

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

Wednesday, 30 November 2022

Registry
The Permanent Court of Arbitration

A P P E A R A N C E S

The Tribunal:

Presiding Arbitrator:

PROFESSOR JUAN FERNÁNDEZ-ARRESTO

Co-Arbitrators:

PROFESSOR GUIDO SANTIAGO TAWIL
MR HUGO PEREZCANO DIAZ

Administrative Secretary:

MS SOFIA DE SAMPAIO JALLES

Registry, Permanent Court of Arbitration:

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MR CRISTÓVÃO TOMÁS BACH ANDRESEN LEITÃO
MS LARA CRISTINA JERÓNIMO DUARTE

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 DARIA KUZNETSOVA

Miranda & Associados:

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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)

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1 (9.30 am, Wednesday, 30 November, 2022)

2 KISHAN DAGA, continued

3 **PRESIDENT:** Good morning to everyone.

4 This is the third day in the hearing on the merits
5 in the arbitration between Patel Engineering Ltd and
6 the Republic of Mozambique.

7 Is there any point of order before we
8 start?

9 **MS VASANI:** Just one, Mr President. And
10 good morning, everyone.

11 I was just wondering if we could have an
12 indication from Respondent approximately how much
13 longer you might have with Mr Daga. We have a
14 person coming to assist with translation once his
15 testimony is over and, if we could give them an
16 estimated time, that would be really helpful.

17 **MS BEVILACQUA:** My estimate is 45 minutes.

18 **PRESIDENT:** Excellent. Is there any other
19 point of order, Ms Bevilacqua?

20 **MS BEVILACQUA:** No, thank you --

21 **MR BROWN:** There is, actually, yes. Thank
22 you, Mr President.

23 **PRESIDENT:** Mr Brown.

24 **MR BROWN:** I did want to -- and we had
25 talked about this last night after the record was

1 closed -- I do understand that the Tribunal has
2 ruled to admit Exhibit C-356. The Republic of
3 Mozambique does like to note on the record its
4 objection to that exhibit, so I appreciate your
5 opportunity to do that this morning.

6 I will also say that, despite that
7 objection, we do also appreciate the Tribunal's
8 additional caveats about that being able to instruct
9 the witness and the decorum that has been promised
10 by opposing counsel as well. So thank you.

11 **PRESIDENT:** Thank you, Mr Brown.

12 Yes, I think your position is noted. The
13 Tribunal will in due course issue a formal decision.
14 We have taken an oral decision that we accept these
15 documents with regard to Minister Zucula, but we
16 will issue a formal decision and then, of course,
17 you may react in writing so that your position is
18 clear.

19 **MR BROWN:** Thank you, Mr President.

20 **PRESIDENT:** Thank you.

21 Very good.

22 Good morning, Mr Daga.

23 **MR DAGA:** Good morning, sir.

24 **PRESIDENT:** Can I remind you that you are
25 still under oath?

1 **MR DAGA:** Yes.

2 **PRESIDENT:** And so, without further ado,
3 Ms Bevilacqua, whenever you want, you can continue,
4 and if we can shorten Mr Daga's examination, I think
5 it would be appreciated so that we do not incur too
6 much delay.

7 **MS BEVILACQUA:** Yes, thank you,
8 Mr President.

9 Cross-examination by Respondent, cont'd

10 **MS BEVILACQUA:** Mr Daga, just to finish
11 where we had left off last night, we were talking
12 about C-9. Claimant's Exhibit C-9.

13 **MR DAGA:** Yes, I have.

14 **MS BEVILACQUA:** Which you provided to the
15 ministry?

16 **MR DAGA:** Yes.

17 **MS BEVILACQUA:** And the first several
18 documents listed in "references" were from the
19 Preliminary Study, correct?

20 **MR DAGA:** Maybe some are from them.

21 **MS BEVILACQUA:** And then you did identify
22 additional information and meetings that you had in
23 response to the ministry's inquiry?

24 **MR DAGA:** Yes.

25 **MS BEVILACQUA:** And that is your signature

1 on the bottom of page 9 for each of those pages?

2 **MR DAGA:** Yes.

3 **MS BEVILACQUA:** Now I would like to talk
4 about the tender process and, before we get to the
5 tender process, the PFS was submitted and it was
6 approved by the ministry, correct?

7 **MR DAGA:** Yes.

8 **MS BEVILACQUA:** And it was approved
9 in June of 2012?

10 **MR DAGA:** 15 June 2012.

11 **MS BEVILACQUA:** And would you please take
12 a look in your binder at Exhibit C-11.

13 **MR DAGA:** What is the tab number?

14 **MS BEVILACQUA:** It is in tab 6 of your
15 binder.

16 **MR DAGA:** Tab 6 is a different letter.
17 Tab 7, I think. Approval letter is on tab 7.

18 **MS BEVILACQUA:** Thank you. And in the
19 approval letter --

20 **MR DAGA:** 15 June letter?

21 **MS BEVILACQUA:** Yes, and if you look at
22 the Portuguese under tab A.

23 **MR DAGA:** Yeah.

24 **MS BEVILACQUA:** It says to exercise
25 "expressamente o seu *direito de preferência*",

1 correct?

2 **MR DAGA:** Yeah.

3 **MS BEVILACQUA:** And the -- you respond in
4 the next tab, tab 8, on June 18th?

5 **MR DAGA:** Yes.

6 **MS BEVILACQUA:** And when you exercised
7 your right, how do you phrase it?

8 **MR DAGA:** It is written very clearly. "We
9 would like to inform you that we expressly exercise
10 our right of preference for implementation of the
11 project. We hereby confirm that we will proceed
12 with the implementation of the project".

13 **MS BEVILACQUA:** And you exercised, as you
14 said, your right of preference at that time?

15 **MR DAGA:** Yes, right of preference and
16 right of first refusal is same.

17 **MS BEVILACQUA:** And, as you recall, you
18 then began to reach out to CFM to negotiate,
19 correct?

20 **MR DAGA:** After that I have written one
21 more letter on 22nd of June asking CFM to whom
22 should I contact -- asking ministry to whom should
23 I contact in CFM for the formation of SPV, but that
24 letter I did not get any reply. So after that
25 I started with my own contacts, tried to contact

1 Mr-- chairman of CFM through SPA, and I got an
2 appointment and I met him.

3 When I met CFM chairman, I was shocked and
4 surprised. First of all, he said that I am not
5 aware of the project. Second thing, I do not have
6 any PFS so I'm not aware about and I have never got
7 an instruction from the minister to negotiate with
8 you.

9 It was a shock for me because on 9th
10 of May in the presentation, CFM engineering director
11 and other people were present. After that we had
12 two, three meetings in CFM office with their
13 technical and commercial people, and we have
14 discussed with them.

15 In between we had a site visit also.
16 Before approval of the PFS, Mr Zucula, minister,
17 invited me that you should come, I am going to that
18 site to Namacurra so I want to visit the Macuse site
19 and I want you should show me the site also. So
20 during that visit also the engineering director, Mr
21 Gomes, he was present.

22 So it was a shock for me but still, I did
23 not contested him. I said OK, sir, I will send you
24 the PFS. I will send you the letter I'll get you,
25 and I'll try to speak to Mr Zucula for this.

1 Next day itself I went to Mr Zucula.
2 I told him that this has happened and this was his
3 reaction. He spoke over the phone to him in
4 Portuguese. I did not understand, but from his body
5 language I could understand that he was a little bit
6 upset and angry on him, and after concluding the
7 phone he told me that I have already told, you now
8 go and meet him and discuss.

9 **MS BEVILACQUA:** Mr Daga, were
10 representatives of CFM present at the presentation
11 of your PFS given on May 7th?

12 **MR DAGA:** May 9th.

13 **MS BEVILACQUA:** I'm sorry. Thank you for
14 the correction on the date.

15 **MR DAGA:** Yes.

16 **MS BEVILACQUA:** Were representatives of
17 CFM present at the presentation you gave on the PFS?

18 **MR DAGA:** Yes. Senior people were there.

19 **MS BEVILACQUA:** Yes.

20 **MR DAGA:** Two senior people were there.

21 **MS BEVILACQUA:** And they knew what was
22 given at that presentation?

23 **MR DAGA:** Yes.

24 **MS BEVILACQUA:** They participated?

25 **MR DAGA:** Yes. Even Mr Ruby on 17th or

1 18th of May, he has given the presentation to CFM on
2 the same project, Ruby, who was involved in the
3 Preliminary Study for us as assistant to Dr Muhate.

4 **MS BEVILACQUA:** And you asked Mr Zucula to
5 give some approval to negotiate with CFM?

6 **MR DAGA:** I requested that to whom I
7 should contact, whether commercial head or the
8 chairman or engineering director, to whom I should
9 talk about making the SPV. That is what. But I did
10 not get any reply for that.

11 **MS BEVILACQUA:** And Mr Zucula provided
12 information to you and confirmed the information was
13 provided to you?

14 **MR DAGA:** No, he never provided me this
15 information. I myself of my own, I arranged the
16 meeting with CFM chairman. I met him, first with
17 Sapura who was the chief executive of SPI and Mr
18 Prabhu. In that meeting he told me I do not have
19 copy of PFS, I do not have any instruction.

20 So I came back, I spoke to Mr Zucula, he
21 spoke over the phone in front of me in Portuguese.
22 His body language was different. Angry. And
23 afterwards he told me that I have already
24 instructed, you please go and talk to him.

25 And second time I went, it was a more

1 shocking news for me. He --

2 **MS BEVILACQUA:** Mr Daga, Mr Zucula
3 confirmed in writing to you that you were to
4 continue negotiating with CFM and you did negotiate
5 with CFM in --

6 **MR DAGA:** That was much later. Much --

7 **MS BEVILACQUA:** Let's take a look at
8 Exhibit C-16, please.

9 **MR DAGA:** Yes.

10 **MS BEVILACQUA:** And you received from
11 Mr Zucula confirmation that no further authorisation
12 was needed to speak to CFM.

13 **MR DAGA:** Yes, this is the letter on 27th
14 of August I got it, when I met first time on 6th or
15 7th of August and second time I think after a week's
16 time or ten days' time I met again, and I informed
17 him. After that, I received this letter. Not
18 before.

19 So my two meetings were all with CFM and
20 he was knowing because I myself told him that I am
21 talking to Mr Rosario Mualeia, the chairman of CFM.

22 **MS BEVILACQUA:** And you met with CFM and
23 you offered CFM a 20 per cent interest in the
24 project.

25 **MR DAGA:** I told him I'll offer the equity

1 as per the PPP Law, what is provided.

2 **MS BEVILACQUA:** You offered him what was
3 provided in the PPP Law?

4 **MR DAGA:** Yes.

5 **MS BEVILACQUA:** I don't understand your
6 reference to the PPP Law, sir. There's no reference
7 in the -- is there a reference in the PPP Law to 20
8 per cent equity interest?

9 **MR DAGA:** Yes, somewhere it is written.
10 My legal team, if I request, can help me out.

11 **PRESIDENT:** Don't worry.

12 **MR DAGA:** OK.

13 **PRESIDENT:** They will draw your attention
14 to it if it's relevant for Claimant.

15 **MR DAGA:** Thank you.

16 **PRESIDENT:** So can we -- you are in any
17 case no Mozambican lawyer. You are here to tell us
18 about the facts.

19 **MS VASANI:** Mr President, may I just also
20 note that opposing counsel misquoted the letter when
21 asking her question. It doesn't talk about
22 authorisation. It says negotiation with CFM is not
23 prohibited and to my knowledge has already begun. I
24 think that was misstated on the transcript, just to
25 clarify the transcript.

1 **PRESIDENT:** Very good. Ms Bevilacqua,
2 please continue.

3 **MS BEVILACQUA:** Mr Daga, do you know
4 whether CFM is required to accept an offer of an
5 equity stake in a project?

6 **MR DAGA:** No, it was told by Ministry of
7 Transport to me that see, you have to go and
8 negotiate with CFM to become SPV partner. So
9 I thought that he has been -- CFM has been nominated
10 by the government as SPV partner, which is required.
11 In the public-private partnership government has to
12 nominate some company, some entity, to participate
13 in the project. So I thought CFM is one which has
14 been nominated by the government.

15 **MS BEVILACQUA:** And do you have an
16 understanding that CFM gets to choose what
17 percentage it will accept when offered to
18 participate?

19 **MR DAGA:** I offered them 20 per cent, the
20 equity.

21 **MS BEVILACQUA:** And they rejected that
22 offer?

23 **MR DAGA:** No. He has clearly told me that
24 I do not have -- in the second meeting he told me
25 very clearly that I do not have that kind of money.

1 If I would have had that kind of money, I would have
2 completed my existing project.

3 This was his exact words he has told me in
4 the meeting.

5 **MS BEVILACQUA:** Did you offer them any
6 other percentage other than --

7 **MR DAGA:** No.

8 **MS BEVILACQUA:** -- a 20 per cent interest.

9 **MR DAGA:** When he was not ready for
10 20 per cent, even what was the point, and when he is
11 saying clearly that I do not have that kind of money
12 with me. I would have otherwise invested in my
13 existing project. Why should I go for a new
14 project?

15 **PRESIDENT:** Simply because you were not
16 offering -- you were offering them 20 per cent of
17 their project for the railway company to disburse
18 the capital which was required.

19 **MR DAGA:** Yes. Equity. Equity holder.
20 20 per cent it was. 80/20. That means 80 per cent
21 would be mine, 20 per cent would be theirs --

22 **PRESIDENT:** 20 per cent was required.

23 **MR DAGA:** Yes.

24 **PRESIDENT:** So it would be 20 per cent of
25 20, so 4 per cent?

1 **MR DAGA:** Yes.

2 **PRESIDENT:** They would have to put up
3 4 per cent of the cost of the project?

4 **MR DAGA:** Yes. Around 120 million.

5 **PRESIDENT:** 120 million?

6 **MR DAGA:** \$120 million.

7 **PRESIDENT:** Thank you.

8 **MS BEVILACQUA:** And it was your
9 understanding that CFM would have to put up
10 120 million in order to form this SPV and continue
11 forward?

12 **MR DAGA:** Yes, if SPV has to be formed,
13 the parties has to participate in equity. It may be
14 that in phases also the equities can be participated
15 as per in the financing of the SPVs, but SPV --
16 member has to participate in equity.

17 **MS BEVILACQUA:** Did you believe that CFM
18 was required to reach an agreement with you?

19 **MR DAGA:** No. When CFM was nominated by
20 Ministry of Transport, definitely I have to go and
21 talk to them only. But yes, OK, ministry has asked
22 me to talk to you. Let us make a -- let us form an
23 SPV for the project.

24 But I got entire reply in a negative side,
25 which also I have communicated to Ministry of

1 Transport, Mr Zucula.

2 **MS BEVILACQUA:** To walk through the tender
3 process more quickly, I would like to share with you
4 Exhibit 380. Claimant's 380.

5 **MR DAGA:** Should I close this?

6 **MS BEVILACQUA:** Yes.

7 **MR DAGA:** Thank you.

8 **MS BEVILACQUA:** Mr Daga, if you would take
9 a look at page 11 of Claimant's 380. The last
10 entry, number 55, "22 November 2012. The Mozambican
11 press reported that Mozambique would launch a public
12 tender for the project" and it references a Claimant
13 exhibit number. Yes?

14 **MR DAGA:** Yeah. I came to know through
15 our legal advisor, Mr Caldeira. He informed me that
16 this is the information has come out in the
17 newspaper. This news has come out.

18 **MS BEVILACQUA:** And so you were informed a
19 tender process would be starting at the end
20 of November 2012?

21 **MR DAGA:** It was a shock for me.

22 **MS BEVILACQUA:** That was not my question.

23 **MR DAGA:** I was never told.

24 **MS BEVILACQUA:** That was not my question.

25 You were informed at the end

1 of November 2012 a tender process would start?

2 **MR DAGA:** I was not informed. It has
3 appeared in the public press. I was never told.

4 **MS BEVILACQUA:** Your attorney, Mr
5 Caldeira, informed you?

6 **MR DAGA:** Pardon?

7 **MS BEVILACQUA:** Your attorney,
8 Mr Caldeira --

9 **MR DAGA:** He informed me that it has
10 appeared in the press in a newspaper. That
11 cannot -- I cannot take it authentic that I receive
12 from the Ministry of Transport that yes, we are
13 going for the tender.

14 Whereas, in between, on 5th October,
15 I have written them a letter again. When CFM was
16 not responding I said that I will form, register an
17 SPV and I'll put my equity and I give an undertaking
18 that whenever you nominate any other party, I'll
19 give equity to them. That undertaking letter was
20 also given to them on 5th of October, but I did not
21 get any response from that also. No response from
22 any letters.

23 **MS BEVILACQUA:** Mr Daga, you then wrote to
24 the ministry on 28 November 2012.

25 **MR DAGA:** Yes.

1 **MS BEVILACQUA:** And this chronology was
2 prepared by and submitted by your counsel, correct?

3 **MR DAGA:** Yeah.

4 **MS BEVILACQUA:** And the dates, to the best
5 of your knowledge, in this chronology are accurate?

6 **MR DAGA:** I think so.

7 **MS BEVILACQUA:** OK. And you wrote to the
8 ministry asking to be awarded the concession
9 directly?

10 **MR DAGA:** Yes. Because when this news
11 came to me, to safeguard my own interest and
12 company's interest, definitely I have to write to --
13 because they had not officially communicated to me,
14 so I cannot write officially. They could have said
15 to me that who has asked you and who has told you,
16 so I was writing that yes, direct award should be
17 given and these are the reasons for direct award.
18 In the past also these are the people who have been
19 given the direct awards.

20 **MS BEVILACQUA:** Now, at this point,
21 in November of 2012, the tender itself had not
22 launched yet.

23 **MR DAGA:** No.

24 **MS BEVILACQUA:** OK. And in January 2013,
25 if you look at page 13 of the chronology, entry

1 number 59.

2 **MR DAGA:** Yeah.

3 **MS BEVILACQUA:** The MTC replied to
4 your November letter.

5 **MR DAGA:** Yes.

6 **MS BEVILACQUA:** And the MTC confirmed that
7 a public tender was going to take place?

8 **MR DAGA:** Yeah. That was the first time
9 I was informed that this is the intention of the
10 ministry that they are going for the tender. 11th
11 of January 2013. And it was a shocking news. It
12 was a complete violation of my MOI.

13 **MS BEVILACQUA:** And after receiving that
14 letter, you wrote to the MTC and you copied the
15 Prime Minister of Mozambique on the 22nd of January?

16 **MR DAGA:** Yes.

17 **MS BEVILACQUA:** The tender published --
18 excuse me -- the tender notice itself was published
19 on January 30, 2013, if you look at entry 61,
20 correct?

21 **MR DAGA:** 30th January.

22 **MS BEVILACQUA:** Yes.

23 **MR DAGA:** Yeah. And my letter was on 22nd
24 of January to the Prime Minister.

25 **MS BEVILACQUA:** Correct.

1 **MR DAGA:** Yeah.

2 **MS BEVILACQUA:** So the public notice goes
3 out on 30 January.

4 **MR DAGA:** Yes.

5 **MS BEVILACQUA:** And the MTC replies to
6 your letter after the public notice went out on
7 14 February?

8 **MR DAGA:** Yes.

9 **MS BEVILACQUA:** And it informs you
10 specifically that the Minister of Transport and
11 Communication cannot reverse the decision already
12 taken by the Council of Ministers, correct?

13 **MR DAGA:** Yes.

14 **MS BEVILACQUA:** And the decision taken by
15 the Council of Ministers was to launch a public
16 tender?

17 **MR DAGA:** Yes. Which was the violation of
18 my MOI because as per MOI, once my PFS is approved,
19 they have to give me the concession agreement for
20 implementation of the project.

21 **MS BEVILACQUA:** In March -- it's entry 63
22 on the chronology.

23 **MR DAGA:** 63.

24 **MS BEVILACQUA:** 63. Mozambique
25 distributed the tender notice inviting interested

1 parties to submit an expression of interest by
2 8 March.

3 **MR DAGA:** 8 March, yeah.

4 **MS BEVILACQUA:** And before that deadline
5 you wrote to the Prime Minister of Mozambique again?

6 **MR DAGA:** Yes.

7 **MS BEVILACQUA:** You wrote to him on the
8 4th of March, 2013.

9 **MR DAGA:** Yes. Because I have to put
10 my -- all offers so that I can secure my job. I had
11 put two years, three years, two and a half years of
12 hard work myself with my entire team, we have put
13 money, and then suddenly we are seeing that our hard
14 work is going waste and somebody else will enjoy the
15 fruit of this hard work.

16 So definitely I have to try all corners,
17 every stone I approach, that yes, kindly help me
18 out, kindly help me out here. This was my stand
19 every time. Ultimately it was my company's future.
20 I was losing that job. Tender is a tender. You may
21 get, you may not get.

22 **MS BEVILACQUA:** And on 8 March, which was
23 the deadline to submit an expression of interest,
24 PEL, along with Grindrod and SPI, submitted an
25 expression of interest for the public tender,

1 correct?

2 **MR DAGA:** Yes.

3 **MS BEVILACQUA:** So you became part of the
4 PGS consortium.

5 **MR DAGA:** PGS consortium.

6 **MS BEVILACQUA:** And SPI is a local
7 Mozambican company.

8 **MR DAGA:** Yes. Patel, Grindrod and SPI.
9 That was the consortium.

10 **MS BEVILACQUA:** And then on the 12th
11 of April 2013 --

12 **MR DAGA:** Yes.

13 **MS BEVILACQUA:** -- the MTC issued tender
14 documents to six prequalified bidders, including the
15 PGS consortium?

16 **MR DAGA:** Yes.

17 **MS BEVILACQUA:** And on the 16th of April
18 there is a letter sent by the Ministry of Foreign
19 Affairs.

20 **MR DAGA:** The High Commissioner of India
21 has written to the Ministry of Foreign Affairs
22 because whenever we have an understanding in our
23 country that whenever you invest in any other
24 country, you have to inform -- keep informed the
25 local ambassador of the country that you are doing

1 this, this work.

2 So when these things were going on, even
3 high commissioner has also sent me the tender notice
4 also. Then I requested him, sir, can you interfere
5 at the government level, Government of India to
6 Government of Mozambique, because Government of
7 Mozambique was having at that time a friendly nation
8 status, so I said to Ministry of Foreign Affairs of
9 India if they can say that, yes, this
10 3 billion-dollar project is being carried out by an
11 Indian company and you have signed already an MOI,
12 so kindly provide them this facility and sign a
13 concession agreement. This will be a good sign of
14 friendship.

15 **MS BEVILACQUA:** And that letter was sent
16 on the 16th of April 2013?

17 **MR DAGA:** Yes.

18 **MS BEVILACQUA:** Would you please take a
19 look at Exhibit C-29. It is in your binder. I will
20 give you a tab reference in a moment.

21 **MR DAGA:** At tab?

22 **MS BEVILACQUA:** Just one moment.

23 **MR DAGA:** OK.

24 **MS BEVILACQUA:** 23.

25 **MR DAGA:** 18th of April letter, yeah.

1 **MS BEVILACQUA:** Yes.

2 And this is a letter from Minister Zucula?

3 **MR DAGA:** Yes, Minister of Transport.

4 **MS BEVILACQUA:** To you -- to PEL.

5 **MR DAGA:** To Patel.

6 **MS BEVILACQUA:** And we are looking now at
7 the English together, yes?

8 **MR DAGA:** Yes.

9 **MS BEVILACQUA:** And it references in the
10 second paragraph that the Council of Ministers, in
11 its 10th Ordinary Session held on the date
12 16 April 2013.

13 **MR DAGA:** Yes.

14 **MS BEVILACQUA:** And that's the same date
15 that the high commissioner of Mozambique in India
16 sent a letter to the Ministry of Foreign Affairs.

17 **MR DAGA:** This I cannot say. It is not
18 under my purview.

19 **MS BEVILACQUA:** I'm just saying the dates
20 are the same.

21 **MR DAGA:** Dates are same. It looks.

22 **MS BEVILACQUA:** All right.

23 And this letter talks about, in the same
24 paragraph -- the letter in C-29 talks about
25 "considering the urgency of these infrastructure,

1 the national strategic interest, the time available
2 and the fact that the tenderer has carried out all
3 the feasibility and engineering studies, and that it
4 is in the national interest that the project be
5 accelerated, decided to invite this company to start
6 the process with a view of carrying out those
7 projects. Therefore, the representatives of Patel
8 Engineering Ltd are invited to contact the Ministry
9 of Transport and Communications to begin this
10 process within seven days".

11 **MR DAGA:** Yes.

12 **MS BEVILACQUA:** Does anything in those two
13 paragraphs reference a direct award or direct
14 negotiation?

15 **MR DAGA:** No, because this letter has been
16 addressed to Patel Engineering Ltd.

17 **MS BEVILACQUA:** Do you know whether any
18 other entities received a similar letter as part of
19 the tender process?

20 **MR DAGA:** No, I do not know.

21 **MS BEVILACQUA:** Do you know whether
22 requesting a bank guarantee of participants in a
23 public tender is a standard part of a tender
24 process?

25 **MR DAGA:** No --

1 **MS BEVILACQUA:** In your experience?

10:02

2 **MR DAGA:** That bank guarantee is a
3 different bank guarantee for earnest money. That
4 was a different bank guarantee which was mentioned
5 also in the tender notice.

6 This bank guarantee they have asked .01
7 per cent of the value of the contract -- project as
8 a security until a concession agreement will be
9 finalised.

10 **MS BEVILACQUA:** Where in this document
11 does it say "until the concession agreement is
12 finalised"?

13 **MR DAGA:** "and keep it valid until the
14 conclusion of the contract, at which time the same
15 shall be returned to the contracting entity".

16 So third line on the second page.

17 **MS BEVILACQUA:** Perfect.

18 And it also asks you to present a
19 statement, agreement or take and pay memorandum with
20 the mining companies?

21 **MR DAGA:** Yes, but, as I said earlier
22 yesterday also, that take-off agreement will be
23 given only by the mining companies to me only after
24 I sign an agreement, so this was a part -- second
25 part of the letter that, yes, OK you sign the

1 agreement, we'll sign the contract, and then you
2 must present the statement that, yes, these are the
3 agreements you are having. That is later on.

4 **MS BEVILACQUA:** Did you meet with the
5 ministry within seven days, as referenced in
6 Exhibit C-29?

7 **MR DAGA:** Yes. I have met.

8 **MS BEVILACQUA:** Who did you meet with?

9 **MR DAGA:** I met Mr Zucula also. I met
10 Mr Chaúque also, who was the legal person.
11 Mr Zucula has directed me. When I met him I asked
12 for a draft concession agreement so that I can send
13 it to Mumbai to my HO for study, if you have any
14 draft agreement, so that my entire legal team, my
15 finance team, my technical team can review and we
16 can come back with the full team to discuss this
17 concession agreement.

18 So he said you meet Mr Chaúque, he will
19 provide you.

20 **MS BEVILACQUA:** And on May 9, 2013 you
21 provided a bank guarantee?

22 **MR DAGA:** Yes. We submitted the bank
23 guarantee on 9th of May.

24 **MS BEVILACQUA:** And you did not submit
25 with the bank guarantee any take or pay agreements,

1 correct?

2 **MR DAGA:** It was not required. Again, I'm
3 saying --

4 **MS BEVILACQUA:** OK. You did not submit
5 it?

6 **MR DAGA:** I said no.

7 **MS BEVILACQUA:** OK.

8 **MR DAGA:** It is not required. No
9 concession -- no mining company will give any letter
10 of confirmation of take-off agreement to a party who
11 does not have contract in their hand. It's a common
12 practice in construction or any mining industry.
13 They will give only if you have project in your hand
14 and they know that, yes, you are going to execute
15 this project. Otherwise, why they will commit their
16 off-take agreement to you? They can write again an
17 expression of interest or yes, we may take and we
18 may take an interest in that, but nobody will
19 confirm. That is for sure. Even the minister was
20 also knowing this thing. That's why he was not
21 compelling me that, no, I want this. Without this,
22 I cannot go further. They have never written again
23 on this aspect.

24 **MS BEVILACQUA:** On the 13th of May,
25 referring to Exhibit C-380 --

1 **MR DAGA:** Yeah.

2 **MS BEVILACQUA:** I'm sorry, Mr Daga. I'm
3 referring to the chronology in Exhibit 380.

4 **MR DAGA:** Yeah.

5 **MS BEVILACQUA:** Thank you.

6 On the 13th of May you received a response
7 from the ministry, a new letter?

8 **MR DAGA:** Yes.

9 **MS BEVILACQUA:** Let's look at the letter.
10 It's Exhibit C-34.

11 **MR DAGA:** Yeah.

12 **MS BEVILACQUA:** It is tab 24 in your
13 binder.

14 **MR DAGA:** Yeah. I opened that. I know
15 you are coming to this letter. That's why I opened
16 it. I remember the dates by heart.

17 **MS BEVILACQUA:** And this letter is from
18 Mr Chaúque?

19 **MR DAGA:** Yes.

20 **MS BEVILACQUA:** To you?

21 **MR DAGA:** Yes.

22 **MS BEVILACQUA:** And Mr Chaúque informed
23 you that there was a meeting of the 12th Ordinary
24 Session on the 30th of April.

25 **MR DAGA:** Yes.

1 **MS BEVILACQUA:** And that the Council of
2 Ministers came to the conclusion that "the current
3 public tender represents the correct option, there
4 not being, therefore, space for direct negotiations
5 with any of the bidders presented in the
6 pre-selection phase"

7 **MR DAGA:** Yes.

8 **MS BEVILACQUA:** "Thus, and based on this
9 decision, there shall be no place for direct
10 negotiation with Patel Engineering".

11 **MR DAGA:** Yes.

12 **MS BEVILACQUA:** And you were encouraged to
13 continue the bidding process, "enjoying from the
14 start a preference right from the 15 percentage
15 points stipulated by law". At least what's written
16 in the English version.

17 **MR DAGA:** This is what they have written.
18 This is on record. But now, sir, I will turn a
19 little -- you have to go behind.

20 In this letter, as per this letter, the
21 ordinary session has held on 30 April 2013.
22 Definitely Minister of Transport, Mr Zucula, must
23 have been present in this Council of Ministers
24 meeting where this was an important decision about
25 the project under his ministries being taken.

1 9th of May I am submitting my bank
2 guarantee as per their 18 April letter. On that day
3 he never said to me that I will not accept this bank
4 guarantee because we have already decided that we
5 are going for a public tender.

6 **MS BEVILACQUA:** Mr Daga, the public tender
7 was already under way.

8 **MR DAGA:** Yeah.

9 **MS BEVILACQUA:** OK. Thank you.

10 **MR DAGA:** So, many things were going
11 behind the scene but they were not telling us
12 correctly. One time, first time, they will go for
13 the tender. In that first letter they have not
14 mentioned which Council of Ministers on which date
15 this has been decided that they will go for the
16 tender.

17 Second letter, 18th of April, they have
18 written that this session, this date, Council of
19 Ministers decided.

20 Third letter, this date, this Council of
21 Ministers session, they have decided not to go for
22 direct award. So why this was not written in the
23 first letter when they have informed they are going
24 for public tender of 11 January, I think, 2013?
25 Nobody has written to me there.

1 **MS BEVILACQUA:** After you received this
2 letter, Mr Daga, you did not try to stop the tender
3 process in Mozambique?

4 **MR DAGA:** It was a devastating letter for
5 us, for our company --

6 **MS BEVILACQUA:** That's not my question,
7 Mr Daga.

8 Would you please try to answer first with
9 a yes, no, or I don't know, as the president has
10 instructed you?

11 **MR DAGA:** Yeah.

12 **MS BEVILACQUA:** After you received the
13 letter from the ministry in C-34, you did not try to
14 stop the tender process by filing a lawsuit or other
15 action in Mozambique?

16 **MR DAGA:** No, we have not filed any
17 lawsuit in Mozambique.

18 **MS BEVILACQUA:** Instead, you and your
19 consortium members participated and submitted a bid
20 in response to the public tender?

21 **MR DAGA:** Yes. Because we still did not
22 want to lose this opportunity. We have kept our
23 right reserved in the expression of interest also.
24 Our legal team can explain that in a better way.
25 I will not be able to explain that better way. But

1 8th of March expression of interest also I have kept
2 my reserve right -- sorry, sir, for my voice --
3 I have kept my rights reserved, and every letter
4 afterwards we have written the same language. So we
5 have kept open the door for the direct negotiation
6 also. We have never closed that door. Even when we
7 have made a consortium with PGS, we have told them
8 that there is a possibility of direct award. The
9 Grindrod and SPI also has agreed that OK, if you get
10 a direct award, we will have a separate MOI
11 understanding and we will work according to that,
12 and that was also signed before the submission of
13 the tender, so we have kept all the options open.
14 We did not want to lose this project. This was our
15 baby, I will say, and I would not like that somebody
16 should rob my baby and take away from me.

17 **MS BEVILACQUA:** You, along with your
18 consortium members, were scored in the public
19 tender, and the evaluation committee completed their
20 evaluation on 15 July 2013, and you may refer to
21 Exhibit 380 at line 82 to help you find that
22 reference in the chronology. Line 82 on page 20,
23 Exhibit C-380.

24 **MR DAGA:** 82. OK.

25 **MS BEVILACQUA:** In the public tender there

1 were six --

2 **MR DAGA:** No, no, no. Let me correct it
3 here. 15th of July they have made this decision,
4 but it was communicated I think on 19th of July to
5 us.

6 **MS BEVILACQUA:** Yes. Yes.

7 **MR DAGA:** Yeah. It was not communicated
8 on 15th of July. It was communicated to us on 19th
9 of July.

10 **MS BEVILACQUA:** And when you received
11 those results in July of 2013, you were informed of
12 the process for contesting or appealing the results
13 of the tender.

14 **MR DAGA:** No, this was for the technical
15 bid. This was not the result of the commercial bid.
16 Commercial bid was to open further. It was not
17 open. But here also we have participated and we
18 have written on the same day letter on 19th of July.

19 **MS BEVILACQUA:** Yes. You contested and
20 you asked clarifying questions. Yes.

21 **MR DAGA:** Yes. Clarification on the
22 technical evaluation because the entire tender
23 process was not over. Commercial bid was to open.

24 **MS BEVILACQUA:** According to the
25 chronology, the evaluation committee submitted the

1 financial proposals, evaluation report and
2 recommendation on the 26th of July 2013.

3 **MR DAGA:** 26 July. They informed us also
4 by way of letter.

5 **MS BEVILACQUA:** And you were informed
6 on -- according to -- the MTC notified you, the PGS
7 consortium, of its decision on the same day.

8 **MR DAGA:** Yes, 26th of July. They have
9 sent us how they have evaluated the letter and
10 tender bid, evaluation of the tender bid, how they
11 have been done, and on that basis they have written
12 us a letter.

13 **MS BEVILACQUA:** And you were informed of
14 the process for contesting?

15 **MR DAGA:** No, the process of contesting
16 was in the tender itself. It was known to us.

17 **MS BEVILACQUA:** And so you knew when and
18 how you were to lodge any complaints or appeals you
19 had?

20 **MR DAGA:** Yes, that's why -- yes, we were
21 knowing, but that's why we have written again a
22 letter that kindly clarify why it has been changed,
23 the evaluation criteria, what is mentioned in the
24 tender, and this -- how and from where you have got
25 this evaluation process.

1 On 29th of July I think that letter speaks
2 about that, if I'm not wrong.

3 **MS BEVILACQUA:** And the MTC responded to
4 your questions on the 12th of August 2013, if you
5 look at line 91 in the chronology.

6 **MR DAGA:** 12th of August.

7 **MS BEVILACQUA:** And at this point did you
8 try to stop the finalisation of the tender award?

9 **MR DAGA:** No. Again we have written on
10 19th of August in reply to this that we want
11 re-evaluation because this is not according -- done
12 according to the criteria as mentioned in the
13 tender, and we have given all the details also in
14 that letter.

15 **MS BEVILACQUA:** And on the 21st of August
16 the MTC informed the PGS consortium of the appeal
17 process again.

18 **MR DAGA:** Yeah. Yes.

19 **MS BEVILACQUA:** And you did not write to
20 the MTC between the 21st of August and the 27th
21 of August?

22 **MR DAGA:** 28th of August we have submitted
23 that letter.

24 **PRESIDENT:** Ms Bevilacqua, do you have
25 very much longer to go?

1 **MS BEVILACQUA:** No.

2 And you did not finish the appeal process,
3 and the ministry confirmed the tender and announced
4 its award on the 27th of August.

5 **MR DAGA:** All were unilateral decisions
6 taken by the ministry on this tender. They were not
7 responding to our -- any request. So what can I do
8 in that process?

9 **MS BEVILACQUA:** All right. I have one
10 more thing to talk about, Mr Daga.

11 **MR DAGA:** Yes, please.

12 **MS BEVILACQUA:** We looked at a number of
13 drafts of the MOU -- the MOI yesterday, and there's
14 one more I want to look at before we finish your
15 examination. I would like to show you
16 Exhibit C-271.

17 **MR DAGA:** Yes.

18 **MS BEVILACQUA:** And Exhibit C-271 is an
19 e-mail from your counsel, Jose Caldeira.

20 **MR DAGA:** Yes.

21 **MS BEVILACQUA:** In Mozambique, to Mr
22 Prabhu, to you, and to Mr Rafique Jusob.

23 **MR DAGA:** Yes.

24 **MS BEVILACQUA:** And these are your
25 lawyers' red lined changes --

1 **MR DAGA:** Blue line.

2 **MS BEVILACQUA:** Blue line. Yes. They are
3 in blue. Thank you.

4 **MR DAGA:** Thanks.

5 **MS BEVILACQUA:** These are your attorneys'
6 blue lined changes to the memorandum of interest on
7 the 4th of May.

8 **MR DAGA:** Yes.

9 **MS BEVILACQUA:** So this is two days before
10 it is signed.

11 **MR DAGA:** Yeah. If you remember --

12 **MS BEVILACQUA:** I have no question.

13 **MR DAGA:** OK.

14 **MS BEVILACQUA:** If you would please look
15 at clause 7.

16 **MR DAGA:** Yeah.

17 **MS BEVILACQUA:** Clause 7 at this point in
18 time --

19 **MR DAGA:** Yes.

20 **MS BEVILACQUA:** The heading underneath
21 clause 7 is for approval of reports and projects.

22 **MR DAGA:** As I'm not a Portuguese speaking
23 and Portuguese reading person, I cannot comment on
24 this.

25 **MS BEVILACQUA:** You can see, though, sir,

1 that clause 7 --

2 **MR DAGA:** But again -- sorry to disturb
3 you. Please.

4 **MS BEVILACQUA:** You can see that clause 7
5 has four paragraphs within clause 7 at this time?

6 **MR DAGA:** Yes, I can see. Again, as I
7 said yesterday, these are the drafts and were under
8 negotiation, so definitely there may be many changes
9 happens. It must have happened between all of these
10 and the 6th of morning the draft was finalised. 6th
11 of May 2011. In between there are many different
12 words, many changes has happened, so I cannot say
13 that, yes, why it has changed and why we have -- we
14 have long discussions, long sessions we had. Pros
15 and cons we have discussed with the ministry people.

16 **MS BEVILACQUA:** And at this time, which is
17 on the 4th of May, your attorney sent these blue
18 lined changes to clause 7.

19 **MR DAGA:** Yes.

20 **MS BEVILACQUA:** Which still requires an
21 RFD, right? The bankability study is still
22 contained in clause 7, paragraphs 1 and 2.

23 **MR DAGA:** RFD is not the DPR, detailed
24 feasibility. RFD is not that.

25 **MS BEVILACQUA:** And you don't have an

1 English translation of this draft?

2 **MR DAGA:** No, I don't have.

3 **MS BEVILACQUA:** And your attorney in
4 Mozambique is negotiating in the Portuguese?

5 **MR DAGA:** Yes.

6 **MS BEVILACQUA:** And your attorney struck
7 out any reference to *direito de preferência* in
8 paragraph 2 of clause 7 and inserted different
9 language.

10 **MR DAGA:** I can't say anything on this,
11 sir.

12 **MS BEVILACQUA:** And if you look at clause
13 2.1, please -- excuse me, it's just clause 2, your
14 attorney inserted the blue lines into clause 2,
15 which has a reference to clause 7 of this
16 memorandum?

17 **MR DAGA:** Yeah. Clause 7 reference again,
18 as I explained yesterday, that that is the follow-up
19 action of clause 2. In English person, what
20 I explained to you yesterday, to the Tribunal also,
21 that if PFS is approved, then there will be a first
22 right of refusal and concession will be awarded to
23 me. If PFS is not approved then clause 7 will be
24 applied and I have to sign another MOU and I have to
25 invest further money and I have to make another PFS,

1 and I have to give them for approval. This is a
2 fallback clause on clause 2.

3 **MS BEVILACQUA:** I have no further
4 questions. Thank you.

5 **PRESIDENT:** Thank you, Ms Bevilacqua.

6 Ms Vasani, do you have any questions for
7 Mr Daga?

8 **MS VASANI:** I do but only three questions.
9 I'll be very brief, I promise. I understand
10 Mr Daga's voice probably will not last much longer.

11 Re-examination by Claimant

12 **MS VASANI:** You were questioned about
13 choosing standard gauge in the PFS rather than
14 narrow gauge, and counsel for Respondent questioned
15 your choice of standard gauge because all the roads
16 or railroads in Mozambique at that time ran on
17 narrow gauge.

18 **MR DAGA:** Yes.

19 **MS VASANI:** I just want to point to you
20 Exhibit R-42. We'll get the Exhibit for you. In
21 its Claimant's Core Bundle, volume 4, tab 102 at
22 pages 43 and 47. So that reference is R-42, which
23 is contained in Claimant's Core Bundle volume 4, tab
24 102, and I'm going to take you to page 43 at the
25 top.

1 **MR DAGA:** Yes.

2 **MS VASANI:** Mr Daga, do you know what type
3 of gauge was used by the TML consortium in their
4 revised feasibility report, which was updated in
5 2017?

6 **MR DAGA:** In 2015 report they have used
7 standard gauge, what we have suggested in our PFS,
8 but in 2017, they have changed to cape gauge and
9 surprisingly, in this R-42 only at further pages,
10 they have made a comparison in 2015 on the standard
11 gauge and narrow gauge where they have shown that
12 standard gauge costs more than the narrow -- narrow
13 gauge costs more than standard gauge.

14 If I can --

15 **MS VASANI:** Page 47.

16 **MR DAGA:** I can give you the page
17 reference.

18 **MS VASANI:** 47 of that document,
19 I believe. 47 at the top of that document.

20 **MR DAGA:** Yeah. Page 46 they have
21 written.

22 **MS VASANI:** 47 at the top.

23 **MR DAGA:** Yeah. "The difference in Below
24 Rail costs is unlikely to make up the difference in
25 the Above Rail costs. We therefore concur with the

1 BFS that the standard gauge operation is the most
2 efficient and least cost option for this project".

3 I do not know how they have changed in
4 2017 to cape gauge, miss narrow gauge.

5 **MS VASANI:** Thank you, Mr Daga. I just
6 wanted to point that out in their feasibility study.

7 Mr Daga, opposing counsel has emphasised
8 the importance of a bankable feasibility study or,
9 as you sometimes call it, a DPR, a detailed project
10 report, and you use the term DPR in the drafts of
11 the Memorandum of Interest as being -- they have
12 said it's necessary to conclude a concession
13 agreement.

14 Now, Mr Daga, do you know whether ITD, the
15 winning bidder of this project, completed a bankable
16 feasibility study before they were awarded the
17 project?

18 **MR DAGA:** As far as my information goes,
19 no. They have done bankable feasibility report
20 after signing of the concession agreement.
21 Concession agreement was I think signed in 2013.
22 Bankable -- first bankable feasibility report has
23 been submitted in 2015, so it cannot be before
24 signing of the concession agreement.

25 **MS VASANI:** Thank you, Mr Daga. And final

1 question.

2 Did CFM ever ask you at any time for more
3 than a 20 per cent equity share in the project?

4 **MR DAGA:** No, never. Rather, he was
5 saying that I do not have this much of money to
6 invest so where is the question of asking more
7 equity. More equity means then they have to put
8 more money when they are not able to put
9 20 per cent. If they ask 30 per cent also, how can
10 they will put 30 per cent in? I can understand if
11 they ask for the lower equity that, yes, we are not
12 interested in 20 per cent, give us lower equity, but
13 that was not the case here.

14 **MS VASANI:** Thank you, Mr Daga. I have no
15 further questions.

16 **MS BEVILACQUA:** No further questions.

17 **PRESIDENT:** Let me double check with my --
18 yes, my colleague Perezcano has some questions for
19 you, Mr Daga.

20 **MR DAGA:** Yes.

21 Questions by the Arbitral Tribunal

22 **MR PEREZCANO:** Thank you, Mr President.

23 Thank you, Mr Daga.

24 In your first witness statement -- I'll
25 just bring it up -- at paragraph 30 you identify the

1 people on the team that worked on the Preliminary
2 Study. This was the study prepared by Dr Muhate?

3 **MR DAGA:** Yes, sir.

4 **MR PEREZCANO:** In your second witness
5 statement you gave a little bit more detail as to
6 who did what, but I would like to ask you to probe a
7 little bit further on that, sorry, I apologise.

8 So I wanted to ask you, to get a little
9 bit more detail from you as to who did what in
10 respect of the preliminary study, and this is the
11 study that was done by Dr Muhate.

12 So in your second witness statement -- and
13 this is at paragraphs 21 and 22 -- 20 and 21, you
14 mention that Mr Ashish Patel gave his views on the
15 project's financials, but I've looked at the
16 Preliminary Study and there is nothing on financials
17 there, so I was wondering what exactly was
18 Mr Patel's involvement in the Preliminary Study. It
19 seems to me the Preliminary Study is very technical
20 on the issues related to the site. I don't see
21 anything about financials.

22 So what was Mr Patel's involvement in
23 that, if you could provide a little bit more detail?

24 **MR DAGA:** Sir, if you remember yesterday
25 also I explained that how Ashish Patel was involved

1 in the project, because we had a talk once we
2 identified that there is a need of port and
3 infrastructure, then we had a meeting in Mumbai when
4 at that time Ashish Patel was in India.

5 We spoke to him about this, that whether
6 the funding will be available for such kind of
7 infrastructure projects, and he said yes, this kind
8 of infrastructure projects. At that time Mr Rupen
9 Patel, our MD, managing director, has requested him
10 that why don't you participate with me in all the
11 negotiation starting from day one on this project.

12 **MR PEREZCANO:** Yes, I understand that and
13 we had a discussion yesterday with Mr Patel, so
14 I understand his involvement in the project. But
15 I'm asking specifically -- I mean, you identified in
16 your first witness statement the team that was
17 involved in the preparation of the Preliminary
18 Study, and you explain in your second witness
19 statement that Mr Patel gave his views on the
20 project's financial in the context of the
21 preparation of the Preliminary Study.

22 But I don't -- I've looked at the
23 Preliminary Study and there's nothing on financials
24 there, so I'm wondering what was his involvement
25 specifically in the Preliminary Study?

1 **MR DAGA:** Maybe that word may be not the
2 correct word I used. In my statement I think
3 somewhere I have written also that me and Ashish
4 Patel has both negotiated with Dr Muhate what will
5 the cost of the proposal, so that is what I am
6 meaning here for Ashish Patel's involvement. No
7 other cash flow or no other financials. That's why
8 I apologise, it may be a wrong word I have put it.

9 **MR PEREZCANO:** OK. That clarifies that.

10 So Mr Sudhakar and Mr Malapur are the
11 geologists. Their role I can understand in the
12 context of this study. But then you also identify
13 Mr Prabhu, who was, as you've told us in your
14 statements and yesterday in the course of the
15 examination, he was essentially PEL's accountant?

16 **MR DAGA:** Yes.

17 **MR PEREZCANO:** In Mozambique, but, again,
18 what was his involvement in the Preliminary Study?

19 **MR DAGA:** Preliminary Study, again, the
20 expenses and everything has to go through him only,
21 so that was the thing.

22 **MR PEREZCANO:** And what about Mr-- well,
23 Sal & Caldeira, more specifically Mr Caldeira.
24 Again, what was their involvement in respect of the
25 Preliminary Study?

1 **MR DAGA:** Sal & Caldeira's role in
2 Preliminary Study was I think negligible, sir.

3 **MR PEREZCANO:** I'm sorry?

4 **MR DAGA:** Negligible. I don't think --
5 yes, only we have discussed with them that Ministry
6 of Transport wants a preliminary study so we are
7 going ahead and he said OK, you can go ahead with
8 the Preliminary Study, there is no issue. That was
9 only thing.

10 But, as a team, I identified that these
11 were the people involved in this project right from
12 day one.

13 **MR PEREZCANO:** I understand what you meant
14 now. Thanks for those clarifications.

15 I want to ask you a little bit about the
16 involvement of Aries Consulting. Aries was Mr
17 Prabhu?

18 **MR DAGA:** Prabhu.

19 **MR PEREZCANO:** But there were several
20 other people from Mr Prabhu's firm from Aries
21 Consulting that were involved in drafting -- or
22 involved in the draft of the MOI so --

23 **MR DAGA:** Mr Fausto? You are talking
24 about Mr Fausto?

25 **MR PEREZCANO:** I've identified several and

1 I want to get a sense of who did what again.

2 So in addition to Mr Prabhu and several
3 other persons, Mr Fausto Mabota?

4 **MR DAGA:** Jouquam I think you might find,
5 one name.

6 **MR PEREZCANO:** I've identified Fausto
7 Mabota, Arquimedes Nhacule, Nelsa Lopez and Judite
8 Mula.

9 **MR DAGA:** Yeah.

10 **MR PEREZCANO:** Can you tell me roughly who
11 they were and what was their involvement?

12 **MR DAGA:** These were assistants to
13 Mr Prabhu. Judite Mula was the personal secretary,
14 Fausto was number 2 and rest of the two I think they
15 were co-ordinating with the translators. So only
16 their role was to communicate on the e-mails.
17 Nothing else. They were not the decision-makers.

18 **MR PEREZCANO:** OK. And now, Mr Mabota did
19 participate in meetings with the MTC at least in one
20 of them. If you want to turn to.

21 If counsel can bring up Exhibit C-204?

22 **MR DAGA:** 201?

23 **MR PEREZCANO:** 204. I don't know what tab
24 it may be, but it's 204.

25 **MS VASANI:** Tab 57 in Claimant's bundle,

1 volume 2.

2 **MR PEREZCANO:** So if you look there in the
3 bottom half of the page, that's an e-mail from Mr
4 Fausto Mabota.

5 **MR DAGA:** Yes.

6 **MR PEREZCANO:** That's May 5, 2011. It is
7 in Portuguese and I know you've told us you don't
8 speak Portuguese, but the third line there on that
9 e-mail it says -- this will be my personal
10 translation, but it says -- "We considered in this
11 draft all of the points that we discussed with his
12 excellency, the minister". So I take it that he
13 was -- there was a meeting with Minister Zucula --
14 I'm not sure when but it was between May 3rd
15 and May 5th of 2011 that Mr Mabota attended the
16 meeting and then he made revisions to the draft that
17 was discussed.

18 Do you recall that meeting with Minister
19 Zucula? So, again, it was between May 3 and May 5
20 before the meeting where the MOI was signed. Do you
21 recall that meeting?

22 **MR DAGA:** Sir, I don't recall that Mr
23 Fausto has come in any meeting with Mr Prabhu.
24 I don't recall now. If he would have come, he would
25 have come with Mr Prabhu only, to discuss and to

1 write some notes, but as far as my memory goes,
2 I don't think that Mr Fausto has attended any
3 meeting. Mr Prabhu has come with me always in the
4 meeting. Mr Caldeira has come whenever we have
5 discussed on the Portuguese version. These two
6 gentlemen were always there with me. But I don't
7 remember, sir, Fausto. What Fausto was always
8 communicating on behalf of Mr Prabhu.

9 **MR PEREZCANO:** OK. But this meeting -- do
10 you recall if you were present at this meeting with
11 Minister Zucula?

12 **MR DAGA:** Almost all meetings with
13 Mr Zucula -- rather, all meetings with Mr Zucula
14 I was present.

15 **MR PEREZCANO:** And this was a meeting
16 that -- I assume that it was either conducted in
17 Portuguese or, at any rate, it was a Portuguese
18 version of the MOI that was discussed, so I don't
19 know if that helps you recollect.

20 **MR DAGA:** Sir, I don't remember that we
21 have discussed Portuguese version with Mr Zucula any
22 time. We have discussed with Mr Chaúque always and
23 Dr Muhate, as far as my memory goes.

24 **MR PEREZCANO:** OK. Now, I want to ask you
25 about another person. Mr Mondlane Junior.

1 **MR DAGA:** Mondlane Junior.

2 **MR PEREZCANO:** Yes. So if I recall
3 correctly you told us that he was consultant to PEL?

4 **MR DAGA:** Yes, consultant for the mining
5 concessions. Tantalite.

6 **MR PEREZCANO:** So PEL retained Mr
7 Mondlane.

8 **MR DAGA:** Junior Mondlane.

9 **MR PEREZCANO:** And then he was also --
10 I just want to understand, did he go to Odebrecht
11 later or was he also a consultant, because you met
12 with him 6 August 2012, and I just wanted to get
13 if -- after Minister Zucula suggested that Patel
14 meet with Odebrecht and there was an exchange of
15 e-mails with, A, Mr Suarez.

16 **MR DAGA:** Secretary of Mr Zucula.

17 **MR PEREZCANO:** Yes, this was suggested by
18 Ms Cuamba.

19 **MR DAGA:** Yes. She only attends that
20 meeting.

21 **MR PEREZCANO:** And after an exchange of
22 e-mails you met on 6 August 2012 with Mr Mondlane --
23 Junior Mondlane, but who was a representative of
24 Odebrecht at that time so --

25 **MR DAGA:** Now I can recall this. He is

1 not this Mondlane what I am talking as a consultant
2 for tantalite concession. He was Eddie Mondlane,
3 grandson of the ex president, first president of
4 Mozambique, and he was working as a country head of
5 Odebrecht in Mozambique. That was Eddie Mondlane.
6 I remember now. I met him in Hotel Polana, not in
7 ministry.

8 **MR PEREZCANO:** So Eduardo Mondlane Junior
9 is not the same person.

10 **MR DAGA:** No. They are two different
11 Mondlanes. One Mondlane was consultant for my
12 tantalite concession. He was a geologist. He was a
13 local Mozambican. But this Junior Mondlane what is
14 referred here from Odebrecht, he was Mr Eddie
15 Mondlane. He I think grandson or great grandson of
16 Mr Mondlane, first president of Mozambique.

17 **MR PEREZCANO:** That clarifies that. Thank
18 you. I want to ask you were you involved in any way
19 in the project in India concerning the National
20 Highway Association of India where Patel was barred
21 temporarily from participating in certain projects.
22 Were you involved in that at all?

23 **MR DAGA:** No, in that project I was not
24 involved because that was the tender stage project.

25 **MR PEREZCANO:** I'm sorry?

1 **MR DAGA:** Tender stage project. But I was
2 aware of this development, and I was knowing this
3 development.

4 **MR PEREZCANO:** This is just for my own
5 benefit. I note that there was -- Patel had to
6 submit a security in that process, tendering
7 process, in the amount of 13.97 crore.

8 **MR DAGA:** Yeah.

9 **MR PEREZCANO:** And I just wanted to ask
10 you what that would equate in US dollars.

11 **MR DAGA:** At that time --

12 **MR PEREZCANO:** It doesn't have to be
13 precise.

14 **MR DAGA:** Around \$30, \$35 million.

15 **MR PEREZCANO:** A million dollars?

16 **MR DAGA:** 30, 35. But that was a big
17 security.

18 **MR PEREZCANO:** OK.

19 **MR DAGA:** In India they say earnest money
20 deposit.

21 **MR PEREZCANO:** OK. All right, thank you,
22 Mr Daga. Mr President, those are my questions.

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

24 **PRESIDENT:** Very good.

25 I have -- Mr Daga, we are almost through.

1 You had local accountants. You referred
2 to them, and you have just referred to them also
3 when asked by my colleague. Did you have a local
4 corporation? Did you have a corporation, a branch,
5 an office in Mozambique?

6 **MR DAGA:** We did not have any local branch
7 of Patel Engineering in Mozambique. We had some
8 mining -- when we applied for mining concessions we
9 registered some companies there on behalf of Patel,
10 almost around 11 or 12 companies registered, to take
11 the mining concessions. Each concession was taken
12 in each different name.

13 **PRESIDENT:** And this is why you needed a
14 local accountant?

15 **MR DAGA:** Yes, sir.

16 **PRESIDENT:** I have a last question for
17 you. You remember, because there was -- you were
18 examined on these documents -- the letter from
19 Minister Zucula in which he informed you that in the
20 10th session of the Council of Ministers, a certain
21 decision had been taken with regard to the project,
22 and then you remember also that there was -- the
23 10th session was on the 18th of April.

24 **MR DAGA:** That letter dated 18th of April.

25 **PRESIDENT:** Yes. And the session, I think

1 it was on the 18th of April or 17th of April.

2 **MR DAGA:** 16th of April.

3 **PRESIDENT:** Or 16th of April.

4 **MR DAGA:** 16th of April.

5 **PRESIDENT:** Thank you. And then the 12th
6 session, you remember there was a 12th session of
7 the Council of Ministers which was two weeks
8 thereafter on the 30th of April, and you received a
9 letter from Mr Chaúque in which he informed you of
10 their decision taken in the 12th session.

11 **MR DAGA:** 13th of May.

12 **PRESIDENT:** Yes. Two weeks later.

13 **MR DAGA:** Two weeks.

14 **PRESIDENT:** Two weeks later for you to
15 receive the letter.

16 And my question to you is the following.
17 Did Minister Zucula or Mr Chaúque ever give you an
18 explanation of why the Council of Ministers in the
19 10th session took one decision and in the 12th
20 session took another decision?

21 **MR DAGA:** No, never. They have never
22 given an explanation to this. It was surprising for
23 us. We have asked repeatedly. I personally asked
24 them, but there was no answer to this.

25 **PRESIDENT:** You never received an

1 explanation?

2 **MR DAGA:** No, never received, sir. And
3 being a diplomatic question means I'm doubting the
4 Council of Ministers, so it may jeopardise my mining
5 concessions, that's why I have not gone too harsh on
6 that, but softly I was speaking to him always to
7 find out why this has happened, why first you have
8 decided you will not go for tender, you approved my
9 PFS, you will say that, yes, you start negotiation
10 to implement the project, to implement the project
11 means I would have a project in my hand, and then
12 you are changing that no, we will go for tender.
13 Then you are changing, no, in the national interest,
14 strategic interest, national strategic interest, we
15 go with you and we will award, you submit the bank
16 guarantee.

17 Before submission of the bank guarantee
18 they already decided that, yes, we will go for the
19 tender, but they have accepted my bank guarantee,
20 which was returned later date, fine.

21 **PRESIDENT:** My question was whether
22 Minister Zucula gave you any explanation.

23 **MR DAGA:** No. No explanation, sir.
24 Never.

25 **PRESIDENT:** Thank you.

1 Thank you very much, Mr Daga, for your
2 patience, and you are relieved from your duties to
3 the Tribunal. Yes, Ms Vasani?

4 Further Examination by Claimant

5 **MS VASANI:** May I just ask one question
6 and also a clarification for Mr Perezcano?

7 You had asked about the conversion of --
8 and I have a hard time with that as well because
9 it's a very difficult concept. In Claimant's Reply
10 on the Merits at paragraph 671 we did the
11 calculation at that time. It was approximately
12 \$3 million, US dollars, not 35.

13 I just wanted -- I also understood your
14 questions in relation to the meeting before. That
15 is referenced in paragraph 42 of Mr Daga's first
16 witness statement. I don't know if it would be
17 helpful for him to look at it and refresh his
18 memory. I leave that to the Tribunal.

19 **MR DAGA:** Yes, my apology for the
20 calculation mistake. I think you expressed me 13.9
21 crore. So 13.9 crore, 139 million. 139 divided by
22 40, so 3 million. What she is saying is correct,
23 not 30. Legal counsel is right. My calculation
24 mistake. My apology.

25 **MR PEREZCANO:** No worries. Thank you for

1 the clarification.

2 On paragraph 42 I think there were
3 separate meetings, but anyhow, I've taken note of
4 that. Thank you.

5 **PRESIDENT:** Very good. So we now break.
6 It is 10.52. We will come back at 11.10 or 11.15,
7 and we continue with Minister Zucula.

8 (Short break from 10.53 am to 11.17 am)

9 PAULO FRANCISCO ZUCULA

10 (with the aid of the Interpreters)

11 **PRESIDENT:** We resume the hearing, and we
12 do so in order to examine Mr Paulo Francisco Zucula.

13 Good morning, Minister.

14 **MR ZUCULA:** Thank you very much and a very
15 good morning to you.

16 **PRESIDENT:** Mr Zucula, you are here as a
17 witness, and, as a witness, first thing we have to
18 do is to take your oath. Can I kindly request you
19 to stand up? We all stand up. And raise your right
20 hand.

21 Do you solemnly declare upon your honour
22 and conscience that you will speak the truth, the
23 whole truth and nothing but the truth?

24 **MR ZUCULA:** Yes, I so declare.

25 **MR BASOMBRIO:** Excuse me, Mr President.

1 Before we started with the two witnesses we had one
2 point of order to raise.

3 **PRESIDENT:** Yes, of course. I wanted to
4 make a point to Mr Zucula. Maybe it refers to your
5 point of order. Can I make the clarification and
6 then I give you the floor?

7 **MR BASOMBRIO:** Yes, please. Thank you.

8 **PRESIDENT:** Minister Zucula, you are here
9 as a witness and there will be a number of questions
10 to you. I understand that there are some criminal
11 procedures in Mozambique which may or not affect
12 you, and that you -- let me clarify that you are
13 entitled not to provide any answer to questions
14 which may have a relevance in these criminal
15 procedures, and so that if you, at some question,
16 you prefer to use your right not to answer, the
17 Tribunal would understand that.

18 **MR ZUCULA:** Duly understood. Thank you
19 very much.

20 **PROFESSOR TAWIL:** The question is in
21 English, the answer is in Portuguese in the English
22 channel this is channel 1 in English.

23 Can I say something in English.

24 **PRESIDENT:** Let's do the following. Let's
25 hear the questions from -- points of order which Mr

1 Basombrio has and we will do English and will break
2 if necessary. Mr Basombrio, you had two points of
3 order?

4 **MR BASOMBRIO:** Yes, thank you,
5 Mr President. Actually, I only have one, and it
6 relates to how the Portuguese and English is going
7 to be translated.

8 Here is the issue. There are three terms
9 that are very important as to how they are
10 translated. One is *direito de preferência* in
11 Portuguese. The second term is right of preference
12 in English, and the third term is right of first
13 refusal in English.

14 Our request is that the translators do not
15 translate those terms when they are used by counsel
16 or the witness, and just use them in their original
17 language. So, for instance, if Mr Zucula says
18 *direito de preferência*, we don't want the translator
19 to translate that into "right of first refusal". If
20 counsel is requesting about right of first refusal,
21 we want to make sure Mr Zucula understands that
22 that's the question, that they're not asking about
23 *direito de preferência*, because, for obvious
24 reasons, the transcript is going to become very
25 confused and inaccurate.

1 So that would be our point of -- to raise
2 with you, that *direito de preferência* be used in
3 Portuguese, regardless of whether it's the English
4 or the Portuguese translations that are being done
5 by the translators, and that "right of preference"
6 and "right of first refusal" similarly be used only
7 in English.

8 **PRESIDENT:** Thank you. Thank you, Mr
9 Basombrio. Is there any --

10 **MR VASANI:** No, thank you, Mr President.
11 I don't think I have any particular preference
12 because I think the Tribunal understands the
13 disagreement between the parties, and I don't think
14 it's going to make any difference to the Tribunal's
15 determination as to how it's translated. There may
16 be moments in the cross-examination where I may want
17 to distinguish between the two, and I will make that
18 clear, but other than that I will be saying "right
19 of first refusal", but how that's translated for the
20 transcript I don't mind, as long as the Tribunal
21 understands that it is our position that it is a
22 right of first refusal.

23 **PRESIDENT:** I think it's a good proposal.
24 I don't know if the interpreters are hearing me.
25 Can they make a sign? Yes, thank you.

1 So could I kindly ask you that whenever in
2 Portuguese *direito de preferência* is used, you use
3 that same expression in English, and whenever in
4 English the expression "right of preference" or
5 "right of first refusal" is used, that you do not
6 translate that into Portuguese and you use it in
7 English.

8 Excellent. Thank you, Mr Basombrio.

9 **MR BASOMBRIO:** Thank you. That's all.

10 **PRESIDENT:** How is the -- do we need to
11 have a break? Very good. Mr Zucula, we will have a
12 short break because of technical difficulties with
13 the interpretation. I beg for your understanding.

14 (Short break from 11.28 am to 11.40 am)

15 **PRESIDENT:** Is this working? Excellent.

16 So thank you for your patience, Mr Zucula.
17 We give now the floor to the Republic of Mozambique
18 for the direct examination of the witness.

19 Examination by Respondent

20 **MS BEVILACQUA:** Mr Zucula, you have before
21 you your two witness statements. Can you turn to
22 the last page of your first witness statement? This
23 is the statement dated 15 March 2021.

24 **MR ZUCULA:** Yes.

25 **MS BEVILACQUA:** And is that your signature

1 on the last page?

2 **MR ZUCULA:** Yes, it is.

3 **MS BEVILACQUA:** Do you have any
4 corrections or amendments that you wish to make to
5 your witness statement?

6 **MR ZUCULA:** No, I do not have any
7 amendment or correction.

8 **MS BEVILACQUA:** Thank you.

9 Would you please look at your second
10 witness statement? The last page. This is dated
11 22 November 2021. Could you answer audibly?

12 **MR ZUCULA:** Yes.

13 **MS BEVILACQUA:** Is that your signature on
14 the last page?

15 **MR ZUCULA:** Yes, it is my signature.

16 **MS BEVILACQUA:** Do you have any
17 corrections or amendments to your second witness
18 statement?

19 **MR ZUCULA:** No.

20 **MS BEVILACQUA:** Thank you. We have no
21 further questions.

22 **PRESIDENT:** Minister Zucula, before I give
23 the floor to counsel to the Claimant, can I kindly
24 ask you that you first listen to the question which
25 is being asked to you; that these questions will be

1 put to you in a way that you can answer with a yes,
2 no, or I don't know, I don't remember, and I would
3 kindly ask you that you first state yes, no, or
4 I don't know/I don't remember, and then you are
5 welcome to add any clarification you would like to
6 give to further inform the Tribunal.

7 **MR ZUCULA:** Thank you very much. Duly
8 noted and understood.

9 **PRESIDENT:** Mr Vasani will now put some
10 questions to you on behalf of the Claimant.

11 **MR VASANI:** Thank you. Mr President.
12 Cross-examination by Claimant

13 **MR VASANI:** My name is Baiju Vasani. I am
14 counsel for the Claimant and I'm going to ask you
15 some questions over the course of today. My
16 colleague, Ms Kuznetsova, is going to sit next to
17 you and hand you the files. I hope you don't mind
18 her presence there, sir.

19 **MR ZUCULA:** Yes, perfect.

20 **MR VASANI:** We didn't get a translation
21 to -- I think he said "Perfect", but I didn't hear
22 the translation and there's nothing on the record.

23 **PRESIDENT:** Mr Zucula, I am told that the
24 interpretation has to be done manually, the
25 switching of channels, and so we will have to make a

1 short break between each question and the answer so
2 that the interpreters have time to switch channels.

3 **MR ZUCULA:** Very well, thank you.

4 **PRESIDENT:** Can I ask you to speak up
5 because the distance -- that's much better. Then
6 let's do this. Let's break for lunch and -- shall
7 we break for lunch and come back once it is solved?
8 I am now speaking in English? No, I'm not.
9 Apparently --

10 **THE INTERPRETER:** The interpreters confirm
11 that they can hear the president speaking English
12 and are interpreting that English into Portuguese.

13 **PRESIDENT:** Do we need some time? Shall
14 we break for lunch? Off the record now 1, 2, 3.
15 Nothing on floor channel.

16 (Technical issue)

17 (Luncheon adjournment from 11.53 am to 1.27 pm)

18 **PRESIDENT:** Very good. We resume the
19 hearing after all these technical difficulties. The
20 secretary has asked me, for the record that is
21 correct, we give a time check.

22 **MS JALLES:** This morning in the
23 cross-examination of Mr Kishan Daga Respondent used
24 50 minutes, 29 seconds, and in redirect, Claimant
25 used four minutes, so right now the total is seven

1 minutes and 45 for Claimant and six hours and one
2 minute for Respondent.

3 **PRESIDENT:** Very good. Thank you very
4 much.

5 Minister Zucula, thank you for your
6 patience and being here with us. Now, without any
7 further technical glitches, I give the floor to
8 Mr Vasani on behalf of Claimant.

9 **MR VASANI:** Thank you, Mr President.
10 Mr Zucula, good afternoon. Let's try this again.

11 You have elected to testify in Portuguese,
12 which is of course your right. But it's correct,
13 isn't it, that you are fluent in English?

14 **MR ZUCULA:** I understand and speak
15 English.

16 **MR VASANI:** Can you tell us what role or
17 position do you hold in government today, if any?

18 **MR ZUCULA:** No, I have no governmental
19 position at this point in time.

20 **MR VASANI:** So you are entirely a private
21 citizen at this stage?

22 **MR ZUCULA:** I remain a civil servant, but
23 I have no assigned role. I'm going through the
24 motions for retirement.

25 **MR VASANI:** Are you still paid by the

1 government?

2 **MR ZUCULA:** Yes, as a retiree.

3 **MR VASANI:** Now, you became Minister of
4 Transport and Communication in March 2008, correct?

5 **MR ZUCULA:** Yes, indeed.

6 **MR VASANI:** And you were then dismissed
7 from your post in December 2013, yes?

8 **MR ZUCULA:** I was exonerated in 2013.

9 **MR VASANI:** So you were Minister of
10 Transport and Communication for just under
11 six years, by my calculations?

12 **MR ZUCULA:** Correct.

13 **MR VASANI:** Now, your ministry is, and
14 was, responsible for all matters relating to air,
15 roads, rail and ports, correct? Among other things.

16 **MR ZUCULA:** Yes. Road transport had
17 nothing to do with roads and bridges.

18 **MR VASANI:** But air, rail, and ports were
19 part of your ministry's mandates, correct?

20 **MR ZUCULA:** Yes, indeed.

21 **MR VASANI:** And you'd also be aware that
22 Mozambique has significant commercially important
23 and untapped deposits of minerals, especially coal.
24 That's correct, isn't it?

25 **MR ZUCULA:** Yes, I am aware.

1 **MR VASANI:** And one of the key factors in
2 whether the country will realise the benefits of
3 those deposits is if there is efficient
4 transportation within Mozambique and for exports,
5 yes?

6 **MR ZUCULA:** Yes, indeed.

7 **MR VASANI:** And so transportation of
8 minerals was an important function for the ministry
9 of which you were in charge?

10 **MR ZUCULA:** Sorry, the transport of
11 everything. Not just minerals.

12 **MR VASANI:** But part -- an important
13 part -- of your mandate was transportation in
14 relation to minerals, yes?

15 **MR ZUCULA:** Yes. Perhaps I can explain
16 further. The transport issue in Mozambique is --
17 predates our becoming aware of our mineral
18 potential. Our number one problem started out with
19 the internal transport of farming produce. Our
20 awareness of minerals made it possible for us to
21 look for a way of improving our transport system
22 paid for by the transport of more precious minerals
23 such as coal, but the issue was not limited to the
24 transport of minerals.

25 **MR VASANI:** I understand.

1 So increasing the transportation of coal
2 was a key mandate of your ministry?

3 **MR ZUCULA:** It was quite an important
4 aspect, yes, with a view to making it feasible for
5 us to go about building the infrastructure that we
6 were already missing.

7 **MR VASANI:** Indeed.

8 Let's have a look at a map so we can
9 orient ourselves with the Mozambique coastline. If
10 we can go to C-197, and I am going to use a hard
11 copy bundle, which is Core Bundle volume 2, tab 53,
12 I have it up on the screen, but my colleague will
13 also place it in front of you, now this is a
14 slightly later map because it shows the Macuse
15 corridor that reflects PEL's project. What I want
16 to just look at is the geography for a second.

17 Tete on the left-hand side of the page,
18 that's where the majority of the coal deposits are.
19 That's correct, right?

20 **MR ZUCULA:** That's where we are aware of
21 the existence of the majority of the coal deposits,
22 yes, but there's exploration ongoing across the
23 country. So so far this is Tete, the region where
24 we have most data about.

25 **MR VASANI:** And then you see on this map

1 the railway line. It's meant to be green, but I
2 think you have -- I don't know if you have a black
3 and white page -- no, you have a colour page -- it
4 says Nacala Corridor, and you can see it goes sort
5 of up the page and then out to somewhat near the top
6 of the map, which is the port of Nacala, yes? Do
7 you see that?

8 **MR ZUCULA:** Yes, I can see that.

9 **MR VASANI:** And then what is called the
10 Macuse corridor, which of course we know is what is
11 reflective of PEL's project, that goes down in a
12 straighter line to the Zambezia coast at Macuse,
13 yes? You see that?

14 **MR ZUCULA:** Yes, I can.

15 **MR VASANI:** Now, it seems to me
16 geographically obvious that it would be better and
17 more efficient to have a rail line from Tete to
18 somewhere on the Zambezia coast, but I would suggest
19 the fact that such a line was not built and instead
20 was through Nacala and further south on the map is
21 because the government either did not think it's
22 feasible or did not have it as a high priority.

23 **MR ZUCULA:** Apologies, I did not
24 understand the question. Could you please repeat it
25 for me?

1 **THE REPORTER:** I didn't hear his answer.

2 **MR VASANI:** He said he didn't understand.
3 I'll repeat. It seems to me geographically obvious
4 that the straighter line to the coast would be more
5 efficient than the Nacala corridor or a port further
6 down south on the Mozambique coast, and I'm putting
7 to you the point that if the government considered
8 it feasible it would have built, or would have
9 considered it a high priority to build, a railway
10 line and port on the Zambezi coast.

11 **MR ZUCULA:** Like I said at the beginning,
12 the Mozambican transport system, the logistics
13 system, is not dictated by coal.

14 **MR VASANI:** Sir, could you repeat your
15 answer?

16 **MR ZUCULA:** I was saying that, like I said
17 at the outset, the Mozambican transport system, the
18 logistics system, is not dictated by coal. Coal is
19 an important commodity but one whose demand
20 fluctuates. We cannot design Mozambican
21 infrastructure giving pride of place to one
22 commodity. These corridors, as you can see, were
23 drawn by us -- as you can see on the map were drawn
24 by us, and respond to the interests of SADC
25 countries, ie countries in the southern region of

1 Africa, hinterland, without access to ports, Malawi,
2 Zimbabwe, Zambia, Tanzania, Botswana and a great
3 many others. So that's the first reason that
4 explains the existing development corridors which
5 predate our awareness of the coal deposits, so this
6 is the main criterion which dictates the strategy
7 that we see depicted on this map. Coal comes later.

8 As an additional issue, that may help to
9 render feasible the implementation of this
10 preconceived system, irrespective of the existence
11 of coal.

12 **MR VASANI:** It was PEL that first
13 introduced the concept of a corridor from Tete to
14 Macuse, wasn't it?

15 **MR ZUCULA:** No, it was not. Macuse
16 already was a port even in colonial days that was
17 used for the transport of coconut. In the coast of
18 Zambezi, Mozambique had one of its largest coconut
19 plantations from the '60s and the Macuse port had
20 been there from that point in time onwards. We
21 reintroduced this concept on two main grounds
22 because coconut was no longer important in market
23 terms, so two main reasons.

24 First, we wanted to connect to Asiana
25 which is a set of Asian countries. We wanted to

1 connect Asian countries with SADC countries through
2 Macuse and a port through Asian countries, namely
3 with a view to opening the route to Asia.

4 So before I ever heard of Patel, the
5 Macuse corridor was already part of our new strategy
6 that had been in existence since 2008. It was not
7 Patel that introduced the Macuse corridor concept.
8 Patel was perhaps amongst the first to indicate an
9 interest in co-developing this corridor with us, but
10 it did not author the concept.

11 **MR VASANI:** A coconut port is not the same
12 as a deep water port with coal ships, is it?

13 **MR ZUCULA:** Of course not.

14 **MR VASANI:** Let's see what we have on the
15 record with regard to the government strategy.
16 Let's turn, please, to RLA-15, that's in Portuguese.
17 The English is CLA-357, Core Bundle volume 5, 132,
18 and that is the Council of Ministers Resolution No
19 37/2009 dated June 2009.

20 For your reference, Mr Zucula, this is a
21 document that Respondent says proves that this
22 corridor was its concept. And if we turn to page
23 50, there are references at the top so you should
24 see a page 50, and we have it up on the screen, too.
25 Paragraph 3.2.3.5, 3.2.3.5 on page 50.

1 I'm going to depart from Nhamayabué in the
2 district of Mutarara. You see that line 4? Are you
3 with me?

4 **MR ZUCULA:** Yes, I am with you.

5 **MR VASANI:** It crosses the district and
6 then several names to connect with the railway line
7 in Nacala in Mutuali. This railway line shall have
8 a fundamental influence on the development of
9 Zambezia province with its undeniable economic
10 importance considering its great agricultural mining
11 and tourism potential and will increase the capacity
12 to move coal from Moatize that could be exported
13 through the port of Nacala.

14 And then it says line 4 will be served by
15 the following roadways, and then it's got a list of
16 roadways which you said was not part of your
17 mandate, then it says line 4, as well as featuring
18 the ports of Beira and Nacala, will be able to
19 complement and make feasible the ports of Quelimane,
20 Macuse, Pebane and perhaps the future possible ports
21 of Savane and Chinde.

22 So my question is this. This strategy
23 paper tells us that the government in 2009 was to
24 continue to develop the Tete to Nacala and Tete to
25 Beira corridors with the idea that sometime in the

1 future, using roadways, that strategy may make
2 feasible other ports which happens, among many, to
3 include Macuse. That's what this tells us about the
4 government strategy in '09, isn't it.

5 **MR ZUCULA:** Indeed, this document now
6 being shown, if I may, give me one second to check
7 at the beginning thereof. (Pause)

8 **MR VASANI:** Minister Zucula, are you not
9 familiar with this document?

10 **MR ZUCULA:** I may be, but this was more
11 than ten years ago. I left government in 2013. So
12 many documents went through my desk, I'm just
13 refreshing my memory, if I may.

14 **MR VASANI:** Of course. But you were the
15 minister in charge at this particular time, and this
16 is what Mozambique says is the key strategies for
17 your ministry at that time.

18 **PRESIDENT:** Let the minister have a look.

19 **MR VASANI:** Of course. I said,
20 Mr President, of course he may.

21 **PRESIDENT:** Take your time and look at the
22 document.

23 **MR ZUCULA:** Thank you very much.
24 (Technical issue).

25 **PRESIDENT:** Minister Zucula, you will have

1 to repeat your answer. I'm sorry for that.

13:49

2 **MR ZUCULA:** I was saying that I could
3 identify that this document is a resolution
4 approving the integrated transport development
5 strategy, and as a governmental resolution it
6 summarises the strategy. It does not reproduce the
7 entirety of the strategy. Nevertheless it does
8 say -- I must remind you, say it again -- that what
9 we wanted to make feasible is the entirety. This
10 part that refers to Nhamayabué, Mutarara, Muzembaba,
11 Milange, et cetera, is another corridor. This is
12 not the Macuse corridor. It was another corridor
13 that was to operate on the strength of a project
14 that we had with a Portuguese company in this other
15 area that was going to plant eucalyptus for a paper
16 pulp industry, and that could also be used for coal,
17 ie the transport system. But it was more focused on
18 farming products.

19 Lower down in the same document it does
20 say that in future this line may also -- may be used
21 to make the port of Macuse north of Quelimane and
22 another port of Savane, south of Quelimane,
23 feasible.

24 **MR VASANI:** Mr Zucula, nothing in this
25 document that summarises the position just before

1 PEL came into the country even suggests a Tete to
2 Macuse corridor with a deepwater port in Macuse,
3 does it?

4 **MR ZUCULA:** I'm very sorry. I did not
5 understand.

6 **MR VASANI:** Nothing in this document that
7 summarises the ministry's strategy just before PEL
8 came into the country even suggests a Tete to Macuse
9 corridor with a deepwater port in Macuse, does it?

10 **MR ZUCULA:** No, of course. But what I'm
11 saying is that the strategy goes beyond this
12 document. There's another document entitled
13 "Strategy" that does suggest that before PEL make it
14 to Mozambique. This is not the strategic -- this is
15 not the strategy document. This reproduces the
16 approval by the Council of Ministers of the
17 strategy.

18 **MR VASANI:** If that was a highlight of the
19 underlying document, it would have made it onto this
20 summary, wouldn't it?

21 **MR ZUCULA:** But it is mentioned. It is
22 mentioned. Line 4 is to be fed by Milange and a
23 series of other names, and may complement and render
24 feasible the ports of Quelimane, Macuse and Pebane.
25 It is said here. What's not said here is whether

1 this Macuse line is or is not a first priority, but
2 it is already stated that it will render feasible
3 the ports of Quelimane, Macuse and Pebane.

4 **MR VASANI:** Do you recall a workshop that
5 you hosted as Minister of Transport and
6 Communication in November 2009 in Macuto with the
7 Africa Infrastructure Country Diagnostic (it is part
8 of the World Bank) where railways and ports of
9 Mozambique were discussed specifically in relation
10 to the coal sector?

11 **MR ZUCULA:** Not specifically, no, but if
12 it was organised by the World Bank, it probably was
13 not devoted to discussing our strategy. But I have
14 no recollection of that specific workshop.

15 **MR VASANI:** If I can refresh your
16 recollection, there was the Minister of Energy as
17 well, the Minister of Public Works, and it was
18 dedicated exclusively to the transport sector and
19 its relationship to the energy sector. Do you
20 recall?

21 **MR ZUCULA:** I don't remember that one
22 specifically. I do remember several exchanges on
23 that very topic. If I may, I can explain further.

24 When we were drafting the strategy, when
25 we were still drafting the strategy, we had several

1 round tables, workshops, to discuss the very
2 strategy with other sectors, going at it by stages,
3 so as to get the input from all stakeholders,
4 hopefully a consensus, downstream or as a part of
5 our drafting of the strategy. But we had a great
6 many other workshops as well. I remember workshops
7 organised by the World Bank that focused on SADC
8 countries, southern Africa countries. This one may
9 well have taken place, but I have no specific
10 recollection thereof because several similar ones
11 were held with the Ministry of Transport.

12 We had discussed our strategy with
13 agriculture, with energy, with mines, with mineral
14 resources, with all ministries that involved, that
15 had logistical issues under their aegis and
16 therefore we exchanged with all of them. Therefore,
17 this one very likely took place because it was
18 energy. It makes sense that it took place.

19 **MR VASANI:** And none of those discussions
20 with the World Bank or with your sister ministries
21 in energy and public works at this same relevant
22 time just before PEL came into the country ever
23 discussed the concept of a corridor between Tete and
24 the Zambezi coast with a deep water port in Macuse,
25 or frankly anywhere on the Zambezi coast, did it?

1 **MR ZUCULA:** I'm sorry. Excuse me for
2 insisting and persisting. The port of Macuse, the
3 corridor of Macuse, is a very old corridor in
4 Mozambique. It has been known for quite some time.
5 It was not created by Patel. This is an initiative
6 by the government.

7 The way in which it slotted into the
8 priorities at each point in time differed, but it's
9 been part of the development strategy of the
10 transport and logistics system of the country from
11 colonial days, from the '60s, and, of course, it
12 morphed into several successive versions, and the
13 issue in question went up or down the priority scale
14 with the passing of time.

15 So it was not from PEL that we found out
16 about Macuse. Macuse was already in our radar.
17 Zambezi was already in our radar. That's what
18 I wanted to underscore. And the fact that it is not
19 spelled out explicitly in this manner in this
20 document doesn't mean a thing because this is not
21 the only document with which the Government of
22 Mozambique runs the transport sector in Mozambique.
23 This is one of them, not the only one.

24 **MR VASANI:** OK. Let's move on, please, to
25 the events leading up to the execution of the MOI.

1 Now, within MTC you have a team of
2 engineers, don't you?

3 **MR ZUCULA:** I'm not sure at this point in
4 time if the ministry had engineers -- but we did
5 have engineers across the SOEs under the aegis of
6 the ministry. I'm not certain whether we had them
7 at the ministry. The criterion on the strength of
8 which people were seconded to the head office of the
9 ministry was not a degree in engineering, but we
10 could have engineers, yes.

11 **MR VASANI:** Fair enough. But you had
12 engineers available to you?

13 **MR ZUCULA:** Available for?

14 **MR VASANI:** Available for your use, for
15 your consultations.

16 **MR ZUCULA:** Like I said, the ministry has
17 two sections. On the one hand, we had State staff
18 and the criterion for accession thereto is not a
19 degree in engineering. We could have engineers, but
20 they were not there as such as engineers. Then we
21 have SOEs, state-owned enterprises, which did have
22 engineers in different specialties -- mechanics,
23 transport, aeronautics -- but these were mostly
24 under each SOE, which of course does not imply that
25 nobody at the Ministry had any engineering

1 qualification.

2 **MR VASANI:** And this team, writ large
3 under the umbrella of MTC and SOEs, they had
4 expertise in rails and ports, correct?

5 **MR ZUCULA:** Only those working for the
6 railways had qualifications for railways and ports.
7 The ministry serves a more regulatory and political
8 role, not technical as such. The techs' with
9 railway engineering knowledge were in the SOEs. The
10 same way in which I'm somewhat familiar with the
11 Ministry of Transport for Portugal, they too have an
12 SOE that dealt with railways which until recently
13 was called Carris, and that's where the experts in
14 railways are, not necessarily in the ministerial
15 apparatus.

16 **MR VASANI:** Now, it was you who
17 recommended Dr Muhate to work with PEL to complete
18 the Preliminary Study, wasn't it?

19 **MR ZUCULA:** Probably, yes.

20 **MR VASANI:** You don't recall?

21 **MR ZUCULA:** I can't remember who
22 I allocated to that task, but probably I could have
23 appointed Mr Muhate.

24 **MR VASANI:** And Mr Muhate is an engineer,
25 isn't he?

1 **MR ZUCULA:** Yes, but he wasn't at the
2 ministry in the role of engineer. He was in the
3 ministry because he had been deputy Minister of
4 Transport much before my time, and he was somebody
5 who I used as an advisor, not as an engineer. He
6 could be an engineer, I can't remember his technical
7 qualifications. He wasn't there as an engineer but
8 as an advisor based on the experience that he had
9 been a deputy minister of this ministry.

10 **MR VASANI:** OK. So you trusted his
11 experience and expertise as an advisor?

12 **MR ZUCULA:** As an advisor, I listened to
13 his opinion, but it wasn't the final decision, his
14 opinion.

15 **MR VASANI:** Did you also choose Mr Ruby to
16 join the team, or was that Mr Muhate who chose
17 Mr Ruby?

18 **MR ZUCULA:** I don't know who Mr Ruby is.

19 **MR VASANI:** Fair enough.

20 Now, in the Preliminary Study your
21 advisor, Dr Muhate, confirmed to you that the
22 concept of a corridor between Tete and Macuse that
23 PEL was suggesting was one worth exploring further,
24 didn't he?

25 **MR ZUCULA:** I can't recall.

1 **THE INTERPRETER:** Or I don't remember, if **14:04**
2 you prefer.

3 **MR ZUCULA:** Mr Muhate participated in
4 drawing up the strategy before we knew Patel. Many
5 staff from the ministry helped me draw up the
6 strategy, but the opinion of each one, I don't
7 remember today. But obviously it was the opinion of
8 each one that helped shape the strategy, but I can't
9 remember in detail how that strategy was drawn up
10 back in 2008, more than ten years ago. I can't
11 remember the opinion of each advisor in relation to
12 each of the corridors.

13 **MR VASANI:** Mr Zucula, did you not look at
14 the Preliminary Study in preparation for this
15 hearing or your witness statements?

16 **MR ZUCULA:** What didn't I study?

17 **MR VASANI:** The Preliminary Study prepared
18 by Dr Muhate as part of your witness statement for
19 this hearing.

20 **MR ZUCULA:** No, I didn't study it.

21 **MR VASANI:** But you knew Dr Muhate
22 conducted it?

23 **MR ZUCULA:** No, I don't remember. I don't
24 remember that Mr Muhate had been the author of such
25 study. I don't remember. He might have written

1 something. He might have written an opinion, a
2 statement for my reading. I can't remember the
3 content but, as I've told you, he wasn't the only
4 staff member. It wasn't the only strategy. He
5 wasn't the only person working on the strategy.

6 Many people worked on the strategy, and
7 I don't remember today what each contributed.

8 **MR VASANI:** You entered into negotiations
9 over the MOI because Dr Muhate told you in the
10 Preliminary Study that this was a project to explore
11 further.

12 **MR ZUCULA:** No, it can't have been like
13 that. I've said from day one that the strategy
14 already knew about the existence of Macuse. What I
15 remember, when I started talking to Patel, or the
16 company Patel, it was a hearing between myself and a
17 two-member team of Patel who came to present their
18 interest in developing this corridor.

19 And let me underline this, and I'll repeat
20 this. This corridor was already part of our
21 strategy, so if that strategy was based on an
22 opinion of one of my advisors -- Mr Muhate or
23 another advisor, I don't remember -- probably it
24 came through my advisors because I didn't draw up
25 the strategy by myself. It was the ministry.

1 So it's very possible that Dr Muhate
2 convinced me that this strategy was important, but
3 if he did so, it was in 2008 when we were drawing up
4 the strategy before I knew about Patel.

5 **MR VASANI:** The Preliminary Study was in
6 2011.

7 **MR ZUCULA:** Perfect.

8 **MR VASANI:** And you are --

9 **MR ZUCULA:** Are you talking about the
10 Preliminary Study of -- prepared by whom? The PFS,
11 part of the memorandum, or another feasibility
12 study?

13 **MR VASANI:** Maybe let's show it to you --
14 because I don't want to be talking at cross
15 purposes. C-4A, tab 2.

16 Do you recognise that document, sir?

17 **MR ZUCULA:** No, I don't remember this
18 document, but it does make sense.

19 **MR VASANI:** OK. Before we talk about it,
20 you say that "Dr Muhate convinced me a strategy was
21 important, but if he did so it was in 2008".

22 Are you saying you recall a strategy from
23 Dr Muhate on a corridor from Tete to Macuse in 2008?

24 **MR ZUCULA:** If I remember a strategy from
25 Tete to Macuse from 2008? Is that the question?

1 **MR VASANI:** Yes.

2 **MR ZUCULA:** What I'm saying is that the
3 integrated development strategy in the field of
4 transport in Mozambique was prepared in 2008, and in
5 that strategy you will find Macuse. It's already
6 included, Macuse. Unfortunately, I don't have that
7 document with me, I've left the ministry a long time
8 ago, but the ministry has a document, Integrated
9 Strategy for the Development of Transport carried
10 out in 2008, maybe 2009 when it finished, which
11 already includes Macuse as part of the strategy.

12 **MR VASANI:** And, if that document exists,
13 then you would expect that Mozambique would have put
14 it in this arbitration, right?

15 **MR BASOMBRIO:** Objection. Asking for a
16 legal opinion.

17 **PRESIDENT:** Yes. I don't know if
18 Mr Zucula can really help us with that question.

19 **MR VASANI:** Thank you, Mr President.
20 I can withdraw that question.

21 Now, you trusted Dr Muhate, didn't you?

22 **MR ZUCULA:** That's a very complicated
23 question. I trust the opinion of people. As I told
24 you, it was a gentleman with a wealth of experience,
25 more than mine, and I listened to him a lot and to

1 others like him. In that sense, yes, that's why he
2 was my advisor, because he was a trustworthy person
3 or with trustworthy experience.

4 **MR VASANI:** And he never raised any
5 concerns about PEL after working with them on the
6 Preliminary Study, did he, in terms of their
7 competence?

8 **MR ZUCULA:** I don't think so. I don't
9 think there was ever any conflict between the
10 ministry and PEL which undermined their competence.
11 We never questioned, as far as I can recall, the
12 technical competence of PEL.

13 We looked at PEL as a development partner
14 which would, together with Mozambique, develop a
15 corridor for Macuse. We believed that we were going
16 to work together, because if we didn't believe in
17 that we wouldn't have signed the memorandum.

18 So it was a partner where we saw a lot of
19 potential to, together, do things for the benefit of
20 Mozambique. We never doubted, as far as I can
21 recall, the technical competence of Patel
22 Engineering.

23 **MR VASANI:** Thank you, sir.

24 Now, when the ministry enters into a
25 contract, it does so carefully and considerately,

1 doesn't it?

2 **MR ZUCULA:** Obviously.

3 **MR VASANI:** And you make sure that you
4 know who you are contracting with.

5 **MR ZUCULA:** Of course.

6 **MR VASANI:** So you did your due diligence
7 on PEL before you entered into the MOI, didn't you?

8 **MR ZUCULA:** Please bear with me. MOI is
9 not a contract. It's the first step that will lead
10 to a contract. For us, it's not a contract.

11 **MR VASANI:** That wasn't my question, sir.
12 OK. I understand. Let's separate the two for your
13 purposes.

14 Did you do any due diligence on PEL before
15 you entered into the MOI?

16 **MR ZUCULA:** No. We did not do any due
17 diligence from the technical interpretation of what
18 due diligence means. It was early days. Too early
19 to do due diligence. If we were going to do due
20 diligence, it would be further along the road.

21 **MR VASANI:** Well, did you Google Patel
22 Engineering Ltd and see who they are? Or you or
23 your team?

24 **MR ZUCULA:** No. No. We took Patel at
25 face value, what they presented to us. They

1 described who they were, what they wanted to do, and
2 we started with that.

14:15

3 Throughout, later on in the process, as we
4 got into more complex commitments, then we would
5 implement the necessary steps to make sure we knew
6 who we were working with. Frequently these
7 contracts -- these memorandums -- many times we have
8 these memorandums not based on the competence, the
9 technical competence from the engineering point of
10 view of the company but sometimes it's because it's
11 an institution which has the financial power, and
12 they know where they can find their engineering
13 competence. Because in the process, as it evolves,
14 more actors come in.

15 **MR VASANI:** Mr Zucula, I'm sorry. I will
16 only interrupt you if you're not answering my
17 question, and, Mr President, you can instruct me if
18 I'm doing so unfairly.

19 I think you answered my question.

20 And you never asked your High Commission
21 in India for any information it may have about PEL?

22 **MR ZUCULA:** I don't think so.

23 **MR VASANI:** And you never asked your
24 contacts at other companies whether they knew about
25 PEL?

1 **MR ZUCULA:** I don't remember. I don't
2 remember having asked anybody at this stage in the
3 proceedings.

4 **MR VASANI:** But you were comfortable that
5 you had asked PEL all the questions that you needed
6 to sign the MOI, about who it was?

7 **MR ZUCULA:** Yes, probably, yes.

8 **MR VASANI:** Now, you worked on the
9 negotiation, as I understand, with a Mr Chaúque, who
10 was MTC's legal counsel, and Mr Josub, who
11 I understand was head of Mozambique's investment
12 promotion centre and is also a lawyer.

13 That's correct, yes?

14 Sorry, I didn't get the translation of his
15 answer.

16 **MR ZUCULA:** The director. The managing
17 director of CPI did not work for the ministry.

18 **MR VASANI:** I see. But you're aware that
19 he was front and centre of the negotiation of the
20 MOI, yes?

21 **MR ZUCULA:** No, there's some confusion
22 there.

23 The Centre for Promoting Investment is an
24 institution independent of all ministries and they
25 were used to speak to foreign investors about all

1 investment process in Mozambique, all the investment
2 process. And when an investment does take place,
3 then they become active, CPI.

4 The MOI -- the MOI -- is something between
5 the ministry and the investor. CPI played no active
6 role to reach the MOI. The MOI was the ministry on
7 the one hand and the investor on the other. The
8 managing director might have turned up for some
9 explanation, but he wasn't the key person.

10 **MR VASANI:** So, in your view, the CPI only
11 turns up once the investor has made an investment?

12 **MR ZUCULA:** CPI adopts an active role when
13 the investor presents an investment proposal to CPI
14 for the Mozambique government. They approve the
15 investment, and they channel that proposal to other
16 institutions for approval.

17 Before that, it provides information on
18 the legislative background or the legal issues or
19 the tax issues, how the capital has to be spread
20 amongst the partners -- everything that has to be
21 done prior to the investment.

22 Once the investment is done, then CPI
23 becomes the main institution. Not all investors
24 want to come to Mozambique via CPI. They might
25 invest without even having touched upon CPI.

1 **MR VASANI:** And did you know a Mr Rafique
2 Jusob?

3 **MR ZUCULA:** Yes, I did know him.

4 **MR VASANI:** And who is he?

5 **MR ZUCULA:** I assume you're talking about
6 the managing director of CPI at the time?

7 **MR VASANI:** Yes. And were you aware that
8 he's a lawyer?

9 **MR ZUCULA:** No, I didn't know.

10 **MR VASANI:** Who was the chief legal
11 negotiator of the MOI, in your opinion?

12 **MR ZUCULA:** Legal advisor for which side?

13 **MR VASANI:** Your side.

14 **MR ZUCULA:** I didn't have a legal advisor.
15 MOI's normal practice in Mozambique, when we signed
16 this with Patel, we signed four or five with others.
17 It's a normal operation. I resort very often, for
18 these MOIs, to legal advice from the ministry
19 itself, in this case Mr Chaúque, who gave me all the
20 legal opinions, the care we had to take from a legal
21 point of view when we signed an MOI of this nature.

22 So we didn't have a legal advisor. We
23 didn't hire anybody in that field. We did it
24 in-house. We'd done loads of these MOI's. This
25 wasn't the first.

1 **MR VASANI:** So Mr Chaúque --

2 **PROFESSOR TAWIL:** Sorry, if I may follow
3 up.

4 Good afternoon, Mr Zucula. You said that
5 when we signed this with Patel we signed four or
6 five with others. Can you identify those?

7 **MR ZUCULA:** No, I didn't say when. What
8 I say is that we signed that kind of MOI with many
9 companies. For example, I remember we signed a
10 memorandum with another India company called ESSAR
11 also because of a corridor, at the same time more or
12 less, the same year, same period. I'm not saying
13 the same day. I remember that example, for example.

14 **PROFESSOR TAWIL:** But you didn't sign
15 others concerning this particular project?

16 **MR ZUCULA:** No. We had several corridors.
17 Macuse was one of the corridors. As regards this
18 specific corridor, it was with Patel Engineering.
19 I'm just saying that signing MOIs occurred with
20 other corridors, and I gave you the example of an
21 Indian company, ESSAR, with whom we also signed an
22 MOI of the same nature at the same time for the
23 construction of a different corridor. Not this one.

24 **MR VASANI:** And Mr Chaúque and his team
25 were experienced, you say, with these type of

1 contracts?

2 **MR ZUCULA:** I insist, with this type of
3 memorandum -- it's not contract -- yes, they did
4 have experience.

5 **MR VASANI:** ... (overlap) ... understood
6 the difference between a direct award and a tender
7 process?

8 **MR ZUCULA:** Of course.

9 **MR VASANI:** And understood the contents of
10 the existing procurement law and the incoming new
11 PPP Law? ... (technical issues) ...

12 **MR ZUCULA:** The team of Mr Chaúque?

13 **THE INTERPRETER:** Is that who you're
14 referring to about the knowledge?

15 **MR VASANI:** Yes, sir.

16 **MR ZUCULA:** Of course. And most probably
17 Chaúque was also preparing -- was part of the team
18 that prepared the new legislation.

19 **MR VASANI:** And you and Mr Chaúque ensured
20 that the MOI contained all the promises from PEL
21 that you needed?

22 **MR ZUCULA:** All the promises? I didn't
23 understand the question. Promises of what?

24 **MR VASANI:** The MOI contains obligations
25 and rights between the two parties, yes?

1 **MR ZUCULA:** Yes.

2 **MR VASANI:** And my question is did you get
3 everything you needed to get from PEL in the MOI?

4 **MR BASOMBRIO:** Objection. Vague question.

5 **MR VASANI:** Is there anything in the MOI
6 you needed from Patel to promise you that wasn't
7 there?

8 **MR BASOMBRIO:** Objection. Vague question.

9 **MR VASANI:** I don't think it's vague at
10 all.

11 **MR BASOMBRIO:** I stated my objection.

12 **PRESIDENT:** Let's try to -- if we start
13 with objections, this will become and
14 interpretations will become even more complex. Can
15 you repeat your question, and let's see if Minister
16 Zucula can give a meaningful answer and we go from
17 there. And if he can't, he can't.

18 **MR VASANI:** Did you and your legal team
19 make sure that the MOI contained all the promises
20 from PEL that you needed in order to sign?

21 **MR ZUCULA:** The MOI is a memorandum of
22 interest. It is not a document with promises. The
23 MOI regulates a phase of the process, and, in that
24 phase of the process, it regulates only the
25 pre-feasibility study, but it doesn't have promises

1 made by one side or the other.

2 In laying down these rules for the
3 pre-feasibility study, one party has to do
4 something, and the other party has to do other
5 things, but there are not necessarily promises.

6 **MR VASANI:** It's for the Tribunal to
7 interpret the MOI, so I'm not going to go through
8 your interpretation of the clauses. What I do want
9 to do, however, is explore the two versions of the
10 MOI put into the record by Mozambique.

11 Now, the first -- and you may not know
12 this -- is it's English version, and that is only a
13 copy with no original available. Are you able to
14 shed any light on why the MTC has no original of
15 this document available for this Tribunal's
16 inspection?

17 So this is the copy that Mozambique has
18 put forward, but it has been unable to produce the
19 original. And my question to you is are you able to
20 assist us as to why the original is not available?

21 **MR ZUCULA:** I just -- I don't know how to
22 explain. I can say there is an original. It may
23 not have been found, it may have gone missing.
24 I don't know. I haven't been in the government for
25 more than ten years. I haven't entered the

1 ministry. I don't know what happened to the
2 archives. I can't answer where that memorandum
3 might be, but there has to be an original copy
4 somewhere -- an original somewhere. I think it has
5 to exist if no one's torn it up.

6 **MR VASANI:** Yes. It has to exist in the
7 archives, doesn't it?

8 **MR ZUCULA:** Look, I don't know. Perhaps
9 in the archives -- I don't know. I have no idea.
10 Or in the office of the minister. There might be
11 one at the Council of Ministers. I don't know.
12 I don't know. I can't answer for why this document
13 has not been located.

14 **MR VASANI:** But when you were the minister
15 you made sure that your ministry was careful to
16 archive all its originals, weren't you?

17 **MR ZUCULA:** Not necessarily, because we
18 have services, a department that's responsible for
19 that. The government has services that take care of
20 that.

21 With regard to this specific memorandum,
22 when I left the ministry it was still a recent
23 memorandum. This was still happening, and I doubt
24 it would have gone into the archives at that point.
25 Perhaps later it did, but I can't say what might

1 have happened to the original. I have no way of
2 knowing.

3 **MR VASANI:** But there is an archive, and
4 originals go to archives, yes?

5 **MR ZUCULA:** Yes, yes.

6 **MR VASANI:** Let's turn to the Portuguese
7 version then. I want to start, though, with C-204,
8 which is volume 2, tab 57 in the Core Bundle.

9 **MR ZUCULA:** Apologies. If I might, I
10 wanted to perhaps add something to the previous
11 question. With regards to the archive and the
12 version in English, it might not have been archived
13 at the ministry because it's not a working version,
14 but the Portuguese version should have been
15 archived. That is true.

16 **MR VASANI:** So you have an e-mail in front
17 of you. Now, the first thing I want to look at is
18 the top, and it's an e-mail from Rafique Jusob, and
19 the date you see is May 6, 2011. Do you recall that
20 that is the date of the signing of the MOI?

21 **MR ZUCULA:** It is possible. I cannot
22 recall the exact date. It is possible.

23 **MR VASANI:** And you can see the e-mail is
24 sent at 7.10 am, so I'm going to presume that that
25 is Mozambique time.

1 What I'm going to draw your attention to
2 first, though, is something that the Tribunal drew
3 our attention to which is the attaching e-mail
4 below, which is in Portuguese, and I was led to
5 believe, kindly, that the third line down says that
6 this draft contains all the points discussed with
7 his Excellency the Minister. Do you recall any
8 meeting to discuss points in the MOI between the 3rd
9 and the 5th of May 2011?

10 **MR ZUCULA:** I cannot remember.

11 **MR VASANI:** Regardless, what looks like
12 24 hours later, perhaps even less, on May the 6th,
13 is a response from Mr Jusob, and he says, "Dear all,
14 thank you very much for all your effort and
15 dedication. Please find hereby attached the final
16 revised version with my corrections and editing on
17 the Portuguese version. We have to finalise the
18 English version accordingly. Take care and best
19 regards, Rafique".

20 Then you see who are the recipients.
21 Among them are Mr Fausto, Kishan Daga, Mr Muhate,
22 Mr Prabhu. What I'd like to do if you don't mind,
23 and this might be slightly tedious but I think
24 ultimately may be very beneficial, if we could just
25 look at the Portuguese version together, and then

1 I'm going to give you PEL's original wet ink English
2 version which everyone else can follow at C-5A in
3 the copy.

14:34

4 If you could just look at that, minister,
5 that document. Before I ask you, could you just
6 look through that? Please take your time.

7 **PRESIDENT:** Sorry, what have you given to
8 the minister?

9 **MR VASANI:** I've given them original with
10 the embossed.

11 **PRESIDENT:** So it's the one you have.

12 **MR VASANI:** Yes, sir, the wet ink, which
13 is the same as the copy that we're all following.

14 Before we start, I have your answer in
15 your witness statement but just looking at it now in
16 the original, do you recall signing this document?

17 **MR ZUCULA:** Before I read it.

18 **MR VASANI:** You already gave the answer in
19 your witness statement. I would draw your attention
20 to clause 2. That might give you a clue rather than
21 reading the whole document.

22 **MR ZUCULA:** Of this version in English,
23 you're saying?

24 **MR VASANI:** Yes, sir.

25 My question was do you recall signing this

1 document?

2 **MR ZUCULA:** I do not recall, but my
3 signature is on it. This signature is mine.

4 **MR VASANI:** If you go to clause 2, do you
5 recognise the language there?

6 **MR ZUCULA:** No, I do not recognise it.

7 **MR VASANI:** Let's then look at that
8 English version I've given you.

9 **MR ZUCULA:** That's the one I'm looking at.

10 **MR VASANI:** C-5A. And let's compare to it
11 Exhibit C-204, which I will represent to you is the
12 final draft of any version that we have on the
13 record, chronologically speaking.

14 And what you'll see, if you compare them
15 side by side, is in the Whereas clauses, do you see
16 the (a), (b), (c), (d), (e), (f), (g) in the
17 Portuguese?

18 **MR ZUCULA:** Yes.

19 **MR VASANI:** And then you'll see the
20 English version there is no (g)?

21 **MR ZUCULA:** Yes.

22 **MR VASANI:** And what (g) says in that
23 Portuguese, and I'm going to translate -- or I've
24 got a translation -- it says: To that effect, the
25 MTC suggested the creation of a working group and

1 the indication of a senior official to provide
2 assistance, leave the mention group and perform the
3 study. PEL agreed with the proposal and the report
4 of that group is part of this memorandum". Do you
5 see that in the Portuguese?

6 **MR ZUCULA:** Yes, I see it.

7 **MR VASANI:** Now, you can either confirm or
8 say you don't recall, but there is no clause, other
9 clause, in the MOI that refers to the Preliminary
10 Study or makes it a part of the MOI, is there?

11 **MR ZUCULA:** I'm not sure I know what
12 document this is. Could I have time to look at it?
13 Sorry.

14 **MR VASANI:** Let me just tell you what it
15 is so we're not unclear. You have C-204 in the
16 Portuguese.

17 **MR ZUCULA:** Is it this one here? OK.

18 **MR VASANI:** That is the final draft that
19 we have on record chronologically speaking coming
20 from the government in an e-mail chain that talks
21 about your points in a meeting with you, but it is a
22 draft. Do you understand?

23 **MR ZUCULA:** Hmm-mm.

24 **MR VASANI:** The other document, C-5A, is
25 PEL's English version, which it says was signed

1 on May the 6th but which Mozambique says is not the
2 real original, and Mozambique has a different
3 English version. So do you understand the two
4 documents now?

5 **MR ZUCULA:** Yes, I think I do.

6 **MR VASANI:** Thank you, sir.

7 And what I am trying to do is just look at
8 the few differences between the final draft in
9 Portuguese from the government to PEL and the final
10 version that PEL says was the document that was
11 signed and meant to be signed. Do you follow?

12 **MR ZUCULA:** I think so.

13 **MR VASANI:** So I think we can now move
14 quickly.

15 If you look at clause 1 in the Portuguese
16 and look at clause 1 in the original of the English,
17 you can see that they are the same -- and, sir, I'm
18 relying on the fact that you are fluent in both
19 Portuguese and English?

20 **MR ZUCULA:** Hmm-mm.

21 **MR VASANI:** Do you agree that they're the
22 same?

23 **PRESIDENT:** You have to represent that.

24 **MR VASANI:** I can shortcut it by doing
25 that.

1 **PRESIDENT:** Because it's impossible for
2 him to make now an interpretation. If you want to
3 say something is the same as the other, you have to
4 represent that to the witness.

5 **MR VASANI:** Fair enough. Let me do that,
6 Mr President.

7 I'll represent to you that they are the
8 same, and if the other side would like to come back
9 and say they're not, then that's fine.

10 Now please look at clause 2.1 of the
11 Portuguese. Are you there?

12 **MR ZUCULA:** Yes, I'm looking at it.

13 **MR VASANI:** Sorry, clause 2 of the
14 Portuguese, excuse me. I'm going to represent to
15 you that that is the same as 2.1 of the English
16 version.

17 **MR ZUCULA:** Yes, but I do have a little
18 doubt. I think we're comparing in Portuguese
19 perhaps a draft that hasn't been signed, and in
20 English a document that has been signed. They may
21 not have been drawn up at the same time.

22 I don't know if we have the final version
23 that I signed in Portuguese in order to compare it
24 to the English version that was signed.

25 **MR VASANI:** We will get to that, sir, but

1 if you just follow along, and I appreciate that is a
2 draft.

3 Now, if you look at 3.3 of the Portuguese
4 version.

5 **MR ZUCULA:** Yes.

6 **MR VASANI:** And I'll represent to you that
7 that is clause 2.2 of the English version, so I'll
8 represent to you that by moving 3.3 of the
9 Portuguese into 2.2 of the English makes clauses 1
10 and 2 of both documents the same, by making that one
11 formatting change. Do you see that?

12 **MR ZUCULA:** With the exception of the
13 Portuguese which says *direito de preferência* --
14 I don't know if that's the right translation, it
15 says right of refusal. I don't know if it's the
16 same thing. But, otherwise, the substance is the
17 same.

18 **MR VASANI:** And I'll represent to you that
19 clauses 4, 5 and 6 are all the same -- and I'm
20 representing, sir, so you're welcome to take a look
21 but, at Mr President's request, I'm trying to
22 shortcut this -- 7 is the same except the title has
23 been changed to reflect what is actually in clause
24 7. That you can look at. You see the title has
25 changed. I will represent to you that clauses 8 and

1 9 are identical, and then in clause 10, the
2 Portuguese version has English law, and the English
3 language version changes that to Mozambique law.

4 Now can you confirm to the Tribunal that
5 you insisted that Mozambique law govern this
6 agreement?

7 **MR ZUCULA:** Yes, of course.

8 **MR VASANI:** And then I'll represent to you
9 that clauses 11 and 12 are identical. So with my
10 representations, subject to the other side, I've
11 identified four minor differences between the two
12 documents.

13 Now, if we turn, please, to the second
14 witness statement of Mr Daga at paragraph 32, where
15 he says "On May the 6th, 2011 at 7.10 am, Mr Rafique
16 Jusob, who was head of Mozambique's investment
17 promotion centre, shared the final revised
18 Portuguese version of the MOI with PEL and noted
19 that we have to finalise the English version
20 accordingly. This was done at the MTC in the first
21 half of the day with the help of Mr Jusob and
22 Mr Prabhu".

23 Do you see that?

24 **MR ZUCULA:** Yes, I see.

25 **MR VASANI:** So you see where Mr Daga has

1 testified as to where those small adjustments we've
2 seen were made. Do you see that?

3 **MR ZUCULA:** Yes, I see that.

4 **MR VASANI:** And you weren't there that
5 morning, were you?

6 **MR ZUCULA:** I was not, and the people who
7 are involved here are not even staff from the
8 ministry. I think here it only refers to the place
9 where they did it, but it is not the work of the
10 ministry. This is between Mr Rafique, Mr -- who is
11 it? Mr Rafique, PEL -- this is between Mr Prabhu,
12 PEL and Rafique.

13 None of them are civil servants at the
14 ministry. They were at the ministry, but they are
15 not civil servants at the ministry.

16 **MR VASANI:** So is it your position to this
17 Tribunal, Mr Zucula, that the e-mail we have from
18 Mr Rafique and testimony about his involvement was
19 unauthorised?

20 **MR ZUCULA:** No, no, no. That's not what
21 I'm saying. That's really not what I'm saying.
22 Absolutely not. PEL can work with whom they want to
23 work outside the ministry. I can't authorise or do
24 otherwise. They can hire lawyers, they can hire
25 consultants, advisors -- whoever they want. There

1 doesn't have to be an authorisation to do so from
2 the Ministry of Transportation. There's no need for
3 that permission.

4 **MR VASANI:** Mr Rafique is part of the
5 government. He's not part of PEL, isn't he?

6 **MR ZUCULA:** The Centre for the Promotion
7 of Investment is a small agency. It's not part of
8 the government. The government is made up of the
9 members of the Council of Ministers. The members of
10 the government are ministers, and invited deputy
11 ministers. No one else.

12 Mr Rafique was the head of an agency.
13 I don't know whether or not he was doing private
14 work, but he wasn't part of the government, and he
15 wasn't part of my ministerial team either. I think
16 I said that at the outset.

17 **MR VASANI:** Now, in the evening PEL did
18 not have a Portuguese speaker present, did it?

19 **MR ZUCULA:** You're talking about the
20 evening of the 6th?

21 **MR VASANI:** Yes. Forgive me for being
22 inarticulate. The evening of the 6th at the
23 signing.

24 **MR ZUCULA:** I don't remember. I can't
25 recall. I don't know who PEL brought with them.

1 **MR VASANI:** I can represent to you in the
2 pictures there is no person from PEL who speaks
3 Portuguese.

4 But Mr Daga specifically asked you, didn't
5 he, if the Portuguese version reflected the English
6 version, and you looked at Mr Chaúque and he
7 confirmed that it did. That's correct, isn't it?

8 **MR ZUCULA:** I don't recall that. I just
9 don't remember. I have no idea. I don't even
10 recall who PEL had with them, if they spoke
11 Portuguese or not. I don't recall that confirmation
12 by Mr Chaúque. It wouldn't be his role,
13 Mr Chaúque's role, to confirm a translation. It's
14 not -- look, he speaks English, but he's no English
15 expert. I just don't recall. I really don't
16 recall.

17 **MR VASANI:** And that's entirely fair, sir,
18 but, just to be clear for the record, you're not
19 denying it. You just don't remember?

20 **MR ZUCULA:** No, I don't recall.

21 **MR VASANI:** Let's see if the record gives
22 us any further clues as to the MOI versions. If we
23 could turn, please, to C-35, which is volume 2, tab
24 35 in the Core Bundle, and this is a letter from PEL
25 to you dated June the 4th, 2013, and what I want to

1 draw your attention to is you see the first
2 paragraph, and the last sentence starts with "With
3 reference to the MOU signed between MTC and Patel it
4 was agreed as follows:

5 1. Once the prefeasibility study is
6 submitted by Patel and approved by MTC, in that case
7 MTC will sign a concession agreement with Patel.
8 Refer clause 2.1".

9 And do you see how "MTC will sign a
10 concession agreement with Patel" is bolded and
11 underlined to make sure you don't miss it?

12 **MR ZUCULA:** I see that, yes.

13 **MR VASANI:** And you never wrote back to
14 PEL and said what on earth are you talking about,
15 that's not what 2.1 even says?

16 **MR ZUCULA:** I don't know if I never
17 replied. I think I probably would have replied.
18 Either I would have replied or someone in my
19 department would have.

20 This issue, this confusion of the
21 memorandum with a concession was debated with Patel
22 at the time of the public tender. Before that it
23 wasn't discussed. We thought we had an
24 understanding with regards to the role of the
25 memorandum. Then we got to the public tender with

1 the *direito de preferência*, and this was discussed
2 at length. There was an exchange of correspondence
3 backwards and forwards. There were also verbal
4 discussions in which we explained why a public
5 tender is a must.

6 **MR VASANI:** I'm focusing on 2.1 in the
7 language, and I can represent to you that there is
8 no letter in response to this saying to Patel, I'm
9 sorry but that's just not what 2.1 says.

10 **MR ZUCULA:** I am sure there must be a
11 reply. I don't know where it is, but there has to
12 be one.

13 **MR VASANI:** Let's go to paragraph 5 of
14 your second witness statement, please.

15 You say there, "It would have been
16 extremely unusual and inappropriate for MTC to
17 promise PEL the concession based only on PFS
18 approval. That would give PEL a 'blank cheque' as
19 it relates to negotiating the terms and conditions
20 of the concession, including the many fundamental
21 commercial terms not specified in the PFS or
22 elsewhere. It was certainly never my intent, or
23 MTC's intent, to do so".

24 If that is true, Mr Zucula, then
25 immediately upon reading that bolded and underlined

1 sentence in clause 2.1, if it was so "unusual and
2 inappropriate" you would have written back and said
3 I'm sorry but that's not our deal and that's not in
4 the contract. But you didn't. Why?

5 **MR ZUCULA:** That's not true that I didn't
6 say it. We may not have the document here but look,
7 this was discussed on numerous occasions. There
8 have to be ministerial documents explaining that
9 there wasn't -- how do I put this? Look, that's why
10 earlier I was saying instead of looking at this
11 draft MOI in Portuguese, let's look at the MOI I in
12 fact signed, because the final version of the
13 memorandum signed by me does not guarantee a
14 concession, and there has to be a letter. I may not
15 have the letter here, but there must have been a
16 reply to Patel in writing or in a meeting, an oral
17 statement indicating that it does not guarantee them
18 a concession. It's impossible.

19 Even if -- even if Patel thought there was
20 a concession, its lawyers, its own lawyers, its
21 consultants in Mozambique should have told them
22 clearly there is no concession. It's an MOI, a
23 Memorandum of Interest.

24 **MR VASANI:** Now, you left the ministry in
25 2013 and Mr Muthisse took over as Minister of

1 Transport. Yes?

2 **MR ZUCULA:** I believe so.

3 **MR VASANI:** Let's turn to, please, C2 19,
4 which is volume 2, Core Bundle tab 58.

5 You may not have seen this, and my
6 question will be very careful because I know you
7 weren't there, but this is a letter from Patel --
8 this is a letter from Patel to the MTC
9 dated December 20, 2013, and I can tell you that the
10 purpose of the letter appears to be for the minister
11 to understand the context or the history because
12 he's new.

13 But if you turn the page, sir, you'll see
14 who's copied. One, his excellency Dr Vaquina, the
15 Prime Minister. Do you see that?

16 **MR ZUCULA:** Yes, I do.

17 **MR VASANI:** And, number 2, Sal & Caldeira
18 lawyers. Do you see that?

19 **MR ZUCULA:** Yes, I do.

20 **MR VASANI:** And then if you look at
21 annexure A attached to the letter, and you look at
22 number 1, it spells out what clause 2.1 reads as.
23 Do you see that? In the first row in the first
24 column.

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

1 **MR VASANI:** Then it says what PEL did.

2 **MR BASOMBRIO:** I'm going to object. I'm
3 going to object, Mr President. I have to because we
4 have four versions of the MOI, and opposing counsel
5 is representing that that clause is the correct
6 version to the witness.

7 **MR VASANI:** I'm not doing that at all --

8 **MR BASOMBRIO:** Yes, you are.

9 **MR VASANI:** I haven't -- then I'll say it.
10 PEL states in its letter that that is the version of
11 2.1 of the MOI. Do you see that?

12 **PRESIDENT:** Let's -- we are looking at the
13 document which PEL sent, and let's go through the
14 document and let's see if the minister can help us.

15 **MR VASANI:** Thank you.

16 Then you can see what PEL says about MTC's
17 position in the third column of row 1? Do you see
18 that?

19 **MR ZUCULA:** Yes, I can see that.

20 **MR VASANI:** And then you can see the
21 submission by PEL in the fourth column, first row.
22 Yes?

23 **MR ZUCULA:** Yes.

24 **MR VASANI:** Now, as I promised, I'm not
25 going to ask you about what happened with this

1 letter because you weren't there, but I will ask you
2 this.

15:01

3 The MTC would take this type of letter
4 seriously, wouldn't it, because it's one that's
5 copied to legal counsel and the Prime Minister from
6 an aggrieved investor?

7 **MR ZUCULA:** I don't understand the
8 question. Was this letter drafted in order to be
9 submitted to the Tribunal or to advise or to
10 appraise the Ministry of Transport of its contents?

11 **MR VASANI:** It is a letter from PEL to
12 your successor at the ministry in December 2013.
13 The letter is copied to the Prime Minister and to
14 legal counsel in Mozambique. It attaches an annexe
15 that cites provisions in PEL's English version of
16 the MOI, and my question is as follows.

17 The MTC would take such a letter
18 seriously, wouldn't it, because it's copied to
19 lawyers and it's copied to the Prime Minister from
20 an aggrieved investor, and I'm asking you, sir, as
21 the former minister there for six years?

22 **MR ZUCULA:** Had I been a minister and this
23 letter was but a question of information, the only
24 thing I would have done would have been to bring in
25 my advisors in order to knock our heads together and

1 understand what's here, but I would take it as
2 information and I would do nothing else in that
3 regard.

4 But as a way of finding out the contents
5 in the file, I would copy this letter to my
6 advisors, ask them to confirm their interpretation
7 of the contents so I could have a more complete
8 picture, and it would stay as information of which
9 I would take cognisance.

10 **MR VASANI:** Yes, entirely fair. And those
11 advisors would include your lawyers?

12 **MR ZUCULA:** It would involve everybody
13 that was part and parcel of this process, that was
14 familiar with goings on.

15 **MR VASANI:** And if the investor was citing
16 provisions in a contract or an MOI that did not
17 exist, that would have been pointed out by the
18 ministry, wouldn't it?

19 **MR ZUCULA:** I'm very sorry. Can you run
20 that past me again?

21 **MR VASANI:** If the investor was citing
22 provisions in the MOI that did not exist, that would
23 be pointed out to it by the ministry, wouldn't it?

24 **MR ZUCULA:** Most assuredly. It would be
25 crystal clear that the memorandum quoted is false.

1 That this memorandum does not exist. That this
2 paragraph is false, from the point of view of the
3 investor.

4 In any case, let me clarify something
5 I attach a great deal of importance to. Up until
6 the time when I left the ministry, PEL was a
7 potential investor, never an investor, an actual
8 investor in Mozambique.

9 To the best of my knowledge, they did not
10 invest in transport, so the status was not an
11 investor because they didn't invest; it was but a
12 potential investor, and they would be treated as
13 such and not as an investor.

14 **MR VASANI:** Thank you. I'm going to move
15 to another topic. I'm going to look to you for a
16 break. If not, I can carry on.

17 **PRESIDENT:** I think we should make a
18 break, so shall we make it ten minutes?

19 **MR VASANI:** Of course. I'm in your hands.

20 **PRESIDENT:** So we will be back. Minister
21 Zucula, we will have now a break of ten minutes for
22 the interpreters and the court reporters, and we
23 will be coming back at 3.20, and the secretary will
24 show you some coffee and refreshments. Can I kindly
25 ask you not to speak to counsel during the break?

1 Thank you.

2 (Short break from 3.06 pm to 3.23 pm)

3 **PRESIDENT:** We resume the hearing and we
4 give the floor back to Claimant.

5 **MR VASANI:** Thank you, Mr President.

6 Mr Zucula, I want to change now topic, and
7 I want to start with a proposition and see if you
8 agree with me, that the purpose, the objective of
9 the MOI and the PFS was to define the basic terms
10 and conditions for the granting of a concession by
11 the Government of Mozambique to PEL for the
12 construction and operation of the project.

13 Do you agree that that was the objective
14 of the PFS and the MOI?

15 **MR ZUCULA:** It was one of the goals. If I
16 may, I can explain somewhat in greater detail. The
17 MOI is mainly -- mainly regulates the conditions of
18 the prefeasibility study up until its approval
19 according to the terms of approval. Then there are
20 two possible paths.

21 The first path is PEL meeting two
22 conditions so as to allow for a direct award,
23 including a strategic partnership with the public
24 partner, in this case it would be the Mozambican
25 railway, CFM, and said strategic partnership would

1 be a partnership between partners that would have to
2 include institutional empowerment of the CFM. Once
3 these conditions had been met, the possibility would
4 be open to start negotiating for a direct award
5 without tendering procedure.

6 Were these conditions not to be met, a
7 tendering procedure would ensue where PEL would have
8 an advantage vis-à-vis other possible competitors,
9 the so-called *direito de preferência* in the
10 memorandum. So these were the goals, ie the two
11 possible paths at the end of the study.

12 **MR VASANI:** Thank you, sir. We'll come on
13 to the CFM part. I'm now on the first part of your
14 answer, which is the PFS, and I think your answer
15 was it was one of the objectives. And I want to
16 turn your attention to tab 6 of the Core Bundle in
17 volume 1, which is Exhibit R-1. And clause 1.

18 And I can tell you that that is the same
19 clause that is in R-2, which is Mozambique's English
20 version, and it's the same clause that is in C-5A,
21 which is PEL's English version, and indeed PEL's
22 Mozambique version.

23 Do you see that?

24 **MR ZUCULA:** Yes.

25 **MR VASANI:** And when you approved the PFS

1 on June the 15th, 2012, you did so in the context of
2 clause 1. That's correct, isn't it?

3 **MR ZUCULA:** Yes.

4 **MR VASANI:** And let's see how you
5 scrutinised the PFS in the government. Were you
6 there at the presentation of May the 9th, 2012 where
7 the PFS was presented?

8 **MR ZUCULA:** I do not remember, but the
9 answer is probably yes.

10 **MR VASANI:** If I can -- I'll ask you a
11 series of questions. The answer is maybe you don't
12 remember.

13 Do you remember your other colleagues of
14 the ministry there as well?

15 **MR ZUCULA:** I don't specifically recollect
16 but the institutional procedure would be to call the
17 advisory board of the ministry headed by the
18 minister and where all national directors sit and
19 advisors. This would be the normal procedure to
20 present a study. I don't know whether this was the
21 case on the date you quoted, May the 9th.

22 **MR VASANI:** The testimony and documents on
23 the record collectively suggest that the following
24 were there: Representatives of CFM, the Ministry of
25 Planning and Development, the Ministry of External

1 Affairs, the Ministry of Mining, and the Ministry of
2 Finance.

15:28

3 Do you recall that?

4 **MR ZUCULA:** It's possible. I have no
5 recollection, but it's possible.

6 **MR VASANI:** And that's entirely fair.

7 Let's go, please, to C-226, which is for
8 the Core Bundle volume 2, tab 61. This is a record
9 of a chat between Mr Daga and a lady by the name of
10 Arlanda Reis. Can you tell us who is Arlanda Reis?

11 **MR ZUCULA:** Arlanda was one of my
12 secretaries.

13 **MR VASANI:** You can see this is May the
14 9th on the top corner there at 20.17, so that's the
15 day of the presentation of the PFS, and you can see
16 Ms Reis says -- I'll just read through some of
17 this -- "Afternoon. Are you happy with the
18 presentations?" And then me, and that's Mr Daga:
19 "Yes, I am very happy. I think excellency is also
20 happy about this presentation. Now you have to tell
21 me what excellency is thinking about this
22 presentation".

23 Now, I'm going to assume "excellency" is
24 you, in light of the fact that Ms Reis is your
25 secretary?

1 **MR ZUCULA:** Yes, it is possible.

2 **MR VASANI:** And then Ms Reis says "With
3 intervention of all people participated". Mr Daga
4 says "yes lot of questions come up and we answered
5 well". Arlanda says "yes yes. Congratulations for
6 and your staff". Mr Daga says "thanks dear advisor.
7 You can ask sheila how was presentation and what
8 people were talking after presentation in
9 Portuguese".

10 Now, who is Sheila?

11 **MR ZUCULA:** Another one of my assistants.

12 **MR VASANI:** And then Arlanda says "yes,
13 yes". Then it turns to Portuguese and she says, and
14 this is my translation, "sheila told me the
15 presentation was good. That there was a lot of
16 interaction and many questions were raised and Patel
17 was able to reply immediately. I happened to speak
18 briefly with excellency and he also expressed his
19 satisfaction with the presentation, says it was
20 good, and now it is only a matter of waiting and
21 getting to work to carry out the project". Do you
22 see that?

23 **MR ZUCULA:** Yes, I can see it.

24 **MR VASANI:** There was no reason for
25 Ms Arlanda Reis to lie in this contemporaneous

1 document referring to the events of that day, was
2 there?

3 **MR ZUCULA:** I don't see any, but this is a
4 chat with an underling who has little to do with the
5 decision-making procedure. This is an informal
6 chat. I don't know whether this took place over the
7 phone, but these are people who don't really have
8 know-how of the ongoing processes. She had no
9 reason to lie. If she was happy, she was happy, but
10 it does not stand for the institutional point of
11 view.

12 **MR VASANI:** She says you were happy. You
13 were satisfied.

14 **MR ZUCULA:** She can well say it. Arlanda
15 was a very nice lady.

16 **MR VASANI:** Let's turn now, please, to
17 C-8, which is --

18 **MR ZUCULA:** One thing, if I may. What
19 I mean to say is that this presentation -- before
20 the presentation I was aware of the document. I had
21 already looked at the document, read through the
22 document, and possibly even reacted thereto. My
23 presence at the presentation was meant to share --
24 the presentation was meant to share the document
25 with the team and to listen to the team's views.

1 **MR VASANI:** Can we turn, please, to C-8,
2 which is Core Bundle volume 1, tab 11. This is a
3 letter from Mr Daga to you, and you can see at the
4 top it's dated 15 May 2012, and in the second
5 paragraph it says, "We have also made presentation
6 to Excellency" -- again I think that's you -- "on
7 9th of May showing the salient features of the
8 project. During the discussion it was pointed out
9 by Excellency that the required parameter on
10 Technical side is well represented in the report
11 while he wanted some more information on the
12 economic data".

13 And then with this letter PEL provides
14 "estimated and suggested commercial model and
15 statement of utilisation of funds for the project".

16 So what we see is at the meeting you asked
17 for more details on the economic and financial side,
18 and that was provided by this letter. Yes?

19 **MR ZUCULA:** Yes, that is it.

20 **MR VASANI:** Then let's turn, please, to
21 C227, and I'm sorry, we're going to jump around a
22 little bit, and that is Core Bundle volume 2, tab
23 62. This is an e-mail dated May 17, 2012 from
24 Mr Ruby of Inahina telling Mr Daga what he is about
25 to present to the CFM board that day. Do you see

1 that?

2 **MR ZUCULA:** Yes, I can see that.

3 **MR VASANI:** As a short aside for the
4 record you see he has an alternative e-mail, which
5 is his government e-mail, an alternative one in his
6 credentials. So you can see, at the time that the
7 PFS is being scrutinised, it's being presented in
8 internal meetings and presentations at the CFM.

9 **MR ZUCULA:** Of course.

10 **MR VASANI:** Why do you say "of course"?

11 **MR ZUCULA:** Because it's normal that once
12 the feasibility study is presented, it is analysed
13 by all stakeholders -- or other stakeholders.

14 **MR VASANI:** Why is CFM a stakeholder?

15 **MR ZUCULA:** CFM public institution,
16 state-owned company that operates as a regulator and
17 also an operator of railways in Mozambique. It's
18 the government's arm for railways and ports in
19 Mozambique.

20 **MR VASANI:** Let's go, please, to C-9,
21 which is Core Bundle volume 1, tab 12. This is a
22 letter to you of the 1st of June 2012 from PEL, and
23 it's providing you -- you can see the last bolded
24 and underlined reference -- "the source of
25 information used for preparation of this report".

1 So you wanted your government team to look
2 at the source data, not just the PFS, and that's
3 what PEL provided to you, yes, in this letter? I'm
4 sorry. I think you nodded, but you have to speak
5 for the transcription. If your answer is yes,
6 then -- or no. As you wish.

7 **MR ZUCULA:** What was the question? Sorry.

8 **MR VASANI:** Absolutely. My question was
9 this letter is providing you with source material
10 underlying the PFS at your request.

11 I didn't get a translation. I think he
12 said yes but it would be good to get the translator
13 to translate.

14 **MR ZUCULA:** Yes, yes.

15 **THE INTERPRETER:** It was too fast for me.
16 Sorry.

17 **MR VASANI:** Let's go then to C-10, which
18 is Core Bundle volume 1, tab 13, and this is a
19 further letter dated June 11, 2012 from Mr Daga
20 again to you, this time with further technical
21 answers in relation to railway questions, and you
22 can see the discussion they had at point 1 about
23 standard gauge railway. Do you see that?

24 **MR ZUCULA:** Yes, I can see that.

25 **MR VASANI:** And then if you turn the page,

1 sir, at point 6, you can see "The engineering
2 director, CFM further intimated that on perusal of
3 the report, they would be forwarding the queries, if
4 any for which M/s PEL welcomed and agreed to provide
5 necessary calculations".

6 Do you see that?

7 **MR ZUCULA:** Yes, I'm seeing number 6, yes.

8 **MR VASANI:** And, again, that is with the
9 specialist of CFM, yes?

10 **MR ZUCULA:** Correct.

11 **MR VASANI:** So what we've seen here in the
12 documents I've just shown you is a back and forth,
13 questions and answers, between government and Patel
14 on various aspects of the PFS, yes?

15 **MR ZUCULA:** We saw more of the letters
16 from Patel than are/our answers, but yes.

17 **MR VASANI:** And nothing limited you in
18 relation to the questions you could have asked,
19 right?

20 **MR ZUCULA:** Correct.

21 **MR VASANI:** And I've read a report by the
22 company by the name of MZ Betar in this arbitration
23 criticising the PFS.

24 Nothing stopped you retaining a company
25 like MZ Betar, or in fact MZ Betar, while you were

1 scrutinising the PFS, was there?

2 **MR ZUCULA:** I'm sorry I don't know who MZ
3 Betar is.

4 **MR VASANI:** Nothing stopped you retaining
5 outside assistance while you were scrutinising the
6 PFS, was there?

7 **MR ZUCULA:** No.

8 **MR VASANI:** But you chose not to because
9 you had in-house, or in-government, expertise,
10 right?

11 **MR ZUCULA:** Yes, for the PFS we did have
12 in-house capacity to analyse the PFS.

13 **MR VASANI:** In-house railway expertise?

14 **MR ZUCULA:** We had CFM, which is a
15 State-owned company.

16 **MR VASANI:** In-house port expertise?

17 **MR ZUCULA:** Yes, in the CFM company, yes.

18 **MR VASANI:** And, in fact, these people
19 were involved in other corridors like the Nacala
20 corridor or the Beira corridor, so they had
21 expertise not just in rail and port, but actual coal
22 exportation corridors, right?

23 **MR ZUCULA:** Yes, the corridors and the
24 ports, the same thing. Railways and ports is part
25 of what we call a corridor.

1 **MR VASANI:** And they didn't just have
2 expertise on the technical side, but they also had
3 an understanding and expertise on the financial
4 side, didn't they?

5 **MR ZUCULA:** Yes and no. We're talking
6 about different competencies, different
7 capabilities. They had competence to work at this
8 level, ie PFS level.

9 If we are to go to a feasibility study, a
10 real feasibility and project finance, then probably
11 we wouldn't have in-house capacity. We would have
12 to look outside.

13 **MR VASANI:** But you didn't seek that
14 outside assistance for the PFS, right?

15 **MR ZUCULA:** No. For the prefeasibility we
16 didn't.

17 **MR VASANI:** And then we know that on June
18 the 15th the PFS is approved, but what we don't see
19 on the record, Mr Zucula, is any expression of
20 dissatisfaction by you or anyone in the government,
21 do we?

22 **MR ZUCULA:** In relation to the technical
23 study, no.

24 **MR VASANI:** In relation to anything
25 connected with the PFS?

1 **MR ZUCULA:** Which is a technical study.

15:47

2 No problem whatsoever.

3 **MR VASANI:** We've already established that
4 if you wanted more than a technical study, you could
5 have asked for it.

6 **MR ZUCULA:** We only wanted the technical
7 study at this stage. We just wanted a PFS, full
8 stop, which would give Patel Engineering two
9 options, as I've already explained.

10 **MR VASANI:** In order to meet the objective
11 of clause 1, right?

12 **MR ZUCULA:** Yes.

13 **MR VASANI:** OK. Let's now go to what
14 happened with CFM, and what we're going to do is
15 start by opening two documents side by side, and
16 they are C-11, which is in Core Bundle volume 1, tab
17 14.

18 That is a letter from you to PEL
19 dated June the 15th, 2012 approving the PFS and
20 saying that in order to pursue the project, PEL must
21 expressly exercise its right of first refusal and
22 must negotiate with CFM the creation of a company to
23 implement the project.

24 And let's also pull out C-12 which is in
25 Core Bundle volume 2, tab 15, and that is the letter

1 from PEL dated June 18, 2012 in response to your
2 letter in C-11.

3 So it's your letter of June the 15 and
4 PEL's response on June the 18. See those two?

5 **MR ZUCULA:** Yes, I can.

6 **MR VASANI:** Thank you. And let's keep
7 those two open and available, and I want to start by
8 looking at paragraph 6 of your first witness
9 statement.

10 **MR BASOMBRIO:** Mr President, I have to
11 object, unfortunately, but counsel represented that
12 the letter from the minister used the term "right of
13 first refusal". That's not what it says. It says
14 *direito de preferência* so I don't want the witness
15 confused because we believe that's incorrect. It's
16 a misrepresentation of what the letter says.

17 **PRESIDENT:** Yes, thank you. It says,
18 minister, *direito de preferência*. Very good. Let's
19 go now to paragraph -- thank you for drawing the
20 attention to this point, and now let's go to point
21 6.

22 **MR VASANI:** So paragraph 6, please, of
23 your first witness statement, and this is what you
24 say. "Rather, the contemplated approach under the
25 MOI was as follows: After PEL satisfied various

1 conditions, (for example, PEL had to submit a
2 prefeasibility study (PFS) subject to approval by
3 the MTC, and reach a joint-venture agreement with an
4 entity called CFM) the MOI provided PEL with a
5 preferential position (through a points scoring
6 advantage) in the public tender contest for the
7 project, and the right of first refusal in the event
8 that PEL prevailed in the public tender contest for
9 the project".

10 **PRESIDENT:** I have difficulties in finding
11 that.

12 **MR VASANI:** I'm so sorry.

13 **PRESIDENT:** No, no, it's -- first --

14 **MR VASANI:** First witness statement.

15 **PRESIDENT:** Sorry for that. My mistake.

16 **MR VASANI:** And then if we go to paragraph
17 18 of that same first witness statement, you say:
18 "The PFS that PEL submitted was conceptual,
19 discussed ideas the MTC already had, and was not a
20 study of the quality MTC expected. It also did not
21 define the basic terms and conditions of a
22 concession. In good faith, the MTC continued
23 discussions and gave PEL the benefit of the scoring
24 advantage for the public tender contest, if PEL
25 wished to proceed and could form the planned

1 partnership with CFM. PEL struggled to provide
2 required information about its PFS and failed to
3 reach agreement with CFM. PEL's position then
4 changed and PEL asserted, instead, that it should be
5 provided a direct award. However, PEL was again
6 informed that the required public tender process
7 would be employed and that -- consistent with the
8 MOI -- PEL could compete with a bidding advantage
9 and be awarded a right of first refusal if it
10 prevailed in the tender".

11 Do you see what you've written there?

12 **MR ZUCULA:** Yes.

13 **MR VASANI:** So what you say in your first
14 witness statement is very clear. What you say is
15 that if PEL could form a joint venture with CFM and
16 get PFS approval, it gets two things.

17 First, a tender scoring advantage, and,
18 second, a right of first refusal if it ultimately
19 prevailed in the tender. That was what you said in
20 your first witness statement, isn't it?

21 **MR ZUCULA:** Yes. If it participated, not
22 if it won. I'm not sure about the word "prevailed"
23 here. I'm thinking it should say "if it
24 participated", not if it won the tender. If it
25 participated in the tender, not if it won.

1 **MR VASANI:** Mr Zucula, I'm using your own
2 word at the end of 18, "prevailed". That's your
3 word.

4 **MR ZUCULA:** Yes. I might have used it
5 wrong. The translation into Portuguese translated
6 "prevailed" as "winning", as "ganhar".

7 **MR VASANI:** So in English prevailed is to
8 win, so...

9 **MR ZUCULA:** So please bear with my feeble
10 English. The idea was "remain".

11 **THE INTERPRETER:** Says the speaker.

12 **MR ZUCULA:** So the *direito de preferência*
13 is given during the tender, it cannot be given at
14 the end of the tender. That scoring advantage is
15 during the tender, not at the end of the tender
16 process.

17 **MR VASANI:** Yes, the scoring advantage is
18 at the beginning. Explain to me how you get awarded
19 a right of first refusal as well as a scoring
20 advantage at the beginning of the tender.

21 **MR ZUCULA:** The expression right of first
22 refusal was placed by the lawyers, for us in
23 Portuguese it's *direito de preferência*. These are
24 the bonus points over and above what the other
25 bidders have right at the start of the tender

1 process.

2 **MR VASANI:** Can you explain the right of
3 first refusal as part of the tender process?

4 **MR ZUCULA:** We have to go back to the MOI
5 which I signed in the Portuguese version. It
6 doesn't have that terminology "right of first
7 refusal". It says "*direito de preferência*". And
8 it's that concept that is included in the MOI that
9 counts for us. That's in the Portuguese draft, in
10 the signed Portuguese version signed by me.

11 **MR VASANI:** I read your first witness
12 statement correctly, yes? Paragraph 6 and paragraph
13 18?

14 **MR ZUCULA:** Yes, yes.

15 **MR BASOMBRIO:** I object, your Honour --
16 Mr President. I don't think he read paragraph 18
17 correctly. He said --

18 **MR VASANI:** No, I just meant literally did
19 I read the words? I didn't say did I interpret it
20 correctly. Did I read it literally correctly.

21 **PRESIDENT:** Gentlemen, gentlemen.

22 **MR BASOMBRIO:** You read words.

23 **MR VASANI:** Then that's it.

24 **PRESIDENT:** Gentlemen, what is your point?

25 **MR BASOMBRIO:** My point is that he --

1 I object to his interpretation of paragraph 18 which
2 was contrary to what he read in paragraph 18.

3 **PRESIDENT:** OK, but we are here concerned
4 with Minister Zucula's interpretation. I'm slightly
5 lost. Let me try to understand your paragraph 6,
6 minister.

7 Because in your paragraph 6 you then
8 say -- there is a phrase at the end which says and
9 the right -- let me ask you first this. Did you
10 write your witness statement in English or in
11 Portuguese?

12 **MR ZUCULA:** I wrote it in English.

13 **PRESIDENT:** Excellent. Thank you. And so
14 you say there, "and the right of first refusal in
15 the event that PEL prevailed in the public tender
16 contest for the Project".

17 I think we are all asking ourselves
18 exactly what means -- what did you mean by that
19 phrase. How is the right of first refusal in the
20 event that PEL prevailed in the public tender
21 contest for the Project, and it prevailed thanks to
22 the 15 per cent advantage, which is the
23 *direito de preferência*, as you have explained?

24 **MR ZUCULA:** Well, here I apologise for the
25 confusion in the English, but for me, the concept is

1 always *direito de preferência*, meaning what,
2 exactly? Well, in the public tender there are
3 points given. If Patel enters the public tender
4 contest, it has a *direito de preferência* expressed
5 as 15 points or 15 per cent.

6 So by using this word "right of first
7 refusal", this expression "right of first refusal",
8 I must have used it as a synonym of
9 *direito de preferência*, which was always exercised.
10 It was always given to Patel.

11 **PRESIDENT:** OK. Thank you.

12 **MR VASANI:** Let's look at then C-11 and
13 C-12, like I promised, and let's start, please, with
14 C-11, again Core Bundle volume 1, tab 14.

15 And what you ask is, "Therefore, in order
16 to pursue the project, Patel Engineering Ltd must:
17 A. Expressly exercise its" -- I'm going to say
18 "right of first refusal" because that's what I have
19 here, but I take the standing objection.

20 Now, if that is meant to be a 15 per cent
21 scoring advantage, then, Mr Zucula, I think it's
22 nonsensical because no one exercises, let alone
23 expressly, a 15 per cent scoring advantage, do they?

24 **MR ZUCULA:** I'm not sure I follow. It
25 doesn't make sense. Exactly what? Doesn't make

1 sense.

2 **MR VASANI:** A scoring advantage is
3 something given to a tenderer in the context of a
4 tender. It is not something that is exercised, let
5 alone expressly.

6 **MR ZUCULA:** Yes, at the end of the
7 feasibility study you have to say I want to exercise
8 that right.

9 **MR VASANI:** That right in this context
10 with an express exercise now if you want to continue
11 the project only makes sense if it is a right of
12 first refusal to implement the project, doesn't it?

13 **MR ZUCULA:** I really don't follow.

14 **MR VASANI:** Your position, sir, is that
15 this right was only a scoring advantage of
16 15 per cent in a tender. My point to you --

17 **MR ZUCULA:** 15 points, not percentage.
18 Points.

19 **MR VASANI:** Forgive me.

20 My point is this, that that is something
21 that is given to a tenderer. It is not something
22 that someone has to exercise expressly at any time,
23 right?

24 **MR ZUCULA:** Well, why do they have to
25 expressly exercise it? The reason for it is as

1 follows:

2 The study that a company carries out -- or
3 the prefeasibility study carried out by the company
4 may not lead to a business case, may not lead to the
5 conclusion that there is feasibility.

6 If Patel or any other company carries out
7 a study, comes to the conclusion that the business
8 is not a good one, they may withdraw from the next
9 stage. If they decide it's good, they will
10 continue, and in order to continue they have to
11 express that I believe in my study that I will
12 continue. And then we will have the public tender
13 with or without them.

14 And if we have the public tender without
15 them, then we don't use the information contained in
16 their prefeasibility study. They spent the money,
17 they carried out a Preliminary Study, it's their
18 document, if the person withdraws, the document will
19 no longer be used, the tender will continue without
20 them without their information, so they have to
21 expressly indicate I agree in my study, I believe
22 this will bring in money, I believe in the project
23 so I want in.

24 **MR VASANI:** I want in to what? A tender
25 or a direct award?

1 **MR ZUCULA:** I want in to have the project
2 through a public tender or through direct
3 negotiation with CFM. I want to remain in the
4 concession, because up until now it isn't a
5 concession. Up to this point it is not yet a
6 concession. There is no guarantee that there will
7 be a concession.

8 You know, like any company that wants to
9 enter a market, first you carry out a feasibility
10 study. If it works out you proceed with the
11 business. If you don't you withdraw from the
12 business. The study doesn't mean there will be a
13 business.

14 **MR VASANI:** But now you've given me an
15 answer that's different from a 15 point scoring
16 advantage.

17 **MR ZUCULA:** Why?

18 **MR VASANI:** Because you told me that they
19 have to expressly exercise whether they want to
20 continue with the project tender or direct award.
21 It's got nothing to do with a 15 point scoring
22 advantage now.

23 **MR ZUCULA:** No, no, no. It's what I said
24 at the beginning. At the end of the prefeasibility
25 study there are two possible paths.

1 One path is that Patel would enter into a
2 strategic partnership with CFM -- let me see if
3 I can explain this better -- would enter a strategic
4 partnership with CFM, sign a joint partnership,
5 they'd become partners, and the project would then
6 be the project of a new entity, a company between
7 Patel and CFM, a new entity.

8 That entity would then submit the
9 negotiation proposal, and because CFM would already
10 be in that partnership, we would be able to
11 negotiate directly and make a direct award without a
12 public tender. That's one option.

13 The other option is negotiation with CFM
14 has not worked out, there is no PPP, and then in
15 that case we go for a public tender where Patel
16 already has 15 points advantage over all other
17 bidders participating in the tender.

18 I hope I've been clear now.

19 **MR VASANI:** There was no public tender at
20 the time of June the 15th, 2012, was there?

21 **MR ZUCULA:** Of course not. It depends on
22 these two conditions. We can't launch a public
23 tender. It depends on whether Patel enters a
24 partnership with CFM. It depends on Patel's role.

25 If it enters the partnership with CFM

1 there is no public tender -- or there may not be a
2 public tender. If it doesn't enter into the
3 partnership, there may be a public tender.

4 **PRESIDENT:** Minister, these two
5 alternatives -- these two, A and B, are alternative,
6 so Patel could either go for A, and there would then
7 be a tender in which it would have 15 points
8 advantage, or it could go for B and then it has to
9 negotiate with CFM and there would be a direct
10 award.

11 So these are like two alternatives. That
12 is your interpretation?

13 **MR ZUCULA:** These are two alternatives but
14 they're not mutually exclusive. One does not
15 necessarily exclude the other.

16 **PRESIDENT:** You mean temporally?

17 **MR ZUCULA:** Temporally, yes.

18 **PRESIDENT:** So you could go first for CFM
19 and for a direct award, and if that does not work,
20 you could then go to A and to the
21 *direito de preferência*?

22 **MR ZUCULA:** Exactly. Exactly. Exactly.
23 Exactly.

24 **PRESIDENT:** OK.

25 **MR VASANI:** Thank you, Mr President.

1 Let's explore if that's really what the
2 language says, Mr Zucula.

3 Look at what it says. It says,
4 "Therefore, in order to pursue the project, Patel
5 Engineering Ltd must". The word is "deve" in
6 Portuguese, yes? Not "can". "Must".

7 That's the word you use, right?

8 **MR ZUCULA:** Yes.

9 **MR VASANI:** And then there is no "or"
10 between the two things following the "deve" in
11 Portuguese.

12 **MR ZUCULA:** Correct. Correct.

13 **MR VASANI:** So there is no alternative in
14 this letter. It's very clear it's a must, and then
15 the must is followed by two things that are not
16 separated by an "or".

17 **MR BASOMBRIO:** Objection to that question.

18 **MR VASANI:** It's his letter, counsel.

19 **MR BASOMBRIO:** No, but you just construed
20 an assumption.

21 **MR VASANI:** And I'm asking him if he
22 agrees with me.

23 **PRESIDENT:** Wait. Please.

24 **MR BASOMBRIO:** You've got to let me state
25 my objection, which is an important one.

1 **PRESIDENT:** But you have to tell me the
2 objections, not counsel, because otherwise it
3 doesn't help.

16:11

4 What is exactly your objection?

5 **MR BASOMBRIO:** My objection is that he's
6 saying -- he just told the witness that the absence
7 of the word "or" means that they are not
8 alternatives. That's not necessarily true. The
9 word "and" is also missing, and that could mean that
10 they are alternatives.

11 **MR VASANI:** That is an answer!

12 **PRESIDENT:** Yes, thank you. Let's put the
13 question to the witness in a clear way, and let's
14 see what the witness answers.

15 Mr Vasani.

16 **MR VASANI:** It is not a reasonable
17 interpretation of your letter that following the
18 word "must" and two things that are not separated by
19 an "or", that they are alternatives. Do you agree
20 with me?

21 **MR ZUCULA:** I agree, but I would like to
22 add that -- and I may not have that here with me --
23 this is not the only letter that was used to explain
24 to Patel the two options. There should be one or
25 two other letters that indicate this possibility and

1 the other possibility.

2 This one is perhaps not well formulated
3 because it doesn't have the "or" or the "and".
4 Perhaps it was not well written. But this intention
5 is not expressed only in this letter. There are
6 other discussions prior to this and letters prior to
7 this that explain that.

8 **THE INTERPRETER:** And "if necessary" says
9 the witness, and halts.

10 **MR VASANI:** I'm sure if those are on the
11 record then you'll get re-directed. I haven't found
12 it.

13 Let's look at how the investor understood
14 your letter. So let's go to C-12, thank you, which
15 is volume 2, tab 15. This is the other one I asked
16 you to open.

17 And I want to draw your attention to --
18 maybe take an opportunity to read it, sir, because
19 I do want to talk about the letter.

20 Let me know when you've read it.

21 **MR ZUCULA:** I have read it. Thank you.

22 **MR VASANI:** And what I want to draw your
23 attention to is the investor's understanding that it
24 would be implementing the project, and you have the
25 word "implementation" four times. You have it twice

1 in the second paragraph, once in the third
2 paragraph, and once in the fourth paragraph. Do you
3 see that?

4 **MR ZUCULA:** Hmm-mm.

5 **MR VASANI:** Now, my reading of this
6 letter -- and you can either agree with me or not --
7 is that the investor has understood your letter to
8 be an invitation to implement the project, not a 15
9 per cent scoring advantage.

10 Do you agree that that is what the
11 investor has understood?

12 **MR BASOMBRIO:** I have to object. The word
13 "investor" is nowhere in this letter.

14 **MR VASANI:** Oh, ok --

15 **MR BASOMBRIO:** I'm sorry, it's not in the
16 letter.

17 **MR VASANI:** PEL understood.

18 **MR BASOMBRIO:** We have to be clear.

19 **MR VASANI:** I didn't say it's in the
20 letter. I think the Tribunal understands --

21 **PRESIDENT:** Gentlemen, gentlemen.
22 Gentlemen, please.

23 Can you make it to me, please? When you
24 have an objection, would you be kind enough to
25 direct it to me, not to opposing counsel?

1 **MR BASOMBRIO:** Yes.

2 **PRESIDENT:** Because that would avoid that
3 you start discussing. You come to me, I listen to
4 you, if you are right, I give you your point, and if
5 not, I ask and we solve it, but please, this does
6 not become the English Parliament with one side
7 opposing the other -- or the Mozambican Parliament.
8 I don't know if in the Mozambican Parliament the
9 parties are also opposed.

10 So, yes. Let's use a neutral language.
11 Let's call them Patel. I think Mr Basombrio has a
12 point.

13 **MR VASANI:** Yes.

14 So you can see in the letter by the use of
15 the word "implementation" four times that PEL has
16 understood your letter to be an invitation to
17 implement the project after the approval of the PFS.
18 Can you see that?

19 **MR ZUCULA:** Yes, yes.

20 **MR VASANI:** Now, if that was not true,
21 then you would have written back and said, no, I am
22 not inviting you to implement the project. What
23 I am doing is giving you an alternative between a 15
24 point scoring advantage and a potential to negotiate
25 with CFM. Please understand what I am giving you.

1 That's what you would have done.

2 **MR ZUCULA:** No, I don't know why. Let's
3 see if we can understand what "implementation of the
4 project" means.

5 If Patel believes implementation of the
6 project is a concession, well, then clearly that is
7 a misunderstanding, a serious misunderstanding. But
8 what I see in this letter, what I understand in this
9 letter is that Patel is saying yes, in order to
10 proceed with the project, I am going to talk to CFM,
11 I'm going to discuss this with CFM, and I'm going to
12 exercise my *direito de preferência*.

13 That's what I understand. And I said, OK,
14 well, then do that and then let me know the results
15 of that.

16 **MR VASANI:** You were a minister for
17 six years, yes?

18 **MR ZUCULA:** That's right.

19 **MR VASANI:** And you know that governments
20 should be clear with third parties?

21 **MR ZUCULA:** Apologies, sir. Of course we
22 have to be clear, but we're all fallible. Of course
23 we have to be clear, but a company the size of Patel
24 has to know how to manage risk. If something is
25 unclear -- Patel had lawyers, it had consultants,

1 so -- for me it's clear. It's clear Patel is saying
2 yes, I'm going to go talk to CFM, I'm going to
3 exercise my right -- how to put this my right --
4 *direito de preferência*, so I think OK, go to them
5 and I will wait for the results and then we'll see
6 what the next stage might be.

7 **MR VASANI:** No, Patel is not saying I'm
8 going to go talk. Patel has said four times that
9 they are going to implement the project. The last
10 sentence, thank you for your confidence in us that
11 we are going to be the ones implementing the
12 project, and I'm telling you if that is not your
13 understanding you would have corrected them, but you
14 didn't, and I'm asking why.

15 **MR ZUCULA:** No. The third paragraph says
16 "We would also like to inform you that we will
17 proceed with CFM [discussions] to incorporate an
18 entity for implementation of the project". They say
19 clearly they're going to work with the CFM. That's
20 the essential crux of the matter for me. I don't
21 think there's any confusion here.

22 **MR VASANI:** Let's look at this parallel
23 argument that you -- sorry, one second. Excuse me,
24 Mr Zucula.

25 Let's look at this parallel track argument

1 a little harder. Let's go to C-19, which is volume
2 2, tab 22, and paragraph 1. This is a letter from
3 you to PEL dated January 11, 2013.

4 Now, you're aware, aren't you, that by
5 this stage you have already announced a tender
6 process, and you and PEL are in disagreement, if not
7 dispute, as to its rights, right? Chronologically
8 speaking?

9 **MR ZUCULA:** I'm sorry. What is your
10 question again?

11 **MR VASANI:** Do you remember that
12 by January 2013 you had announced a public tender
13 and that the government and PEL were at
14 disagreement, if not dispute, as to the extent of
15 its rights?

16 **MR ZUCULA:** Yes.

17 **MR VASANI:** And you say: In June 2012, in
18 a meeting between you and I, I mentioned that your
19 preferential rights stated in the MOU and provided
20 for in the Law could be materialised through a
21 public tender where Patel would benefit from
22 preference or through a direct negotiation. I've
23 paraphrased the paragraph.

24 Please refresh -- read the whole
25 paragraph.

1 **MR ZUCULA:** Yes.

2 **MR VASANI:** Now, we don't have on record
3 any contemporaneous record of that meeting. Are you
4 aware of any notes that were made of that meeting
5 contemporaneously?

6 **MR ZUCULA:** No, I don't know. No, no.
7 I don't think there would be any notes. I don't
8 know of any notes. There are many things that were
9 discussed in small meetings where we discussed this
10 or that matter and that isn't recorded. Not
11 everything -- not all the hearings that the
12 ministry -- well, perhaps it was recorded in the
13 assistant's notepad but there might not even be a
14 record. But there's also a gap here. I don't know
15 if we have a document or not, but after this letter
16 from Patel to go speak to CFM, between that period
17 and this moment, they did not reach an agreement
18 with CFM. They were unable to set up a partnership,
19 and that's why we ended up with the public tender.

20 **MR VASANI:** And we don't need to turn this
21 up, but I'll just put it in for the record and for
22 your edification, but at paragraph 78 of this first
23 witness statement, and then again in his oral
24 testimony, Mr Daga has denied that you ever
25 mentioned this alternative track in June 2012.

1 Just a general question, Mr Zucula. Patel
2 liked to write letters, didn't it?

3 **MR ZUCULA:** I don't know if it liked to
4 write letters or not. If you would allow me --
5 look, perhaps I just don't know how to answer this
6 question.

7 I think what intrigues me, and I say this
8 most sincerely, is how a corporate business the size
9 of Patel does not manage risk. How does it not know
10 the rules of the country?

11 **MR VASANI:** That wasn't -- I'm going to
12 interrupt you there because that wasn't my question.

13 Any time I've --

14 **MR BASOMBRIO:** I object to the
15 interruption.

16 **PRESIDENT:** Yes. If you want to put the
17 question in redirect, that's fine, but let's go now
18 with the cross-examination.

19 **MR VASANI:** My own reading of the record,
20 and you can correct me if I'm wrong, is that any
21 time Patel felt that its rights were infringed, it
22 would put it in writing and say so.

23 So my question to you is when you dealt
24 with Patel, it was an entity that liked to write
25 letters when it felt infringed?

1 **MR ZUCULA:** Yes, perfectly so, yes.

16:25

2 **MR VASANI:** So my position is that if you
3 had told them in June 2012 that now their
4 understanding of the MOI was wrong and they only had
5 an alternative track, they would have written a
6 letter saying that they disagreed.

7 **MR ZUCULA:** A letter disagreeing on what?
8 Sorry?

9 **MR VASANI:** That the MOI gave them an
10 alternative track between a direct award and a
11 tender.

12 **MR ZUCULA:** I'm not saying that the MOI
13 gave them an alternative. That's not what I'm
14 saying. What I am saying is that not everything is
15 MOI. There are laws in Mozambique, procurement
16 laws, concession laws, there are other documents
17 that supersede this, which -- well, I imagine Patel
18 would have consulted those.

19 What I'm saying is that the MOU does not
20 grant a concession; it in its object regulates the
21 prefeasibility study; and then it says that within
22 that prefeasibility study there will then be a
23 discussion on the conditions under which the
24 government might grant a concession. That's what
25 the MOU says clearly. And now we're discussing the

1 conditions, what those conditions may be.

2 **MR VASANI:** Now let's move on to CFM, and
3 you've mentioned them often, you called it the
4 government arm that implements projects in ports and
5 railways, right?

6 **MR ZUCULA:** Perfect.

7 **MR VASANI:** And it's wholly owned by the
8 Government of Mozambique, yes?

9 **MR ZUCULA:** Perfect, yes.

10 **MR VASANI:** Its chairman is appointed by
11 the Council of Ministers?

12 **MR ZUCULA:** I believe so, yes.

13 **MR VASANI:** Most of the other board
14 members are appointed by the MTC?

15 **MR ZUCULA:** Perfect.

16 **MR VASANI:** MTC approves its annual plans?

17 **MR ZUCULA:** No.

18 **MR VASANI:** MTC approves its budget?

19 **MR ZUCULA:** No.

20 **MR VASANI:** MTC approves its programme of
21 works?

22 **MR ZUCULA:** No.

23 **MR VASANI:** Mr President, he has said no
24 to a series of questions which are in the Law and in
25 a document which is in abeyance to which you said

1 that if the witness said no and the Law said
2 otherwise, we would be allowed to get that document
3 in.

4 So, with your permission, I'd like to put
5 that onto the record.

6 **PRESIDENT:** Yes. Is it really relevant?
7 I think once we have established that it is fully
8 owned company of the Mozambican State and that the
9 chairman is designated by the Council of Ministers,
10 I think it is a fully -- it's a very normal
11 situation which one encounters very frequently, and
12 it's a fully owned -- State-owned company. I think
13 do you really have to establish further facts
14 regarding the State railway company?

15 **MR VASANI:** As a counsel to my client, I'm
16 going to make, and I have made, an attribution
17 argument, and I would like to put before you all the
18 evidence that goes to attribution, but I am
19 proffering that to you, Mr President and I'm in your
20 hands.

21 **PRESIDENT:** Let me ask you this, Minister
22 Zucula. Counsel has looked at the Laws of
23 Mozambique, and they think that the budget and the
24 business plan of the State railway company is
25 approved by the Ministry of Transport, and you said

1 no, it is not approved by the Ministry of Transport.

16:30

2 Is it because you think it is approved by
3 the Council of Ministers, or who approves these
4 budget and annual accounts and the plans of the
5 State railway company?

6 **MR ZUCULA:** To the best of my recollection
7 regarding the CFM's by-laws, CFM is a State-owned
8 enterprise benefiting from financial and
9 administrative autonomy, and it is under the aegis
10 of the ministry as opposed to being subordinated
11 thereto, and for financial matters the supervisor is
12 the Ministry of Finance.

13 So --

14 **PRESIDENT:** It is the Ministry of Finance
15 who approves the budget, the investment plans, and
16 the annual accounts of the State railway, of CFM.
17 Is that your --

18 **MR ZUCULA:** Everything of financial
19 relevance comes under the Ministry of Finance, and
20 the Ministry of Finance has another entity called
21 the State Shareholdings Management Institute, IGEP,
22 which is the institute that coordinates the
23 financial aspects of all SOEs.

24 So to the best of my recollection
25 regarding CFM's by-laws I have no involvement with

1 the financial side of that company, CFM, to the best
2 of my recollection, by heart, and this goes for all
3 SOEs.

4 **PRESIDENT:** Thank you.

5 **MR VASANI:** Mr President, we may have
6 shortcutted it because Mr Zucula has mentioned the
7 by-laws and exactly the document is the by-laws that
8 we would like to put in.

9 **PRESIDENT:** I don't know whether you are
10 going to some other questions. Is it relevant now
11 whether it is one ministry or the other?

12 **MR VASANI:** OK. Let me see if I --

13 **PRESIDENT:** Because if you want to in your
14 post-hearing submissions say that it is different,
15 that's fine. We have here a fact witness. That's
16 his recollection. It may be right or wrong.

17 **MR VASANI:** Fine. Maybe we can wait for
18 the legal experts.

19 **PRESIDENT:** Yes. Why don't we do that?

20 **MR VASANI:** Thank you, sir.

21 All right. Let's look at what CFM was
22 doing in this situation. Now this was a PPP, yes?

23 **MR ZUCULA:** Yes, indeed.

24 **MR VASANI:** And you designated CFM to be
25 the joint venture entity that would form the PPP

1 with Patel, yes?

2 **MR ZUCULA:** I don't appoint it. This is
3 an institution already set up by the government for
4 that purpose and it participates with other
5 investors. It's not necessarily the minister. It's
6 up to the government.

7 **MR VASANI:** Yes. Sorry. The
8 government -- one moment.

9 I had previously asked you about CFM being
10 the entity that entered into PPP with port and
11 railway and you had said yes.

12 **PRESIDENT:** I think there is no
13 discussion. There is some internal discussion where
14 it's the Council of Ministers or the minister, but I
15 think we all agree that the PPP was to be done with
16 CFM.

17 **MR VASANI:** Thank you.

18 Now, you know -- and you're here as a fact
19 witness so I'll ask you your recollection -- that
20 the PPP Law designates the government -- in other
21 words, it says the State -- or another public entity
22 to be a PPP partner.

23 In other words, is it your understanding
24 that the State or an entity that it designates would
25 be the PPP partner?

1 **MR ZUCULA:** The State as such, no, but an
2 arm thereof. The State as such. Ministry, the
3 government, to the best of my understanding, never
4 own a share in PPP. It's always through an entity
5 set up by the State to this purpose.

6 **MR VASANI:** On behalf of the government.

7 **MR ZUCULA:** On behalf of the government,
8 yes, indeed.

9 **MR VASANI:** So it stands in the shoes of
10 the government for that purpose?

11 **MR ZUCULA:** Yes.

12 **MR VASANI:** OK. Now, the negotiation with
13 CFM was not a precondition mentioned in the MOI, was
14 it?

15 **MR ZUCULA:** No.

16 **MR VASANI:** Why not?

17 **MR ZUCULA:** Because yet again it's
18 probably best to explain how matters are run, and
19 I believe Patel is well aware thereof.

20 Patel could have, from the beginning,
21 engaged CFM as opposed to the ministry. They could
22 have gone down that way had they chosen to do so,
23 engage directly CFM, and the project would come to
24 the government as a project submitted by CFM with a
25 foreign partner, and it would have been dealt with

1 differently when it came to the memorandum. There
2 would have been no MOI in this specific case.

3 So it was not a condition of the MOI for
4 us to tell them to speak with CFM. They wanted to
5 engage the government, the State machine as it were.

6 **MR VASANI:** So what you're saying is that
7 it was up to CFM whether it wanted to engage with
8 Patel or not. You just sat back and waited for the
9 results?

10 **MR ZUCULA:** No, that's not what I'm
11 saying. Let's see if I can be clearer.

12 Any investor coming to Mozambique with a
13 wish to invest in energy, in railways -- and
14 I believe this happens across the world -- said
15 investor will look for a local partner. I have a
16 great many cases of companies like Patel that came
17 to Mozambique and, as opposed to having CFM looking
18 for a partner, that possible potential investor goes
19 to CFM if it so decides, negotiates with CFM, comes
20 to whatever deal they can come to -- because CFM
21 have public autonomy -- and then, as a joint entity,
22 they come with the proposal and submit it to the
23 government. That's one path, which was not the path
24 followed.

25 I could not make Patel go and engage CFM

1 and negotiate with CFM from scratch upfront. I only
2 told Patel to engage with CFM should they want to
3 enter into a direct award path.

4 **MR VASANI:** Mr Zucula, this is not Patel
5 wandering around Mozambique looking for a local
6 partner. This is a company that entered into an MOI
7 with the MTC, spent millions of dollars, held up its
8 end of the bargain, you approved the PFS and then
9 you told Patel to negotiate with CFM. You picked
10 CFM.

11 **MR ZUCULA:** I'm sorry --

12 **PRESIDENT:** One second. I'm slightly
13 worried that you may start discussing with the
14 witness -- so I wonder whether -- I think you have
15 just different positions. You are welcome, but be
16 careful. Do not start discussing with the witness.

17 **MR VASANI:** Fine.

18 I understood your answer to be that every
19 investor coming to Mozambique needs a local partner,
20 and if they wanted a direct award they could
21 negotiate with CFM. That's what you said, yes?

22 **MR ZUCULA:** Yes.

23 **MR VASANI:** And I am telling you that the
24 history of this project is PEL entering into an MOI,
25 conducting the PFS which you approved under clause

1 1, which we looked at, and then you saying in order
2 to pursue the project, you must negotiate with CFM.
3 You picked CFM as part of the PPP Law.

4 **MR ZUCULA:** What I'm saying is that these
5 are two avenues that were open to PEL. What I'm
6 saying is that PEL might not have entered into an
7 MOI with the ministry, and they might have gone
8 directly to CFM. I then told them to go negotiate
9 with CFM after they opted for the MOI with the
10 ministry. These are two different paths. They came
11 to us, we signed the MOU, this is the procedure, and
12 this is standard behaviour in Mozambique. It's not
13 my rule or my choice.

14 Any investor, any serious investor in
15 Mozambique, is well aware thereof. We have cases of
16 companies that got a concession for a railway that
17 never came to the minister. They went straight to
18 the CFM, the Nacala corridor is such an instance,
19 they discussed with CFM, they signed a 49/51
20 per cent joint venture -- 51 per cent for the
21 investor, 49 for the CFM -- and a co-operation
22 agreement and then they came to the government for
23 proposal. This is standard operating procedure in
24 Mozambique, wich I was following.

25 The other option is what we name an

1 unsolicited bid, ie they came to us with a view to
2 signing a memorandum, and when the time comes for
3 them to wish for direct negotiation, the available
4 option is to go negotiate with the CFM. But it's
5 not compulsory.

6 If for whatever reason they don't do so,
7 they'll go the public tender way as opposed to a
8 direct award way. It's as simple as that.

9 **MR VASANI:** And in your position, whether
10 CFM engages or has any interest in the project is
11 entirely up to CFM. Nothing to do with you, right?

12 **MR ZUCULA:** No. CFM did not refuse
13 entering the project. CFM did not come to a
14 conclusion on the joint venture terms, to the best
15 of my knowledge.

16 **MR VASANI:** I didn't ask that, and now
17 I will insist on your answering my question.

18 As far as you were concerned, whether CFM
19 engaged or had interest in the project was up to CFM
20 and no one else but CFM, correct?

21 **MR ZUCULA:** It could be, yes.

22 **MR VASANI:** Either it could be, or it is.

23 **MR ZUCULA:** It is. CFM could say I'm not
24 interested in the Macuse project and provide grounds
25 for that refusal.

1 **MR VASANI:** And that was nothing to do
2 with the MTC?

16:43

3 **MR ZUCULA:** No, it didn't, unless --
4 unless it had been earlier decided to be a priority,
5 ie if the government had decided this line is a
6 number one priority and CFM must get onboard, which
7 was not the case, therefore CFM was free not to be
8 interested in the project.

9 **MR VASANI:** Let's look at PEL's letter to
10 you of June 22, 2012 at C-13.

11 **MR ZUCULA:** 2019 you said?

12 **MR VASANI:** 2012.

13 Before I get there, my understanding is
14 this talk with negotiation, this negotiation with
15 CFM, is something PEL could have done even before it
16 did the PFS, right?

17 **MR ZUCULA:** Yes.

18 **MR VASANI:** So as far as you're concerned,
19 the fact that you've approved the PFS and told PEL
20 that, in order to pursue the project, it must
21 negotiate with CFM, there's no connection between
22 negotiating with CFM and your approval of the PFS?

23 **MR ZUCULA:** We're having some difficulty
24 in understanding each other. Negotiation. PEL
25 insistently asked for direct negotiation. They did

1 not want to go down the public tender way. And I'm
2 telling PEL the only path that can lead you to that
3 end is a strategic partnership with CFM. Should you
4 strike up a strategic partnership with CFM, I can
5 take that proposal to the government. Otherwise, it
6 will have to go through public tendering. This is
7 when we entered this conflict.

8 I could not force CFM to negotiate or
9 under what terms. PEL had to negotiate with CFM if
10 they indeed wanted a direct award option because,
11 otherwise, the government would not accept such a
12 direct award. The Council of Ministers would not
13 accept.

14 Ultimately I was helping out PEL. I was
15 showing them the way to a direct negotiation, if
16 they're that reluctant to go down the public
17 tendering way.

18 **MR VASANI:** Let's look at C-13, volume 2,
19 tab 16 in the bundle.

20 Now, this is a letter from CFM, and you
21 can see it's 22nd of June 2012, which is a week
22 after, in the same letter that you approved the PFS,
23 you say that they must, to pursue the project, enter
24 into an SPV with CFM.

25 And Patel ask you to tell them who to

1 speak to within CFM and "a communication to
2 authorise us for discussion for formation of SPV
3 with CFM and CFM being nominated by the Government
4 of Mozambique as designated partner for this project
5 on a PPP model structure".

6 Do you see that?

7 **MR ZUCULA:** In this letter, yes, I can see
8 it, such a reference.

9 **MR VASANI:** Now, when it refers to CFM
10 being nominated by the Government of Mozambique as
11 designated partner for this project on a PPP model
12 structure, it's clear that what PEL is saying is:
13 Confirm that, per the PPP Law, CFM will be the
14 entity that steps into the government's shoes to
15 conduct the concession, conduct the project.

16 **MR ZUCULA:** I don't understand your
17 question. I'm sorry. Is it this document?

18 **MR VASANI:** I asked you about 15 minutes
19 ago about the PPP Law, and you confirmed for me that
20 CFM steps in the shoes of PPP project -- steps in
21 the shoes of the government for a PPP project, and
22 you said yes.

23 Now I'm showing you this letter from PEL
24 to you saying exactly that, confirm that CFM is the
25 designated entity that will step into the shoes of

1 the government for the PPP project. Do you see
2 that?

3 **MR ZUCULA:** I think I'm looking at a
4 different letter. I'm looking at --

5 **MR VASANI:** Maybe I've got the wrong one.
6 Sorry. Tab 16 -- maybe I've got the wrong tab.
7 C-13 --

8 **PRESIDENT:** Dear interpreters, you have
9 the wrong channel.

10 **THE INTERPRETER:** We're very sorry.

11 **MR VASANI:** 16. So look at 2, the second
12 part. "CFM being nominated by the Government of
13 Mozambique" --

14 **PROFESSOR TAWIL:** You need to make the
15 question again.

16 **MR VASANI:** I'm sorry. I'll familiarise
17 him with the document first, sir.

18 So this is a letter from PEL to you. Do
19 you see that?

20 **MR ZUCULA:** Yes, I'm looking at the
21 letter.

22 **MR VASANI:** And, the second part of 2,
23 they're asking for a communication that CFM is being
24 nominated by the Government of Mozambique as
25 designated partner for this project on PPP model

1 structure.

2 Do you see that?

3 **MR ZUCULA:** Yes, I can see that paragraph.

4 **MR VASANI:** And 15 minutes ago you agreed
5 with me that CFM steps in the shoes of the
6 government in PPP projects.

7 **MR ZUCULA:** For railways and ports, yes.

8 **MR VASANI:** So my question is this. You
9 can see here that Patel understands the discussion
10 with CFM is in relation to implementation of the
11 project on a direct award with CFM.

12 **MR ZUCULA:** What this letter says, what
13 I read therein, is that Patel is asking me to
14 confirm to Patel whom they should enter into a
15 negotiation with in CFM. Number 1 says name a
16 contact person, tell us whom we should get in touch
17 with in CFM.

18 And then they further ask for a
19 communication to authorise us to enter into a
20 discussion with CFM to set up an SPV. They're
21 asking needlessly. I don't know what I answered but
22 there's no need for this because, if they're aware
23 of the country's rules and regulations, they would
24 already know that it's CFM.

25 Here they are asking me to give them a

1 person's name.

2 **MR VASANI:** The second part of clause 2 is
3 clear that what they are understanding is that they
4 should enter into a negotiation with CFM as a
5 designated partner under the PPP structure, and
6 you --

7 **MR ZUCULA:** Yes.

8 **MR VASANI:** Now, if that was incorrect, we
9 would have seen a response from you saying that is
10 incorrect?

11 **MR ZUCULA:** This is not incorrect. This
12 is unnecessary, that's what I'm saying. It's purely
13 unnecessary. No need.

14 **PRESIDENT:** Mr Vasani, I think maybe we go
15 to the next document. I think we have pressed the
16 lemon as far as it goes.

17 **MR VASANI:** Yes. Thank you, sir. One
18 more question.

19 **PRESIDENT:** On this?

20 **MR VASANI:** No, it's not on the letter.
21 Even we can shut the letter.

22 It's true, isn't it, that you never
23 provided a substantive response to this letter, at
24 least for two months?

25 **MR ZUCULA:** The answer to this letter,

1 Patel already had it ever since they came to
2 Mozambique and signed an MOI. They knew CFM was the
3 partner for public rail and port infrastructure.
4 They had known it for ever, as any other investor.
5 So much so that we saw the previous letters, of the
6 presentation at CFM -- it was even CFM that
7 presented the project, as we saw here in some
8 correspondence. So they're aware of this, in my --

9 If I answered this letter, I don't know,
10 but this letter, does it stand for any obstacle for
11 Patel to continue to negotiate? It makes no sense
12 to believe so.

13 **MR VASANI:** What we have on record in
14 testimony is that the president of CFM and chairman
15 of the board, Mr Mualeia, first said he did not know
16 about the PFS and then said he had no copy of it.
17 That's not --

18 **MR ZUCULA:** I wouldn't know. I'm unaware
19 of such fact.

20 **MR VASANI:** But that's unlikely to be true
21 in light of CFM's involvement with the PFS at the
22 time, isn't it?

23 **MR ZUCULA:** Yes.

24 **MR VASANI:** Because CFM had been there
25 when the PFS was presented, yes?

1 **MR ZUCULA:** Yes.

2 **MR VASANI:** And we know CFM had an
3 internal presentation of the project to its board?

4 **MR ZUCULA:** It's possible, yes.

5 **MR VASANI:** And CFM would be the entity
6 that would implement the project ultimately?

7 **MR ZUCULA:** Perfect.

8 **MR VASANI:** And this is one of the biggest
9 projects the country has ever had?

10 **MR ZUCULA:** No, not the largest. It's
11 actually the smallest when it comes to railways.

12 **MR VASANI:** 3.1 billion was one of the
13 smallest?

14 **MR ZUCULA:** This project was 500
15 kilometres, whereas the biggest one was 2,500
16 kilometres. Departing from Tete, through Malawi to
17 Nacala, as was shown previously on the map. That
18 would be the largest, about \$5 billion, with Vale,
19 and the second biggest is Sena line. Macuse comes
20 in number third or number four.

21 **MR VASANI:** Let's turn to C-194, which is
22 in Core Bundle volume 2, tab 52. This is a
23 newspaper article of March 1, 2013 quoting the CFM
24 chairman of the board of directors, and then you see
25 in the fifth paragraph down, in relation to the

1 Macuse rail port project.

2 Do you see that?

3 **MR ZUCULA:** Yes.

4 **MR VASANI:** And he says "Here I must
5 mention that, in some cases, the participation of
6 Mozambique Ports and Railways is minimal. In this
7 case, for example, it will not participate because
8 the values are large and we've already participated
9 in the project with Vale, in the Nacala Corridor, in
10 the Techobanine project we are part of Bela Vista
11 Holding". Do you see that?

12 **MR ZUCULA:** Yes.

13 **MR VASANI:** So it's clear that CFM had no
14 intention ever of being part of this project, did
15 it?

16 **MR ZUCULA:** Maybe. It can be.

17 **MR VASANI:** Considering that this is a
18 company wholly owned by the MTC, whose strategy is
19 set by the MTC, you knew from day one that CFM had
20 no interest in this project, didn't you?

21 **MR ZUCULA:** No, I didn't know.

22 **PRESIDENT:** I think we have lost the court
23 reporter. Sorry, we have another technical glitch.
24 I think it's frozen. Is it frozen for everyone?

25 (Pause)

1 **MR VASANI:** Before you sent PEL to talk to **16:59**
2 CFM did you even call CFM's chairman and say hey
3 guys, I'm sending PEL over to you, do you have any
4 interest in the project?

5 **MR ZUCULA:** No, no, no, no. No. We're
6 talking about normal process. Normal procedures.
7 It's not the procedures of Minister Paulo Zucula.
8 It's normal -- it's normal procedures. The CFM are
9 part of the project since the beginning. In terms
10 of information from day one they saw the studies and
11 obviously if you want to build a railway in
12 Mozambique it's with the CFM that you have to talk
13 to. That's clear for CFM and it's clear for
14 everybody. I don't need to call them to say Patel
15 is going to knock on your door. No, I don't need to
16 do that. Patel asked to be heard, asked for an
17 interview, the same way as they asked for an
18 interview with me. A meeting.

19 **MR VASANI:** The PPP Law states that you
20 designate CFM to step into the shoes of the
21 government. You are meant to designate CFM. You
22 have to act.

23 **MR ZUCULA:** Yes.

24 **MR VASANI:** But you didn't.

25 **MR ZUCULA:** To force the railways?

1 **MR VASANI:** They are your subordinate
2 entity whose agenda and strategy you control and
3 under the PPP Law they step into your shoes. They
4 are not a stranger to you, sir.

5 **MR BASOMBRIO:** Mr President, I have to
6 object on the grounds that this line of questioning
7 is becoming argumentative. The witness has already
8 answered many times and Patel's counsel keeps
9 changing the phraseology. Nothing said "step into
10 the shoes". It said the Government, capital G,
11 nominates them. I can go on and on with examples,
12 but we have to be exact, and we cannot get to the
13 point where we're becoming argumentative with the
14 witness. Please.

15 **PRESIDENT:** Thank you. I have one -- two
16 points. One is we have been going on for an hour
17 and a half since the last break so we will have to
18 break whenever it's convenient, and my second
19 question to you, Mr Vasani, is how long do you have
20 to go with the minister?

21 **MR VASANI:** Yes, thank you, sir.

22 **PRESIDENT:** Because I think this line of
23 questioning is at its end.

24 **MR VASANI:** Yes. I have one letter and
25 then I can move on from this topic. I have the

1 Council of Ministers to talk about and the bribery
2 allegation.

3 **PRESIDENT:** Why don't we -- you wanted to
4 do one more question on this?

5 **MR VASANI:** Let me do the one letter, and
6 then I'll take the break, sir.

7 **PRESIDENT:** And then we break.

8 **MR VASANI:** Yes. OK. Sorry, forgive me,
9 it's two letters, but I'll be very quick on the
10 first. Let's turn to C --

11 (Discussion off the record)

12 **MR VASANI:** Turn to C-20, please, and that
13 is in Core Bundle volume 2, tab 23, and if you turn
14 to point 7 on page 3, this is a letter from PEL to
15 you dated January 22, 2013 where they say "We put
16 all our efforts by letter, and attempt to discuss
17 with CFM terms for partnership. We also submitted
18 CFM the required documents as desired by them but
19 regret to inform you that we never got either
20 response or invitation to meet and discuss the
21 subject matter".

22 Do you see that?

23 **MR ZUCULA:** Yes.

24 **MR VASANI:** So that is not the actions of
25 an entity that in good faith had any intention for

1 meeting with PEL, is it?

2 **MR ZUCULA:** CFM, you mean?

3 **MR VASANI:** Yes.

4 **MR ZUCULA:** Probably not. Probably they
5 didn't want the project.

6 **MR VASANI:** Let's look at C-19, tab 22,
7 and this is the last document before the break and
8 on to a different subject.

9 This is your letter of January 11th and
10 going to paragraph 3, I'm sorry -- tab 22 of the
11 second bundle -- what you say is: "Up to the
12 beginning of the last quarter of 2012 PEL and CFM
13 had not been able to reach an agreement leading to
14 the development of a strategic partnership, because
15 no offer beyond 20 per cent was made. Therefore,
16 the matter was taken to the attention of the
17 Cabinet, and, since time was of major concern, the
18 Government decided to look in the market for a
19 partner who was willing to accept more participation
20 of the public company CFM".

21 Do you see that?

22 **MR ZUCULA:** Yes.

23 **MR VASANI:** Now, you ignore the fact that
24 you actually did nothing to assist CFM to reach
25 agreement with Patel, right?

1 **MR ZUCULA:** Please bear with me. Let me
2 repeat. CFM has administrative and financial
3 autonomy. I can't force them to anything. I can't
4 force them to have a plan. If they don't want one,
5 full stop. If they have a reason for not
6 participating -- I'm talking about their in-house
7 rules in Mozambique, I'm not talking about my
8 will -- this doesn't kill the project. It just
9 means that Patel will have to continue the project
10 differently via public tender. It doesn't mean the
11 project died.

12 So the questions are leading to
13 interpreting from us that we wanted nothing from
14 Patel. If CFM doesn't want anything from Patel,
15 I can't force them.

16 **MR VASANI:** You ignore the fact that CFM
17 had no interest in the project.

18 **MR BASOMBRIO:** Mr President, this is
19 argumentative. He's answered several times.

20 **PRESIDENT:** OK.

21 **MR VASANI:** OK, let's go -- let me just
22 finish on this, the 20 per cent.

23 What you say there is "Therefore" -- do
24 you see that word "Therefore"? "Assim" in
25 Portuguese?

1 **MR ZUCULA:** Yes.

2 **MR VASANI:** So you're going to tender
3 allegedly because Patel would not give more than 20
4 per cent, right?

5 **MR ZUCULA:** Can you repeat that? Patel
6 was not going to get more?

7 **MR VASANI:** You say Patel was not willing
8 to give more than 20 per cent. "Therefore" --
9 "assim" -- you're going to the market so that you
10 can get more equity for CFM.

11 **MR ZUCULA:** Yes.

12 **MR VASANI:** So had Patel offered
13 25 per cent or 30 per cent or 35 per cent, you
14 wouldn't have gone to tender?

15 **MR ZUCULA:** No, no, no. There's a letter
16 which states clearly what we're dealing with, the
17 strategic partnership issue, and a strategic
18 partnership means two things. First of all, share
19 capital and, two, technology transfer.

20 Mozambique, through PPPs, wants to have
21 technology transfer and know-how transfer, so the
22 partner will have to be able to increase the
23 operational capacity of railways in Mozambique.
24 That's what we mean about strategic partnership.
25 It's not just to do with percentages. I can tell

1 you that.

2 All PPPs --

3 **PRESIDENT:** This is not the question of
4 counsel. Sorry to interrupt you. What counsel was
5 asking you is if Patel had offered 40 per cent
6 participation to CFM, if then, in your opinion, this
7 PPP would have been successful. That was his
8 question.

9 **MR ZUCULA:** And an institutional capacity
10 plan, yes.

11 **MR VASANI:** We can take a break,
12 Mr President.

13 **PRESIDENT:** We will make a break now. How
14 long do you have to go? Let me give you also a time
15 check.

16 **MS JALLES:** Claimant has so far used three
17 hours and 11 minutes in the examination.

18 **MR VASANI:** I'll just need one more hour,
19 Mr President.

20 **PRESIDENT:** One more hour. We should aim
21 to finish than with the minister today. Very good.
22 It's now 5.10. Let's come back at 5.20.

23 (Short break from 5.10 pm to 5.23 pm)

24 **PRESIDENT:** So let us continue.

25 Mr Vasani, we must finish with the -- or we should

1 try to finish, never say "must" in an arbitration,
2 but let's strive, if at all possible, to finish with
3 Minister Zucula today.

4 **MR VASANI:** I will do my best.

5 **PRESIDENT:** Let's see, because I'm sure
6 there will be some redirect and I'm sure there may
7 be questions from the Tribunal. We must put a
8 deadline I think, although we lost some time today
9 due to all these technical glitches, but we should
10 aim to finalise at a reasonable hour.

11 **MR VASANI:** Let's turn -- noted,
12 Mr President.

13 Let's turn, please, to C-29, volume 2, tab
14 29, please. This is a letter from you to PEL
15 dated April 18, 2013, where you set out in some
16 detail the Council of Ministers decision.

17 Do you remember this letter?

18 **MR ZUCULA:** Give me a minute, please.

19 **MR BASOMBRIO:** And, Mr President, I will
20 just have, as a standing objection to all these
21 translations, the language in the top of the letter
22 in the English that says "Direct Award". That's not
23 part of any of these letters. That's inserted in
24 the translation improperly. If they put the letter
25 back on the screen, you'll see it.

1 **MR VASANI:** Do you remember this letter,
2 Mr Zucula?

3 **MR ZUCULA:** I think so.

4 **MR VASANI:** Now, first of all, do you
5 agree that the Council of Ministers is the
6 government under Mozambican law, yes?

7 **MR ZUCULA:** Perfect.

8 **MR VASANI:** Let's keep this open, but now
9 let's go to article 13(3) of the PPP Law that was in
10 effect in April 2013, please. You'll see that's
11 CLA-65A which is in Volume 5, tab 122. Can you put
12 that on the record directly, please?

13 **MS MARTINS:** The Portuguese version is
14 CLA-25 at tab 113 of the Core Bundle.

15 **MR VASANI:** Mr Zucula, maybe you'd like to
16 look at the Portuguese instead of the English
17 translation. Do you have the Portuguese in front of
18 you?

19 **MR ZUCULA:** I do.

20 **MR VASANI:** And do you see article 13(3)
21 where it's translated "In ponderous and duly" --

22 **MR ZUCULA:** Article 10 --

23 **MR VASANI:** 13(3).

24 **MR ZUCULA:** Yes, I can see that.

25 **MR VASANI:** "In ponderous and duly

1 substantiated situations, and as a measure of last
2 resort subject to the prior express authorisation of
3 the Government, PPP enterprises may, on an
4 exceptional basis, be contracted through negotiation
5 and direct award".

6 Do you see that?

7 **MR ZUCULA:** Yes, I'm seeing it.

8 **MR VASANI:** So you need two things. You
9 need due substantiation, and you need prior express
10 authorisation of the government, yes? Do you see
11 that?

12 **MR ZUCULA:** Yes, yes.

13 **MR VASANI:** All right. Let's turn back,
14 then, please, to C-29, and you've agreed with me
15 that the Council of Ministers is the government,
16 yes?

17 **MR ZUCULA:** Yes, perfect.

18 **MR VASANI:** And let's look at what the
19 Council of Ministers said in its 10th Ordinary
20 Session on April 16, 2013.

21 It says, "considering the urgency of these
22 infrastructures, the national strategic interest,
23 the time available, and the fact that the tenderer
24 [Patel] has carried out all the feasibility and
25 engineering studies, and that it is in the national

1 interest that the project be accelerated, decided to
2 invite this company to start the process with a view
3 to carrying out those projects".

4 Do you agree with me that that is the
5 government giving due substantiation in accordance
6 with article 13(3) of the PPP Law? (Pause) I asked
7 you a question. Did it not get translated?

8 **PRESIDENT:** I think the Minister is
9 thinking --

10 **MR VASANI:** I'm sorry.

11 **MR ZUCULA:** I didn't understand the
12 question.

13 **MR VASANI:** Do you agree with me that this
14 is the government giving due substantiation to a
15 direct award in accordance with article 13(3) of the
16 PPP Law?

17 **MR ZUCULA:** No. This letter does not
18 mention direct award. In my reading of this letter,
19 it doesn't mention direct and it's not talking about
20 direct awards here.

21 **MR VASANI:** We've seen 13(3) of the Law
22 where, in order to give direct award, the government
23 must give due substantiation. What the government
24 says here is that for national strategic reasons,
25 PEL is invited to carry out the project, start the

1 process with a view to carrying out the project.

17:31

2 That is awarding a direct award with due
3 substantiation in accordance with article 13(3) of
4 the PPP Law, isn't it?

5 **MR ZUCULA:** No. This letter is inviting
6 Patel to start the process with a view to continuing
7 the project, and then we give them seven days to
8 answer and to present a bank guarantee to the tune
9 of 0.1 per cent sorry until the end of the contract.
10 The bank guarantee has to be valid for that period.
11 It's an invitation to Patel to participate in the
12 process of the project and it doesn't mention direct
13 award. It's a personal invitation to Patel to
14 participate in the tender.

15 It doesn't mention -- it doesn't say it's
16 for direct award.

17 **MR VASANI:** Sorry, it's --

18 **PROFESSOR TAWIL:** Counsel, can I make a
19 follow-up?

20 **MR VASANI:** Yes, of course, sir.

21 **PROFESSOR TAWIL:** Mr Zucula, two questions
22 relating to your answer. First, if there's no
23 direct award of the contract, what is the purpose of
24 the guarantee? And, second, why does it say that
25 the guarantee will be valid until the celebration of

1 the contract? If there's no --

2 **MR ZUCULA:** This is valid for all
3 participants in a tender process. All bidders --
4 all those who participate in a public tender -- have
5 to put up a bank guarantee which will be valid until
6 the signing of the contract.

7 **PROFESSOR TAWIL:** But wouldn't that appear
8 in the terms of reference or bidding terms more than
9 in a direct letter --

10 **MR ZUCULA:** Yes. What we're doing with
11 this letter, in the same period or close to this
12 period we held a public tender by official notice
13 for everybody. Just for deference to Patel, instead
14 of just having a publication in a newspaper, we took
15 special care, because they had been negotiating us
16 from the beginning we took special care through this
17 letter to inform Patel.

18 **PRESIDENT:** Please, Mr Vasani, please
19 proceed.

20 **MR VASANI:** Thank you. In your witness
21 statement -- let's turn to your witness statement,
22 please, and that is at paragraph 13 of your second
23 statement. You say "I reiterate my prior comments
24 that, in reviewing PEL's request for an
25 extraordinary direct award, the Council of Ministers

1 at one point in 2013 suggested further discussions
2 with PEL".

3 Do you see that?

4 **MR ZUCULA:** Yes.

5 **MR VASANI:** The Council of Ministers
6 doesn't get together with all the heads of the
7 ministries in order to pass a resolution to suggest
8 further discussions, does it?

9 **MR ZUCULA:** It doesn't gather with all the
10 ministers? Is that the question?

11 **MR VASANI:** If all the resolution was
12 doing was suggesting further discussions, that does
13 not require the entire collective government to
14 gather together in a room and pass a resolution that
15 there's going to be further discussions.

16 Governments don't get together to decide such
17 mundane things, do they?

18 **MR BASOMBRIO:** Mr President, I object on
19 the grounds that he's calling it a resolution.
20 There's no evidence of any decree, any resolution.
21 I don't know what he's talking about.

22 **PRESIDENT:** Let's -- Mr Zucula, you were
23 for six years a minister of the Government of
24 Mozambique, and you met regularly. I think every
25 week the Council of Ministers met.

1 **MR ZUCULA:** Perfect.

2 **PRESIDENT:** And was it on a Friday or on a
3 Monday? What is the normal day in Mozambique for
4 the Council of Ministers to meet?

5 **MR ZUCULA:** Ordinary meetings, Tuesdays.
6 Extraordinaries? Whenever. Ordinary meetings on
7 Tuesdays, extraordinary meetings whenever.

8 **PRESIDENT:** Very good. And who chairs?
9 Is it the President of -- is it the Prime Minister,
10 or is it the President of the State?

11 **MR ZUCULA:** Most of the time it's the
12 President of the country.

13 **PRESIDENT:** And is there a secretary?

14 **MR ZUCULA:** Yes, there is a secretariat.

15 **PRESIDENT:** Is that a minister?

16 **MR ZUCULA:** No, no, not a minister.

17 **PRESIDENT:** Very good. And there is an
18 agenda for each meeting?

19 **MR ZUCULA:** Always.

20 **PRESIDENT:** Very good. And there are
21 resolutions which are being -- for each point of the
22 agenda, one minister makes a proposal of a
23 resolution. Is that the normal way to proceed?

24 **MR ZUCULA:** Not necessarily. I can
25 explain if you want. The agenda, first of all, is

1 discussed -- each item is discussed, reviewed. We
2 have different types of agendas. We can just have
3 items for information to the Council of Ministers.
4 It can be a decree law, it can be a resolution, or
5 just a strategic discussion.

6 We don't always have resolutions in our
7 meetings. We always have minutes to the meeting.
8 Always. A resolution is when a decision is taken
9 which has to be published as a resolution, a decree,
10 or a decree law.

11 **PRESIDENT:** Very good, so you have agenda,
12 there is always, then, a transcript of the
13 discussion, a summary of the discussion, and,
14 depending on the items, there are resolutions, or it
15 is -- it is just a summary of the discussion,
16 correct? That's the normal way it works?

17 **MR ZUCULA:** That is correct, president.

18 **PRESIDENT:** And when you discussed on the
19 10th session, what was exactly on the agenda, if you
20 remember, with regard to our PPP?

21 **MR ZUCULA:** I don't recall.

22 **PRESIDENT:** But it was on the agenda.
23 There was something on the agenda regarding this
24 corridor between Tete and the coast?

25 **MR ZUCULA:** Yes, it should be on the

1 agenda.

2 **PRESIDENT:** Very good. Yes, of course.

3 My colleague, Dr Perezcano, has a question for you.

4 **MR PEREZCANO:** Thank you, Mr President.

5 Mr Zucula, how did this particular item get on the
6 Council of Ministers' agenda for this session? Who
7 put it in the agenda and why? I would assume it
8 would have been the Ministry of Transportation, so
9 I would assume it would have been you.

10 **MR ZUCULA:** Of course.

11 **MR PEREZCANO:** If that is the case --

12 **MR ZUCULA:** Yes, right.

13 **MR PEREZCANO:** -- why did you put this
14 item on the agenda of the Council of Ministers for
15 discussion or decision or for whatever purpose?

16 **MR ZUCULA:** I suppose that this item was
17 put to the Council of Ministers on a number of times
18 for information purposes or for decision to be
19 taken. Based on procedure, I'm convinced that when
20 we signed the memorandum I must have informed the
21 Council of Ministers that there was a memorandum for
22 a particular reason and the memorandum would have
23 been disseminated in Council of Ministers.

24 I probably also informed the minister on a number of
25 occasions of the progress at the level of the

1 prefeasibility study.

2 And I probably also presented the study,
3 the approved study, the study approved by us, the
4 ministry, I probably presented that in the Council
5 of Ministers for information or for approval, and
6 I must have presented the main points in the
7 discussions on the possibility for direct
8 negotiation or otherwise. I imagine, based on
9 procedure, that this would have gone to the Council
10 of Ministers three or four times throughout the
11 whole process.

12 **PRESIDENT:** Please, Mr Vasani.

13 **MR VASANI:** So you were the one who put it
14 on the agenda and presented to the Council of
15 Ministers at the 10th Session?

16 **MR ZUCULA:** Always, yes.

17 **MR VASANI:** And you would have been in
18 favour of -- and I'm going to put it neutrally --
19 negotiations, continued negotiations with PEL?

20 **MR ZUCULA:** Of course.

21 **MR VASANI:** Let's go to the 12th Ordinary
22 Session. Go to C-34, volume 2, tab 34, and this is
23 a letter from Mr Chaúque on the 13th of May, 2013 to
24 Patel. Now, notably, this letter didn't come from
25 you for the first time. This came from Mr Chaúque.

1 Is it because you didn't agree with the Council of
2 Ministers' decision?

3 **MR ZUCULA:** No, no, no, no. It's just how
4 we split up the work internally.

5 **MR VASANI:** That document talks about
6 something that happened on the 12th Ordinary
7 Session, and I'm going to mimic the president's
8 questions.

9 Who put this back on the agenda for the
10 12th Ordinary Session?

11 **MR ZUCULA:** It could only have been me.
12 It could only have been me.

13 **MR VASANI:** So it's your position to this
14 Tribunal that you put it on the agenda on the 10th
15 Ordinary Session and argued in favour of direct
16 negotiations, putting it neutrally, with PEL, and
17 then two weeks later you put it back on the agenda
18 to argue the opposite?

19 **MR ZUCULA:** Yes, but there's an omission
20 here in between. I always collaborated. I wanted
21 there to be the speedier direct negotiation avenue.
22 I just didn't go down that route by direct
23 negotiation because of the lack of a commitment by
24 CFM with Patel.

25 Had there been a commitment with CFM, we

1 would have gone down that path. I always defended
2 that idea because for me it would have been
3 speedier, less costly to go down the direct
4 negotiation path if CFM had come onboard, and I was
5 always in favour of that, but because there was no
6 agreement with the CFM, I could no longer defend
7 direct negotiation before the Council of Ministers.

8 **MR VASANI:** I'm sorry, Mr Zucula, the
9 negotiation with CFM was a 2012 issue. This is now
10 2013. And you've testified to this Tribunal under
11 oath that you put this on the agenda for the 10th
12 Session, you argued in favour of PEL, and then
13 two weeks later you say you put it back on the
14 agenda and argued against PEL's position, and I'm
15 asking you to explain that.

16 **MR ZUCULA:** The explanation is that it
17 depends on the point in time in which I came to the
18 conclusion that there would not be an agreement with
19 CFM. When I reached that conclusion I made that
20 decision, hence the opposite position.

21 **PRESIDENT:** Let me understand the
22 position. There is the 10th Session and the 12th
23 Session. Let's try to agree on the facts. On both
24 sessions there was an agenda and in both sessions
25 there was a discussion regarding the corridor

1 between Tete and the sea, and you -- let me first
2 clarify this. It was your proposal to put this on
3 the agenda in both cases.

4 **MR ZUCULA:** Perfect.

5 **PRESIDENT:** In these discussions what
6 happens is, if you have put it on the agenda, it is
7 you who take the floor and then you present your
8 position to the Council of Ministers. This is the
9 normal way you proceed.

10 **MR ZUCULA:** Perfect.

11 **PRESIDENT:** Very good. And so in the 10th
12 Session, you -- in the 10th Session you -- let's go
13 to the exact words, I don't want to say something
14 which is not -- you proposed -- I will now say it in
15 Portuguese --

16 **THE INTERPRETER:** Invite this company to
17 begin the process with a view to carrying out these
18 projects.

19 **PRESIDENT:** Do you agree that this would
20 be -- is this -- I have now a doubt here -- is this
21 within the public tender, or is this outside the
22 public tender?

23 **MR ZUCULA:** This is within the public
24 tender.

25 **PRESIDENT:** Within the public tender.

1 Very good. And then two weeks later in the 12th
2 Session it says what is -- here it says, and maybe
3 you have a look at C-34, which is the letter from
4 Mr Chaúque. Here it says "concluiu". "O Conselho
5 de Ministros ...concluiu".

6 There seems to be a decision. Is that
7 correct, that there was a decision?

8 **MR ZUCULA:** Yes.

9 **PRESIDENT:** There was then a decision, so
10 it was not just a discussion. There was really a
11 decision taken?

12 **MR ZUCULA:** Yes, yes.

13 **PRESIDENT:** And the decision was "que o
14 concurso público", so that's the tender --

15 **THE INTERPRETER:** That the public tender
16 represents the correct option.

17 **PRESIDENT:** So it means that the Council
18 of Ministers said the public tender must go forward.

19 **MR ZUCULA:** Yes.

20 **PRESIDENT:** So it's exactly the same
21 decision as in the 10th Session. There is no
22 difference?

23 **MR ZUCULA:** No, there isn't. What we here
24 see is the underscoring of a prior, of another
25 decision. There are two decisions, one underscoring

1 the previous one. There's no contradiction.

2 **PRESIDENT:** There is no contradiction.

3 But then it says, look here "não havendo, por isso,
4 espaço para negociação directa com nenhum dos
5 concorrentes". So it seems that this decision is
6 now saying but there will not be any direct
7 negotiation. So I wonder how these two decisions
8 fit the one with each other?

9 **MR ZUCULA:** Well, I -- let me see if I can
10 clarify this.

11 In the previous session -- I can't see
12 that letter any more now, but what I do is I invite
13 Patel to come to the ministry to prepare for the
14 public tender. Although I don't say that
15 explicitly, I say to begin the projects and I ask
16 for the guarantee letter. I'm inviting Patel.

17 Now, here, this is a direct information on
18 a resolution that is already in writing. Probably
19 in the 10th Session there was no written resolution,
20 there was a decision in the minutes, but here there
21 appears to be a written decision, which is why the
22 legal consultant would have informed of this. This
23 is my interpretation.

24 I guess when we sent the letter to Patel
25 there was only minutes and at this point there will

1 have been a resolution. That's my interpretation
2 because this is how the process happens.

3 **PRESIDENT:** But you see in the second
4 paragraph Mr Chaúque says -- I will read it to you
5 in Portuguese --

6 **THE INTERPRETER:** Based on this
7 decision -- Mr Chaúque says there was a decision --
8 there shall be no place for direct negotiation with
9 Patel.

10 **PRESIDENT:** So he says there will not be
11 any direct negotiation. So he -- the way I read
12 it -- is saying that the 10th Session had initiated
13 what he calls "negociação directa" and that now
14 there is a decision, a formal decision, from the
15 Council of Ministers saying that the correct way,
16 "opção correcta", is the tender.

17 Can I convince you of my reading of this,
18 or is there something I'm not seeing correctly?

19 **MR ZUCULA:** President, I'm not sure
20 I follow.

21 In the 10th Session there would have been
22 a decision for direct negotiations and in the 12th
23 there is no longer a decision?

24 **PRESIDENT:** Well, I don't know. I was not
25 there. You were there, minister. You see

1 Mr Chaúque says "Assim, e com base nesta decisão não
2 haverá lugar a negociação directa ... "

17:54

3 **THE INTERPRETER:** Based on this decision
4 there shall be no place for direct negotiation.

5 **PRESIDENT:** So Mr Chaúque seems to imply
6 that before there was some "negociação directa"
7 direct negotiations.

8 **MR ZUCULA:** Yes, there was. Let me see if
9 I can clear this up.

10 Yes, way before the 10th and 12th Sessions
11 information was given to the Council of Ministers
12 where the Council of Ministers then instructs that
13 there is margin, there's leeway for direct
14 negotiation based on negotiations with CFM.

15 So at a given moment in time there was a
16 decision that there should be direct negotiation
17 based on a strategic partnership with CFM, and
18 there's a moment in time where we instruct Patel to
19 enter into those negotiations, and that negotiation
20 is not fruitful. And because it is not fruitful, we
21 go to the Council of Ministers again and say there
22 was no strategic partnership, and that is when this
23 proposal comes up to go with the public tender.
24 And, based on that, I draw up this invitation letter
25 to Patel inviting them to participate, and I imagine

1 Chaúque is waiting for the resolution of the Council
2 of Ministers, not the minutes, and then draws up
3 this letter.

4 So yes, president, to answer your question
5 there was a moment in time when there was direct
6 negotiation but subject to a condition that was not
7 met.

8 **PROFESSOR TAWIL:** May I make a question?

9 Following the questions made by the
10 president, you seem to indicate that that decision
11 was prior to the 10th Session and that the 10th
12 Session was already the decision to go to the public
13 tender, and that this invitation on the 10th Session
14 to come to the ministry was to get into the public
15 tender. Correct?

16 **MR ZUCULA:** Yes.

17 **PROFESSOR TAWIL:** If you go to the wording
18 in the letter C-29, where you say it doesn't speak
19 about public tender but it doesn't speak about
20 direct negotiations, it refers to the urgency and
21 strategy and national interest, and those are
22 normally exceptions to public tender and those are
23 the cases for direct negotiations, am I right, that
24 those are normally the situations where you go to a
25 direct negotiation and you avoid the public tender,

1 urgency, and strategic interest?

2 And I would like to understand why is
3 urgency and strategic interest mentioned when you
4 are calling them to come to a tender. Thanks.

5 **MR ZUCULA:** The urgency and the strategic
6 interest do not determine, as far as I can recall,
7 the absence of a public tender. What was happening
8 was that this had been dragging on since 2011, and
9 nothing was happening, and because we had been
10 dealing with this for a long time and we weren't
11 initiating the process, we decided not to wait any
12 longer because it was urgent. We weren't going to
13 wait for further negotiations with the SOE because
14 it was urgent, a lot of time had elapsed and --
15 that's not here but that's the spirit of the text --
16 so we would advance to a public tender.

17 The urgency here is not an emergency. It
18 was just something that had been dragging on for a
19 long time.

20 **PRESIDENT:** Thank you. Mr Vasani. Sorry
21 to -- oh, no. Mr Perezcano has a question.

22 **MR PEREZCANO:** Or several. Thank you,
23 president.

24 Mr Zucula, on April 12th, 2013, the
25 Ministry of Transportation invited six qualified --

1 or pre-qualified bidders to tender. So this
2 happened on April 12th. In other words, the
3 tendering process had begun since late January.
4 There were some 25 or so companies that participated
5 initially and six companies were selected to go to
6 the next stage, and that happened in April 12th.

7 Then only four days after that there are
8 six bidders that are pre-qualified, including Patel.
9 Then you take this matter to the Council of
10 Ministers and the Council of Ministers comes back
11 and invites Patel to negotiate directly with the
12 Ministry of Transportation.

13 So I don't understand. There are six
14 bidders there and the Council of Ministers only
15 invites Patel to direct negotiations. That's four
16 days later on April 16. Then on April 18th you
17 inform Patel of this decision. A few days later
18 Patel accepts the invitation. On April 24 there is
19 a proposal to hold the first negotiations meeting,
20 and then a few days later, on April 30, there is a
21 decision that, no, negotiations are not happening,
22 we're continuing on the tendering process with Patel
23 and all other five bidders.

24 I don't understand that. Can you please
25 explain to me what happened there?

1 **MR ZUCULA:** I don't think I followed.

18:01

2 At one point in time the Council of
3 Ministers invites Patel to enter into direct
4 negotiations. Was I right in understanding this is
5 what you said? Can you tell me at what point in
6 time did the Council invite Patel to enter into a
7 direct negotiation?

8 **MR PEREZCANO:** Well, you -- on your letter
9 of April 18, 2013, you convey to Patel the Council
10 of Ministers' invitation to begin negotiations with
11 the Ministry of Transportation. That's the letter,
12 the April 18 letter.

13 **PRESIDENT:** That's C-29.

14 **PROFESSOR TAWIL:** And you were in the
15 middle of a tender. So what is the purpose of the
16 invitation if you were in the middle of a tender?

17 **MR ZUCULA:** I hope -- I had hoped to have
18 clarified this. I may not have been too clear.

19 Firstly, this letter is not an invitation
20 to enter into a direct negotiation. It's not
21 written thereon that we will have recourse to a
22 direct negotiation. What it does say is that we
23 will start a process with a view to carrying out the
24 project. It doesn't say which process. It doesn't
25 say, for instance, that it will be a direct

1 negotiation process, and this letter is mine, not
2 the Council of Ministers.

3 I hope to have been clear.

4 **MR PEREZCANO:** No. I'm sorry to say not
5 quite.

6 I understand that it says "decidiu
7 convidar esta empresa para iniciar o processo com
8 vista a realização daqueles projectos".

9 So that's your April 18th letter. But
10 then a few days later, by letter dated 24 April --
11 and this is C-32 if you have it there -- there is an
12 interministerial technical team that proposes to
13 hold the first negotiations meeting with Patel at
14 the MTC.

15 **MS MARTINS:** Tab 32 of the Core Bundle.

16 **MR PEREZCANO:** So I mean although the 18
17 of April letter does not say "invite negotiations",
18 I don't know what the invitation for the process was
19 if Patel was already within those six pre-qualified
20 bidders, so that it had begun the tendering process,
21 but there is in addition to that, to Patel's
22 participation in the tendering process, there is an
23 invitation specifically to Patel that leads to a
24 proposal to hold a first negotiations meeting
25 on April 24th.

1 **MR ZUCULA:** I'm afraid I can't vouch for
2 this letter, but what I keep saying is that
3 I believe that terminology here does matter. In
4 none of these letters will you find a reference to
5 terms such as concession agreement or contract.
6 None of these letters says unequivocally that we'll
7 be negotiating a direct award.

8 I can't vouch for this letter. It's the
9 first time I've seen it. I don't know what the
10 interministerial committee wanted to discuss with
11 Patel, I don't know, but most certainly it was not a
12 direct award.

13 **MR PEREZCANO:** Well, it might not be a
14 direct award, Mr Zucula, but it does say -- and
15 I appreciate that this is Mr Chaúque's letter, but
16 it does say "Assunto: negociacoes diretas dos termos
17 das concessoes do Porto em Macuse".

18 I apologise for my terrible Portuguese.
19 I don't speak Portuguese, but it says negotiations
20 of the terms of concession of the port in Macuse.
21 I mean I appreciate this is a letter from
22 Mr Chaúque, but he was your legal advisor at the
23 ministry?

24 **MR ZUCULA:** Indeed. I agree. But this
25 letter must be read in conjunction with PEL's

1 letter. It would seem -- the case is that Patel
2 wrote the ministry asking for something, because
3 Chaúque's letter is a reply thereto. It says "In
4 the context of our communication regarding the above
5 subject, we received a letter" -- and a series of
6 references follows, indicates that it comes from
7 Patel dated 24th of April confirming the date, the
8 holding of the first meeting.

9 In order to understand properly the scope
10 of this letter we would have to look at what Patel
11 requests on this letter this one replies to. We
12 cannot deduce that it was a direct negotiation for
13 the concession. It was something that Patel was
14 requesting from the ministry, which I don't know
15 what it was.

16 **PROFESSOR TAWIL:** Sorry, but I mean, this
17 appears to be triggered by your letter C-29. C-32
18 seems to be a consequence of your letter of
19 18 April.

20 **MR ZUCULA:** I don't know, but what I can
21 read is that this letter is in reply to a letter
22 from Patel. "In the context of our communication
23 regarding the above subject, we received the
24 official letter." I think this letter comes from
25 Patel. I would have to see this letter in order to

1 understand what we are talking about.

2 **PRESIDENT:** Very good. Mr Vasani, we give
3 you back the witness. We have sequestered him.

4 **MR VASANI:** No, no, thank you,
5 Mr President. Actually, I thank the Tribunal for
6 having shortcut a lot of my cross-examination.
7 I can actually move topics now, and I can finish in
8 15 --

9 **PRESIDENT:** Can we see the letter from --
10 the reaction from PEL to --

11 **MR VASANI:** Yes, of course, sir.

12 **PRESIDENT:** That is what -- I think it
13 would be good that we have a look at that --

14 **MR VASANI:** Yes, of course.

15 **PRESIDENT:** -- because the minister was
16 saying that he wanted to see it. So let's see that.

17 **MR VASANI:** That's tab 31 in the Core
18 Bundle. C-31. Mr Zucula, you said you wanted to
19 see this letter. It says "Subject: Implementation
20 of project on PPP basis for rail link from Moatize
21 to Macuse", and then it talks about that they'll
22 hand over a draft concession agreement in Portuguese
23 latest 24th of April 2013, and a first meeting
24 on May the 8th.

25 **MR ZUCULA:** No, this is not the same.

1 This is not the same. It doesn't look like. The
2 letter that Chaúque mentioned here --

3 **PRESIDENT:** You are speaking in English,
4 sir.

5 **MR ZUCULA:** I'm very sorry. The letter
6 Chaúque refers to dated April the 24th, the
7 reference is PEL/MOZ/INFRA/102. The one that you're
8 showing now is PEL/MOZ/INFRA/101.

9 **MR PEREZCANO:** There are two letters.
10 C-32 is 102 and C-30 is 101.

11 **MR VASANI:** Mr Zucula, if you have any
12 response --

13 **MR ZUCULA:** I'm just reading.

14 **MR VASANI:** I give you an open invitation
15 to speak about the letter.

16 **MR ZUCULA:** 102 comes after 101, so I'm
17 going through 101 to better understand 102. The
18 reference is made to the internal Mozambican
19 reference on the letters, PEL/MOZ/INFRA/101 and then
20 102.

21 **MR VASANI:** Do you have any reaction in
22 the light of the Tribunal's questions to you now
23 that you've seen the letters?

24 **MR ZUCULA:** My stance is the very same.
25 In Patel's letter reference is made to my

1 letter saying that their is for the negotiation of
2 the concession, but this is what Patel says, not
3 what we say. And in relation to that, in fact --
4 then it has a part here that is the continuation,
5 where is it?

6 **MR VASANI:** Mr President, members of the
7 Tribunal, are there any further questions on this
8 topic?

9 **PRESIDENT:** No, it's important --

10 **MR VASANI:** Please, sir. Of course.

11 **PRESIDENT:** It's important because
12 Patel -- when you see the answer from Patel, they
13 completely misunderstand C-29, the decision of the
14 10th Session of the Council of Ministers. They
15 think that it is a direct negotiation of the
16 concession agreement, and they write you a very
17 happy letter in which they convey their gratitude
18 and their happiness.

19 My problem comes more if you -- and you
20 say well, they misunderstood. But if you then go to
21 Mr Chaúque's letter, which is C-32, he seems to have
22 also been misled by the interpretation of Patel
23 because he "o assunto" as my colleague underlines to
24 you, "negociacoes dos termos" -- and he seems to be
25 assuming a direct negotiation of the terms of the

1 concession agreement. And we have another letter
2 from Patel which says "and we are expecting in the
3 near future the first draft in Portuguese of the
4 concession agreement". That's C-31.

5 So there seems to be some confusion
6 between what you explain to us the Council of
7 Ministers decided in its 10th Session and what Patel
8 understood and what Mr Chaúque understood.

9 Because that then fits in, if you follow,
10 the letter of Mr Chaúque of the 12th Session of the
11 Council of Ministers. There he says "negociação
12 directa", he says that avenue is finished, and he
13 uses there the expression "negociação directa", so
14 he must have been in the thought that a "negociação
15 directa" was envisaged.

16 **MR ZUCULA:** Yes, indeed, president.
17 Direct negotiation was indeed envisaged. It
18 remained envisaged up until that point in time when
19 negotiations with CFM had failed. The exchange of
20 correspondence between Mr Chaúque and Patel, I hope
21 he'll be able to clarify this himself, although
22 looking at the letter, it does not refer to direct
23 award of the concession. That is Patel's letter.

24 But there clearly is misunderstanding
25 between these two parties.

1 **PRESIDENT:** Thank you.

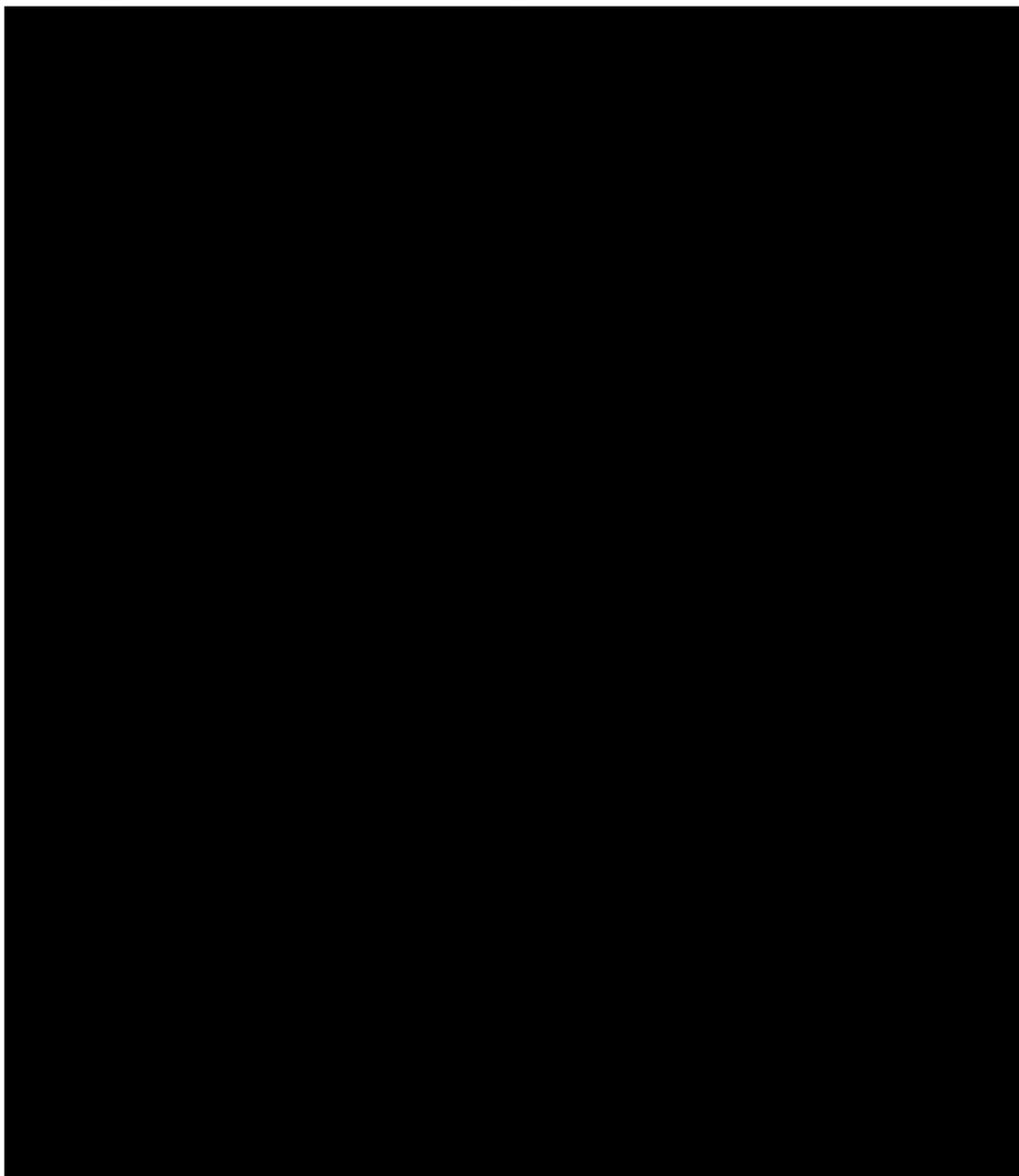
18:18

2 **MR VASANI:** Thank you, Mr President. I'm
3 going to change topics. It's my final topic and
4 I hope to be done quite soon.

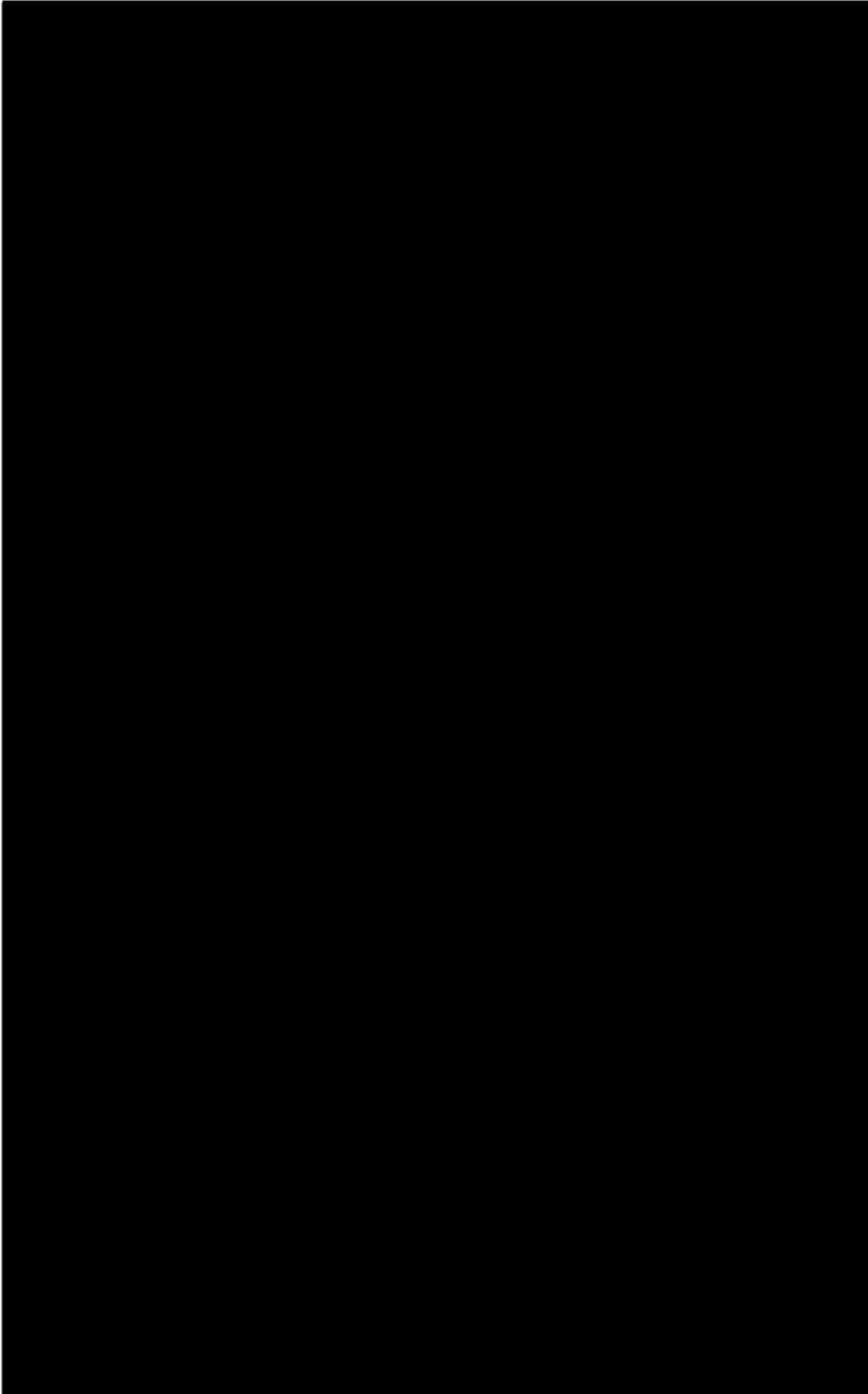
5 **PRESIDENT:** Yes, thank you.

6 [Pages 695/7 to 697/17 designated as Confidential]

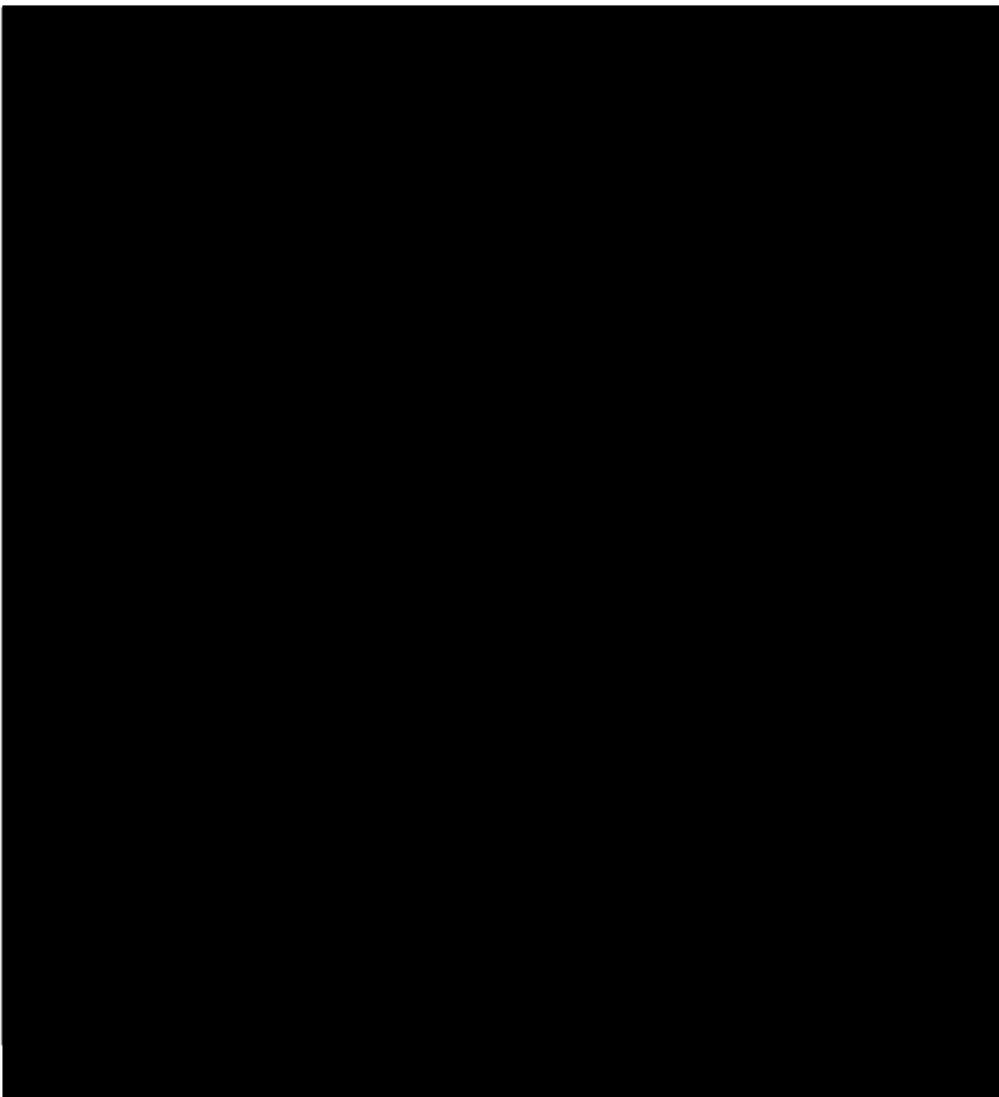
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[End of Confidential Passage]

MR VASANI: You have made an allegation of crime against Mr Daga, yes, in this arbitration?

PRESIDENT: You may wish to express -- to refer expressly to what --

MR VASANI: Of course. Let's go to paragraph 25 of your first witness statement.

You say "PEL attempted to offer me a bribe

1 which I refused. During the time period that PEL
2 was struggling to gain traction with its post PFS
3 negotiations I flew to Macuse with Mr Daga from PEL.
4 During this flight Mr Daga sat on the seat next to
5 me on the airplane. I clearly recall that, while we
6 were discussing PEL's difficulties, Mr Daga stated
7 to me in these specific words that he was inviting
8 me to come to visit in India so that we may unlock
9 these problems and we will help you out".

10 Paragraph 26. "I understood Mr Daga's
11 suggestion that PEL would help me out as an indirect
12 or implicit offer of a bribe to me, a Mozambican
13 government official. It was illegal for PEL to
14 offer to help me out. My personal interests were
15 irrelevant. I immediately told Mr Daga that I was
16 declining both his invitation for a trip to India
17 and his offer to help me out".

18 And then in your second statement at
19 paragraph 16 you just simply say you reaffirm that
20 position.

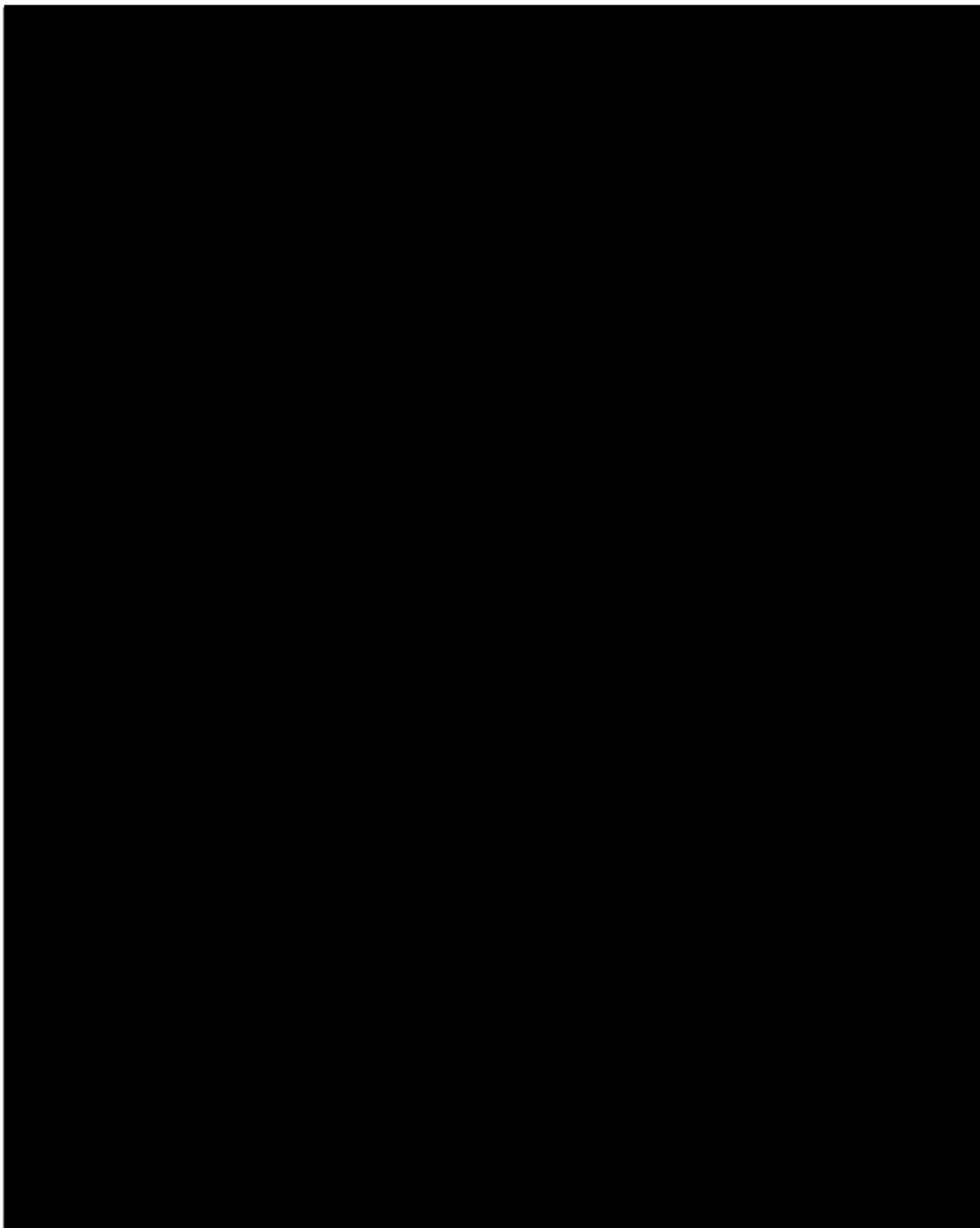
21 So what you are doing there, Mr Zucula, is
22 that you are representing yourself to this Tribunal
23 as someone of honour, yes?

24 **PRESIDENT:** I don't think that this is a
25 correct question. I don't think that that is a

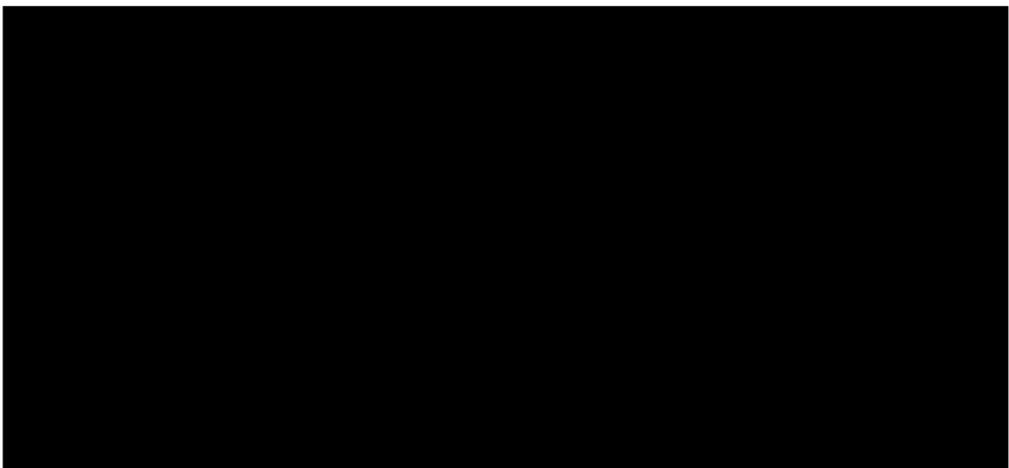
1 factual question to which he can answer. You may
2 wish to ask him if he confirms, if he has further
3 details or whatever, but I don't think that that is
4 a proper question.

5 [Pages 699/6 to 700/7 designated as Confidential]

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[End of Confidential passage]

MR VASANI: Yes. Just a last point,

Mr President.

Let's go back to paragraph 25, please, of your first witness statement.

Now, first of all, are you aware Mr Daga has been in the business world for 50 years and has never been accused of any such crime before?

MR ZUCULA: I don't know.

MR VASANI: And this alleged bribe you say took -- took place -- you don't give a date. You said "During" -- this is paragraph 25 of your first witness statement -- "During the time period that PEL was struggling to gain traction with its post PFS negotiations". Can you see that?

MR ZUCULA: Yes.

MR VASANI: Who is that negotiations with?

Is that CFM or someone else?

1 **MR ZUCULA:** It's the whole process.

2 **MR VASANI:** No. You're going to have to
3 be -- if you're going to make an allegation of this
4 nature, Mr Zucula, you're going to have to be more
5 specific.

6 "Post PFS negotiations". What does that
7 mean?

8 **MR ZUCULA:** I'm talking about all the
9 negotiations with CFM with Patel. All the process
10 of negotiation.

11 **MR VASANI:** Yes. And when you say "post"
12 PFS, you mean after the PFS was approved, right?

13 **MR ZUCULA:** Perfectly. That's when we
14 started negotiations. Before there was very little
15 negotiation, prior to that.

16 **MR VASANI:** Correct. And then in
17 paragraph 25 you say, "while we were discussing
18 PEL's difficulties, Mr Daga stated to me, in these
19 specific words" and then you allege he made an offer
20 of a bribe. Do you see that?

21 **MR ZUCULA:** Yes, I can see that.

22 **MR VASANI:** The difficulty you have,
23 Mr Zucula, with your story, is that this flight took
24 place in May 2012, and any difficulties that PEL had
25 with CFM only began in August 2012.

1 **MR ZUCULA:** I didn't mention any
2 negotiations with CFM. I didn't mention that. If
3 you want me to explain, I went to visit the project
4 site for the first time in Macuse.

5 **MR VASANI:** Let's look at Mr Daga's first
6 witness statement at paragraphs 71 to 75 -- sorry,
7 give me one second. First witness statement, 71 to
8 75.

9 Now, this witness statement was submitted
10 before you made any allegation of bribery in
11 Respondent's Statement of Defence, and Mr Daga says
12 this:

13 71. "After presenting the PFS, I felt as
14 if the government was committed to the project.
15 I really felt things had developed positively and
16 I was excited about advancing and implementing the
17 project. Therefore PEL continued to have
18 increasingly detailed conversations with the MTC as
19 it requested even further information concerning the
20 PFS and the project. The government's commitment to
21 the project seemed steadfast. We expected that the
22 MTC's approval would follow shortly and we would be
23 issued a draft concession. It was around this time
24 that Minister Zucula asked me to come to Macuse as
25 he was visiting Quelimane and he wanted me to show

1 him the proposed location of the port. Mr Prabhu,
2 Mr Sudhakar and I all took the same flight as
3 Minister Zucula. We reached Quelimane and from
4 there we went to the small town of Namacurra and
5 then on to Macuse. During the visit I saw Mr Gomes.
6 CFM was also present. During the site visit
7 I explained the location of the port and the berths.
8 Minister Zucula indicated he was impressed with the
9 work that PEL had done and looked forward to PEL
10 completing the project. The MTC approved the PFS
11 on June 15, 2012".

12 So during this flight, Mr Zucula, there
13 were absolutely no difficulties in post PFS
14 negotiations, were there?

15 **MR ZUCULA:** What is true from your
16 statement, sorry?

17 **MR VASANI:** I think you fully understand
18 what I'm saying, Mr Zucula.

19 **PRESIDENT:** Please, put the question.

20 **MR VASANI:** But I will put it to you
21 again.

22 You say in your witness statement that on
23 that flight in the middle of Mr Daga explaining his
24 difficulties in post PFS negotiations he offered you
25 a bribe, and I have just shown you a chronology

1 difficulty because that trip took place in May 2012,
2 and I've shown you Mr Daga's statement where he was
3 excited and happy and he felt the government were on
4 his side, he had no difficulties, and we know that
5 any difficulties only happened in August 2012, and
6 what that means, Mr Zucula, is that your statement
7 is not true.

8 **MR ZUCULA:** It is true. It is true when
9 I say -- I want to correct something in this
10 document and in this witness statement by Mr Patel.

11 I visit Macuse to visit the project site.
12 I am the one who's visiting the project when they
13 told me that the PFS is ready, is finished. There's
14 no invitation, there's no invitation to Mr Patel
15 because I assume that he's there, but I found him on
16 the plane. I met him on the plane. Maybe it's
17 exaggerated, but it's true, and this is true.
18 Mr Patel invited me to visit India to unblock
19 matters from India. I might be wrong but I took
20 that -- because it's not normal because we are
21 forbidden to have any contacts, neither coffee nor
22 lunch nor dinner, whilst we negotiate a project
23 which involves money.

24 I interpreted that as a way of pleasing
25 me. That's my interpretation. The rest that he

1 says here, we were all enthusiastic from the
2 beginning and very encouraged and happy, until the
3 difficulties cropped up.

4 **MR VASANI:** Mr Zucula, will you withdraw,
5 please, your allegation against Mr Daga?

6 **MR ZUCULA:** To withdraw that he invited me
7 on a trip?

8 **MR VASANI:** That "he attempted to offer me
9 a bribe". Will you withdraw that allegation, sir?

10 **PRESIDENT:** That he invited you to India
11 but not that he offered you money, is the proposal
12 from counsel.

13 **MR VASANI:** Thank you, Mr President.

14 **MR ZUCULA:** President, can I talk to my
15 lawyers?

16 **PRESIDENT:** Of course. Of course. You
17 want to -- the government's lawyers or your personal
18 lawyers?

19 **MR ZUCULA:** My lawyers here. My lawyers
20 here.

21 **PRESIDENT:** But they are the lawyers for
22 the Republic of Mozambique.

23 **MR ZUCULA:** And I represent Mozambique, so
24 they're considered my side.

25 **PRESIDENT:** I mean, it is how -- you have

1 the recollection, minister, of exactly what was said
2 and whether it was an innocent invitation to come to
3 India and to enjoy the Indian cuisine and Indian
4 hospitality, and which you could not accept because
5 you were in negotiations, I understand that, or
6 whether there was something else that they were
7 offering you, a personal gain which, the first is --
8 you may not be able to accept it, but it's proper,
9 it's not a crime, and the second evidently is a
10 crime.

11 And I assume that it is important for
12 Mr Daga to know what exactly your recollection is?

13 **MR ZUCULA:** Perfect. I understood. I can
14 remove that it was a bribery attempt, but I can
15 explain that this is always happening to us in
16 Mozambique, and sometimes go to prison only for
17 that -- so it's natural that I interpreted his out
18 of the blue offer to visit India as a bribe. We
19 don't have a personal relationship, we're not
20 friends, we are not business partners, so how does
21 that trip invitation come out of the blue? That's
22 why I interpret it as a bribery attempt. I can
23 withdraw that, but I can't withdraw the fact that I
24 was invited to India.

25 **PRESIDENT:** Thank you.

1 **MR VASANI:** Thank you, Mr Zucula.

2 Mr President, I have no further questions.

3 **MR BASOMBRIO:** And, Mr President, we're
4 fine with the request from counsel and with what
5 Mr Zucula has said.

6 **PRESIDENT:** Thank you. Thank you,
7 minister, for your words.

8 Let me double check. You are finished?

9 **MR VASANI:** Yes, sir.

10 **PRESIDENT:** Is there any redirect from the
11 Republic of Mozambique?

12 **MR BASOMBRIO:** No, there's not. Thank
13 you.

14 **PRESIDENT:** Is there any further question?

15 We are almost through, minister.
16 Five minutes and we are through.

17 **MR PEREZCANO:** Yes, thank you,
18 Mr President. I'm going to go back to the Council
19 of Ministers' invitation -- sorry, I have several
20 documents open. So Patel's letter of 24 April 2013,
21 this is the one numbered 102 at C-31 suggests that
22 they had a meeting with you and that you told them
23 that you would hand over a draft concession
24 agreement in Portuguese at the latest by that same
25 day, 24 April 2013.

1 I just want to be sure. Do you recall
2 having had this meeting with Patel?

3 **MR ZUCULA:** No, I don't remember, but let
4 me add, it's natural that I would hand over a
5 template of what would be a project of concession.

6 **MR PEREZCANO:** Thank you, Mr President.
7 I have no other questions.

8 **PROFESSOR TAWIL:** I have only one small
9 clarification, something I didn't understand, and
10 I need to go back to 14.15.12 in the transcript.
11 Here it is. You were speaking about due diligence
12 at that time and what you said here is "No, we
13 didn't make a due diligence and then throughout
14 later in the process as we got into more complex
15 commitment, then we would implement the necessary
16 steps to make sure we confirm who we were working
17 with".

18 Which more complex commitments would you
19 have entered if the MOI didn't mean any commitment
20 for you? I mean you were referring to what, when
21 you say that you would be doing a due diligence
22 afterwards?

23 **MR ZUCULA:** It could be many things.
24 Starting point, basic start, contacts with our
25 embassy in India and the Indian embassy in Maputo.

1 Maybe that's where we would start off the most basic
2 issue.

3 We would later try to find out about Patel
4 investments in India and elsewhere and probably try
5 and get their professional CV. That happens at a
6 time when the tender documents are submitted because
7 one of the important tender documents is the CV of
8 the company. The company has to show their own CV.
9 And so based on what the CV is, we can check whether
10 what they are stating is true or not. That's our
11 due diligence.

12 Due diligence becomes more serious when we
13 receive some negative information in relation to
14 Patel. In that case we have to dig deeper, either
15 ourselves or other Mozambican institutions.

16 **PROFESSOR TAWIL:** Thank you. No further
17 questions.

18 **PRESIDENT:** Minister Zucula, thank you
19 very much. You have come from Maputo to be with us?

20 **MR ZUCULA:** Yes, Mr President.
21 I travelled from Maputo.

22 **MR VASANI:** Sorry. For the record, maybe
23 I missed it and I was day dreaming, but did you ask
24 about redirect? Did you already? Forgive me.
25 I missed it completely. Forgive me, Mr President.

1 **PRESIDENT:** Thank you. I did not forget.

18:44

2 I was saying, Minister Zucula, we wish you
3 a safe trip back home, and we thank you for having
4 made the effort of coming all the way to better
5 explain the facts of this case to us. Thank you
6 very much.

7 **MR ZUCULA:** Thank you for your indulgence,
8 for your patience. I hope I have contributed to
9 having clarified some of the facts of this case.
10 Thank you very much.

11 **PRESIDENT:** Very good. We close the
12 transcript for today.

13 (The hearing was adjourned at 6.45 pm)

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