

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

Case No. ARB/18/21

Video conference
via Zoom

Friday, 25th June 2021

Hearing on Jurisdiction and the Merits

Before:

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

BAY VIEW GROUP LLC
and
THE SPALENA COMPANY LLC

Claimants

-v-

GOVERNMENT OF RWANDA

Respondent

Secretary to the Tribunal: ALEX B KAPLAN

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

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12:15 1 Friday, 25th June 2021
 2 (Transcript times are British Summer Time)
 3 (12.15 pm)
 4 MR KAPLAN: Good morning, good afternoon, thanks to
 5 everybody for your patience. We have been trying to
 6 successfully set up the connection for the first
 7 witness. We're still a few minutes out from having that
 8 connection fully up and running with the 360-degree
 9 camera and the interpretation set. I leave it to the
 10 Tribunal and to the parties to consider options whether
 11 one, you wish to wait a further few minutes, or if you
 12 would rather continue to the second witness who is ready
 13 to go. Thank you, and thanks again for your patience.
 14 THE PRESIDENT: Alright, can we then discuss this with
 15 counsel?
 16 MR KAPLAN: Yes, they are present.
 17 THE PRESIDENT: They are present, okay.
 18 Before we do that, as we've got a little bit of
 19 time, could I just ask Mr Cowley a question for the
 20 benefit of the Tribunal?
 21 Mr Bidega's statement was introduced in the context
 22 of the preliminary objections. We would be grateful if
 23 you could explain to us in what respect his statement is
 24 relevant to those objections?
 25 MR COWLEY: I would like an opportunity to go back and

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12:18 1 be notified.
 2 THE PRESIDENT: Thank you.
 3 MR COWLEY: And then lastly, a question -- and I'm sorry,
 4 I shouldn't just jump in. If Mr Hill has any comment on
 5 that, I should pause.
 6 Lastly a question for the Tribunal. Can we ask what
 7 the intention is regarding the requirement of the
 8 parties to make advance payments if we're in a situation
 9 today that there's still no confirmation of payment as
 10 represented in the response.
 11 It could be simply a matter that everybody's busy on
 12 this proceeding, but in the typical course, Mr Kaplan
 13 confirms receipt of everything as it comes in, you know,
 14 and so we're just in a situation where we haven't
 15 received that information from Mr Kaplan and making the
 16 assumption that that's because it hasn't come in yet.
 17 THE PRESIDENT: I think that seems a fairly reasonable
 18 assumption; is that right, Mr Kaplan?
 19 MR KAPLAN: Yes, Mr President, and I would like to take
 20 a moment also to just say that the World Bank's fiscal
 21 year ends on June 30 and what happens as the fiscal year
 22 ends is our treasury computer system, which is SAP, goes
 23 on what's called a freeze.
 24 So if the funds are coming in the next week, we will
 25 not get the electronic SAP confirmation that they've

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12:16 1 revisit that. I haven't considered that for, at this
 2 point now, well over a year. So I would just like the
 3 opportunity to focus on the question before trying to
 4 answer.
 5 THE PRESIDENT: Alright. Well, perhaps before we -- there
 6 may not be time but let's go on to the next item then,
 7 which is do we take Mr Mbaya straightaway?
 8 MR COWLEY: We're prepared to do either, obviously, with the
 9 second witness available.
 10 THE PRESIDENT: Yes.
 11 MR HILL: I've got no difficulty. I'm going to be extremely
 12 short with Mr Mbaya and it's probably good that he's not
 13 hanging around in the meantime, so it probably is a good
 14 idea.
 15 THE PRESIDENT: Alright, let's take him straightaway then.
 16 MR COWLEY: I do have two housekeeping matters.
 17 THE PRESIDENT: Alright, let's have those.
 18 MR COWLEY: For the Tribunal's information, for planning
 19 purposes, and as well as Respondent's counsel, Claimants
 20 have determined to forego cross-examination of
 21 Emmanuel -- and I apologise in advance if I mispronounce
 22 his last name -- Muvura. He is on the schedule Day 7,
 23 London time, direct anticipated to start at 1.50 and
 24 cross for 30 minutes, so we provide notice that we're
 25 foregoing that cross-examination and the witness should

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12:20 1 been deposited in the trust, however, if the Respondent
 2 sends us the wire transfer, that usually is something
 3 that we could provide to treasury to help trace that in
 4 the meantime.
 5 THE PRESIDENT: Yes.
 6 MR KAPLAN: We are falling in the time of year where it's
 7 not as instantaneous but the wire transfer confirmations
 8 hopefully may suffice.
 9 THE PRESIDENT: Today is the day by which Rwanda said they
 10 would provide the funds, isn't it?
 11 MR KAPLAN: My understanding of correspondence is that it
 12 was today, yes.
 13 THE PRESIDENT: Well, today is not over. I don't expect
 14 Mr Hill is in a position to comment on this?
 15 MR HILL: I'm not, but certainly Mr Cowley is entitled to
 16 raise this and I will find out.
 17 THE PRESIDENT: Thank you.
 18 Right, may we proceed, then, with Mr Mbaya?
 19 MR WATKINS: Okay, we're going to bring the witness in now.
 20 THE PRESIDENT: Thank you.
 21 MR WATKINS: And Mr President, while we're bringing in
 22 Mr Mbaya, I just want to remind everyone that the
 23 interpretation channel is active. Mr Mbaya, I believe,
 24 is testifying in French, so if you need to listen in on
 25 English you'll need to be on the English channel. If

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12:21 1 you want to listen in on French, you'll need to be on
 2 the French channel, just as a reminder.
 3 Lastly, before I go off, I'll note that remember the
 4 channels change every time you leave a breakout room, so
 5 I'll remind everyone if we come back from a break we'll
 6 need to reset the interpretation channels. So I'm going
 7 to go ahead --
 8 MR KAPLAN: Actually, now that I think of it James, excuse
 9 me, can we just ensure that the Tribunal room is picking
 10 up English and not floor?
 11 THE PRESIDENT: Everything I've heard so far is in English
 12 but that's not surprising, but I haven't got anything on
 13 my laptop.
 14 MR HARRISON: James, nor do I. I don't have the translation
 15 button at the bottom of my screen.
 16 THE PRESIDENT: No, it will probably come up when the
 17 witness is called, but we're not in a position to tell
 18 you at the moment that all is well on this front. It's
 19 only Ms Dohmann, I think, who is going to be following
 20 in French, and she has got headphones for that purpose.
 21 MR KAPLAN: We'll see that when we reach the interpretation,
 22 but Mr Harrison, have you seen the interpretation
 23 button?
 24 THE PRESIDENT: We've got it now, we've put it onto English.
 25 MR KAPLAN: Okay, great, and Mr Harrison?

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12:23 1 MR HARRISON: I still do not have it. I had it in testing
 2 with FTI, but I do not currently have it on my screen
 3 now.
 4 MR WATKINS: If you expand your Zoom application are there
 5 three dots that say "More"?
 6 MR HARRISON: There are not. I have "participants", "chat",
 7 "share screen", "raise hand", and "record".
 8 MR WATKINS: You're dialling in on the phone?
 9 MR HARRISON: Yes, we are using the Polycom in the room to
 10 do audio so Steve and I can share it.
 11 MR WATKINS: Okay, you know what we will need to do. Are
 12 you taking this witness?
 13 MR HARRISON: I am.
 14 MR WATKINS: So maybe what we can do is disconnect the phone
 15 for this particular witness and use the audio on your
 16 laptop, and then that way you will have the
 17 interpretation channel, and you will just have to turn
 18 up your speaker so Mr Cowley will be able to hear.
 19 MR HARRISON: Okay, give me one moment and I will change
 20 that, if you could just let me confirm that I've done
 21 that before we start, I would appreciate that.
 22 I apologise for the delay. Give me one moment.
 23 MS DOHMANN: The interpretation channel does not come up on
 24 the laptop. There is no button to click on for the
 25 interpretation channel.

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12:25 1 MR WATKINS: Okay, are the IT folks there? Mike is supposed
 2 to be there.
 3 MS DOHMANN: Our Tribunal assistant has gone to find him.
 4 (Pause).
 5 We have not found him.
 6 MR HARRISON: Okay, thank you for bearing with me. I now
 7 have the interpretation channel with computer audio.
 8 MR WATKINS: Alright, one moment, we have the Tribunal
 9 sending for their IT individual.
 10 THE PRESIDENT: I think we're alright if Mr Harrison is
 11 alright. (Pause).
 12 Mr Harrison, are you happy to proceed?
 13 MR HARRISON: Yes.
 14 THE PRESIDENT: We'll soon find out if things are not going
 15 as they should.
 16 MR HARRISON: Yes, thank you for your patience, we
 17 appreciate it. I am ready to proceed.
 18 MR JOSEPH MBAYA (called)
 19 (Evidence interpreted)
 20 THE PRESIDENT: Alright, well, let us try.
 21 Good morning, Mr Mbaya, can you hear me?
 22 THE WITNESS: Yes, I can hear you clearly.
 23 THE PRESIDENT: Good. You will have a declaration in front
 24 of you, I hope it's in French, but I suspect if it's in
 25 English you will understand it. It's in French, that's

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12:26 1 fine. Could you please, providing you are happy with
 2 it, repeat it?
 3 THE WITNESS: I solemnly declare upon my honour and
 4 conscience that I shall speak the truth, the whole truth
 5 and nothing but the truth.
 6 THE PRESIDENT: Thank you very much.
 7 I think we're okay.
 8 Direct examination by MR HARRISON
 9 MR HARRISON: Mr Mbaya, could you state your full name and
 10 your current employment?
 11 A. My name is Joseph Mbaya. I am the risk and security
 12 manager for the mines.
 13 Q. Mr Mbaya, which mines are you referring to there?
 14 A. (Answer not interpreted) Ruashi Mining.
 15 Q. And could you please briefly tell the Tribunal what you
 16 were doing in Rwanda, starting in 2011?
 17 A. In Rwanda I was the head of traceability of the ore, and
 18 therefore I was the manager, the person who puts in
 19 place the traceability system for ores in Rwanda. This
 20 was my role, I was the project manager.
 21 MR HARRISON: Thank you, Mr Mbaya. No other questions.
 22 THE PRESIDENT: Mr Hill.
 23 Cross-examination by MR HILL
 24 MR HILL: Mr Mbaya, Pact is an international
 25 non-governmental organisation, isn't it?

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12:29 1 A. That's correct.
 2 Q. And you left Rwanda in 2014, didn't you?
 3 A. Indeed.
 4 Q. And since then, other personnel have taken over your
 5 role; correct?
 6 A. That's correct.
 7 Q. And the staff who have been on the ground in Rwanda
 8 after 2014 will be in a good position to describe how
 9 the tagging system works in the various places in
 10 Rwanda; yes?
 11 A. I believe so.
 12 Q. And they will be in a good position to describe what
 13 happens when Pact discovers problems and what actions
 14 are to be taken?
 15 A. There is a background noise here. The microphone speaks
 16 at the same time as you do. It's very disturbing. Can
 17 you do something? Can you mute something so that
 18 I don't have this interference?
 19 Q. Yes, that is a mute original audio setting that you need
 20 to do, or someone needs to help you with.
 21 MR WATKINS: We're logging in right now.
 22 A. Okay, it's quieter.
 23 MR WATKINS: Go ahead, Mr Hill, we should be good now.
 24 MR HILL: And the staff who are now on the ground will also
 25 be in a good position, won't they, to describe what

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12:31 1 happens when Pact discovers anomalies and what action is
 2 normally taken?
 3 A. I think that there are two things here. The staff,
 4 technical staff -- well, anything technical they are
 5 able to do, but in its own country it might not be able
 6 to say a certain number of things.
 7 Q. And the personnel who are on the ground are also in
 8 a good position to understand and comment on the
 9 increase in export levels from Rwanda after you left
 10 your job in 2014?
 11 A. Can you reword your question, or repeat it?
 12 Q. Yes. The people who have taken over from you and the
 13 Pact staff are in a good position to understand and
 14 comment on the increase in export levels from Rwanda in
 15 the period after you left the job.
 16 A. Yes, the person who is there can draft reports and
 17 normally give a report for the work being done in the
 18 field. There is no doubt about that.
 19 MR HILL: Thank you, Mr Mbaya. I have no further questions.
 20 MR HARRISON: No further questions.
 21 THE PRESIDENT: Mr Mbaya, you had a very brief participation
 22 in these proceedings. Thank you very much for your
 23 assistance.
 24 THE WITNESS: Thank you.
 25 (Pause).

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12:35 1 THE PRESIDENT: Have we got an update on the position so far
 2 as Mr Bidega is concerned?
 3 MR COWLEY: We have not heard further from Mr Kaplan or FTI
 4 about the progress of that.
 5 MR WATKINS: Mr President, we are still working with
 6 Mr Bidega in a separate breakout room. They are having
 7 some issues with connectivity. We do have the next
 8 witness available in the waiting room, Mr Barthelemy.
 9 I have to send him a message to make sure he is in front
 10 of the computer, but he was already tested and was in
 11 and he's in the waiting room waiting.
 12 THE PRESIDENT: Thank you, well, unless counsel have any
 13 objection, it would seem sensible to proceed with him.
 14 MR COWLEY: No objection.
 15 THE PRESIDENT: Very well, could he be invited --
 16 MR COWLEY: I'm going to sign off again.
 17 THE PRESIDENT: Yes. Could he be invited to join us?
 18 MR WATKINS: Yes, one moment. We're bringing him in.
 19 Mr Barthelemy, can you hear us?
 20 MR CHRISTOPHE BARTHELEMY (called)
 21 (Evidence interpreted)
 22 THE WITNESS: Yes, I hear you.
 23 MR WATKINS: Okay.
 24 THE PRESIDENT: Good morning, Mr Barthelemy.
 25 THE WITNESS: Good morning.

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12:37 1 THE PRESIDENT: You will have on your screen
 2 a declaration --
 3 THE WITNESS: Merci, bonjour.
 4 THE PRESIDENT: Are you happy to repeat the declaration on
 5 your screen, please?
 6 THE WITNESS: For the moment I've got nothing. What screen?
 7 Okay, declaration of the witness: I solemnly declare
 8 upon my honour and conscience that I shall speak the
 9 truth, the whole truth and nothing but the truth.
 10 THE PRESIDENT: Thank you.
 11 Direct examination by MR HARRISON
 12 MR HARRISON: Mr Barthelemy, could you state your full name
 13 and your current employment?
 14 A. Yes, my name is Christophe Barthelemy, Christian name
 15 and surname, and I am a project manager for
 16 agro-industrial projects.
 17 Q. Mr Barthelemy, could you please turn off the TV in the
 18 background?
 19 A. Certainly.
 20 Q. Thank you.
 21 Do you recall that you submitted a witness statement
 22 in relation to this case?
 23 A. Quite. I presented a witness statement.
 24 Q. And have you had a chance to review that witness
 25 statement?

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12:39 1 A. Yes. I have a version on my screen.
 2 Q. Are there any corrections that you feel you need to make
 3 to your witness statement?
 4 A. No. No correction to be done.
 5 Q. And could you just tell the Tribunal briefly what you
 6 were doing when you were in Rwanda?
 7 A. I was the general manager of a company called
 8 Phoenix Metals, which was both an ore, a metal trader,
 9 and I was also recruited to (inaudible) inactivity, the
 10 only foundry of the region of the Great Lakes in
 11 order -- let me complete my answer -- in order to comply
 12 with the Dodd-Frank law concerning the traceability of
 13 minerals or ore.
 14 MR HARRISON: Thank you, Mr Barthelemy, no further
 15 questions.
 16 Cross-examination by MR HILL
 17 MR HILL: Mr Barthelemy, you were the managing director of
 18 Phoenix Metals, as you have said; yes?
 19 A. Quite. And --
 20 Q. And you say --
 21 A. Forgive me.
 22 Q. And you say in your witness statement that Phoenix
 23 closed its operations in Rwanda in 2017 after a dispute
 24 with the Rwandan Government. Can you be shown
 25 paragraphs 34 and 35 of Mr Gatara's witness statement.

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12:41 1 Mr Gatara explains that:
 2 "Phoenix did not close their business in Rwanda
 3 because of a dispute with the Government of Rwanda.
 4 They closed their business because they failed to repay
 5 a loan to I&M Bank which was secured by a pledge over
 6 their tin smelter. Phoenix had bought the smelter from
 7 the Government in 2002 and had received a licence to
 8 produce and export smelted tin of at least 95% content.
 9 But for the entire 15 years from 2002 to 2017 they never
 10 operated the smelter but rather traded in raw
 11 cassiterite which they did not have a licence for.
 12 "In 2017 the Government sought to regularise the
 13 position and advised Phoenix to separate the smelting
 14 business instead of trading raw cassiterite, by applying
 15 for a trading licence as required by law. Phoenix did
 16 not do so and instead closed down its trading business.
 17 In late 2017, I&M Bank, to whom Phoenix had pledged the
 18 smelter as security for a loan to support its trading
 19 business, enforced its security against the smelter
 20 following Phoenix's failure to repay its outstanding
 21 loan."
 22 And that fairly summarises the position, doesn't it?
 23 A. This is a summary of the situation without explaining
 24 the reasons why.
 25 Q. Well, I'll move on.

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12:43 1 You made a suggestion in your witness statement
 2 about different levels of capital investment in mining
 3 by different mining companies. Now, do you recall that
 4 Mr Imena was the State Minister for Mining; yes?
 5 A. Yes, Evode Imena, indeed.
 6 Q. And in that capacity, he would have seen and had access
 7 to applications from all mining companies and status
 8 updates from mining companies, wouldn't he?
 9 A. Quite.
 10 Q. And he would be in a good position, and a better
 11 position than you, to know accurately the levels of
 12 investment by the different mining companies; correct?
 13 A. Well, I can't answer such a question, because on the one
 14 hand you have a minister representing a government that
 15 uses the services and their teams, and us on our side as
 16 traders, we would carry out due diligences that enabled
 17 us to see what was happening in each of the artisanal or
 18 semi-industrial mines that were our clients.
 19 Q. Now, you deal in paragraph 12 of your witness statement
 20 with an incident where you explain about receiving some
 21 white coltan, and you suggested that it did not appear
 22 there were real consequences. But, in fact, as the
 23 Pact -- the person who is head of Pact explains, the
 24 company concerned was suspended following
 25 an investigation. Did you realise that?

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12:45 1 A. Can you show me paragraph 12, please, because this is
 2 not the recollection that I have of this incident.
 3 Q. Yes. So it's your witness statement, paragraph 12. You
 4 say you had received white coltan mixed with black
 5 coltan. You asked ITRI to investigate. You explained
 6 about options given to you, you returned the minerals to
 7 the miner, and then you say:
 8 "... it did not appear that illegal traders faced
 9 real consequences ..."
 10 And the person who was in charge of Pact has
 11 explained that in that incident you refer to, the trader
 12 did -- the company did face real consequences because it
 13 was suspended following an investigation.
 14 A. This is not what occurred, as I remember it. I received
 15 a mixed coltan with 80% white and 20% black coltan. The
 16 white one is highly radioactive and non-magnetic, the
 17 other one is not very magnetic, nor radioactive. The
 18 black one is found only in Rwanda, while the white one
 19 comes only from DRC.
 20 So it means that this mixed ore was illegal, so when
 21 I carried out my analysis as trader, because I had
 22 a laboratory within my premises, I detected this coltan
 23 and I couldn't export it for two reasons: first, it
 24 didn't comply with the traceability rules but, secondly,
 25 when you send coltan abroad, when it's received, there

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12:47 1 are radioactivity tests that are carried out and in this
 2 regard it would have been refused, so that's why I told
 3 ITRI there was a problem. There was one tonne in
 4 storage for one and a half years, there were no
 5 reactions, right up until the time when the client said
 6 to me: you're going to have to buy my coltan, and
 7 I said: no, this coltan is being observed, and I kept it
 8 in store at the request of ITRI. And after one and
 9 a half years I said: what should I do with this coltan?
 10 They were very embarrassed, and they said to me that
 11 I should -- or that I could sell it, but at my own risk.
 12 Since I complied with traceability, I said if
 13 I don't sell it, what should I do with it? Well, in
 14 that case, they said, send it back to the supplier.
 15 That's exactly what I did. After that I don't know at
 16 all whether the supplier was sanctioned or not because
 17 from memory I didn't see that in the reports of the ITRI
 18 incident.
 19 But this last statement that you -- is my memory.
 20 For the rest, it's my memory, but I'm absolutely certain
 21 of it. Sorry.
 22 Q. Just dealing with the mixing of white coltan and black
 23 coltan, it's right, isn't it, that in 2013, a number of
 24 traders were suspended for that mixing issue; yes?
 25 A. I have no knowledge of that. I only dealt with what was

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12:49 1 happening at Phoenix Metals and I make sure that we
 2 comply with traceability rules.
 3 Q. It's right also, isn't it, that the Chinese -- number of
 4 Chinese buyers reduced after 2011 when the ITRI system
 5 was introduced; correct?
 6 A. This is not the perception that I have of it. When
 7 I arrived in 2011 -- yes -- in Rwanda, for this mission
 8 of the implementation of traceability for the foundry
 9 and also to pursue the trading activities, and
 10 I completed my mission at the end of 2016, so I didn't
 11 know the period when Phoenix Metals was not capable of
 12 reimbursing its loan, but what I did see between 2011
 13 and 2016 -- and I'm speaking from memory -- is that
 14 there were approximately 50 traders in the country with
 15 approximately 30% of foreign ore trading companies,
 16 mainly European, and 60%, 66%, well, one-third,
 17 two-thirds of local traders.
 18 Now, following the implementation of ITRI and their
 19 traceability system, what happened is that there was
 20 implementation when we went to the meetings organised by
 21 the Mining Ministry and Mr Evode Imena in particular,
 22 the Minister, I could see a lot of Asian faces coming
 23 in, both on mines and training systems, and from memory,
 24 if memory serves, in 2015 or 2014 -- I don't have the
 25 exact recollection -- the Minister for Mines wanted to

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12:51 1 restructure the mining sector because it seemed a little
 2 too disorganised in terms of trading because of the
 3 multiplication of the trading companies. 50 trading
 4 companies for, let's say, the volume of extracted ore
 5 that didn't work.
 6 What I did notice, that extractions of ore between
 7 2012, 2013, 2014 and -- even in 2014 statistics had it
 8 that Rwanda was the first exporter of coltan in the
 9 world, and this didn't match reality.
 10 Q. You're moving away from my question now, Mr Barthelemy,
 11 so just focus on my questions.
 12 A. Yes, but for me I saw an increase of exports, or rather
 13 a reduction. There was a reduction after that because
 14 ITRI authorised the traceability of ores in the Republic
 15 of Congo.
 16 Q. Now, I'm going to change topic now and ask you about
 17 paragraphs 16-20 of your witness statement where you
 18 give evidence about the tender process for NRD's former
 19 concessions in 2016.
 20 Now, what you seem to say in your evidence is that
 21 in order to hide the fact that investors behind NRD were
 22 tendering, you coordinated a bid behind a third-party
 23 company and you made a tender through that company.
 24 That's what you say in your witness statement; yes?
 25 Summarising it.

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12:53 1 A. Yes, you are right.
 2 Q. And what was the name of that company?
 3 A. Well, quite frankly I don't remember. I had several
 4 clients. I remember the gentleman, he was an elderly
 5 gentleman, very pleasant, spoke good French, but I can't
 6 remember the name of his company. But I did use that
 7 third party because it seemed, following the
 8 explanations that I obtained from NRD(?), that they were
 9 blacklisted.
 10 Q. But you can't remember the name of the company that
 11 tendered?
 12 A. No, I don't have that recollection.
 13 Q. And you say that you tendered for all the concession
 14 areas that had previously been NRD's concession areas;
 15 yes?
 16 A. No. No. After we thought about it, we only bid for two
 17 out of the five.
 18 Q. Which ones?
 19 A. I don't remember the names because this is information,
 20 you know, once you no longer deal with them, I'm dealing
 21 with different things now.
 22 But, anyway, there were two zones where there was
 23 coltan on the one hand, and tungsten, and cassiterite on
 24 the other. From memory, there were five concessions and
 25 we'd worked on the best two that were of interest to

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12:55 1 NRD.
 2 Q. And you then say that you were then told not to tender
 3 and stopped bidding and you suggest you stopped bidding
 4 in late April or early May 2016. Sorry, Mr Marshall
 5 suggests you stopped bidding in late April or
 6 early May 2016; yes?
 7 A. I don't have a recollection of the exact date so
 8 I'm sorry, this is not something that I have in mind.
 9 What I do know is that we put in a bid before the
 10 end of the closure of the bidding period.
 11 Q. Can you go to R-133. This is an evaluation report from
 12 the Evaluation Committee for the tenders dated
 13 24th May 2016, following the Committee's evaluation
 14 which had taken place between 3rd and 17th May.
 15 If you go to page 1, you can see that the former
 16 concessions, on the right-hand column, have been
 17 subdivided into 20 perimeters across two categories. If
 18 FTI could show more of the page, please.
 19 So there were the former concessions divided into 20
 20 perimeters across two categories. Can you recall now
 21 what perimeters you're suggesting you tendered for?
 22 A. Am I allowed to look up things in my computer?
 23 Q. I think probably partly for time and partly for the
 24 process, I'm going to say no. I'm going to ask you to
 25 do your best from your memory, if that's alright.

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13:00 1 there were eight elements evaluated:
 2 "Mine development (5 marks).
 3 "Further Mineral Exploration Plan and Estimated
 4 Budget (3 marks).
 5 "Mineral Beneficiation Plan with estimated budget (3
 6 marks).
 7 "Approach to Value Addition (5 marks).
 8 "CSR Plan and Budget (2 marks)
 9 "Plan and Estimated budget for infrastructure
 10 development within the perimeter (3 marks)
 11 "Environmental Management Plan and estimated budget
 12 (3 marks)
 13 "Employment Plan of the company and planned
 14 employment compensation ... (2 marks)."
 15 And -- give me one moment, Mr Barthelemy. (Pause).
 16 Then if you go on to the next page of the document,
 17 you can see that there was criteria set in the bidding
 18 documents plus elements for the evaluation, and
 19 underneath that it explains under each of those eight
 20 categories the elements evaluated by the committee; do
 21 you see that?
 22 And then on the back of that process, the committee
 23 selected the winning tender; do you see that?
 24 A. Yes, I do.
 25 Q. So it was a public tender with a defined evaluation

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12:58 1 A. No, really, I run the risk of talking nonsense. In my
 2 head, Nemba means something, rings a bell.
 3 Q. Now, if you look at the bottom of that page, you will
 4 see that bidders were given until 20th April 2016 to
 5 lodge in their technical and financial proposal. Do you
 6 see that?
 7 A. Yes, that I can see.
 8 Q. And if you go to page 2 of this document, you will see
 9 the list of applicants. There was no tender from any
 10 company represented by you or Mr Marshall, was there?
 11 A. No, that's quite right. This being said, I remember the
 12 name Bisyo.
 13 Q. And then if you go down to page 3, you can see the
 14 exercise that was undertaken in respect of the tenders
 15 that were received. You can see at the bottom of the
 16 page there was an element of financial evaluation; do
 17 you see under "Technical", I'm going to take it slowly
 18 because of the translation: "Technical and Financial
 19 Proposal Evaluation" in the heading. And then it says:
 20 "Financial evaluation was carried out with the
 21 highest proposal/investment commitments getting all the
 22 points for budget on the criteria where as other bidders
 23 getting marks in comparison to the highest bidder as per
 24 the bid document instructions."
 25 Then it explains about currency conversion, and then

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13:02 1 process; correct?
 2 A. I was not aware of this document, but it was a public
 3 tender.
 4 MR HILL: Thank you, Mr Barthelemy. I have no further
 5 questions.
 6 A. Thank you, sir.
 7 Re-direct examination by MR HARRISON
 8 MR HARRISON: Mr Barthelemy, do you recall at the outset of
 9 your testimony you were shown paragraphs 34 and 35 of
 10 Mr Gatere's witness statement, and if I could ask FTI to
 11 put those back up.
 12 A. Yes, I do recall that.
 13 Q. And Mr Hill asked you if this was a fair summary.
 14 Excuse me. Mr Hill asked you if this was, I think,
 15 a fair reading of the events, to which you responded
 16 that it was a summary, but without explaining the
 17 reasons why; do you recall that?
 18 A. Absolutely.
 19 Q. Could you explain the reasons why?
 20 A. The reasons for which Phoenix Metals bid for the
 21 smelting plant required meeting some prerequisites in
 22 order to operate the smelting plant. It works 24/7. As
 23 soon as you stop the smelting plant, for instance
 24 because of power supply problems, the liquid that's at
 25 the bottom of the blast furnace hardens and then it

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13:04 1 takes three weeks to clean out the furnace. This is why
2 it's important to always have a consistent supply of
3 power. That's one thing.
4 On the other hand, the plant had -- could trade
5 between 14 and 18 tonnes of ore per day. This was
6 roughly the production of -- Rwanda's production of
7 cassiterite at the time, so there were discussions
8 between the government and Phoenix Metals in order to
9 put in place protection so cassiterite would not be
10 exported -- that it would be exported not as ore but as
11 ingots, so the first prerequisite to be made was
12 electricity supply; second prerequisite, control system
13 on cassiterite, and the third condition, it was
14 necessary to get a certification under the Dodd-Frank
15 law for audit purposes. It makes it possible to audit
16 stocks and the accounts of the company that is going to
17 operate with the mineral with one or two years of
18 precedent, and for this part we were in the final stage
19 of the audit, which was being conducted by a French
20 auditor who was based in San Francisco. So we were 80%
21 of the way through the audit and we had even succeeded
22 in getting an authorisation to conduct the test in the
23 presence of this auditor and ordered to export 10 tonnes
24 of tin ingots based on the stocks.
25 This is why Phoenix Metals, lacking the financial

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13:09 1 not properly translated, I did not mention the Ministry
2 of Defence. Currently in Rwanda you have an engineering
3 office which is directly under the President's office,
4 and the managers there are high-ranking military under
5 Ngali, and this engineering office is what makes it
6 possible to move forward or to make things move forward.
7 So maybe this reference "Ngali" was then translated as
8 the Ministry of Defence, but I certainly did not refer
9 to the Ministry of Defence, but it might have been
10 "Ngali".
11 MR HARRISON: No further questions.
12 THE PRESIDENT: Thank you very much, Mr Barthelemy.
13 THE WITNESS: I thank you. Am I finished? May I then turn
14 the computer off?
15 THE PRESIDENT: Yes, you are.
16 THE WITNESS: And go back to watching TV. Thank you.
17 THE PRESIDENT: Right, are we now in a position to proceed
18 with Mr Bidega?
19 MR KAPLAN: I understand that we are.
20 MR WATKINS: We're going to bring him back in and we may
21 need a minute, but while we're here, I'm going to bring
22 him back in and just to make sure his audio -- his IT
23 person is standing by.
24 THE PRESIDENT: Yes, we are departing from the agreed
25 timetable, which had proposed a break at this stage.

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13:06 1 resources, was not able to go all the way, because the
2 power supply issue was not resolved. I think it has
3 been resolved now, because there's other means of
4 electricity production, for instance, solar and oil and
5 gas coming from the lake that's close by. And then
6 there was a problem to secure the supply of raw
7 materials. So on these two points we needed
8 governmental support. Discussions had started in 2011
9 when I arrived, and when I left in 2016, had yet to be
10 resolved.
11 Q. FTI, if you could bring up paragraph 20 of
12 Mr Barthelemy's witness statement. Mr Barthelemy, could
13 you explain what you mean here in the first line that:
14 "Later, we were told not to tender ..."
15 A. When I proposed to the third-party company to bid on all
16 of the NRD concessions, that person, who was acquainted
17 on a personal basis with some of the members of
18 government, told me there's no point in bidding for all
19 of the mines because in any event they will not be
20 regranted to a single company, and that's why we focused
21 on two concessions rather than going for all of them.
22 But this information came from an external person who
23 led us to reach this decision not to bid for all of the
24 concessions.
25 On the other hand, I did not mention, or maybe it's

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13:11 1 I would quite like to have half an hour of Mr Bidega
2 before we break, to have a more balanced day, if the
3 parties are agreeable?
4 MR WATKINS: Just a reminder that Mr Bidega is going to be
5 testifying in Kinyarwanda, so please stay on the
6 English channel if you obviously are a native English
7 speaker. Bringing him in now.
8 THE PRESIDENT: Thank you.
9 MR WATKINS: We're sending a request to start his video.
10 This is not one of our systems so unfortunately we don't
11 have the ability to log in and control it.
12 Mr Bidega, if you can hear us can you please unmute
13 yourself and turn your camera on, please?
14 MR BRODSKY: I hear him on the Kinyarwanda channel.
15 MR WATKINS: I think they're just translating.
16 Mr President, it looks like -- oh, wait a minute.
17 I see they've unmuted themselves.
18 Mr Bidega, can you hear me?
19 Mr Bidega; can you hear me?
20 THE WITNESS: Yes, yes.
21 THE INTERPRETER: I think he can hear now. James, I think
22 Mr Bidega is alright now.
23 MR WATKINS: Okay. Excellent. So I will go off --
24 actually, can we quickly test, Mr Bidega, I'm speaking
25 on the English channel. Is my voice being translated to

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13:14 1 you?
 2 I'm not hearing anything back from the interpreters
 3 on the English channel.
 4 THE INTERPRETER: Mr Bidega doesn't seem to be getting --
 5 no, there is something coming. James, just a moment,
 6 please.
 7 MR WATKINS: Yes, can you make sure he is on the -- in
 8 interpretation he is on the Kinyarwanda channel,
 9 please?
 10 IT ASSISTANT: Okay, I have seen it.
 11 MR WATKINS: Mr Bidega, can you hear me, and am I being
 12 translated?
 13 THE INTERPRETER: "Yes, I can hear you", he says.
 14 MR WATKINS: Okay, I will go off camera and mute myself,
 15 Mr President.
 16 MR KAPLAN: And additionally, can Mr Bidega please be alone
 17 in the room. If he is being assisted, that assistance
 18 is no longer required during the testimony, it seems.
 19 THE INTERPRETER: Yes, he is out. Mr Bidega is alone now.
 20 MR DOMINIQUE BIDEGA (called)
 21 (Evidence interpreted)
 22 THE PRESIDENT: Right, let us proceed. Mr Bidega. You
 23 should have on your screen a declaration.
 24 THE WITNESS: Yes, I see that.
 25 THE PRESIDENT: Could you please read that out?

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13:16 1 THE WITNESS: I, Bidega ...
 2 I, Bidega Dominique, do solemnly swear upon my
 3 honour and conscience that I will speak the truth, the
 4 whole truth and nothing -- nothing but the truth.
 5 THE PRESIDENT: Thank you.
 6 Direct examination by MR COWLEY
 7 MR COWLEY: Good afternoon, Mr Bidega. Can you please
 8 identify the former position you held with the Rwanda
 9 Geology and Mines Authority and explain what period of
 10 time you worked there?
 11 A. Yes. When OGMR -- during -- when I worked for OGMR
 12 I was director for regulations in that mining
 13 organisation, and I started with OGMR, and before then
 14 I worked for others in Gatumba location and in other
 15 mining companies before they were abolished.
 16 Q. What period of time did you work for -- let me stop that
 17 question, I apologise. Ask him this question first, so
 18 it's clear: does "OGMR" stand for the Rwanda Geology and
 19 Mines Authority?
 20 A. That's correct.
 21 Q. Over what period of time were you employed by OGMR?
 22 A. I was employed by OGMR until it was -- it changed --
 23 what I mean is that I was employed in that authority
 24 until 2011 because I was tired, I wanted to take
 25 a break. So I requested that I would leave my position.

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13:20 1 Q. If I could ask FTI to bring up C-207, and go to page 89
 2 of that PDF. Mr Bidega -- if I could ask the translator
 3 to read to Mr Bidega the email exchange on that page.
 4 (Pause).
 5 THE INTERPRETER: The interpreter is going to interpret
 6 what's written on the page.
 7 A. That's correct.
 8 THE PRESIDENT: May I intervene for a moment. Mr Bidega,
 9 these are communications in English; did you type them
 10 in English?
 11 A. That's correct, I wrote them.
 12 THE PRESIDENT: Well, I suggest there's no need for the
 13 interpreter to interpret them.
 14 MR COWLEY: Thank you.
 15 The date of your email at the top of this page
 16 is December 13th, 2011; were you still employed with
 17 OGMR on that date?
 18 A. No. I had resigned because I was tired.
 19 Q. During the year 2011 did you have conversations with
 20 Roderick Marshall about the draft contract that is
 21 a version or a draft is attached to this email, if you
 22 could scroll down, FTI, to show him.
 23 A. That's correct. During that time I was free --
 24 Q. And those conversations -- sorry -- the conversations
 25 with Mr Marshall about a draft contract for a licence

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13:24 1 for NRD began when you were -- did they begin when you
 2 were still employed by OGMR?
 3 A. No.
 4 MR COWLEY: No further questions.
 5 MR HILL: Mr President, would you just give me a moment to
 6 consider whether I have any questions in light of the
 7 evidence-in-chief? (Pause).
 8 Mr President, I know you did say you wanted half
 9 an hour, but that has had quite an impact on the
 10 questions I was going to ask and I wonder if we could
 11 take a break.
 12 THE PRESIDENT: Yes, we'll take the half an hour now.
 13 There's one question that I would like Mr Cowley to help
 14 us with and that is the process by which statements that
 15 we have in English were taken from foreign-language
 16 witnesses. Perhaps at a convenient moment you can help
 17 us with that.
 18 MR COWLEY: I can answer that question with regard to this
 19 witness now, I believe.
 20 MR HILL: Yes, it might be fairer to let the witness go and
 21 deal with this without the witness.
 22 MR COWLEY: Certainly.
 23 MR WATKINS: Okay, Mr Bidega, we are going to put you in
 24 a waiting room. If you could just stay in front of your
 25 computer and I will send the staff there an email about

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13:26 1 the status; okay?
 2 THE WITNESS: Alright.
 3 MR WATKINS: Alright, he has been moved out of the meeting.
 4 THE PRESIDENT: Thank you.
 5 Yes, Mr Cowley?
 6 MR COWLEY: So the drafts of the affidavit, or witness
 7 statement, excuse me, we forwarded to
 8 Olivier Rwamasirabo, another witness, in Kigali, who
 9 worked with -- informed us he engaged a translator, and
 10 we did not work directly with the translator. We sent
 11 the draft and received back the draft in the execution
 12 version through Mr Olivier, but the -- excuse me,
 13 Mr Rwamasirabo -- but we were told that he was working
 14 through a translator, so that what Mr Bidega had, he was
 15 reading in his natural language. That's what we
 16 understood.
 17 THE PRESIDENT: And the drafts were prepared on the basis of
 18 discussions that counsel had with the witnesses; is that
 19 it?
 20 MR COWLEY: Again, the discussions, I believe, were --
 21 I wasn't involved in the discussion but I believe the
 22 discussions were aided by Mr Olivier Rwamasirabo
 23 connecting us so that we could talk, and being present
 24 to answer questions about what words meant. But the
 25 idea was that we would send what we understood he said

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14:06 1 THE PRESIDENT: There was a little bit of cross --
 2 MR HILL: No, there wasn't any cross. No, I had no cross at
 3 all so re-examination doesn't arise.
 4 MR COWLEY: Sorry, I did not hear what you said because
 5 unfortunately I followed the instruction of FTI to check
 6 the correct channel which turned off Mr Hill, so I saw
 7 that he was talking, I heard nothing, and I truly
 8 apologise, but can I hear what you said?
 9 MR HILL: No, that's fine. I will repeat it: I'm not going
 10 to ask questions in cross-examination of this witness in
 11 light of the evidence that emerged in-chief, and as
 12 I submitted to the Tribunal, that means no
 13 re-examination arises.
 14 MR COWLEY: I understand, and I'm not making an argument.
 15 I was just intervening to let you know I hadn't heard
 16 anything. I appreciate you repeating it and having the
 17 patience with me.
 18 May I make a request, Mr President?
 19 THE PRESIDENT: You may.
 20 MR COWLEY: I will only go into the details you would like,
 21 and none, if necessary, so I leave that to you in terms
 22 of the background, but the request is -- and I say this
 23 with great meaning and true sincerity, the surprise that
 24 we just experienced leads me to ask for what I know is
 25 a highly unusual request in the middle of a hearing, but

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13:28 1 to him in a draft, it would be translated, and we waited
 2 to get back.
 3 THE PRESIDENT: Yes, thank you.
 4 MR COWLEY: It was not one single event, in other words. It
 5 wasn't one call in a document.
 6 THE PRESIDENT: Yes, thank you very much, Mr Cowley. We'll
 7 break for half an hour.
 8 (1.28 pm)
 9 (A short break)
 10 (2.05 pm)
 11 MR WATKINS: Just a reminder to everybody to make sure to
 12 choose the appropriate interpretation channel.
 13 Sometimes when you come out of Zoom it throws you into
 14 the off or floor channel, so please choose English if
 15 you are a native English speaker, and I will go off
 16 camera and wait to hear from you when to bring the
 17 witness in, Mr President.
 18 MR HILL: Just to be clear, it won't be necessary. I have
 19 looked through the statement in the light of the
 20 evidence and I have no further questions of this
 21 witness.
 22 THE PRESIDENT: Thank you.
 23 Any re-examination?
 24 MR HILL: I'm not sure there can be, Mr President, can
 25 there, if I haven't done any cross.

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14:07 1 I would like an instruction and a direction to Rwanda to
 2 produce the internal personnel record for Mr Bidega only
 3 to the extent it discloses the dates of employment: when
 4 he was hired; if he took leave, disclose it, and if not,
 5 if it's like many employees, date of hire, date of
 6 resignation or fire, date of termination. But we would
 7 like the official employment record just to say when he
 8 was an employee of [OGMR] produced by Rwanda, and
 9 I understand it's a very special request, I can justify
 10 it or explain it only to the extent the Tribunal thinks
 11 it's necessary, and then I will.
 12 MR HILL: Well, we would obviously resist that. It looks
 13 like Mr Cowley is seeking to impugn his own witness,
 14 which he cannot do. The witness has given evidence,
 15 which is very clear, of the capacity in which he
 16 considered he was acting, in which he commented on
 17 drafts and so on from Mr Marshall. So none of this even
 18 arises, and on both of those grounds we would resist
 19 that.
 20 MR COWLEY: Well, if I may be heard, the question of whether
 21 this is our witness, or whether he's now speaking for
 22 someone else, is exactly why I would like to ask this
 23 and, again, I'll go into the details with the Tribunal.
 24 I do not want to bias or prejudice or suggest anything
 25 in advance of what the Tribunal asked for, but I can

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14:09 1 assure you, I can explain and justify why this is very
 2 shocking to hear today, and it is in that regard that
 3 I don't accept that he's still our witness. I do not
 4 accept that circumstances have not changed dramatically
 5 and the agency, for lack of better term -- and that's
 6 not necessarily a great term when you are talking about
 7 employment, because I'm using it very differently -- but
 8 the agency in which he just testified is very much in
 9 question, and before I get ahead of anything, this very
 10 basic request, because I will point out to the Tribunal,
 11 it cannot be unknown to Rwanda whether or not he was
 12 an employee on these dates, and in multiple ways it has
 13 never been the position of the Respondent that he was
 14 not an employee at the time of these emails.
 15 They have taken other positions attacking the weight
 16 we assign the emails -- and I'm not suggesting they've
 17 agreed or admitted or waived what we say the effect of
 18 the emails are, but having attacked it from numerous
 19 sides in terms of an argument, the one glaring, pointed
 20 omission, is an argument that he was not in fact who he
 21 said he was when those emails were sent. He was not the
 22 director of that office, as his signature block says,
 23 essentially.
 24 And so, again, I recognise the highly unusual
 25 request, and I am suggesting that there are even more

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14:11 1 highly unusual circumstances that we think justify it,
 2 and the simplicity with which it could be produced and
 3 the lack of burden with which it could be produced, and
 4 in one easy production, the truth of the matter will be
 5 on the table for all to see and no one to argue about,
 6 and then we can address with that truth what just
 7 happened and what should be done about it.
 8 MR HILL: Well, again, I submit this is clearly a fishing
 9 expedition. If what he's suggesting is there are some
 10 grounds to declare his witness hostile, Mr Cowley is
 11 fishing and doesn't begin to have the grounds for that.
 12 THE PRESIDENT: We're not going to make any ruling on this
 13 at the moment.
 14 We're now going to have Respondent's witnesses.
 15 Mr Cowley, you can consider your position, but there
 16 will be a number of witnesses who will be susceptible to
 17 having questions asked about this matter, if you are so
 18 advised.
 19 MR COWLEY: I'm sorry, that was directed at me?
 20 THE PRESIDENT: Yes.
 21 MR COWLEY: Well, then I would like to ask for a recess in
 22 the proceedings before any further witnesses testify,
 23 before any further expense is put in in taking testimony
 24 only to risk having to come back and retake it, that the
 25 parties quickly address in writing what we intend to

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14:12 1 file is a written request -- and I will submit to the
 2 Tribunal the -- apparently it's necessary if the
 3 Respondent is going to resist producing this information
 4 on the very formalistic grounds of how we came here.
 5 I will explain why where we are today is not at all like
 6 where we were less than seven days ago, and I will ask
 7 the Tribunal to require that the information be put on
 8 the table, because I believe it is not a question of the
 9 formality of how one asks questions and the mere limited
 10 issue of whether I could ask cross-examination questions
 11 of Mr Bidega, but the real question is whether there's
 12 been witness tampering and whether there's been
 13 something significant done to change testimony that was
 14 twice over confirmed, most recently less than seven days
 15 ago.
 16 So this is, again, highly unusual, but I assure you,
 17 quite shocking circumstance that we're in. So I would
 18 like to make the request.
 19 THE PRESIDENT: Mr Cowley, I suggest that you make this
 20 request in writing and that you give the Respondent
 21 an opportunity to respond to it, and we will then
 22 consider it.
 23 MR COWLEY: Can we pick up the hearing and the testimony of
 24 the remaining witnesses on Monday and give us the
 25 opportunity to submit that in writing today? It would

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14:14 1 avoid any waste and unnecessary expense that would
 2 further entrench the parties in positions?
 3 MR HILL: In my submission, this would just add to the
 4 expense. This arbitration should not be derailed. Can
 5 I just record my particular concern at a submission just
 6 made by Mr Cowley where he purported to tell the
 7 Tribunal what he thinks the witness would have said or
 8 may have said on some previous privileged occasion,
 9 which is utterly inappropriate, and an attempt to
 10 prejudice the Tribunal, and that shouldn't have
 11 happened.
 12 Now, in my submission, we should just get on with
 13 the arbitration and Mr Cowley should take up the
 14 President's invitation of putting in a written
 15 application if he sees fit.
 16 MR COWLEY: If we're going to make a submission, we need the
 17 day to do it. We need to stop and be able to submit it.
 18 THE PRESIDENT: We're going to retire into our private room
 19 for five minutes.
 20 (2.15 pm)
 21 (A short break)
 22 (2.19 pm)
 23 THE PRESIDENT: The Tribunal has considered your
 24 application. We see no justification for interrupting
 25 the proceedings at this point and remain of the view

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14:19 1 that you should make your application in writing in the
 2 manner directed.
 3 MR COWLEY: And if it impacts the decision of the Respondent
 4 whether they would have cross-examined if we're allowed
 5 to -- in the possibility that the employment record is
 6 ordered to be produced and is part of the evidence
 7 before the Tribunal, presumably that might impact
 8 a decision whether to cross-examine on the substance of
 9 the other aspects of his witness statement, and so
 10 I would just ask the Tribunal to consider in advance,
 11 rather than readdress later whether this witness has to
 12 be found and brought back in those circumstances, or
 13 that the Respondent will have to stick with its decision
 14 to be done.
 15 MR HILL: Well, in the extremely remote scenario that this
 16 arises, in my submission, if we have to take a witness
 17 out of order, we may have to do that, and if I have to
 18 revisit that decision, we may have to do that, but this
 19 is most unlikely to arise and I respectfully submit we
 20 should move on.
 21 THE PRESIDENT: Yes. We will proceed, please.
 22 MR WATKINS: Okay, Mr President, we will bring in the next
 23 witness. Just a reminder to everybody this witness will
 24 be testifying in French so you will need to make sure
 25 you are on the appropriate interpretation channel.

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14:21 1 We're bringing the witness in right now.
 2 THE PRESIDENT: Thank you.
 3 We have a declaration on the screen but it's
 4 a declaration for an expert witness.
 5 MR BRODSKY: My apologies.
 6 THE PRESIDENT: I can see why, because this gentleman is
 7 a professor.
 8 Professor Rupiya, do you see the witness declaration
 9 on the screen in front of you?
 10 PROFESSOR PROSPER NKANIKA WA RUPIYA (called)
 11 (Evidence interpreted)
 12 THE WITNESS: Yes, I can.
 13 THE PRESIDENT: Would you please read it out?
 14 THE WITNESS: I solemnly swear on my honour and conscience
 15 to tell the truth, the whole truth and nothing but the
 16 truth.
 17 THE PRESIDENT: Thank you very much.
 18 THE WITNESS: You're welcome.
 19 Direct examination by MR HILL
 20 MR HILL: Professor Rupiya, you were a geologist --
 21 A. I still am, yes.
 22 Q. -- employed by Natural Resources Development Rwanda as
 23 chief geologist; is that right?
 24 A. I was a geologist in chief at NRD. Today I am retired.
 25 Q. And is it right you were the chief geologist

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14:24 1 between February 2008 and February 2012 at NRD?
 2 A. That is correct.
 3 MR HILL: Thank you. If you wait there, Mr Harrison will
 4 ask you some questions.
 5 Cross-examination by MR HARRISON
 6 MR HARRISON: Mr Rupiya -- actually, if I could first have
 7 FTI bring up the second witness statement, page 3 at the
 8 bottom, paragraph 11.
 9 Mr Rupiya, here you list activities in 2008 that you
 10 state did not occur on behalf of NRD; is that correct?
 11 I should have started, I suppose, can you read the
 12 English that's on the screen, or do you need the English
 13 translated?
 14 A. I can read English.
 15 Q. Okay, thank you.
 16 A. What was the question?
 17 Q. Going back to my question, you see here -- you can see
 18 here at paragraph 11 you are identifying activities in
 19 2008 that you state that NRD did not engage in; correct?
 20 A. The Mara environmental study, I must say I do not recall
 21 having seen that study at all.
 22 At 11.2, regarding the opening of new sites, in 2008
 23 no sites were opened, activities were conducted in mines
 24 that were owned by REDEMI.
 25 On 11.3, the building of houses and offices, what

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14:27 1 was done was mostly to rehabilitate existing houses that
 2 were also left behind by REDEMI.
 3 Now, regarding 11.4, "Donations", if there were any,
 4 I was not aware of any.
 5 Q. And FTI, if you could put the witness statement on the
 6 left, if it's possible to have the two pages in the left
 7 pane, I don't know if that's possible, and if you could
 8 pull up C-147 on the right.
 9 Mr Rupiya, you were pulling the information here in
 10 paragraph 11 from this document, correct, that's been
 11 identified at C-147, and that's the citation at
 12 footnote 2 in your witness statement; correct?
 13 A. That is correct.
 14 Q. Okay. So if we look at the -- and confirming, you
 15 started in 2008; correct?
 16 A. That's correct.
 17 Q. So if we look at the table in 2008, you would agree with
 18 me, then, that NRD continued fieldwork, geological and
 19 tectonic mapping; right?
 20 A. Yes.
 21 Q. And you would agree with me that there was sampling
 22 ongoing in 2008?
 23 A. Indeed. There was sampling conducted in 2008.
 24 Q. And you agree that there was the construction of
 25 research shafts in 2008?

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14:29 1 A. Look, I'm not sure that new shafts were actually built,
 2 but there were rehabilitation of existing shafts, which
 3 were threatening to collapse.
 4 Q. And similarly there was rehabilitation of tunnels?
 5 A. Tunnels were also rehabilitated in Nemba, I believe.
 6 Q. And in the bottom left of the 2008 section, it states
 7 "Environmental activities", so you agree with me that
 8 environmental activities were being undertaken by NRD?
 9 A. Well, yes, NRD conducted environmental activities
 10 afterwards, but what I do not know -- I mean, work was
 11 conducted but I didn't see any billing for this.
 12 Q. I'm sorry, I didn't catch that. You didn't see any what
 13 for this?
 14 A. Any billing.
 15 Q. And you agree, then, as well, that NRD began
 16 semi-industrial works, which is identified --
 17 A. I was saying that work --
 18 THE INTERPRETER: Sorry, the witness is repeating himself.
 19 A. I was saying that work was conducted, the amount -- I do
 20 not know how much was billed for it.
 21 MR HARRISON: And Mr Rupiya, you agree then in 2008 NRD
 22 began semi-industrial works; is that correct?
 23 A. Well, in 2008 machines were purchased, a bulldozer,
 24 a crane, a few crushing -- crushers, a few crushing
 25 machines for ore.

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14:32 1 Q. And, Mr Rupiya, it sounds like you believe that the
 2 purchase of bulldozers, a crane and crushers are the
 3 beginnings of industrialisation for mining; is that
 4 correct?
 5 A. Yes. It was the beginning of a -- of such activity.
 6 Q. So FTI, on his witness statement if you could scroll
 7 down to paragraph 12.
 8 Actually, I'm sorry, if you could not blow that up
 9 because I'm going to have you scroll down on the other
 10 document as well, to the 2009-section.
 11 Mr Rupiya, in your witness statement with respect to
 12 2009 you identify what appeared to be two items that
 13 were not conducted in 2009 from the list on the right;
 14 correct?
 15 A. Excuse me? Could you repeat?
 16 Q. I'll rephrase the question. In paragraph 12 of your
 17 witness statement you identify that the "construction of
 18 new shafts" and "donations: teams of doctors sent to
 19 Rwanda" were not done in 2009; correct?
 20 A. Well, there were new shafts -- there were no new shafts.
 21 Most of the extraction work and mining was conducted in
 22 existing shafts that may have led to the opening of new
 23 galleries.
 24 Q. So you understand that the shafts that were being opened
 25 could lead to further tunnelling to identify additional

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14:35 1 resources to mine; is that right?
 2 A. Rather than saying tunnels, I would say it's just the
 3 continuity of what was already there.
 4 Q. So in 2009 you agree that dams were built in the
 5 Sebeya River?
 6 A. Yes, some dams were built on the Sebeya River.
 7 Q. And you agree that there was improvement in road access
 8 in order to access the Sebeya and Giciye concessions;
 9 correct?
 10 THE INTERPRETER: I'm sorry, I did not hear the beginning of
 11 your question because it overlapped with his answer.
 12 Could you please repeat it?
 13 THE PRESIDENT: I'm sorry, excuse me, if it overlapped with
 14 his answer we would like to have the answer before the
 15 question is asked.
 16 MR HARRISON: I apologise. I misunderstood the interpreter.
 17 THE INTERPRETER: Shall I -- what would you like me to do?
 18 Maybe you could ask the question again?
 19 THE PRESIDENT: I think that would be a good idea.
 20 Could you put the question again?
 21 MR HARRISON: Yes, of course. I'm just looking back at the
 22 question.
 23 Mr Rupiya, you agree that there was improvement to
 24 the road access in order to -- let me rephrase that.
 25 You agree that there was improvement to the road

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14:37 1 infrastructure in order to access the Sebeya and Giciye
 2 concessions?
 3 A. For Sebeya, yes. For Nemba it wasn't much of anything.
 4 Most of the work was done in the western concession,
 5 Sebeya, Rutsiro and Giciye. Some bridges were
 6 rehabilitated and roads repaired.
 7 Q. And you agree in 2009 there was the opening of new
 8 mining sites; correct?
 9 A. In fact, these are the old mines that continue to be
 10 operated. There were no new operations or no new mining
 11 sites.
 12 Q. Mr Rupiya, that's not something you included in your
 13 witness statement, right, that the line item for opening
 14 new sites was an activity not done in 2009; correct?
 15 A. If I didn't say it, it's because the question wasn't put
 16 to me.
 17 Q. Mr Rupiya, this was the document you reviewed in order
 18 to give your witness statement; correct?
 19 THE PRESIDENT: Mr Harrison, I'm just looking at the
 20 supplemental statement, 11.2.
 21 MR HARRISON: Yes, and -- thank you, Mr President -- I'm in
 22 paragraph 12, which deals with the entries for 2009.
 23 THE PRESIDENT: Ah, right.
 24 MR HARRISON: Mr Rupiya, this document, C-147, formed the
 25 basis of this part in paragraph 12 of your second

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14:39 1 witness statement; right?
 2 A. Yes. That is correct. It is my statement.
 3 Q. And you had time to review C-147 before you prepared
 4 your witness statement?
 5 A. The document on the right-hand side is a document that
 6 I was familiar with in connection with the request for
 7 renewal, the application for renewal.
 8 Q. And you reviewed this particular document in preparation
 9 for drafting your second witness statement; correct?
 10 A. The document on the right is a document that I was
 11 familiar with since 2010 when it was drafted.
 12 Q. Mr Rupiya, you agree in 2009 that there was the
 13 continuation of semi-industrial works on behalf of NRD?
 14 A. As I just said, it was the beginning, but it did not
 15 continue.
 16 Q. One of the items on here, Mr Rupiya, is the purchase of
 17 three compressors. What are those compressors used for?
 18 A. These compressors were used to provide compressed air to
 19 the shaft in Nemba. And the other compressor was in
 20 Mara. But there was no flexible, that is no hose in
 21 order to use it, so it was not used at all.
 22 Have you understood my answer?
 23 Q. Yes, I was just taking a moment to get to the next
 24 question.
 25 Mr Rupiya, I'm going to ask FTI to move down to

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14:46 1 have included that on your witness statement; correct?
 2 A. This is quite a while back so it's possible to forget.
 3 Q. And, Mr Rupiya, in the bottom left of the 2010 section
 4 you would agree with me, then, that environmental
 5 activities were undertaken by NRD. There was
 6 an environmental report in Nyatubindi and that dams were
 7 built in Rutsiro; right?
 8 A. Yes, those works did take place?
 9 Q. If FTI could move down to the 2011 period.
 10 And, Mr Rupiya, you agree that the environmental
 11 project at Nyatubindi continued; correct?
 12 A. Yes, because at that time there was always a problem of
 13 the Sebeya River being sullied.
 14 Q. And NRD for this environmental project was trying to
 15 remedy that problem; correct?
 16 A. In fact, that's why there was the building of a dam at
 17 the source of the Sebeya River.
 18 Q. And you agree that there was consultation on the
 19 environmental projects with Olomouc University?
 20 A. I'm not familiar with this university. I don't know it,
 21 and I don't know if there was consultation. The work
 22 was done by environmental experts.
 23 Q. So, Mr Rupiya, I want to talk about the Rutsiro plant
 24 a little bit.
 25 THE INTERPRETER: The witness is just finishing and giving

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14:43 1 2010, and this might span two pages.
 2 MR BRODSKY: I think it would be helpful to do those pages
 3 consecutively for screen space.
 4 MR HARRISON: Okay.
 5 Mr Rupiya, for 2010 -- can we just pull up C-147 and
 6 hide the witness statement for a moment.
 7 So Mr Rupiya, you would agree that in 2010
 8 construction of the Rutsiro plant continued?
 9 A. The construction did take place. It was an ore
 10 treatment plant in Rutsiro. Yes, I can confirm that.
 11 Q. And NRD continued to update the infrastructure by
 12 building roads; correct?
 13 A. I don't recall whether in 2010 the repair work on the
 14 roads continued. I know that in 2008 -- perhaps in 2009
 15 that was so, but in 2010, I don't believe so.
 16 Q. And if infrastructure work on the roads was not done in
 17 2010, it's something you would have included in your
 18 witness statement; correct?
 19 A. I don't recall. I know that there was some repair work,
 20 but I don't know if in 2010 there were some roads still
 21 being repaired; I don't remember.
 22 Q. Mr Rupiya, your witness statement for the 2010 time
 23 period, which is based on this document, does not
 24 identify the absence of road repair work, and so if this
 25 was something that you thought did not occur you would

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14:49 1 the end of his last response.
 2 A. I said that the environmental studies were done
 3 by Rwandan environmental experts. I do not know this
 4 university that's mentioned here.
 5 MR HARRISON: Mr Rupiya, I apologise for cutting off part of
 6 your answer with the delay of translation.
 7 If I could talk to you a bit about the Rutsiro
 8 plant. You agree that NRD -- in your first witness
 9 statement you stated that NRD spent, you said about
 10 a million dollars building the Rutsiro plant; correct?
 11 A. That's information I was given by Dr Fink. He was in
 12 charge of building the plant.
 13 Q. And you have no reason to doubt that information, do
 14 you?
 15 A. There was no reason for him to mislead me on this topic.
 16 Q. And you understand that the plant was in fact
 17 commissioned; correct?
 18 A. This plant was completed, but it did not operate because
 19 they realised at the end that the plant that had been
 20 built to process the rejects from the Rutsiro mine, that
 21 it did not contain the correct ore, so in the end the
 22 plant did not operate.
 23 Q. And so you just said now, and what I understand from
 24 your witness statement, was that there wasn't sufficient
 25 mineral at the plant in order to justify continued

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14:52 1 operations; is that your testimony?
 2 A. I don't really understand what you're saying. Could you
 3 please repeat your question?
 4 Q. Let's pull up paragraph 10 of his first witness
 5 statement.
 6 A. I see it.
 7 Q. And I'm going to direct you into the middle, if FTI can
 8 highlight where I start reading. Your witness statement
 9 says:
 10 "The commissioning was completed by Mr Ehlers when
 11 he joined, but the plant was a total failure -- when it
 12 was started in late 2010 it turned out that the scree
 13 rocks contained little wolframite ..."
 14 So, Mr Rupiya, my question is, your understanding
 15 was that the plant was not working at that time because
 16 there wasn't sufficient mineral in the scree to operate
 17 it on a regular basis; correct?
 18 A. That is correct.
 19 Q. So if you were to bring, for example, a truckload of
 20 minerals to the plant, you would be able to use the
 21 plant; correct?
 22 A. A truckload is not enough to have a plant run. You need
 23 a regular supply for the plant to run. So a truckload
 24 is not sufficient.
 25 Q. So if there were a regular supply of minerals, the plant

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14:54 1 would in fact operate; correct?
 2 A. The plant was built, but they realised that there's no
 3 ore there to bring to the plant, and, as I said, the
 4 prior prospection work was done by an Australian
 5 geologist, but that was before I came on board.
 6 Q. Mr Rupiya, my question, I think, is a little bit
 7 different. My question is, if there is a consistent
 8 supply that the plant would in fact be able to process
 9 those minerals; correct?
 10 A. The plant was correctly built. It could operate but it
 11 didn't have any ore to process.
 12 Q. And Mr Rupiya, you understood that the plant could
 13 process wolframite or cassiterite or tantalum; correct?
 14 A. Yes. The plant could handle any kind of ore by the
 15 gravity principle, but the plant did not operate because
 16 there was no ore to be processed close by.
 17 MR HARRISON: Thank you, Mr Rupiya. No further questions.
 18 Re-direct examination by MR HILL
 19 MR HILL: Professor Rupiya, just one question from me. You
 20 were asked about environmental work carried out in
 21 Nyatubindi. Are you able to assist on whether NRD was
 22 carrying out mining in Nyatubindi?
 23 A. I'm sorry, could you please repeat that question?
 24 Q. You were asked about environmental work in Nyatubindi;
 25 can you tell us whether NRD was carrying out any mining

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14:57 1 in Nyatubindi sites?
 2 A. Yes. NRD did operate there, did carry out mining work
 3 there.
 4 MR HILL: Thank you, Professor Rupiya. I have no further
 5 questions.
 6 THE PRESIDENT: Thank you very much, Professor, for coming
 7 to assist us. You are now free to go.
 8 THE WITNESS: And I thank you.
 9 MR HILL: It should be Mr Sindayigaya next, I hope.
 10 MR WATKINS: Yes, he is testifying from the same location so
 11 I've notified the team there to swap him out. I will
 12 bring him in with your instructions, Mr President?
 13 THE PRESIDENT: Yes, please.
 14 MR WATKINS: Just one moment. Bringing him in.
 15 MR BRODSKY: James, to clarify, Mr Sindayigaya is a fact
 16 witness testifying in French?
 17 MR WATKINS: He is a fact witness testifying in English,
 18 I believe.
 19 MR BRODSKY: Okay, thank you.
 20 MR WATKINS: Okay, Mr President, I will go off camera.
 21 THE PRESIDENT: Thank you.
 22 MR JEAN AIME SINDAYIGAYA (called)
 23 THE PRESIDENT: Good afternoon, Mr Sindayigaya. You should
 24 have on your screen in front of you a declaration, and
 25 I would be grateful if you would read it aloud.

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15:02 1 THE WITNESS: Good afternoon.
 2 My name is Jean Aime Sindayigaya. I solemnly
 3 declare upon my honour and conscience that I shall speak
 4 the truth, the whole truth and nothing but the truth.
 5 THE PRESIDENT: Thank you.
 6 Direct examination by MR HILL
 7 MR HILL: Mr Sindayigaya, you were, as I understand, the
 8 senior accountant at Natural Resources Development, or
 9 NRD; is that right?
 10 A. Yes.
 11 Q. And could you tell us what timeframe it is? As
 12 I understand, you joined in January 2010, didn't you?
 13 A. Yes, I joined NRD in January 2010 and I left NRD
 14 in September 2012.
 15 MR HILL: Thank you. Now, if you wait there, Mr Cowley, who
 16 represents the Claimants in this action, is going to ask
 17 you some questions.
 18 Cross-examination by MR COWLEY
 19 MR COWLEY: Good afternoon, Mr Sindayigaya, and I apologise,
 20 I'm doing this so often during these proceedings.
 21 I apologise for mispronouncing your name.
 22 Can we focus for just a moment on this title that
 23 you ascribe to yourself, that's senior accountant. You
 24 were already employed by NRD, as you just gave the
 25 timeframe. That means you were already employed by NRD

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15:03 1 before Mr Marshall's investors group acquiring NRD from
 2 Starck; correct?
 3 A. Correct, I was employed almost a year before Mr Marshall
 4 acquired NRD in December or January 2011.
 5 Q. And so in January 2011, Mr Marshall was in Kigali in the
 6 NRD offices for the first time as acting CEO; correct?
 7 A. Yes, as the new chairman, yes, in January 2011.
 8 Q. And up to that date, for NRD you were just a staff
 9 accountant; correct?
 10 A. Pardon?
 11 Q. As of that time, up until Mr Marshall arriving, you were
 12 just a staff accountant for NRD; correct?
 13 A. When Mr Marshall acquired NRD, I was already a senior
 14 accountant.
 15 Q. So you claim to have been promoted to senior accountant
 16 at NRD before Mr Marshall arrived as CEO?
 17 A. Pardon?
 18 Q. Let me take a step back. When you were first hired
 19 in January 2010 by NRD, you called yourself a field
 20 accountant; is that correct?
 21 A. Yes.
 22 Q. And there were a handful of such accountants working at
 23 NRD at the time; correct?
 24 A. There was a chief accountant, Mr Chege.
 25 Q. You acknowledged that in January 2011, management

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15:06 1 changed, Mr Marshall and some people he brought in
 2 arrived; correct?
 3 A. Yes.
 4 Q. If I could ask that his witness statement be pulled up,
 5 and if you could bring it to paragraph 6.
 6 I apologise for the delay, I'm just trying to find
 7 it and bring it up myself if I could, so I can see the
 8 context. It's just easier for me to read it,
 9 Mr Sindayigaya, on my own laptop because I can make it
 10 much bigger, so I do apologise. Thank you for your
 11 patience.
 12 Now, looking at paragraph 6, you say:
 13 "In early 2011, I was promoted to the position of
 14 Senior Accountant at NRD."
 15 That's the testimony you gave when describing
 16 yourself and your own background in your witness
 17 statement; correct?
 18 A. Yes.
 19 Q. And that would mean, if it were true, that Mr Marshall
 20 would have had to give you a promotion after arriving,
 21 and just meeting you, he gave you a promotion to the
 22 position of senior accountant; correct?
 23 A. Pardon? I did not get the question very well.
 24 Q. If it were true that in early 2011 you became senior
 25 accountant --

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15:08 1 A. Yes.
 2 Q. -- that would have to mean Mr Marshall, after his
 3 arrival, would have approved a promotion for you;
 4 correct?
 5 A. That -- and correct that should be considered on what is
 6 in my statement.
 7 Q. So if your statement is true --
 8 A. Yes.
 9 Q. -- Mr Marshall would have at least approved something
 10 that informed you you were being promoted, and that
 11 would have occurred only after Mr Marshall arrived;
 12 correct?
 13 A. When Mr Marshall joined, he was not immediately -- he
 14 did not immediately take over the whole management as
 15 the person to approve all the paper works, because at
 16 that time when he joined, there was Mr Ehlers, who was
 17 still managing director.
 18 Q. And you don't know what conversations Mr Ehlers as
 19 managing director had with his new CEO about what
 20 approvals he had to get to promote somebody, do you?
 21 A. I've shown that when he took over they had
 22 a conversation on all the staff, and I took whatever was
 23 coming from Mr Ehlers as legitimate as he was still
 24 managing director.
 25 Q. My question was a little different: you don't know

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15:09 1 anything about the conversations between Mr Ehlers and
 2 Mr Marshall about what sort of approvals he now needed,
 3 beginning in 2011, in order to promote someone like you,
 4 do you?
 5 A. Not at my knowledge.
 6 Q. And you know in this case that Mr Marshall said you were
 7 just a bookkeeper, one among many, at the company, don't
 8 you?
 9 A. At which time exactly?
 10 Q. In this proceeding. You know his position is that --
 11 A. Yes.
 12 Q. -- you weren't who you say you are in this statement,
 13 you didn't have all this important responsibility; you
 14 were just a staff bookkeeper, don't you?
 15 A. No.
 16 Q. You --
 17 A. I was not a bookkeeper. Since the day one I've joined
 18 NRD, I've never been a bookkeeper.
 19 Q. It's accurate to say that you've never been able to
 20 provide a notification of any kind, any document,
 21 promoting you on or after January 1st, 2011, to a title
 22 of senior accountant, have you?
 23 A. Excuse me? Could you repeat your question?
 24 Q. I'm sorry, I thought you were asking a question.
 25 A. Yes. Can you repeat the question?

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15:11 1 Q. Certainly. It's accurate to say that you have never
 2 produced any document or electronic email communicating
 3 to you a promotion to senior accountant in January 2011
 4 or later, have you?
 5 A. I was never asked to produce such document, but if this
 6 might be needed, I can again look into my past data.
 7 Q. At the time Mr Marshall arrived --
 8 A. Yes.
 9 Q. -- in addition to Mr Ehlers already serving as managing
 10 director --
 11 A. Yes.
 12 Q. -- there was an employee serving as chief financial
 13 officer; correct?
 14 A. Yes, Mr Kabera, Julius.
 15 Q. So the company already employed a chief financial
 16 officer, and you said there was a senior accountant
 17 position also existing, and it was filled by Mr Chege at
 18 that time in January 2011?
 19 A. I have to say that with time, with almost 11 years, it
 20 would be very hard to recall all the appointments and
 21 all the position change in an institution that you have
 22 left in 2011. So I would not go into details into those
 23 change of position and nominations if you allow.
 24 Q. Just to make sure I'm not misunderstood, as I read your
 25 witness statements, there was only one change of

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15:13 1 position ever for you while employed by NRD; do I have
 2 that right?
 3 A. Yes. I have only been changed to senior accountant.
 4 Q. You never had any staff at NRD reporting to you as their
 5 manager; correct?
 6 A. No. I had at least under me when Mr Kabera and his team
 7 left, I was left with almost all the responsibility of
 8 a chief accountant, but it was never been put in
 9 writing, because I had a team of two cashiers, I had
 10 a team of field accountants, and I was managing the team
 11 in some manner like a chief accountant, yet it has never
 12 been formally recognised.
 13 Q. So this is a title that you have given yourself because
 14 the company didn't give it to you because you felt you
 15 deserved it; correct?
 16 A. No, the senior accountant, I was promoted to senior
 17 accountant, but I was never promoted to chief
 18 accountant, yet I did the tasks for a chief accountant.
 19 Q. In fact, NRD relied on an outside accounting firm to
 20 handle all its monthly recording and calculations,
 21 didn't it?
 22 A. At some point it was a management decision from Mr Quam
 23 and Mr Marshall to have an external view of the
 24 accounting. I remember that time I told them: this is
 25 your choice, but we can always do the same task, and

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15:15 1 they said that they preferred to have an external -- an
 2 external who are doing the final reports.
 3 Q. To be clear, what you're talking about wasn't a request
 4 for a one-time review of what you had done. Management,
 5 led by Mr Marshall, requested that the regular
 6 accounting work be done by an outside firm on a monthly
 7 basis, didn't he?
 8 A. It was done to only do the final report, but the core
 9 business, the core sphere of accounting was done by my
 10 team and the external accountant was only providing the
 11 information to do mostly yearly returns.
 12 Q. Can I ask that R-239 be brought up.
 13 If we could scroll down we can get to the beginning
 14 email in the chain, and I'm going to ask Mr Sindayigaya,
 15 please let me know, are you comfortable reading the
 16 English and reading this yourself as it goes along so
 17 you know what you're looking at?
 18 A. Yes.
 19 Q. Okay, so I'm going to ask that you be given
 20 an opportunity to do that, go to the beginning of the
 21 email chain and then scroll up as he lets you know, and
 22 Mr Sindayigaya, I only want to do this so long as it
 23 takes for you to tell us do you recognise this and do
 24 you know already what this document contains, or do you
 25 need to read the whole thing? Just tell us as it goes

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15:17 1 along.
 2 A. I know what it is about.
 3 Q. So you will agree that the original email --
 4 A. Yes.
 5 Q. -- was from some member of the outside accounting firm
 6 I just spoke about; correct?
 7 A. Yes.
 8 Q. And that firm's name is Van Kays?
 9 A. Yes, Alice Van Mierlo.
 10 Q. So on this particular June 27th email, someone from the
 11 outside accounting firm reaches out to you and has
 12 a short list of: give me these documents for June;
 13 correct?
 14 A. Yes.
 15 Q. And then you respond -- I'm sorry, before I left it,
 16 that request from the outside accounting firm also
 17 said -- now I see my mistake. Let me ask the question
 18 over. This email from Van Kays not only said: here are
 19 the documents you've got to get to us, get them to us
 20 by July 5; correct? That's what you were asked?
 21 A. Yes.
 22 Q. And then you respond to that saying:
 23 "The ... binders are due to be submitted..."
 24 You meant they're being worked upon, they're being
 25 pulled together, correct?

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15:20 1 A. Yes, at that particular moment the accounting work was
 2 divided what has to be internally and what had to be
 3 done by the external accountant.
 4 Q. And you're sending this email on July 5th. So a couple
 5 of days before the deadline Van Kays asked for them,
 6 you're reaching back out and you're saying: they are
 7 being pulled together, but some won't be finished and --
 8 what is it that you say? That they will be ready?
 9 What's the date that you intended to reference there?
 10 A. 10th May.
 11 Q. So was that just a typo? You meant to say a different
 12 date in July, or some other time?
 13 A. It might be a typo.
 14 Q. Okay. In any event, we could agree that you're saying:
 15 it won't be ready by your July 7th requested date, we're
 16 working on some others and we'll get them to you;
 17 correct?
 18 A. Yes.
 19 Q. And then Mr Quam responds. Now, who is Mr Quam? What's
 20 his position at that time?
 21 A. He was the managing director.
 22 Q. So the managing director responds to you, and is it fair
 23 to say that he was snapping at you, saying: that's
 24 unacceptable, you've got to get them there faster. Is
 25 that fair?

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15:23 1 before is that they should, at least by 15th, ascertain
 2 that the tax which are remitted are correct. It does
 3 not mean that they had to redo all the work of the
 4 accounting department.
 5 Q. Well, if you look back at the list, your work was just
 6 gathering the monthly data, not preparing accounting
 7 reports of any kind, stacking up the bills paid in June,
 8 stacking up the unpaid bills as of June. That's all
 9 you're doing, is collecting information in these
 10 binders; correct?
 11 A. There is some stage, maybe there's no document in this
 12 session that has been provided, at a later stage, when
 13 we were preparing the reports, that we were exchanging
 14 information regarding reports specifically. You have
 15 these accounts standing this, this account standing
 16 this, so it will be biased to only base on this email to
 17 say that I was not involved in the preparation of the
 18 reports.
 19 Q. Well, let's see what we can agree on. We can agree that
 20 the Van Kays email said to you: give us all this data --
 21 and it has line items -- and not one of them refers to
 22 a completed accounting report, does it?
 23 A. No.
 24 Q. I'm sorry, did you ask me to wait?
 25 A. I'm not agreeing on this assertion that I was only

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15:21 1 A. It's happened in any institution to have such -- because
 2 the managing director has the prerogative to get into
 3 any matter concerning his company under his ...
 4 Q. Understood. I'm just asking, can we agree that's how
 5 you read this? It was somewhat snappish and he
 6 instructed you: no, you're not going to do it then,
 7 you're going to do it as fast as you can, right?
 8 A. Pardon? Can you repeat the question?
 9 Q. Mr Quam responded to you rather shortly saying: you've
 10 got to get them pulled together faster. That's the
 11 meaning of his email as you understood it?
 12 A. Yes, he did.
 13 Q. Okay, and then he went on and said: and I have a new
 14 policy from here on out. He's telling you that you're
 15 to get these binders to Van Kays by the fifth day of
 16 each month, that's the policy:
 17 "There will be no exceptions to this requirement."
 18 A. Yes.
 19 Q. So he's telling you -- you're just putting together
 20 binders of the raw monthly data -- Van Kays is going to
 21 start on the monthly reports by the fifth day of each
 22 month. They're going to do it all, isn't he?
 23 A. Not that Van Kays has to do the whole work, because here
 24 in Rwanda the tax returns are submitted on 15th of each
 25 month. Basically why they needed to go through our work

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15:25 1 giving them information.
 2 Q. Well --
 3 A. Because we were exchanging information and building up
 4 the reports all together.
 5 Q. I'm sorry, I wasn't paying attention, my fault, and
 6 I apologise to the Tribunal, I am looking at my laptop
 7 and I didn't notice. FTI, can you please scroll back
 8 down so that Mr Sindayigaya can see what I'm actually
 9 talking about. That wasn't in sync and I apologise for
 10 that, Mr Sindayigaya, because I should be paying
 11 attention to know what you're actually looking at.
 12 So, if you don't mind me repeating the question,
 13 I'm now actually giving you a chance to answer it, this
 14 list of information that has to be put in binders, that
 15 starts this email chain, not one item on that list is
 16 an accounting report analysing, tabulating, summarising
 17 anything for the company; it's just stacking up the
 18 paper and other information, putting it in a binder, on
 19 these topics and handing it off to an accounting firm;
 20 correct?
 21 A. Not correct.
 22 Q. Okay. You will agree, you don't see one item that uses
 23 the word "Report", do you?
 24 A. I'm seeing that we are only limiting on one email to
 25 make a conclusion that reports were done only by

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15:26 1 Van Kays, but the accounting is not limited only on
 2 those monthly register. There were other things.
 3 Let's say, for example, at a certain moment I had to
 4 provide -- I would have to go through my depreciation
 5 schedule, I had to go to see my general accruals, those
 6 accounting things are not done just for the tax
 7 purposes. Here I was just transmitting them information
 8 on which they can base to verify that the tax I will be
 9 paying for the next 15th will be correct. They were
 10 kind of an external auditor that had to validate
 11 whatever our workings.
 12 Q. Mr Sindayigaya, we can agree on one thing to start with,
 13 that this email is not every email you ever received
 14 about the work you were doing. I could agree to that,
 15 but this is an email produced by the Respondent --
 16 A. Yes.
 17 Q. -- and they're capable of producing other emails if they
 18 think they're relevant. So I would please like to ask
 19 you, answer the question I'm asking.
 20 A. Yes.
 21 Q. Do you agree that this email --
 22 A. Yes.
 23 Q. -- tells you to just collect some documents, put them in
 24 a binder and send them off by the 5th of the month, and
 25 not one item referenced contemplates you doing a report

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15:30 1 purpose, it was for tax returns, not for the accounting
 2 reports.
 3 Q. I will agree that this is one email on one topic, sir,
 4 and I'd please ask you to just answer the questions
 5 I'm asking, because it is about this email. He asks you
 6 very shortly to get these -- these papers that they
 7 asked you --
 8 A. Yes.
 9 Q. -- these binders, get them out by the fifth day of each
 10 month, no excuses; correct?
 11 A. Correct.
 12 Q. Now, isn't it accurate that Mr Quam's email shows that
 13 he was talking to you and considering you to be
 14 a low-level clerical type of bookkeeper, not somebody
 15 with significant responsibilities of having to do his
 16 own reports and has staff running around putting
 17 together binders, but you: run around, put together
 18 binders of papers, get them to the accountants by the
 19 fifth day of each month and you don't have an excuse.
 20 Can't we agree that's how he talked to you?
 21 A. We do not agree.
 22 Q. Can you at least agree that this is not how you talk
 23 to a management level employee if you are a managing
 24 director. You tell them to have their staff do the
 25 clerical work; can you agree with that?

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15:28 1 and handing it off; can you agree to that?
 2 A. Excuse me, sir, can you also read the first phrase after
 3 "Dear Aime":
 4 "I kindly request for the following binders in
 5 purpose of RRA declarations."
 6 RRA means Rwanda Revenue Authority. It's only for
 7 reviewing the tax purposes, it's not for accounting
 8 purposes.
 9 Q. Just as I agreed with you --
 10 A. Yes.
 11 Q. -- that there's other emails referring to work you've
 12 done that's not included in this email, can you also
 13 agree with me that there's other emails and
 14 communications about accounting work being done by
 15 Van Kays with information that also aren't included and
 16 referenced in this one email?
 17 A. Pardon? That was very fast in your explaining.
 18 Q. Why don't I just move on. This is the request, your
 19 managing director, if you go back up, FTI, to the --
 20 A. For tax declaration. Not for accounting.
 21 Q. -- (overspeaking) question, Mr Sindayigaya. Mr Quam
 22 instructs you you're to get these documents out in
 23 binders by the fifth day of the month, no excuses, this
 24 has to be done.
 25 A. That's returns. Again in this email you see that the

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15:31 1 A. It all depends on the context, because in any
 2 institution there might be delays into report, there
 3 might be things that affect the reporting, but if the
 4 managing director intervened, it was to give his push to
 5 get the work done faster. I agree. And this is not --
 6 if he was not satisfied with my work, he should have
 7 looked for substitution, and if I left in September --
 8 I stayed with this company until September 23rd, which
 9 means he was -- he did not dismiss me for any reporting
 10 matter that you are raising now.
 11 Q. Well, that's an interesting segue. In fact, Mr Marshall
 12 and Ms Zuzana, do you recall Ms Zuzana Mruskovicova?
 13 I am sorry, I am just incapable of doing the right job
 14 with that name and I am so embarrassed by it.
 15 Do you recall her?
 16 A. Yes, I recall her.
 17 Q. And you recall her position? She came in and started
 18 working as the CFO, the new CFO?
 19 A. She has never been CFO.
 20 Q. Do you recall that they terminated you
 21 in September 2012?
 22 A. They have never terminated me.
 23 Q. But --
 24 A. I'm the one who left the company on my will because
 25 I was having -- I was fed up of the status and of

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15:33 1 working without being paid.
 2 Q. I understand that -- strike the question, I'll start
 3 again.
 4 Would you agree that before your employment ceased
 5 at the company --
 6 A. Yes.
 7 Q. -- Mr Marshall and Ms Zuzana let you know that as
 8 a result of investigating certain things, they
 9 considered you to be under suspicion of false
 10 bookkeeping, among other things, and therefore you had
 11 to leave?
 12 A. I have come to know those false allegations last year
 13 when I saw Mr Marshall counter -- reply to my testimony.
 14 Those are fabricated lies from one to the last point.
 15 Q. And you've been interested in establishing, making clear
 16 that those are lies and that that didn't happen. Since
 17 seeing it, you've tried to show that's not true, haven't
 18 you?
 19 A. It's not true. I've never been. I have never been
 20 investigated, I have never been to any matter terminated
 21 for fraud or investigation by Mr Marshall and Madam
 22 Zuzana.
 23 Q. And you've worked hard to try to put as much information
 24 forward to establish the truth of your belief that it
 25 was a lie: you were not terminated, you in fact

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15:35 1 resigned; correct?
 2 A. Yes, when I saw the fabricated letters I had to give
 3 information, counter information on that.
 4 Q. And yet you're unable to provide a copy of a resignation
 5 letter, email, handwritten note, anything from you that
 6 said: I'm now giving you notice, or I'm now resigning,
 7 anything like that at all. You can't provide it, can
 8 you?
 9 A. Well, sir, this thing has gone for -- I left
 10 in September 2012. It's now more than nine years, so it
 11 will be impossible to tell me that I have all the
 12 documents in my possession on things that happened
 13 in September 2012.
 14 Q. In fact, the reason you can't provide a notice of
 15 resignation or a notice of immediate departure is
 16 because none exists, isn't it?
 17 A. Pardon?
 18 Q. The reason you can't provide --
 19 A. Yes.
 20 Q. -- a notice of resignation or a statement of immediate
 21 resignation is because none exists; correct?
 22 A. I assume there should have been some form of informing
 23 the management, but at any point I've not been asked to
 24 provide such document, so it's a document into things
 25 I have submitted, it's not there, but it does not mean

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15:37 1 that it has never been there.
 2 Q. Just to be clear, based on your last answer, we do agree
 3 that if you were the professional senior accountant that
 4 you say you were in the witness statements you
 5 provided --
 6 A. Yes.
 7 Q. You would understand that a person in such a role at
 8 a company would provide the management team above him
 9 with notice, reasonable notice of how long they have to
 10 fill his important position because they're leaving.
 11 You agree that that would normally be done by such
 12 employees; correct?
 13 A. I agree.
 14 Q. And you claimed in your witness statement in response so
 15 the second witness statement if I could ask to be
 16 brought up, the witness statement that you gave after
 17 trying to respond to Claimants' position that you were
 18 terminated and why, instead of showing such notice, you
 19 say you got fed up, you got tired because the company
 20 was in disarray with huge debts, and you had enough, so
 21 you left. I'm sorry if I didn't say it -- if I could
 22 ask you to draw the witness's attention to paragraph 25
 23 of his supplemental witness statement. Apologies again,
 24 Mr Sindayigaya, I'm not focused enough on what you are
 25 being shown.

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15:39 1 A. Yes, I am having it on the screen.
 2 Q. That's your explanation for what you say really
 3 happened; correct?
 4 A. Yes.
 5 Q. I apologise.
 6 You do not say in paragraph 25 when setting out your
 7 whole response to what you say are inaccurate
 8 representations by the Claimants, you don't say here
 9 that you in fact made the decision to leave the company
 10 for these reasons and gave them notice of any period of
 11 time, you gave them a writing of anything that you say
 12 you know professionals in the senior accounting position
 13 that you say you held would be expected to provide, do
 14 you?
 15 A. I was not being specific on that particular point, how
 16 I left, because the company was in such a state
 17 of disarray, like I said, and I'm not sure even if the
 18 letter and things that someone would have sent would
 19 have reached the management, because there was no
 20 processes, there was nothing at that moment.
 21 Q. The statement that the company was in such disarray and
 22 that's why you gave up at the moment you did, and now
 23 you're saying you recognise that you didn't write
 24 anything at all, which --
 25 A. Sorry, I --

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15:41 1 Q. Sorry, let me restate the question because
 2 (overspeaking) I misspoke for a moment so I would like
 3 to just start over?
 4 MR HILL: I think the witness is trying to say something
 5 anyway, if you just let him speak, please.
 6 A. I'm saying there's a statement -- he's saying that
 7 I recognised I did not do anything to notify that I am
 8 leaving, but that's wrong. They might be informed of
 9 communication that had led them to communicate that
 10 I'm leaving the company, but with the time being and so
 11 on, it's something you cannot trace as I have no access
 12 to the NRD documents and so on, and maybe from time to
 13 time I just destroyed such -- all documents. In nine
 14 years there have been a lot of things. It might be
 15 an email, it might be an SMS. It's not something that
 16 at this moment should really be a concern as you agreed
 17 that I left in September 2012, to the knowledge of the
 18 management.
 19 MR COWLEY: And the reasons that you have given, or you have
 20 stated --
 21 A. Yes.
 22 Q. -- was why you gave up at that time, and in parts of
 23 some answers you said why you felt the company was in
 24 such disarray, a written document wouldn't even get
 25 anywhere. That reason, according to your witness

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15:43 1 statements when read together, that existed the entire
 2 time that Mr Marshall's group was involved in the
 3 company, didn't it?
 4 A. Not -- from the period that -- if you compare the period
 5 when I left and the period when Mr Marshall came into
 6 the company, there's a huge difference financially and
 7 even on daily(?) activities, because at the time I left,
 8 no one was having control, it was like -- sorry to
 9 use -- it was like a jungle, no one was managing the
 10 company and it was like in the market where people meet,
 11 no one knows what he's doing and so on. But when he
 12 joined there was a structure, there was a managing
 13 director, there was a CFO, there was the senior
 14 accountant, there was a structure that was working.
 15 So there is a big difference between the moment
 16 I left and the moment Mr Marshall joined the company.
 17 Q. Let's call up your first witness statement.
 18 A. Please.
 19 Q. Paragraph 18.
 20 Now, Claimants don't accept your version of the
 21 story --
 22 A. Yes.
 23 Q. -- but working within your version of the story, you
 24 actually said, when you first gave a witness statement,
 25 that by the time the company was sold -- and let me

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15:45 1 pause right there, you're talking about sold by Starck
 2 to Spalena; correct?
 3 A. Yes.
 4 Q. So Mr Marshall is just about to come on the scene:
 5 "... we were on the verge of bankruptcy -- we had
 6 not received any funding from Starck for a long time and
 7 the money we were receiving from mineral sales was not
 8 enough to pay the company's debts."
 9 Do you see that?
 10 A. I'm seeing it.
 11 Q. And then you go on in your account of the story to say,
 12 in section 19, Mr Marshall showed up and fired people.
 13 So that structure you said that existed you said
 14 immediately went away. That's what you said in your
 15 statement, again, not that we're agreeing with how you
 16 presented it.
 17 A. I did not get the question. I read the extract, but
 18 I did not get the question you are -- how you are
 19 correcting it.
 20 Q. Well, I'm picking up on what you said was the
 21 explanation, that there was a significant difference in
 22 the financial situation at the company and in the
 23 structure and organisation of its employees from when
 24 Mr Marshall first took over when it was very good --
 25 A. Yes.

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15:46 1 Q. -- to when you had to leave when it was very bad, and
 2 I'm asking you, do you agree you in fact said when he
 3 first took over the company was on the verge of
 4 bankruptcy, so it was as bad as it gets, right?
 5 A. Yes, it was in bad -- it was in bad shape, but not to
 6 the extent of being totally in disarray when there is no
 7 more management, there is no activities, no one could go
 8 to the mines because miners were not paid. There were
 9 some sites where we had mines, but you could not even
 10 access there. But when Mr Marshall joined, at least
 11 that time, despite the financial difficulties, there was
 12 a learning structure, there was something -- there was
 13 a structure which was fighting to get back, and that
 14 structure, from the time Mr Marshall got the company, it
 15 went down until the time I left, when I saw that there
 16 was no return, no point of return.
 17 Q. We'll get back to that in a moment, but I want to stick
 18 with something you just said.
 19 So, is it accurate to say, based on how you're
 20 describing the NRD situation before the sale to Spalena,
 21 you will agree that in your telling of the story, NRD
 22 was not experiencing a situation where miners weren't
 23 getting paid, employees were going unpaid, assets were
 24 being sold just to keep getting them any money. You say
 25 that was not happening; right?

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15:48 1 A. Before -- sorry, can you rephrase the question?
 2 Q. Yes. You're saying that at the time Starck sold Spalena
 3 to -- excuse me -- Starck sold NRD to Spalena --
 4 A. Yes.
 5 Q. -- it was not true that NRD had already experienced
 6 a situation where miners were going unpaid, debts were
 7 being run up unpaid, assets were being sold to pay
 8 employees. That's --
 9 A. It had experienced some situation in the past, but
 10 because of the support we were still getting from --
 11 sorry, are you getting me?
 12 Q. I think you're frozen. FTI can take over from here.
 13 MR WATKINS: One moment.
 14 THE PRESIDENT: We're due very soon for a half an hour
 15 break; would it be a good idea to take that now?
 16 MR COWLEY: Yes, sir, so long as -- are we able to give some
 17 instruction to Mr Sindayigaya about the rule of not
 18 conferring with others during this break, I would
 19 appreciate it.
 20 A. Sorry?
 21 THE PRESIDENT: Ah. We're going to have half an hour's
 22 break.
 23 A. Yes.
 24 THE PRESIDENT: And it's one of our rules that a witness
 25 cannot discuss the case in the course of giving

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15:50 1 evidence. I'm sure that won't be a hardship to you. So
 2 we can come back in half an hour.
 3 A. So you mean I will have to come back?
 4 THE PRESIDENT: Yes, in half an hour's time.
 5 A. In half an hour.
 6 THE PRESIDENT: We're just having a comfort break.
 7 A. Good. Good. Thank you. I can stay here?
 8 MR WATKINS: Mr Sindayigaya, if you could stay on the line
 9 for me, I'm going to open the breakout rooms for
 10 everyone else.
 11 (3.51 pm)
 12 (Adjourned until 4.20 pm)
 13 (4.22 pm)
 14 MR COWLEY: If the Tribunal does not have any issue, I would
 15 just like to pick back up what we started with this
 16 morning in terms of the question about confirmation of
 17 payment, as I understand it, and I'm not the best with
 18 math, but as I understand it, it's now post business day
 19 for banks in Kigali. Presumably if any confirmation of
 20 a payment could be provided today, that opportunity is
 21 now over, and I would just ask if the Tribunal has
 22 received the required payment by the represented time.
 23 MR KAPLAN: Members of the Tribunal, counsel, I have
 24 received no correspondence from the Respondent regarding
 25 payment.

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16:23 1 THE PRESIDENT: Well, will you kindly inquire of them why it
 2 hasn't arrived. I'm not saying do this immediately, but
 3 on Monday we would like to know.
 4 MR HILL: If I can just update the position. I have
 5 instructions that payment has been transferred, or is in
 6 the course of being transferred, so if it hasn't
 7 arrived, no doubt it will. We have a payment transfer
 8 slip on our side already, from yesterday, I understand.
 9 MR KAPLAN: Mr Hill, if that can be provided confidentially
 10 to me, I can have it traced so we can get the -- it will
 11 facilitate the deposit.
 12 MR HILL: I will.
 13 THE PRESIDENT: Thank you.
 14 MR COWLEY: I have nothing further.
 15 I did not mean with the witness, I meant now.
 16 MR WATKINS: Would you like the witness brought back in?
 17 THE PRESIDENT: I would, yes, please.
 18 MR COWLEY: May I continue, Mr President?
 19 THE PRESIDENT: Yes, you may.
 20 MR COWLEY: Mr Sindayigaya, can I ask you -- oh, I'm sorry,
 21 FTI, can you please bring back up his initial witness
 22 statement? And if you could return to paragraph 18.
 23 Mr Sindayigaya, if you could see in the middle of
 24 paragraph 18 what I had asked you about before the
 25 break, your testimony regarding being on the verge of

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16:25 1 bankruptcy. If I could ask you to look forward in that
 2 same sentence, there's a dash, you testified:
 3 " ... we had not received any funding from Starck
 4 for a long time and the money we were receiving from
 5 mineral sales was not enough to pay the company's
 6 debts."
 7 Do you recall that this is referring to the time
 8 before the sale by Starck of NRD?
 9 A. Yes, I recognise.
 10 Q. And that was your memory -- excuse me. That was your
 11 statement of the financial status of the company at the
 12 time prior to the sale: support money hadn't come in
 13 from Starck for a long time, correct?
 14 A. Right.
 15 Q. And if you could scroll back --
 16 A. I confirm. I confirm.
 17 Q. I ask if you could scroll back up to FTI, to 17, the
 18 bottom of 17, just let the witness see that paragraph as
 19 well. I'm going to direct your attention,
 20 Mr Sindayigaya, to the bottom sentence. You confirm
 21 that same point twice over:
 22 "We did not receive any further money from stark
 23 after this ..."
 24 And that's referring to \$100,000 for some six-month
 25 period earlier in the year, above that, in the

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16:27 1 paragraph, do you see that?
 2 A. I confirm.
 3 Q. And based on the descriptions in your witness
 4 statements --
 5 A. Yes.
 6 Q. -- is it accurate to say as you've told the story of the
 7 financial conditions of the company, from the period
 8 where we just saw you describing verge of bankruptcy and
 9 why, through to your leaving, it never got better. You
 10 say it just continued to get worse. That's how you
 11 describe it; correct?
 12 A. Correct.
 13 Q. And in telling your description of the financial status
 14 of the company at around the time of the sale, you
 15 provided, as part of your witness statement, a handful
 16 of accounting documents; do you recall that?
 17 A. Yes.
 18 Q. Okay, if I could ask FTI to bring up three, they're
 19 sequential, R-232, R-233, R-234.
 20 Mr Sindayigaya, just so it's clear what we're
 21 talking about, starting with the first one in order,
 22 R-232, if I could draw your attention to that. I hope
 23 you have that?
 24 A. I have it in front.
 25 Q. It should say at the top "Profit & loss Account for the

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16:29 1 period ended 31 December 2010"?
 2 A. Yes.
 3 Q. That's for the company NRD; correct?
 4 A. Correct.
 5 Q. The next document, R-233, is a balance sheet as of the
 6 same year end time period for NRD; correct?
 7 A. I confirm.
 8 Q. Well, if you don't mind, just let them bring it up. It
 9 is, I'm sorry. So you said yes, you agree that's what
 10 that document is?
 11 A. Yes, I agree.
 12 Q. And then R-234, please. This is a little harder to read
 13 on my screen because it's so wide it makes it small, but
 14 on the left-hand side, yes. Thank you. You can see
 15 that this is a property, plant and equipment summary
 16 sheet, or spreadsheet, that begins with information from
 17 the beginning of 2010 and ends at the same year end time
 18 period; do you see that?
 19 A. I'm seeing it and I confirm.
 20 Q. So how is it that you had in your possession and were
 21 able to add to your witness statement these three year
 22 end financial statements for the Starck-owned NRD in
 23 2010?
 24 A. If you can go to the date of certification by KPMG, you
 25 may see that those documents were finalised on

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16:31 1 13th February 2012 under my tenor as senior-chief
 2 accountant. I was doing chief accounting but not
 3 formally; informally, let me say.
 4 Q. Thank you, but my question, in case I didn't say it
 5 right, my question I intended to ask was how was it that
 6 you had those documents in your possession as
 7 of May 2019?
 8 A. You mean how I -- I -- NRD did not have an email server
 9 or something to use. We all used our private emails
 10 like you have seen on the emails. So I managed to get
 11 it from my old emails.
 12 Q. So you retained these company documents?
 13 A. To some extent. No one has ever asked me to return it,
 14 and it was in my emails.
 15 Q. Correct. But, sir, in your telling of events, you say
 16 no one was asking you to leave. You say --
 17 A. Yes.
 18 Q. -- you professionally gave notice of some sort that you
 19 had had enough and you had to leave, and that's how you
 20 handled it, as a senior accountant at the time in 2012.
 21 That's your telling of the story; correct?
 22 A. Yes.
 23 Q. So you were -- in your telling, you were acting
 24 professionally; correct?
 25 A. Yes.

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16:33 1 Q. And you understood that anyone who actually holds the
 2 title of senior accountant at a company, has access to
 3 a lot of confidential proprietary company information;
 4 correct?
 5 A. To some extent, yes.
 6 Q. The senior accountant has access to information that one
 7 would need to have a lot of trust to give a person;
 8 correct?
 9 A. Can you rephrase the question?
 10 Q. The information such as the three documents that we just
 11 looked at is the type of confidential information that
 12 a company only gives out to those employees in
 13 a position of trust; correct?
 14 A. Not such confidential, because here in Rwanda the
 15 audited financials are public. There's no such
 16 confidentiality that someone would know your position
 17 because it's published, it's given to the tax
 18 authorities, anyone coming to give you financing, you
 19 access it. It's not such a confidential document to
 20 some extent.
 21 Q. Then either way, if it really is public and available
 22 for everybody to obtain --
 23 A. Yes.
 24 Q. -- or you had it because, as part of your job, you
 25 simply used your personal email account and no one ever

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16:34 1 asked you to give anything back, you equally had access
 2 to the monthly and year end financial information for
 3 the company in the years 2011 and up through the 2012
 4 year, that you say you left on your own; right?
 5 A. Unfortunately, when I left, 2011 was not yet finalised.
 6 Q. Right, but because of your important position, you had
 7 the non-finalised version. You had the accounting
 8 information that was going to be sent to an auditor
 9 asking for their approval. You had the internal company
 10 confidential version because of your important position;
 11 right?
 12 A. There's something I have again to cross-check.
 13 Q. I apologise, but I don't understand. When you say you
 14 have to cross-check, is it simply that you're saying you
 15 don't know if you had it, you'd have to go back and
 16 look?
 17 A. At this point of time it's hard for me to know what
 18 documents is in my possession, what has been lost,
 19 because it's a long time these things has ended, and it
 20 will be impossible to have exact saying in my email,
 21 this date I have this and this. So if you ask me to re
 22 cross-check I might have them, but I'm not to confirm in
 23 this session.
 24 Q. Well, we can agree that --
 25 A. Yes.

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16:38 1 to 36 of that document. This is the last page -- well,
 2 actually, if we could -- it's better that I start with
 3 something that's more explanatory. Can I ask FTI to
 4 switch and go back to the first page. Now, I'm just
 5 showing you the first page for a reason, Mr Sindayigaya.
 6 This is -- this document purports to be the agreement by
 7 which Starck sold NRD's parent company to Spalena, and
 8 there's more pages than this between the one I'm going
 9 to actually focus on, which I'm choosing not to show you
 10 because I would like to just ask you, did you ever see
 11 that while working at the company? Were you asked to
 12 look at the contract between Starck and Spalena?
 13 A. Depending on the position I was holding when the company
 14 was sold, I did not have access to this document.
 15 Q. So you don't recall ever seeing the agreement?
 16 A. Not at the time of acquisition.
 17 Q. You saw it at a later time?
 18 A. If I recall this, I saw it during this process of
 19 disputes.
 20 Q. How is it that you came by this document to see it?
 21 MR HILL: He's not allowed to ask that. This witness made
 22 it quite clear that he has seen this in the context of
 23 this arbitration, this dispute, and Mr Cowley shouldn't
 24 be asking him about the witness's communications in
 25 relation to this dispute.

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16:36 1 Q. -- as you described your access and why you would have
 2 it as of the day you left --
 3 A. Yes.
 4 Q. -- you didn't choose to put forward any other financial
 5 information that a senior accountant would have on
 6 a monthly, quarterly, annual basis for 2011 or 2012, did
 7 you?
 8 A. Sorry? I missed the words in the question.
 9 Q. I'll move on.
 10 Can I ask FTI now to bring up R-235. This is
 11 another financial document for the period ending -- year
 12 end 2010 that you attached to your witness statement
 13 when describing the state of financial affairs then;
 14 correct?
 15 A. Correct.
 16 Q. And this list of creditors, your description of things
 17 at the company helped support your explanation that the
 18 company was on the verge of bankruptcy at the time;
 19 right?
 20 A. The company had huge debt compared to the assets and net
 21 cash -- working capital, let me say it that way.
 22 Q. And that's what you meant by the phrase "verge of
 23 bankruptcy", right?
 24 A. Yes.
 25 Q. And so if I could ask FTI to bring up C-068 and then go

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16:40 1 MR COWLEY: It can't be a witness's communication with his
 2 counsel. This is a witness who is a former employee of
 3 the opposing party, and if anything being asked to talk
 4 about actions by the witness in his capacity as an agent
 5 and he gives himself significant capacity as an agent of
 6 NRD, he is not a Rwandan witness who is within the
 7 protection of privilege in discussions with Rwanda's
 8 counsel, if anything, he might be with NRD's counsel,
 9 and I'm not claiming to have had any such privileged
 10 communication, so I don't agree that that's what
 11 I'm asking.
 12 MR HILL: Well, I disagree with that characterisation.
 13 Obviously communications between our lawyers -- Rwanda's
 14 lawyers and the witnesses are, by their nature,
 15 privileged, irrespective of the source of employment of
 16 the witness.
 17 MR COWLEY: I would ask the Tribunal for its ruling.
 18 THE PRESIDENT: Yes, we'll give a ruling: we agree with
 19 Mr Hill.
 20 MR COWLEY: Can I ask that you turn to page 36. This is
 21 a certificate signed by Mr Ehlers. You can see the
 22 effective date, December 22nd, 2010, that accompanied
 23 the agreement. Can I ask you to read to yourself
 24 Mr Ehlers's paragraph stating what he's certifying to.
 25 (Pause).

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16:42 1 A. I've read it.
 2 Q. Now, if we go back to the document, please, R-235.
 3 THE PRESIDENT: Just before we leave this, something that's
 4 been puzzling me, could we go back to that. This
 5 witness may be able to help. There's a reference there
 6 to:
 7 "... loans from the majority-shareholder of NRD
 8 (HC Starck Resources ...) ..."
 9 Was NRD indebted to Starck Resources to your
 10 knowledge?
 11 A. Pardon, Mr President? I did not get the question.
 12 THE PRESIDENT: Sorry. Looking at this certificate --
 13 A. Yes.
 14 THE PRESIDENT: -- it states:
 15 "... other than tax liabilities to the Rwandan
 16 State in respect of expatriate employees ..."
 17 A. Yes.
 18 THE PRESIDENT: "... and loans from the
 19 majority-shareholder of ...
 20 (... Starck Resources ...)..."
 21 I am asking you whether there was indebtedness on
 22 the part of NRD to Starck Resources?
 23 A. Yes, mainly for the construction of the factory, because
 24 most of the material were bought by Starck in Rwanda.
 25 THE PRESIDENT: Have you any idea the amount of that

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16:44 1 indebtedness?
 2 A. I'd refer to the 235, if I recall, the list of
 3 creditors. But it's something around 1.7, if I recall,
 4 billion. I don't have the figures in --
 5 THE PRESIDENT: Yes, alright. Thank you.
 6 MR COWLEY: If we could now turn to R-235. If you could
 7 blow that up a little bit for him so he can see it.
 8 Thank you.
 9 Mr Sindayigaya you said, I think, a moment ago that
 10 on this list of creditors is the Starck parent company
 11 that loaned money to NRD, its subsidiary?
 12 A. Yes, it's part, if you go to lines 6 and 7, that's
 13 Starck. HC Starck. That's their abbreviation.
 14 Q. So the certificate specifically said it wasn't including
 15 those two items.
 16 A. Yes.
 17 Q. And certain other tax liabilities.
 18 A. That's what I saw on the certificate, yes.
 19 Q. You'll agree that the certificate fails to mention the
 20 remainder; correct?
 21 A. If we take the 751 million, plus the 362, it's already,
 22 to my quick addition, it's 1.1 billion, which is
 23 meaning, the remainder is 76 million, less than
 24 \$100,000.
 25 Q. Thank you.

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16:47 1 A. Yes.
 2 Q. And did you look over the certificate and help prepare
 3 it for Mr Ehlers before he signed it?
 4 A. No, no, no, no. No.
 5 Q. If I could ask that Mr Sindayigaya's first witness
 6 statement be brought up. Paragraph 21, please. If you
 7 could see in your statement, in describing Mr Marshall's
 8 activities from the day he started, you say, in addition
 9 to alleging that he showed no interest in the mines, you
 10 specify he did not visit them, from day one. That was
 11 your intended testimony: that you were swearing, you
 12 know Mr Marshall's activities every single day from the
 13 beginning of January 2011 to September 2012, and are
 14 attesting he was never at a mine on any of those days;
 15 is that how you understood your testimony?
 16 A. May I read?
 17 To my recollection he has never been into the
 18 biggest part of the mine, which are the western
 19 concessions.
 20 Q. That's not what this statement says. You'll agree with
 21 that, right?
 22 A. When I say visit, it's kind of getting deep, getting to
 23 the mines, know the programmes, know that the people
 24 don't have shovels, don't have overalls, don't have
 25 anything. That's the kind of feeling when I stated

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16:49 1 this, that Marshall never got that extent of visiting
 2 the mines and get that feeling of the acquisition that
 3 he's getting.
 4 Q. What you actually said was, from day one he never
 5 visited the mines. Did you mean to convey to the
 6 Tribunal that you knew his whereabouts on every day
 7 between 1st January 2011 and September 2012 when you
 8 left, and you were attesting he never set foot at any
 9 mine; is that what you were intending?
 10 A. The way you are phrasing the sentence is not the way
 11 I would phrase it.
 12 Q. Okay. So is it fair to say that you will acknowledge
 13 that it's entirely possible that Mr Marshall visited one
 14 or more of the mines over that time period, any number
 15 of times, and you don't know?
 16 A. To my knowledge he never visited the biggest part of the
 17 mines which were western concession, and that's what the
 18 mines which were remotely -- not --
 19 Q. So that means you -- that means you account --
 20 A. They might -- sorry -- they might a slight, let's say
 21 there was some mines which are in the radius of Kigali.
 22 That's one, he will just pass by and so on and see. But
 23 there was never a visit that he made purposely to know
 24 the status of the remote mines which are western, these
 25 were part of the licence he was chasing for.

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16:51 1 Q. Mr Sindayigaya, you'll agree that whatever Mr Marshall
 2 did on any day he visited a local to the Kigali office
 3 mine, or distant mine, you weren't with him; will you
 4 agree to that?
 5 A. Can you rephrase the question again?
 6 Q. You'll agree that whatever Mr Marshall did, any time he
 7 set foot at any of the mines --
 8 A. Yes.
 9 Q. -- wherever located, you weren't with him?
 10 A. No, I do not agree.
 11 Q. So you were with him when he visited a mine?
 12 A. I never been with him to any mine.
 13 Q. Okay. So should he have visited any, you weren't there
 14 with him and you don't know what he did when he was
 15 there; correct?
 16 A. Pardon? Can you repeat? Sometimes you are going fast.
 17 Can you repeat?
 18 Q. Let me ask a different question, because you seem to be
 19 struggling with that concept, and it's probably my
 20 fault, but I'd like to ask a little bit different
 21 question but for the same purpose.
 22 A. Yes.
 23 Q. Can't you agree with me that you actually didn't work so
 24 closely with Mr Marshall, given your disparate
 25 positions, that you actually accounted for his

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16:52 1 whereabouts on every single day between January 1st,
 2 2011 and September 2012; can't you agree to that?
 3 A. I cannot agree because in a such, let's say, small
 4 company, all the movements of the chairman/big boss are
 5 known and prepared by the office. Which means if he has
 6 to go to any mine, there will be some provision for
 7 driver allowances, and so on. Those are the things that
 8 would get my attention, without even going with him, he
 9 would have to get some accommodation and so on, and
 10 those such expenses have never come to my desk during my
 11 tenure in NRD.
 12 Q. Can we go to paragraph 9 of that same witness statement?
 13 Do you see in this paragraph that you refer to the
 14 plant at the Rutsiro concession and say that it never
 15 operated during the entire time you were with NRD?
 16 A. Yes.
 17 Q. Do you see that? Now, can't you agree that, given your
 18 job as, at that time, staff accountant, that you
 19 actually didn't spend all day every day that you worked
 20 at the Rutsiro plant out in the field?
 21 A. As part of -- when I joined NRD I was assigned
 22 specifically to be -- to monitor the transactions which
 23 are happening on site, which had given me a crucial time
 24 to build a network of site supervisors and their support
 25 clerks that will give me, time to time, information

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16:55 1 related to the mining and production. So during that,
 2 from the time I joined, I managed to put in place
 3 a system, a reporting system every Thursday that I'll
 4 know how much minerals have been produced so that I can
 5 budget my cash flow. It gave me a -- I was not on site
 6 but I had a full insight on what was happening on site,
 7 let's say, a weekly basis, and there was never
 8 a production that came out of the plant under my tenure.
 9 Q. So this detailed focus from all these people every day
 10 telling you exactly what they were doing, you
 11 maintain -- let me finish, sir -- you maintained that as
 12 you became the senior staff attorney, that's also your
 13 testimony; right?
 14 I'm sorry, I misspoke. It's your testimony, sir,
 15 that this detailed daily reporting from everybody about
 16 what -- everything was happening at each mine, that
 17 continued when you became the senior accountant at the
 18 company; correct?
 19 A. Yes, it continued.
 20 Q. Okay. So if it's your testimony and you want the
 21 Tribunal to believe that if any miner walked up to the
 22 plant, the washing station, with a bucket of ore and
 23 cleaned it, because it would help speed up the
 24 extraction of minerals, you were told immediately.
 25 That's your testimony; right?

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16:56 1 A. I'll phrase the other way, that if the production -- if
 2 there were trucks that were carrying out unwashed
 3 minerals into the plant and get the production washing
 4 process from the plant, which is industrial rather than
 5 the artisanal, I would have known it because that was --
 6 I was really interested to see that plant -- coming into
 7 my report that the plant has started giving out the
 8 minerals. It would have come to my attention on that
 9 same day.
 10 Q. So it's now your statement that what you meant to be
 11 referring to was only one operation of the plant, which
 12 is loading the maximum amount from a truck at the top
 13 and having it run through the entire plant all the way
 14 to the bottom. That's all you meant to refer to in this
 15 statement; is that your explanation?
 16 A. No, I'm referring to have the plant to be operational
 17 rather than having small test or some miner coming to
 18 wash the minerals at Rutsiro plant. I'm referring to
 19 have the plant being fully operational and have the
 20 whole chain producing what was supposed to be coming
 21 from it, which means -- is the artisanal work of the
 22 miners.
 23 Q. Right. So if the plant was being operated quite often,
 24 in parts some miners would come up and use the crusher
 25 to help them with their load, and some other miners

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16:58 1 would use the sifter to extract things from their load.
 2 You are not saying that didn't happen; you just say it
 3 doesn't count, right?
 4 A. It was not -- the plant was tested but never went to the
 5 full commissioning, that will be the exact word.
 6 Q. And I want to be clear that you're agreeing --
 7 A. Yes.
 8 Q. -- that parts of the plant, such as the washing station
 9 or the crusher, could have been used, and was used, by
 10 miners from time to time throughout, and you're not
 11 actually saying that aspect of the plant wasn't
 12 operating regularly; you're just not talking about it,
 13 right?
 14 A. I'm not talking about the site jobs; I'm talking about
 15 the industrial part of the plant.
 16 At the place where the plant is situated you might
 17 find a miner has preferred not to do his things in the
 18 forest because he is staying near the plant and they
 19 will just come and do the things there.
 20 The production from those small jobs will not be
 21 accounted as from the production of the plant.
 22 Q. In your view; correct?
 23 A. Sorry?
 24 Q. If I could ask the supplemental witness statement to be
 25 brought up, paragraph 9. There you go. If you could

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17:02 1 statement: some other people I talked to told me that
 2 nobody else, no other miner anywhere near Bisesero ever
 3 did anything through the end of the year, 2010. Instead
 4 you say definitively you know that there was absolutely
 5 no mining by any person at the Bisesero concession
 6 through that time period, don't you?
 7 A. If there was minerals and miners, it would have been
 8 part of the things we could have found on site
 9 in March 2011, and we found absolutely nothing. We
 10 found only closed mines.
 11 So my affirmation is that it's impossible to have
 12 mining activity in 2010 and find that you had no
 13 minerals on site, you had no staff, you had no operating
 14 mines because they were all full of mud, mud slides.
 15 They were all closed. For a long time. We had to do
 16 the bush clearing to get to the first mining.
 17 I remember myself when the Bobcat went there, we had to
 18 bring the Bobcat to even get a pathway to the tunnel
 19 where the mines were supposed to be. It was completely
 20 a state of --
 21 Q. It's 12,000 acres, isn't it?
 22 A. In March or April. I don't recall the exact date.
 23 Q. It stayed the same size: it's 12,000 acres; correct?
 24 A. Pardon?
 25 Q. The Bisesero concession --

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17:00 1 take a look at this paragraph and your next witness
 2 statement, you can see that you're referring to activity
 3 at the Bisesero concession?
 4 A. Yes.
 5 Q. And I want to draw your attention to the fact that
 6 you're talking about through the end of 2010, and then
 7 a little bit forward as you go through the paragraph.
 8 Do you see the time periods in the concession reference?
 9 A. Yes, I recall everything and I confirm those.
 10 Q. Throughout 2010, NRD, you say, had nothing to do with
 11 Bisesero, right?
 12 A. To my knowledge, nothing.
 13 Q. So this statement, if one were to read it, to be true
 14 would have to be given by someone who, on a daily basis,
 15 was at the Bisesero concession and observing absolutely
 16 no miner doing any mining activity there each and every
 17 day for that statement to be true; correct?
 18 A. That statement is true to the testimony we got when we
 19 started visiting the mines, especially the information
 20 from the Slovak team that was building the clinic, that
 21 I spent a lot of time with them in Bay View house in
 22 Nyamishaba, they were telling me that there was no
 23 activity in Bisesero because they're only busy with the
 24 clinic.
 25 Q. You will acknowledge that you didn't say in your witness

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17:04 1 A. Yes.
 2 Q. -- is 12,000 acres large; correct?
 3 A. I don't have those technical and size data.
 4 Q. Can you at least agree with me that however many
 5 thousands of acres Bisesero is --
 6 A. Yes.
 7 Q. -- there isn't any one time you ever undertook to visit
 8 the whole thing, let alone visit the whole thing every
 9 single day?
 10 A. From the time we started visiting, Bisesero was much
 11 smaller than our five concessions in Rutsiro, Giciye,
 12 Sebeya.
 13 I was doing -- from the time before Bisesero came in
 14 I used to do one day, all the five mines in a remote
 15 forest, and Bisesero was the simplest one, which I would
 16 spend the night in Kibuye with the Slovak team, and the
 17 following morning I would just do Bisesero site in half
 18 day because that was much smaller than NRD concessions.
 19 I would not say that I would go into the mines itself,
 20 but the main point of collection of minerals, I would go
 21 there in less than half a day.
 22 Q. And you won't agree with me that you never covered all
 23 12,000 acres or however many thousands of acres it is,
 24 right? You don't agree?
 25 A. I did not go inside the mines, but I was doing the --

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17:06 1 each mine had a point where you meet the miners and get
 2 the minerals. I always did it for Bisesero as I was
 3 doing for NRD concessions.
 4 Q. Mr Sindayigaya --
 5 A. Yes.
 6 Q. -- is it fair for me to say you have a tendency to
 7 exaggerate to make a point, and you feel comfortable
 8 leaving a lot of details out because you feel justified
 9 in your point so you will say it the way you want?
 10 A. Pardon? The connection is cutting out.
 11 Q. Mr Sindayigaya --
 12 A. Yes, sir.
 13 Q. -- don't you acknowledge that you have a tendency to
 14 exaggerate when making a point?
 15 A. It's not a tendency, it's -- how do I explain that,
 16 English is not my native language and I always have to
 17 look for perfect words, wording.
 18 Q. If I could ask that C-210 be brought up.
 19 Do you recall, sir, that in your witness statement,
 20 I believe it's the supplemental witness statement, I'll
 21 find it if it is necessary because you don't recall it,
 22 but do you recall addressing Mr Marshall's statement
 23 that there was a cooperation agreement between BVG's
 24 Bisesero concession and NRD leading up to the sale from
 25 Starck to Spalena?

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17:08 1 A. I don't recall anything like this.
 2 Q. You don't recall the reference to a cooperation
 3 agreement?
 4 A. No, no, no, I was not involved in any matter in the sale
 5 of NRD.
 6 Q. I apologise, but I just need to, because I didn't take
 7 accurate notes, I just need one moment, please, and
 8 I apologise for the delay, but just to find the
 9 paragraph. (Pause).
 10 A. Pardon? (Pause).
 11 Q. Well, I apologise already, and I'll say it again out of
 12 consideration that I'm holding the Tribunal and opposing
 13 counsel up, I will put that question aside and move on
 14 to another question about this document.
 15 Mr Sindayigaya --
 16 A. Yes, sir.
 17 Q. -- if I could ask -- FTL, if I could ask you to scroll
 18 down to the next page, first of all, do you see the
 19 reference to the "Cooperation Agreement" on the next
 20 page, the email. It says "Cooperative Agreement".
 21 A. I'm seeing an email sent -- yes, I'm seeing the subject
 22 matter.
 23 Q. And then it says:
 24 "Please find the signed cooperative agreement in PDF
 25 Format".

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17:09 1 In the first line; do you see that?
 2 A. Yes.
 3 Q. That's to orient you. I want to ask now that the second
 4 page be brought up. If you could scroll down and I'll
 5 let you read it as much as you need, sir, but what
 6 I wanted to show you is that there's a document titled
 7 "Cooperation agreement", and Mr Ehlers's signature, the
 8 bottom. Mr Ehlers never informed you that such
 9 an agreement was being entered between the two
 10 companies; correct?
 11 A. Never.
 12 Q. And that's because, given your position at the company,
 13 it was something you simply had no use to know; correct?
 14 A. Correct, because at the time this happened, I was having
 15 Mr Kabera -- I apologise -- at the time all this has
 16 been happening, I was having Mr Chege as chief
 17 accountant and some of finance managers. So I was not
 18 involved into big deals in November or December 2010.
 19 Q. Or even the fact that an agreement would be signed that
 20 would relate to expenses and operation of mining
 21 activity; correct?
 22 A. That's what surprised me that I just saw. I saw this
 23 agreement in the process of this dispute, it has never
 24 came to my attention that there was a cooperation
 25 agreement.

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17:11 1 Q. But you do agree that Mr Ehlers didn't feel you were the
 2 type of employee that would need to know information
 3 like that given your responsibilities; right?
 4 A. That will be Mr Ehlers to appreciate to whom he would
 5 share the information, but I know that at the time this
 6 happened I was still, let's say, not really a big -- a
 7 senior staff, like I would say.
 8 Q. If I could ask that the supplemental witness statement
 9 be brought up and paragraph 20 be focused on. Could
 10 paragraph 20 be brought up so he could read it?
 11 Can you see?
 12 A. I'm seeing it.
 13 Q. I'm sorry, is this the supplemental witness statement?
 14 A. Yes, sir.
 15 Q. I apologise, I'm sorry, it says page 20, and there isn't
 16 one, so I ... again, this is my fault and I will find it
 17 shortly.
 18 Do you recall providing in your supplemental witness
 19 statement an explanation of a dispute with Mr Quam?
 20 A. I did a supplemental witness statement, yes.
 21 MR BRODSKY: Is this the section you're looking for,
 22 paragraph 24?
 23 MR COWLEY: Yes, I'm very grateful for that help.
 24 I apologise, again, for delaying others. If you could
 25 bring it up again so that he could see it better. Do

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17:14 1 you now recall the specifics that you provided regarding
 2 a dispute with Mr Quam?
 3 A. Yes, I recall.
 4 Q. And because of this dispute, because the two of you
 5 became angry with each other about the things you
 6 raise --
 7 A. Yes.
 8 Q. -- you disliked him; correct?
 9 A. At the end of the -- at the end of the day, when he was
 10 fired we were, let me say, not the best friends, to just
 11 put it gentle.
 12 Q. Well, you didn't put it gentle to Mr Quam, did you? Can
 13 I ask that C-183 be brought up?
 14 A. Sorry?
 15 Q. They're bringing up another document, sir.
 16 In October 2011 when Mr Quam was let go by the
 17 company, you were anything but gentle to Mr Quam;
 18 correct? Those are your messages to his phone that are
 19 at the bottom of the email; correct?
 20 A. Correct.
 21 Q. It's accurate to call that taunting, at the very least,
 22 to Mr Quam, isn't it?
 23 A. Can you rephrase the question?
 24 Q. Because Mr Quam did things like treat you poorly as
 25 a result of your calling him out on certain expenses,

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17:18 1 Mr Sindayigaya.
 2 A. Yes, sir.
 3 MR COWLEY: Thank you.
 4 Re-direct examination by MR HILL
 5 MR HILL: Mr Sindayigaya, you were asked some questions at
 6 the beginning of the cross-examination about emails
 7 relating to your position as senior accountant.
 8 A. Yes, sir.
 9 Q. Can you be shown bundle R-236. This is an email from
 10 you in May 2011 to Mr Marshall, amongst others, and can
 11 we look at how you sign yourself on that email; do you
 12 see how you've signed yourself?
 13 A. Yes, that's always my style of -- even today that's how
 14 I'm signing my emails, professional emails, related
 15 emails.
 16 Q. And do you see the title that you refer to there of
 17 "Senior Accountant NRD Rwanda"; do you see that?
 18 A. I'm seeing it.
 19 Q. Did Mr Marshall ever suggest to you at any time, for
 20 instance when you sent this email, that you shouldn't be
 21 giving yourself that title and it wasn't your title?
 22 MR COWLEY: I do object to the leading.
 23 A. Not at all.
 24 MR HILL: Thank you, Mr Sindayigaya. No further questions.
 25 A. Thank you, Mr Hill.

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17:16 1 because of how he talked to you in the email we looked
 2 at at the beginning, you were very happy to get him back
 3 as much as you could when you found out he was let go;
 4 isn't that true?
 5 A. Yes, at some extent I was happy that he was out of the
 6 company before me.
 7 Q. But more than being quietly happy about it, it was your
 8 nature to rub it in his face as much as you could so
 9 that the sting of the event was really felt. That's
 10 what you wanted to do; right?
 11 A. No.
 12 Q. Isn't that exactly what you're doing in these witness
 13 statements with your reference to, in every way
 14 possible, calling Mr Marshall and Ms Zuzana liars and
 15 wrong about everything, you are trying as hard as
 16 possible to get back at them for letting you go, for
 17 terminating you; isn't that really what all these
 18 statements are about in your witness statements?
 19 A. No. This time I'm trying to give as much as truth about
 20 what happened under my tenure in NRD, and I feel that
 21 this should not be a reference because those messages
 22 were made by -- 10 years ago. I have more experience,
 23 I have more, I would say, more wisdom than that time.
 24 MR COWLEY: Thank you, Mr Quam, no further questions.
 25 I'm sorry, I said Mr Quam. I apologise for that,

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17:20 1 THE PRESIDENT: Thank you very much for your assistance.
 2 You're free to leave.
 3 A. Thank you, Mr President.
 4 MR HILL: Mr President, we now have Mr Ehlers.
 5 THE PRESIDENT: Yes.
 6 MR WATKINS: Mr President and Mr Hill, Mr Ehlers was tested
 7 at the last break and was in the waiting room but has
 8 just dropped off the meeting. We've reached out to him.
 9 It just happened a few minutes ago, and our system is
 10 offline. I know he has very weak internet, so we just
 11 emailed him in an attempt to figure out why he dropped
 12 off, but that just happened. He was in the waiting room
 13 as of about a couple of minutes ago. I've not heard
 14 back.
 15 THE PRESIDENT: Have we any other witnesses immediately
 16 available?
 17 MR HILL: No, I am afraid not, Mr President. Mr Ehlers is
 18 the only other witness for today.
 19 THE PRESIDENT: I see.
 20 MR HILL: Oh, I may be wrong about that. I'm wrong about
 21 that. We have Mr Kagubare. Shall I find out if he is
 22 ready and then I will tell you whether he can be
 23 interposed.
 24 THE PRESIDENT: Yes, and there's also Mr Nsengiyuma, both
 25 have got very similar first names.

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17:21 1 MR HILL: I'll find out.
 2 MR WATKINS: And they are using the same kit that
 3 Mr Sindayigaya was using, so they just need to be in the
 4 room and we can just bring them in.
 5 MR HILL: Mr President, may I just drop off the screen for
 6 a moment, then I will try and find out what's going on
 7 and whether someone else can be interposed?
 8 THE PRESIDENT: Yes, certainly.
 9 MR BRODSKY: James, I sent a wake-up message to the computer
 10 through Splashtop but I don't know if -- he had it
 11 plugged in earlier so I don't think it's a power issue.
 12 (Pause).
 13 MR HILL: Mr President, I understand that Mr Kagubare is
 14 available and can be put up if that helps, only
 15 obviously if Mr Cowley is prepared for that.
 16 MR COWLEY: We're prepared, but I'm going to be going dark
 17 and Mr Harrison will come up.
 18 MR WATKINS: Shall I bring in the witness? I can see he's
 19 available.
 20 THE PRESIDENT: Yes, please.
 21 MR WATKINS: Alright, I will go off camera, Mr President.
 22 MR JOHN BOSCO KAGUBARE (called)
 23 THE PRESIDENT: Good evening, Mr Kagubare, can you hear me?
 24 I see you nod. If you look at your screen, you will see
 25 a witness declaration, and I would be grateful if you

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17:26 1 A. He is muted, I can't hear him.
 2 MR HARRISON: Thank you, I apologise.
 3 You confirmed to Mr Hill, you said you were
 4 a Director of Operations and Production; is that right?
 5 A. That's right.
 6 Q. And you also manage security for the mines according to
 7 your witness statement; is that right?
 8 A. That was one of the activities under operations.
 9 Q. Okay.
 10 A. Yes.
 11 Q. Okay. And I want to back up a minute. What is the
 12 Virunga Group of Companies?
 13 A. Virunga Group of Companies was my company, a
 14 construction company.
 15 Q. What type of construction does the company do?
 16 A. Normal construction. I'm a civil engineer by
 17 profession.
 18 Q. Is it, you know, residential buildings, houses,
 19 commercial structures?
 20 A. Everything. Buildings, roads, bridges, everything, you
 21 name it.
 22 Q. And did you do any work for mining companies on behalf
 23 of Virunga, building roads or bridges?
 24 A. No, I didn't.
 25 Q. Before joining NRD, did you have any mining experience?

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17:24 1 could read that. Could you raise your hand if you can
 2 hear me, Mr Kagubare? Yes, I think you are muted
 3 because we can't hear you.
 4 MR WATKINS: It may be a physical button on the microphone.
 5 THE WITNESS: Sorry, can I read it again?
 6 THE PRESIDENT: Yes, please read it again.
 7 THE WITNESS: I solemnly declare upon my honour and
 8 conscience that I shall speak the truth, the whole truth
 9 and nothing but the truth.
 10 THE PRESIDENT: Thank you very much.
 11 THE WITNESS: You're welcome.
 12 Direct examination by MR HILL
 13 MR HILL: Mr Kagubare, I understand you were the former
 14 Director of Operations and Productions at Natural
 15 Resources Development, or NRD; is that right?
 16 A. That's right.
 17 Q. And as I understand from your witness statement, you
 18 started work there from the second half of 2013?
 19 A. I believe so. I can't remember the exact date, but it's
 20 around that time.
 21 MR HILL: Thank you. Now, if you wait there, Mr Harrison,
 22 who acts on behalf of the Claimants, is going to ask you
 23 some questions.
 24 A. Okay.
 25 Cross-examination by MR HARRISON

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17:27 1 A. Before?
 2 Q. Before.
 3 A. No.
 4 Q. When you joined NRD that was the first time that you
 5 were working on behalf of a mining company; is that
 6 correct?
 7 A. That's right.
 8 Q. And according to your witness statement, and we don't
 9 need to bring it up right now, you have been the
 10 managing director of Virunga since it began in 2011; is
 11 that correct?
 12 A. That's right.
 13 Q. So you were the managing director of Virunga the entire
 14 time that you also worked for NRD; is that right?
 15 A. By the time I started working with NRD, it had stopped
 16 operations because of lack of contracts.
 17 Q. Okay. So when did -- just to be precise, when did
 18 Virunga stop operating?
 19 A. I wouldn't say it stopped operating, but in the way the
 20 market works here, if there are no contracts, you can't
 21 operate. I can spend a year without a contract, but if
 22 there's a contract, I would get involved and go do the
 23 tenders, do the bidding, until I get something to do.
 24 Even up to now it's still there, but it's inoperational.
 25 Q. And you've kept it operating with the hope of getting

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17:29 1 a new contract; right?
 2 A. Yes.
 3 Q. When was the last time you had a contract for Virunga?
 4 A. Around, I think, 2018. 2017/2018.
 5 Q. And before that, before 2017/2018 did you have any
 6 contracts -- let me rephrase that -- did you have any
 7 contact between 2013 and 2017 or 2018?
 8 A. I believe I did.
 9 Q. Approximately how many per year?
 10 A. About two.
 11 Q. And I know you told Mr Hill you don't recall the exact
 12 date of when you joined NRD, but do you recall the
 13 month?
 14 A. I believe it was in the second half of 2013.
 15 Q. So we're saying some time -- you would agree with me
 16 maybe that's August or later in 2013; is that fair?
 17 A. I don't remember. I wouldn't say -- I wouldn't be
 18 specific on the month, but I believe it must have been
 19 after July, I guess.
 20 Q. And you currently work for the Directorate of Military
 21 Intelligence, which I'll abbreviate DMI?
 22 A. No.
 23 Q. Have you ever worked for DMI?
 24 A. Yes.
 25 Q. And when did you work for DMI?

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17:33 1 Q. FTI, could you actually make it smaller again and maybe
 2 just blow it up but not quite as much, and then
 3 Mr Kagubare, I'll ask you a few questions. I want to
 4 make sure we can both read it well.
 5 So you can see at the top it's an email from
 6 marshall[attorney]@yahoo.com. As you understand it,
 7 that's Mr Roderick Marshall; right?
 8 A. Yes.
 9 Q. And then the "to" field is John Kagubare, that's
 10 kagubare@gmail.com?
 11 A. That's right.
 12 Q. Let's just down for a second, it is forwarding an email,
 13 in the below email, do you recognise any of those names,
 14 there's Sauer Jiri and Martin -- I truthfully cannot
 15 read that on the screen?
 16 A. Yes, I do. I recognise the names.
 17 Q. Okay, that's helpful, thank you. Who were those people?
 18 A. These were people who were introduced to me by Rod who
 19 were, I think, Czech and Slovak, that were looking for
 20 a market to sell their trucks and repair of helicopters
 21 in the African countries.
 22 Q. And do you have an understanding as to why Mr Marshall
 23 was introducing them to you?
 24 A. Yes, because he knew I was in the army and some of my
 25 colleagues I was with in the army were still in the

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17:30 1 A. From -- it depends, I worked for the DMI in Uganda in
 2 1986 to 1990, and in Rwanda I didn't. I worked briefly
 3 with the National Security Service in 2000-2004.
 4 Q. Did you have any role with the National Security Service
 5 in 2013?
 6 A. No.
 7 Q. And just so I understand, I want to make sure that
 8 I'm asking the right question, is there a Directorate of
 9 Military Intelligence in Rwanda, or is that the National
 10 Security Service?
 11 A. The National Security Service is -- it has several
 12 bodies under it. That is immigration, internal security
 13 and external security. Military intelligence is not one
 14 of them.
 15 Q. And do you have an understanding that when you were
 16 working for NRD you were helping liaise between NRD and
 17 the military?
 18 A. I was doing what?
 19 Q. That you were acting as a liaison between NRD and the
 20 military?
 21 A. No, I wasn't.
 22 Q. Could FTI bring up C-136. Well, I'll ask you,
 23 Mr Kagubare. Can you read that? It's a little fuzzy,
 24 the email.
 25 A. It's a bit fuzzy, but what is it about?

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17:34 1 army, and he thought I could contact them to see if they
 2 are interested.
 3 Q. And so he forwarded this email to you on December 24th,
 4 2014; correct?
 5 A. I can read it, that's the date, yes.
 6 Q. Okay, your understanding is that he was forwarding this
 7 email in order that you would provide that information
 8 to some of your contacts that remained in the army;
 9 correct?
 10 A. What is in the message? He just said that he's trying
 11 to get in touch with me. Excuse me.
 12 Q. So if you look down at the body of the email below that
 13 he's forwarded:
 14 "Enclosed you will find ..."
 15 And there's a link; do you see that?
 16 A. A link?
 17 Q. "Enclosed you will find ..."
 18 And then it says https, and there's a URL link,
 19 app.box.com?
 20 A. Yes, I see it.
 21 Q. And it says:
 22 "This is manual and also description of drawings
 23 what they have on vehicles..."
 24 Below. You see that?
 25 A. Yes, I can see it.

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17:35 1 Q. Okay. And do you have an understanding of what the
 2 subject line "RM-70" means, or it is a reference to?
 3 A. Yes, it is a truck that carries artillery. It is one of
 4 the Tatra trucks that were used, they were marketing,
 5 that carry these long-range missiles.
 6 Q. And so understanding what the context of this email is,
 7 when you received it you understood that Mr Marshall was
 8 sending it to you with the intention that you would pass
 9 it along to your contacts in the army, correct?
 10 A. He was trying to get to markets, as a liaison, he was
 11 a businessman, he wanted to get money from all corners,
 12 so that's one of these channels where he thought he
 13 could introduce these products into the country.
 14 Q. And you were helping him to do that, right?
 15 A. Yes.
 16 Q. We can take that down, FTI, thanks.
 17 Your witness statement says that you were approached
 18 by a friend to ask whether you were interested in
 19 working for NRD. Who is the friend you're referring to?
 20 A. A businessman here in Kigali who is the -- who knew them
 21 before I knew them. It was a businessman in Kigali by
 22 the names of Charles.
 23 Q. Charles?
 24 A. Yes.
 25 Q. Does Charles have a last name?

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17:39 1 Q. And we covered this just briefly before, but one of your
 2 jobs was to manage security at the mines; correct?
 3 A. That's not correct. I was a director, and those who
 4 manned the security were my responsibility. Security
 5 was one of the activities under the operations
 6 department.
 7 Q. So you were in charge of everybody who was providing
 8 security at NRD's mines; correct? Is that your
 9 understanding of your role?
 10 A. They were under -- they were my responsibility, yes.
 11 Q. And so you wanted to ensure that when you joined NRD,
 12 that there wasn't illegal mining; right?
 13 A. Not necessarily illegal mining, but theft of minerals.
 14 That's why we deployed the security personnel on the
 15 entrances of the tunnels and on the stores so that no
 16 minerals were stolen.
 17 Q. Can we pull up paragraph 14 of Mr Kagubare's witness
 18 statement.
 19 So some time starting in the second half of 2013 you
 20 joined and you state:
 21 "I hired a security team of over 200 personnel to
 22 patrol the mines and to put an end to the illegal
 23 miners."
 24 A. Yes.
 25 Q. So you agree that you were trying to help stop illegal

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17:37 1 A. Ngarambe.
 2 Q. And --
 3 A. Do you want me to spell it for you?
 4 Q. That would be great?
 5 A. N-G-A-R-A-M-B-E.
 6 Q. You may not believe me, but I spelled it right in my
 7 notes.
 8 And what was Mr Ngarambe's relationship to NRD that
 9 he was making this introduction?
 10 A. I didn't know. He told me he had friends, an American
 11 who was in the mining business, but he was failing, he
 12 had failed to operate his mining contracts in Rwanda and
 13 he was pulling out. But then he said: John, can you
 14 help? I said: what do they need help with? So he said:
 15 let's go and meet them, so we went and met them and they
 16 told me what they wanted from me.
 17 Q. What line of business is Mr Ngarambe in?
 18 A. He's in the transport business.
 19 Q. Transport?
 20 A. Did you say transport?
 21 Q. And is that, you know, commercial trucking, or what does
 22 that mean?
 23 A. Buses.
 24 Q. Buses. Okay.
 25 A. Town service and buses.

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17:41 1 mining at NRD's mines; right?
 2 A. Yes.
 3 Q. And separately, and in addition to that, you wanted to
 4 stop the theft of minerals from NRD's mines?
 5 A. No, the people -- the way mining, these artisan miners
 6 work, they are the same people who mine the minerals
 7 during the day, they are the ones who come -- and before
 8 security was there, the same people would come in in the
 9 evening, after everybody's gone, they either take the
 10 minerals that they left behind, or there are some
 11 minerals that they didn't want to let the management
 12 know, they mine at night, the same people. Because they
 13 would be the one who spent there the whole day, then
 14 they would know which spots to go to during the night.
 15 So there were our miners during the day and they
 16 were doing what was not with our consent in the night or
 17 in the evening. So I termed that as illegal mining
 18 because we had not authorised them to do that.
 19 Q. And you wanted to ensure that the minerals mined on
 20 NRD's concessions were properly tagged --
 21 A. They (overspeaking) --
 22 Q. I'm sorry, I spoke over you.
 23 A. Before they are tagged, they come from the mines, then
 24 the security escorts them to our stores, and then we
 25 wait. Once we've accumulated enough to transport to

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17:42 1 Kigali to the buyers, that's when we go and get the tags
 2 to tag them. So they are not tagged every day they come
 3 from the mines, they are tagged like once a week, when
 4 they are ready for transport.
 5 Q. And in that interim period as they're ready for
 6 transport, they're stored at NRD's facility; right?
 7 A. Yes.
 8 Q. And part of your goal in stopping the illegal mining or
 9 the theft is to ensure that NRD is credited with those
 10 minerals and they're tagged appropriately as NRD's;
 11 correct?
 12 A. Say that again.
 13 Q. Part of your goal in ensuring that there's no theft and
 14 no illegal mining is to have these minerals tagged
 15 properly as NRD's; correct?
 16 A. No, no, that's not the tagging. The tagging was --
 17 there's a system of traceability by the government to be
 18 able to track the amount and type of minerals from
 19 particular mines to their destination. It was not to do
 20 with the tagging -- stopping theft. That's a totally
 21 different thing altogether.
 22 Q. Well, you would agree that if a miner is stealing
 23 a mineral that was mined on NRD's concession, it's not
 24 going to be tagged as NRD's, because that miner wants to
 25 make a private sale of those minerals, right?

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17:44 1 A. When the miners steal the minerals from the mines, they
 2 don't come to us, they just disappear halfway in the
 3 bushes, so we have no idea how much is going unless
 4 we've caught somebody, and we find them with a kilo or
 5 2 kilos, that we know that was theft. So there's no way
 6 we could control the thieves unless -- that's how
 7 I developed an idea of putting up a security system for
 8 waiting -- at the entrance of the mines, waiting at the
 9 vents, which were like escape routes from the mines, and
 10 also escorting the minerals from the mines to the
 11 stores, but in that whole process there's no tagging
 12 involved.
 13 Q. And I guess -- I do believe we're actually saying the
 14 same thing here, but just if these minerals are stolen
 15 then there's no chance they're going to be stored and
 16 subsequently tagged as NRD's, correct?
 17 A. When they are stolen you wouldn't know even they exist.
 18 Q. And sticking with the paragraph that's highlighted on
 19 the screen, or blown up on the screen, you acknowledge
 20 that you -- the team that you put in place was
 21 successful in stopping most of the stealing by artisanal
 22 miners; correct?
 23 A. Not 100%, but they did to a very big extent.
 24 Q. And you also say here that sales increased as a result
 25 of the efforts that you took to curb illegal mining?

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17:45 1 A. That's right.
 2 Q. And did you at the time have an understanding that this
 3 was something that the Government of Rwanda had
 4 requested NRD to do to try and curb the illegal mining
 5 that was allegedly going on at NRD's concessions?
 6 A. By the time I joined them, because they were
 7 personally -- when I sat with them on a table to discuss
 8 their problems, they mentioned that they lost track of
 9 everything, they've got cases in court, they have got
 10 minerals that are disappearing, I decided to -- I told
 11 them I'm going to see, I'm going to investigate why they
 12 are not getting minerals. And during my investigation,
 13 I realised the miners were taking advantage of the weak
 14 management system and the security system. In fact,
 15 there was no security, they weren't monitoring who mines
 16 what and who delivers what, and that's why all the
 17 minerals were missing.
 18 So me, my suggestion was, the only way we can
 19 curtail this is to employ security personnel, and that's
 20 the way we could only know that the minerals mined have
 21 got to their destination.
 22 So by my understanding, it was an idea I brought to
 23 them, not that the government had instructed them, they
 24 never told me what the government had instructed them to
 25 do.

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17:47 1 Q. And because of the impact that the security that you put
 2 in place had, NRD was able to make more money from the
 3 sale of minerals; correct?
 4 A. Yes, they did.
 5 Q. And so this was the second half of 2013 and going
 6 through into 2014; correct?
 7 A. That's correct.
 8 Q. And could FTI bring up R-203.
 9 I do see on the schedule that we're supposed to --
 10 I think we're supposed to take a break in two minutes.
 11 I was going to change topics, if that's amenable?
 12 THE PRESIDENT: Yes, we'll take a 10-minute break and
 13 counsel ought to decide whether they can stand down one
 14 of the two witnesses who have not yet been reached.
 15 It's not realistic, is it, to think we're going to
 16 manage to deal with both of them?
 17 MR HARRISON: I will confer with Mr Cowley but I do think
 18 that both of Mr Ehlers -- well, Mr Nsengiyuma is
 19 scheduled to go today and starting again Monday, and we
 20 certainly do want to cross-examine Mr Ehlers.
 21 THE PRESIDENT: Alright, well then Mr Nsengiyuma ought to be
 22 told he can go home; isn't that right?
 23 MR HARRISON: Okay, that's fine.
 24 THE PRESIDENT: Very well, a 10-minute break.
 25 (5.49 pm)

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17:50 1 (A short break)
 2 (6.06 pm)
 3 THE PRESIDENT: Yes, please bring him in.
 4 Please continue.
 5 MR HARRISON: Mr Kagubare, do you have a headphone in right
 6 now?
 7 A. Sorry, yes, I was on the phone while I was on my break.
 8 Q. Were you discussing your testimony on your break?
 9 A. I was talking to my wife.
 10 THE PRESIDENT: The answer is implicit!
 11 MR HARRISON: I don't need to follow up.
 12 FTI, could you bring up R-203. These are meeting
 13 minutes from September 16th, 2014; do you see that?
 14 A. Yes, I can see it.
 15 Q. And the attendees listed are you, Zuzana Mruskovicova,
 16 Peter Martin, and the Minister of State in Charge of
 17 Mining; do you see that?
 18 A. I can see it.
 19 Q. And the Minister of State in Charge of Mining is
 20 Mr Evode Imena; correct?
 21 A. I believe by then. He is no longer the Minister of
 22 State.
 23 Q. So do you recall the content of this meeting?
 24 A. Not really. Unless I read through it.
 25 Q. So I do -- I really just want to talk about what's in

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18:10 1 And do you recall that she was the bailiff that did
 2 an assessment at Nemba in, I believe, late August of
 3 2014?
 4 A. I don't believe I met that Jacquie, but the bailiff
 5 I only remember having any dealings was Bosco. I don't
 6 remember meeting this Jacquie.
 7 Q. And when you say "Bosco", who was Bosco?
 8 A. Bosco Nsengiyuma, he was a bailiff who was acting on
 9 behalf of Ben Benzinge, and they had come to claim that
 10 Ben Benzinge had shares in the company, and I told them
 11 as far as I'm concerned, I only know Rod Marshall as
 12 the chairman and owner of the company, I didn't know
 13 Ben Benzinge, and I challenged them and they left to go
 14 and bring proof and they never came back.
 15 Q. And Mr Kagubare, if I could just direct you to what's on
 16 the second page here, which the court bailiff,
 17 Ms Umurungi, identified as damage to the Nemba site
 18 after Mr Ben Benzinge's temporary possession. Is this
 19 consistent with what -- let me strike that.
 20 This is consistent with what you saw for damages at
 21 the site; right? (Pause).
 22 A. Yes, I've gone through it.
 23 Q. And that's consistent with the damages you saw when you
 24 visited the Nemba site; correct?
 25 A. I recall it's because this Gabriel Kayonga mentioned

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18:08 1 that first paragraph, and specifically the last
 2 sentence, where it says:
 3 "NRD also provided the Minister with NRD's bailiff's
 4 findings in Nemba showing the extent of damage caused by
 5 Benzinge."
 6 Do you see that sentence?
 7 A. "NRD also provided the Minister with NRD's bailiff's
 8 findings in Nemba showing the extent of damage
 9 caused ..."
 10 I can see that sentence, yes.
 11 Q. And you understand that to be a reference to -- let me
 12 restart that. You understand "Benzinge" to be
 13 a reference to Ben Benzinge?
 14 A. That's right.
 15 Q. And you understand that the damage referred to in Nemba,
 16 as a result of damage caused when Mr Ben Benzinge had
 17 temporary possession of the Nemba concession; correct?
 18 A. I believe I quashed their attempt to take possession of
 19 the mines; they never took possession of it.
 20 Q. So can we pull up C-075. This is a document titled
 21 "Report on a Natural Resources Development Rwanda Ltd
 22 ... at Nemba Mining Site", and if, FTI, you could go
 23 actually to the second page, where I think there's
 24 a signature:
 25 "Professional Courts Bailiff, Umurungi Jacquie."

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18:12 1 here, I'm the one who employed him, and mentioning him
 2 meaning that was during my time as the Director of
 3 Operations there, but I can't remember all the details
 4 of what was there because most of the things were not
 5 like an attack and they stole all the things: things
 6 were missing because of the theft that I told you about,
 7 so I cannot be specific that it happened on a particular
 8 event.
 9 Q. And this states that the bailiff interviewed, I believe,
 10 it looks like Gabriel Kayonga and Emmanuel Musabyimana,
 11 and I apologise to him for how I pronounced that. Those
 12 were people who were employed by you, is that right?
 13 You supervised them, correct?
 14 A. Gabriel Kayonga was a supervisor and Mr Musabyimana was
 15 a subcontractor.
 16 Q. And Mr Kayonga reported to you; correct?
 17 A. Yes, he did.
 18 Q. So you trust that what he told the court bailiff was
 19 true and accurate based on what he was saying at the
 20 site at Nemba; right?
 21 A. I believe so.
 22 Q. Could FTI pull up paragraph 20 of Mr Kagubare's witness
 23 statement. I'll just give you a moment to read that.
 24 Let me know when you have.
 25 A. Yes, I've read it.

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18:15 1 Q. So earlier in your witness statement you say that you
 2 were -- you had a salary of US\$2,000 a month; right?
 3 A. That's right.
 4 Q. And so in December 2015, Ms Mruskovicova gave you that
 5 last \$2,000 monthly payment; correct?
 6 A. I believe so.
 7 Q. And that was for work you were doing on behalf of NRD up
 8 through December 2015; correct?
 9 A. I don't remember. It was late 2015, might
 10 be November, December or October. I don't remember.
 11 Q. You agree with me though: she was paying you for work
 12 that you were doing on behalf of NRD through October
 13 or November or December 2015, whenever that last date
 14 was?
 15 A. That's right.
 16 Q. And these were security services and operational
 17 services that you were providing on behalf of NRD
 18 through this time period?
 19 A. Basically I almost did everything. For them, they just
 20 sat in Kigali and waited for minerals to come. Only at
 21 times when she would just come to the mines, and she
 22 would push her weight around and at times there were
 23 cases of theft she comes and sometimes the miners would
 24 not want to mine because they didn't get their money,
 25 then she would have to come up and give reasons why

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18:16 1 money is not coming up.
 2 But most of the time I was the one running the
 3 operations and production, so that payment was for my
 4 services, yes.
 5 Q. Just to clarify, part of your job was to help prevent
 6 the theft of minerals; correct?
 7 A. Part of my job, yes.
 8 MR HARRISON: I have no other questions, Mr Kagubare. Thank
 9 you.
 10 MR HILL: Mr President, would you just give me one minute
 11 just to have a discussion, and then I'll come back.
 12 THE PRESIDENT: Yes.
 13 MR HILL: I'm grateful. (Pause).
 14 Re-direct examination by MR HILL
 15 MR HILL: Mr Kagubare, you were asked some questions about
 16 what was said to be thefts of equipment at the Nemba
 17 site. Your understanding at the time, were there thefts
 18 and, if there were, who did you think was responsible
 19 for thefts?
 20 A. Now when -- by the list, when we're looking back at the
 21 list of the materials, during that time I was not in
 22 charge because I believe there are times when we would
 23 be stopped by the OGMR, which was the body governing the
 24 mining activities, the government body, and if for some
 25 reason, either environmental or dispute, so anything

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18:18 1 that when you stopped you pull out of the mines, and if
 2 I recall very well, those thefts that were mentioned
 3 there were not during my presence, and whatever was done
 4 was an assessment that was done when we were accepted to
 5 come back to the mines.
 6 Q. And are you able to help, then, do you know who might
 7 have been responsible, what type of people might have
 8 been responsible for them?
 9 A. The locals, the people who were -- because even if they
 10 stopped us, the locals who would benefit from the
 11 illegal mining, they would come overnight or during the
 12 day because there was no management, they would do
 13 whatever they did, they would take like those fence
 14 wires, they would do the mining, they would -- there is
 15 a big market here for scrap metal, they could have taken
 16 those rails for selling as scrap. I wouldn't know
 17 because by that time I would not be in charge and
 18 there would not even be civil security personnel.
 19 MR HILL: Thank you, Mr Kagubare. No further questions.
 20 THE PRESIDENT: Thank you very much for your assistance.
 21 You're now free to go home.
 22 THE WITNESS: Thank you so much.
 23 MR HILL: Mr President, I think we have both Mr Ehlers and
 24 Mr Nsengiyuma available. I think Mr Ehlers's connection
 25 is now working, in which case we'll have Mr Ehlers, but

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18:20 1 if it is not, we've got Mr Nsengiyuma.
 2 THE PRESIDENT: Very well, let's have Mr Ehlers, and we've
 3 got 40 minutes before we break.
 4 MR WATKINS: Please note that due to the internet
 5 connectivity with Mr Ehlers we have brought him in on
 6 an iPad, so it's obviously just a little bit different
 7 than a webcam, and he needs the iPad to contact to his
 8 hearing aid, so bear with the awkwardness of the
 9 position of the camera.
 10 Mr Ehlers, can you please unmute yourself?
 11 MR KAPLAN: In addition, I think we need to say that --
 12 THE WITNESS: Can you hear me?
 13 MR WATKINS: We can hear you, one moment.
 14 MR KAPLAN: In addition, because Mr Ehlers is connecting on
 15 his iPad only, there is no 360 modality for his
 16 testimony; is that correct?
 17 MR WATKINS: That is correct. The camera would have just
 18 taken too much bandwidth. He has such limited bandwidth
 19 that we just need that bandwidth to connect him on his
 20 iPad.
 21 THE PRESIDENT: Yes, never mind. Let's move on.
 22 MR ANTHONY EHLERS (called)
 23 THE PRESIDENT: Good evening, Mr Ehlers. Do you see on your
 24 screen --
 25 THE WITNESS: Good evening, I can see --

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18:21 1 THE PRESIDENT: You don't see on your screen yet.
 2 THE WITNESS: Yes.
 3 THE PRESIDENT: Is there a witness declaration that you can
 4 see?
 5 THE WITNESS: Yes.
 6 THE PRESIDENT: Would you be kind enough to read it, if you
 7 are prepared to make that declaration?
 8 THE WITNESS: It's very small that I see. It's --
 9 I solemnly declare upon my honour and conscience --
 10 THE PRESIDENT: If you listen, you can repeat after me:
 11 I solemnly declare upon my honour ... can you repeat
 12 this?
 13 THE WITNESS: I solemnly declare upon my honour.
 14 THE PRESIDENT: And conscience.
 15 THE WITNESS: And conscience.
 16 THE PRESIDENT: That I shall speak the truth, the whole
 17 truth and nothing but the truth.
 18 THE WITNESS: That I shall speak the truth, the whole truth
 19 and nothing but the truth.
 20 THE PRESIDENT: Thank you very much.
 21 Direct examination by MR HILL
 22 MR HILL: Mr Ehlers, you were -- just give me one moment.
 23 You've provided three witness statements, haven't you:
 24 a witness statement, a supplemental witness statement,
 25 and one that you provided which the Tribunal should have

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18:23 1 had today?
 2 A. Yes, those are my statements.
 3 THE PRESIDENT: Have we had one today?
 4 MR KAPLAN: Yes, there was a supplemental witness statement
 5 of Mr Ehlers that was emailed to the Tribunal during the
 6 first break today.
 7 THE PRESIDENT: Alright.
 8 MR HILL: Just to be clear, for the Tribunal, that's the one
 9 we were directed to provide dealing with the cooperation
 10 agreement.
 11 THE PRESIDENT: Oh, yes, yes, no, I've have seen that.
 12 Thank you, yes.
 13 MR HILL: Mr Ehlers, you were the former managing director
 14 of NRD, or Natural Resources Development Rwandan
 15 Limited, weren't you?
 16 A. Yes, that's correct.
 17 MR HILL: Now, if you wait there, Mr Cowley, who acts for
 18 the Claimant, is going to ask you some questions.
 19 A. Sure.
 20 Cross-examination by MR COWLEY
 21 MR COWLEY: Good afternoon, Mr Ehlers.
 22 A. Good afternoon.
 23 Q. I would like to pick right up with the question to
 24 confirm, you began in the position of managing director
 25 in June of 2010, working for Starck, or working for --

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18:24 1 A. That's correct.
 2 Q. I'll say it a little bit differently because I meant to
 3 be more coherent, sorry.
 4 You were hired into the position of managing
 5 director of NRD by Starck; correct?
 6 A. That's correct.
 7 Q. And there was a period of time where Starck's subsidiary
 8 was owned by Starck, the parent, and you were the
 9 managing director on the ground, passed the sale of the
 10 subsidiary that owned NRD shares to Spalena; correct?
 11 A. Correct. Not very long after that, very early in the
 12 new year, I went for an eye op and Mr Marshall
 13 terminated my services --
 14 Q. While you were --
 15 A. -- when I came back to Rwanda.
 16 Q. While you were the managing director under Starck's
 17 ultimate ownership, there was no one from the Starck
 18 organisation on the ground in Rwanda supervising your
 19 efforts; correct?
 20 A. No, there was not.
 21 Q. When --
 22 A. Did you hear that? You heard my reply?
 23 Q. I did, and if I pause -- I apologise, I'll probably
 24 pause for other reasons, but I'm pausing right now
 25 because you're freezing and I can't tell if you could

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18:26 1 hear me. I'm sorry if I sound like I'm stuttering but
 2 your picture is -- I'm doing the best I can.
 3 A. No, no, no, I've just got a very bad connection.
 4 Q. When Spalena acquired the parent company of NRD,
 5 Mr Marshall came to Kigali and was on the ground as CEO
 6 above you at the company for that limited period of
 7 time; correct?
 8 A. My services were terminated as soon as I returned to
 9 Rwanda, so I never really reported to Mr Marshall.
 10 Q. So you're suggesting after the Christmas break at the
 11 end of 2010, you didn't come back to Rwanda until March
 12 or later, when you were terminated?
 13 A. I can't remember the exact dates, but I know I went for
 14 an eye operation. I went to South Africa for an eye
 15 operation. I had a cataract in my one eye and that was
 16 removed.
 17 Q. So, as you understand it today, do you agree that from
 18 the point where Spalena acquired the parent company of
 19 NRD, you and Mr Marshall spent virtually no time in the
 20 office together because you were away for an eye
 21 operation and when you came back you were immediately
 22 terminated?
 23 A. Yes. That is as I remember it. In the period that
 24 I was in South Africa, we might have spoken by telephone
 25 or emails, I can't remember all the details, but we did

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18:28 1 have communication.
 2 Q. And Mr Marshall instructed you before you returned and
 3 were informed of your termination, that you should not
 4 be returning to the country in order to work --
 5 A. Correct.
 6 Q. Let me just finish the whole question --
 7 A. Correct.
 8 Q. You should not be returning to the country in order to
 9 continue working for NRD; correct?
 10 A. Correct.
 11 Q. Nevertheless, you came back to Rwanda; correct?
 12 A. Correct.
 13 Q. And that's when you were informed of your termination;
 14 correct?
 15 A. Correct.
 16 Q. Can I ask that C-173 be brought up. Now, I'm going to
 17 ask you preliminarily, Mr Ehlers, I want to get
 18 an understanding of, given the device you're on, what is
 19 it that you can see in terms of a document that's been
 20 brought up?
 21 A. I can see the "Natural Resources Development" right down
 22 to "This resolution being adopted by unanimous
 23 written ..."
 24 Q. Thank you. Very descriptive. Can you see it in large
 25 enough print to actually read it?

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18:31 1 answer he was giving rather than being cut off.
 2 A. Sorry, I didn't hear that. Is that a question for me?
 3 THE PRESIDENT: Mr Ehlers, if you wish to add something,
 4 please do so.
 5 A. Oh, what I wanted to say, this letter was brought to me
 6 and Mr Quam told me to sign it because there were still
 7 monies owing to me, and I signed it. He said nothing
 8 can proceed if I don't sign it, so I signed it in the
 9 hope of getting my severance package.
 10 MR COWLEY: Now, you say that you had a position at the time
 11 that the company owed you a specific amount of money for
 12 services already; correct?
 13 A. Yes.
 14 Q. And you say that in your witness statement; correct?
 15 A. Yes.
 16 Q. And now you just described being told that if you sign
 17 it, you'll get severance, an amount for leaving --
 18 A. Well, maybe I'm not using the right terminology. If
 19 I sign it, I will get the money that was owing to me.
 20 Q. Now, you'll agree, sir, that of all the documents
 21 attached to and referenced in your three witness
 22 statements, you don't attach any document in which
 23 a statement that the company owes you money for services
 24 already provided as of March 5th, 2011, has been
 25 provided to this Tribunal; correct?

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18:29 1 A. Yes.
 2 Q. Okay. Are you familiar with that document, and I could
 3 ask FTI --
 4 A. Yes. Yes. Yes, I have read it before.
 5 Q. And if you scroll it down. Scroll it down a little bit
 6 further, please, I'm sorry. Is that your signature at
 7 the very bottom, handwritten signature?
 8 A. Yes, on 5th March, that is my signature.
 9 Q. And you understood when you were signing it that you
 10 were acknowledging being provided notice on that date
 11 that you were terminated as managing director of NRD;
 12 correct?
 13 A. That's correct.
 14 Q. Now --
 15 A. If I --
 16 Q. If I may ask questions, I'm sure if there is -- is there
 17 something that you need to follow up on in order to
 18 address whether or not that's your signature on that
 19 day?
 20 A. No, that is my signature. It was brought to me by
 21 Mr Quam --
 22 Q. Thank you. I just wanted to make sure you didn't have
 23 anything else to say in answer to my last question.
 24 I'll continue, please.
 25 MR HILL: I wonder if the witness could just finish the

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18:33 1 A. I can't remember exactly what I put in there, but ...
 2 I think in my statement I did say that there was monies
 3 owing to me. I can't remember exactly.
 4 Q. I asked a poor question if you thought that I meant you
 5 didn't say it in a statement. Let me ask it
 6 differently.
 7 Do you recall when you signed various witness
 8 statements that there were exhibits, other documents,
 9 documents from the company or somewhere else, that you
 10 reference in your statement, but they were otherwise
 11 existing documents?
 12 A. Oh yes --
 13 Q. Yes.
 14 A. -- (overspeaking) as I recall.
 15 Q. And you'll agree that while your witness statement says
 16 that you signed this thinking that it's because they had
 17 to pay you money and that's why you signed it, that you
 18 did not actually provide a copy of any documentation
 19 between you and the company or you and anyone else in
 20 which a claim as of March 2011 had been documented that
 21 money was owed to you; correct?
 22 A. That's right.
 23 Q. And nevertheless, when you signed that statement
 24 acknowledging termination -- well, let me do something
 25 different, I apologise, I'll withdraw that question as

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18:34 1 I started it, I'll return to it in a moment.
 2 But if we could scroll back up, can we confirm that
 3 you read the statement that is there before signing?
 4 A. Yes.
 5 Q. And you'll agree that when you read it, you recognised
 6 that the statement itself doesn't say: and the company
 7 acknowledges that it owes you money currently and will
 8 pay it; correct?
 9 A. That's correct.
 10 Q. As of March 4th, the day before you signed this, you
 11 believed you were -- excuse me, that was poorly worded,
 12 let me start over.
 13 As of March 4th, 2011, you were the managing
 14 director of NRD; correct?
 15 A. Yes.
 16 Q. And you understood and believed that, despite the sale
 17 of the parent company from Spalena to -- excuse me --
 18 you understood and believed that despite the sale of the
 19 parent company from Starck to Spalena, your position
 20 didn't change on the day of the sale, you remained in
 21 the same position with the same responsibilities;
 22 correct?
 23 A. Correct.
 24 Q. And you understood as part of your position throughout
 25 as managing director, you had a company-owned laptop;

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18:37 1 you were keeping it for a period of time; correct?
 2 A. Yes, what did you -- I didn't hear that last sentence?
 3 Q. Certainly, I'll ask it again. You understood,
 4 after March 5th, 2011, having signed this document, that
 5 you were going to hold that laptop with all the
 6 confidential information and company information it may
 7 have had on it as of that day, you were going to hold
 8 that for some period of time; correct?
 9 A. That's correct.
 10 Q. And what you say in your witness statement is, you were
 11 going to hold it until the company made good on paying
 12 you an amount you said was owed; correct?
 13 A. No, I didn't specify an amount, but I was waiting for
 14 my ...
 15 Q. I'm sorry, you did freeze there. I don't know if I'm
 16 the only one who didn't hear your answer but I assume
 17 everybody didn't, so I'm going to ask you to repeat that
 18 last answer.
 19 A. Please, just do the question again?
 20 Q. Okay. When you maintained the laptop, when you
 21 continued to hold it, you thought you were going to hold
 22 it for a period of time to see if you were paid some
 23 money by the company that you thought you were
 24 expecting; correct?
 25 A. That's correct.

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18:36 1 correct?
 2 A. Just please repeat that. You broke up.
 3 Q. The entire time you served as managing director for NRD
 4 you had a company-owned laptop; correct?
 5 A. That's correct.
 6 Q. And you used that to do company business as managing
 7 director; correct?
 8 A. That's correct.
 9 Q. And I don't want to be pedantic and ask in any detail,
 10 but can we agree that as managing director you had the
 11 ultimate responsibility for the day-to-day operations
 12 below chairman, below the highest authority for the
 13 company, you had all the other responsibilities and
 14 everybody else in the company ultimately reported to you
 15 first; correct?
 16 A. That's correct.
 17 Q. And as a result of that, a lot of confidential company
 18 information, employee information, other things that you
 19 would have to come across to carry out those
 20 responsibilities, you had access to on your laptop,
 21 correct?
 22 A. That's right.
 23 Q. And so you knew when you were retaining, holding onto
 24 the laptop after March 5th, 2011, you had a lot of very
 25 confidential important internal company information and

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18:39 1 Q. But will you agree with me, sir, that at no point did
 2 you ever document, before or after that day: here is the
 3 money I am owed, so it has to be paid before you get the
 4 company laptop back?
 5 A. That's right, I didn't submit any documentation,
 6 I merely told Mr Quam: I will return your computers and
 7 stuff once I've been paid.
 8 Q. And you didn't specify a figure?
 9 A. I didn't specify an amount, but I was on a -- I was on
 10 a contract, so if it was so much per month, or so much
 11 per week, or per day, I had never submitted an invoice
 12 to NRD.
 13 Q. And you'll agree that, because you were holding onto the
 14 company records, including access to whatever payroll or
 15 employee information was on your laptop as the managing
 16 director, you'll agree that documentation that you had
 17 also didn't include some line items somewhere that
 18 specified an amount owed to you?
 19 A. No. No, I didn't. I can't remember exactly, but I do
 20 not think there was payroll information on the computer.
 21 That was kept by the accounts department.
 22 Q. Okay, if I could draw your attention back to the body of
 23 the text that starts "Whereas", it purports to state
 24 that the company is taking some action as a result of
 25 this document, and it stated --

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18:41 1 A. Can you just excuse me, please, for a minute. Just --
 2 my little dog has entered the room. Let me get him out
 3 of here, okay? Please.
 4 THE PRESIDENT: Yes, you're not allowed to have dogs in the
 5 room!
 6 A. Thank you, I'm back. Can you see me?
 7 THE PRESIDENT: Yes, sir.
 8 A. We were talking about that paragraph "Whereas".
 9 MR COWLEY: Right, and you'll see the references there that
 10 in setting up why the company is taking the specific
 11 action identified below, it's because, according to the
 12 company, your return could cause great harm to the
 13 company and otherwise acted in breach of trust; do you
 14 see that?
 15 A. I see that.
 16 Q. And we could all see that it doesn't specify: here's
 17 what we say he did, or can do that constitutes those
 18 characterisations, it doesn't say it there; correct?
 19 A. Yes.
 20 Q. But you knew at the time that this was delivered and you
 21 signed it, you knew what -- the reason why the company
 22 was saying it was taking this action, because it was
 23 reported to you; correct?
 24 A. Yes.
 25 Q. And Mr Marshall, and perhaps others, let you know that

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18:44 1 that those were very serious allegations and you
 2 understood them to be serious allegations against you.
 3 I'm not suggesting that that meant you said
 4 (overspeaking)?
 5 A. Oh, yes.
 6 Q. I'm sorry, I spoke over you and I did not mean to.
 7 A. Yes. I -- I didn't agree --
 8 Q. Mr Ehlers, I don't know if you are speaking but --
 9 A. Sorry, no, I didn't agree with the allegations but
 10 I knew that these were the allegations that --
 11 Q. You're frozen, so I'm hoping and waiting that ...
 12 A. Okay. Can you hear me now?
 13 Q. The problem is, I think we're only hearing parts of it.
 14 A. Can you hear me?
 15 THE PRESIDENT: We can hear you. Let's carry on. Your
 16 image is frozen but your voice is not.
 17 MR COWLEY: Hearing the allegations at that time made you
 18 very angry, didn't they?
 19 A. Please repeat that? You also broke up a bit.
 20 Q. Sorry. Hearing the allegations that were being made as
 21 the reasons for this action made you angry; correct?
 22 A. Well, I -- they were rather unexpected. I wouldn't say
 23 I was angry, they were unexpected and out of the blue
 24 from Mr Marshall.
 25 Q. And it's your testimony that they didn't anger you?

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18:43 1 what was reported to you was based on what was
 2 characterised as an investigation by people on behalf of
 3 the company. They came up with certain information that
 4 they said in the company's position met these
 5 definitions and they communicated those to you but they
 6 didn't put them in writing; correct?
 7 A. Sorry, I'm not quite following what you're asking there.
 8 Q. The -- what was reported to you as the reasons was -- it
 9 was also explained to you that they were based on some
 10 people on behalf of the company doing what they
 11 considered to be an investigation. It looked into
 12 background facts and it had certain allegations;
 13 correct?
 14 A. Yes. Yes, that's correct.
 15 Q. And those allegations were communicated to you orally at
 16 least one time before you signed this; right?
 17 A. Yes.
 18 Q. And --
 19 A. But --
 20 Q. I don't want to dwell too much on specifically what it
 21 is, but I wanted the record to be clear that you knew
 22 what the company was talking about, even though this
 23 document doesn't say it. So thank you for doing that.
 24 Moving past that, I would like to focus on those
 25 allegations as you understood them. It's fair to say

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18:46 1 A. Oh yes, I was upset. Angry.
 2 Q. I'm going to put aside the allegations, at least for the
 3 time being, and let's say, regardless of who is right
 4 and who is wrong about those specific allegations, I'd
 5 like to focus on what we do know the company talked to
 6 you about and what was on the table, so to speak, in
 7 your limited time with the company before being
 8 terminated after Spalena bought it. So can we agree
 9 that among the responsibilities you held whilst serving
 10 in the role of managing director was to manage the other
 11 employees of the company?
 12 A. Correct.
 13 Q. And as a result of the role of having all the other
 14 groups, all the other operational departments and groups
 15 within the company all reporting ultimately to you,
 16 either directly or indirectly, you understood your
 17 position to be both the internal voice and face of the
 18 company to its employees, and external to the community,
 19 didn't you?
 20 A. Yes, I did.
 21 Q. Could I ask that C-176 be brought up, please?
 22 Sorry, I'm just trying to catch up to you with
 23 a version that I could open and read that's large enough
 24 for myself. That is the wrong one. No, my fault, not
 25 yours.

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18:48 1 You're familiar with having seen this statement by
 2 Valery Mpongo before; correct?
 3 A. Yes, yes, I saw it.
 4 Q. And in your witness statement you address the Claimants'
 5 description of how this factored into a decision to
 6 terminate you; correct?
 7 A. That this factored into a decision to terminate me? No,
 8 I wasn't aware of that.
 9 Q. Okay. You addressed the allegation that Claimants make
 10 about the meaning of this statement already in a witness
 11 statement; correct?
 12 A. Yes.
 13 Q. And other than taking issue with the fact that American
 14 lawyers erroneously associate the name Valery with
 15 a female, for which we apologise to Mr Mpongo, you, in
 16 reviewing this, did acknowledge that in fact you had
 17 an altercation, a physical altercation with Mr Mpongo;
 18 correct?
 19 A. That's correct.
 20 Q. And you admit becoming physical and striking him;
 21 correct?
 22 A. Yes, I did.
 23 Q. And Mr Mpongo was an employee of the company; correct?
 24 A. That's correct.
 25 Q. Would you agree, sir, that for any company, to have

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18:50 1 a managing director who has going forward responsibility
 2 to manage all the employees and ultimately have a say
 3 over all their various altercations and issues with each
 4 other, to cross the line and physically strike
 5 an employee as part of your own judgment crosses a line
 6 that can't be permitted? You can't have someone who
 7 would exercise their role, their authority, continue to
 8 be managing director, once that happens; can you agree
 9 with that?
 10 A. Yes.
 11 Q. Can I ask that C-178 be brought up, and C-177.
 12 Now, looking first at C-178, and because they're
 13 side-by-side, please let me know now, are they large
 14 enough for you to read at all?
 15 A. No, they're very small. Could I see 177 first?
 16 Q. My mistake, I should have recognised you are on
 17 a different device.
 18 Could FTI please close C-177 so we can make C-178,
 19 and we will do this one at a time -- so if you scroll
 20 down to the bottom we can see what C-178 is. It's
 21 an internal email chain, and the ultimate subject of
 22 a handful of emails was the reaction that a situation at
 23 which Mr Pascal was at the centre appeared to be growing
 24 in import to some employees; correct?
 25 A. Yes, Innocent was our supervisor on Nemba.

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18:52 1 Q. Pascal? Is that who you referred to, Innocent Pascal?
 2 A. I can't remember -- Innocent's surname was Mupenzi, and
 3 then Bernard Ndolo, he was also one of the site
 4 managers.
 5 Q. Okay, take your time. Familiarise yourself with the
 6 email as much as you need to, my question is a bit more
 7 high level than the details of the individuals. You
 8 will agree that this email chain --
 9 A. Yes.
 10 Q. -- is discussing an issue that at least some people
 11 thought was becoming of growing import among employees
 12 of NRD?
 13 A. If I remember correctly, this was about a genocide
 14 statement, or a genocide mentality, which is a very
 15 serious thing in Rwanda.
 16 Q. Fair enough, and I appreciate I'm going in a little bit
 17 different direction than you, so just focus. All
 18 I'm trying to establish is, do you agree that this email
 19 chain related to something that was going on among
 20 employees of the company?
 21 A. Yes.
 22 Q. I think you said "Yes"; is that correct? You froze.
 23 A. Yes, I did say "Yes".
 24 Q. And then I want to focus on the last email on the chain,
 25 the email from you in which you start by saying:

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18:54 1 "I have seen this over and over again. These people
 2 cannot work together. They need a white person to
 3 supervise them. Zuzana get me the white shift boss who
 4 speaks English."
 5 I'm going to leave that for a moment and then
 6 I'm going to ask that the second doc that I called for
 7 before, C-177, be brought up. Do you recognise this
 8 email?
 9 A. Could you just expand that? Yes. It's very, very
 10 faint.
 11 Q. Is there any way, FTI, that you could --
 12 A. No, it's a bad copy to start with.
 13 MR BRODSKY: I'm attempting to pull up a clearer copy. It
 14 might help a little bit but not much.
 15 MR COWLEY: If not, then give up and -- I think I can speed
 16 up by reading because it's short.
 17 FTI, shall I just read? Oh, sorry.
 18 A. Please, just read it.
 19 Q. Is that better?
 20 A. Sentence by sentence. No, it's still really bad.
 21 Q. Let me try it a different way. Focus not on what you
 22 can't read, but I'm just going to tell you some details
 23 of this because I'm only trying to establish if you
 24 remember it. If you say you remember it, that's all
 25 I need to know and I can ask you another question.

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18:56 1 The email is actually dated the day after you signed
 2 the document we looked at a moment ago, you sent this
 3 email on March 6th, 2011, the subject is "Issues raised
 4 by Julius", it's to Rod Marshall, and it says:
 5 "I faintly heard that you said that Julius said that
 6 I was aware of all the issues that he was being accused
 7 of. I have told you many times when you have a hearing
 8 with anyone especially a Rwandan get all the parties
 9 together these people are natural born liars."
 10 That's the first sentence of the email to Rod on
 11 that date. Do you recall the email and what it was
 12 talking about?
 13 A. Oh yes, yes, yes. I recall that very well.
 14 Q. So can you agree with me, sir, that Mr Marshall, as
 15 chairman, once exposed to your viewpoint, and
 16 understanding how that would impact and potentially
 17 filter into interactions with the employees of this
 18 company going forward, simply had no choice but to
 19 terminate you because he could not leave you in the
 20 position of managing the employees of NRD? Can you
 21 agree with that?
 22 A. No. I can't agree with it. I can't agree with that.
 23 Mining is a -- it's not an easy business, and of
 24 course tempers do fray, and I did lose my temper with
 25 Valery, and what I was trying to say to Mr Marshall is,

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18:58 1 if he has a hearing, just get all the parties present.
 2 Q. And I'm not quibbling with that, sir, I was focusing on
 3 something a little bit more high level.
 4 A. Yes, I'm listening.
 5 Q. Having been exposed to your viewpoint about the nature
 6 of people, and understanding that you're talking about
 7 employees of the company --
 8 A. Correct. Correct.
 9 Q. -- that with that viewpoint, you simply cannot be
 10 permitted to be the voice and face of NRD with its
 11 employees or with the community; that it simply could
 12 not be permitted. Can you agree with that view?
 13 A. Well, that was -- no, that was Mr Marshall's opinion,
 14 not mine.
 15 Q. Isn't it accurate to say that to this day you're still
 16 very angry at Rod Marshall?
 17 A. I'm sorry, I'm angry?
 18 Q. Yes.
 19 A. You're breaking up. I'm angry at Mr Marshall? Is that
 20 what you're saying, I'm still angry at Mr Marshall?
 21 THE PRESIDENT: That is what he is saying, yes.
 22 A. No, no, no, no, I'm not angry with him. I stayed on in
 23 Rwanda for quite a few years after this. I'm not angry
 24 with him. I just, you know, he's just -- it's no
 25 concern of mine.

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18:59 1 MR COWLEY: Isn't it accurate to say that from the time you
 2 were fired, you immediately focused on how to get
 3 Rod Marshall back for his view, how he treated you, and
 4 terminating you?
 5 A. No. No. No. I think -- no, I don't agree with that.
 6 I think -- I would say that you are referring to
 7 the licence application I put in for Nemba.
 8 MR COWLEY: Mr President, I am going to move on to
 9 a different topic. It is right at the time, I want to
 10 recognise that.
 11 THE PRESIDENT: Yes, could you just assist me, because
 12 I have had some difficulty in following the relevance of
 13 this, unless all this cross-examination has been what we
 14 lawyers call cross-examination as to credit; is that
 15 what it's been?
 16 MR COWLEY: Exactly.
 17 THE PRESIDENT: I see. Very well. Well, we will now break
 18 until tomorrow morning. I'm sorry, Mr Ehlers, but we'll
 19 have to request you to come back tomorrow if you can do
 20 so.
 21 MR COWLEY: Mr President.
 22 A. Sure. Sure.
 23 MR COWLEY: Mr President --
 24 THE PRESIDENT: And in the meanwhile, it's one of our rules
 25 that you mustn't talk about the case over the

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19:00 1 adjournment. I'm sure that won't cause you any
 2 distress.
 3 A. No, I haven't spoken to anybody in Rwanda about this
 4 case.
 5 THE PRESIDENT: Thank you very much.
 6 A. I can't remember having contact with anyone.
 7 I want to say one thing before we go off the
 8 subject.
 9 THE PRESIDENT: Yes.
 10 A. Mr Valery Mpongo contacted me about five or six months
 11 ago, wanting to know -- he said he was now in the DRC
 12 and could I buy any minerals from him. So it's not as
 13 if, you know, from the -- we're certainly not -- I don't
 14 think if he hated me he would have approached me to buy
 15 minerals. So I didn't have a chance to say that.
 16 But, anyway, we can carry on talking tomorrow.
 17 THE PRESIDENT: Very well, have a good evening.
 18 A. Thank you, good night.
 19 THE PRESIDENT: Good night.
 20 Right, we shall adjourn until tomorrow. Not
 21 tomorrow, until Monday.
 22 It was going to be tomorrow, but it's not going to
 23 be tomorrow.
 24 (7.02 pm)
 25 (The hearing adjourned until 12.00 pm on

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19:02 1 Monday, 28th June 2021)

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