

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

Case No. ARB/18/21

Video conference
via Zoom

Tuesday, 29th 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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12:01 1 Tuesday, 29th June 2021
 2 (Transcript times are British Summer Time)
 3 (12.01 pm)
 4 THE PRESIDENT: Have we any housekeeping to deal with before
 5 the witness returns?
 6 MR COWLEY: No, your Honour, not for Claimants.
 7 THE PRESIDENT: No?
 8 MR HILL: No, nothing from the Respondent.
 9 THE PRESIDENT: Very well. Then please invite the witness
 10 back.
 11 MR WATKINS: Okay, bringing him in now.
 12 (12.02 pm)
 13 MR EVODE IMENA (continued)
 14 Cross-examination by MR COWLEY (continued)
 15 Q. May we bring up the first witness statement of Mr Imena
 16 and go to paragraph 12, please.
 17 Mr Imena, do you recognise that this paragraph is
 18 addressing the NRD November 2010 application and some of
 19 your criticisms of that application?
 20 A. Yes.
 21 Q. Focusing your attention on the criticism that begins
 22 here of the exploration of reserves; do you see at the
 23 beginning you're talking about that there?
 24 And now if I could ask you to go onto paragraph 13.
 25 You say here:

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12:03 1 "In order to meet the requirements of the Contract,
 2 I would have expected NRD to have collected thousands of
 3 samples for this given area."
 4 Then you go on with further criticisms.
 5 You'll agree that you weren't -- your position with
 6 MINIRENA in -- excuse me, I started the question
 7 incorrectly; I need to restate it.
 8 You'll agree that you were not working with MINIRENA
 9 when this contract was first entered by the parties;
 10 correct?
 11 A. Correct.
 12 Q. So you'll agree when you're talking here about your
 13 expectations, what you're talking about is someone
 14 coming after the fact and saying how you would interpret
 15 it yourself, not as the party that actually negotiated
 16 it but how you want it interpreted now; correct?
 17 A. No, I don't agree.
 18 Q. Okay. You will agree though, sir, you've never found
 19 anywhere in the NRD file any communication from anyone
 20 at MINIRENA to NRD stating this expectation as to what
 21 the contract requires in order to meet the exploration
 22 of reserves requirement; correct?
 23 A. Not correct. In 2009, if I remember well, the then
 24 Minister Bazivamo, Christophe, wrote to NRD explaining
 25 that the ministry was not satisfied with the amount of

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12:05 1 work conducted by NRD, and that is -- that was in 2009.
 2 So my statement here that I expected them to conduct
 3 extensive sampling is based on best industry standard.
 4 You cannot conduct proper exploration by only collecting
 5 100 and a few samples in an area of more than
 6 30,000 hectares.
 7 Q. So the 2009 letter you referred to was three years after
 8 the contract was entered; correct?
 9 A. You are right.
 10 Q. Yes.
 11 A. And at that time the minister was reminding NRD that
 12 they just have a short amount of time remaining before
 13 the end of their contract, and he was telling them that,
 14 "Look, you didn't perform".
 15 Q. If we could bring up C-017, and down the bottom there's
 16 "Rights and Obligations of the Parties": if we could
 17 highlight that, Article 2, all the way to the bottom.
 18 In fact, the actual contract signed by the parties
 19 doesn't talk about a level of establishing reserves.
 20 The actual contractual language is:
 21 "Make a geographical demarcation of the
 22 perimeters ..."
 23 A. That was one --
 24 Q. Sorry, let me finish the question. That's the contract
 25 provision you say gives rise to the expectation you set

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12:06 1 out in paragraph 13 of your witness statement; correct?
 2 A. Not correct. This obligation, you are just showing me
 3 one point. But there are other obligations.
 4 Q. Let's go on to the next page. Sir, items 2, 3, 4 and 5
 5 do not talk about establishing the level of reserves to
 6 the detail you talk about in paragraph 13 of your
 7 witness statement; correct?
 8 A. Not correct. If you look at point number 5, they say
 9 that they should:
 10 "Provide evaluation reports of reserves and the
 11 feasibility study after 4 years."
 12 Q. And --
 13 A. So to conduct evaluation reports of reserves, you
 14 conduct extensive geological, geophysical, geochemical
 15 work. You conduct sampling, you conduct drilling, you
 16 conduct the geotechnical studies, you conduct financial
 17 studies. It's a whole bunch of studies that will lead
 18 you to reserves calculations and feasibility study, and
 19 for that you cannot just collect 100 and a few samples
 20 and think that you will get there.
 21 And in fact --
 22 Q. Sir --
 23 A. Sorry.
 24 Q. If MINIRENA wanted to impose all the requirements you
 25 just listed, it could have set them out in the contract

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12:08 1 and asked NRD if it would agree to them in 2006. But it
 2 did not do so; correct?
 3 A. Not correct. If you are a miner or if you are
 4 a geologist and someone tells you, "Go and do evaluation
 5 of reserves", you understand that you will do that. It
 6 is a technical term that encompasses all those studies.
 7 Q. If we could bring up C-035, please.
 8 C-035 is the 2010 application; do you see that, sir?
 9 A. I see it.
 10 Q. Now, if you could go to pages 101 and 102.
 11 To the Tribunal, just so that you're aware, you're
 12 not on mute. I don't know if you expect to be or don't,
 13 but I thought I would point that out.
 14 A. Sorry, I couldn't hear.
 15 Q. 101 and 102. There's actually an analysis of wolframite
 16 in this application which leads to an estimate of
 17 reserves; correct?
 18 A. This is an estimate of just one deposit, and these are
 19 the scree deposit. It means these are the remainings of
 20 old activities. And if I may remind you, they were
 21 given five concessions and they only conducted
 22 estimation of tailings resources in only one deposit,
 23 which is less than 20%.
 24 Q. So would you agree with me that it contains an estimate
 25 of reserves of wolframite? Can you agree?

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12:10 1 A. I can agree.
 2 Q. Okay.
 3 A. But if I can add, this is just for one concession and
 4 it's not even the primary resources. These are the
 5 tailings, the remainings.
 6 Q. If one were to read your witness statement, one would
 7 come away with the belief that NRD never reached any
 8 estimate of any reserve; isn't that correct?
 9 A. It's not correct. I clarified in my reports and in my
 10 statement that they did good preliminary works:
 11 preliminary works. But they didn't do expected
 12 extensive works.
 13 Q. If we could blow up, on page 102, the reference to scree
 14 samples. I'm going to pull up myself and direct ...
 15 5.2.
 16 As you pointed out, this section is only referring
 17 to one concession area; correct?
 18 A. You are right.
 19 Q. And it's only referring to one portion of that
 20 concession area; correct?
 21 A. You are right.
 22 Q. And it says just in that area, there were 130 samples
 23 taken; correct?
 24 A. You are right.
 25 Q. Now, you say the entire application shows that only

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12:12 1 115 samples from all five were taken. That simply
 2 wasn't true, is it?
 3 A. It's true, my assertion is true. I don't exactly
 4 remember the page where they state that they only
 5 collected 100 and a few samples.
 6 Q. You --
 7 A. And in fact, the fact that they conducted
 8 a non-exhaustive study led them to install a plant that
 9 had never gone operational. The plant failed to be
 10 operational because they failed to conduct appropriate
 11 studies before installing that plant. And the
 12 government wanted them to conduct proper studies so that
 13 they can install adapted plants to these resources.
 14 Q. Sir, you do know that in this application they explain
 15 not that they missed wolframite where they built the
 16 plant, but that they built the plant in an area where
 17 the secondary reserves of wolframite were not
 18 sufficient, but needed to be run off before they reached
 19 the primary reserves of wolframite, which would then
 20 feed the plant over time; you know that they reported
 21 that to MINIRENA, correct?
 22 A. Actually, sir, you are confirming what I'm saying. If
 23 they had conducted proper studies, they would have never
 24 installed that type of plant there. But they failed to
 25 conduct proper studies and then installed a dummy plant.

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12:13 1 Q. They reached the opposite conclusion: that over time the
 2 primary reserves were sufficient so that when they
 3 reached them, the plant would be very productive, and
 4 that's why they invested their money in that plant in
 5 that location. They told you that in this report;
 6 correct?
 7 A. Not at all, sir. That plant was designed to process
 8 scree material, not primary wolframite material.
 9 Q. You do understand that the people who wrote this report
 10 and invested in the plant knew better than you what they
 11 intended to do and how they intended to feed the plant;
 12 you will agree with that, correct?
 13 A. I hoped they knew better than all of us. But
 14 unfortunately I was sad to see that their plant didn't
 15 work. So that is a disappointment that I still feel.
 16 Q. And --
 17 A. We thought they were very good, but in the end we were
 18 disappointed.
 19 Q. And rather than report what was actually said in the
 20 application about the timing and what it would take to
 21 reach the primary reserves that the plant was built to
 22 serve, you reported a conclusion that the plant was
 23 built where there would never be any reserves. That was
 24 contrary to what NRD was saying its intentions and
 25 expectations were; correct?

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12:15 1 A. Can you repeat, please? I didn't get your suggestion.
 2 Q. Your witness statement, rather than report what NRD
 3 actually said its expectations were long-term in terms
 4 of the supply of wolframite from the primary reserves,
 5 simply reported that there was never going to be any to
 6 support the plant and it was all a mistake. That's how
 7 you described the application; correct?
 8 A. I described the application as a very preliminary work.
 9 And in fact in this 5.2 paragraph that you are showing
 10 me, you see yourself at line number 4 that the samples
 11 were put in rice bags. And sir, if a company is serious
 12 enough to invest in a mine, they would not use rice
 13 bags: they should bring proper bags and do proper work.
 14 So this is another sign that their works was just
 15 preliminary and superficial.
 16 Q. Sir, I'm going to ask you one last time. You decided
 17 when writing in your witness statement not to report
 18 NRD's actual expectations about hitting primary reserves
 19 of wolframite, and instead simply reported the
 20 conclusion that there would not be any wolframite to
 21 feed the plant; that's how you chose to describe this,
 22 correct?
 23 A. No sir, not correct.
 24 Q. And you will agree with me that when you wrote your
 25 analysis in 2012 of the NRD application, you conducted

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12:16 1 no independent analysis of the reserves yourself;
 2 correct?
 3 A. My mission was not to conduct an independent analysis of
 4 reserves. Actually, NRD's mission was to conduct
 5 an analysis of reserves. My mission was to evaluate the
 6 report.
 7 Q. Could I ask you to please focus on my question.
 8 A. Yes, sir.
 9 Q. When providing your analysis, you conducted no
 10 independent study of the reserves at Rutsiro; correct?
 11 A. I agree with you. That was not my job.
 12 Q. And you've never conducted an independent analysis of
 13 reserves at Rutsiro as of the time that you wrote your
 14 witness statement; correct?
 15 A. You are right. That was not my job. It was NRD's job
 16 to conduct evaluation of reserves; it was not the job of
 17 the ministry.
 18 Q. Now, 5.2, the discussion of the samplings and analyses
 19 of the wolframite at Rutsiro, near the bottom of that
 20 paragraph it says the concentrate that they took from
 21 their samples was dried, weighed and analysed in Germany
 22 at Starck's headquarters. Do you see that?
 23 A. I see that, sir.
 24 Q. And in the application they say:
 25 "The detailed results are available on request."

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12:18 1 Do you see that?
 2 A. I see that.
 3 Q. You didn't request them, did you?
 4 A. I didn't have to request. They were supposed to --
 5 Q. Did you request them, sir?
 6 A. I didn't have to request them.
 7 Q. Did you?
 8 A. I didn't have to request them.
 9 Q. You're not aware of anybody at MINIRENA requesting and
 10 reviewing the detailed analyses of the wolframite
 11 samples that are offered, are you?
 12 A. The report that was submitted to MINIRENA was enough for
 13 us to identify that they didn't perform well.
 14 Q. Now, if I could ask that this be brought down and we
 15 start at page 101.
 16 This section 5 on page 101 starts the report in the
 17 2010 application of NRD's "Resource and Reserve
 18 Estimations"; do you see that?
 19 A. Yes, I see that.
 20 Q. Okay. So you'll see just from the first three bullet
 21 points that the only estimates were not scree wolframite
 22 at Rutsiro. They -- right, in the first couple of
 23 paragraphs -- summarise some estimates of other minerals
 24 at other locations; correct?
 25 A. Correct.

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12:19 1 Q. Okay. If I could ask now that that be brought down and
 2 just scroll the pages from 101 to 115.
 3 MR HILL: I wonder if the pages could be scrolled on the
 4 witness saying when the pages could be turned, rather
 5 than the FTI person, please. If we go back to the
 6 beginning, and the witness should say when he's ready
 7 for the pages to be turned.
 8 MR COWLEY: I'm not asking him to talk about any of the
 9 specific contents, I'm not going to ask him questions
 10 about the language. I'm just making the scrolling
 11 an effort to essentially turn the pages that we're all
 12 sharing, to see how long this section goes on. That's
 13 the purpose of it.
 14 MR HILL: Well, if that was only the purpose, you could have
 15 just said it's however many pages long. You plainly are
 16 wanting to say something about the content.
 17 MR COWLEY: If you would allow me to conduct the
 18 questioning. It would have been over if it wasn't
 19 interrupted.
 20 Can I just ask that the pages go until 115.
 21 Sir, you'll agree that your summary of the NRD
 22 provision of information about work done to conduct
 23 analyses and estimates of reserves at its concessions
 24 was very unfair in focusing on one or two small sections
 25 of these 15 pages of various reports/analyses/summaries

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12:22 1 of work done at all the concessions?
 2 A. I do not agree. If I may clarify, expecting that
 3 a detailed resources evaluation report would just be
 4 made by 15 pages of unclear images would be very, very
 5 wrong. So this is just a superficial understanding of
 6 the reserves.
 7 And in fact the people who made this report made it
 8 clear themselves that their plan for 2011 to 2017 was to
 9 do estimation of reserves. Actually they know
 10 themselves that they never conducted proper estimation
 11 of reserves, because they were planning to do so. But
 12 the government gave them four years to do that, and they
 13 failed. So it is written in this report.
 14 Q. If we could go back to the witness statement,
 15 paragraph 15, and highlight paragraph 15.
 16 Again, sir, here you are saying what the
 17 expectations were of the contract that was entered prior
 18 to your starting with MINIRENA, and you say for
 19 an estimate of reserves, you expected:
 20 "... a recognised expert setting out professional
 21 and detailed study of the level of mineral reserves at
 22 each site."
 23 Do you see that?
 24 A. I see that, sir.
 25 Q. Now, you'll agree you could not find anywhere in the NRD

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12:23 1 file such a communication of expectations to NRD at the
 2 time the contract was entered, could you?
 3 A. The contract was very, very clear at point number 5: it
 4 required NRD to do evaluation of reserves and
 5 a feasibility study. For any mining professional, for
 6 any geologist, you understand immediately what
 7 "evaluation of reserves" means.
 8 Q. And they did what they understood and submitted their
 9 report, but you said: no, it wasn't a recognised expert,
 10 and that's what you expected.
 11 And I'm asking you: can you agree with me that the
 12 contract you just pointed to does not say anything about
 13 a recognised expert setting out this analysis? You left
 14 to the contracting party, NRD, to provide the analysis
 15 it saw fit; correct?
 16 A. I do not agree. In this report you are showing me, they
 17 clearly say themselves that they failed to do the
 18 evaluation of reserves, and they were applying actually
 19 to renew the exploration licence so that they continue
 20 and --
 21 Q. Do you remember my question? I simply asked you whether
 22 you could agree that the contract doesn't mention having
 23 to hire some outside expert; you left to NRD [in] what
 24 form it would submit its estimation of reserves. Can
 25 you agree with that?

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12:25 1 A. I do not agree. The contract said it specifically, that
 2 they need to do estimation of reserves and conduct
 3 a feasibility study, and they failed to do so.
 4 Q. Are you even familiar with the type of technology that
 5 went into the modelling of the different layers and
 6 images of the geography at the various concessions in
 7 the NRD application?
 8 A. Yes, I read that report.
 9 Q. Right. That was the most advanced technology for
 10 analysing below-grade reserves that they were using in
 11 that report, isn't it?
 12 A. If they believe that this was the most advanced
 13 technology, it's a good sign that they really failed to
 14 understand what is mining about.
 15 Q. Okay. In fact, Starck is itself a company full of
 16 experts on analysing reserves to invest in mining and
 17 acquisition of reserves around the world, isn't it?
 18 A. I don't want to dispute anybody's ability, but I'm just
 19 giving you the facts, sir. And the fact is that this
 20 company failed to implement its contractual obligations.
 21 Q. You can't identify any other applicant, following the
 22 initial exploratory licence phase, that submitted
 23 estimates of reserves meeting the expectations you
 24 identify in your witness statement of thousands of
 25 samples and independent, recognised experts quantifying

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12:27 1 the specific reserves in the location, can you?
 2 A. I can, quickly, for the sake of an example. Rutongo
 3 collected 4,000 samples in just one tunnel. And another
 4 example, and I would be pleased that you come and visit
 5 that mine: it's New Bugarama mine. They provided
 6 an estimation of reserves, they installed two plants,
 7 and those plants are fully operational. You can come
 8 and see them.
 9 Q. If those reports included the estimated reserves using
 10 your expectations, you would have attached them to your
 11 witness statements and pointed to them as examples,
 12 wouldn't you?
 13 A. If you are willing to get those reports, they can be
 14 shared to you. But they have no matter to do with NRD.
 15 Q. You had the reports available to you; correct?
 16 A. I have many reports available to me.
 17 Q. And these reports, you say, followed your expectations;
 18 correct?
 19 A. They followed my expectations.
 20 Q. But you didn't attach those reports to your witness
 21 statement, showing them as examples, did you?
 22 A. If I was -- if I had been given the opportunity to give
 23 all the files that I had in my hand, I would have done
 24 so. But I focused on what was essential to NRD's
 25 matters.

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12:29 1 Q. If we go back to -- I'm sorry, it's already up. You had
 2 it up, I apologise -- paragraph 15 of your witness
 3 statement, the bottom three lines, you say that:
 4 "Additionally, there was the problem that NRD had
 5 obtained an environmental impact assessment ... for
 6 an ore dressing plant at Rutsiro (which never in fact
 7 operated) and an abbreviated (and inadequate) EIA for
 8 Nyatubindi ..."
 9 Then it carries on:
 10 "... but not for any of ... the other concession
 11 areas."
 12 That's a criticism you lodge of the report:
 13 inadequate environmental analyses. And you say there
 14 are only two aspects of an environmental study at all
 15 submitted by NRD; correct?
 16 A. Can you repeat your question, please?
 17 Q. You criticise the environmental analysis in the
 18 application, and in doing so you identify NRD as having
 19 provided only these two environmental discussions and
 20 analyses at all; correct?
 21 A. Actually what I said, and it is clear in my statement:
 22 NRD had been given five concessions. They only
 23 conducted an environmental impact assessment for one
 24 plant, not even one concession, and an abbreviated
 25 assessment for one deposit.

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12:30 1 So they didn't provide environment impact assessment
 2 for the five concessions. That is what I'm mentioning
 3 in my statement.
 4 Q. If we could go back to C-035 and start at page 121. Do
 5 you see 6.5, near the bottom, sir, "Proposed Activity
 6 Plan in Environmental Mitigation", over the next
 7 five years as of then? Do you see that, sir?
 8 A. Yes, I'm reading it.
 9 Q. If we could go back, it continues. So we'll have to --
 10 it's not just this one section. I'm going to ask you to
 11 put the pages upside by side. It starts on page 121,
 12 section 6.5, and it goes through page 124.
 13 Are you ready to turn the pages, sir?
 14 A. Yes, please.
 15 Q. Can you put pages 123 and 124 up side by side.
 16 So you'll agree that over the pages covered by
 17 section 6.5, in fact NRD, in its 2010 application,
 18 discussed the environmental mitigation plans for Nemba,
 19 Rutsiro and Nyatubindi over the next five years, and
 20 then mentioned briefly general intentions for three
 21 other periods of the concessions, Giciye, Sebeya and
 22 Mara; correct?
 23 A. Not correct. Actually here they are saying that they
 24 planted trees in Nemba; they constructed a dam in
 25 Nyatubindi; and Giciye, Sebeya and Mara, they are saying

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12:33 1 what they intended to do.
 2 But my statement says that they never conducted
 3 environment impact assessment, and this is correct,
 4 because here there's no way where they say that they
 5 completed environment impact assessment for these
 6 concessions. So this is not the same.
 7 Q. Can I now ask that we turn to page 143.
 8 At page 143 of NRD's 2010 application begins the
 9 environmental impact assessment report for Rutsiro
 10 plant; correct?
 11 A. Correct.
 12 Q. That environmental impact assessment report that you say
 13 wasn't included is actually 80 pages long in the
 14 application; correct?
 15 A. This environmental impact assessment is just for one
 16 plant in Rutsiro; it's not even for the Rutsiro
 17 concession.
 18 Q. Sir --
 19 A. It's not a --
 20 Q. My question was --
 21 A. Yes, please.
 22 Q. -- this environmental impact assessment report covers
 23 the next 80 pages, approximately, of the application; is
 24 that correct?
 25 A. I don't remember the number of pages it has.

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12:34 1 Q. Could I ask that we go to the end of this section.
 2 I believe -- let me find it myself. (Pause)
 3 MR HILL: Just while Mr Cowley is looking, his earlier
 4 question said:
 5 "[The] environmental assessment report ... you say
 6 [is]n't included ..."
 7 I'm not sure Mr Cowley meant to say that, because
 8 the witness statement does say in terms at the bottom of
 9 paragraph 15 that the environmental impact assessment
 10 for the ore dressing plant was made. So that may have
 11 been a slip by Mr Cowley.
 12 MR COWLEY: No, I picked up on his prior answer.
 13 It goes to page 223, does it not, sir?
 14 Do you agree that the environmental impact
 15 assessment within the application goes all the way to
 16 the last page with content on it of the report, 223? If
 17 you could ...
 18 A. I didn't get your question, but I'm seeing here it is
 19 written page 80. So I don't really get what you're
 20 asking to confirm.
 21 Q. Could I ask FTI to go to page 223. That's the last page
 22 of the environmental impact assessment that starts at
 23 page 80; correct?
 24 A. I think so.
 25 Q. Now if I could ask FTI to bring up C-036.

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12:37 1 Sir, in addition to the environmental impact
 2 assessment report within the application, NRD also
 3 submitted to MINIRENA the environmental impact
 4 assessment for Nyatubindi; correct?
 5 A. You are right.
 6 Q. And that's this document?
 7 A. I think so.
 8 Q. Now if I could ask that C-043 be brought up.
 9 As part of its application process and attempts to
 10 discuss it with MINIRENA, NRD submitted in November 2011
 11 an updated environmental mitigation report for
 12 Nyatubindi; correct, sir?
 13 A. I see that mission report. Yes, I can see it.
 14 Q. That's C-043; correct?
 15 A. Yes, I see that report you are showing me.
 16 Q. May I ask that C-044 be brought up.
 17 C-044 is a letter from NRD transmitting the updated
 18 environmental impact assessment for Nyatubindi to
 19 a number of parties, and it concludes, on the second
 20 page, asking, on their end, others [who] worked with NRD
 21 to continue to push forward by discussing the next steps
 22 with experts as to road access, so further remediation
 23 efforts can continue at that facility; correct, sir?
 24 A. Sorry, I didn't understand your question.
 25 Q. This is the transmittal letter of the updated

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12:41 1 assessment. It's not an environment impact assessment
 2 study. It's just a --
 3 Q. Can we go back to --
 4 A. -- it's just a (inaudible) information.
 5 Q. I'm sorry, if you didn't hear me, can we go back to
 6 Exhibit C-043.
 7 So the letter we were just looking at, you recognise
 8 as -- I'm sorry, I must have called up the wrong one.
 9 I'm sorry, I said the wrong number. C-036.
 10 You recognised the letter that we were just talking
 11 about as transmitting to all those individuals this
 12 report; correct?
 13 A. You are right.
 14 Q. And it asks at the end of the letter that experts on the
 15 Respondent's side, experts from Rwanda and its locales
 16 that were involved in the concession area, to provide
 17 experts and work on development of a road that would be
 18 utilised to conduct further anticipated remediation
 19 work.
 20 So the letter ended by saying, "We want to work with
 21 you so we can continue our remediation experts, identify
 22 experts and work with us". That's how the letter ended,
 23 right?
 24 A. That is what I'm reading. Yes, you're right.
 25 Q. You're not aware of anyone ever doing that and

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12:38 1 environmental impact assessment report for Nyatubindi;
 2 correct?
 3 A. So can I be given some time to read this letter, if you
 4 want me to confirm anything?
 5 Q. Please. I didn't think -- I just asked you if that's
 6 what it is; I didn't cut off any attempt to read it.
 7 So, yes. (Pause)
 8 A. Yes, I finished reading.
 9 Q. So you recognise this is the transmittal of the updated
 10 environmental impact assessment report for Nyatubindi;
 11 correct?
 12 A. What I recognise is that they are transmitting a report
 13 to the mayor and asking an expert from the district to
 14 come and assess the work done by NRD at Nyatubindi, and
 15 asking an expert, an engineer, to come and agree with
 16 them where the maintenance of the road should be done.
 17 And this is in no way in contradiction with what
 18 I said in my statement. I said --
 19 Q. I'm not asking to argue with you about anything yet, and
 20 I'm not asking you to argue with me about whatever point
 21 you want to make. I just asked you: do you recognise
 22 that this transmittal letter forwarded to all the
 23 parties shown here the updated environmental impact
 24 assessment report for Nyatubindi?
 25 A. Not as you're mentioning. It's a rapid environmental

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12:43 1 continuing to work with NRD on that issue, are you?
 2 A. I didn't get your question properly.
 3 Q. Nobody on Rwanda's side came forward with experts of
 4 their own, worked with NRD to continue to explore the
 5 siting of the road for additional remediation efforts by
 6 NRD; correct?
 7 A. This letter was addressed to the mayor, not to myself.
 8 So I don't know what happened after this letter was
 9 addressed to the mayor of the district.
 10 Q. That's what I was asking. You're not aware of anybody
 11 actually working with NRD, in response to its letter, to
 12 do what it asks, right?
 13 A. It's not as simple as you're suggesting. This letter
 14 was addressed to the mayor of the district, and you're
 15 asking me to confirm something for which I don't have
 16 any information. I don't want to speculate. I was not
 17 there and I was not the recipient of the letter.
 18 Q. If I could ask to go to paragraph 58 of Mr Imena's
 19 witness statement.
 20 In paragraph 58 of your first witness statement,
 21 sir, you talk about Rutongo's application. Do you see
 22 that testimony?
 23 A. Yes, I see that.
 24 Q. Now, Rutongo as a concession, that's Tinco as the
 25 applicant; correct?

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12:45 1 A. Sorry, can I be given a minute and go through the
 2 paragraph, so that I can be able to answer to your
 3 questions? (Pause) Yes, I have finished.
 4 Q. This reference to "Rutongo's application", Rutongo is
 5 actually -- excuse me, the applicant for the Rutongo
 6 concession is actually Tinco and its joint venture
 7 partner; correct?
 8 A. You are right.
 9 Q. And the joint venture partner is Rwanda; correct?
 10 A. Yes, Rutongo is a joint venture company where the
 11 Government of Rwanda has shares.
 12 Q. And at this time of its application -- when I say "this
 13 time", at the time of the application for extended
 14 licences past the exploration stage -- Rwanda was the
 15 overwhelming majority owner of the joint venture for
 16 Rutongo; correct?
 17 A. I think so.
 18 Q. Now, you'll agree that you include this information in
 19 paragraph 58 because what you're trying to convey to the
 20 Tribunal is: unlike NRD, whose application you heavily
 21 criticise, you point to the Tinco and Rwanda application
 22 for Rutongo's concession as the better application, and
 23 that met your expectations; correct?
 24 A. This is an example among many. But you are right:
 25 Rutongo application was much better than NRD's

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12:47 1 application.
 2 Q. And that's what you're trying to convey by including
 3 this information; correct?
 4 A. This is what I agree with.
 5 Q. Okay. Could I ask that R-042 be brought up.
 6 R-042 is the Tinco application submitted for the
 7 Rutongo concession; correct?
 8 A. Yes.
 9 Q. If I can ask that we go to page [67] of that
 10 application.
 11 Section 10 of the Tinco application for Rutongo's
 12 concession -- in section 10, Tinco discusses the
 13 environmental impact assessment element of its
 14 contractual obligations; correct?
 15 A. Can you repeat your question, please?
 16 Q. This is the section, section 10 that we're looking at,
 17 where Tinco addresses how it says it and Rwanda met the
 18 environmental impact assessment obligation in the
 19 contract?
 20 A. Here what I read is that they contracted a company, that
 21 company was given an environment impact assessment
 22 project brief by the Rwanda Development Board, and that
 23 they had started to complete an environment impact
 24 assessment study.
 25 Q. Sir, this section 10, when you received and reviewed the

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12:49 1 application from Tinco for the Rutongo concession, you
 2 understood section 10 was trying to speak to how Tinco
 3 and its joint venture partner believed they met the
 4 environmental impact assessment obligation in the
 5 original exploratory licence contract; correct?
 6 A. I didn't understand your question.
 7 Q. Okay.
 8 A. Sorry.
 9 Q. You understood that they're addressing what they
 10 believed was the contractual obligation to inform Rwanda
 11 what environmental impact assessment had been done in
 12 the initial exploratory years of their contract;
 13 correct?
 14 A. Sorry, I'm not -- I'm not understanding the question.
 15 I'm very, very sorry.
 16 Q. I will ...
 17 A. Maybe it's because I'm reading while at the same time
 18 you are asking me a question.
 19 Q. You understood when criticising NRD's information in its
 20 application regarding environmental impact assessment
 21 that you were criticising their ability to meet
 22 an obligation of the contract; correct?
 23 A. My report was giving facts, and the fact is that NRD
 24 didn't submit an environment impact assessment for all
 25 the five concessions.

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12:50 1 Q. Sir --
 2 A. This is what I said.
 3 Q. -- the reason you addressed that and raised that
 4 criticism is because you thought you were speaking to
 5 an element of the NRD original contract; correct?
 6 A. Sorry, I'm -- I didn't get again. If you can speak
 7 slowly, maybe I will understand better what you are
 8 asking me to confirm or not confirm.
 9 Q. Okay. Let's move forward. I do have a time issue and
 10 so I need to move forward.
 11 To get back to Tinco, in reviewing section 10 of
 12 Tinco's application for Rutongo, you found it
 13 acceptable, right?
 14 A. If you can allow me, you read at the last paragraph:
 15 they say that they conducted an environment audit. And
 16 in our process you either provide an environmental
 17 impact assessment or an environment audit. And here
 18 what I'm reading is that the company passed the audit,
 19 and the audit is much difficult to pass than just the
 20 environmental impact assessment. So this confirms what
 21 I said in my statement: that Rutongo did much better
 22 than NRD.
 23 Q. Focusing on the aspect of Tinco's application where they
 24 believed they needed to address an environmental impact
 25 assessment, they said they just hired someone, at the

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12:52 1 time of the application; correct?
 2 A. You are correct.
 3 Q. And you didn't find that to be a concern; correct?
 4 A. Actually in Rwanda you are not allowed to conduct the
 5 environment impact assessment yourself; you are supposed
 6 to hire someone accredited by the Rwanda Environment
 7 Management Authority and by the Rwanda Development
 8 Board. So it's a duty to hire someone, as NRD hired
 9 Dr Fabien. So this is normal process.
 10 Q. So you didn't find it a concern that only at the end of
 11 the initial licence term they first hired such
 12 an independent environmental assessor to write a report,
 13 an environmental impact assessment, and that they
 14 anticipated that report would be done in 12-18 months
 15 after the application? You did not find that to be
 16 a concern; correct?
 17 A. Actually I said that Rutongo had already passed
 18 an audit, and an audit is much more difficult than just
 19 conducting an environment impact assessment. And NRD
 20 failed the easiest thing to do, which was to present
 21 an environment impact assessment, and that is what
 22 I'm saying in my statement.
 23 Q. Sir, I'm asking you to focus on the Tinco application.
 24 You were not concerned that they never hired anyone to
 25 do an environmental impact assessment prior to the end

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12:54 1 of the licence and told you that it wouldn't be ready
 2 for 12-18 months; correct? Can you agree you weren't
 3 concerned with that?
 4 A. I don't understand where the concern should be.
 5 Q. And so you agree you'd had none; correct?
 6 A. Sorry, I didn't get your question.
 7 Q. Tinco --
 8 A. Because you're asking me if I had a concern. I didn't
 9 have a concern.
 10 Q. I'll ask the question again. I'll ask a different
 11 question, try to address it a different way.
 12 Tinco received a long-term concession for Rutongo;
 13 correct?
 14 A. Tinco received a large-scale mine in 2015, you are
 15 right.
 16 Q. And they never came back -- at least according to your
 17 witness statement and what you provide as exhibits, they
 18 never came back and provided that environmental impact
 19 assessment before getting that licence; correct?
 20 A. Sorry, this paragraph you are showing me, it's
 21 mentioning that in 2011 they were planning to have
 22 an impact assessment report ready in 18 months, meaning
 23 mid-2012. And they got their licences -- their licence
 24 in 2015: it means four years after the report you are
 25 showing me.

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12:55 1 Q. And in all that time, you did not receive
 2 an environmental impact assessment report that you could
 3 attach to your witness statement for Tinco's
 4 application; correct?
 5 A. I didn't attach the environment impact assessment to
 6 Rutongo to my witness statement, yes, you are right.
 7 Q. Well, you did attach one: you attached R-043. Can we
 8 bring that up.
 9 This is the environmental impact assessment report
 10 you attached to your witness statement; correct?
 11 A. Yes.
 12 Q. This is the environmental impact assessment that Tinco
 13 obtained and provided at the beginning of its
 14 exploratory licence period, not at the end, the
 15 12-18 months later that they said they would get, but
 16 the one you already had from the beginning, right?
 17 A. I don't know what you want -- you would like me to
 18 confirm. But here you are showing me an environmental
 19 impact assessment of 2008. You showed me a plan in
 20 2011: the plan confirms that an environment audit was
 21 completed. And I say that completing an audit --
 22 Q. Can you answer my question. This environmental impact
 23 assessment report that you attached to your witness
 24 statement was a report that Rwanda had from Tinco before
 25 the expiration of its exploratory licence; correct?

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12:57 1 A. This is -- correct. This is a very good sign that
 2 Rutongo immediately completed an impact assessment in
 3 2008.
 4 Q. At the beginning of its exploratory licence; correct?
 5 A. This confirms their seriousness.
 6 Q. And you'll agree: if you had an environmental impact
 7 assessment from Tinco and its joint venture partner,
 8 Rwanda, at the end of the exploratory licence, as
 9 promised, you would have attached that too to your
 10 witness statement?
 11 A. So there have been ten years since 2011. I don't
 12 remember with details what was submitted in 2011 and
 13 2012. (Overspeaking) --
 14 Q. And you can't agree with me that if you had it, you
 15 would have attached it to your witness statement,
 16 instead of an old, dated one that didn't meet the
 17 contract requirement that we're looking at?
 18 A. I think speculating on this on my side would not be
 19 appropriate. So I'm not wanting to speculate on data
 20 that I don't remember.
 21 Q. The lack of any defined standards as to what applicants
 22 were supposed to provide in order to meet the different
 23 elements of their exploratory licences permitted Rwanda
 24 to apply complete subjective analysis, such that it
 25 could reject everything NRD said about environmental

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12:59 1 impact assessment as insufficient, and yet accept the
 2 statement "We'll give you a report later" as sufficient
 3 for a different applicant, right?
 4 A. I totally disagree with your suggestion.
 5 Q. You will agree --
 6 A. Our 2008 law was very clear, the 2008 law was very clear
 7 about what was supposed to be submitted; the 2006
 8 contract was clear; the 2014 law was very clear. So
 9 I totally disagree with your suggestion.
 10 Q. The 2008 law, sir -- excuse me. The 2006 time period
 11 and the contract being formed, you'll agree that if
 12 there are any statements of general guidelines,
 13 applicable to every applicant for a concession, they
 14 would be provided in your witness statement as the
 15 standard that everyone had to meet and that you were
 16 applying; correct?
 17 A. Not correct.
 18 If I can give a short and quick example, if you ask
 19 me to respond to an email, you don't start telling me
 20 that you start by switching on your computer. So these
 21 are basic things anyone knows: that before responding to
 22 an email, you need to have an operational computer.
 23 So if a government tells you and you agree to
 24 conduct estimation of reserves, you know that you will
 25 switch on your computer. Just to link that example to

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13:02 1 continues onto the next page, all the way through
 2 section 14. Do you see that?
 3 A. I see that.
 4 Q. If I could ask that we turn to pages 11 and 12.
 5 Beginning on page 11, the tender informs all
 6 applicants generally how their submissions are to be
 7 evaluated, point by point. Every aspect that they're
 8 supposed to talk about in those submission 1 through 14
 9 guidelines, it says what Rwanda believes needed to be
 10 done to meet that element; correct?
 11 A. You are correct.
 12 Q. And that continues for two more pages, through 13 and
 13 14; correct?
 14 A. You are correct.
 15 Q. Now, you will agree with me, won't you, that the reason
 16 in 2016 public statement of not only the elements
 17 required to be provided to Rwanda in order to be
 18 a successful applicant for these concessions, and
 19 a statement of exactly what Rwanda believed was required
 20 and what was meant -- using your hypothetical, how it
 21 believed one would successfully turn on the computer
 22 before typing the email -- the reason it did that in the
 23 tender is because it didn't exist anywhere else, any
 24 time before, for the applicants to look at; correct?
 25 A. Not correct.

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13:00 1 what I'm trying to say.
 2 Q. So to be clear, you're agreeing with me that there were
 3 no written guidelines for all applicants in Rwanda to
 4 look at to see that they applied to everybody and
 5 exactly what they were, and your argument is they
 6 weren't necessary. But I want to focus on the first
 7 part. You do agree with me that they didn't exist in
 8 writing, right?
 9 A. I don't agree. In 2008 Rwanda had a law, which is
 10 written, available to anyone, and that was the guideline
 11 at that time. In 2014 we had the law which is written
 12 and available to anyone: that is a guideline.
 13 Q. Can I ask that C-140 be brought up.
 14 C-140 is the documentation concerning the tender of
 15 the NRD concessions that occurred in 2006; correct?
 16 A. You are right.
 17 Q. If I could ask that FTI turn to pages 7 and 8.
 18 Focusing at the beginning of section 2.11, it
 19 states:
 20 "The submission ..."
 21 For the applicants who want to participate in the
 22 tender, their submission:
 23 "... shall include the following documents: ..."
 24 And then it lists in detail all the documents that
 25 are to be provided by the applicants. And that

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13:04 1 Q. Prior to the tender in 2016, can you point to any
 2 publicly available documentation explaining how the
 3 various criteria for applicants for mining concessions
 4 would be evaluated as to all the elements that they had
 5 to supply?
 6 A. If I can explain, here you are showing me a document
 7 prepared by the government whereby we are trying to look
 8 for potential good candidates and then we are showing
 9 them the criterias that will be applied in selecting
 10 them. And in 2006 the candidate had already been
 11 selected. The 2006 contract is the agreement between
 12 the government and the selected candidates. So these
 13 are two different things.
 14 Q. I understand your answer. If I could just briefly ask
 15 you to pause. You're making an argument with me right
 16 now about why you think this is different, and
 17 I'm simply trying to focus you on a fact.
 18 The reason that this is in the tender, spelled out
 19 in the document, is because Rwanda couldn't refer to
 20 an already-existing public statement of these elements
 21 for how it would evaluate the required aspects of the
 22 submission; it didn't already exist to just refer to,
 23 correct?
 24 A. Sir, you know that in every business there is evolution
 25 and there is progress. In 2006 and 2016, that is

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13:06 1 ten years' gap. So we have been progressing, and we
2 have been requiring more complicated criteria to admit
3 people into the sector. But NRD was very, very lucky to
4 be given a contract without even fulfilling these
5 conditions.
6 Q. Please answer the question -- please stick with the
7 questions. To get through your day, it's going to be
8 very tough, and I --
9 MR HILL: I would ask Mr Cowley to stop the implied
10 criticism. I think these all have been answers to the
11 questions.
12 MR COWLEY: I strongly disagree, and I just would like the
13 witness to focus on what I'm asking.
14 If there were any other -- strike the question
15 I started.
16 At the time of the 2016 tender there was no prior
17 publicly available statement of how all the submission
18 elements would be evaluated that could have been
19 referred to; correct? Can you agree with me on that?
20 A. I disagree. In 2006 there was no tender.
21 Q. I didn't say anything about 2006. I didn't ask you
22 about a tender in 2006. Please address the question.
23 A. Can you repeat then the question?
24 Q. In 2016 the reason the four pages of description of how
25 the elements of a tender would be evaluated were set

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13:09 1 THE PRESIDENT: Thank you.
2 MR COWLEY: May I ask that we turn to page 16, section 2.38.
3 In the tender Rwanda made it clear that the
4 submissions and the information that would be provided
5 would look out, in terms of plans and budgets, for
6 five years of the project; correct?
7 A. Yes.
8 Q. And that's regardless of how long the licence that would
9 be issued actually would cover; correct?
10 A. Can I get your question again?
11 Q. Regardless of how long the licence period would be for
12 a successful applicant, its submission was only to
13 provide plans and budgets for the first five years of
14 the licence?
15 A. Yes, you need to provide a plan and budget for the first
16 five years.
17 Q. Even if the licence that would be issued would be
18 longer; correct?
19 A. You are right.
20 Q. And in fact the successful applicant in 2016,
21 Fair Construction, was given a 15-year term for the
22 concessions; correct?
23 A. Correct.
24 MR COWLEY: Mr President, I believe we're scheduled for
25 a break in four minutes. I'm about to change topics

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13:07 1 forth in the document is because they didn't exist
2 anywhere else to be referred to?
3 A. I don't understand what you are trying me to confirm.
4 I said that there was a 2008 law and a 2014 law, so
5 those were the reference documents. When NRD applied in
6 2006 and got their licence, we had the 1971 law. So the
7 1971 law was the reference in 2006; the 2008 law was the
8 reference in 2010; and the 2014 law was the reference in
9 2016.
10 So I don't know what more I can give.
11 Q. Instead of just relying on the law as the reference, you
12 do agree, at least, that Rwanda took the time and effort
13 to set forth an explanation of the criteria that would
14 be used to evaluate whether the applications met the
15 standards required to be submitted; can't you agree with
16 at least that?
17 A. I agree with the fact that in Rwanda we abide by the
18 laws and we use the law to evaluate the applications.
19 THE PRESIDENT: Mr Cowley, my recollection is that the
20 witness did agree with what you were putting to him, and
21 explained that in Rwanda over the ten years they have
22 been making progress in the assistance that they were
23 providing to those seeking concessions.
24 Is that right, Mr Imena?
25 A. Yes, you are right, sir.

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13:11 1 altogether, so I think --
2 THE PRESIDENT: Yes, these schedules that are prepared,
3 I think I've already indicated, are not very
4 satisfactory. I think we would like to go on for
5 another half an hour before we break, just to have
6 a more balanced break, because the schedule only
7 provides for a quarter of an hour break, but we are
8 taking our lunch break at the first break.
9 So if that's acceptable, can we go on for another
10 half an hour?
11 MR COWLEY: Certainly. I just wanted to raise it.
12 Bear with me one moment. I'm trying to locate on my
13 system a document that I have trouble bringing up.
14 (Pause) If I could ask that we bring up C-062.
15 Mr Imena, C-062 is an August 2nd 2011 letter from
16 Mr Kamanzi, your predecessor --
17 A. Yes.
18 Q. -- at the ministry. And this is the first response to
19 NRD after its November 2010 application; correct?
20 A. Yes, I think so.
21 Q. And here it says -- the reaction is, "You didn't comply
22 with the contract; we have to talk about how the
23 licences would be operated going forward"; correct?
24 A. Yes, I see that he's telling NRD that the contract was
25 not fully executed: there was no presentation of report

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13:14 1 of reserves and mining feasibility studies. Yes.
 2 Q. Now if I could ask that C-034 be brought up.
 3 C-034 is a letter from Mr Kamanzi again to NRD,
 4 further extending the licence period so that -- in his
 5 words, because:
 6 "It has not been possible to conclude the contract
 7 in the above time of extension. I understand the
 8 absolute necessity to conclude this agreement as soon as
 9 possible for strong investor confidence."
 10 So he's extending the time period further; correct?
 11 A. You are correct.
 12 Q. Now, there wasn't, in between those two letters,
 13 a resubmission by NRD changing the licences it was
 14 applying for or otherwise abandoning the November 2010
 15 application in full; correct?
 16 A. Yes, I think that's the situation, yes.
 17 Q. Can you agree with me that if one were to read these two
 18 letters side by side as messages to NRD as to what
 19 MINIRENA's reaction to the November 2010 application is,
 20 one would have to conclude that the reactions are
 21 entirely inconsistent?
 22 A. I don't agree.
 23 Q. In the first letter there's no mention of needing to
 24 conclude quickly a contract meeting the parameters of
 25 the application; correct?

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13:16 1 A. Can you repeat, please?
 2 Q. Sure. Maybe we could put them side by side, because
 3 I don't want this to be a test of Mr Imena's short-term
 4 memory. C-062 and C-034, the two letters.
 5 So in the earlier one, in August, there's no mention
 6 here of acknowledging that MINIRENA is going to work
 7 quickly with NRD to conclude a contract for the licences
 8 that were sought in the 2010 application, right?
 9 A. In the 2011 letter, April --
 10 Q. August?
 11 A. August, yes. NRD made an application. The application
 12 was received, but was deemed not satisfactory. NRD is
 13 given six months to complete what is not satisfactory,
 14 and the ministry to conclude an agreement. Then in the
 15 six months, the progress -- the process didn't yield any
 16 final decision. Then the minister is giving another
 17 six months.
 18 That is what I'm trying to interpret from these two
 19 letters.
 20 Q. The fair reading of the August letter is that the
 21 application for the five licences would need to be
 22 revised for any kind of contract because, in the terms
 23 of the letter, the contract wasn't satisfied, so they
 24 needed to discuss the terms of what licences would be in
 25 play going forward; correct?

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13:18 1 A. Sorry, what I see from the August 2011 letter is that
 2 the work from NRD was not satisfactory, but the ministry
 3 is extending six months in order -- as reads the last
 4 line -- in order:
 5 "... to allow us time to determine the future of
 6 these concessions."
 7 And the next letter says that, "Okay, we have
 8 an idea on the future of these concessions, and we would
 9 like to give you time so that we conclude an agreement".
 10 Q. Sir, in the second letter, in February, I believe it is,
 11 if I can read it correctly -- yes, February 2012 -- the
 12 minister isn't mentioning reconsidering what licences
 13 would be subject to discussion; correct?
 14 A. No details -- yes, you're correct. No details are given
 15 in the letter.
 16 Q. Well, there is a detail that the ministry at that time
 17 recognised the "absolute necessity to conclude
 18 [an] agreement as soon as possible", in order to promote
 19 "strong investor confidence". You see that detail;
 20 correct?
 21 A. I see that, correct.
 22 Q. So the message to NRD, reading that letter, is: we're no
 23 longer being given pressure to give up the application
 24 for the five licences we sought, rethink everything, and
 25 instead we're now being told: the ministry agrees we're

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13:20 1 going to sit down, based on that application, and as
 2 quickly as possible conclude those contracts. That's
 3 the message, right?
 4 A. There's nowhere the minister is saying that the five
 5 concessions will be given. The minister is saying,
 6 "I want to conclude an agreement as soon as possible".
 7 On which concessions, those are the details that are not
 8 included in the letter.
 9 Q. Well, he also doesn't hint at the idea in February 2012
 10 that it's in doubt, and NRD -- strike the question
 11 I started.
 12 He does not even suggest in the February letter that
 13 that was a preliminary topic that had to be resolved
 14 before a contract could be discussed, does he?
 15 A. No.
 16 Q. And you'll agree that before you can sit down and
 17 negotiate the terms of the contract for the licence, who
 18 was going to do what when, the various rights and
 19 obligations of the parties, the first thing that had to
 20 be done in the process was agree on the parameters:
 21 what's the concession at issue, for how long you're
 22 going to have it, what are you telling us you're going
 23 to mine for and how you're going to do it? We need to
 24 agree on that: then we know whether the terms we're
 25 negotiating are actually achieving what we're expecting

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13:21 1 to achieve, right?
 2 A. No. I think if I am an investor, I first look at the
 3 contract that I signed and see if I'm satisfactory in
 4 fulfilling all my obligations. But here the minister
 5 has already told the investor that there are things that
 6 are not okay. So to me, that is step number one to
 7 anything that will follow.
 8 Q. Sir, I didn't ask about investors. I'm not sure what
 9 that answered. So I apologise, but I'm going to have to
 10 ask the question again and make sure we're talking about
 11 the same thing.
 12 If the two parties are going to sit down as soon as
 13 possible to negotiate the terms of a licence, before
 14 they can negotiate the specific terms of the rights and
 15 obligations in the licence, you needed to have
 16 an understanding: what's the licence going to cover?
 17 What concession? What minerals? How long? That had to
 18 be understood before you could negotiate the terms of
 19 the licence that provided for it, right?
 20 A. I think it's not necessary to interpret these letters
 21 beyond the message that they contain. The letters are
 22 very clear. I think -- I don't -- I have not the
 23 capacity to make any further interpretation to these
 24 letters that are clear enough to me.
 25 MR HILL: Now, Mr Cowley knows very well there are letters

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13:23 1 in between these two letters which he hasn't taken the
 2 witness to, and I think he needs to be very careful with
 3 his questions here.
 4 MR COWLEY: Mr Hill, I believe that's a completely
 5 inappropriate interjection, given the nature of the
 6 question I'm asking.
 7 MR HILL: It's not, I'm afraid. I chose my words quite
 8 carefully, because I'm quite disappointed with some of
 9 the questions so far which don't give a fair impression
 10 of the letters that passed in between. And I've held
 11 back, but it's gone on, and I do need to intervene to
 12 mention this.
 13 MR COWLEY: I strongly disagree that you've held back, and
 14 I strongly disagree what you said was appropriate. The
 15 witness knows I'm asking a general question about how to
 16 discuss, how to negotiate a contract for a licence. You
 17 know that as well. And I would appreciate being able to
 18 answer the questions without interference.
 19 Sir, can't you agree with me that in order to sit
 20 down with an applicant and negotiate a licence for
 21 mining concession, one needed to first agree what
 22 concession we're talking about?
 23 A. Yes, that's part of what needs to be agreed upon.
 24 Q. So you first need to address whether you're going to go
 25 forward, as the applicant requests, and discuss the

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13:24 1 concession that you're seeking at all, before you
 2 decide, "Let's negotiate the contract for it", right?
 3 A. I first read the contractual obligations. That's where
 4 I start.
 5 Q. And you would do that in order to make a decision: are
 6 you going to go forward with this applicant and discuss
 7 the concession they're seeking at all? If you decide
 8 no, then there's no contract to negotiate, right?
 9 A. Yes, that's the essence I'm reading in these letters.
 10 Q. So if you're talking about scheduling a time to, as soon
 11 as possible, sit down and negotiate the contract, that
 12 means you had to already make that preliminary decision:
 13 are they going to pursue, and you're going to negotiate,
 14 licences for the concessions they applied for or
 15 something different, right?
 16 A. No. I think you know it better than me: negotiations
 17 are a process. So it's not something written in the
 18 rock. So it's a process where the two parties discuss
 19 and they end up concluding an agreement that is suitable
 20 to both of them. So the ministry here is showing
 21 flexibility in saying, "Okay, we are allowing both of us
 22 time so that we can conclude an agreement".
 23 Q. That was sent on February 22nd 2012. If a meeting were
 24 set up on March 1st 2012, what concessions -- or
 25 concession -- were the contracts going to address with

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13:26 1 NRD?
 2 A. If you may allow, let me not speculate on things that
 3 I can't answer, but let me rely on facts. After this
 4 February 2012 letter, there were other letters sent by
 5 the minister. So those are the facts on which --
 6 Q. And I'm asking you to place yourself in NRD's position.
 7 It received the February 22nd letter, and on
 8 February 22nd it's reading it and talking about as soon
 9 as possible, March 1st, sitting down to negotiate
 10 a contract.
 11 At that time, based on your understanding of the
 12 parties' communications, what were the contracts going
 13 to cover?
 14 A. Sorry, sir, that's what I said: that I think it's not
 15 appropriate to speculate. Let's just base on facts. So
 16 there are letters that followed this February 2012
 17 letter.
 18 Q. Before you go on to the other letters, can you agree
 19 that, even knowing the full file, you can't say that on
 20 February 22nd NRD would be able to have any
 21 understanding of what concessions it was to sit down and
 22 negotiate contracts for; correct?
 23 A. I'm sorry, I do not agree with your suggestion.
 24 Q. Then please tell me what concessions were to be covered
 25 by these contracts, according to communications from

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13:27 1 MINIRENA to NRD up through February 22nd 2012.
 2 MR HILL: Again, he's asking the witness to speculate on
 3 things without showing him the material, the letters
 4 that passed immediately before this second letter, which
 5 answer his question. And it's not fair for Mr Cowley to
 6 deliberately not go to the previous correspondence and
 7 then ask the witness to speculate in this way.
 8 MR COWLEY: Mr President, I do not know what's being
 9 referred to. I have absolutely no intention of doing
 10 anything unfair.
 11 I can't imagine that counsel, after the type of
 12 testimony that's been provided and the wild opinions
 13 about what everybody must have expected at different
 14 times, based on different things, that now a line is
 15 going to be drawn suggesting that this witness does not
 16 have the ability to look at a letter and say what the
 17 ministry would have understood it to mean and what NRD
 18 would have understood it to mean. That's the only --
 19 MR HILL: The question is to put it in the -- he's been
 20 asked to -- the question asked the witness to put the
 21 letter in the context of what was going on at the time
 22 and what people would have thought. If he's going to do
 23 that, he needs to show him R-018, which passes
 24 immediately before that and answers his question.
 25 MR COWLEY: Yes, I strongly disagree about the coaching.

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13:29 1 This is completely inappropriate intervention.
 2 I will take the time to look at the document.
 3 I have absolutely no intention to leave something out
 4 that's relevant -- I don't think it is -- to my
 5 question. But I would like the opportunity, given this
 6 what I would consider to be remarkable intervention and
 7 representations on behalf of the witness, but I would
 8 like to do that during the break.
 9 THE PRESIDENT: I think that's a good idea, Mr Cowley,
 10 because this all started off with your suggesting that
 11 these two letters were not compatible or consistent, and
 12 for myself I am inclined to agree with that. That then
 13 raises the question of what links the two. If there is
 14 relevant correspondence linking the two letters, that
 15 may provide the explanation for an apparent
 16 inconsistency between the two.
 17 The second letter is talking about the contract.
 18 The first letter is talking about licences.
 19 MR COWLEY: Yes, sir. May we take the break and I will look
 20 up this document?
 21 THE PRESIDENT: I think it would be a good idea. We'll take
 22 the break now and come back in half an hour.
 23 (1.30 pm)
 24 (A short break)
 25 (2.06 pm)

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14:06 1 MR COWLEY: Mr President, can you just tell us what time you
 2 would like a break, so I can keep my eye on it?
 3 THE PRESIDENT: Right, that's kind of you. I should think
 4 about 4 o'clock, or perhaps a bit before. In an hour
 5 and three-quarters, something like that.
 6 MR COWLEY: Thank you, sir.
 7 THE PRESIDENT: Are you ready to proceed, Mr Cowley?
 8 MR COWLEY: Yes.
 9 THE PRESIDENT: Yes, thank you. Could the witness be
 10 invited back, please.
 11 MR COWLEY: FTI, can you please bring up the exhibit that
 12 Mr Hill insists the witness review, R-018.
 13 Mr Imena, before the break, counsel for the
 14 Respondent insisted that you needed to review this
 15 before answering my questions. So by all means please
 16 review this. (Pause)
 17 A. Yes, I have finished reading.
 18 Q. Can you bring back up C-034, please.
 19 Now, Mr Imena, to pick back up the questions that
 20 I was asking, in February 2012 you'll agree that your
 21 predecessor was informing NRD that the parties should,
 22 as soon as possible, negotiate the terms of a licence --
 23 excuse me, complete the terms of a licence?
 24 A. You are right.
 25 Q. So at that time there was no understanding between the

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14:09 1 parties as to whether it was five concessions that were
 2 going to be ever approved, something less than five,
 3 only two: you'll agree that that was not yet resolved
 4 between the parties as of the letter that Mr Hill
 5 insisted that you read; correct?
 6 A. Actually, I thank our counsel that I was allowed to look
 7 at this letter, and now I understand properly the
 8 context.
 9 The first letter of 2011 shows that the report was
 10 not satisfactory, and this one of January gives a clear
 11 position of the ministry that they are okay to move
 12 forward with the negotiations on two concessions, and if
 13 NRD is happy with that proposition, they can move
 14 forward. And the February letter says, "Please, we have
 15 not finished to discuss on the negotiations, so
 16 I'm extending to you more time".
 17 So to me, the message from the ministry had been
 18 very clear to NRD: that you are given two concessions
 19 and we are ready to negotiate on them.
 20 Q. Well, it says something more than -- you've now switched
 21 the language. You suggested that the February letter
 22 says "to conclude negotiations". It actually says "to
 23 conclude the contract"; correct?
 24 A. Yes. So that's -- it's --
 25 Q. Thank you.

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14:11 1 A. It's just the language. It's just the language.
 2 Q. Yes. Well, it's --
 3 A. But I think the context is the same.
 4 Q. It's very different language. So they were being
 5 invited in to negotiate contracts for operating mining
 6 concessions. Your testimony is it was only going to be
 7 two; correct?
 8 A. Yes.
 9 Q. Okay. First question: which two?
 10 A. That was to be chosen by NRD.
 11 Q. First of all, to be clear for the sake of the record,
 12 the Claimants continue to stand behind Mr Marshall's
 13 testimony that the discussion that is purportedly
 14 confirmed in R-018 did not occur.
 15 But putting that aside as a disagreement as to who
 16 said what to whom in December, your testimony now is:
 17 the ministry had approved the granting of concessions,
 18 any two to be chosen by NRD; and when they came in, as
 19 soon as possible, to negotiate contracts, those
 20 contracts would be for licences to operate two mining
 21 concessions. Correct? That's your testimony?
 22 A. Not correct. Can I clarify what I want to say?
 23 NRD had five concessions. The ministry evaluated
 24 and said, "Okay, we can allow you to negotiate with us
 25 two concessions". In this letter, the names of the

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14:14 1 concessions for mining going forward by NRD; correct?
 2 A. Yes.
 3 Q. So it's perfectly reasonable for NRD to read the
 4 February letter, just as you do, to say, "We're no
 5 longer saying that you don't get any concession and
 6 licence going forward yet because you didn't invest
 7 \$40 million yet", right?
 8 A. You are right.
 9 Q. And it was perfectly reasonable for NRD to read the
 10 February 2012 letter to say the ministry is no longer
 11 saying they don't get any concession or licence going
 12 forward at all, they don't qualify as an applicant
 13 because they have not sufficiently identified reserves
 14 in at least two specific concessions, unnamed in the
 15 letters, but Rutsiro and Nemba. The ministry is not
 16 saying they don't qualify as an applicant; they're going
 17 to give them a contract, right?
 18 A. It's not as simple as you're trying to put it.
 19 The ministry here is saying, "You have five
 20 concessions. We know you didn't perform, but we are
 21 generous enough to allow you at least to negotiate for
 22 two contracts". And here you see that NRD had said,
 23 "No, you give us the five or nothing". And then the
 24 ministry says, "No, we are generous: you can take two.
 25 But if you still want only the five, then we are happy

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14:12 1 concessions are not mentioned. But what I recall, with
 2 my experience at that time, it is the concessions where
 3 at least NRD tried more work compared to the other
 4 concessions, and those concessions were Rutsiro and
 5 Nemba.
 6 Q. So although it's not named in any letter, you say the
 7 ministry had already made a decision as to which two
 8 concessions it would award contracts and negotiate
 9 specific contract terms for licences for NRD to operate
 10 those two concessions going forward; correct?
 11 A. The ministry was happy to move forward in negotiations
 12 with NRD on two concessions.
 13 Q. And the negotiations --
 14 A. What I recall, it means that on our side, Nemba and
 15 Rutsiro.
 16 Q. Please just focus on my question. I'm trying to see
 17 that we have agreement here that it's not just ambiguous
 18 negotiations: they weren't inviting them in for
 19 a negotiation of any and all issues, they were inviting
 20 them in as soon as possible to conclude contracts. And
 21 you're saying the ministry intended in those discussions
 22 those contracts would be for Rutsiro and Nemba; correct?
 23 A. You are right.
 24 Q. And the contracts that they were saying should be
 25 concluded as soon as possible were to operate those two

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14:16 1 that you relinquish them". It is clear in the letter.
 2 So it was --
 3 Q. And I'm not saying anything different in my question,
 4 sir. You're not focusing on my question. But I do
 5 notice that you keep changing the term [from]
 6 "concluding a contract", which is in the letter, to
 7 "negotiate", which is ambiguous as to what it may refer
 8 to. And I want to be specific.
 9 My question to you is: it was reasonable in
 10 February 2012 for NRD to read the minister's letter to
 11 say, "Come in, we will conclude contracts for licences
 12 to operate" -- you say -- "two mining concessions going
 13 forward, and you don't have to worry anymore that you
 14 get nothing going forward because you have not
 15 sufficiently identified all reserves in all concession
 16 areas as of the application". That would be --
 17 THE PRESIDENT: Mr Cowley, you keep using the expression
 18 "going forward". Can you be more precise as to what you
 19 mean by that? Is there any length of period going
 20 forward that you're putting to this witness?
 21 MR COWLEY: I have not put it to this witness on purpose
 22 because it's not in the letters, and I'm not suggesting
 23 it's hidden in the letters anywhere. But concluding
 24 a contract is what the minister did say, and I'm just
 25 trying to get agreement by this witness that he

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14:18 1 understood it to mean what -- as the Tribunal knows,
 2 we've been saying NRD understood that these other issues
 3 were off the table.
 4 I just want to focus on the fact that we're no
 5 longer talking about application; we're talking about
 6 contract terms. Whether they reached agreement on the
 7 length or not, I am not suggesting is shown by these
 8 letters, and that's why I'm not suggesting it in my
 9 questions, because I don't mean that his answers imply
 10 that.
 11 So, Mr Imena, you will agree that it was reasonable
 12 for NRD in 2012 to read the minister's letter to say it
 13 was not disqualified from getting a licence for any
 14 concession because it failed to provide sufficient
 15 estimates of reserves at every concession, right?
 16 A. I will agree that the ministry made it clear to NRD that
 17 they failed to fulfil their obligations. But the
 18 ministry gave them the opportunity to negotiate
 19 contracts or agreements or licence, as you wish, for two
 20 concessions, because the ministry wanted investors and
 21 was much supportive to NRD. That is what I think these
 22 letters are telling us.
 23 Q. Sir, you will agree, will you not, that the
 24 February 2012 letter does not say, "You did not qualify
 25 for anything because you have not met the contract terms

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14:22 1 tell you.
 2 Q. You will agree, sir, that these issues that predominate
 3 in your witness statement, all the reasons why NRD
 4 didn't qualify for anything, it would not get any
 5 licence for any concession -- because it failed to
 6 invest \$40 million, because it failed to specify the
 7 exact reserves at every site, because it failed to
 8 provide adequate environmental impact assessments at
 9 every site -- you'll agree that as of February 2012, the
 10 minister advised NRD that it was not standing by such
 11 claims, and it was willing to conclude contract
 12 negotiations for at least one, if not more, licences for
 13 concessions. Can you agree with that?
 14 A. I agree with that, and that is a sign that the ministry
 15 was very indulgent and generous to NRD. I agree totally
 16 with that.
 17 Q. So won't you agree, sir, that when you prepared your
 18 witness statement that said all these reasons why NRD
 19 had to know it was not entitled to anything, you
 20 purposely failed to state what you knew to be true: that
 21 your predecessor minister already said, "We're not
 22 standing by these issues any further", as of
 23 February 2012. "We will negotiate at least one, if not
 24 more, contracts with NRD going forward". Right?
 25 A. It's not only my predecessor who told NRD that. I met

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14:20 1 for any concession, but we'll still talk to you", right?
 2 A. Excuse me. I think, as I explained it before, it's not
 3 appropriate to me to make further interpretation, rather
 4 than what is written. I can't make an interpretation
 5 for NRD. I can only explain the facts that I know.
 6 Q. And you do know as a fact, in the letter they didn't
 7 mention anything about not qualifying for any
 8 concession; all they talk about, all the minister talks
 9 about is they'll conclude contracts. Correct?
 10 A. I agree that the minister, in his first letter of 2011,
 11 says, "You didn't perform as expected", but in his
 12 second letter says, "We are happy to discuss with you
 13 two concessions". In his third letter, he says, "I'm
 14 giving you more time so that we can conclude the
 15 contract or the licence or the agreement". That is what
 16 I agree.
 17 Q. Okay. And you'll also agree that it was reasonable for
 18 NRD to read the February 2012 letter to say that the
 19 minister is not taking the position that NRD will not
 20 qualify for a licence for any concession because it
 21 failed to provide sufficient environmental impact
 22 assessments for every concession; correct?
 23 A. Not correct. What I agree is that I'm not in a position
 24 to make an interpretation for NRD. I'm making what
 25 I remember of the facts, and this is what I'm trying to

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14:24 1 NRD and told them, "Please, we are willing to negotiate
 2 with you". I had a meeting, it is written in my
 3 statement: "Please, we are willing and ready to
 4 negotiate with you for one or two concessions".
 5 That's -- it's a fact. So --
 6 Q. And so --
 7 A. -- it's clear to me.
 8 Q. It's true, sir, is it not, that all these issues that
 9 you dwell on at such length in your witness statement as
 10 to the failings of NRD in its 2010 application, you know
 11 as a reality did not actually block the award of licence
 12 contracts for at least one, if not more, mining
 13 concessions? Those were not the issues that prevented
 14 the parties from going forward; correct?
 15 A. I totally disagree with your suggestion. What I agree
 16 with is clear in the letters. NRD was not satisfactory
 17 in completing and implementing its contractual
 18 obligations, but the government gave NRD a chance to at
 19 least negotiate for one or two concessions, although the
 20 government knew that NRD was not satisfactory in
 21 completing its obligations. That is what I agree with.
 22 Q. Can I ask that C-045 be brought up.
 23 C-045, sir, is a September 13th 2012 letter, again
 24 from your predecessor, Mr Kamanzi, to NRD, further
 25 extending what's referred to as the "previous license of

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14:25 1 [NRD]"; correct?
 2 A. Can you repeat your question, please?
 3 Q. This is a September 13th 20 --
 4 A. Excuse me. I think the problem: you are showing me
 5 a paper and you ask a question at the same time. So if
 6 you can give me a minute, I can read, and then --
 7 Q. Absolutely. I have no trouble with that. Just let me
 8 know when you want me to repeat the question. (Pause)
 9 A. Yes, please, you can ask it.
 10 Q. This is a September 13th 2012 letter from your
 11 predecessor, Minister Kamanzi, to NRD, further extending
 12 what is referred to as "the previous license" for three
 13 more months; correct?
 14 A. Correct.
 15 Q. Just as an aside, sir, because I don't want this to feel
 16 like it's some sort of battle, but when I ask that they
 17 bring up a document and ask you a question about it,
 18 I have every intention to give you whatever time you
 19 need to read the document before answering. I'm not
 20 demanding an answer immediately. So if I forget to say,
 21 "Please let me know when you're done reading", just take
 22 the time to read it and let me know. Okay?
 23 A. Noted.
 24 Q. You'll agree that this letter to NRD does not state that
 25 only one or two or three previous licences were

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14:29 1 A. I think, sir, it's not appropriate for me to make
 2 a further interpretation of this very clear letter. It
 3 is in the same context with the previous letters. This
 4 is a process that was ongoing. The government was
 5 telling NRD, "Come to the table so that we negotiate".
 6 So I think I'm not able to make further interpretation
 7 on this letter.
 8 Q. It's not just negotiate any topic, sir. You keep saying
 9 a very general term. The letter says specifically
 10 negotiating contracts, right?
 11 A. You are right.
 12 Q. And the contracts that everybody was talking about in
 13 these letters are licences, one or more licences for one
 14 or more concessions; correct?
 15 A. You are right.
 16 Q. You will agree that it would be completely inappropriate
 17 if the ministry already made an internal decision to
 18 reject the November 2010 application for three
 19 concessions, so that NRD was not approved to operate
 20 those going forward, to leave it nevertheless operating
 21 them; correct?
 22 A. No, not -- it's not correct. Excuse me.
 23 There was a meeting between NRD and people of the
 24 Rwandan Natural Resources Authority, and those people
 25 were representing the ministry. They made it clear to

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14:27 1 extended; as of this time, your predecessor was
 2 extending all of them, so that the work on the new
 3 contracts could continue. Correct?
 4 A. I do not agree. This letter is extending the licences
 5 for all the concessions for, I think, six months or
 6 something like that. It doesn't cancel the previous
 7 letters.
 8 And let's keep these letters in the same context.
 9 Q. Sir, can --
 10 A. They are written by the same minister, written to the
 11 same company. So this is to say, "Continue mining in
 12 the five concessions, I'm giving you that opportunity,
 13 and we are reorganising you ourselves so that we
 14 conclude negotiations".
 15 Q. You'll agree that that message would never have been
 16 delivered if in fact, as of September 2012, the ministry
 17 had made the decision to reject the 2010 application for
 18 three of the concessions; correct?
 19 A. I didn't get your question, sorry.
 20 Q. The message that you just stated NRD was to understand,
 21 that it was being given the opportunity to continue
 22 mining at all five concessions while the discussions
 23 continued, would never have been sent if in fact what
 24 the minister meant was, "You are rejected and you cannot
 25 pursue a licence for three of those concessions", right?

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14:31 1 NRD that the ministry is ready to move ahead with
 2 contracts for two concessions, and it was also clear in
 3 the mind of the ministry that it was for short-term
 4 licence, but NRD made it clear to them that they either
 5 get the five or nothing.
 6 So let's not extract this fact from this context.
 7 Q. Sir, you do know from your discussions and review of the
 8 NRD file, as well as your review of the materials that
 9 were submitted in this case, that the Claimants very
 10 much dispute Rwanda's description of what was said at
 11 a December meeting; you know it's in dispute, right?
 12 A. Dear sir, I met Mr Marshall, I discussed with him.
 13 Discussing with him is also very difficult: he is -- he
 14 has a character. But we don't have time to spend on
 15 that.
 16 But the message from the ministry has always been
 17 clear. That's what I would like to mention.
 18 Q. You do understand I asked you whether you already know
 19 that Claimants dispute what was said at the December
 20 meeting? That's my only question to you. You know they
 21 say, "We don't agree with your characterisation of what
 22 we were told"; correct?
 23 A. And what I'm trying to say is that I don't agree with
 24 what the Claimant is telling you.
 25 Q. Right. And you know he doesn't agree with what you're

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14:32 1 telling me, right?
 2 A. I know if he was agreeing, I wouldn't be sitting here!
 3 Q. Okay. So I am just trying to focus on the letter.
 4 A. I'm trying to give --
 5 Q. Let me ask --
 6 A. -- the Tribunal the reality, the truth. That is what
 7 I'm trying to do.
 8 Q. Sir, please wait for a question, because --
 9 A. Sorry, sorry, sorry.
 10 Q. -- I ask a question about a letter and you again argue
 11 about something that happened in a meeting, and they're
 12 not lining up. So I would like to stick with the
 13 questions and answers, and your counsel is perfectly
 14 prepared to ask you other questions.
 15 You will agree that if the minister or the ministry
 16 had reached a conclusion to reject the application for
 17 three concessions, it would be inappropriate, under
 18 Rwandan law, to leave NRD operating the concessions,
 19 right?
 20 A. Sorry, I'm going to repeat my answer. This was
 21 a process that started in 2010, and the answers from the
 22 minister are clear in the letter. So I do not agree
 23 with the suggestions you are making.
 24 Q. Under Rwandan law, the ministry must approve the
 25 operator of a mine. If not approved by the ministry,

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14:36 1 that you should vacate. Or yourself you can relinquish,
 2 on your own decision, and say, "I'm no longer interested
 3 in this; I'm quitting".
 4 Q. And if the ministry says, "No, we don't agree that you
 5 can operate, you're not going to be given a licence or
 6 permission to operate that mine", it can't nevertheless
 7 say, "But go ahead and do it anyway for a while, we'll
 8 get back to you", right?
 9 A. Yes, when you are in the process of evaluation
 10 negotiation, you can be given extensions, as the case
 11 that has been granted to NRD.
 12 Q. Up until this point, where that's being extended again,
 13 you say that they're in discussions. But you've also
 14 said that the ministry knows, and NRD is supposed to
 15 know, they're not in discussions and there's no
 16 possibility of getting licences to operate three
 17 concessions. You said both, right?
 18 A. If I remember properly what I said, this was a process:
 19 NRD was given the opportunity to apply for two
 20 concessions, and the ministry was extending the licence
 21 to give NRD that opportunity. So this is what
 22 I remember I said.
 23 Q. Well, let's put specifics on that. What you're saying
 24 is the minister has told NRD, "We will give you the
 25 opportunity to negotiate with us for contracts to

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14:34 1 it's illegal to operate the mine, collect the minerals
 2 and sell them; correct?
 3 A. You are right.
 4 Q. So the ministry can't agree that a mine, for example,
 5 would be operated by artisan miners, free to do what
 6 they want, with no approved operator in charge of
 7 everything, right?
 8 A. Sorry, I didn't get your question.
 9 Q. Okay. It's illegal under Rwandan law for miners to just
 10 go mine minerals at a site, take them and sell them,
 11 without working under an approved operator of the mine,
 12 approved by the ministry, right?
 13 A. You are right.
 14 Q. So just as the ministry can't agree that miners can
 15 simply operate a mine on their own, the ministry can't
 16 agree that someone it's rejected as an operator is left
 17 in charge and nevertheless operating the mine, right?
 18 A. Sorry, I didn't get the question properly.
 19 Q. If an operator asks for approval of the ministry to
 20 operate a mine at a particular concession area and is
 21 told no, it would be illegal for that operator to
 22 nevertheless do it and operate that concession, right?
 23 A. Under the law, you are only allowed to mine if you have
 24 the permit or the licence from the ministry. And you
 25 can continue to do so until you get the final notice

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14:38 1 licence two mining facilities; we will not give you
 2 an opportunity to negotiate licences for these three",
 3 and you're saying it's told NRD, "But operate all five"?
 4 A. Yes, "As we are concluding the negotiations, continue
 5 operating the five".
 6 Q. And you'll agree that's entirely inconsistent with
 7 Rwandan law: if they've already been told no, if that's
 8 what the minister believes, they've been told, "No, we
 9 will not consider you for a licence for three
 10 facilities", the minister then can't say, "But operate
 11 them"?
 12 A. I totally disagree with your suggestion. Can I explain?
 13 Q. If you need to, to answer the question.
 14 A. The minister --
 15 THE PRESIDENT: I would welcome an explanation, please,
 16 because I'm puzzled about this.
 17 A. This company was given five concessions in 2006. That
 18 was in the context of privatisation. The government was
 19 attracting investors.
 20 But in 2010 the government noticed that the ability
 21 of this company is not sufficient to operate five
 22 concessions. This was notified to NRD. But in that
 23 period of time, while the government was expecting to
 24 conclude an agreement, the government allowed them to
 25 continue mining in the five areas, so that the two or

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14:39 1 one selected and discussed among the parties will be
 2 given to NRD.
 3 Unfortunately, this process that started by my
 4 predecessor was not concluded until I was in charge.
 5 And I tried to push it, and we failed, until the 2014
 6 law came on and I said, "People -- please, NRD, now
 7 there's a new law, let's try to put things properly".
 8 We asked them to apply basing on the new requirements of
 9 the 2014 law. Unfortunately, they failed. And we told
 10 them in 2015 we cannot continue.
 11 So this is the summary of what I remember and this
 12 is the summary of the truth, if my mission is to give
 13 the truth to this Tribunal.
 14 MR COWLEY: Well, I don't intend or desire to argue with you
 15 for no purpose, sir. You started your answer and then
 16 said you wanted to explain. But your answer was: no,
 17 I was wrong; and what I heard as an explanation agreed
 18 with my question as I understood it. So I want to try
 19 to get clarity on the record here.
 20 It's your position that your predecessor minister
 21 informed NRD, and it's your position NRD understood, it
 22 would never be given -- excuse me, that's too strong
 23 a statement. Let me rephrase that question.
 24 It's your position that your predecessor minister
 25 informed NRD that it would not be granted contracts to

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14:41 1 licence three concessions as a result of the
 2 November 2010 application, and that the parties, you
 3 say, understood NRD was not qualified to get them and
 4 would not get them. Nevertheless, while discussing the
 5 terms of a contract for two concessions, the minister
 6 informed NRD, "Operate the three others too". That's
 7 what your testimony is, right?
 8 A. My testimony is I don't want to speculate and interpret
 9 clear letters. I just try to explain to you what
 10 I know, and that is what I will try to do.
 11 Q. And did my question accurately report back your
 12 explanation?
 13 A. No.
 14 Q. Okay. Let's break it down.
 15 As of September 2012, you stated, based on the prior
 16 communications, that we have to keep in mind the meaning
 17 both of the minister -- and what NRD must have
 18 understood the meaning to be, you say, was that the
 19 reference to completing the ongoing work for new
 20 contracts referred to only Rutsiro and Nemba
 21 concessions, and that there was no ongoing work to be
 22 completed for licences to the three other concessions;
 23 correct?
 24 A. These letters were sent after the expiry of the initial
 25 contract that had given five concessions to NRD. Now,

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14:43 1 the contract expired and the ministry concluded that the
 2 work done by NRD was not satisfactory. But the ministry
 3 said, "We are giving you a chance, and we don't want to
 4 lose you. Please, let's discuss on contracts for two.
 5 But in the meantime, because you were working on the
 6 five, keep working on the five as we finalise this
 7 process".
 8 Q. Sir, as of September 2012, when your predecessor issued
 9 this letter, is it your position that the ministry's
 10 message to NRD was that the work that was to be
 11 concluded on contracts included work on potential
 12 contracts for all five concessions; or no, it only
 13 included work for contracts on two concessions?
 14 A. My position is: if NRD had made proper work in the five
 15 concessions, and even here with this letter of
 16 September -- I think -- is it September 2012? -- they
 17 are still allowed to continue working on the five
 18 concessions. If they had successfully implemented
 19 proper work on these five concessions and they came back
 20 to the minister and said, "Look, by the way, in 2010 we
 21 didn't do a lot, but with this extension, this is what
 22 we did", the ministry would have considered that new
 23 work.
 24 But nothing new -- apart from the information that
 25 was given in 2010, nothing tangible new came from 2010

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14:45 1 on the three other concessions.
 2 Q. You'll agree with me, sir, that the minister knew what
 3 came in prior to September 13th 2012; it wasn't an open
 4 question in the minister's mind at that time whether new
 5 work came in as of that time, right?
 6 A. Excuse me. How can I be in the minister's mind at that
 7 time?
 8 Q. Well, sir, I don't agree that that's a line that you've
 9 been drawing in your answers to the questions, but I'm
 10 asking as a matter of pure logic. Or, if you're going
 11 to expand on logic, you know the minister's practice and
 12 you know how the NRD file was maintained because you
 13 picked it up.
 14 Is there any reason you can't say that as of
 15 September 13th 2012, the ministry at least knew what
 16 additional information, if any, NRD gave about the other
 17 three concessions beyond Rutsiro and Nemba?
 18 A. Sorry, I will keep repeating myself.
 19 The ministry got a report, assessed it, gave its
 20 finding to NRD. And between 2010 up to 2012, nothing
 21 tangible came to describe that there's much work that
 22 has been done on the three other concessions, rather
 23 than Nemba and Rutsiro.
 24 Q. Please pause there. As of September 13th 2012, your
 25 predecessor minister knew that, right?

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14:47 1 A. Can you ask the question, please, again?
 2 Q. What you've just said occurred, as of
 3 September 13th 2012, your predecessor minister knew that
 4 too, right?
 5 A. You're asking if he knew what I'm telling you?
 6 Q. Yes. You just described what happened between
 7 November 2010 and September 2012: you characterised what
 8 happened.
 9 A. Yes.
 10 Q. My question is simple: the minister at the time knew the
 11 same thing, right?
 12 A. I didn't get your -- that question. "Same vein"? What
 13 is the meaning of "same vein"?
 14 Q. I'm sorry, I mispronounced the word. Sometimes I talk
 15 too fast, and I know that, but I have a hard time
 16 slowing myself down.
 17 What you just described as occurring between the
 18 application in November 2010 and the state of affairs in
 19 September 2012, your predecessor minister knew the same
 20 thing, right?
 21 A. Yes.
 22 Q. Okay. So just sticking with that, when he sent the
 23 letter out on September 13th 2012, knowing what you've
 24 characterised as happening up until that date, is it
 25 your position that when he referred to "new contracts

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14:50 1 The position of the ministry was to offer
 2 negotiation for contracts for two concessions at that
 3 time. But I would guess that if NRD had come with more
 4 information on the proper work made on the five
 5 concessions --
 6 Q. Please don't add a hypothetical and change my question
 7 before you answer my question.
 8 MR HILL: That's an entirely unfair interruption of the
 9 witness. He's giving you an answer to the question. If
 10 he could answer the question, because it was exactly on
 11 the question asked.
 12 MR COWLEY: He says: if something different had happened.
 13 I've asked him to stick only with what actually happened
 14 as of the date that the --
 15 MR HILL: No, that again is unfair. He's explaining what
 16 the ministry point of view would have been at the point,
 17 which is exactly what he's been asked to speculate.
 18 MR COWLEY: Mr President, I'm going to have to ask: I do not
 19 think it is fair, after all these efforts, to get
 20 an answer to the question that the answer becomes
 21 a changed question.
 22 THE PRESIDENT: I'm sorry, my view is that he was answering
 23 the question perfectly clearly and it wasn't a question
 24 that he felt could be answered yes or no.
 25 MR COWLEY: My apologies.

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14:49 1 that will be negotiated" going forward, you know, from
 2 that date forward to be negotiated, he was referring in
 3 NRD's case to only contracts for Rutsiro and Nemba, or
 4 he was also referring to the possibility of contracts
 5 for the other three concessions too? Which?
 6 A. Sorry, the question was too long and I got lost,
 7 unfortunately.
 8 Q. I can be criticised for lots of things, and I'll take
 9 it. Many things I do can be criticised. I'll try
 10 again. And I'm apologising: I'm not trying to belabour
 11 this for you, I'm trying to make it simple, but
 12 I'm doing a poor job.
 13 We've already agreed that your characterisation of
 14 what happened between November 2010's application and
 15 September 2012's letter, the prior minister was
 16 aware of.
 17 A. Yes.
 18 Q. With that as an agreed fact --
 19 A. Yes.
 20 Q. -- when your predecessor sent the September 13th 2012
 21 letter and referred to "new contracts that will be
 22 negotiated", was he referring to new contracts for the
 23 Rutsiro and Nemba concessions only, or all five
 24 concessions?
 25 A. So let me explain it as much as I can.

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14:52 1 THE PRESIDENT: He was explaining why it couldn't be
 2 answered yes or no, and what he thought the ministers
 3 meant by this offer.
 4 A. Thank you, sir, for the clarification.
 5 And what I'm trying to explain: these are things
 6 that happened some years ago. You are showing me
 7 a letter which was signed by my predecessor and you're
 8 asking me to interpret it. I cannot interpret it in
 9 just "yes" or "no"; I'm trying to give you the context.
 10 And unfortunately my answers will seem repeating
 11 themselves, because what I'm telling you, those are the
 12 facts, and we have the letters here.
 13 So if NRD had produced proper work in all the five
 14 concessions, the government would have been very happy
 15 to give them all the five concessions. But in the view
 16 of the government at this time, we were saying, "Let's
 17 proceed with one or two". That is what I was trying to
 18 answer.
 19 MR COWLEY: I'm going to preface this question by saying
 20 I'm not asking you to talk about NRD specifically. I'm
 21 asking you a question of how the ministry applies its
 22 authority under Rwandan law.
 23 If a concession is held out for applications,
 24 an applicant applies, as part of the tender, for the
 25 licence to that concession, the ministry decides you do

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14:54 1 not qualify, you will not be given a licence. Do you
 2 agree with me, sir, that it would be inappropriate under
 3 Rwandan law to say, "But for the time being, operate the
 4 concession anyway"?

5 A. I do not agree with your interpretation of the facts.
 6 Q. I specifically said I'm not talking about NRD. So
 7 please don't talk about NRD in the answer. I'm asking
 8 a hypothetical question about how it works, how the
 9 ministry's authority is applied and what they can and
 10 can't do. So please don't answer about what it did with
 11 NRD; answer only what I'm asking.
 12 If somebody applies, makes an application under
 13 a tender -- which has nothing to do with our case -- for
 14 a mining concession, and the ministry says, "No, you do
 15 not qualify, you will not be given a licence", do you
 16 agree with me that it would be inappropriate under
 17 Rwandan law for the ministry to say, "Despite that
 18 decision, operate that mine for a while"?

19 A. I do not agree with your interpretation of the facts.
 20 If I'm given a minute, I can explain.
 21 You want to understand the context in which the
 22 ministry operated. The first thing is to get a licence.
 23 When you get a licence, you operate. When you submit
 24 an application file, the application file is processed.
 25 This can take some months; it can even take some years.

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14:57 1 minister to extend it for only two more weeks at that
 2 time?

3 A. My understanding is that the minister was again giving
 4 chance to the negotiation process. That is my
 5 understanding. It is to give a chance to see if
 6 an agreement can be reached.
 7 Q. If contracts for licences of one or more mining
 8 concessions could be reached, right?

9 A. That's my understanding.
 10 Q. And there wasn't an expectation of the minister to do
 11 something more than that in the next two weeks; correct?

12 A. I would don't -- I would not like to speculate.
 13 Q. Can I ask that C-160 be brought up.
 14 I am remembering to say this time, sir: tell me when
 15 you're ready to answer a question.
 16 A. Yes. (Pause) Yes, I have finished.
 17 Q. C-160 is a January 21st 2013 letter from then
 18 Minister Kamanzi to the Rwanda Development Board;
 19 correct?

20 A. Correct.
 21 Q. And in the letter he asks the RDB:
 22 "... to initiate negotiations with the above
 23 company."
 24 Which is NRD.
 25 "Its initial license for four ... years expired some

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14:55 1 And as long as no final decision has been made on your
 2 case, you are allowed to continue to operate. This is
 3 how we operated.
 4 Q. Sir, looking back at C-045, do you see that the date of
 5 the letter extending the licence period for NRD to
 6 operate the mining concessions is from the
 7 September 13th date when it goes out to October 2012?
 8 A. Yes.
 9 Q. Two more weeks left in the month; correct?
 10 A. Yes.
 11 Q. You'll agree that the only reasonable understanding NRD
 12 would have after receiving this letter is the minister
 13 believes they are so close they can complete whatever
 14 contracts he's referring to in the next two weeks?
 15 A. I do not agree with your interpretation.
 16 Q. Based on your understanding of events, your review of
 17 the file, did the minister have any reason to extend
 18 further, for the remaining two weeks in September, the
 19 licences under which NRD had been operating the
 20 concessions for only two weeks, because something else
 21 was planned for the weeks following?
 22 A. I'm sure the minister had very good reasons.
 23 Q. I'm asking you, based on your review, because he's not
 24 here. You reviewed the file, you looked at the facts.
 25 What did you understand the reasons were for the

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15:00 1 time back. The company has been operating on short term
 2 extensions as we wait for the conclusion of the new type
 3 of agreement with them, if any."
 4 Do you see that?

5 A. I see that.
 6 Q. Now, the reason Minister Kamanzi asks the RDB to
 7 initiate those negotiations is because at some point in
 8 the intervening period between the letters in which he
 9 said to NRD, "We will negotiate the contract in this
 10 letter", a policy decision had been made that the RDB
 11 would handle the primary role in such negotiations;
 12 right?

13 A. You are right.
 14 Q. In the middle paragraph, then Minister Kamanzi
 15 identifies the five concessions and says:
 16 "... [those] were too many for one license. The way
 17 forward should be to negotiate a license for each
 18 concession so that [they may] be evaluated separately."
 19 Then he reports that activities have temporarily
 20 been stopped in two of the concessions because of
 21 environmental degradation. Do you see that?
 22 A. I see that.
 23 Q. He says, however:
 24 "... negotiations [should] begin with concessions
 25 that currently have no serious issues."

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15:01 1 Correct?
 2 A. Correct.
 3 Q. Is it your understanding that Minister Kamanzi was
 4 telling the RDB that other than Rutsiro and Sebeya,
 5 there's no serious issue with negotiating licence
 6 contracts for NRD to operate all the other mining
 7 concessions?
 8 A. I don't agree with the way you are summarising the
 9 understanding from this letter. If I may explain, this
 10 is in the same context with what we were discussing
 11 previously. Here the minister is telling RDB, "Please
 12 start negotiations, but negotiate each concession
 13 separately". And I think immediately after this letter,
 14 RDB invited NRD to come and negotiate, starting with
 15 Nemba.
 16 So this is in the same context: it's the
 17 continuation of a process.
 18 Q. And again, I have to apologise: I don't understand the
 19 disagreement with my [question]. It seems to me your
 20 explanation was, "Yes, your question was correct", but
 21 you started by saying: no, I wasn't correct.
 22 You understood, just as I asked, that
 23 Minister Kamanzi was informing RDB that there were no
 24 serious issues for stopping negotiation of licence
 25 contracts regarding all the concessions other than

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15:03 1 Rutsiro and Sebeya in this letter, right?
 2 A. You are right.
 3 Q. Now, prior to January 22nd 2013, if not that day itself,
 4 when was the policy change implemented such that the
 5 ministry was to hand off the primary role in negotiating
 6 with applicants to RDB? When did that policy change
 7 that led to this letter?
 8 A. I don't remember the exact date right at the moment.
 9 I don't remember the exact date, but it was around that
 10 time.
 11 Q. Now, the first paragraph which we started with -- and if
 12 I could ask you to look back at that -- that included
 13 the statement that:
 14 "The company has been operating on short term
 15 extensions as we wait for the conclusion of the new type
 16 of agreement with them, if any."
 17 A. Yes, I see that.
 18 Q. But you know that as of January 22nd 2013, there had not
 19 been a short-term extension of the licences for any of
 20 the five concessions since October 2012, right?
 21 A. Let me explain it again. I said that in Rwanda at that
 22 time, when you have a licence, you continue operating it
 23 until a final decision has been made on your
 24 application. So no final application had been made
 25 until January 2013.

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15:06 1 Q. You say "no final application": did you mean "no final
 2 decision"?
 3 A. No final decision. Excuse me. Excuse me. No final
 4 decision.
 5 Q. Right, but I was asking about something very different.
 6 I was asking about the representation in this letter
 7 that the company has been operating on short-term
 8 extensions.
 9 We looked at the references to extensions in
 10 a couple of letters that the last one said ran through
 11 the end of September 2012 to October 2012. So as of
 12 October 2012, there's no written further extension of
 13 any licences that we've looked at so far.
 14 A. I --
 15 Q. Do you agree that there were no written further
 16 extensions of the licences at all?
 17 A. Exactly. It confirms what I was trying to explain. As
 18 long as the ministry has not made a final decision on
 19 your application, you are allowed to continue operating.
 20 And actually here the minister is recognising that NRD
 21 has been operating.
 22 Q. I do not understand the answer, so please explain. As
 23 of January 22nd 2013, is it your understanding that NRD
 24 was at that time currently operating on a short-term
 25 extension of its licences for all five concessions?

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15:07 1 A. Yes, that is my understanding.
 2 Q. And what extended the licence for the concessions to NRD
 3 from October 1st to January 22nd 2013?
 4 A. What extended it is the fact that no letter was sent to
 5 NRD telling them, "Please close your bags and relinquish
 6 the concession".
 7 Q. So as you understood it, there was no need to inform NRD
 8 that its licences were extended for a period; you
 9 understood that its licences were automatically extended
 10 under Rwandan law until it was told the opposite, "You
 11 now must stop operating"?
 12 A. You are right.
 13 Q. So then why did the minister send any of the prior
 14 letters saying that it was willing to extend for
 15 a specific period of time?
 16 A. The minister was showing NRD that the application has
 17 been received, some observations had been made on the
 18 application, some negotiations had started, and the
 19 minister said, "Now let me hand over to RDB so that RDB
 20 can lead the negotiation process".
 21 So I think -- again, that's why I'm not willing to
 22 speculate -- that the fact that no further extension
 23 letter was sent is because the minister was waiting for
 24 the conclusions of these negotiations on the side of
 25 RDB. But again, excuse me, I don't want to speculate.

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15:09 1 Q. Wasn't the minister always waiting for the conclusion of
 2 negotiations of a contract, every time he sent a letter
 3 saying, "We will extend for a short period of time your
 4 licences"?

5 A. Here NRD had been given an opportunity to negotiate for
 6 two concessions, but on several occasions they were not
 7 willing to take that opportunity. So the minister said,
 8 "Let me hand that file or process to RDB to lead it".
 9 So that's what the letter is telling us.

10 Q. Are you aware of any communication from the Ministry of
 11 Mines to RDB, whether before or after the exhibit we're
 12 looking at on January 22nd 2013, in which RDB was
 13 informed that there were only two concessions for which
 14 contracts would be considered, and therefore should only
 15 be negotiated?

16 A. I wouldn't like to speculate on that.

17 Q. I'm just asking you simply: in your review of the file
 18 and your preparations when you took it over, and again
 19 in your preparations for this witness statement that you
 20 provided in this case, have you become aware of any
 21 communication in which the ministry, anybody on behalf
 22 of the ministry, informed RDB, when going forward with
 23 negotiations as asked with NRD, "There's only two
 24 concessions in which negotiations should occur because
 25 there's only two concessions for which contracts will be

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15:14 1 when they meet with you and talk about contracts going
 2 forward; that's why this document was sent, correct?

3 A. Excuse me. Can you show me where the representatives of
 4 the ministry asked NRD to do so?

5 Q. It's not in writing, so no, I'm not prepared to show it
 6 to you. But I'm asking you: you're aware in any event,
 7 you're aware that this was requested of NRD to put in
 8 the file that was being sent to RDB for negotiations, so
 9 that there was a document that said "long-term ...
 10 license"; right?

11 A. No, I do not know who requested NRD to do so. That's
 12 why I was asking you to please show me the letter of
 13 instruction that was given to NRD.

14 Q. Well, you will agree that in communicating to the RDB in
 15 January 2013, the minister said, "Please commence now
 16 negotiations"; he did not say, "Don't commence now
 17 negotiations, because a new application has to come in
 18 first", right?

19 A. Yes, the minister instructed RDB to lead the negotiation
 20 process. But my question was thus: where is the proof?

21 Q. Sir, please just focus on my questions.
 22 When he sent the letter saying, "Commence
 23 negotiations now", he knew that this hadn't been
 24 received; correct?

25 A. I don't want to confirm things while no document had

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15:11 1 issued"? If --

2 A. I wouldn't like to speculate.

3 Q. So it would be speculation as to whether you've seen it
 4 or not? Do you recall --

5 A. It would be speculation if I tell you things for which
 6 I don't have facts.

7 Q. Okay. So can you at least agree with me, based on your
 8 review of the file, you haven't seen anything, so you
 9 can't say that it didn't happen, but you know that you
 10 haven't seen it happening?

11 A. I do not agree with you.

12 Q. If we could bring up C-054.
 13 C-054 is a transmittal letter referring to
 14 an amended application for the long-term licence, or
 15 long-term licences; correct?

16 A. Excuse me, can I be given a minute to read it?

17 Q. Of course. Like I said, I do not mean to imply by
 18 asking you a question that you can't read what you're
 19 being shown. I try to remember to tell you [that] you
 20 can read. But please, just take the time to read.
 21 (Pause)

22 A. Yes, I read it.

23 Q. Now, the representatives of the ministry asked NRD to
 24 send a new document referencing a long-term licence so
 25 that the new negotiators, RDB, would have it in the file

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15:16 1 been shown to me.

2 Q. Sir, you've seen the documents. You saw -- and I'll
 3 pull them up again. You saw the January 13th 2013
 4 letter to RDB from Minister Kamanzi, right?

5 A. Sorry, maybe it's me who got it not right, but you
 6 started your question saying that the ministry requested
 7 this document. So I was just asking: where is the
 8 letter requesting?

9 Q. I'm asking a different question now. Please focus on
 10 the question I'm asking. I understand the point you
 11 made about a prior question, but we've now progressed.
 12 Please leave that question and listen to the next
 13 question.

14 A. Good.

15 Q. When the minister wrote to RDB saying, "Commence
 16 negotiations", you know this letter hadn't come in yet,
 17 right?

18 A. Can you ask your question again, please?

19 Q. Can we put up side by side C-160 along with this letter.
 20 Mr Imena, you understand that when then
 21 Minister Kamanzi wrote on January 22nd to RDB that it
 22 should commence negotiations, a January 30th letter
 23 wasn't yet in the file; you know that, right?

24 A. What I see is that there's a letter that was given on
 25 21st January to RDB requesting them to start

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15:17 1 negotiations one concession by one concession, and I'm
 2 seeing another letter applying for long-term mining
 3 licence. That is what I see.
 4 Q. And you simply will not agree with me that the first
 5 letter you see is dated before the second letter you
 6 see? We can't get that agreement before we move on and
 7 complete the questioning?
 8 A. The letter to RDB was made before the letter from NRD.
 9 Q. So we can agree that the minister's position at the time
 10 was, "We're prepared to have you negotiate contracts
 11 with NRD", knowing that he didn't have in hand any new
 12 or amended application, right?
 13 A. The minister's position, sorry, it's very clear in his
 14 letter to RDB, and the minister had been through that
 15 process since 2010.
 16 Q. I'm not sure how that answers the question. Please,
 17 sir, focus on the question.
 18 He knew when he said, "We're ready for you to
 19 commence negotiations with NRD", he was not holding
 20 an amended application when he said it, right?
 21 A. I do not agree.
 22 Q. He knew when he said in 2012 to NRD that, "We'd like to
 23 conclude", in one letter, "as soon as possible", and in
 24 the other letter that, "We're going to conclude in the
 25 next two weeks negotiations of a contract", it was not

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15:19 1 a contract based on an amended application, because he
 2 didn't have one, right?
 3 A. I do not agree. Can I explain?
 4 Q. If it's actually necessary to answer the question,
 5 explain, sir. Just answer the question.
 6 A. I think it's necessary, because between 2010 until 2013
 7 there have been discussions between RNRA, the ministry
 8 and NRD. So there had been progress made in that
 9 process. So that is my explanation I wanted to add.
 10 Q. What discussions about a new amended application are you
 11 referring to?
 12 A. Excuse me. I just said that between 2010 and 2013, the
 13 ministry had been already meeting with NRD and
 14 discussing on the application made in 2010.
 15 Q. Right. Again, I'm perplexed as to how this explanation
 16 relates to my question. I simply said the minister made
 17 his statements about, first, the ministry being prepared
 18 to conclude the negotiations of a contract directly with
 19 NRD, and then saying, "RDB, we're prepared to have you
 20 negotiate these contracts with NRD", he made those three
 21 statements knowing he didn't have an amended
 22 application; he was only holding an original
 23 November 2010 application.
 24 A. Excuse me, I wouldn't like to speculate. I think
 25 I tried to explain what I recall.

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15:21 1 Q. Okay. If I could ask FTI to bring up C-060.
 2 Sorry, I'm trying to bring it up myself.
 3 This is your first communication with NRD; correct?
 4 A. Correct.
 5 Q. You invited NRD's Mr Marshall to a discussion with the
 6 ministry on October 29th 2013; correct?
 7 A. Correct.
 8 Q. Now, between -- and I'll bring it up again if we need to
 9 for the dates, if we can't just agree we remember the
 10 dates. Between January 22nd 2013, when your
 11 predecessor, Mr Kamanzi, instructed the RDB that they
 12 should commence negotiations with NRD about contracts,
 13 and this letter, did anybody contact NRD, either anybody
 14 from NRD or anybody from the ministry, to negotiate?
 15 A. NRD was invited to negotiate by the CEO of RDB. NRD
 16 came, there was a meeting, they discussed about
 17 negotiating for Nemba concession. RDB was clear that
 18 government is proposing a five year licence. NRD was
 19 not happy with that proposal. And then the process of
 20 negotiating did not yield tangible results.
 21 Q. Well, before I get back to the last part, excuse me, can
 22 you tell me when that meeting occurred, as you
 23 understood it?
 24 A. I don't remember the exact date, but it was after
 25 Minister Kamanzi wrote to the CEO of RDB, the letter you

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15:24 1 were showing me. After that letter, the CEO of RDB
 2 invited NRD to come and discuss.
 3 So there was a meeting, but unfortunately that
 4 meeting didn't produce any tangible outcome.
 5 Q. Okay. I can bring up the document in one moment -- I'm
 6 looking for the number -- to place it in time. So I'll
 7 just return to it in a second. But just for the purpose
 8 of my questions, the date it occurred is not important
 9 to the next question.
 10 Following this meeting that you -- again, you've
 11 stated what you believe you understand happened at the
 12 meeting. Are you saying that it's your understanding
 13 that RDB continued negotiations with NRD about potential
 14 contracts that were not successful? Or are you saying:
 15 as a result of what you described as occurring at the
 16 meetings, the negotiations were unsuccessful, and that's
 17 all that happened?
 18 A. I was aware that the negotiations were not progressing.
 19 And since I had become the new Minister in Charge of
 20 Mining, minister of state, I invited NRD to come and
 21 discuss. And as you will see, RDB is informed about
 22 this meeting. So we were informed already by RDB that
 23 the project is not progressing.
 24 Q. I'd just like to stop you, because I don't want to get
 25 ahead to other discussions; I just wanted to be clear

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15:26 1 what you were saying occurred before your discussions.
 2 Let me place it in time; it will be easier.
 3 I apologise for not having this handier. Bring up
 4 C-159, please.
 5 Could you just enlarge the -- well, let the witness
 6 read the first page. And let me know, sir, if you need
 7 to read more to know what this document is, if there is
 8 more. (Pause)
 9 A. Yes, you can proceed. Next page, if there's any.
 10 (Pause)
 11 Q. Sir, if it helps in your review of the letter, my only
 12 question to you is regarding the placement in time of
 13 discussions. I do not intend to ask you anything about
 14 the actual contents of the document; that's why I wasn't
 15 prepared to bring it up originally. But you said you
 16 didn't know the date. I'm just trying to orient you.
 17 So by all means read what you need to, to feel
 18 comfortable in answering, but I'm prefacing my questions
 19 only about the date.
 20 A. So excuse me, this event happened some time back, so
 21 that's why I was taking some time to read. And it
 22 was --
 23 Q. Understood. But I'm not asking you about what was said
 24 at a meeting. The Claimant has already testified that
 25 he disputes characterisations of what happened at the

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15:29 1 meeting. We're not asking you to get into it. You
 2 weren't there.
 3 I'm just suggesting to you that a document was
 4 pointed out to me that -- you couldn't say the date of
 5 a meeting with RDB. I wanted you to see a document that
 6 put a date on a meeting.
 7 Now, do you recall, when you testified already that
 8 you know RDB's CEO invited NRD to a meeting, that
 9 occurred in May; correct?
 10 A. Yes, that's what I see.
 11 Q. Okay. Now, after the May meeting, is it your testimony
 12 that you're aware of other communications that you're
 13 characterising as "negotiations" between RDB and NRD,
 14 or -- what I'm trying to confirm is: are you just saying
 15 that there was a meeting, the meeting was unsuccessful?
 16 A. You are right: that's what I was trying to say.
 17 Q. The latter?
 18 A. There was a -- can I explain?
 19 Q. Yes, I'm just trying to move on quickly, I apologise.
 20 I'm trying to move faster.
 21 It's the latter: there was one meeting, the meeting
 22 was unsuccessful; that's all you were trying to say,
 23 correct?
 24 A. Excuse me. Because this is a complex issue, so I cannot
 25 just say yes or no: it may end up not giving the truth

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15:31 1 to this Tribunal.
 2 Q. Please, sir, I'm not asking you the contents or what you
 3 think are the contents of any communications; I'm just
 4 asking you if you're suggesting there were more
 5 communications than the meeting. I'll follow up with
 6 questions if I have them.
 7 A. So what I was trying to say: there was a meeting, and we
 8 have the minutes of that meeting. There might have been
 9 other communications that I don't know, and I don't want
 10 to speculate on that. But at least there has been
 11 a meeting.
 12 Q. Thank you.
 13 Now, between the time when RDB convened a meeting
 14 with NRD and your letter inviting RDB to meet with you
 15 on October 16th, did you have discussions with RDB about
 16 who would lead negotiations going forward?
 17 A. The policy of the government remained the same: RDB was
 18 to lead negotiations.
 19 Q. Was there any written communications about your
 20 extending an invitation despite that policy, and
 21 explaining why?
 22 A. Sorry, the line got cut off for a second. I didn't hear
 23 the entire question.
 24 Q. Yes. Was there a written communication between you and
 25 RDB about your going forward to set up a meeting despite

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15:32 1 that policy staying in effect?
 2 A. I don't think there's a written communication.
 3 Q. You understood at this time RDB -- I'm sorry, I said the
 4 wrong term.
 5 You understood at this time that NRD was still
 6 operating all five concessions; correct?
 7 A. That's my understanding.
 8 Q. And you did not instruct them to stop operating any
 9 concessions prior to this invitation for a meeting,
 10 right?
 11 A. You are right.
 12 Q. If I could ask that C-064 be brought up.
 13 Let me know when you're prepared to answer
 14 a question about this document, sir. (Pause)
 15 A. Yes, I read it.
 16 Q. C-064 is an August 14th 2014 letter from you to NRD
 17 explaining that NRD needed to submit a new application
 18 for concessions; correct?
 19 A. Correct.
 20 Q. Now, prior to this letter, NRD had only been informed
 21 that negotiations for a contract, or one or more
 22 contracts, were to occur, and the context being, at the
 23 times of those letters and communications, that the only
 24 application pending was the November 2010 application;
 25 correct?

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15:35 1 A. Not correct, because prior to my letter there had been
 2 that 2010 application and another application that was
 3 sent in 2013 by NRD.
 4 Q. Okay, so let me break the question down.
 5 Some of the communications NRD received, that we've
 6 already gone over, said that there were to be
 7 negotiations of one or more contracts for licences, at
 8 a time when the only application was the November 2010
 9 application, right?
 10 A. You are right.
 11 Q. Then in 2013 NRD was informed that it was invited to
 12 come and negotiate about a contract, again for one or
 13 more licences, but to negotiate a contract with RDB,
 14 when there were two documents on the table, the
 15 November 10th 2010 application and the January 30th 2013
 16 amendment, right?
 17 A. You are right.
 18 Q. Now, do you agree with me that based on your
 19 understanding of these communications that preceded
 20 you -- you're summarising communications that preceded
 21 you even in C-064 -- you are not aware of any
 22 communication to NRD that said, "Now that we have this
 23 January 30th 2013 amendment document, we're no longer
 24 prepared to negotiate one or more contracts with you
 25 because we don't consider you as qualifying for even one

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15:38 1 I met personally with NRD and I again explained to them
 2 that the government is open for negotiations; however,
 3 that there are conditions that needs to be fulfilled,
 4 but we are ready to move forward with the negotiations.
 5 At that time, if I recall it properly, Mr Marshall
 6 said that for them the only interesting thing is
 7 a long-term licence for the five concessions. I think
 8 I told him that anything that will be agreed upon will
 9 need to be fulfilling the requirements of the law.
 10 So there have been communications between the
 11 ministry, RDB and NRD between January 2013 and NRD --
 12 and this letter.
 13 Q. In order for me to understand your explanation, I do
 14 return to the question: can you put dates on these? You
 15 met with Mr Marshall when?
 16 A. So if I had been allowed to come in with my witness
 17 statement, I would have read it and give you a date.
 18 But I was told it's not allowed, so I can't give you
 19 an exact date.
 20 Q. Was it before the May 2013 meeting that RDB held with
 21 NRD?
 22 A. It was after the RDB meeting.
 23 Q. Was it one meeting or more than one meeting that you're
 24 referring to with Mr Marshall?
 25 A. At least what I remember properly is that I invited

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15:37 1 licence"; correct?
 2 A. I do not agree with you. Can I explain?
 3 Q. Well, first please just tell me the date or the nature
 4 of the communication, and then I'll try to bring it up
 5 so we could follow your explanation.
 6 MR HILL: He should be allowed to explain his answer to the
 7 question.
 8 MR COWLEY: The answer to the question was: he didn't agree
 9 with me that there was no communication. I'm asking
 10 him: before he goes off with an explanation, tell me the
 11 date of the communication, so we can all look at it
 12 before he explains. That's --
 13 THE PRESIDENT: It doesn't follow that there's anything we
 14 could look at, Mr Cowley. Could the witness please give
 15 the explanation to his answer, and then that may lead on
 16 to a further question.
 17 MR COWLEY: Certainly, if that's how the Tribunal wishes to
 18 proceed. Certainly.
 19 A. So after January 2013, when NRD submitted its updated
 20 application file, I met with them. But there were other
 21 meetings between RDB, for example the May 2013 meeting
 22 between RDB, and people from the ministry were present.
 23 But again, there was a meeting I had with them;
 24 I don't remember the exact date, but it was after the
 25 RDB meeting and it was before this C-064 letter. So

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15:41 1 them, and you showed me my invitation letter. So they
 2 replied to that invitation and we met. So the date,
 3 I don't remember that, but it's after my invitation.
 4 Q. I'm a little bit confused, because I thought this line
 5 of questions had to do with what -- I thought I started
 6 by asking you whether NRD had been informed of something
 7 between the dates of prior communications and this
 8 invitation letter. So I understand that a meeting
 9 occurred after your invitation, but I intended to --
 10 maybe my confusion is caused by the fact that I think
 11 I said something that I didn't, and I apologise if
 12 that's the case. But I'd like to return to my original
 13 point.
 14 Prior to your invitation for NRD to come in and
 15 meet, your invitation that went out in August 2014, are
 16 you aware of any communication by either RDB or anyone
 17 at MINIRENA to NRD saying, "We are no longer prepared to
 18 negotiate a contract for a licence with you because
 19 we've received this January 30th amendment"?
 20 A. Excuse me, I got confused in your question. You
 21 mentioned my invitation of August 2014. Which
 22 invitation is that? August 2014, my invitation.
 23 Q. I believe it's -- I have a hard time -- I'm sorry,
 24 I don't want to look away from you while I'm talking.
 25 But I believe it's the document that's up, C-064, and

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15:42 1 I could check it in another version that I have up
 2 that's got much bigger writing for me.
 3 A. So if I can help, this is not my invitation letter to
 4 NRD. It was -- this letter was informing them on the
 5 changes of the law and requesting them to submit
 6 a re-application.
 7 Q. Fair enough. I misspoke, and perhaps that was the
 8 original cause of the confusion.
 9 Between the times starting in 2012, including in
 10 2013 the invitation to meet with RDB, between the times
 11 that NRD was informed that RDB, or before it the
 12 ministry, was prepared to negotiate the conclusion of
 13 a contract for a licence of one or more concessions and
 14 this August 2014 letter from you, are you aware of any
 15 communication to NRD that informed them MINIRENA was not
 16 willing to negotiate at that time a contract for
 17 a licence for one or more concessions because it
 18 received a January 30th 2013 amendment?
 19 A. So, sorry, actually that is what I explained. Before
 20 this letter of 2014 and after the January 2013
 21 application, if I got it properly, you are asking if
 22 there has been communication to NRD. And I said: yes,
 23 I personally --
 24 Q. A specific message, sir. I'm not asking you to repeat
 25 any and all communications in the time period. I said

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15:47 1 Q. That's not what I asked.
 2 THE PRESIDENT: Please allow the witness to continue.
 3 A. Did I inform them that we were not able to grant the
 4 30 years -- because they were now applying for 30 years.
 5 Did I inform them that we are not ready to grant the
 6 30 years licence? Yes. That's what I can answer.
 7 MR COWLEY: But my question goes further than that.
 8 Are you aware, yes or no, whether anyone -- RDB, you
 9 or anyone else on behalf of MINIRENA -- informed NRD
 10 you weren't prepared to negotiate a contract for
 11 a licence, whatever its terms may turn out to be, for
 12 one or more concessions because of the January 2013
 13 amendment?
 14 A. Yes, I informed NRD that we are ready to negotiate with
 15 them.
 16 Q. Just to be clear, because I think your answer was -- and
 17 I don't want the record to be confusing. I thank you
 18 for your answer, but I think you said "Yes" when I --
 19 A. Yes. Yes.
 20 Q. You did inform -- even after January 2013's amendment,
 21 you informed NRD you were willing to negotiate
 22 a contract --
 23 A. Yes, I informed --
 24 Q. -- for one or more concessions?
 25 A. Yes, I informed NRD that we were willing to negotiate

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15:45 1 specifically: was NRD informed that the ministry was no
 2 longer willing to negotiate a contract for a licence to
 3 one or more concessions because of the January 2013
 4 amendment?
 5 A. I will not -- you are phrasing it as something short.
 6 But the ministry informed NRD that it is not prepared to
 7 grant the 30 years licence after the application for
 8 30 years.
 9 Q. That's a term of a contract, sir. I've asked a very
 10 different question. I've tried to focus and lead my
 11 question at the same level of the communications that
 12 went to NRD that we've spoken about numerous times,
 13 negotiating or concluding a contract or a licence.
 14 You specified your understanding that that only
 15 referred to two concessions. Had anybody, before your
 16 August 2014 letter, said to NRD, "We're no longer in
 17 a position of negotiating a licence for any concession
 18 because of the January 2013 amendment"? That's a very
 19 specific question.
 20 A. It's a specific and complex question. If I got it, you
 21 are -- okay, I met them. But then your question is
 22 confusing me.
 23 Did I inform them that the ministry received their
 24 long-term application? Yes. Did I inform them that we
 25 were not --

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15:48 1 with them.
 2 Q. For a contract for a licence, is the question.
 3 A. A contract for?
 4 Q. A licence to one or more concessions. I didn't specify
 5 any particular terms; just a licence. Were you willing
 6 to negotiate a contract for a licence?
 7 A. You are right.
 8 Q. Thank you.
 9 Now, prior to this letter from you that's been
 10 marked C-064, was there any discussion that you're aware
 11 of, any communication that you're aware of to NRD
 12 informing them that before any further discussions about
 13 a contract for a licence could go forward, a whole new
 14 application had to be submitted?
 15 A. So let me explain it, giving the context.
 16 I met with NRD, I told them that we are willing to
 17 negotiate with them a licence, or a contract. They told
 18 me that they want five concessions. I told them if
 19 there were to be any concession, it should be negotiated
 20 separately. We put together a team at the ministry that
 21 will help in that process. Unfortunately, NRD didn't
 22 come on board to continue the process until we reached
 23 2014.
 24 Q. The discussion that you just said you had at a meeting
 25 with NRD, was that before or after the letter we're

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15:50 1 looking at?
 2 A. It is before this letter.
 3 Q. And you say the date is in your witness statement?
 4 A. I believe so.
 5 Q. Well, I'll take a look at the break and I'll try to come
 6 back, just so we can try to put clarity on the record.
 7 I don't have that reference to hand.
 8 MR HILL: It's paragraph 25.
 9 MR COWLEY: Thank you. So the supplemental witness
 10 statement, paragraph 25, if that could be brought up,
 11 please.
 12 MR HILL: No, the first witness statement.
 13 MR COWLEY: Well, then we found it twice. So could I have
 14 the supplemental witness statement brought up at
 15 paragraph 27. Second supplemental -- or actually the
 16 supplemental. Actually I don't see the title: is this
 17 the supplemental?
 18 MR HILL: This is the one I was guiding you to, but
 19 obviously you must take your own course. It's the first
 20 witness statement.
 21 MR COWLEY: I can't see it, that's the only problem. I was
 22 trying to bring up the one that I could see.
 23 If the date helps you, sir -- I actually am trying
 24 to speed things up. Despite failing miserably at that
 25 and slowing it down, I'm trying to speed things up. So

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15:54 1 explain.
 2 In this meeting I told them that, first, they no
 3 longer have licences. Although we know they're
 4 operating, they don't have licences, and the priority to
 5 us was to help them get licences.
 6 Two, I told them that the ministry was willing to
 7 continue the process started by my predecessor and
 8 negotiate one or two concessions. Unfortunately,
 9 Mr Marshall was not willing to accept our offer.
 10 The other part you are mentioning of applying one at
 11 a time, applying one at a time comes in 2014, after this
 12 meeting.
 13 Q. Okay. Sir, when you told Mr Marshall in this meeting in
 14 October 2013 that they no longer had licences, was that
 15 the first time that you contend NRD was informed of
 16 that?
 17 A. NRD knew that they had no licence since the last
 18 extension given by Minister Kamanzi, but we still
 19 allowed them to operate. And now we wanted to
 20 regularise that situation.
 21 MR COWLEY: Sir, I'm --
 22 THE PRESIDENT: It's time for a break, isn't it? 30-minute
 23 break.
 24 I'm getting very concerned about the time when
 25 I look at the original timetable. You will have to

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15:52 1 please, if we're in the document that it's paragraph 25,
 2 bring up paragraph 25 for him and let him look at it.
 3 I'm sorry, supplemental is up. 27. It will be
 4 enlarged, sir. (Pause)
 5 A. Yes, I read it.
 6 Q. So is the reference to the meeting in that paragraph the
 7 meeting that you were just testifying about?
 8 A. Exactly.
 9 Q. And the meeting occurred October 30th 2017?
 10 A. Exactly.
 11 Q. And that's after the letter that we were looking at?
 12 A. No, before.
 13 Q. It's before?
 14 A. It's before.
 15 Q. I'm sorry, it's before, because this is 2014.
 16 I apologise.
 17 So prior to this letter, in C-064 you had informed
 18 NRD in October 2013 that, as you testified, they needed
 19 to apply one at a time; correct?
 20 A. I can repeat again what is written.
 21 Q. Just focus on one term at a time, please.
 22 You've testified about a meeting at which you
 23 instructed Mr Marshall your position was it needed to be
 24 one concession at a time; correct?
 25 A. Sorry, it's not as you are trying to put it. If I can

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15:56 1 think about that.
 2 MR COWLEY: I'll work during the break to make sure I narrow
 3 as much as possible.
 4 THE PRESIDENT: Alright, 30 minutes.
 5 (3.56 pm)
 6 (Adjourned until 4.26 pm)
 7 (4.27 pm)
 8 MR HILL: Could I just raise one point which relates to my
 9 two next witnesses. I've got both of them on standby.
 10 If Mr Cowley is not going to get on to one or both
 11 of them, could they be told now so they could go,
 12 because I'm sure they've got commutes and it's getting
 13 late in the Rwandan day.
 14 MR COWLEY: So Mr Gatare I think could be asked to leave.
 15 Even if we're short -- and I have lower estimates of
 16 time with Dr Michael than originally: I do believe it
 17 will be faster than originally anticipated. But
 18 nevertheless, even if we weren't originally intending to
 19 go into tomorrow with Dr Gatare, I do believe I can
 20 reduce that as well, and reduce the expert witness's
 21 time compared to what was originally anticipated.
 22 So I am not anticipating a timing problem as we
 23 currently stand. That will continue through the day
 24 tomorrow, at least on my side.
 25 THE PRESIDENT: Very well then. Dr Gatare can be told

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16:28 1 he can go home. Is he a Dr?
 2 MR HILL: He's a Mr, I think.
 3 THE PRESIDENT: Mr Gatare.
 4 MR HILL: Thank you, Mr President.
 5 MR WATKINS: Would you like the witness now?
 6 THE PRESIDENT: Yes, please.
 7 MR WATKINS: Bringing him in.
 8 MR COWLEY: Mr Imena, on August 14th 2014 -- and if it could
 9 be brought back up, just so he has it available if
 10 necessary, C-064 -- when you sent your letter to NRD
 11 that we were looking at before the break, you knew the
 12 circumstances NRD was actually facing on the ground with
 13 regard to access to its offices and the concessions;
 14 correct?
 15 A. No.
 16 Q. And you were informed that Mr Benzinge was claiming to
 17 have ownership rights in NRD and he was taking action to
 18 prevent Mr Marshall from operating the company; correct?
 19 A. Not correct. I knew Mr Benzinge was having claims
 20 regarding the ownership of NRD. I didn't know at that
 21 time that NRD had issues in accessing its office.
 22 Q. Well, we'll get to it in a moment in terms of your
 23 witness statements, but if you need to read it before
 24 you can answer any questions, just tell me that and I'll
 25 wait for any questions about it.

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16:30 1 But you do recall Mr Benzinge approaching you to
 2 explain his position and what he wanted to see done, and
 3 that factored into your decision about whether or not to
 4 permit NRD tags to be provided to the company; correct?
 5 A. Not correct.
 6 Q. Okay. We'll get there. Let me focus just on the
 7 August 14th time period.
 8 So it's your testimony that when you sent the letter
 9 that's up on the screen, C-064, that you had no idea
 10 Mr Marshall and Ms Zuzana were put out of access to the
 11 corporate offices and the Nemba offices; that's your
 12 testimony?
 13 A. Yes.
 14 Q. You knew, even though you didn't know that fact, it was
 15 an assumption on your part that in order to prepare and
 16 complete a new application that would be consistent with
 17 the 2014 law, whoever was in charge of preparing it
 18 would need access to all the corporation information
 19 about activities over the years since at least 2010,
 20 right?
 21 A. No, let me explain it.
 22 What I knew is that we sent this letter to NRD when
 23 I was not informed that they don't have access to their
 24 office. Then the second thing I know is that to prepare
 25 this type of application, you need information that you

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16:32 1 may have in your office, that you may have in your
 2 computer and that you would need to collect from other
 3 government offices.
 4 Q. And it was your assumption that they had access to all
 5 of those things, is that your testimony, when you sent
 6 this letter out?
 7 A. Yes, when I sent it, I thought they had access to all
 8 the necessary information.
 9 Q. When did you learn that they didn't?
 10 A. Can you please repeat?
 11 Q. When did you learn that they did not?
 12 A. When Marshall wrote to me and informed me that they
 13 don't have access to their office.
 14 Q. And when he wrote to you and told you that, did you then
 15 respond, "Well, then you don't need to worry about
 16 trying to prepare and submit a new application until
 17 that's corrected"?
 18 A. I gave him another chance to collect and submit all the
 19 information.
 20 Q. What do you mean, "another chance"?
 21 A. He was given a letter by myself, by the ministry,
 22 extending the period of time he had been given.
 23 Q. Is that because you recognised that the first period of
 24 time went by and it really wasn't a chance to respond to
 25 the request by filing a new application, since access to

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16:34 1 the offices, the computer, the information in the files,
 2 wasn't available?
 3 A. No. Can I explain?
 4 Q. Please.
 5 A. Mr Marshall was given this letter we are seeing on the
 6 computer to submit an application. That application was
 7 received by the ministry, it was assessed. We found
 8 that it was not satisfactory according to the
 9 requirements.
 10 Mr Marshall claimed that he had no access to some of
 11 his documents, but the assessment was showing that some
 12 of the critical things he failed to provide are not even
 13 documents that should be found in his office. For
 14 instance, a tax clearance certificate, he failed to
 15 provide that. And that is never found in an office; it
 16 is requested from the Rwanda Revenue Authority.
 17 Again, another document was the Environment
 18 Management Authority certificate, which is also -- we
 19 called it a recommendation -- which was to be provided
 20 by the office in charge of environment management. That
 21 was not in his office.
 22 So we thought this was a trick to continue delaying
 23 the process of this licensing scheme that we had entered
 24 in with him.
 25 Q. So that's a reason for not extending another chance, as

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16:36 1 you called it, right? Those are all reasons to reject
 2 an argument that the first chance wasn't a good chance,
 3 and say, "No, we're done", right?
 4 A. Not as how we are putting it. He was given here
 5 30 days. If I remember properly, beyond the 30 days, he
 6 was again given 15 days.
 7 Q. And you just told me the reasons why you think he didn't
 8 deserve it, right?
 9 A. And by the way, we had no legal obligations to give him
 10 an extension. But because we wanted to help him and
 11 have him as an investor, we extended to him that
 12 opportunity.
 13 Q. And that's the reason you extended it: because you
 14 wanted to have Mr Marshall be an investor in one or more
 15 of these concessions?
 16 A. You are right.
 17 Q. Now, at that time [that] the first request in writing
 18 for the submission of a new application went out to NRD,
 19 how many other applicants for licences beyond an initial
 20 exploratory licence phase were given similar requests to
 21 resubmit their application?
 22 A. Several companies were required -- requested to abide by
 23 the 2014 law.
 24 Q. That's not my question though, because the 2014 law may
 25 cover a lot of things. I want to make sure we're

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16:39 1 Q. Can you identify even one?
 2 A. I don't remember the number. But I can give you a case:
 3 Gatumba Mining Concession was asked to do the same, to
 4 comply with the new 2014 law. Gatumba Mining
 5 Concessions.
 6 Q. Can you identify any other?
 7 A. I gave you just one. I don't remember the other.
 8 Q. That was my question: can you remember any other? You
 9 said you can't remember the other.
 10 A. Unfortunately, I remember right now Gatumba Mining
 11 Concessions.
 12 Q. As of August 2014, how many applicants for licences to
 13 operate mining concessions beyond the initial
 14 exploratory licence phase existed?
 15 A. Can you repeat, please? Because if I'm allowed to
 16 answer, I also remember Trans Africa and Rogi Mining --
 17 Trans Africa and Rogi Mining, if I remember well -- as
 18 cases to ask to fulfil the requirements with the 2014
 19 law.
 20 Q. Again, just to be clear, I'm not asking whether you told
 21 people to fulfil the requirements of the 2014 law. I'm
 22 asking a very specific question. I'm asking you to tell
 23 us who you actually recall telling, as a pending
 24 applicant, to submit a new application under the law.
 25 So with that clarification, please let me know what your

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16:37 1 focused on the same thing.
 2 I'm asking you: within the pool of applicants for
 3 licences to operate mining concessions, how many such
 4 applicants in August 2014 were told, "Submit a new
 5 application and we'll go forward with the process of
 6 considering it"?
 7 A. So if I can explain it properly, NRD's case had started
 8 in 2010, continued to stall, and in 2014 we asked them
 9 to comply with the new law. All the other companies in
 10 the country were informed that we have a new law, and
 11 anyone who wants to apply for a licence will need to
 12 apply, fulfilling the obligations of the new law.
 13 But again, we had no legal obligation even to write
 14 this letter to NRD. But because of -- out of good
 15 faith, we said: let's extend to him this new chance to
 16 fulfil the new requirements. We had no obligations to
 17 do so.
 18 Q. Sir, I'm going to ask you again.
 19 A. Yes, please.
 20 Q. Of the applicants seeking a licence to operate a mining
 21 concession beyond the initial exploratory licence period
 22 that existed as of August 2014, how many of such
 23 applicants were informed that they had to submit a new
 24 application?
 25 A. I don't remember the number.

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16:42 1 answers were to that question.
 2 A. Those are the examples I gave you.
 3 Q. Now, how many applicants for a licence to operate
 4 a mining concession beyond the initial exploratory
 5 licence phase existed as of August 2014?
 6 A. Companies that had licences before 2014, and that
 7 continued beyond 2014?
 8 Q. No, I'm asking a different question, not who had already
 9 been issued licences. We talked about yesterday your
 10 memory, as best you could recall, how many applied and
 11 how many were awarded. I'm asking how many were
 12 pending.
 13 So of the applicants for licences to operate
 14 a mining concession that had a pending application that
 15 was originally submitted before 2014, how many of them
 16 were told in August 2014, or by August 2014, "Submit
 17 a new application"?
 18 A. There are many, but I don't remember the number.
 19 Q. Can you remember whether it's more than 25?
 20 A. I wouldn't like to speculate on a number.
 21 Q. If I could ask that C-119 be brought up.
 22 Please let me know when you're ready to answer
 23 a question. (Pause)
 24 A. Yes, I read it.
 25 Q. This letter, C-119, is an October 28th 2014 letter in

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16:45 1 which you informed NRD that its re-application was
 2 denied and it needed to turn back over all the
 3 concessions; correct?
 4 A. Correct.
 5 Q. And you had some details about -- or you reference
 6 a "closure process".
 7 That position changed after this letter; correct?
 8 A. We gave him seven days to lodge an appeal. So he
 9 appealed that decision: that's why we had to take into
 10 consideration his appeal.
 11 Q. And who was considering the appeal?
 12 A. There was a committee at the ministry.
 13 Q. Okay. And when did they decide that appeal?
 14 A. I don't remember the exact date, but it is after this
 15 October letter.
 16 Q. Can you bring up C-087. It's more than one page, so if
 17 you can open it up to two pages for the witness.
 18 (Pause)
 19 A. Exactly. I read it.
 20 Q. So after the prior letter that we just read, this letter
 21 informed NRD that it had another opportunity to submit
 22 more information; correct?
 23 A. You are right.
 24 Q. Had the appeal been decided in between?
 25 A. I remember Mr Marshall claimed that his application was

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16:47 1 fulfilling all the requirements. Then we gave him this
 2 opportunity to go ahead and prove it again, and we again
 3 gave him a list of the documents he needs to submit.
 4 Q. My question is: in between the last two letters that we
 5 looked at, was the appeal decided?
 6 A. Exactly.
 7 Q. So the committee issued a decision internally?
 8 A. Yes.
 9 Q. Is it in writing?
 10 A. I don't remember.
 11 Q. After this letter, NRD did submit some more information;
 12 correct?
 13 A. They submitted some additional information. That
 14 information was again reassessed, and unfortunately it
 15 was deemed unsatisfactory.
 16 Q. Do you recall when you informed NRD of that position?
 17 A. Yes. There's a letter after -- definitely after this
 18 November 2014 letter.
 19 Q. It's in 2015; correct?
 20 A. I think so.
 21 Q. And that letter informing NRD of that decision of 2015
 22 ended the same way as the prior letter we looked at:
 23 that the concessions had to be turned back over;
 24 correct?
 25 A. You are right.

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16:49 1 Q. Turning over the concessions didn't require any sort of
 2 physical action by NRD to put something that constituted
 3 the concessions back in your office, right?
 4 A. No.
 5 Q. It meant: step out of the way so the government could
 6 take over control of the operations; correct?
 7 A. No, not as you are putting it. It meant fulfilling the
 8 requirements of the law we mentioned to him in our
 9 letters. So the 2014 law was clear on what happens if
 10 an application is rejected. So he had to implement what
 11 was in the law.
 12 Q. Who would take over operations? Since NRD was denied
 13 the ability to continue operations, who was going to
 14 operate the mines?
 15 A. No one.
 16 Q. Can we talk a minute about what was happening at the
 17 mines, as far as you knew, in this time period, 2014
 18 into 2015? One of your major complaints against the
 19 application submitted by NRD is that mostly artisanal
 20 mining was occurring at the sites of the mining
 21 concessions; correct?
 22 A. I don't remember what was going on specifically at that
 23 period of time.
 24 Q. You are familiar with the phrase "artisanal mining", are
 25 you not?

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16:51 1 A. I'm familiar with that phrase.
 2 Q. And you are familiar with the fact that the ministry
 3 raised as a complaint against the applications received
 4 from NRD that primarily artisanal mining was occurring
 5 at the sites; correct?
 6 A. Can you show me that document, where we raised that?
 7 Q. If the answer is you actually don't remember that being
 8 an issue, I'd rather you just tell me and I'll accept
 9 that as an answer.
 10 A. Can you ask me again the question, please?
 11 Q. Yes. Are you aware whether or not the ministry raised
 12 as a criticism of the application submitted by NRD that
 13 primarily artisanal mining was occurring at the
 14 concession sites?
 15 A. There are several areas, including that one you are
 16 mentioning, that show that NRD was not fulfilling the
 17 requirements.
 18 Q. I'm asking specifically: do you remember the issue of
 19 primarily artisanal mining occurring at the sites being
 20 raised by Rwanda? Or if you don't recall, that's your
 21 answer, and then I have an answer.
 22 A. I don't recall.
 23 Q. Okay. So again now I am not asking then about NRD
 24 specifically, because you've told me you don't recall.
 25 So please just focus on the question I am going to ask.

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16:52 1 Artisanal mining, as you understand that concept,
 2 that does occur in Rwanda is conducted by individuals
 3 that live in and around the areas covered by particular
 4 mining concessions; correct?
 5 A. I didn't get your question. I'm sorry.
 6 Q. The artisanal miners are people that live near the
 7 concessions, near some of the concessions where such
 8 mining takes place; correct?
 9 A. That's not my definition.
 10 Q. Okay. There are people who conduct personally mining
 11 activities at or around the concessions; correct?
 12 A. Correct.
 13 Q. And those people go out with their own tools, their own
 14 implements, to collect minerals which they try to sell
 15 on their own; correct?
 16 A. If people go in a mine without an authorisation,
 17 a licence, they are called illegal miners; they are not
 18 called artisanal miners.
 19 Q. I'm trying to -- I was going to get there. Because you
 20 didn't have agreement with me on the first, so I'm
 21 backing up. I didn't put that back in my question.
 22 Please just focus on the question.
 23 If people go out with their own tools and implements
 24 and take minerals however they can, they're trying to
 25 sell them after they obtain them; correct?

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16:54 1 A. Yes.
 2 Q. Okay. So you understand that around some of the mining
 3 concessions in Rwanda, there are individuals who do
 4 that -- let's stick with illegal mining practice,
 5 because they need to do it in order to make money to
 6 live, them and their families, right?
 7 A. You are right.
 8 Q. Now, artisanal mining is also a primarily
 9 labour-intensive individual with limited tools manually
 10 obtaining minerals that the mining operator then
 11 collects and sells, if that's how the mining is done at
 12 their concession, right?
 13 A. No, it's not as you are suggesting. If I can explain
 14 quickly.
 15 In our country we have several miners, and according
 16 to the 2014 law we had three types of mining licences:
 17 artisanal mining, small-scale mining and large-scale
 18 mining. So being an artisanal miner is totally
 19 different from being an illegal miner.
 20 Q. I recognise that. That's why I didn't mix the two in my
 21 questions. I asked about the artisanal miners when
 22 they're conducting at concessions.
 23 These are individuals that are conducting mining at
 24 the concessions primarily by hand; correct?
 25 A. There's no individuals granted with a licence. Licences

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16:55 1 are given to cooperatives or to companies.
 2 Q. I really didn't anticipate this was going to be
 3 an argument. I'm not trying to argue with you, sir.
 4 The miners, let's use that term -- I'm switching
 5 terms. I'm not talking about the licences afforded
 6 them. The miners who conduct the mining operations of
 7 an operator who is given an artisanal licence, the
 8 miners are people that are doing it by hand at the
 9 concession; correct?
 10 A. The miners, yes, is someone who is working at a mine.
 11 Q. And the people who do that sort of work live around the
 12 mine, they're very local to the concession, doing it by
 13 hand and then going home very close to where they're
 14 mining; correct?
 15 A. Correct, most of them live close to their mines.
 16 Q. So both the illegal miners and miners who are doing it
 17 legally under an artisanal licence, they're people who
 18 get up every day, go into a concession and by hand
 19 extract minerals, and they try, either through the
 20 operator or on their own, to sell it and make money so
 21 their family can live; correct?
 22 A. They cannot sell it if they don't have the authorisation
 23 to do so.
 24 Q. Well, I'll get there in a moment. But that's what they
 25 try to do, don't they?

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16:57 1 A. Can you repeat, please?
 2 Q. Yes. The people who are getting up and going out every
 3 day conducting these mining activities, they're hoping
 4 to turn the minerals into payment: illegal miners on
 5 their own, artisanal miners from the operator; correct?
 6 A. You are right: mining is about money.
 7 Q. Yes. So if you say that the mining concession is not
 8 going to be operated, you actually know that the people
 9 who need the money for their families to live, and
 10 they're all around that concession, and they've got up
 11 every day and they've mined minerals by hand, they're
 12 still going to keep doing it because they still need the
 13 money, right?
 14 A. The government puts in place measures to quickly issue
 15 licences to capable companies to manage mines, or areas
 16 where minerals have been discovered.
 17 Q. And that would be the operator of the mine, right?
 18 A. Yes, new operators will be invited to come in.
 19 Q. Right. So I'm going to get back to that a moment ago,
 20 because you said no one was going to operate this and
 21 that's what caused this question.
 22 With regard to the miners themselves who were doing
 23 work every day, you know when you told NRD, "You're no
 24 longer to operate these concessions, turn them back
 25 over", the miners still needed to get up the next day,

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16:58 1 mine minerals and get paid for it, because their
 2 families needed the money, right?
 3 A. Yes, that would be illegal mining.
 4 Q. Okay. So the day before, they may have been artisanal
 5 miners; the day after, they might be illegal miners.
 6 But they're still going to do it, right? You knew that?
 7 A. Illegal people are -- exist everywhere, and they even
 8 exist here.
 9 Q. So when you say that no one was intended to operate the
 10 mining concessions right away when you asked NRD to turn
 11 them over, you knew miners were going to mine the next
 12 day, regardless of who you said was operating them,
 13 right?
 14 A. Those are illegal miners.
 15 Q. And I'm asking whether you knew as a practical reality
 16 it was going to happen, right?
 17 A. No.
 18 Q. Sir, when you asked NRD to turn over the concessions,
 19 you didn't think any and all mining by any and all
 20 miners was immediately going to stop because NRD was no
 21 longer permitted to call itself operator, did you?
 22 A. That was not the wish of the government.
 23 Q. You also knew that for the government to say, "Here's
 24 a mine where I know people are getting up every day and
 25 mining minerals to get paid for it, but I authorise no

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17:02 1 new law, some of the blocks -- some of the former areas
 2 were divided into blocks, and those blocks were put out
 3 for tender. And that's the document we discussed
 4 earlier today.
 5 Q. So it sent geological teams to assess the area and
 6 decide what concessions could profitably be put out as
 7 available for applicants to bid on?
 8 A. Yes, not only geological teams, but environmentalists,
 9 economists. So a group of professionals.
 10 Q. But it didn't send out teams of security to keep illegal
 11 miners off the concessions, or any teams out to provide
 12 safety for anybody who might be conducting mining or
 13 other activities there; correct?
 14 A. If people engaged in illegal mining, then appropriate
 15 institutions of the country dealt with that.
 16 Q. Just answer my question though, please. You didn't send
 17 out security teams or other safety teams to take care to
 18 prevent illegal activities or take care of the people
 19 who were there acting as miners before; correct?
 20 A. Excuse me. I was not leading the police; I was leading
 21 the Ministry of State in Charge of Mining. So I sent
 22 geologists and other engineers.
 23 Q. Did you send the police to all the concessions and ask
 24 them to secure and prevent any illegal mining and
 25 protect the safety of the former miners who lived around

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17:00 1 operator to oversee that", that's contrary to the law,
 2 don't you?
 3 A. Can you repeat, please?
 4 Q. For the government to allow mining at a concession with
 5 no licensed or permitted operator is contrary to the
 6 law?
 7 A. Illegal mining is not allowed. In Rwanda it is
 8 punishable by the law.
 9 Q. So if you don't permit an operator to run a mining
 10 concession in order to comply with the law, the
 11 government would need to actually send out security and
 12 prevent illegal mining on its own every day, right?
 13 A. If someone is doing illegal activities, the government
 14 deals with that person who is doing illegal activities.
 15 Q. And you had no real question that mining had to continue
 16 every day, because the people needed to live, right?
 17 A. Not right.
 18 Q. Sir, what did the government do to take possession of
 19 the concessions after telling NRD in 2015 it must stop
 20 operating the concessions and turn over those
 21 concessions to the government?
 22 A. You asked me: what did the government do?
 23 Q. Yes.
 24 A. The government sent teams to all the former NRD
 25 concessions, evaluations were made. And following the

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17:03 1 there?
 2 A. The local authorities and all the people in charge were
 3 informed that NRD is no longer operating the mines. So
 4 all the institutions were informed, and they implemented
 5 appropriate measures.
 6 Q. You're familiar with the fact that NRD's head of
 7 security and other operations stayed on site providing
 8 that security, continuing to protect the concessions as
 9 best as possible in 2015 and after NRD was told it was
 10 not permitted to operate the mines, don't you?
 11 A. After I sent my letter to NRD informing them that the
 12 discussions and the negotiations are over, I no longer
 13 went back and dealt with that case.
 14 Q. And you did not follow up with anyone from NRD after
 15 informing them that their applications for licences were
 16 denied in 2015: you did not go back and follow up and
 17 tell them you were going to complain about the fact that
 18 they did not do any number of things that were required
 19 to turn over a concession; correct? You just stopped
 20 communicating with them and let it be, right?
 21 A. Not right. After my final decision was made, I sent to
 22 NRD a letter informing them [of] a process that would
 23 lead to the final winding-up -- or winding-down,
 24 actually -- of their activities. They refused to
 25 participate in that process.

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17:05 1 Q. Well, based on your letter in 2015, they wouldn't have
 2 been there, would they?
 3 A. Can you repeat, please?
 4 Q. Sending a letter to the former concessions of NRD wasn't
 5 going to reach NRD after you told them they're not
 6 allowed on the concessions anymore, right?
 7 A. NRD was a registered company in Rwanda. So without
 8 a licence, it doesn't mean that the company is no longer
 9 existing.
 10 Q. Right. But sending mail to the company concessions and
 11 offices wasn't going to reach them when they were told
 12 they weren't allowed to operate the concessions, right?
 13 A. I can repeat it. NRD was a company: it had an address,
 14 it had an office, it had people in charge of that
 15 company. So they were informed about that process.
 16 Q. If I could ask that the first witness statement be
 17 brought up and paragraphs 49 and 50 focused on. (Pause)
 18 A. Yes, please. I read it.
 19 Q. When you refer here to Pact, you are referring to the
 20 agency that at that time was responsible for
 21 administering the tagging system and working with the
 22 mining concession operators to do so; correct?
 23 A. You are right.
 24 Q. When you say in the summer of 2014 you barred them from
 25 providing the tags under the iTSCi system to NRD, were

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17:09 1 Q. They were getting tags, right?
 2 A. Yes.
 3 Q. They had no active licence issued by the ministry at
 4 that time; correct?
 5 A. Yes.
 6 Q. You didn't bar Pact from providing tags to those other
 7 applicants, did you?
 8 A. They didn't have issues similar to the problem NRD was
 9 having.
 10 Q. Can paragraph 53 be brought up, please.
 11 Did you have an opportunity to read it, sir?
 12 (Pause)
 13 A. Yes, I read it.
 14 Q. You call it a "secondary" issue, but one of the reasons
 15 you say you decided to bar Pact from issuing tags to NRD
 16 is Mr Benzinge informed you of his claim that he was the
 17 rightful person to be in charge of NRD, and that he in
 18 fact threatened to sue should NRD be issued tags, unless
 19 he was treated as the person in charge of NRD, right?
 20 A. If I can explain it. The first reason to bar NRD from
 21 accessing tags was the fact that they had no licence, no
 22 valid licence. And --
 23 Q. I've moved on, sir. Can we focus on the secondary
 24 issue? I've moved forward.
 25 A. And the second --

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17:08 1 you referring to before or after the letter in August in
 2 which you instructed NRD to submit a re-application?
 3 A. Can you repeat your question, please?
 4 Q. Alright, I can make it more simple. I'm sorry.
 5 Do you see the beginning of paragraph 49:
 6 "In around the summer of 2014, I barred Pact ..."
 7 And you went on.
 8 The time period you're referring to, is that before
 9 or after the letter in August 2014 in which you
 10 instructed NRD to file a re-application?
 11 A. I don't remember the exact date I informed Pact, but it
 12 was in 2014.
 13 Q. Wasn't it much earlier, when the bailiff worked with
 14 Mr Benzinge to seize the offices and then the Nemba
 15 facility office?
 16 A. I don't remember when their offices were seized, the
 17 exact date.
 18 Q. In the summer of 2014 there were -- although you've
 19 already told me -- I asked this question about
 20 identifying a number. You said you didn't remember the
 21 number. But can we agree that there were applicants for
 22 licences beyond the exploratory licence phase for mining
 23 concessions that had not yet been granted long-term
 24 licences for those concessions?
 25 A. Yes.

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17:12 1 Q. Thank you.
 2 A. -- was the fact that Mr Benzinge showed me a ruling by
 3 the Supreme Court of Rwanda saying that he's the owner
 4 of NRD, and telling me that if we continue engaging with
 5 Mr Marshall as the representative of NRD, he will bring
 6 the case to court. So as a minister, someone working
 7 for the government, I take very seriously rulings from
 8 the Supreme Court.
 9 Then I told him that I'm not going to be involved in
 10 his problems with NRD. But I'm not going to give him
 11 tags, because he came to see me thinking that he will be
 12 the one given tags. I told him no. But I said: whoever
 13 owns NRD will receive tags after their issue of licence
 14 is regularised.
 15 Q. Okay. When Mr Benzinge brought you a ruling from the
 16 Supreme Court, did you read the decision, or did you
 17 just listen to Mr Benzinge as to what he said the
 18 decision meant?
 19 A. I think I read it. If I remember properly, I think
 20 I read it.
 21 Q. Well, you would agree it wouldn't have been reasonable
 22 for you to just rely on what Mr Benzinge said the
 23 Supreme Court ruled, without looking at it, if it was
 24 going to form any part of a decision whether to allow
 25 NRD to participate in the tagging system; correct?

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17:13 1 A. I think not only me as a person reading it, my advisors
 2 took a look at it and informed me that this is something
 3 that can be serious against the ministry.
 4 Q. Having read it and talked to your advisors about it, you
 5 knew that the order from the Supreme Court said that
 6 Mr Benzinge was a 15% shareholder, a minority
 7 shareholder in NRD; correct?
 8 A. I don't remember the whole details of the ruling from
 9 the Supreme Court. But what I remember: the ruling was
 10 saying that Benzinge is the one representing NRD.
 11 Q. The ruling actually said it wasn't going to change the
 12 underlying arbitration decision that itself said it
 13 wasn't going to change Mr Marshall's designation as
 14 representative, even though Mr Benzinge insisted that he
 15 be identified as managing director. Isn't that what the
 16 ruling said?
 17 A. I don't remember going into details of the ruling. But
 18 I remember having been shown that ruling, which was
 19 saying that Benzinge would be considered at that time,
 20 specific time, as the representative of NRD.
 21 Q. You say you read that in the order?
 22 A. Yes.
 23 Q. Did you ask for any clarification from the
 24 administration within Rwanda's government responsible
 25 for determining rightful ownership status of

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17:15 1 corporations?
 2 A. I asked clarification to Benzinge and to Marshall.
 3 I said, "The ministry will only deal with the rightful
 4 owner of NRD as it is indicated by RDB". And
 5 Mr Marshall was the one to come and show me that in the
 6 register of RDB, he is the rightful owner, and that's
 7 why we continued proceeding with him.
 8 Q. Why didn't you ask the registrar yourself?
 9 A. I had the choice to either ask Marshall, Benzinge or the
 10 registrar. I chose to ask those two people who were
 11 claiming to be the rightful owners.
 12 Q. Right. But you were familiar with the fact that the
 13 registrar was the ultimate authority on disputing
 14 parties' claims of ownership: the registrar would say
 15 who is right and who is wrong; correct?
 16 A. Yes.
 17 Q. And you're saying that as Minister of Mines, you decided
 18 to ask the two disputing parties, and not the
 19 administrative body that's in charge of resolving their
 20 disputes?
 21 A. I had no obligation to ask him.
 22 Q. Did you ask the Ministry of Justice -- since this was
 23 a legal issue regarding what had to be done as a result
 24 of a Supreme Court decision, did you ask the Ministry of
 25 Justice to advise you in any way?

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17:17 1 A. The Ministry of Justice has been advising the
 2 Minister of Mining throughout this process.
 3 Q. I'm sorry if I asked a poor question, but I'm just
 4 trying to refer to it specifically.
 5 Did you ask the Ministry of Justice to address the
 6 question that Benzinge raised about the Supreme Court
 7 decision, so that they would answer his question?
 8 A. Let me try to be specific. I didn't engage in this
 9 issue between Benzinge and Rod Marshall. I just told
 10 them, "The rightful owner of NRD should come and prove
 11 it". And Marshall ended up proving that he's the one
 12 recognised by RDB, and that was the end of it. We
 13 continued, we proceeded with Marshall.
 14 Q. That took months, right?
 15 A. That took ...?
 16 Q. That took quite some time; correct?
 17 A. It depended on their side, because they were the ones
 18 requested to prove that.
 19 Q. Well, you say that, and you say that you told them you
 20 weren't going to get involved. But in fact your witness
 21 statement admits it was a secondary reason that you gave
 22 them for not permitting the company to have tags that
 23 were required in order for the company to keep earning
 24 revenue?
 25 A. It's not only that reason. I even had verbal advice

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17:18 1 from Dr Michael, who told me that they made also
 2 an assessment internally and they also gave me
 3 an advice. So I considered several advices.
 4 Q. I'm focusing on this Benzinge issue and your witness
 5 statement's characterisation of it as a "secondary"
 6 issue.
 7 You said you're not getting involved, but you chose
 8 a path to say -- it was one of the grounds for not
 9 issuing tags. You chose a path that didn't get quick
 10 resolution by one of the other representatives of the
 11 government capable of issuing a final determination very
 12 quickly; correct?
 13 A. My mission was not to resolve the problem between
 14 Benzinge and Rod Marshall. My mission was to see if NRD
 15 has a licence and is operating through the law.
 16 Q. You understood that the refusal to allow Pact to issue
 17 tags meant that Mr Marshall, or whoever was going to
 18 prevail in the dispute about controlling NRD, would
 19 essentially be financially strangled from continuing
 20 with those concessions, because without tags, there's no
 21 legal revenue to be earned from the minerals mined at
 22 the concessions?
 23 A. The primary concern for the minister at that time was to
 24 ensure that NRD gets a licence. That was the primary
 25 concern.

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17:20 1 And stopping NRD to get the tags actually yielded
 2 positive results to the ministry, because NRD had been
 3 refusing to take note of all the advice given since some
 4 years back, NRD had been refusing to understand what the
 5 ministry was telling that company; and when we touched
 6 the tags, they started submitting documents that we were
 7 requiring. So stopping them accessing the tags was very
 8 positive.
 9 Q. Can you please explain how it is that you felt
 10 comfortable as minister to say that the entity that you
 11 continued to recognise as the operator of mining
 12 concessions where mining was being conducted, minerals
 13 were being extracted, somebody wanted to sell them for
 14 cash, all was taking place, you were comfortable leaving
 15 in place as operator a company that, on the other hand,
 16 you were saying was not qualified to receive tags to
 17 sell those minerals?
 18 A. You put it very well. The entity I was leading was
 19 recognising NRD, but at that time NRD had stopped to
 20 recognise the entity I was leading. And the only tool
 21 that helped them understand that the priority of things
 22 is to have a licence was touching on the tag thing.
 23 Q. Well, you know that's not true. Even under the period
 24 where they were operating on the initial licence,
 25 there's always the ability for the ministry to say,

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17:23 1 since it's a contract, "There's a breach of contract;
 2 it's terminated". You knew that, right?
 3 A. Not at all. I do not agree.
 4 NRD was happy continuing receiving tags because NRD
 5 was not investing. They were just buying minerals from
 6 the mine workers, selling them in Kigali and making
 7 small profits. We were telling them, "Please comply
 8 with the laws". They were happy to continue operating
 9 without a licence. And we just tell them, "Enough is
 10 enough. Please come and comply".
 11 Q. You were familiar that you had a tool of claiming breach
 12 of contract if you believed there was a breach of
 13 contract; you knew that, correct?
 14 A. Can you repeat, please?
 15 Q. Yes. I'm trying to follow up on your testimony where
 16 you said you only had one tool available to you.
 17 You knew, since the licences were contracts, you
 18 always had available a tool to claim breach of contract
 19 and terminate the licence of NRD; you knew that at every
 20 phase, right?
 21 A. There were several tools, and stopping tags was among
 22 them.
 23 Q. Okay. And it's the tool you chose in the summer of
 24 2014; correct?
 25 A. Correct.

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17:24 1 Q. And your testimony here today was in October, I believe,
 2 or at some point -- and I'll pull up the notes if it's
 3 important -- but at some point in 2013 you met with
 4 Mr Marshall and told him at that time you as minister
 5 considered NRD no longer to be a licensee at the
 6 concessions; correct?
 7 A. Can you repeat, please?
 8 Q. Your testimony here today is that in 2013 you met with
 9 Mr Marshall, and at the time of that meeting you told
 10 him the ministry no longer considered NRD to be the
 11 licensed operator of the mining concessions?
 12 A. I don't want to get confused and to confuse this
 13 Tribunal. What I know: I met Mr Marshall several times,
 14 in 2013, 2014 and even in 2015.
 15 Now, in 2014 there was this re-application --
 16 Q. My question asked you about 2013. Please just direct
 17 your answer to 2013.
 18 Isn't it your testimony here today that at a meeting
 19 in 2013 you told Mr Marshall you did not consider NRD to
 20 be a licensee of the concessions anymore?
 21 A. In 2013, during a meeting I had with them in October,
 22 I informed them that they have no licence, but the
 23 ministry is engaged to discuss with them one or two
 24 licences. That is what I said in 2013.
 25 Q. Okay. So from that October meeting when you told that

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17:26 1 to Mr Marshall until the summer of 2014, it was your
 2 position that NRD was no longer a licensee of the
 3 concessions, but you continued to recognise NRD as
 4 permitted to receive tags to sell minerals mined at
 5 those concessions; isn't that correct?
 6 A. Yes, they were still recognised as the people operating
 7 the mines.
 8 Q. Well, how is that? Under Rwandan law, how could they be
 9 recognised by the Ministry of Mines as both not
 10 a licensee at all, but operating the mines and lawfully
 11 selling minerals mined there?
 12 A. I explained earlier that as long as -- for a formal
 13 licensee who applied for a new licence, as long as no
 14 final decision has been taken, we considered that former
 15 licensee as the operator of the mine.
 16 Q. So the permission from the initial licence to NRD, your
 17 testimony is you recognised as continuing all the way to
 18 the time where you told NRD it had to leave the mining
 19 concessions?
 20 A. You are right.
 21 Q. And that's in 2015; correct?
 22 A. That was the final decision, 2015.
 23 MR COWLEY: Thank you. No further questions.
 24 MR HILL: I have no re-examination.
 25 (5.28 pm)

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17:28 1 Questions from THE TRIBUNAL
 2 THE PRESIDENT: I wonder if you can just give me a little
 3 bit further explanation about the artisanal miners.
 4 Perhaps if we look at paragraph 49 of your first
 5 statement, that would be a convenient way of doing this.
 6 Could that be put up.
 7 The second half of this paragraph reads:
 8 "By June 2014 NRD had not had a mining licence for
 9 any of its concessions since October 2012. However,
 10 with our indulgence it was continuing to operate its
 11 mines ..."
 12 You've just been telling us about that. This was
 13 an indulgence that the ministry gave to a company that
 14 meant it was not acting unlawfully in continuing to
 15 mine, notwithstanding it had no licence; is that right?
 16 A. You are right, sir.
 17 THE PRESIDENT: And that was, what, under a general
 18 administrative power that the ministry could do that?
 19 A. You are right, sir.
 20 THE PRESIDENT: I see. And you say:
 21 "... it was continuing to operate its mines, through
 22 the artisanal miners, and was able to buy minerals from
 23 the artisanal miners on its sites and have them tagged
 24 following which it was able to sell them to traders in
 25 Kigali."

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17:29 1 Was the tagging being done on site or in Kigali?
 2 Because there's conflicting evidence about that.
 3 A. Tagging was being done on site.
 4 THE PRESIDENT: On site. And these miners, were they miners
 5 who had individual -- "licence" may be the wrong word,
 6 but concession, as an artisanal miner, to mine?
 7 A. These miners were operating under the authority of the
 8 NRD. So we are calling them "artisanal miners" because
 9 they were just using artisanal tools: small, hand-held
 10 equipment.
 11 THE PRESIDENT: Yes. Well, this is what interests me. NRD
 12 is given a concession or a licence to mine. There are
 13 a lot of miners living around the mine, and NRD uses
 14 them to exercise its licence. Now, I could understand
 15 if NRD employed them and paid them as labourers, but
 16 this suggests that they would own the ore that they
 17 mined and sell it to NRD. And that's what I have
 18 a little difficulty understanding.
 19 How were they able lawfully to extract minerals
 20 which they owned and could sell to NRD?
 21 A. Yes, thank you for the question.
 22 NRD was given concessions and was supposed to create
 23 industrial mines in those concessions. And for
 24 industrial mines to be developed, you need to employ
 25 people, and we call them mine workers, and you arrange

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17:31 1 payment for them.
 2 But then NRD, what they did, they came and organised
 3 people that are living close to the mines and people
 4 coming from neighbouring towns, gave them small
 5 equipments and told them, "You go and mine. Whatever
 6 production you will have, we will buy it at a price, and
 7 we will take it to mineral traders in Kigali", and they
 8 will -- NRD will sell it and retain a profit.
 9 So that was not the model. The government was
 10 looking for a company like NRD because it was considered
 11 as a large investor: we thought it will bring in
 12 machinery, plants, structure and organisation that will
 13 transform this artisanal way of working into a modern
 14 way of doing business. But unfortunately we ended up
 15 seeing that NRD has not that capacity and has not that
 16 intention.
 17 MS DOHMANN: Mr Imena, I have a question in the same
 18 context. We have heard from the professional bailiff
 19 that he enforced judgments in favour, as I understood
 20 it, of employees who hadn't been paid. I wasn't clear
 21 whether those were actual staff that had been hired
 22 under contracts of employment in order to do mining work
 23 for NRD or whether those were artisanal miners who had,
 24 as it were, sold minerals to NRD, for NRD then to sell
 25 it on to metal traders in Kigali.

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17:33 1 I don't know whether that is something you can
 2 answer, because you are, of course, the minister in
 3 Kigali and not on the site. But maybe you can throw
 4 light on that.
 5 A. Thank you very much.
 6 How -- the little information I have about it is
 7 that NRD had few employees -- permanent employees that
 8 are paid, I think, on a monthly basis, and those
 9 employees would be mostly in charge of accounting,
 10 drivers, maybe security people who will be controlling
 11 a few of the equipment that the company had brought, and
 12 other people doing the day-to-day work, and those would
 13 maybe constitute 5 -- or about 5% of the whole
 14 workforce. But the main number of the workforce is made
 15 by those miners who are paid from their production.
 16 MS DOHMANN: Mr Imena, was there any connection between the
 17 fact that the ministry was, as you said, indulgent, and
 18 constantly gave short extensions and, as we have said
 19 indulgences to NRD, that if NRD were still in charge,
 20 then those artisanal miners would not become illegal
 21 miners?
 22 A. The indulgence was really connected to the fact that
 23 initially the ministry was looking for investors. And
 24 when we heard that this company was coming from abroad,
 25 and according to what they initially told us, we thought

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17:35 1 they would become a very good investor. So the
 2 indulgence continued with that prior perception we had,
 3 thinking that: let them be given more time, maybe they
 4 can improve.
 5 MS DOHMANN: Thank you very much.
 6 MR IMENA: You are welcome.
 7 THE PRESIDENT: Yes, thank you for your assistance. You are
 8 now free to go.
 9 MR IMENA: Thank you, sir. Thank you.
 10 (The witness withdrew)
 11 THE PRESIDENT: It might make sense to take the last
 12 15-minute break now.
 13 (5.36 pm)
 14 (A short break)
 15 (5.51 pm)
 16 MR WATKINS: Okay, Mr President, the next witness is
 17 waiting. I will go off camera and wait to hear you
 18 request him being brought in.
 19 MR HILL: If I could raise one point of housekeeping just
 20 before we do. It's just in relation to the timetable,
 21 Mr President.
 22 By the end of the day, Mr Cowley will have had
 23 approximately 19 and a half hours and I will have had
 24 approximately 18 and a quarter. The procedural order in
 25 fact allocated 24 hours per side, which notionally means

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17:52 1 there's over 10 hours between us, and obviously we've
 2 only got a 6-hour day tomorrow.
 3 I was going to propose the 6-hour day gets split so
 4 that first we catch up on the time that the Claimants
 5 have had longer, so that's about an hour and a quarter,
 6 and thereafter there's equality of time, so by the end
 7 of the day, each side will have had the same amount of
 8 time. Now, obviously the precise number could be
 9 debated and agreed between the parties, but that would
 10 be the principle I would propose.
 11 THE PRESIDENT: Mr Cowley, does that sound satisfactory to
 12 you?
 13 MR COWLEY: I would simply like the opportunity to discuss
 14 that with Respondent's counsel after today and see if we
 15 could present a joint agreed-upon allocation tomorrow
 16 morning first thing at housekeeping, or have the
 17 Tribunal resolve it if we don't. I would just like the
 18 opportunity to focus on it, instead of my outline, while
 19 it was being presented.
 20 MR HILL: No, I'm absolutely fine with that. As long as
 21 it's not going to be suggested there should be anything
 22 other than equality, then I'm completely happy to agree
 23 to that.
 24 THE PRESIDENT: Very good. Right, then let us proceed.
 25 MR WATKINS: Okay, we're bringing the witness in.

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17:53 1 (5.53 pm)
 2 DR MICHAEL BIRYABAREMA (called)
 3 THE PRESIDENT: Good evening. Previous witnesses have
 4 referred to you as "Dr Michael"; are you happy with
 5 that?
 6 DR BIRYABAREMA: Hello?
 7 THE PRESIDENT: Can you hear me?
 8 DR BIRYABAREMA: I can hear you, yes.
 9 THE PRESIDENT: Yes. Well, if I may call you "Dr Michael".
 10 Would you like to look, please, at the screen, where
 11 you will see a witness declaration. And if you're happy
 12 with that, why don't you read it aloud to us, please.
 13 DR BIRYABAREMA: I solemnly declare upon my honour and
 14 conscience that I shall speak the truth, the whole truth
 15 and nothing but the truth.
 16 THE PRESIDENT: Thank you very much.
 17 (5.54 pm)
 18 Direct examination by MR HILL
 19 Q. Dr Michael, could you be shown your first witness
 20 statement, and I'm going to ask for FTI to pull up
 21 paragraph 7. Thank you.
 22 I understand there's a correction to a date you want
 23 to make in that paragraph?
 24 A. Yes, the correction is that I actually worked for the
 25 Rwanda Geology and Mines Authority. After that,

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17:55 1 I went -- I worked for the Rwanda Natural Resources
 2 Authority for five years. That was up to 2016, not
 3 2018.
 4 So I guess the correction there is: instead of
 5 "7 years", it should be "5 years"; and instead of
 6 "2018", it should be "2016".
 7 MR HILL: Thank you. Now, if you wait there, Mr Cowley, who
 8 represents the Claimants in this arbitration, is going
 9 to ask you some questions.
 10 (5.55 pm)
 11 Cross-examination by MR COWLEY
 12 Q. Good afternoon, Dr Michael.
 13 A. Good evening.
 14 Q. Good evening.
 15 Please bring up C-032.
 16 Dr Michael, please take a look at this document, let
 17 me know when you're able to answer a question about it.
 18 A. Yes, I can.
 19 Q. This is a letter that you wrote on July 20th 2009 to the
 20 director of the National Land Center in support of NRD's
 21 request for the necessary permit to construct the plant
 22 at one of the concessions; correct?
 23 A. That's correct.
 24 Q. If I could focus you on the second sentence of your
 25 letter to the National Land Center at the time. In

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17:56 1 describing the relationship of NRD to the Rutsiro mining
2 exploration permit area, you say:
3 "This is a four year permit obtained on the
4 24/11/06. Such permits are expected to be converted
5 into long term concessions of 30 years when there is
6 success in defining economic deposits."
7 That's what you wrote at that time; correct?
8 A. Yes, I wrote it.
9 Q. And you wrote that at that time to the National Land
10 Center because you believed it was true; correct?
11 A. I believe what was true?
12 Q. You said you wrote that, and you believed it was true
13 when you wrote it; correct?
14 A. You mean what I wrote? Yes.
15 Q. If I could ask that R-111 be brought up. It's
16 a three-page document, so perhaps you could start
17 opening the second page as well, and allow Dr Michael to
18 see what is in front of him.
19 Dr Michael, when you feel you recognise the document
20 and are able to answer questions about it, please tell
21 me.
22 A. Yes, I recognise it.
23 Q. You wrote this document; is that correct?
24 A. Yes, I did.
25 Q. And you wrote it when?

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18:00 1 Q. I apologise, but I did not quite catch what you said.
2 I did hear you say, "We used it ..."
3 A. It was used. It was used to progress with NRD's
4 application for these short-term licences.
5 Q. Okay. Prior to your preparing this assessment, had
6 anybody else on behalf of MINIRENA undertaken any review
7 or analysis of that application?
8 A. I can't recall. I don't remember.
9 Q. When you did your assessment, were you working with
10 anyone?
11 A. Well, I generated it generally -- largely myself, but
12 we were an institution: we could always benefit from
13 each other's professional input. But I wrote -- again,
14 I wrote it.
15 Q. Did you write it for someone else to review and take
16 action on, as far as you knew?
17 A. Well, because I was in charge of assessing such
18 a report, of course, yes, the minister would refer to it
19 and ... So it was a document that could be used by
20 whoever was responsible for dealing with this licence
21 application.
22 Q. And who did you understand that to be in April 2011?
23 A. Sorry?
24 Q. In April 2011, who did you think was responsible for
25 dealing with the NRD licence application?

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17:58 1 A. 20 -- should be, like, April 2011. So certainly in the
2 months of April/May 2011. I don't remember exactly the
3 exact date, but it was 2011.
4 Q. What was the purpose of this document when you wrote it?
5 A. It was to assess the value of the report NRD had
6 presented as a document to apply for short-term licences
7 and the extension of exploration licence.
8 Q. And that's the November 2010 application that NRD
9 submitted?
10 A. Yes.
11 Q. I apologise for one second, I just need to fix my
12 computer. It's frozen. And I need to use that to see,
13 because I have a hard time seeing the documents on the
14 screen. So bear with me for hopefully no more than
15 a minute.
16 A. Can you zoom in the document, so the letters are not
17 very small?
18 Q. Yes, I'm going to ask questions about specific sections,
19 and I will have it zoomed in for you when I do.
20 Sticking with the creation of the document
21 generally, you wrote this document about the NRD
22 November 2010 application. What did you do with this
23 document once it was created?
24 A. We went -- we used it actually to assess the way forward
25 with NRD's application.

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18:03 1 A. I don't understand your question.
2 Q. Okay. In answer to a previous question, you said you
3 wrote it for whoever was responsible for dealing with
4 NRD's application; do I have that right?
5 A. I mean, that means assessing and also taking decisions,
6 yes.
7 Q. And who, at that time, did you think was going to use
8 this document as part of that responsibility?
9 A. No, I believe also a minister was using it to finalise
10 on the way forward with this application.
11 Q. On the first page, second paragraph, if that could be
12 zoomed in so that Dr Michael could review it. As part
13 of the introduction to your assessment, you wrote:
14 "The nature of the agreement was ..."
15 And just to be specific, I'm going to pause there.
16 The "agreement" that's referred to in this sentence
17 in your report is the initial exploratory licence
18 agreement with NRD; correct?
19 A. Yes, this was the 2006 contract and the agreement it
20 accompanied.
21 Q. So the nature of that agreement, you said, was:
22 "... (i) Provide a progress report on the
23 exploration program activities after two years and (ii)
24 Provide resource evaluation reports and the feasibility
25 Study after four years: based on this a long term mining

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18:05 1 license would be negotiated."
 2 You wrote that; correct?
 3 A. Yes, I wrote it.
 4 Q. And when you wrote that, you believed that was true;
 5 correct?
 6 A. Yes, it was true that if the NRD provided both the
 7 report and the feasibility study, there would be
 8 a negotiation for a long-term licence. But this would
 9 depend on whether we got satisfactory reports from NRD.
 10 Q. If I could ask that, on page 3, the top paragraph be
 11 zoomed in.
 12 Have you been able to review that, sir?
 13 A. Yes, I can see it.
 14 Q. I want to focus on the second sentence, that the
 15 "preliminary exploration work" referred to in the prior
 16 sentence you said was:
 17 "... crucial in the light of the large area given to
 18 the company because of its expressed financial and
 19 technical capability."
 20 The "large area", that you characterise or reference
 21 that way, referred to the five mining concessions
 22 subject to the initial 2006 licence; correct?
 23 A. Yes, correct.
 24 Q. In addition to those five mining concessions, what are
 25 the largest mines in Rwanda?

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18:07 1 A. Well, I can't recall now. But certainly NRD had the
 2 biggest chunk, because it had a total area of about
 3 32,000 hectares.
 4 Q. But in terms of mining concessions, instead of trying to
 5 recall who owns them and which ones are jointly owned,
 6 other than any of the five that NRD was licensed to
 7 operate for a period, what are the largest mining
 8 concessions that you can identify in Rwanda?
 9 A. Well, I -- the largest -- I don't remember very well the
 10 acreage of each one of them, but definitely either
 11 Rutsiro or Gatumba were definitely among the biggest.
 12 But I can't remember exactly how the variation of the
 13 areas of these concessions is -- was then, because they
 14 have been modified.
 15 Q. How about the most productive mining concessions?
 16 Instead of trying to remember the specific area, what
 17 are the most productive mining concessions in Rwanda?
 18 Not referring, again, to the five NRD concessions.
 19 A. Sorry, come again? I didn't understand your question.
 20 Q. Yes, okay.
 21 So there were five concessions originally subject to
 22 the NRD exploratory licence. You've characterised them
 23 here. I'm asking about the rest of the mining
 24 concessions in Rwanda. What are the most productive
 25 mining concessions in Rwanda that you can recall?

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18:09 1 A. You mean today? Do you mean today?
 2 Q. If it changes your answer, you can explain that mining
 3 concessions were more productive back then, but not now.
 4 Tell me as you understand it. I don't want to suggest
 5 I have an ability to specify the most important time.
 6 You know how you need to break it down for the answer.
 7 I'm just trying to get a sense of who the comparable
 8 concessions are, that's all I'm trying to do.
 9 A. Well, if I remember, in 2010, 2011, 2012, Rutongo was
 10 the -- was producing more than most of the other
 11 concessions.
 12 Q. Any others that you can recall as the largest producers?
 13 A. Well, I really can't speculate. Especially, you know,
 14 now I am retired, it's quite several years when --
 15 Q. Yes, thank you for --
 16 A. -- I was looking at the documents and so on.
 17 Q. Thank you for trying. I appreciate it.
 18 If I could ask that the supplemental witness
 19 statement be brought up, paragraph 9.1. It's focused
 20 on -- and that's going to be a spillover: it starts on
 21 page 3 and goes onto page 4. So as best you can, if you
 22 could highlight that.
 23 Do you see in your supplemental witness statement
 24 given in this case, you say that NRD's 2010 application
 25 was for five-year licences, but NRD made no application

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18:11 1 for long-term licences until 2013?
 2 A. Sorry? I think it's not the one which is put up there.
 3 Q. I'm having a difficult time hearing you, and perhaps I'm
 4 talking too fast. I think it best if I just repeat the
 5 question.
 6 A. What you've told me is not what is on the screen.
 7 Q. I apologise. Let me ... Then it's my reading skills
 8 that are at issue, I believe. So I'll try to do
 9 a better job this time, sir.
 10 Do you see in your witness statement that you say in
 11 reference to NRD's 2010 application, it was for
 12 five-year licences, but that NRD made no application for
 13 long-term licences until 2013?
 14 A. Sure. That's true. They didn't make any long-term
 15 licence application until 2013, I guess January 2013.
 16 Q. Thank you.
 17 Could I ask that the document R-017 be brought up.
 18 A. Sorry?
 19 Q. We're bringing up a different document for you. It will
 20 take a second.
 21 Let me bring it up on my own computer for one
 22 second, if you would bear with me, so that I can read
 23 it.
 24 So this is an eleven-page document. They're
 25 highlighting the first page of an eleven-page document.

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18:13 1 That's large enough, hopefully, for you to read.
 2 Do you recognise what the document is from reading
 3 that? Or we can scroll through the pages.
 4 A. Yes, can you scroll through the pages so I can see ...
 5 Q. FTL, please do that for the witness. And then you let
 6 us know if you recognise this document.
 7 A. At least those first two pages, yes.
 8 Q. Keep going. Do you recognise what that document is?
 9 A. Yes, I do.
 10 Q. This is a document you prepared and you talk about in
 11 your second witness statement; is that correct?
 12 A. Yes.
 13 Q. If you could just hold on one second, I'll direct you to
 14 a specific page.
 15 When do you say you prepared this document?
 16 A. Well, it should be March 2015.
 17 Q. Okay.
 18 A. I don't remember the date, but it should be March 2015.
 19 Q. Thank you. If you could take him to page 7.
 20 In section 4 of the document that you created in
 21 March 2015, you describe as the "Application for
 22 [a] Long Term License" the November 29th 2010
 23 application and extensions after expiration of the
 24 original short-term licence through October 2012; do you
 25 see that?

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18:18 1 a five-year mining licence and an exploration licence.
 2 Q. I think I understood your answer but I just wanted to be
 3 clear, because the question that I was trying to ask you
 4 was: you wrote this document yourself, this isn't just
 5 a document that was prepared by someone on your staff;
 6 correct?
 7 A. Yes, I wrote it, yes.
 8 Q. I'm done with this document.
 9 Dr Michael, are you able to identify all the other
 10 short-term exploratory licence holders that applied for
 11 extensions --
 12 A. Sorry? Sorry?
 13 Q. I apologise. I'm speaking slowly and perhaps I'm making
 14 it more confusing. I'm trying to avoid speaking
 15 quickly. So I will try again.
 16 Are you able to identify the other short-term
 17 exploratory licence holders who submitted applications
 18 for additional licence periods, long or short, following
 19 the expiration of their normal exploratory term? Do you
 20 know who those are?
 21 A. Well, it's some time back. But Rutongo certainly did
 22 apply for the extension or the renewal of the licence.
 23 I can't remember the others.
 24 Q. Okay. I'm not going to try and make this a memory test,
 25 ticking off every name. Can I ask: do you recall

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18:16 1 A. Sorry, which one is that? Paragraph what?
 2 Q. Okay. Do you see section 4 of this document is
 3 highlighted? It's brought up in larger text. If
 4 I could ask that the first paragraph be highlighted in
 5 yellow.
 6 Have you read that, sir?
 7 A. Yes.
 8 Q. You'll agree that the description of the 2010
 9 application and the reference to the extension of the
 10 licence from the original four-year exploratory term
 11 through October 2012, you describe in the heading as
 12 "Application for Long Term License".
 13 If I could ask that the heading be highlighted in
 14 yellow, so he understands what that means.
 15 Do you see that that's how you characterised it?
 16 A. Well, I think that was -- certainly it was not
 17 a long-term licence, but that was an oversight.
 18 Q. I just wanted to direct your attention to it because my
 19 question to you, sir, is: you wrote that language;
 20 that's not something somebody else wrote for you and you
 21 signed off on. But you wrote this memo; correct?
 22 A. Let me read through again to understand.
 23 Q. I didn't quite hear what he asked.
 24 A. This definitely was a misrepresentation of the facts on
 25 my part. But what they had applied for was actually

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18:21 1 approximately the number of short-term exploratory
 2 licence holders that, following the expiration of that
 3 initial four- or five-year term, they applied for
 4 additional licences to operate the concession?
 5 A. Come again?
 6 Q. Do you recall approximately how many there were, sir?
 7 A. No, I can't speculate now.
 8 Q. Can you recall whether there were any other short-term
 9 exploratory licence holders from this initial
 10 privatisation time period in the mid-[2000s], similar to
 11 NRD, who, when their short-term licence expired, they
 12 applied for an additional licence, and that as of 2014
 13 a decision still hadn't been made? Were there others?
 14 A. No, I can't remember when. I can't speculate.
 15 Q. In 2014, did you become familiar with the dispute that
 16 arose when Ben Benzinge claimed that he had a right to
 17 exercise control of the operations of NRD?
 18 A. Well, I recall it, but I didn't follow it up closely.
 19 Q. Just to be clear, what do you mean, you "didn't follow
 20 it up"? Was something brought to your attention for
 21 action?
 22 A. No.
 23 Q. Did Mr Benzinge inform you of his position?
 24 A. I don't remember. I really can't speculate.
 25 Q. So you're saying you don't recall how you heard of it?

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18:23 1 A. No, I recall the dispute, but I don't -- certainly
 2 I'm not -- didn't follow the details of the dispute.
 3 Q. Okay. If you could bear with me for a couple more
 4 questions: I want to just see if there's any aspect of
 5 it that you might recall.
 6 Do you recall that as part of the dispute between
 7 Mr Benzinge and at least Mr Marshall, Mr Benzinge was
 8 given the keys and control of the offices of NRD by
 9 Bailiff Bosco?
 10 A. Well, I can't -- I am not certain about the truth of
 11 that. But definitely in some of the documents that
 12 Marshall was asked to produce, he indicated that
 13 Mr Benzinge had taken the keys of the office. But it
 14 was not in my remit to follow. I guess it was being
 15 considered within courts, and ...
 16 Q. Do you have --
 17 A. But this --
 18 Q. I'm sorry, I didn't mean to speak over you.
 19 Do you have a recollection that Mr Benzinge, for
 20 some period of time, was the person operating/in charge
 21 of the NRD concessions?
 22 A. Well, yes, partly. You know, he had -- it's reported in
 23 the record that he had 15% of NRD ownership. So
 24 definitely he had access to NRD concessions. But the
 25 extent of how he was involved and the depth of it, no.

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18:25 1 Q. Is it accurate to say that MINIRENA as a department is
 2 responsible for knowing what individuals are operating
 3 and owning the companies to whom mining concession
 4 licences are granted?
 5 A. Sorry, come again? I didn't understand you.
 6 Q. Was the Ministry of Mines responsible for knowing and
 7 keeping informed of what individuals owned and operated
 8 companies to whom mining concession licences had been
 9 issued?
 10 A. Yes, but with NRD the change of ownership was always --
 11 initially not very clear, not even clear at the
 12 ministry.
 13 Q. Did there come a period of time where you learned that
 14 at the NRD licence concessions, there was violence among
 15 the miners breaking out, and Mr Benzinge at that time
 16 was operating the concession?
 17 A. No, I really -- I can't speculate.
 18 MR COWLEY: I have no further questions.
 19 MR HILL: I have no re-examination.
 20 THE PRESIDENT: We have no questions.
 21 Thank you very much, Dr Michael, for your
 22 assistance. You are now free to go.
 23 DR BIRYABAREMA: Thank you.
 24 (The witness withdrew)
 25 THE PRESIDENT: And there's no further business that we can

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18:27 1 now do; is that right?
 2 MR COWLEY: Correct, your Honour.
 3 THE PRESIDENT: Right.
 4 Yes, well, perhaps counsel can use the unexpected
 5 piece of spare time to discuss what, if any, further
 6 procedural orders should be made on close of this
 7 hearing tomorrow. I have particularly in mind the
 8 question of whether there should be post-hearing briefs
 9 and, if so, the nature of those briefs. Is that
 10 something that has been discussed to date?
 11 MR COWLEY: Between counsel, there have been no discussions.
 12 THE PRESIDENT: Sorry?
 13 MR COWLEY: Between counsel, there have been no discussions
 14 on that issue. We can discuss it this afternoon.
 15 Regarding the timing for tomorrow, we typically get
 16 a report of the current time shortly after the close of
 17 the day from Mr Kaplan. Once that comes out, we can
 18 discuss both issues.
 19 THE PRESIDENT: Very well.
 20 Mr Hill, there's nothing else we can do this
 21 evening, is there?
 22 MR HILL: No, not from my point of view.
 23 Mr President, you're right: before tomorrow, the
 24 parties should liaise on whether there should be
 25 post-hearing briefs and the length.

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18:29 1 THE PRESIDENT: Yes.
 2 MR HILL: Because where we got to before, I think both
 3 parties were agreed there should be post-hearing briefs,
 4 but there was a debate about the length, and that's
 5 still a live debate.
 6 And then there's also -- I hope it won't be
 7 contentious -- it's just the allocation of tomorrow's
 8 hours. And that's against the clock.
 9 THE PRESIDENT: Yes, I don't anticipate we are going to have
 10 any problem with timing tomorrow.
 11 Could I just say this about the post-hearing briefs:
 12 the Tribunal would be very grateful if these would focus
 13 on the evidence that we've had and how that fits into
 14 the respective cases of the parties. What we don't want
 15 is a complete rehash or repetition of pleadings. We
 16 would like to focus on the effect of the evidence we've
 17 heard.
 18 Right, we will adjourn until midday tomorrow.
 19 MR COWLEY: Thank you.
 20 (6.30 pm)
 21 (The hearing adjourned until 12.00 noon the following day)
 22
 23
 24
 25

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