

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 7
Hearing on the Merits

Tuesday, 30th May 2017

Before:

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

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

Claimants

-v-

THE REPUBLIC OF GUINEA

Respondent

M KAREL DAELE and DEEPA SOMASUNDERAM, 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 SARRA-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.

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08:30

Tuesday, 30th May 2017

1
2 (8.34 am)

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

4 I see that we are ready to start with Day 7 of this
5 hearing. We start with the mini-openings. The Tribunal
6 has a few points that it just lists now, and then you
7 address them or you add whatever else is required.

8 Looking first to the Claimants, there's a new
9 participant in the room: could you please introduce the
10 person?

11 MR DAELE: (In English) Absolutely, Madam President. May

12 I introduce you Mr Gustaf Bodin: he is

13 a representative for BSGR, he is a director of BSGR.

14 THE PRESIDENT: Welcome.

15 MR BOLDAN: Thank you. Good morning.

16 THE PRESIDENT: Then on the Tribunal's list of pending
17 matters there is the objections to transparency that we
18 received this morning from the Claimants. It was just
19 about ten minutes ago. Do we have a printed version for
20 the Respondent? The assistant can give his, so you can
21 have a look at it.

22 We do not necessarily need to deal with this now.

23 It's one point, and I don't know whether the Claimants
24 wish to give additional explanations.

25 Then we have received from the Claimants last night

08:35

1 Exhibits C-354 to C-360. I did recognise from our
2 previous debates C-354 to C-357. I am not sure about
3 the status of the other ones and maybe you want to give
4 some explanation on that.

5 My last point is timing, and that goes to both
6 parties. If I look at the remaining time available,
7 it's over 19 hours; if I look at the remaining days,
8 it's three. According to your programme, that means
9 6 hours 20 per day only for the parties, without
10 interruptions, breaks, Tribunal questions. These are
11 very heavy days in my experience.

12 So I don't know, I'm just flagging this now; you may
13 give it some thoughts. Maybe you don't need all your
14 time. Maybe you want to start early again. I just
15 wouldn't want us to be caught by time at the very end and be
16 rushed and pressed, because you need to be satisfied
17 that you can get to the close of the hearing putting
18 forward whatever you have to. So I'm just flagging
19 this; you can even think about it.

20 Now, having said all this, I turn to the Claimants:

21 Mr Daele.

22 MR DAELE: In terms of the objections to the transparency,

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

08:39

1 THE PRESIDENT: Maybe you can take this into account when
2 you revert on the exception.

3 Mr Daele, I have interrupted you.

4 MR DAELE: Then in terms of the second point, those new
5 exhibits, I think I will pass the microphone.

6 MS PELED: As regards the Exhibits C-358 to C-360, we
7 obtained the authorisation to produce them just before
8 the hearing started and we just haven't formally
9 addressed the Tribunal and the other side on this yet.
10 So this is an authorisation dated 20th May 2017, in
11 an email, and we just produced this now, but --

12 THE PRESIDENT: You received the authorisation from whom?

13 MS PELED: It was from the Tribunal. It was in the request
14 for additional submissions really just before the
15 hearing started.

16 THE PRESIDENT: Oh, this Tribunal?

17 MS PELED: Yes, this Tribunal.

18 THE PRESIDENT: Oh, I apologise, I should have known this.

19 MS PELED: No, no, no, sorry. So we just had a delay in
20 producing the documents themselves. So that's the
21 reason why.

22 THE PRESIDENT: So they had already been admitted into the
23 record?

24 MS PELED: Yes.

25 THE PRESIDENT: Thank you for the explanation.

08:41

1 MR DAELE: Then in terms of the timing, of course

2 I absolutely hear what you say. I just also see on the

3 table that we still have a lot of time for BSGR.

4 There's a significant -- obviously it's because last

5 week there was the cross-examination of our witnesses.

6 But as far as I can tell, there's almost 14 hours left

7 for us and 5 for Guinea. That is one point.

8 I think the other point -- but maybe we need to

9 discuss this also with Guinea -- I think there's maybe

10 an issue with the order of the witnesses. Maybe you're

11 going to introduce this point, Michael?

12 MR OSTROVE: (Interpreted) Thank you. Indeed. Well, let me

13 check: today we have Ambassador Ousmane Sylla, followed

14 by Minister Ahmed Kanté. Very late in the day, we had

15 a confirmation that Mr Tinkiano did obtain his visa and

16 that he was flying out last night. So no problem, he

17 will be here to testify on Wednesday afternoon.

18 The one thing that's not clear is for Mr Louncény

19 Nabé. He is the governor of the Central Bank at

20 present. There has been a bank strike in Guinea, it's

21 ongoing right now. Mr Mohamed Sidiki Sylla has flown

22 back to Guinea and said it's impossible to get some cash

23 in Guinea, and Mr Nabé is involved 24 hours a day in the

24 negotiations.

25 He hopes to be able to travel over Tuesday night if

08:44

1 everything has been settled. Otherwise, we'll try and
2 see whether the video conference system that we've been
3 using at the IMF in Conakry would be available. We'll
4 mention it to the technicians. We do hope that he can
5 catch a flight tonight, so that he can testify on
6 Thursday, instead of Wednesday. In which case it would
7 be Bouna Sylla who could testify on Wednesday, and
8 Thursday would be dedicated to Mr Nabé and Mr Avidan.
9 So it's just that Mr Bouna Sylla and Nabé would be
10 switched.

11 Otherwise, as far as timing is concerned, when
12 Mr Avidan had cancelled and then postponed his testimony
13 we had asked for a little flexibility, because of course
14 we did much more with Mr Struik than we would have done
15 in the absence of Mr Avidan. But now that Mr Avidan,
16 who is one of the key witnesses, can appear, then we'd
17 like to reduce the examinations, but we've got lots of
18 subjects to deal with.

19 My other question had to do with the agenda. You
20 said, Madam President, that we had three days left.
21 Well, in our programme Friday morning was available for
22 questions by the Tribunal, and I wanted to make sure
23 that this was still available.

24 THE PRESIDENT: (Interpreted) Yes, Friday is still
25 available, but it's true that everybody had seemed to

08:46

1 think that we would close on Thursday night, with the
2 questions of the Tribunal that would be given to you for
3 the post-hearing briefs. But the Tribunal is available,
4 and Friday is available if we really need it. The
5 question, when I raise this question of timing, is not
6 to restrict the time which is allocated; it's just that
7 we all reach the end of the hearing together.

8 Okay, let's sum up the programme. So today we've
9 got Ousmane Sylla, followed by Mr Kanté. Then tomorrow
10 we've got Bouna Sylla and Mr Tinkiano. And on
11 Thursday -- no, maybe I'm confused. Mr Ostrove, can you
12 repeat the sequence?

13 MR OSTROVE: Yes, I think you're quite right. Today,
14 Ousmane Sylla and Ahmed Kanté. Tomorrow, Bouna Sylla
15 and Lansana Tinkiano. And on Thursday we'll have
16 Loucény Nabé --

17 THE PRESIDENT: Ah, that's what was missing.

18 MR OSTROVE: -- and Avidan.

19 MR DAELE: (in English) Excuse me, Madam President, I do have
comments in

20 relation to this.

21 First of all, obviously if Mr Nabé cannot travel to
22 Paris, we do this by video conference, then we would
23 expect that it's for the Guinea side to organise the
24 same logistics as we had to organise in terms of making
25 sure the bundle is in front of Mr Nabé. We will not be

08:48

1 in a position to now, last minute, send people from our
2 side to Guinea to make sure he has the bundle and
3 everything. So we would expect the same kind of
4 arrangements that were made in relation to our
5 witnesses, in terms of the interrogation by video
6 conference.

7 The second point of course is that we want to make
8 sure that we have Mr Nabé available for the sufficient
9 time that we need for our cross-examination, and not
10 just -- I don't know, I'm only speculating -- but for
11 half an hour or for an hour, because he has to run to
12 another meeting or something. He is an important
13 witness, and so we want at least to have the time with
14 him that was foreseen in the schedule.

15 THE PRESIDENT: Which was three hours, yes.

16 MR DAELE: Yes.

17 THE PRESIDENT: We would, if we do it by video conference --
18 and of course, the sooner we know, the better, for
19 organizational. The Respondent would then have to
20 liaise with the Secretary, and if it can be done at the
21 IMF it is easier because it is inside the World Bank
22 Group, and that should be organised. We would follow
23 then the same protocols like we have done for
24 Mr Steinmetz in respect of the video conferencing, and
25 we of course understand you would have no one present

08:50 1 there, but we'll have to handle this as best as we can.

2 MR OSTROVE: (interpreted) Yes, indeed. So Mohamed Sylla has
gone back.

3 We will ask his law firm, who has limited means compared
4 to ours, but if they are prepared to print the documents
5 on the day before. And I believe that BSGR has advisors
6 in Conakry, so if BSGR wishes somebody to be present,
7 I don't think there should be a problem. And our
8 colleague Sylla will be present anyway, if the worst
9 came to the worst.

10 THE PRESIDENT: (interpreted) Yes, but we just have to check who
holds the

11 documents in trust before they are presented to the
12 witness. All this is still theoretical, so let's not
13 spend too much time on it.

14 (In English) Professor van den Berg would like a new
15 schedule, because there's too many changes. You do this
16 when you have time.

17 Of course, if we do not have sufficient time on
18 Thursday, we would have to continue on Friday morning,
19 and that would mean that Mr Avidan would have to be
20 available then. It may not be necessary, but it maybe
21 a good idea to flag it now for his own schedule.

22 MR DAELE: Okay. We'll do our best.

23 THE PRESIDENT: Anything further that we should address now,
24 before we start with the first witness? I haven't
25 really yet given the floor to the Respondent for your

08:52

1 general remarks.

2 MR JAEGER: A small question of procedure, Madam President.

3 Yesterday we indicated to the Tribunal that we wish
4 to submit a new exhibit which is an FBI statement from
5 26th May 2017 concerning the status of the original
6 documents signed by Mrs Touré and her present situation.
7 We sent this document to our adversaries and heard
8 yesterday that they were opposed to the admittal of
9 these documents, so we are going to ask the Tribunal to
10 rule on the production of this new document.

11 THE PRESIDENT: (Interpreted) Are you asking for this, or
12 are you announcing that you will?

13 MR JAEGER: We are asking for this. We think that it is
14 useful to produce this document because it answers
15 directly the allegations made by Mr Beny Steinmetz
16 concerning Mrs Touré and relating to these original
17 documents, though we think it would be a good thing to
18 rule on this particular point during our hearing.

19 PROFESSOR VAN DEN BERG: (Interpreted) What is the exact
20 date? The French transcription has no date, and in the
21 English it's 2005.

22 MR JAEGER: 26th May 2017.

23 THE PRESIDENT: (In English) Would Mr Daele wish to react to
24 this request?

25 MR DAELE: Yes. We indeed received this request, and we

08:54

1 were asked whether we would object or not, and we
2 replied with a letter in which we asked a number of
3 questions in relation to -- I think last week there was
4 a lot of argument about the status of these documents
5 and whether they were originals, and who had the custody
6 and so forth. So we basically asked a number of
7 questions to counsel for Guinea to give a number of
8 explanations, so that we could form a view and take
9 a position on the production of this new document also
10 from the FBI agent, and so far we have not received
11 an answer. Well, that's maybe not entirely true. We
12 did receive an answer, but the answer was, "We'll give
13 you an answer in due time".

14 So for the moment we don't have the answers to the
15 questions we raised, and that's why at this moment we
16 cannot agree to have this document now on the record: we
17 would first need to see the answers. So that's our
18 current position: we are waiting for the reply from
19 Guinea's counsel. And if the Tribunal would want us to,
20 we can obviously produce the correspondence that we've
21 had.

22 THE PRESIDENT: Yes, before we do that, let me listen to the
23 Respondent's position on this question of questions.

24 MR JAEGER: It is correct that the Claimants sent us a list
25 of questions. This being said, the rules of evidence in

08:56

1 international arbitration are such that the parties are
2 free to produce the documents that they wish to produce
3 to support their arguments. If the other party has
4 questions or comments on the document, it is free to
5 make such comments during the proceedings, but we don't
6 see how a party can subordinate our right to produce
7 elements of evidence to the answering of their questions
8 relating to this document.

9 THE PRESIDENT: (Interpreted) Well, you are of course
10 entitled to produce documents with your statements or
11 submissions, with of course the caveat of exceptions.
12 There is a timing also for doing so.

13 MR JAEGER: Yes, this is a question of due process. We are
14 well aware of this, and that's why we are submitting it
15 to the authorisation of the Tribunal. But the questions
16 that are put by our adversary are not linked to due
17 process; they are questions that deal with the subject
18 matter of the original documents that are dealt with in
19 this statement and, amongst others, their provenance.

20 So at this stage there is no question concerning the
21 fact that our adversary would not be in a position to
22 exert their right to comment and to get to know these
23 documents in due course and to make comments and apply
24 due process. So, so far there's been no objection on
25 due process, but there are questions, questions that may

08:58

1 be raised at any point in time by our adversary, but
2 I don't see why the admittal of this exhibit would be
3 subordinated to our answers to these questions.

4 THE PRESIDENT: (In English) Would you like to respond,
5 before I say something?

6 MR DAELE: Yes. Yes, it's true there are a number of
7 questions in relation to the original documents, but
8 we've also asked questions in relation to the new
9 document, so the declaration of the FBI agent that they
10 now want to submit to the Tribunal. So not only in
11 relation, let's say, to the underlying documents that
12 are at the heart of the dispute, but also the new
13 document that they want to submit.

14 THE PRESIDENT: I think the best would be that we see your
15 exchange of correspondence and then we deliberate on
16 what should be done with respect to this FBI document.
17 Can we do this? If we can have it in the course of the
18 morning, you can send it to us by email, and then we
19 will review it during the lunch break.

20 MR JAEGER: Okay.

21 MR DAELE: Yes.

22 THE PRESIDENT: (Interpreted) Were there other comments on
23 behalf of the Respondent?

24 MR OSTROVE: No, Madam President.

25 THE PRESIDENT: So in that case I think we can hear the next

08:59

1 witness, Mr Ousmane Sylla. There are two Syllas; we
2 mustn't confuse them. Can we ask Mr Ousmane Sylla to
3 come into the room.

4 (9.01 am)

5 DR OUSMANE SYLLA (called)

6 (Evidence interpreted)

7 THE PRESIDENT: Good morning, sir. Kindly be seated.

8 Welcome.

9 You are Ousmane Sylla; at present you are
10 an ambassador of the Republic of Guinea to the
11 European Union?

12 A. Yes.

13 THE PRESIDENT: And you were Minister for Mines twice, but
14 we're particular interested in your second term of
15 office. You have submitted two written statements: the
16 first one 16th May 2016, the second 31st March 2017. Is
17 that accurate?

18 A. Yes.

19 THE PRESIDENT: Do you have your statements with you?

20 A. Yes.

21 THE PRESIDENT: Very well.

22 You are here as a witness, as you know, and as such
23 it is your duty to tell us only the truth. Would you
24 confirm that this is really your intention by reading
25 the witness declaration that you should have on the

09:02

1 table before you.

2 DR SYLLA: Yes. Witness declaration: upon my honour and
3 conscience, I declare that I shall say the truth, the
4 whole truth, and nothing but the truth.

5 THE PRESIDENT: Thank you.

6 First counsel for Guinea will be putting a few
7 questions to you, and then we shall hear BSGR's counsel.
8 Thank you.

9 Mr Ostrove.

10 MR OSTROVE: Thank you, Madam President. We have no
11 questions for the ambassador.

12 THE PRESIDENT: Very well then.

13 Mr Daele.

14 (9.03 am)

15 Cross-examination by MR DAELE

16 Q. (Interpreted) Good morning, Mr Sylla.

17 A. Good morning, sir.

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

19 As yesterday, I will try to conduct your examination
20 in French, and I apologise if my French is not perfect
21 but I shall do my best. I am Belgian; at least during
22 the weekend, I believe we live in the same city.

23 My first question -- before we get started, I will
24 try and follow your witness statement, so every once in
25 a while I will be referring to some specific paragraphs

09:04

1 in your statements. We shall start with your first
2 witness statement; if I move to the second witness
3 statement, I shall tell you.

4 In paragraph 9 you said that you were appointed
5 Minister of Mines on 29th May 2006. Was it
6 President Conté who appointed you?

7 A. Yes, it was the President of the Republic Conté who
8 appointed me.

9 Q. At the time of your appointment did President Conté give
10 you any instructions or directives, any explanations as
11 to what he expected from you as Minister of Mines?

12 A. He simply told me that he trusted me, that I had been
13 once Minister of Mines and he had been very satisfied
14 with the work I had done at the time, and that was the
15 reason why he was calling upon me a second time. But he
16 gave me no specific instructions.

17 Q. What was the position of President Lansana Conté as
18 regards investment in the mining sector at the time?

19 A. At the time his main concern was to attract investors
20 and to keep them in the country.

21 Q. Was that also the position within the Guinea population
22 at large? Was that also something the citizens wanted?

23 A. Yes. You know that Guinea has been described as
24 a geological scandal, with so very many mining resources
25 available and untapped, and this is why the President

09:06

1 and everyone in the population wanted to attract
2 investment into that area.

3 Q. What kind of minister were you?

4 A. I was Minister of Mines and Geology.

5 Q. Yes, I know what sector you were responsible for. But
6 I was rather wondering not really your personality, but
7 were you a strong minister, with your own ideas as to
8 what had to be done, what had to be changed, or were you
9 rather somebody who would simply carry out instructions
10 that somebody else would give you? The perception
11 people had of you was that of a strong, resolute
12 minister?

13 A. Well, it's very difficult for oneself to describe one's
14 actions. But as I told you, I was Minister of Mines
15 once; the President called me for a second time because
16 he believed that I had done excellent work the first
17 time and he needed me for a second round. But I must
18 point out that there was a Coordinator of Governmental
19 Action who was in fact acting as Prime Minister, and we
20 were technical ministers. But I believe that if he told
21 me that he was calling upon me and he trusted me, well,
22 it is precisely because of that relationship of trust
23 between us.

24 Q. Were you afraid of the President?

25 A. No, I wasn't afraid of the President; I respected him.

09:08

1 I had respect for the President, and he respected me in
2 return.

3 Q. So if you did not agree, for instance, on any one
4 specific point, you could always express your opinion
5 freely to him and engage in an open discussion with the
6 President?

7 A. Well, that was natural. And definitely when I had
8 something to tell him, that I didn't agree on one
9 specific point, I would go see him and tell him.

10 Q. And he wasn't particularly -- how would I put it? --
11 frustrated or annoyed when you would come and explain
12 your position if you didn't agree with him?

13 A. Oh, no, not at all. President Conté -- I was in
14 Siemens; probably you read that. I was head of
15 a department in Germany when he asked me over. I wasn't
16 alone; there were seven of us at the time. You should
17 know the context there. So he was bold enough to call
18 on high-ranking Guinean officials who were working
19 abroad, who had experience, to come back to the country
20 and help him out.

21 When we returned -- I was with Siemens in Germany,
22 others were at the World Bank, yet others were in
23 France -- and he told us, "I am a soldier, I am
24 a peasant, I don't know these areas well, but I have
25 called upon you to come and work for your country, help

09:09

1 me to get this country moving forward".

2 Q. You replaced Mr Souaré?

3 A. I replaced Mr Souaré.

4 Q. Do you know why Mr Souaré was replaced?

5 A. Well, that was up to the President of the Republic.

6 Q. But he never explained?

7 A. No.

8 Q. So you do not know whether that was linked with the BSGR
9 case?

10 A. No.

11 Q. With the Rio Tinto case?

12 A. No. However, I should like to point out that Mr Souaré
13 was then appointed Minister of State in charge of Higher
14 Education and Scientific Research, which is an even
15 higher echelon.

16 Q. When you were abroad and then you arrived back in your
17 country, I imagine that there must have been a period of
18 transition. Did you speak with Mr Souaré when you
19 took -- well, not his position, but when you replaced
20 him?

21 A. Yes, as in all countries, obviously. When one minister
22 leaves and the other one comes in in the same position,
23 the new minister coming in has a conversation with the
24 outgoing minister, and so that ministerial power passes
25 from one minister to the other, as in all countries.

09:11

1 Q. Do you have any memories of what he said about the BSGR
2 case?

3 A. No, I have no specific memories about that.

4 Q. Did he mention the Rio Tinto case to you?

5 A. He talked about mining dossiers in general, the mining
6 sector in general, several projects which were underway,
7 which is normal when power goes from one minister to the
8 next.

9 Q. Thank you. Would you kindly refer to the document that
10 you will find behind tab 1, please, in your bundle.
11 This is C-165. It's a letter from Rio Tinto to
12 Mr Souaré. As you can see on page 3, there's a date:
13 May 12th 2006. It's only two weeks before your
14 appointment.

15 Do you remember if you ever discussed this letter?
16 Because this letter actually describes Rio Tinto's
17 position at the time you took office.

18 A. Well, I tell you again that Mr Souaré summarised the
19 various projects underway to me, but he didn't
20 specifically address any one particular case.

21 Q. Fine. Can we then look at the very last paragraph on
22 page 3, the last line. It says:

23 "... to signify your agreement ..."

24 It wasn't your agreement, it was the agreement of
25 Mr Souaré. So Rio Tinto is asking for his agreement so

09:13

1 that the date of submission of the feasibility report be
2 set at 30th December 2008. Do you see that?

3 A. Yes, I do.

4 Q. Do you also see that Mr Souaré signed this document,
5 since at the end of the page you see Mr Souaré's
6 signature?

7 A. Yes, I see it.

8 Q. Therefore here the ministry agrees to postpone, in fact,
9 because you can see on the second page, the second
10 paragraph from the end, it's a paragraph that says,
11 "Within this context". Do you see that paragraph?
12 Well, in that paragraph mention is made of the fact that
13 this report had initially to be submitted on
14 30th May 2006.

15 So now, instead of it being submitted on
16 30th May 2006, the date of submission is postponed to
17 30th December 2008?

18 A. Well, I see that.

19 Q. In your experience, how long does a mining developer
20 need between the time he submits the feasibility report
21 and the time that he actually starts developing, mining
22 the iron ore?

23 A. There's no general rule. The time that elapses between
24 the submission of the feasibility study and the
25 production of the first tonne of iron ore depends on the

09:15

1 project. Projects develop differently. I cannot tell
2 you whether you need one year, two years, three years.

3 Q. Well, in Rio Tinto's project?

4 A. Well, in Rio Tinto's project I believe that if the
5 minister gave his agreement, the reason is that he must
6 have had technical explanations given to him at the time
7 on the basis of which he took that decision. He must
8 have had those explanations and deemed it useful to
9 grant that extension of the deadline.

10 Q. Very well then. Can we proceed to the following page.

11 There we see a table, which is the chronology of the
12 Simandou project. Look at the second column, the
13 vertical column: it says "Feasibility Study", and at the
14 bottom of the page you see that date, December 2008?

15 A. Yes, yes, I see that.

16 Q. Then the next column to that is the time needed in order
17 to build the mines and the railways. Do you see that?
18 And then the very last column, vertically you see the
19 word "Production", and the date given is 2013?

20 MR OSTROVE: I'm sorry, Madam President, I'm sorry to
21 interrupt. According to Procedural Order No. 1,
22 paragraph 18.15, the examination should be confined to
23 the written witness statement and to the answers given
24 in the course of his direct examination. But we're now
25 listening to an examination on negotiations with

09:17

1 Rio Tinto which took place before Mr Sylla stepped into
2 office as Minister of Mines. He doesn't mention that at
3 all in his written statement, nothing about his
4 relations with Rio Tinto, and the fact that he took
5 office in June 2006 doesn't really leave the door wide
6 open to examination on this particular subject. And
7 it's unfair to him, unfair to the minister, who was to
8 prepare on the basis of his own witness statement,
9 madam.

10 THE PRESIDENT: (Interpreted) Mr Minister, are you aware of
11 this letter? Did you know about this letter?

12 A. No.

13 THE PRESIDENT: Had you seen it before, sir, in the context
14 of your duties as minister?

15 A. I have never seen that letter.

16 THE PRESIDENT: Were you aware of this particular timetable?

17 A. No, I wasn't.

18 THE PRESIDENT: Did you know that the date of the Rio Tinto
19 feasibility study had been postponed?

20 A. Yes, I knew about that. The postponement had been
21 granted.

22 THE PRESIDENT: Did you know that the production date was
23 2013?

24 A. I knew that that date had also been postponed,
25 your Honour.

09:19

1 THE PRESIDENT: Does that settle the matter? Because it's
2 true this is a question that should have been asked to
3 Mr Souaré yesterday. But since the ambassador took
4 office after this letter --

5 MR DAELE: Well, I would totally agree. But as he
6 explained, there was nonetheless a period of transition,
7 and this is a letter two weeks before his arrival, and
8 he spoke to Mr Souaré on the status of various mining
9 projects.

10 So along those lines, madam, I don't think that
11 I acted in disrespect of the procedural order. This is
12 a letter dating back to the period when Mr Sylla took
13 office. But as far as my questions are concerned, I'm
14 satisfied with the answers I received, madam, so I have
15 no further questions on this document.

16 THE PRESIDENT: Very well then. We can proceed to your next
17 set of questions.

18 MR DAELE: In paragraph 11 and following, you speak of the
19 various wives of the President, and in paragraph 14 you
20 mention a meeting you had with the President and with
21 Mamadie Touré, and you say that, "He introduced her to
22 me as such" -- in other words, as his fourth wife -- at
23 that meeting.

24 A. Yes.

25 Q. Did you know prior to that meeting who Mamadie Touré

09:21

1 was?

2 A. I knew who she was, because it was well known in Guinea
3 that his Excellency the President of the Republic had
4 married a fourth wife. So she was indeed his wife. But
5 I had never met her before.

6 Q. So in the course of that meeting with the President and
7 Mamadie Touré, did they mention the BSGR case, dossier?

8 A. No.

9 Q. Did the President give you any instructions at all in
10 the course of that meeting?

11 A. I repeat: the President asked me to go see him in
12 Dubréka. So when I went to Dubréka, it was at the
13 residence of his fourth wife, and he introduced her to
14 me. And he and I remained together; he gave me
15 instructions for a state mission I was to carry out.

16 Q. But that had nothing to do with BSGR or Rio Tinto; it
17 was an entirely different mission?

18 A. Yes, it was a state mission, nothing related to that at
19 all. But he introduced me to that lady as his fourth
20 wife.

21 Q. Did she remain in the course of the meeting with you?

22 A. No, no. It was just the President and I alone.

23 Q. Well, I'm sorry for the question, which might sound
24 a little bit silly, but I would imagine that Ms Mamadie
25 Touré didn't actually speak to you?

09:23

1 A. He introduced her to me, I greeted her, and the
2 President wanted the conversation to be just strictly
3 between him and me, and therefore she left.

4 Q. You say in paragraph 15 that:

5 "It was known that Mamadie Touré would use her
6 influence for some companies and ... that BSGR had
7 managed to get access to the palace thanks to her."

8 A. Well, that is the plain truth.

9 Q. You say that it was known: known by whom?

10 A. Well, it was known by everyone: by the members of the
11 government, by all Guineans. And as I'm stating in that
12 paragraph, her brother, Ibrahima Sory Touré, was
13 an intermediary between her -- a middleman between her
14 and the various ministers.

[PROTECTED]

[REDACTED]

09:25

[PROTECTED]

[REDACTED]

09:27

[PROTECTED]

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09:29

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09:31

[PROTECTED]

[REDACTED]

[PROTECTED]

[REDACTED]

12 you stand by your statement that it was generally well
13 known that Mrs Touré was involved in the BSGR dossier?
14 A. I stand by my statement. During the period of my tenure
15 as minister, Mr Ibrahima Sory Touré came to see me
16 saying that he was coming on behalf of his sister, who
17 was the fourth wife of the President of the Republic,
18 and that she was the one supporting BSGR. It was during
19 my term as minister.

20 Now, as regards my departure from the Ministry of
21 Mines and the period elapsed since then, I cannot speak
22 to that period. But I can tell you exactly what I know
23 and what I stated.

24 Q. You testified on two things in this paragraph, in fact.
25 You said in your statement that Mr Ibrahima Sory Touré

09:35

1 told you what you just reported, but you also said that
2 it was known. And when you say it was known, it's not
3 coming from Mr Ibrahima Sory Touré; you say it was
4 generally known. This is the second statement that you
5 made in this paragraph.

6 A. I maintain this second statement. It was known -- at
7 least it was known at the level of the presidency --
8 that Mamadie Touré intervened with the President on
9 behalf of some companies. I once again reaffirm this
10 statement.

11 Q. What did Ibrahima Sory Touré tell you regarding
12 Mamadie Touré's interventions? What did he say she had
13 done?

14 A. He did not say what she had done. He just said that she
15 supported this company where he worked, because he was
16 already employed by this company.

17 Q. But he did not give concrete examples?

18 A. No, he did not need to give concrete examples to say,
19 "This is what my sister [has done]".

20 Q. Did you ask?

21 A. No, he just said that his sister supported the company
22 that he worked for. He was very clear.

23 Q. Did you ask what she had done?

24 A. No, I did not ask. As she was the wife of the
25 President, I was not going to go into detail on this

09:37

1 question.

2 Q. You said you spoke with Minister Souaré during your
3 transition. Did Mr Souaré say anything about
4 Mamadie Touré?

5 A. No, he did not. I do not recall that he would have done
6 that. And it would not have been usual or normal to
7 speak about the President's wives.

8 Q. You say that in addition to Ibrahima Sory Touré, several
9 officials working within the presidency told you that.
10 What did these officials tell you exactly?

11 A. They said exactly what all members of the government
12 already knew: that Mrs Touré would intervene on behalf
13 of a given company. These were the various officials
14 who were close in the entourage of the President.

15 Q. So this was regarding several companies?

16 A. But this comment concerned the four wives, so it
17 concerned several companies operating in Guinea.

18 Q. You said "the First Lady"?

19 A. No, I say "the First Ladies", because he had four wives
20 and they were all considered as First Lady or First
21 Ladies.

22 Q. So the comment applied to all four of the wives, not
23 specifically Mamadie Touré?

24 A. No, not specifically Mamadie Touré but it did apply to
25 her as well; she was one of the four.

09:39

1 Q. But these officials did not give any examples of what
2 Mamadie Touré allegedly did?

3 A. No, they did not.

4 Q. We are talking about officials. How many officials are
5 we talking about: two, three, four?

6 A. These are the direct aides of the President: the
7 Secretary General, the Chief of Staff, the advisors.
8 There were several of them.

9 Q. Do you have their names? Could you identify them?

10 A. I do not recall their names at this point. This was in
11 2006 and 2007. I would have to look at the
12 organisational chart of the President's Office.

13 Q. You say in the last line of this paragraph that
14 Mamadie Touré never spoke directly with you?

15 A. That is true, and I think this proves it. I did not
16 speak directly with her.

17 Q. In your second statement you say -- and I am referring
18 here to paragraph 3 -- you confirm that:

19 "... Mamadie Touré never met with me to give me
20 instructions."

21 A. That is the truth.

22 Q. Did she give you instructions without actually meeting
23 you?

24 A. She did not give me instructions. I repeat what I wrote
25 here: Mr Ibrahima Sory Touré was the one who came to see

09:40

1 me.

2 Q. But she was not using Ibrahima Sory Touré to pass on
3 instructions?

4 A. If he comes to see me on behalf of his sister, on behalf
5 of BSGR, it's clear that he has discussed it with his
6 sister and BSGR.

7 Q. Did he say that he was coming on behalf of his sister or
8 on behalf of BSGR?

9 A. He came and spoke on behalf of both.

10 Q. So he was passing on instructions of Mamadie Touré?

11 A. The wishes, the desires of his sister.

12 Q. And what instructions did he pass on?

13 A. Simply that the Minister of Mines should facilitate the
14 granting of the permits that they had requested, and
15 this was permits for uranium.

16 Q. When Mr Ibrahima Sory Touré passed on these alleged
17 instructions, did he say that they were coming from the
18 President?

19 A. No, he did not say that they came from the President.
20 He was talking about BSGR and his sister. But his
21 sister is the President's wife. The link, the
22 connection is clear.

23 Q. Did he say that Mamadie Touré had discussed these
24 instructions with the President and that the President
25 was in agreement?

09:42

1 A. Mamadie Touré cannot interfere on a dossier without
2 discussing with her husband, who's the President; that's
3 the very least.

4 Q. So she would not be working behind the President's back?

5 A. No, not at all. I don't believe so. They were husband
6 and wife.

7 Q. Do you have an opinion regarding the intellectual level
8 of Mamadie Touré?

9 A. I do not have an opinion on her level. I don't know
10 what her background is, I don't know what her CV is.
11 I don't know if she studied, what studies she did.
12 I don't know what her level of attainment is. I don't
13 know if she has a diploma. I don't even know if she
14 graduated from secondary school.

15 Q. Do you know how old she was at the time?

16 A. I never asked her how old she was, out of courtesy.
17 I certainly don't ask how old a woman is, and
18 particularly the First Lady.

19 Q. In paragraphs 16 and further, you talk about a meeting
20 that was held with all the mining investors. This is
21 a meeting that took place on June 16th, and you say that
22 you announced your strategy for the mining sector.

23 I think you were appointed minister on May 29th, but
24 two weeks later, in June 2006, you already had
25 a strategy for the sector. Had this strategy been

09:44

1 approved by President Conté?

2 A. Yes. Let me go over this again.

3 I was appointed May 29th. In June I took up my
4 responsibilities. But this was the second time I was
5 appointed Minister of Mines. So during my first term
6 I had developed a strategy for the mining sector for
7 Guinea. If I may permit myself this, I am in a way the
8 father of the first Mining Code of Guinea, along with
9 the World Bank, and my strategy was transforming our
10 natural resource industry. I thought that we were too
11 reliant on bauxite, and I wanted to work on a mining
12 strategy that would encourage our partners to help us to
13 process the natural resources in country to develop
14 employment. That was the first pillar of my mining
15 strategy.

16 Then the second pillar was to address our
17 over-reliance on bauxite. We were approaching
18 an anniversary of our independence. At the time I am
19 referring to, there was not a single alumina plant
20 operating in the country. So the second aspect of our
21 strategy was to diversify our portfolio so that we
22 wouldn't be completely reliant on bauxite, to see how we
23 might broaden our natural resource base; once again, to
24 not be too dependent on the price of bauxite and
25 aluminium.

09:46

1 This is why we decided to bring together all of the
2 mining companies in June 2006 to announce that I was
3 Minister of Mines for a second time, and this was the
4 strategy I wanted to roll out, and I was launching
5 a call to help Guinea to achieve its different
6 objectives. First of all, process mining resources,
7 creating jobs for young people, industrialising the
8 country. And then, as a second pillar, reducing our
9 dependence on one product and diversifying production.

10 This is why I brought together all the mining
11 companies in June 2006, to develop this strategy, and
12 also to look into the various aspects of the strategy:
13 the environmental impact, the consequences for local
14 community development, the creation of jobs for young
15 people, making more locals accede to management
16 positions. And this is my strategy that I developed and
17 that I carried forward during my second tenure.

18 So I am making these clarifications, with your
19 permission, that the strategy had already been put in
20 place, that was known. And one of my colleagues said,
21 talking about the different Ministers of Mines, that
22 I was able to modernise the mining sector, and that was
23 my goal.

24 Q. So your first mandate as minister was in 1985?

25 A. I was appointed on December 22nd 1985, Minister of Mines

09:48

1 and Natural Resources.

2 Q. So there were more than 20 years that had elapsed
3 between your first term as minister and your second one?

4 A. 17 years, to be precise.

5 Q. 1985?

6 A. 1986, and I came back in 2006.

7 Q. So it was quite a long period that elapsed between your
8 two terms as minister?

9 A. Correct.

10 Q. The strategy had not changed during this period of
11 16 years, 20 years?

12 A. As I speak today here, this strategy still holds true
13 for all mining resources.

14 Q. So the problems that you had encountered in the 1980s
15 were still prevalent when you became minister for the
16 second time?

17 A. Well, there were some things came to pass. We had an
18 alumina plant, we were able to diversify the mining
19 sector. So some things were done, but we needed to
20 carry it forward further. My predecessors did do the
21 work that was required.

22 Q. My question, before you responded, was whether your
23 strategy had been approved by the President.

24 A. Yes, it was approved by the President.

25 Q. Was it approved by the Prime Minister?

09:49

1 A. I did not have a Prime Minister. There was an official
2 responsible for coordinating governmental work and there
3 was a Secretary General of the Presidency, and the
4 strategy was approved by him and by the Council of
5 Ministers.

6 Q. By the Council of Ministers? When did they approve the
7 strategy? Was there a meeting?

8 A. Of course. Council meetings took place every Tuesday
9 under the chairmanship of the Coordinator of
10 Governmental Activity, and that's when I spoke and it
11 was approved by all those present.

12 Q. So if we had the minutes of these meetings, we would be
13 able to see that this presentation was made and it was
14 approved?

15 A. Yes, it was approved.

16 Q. Was this strategy different from Mr Souaré's?

17 A. No, I said that my predecessors did fine work and
18 I continued, and this was a strategy that was defended
19 by all successive Mining Ministers. These are obviously
20 things that are in the natural interest. Each minister
21 tried to implement at least part of the grand strategy
22 for the mining sector.

23 Q. You said in paragraph 18 that during this meeting you
24 met with Mr Avidan, the director of BSGR, and you say
25 that you recall having spoken of bauxite, uranium, rare

09:51

1 metals and gems. You said that you don't recall that he
2 spoke of iron ore?

3 A. Not on that day.

4 Q. Is this not a bit strange, insofar as Ibrahima Sory
5 Touré came to see you -- with the alleged instructions
6 coming from Mamadie Touré -- to get the iron ore permit,
7 then you meet the CEO of BSGR and he doesn't bring up
8 iron ore?

9 A. Let me correct that. Ibrahima Sory Touré talked to me
10 about the uranium permits, not iron.

11 Q. Will you agree with me that Mr Avidan was talking about
12 these minerals, and that BSGR is also keen to invest in
13 those sectors?

14 A. If he referred to them, of course it's because he was
15 expressing the interest of his company; there is no
16 doubt about that.

17 Q. We heard before that BSGR's sole interest was to invest
18 in Blocks 1 and 2 on Simandou. This seems to indicate
19 something else.

20 A. I would like to clarify this: that BSGR was also talking
21 about bauxite. They had permits for bauxite. So they
22 were not only interested in iron ore. And then uranium.

23 Q. Did Mr Avidan talk about Rio Tinto?

24 A. No, he did not bring this up with me.

25 Q. Did he talk about his desire to get Blocks 1 and 2?

09:53

1 A. On that day he did not bring that up.

2 Q. In paragraph 19 of your statement you say that:

3 "Ibrahima Sory Touré was subsequently present during
4 all the meetings with BSGR at the Ministry of Mines."

5 Do you know how many meetings were held?

6 A. From June 2006 to March 2007, I do not recall. But
7 these were meetings that were held regularly with the
8 mining companies. I cannot say today the precise number
9 of meetings that took place during the nine months that
10 I was minister.

11 Q. Did these meetings take place at the request of BSGR?
12 Was it at the request of your ministry?

13 A. The ministry regularly called in the mining companies
14 for meetings, and BSGR was invited, just like other
15 mining companies. But it could also be that a mining
16 company asked to come and see the minister or the
17 officials, and those meetings would be granted and they
18 took place regularly. It was standard practice.

19 Q. In paragraph 20 you talk about the conference that took
20 place on September 19th 2006. You say that you were not
21 present, but that nonetheless you did receive something.

22 Let's look at the document in tab 3, C-89.

23 A. Yes.

24 Q. Are you familiar with this presentation?

25 A. Yes.

09:55

1 Q. Did you read it at the time?

2 A. Yes, at the time I read it.

3 Q. What was your position on this presentation and on the
4 work described in this presentation? And if you would
5 go to page 10 of the document. This document includes
6 the programme, BSGR's plans in the zones over which they
7 had permits, Simandou North, Simandou South, and you see
8 here detailed figures, detailed timeframes, a drilling
9 programme that would be for Simandou North on page 10,
10 then a [drilling] plan for Simandou South on page 11.
11 And on page 12 we see a feasibility study is referred
12 to, with exploration starting in October 2006.

13 I could continue, but I don't think it's worthwhile
14 to review all the pages. But we could, for instance,
15 look at page 17. Here we find a detailed schedule with
16 dates.

17 A. Yes.

18 Q. This is for Simandou North and South. Then on pages 18
19 and 19 we have budgets.

20 A. Yes.

21 Q. Again, these are detailed tables. \$18 million
22 altogether.

23 On page 20 we have the different milestones for the
24 different zones and the amounts spent. I'm referring to
25 page 20.

09:58

1 Page 22, we have the same sort of information for
2 bauxite, again with a detailed schedule, and there's
3 information on the investments.

4 Maybe for the benefit of the Tribunal, on page 37,
5 we have here a schedule with the detailed milestones,
6 with the activities underway in 2006. If we take the
7 second half of 2006, and then on pages 38 and 39 we have
8 the amounts invested.

9 What was your reaction when you saw this
10 presentation?

11 A. I repeat once again: I was not present at this meeting.
12 It was my Secretary General who went to the meeting and
13 then he reported back to me.

14 This document is a standard for all mining
15 companies. My reaction to the Secretary General was to
16 say, "Well, fine, this presentation has been made,
17 that's all fine, but now let's see what they actually do
18 on the ground. Let's see if what they have in this
19 paper is going to actually be implemented step by step".

20 But presenting this kind of document was something
21 that was entirely standard for companies. When they
22 have a concession, they carry out exploration and they
23 are complying with the rules that are imposed by the
24 Mining Code. But what's important is what takes place
25 on the ground.

10:00

1 Q. I think you said that BSGR didn't have the financial nor
2 technical capacity to carry this out. Does this
3 presentation not suggest the contrary? I'm under the
4 impression that they know what they're talking about.
5 They're talking about investing millions.

6 A. I think that such a document could be presented by any
7 company, your Honour. It doesn't reflect the technical
8 capacity of the company because any company could do
9 likewise.

10 Q. In paragraph 21 you talk of the reception that followed
11 and the video that you watched. Do you remember how
12 long this video is? Did you look at excerpts or did you
13 see the full video?

14 A. No, just a few minutes.

15 Q. Because the video is 18 minutes long. So is that the
16 version with the comments of Global Witness that you
17 saw?

18 A. I saw the pictures. I didn't see the comments by
19 Global Witness, as far as I remember.

20 Q. So you didn't see that there was a reference to the
21 berets rouges, the red berets?

22 A. Yes, I did see the pictures with the red berets.

23 Q. You saw that they were already present before Mrs Touré
24 arrived?

25 A. Your Honour, I think that truly this question is

10:02

1 irrelevant. But I do remember the video and I see the
2 red berets and I see Mrs Touré arriving. This is
3 exactly what I saw. As I described, were the red berets
4 there before/after? I don't know. She was there
5 together with the red berets, your Honour.

6 Q. So you had a meeting with all of the mining promoters in
7 June 2006?

8 A. Yes.

9 Q. And in paragraph 23 you depict that there was a second
10 meeting in January 2007?

11 A. Yes.

12 Q. For mining promoters?

13 A. Yes.

14 Q. You say in [paragraph 24] that the aim of the meeting
15 was to make sure that they shouldn't leave the country
16 when the country was experiencing a crisis. So there
17 was a fear that promoters might leave?

18 A. Yes. Well, you're quite familiar with the history of
19 several African countries, your Honour. When there are
20 strikes in a country, general strikes at that, and such
21 strikes go together with social upheaval -- we see that
22 in Africa, Latin America, mining countries or not --
23 investors might start worrying about the situation and
24 one has to study how to evacuate one's staff.

25 So the aim of that January meeting was to ask mining

10:04

1 companies to see that our country was not in danger,
2 there was no danger of total destabilisation, and they
3 shouldn't fear and decide to stop their mining
4 activities because the country was in upheaval and they
5 wanted to leave. So the idea was to comfort them.

6 And I think that the meeting was very useful,
7 because his Excellency the ambassador of the United
8 States at the time called me to thank me for holding
9 such a meeting. He called me personally and said that
10 he was really grateful because there was staff, US
11 staff, that was working with the CBG, the bauxite
12 company in Guinea, 400 kilometres away from Conakry, and
13 the ambassador was worried about the safety of US
14 citizens.

15 So when I called for this meeting and I reassured
16 the ambassador of the United States that everything had
17 been done to make sure that these expats were safe, and
18 after that we took some measures at governmental level,
19 and all of this was extremely efficient. This was the
20 aim of that meeting, and I think it was very useful.

21 Q. The document under tab 4 is R-211. This is the uranium
22 permit --

23 A. Yes.

24 Q. -- that you granted?

25 A. Yes.

10:05

1 Q. On the first page you see that the permit application
2 was done on 5th February?

3 A. Yes.

4 Q. So hardly two/three weeks after you had asked them to
5 stay?

6 A. Yes.

7 Q. So I would imagine that you were very happy, because not
8 only did you ask them to stay, but BSGR did more than
9 that: not only does it stay, but on top of that, it is
10 ready to invest even more in the country, which is
11 experiencing a major crisis. Do you agree with me?

12 A. Let me go back to this decision. This decision was
13 applied for in 2006, and the signature is the
14 achievement of this request which was applied for in
15 2006. And the letter is dated 2005, but the request was
16 presented to the Ministry of Mines and the signature was
17 just the outcome of this entire process.

18 So independently from what I said in January, when
19 I hosted this meeting with the companies, the process
20 had already started and my officials proved to me that
21 it was feasible. Because this is only the last stage,
22 if you like: you have the ministry, then the CPDM and
23 then the recommendation to the minister. And
24 Mamadie Touré came to support this document; that's why
25 I signed it.

10:07

1 Q. But this says that it was signed in February 2007.

2 A. I'm telling you that the official application was done
3 by letter on 5th February 2005. But it doesn't mean
4 that the interest for uranium doesn't date back from
5 2006.

6 Q. But the official request was done two weeks after your
7 request: "Please, investors, stay put, trust us". And
8 what does BSGR do? Apply formally for new permits. So
9 it's ready to invest even more in your country, despite
10 the crisis?

11 A. This is the intention that was demonstrated. I can't
12 deny this. This is very clear, that they expressed
13 their wish to invest in the mining sector. For me that
14 was positive, because it went in the direction of
15 diversification further to bauxite. This is the
16 rationale.

17 Q. So the CPDM gave a positive recommendation?

18 A. Correct.

19 Q. Do you know whether Mamadie Touré exerted any pressure
20 on the CPDM to give a positive recommendation?

21 A. I have no information on that subject matter.

22 Q. Do you know if the President himself put some pressure
23 on the CPDM?

24 A. Your Honour, I can state that the President of the
25 Republic does not intervene in these matters to give

10:09

1 instructions to officials. He's got his ministers and
2 his Prime Minister and his government.

3 Q. Did you look at the application?

4 A. I had some very competent people on my team, and
5 therefore it was referred to them.

6 Q. So once you receive a recommendation, a positive
7 recommendation, you just approve it?

8 A. I trust -- well, the Minister of Mines has an excellent
9 competent team, and when I took office I saw that they
10 were very competent.

11 Q. So if the recommendation is positive, it means that
12 BSGR, according to the CPDM, was competent to obtain the
13 permit?

14 A. They judged that the permit should be granted, and
15 that's what I did.

16 Q. Did the President exert any pressure upon you to approve
17 this positive recommendation?

18 A. The President exerted no pressure upon me whatsoever for
19 me to sign the document. The only person who intervened
20 was Mr Ibrahima Sory Touré.

21 THE PRESIDENT: Can I ask for a point of clarification.

22 It's the second point you say this. You said, "Ibrahima
23 Sory Touré came and supported this document and this is
24 why I signed it". So what is the impact of Mr Touré's
25 involvement in the process that leads you to sign the

10:10

1 document?

2 A. There is a normal process, your Honour, and now there is
3 a pressure which is abnormal, that came on top of the
4 normal process. It speeded up the signing, it really
5 helped the signing.

6 THE PRESIDENT: Had there not been this abnormal pressure,
7 would you have signed the document?

8 A. It would have taken longer probably.

9 THE PRESIDENT: But you would have signed it on the
10 principle?

11 A. I would have signed it within the strategy of aiming at
12 diversification in the mining sector.

13 THE PRESIDENT: Thank you.

14 MR DAELE: The level of this pressure. At the outset you
15 said that you didn't fear the President. So if there
16 are pressures, why did you submit to this pressure and
17 not oppose it?

18 A. I said I didn't fear the President; I respect the
19 President. And it's the President who appointed me in
20 my function, so I do respect him. If he gives me
21 instructions, and I find that such instructions go in
22 the right direction, obviously it's a type of pressure.

23 Q. Yes, but the big problem is that these were not the
24 President's instructions; they were instructions from
25 Mamadie Touré.

10:12

- 1 A. Yes, but who says "madam" means "mister".
- 2 Q. On what basis?
- 3 A. On the basis of a relationship between madame and
4 monsieur. Monsieur introduced me to madame.
- 5 Q. So they are interchangeable?
- 6 A. Not at all. But madam is with mister.
- 7 Q. So you say if you say "madam", you say "mister", they're
8 interchangeable?
- 9 A. No. One is the President of the Republic, the other one
10 is his wife.
- 11 Q. Does she have official power or functions as First Lady?
- 12 A. She is First Lady, that's her official function.
- 13 Q. Does she have any powers under the Constitution?
- 14 A. The Constitution doesn't give any power. She is not
15 a member of the government. But she is the wife of the
16 President of the Republic: it gives her a certain aura,
17 a certain distinction.
- 18 Q. When you say "madam is mister", is it only valid for
19 Mamadie Touré or for the other three?
- 20 A. I repeat: Mr President of the Republic had four wives.
- 21 Q. So the other three were also interchangeable?
- 22 A. Not interchangeable. I repeat: ladies cannot be
23 President of the Republic. When I say "mister is
24 madam", it doesn't mean that they are interchangeable.
25 There are lady presidents of the Republic whose

10:14

1 [husbands] are First Gentlemen. But they are not
2 interchangeable.

3 Q. In terms of the dates, how did Mr Ibrahima Sory Touré
4 come to give you the instructions?

5 A. I can't give you an exact date, your Honour. But I can
6 tell you that during my term, 2006/2007, I was there for
7 nine months and there were contacts.

8 MR JAEGER: Just a comment: could you avoid saying "tu" to
9 the witness, please.

10 THE PRESIDENT: I think this is part of the difficulty that
11 Mr Daele is imposing upon himself to make the
12 cross-examination easier. That's how I understand it
13 and construe it, and I'm sure that's how Mr Ambassador
14 is understanding it.

15 MR DAELE: Each time I say "tu" to you, please forgive me,
16 and replace it by "vous".

17 DR SYLLA: I am very humble and I understand. All the more
18 so that we both live in Brussels, we are compatriots!

19 MR DAELE: Thank you.

20 To go back to the dates, you are quite vague, you
21 say "2006/2007", and you said that without any pressure
22 it wouldn't have gone that fast. So there is
23 an indication of timing.

24 When did you get this instruction? Was it in June,
25 July, before the meeting, in January 2007; when?

10:16

1 A. I saw Mr Ibrahima Sory Touré on several occasions,
2 I can't tell you, "On that particular date, Mr Ibrahima
3 Sory Touré told me this, that or the other". Each time
4 I saw him, throughout the nine months of my term as
5 minister, he would mention BSGR and the various wishes
6 of BSGR. I can't give you an exact date today. Each
7 time he would defend the company.

8 Q. Yes, obviously, because he was employed by BSGR.

9 A. Absolutely.

10 Q. So that's not abnormal. But each time he was there, he
11 forwarded Mamadie Touré's instructions; did he repeat
12 them?

13 A. Each time he saw me, it's normal. He's an employee of
14 the company, as you said yourself, so he would convey
15 the recommendations and instructions of his sister. He
16 did it every single time.

17 Q. How did he put this? He said, "I came three weeks ago
18 and three weeks have elapsed, what's happening? You
19 know that my sister is behind all of this?" How did he
20 go about it?

21 A. He doesn't speak that way, your Honour. The idea was
22 "Excellency, Mr Minister, we have files in your hands,
23 please try and speed up the process". This is the
24 courteous formula that was used.

25 Q. In your second witness statement, you said under

10:17

1 paragraph 4 that:

2 "Another company would never have obtained such
3 mining permits with such ease."

4 My question is the following: what aspect of the
5 procedure would have been more difficult?

6 A. I have already answered this question. Let me repeat
7 what I said. Had another company applied for this
8 permit, it would have attained it. But the fact that
9 Mr Ibrahima Sory Touré supported this application and
10 asked us to speed up the process, it did speed up the
11 process, which is normal.

12 Q. Are there terms that BSGR did not have to fulfil?

13 A. In this particular case, no. Because the technical
14 officials, the CPDM, the mine directorate, studied the
15 case and gave a positive recommendation.

16 Q. For me things are not yet clear as to how long the
17 procedure actually took, but let's say that it was
18 swift. Is a possible explanation not that, fine, the
19 speed is explained by the crisis that the country was
20 undergoing and you wanted to show that there were new
21 investors or the same or at least investors that
22 continued to invest in the country despite the crisis?
23 Secondly, on the basis of the feasibility study that you
24 saw yourself, there are concrete plans presented by
25 BSGR. Is that not a possible explanation?

10:19

1 A. It's not a possible explanation, and from my point of
2 view it's something that was started in 2006 and that
3 reached its conclusion in 2007. The crisis had arrived
4 in January 2007. The signature of this permit has
5 nothing to do with the crisis. It was a normal process
6 that just reached its conclusion. It's got nothing to
7 do with the crisis.

8 Again I repeat: the aim of the meeting, more than
9 anything, was to comfort the companies, especially those
10 companies that were active in the country, and had been
11 active for dozens of years, were exploiting bauxite and
12 were hoarding it, and we needed to reassure them; as
13 I said, with the intervention of the American
14 ambassador. So you can't link the signature of this
15 decision to the crisis to say this is evidence that
16 there are countries that say -- no, not at all.

17 Q. So when I try to sum up your statements on these events,
18 I noted that: (1) you had a meeting with the President
19 and Mamadie Touré during which she didn't say anything
20 about BSGR; (2) President Conté never gave new any
21 instructions about BSGR; (3) Mamadie Touré never gave
22 any instructions relating to BSGR; (4) the only
23 connection between you and the President and/or Mamadie
24 Touré were the visits of her half-brother, who claimed
25 that he was conveying Mamadie Touré's instructions; and

10:21

1 (5) that you granted the permits upon the recommendation
2 of CPDM. Is that right?

3 A. First, there was no meeting between the President,
4 myself and Mamadie Touré. The President was in Dubréka
5 with his wife, Mamadie Touré. He called me and
6 introduced me to Mamadie Touré as his fourth wife.
7 Mrs Mamadie Touré was saluted and she withdrew, and
8 I was given instructions and I left.

9 Another precision: the signature of these permits,
10 these are not iron ore permits, they were uranium
11 permits, in February 2007. And this is the conclusion
12 of a technical procedure with the CPDM, their Mining and
13 Geology Department, and the fact that Mr Ibrahima Sory
14 Touré came and asked us to start up the process.

15 Q. I have one more point on this. You say that the
16 pressure of Ibrahima Sory Touré was only linked to the
17 uranium matter; he never put any pressure for iron ore?

18 A. I never granted any iron ore permit during my nine
19 months. So I was submitted to no pressure whatsoever.

20 Q. You did not grant it, but did he talk about it?

21 A. No, he didn't mention it. I didn't have to attribute
22 it. We were talking about uranium only.

23 Q. Did he convey instructions of Mamadie Touré concerning
24 iron?

25 A. During my nine months I had no instructions from

10:23

1 Mr Sory Touré on iron, given the fact that under my
2 authority there was no application concerning iron.

3 Q. Did he convey instructions concerning Blocks 1 to 4 of
4 Rio Tinto?

5 A. I had no instructions in this regard. I repeat: it was
6 uranium, and only uranium.

7 Q. I still have a few questions concerning the events that
8 took place after you left the Ministry of Mines.

9 You say in paragraph 26 that in 2009 you were
10 arrested, or at least accused of committing a fraud.
11 Can you explain this accusation?

12 A. Yes. Your Honour, in 2009 a young captain took over the
13 power in Guinea, Mr Camara, and the moment he did that,
14 one of his advisors, his cousin, Mr Onipogui, who had
15 become his advisor, was personally against the Prime
16 Minister, myself, Ahmed Kanté and Nabé, all four
17 ministers who are here today in this case.

18 He pushed Captain Dadis Camara to say that
19 an inspection should be carried out at the Ministry of
20 Mines concerning what was called the "mining fund" at
21 the time. So this against all four ministers with whom
22 he had had difficulties, because he didn't meet the
23 qualification requirements to be inspector of mines.

24 I organised a major mining symposium in Dusseldorf
25 in Germany, because I had studied in Germany. He wanted

10:26

1 to attend, I told him that he had no place there, and
2 this started the conflict between ourselves. And he
3 also bore a grudge to Minister Souaré, as well as
4 Mr Kanté and Mr Nabé. So upon the basis of these lies,
5 he got Captain Dadis to understand that all four
6 ministers had carried out embezzlement or
7 misappropriations of funds.

8 May I continue?

9 PROFESSOR VAN DEN BERG: A clarification. Mr Onipogui, it
10 is Alhassane Onipogui, who was appointed in 2014 as
11 minister, state inspector?

12 A. He was appointed under Dadis, yes.

13 PROFESSOR VAN DEN BERG: But a question: in 2014 he was
14 named state inspector?

15 A. It's possible.

16 So there were these inspections. We were not even
17 arrested; we were put under house arrest. The case was
18 submitted to an investigative judge who was very
19 courageous. Under a military regime, to accept to tell
20 the truth was not a done thing.

21 This investigative judge did his job, and despite
22 all of the threats and all of the pressures he was put
23 under, he decided that the case was null and void, and
24 that all four ministers were erroneously accused. He
25 was threatened with death, he was threatened to be

10:27

1 ousted from his position. And in 2010 he declared that
2 all four ministers were innocent -- not guilty, in other
3 words -- and we all had the benefit of a dismissal, and
4 we were rehabilitated officially on the national
5 television.

6 This is what pertains to this matter. That's the
7 explanation I wanted to give.

8 MR DAELE: For how long were you arrested?

9 A. Nine days. Just nine days.

10 Q. Are you aware of the fact that there are other
11 testimonies in this case in point that say that you
12 signed a recognition of the facts that you were accused
13 of, and also a commitment to pay back the money?

14 A. During those nine days, Captain Dadis and his team, his
15 group, told us -- and I must underline that Captain
16 Dadis, after all of this and everything that happened to
17 him, he's now in Burkina Faso -- Captain Dadis
18 acknowledged that he had accused us erroneously and
19 asked for forgiveness. I insist on giving you this
20 information.

21 Q. My question was: did you sign?

22 A. We signed papers saying that we assumed, but not that we
23 were guilty, and that the investigating judge should
24 establish the truth, this very courageous judge.

25 Q. With a commitment to pay back. Did you pay back?

10:29

1 A. No, we didn't pay back a penny.

2 Q. Are you talking only for yourself, or do you know also
3 that the other three didn't pay?

4 A. The other three will come, or they've come here already.
5 We had paid -- we had been asked to pay sureties. We
6 had been asked to pay this guarantee, this surety. We
7 each paid up, as should be. But after the case was
8 dismissed, the Prime Minister at the time gave
9 instructions to the public prosecutor to reimburse such
10 sureties, and it was done.

11 Q. And what was the amount?

12 A. To the tune of 50 million Guinean francs. And it was
13 totally paid back.

14 Q. Are you familiar with the article that appeared on the
15 BBC at the time, 2nd April 2009? It said that you paid
16 back US\$2 million.

17 A. That's wrong.

18 Q. But are you familiar with this article?

19 A. No, I'm not familiar with this article. It's the first
20 time I've ever heard of it.

21 Q. Last subject on which I would have a few questions for
22 you, sir.

23 When you left the ministry, you became a BSGR
24 consultant?

25 A. Yes.

10:31

1 Q. I believe you did that for a rather long period, between
2 the end of 2007 up until the beginning of 2009?

3 A. For one year.

4 Q. During that period, did the BSGR leaders tell you that
5 they had signed contracts with Mamadie Touré?

6 A. They never said that to me.

7 Q. Did they say that there were other companies that had
8 signed contracts with Mamadie Touré on behalf of BSGR?

9 A. Never.

10 Q. Did they inform you about anything -- or in any way did
11 they inform you that Mamadie Touré had influenced their
12 dossier in their favour?

13 A. They never told me. But I knew that Mamadie Touré
14 continued her lobbying activities.

15 Q. During that period did you see any evidence, any proofs
16 that Mamadie Touré was working for BSGR?

17 A. I never saw any proof. I was an independent consultant.
18 I was no longer -- I no longer held any governmental
19 position. I had my office in the city. I set up
20 a company called Guinea Consult, and I would work with
21 other companies, also German companies, in the area of
22 the energy. So once a week I would go to BSGR. So
23 I wasn't really handling any one specific case.

24 Q. Did BSGR turn to you in order to exert some pressure or
25 influence on former colleagues at the ministry?

10:33

1 A. No, not at all. I never had to meet my successor in
2 order to talk to him about anything. My role was simply
3 to provide advice to the company in the area of mining
4 diversification. That was precisely the purpose of my
5 work.

6 Q. You were taken on as consultant for your technical
7 capacities?

8 A. Indeed, sir.

9 Q. And that's the only thing you did for BSGR during that
10 period?

11 A. Indeed that is the case. I wanted that company -- and
12 I gave her that advice several times -- I wanted that
13 company to focus on diamonds, which is their core
14 activity, diamonds. I wanted them to get more involved
15 in diamonds, where they were very powerful.

16 Q. Did you ever meet Mamadie Touré during that period?

17 A. No, I never saw her during that period. As I told you,
18 I only met her once, with the President of the Republic.

19 Q. Do you know whether there were any meetings between
20 Mamadie Touré and BSGR during that period?

21 A. I can't affirm that, I do not know. I am not aware of
22 any such meetings.

23 Q. In any case, you never had a meeting with, say, the
24 President as regards the BSGR dossier?

25 A. I had no meetings with the President on that dossier.

10:34

1 Q. The thesis advanced by the Guinean Government is that in
2 fact BSGR is a corrupting company.

3 A. A what?

4 Q. A company of people who give out bribes and who try and
5 bribe Guinean officials. Would you be ready to work for
6 a company that pays out bribes?

7 A. With my training, with my background that everybody is
8 aware of, I would never work for a company that is
9 paying bribes. But I cannot know what a company does;
10 I am not there all the time. I cannot be aware of all
11 of the activities undertaken by a company that I give
12 advice to.

13 Q. However, in your term as minister and now as consultant,
14 you've never seen any evidence that BSGR had paid any
15 bribes to anyone?

16 A. No, I have no such evidence. And I myself was never
17 bribed by anyone.

18 Q. Well, you say that you prepared reports on the evolution
19 of the mining sector, bauxite, iron ore, gold, diamonds,
20 and that you had worked on the project to export iron
21 ore through Liberia. So that means that BSGR was
22 actually working on these feasibility studies out in the
23 field.

24 A. Well, that's the advice I would give them. And
25 I particularly worked with a geologist, Mr Nassirou Bah;

10:36

1 I mentioned him in the statement. In the meantime he
2 has passed away.

3 Q. But you were under the impression that it was a serious
4 company that wanted really to develop the mines that it
5 had titles on?

6 A. Well, I wanted to give advice for the company for it to
7 move into its strongest area, which for me was diamonds,
8 and that was the goal I pursued.

9 Q. During that period as consultant, did you also have any
10 official positions?

11 A. No, I wasn't officially a minister. I didn't have any
12 official duties. I left the government, and as soon as
13 I left the government I opened my own consulting firm.

14 Q. And you did not give advice on mining projects to the
15 Ministry of Transport?

16 A. The Ministry of Transport, I did give them advice on the
17 Trans-Guinean Railway, I gave advice to the minister,
18 and also on port activities.

19 Q. This was as what?

20 A. As consultant. I never had any salary from the Ministry
21 of Transport. Mr Touré, who was the minister at the
22 time, could testify to that.

23 Q. Do you remember whether you set up your company before
24 you started working with BSGR or did you set it up
25 after? BSGR may have asked you to do so.

10:38

1 A. No, no, no, it existed in advance of that. I left the
2 government in 1992 and I set up Guinea Consult with two
3 other partners, and so the company existed well before
4 that. And I would also give advice to German companies.
5 The consulting office already existed when I was
6 appointed director, and then ambassador and then
7 minister. But my partners continued running the company
8 up until today; it still exists with the partners, the
9 co-founders.

10 Q. But you say it was Mr Avidan who contacted you?

11 A. That's right.

12 Q. Even though Mr Avidan -- he is coming tomorrow -- but he
13 told me that it was you who actually, perhaps not
14 entered into contact with him, but you saw him on
15 a flight between Paris and Conakry. Does that ring
16 a bell? That is where he spoke to you for the first
17 time?

18 MR JAEGER: Is that information in this arbitral proceeding?

19 MR DAELE: Well, it is in the testimony.

20 THE PRESIDENT: I believe that's the second statement,
21 paragraph 8.

22 Perhaps you could ask the question.

23 A. Your Honour, may I answer the question?

24 I had already left the government. I had no longer
25 any officials duties. My German friends asked me to go

10:40

1 see them in Cologne at Siemens, where I worked. On the
2 way back, at Airport Charles de Gaulle, on the bus
3 taking us to the airplane, I saw Mr Asher Avidan. I am
4 giving you all these details so if you see him tomorrow,
5 he might corroborate this.

6 He greeted me -- I was a minister; he was from
7 BSGR -- and he said, "Mr Minister Sylla, what are you
8 now?" And [I] said, "I'm now a consultant and coming
9 from Germany, where my former partners asked me to go
10 see them". "Are you back in Guinea? Do you have any
11 official duties?" "No, no, I have no official duties in
12 Guinea. I am now in private business". "Well, would
13 you be interested in giving us advice, as a consultant?"
14 And I said, "With pleasure, with pleasure. If you
15 believe that I can be of use to your activities, give
16 you advice that would make you go along a line that
17 would be of profit to the country, I would be pleased to
18 do so". And this is how Mr Asher Avidan asked me to
19 provide that kind of work for them.

20 This is what happened on that bus going from the
21 terminal to the airplane. That's when it all took
22 place.

23 MR DAELE: The next-to-last paragraph of your second
24 statement, paragraph 11, you say that BSGR put an end to
25 the cooperation with you in January 2009, and you state

10:42

1 that you were:

2 "... under the impression that I had become useless
3 to them, because they had find new influential support."

4 So you seem to be suggesting here that they were
5 working with you because you were a source of support,
6 an influential support.

7 A. No.

8 Q. Well, then explain this paragraph 11.

9 A. Well, I worked as a consultant for them for a year, and
10 as soon as Mr Dadis Camara took power, Mr Avidan told
11 me, "Mr Sylla, we no longer need you". Does it mean
12 that I was influential? I was just a private
13 consultant. That means that my services were no longer
14 useful since Mr Dadis took power. And BSGR then got
15 into contact with a new power, and things were moving on
16 well for them, so they no longer needed advice for any
17 other field.

18 A company is free to put an end to its cooperation
19 with a consultant, with a freelancer, saying, "We no
20 longer need your services". My supposition at the time
21 was: well, I'm not influential. Dadis is in power, they
22 have excellent relations with Dadis, and this is why
23 they are telling me they no longer need my services. It
24 doesn't mean that I held any position of influence.

25 Q. Well, I was just asking this question because I wanted

10:43

1 to clarify matters. I wanted to make sure that there
2 was no suggestion here on your side that you were
3 working with BSGR in order to move forward their
4 interests.

5 A. No, no.

6 MR DAELE: [No, okay.] Well, then I have no further
7 questions for you, and I should like to thank you.

8 DR SYLLA: Thank you.

9 THE PRESIDENT: Well, I believe this is the right time for
10 a break, because you have been testifying for almost two
11 hours. After that, do you think you will have any
12 questions?

13 MR OSTROVE: We would like to check among us.

14 THE PRESIDENT: Yes, you can tell me after the break.

15 MR OSTROVE: There's one thing that would help me, however.

16 I was looking for a document to which Mr Daele referred
17 today, and yesterday as well, but we have not reacted to
18 that yet. It's a reference to a BBC article which
19 apparently said that we had reimbursed a great deal of
20 money. I haven't found this. If you can tell me what
21 the annex number is, because I would like to read the
22 document myself, since you have referred to this
23 document.

24 MR DAELE: There is no annex reference number, because that
25 was not part of our file. I saw it yesterday, and

10:45

1 I didn't even submit that to the Tribunal; I just asked
2 the witness whether he was aware of an article that
3 appeared on the BBC website.

4 MR OSTROVE: Madam President, I believe that's somewhat
5 anomalous, the fact that the document is being quoted to
6 ask the witness to make a comment on it. However, we
7 cannot check on the contents of that document, what that
8 document said, so that later, in re-direct, we could
9 mention it. That makes it possible for a certain amount
10 of suspicion to be trailing along, which we don't
11 believe is normal.

12 THE PRESIDENT: I believe that both witnesses have said that
13 they were not aware of that article, and that that
14 wasn't at all the amount in question. So from that
15 particular vantage point, I don't think there is
16 a difficulty.

17 But it is true that in principle, Mr Daele, if you
18 ask a question of a witness, it should be in connection
19 with a document on our case file; or in that case you
20 draw attention to the fact that the document is not in
21 the case file and you ask for authorisation to refer to
22 it. Because it could be useful for your adversaries to
23 take a look at the document, and the witness also to
24 consult that document if needed.

25 MR OSTROVE: But if there's no implication trailing along --

10:46

1 we thought that the witnesses had been called to pay
2 back millions. But if that is not present in the case
3 file anymore ...

4 MR DAELE: I'd like to apologise if necessary. I will no
5 longer ask any questions on that to other witnesses, if
6 you have a problem with that.

7 THE PRESIDENT: It is true that there are still two other
8 witnesses who might be asked these questions. It is
9 better perhaps to give up that line of questioning
10 already.

11 MR DAELE: Very well then.

12 THE PRESIDENT: Mr Ambassador, I will ask you during the
13 break, please, to refrain from speaking to anyone about
14 your testimony. So it would be better indeed, sir, to
15 refrain from speaking to anyone at all.

16 DR SYLLA: No, I will remain seated here and I will wait for
17 you to come back.

18 THE PRESIDENT: No, of course not, sir. You can go out of
19 the room, go out for a breath of fresh air. 15 minutes.

20 DR SYLLA: Your Honour, I would like to draw your attention,
21 with your permission, that I have to go to Brussels.

22 THE PRESIDENT: Yes, you have to leave here when?

23 DR SYLLA: I would have to leave at 1.00 pm at the very
24 latest.

25 THE PRESIDENT: Oh, fine, there's no problem. You will be

10:47

1 finished way before that. Thank you.

2 DR SYLLA: Thank you very much, madam.

3 (10.48 am)

4 (A short break)

5 (11.07 am)

6 THE PRESIDENT: I believe we are all ready to resume.

7 Ambassador, are you ready?

8 DR SYLLA: Yes, ma'am.

9 MR OSTROVE: I have several items of good news to announce
10 for Guinea.

11 First of all, it would seem that the bank strike has
12 been settled. The good news is that Mr Nabé will be
13 able to travel tonight. So there won't be any video
14 conferencing; he will be able to be here for his
15 testimony on Thursday.

16 Another piece of good news is that I have no
17 questions for the ambassador.

18 THE PRESIDENT: Do my co-arbitrators have any questions for
19 Ambassador Sylla?

20 (11.08 am)

21 Questions from THE TRIBUNAL

22 THE PRESIDENT: I must say that in the answers you provided
23 to the questions put to you by the counsel for [BSGR]
24 you had covered, sir, practically everything I had, that
25 I was interested in more particularly.

11:08

1 In your first statement, however, you do mention in
2 paragraph 13 that during your second term, beginning in
3 May 2006, President Conté was already very ill. What
4 was the impact of that on the discharge of your duties
5 as member of the government?

6 A. Thank you, your Honour.

7 His state of health at the time was really
8 declining. He had gone to Geneva several times for
9 treatment. He was very ill. And he had entrusted the
10 coordination of governmental activities first of all to
11 the Prime Minister and then to someone who was
12 Coordinator -- the official title -- Coordinator of
13 Governmental Activities, because he himself was very
14 weak and also psychologically he was very vulnerable,
15 easy to influence, because he no longer had all his wits
16 about him. He was already in a very serious state of
17 health. Things weren't really going well at all for
18 him.

19 This is what I wanted to say here.

20 THE PRESIDENT: You said that he was surrounded by
21 a veritable mafia?

22 A. Yes, these were people who took advantage of his
23 position. You know that when the head of state is ill,
24 and the royal court -- and I'm sorry to be using these
25 words; you will allow me to use these words -- everybody

11:10

1 is trying to get things going in their way, what will
2 best suit them.

3 Unfortunately that is what is happening. Otherwise,
4 madam, there wouldn't be a decree issued in the morning,
5 and then in the evening another decree issued to repeal
6 the morning decree. Sadly that was the state of affairs
7 at the time.

8 THE PRESIDENT: Yes. This was a period that lasted several
9 years?

10 A. Well, the very critical years were 2006, 2007 and 2008.
11 And after that, he passed away on 22nd December 2008.
12 He suffered tremendously.

13 THE PRESIDENT: You told us that you were the "father" --
14 I think this was the word you used -- of the strategy?

15 A. No, I apologise, your Honour. I said I was the founding
16 father of the first Mining Code of Guinea.

17 THE PRESIDENT: Yes, of the Guinean mining strategy.

18 A. Well, madam, in 1986, when President Conté called upon
19 me, I came in and I realised that my country had no
20 mining code and no environmental code, and I got the
21 support of the World Bank in order to draft the very
22 first Mining Code of the Republic of Guinea.

23 THE PRESIDENT: Was that the 1995 Mining Code?

24 A. No, 1986. He asked me to come and join him in 1985. On
25 1st January 1986 I stepped into office. Prior to that,

11:12

1 I was chief of department at Siemens.

2 THE PRESIDENT: Yes, this is what I had read. I thought
3 that you had a very interesting career.

4 A. Thank you very much, your Honour.

5 THE PRESIDENT: You also spoke to us about the mining
6 strategy, you explained the pillars of that strategy:
7 processing of raw materials, diversification.

8 I am perhaps going beyond the subject at hand here,
9 the various facts that you mentioned in your testimony;
10 I may be overstepping that particular ambit. However,
11 I am interested in your answer, because you left the
12 ministry after some ten years.

13 How do you assess the progress made in the
14 implementation of that strategy? Is it the same
15 strategy? Is it moving forward? How do you view
16 things, sir?

17 A. Well, I must say, if I can speak honestly, very, very
18 honestly, ever since the arrival of his Excellency the
19 President of the Republic -- because I don't want you to
20 say this is the ambassador speaking.

21 THE PRESIDENT: No, no, I'm putting the question to
22 Dr Ousmane Sylla.

23 A. Well, then I shall answer in that capacity.

24 Ever since the arrival of the President of the
25 Republic Alpha Condé, the reforms undertaken in the

11:13

1 mining sector had been highly courageous reforms. The
2 present government has noticed that in order to
3 implement the strategy that I mentioned earlier, there
4 is one essential element to that my country needs, and
5 that is energy. Without energy, we can't speak of
6 processing raw materials.

7 So the head of state, with his government, have
8 launched a very wide-ranging campaign to construct
9 hydroelectric dams in order to have the necessary power
10 in order to process raw materials. That is the key
11 element right now.

12 Second, the President wants to create special
13 economic areas in order to develop the processing of raw
14 materials; that is to say, not just to focus on mining
15 the raw materials, but also the agro industry which is
16 of importance to the country. He always says this: it's not
17 mines that is the key element, but agriculture. Mining
18 can be used as one of the levers -- not the lever, but
19 one of the levers -- for economic development.

20 Therefore, by creating special economic development
21 zones, we cannot only get a mining industry,
22 an aluminium factory set up, but also the processing of
23 our agricultural raw materials which for the timing are
24 not really being used properly, like mangoes and others,
25 that are allowed to rot if the harvesting is not done in

11:15

1 due time.

2 This is why a lot is being done right now. In
3 mining, obviously mining has gone forward very strongly
4 in the area of aluminium, for instance. Two/three
5 factories are now being set up, at the present time. We
6 need to go down the aluminium path definitely,
7 definitely, but for that we need a great deal of power.
8 Therefore we have to have new hydroelectric dams, one of
9 them which is almost on the verge of being inaugurated.

10 So I'm being optimistic, with everything that has
11 happened today. I'm optimistic that in the years to
12 come, between now and 2020, 2022, 2024, we shall have in
13 Guinea an industrial boom, which is already in the
14 offing. However, our partners would also have to play
15 the game along with us; in other words, that they would
16 accept that we cease exporting raw materials and that we
17 process them in the country.

18 I can give you a story, with your permission, madam.
19 When I stepped into office in 1986, the CBG, which was
20 under the stewardship of Alcoa, which was the biggest
21 aluminium company in the world, in their first
22 agreements had promised to Guinea that in the ten years
23 to come, they would have an aluminium factory. But in
24 1986 I noticed that the aluminium factory wasn't there.

25 So I went to see Mr Parry, who was the chief

11:17

1 executive officer of Alcoa, and I showed him the file
2 and said, "You had promised this, and so far we haven't
3 seen that aluminium factory anywhere". So I asked Alcoa
4 to fulfil their pledge and to build that aluminium
5 factory. So the aluminium factory unfortunately, up
6 until my departure from the mining industry, had not yet
7 been set up, and they are now promising that they will
8 set up that aluminium factory.

9 So this is what I said, and I repeat: right now
10 there's a tremendous amount of dynamism, there's
11 a momentum going forward, and I hope that with the new
12 hydroelectric dam, we will be able to get to process
13 bauxite into aluminium in the country. But iron ore is
14 not just exporting raw iron ore; we should have steel
15 mills in the country. We must have added-value
16 possibilities in the country. It is tremendously
17 important for us.

18 THE PRESIDENT: But you speak to us about aluminium; that is
19 bauxite.

20 A. Yes, definitely.

21 THE PRESIDENT: From the viewpoint of exploiting the other
22 mining resources, what is your assessment of the
23 situation?

24 A. My assessment is positive, because my government is keen
25 to see to it that this processing is done. In the

11:18

1 negotiations to come, I'm sure that the Mine Ministry
2 will be asking -- will be concentrating on processing.
3 Processing should be the priority.

4 When our partners realised that there are other
5 companies also -- well, as I told you, there are two
6 aluminium factories in the pipeline -- the partners will
7 no longer come to us to say, "You have to export
8 bauxite". They will know that we will be exporting
9 aluminium.

10 There we also need railways. We need that long
11 railway line that we need in our country that is going
12 to be the backbone for the industrial development for
13 the country, from the jungle to the coast. It will be
14 fantastic: it will create thousands of jobs.

15 And we should stop exporting raw iron ore; we should
16 begin and start processing iron on the spot.

17 In diamonds, this is another one of the projects
18 which has been reactivated by the ministry. Guinea has
19 very top-grade diamonds, but Guinea has another
20 advantage: we have a very good Mining Code right now.
21 We are surrounded by some diamond-producing countries,
22 like Sierra Leone, Côte d'Ivoire, Liberia in smaller
23 quantities. One of our ideas was to create in Guinea
24 a place where diamonds would be cut and polished. We
25 wanted even to set up a diamond undertaking for all four

11:19

1 countries.

2 Going to gold, gold also for almost a century.
3 We've been producing gold ever since the Mandinka
4 Empire. A lot of our gold was exported even all the way
5 to Mecca. So why not have a smelter in Conakry, try and
6 recover the raw gold, take it to Conakry, have
7 a smelting factory there and process our gold there?

8 This is all part of the present plans of the
9 government. I'm rather optimistic as regards the
10 further industrial development of the mining sector.

11 THE PRESIDENT: Well, thank you very much indeed, sir. It
12 was very interesting listening to you. This takes us
13 away from the immediate concerns of this file, but it is
14 also good every once in a while to have a much broader
15 view.

16 Thank you very much, Ambassador. That brings your
17 testimony to an end -- no, perhaps I was rushing.

18 Mr Daele, you may perhaps have other questions
19 arising from the questions by the Tribunal.

20 MR DAELE: Yes, I do have one question, a very short one.

21 (11.21 am)

22 Further cross-examination by MR DAELE

23 Q. You said that because of the President's illness, there
24 were persons who sought to take advantage of his
25 illness. While you were minister and while you were

11:21

1 a consultant, did you see that BSGR attempted to take
2 advantage of the President's illness?

3 A. No.

4 MR DAELE: That was my only question.

5 THE PRESIDENT: Thank you.

6 This time we have truly come to the end of your
7 examination, Mr Ambassador. Thank you.

8 DR SYLLA: Your Honour, thank you very much. It was very
9 interesting for me too, and I can only hope that truth
10 will be revealed.

11 THE PRESIDENT: [Thank you very much.] I believe that we
12 can move on to the next witness without a pause.

13 MR OSTROVE: Minister Kanté is here and he's ready to come
14 in. (Pause)

15 (11.26 am)

16 MINISTER AHMED KANTÉ (called)

17 (Evidence interpreted)

18 THE PRESIDENT: Mr Minister, good morning. For the purposes
19 of the transcript, could you please confirm that you are
20 Ahmed Kanté?

21 A. Yes.

22 THE PRESIDENT: Are you director general of SOGUIPAMI?

23 A. Yes.

24 THE PRESIDENT: You were Minister of Mines and Geology
25 during a period of interest to us: that is, March 2007

11:26

1 to August 2008. Is that correct?

2 A. Yes, it is.

3 THE PRESIDENT: You have submitted a written witness
4 statement dated December 8th 2015?

5 A. Yes.

6 THE PRESIDENT: Do you have it with you?

7 A. Yes.

8 THE PRESIDENT: You are heard as a witness. As a witness,
9 you have the obligation to tell the truth. Can you
10 please confirm that this is so by reading the witness
11 [declaration] that you have before you.

12 MINISTER KANTÉ: I solemnly declare upon my honour and
13 conscience that I shall speak the truth, the whole
14 truth, and nothing but the truth.

15 THE PRESIDENT: Thank you.

16 We will first hear from Guinea's counsel for
17 questions, and then for cross-examination, counsel for
18 BSGR will be putting questions to you.

19 Mr Ostrove, you have the floor.

20 MR OSTROVE: [Thank you, Madam President.]

21 (11.27 am)

22 Direct examination by MR OSTROVE

23 Q. Good morning.

24 A. Good morning.

25 Q. Do you have a copy here of your statement, RWS-4?

11:28

1 Before we begin, are there any changes or corrections
2 that you would like to make to this statement?

3 A. Yes.

4 Q. What are these?

5 A. Paragraph 22.

6 Q. What is the correction that you would like to make?

7 A. Instead of "September 2008", it's "August 2007".

8 Q. I'm sorry, could you repeat that?

9 A. "August 2007".

10 Q. Are there any other changes or corrections you wish to
11 make to your witness statement?

12 A. No.

13 MR OSTROVE: Madam President, I have no further questions.

14 THE PRESIDENT: Mr Daele.

15 MR DAELE: [Thank you very much.]

16 (11.29 am)

17 Cross-examination by MR DAELE

18 Q. Good morning, Mr Kanté. Welcome. My name is
19 Karel Daele, I am one of the lawyers representing BSGR.

20 I will endeavour to examine you in French, although
21 this is not my mother-tongue, but I believe it will help
22 to improve our discussion. If at any moment I lapse
23 into using the "tu", the informal form, with you, I do
24 apologise. I shall endeavour to use the formal form,
25 the "vous" form. So if I use "tu", it is not out of

11:29

1 a lack of respect.

2 I propose to go through your witness statement, and
3 if I refer to the paragraphs in your statement, I shall
4 endeavour to do it chronologically. I will also
5 indicate the paragraph number, to facilitate things.

6 In paragraph 5 you say that you worked for the
7 Central Bank from 1984 to 2007, and you say that you
8 left the Central Bank to become Minister of Mines. Does
9 this mean that you had no particular expertise in the
10 mining sector when you were appointed minister?

11 A. No. When I was working for the Central Bank, I was
12 responsible for the relations between the Central Bank
13 and the mining companies. I was a member of the board
14 for the SMD, and I was responsible for all of the
15 operations involving the transfer of gold with respect
16 to the different mining companies.

17 Q. Was your experience then limited to gold, or did you
18 have broader experience, or were you experienced with
19 iron ore and bauxite while you were with the
20 Central Bank?

21 A. No, I did not have operational experience. But as you
22 can imagine, as a member of the board of a mining
23 company in a country that has significant mining
24 resources, one of course has knowledge over all of the
25 resources, and that was my case.

11:31

1 Q. Were you appointed by President Conté?

2 A. Yes, I was appointed by President Conté. But it was the
3 Prime Minister of the time, Mr [Kouyaté], who saw me,
4 along with other officials, to have a discussion with me
5 and to offer the position.

6 Q. When you were appointed, did you receive instructions or
7 directions from President Conté in terms of your
8 policies as future Minister of Mines?

9 A. No. As you know, at the time, unlike the previous
10 governments, the Prime Minister was the head of
11 government. So the responsibilities and expectations
12 for ministerial portfolios were drafted and we all saw
13 what our responsibilities were, as well our road map.

14 Actually these were established during a retreat
15 that was organised at the Bel Air Hotel in Boffa, and
16 this took place over a period of four days. Some
17 embassies were also invited to this retreat and they
18 were able to follow how the new governmental team was
19 starting off.

20 Q. But the President wasn't there?

21 A. The President was not the head of government.

22 Q. The head of government would be then the Prime Minister,
23 the then Prime Minister, Lansana Kouyaté?

24 A. That's correct.

25 Q. Did the Prime Minister give you directions at the

11:33

1 beginning of your tenure?

2 A. Yes, of course.

3 Q. Could you tell us: what were those directions that you
4 received?

5 A. Allow me to summarise the situation.

6 The directives given to the government as a whole
7 were clearly set out in the tripartite agreement that
8 was signed between the trade unions, the employers and
9 the government. This tripartite agreement put an end to
10 the crisis, the violent crisis that was afflicting
11 Guinea in the period 2006/2007. And during this period
12 of crisis, all of the governmental infrastructure,
13 particularly everything to do with law enforcement and
14 justice, were destroyed across the country.

15 So in order to restore calm, there was a letter, and
16 this is what we call the "tripartite agreement". And
17 under this agreement, the mining sector had to review
18 all of the agreements in place and had to review as well
19 the conventions, because it was well known that Guinea
20 was not sufficiently benefiting financially from the
21 operations of these natural resources.

22 And then we had to clean up the mining cadastre. It
23 was also well known that the granting of permits was
24 simply irrational, and that many companies that had
25 gotten mining permits had neither the technical

11:35

1 capability nor the financial capability necessary to
2 honour the twelve commitments that are to be found in
3 each one of the decrees whereby permits are granted.

4 And then there was the issue of reorganisation. We
5 needed to reorganise the ministerial departments, whose
6 performance as public service providers were being
7 impugned by the population. So this was this measure
8 that was cross-cutting for the whole government, but it
9 also affected the mining sector. And we also had to
10 clean up the way the mining sector worked and also the
11 relationship between the mining companies and the mining
12 administration.

13 So this is a broad outline of what directions were
14 given to the Minister of Mines.

15 Q. I will attempt to summarise. Is it fair to say then
16 that the government's objective and policy was to
17 promote real investment in the mining sector?

18 A. Yes, of course. That's it.

19 Q. And this was also the will of the Guinean people?

20 A. Yes, it was. But it also had to go hand-in-hand with
21 a cleaning-up exercise of what existed.

22 Q. Did you receive specific directives on the BSGR or
23 Rio Tinto dossiers?

24 A. Not specifically, especially because for the purposes of
25 implementing these directives there was

11:37

1 an inter-ministerial committee that was created called
2 CIRCOM(?), with representatives of all the ministries
3 that were involved in the mining sectors, but also
4 representatives of trade unions and civil society. So
5 this committee could not receive directives or
6 directions from any company. They were tasked with
7 looking at all of the conventions and all of the
8 agreements signed by the Republic of Guinea and that
9 were in force at the time.

10 Q. Would it be an overstatement to say that because of the
11 President's illness, some of the President's power had
12 somehow shifted to the Prime Minister and the committee
13 that you've just referred to, whose name I didn't quite
14 grasp?

15 A. No, this committee was not just involved with the mining
16 sector. I always say: look to the tripartite agreement.
17 The President agreed to waive some of his powers, to
18 grant it to the government, that was labelled the
19 "Government of Consensus". It was completely
20 understood.

21 Q. When you were appointed, did you talk to your
22 predecessor, Mr Souaré?

23 A. No, it was Mr Sylla.

24 Q. Did you speak with Mr Sylla?

25 A. Yes, I did.

11:39

1 Q. Did you prepare the transition and did you talk with him
2 to this purpose?

3 A. Yes, we talked.

4 Q. Did you talk about the BSGR situation?

5 A. We talked about all dossiers, including BSGR, of course.

6 Q. Do you recall the content of this discussion? Do you
7 recall what Mr Sylla said about BSGR?

8 A. No, not specifically. The directives that were being
9 implemented by Mr Sylla's ministry were different from
10 the directives that we had. So I don't see why he could
11 talk to me specifically about a given company. We know
12 they are the major companies, major players, and any
13 Minister of Mines would be aware of this. And on the
14 major dossiers, of course there was the Simandou case,
15 there was CBG, there was the ASAG(?) and so on.

16 Q. So in terms of Simandou, do you remember what Mr Sylla
17 said?

18 A. No, I do not recall specifically what he said. You
19 should think that when you pass on your portfolio to the
20 next minister, you spend a day together. We spoke for
21 five to ten minutes, and since our instructions were to
22 pass on the ministerial portfolios as quickly as
23 possible, we basically got together to make the
24 necessary speeches, to sign the relevant documents.

25 Q. In paragraph 9 of your statement, you say that:

11:41

1 "In March 2011 [you were] appointed
2 Minister-Councillor in charge of Mines within the
3 Presidency ..."

4 Who appointed you to this position?

5 A. It was President Condé.

6 Q. The current President?

7 A. Yes.

8 Q. This was in March 2011. Did you advise him on the
9 agreement between Rio Tinto and the government that was
10 signed on April 22nd; that is, six weeks after your
11 arrival in your position?

12 A. No.

13 Q. In paragraph 11 you say that:

14 "[You] learned about the BSGR company a few months
15 after [your] arrival ..."

16 The timeframe that you give here, a few months after
17 you became minister, first of all this confirms what you
18 just said: namely that when you were appointed, there
19 was no talk about BSGR, and it was a few months later
20 that you learned for the first time that BSGR existed.

21 Is that correct?

22 A. No --

23 Q. Because you say:

24 "I became aware of the existence of [this company]
25 a few months after my arrival at the ministry ..."

11:43

1 So let me reword my [question]. Did you learn of
2 the existence of BSGR before this period that you refer
3 to here?

4 A. No. We simply cannot remember word by word what was
5 said at this moment, this very heightened moment. But
6 subsequently, the companies themselves ask to come and
7 see the minister, and of course you schedule these
8 visits because this is tradition.

9 Q. In terms of timing, when would this be, when you say
10 "a few months after [you] arrived at the ministry"? You
11 became minister in March. So a few months later, would
12 this be in the summertime, July/August?

13 A. I think towards August 2007.

14 Q. This means that before then, BSGR didn't solicit
15 a meeting with you, didn't try and meet with you in
16 order to explain the situation, between the time you
17 became a minister and the month of August?

18 A. No. As I told you, there was a letter sent by BSGR
19 before this. But in the context of the time, there were
20 close to 100 companies that want to meet with the
21 minister, and it's based on your agenda that you can
22 schedule such meetings.

23 Q. Here you are referring to a letter, so it was formal.
24 BSGR had sent a letter saying that they wished to see
25 you. And you said that this was standard procedure?

11:45

1 A. Yes, that's correct.

2 Q. During this meeting that was held in August 2007, BSGR
3 explained what they did, and you say in paragraph 13
4 that Mr Avidan was there and that Mr Ibrahima Sory Touré
5 was there as well.

6 Do you recall whether Mr Sory Touré mentioned during
7 this meeting that he was linked in any way to the
8 President's family?

9 A. No.

10 Q. Was Mamadie Touré present at this meeting?

11 A. No.

12 Q. In paragraph 14 you say that BSGR explained the work
13 that they'd been doing, and in paragraph 15 you say that
14 Mr Avidan also said that BSGR was keen in getting the
15 blocks held by Rio Tinto?

16 A. Yes.

17 Q. Then you give an explanation on Rio Tinto's zones. You
18 go into some technical detail in paragraph 16.

19 As regards this concession, can you explain to us
20 what are the different stages corresponding to
21 Rio Tinto's rights?

22 A. Rio Tinto's rights?

23 Q. Yes, because here you talk about Rio Tinto's rights.
24 Maybe I can help you. Is it correct that Rio Tinto
25 received the first permit in 1997, the first permit that

11:47

1 covered a three-year period?

2 A. Yes, that is correct.

3 Q. When this came up for renewal in 2000, what should have
4 happened? How should this have happened, to renew the
5 permit?

6 A. What the 1995 Mining Code stipulated -- and that was the
7 Mining Code that was still in force, and this applied to
8 Rio Tinto and to any other company -- [was] that after
9 three years the results of studies had to be submitted,
10 and if possible a feasibility study. So all of the
11 information collected within the perimeter of the zone
12 had to be submitted, along with a plan for retroceding
13 or returning half of the perimeter that had been
14 granted. So Rio Tinto, a few years later, did that.

15 Q. It did all of that?

16 A. Well, what they did is they submitted a plan for
17 retrocession, reducing their initial perimeter by half.
18 This was done. As for the results of their work that
19 they had to submit to the state, they did submit
20 something, and I have to say I later came to consider
21 that this was incomplete.

22 Q. Do you consider that the renewal of the permit, given
23 the absence of results, do you consider that it was done
24 legally?

25 A. No, the renewal is legal, because there is not a list of

11:49

1 actual results that have to be submitted. We have the
2 Mining Law, and then you have implementing decrees that
3 lay out everything, the detail of each article. But if
4 you don't have implementing legislation, then the mining
5 companies had a certain amount of leeway: they could
6 either give some information or not give some
7 information they thought was more strategic.

8 So what I can say is that the retrocession that was
9 done by Rio Tinto was formally acceptable.

10 Q. Did you not announce in 2009 that the renewal was
11 actually not legal, during the mining forum?

12 A. No, not for the first renewal. We said something about
13 the subsequent renewal.

14 Q. So we are coming to the second renewal. This would be
15 in 2002. Did you consider that that renewal was legal
16 or in accordance with the Mining Law?

17 A. What does the Mining Law say? It says that you have
18 three years, then you have to retrocede half the
19 perimeter and you have to give results. Then you have
20 two more years to actually deliver on the perimeter and
21 to come up with a feasibility study. If you're unable
22 to produce the feasibility study, then you have to
23 return once again half of what you have left, and you
24 keep only half, the other half.

25 What happened in Rio Tinto's case was that given

11:51

1 that the two additional years had come to an end and
2 they still hadn't produced a feasibility study, they
3 simply directly went for a concession and a convention,
4 because if they had a concession or convention, it meant
5 that they would not have to retrocede anything further.
6 And this is precisely what was being contested.

7 Q. But the process that you're describing now, was this in
8 accordance with the Mining Law?

9 A. What was done?

10 Q. Yes.

11 A. It depends on the interpretation.

12 On the one hand, Rio Tinto told the government that
13 mobilising the finances necessary for such a project was
14 conditional on the consolidation of the mining rights
15 vis-à-vis those who would be financing them, and that
16 was understandable. On the other hand, there were those
17 who were very strict about applying the Mining Code, and
18 they said that two years later, if you didn't have
19 a real feasibility study, then you had to retrocede
20 a second time.

21 Q. So in 2002 they should have retroceded 50% of the zone?

22 A. Can you say that again?

23 Q. In the commission that was signed, there was no such
24 retrocession?

25 A. That's exactly it. It's as if one stage had been

11:52

1 skipped over, and that was exactly what was challenged.

2 Q. Then there was the concession granted in 2006. Did you
3 consider that this was done in accordance with the law?

4 A. At the time it was not my role to pass judgment on this.
5 When I did consider was that under normal circumstances,
6 that in 2002 they should have retroceded the 50% for the
7 second time, and I believe that's what was done later
8 on.

9 Q. Did you describe this concession as "paradoxical" --
10 I think this is the word that you used -- in 2009?

11 A. In 2009 it was not me; there was a committee. The
12 committee produced a report that was highly relevant,
13 and in fact this debate was public, and I did not chair
14 that commission.

15 Q. In paragraph 18 you say that you understood at the time
16 that BSGR did not have the technical nor the financial
17 resources in order to carry out the prospecting work.
18 But the permits that they got were granted in 2006 and
19 2007 on the basis of the positive recommendation of the
20 CPDM.

21 Are you suggesting in this paragraph that the CPDM
22 is not competent?

23 A. No, you have to look at things in the proper context.
24 I am passing judgment, but after making certain
25 observations. The titles were granted, they had two

11:54

1 years to perform. So I had evidence to justify whether
2 or not they had the financial or technical capability.

3 At the time we were talking about a company that
4 didn't have two or three permits; they had 23 permits.
5 BSGR had 23 permits: four for uranium, about 12 for
6 bauxite, and the rest for iron ore. You can understand
7 that one company might have some trouble with one or two
8 permits, but that they be stumbling over 23 permits,
9 this clearly was evidence that they did not have the
10 technical or financial capability in order to be able to
11 carry out the necessary prospecting in all areas.

12 Q. But you will agree that CPDM, when it makes its
13 recommendation, is forming a judgment or is evaluating
14 the technical and financial conditions of BSGR?

15 A. The CPDM's appreciation is just at that particular
16 moment. And for us within the mining administration
17 it's to look at the performance of the company not just
18 on the basis of its background and its history, all over
19 the world, but what they've actually delivered in
20 Guinea.

21 You can be a good performer in Brazil, Australia,
22 wherever, but if in Guinea the twelve obligations that
23 you have undertaken by virtue of the permit that's been
24 granted to you, if you don't comply with these twelve
25 commitments -- nobody is challenging the technical and

11:56

1 financial capability elsewhere. What is being
2 challenged is just your capability vis-à-vis the
3 delivery on the permits you've been given. They were
4 capable, they had money, maybe they were performing
5 elsewhere. But in Guinea, for 23 permits, they were not
6 performing.

7 Q. But this is a retrospective look?

8 A. My view was that they had the permits, they had enough
9 time to develop.

10 Let me give you an example. If a company really has
11 the financial and technical capabilities, for instance,
12 with a bauxite permit, they can go to develop and they
13 can complete development in six months. Here,
14 20 permits for over two years, and clearly there was no
15 result; nothing was delivered.

16 We had at the time established a sort of classifying
17 system for the companies, and BSGR was in the category
18 of companies that had too many permits, 23 permits for
19 three strategic resources, iron ore, bauxite and
20 alumina, and they had not performed.

21 Q. But when the CPDM is making this positive recommendation
22 and your predecessors grant the permit, at that
23 particular moment you did not criticise the CPDM or your
24 predecessors; in other words, you're not critical of
25 them for having given this permit?

11:57

1 A. No, one cannot be critical of them, because the
2 documents were provided by the company then were
3 historical documents. In other words, they say, "This
4 is what we've done for the last three years. Here are
5 our profit and loss statements. This is our bank
6 holdings. These are the guarantees and the surety we
7 can provide". CPDM should, under normal circumstances,
8 grant the permits. Then it is only through trial and
9 error and actual delivery that we see whether the
10 company can do it or not.

11 Because a company can get a permit in a given
12 country, and even though it may have the financial and
13 technical capabilities to develop it, but for strategic
14 reasons it may be wanting to freeze the resources, not
15 to develop them. We are all familiar with this process.

16 Q. Do you know if the President or Mamadie Touré or
17 Ibrahima Sory Touré, acting on behalf of Mamadie Touré,
18 exerted pressure on the CPDM or on your predecessors in
19 order to get these permits?

20 A. No. I did not manage what happened before I became
21 a minister.

22 Q. Under paragraph 18 you mention the general state and the
23 progress of the work. I presume that this has to do
24 with the cleaning-up process that you were referring to
25 earlier.

11:59

1 The general statement, was that something that was
2 done on a regular basis? Was it done on a quarterly
3 basis, on a half-yearly, or ...?

4 A. We would do that once a year. Once a year we would
5 assess the situation. So this was the initial
6 assessment that enabled us to see, not only for BSGR but
7 for all of the permits on the territory, the state of
8 progress, and to compare the state of progress vis-à-vis
9 the twelve undertakings that can be found in the
10 decisions, in the granting decisions.

11 And before that, we had a meeting with all of the
12 stakeholders saying, "This is what we're going to do".
13 We said we'd look at each of the permits, to enable them
14 to be present on each of the permits, in order to avoid
15 alleging, "At the time you did this, I wasn't there and
16 therefore I couldn't have proven my work". So this was
17 done for all of the permits.

18 Q. This was an enormous job?

19 A. Yes, indeed. It took us 45 days, but we did achieve it:
20 30 days in the field, 15 days to draft the reports, and
21 two more weeks to decide accordingly.

22 Q. Do you remember more or less what date this general
23 survey was completed, finalised? Was it at the
24 beginning of your tenure?

25 A. No, it was not at the beginning. It was most probably

12:01

1 during the last quarter of 2007, this sort of thing.

2 I don't have the exact date. But if you like, we can

3 look for the exact date.

4 Q. You say that this report was based on field visits, or

5 did I mistake what you said? Okay, let me reword my

6 question. On the basis of what data did you establish

7 these reports?

8 A. What was done was to ask CPDM, to start with, to give us

9 an assessment of all of the reports that had been

10 presented by all of the mining companies in the research

11 phase and those that were already exploiting the

12 deposit. You know there is a document that grants the

13 permit, and within that there are quarterly reports that

14 have to be presented by each of the companies.

15 So to start with, one had to assess the state of --

16 well, the documentary assessment, because it was

17 presented by the company. And secondly, there were

18 financial obligations that were linked to the holding of

19 the permits; for instance, the surface tax that would go

20 back to the communities, that sort of thing. Here again

21 it was one of the columns, and you have twelve-odd

22 columns in which you had obligations to supply the

23 documents.

24 So to start with, one would have the assessment of

25 all of the companies that submitted the documents on

12:03

1 a regular basis and others that haven't. So we didn't
2 stop there. We established four teams -- there are four
3 general regions, so four regional teams -- and they went
4 and worked in the field for one month and they came back
5 and reported back.

6 So it's work in the field, but also on the basis of
7 the documents. It's the summary of those two that would
8 lead to withdrawal or maintenance or validation of the
9 titles.

10 Q. How many permits were included? You said all of the
11 permits. Are we talking about hundreds? Do you have
12 an order of magnitude?

13 A. There were more than 800, and we have withdrawn between
14 180 and 220 such permits; for which, by the way, there
15 were BSGR permits.

16 Q. So you withdrew permits from BSGR?

17 A. Yes, for permits for which practically nothing had
18 moved.

19 Q. Do you know whether BSGR opposed or objected to the
20 withdrawal of the permits?

21 A. Nobody objected, because it was done on a totally
22 transparent basis. In other words, they were
23 associated -- well, first of all, we called everybody to
24 say, "This is what we purport to do. These are your
25 contractual obligations: there are twelve such

12:05

1 obligations. For each of these undertakings, we are
2 going to tick the box for those that have been fulfilled
3 and those that haven't". So I can tell you there was no
4 criticism at the time.

5 Q. Do you know in what matter the BSGR permits were
6 withdrawn? Was it bauxite?

7 A. Well, it must have been bauxite, but also something
8 else -- what's the name? -- uranium. But I have no
9 precisions on this.

10 Q. But you didn't withdraw any iron permits?

11 A. Can you repeat?

12 Q. Yes. North and South iron ore permits were not
13 withdrawn?

14 A. At the time, no.

15 Q. Because you deemed that they were doing their job?

16 A. Not all of the job. You know, we had determined
17 a certain number of points because we had given each
18 line a certain number of points. So it means that BSGR,
19 on the totality, had the average mark that had been
20 chosen by the commission on those permits. But it
21 doesn't mean to say that they did all of the job.

22 Q. So on the permits that are the subject of our
23 proceedings here, North and South, apparently they
24 passed, they got a pass, didn't they?

25 A. Apparently, yes.

12:06

1 Q. But you were the ones to put them through the exam?

2 A. No. No, no.

3 Q. There is a service: you said, "together with my
4 services". So your services did withdraw permits. So
5 at the end of the day it's your services, because you
6 were Minister of Mines. So your services decided to
7 give them a pass on the permits that we're talking about
8 today?

9 A. It doesn't mean to say that I was there to hand out good
10 marks or bad marks. This was done by the services in
11 the field who carried out the censuses.

12 Q. But you described the system with the columns.

13 A. Yes, this is a suggestion to know on what basis a permit
14 would be validated or not, because we were starting
15 a new era where all of the questions could be raised,
16 whatever the level.

17 Q. Do you know whether BSGR tried to influence or to put
18 pressure on your services when you were in the process
19 of putting this assessment together?

20 A. Look, attempts at influencing this or that, I cannot say
21 anything about. But what is certain is that we made
22 sure, through the work that was carried out, that the
23 procedure be totally transparent, and anybody who would
24 disagree may have the possibility of complaining about
25 it as need be.

12:08

1 Q. Fine. So let me continue. We have reached your first
2 meeting with BSGR in August 2008.

3 A. 2007.

4 Q. Sorry, yes, 2007, when they expressed their interest in
5 the Rio Tinto blocks and you said, under paragraph 19,
6 "No, you first need to work in the zones that you've
7 already got". And you say under paragraph 20 that BSGR
8 didn't react. Is it that they didn't say a thing? Did
9 they object during the meeting, when you said no?

10 A. You know, when you make such a proposal and you're being
11 told that you need to perform better before you get
12 anything else, and that you shouldn't apply for
13 something which is legally granted to somebody else, you
14 can't say anything else. You can't say a thing.

15 Q. Do you know whether BSGR then went to see the President
16 or Mamadie Touré to complain about your position?

17 A. No. I considered it. If at a later stage I was asked
18 to go to the presidency and I met with them, it's not by
19 accident; it's because they mentioned it.

20 Q. But during that meeting they didn't say oh no, beware,
21 because we're going to go and report this to the
22 President or to Mamadie Touré, who is supporting us; you
23 should be careful"?

24 A. No, they couldn't speak this way to me.

25 Q. You say under paragraph 21 that it's only after this

12:10

1 first encounter that you became aware that Mr Ibrahima
2 Sory Touré was the brother of one of the President's
3 wives. How did you hear about this?

4 A. Well, these are rumours that were going around. I mean,
5 when you have a hearing of that sort, especially when
6 people are unhappy, they tend to gossip, and it gets
7 back to me.

8 Q. You say, "one of the wives of the President". Did the
9 gossip say which wife was concerned? He was the brother
10 of which wife, since there were several?

11 A. Well, look, as far as I was concerned, this was of no
12 importance whatsoever; none.

13 THE PRESIDENT: What was of no importance?

14 A. The fact that he should be the brother of the
15 President's wife.

16 THE PRESIDENT: It was of no importance, whatever the wife?

17 A. None. And this was the case throughout the management
18 of the President. He was not the only one. I had to
19 deal with a lot of other people who had permits who
20 claimed that they were linked to Tom, Dick or Harry, but
21 it was of no importance.

22 MR DAELE: In paragraph 22 you describe your encounter with
23 the President and BSGR in September. This is where you
24 want to make your modification, isn't it? So it's
25 September 2007, right?

12:12

1 A. Yes, because in September 2008 I wasn't there anymore.
2 I was no longer there.

3 Q. No, no, no, I'm not criticising you. I just want to
4 make sure that I take a note of the right modification.

5 PROFESSOR MAYER: (Interpreted) Is it September 2007 or
6 August?

7 A. August.

8 MR DAELE: So you met with the President, he had called this
9 meeting himself, and when he called you, did he explain
10 why he wanted you to go and see him, on the phone?

11 A. Oh, no, it wasn't a phone call.

12 Q. You said, "I was called by the President". Did he call
13 you personally, or Mamadie Touré, or the President's
14 services?

15 A. I don't remember.

16 Q. You say that he was sick during that period. But
17 although he was ailing, were you under the impression
18 that he was still aware of business, of what was
19 occurring for instance in the mining sector, when you
20 met with him?

21 A. When I met with him at that particular time, yes.

22 Q. And he was still capable of giving directives or
23 indications? He was still speaking clearly?

24 A. The answer that he gave me proves this, yes.

25 Q. And therefore he was also capable of understanding what

12:14

1 you were explaining to him?

2 A. Yes, that's what I believe.

3 Q. Was Mamadie Touré present at this meeting?

4 A. No.

5 Q. Were there other people present at this meeting?

6 A. There were other people, but I can't remember who they
7 were.

8 Q. Because I think that you've already testified that there
9 were always people around the President.

10 A. Absolutely.

11 Q. So it was not exceptional that there should be lots of
12 people in the room?

13 A. It was not a room; we were outside.

14 Q. Yes, I apologise. So it wasn't exceptional that there
15 be people around the President, even if there were
16 a meeting with BSGR or yourself?

17 A. No.

18 Q. The fact that other people -- well, who was there?

19 A. I don't remember.

20 Q. Could it have been his attaché, his personal secretary?

21 Even if you don't remember the names, what sort of
22 people were around the President?

23 A. You know, when you're asked to go to such a meeting and
24 you find your President sitting under a tree with people
25 around him, and immediately you see the BSGR

12:16

1 representatives, the rest doesn't count anymore, because
2 what comes back to mind is your meeting with them and
3 the fact that you were convoked by the head of state as
4 a consequence of this meeting. Since it was a meeting
5 that didn't in fact fare very well for them, you
6 concentrate on the head of state, and the people around
7 him don't really count very much. That's in those
8 circumstances. So I can't tell you.

9 Q. But are we talking about two people, ten people?

[PROTECTED]

15 A. Well, look, when you arrive, he's seated there in front
16 of you; maybe there could be two or three people behind
17 him, others on the side. It's not something that's
18 formal, where everybody is sitting down; not at all.
19 You've got a few on one side, you've got bodyguards,
20 this and that. It was purely informal.

21 Q. The fact that they were there means that they have
22 a certain influence on the President?

23 A. I cannot judge this.

24 Q. You have never testified that people around the people
25 would put any pressure on the President?

12:17

1 A. If none of these people took the floor, you can only
2 believe what you discussed yourself. If somebody else
3 had spoken one way or another, you could have construed
4 something or construed that there was a will to
5 influence the President or not. But there it was only
6 an exchange between the President and myself; nobody
7 else took the floor.

8 Q. In paragraph 24 you said that:

9 "Asher Avidan made the introduction and came to
10 speak about his problem."

11 A. Yes, at the beginning.

[PROTECTED]

[REDACTED]

12:20

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 Q. You also say in that paragraph that you don't know how
8 they had access to the President. So you don't know
9 whether the meeting was organised by Mamadie Touré or
10 Ibrahima Sory Touré?

11 A. Look, when you're dealing with a company of this type,
12 one of the PRs of which happens to be the brother of one
13 of the President's wives, and you find yourself face to
14 face with this gentleman, with Asher Avidan, facing the
15 President, the rest is just left to your imagination,
16 unless you launch a police investigation to establish
17 the facts. So you imagine, obviously, that if this
18 meeting is taking place, it's because there was this
19 relationship.

20 Q. In your declaration you said:

21 "I don't know how they had access to the President."

22 Do you maintain this?

23 A. Yes, I maintain, and it was of no interest to me.

24 Q. Mr Ibrahima Sory Touré was present too?

25 A. Yes. For this meeting, yes.

12:21

1 Q. We heard on several occasions that he was part of the
2 President's family, right? During that meeting, were
3 there warm contacts between Ibrahima and the
4 President --

5 A. Not at all.

6 Q. -- since he belongs to the family?

7 A. No, not at all. I told you that during this meeting,
8 exchanges only took place between the President and
9 myself. At no point in time did they interfere.

10 Q. They didn't say "tu" to each other? After all, they
11 were brothers or ...

12 A. No.

13 Q. So it would seem that Mr Avidan explained his problem.
14 Just to make sure, can you clarify what the problem was?

15 A. Well, I spoke bluntly with the President; I didn't beat
16 about the bush.

17 Q. Yes, but in your first phrase it says:

18 "[Mr] Avidan made the introductions and said that he
19 was talking about the problem."

20 A. I went straight to the subject matter. The problem is
21 that I had been to the offices that introduced -- that
22 presented their companies that wished to extend their
23 mining permits to those that are owned by Rio Tinto.

24 I explained to the President that Rio Tinto didn't
25 have a research, they had a convention and a concession,

12:23

1 and that a decision of the minister could not contradict
2 a convention that had been ratified by the National
3 Assembly, nor a mining concession which has been signed
4 by the head of state. These are the explanations that
5 I gave them.

6 Q. And the reaction of the President can be found in your
7 paragraph 26, when you say that:

8 "The only indication that the President gave me was
9 to take decisions that comply with the nation's
10 interest."

11 A. Absolutely.

12 Q. And how did you apply this?

13 A. Well, my position -- it means that my position towards
14 that problem was right, because had it been wrong, he
15 could have conveyed so to me.

16 Q. So this directive was perfectly normal?

17 A. Yes, it complies. You will never see a minister attack
18 the documents that have been signed by the head of
19 state, nor the National Assembly.

[PROTECTED]

12:25

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12:28

[PROTECTED]

[REDACTED]

20 Q. Then you mentioned a second meeting with BSGR which took
21 place immediately after that meeting with the President,
22 in the course of which the President simply told you to
23 take the interest that would best serve the interests of
24 the country.

25 Then you say, therefore, in paragraphs 27 and 28,

12:30

1 that you have another meeting, and in the course of
2 which:

3 "Asher Avidan spoke to me as though the President
4 had given formal instructions that I was to carry out
5 concerning Simandou."

6 Can you clarify? What was it that Mr Avidan said
7 specifically?

8 A. Well, I would simply say that some time after that, they
9 came to see me in my office, and the feeling was like,
10 "Well, we've come to put the final touches on this,
11 we've come to finalise this". So I had to remind
12 them --

13 Q. To finalise what?

14 A. Well, no, that was their request, that we had to accede
15 to their requests, and it was in that state of mind that
16 they came to see me. Now, obviously I had left them
17 there; I don't know what they had discussed later. But
18 from what I saw myself personally, and from what I got
19 from Mr Touré and from Mr Avidan --

20 Q. Well, apparently Mr Avidan interpreted the instructions
21 of the President in a different manner from you, because
22 for you it was a general thing, sort of a leitmotif,
23 whereas he interpreted that differently.

24 A. Well, that is a possibility.

25 Q. Is there another possibility?

12:31

1 A. Well, the other possibility was that -- well, I left
2 them there and I don't know what happened after I left.
3 So I don't know.

4 Q. Yes, but Mr Avidan didn't say, "Well, once you left,
5 I kept discussing with the President, and he told me
6 that I was to tell you that this is what's got to be
7 done"?

8 A. No, I think that you would have to [ask] Mr Avidan --

9 Q. No, but you were there. You're making a statement here as
10 to what Mr Avidan said. So I'm asking you what
11 Mr Avidan actually said.

12 A. Well, that's what you find in the text, in paragraph 28.
13 You see, "Mr Minister, we have come to finalise this".

14 Q. I'm sorry, I'm sorry. You are saying that it really is
15 possible that Mr Avidan perhaps didn't quite interpret
16 correctly the instructions from the President, that's
17 one possibility; and you're suggesting that there may be
18 another possibility, and that is that once you had left,
19 the President gave other instructions to Mr Avidan,
20 different from those that he had given you?

21 A. Well, because it was surprising that, having been at the
22 same conversation with the President, now Mr Avidan
23 comes over and gives an interpretation which is totally
24 different from what had happened.

25 Q. But what is it Mr Avidan said exactly? Didn't he say,

12:33

1 for instance, the decision was general: "take the best
2 decision in the interest of the country". So what is in
3 the best interest of the country?

4 A. That is respecting the law, not pronouncing on an act
5 that has already been attributed to others, and
6 therefore -- and precisely Mr Avidan's approach was to
7 get something that he was not entitled to. That's not
8 possible. The interest of the country, it's very clear.
9 What Mr Avidan was asking for was inadmissible.

10 Q. What was the request?

11 A. Well, the request was that they had claims on Simandou
12 blocks which at the time had already been legally
13 attributed to Rio Tinto. So that particular request was
14 illegal.

15 Q. So then he said what? He said expressly, in the course
16 of that meeting with you, "You heard the President,
17 before both of us, giving me access to these permits"?

18 A. No, he didn't say so in so many words. He didn't say it
19 explicitly, but this is what was meant. Coming over to
20 say, "We have come here to finalise": what is there to
21 finalise apart from the requests? But the requests were
22 inadmissible to begin with. Both as far as the form and
23 the substance thereof was concerned, it was illegal.
24 And they could then have Rio Tinto actually suing them,
25 because nobody has the right to put forward a claim

12:34

1 concerning a mining title which is still valid and which
2 has been attributed to somebody else. It's as simple as
3 that.

4 Q. Well, in any case, those were not the instructions that
5 you heard from the President?

6 A. The instructions from the President was to do what was
7 in keeping with the best interest of the country. And
8 what was in keeping with the best interest of the
9 country was scrupulously respecting the law of the
10 country. What does the law of the country say? That
11 you cannot do anything about a mining title which is
12 still in force and belongs to another company.

13 And therefore BSGR's approach was illegal, their
14 request was illegal, both as far as the form and the
15 substance thereof is concerned. I must repeat: it was
16 inadmissible, it was illegal.

17 Q. How did BSGR react?

18 A. Well, they couldn't react, because BSGR knew the laws
19 very well.

20 Q. So they didn't say anything?

21 A. Well, they couldn't have said anything else.

22 Q. They said nothing? They said nothing? They didn't say,
23 "Well, we have just received instructions from the
24 President"?

25 A. Oh, no, not at all. My answer was extremely clear.

12:35

1 Q. Yes, well, your answer may have been clear --

2 THE PRESIDENT: Well, you have been overlapping for some
3 time. I think really you must give time to the witness
4 to finish the answer before you ask the following
5 question.

6 MR DAELE: Your answer to my question, if I understood
7 correctly -- my question was: how did BSGR react when
8 you gave that answer? Did BSGR then say, "Well, wait
9 a minute, it was the President himself who had decided
10 this", or they said nothing at all?

11 A. They said nothing.

12 Q. Do you know whether afterwards they complained to the
13 President?

14 A. I do not know.

15 Q. Or to Mamadie Touré?

16 A. That I don't know.

17 Q. In paragraph 30 you speak of another meeting which took
18 place in December 2007. You got a phone call from the
19 Prime Minister asking you to go see the President, so
20 you went to see the President.

21 In paragraph 31 you said that there was a lady. Did
22 that lady speak in the course of that meeting?

23 A. No.

24 Q. Was BSGR present at that meeting?

25 A. No.

12:37

1 Q. Were there any other people in the room? The entourage?

2 A. Well, I don't know. Maybe his aide-de-camp was present.

3 I can no longer remember.

4 Q. Did the President introduce that lady?

5 A. I came with the Prime Minister. You remember the

6 context was that I was called. Leaving my office,

7 I didn't know that I was going to come to discuss that

8 matter. When I got to the office of the Prime Minister,

9 the Prime Minister said, "We are going to see the

10 President", and it was during the trip over to the

11 President's residence that he spoke to me about the BSGR

12 case.

13 It just so happens that I have a certain number of

14 sensitive files that I always keep with me in my car.

15 So we went in, and he asked me to give explanations to

16 the President concerning the BSGR situation. So

17 I unfolded the maps and I gave explanations on that.

18 Q. But my question was whether the President had introduced

19 the lady.

20 A. No, it wasn't he who introduced.

21 Q. Was it the Prime Minister who introduced the lady?

22 A. He asked me to speak.

23 THE PRESIDENT: No, the question was whether the President

24 or the Prime Minister introduced that lady, saying who

25 she was.

12:39

1 A. No, I'm sorry, I understood something else. No, there
2 were no introductions, madam.

[PROTECTED]

[REDACTED]

18 Q. But in paragraph 31 of your statement in the framework
19 of this procedure, you say that you had already heard
20 about her. In the last sentence you say:

21 "... I told myself that must have been the sister
22 ... about whom I had heard."

23 What is it that you had heard about her?

24 A. Well, as I explained, in the course of my first meeting
25 with BSGR it had been pointed out to me that the person

12:41

1 in charge of the public relations of BSGR was a brother
2 of one of the wives of the President. So that's it.
3 Quite naturally, these are things that you keep in mind.

4 Q. These are discussions in the corridors?

5 A. Yes, these are corridor conversations.

6 Q. Something like a half-hour before, in the corridors of
7 the ministry, you had heard?

8 A. Yes, it wasn't formal at all.

9 Q. So there was this meeting then. In paragraph 32 you
10 say:

11 "The Prime Minister introduced me ..."

12 And then you discussed or explained the BSGR case:
13 that they had done nothing in their zones and that you
14 couldn't understand why they would be granted additional
15 permits.

16 Then you say in paragraph 33:

17 "The explanation I gave seemed convincing."

18 And therefore, again, the President didn't give you
19 any specific directives or instructions on that dossier
20 or the status of the permit or the request for permits
21 by BSGR.

22 What did the President answer when you explained
23 your position?

24 A. Well the President actually spoke to the lady, not to
25 me, saying "Don't get involved in these mining -- in

12:43

1 this mining business".

2 Q. But she didn't say anything?

3 A. No, she didn't say anything.

4 Q. The President said, "Shut up", more or less; he said,

5 "Don't get involved"?

6 A. Yes, "Don't get involved in these mining problems".

7 Q. But the President himself did not give you any

8 instructions?

9 A. There was nothing, there was no instruction to give me.

10 He had nothing to say about the explanations I had

11 given.

12 Q. Because they were clear?

13 A. Yes. In my opinion, yes, because he could have said the

14 opposite if he had wanted to.

15 Q. But doesn't this show that in fact Mamadie Touré had no

16 influence on the President?

17 A. Well, listen here. This problem of influence for

18 someone who lives outside the Presidential Palace is

19 very difficult to apprehend, because the influence --

20 I understand in that context "influence" as being the

21 power that someone can have on a decision-maker to get

22 a decision taken which is not a conventional or

23 traditional decision, that is a decision departing from

24 the usual rules, and you have that influence that you

25 can bring to bear in certain number of cases.

12:45

1 Having influence -- or this lady having an influence
2 on the President is something very difficult to assess
3 from the outside, because don't forget we are in the
4 context of a head of state who is ill, and it was well
5 known that he had moments of lucidity and others where
6 he would be struck with amnesia.

7 So people with that kind of pathology, with dire
8 consequences on those people's memory, you have to
9 realise that there are some assertions that somebody may
10 be making at one point in time and which can be
11 contradicted immediately afterwards. So you cannot
12 really know what is due to the illness or what is due to
13 influence. I personally could not pass judgment on that
14 at all.

15 PROFESSOR MAYER: Mr Daele, I'm sorry, I should like to ask
16 for a clarification.

17 She didn't speak at all, Mamadie Touré, during that
18 meeting?

19 A. No, not at all.

20 PROFESSOR MAYER: Then how can you explain what the
21 President said, "I have told you not to get involved in
22 this"? What was he referring to?

23 A. Well, it probably means that they had been talking about
24 it before, and it was not the first warning he was
25 giving her, that is for sure.

12:47

1 PROFESSOR MAYER: Thank you.

2 MR DAELE: So on that day the President was lucid.

3 A. It seems to me he was.

4 Q. Are you saying there may be different interpretations,
5 but your interpretation was that she had an influence,
6 or not at all, when you hear an answer such as that one?
7 Because after all, it's rather aggressive.

8 A. Once again, when someone is ill, it's very difficult
9 really to know what's going on in his mind.

10 Q. Yes, but that means --

11 A. Well, in my opinion he was lucid. But there was nothing
12 that could tell me whether he was not actually
13 undergoing tremendous pain that could even have
14 an influence on the way in which he would address the
15 people around him. It is only a medical doctor who
16 could tell you, could give you such an answer.

17 Why do I say [he was] lucid? Because the decision
18 he took was certainly in keeping with the decision that
19 normally he should take in that type of conversation,
20 where you have somebody close to you who is getting
21 involved in public matters.

22 Q. Do you know that we asked your government to produce
23 documents explaining the physical state of the
24 President, and the Tribunal even ordered that these
25 documents be produced, but that we haven't received any

12:48

1 documents establishing really the state of health of the
2 President?

3 A. Well, perhaps we are two entirely different societies,
4 you see. A pathology -- and it is even the case in some
5 western societies. Discussing a President's health in
6 public is not a very usual thing. As to the pathology,
7 I don't know whether they even know, whether they have
8 had access to any documents.

9 Q. Well, you say that perhaps he was suffering, undergoing
10 tremendous pain at the time. Do you think that he would
11 have organised a meeting when he was undergoing such
12 tremendous pain?

13 A. Well, you know, that man is a former military man: he
14 has tremendous endurance. So in the discharge of his
15 duties, very often one could see him stay in the car in
16 order to discharge some of his obligations. These are
17 suppositions. But I believe that he was doing his very
18 best, considering his health, in order to carry out his
19 duties.

20 Q. How much power [did he have] at the time? Because at
21 the beginning you said that because of the tripartite
22 agreement, in fact the power was no longer [vested] in
23 the President but in somebody else. So what power did
24 he still have?

25 A. Well, in the tripartite agreements it was established

12:50

1 that the Prime Minister was to appoint the members of
2 the government, but that they had to be confirmed by
3 presidential decree, which wasn't the case before. And
4 afterwards it was the Prime Minister who would have to
5 appoint people to the essential functions, i.e. the
6 various ministries, et cetera. That was the substance
7 of the tripartite agreements. In other words, there
8 were a certain number of powers that the President still
9 has at his level, but the tripartite agreements forced
10 him to delegate these powers, at least on paper.

11 Q. Madame Mamadie Touré didn't speak in the course of the
12 meeting, when the President told her not to get
13 involved? What was her reaction, even non-verbal
14 reaction?

15 A. Well, in all the meetings I ever attended with the
16 President, nobody ever spoke after the President,
17 no one.

18 Q. Did she look shocked or astonished, neutral?

19 A. When you are facing the President and there is a lady
20 next to him, you concentrate on the President.

21 Q. Was she physically close to him: 1 metre away from him,
22 2 metres? She was sitting next to him? They were right
23 in front of you?

24 A. No, no, she was to the right of the President.

25 Q. So then you actually didn't see her non-verbal

12:52

1 expression?

2 A. No.

3 Q. So after that meeting, 24 hours after that -- and I have
4 reached now paragraph 35 -- the Prime Minister, Prime
5 Minister Lansana Kouyaté, asked to see you, and when you
6 went to see him, he was with Mamadie Touré.

7 Did they try to explain what had happened the day
8 before?

9 A. To some extent.

10 Q. So again you had to explain what you had explained on
11 the day before. Was BSGR present at that meeting?

12 A. No.

13 Q. At this meeting, did Mamadie Touré speak?

14 A. No.

15 Q. Did the Prime Minister indicate that he had received
16 instructions from the President?

17 A. No.

18 Q. Doesn't that incident show that in fact Mamadie Touré
19 had to go behind the President's back if she wanted to
20 get something done?

21 A. Well, I think that goes without saying.

22 Q. Sorry, I didn't quite understand. But the fact that she
23 has to go behind his back means that she has no
24 influence, because otherwise it wouldn't be necessary
25 for her to go behind somebody's back; you do that in

12:54

1 front of the President when you wield influence, as she
2 had tried on the day before.

3 A. No, that means, in my opinion, that the presidential
4 word wasn't a limit to her.

5 Q. That meeting was also in December 2007. And you were
6 Minister for Mines until August 2008 --

7 A. [Yes.]

8 Q. -- so a further eight months?

9 A. Yes, but in the meantime the Prime Minister changed.

10 Q. Yes, but still eight months. And during those eight
11 months, December 2007 to August 2008, did you have any
12 other meetings with the President on the BSGR
13 activities?

14 A. No.

15 Q. Any other meeting with Mamadie Touré?

16 A. No.

17 Q. Any other meeting with other people who would say that
18 they were acting on behalf of Mamadie Touré?

19 A. No.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 5 Q. That means that between December 2007 and the end of
6 your term of office, you never again had any contacts
7 with BSGR or Mr Ibrahima Sory Touré or Mr Avidan?
- 8 A. No physical contact. There was exchange of emails, yes,
9 exchange of letters.
- 10 Q. Were there any phone calls?
- 11 A. No. I don't remember any.
- 12 Q. In that period were there other people trying to bring
13 pressure to bear upon you?
- 14 A. Of course, because the request on the Simandou blocks
15 was put forward again.
- 16 Q. But you had no contacts with Mamadie Touré or with
17 Mr Avidan or meetings with BSGR, in spite of which there
18 was still pressure which you felt? You're saying that
19 there was still pressure?
- 20 A. Well, I don't consider that really to be pressure. They
21 were simply expressing what they wanted to do, and we
22 were just telling them that in light of the regulation
23 it was not feasible.
- 24 Q. In paragraph 41 you speak of the withdrawal of
25 Rio Tinto's rights.

12:58

1 A. Yes.

2 Q. And you say that withdrawal of rights -- well, really
3 you were not minister at the time, at the time of the
4 withdrawal?

5 A. Well, I was there, yes. I was there. The withdrawal
6 was in July.

7 Q. No, that is the suspension of the concession.

8 A. You're saying what?

9 Q. The suspension of the concession in July.

10 THE PRESIDENT: Perhaps you may not be using the same
11 terminology. That is a decision taken in July 2008 to
12 withdraw the concession, Rio Tinto's concession.

13 MR DAELE: To clarify matters with the witness, sir, you
14 mention here "withdrawal": you mean the presidential
15 decree of 8th July 2008, or are you referring to the
16 decision taken by the Council of Ministers of
17 4th December concerning the retrocession?

18 A. No, I'm referring to the July decree.

19 Q. So then you're saying that the withdrawal and the
20 granting of permits were two different problems.

21 Then this is something I find quite interesting: you
22 say the fact of being able to withdraw Blocks 1 and 2
23 from Rio Tinto did not give any rights to BSGR over
24 those permits. When I read this, this means that you
25 actually do recognise that the government was entitled

13:00

1 to withdraw those blocks from Rio Tinto.

2 A. But of course.

3 Q. However, on the subsequent granting of those rights to
4 BSGR, there you say: no, that is not acceptable.

5 A. Yes, because they immediately wrote -- immediately after
6 the decree, they wrote a letter, asking this time for
7 Blocks 1, 2 and 3. They were asking for three out of
8 the four blocks.

9 And the answer I gave, with the very last letter
10 I wrote before I left the ministry, was to tell them
11 that the conditions for the granting of those blocks had
12 to be very specific because we had entered a phase of
13 negotiation of a global agreement which meant that the
14 counterpart -- or rather, as a counterpart to the
15 granting of mining rights or mining permits, there had
16 to be financing made available to the state so as to
17 cover infrastructures other than the mining
18 infrastructures.

19 This is what I reminded them of in that letter.
20 They may have had the technical and financial
21 capabilities, but there were other things that they had
22 not shown they had in Guinea; and then later, in the
23 conditions to grant those blocks, there was that.

24 Q. So the last thing you did, I believe that you actually
25 set up a committee in your ministry, a [committee] made

13:02

1 up of officials, on 27th August?

2 A. What committee of officials?

3 Q. I hope that we find the document in the file.

4 THE PRESIDENT: C-176.

5 MR DAELE: It's your decision dated 27th August 2008,

6 tab 19.

7 A. Yes, 19.

8 Q. I think that this is the document showing that you set
9 up a Technical Committee in order to review Rio Tinto's
10 mining titles. Do you remember having set up that
11 committee?

12 A. Yes.

13 Q. I think this was on your last day as minister?

14 A. Yes, because the rights had been suspended and we had to
15 give an opinion on the implementation of the suspension
16 or the enforcement of the suspension of those rights.
17 So the decree granting the four titles had been
18 suspended. It was -- how is that called? There is
19 a legal term that escapes me right now. It was revoked,
20 so to speak. So now we had to put forward a proposal to
21 see which blocks could be taken back by the state and
22 which blocks could be given to Rio Tinto.

23 Q. The nine people here, did you choose them yourself, on
24 the basis of their capacity?

25 A. Yes, on the basis of their capacity. [Mr Bangoura] was

13:04

1 the National Director for Geology and he chaired the
2 commission that was responsible for cleaning up the
3 mining titles. So he was there, as well as the head of
4 the CPDM, as you have observed. Altogether these were
5 people who were competent to have an opinion on this.

6 So it wasn't just the minister saying "I recommend
7 taking two or three permits". We needed to have people
8 there who could, on the basis of the work that had
9 already been done, tell us what the permit was within
10 which Rio Tinto had effectively done prospecting, and
11 the zones where less work had been done. Because the
12 permits in the areas where they had actually performed,
13 we couldn't remove those permits, leaving them the other
14 ones. So that was the work to be done by the
15 commission.

16 Q. Thereafter you were no longer minister, so I imagine you
17 don't know a great deal about what occurred later on.
18 But generally speaking, you were confident in the work
19 that had been done by these people during this period?

20 A. It was entirely normal, because all of this was also
21 part of catching up with the second retrocession that
22 should have been done by Rio Tinto. So I think that
23 they did actually outstanding work. The company was
24 keeping the permits where they had performed well,
25 Blocks 3 and 4, whereas in Blocks 1 and 2 they had done

13:07

1 less work; they had just done some reconnaissance work.

2 Q. The presidential decree of July 2008, did it grant
3 permits to BSGR?

4 A. No. No, the decree does not concern BSGR.

5 Q. I have two or three final questions.

6 Did you receive any bribes from BSGR?

7 A. No. Perhaps you should ask them who they bribed.

8 Q. Do you know any other officials who received bribes from
9 BSGR?

10 A. No.

11 Q. Have you heard, or did you hear at the time, rumours
12 that people had received bribes?

13 A. These are things that you hear on the web and the
14 newspapers. Personally, I have no judgment on this
15 question.

16 Q. Did you reach any decisions that you should not have
17 taken were it not for the pressure exerted by
18 Mamadie Touré?

19 A. I did not completely understand your question.

20 Q. Did you make some decisions during this period --
21 because we heard the allegation that there was pressure
22 being exerted. So my question is: had there not been
23 such pressure, are there any decisions that you took at
24 the time that would have been different?

25 A. No, it changed nothing as far as I'm concerned, because

13:08

1 for me my consistent line of behaviour was being in
2 compliance with the Mining Code. So no decisions were
3 taken that were not in accordance with the Mining Code.

4 So, for instance, it's the Mining Code that says you
5 can't grant permits when there are already permits
6 there. And for a company that did not have the
7 financial or technical capability in Guinea, there again
8 the decision was foregone, because a company that had
9 23 permits and did not perform on any of these permits
10 simply could not claim that it exercised the technical
11 and financial capabilities on Guinean soil.

12 Q. But you had the ability to sanction this by withdrawing
13 the permits, as you had done with other permits, but you
14 didn't do it because BSGR had passed the test.

15 A. You have to understand what that means, that BSGR passed
16 the test. The permits where they had done some work,
17 there was some performance, well, we were waiting,
18 because they had been working for two years, and the
19 first major milestone for [companies] that are actually
20 working on the ground is three years after the granting
21 of the first permit.

22 So we were not yet in the third year following the
23 granting of the permit for iron ore. The other ones,
24 they hadn't done anything, so we weren't going to wait
25 for the end of the third year to come to a decision. So

13:10

1 that's an important detail.

2 Q. Would you please go to tab 7.

3 A. I have it.

4 Q. This is a letter dated April 30th 2008, document C-195.

5 You constantly say that BSGR had 23 permits and they
6 did nothing.

7 A. Yes.

8 Q. In this letter they are now saying that they are
9 returning nine permits and then another four permits,
10 and again five permits. Do you see this? Iron ore,
11 uranium and bauxite. Altogether, 18 permits that are
12 being returned to the government.

13 A. But how many did they keep?

14 Q. Five. It's not 23. You say that it was unacceptable
15 because they had 23 permits and they didn't do anything.
16 Here, on April 30th 2008, they returned 17 permits,
17 I believe. So they actually had five permits. This is
18 at the time of the decision.

19 A. Did you clearly read this letter? This letter doesn't
20 return them. They say, "We will be ready to return them
21 if you give us Simandou". That is a big nuance.

22 Q. Where do you see this condition?

23 A. What we have here is the result of the evaluation, and
24 they say:

25 "... the extension of the permits for iron ore on

13:13

1 Mount SIMANDOU ..."

2 You see the link there is between their willingness
3 to return these permits and the granting of the permits
4 for Mount Simandou.

5 Q. No --

6 A. So first of all they are talking about:

7 "Returning to the portfolio of the State as soon as
8 the signing of the extension permits ... of Mount
9 SIMANDOU of over nine ... permits for prospecting ..."

10 Have you read this? This is very different from
11 saying, "We're just giving back to you these permits".
12 That's not what they're saying. They're saying, "We
13 will return them if you give us Simandou". This was
14 a conditional letter, and it's not all of the permits
15 that they're offering to return.

16 Q. Is there a reference to the Rio Tinto permits?

17 A. All of Simandou was held by Rio Tinto. So if you're
18 talking about Simandou, then you're talking about
19 Rio Tinto.

20 Q. But there was Simandou North and Simandou [South].

21 A. Everything was under permit with Rio Tinto at the time.

22 Q. April 30th 2008, BSGR did not hold permits in
23 Simandou North and Simandou South?

24 THE PRESIDENT: We need to read the beginning of the letter
25 that talks about Blocks 1 and 2.

13:14

1 MR DAELE: Yes, indeed.

2 THE PRESIDENT: So they requested extension for Blocks 1 and
3 2, and then it goes on to talk about returning the nine
4 prospecting permits.

5 MR DAELE: Isn't one of the reasons for not giving Blocks 1
6 and 2 to BSGR because, as you've said several times,
7 that they had too many permits and they were doing
8 nothing with them?

9 A. There was a fundamental and legal reason, and that is
10 that these permits were still valid, they were still in
11 effect, they were part of Rio Tinto's portfolio, so they
12 had no cause to vie for them. But in addition to this,
13 there were 23 permits for which they hadn't performed,
14 so why would they go and ask for something else? And
15 that was the substance of the conversation that we had
16 directly with them.

17 When you look at what's written here, we're talking
18 about returning five out of 13 bauxite permits. So for
19 bauxite they had 13 permits. They had four permits for
20 uranium. And then look at all the permits they had
21 around Simandou. So altogether they had 23.

22 Q. But in your testimony you told the President that they
23 could not apply for additional permits because they
24 already have enough permits and they're not doing
25 anything. That is what you said?

13:16

1 A. Yes, that's for prospecting permits.

2 Q. [Yes, absolutely.]

3 A. [And this is even less so for --]

4 Q. [And what they're doing here --]

5 A. May I finish? This is even less so for a mining
6 concession that belongs to another company. That was
7 completely illegal.

8 Q. Why is applying for a permit illegal? I mean, the
9 simple fact of applying for a permit, to what extent is
10 that illegal?

11 THE PRESIDENT: When Mr Daele says "applying for it", he
12 means making an application for it.

13 MR DAELE: The mere fact that BSGR had made an application,
14 this is something you qualify as being illegal. How is
15 this illegal? If the application is not in compliance,
16 clearly it will be rejected. But the simple fact of
17 applying is not illegal. It may be inadmissible. But
18 in what way is the simple fact of applying illegal?

19 A. There are several reasons. Granting a mining title to
20 a company, whether it's a prospecting permit or a mining
21 convention, is a decision that is public. Everybody
22 knows that a given permit belongs to a given company.
23 And the period during which this mine is set for
24 a prospecting permit is three years, with two possible
25 two-year extensions. And the permit is opened up to

13:18

1 other competitors if it is withdrawn by the state.

2 So until such time that it's withdrawn, you cannot
3 apply for it, nor can you even set foot in that
4 perimeter without being authorised. There have been
5 cases where helicopters have overflowed perimeters, and
6 that actually led to legal action. Rio Tinto was
7 entitled to its rights had it decided to go after BSGR
8 for applying for a permit that was still in effect and
9 was still valid.

10 Q. Did the Mining Law provide for a sanction for those who
11 would apply for a permit for a zone that was already
12 under permit?

13 A. No, not formally so. But it was something that was
14 clearly expressed to the players in the mining sector.

15 Q. Was there a specific prohibition in the Mining Law?

16 A. No. It's in the tradition, the way it was implemented.
17 As I said before, there was no implementing decree for
18 the Mining Law.

19 Q. So BSGR was not in violation?

20 A. No, they should not have done it. Yes, they have --
21 it's intangible, the perimeter that is granted to
22 a company is intangible. But the simple fact that
23 anybody would come and set foot on territory is illegal.

24 Q. But there's no sanction, there's no consequences under
25 law?

13:20

1 A. No. If there had been a complaint, then there would
2 have been a sanction.

3 Q. What type of sanction?

4 A. I don't know. I'm not the one who is going to judge
5 this.

6 Q. Would it be prison? Would it be a fine?

7 A. That would be up to the judge to decide.

8 Q. But the judge has to base him or herself on a legal
9 text; correct?

10 A. Yes. I can assure you there have been such cases and it
11 always ends up with a problem.

12 THE PRESIDENT: Mr Daele, I think we've gone beyond the two
13 hours. I would like to break. Do you have many
14 questions left?

15 MR DAELE: No, just a few.

16 THE PRESIDENT: I think maybe then it would be good to stop
17 and allow everybody to have a bite to eat. That is
18 perhaps not what I should have said; I'm very sorry,
19 Mr Kanté.

20 So we shall resume at 2.15, if you all agree.

21 I think we will finish fairly early today with the
22 minister.

23 I have understood that you need to leave by 5.00 pm;
24 is that correct?

25 MINISTER KANTÉ: Yes.

13:21

1 THE PRESIDENT: I think we will be finished much earlier.

2 Is that correct, Mr Daele? Can you confirm that?

3 MR DAELE: Yes, I believe that's correct.

4 MR OSTROVE: It would be very good for the rest of the week

5 if we could start with the examination of Mr Bouna

6 Sylla. He's in Paris and he's available this afternoon.

7 So we could possibly even complete this examination, to

8 free up the rest of the week.

9 MR DAELE: This is a problem, because Mr Sylla was scheduled

10 for Thursday and I still need those two days to conduct

11 his examination. I have prepared myself based on the

12 chronology as had been set out, first starting with

13 Mr Nabé, then Mr Tinkiano, and Mr Bouna Sylla was the

14 last one. I'm sorry, I'm not ready.

15 THE PRESIDENT: I have understood that Mr Tinkiano is not

16 here yet or has not arrived?

17 MR OSTROVE: I think he flew last night. He may already be

18 in Paris. But he hadn't planned to spend the night on

19 a plane and then be heard.

20 THE PRESIDENT: I don't think it's very fair. So I see no

21 other solution than to finish with Mr Kanté's hearing

22 and adjourning until tomorrow.

23 MR DAELE: I'm sorry, I am ready to examine Mr Tinkiano.

24 THE PRESIDENT: But apparently that's not going to work

25 either.

13:24

1 MR DAELE: I just want to avoid giving the impression that
2 I don't want to be cooperative.

3 THE INTERPRETER: Apologies, the President is speaking
4 without her mic.

5 (A discussion re the order of witnesses
6 took place off the record)

7 THE PRESIDENT: I am still on the record.

8 Mr Minister, I must ask you not to talk about your
9 testimony during the lunch break to anyone, and the best
10 way to respect this instruction is simply not to speak
11 to anyone.

12 MR OSTROVE: Mr Kanté's wife has come to Paris to see him
13 and has planned to have lunch with him, and I think, to
14 my knowledge, she knows nothing about the case. Can he
15 be authorised to have lunch with his wife if they don't
16 talk about the case?

17 MR DAELE: I am trying to express this in a neutral way.
18 I have no objection.

19 MR OSTROVE: Thank you for your understanding.

20 THE PRESIDENT: So, yes, you can have lunch with your wife,
21 but without talking about the case at all.

22 MINISTER KANTÉ: Thank you very much.

23 THE PRESIDENT: See you later.

24 (1.27 pm)

25 (Adjourned until 2.30 pm)

14:36

1 (2.36 pm)

2 THE PRESIDENT: Before we start, Mr Minister, I just have
3 one question for the Claimants.

4 (In English) We have received the exchange of
5 correspondence with respect to the FBI declaration at
6 issue, and we note that among the attachments there is
7 one email that does seem to attach the declaration
8 itself. So we would like to know whether we are
9 supposed to read this declaration or not. What is the
10 Claimants' view?

11 MR DAELE: (In English) Not yet. The declaration itself,
12 not yet.

13 THE PRESIDENT: Not yet. So we should first make a decision
14 as to whether it is in. Fine. So we will have to
15 discuss this among the Tribunal members in a later
16 break.

17 That is all I needed to say now, before we continue.

18 MR OSTROVE: (Interpreted) I think there was a technical
19 problem that you might have noted this morning, in that
20 the French livenote had stopped operating for one and
21 a half hours --

22 THE PRESIDENT: Yes, mine stopped rather early.

23 MR OSTROVE: Since I wanted to refer to what has been said,
24 we have asked the court reporters if they could send us
25 this morning's transcript by email, so that everybody

14:37

1 has it available for this afternoon.

2 THE PRESIDENT: Yes. Fine, thank you. And I see that now
3 it is working.

4 Maître Daele, you have the floor for the
5 continuation of your examination.

6 MR DAELE: (Interpreted) Good afternoon, Minister Kanté.
7 I hope that you had a pleasant lunch with your wife.
8 I still have two questions to put to you before
9 I finish.

10 Just before the break I asked you whether you
11 yourself had taken decisions that you would not have
12 taken had pressure not been exerted upon you. So I'd
13 like to repeat the same question, but not as far as you
14 are concerned but as far as the President is concerned.

15 According to you, did the President take decisions
16 in this case that he would not have taken had pressure
17 by Mamadie Touré not been exerted upon him?

18 A. I don't know what decision you're talking about.

19 Q. In general, would you be aware of decisions or
20 directives that the President did give, but would not
21 have given had he not been under the pressure of
22 Mamadie Touré?

23 A. I'd like you to be more precise.

24 Q. The directive which consisted in taking decisions in the
25 interests of the country, was that a decision that he

14:39

1 gave under pressure of Mamadie Touré?

2 A. In fact I think that the directives that he gave
3 complied with his responsibilities.

4 Q. And did your government take decisions that it would not
5 have taken had it not been under the pressure of
6 Mamadie Touré?

7 A. I think that the decisions that were taken by the
8 government complied with the law and regulations that
9 were in force at the time.

10 Q. Without pressure, would the government have taken the
11 same decisions?

12 A. I couldn't tell you.

13 MR DAELE: Okay, thank you. I have no further questions.

14 THE PRESIDENT: Mr Ostrove, do you have any questions?

15 MR OSTROVE: Yes, Madam President.

16 (2.41 pm)

17 Re-direct examination by MR OSTROVE

18 Q. Mr Daele has just mentioned a question that he asked
19 just before the break; in other words, whether you had
20 taken decisions that you would not have taken in the
21 absence of pressure from Mamadie Touré or anyone else.

22 I'd like to know: when you were a minister, did you
23 grant any permits to BSGR?

24 A. No.

25 Q. Did you take any decisions in favour of BSGR when you

14:41

1 were a minister?

2 A. No.

3 Q. I'd now like to turn to another item which is linked
4 with two different things: first, Mr Ibrahima Sory Touré
5 and his role.

6 First, a general question. The question is the role
7 of the members of the presidential family in Guinea, or
8 intrigues around the presidential family. For you as
9 a minister, is that of any importance at all?

10 A. No. For me, as I said earlier, it had no importance
11 whatsoever.

12 Q. From your experience, these questions of the members of
13 the presidential family are important for other
14 ministers in Guinea or other officials?

15 A. Well, hypothetically it could be the case.

16 Q. I'd now like to turn to a subject that took quite
17 a while this morning, i.e. your answer to the
18 applications for permits over Simandou, the BSGR
19 applications. To sum up, we heard that you were being
20 asked certain things, you were called to see the
21 President, and you explained that it wasn't possible to
22 grant these permits.

23 If we look at your testimony, for instance at
24 paragraph 25, you were asked about this paragraph:

25 "I explained to the President what problem we were

14:44

1 talking about, i.e. Simandou and the fact that the zones
2 had been attributed to Rio Tinto. I repeated that BSGR
3 had to give its proof of its worth on the deposits that
4 had already been granted and that, whatever the case,
5 Simfer already held the mining concession on blocks 1
6 to 4 in Simandou."

7 Had you wanted to grant a research permit to BSGR on
8 these blocks, would that be in your power?

9 A. No.

10 Q. Why?

11 A. Because the Simandou blocks at the time were the subject
12 of a concession and a mining convention. These are
13 documents that are ranked by order of importance, signed
14 by the National Assembly, as far as the convention is
15 concerned, and by decree of the head of state as far as
16 the concession is concerned. So a ministerial decision
17 can only rank third.

18 Q. So if BSGR wanted to come to you or any other Minister
19 of Mines to ask for a permit on this zone which was
20 already the subject of concession, what would they have
21 had to obtain before they could?

22 A. Two things. First, the application would have to deal
23 with a parameter which is not the subject of a mining
24 title, a valid mining title, that's the first thing,
25 because you can't superimpose titles.

14:46

1 Q. So when we're talking about Blocks 1 to 4 at Simandou,
2 in order to free these perimeters, to release them from
3 any other rights, what would BSGR have to obtain?

4 A. It's not BSGR that could have obtained it. Rio Tinto
5 would have had to default, and this would have had to be
6 appreciated by the state and, given the legislation,
7 this should lead to the withdrawal of one or several
8 blocks.

9 Q. Who could withdraw? Could the Minister of Mines
10 withdraw the concession from Rio Tinto?

11 A. No, he couldn't.

12 Q. Who could?

13 A. On the basis of a report of the ministry and
14 recommendation from the inter-ministerial decree that
15 would only have been possible.

16 Q. On the basis of a ministerial report, before
17 a concession was withdrawn, what type of report from the
18 ministry would be required?

19 A. No, it's a report that assesses the situation of the
20 block in question and that identifies potential flaws in
21 the management of that perimeter, in the light of the
22 regulation, and that may propose to the President of the
23 Republic in fact to reverse the decision.

24 Q. If I understand you correctly, that would have required
25 a report from the ministry sent to the head of state?

14:47

- 1 A. Yes.
- 2 Q. Can we look at tab 13, which is C-92. Did you see that
3 decree at the time?
- 4 A. Yes.
- 5 Q. Can you depict it for us?
- 6 A. It is the decree that reversed the previous decree that
7 had granted a Simandou concession to Rio Tinto.
- 8 Q. Who signed this document, is the question?
- 9 A. The President of the Republic at the time:
10 General Lansana Conté.
- 11 Q. You have described the state of health of President
12 Conté in 2007. In the summer of 2008, had his situation
13 improved? What was his health like at the time?
- 14 A. As far as I know, he -- according to the opinion, his
15 pathology evolved.
- 16 Q. What do you mean by this?
- 17 A. His state of health was deteriorating.
- 18 Q. You were Minister of Mines at the time, and you
19 mentioned a report earlier that should have been sent by
20 the Minister of Mines to support a decree such as this.
21 Do you have knowledge of the existence of such a report?
- 22 A. At the time we did draft a report.
- 23 Q. After this decree which revokes the concession -- and in
24 Article 3 it says that:
25 "Consecutive with the withdrawal of the mining

14:50

1 concession, the rights of Company SIMFER will be defined
2 by a Decree of the Minister of Mines and Geology
3 pursuant to the law."

4 After this decree was issued, legally you had the
5 power to withdraw the research permit from [Rio Tinto]
6 and grant it to BSGR?

7 Forgive me, I think I went a bit too fast. After
8 this decree, what was the legal regime of Blocks 1 to 4
9 at Simandou?

10 A. This is the transitional period, because it is said in
11 that very decree that they should be granted to the said
12 company, so within the limitations of rules and
13 regulation. This is why I said that a commission had
14 been set up in order to be able to define on the basis
15 of the results of the work which application to be given
16 to this instruction.

17 Q. Could you read for yourself Article 3.

18 A. Yes:

19 "The rights of SIMFER Company, consecutive with the
20 withdrawal of the mining concession, are those of the
21 holder of the permit while respecting the legal system
22 governing which shall be defined by a Decree of the
23 Minister of Mining and Geology pursuant to the law."

24 Q. Can you explain what this means?

25 A. You have a decree that's already been the subject of

14:52

1 a report. So this concerns Simandou. It is now said
2 that the rights of Simfer will go to a company that has
3 the benefit of a research permit.

4 Q. And if you read Article 2 of this decree, can you read
5 it for yourself and just explain what it means?

6 A. It says that:

7 "There will be granted a mining concession to the
8 said Company for the development of iron in Simandou in
9 conformity with the prescriptions of the Mining Code
10 defining the rights and obligations of the mining
11 entrepreneur, the duration of the concession and the
12 details of its renewal."

13 Q. "The said Company" means whom?

14 A. Simfer.

15 Q. Simfer is the joint venture company that was created?

16 A. Yes, with Rio Tinto.

17 PROFESSOR MAYER: Forgive me. Before we leave this, I would
18 have a question on Article 1 of this decree.

19 "Is and remains in effect the ... 30 March 2006
20 [Decree], granting ...", et cetera.

21 Was there truly a decree that already granted this
22 right, or does it mean that we are reporting this decree
23 under this way and it remains in effect?

24 A. This was the abrogation decree, as I see it, of the
25 mining titles that had been granted to Rio Tinto.

14:54

1 PROFESSOR MAYER: It's Article 1 that states so in so many
2 words?

3 A. Yes.

4 PROFESSOR MAYER: Thank you.

5 MR OSTROVE: If you now go to tab 15 of the bundle,
6 i.e. C-98. One week after this decree, on 5th August
7 2008, you see the letter from Mr Asher Avidan. Do you
8 remember that letter?

9 A. Yes.

10 Q. From what you understood, what is BSGR asking from you
11 at this stage?

12 A. In fact, BSGR is renewing its prior application with
13 an extension to Block 3. Because if you remember, the
14 first application had to do with 1 and 2, for which they
15 stated that there had been no work; but now, since the
16 state has expressed its wish to abrogate the Simfer
17 rights on those blocks, they might have deemed it
18 necessary to think that all of the blocks were concerned
19 and therefore applied in this way by extending the
20 request from 1 and 2 to 3 also.

21 So it is 1, 2 and 3 that are concerned here, and at
22 the time the state had not determined the fate, because
23 the decree had been published, a commission had been set
24 up to see what could be put at the disposal of Simfer,
25 and this is the meaning of the answer that gave this

14:56

1 letter.

2 Q. We'll turn to this answer in a moment, but if we remain
3 with this letter following the publication of the
4 decree, the famous decree dated 20th July, relating to
5 the expression of the decree that was granted to Simfer
6 on the monopoly of the Simandou mountain range:

7 "... we have the honour of very respectfully
8 approaching you, to request your intervention in favour
9 of our application filed with your Department under
10 No. 0738 dated 17 July 2007 concerning the extension of
11 our research and exploration permits on Blocks 1, 2
12 and 3 ..."

13 Do you remember this request dated 27th July 2007,
14 one year earlier?

15 A. Yes, I do.

16 Q. How did you react to the fact that they were insisting
17 on a request or an application that had been filed in
18 July 2007 concerning the Simandou block?

19 A. Well, the argument that we had given them concerning the
20 validity of the titles over the Simandou blocks had just
21 disappeared, because of the decree that abrogated
22 Rio Tinto's rights on the total on all of the blocks.
23 Therefore they repeated a prior letter that, even so,
24 their appetite had become greater and they wanted all
25 four blocks.

14:58

1 Q. You mentioned your answer to this letter, which can be
2 found at tab 16, just behind, which is Exhibit C-198,
3 your letter dated 19th August 2008. I think you
4 mentioned this answer this morning without looking at
5 it. Can you simply read it for yourself to refresh your
6 memory and explain to us what you are trying to achieve
7 with this letter?

8 A. In that letter I try to repeat the answer I had given
9 them at the beginning of the year, on 30th April the
10 same year, where I had announced a certain number of
11 principles relating to the granting of research permits.
12 Therefore I was explaining also that the decree that had
13 just been adopted, and which cancelled the attribution
14 decree in favour of BSGR, asked the ministry to now
15 determine the conditions for its implementation. And at
16 that point of time these blocks were not yet available,
17 because some work had to be done to implement the decree
18 and to propose to the authority a fate for the four
19 blocks, and that work was not yet completed.

20 I also tried to explain to them that the terms for
21 attribution of these blocks which would potentially be
22 released had changed. Further to the technical and
23 financial capacity, the logic was that a relation that
24 we had talked -- a global package should be forthcoming.
25 In other words, we wanted to put at their disposal

15:00

1 a certain number of permits in exchange for the
2 availability by the state of funding aiming at
3 infrastructures that had nothing to do with mining
4 infrastructures. So in our view these terms also had to
5 be fulfilled.

6 So we tried to be totally transparent and to tell
7 them where we stood at the time when they wrote to us.

8 Q. If I understand correctly this last point that you have
9 just mentioned, this is a point covered by the fourth
10 paragraph of this letter?

11 A. Yes.

12 Q. "The Government's strategy in order to develop the
13 substances of particular interest ..."

14 Including, therefore, iron ore:

15 "... is henceforth to have partners ...", et cetera.

16 A. Yes, that's right.

17 Q. The government strategy, who set up that strategy?

18 A. Well, it was the government.

19 To give some background, we had reached a point
20 there where the mining registry was completely
21 saturated, so we had to clear that up. And what the
22 government decided at the time was that the discussions
23 engaged already with the Chinese should get to the point
24 where a certain number of permits would be identified,
25 and as consideration for these permits there would be

15:02

1 some finance of some \$23 billion that were made to be
2 available to the Government of Guinea.

3 And if you notice the consistency of that position,
4 I never signed a single exploration permit during the
5 whole of my term of office: 15 months in the government
6 and never granted a single exploration permit, because
7 I totally kept to that strategy.

8 Q. Concerning this strategy now that you are describing in
9 this paragraph, was it your opinion at the time that
10 BSGR met that strategy or that its requests complied
11 with the government strategy?

12 A. Well, the point was also to tell BSGR that under the
13 conditions at the time, their offer did not comply with
14 all the consideration that had to be given in order to
15 be able to have any claims on those blocks.

16 Q. Well, then if you had not been removed from your
17 position as Minister of Mines and Geology at the time,
18 in your opinion would you afterwards have granted
19 an exploration permit to BSGR on Blocks 1 and 2 in
20 Simandou?

21 A. Under present conditions -- well, there are two things.
22 First of all, the first limitation, taking into account
23 what BSGR had asked for in the past. Remember, here
24 we're talking about financing that has got to be made
25 available to the government and on which there can be no

15:04

1 ambiguity. So I would say at that level the problem of
2 granting the permit went beyond the competence of the
3 minister. This is a decision that had to be taken by
4 the Council of Ministers, with the support of all
5 members of the government.

6 Q. Well, then one last question on the nature of that
7 decision. If you look at the second paragraph of this
8 letter, where you recall your first answer and you say
9 that, "I had told you about some principles pertaining
10 to the granting of the exploration permits, retrocession
11 and renewals that cannot be possible without submitting
12 the results of previous exploration permits", well, had
13 you seen a presentation of previous exploration permits
14 by BSGR?

15 A. No. No. I think that at that particular juncture there
16 were some conditions with which it was not possible to
17 start playing around. There was a consideration to be
18 given in exchange for the permit, making available to
19 the government substantial amounts in order to cover
20 a big programme of the building infrastructures the
21 country needed, and therefore I cannot see how BSGR,
22 under the conditions of that strategy, could accede to
23 those blocks.

24 MR OSTROVE: Thank you.

25 Thank you very much, Madam President. I have no

15:06

1 further questions.

2 THE PRESIDENT: Do my colleagues have questions?

3 (3.06 pm)

4 Questions from THE TRIBUNAL

5 PROFESSOR MAYER: I have a question on something that has
6 just been said, and which I can still see on the screen,
7 a question by Mr Ostrove:

8 "If you had not been repealed from your position as
9 Minister of Mines, would you, in your opinion, have
10 thereafter granted an exploration permit to BSGR on
11 Blocks 1 and 2 of Simandou?"

12 In your answer you said that first of all you had to
13 make sure of the question of financing. But then you
14 added:

15 "I would say that at that level, the problem of the
16 granting of the permit went beyond the mere competence
17 of the ministers. These are decisions that had to be
18 taken by the Council of Ministers and with the approval
19 of the whole of the government."

20 Well, according to what I've understood, when it's
21 a matter of an exploration permit, you don't really have
22 to go all the way up. So would you mind clarifying
23 this?

24 A. Well, yes, there are different categories of permit, you
25 see. There are permits on which you have absolutely no

15:07

1 information, and which do not have any strategic value,
2 and which a minister can very easily grant by himself.
3 But there are other permits, like the Simandou permits,
4 for instance, on which there was enough information, and
5 in respect of which the reserves announced actually were
6 in the hundreds of millions of tonnes of iron.

7 And since we were dealing here with a strategy,
8 an overall strategy -- because the infrastructure that
9 was going to be financed because of the consideration
10 given over these permits, these were infrastructures
11 going right across all the economic sectors of the
12 country. So one ministry alone couldn't take that
13 decision. The decision had to be taken by the full
14 Council of Ministers, as had been done in fact for the
15 permits that were part and parcel of the global package
16 signed with China in 2008.

17 So we have here a world-class permit that we're
18 talking about, and the estimate of its value was
19 feasible on a preliminary basis. But on the other hand
20 you have permits that are not that substantial, and in
21 respect of which a minister alone could take a decision,
22 without needing to report to the authorities above him.

23 PROFESSOR MAYER: If you know the answer, can you answer
24 whether the exploration permits for North Simandou and
25 South Simandou were permits of that very high level,

15:09

1 which entailed a decision by the full Council of
2 Ministers, or not?

3 A. Are you talking about the permits granted to BSGR?

4 PROFESSOR MAYER: Yes, those pertaining to the surroundings
5 of Simandou North and South.

6 A. Well, those at the extremes of Simandou granted to BSGR
7 didn't have a study level at the time which justified
8 their being included among the strategic permits.

9 PROFESSOR MAYER: Thank you.

10 THE PRESIDENT: Your witness statement, sir, paragraph 43:
11 you speak of your integrity, you speak of your
12 reputation as an incorruptible person, which may have
13 been an obstacle to some.

14 Can you further develop this subject? Were you
15 subjected to bribery attempts which made you think that
16 you were incorruptible? Why are you writing this?

17 A. Well, I am describing there the overall perception
18 people have of my person. And in that position
19 obviously you are exposed, not just to pressure of all
20 kinds, whether they be political or social, which
21 actually may affect even your family, and some people
22 also attempted to bring financial pressure to bear upon
23 you.

24 THE PRESIDENT: And you were the subject of financial
25 pressure during your term of office as Minister of

15:11

1 Mines?

2 A. Not openly. Not openly.

3 THE PRESIDENT: Well, that kind of thing is rarely open.

4 A. Well, you see, madam, their strategy also depends on the
5 person that they're dealing with. But they cannot say
6 directly. They can cover it up with all kinds of
7 things, but you will be able to see nonetheless that
8 they tell you, "Oh, we'll be very grateful to you if you
9 do this, that or the other"; words don't really carry
10 that much meaning, but you will immediately understand
11 that they are trying to influence you in order to take
12 an undue decision, either materially or financially.

13 THE PRESIDENT: If I understand correctly the meaning of
14 your written statement, that was the reason for the fact
15 that you were removed from the position of Minister of
16 Mines?

17 A. Yes, because if you place yourself in the context of our
18 arrival when we got to office and the work we had to do,
19 I was the only Minister of Mines who, during 15 months,
20 never signed a single contract, never granted a single
21 permit, and the country withdrew permits in order to
22 rebuild the state's portfolio.

23 So you must understand that trying to get a permit
24 goes together with a certain amount of privileges: tax
25 privileges, the importing of capital goods and other

15:13

1 forms of privilege, even in the purchase of the fuel
2 that you have to use for your exploration work; you buy
3 all of that duty free. And when you're deprived of
4 that -- because you realise that most of the forms of
5 privilege and the advantages you were granted, instead
6 of being oriented towards the development of the permits
7 so that you can discharge your twelve obligations, at
8 times you haven't even got back to the perimeter of your
9 permit and you've made fantastic inputs.

10 So all of this was removed. This was a tremendously
11 painful work because some of these people were
12 completely brushed aside.

13 And secondly, those who claim to have access to
14 titles unduly will henceforth be refused. And so you
15 have a lot of people behind them. Not to mention the
16 fact that you were in a system there where -- let's put
17 it this way: the perimeter of the mining activities is
18 permeable to all, because you have parents, you have
19 friends here and there, everybody is interested, and
20 it's up to you to take the decision either to satisfy
21 them -- and in that case obviously you would jump from
22 one introduction to the next, because you won't be able
23 to satisfy everyone -- or then you try and get the law
24 applied. And in that case obviously your life there is
25 not going to be very lengthy.

15:15

1 THE PRESIDENT: Well, the decision to remove you was
2 a decision by the President? Was it taken by
3 a presidential decree?

4 A. It was a decision through a presidential decree. That
5 could be different from a presidential decision.

6 THE PRESIDENT: Who makes the proposal then?

7 A. I think that in my case it was the Prime Minister.

8 THE PRESIDENT: And his proposal is then approved by the
9 President; is that the normal procedure?

10 A. That's what the decree says in any case.

11 THE PRESIDENT: Could you now turn to tab 6, which is
12 document C-169. This is a note by Mr Sakho. He was, if
13 I understand correctly, a legal advisor to the Ministry
14 of Mines at the time.

15 The note is dated 15th February 2008; that's to say
16 the time you were minister. Is that not the case?

17 You are aware of the existence of this note?

18 A. Not particularly.

19 THE PRESIDENT: Not particularly?

20 A. No, not particularly.

21 THE PRESIDENT: You saw it at the time?

22 A. Generally, the documents that I see, I usually jot
23 something down on them.

24 THE PRESIDENT: So what is it: you are discovering it now,
25 or since then you have come across it?

15:17

1 A. No, I just saw it now. I would have to read it to see
2 whether anything comes back to my memory.

3 THE PRESIDENT: Please go right ahead and read it if you
4 want to. Take your time. (Pause)

5 My questions are not questions on specific points,
6 but just on the document in general. You will have
7 noticed that it deals with irregularities in the Simfer
8 agreement on the Simandou deposits.

9 Mr Sakho was indeed the legal advisor to the
10 ministry?

11 A. Yes.

12 THE PRESIDENT: He therefore was under your authority?

13 A. Yes.

14 THE PRESIDENT: You asked him to examine the irregularities
15 in the Simfer agreement?

16 A. I don't remember. But an advisor does the work that you
17 ask him to undertake, but on his own initiative he can
18 look into a dossier and then send you the results of his
19 work.

20 THE PRESIDENT: Are there any other people that give
21 instructions to the legal advisor of the ministry, apart
22 from you?

23 A. Not another person, but on his own initiative he can
24 look into a matter falling within his remit. On this
25 dossier, for instance, you could have the legal advisor

15:19

1 writing to you, but also you have the results of
2 investigations made by the inter-ministerial committee,
3 where you have representatives of various key
4 ministries, the trade unions and civil society.

5 THE PRESIDENT: If you would be kind enough to go to the
6 next tab, or rather the one after that, tab 8. This is
7 Exhibit R-228. The Secretary General of the Presidency
8 writes here a letter to Simfer.

9 Are you aware of the existence of this letter?

10 A. I think I have seen it before yes.

11 THE PRESIDENT: This was during your period as Minister of
12 Mines, 22nd May 2008?

13 A. Yes.

14 THE PRESIDENT: A letter mentioning the subject of mining
15 concessions. Does it seem normal to you that the
16 Secretary General of the Presidency should be writing
17 directly to a mining company?

18 A. No, but you see, in an environment where there were so
19 many things that were not normal, the fact that
20 a representative of a company should appeal directly to
21 the head of state -- we were not in a normal
22 environment.

23 THE PRESIDENT: We were not in a normal environment. But
24 this is not a representative of a company; this is the
25 Secretary General of the President who is writing to

15:22

1 a mining company. I would have thought that that was
2 part of your powers; in other words, relations with
3 mining companies and the concessions, that was something
4 that was within your remit.

5 A. Well, madam, you know, the way the Presidency of the
6 Republic works is rather peculiar and we're not in
7 an ideal position to pass judgment on that. The
8 Secretary General can take advantage of practically any
9 dossier, the Secretary General of the Presidency can use
10 practically any dossier he wants to, because if you can
11 call him thus, he's sort of the President's right arm.

12 THE PRESIDENT: Yes, but then if he takes a dossier that
13 belongs to one ministry in particular, would he tell the
14 minister in question? Would he tell the minister in
15 question before he starts handling one of his dossiers,
16 before he takes it upon himself to take an action which
17 is not innocuous? Because here he is actually
18 withdrawing the concession decree.

19 A. Well, theoretically he can't. There are some documents
20 that he receives because, as I was telling you, at the
21 time there was some work that was being done at the
22 level of the committee, and those documents that were
23 addressed to the government obviously would eventually
24 fall on the lap of the Secretary General of the
25 Presidency. He had the rank of a minister.

15:23

1 THE PRESIDENT: I just want to make sure that I've asked all
2 my questions. I believe that is the case, so I have no
3 further questions.

4 Parties, any questions, following the questions from
5 the Tribunal?

6 MR DAELE: Yes, I would have a few short questions.

7 (3.24 pm)

8 Further cross-examination by MR DAELE

9 Q. Under tab 16 (C-198) you have the document where we see
10 your reaction to BSGR's request to obtain the permits
11 for Blocks 1, 2 and 3. Before the break you had said
12 that that request was illegal.

13 Do you find here in this letter an explanation to
14 BSGR of the fact that what they were doing was illegal?
15 Is that word "illegal" being used?

16 THE PRESIDENT: Mr Daele, if I understand correctly, you are
17 engaging in re-cross; these are not questions resulting
18 from the Tribunal's questions. There's no problem if
19 you want to engage in re-cross, but we simply have to
20 know what you're doing, and then I could authorise you
21 to ask any re-cross questions. They don't particularly
22 flow from the questions that we had put, and authorising
23 you to do re-cross is not to be taken for granted, sir.
24 It doesn't matter that you can't ask the questions, but
25 you have to ask for the apposite authorisation.

15:25

1 MR DAELE: Well, I'm thinking about it. In that case I have
2 no further questions.

3 THE PRESIDENT: (In English) I didn't mean to cut you off
4 necessarily. I meant to say that if we do
5 a re-cross-examination, it is with the leave of the
6 Tribunal. I thought you were asking questions that
7 resulted from the questions of the Tribunal members, but
8 then you went into a different topic. So that is why
9 I raise the question.

10 MR DAELE: (In English) So I was raising this question
11 because I discussed this with the witness this morning,
12 then there were a number of questions. The witness was
13 taken by counsel for Guinea to this document, and that's
14 why I --

15 THE PRESIDENT: Yes, fine. So this is
16 a re-cross-examination. You can ask the questions.

17 MR DAELE: Thank you, madam.

18 (Interpreted) You said before the break that the
19 fact that this request had been put forward was illegal.
20 This is what you said. Do I find here in this letter
21 that position? Are you explaining in this letter to
22 BSGR, "What you're doing is illegal"?

23 A. No. No. We're not talking about the same moment in
24 time. Before the validity of titles was confirmed --
25 and here this is 19th August, when the state has taken

15:27

1 into account the validity of those titles on the blocks.

2 Q. But at what time do we move from a situation of
3 illegality to a situation of legality?

4 A. Illegality proceeds from the situation in which you put
5 forward a request on a permit that already has a holder
6 and which hasn't got back to the state's portfolio.

7 Q. So at the time of the presidential decree of 28th July
8 there was no longer any holder on Blocks 1 to 4. And
9 therefore at that time the request from BSGR would have
10 become legal, it would be legal, because there was no
11 longer any prohibition against such a request, since the
12 presidential decree had already been issued, the
13 28th July decree, and it is that decree that removed the
14 illegality?

15 A. Well, in fact we move from illegality to availability.
16 It is as of the time the decree is actually issued, then
17 the availability of one or another block has not yet
18 been asserted by the state. There is work that has to
19 be done by the mining industry in order to be able to
20 say what goes back to the company that was the former
21 holder. Because the decree says that. The decree
22 doesn't say that everything was withdrawn. And what
23 we're being asked is to implement that decree. And
24 therefore, as I was saying, there is a committee that
25 had to do its work for this, and it was definitely the

15:29

1 work of that committee that led to the retrocession [by]
2 Rio Tinto of Blocks 3 and 4 and the withdrawal of
3 Blocks 1 and 2.

4 Therefore, when it is illegal, it's not feasible,
5 and when it's not available, it's not feasible. You
6 can't pronounce on it because it was not available at
7 the time. Definitely they have been withdrawn from
8 Rio Tinto, but none of the blocks was yet available
9 because the state hadn't yet pronounced on which
10 particular blocks would be going back to Rio Tinto and
11 which blocks would be freed.

12 Q. Well, then the request of 5th August -- this is tab 15
13 (C-98) -- after the presidential decree, this particular
14 request is not illegal?

15 A. In my opinion, this application is dealing with
16 a perimeter which is not available.

17 Q. But that was not my question to you. I wanted to ask
18 whether, in itself, this application is illegal.

19 A. In my opinion, yes, yes. Because you see at that level,
20 you can put forward the application you want to, but the
21 administration can't give you an answer because the
22 administration knows that none of those blocks was
23 really available.

24 Q. However, in your letter, your answer, [tab] 16 (C-198),
25 you're not saying to BSGR that their application was

15:31

1 illegal. I already asked the question, and you said no.

2 You said it was normal because at the time --

3 A. Well, yes, this is just what I repeated right now. When

4 it's illegal, it's something that we already told them.

5 But we find ourselves now in a situation, in a phase

6 where the rights had been already withdrawn; however,

7 the permits were not available for anybody. So we

8 couldn't take any decisions at all concerning the

9 permits at that point.

10 Q. Tab 11 (C-78). This is your letter dated 10th July.

11 This is prior to the presidential decree.

12 Are you accusing BSGR in this letter of undertaking

13 illegal action?

14 A. I didn't use the term "illegal" in the letter, but

15 I said that it wasn't feasible.

16 Q. However, there is a difference between being feasible

17 and being legal. Unfeasible and illegal is not quite

18 the same thing.

19 A. Well, I don't see where you draw that difference from.

20 When it is legal, it is feasible.

21 Q. Oh, for you it's the same thing, unfeasible and illegal

22 is the same thing?

23 A. Well, they both have the same effect.

24 MR DAELE: I have no further questions. Thank you very

25 much.

15:33

1 THE PRESIDENT: Does the Respondent have any further
2 questions?

3 MR OSTROVE: If you would please give me a moment.

4 (Confers) We have no further questions.

5 THE PRESIDENT: Very well.

6 Thank you. This is the end of your testimony,
7 Mr Minister, and thank you for your explanations.

8 MINISTER KANTÉ: Thank you, Madam President. (Pause)

9 (3.34 pm)

10 THE PRESIDENT: My apologies, sir, you may leave. I wasn't
11 particularly clear.

12 The Tribunal now has to deliberate on the matter of
13 the FBI affidavit. Claimants were to give us additional
14 information on the grounds for the objection to
15 transparency. I don't know if this is something that
16 you wanted to handle now or later. Again, this has to
17 do with the Freeh report.

18 (In English) Maybe the first thing would be good for
19 the Tribunal first to retire to consider this issue of
20 the FBI declaration.

21 MR DAELE: (In English) So you want me first to deal with
22 the Freeh report?

23 THE PRESIDENT: If you can do it, then the Tribunal can
24 consider everything together. But if you're not ready,
25 then we can do it otherwise.

15:35

1 MR DAELE: I can do both.

2 THE PRESIDENT: Fine.

3 MR DAELE: In relation to the Freeh report, we set out what
4 we had to say in the email I think yesterday, and we
5 just defer to the wisdom of the Tribunal to take the
6 decisions it deems appropriate.

7 THE PRESIDENT: (Interpreted) Does Respondent want to add
8 anything before the Tribunal deliberates on these two
9 matters? Because now we have everything that we
10 require.

11 MR OSTROVE: Yes, we looked back at Article 7 of the Rules
12 on Transparency and we don't believe that here there is
13 any motion being made, so we don't quite understand why
14 the Freeh report should be considered as being
15 confidential in this case.

16 THE PRESIDENT: Thank you. The Tribunal needs some time.
17 It's hard for us to say exactly how long it might take,
18 but the Secretary will come and get you when we are
19 ready. Thank you.

20 (3.37 pm)

21 (A short break)

22 (4.14 pm)

23 THE PRESIDENT: (In English) Do we understand that

24 Mr Tinkiano is available for examination this afternoon?

25 MR OSTROVE: Yes, he's ready and he's here.

16:15

1 THE PRESIDENT: Are you prepared?

2 MR DAELE: We're prepared, extremely well prepared! (Pause)

3 THE PRESIDENT: Before we call him in, just the procedural
4 points that are pending.

5 On the FBI declaration, we have reviewed the
6 correspondence between counsel and it seems difficult
7 for us to assess the weight and relevance of the issues
8 that are being discussed without seeing the declaration
9 itself. So the Tribunal orders its production into the
10 record, and the Tribunal invites both parties to make
11 any comments they wish on this declaration orally
12 tomorrow at the time of the mini-openings.

13 We should also give it an exhibit number: that will
14 be R -- I don't know what, but you will tell us.

15 MR OSTROVE: Pending confirmation, it should be R-586.

16 THE PRESIDENT: I think that R-586 has already been given
17 out.

18 MR OSTROVE: We had a previous document that was R-585. We
19 will look into it, we'll check.

20 THE PRESIDENT: Yes indeed, thank you. You will tell us
21 tomorrow morning.

[PROTECTED]

[REDACTED]

5 Then there is a further minor point. The Respondent
6 has used a translation in the examination today of the
7 LCIA transcript of Mr Kanté's examination by the LCIA
8 tribunal. For the record, it would be good if that is
9 being filed and given an exhibit number as well.

10 I mean, we have the original in English, but we don't
11 have the translation.

12 MR DAELE: We have not been able to verify, let's say, the
13 quality of the translation. We don't know whether it
14 was --

15 THE PRESIDENT: Yes. It can be filed, and you would still
16 have an opportunity. Yes, let's put this on the record,
17 that you have not verified the accuracy of the
18 translation and that you may wish at some point to make
19 comments or make your own suggestions of the
20 translation.

21 MR DAELE: Thank you.

22 THE PRESIDENT: Good. (Interpreted) Is there anything else?

23 MR OSTROVE: First of all, for the translation of the LCIA
24 transcript, of course we rely on what was said here
25 because the translation was already reviewed by the

16:19

1 parties in that arbitration. So the translation into
2 French was provided just for the facility of the
3 witness, because the French was not the original.

4 THE PRESIDENT: In that case we could also not produce it,
5 and we have the English version and I think that that
6 suffices.

7 MR OSTROVE: Fine.

8 MR DAELE: That's fine with me as well.

9 THE PRESIDENT: (In English) That simplifies matters.

[PROTECTED]

[REDACTED]

19 MR DAELE: [REDACTED] But I would
20 think that one week from the end of the hearing seems
21 reasonable to me. So my proposal would be, I don't
22 know, either Friday of next week or the following
23 Monday, like one week or something, the time for us to
24 go back to London and ... somewhere around 10th June.
25 I don't have a calendar.

16:21

1 MR OSTROVE: The following Monday would be June 12th.

2 THE PRESIDENT: Good. And depending on the answer, we'll
3 have to take it from there. Good.

4 (Interpreted) Can we call Mr Tinkiano in then.

5 MR OSTROVE: Madam President, while we're waiting, would you
6 like a paper version of the FBI statement? Would you
7 like it in paper form, hard copy?

8 THE PRESIDENT: Yes, thank you. (Pause)

9 (4.22 pm)

10 MR LANSANA TINKIANO (called)

11 (Evidence interpreted)

12 THE PRESIDENT: (Interpreted) Good afternoon, sir.

13 MR TINKIANO: Good afternoon.

14 THE PRESIDENT: Thank you for coming to testify.

15 For the transcript, can you confirm that you are
16 Lansana Tinkiano?

17 A. Yes, I am Lansana Tinkiano.

18 THE PRESIDENT: You are currently [a clerk] at the Fourth
19 Chamber of the Appeals Court of Conakry?

20 A. Yes.

21 THE PRESIDENT: At the time under examination here, you were
22 chief clerk at the Tribunal de 1ère Instance of
23 Conakry [II]?

24 A. That is correct.

25 THE PRESIDENT: You presented a written statement dated

16:24

1 9th January 2015; is this correct?

2 A. Yes, it is.

3 THE PRESIDENT: Do you have your statement with you?

4 A. Yes, I do.

5 THE PRESIDENT: You are heard as a witness. As a witness,
6 you are under the obligation to tell the truth. I would
7 like to ask you to confirm that you intend to do this by
8 reading the witness declaration.

9 MR TINKIANO: I solemnly declare upon my honour and
10 conscience that I shall speak the truth, the whole
11 truth, and nothing but the truth.

12 THE PRESIDENT: Thank you.

13 You will first answer the questions of the counsel
14 for the Republic of Guinea, and then you will answer the
15 questions posed by counsel for BSGR.

16 MR OSTROVE: Thank you to Mr Tinkiano. Thank you,
17 Madam President. We have no questions on his witness
18 statement.

19 THE PRESIDENT: Thank you.

20 Mr Daele.

21 MR DAELE: [Thank you, Madam President.]

22 (4.25 pm)

23 Cross-examination by MR DAELE

24 Q. (Interpreted) Good afternoon, Mr Tinkiano. My name is
25 Karel Daele, I am a lawyer representing BSGR.

16:25

1 I shall endeavour to conduct this examination in
2 French, to facilitate matters. I apologise for any
3 mistakes I might make; this is not my native language.
4 I will endeavour to use the "vous" form of address. If
5 at some point I lapse into using the "tu" form, the
6 informal form, I apologise; it's not for lack of
7 respect, it's sometimes in the heat of action.

8 I will be going through your statement, and when
9 I ask you a question, I will refer you to the numbered
10 paragraph of the statement that you have before you.

11 I would like to ask a first question about
12 paragraph 3. You say that you were chief clerk. How
13 many chief clerks were there, or are there, in the
14 Tribunal de lère Instance of Conakry II? Were you the
15 only chief clerk?

16 A. Yes, I was the only chief clerk from 2004 to 2010.

17 Q. So there's only one head clerk?

18 A. That's correct, and it's still true today.

19 Q. Are there other clerks?

20 A. Yes, there are other clerks.

21 Q. But those are ordinary clerks?

22 A. Yes, for the civil section, for the criminal section.

23 Q. And the fact that you were chief clerk, it means that
24 the other clerks were under your authority? Was there
25 a hierarchy?

16:27

- 1 A. I'm sorry?
- 2 Q. The fact that you were chief clerk, this means that
3 there was a hierarchy and they were under your
4 authority? So the other clerks, did they come under
5 your authority?
- 6 A. Yes.
- 7 Q. So you really were the chief clerk, as in the head of
8 that service?
- 9 A. Yes.
- 10 Q. What are the responsibilities of a chief clerk?
- 11 A. There are multiple responsibilities. The chief clerk
12 coordinates the work of the clerks' office. He signs
13 the transcripts. He is a trainer at the centre.
- 14 Q. What are the duties of a regular clerk?
- 15 A. The other clerks help the judges in holding the
16 hearings.
- 17 Q. You were not present during hearings?
- 18 A. No.
- 19 Q. Did you have your own office?
- 20 A. Yes, I had my office.
- 21 Q. A person wanting to have a document legalised had to
22 come to your office?
- 23 A. Yes.
- 24 Q. Was it necessary to make an appointment?
- 25 A. To do what?

16:29

- 1 Q. To make an appointment.
- 2 A. What, to come and see me? No, it's not necessary.
- 3 Q. So people could just come to the court?
- 4 A. No, I did not need to give an appointment.
- 5 Q. Are there a lot of people coming to your office?
- 6 A. Yes.
- 7 Q. So you have a stamp that's marked "Chief Clerk"?
- 8 A. Yes.
- 9 Q. Nobody else has a similar stamp?
- 10 A. No. No, nobody else has one, unless it's been made
- 11 somewhere else. Somebody else would have it simply
- 12 because I would be unable to perform my function, in
- 13 which case somebody could be appointed to replace me and
- 14 they would have it.
- 15 Q. So if you're not there, one of the other clerks would
- 16 become sort of a substitute or an interim chief clerk?
- 17 A. Yes, if in the case of illness or death or simply
- 18 inability to be present.
- 19 Q. You are also in charge of tax stamps?
- 20 A. No, that's handled by the Treasury, the Office of the
- 21 Treasury.
- 22 Q. So if there is a fiscal stamp on a document, it doesn't
- 23 mean that you necessarily put it on the document?
- 24 A. Could you repeat your question?
- 25 Q. If a document has a tax stamp on it, it doesn't mean

16:31

1 that you're the one who would have put it on the
2 document?

3 A. I don't have these stamps in my office. Everybody goes
4 to the Public Treasury, pays for the stamp, and affixes
5 it on the document themselves.

6 Q. So you first have to pay for the stamp?

7 A. Yes, that's correct.

8 Q. In paragraph 4 you say that you were often asked to
9 legalise the signatures.

10 A. Yes.

11 Q. When you use this term "regularly", could you say how
12 many times you do it: every week or every day?

13 A. On a weekly basis, on a daily basis; it's hard to say.

14 Q. But would it be once or ten times a day?

15 A. It could be three times, it could be two times, it could
16 be four times.

17 Q. But something along those lines: somewhere between one
18 and ten? Sometimes it may be not at all.

19 A. Well, it never went to ten.

20 Q. Could you briefly explain the process used to legalise
21 signatures? The process to legalise signatures, how
22 does this work?

23 A. In my time, a person would come with a document,
24 a signed document, it's a document between parties, and
25 we simply legalise the signature.

16:33

1 Q. Do they sign in front of you?

2 A. No, the document is already signed.

3 Q. So the document is signed before they appear before you?

4 A. Yes.

5 Q. So when a person comes, does that person have to give
6 proof of identity?

7 A. Yes, when a person comes, and at times, yes, I do check
8 identity. Sometimes I may ask whether they are the
9 persons who have signed the document, and they confirm
10 that this is a document that they drew up, in which case
11 I can legalise the document.

12 Q. So you say that sometimes you check and sometimes [you]
13 don't check; in other words, sometimes you ask that,
14 "You are Mr X or Madam Z?", and if the person says that
15 that's who they are, you take them at their word and
16 then you legalise the document?

17 A. I think I've answered regarding legalisation.

18 Q. No, not yet. How do you establish the identity of the
19 people who come before you, if tomorrow I come before
20 you and I say, "I am Donald Trump"?

21 A. Tomorrow, if you come to see me tomorrow to establish
22 your identity, I ask for your ID, I ask for a copy of
23 your ID papers.

24 Q. So without an ID card, it is not possible to have
25 a document legalised?

16:35

1 A. Without an ID card -- in this particular case I think it
2 was the authority that was there.

3 Q. I'm actually not talking about our specific case. I am
4 just talking about the general process to legalise
5 a document. You said that people must present ID?

6 A. Yes, that is what I said.

7 Q. Is it possible to come before you with somebody else's
8 ID papers? Let us say that I want to legalise
9 a document that was signed by my mother, and my mother
10 gives me her ID and she sends me to court. Must the
11 person must be physically present?

12 A. You're asking if the person is physically present? Yes.

13 Q. In paragraph 5 you refer to two documents that are
14 Annexes A and B. These are annexes that are appended to
15 your statement.

16 If I look at the document under tab 1 (R-25), it was
17 annexed to your statement, and if we turn the page, we
18 see at the bottom to the right your stamp. This is the
19 official stamp. I see a signature, but the signature is
20 hard to read.

21 How do you sign? What am I looking at here? What
22 is your signature: do you sign your first name and
23 surname, just your surname? On this document.

24 A. My signature is "Lansana".

25 Q. So the first letter would be the letter L, and at the

16:38

1 very end a flourish?

2 A. Yes.

3 Q. So that's how you sign the documents?

4 A. Yes.

5 Q. You say in paragraph 6 that you remember when a woman
6 came in the company of some military personnel, a white
7 person, and they came to see you in order to have their
8 signatures legalised. You did not recognise the lady,
9 but there were red berets in company. And you said
10 that:

11 "Having read the documents, I asked whether those
12 were their signatures."

13 You do not say here whether you asked them to
14 produce their ID papers. Do you recall if you asked for
15 ID?

16 A. If you continue to read, you will see that in
17 paragraph 8 ...

18 Q. Yes, please go ahead. I read what you have in
19 paragraph 8, but that is not quite what my question was.
20 My question was: did you identify the people who came to
21 see you?

22 A. I answered earlier: it was the authority who came and --
23 THE PRESIDENT: Mr Tinkiano, this is the question: did you
24 ask the persons who came to see you to produce their ID
25 papers, ID cards, passports?

16:41

- 1 A. No.
- 2 THE PRESIDENT: How then were you able to establish the fact
3 that the signatures on the documents were indeed their
4 signatures?
- 5 A. Based on their answers.
- 6 THE PRESIDENT: Because they assured you that was so, based
7 on what they said?
- 8 A. They asked me -- I asked them: had they signed it? They
9 said yes. And it's on that basis that it was done.
- 10 MR DAELE: It is alleged that the document was signed by
11 Mamadie Touré. You were not shown ID papers for
12 Mamadie Touré. Could it could have been another person
13 who claimed to be Mamadie Touré?
- 14 A. I don't know. When I asked who was this woman, I was
15 told that she was Mamadie Touré, a lady under the
16 protection of the former President of the Republic
17 Conté.
- 18 Q. But whom did you ask? Because in paragraph 8 you say:
19 "... I asked people who were there at the
20 tribunal..."
- 21 A. Yes, I had people around me, I had the other clerks who
22 knew the people over there.
- 23 Q. But you didn't know the people over there. How was it
24 that they knew who she was and [you didn't]?
- 25 A. I didn't know them because I'm not in the inner circle.

16:43

1 Q. But the other people in the tribunal, they were part of
2 the close entourage?

3 A. When a person comes, and their red berets with them --
4 and it was the first time that this happened -- I mean,
5 why should I raise questions?

6 Q. Did you know that the President had four wives?

7 A. Really? That's what you're saying.

8 Q. This is what is being claimed in these proceedings.

9 Let us suppose the President had several wives. Do
10 they all have presidential protection, presidential
11 security detail?

12 A. Yes.

13 Q. So the fact that there is, you know, a presidential
14 security detail, theoretically it would be possible for
15 it to be one of the other wives?

16 A. But this is what I was told. This is what I was told.
17 They are his wives: there was Aria, there was another,
18 and Mamadie. I didn't know that there were four.

19 Q. Let's talk now about Mr Lev Ran. Did you check his ID,
20 Mr Lev Ran's ID?

21 A. Where is he?

22 Q. On page 2 at the bottom you see there is:

23 "... Pentler Holdings ... represented by ...
24 LEV RAN".

25 A. He's not the one who signed.

16:45

1 Q. The question was: did you check Mr Lev Ran's identity?

2 A. Well, I told you that since madam was accompanied by the
3 elite guard, I didn't want to check that situation.

4 Q. So it is possible that it might not have been
5 Mr Lev Ran, but it could have been somebody else who
6 claimed to be Lev Ran?

7 A. I did say, "accompanied by a white man". I didn't say
8 whether this man was called this or that.

9 Q. Where do we find Mamadie Touré's signature on this
10 document?

11 A. We don't.

12 Q. Can you repeat?

13 PROFESSOR VAN DEN BERG: What document are you talking
14 about?

15 MR DAELE: The same document.

16 My question was: did you show us Mamadie Touré's
17 signature?

18 A. I can't see it.

19 Q. But you say that the people came and introduced each
20 other with a signature, you checked.

21 So what Mamadie Touré signature did you legalise, if
22 there's no signature on that document?

23 A. There is not one.

24 Q. So why did you put the stamp, the legalisation stamp, if
25 there's a signature that's missing?

16:48

1 A. I think that Pentler Holdings here signed.

2 Q. I'm sorry, I didn't understand.

3 A. Well, you see Pentler Holdings.

4 Q. Yes, Pentler is one party. As you can see, it's
5 a contract between two parties: one party is Pentler,
6 and we see the signature; the other party is
7 Mamadie Touré.

8 We can turn to the next document. I think on this
9 document you've answered my questions.

10 Let me turn to the document under tab 2. This is
11 R-26. On the first page we see there's a letter of
12 undertaking between Mamadie Touré and again
13 Pentler Holdings as a company.

14 MR OSTROVE: I don't think it is "a letter of undertaking
15 between". Can you read it properly?

16 MR DAELE: Yes. It's a letter of undertakings towards
17 Mrs Mamadie Touré from Pentler Holding.

18 I have the same question for you: where do I find
19 Mamadie Touré's signature?

20 A. It's the same document, isn't it? It bears the same
21 title.

22 Q. No, it's not the same document. These are two different
23 documents. So I repeat my question.

24 A. There is none. There is none.

25 Q. For this document you checked the identity of

16:50

1 Mr Lev Ran?

2 A. Of who?

3 Q. Mr Lev Ran. The white man, Mr Lev Ran.

4 A. You mean Pentler or Lev Ran?

5 Q. Yes, the gentleman -- well, there is a signature next to
6 Pentler. It says:

7 "... Pentler Holdings ... represented by Mr ...
8 LEV RAN".

9 My question is: did you check the identity of
10 Mr Lev Ran for this document?

11 A. No.

12 Q. Under tab 3 of the same folder (R-27) -- you say in your
13 paragraph 9 that:

14 "[You were] also shown an MOU between [BSGR], signed
15 by its CEO, and ... Matinda & Co ... signed by Mamadie
16 Touré, dated 20 June 2007 and legalised on 20 July ..."

17 Did you, upon the opportunity of the legalisation of
18 this document, check the identity of Mamadie Touré, the
19 woman who signed?

20 A. I told you that this document was presented to me, and
21 I say later that I don't recollect whether this was in
22 my file or not.

23 Q. But isn't it a bit strange that just one year earlier
24 you remember having seen this woman? Because she was
25 surrounded by red berets.

16:53

1 A. Yes.

2 Q. So one year later it would seem that she came back to
3 you, and you have no recollection of that?

4 A. No, I have no recollection of that.

5 Q. And who appeared to sign in the name of BSG Resources
6 Guinea?

7 A. It's the general manager. That's what it says.

8 Q. Who was the general manager? Whose signature is this?

9 A. I don't know. I told you I have no recollection of
10 this.

11 Q. So it could be anybody who claims that they are general
12 manager of BSGR? It could be anybody; there's not even
13 a name here.

14 A. Why do you think that way?

15 Q. Well, to check that it is actually somebody's signature,
16 you need to know who that person is, surely? Name,
17 surname or ID card.

18 MR OSTROVE: I think he's already said, Madam President,
19 that he doesn't remember this document. So I don't know
20 how he can be asked questions on checking that he did,
21 when he has no recollection of the occurrence.

22 THE PRESIDENT: If I understand you rightly, Mr Tinkiano,
23 you have no recollection of the document itself. Is
24 that right? Is that what you told us? You don't
25 remember either that people would have come to see you

16:55

1 later, so after the first visit?

2 A. No, I don't have any recollection, madam.

3 THE PRESIDENT: You don't remember that this woman who you
4 were told was Mamadie Touré would have come back to you?

5 A. No, I have no recollection.

6 THE PRESIDENT: Had she come back, do you think you would
7 remember?

8 A. I don't understand you.

9 THE PRESIDENT: If she'd come back approximately one year
10 after the first visit, would that be something you would
11 recollect?

12 A. No, I don't remember. Given my advanced age, no, I'm
13 not -- I'm no longer able to think about this.

14 THE PRESIDENT: I'm not talking about your age. There are
15 some events that one remembers, others that one forgets.
16 The visit from Mamadie Touré, is that something that one
17 recollects or is it something one forgets?

18 A. No.

19 THE PRESIDENT: Mamadie Touré's visit, is that something you
20 remember?

21 A. Mamadie Touré's visit?

22 THE PRESIDENT: Yes.

23 A. In my office?

24 THE PRESIDENT: [Yes.]

25 A. Yes.

16:56

1 THE PRESIDENT: Had she come back a second time, would you
2 remember that?

3 A. Well, the first document, I remember when it occurred.
4 But here, no.

5 THE PRESIDENT: That is understood, and I understand also
6 that you don't remember the second episode. What
7 intrigues me somewhat is that had she truly come back,
8 isn't that something that would have struck you, that
9 would have stayed in your recollection?

10 A. Yes.

11 PROFESSOR VAN DEN BERG: Mr Chief Clerk, the first two
12 documents, we have the letter of undertakings, R-25, and
13 then the second one, letter of undertakings, R-26, and
14 as indicated, this is something signed by Pentler
15 Holdings in the name of Lev Ran and towards Mrs Touré.

16 Legally speaking, is it necessary for Mrs Touré to
17 be present for the legalisation of these two documents?

18 A. I was, you know, quite happy in my office when I receive
19 some lady, and then after that I was told that she was
20 Mamadie Touré. That's all I can say.

21 PROFESSOR VAN DEN BERG: My question is: is it necessary
22 that she should have been present in order to legalise
23 these two letters of undertakings? I'm not talking
24 about the third document, the MOU.

25 A. For the MOU?

16:59 1 PROFESSOR VAN DEN BERG: No, I'm asking you about the first
2 two documents, the first letter of undertakings. Do you
3 have it in front of you?
4 A. The first letter?
5 PROFESSOR VAN DEN BERG: Yes. If you go to the bottom of
6 the second page, it says "Pentler Holdings", and there's
7 a signature, right?
8 A. Yes. I don't understand your question.
9 PROFESSOR VAN DEN BERG: Do you see the document which is
10 R-0025?
11 A. Yes.
12 PROFESSOR VAN DEN BERG: Please turn the page.
13 A. Yes.
14 PROFESSOR VAN DEN BERG: At the bottom of page 2, in black,
15 you have a stamp?
16 A. Yes.
17 PROFESSOR VAN DEN BERG: The stamp of Pentler Holdings, and
18 beside this you have a signature, right?
19 A. Yes.
20 PROFESSOR VAN DEN BERG: Do you see another signature on
21 this document apart from yours, next to your stamp?
22 A. Apart from Pentler Holdings' signature?
23 PROFESSOR VAN DEN BERG: Can we put the document up on the
24 screen? (Pause) This is the same document, okay?
25 A. Yes.

17:00

1 PROFESSOR VAN DEN BERG: So you see a signature here next to
2 "Pentler Holdings", right?

3 A. Yes, it's the only signature.

4 PROFESSOR VAN DEN BERG: And you say here, this is your
5 signature (indicating)?

6 A. Yes.

7 PROFESSOR VAN DEN BERG: Is there a third signature on this
8 document?

9 A. I've already answered: there isn't.

10 PROFESSOR VAN DEN BERG: There's no third signature.

11 Can we go back to page 1. You see here this is the
12 company that undertakes, Pentler Holdings, towards
13 Mamadie Touré.

14 A. Yes.

15 PROFESSOR VAN DEN BERG: And since it's an undertaking,
16 there's only one signature and that's Pentler Holdings?

17 A. [Yes.]

18 PROFESSOR VAN DEN BERG: Legally speaking, would it be
19 necessary for Mrs Touré to be present in person for the
20 legalisation of the signature of this document?

21 A. I said in my witness statement that the lady was present
22 with a white man. I've answered the question.

23 PROFESSOR VAN DEN BERG: Okay. Can you turn to page 2
24 again.

25 A. Yes, on page 2 there's no signature.

17:02

1 PROFESSOR VAN DEN BERG: You put your stamp down here, "Seen
2 for the material legalisation of the signatures". What
3 signatures did you legalise?

4 A. Well, then it will be Pentler's signature.

5 PROFESSOR VAN DEN BERG: So the necessary presence with
6 ID cards is that of the person who signed here?

7 A. Yes.

8 PROFESSOR VAN DEN BERG: Nobody else?

9 A. On the document there's no other signature.

10 PROFESSOR VAN DEN BERG: If this is Mr Lev Ran's
11 signature -- you say he is the white man who came --
12 have you checked his passport?

13 A. No.

14 PROFESSOR VAN DEN BERG: No, you didn't?

15 A. She was accompanied by somebody who was protected by the
16 elite guards of the Guinean Army, so I did not wish to
17 check.

18 PROFESSOR VAN DEN BERG: Oh, now I understand what happened.
19 Madame Mamadie Touré came with the red berets, so at
20 least somebody who claimed to be Madame Touré,
21 introduced herself as such, and said, "This white man is
22 Mr X", and you just believed her?

23 THE PRESIDENT: I do not want to confuse the witness.

24 I understand you -- and please correct me if I'm
25 mistaken -- that Mamadie Touré did not introduce

17:04

1 herself; it's only afterwards that people told you that
2 this was Mamadie Touré. Is that right?

3 A. Yes, that's what I say in my witness statement.

4 THE PRESIDENT: Then you also said that you had not tried to
5 identify the white man who was there; is that right?

6 A. Yes.

7 THE PRESIDENT: So it could have been Mr Lev Ran or somebody
8 else?

9 A. Yes.

10 PROFESSOR VAN DEN BERG: I'm confused, because a few minutes
11 ago you said that you were quite happy in your office,
12 minding your own business, and all of a sudden a group
13 entered, and so your peace and quiet was interrupted.

14 A. [Yes.]

15 PROFESSOR VAN DEN BERG: So this lady with the red berets
16 came into your room?

17 A. I confirm that it's a lady who entered with the red
18 berets.

19 PROFESSOR VAN DEN BERG: But it's a group of people who
20 came?

21 A. Yes, it was a group of people. There was a total panic
22 on that day at the court.

23 PROFESSOR VAN DEN BERG: And they said, "This is the white
24 man, you need to put your stamp down", that's it? And
25 this was on 21st July 2006.

17:05

1 PROFESSOR MAYER: Just one question. The white man, did the
2 white man say, "This is my signature"?
3 A. The white man said that this was his signature.
4 PROFESSOR MAYER: And therefore you legalised it?
5 A. [Yes.]
6 PROFESSOR VAN DEN BERG: Did he present his ID card?
7 A. I told you that I didn't try to check. Since this was
8 the elite guards that were around them, I didn't check.
9 PROFESSOR VAN DEN BERG: Can we now put up on the screen
10 R-27, which is the MOU. This was one year later. It's
11 20th July 2007.
12 THE PRESIDENT: June. 20th June. You said July.
13 A. The legalisation is 20th July.
14 THE PRESIDENT: Yes, this is right. It was signed on
15 20th June, but the legalisation was on 20th July.
16 A. (Inaudible, no microphone).
17 PROFESSOR VAN DEN BERG: So it's one year later. You don't
18 remember that there's a new invasion in your office?
19 A. (Inaudible, no microphone).
20 THE INTERPRETER: The witness doesn't have a mic. We can't
21 hear the witness.
22 A. (Inaudible, no microphone) ... after I signed. But
23 I don't remember signing this. I don't remember signing
24 this.
25 PROFESSOR VAN DEN BERG: Thank you.

17:08

1 THE PRESIDENT: You may resume, Mr Daele.

2 MR DAELE: On this document, now that you can see it in

3 front of you, it seems that there is something which is

4 striking. You see the name Mamadie Touré?

5 A. Yes.

6 Q. Don't you agree that it appears under the stamp?

7 A. Above. It's above the stamp.

8 Q. Yes. You see here in the corner, I'm telling you the

9 name, your stamp, you see the words here are below the

10 name Mamadie Touré, and I agree that it's difficult to

11 see, but the letters here are interrupted by the "M".

12 So my impression is that the stamp appeared first, and

13 then the name Mamadie Touré was added afterwards.

14 A. Adding the name Mamadie Touré, these are not the same

15 letters, because you see on the computer it's the same

16 letters.

17 Q. But don't you have the feeling that here the chief clerk

18 is behind the signing of Mamadie Touré?

19 A. I think it's a problem with the page. The page wasn't

20 like this. We had to put the stamp.

21 Q. But if you put your stamp, the text of the chief clerk

22 must be over the "M", not behind it. I don't know if

23 you understand what I'm saying.

24 A. But this is the circumference of the chief clerk stamp.

25 PROFESSOR VAN DEN BERG: If you can help, can we put up

17:11

1 C-356?

2 THE PRESIDENT: This is an annex that was placed on the
3 record last night, it was produced electronically last
4 night. (Pause)

5 PROFESSOR VAN DEN BERG: There's a stamp at the beginning of
6 the document that says "Forged". But here we don't see
7 your own stamp, Mr Registrar, so you never legalised
8 this document. But the word "Madame", appears there,
9 "Mme". I wonder whether this will help you to ascertain
10 what happened. Because here we have "Mme", "Madame".
11 Normally you would have to see "Mme" first, and then the
12 stamp on it, and not the other way round. No?

13 MR DAELE: Do you have a question?

14 PROFESSOR VAN DEN BERG: I am clarifying the question.

15 If you are going to stamp on that, what would the
16 result be if you now stamp? If you compare the
17 documents you have in front of you, R-27, Mr Daele asked
18 you a question about that stamp and the name "Mme
19 Mamadie TOURE". He asked you whether "Mme" and the name
20 "Mamadie TOURE" had been stamped after you affixed your
21 stamp.

22 A. Well, the page is not wide enough. So that is the
23 document, that is the page, and so all the stamps have
24 to be placed together.

25 PROFESSOR VAN DEN BERG: Thank you.

17:14

1 MR DAELE: Could you then go back to tab 4, which was added
2 at the last minute, which is a statement by Mamadie
3 Touré. R-35, paragraph 17. At the end of that
4 paragraph we can read:

5 "Marc Struik signed for BSGR Guinea. A lawyer took
6 this in order to legalise it and then gave me a copy.
7 An authentic copy of the MOU is appended as Annex 3."

8 Then when you turn the page, keep on turning until
9 you get to Annex 3, you see the same document which
10 appears under tab 3 of our bundle. So that document, it
11 is therefore Mamadie Touré who is saying that "A lawyer
12 took it in order to legalise it and then he gave me
13 a copy".

14 A. Well, that goes back to what I'm saying. I can't
15 remember the signature.

16 Q. Yes, but when I read this, this seems to be suggesting
17 that she wasn't actually there, she didn't go to the
18 tribunal, she didn't go to the court, it was somebody
19 else who went.

20 A. Yes, but I wasn't talking about this one. This one,
21 I don't know whether she was there.

22 Q. No, but we're talking about the same document.

23 A. Yes, this is what we're talking about. But she wasn't
24 in front of me. As I cannot remember.

25 THE PRESIDENT: Mr Tinkiano, would it be possible, sir, for

17:17

1 a lawyer to have seen you with a signed copy, without
2 the persons who had signed, and he would have asked you
3 to legalise the document?

4 A. Madam, I said -- and I repeat -- that I cannot remember.
5 But now this lady says that it was a lawyer, that she
6 sent a lawyer; well, then that's it.

7 THE PRESIDENT: But is that possible, for a lawyer to come
8 and see you with a signed document, asking you to
9 legalise it?

10 A. Yes. Yes, that does happen. Even today I was phoned to
11 legalise a document in Conakry, and I said, "I'm in
12 France". So that could happen, that can happen. Yes,
13 it can happen.

14 MR DAELE: And therefore without the people in question
15 being present physically? The people whose signatures
16 you legalise don't have to be physically present in
17 front of you?

18 A. Well, no. If a lawyer comes and he knows the person who
19 sent them -- you, you can send a document to a judge and
20 you, for instance, could represent somebody else.

21 Q. Yes, but when that happens, do you check and see whether
22 the lawyer has been duly empowered by that person? Do
23 you ask to see a proxy?

24 A. If we could see the name of the lawyer who came up with
25 this document, that would solve the matter.

17:19

1 Q. But that would be a lawyer who's been given a power of
2 attorney by one person or by the two parties?

3 A. Well, the lady said that it was her lawyer.

4 Q. But that applies to her signature, I would say. But
5 then how do you verify the signature of the other party?
6 Did the other party also send a lawyer, or one lawyer
7 suffices for both parties?

8 A. Well, it could be the other way round: the two people
9 who come with their lawyers, or the two people who would
10 say, "We would agree that one lawyer comes to get the
11 document legalised, one single lawyer".

12 Q. Well, if the way that happens is by using a lawyer, does
13 the lawyer have to show the identity cards or any
14 documents proving the identity of the parties?

15 A. I think that the lawyer is known by the Bar Association.
16 A lawyer has to be registered with the Bar Association.

17 Q. So it's a question of trust, if you know the lawyer?

18 A. No, I don't know the lawyer. She's the one who
19 mentioned the lawyer.

20 Q. Yes, but at the time the lawyer shows up at your office
21 and says, "I am representing Mr X and Mr Z", at that
22 time does the lawyer have to show documents identifying
23 X and Z?

24 A. Well, if the lawyer represents a party to a dossier, you
25 don't need to ask whether he's so-and-so, if he is the

17:21

1 representative. Why do you think he comes? It's like
2 you: you're representing a party here.

3 Q. Yes, but I have had to show that I represent this party.

4 A. Ah. But the lawyer here didn't say whether he was
5 representing the party.

6 Q. I'm asking you. I'm asking you.

7 A. But it is the lady who knows. The lady says she sent
8 a lawyer. So she is the one who knows. I want to say
9 here I can't remember this signature. If the lady says
10 that she sent a lawyer to me, to see me, to sign, then
11 that's it.

12 Q. Paragraph 9 of the same document. The same document,
13 behind tab 4 (R-35), paragraph 9. Mamadie Touré speaks
14 of another document, a memorandum of understanding.
15 There also, in paragraph 9 towards the end, she says:

16 "After my signature of the 2006 MOU, a lawyer came
17 later to give me a copy; this copy bore the signature of
18 Pentler Holdings as well as a stamp by the registrar."

19 So here again we have the same system: apparently it
20 was a lawyer who takes it upon himself to make sure that
21 the document is legalised.

22 A. Well, at that level I cannot answer. But there may have
23 been some deeds signed by the person replacing me, and
24 I don't know whether you're talking about acts that
25 I signed or acts that he signed.

17:23

- 1 Q. Well, can we turn to that document, which is behind
2 tab 2.
- 3 A. Tab 2 in my statement?
- 4 Q. No, no, no, Mamadie Touré's statement. It's a document
5 under Annex 2. The title is "Protocole d'Accord".
- 6 A. It says what here? Well, I cannot tell you anything
7 about this act because I didn't sign it.
- 8 Q. Yes, but that was my question. When you turn the page,
9 on page 2 I see the stamp, it says "Chief Registrar",
10 but I see a different signature, not yours.
- 11 A. Well, yes, I cannot answer.
- 12 Q. Do you recognise this signature?
- 13 A. Yes. Yes, this is the person who replaced me.
- 14 Q. Who? He didn't give his name.
- 15 A. That is Daikoba(?).
- 16 Q. Who is Daikoba?
- 17 A. He is another registrar. When I'm absent, he comes to
18 replace me, and during my absence he was probably the
19 one who signed. He is the one who signed during my
20 absence.
- 21 Q. Do you see the signature of Mamadie Touré on this
22 document?
- 23 A. No. Oh, yes, there is a signature. There is the
24 signature of Mamadie Touré, yes. It is there.
- 25 Q. Do you remember whether your colleague ever talked to

17:25

1 you about the fact of a lady who came with the
2 presidential guard?

3 A. No, it's I who told him.

4 MR DAELE: I believe I have no further questions for the
5 time being.

6 THE PRESIDENT: Mr Ostrove, any questions in re-direct?

7 MR OSTROVE: Yes. [Thank you], Madam President.

8 (5.26 pm)

9 Re-direct examination by MR OSTROVE

10 Q. Would it be possible to allow me to show something on
11 the screen? I just want to make sure that I have the
12 right document, if you bear with me. (Pause)

13 Mr Tinkiano, when you stamp a document -- and this
14 is R-27 on the screen, which is the third annex to your
15 statement; it's a document that we were looking at
16 earlier -- who indicates the date on the stamp, on the
17 register stamp?

18 A. It is the registrar himself.

19 Q. And is it your writing there, "20/07/07"?

20 A. Yes.

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

22 THE PRESIDENT: Do my co-arbitrators have any questions to
23 put to Mr Tinkiano? I want to make sure that all the
24 questions have been put.

25 Yes, I have no further questions for you

17:28

1 Mr Tinkiano. That means therefore, sir, that we have
2 come to the end of your testimony.

3 I'm looking at Mr Daele: you have no further
4 questions either, sir?

5 MR DAELE: No, for once I have no further questions.

6 THE PRESIDENT: Very well. That means therefore,
7 Mr Tinkiano, that this brings us to the end of your
8 testimony, and thank you very much for your
9 explanations. You may now leave.

10 MR TINKIANO: Thank you, madam. Thank you to the
11 arbitrators and lawyers on both sides. Thank you. My
12 signature shows that I am in Paris! Thank you very
13 much. (Pause)

14 THE PRESIDENT: This brings us to the end of this day.
15 Tomorrow morning we shall begin, if I'm not mistaken --
16 who is going to be the first witness tomorrow morning?

17 MR OSTROVE: We have Mr Bouna Sylla tomorrow morning.

18 THE PRESIDENT: Mr Bouna Sylla first, and then Mr Nabé
19 afterwards?

20 MR OSTROVE: We're going to have to check with Mr Nabé to
21 see whether he is going to be in a position to come and
22 testify after the night flight, and I don't know whether
23 he is going to be fasting, so we're going to have to
24 look into that. But we hope that he will be able to
25 come and testify tomorrow, so we can keep Thursday for

17:30

1 Mr Avidan.

2 THE PRESIDENT: That would be perfect. No further comments?

3 So we'll be resuming tomorrow morning at 9.30, is

4 that the idea? That is far pleasanter.

5 MR DAELE: I would prefer 8.30! No, not at all.

6 THE PRESIDENT: 9.30?

7 MR DAELE: That suits us fine.

8 THE PRESIDENT: Thank you.

9 (5.31 pm)

10 (The hearing adjourned until 9.30 am the following day)

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