

PCA CASE No 2020-21

In the matter of an arbitration
under the Arbitration Rules of the United Nations
Commission on International Trade Law 1976

and

The Agreement between the Government of the Republic
of India and the Republic of Mozambique for the
Reciprocal Promotion and Protection of Investment
dated 19 February 2009

- between -

PATEL ENGINEERING LIMITED (INDIA)

(Claimant)

- and -

THE REPUBLIC OF MOZAMBIQUE

(Respondent)

The Arbitral Tribunal

Prof Juan Fernández-Armesto (Presiding Arbitrator)
Prof Guido Santiago Tawil (Arbitrator)
Mr Hugo Perezcano Diaz (Arbitrator)

**ORAL HEARING
PORTO, PORTUGAL**

Tuesday, 29 November 2022

Registry
The Permanent Court of Arbitration

A P P E A R A N C E S

The Tribunal:

Presiding Arbitrator:

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Co-Arbitrators:

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MR HUGO PEREZCANO DIAZ

Administrative Secretary:

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A P P E A R A N C E S

The Claimant:

Representative:

MR KISHAN DAGA, Patel Engineering

Counsel:

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MR EDWARD HO

20 Essex Chambers:

MR BAIJU VASANI

Messrs CMS Cameron McKenna Nabarro Olswang LLP:

MS SARAH VASANI
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MS SOFIA MARTINS
MR RENATO GUERRA DE ALMEIDA
MR RICARDO SARAIVA

Fact Witnesses:

MR KISHAN DAGA, Representative
MR ASHISH PATEL (via video conference)

Expert Witnesses:

PROFESSOR RUI MEDEIROS
MR KIRAN SEQUEIRA
MR PAUL BAEZ
MR DAVID DEARMAN
MR ANDREW COMER (via video conference)
MR DAVID BAXTER (via video conference)
MR GERARD LAPORTE (via video conference)

A P P E A R A N C E S

The Respondent:

Representative:

MR ANGELO MATUSSE, The Republic of Mozambique

Counsel:

Dorsey & Whitney LLP

MR JUAN BASOMBRIO
MS THERESA BEVILACQUA
MR DANIEL BROWN

Fact Witnesses:

MR LUIS AMANDIO CHAUQUE
MR PAULO FRANCISCO ZUCULA (via video conference)

Expert Witnesses:

MS TERESA F MUENDA
MR JOSE TIAGO DE PINA PATRICIO DE MENDONCA
MR DANIEL FLORES
MR LARRY DYSERT (via video conference)
MR DAVID EHRHARDT (via video conference)
MR MARK LANTERMAN (via video conference)
MR MARK SONGER (via video conference)

I N D E X

KISHAN DAGA256
 Examination by Claimant258
 Cross-examination by Respondent260
ASHISH PATEL344
 Examination by Claimant346
 Cross-examination by Respondent349
KISHAN DAGA, continued394
 Cross-examination continued394

1 (9.29 am, Tuesday 29 November 2022)

2 **PRESIDENT:** Good morning. This is the
3 second day in the hearing on the merits in Case PCA
4 No 2020-21 between Patel Engineering Ltd and the
5 Republic of Mozambique.

6 A very good morning to you. Is there any
7 point of order before we start with the examination
8 of the witnesses? And I turn first to Claimant.

9 **MS VASANI:** Good morning, Mr President.
10 Good morning, Tribunal members.

11 Just two points of order from us. First,
12 you'll see some additional individuals in the room
13 from Claimant's side. I just wanted to introduce
14 them so that everyone is clear who is here.

15 We've got David Baxter, who is our PPP
16 expert, and David Dearman, who is our quantum
17 expert, are joining this afternoon -- or this
18 morning.

19 **PRESIDENT:** Good morning, gentlemen.

20 **MS VASANI:** And the second point I wanted
21 to raise is just under Procedural Order 1, paragraph
22 106. I just wanted to confirm for everyone's mutual
23 understanding that the witnesses will be
24 sequestered, the fact witnesses apart from client
25 representatives will be sequestered throughout the

1 hearing so that they cannot discuss previous days'
2 testimony, and they will not receive any information
3 about any of the previous fact witnesses or anything
4 that occurs at the hearing.

5 **PRESIDENT:** You are referring to paragraph
6 106, and it says "Unless the parties agree or the
7 Tribunal decides otherwise, a factual witness other
8 than a representative of the party concerned, shall
9 not be present in the hearing room during the
10 hearing of oral testimony, discuss the testimony of
11 any other witness, or read any transcript or oral
12 testimony prior to his or her examination. Unless
13 the parties agree otherwise expert witnesses shall
14 be allowed to be present in the hearing room at any
15 time".

16 **MS VASANI:** Correct. We just wanted to
17 confirm -- yes, that's correct. We just wanted to
18 confirm so that there's no misunderstandings.
19 There's been a few procedural misunderstandings
20 between the parties, and I just wanted to have the
21 Tribunal confirm that all fact witnesses will be
22 sequestered.

23 **PRESIDENT:** Is there any comment from the
24 Republic of Mozambique?

25 **MR BROWN:** Apologies, Mr President.

1 **PRESIDENT:** I am sorry we have organised a
2 very nice hearing room, but the weather was beyond
3 our powers. If you come in summer, sir, I promise
4 you Indian weather here.

5 **MR DAGA:** I'll wait for your invitation,
6 sir.

7 **PRESIDENT:** Mr Daga, you are here as a
8 witness, and the first thing we have to do is you
9 take your oath as a witness. Can you please stand
10 up?

11 **MR DAGA:** Yes.

12 **PRESIDENT:** Can we all stand up, please.
13 Can you raise your right hand? Do you
14 solemnly declare upon your honour and conscience
15 that you will speak the truth, the whole truth and
16 nothing but the truth?

17 **MR DAGA:** I solemnly declare upon my
18 honour and conscience that I will speak the truth,
19 the whole truth, and nothing but the truth.

20 **PRESIDENT:** Thank you, sir.

21 **MR DAGA:** Thank you.

22 **PRESIDENT:** Mr Daga, you know you have
23 counsel for the Republic on the left, you have
24 counsel to Claimant on your right. There will be
25 questions to you first from counsel to Claimant and

1 then from counsel to the Respondent.

2 Questions will be put to you in a way that
3 you can answer with a yes, a no, or I don't know,
4 I don't remember. Could I kindly ask you that you
5 first state your position for the transcript so that
6 you say yes, no, or I don't remember or I don't
7 know, and then you are most welcome to give any
8 explanation you think would be helpful to the
9 Tribunal?

10 **MR DAGA:** OK, sir.

11 **PRESIDENT:** Very good. Ms Vasani, you
12 have the floor.

13 Examination by Claimant

14 **MS VASANI:** Good morning, Mr Daga.

15 **MR DAGA:** Good morning.

16 **MS VASANI:** Mr Daga, do you have before
17 you your two witness statements?

18 **MR DAGA:** Yes.

19 **MS VASANI:** And the first witness
20 statement is dated 29 October 2020?

21 **MR DAGA:** Yes.

22 **MS VASANI:** Could you just turn to the
23 last page of that statement, please?

24 **MR DAGA:** Yes.

25 **MS VASANI:** And is that your signature?

1 **MR DAGA:** Yes.

2 **MS VASANI:** Mr Daga, do you have any
3 amendments or corrections to make to this witness
4 statement?

5 **MR DAGA:** No.

6 **MS VASANI:** Thank you. And do you have
7 your second witness statement there, Mr Daga?

8 **MR DAGA:** Yes.

9 **MS VASANI:** And that witness statement is
10 dated August 5, 2021, is that right?

11 **MR DAGA:** 2021, yes.

12 **MS VASANI:** Could you turn to the last
13 page of that witness statement as well?

14 **MR DAGA:** Yes.

15 **MS VASANI:** Can you confirm for the
16 Tribunal that that's your signature, Mr Daga?

17 **MR DAGA:** Yes, that's my signature.

18 **MS VASANI:** Mr Daga, do you have any
19 amendments or clarifications to make to your second
20 witness statement?

21 **MR DAGA:** No.

22 **MS VASANI:** Thank you, Mr Daga.

23 **MR DAGA:** Thank you.

24 **MS VASANI:** That's all from Claimant.

25 **PRESIDENT:** Very good. No further

1 questions. Excellent. So we'll give the floor to
2 the Republic.

3 Cross-examination by Respondent

4 **MS BEVILACQUA:** Good morning, Mr Daga. My
5 name is Theresa Bevilacqua and I am counsel for the
6 Respondent, the Republic of Mozambique.

7 **MR DAGA:** Good morning.

8 **MS BEVILACQUA:** I would like to begin by
9 asking you a few questions about PEL's experience in
10 Mozambique before the MOI. OK?

11 **MR DAGA:** OK.

12 **MS BEVILACQUA:** So if I understand your
13 witness statement correctly, your written testimony,
14 PEL had not previously negotiated any public-private
15 partnership, or PPP, agreements in Mozambique before
16 attempting to negotiate the MOI. Is that correct?

17 **MR DAGA:** Which -- on which page it is on
18 my statement?

19 **MS BEVILACQUA:** No. My question is based
20 on your experience and what you disclosed about
21 PEL's experience in Mozambique, did PEL attempt to
22 negotiate any type of PPP in Mozambique before 2011?

23 **MR DAGA:** No, we did not. This was the
24 first PPP project what we have. Before that we had
25 some work for mining concessions we were doing in

1 Mozambique.

2 Actually, we went to Mozambique in search
3 of coal.

4 **MS BEVILACQUA:** Yes. And you had
5 mentioned in your witness statement --

6 **MR DAGA:** Yes, so because we were
7 requiring that coal for our thermal power project in
8 India, so we went to Mozambique for search of coal,
9 but when we went there we came to know that
10 government has stopped giving the direct concessions
11 of coal. So we were trying to negotiate with the
12 already concession holders, and in the meantime we
13 took some exploration licences from the mining
14 department about tantalite and marble.

15 **MS BEVILACQUA:** Excuse me. If I may pose
16 another question, then.

17 You did have mining exploration rights in
18 Mozambique?

19 **MR DAGA:** Yes. Mining exploration rights
20 we had for tantalite and marble.

21 **MS BEVILACQUA:** And you had those for how
22 long?

23 **MR DAGA:** Almost to those explorations
24 where for five years we were doing.

25 **MS BEVILACQUA:** Five years?

1 **MR DAGA:** Yes. We got the concessions in
2 2008 I think, or 2009 somewhere we got those
3 concessions.

4 **MS BEVILACQUA:** And you determined -- you
5 PEL -- determined that those deposits were not
6 commercially viable and so you surrendered those
7 concessions back to the Republic of Mozambique?

8 **MR DAGA:** Yes. Although the tantalite
9 quality was very good as per the experts, but it was
10 not commercially viable to explore and export that
11 quantity, so we surrendered initially the tantalite
12 concession, and marble concession we got the mining
13 concession also, but when we started the detailed
14 study for mining purpose, then we came to know that
15 there are fractures in the marble layers which will
16 not give marble block size of -- bigger size which
17 can be commercially viable.

18 So we thought that it is not worthwhile to
19 further follow up with that, and that also we
20 surrendered.

21 **MS BEVILACQUA:** And so you surrendered
22 that as well?

23 **MR DAGA:** Yes. But that was in 2014-15 we
24 have surrendered somewhere.

25 **MS BEVILACQUA:** 2014 or '15?

1 **MR DAGA:** Somewhere. I don't remember
2 exactly the date now.

3 **MS BEVILACQUA:** And before you began
4 negotiations on the MOI, PEL had not built any
5 railways in Mozambique?

6 **MR DAGA:** Not in Mozambique but elsewhere
7 we have. In India we have done. Railway projects
8 also.

9 **MS BEVILACQUA:** Yes. Had you built in
10 railways in Africa?

11 **MR DAGA:** No, not in Africa.

12 **MS BEVILACQUA:** And had you engineered any
13 mines in Mozambique?

14 **MR DAGA:** No, no, we did not have any
15 mining. But, as I said earlier, that we went for
16 the coal in search of, and during that process
17 I found out this project, because I found from the
18 mining department that they are planning to export
19 huge quantity of coal, around 50 to 60 million tons
20 per annum in next five to seven years. And I'm
21 talking about 2008-9, that time.

22 Then I started searching -- being an
23 infrastructure company working and almost now 50
24 years I'm working in the company for infrastructure
25 works, so it automatically gave me a click that how

1 they are going to export this quantity of coal if
2 there are no exit routes.

3 Then I started collecting some datas in
4 Mozambique only that what are the coal exports
5 prospects, what are the other mineral exports, and
6 there I found out there is a big need of
7 infrastructure projects in Mozambique, and then
8 I started talking to my colleagues in India and our
9 well wishers and friends in Mozambique and
10 executives of various ministries.

11 **MS BEVILACQUA:** And at this time in 2010,
12 or any time before, PEL had not built a port in
13 Mozambique or off its coast?

14 **MR DAGA:** Not in Mozambique. We did not
15 do any civil works in Mozambique prior to this
16 project.

17 **MS BEVILACQUA:** And the idea to connect
18 the large coal deposits owned by the Republic of
19 Mozambique to a port to export them, you would
20 agree, is not a novel or unusual idea?

21 **MR DAGA:** You cannot say it is not unusual
22 idea. It is -- was an unusual idea because when
23 mining department was thinking of exporting the coal
24 but the other department does not have the required
25 infrastructure to transport the coal to the ports

1 and to exit from the ports, at that time there was
2 only one port for coal export, which was Beira,
3 which was almost around 600 kilometres from Tete
4 area where the coal mines were. And capacity of
5 that port was around 2 and a half million tons, if I
6 remember correctly, at that time.

7 Railway line was also very small, a narrow
8 gauge railway line, which also could not carry more
9 than 4 million tons of export coal from Tete area,
10 so that has triggered in our mind that why not to
11 search for some area which is nearer to the mining
12 areas so that coal mines can get benefit out of it
13 and even the government of Mozambique also can get
14 benefit out of it from the coal export.

15 So we were -- that's why we were looking
16 about the Zambezia coast because if you see the
17 Mozambique map, it is almost horizontally -- there
18 is a shortest distance which comes. Beira, almost
19 600 kilometres, another mining company, Vale, was
20 doing some development in Nacala, which was almost
21 around 900 kilometres, and that line was going via
22 Malawi, so you are entering into another country
23 while exporting, so there are many rules and
24 regulations of that country you have to follow.

25 So we thought that why not to think of

1 some infrastructure project and port location where
2 we can have this port in Zambezia coast which is
3 nearest coast to the Tete area, and that was the
4 starting point where I have prepared an Excel sheet
5 also --

6 **MS BEVILACQUA:** I will ask you about your
7 Excel sheet in a moment, if you could wait for a
8 question.

9 **MR DAGA:** Sorry.

10 **MS BEVILACQUA:** -- that would be helpful.
11 Thank you.

12 **MR DAGA:** Sorry.

13 **MS BEVILACQUA:** So the government of
14 Mozambique which owns the coal deposits in the Tete
15 region does not need any outside engineering company
16 to come in and tell it that the shortest distance
17 between two points is a straight line.

18 **MR DAGA:** I could not follow your
19 question.

20 **MS BEVILACQUA:** The mine -- the coal
21 exists in the Tete province, and Mozambique doesn't
22 need PEL to tell it that the shortest way to export
23 the coal is to build a new railway. That is obvious
24 from a map.

25 **MR DAGA:** Yes. It was a surprising thing

1 for me also that when a country's -- the main
2 business of mining and they want to export and they
3 do not have any infrastructure projects ready for
4 that.

5 Because if you have to plan for export in
6 five years, such kind of projects also takes five to
7 six years of time, but at that time there was no
8 thought process going on in Mozambique people's mind
9 anywhere in any department.

10 **MS BEVILACQUA:** And part of the issue is
11 you need the ability to have investment in the
12 region and the capital in the country to build the
13 infrastructure, correct?

14 **MR DAGA:** See, when we envisaged this
15 project --

16 **MS BEVILACQUA:** If you could answer my
17 question with a yes or a no first, as the president
18 has instructed.

19 **MR DAGA:** Yes, we are ready to invest in
20 the project, and when we envisaged this project,
21 I came back to Mumbai and we had a talk in the
22 office with Mr Ashish Patel who's the second
23 witness. He was in the financing market and
24 arranging the funds, finances for the big
25 projects --

1 **MS BEVILACQUA:** Mr Daga, that was not my
2 question. I apologise. I think you misunderstood.

3 **MR DAGA:** Can you repeat then?

4 **MS BEVILACQUA:** Yes, sir, I'd be happy to.

5 **MR DAGA:** Sure.

6 **MS BEVILACQUA:** My question was that in
7 order to build the large infrastructure projects to
8 connect the coal mines to a port, you need to be
9 able to have the capital and the resources within
10 the country to do that?

11 **MR DAGA:** No, no. Resources were
12 available in the country and funds were to be
13 arranged from outside for the project. The country
14 did not have any funds for that project. This is
15 the answer for this question.

16 **MS BEVILACQUA:** And you understood that
17 Mozambique knew where its coal deposits were, and
18 Mozambique, of course, knows where its ports are
19 located?

20 **MR DAGA:** Mozambique was aware of the coal
21 mines because they were allotting the concessions,
22 so they were knowing the Tete area is full of coal,
23 and they were knowing that where a port is there,
24 Nacala was under planning and construction. Maputo
25 port was not for coal exports. That was only for

1 the normal general cargo. They were aware of this
2 thing.

3 **MS BEVILACQUA:** And you did some research
4 yourself and prepared a spreadsheet you mentioned in
5 about middle of 2010?

6 **MR DAGA:** Yes, in 2010 it was roughly.

7 **MS BEVILACQUA:** And you based that
8 information -- where did that information come from?

9 **MR DAGA:** This information came -- I spoke
10 to the director of mining department which was
11 having the -- issuing the licences for the coal, and
12 I talked about that, that what are your plans for
13 export of the coals and where are the exit routes?
14 Then they said that these are our plans, roughly,
15 and we do not have any export exit routes. That is
16 the job of the Ministry of Mining. They have to
17 provide us.

18 So from there I started and made that
19 spreadsheet on the basis of that, and I spoke to one
20 of my friends, chief executive of Maputo port, and
21 I showed him that spreadsheet, that if the country
22 has to export this much of coal, then you need this
23 kind of infrastructure in the country, this kind of
24 railway line, this kind of -- these kilometres of
25 railway line, this million tons of port per annum

1 export.

2 So his initial reply was that that is
3 outlook of mining companies, not our outlook. Every
4 mining company should have their own port, should
5 have their own railway line.

6 Then I explained him that this is not the
7 case, in any country particularly railways and
8 highways are owned by the State. It can be operated
9 by somebody. And I explained him that imagine there
10 are 50 mining companies working in Tete and 50
11 railway lines are coming from Tete area to anywhere
12 in the Mozambique coast and 50 number of ports, how
13 many criss-crossing and who are going to manage that
14 criss-crossing. After so much discussion then he
15 finally agreed yes, what you are saying is making
16 sense, that government of Mozambique should think
17 about a project but the question is where are the
18 funds. And it was our understanding that we will
19 get the funds for this kind of infrastructure
20 project because Mr Ashish Patel was situated at that
21 time -- located in Australia, and Australia being a
22 hub of coal mines and leaders in the coal mining
23 areas, from there he came to know that, yes, they
24 are aware that in Mozambique such facilities are not
25 available, and they want to create this kind of

1 strategy and funds will be available. There will be
2 many stakeholders which will take stakes in this
3 kind of project.

4 And that was the starting point. We
5 started seriously thinking about the project.

6 **MS BEVILACQUA:** And that's in 2010 you
7 built a spreadsheet. I would like you to look at
8 that spreadsheet.

9 **MR DAGA:** Can I have it?

10 **MS BEVILACQUA:** Yes, sir. It's Claimant's
11 Exhibit 196.

12 **MR DAGA:** Where it is?

13 **MR VASANI:** Ms Bevilacqua, can you just
14 confirm that you are giving him the full exhibit and
15 not excerpts of the exhibit?

16 **MS BEVILACQUA:** Yes, sir.

17 Could we bring up Respondent's
18 presentation mode, please, on the screens?

19 **MR BASOMBRIO:** I'm sorry to interrupt, but
20 there's some wires hanging over of your side,
21 Mr Vasani, that blocks the screen. Thank you.
22 Thank you.

23 **MS BEVILACQUA:** Mr Daga, your counsel
24 showed this during the opening statement
25 presentation along with a suggestion that your

1 proposed project would be a game-changer based on
2 the blue box at the top of the page and the numbers
3 that come underneath it, and I just want to be clear
4 about what these numbers represent in the
5 spreadsheet.

6 **MR DAGA:** Which page number?

7 **MS BEVILACQUA:** I'm looking at
8 Exhibit 196 --

9 **MR DAGA:** Yes, 196 there with me. OK.
10 Definitely this is a game-changer project for the
11 country because country can export the mineral
12 resources with that, this kind of projects. It is
13 not only the one you require, you require many such
14 kind of projects when you have to export such huge
15 quantity per annum. It is not a question it can be
16 exported from one place.

17 **MS BEVILACQUA:** And you're looking on this
18 spreadsheet at the total tons available for export
19 for mining in Mozambique, correct?

20 **MR DAGA:** Yes.

21 **MS BEVILACQUA:** Yes. So if you had the
22 ability to mine all of the coal in the Tete province
23 belonging to Mozambique, those are the numbers that
24 you are seeing underneath the blue box, correct?

25 **MR DAGA:** Yes, these are the numbers which

1 were given by mining department to me, and based on
2 our experience and my experience, I have prepared
3 this spreadsheet.

4 **MS BEVILACQUA:** And you assumed in the
5 spreadsheet --

6 **MR DAGA:** It has not -- sorry to
7 interrupt. It has not been prepared by anybody
8 else. It has been prepared by me only.

9 **MS BEVILACQUA:** I understand. And you
10 assumed in this spreadsheet that you would be able
11 to extract at least 60 per cent of all of the coal
12 existing in the mines of Mozambique?

13 **MR DAGA:** Normally that is the -- when we
14 started there were coal mining concessions
15 searching, and I had a geologist expert with me
16 during that period, Mr Satya Pudukollu, who was
17 there as a professor in Eduardo Mondlane University
18 for 14 years.

19 So as per his advice, he said that
20 whatever the coal you mine, 60 per cent is
21 exportable coal, the rest is a waste. You can't
22 export that. So either it is a broken pieces or
23 powder form or other -- whatever other materials
24 which are mixed with that.

25 So after washing, that is the maximum coal

1 you can export. That was the idea was given, and
2 that's why I have taken 60 per cent, which is on the
3 worst case scenario.

4 **MS BEVILACQUA:** It's the worst case
5 scenario to export 60 per cent of the country's
6 natural resources --

7 **MR DAGA:** Yes.

8 **MS BEVILACQUA:** -- over a ten-year period?

9 **MR DAGA:** Pardon?

10 **MS BEVILACQUA:** Over a ten-year period?

11 What is that period of time?

12 **MR DAGA:** It is 50 years period. It is
13 written in that "Years required to extract" that
14 it's 50 years. 6 billion tons.

15 **MS BEVILACQUA:** 6 billion tons --

16 **MR DAGA:** -- of the coal.

17 **MS BEVILACQUA:** -- at 62 million tons per
18 year.

19 **MR DAGA:** 72 million tons per annum is
20 export quantity. 120 million tons is the total
21 export quantity. Extraction of 120 million tons.

22 **MS BEVILACQUA:** And you're assuming 5,000
23 kilometres of rail in this --

24 **MR DAGA:** It was in just a very wild
25 estimate during that period without just as yes,

1 what will be the capacity of the rail, what will be
2 the capacity of port and how much -- how many
3 locations of the port and what will be the railway
4 line length it will be required.

5 So this was just an eye opener for
6 Mozambique I made this spreadsheet. It is not the
7 exact numbers or anything whatever, but it was an
8 eye opener for the country that yes, this kind of
9 infrastructure is needed, and they have to think for
10 such kind of projects. And immediate attention was
11 needed for that.

12 **MS BEVILACQUA:** And this spreadsheet in
13 C-196 also assumes tens of billions of dollars in
14 four phases of the project, yes?

15 **MR DAGA:** This was again a wild estimate
16 from there that, yes, this kind of investment will
17 be needed. You cannot say that exactly
18 43.29 billions will be required or 44 billions will
19 be required. This was just a wild guess that this
20 is the kind of investment needed in this country.
21 If you have to export the coal, from where this
22 money was going to come? That was to be thought by
23 the planners of the country.

24 **MS BEVILACQUA:** So you came up with this,
25 in your words, "wild guess" spreadsheet --

1 **MR DAGA:** This was the --

2 **MS BEVILACQUA:** Excuse me, sir. I'm not
3 finished with my question.

4 **MR DAGA:** OK.

5 **PRESIDENT:** Also for the court reporters,
6 if you can make a small -- and for the
7 interpreters -- it must be extremely difficult to
8 interpret you into Portuguese, so if you can wait
9 for the question from counsel and leave a second and
10 then you answer. That would be appreciated.

11 **MR DAGA:** Agreed.

12 **MS BEVILACQUA:** You mentioned that this is
13 somewhat of a wild guess and you would agree, sir,
14 that you did not share this spreadsheet with
15 Mr Zucula, Minister Zucula, in 2010, correct?

16 **MR DAGA:** No. This I did not share with
17 Mr Zucula.

18 **MS BEVILACQUA:** And you --

19 **MR DAGA:** First -- sorry. First, as
20 I said, that I wanted to make sure that this kind of
21 project is possible and Mozambique will agree for
22 such kind of projects. That's why I spoke to Maputo
23 port chief executive, Mr Osório, and I also spoke
24 one of the very senior guys from CFM, Mr Fonseca,
25 who was considered as a father figure in transport

1 business and he was the chairman for CFM for many
2 years.

3 So I spoke to him also, and he said, yes,
4 this kind of project is very much needed. Why we
5 have not thought for, and why our government has not
6 thought, this was his exact words to me, and that
7 has given me a boost that, yes, now I shall start
8 seriously and I should start communicating with the
9 government on this project. That was the starting
10 point.

11 **MS BEVILACQUA:** When are you claiming
12 Mr Fonseca made those exact words to you?

13 **MR DAGA:** Pardon?

14 **MS BEVILACQUA:** You said "those were his
15 exact words to me". When did you think this
16 happened?

17 **MR DAGA:** It happened once I met him in
18 2010, and then again I met him in 2011 also, I
19 think. Twice I have met him.

20 **MS BEVILACQUA:** And you would agree that
21 you need more than two pages of the spreadsheet in
22 front of you, which approximates a wild guess, to
23 create a viable project of this scale and scope?

24 **MR DAGA:** When you have to start any
25 infrastructure project, first you have to make some

1 estimates, and those estimates are based on the
2 experiences. It can go plus 10 per cent, minus 10
3 per cent, plus 15 per cent, minus 15 per cent also.

4 But to start with you have to have some
5 kind of basis that on what basis you are starting
6 and you are thinking of the plan. Then it can be
7 refined in due course of time. That is a normal
8 process for any infrastructure project which we have
9 learned.

10 **MS BEVILACQUA:** And up to this point PEL
11 had not proposed a project of this size or magnitude
12 in Africa for rail and port, had you?

13 **MR DAGA:** At that time this was one of the
14 biggest project what we came to know in Africa, it
15 will be. If it happens.

16 **MS BEVILACQUA:** On behalf of PEL, you were
17 willing to investigate whether a project of this
18 size was a possibility and whether it could work?

19 **MR DAGA:** Yes, from Patel's side, I was
20 the person who was responsible for this.

21 **MS BEVILACQUA:** But you actually had to do
22 some convincing of the people in Mozambique. For
23 example, the minister -- excuse me, the director of
24 the port in Macuse -- I'm sorry, my apologies. You
25 had mentioned the chief executive of the Maputo

1 port, who was not a fan of your plan, was he?

2 **MR DAGA:** Actually, he was the person who
3 was previously in CFM working, but then he was made
4 chief executive of Maputo port.

5 So through one of my friends I met him,
6 but, yes, he will be the person who can guide me
7 properly whether such kind of infrastructure is
8 needed or not. That's why I started and he
9 suggested that why don't you take advice from
10 Mr Fonseca also because he is considered as a father
11 figure.

12 So I met Fonseca also during that period
13 for this kind of projects, because we were -- wanted
14 to make sure that what we are talking, it should
15 make some sense to the government also and to the
16 coal mining companies also.

17 **MS BEVILACQUA:** Right, because you need
18 both the government of Mozambique and then the coal
19 mining companies to participate in a project like
20 this to make it viable?

21 **MR DAGA:** This was a later development
22 when we started talking about the MOI and all those
23 things. At that moment it was a suggestion that why
24 not to call for the mining companies also to involve
25 in the project and become stakeholders in such kind

1 of project, and we appreciated that suggestion and
2 we discussed also with a lot of mining companies.

3 Ultimately the mining companies are going
4 to export, so that was a need for them also, because
5 if they know that there is no exit route, they will
6 not invest in the country, in the mining sector.

7 So to increase the investment in mining
8 sector, you need such kind of projects who can
9 export -- from where they can export their product.

10 **MS BEVILACQUA:** And after this spreadsheet
11 in C-196, you reached out to more individuals within
12 the government of Mozambique, right?

13 **MR DAGA:** Yes. This I discussed with so
14 many people. Even I discussed one of the counsel,
15 I was -- commercial counsel in the embassy of
16 Mozambique in India, I was knowing him. I spoke to
17 him also in Mozambique that, yes, whether this kind
18 of things will be good enough to make investment.
19 He also suggested that, yes, this is a good
20 investment. I'm forgetting his name. I don't
21 remember, kindly excuse me, the gentleman's name.

22 **MS BEVILACQUA:** And you had a number of
23 individuals who lived in Mozambique and spoke
24 Portuguese that you added to your team --

25 **MR DAGA:** No, I was -- sorry. Sorry.

1 **MS BEVILACQUA:** Thank you.

2 That you added to your team to assist you.
3 You referenced them in paragraph 17 of your first
4 witness statement, and I would draw your attention
5 to paragraph 17e.

6 You had as someone assisting you,
7 Mr Prabhu from Aries Consulting, correct?

8 **MR DAGA:** Yes. Yes. He was our
9 representative, local representative, in Mozambique.

10 **MS BEVILACQUA:** And he's an accountant?

11 **MR DAGA:** He was a chartered accountant
12 working there.

13 **MS BEVILACQUA:** And he speaks Portuguese?

14 **MR DAGA:** He was speaking Portuguese. But
15 I was communicating with all these people in English
16 only because I was not knowing Portuguese.

17 **MS BEVILACQUA:** And you hired Sal &
18 Caldeira Abogados as legal counsel in Mozambique?

19 **MR DAGA:** Yes, Sal & Caldeira we were
20 taking legal advice from them because Dr Satya
21 Punukollu was knowing Mr Caldeira of Sal & Caldeira,
22 so he suggested that we should take his opinion on
23 these new ventures and all those things.

24 **MS BEVILACQUA:** You also hired SPI, a
25 local investment firm in Mozambique.

1 **MR DAGA:** We have not hired them. SPI I
2 had met them and -- during my coal mining
3 concessions period, and at that time I had the
4 understanding with them that they will be my equity
5 partner as a local partner for all my ventures in
6 Mozambique, whatever I do. They were not the
7 consultant and we have hired them.

8 **MS BEVILACQUA:** You say in paragraph 17 on
9 the bottom of page 2 of your witness statement that
10 you put together --

11 **MR DAGA:** 2?

12 **MS BEVILACQUA:** Paragraph 17. Same
13 paragraph, yes?

14 **MR DAGA:** Yes.

15 **MS BEVILACQUA:** And I'm looking at the
16 last sentence in the paragraph before you get to the
17 letters. You put together a team of experts and
18 consultants, and then the last sentence before the
19 list is "This team consisted of" and the last member
20 of that team that you list in paragraph (h) of 17 is
21 SPI.

22 **MR DAGA:** Yes.

23 **MS BEVILACQUA:** And SPI based in
24 Mozambique also spoke Portuguese.

25 **MR DAGA:** SPI was a Mozambican speaking

1 company. The SPI chief executive was Mozambican
2 speaking.

3 Why we have taken SPI, because whenever
4 you go to any other third country, you require some
5 local company who can do your liaisioning works, and
6 local helps can be obtained from them, and that was
7 the reason why we have made an arrangement with SPI
8 and we made them the equity partner for all our
9 ventures in Mozambique.

10 **MS BEVILACQUA:** Did you have other
11 consultants in Mozambique later in the project who
12 you worked with? For example, did you work with a
13 Mr Mondlane?

14 **MR DAGA:** Mr?

15 **MS BEVILACQUA:** Mondlane?

16 **MR DAGA:** Mondlane? He was for our mining
17 consultants. Mr Mondlane was -- Junior Mondlane was
18 the mining consultant. He was not --

19 **MS BEVILACQUA:** For PEL?

20 **MR DAGA:** Pardon?

21 **MS BEVILACQUA:** For PEL?

22 **MR DAGA:** For Patel only, but only for the
23 tantalite mining concessions. He was not a person
24 from infrastructure industry.

25 **MS BEVILACQUA:** The next step in the

1 process was the Preliminary Study. Do you recall
2 discussing the Preliminary Study with the Ministry
3 of Transport and Communications?

4 **MR DAGA:** Yes. That was the thing in I
5 think February 2011. If I remember the exact date,
6 17 February. I met 15th of February I think or 16th
7 of February I met Minister of Planning, because it
8 was my understanding that such kind of big projects
9 first Minister of Planning will be having the ideas
10 about this, and they will put in their five, seven
11 years plans of the country, so why not to discuss --
12 and SPI chief also suggested me that first we should
13 talk to the Minister of Planning, Mr Aiuba at that
14 time. He was the gentleman. I met him and
15 I explained him these are our plans and this is the
16 spreadsheet, I showed him that this kind of projects
17 are required, so do you have any idea about such
18 kind of projects. He said we do not have any idea
19 or anything in the planning for such kind of
20 projects, but it will be a very good idea to have
21 such kind of projects if you can arrange the funds.

22 That was the first question by him that if
23 you can arrange the funds.

24 **MS BEVILACQUA:** I'm sorry, I could not
25 understand. Could you repeat, please?

1 **MR DAGA:** In February -- 17 or 15

2 February --

3 **MS BEVILACQUA:** No. Just the last part.

4 **MR DAGA:** If you arrange the funds for the
5 projects, then we are ready to discuss with you
6 because Mozambique does not have that kind of funds
7 to invest in the project. That was his saying. And
8 he suggested me that instead of mine -- because this
9 project will come under Ministry of Transport and
10 Communications, so better you meet Mr Zucula. At
11 that moment he asked his secretary to fix up an
12 appointment for me with Mr Zucula, he fixed the
13 appointment and next day I met Mr Zucula. The same
14 kind of expression of letter, expression of interest
15 which I submitted to Mr Aiuba, Minister of Planning.

16 **MS BEVILACQUA:** And you did -- you did
17 work with the Ministry of Transport and
18 Communications on the Preliminary Study, correct?

19 **MR DAGA:** This was the first time I met
20 Mr Zucula there.

21 **MS BEVILACQUA:** Yes, I understand.

22 **MR DAGA:** I had never worked previously
23 with him.

24 **MS BEVILACQUA:** I understand.

25 **MR DAGA:** Yes.

1 **MS BEVILACQUA:** After that meeting --

10:13

2 **MR DAGA:** Sorry. Yes, please.

3 **MS BEVILACQUA:** After your first meeting
4 with Mr Zucula -- you had more than one, I'm
5 assuming, right?

6 **MR DAGA:** During the first meeting he just
7 listened to me and registered what I say, I think,
8 and then he said let us have one more meeting, let
9 me talk to my people in the ministry and let us
10 think of this. Then I think maybe after a week's
11 time or so, again I met him, maybe four, five days,
12 I don't remember exact dates now, it's almost 12
13 years back story, but still I met him and during
14 that meeting he told me that as per our people,
15 there is no possibility of port in Zambezia coast
16 because this delta is a very disturbed delta, having
17 a swampy land and lot of rivers and streams are
18 coming so a lot of siltation problem is there.

19 So he suggested I will suggest to you two
20 of the persons who are experts, considered as
21 experts, you have to hire them and you have to make
22 a Preliminary Study through them, and if they
23 suggest to me that, yes, there is a possibility of
24 port and railway line in that -- because port was
25 the main question here. Railway line, anywhere you

1 can connect, but the port you require the suitable
2 location.

3 I said OK, I'll invest that also because
4 I was very hopeful and very much enthusiastic about
5 this project because this kind of project was well
6 received in Mozambique by the ministries so I said
7 OK, I'll go with the Preliminary Study with whatever
8 experts you are suggesting to me, and we will make a
9 report to you.

10 **MS BEVILACQUA:** So PEL funded the
11 preliminary study, but it was actually conducted by
12 two people affiliated with the MTC from Mozambique?

13 **MR DAGA:** Actually, one -- Dr Muhate was
14 working with MTC and Mr Ruby was taken by Dr Muhate,
15 who was working I think in INAHINA, something like
16 that, the other project which was also coming under
17 Ministry of Mining, that company.

18 **MS BEVILACQUA:** And the Preliminary Study
19 is Exhibit C-4.

20 **MR DAGA:** Tab 1.

21 **MS BEVILACQUA:** Tab 1.

22 **MR DAGA:** Yeah.

23 **MS BEVILACQUA:** And you recognise this,
24 Mr Daga. This is the Preliminary Study?

25 **MR DAGA:** Yes.

1 **MS BEVILACQUA:** And if we look at the
2 first several paragraphs on the first page after the
3 cover page --

4 **MR DAGA:** Yeah.

5 **MS BEVILACQUA:** The first page of
6 substance, so if you would flip forward, Mr Daga.
7 Keep going, that's OK. Keep going.

8 **MR DAGA:** No?

9 **MS BEVILACQUA:** There you go, the page on
10 the right. You see?

11 **MR DAGA:** This page? OK.

12 **MS BEVILACQUA:** And this introductory
13 portion of the Preliminary Study was prepared by the
14 officials and the people responsible for the study
15 living in Mozambique, correct?

16 **MR DAGA:** Yes, these were the two
17 people --

18 **PROFESSOR TAWIL:** Excuse me, counsel. Is
19 this 4A? Because there appears to be a 4A and it
20 is something different.

21 **MS BEVILACQUA:** This is C-4. I will tell
22 you I don't know the difference between C-4 and
23 C-4A.

24 **MS VASANI:** C-4A is the full Preliminary
25 Study. I think there's only one additional page or

1 so in C-4A, but Daria knows the best.

2 **MS KUZNETSOVA:** Thank you. There IS one
3 additional annexe in C-4A, which is the railway
4 study.

5 **MR VASANI:** Sorry to interrupt. Just so
6 we're fair to the witness, you've given him C-4 and
7 not C-4A, but I'm going to presume for the purposes
8 of your questions the A part is not necessary?

9 **MS BEVILACQUA:** That is correct.

10 So, Mr Daga, looking at the introduction
11 here, it's explaining the geographic location of the
12 country of Mozambique, its boundaries, its
13 coastline, et cetera, and this was prepared by
14 people who lived in Mozambique, correct?

15 **MR DAGA:** Yeah, these were the two local
16 Mozambican people. We hired them.

17 **MS BEVILACQUA:** And the study itself is
18 approximately 30, perhaps 31, pages if the rail
19 study is included, and it does examine locations for
20 ports, locations for rails on a preliminary basis,
21 correct?

22 **MR DAGA:** Yes. This study was conducted
23 only to find out a probable port location, because
24 Minister Zucula said to me there is no possibility
25 of port in this delta between Chinde and Pebane, so

1 if some of my experts suggest there is a possibility
2 of port, then I'll go further down on the line.
3 Otherwise, we'll stop it here.

10:20

4 **MS BEVILACQUA:** And so in examining these
5 four port locations, the last thing that the
6 Preliminary Study does, if you turn to the second to
7 the last page.

8 **MR DAGA:** Yeah. Page 24 you are asking?
9 Or page 31?

10 **MS BEVILACQUA:** Just a moment, please.

11 **MR DAGA:** Because 4A is not here. It's 4.
12 Exhibit 4.

13 **MS BEVILACQUA:** Page 23, Mr Daga.

14 **MR DAGA:** Page 23? Here.

15 **MS BEVILACQUA:** And page 23 lists
16 recommended specialist studies that were recommended
17 to occur after the Preliminary Study.

18 **MR DAGA:** Yes.

19 **MS BEVILACQUA:** And this was the
20 recommendation made by Mozambique, who conducted
21 this, and PEL, who sponsored this study?

22 **MR DAGA:** Yeah, this was the
23 recommendations.

24 **MS BEVILACQUA:** And the recommendations
25 include to move forward and understand detailed

1 hydrographic and bathymetric surveys to the port
2 sites.

3 **MR DAGA:** No. And this preliminary study,
4 these are the things which are to be done to
5 finalise the port location and including in the
6 feasibility study or other way you can say in the
7 DPR, detailed project report. These are the -- they
8 have suggested that these are the studies should be
9 done so that we are sure of that it is a bankable
10 project.

11 **MS BEVILACQUA:** And those things include,
12 among others, assessment -- the last bullet point,
13 "Assessment of the impacts of the development of
14 railway and navigation on the concerned regions".

15 **MR DAGA:** Yes, these are the points which
16 has to be considered in detailed project report.
17 That is what they have suggested.

18 **MS BEVILACQUA:** Yes. And you also need
19 detailed studies to determine the best and
20 economically, environmentally feasible transport
21 mode?

22 **MR DAGA:** Yes, correct.

23 **MS BEVILACQUA:** And detailed engineering
24 studies to confirm the rail route once you know the
25 port location?

1 **MR DAGA:** Yes.

2 **MS BEVILACQUA:** All of these things would
3 be necessary in order to show that you have a
4 bankable project?

5 **MR DAGA:** Yes, correct.

6 **MS BEVILACQUA:** If you could turn to your
7 witness statement, your first witness statement,
8 please. Paragraph 26 of your first witness
9 statement. I'm looking at the last sentence in
10 paragraph 26.

11 **MR DAGA:** Let me read, please.

12 **MS BEVILACQUA:** Yes.

13 **MR DAGA:** Yes. Please.

14 **MS BEVILACQUA:** In the last sentence you
15 noted "A clear and considered Preliminary Study
16 would give the government the comfort of knowing
17 that the concept which PEL was presenting was viable
18 and worth developing with a prefeasibility study".

19 Now, there are a number of risks and
20 factors that could make a project not viable, even
21 at this early stage. You agree?

22 **MR DAGA:** Pardon?

23 **MS BEVILACQUA:** There are a number of
24 factors that could make a project not viable even at
25 this early preliminary phase?

1 **MR DAGA:** There can be some hurdles which
2 can make the project unviable, as previously
3 Mozambique has thought for, that there are disturbed
4 deltas, there are streams available so there is
5 siltation problems, so port will not be possible,
6 and that is why the reason this Preliminary Study
7 was conducted.

8 Then we were insisting, because we had
9 done homework in India, seeing all these locations
10 that, yes, there is a possibility of port in
11 Zambezia coast.

12 When Mr Zucula told me that, yes, I agree
13 with your concept, but if Preliminary Study suggest
14 to me that, yes, there is a possibility of port,
15 then I'll go ahead with the project. Otherwise,
16 I don't want waste -- I don't want to waste your
17 time and money and my time. This was his exact
18 words he has told me on this Preliminary Study that
19 day evening. I think we met in the evening around
20 five o'clock or so in the evening before he left for
21 the office, and these were the exact words he told
22 me. That I don't want to waste your time, money and
23 my time, if my people says there is a possibility of
24 port I'll go further ahead. Otherwise, we'll stop
25 this discussion here only. And I accepted that.

1 I said, OK, fine. You give me the name of the
2 persons, we will talk to him, and we will conduct
3 the Preliminary Study. And that is why on same day
4 we sat in the night in the hotel, me and Mr Ashish
5 with Dr Muhate, and we asked him kindly give me your
6 proposal so that we can finalise immediately, I want
7 this study to be done on the right footing. And
8 your opinion I want that whether there is a
9 possibility of a port or not.

10 **MS BEVILACQUA:** And with the Preliminary
11 Study, you agreed to pay for the cost, correct?

12 **MR DAGA:** Pardon?

13 **MS BEVILACQUA:** You agreed to pay for the
14 cost of the preliminary study?

15 **MR DAGA:** Yes, we had paid. We had paid
16 the cost of the Preliminary Study.

17 **MS BEVILACQUA:** And you did not have a
18 contract that would give you something in return for
19 delivering the Preliminary Study, correct?

20 **MR DAGA:** I could not understand your
21 question.

22 **MS BEVILACQUA:** You undertook the
23 Preliminary Study on your own cost, on your own
24 volition, with nothing in return, nothing guaranteed
25 in return.

1 **MR DAGA:** No, this was -- as a business
2 entity you have to take this on the floor that yes,
3 if there is a possibility, then I go ahead and I'll
4 be successful. Otherwise, that investment goes as a
5 bad investment.

6 **MS BEVILACQUA:** And sitting here today,
7 you cannot tell us how much it cost or how much PEL
8 spent to conduct the Preliminary Study, can you?

9 **MR DAGA:** Exact numbers I'm not able to
10 tell you.

11 **MS BEVILACQUA:** You can't give us
12 estimates either, can you?

13 **MR DAGA:** I can't tell you anything.
14 I don't remember.

15 **MS BEVILACQUA:** And if you look at the
16 screen, and I will bring it to you, it's in the Core
17 Bundle --

18 **MR DAGA:** I can't read it. On the screen
19 it's so small.

20 **MS BEVILACQUA:** Tab 46 in the Core Bundle.

21 **MR PEREZCANO:** What is the number in the
22 record, the exhibit number?

23 **MS BEVILACQUA:** These are Claimant's
24 responses to the document requests, and they were
25 attached to the Panel's order. I will find the

1 order number for you.

2 **PRESIDENT:** This is the document
3 production schedule for document number 18, I think.

4 **MS BEVILACQUA:** So this is Mozambique's
5 Request No 10 for the production of documents to
6 Claimant PEL. On page 13 of the exhibit, sir. I'm
7 sorry, I said 18.

8 **PROFESSOR TAWIL:** Excuse me. I'm lost.
9 I'm looking at what I was given, Respondent Core
10 Bundle 40. It's different.

11 **MS BEVILACQUA:** 46?

12 **PROFESSOR TAWIL:** Oh, 46. Apologies.

13 **MS BEVILACQUA:** OK, Mr Daga. Can you see
14 the requesting party, which is Mozambique, asked you
15 to provide copies of all documents that show any
16 costs incurred with respect to the Preliminary
17 Study?

18 **MR DAGA:** Yes.

19 **MS BEVILACQUA:** And you have none?

20 **MR DAGA:** No, I did not, because I did not
21 have the records available. This study was done in
22 2011, so as per the income tax rule in India, if
23 there are no queries within three years, then we can
24 keep off the records and we don't keep.

25 If there is a question on the -- any

1 investment or any expenses, then we have to keep the
2 record for seven years maximum. After that, we
3 don't have to keep. So there was no questions on
4 this and these are the Preliminary Studies, very
5 small amount maybe, so we have not kept any record.
6 And this goes in head office account because until
7 we secure a job, all expenses comes to the head
8 office. So there are projects like this, many
9 projects, where we go for bids, tenders,
10 investigations, and all expenses goes to the head
11 office, so it is very difficult and a complex
12 situation to identify which expenses is for which
13 project. It's very difficult.

14 **MS BEVILACQUA:** And that's a normal part
15 of your business, correct, Mr Daga, that it's
16 ordinary for PEL to have a number of these projects
17 that go out for bids, tenders, investigations,
18 preliminary studies, and you run all of those sorts
19 of expenses through your head office?

20 **MR DAGA:** Yes.

21 **MS BEVILACQUA:** Now I want to talk to you
22 about --

23 **MR DAGA:** Can I close this?

24 **MS BEVILACQUA:** You may close, yes. Thank
25 you.

1 I would like to talk to you now about the
2 negotiations around the MOI, the memorandum of
3 understanding, and those start happening after the
4 Preliminary Study is completed, correct?

5 **MR DAGA:** Yes.

6 **MS BEVILACQUA:** And the preliminary study
7 is completed in March of 2011?

8 **MR DAGA:** March 2011. By end
9 of March 2011 somewhere we submitted this
10 Preliminary Study, but I was in contact with
11 Dr Muhate throughout this month period that what are
12 the chances, what are the locations you are visiting
13 and whether there is a possibility. After visiting
14 so many places he told me that, yes, there are three
15 port locations which are good locations and we can
16 consent it and we will consent it on those, and then
17 there are chances that we will succeed in our
18 venture.

19 **MS BEVILACQUA:** So it took approximately a
20 month to conduct the Preliminary Study, correct?

21 **MR DAGA:** Pardon?

22 **MS BEVILACQUA:** Approximately 30 days, a
23 month, to do the Preliminary Study?

24 **MR DAGA:** Maybe approximate. It must have
25 taken 30 days, 40 days. Not more.

1 **MS BEVILACQUA:** Not very long?

2 **MR DAGA:** No.

3 **MS BEVILACQUA:** And as a result of that
4 Preliminary Study, the Ministry of Transport
5 identified three possible port locations?

6 **MR DAGA:** I could not follow you.

7 **MS BEVILACQUA:** Three possible port
8 locations identified as a result of the Preliminary
9 Study?

10 **MR DAGA:** I think in Preliminary Study
11 they listed four locations but in that they have
12 given a preference also that yes, Macuse may be the
13 most preferred location for a port.

14 **MS BEVILACQUA:** And then it was after
15 that, after the Preliminary Study was completed,
16 that you began drafting what you called a memorandum
17 of intent?

18 **MR DAGA:** No, that is not -- partially --
19 that is partially correct, partially incorrect.
20 When I was talking to Dr Muhate during this study
21 and when he suggested me that, yes, there is a
22 possibility, strong possibility of port in this
23 coast in this area, then we started drafting the MOI
24 drafts and then we started that, OK, let us not
25 waste much of time, keep the drafts at least

1 something ready for the discussion with the
2 ministry.

3 **MS BEVILACQUA:** And the first several
4 drafts that you located and submitted with your
5 second witness statement are all -- the first
6 several are internal drafts only to PEL, correct?

7 **MR DAGA:** Yes, all internal because first
8 we have to ourselves also satisfy our legal,
9 finance, administrative, technical, all people has
10 to satisfy, and there were many suggestions on that
11 that, yes, this kind of draft, this kind of draft,
12 we have taken out drafts from various other
13 projects, that this kind of draft can be given to
14 the ministry. So this was a very, very preliminary
15 stage.

16 **MS BEVILACQUA:** Yes. It's very
17 preliminary and very early in the process, correct?

18 **MR DAGA:** Yes, very early in the process
19 and it has to get defined in due course of time.

20 **MS BEVILACQUA:** And the first draft that
21 you produce is in Claimant's Exhibit 201, and I'd
22 like to start with the e-mail, and this is shortly
23 after the Preliminary Study is concluded. You
24 drafted the attached memorandum of intent, correct?

25 **MR DAGA:** No, no, no. This was before

1 Preliminary Study was concluded. This was --

2 **MS BEVILACQUA:** While it's happening?

3 **MR DAGA:** -- 13 March 2011 we have
4 started. As I said earlier, that when I came to
5 understand from Dr Muhate that, yes, there are
6 possibility of port locations, then I started
7 drafting this and I sent to Ashish that, yes, this
8 is -- because we were two people responsible there
9 at that time from our company.

10 So first we wanted to settle between
11 ourselves that, yes, what draft we can give for that
12 to the ministry.

13 **MS BEVILACQUA:** So I'd like to look first
14 at your e-mail to Mr Patel, which is on the first
15 page of the exhibit there, and it's at the bottom of
16 the page because the e-mails print in reverse
17 chronological order.

18 So it's the one that's Saturday,
19 12 March 2011?

20 **MR DAGA:** Yes, 12th of March 2011.

21 **MS BEVILACQUA:** Correct.

22 **MR DAGA:** At 6.35 pm?

23 **MS BEVILACQUA:** Yes.

24 And this is you summarising the terms that
25 you are sending just internally to Mr Patel?

1 **MR DAGA:** Yeah. This was a very, very
2 early drafts -- one of the drafts.

3 **MS BEVILACQUA:** And at this point you have
4 left the name of the ministry blank. You have not
5 filled in which ministry it is because it may
6 change, and you didn't know who you'd be negotiating
7 with?

8 **MR DAGA:** Yeah, because such kind of --
9 generally in India what we have seen, that you have
10 to go to the Ministry of Planning or Planning
11 Commission for such kind of project first and you
12 have to sign.

13 So I was not sure what will happen there,
14 so that's why I have written in my mail also that
15 the name of the ministry can change, but that can be
16 made -- changed at any moment. Only the contents we
17 should first finalise.

18 **MS BEVILACQUA:** And it was your opinion at
19 the time that you should not write much in this, the
20 MOI, except to bind them from not going to others?

21 **MR DAGA:** Yes, because that was the first
22 thought, that if I start a study and I start
23 investing my own money that the government should
24 not go to somebody else also. That was the first
25 point, first story that came in the mind, that we

1 should bind them somewhere.

2 **MS BEVILACQUA:** And these are -- if you
3 would then look at Mr Patel's response, and his
4 response to you that you should replace the Chinde
5 area with the actual port or at least include the
6 port to keep the area as broad as possible.

7 **MR DAGA:** Yes, because still Dr Muhate was
8 finding a gap area located between Chinde and
9 Quelimane, so as per his suggestion that we should
10 not write only Chinde, we should write a band length
11 that yes, in this bandwidth we are talking about the
12 port project.

13 **MS BEVILACQUA:** And what is attached as
14 the draft of the MOI, again, this is all just
15 internal to PEL and at this point you're thinking as
16 to how the MOI would look, on the last page of the
17 exhibit, that there would be a techno commercial
18 feasibility report within 12 months of signing the
19 MOI, and then you would agree to enter a BOO
20 agreement. That's a Build Own and Operate
21 agreement?

22 **MR DAGA:** Yes, this was the initial ideas.
23 There is -- the "T" is missing here.

24 **MS BEVILACQUA:** I'm sorry?

25 **MR DAGA:** "T" is missing. BOOT. "T" is

1 missing.

2 **MS BEVILACQUA:** What is the "T".

3 **MR DAGA:** "T" is the Transfer. Build,
4 Own, Operate and Transfer. Means we have to give
5 back to the government. That was -- at a later
6 stage it was added, that, yes, we cannot give an
7 open-ended concession to you. You cannot have
8 rights throughout your career that, yes, you can
9 operate and maintain, so you have to transfer back.
10 And that is where the time limit comes. So then it
11 becomes BOOT instead of BOO.

12 **MS BEVILACQUA:** And at this time in March
13 of 2011, what was Mr Ashish Patel's role with PEL?

14 **MR DAGA:** Ashish Patel was involved in
15 this project, as I say, from 2010 onwards somewhere,
16 in mid 2010, when we started talking about this kind
17 of project, infrastructure projects is available,
18 can we get the funds or not.

19 So our MD also -- managing director also
20 thought that, OK, let him involve right in the
21 beginning itself at the time of signing of MOI or
22 any study so that he is aware of that this kind of
23 project is there, and funds are available for such
24 kind of projects, and he can speak in the funding
25 institutions according to that. That's why Ashish

1 was involved.

2 **PRESIDENT:** Ms Bevilacqua, whenever you
3 think it is appropriate, we should make -- in the
4 next quarter of an hour we should make a break.

5 **MS BEVILACQUA:** We can do that now, if you
6 would like. That would be fine.

7 **PRESIDENT:** Yes. Mr Perezcano has a
8 question for you, Mr Daga.

9 **MR PEREZCANO:** Thank you, Mr Chair.

10 Before we break, Mr Daga, I understand
11 that you said right now in reference to paragraph 2
12 where it says the BOO, and I understand you said
13 that "T" is missing, and should have been BOOT to
14 include the Transfer?

15 **MR DAGA:** Yes.

16 **MR PEREZCANO:** Now, I just want for you to
17 clarify. This is Patel's internal draft. So did
18 you miss the "T" in this draft on 12th March, or did
19 it change from a proposed BOO, or a BOO that Patel
20 proposed on 12 March, did it later change in
21 discussions with the government to a Build, Own,
22 Operate, Transfer?

23 So, just to put it simply, my question is,
24 is "T" missing from this draft, or was it intended
25 to be BOO and then "T" was added at some later

1 point? Could you please clarify that for me?

10:47

2 **MR DAGA:** Sir, a very simple answer I'll
3 give it to you. When you ask something, you will
4 ask for the moon but you will not get moon. You may
5 get earth only, some place in the earth.

6 So definitely when I started with my
7 thinking, that why not to have this project
8 throughout my life or throughout the life of the
9 project. That's why it was BOO. Not BOOT.

10 **MR PEREZCANO:** OK. Understood. You were
11 asking for the moon.

12 **MR DAGA:** Yes. Because as a business
13 person, definitely I'll ask whatever maximum I can
14 extract from the project.

15 **MR PEREZCANO:** Understood. Thanks for the
16 clarification. Thank you, Chair.

17 **PRESIDENT:** Shall we break then?

18 **MS BEVILACQUA:** Yes, thank you,
19 Mr President.

20 **PRESIDENT:** Shall we break for a quarter
21 of an hour, so we'll come back five past the hour.

22 **MR VASANI:** Mr President, will you give an
23 admonishment to the witness?

24 **PRESIDENT:** Yes. Mr Daga, can I kindly
25 ask you not to speak to counsel to Claimant during

1 this break?

2 **MR DAGA:** Sure, sir. Should I sit here?

3 **PRESIDENT:** No, no. You're welcome to
4 have a coffee. You can walk around.

5 (Short break from 10.49 am to 11.08 am)

6 **PRESIDENT:** We resume the hearing, and we
7 give the floor to the Republic of Mozambique.

8 **MS BEVILACQUA:** Sorry, I did not hear you.

9 **PRESIDENT:** It couldn't be simpler.
10 We give the floor to the Republic of
11 Mozambique.

12 **MS BEVILACQUA:** Thank you, Mr President.

13 Mr Daga, do you still have in front of you
14 Exhibit C-201 that was the loose piece of paper? I
15 think it's under your witness statement.

16 **MR DAGA:** This?

17 **MS BEVILACQUA:** Yes. Thank you.

18 And, as we were discussing this first
19 internal draft of an MOI that you put together,
20 I would like to confirm just a little bit what PEL's
21 process was for entering into an MOI.

22 PEL at this time had internal legal
23 counsel, correct?

24 **MR DAGA:** Pardon?

25 **MS BEVILACQUA:** Did you have internal

1 legal counsel to review legal documents such as an
2 MOI?

3 **MR DAGA:** I don't think at this stage we
4 have sought any legal opinion.

5 **MS BEVILACQUA:** That wasn't my question.
6 My question was does the company -- or in 2011 did
7 the company at that time have counsel to review
8 legal documents?

9 **MR DAGA:** Yes, we have.

10 **MS BEVILACQUA:** And at this point in 2011,
11 this particular document was not at a point where
12 you presented to it legal, is that right?

13 **MR DAGA:** Yes, this was not -- this was
14 internal draft from my side to Ashish only. Nobody
15 else.

16 **MS BEVILACQUA:** All right. And then if
17 you look at Mr Patel's response to you, which is the
18 e-mail, first page, top of the page on the left-hand
19 side -- got it?

20 **MR DAGA:** Pardon?

21 **MS BEVILACQUA:** Mr Patel's response to
22 your e-mail?

23 **MR DAGA:** Yeah. Yeah.

24 **MS BEVILACQUA:** In making suggestions of
25 things to change, Mr Patel says "Let me know what

1 the legal team says".

2 **MR DAGA:** Yeah, correct.

3 **MS BEVILACQUA:** At least at this point in
4 time Mr Patel is assuming the legal team is
5 reviewing.

6 **MR DAGA:** Yeah, legal team has to review
7 ultimately some conditions.

8 **MS BEVILACQUA:** And there are other
9 internal approval processes within PEL if you're
10 going to enter a contract, correct?

11 **MR DAGA:** Yes. We have to talk to our
12 managing director, we have to get permission from
13 board of directors. We have to -- all this process
14 we have to go for.

15 **MS BEVILACQUA:** And does that process
16 change depending on the size and the scope of the
17 contract?

18 **MR DAGA:** Pardon? Can you repeat, please?

19 **MS BEVILACQUA:** Yes. Does that internal
20 approval process change based on the size or the
21 scope of the contract?

22 **MR DAGA:** Internal people may suggest
23 something that, yes, this should be done, this
24 should not be done, but the broad scope was to
25 develop infrastructure project. That was known to

1 everybody, and we were working for that only, to
2 achieve that goal.

11:11

3 **MS BEVILACQUA:** And at this time in 2011
4 you already had, as part of your team in Mozambique,
5 legal counsel, the Sal & Caldeira firm?

6 **MR DAGA:** Yes, Sal & Caldeira was there.

7 **MS BEVILACQUA:** Who did you work with at
8 Sal & Caldeira?

9 **MR DAGA:** Mr Caldeira himself. But this
10 drafts were not discussed at that time with him.

11 **MS BEVILACQUA:** Understood. This is still
12 all just internal to PEL at this time?

13 **MR DAGA:** Very initial draft.

14 **MS BEVILACQUA:** I would like to look at
15 the next draft of the MOI that PEL produced in this
16 case, and that is in Exhibit 223.

17 **MR DAGA:** 2?

18 **MS BEVILACQUA:** Claimant's 223. I will
19 have it handed to you.

20 First I'd like to understand who some of
21 these individuals are on the e-mail.

22 **MR DAGA:** Rahul Mundada was from our legal
23 team. Gajanan Patkar is also from the legal team.

24 **MS BEVILACQUA:** So the two individuals on
25 this 21 March 2011 second draft of the MOI produced

1 by PEL are legal team from PEL?

2 **MR DAGA:** Yes, this was the legal team.

3 This was a draft given by the legal people.

4 **MS BEVILACQUA:** So they provided comments
5 on your initial draft?

6 **MR DAGA:** As you know, when we go to the
7 legal team, they will add hundreds of points to
8 safeguard everything, to bind everybody that --
9 which does not happen in the projects, so this was a
10 first draft like that from the legal. It must have
11 changed 200 per cent even.

12 **MS BEVILACQUA:** OK. Let's look at some of
13 the things that changed between Exhibit 201 and
14 Exhibit 223.

15 Exhibit 223 that you have in front of you
16 visually looks different. Do you see that? It's in
17 a different font, different type face?

18 **MR DAGA:** Yes, different fonts.

19 **MS BEVILACQUA:** Do you know if the legal
20 team has a standard font that they use at PEL?

21 **MR DAGA:** Pardon?

22 **MS BEVILACQUA:** Do you know if your legal
23 team at PEL uses a standard font?

24 **MR DAGA:** Standard?

25 **MS BEVILACQUA:** Yes. Do they have a

1 standard?

2 **MR DAGA:** Standards of font?

3 **MS BEVILACQUA:** Of font, yes.

4 **MR DAGA:** I can't say that. I can't say
5 that.

6 **MS BEVILACQUA:** That's fine.

7 Do you recognise that this appears to be a
8 Times New Roman?

9 **MR DAGA:** Yes, this is a different font,
10 I can recognise, because everyone uses different
11 fonts. Somebody is fond of Aerial, somebody is fond
12 of Times, somebody is fond of some other font.
13 Everybody goes for that.

14 **MS BEVILACQUA:** I think I understood. I'm
15 going to make one request. If you could speak a
16 little slower so that I can --

17 **MR DAGA:** OK.

18 **MS BEVILACQUA:** -- understand better.

19 **MR DAGA:** OK.

20 **PRESIDENT:** We have an excellent court
21 reporter because sometimes I'm amazed that -- this
22 is off the record. (Discussion off the record).

23 **MS BEVILACQUA:** So looking at Exhibit 223,
24 this is still an internal to PEL only document.
25 It's between you and legal team members at PEL?

1 **MR DAGA:** Yes. Internal it was.

2 **MS BEVILACQUA:** And this is still March of
3 2021, and at this point PEL still does not know
4 which ministry it might be working with in --

5 **MR DAGA:** No.

6 **MS BEVILACQUA:** -- in Mozambique, correct?

7 **MR DAGA:** Yeah.

8 **MS BEVILACQUA:** And I would draw your
9 attention to the second page of the MOI itself, so
10 it's the third page of the document. Do you see the
11 numbered clauses after the lettered clauses?

12 **MR DAGA:** Serial numbers?

13 **MS BEVILACQUA:** Yes.

14 **MR DAGA:** I can see the 1, 2, 3, 4, 5, 6.

15 **MS BEVILACQUA:** Perfect. So number 2,
16 clause 2, is that PEL shall carry out a
17 preliminary/feasibility study to select a probable
18 port location, correct?

19 **MR DAGA:** Yes.

20 **MS BEVILACQUA:** And then clause 3 it has
21 "PEL shall carry out water survey, ground survey,
22 geotechnical study and civil engineering study on
23 the project once the MOI is signed and executed".

24 **MR DAGA:** Yes.

25 **MS BEVILACQUA:** And those are two

1 different things, paragraphs 2 and 3, correct?

11:18

2 **MR DAGA:** Yes, because the legal people
3 were not able to understand what are the
4 implications of this. That's why.

5 **MS BEVILACQUA:** And the preliminary
6 feasibility study referenced in paragraph 2 is
7 different from all of the other studies listed in
8 paragraph 3?

9 **MR DAGA:** Paragraph 3 is part of paragraph
10 2, feasibility study. They were mentioning a
11 preliminary study and feasibility -- stroke
12 feasibility study, and what Dr Muhate was doing, at
13 that time nomenclature was "Initial Study", but
14 later on it was changed to Preliminary Study.

15 We were thinking that it is the initial
16 study what Dr Muhate is doing, but when he reported
17 he wrote "Preliminary Study" on there.

18 **MS BEVILACQUA:** And so it's your testimony
19 that paragraph 2 in this version is referring to the
20 Preliminary Study of Dr Muhate?

21 **MR DAGA:** No. It is referring to the
22 feasibility study.

23 **MS BEVILACQUA:** OK.

24 **MR DAGA:** PFS.

25 **MS BEVILACQUA:** And you understand there's

1 a difference between a PFS and a feasibility study?

11:19

2 **MR DAGA:** Yes.

3 **MS BEVILACQUA:** There's a --

4 **MR DAGA:** Lot of difference.

5 **MS BEVILACQUA:** Lot of difference between
6 those two things.

7 **MR DAGA:** PFS and the bankability report.

8 **MS BEVILACQUA:** So the bankability report,
9 is that the equivalent of a feasibility study?

10 **MR DAGA:** You can say -- some people say
11 it is a feasibility study report, some people say it
12 is a detailed project report, some people say it is
13 a bankable report. Different nomenclatures are used
14 by different people.

15 **MS BEVILACQUA:** But in all events, a
16 pre-feasibility study is different from the
17 bankability, the detailed project report?

18 **MR DAGA:** Yes.

19 **MS BEVILACQUA:** Or a feasibility report?

20 **MR DAGA:** PFS, pre feasibility, is
21 basically normally generally to know whether the
22 project is feasible or not technically. Commercial
23 things comes at a later stage. First, it has to be
24 technically viable or technical whether parameters
25 are allowing that yes, we can go ahead with the

1 project or not. Then further studies has to be done
2 on that.

11:20

3 **MS BEVILACQUA:** And so commercial phases
4 would come later after pre --

5 **MR DAGA:** The detailed commercial phase
6 comes later.

7 **MS BEVILACQUA:** In paragraph 4 of this
8 Exhibit 223, it states "PEL shall also carry out a
9 study and suggest a commercial model for the
10 operation of this project".

11 **MR DAGA:** Yes, it is written.

12 **MS BEVILACQUA:** And what would that
13 commercial model look like?

14 **MR DAGA:** See, they were talking about the
15 cash flow. That was not the initial stage what we
16 were anticipating in our prefeasibility study, but
17 later on we have developed that.

18 **MS BEVILACQUA:** So when you say "they were
19 talking about the cash flow" you're referring to --

20 **MR DAGA:** My legal team.

21 **MS BEVILACQUA:** -- PEL's counsel?

22 **MR DAGA:** My legal team.

23 **MS BEVILACQUA:** And you wouldn't
24 anticipate having a commercial study in your
25 prefeasibility report?

1 **MR DAGA:** Detailed commercial study was --
2 detailed commercial study was not envisaged.

11:22

3 Very broad commercial figures were to be
4 made so that we know what will be the cost, what
5 will be the investment level.

6 **MS BEVILACQUA:** So looking at the costs
7 only of the proposed project in the prefeasibility
8 study phase?

9 **MR DAGA:** Mainly -- basically that was the
10 intention for prefeasibility study.

11 **MS BEVILACQUA:** But that's not what is
12 contemplated in paragraph 4 of this draft, correct?

13 **MR DAGA:** No, that is why I said that it
14 is a very, very early stage drafts, and people were
15 not aware of what is going to happen in the project.

16 So they were giving all the options that,
17 yes, these are the points which you are to take care
18 out of which what is to be omitted, what is to be
19 added, then the final version will come.

20 **MS BEVILACQUA:** If you would look at the
21 next page, it's the one that has some black
22 redacting on it there, paragraph 8.

23 **MR DAGA:** Yes, I see.

24 **MS BEVILACQUA:** Paragraph 8. "Once the
25 techno-commercial feasibility report is submitted to

1 and accepted/approved by MPDM, and if PEL decide to
2 execute the project, then the parties shall sign the
3 definitive agreements".

4 **MR DAGA:** Yes.

5 **MS BEVILACQUA:** And there's no indication
6 as to what the commercial terms of those definitive
7 agreements would be because it's just simply too
8 early in the process.

9 **MR DAGA:** Well, definitive agreement here
10 what we are meaning is the -- in Mozambique what
11 this is, a Concession Agreement.

12 **MS BEVILACQUA:** And those words, at least
13 in your internal PEL version, in English, do not
14 exist. It does not say "concession agreement",
15 correct?

16 **MR DAGA:** No, in India we do not use
17 concession agreement. We use agreements, what we
18 have with our clients. But in Mozambique this is
19 the -- because this has -- concession, the word has
20 come I think from the mining side for everything.

21 **MS BEVILACQUA:** Do you know if a
22 concession agreement for a PPP project for public
23 infrastructure is different from a mining concession
24 agreement in Mozambique?

25 **MR DAGA:** But I'm telling in normal, broad

1 sense, the consistent word must have come from that,
2 mining concessions. And different different
3 countries, different different areas are using
4 different different terminology.

11:24

5 **MS BEVILACQUA:** And my question was do you
6 know if a concession for a PPP project for public
7 infrastructure is different from a mining concession
8 in Mozambique?

9 **MR DAGA:** Yes, it is a different,
10 definitely.

11 **MS BEVILACQUA:** And the process may be
12 different as well for receiving a mining concession
13 versus a PPP concession?

14 **MR DAGA:** Yes. They are two different
15 things.

16 **MS BEVILACQUA:** And at least at this
17 phase, you have not attempted to translate this in
18 any way into the Portuguese?

19 **MR DAGA:** No, no, no. Everything was
20 discussed -- because we were English speaking people
21 so we were discussing it in English only in the
22 beginning.

23 **MS BEVILACQUA:** And at least at this point
24 in time, with your legal counsel involved, PEL's
25 internal draft proposed that it would have a

1 techno-commercial feasibility report, then followed
2 up with definitive agreements?

3 **MR DAGA:** Yeah. This was their
4 suggestion.

5 **MS BEVILACQUA:** All right. Let's look at
6 the next that PEL produced as a draft. It's
7 Exhibit Claimant's 224. If we could, like we did
8 with the last, in Exhibit 224, would you please
9 identify who the other individuals are on this
10 e-mail?

11 **MR DAGA:** Yes.

12 **PRESIDENT:** Mr Daga, I have a question
13 which is nagging my mind. Does your company have a
14 policy on the use of e-mail addresses?

15 **MR DAGA:** Yeah. E-mails were there during
16 that period.

17 **PRESIDENT:** Yes, but I see you are using a
18 corporate e-mail.

19 **MR DAGA:** Yes.

20 **PRESIDENT:** And everyone else is using
21 private e-mails, and I was surprised.

22 **MR DAGA:** No, there were some people who
23 were using their own IDs instead of corporate IDs.
24 That's why.

25 **PRESIDENT:** And can you give me an

1 explanation? I mean most companies seem to have a
2 policy that you can only use for business purposes
3 your business e-mail. Why were -- even your legal
4 counsel were using private e-mails.

5 **MR DAGA:** That was the very beginning
6 stage I think so, in our company also, about the
7 e-mail system and all those things, so new people
8 who were coming, they were using their own IDs, and
9 then slowly and slowly they have been given IDs from
10 the company. That may be the reason. Otherwise --
11 in this particular Sandeep Shetty, he was the
12 personal assistant to our managing director. I
13 think at that time he came from the states, he was
14 living in the States, and he was transferred to
15 Mumbai this way.

16 **PRESIDENT:** Thank you.

17 **MR DAGA:** Like if you see, sir, even the
18 cc, hashmang@gmail.com. That is Ashish Patel's ID
19 he is using.

20 **MS BEVILACQUA:** So following up on your
21 description of those e-mail addresses, Sandeep
22 Shetty you said is the assistant to your managing
23 director?

24 **MR DAGA:** Yes. He was personal assistant
25 to managing director.

1 **MS BEVILACQUA:** So who actually reviewed
2 and inserted the red text that we see in the
3 memorandum of interest in Exhibit 224?

4 **MR DAGA:** You mean to say this red font?

5 **MS BEVILACQUA:** Yes.

6 **MR DAGA:** This was edited by MD.

7 **MS BEVILACQUA:** I'm sorry, by who?

8 **MR DAGA:** MD. Managing director.

9 **MS BEVILACQUA:** The managing director.

10 **MR DAGA:** Yes. It must be done by Sandeep
11 Shetty but on instruction of the managing director.
12 I don't know whether he has done personally or
13 through him. I'm not aware.

14 **MS BEVILACQUA:** So the comments coming
15 from the managing director --

16 **MR DAGA:** Yes.

17 **MS BEVILACQUA:** -- I would like to focus
18 on the first Whereas clause on the first page of the
19 MOI.

20 **MR PEREZCANO:** May I interrupt?

21 **MS BEVILACQUA:** Yes.

22 **MR PEREZCANO:** The managing director,
23 you're referring to Mr Rupen Patel or somebody else?

24 **MR DAGA:** Mr Rupen Patel. It is written
25 here "Rupen Bhai". In Gujarati normally we say Bhai

1 to men and Ben to lady. That is why it's written
2 Rupen Bhai, and because he's much younger to me,
3 that's why I have written Rupen Bhai, because Rupen
4 Patel would be too harsh to write and he did not
5 expect that I will give him a respect for that so no
6 further adjectives. That was the reason, sir.

7 **MS BEVILACQUA:** Just to clarify, Mr Ashish
8 Patel is not related to Rupen Patel?

9 **MR DAGA:** Pardon?

10 **MS BEVILACQUA:** Mr Ashish Patel, who is at
11 the hashmang@gmail.com is not related to Rupen
12 Patel?

13 **MR DAGA:** Yes, directly you can say.

14 **MS BEVILACQUA:** Is Mr Rupen Patel, is that
15 the highest position in the company?

16 **MR DAGA:** No. His father was there as the
17 chairman at that time. But all working decisions
18 were taken by Mr Rupen Patel.

19 **MS BEVILACQUA:** All right. So if you
20 would focus on the comments coming from the managing
21 director, Mr Rupen Patel, in that first Whereas
22 clause, at least at this time it was his suggestion
23 to keep the description more vague, "do not define
24 [the] corridor". Correct?

25 **MR DAGA:** He was suggesting that do not

1 define the exact location because during the
2 prefeasibility study we may not reach to that exact
3 location. That's why it was his suggestion, that
4 let us keep it wide open.

5 **MS BEVILACQUA:** And at the end of the red
6 section it was "so you lock all exits via one
7 agreement".

8 **MR DAGA:** Yes, that was to lock the
9 Mozambique government, that they should not go to
10 somebody else other than us. That was his meaning
11 here.

12 **MS BEVILACQUA:** Yes, in fact --

13 **MR DAGA:** Or the suggestion.

14 **MS BEVILACQUA:** And, in fact, he
15 suggested, about halfway down that paragraph, the
16 "idea is to silently block all corridors via this
17 agreement".

18 **MR DAGA:** On the same page?

19 **MS BEVILACQUA:** Yes. If you look at the
20 screen you may be able to see it better.

21 **MR DAGA:** Yeah. Yes, this was his idea.

22 **MS BEVILACQUA:** And that is to silently
23 block, as in keep out all other potential projects
24 from being developed.

25 **MR DAGA:** Where it is written?

1 **MS BEVILACQUA:** What did you understand
2 "silently block all corridors via this agreement" to
3 mean?

4 **MR DAGA:** Silently block all corridors in
5 that region. That was his idea, that in that region
6 nobody else would come. I cannot block the entire
7 country, but I can have a limitation of the areas,
8 that it's in this area, that will be my -- I will be
9 doing all this thing, exclusivity, when I am
10 spending money on that.

11 **MS BEVILACQUA:** Let's look, then, at the
12 next page and his next comment to you. "Why
13 restrict ourselves to 20 million?" He's talking
14 about the hauling capacity of coal out of the mines
15 along the rail, right?

16 **MR DAGA:** So one, two, three, four --
17 fourth line you are asking, "why restrict ourselves
18 to 20 million ... what do they have ... if they have
19 5 million tons rail you say 10 million".

20 So this was his question to us, that why
21 are you going for 20 million and restricting
22 yourself. Suppose if 5 million is there, let us
23 take that also because it's a BOO project, so
24 whatever comes we'll transport as a business person.

25 **MS BEVILACQUA:** And his direction or

1 suggestion was to keep the upside capacity open and
2 commit to the minimum capacity?

3 **MR DAGA:** Yes, so that if minimum capacity
4 goes below, then we may not be able to recover the
5 cost, so government has to compensate on that, that
6 yes, this is the minimum quantity we require to
7 transport when I am developing the corridor.
8 Maximum can be anything, whatever I can carry on
9 there. Whatever I can do the haulage, transport,
10 and load in the ship.

11 **MS BEVILACQUA:** Because there is a certain
12 minimum threshold capacity on that rail line that
13 PEL would need in order to recover its costs?

14 **MR DAGA:** Yes.

15 **MS BEVILACQUA:** And if you fall below that
16 minimum, the project will not cash flow and will not
17 return on your investment?

18 **MR DAGA:** Yeah. The revenue losses will
19 be there.

20 **MS BEVILACQUA:** And at this point in PEL's
21 internal drafting we still see that it is on a BOO
22 basis in paragraph (c) on page 2?

23 **MR DAGA:** Yes.

24 **MS BEVILACQUA:** The "T" is still missing?

25 **MR DAGA:** Yes, "T" is still missing.

1 **MS BEVILACQUA:** And there's also the same
2 numbered paragraphs, although they may appear in a
3 different order, so we go from letters to numbers,
4 and again, it has now preliminary/feasibility study
5 in paragraph 1, and it still has that PEL shall
6 carry out the water survey, ground survey,
7 et cetera, in paragraph 2.

8 **MR DAGA:** In this -- particularly what
9 were his ideas, he has corrected those ideas and he
10 has sent back to us. Then it was for us how to
11 formulate it. Between me and Ashish.

12 **MS BEVILACQUA:** And he -- at least
13 Mr Rupen Patel in this draft did not provide any
14 comments on what your attorneys had suggested in the
15 prior round, that those water surveys, the ground
16 surveys, and then the commercial model for operation
17 of the project in paragraph 3.

18 **MR DAGA:** No. That he has kept it open
19 for us to decide with the government.

20 **MS BEVILACQUA:** In paragraph 7, this looks
21 similar to what we saw in the prior drafts, correct?

22 **MR DAGA:** Yes.

23 **MS BEVILACQUA:** And here Mr Rupen Patel is
24 asking why it has a clause of being "accepted and
25 approved"?

1 **MR DAGA:** Yes. He said I'm managing
2 director, he said why we should have this condition.
3 Let us have that -- we will submit the commercial
4 feasibility study and we'll get the job. As MD, it
5 makes his business sense. Why to bound ourselves
6 that, yes, there is a hurdle in between.

7 **MS BEVILACQUA:** And then paragraph 8 is
8 talking about developing a rail corridor, and
9 Mr Patel inserts "this is where the tricky part
10 comes ... no rail corridor from Tete ... would be
11 tricky".

12 What were you discussing or negotiating at
13 this point internally with PEL?

14 **MR DAGA:** For connecting to Tete area.
15 Now, in Tete also which area we have to connect
16 where maximum mines are there, maximum tonnage we
17 can get it. That was the -- his ideas that, yes,
18 it's a tricky situation.

19 **MS BEVILACQUA:** And if you would look at
20 the next page, and Mr Patel is suggesting to add a
21 dispute resolution clause, correct?

22 **MR DAGA:** Pardon?

23 **MS BEVILACQUA:** The red right above the
24 "In witness whereof".

25 "this MOI constitutes" --

1 **MR DAGA:** Yeah.

2 **MS BEVILACQUA:** And there's a typo. But
3 he's suggesting other standard clauses to be
4 included in the agreement, correct?

5 **MR DAGA:** Yes.

6 **MS BEVILACQUA:** Yes. And there's also in
7 this draft at the bottom of the page "This part is
8 for BG", and you understand "BG" to be bank
9 guarantee, correct?

10 **MR DAGA:** "BG" means bank guarantee.

11 **MS BEVILACQUA:** And so as drafted, before
12 we look at Mr Patel's comments, I'd like to look at
13 what was there when he received the document. So we
14 have to go below the red type. OK? We're going to
15 flip the page. So this part is for a bank
16 guarantee.

17 "In case the minister asks some sort of
18 security [then] we will give. Otherwise this clause
19 will not be added", so there's a draft here of what
20 a bank guarantee would look like?

21 **MR DAGA:** Yeah.

22 **MS BEVILACQUA:** OK. And Mr Patel's
23 comment to that, Mr Rupen Patel's comment, is that
24 because PEL was already spending money for the
25 study, he suggested not adding a bank guarantee, and

1 because you would conduct a Preliminary Study, it's
2 normal international practice not to include the
3 bank guarantee.

4 **MR DAGA:** Yes.

5 **MS BEVILACQUA:** And he introduces the
6 concept that if you do not complete your report
7 within so many months, the agreement will lapse.

8 **MR DAGA:** Yes, that was his -- that was
9 the draft says. If we are to provide for the bank
10 guarantee, if they ask. There's no if and buts
11 here. They are options he is keeping open.

12 **MS BEVILACQUA:** OK. Let's look at the
13 next draft that you've produced, which is
14 Exhibit Claimant's 225.

15 **MR DAGA:** There are two.

16 **MS BEVILACQUA:** Oh, that -- thank you.

17 All right. So this is -- now we are
18 into April 2011 in Exhibit 225.

19 **MR DAGA:** Yeah.

20 **MS BEVILACQUA:** And it is -- this one is
21 from Mr Ashish Patel to Mr Rupen Patel with a copy
22 to you.

23 **MR DAGA:** See, because we were in
24 Mozambique at that time. We were writing,
25 exchanging these mails from Mozambique, Maputo. Me

1 and Ashish Patel were there, and we were going to
2 meet to I think at that time Dr Muhate or Mr Rafique
3 in the ministry. I don't remember exactly now but
4 we were supposed to go and we had to hand over the
5 draft to them. This is the basic draft for us, from
6 our side.

7 **MS BEVILACQUA:** And that fact is reflected
8 in the e-mail from Mr Ashish Patel to Mr Rupen
9 Patel.

10 **MR DAGA:** Yeah.

11 **MS BEVILACQUA:** That you would be meeting
12 one of the advisors in five minutes?

13 **MR DAGA:** Yes.

14 **MS BEVILACQUA:** It says "We shall give him
15 this copy to review. We are trying to sign this
16 tomorrow".

17 You're trying to sign the MOU --

18 **MR DAGA:** MOI.

19 **MS BEVILACQUA:** Excuse me, apologies. You
20 were trying to sign the MOI the next day.

21 **MR DAGA:** Because that was the discussion
22 we had over the phone with the advisor that, yes, if
23 everything is sent, then tomorrow we can sign that
24 MOI.

25 **MS BEVILACQUA:** Which advisor is this that

1 you're speaking of?

2 **MR DAGA:** I think it was Dr either Muhate
3 or Mr Rafique of CPI. I don't remember now exactly
4 because these two people were authorized by the
5 ministry to talk on it.

6 **MS BEVILACQUA:** And Dr Muhate worked with
7 which Mozambican --

8 **MR DAGA:** Dr Muhate was advisor in the
9 Ministry of Transport.

10 **MS BEVILACQUA:** And Mr --

11 **MR DAGA:** Mr Rafique was head of CPI.
12 Central Promotion of Investment. I think Mr Matusse
13 will correct me if I'm wrong. We understand that
14 whatever foreign investment comes in the country it
15 has to be through CPI, so we have to involve CPI in
16 every project there. First we have to come to CPI.
17 We have to contact them.

18 **MS BEVILACQUA:** And at this time when you
19 had hoped to sign an agreement the next day, you
20 still have left vague which agency of Mozambican
21 government this would be with. It just says the
22 government of Mozambique.

23 **MR DAGA:** No, but in the -- I think in the
24 next page we have written Ministry of Transport and
25 Communications and Ministry of Planning. Both we

1 have written. That's why. And the last page, if
2 you see. Because we were not sure who would sign.
3 Otherwise, some people said even Rafique -- I think
4 Rafique only told that both ministry will be
5 involved in this. It's a mega project so it may be
6 you have to write Minister of Planning also.

7 **MS BEVILACQUA:** And the agreement as of
8 this point in time lists the government of
9 Mozambique, abbreviated "GOM" at the beginning.

10 **MR DAGA:** Yeah, that's why we have
11 mentioned in the talk GOM, Government of Mozambique.

12 **MS BEVILACQUA:** And did you present this
13 version, or something like this, to the
14 representative of Mozambique that you were scheduled
15 to meet?

16 **MR DAGA:** I don't remember exactly, but we
17 must have given some kind of draft to them, but
18 I don't remember exactly whether we have given this
19 draft or not.

20 **MS BEVILACQUA:** And at least that seemed
21 to be the intent in the e-mail, as communicated by
22 Mr Ashish Patel. "We will give him this copy for
23 his review".

24 **MR DAGA:** Yeah. But we do not -- I don't
25 remember exactly.

1 **MS BEVILACQUA:** OK. And in this copy,
2 I want to take a look at some of these -- some of
3 these provisions that exist. Right?

4 Would you take a look, please, at
5 paragraph 6 on page 3 of the MOI?

6 **MR DAGA:** Yes.

7 **MS BEVILACQUA:** "Once the prefeasibility
8 report is submitted and accepted ... then PEL shall
9 prepare a detailed bankable project report and
10 submit" it to the government.

11 **MR DAGA:** Yeah.

12 **MS BEVILACQUA:** And then it's only after
13 that submission of the detailed bankable project
14 report, and if PEL decides to execute, that the
15 parties will sign definitive agreements, meaning a
16 concession?

17 **MR DAGA:** This was the suggestion from, I
18 think, Rafique or Muhate that, yes, we should have
19 DPR also, but we were having two different ideas.
20 That DPR we cannot -- why we should do the DPR. DPR
21 should be done after Concession Agreement is signed.
22 So this was the point of discussion. The DPR word
23 has not come I think earlier. This has come first
24 time, on their suggestion.

25 **MS BEVILACQUA:** OK. And it is included in

1 this draft, which was prepared by Patel?

2 **MR DAGA:** Yes.

3 **MS BEVILACQUA:** -- excuse me. PEL.

4 **MR DAGA:** Because for the discussion it
5 is, because at that time it is at discussion stage.

6 **MS BEVILACQUA:** And you had also indicated
7 while you are in the discussion phase, you had hoped
8 to sign it tomorrow, correct?

9 **MR DAGA:** That was the idea just -- it was
10 the idea given by them only. So we were writing and
11 just to create pressure on HO also that, yes, they
12 should reply immediately.

13 **MS BEVILACQUA:** So a negotiating tactic,
14 if you will?

15 **MR DAGA:** It is a negotiation to go on.

16 **MS BEVILACQUA:** And to keep the pressure
17 on, you wanted to sign quickly?

18 **MR DAGA:** Not to pressure on the
19 government to sign quickly but to -- in the
20 interests of the project we were enthusiastic, the
21 earlier the better.

22 **MS BEVILACQUA:** Then let's look at the
23 next one, which is exhibit Claimant's 222.

24 **MR PEREZCANO:** May I interrupt for a
25 moment?

1 **MS BEVILACQUA:** Of course.

2 **MR PEREZCANO:** Just another clarification,
3 Mr Daga, on the DPR.

4 Right now you said that it was probably
5 Rafique who suggested including the DPR, but this
6 draft is before the meeting with either Dr Muhate or
7 Mr Rafique later on, so this was included -- the DPR
8 language was included by Patel on its own between
9 the earlier morning revised draft by Mr Rupen Patel
10 and the later in the afternoon time that you met
11 with either Dr Muhate or Mr Rafique.

12 So could you clarify where the language
13 came from? Since I assume this draft has not yet
14 been shared -- in fact, Mr Ashish Patel says we're
15 going to be meeting with one of the advisors in
16 five minutes, so this draft hasn't been shared and
17 I assume there has been no feedback, therefore, from
18 either Rafique or Muhate.

19 Could you clarify that for me?

20 **MR DAGA:** I think, sir, you missed my one
21 word in between. I said over phone they had
22 suggested that these are the other request from
23 Government of Mozambique. Either Mr Rafique or
24 Dr Muhate must have told and that was included in
25 the draft, because we were to go to -- with them for

1 the discussion. So that's why it was included in
2 there, that OK, we jot down all the points -- mine,
3 yours, theirs, everybody's points -- and then we
4 discuss and negotiate. It cannot be one-sided MOI
5 or any agreement. That was the idea of that at that
6 time.

7 Because, otherwise, why as a company, why
8 I'll invest money on the feasibility study,
9 pre-feasibility study, feasibility study, bankable
10 report and then I come to know there's no agreement.
11 Why should I take that big risk as a company. But
12 the government will definitely try to bind me that,
13 OK, you bind also yourself for all these costs.

14 **MR PEREZCANO:** Thank you.

15 **MR DAGA:** Thank you, sir.

16 **MS BEVILACQUA:** And at this point in time
17 we have not seen, as part of the discovery or the
18 documents we've looked at today, any document shared
19 with the MTC or the Government of Mozambique. 225
20 is the first one that suggests it may have been
21 shared based on the cover e-mail. All the other
22 documents we looked at were internal PEL documents,
23 correct?

24 **MR DAGA:** Yeah, all of them were internal.
25 That must have been shared with them in the -- with

1 the ministry, those advisors. That -- I can
2 remember that, yes, that in the meeting they must
3 have asked us also to give at least rough draft, and
4 on that basis only Dr Muhate has sent us back this
5 e-mail. He must have discussed with Mr Rafique,
6 with Mr Zucula or Mr Aiuba -- anybody -- and then he
7 must have said because that draft was 5th
8 of February. This is 14th of February. So that is
9 a gap of nine days in between. And you can
10 understand that government people will take all the
11 formal routes to secure their skin also.

12 **MS BEVILACQUA:** Do you have in front of
13 you, sir, Exhibit 222?

14 **MR DAGA:** 222.

15 **MS BEVILACQUA:** This is the first time we
16 see a document coming from Dr Muhate to you,
17 correct?

18 **MR DAGA:** Yes.

19 **MS BEVILACQUA:** And these are Dr Muhate's
20 comments on a version of the MOI. Yes?

21 **MR DAGA:** Yes.

22 **MS BEVILACQUA:** And this version of the
23 MOI is still in Times New Roman font.

24 **MR DAGA:** Yes.

25 **MS BEVILACQUA:** Although the print is much

1 larger on this than what we saw in prior versions,
2 yes? So the font size has increased.

3 And some of Dr Muhate's comments include
4 either reinserting or moving where certain
5 paragraphs are in the agreement, for example
6 paragraph 3 on page 3 of the MOI.

7 **MR DAGA:** Yes.

8 **MS BEVILACQUA:** We've seen this paragraph
9 before. It looks like it's in a different location
10 in the document. Same with paragraph 4.

11 **MR DAGA:** Paragraph number 3. "MTC shall
12 provide all the required assistance to PEL at no
13 extra cost in getting such documents, data, details,
14 information, permissions, consents, no objection
15 certificates, et cetera, as may be required by PEL
16 for carrying out the prefeasibility study".

17 **MS BEVILACQUA:** And this was in the prior
18 version we just looked at?

19 **MR DAGA:** Prior?

20 **MS BEVILACQUA:** Yes.

21 **MR DAGA:** I could not understand what you
22 said.

23 **MS BEVILACQUA:** It was also included in
24 Exhibit 225?

25 **MR DAGA:** Hmm-mm.

1 **MS BEVILACQUA:** So if you want to take a
2 look back at Exhibit 225 that we looked at a moment
3 ago, that paragraph 3 is also -- excuse me. That
4 paragraph 3 is what is paragraph 4 in page 222.

5 **MR DAGA:** Yeah. I can't see it, but it
6 may be, if you say it. I can't see that -- oh,
7 sorry. It is here. Just a minute. Partly they
8 have corrected that sentence.

9 **MS BEVILACQUA:** Well, in paragraph --
10 actually, if you would keep them next to each other.
11 Can you look at them next to each other?

12 **MR DAGA:** Yes.

13 **MS BEVILACQUA:** So I'm looking at 225 and
14 222. OK?

15 **MR DAGA:** Yeah.

16 **MS BEVILACQUA:** And the idea in paragraph
17 3 is the same, correct? Just go ahead. Take your
18 time. Review them.

19 **MR DAGA:** Paragraph 4 is starting from
20 "GOM shall nominate" --

21 **MS BEVILACQUA:** I'm sorry. I meant
22 paragraph 3. Paragraph number 3. In 225 it's "The
23 Government of Mozambique shall provide all", right?

24 **MR DAGA:** Yeah.

25 **MS BEVILACQUA:** In 222 it now says "MTC".

1 Yes?

2 **MR DAGA:** Correct. Because now what is
3 happening here at this stage, we are talking in
4 person, we are talking through e-mails sometimes, we
5 are talking -- because we are in Maputo at that
6 time, so we were making them, we were correcting the
7 drafts, revising the drafts. Two, two, three, three
8 times we were meeting during that period to these
9 people, these advisors. So I don't remember now
10 which has come first, which has come second, but
11 whatever -- on the e-mails, I can remember that,
12 yes. These are the e-mails. But this was the phase
13 where all discussions were going on, at various
14 times, various levels with people.

15 **MS BEVILACQUA:** And some of what appears
16 in red in Exhibit 222 isn't a change in substance
17 but maybe a change in form, at least as to
18 paragraphs 3 and 4?

19 **MR DAGA:** Maybe due to after discussion,
20 these things must have happened. I don't remember
21 now exactly how it has come at this stage.

22 **MS BEVILACQUA:** And Exhibit 222 still has
23 the paragraph 6 regarding the detailed bankable
24 project report.

25 **MR DAGA:** As I said, that they were

1 insisting on that. It was the government side was
2 insisting but we were resisting, that we will not be
3 able to do that.

4 **MS BEVILACQUA:** And that was something
5 that at this point in the negotiations Mr Muhate was
6 insisting on as part of the MOI?

7 **MR DAGA:** Yeah.

8 **MS BEVILACQUA:** And only after the
9 detailed bankable project report would you execute
10 definitive agreements?

11 **MR DAGA:** Yes.

12 **MS BEVILACQUA:** So then let's look at the
13 next one in the chain.

14 **MS VASANI:** I'm sorry, but could I please
15 make an intervention? I apologise. I just heard
16 from Mr Ashish Patel. He's had a family emergency.
17 He's currently in our Milan office waiting to
18 testify. His family is at home, his children and
19 wife are very upset, he's saying that he's going to
20 leave to be with them, and he's asking if there's
21 any way he can move up his testimony in order to
22 leave as soon as possible. I've asked him is it
23 possible to move until tomorrow. He said it's not
24 possible to move to tomorrow. He would like to
25 testify as soon as possible so that he can go home

1 to be with his family. I said I would ask.
2 I realise this is in the middle of your
3 cross-examination and I'm really sorry about that,
4 but he is really distressed, and I believe he will
5 leave if I -- he's not in PEL's control so
6 I can't -- I can't make him stay.

7 **MS BEVILACQUA:** May I have a moment to
8 confer on my side of the bench?

9 **PRESIDENT:** Yes. Let's do the following.
10 Why don't we interrupt now for five minutes and you
11 speak among yourselves and you try to find a
12 solution to this and we'll see what happens. So
13 we'll be back whenever. It's now 12.03. Let's come
14 back at 12.10.

15 (Short break from 12.03 pm to 12.29 pm)

16 **PRESIDENT:** So we resume.

17 Mr Daga, we will do the following, if you
18 agree. We will have now to interrupt your
19 examination because Mr Patel has an emergency. We
20 will now break for an hour so that we will have
21 lunch and so that Respondent's counsel can also
22 prepare for the examination of Mr Patel. We will be
23 coming back at 13.30, and we will examine first
24 Mr Patel and it will not be very long, and then we
25 will finalise hopefully your examination today, sir.

1 While this lasts, can I kindly ask you not
2 to speak with anyone and not to read any transcript
3 of this procedure. The secretary will provide you
4 with some place where you can be. You can also go
5 for a walk, if you want. We will come I think not
6 before 1430. I don't think it's realistic that you
7 will -- well, if you could be back by 1415 there
8 will be a room made available to you --

9 **MR DAGA:** No problems.

10 **PRESIDENT:** Thank you for your
11 flexibility.

12 **MR DAGA:** No issue. It is our case.

13 **PRESIDENT:** Very good. So, with that, we
14 then come back at half past one, and we hope that
15 with this, everything runs smoothly. Thank you.

16 (Luncheon adjournment from 12.31 pm to 1.34 pm)

17 **PRESIDENT:** We resume the hearing, and we
18 do so in order to examine Mr Ashish Patel. I think
19 Mr Patel is on a video link.

20 ASHISH PATEL
21 (via videolink)

22 **PRESIDENT:** Mr Patel, can you see us?

23 **MR PATEL:** Yes, I can see -- I see a blank
24 screen in front of me, and on my right side I have
25 small windows and I can see the -- yes, now it's

1 zoomed in on the members of the Tribunal.

2 **PRESIDENT:** Very good. Mr Patel, we
3 understand you have a personal grievance, and we
4 thank you for making the effort of being here with
5 us.

6 Mr Patel, you are here as a witness, and
7 the first thing we have to do is that we have to
8 take your oath as a witness.

9 So can I kindly ask you that you raise
10 your right hand. Do you solemnly declare upon your
11 honour and conscience that you will speak the truth,
12 the whole truth, and nothing but the truth?

13 **MR PATEL:** Yes, I do.

14 **PRESIDENT:** Thank you.

15 Mr Patel, there are -- on my left side is
16 counsel to Claimant, to Patel, and on my right side
17 is counsel to the Republic of Mozambique. There
18 will be some questions to you, and these questions,
19 Mr Patel, can all be answered with a yes, a no or
20 I don't know. Can I kindly ask you that you first
21 state your position, that you say clearly yes, no,
22 or I do not know, I do not remember, and then you
23 are welcome to add any further clarification which
24 you think could be helpful to the Tribunal?

25 **MR PATEL:** I understand.

1 **PRESIDENT:** Thank you. With that, I turn
2 over the witness to Claimant's counsel.

3 **MS VASANI:** Thank you, Mr President.

4 And before we get started, I want to thank
5 both opposing counsel and the Tribunal for their
6 flexibility in hearing from Mr Patel at this time.

7 And, for the record, I'd just note that in
8 the room, as you can see on the bottom screen shot,
9 is Manuel Peña, who is a trainee solicitor from CMS,
10 and he is there for any technical issues. We
11 certainly hope his assistance is not necessary but,
12 if it is, we have someone there.

13 With that, I will pass the floor over to
14 Ms Kuznetsova, who will conduct the direct
15 examination of Mr Patel.

16 **PRESIDENT:** Please.

17 **MS KUZNETSOVA:** Thank you.

18 Examination by Claimant

19 **MS KUZNETSOVA:** Good afternoon, Mr Patel.
20 Do you have your first witness statement in front of
21 you?

22 **MR PATEL:** Yes, I do.

23 **MS KUZNETSOVA:** It is dated
24 27 October 2020?

25 **MR PATEL:** Yes.

1 **MS KUZNETSOVA:** Can you please go to the
2 last page?

3 **MR PATEL:** Yes.

4 **MS KUZNETSOVA:** Is it your signature?

5 **MR PATEL:** Yes.

6 **MS KUZNETSOVA:** Thank you.

7 Do you have your second witness statement
8 dated 1 August 2021?

9 **MR PATEL:** Yes.

10 **MS KUZNETSOVA:** And can you please also go
11 to the last page?

12 **MR PATEL:** Yes.

13 **MS KUZNETSOVA:** Is it your signature?

14 **MR PATEL:** Yes.

15 **MS KUZNETSOVA:** Mr Patel, do you want to
16 amend anything in your first or second witness
17 statements?

18 **MR PATEL:** In the first I now live in
19 Lugano, Switzerland. No longer residing in
20 Singapore.

21 In the second statement in paragraph 24,
22 in the last line it should read is not actually a
23 requirement of the "prefeasibility study", not
24 "tender process".

25 **MS KUZNETSOVA:** Mr Patel, for the record,

1 can you please read us how paragraph 24 of your
2 second witness statement should read?

3 **MR PATEL:** Yes. "As a preliminary point,
4 I note that the submission of a cash flow
5 projection, or analysis of the Project's economic
6 viability, was not actually a requirement of the
7 prefeasibility study".

8 **MS KUZNETSOVA:** Thank you. And is there
9 anything else that you want to clarify in your
10 witness statements?

11 **MR PATEL:** I think the only other thing
12 that is important to understand is after this period
13 of time, May/June 2012, I have no longer been
14 associated with Patel Engineering. I was no longer
15 associated with this project. I haven't worked with
16 them on anything else whatsoever until this -- until
17 these sets of procedures were brought to me.

18 **MS KUZNETSOVA:** Thank you.
19 I have no further questions.

20 **PRESIDENT:** Thank you.

21 **PROFESSOR TAWIL:** I apologise. I didn't
22 understand the correction, if I can be guided to the
23 correction in paragraph 22 that the witness read,
24 because my reading was he read exactly what it is in
25 the statement.

1 **MS KUZNETSOVA:** It is paragraph 24,
2 I believe.

3 **MR PATEL:** Yes, paragraph 24.

4 **MS KUZNETSOVA:** Of the second witness
5 statement.

6 **PROFESSOR TAWIL:** OK.

7 **MS KUZNETSOVA:** Do you want me to read it?

8 **PROFESSOR TAWIL:** It's OK. Thanks very
9 much. The Chairman just clarified. Thank you.

10 **PRESIDENT:** Very good.

11 So we now give the floor, Mr Patel, to
12 Ms Bevilacqua, who will have some questions to you
13 on behalf of the Republic of Mozambique.

14 **MR PATEL:** Thank you.

15 Cross-examination by Respondent

16 **MS BEVILACQUA:** Good afternoon, Mr Patel.

17 I will try to make this as quick as
18 possible and just to clarify a few things and get it
19 in the forefront of everyone's mind, you mentioned
20 that after 2012 you were no longer affiliated with
21 PEL engineering, correct?

22 **MR PATEL:** That's correct. After May
23 or June 2012, yes.

24 **MS BEVILACQUA:** And before that time -- so
25 the timeframe at issue in this matter where we're

1 looking at 2010 up through June or so 2012, you were
2 a part-time consultant with PEL?

13:41

3 **MR PATEL:** That's correct.

4 **MS BEVILACQUA:** And despite the fact that
5 you have the same last name as Mr Rupen Patel, you
6 are not related?

7 **MR PATEL:** That's correct. Patel is a
8 very common name.

9 **MS BEVILACQUA:** And one of the things that
10 you do for a living, Mr Patel, is raise capital,
11 correct?

12 **MR PATEL:** Right now, for the last number
13 of years I am a fund manager. I don't raise capital
14 for projects, I run my own hedge fund, but in a
15 previous life, yes, I was an investment banker and
16 I raised capital for equity.

17 **MS BEVILACQUA:** And you were engaged as a
18 part-time consultant by PEL specifically with
19 respect to Mozambique?

20 **MR PATEL:** Yes. I had met Rupen through
21 my uncle, and when I visited their offices in
22 Mozambique we talked about their operations in
23 Mozambique and some of their projects. And out of
24 that, they asked me to help -- help them in their
25 operations there to look at this project, to assist

1 them.

2 **MS BEVILACQUA:** And the projects that you
3 are speaking of at that time, what were those
4 projects in Mozambique?

5 **MR PATEL:** They had a tantalite
6 concession, and they had a marble concession.

7 **MS BEVILACQUA:** Do you know whether
8 Patel -- I'm sure I should say PEL -- continued to
9 operate those while you were still a consultant, or
10 did they surrender those concessions?

11 **MR PATEL:** I don't know. That's -- they
12 told me that they had them, but I have no further
13 information about that.

14 **MS BEVILACQUA:** That's fair.
15 What did you do for PEL in relation to
16 those tantalite and marble concessions, if anything?

17 **MR PATEL:** The marble, nothing. The
18 tantalite concessions they gave me some high-level
19 information, and asked me if there were any parties
20 that might be interested in acquiring the asset.

21 I spoke to some people in western
22 Australia who looked at junior mining projects, but
23 there was no level of interest for a tantalite
24 project at that time.

25 **MS BEVILACQUA:** Was it your understanding

1 at this time in 2011 or so that PEL is not a mining
2 company. They had rights and they had concessions,
3 but they don't actually mine?

4 **MR PATEL:** Yes. I was not across all of
5 their operations. I did -- we had one party in
6 common who lived in Indonesia and Jakarta and PEL
7 owned some coal assets with them, and I believe one
8 was operational, but I don't think PEL was the
9 contractor. I think they had a local Indonesian
10 contractor. I do recall PEL having some mining
11 interests, but I'm not sure they're a mining
12 company.

13 **MS BEVILACQUA:** In your first witness
14 statement you recall that Mozambique at the time --
15 and I'll use 2011 as the timeframe for now -- was
16 limited to only two operating ports of any
17 significant value, this is in paragraph 14 of your
18 witness statement, and then you reference Nacala and
19 the Beira port. And "The former was tied up by Vale
20 and the latter was relatively small". I just wanted
21 to ask what you mean by "The former was tied up by
22 Vale".

23 **MR PATEL:** So Vale is a South American
24 mining company and a very large iron ore producer.
25 Mozambique was known -- back then, I haven't thought

1 about Mozambique for a decade but back then was
2 known for its high grade coking coal, and Vale went
3 in and tied up a phenomenal resource and they also,
4 if I remember right, had a lock on that port.

5 So they were almost the exclusive users of
6 that, and Mother Nature was very kind in Nacala.
7 It's a 60 metre deep natural port. So they were
8 able to extract their coal quite easily. There were
9 a number of other players in the coal industry that
10 would have had difficulty evacuating their coal
11 because the primary deep water port was controlled
12 by Vale.

13 **MS BEVILACQUA:** It was your understanding
14 in approximately 2011 that there were two existing
15 ports, one in Nacala and one in Beira.

16 **MR PATEL:** That's correct. And Beira was
17 used for other goods, not for bulk commodities, if I
18 remember correctly at the time.

19 **MS BEVILACQUA:** If you refer to your
20 witness statement in paragraph 14, you said Beira
21 "had very limited capacity for exporting coal".

22 **MR PATEL:** So I think that Beira could
23 have (audio distortion) for coal. I think
24 theoretically it's possible. But I think if I
25 remember correctly (audio distortion) used for

1 importing canned foods and toilet paper. Not
2 exporting coal at the time.

3 **MS BEVILACQUA:** I think the Zoom is
4 frozen.

5 **MR PATEL:** Can you guys see me now?

6 **PRESIDENT:** Yes, now you are back.

7 **MR PATEL:** Sorry. It froze for a second.

8 **MS BEVILACQUA:** In paragraph 17 of your
9 first witness statement you referenced the positive
10 feeling that you had and positive belief you had
11 that the project could be profitable as it would
12 unlock substantial value from existing stakeholders
13 in the coal region.

14 But at this point, before the MOI and
15 before the Preliminary Study, would you agree that
16 this was just -- it was very forward looking and had
17 potential but no financial studies had been
18 developed yet for the project?

19 **MR PATEL:** Yes. There were no financial
20 studies developed for the project in 2011.

21 **MS BEVILACQUA:** And you had spoken to some
22 brokerage companies who seemed very positive but,
23 again, you presented them with no financial
24 documentation at that time?

25 **MR PATEL:** No, I did not. The brokerage

1 companies that I presented to -- I am -- I used to
2 work for Merrill Lynch and I used to run Merrill
3 Lynch's big business for Australia. I worked in the
4 Merrill Lynch capital markets in Australia for a
5 decade.

6 The colleagues that I came up through the
7 industry with are all now my -- (screen frozen) --
8 Deutsch Bank Australia, Institutional Banking for
9 Westpac and Credit Suisse. Back in 2011, I just
10 left industry in '07, it was very easy for me to
11 pick up the phone and say hey, guys, this is what's
12 going on in Mozambique, if we can get the concession
13 sorted out and it makes sense, can we approach some
14 financiers, can we approach -- you know, whoever we
15 need to, and not one person in any of my discussions
16 said no. Not one.

17 **MS BEVILACQUA:** And you also had
18 discussions with two mining companies, one being
19 JSPL and the other being Rio Tinto, correct?

20 **MR PATEL:** That's correct. I spoke with
21 Mr Naveen Jindal himself actually and the Rio Tinto
22 individuals, I can't remember their names.

23 **MS BEVILACQUA:** And you understand that
24 Rio Tinto at that time, in 2011/2012 timeframe, was
25 running the largest mine rail to port operation in

1 the world?

2 **MR PATEL:** Yes. And they had -- I can't
3 remember if they had just acquired or were about to
4 acquire Riversdale. So Riversdale was a
5 multibillion dollar coal project in the Tete region,
6 and the lawyer who worked on that was a friend of
7 mine, and I actually asked him, you know, would
8 Riversdale be interested in this as well. That was
9 one of the western Australian contacts.

10 **MS BEVILACQUA:** And that, just to be
11 clear, was a mine -- multibillion dollar coal
12 project in Mozambique?

13 **MR PATEL:** That's correct, in the Tete
14 region. Yes.

15 **MS BEVILACQUA:** Can you recall how many
16 times you personally visited the country of
17 Mozambique while you were working on this project
18 for PEL?

19 **MR PATEL:** No. It was six or seven, maybe
20 eight times. Not more than that.

21 **MS BEVILACQUA:** I'd like to talk to you
22 now about the drafting and initial drafts exchanged
23 for the Memorandum of Interest. OK?

24 Who was the primary negotiator on behalf
25 of PEL with Mozambique?

1 **MR PATEL:** Mr Daga. Daga Saab.

2 **MS BEVILACQUA:** And do you recall how many
3 drafts were exchanged or how many drafts you
4 reviewed as part of the process?

5 **MR PATEL:** No, I don't recall the exact
6 number.

7 **MS BEVILACQUA:** We are going to attempt a
8 very brave feat of document sharing now.
9 I understand -- and we have provided electronic
10 copies.

11 **MR PATEL:** Yes.

12 **MS BEVILACQUA:** So if the screen share
13 isn't working you should have access also and do
14 have access to a full electronic copy of each
15 document I will use. I'd like to start with
16 Exhibit 201, Claimant's 201. So this is -- at least
17 as best I can tell, this is the first iteration of a
18 Memorandum of Interest we have received from PEL.
19 And the top here is an e-mail from you to Mr Daga,
20 correct?

21 **MR PATEL:** Yes, it is.

22 **MS BEVILACQUA:** And you're using a gmail
23 address. Was that commonplace while you were a
24 consultant for PEL?

25 **MR PATEL:** Patel Engineering, I don't

1 recall they ever provided me an e-mail address.

13:54

2 I used this -- I don't use this e-mail address, the
3 one you see here, any more either, I haven't used it
4 in years, but at the time this is the one I was
5 using.

6 **MS BEVILACQUA:** OK. And you make some
7 comments on a draft that Mr Daga has provided, and
8 at this point in the drafting process, do you know
9 whether the Preliminary Study had been completed?

10 **MR PATEL:** I can't remember.

11 **MS BEVILACQUA:** And if you would take a
12 look at the Memorandum of Interest that is attached
13 to the e-mail, you can see right now this is set up
14 for the Ministry of Planning and Development for the
15 Republic of Mozambique.

16 Do you recall who, if anyone, you spoke
17 with at the Ministry of Planning and Development?

18 **MR PATEL:** No. I don't remember. It was
19 so long ago for me.

20 **MS BEVILACQUA:** Do you understand that
21 there is a difference between a prefeasibility
22 report, a feasibility report, and a bankability
23 study?

24 **MR PATEL:** Yes, I do.

25 **MS BEVILACQUA:** And, generally speaking,

1 the prefeasibility report is done at an initial
2 phase and contains much less detail and fewer
3 studies than what would be required for a bankable
4 report, correct?

5 **MR PATEL:** That is correct.

6 **MS BEVILACQUA:** And the prefeasibility
7 report does not actually prove economic or financial
8 feasibility of the project, does it?

9 **MR PATEL:** No, it does not prove it. It
10 is prefeasibility.

11 **MS BEVILACQUA:** By definition, correct?

12 **MR PATEL:** Yes, by definition.

13 **MS BEVILACQUA:** And if we could, let's
14 take a look at Exhibit 220, Claimant's 220 --
15 apologies. I'm going back to 201.

16 All right. So in 201 you wrote to Mr Daga
17 a few comments about the draft Memorandum of
18 Interest, and you asked him to let you know what
19 legal says about the document, correct?

20 **MR PATEL:** Yes.

21 **MS BEVILACQUA:** And in the draft MOI that
22 is attached as Exhibit 201, there is no reference to
23 anything like a bankability study or a post -- there
24 is only a reference in paragraph 8 to a
25 techno-commercial feasibility report, correct?

1 **MR PATEL:** I'm just reading it now.

2 **MS BEVILACQUA:** Yes.

3 **MR PATEL:** I can see the
4 techno-commercial, yes.

5 Yes, there is no reference to a bankable
6 feasibility, no.

7 **MS BEVILACQUA:** And do you know what a
8 techno-commercial feasibility report is?

9 **MR PATEL:** I had never heard of that term
10 before Mr Daga had used it. The terms that we
11 use -- well, I used in the US or in Australia was a
12 bankable feasibility, not DPR or a detailed project
13 report, and a techno-commercial feasibility is a
14 term I never used. My understanding, I believe, I
15 think it was their term for what they called a
16 prefeasibility -- what we would call a
17 prefeasibility, but I had never heard of that term,
18 and I have never heard it since.

19 **MS BEVILACQUA:** Thank you.

20 And now if we can look at Exhibit 220,
21 this is a March 24, 2011 e-mail from you to Mr Daga
22 responding to something he sent you the day before
23 which appears to be -- or appears to have had at one
24 point an attachment that says "this is after legal",
25 so responding with comments from legal.

1 And then your response to Mr Daga is that
2 the primary issue you had "is that we don't have
3 detail around the final agreement in place", this is
4 as of 24 March 2011, and if you "spend all the time
5 and money to do a full feasibility report and at the
6 end it comes to signing, the project we only get a
7 five year concession. That is not bankable".

8 Why would that not be bankable?

9 **MR PATEL:** From my perspective, if someone
10 is going to spend billions of dollars on an
11 infrastructure project, it needs a certain amount of
12 time to recoup the capital and to pay down the debt.
13 Five years is generally not enough time for a
14 multibillion dollar infrastructure project that
15 upgrades the infrastructure of a country that they
16 can use for decades.

17 So when you're looking at financing these
18 projects, you're usually looking at 30 plus years to
19 look at what is generally finance-able.

20 **MS BEVILACQUA:** OK. I want to back up
21 just a step, though, because I read the e-mail
22 differently, I think, than what you were saying, or
23 maybe my question was not articulate.

24 What you wrote to Mr Daga was that "if you
25 spend all the time and money to do a full

1 feasibility report and then at the end when it comes
2 to signing the project, we only get a five-year
3 concession. That is not bankable", what amount of
4 money would you anticipate spending to do a full
5 feasibility report on a project like this?

6 **MR PATEL:** That was not the intent of my
7 e-mail.

8 **MS BEVILACQUA:** OK.

9 **MR PATEL:** What I was -- when I wrote this
10 I meant to say -- and I guess it's not clear but at
11 the time Daga understood -- is what I meant to say
12 is we can't end up in this process where we've done
13 a full feasibility report and then we end up with a
14 five-year concession. That is not -- we can't
15 finance that project.

16 So even if we got to the end, showed that
17 this was a project that would be possible, doable,
18 good for the country, and the concession was five
19 years, that's not something that we could, as Patel
20 Engineering, go and get financed in the marketplace.

21 **MS BEVILACQUA:** Sure.

22 **MR PATEL:** We needed a long term -- that's
23 why I say we need a 30 year concession. That e-mail
24 didn't refer to how much money would you have to
25 spend on a feasibility report to make it bankable.

1 It was if we spend whatever -- I don't
2 know the budgets, I wasn't running a budget,
3 I wasn't hiring the consultants, that was not
4 something that I was across at all, but this had
5 nothing to do with how much money we spent on the
6 reports. It was let's say we spend all that money
7 and time, if we don't have a 30 year concession or,
8 you know, as it evolved to exclusivity and first
9 right of refusal, then what's the point? We can't
10 finance this project anyway.

11 **MS BEVILACQUA:** And I want to follow up on
12 that, right, because you said if you don't have a 30
13 year concession or as it evolved exclusivity and a
14 first right of refusal.

15 So there's a difference between the award
16 of a 30 year concession and the other options of
17 exclusivity and exercising a first right of refusal,
18 as you understand it?

19 **MR PATEL:** Yes.

20 **MS BEVILACQUA:** And there's also paths to
21 get off of the train, so to speak, right? If you do
22 a feasibility study and at the end of the day the
23 concession is only going to be for five years, you
24 don't have to take the concession, correct?

25 **MR VASANI:** Counsel, sorry, are you asking

1 him to interpret the MOI, or are you asking him a
2 general question? Because it sounds dangerously
3 like you're asking him his interpretation of the
4 MOI.

5 **PRESIDENT:** Can I kindly ask you that you
6 do not interrupt each other? If you have any
7 problem and you come to me, I'll solve it.

8 **MR VASANI:** I apologise, Mr President.

9 **PRESIDENT:** It will just make things much
10 more difficult, including with the examination
11 through video conferencing. So if you have a
12 problem, you come to me and I'll take the
13 appropriate action. So, what was your point?

14 **MR VASANI:** So the question sounds like
15 she's asking him to interpret the MOI, and I'm
16 saying that is not an appropriate question for him
17 because he's not a lawyer.

18 **PRESIDENT:** Well, I think you were doing
19 well. Why don't you continue, Ms Bevilacqua?

20 **MS BEVILACQUA:** Thank you.

21 The question I had asked Mr Patel was
22 there are stations where you can get off the train,
23 so to speak. If you do a feasibility study and at
24 the end of the feasibility study the concession
25 would only be for five years, you wouldn't have to

1 take that concession because it's not bankable?

14:04

2 **MR PATEL:** Yeah, I presume Patel would
3 never -- Patel could not be forced to take a
4 concession. They had a first right of refusal.

5 **MS BEVILACQUA:** And so back to your e-mail
6 here in Exhibit 220, what you were interested in
7 receiving was, you know, something that would last
8 long enough to make a return on the
9 multibillion-dollar infrastructure project?

10 **MR PATEL:** Yes. I think that from the
11 outset this was a commercial arrangement. Everyone
12 was looking to benefit from this, whether it was the
13 country, the tax revenues, the people, and PEL.

14 **MS BEVILACQUA:** And without something that
15 looked like a 30-year concession, as you say in your
16 e-mail, you wouldn't begin financial closure. What
17 did you mean by financial closure?

18 **MR PATEL:** So the term "financial closure"
19 is another term that they use in India, and that's
20 essentially looking at moving from your bankable
21 feasibility into raising the capital and making sure
22 that the capital is available for the project.

23 **MS BEVILACQUA:** And on the timeline of how
24 these projects work, all of that would occur after a
25 full feasibility report?

1 **MR PATEL:** I think it is very unlikely to
2 raise long-term capital until a bankable feasibility
3 is done. You can find upfront equity from in-market
4 players if they feel that there is enough value for
5 that, but to find the long-term debt is only
6 possible after your bankable feasibility.

7 **MS BEVILACQUA:** Thank you. I would like
8 now to move to Exhibit Claimant's 225. So this is
9 the 5th of April 2011, and that's an e-mail from you
10 to Rupen Patel and Mr Daga?

11 **MR PATEL:** Yes.

12 **MS BEVILACQUA:** And apparently, based on
13 the content of the e-mail below, it looks as they
14 you were in Mozambique at the time?

15 **MR PATEL:** Yes.

16 **MS BEVILACQUA:** And there's an attached
17 MOI, and you note that you would be meeting one of
18 the advisors in five minutes, that you would give
19 him the copy and would try to sign tomorrow.

20 Do you recall providing a copy in this
21 timeframe to one of your Mozambican counterparts?

22 **MR PATEL:** I don't remember. I saw this
23 this morning when I came in the office, the CMS
24 offices, and I don't remember who we were meeting or
25 who we shared this with. I'm sorry.

1 **MS BEVILACQUA:** That's fine.

2 If you sent this e-mail to Mr Rupen Patel,
3 who's the managing director of PEL, do you believe
4 you went through and actually delivered a copy to
5 the counterparty?

6 **MR PATEL:** I think it was our intent to do
7 so. I don't think that I was misleading Rupen.

8 **MS BEVILACQUA:** Of course not, no. That
9 was not intended by my question either.

10 All right. So if you would look, then, at
11 page 3 of the MOI that is attached, clause 6, at
12 least in this draft of the MOI it references that
13 "Once the prefeasibility report is submitted and
14 accepted by the Government of Mozambique, then PEL
15 shall prepare a detailed bankable project report, or
16 DPR, and submit it to the government. And after
17 submission of the DPR and if PEL decides to execute
18 the project, the parties shall sign the definitive
19 agreement/s".

20 Do you have an understanding of what "DPR"
21 means in this context?

22 **MR PATEL:** I would assume it means a --
23 what we would consider a bankable feasibility
24 report.

25 **MS BEVILACQUA:** And do you have an

1 understanding of what "definitive agreement/s" means
2 at the end of clause 6?

3 **MR PATEL:** No. I mean, it could mean --
4 I don't know what stage Daga would take this to,
5 what the next step in the process would be, if there
6 would be the concession agreement or another stage.
7 I cannot tell you for sure.

8 **MS BEVILACQUA:** There could be another
9 stage even before the signing of the concession
10 agreement?

11 **MR PATEL:** I don't know. This is why I'm
12 asking -- what you're asking me, I don't actually
13 know, but I am looking at the next paragraph, which
14 is, you know, PEL had the first right of refusal.
15 It was their project to decide to move forward with.
16 The Government of Mozambique would not provide any
17 right or permission whatsoever to any third party
18 for developing or expanding or anything similar.

19 **MS BEVILACQUA:** And it's limited to a
20 certain location within the rest of that paragraph,
21 correct?

22 **MR PATEL:** Yes.

23 **MS BEVILACQUA:** And then after the draft
24 that we just looked at in Exhibit 225, there's some
25 e-mail exchanges with you, Mr Daga, and Sandeep, who

1 I understand was the assistant to Mr Rupen Patel?

14:12

2 **MR PATEL:** Yes. I'd forgotten about him.

3 He was Mr Rupen's executive assistant at the time.

4 Yes.

5 **MS BEVILACQUA:** I'd like to start with the

6 bottom e-mail on the first page, which spills over,

7 of course, to the top of the next page.

8 **PROFESSOR TAWIL:** Excuse me, counsel.

9 Sorry, I'm lost. I don't find that as Exhibit 225.

10 **MS BEVILACQUA:** 221.

11 **PROFESSOR TAWIL:** OK. In the record it's

12 225. Thanks.

13 **MS BEVILACQUA:** So the first e-mail in the

14 chain is from Mr Daga to you and to Sandeep Shetty

15 on 18 April 2011, and Mr Daga is relaying some

16 additional comments on the MOI to you at the first

17 part of the e-mail. Do you see that?

18 **MR PATEL:** Yes. I'm reading it now.

19 **MS BEVILACQUA:** Perfect.

20 And I understand that the names of some

21 individuals are blacked out, and I'm not concerned

22 with that, but you'll see he is pointing out that

23 changes are being made to point number 7 and 8, and

24 that he would be incorporating those changes, and

25 that this was OK as a preliminary document. And

1 then you can improve when we come to MOU and
2 agreement stage.

3 Do you -- or do you recall having
4 discussions about entering first an MOI, a
5 Memorandum of Interest, and then later a Memorandum
6 of Understanding and Agreement?

7 **MR PATEL:** No, I don't. I don't remember
8 any of these discussions.

9 **MS BEVILACQUA:** And then at the bottom of
10 this page going on to the next page, it says "As per
11 them it is only MOI why are you making so many
12 binding conditions on Ministry? Because once the
13 DPR is accepted then government will sign the
14 agreement".

15 Do you remember having discussions with
16 Mr Daga or anyone else working for the ministry that
17 they wanted a DPR to sign the agreement?

18 **MR PATEL:** No --

19 **MS BEVILACQUA:** Excuse me.

20 **MR PATEL:** No. I'm reading this e-mail
21 now. No, I don't. This was -- and then Daga sent
22 this -- yeah, I don't, I'm sorry.

23 **MS BEVILACQUA:** OK. Why don't we take a
24 look, then, at your response to Mr Daga just to see
25 if it refreshes your memory at all, so that will be

1 at the top of the first page.

2 And you're noting that the issue you have
3 on point 7, which was one of the paragraphs that
4 Mr Daga said he was incorporating changes to, is
5 that the first right of refusal and exclusivity
6 would only happen after you provide a DPR, and you
7 were advocating for exclusivity sooner.

8 **MR PATEL:** Yes. I think it's only
9 commercial. It's not commercial to go and spend a
10 lot of time and a lot of money with a risk that
11 someone else ends up with the project, so if you're
12 going to commit that much time and money and energy
13 and resources to a bankable feasibility, or a DPR,
14 as they call it, PEL should know that they have --
15 they have the project and if they choose not to take
16 it up at that point in time, that's their option,
17 but they should at least have it if they're going to
18 put in that much time and effort.

19 **MS BEVILACQUA:** And there's quite a bit
20 more undertaking in terms of the studies and the
21 resources and the financial investment in a DPR as
22 compared to a prefeasibility study, correct?

23 **MR PATEL:** Yes, that's correct.

24 **MS BEVILACQUA:** If we could, then, I'd
25 like to look at Exhibit 202, Claimant's 202, and

1 I will represent to you this is a translation of the
2 MOI from 18 April 2011. My first question is do you
3 recall reading any Portuguese versions of the MOI
4 before it was executed?

5 **MR PATEL:** No, I don't read Portuguese.
6 I don't understand Portuguese. And I was not copied
7 on this e-mail either.

8 **MS BEVILACQUA:** Correct.

9 If we look at page 5 of this document in
10 202, there is a chart comparing the Portuguese to
11 the English or the English to the Portuguese in the
12 various clauses.

13 Did you review a chart like this at any
14 point before you signed the MOI?

15 **MR PATEL:** I can't remember.

16 **MS BEVILACQUA:** Would this have been a
17 helpful tool for you to look at before executing the
18 MOI?

19 **MR PATEL:** Yes.

20 **MS BEVILACQUA:** And I'm curious, because
21 we'll get to it in just a moment, but being a
22 consultant for PEL, why you were one of the
23 signatories to the MOI?

24 **MR PATEL:** Mr Rupen Patel asked me to
25 participate in that role. He asked me to take the

1 role of an executive director in their special
2 projects group and to sign the MOI, so I did. It's
3 no more complicated than that.

4 **MS BEVILACQUA:** Thank you.

5 And then if we would look at Exhibit 204,
6 please, Claimant's 204, this is an e-mail from
7 Mr Rafique dated 6 May 2011, 7.10 am. I do not
8 believe you are a recipient of this one?

9 **MR PATEL:** No, I'm not.

10 **MS BEVILACQUA:** OK. And this is
11 attaching, if you look, a Portuguese version of the
12 MOI on what ends up being the signing date, correct?

13 **MR PATEL:** I don't remember. Was
14 it May 6th? OK.

15 **MS BEVILACQUA:** We can look at it in a
16 moment. That's fine.

17 Did you review this Portuguese version
18 that was circulated at 7.10 in the morning.

19 **MR VASANI:** Mr President? I'm sorry, he's
20 already said that he wasn't a recipient of the
21 e-mail, so I think we're asking him on a document
22 that he clearly hasn't seen.

23 **PRESIDENT:** He did say that he is not the
24 recipient.

25 **MS BEVILACQUA:** I understand. That is a

1 different question, though, than if he reviewed it.

14:22

2 **PRESIDENT:** Please.

3 **MS BEVILACQUA:** Do you recall reviewing an
4 early Portuguese version -- excuse me, a Portuguese
5 version early in the day on May 6th?

6 **MR PATEL:** No, I do not. I did not review
7 the Portuguese versions because I don't read
8 Portuguese.

9 **MS BEVILACQUA:** OK. Fair enough.

10 When it came to actually executing the
11 memorandum of intent, do you recall that you
12 executed four original copies? So two in Portuguese
13 and two in English?

14 **MR PATEL:** Yes, I remember that there was
15 one of each for both parties.

16 **MS BEVILACQUA:** So that way, yes, one --
17 so each party would be able to keep with them a
18 Portuguese and an English signed copy?

19 **MR PATEL:** That's correct, with real
20 signatures.

21 **MS BEVILACQUA:** Yes.

22 **MR PATEL:** Yes.

23 **MS BEVILACQUA:** Did you review the
24 Portuguese versions, the two that were presented for
25 signing on May 6th, before you executed them on the

1 6th?

2 **MR PATEL:** I did not review them. I did
3 not review any of the Portuguese versions because
4 I don't read Portuguese.

5 **MS BEVILACQUA:** Did you review any of the
6 English versions before you signed them?

7 **MR PATEL:** Yes, I -- I remember that I was
8 with Daga Saab, and we read them that morning and so
9 we -- and then we were ready to sign them that day.

10 **MS BEVILACQUA:** Do you recall reviewing
11 the English version of the MOI before you executed
12 it in the evening? At the time you were executing
13 the document, do you recall reviewing it first?

14 **MR PATEL:** I don't recall. I don't
15 remember if I read it or just looked at it or just
16 initialled it and signed it. I can't remember.
17 It's a long time ago.

18 **MS BEVILACQUA:** Understood. Yes,
19 I understand.

20 Let's take a look at, then, at Exhibit 5A.

21 **PRESIDENT:** C-5A?

22 **MS BEVILACQUA:** Yes, thank you.

23 Mr Patel, do you recognise your initials
24 anywhere on this cover page?

25 **MR PATEL:** Yes, down at the bottom.

1 **MS BEVILACQUA:** And on the right or
2 left-hand side of the document?

3 **MR PATEL:** On the left side.

4 **MS BEVILACQUA:** And if we could go to the
5 last page.

6 And is that your signature, Mr Patel?

7 **MR PATEL:** Yes, it is.

8 **MS BEVILACQUA:** And if we could look at
9 Claimant's 5B, again, your initial appears in the
10 lower left-hand corner of all these and it's the
11 signature on the right of the two, correct?

12 **MR PATEL:** Yes.

13 **MS BEVILACQUA:** I'm sorry. It's the
14 initials to the right of the two.

15 OK. And on the last page, is that your
16 signature?

17 **MR PATEL:** Yes, it is.

18 **MS BEVILACQUA:** And if we could look at
19 R-1, and the initials on this one are harder to see
20 on a copy. Do you recognise your initials or
21 Mr Daga's?

22 **MR PATEL:** I mean, it looks like the other
23 ones. It's hard to read.

24 **MS BEVILACQUA:** And if we could go to the
25 last page, please, again a faint copy, but does that

1 appear to be your signature on the last page of R-1?

14:28

2 **MR PATEL:** Yes, it looks like it. It's
3 very difficult to see, but yes.

4 **MS BEVILACQUA:** And it also bears the
5 stamp of PEL in the centre there?

6 **MR PATEL:** Yes.

7 **MS BEVILACQUA:** And now R-2, please. And
8 do you recognise that as your initials on the bottom
9 of the page there to the right?

10 **MR PATEL:** Yes.

11 **MS BEVILACQUA:** And could we look at the
12 last signature page as well?

13 And is that your signature, Mr Patel?

14 **MR PATEL:** Yes.

15 **MS BEVILACQUA:** And, again, it also bears
16 the stamp of Patel?

17 **MR PATEL:** Yes.

18 **MS BEVILACQUA:** And if we could stay on
19 R-2 for a moment, Mr Patel, you may take as much
20 time as you want to flip through any of the pages in
21 the exhibit before you so that you feel comfortable
22 answering questions, but I will tell you this is the
23 English version of the MOI produced by the Republic
24 of Mozambique, and we are looking right now at
25 clause 2 in Exhibit R-2.

1 And do those look like your initials on
2 the lower left-hand corner?

14:30

3 **MR PATEL:** Yes.

4 **MS BEVILACQUA:** And if you --

5 **PRESIDENT:** We don't have a transcript now
6 of what he said.

7 **MS BEVILACQUA:** Sorry, could you repeat
8 your response? The court reporter could not hear.

9 I'd like to look, then, at the content of
10 PEL's English version, which is Exhibit 5A, and if
11 you could keep up this one, too, because neither you
12 nor I read Portuguese, Mr Patel, we're going to work
13 in the English together. OK?

14 **MR PATEL:** Great.

15 **MS BEVILACQUA:** So on the left-hand side
16 of the screen we have PEL's produced copy in English
17 of the MOI with the page that contains clause 2.1
18 and part of 2.2, and on the right-hand side of the
19 screen we have Mozambique's produced copy of the MOI
20 with clause 2 in its entirety.

21 Do you see those on your screen?

22 **MR PATEL:** Yes, I do.

23 **MS BEVILACQUA:** And you will note that
24 there's a difference between the language on the
25 left-hand side in clause 2.1 and the language on the

1 right-hand side in the same clause.

2 Do you see that?

3 **MR PATEL:** Yes.

4 **MS BEVILACQUA:** And, in fact, most of the
5 paragraph of 2.1 on the left-hand side is different
6 and contains a number of additional words and
7 clauses as compared to the version on the right,
8 correct?

9 **MR PATEL:** Yes.

10 **MS BEVILACQUA:** And this clause 2.1 in
11 PEL's version refers to a prefeasibility study on
12 the basis of a report of the working group for
13 assessing the appropriate site of the port and to
14 finalise the rail route, thus ensuring that once the
15 terms under clause 7 of this memorandum are
16 approved, the Government of Mozambique shall issue a
17 concession of the project in favour of PEL.

18 Is that accurate?

19 **MR PATEL:** Yes.

20 **MS BEVILACQUA:** And in Mozambique's
21 English version, clause 2.1 states PEL shall carry
22 out a prefeasibility study (PFS) within 12 months
23 and will submit to the government for respective
24 approval.

25 So in Mozambique's English version there's

1 no mention of a working group, there's no mention of **14:34**
2 finalising a rail route, there's no mention of
3 clause 7 and no mention of a concession, correct?

4 **MR PATEL:** That's correct.

5 **MS BEVILACQUA:** And if we could put up
6 clause 7 in both exhibits, and please take your
7 time, Mr Patel, and confirm, if you are able, that
8 the language in clause 7 of both Mozambique's and
9 PEL's MOI is identical.

10 **MR PATEL:** Yes, it is.

11 **MS BEVILACQUA:** And clause 7 talks about
12 what happens if the project is found to be not
13 viable, commercially unviable for any reason,
14 correct? Excuse me, "techno-commercially unviable
15 for any reason".

16 **MR PATEL:** That's correct.

17 **MS BEVILACQUA:** And there's that phrase
18 again where techno-commercial viability has
19 appeared.

20 **MR PATEL:** Yes.

21 **MS BEVILACQUA:** OK. If the project is
22 found to be techno-commercially unviable for any
23 reason the parties agreed to sign a new memorandum
24 to undertake another study, correct?

25 **MR PATEL:** Yes.

1 **MS BEVILACQUA:** Do you recall doing any
2 comparison of the Portuguese execution copies of the
3 MOI to any English versions of the MOI on the day
4 that they were executed?

5 **MR PATEL:** No, I did not.

6 **MS BEVILACQUA:** Now I'd like to shift
7 gears and talk about some financial information that
8 you put together after you conducted the
9 prefeasibility study, so after PEL conducted the
10 prefeasibility study under the MOI.

11 Do you recall assisting Mr Daga in
12 providing additional information to the MTC?

13 **MR PATEL:** Yes, I do.

14 **MS BEVILACQUA:** And, to the best of your
15 memory, what do you recall being asked to do?

16 **MR PATEL:** I was asked to put together a
17 preliminary financial model that would demonstrate
18 if the project was financially viable.

19 **MS BEVILACQUA:** And what information did
20 you use to do that?

21 **MR PATEL:** I used assumptions and figures
22 provided to me by Mr Daga and by Mr Guerra from CFM
23 through Mr Daga, so all of the capital expenditure
24 figures were provided to me by Daga Saab and all of
25 the operational figures for revenue and costs,

1 operational costs, were provided by CFM through
2 Daga.

3 **MS BEVILACQUA:** Just to make sure I have
4 it correct, you didn't interface directly with CFM,
5 but Mr Daga did and then conveyed it to you?

6 **MR PATEL:** That's correct.

7 **MS BEVILACQUA:** If we could pull up C-8,
8 please, this is Claimant's Exhibit 8. Just for the
9 record -- there we go -- what was displayed a moment
10 ago is not C-8. We'll get the correct C-8 on the
11 screen. There we go.

12 OK. So this is a transmittal letter from
13 Mr Daga to the Ministry of Transport, and if you
14 would please forward to the third page, I know it's
15 going to be very challenging to see in this mode,
16 but this is the sensitivity table.

17 Did you prepare the sensitivity table?

18 **MR PATEL:** If it was part of the model,
19 I did. I -- it was a long time ago, so I can't
20 remember, but if it was part of the financial model,
21 then I would have.

22 **MS BEVILACQUA:** And just so we're clear --
23 and we can show you the rest of the pages in C-8 so
24 that you can see, they are attached to Mr Daga's
25 letter.

1 **MR PATEL:** Yes, I prepared this model.

14:40

2 **MS BEVILACQUA:** OK. And in your witness
3 statement, when you talk about the model, you
4 mentioned that you had to make certain assumptions
5 because this is, after all, future and very forward
6 looking and is done for the purpose of, I believe
7 you said, financial viability?

8 **MR PATEL:** Yes. At this preliminary stage
9 it was -- well, first of all, it was not a
10 requirement to provide this model. However, after
11 we submitted the prefeasibility, Daga called me up
12 and said Minister Zucula requested this. They
13 wanted to understand from a high level what this
14 looked like, and so we put it together on a
15 conservative basis, what we felt at the time was a
16 conservative basis on both cost of construction,
17 capex and opex, to model out whether the debt could
18 be serviced. If you borrowed money to do this,
19 could you pay the debt down.

20 **MS BEVILACQUA:** And there are a number of
21 assumptions that have to go into that analysis as to
22 whether you could pay the debt down if you borrowed,
23 and one of those assumptions is well, what's the --
24 first of all, what's the debt percentage, right, and
25 what's the equity required, and you built those into

1 your model?

2 **MR PATEL:** Yes, we would have had to
3 assume leverage ratios.

4 **MS BEVILACQUA:** And you also have to
5 assume a debt rate?

6 **MR PATEL:** Yes.

7 **MS BEVILACQUA:** And here you assumed a
8 debt percentage of 80 per cent, a debt rate of
9 7 per cent, and that the equity required would be
10 623 million, correct?

11 **MR PATEL:** Yes.

12 **MS BEVILACQUA:** And that gets you to
13 2.492 billion in debt for this proposal?

14 **MR PATEL:** That's correct.

15 **MS BEVILACQUA:** And do you recall how long
16 the build period was in this analysis? We can pull
17 it out for you and not make us all go blind.

18 **MR PATEL:** It looks like six years but --

19 **MS BEVILACQUA:** Yes. And do you also
20 recall how long it would take before you started
21 earning any cash back on the initial investment?

22 **MR PATEL:** That, I don't recall.

23 **MS BEVILACQUA:** So if we look at the first
24 six years while the project is being built, it's all
25 capex and virtually no revenue, correct?

1 **MR PATEL:** Yes.

2 **MS BEVILACQUA:** And then the closing debt
3 balance at year 10 in this model that you prepared
4 is 3.8 billion.

5 **MR PATEL:** I can't see it. I'm
6 assuming --

7 **MS BEVILACQUA:** We'll pull it out for you.
8 Can you find the closing debt balance at
9 year 10?

10 **MR PATEL:** I think it's -- is it the 3.754
11 or the 3.816? It's hard for me --

12 **MS BEVILACQUA:** Yes, the 3.75 is the
13 opening, and the 3.8 is the closing. And you didn't
14 run an NPV, or a net present value, on this
15 attachment or this financial model, correct?

16 **MR PATEL:** Correct. This analysis wasn't
17 put together to run an NPV on.

18 **MS BEVILACQUA:** And you weren't asked to
19 do one either by Mr Daga, correct?

20 **MR PATEL:** We were not asked to do one by
21 Mr Daga. We were not asked to do one by the
22 government. The government at the time had four
23 weeks to review the model. They had no comments.
24 They did no further analysis that we knew of or had
25 no criticisms of the model at the time.

1 **MS BEVILACQUA:** But before anyone actually
2 invests the capital in a \$3.1 billion project, at
3 some point you're going to need to run a net present
4 value on something to know whether it's financially
5 viable.

14:46

6 **MR PATEL:** Not necessarily. I think you
7 have to consider who your investors are and who's
8 raising the capital. If you're a purely financial
9 investor, an NPV analysis might be important to you.
10 If you are an in-market coal owner like Jindal or
11 Rio Tinto, you've already invested hundreds of
12 millions of dollars into a coal asset. You've
13 chalked it out, you want to start producing but you
14 have no way of evacuating it and no way of actually
15 getting to it market, then you might not be looking
16 at the NPV of a standalone port-rail product, you
17 might be looking at it as an equity investment you
18 need to make to make the rest of your investment in
19 the country financially viable. I think it's really
20 important to understand who your audience is and
21 who's going to be investing in the project before
22 you can assume that you have to run an NPV a certain
23 way before a project is financially viable.

24 **MS BEVILACQUA:** And I understand the
25 distinction you were making between a coal operator,

1 coal mining company, versus an equity investor,
2 correct?

14:47

3 **MR PATEL:** They could be one and the same.
4 I think there's a very real possibility that either
5 Rio or Jindal would have wanted to take equity in
6 the project themselves to ensure that they had a
7 corridor like Vale and to make sure that they can
8 get their coal out for the next 30 years (audio
9 distortion) get it out period.

10 So I think it's -- I don't think you
11 should separate the two when you think about the
12 financial analysis and the viability of the project.

13 **MS BEVILACQUA:** Do you know what happened
14 to the Vale project in the Nacala port?

15 **MR PATEL:** No. After May 2012, I haven't
16 thought about Mozambique again, to be frank.

17 **MS BEVILACQUA:** Nearly finished. If we
18 could take a look at cover letter of C-8, please
19 Mr Patel, this is Mr Daga's communication to
20 Mr Zucula then attaching the financials that you've
21 prepared, and he notes that at this stage the port
22 of Macuse would be a greenfield project and that
23 there was very little hydrographic information and
24 oceanographic studies that were available at the
25 time, and he also notes that there was no commercial

1 model built before the MTC asked for one, correct?

2 **MR PATEL:** Yes, I see that. Yes.

3 **MS BEVILACQUA:** And then on the second
4 page he talks a little bit more about the financials
5 that are attached.

6 **MR PATEL:** Yes.

7 **MS BEVILACQUA:** Give us just a second.

8 And he talks about the financials being
9 clear that "even in a worst case scenario, also it
10 is financially viable even without considering the
11 multiple growths", and you understand that multiple
12 growths would be expansion or increase of the scope
13 of the project or the amount of coal being moved
14 along the rail?

15 **MR PATEL:** I can't recall what he
16 specifically meant by that but I would assume that
17 additional capacity, yes.

18 **MS BEVILACQUA:** But it's not actually the
19 worst case scenario, is it?

20 **MR PATEL:** I'm not sure what you mean.

21 **MS BEVILACQUA:** OK. Well, he represents
22 that the financials attached show that even in the
23 worst case scenario, "it is financially viable",
24 "it" being the project as proposed at this time by
25 PEL. Yes?

1 **MR PATEL:** Yes.

2 **MS BEVILACQUA:** But you have to understand
3 what some of those assumptions are going into the
4 analysis to understand if it's actually worst case,
5 don't you?

6 **MR PATEL:** Absolutely. A model -- I like
7 to say a model is garbage in/garbage out. If you
8 don't have the right assumptions, then the model
9 doesn't give you any useful information.

10 **MS BEVILACQUA:** So some of those key
11 assumptions would be the amount -- the tons of coal
12 that you can move on the rail line, agreed?

13 **MR PATEL:** Yes. That would drive your
14 revenue. Yes.

15 **MS BEVILACQUA:** And then also the
16 utilisation of that rail and the port?

17 **MR PATEL:** Your capacity, yes.

18 **MS BEVILACQUA:** And in this -- in these
19 financials it's assumed that there would be
20 25 million tons of coal on the new rail, and that
21 the new port with 100 percent utilisation.

22 **MR PATEL:** I can't -- I cannot
23 specifically recall the conversations I had with
24 Daga Saab, but I do recall the feeling that there
25 was so much demand for a corridor like this because

1 Vale had Nacala to themselves essentially, so
2 everyone else was looking at a way to take their
3 coal out.

4 So all of the miners that we had spoken to
5 about this had an interest. So I think the feeling
6 was back then that 25 million tons was not going to
7 be difficult to move.

8 **MS BEVILACQUA:** What about the 100 percent
9 utilisation?

10 **MR PATEL:** I think that just assumes that
11 if this was built to do 25 million tons, it would be
12 utilising the full capacity on whatever number of
13 shifts we were running.

14 **MS BEVILACQUA:** Do you recall how many
15 days a year this model had it running to achieve
16 those numbers at full --

17 **MR PATEL:** No. No, I don't. There's
18 probably a variable in there. 320. OK?

19 **MS BEVILACQUA:** And there are also a
20 number of items that are not included in this
21 analysis such as a concession fee, correct?

22 **MR PATEL:** Yes, there is no concession
23 fee. At the time the concession agreement had not
24 been negotiated yet, but some of the variables that
25 were being discussed were how much equity the

1 government would hold. If they held equity, then
2 would they actually get a fee, would there be tax
3 paid, because these are all -- these are all
4 revenues for the government, and so if the
5 government was taking equity and a fee and tax, then
6 they're essentially taking all the value out of the
7 project.

8 So the way that the government was going
9 to receive value was still being determined.

10 **MS BEVILACQUA:** But this model includes no
11 concession fee, and it also includes and assumes no
12 tax rate.

13 **MR PATEL:** That's correct. The assumption
14 was going to be that the government was going to
15 have an equity share and that equity share would
16 be -- would be the compensation that they needed,
17 and so there would be no concession fee paid or --
18 and there would be a tax holiday for a period of
19 time, given that they were an equity shareholder.

20 **MS BEVILACQUA:** And the model also did not
21 include any contingencies for delays or for cost
22 overruns on the project?

23 **MR PATEL:** I did not put it in the model.
24 Daga gave me the numbers. He may have included cost
25 overruns on his own end, so the capex number I was

1 given was just a number -- it's going to cost this
2 much per locomotive and this much per kilometre.
3 That number itself could have included a
4 contingency. Knowing Daga, it most likely did.

5 **MS BEVILACQUA:** And the assumption that
6 the government was going to have an equity share and
7 there would be a tax holiday, as you mentioned a
8 moment ago, and no concession fee paid, those were
9 all things that would still need to be negotiated to
10 know what the final economic terms are, or any terms
11 of a concession agreement.

12 **MR PATEL:** My understanding was that Daga
13 had had those discussions with Minister Zucula and,
14 as I mentioned earlier, this model was given to
15 them. They reviewed it for one month and then they
16 approved the prefeasibility.

17 I'm sure that the items that you're
18 raising would have been raised by the government at
19 that time. They could have run every analysis they
20 needed to. They did not come back and say adjust
21 the model for anything. They came back and approved
22 the prefeasibility.

23 So my understanding was these discussions
24 had taken place with Daga and Minister Zucula to
25 some extent.

1 **MS BEVILACQUA:** Did you prepare the capex
2 table in the prefeasibility study?

3 **MR PATEL:** No, I did not.

4 **MS BEVILACQUA:** Do you recall who did?

5 **MR PATEL:** No. I was shown it this
6 morning because I think it was part of the bundle,
7 but no, I don't recall who did.

8 **MS BEVILACQUA:** Thank you very much,
9 Mr Patel. I am finished, and I pass the witness.

10 **MR PATEL:** Thank you, guys, for
11 accommodating me today. I really appreciate it.

12 **PRESIDENT:** Yes. We are almost through,
13 Mr Patel. Let me double check whether counsel to
14 Claimant has any further question.

15 **MS KUZNETSOVA:** Thank you, Mr President.
16 I'm Ms Kuznetsova. We have no further questions for
17 Mr Patel.

18 **PRESIDENT:** Very good. Is there any
19 further question for Mr Patel?

20 Mr Patel, we thank you. We hope that
21 everything goes better at home, and we thank you for
22 having been here with us, and we wish you a safe
23 trip back home.

24 **MR PATEL:** Thank you, everyone. Thank you
25 again.

1 **PRESIDENT:** Very good.

2 So then let's make a break now so that you
3 can also re-adjust to your -- it's now 3, so let's
4 come back at 20 past 3.

5 (Short break from 2:59 to 3:22 pm)

6 KISHAN DAGA, continued

7 **PRESIDENT:** We welcome back Mr Daga.

8 Thank you for your patience, sir, and we continue
9 now with your examination, and we give the floor
10 back to Respondent and to Ms Bevilacqua.

11 **MS BEVILACQUA:** Just one moment,
12 Mr President.

13 **PRESIDENT:** Of course.

14 **MS BEVILACQUA:** I'm ready. Thank you.

15 **PRESIDENT:** Are you ready, Mr Daga?

16 **MR DAGA:** Yes. Thank you.

17 Cross-examination continued

18 **MS BEVILACQUA:** Thank you. Thank you,
19 Mr President.

20 All right. Where we left off, Mr Daga, we
21 were looking at some of the drafts of the MOI from
22 that spring 2011 timeframe, and I'd like to show you
23 next an e-mail exchange between you and Mr Rupen
24 Patel's assistant and Mr Ashish Patel. This is
25 Claimant's Exhibit 221.

1 Have you had a chance to look at that,
2 Mr Daga?

3 **MR DAGA:** Yes.

4 **MS BEVILACQUA:** In the e-mail that you
5 sent to Ashish Patel and Sandeep Shetty at the
6 bottom half of the first page and across the second
7 page of Exhibit 221, you address the top portion of
8 the e-mail to Mr Patel and the bottom portion to
9 Sandeep, and to Ashish you noted that you were
10 attaching a modified MOI. Point number 7 and 8,
11 there are changes, and you incorporated those
12 changes as per a requirement, and then you say
13 "without defeating the main purpose of the MOI",
14 correct?

15 **MR DAGA:** Yes.

16 **MS BEVILACQUA:** Do you recall what those
17 changes were to points 7 and 8?

18 **MR DAGA:** I don't remember, no, what was
19 the changes we made.

20 **MS BEVILACQUA:** And the next paragraph you
21 said "In my opinion it is OK as a preliminary
22 document", referring to the MOI there?

23 **MR DAGA:** Yes.

24 **MS BEVILACQUA:** And then you state "We can
25 improve upon when we come to MOU and agreement

1 stage".

2 **MR DAGA:** Yeah.

3 **MS BEVILACQUA:** So what's the difference
4 between the MOI and MOU and agreement stage.

5 **MR DAGA:** See, there was no difference
6 between MOI and MOU --

7 **PRESIDENT:** You have to speak to us,
8 Mr Daga, to the microphone because otherwise -- or
9 you put the microphone on the other side.

10 **MR DAGA:** Sorry. Basic difference between
11 MOI and MOU is MOI is Memorandum of Interest and MOU
12 is Memorandum of Understanding. Some people say
13 MOI, some people say MOU. We generally normally in
14 India we use term MOU but in Mozambique they were
15 using the term MOI.

16 So I said that when we signed the MOU, at
17 that time we can improve on this point. That was
18 the only talk. It is all the same. Normally in
19 India MOI is expression of interest, but here it was
20 a Memorandum of Interest they are saying. Basically
21 there is no much of difference between MOI and MOU.
22 It is a difference of nomenclature.

23 **MS BEVILACQUA:** And you noted to Mr Ashish
24 Patel that if these changes were OK, you would sign
25 on Wednesday, which would be two days from the date

1 the e-mail was sent.

2 **MR DAGA:** That is written.

3 **MS BEVILACQUA:** And with Mr Sandeep
4 Shetty, you asked to share this with Rupen Patel.

5 **MR DAGA:** Yes. "Kindly show it to
6 Mr Rupen Patel".

7 **MS BEVILACQUA:** So you were asking to
8 share not only the draft but also your comments that
9 followed, correct?

10 **MR DAGA:** Yeah, yeah. Correct.

11 **MS BEVILACQUA:** And your comments that
12 follow, someone whose name is blacked out --

13 **MR DAGA:** I am not sure who has made this
14 black-out.

15 **MS BEVILACQUA:** That's fine.

16 **MR DAGA:** I'm not remembering exactly.

17 **MS BEVILACQUA:** Suggested modifications
18 and you did that, and you wrote "Because law was not
19 agreeable as it is we submitted MOI".

20 What law was not agreeable as it is?

21 **MR DAGA:** I don't remember, but this is
22 maybe referring to Mozambican -- their law
23 department only. It may be. I don't remember
24 exactly now.

25 **MS BEVILACQUA:** Then you continued, "As

1 per them it is only MOI why you are making so many
2 binding conditions on Ministry".

3 **MR DAGA:** Yes. That was the -- I think it
4 was from the Ministry of Transport this has come,
5 that it is not much of the thing so why are you so
6 serious about that.

7 But we said that, no, we are serious about
8 this and we want to see this business so we want
9 some binding agreements with the government. There
10 was a question of investment here. That's why we
11 wanted to bind the government also on certain
12 conditions.

13 **MS BEVILACQUA:** And the investment that
14 you just referred to in your previous answer, you're
15 talking about the prefeasibility study that's
16 contemplated by --

17 **MR DAGA:** I couldn't hear.

18 **MS BEVILACQUA:** The investment that you
19 just talked about in your prior answer is the
20 prefeasibility study that you were undertaking as
21 part of this MOI?

22 **MR DAGA:** Yeah, prefeasibility study
23 expenses.

24 **MS BEVILACQUA:** But then your answer in
25 C-221 goes on to say, "Because once the DPR is

1 accepted [then] Government will sign the agreement. **15:31**

2 At that time we can put all these elaborate
3 conditions".

4 **MR DAGA:** Yeah, those were the discussions
5 stated only, as I said previously also.

6 **MS BEVILACQUA:** And the DPR is the
7 bankability study?

8 **MR DAGA:** Yeah, because DPR we never
9 agreed that we will make the DPR and then we'll sign
10 the definite agreement. Ours was that we will do
11 the prefeasibility study, and if study is approved,
12 then you are to sign the agreement. The government
13 was always saying no, we want a DPR, bankable study.
14 We said bankable study only can be done once we sign
15 the agreement, because DPR costs much, much more
16 than the prefeasibility study. Maybe ten times
17 more.

18 So we were not ready for that expenses or
19 to take the risk of that. If government agrees on
20 the prefeasibility study we were ready, OK, sign the
21 agreement, we will do the bankable report. If
22 bankable report comes, then we will see what happens
23 to that.

24 **MS BEVILACQUA:** And at this point in the
25 negotiation you understand that the Government of

1 Mozambique is saying, no, we'll sign the agreement
2 after the DPR, and you were asking to have a
3 concession after the prefeasibility study?

4 **MR DAGA:** We were always pressing that
5 after prefeasibility report, if it is approved, then
6 you are to sign an agreement with us and concession
7 should be given to us for implementation.

8 **MS BEVILACQUA:** And then Mr Patel responds
9 to you and, recall, you were talking to Mr Patel
10 about the changes being made in points 7 and 8 of
11 the MOI in your e-mail below, yes?

12 **MR DAGA:** To Mr Ashish Patel?

13 **MS BEVILACQUA:** Yes, sorry.

14 **MR DAGA:** Right. Because these e-mails
15 were exchanged between me and Ashish, the jobs, and
16 we were also coming -- keeping in loop our MD Office
17 also, so that they know what is happening and if any
18 suggestions comes, they can intervene in between,
19 any time. That was the purpose of this.

20 **MS BEVILACQUA:** And what Mr Ashish Patel
21 responds is "This looks fine. The only issue I have
22 is that in point 7" -- which would be clause 7 --
23 "it seems we only get the first right of refusal and
24 exclusivity after we provide a DPR".

25 **MR DAGA:** Yes, that is what Mozambique was

1 always asking. I said in previous question, also
2 answer to that, that Mozambique was asking the DPR
3 but we were saying no, no DPR. We want at PFS stage
4 itself all the commitments.

5 Because Mozambique was not spending
6 anything. We were spending from our pocket. So
7 definitely when we spent from our pocket, we want
8 certain guarantees from Mozambique that, yes,
9 projects will be given to you.

10 **MS BEVILACQUA:** Then let's look at
11 Exhibit 202, please. Claimant's 202.

12 **MR DAGA:** Yes.

13 **MS BEVILACQUA:** OK. Thank you. And
14 Exhibit 202 is an e-mail to you from someone at
15 Aries?

16 **MR DAGA:** Yes, that was Mr Bantwal
17 Prabhu's office, company. Aries Consulting
18 Engineers.

19 **MS BEVILACQUA:** And this is the same date
20 as the e-mail we just looked at, I believe, in
21 Exhibit --

22 **MR DAGA:** And this was because Dr Muhate
23 and Rafique told me that we are to change, convert
24 this into Portuguese also, because in Mozambique we
25 have to sign a Portuguese MOI also.

1 So we gave it to them that, OK, if it can
2 be translated by an official translator, so we got
3 it translated from the official translator after
4 paying the fees to them.

5 **MS BEVILACQUA:** So the person sending the
6 e-mail is with the -- your accountant's firm?

7 **MR DAGA:** Yes, this is -- I gave it to
8 them only because they were our local
9 representatives. They were handling our accounts
10 also. Local accounts.

11 **MS BEVILACQUA:** And do you know who
12 performed the translation?

13 **MR DAGA:** Pardon?

14 **MS BEVILACQUA:** Do you know who performed
15 the translation?

16 **MR DAGA:** The translation was get it done
17 by them from an official translator.

18 **MS BEVILACQUA:** OK.

19 **MR DAGA:** But they're hiring an official
20 translator for their regular business, so I said
21 them that you can get it through that translator
22 only.

23 **MS BEVILACQUA:** And you understood that
24 the Government of Mozambique required the Memorandum
25 of Interest to be also in Portuguese.

1 **MR DAGA:** In Portuguese also.

2 **MS BEVILACQUA:** And you can see pages --
3 the first several pages are a Portuguese
4 translation.

5 **MR DAGA:** Yeah.

6 **MS BEVILACQUA:** And you do not read the
7 Portuguese. Did you review it?

8 **MR DAGA:** No, no, no. I can't read --
9 I don't know Portuguese.

10 **MS BEVILACQUA:** Did you make any attempt
11 to compare it with the English version yourself?

12 **MR DAGA:** No. If you see the page after
13 the MOI ends after the signatory, if you see there
14 is a comparison, Memorandum of Interest in English
15 as well as in Portuguese. So from there I can see
16 they are using the same clauses what we have in
17 English, and translation is done.

18 **MS BEVILACQUA:** Right. And at this point
19 in the negotiation with the first comparison between
20 the Portuguese and the English, we can see that this
21 version still contains clause 6 and clause 7.

22 **MR DAGA:** Yeah. Yeah, this is the
23 18 April, that same English version was got it
24 translated. That's why I think it may be the same
25 version, or must be, because on those days every day

1 two, three exchanges were happening between us.

15:39

2 Some are with the hand, some are by mail, as I said
3 previously, so this may be one of them.

4 **MS BEVILACQUA:** Is it your testimony --
5 I just want to be clear --

6 **MR DAGA:** Pardon?

7 **MS BEVILACQUA:** I just want to be clear.
8 Is it your testimony that you were exchanging
9 changes in the document two or three times a day?

10 **MR DAGA:** Yeah. Because we were in Maputo
11 at that time, and we were -- me and Ashish were in
12 Maputo, and we were exchanging between Bombay and us
13 and office of Mr Prabhu. The three. We were a
14 triangle, rather, you can say.

15 **MS BEVILACQUA:** And this is about three
16 weeks before the MOI is actually executed. How long
17 were you in Mozambique at this time? Were you
18 living there?

19 **MR DAGA:** Almost I used -- in this
20 period -- this period I think I was there for almost
21 20, 25 days, if I remember correctly.

22 **MS BEVILACQUA:** And was Mr Ashish Patel
23 with you the whole time?

24 **MR DAGA:** Ashish Patel was there for a
25 week or ten days. After that he went back, and then

1 we were talking over phone only.

2 **MS BEVILACQUA:** So you were in Mozambique
3 for approximately 20 to 25 days?

4 **MR DAGA:** Yeah, roughly. During this
5 period only. I do not remember exact dates now.
6 I have to check my passport. But I usually, in
7 2011, '12, '13, almost two years I have spent in
8 Mozambique, because this project I have taken as a
9 passion, and this was my dream project, so I wanted
10 to devote maximum time on this project.

11 **MS BEVILACQUA:** If you would take a look,
12 then, at Exhibit C-204, while you're looking at
13 that, Mr Daga, how were changes being made two to
14 three times a day to this document? What was that
15 process like?

16 **MR DAGA:** Pardon? Can you repeat?

17 **MS BEVILACQUA:** Yes. You had mentioned
18 that you were making changes two or three times a
19 day based on negotiations.

20 **MR DAGA:** It was not only that always we
21 were making, but whenever it was needed we were
22 changing and exchanging, talking, because this was
23 the first time we were doing all these things in
24 Mozambique, so we were keeping that eye always on
25 these things.

1 **MS BEVILACQUA:** And who on your team was
2 making changes in the document itself?

15:43

3 **MR DAGA:** Myself, Ashish, Mr Prabhu.
4 Sometimes Mr Caldeira also we have included.

5 **MS BEVILACQUA:** Mr Caldeira being your
6 Mozambican counsel?

7 **MR DAGA:** Mozambican lawyer. Legal
8 advisor.

9 **MS BEVILACQUA:** And who on Mozambique's
10 side was making changes?

11 **MR DAGA:** At that time, Mozambique side,
12 Mr Rafique, Dr Muhate, they were two people who were
13 involved. After that I think Mr Chaúque started
14 coming in. On the final day I think he came.
15 Previous day of I think 4th or 5th of May Mr Chaúque
16 came in the picture.

17 I think fifth day evening we sat up to
18 nine o'clock or 8.30/nine o'clock, me, Mr Caldeira,
19 Mr Prabhu and Ashish, and we finalised the English
20 and Portuguese versions, both, if I remember
21 correctly.

22 **MS BEVILACQUA:** And when Mr Chaúque and
23 Mr Muhate and Mr Rafique were making changes, they
24 were making changes in the Portuguese language
25 version?

1 **MR DAGA:** Mr Chaúque, Mr Muhate, and
2 Mr Caldeira, they were making the changes in the
3 Portuguese version, but these are the Portuguese
4 people.

5 **MS BEVILACQUA:** Portuguese speaking.

6 **MR DAGA:** Yes, Portuguese speaking people,
7 so they were doing the changes in Portuguese.
8 Whatever we are agreeing in English, the certain
9 changes were made in the Portuguese same time. I
10 think fifth of night it is, previous day, of the
11 signing of MOI.

12 **MS BEVILACQUA:** And we'll look at the
13 signed version in just a minute. I believe it is
14 the --

15 **MR DAGA:** Pardon?

16 **MS BEVILACQUA:** -- 6th of May.

17 **MR DAGA:** 6th of May, you are talking
18 about 204?

19 **MS BEVILACQUA:** Yes.

20 **MR DAGA:** This is the e-mail I sent from
21 Mr Rafique who was the CPI head.

22 **PRESIDENT:** Sorry, can you repeat who
23 Mr Rafique was?

24 **MR DAGA:** Rafique was, sir, their Centre
25 Promotion of Investments head.

1 **PRESIDENT:** He was a civil servant?

2 **MR DAGA:** I think so.

3 **PRESIDENT:** And I have the same question
4 to you. I find it strange that he is writing from a
5 Gmail, and that everyone here except you seems to be
6 writing from their personal e-mails.

7 **MR DAGA:** Yeah, most of the Mozambique
8 people arrive and they are using their own IDs
9 there. Most of the people I have seen. Because
10 I was working in the company very long so I was
11 using only the company's e-mail ID.

12 **PRESIDENT:** Yes. But I'm surprised that
13 Mr Rafique, if he belongs to an official entity
14 which is for the promotion of investment in
15 Mozambique -- is that correct?

16 **MR DAGA:** Yes.

17 **PRESIDENT:** And his e-mail is
18 rafiquejusob@gmail.

19 **MR DAGA:** Yeah, gmail.com. I have
20 received all the mails from him from this e-mail ID
21 only. Even Dr Muhate's mail I think was from his
22 personal ID, not from MTC ID.

23 **PRESIDENT:** OK. My colleague says that
24 many government officials used at that time Gmail
25 accounts because they probably were more efficient

1 than the State accounts. So it did not sound
2 strange to you when you saw?

3 **MR DAGA:** No, no, no, sir. It was not
4 very strange to me because every time I used to get
5 that, except the SPI lady. She was using her
6 company ID. The rest all were using their own
7 personal IDs, if I remember.

8 **PRESIDENT:** OK. Sorry for the
9 interruption.

10 **MS BEVILACQUA:** All right. So
11 Exhibit C-204 was sent to you on the 6th
12 of May 2011?

13 **MR DAGA:** In the morning.

14 **MS BEVILACQUA:** In the morning.

15 **MR DAGA:** Yes.

16 **MS BEVILACQUA:** By Mr Rafique, and he's
17 attaching a version of the Portuguese, and he calls
18 it the "final revised version with my corrections
19 and editing on the Portuguese version" and notes
20 that "we still need to finalise the English
21 version".

22 **MR DAGA:** Yes. That is true.

23 **MS BEVILACQUA:** And Mr Rafique is not the
24 person who is going to sign the MOI on behalf of the
25 MTC, correct?

1 **MR DAGA:** No.

2 **MS BEVILACQUA:** And this is not the final
3 version of the MOI either, is it?

4 **MR DAGA:** No. This was the final version
5 of MOI which was shown to us, even when we were
6 called at eleven o'clock for signing ceremony. When
7 we went there they have taken out four prints, two
8 prints of each. Two prints of English version, two
9 prints of Portuguese version. And all the four were
10 English version also same after the correction, and
11 the Portuguese version also was the same after these
12 corrections, which was shown to us.

13 And at that time, at 11 o'clock when we
14 went to MTC, Mr Prabhu was with me. He was doing
15 the Portuguese so he compared that, yes, both
16 versions are correct and whatever we have agreed in
17 the night and whatever Mr Jusob has written in the
18 morning, all are incorporated correctly. But eleven
19 o'clock we could not sign because Minister Zucula
20 could not come. He was busy at some other place.
21 So around one o'clock we were told that he will not
22 come before 3 so you can go back, have your lunch
23 and come back. This is what his secretary informed
24 us.

25 Then we went for the lunch. When we came

1 at four o'clock, at that time Mr Prabhu was not
2 there with us because he was having some other
3 meeting and I guess some other assignment.

4 So me and Ashish only came to the ministry
5 for signing ceremony, and we waited up to, I think,
6 6 or 6.30, and then Mr Zucula came. After coming,
7 he called for the prints, final prints. He said
8 have you seen in the morning? I said yes, we have
9 seen in the morning these prints. But still, he --
10 like this he glanced, and he read English and
11 Portuguese version like this, keeping in hand.
12 I still remember the scene.

13 And then I asked him, sir, is the same
14 what is shown in the morning I think to us. Then he
15 said yes, it's the same version, there is no
16 changes. And he asked Mr Chaúque whether these are
17 the things which have been finalised. He said, yes,
18 these were the prints were finalised.

19 And when minister said that, yes, it's the
20 same thing, I have to go by his words. I have to
21 honour his words. I cannot have a doubt that he
22 will tell me something that it is not the same
23 version, but later on I found out there was some
24 changes in there.

25 **MS BEVILACQUA:** I would refer you, sir, to

1 your second witness statement, please.

15:52

2 PROFESSOR TAWIL: Sorry, can I make a
3 follow-up question?

4 MS BEVILACQUA: Yes.

5 PROFESSOR TAWIL: What did you attribute
6 the changes to?

7 MR DAGA: Pardon, sir?

8 PROFESSOR TAWIL: What is your personal
9 recollection of why these changes were made? Is it
10 a confusion what happened, were they different -- at
11 the time. I'm not speaking five years afterwards,
12 or ten.

13 MR DAGA: Sir, between eleven o'clock when
14 it was seen, shown to us, and six o'clock when we
15 went again, four o'clock, and after that those
16 prints were brought around 6.30/seven o'clock when
17 Mr Zucula came, I am not aware who has made these
18 changes and how these changes is made. These
19 changes have never been occurred in any of the
20 drafts, if you see.

21 PROFESSOR TAWIL: I understand. The
22 question is different.

23 Now in a recollection, what do you
24 attribute the changes to? Why were the changes
25 made? What do you think happened? I'm asking you

1 what do you think happened? I know that you don't
2 know, I know that two documents appeared, but one
3 can have a construction. Was it they confused the
4 drafts? What happened?

5 **MR DAGA:** In a harsh language if I say
6 that this may be done with the intention to create
7 some problems at a later date for us, because both
8 we are not knowing the Portuguese, so it must have
9 been done with that. Otherwise, there would not
10 have been any dispute. Had it been the original
11 whatever was shown in the morning was of MOI, there
12 would not be any dispute also between the clauses.

13 **PROFESSOR TAWIL:** Thanks. Counsel, your
14 witness.

15 **MS BEVILACQUA:** Mr Daga, when you showed
16 up at 11 for the signing that morning, you had a
17 Portuguese speaker with you, yes?

18 **MR DAGA:** Yes.

19 **MS BEVILACQUA:** And he stayed with you
20 throughout the day until he had an appointment in
21 the afternoon?

22 **MR DAGA:** At one o'clock we were there, as
23 I said, and then we were told that minister is busy,
24 Mr Zucula will come in the afternoon, three o'clock,
25 so four o'clock you come. We went four o'clock. At

1 that time Mr Prabhu was not with us. Caldeira was
2 not in town on that day, so I could not take any
3 Portuguese speaking person with me.

4 **MS BEVILACQUA:** You also had your advisor
5 from SPI?

6 **MR DAGA:** No. She was also not there.
7 Otherwise, I would have taken her also.

8 **MS BEVILACQUA:** And you did not confirm
9 with any Portuguese speaker on your side of the
10 negotiating team what changes were made and whether
11 any changes were made?

12 **MR DAGA:** When in the morning it was shown
13 the final prints, and it was confirmed by Mr Prabhu
14 that, yes, this is whatever we have agreed in the
15 night, previous night, and what Mr Rafique has
16 written in the morning seven o'clock mail, all
17 changes are incorporated, it is the same, nothing is
18 new now, we can sign it. I said OK, finally I will
19 sign it. No problem.

20 Me and Ashish were to sign so we said we
21 will sign it, but unfortunately we could not sign it
22 because Mr Zucula was not available. But between
23 eleven o'clock or six o'clock what has happened, I
24 do not know. God knows only. Or they know why they
25 have made the changes and what was the reason for

1 making the changes.

2 **MS BEVILACQUA:** And, Mr Daga, you actually
3 have no idea what was done. You are speculating as
4 to what was done, when it was done, by whom and why?

5 **MR DAGA:** I have no idea. I had at that
6 time no idea that there is any changes made in this
7 Portuguese version, otherwise I would not have
8 signed that. When minister also confirmed me that
9 yes, it is the same thing whatever you have
10 finalised and whatever Mr Rafique has shown to you
11 in the morning, and I believed his word because
12 I cannot distrust a minister when he's saying.

13 **MS BEVILACQUA:** And, Mr Daga, you were
14 perfectly capable of reading the English versions
15 that were put in front of you?

16 **MR DAGA:** English version was the correct
17 version I have gone through also. There was no
18 changes in the English version.

19 **MS BEVILACQUA:** Well, let's look at the
20 English version real quick then. That's Claimant's
21 Exhibit 5A.

22 So this is your version of the English of
23 the MOI. Is that your initial in the bottom
24 left-hand corner of this document?

25 **MR DAGA:** Can I see the total --

1 MS BEVILACQUA: Of course, yes.

2 MR DAGA: Yes, this is the correct
3 version, what I have signed in English.

4 MS BEVILACQUA: 5A, do you have it?

5 MR DAGA: Yeah.

6 MS BEVILACQUA: OK. And is that your
7 initials there?

8 MR DAGA: Yes.

9 MS BEVILACQUA: All right. And if you
10 would, let's look at clause 2.1, please.

11 MR DAGA: Yeah. Yes, please.

12 MS BEVILACQUA: You can see? And clause
13 2.1 has a statement of the prefeasibility study.

14 "PEL shall carry out a prefeasibility
15 study (PFS)" And it goes on to talk about the
16 location of the port and the rail and the working
17 group, et cetera.

18 PRESIDENT: What is the question?

19 MS BEVILACQUA: I'm sorry. We're making
20 it bigger so we can see. I'm sorry. Thank you.

21 PRESIDENT: No worries.

22 MS BEVILACQUA: So PEL shall carry out the
23 prefeasibility study.

24 MR DAGA: PEL to carry out.

25 MS BEVILACQUA: Yes. And then I'm

1 skipping, I'm not quoting directly, to finalise the
2 rail route, "thus ensuring that once the terms under
3 Clause 7 of this memorandum are approved, the
4 Government of Mozambique shall issue a concession of
5 the project in favour of PEL".

6 Do you see that?

7 **MR DAGA:** Yes.

8 **MS BEVILACQUA:** And right underneath it we
9 have clause 7. This is clause 2.1 and clause 7 of
10 your English version of the MOI.

11 And clause 7 says, "In the event that the
12 above mentioned corridor is found to be
13 techno-commercially unviable for any reason
14 whatsoever, both parties agree to sign a new
15 memorandum to undertake another study of a similar
16 project".

17 **MR DAGA:** Yes.

18 **MS BEVILACQUA:** Yes. So clause 7 makes
19 absolutely no sense with reference to 2.1, does it,
20 Mr Daga?

21 **MR DAGA:** No. It is not this way.

22 The clause 2 is that once prefeasibility
23 report is approved, then the government will issue
24 the concession. If it is not approved, then clause
25 7 will be applicable and we have to sign another MOI

1 to undertake a similar study.

2 It is the follow-up action of clause 2.

3 It is not two different things, or it is not a void
4 clause. I think it has been read mistakenly.

5 Clause 2 says that they will approve my
6 PFS, if it is approved, then the concession will be
7 given. If it is not approved, then clause 7 will be
8 applicable. That yes, it is not commercially viable
9 so we will make a separate study again, at our cost.

10 **MS BEVILACQUA:** Mr Daga, that's not what
11 the language of section 2.1 says at all.

12 **MR DAGA:** Pardon?

13 **MS BEVILACQUA:** That's not what the
14 language of 2.1 says at all.

15 **MR DAGA:** No, it is very clear. I can
16 read through there. It is very clear and that was
17 the understanding right from the beginning, that
18 even they also -- MTC also told that suppose in case
19 what happens then it does not give you the viable
20 reason. That's why we have added this clause in the
21 beginning. That when I'm limiting myself to a
22 corridor between Zambezia coast I make another study
23 in that region and make the port viable.

24 **MS BEVILACQUA:** Clause 7 doesn't have an
25 approval process in it whatsoever.

1 **MR DAGA:** Clause 7 says that if it is
2 found commercially unviable for the reason
3 whatsoever, both parties will agree to undertake a
4 study of similar projects, so it is a follow-up
5 action of clause 2, that if it is not viable in
6 clause 2 it is not acceptable to government, they
7 will not approve, I will sign another MOI with the
8 government, and they will allow me again to
9 similar -- because they were knowing that there is
10 no possibility of port in that area, and I was
11 insisting that there is a possibility of port.
12 Their working group preliminary study, what
13 Dr Muhate has said, they are saying that, yes, there
14 is a possibility.

15 So I was sure that, yes, if I -- if you do
16 not approve or find some faults in the PFS I'm ready
17 to invest again and do the second study. That was
18 the follow-up action of clause 7. This was the
19 understanding.

20 **MS BEVILACQUA:** Do you recall what clause
21 7 was in the prior draft of this agreement that we
22 looked at in exhibit Claimant's 225?

23 **MR DAGA:** See, this was the final draft
24 which we have reached.

25 **MS BEVILACQUA:** That was not my question,

1 sir.

2 Do you recall what clause 7 was in the
3 prior versions of this draft MOI before this
4 agreement was signed?

5 **MR DAGA:** 22?

6 **MS BEVILACQUA:** 225 would be an example.

7 **MR DAGA:** No, in 225 that clause 7 was
8 totally different. It is totally different.

9 **MS BEVILACQUA:** And in that prior version
10 that was totally different --

11 **MR DAGA:** Yeah. These were discussed on
12 the final day previous -- penultimate day I would
13 say, and these changes were made in English and
14 Portuguese.

15 **MS BEVILACQUA:** And in Exhibit 202, which
16 was the first translation comparing the clauses line
17 by line, the Portuguese with the English, do you
18 recall what clause 7 was?

19 **MR DAGA:** Yes, this was with the DPR, that
20 clause.

21 **MS BEVILACQUA:** That's right.

22 **MR DAGA:** This was old again. After that
23 so many things have changed in the final version of
24 the PFS -- MOI. So a lot of changes has happened.

25 **MS BEVILACQUA:** Please look at

1 Exhibit 204.

2 **MR DAGA:** Yeah.

3 **MS BEVILACQUA:** Which was that final
4 version as referenced -- or the final revised
5 version as referenced by Mr Rafique --

6 **MR DAGA:** Yes. Portuguese version.

7 **MS BEVILACQUA:** -- the morning of May 6th.

8 **MR DAGA:** If I read now, I don't know
9 Portuguese, but somebody can translate that clause 7
10 how it reads. I think it reads like that, that if
11 it is commercially unviable I will sign another MOI,
12 and invest further to make a port for the
13 government.

14 So I am taking a risk of further
15 investment. When I was confident that, yes, I will
16 not lose and my PFS will be approved, that's why
17 I have taken this risk and I have agreed that, OK,
18 you can have this clause also. No problem.

19 **MS BEVILACQUA:** Mr Daga, would you please
20 look at Exhibit 204?

21 **MR DAGA:** Yeah.

22 **MS BEVILACQUA:** Exhibit 204, which you
23 said was the version of the Portuguese that your
24 Portuguese speaking advisor reviewed in the morning
25 of May 6th, correct?

1 **MR DAGA:** Yeah, morning. Mr Jusob sent.

2 **MS BEVILACQUA:** Correct. And that you
3 believed this was the final.

4 **MR DAGA:** Yeah.

5 **MS BEVILACQUA:** And if this was the final
6 version, then your English version in 5A should
7 track this Portuguese version in Exhibit 204,
8 correct?

9 **MR DAGA:** Pardon?

10 **MS BEVILACQUA:** Your English version in 5A
11 should track the structure and organisation of this
12 Exhibit 204 in the Portuguese.

13 **MR DAGA:** No. I don't remember now on
14 this version whatever their minor changes because he
15 has written that minor modification I have done, so
16 I don't remember that what were the minor
17 modifications in Portuguese version. So he said OK,
18 whatever the minor modifications I have made in any
19 clause, that can be incorporated in English version,
20 not the entire MOU has to be changed.

21 **MS BEVILACQUA:** I would like you to look
22 at clause 3.

23 **MR DAGA:** Yeah.

24 **MS BEVILACQUA:** In Exhibit 204.

25 **MR DAGA:** Yeah.

1 **PRESIDENT:** Before we all get crazy with
2 versions, can we agree that C-204, which is a
3 Portuguese version, that clause 2 seems to be the
4 same as the one which was signed in English?
5 Because it also includes a cross reference to 7. Is
6 that -- or I'm getting lost here?

7 **MS BEVILACQUA:** You are not lost,
8 Mr President. You are correct. But, I'm sorry, I
9 think you're saying -- I think you have reversed --
10 can you say it one more time?

11 **PRESIDENT:** No. I -- you remember we saw
12 and you showed to the witness and you drew his
13 attention to what you said was a contradiction
14 between clause 2 and clause 7 in the English final
15 version which is C-5A, which is the version which is
16 in the archives of Claimant. Do you remember that?

17 **MS BEVILACQUA:** Yes, sir. Yes.

18 **PRESIDENT:** And now you draw our attention
19 to C-204, which is a Portuguese version.

20 **MS BEVILACQUA:** Yes.

21 **PRESIDENT:** And my question to you is this
22 contradiction between clause 2 and clause 7 is also
23 present in this version.

24 **MS BEVILACQUA:** It is also present along
25 with other things, yes. I understand.

1 **PRESIDENT:** So at least on that we agree. **16:10**

2 I don't think we can ask Mr Daga too much about the
3 Portuguese version because he has told us he does
4 not understand.

5 **MR DAGA:** I do not.

6 **PRESIDENT:** No problem. I don't
7 understand Hindu so...

8 **MR DAGA:** Thank you, sir.

9 **PRESIDENT:** No problem with that.

10 **MS BEVILACQUA:** Now in clause 3 of
11 C-204 --

12 **PRESIDENT:** You must be careful now
13 because he does not speak Portuguese, but fair
14 enough.

15 **MS BEVILACQUA:** And it will not require
16 speaking Portuguese.

17 **PRESIDENT:** Good.

18 **MS BEVILACQUA:** You see there that there
19 are three numbered paragraphs under clause 3?

20 **MR DAGA:** Yes.

21 **MS BEVILACQUA:** And there is only one
22 numbered paragraph in clause 2?

23 **MR DAGA:** Yes.

24 **MS BEVILACQUA:** It's actually unnumbered,
25 it's just clause 2.

1 **MR DAGA:** In Portuguese version?

16:11

2 **MS BEVILACQUA:** Yes, in the Portuguese
3 version you're looking at right now.

4 **MR DAGA:** Correct.

5 **MS BEVILACQUA:** And in your English
6 version, if we can look at Exhibit C-5A.

7 **PRESIDENT:** Yes.

8 **MR DAGA:** Yes.

9 **MS BEVILACQUA:** That structure in those
10 paragraphs is different than what we just saw --

11 **MR DAGA:** No, if you --

12 **MS BEVILACQUA:** -- in Exhibit C-204?

13 **MR DAGA:** No. If you see the headings of
14 the clauses, clause number 2 is prefeasibility study
15 --

16 **MS BEVILACQUA:** I'm sorry. We have the
17 wrong -- we have the wrong picture on the screen.
18 Just a moment.

19 Do you have the hard copy in front of you,
20 sir?

21 **MR DAGA:** Yeah, I have hard copy. Both.
22 So I'm reading from the hard copy.

23 **MS BEVILACQUA:** OK.

24 **MR DAGA:** So English version clause 2 I'm
25 reading. Heading is "Prefeasibility study" and

1 clause 3 is the time of completion of the study, so
2 we wanted to add this point number 2 of clause 2
3 here instead of time, because it is related to the
4 prefeasibility study, it is not related with the
5 time. The clause 3 is related to the time taken for
6 the studies.

7 **MS BEVILACQUA:** So that's a change --

8 **MR DAGA:** So we have taken into clause
9 2.2, it's taken here. That is the only difference.
10 But the contents are same. Meanings are same.

11 **MS BEVILACQUA:** But that's a change that
12 you wanted made during the day after --

13 **MR DAGA:** I have not made anything.

14 **MS BEVILACQUA:** No, no. Excuse me.
15 Please let me finish my question.

16 **MR DAGA:** Yeah.

17 **MS BEVILACQUA:** That's a change that you
18 wanted made after you received Exhibit C-204 at 7.10
19 am on May 6th.

20 **MR DAGA:** Yeah.

21 **MS BEVILACQUA:** You wanted the clause
22 moved from section 3 up into section 2.

23 **MR DAGA:** As I said earlier, again I'm
24 repeating the same thing, that he has not modified
25 the entire MOU; he has modified certain words only,

1 Mr Rafique. So he has said that, okay, according to
2 that you can modify, if any requirement is there.
3 That was the meaning of that e-mail. It is not that
4 the entire MOU is changed by him. He was not
5 authorised to change the entire thing.

6 **MS BEVILACQUA:** I'm sorry, what e-mail are
7 you referring to? You said that was the meaning of
8 that e-mail.

9 **MR DAGA:** I'm talking about the e-mail of
10 Mr Rafique on C-204.

11 **MS BEVILACQUA:** And C-204 --

12 **MR DAGA:** Because I remember distinctly.
13 I was deeply involved in this, so I remember
14 distinctly all these things. Although I am old, but
15 still my memory is there. I can remember.

16 **MS BEVILACQUA:** Exhibit C-204 also has a
17 paragraph (g) at the end of the consideration
18 section. I know that you don't speak Portuguese and
19 neither do I, but before we get to the numbered
20 clauses there are lettered clauses, and you can see
21 there's a paragraph (g).

22 **MR DAGA:** Which is clause?

23 **MS BEVILACQUA:** It's clause (g). It's in
24 the Whereas clauses, right? So it's at the top of
25 the second page of the 204 exhibit.

1 **MR DAGA:** Yeah.

2 **MS BEVILACQUA:** And, again, if this is the
3 final version in Portuguese, it should track what
4 your English version is that is signed in 5A.

5 **MR DAGA:** I do not know, but this was
6 confirmed in the morning to me by my Portuguese
7 speaking person also, that whatever we have written
8 in point number (a), (b), (c), (d), (e), (f), it is
9 the same, but sometimes in the language we have to
10 write in a different way, so there is one point
11 extra. Otherwise, there is no change. Meaning is
12 same from Whereas to clause number 1.

13 **MS BEVILACQUA:** OK. So then let's look at
14 5A. You can see the comparison on the screen, your
15 executed version.

16 **MR DAGA:** 5.

17 **MS BEVILACQUA:** Of 5A. The Whereas
18 clauses end at letter (f).

19 **MR DAGA:** 5, 1 and 2?

20 **MS BEVILACQUA:** I'm sorry. Exhibit 5A.

21 **MR DAGA:** Yeah.

22 **MS BEVILACQUA:** I'm on page 2.

23 **MR DAGA:** Yes.

24 **MS BEVILACQUA:** You see? And at the top
25 of the page you'll see a lettered paragraph (e) and

1 a lettered paragraph (f).

2 **MR DAGA:** Yes.

3 **MS BEVILACQUA:** And there is no paragraph
4 (g).

5 **MR DAGA:** Yes, that is what I earlier told
6 you, that when Mr Prabhu has read (a), (b), (c),
7 (d), (e), (f) and (a), (b), (c), (d), (e), (f), (g),
8 he said the meanings are same, there is no change.
9 Absolutely. And I have gone by his words that OK,
10 once there is no change, no material changes are
11 there, we can sign.

12 **MS BEVILACQUA:** And then let's look at
13 Exhibit 5B. Claimant's 5B. Tab 3 in your binder.

14 **MR DAGA:** Tab 3. Tab 3 the same.

15 **MS BEVILACQUA:** It should be right behind
16 the document.

17 **MR DAGA:** Clause 1 and 2, this is tab 5A.
18 This is C-5A. C-5B is here. That is the Portuguese
19 version. It is written C-5B. Yeah.

20 **MS BEVILACQUA:** OK. Do you have C-5B,
21 Mr Daga?

22 **MR DAGA:** Yeah, yeah.

23 **MS BEVILACQUA:** And C-5B is your signed
24 Portuguese version?

25 **MR DAGA:** Correct.

1 **MS BEVILACQUA:** OK. And those are your
2 initials in the lower left-hand corner?

16:19

3 **MR DAGA:** Initials are mine.

4 **MS BEVILACQUA:** Yes, the initials are
5 yours. And you believe this is what you signed.
6 This is your, PEL's, version?

7 **MR DAGA:** Yeah.

8 **MS BEVILACQUA:** That you maintained in
9 your files?

10 **MR DAGA:** Yes.

11 **MS BEVILACQUA:** And if you look in the
12 Portuguese version you signed, it also ends at
13 paragraph (f) in the Whereas clauses. There's no
14 paragraph (g).

15 **MR DAGA:** (g). Yes.

16 **MS BEVILACQUA:** And your section 3, the
17 changes match and track as well. You have two
18 numbered paragraphs under clause 3 in the English
19 and two numbered paragraphs under clause 3 in the
20 Portuguese.

21 **MR DAGA:** Hmm-mm.

22 **MS BEVILACQUA:** And if you compare clause
23 2.1 in the Portuguese to clause 2.1 in the English
24 --

25 **MR DAGA:** Yeah.

1 **MS BEVILACQUA:** -- of the documents in
2 your possession, you can see that clause 2.1 takes
3 up about six lines of text, and clause 2.1 in C-5B
4 takes up two lines of text.

5 **MR DAGA:** Yeah. I can see that.

6 **MS BEVILACQUA:** Did you provide the
7 Portuguese version of the MOI that you executed
8 after you signed it to your counsel at Sal &
9 Caldeira?

10 **MR DAGA:** Yes, Sal & Caldeira have seen
11 this.

12 **MS BEVILACQUA:** No. After you signed it,
13 did you provide them with signed copies?

14 **MR DAGA:** No. After I signed I don't
15 think I state we went to Mumbai after signing. Next
16 day.

17 **MS BEVILACQUA:** Why did you not provide it
18 to your Mozambican counsel?

19 **MR DAGA:** No, that was not needed, once
20 I signed the MOI. He was only the need-based
21 advisor; he was not a permanent advisor for me, but
22 a need-based. Whenever I need, I used to take his
23 advice.

24 **MS BEVILACQUA:** Did you provide an
25 executed copy to your accountants?

1 **MR DAGA:** Yes. Mr Prabhu was having this.
2 Prabhu was having this copy.

16:22

3 **MS BEVILACQUA:** He had the copy --

4 **MR DAGA:** I went to him, and Sal &
5 Caldeira I gave after some time I think, next visit
6 or after that I have given it, because he wanted
7 that, yes, I can keep for my record. Then I gave
8 him for his record.

9 Prabhu also kept, OK, that is for record
10 it is kept. He has also kept in his record. Nobody
11 has noticed these changes at that time because
12 everybody was referring the English version. We
13 were talking on the English version only. If you
14 see my all correspondences after this also,
15 everything is referring in my English MOI clauses.
16 Nowhere I would have referred MOI in Portuguese
17 clauses, and nowhere MTC has refused that this
18 clause is not there, this clause is not there, this
19 clause is not there. They were also depending upon
20 my English version only.

21 **MS BEVILACQUA:** Did you provide a copy of
22 this to the consortium members in the PGS
23 consortium?

24 **MR DAGA:** No, PGS consortium --

25 **MS BEVILACQUA:** I know, later. I know it

1 doesn't exist yet.

2 **MR DAGA:** Pardon?

3 **MS BEVILACQUA:** I know it doesn't exist at
4 this time. Later in time did you provide a copy to
5 the PGS --

6 **MR DAGA:** English version, yes. English
7 version we have given to them.

8 **MS BEVILACQUA:** But not the Portuguese?

9 **MR DAGA:** No, not the Portuguese, because
10 Portuguese we kept in the locker only and we kept
11 the copy of English version everywhere, because we
12 were -- it has the same value, equal value as
13 English and Portuguese. It is written also.

14 So we were talking on the Portuguese and
15 everybody was speaking and talking to me in English.
16 In ministry also. So always we are using English
17 version of MOI.

18 **MS BEVILACQUA:** Well, let's talk about the
19 equal value. That's in clause 12, correct.

20 **MR DAGA:** Pardon?

21 **MS BEVILACQUA:** Clause 12. You can look
22 at it in Exhibit 5A.

23 **MR DAGA:** Yes. "The present memorandum of
24 interest is signed in Portuguese and English
25 language and shall have equal value".

1 **MS BEVILACQUA:** And in this case we have
2 three agreements, three MOIs that are all the same
3 when it comes to section 2.1.

4 **MR DAGA:** Three?

5 **MS BEVILACQUA:** Mozambique's Portuguese,
6 your Portuguese, and Mozambique's English section 2
7 point --

8 **MR DAGA:** I do not recognise Mozambique's
9 English version. That is not what I have signed
10 here.

11 **MS BEVILACQUA:** Are you claiming that
12 someone has forged your signature, Mr Daga?

13 **MR DAGA:** I cannot say, but it goes to
14 that side only.

15 **MS BEVILACQUA:** You cannot say, as you sit
16 here today, that your signature was forged --

17 **MR DAGA:** How can I blame anybody but
18 I have not signed that --

19 **MS BEVILACQUA:** Excuse me. We have court
20 reporters who need to take down what you are saying
21 and you keep interrupting my questions. I would ask
22 you to please wait until I am finished.

23 **MR DAGA:** Yeah.

24 **MS BEVILACQUA:** Mr Daga, I would like you
25 to look at the signature page on R-2. I will bring

1 it up for you in just a second. It is included in
2 your binder. It should be at tab 6, I think.

3 **MR DAGA:** No, tab 6 is different.

4 **MS BEVILACQUA:** I'm sorry. Tab 43. My
5 apologies. It's the second binder.

6 **MR DAGA:** Tab. No 4 is also a different
7 letter.

8 **MS BEVILACQUA:** You'll have to go to the
9 other binder.

10 **MR DAGA:** OK, OK. Tab 4. Yeah. This
11 version I have not signed, R-2.

12 **MS BEVILACQUA:** Please turn to the
13 signature page.

14 **MR DAGA:** Yes.

15 **MS BEVILACQUA:** Just a moment.

16 Mr Daga, is that the seal of PEL on the
17 page in the middle between your signature and
18 Mr Patel's signature?

19 **MR DAGA:** Yes.

20 **MS BEVILACQUA:** And is that --

21 **MR DAGA:** I can see.

22 **MS BEVILACQUA:** And is that your signature
23 to the left of the seal of PEL?

24 **MR DAGA:** Yes.

25 **MS BEVILACQUA:** At the end of the day,

1 Mr Daga, it doesn't matter what was included in
2 various drafts going back and forth. You would
3 agree it matters what was signed, correct?

4 **MR DAGA:** Pardon?

5 **MS BEVILACQUA:** It doesn't matter all the
6 drafts we looked at. What matters is what is the
7 executed version of a document in order to be a
8 contract.

9 **MR DAGA:** Executed versions are 5A and 5B,
10 what we have submitted in this Tribunal.

11 **MS BEVILACQUA:** Yes. And your 5A and 5B
12 have different sources --

13 **MR DAGA:** No, 5A and 5B are originals, and
14 I have submitted I think yesterday the copies also.
15 Original copies also.

16 **MS BEVILACQUA:** Your 5A and 5B, clause 2.1
17 are different. They are not the same, correct?

18 **MR DAGA:** Yes.

19 **MS BEVILACQUA:** And what matters isn't
20 drafts or what we looked at before the execution,
21 but what matters is what the parties signed in order
22 to be a binding agreement, correct?

23 **MR DAGA:** Yes, that is we have signed it.
24 But I have not signed 5B. What you are showing me,
25 this English version, that is not what I have

1 signed.

2 **MS BEVILACQUA:** We just looked -- and I'm
3 sorry, that is not -- what you are touching with
4 your right hand is not 5B. That's Respondent's
5 Exhibit 2.

6 **MR DAGA:** This is R-2.

7 **MS BEVILACQUA:** Yes.

8 **MR DAGA:** Sorry. I'm extremely sorry.
9 R-2. This I have not signed. This document I have
10 not signed.

11 **MS BEVILACQUA:** You just testified a
12 moment ago that that is your signature on R-2.

13 **MR DAGA:** It looks like my signature, but
14 I have not signed this MOI. If you see this MOI's
15 cover page, fonts are different which are matching
16 with whatever I have signed the MOI and the rest of
17 the pages fonts are totally different. How can an
18 MOI having two different kinds of fonts and which
19 will not come to the notice? We have not signed
20 that. If you see my original, it is having the same
21 fonts throughout.

22 **MS BEVILACQUA:** And if you look at the
23 lower left-hand corner of each page of Exhibit R-2
24 --

25 **MR DAGA:** Yeah.

1 **MS BEVILACQUA:** -- those are your
2 initials?

3 **MR DAGA:** Yeah, initials -- it looks like
4 initials. Initials can be copied also. Copied and
5 paste.

6 **MS BEVILACQUA:** And you do not have any
7 forensic document expert or any evidence that
8 somebody actually came in and copied your signatures
9 or initials onto that page?

10 **MR VASANI:** Mr President -- I think,
11 Mr President --

12 **PRESIDENT:** I don't think that that's a
13 proper question. He is a fact witness. Let's
14 establish the facts as he knows them, and we'll then
15 decide.

16 **MS BEVILACQUA:** Thank you, Mr President.
17 You are speculating as to how your
18 initials got onto those pages in Exhibit R-2?

19 **MR DAGA:** I am not speculating. I am
20 saying that initials may be mine or this is copied.
21 It is easier nowadays to cut, copy, paste. I don't
22 say. But this is not the MOI which I have signed.
23 That I am 101 per cent sure, and I'm confident.

24 **MS BEVILACQUA:** And do you recall that
25 other drafts of the MOI that we have looked at

1 today, including Exhibit C-225 and others, appear in
2 Times New Roman font, in larger type face?

16:30

3 **MR DAGA:** Don't forget, please, that
4 I have sent that e-mail to Dr Muhate, and he has
5 made the changes in that MOI in red, if you remember
6 that MOI copy.

7 So the fonts were available with them, but
8 what is the final version is having a totally
9 different fonts. I am not a graphological
10 specialist or anything, but still I can see on a
11 cursory look, that yes, they are two different
12 things which is seen here. I am not a specialist,
13 I don't say that I'm a specialist for signatures and
14 this thing. I'm not saying.

15 **MS BEVILACQUA:** If now would be
16 appropriate, could we take a short afternoon break?

17 **PRESIDENT:** Very good. How long do you
18 have to go, Ms Bevilacqua?

19 **MS BEVILACQUA:** I will try for an hour.

20 **PRESIDENT:** It's now 4.32. Shall we come
21 back at 4.45?

22 **MS BEVILACQUA:** Perfect.

23 **PRESIDENT:** 4.45. And you know the rules.

24 **MR DAGA:** I'm here only. I am not going.

25 **PRESIDENT:** No, you can walk.

1 (Short break from 4.32 pm to 4.49 pm)

2 **PRESIDENT:** So we resume the hearing and
3 we give the floor to the Republic of Mozambique. We
4 may wish to have a time check from the secretary.

5 **MS JALLES:** So today Respondent has used a
6 total of four hours and 14 minutes, and this was one
7 hour and 16 minutes for Mr Ashish Patel, and now the
8 cross-examination of Mr Daga has been going on for
9 two hours and 58 minutes since the beginning this
10 morning.

11 **MS BEVILACQUA:** Thank you.

12 **PRESIDENT:** Very good. Please.

13 **MR BASOMBRIO:** I'm sorry. Could you
14 please also specify what was the length of the break
15 that we took to deal with those other issues? Was
16 that deducted from this time?

17 **MS JALLES:** Yes. I never count any
18 procedural issues or questions of the Tribunal, and
19 answers to the Tribunal also go for the Tribunal's
20 time.

21 **MR BASOMBRIO:** Thank you for clarifying.

22 **MS JALLES:** Yes.

23 **MS BEVILACQUA:** Thank you, Mr President.

24 Mr Daga, I now want to focus on the
25 prefeasibility study, your submission of the

1 prefeasibility study, and some of the information
2 that was contained in the prefeasibility study and
3 some information that was not included.

4 **MR DAGA:** OK.

5 **MS BEVILACQUA:** So, for example, let's
6 start with section 10.3, which is on page 113 of
7 Claimant's 6B.

8 **MR DAGA:** Tab 6? Tab 4 you are talking?

9 **MS BEVILACQUA:** Page 113. Section 10.3,
10 Environmental Impact.

11 **MR DAGA:** Yes.

12 **MS BEVILACQUA:** And as part of the
13 prefeasibility study, you did not do an
14 environmental impact assessment?

15 **MR DAGA:** Pardon? I could not follow your
16 question.

17 **MS BEVILACQUA:** As part of the
18 prefeasibility study, you did not do an
19 environmental impact assessment?

20 **MR DAGA:** No.

21 **MS BEVILACQUA:** And as someone who has
22 negotiated and worked on large complex public
23 infrastructure projects, you know that environmental
24 assessments can sometimes pose challenges to those
25 projects?

1 **MR DAGA:** Yeah, I was -- I'm aware of
2 that, but that is a part of detail feasibility, not
3 the part of prefeasibility.

4 **MS BEVILACQUA:** So that would be part of a
5 study that came later?

6 **MR DAGA:** Yes. That is a later stage
7 after the agreement is signed.

8 **MS BEVILACQUA:** And that's a study that
9 would also incur much more additional costs -- or
10 can incur many more additional costs?

11 **MR DAGA:** Yes, because project report will
12 cost many fold.

13 **MS BEVILACQUA:** And sometimes the results
14 from an environmental assessment might make a
15 project not viable?

16 **MR DAGA:** I have not come across such
17 situation in my career of 50 years until now, so
18 I can't say that, but it may be a possibility. If
19 that becomes unviable, then it will not be a
20 bankable project also.

21 **MS BEVILACQUA:** Now, you had some other
22 consultants who assisted you in the preparation of
23 the PFS. If you would go back to the beginning of
24 Exhibit 6B, page 3 of 6B.

25 And who are those consultants?

1 **MR DAGA:** WAPCOS is an Indian company who
2 are in assessment of ports and jetties, particularly
3 marine work they are specialised. And AARVEE
4 Associates they are specialised in highways and
5 railways.

6 **MS BEVILACQUA:** So you had a rail and
7 highway advisor and then a ports advisor.

8 **MR DAGA:** Port is for WAPCOS, and AARVEE,
9 they are for rail corridor and highways.

10 **MS BEVILACQUA:** Did any of these
11 consultants or anyone from PEL sign off on the
12 prefeasibility study? Physically sign the
13 prefeasibility study?

14 **MR DAGA:** No, prefeasibility is not signed
15 by them. Prefeasibility is signed by me only.

16 **MS BEVILACQUA:** And it's only signed on
17 your transmittal letter to Minister Zucula, correct?

18 **MR DAGA:** Yes.

19 **MS BEVILACQUA:** And I would like you to
20 look at annexe 14, which is on -- its annexe 14 at
21 the back of the PFS.

22 **MR DAGA:** These are --

23 **MS BEVILACQUA:** If you turn back right
24 where -- keep going back one page, on the right-hand
25 side.

1 **MR DAGA:** This?

2 **MS BEVILACQUA:** No, this.

3 **MR DAGA:** One. OK.

4 **MS BEVILACQUA:** You can also look at the
5 screen if it's easier. It's in colour. It may help
6 you.

7 **MR DAGA:** Yeah, I can see on the screen.

8 **MS BEVILACQUA:** Good.

9 And it looks like this drawing was put in
10 by the port company, the port consultant who was
11 helping you?

12 **MR DAGA:** Yeah.

13 **MS BEVILACQUA:** Can you tell?

14 **MR DAGA:** Yes, this was prepared by
15 WAPCOS.

16 **MS BEVILACQUA:** And it says along the
17 borders, all four borders, that it was produced by
18 an auto desk educational product. Do you know what
19 that means?

20 **MR DAGA:** No, I could not understand.

21 **MS BEVILACQUA:** So do you see along all
22 four edges there's a stamp that says produced --

23 **MR DAGA:** AutoCAD educational product.

24 **MS BEVILACQUA:** Yes.

25 **MR DAGA:** Yeah.

1 **MS BEVILACQUA:** Do you know what that
2 means?

16:58

3 **MR DAGA:** I am not aware of this.

4 **MS BEVILACQUA:** You're not familiar?

5 **MR DAGA:** No, I am not aware of this.

6 **MS BEVILACQUA:** Did you review the work of
7 WAPCOS before it was submitted with the PFS?

8 **MR DAGA:** No. I'm not a port expert.
9 That's why I have hired the consultant for port and
10 they have made this study. We have given a
11 presentation to the ministry, and ministry people
12 were there, CFM people were there also were in the
13 ports, they have seen, they have asked many
14 technical questions also. Everything was clarified
15 to them on 9th of May when we gave the presentation
16 to the ministry, and that almost around 25 to 30
17 people were there from various ministries. CFM
18 engineering director was there, I remember
19 distinctly, senior people were there, Ministry of
20 Finance people were there, Ministry of Planning
21 people were there, Ministry of External Affairs was
22 there, Ministry of Transport obviously they were
23 there.

24 **MS BEVILACQUA:** My question was, sir, did
25 you review the work of this consultant on the ports

1 as it was submitted?

2 **MR DAGA:** No, I have gone by their words
3 only, because they are the specialist consultant, so
4 there was no question of reviewing.

5 **MS BEVILACQUA:** And is the same true for
6 your rail and highway expert?

7 **MR DAGA:** Yes.

8 **MS BEVILACQUA:** I want to look at the cost
9 estimates in the prefeasibility study.

10 **MR DAGA:** Yes.

11 **MS BEVILACQUA:** It's at section 9, which
12 is page 105 and 106, so page 105 is just the cover
13 page.

14 **MR DAGA:** Yeah.

15 **MS BEVILACQUA:** And page 106 is the cost
16 estimate.

17 **MR DAGA:** Yeah.

18 **MS BEVILACQUA:** And this is a single page
19 of cost estimates, correct?

20 **MR DAGA:** Yes, single page cost estimate.
21 Because in the feasibility stage we thought that we
22 will give them the rough cost of the project, not
23 the detailed cost, but during the presentation they
24 requested me that, yes, they want a detailed cost
25 analysis how we have arrived on these figures, and a

1 cash flow of the project for 30 years' concession.
2 After that we have prepared that, and we have
3 submitted to them.

4 There were I think -- I remember two or
5 three meetings, techno-commercial discussions we
6 had, and those meetings had taken place in CFM
7 office.

8 **MS BEVILACQUA:** OK. So my question is
9 about the document in front of you and the
10 prefeasibility study as submitted in Exhibit 6B.

11 **MR DAGA:** Yeah.

12 **MS BEVILACQUA:** And there is one page of
13 cost estimates in that document, correct?

14 **MR DAGA:** One --

15 **MS BEVILACQUA:** We're looking at on the
16 screen.

17 **MR DAGA:** One major cost?

18 **MS BEVILACQUA:** One page of cost
19 estimates.

20 **MR DAGA:** One page?

21 **MS BEVILACQUA:** Yes.

22 **MR DAGA:** Yes, this is one page. This is
23 a summary abstract of the cost.

24 **MS BEVILACQUA:** And who prepared the
25 abstract of the costs?

1 **MR DAGA:** Abstract was prepared by me in
2 consultation with both the people, this WAPCOS and
3 AARVEE. WAPCOS has given their cost, AARVEE has
4 given their cost, and other costs we have added in
5 the section below, which were combined from both the
6 people.

7 **MS BEVILACQUA:** I'm waiting for the
8 transcript because I'm having a hard time with the
9 end of the sentence, so I just want to make sure
10 I understood you. So just a moment.

11 OK. So the inputs that we can see in the
12 table here that relate to ports and relate to rail?

13 **MR DAGA:** Yeah.

14 **MS BEVILACQUA:** Those you're saying came
15 from the consultants that we saw on page --

16 **MR DAGA:** Even the third C part also, part
17 is coming from them, like Social Development and
18 Rehabilitation we have calculated according to the
19 Mozambique conditions. Engineering Studies and
20 Design Consultancy, this has come from them.
21 Temporary Establishment and Freights, this we have
22 calculated.

23 **MS BEVILACQUA:** I just want to confirm.

24 **MR DAGA:** Yeah.

25 **MS BEVILACQUA:** PEL contributed -- just

1 tell me which line items on this chart PEL actually
2 contributed the numbers for.

3 **MR DAGA:** Entire cost sheet I would say.
4 It's not one line or two lines because PEL is
5 responsible for the entire cost.

6 **MS BEVILACQUA:** And you took input or
7 estimates --

8 **MR DAGA:** PEL has taken inputs from the
9 consultants which they have deployed and have
10 submitted this cost.

11 **MS BEVILACQUA:** And this is only a table
12 of costs. No revenue is contained on this?

13 **MR DAGA:** No. As I said earlier, that we
14 have submitted a broad cost, but during the
15 presentation and after the techno-commercial
16 discussions, they have asked me the detailed cost
17 and a cash flow model which we have submitted at a
18 later date.

19 **MS BEVILACQUA:** And we'll talk about that
20 in a minute.

21 **MR DAGA:** Yes.

22 **MS BEVILACQUA:** Right now I'm confining my
23 questions.

24 **MR DAGA:** This is only the broad costs we
25 have given in the prefeasibility, one we have

1 submitted on 2nd of May.

2 **MS BEVILACQUA:** And you have a line here
3 in these broad costs under heading D for
4 Contingencies and Sundries.

5 **MR DAGA:** Yeah.

6 **MS BEVILACQUA:** And that's 285 million.

7 **MR DAGA:** Yes.

8 **MS BEVILACQUA:** Which is less than
9 10 per cent of the overall estimated cost for the
10 project at 3.15 billion.

11 **MR DAGA:** Yeah.

12 **MS BEVILACQUA:** And at this stage, you
13 believe this was a reasonable estimate of costs,
14 especially for contingencies?

15 **MR DAGA:** Normally when we quote for any
16 infrastructure projects, even in India also, we keep
17 sundries and contingencies 10 per cent -- in and
18 around, depending upon the size of the project.

19 **MS BEVILACQUA:** And on a project of
20 3.1 billion --

21 **MR DAGA:** Yeah.

22 **MS BEVILACQUA:** -- you have a contingency
23 of less than 10 per cent?

24 **MR DAGA:** No. If project value is less,
25 the contingency and sundries percentage will be

1 more. The project will use more, then contingency
2 and sundries comes down. It is inversely
3 proportional to the cost of the project, or
4 indirectly proportional to the cost of the project.

5 **MS BEVILACQUA:** And you do not distinguish
6 here between what is contingency and sundries?

7 **MR DAGA:** No, this is the estimate so we
8 have to keep this provision, because there may be
9 certain things which we must have left out or
10 certain things which are needed to be done, so those
11 will be covered in contingencies and sundries
12 expenses.

13 **MS BEVILACQUA:** What about cost overruns?
14 Is that included in contingencies --

15 **MR DAGA:** Pardon?

16 **MS BEVILACQUA:** Cost overruns.

17 **MR DAGA:** Cost overrun also it covers in
18 the contingencies, but as per our knowledge and
19 estimate, there should not be any cost overrun of
20 this value. We are sure of that.

21 **MS BEVILACQUA:** Let's look at page 127
22 of -- I'm sorry. This is section 10.2, page 123.
23 Do I have that reference correct?

24 **MR DAGA:** Yeah, I can see the chart.
25 I can see the pie chart. 887 million.

1 **MS BEVILACQUA:** Yes.

2 **MR DAGA:** I think the figure I remember.

3 **MS BEVILACQUA:** And this is the single
4 page of financial benefits included in the PFS?

5 **MR DAGA:** Yes. This was -- I have shown
6 how much government will benefit from this project.
7 This is the analysis of that. I have calculated in
8 back of my mind and back in my records that this is
9 the detail out and then I have put this in the pie
10 chart.

11 **MS BEVILACQUA:** So you yourself made this
12 calculation in the back of your mind?

13 **MR DAGA:** And back on the record. Also
14 I have a record also of this, detailed record of
15 this, how I arrived on this figure of 887.

16 **MS BEVILACQUA:** And has that been
17 produced?

18 **MR DAGA:** No. Nobody has asked me, even
19 the submission presentation or technical discussion,
20 that we want detail of this. Otherwise I would have
21 given the detail also. As I have given other
22 details, I would have given this detail also. But
23 they were aware of that if corporate tax and
24 withholding tax is the major component in this,
25 which will come from the mining companies.

1 **MS BEVILACQUA:** And so the Government of
2 Mozambique has 887 million reasons to take on this
3 project and do it every year based on this -- based
4 on this --

5 **MR DAGA:** I did not understand your
6 question. Can you repeat?

7 **MS BEVILACQUA:** You estimated or projected
8 financial benefit to the tune of \$887 million a year
9 for the Government of Mozambique?

10 **MR DAGA:** Yeah.

11 **MS BEVILACQUA:** So it would be in the
12 Government of Mozambique's interest to take up this
13 project and do it based on this estimate?

14 (Technical interruption)

15 **PRESIDENT:** Can we continue? Very good.
16 Please.

17 **MS BEVILACQUA:** Thank you.

18 And the last sentence on this page,
19 additionally, the Government of Mozambique will also
20 benefit through the profit sharing from the
21 public-private partnership model of business?

22 **MR DAGA:** Yes.

23 **MS BEVILACQUA:** And there's no indication
24 whatsoever what those profits would be?

25 **MR DAGA:** No. Initially when I submitted

1 this prefeasibility study, as I said earlier, we
2 have not submitted the cash model. It was prepared
3 at a later date on the request of the ministry and
4 CFM that they wanted to see that cash model.

5 **MS BEVILACQUA:** And who prepared that cash
6 model?

7 **MR DAGA:** Mr Ashish Patel prepared that.

8 **MS BEVILACQUA:** If we could look at
9 section 10.6 in Exhibit 6B, which is at page 115.

10 **MR DAGA:** Yeah.

11 **MS BEVILACQUA:** So, Mr Daga, the first
12 sentence in what we're talking about is financing of
13 the project, right? "When financing the project it
14 is critical to evaluate the project for its
15 techno-commercial viability".

16 **MR DAGA:** Yes, correct.

17 **MS BEVILACQUA:** And "The easiest way to
18 ensure funding success is to conduct a thorough
19 prefeasibility and bankable feasibility report".

20 **MR DAGA:** Yes.

21 **MS BEVILACQUA:** And those are two
22 different things?

23 **MR DAGA:** They are two different things.
24 This bankable feasibility report comes only after
25 signing of the concession, and we can go to the

1 financial institutions with the bankable feasibility
2 report.

17:12

3 **MS BEVILACQUA:** And what PEL wrote in this
4 document 6B was, "Conduct a thorough prefeasibility
5 and bankable pre-feasibility report. With these
6 reports in hand, concession agreement signed and
7 preferably some kind of understanding with the
8 mining companies in the form of off-take letters
9 signed, the funding task becomes quite easy".

10 **MR DAGA:** Yeah.

11 **MS BEVILACQUA:** So there are about five
12 different predicates there that you need in order
13 for the funding to become quite easy in your words.

14 **MR DAGA:** You have to break it in pieces
15 now.

16 First, bankable study report, then
17 concession agreement is there, and some kind of --
18 because once I signed the concession agreement, the
19 mining companies will sign with me the off-take
20 letters. Without concession agreement they will not
21 sign.

22 Yes, we have talked to the mining
23 companies on the request of Mr Zucula to ESSAR, to
24 Jindals, to Rio Tinto, that yes, they are interested
25 in the project, and if the concession agreement is

1 signed they will be the stakeholders also. They
2 will take part. Particularly Jindals have promised
3 that they are from India and they say that, yes, we
4 will take part in the project also because it is the
5 benefit for the mining companies.

6 So off-take letters is always given after
7 the concession agreement is signed because they
8 should make sure that, yes, I have the project in my
9 hand, in my pocket, otherwise why they will sign a
10 concession off-take letter with me without any
11 concession agreement or project in my hand, whether
12 I will do the project or not.

13 **MS BEVILACQUA:** You did not identify in
14 the prefeasibility study any potential off-take
15 letters with any potential mining companies,
16 correct?

17 **MR DAGA:** See, in the beginning --

18 **MS BEVILACQUA:** Sir, please, if you could
19 answer my question with a yes or no first.

20 **MR DAGA:** Yeah.

21 **MS BEVILACQUA:** Did you include any
22 off-take letters or any mention of individual mining
23 companies in your prefeasibility study?

24 **MR DAGA:** No, we have not included any
25 off-take letters because we did not have any

1 off-take letters. We had only assurances, which
2 are -- those letters are on record. That is to
3 Jindal, Rio Tinto, those letters are on record.

4 **MS BEVILACQUA:** Actually Rio Tinto did not
5 give you an indication that it was interested, did
6 it?

7 **MR DAGA:** Rio -- that was again a point
8 which has to be considered. Rio Tinto, when we
9 talked Rio Tinto indicated that they are also
10 studying the similar kind of project in the same
11 region, and that raised my sixth sense that how they
12 can do it when I have signed an MOU -- MOI with the
13 ministry where my exclusivity clause is there.

14 So I did not contest it with Rio Tinto.
15 I listened to them, and in the next meeting I spoke
16 to Mr Zucula and talked to him that are you taking
17 any other company also for this area, for making the
18 studies of the project. His answer was, no, it will
19 be a breach of MOI. I have signed with you an
20 exclusivity clause, so I cannot sign any with
21 anybody else.

22 But, afterwards, fact came out that they
23 had signed with Rio Tinto, and Rio Tinto has
24 submitted a report to them.

25 **MS BEVILACQUA:** And --

1 **MR DAGA:** Which was -- sorry. I am not
2 complete.

3 Which was a breach of MOI clause of
4 exclusivity, which MTC had did it. Yes, please.

5 **MS BEVILACQUA:** Here's what Rio Tinto
6 actually said to you.

7 **MR DAGA:** Yeah.

8 **MS BEVILACQUA:** On the 21st
9 of February 2012.

10 **MR DAGA:** Yes. Before submission of the
11 PFS we had a meeting with them. Jindals and
12 Rio Tinto both.

13 **MS BEVILACQUA:** And Rio Tinto states that
14 as you are aware, Rio Tinto operates the largest and
15 most efficient integrated mine rail and port system
16 in the world, and that they had already presented a
17 proposal to the government. It doesn't say in the
18 same area, it doesn't say the same type of proposal,
19 it doesn't say anything about what Rio Tinto is
20 doing, does it?

21 **MR DAGA:** When I met with Ashish to the
22 Rio Tinto's country head and their senior executive
23 from their head office, they say that we are also
24 pursuing the similar kind of project. "Similar kind
25 of project" means what? Because Nacala was pursued

1 by Vale, Beira was done by themselves, CFM, it was a
2 government project, so there was no third project
3 which anybody was pursuing.

4 This is the area everybody was looking.
5 We were still was doing the water transportation
6 through River Zambezi. That also we were aware of
7 but yes, that will create an environmental hazard so
8 they were not successful in that, so the Zambezia
9 coast was the only area where the ports can happen.

10 **MS BEVILACQUA:** And none of what you just
11 said is contained in Exhibit 59, is it?

12 **MR DAGA:** Pardon?

13 **MS BEVILACQUA:** None of what you just said
14 is contained in Exhibit 59.

15 **MR DAGA:** Exhibit 59?

16 **MS BEVILACQUA:** It's right there on the
17 screen.

18 **MR DAGA:** Yeah, but this was an eye opener
19 for me. This letter itself is good enough for me
20 that, yes, there is something going on, fishy. Some
21 fishy things are going on Ministry of Transport
22 also, which they are hiding from us, and on the back
23 of us they are doing all these things, which we came
24 to know at a later date.

25 **MS BEVILACQUA:** Mr Daga, would you please

1 look at section -- excuse me, back at page 115 of
2 section 10.6 of C-6B, the PFS.

3 **MR DAGA:** Yes.

4 **MS BEVILACQUA:** And the paragraph
5 beginning "When financing the project".

6 **MR DAGA:** No, because light is very poor.
7 I'm using flashlight. Yes, please. Oh, you have
8 there.

9 OK. Now -- thank you very much.

10 **MS BEVILACQUA:** So where we had left off
11 was the off-take letters, right? But you note that
12 there are numerous funds, banks and private
13 investors who do not have either the appetite or
14 wherewithal to attempt a project like this on their
15 own at an early stage but are very keen to
16 participate when the project is derisked, and that
17 Patel Engineering Ltd is proving the critical steps
18 and milestones to totally de-risk the project and
19 not make it palatable but make it an essential
20 investment.

21 **MR DAGA:** Yeah.

22 **MS BEVILACQUA:** And your prefeasibility
23 study does not contain any tables of risk analysis
24 in it?

25 **MR DAGA:** No, risk analysis we have

1 mentioned also that it will be done at a later
2 state, studies, and Mr Ashish has already spoken to
3 the funds' private investors. Our managing director
4 has spoken in India to our lead bankers that this
5 kind of project we are pursuing, will you be
6 supporting us in the funds. They also agreed, yes,
7 we will support you in the funding of such kind of
8 projects, and that's why we have gone ahead with
9 this project. And we have gone with a positive note
10 that yes, we are going to complete the project, not
11 with a negative thought that, yes, these are the
12 hurdles which will come, these are the hurdles we
13 have to pass on this thing. We have had a positive
14 mind that yes, this project is feasible, it can be
15 done, mining companies will be much more interested
16 because they will find the easiest and shortest exit
17 route, and that's the reason we have followed up.

18 **MS BEVILACQUA:** Do you know what gauge you
19 used for the railroad in the PFS submission?

20 **MR DAGA:** Standard gauge we have.

21 **MS BEVILACQUA:** And do you understand that
22 all the railroads in Mozambique run on a different
23 gauge? They run on a narrow gauge?

24 **MR DAGA:** Yes. Because, why we have gone
25 for standard gauge during that period the SADC

1 countries have signed almost an understanding that
2 they are going to change all their metre gauge --
3 Cape gauge rather, to standard gauge, and as this
4 project was to attract cargo from Malawi, Zambia so
5 that the cargo can come on the same tracks, that's
6 why we have gone for a standard gauge.

7 In prefeasibility we have certainly
8 written that these are the reasons for using the
9 standard gauge. This is mentioned in my
10 prefeasibility study.

11 **MS BEVILACQUA:** But if the existing rail
12 lines in the country of Mozambique are narrow gauge.

13 **MR DAGA:** Yes.

14 **MS BEVILACQUA:** And at the time you submit
15 this and when the project is being built, those
16 railroads are still at a narrow gauge. The existing
17 railroads. It will take time to transfer all of
18 them from --

19 **MR DAGA:** I disagree with you. When
20 I have submitted my prefeasibility study I had a
21 presentation. There was a techno-commercial
22 discussion during the presentation where CFM was --
23 their expert company was present. Then I had two or
24 three meetings specially on technical discussions.
25 They have asked me certain technical discussions.

1 If they would have objected or they would
2 have any objection they would have told me that no,
3 we want narrow gauge only, we don't want standard
4 gauge, but they have never said that. They accepted
5 that, yes, this is the future requirement and
6 keeping future in mind we should go for standard
7 gauge.

8 **MS BEVILACQUA:** Is it your testimony now,
9 sir, that someone actually told you that they wanted
10 standard gauge?

11 **MR DAGA:** I could not understand your
12 question. Can you repeat?

13 **MS BEVILACQUA:** Yes.

14 Did someone within Mozambique tell you
15 that they wanted standard gauge for this project?

16 **MR DAGA:** The prefeasibility was an open
17 book. It was submitted to the ministry so --

18 **MS BEVILACQUA:** That is different.

19 **MR DAGA:** Pardon?

20 **MS BEVILACQUA:** Please, sir. That is
21 different than the question I asked.

22 **MR DAGA:** Yeah.

23 **MS BEVILACQUA:** Did someone at the MTC or
24 CFM or anywhere tell you that they wanted the
25 prefeasibility study to reflect standard gauge?

1 **MR DAGA:** No. During the studies it was
2 discussed by our railway people that we are going
3 for standard gauge, and they said yes, you go for it
4 because this is the future need, and if we are to
5 attract cargo from Malawi and Zambia, neighbouring
6 countries, then we have to go for standard gauge
7 otherwise there will be a trans-shipment which will
8 again cost and increase the cost of transportation
9 and handling of the material. That's why standard
10 gauge was selected, and we made our studies based on
11 standard gauge.

12 **MS BEVILACQUA:** The PFS did not finalise
13 the exact location of the port for the projected
14 project, correct?

15 **MR DAGA:** No, PFS has finalised the
16 location of the port. PFS indicates that. Macuse
17 rail line port. At two, three places it has been
18 written that we prefer that location.

19 **MS BEVILACQUA:** You also have three
20 different proposed rail routes in the PFS as well.
21 Yes?

22 **MR DAGA:** Yes, and then we have gone for
23 an option 2. It is also written in the PFS that we
24 will opt for option 2 for railway, which was showing
25 493 kilometres but when we have visited the site

1 physically at that time we found out there are
2 certain streams, certain hillocks are coming in
3 between which were not seen in the Google elevation
4 maps correctly, so we have changed the route to
5 avoid all those additional costs, and that's why
6 this has gone to 516 kilometres from 493 kilometres.
7 That is option 2. And we have mentioned in our PFS
8 that we are selecting option 2 route.

9 **MS BEVILACQUA:** Let's take a look at the
10 presentation you gave about the PFS after it was
11 submitted, so we're going to look at Exhibit C-7.
12 Claimant's 7, it should be the next one in your
13 book. It is that PowerPoint. Back one. Right
14 there.

15 **MR DAGA:** PowerPoint presentation?

16 **MS BEVILACQUA:** Yes.

17 **MR DAGA:** That was given on 9th of May to
18 MTC. Yeah.

19 **MS BEVILACQUA:** Just a moment.

20 And you mentioned in your direct written
21 testimony that there were a number of stakeholders
22 present at this presentation when it was given?

23 **MR DAGA:** Yeah.

24 **MS BEVILACQUA:** And did you prepare these
25 slides for the presentation?

1 **MR DAGA:** Pardon?

2 **MS BEVILACQUA:** Did you prepare the slides
3 in English for this presentation?

4 **MR DAGA:** English was prepared by us, by
5 our entire team, and then it was translated in
6 Portuguese because it was a specific request from
7 the ministry that the presentation should be in
8 Portuguese, not in English.

9 **MS BEVILACQUA:** And do you know who did
10 the translation?

11 **MR DAGA:** Pardon?

12 **MS BEVILACQUA:** Who did the translation?

13 **MR DAGA:** Again, it was got done through
14 the official translator, by Mr Prabhu.

15 **MS BEVILACQUA:** And that Mr Prabhu is your
16 accountant?

17 **MR DAGA:** Mr Prabhu, yeah. And during the
18 presentation Mr Prabhu was also present, Mr Caldeira
19 was also present, so that whatever the questions
20 were asked in Portuguese, they translated to
21 English, and I replied in English. They again
22 translated in Portuguese.

23 **MS BEVILACQUA:** So in the presentation
24 that you gave to those stakeholders along with
25 having your Mozambican counsel present and your

1 accountant present, you included here the same but
2 even shorter estimated cost projections, correct?

3 **MR DAGA:** I have given only the port this
4 much total cost, rail corridor this much, others,
5 contingency, on the four, a, b, c, d, what I have in
6 section 10 given a, b, c, d detail, little costs,
7 here I have summarised to them, a, b, c, d.

8 **MS BEVILACQUA:** And, again, because --
9 again, no revenue. Just costs. This is the cost.

10 **MR DAGA:** Yeah, this is the -- we have
11 said that the project will cost this much. After
12 that they have discussion, they have asked me for
13 the details, I have submitted.

14 **MS BEVILACQUA:** Would you go to the next
15 slide, please, the next page?

16 **MR DAGA:** Yes.

17 **MS BEVILACQUA:** So you've got estimated
18 sale parameters to make the project viable.

19 **MR DAGA:** These are the revenues, what
20 I will charge from the mining companies. These are
21 the rates. Estimated revenue from rail shall be
22 minimum 5.5 cents per ton per kilometre and
23 estimated revenue from the port will be \$11 per ton
24 to be charged to the mining companies.

25 **MS BEVILACQUA:** And if you charge that

1 amount per ton, your conclusion is with the above
2 revenues the project becomes financially viable.

3 So if you set the price and you set the
4 tons, you can make the project viable.

5 **MR DAGA:** Yes. We were sure of. Because
6 these financial figures, these rates, were given to
7 me, suggested to me rather, by an expert -- ex
8 expert of CFM. He was the chief economist, Mr Joe
9 Viera. He prepared this model for me and he gave me
10 that this is the highest cost you can go for. You
11 will not get more than this. This will be the
12 profitable thing.

13 He gave me the sale rates, he gave me the
14 cost to be -- operation cost, maintenance cost --
15 entire model he has prepared. I gave those models
16 to Ashish, and Ashish prepared the cash flow model
17 based on those two models given by Joe Viera.

18 And I have reasons to believe because he
19 has worked throughout his career in CFM, so he was
20 knowing ins and outs of the rates and revenues, that
21 what can be the cost, what can be the revenue.

22 If I remember correctly, at that time the
23 Sena line which is from Tete to Beira port which was
24 charging 3.25 cents per ton per kilometre and their
25 cost was 2.75 per tons per kilometre, what was told

1 to me by Mr Joe Viera.

2 But 3.25 cents were very low rate. It
3 will not give any profit because the Sena line has
4 many disadvantages, so we put up that 5 and a half
5 cents that, OK, 5 and a half cents will be a good
6 commercially acceptable rate to the mining companies
7 because I'm reducing the total length of the railway
8 line from 600 kilometres to 500 kilometres. 100
9 kilometres. Haulage capacity, because I'm having a
10 standard gauge, my haulage capacity is increased.
11 Then the metre gauge line.

12 So definitely my maintenance and operation
13 cost will be reduced. To mining companies it will
14 be -- facilitate a higher percentage of their
15 outputs to go to the ports.

16 **MS BEVILACQUA:** Look at the next slide,
17 please.

18 **MR DAGA:** Pardon?

19 **MS BEVILACQUA:** Yes, next page.

20 **MR DAGA:** This is that \$885 million.

21 **MS BEVILACQUA:** Same pie chart from the
22 PFS?

23 **MR DAGA:** Yeah, this is also from the PFS.
24 Project benefits.

25 **MS BEVILACQUA:** And there's nothing -- at

1 least to this point, in the PFS you did no financial
2 modelling to show solvency or to show the return on
3 the investment.

4 **MR DAGA:** Again, I am repeating the same
5 thing I have already told, that we have given the
6 broad cost on the request of MTC and CFM. I have
7 submitted a cash model to them. This was later
8 date, it was submitted.

9 **MS BEVILACQUA:** Let's look at C-8. It
10 should be the next one.

11 **MR DAGA:** Letter? 15.05?

12 **MS BEVILACQUA:** Yes. This is your letter
13 to the MTC.

14 **MR DAGA:** Yeah.

15 **MS BEVILACQUA:** And you are responding to
16 their questions, correct?

17 **MR DAGA:** Yeah.

18 **MS BEVILACQUA:** Because during the
19 presentation, they asked you questions about and
20 requested more information, especially on the
21 finances.

22 **MR DAGA:** More questions on the funding
23 particularly, yeah.

24 **MS BEVILACQUA:** And if you would go to --
25 so you note in your letter to Minister Zucula that

1 at this stage the emphasis was on technical
2 feasibility, and you noted that you put in maximum
3 possible datas wherever were available, but a number
4 of data points were missing. You note not much
5 hydrographic and oceanographic data were available,
6 and that you omitted some of that from your study
7 because the data did not exist, correct?

8 **MR DAGA:** Yes. We have tried to get as
9 much as possible datas. Now, again, I'm emphasising
10 here that, because we were sure of the project, we
11 have done a detailed prefeasibility study. Normally
12 in prefeasibility study such details are not given
13 like what we have given for the railways that each
14 and every 40 kilometres section we have drawn, we
15 have estimated the quantities in the drawings we
16 have shown. This much of details is never given in
17 the prefeasibility study but we were sure that yes,
18 this project is going to come at a later date to us,
19 so whatever work we can do it right now, that will
20 give more confidence to our entire team. And that
21 was the reason why we have done this much of details
22 and we have collected datas from various sources.
23 Whatever not available in Mozambique we have tried
24 from other sources, particularly for the
25 hydrographic and oceanographic details. And that's

1 why we are sure this project will be technically
2 feasible, and I feel that when they have approved my
3 PFS they have considered all these factors and after
4 that only they have approved my PFS. Otherwise,
5 they would not have approved my PFS. The CFM
6 experts, the MTC experts, they must have consulted
7 themselves and they have taken almost a month after
8 I submitted all these details to approve my
9 prefeasibility study.

10 **MS BEVILACQUA:** And if you look at the
11 next page, you explain what you are attaching here
12 for Mr Zucula.

13 **MR DAGA:** Yeah.

14 **MS BEVILACQUA:** And you prepared -- you
15 had Mr Ashish Patel prepare this model?

16 **MR DAGA:** Yes, Ashish Patel prepared this
17 model.

18 **MS BEVILACQUA:** And you provided him
19 certain assumptions?

20 **MR DAGA:** Yes, what you have shown earlier
21 to me, that 5 and a half cents per ton per kilometre
22 for the railway freight and \$11 per ton for the
23 port. That was given to him by me, those datas.

24 **MS BEVILACQUA:** Yes. And you say "it
25 gives a clear idea that even in worst case scenario

1 also it is financially viable".

2 **MR DAGA:** Yes.

3 **MS BEVILACQUA:** So you're saying the
4 project, as of this prefeasibility phase, is
5 financially viable under the worst case scenario.

6 **MR DAGA:** Yeah.

7 **MS BEVILACQUA:** OK. Let's look at the
8 analysis that Mr Patel did.

9 Did you review this analysis, the
10 financial analysis --

11 **MR DAGA:** I am not a commercial --
12 unfortunately I am not a commercial person so
13 I cannot review the analysis, but yes, whatever the
14 basic assumptions have been made, that were
15 discussed with Mr Ashish and me, and we -- then the
16 model has been done by him and he must have
17 explained you in a better way this model. I cannot
18 explain this model. But, yes, assumptions were
19 made, we sit together and these assumptions were
20 made. That is for sure.

21 **MS BEVILACQUA:** OK. As you sit here
22 today, Mr Daga, can you tell us what PEL expended,
23 what PEL paid out to prepare the table we just saw
24 in exhibit C-8?

25 **MR DAGA:** What?

1 **MS BEVILACQUA:** Yes, can you tell me what **17:41**
2 it cost PEL to prepare that response to Minister
3 Zucula's request about the financial viability?

4 **MR DAGA:** For this model, cash flow model?

5 **MS BEVILACQUA:** Yes.

6 **MR DAGA:** No, I have not calculated any
7 cost for that. No separate cost has been calculated
8 for that because we don't have the system of time
9 sheet management in our company. We don't manage
10 those time sheets.

11 And it was prepared by Joe Viera to whom
12 I have hired a consultant. I have paid him his
13 fees. Then Ashish has developed this cash flow. So
14 there was no separate work-out for this cash flow
15 model.

16 **MS BEVILACQUA:** OK. Let's look then at
17 Exhibit 9. C-9.

18 **MR DAGA:** Which is this tab?

19 Yes, please.

20 **MS BEVILACQUA:** So Minister Zucula asked
21 not only for financial information but for other
22 additional information as well, correct?

23 **MR DAGA:** Not Mr Zucula. The team.

24 **MS BEVILACQUA:** Thank you. The team.

25 **MR DAGA:** Yeah.

1 **MS BEVILACQUA:** One of the things they
2 asked for was the source information.

3 **MR DAGA:** Source of information for
4 preparation of this prefeasibility report.

5 **MS BEVILACQUA:** Right.

6 **MR DAGA:** Which has been given to them.

7 **MS BEVILACQUA:** And you attached a list of
8 references, correct?

9 **MR DAGA:** Pardon?

10 **MS BEVILACQUA:** You attached to the letter
11 the list of references.

12 **MR DAGA:** Yeah, these references we have
13 attached.

14 **MS BEVILACQUA:** And I'd like to compare
15 that list of references, which is the last page of
16 Exhibit 9, to the last page of Exhibit 4, C-4. C-4
17 is the Preliminary Study.

18 **MR DAGA:** Pardon?

19 **MS BEVILACQUA:** C-4 is the Preliminary
20 Study, and it should be I believe the first tab in
21 your binder.

22 **MR DAGA:** Preliminary Study. OK, yes.

23 **MS BEVILACQUA:** So let's look at the last
24 page of the Preliminary Study.

25 **MR DAGA:** Yeah.

1 **MS BEVILACQUA:** And what you provided to
2 the Ministry of Transport in Exhibit 9.

17:44

3 **MR DAGA:** Yeah. Definitely I cannot
4 change the reports. Whatever the Preliminary Study
5 they have done, they have used the same datas.
6 I have to use for my prefeasibility study the same
7 data. I cannot change the data. Suppose Macuse
8 River data is generated and it is available with
9 them. Same data I have to use. Now only thing in a
10 refined way I have done it. There they have used
11 that, OK, we have gone to our references of this and
12 we find that this location is possible.

13 Now, in prefeasibility I have got it
14 confirmed that, yes, with these datas available,
15 this location list can be confirmed.

16 Naturally I gave example --

17 **MS BEVILACQUA:** Let me just make sure
18 I understand what you're saying.

19 **MR DAGA:** Yeah.

20 **MS BEVILACQUA:** You used the same data
21 that the Preliminary Study used wherever possible.

22 **MR DAGA:** Additional data also. There may
23 be some additional datas.

24 **MS VASANI:** Mr President, I think it would
25 be helpful and fair to the witness if he was shown

1 the entire document below, and not just that list.

17:45

2 **MS BEVILACQUA:** That is the entire
3 document.

4 **MS VASANI:** In C-9 there's the additional
5 data. C-9 lists out that data and then additional
6 data.

7 **PRESIDENT:** Ms Bevilacqua, I am looking
8 with some concern at the watch. You said something
9 about an hour. I have no feeling about time, but we
10 have like a quarter of an hour left, so, yes, we
11 must decide what we do because there may be some
12 redirect and there are certainly some questions from
13 the Tribunal. At some stage we'll have to take a
14 decision how we continue.

15 **MS BEVILACQUA:** With your permission,
16 Mr President, would you like to adjourn for the day
17 and finish in the morning?

18 **PRESIDENT:** No, no, it's up to you. We
19 must finish at 6. I mean, this is what we agreed,
20 roughly. We can stay five minutes longer but we
21 cannot stay until 7 because otherwise we will not
22 survive the week.

23 So you will have at some stage -- I don't
24 know how much redirect you have, Ms Vasani?

25 **MS VASANI:** Very little.

1 **PRESIDENT:** I have two questions, there
2 may be some additional questions. I need at least
3 ten minutes with the witness. So either you are
4 finishing very, very quickly, or if you are not
5 finishing very, very quickly I have bad news for
6 you, sir, that we may have to go on tomorrow. You
7 have waited long enough to have your day in court.

8 **MR DAGA:** No, I have no regrets or
9 nothing. I want to give as much as possible
10 information to the Tribunal for the good decision.
11 This way I'm ready for that.

12 **PRESIDENT:** So you have the -- do as you
13 wish.

14 **MS BEVILACQUA:** Why don't -- we can pause
15 here and maybe figure out this issue I'm having with
16 the document and pause for the day and resume
17 tomorrow.

18 **PRESIDENT:** We'll pause by 6. Let's use
19 the time until 6, and at 6, five past 6, if you
20 continue we'll have to sequester the witness and
21 adjourn for tomorrow. I'm sorry. It has been an
22 eventful day, but there is not much more we can do.

23 **MS BEVILACQUA:** Understood. Thank you.
24 We have a different version of C-9.

25 **MS VASANI:** That's the version --

1 **PRESIDENT:** My version has four pages.

17:50

2 **MS BEVILACQUA:** I must have a different
3 version loaded electronically. Give me just a
4 moment. Thank you. I would display it if I could.

5 **MS VASANI:** OK. It's just not the full.

6 **MR DAGA:** Can I have one request?

7 **PRESIDENT:** Yes, of course.

8 **MR DAGA:** Can we pause for the day today?

9 **PRESIDENT:** Sorry?

10 **MR DAGA:** Pause for the day today because
11 it was a long day for me also, in between a gap of
12 two hours almost.

13 **PRESIDENT:** You would like to pause now,
14 sir?

15 **MR DAGA:** Yeah. Whatever the questions
16 Tribunal have, I can answer, no problem.

17 **PRESIDENT:** No, no. That's OK.

18 **MR DAGA:** I'm coming for tomorrow.

19 **PRESIDENT:** You're tired.

20 **MR DAGA:** That's right. I don't want to
21 exert myself much.

22 **PRESIDENT:** I fully understand that.
23 I know it is a tense time.

24 So let's do the following. Let's now
25 break. Can I kindly ask you that you look at your

1 questions and you try to put them together so we go
2 quickly through the witness tomorrow.

3 Tomorrow we had the witnesses on behalf of
4 the Republic, and we start with Mr Chaúque or with
5 --

6 **MS BEVILACQUA:** Mr Zucula first.

7 **PRESIDENT:** We start with Minister Zucula.
8 Very good. And if we spill over, Mr Chaúque would
9 be available on Wednesday in the morning, just to be
10 on the safe side?

11 **MS BEVILACQUA:** Yes. On Thursday.

12 **PRESIDENT:** Because with Minister Zucula
13 we will certainly finalise tomorrow, and then he can
14 leave. Very good.

15 So, sir, thank you very much for your
16 patience.

17 **MR DAGA:** Thank you.

18 **PRESIDENT:** Can I kindly ask you that you
19 are alone for the evening and the night, you do not
20 speak to anyone --

21 **MR DAGA:** I am alone.

22 **PRESIDENT:** -- regarding this case and
23 especially not with counsel.

24 **MR DAGA:** Sure.

25 **PRESIDENT:** I'm sure there are some very

1 nice restaurants --

2 **MR DAGA:** No, I don't take --

3 **PRESIDENT:** -- in Oporto.

4 **MR DAGA:** I don't take food in the hotel.
5 I go out for food with my assistant. So I'll go out
6 because I eat only vegetarian food, so very little
7 choice is available for me.

8 **PRESIDENT:** Very good. And we meet
9 tomorrow at half past nine.

10 So with this, we close the record for the
11 day. We thank our interpreters and our court
12 reporters, it must have been a difficult day for
13 them, and we meet all tomorrow at half past nine.
14 So this is closed.

15 (The hearing was adjourned at 5.53 pm)

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