

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

Case No. ARB/14/22

World Bank
66 avenue d'Iéna
Paris, 75116
France

Day 6
Hearing on the Merits

Monday, 29th May 2017

Before:

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

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

Claimants

-v-

THE REPUBLIC OF GUINEA

Respondent

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

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

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Discussion re procedural matters	1
DR AHMED TIDIANE SOUARÉ (called)	7
Direct examination by MR OSTROVE	9
Cross-examination by MR DAELE	14
Tribunal questions	56
Tribunal questions	70
Tribunal questions	86
Tribunal questions	97
Tribunal questions	103
Tribunal questions	129
Tribunal questions	135
Re-direct examination by MR OSTROVE	154
Tribunal questions	161
Questions from THE TRIBUNAL	166
Re-cross-examination by MR DAELE	180
Discussion re procedural matters	187

09:30

1

Monday, 29th May 2017

2 (9.30 am)

3 THE PRESIDENT: Good morning to everyone. We are ready to

4 start Day 6 and the second portion of this hearing.

5 I hope everyone had some rest at least over the weekend

6 and you are full of energy to start this week.

7 We will start with the mini-openings, as we had done

8 last week. The Tribunal has just two points, and maybe

9 I raise them right away and you may wish to comment, or

10 maybe they are part of your points in any event.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 That was the first point. The other point was with
6 respect to Exhibits C-354, C-355 and C-356. One of them
7 is the Freeh report. We don't believe they have been
8 produced, at least we have not received them, so if you
9 want to make sure that they are produced.

10 And of course -- but I'm sure you will address this
11 now -- we are interested in knowing what the schedule is
12 for this week, if there has been some rearrangement of
13 witness sequencing in order to fit in Mr Avidan and
14 other concerns.

15 Can I turn to you, Mr Daele.

16 MR DAELE: Thank you, Madam President. On the first point,
17 I propose to come back to you on this tomorrow.

18 THE PRESIDENT: That is the idea, yes.

19 MR DAELE: And, yes, also on the second point, the same
20 thing.

21 In terms of the third point, the schedule for the
22 witnesses, there has been an exchange of emails over the
23 last couple of days between the two sides and I think we
24 have reached at least an agreement that we would like to
25 propose to the Tribunal.

09:35

1 I think the schedule for today would not change. So
2 today we just have Mr Souaré.

3 THE PRESIDENT: Yes.

4 MR DAELE: Then tomorrow morning we would start with
5 Mr Ousmane Sylla. Then there is a change, because
6 Mr Tinkiano is not available yet. So Mr Tinkiano, who
7 was going to be the second witness tomorrow, is not
8 coming, at least not tomorrow, and we will have instead
9 Mr Kanté. So Mr Kanté was foreseen for Wednesday; we
10 are moving him up to tomorrow's session. So then we
11 will have in the morning Sylla, and in the afternoon we
12 will have Kanté.

13 Then on Wednesday we would have Mr Nabé. So he
14 would have the entire day, Nabé, because on the proposal
15 now his session was going to be split between Wednesday
16 and Thursday. So we would do Mr Nabé on Wednesday.

17 Then on Thursday -- I believe Mr Tinkiano arrives in
18 Paris Wednesday evening. So on Thursday then we would
19 start with Mr Avidan, Asher Avidan, so our witness who
20 could not be here last week. So he would testify in the
21 morning. Then once Mr Avidan is finished, then we would
22 have the last two witnesses of the Guinean side, so
23 Mr Tinkiano and Mr Bouna Sylla. They have also produced
24 pretty short witness statements. It's going to be tight
25 that day, I think, depending on how long Mr Avidan

09:38

1 takes. But I think that's the schedule that we
2 discussed.

3 THE PRESIDENT: Fine. Thank you. Thank you for having
4 conferred on this and reached a solution. My initial
5 reaction is that we will have quite a heavy day
6 tomorrow, but a light day today and Wednesday, and again
7 a rather heavy day on Thursday. Is that the intent?

8 (Interpreted) Does the Respondent confirm the
9 programme as announced?

10 MR OSTROVE: (Interpreted) Yes, with a few comments, give
11 and take a few points of clarification that might help
12 to alleviate Tuesday and Wednesday.

13 To start with, obviously the Claimants will take the
14 time they need, but Ousmane Sylla is available to start
15 this afternoon. If we don't take up all of today with
16 Minister Souaré, then we could start with
17 Mr Ousmane Sylla. This would mean that we could start
18 tomorrow afternoon -- or at least we could start
19 a little earlier with Mr Kanté tomorrow. The only
20 constraint is that he would like to leave at 5 o'clock
21 tomorrow if at all possible, because he's got
22 commitments. So if we could start with him today -- no,
23 no, no, no, wait a minute. We start with Mr Sylla
24 today, in order to finish earlier with Mr Sylla
25 tomorrow.

09:40

1 THE PRESIDENT: Yes, all the more so there's a time
2 constraint for tomorrow afternoon.

3 MR OSTROVE: Yes, but of course the Claimants are free to
4 take as much time as they wish.

5 As far as Mr Tinkiano is concerned, there is indeed
6 a problem of passport and visa that should have been
7 settled. But with the public holiday last week, there
8 was an update of the computer system at the consulate
9 and therefore they couldn't issue it. But he will
10 obtain it this morning and can travel tonight, and he
11 will be available on Wednesday. So if we could hear
12 Mr Tinkiano on Wednesday, since his testimony is very
13 short, it might also make one's task easier for
14 Thursday.

15 Last thing. Indeed I'd like to thank my colleague
16 for accepting to put Mr Avidan early on Thursday; this
17 will make things easier for the video. But we were told
18 that since he is fasting, Mr Bouna Sylla said that he
19 would prefer to appear in the morning. Well, if we
20 could do what you suggested, i.e. put Bouna Sylla before
21 Mr Avidan on Thursday, that would be better in terms of
22 alertness, let's say.

23 So we hope that the cross-examination of Mr Souaré
24 today can move ahead and we can start with Mr Ousmane
25 Sylla, and therefore Tinkiano would appear on Wednesday

09:42

1 and Mr Bouna Sylla could be heard on Thursday morning,
2 before Mr Avidan.

3 THE PRESIDENT: Thank you. I think that things are
4 perfectly clear. We will see how we progress. We shall
5 show a certain degree of flexibility to adjust.

6 (In English) Mr Daele, I cut you off, because you
7 were doing your mini-opening, but I wanted to be sure
8 that we are clear on the schedule, and I think we are,
9 as far as we can be for now. But you may have other
10 things that you want to --

11 MR DAELE: I was just taking notes. So I understood that
12 for Thursday we are going to start with Mr Sylla, and
13 not -- okay.

14 THE PRESIDENT: It would be preferable, because he is
15 fasting. So towards the end of the afternoon I suppose
16 he gets very tired.

17 MR DAELE: Okay. Fine, thank you.

18 THE PRESIDENT: No other matters to raise at this
19 mini-opening?

20 MR DAELE: No.

21 THE PRESIDENT: Good, thank you.

22 (Interpreted) Let me turn to the Respondent. Do you
23 have any other points to raise as mini-openings?

24 MR OSTROVE: Yes, there is a point. Maybe our adversaries
25 can help us: we wanted to submit a new exhibit to the

09:43

1 Tribunal and wanted to know whether we had the agreement
2 of the Claimants or whether we had to make an official
3 request with the Tribunal to obtain authorisation. Have
4 you had an opportunity to look at this? Can you confirm
5 that I can submit the document? Otherwise I can apply
6 for authorisation.

7 MR DAELE: Can I come back to this after the lunch break?

8 THE PRESIDENT: Is this a document that you need before the
9 lunch break?

10 MR OSTROVE: No, I think it can wait. Thank you.

11 THE PRESIDENT: Was that all, in terms of openings? Yes?

12 (In English) Fine. Then I think we can call in the
13 first witness. (Pause)

14 MR OSTROVE: Forgive me. While we wait, let me say that
15 Minister Souaré, who is going to testify, is also
16 fasting. So it's a good thing that we should start
17 early this morning, and I hope that you will show
18 understanding if he is a little tired. (Pause)

19 (9.46 am)

20 DR AHMED TIDIANE SOUARÉ (called)

21 (Evidence interpreted)

22 THE PRESIDENT: (Interpreted) Mr Prime Minister, good
23 morning. Thank you for being here today. At some stage
24 you might need the headsets to listen to the
25 translation. For the moment, I'm going to speak French.

09:46

1 For the transcript, could you confirm that you are
2 Ahmed Tidiane Souaré?

3 DR SOUARÉ: Good morning, madam. Yes, I confirm.

4 THE PRESIDENT: At some stage, the period that we are
5 interested in, you were the Minister of Mines. You were
6 also appointed Prime Minister of your country. What is
7 your current occupation?

8 A. Presently I am an independent consultant.

9 THE PRESIDENT: So you no longer hold any responsibility in
10 the mining sector or government?

11 A. No, I don't.

12 THE PRESIDENT: You have submitted a written statement which
13 is dated 8th December 2015. Do you have it at hand? It
14 should be in the first volume of documents that has been
15 handed out. (Pause)

16 A. 8th December, yes, it's here.

17 THE PRESIDENT: You are being heard here as a witness, as
18 you know, and as a witness you have the duty to tell the
19 truth. May I ask you to confirm that this is your
20 intention by reading the declaration that you have in
21 front of you.

22 DR SOUARÉ: Yes, madam. I solemnly declare upon my honour
23 and conscience that I shall speak the truth, the whole
24 truth, and nothing but the truth.

25 THE PRESIDENT: Thank you.

09:48

1 You know how we are going to proceed: first lawyers
2 for Guinea are going to ask you a few questions, and
3 then we shall switch to BSGR, who will be asking their
4 own questions.

5 DR SOUARÉ: Fine.

6 THE PRESIDENT: Mr Ostrove, you have the floor.

7 (9.49 am)

8 Direct examination by MR OSTROVE

9 Q. Mr Prime Minister, good morning.

10 A. Good morning, sir.

11 Q. I have a few questions to put to you concerning the
12 elements of interest to the Tribunal so far, and
13 interest to the parties of course, in this case in
14 point.

15 Would you remember a reception that took place in
16 the offices of BSGR in September 2006?

17 A. Yes, I remember that reception. I was Minister of State
18 for Education.

19 Q. And you were present?

20 A. Yes, I was invited, as former Minister of Mines.

21 Q. I'd like to play an extract of that video when there is
22 a person who enters the room and ask you a few
23 questions, if I may. I am going to put it up on the
24 screen for you. For the files, it's as of minute 18 and
25 7 seconds.

09:50

1 THE PRESIDENT: Can you remind us that this is R-237; is
2 that right?

3 MR OSTROVE: Yes, forgive me.

4 THE PRESIDENT: R-207, thank you. I've got it.

5 MR OSTROVE: I'm going to check, sorry. (Pause) Yes, it's
6 R-207, indeed.

7 THE PRESIDENT: Thank you.

8 MR OSTROVE: I don't know if we will have the sound, but
9 sound is not very important in this case in point.

10 (Video Exhibit R-207 played)

11 Mr Prime Minister, do you recognise the two people
12 who are here in the forefront?

13 A. Yes.

14 Q. Who are they?

15 A. The lady is Mamadie Touré, and the gentleman I believe
16 is her brother Touré.

17 Q. If we continue watching the video.

18 (Video Exhibit R-207 played)

19 A. This is right.

20 Q. Who are the people, the military who are around her?

21 A. I don't understand your question.

22 Q. You see that there are several people in military
23 attire: you see here, for instance, and behind there are
24 a few people. Do you know these people; not personally,
25 but by their function?

09:52

1 A. Yes, this is the Mamadie Touré guard, the close guard of
2 the President.

3 Q. Why do you say it's [her] guard, and not merely just
4 simple military troops or soldiers?

5 A. Well, [s]he usually has some guards, and this is who
6 they are.

7 Q. If I show you a little bit more. Later I'm going to ask
8 you if you have further comments on this subject.

9 (Video Exhibit R-207 played)

10 In the light of what you've just seen, that we can't
11 see on the transcript, i.e. Mamadie Touré moves around
12 in the reception, do you have any comments on the role
13 of these guards that follow her?

14 A. Comments? What do you mean?

15 Q. Does it confirm that it's the personal guard of
16 Mrs Touré?

17 A. I have no doubt whatsoever that it's her personal
18 security because I know Mrs Touré at this reception.

19 Q. So if I could turn to another subject matter. There are
20 elements in the file where some people had been speaking
21 about a customary practice relating to review
22 commissions, or commissions that are to examine investor
23 applications, which would be a standard practice for
24 those investors, i.e. to pay certain amounts to the
25 members of the commission that examines their titles.

09:54

1 In your experience as Minister and Prime Minister,
2 is this normal practice, that an investor should pay
3 members of a commission that are there to examine the
4 mining titles?

5 A. It's neither legal within the Mining Code nor
6 traditional. This is not a practice that I experienced
7 as Minister or Prime Minister. This is not a practice
8 that would enable one to reach one's objective in terms
9 of obtaining mining titles.

10 Q. Why would that practice not enable one to reach one's
11 objective?

12 A. These committees are supposed to be impartial, neutral.
13 They should apply -- they are expected to apply the law,
14 the mining practices. Partners and investors are
15 supposed to tell the truth on their conscience, on their
16 honour and conscience.

17 Q. If the amount in question were merely \$1,000 per person
18 for a few weeks' work, from your experience, an amount
19 of \$1,000, in those days of course, at the end of 2008,
20 would that be an important amount for a civil servant in
21 Guinea?

22 A. This is a considerable amount, since it goes far beyond
23 the monthly remuneration of the civil servant in
24 question.

25 Q. Do you remember how much you were paid on a monthly

09:56

1 basis when you were Prime Minister?

2 A. Prime Minister?

3 Q. Or Minister of Mines?

4 A. Ministers have compensations which are specific that add
5 up, come on top of their wages, if they are civil
6 servants. When we were in the government, ministers
7 would get 5 million Guinean francs. At the present
8 rate, it's \$500. At the present rate, but of course it
9 wasn't the rate at the time.

10 Q. And those civil servants who were not ministers, who
11 were mere advisors, do you have an idea of their
12 remuneration typically?

13 A. Yes, 1 million/1.5 million.

14 Q. Which in dollars at today's rate would be
15 approximately...?

16 A. Less than \$200, or around \$200, at today's rate.

17 MR OSTROVE: I have no further questions.

18 THE PRESIDENT: Thank you.

19 (In English) Mr Daele, can I turn to you for
20 cross-examination.

21 MR DAELE: Absolutely. I thought we were already in the
22 re-direct!

23 THE PRESIDENT: (Interpreted) Mr Prime Minister, you will
24 need your headset to understand a question. If you do
25 not understand a question, please say so, or if you

09:58

1 can't hear the translation, please say so.

2 MR OSTROVE: I seem to understand that Mr Daele is going to
3 honour us with a French cross-examination.

4 MR DAELE: (Interpreted) I'm going to try.

5 THE PRESIDENT: Oh, forgive me. This is magnificent.

6 MR DAELE: I'm not sure it is going to be magnificent, but
7 I am going to do my best.

8 THE PRESIDENT: Oh, wonderful, thank you. Please take the
9 floor in French.

10 (9.58 am)

11 Cross-examination by MR DAELE

12 Q. Good morning, Mr Souaré. As I've just explained, I am
13 going to proceed to the cross-examination in French.
14 I apologise if I make a lot of mistakes, but I think it
15 will help our conversation if we don't need to go
16 through the interpreters. If you don't understand my
17 question, I will reword it in English and then we shall
18 use our interpreters. But I am going to endeavour to do
19 this in French, and I hope that my former teachers from
20 my school are not listening to the ICSID video!

21 Let me start by a few questions on your
22 introduction. You said that you are no longer involved
23 in the government. When did you leave the government or
24 the administration?

25 A. In 2014.

09:59

1 Q. 2014. What was your last responsibility?

2 A. I was the special advisor to the President, sir, the
3 President of the Republic.

4 Q. And you held this position for how long?

5 A. Two years.

6 Q. So you were special advisor for the President. On what
7 type of matter did you advise the President?

8 A. It is transversal. A special advisor in fact looks at
9 all of the questions that are suggested by the President
10 of the Republic, without any sectorial limitation.

11 Q. Does it include also mining matters?

12 A. Yes, everything.

13 Q. So mining also?

14 A. All subjects.

15 Q. Were you involved in the negotiations or did you advise
16 the President at the level of the negotiation of the
17 amicable settlement with Rio Tinto?

18 A. No.

19 Q. Not at all?

20 A. Not at all.

21 Q. You discussed this Rio Tinto subject with the President
22 after the amicable settlement?

23 A. No.

24 Q. At what date was this agreement with Rio Tinto entered
25 into; do you remember?

10:01

1 A. No, I have no specific recollection of this.

2 Q. In 2011; is that possible?

3 A. Yes, it's possible, 2011. Yes. I was already a special
4 advisor.

5 Q. You say that right now you're consultant or advisor?

6 A. Yes.

7 Q. On what subjects?

8 A. Mining, finance, anything related by my experience, and
9 education as well.

10 Q. Do you have any mining customers? Do you have any
11 customers in the mining sector to whom you give advice?

12 A. Yes. We have helped the Mining Department to organise
13 the mine forum. We read the texts, make sure that the
14 best practices are put in place for the mining sector.

15 Q. Is Rio Tinto one of your customers, or were they one of
16 your customers at one point?

17 A. Never.

18 Q. And Sable Mining?

19 A. No.

20 Q. So you were appointed in March 2005?

21 In fact, just to explain things, I will be following
22 more or less your witness statement. So I shall try, to
23 the extent possible, to mention the particular paragraph
24 to which I will be referring in your witness statement;
25 it will make things easier for you, for me and for the

10:03

1 Tribunal.

2 So at paragraph 6 you say that you were appointed in
3 March 2005?

4 A. Yes.

5 Q. Was it President Conté who appointed you?

6 A. Yes, it was President Conté, on the proposal of the
7 Prime Minister.

8 Q. But the appointments were made by the President himself?

9 A. Yes, by the President himself.

10 Q. At the time of your employment --

11 PROFESSOR VAN DEN BERG: [Could we pause for a moment.]

12 (Interpreted) We have a minor [technical] problem: my
13 screen has frozen.

14 (Pause to resolve a technical problem)

15 THE PRESIDENT: Would you kindly repeat your last question.

16 MR DAELE: I will repeat my last question.

17 I think I was asking you whether, as consultant, you
18 had any mining clients, and I think that your answer was
19 yes. Then there was another question I put to you -- or
20 maybe you care to repeat your answer. Do you have any
21 mining customers?

22 A. No. Mining customers, no.

23 Q. Okay. I had also asked you whether Rio Tinto was
24 a client.

25 A. And I had said no.

10:06

1 MR DAELE: I think those were my last questions.

2 THE PRESIDENT: You also asked the question about

3 Sable Mining, and the answer was also no.

4 A. That's right.

5 MR DAELE: And then I asked you whether you were appointed

6 by President Conté himself.

7 A. Yes.

8 Q. At the time of your appointment, did President Conté

9 give you any instructions, any directives?

10 A. Directives?

11 Q. Yes, directives: what he wanted to see done in the

12 mining sector, what he was expecting you to do as new

13 Mining Minister.

14 A. The directives that were simply the policy of the

15 government, which were to be coordinated by the

16 Prime Minister in every sector.

17 Q. Is this what he actually told you?

18 A. No, directly President Conté didn't say that. The

19 Prime Minister, yes.

20 Q. What did the Prime Minister tell you then?

21 A. For the mining sector? Well, we had the objective of

22 promoting the mining sector, opening it up, of receiving

23 investors, of proceeding to the exploitation of the

24 mines, promoting processing on site; a host of

25 innovating policies.

10:07

1 Q. So the official policy of the government was to promote
2 investment in the mining sector?

3 A. Yes, indeed.

4 Q. Why did the government adopt this policy? What was the
5 final goal?

6 A. The final goal was tapping into the mining resources of
7 the country. We had that reputation for mining wealth
8 and the Mining Minister, the mining sector, had to see
9 to it that mining was developed in the country.

10 Q. Was this policy supported by the population?

11 A. Absolutely, yes. In the end, the main target of this
12 development is the population, to try and improve the
13 living conditions of the population. That is what
14 justified our public action.

15 Q. So everyone, the whole of the political world, all the
16 Guineans were expecting and wanted to see investments
17 promoted in that sector to develop that mining resource?

18 A. Yes, of course. Everybody wanted that.

19 Q. What type of minister were you?

20 A. What do you mean?

21 Q. Were you a strong minister who would not be easily
22 influenced, who had his own ideas, who would express his
23 ideas at the Council of Ministers vis-à-vis the
24 President; or were you -- and I'm sorry to use this
25 word -- a rather weak minister who would accept anything

10:09

1 that he was told?

2 A. I think that my record shows that I was a minister who
3 would assume fully his responsibilities. Because after
4 being the Minister of Mines, I became Minister of State
5 for National Education: I had eight ministers under my
6 responsibility. And after that, I was the Prime
7 Minister of Guinea.

8 Q. Assuming your responsibilities, that would imply showing
9 opposition if you did not agree with a particular
10 direction which you felt was not in the best interest of
11 the country, so you would try and change that direction;
12 is that what you mean? Is that what you are saying? Is
13 that your testimony, when you say "assume ... [your]
14 responsibilit[y]"?

15 A. Well, you know, a minister is really a technical advisor
16 to the President of the Republic in his particular
17 sector. So assuming one's responsibilities as
18 a minister is to explain the reality to the
19 decision-maker, i.e. the ultimate decision-maker, the
20 President of the Republic, showing the advantages and
21 drawbacks in any one particular situation. That's what
22 the minister does. And then the Prime Minister or the
23 President then can take their own decisions based on
24 authority, which do not always go along the lines of the
25 recommendation made by the ministers. And at the

10:11

1 Council of Ministers, the decision-maker decides.

2 Q. Are there any examples where the Prime Minister or the
3 President himself would not have agreed with you and
4 used their authority in order to change your decisions
5 or your policies?

6 A. Well, it's perhaps the other way around actually.
7 I never encountered any obstacles in connection with my
8 proposals. At times, in fact, it was the President who
9 would ask me to do something which was not in keeping
10 with what I wanted.

11 Q. And in such a case, what would you have done?

12 A. Well, I would always try and draw the President's
13 attention or to place his willingness within a given
14 context or his determination within the context of the
15 best mining interest for the Republic.

16 Q. Is this what happened with the BSGR case or are you
17 speaking about other cases?

18 A. For instance, yes. It's not the only one, but it's one
19 of the examples.

20 Q. The President in the BSGR case did not agree with you?

21 A. Well, as I was telling you, the BSGR case actually came
22 from the presidency itself. And as this dossier or case
23 was presented, the presidential directives could not be
24 applied, in light of the Mining Law at the time.

25 Q. Then what were the objectives from the President?

10:13

1 A. The directives were, first of all, to facilitate BSGR's
2 investment in Guinea.

3 Q. Would that have been against the law, against the
4 Mining Law, to help the investors?

5 A. No, that's not in the law. But that wasn't the only
6 directive that I was explaining. I was telling you that
7 the first directive was: "Well, Mr Minister, here you
8 have people who are interested in your sector. Please
9 make that task easier, facilitate that task". That is
10 perfectly normal. But some time afterwards, the
11 investors want Mount Simandou: big problem, because
12 Mount Simandou was wholly a concession of Rio Tinto's.

13 Q. When was the second directive given to you?

14 A. It's towards the -- it's on the way to it.

15 Q. This was an express directive?

16 A. It was not an express directive from the President. But
17 after the meeting -- I have explained this here
18 somewhere -- the BSGR company took a presidential
19 helicopter to visit the site, a site that was under
20 a Rio Tinto concession.

21 Q. They only visited the Rio Tinto site?

22 A. Yes.

23 Q. They didn't visit other sites?

24 A. I do not know, because it wasn't a mission that I had
25 organised myself. I am telling you about things that

10:15

1 were told to me.

2 Q. By whom?

3 A. By the World Bank, the [IFC]. I believe that they were
4 shareholders in Rio Tinto.

5 Q. How would the IMF receive that information, basing
6 themselves on what?

7 A. I wouldn't know.

8 PROFESSOR VAN DEN BERG: No, it's the IFC.

9 MR DAELE: It's the IFC who informed you? On the basis of
10 what information?

11 A. I would not know. I imagine since they are
12 shareholders, since the Rio Tinto officials or people
13 were on the spot, then I guess that was the source of
14 the information. They would report to their hierarchy
15 about what was going on in the field.

16 Q. So this was your second directive? The fact that they
17 used the helicopter, you took that to be a second
18 directive from the President; you understood that, you
19 interpreted it as the second directive?

20 A. Well, when I received that information as minister, my
21 very first duty was to summon the leadership of BSGR.

22 Q. But I should like to interrupt you, because I want to
23 speak about that incident in greater detail. I want to
24 delve into that particular paragraph in your witness
25 testimony, if I may.

10:17

1 Just brushing aside the helicopter incident for the
2 time being, are there any other examples where you
3 actually saw, you understood that second direction or
4 second directive given by the President, i.e. that the
5 Rio Tinto zones should be given over to BSGR?

6 A. Yes, through the approach of Mamadie Touré.

7 Q. You are speaking about "the approach of Mamadie Touré".
8 Would you mind clarifying that approach? What did she
9 do?

10 A. Let me tell you this: Mamadie Touré was the President's
11 wife.

12 Q. This is being challenged.

13 A. This is what I know. Even if I haven't asked my boss
14 for the marriage certificate, but this is what I know.
15 She is the wife of the President. And the first
16 conversation between the president of BSGR and myself
17 was organised by Mamadie Touré. So when I see
18 Mamadie Touré somewhere, anywhere in this case, I can
19 see the President behind her.

20 Q. But it was at that meeting that the President said
21 simply, "Help the BSGR investors"?

22 A. Yes, at that meeting, the first meeting.

23 Q. You said that afterwards there was a second direction,
24 a second directive from the President which was much
25 more explicit. You said it was afterwards. So what did

10:18

1 Mamadie Touré do? Because you mention the approach.

2 But apart from that meeting, what did she do?

3 A. Well, first thing, you are going very quickly through
4 this, but this is extremely important. And it's totally
5 unusual for the presidential helicopter to take mining
6 promoters to a mining site. That was the very first
7 time that I had ever seen that happening. And that's
8 a very strong message.

9 Q. But again you are mentioning the helicopter. We already
10 mentioned the helicopter before. I'm asking you now:
11 what did Mamadie Touré do, apart from this meeting?
12 What else did she do?

13 A. All of that is Mamadie Touré: the helicopter, that's
14 Mamadie Touré. It was Mamadie Touré who brought about
15 that first meeting.

16 Q. So she is the one who had the keys to the helicopter?

17 A. No, that's not possible. But it is through her
18 intervention. She hasn't got the keys to the
19 helicopter; not even the President has the keys to his
20 own helicopter.

21 Q. Well, you had that meeting, and then the helicopter on
22 the following day took these people; immediately after
23 the meeting, or maybe one day?

24 A. Yes, more or less.

25 Q. During this meeting, did Mamadie Touré mention the

10:20

1 helicopter?

2 A. No. From memory I can tell you: no, she didn't mention
3 the helicopter. She should have -- I'm sure -- she
4 probably spoke about it to her husband: "To help the
5 investors, I will call the Minister for Mines".

6 Q. So you believe that Mamadie Touré was the one who gave
7 out the instructions for the President's helicopter to
8 be used?

9 A. No. Mamadie Touré does not give out instructions.
10 Mamadie Touré would confide in her husband and ask her
11 husband, and it is her husband who would take the
12 decisions. Although considering the situation at the
13 time, it is very possible that Mamadie Touré may have
14 actually got things done with the President's entourage
15 in order to get that helicopter ride organised. That is
16 possible.

17 But what is important to take from all this is that
18 all this was happening because BSGR had access to the
19 presidency; and if BSGR had access to the presidency, it
20 was thanks to Mamadie Touré.

21 Q. So you said there was a meeting, then there was
22 a helicopter ride. Were there any other interventions
23 by Mamadie Touré in the course of this period that you
24 would know about?

25 A. Yes. When we met in my office, when all of us found

10:22

1 ourselves in our office, she always insisted on the fact
2 that BSGR should have permits on Simandou. And there,
3 technically, I would have to say, "No, that doesn't work
4 that way. We shall try and find some interesting zones
5 where you can develop your activity. So I will have to
6 refer you back to my technical service, the Centre for
7 the Promotion and Development of Mining, the CPDM".

8 Q. We will revert to this later, if I may. In fact, I will
9 not revert to it later; I will simply continue now.

10 On paragraph 8 of your witness statement you said
11 that the first meeting with BSGR took place at the end
12 of November or the beginning of December 2005?

13 A. It's not the -- that's the first one I remember. The
14 first one I remember. Because this is something that
15 happened some twelve years ago.

16 Q. This was the meeting with the President, and this is why
17 you were saying that that dossier came from the
18 President, the BSGR dossier, right?

19 A. Yes.

20 Q. That dossier or that case came from the presidency, is
21 what you said some ten minutes ago.

22 A. Yes, yes, that meeting was with the President.

23 Q. Can you please refer to tab 4. This is document
24 [C-344].

25 A. And what is the title of that document?

10:25

1 Q. No, that's not the right document. (Pause) I'm sorry.

2 The document behind tab 4 is a letter dated

3 4th August 2005?

4 A. No, it says 2nd August 2005.

5 Q. Yes, that is the right letter. But the letter which

6 I wanted to show to you is not addressed to Madame Barry

7 but to Mr Souaré himself. You can see at the beginning

8 of the document --

9 THE PRESIDENT: Well, perhaps Mr Souaré can tell us who

10 Mrs Barry is.

11 MR DAELE: Do you remember this letter?

12 A. Yes.

13 Q. This letter refers to a meeting with you on

14 20th July 2005?

15 A. Not meeting, but visit.

16 Q. Yes, sorry, visit. Which means therefore that you

17 visited BSGR, they had contacts with you in July 2005.

18 So this dossier didn't come from the President, but BSGR

19 actually came to see you in 2005.

20 A. May I explain?

21 Q. By all means.

22 A. First of all, in my statement I was speaking about

23 a formal meeting, a formal meeting with BSGR. What took

24 place in July and August was a visit, an ordinary visit.

25 Like any other promoter who comes into Guinea, the

10:27

1 technical services would introduce him to the minister
2 for a courtesy visit, and they take advantage of the
3 opportunity to explain in very general terms what their
4 intention is in the country.

5 That is the whole point of that. That is not
6 a meeting, it's not a working session. When you're
7 Minister of Mines, you see some 30 people per month in
8 these particular circumstances, and it doesn't commit
9 anyone, neither the promoter nor the minister. It's
10 just to say, "Hello, here I am", that's all.

11 Q. Then why is it that on the basis of that letter it would
12 appear that it is clear that you discussed at least four
13 different projects? You see number 1, the iron ore in
14 Mount Simandou. That is the same letter, it's that
15 letter there.

16 MR OSTROVE: It's not the same letter. That's a letter
17 addressed to the minister.

18 MR DAELE: Well, the contents of the letter is identical,
19 but this is the letter that I wanted to show.

20 A. It's a different letter.

21 Q. No, it's the same letter. That letter is addressed to
22 Minister Souaré. It's a wrong letter in the bundle, but
23 it's the same letter, and that letter is addressed to
24 Barry. That's the letter I want to discuss. Do you
25 remember that letter?

10:29

1 A. Yes.

2 MR OSTROVE: What is the reference?

3 MR DAELE: R-161.

4 MR OSTROVE: It is not R-161. That was when you were acting
5 in the framework of the Vale case. It must be
6 a different reference.

7 THE PRESIDENT: Your index shows C-344 for that particular
8 letter.

9 MR OSTROVE: Fine. Thank you very much.

10 MR DAELE: The important thing actually is for Mr Souaré to
11 remember this letter.

12 You see there the four projects which were discussed
13 in the course of that meeting, the meeting that took
14 place on 20th July: the first one is the iron ore in
15 Mount Simandou; two, bauxite deposits in Dabola-Tougué;
16 third, any other iron ore deposit in Conakry, within the
17 radius of 200 kilometres; and fourth, diamond deposits.

18 Yet you said that that meeting was just to say,
19 "Hello, here I am, and goodbye". However, it seems to
20 be that you were actually discussing specific projects;
21 as shown in this letter, you were actually discussing
22 some specific potential investments?

23 A. No, that's not at all the way it happened. When
24 a promoter comes, he is introduced to the minister, he
25 can speak about 1,000 different subjects. He says,

10:31

1 "Good morning, Mr Minister. I have arrived in Guinea.
2 I want to go into bauxite, into gold, into oil. I want
3 to do this, that and the other".

4 You can well imagine that at the first meeting, at
5 the first encounter, you cannot actually discuss these
6 things in detail. The promoter simply speaks about his
7 intentions. The minister takes note of them, and then
8 bids the promoter welcome, and then he says, "Go and see
9 the technical department". That is all.

10 It's not a meeting; it's an audience. It's
11 an audience. It's no more than 15 or 20 minutes. You
12 have -- all the mines of Guinea could not be reviewed in
13 one first meeting.

14 Q. All the mines of Guinea? No, no. We are talking about
15 ores here. We are not covering the whole of Guinea.

16 A. Well, practically everything in Guinea is mentioned here
17 in this letter: iron ore, bauxite, diamonds and
18 potential mining opportunities. You are not excluding
19 anything.

20 Q. You are not excluding anything?

21 A. No. Everything that is not actually mentioned is under
22 potential mining opportunities.

23 Q. But these were specific opportunities, it was specific
24 areas where the government was looking for investment?

25 A. The government was looking for investment in all the

10:32

1 mining resources. The government would accept these.

2 Q. Where did BSGR get this information from? It is fairly
3 detailed, where you're saying 200 kilometres is not
4 400 kilometres.

5 A. Ask BSGR.

6 Q. But you are here today. I'm asking you because you were
7 present at this meeting.

8 A. BSGR came with this to see us.

9 Q. Where did BSGR get this information from? Because they
10 were not in-country at the time. So where did they get
11 this information? Is it possible that they got the
12 information from the CPDM?

13 A. Yes, it is possible and it would be entirely normal.
14 That is what the CPDM's job is: to provide information
15 to those who wish to invest in Guinea. It's entirely
16 possible. Just as they could be here and talk through
17 new technologies, find information on new technologies.

18 Q. If BSGR first talked to CPDM, then with you, it doesn't
19 mean that they went first to the President. So the
20 whole case hasn't come from the President, hasn't fallen
21 out of the sky. They first went to CPDM, then I imagine
22 they came to you, they were sent to you, you met with
23 them. They followed up on that meeting with a formal
24 letter, because you are saying that this wasn't even
25 a meeting.

10:34

1 A. It was a visit.

2 PROFESSOR VAN DEN BERG: (In English) Can we go down in the
3 letter?

4 THE PRESIDENT: You've made several statements. Give the
5 witness an opportunity to answer your questions.

6 I think these are implicit questions.

7 A. You must recognise what governmental practice is and
8 make a distinction between visits, technical meetings,
9 inter-ministerial meetings and Council of Ministers
10 meetings.

11 The minister is there to see a person: that is
12 a visit. That is something that is set, with a set
13 schedule; it is not intended to review technical
14 matters. And when you visit a minister, the world over,
15 you are not looking at the technical details of a given
16 case. So during this visit BSGR basically put forward
17 what they were seeking.

18 THE PRESIDENT: We have understood the distinction you are
19 making between a visit and a meeting or a technical
20 working session. The question was somewhat different.

21 Before, when you were testifying, you said that the
22 whole case came from the President's office, that BSGR
23 was sent by the President. Here, according to counsel
24 for Claimants, we have an indication that there was
25 a visit, possibly of prior contact with the CPDM, which,

10:36

1 once again according to counsel, would show that this
2 whole matter was not referred by the President. That is
3 the explanation that is being sought.

4 A. Thank you, I understand now.

5 When I say that BSGR was sent by the President, it's
6 for the specific matter of Simandou. All mining
7 developers always ask for a visit with the Minister of
8 Mines. BSGR of course did this. What I wished to say
9 in my statement is that when I say BSGR was referred by
10 the President, I'm talking about the Simandou issue.
11 Because if BSGR had just gone through the standard
12 channel, the technical services, then Minister of Mines
13 and then back to the technical service, then I would not
14 have talked about the President's office.

15 But when you're receiving a company as a matter of
16 courtesy, and as a minister you are then summoned by the
17 presidency to receive directives, it means that the
18 visit was a courtesy visit, but that there was
19 a presidential position taken that has to be complied
20 with on this given matter. That is the explanation.

21 THE PRESIDENT: Thank you.

22 MR DAELE: You see that this letter is copied to the Prime
23 Minister and to the advisor of the Minister of Mines.
24 Once again, this suggests that BSGR was in contact with
25 other agencies of the Guinean Government, including your

10:38

1 office and the Office of the Prime Minister.

2 A. Nobody is denying this. Nobody is denying the fact that

3 BSGR had these contacts. Nobody is challenging this.

4 Q. If we can return to your paragraph 8, when you say, "The

5 first meeting with BSGR", that means the first meeting

6 if we overlook the visit of July 2008?

7 A. No. We just say that the visit was a visit.

[PROTECTED]

[REDACTED]

10:42

[PROTECTED]

[REDACTED]

10:45

[PROTECTED]

[REDACTED]

- 20 Q. Let's go back to paragraph 9 of your ICSID witness
21 statement. In this paragraph you give more detail about
22 this meeting that took place in early December. You say
23 that you're not 100% certain, but you think that
24 Beny Steinmetz was present at this meeting?
25 A. I say that I'm not certain about this. You saw that in

10:47

1 my other statement I'm not very certain about who was
2 there. First of all, it was the first meeting; and
3 secondly, as I said, I saw anywhere from 20 to 30
4 delegations of potential mining developers per month.

5 Q. This was with the President?

6 A. It's during the same timeframe. So I don't have in mind
7 one particular developer. What I was interested in was
8 the project and the rules. I have hundreds of business
9 cards from mining developers.

10 Q. But you're not ruling out the fact that Mr Steinmetz was
11 there?

12 A. No, I can't rule it out, nor can I say definitively that
13 he was there.

14 Q. Do you know that Mr Steinmetz himself denies that he was
15 present? He says he did not come to Guinea before 2008.
16 Are you aware of this?

17 A. As I told you, I don't know. This is really as much as
18 I know, because I don't remember, and I -- at that point
19 I didn't make a distinction between the individuals.

20 Q. You don't know if he was there at the meeting of
21 July 2005?

22 A. I can't say definitively, because these are persons that
23 we don't really take an interest in unless we already
24 know them.

25 Q. You say in this paragraph that Mamadie Touré was present

10:49

1 at this meeting. Did you know Mamadie Touré at the
2 time; not now, but then?

3 A. Yes, of course.

4 Q. How did you know what her connection was to the
5 President?

6 A. He is my President; I know his wives. He had four
7 wives.

8 Q. There are other ministers who say they don't know of
9 four wives. But you do?

10 A. Yes, I do. If a minister believes that he doesn't know
11 the wives of the President, that's their business. But
12 I did know them, and I have known the four, I have met
13 the four in different circumstances.

14 Q. Can you give the names of the wives of the President?

15 A. Yes. There is the first lady, Aria Conté. Hadia
16 Kajaset-Conté. Mamadie Touré was the fourth. The third
17 is Hadia Diallo.

18 Q. Have you had meetings with them?

19 A. Meetings with the wives of the President?

20 Q. Yes, meetings.

21 A. No, not meetings; on a social basis. I had a meeting
22 with Hadia Kajaset(?) because she ran a humanitarian
23 foundation. And I had meetings with Mamadie Touré
24 because she was defending certain matters for her
25 husband that were of concern to me.

10:51

1 Q. Do you know that other witnesses have said that a lot of
2 pressure was exerted because there was interest in the
3 mining sector at stake? Do you think this is credible?

4 A. You can only speak to what you have experienced. I was
5 Minister of Mines for 14 months.

6 Q. But you were in the government; you then went on to
7 become Prime Minister.

8 A. Yes, I was Prime Minister following that.

9 Q. But you were not gone; you were still very much involved
10 in all public affairs.

11 A. Yes. But what I am explaining is: I did not see any of
12 the other wives defending mining interests.

13 Q. Did you hear any rumours according to which the other
14 wives were trying to influence the Minister of Mines and
15 to play a role in the mining sector?

16 A. Only one time, and it didn't involve me. It involved
17 Hadia Kajaset and it involved oil. And I did not hear
18 the name of any of the other wives being involved in the
19 mining sector.

20 Q. In paragraph 10 you say that this was a short meeting.
21 Do you remember how long it lasted?

22 A. You are asking me a question to which I cannot answer.

23 Q. You're an intelligent man. When you say it's a short
24 meeting, is it 5 minutes, 10 minutes? You did say it
25 was a short meeting.

10:53

1 A. No, it wasn't a long meeting. Perhaps 30 minutes.

2 Q. You said:

3 "The President introduced BSGR as a mining
4 developer."

5 And you said, "The President introduced BSGR", as if
6 you didn't know BSGR at all, whereas you had met them
7 six months before. Did you not tell the President,
8 "Yes, I know who BSGR is. They have already come to see
9 me". You didn't say that to the President?

10 A. No, that would be discourteous. If the President is
11 summoning you in, he knows what he's doing: he's issuing
12 a recommendation. And you accept his recommendation,
13 you take it as such.

14 Q. We were in the middle of paragraph 10. You said:

15 "The President simply said that it was necessary to
16 facilitate their job so that they could invest in the
17 country."

18 A. Yes, it's a simple statement, but it's important, it's
19 substantial. When the President says, "This is my
20 recommendation" -- because he doesn't do this for
21 everybody. If he is doing this for somebody, it is
22 because it is important. And it's up to the minister to
23 understand, to decipher that.

24 Q. Did he instruct you to give BSGR permits on Blocks 1
25 or 2?

10:55

1 A. He didn't go into detail.

2 Q. So he did not give specifying directions to grant
3 Blocks 1 or 2 to BSGR?

4 A. No, he did not say that.

5 Q. Did he say to give other permits to BSGR?

6 A. He said we were to facilitate the job for the developer
7 that wanted to invest in Guinea.

8 Q. But this was the general policy of promoting
9 investments?

10 A. Yes, up until then, that is correct. There is no
11 problem. That's exactly what I was looking for and it's
12 what the country wanted. Things got complicated
13 afterwards.

14 Q. You also say that Mamadie Touré did not speak during
15 this meeting?

16 A. No, she did not speak. She did not need to speak.

17 Q. During this meeting, she did not ask for anything? One
18 cannot ask if one doesn't speak.

19 A. She instigated this meeting. As I said, she needed to
20 present the whole matter.

21 Q. How are you so certain about this? Did the President
22 say that she had instigated and organised the meetings?

23 A. It was visible. She has no reason to be there.

24 THE PRESIDENT: There's often some overlap. If you could
25 please wait for the end of the sentence before asking

10:56

1 the next question.

2 I do apologise for the interruption. You were
3 explaining that Mamadie Touré did not need to say that
4 she had organised the meeting because it was visible,
5 and you were explaining in what way it was visible.

6 A. Her presence sufficed. She is not chief of protocol.
7 She is an advisor. She is not a member of the
8 government. To be next to the President when he is
9 seeing his ministers, if she is there, it is because she
10 is defending something that she holds dear.

11 MR DAELE: It would not be possible that she would have been
12 there to deal with something that was handled before,
13 and the President said, "I have another meeting for ten
14 minutes, you can stay"?

15 A. No. If that were the case, the President would have
16 told her to wait next door. She would not be present at
17 a meeting that was of no concern to her. It's not as if
18 there was no place for her to go in the President's
19 office.

20 Q. Was there anybody else present in the room?

21 A. No.

22 Q. Did she call you and ask you to come to the Presidential
23 Palace?

24 A. No, it's the President. She cannot call me.

25 Q. It's the President himself?

10:58

1 A. No, the protocol.

2 Q. The protocol?

3 A. Yes.

4 Q. And the protocol says the President is summoning you,
5 you are being called by the President and Mamadie Touré?

6 A. No, the protocol says that, "The President is expecting
7 you now at the President's office".

8 Q. During this meeting, did the President say or indicate
9 that Mamadie Touré had instigated the meeting?

10 A. Do you know what a president is? Does he need to
11 justify himself in front of his minister or his wife?

12 I don't think so. Why did he summon me?

13 Q. I will repeat my question. Did the President say during
14 the meeting that Mamadie Touré had organised the
15 meeting?

16 A. I said no, and I said she cannot do that.

17 Q. Did the President say that Mamadie Touré had made some
18 request to him?

19 A. No.

20 Q. What did you answer in response to the President's
21 instruction to receive the mining developer BSGR?

22 A. I took note of the instruction and I get organised. He
23 is not asking me to do it; it is an instruction.

24 Q. I told you that we would talk some more about the
25 helicopter incident. I would now like to go to

10:59

1 paragraphs 11, 12 and 13.

2 You say that you were not aware of this mission?

3 A. That is correct.

4 Q. If you would please look at tab 7. This is a report on
5 the mission, Exhibit R-175. You will see that on page 3
6 there is a date: December 3rd 2005. So I imagine this
7 report was drafted immediately following on the visit.

8 I see that the author of the report is Mr Soriba
9 Bangoura. Do you know him?

10 A. Yes: he was the deputy director of the CPDM.

11 Q. The deputy director general: does that make him number
12 two of the CPDM?

13 A. That is correct.

14 Q. So he was number two of CPDM?

15 A. Deputy of the manager, deputy manager.

16 Q. So he's the one who makes this report.

17 I'm going to turn to the first page, third
18 paragraph. You see that Mr Soriba himself was involved
19 in the mission?

20 A. He even says that he is the head of the mission.

21 Q. Yes. It says here:

22 "The mission was made up of:

23 "1. Mr Soriba BANGOURA ... Head of the Mission ..."

24 In other words, it was CPDM itself that had
25 organised the said visit?

11:02

1 A. This is what we can see here, yes.

2 Q. In the second paragraph it is said that this mission was
3 in fact organised by "his Excellency Dr ... SOUARE".
4 Can you see this?

5 A. You skipped --

6 Q. Well, it was organised by "his Excellency Dr Ahmed
7 Tidjane SOUARE". So it was recommended by the
8 President, but organised by Mr Souaré, yourself?

9 A. Yes, it's me.

10 Q. So in your witness statement you say that you were not
11 aware of this, when the head of the mission on the next
12 day, in an official report, says that you were the one
13 to organise this mission. Can you explain this
14 contradiction?

15 A. Yes, very rapidly.

16 To start with, this mission, or this report rather,
17 is faulty. It's an ordinary piece of paper with no
18 letterhead. All of the official ministerial reports
19 have a letterhead.

20 Secondly, there is no mandate that would be
21 referenced in this report, which goes to show that this
22 mandate was not given. If it's the report of a mission,
23 it would say, "In compliance of mission order no. [X],
24 and therefore we make the report".

25 Thirdly, the deputy manager, who says, "A mission

11:04

1 recommended by his Excellency President of the Republic
2 and organised by his minister", is not usual
3 administrative practice. The deputy manager has nothing
4 to do with the President of the Republic. If there had
5 been recommendations, it's up to the minister to have
6 received recommendations from the President of the
7 Republic, and the minister signs mandates, or the deputy
8 secretary or the chief of staff at the ministry.

9 And another item: it's a bizarre mandate, because
10 the manager himself does the visit, doesn't associate
11 a special engineer, nor anybody who specialises in
12 geology, and doesn't take the specialist. He just jumps
13 on a helicopter and the reports the mission.

14 This is a fake.

15 Q. Do you know that this is a document that was produced by
16 your delegation, your own delegation? We were not the
17 ones to produce this document.

18 A. Whatever the source, I, minister, for the reasons that
19 I have just repeated, I don't recognise this document as
20 a real --

21 Q. Therefore it's a forgery?

22 A. A minister is somebody who faces responsibilities in
23 front of a mining operator. I can't just start
24 a mission and then pretend that I don't know that there
25 is such a mission in the field. When I send over

11:06

1 a mission, it is justified, and when I am asked to
2 report, I assume my responsibilities, especially in
3 front of a mining operator, when I am the Minister of
4 Mines.

5 Q. On the contents, now you've said a lot about the form,
6 what about the contents, the substance, the five people
7 who are part of the mission? Do you know that this list
8 is correct, that they were truly present?

9 A. I don't know. I don't know.

10 Q. But did you get some information after the mission?
11 This is what you say in the following paragraph: you
12 said, "Yes, I tried to get information".

13 A. Yes, to see who had done this and to establish that it
14 was BSGR who had done it. That was important for me.

15 But you see the composition of this mission: apart
16 from Mr Soriba Bangoura, you have a geologist from BSGR,
17 you have an interpreter, then you have the pilots and
18 co-pilots. Quite frankly, this is a bizarre mission, to
19 say the least.

20 Q. In the fourth paragraph it is said that:

21 "Before [leaving] Conakry ... taking into account
22 the specificity of the sites to be visited, what was at
23 stake and the time allotted to the mission, targets were
24 listed, georeferenced, and integrated to the GPS by the
25 group of Experts ..."

11:08

1 Including Bangoura. So the sites to be visited were
2 put into the helicopter, and to the computer system of
3 the helicopter?

4 A. Yes, according to Bangoura.

5 Q. Can we turn to page 4 of this document. We see the
6 various sites that were visited and the indications.
7 These are blocks that are known as Simandou North and
8 Simandou South.

9 So the idea was not to visit the Rio Tinto zones,
10 but those that were not yet attributed to Rio Tinto or
11 other companies?

12 A. Well, I can have a good laugh when I see this because
13 I think I've read somewhere -- give me a second.

14 (Pause)

15 You see in the report, the same page:

16 "The curiosity of the team led to landing at the 3rd
17 point of observation and sampling ... (RIO TINTO
18 permit), completely in the North, close to the Okenkoui
19 summit on the map [near] Damaro approximately
20 140 kilometres away from the starting point."

21 So even if the GPS has recorded certain things, they
22 had the curiosity to land where they shouldn't have.

23 Q. But do you agree that the aim of this visit was not to
24 go and see what Rio Tinto was doing, but exploring the
25 zones that were still free?

11:10

1 A. No, I disagree. My feeling today is that it's the
2 contrary. The aim was to go to Rio Tinto, but under the
3 coverage of North and South, and that's what the facts
4 demonstrated afterwards. Otherwise you wouldn't need --
5 you wouldn't have needed to have such a distorted,
6 devious mission to go and visit these sites.

7 You didn't even need to take a helicopter to go and
8 visit sites in the North and South. This is -- things
9 are straightforward. You don't need a helicopter to do
10 so. No mining developer has done so by helicopter.

11 Q. Were there other helicopters, apart from Rio Tinto's?

12 A. Yes, there are small helicopter companies in the
13 neighbourhood that can be rented.

14 Q. Was it prudent to fly these small helicopters? Were
15 they in good state of repair?

16 A. Of course. They were commercial companies, with all the
17 necessary security. Other companies did that with small
18 planes, helicopters, the logistics in the neighbourhood:
19 Mali, Dakar, et cetera. It's quite possible. But
20 whatever the case, it would have been safer than the
21 presidential helicopter.

22 Q. In paragraph 14 you say that there was this visit, that
23 then you got a phone call from the World Bank, and you
24 say that you were not informed, so you took some
25 information, and you say under paragraph 14 that you

11:12

1 immediately informed the President.

2 A. Yes.

3 Q. What did the President say to you during that phone
4 call?

5 A. He asked me to check.

6 Q. But you had already checked. In your chronology, you
7 checked; and because you had checked, you called the
8 President to tell him what had happened?

9 A. Yes.

10 Q. What did the President say? Did he say, "But I was the
11 one who ordered and approved this visit. What's the
12 problem?"

13 A. No, that's not at all what he said.

14 Q. What did he say?

15 A. He didn't say that at all. I informed him that it was
16 his helicopter that had been used, and that it landed on
17 the Simandou mountain, which is under Rio Tinto
18 concession, and that this is a major event that has to
19 be granted its entire dimension.

20 Q. What --

21 A. To give this event all of its dimension.

22 Q. What do you mean?

23 A. The dimension of this event: a developer has violated
24 the concession of another developer.

25 Q. So the President was unhappy, was not happy about this?

11:13

1 A. I was not with him; I don't know. You need to know that
2 the President is not a geologist, he is not
3 a technician, he probably wouldn't know about this. It
4 is up to the minister to pick up on these aspects and to
5 prepare the right presidential decision, insofar as it's
6 possible.

7 Q. Sorry, I don't understand. You said that the helicopter
8 mission was ordered by the President and Mamadie Touré.

9 A. I never said that. I never said that the mission -- at
10 no point in time did I say that the mission was ordered
11 by the President. I said it's the presidential
12 helicopter that was used.

13 Q. Forgive me, I had understood things differently. So if
14 it's not the President, who ordered the mission?

15 A. It could be, as I said earlier and I explained earlier,
16 that Mamadie Touré, having introduced BSGR to the
17 President of the Republic and having asked for a favour,
18 might be the source of this logistics availability. How
19 did that occur within the presidency? I, minister,
20 don't know. I wasn't consulted. But I could -- had
21 I been consulted, I could have launched a mission
22 without the presidential helicopter, which is
23 a sovereign tour.

24 Q. Let's imagine that it was indeed Mamadie Touré who had
25 organised the said visit. So then you call the

11:15

1 President and you complain about what had occurred. You
2 say, "They did this and that and the other, they went to
3 the Rio Tinto zones, this is not acceptable"; I presume
4 that is what you would say. I repeat my question: what
5 did the President answer?

6 A. Since there was no sanction -- I do not look at your
7 hypothesis -- I presumed that it was with the consent of
8 the President that the helicopter was used.

9 Q. He said nothing?

10 A. I cannot know.

11 Q. You were on the phone with him?

12 A. I phoned him. I wasn't present when he decided. I am
13 interested in facts. Again I repeat: I am wondering if
14 you know how a presidency functions, or even
15 a department. You cannot make a comment on a very major
16 [subject] for your own reasons.

17 THE PRESIDENT: I think, Mr Minister, you have already
18 answered the question, and he certainly didn't say that
19 he had started the mission.

20 A. When silent, it means that you consent, surely.

21 MR DAELE: Following this phone call, you called BSGR?

22 A. Yes.

23 Q. To express your feelings and the fact that it was
24 totally unacceptable, what they had done was totally
25 unacceptable?

11:17

1 A. Yes.

2 Q. You say under paragraph 16 that Mamadie Touré was
3 present at this meeting. Between brackets, was it
4 a meeting or a hearing or what?

5 A. This time it was a meeting, it was a real meeting. So
6 there was less courtesy!

7 Q. But okay, you were present.

8 You say under paragraph 16 that Mamadie Touré didn't
9 say much. But this means that she did say a little
10 something, even if she didn't speak much. Did she speak
11 at all?

12 A. No, she just repeated the wish to help BSGR to obtain
13 the Simandou.

14 Q. "Repeated"?

15 A. Yes.

16 Q. When had this wish been expressed earlier on, to
17 obtain --

18 A. The landing of the helicopter or the visit of the
19 Simandou site by BSGR. This was a wish.

20 Q. But they also visited North and South.

21 A. They should not have done so. They should not have done
22 so. An operator -- you need to understand. Let me
23 explain.

24 You need to respect the country and its
25 institutions. When an operator knocks on the door,

11:19

1 courtesy visit, is introduced to the President,
2 et cetera, and immediately he jumps into the field,
3 without further ado: do you think this is normal, normal
4 practice? Absolutely not.

5 There is what is said and there is what is behind
6 the words, what is not vocally said. And the minister
7 is there to appreciate all this.

8 THE PRESIDENT: May I ask a question on all of this. Was
9 what was shocking in the approach as you're explaining
10 it the fact that they should have gone to the field on
11 Rio Tinto zones, or was it the fact of the using the
12 presidential helicopter?

13 A. For me, both. The first one was a provocation, illegal
14 provocation, and the helicopter was in fact a statement
15 of power. And both things were unacceptable for me, as
16 Minister of Mines.

17 THE PRESIDENT: Thank you.

18 We have reached the time when we need to have
19 a break. I don't want to interrupt your line of
20 questioning.

21 MR DAELE: Let me finish with this meeting, if I may, and
22 then we can break.

23 We were at paragraph 20, where [you] start talking
24 about granting of permits. So Mamadie Touré didn't say
25 much; she just repeated BSGR's interest for the

11:21

1 Rio Tinto zones. Is that a good summary?

2 THE INTERPRETER: Didn't hear an answer.

3 MR DAELE: Concerning these Rio Tinto zones, what was your
4 opinion as to the work that Rio Tinto had already
5 achieved?

6 A. My opinion was that Rio Tinto should continue to work on
7 that particular zone, so to do. That would have to take
8 place immediately afterwards. I had the Rio Tinto
9 concessions, I signed on the four concessions. So that
10 Rio Tinto continue the work, because it was -- this
11 project was the source of enormous expectations on
12 behalf of the government and population alike.

13 Q. The permits were granted to Rio Tinto in 1997?

14 A. The permits, yes.

15 Q. And at the time, end of 2005, they had already had the
16 permits for eight years?

17 A. Yes.

18 Q. Research permits?

19 A. Yes.

20 Q. How much work had Rio Tinto actually achieved after
21 eight years?

22 A. They did some research. There was a report with
23 a department that had its own policy, and we fully
24 understand -- and we've got the experience in this --
25 that the development of a project of that magnitude may

11:23

1 take several years. We'd seen that in the northern
2 part, with bauxite and CBG. The project was started in
3 1963 and the first tonne of bauxite was exported ten
4 years later.

5 Q. Yes, this is export. We're not even talking about
6 export here, because export means exploit. Here we're
7 talking about exploring.

8 A. Yes, well, you need time to export, you need to
9 research, discover, exploit, et cetera, so that you can
10 gain time. So we knew that this was a lengthy process.
11 From that standpoint, Rio Tinto undeniably had a certain
12 understanding on behalf of the government. But when
13 I reached the head of the department in 2005, I got in
14 touch with Rio Tinto and I tried to establish a deadline
15 so that the first tonne of iron be exported by 2009.

16 Q. And the deadline to export by 2009, did they comply with
17 this?

18 A. No, they did not comply.

19 Q. Was the government happy with the work that had been
20 done by Rio Tinto throughout those eight years?

21 A. Well, there are ups and downs. On some occasions, fine;
22 others less so. But generally speaking we can say that
23 Rio Tinto did not yield total satisfaction in the eyes
24 of the government, and this is why I told you that the
25 mission consisted in opening up and receiving as many

11:25

1 investors as possible.

2 Q. Yes, but in the Rio Tinto project, can you give us the
3 feeling of what proportion they had already done of the
4 research? Had they reached the middle? You say this
5 was 2006, and export 2009. Had they gone halfway?

6 A. They hadn't completed their research. I can't give you
7 a percentage, just an idea. They had not finished their
8 research. Because according to the mining laws, when
9 the operator completes research on a given zone, they
10 have to prepare what is known as the feasibility study
11 on a target that is determined by the operator himself
12 on the best prospects, and then return to the state what
13 is of no interest to them to the tune of 50%. And they
14 hadn't reached that phase at Rio Tinto by that time.

15 Q. Do you remember your visit, your helicopter visit,
16 during that period?

17 A. Another visit?

18 Q. Yes. End of November, just a few days before the visit
19 with the presidential helicopter. Doesn't it ring
20 a bell, another visit with another helicopter towards
21 the end of November? I'm going to help you, because you
22 were on board this helicopter yourself and you visited
23 the zones together with Rio Tinto.

24 A. Yes, that's true. I went once with the Minister of
25 Environment and the Minister of Small and Medium-Sized

11:27

1 Enterprises.

2 Q. What was the aim of this visit?

3 A. It was a visit to Rio Tinto in the field. We came -- we
4 flew over to N'Zérékoré by plane and then we were taken
5 over by the Rio Tinto helicopters.

6 Q. Could you take [tab] number 6. It's C-166. It's
7 a letter, you can see from the first page, a letter from
8 CPDM -- so your services -- to yourself. "Mr Minister",
9 that's you.

10 Are you familiar with this letter?

11 A. Yes, I can see it.

12 Q. But you recognise it?

13 A. Yes.

14 Before you ask your question, allow me to note: you
15 see the letterhead, the CPDM letterhead, that's the
16 letterhead I was talking about, and this is the manager,
17 the director, who wrote. It's different from the report
18 from the deputy manager, what I was saying earlier.

19 Have you noted?

20 Q. No, it's not up to me to note, it's up to the Tribunal.

21 A. No, you asked the question.

22 Q. On the second page it is said, at the top of the
23 document, that these were visits on 28th and
24 29th November; as I indicated earlier, that was two or
25 three days before the other helicopter visit.

11:29

1 "... a special expedition that enabled you to fly
2 over the entire Simandou chain to realise for yourself
3 the realities of the field."

4 Then I go down a bit, and in the middle of that
5 paragraph it is said:

6 "Naturally, the opportunity was also given to you to
7 ascertain, with certainty, that only one of the
8 15 indices that have been identified, i.e. the
9 Pic de Fon, was the object of systematic exploration
10 work ..."

11 So one out of 15 was explored, or was in the process
12 of being explored. So there are 14 others in the
13 Rio Tinto zone where Rio Tinto had not even started,
14 remotely started, after eight years, to do some
15 research.

16 So does this letter match your memory?

17 A. My what?

18 Q. Your memory of that visit. Only 1 in 15?

19 A. Well, I take note of this. It's the CPDM director who's
20 speaking here, so I take note of that. But the letter
21 itself says that it was possible to reveal the existence
22 of 1.2 billion tonnes' worth of reserves.

23 Q. Well, they overflowed four zones. In those four zones
24 there were 15 identified mineralisations and only one
25 had been explored. So the other 14 --

11:31

1 A. Yes, but the most difficult one, the Pic du Fon, which
2 is the highest one.

3 Q. That was the most difficult?

4 A. Yes, the most difficult and the richest, the richest one
5 also.

6 Q. So when you saw this, that they hadn't really done much
7 on that range, that doesn't explain why the government
8 was desirous to have other promoters going into the
9 Mount Simandou area, then actually to carry out
10 prospection?

11 A. The government did want that, but it had to observe the
12 Mining Code. Once you have granted a concession, then
13 you are forced to wait until retrocession takes place in
14 order to attribute that area to somebody else, however
15 much you want Rio Tinto to do something. This is what
16 I did: I set a deadline, and I provided as much pressure
17 as possible.

18 Q. You talk about a retrocession. Had Rio Tinto already
19 retroceded these areas?

20 A. No, at that point --

21 Q. No, I'm talking about retrocession, because the permits
22 are granted for three years, from 1997 until 2000. So
23 in the year 2000 a retrocession had to take place. So
24 did they retrocede 50% of their zone in the year 2000?

25 A. They never retroceded.

11:33

1 Q. So this is a breach of the Mining Code?

2 A. It could be understood to be that way.

3 Q. But the law is clear?

4 A. The law is clear. But for your information, sir, you
5 must know that there is the Mining Law, and on the basis
6 of that Mining Law the state and the promoters negotiate
7 and reach an agreement on principles of implementation,
8 and all of that is called a "mining convention", or
9 a mining agreement. And that mining agreement is free
10 to interpret the Mining Law in one way or the other for
11 the best interest of the state.

12 Q. So you're actually telling me that it wasn't very clear
13 whether here there was a breach of the Mining Law?

14 A. I mean to say this: even if the law may have been
15 breached, it wasn't unbeknownst to the state. The state
16 wasn't indifferent to that. The state had to say after
17 Rio Tinto, "Well, careful"; this and that and the other
18 are brought to their attention.

19 Because you see, when you sign a partnership
20 involving billions of tonnes of reserve and billions of
21 investment also, if the law is breached, you cannot just
22 say overnight, "Oh, the law has been breached", and you
23 bring everything to a grinding halt. No, this is
24 a partnership. So you get your partner together, you
25 get together with your partners around the table, you

11:35

1 discuss things, you hash things out, and what you do is
2 you enable that partnership to continue moving forward.

3 MR DAELE: Madam President, I think that this is perhaps the
4 time for a break.

5 THE PRESIDENT: Yes, a good idea. 15 minutes.

6 Mr Prime Minister, I will ask you, please, to
7 abstain from speaking to anyone concerning this case
8 during the break, and the best way of observing that
9 rule is simply, sir, to abstain from speaking at all
10 during the break.

11 DR SOUARÉ: I have understood very well. I promise to
12 observe that rule.

13 THE PRESIDENT: Thank you very much. A 15-minute break.

14 (11.36 am)

15 (A short break)

16 (11.56 am)

17 THE PRESIDENT: Mr Daele.

18 MR DAELE: Thank you very much.

19 I wanted to ask another question on that meeting,
20 your meeting with Mamadie Touré and BSGR. This was
21 paragraphs 17 and 18. I only wanted to point out that
22 you know that Mamadie Touré made a statement in the
23 United States of America, to the American authorities,
24 and that statement apparently contains this part of the
25 story as recounted by Mamadie Touré.

11:57

1 Do you know that Mamadie Touré doesn't mention that
2 meeting in her otherwise highly detailed statement,
3 which is to be found in [tab] 48 (R-35)? I will not ask
4 you to read the whole of the statement, but only to
5 indicate that in that statement she refers to other
6 meetings, but she doesn't mention this one at all, the
7 meeting to which you refer in paragraphs 17 and 18.

8 THE PRESIDENT: Well, what is the question? Because you
9 can't expect the minister to read the whole of the
10 statement.

11 MR DAELE: Don't you think it's a little bit odd that
12 Mamadie Touré herself doesn't mention a meeting which
13 you say you had with her?

14 A. No, it doesn't seem odd to me. That sort of thing can
15 happen for a variety of reasons. First of all, let's
16 take reasons in good faith. Knowing the level, the
17 intellectual level -- with all due respect that I have
18 for the wife of my boss -- but knowing her intellectual
19 level, I could tell myself that she could very easily
20 forget to mention a few meetings.

21 Q. I do not wish to be impolite, but does that mean that
22 you consider her intellectual level not to be very high?

23 A. With all due respect, it isn't a high intellectual
24 level. I do say this somewhere in one of my notes. The
25 level is really not a very high level.

11:59

1 Q. Do you think that she was capable of discussing
2 political issues, for instance, she had the capability
3 of approaching political subjects with the President or
4 other ministers?

5 A. Oh, I hardly think so. I don't think she would have
6 been the ideal person to discuss matters political.
7 Some immediate economic interests, perhaps; but
8 political, no.

9 Q. Well, at the end of the meeting -- and I'm on
10 paragraph 19 now -- you told BSGR, "Of course you can
11 apply for prospection permits in zones that have not
12 been attributed to others yet", and so you referred them
13 to the technical service of the CPDM?

14 A. Yes, I did.

15 Q. Can you describe for us the work of the CPDM, of their
16 services, what the responsibilities of the CPDM are
17 within the framework of prospection permits?

18 A. Well, they keep the mining registry. They meet with the
19 promoters: they give them advice on what they want to do
20 or what they are able to do, guide them towards some
21 zones of interest to them which would meet their
22 concerns. It's therefore a service to facilitate mining
23 investment, technical facilitating of mining
24 investments.

25 Q. Do they also check on the competence and background of

12:01

- 1 the mining promoters?
- 2 A. Well, yes, of course. One of its missions is to draft
3 sort of an ID card for the promoter, their background,
4 technical competence, et cetera, so as not to enter into
5 business with somebody who is not known at all.
- 6 Q. And at the end of that work, the CPDM submits
7 a recommendation to the Mining Minister?
- 8 A. Indeed it does.
- 9 Q. And that recommendation could be either positive or
10 negative?
- 11 A. Generally positive. It's a kind of filter also. When
12 it is totally negative, they don't even bother to submit
13 anything to the minister.
- 14 Q. Is the CPDM what I would call an independent, objective
15 service?
- 16 A. Independent in what sense?
- 17 Q. Independent from the President.
- 18 A. Well, it is a service under the Mining Minister.
- 19 Q. But does it work on these dossiers in an entirely
20 independent fashion, or under the direction of --
- 21 A. Well, it is supposed to be. It is supposed to be
22 independent, obviously.
- 23 Q. But were they independent?
- 24 A. Well, that you would have to appreciate yourself on the
25 spot.

12:03

1 Q. In the BSGR case, were they independent, according to
2 you?

3 A. According to me, I wonder. When the deputy director
4 makes a report such as the one we saw and he improvises
5 himself as head of the mission, for which he is not
6 totally competent, I tell myself that probably there
7 were some connections; of which nature, I wouldn't
8 actually know.

9 Q. But you said that the CPDM -- you said this elsewhere --
10 scrupulously follow the procedure?

11 A. Yes, for -- as far as permits granted are concerned.

12 Q. Yes, I'm talking about the permits for the North and the
13 South.

14 A. Yes, the North and the South, and the whole of Simandou,
15 the procedure was respected. I saw to it that it was,
16 because I already knew what was around all of this.

17 Q. But you were not aware that the CPDM or members of the
18 CPDM may have been in any way influenced by the
19 President?

20 A. For those particular permits?

21 Q. Yes, for those two permits.

22 A. Well, for these two permits, I think that it wasn't the
23 President, it was me. In order to escape presidential
24 pressure, whilst at the same time respecting his
25 decision and his determination, I asked my services to

12:05

1 look for zones, and they did so.

2 Q. So you exerted pressure for them to issue a positive
3 recommendation?

4 A. No.

5 Q. This was work done by the CPDM independently, therefore,
6 on the basis of that dossier?

7 A. This is work done by the CPDM on instructions from the
8 hierarchy, and the hierarchy is me here.

9 Q. And what indeed were the instructions you gave to the
10 CPDM?

11 A. I told them to find non-occupied zones that would show
12 potential to BSGR, as long as we didn't touch Central
13 Simandou.

14 Q. It is in keeping with the law that you should give these
15 directives to CPDM?

16 A. Look here, sir. When you're under presidential
17 instructions, you try and apply those instructions in
18 full compliance with the law. This is not normally done
19 that way; those instructions should not come from the
20 minister. But in order to safeguard the Mining Law, in
21 respect of Simandou, it was necessary to proceed in that
22 fashion.

23 Q. However, this is a bit contradictory, because on the one
24 hand you're saying that the procedure was scrupulously
25 complied with, and on the other you say, "Well, I gave

12:06

1 out instructions myself which were anomalous, because
2 I had to do so".

3 A. No, I didn't give out anomalous instructions. Not
4 anomalous instructions, no. Instructions to comply with
5 the law, the Mining Law.

6 THE PRESIDENT: If I may ask for a clarification here.

7 Was the CPDM under your authority?

8 A. Yes, madam.

9 THE PRESIDENT: So you did have the power to give
10 instructions to the CPDM?

11 A. Yes, like all services under the ministry.

12 MR DAELE: The areas or zones that BSGR got, were they
13 known? Was it known in the mining industry that there
14 were iron ore deposits there? These were known zones,
15 or were they unknown; nobody knew what was to be found
16 there?

17 A. In our house jargon we would say that these were
18 prospective zones, prospective zones, supposed to
19 contain deposits. What particular type and quality and
20 amount could only be ascertained later, through
21 exploration.

22 Q. Were other promoters interested in these areas?

23 A. At the time, no. This is the reason why they had not
24 been attributed.

25 Q. So at the time during which the country is actually

12:08

1 attracting its investors, and there are zones that are
2 as of yet unexplored and no other promoter has expressed
3 an interest in that area, would it be in keeping with
4 the governmental policy to promote investment, and if
5 there's a willing investor who says, "I want to come and
6 invest in that zone", they would have received a permit?

7 A. Yes, yes, that is in keeping with the policy. However,
8 the promoter in question didn't begin that way; it is
9 only by default that it found itself there. They wanted
10 Simandou. That is what you must keep in mind.

11 Q. For you, Simandou is Blocks 1 through to 4, Blocks 1, 2,
12 3, 4? Because the permits that BSGR got was also
13 Simandou, North and South.

14 A. Well, north of Simandou and south of Simandou. It is in
15 the Simandou area, but north of and south of; except for
16 Central Simandou.

17 Q. Would you kindly go to tab 58, C-248. It's an interview
18 you gave in April, I believe, 2014.

19 Do you remember that interview?

20 A. Yes.

21 Q. First of all you have the document in English, and
22 later, starting on page 3, you have the original French.

23 So on the second page of your French article, the
24 first paragraph thereof, it starts by saying:

25 "First of all, regarding the BSGR case ..."

12:12

1 Do you see that? The second line says:

2 "This company applied for, and was granted in
3 a perfectly regular manner and in conformity with the
4 current law on mining, two permits ..."

5 Are these your words?

6 A. Absolutely, yes.

7 Q. So you are corroborating here that the granting of those
8 permits was perfectly regular?

9 A. Yes, but when you quote a document, I would be very
10 grateful to you if you placed that document in its
11 proper context. Why this comment? It wasn't
12 an interview, it was a comment. Why that comment?

13 It is important to know I made that comment in
14 answer to an insinuation from my predecessor, Prime
15 Minister Lansana Kouyaté, who on the internet may have
16 insinuated that he was removed from office because he
17 refused to grants Blocks 1 and 2 to BSGR, and that Prime
18 Minister Souaré was certainly appointed in order to give
19 that to BSGR, and the proof of that is that around 22nd
20 or 23rd May, Prime Minister Souaré sent a letter in
21 order to withdraw those plots from Rio Tinto.

22 So I am pointing out in that comment, for the
23 benefit of my predecessor, that the letter in question
24 does exist indeed, but it was the President of the
25 Republic -- in fact, it was the Secretary General of the

12:14

1 Presidency -- who took advantage of the fact that the
2 former Prime Minister was on the way out and the new one
3 was not yet in. In the interregnum, he wrote that
4 letter in order to withdraw Blocks 1 and 2 from
5 Rio Tinto.

6 So I was making that comment in order to tell my
7 predecessor that he was wrong: Prime Minister Souaré was
8 not concerned at the time implied in Blocks 1 and 2 and
9 the removal of these blocks from Rio Tinto. However,
10 Prime Minister Souaré does recognise having granted
11 permits to BSGR north and south of Simandou. That was
12 the spirit of the comment.

13 Q. Well, we will speak of your term of office as Prime
14 Minister later. But right now, sir, we are actually
15 focusing on your action as Minister for Mines.

16 A. Well, that paper was after being Minister for Mines.

17 Q. Yes, but you're saying yourself -- these are your very
18 words in this document -- perhaps you may have had
19 problems with Mr Kouyaté on Blocks 1 and 2. However, in
20 that particular paragraph that I just quoted to you,
21 nothing is mentioned --

22 A. Yes, I assume that. I definitely would assume that for
23 the regions north and south of Simandou.

24 Q. Very well then.

25 So clearly BSGR got from you the two permits.

12:15

1 I believe this was on 6th February 2006.

2 I'm going to change subjects now because I should
3 like to refer to paragraph [23] of your witness
4 statement, and I should like to broach the subject of
5 the MOU.

6 You said the discussion of the MOU was held
7 concomitantly with the discussions on the permits for
8 the zones north and south of Simandou. But what
9 I wanted to show you unfortunately is not in the bundle
10 before you, so I would like to show it on the screen for
11 you.

12 The document is in the bundle, [tab] 5. This is
13 Exhibit R-173. This is a letter from BSGR addressed to
14 you, dated November 24th 2005. The first page contains
15 the letter, and then there is the draft memorandum
16 annexed. Then on the second page we have a second
17 draft, dated November 2005, that is submitted for
18 discussion only. Do you see this?

19 A. Yes.

20 Q. As I was saying, this letter dated 24th November 2005,
21 sent to you by BSGR with a second draft memorandum.

22 So returning to what we were discussing earlier,
23 does this document not prove that BSGR was in
24 discussions with you prior to seeing the President,
25 given the date of this letter? If we are following your

12:18

1 chronology, this is one week before the meeting with the
2 President when you brought up BSGR for the first time.
3 But it appears here that there is a letter dated
4 November 24th where this is already being discussed, the
5 second draft memorandum.

6 A. The second one, yes. A project with the services, not
7 with myself.

8 Q. But it was addressed to you.

9 A. Yes, the document was sent to me, but not the first
10 draft memorandum.

11 Q. But you're not denying that you received this second
12 draft memorandum on November 24th?

13 A. What I know today and what I can say today is this; two
14 things.

15 First of all, all of this took place almost at the
16 same time, it's a very short period, everything that
17 we're discussing. I can confirm this. I can't give you
18 the exact dates. I think you will be indulgent, given
19 the fact that so much time has elapsed; more than
20 a decade. And also because this was not a special topic
21 at the time. This was one mining developer amongst
22 others.

23 Secondly, I did negotiate and sign a memorandum of
24 understanding with BSGR. All of these documents show
25 that BSGR was keen to get a hold of Simandou, which

12:20

1 created ambiguity and misunderstanding between BSGR and
2 my services. BSGR was talking about Simandou, the whole
3 area. And in the end we corrected this; in other words,
4 the memorandum of understanding was for the areas that
5 were beyond Simandou. And we promised in the memorandum
6 of understanding that they would be the first ones to be
7 consulted -- in other words, they would have a right of
8 first refusal -- if Blocks 1 and 2 were to be
9 retroceded.

10 Q. Let's talk about this. You said that BSGR was one
11 developer amongst others. Does it happen very often
12 that a developer proposes to create a company with the
13 government and granting a 15% interest to the
14 government?

15 A. But that's in the Mining Law.

16 Q. But to do it, is that standard?

17 A. Yes. The percentage of the state's stake is set out in
18 the Mining Law.

19 Q. And there's no difference based on the type of ore?

20 A. Yes, of course, depending on whether it's gold or iron.

21 Q. But for iron ore, it was in the law? And we are talking
22 about the 1995 Mining Code; we are not talking about the
23 2001 code.

24 A. The state's stake, with a given percentage, is set out
25 in the Mining Code. So it's just a matter of

12:22

1 interpreting the code. It's the legal interpretation,
2 legal application of the code.

3 Q. This type of agreement, a memorandum of understanding,
4 was this standard practice?

5 A. No, this was not standard practice.

6 Q. But you say that BSGR was just one more developer?

7 A. Initially, yes.

8 Q. But November 24th, we're talking the beginning of the
9 whole period.

10 A. Yes, the beginning is another developing miner who is
11 coming with his own brand method, approach. They don't
12 all make the same approach, they don't make the same
13 offers, they don't have the same interests, and they
14 don't show the same things in order to be attractive to
15 the government.

16 BSGR tried to make itself very attractive, claiming
17 to have the financial capability, the ability to
18 mobilise the technical resources and the ability to
19 conduct several mining projects at the same time. Of
20 course this is attractive.

21 Q. We are going to take a look now at the Mining Code 1995.

22 This is Exhibit CL-1.

23 Do you see Article 167.2?

24 A. Yes.

25 Q. Does this relate to iron ore?

12:24

1 A. I see it.

2 Q. It says here there is no free stake for the government.

3 You say it wasn't anything unusual. This is the law.

4 So how do you reconcile what you've said and the actual

5 text of the law?

6 A. That's what I'm saying, is that the interest of the

7 state is set out by the Mining Law, based on the

8 particulars, but without an actual percentage.

9 Q. But there's no 15%; that's not set out in the law. The

10 interest -- so the 15% stake, I asked, "Is it true for

11 iron ore projects?", and you said, "Yes, and for other

12 types of minerals". Did I misunderstand you?

13 A. No, I said it varied depending on the resource.

14 Q. I just want to check your statement that BSGR was

15 a mining developer just like any other one.

16 A. I think you can grant me this. Initially, everybody

17 stands equal. It's only with the passage of time, and

18 through their actions, that we're able to differentiate

19 between developers. They all come with fine ideas and

20 attractive proposals. That's what I was saying.

21 Q. So we were looking at the letter of November 24th 2005.

22 In your statement -- if you would please go back to your

23 statement -- I believe that you have annexed to your

24 statement another letter from BSGR. (Pause)

25 Madam President, apologies, I just need a moment.

12:28

1 THE PRESIDENT: Maybe C-208.

2 MR DAELE: If you would please turn to tab 10 (C-208).

3 Again, this is a letter dated January 6th 2006. Do you
4 recognise this letter?

5 A. Yes.

6 Q. Would you please go to page 9, the penultimate page. We
7 have here the geographic coordinates of the zones
8 covered by the memorandum of understanding, and then on
9 the back of this page we see a map of the zones.

10 Can you confirm that these are the zones that are
11 known as Simandou North and Simandou South, and not
12 Blocks 1 through 4 held by Rio Tinto?

13 A. I can't confirm anything with the geographic coordinates
14 because I don't have a map with all the coordinates.

15 Q. Well, you can see the map.

16 A. Yes, but I don't want to give an approximate answer.

17 Q. There's nothing approximate here.

18 A. I see the map, I see the coordinates, but I don't know
19 what the coordinates are for Blocks 1, 2, 3, 4. So if
20 I say something, it will be approximate.

21 Q. Do you remember that Blocks 1, 2, 3, 4 were between
22 zone A and zones B and C?

23 A. I beg your pardon?

24 Q. You see at the top of the page there is a square with
25 the letter A; below, two other boxes with B and C. Are

12:31

1 they not on either side of Blocks 1, 2, 3, 4?

2 Are Blocks 1, 2, 3, 4 of Rio Tinto, as far as you
3 can recall were they located between box A and boxes B
4 and C, or did boxes A, B and C cover Blocks 1 through 4?

5 A. The blocks are what they are, they have their geographic
6 coordinates. I would like for this discussion to deal
7 with the signed memorandum of understanding. The spirit
8 of the text clearly defines what is intended by the
9 signatories. Here in the annex you have geographic
10 coordinates, they are set. They are what they are.

11 Q. Let us look at the signed memorandum of understanding,
12 February 20th 2006. That's [tab] 13, Exhibit C-9.

13 I would like to ask you to keep this page available,
14 that is the map, and if you could compare this map with
15 the map in [tab] 13.

16 THE PRESIDENT: I think it is very difficult to compare
17 geographic coordinates on a map where we don't actually
18 see the latitude and longitude indicated on the map and
19 we cannot check these coordinates. I think this is
20 exactly what the minister was saying. You need to have
21 a map that shows latitudes and longitudes.

22 A. If I may, I'd like to add something else.

23 THE PRESIDENT: We do not have the latitude and longitude
24 indicated. What we have is a box containing the
25 coordinates. Are they correct? That's the first thing.

12:34

1 And how do we know that the box is actually placed at
2 the right location?

3 MR DAELE: I first asked Mr Souaré a question about the
4 draft memorandum of understanding of January 6th, which
5 is [tab] 10 (C-208). This is the draft memorandum of
6 understanding proposed by BSGR. And we see that on the
7 last page --

8 THE PRESIDENT: I have completely understood the two maps,
9 one under tab 10 and one under tab 13. The problem that
10 I have applies to both maps: it's that the map itself
11 does not contain an indication of latitudes and
12 longitudes, so I simply don't know if the boxes are
13 placed at the right location.

14 MR DAELE: Yes, the coordinates are right next to the box.

15 THE PRESIDENT: Yes, but they've been added on to the map.
16 The map itself does not contain those coordinates.

17 And I think the witness can answer.

18 A. Yes, I would like to add something. The exercise that
19 you are asking us to do is difficult, precisely because
20 we don't have a map, we just have a diagram, something
21 you can draw on a board and then you just write
22 coordinates next to the boxes. And these are documents
23 that are annexed, but they haven't been initialled. So
24 I think that these maps and these figures have no
25 significant value for what we're doing, and really we

12:35

1 can do without them and simply read the content of the
2 memorandum.

3 MR DAELE: But the map is an annex to the contract, and
4 contract is signed, and you said we should look at the
5 signed contract. The document under tab 13 (C-9) is the
6 signed version of the memorandum of agreement, signed
7 February 20th 2006.

8 If I could finish. So the last page is Annex 2.
9 This is a map of the zone to be found on page 11. As
10 you can see on page 11, it is titled "Annex 2", "Plan of
11 the prospecting zone" and there is a map with
12 coordinates.

13 THE PRESIDENT: I think the preceding page is more
14 interesting.

15 MR DAELE: That's up to you to decide. In any event,
16 Annex 2 includes a map of the prospecting zone with the
17 coordinates.

18 Now I'm coming to my question: if the map under
19 tab 13 -- that is, the map that is annexed to the
20 memorandum that was signed on February 20th -- is this
21 map the same as we have under tab 10, that is to say the
22 map that is annexed to this January 6th draft memorandum
23 of understanding, if you compare the two maps? We have
24 on the one hand the proposal made by BSGR, that's under
25 tab 10, and under tab 13 is the signed contract.

12:37

1 I am simply making the point that the maps are
2 identical and the coordinates are identical, if you
3 compare all the figures, the actual geographic
4 coordinates. This means that the memorandum of
5 understanding that was signed on February 20th is the
6 same as the draft memorandum that was proposed by BSGR
7 on January 6th.

8 A. Are you finished?

9 Q. Yes.

10 A. Thank you.

11 Don't be too quick to conclude that they're
12 identical. As I said earlier, I do not attach any
13 importance to these two documents. Why? Simply because
14 they are not initialled. How can I know that these were
15 not identical documents that were simply added on? As
16 you know full well, when a contract is signed, all pages
17 are initialled, including the annexes, and neither one
18 of these maps are initialled.

19 This is why I am asking you to compare the terms and
20 conditions of the memorandum; that is, the terms and
21 conditions of the draft memorandum and the final
22 memorandum. That is what constitutes an undertaking for
23 both parties. These are not maps; these are just sort
24 of diagrams that have been annexed, they are
25 non-initialled, and they have no value as far as I'm

12:39

1 concerned.

2 Q. If we look at page 3 of the memorandum, here we have
3 signatures, initials, and there's a reference to
4 Annexes 1 and 2, and this page is signed.

5 A. I do not contest the fact that there are annexes. What
6 I am challenging or questioning is: are these annexes
7 the ones that were meant to be there? Because the
8 appended annexes should be initialled.

9 Q. Why did you include them in your statement, in your
10 testimony, if they are without any value? It is part of
11 your own testimony, because they are annexed to your own
12 statement.

13 A. I asked for a document and I appended it without reading
14 it. But what I'm saying today, for me what is
15 an undertaking or a commitment is something I have
16 signed. And I don't recognise these maps because
17 I suspect that these are diversionary in nature, because
18 they include part of the Simandou that was part of
19 Rio Tinto's concession. And this is like a banana peel,
20 honestly. And the memorandum of understanding is very
21 clear: you can't sign a memorandum and then append
22 annexes that are in contradiction with the memorandum.

23 Q. But in what way do these annexes contradict the
24 memorandum?

25 A. This diagram, I would say, this drawing, it's unclear

12:41

1 simply because the coordinates are not indicated. If
2 you were to check this on a real map, that's what you
3 would get.

4 So that's why I say in the memorandum of
5 understanding the terms are set out very clearly: BSGR
6 has to wait for the blocks to be retroceded before they
7 can lay a claim to it.

8 Q. Is there something contrary to that in the memorandum?

9 A. No, that's exactly what the memorandum said so. We are
10 talking here about these maps.

11 Q. But you said that you did not check the annexes when you
12 signed your witness statement; you just said that.

13 A. The annexes I simply did not notice, because what is
14 important is what I committed to, is my undertaking, as
15 recognised by virtue of my signature and my initials.
16 And you can't simply take that away from me.

17 Q. You're saying that this map has no validity because it
18 is not signed. Annex 1, on page 10, includes a table
19 with coordinates. Do you see that?

20 A. Yes, I see that it summarises what's on the map.

21 Q. But this document hasn't been signed either.

22 A. The two go together. The map is just the graphic
23 illustration of this table.

24 Q. So the other one is not valid either?

25 A. Yes, that is correct.

12:42

1 Q. So the two annexes are not valid, including the one in
2 the memorandum signed on February 20th?

3 A. Or the valid annexes are not appended to the memorandum,
4 I don't know.

5 Q. But it is your lawyers who have appended this document
6 to your statement.

7 A. They will look for the proper documents.

8 PROFESSOR MAYER: (Interpreted) Neither one is signed, but
9 I don't think they really fit together, because in the
10 coordinates I have, in addition to North and South,
11 Block 1 and Block 2, with latitudes that are clearly
12 situated between the two, and these are not indicated on
13 the map.

14 I don't know if anyone here, either the witness or
15 counsel, would like to comment [on] this.

16 A. Your comment is extremely astute and actually it
17 validates what I am saying. I am saying that these
18 documents were simply added on to the memorandum; these
19 are not documents that are actually consistent with the
20 spirit of the memorandum of understanding, because if
21 you re-read the memorandum of understanding, it's not
22 exactly what is expressed here in this annex. That is
23 my comment.

24 PROFESSOR MAYER: Thank you.

25 MR DAELE: You say in your statement that you were subjected

12:44

1 to pressure, pressure exerted by the President's family.
2 We are now in [paragraph] 25; that is the final version.
3 You talk about being protected against the pressure that
4 was exerted by the family of the President.

5 So you're talking about pressure exerted by the
6 President's family, but you do not talk about pressure
7 exerted by the President himself; is that correct?

8 A. Correct. The family of the President is the President
9 himself. In other words, the family doesn't represent
10 anything. The family cannot exert any pressure without
11 the President.

12 Q. What is the relationship between the President and
13 Mr Ibrahima Sory Touré? You say that they belong to the
14 same family. How are they related, acquainted?

15 A. I ended up understanding that he was his brother-in-law.

16 Q. What does that mean?

17 A. The spouse of his sister, Mamadie Touré.

18 Q. I'm sorry, can you repeat the relationship -- I don't
19 understand -- between Ibrahima Touré --

20 A. The relationship with Ibrahima Touré, he is the brother
21 of Mamadie Touré. The President is the spouse of
22 Mamadie Touré. Therefore Ibrahima Touré is the
23 brother-in-law of the President.

24 Q. And the relationship between Ibrahima Touré and
25 Mamadie Touré: you say that they are brother and sister?

12:47

- 1 Does it mean that they have the same parents?
- 2 A. That's what it means.
- 3 Q. Both parents?
- 4 A. It could be the mother only or the father only or both;
- 5 that's our tradition.
- 6 Q. Did they live together when they were young?
- 7 A. I don't know.
- 8 Q. Is it the same father or the same mother?
- 9 A. I don't know. I didn't ask.
- 10 Q. Well, do you know whether they are half-brother and
- 11 sister or full brother and sister?
- 12 A. For us, brother or sister is brother or sister, that
- 13 level.
- 14 Q. But Guinean men can have several wives and you can have
- 15 many brothers and sisters?
- 16 A. Quite so.
- 17 Q. And the relationship between brothers and sisters is not
- 18 necessarily that close, as close as it would be in
- 19 Europe, where you would have one single wedding and
- 20 brothers and sisters of the same parents?
- 21 A. Well, this is a practical life. You know, you could
- 22 easily be closer socially to a half-brother than you
- 23 would be to a brother.
- 24 Q. [Did they live in the same village?]
- 25 A. I don't know the background.

12:48

1 Q. Therefore you talk about pressure from the family to
2 influence or to enter into the memorandum of
3 understanding. What did they do exactly? What sort of
4 pressure did they exert?

5 A. You forget that they called me to ask me to help BSGR to
6 work in Guinea. This is the pressure.

7 Q. This is for the technical report. We're talking here of
8 the memorandum, the MOU.

9 A. Everything is linked. Everything is linked together.
10 Because I wasn't asked -- the President didn't ask me to
11 give a permit to BSGR; he said "help".

12 Q. Yes. But to sign the MOU?

13 A. No. The President has other fish to fry. If he is
14 interested in a specific file and tells me to help, it's
15 up to me to see how we can go about it while complying
16 with the law. And normally, if I were just a minister
17 who accepted all of the orders, I would have said,
18 "Okay, okay, okay", because the President would have
19 instructed me. But I thought it over and tried to
20 contain the aggressive wishes of BSGR.

21 Q. You kept the President informed of these negotiations?

22 A. No, no. I don't have to report the details to the
23 President. If he needs a summary or if things are
24 blocking, obviously one can go further up. But as long
25 as I'm not asked anything, I am in peace and I can

12:50

1 continue to exert my full powers as minister.

2 Q. And the meeting at the beginning of December, and in
3 between that and the signature of the MOU, there was no
4 longer any contact with the President?

5 A. For that particular matter, no.

6 Q. And the pressure that was exerted by the family, is that
7 at the first meeting and the helicopter flights?

8 A. Yes, and each time that they intervened: like Mamadie
9 Touré, when she got back from the helicopter flight, she
10 exerted pressure. But what I wish you to understand is
11 that for a minister, an instruction suffices for the
12 entire file. You can't say: pressure in the beginning,
13 no pressure in the middle; no. I operate on the basis
14 of what the President told me first time around. You
15 can't just ignore this when you are minister.

16 Q. And you say that this contract with BSGR is something
17 for which there was pressure?

18 A. Yes.

19 Q. And there was pressure and you didn't grant what they
20 wanted. Did BSGR complain to Mamadie Touré or the
21 President?

22 A. No, because they had the skill to negotiate and to
23 promise to BSGR, "Well, work on what was granted you,
24 but if Rio Tinto retrocedes, you will be the first ones
25 to acquire it".

12:52

- 1 Q. And you had other meetings with BSGR?
- 2 A. No. I gave the ideas, and the services dealt with the
3 rest.
- 4 Q. [Was it] the CPDM that negotiated?
- 5 A. Yes. Technical proposals, there was a big file.
- 6 Q. And you weren't involved in the negotiations?
- 7 A. No, I don't have enough time.
- 8 Q. Did CPDM keep you regularly informed of the state of
9 negotiations?
- 10 A. They gave me a summary, and it didn't take much time.
- 11 Q. Before or after the signature?
- 12 A. What?
- 13 Q. That they kept you informed?
- 14 A. Well, CPDM reports and presents the file for signature,
15 of course, and justifies --
- 16 Q. At that time the contract was already negotiated, CPDM
17 presents the contract and says, "Excellency,
18 Mr Minister, can you sign the MOU"?
- 19 A. Yes.
- 20 Q. I am now at [paragraph] 27. So there was a ceremony for
21 the signature in the presence, you say, of all of the
22 services of the ministry?
- 23 A. Yes.
- 24 Q. It means that your services were proud of this contract?
- 25 A. I was myself proud of it.

12:54

1 Q. Why? Because it was a good contract for the country?

2 A. Because, first, it complied with mining law. It was
3 a contract the announcement of which was of interest to
4 the country. We thought we'd done a good deal.

5 Q. The fact that all of the services were present also
6 means that the other services, the CPDM, was involved in
7 the negotiation and that's why they were there?

8 A. Yes, no. Well, CPDM, yes; the other services, no. When
9 there is an event, all of the services are invited. The
10 managements, the directorates, mines, geology,
11 et cetera, they are asked to come over to the big
12 meeting room and we do a solemn signature of the
13 contract.

14 Q. Was Mamadie Touré present at this ceremony?

15 A. I don't remember, but I presume she was. She must have
16 been.

17 Q. But you're not certain?

18 A. I can't say for sure, after ten years have elapsed.

19 Q. You say in that same paragraph that as far as
20 Ibrahima Sory Touré is concerned:

21 "I understood at the time that he was the Guinean
22 contact of BSGR and that he was not hiding the fact that
23 he was the brother ..."

24 I'm interested by the term "at that time". This
25 means that before that, you hadn't realised that he was

12:56

1 the brother?

2 A. No. Before that time, I didn't know. I never found him
3 at the President's or at Mamadie Touré's before.

4 Q. So he wasn't there before, okay.

5 You still say in paragraph 15 of your witness
6 statement that Ibrahima Sory Touré was present at the
7 meeting. Do you see?

8 "The representatives of BSGR came to that
9 appointment together with Mamadie Touré. I do not
10 remember the names of the representatives ... apart from
11 Ibrahima Sory Touré ..."

12 A. So he was visible, but I didn't know his status, family
13 status, nor his status within the company. But he was
14 there.

15 Q. So it's not at that time that you realised that he was
16 the brother?

17 A. It was at that time.

18 Q. At the time of the ceremony?

19 A. At the time of the ceremony. Before that, I didn't
20 know.

21 Q. The fact that there should be a ceremony, this was
22 public, wasn't it? It still means that the MOU was not
23 a secret document; it was truly public, official. And
24 you wanted or your services wanted the world to be aware
25 that this contract had been signed?

12:58

1 A. It was not secret. It's the battle that was secret.

2 Q. During the meeting there was this offer of a little car?

3 A. Yes.

[PROTECTED]

[REDACTED]

13:00

[PROTECTED]

[REDACTED]

13:04

1 "I no longer had any direct contacts with BSGR until
2 the end of my term."

3 A. Yes.

4 Q. And in paragraph 31 you say:

5 "I never saw Mamadie Touré again ..."

6 A. Yes, until today.

7 Q. After the signature of the MOU that didn't involve
8 Blocks 1 and 2, you no longer had any pressure from
9 Mamadie Touré or BSGR to do something with Blocks 1
10 and 2?

11 A. Right, correct, no longer any pressure. When I was at
12 Education, I never heard of this. When I came back to
13 the Prime Minister's office, then I understood that this
14 was still involved with the presidency.

15 PROFESSOR VAN DEN BERG: (Interpreted) May I ask a question.
16 Paragraph 31 at the end, you say:

17 "She ..."

18 And that's Mrs Mamadie Touré:

19 "She had obtained what she wanted and therefore I no
20 longer saw her."

21 Can you state what she obtained, according to you?

22 A. What she obtained at the time was the satisfaction of
23 BSGR. BSGR wanted permits; she obtained permits. And
24 BSGR wanted an MOU to protect itself; in case of
25 retrocession, that it would be the purchaser of the

13:05

1 blocks.

2 PROFESSOR VAN DEN BERG: On what basis do you know that she
3 wanted to obtain this? Anything concrete?

4 A. BSGR started with this. BSGR asked for Simandou. In
5 its first project -- first draft MOU, BSGR wanted its
6 activities to cover Simandou. So it was crystal clear.
7 That was what reality was.

8 PROFESSOR VAN DEN BERG: Did she tell you what she wanted?

9 A. Mamadie?

10 PROFESSOR VAN DEN BERG: Yes.

11 A. Yes, she told me.

12 PROFESSOR VAN DEN BERG: She told you?

13 A. Yes. When the helicopter came back, I asked them to
14 come over, and she pleaded BSGR's cause to help them to
15 obtain Simandou. As I said, she doesn't have a very
16 good technical level and I presume that she didn't
17 understand everything that was at stake. I told her to
18 calm down, and we would deal with the file to her
19 satisfaction, but not rushing anything.

20 PROFESSOR VAN DEN BERG: And this is when she actually told
21 you that she wanted this for BSGR?

22 A. On this occasion.

23 PROFESSOR VAN DEN BERG: And when you convoked them after
24 the helicopter trip, she told you in concrete terms what
25 she wanted for BSGR?

13:07

1 A. She told me rapidly that I -- and I notified that she
2 was very brief. She said what I just told you. That
3 was her will. She is not a technical person.

4 PROFESSOR VAN DEN BERG: Can you be more concrete? What
5 exactly did she say?

6 A. She said, "Minister, Minister, I wish you to help BSGR
7 to obtain Simandou. They are going to work for the
8 country". Something to that effect.

9 PROFESSOR VAN DEN BERG: Thank you.

10 MR DAELE: Therefore, after the meetings, after the
11 ceremony, you no longer had any contacts with BSGR, nor
12 Mamadie Touré, until the end of your term as Minister of
13 Mines in June 2006.

14 In everything that we've mentioned this morning, do
15 you know somebody by the name of Ismaël Daou?

16 A. No.

17 Q. Do you know somebody by the name of Aboubacar Bah?

18 A. No.

19 Q. You never had any meetings or phone calls?

20 A. In this particular case, no. It rings no bell. Those
21 names don't ring any bell.

22 Q. You had meetings with a company called Pentler; does
23 that ring a bell?

24 A. Pentler? No, I don't know that company.

25 Q. And Mr Roy Oron?

13:09

1 A. Roy Oron, I think that's BSGR, I believe.

2 Q. You had meetings with Roy Oron?

3 A. As I told you, I don't know who was present, who wasn't.

4 At least it's possible that he might have been there.

5 He's the resident manager for BSGR. I don't know the

6 difference between these people, unfortunately.

7 Q. And Mr Lev Ran?

8 A. No. No, it's today that I've heard this.

9 Q. Frédéric Cilins?

10 A. I think that's BSGR, isn't it?

11 Q. It's Pentler.

12 A. Oh, if you say so. I don't know.

13 Q. Did President Conté tell you about the BSGR file after

14 the ceremony, apart from giving him the little car and

15 informing him, the three/four months after you left the

16 department?

17 A. No, he didn't mention it, because we were back to

18 normal. Calm was back.

19 Q. Let's go to the September 2006 reception. Why did you

20 attend this reception? What was the opportunity to

21 organise this reception?

22 A. I think it was the inauguration of BSGR headquarters,

23 I believe. I'm not sure. But anyway, I was invited as

24 a guest of honour, as previous Minister of Mines, and

25 I had dealt with BSGR. I think that's it, that's the

13:11

1 reason.

2 Q. The fact that you were present at a reception, this
3 particular reception, does it express some sort of
4 support for BSGR, the fact that you should be there?

5 A. Well, obviously it could be perceived as such. We
6 always say that, "We have the honour of your presence".
7 It's a mere courtesy, in fact. But I don't know what
8 they had calculated. They could manipulate us,
9 unbeknownst to us.

10 Q. The Minister of Mines who had replaced you, Mr Sylla,
11 wasn't there at this reception, didn't attend this
12 reception, or was he there?

13 A. I don't know was there or not, was he in Guinea or not?
14 Whatever the case, there were representatives of the
15 ministries.

16 Q. Were there other ministries?

17 A. I don't remember.

18 Q. How many people attended? I know you didn't count them.
19 But were there lots of people?

20 A. Yes. Average, I would say. I don't think that people
21 were very eager.

22 Q. So 500? How many?

23 A. I couldn't tell you. I know that there is no great
24 enthusiasm. It was just one of these ordinary
25 receptions, like those that take place in Conakry over

13:13

1 there.

2 Q. And you were shown the video of this reception?

3 A. Yes.

4 Q. Did you look at the entire video?

5 A. No. What for?

6 Q. Why not?

7 A. Well, I was present. Why should I look at the video?

8 This was not my main activity. I sacrificed 15 minutes

9 of my term to go to the reception.

10 Q. I read in your declaration that you saw a video of the

11 conference.

12 A. Yes, the way I did earlier on, when you showed it to me.

13 I didn't see the entire video.

14 Q. Do you know that at the beginning of the video there are

15 passages where we see the red berets before Mrs Touré

16 arrived? Because you say it's clear that she was the

17 spouse because she came with the guards. But when you

18 look at the entire video, you see that the guards

19 arrived before she did.

20 A. The spouse of the President has the benefit of the

21 protection of the presidential guard. And this means

22 that she has a bodyguard -- you saw the bodyguard behind

23 her, it's clear -- and she may ask three or four

24 military to investigate the premises before she arrives.

25 So this is practice. It's clear that you can't have

13:14

1 a great number of such guards by accident or in a place
2 where a ceremony is taking place.

3 THE PRESIDENT: If I ask for a precision. Would it be
4 possible that these guards be present because there were
5 ministers attending the reception, like yourself?

6 A. No, madam, because ministers -- or at least at the
7 time -- our guards were not red berets. They were only
8 dedicated to the presidency, and we just had the police.

9 THE PRESIDENT: Thank you.

10 MR DAELE: In paragraph 35 you say that:

11 "This was not actually the first time that Mamadie
12 Touré got involved in dossiers being handled by the
13 Ministry for Mines ..."

14 And you mentioned a Global Alumina Corporation
15 dossier. What did she do to support that dossier? What
16 did she do to advance that dossier?

17 A. She exerted some pressure for the agreement with that
18 promoter to be signed, and that was done.

19 Q. That was pressure on whom?

20 A. Pressure on the Prime Minister and on the Minister of
21 Mines, and that was me.

22 Q. How did she exert pressure upon you? What did she do?

23 A. She insistently kept calling.

24 Q. In that Global Alumina case, she called you?

25 A. She called the Prime Minister.

13:16

1 Q. Did she call you also?

2 A. No, not directly.

3 Q. So how do you know that she called the Prime Minister?

4 A. Because I was there.

5 Q. You were there with Mamadie Touré?

6 A. No, I was with the Prime Minister when she called.

7 I had just joined the government at the time.

8 Q. And what did the Prime Minister say?

9 A. The Prime Minister resisted because there were some
10 weaknesses, particularly where all of the tax matters in
11 that mining agreement was concerned. And the Prime
12 Minister said, "No, we're going to have to take a look
13 at this and renegotiate some aspects of that".

14 Q. Well, the Prime Minister resisted. And after that, she
15 did not get in touch with you personally to exert
16 pressure upon you?

17 A. No, no, not at all.

18 Q. Did she know that you were in the Prime Minister's
19 office?

20 A. She didn't know that I was with the Prime Minister, but
21 she knew that I was the Minister for Mines.

22 Q. How did you know it was she?

23 A. Sir, I was with the Prime Minister. They were speaking
24 about a duty concerning my ministry, and obviously it
25 was clear that he would make comment to me on this, the

13:17

1 least he could have done.

2 Q. Apart from that phone call, did she take any other
3 initiatives for that particular dossier that you would
4 know about?

5 A. What dossier are you talking about?

6 Q. I'm talking about Global Alumina Corporation.

7 A. Well, I know that she handled that up until the work was
8 actually launched, where she attended also the launch
9 with the red berets. I think I say that somewhere.

10 Q. You mentioned also another dossier where she exerted
11 some pressure, and it was Hyperdynamics.

12 A. Yes, indeed.

13 Q. But I think that this morning you said that where
14 Hyperdynamics was concerned, it was another woman,
15 another one of the wives of the President?

16 A. No, no, no, it was two women, the two wives. Mamadie
17 Touré tried to do so with the President, as I said, but
18 she didn't get anywhere because the President dismissed
19 her altogether. Whereas the other lady, Hadia
20 Kajaset-Conté, wanted to exert pressure upon me
21 directly. She invited me over to her foundation and she
22 mentioned the problem.

23 Q. But you say that in the course of that meeting with the
24 President and with Mamadie Touré concerning the
25 Hyperdynamics dossier, the President was rather firm,

13:19

1 and he said, "Don't talk about that, you leave here"?

2 A. Yes.

3 Q. So he wasn't actually listening to Mamadie Touré; he
4 told her to shut up?

5 A. Well, on that particular dossier, he was not at all
6 receptive. However, for the other dossier, he was
7 receptive. So it depends on his moods. Well, it's the
8 President, you know: he probably had his own personal
9 position on the oil dossier because there are other
10 things to be taken into account. It's highly
11 complicated at that level.

12 Q. So that depended on his moods?

13 A. Well, it depended on the dossier; it depended on so very
14 many different things.

15 Q. So in the Hyperdynamics business, he didn't want to
16 insist; however, with the BSGR business, he did insist?

17 A. Yes.

18 Q. After that meeting on the Hyperdynamics dossier with
19 Mamadie Touré, did she get in touch with you again?

20 A. No. In other words when it's "no" upstairs, it's "no"
21 downstairs; when it's "yes" upstairs, it's "yes"
22 downstairs. That's the way it works.

23 Q. How many times did you see the President and
24 Mamadie Touré in action together?

25 A. In action?

13:21

1 Q. Yes, in action. I mean participating -- I'm sorry, I'm
2 sorry, I'm sorry.

3 A. Well, you did say that your French was approximate!

4 Q. That is a very good example of it! Yes, I should have
5 to rephrase my question.

6 A. Yes, that is much better for all of us.

7 Q. Let me put it this way: how many meetings did you attend
8 when you would see both the President and Mamadie Touré
9 together? You said there was a meeting on
10 Hyperdynamics, a BSGR meeting. Were there any other
11 meetings concerning any other cases?

12 A. Well, I don't really remember for other dossiers.
13 I don't remember anything else. But here again I must
14 say that I wasn't actually keeping track of the agenda
15 of the four wives. This is the kind of thing that would
16 just happen, and I would take note of it and that's it.
17 And I would record that in my hard disk, in my hard
18 drive.

19 Q. Is your hard drive accessible?

20 A. Well, it may be saturated, with all the information it
21 contains.

22 MR DAELE: Perhaps I could stop here now for lunch. I will
23 continue this afternoon, Madam President.

24 THE PRESIDENT: Well, I was just about to ask you indeed
25 whether this is a good time to take a break.

14:22

1 (Interpreted) I should like to say before starting this
2 afternoon's session that in the course of the hearing
3 this morning, the [Respondent] examined the model car
4 that Mr Daele showed to Mr Souaré, so that we could
5 identify the car in connection with your questions.
6 When we re-read the transcript, it might be a good idea
7 for you to submit a photograph. So maybe the two sides
8 can agree on one picture that would be given to the
9 Tribunal, and that would be C-[357].

10 After that, you can now start again with your
11 questions for Dr Souaré. I thank you for your patience,
12 sir.

13 MR DAELE: Thank you very much. (Pause)

14 Good afternoon, Mr Souaré. This morning we had
15 discussed your involvement in this dossier in your
16 capacity as Minister for Mines. But this afternoon we
17 shall be addressing your involvement in that case, but
18 in your capacity as Prime Minister.

19 First of all, I think it was in June 2006 that you
20 left the Ministry for Mines and you became Minister of
21 State for Social Matters?

22 A. Yes.

23 Q. Did the minister explain that change? Was that
24 connected with the BSGR file, or not at all?

25 A. No, it was just a global overall ministerial reshuffle:

14:25

1 a change in prime ministers, a change in the structure
2 of the government.

3 Q. And that was a kind of promotion as well?

4 A. Yes, it was a promotion.

5 Q. Because Minister of State is more commanding of respect
6 than just plain Minister for Mines? Why is it
7 a promotion?

8 A. Because there is more responsibility involved, and the
9 whole of the government was restructured into five or
10 six major areas, and I was in charge of one of those
11 areas. Minister of State for Social Affairs is
12 a minister that is responsible for the three sectors:
13 education, social affairs, youth, et cetera. So it was
14 a heightened responsibility.

15 Q. So that would mean that the President was happy with
16 what you had done as Minister for Mines, I would assume.
17 Did you ever speak to him about that when you changed
18 departments?

19 A. No, not particularly. We would express our gratitude
20 and recommit ourselves to our duties.

21 Q. In that period, starting in June 2006 -- well, I know
22 that you were for a year, or a little bit over that,
23 Minister for Social Affairs, and then the government
24 fell, but you came back in May 2008 as Prime Minister.

25 So in that period, going between June 2006 and

14:27

1 May 2008, that particular period, did you follow the
2 advance of the BSGR dossier? Did you have any other
3 meetings with BSGR or Mamadie Touré, or even the
4 President himself, on that particular BSGR case?

5 A. What period?

6 Q. Well, from June 2006, when you left the Ministry for
7 Mines, and when you took office as Prime Minister,
8 during that particular period. You were no longer
9 involved at all with the BSGR case during that period?

10 A. No, not at all.

11 Q. So in May 2008 you replaced the Prime Minister,
12 Lansana Kouyaté?

13 A. Yes.

14 Q. Can you tell us why Lansana Kouyaté was replaced?

15 A. I'm not necessarily privy to the intentions of the
16 President of the Republic. What I must say is that
17 these were particularly restless times in Guinea. You
18 may have known that it was after repeated strikes and
19 popular demonstrations against the government that the
20 government fell, and Mr Kouyaté was appointed under
21 union pressure. But I believe that Mr Kouyaté and his
22 government didn't rise to expectations, the unrest
23 continued, and the President opted for a change.

24 Q. But the replacement of Mr Kouyaté was not connected with
25 the BSGR or the Rio Tinto cases, according to you?

14:29

1 A. Oh, those are tiny things compared with the political
2 situation of the country. That would not be the reason
3 for an in-depth ministerial reshuffling.

4 Q. We saw statements in the press of April 2014 -- we saw
5 them this morning -- where you spoke about the incident
6 with Mr Kouyaté. I believe that in that interview you
7 refer to a hotel being sold in Libya, to the Libyan
8 Government. Do you remember that incident? I think in
9 that interview you said that Mr Kouyaté's replacement
10 was linked to the sale of those hotels.

11 A. No, I never said that it was linked to the sale of the
12 hotels. But I mentioned the sale of the hotels as one
13 of the weaknesses of the Kouyaté government.

14 Q. Did the President ever explain to you again why you came
15 back as Prime Minister? Did he give you any fresh
16 directives at the time you were appointed
17 Prime Minister?

18 A. Well, he gave me the mandate of addressing the political
19 and social unrest, and to try and calm the situation
20 down and promote the socioeconomic development of the
21 country, and particularly asked me to organise the
22 legislative elections that were behind schedule.

23 Q. But he didn't speak to you about the situation in the
24 mining sector?

25 A. No, not particularly.

14:31

1 Q. Did Mamadie Touré enter into contact with you after your
2 appointment?

3 A. No, no.

4 Q. You say in paragraph 38 of your witness statement that
5 the President signed a decree in July 2008 withdrawing
6 the concession that had been granted to Rio Tinto in
7 March 2006. I believe that it was you -- or at least it
8 was under your stewardship as Minister for Mines that
9 the concession was signed?

10 A. Yes, on 30th March.

11 Q. Did you know that the President -- whether the President
12 asked for any legal advice before withdrawing
13 Rio Tinto's concession?

14 A. I'm afraid I didn't understand your question.

15 Q. Did you know that he actually asked for the opinion of
16 legal advisors before withdrawing the concession? Were
17 you aware of that?

18 A. Before suspending it in 2008?

19 Q. Yes.

20 A. No, I didn't know.

21 Q. Well, then could I ask you to go to tab 17. That is
22 document C-169 and is a note by Mr Sakho, Momo Sakho,
23 who was the legal advisor to the President.

24 When you see this document -- well, first of all,
25 had you seen it before?

14:34

1 A. Mohamed Sakho, is that what you're saying?

2 Mohamed Sakho?

3 Q. No, Momo Sakho.

4 A. Momo Sakho was never legal advisor to the President. He
5 was the legal advisor to the Minister of Mines.

6 Q. Oh, I beg your pardon. So Momo Sakho, the legal advisor
7 in the Ministry for Mines, prepared a note,
8 February 2008, on the irregularities of the Rio Tinto
9 agreement. Are you aware of this note?

10 A. No, no, I just see it now for the first time.

11 Q. Well, I'll walk you through it. You can read it for
12 yourself if you want to. There are three pages.

13 Here, according to the advisor to the Minister for
14 Mines, the agreement is in breach of the mining
15 legislation and therefore should be terminated.

16 A. Well, that is his opinion. I am saying it is his
17 opinion in 2008. But he had the same duties in
18 2005/2006, so why didn't he send the same note to me,
19 who was then the minister? He lived with that for three
20 years with no problems at all.

21 Q. Fine. So that is Mr Sakho's opinion. And you say in
22 paragraph 38 that it was rather unusual for that
23 decision to be taken by the President?

24 A. Yes.

25 Q. But if the concession was granted via a presidential

14:36

1 decree, is it not the case that it can only be withdrawn
2 by means of a presidential decree as well?

3 A. Yes, that is the case. But what is important is to know
4 where the decree was prepared, where there were
5 irregularities in the decision-making process. You have
6 noticed yourself that the legal advisor to the Minister
7 for Mines drafts a note sent directly to the President
8 of the Republic: that is not normal. It's not normal.

9 Q. But the fact that the decision was taken by means of
10 a presidential decree, that is normal?

11 A. Only the President can issue a decree. But it's not
12 just anyone that can submit the draft of the decree to
13 the President.

14 Q. But you were Prime Minister at the time. Did you speak
15 with the President at any time as regards that
16 presidential decree of 28th July withdrawing the
17 concession of Rio Tinto?

18 A. I did not specifically address that issue with the
19 President. I should like to point out that the
20 President at the time was already very ill, very weak.
21 Three/four months after that, he actually passed away.
22 So, no, I didn't mention that. But these were things
23 that I noticed afterwards, and these were thorns in my
24 side when I became Prime Minister.

25 Q. Do you know whether Mamadie Touré had exerted any

14:38

1 pressure on the President in order to get that decree
2 signed?

3 A. Well, I cannot actually say so in so many words. But
4 what I do notice is that Mamadie Touré never diverted
5 from that dossier from the very beginning; she kept
6 handling it. And she could only act in the interest of
7 BSGR, because finally the cancellation of the concession
8 was meant to get Rio Tinto to retrocede part of the
9 Simandou blocks, and don't forget that there was an MOU
10 which promised BSGR a part of Simandou in the case of
11 retrocession. So if you put all of this together, one
12 could very easily imagine the role played by
13 Mamadie Touré.

14 Q. But you say that she never diverted from this dossier.
15 Since July 2006, however, you were no longer in contact
16 with her, nor were you in contact with BSGR, and you
17 didn't discuss the BSGR matter with the President.

18 So on what grounds are you saying that already in
19 2007 or at the beginning of 2008 she never diverted from
20 the dossier? How were you able to see that for
21 yourself?

22 A. Well, in September I was no longer Minister for Mines.
23 And Ibrahima Sory Touré and herself were the promoters,
24 the people who were pushing BSGR forward. I didn't
25 think there was a separation between them and their

14:40

1 dossier.

2 Q. Yes, but between that ceremony in 2006 and your
3 appointment as Prime Minister in June 2008, this is
4 a little less than two years.

5 A. Yes.

6 Q. So what did you do during that period? Because you say
7 she never diverted from that. On what grounds do you
8 base yourself to say that?

9 A. Well, I don't know what she did. But what I can tell
10 you is that the overall trend didn't change at the level
11 of the presidency, didn't change at all, because all the
12 acts or actions undertaken by the President, even
13 irregularly, were actions that in the end were
14 beneficial to BSGR. And since she was the one who
15 introduced BSGR, it's only logical for me to assume that
16 she continued acting on their behalf.

17 Q. But, for instance, it was not on the basis of former
18 Ministers for Mines who succeeded you, like Mr Kanté or
19 Mr Sylla, who said, "Yes, in 2007 Mamadie Touré did
20 this, that or the other"?

21 A. No, and I never questioned my colleagues on the matter.

22 Q. You say in paragraph 41 that it was rather difficult for
23 you to remember in detail what occurred in that period.
24 Do you see that?

25 A. Yes, I do. I see it, yes.

14:42

1 Q. Now I have good news for you, because I'm going to try
2 and help you to remember. So would you kindly turn to
3 tab 26, please (C-176). What you see there is a note of
4 27th August 2008 whereby the Minister for Mines,
5 Mr Kanté, sets up a Technical Committee in order to
6 review the mining titles granted to Rio Tinto.

7 A. Yes, I see that.

8 Q. Were you aware of the setting-up of that committee?

9 A. No. That's an in-house committee. I was Prime
10 Minister.

11 Q. But you can see that there are nine members of that
12 committee: there's a chair, Mr Bangoura; two
13 rapporteurs, including Soriba Bangoura; and then another
14 six members.

15 So this is a committee, you would agree with me,
16 made up by officials, officials belonging to the
17 Ministry of Mines. These are high officials, aren't
18 they?

19 A. Yes.

20 Q. Do you know whether President Conté exerted any pressure
21 on the members of that committee?

22 A. No, no. That committee is a committee which I would
23 call a very normal committee within the Ministry of
24 Mines. It's normal to set up a committee like this in
25 order to review the mining titles granted to Rio Tinto

14:44

1 in connection with all of the delays accumulated in
2 their operations, and particularly in the retrocession
3 timetable. So that is a committee that would be
4 considered to be perfectly ordinary, run of the mill,
5 within that department.

6 Q. But do you know whether Mamadie Touré exerted herself
7 any pressure on the members of that committee?

8 A. No, I don't know. I didn't even know about the
9 existence of the committee at the time.

10 Q. I'm going to show you a document at tab 27, C-177. Here
11 there is talk of another committee; this is
12 an inter-ministerial committee.

13 Were you aware of the existence of this committee?

14 A. Yes, of course. I put it together myself.

15 Q. What was the purpose of this committee?

16 A. Let us read together.

17 Q. It was to discuss the crisis that was created as
18 a result of Rio Tinto.

19 A. Rio Tinto, the problem of the retrocession, I think
20 there had been an appeal to the President to have this
21 reviewed in transparency, and to do this in an amicable
22 fashion, and to review all of the issues at hand and to
23 formalise a decision for the Council of Ministers.

24 Q. You were not part of the inter-ministerial committee?

25 A. I was Prime Minister at the time, sir.

14:47

1 Q. So you were part of the committee?

2 A. No.

3 Q. You instituted this committee, but you were not actually
4 part of it?

5 A. No. The committee was chaired by the Minister of
6 Justice.

7 Q. There were six members on this committee: the Minister
8 of Justice, Mr Bachir Touré, who was also the chair of
9 the committee; then Mr Nabé, Minister of Mines;
10 Mr Traoré, Minister of the Civil Service; Mr Papa Koly
11 Kourouma, Minister of the Environment; Mr Saadou Nimaga,
12 legal advisor to the Minister of Mines; and Mr Fassama
13 Kourouma, from the National Directorate of Mines.

14 So you will agree that these are senior officials,
15 so this is a very serious committee?

16 A. Yes, indeed.

17 Q. So it would be this committee that would determine the
18 position or recommend the position to be taken to the
19 Council of Ministers? The purpose of this committee was
20 to make a recommendation to the Council of Ministers
21 regarding Rio Tinto?

22 A. That is correct.

23 Q. There were six members in the committee. Do you know if
24 President Conté applied pressure to the members of the
25 committee?

14:49

1 A. I don't know. The committee was set up at the
2 initiative of the Council of Ministers. At the time,
3 President Conté was not present during the meetings of
4 the Council of Ministers. I chaired the Council of
5 Ministers. But he could give instructions to any
6 minister without necessarily going through the
7 Prime Minister. So I don't know.

8 Q. Did any of the members of the committee report receiving
9 phone calls from the President or having met with the
10 President?

11 A. No.

12 Q. Did any of the members have contact with Mamadie Touré
13 or did any of them tell you that they had been in
14 contact with Mamadie Touré?

15 A. No. But the Minister of Mines, who was a member of the
16 inter-ministerial committee, could have been in contact
17 with the President on these issues. This is not
18 something that I can rule out.

19 Q. But he never told you that that had been the case?

20 A. No.

21 Q. You never gave instructions to Mr Nabé either; is that
22 correct?

23 A. Well, instructions -- I chaired this council.

24 Q. But outside of the meetings of the committee?

25 A. No, there were no informal instructions given.

14:51

1 Q. What was the position of the committee on the crisis
2 situation surrounding Rio Tinto?

3 A. What was what?

4 Q. What was the position of the inter-ministerial
5 committee?

6 A. I think that at the time the inter-ministerial
7 committee, after several working sessions, came to the
8 conclusion that Rio Tinto was not willing to return the
9 blocks, which was in violation of the Mining Code, and
10 this is why the committee recommended to the government
11 to take a decision ex officio.

12 Q. The committee's position was not, in other words,
13 favourable to Rio Tinto?

14 A. This was a governmental committee responsible for
15 looking into the relationship between the state and
16 an operator, an operator who had failed in its
17 obligations and had made an appeal. And the committee
18 decided that this appeal could not be acceded to, and
19 the operator Rio Tinto was found to not have been in
20 compliance with its legal obligations to return 50% of
21 its concession. This is why the committee recommended
22 to the government that decision be taken.

23 Q. In the last paragraph on page 3 of the same document --
24 again, we're in the document under tab 27 -- it is said:

25 "... the members of the inter-ministerial committee

14:53

1 unanimously believe that it is impossible to give
2 a favourable consideration to the appeal ..."

3 The appeal was made by Rio Tinto following the
4 decree that withdrew the concession. I see that you
5 agree with me. So Rio Tinto had appealed directly to
6 the President, but the ministerial committee says
7 unanimously that it is simply impossible to accede to
8 this request?

9 A. That is correct, because the committee believed that it
10 was not legal. And the committee asked the technical
11 team to carry on discussions with the partners to get
12 the data and to determine exactly what would be the
13 limits of the zone to be retroceded.

14 Q. Let's turn to the document under tab 28. This is
15 document C-178. This document is a legal opinion
16 reached by the committee that had been created within
17 the Ministry of Mines on August 27th. If you read the
18 minutes of the inter-ministerial committee, it refers to
19 this legal opinion.

20 The legal opinion, on the last page under
21 paragraph 3, stipulates that "The base convention signed
22 on 26 November 2002", and in this respect Simfer -- that
23 is to say Rio Tinto -- has not honoured its obligations.
24 You see this?

25 A. Yes, I do: has not honoured its obligations, neither in

14:56

1 terms of the retrocession or the feasibility study.

2 Q. So the President had access to this legal opinion, and
3 this is what had been received in February 2008. And
4 you said at the time that this was not an important
5 person.

6 A. No, the content is not the same. Mr Sakho believed that
7 the decree on the concession should not have been
8 granted to Rio Tinto. And the major difference here is
9 that I did not approve the approach because I believe
10 that it was a parallel approach by Mr Sakho, who was not
11 carrying out his obligations when he was going out and
12 doing studies for the President's office. To what end
13 was this being done?

14 Q. In this report there's no mention of the decree. On
15 page 3 in paragraph 2, reference is made to the decree
16 of March 30th. And in the last paragraph under this
17 section -- and here we're at the bottom of page 3 -- it
18 says:

19 "In any event, there is no legal argument that could
20 justify absolving the company of its obligation to
21 retrocede."

22 It goes on to say that the company is not convincing
23 when it makes its appeal.

24 So you will agree with me that on the basis of this
25 legal opinion, the concession, the convention and the

14:58

1 March 30th 2006 decree were not granted in accordance
2 with the law?

3 A. You have noted the acts that are being invoked here
4 under the then Mining Code. But as I say -- and I said
5 then -- in addition to the Mining Law, there were the
6 mining conventions. Each partner had to sign a mining
7 convention with the state. And based on the specific
8 characteristics, based on the size of the investment,
9 based on the size of the deposit, each mining convention
10 could grant more or less significant advantages that are
11 not necessarily explicitly set out in the Mining Law.

12 This is the whole purpose of the convention.

13 Otherwise, if somebody wants to, say, develop an iron
14 ore mine, they would just come along and they would sign
15 an agreement, they would just be given a copy of the
16 Mining Code. But the law has to be implemented in
17 accordance with the real facts.

18 This is why committees are set up to review mining
19 conventions, to make sure that nothing too much has been
20 given, or maybe too little was given; that, you know,
21 there hasn't been too much of a departure from the law.

22 Q. Will you agree with me when I say that the position of
23 the inter-ministerial committee in early December was,
24 "We need to negotiate with Rio Tinto, we need to
25 negotiate the retrocession"?

15:00

1 A. Yes, that was the committee's mission. And I can say
2 the government was starting to feel harassed by
3 Rio Tinto. Rio Tinto had the concession and it had
4 these advantages, [it] had a deposit to develop, and we
5 were still waiting. We needed to clarify the situation,
6 we needed to know what the real situation was and what
7 needed to be done in order to advance on this.
8 Companies cannot simply freeze mining resources; either
9 it develops to operate or it has to return it. And this
10 was the whole raison d'être of the committee.

11 Q. Could you please turn to tab 31. This is document
12 [C-]181. This is a letter from Rio Tinto dated
13 September 30th 2008, addressed to Dr Nabé, who was
14 Minister of Mines.

15 A. It's not what I see.

16 Q. We're under tab 31.

17 A. Yes, I see it.

18 Q. This is a letter from Rio Tinto sent to the Minister of
19 Mines. In the middle of the page, paragraph 4, that
20 begins:

21 "Through correspondence and the discussions held
22 over the last few months, we ..."

23 "We" being Rio Tinto.

24 "... have noted that the major concerns of the State
25 are: ..."

15:02

1 Then four points follow. One is:

2 "The rebalancing of the convention so that the
3 Republic of Guinea and its peoples can fully benefit
4 from the exploitation of these resources in the short
5 term and in the long term."

6 Secondly, so this is the second concern of the
7 state:

8 "... Rio Tinto intends to 'freeze' the Simandou
9 resources ..."

10 Third concern:

11 "... Rio Tinto has not carried out all of its
12 obligations under the Convention and the Concession ..."

13 And last concern:

14 "... Rio Tinto controls too large a share of the
15 Simandou resources and must return part of the zone it
16 actually holds or agree to work ... with a third party."

17 So this is Rio Tinto's summary of the government's
18 position. Do you agree with this summary? Does this
19 reflect your government's concerns at the time?

20 A. I cannot answer this question. It's up to the Minister
21 of Mines to respond to these questions in detail.

22 Q. You were Prime Minister at the time --

23 A. Yes. I had some very major political issues to handle.
24 And clearly the government's policy was to ensure that
25 partners comply with their commitments, that projects

15:04

1 advance, to avoid the freezing of resources. All this
2 comes under the heading of mining policy. Now, whether
3 it's done as a joint venture or not, this is a technical
4 detail that is handled by the department itself.

5 Q. Do you know that Mr Nabé said that you were involved in
6 a meeting with him and the President in September 2008
7 to discuss the BSGR situation and Rio Tinto?

8 A. I don't clearly recall such a meeting. Of course,
9 I can't rule out the fact that I was at the President's
10 office to discuss this situation, as were other
11 ministers, but I don't remember a formal specific
12 meeting on this very topic. But he could come in and
13 consult the President while he was there. This could
14 have happened. I had 36 ministers, so this could have
15 happened.

16 Q. If we are to assume that Mamadie Touré was present at
17 this meeting, do you recall such a meeting?

18 A. No, I do not have such recollection. But it would be
19 Mr Nabé who would know whether he was called to discuss
20 this case with Mamadie Touré; it's up to him to say.

21 Q. You do not recall having yourself called Mr Nabé to
22 summon him to the presidency?

23 A. No. I cannot summon him to come to the presidency.
24 I can summon him to come to my office; or if the
25 President tells him to come in my company, then of

15:07

1 course we can inform him of that.

2 Q. Did you do that?

3 A. No, I don't recall having done that.

4 THE PRESIDENT: You say you don't remember. Are you ruling
5 it out, or you simply do not have any recollection? In
6 other words, you don't recall having done it or not
7 having done it?

8 A. I can't rule it out entirely because this is the sort of
9 thing that could have happened. But quite honestly,
10 I simply do not remember. So I don't want to risk
11 saying anything just for the sake of saying something.

12 MR DAELE: Do you recall having called Mr Nabé to pass on
13 either messages or instructions on the BSGR/Rio Tinto
14 situation?

15 A. No. But I believe that most of the messages were
16 exchanged in a standard way. I believe I probably
17 called him to ask him how the inter-ministerial
18 committee's work was advancing, because he was not the
19 President but he was Minister of Mines, and so it was
20 his dossier that was being reviewed.

21 Q. But it was not in order to pass on any directive or
22 instruction from the President?

23 A. But any directive that I pass on is from the President.

24 Q. But not from the Council of Ministers?

25 A. The Council of Ministers sits and deliberates on behalf

15:09

1 of the President.

2 Q. But were these instructions or directions coming from
3 the presidency or from the inter-ministerial committee?

4 A. The committee receives instructions; it does not issue
5 them.

6 Q. The President instructed the inter-ministerial
7 committee?

8 A. I don't know, but I don't believe so. I am not a member
9 of the committee, and the committee did not draw my
10 attention to any such thing. And its purpose was very
11 clear: it had to clearly review and clarify the
12 situation.

13 I would like to make something clear for everybody's
14 understanding. My government was in a hurry. There was
15 a great deal of social upheaval and political upheaval.
16 Things had to be handled very quickly to move forward.
17 There was this type of pressure that was being felt at
18 all levels of government.

19 The committee, as you saw, included the Minister of
20 Mines, the Minister of Employment, the Minister
21 Responsible for the Environment, the Minister of
22 Justice, so to handle all of the legal aspects. So you
23 can see what it was.

24 Q. So, yes, there was a sense of urgency. And the
25 President was very ill at the time?

15:10

1 A. Yes, indeed. And the urgency of course had to do with
2 that situation, and also there were multiple strikes.

3 Q. You know that BSGR applied for a prospecting permit on
4 Blocks 1 and 2 in early August 2008; in other words,
5 following the presidential decree? So again BSGR made
6 its application to get the permits right after the
7 decree?

8 A. Well, I wondered if there wasn't a cause-and-effect
9 relationship here.

10 Q. Yes, they applied for the permits. To your knowledge,
11 were there other companies or mining developers who
12 applied for these permits?

13 A. To my knowledge, no, because it wasn't the standard way
14 of doing things.

15 Q. In what way was it not standard procedure?

16 A. I already told you: when the President's office has the
17 President issue a decree with informal consultation of
18 legal advisors from various departments, it's clear that
19 the decree is not going to be perceived as being proper,
20 neither by the ministry nor by the other governmental
21 departments.

22 This is why I say that the fact that there was
23 a decree and that BSGR applied right behind, that these
24 two were definitely linked, and obviously one was done
25 because of the other. In other words BSGR's sort of

15:12

1 eagerness may have motivated the adoption of the decree.

2 Q. Would you please turn to tab 29. It's Exhibit C-197.

3 This is a letter from a company called AfriCanada. Do
4 you know this company?

5 A. No, I do not know this company.

6 Q. Do you know they also applied to get these permits?

7 A. No, I did not know that. This is the first time I see
8 this letter. Who is it sent to? The addressee is not
9 indicated, nor is it signed.

10 Q. I can confirm that this document was produced by the
11 Guinean Government, for information.

12 A. Regardless of the source, all I can say is this is the
13 first time I see it, and I simply observe that it is
14 neither signed, nor is the addressee indicated. And
15 again, as far as I'm concerned, I am seeing it for the
16 first time.

17 Q. Would you please go to tab 34.

18 A. I have it.

19 Q. This is Exhibit C-94. This is a letter from
20 Minister Nabé. In this letter he talks about the
21 procurement of the new prospecting permits in the
22 Simandou zone. So it concerns BSGR's application to
23 receive these permits.

24 You say that this application is illegal, but your
25 Minister of Mines in here, in this letter, is writing to

15:15

1 BSGR.

2 A. What did I say was illegal?

3 Q. You said five minutes ago that BSGR's application for
4 permits was illegal.

5 A. No, no, don't put words in my mouth, I did not say it
6 was illegal. I said that BSGR certainly did something
7 in order to get the opportunity to apply for the
8 permits. That's what I said, maybe using other words.

9 Q. I'm sorry, I will check the transcript afterwards.

10 THE PRESIDENT: What the minister said is that the decree
11 that was withdrawing Rio Tinto's concession in July was
12 not proper, and then you established a link with BSGR's
13 application.

14 A. Thank you very much. That's exactly it.

15 MR DAELE: We'll see. Whatever the case, this is a letter
16 from Minister Nabé to BSGR in the framework of the
17 application for new permits. In the third paragraph it
18 says:

19 "... the government must look at the potential
20 consequences of [such] decisions ..."

21 Therefore it says:

22 "Within that framework, we are asking you to kindly
23 let us have in writing: ..."

24 And here we see five points. The government is
25 asking for information from BSGR:

15:17

1 "- the detailed results of your work on the permits
2 which have already been granted in the Simandou zone;

3 "- evidence of your technical capacity and financial
4 capacity ...

5 "- your commitment to face in lieu and in place of
6 the Republic of Guinea, financially speaking, against
7 any arbitral or judicial proceedings that Guinea would
8 be involved in in relation to the granting of a research
9 permit ...

10 "- confirmation of the implementation of a guarantee
11 or a surety ... [and]

12 "- the commitment to pay a bonus of
13 20 million USD...

14 So it's your government, or at least the Minister of
15 Mines, Nabé, who is asking BSGR whether they are ready
16 to fulfil those five terms. Did you know about this
17 letter?

18 A. I confirm that this is my government and Nabé was my
19 Minister in Charge of Mines. But you will note for
20 yourselves that the Prime Minister is not Cc'ed. And
21 this is how it works: ministers do not ask the Prime
22 Minister the authorisation to brief. They act according
23 to the law, according to regulations. And fortunately
24 for us, Mr Nabé is alive and kicking, and could easily
25 answer any questions relating to his acts, if you so

15:19

1 wish.

2 But what I can say quite honestly is my perception
3 when I see a letter such as this one, I remember what
4 I had myself done in the past, when I was Minister of
5 Mines. When the President asked me to help BSGR,
6 I couldn't give them Simandou. So when I, former
7 Minister of Mines, read this memo, I think that Mr Nabé
8 is probably faced with pressure from BSGR, who say that
9 at all costs they want to have Blocks 1 and 2, "And if
10 you give them to me, even if there is a lawsuit, I am
11 ready to be there in lieu, in place of the government".
12 This is how I interpret this letter.

13 Q. Well, that's your interpretation; you don't know for
14 sure?

15 A. No, I don't.

16 THE PRESIDENT: This interpretation is based on the mention
17 of the financial consequences of arbitral or judicial
18 proceedings, or are there other elements that lead you
19 to believe that Minister Nabé, when he wrote this
20 letter, was under pressure?

21 A. It is precisely when he mentions judicial and financial
22 consequences. Because if you do things legally, you
23 should not be concerned with legal and financial
24 consequences. I presume that he is being pushed to
25 adopting an act which might trigger legal and financial

15:20

1 consequences, and he is protecting himself here. This
2 is my understanding. I'm not interpreting. I'm just
3 telling you I've never seen this letter before today.
4 But if you ask me about it, I can tell you how, as Prime
5 Minister and former Minister of Mines, I understand this
6 letter.

7 MR DAELE: But Mr Nabé himself never told you that this list
8 was there to protect him against the pressure of BSGR or
9 the pressure of the President?

10 A. No, he didn't tell me. But we're not going to try and
11 launch into a theatre play. There is a story behind all
12 this, and the reality is constant.

13 Q. Well, I told you that Mr Nabé himself is saying that
14 these terms were discussed within the inter-ministerial
15 committee.

16 A. This is normal, it's the purpose of the committee. It's
17 normal that they should express ideas and it's normal
18 that committees should discuss these ideas and it's
19 normal that he should write to a company without saying
20 a word to the Prime Minister.

21 Q. So it's not Mr Nabé who is under pressure; it's the
22 entire committee?

23 A. No, no. I repeat: do not jump to conclusions. This
24 matter is much more complex than you say.

25 First and foremost, it's the responsibility of

15:22

1 Mr Nabé; it's not the committee's responsibility. It's
2 not because Mr Nabé cannot deal with this matter all by
3 himself that it was felt that it should be widened to
4 other ministers. It is his responsibility, it's his
5 file. He will tell you himself, if you meet him one
6 day.

7 Q. Well, we might; who knows?

8 Could you refer to [tab] 36, please. It's C-95.
9 This is BSGR's response to Minister Nabé's letter.

10 A. Yes.

11 Q. An answer to the letter that we just saw a moment ago
12 with the terms. In that letter BSGR confirms that it is
13 ready to fulfil the terms in question and furnishes the
14 required documents.

15 You see on the last page, below the signature of
16 Mr Avidan, the attached attachments: the results of the
17 geological research; the evidence that there is
18 financial capacity as proved by Ernst & Young; copies of
19 quarterly reports; and copies of presentations during
20 the symposium.

21 A little further up on the same page is mentioned
22 payment of a bonus:

23 "... in case there is an exploitable discovery, the
24 bonus will be at your disposal for the achievement of
25 development projects."

15:25

1 This is the first paragraph. And the second one
2 talks about arbitral and judicial proceedings, where
3 BSGR confirms that it is ready to bear the costs and
4 expenses. You can see that?

5 A. Yes.

6 Q. [Tab] 37 --

7 A. 36 is finished?

8 Q. [Tab] 37. It's C-179. This is Minister of Mines Nabé
9 sending a letter to you, the Prime Minister, and also
10 the Minister of Justice. On the last page it is said,
11 just before the chapter called "Recommendation", that:

12 "Some of these terms have already been met by
13 BSGR Guinea through a letter sent to the Minister ..."

14 This is the letter we've just looked at. And the
15 Minister of Mines sends you a note saying that BSGR has
16 already met some of these terms and conditions imposed
17 by the government. And also at the bottom it is said:

18 "Attachments: Copies of the various exchanges of
19 letters."

20 So you are given the file.

21 A. Yes, but read the first recommendation:

22 "We cannot complement at this stage granting the
23 permits ..."

24 Q. I agree with you. But it's not at this stage that the
25 permits were indeed granted?

15:27

1 A. Yes, but this is the way the government operates. So
2 far, no problem.

3 Q. So at that stage the government or the Minister of Mines
4 is not yet ready to grant the permits to BSGR?

5 A. No. And that is 10th November.

6 Q. May I show you [tab] 39. This is a technical memo of
7 the same commission. This is C-187. So we've already
8 seen a legal memo from that commission, and now we are
9 seeing a technical note. You see on page 3 again there
10 is the signature of Mr Bangoura, the president of the
11 commission within the Ministry for Mines,
12 14th November 2008.

13 At the bottom of the second page we've got
14 number 17, dated "October 2008". Can you see this
15 paragraph?

16 A. Yes, I can see it.

17 Q. So the last paragraph, under number 17, the Technical
18 Committee says:

19 "... RIO TINTO presents a report ... together with
20 a pattern for voluntary retrocession of 130 ... [square
21 kilometres] ... equivalent to 17% of its surface, in
22 lieu and place of 50% ..."

23 A. Yes.

24 Q. "... expected by the Mining Administration."

25 A. Quite so.

15:30

1 Q. So we're in October. Even at that time, Rio Tinto was
2 not ready to retrocede 50% of its zone?

3 A. Yes. Until the end, until the very end.

4 Q. They were ready to retrocede only 17%; do you agree with
5 me?

6 A. Yes, that's why it was inadmissible.

7 Q. So that's mid-November. Let me show you [tab] 41. It
8 is document C-189. So this is a Rio Tinto letter dated
9 3rd December 2008 to Mr Nabé. After refusing to
10 retrocede 50%, it sends this letter on 3rd December, and
11 the first paragraph says the following:

12 "Rio Tinto is presently carrying out a general
13 review of its expenses on this project in the light of
14 the progress of present conditions. Three main factors
15 mean that the Simandou Project is a high-risk project.
16 Firstly, the uncertainty linked to the withdrawal by the
17 State of our Concession. Secondly, an investment amount
18 which is very high and requires an important resource in
19 iron ore and a wide-scale project. Thirdly, the
20 challenges raised by the economic slowdown throughout
21 the world which make even more acute the questions
22 raised by uncertainty as to the withdrawal of our
23 concession ..."

24 The second paragraph, here it announces:

25 "While we are reviewing the Project, and in light of

15:33

1 the uncertainty concerning our Concession, and the need
2 for important resources in ore and the global economic
3 situation, the expenses for the Simandou Project are
4 going to be reduced in 2009 for all of the non-essential
5 work."

6 Therefore Rio Tinto is informing the government that
7 it is going to cut down its investments in those zones,
8 Blocks 1 to 4.

9 In the last paragraph of the first page, it refers
10 again, it says:

11 "Furthermore, the worldwide economic slowdown has
12 enhanced the problems ..."

13 Then on the second page, third paragraph, it says:

14 "As of December 2008, Rio Tinto will cut down
15 significantly the number of subcontractors ... for the
16 Simandou project ..."

17 Have you seen this letter before?

18 A. Yes.

19 Q. How did you interpret it?

20 A. As any responsible government, we didn't have to wait
21 for the answer. On 4th December we ordered the Minister
22 of Mines to take all necessary measures, legal measures,
23 in view of the situation.

24 Q. So the government on the next day, the ministerial
25 committee --

15:35

1 A. The Council of Ministers.

2 Q. The Council of Ministers -- I apologise -- following
3 this letter, decided on the very next day to answer --

4 A. Not this particular letter; seeing the evolution of the
5 process, what was at stake, the strengths and
6 weaknesses, constraints and freedoms, the report of the
7 inter-ministerial committee, et cetera.

[PROTECTED]

[REDACTED]

- 3 Q. What pressure did BSGR exert between July 2008 and
4 4th December 2008? What pressure?
- 5 A. Pressure -- the decree dated July 2008 is a decree that
6 I, as Prime Minister, was not aware of. And what
7 Minister Nabé will tell you, he will tell you whether he
8 was aware of it or not. But before that decree, there
9 was a letter from the minister secretary, probably
10 helped by the legal counsel at the time, erroneously;
11 for what reason, you could try and establish this. But
12 he wrote the letter to Rio Tinto to warn that the rights
13 would be withdrawn. You have a lot of documents; maybe
14 you do have these letters at hand.
- 15 Q. What rights does the July 2008 decree grant BSGR?
- 16 A. It grants BSGR an opportunity. Don't forget that the
17 MOU that BSGR sought to obtain from the start was to
18 have part of Simandou as a priority in case there was
19 a retrocession. So if a decree frees part of Simandou,
20 don't you see the interest for BSGR?
- 21 Q. Did the MOU influence this debate?
- 22 A. What debate?
- 23 Q. To grant the rights to BSGR. It was on the basis of the
24 MOU of 20th February 2006?
- 25 A. No. You need understand. The MOU, I told you, was just

15:43

1 a disguise for the circumstances in 2005/2006. Now, in
2 2008, we were faced with a different reality. BSGR
3 continued to do some work on the permits it had in North
4 and South Simandou, and that is what we understand
5 today; without, of course, renouncing the other parts of
6 Simandou that it wished to acquire. This is constant.

7 Q. So the presidential decree dated July 2008 didn't grant
8 rights to BSGR; it just created an opportunity for BSGR
9 to apply?

10 A. Yes.

11 Q. And this opportunity was also open to other mining
12 promoters?

13 A. No, I've already told you that it wasn't the case. The
14 proof of the pudding is that nobody else obtained it.
15 You can't say that BSGR was the best offer, the most
16 traditional, the most knowledgeable; no. It's made to
17 measure, made to measure; it was tailor-made.

18 Q. So the conditions that were prepared by the minister
19 were tailor-made?

20 A. No, this is not the same thing. The inter-ministerial
21 committee looks at facts and relays facts and reaches
22 conclusions. What I'm telling you now is that such
23 conclusions are too well suited to the interests of
24 BSGR. Is it just by accident that it corresponds to
25 what BSGR has been seeking for three/four years?

15:45

1 Q. Well, then after the decision at the Council of
2 Ministers meant Blocks 1 and 2 would be removed from
3 Rio Tinto, that very Council of Ministers decided to
4 grant the rights to BSGR. It's the same council.

5 A. No, it's not the same council. It's the minister. The
6 minister was re-established in his duties. And once
7 a zone is freed up, it is the minister's responsibility,
8 on the basis of studies, to attribute -- to grant the
9 permit to one operator or another.

10 Q. Yes, but you're saying that that is not the same council
11 that granted the rights to BSGR? It wasn't the council,
12 it was the minister himself, Minister Nabé personally?

13 A. Well, the council gave directives. The council is wont
14 to give directives. And you read the minutes from that
15 council meeting: it ordered the minister to use all
16 legal means in order to restore the rights of the state
17 on Mount Simandou in connection with Simfer.

18 Q. And you took part in that council?

19 A. I chaired it.

20 Q. How many members in the council?

21 A. Well, if no one is absent, 36.

22 Q. 36, yes. It could even be 37. And do you remember
23 whether that particular council meeting, everybody
24 attended, more or less?

25 A. Well, I can't say, but the minutes can tell us. The

15:47

1 minutes show the people present, those who sent in
2 apologies.

3 Q. Well, unfortunately we haven't got that document. We
4 have asked for it, but we haven't received it, we
5 haven't obtained it.

6 So would you remember from memory whether everybody
7 had attended the Council of Ministers on that day?

8 A. Well, in any case the council is usually attended by
9 everyone. The most people I saw absent once was six
10 ministers, but that's the maximum number of absentees
11 that I've ever seen. It's usually two or three. But
12 a subject concerning a particular ministry cannot be
13 discussed in the absence of that minister.

14 Q. Would you know if any of the members of the council was
15 contacted by the President or by Mamadie Touré before
16 taking a decision?

17 A. I don't know. No minister has ever told me anything.

18 Q. I have almost concluded.

19 You say that towards the end of the regime of
20 President Conté -- and I have reached now
21 paragraph 46 -- you say that at one point in March 2009
22 you were accused of mismanagement of the mining fund,
23 but that after eleven days the case was dismissed, the
24 charges brought against you were dismissed.

25 Do you remember having recognised the facts at the

15:49

1 time and actually paying, reimbursing, \$2.5 million at
2 the time? Does that ring any bell? And the reports in
3 the media?

4 A. No, this is not a question that should be arising here.
5 But since you're bringing it up --

6 Q. Well, you said this in your own statement once: that you
7 were imprisoned and then you were released, and these
8 were the circumstances for your release.

9 A. Fine, then I will give you an answer. First of all, let
10 me tell you that at no time did I recognise having
11 mismanaged the mining fund, at no moment at all.

12 Q. But you know that other ministers and other witnesses
13 have stated in their own testimonies that you have
14 recognised that, that you have recognised that
15 responsibility?

16 A. No, no. The evidence is there to show that. What
17 I told the criminal investigation police in my country
18 is: the mining fund is monies for geological research,
19 geological exploration work, small amounts to buy
20 probing equipment, fuel, geological equipment. I took
21 the initiative of distributing those amounts to all the
22 ministry services as support budgets, backup budgets;
23 this was for services that had no budget of their own.
24 And with those amounts I was able to buy some
25 60 vehicles for the ministry -- they are still there to

15:51

1 be seen -- I equipped the conference room, bought the
2 computers, et cetera.

3 And even the one who was accusing us actually
4 appeared on television saying that we were not guilty.
5 He said that, "What Prime Minister Souaré, Nabé and
6 others, what people say that they mismanaged is not
7 money that went into their pockets". He declared that
8 solemnly on television.

9 Q. Well, would you take a look at tab 72, please,
10 Mr Kanté's testimony.

11 A. Who?

12 Q. Mr Kanté, Ahmed Kanté, in this particular proceeding.
13 Number 6, towards the middle of the paragraph, he says:
14 "We were asked to sign an act recognising the facts
15 that we were approached for and a commitment to
16 reimburse. Unlike the others who were charged,
17 I refused and I continued denying these accusations."

18 Well, on this basis I am saying there are witnesses
19 in this arbitral proceeding who have testified that you
20 signed that recognition.

21 A. Well, let me tell you this. At the time there was a big
22 to-do in the country, and Prime Minister Souaré was not
23 just any person. So we were all called over, and the
24 President said, "Do help me, we're going to try to get
25 out of this. You will be paying for part of this and

15:53

1 I will release you, Mr Sylla, Mr Souaré" -- and we
2 accepted -- "Mr Nabé".

3 Q. And you paid how much?

4 A. Wait, wait, wait. First of all, the principle involved.
5 We were told, "Pay a little bit, and then I will
6 announce to the population that you are released".
7 There was nothing technical about that; this was
8 political.

9 Mr Kanté said he wouldn't pay. Mr Kanté was
10 a friend of President Dadis. President Dadis called me
11 and he said, "Mr Prime Minister, tell Mr Kanté that I'm
12 ready to give him 200 million for him to pay, and we
13 settle that matter". Because I told him, and he said he
14 would not want to do so; that he preferred justice. But
15 you know how justice works here. It was the President
16 accusing himself who asked me this.

17 Q. So the President said that he would give you 2 million
18 for you to reimburse the 2 million. Or did
19 I misunderstand you? The President said he was ready
20 to -- oh, for Kanté, he was ready to loan him 2 million?

21 A. Yes, that's it, to Kanté. The President was ready to
22 give him the 2 million to pay and he said, "We will turn
23 the page". But Mr Kanté said, "No, we need justice".
24 And the consequence of that was that, under totally
25 legal circumstances, he spent a whole year behind bars.

15:54

1 Q. How much did you have to pay yourself?

2 A. I believe I paid 200 million, which I totally recovered.

3 I was given back everything.

4 Q. 200 million what, dollars?

5 A. No, 200 million Guinea francs. That's about \$20,000.

6 Q. Oh, because there was an article in BBC News,

7 2nd April 2009, mentioning \$2.5 million.

8 A. Well, really that's far too much. That's impossible.

9 You can't even have that much.

10 In any case, this was political and military
11 gymnastics. There was no mismanagement, no
12 embezzlement, no recognition of guilt. That's the way
13 it happened.

14 Q. Well, I'm almost through. I just have a few short
15 questions.

16 Did you receive yourself any bribes from BSGR
17 personally?

18 A. No.

19 Q. Do you know of any other officials who received bribes
20 from BSGR?

21 A. No.

22 Q. Do you know whether the President was bribed?

23 A. Well, you would have to ask him.

24 Q. Does that mean yes or no? Does that mean yes or no?

25 A. Well, that means I do not know. How can I possibly

15:56

1 know?

2 Q. Were you approached by BSGR in order to intervene in
3 their favour?

4 A. What?

5 Q. Were you approached by BSGR in order to intervene in
6 their favour?

7 A. When? Where?

8 Q. Well, during your term of office as Minister for Mines
9 or as Prime Minister.

10 A. As Minister for Mines, they tried to charm me, they put
11 forward all their requests, and they were indeed
12 charming at the outset. They wanted to move fast, and
13 I, as Minister for Mines, was interested in that,
14 obviously, and I fell for their charm. But later
15 I discovered that they had a different agenda and that
16 they had a different channel: the presidency.

17 Q. Do you know whether Ismaël Daou or [Aboubacar Bah] at
18 one point paid any bribes to Guinean officials?

19 A. Well, I don't know even know these people, I didn't even
20 know them.

21 Q. Well, what decision or what directives or what direction
22 President Conté would not have taken, had it not been
23 for the influence of Mamadie Touré?

24 A. I can't understand your question.

25 Q. What direction would President Conté have not taken, had

15:58

1 it not been for the influence of Mamadie Touré?

2 A. Well, he would never have called me to say anything
3 about BSGR.

4 Q. And what is the decision that you would not have taken,
5 had it not been for the influence of Mamadie Touré?

6 A. Well, I would not have signed a memorandum of
7 understanding, because I have never done that for
8 anyone, not even for Rio Tinto.

9 Q. And finally, what decision would your government have
10 not taken, were it not for Mamadie Touré's pressure?

11 A. Well, here things are getting a little bit involved,
12 because in my government this was the technical failure
13 from Rio Tinto, concomitant with the aggressive requests
14 of BSGR, the two at the same time.

15 MR DAELE: Well, I have no further questions. Thank you
16 very much.

17 DR SOUARÉ: Thank you.

18 THE PRESIDENT: Thank you.

19 Have you any questions in re-direct, sir, or should
20 we have a break now?

21 MR OSTROVE: For the time being, I do have several areas of
22 questioning. So we could take a break.

23 THE PRESIDENT: Yes, if it is reasonable, then we should do
24 so, because we began quite some time ago.

25 So, Mr Prime Minister, again the same rule for this

16:00

1 break, sir.

2 We shall be taking a 15-minute break before we
3 resume -- 10 minutes, perhaps? I can see time flying
4 by.

5 MR OSTROVE: Mr Prime Minister, are you still strong enough
6 to continue if we take a 10-minute break?

7 THE PRESIDENT: Perfect. Thank you.

8 (4.01 pm)

9 (A short break)

10 (4.14 pm)

11 THE PRESIDENT: Are we ready to resume?

12 MR OSTROVE: Yes. Thank you very much, Madam President.

13 Re-direct examination by MR OSTROVE

14 Q. Mr Prime Minister, I only have a few questions to ask of
15 you concerning the cross-examination that you have just
16 been through. I should like to take them rather in
17 chronological order, if I may.

18 So let us take first of all that celebrated mission
19 report that you will find in tab 7 (R-175). You were
20 asked a few questions on that mission report.

21 A. Yes.

22 Q. You cast some doubt on the document, and my adversary
23 said that this was a document produced by Guinea.

24 If that document indeed existed in the Guinea
25 records, in your opinion, why would Soriba Bangoura have

16:15

1 prepared this report?

2 A. Well, first of all, Mr Soriba Bangoura is the deputy
3 director, and the director exists, and he is Mr Ibrahima
4 Kalil Soumah. So if the report does exist, then
5 certainly the purpose would be to protect from any
6 possible inquisition from the ministry.

7 In any case, it's not in the usual convention or
8 traditional established forms of the department. If he
9 was contacted directly by the presidency or by Mamadie
10 Touré, he could have done that mission and prepared that
11 report. But there was no reason to deposit that with
12 the minister who would not have ordered that mission.

13 Q. And on that mission, sir, you said -- and I think I am
14 quoting now what you said on the organisation of the
15 meeting with the presidential helicopter:

16 "I would not put it past Mamadie Touré, considering
17 the situation at the time, for her to try and get that
18 organised."

19 What do you mean, "considering the situation at the
20 time"?

21 A. Well, what I meant is that the President, given his
22 failing health, would not be able to control every
23 single detail, and the people in his entourage, those
24 closest to him, would be the best to know what his
25 strong points and weak points were at the time.

16:17

1 Q. What was the situation of the health of the President in
2 this month of December 2005, to your knowledge?

3 A. Well, the President had been ill since 2003.

4 Q. Ill which way?

5 A. He was ill; his state of health was not good. In the
6 presidential campaign of 2003, well, he didn't go
7 anywhere. He sent some people on missions, but he never
8 left Conakry.

9 Q. Thank you.

10 Again on this mission report, this mission with the
11 presidential helicopter, Soriba Bangoura, would that be
12 the same Soriba Bangoura that we can find at the end of
13 your cross-examination bundle, behind tab 26 (C-176), where

we

14 see that there's the setting-up of the Technical
15 Committee in order to review the mining titles granted
16 to Rio Tinto? There are several Bangouras, including
17 Soriba Bangoura.

18 A. Yes, it's exactly the same one. It says director
19 general -- deputy director general.

20 Q. And Annex [C-]187, the technical note on Simfer, it says
21 "PO. President of the Commission P", "A member", and
22 it's signed by Soriba Bangoura?

23 A. It's exactly the same person. It's the committee with
24 the list that he signed for the President.

25 Q. Now, one small detail, but just to make sure that we

16:19

1 clarify something. Mr Daele asked you some questions
2 having to do with paragraph 27 of your own witness
3 statement.

4 If you would kindly refer to your own witness
5 statement, paragraph 27, where the MOU is being
6 discussed, the signature and the ceremony following the
7 signature. You say that you don't remember who was
8 representing BSGR, but you do know that Mr Ibrahima Sory
9 Touré was present. When Mr Daele read the following
10 sentence, there were a few words he skipped. I don't
11 think he did that on purpose. But you said this:

12 "I understood then that he was the Guinean contact
13 for BSGR ..."

14 And the words skipped were:

15 "... with the administration and that he was not
16 hiding behind the fact that he was the brother of
17 Mamadie Touré."

18 When you say that you understood at the time that he
19 was "the Guinean contact ... with the administration",
20 what did you understand Mr Ibrahima Sory Touré's role to
21 be?

22 A. Well, I understood that wherever BSGR went, he was
23 there, he was introducing BSGR.

24 Q. And when you said that you understood at the time that,
25 "he wasn't hiding behind the fact that he was Mamadie

16:20

1 Touré's brother", how did you understand that?

2 A. Well, he told me, he announced that himself.

3 Q. And to you, what is the relationship between his being
4 the contact with the administration and the fact that he
5 would invoke being the brother of Mamadie Touré?

6 A. Well, that meant that he is not just an anonymous
7 person. He is surrounding him with his sister's aura
8 for his own work.

9 Q. But the fact of being the brother to the fourth wife of
10 the President --

11 A. Well, it opens a few doors.

12 Q. Just being the brother?

13 A. Yes. That is called trafficking in influence.

14 Q. Let us now go back to the series of MOUs at the
15 beginning of your cross-examination, and on what you
16 call that presidential law.

17 For you as Minister of Mines, and also in other
18 ministries, does an investor receive a different
19 treatment if that investor is introduced by the
20 President of the Republic, as compared to an investor
21 who doesn't have that kind of backing?

22 A. Well, obviously so.

23 Q. Why?

24 A. Because of influence there again. Somebody who comes
25 very simply is very different from someone who is

16:22

1 recommended by the authorities.

2 Q. How does the recommendation from the authority --

3 A. Well, in the sense of facilitating things: facilitating
4 procedures; facilitating access, to the extent possible;
5 granting, to the extent possible, what is being
6 requested.

7 Q. If you can then go back to tab 5. That's R-173. It
8 begins with a letter dated 24th November 2005. In the
9 second paragraph of the letter, mention is made of the
10 MOU:

11 "This MOU aims at enabling the promotion and
12 development of iron ore deposits in SIMANDOU, as well as
13 the corresponding infrastructures ...", et cetera.

14 When this document speaks of "iron ore deposits in
15 SIMANDOU", at the time this meant what?

16 A. At the time, when things are stated in that way, that
17 would mean Mount Simandou and its surrounding areas;
18 it's the whole zone. This is being deliberately
19 ambiguous. This deliberate ambiguity has always been
20 introduced by BSGR. Little by little, we've had to
21 spell things out. This is the reason why there was
22 a delay in putting together the MOU.

23 Q. Agreed.

24 Then turning now to [tab] 10 (C-208),
25 6th January 2006. This is another MOU. The cover

16:24

1 letter is practically the same:

2 "We have the honour of transmitting to you the
3 proposal for an MOU, appended hereto ..."

4 The goal is:

5 "... to enable the promotion and development of iron
6 ore deposits in Simandou North and South, as well as
7 infrastructures ..."

8 So here, the "iron ore deposits in Simandou North
9 and South", what would the difference be there?

10 A. The difference is that we're now getting closer to the
11 areas that are North and South, but it's still not being
12 mentioned. There is still a certain degree of ambiguity
13 that persists.

14 Q. What is the ambiguity -- could I please be allowed to
15 finish the question. What is the ambiguity when saying
16 in the "iron ore deposits in Simandou North and South"?

17 A. Well, it's not precise, because Blocks 1 and 2 is North,
18 Blocks 3 and 4 is South. So when you say "North and
19 South Simandou", there is still that lack of clarity, on
20 purpose, deliberately. Otherwise one would have to say
21 "north and south of Simandou", to clarify things.

22 Q. Well, between the 6th January draft and the final draft
23 of 20th February 2006, BSGR obtained a few mining
24 titles, mining permits. Do you remember the permits it
25 got on 6th February 2006?

16:26

1 A. Well, I can't remember all the permits. But it was
2 outside Simandou itself. It was in the Macenta zone,
3 Lola, N'Zérékoré, in those areas, if my memory serves me
4 well.

5 Q. If I can be allowed to show you on the screen a map of
6 that zone (R-150). The prospection permits obtained by
7 BSGR on 6th February 2006, do you remember what they
8 pertain to? Is it Simandou North, Block 1, Simandou
9 North, Block 2, Simandou South, Block 3 or Simandou
10 South, Block 4?

11 A. Well, it's outside that. It's the zones surrounding
12 that.

13 PROFESSOR VAN DEN BERG: To avoid confusion, please,
14 Mr Prime Minister, do you call that "Central Simandou",
15 as opposed to "North Simandou" and "South Simandou"?

16 A. Yes, it's the whole of the envelope. The whole of the
17 envelope is Simandou. Well, there is the region north
18 of Simandou and south of Simandou, south-west of
19 Simandou, where they had permits in that particular
20 area. But not along that axis.

21 MR OSTROVE: So if I turn to the next page of R-150, you
22 still have Blocks 1 and 2 here and Blocks 3 and 4 here,
23 but you have a zone that is called "North Simandou" and
24 "South Simandou".

25 A. Yes, indeed. And these are not on the mountain range.

16:29

1 Q. So the permits they obtained on 6th February --

2 A. It is precisely those areas.

3 Q. So could you be more specific than just saying "those
4 areas"?

5 A. Well, North Simandou, South Simandou. These were
6 permits granted in order to enable them to start
7 working, without in any way disturbing Rio Tinto in its
8 concession.

9 Q. And it was whose idea to get permits in those two areas,
10 North Simandou and South Simandou?

11 A. Well, it was a proposal of the CPDM, at my behest,
12 because I had already been instructed by the President
13 to help them in their work. But they, instead of
14 waiting for things to happen, they went to the mountain
15 themselves to find something. So something had to be
16 done. I instructed my services to find areas in the
17 zone.

18 Q. If I understood you correctly you said that it was CPDM,
19 at your behest, that proposed North Simandou and South
20 Simandou, right?

21 A. Yes. It was the CPDM that runs the mining registry. It
22 is the CPDM that can say, "Well, there are outcroppings
23 in this area or in this other area, there are
24 occurrences here or there, but these areas are already
25 in the hands of Peter or Paul".

16:30

1 Q. Well, if BSGR had not had the support of the presidency,
2 would they have obtained these permits in North Simandou
3 and South Simandou?

4 A. Well, I don't know whether they would have asked for
5 those. If they asked for them, they would have received
6 them anyway because they were free zones. But I don't
7 think that they would have asked for them, had it not
8 been for the suggestion made by the CPDM.

9 Q. One of the last subjects dealt with during your
10 examination, during the period when there were
11 negotiations with Rio Tinto concerning the retrocession
12 of 50% of the zone under their concession.

13 If I understood you correctly, at the end of
14 November you were involved with negotiation -- I'm
15 sorry, I withdraw the question. Let me reformulate it.

16 Did you participate in the negotiations with
17 Rio Tinto on the retrocession of these blocks?

18 A. No, I was not involved in the negotiations. I gave
19 instructions as Prime Minister.

20 Q. If we go to Exhibit C-179. (Pause)

21 If you'll look at Exhibit [R-239], under tab 44.
22 This was a Rio Tinto letter that was sent on
23 December 11th 2008 and it is Rio Tinto's reaction to the
24 letter sent on December 8th regarding the planned
25 withdrawal, and it annexes a draft retrocession

16:33

1 document. If you could read paragraph 2.

2 A. "I must admit that I was surprised to receive a plan for
3 retrocession, given our very good meetings held recently
4 and particularly the one with the Prime Minister and the
5 high-ranking officials of our Group (Messrs Sam Walsh
6 and Hugo Bagué). We deeply regret that, in spite of the
7 fact that we honoured our obligation, such an action is
8 being considered that can only prejudice the project as
9 a whole and the image of the country."

10 Q. When you read this, do you recall that you were involved
11 in meetings with Rio Tinto regarding the negotiations
12 for the retrocession?

13 A. No, it's not negotiations. I was invited by Rio Tinto
14 to go to the Pilbara mine in Australia, to look at their
15 financial and technical capabilities. And I was
16 involved in promoting the mining sector in London, and
17 Rio Tinto was there represented by some of its top
18 leaders.

19 Q. During your examination you referred to a meeting of the
20 Council of Ministers that was held on December 4th 2008,
21 and you said that the Minister of Mines had been
22 instructed after this meeting, and I don't want to in
23 any way misrepresent what you said.

24 Could you tell us again: what were the instructions
25 given to the Director of Mines after this meeting?

16:35

1 A. Basically to apply the Mining Law, so that the state
2 could have its rights upheld, given the fact that
3 Rio Tinto was refusing to return the blocks that had to
4 be retroceded.

5 Q. The granting of prospecting permits for Blocks 1 [and 2]
6 to BSGR took place on what date; do you recall?

7 A. I believe 9th December, if memory serves. It was right
8 after the Council of Ministers' meeting. But all of
9 these dates I'm saying with some reservation, given the
10 time elapsed.

11 Q. The instructions to take the necessary steps in
12 accordance with the Mining Law, a granting of these
13 permits in a five-day timeframe, was this a standard
14 practice?

15 A. It was a period during which we certainly knew that BSGR
16 was waiting in the hallway, so to speak. As I said
17 earlier, it simply proved that BSGR was pressing to
18 achieve its ambition, ambition that had been expressed
19 as early as 2005 and 2006, and this is the only
20 explanation.

21 Q. Let's now go to tab 36, Exhibit C-[95]. This is
22 a letter from BSGR dated November 6th 2008, addressed to
23 the Minister of Mines.

24 Did you see this letter at the time?

25 A. No, I did not see it at the time.

16:38

1 Q. If you would please look at paragraph 2. It says:

2 "In this regard, we ... draw your attention to the
3 Memorandum of Understanding signed on 20 February 2006
4 between the Republic of Guinea and our Company which
5 provides in chapter 3.2.2.7 that, any Simandou zone that
6 were to become free, would be granted to BSGR in
7 accordance with Research and Operations Permits."

8 A. First of all, you will note that it is overstated. This
9 is not what the memorandum of understanding actually
10 said. The memorandum said that we would offer this on
11 a priority basis to BSGR, they would have a right of
12 first refusal, and here it says it would automatically
13 go to BSGR. So it's not quite the same thing. So the
14 situation is being capitalised upon.

15 It shows simply that BSGR had an objective, and that
16 was Simandou, and everything that was done was done to
17 that end, to accomplish that goal. And this is very
18 clear evidence of that.

19 MR OSTROVE: Thank you, Mr [Prime] Minister.

20 Madam President, I have finished with my questions.

21 THE PRESIDENT: Let me turn to my co-arbitrators to see if
22 they have any questions for Minister Souaré.

23 (4.40 pm)

24 Questions from THE TRIBUNAL

25 PROFESSOR MAYER: Good afternoon, Mr Minister. I have two

16:40

1 or three questions.

2 First of all, the helicopter trip. I am referring
3 to paragraph 14 of your statement, in the following
4 words:

5 "I immediately informed the President Lansana Conté
6 by telephone ..."

7 Earlier you did not say how the President reacted,
8 or I did not understand if you did mention it. So
9 I would like to return to this, because I imagine he
10 could have had one of several reactions: either neutral,
11 "Thank you for informing me"; or he could have been
12 shocked and said, "This is unacceptable, especially with
13 my helicopter"; or conversely, he could have said, "Yes,
14 indeed, this was upon my instructions. And there may be
15 a fourth version and a fifth that you may not recall.
16 But do tell us.

17 A. The President was not apparently shocked. He said to
18 look into it.

19 PROFESSOR MAYER: So he was rather neutral?

20 A. Yes. And under such circumstances, as you do,
21 I understand that even [if] he hadn't instructed or
22 given instructions for this to take place, that was not
23 too far off.

24 PROFESSOR MAYER: For my second question, we need to go to
25 tab 6 of the first volume (C-166). This is the letter

16:41

1 that was sent to you by the director of the CPDM on
2 December 1st 2005. The letter deals with the draft
3 decree granting Simfer a mining concession, et cetera.

4 What strikes me here is the tone of this letter. It
5 goes as far as to say -- given the fact that, as you
6 said, it's coming from somebody who is part of an agency
7 under your ministry, he is talking about:

8 "... [creating] the ... situation that was imposed
9 for 42 years to our country ... No Guinean patriot needs
10 to have such a situation like this reproduced for our
11 country."

12 Is this a normal tone for this type of report.

13 A. What paragraph is this?

14 PROFESSOR MAYER: It's the third paragraph, second half of
15 the third paragraph on page 1.

16 A. "Unfortunately, accepting such a reality would be
17 tantamount to recreating, for this natural treasure, the
18 same inextricable situation that was imposed for [over]
19 42 years to our country as a result of the base
20 convention with CBG, which means that the State could no
21 longer manage its own resources. No! No Guinean
22 patriot needs to see such a situation reproduced ..."

23 It's not shocking, even if it's a bit rough round
24 the edges. He's an engineer, but he's talking about
25 a situation that was well known in the country.

16:44

1 You know that with bauxite, CBG signed a convention
2 in 1963 whereby it was granted the majority of the
3 bauxite resources through a convention, and that company
4 basically concentrated tremendous bauxite resources,
5 close to 2 billion tonnes. And we negotiated throughout
6 my mandate to try to get a rider that would take back
7 part of the bauxite resources, to bring it back into the
8 state's reserves, and to leave a reasonable part to the
9 CBG, the Guinean Bauxite Company.

10 So the spirit of the letter was simply to not give
11 to Rio Tinto the whole of the Simandou range, when other
12 companies could come and share in its development.

13 PROFESSOR MAYER: That was so much for the form, but also
14 the substance: there was a position that he took, but
15 apparently you did not share his position. How did you
16 react?

17 A. In terms of substance, he just didn't want Rio to keep
18 all of Simandou in its concession. My position was more
19 forward-looking and dynamic. Rio had been there for
20 a long time; they wanted to be able to move fast. But
21 I had the Mining Code that set out the obligation to
22 retrocede part of the blocks, and I would say that that
23 was acceptable, and that's how I explain our difference
24 of position.

25 PROFESSOR MAYER: One last question regarding the permits

16:46

1 you granted on February 6th and the final memorandum
2 signed on February 20th regarding Simandou North and
3 Simandou South.

4 My impression is -- and please correct me if I'm
5 mistaken -- in the memorandum of understanding, what was
6 being covered was -- I want to make sure I'm not making
7 a mistake here -- no, it covered North Simandou and
8 South Simandou, just like the permits, and perhaps
9 something in addition. But is that correct?

10 A. The permits were granted to save the central part of
11 Simandou, the four blocks. That's why those permits
12 were granted. But the memorandum of understanding --
13 and you will note when you read it -- BSGR clearly was
14 trying to get a hold of part of Simandou, either now or
15 later.

16 PROFESSOR MAYER: But the permits had been granted on
17 February 6th. The memorandum of understanding did not
18 add anything to that.

19 A. No, there was nothing that was added by virtue of this
20 memorandum. But as a promise -- and this is where BSGR
21 was interested -- it was the prospect, the potential of
22 getting part of the Simandou Central part if the
23 retrocession were to occur. And it's my understanding
24 that the company, basically they're looking to support
25 the government's efforts to make that retrocession

16:48

1 happen, because they could only get a hold of that if
2 the retrocession actually occurred.

3 PROFESSOR MAYER: Thank you, I have no further questions.

4 PROFESSOR VAN DEN BERG: Mr Minister, at the end of your
5 examination by Mr Daele, you were asked, "If Mamadie
6 Touré had not intervened, what would have happened with
7 the President?" And I'm sorry, I am going to rephrase
8 what you said. You said, "He would have called me".
9 You remember when you said this?

10 A. I'm not sure I understood.

11 PROFESSOR VAN DEN BERG: At the end of your examination, he
12 asked you a question: "If Mamadie Touré had not
13 intervened, what would have been different, what would
14 have happened differently?" And you answered, "He would
15 have called me".

16 THE PRESIDENT: I noted the that question was, "If Mamadie
17 Touré had not intervened, what would have happened?",
18 and you answered, "He would not have called me".

19 A. That's exactly it: he would not have called me.

20 PROFESSOR VAN DEN BERG: Is that correct?

21 A. If she had not intervened, he would not have called me.

22 PROFESSOR VAN DEN BERG: Did she intervene?

23 A. Yes.

24 PROFESSOR VAN DEN BERG: And the President did call you?

25 A. Yes.

16:50

1 PROFESSOR VAN DEN BERG: When? When was that, that phone
2 call?

3 A. I don't remember. End of November/early December.

4 I don't recall the exact date.

5 PROFESSOR VAN DEN BERG: What year was this?

6 A. 2005.

7 PROFESSOR VAN DEN BERG: What did the President ask you?

8 A. The President presented the group as a partner that was
9 keen to go into the mining business in Guinea, and he
10 asked me to facilitate their path and to support them.

11 PROFESSOR VAN DEN BERG: Did you take this to be
12 an instruction from the President?

13 A. Of course.

14 PROFESSOR VAN DEN BERG: Had you not complied with this
15 request, what would have been the consequences?

16 A. The consequences personally, it would be disloyal on my
17 part, because when the President gives me an order to do
18 something, I must endeavour to do it, to look into how
19 it can be done well, remaining within the confines of
20 the law. And if I do not do it, of course he will be
21 displeased. He will be displeased, and he can express
22 this in different ways. He could come back and request
23 it for a second time, you know, with a kind of warning.

24 PROFESSOR VAN DEN BERG: What he asked you to do, was it
25 improper, legally speaking?

16:51

1 A. Initially, no. He's the President. He sees operators,
2 he trusts them, and he calls the minister and he says,
3 "Please facilitate things for them". So far there was
4 nothing to indicate that this was improper or illegal,
5 because that day he did not say specifically that
6 such-and-such a zone is to be attributed that is already
7 granted to another company.

8 PROFESSOR VAN DEN BERG: Were there further instructions
9 given by the President?

10 A. Not directly, as I explained.

11 PROFESSOR VAN DEN BERG: Indirectly?

12 A. Indirectly, through his wife; indirectly, the landing of
13 the helicopter on Simandou range, and his negative
14 reaction; indirectly, the various steps that were taken
15 involving these mining titles.

16 PROFESSOR VAN DEN BERG: Thank you.

17 THE PRESIDENT: I'd like to continue along these lines.

18 You were asked what would have happened had Mamadie
19 Touré not exerted her influence over the President, and
20 you said, "He would not have called me". Then you were
21 asked, "What would have happened had you not been under
22 pressure?", and you answered, "I would not have signed
23 the memorandum of understanding". And please correct me
24 if I am mistaken.

25 Then you were asked a question about the events that

16:53

1 followed, and I forget exactly how the question was
2 worded. But you said, "The situation is more muddled,
3 because this is where Rio Tinto's failure to progress
4 met up with BSGR's determination to succeed".

5 I would like you to be a little more detailed in
6 this answer. We're just trying to look at the
7 chronology of the alleged influence of Mamadie Touré
8 over the President and then the consequences and
9 repercussions as far as you're concerned, and then the
10 applications for the rest of the government and the
11 administration.

12 So how can we analyse the events that followed after
13 the memorandum of understanding?

14 A. Yes, quite a while after the memorandum of
15 understanding, I had left the Ministry of Mines and then
16 the Ministry of Education, I was even unemployed for
17 a year, and then I came back as Prime Minister, and at
18 that point I discovered that the presidency had already
19 issued letters to Rio Tinto to give back the blocks, and
20 the President also issued a decree that was entirely
21 improper imposing this retrocession.

22 So when asked how I felt about that, I simply said
23 it was a bit muddled because it was the combination of
24 several facts: the fact that Rio Tinto systematically
25 refused to retrocede the blocks, and this in turn gave

16:55

1 arguments to the party that was obstinately trying to
2 get a hold of part of the Simandou through this
3 retrocession.

4 So I think that on the one hand the refusal, and
5 Rio Tinto's obstination, simply gave the government
6 grounds to act de facto and proceed with the
7 retrocession, and then to immediately turn around and
8 grant them to BSGR. It's a way to say that these two
9 events simply cannot be separated.

10 THE PRESIDENT: A question concerning the same chain of
11 events. You became Prime Minister in May or June 2008?

12 A. In May.

13 THE PRESIDENT: In July 2008 the President withdraws
14 Rio Tinto's concession. I believe this is when you said
15 that when you discovered the decree, when you were
16 appointed Prime Minister, this was one of the thorns in
17 your side. What was the thorn exactly?

18 A. The thorn was BSGR. When I was appointed Prime Minister
19 on May 20th, I took up my duties on May 23rd. In
20 between 20th and 23rd May there was a letter that
21 preceded the decree that basically told Rio Tinto that
22 the presidency was about to abrogate the decree granting
23 the concession. So when I took up my duties, I was not
24 at all aware of this letter. And then in July this
25 warning was then followed by implementation, and it was

16:58

1 carried out.

2 And a few months later, my predecessor accused me,
3 saying that I refused to grant the permits to BSGR and
4 that that's why I was dismissed. My successor may have
5 been appointed to take care of this matter. And that's
6 why I reacted the way I did and I said, "No, Mr Kouyaté,
7 it's not your successor who did this; it's the
8 presidency. I'm just as surprised as you are".

9 And this is why I can say BSGR was very consistent
10 in its efforts to get a hold of part of Simandou.

11 Q. Thank you for answering this question. Now I want to
12 ask a much simpler question.

13 What is the average wage in Guinea, across all
14 areas? We talked about this already, Minister, but just
15 give us an order of magnitude.

16 A. I think that managers get paid 2 or 3 million Guinean
17 francs.

18 THE PRESIDENT: That would be a manager. And if you convert
19 that into dollars?

20 A. \$200-300. And the lower wage-earners probably make
21 \$100-150.

22 Q. March 30th 2006, this is when you are Minister of Mines.
23 Rio Tinto's concession on the four blocks are signed;
24 this is during your mandate.

25 Am I understanding correctly that there was no

17:00

1 feasibility study submitted by Rio Tinto at that time?

2 A. Yes. But as I explained before, already at the time --
3 since 1997 in fact -- Rio Tinto had been flirting with
4 the Simandou mountain, and at the end of the day the
5 government was irritated with this.

6 And when I reached the office, we were told that we
7 had to open up, we had to act swiftly with mining
8 projects. I signed lots of agreements for local
9 projects. We had a meeting, and since finally the
10 market was beginning to behave more or less well,
11 I demanded from Rio Tinto that they give a precise
12 schedule for the exploitation of the deposit. So
13 Rio Tinto then asked for a concession on the entire
14 mountain so that the first tonne of iron be exploited by
15 2009.

16 THE PRESIDENT: That was the objective of the signature of
17 the convention; is that right?

18 A. Yes.

19 THE PRESIDENT: So from your standpoint, it was a way of
20 speeding up the work and the progress of Rio Tinto?

21 A. Yes. It was meant to speed up this and put them in
22 a condition to exploit this deposit.

23 MR OSTROVE: Sorry, you said the signing of the convention,
24 but in fact you meant concession.

25 THE PRESIDENT: Yes, quite right. Thank you for pointing

17:02

1 this out.

2 Let me just check if I still have any questions that
3 wouldn't have been raised.

4 PROFESSOR VAN DEN BERG: Concerning the feasibility study,
5 could you look at tab 44 again (C-188). This is the
6 Rio Tinto letter sent by Simfer on 11th December 2008.

7 A. Yes.

8 PROFESSOR VAN DEN BERG: If you look at the last paragraph
9 of the first page, it says:

10 "We have practically completed the Feasibility
11 Study..."

12 And it's a translation in French. Does this mean
13 that on 11th December 2008 there was still no
14 feasibility study or report?

15 A. I don't understand your question.

16 PROFESSOR VAN DEN BERG: Does it mean that on
17 11th December 2008 there was not yet a feasibility study
18 report from Rio Tinto?

19 A. No, there wasn't. And what they say here is to avoid
20 the subject, saying that it would be presented before
21 the end of the year.

22 PROFESSOR VAN DEN BERG: Well, that was the question of the
23 President, who asked you: on 20th March --

24 A. 30th March.

25 PROFESSOR VAN DEN BERG: The time of the concession.

17:04

1 A. Not convention, concession.

2 PROFESSOR VAN DEN BERG: Well, there was no feasibility
3 report?

4 A. I explained that there was no feasibility study.

5 PROFESSOR VAN DEN BERG: So it took yet another two years?

6 A. Yes. Unfortunately, yes, that was the case, and still
7 no feasibility study. This is what I called refusal to
8 be up to date in this regard.

9 THE PRESIDENT: No more questions from counsel, following
10 the questions by the Tribunal?

11 MR DAELE: Yes, I do have some questions.

12 THE PRESIDENT: Following the Tribunal's questions?

13 MR DAELE: Yes, I still have four questions, and I wish to
14 show some documents which I think are of extreme
15 relevance.

16 MR OSTROVE: Is this a re-cross?

17 PROFESSOR VAN DEN BERG: Are you asking to re-cross?

18 THE PRESIDENT: Re-cross is under authorisation of the
19 Tribunal, as well as supplementary questions. You do
20 have this authorisation, but we insist that you restrict
21 your questioning to our own questions and re-direct
22 examination.

23 MR DAELE: Yes, and the answers that were given by
24 Mr Souaré.

25 THE PRESIDENT: Of course.

17:06

1 (5.06 pm)

2

Re-cross-examination by MR DAELE

3 Q. To start with, let's take the last subject first. When
4 was the concession -- not the convention -- with
5 Rio Tinto, when was it signed? I think your counsel
6 asked you to clarify [that, for example,] when it
7 started producing [in 2009], this commitment was not
8 included in the concession but in the convention?

9 A. This is not what I said.

10 Q. The 30th March 2006 document?

11 A. Yes. The attribution of the concession is what
12 I explained.

13 Q. Can we look at this document to see where this
14 commitment is to be found?

15 A. No, it's not a commitment.

16 Q. So it's not in that document?

17 A. No, it's not in that document.

18 Q. Is there any evidence that Rio Tinto truly took that
19 commitment, when it's not in the decree itself, or the
20 concession itself?

21 A. No, this is not the type of thing you put in a decree.

22 Q. Where do you put it then?

23 A. These are technical discussions, technical reports
24 between the department and the company.

25 Q. But you said that there was nonetheless an important

17:07

1 commitment, and you have no written evidence of it?

2 A. Well, it does exist within the ministry, I can tell you.

3 The planning for the execution, the schedule for the

4 execution does exist, not only at Rio Tinto but also

5 achievement of the railway, the tripartite committee,

6 there are minutes of the meetings, et cetera, that are

7 binding.

8 Q. But they are not part of the documents that are legally

9 binding per se?

10 A. Well, not legally binding as such. But the law is clear

11 on these measures. The retrocession and the renewal of

12 the permits, Rio Tinto is familiar with this.

13 Q. Yes, retrocession, of course. But you're talking about

14 something else: you're talking about a commitment to

15 start export in 2009?

16 A. 2009.

17 Q. This is a commitment that you negotiated with Rio Tinto?

18 A. Absolutely.

19 Q. But this commitment is not to be found in any document,

20 decree, agreement?

21 A. But in the technical documents, the official documents

22 of the ministry, the work will be done on this basis,

23 et cetera, a function of this commitment.

24 Q. Is the schedule legally solid?

25 A. Here you're talking about "legally solid". We are

17:09

1 talking about technically achievable. This was not
2 meant for here.

3 Q. We looked at the document under tab 6 (C-166), on which
4 Professor Mayer asked a few questions, a letter from
5 Ibrahima Soumah.

6 A. Yes.

7 Q. Can you confirm the position in CPDM of Mr Soumah? Who
8 was he?

9 A. He was the manager, the general manager. He was the
10 boss of Soriba [Bangoura].

11 Q. So he was the manager?

12 A. Yes.

13 Q. The third question: in terms of the map that we saw --
14 can we have it on the screen again, please? (Pause)

15 Do you know where this map (R-150) comes from?
16 Where did it originate?

17 A. I have no idea.

18 Q. Was it an attachment to a contract or a proposal,
19 an MOU?

20 A. I don't know.

21 THE PRESIDENT: Dr Souaré doesn't know, so maybe you can
22 give him the source.

23 MR DAELE: (Inaudible, no microphone).

24 THE PRESIDENT: If he doesn't know where it came from.

25 A. I don't know where it came from. It's not the first

17:11

1 time I see it, of course.

2 MR DAELE: Can we put the first Guinean conclusion up on the
3 screen, the Counter-Memorial? Because I'm going to show
4 you that this is a map that was prepared for the
5 Counter-Memorial. Here it is, we have the same map.

6 Could we read the paragraphs on page 24. Here we
7 are, you have the text. We are talking here of the
8 situation in 2000. You see paragraph 84, it's the
9 situation in 2000 which is depicted:

10 "In compliance with the provisions of the Mining
11 Code ... Rio Tinto had to retrocede 50% of the
12 perimeter..."

13 So it received its permit in 1997, so in 2000, it
14 was the first time that retrocession should have
15 occurred.

16 If we continue down, the 50% retrocession -- here we
17 go. For the mining cadastre, you see that the zones
18 were each numbered.

19 "Following the renewal, and the retrocession, the
20 perimeter that was initially covered [was the
21 following]."

22 So here we're looking at a map which represents the
23 situation in 2000. This is before the retrocession.

24 MR OSTROVE: Sorry for intervening. It's contrary to what
25 you've just said. It's the situation after the

17:13

1 retrocession.

2 MR DAELE: Okay, the Tribunal can read through the
3 conclusion. I am saying that it is the situation before
4 the retrocession.

5 A. Can you lower this, because it is explained -- no, the
6 other way -- it is explained:

7 "For the needs of the mining cadastre and the
8 definition of the research perimeters, the Guinean
9 mining administration started numbering each of the
10 zones at Simandou that were the subject of a permit
11 ('Blocks' 1 to 4). Following the renewal and
12 retrocession, the perimeter that was initially covered
13 by these permits in North Simandou corresponded now to
14 Blocks 1 and 2 and those covered by Simandou South to
15 Blocks 3 and 4 ..."

16 After the renewal and retrocession.

17 Q. Can we look at [tab] 10 (C-208). Mr Ostrove mentioned
18 it. You see that here there are ambiguities in terms of
19 Simandou North and South. If you would turn the page,
20 on the first page it is said that Simandou North and
21 South cover the zones that are described in the
22 attachment. So these zones are well defined, because if
23 we do turn to the attachment, i.e. on page 9 --

24 A. You are looking at a draft MOU.

25 Q. Yes, but this is what you were questioned about.

17:15

1 A. Okay. This is a draft; let's work on the basis of the
2 MOU itself.

3 Q. But you said that this created an ambiguity: it's the
4 content of North and South.

5 A. The ambiguity is that it's a draft, and nothing but.

6 Q. Can you turn to page 9 of this document, please, where
7 you have the coordinates for the northern zone and
8 southern zone, you can see.

9 So I am wondering to what extent BSGR created
10 an ambiguity when it explicated the coordinates in this
11 way.

12 A. The ambiguity, as I said before, is that this is not
13 initialled. Secondly, the ambiguity is to say "the
14 Simandou deposit", when you have to distinguish.

15 Q. No, it says "North and South".

16 A. I'm talking about the entire ambiguity. You started by
17 saying "iron ore Simandou deposit". What does it mean?
18 Is it the amount? Is it the surrounding zone? What are
19 we talking about? It's ambiguous. Then you said "North
20 Simandou, South Simandou", instead of saying "to the
21 north of Simandou and to the south of Simandou". It's
22 one word; it doesn't cost much to be precise. Because
23 if you cut in half, what is located in the north is
24 Simandou.

25 Q. Last question. The MOU dated 20th February 2006, did

17:17

1 that have an influence in the Council of Ministers'
2 decision when they granted the permits on Blocks 1 and 2
3 to BSGR? During the meeting of 4th December 2008, did
4 one base one's decision to grant the permit on the MOU?

5 A. Let me restate what I said earlier. On 4th December
6 it's not the council for the attribution or the granting
7 of permits; it's the instruction which is given to the
8 Minister of Mines to carry out an automatic retrocession
9 with Rio Tinto. Then it's on 9th December -- at a later
10 stage, therefore -- that the permits were granted to
11 BSGR.

12 And to answer your question, we read earlier the
13 letter that was sent by BSGR to the Minister of Mines,
14 which recalls -- in a very awkward way, by the way --
15 the contents of the MOU, which means that BSGR sees this
16 as an argument for its new acquisition.

17 Q. And therefore my question was whether, during the
18 4th December 2008 meeting, the council meeting, this MOU
19 was discussed.

20 A. No, it wasn't the subject. The subject was Rio Tinto
21 and its problems.

22 Q. Do you know whether Minister Nabé based his decision to
23 grant the permits to BSGR on the MOU?

24 A. I've said before, we wrote a letter to him that we read
25 together, to recall the existence of the MOU.

17:19

1 Q. I'm asking you again --

2 A. I don't know.

3 MR DAELE: I have no further questions.

4 THE PRESIDENT: Thank you.

5 Are there questions on the side of the Respondent as
6 a reaction to those questions?

7 MR OSTROVE: No, thank you, Madam President.

8 THE PRESIDENT: Do my co-arbitrators have more questions,
9 further questions? No, neither do I.

10 So this is the end of a very lengthy day, Mr Prime
11 Minister. Your examination has come to an end. We'd
12 like to thank you very much for your explanations.

13 DR SOUARÉ: Thank you. The pleasure was mine. Thank you
14 all, including those who ask very tricky questions!

15 MR OSTROVE: Thank you, Mr Prime Minister.

16 THE PRESIDENT: What next? It's now 5.20. Is there any
17 logic in starting with the next witness? What do you
18 think?

19 MR OSTROVE: Minister Sylla is here if we wish to start, but
20 we are in your hands.

21 THE PRESIDENT: His examination is planned for how long; do
22 we know? Originally it was supposed to be two hours.

23 MR OSTROVE: All I can say, Madam President, or all I can
24 suggest is, as we had indicated at the beginning of the
25 meeting, Minister Kanté has a constraint tomorrow and

17:21

1 would like to finish at 5 o'clock if at all possible.

2 So it would be a good thing maybe to start with Mr Sylla
3 if at all possible. But I do understand that my learned
4 friends might be tired after cross-examining
5 Minister Souaré.

6 But I was going to suggest that maybe we start
7 earlier tomorrow morning, if at all possible, so that we
8 run less risk of having a problem at 5 o'clock.

9 THE PRESIDENT: Yes, my concern is that tomorrow is a very
10 busy day, and we need to finish at 5 o'clock.

11 I understand that it might be a bit late to continue
12 now. We could continue now or start earlier tomorrow.

13 MR DAELE: I prefer to start tomorrow morning.

14 THE PRESIDENT: Okay. (Pause) We are disagreeing on the
15 starting time for tomorrow: there are early risers and
16 others! Would you be ready to start at 8.00? I'm just
17 probing. 8.30?

18 MR OSTROVE: From our side, we can start at any time you
19 like. 7.30 would be a bit early because I have to take
20 my kids to school. But why not take a half-hour and
21 start, try to make progress tonight, to gain time?

22 MR DAELE: Can we start at 8.30 tomorrow? Because I also
23 need to read through; I'm not ready to start Mr Sylla's
24 examination. This was not in the plans.

25 THE PRESIDENT: No, of course, naturally.

17:24

1 MR DAELE: And I also would like the Tribunal to be as fresh
2 as a daisy.

3 THE PRESIDENT: Well, the Tribunal is always very attentive
4 don't worry. But let's start tomorrow at 8.30, in the
5 hope that we can finish by 5 o'clock if we all show
6 a certain degree of discipline.

7 So have a nice evening. Thank you.

8 (5.25 pm)

9 (The hearing adjourned until 8.30 am the following day)

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