

Case No. SCSL-2004-14-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA

FRIDAY, 27 JANUARY 2006
9.45 A.M.
TRIAL

TRIAL CHAMBER I

Before the Judges:	Pierre Boutet, Presiding Bankole Thompson Benjamin Mutanga Itoe
For Chambers:	Ms Sharelle Aitchison Ms Roza Salibekova Ms Anna Matas
For the Registry:	Mr Geoff Walker Ms Maureen Edmonds
For the Prosecution:	Mr Desmond de Silva Mr Joseph Kamara Mr Kevin Tavener Ms Bianca Suci (Case Manager)
For the Principal Defender:	Mr Lansana Dumbuya
For the accused Sam Hinga Norman:	Dr Bu-Buakei Jabbi Mr Alusine Sesay Mr Kingsley Belle (legal assistant)
For the accused Moinina Fofana:	Mr Arrow Bockarie Mr Michiel Pestman Mr Andrew Ianuzzi
For the accused Allieu Kondewa:	Mr Ansu Lansana

1 [CDF27JAN06A - SV]
2 Friday, 27 January 2006
3 [Open session]
4 [The accused present]
09:31:12 5 [Upon commencing at 9.45 a.m.]
6 PRESIDING JUDGE: Yes, Mr Prosecutor.
7 MR TAVENER: Thank you very much. There's one brief matter
8 I'd like to raise prior to Chief Norman continuing with his
9 evidence-in-chief. An issue arose yesterday and that was
09:48:00 10 concerning the effect of the decision of the Court to eliminate a
11 number of crime bases in respect of Black December. Your Honours
12 spoke briefly about that issue yesterday and consequently the
13 Prosecution now has some concern and we seek guidance from the
14 Court in respect of this matter. The Prosecution submits that it
09:48:27 15 has an impact on this trial, in particular the ability of the
16 accused to testify about certain aspects of the charges laid
17 against him.
18 I understand this matter also was a subject of a motion
19 which was initially filed on 31st October 2004, and that was a
09:48:46 20 joint motion of the first and second accused to clarify the
21 decision on the Motion For Judgment of Acquittal Pursuant to Rule
22 98. There has been a subsequent prosecution response and a
23 reply. To date, as I understand it there's been no formal
24 decision on that particular motion.
09:49:03 25 I don't wish to argue it at this stage obviously because I
26 don't wish to interfere with Chief Norman testifying further this
27 morning. However, I'd seek this matter be resolved as soon as
28 possible, because, in the Prosecution's submission, Chief Norman
29 cannot complete his evidence until the matter of whether or not

1 he can testify about Black December -- because the Prosecution
2 says it relates to other issues besides unlawful killings at the
3 crime bases, it impacts on Chief Norman's ability to testify
4 about his conduct in the latter part of 1997. We say it's still
09:49:45 5 relevant to the indictments, relevant on a number of issues, and
6 our submissions are contained in our response to the joint
7 motion.

8 So we would say as a matter of urgency this issue should be
9 resolved, perhaps this afternoon, before Chief Norman finishes
09:50:02 10 testifying in-chief. Because certainly the Prosecution's
11 submission is that we are entitled to cross-examine him about
12 matters that, in general, relate to Black September, although not
13 the unlawful killings.

14 PRESIDING JUDGE: You mean Black December?

09:50:18 15 MR TAVENER: Black December, sorry; I keep lapsing there.

16 JUDGE ITOE: Are you very certain that Mr Norman is
17 finishing his testimony this afternoon?

18 MR TAVENER: No, I'm not. I just want the matter dealt
19 with before he completes his evidence.

09:50:32 20 PRESIDING JUDGE: In any event, I thought we had been quite
21 clear yesterday in our comments that as far as this Chamber and
22 this Court is concerned, Operation Black December in Gumahun,
23 Gerihun, Jembeh and Bo-Matotoka Highway has been struck out.

24 MR TAVENER: I understand that, and it is our understanding
09:50:55 25 that that only relates to unlawful killings at that crime base.
26 There's other issues that arise in relation to Black December.
27 For instance, in respect of the giving of orders, the accused's
28 role and, indeed, the other accused persons' role at that time;
29 their ability to give orders, receive information, terrorise

1 citizens, the use of child soldiers, for instance. Those matters
2 are, we would say, still on foot, they're still alive. That's
3 our problem.

4 PRESIDING JUDGE: Fine. We'll look into this. But, again,
09:51:28 5 so there is no doubt in your mind or anybody's mind, our
6 decision - I have a copy of it here, the last portion as such -
7 we struck down -- it says, "There is no evidence capable of
8 supporting conviction against the accused in respect of the
9 following areas", as such in 25(g).

09:51:53 10 MR TAVENER: (g), that's correct. That's unlawful killing.
11 That's all.

12 PRESIDING JUDGE: I haven't looked at the other ones, but
13 because we're talking of Black December, Black December was more
14 specific to 25(g). It says in (g), "In Jembeh, Gumahun, Gerihun,
09:52:16 15 Bo-Matotoka Highway"; all of those in (g) have been struck out.

16 MR TAVENER: Yes, I understand that. But issues in
17 relation to individual responsibility, command and control, other
18 areas that are still on the indictment, still alive on the
19 indictment need to be addressed. That's our confusion. We
09:52:35 20 understand what has gone. What we need to know is what is left.

21 PRESIDING JUDGE: Thank you, Mr Prosecutor. We have taken
22 note of your comments and observation.

23 MR TAVENER: Thank you, Your Honour.

24 PRESIDING JUDGE: Before we move - yes, Mr Pestman, I will
09:54:03 25 come to you - I would like to ask Court Management to determine
26 why we were late starting this morning, as to why the accused
27 were late in coming. So we would like to know why this Court was
28 delayed because of that. Mr Pestman, you were up.

29 MR PESTMAN: Yes, yes. As far as we're concerned, your

1 response yesterday on the Black December --

2 JUDGE THOMPSON: Mr Pestman, address the Court properly.

3 Would you like to use the language that's familiar. Address the

4 Court properly and address the Presiding Judge properly. I'm

09:54:43 5 cautioning you to adjust your demeanour to accord with the

6 protocol and the traditions of the Court.

7 MR PESTMAN: I would just like to raise a new point, Your

8 Honour.

9 JUDGE THOMPSON: Right.

09:54:59 10 MR PESTMAN: As far as we're concerned, I think your

11 answer --

12 JUDGE ITOE: Your Honours. There are three judges in this

13 Court.

14 JUDGE THOMPSON: If you cannot really adjust your demeanour

09:55:10 15 you put into question whether your seniority in the Bar is in

16 accord with your understanding of what the high traditions and

17 ideals are. Everybody else does that but you seem to have your

18 own particular way, and we, when we address you we address you

19 learned counsel and all that. Please adjust your demeanour to

09:55:36 20 accord the protocol and the decorum of the Court.

21 MR PESTMAN: I understand your point, Your Honour. Can I

22 say Your Honour once more and then go on as I started, please. I

23 just want to make one point as far as Black December is

24 concerned. I think your answer yesterday was quite clear and

09:56:04 25 that's actually the answer we tried to get from the Court,

26 Your Honours. But as a general point I would like to state that

27 generally we think that a motion deserves an answer or a decision

28 by Your Honours, and I hope that there will still be a written

29 decision on that particular motion, just to clarify this issue

1 once and for all.

2 There's another point I would like to raise. This
3 afternoon, if there is 10 or 15 minutes to spare, we would like
4 to raise or make an application on the basis of Rule 66(B) of the
09:56:46 5 Rules. We have been trying to get access to information in the
6 possession of the Prosecution and we have not succeeded to do so.
7 So we would like to raise this issue this afternoon if there is
8 some time in the schedule, because we think that it's an urgent
9 issue that needs to be resolved as soon as possible. Not
09:57:05 10 necessarily before finishing with this particular witness, but
11 before we start dealing with the next witness.

12 PRESIDING JUDGE: As we have indicated, we don't know how
13 long Mr Norman will be testifying. But, given the nature of his
14 evidence for the time being, at least my understanding is I don't
09:57:27 15 think it will be finished this afternoon. So there will be maybe
16 some time next week. So you're saying you want to do this this
17 afternoon. Normally, as you know, Friday is the day where we
18 will hear motions. So if this is important before you proceed with
19 presumably cross-examination of the witness -- yes, because the
09:57:53 20 procedure, as you know, is once the evidence-in-chief is
21 completed then you go with cross-examination and so does the
22 third accused. And if you say it is important and urgent but it
23 may wait, then we'll wait.

24 MR PESTMAN: My main concern is that we will not --

09:58:11 25 JUDGE ITOE: Mr Pestman, is the matter of concern to you of
26 a general concern to all the Defence teams?

27 MR PESTMAN: It's a concern to my client.

28 JUDGE ITOE: To your client.

29 MR PESTMAN: And the other clients are not my concern, but

1 maybe they will join the motion. I know there is some interest.
2 My only concern is that we will not have a decision before we
3 start with the next witness, and that's why I wanted to raise the
4 issue as soon as possible. But I don't think it's going to be a
09:58:41 5 very complicated discussion and I think it should not be too
6 difficult.

7 PRESIDING JUDGE: Have you informed the Prosecution?

8 MR PESTMAN: We've been trying -- we've been negotiating
9 about this issue the last couple of days.

09:58:52 10 PRESIDING JUDGE: They know of the issue?

11 MR PESTMAN: They know, but we haven't distributed the
12 decisions, the rules, the orders of the courts and jurisprudence.

13 PRESIDING JUDGE: We'll continue with the evidence of this
14 witness this morning and maybe the best way to deal with that is
09:59:08 15 when we resume activities after the lunch break we'll go with
16 that motion if you say it is of some urgency in that respect. I
17 don't think we can postpone that for too long, unless it is
18 resolved between now and then.

19 MR PESTMAN: I don't think it will be. Thank you very
09:59:24 20 much.

21 PRESIDING JUDGE: Thank you.

22 MR JABBI: My Lords, if I may also say one or two things on
23 some of the issues that have just been raised. The question, for
24 instance, of clarification of the order as in the decision - in
09:59:46 25 the judgment of acquittal about the crime bases that have gone.
26 My Lord, as I was saying yesterday, there may be need for urgent
27 clarification of that issue, especially as the processes on a
28 motion applying for that clarification have been completed. I
29 believe this clarification is absolutely necessary, not only

1 before the first accused completes his testimony in chief, but I
2 would also suggest as reasonably possible that the clarification
3 come soon enough so that we are able to lead him with certainty
4 on various issues.

10:00:58 5 PRESIDING JUDGE: We've heard enough on this for now,
6 Dr Jabbi. We will look into that and we'll come to a decision.

7 MR JABBI: We are supposed to be leading him now and
8 grounds to be covered may well involve reference to some of those
9 issues. So some certainty or some clarification beyond any doubt
10:01:32 10 might be necessary as a guide for us as well.

11 PRESIDING JUDGE: That's fine.

12 MR JABBI: The second issue, My Lords: again, it was
13 exemplified in this question about Black December yesterday as a
14 result of certain clarifications not having been done yet as
10:01:58 15 between first accused and his defence counsel. My Lord, I wish
16 to give notice that we would want to apply later this morning or
17 early in the afternoon for leave for further communication with
18 the first accused whilst he is yet giving his testimony. We
19 believe that, in all the circumstances, perhaps that application
10:02:36 20 will still be in place and we want the Court to hear us on that
21 issue, but not right now, My Lord.

22 PRESIDING JUDGE: Very well.

23 MR JABBI: The Prosecution has also been notified to that
24 effect.

10:02:53 25 PRESIDING JUDGE: Very well. Thank you, Mr Jabbi. Having
26 heard you on that now, are you ready to proceed with the
27 continuation of the examination-in-chief of Mr Norman?

28 MR JABBI: Yes, My Lord.

29 PRESIDING JUDGE: Would you please do so. Good morning,

1 Mr Norman.

2 THE WITNESS: Morning, My Lords.

3 WITNESS: SAMUEL HINGA NORMAN [Continued]

4 EXAMINED BY MR JABBI: [Continued]

10:03:15 5 MR JABBI:

6 Q. Good morning, Mr Witness. Maybe we begin briefly where we

7 ended yesterday. You recollect that you had made a statement

8 about the difficulty of saying whether RUF on certain occasions

9 were civilians or combatants because of their lack of distinctive

10:03:52 10 attire to identify them. You made that comment and a few

11 questions were posed. Then I posed a parallel question in

12 respect of the hunters and we were too close to the end for that

13 to be adequately dealt with. So I will pose that question again

14 to begin this morning and the question is: Were there any

10:04:27 15 instances when the appearance of the hunters in operation gave

16 rise to any confusion?

17 A. Yes, My Lord.

18 Q. Yes, carry on, please.

19 A. There indeed were instances when complaints were made that

10:05:09 20 Kamajors were attacking civilians. The Kamajors themselves were

21 product of these same civilians and they were living with them in

22 their various communities. So an investigation to these

23 complaints -- some of these complaints were conducted. The

24 police, meaning Sierra Leone police, were informed that some

10:06:10 25 people were operating around the eastern part of Sierra Leone,

26 specifically between the north and the east, Masingbi and Sewafe,

27 and that these people were wearing something similar to some of

28 the wearings of some Kamajors.

29 Q. Watch your pace, please.

1 A. And that these were surely and actually not Kamajors. That
2 was when the taking of Sefadu Kono was hotly contested, after
3 Sewafe Bridge had been captured by the Kamajors. There were also
4 instances when a businessman in Bo was alleged to have prepared a
10:08:09 5 huge quantity of netted vests that was common to Kamajors and was
6 sending these to the rebel lines. This was common knowledge in
7 Bo, Bo Town. Again --

8 Q. Do you know the name of this businessman? You can carry on
9 if you want to carry on.

10:08:55 10 A. Yes, he had a nickname Doctor something, around - I think
11 it was at Fenton Road in Bo, but I will remember the reason as I
12 go along. There was also another instance after the signing of
13 the cessation of hostilities between the RUF and the CDF around
14 15 June 2001. A group of fighters emerged in some part of north
10:09:55 15 of Sierra Leone, around a village named either Yifin beyond
16 Kabala, and these were killing civilians. At the time when this
17 matter came to public concern, I was travelling; I was in London
18 on route to New York. I was invited to the BBC Bush House to
19 clarify this issue on the BBC Focus program and General Opande of
10:11:03 20 the UNAMSIL was on the BBC that same day. Earlier on he had said
21 that these were Kamajors and while I was refuting this in London
22 on the BBC, General Opande's voice again was heard offering his
23 apology for a mistake that, indeed, it had now been proven that
24 those who were alleged to be Kamajors were in fact not Kamajors,
10:12:09 25 but they were part of the RUF breakaway group under a name called
26 Demba Mara. That matter only came to rest --

27 JUDGE ITOE: Is it possible to spell Demba Mara?

28 THE WITNESS: Yes, My Lords D-E --

29 JUDGE ITOE: Is it D or T?

1 THE WITNESS: D, delta. D-E-M-B-A, Demba, and Mara,
2 M-A-R-A-H. Because the CDF and the RUF had made an undertaking on
3 the day that the cessation of hostility was signed that any
4 attack on the civilians should be the concern of both parties and
10:13:50 5 both parties should join to take action. But because the
6 geographical distance between the Kamajors and where these
7 incidents had occurred was a considerable distance, the RUF
8 instead took the action and reported to General Opande that the
9 group had been eliminated and that was found out later to be
10:15:00 10 true. There was no further problem about that. So these are
11 some of the instances including the wearing of military apparel
12 by forces hostile to government and to even ECOMOG and UNAMSIL at
13 that time. So these instances were possible.

14 MR JABBI:
10:15:31 15 Q. So with this particular last instance, why were they
16 alleged to be Kamajors?
17 A. Some of them were wearing something similar to what the
18 Kamajors wear -- some Kamajors wear in their locality.

19 PRESIDING JUDGE: When you say "some" you mean this
10:16:05 20 breakaway group?

21 THE WITNESS: This breakaway group, My Lord, was wearing
22 something, I think, deceptive camouflage.

23 MR JABBI:
24 Q. You have given a few instances of the apparel of certain
10:16:26 25 groups -- being used by certain groups that were not belonging to
26 that group in order to create confusion, at least?

27 A. Yes, My Lord.

28 Q. Do you have any other instances anywhere?

29 A. Well, as far as the war was concerned, these were almost

1 always possible and it happened right up to finally the "di wa
2 dan dan" statement was made.
3 Q. It happened in various places, you mean?
4 A. Yes, My Lord.
10:17:04 5 Q. Now, you were pondering over a certain name connected with
6 the creation of these camouflage, confused apparel. You say
7 doctor something?
8 A. Doctor, I think, Osman. Is it Osman Bangura or Osman
9 something. He was a popular businessman in Bo, but because he's
10:17:36 10 now deceased, I think his name --
11 Q. You are not sure of the name?
12 A. Yes.
13 Q. Does MB Sesay ring a bell?
14 A. Dr MB, MB, that could be the name. MB Sesay was a popular
10:18:03 15 man, but I was not very often around that area. But he was --
16 that name was one of the names that was conveyed to
17 His Excellency by some people who went to investigate the matter.
18 There was an MB Sesay among the list of names that was given to
19 HE and he asked me about the instance. But this was seriously
10:18:34 20 dealt with later by the National Co-ordinating Committee.
21 Q. HE who?
22 A. His Excellency the President, whom we normally shortly just
23 called HE.
24 Q. You said just now that it was dealt with by the National
10:18:59 25 Co-ordinating Committee. What body was that?
26 A. That was an administrative body established by the
27 President, Dr Alhaji Ahmad Tejan Kabbah.
28 Q. Around when?
29 A. Around 1999.

1 Q. That's quite a long period, 1999?
2 A. Yes.
3 Q. Around which time in 1999?
4 A. This happened soon after the Freetown invasion. Not soon
10:19:43 5 after -- thereafter the Freetown invasion. It must have been
6 between January '99 and early part of February 1999.
7 Q. After what you are calling the January invasion?
8 A. Yes.
9 Q. What was the January invasion?
10:20:21 10 A. This was a popular name given to that dreadful day when
11 Freetown was invaded by fighters that were indiscriminate in
12 spoiling life and property.
13 Q. When was the day? What day was it?
14 A. 6th January 1999.
10:20:50 15 Q. 6th January --
16 A. 1999, was the date. I think it was a Monday, something
17 like that.
18 Q. Did you know the invaders?
19 A. They were alleged to have been AFRC returned group.
10:21:07 20 Q. What do you mean by "returned group"?
21 A. The AFRC had been evicted from power and from Freetown, and
22 so a sector of them left the city and went and linked up with the
23 RUF. And some time after that there was a return of that group,
24 wanting to again take power. So that is why we referred to them
10:21:48 25 as the returned group.
26 Q. So it was AFRC and RUF combined?
27 A. It would be unsafe for me to say they were combined because
28 of my knowledge now long after. But at that time we thought it
29 was a combined team. Now I know it wasn't.

1 Q. Now you know it wasn't. What was it then?

2 A. It was the AFRC activity.

3 Q. And you spoke about destruction done by them. Can you
4 elaborate on that?

10:22:45 5 A. Well, houses were burnt, vehicles destroyed, and human
6 beings killed in the battle. It was a serious warfare.

7 Q. Where was this?

8 A. It started from the east of Freetown, seeping through to
9 the centre, stopping just about State House, stretching from
10:23:21 10 Fourah Bay College right down to King Jimmy.

11 Q. Why did it have to stop only there?

12 A. By midnight of that evening when the operation started, the
13 ECOMOG forces, together with the Civil Defence Forces, at that
14 time had been caught by surprise. Soon after midnight the
10:24:10 15 surprise had been overcome and a belt of defence was then put in
16 place by the ECOMOG and the civil defence. And so that saved the
17 centre of Freetown and the west from the destruction that the
18 east suffered from.

19 Q. Were these two sets of troops operated together separately,
10:25:10 20 the ECOMOG and the hunters?

21 A. No. At that time the ECOMOG was in control of the hunters,
22 the civil defence, and they were taking orders, military orders
23 from them, and so they operated together.

24 Q. Where were you yourself?

10:25:46 25 A. I was in the far west of Freetown, around Spur Road, in my
26 quarters.

27 Q. Obviously in the safe far west?

28 A. Well, luckily that was how it was, but I had to travel. I
29 had to travel with the chief of defence staff, some officers of

1 ECOMOG and some fighters of the civil defence who were, for
2 security reasons, were camped at Brookfields Hotel in a large
3 number, about 500 or more of them.

4 Q. Of whom?

10:26:42 5 A. Of the fighters, together with the members of OBHS that
6 were strictly in charge of Freetown or Western Area operation.

7 Q. You mean hunters?

8 A. Yes.

9 Q. You say the operation stopped around State House. What
10:27:08 10 happened to the invaders?

11 A. Well, they were militarily dealt with and they pulled out.

12 Q. You obviously mentioned this January invasion when you were
13 talking about -- about to talk about something else.

14 A. Yes.

10:27:46 15 Q. That was the National Co-ordinating Committee.

16 A. Yes.

17 Q. Would you want to explain about that now?

18 A. Yes, My Lords. Soon after that occasion of that serious
19 fighting, I think two or three weeks after that I received a
10:28:20 20 letter signed by His Excellency establishing the formation of a
21 body called National Co-ordinating Committee, NCC, chaired by the
22 President's own appointee and named - it was the President's
23 vice-president, at that time - Dr Albert Joe Demby.

24 Q. He was the chairman?

10:29:25 25 A. He was appointed chairman. And members were specifically
26 listed by offices and by names.

27 Q. Do you remember the date of that letter?

28 A. I think it was January --

29 JUDGE ITOE: Dr Jabbi, if he received a letter like that

1 and if the letter exists --

2 MR JABBI: As Your Lordship pleases.

3 JUDGE ITOE: I mean, is there anything wrong --

4 THE WITNESS: Any time between 28, 29, 30.

10:30:28 5 MR JABBI: Thank you.

6 JUDGE ITOE: This is a document. If it still exists.

7 MR JABBI: My Lord -- yes. However, his knowledge of it,

8 his memory of it could be tested. I'm just trying to lay

9 foundation.

10:30:40 10 THE WITNESS: It definitely was in January but towards the

11 very end of January.

12 MR JABBI: Thank you.

13 Q. Now when you were talking about that letter what you said

14 was you received a letter that certain committee was formed.

10:30:59 15 That's what you said?

16 A. That such committee had been established.

17 Q. Had been established?

18 A. Yes, My Lord.

19 Q. Did you have any prior knowledge of the preparatory stage?

10:31:23 20 A. No, My Lord.

21 Q. Now you called it an administrative committee; not so?

22 A. Yes, My Lord.

23 Q. Now I want to show you a document.

24 PRESIDING JUDGE: You want to show this document to the

10:32:49 25 witness?

26 MR JABBI: Yes, My Lord, to the Prosecution --

27 PRESIDING JUDGE: To the Prosecution first.

28 MR JABBI: Yes, My Lord.

29 PRESIDING JUDGE: You want to show it to the second accused

1 and the third accused as well and you have copies of that
2 document?

3 MR JABBI: I have a copy for Court Management.

4 PRESIDING JUDGE: So what is your intent with this
10:33:41 5 document, Dr Jabbi?

6 MR JABBI: My Lord, we want to tender it as an exhibit.

7 PRESIDING JUDGE: What's the relevance of this document?

8 MR JABBI: The witness has just spoken about a letter he
9 received announcing the establishment of a national co-ordinating
10:34:12 10 committee, which he called an administrative committee, and that
11 is the letter which I want to show to him.

12 PRESIDING JUDGE: So you're submitting that this is the
13 letter?

14 MR JABBI: Yes, I want him to establish whether that is the
10:34:33 15 letter, My Lord.

16 PRESIDING JUDGE: Fine. Mr Prosecutor, any comment?

17 MR TAVENER: There's no objection to the letter being shown
18 to the witness and indeed it being tendered if it's required.

19 PRESIDING JUDGE: Mr Pestman, any comment?

10:34:48 20 MR PESTMAN: No, Your Honour.

21 PRESIDING JUDGE: Third accused, any comment?

22 MR LANSANA: Your Honours, none.

23 PRESIDING JUDGE: Thank you. So you want that to be marked
24 as an exhibit first, or how do you want to do it?

10:35:04 25 MR JABBI: I just want him to identify it first of all,
26 My Lord.

27 PRESIDING JUDGE: Fine, yes.

28 MR JABBI:

29 Q. Mr Witness, can you have a look at the document you have in

1 your hand there now?

2 A. Yes, My Lord.

3 Q. Is that the document you referred to?

4 A. This is the document I received a copy of.

10:35:25 5 Q. What is the date?

6 A. The date is 29 January 1999.

7 JUDGE ITOE: What was the date again?

8 THE WITNESS: 29 January 1999, My Lords.

9 PRESIDING JUDGE: It's a document of two pages. I can see

10:35:56 10 two or three --

11 THE WITNESS: Yes, My Lord.

12 PRESIDING JUDGE: Two pages, thank you.

13 MR JABBI: My Lord, we wish to tender it and if it can be

14 marked appropriately.

10:36:15 15 PRESIDING JUDGE: Yes. Which number of exhibit are we at?

16 MS EDMONDS: 120.

17 PRESIDING JUDGE: 120. So this document, if I can see

18 it -- you have a copy for the Court?

19 MR JABBI: Yes, My Lord.

10:36:50 20 PRESIDING JUDGE: Do you have additional copies, Dr Jabbi?

21 MR JABBI: Yes, My Lord.

22 PRESIDING JUDGE: Thank you. So you have two more copies?

23 I would like to have copies for the Bench, please. So this

24 document indeed of two pages and dated 29 January 1999 is titled

10:37:33 25 Committee on National Militia/CDF is marked as Exhibit 120.

26 [Exhibit No. 120 was admitted]

27 MR JABBI:

28 Q. Now, Mr Witness, would you like to read the contents of

29 this document, read it aloud?

1 A. Their Lordships so order?

2 PRESIDING JUDGE: Please do so.

3 THE WITNESS: Thank you, My Lord. "Sierra Leone
4 Government, Office of the President, 29 January 1999. Dear sir,
10:38:48 5 Committee on a National Militia/CDF. His Excellency the
6 President has set up a committee to handle all policy matters
7 relating to the national militia/CDF. The Committee will be
8 chaired by the vice-president and will comprise the following
9 other members: the Minister of Finance; the Minister of
10:39:46 10 Agriculture; the Minister of Presidential Affairs; the Minister
11 of Information (Representative of the West); the Deputy Minister
12 of Defence; the Chief of Defence Staff; the resident minister,
13 eastern province; the resident minister, northern province; the
14 resident minister, southern province; the Deputy Minister of
10:40:31 15 Agriculture (Mr Okere Adams) (representative of the north); Chief
16 Brima Kargbo (representative of the east); the national security
17 advisor.

18 "The committee's terms of reference include:

19 1. Determination of suitable organisational structure for the
10:41:05 20 national militia/CDF; 2. Constantly reviewing the manpower
21 situation of the militia to respond promptly to requests made by
22 the Ministry of Defence; 3. Review of means of financing
23 logistical and other requirements of the militia and sources of
24 financing such requirements; 4. Initiation of action, where
10:41:53 25 appropriate, to recruit additional militias.

26 "As a member of the committee you are invited to attend
27 meetings of the committee as and when they are convened. The
28 next meeting of the committee will be held at the presidential
29 lodge at 11 a.m. on Saturday, 30 January 1999.

1 Yours faithfully, Siaka Mansaray, National Security
2 Advisor."

3 Addressed to the Minister of Finance; the Minister of
4 Agriculture; the Minister of Presidential Affairs; the Minister
10:42:51 5 of Information; the chief of defence staff; the resident
6 minister, eastern province; the resident minister, northern
7 province; the resident minister, southern province; the Deputy
8 Minister of Agriculture Mr Okere Adams. That ends the reading of
9 this document, My Lords.

10:43:35 10 MR JABBI:

11 Q. Now, first of all, you read out the Deputy Minister of
12 Defence as among the members of that committee?

13 A. Yes, My Lord.

14 Q. Who was the Deputy Minister of Defence referred to there?

10:43:56 15 A. The Deputy Minister of Defence at that time was
16 Chief Samuel Hinga Norman.

17 Q. Towards the end of the letter a meeting was announced.
18 "The next meeting of the committee will be held at the
19 presidential lodge at 11.00 a.m. on Saturday, 30 January 1999."

10:44:30 20 Did that meeting take place?

21 A. The meeting took place, My Lord, but I did not attend
22 because I never received the copy of this document until it was
23 discovered I was not at the meeting.

24 Q. Did you receive a copy of it subsequently?

10:45:06 25 A. I did, My Lord.

26 Q. Now did you attend any meetings of that committee ever?

27 A. Yes, My Lord. Meetings continued thereafter.

28 Q. How frequently?

29 A. Sometimes once a week, sometimes once every two

1 weeks, sometimes later on it became a monthly or bi- or
2 tri-monthly issue.

3 Q. And how long did that committee survive?

4 A. There has not been any communication de-forming this
10:46:07 5 committee up to now, to my knowledge.

6 Q. When was the last time that you personally attended a
7 meeting of that committee?

8 A. I think must be around February 2003.

9 Q. That you personally attended a meeting?

10:47:03 10 A. I remember. At that time the chairmanship had been changed
11 from the vice-president, Dr Joe Demby, to the leader of the
12 majority party in Parliament, Mr RES Lagawo, whom I understand is
13 also deceased while I have been in this detention.

14 JUDGE ITOE: You say you last attended a meeting of this
10:47:39 15 committee in 2003 or?

16 THE WITNESS: February 2003, My Lord. I was arrested in
17 March 2003.

18 JUDGE ITOE: I see. Okay.

19 MR JABBI:

10:47:59 20 Q. I was actually going to ask why you did not attend any
21 subsequent meetings after February 2003?

22 A. I will say that probably the Special Court authorities did
23 not inform me to attend.

24 Q. Now, do you know when the chairmanship of that committee
10:48:28 25 changed to Mr Lagawo as you said?

26 A. Specific date, no, but I know it happened -- the change
27 took place before the general elections.

28 Q. Of?

29 A. Of the year 2002. This had happened immediately after the

1 SLPP convention in Bo, where rumours were rife that the President
2 would be changing his vice-president.
3 Q. When was the SLPP convention of 2002 that you're talking
4 about?
10:49:13 5 A. I think May 2002.
6 Q. May?
7 A. May, the month of May in Bo. I think the occasion was at
8 the Bo Teachers' College or something.
9 Q. When was the election itself?
10:49:50 10 A. The election took place in June 2002.
11 Q. You are saying that the chairmanship of this committee
12 changed before the convention -- the SLPP convention of that
13 year?
14 A. I think the correction is that the convention took place in
10:50:22 15 April 2002 and the change of the chairmanship took place in May
16 2002.
17 Q. So the change of chairmanship took place after the
18 convention?
19 A. After the convention, yes.
10:50:33 20 Q. Could the convention have been in March 2002?
21 A. It could well have been. We were all actively politicking
22 around the country.
23 Q. Now, you have read terms of reference of this committee.
24 Can you actually explain in practice some of the functions and
10:51:02 25 activities?
26 A. Yes, at the --
27 Q. And please watch the pace and the pens.
28 A. Thank you, My Lord. At the second meeting the chairman
29 announced that certain instructions had been given to him to

1 carry out. He was to arrange for specific members of the Civil
2 Defence Force to be co-opted, and these members afterwards became
3 the national public relation officer, PRO, of the civil defence
4 and the logistics officer of the civil defence.

10:52:20 5 [CDF26JAN06B - SGH]

6 The Ministry of Defence was to give name of the secretary
7 to this committee. That name was submitted, a Mr Maturi was
8 submitted. The next that was dealt with was strictly -- the
9 committee was to inform the national co-ordinator that the Civil
10:53:30 10 Defence Force was now being taken care of by a higher body called
11 National Co-ordinating Committee, and that the national
12 co-ordinator would henceforth communicate with the National
13 Co-ordinating Committee and not directly with the President on
14 issues specifically dealing with hunters/militia/Civil Defence
10:54:20 15 Force.

16 Q. Now the national co-ordinator, was he a member of this
17 committee?

18 A. The national co-ordinator was not named as a member in the
19 listing of members, but a deputy defence minister was. So the
10:55:10 20 deputy defence minister informed the national co-ordinator of the
21 changes. The information was not difficult to pass; it was the
22 same person, Chief Hinga Norman.

23 Q. So up to that time Chief Sam Hinga Norman was still
24 national co-ordinator of the CDF?

10:55:39 25 A. He was still national co-ordinator of the CDF, but subject
26 now to the authority of the National Co-ordinating Committee,
27 instead of liaising directly now with any military organisation.
28 It was now that the hunters issue was directly linked to any
29 military organisation through the National Co-ordinating

1 Committee.

2 Q. Do you have any other type of activity that was performed
3 by this committee in practice?

4 A. Yes. Yes, My Lord. The National Co-ordinating Committee
10:56:44 5 then told the deputy defence minister that they would want to
6 inform Chief Samuel Hinga Norman to perform the duty of national
7 co-ordinator under their authority.

8 JUDGE ITOE: Sorry, let's get that again.

9 THE WITNESS: The National Co-ordinating Committee, at that
10:57:28 10 NCC meeting, informed the deputy defence minister that they would
11 like Chief Hinga Norman -- Chief Samuel Hinga Norman to perform
12 the duties of national co-ordinator under the authorities of the
13 National Co-ordinating Committee. So from that time this
14 logistical support to the militia or hunter or CDF was channeled
10:58:39 15 through the National Co-ordinating Committee to the national
16 co-ordinator, and consequently to the hunters, militias and so,
17 through the chief of defence staff. Through the chief of defence
18 staff. So whatever went to the hunters was passed from
19 government to NCC to national co-ordinator to the chief of
10:59:27 20 defence staff and then, finally, to the men on the ground.

21 JUDGE ITOE: I understand it to mean then that the chief of
22 defence staff stepped in for the role which Mr Norman played as
23 the national co-ordinator of the CDF.

24 THE WITNESS: As a direct co-ordinator between the
11:00:15 25 government of Sierra Leone and ECOMOG. The chief of defence
26 staff had now come in, you are right, My Lord.

27 JUDGE ITOE: We want to have a further explanation to that.
28 Learned counsel can you take him back please?

29 MR JABBI: Yes, thank you, My Lord.

1 JUDGE ITOE: There is some ambiguity somewhere.

2 MR JABBI:

3 Q. You heard what his Lordship said.

4 A. There are certainly ambiguities.

11:00:51 5 Q. Can you be specific about this line of control or
6 direction, at least?

7 A. That was the direction of the national co-ordinating
8 committee by virtue of the terms of reference that had been
9 given.

11:01:21 10 Q. So the national co-ordinator had no direct interface with
11 the CDF in that arrangement? He had to go through the chief of
12 defence staff?

13 A. As far as military operations and supplies of logistics
14 distribution were concerned, yes. Especially arms and
11:01:48 15 ammunition.

16 Q. What other examples of logistics were qualified in that
17 line of supply?

18 A. You have a fighting and a maintenance logistics. Fighting
19 logistics are those relative to specifically weapons - arms and
11:02:16 20 ammunition.

21 Q. Pace, please?

22 A. Arms and ammunition; operational activities, movement of
23 the hunters, assignment to areas of activities. When it comes to
24 allocation of money for procurement of food and medicine, then
11:02:56 25 that became administrative and that was from the Ministry of
26 Finance to the defence office to the defence ministry to the
27 logistics, to the director of logistics of the militia hunters
28 that were attached to the office of the Ministry of Defence.

29 Q. Did those have to go through the national co-ordinator?

1 A. No, they went through the deputy minister of defence. I
2 really sympathise with their Lordships for this ambiguity, but I
3 didn't create it, so that's how I operated.

4 PRESIDING JUDGE: So if I understand the last part of your
11:04:03 5 evidence here, you are saying that, as national co-ordinator, you
6 had no direct interface with the hunters for the logistic and
7 supply of arms and ammunition, that is, the weapons and so on and
8 know about their --

9 THE WITNESS: And their deployment.

11:04:25 10 PRESIDING JUDGE: And their operational activities per se?

11 THE WITNESS: Yes.

12 PRESIDING JUDGE: But, setting that aside, the other
13 logistics, such as procurement of food, medicine and so on and
14 pay was still the responsibility, not only of the national
11:04:37 15 co-ordinator, but of the Deputy Minister of Defence, and to get
16 that, they would come to you through the director of logistics;
17 is it? No?

18 THE WITNESS: No, My Lord, to get that, this was budget
19 allocation. Now the budget proper for the army was being
11:05:03 20 operated by the chief of defence staff, and the budget proper --

21 MR JABBI:

22 Q. Watch the pace, please.

23 A. Budget proper for the administrative maintenance of the
24 militia went directly from the Ministry of Finance to the
11:05:25 25 Ministry of Defence, then to the director of logistics of civil
26 defence or militia.

27 PRESIDING JUDGE: But in the Ministry of Defence the
28 director of logistics in that ministry would report to you as the
29 Deputy Minister of Defence?

1 THE WITNESS: No, My Lord.

2 PRESIDING JUDGE: To the Minister of Defence?

3 THE WITNESS: No, My Lord. He would report to the director
4 of defence. We had another administrative set-up. The director
11:06:16 5 of defence was the administrative head linked up with the
6 Ministry of Finance for all finances to the Ministry of Defence,
7 not to the chiefs of defence staff. Now the Deputy Minister of
8 Defence oversees the distribution of budgetary allocation to the
9 armed forces of Sierra Leone on one side and to the Ministry of
11:07:32 10 Defence on the other. So for finances under the Ministry of
11 Defence was then the militia's allocation of maintenance funds,
12 and this is what it was up to January 2002.

13 MR JABBI:

14 Q. Thank you very much, but still some further specification.
11:08:19 15 You have shown the line of the source and distribution line of
16 the facilities. Now can you also more specifically say what
17 particular items of logistics?

18 A. Welfare logistics.

19 Q. Welfare logistics went to the hunters after the formation
11:08:52 20 of the NCC, the National Co-ordinating Committee?

21 A. Yes, My Lord. Specifically rice and money - cash. Rice
22 and money.

23 Q. How often did such rice and money flow?

24 A. Every month from July, 1998 to January year 2002. Every
11:09:39 25 month.

26 Q. Every month. And any idea of quantities per month of, say,
27 rice?

28 A. Yes, My Lord. Initially it was 5000 bags of rice
29 and 51,650,000 Leones, initially.

1 Q. Per month?

2 A. Per month. Later there was an NCC investigation into the
3 feeding of men on hazardous duties and they wanted to equate the
4 balance with the soldiers, so the quantity of rice was dropped to
11:11:27 5 about 3,500 and the amount of money was raised to 103,200,000.
6 My correction for the first amount was 51,000,600 not 650.
7 51,000,600. My correction, My Lords.

8 JUDGE ITOE: And the second mount was?

9 THE WITNESS: 103,200,000.

11:12:06 10 PRESIDING JUDGE: So just above the first amount?

11 THE WITNESS: Yes. It was doubled.

12 MR JABBI:

13 Q. So why is that --

14 A. It was doubled. The rice dropped, the money increased.

11:12:18 15 Q. By how much did the rice drop?

16 A. From 5,000 it dropped to 3,500. By about 1,500, My Lords.

17 Q. What were the specific target groups for those
18 distributions, by way of hunter groups?

19 A. Well, the government explanation that was written in a
11:12:50 20 document that was signed was that they were prepared to feed
21 only 8,600 civil defence members and not the number that had been
22 submitted to them by the director of personnel and logistics.
23 So, estimates were made at the Ministry of Finance and, finally,
24 the NCC was informed of the changes in quantities and amount.

11:13:42 25 Q. Yes, I was asking for the specific hunter groups that
26 became targets of this distribution.

27 A. I am coming to that, My Lord.

28 Q. Thank you.

29 A. A meeting between the national co-ordinator and the other

1 members of the committee proved that it would be difficult to
2 target only 8,600 men out of the huge thousands, anything
3 between 150- to 200,000 men, and that was to spread across the
4 country. So it was decided to do the distribution --

11:14:43 5 JUDGE ITOE: So out of the total of how many men?

6 THE WITNESS: Rough estimate of the civil defence manpower
7 would be 250,000, My Lord.

8 PRESIDING JUDGE: 200 or 100?

9 THE WITNESS: 250,000.

11:15:07 10 PRESIDING JUDGE: At what time? The time we are talking
11 about now?

12 THE WITNESS: No, no, not now, My Lords.

13 PRESIDING JUDGE: At the time you are testifying to.

14 THE WITNESS: Yes, at the -- in fact, at that time the
11:15:17 15 disarmament was in progress.

16 PRESIDING JUDGE: Yes.

17 THE WITNESS: And it was estimated that there were about
18 five men to one weapon at any time therefore was any operation.
19 So it became difficult to do such distribution. We then decided
11:15:35 20 to distribute by allocation per chiefdom. Allocation per
21 chiefdom. So 149 chiefdoms. If we did again it could be a bit
22 difficult, so we dropped down to allocation by district for
23 chiefdoms. So it was decided that for the fighters that were not
24 commanders, just fighters, who were resident in their chiefdoms,
11:16:29 25 we allocated 10 bags per chiefdom. So those 10 bags could be
26 counted to the number of chiefdoms in the district. And then,
27 finally, the quantity of rice per district was transported,
28 together with an amount of money that would accompany the rice.
29 And the other distribution to directors and senior commanders --

1 you have battalions, senior battalions, and then the directors
2 and then the members of the national co-ordinating committee
3 wasn't affected. This is how the distribution was done and there
4 was not any problem that had been feared, with this type of
11:17:33 5 distribution we evaded problems.

6 Q. The national co-ordinating committee members --

7 A. That's what I meant.

8 Q. -- also got allocation?

9 A. Yes, My Lord.

11:17:46 10 Q. And you are saying that -- carry on.

11 A. And the paramount chiefs of every chiefdom, 149 of them,
12 had a quantity, a bag of rice each, an amount of 25,000 leones
13 each. These were hard times. Fighters would not go and eat rice
14 and chiefs eat bulgor.

11:18:24 15 PRESIDING JUDGE: Dr Jabbi, aren't we moving a bit outside
16 of the core issues that we should be dealing with?

17 MR JABBI: My Lord, we are just on the margin of it.

18 PRESIDING JUDGE: I am reminded that --

19 MR JABBI: I am asking a final questions on it, My Lord.

11:18:37 20 PRESIDING JUDGE: To my understanding and knowledge the
21 distribution of rice is not an issue at all.

22 MR JABBI: My Lord, one has been trying, and I think the
23 witness has brought it out quite well, to demonstrate the
24 governments too.

11:18:56 25 PRESIDING JUDGE: I'm not talking of the structure of the
26 organisation of the National Co-ordinating Committee.

27 MR JABBI: All this information tells us to what extent
28 government felt responsible for the welfare of the fighters, and
29 to what extent they acknowledge their relevance and significance.

1 I am asking only one more question there, My Lord.

2 PRESIDING JUDGE: We would like you to try to stick to the
3 core issues. There is a lot of them. Otherwise we are going to
4 be lost in these meanders for weeks.

11:19:30 5 MR JABBI: I am moving into another area of core issue
6 after the next question, My Lord. Just one more question.

7 PRESIDING JUDGE: Let's go with your next question and we
8 will break after that, so we can move back to the core issues.

9 MR JABBI: Thank you very much, My Lord.

11:19:42 10 Q. Are you saying that what you have explained took place
11 every month after the formation of the NCC?

12 A. That is what I am saying, My Lord. And beyond that, I want
13 to state that all that government gave for the support and
14 maintenance of civil defence has been alleged my responsibility.

11:20:17 15 This is the reason why I am particularly happy to let it be known
16 that Hinga Norman could not have had that huge amount of money in
17 this country to feed that number of people that I'm alleged to
18 have maintained and cared for and procured for.

19 MR JABBI: Thank you very much.

11:20:43 20 PRESIDING JUDGE: Chief Norman, these are not the
21 allegations that you are facing in this Court. So that is why I
22 tried to bring this back to your counsel. There might have been
23 these allegations in this country; I don't know. But what I know
24 is that these allegations are not the allegations that we are
11:20:57 25 dealing with here today. That is the observation I make.

26 THE WITNESS: Thank you, My Lord, I take it.

27 PRESIDING JUDGE: So, having said that we will break after
28 this last question, we will pause for 15 minutes. Court is
29 adjourned.

1 [Break taken at 11.21 a.m.]

2 [Upon resuming at 11.55 a.m.]

3 PRESIDING JUDGE: Dr Jabbi, are you ready to proceed with
4 the examination-in-chief?

11:57:16 5 JUDGE ITOE: Dr Jabbi, everybody is waiting.

6 MR JABBI: Sorry, I thought you were --

7 JUDGE ITOE: No.

8 PRESIDING JUDGE: I just asked you if you were ready to
9 proceed, then please proceed.

11:57:22 10 MR JABBI: Thank you, My Lord. I peeked and saw
11 your Lordship doing something on the computer there.

12 PRESIDING JUDGE: I was waiting for you.

13 MR JABBI: Thank you, My Lord. My Lord, if may start this
14 subsession by just referring briefly to the very wide scope both
11:57:46 15 of the time frame and the allegations in the indictment which
16 sometimes guide us in the sweep of the examination-in-chief. For
17 example, My Lord, paragraph 13 of the indictment, under
18 Individual Criminal Responsibility, reads as follows, at least
19 the first half of it:

11:58:16 20 "At all times relevant to this indictment Samuel Hinga
21 Norman was the national co-ordinator of the CDF. As such, he was
22 the principal force in establishing, organising, supporting,
23 providing logistical support and promoting the CDF."

24 So My Lord, in trying to counter offence like that, one is
11:58:44 25 tended sometimes to take a sweep that we safely embrace the
26 period and the scope of allegations.

27 PRESIDING JUDGE: We understand that. That is why we have
28 allowed it to proceed the way it was, but at this stage I thought
29 that it was going a bit too far. We are just trying to bring you

1 back to what we said the core issues are. Yes, we understand
2 that these are the allegations and certainly you are entitled and
3 the accused is certainly entitled to speak to it. Absolutely so.

4 MR JABBI: Thank you, My Lord.

11:59:39 5 Q. Now, Mr Witness, I want us to deal with one of the general
6 core issues which is of wide relevance and application in these
7 proceedings and that really is the general aspects of the Kamajor
8 situation specifically. Now, first of all, just as an
9 introductory element, can you explain to the Court the role of
12:00:52 10 local communities and their chiefs in the emergence and formation
11 of the Kamajor movement?

12 A. I would, My Lord, but before going to that, perhaps if Your
13 Lordships will allow me to explain how this National
14 Co-ordinating Committee worked right up to the chiefdoms in the
12:01:20 15 towns --

16 JUDGE ITOE: Excuse me, now that you are moving to maybe
17 the core issues, does Mr Norman have a copy of the indictment
18 before him? Does he have a copy of the indictment?

19 THE WITNESS: I still have not received any copy of the
12:01:41 20 indictment, My Lord, and that is what I have been crying for
21 always.

22 JUDGE ITOE: Because Mr Norman is defending himself on the
23 basis of an indictment which has been proffered against him.
24 Even if he had had one before, I think he should be given a copy
12:01:59 25 of the indictment. Has counsel made any attempts to give him a
26 copy of the indictment on which he is basing his
27 cross-examination? His examination-in-chief, I'm sorry.

28 MR JABBI: My Lord, I hesitate a lot to talk about this
29 particular issue.

1 PRESIDING JUDGE: Let's not engage into --

2 JUDGE ITOE: We don't get into polemics. Does he have this
3 indictment which you have referred to or not, because you have
4 referred to paragraph 13 of this indictment. Does Mr Norman have
12:02:33 5 this indictment?

6 MR JABBI: I am not aware if he has it.

7 PRESIDING JUDGE: He has just stated that he doesn't. So
8 have a copy made and make it available to him so he can look at
9 certainly when he testifies if he wants to.

12:02:52 10 MR JABBI: Would that be before I pose the questions I
11 wanted to pose?

12 JUDGE THOMPSON: Let me seek one clarification. Do you
13 intend to structure your examination-in-chief for the next
14 segments of the narration on the basis of paragraph 13?

12:03:12 15 MR JABBI: No, My Lord. I just quoted paragraph 13 to
16 explain about the last stage.

17 JUDGE THOMPSON: On an ex post facto kind of
18 rationalisation.

19 MR JABBI: Yes, My Lord.

12:03:23 20 JUDGE THOMPSON: Okay.

21 PRESIDING JUDGE: Well, if you are not to use the
22 indictment now specifically to go through some of the
23 allegations, but we are going to be coming back to that, let's
24 make sure that at the lunch break a copy is made and given to the
12:03:41 25 accused so he can use it, if he wants to, while he is giving
26 evidence.

27 MR JABBI: As Your Lordships please.

28 PRESIDING JUDGE: If you do have an extra copy now you can
29 give it to him. I see there is a copy coming from the -- is this

1 a copy of the indictment?

2 MR JABBI: My Lord, for the moment the witness wanted to
3 explain something in relation to the last set of incidents.

4 PRESIDING JUDGE: The national co-ordination committee,
12:04:38 5 that was the request and, yes, Mr Norman, you may indeed.

6 THE WITNESS: Yes, My Lord. The National Co-ordinating
7 Committee was established with members selected to represent the
8 various regions and those members were then responsible for all
9 complaints from the various regions and to the various regions.
12:05:54 10 They would be discussed and, where possible, settled at the
11 National Co-ordinating Committee meetings. So all the
12 communities that had formed their various groups of hunters from
13 the villages, to towns, sections, chiefdoms and districts were
14 the responsibility of the regional representatives. That, My
12:07:28 15 Lord, was a set-up up to the time I was arrested.

16 MR JABBI:

17 Q. And I take it that you have concluded on the National
18 Co-ordinating Committee?

19 A. My Lords --

12:07:59 20 JUDGE ITOE: If he wants to come back to it, why not? He
21 cannot be said to conclude.

22 MR JABBI: For now.

23 JUDGE ITOE: His memory may be shortened.

24 THE WITNESS: It depends, if you ask questions relating to
12:08:15 25 them I will go back there.

26 MR JABBI: Okay.

27 Q. Now I wanted us to move not really away, but to some other
28 aspect of the situation and I posed one question -- a set of
29 questions about the Kamajor movement, its emergence and its

1 nature, its functioning and that generally. The first question I
2 posed was whether you could tell us the role of the chiefs and
3 the respective local communities in the emergence of the Kamajor
4 movement?

12:09:30 5 A. My Lords, Kamajor -- the word "Kamajor" means "hunter" in
6 Mende. M-E-N-D-E, Mende. Kamajors had existed with the
7 existence of the tribe itself Mende and they were in being long
8 before I was born. The head of them had always been considered
9 by the Mende tribesmen as the leader or chief. My
12:10:39 10 great-grandfather and grandfather and my father were Kamajors and
11 warriors of the Vonjo warrior dynasty in Lunya.

12 JUDGE ITOE: Can you spell that, Vonjo?

13 THE WITNESS: V-O-N-J-O, Vonjo.

14 JUDGE ITOE: Of the Vonjo what? What was Vonjo, dynasty or
12:11:30 15 what?

16 THE WITNESS: Yes, dynasty. Of the Vonjo dynasty in Lunya,
17 L-U-N-Y-A, Lunya Chiefdom, before it became amalgamated to
18 Vangelu Chiefdom, V-A-N-G-E-L-U. Vangelu Chiefdom. They became
19 Valunia, V-A-L-U-N-Y-A [sic]. Valunia Chiefdom. So right across
12:12:42 20 Mende land the Kamajors existed. I am aware also that this same
21 group of people exists in all the tribes covering the entire
22 Sierra Leone. They exist even in Krio-dom. My respect to your
23 Lordship. They are called hunting society. With the
24 modernisation of traditional rulership in Sierra Leone, these
12:14:27 25 people became hunters of beasts in the wild, so there was a
26 colonial arrangement in Sierra Leone that every chiefdom should
27 organise the registration of those who were hunters specifically
28 using shotguns so that their numbers would be known because these
29 guns were to be used solely for the purposes of protecting mainly

1 the crops, crops, farmers and then those who would want to use it
2 for meat for the homes, not for the purposes of war.

3 So, when the 1991 war or civil conflict broke out, these
4 guns that were not meant for war were then suddenly discovered as
12:18:15 5 weapons for war. When the army took over in 1967, the military
6 government at that time decided that the police should collect
7 all shotguns across the country. From that time to the AFRC coup
8 in 1997, guns - shotguns particularly - had always been collected
9 whenever there was a military government.

12:19:42 10 Now, when in 1991 the war or the civil conflict entered
11 Sierra Leone, the military decided to co-opt hunters and to use
12 them as vigilantes. Vigilantes. But I am also aware that long
13 before 1991 civil conflict, there had a reason, a situation
14 referred to in Sierra Leone referred as Ndorgbor Yosui war,
12:21:02 15 N-D-O-R-G-B-O-R.

16 JUDGE ITOE: Can you start that spelling again, please.

17 THE WITNESS: N-D-O-R, Ndor, G-B-O-R, Gbor, Y-O-S-U --
18 S-U-I. The Ndorgbor Yosui war. The hunters from the north known
19 as Tamaboros were requested to assist in that war. This was in
12:22:16 20 the 80s, early 80s. This was when was discovered that the
21 Ndorgbor Yosui Masonic -- correspondingly, Masonic tribal hunters
22 would be required to assist in that war, and that is how the
23 Tamaboros came in. So the importance of the hunters in the use
24 of their hitherto only ordinary hunting weapons were then
12:23:09 25 discovered, and that was how the emergence of the hunters into
26 what was going to be a purely conventional war was brought about
27 to be in Sierra Leone.

28 MR JABBI:

29 Q. Now, at that stage, did the hunters have to go through a

1 particular experience in order to be identified as hunters?

2 A. Before their involvement in conventional warfare, they had
3 their own Masonic temples where children would not go. And
4 obviously they came into conventional war with a measure of the
12:24:32 5 use of their Masonic means.

6 Q. Now you have used "Masonic" a few times in explaining about
7 the hunters. Would you want to explain what you are referring to
8 the Masonic means, the Masonic temple?

9 A. Masonic in the Kamajor sense was the means that the hunters
12:25:09 10 will use for wild beast not to identify them or even see them.

11 And that same means was improved upon for an exercise that
12 involved human beings. So sometimes when it is used, the other
13 human being that is not of that Masonic prowess may not see
14 whether you who are using it were around. Sometimes they see
12:26:17 15 that, they see you and they have corresponding weapon, the
16 missile may not hit you. That's what I mean.

17 Q. So you are saying that certain powers were used by hunters
18 to make themselves invisible to beasts they were hunting in the
19 bush?

12:26:42 20 A. All hunters of all countries have that means.

21 Q. And that when the war came in Sierra Leone, they developed
22 that prowess so that human beings who did not belong to their
23 society could be made not to see them?

24 A. Could not be seen or could not be hit by the missile.

12:27:29 25 Q. You are saying that these were mystic powers?

26 A. I would refer to them as mystic or Masonic, but they are
27 powers, really, that worked.

28 Q. Was it supernatural?

29 A. Well, it depends the adjectival phrase that one would like

1 to use.

2 Q. We just want to understand.

3 JUDGE THOMPSON: Counsel, why not stick to one
4 particular -- it can be argumentative whether mystic necessarily
12:28:01 5 implies supernatural or Masonic. Perhaps we should stick to one
6 terminology. I would caution you not to use them as synonyms
7 because I don't understand mystic, Masonic or supernatural to be
8 the same. Because I understand the terminologies, but it is
9 entirely up to you if you want to treat them as synonymous. As a
12:28:31 10 linguist, I am sure you would caution yourself.

11 MR JABBI: I was just enquiring, My Lord.

12 Q. Right, so we come to the war. You say that started in 1991
13 and hunters came to be employed in it. What particular role or
14 function were they required to perform in the war?

12:29:25 15 A. The role of the hunters in Sierra Leone in the conflict was
16 mainly to defend initially their community. Eventually their
17 democracy.

18 Q. You have used two time frames there, initially and
19 eventually.

12:30:14 20 A. Started from --

21 Q. Yes, initially what particular functions, specific
22 functions were their performing in the framework of defence?

23 A. Self, home, land and property, including wards.

24 Q. How?

12:30:49 25 JUDGE ITOE: Including what?

26 THE WITNESS: Wards, My Lord. Human beings that are
27 responsible to -- W-A-R-D-S, My Lords. You are my master in the
28 language.

29 MR JABBI:

1 Q. I am just asking which of them you mean. Now, still
2 initially, how did they come to get involved in that defensive
3 activity?

4 A. It was a suggestion that was made by elders of the
12:31:46 5 communities to their chiefs for their hunters to protect them.

6 Q. Against?

7 A. Against those who were referred to as rebels. And because
8 of their number that was limited at that time, arrangements were
9 made by the community leaders and their chiefs to implore the
12:32:46 10 hunters to expand their defences by increasing manpower.

11 [CDF27JAN06C - EKD]

12 Q. Which manpower?

13 A. Human manpower to be increased for their defence. That is,
14 the defence of the community.

12:34:10 15 Q. That is the hunters' manpower?

16 A. That is the hunters' manpower. Not necessarily the weapon,
17 but those number of people that will be employed in the defence
18 of a village. If a village was having one or two hunters those
19 ones would be a limited number in the area of defence. So young
12:34:11 20 men were prevailed upon to be prepared by these hunters to
21 increase their numbers and this was called initiation. This was
22 called initiation; getting the number increased.

23 Q. That is having more people performing the role of hunters?

24 A. Performing the role of defence.

12:34:11 25 Q. Role of defence. You say, to prepare. How to prepare?

26 A. Well, earlier on I have said that these were people with
27 specific means, call it Masonic. And so, like, we have our
28 traditional societies preparing us to be grown into manhood or
29 preparing our daughters to grow into womanhood. So when you

1 prepare young men to go into fighting, that is the preparation I
2 mean. Putting them through some certain training and some
3 conditions that they will be hardened enough not to run away in
4 the face of fierce battle. The conventional warfare also has
12:35:22 5 this type of training and when after that training is over they
6 are referred to as soldiers. Initially they are ordinary people
7 taken as recruits, put through some training, and they eventually
8 become trained people with a specific name, soldiers.

9 Q. So were the hunters now expanding their numbers with this
12:35:58 10 preparation as you have called it?

11 A. They all now come under the caption and named Kamajor.

12 Q. No, but this act of preparation, if we may just deal with
13 it.

14 A. I will only limit myself to the word "preparation" because
12:36:17 15 it's purely traditional, in the societal traditional.

16 Q. Surely that does not necessarily prevent one asking what
17 was the primary objective of the preparation?

18 JUDGE THOMPSON: The evidence is that --

19 THE WITNESS: To defend.

12:36:50 20 JUDGE THOMPSON: Okay. The evidence is -- the word
21 "initiation" has used on the record, hasn't it?

22 MR JABBI: Yes, My Lord.

23 JUDGE THOMPSON: Quite, and it would seem -- and that was
24 equated with preparation for warfare. Then the witness
12:37:07 25 analogised with conventional warfare.

26 MR JABBI: Yes, My Lord.

27 Q. What feature of warfare was being targeted in that
28 preparation?

29 A. Traditional warfare for the defence of the community,

1 people and property initially.

2 Q. Are you then saying that preparing somebody into the
3 hunting society was necessarily for warfare?

4 A. That is not what I am saying, My Lord. I am only saying
12:38:40 5 that there was need in Sierra Leone for that. There became need
6 in Sierra Leone for that.

7 Q. Was there any need for initiation without necessarily going
8 into warfare?

9 A. Well, there are series of other initiations in this
12:39:22 10 country --

11 Q. No, in the hunters' initiation.

12 A. Including that one, but they are not necessarily for
13 warfare.

14 JUDGE ITOE: But refer to the hunters -- we are on the
12:39:33 15 hunters.

16 THE WITNESS: Yes, My Lord.

17 JUDGE ITOE: Just limit yourself to that.

18 MR JABBI:

19 Q. You have said defensive weapon -- I mean, warfare was the
12:39:41 20 objective and I asked whether there was any other need for
21 initiation without necessarily going to warfare?

22 A. Yes. Kamajors normally are initiated without warfare.
23 When there was this conflict, then it became necessary to
24 increase their number for that purpose. That's what I explained,
12:40:20 25 My Lords.

26 Q. Were you your self a hunter before the war?

27 A. I was not a Kamajor before the war. I became a Kamajor
28 when the war came. And this was the general request even from
29 His Excellency the President and the government. The document

1 you gave me today was talking about initiation.

2 Q. You are referring to Exhibit 120?

3 A. Yes, My Lord.

4 Q. And that was the expanding scheme, expanding the number of
12:41:43 5 hunters?

6 A. I wouldn't -- I think the government itself wanted that
7 number to be increased by initiation and that was the document
8 they prepared and gave to the chairman of the National
9 Co-ordinating Committee.

12:42:10 10 PRESIDING JUDGE: Mr Norman, you have just said that, "I
11 became one during the war because" and you made reference to the
12 President. I'm not sure I understood that.

13 THE WITNESS: No, My Lord, I said the President made a
14 request for that number to be increased.

12:42:25 15 PRESIDING JUDGE: Okay, that's the document you are making
16 reference to?

17 THE WITNESS: Yes, My Lord.

18 PRESIDING JUDGE: Are you suggesting that you were not a
19 Kamajor until that request came and you became a Kamajor from
12:42:44 20 that moment on?

21 THE WITNESS: No, My Lord. I am only saying that the
22 number increased as a result of the request from government
23 itself.

24 PRESIDING JUDGE: Okay, thank you.

12:42:56 25 MR JABBI:

26 Q. When did you become a Kamajor?

27 A. In March 1996. Wrong, sorry. In October 1995. In October
28 1995.

29 Q. In October 1995.

1 A. That's when I was initiated as a Kamajor.
2 Q. Where were you initiated?
3 A. In Bo.
4 Q. Can you tell the Court what constituted the exercise of
12:44:17 5 initiation that you went through?
6 A. Under traditional ban, I cannot. I will only say I was
7 initiated. I will not go into details of initiation.
8 Traditionally I am restricted.
9 Q. But surely you have been giving analogies of men prepared
12:44:54 10 into manhood -- young men prepared into manhood, young women
11 prepared into womanhood, and I'm sure you will join those as
12 analogies to the initiation process of hunters?
13 A. Surely, My Lord, I'm a traditional person, like traditional
14 Sierra Leoneans. We go through some certain traditional
12:45:29 15 training, like the Poro, like the Wunde, like the Gbangbani, and
16 like our wives, the Bondo society, and the Bondo's society is in
17 this Bible, in the Book of Esther, Esther, chapter 2.
18 Q. The Bondo society?
19 A. Is here in the Book of Esther, chapter 2, and they talk
12:45:52 20 about the purification and the right of initiation in the way of
21 women towards womanhood, and they were taken to the house of
22 woman for a period of time when they were virgins until when they
23 are out and they are given to their husbands to become
24 concubines. That is the Bondo society. So we don't know it.
12:46:29 25 Q. Okay, so let's go back to the hunter initiation?
26 A. Hunter initiation --
27 Q. I want to ask a specific question.
28 A. Yes.
29 Q. What powers did the initiate become endowed with as a

1 result of the initiation?

2 A. Then you are talking -- we are now going beyond initiation
3 to immunisation. Those are in two sets.

4 Q. Carry on.

12:46:58 5 A. Initiation means going through the rites of training which
6 even in the western world --

7 JUDGE THOMPSON: Slowly, Mr Norman.

8 THE WITNESS: My Lords.

9 JUDGE THOMPSON: Could you start again?

12:47:10 10 THE WITNESS: Initiation means going through the rites of
11 training and this is performed even in the conventional western
12 warfare training, that a period of time is allocated for one to
13 go through such training to be referred to specifically by names.
14 In English we call those type of people soldiers. They may be
12:47:54 15 men, they may be women. In other languages they have their word
16 for soldiers. So in our traditional situation, where war
17 threatens a people, especially in Sierra Leone and particularly
18 among Mendes, certain group of young people are put together
19 to --

12:48:39 20 MR JABBI:

21 Q. Please watch your pace.

22 A. -- are put together to go through that period of
23 segregational training. Like even in the army again you are set
24 aside for a period of time. And in our own tradition, you are
12:48:58 25 segregated for a period of either days, weeks or months and
26 certain things are taught and certain situations develop for you
27 to go through, so that you cannot turn tail, run away in the face
28 of battle. That is initiation. What is then given particularly
29 to immunise you, to make you even a lot bolder, is called

1 immunisation. The simplest form of immunisation in the western
2 world --
3 Q. Watch your pace, please.
4 A. -- is the bullet-proof garment. In the olden days the
12:50:01 5 warriors wear iron shield. The iron shield of the initiated
6 Kamajor is a means by which nothing is worn, but one is safe by
7 missile from head to sole. And I received that one. I am sure
8 of it, I am convinced of it and I am proud of it.
9 Q. How were you made sure or convinced of it?
12:51:05 10 A. Going through the tests. Tests of gunshots. If
11 Their Lordships will allow perhaps, and those are performed here,
12 I could catch the gunshot and show it to them. I'm sorry, Your
13 Lordships.
14 PRESIDING JUDGE: No need to perform that. Thank you very
12:51:37 15 much.
16 JUDGE ITOE: That is not my mission here.
17 THE WITNESS: Thank you, My Lords.
18 JUDGE THOMPSON: I concur in that observation.
19 MR JABBI:
12:51:44 20 Q. I am quite sure Their Lordships are satisfied with your
21 being sure of yourself in that regard. They need no further the
22 proof of it.
23 A. I was thanking them for their confidence in me.
24 JUDGE ITOE: That was not our conclusion either.
12:52:01 25 THE WITNESS: They measured confidence in me, proposing me
26 by them, I will appreciate and thank them, Their Lordships.
27 MR JABBI:
28 Q. Are you seriously telling this Court that as a result of
29 going through the Kamajor initiation --

1 JUDGE THOMPSON: Remember this is examination-in-chief.
2 You cannot cross-examine your witness. I am just reminding you
3 of a fundamental --

4 MR JABBI: Yes, My Lord, I just wanted to summarise.

12:52:33 5 JUDGE THOMPSON: You will get argumentative if you want to
6 cross-examine your witness and maybe moving down a slippery road.

7 MR JABBI: Yes, indeed, My Lord. Thank you very much.

8 PRESIDING JUDGE: I think we have given you enough latitude
9 but there is a limit to it.

12:52:44 10 MR JABBI: Yes, My Lord.

11 PRESIDING JUDGE: I know you are watching the clock. We
12 will go to 1 o'clock.

13 MR JABBI:

14 Q. Now, Mr Witness, you have spoken about the powers that were
12:53:02 15 infused, if I may say, into a hunter through that initiation
16 process. Since there was this objective of defence in the war,
17 may I also ask if any particular instructions went along with
18 those forms of exercise in the initiation?

19 A. Certainly, My Lords.

12:53:39 20 Q. Yes?

21 A. There is always a taboo to every situation or human being
22 in life. Some drug or medicine that we'll take may be good for
23 me but not for you. It may react against you and not me. But
24 when once the rights of initiations have been performed, and
12:54:16 25 immunisations are being applied, rules and regulations are laid
26 by which one should go very strictly. Again, I refer to the book
27 of Deuteronomy, chapter 23 verses 9 to 11. The rule of immunised
28 warfare --

29 JUDGE ITOE: Chapter what?

1 THE WITNESS: Chapter 23. Deuteronomy 23, 9 to 11, My
2 Lords. The rules of war was laid down by God, that you are
3 protected if you don't do this, you are not if you do this. And
4 that is the reason why specifically the Kamajor is always afraid
12:55:31 5 of harming women, or touching them, when once they're prepared
6 for war. After the admonition to go to war, and in that
7 admonition we are told be careful of women, and be careful of
8 harming the innocents, be careful of theft, in war commonly
9 referred to as looting, no immunised initiate fighter will be
12:56:35 10 covered if they go against those traditional rules. So many of
11 hunters never returned, who went against that truth, those rules.
12 You receive your punishment in the battlefield.

13 MR JABBI:

14 Q. Just to round up on those rules and regulations as you call
12:57:43 15 them, is there any other you want to mention to close it?

16 A. I only want to say, My Lords, that if I was a commander I
17 only tell my men those are the rules under which you are
18 protected. If you breach them you bear the consequences. So
19 there is no need for physical punishment inflicted. But I'm
12:58:28 20 sure, because I was not a commander in the field, their
21 commanders - that is, the hunters' commanders - must have told
22 them and given them admonition to battle. It is always done last
23 you cross the line you advance to contact.

24 MR JABBI: Thank you. Well, maybe you can hang it there.

12:59:16 25 PRESIDING JUDGE: Court is adjourned until 2.30. Thank
26 you.

27 [Luncheon recess taken at 1.00 p.m.]

28 [CDF27JAN06D - EKD]

29 [Upon resuming at 2.38 p.m.]

1 PRESIDING JUDGE: Good afternoon. Mr Pestman, we are now
2 back in court to hear your motion or application. When you rose
3 this morning and indicated that you had a motion you would like
4 the Court to deal with, and we scheduled that to be right after
14:39:52 5 lunch. So we are quite prepared to hear what you say. You did
6 qualify your comments at the time to say that there might be some
7 agreement so I don't know if where you are, so you can inform the
8 Court as to what the status is, and if you still intend to
9 proceed with your motion.

14:40:12 10 MR PESTMAN: Thank you, Your Honour. Yes, we are. My
11 application today is the result of negotiations, fruitless
12 negotiations, we have had with the Prosecution. We have tried to
13 settle this case, of course, out of court but we have been
14 unsuccessful. That is why we would like to raise the issue
14:40:33 15 today, and I thank you for the time given to do so.

16 We have, of course, in the course of our investigations
17 spoken to a great number of potential witnesses for the Defence.
18 We found out that some of these witnesses had also spoken to
19 people they associate with the Special Court. These people might
14:41:00 20 be investigators, it may also be people attached to the
21 Prosecution, or working for the Prosecutor. We have checked the
22 witness statements which were disclosed so far by the Prosecution
23 and we are convinced, in at least one case, that we have not
24 received the statements or the interview notes made by
14:41:33 25 investigators or prosecution with these particular witnesses. We
26 would like to have those statements. That is basically what we
27 are asking for today.

28 Just to be completely clear, we agree with the Prosecution
29 that there is no inherent obligation to disclose these

1 statements. According to the Rules, the Prosecution is only
2 obliged to disclose statements of witnesses they are intending to
3 call at trial or statements, interview notes, which, in their
4 view, which is not always our view, contains exculpatory
14:42:32 5 evidence. We are not interested in those statements. We are
6 interested in the miscellaneous category, the left-over category,
7 of material statements and interview notes given by witnesses we
8 have put on our list to be heard or called at trial. There is no
9 obligation for the Prosecution to release those documents but we
14:43:02 10 think we have a right to inspect them.

11 Of course, we ask the Prosecution why don't you want to
12 give us those documents? I understand that they don't want to
13 reveal them to us, also because they want to use them when
14 cross-examining our witnesses. I won't use the word ambush, but
14:43:25 15 the idea is certainly to surprise the Defence and the witness in
16 question. As I said, there is no obligation to disclose, but we
17 are of the opinion that we have the right to inspect those
18 documents on the basis of Rule 66(A)(iii).

19 PRESIDING JUDGE: So your application is really at this
14:44:01 20 stage to be allowed to inspect those documents that you claim are
21 in the possession of the Prosecution in some form?

22 MR PESTMAN: Yes. We don't know whether it is an official
23 statement or whether it is just interview notes.

24 PRESIDING JUDGE: These statements you are talking about
14:44:19 25 are not in a statement but those they would have of witnesses you
26 have listed on the witness list that you intend to call?

27 MR PESTMAN: Yes, and statements which, in their view, in
28 the view of the Prosecution, are not containing any exculpatory
29 evidence, which we cannot control, we cannot check. Otherwise we

1 would have received them on the basis of Rule 68, and statements
2 of witnesses they decided not to call. It is not surprising that
3 we decided to do the opposite.

4 JUDGE THOMPSON: At this stage you categorise the
14:44:57 5 statements to three categories: (a) those statements of
6 witnesses they intend to call; and (b) the evidence of an
7 exculpatory nature, and then you have this residual category,
8 miscellaneous or residual, which they may not -- in fact, there
9 is no indication they want to use, but they have. So that is the
14:45:24 10 one you are targeting.

11 MR PESTMAN: Yes, and if I want to narrow it down more, I
12 am only interested -- and I am talking about the residual
13 category, thank you for suggesting the word. I am only
14 interested in those documents, statements, written interview
14:45:39 15 notes in the residual category given by witnesses which we have
16 put on our list.

17 JUDGE THOMPSON: Good, quite. In other words, in fact your
18 category is much narrower, because they could have 500 in that
19 residual category and you are only interested in 50 or less than
14:45:56 20 that.

21 MR PESTMAN: I think it is only a few.

22 PRESIDING JUDGE: Or even eight.

23 JUDGE THOMPSON: Or even eight. Clearly your request, as I
24 see it, is not even a full disclosure but a right to inspect.

14:46:07 25 MR PESTMAN: Exactly.

26 JUDGE THOMPSON: I just want to get you right.

27 MR PESTMAN: I don't think we have the right to disclosure.

28 JUDGE THOMPSON: No, but you've said that. The law is
29 settled on that.

1 MR PESTMAN: Although of course the easiest solution to the
2 problem would be to give us --

3 JUDGE THOMPSON: I just want to make sure that I am on the
4 same wavelength.

14:46:24 5 MR PESTMAN: Although I would be quite curious to inspect
6 all the other things as well.

7 JUDGE ITOE: What if inspected it becomes necessary to
8 tender them and to use them for your further purposes in terms of
9 your defence? Would that not amount to a disclosure somehow of
14:46:40 10 the statements for your use? Because inspection -- I mean, if
11 you weren't expecting to use them, you wouldn't want to inspect
12 them.

13 MR PESTMAN: I agree, Your Honour.

14 JUDGE ITOE: So a disclosure would normally follow an
14:46:57 15 inspection for your purposes.

16 MR PESTMAN: I am not sure what the exact meaning is of the
17 word "disclosure", but I always understood it to mean handing
18 over documents and that could follow inspection, but not
19 necessarily.

14:47:16 20 Rule 66(A)(iii), that's the rule we rely on. I have
21 submitted a defence list of authorities and I hope you have been
22 able to have a quick look at them. We have supplied copies to
23 the Prosecution as well. Rule 66(A)(iii) identifies three
24 instance or cases in which the Defence has the right to inspect
14:47:57 25 documents in the so-called residual category.

26 Firstly, when the Defence, not the Prosecution, considers
27 them material for the preparation of the case. The second case
28 is when the Prosecution or the Prosecutor intends to use these
29 documents in trial as evidence. And a third category, which is

1 not relevant today, is when it concerns material obtained from
2 the accused. I only want to rely on the first two instances or
3 cases. My understanding is - but the Prosecution has to correct
4 me if I am wrong - that they want to use these statements,
14:48:42 5 interview notes for cross-examination or for purposes of
6 cross-examination. In my view then they do intend to use it at
7 trial and I think that for that reason alone we already have the
8 right to inspect the documents.

9 But I think in this case this application can also rely on
14:49:03 10 the first case mentioned in Rule 66(A)(iii), because I think that
11 this material is also of importance for the preparation of our
12 defence. There has been some discussion about this criterion
13 before the other tribunals. If I can kindly draw your attention
14 to the last decision of the Appeals Chamber in the Krstic case
14:49:32 15 you will see that the criterion is liberal, maybe even vague, and
16 I understand the criterion to be that the Defence has the right
17 to inspect those materials, and I refer to page 4 of that
18 decision -- last sentence of page 4, "whenever that material
19 could reasonably lead to further investigation by the Defence or
14:50:06 20 whenever that material can lead to the discovery of additional
21 evidence." That is a very wide criterion which I, or we, claim
22 we can easily fulfil in this case.

23 To be more precise, we would like to have access to these
24 statements which were given - I would like to remind Your Honours
14:50:34 25 of - in some cases three, four years ago, we suspect. We would
26 like to inspect these documents to refresh the memories of our
27 witnesses. We found out that they often don't remember what they
28 told the Prosecution or the investigators. We would like to have
29 access to these documents to inspect and to establish whether

1 these people have indeed spoken to a prosecutor or investigator.
2 We would like to have access to assist us in the preparation of
3 the examination-in-chief of the witness, and we would like to
4 have access to these documents to further assist us with our own
14:51:20 5 investigation, not with regard to that particular witness but
6 more in general.

7 And, last point, just to be sure, we would like to see or
8 have access to these statements to know whether the Prosecutor
9 has met all obligations under Rule 68. We would like to know
14:51:41 10 whether the Prosecutor has indeed given us all exculpatory
11 evidence. We have reason to believe that that is not the case.

12 PRESIDING JUDGE: In respect of those statements?

13 MR PESTMAN: Yes. If it is true that the witnesses we
14 spoke to have spoken to somebody working for the Prosecution, and
14:52:05 15 if it is correct what they remember they have said, then there is
16 exculpatory evidence and that should have been disclosed under
17 Rule 68. But we don't know. Of course we have to make -- it is
18 a long time ago, memory is a complicated thing and maybe they are
19 wrong. But we would like to be able to check. But that is not
14:52:25 20 the only reason we would like to have access --

21 JUDGE THOMPSON: So that reason is to really find out
22 whether there has been a breach of Rule 68.

23 MR PESTMAN: Well, yes.

24 JUDGE THOMPSON: That's okay. I just wanted to make sure.

14:52:38 25 MR PESTMAN: But I just want to stress that is actually the
26 least important reason.

27 JUDGE THOMPSON: But I need to understand every position.

28 JUDGE ITOE: It cannot be the least important because you
29 say you have cause to believe that those statements contain

1 exculpatory evidence.

2 MR PESTMAN: Yes.

3 JUDGE ITOE: And if that speculation is right, then it
4 amounts to a breach by the Prosecution of its obligation under
14:53:01 5 Rule 68. So it can't be said to be the least, or it should not
6 be treated as lightly as you are wanting to do so.

7 MR PESTMAN: The main reason we would like to inspect them
8 now is just to get access to the information to help us in our
9 investigation -- to continue with our investigation, which of
14:53:23 10 course goes on until the very last day of the trial, as I
11 suspect.

12 So, in short, it is in the interest of the Defence and our
13 investigation that we get access as soon as possible. Certainly
14 before the witnesses we think spoke to the Prosecution are going
14:53:41 15 to testify. I also think that it is in the general interest of
16 the pursuit of the truth and I really don't see why the
17 Prosecutor can object to that. Thank you.

18 PRESIDING JUDGE: Mr Prosecutor, you wish to respond to
19 this application?

14:54:02 20 MR De SILVA: May it please My Lords. This application is
21 misconceived for a number of reasons, which I hope I can
22 demonstrate.

23 First, as my learned friend Mr Pestman agrees, and with
24 that I too agree, that there is no inherent obligation for the
14:54:36 25 Defence to receive any statement of a witness the Prosecution
26 have not used whom the Defence wish to call as a witness. That
27 is the first point and I agree with that.

28 So my learned friend, as an alternative, wants to inspect
29 and he wants to inspect under Rule 66(A)(iii), which, with great

1 respect, does not apply. If we look at Rule 66(A)(iii) it
2 becomes apparent why. Rule 66(A)(iii) applies to exhibits and it
3 is apparent from the language of Rule 66(A)(iii) that it is
4 confined to exhibits, although it does use the word "document".

14:56:10 5 But the word "document" --

6 JUDGE THOMPSON: I didn't mean to interrupt you, but
7 wouldn't a tidier approach to be to read the rule for us and then
8 seek to submit on it.

9 MR De SILVA: Certainly, if Your Lordship prefers it that
14:56:25 10 way.

11 JUDGE THOMPSON: Yes, I would like to be educated as to
12 what exactly the rule says and why you are seeking to give it the
13 interpretation you choose to do.

14 MR De SILVA: My Lord, I hesitate to seek to educate
14:56:35 15 Your Lordship. I might try and assist, possibly.

16 JUDGE THOMPSON: Thank you.

17 MR De SILVA: Looking at Rule 66(A)(iii):
18 "At the request of the Defence, subject to sub-rule B,
19 permit the Defence to inspect any books, documents,
14:57:03 20 photographs and tangible objects in his custody or control
21 which are material to the preparation of the Defence upon a
22 showing by the Defence of categories of or specific books,
23 documents, photographs and tangible objects which the
24 Defence considers to be material to the preparation of a
14:57:26 25 defence, or to inspect any books, documents, photographs
26 and tangible objects in his custody or control which are
27 intended for use by the Prosecution as evidence at trial or
28 were obtained from or belonged to the accused."

29 We submit that a proper interpretation of Rule 66(A)(iii)

1 is an interpretation that points to that sub-rule applying to
2 exhibits. However, my learned friend is quite right that after
3 "books" the word "documents" is referred to. A document, of
4 course, can include a statement, as a matter of logic. But the
14:58:33 5 fact that the word "documents" here does not include a witness
6 statement is apparent from looking at sub-rule (ii) because if
7 the word "documents" in sub-rule (iii) were to include witness
8 statements, then sub-rule (ii) would be wholly otiose. We would
9 submit that sub-rule (iii) relates really to exhibits.

14:59:12 10 My Lords, if Your Lordships would be kind enough now to
11 look at sub-rule (ii), it reads as follows:
12 "Continuously disclose to the Defence copies of the
13 statements of all additional Prosecution witnesses whom the
14 Prosecutor intends to call to testify, but not later than
14:59:42 15 60 days before the date for trial, or as otherwise ordered
16 by a judge of the Trial Chamber either before or after the
17 commencement of the trial upon good cause being shown by
18 the Prosecution."

19 That's the first part of sub-rule (ii). We have complied.
15:00:06 20 The Prosecution has complied with letting the Defence have the
21 witness statements of prosecution witnesses, the witness
22 statements of exculpatory witnesses. The Prosecution has done
23 that.

24 Then it goes on, My Lords:
15:00:22 25 "Upon good cause being shown by the Defence, a judge of the
26 Trial Chamber may order that copies of the statements of
27 additional prosecution witnesses that the Prosecution does
28 not intend to call be made available to the Defence within
29 a prescribed time."

1 Now, I start by saying my learned friend's application is
2 based on the wrong subsection, which really refers to exhibits.
3 That is sub-rule (iii). And sub-rule (ii), if he were to seek to
4 bring his application under sub-rule (ii), he would fail for
15:01:03 5 different reasons. That is why my friend has rightly conceded -
6 rightly conceded - that there is no inherent obligation for these
7 statements to be disclosed.

8 Let us suppose for a moment - and I do this, I hope, to
9 assist the Court. Let us suppose my learned friend brought his
15:01:33 10 application under sub-rule (ii). Looking at the second part of
11 sub-rule (ii), which I have just read, which reads again, "Upon
12 good cause being shown by the Defence, a judge of the Trial
13 Chamber may order." So that means Your Lordships. It is a
14 discretionary matter for Your Lordships whether Your Lordships
15:02:09 15 make an order or not, even if this application were to b e
16 brought under sub-rule (ii). My Lord, sub-rule (ii) relates to
17 witness statements taken by the Prosecution of people who the
18 Prosecution intended to call as witnesses, but then finally
19 decides not to do so.

15:02:43 20 My Lords, there is a very important point of principle that
21 emerges as a result of the application made by learned counsel
22 for the second accused. That important point of principle is
23 this: The Defence have got a list of defence witnesses. They
24 want to know whether their defence witnesses have made earlier
15:03:14 25 statements to the Prosecution, and that is the nub of it.

26 My Lords, where a person has made a witness statement to
27 the Prosecution and where the Prosecution takes the view that
28 that witness is not a witness of truth, then, of course, the
29 Prosecution does not call that witness, because the obligation

1 upon the Prosecution is to endeavour to place before a court
2 credible evidence.

3 A prosecutor is sometimes confronted with a statement taken
4 from a witness, which, for a number of reasons, internal perhaps,
15:04:23 5 leads a prosecutor to understand or believe that the witness is
6 not a truthful one.

7 Now, if the Defence choose to call that witness, one of the
8 few weapons that a cross-examining party has in his hands is the
9 ability to cross-examine that witness as to his credit on the
15:04:57 10 basis of a previous inconsistent statement. There is absolutely
11 no warrant for the proposition - and I do not really think my
12 learned friend suggests it - there is no warrant for the
13 proposition that the Prosecution should hand over what we may
14 regard as a -- what may turn out to be a previous inconsistent
15:05:38 15 statement to the Defence in order that a defence witness, whom
16 the Prosecution originally came to the view was an untruthful
17 witness, can fashion his evidence when he gives evidence before
18 this Court around a statement he had made at an earlier point in
19 time, thereby preventing the Prosecution from exposing him, for
15:06:09 20 example, on the basis of a previous inconsistent statement. In
21 other words, bringing his evidence that he gives before this
22 Court into line with a previous statement he has made.

23 Now, this is absolutely crucial and fundamental, because
24 one of the few weapons - be you prosecuting or be you defending -
15:06:32 25 open to opposing counsel is to search for the truth. And insofar
26 as this Tribunal or any tribunal is embarked upon a search for
27 the truth, then that which serves the interests of the truth must
28 be and should be upheld for a number of reasons.

29 An analysis of the position, we submit with great respect

1 to Your Lordships, demands that this Court exercise its
2 discretion against this application for three reasons:

3 First, it seeks to deny the principle of equality of arms
4 to the Prosecution by hampering the Prosecution in its right to
15:07:52 5 cross-examine as to credit.

6 Second, as I touched upon, that insofar as we embark upon a
7 search for the truth, to enable defence witnesses to fashion that
8 evidence in the light of earlier statements is to take a step
9 back from the truth. If defence witnesses are telling the truth,
15:08:43 10 they should not require earlier statements. And on the
11 assumption that my learned friend -- I mean, I am dealing with
12 the whole of Rule 66. He has brought, as I have indicated, his
13 application under Rule 66(A)(iii) but that plainly in my
14 submission does not apply and I am dealing with it, I hope to
15:09:14 15 help him, under Rule 66(A)(ii) where the defence have to show
16 good cause before they can make this application.

17 Good cause cannot mean that the Prosecution are deprived of
18 the right to cross-examine on a previous inconsistent statement.
19 I mean, it cannot possibly be. So, My Lords, my learned friend
15:09:44 20 concedes that there is no right. He brings this application on
21 the basis of Rule 66(A)(iii) which really refers to exhibits, and
22 so he wants to inspect, knowing that he cannot seek disclosure.
23 So this is a fishing expedition to see what his witnesses might
24 previously have said. These may be people whom we have come to
15:10:16 25 the conclusion are not witnesses of truth, and that is why we
26 never used them.

27 I am sure my learned friend is acting from the highest of
28 motives in the interests of his client, but there is absolutely
29 no authority whatsoever for the proposition that he has advanced,

1 that he is entitled under Rule 66(A)(iii) for witness statements,
2 because sub-rule (iii), as I have indicated, the word "documents"
3 plainly does not include witness statements otherwise sub-rule
4 (iii) would be otiose.

15:11:09 5 As for the authorities cited by my learned friend, perhaps
6 I could deal with them in this way:

7 The first of the authorities, which is the case of Krstic
8 is irrelevant because it deals with sensitive material.

9 The second of the authorities, Kajelijeli, is wholly
15:11:44 10 irrelevant. So is the third.

11 And the final authority of Delalic is quite interesting
12 because it does not assist my learned friend one little bit,
13 although it was a decision of a trial chamber, Your Lordships
14 will find that as the very last authority in that bundle, the
15:12:08 15 case of Delalic before the Trial Chamber at ICTY.

16 Looking at the introduction, My Lords, which I hope
17 Your Lordships have managed to find the page, about four or five
18 lines down you see what this case is about. It was a request by
19 counsel for the accused for the determination of the parameters
15:12:42 20 of Sub-Rule 66(B) of the Rules of Procedure and Evidence in that
21 court. My Lords, sub-rule (B) I think we needn't worry about too
22 much. But if Your Lordships would be kind enough to go to
23 paragraph 4 of that report - and this is what the Court held and
24 we submit that this is a correct interpretation of the law - it
15:13:30 25 reads as follows:

26 "On 24th July 1996 the Prosecution indicated that it does
27 not read sub-rule 66(A)." Perhaps we should look at
28 sub-rule 66(A). Go to the beginning, "Subject to the provisions
29 of Rule 50, 53, 69 and 75, the Prosecution shall within 30 days

1 of the initial appearance of an accused disclose to the Defence
2 copies" -- Your Lordships are very familiar with that. That is
3 what they are dealing with. So coming back to this report:

4 "On 24th July 1996 the Prosecution indicated that it does
15:14:15 5 not read sub-rule 66(A) as requires" --

6 THE INTERPRETER: Your Honours, if I may, learned counsel
7 is going very fast for the interpreter.

8 PRESIDING JUDGE: We have an observation from the
9 interpreters that you are reading too fast and they cannot follow
15:14:32 10 up with you. So would you mind taking back this last part,
11 please? I understand it is difficult at times, but would you
12 just slow down a bit the pace of your presentation?

13 MR De SILVA: I am very grateful to Your Lordship for
14 reminding me. I apologise to the interpreter. I can't see the
15:14:51 15 interpreter, who is concealed, but perhaps they will accept my
16 apologies.

17 Coming back to paragraph 4,
18 "On 24th July 1996 the Prosecution indicated that it did
19 not read sub-rule 66(A) as requiring the disclosure of
15:15:11 20 every statement obtained from every person regardless of
21 whether or not the person will be a witness."

22 Now, that is really what the Defence are seeking in this
23 case; statements of people whom the Prosecution have not used.

24 "Instead, it construes sub-rule 66(A) as requiring it to
15:15:39 25 turn over all supporting material as well as prior
26 statements of only" -- and of course I invite
27 Your Lordships to underline the word only - "only those
28 witnesses the Prosecution intends to call at trial."

29 This interpretation is correct.

1 We submit that the Trial Chamber in that case correctly
2 interpreted Rule 66(A). There is no obligation on the
3 Prosecution, absolutely none whatsoever, to supply the Defence
4 with witness statements, apart from exculpatory, of course, but
15:16:29 5 Your Lordships know I am not referring to those or those
6 statements where there is an obligation upon the Prosecution to
7 make disclosure to the Defence. I am talking about that residual
8 category that My Lord Thompson so helpfully described as being in
9 the residual category. There is absolutely no obligation, none
15:16:54 10 whatsoever.

11 The reason for that, My Lords, is the reason I have given
12 Your Lordships. Because inasmuch as the Defence have the right
13 to test prosecution witnesses, the Prosecution have got the right
14 to test defence witnesses. And it is by embarking upon that that
15:17:15 15 Your Lordships can determine, at the end of the day, where the
16 truth lies. And that is why I would submit it would do violence
17 to the whole concept of the equality of arms, if the Prosecution
18 right to cross-examine a witness called by the Defence in
19 relation to whom we may hold a statement that does not have to be
15:17:46 20 disclosed, but which would enable us to cross-examine that
21 witness as to his credit - if we are deprived of that right, then
22 there is no equality of arms. The Defence can cross-examine
23 prosecution witnesses.

24 My Lords, I don't want to make too much of a point of it,
15:18:11 25 but Your Lordships know this is an application made against a
26 back-cloth in which the Defence haven't supplied the Prosecution
27 with one single statement.

28 Perhaps when I talk about the equality of arms I hope I
29 have struck a cogent note with My Lords. It is quite wrong, in

1 our respectful submission, that the Prosecution right to
2 cross-examine a potential defence witness should be blunted by
3 the Defence being given the right to go on a fishing expedition
4 so as to alert their witnesses to the contents of an earlier
15:19:25 5 statement. It would mean, if this application was allowed, that
6 the Prosecution is put in a position of disadvantage. And
7 therefore, we would submit that this application is misconceived.
8 It is brought under Rule 66 sub-rule (iii). I have helpfully, I
9 hope, looked at any other part of that Rule that might assist my
15:20:07 10 friend, and it doesn't help him. And so, My Lords, if there is
11 any further matter upon which I can help Your Lordships I shall
12 be only too happy to do so.

13 JUDGE THOMPSON: I am interested in the main thrust of your
14 submission. You say that the Bench must give a restrictive
15:20:38 15 interpretation to Rule 66(A)(iii) and accept that the proper
16 interpretation of that rule and sub-rule is in fact confined to
17 exhibits. That is one of the --

18 MR De SILVA: Indeed.

19 JUDGE THOMPSON: -- the main thrust of your argument. In
15:21:03 20 other words, you seek to exclude Rule 66(A)(iii) as applicable as
21 a proper basis upon which he can ground or predicate his
22 application.

23 MR De SILVA: Yes.

24 JUDGE THOMPSON: Right. If that is correct, then I need to
15:21:30 25 be satisfied, if you are applying the ejusdem generis rule of
26 statutory interpretation, I need to be satisfied as to where does
27 the notion of exhibits become the genus in respect of which
28 books, documents, photographs and tangible objects are the
29 species.

1 MR De SILVA: My Lord, yes. Yes. My Lord, we would

2 submit --

3 JUDGE THOMPSON: Because I think that that implies your

4 submission --

15:22:15 5 THE INTERPRETER: My Lord, your microphone is not on.

6 JUDGE THOMPSON: I apologise, interpreter. Your submission

7 does imply here, it was inviting the Court not to place a broad

8 or liberal interpretation upon that rule, and you seek to confine

9 the rule to this: That that rule can only refer to exhibits. So

15:22:37 10 if I apply the plain and ordinary meaning rule - and, of course,

11 remember that the plain and ordinary meaning rule requires that

12 if the rule is unambiguous and precise, we do not have to enter

13 into the realm of statutory construction, we apply the plain

14 meaning. So if you are pushing us beyond the plain meaning, it

15:23:08 15 says, "books, documents, photographs, tangible objects," then you

16 seek to suggest that there is some ejusdem generis rule applying

17 here.

18 MR De SILVA: My Lords, I hope I make myself plain. I

19 might have failed to do so. My learned friend is not looking for

15:23:30 20 books or photographs or tangible objects. That is not his

21 application. They are plainly in the realm of exhibits. But the

22 word "document" appears. I am prepared to concede at once that a

23 document, the ordinary construction of the word "document" could

24 include - could include - a witness statement.

15:23:57 25 JUDGE THOMPSON: Yes. So it is the jurisprudence that

26 really can help us to say that in the context of these rules,

27 exhibit has been the preferred interpretation as against the

28 broad liberal interpretation.

29 MR De SILVA: My Lords, it is apparent as a matter of

1 statutory construction or any construction --

2 JUDGE THOMPSON: Remember you adopt statutory construction
3 only when the meaning is not plain.

4 MR De SILVA: My Lord, yes.

15:24:25 5 JUDGE THOMPSON: We don't enter the realm of statutory
6 construction, we keep to statutory interpretation.

7 MR De SILVA: My Lord, on any interpretation, we would
8 submit that the use of the word "document" there is proper if
9 those who produced these rules intended sub-rule (iii) to include
15:24:56 10 exhibits, exhibits, as Your Lordships know, of course can include
11 documents. So the word "document" appearing in that sub-rule is
12 perfectly normal. Does the word "document" there, does it mean,
13 in the context of Rule 66(A)(iii), witness statements? It does
14 not, for one very good reason. If it did, sub-rule (ii) would be
15:25:30 15 otiose, because sub-rule (ii) deals with witness statements. So
16 if, in fact, the word documents was contemplated as taking in
17 witness statements, you wouldn't need, with respect, you would
18 not need sub-rule (ii).

19 JUDGE THOMPSON: But does sub-rule (ii) deal exhaustively
15:26:02 20 with statements? Remember that counsel virtually categorised
21 witness statements. He made a clear demarcation between those
22 witnesses intended to be called by the Prosecution, then those
23 which reveal or may reveal exculpatory evidence, and then this
24 residual category, this very wide category. So where in sub-rule
15:26:28 25 (ii) is that provided for? And why is sub-rule (ii) exhaustive
26 in its formulation as to the subcategories of witness statements?

27 MR De SILVA: My Lord, because even my learned friend
28 concedes that there is no rule specifically recovering his
29 request and seeks to bring it under sub-rule (iii). But, My

1 Lords, as I indicated by looking at the last case, the obligation
2 upon the Prosecution to supply witness statements is really
3 confined to such witnesses as the Prosecution uses or such
4 witness statements as may be of exculpatory material. There is
15:27:23 5 no other obligation.

6 JUDGE THOMPSON: He concedes that.

7 MR De SILVA: Well, My Lord --

8 JUDGE THOMPSON: He concedes that.

9 MR De SILVA: My Lord, yes.

15:27:31 10 JUDGE THOMPSON: And he concedes that he does not have a
11 right to disclosure under sub-rule (ii). He says, "What we are
12 looking for is a right to inspection, which is provided under
13 sub-rule (iii)".

14 MR De SILVA: And the purpose of that - and the purpose of
15:27:47 15 that -- Your Lordships would no doubt first -- the dialogue
16 between Your Lordship and me at the moment is, of course, over
17 the meaning of the word "documents". We would say that it is a
18 word that has to be used by the drafters because plainly
19 documents are often exhibits or whatever. But we would submit,
15:28:17 20 in the context of sub-rule (iii), it plainly doesn't relate. I
21 can't make the position any clearer. It plainly doesn't relate
22 to witness statements because witness statements are dealt with
23 in sub-rule (ii). And to give it a wide meaning of including
24 witness statements would, in our respectful submission, be to
15:28:39 25 throw the net too wide. If you look at a section that plainly is
26 talking about exhibits, it would be a strange use of language to
27 inject into that section a witness statement, which is a wholly
28 different category of creature. And so, My Lords, when one
29 looks -- it is all discretionary in any event.

1 If Your Lordships were to take the view that there is a
2 fundamental point here, that fundamental point being that there
3 must be an equality of arms between the Prosecution and Defence,
4 it cannot conceivably be the case that the Prosecution should be
15:29:41 5 deprived of the one method they have in cross-examination of
6 exposing a defence witness, in the same way as they have the
7 right to expose a prosecution witness, by means of the use of a
8 previous statement which may be inconsistent. To give one side
9 that right and deprive the other side of it would not seem to be
15:30:15 10 very just and I would invite Your Lordships, in the construction
11 of this, to apply a very fundamental and very basic rule that
12 even if the Defence were to be able to say, "We have got defence
13 witnesses who want to know what they may have said two or three
14 years ago to refresh their memories", which I think is the
15:31:13 15 submission, that is a matter that the Court often deals with
16 where a witness may go into the witness box and cannot quite
17 remember what happened two or three years ago, that is the
18 latitude given to that witness by the Court because a court is
19 understanding about the passage of time.

15:31:32 20 Indeed, if that witness were to say, "Well, I made a
21 statement three years ago", whatever it is, the Court will be
22 understanding of that, but so that the Defence can take a look at
23 all this in circumstances - and I emphasise this because this
24 adds to the unfairness of the application - in circumstances
15:31:59 25 where we have been denied every single defence witness
26 statements. My learned friend has all these witnesses, the
27 Prosecution are denied it. And so we are obliged to play by some
28 different rules. And my purpose in standing up before
29 Your Lordships is to say it has got to be a level playing field,

1 otherwise the whole meaning of an equality of arms is defeated.

2 I just want to make sure, on behalf of the Prosecution,
3 that liberal notions of justice do not get out of hand to the
4 point that the Prosecution is prejudiced. I can't put it any
15:32:56 5 more clearly than that. I could say to Your Lordships any one of
6 my learned friends can cross-examine a prosecution witness on a
7 previous inconsistent statement. Why can I not? Why should that
8 right be blunted by the witness being shown some earlier
9 statements so that he can give his evidence in a way fashioned to
15:33:23 10 fit with a statement made by him at an earlier stage when we, the
11 Prosecution, may have come to the conclusion he was not a witness
12 of truth and thereby blunt our ability to demonstrate to
13 Your Lordships that the witness is an untruthful witness. That
14 would be something fundamentally wrong.

15:33:49 15 My Lords, I have put it in this way because it goes to the
16 very foundations of the administration of justice and it goes to
17 the foundations of the administration of justice on the basis of
18 the equality of arms. My learned friend's application calls for
19 a very strained -- a very strained interpretation, in our
15:34:18 20 respectful submission. It is an attempt, plainly, to put the
21 Defence at advantage over the Prosecution in circumstances in
22 which justice, in our respectful submission, will be denied to
23 the ability of the Prosecution to do exactly what the Defence
24 have got the right to do when they cross-examine prosecution
15:34:44 25 witnesses.

26 My Lords, I don't think I can put it any more clearly than
27 that. I have stated my position. Nothing is improved by
28 repetition. And so, My Lords, there it is.

29 PRESIDING JUDGE: But if I may, Mr Prosecutor, maybe there

1 is something I do not understand in your arguments. You're
2 saying that the Prosecution, if that application were granted,
3 would be deprived of their ability to cross-examine on a prior
4 inconsistent statement. I would like to understand how. You
15:35:22 5 would still have the statement. How is it that you are deprived
6 to cross-examine?

7 MR De SILVA: My Lord, I'm very glad --

8 PRESIDING JUDGE: You would be deprived to cross-examine
9 that the witness does not know of any more, but not of
15:35:34 10 cross-examining on a prior inconsistent statement. Am I right?

11 MR De SILVA: I'm very glad Your Lordship asked me that
12 question. Firstly, we do not have -- the Defence do not give us
13 the witness statement, their witness statement. So we have got
14 to operate in the dark. So we have got -- to start with, we have
15:35:58 15 got nothing to compare the defence witness's evidence with,
16 because we don't have -- the Defence have not given us the
17 witness statement.

18 PRESIDING JUDGE: No, but you do have summaries of the
19 evidence. That was one of their obligations and they have
15:36:12 20 provided that. So we have indication of what they will be
21 talking about.

22 MR De SILVA: Well, My Lord, we would submit, and as has
23 been said before, what has on the whole has been said those
24 witnesses can say is said in the vaguest terms. But, be that as
15:36:35 25 it may, My Lords, if a witness -- if the Defence are able to take
26 a look at a witness statement, for example, that has been given
27 to the Prosecution and they detect in that or show their witness
28 or are able to tell the witness what is in that statement, that
29 witness is able to modify his evidence so as to come into line

1 with the previous statement he made. That blunts the Prosecution
2 ability -- that is what affects the Prosecution ability to be
3 able to cross-examine that witness, because there would be
4 apparently no contradiction. This is the point.

15:37:21 5 The ability to use a witness statement really only arises
6 if there is an apparent contradiction between what the witness is
7 saying in the witness box and the document I hold in my hand. If
8 the contents of the document I hold in my hand, the witness has
9 been alerted to, then that witness can seek to avoid the
10 contradictions by evidence he gives, by the way in which he gives
11 his evidence. To that extent the Prosecution's sword -- can I
12 put it this way, because it is a weapon, cross-examination is a
13 weapon that is used by both sides. The sword of
14 cross-examination in the hands of the Prosecution is blunted.

15:38:23 15 That is the way I put it. My Lord, I hope I have made that
16 position clear because, to that extent, that must be the case.
17 That must be the case.

18 We say if a prosecution witness is telling the truth, then
19 he makes his statement to his lawyers, the lawyers for the
15:38:49 20 accused, and that witness goes into the witness box and gives his
21 evidence. If things happen two or three years ago, well, if I
22 confronted him with his previous statement, he could say, "Yes,
23 it happened a long time ago" and the Court would understand that.
24 So I cannot understand why the Defence wish this fishing
15:39:17 25 expedition.

26 It would be very unfortunate if this application was
27 granted we would submit, because it would set a dangerous
28 precedent and it would mean that the Prosecution would be at a
29 disadvantage. We would submit that, as a matter of principle, we

1 must -- I must, on behalf of the Prosecution, stand by the rights
2 of the Prosecution to do that which the Defence can do and not
3 have any inroad made in any shape or form into the Prosecution
4 right to cross-examine as to credit properly, where we take the
15:40:02 5 view that a witness may not be telling the truth. And anything
6 at all that diminishes the Prosecution right to do so must
7 necessarily be injurious to the Prosecution and therefore invade
8 the concept of the equality of arms.

9 My Lord President, I hope -- I can't take it any further --
15:40:37 10 PRESIDING JUDGE: That's fine, thank you.

11 MR De SILVA: -- than the way in which I put it.

12 PRESIDING JUDGE: You have responded to my question.

13 MR De SILVA: I thank you, My Lords.

14 PRESIDING JUDGE: Mr Pestman, you wish to reply to this
15:40:49 15 response by the Prosecution?

16 MR PESTMAN: Thank you. Shortly, Your Honour. I would
17 just like to make a couple of points.

18 First of all, it is important to note that the Prosecutor
19 has admitted that they intend to use those statements, witness
15:41:07 20 notes, for their cross-examination and that is already enough
21 reasons to allow us inspection.

22 Second, the Prosecution seems to suggest that the
23 unreliability of a witness is the only reason for the Prosecution
24 not to call that particular witness. There are of course other
15:41:26 25 reasons why the Prosecution could decide not to call a witness.
26 For example, that it doesn't serve a particular purpose, support
27 their indictment. There might be other reasons not to call a
28 witness. A witness could simply tell the truth and the truth
29 might not be liked by the Prosecution.

1 By the way, there is no interest -- we have no interest in
2 calling unreliable witnesses. That is exactly what we are trying
3 to prevent by having access to those statements. I would like to
4 stress that we are acting in good faith and I have the idea that
15:42:12 5 the Prosecution is challenging our good faith. I have been
6 reminded numerous times in the past that I am an officer of this
7 Court and I am beginning to see myself as such and I am not going
8 to fashion statements of witnesses. I would like to stress that.
9 That is not my intention. Of course, we will not do that.

15:42:34 10 One of the reasons, as I said, we are trying -- or we would
11 like to have access to those statements, whatever documents,
12 whatever you want to call those documents, is to prevent that we
13 call unreliable witnesses. We are altogether in the pursuit of
14 the truth.

15:42:54 15 Sub-rule (ii) is, of course, not the right rule. It does
16 not apply in this particular case. I can refer to decisions
17 which we have submitted earlier and I tend to agree with the
18 question or the opinion expressed by Your Honour that the
19 category the Prosecution refers to, the category of (A)(ii), is
15:43:25 20 much narrower than the sub-rule (iii). We are not only looking
21 for statements of witnesses the Prosecution did not intend to
22 call. We are looking for much more. We are looking for all
23 statements given by people the investigators, for example, spoke
24 to. People the Prosecution never intended to call, maybe because
15:43:49 25 they don't even know that the investigators spoke to them.

26 Of course, sub-rule (iii) also applies to witness
27 statements. I would almost use the N word, but I won't. If you
28 have a look at the decisions which I submitted, they all relate
29 to witness statements. Sometimes -- I think in one case it is

1 not a witness statement, but a statement of another accused in a
2 different trial. It is always about statements, it is never,
3 ever about exhibits. If the Prosecution wants to use a book, I
4 can look it up in a library. It is quite obvious that this rule
15:44:30 5 is not intending to prevent me -- or to give me books which I can
6 readily receive or look up in the library.

7 One point which I would like to make clear: Fair trial,
8 the principle of a fair trial, is primarily intended to protect
9 the rights of the accused. The right to equality of arms - they
15:44:54 10 call it the principle of equality of arms - does not apply to the
11 disclosure of evidence. I think that I don't have to explain
12 that. That will be in clear violation of the right of every
13 accused not to incriminate himself and also in violation of the
14 burden of proof which in criminal cases clearly rests on the
15:45:14 15 Prosecution. It is not up to us to prove that the accused is not
16 guilty.

17 And by the way, as a final point, I would like to stress
18 and to point out that during the cross-examination of the
19 witnesses led by the Prosecution, we never, ever used a witness
15:45:34 20 statement which was not also known to the Prosecution. We tried
21 to get access to the witnesses the Prosecution was going to
22 present or call, but we were never allowed to speak to them. So
23 even if I follow the position taken by the Prosecutor, we were
24 never allowed to use a statement given by a witness called by the
15:45:56 25 Prosecution which the Prosecution did not know. They are always
26 familiar with the contents of the statements which we used for
27 our cross-examination.

28 These are the points I wanted to make.

29 PRESIDING JUDGE: Thank you, Mr Pestman.

1 JUDGE ITOE: Mr Pestman, when we look at Rule 66, it is
2 consecrated mainly on the mention in 66(A)(i) on statements
3 66(A)(ii) still on statements, talking of statements
4 specifically. But I think we must admit here that in 66(A)(iii)
15:46:43 5 there is no direct allusion to statements. It talks of
6 documents, which brings us, I would imagine, to the obligation of
7 determining whether a statement was indeed envisaged by the
8 plenary in considering Rule 66(A)(iii). It could have been a
9 document in another form other than statements, because it could
15:47:13 10 be argued - it could be argued - that in talking of documents
11 66(A)(iii) did not intend to include statements. If it intended
12 to, it could have been specifically mentioned under 66(A)(iii).
13 That is my first concern in this debate.

14 And then, of course, I wanted to ask you, do you have your
15:47:44 15 own witness statements of these eight witnesses you are referring
16 to? Do you have your defence witness statements? I am asking
17 this question because, in my opinion, the Prosecution has raised
18 the principle, and rightfully so, of equality of arms. And it is
19 true that there is no obligation for you to disclose unless you
15:48:18 20 are so required by the Trial Chamber and the Trial Chamber has
21 reserved its right to ask you to produce, should necessity arise,
22 to disclose some statements. Because if, like the Prosecution
23 states, no statements have been disclosed to them of your defence
24 witnesses and they have done so on the basis of which you have
15:48:43 25 extensively cross-examined their witnesses, wouldn't you think
26 that the principle of equality of arms is breached in those
27 circumstances? That is my worry. I mean, would you expect that
28 you will keep your statements, you know, like your cards under
29 the table and expect the Prosecution to disclose everything to

1 you without a corresponding obligation on your part to also
2 disclose, because this is also a fundamental in the
3 administration of justice?

4 MR PESTMAN: If I may, Your Honour, start with an answer to
15:49:25 5 your last question, the answer is yes, we expect the Prosecution
6 to follow the Rules and so will we. And the Rules clearly state
7 that we have no obligation to disclosure and that is of course
8 the consequence or the fact of equality of arms --

9 JUDGE ITOE: But you are holding your statements to your
15:49:42 10 chest. You don't want them to be seen because you now benefit
11 from the protection of the Court which has said that it will not
12 obligate you to disclose those statements until such a time that
13 it would find it necessary to oblige you to do so. Don't you
14 think there is the principle of the application of equality of
15:50:02 15 arms here? And if you have those statements as you have referred
16 to -- 8 of them in number, I hope I am quoting you rightly. If
17 you have those statements, why don't you boldly disclose to them
18 and then they too will have the obligation to disclose their
19 statements to you. This is it. Because you cannot reserve the
15:50:22 20 right to ambush the Prosecution and not give the Prosecution the
21 right to also ambush you.

22 MR PESTMAN: I would love to ambush the Prosecution but we
23 can't. They always had the statements we had when we
24 cross-examined their witnesses. If the Trial Chamber decides
15:50:40 25 that we have to disclose evidence, of course we will do so. We
26 have disclosed the summaries.

27 JUDGE ITOE: They have said they are vague and I think
28 somewhere, somehow those summaries are really vague. Somewhere,
29 somehow.

1 MR PESTMAN: Can I maybe answer the first question you
2 raised about the documents, whether documents entails witness
3 statements. I think the answer is obviously yes. If you look at
4 the jurisprudence of the ICTR and ICTY it has always been
15:51:19 5 automatically assumed that these documents, this particular rule
6 also applies and maybe specifically applies to witness
7 statements. I think the oldest ruling or order or decision by
8 the ICTY is very clear on that. And you can also see, if you
9 read the corresponding rule at the ICTY, you will see that it is
15:51:39 10 an exact copy of our rule. It has never been redacted or
11 changed.

12 PRESIDING JUDGE: We will obviously read that case law and
13 any other case law that we feel is appropriate to this particular
14 issue. It will not be necessarily limited to what you have
15:51:54 15 submitted. We will see what may exist over and above. So we
16 will certainly look into this. As has been pointed out, the
17 issue is indeed fundamentally a question of equality of arms in
18 this issue and whether or not he will breach or he won't, I will
19 not make that decision now from the Bench. We will look into
15:52:16 20 this matter and make a determination as to how best to achieve
21 justice in these kinds of circumstances. So we will give due
22 consideration to arguments and case law presented by both sides,
23 but my colleague Justice Thompson -- you may be seated,
24 Mr Pestman.

15:52:34 25 JUDGE THOMPSON: For my own self-enlightenment, do you have
26 any case law authority from the jurisprudence in support of the
27 restrictive interpretation that you have canvassed where it was
28 decided that those categories of objects enumerated in the rule
29 are to be restricted to exhibits, nothing else, or is it just

1 your submission to the Court? If you do have and if you intend
2 to find something, I will be interested. Thank you. I don't
3 want you to even respond now. Just reserve the right in case you
4 have something that you can enlighten me on.

15:53:15 5 MR De SILVA: It is my humble submission but I shall
6 endeavour to see if there is any jurisprudence that can throw any
7 light on this matter either one way or the other. It is because
8 we would submit that the position is so plain that there is no
9 jurisprudence.

15:53:36 10 JUDGE THOMPSON: But even in plain [indiscernible] there is
11 jurisprudence sometimes, jurisprudence to support the plain and
12 unambiguous meaning of rules. But in any event, if you have
13 something and if not, I will be content.

14 MR De SILVA: My Lords, I will take up Your Lordship's
15:53:54 15 invitation with thanks and if there is any material which we can
16 lay before the Court to help the Court any further, of course,
17 that will be done.

18 PRESIDING JUDGE: Mr Prosecutor, as you know, what may
19 appear to be plain to one may not be plain to the other. That is
15:54:09 20 often one of the challenges that courts do face. Having said
21 that, I thank you for your comments. Mr Margai, indicated
22 that --

23 MR MARGAI: Yes, My Lord, if I may be heard.

24 PRESIDING JUDGE: On that issue.

15:54:21 25 MR MARGAI: On that issue, yes.

26 PRESIDING JUDGE: Very well.

27 MR MARGAI: I think we are all hear to seek justice, be you
28 prosecutor or defence. My Lord, it may be somewhat unfortunate
29 that my learned friend Pestman circumscribed his application by

1 coming under Rule 66(iii), but Your Lordships will note from the
2 Delalic authority referred to by the Prosecutor, paragraph 4,
3 lines 19 to 22 I think it is of assistance. Your Lordships will
4 note that in this authority in the interest of justice the Court
15:55:11 5 looked at the totality of Rule 66 and in summary --

6 PRESIDING JUDGE: You're talking of Delalic?

7 MR MARGAI: Yes, My Lord. And in summary, paragraph 4,
8 lines 19 to 22 this was what was said: "In summary sub-rule
9 66(A) requires the Prosecution to disclose to the Defence all
15:55:38 10 supporting material" - "all supporting material" - "that
11 accompanied the indictment at confirmation, all prior statements
12 obtained by the Prosecution from the accused and all prior
13 statements obtained by the Prosecution from those whom it intends
14 to present at the trial."

15:56:03 15 I think that is of some assistance, no doubt.

16 JUDGE THOMPSON: Only in the sense to which the formulation
17 of the rule in Delalic case is linguistically and semantically
18 akin to our own rule?

19 MR MARGAI: Yes, My Lord. Thank you.

15:56:25 20 PRESIDING JUDGE: Thank you very much.

21 MR De SILVA: Would Your Lordships just allow me to reply.

22 PRESIDING JUDGE: Yes, we will.

23 MR De SILVA: I think my learned friend was quite right in
24 drawing Your Lordship's attention because it is in no way
15:56:44 25 inconsistent with the position I have taken up, that sub-rule
26 66(A) requires the Prosecution to disclose to the Defence all
27 supporting material that accompanied the indictment at
28 confirmation. We have done that. All prior statements obtained
29 by the Prosecution from the accused - yes. And any prior

1 statement obtained by the Prosecution from those whom it intends
2 to present at trial. We have done that. And so I am grateful to
3 my learned friend, I didn't think he was going to ride to my
4 assistance. If he assists me in the future in this way, I shall
15:57:28 5 be much obliged.

6 JUDGE ITOE: I hope you will share your pay packet with
7 him.

8 MR De SILVA: My Lord, there are certain things in which I
9 draw the line.

10 PRESIDING JUDGE: Thank you. We will obviously not decide
11 on this application now, but we will take that under advisement
12 and we know that there is some urgency in this because as we are
13 moving along, it will become more urgent that a decision be know
14 on this and we will do our utmost to proceed with it as
15:58:01 15 expeditiously as we can.

16 MR De SILVA: My Lord, I am very sorry. The request having
17 been made to assist the Court, it has been put in my hands an
18 authority -- of course, I don't know whether my learned friend
19 has it, I don't think he has. It is from ICTY. It is the case
15:58:22 20 of Blagojevic. I just quote one sentence. "The Trial Chamber
21 observes while maintaining its position that the term 'documents'
22 in Rule 66(B) is not intended to include witness statements." I
23 shall copy this for Your Lordships.

24 PRESIDING JUDGE: What is the date of that decision?

15:58:50 25 MR De SILVA: The date of this decision, My Lords, is
26 12th December 2002, and if I might spell it:
27 B-L-A-G-O-J-E-V-I-C, but I shall have this copied for
28 Your Lordship. If that is correct, then I have wasted a great
29 deal of Your Lordships' time and I hope I shall be forgiven.

1 PRESIDING JUDGE: Thank you. The Court will adjourn for
2 15 minutes. When we resume we will come back with the accused
3 giving evidence in examination-in-chief. Thank you.

4 [Break taken at 3.58 p.m.]

16:28:14 5 [CDF27JAN06 - CR]

6 [Upon resuming at 4.27 p.m.]

7 PRESIDING JUDGE: Dr Jabbi, you are ready to resume the
8 examination-in-chief of the first accused?

9 MR JABBI: Yes, My Lord.

16:28:53 10 PRESIDING JUDGE: For your information, we don't intend to
11 sit any later than 5.30 this afternoon, so plan your examination
12 accordingly.

13 MR JABBI: Thank you, My Lord. I had also indicated
14 earlier on that I wished to make an application later on today.

16:29:11 15 I don't know if that is --

16 PRESIDING JUDGE: I remember your application, yes.

17 MR JABBI: I don't know when I can do so.

18 PRESIDING JUDGE: Well, we don't intend to sit later than
19 5.30 so, if you are to do it, you have to make it between now and
16:29:28 20 5.30. The witness and the accused may remain where he is. That
21 application concerns access that you want to be given to the
22 first accused?

23 MR JABBI: Yes, My Lord.

24 PRESIDING JUDGE: Very well, we will hear it now. If this
16:29:55 25 is for access during the weekend, or later on, we need to know
26 what it is that you are claiming at this time and we'll take that
27 under advisement. So let's hear from you on that.

28 MR JABBI: Thank you, My Lord. My Lord, as you have
29 rightly said, this is an application that the defence team for

1 the first accused be allowed to interact and make communication
2 with him over the weekend with effect from this afternoon, or
3 this evening.

4 My Lords, the basic point which I had in fact gone over in
16:30:55 5 a previous application is a difficult faced by Court-appointed
6 counsel for the first accused in light of his decision earlier on
7 to withdraw from the proceedings.

8 JUDGE ITOE: Dr Jabbi, I don't think we want to visit this
9 terrain. Try to understand the stand of this Court. Please,
16:31:38 10 circumscribe your application within a context that does not take
11 you into those controversial issues which the Court has told you
12 over and over again we don't want to be revisited.

13 MR JABBI: My Lord, I'm just establishing a context. I am
14 not trying to revive the issues of that situation.

16:32:07 15 JUDGE ITOE: But you know the stand of the Court in the
16 matter, don't you?

17 MR JABBI: I do know the stand of the Court, My Lord.

18 JUDGE ITOE: You can continue with your application.

19 MR JABBI: Thank you very much, My Lord. If I may just
16:32:42 20 refer very briefly to the duties of court-appointed counsel as
21 determined in the consequential order on the role of
22 court-appointed counsel, dated 1st October 2004. With your
23 leave, if I may just read the various subparagraphs of that
24 order.

16:33:16 25 "The Court orders that the duty of a court-appointed
26 counsel would be to represent the case of the accused and,
27 in particular, shall:
28 (a) represent the accused by investigating and preparing
29 for the testimony of prosecution witnesses and

1 cross-examining them;
2 (b) prepare for and examine those witnesses court-assigned
3 counsel deem it appropriate to call for his defence;
4 (c) make all submissions on fact and law as they deem it
16:33:54 5 appropriate to make in the form of oral and written motions
6 before the Court;
7 (d) seek from the Trial Chamber such orders as they
8 consider necessary to enable them to represent the
9 accused's case properly, including the issuance of
16:34:17 10 subpoenas;
11 (e) discuss with the accused the conduct of the case and
12 therefore to obtain his instructions thereon and take
13 account of views expressed by the accused while retaining
14 the right to determine what course to follow;.
16:34:43 15 And (f) act throughout in the best interests of the
16 accused."
17 My Lord, the point is that we have found it very difficult
18 to go in accordance with these functions in practice whilst the
19 accused was withdrawn, because that withdrawal was not just a
16:35:16 20 physical withdrawal from the proceedings in the Court, but from
21 discussion of any of those matters taking place in Court,
22 including how he might be assisted in preparing his defence,
23 because by then it was not even clear whether he was coming to
24 make -- he was coming to give testimony in his own defence. It
16:35:47 25 was only after last week, Thursday, that that decision came
26 through and a more open interaction started taking place. But,
27 of course, there was so much material to cover in the process of
28 interacting with him on the basis of the proceedings that have
29 taken place that, certainly, we did not receive -- we were not

1 able to give as much assistance on all the available areas as we
2 would ourselves have liked to give.

3 My Lords, according to the functions of the Court-appointed
4 counsel that I have just read, there is also a requirement of
16:36:38 5 seeking continuing instructions from the accused person.

6 However, with the present situation of him giving evidence, that
7 also has been held at bay. That is why, under function (d) we
8 may seek from the Trial Chamber such order as we consider
9 necessary to able us to present the accused's case properly. We
16:37:16 10 thought these circumstances be considered as exceptional so that
11 the Court can use its discretion to enable further interaction
12 and interchange with the accused person even though -- but more
13 particularly because he has opted to give evidence in his own
14 defence.

16:37:51 15 My Lord, I do not need, really, to cite any authorities to
16 the effect. I have already, in a previous application, cited
17 authority which suggests that the rule of practice in question is
18 flexible and it grants a discretion to the Court to grant
19 exceptions in particular circumstances, and we would want to
16:38:29 20 suggest to the Court that the circumstances I have just adverted
21 to are exceptional in nature and do qualify for the grant of the
22 exceptions in question.

23 It is not a thing of our own making. We are appointed by
24 the Court. We are determined to do our duty as prescribed as
16:38:51 25 conscientiously as possible, but we do realise that that
26 situation referred to created problems in our way, and we want to
27 be satisfied that we have performed our duties in the best way
28 possible.

29 My Lord, I do not want to say more. I am sure everybody

1 understands the point I'm making and we just want to plead with
2 Your Lordships for this exceptional grant to be made in the
3 circumstances as I have described. Thank you very much, My Lord.

4 PRESIDING JUDGE: I would like to hear from you before you
16:39:32 5 sit down. What is it you're requesting, more specifically? We
6 have given a decision this week where we denied the application
7 where you were asking to meet every other day with the accused to
8 prepare his examination as such. We said no to that, but we said
9 we are prepared to hear an application, as the case may be, on
16:39:59 10 exceptions as such. But the rule is once an accused is giving
11 evidence, he is not to discuss with his counsel. This is the
12 rule, but there might be some exception. Are you suggesting that
13 the exception is that because the accused has refused to
14 collaborate with you in the past, this is sufficient to allow you
16:40:19 15 to now discuss with the accused as he is giving evidence? Is it
16 what you are suggesting?

17 MR JABBI: The first point, My Lord, is the requirement for
18 taking continued instructions from the accused as we go along.

19 PRESIDING JUDGE: Yes, but you cannot take instructions
16:40:39 20 from an accused when he is giving evidence. This is a
21 fundamental rule. Instructions were to be taken and this is the
22 purpose of that order at the time. If the accused sought not to
23 give you any instructions, that's his decision and we have no
24 control over that. This is his sole own discretion not to do it.

16:41:00 25 Now, if you show me that this is because the Court
26 precluded the accused to give you an instruction, the Court, I am
27 not meaning only this Chamber, but the overall Court -- I'm
28 prepared to hear some evidence in this respect, but, from what I
29 know, it would appear that this is the accused that has decided,

1 and you have mentioned that, not to offer and not to give you any
2 instruction. Prior to him giving evidence today, and this week.
3 Now he is a witness and he's giving evidence. If there is to be
4 any contact with the accused -- it's not the accused now, it's
16:41:36 5 the witness. Any contact between you and the witness, we need to
6 know what is the exception and what it is you want to discuss
7 with him.

8 JUDGE THOMPSON: If I understand the learned Presiding
9 Judge's viewpoints, which he's put across now, correctly, I think
16:42:05 10 I find myself in the same predicament. In other words, you are
11 giving us a blank cheque in terms of the instant application.
12 Are you with me?

13 MR JABBI: Yes, I am still just waiting for you to finish.

14 JUDGE THOMPSON: In other words, what is so pre-emptory in
16:42:40 15 character that has prompted this request? In other words, as he
16 said, we don't want to go into the checkered history of
17 difficulties that you experienced at the beginning culminating in
18 your appointment as one of the Court-appointed counsel. But,
19 specifically, what are you now proposing to do? What are the
16:43:06 20 grounds of your present application? In other words, if you let
21 us have some specifics, that might --

22 MR JABBI: My Lord, for instance -- there is a variety of
23 things, but, for instance, in that mood, the accused was not even
24 able to discuss with us the other witnesses we were intending to
16:43:37 25 call and what statements they were making. We have been able,
26 notwithstanding that, to obtain witnesses and take statements
27 from them, but we consider that it is necessary to discuss with
28 him some of those statements and some of those witnesses so that
29 we have some guidance, we have some direction. That is just one.

1 JUDGE THOMPSON: Two?

2 MR JABBI: Two, My Lord, we believe that since he has been
3 more or less a bit reserved in discussing instructions with us,
4 it may well be that he has some precise instructions he would
16:44:27 5 want to impart to us. In all the circumstances, but we cannot
6 tell because we cannot interact with him. We have not had
7 sufficient time since he changed his mind for us to go into those
8 details.

9 JUDGE THOMPSON: I reckon those precise instructions,
16:44:45 10 properly, will relate to potential witnesses or witnesses who are
11 going to come. Not in respect of the instant situation, because
12 he's testifying now, and I'm sure it would not be proper for any
13 precise instructions to be given at a stage when he's in the
14 custody, so to speak, of the Court as a witness. Are you with me
16:45:16 15 on that? Because I am trying to think about the procedural
16 propriety of us saying yes in respect of what he is doing now;
17 that is to say, giving his testimony. You have the liberty to go
18 and take some fresh instructions.

19 PRESIDING JUDGE: That is not related to his actual
16:45:41 20 evidence.

21 JUDGE THOMPSON: That is right. Yes. So, all that you are
22 saying to us, you probably are planning ahead. In other words,
23 you want leave from us in respect of prospective preparation for
24 evidence like who may come next, who may not come next and that
16:46:02 25 kind of thing. If that is the case, then, perhaps, it is not as
26 pre-emptory as you think. Why not wait until his evidence is
27 completed? I mean, I am just throwing this -- just thinking
28 aloud. I may be wrong, I may in fact be missing the point of it
29 all.

1 MR JABBI: That is part of the point, My Lord.
2 Notwithstanding that is not all of it. But, for instance, we
3 would like even to clear with him, very simply, even this witness
4 list. We have certain obligations, for instance, to file certain
16:46:50 5 lists and certain pieces of information connected with certain
6 lists.

7 PRESIDING JUDGE: Well, you have filed a witness list now.

8 MR JABBI: We have indeed, My Lord. Well, My Lord, to
9 discuss with him the witness list may well throw up some required
16:47:06 10 decision that we should make in respect of it and that required
11 decision may run against some prescribed rule or time limit.

12 JUDGE THOMPSON: Or you may want to revise with him
13 downwards your witness list.

14 MR JABBI: That is one possibility, certainly, My Lord.

16:47:30 15 JUDGE THOMPSON: Scale it down to half the number or that
16 kind of thing.

17 MR JABBI: That, indeed, is one possibility. It may even
18 be perhaps, in addition to scaling it down, it may even be
19 perhaps that he is keen on certain persons who must be included
16:47:47 20 as witnesses, but we are not in a position to discuss this with
21 him in the present circumstance.

22 JUDGE THOMPSON: Perhaps we should have a laundry list of
23 what you intend.

24 PRESIDING JUDGE: As you can see, we are not, as my brother
16:47:59 25 Justice Thompson just said, we are not prepared to give you carte
26 blanche to draw at this particular stage. Yes, it could have
27 been done if you had spent 24 hours with him before he became the
28 witness. But at this stage, he is a witness of the Court. Any
29 access to him while he's a witness has got to be very much

1 circumscribed and we need to know what, exactly, it is, what are
2 the matters you are going to be discussing. And it has not and
3 cannot be about his evidence, the evidence he has already given
4 or he's about to give.

16:48:28 5 MR JABBI: My Lord, as you have said, we have in fact
6 started his evidence, and I think you can see that it is flowing.

7 PRESIDING JUDGE: Yes, it is flowing very well.

8 MR JABBI: So, we are not trying to discuss his evidence
9 with him, but we are trying to be sure that we comply with every
16:48:47 10 possible requirement so far and, if there is some suggestion from
11 him in respect, for example, of witnesses or the witness list, we
12 want to have that as soon as possible.

13 JUDGE THOMPSON: Perhaps what you should do, you might well
14 advise yourself to go back and do your homework again and why not
16:49:09 15 come up with some conceded items, because now I know you are
16 thinking on your feet and the law of diminishing returns again
17 may be operating here. You might want to come back with
18 something concrete rather than this, I would say, not clearly
19 thought-out plan which, again, is no fault of yours. You have
16:49:42 20 been on your feet for how many days, you know. Go and work it
21 out and come back with something that we would consider
22 appropriate and then apply our minds to it. Because, really, as
23 His Lordship says, the Presiding Judge, we can't give you a blank
24 cheque or carte blanche here.

16:50:02 25 MR JABBI: What I think I need to exclude in the
26 application is the possibility of discussing his evidence with
27 him.

28 JUDGE THOMPSON: That's one way to approach it, but I am
29 not sure that's the satisfactory way. Since we are concerned

1 with procedural propriety here, why not take us into your
2 confidence as to what and what you would really like to discuss
3 with him. So that if at all we come along your side and give
4 you, we are certain that we have done everything, also protecting
16:50:47 5 the interests of the Prosecution.

6 MR JABBI: I would have thought, My Lord, that I have
7 stated that as clearly as possible. I have spoken about how I
8 have tried to settle the witness list once and for all, and also
9 apart from the witness list, as a list, to discuss with him the
16:51:04 10 statements of some of the witnesses so that we are aware that
11 he's fully informed about things so that he can give an
12 instruction he wants to give as well.

13 JUDGE THOMPSON: I am just trying to be helpful.

14 MR JABBI: Thank you, My Lord.

16:51:24 15 JUDGE THOMPSON: I thought you might want to prepare a
16 fairly reasonably exhaustive list, rather than come after another
17 three days you come back with something else and all that. But I
18 will restrain myself.

19 MR JABBI: For now, My Lord, that is what we are
16:51:36 20 principally concerned with, especially the need that we do use
21 the weekend period for that purpose.

22 [Trial Chamber conferred]

23 [Ruling]

24 PRESIDING JUDGE: Dr Jabbi, we are of the unanimous view
16:52:40 25 that your application is not to be granted at this time. We
26 would like to see something more precise in writing as to what it
27 is you want to discuss with the witness. If you are seeking
28 instruction in as much as possible, we can only recommend that
29 you do it after he has completed his examination and if there is

1 an urgent matter, we would like to know what it is and then have
2 some more details of what it is you want to discuss.

3 As I say, you have already produced a witness list. I
4 don't see the urgency that this witness list be discussed this
16:53:18 5 weekend with the witness and we would prefer that this be done at
6 a later stage and therefore your application to meet with the
7 witness during the weekend to discuss these matters is denied.

8 You may come back and I suggest to you you come back with
9 some precise details as to the matters you want to discuss and
16:53:38 10 when that is to be done, but not this particular weekend.

11 MR JABBI: As your Lordships please.

12 PRESIDING JUDGE: Thank you.

13 MR JABBI: Thank you.

14 PRESIDING JUDGE: In his evidence-in-chief, Dr Jabbi, we
16:54:48 15 can go back to where you were. You were talking of the time of
16 the Kamajors.

17 MR JABBI: Yes, My Lord.

18 Q. Now, Mr Witness, we were dealing with various aspects of
19 the Kamajor situation. I think the last thing we did was your
16:55:17 20 talking about immunisation as the second main aspect of the
21 exercise of becoming a Kamajor. I should ask, first of all,
22 whether you have anything more to say about the uses of
23 immunisation?

24 A. My Lords, I had not completed explaining to My Lords
16:55:58 25 initiation and immunisation and what they meant. All I said was
26 that to go beyond what they meant and to explain in detail that
27 we exposed the secrecy of traditional rights, I said I would not
28 do. Beyond that, I can go and explain initiation and
29 immunisation.

1 Q. As you see fit and proper, please.

2 A. Thank you, My Lords. I was trying to draw the difference
3 to My Lords between initiation and immunisation. Initiation was
4 part of the training that could make the difference between a
16:57:14 5 member of an institution and a non-member. Like in the army, a
6 civilian is recruited and is put through some training for a
7 period of time, and when that period of time is over, then the
8 civilian that was recruited had now been transformed into a
9 soldier.

16:57:51 10 JUDGE ITOE: Mr Norman, I think you are labouring yourself,
11 because don't you think that you have covered this.

12 THE WITNESS: I had, My Lord. I was just trying to --

13 JUDGE ITOE: You're just recapitulating or so?

14 THE WITNESS: No, My Lord, to connect it now with
16:58:12 15 immunisation.

16 JUDGE ITOE: [Overlapping speakers] immunisation, yes.

17 THE WITNESS: Immunisation was the means to strengthen the
18 confidence of the initiate. Immunisation does not belong a right
19 to initiates alone. Immunisation could be an arrangement between
16:58:51 20 the initiators and those wishing to be immunised. It could also
21 be performed upon request for the area where the individual could
22 not be given the immunisation without the authority of a parent
23 or ward. But normally the immunisation is performed very
24 strictly upon male human beings, male human beings, and they are
16:59:51 25 not -- the immunisation is not necessarily to go to war. It is a
26 preventive instrument whenever there is danger around, and it is
27 based upon restrictions normally referred to as rules and
28 regulations if, when broken, then the immunisation could not be
29 effective.

1 The immunisation rules are open to the public. Those are
2 not hidden facts; that when one is immunised, one is instructed
3 to keep away from any impurities. For grown-ups, meaning male
4 contact with the opposite sex; forbidden contact with the corpse,
17:01:43 5 dead bodies; forbidden contact with the blood of the human being;
6 forbidden acts of wickedness; inflicting injuries on the
7 undefended or surrendered enemies, or denying to protect the
8 surrendered.

9 Q. What do you say about all these things you have itemised?

17:02:53 10 A. I'm saying that these are the regulations when one's
11 immunisations are performed upon the individual. So any person
12 that is male, that is not necessarily a fighting individual in
13 the conflict in Sierra Leone called hunters could acquire or
14 request and obtain it, not necessarily the hunter.

17:03:41 15 Q. So --

16 A. And after initiation of the fighters, and after
17 immunisation, the test is done openly before they are admonished
18 to battle. Openly, their village or the townspeople are invited
19 to witness the test of the immunisation; sometimes by live
17:04:19 20 snakes, sometimes by boiling water, sometimes by hot oil,
21 sometimes by live shots from the guns. Sometimes even by the
22 infliction of a sword strike.

23 Q. In what sense was this a test? All that you've mentioned,
24 how was it a test?

17:05:08 25 A. I've said the test of immunisation was the public proof of
26 being witnesses when these tests were performed on the initiate
27 and on the immunised.

28 Q. That is to say, when the test was applied, what would show
29 that it was an effective one?

1 A. That the live human beings were being paraded and into whom
2 volumes of shots had been fired remained alive and unwounded.

3 Q. Thank you. Now you were also saying just now that
4 immunisation was not necessarily for fighters going to war. Was
17:06:11 5 there people who were immunised but who did not in fact go to
6 war?

7 A. Plenty of them are in Sierra Leone. Some of them would
8 even be hearing me talking about it now.

9 Q. Any particular types of persons?

17:06:23 10 A. Male human beings, grown-up and upon request it could even
11 be performed on babies, especially during the time of war when
12 attacks could come at random during the day or night. When
13 babies, especially male children, that were most in need by the
14 enemy to be taken away were immunised so they could run away from
17:06:53 15 them and then disappear to their parents in their hideouts or to
16 the Kamajors or to the hunters for safe protection.

17 Q. Babies?

18 A. Young babies that were male, when they are immunised and
19 are carried by their mother the immunisation is benefited by the
17:07:15 20 mother also, and that those things happened. If one were to take
21 investigative team to the villages where these things occurred,
22 My Lords, you will find out that these are true.

23 Q. Now was there a situation where women, as women, could be
24 initiated and immunised?

17:07:59 25 A. Yes, there were, but these were women who have crossed the
26 age of menopause and were no longer women of the world. And we
27 even have an initiator that is a woman, an old woman. When once
28 you allow yourself to be immunised as a woman -- initiated and
29 immunised as a woman hunter, then, according to the rites of

1 tradition, you could no longer bear children. So that is the
2 reason why young women are prevented, so our generation or
3 population could not be reduced.

4 Q. Now if we may talk about those initiates who were fighters.
17:09:25 5 They, of course, would necessarily be immunised according to your
6 explanation; not so?

7 A. That was a compelling condition, because it's like, again,
8 in the army, when intelligence are going beyond the line, they
9 are equipped with bullet-proofs and other things. So, among the
17:10:05 10 Kamajors, since their business was strictly -- mainly to defend
11 and not to offend, they were encouraged, which immunisation was
12 part of the concluding part of the initiation.

13 Q. Now let us come to the Kamajor system as a war machine.
14 Can you explain to the Court -- let's say the chiefdom hunter
17:11:20 15 group, whether that would be organised according to any command
16 structure?

17 A. My Lords, I would prefer not to refer to the Kamajor system
18 as a war machine. The Kamajors --

19 JUDGE THOMPSON: Is it that a preference, or are you giving
17:11:43 20 us factual information?

21 THE WITNESS: That is not a preference. I would prefer to
22 call them Kamajors rather than a war machine.

23 JUDGE THOMPSON: Okay.

24 THE WITNESS: They are not and they were not --

17:11:58 25 JUDGE THOMPSON: That's what I want to know, whether they
26 are or they are not, rather than a preference. Right.

27 MR JABBI:

28 Q. Yes, carry on, please.

29 A. Question again, My Lord.

1 Q. As reformulated by yourself, were hunters or Kamajors
2 constituted into any command structure within the chiefdom
3 system?

4 A. Well, My Lords, I would say wherever there is control there
17:12:43 5 is always leadership. And the leadership in the area where the
6 hunters found themselves would necessarily be in command. That
7 is the man or the leader that takes the responsibility on the
8 spot where actions or activities are carried out or taking place.

9 Q. Now, can you possibly explain --

17:14:02 10 A. Yes, My Lord.

11 Q. The stages or the times within the overall time frame that
12 we have, the stages at which a district structure was added to a
13 chiefdom structure, a regional structure added to a district
14 structure, and that sort of thing?

17:14:32 15 A. Yes, My Lord. Sierra Leone is a four-region nation and the
16 regions are further distributed into districts; the districts are
17 distributed into chiefdoms; the chiefdoms distributed into
18 sections; the sections are distributed into towns, villages and
19 houses. And for a very strict control, the hunters were so
17:15:51 20 allocated with responsibilities.

21 Now, after the formation of the National Co-ordinating
22 Committee, a structure called "command structure" was put in
23 place so that His Excellency could be informed. So the structure
24 named organigram was drawn with His Excellency at the top --

17:17:02 25 Q. When was this done for the first time?

26 A. This was done by the -- it was done under the directive of
27 the National Co-ordinating Committee, any time after the
28 formation of the National Co-ordinating Committee.

29 Q. So that was obviously after January 1999?

1 A. You're correct, My Lord.

2 Q. According to your earlier exhibit.

3 A. You're correct, My Lord. So --

4 Q. Before --

17:17:38 5 A. Go on.

6 Q. Before that time, was there any such structure, defined

7 structure?

8 A. There was only a limited one that started with the

9 chiefdoms to the villages and houses. Only chiefdom to the

17:17:59 10 villages and houses. Villages, chiefdoms, sections, towns,

11 villages and houses. That was what it was --

12 Q. Up to?

13 A. -- before government itself summoned the assistance of the

14 hunters. And then government took full control of the

17:18:21 15 responsibility of the hunters, right up to when I was arrested.

16 Q. What you are saying is that before 1999, there was no such

17 structure.

18 A. There was no structure known as the organigram that

19 involved the President right down to the village, or the compound

17:18:47 20 head. There was only organigram that involved the chief, whether

21 it was the regent chief or paramount chief, down to the compound

22 head.

23 Q. Okay, thank you. For the remaining time we have, I suggest

24 we go to a certain matter. I would like to take you back to Base

17:19:20 25 Zero. You remember that when you were giving evidence of two

26 days ago you mentioned the question of a satellite phone?

27 A. Yes.

28 Q. It was availed after some time when you arrived in Base

29 Zero for the first time.

1 A. Yes, My Lord.

2 Q. Did you have any interaction or exchange with your minister
3 of defence through that instrument whilst you were at Base Zero?

4 A. Yes, My Lord, sometimes I did.

17:20:20 5 Q. How often, for instance?

6 A. Whenever it was necessary for me to inform the Minister of
7 Defence and the President.

8 Q. How many times, for example, did you have to do that? Let
9 us say a week.

17:20:40 10 A. Well, it was not stipulated strictly I did. Wherever
11 occasions arose, I did.

12 Q. Can you tell us when those occasions arose?

13 A. Yes, like when, you know, some incidences occurred and His
14 Excellency would want to get -- he'd get the BBC reports and then
17:21:12 15 they would want to confirm the BBC report with me, he will ring,
16 and then I will clarify to him. Like the crossing of ECOMOG
17 crossing the Mano River bridge moving towards Kenema; like the
18 taking of Bo; taking of Kenema, especially where there were
19 strong military bases; and those incidences he would like to

17:21:46 20 confirm with me. Sometimes I did give the confirmation when I
21 had. Other times, I told him that the report from infield had
22 not been received. So I would wait and give him the report.

23 Q. Was he usually the person who phoned to ask for specific
24 requests?

17:22:13 25 A. Sometimes it was the minister of presidential affairs in
26 exile, and then I would talk directly to the President
27 thereafter.

28 Q. Did you yourself volunteer any contact on that phone?

29 A. Sometimes I did when there were, you know, needs for --

1 especially when we were in the bush when there were needs for
2 supplies. Like, I would contact him and then he would contact
3 ECOMOG like General Khobe or like the ECOMOG that was in Monrovia
4 for some assistance to be forwarded or flown in to the base.

17:23:29 5 Q. In addition to that exchange of reporting, was there any
6 system of giving instructions?

7 A. Directly from the President? I wouldn't remember that he
8 gave -- told me to go and do or tell the Civil Defence Forces to
9 do so and so. He would only admonish me to be very sure that the
17:24:00 10 coordination between the fighters and the ECOMOG should be taken
11 care of so there would not be any friction that we have negative
12 effect on their relationship, and that I communicated to the
13 commanders in the field. We did not have radio communication
14 sets to command areas and so on, so most of our communication to
17:24:39 15 commanders in the field were done by foot runners. That is
16 walking distances, sometimes taking up to a week.

17 Q. Did you yourself go to the field of combat at any time?

18 PRESIDING JUDGE: Can you repeat your question? If he
19 would?

17:25:20 20 MR JABBI: If he himself went to the field of combat at any
21 time.

22 THE WITNESS: No, My Lord, it was strictly forbidden for me
23 to go to the area of combat. My being a casualty was some scary
24 issue that I did not risk, and those around me would not allow
17:25:49 25 it. The only time when I was caught up with active combat was
26 when I was attacked in 1995 in Telu. After that time, I survived
27 and later, when I was appointed national co-ordinator, I never
28 was caught in any combat, and I never went near combat, and I
29 never directed combat.

1 MR JABBI:

2 Q. Now, you have just said you never directed combat. The
3 instructions to the fighters at the front, how did they emanate,
4 how did they flow?

17:27:25 5 A. These were men under ECOMOG control. Whatever they did out
6 there was under ECOMOG control. When they were not under ECOMOG
7 control, they would be under their own commanders on the spot in
8 field.

9 Q. With the War Council, for instance, would that be the
17:28:09 10 situation all the time?

11 A. The War Council did not direct combat. The War Council
12 does not direct combat. They give advice and directives to
13 administrators and sometimes commanders.

14 Q. Would War Council refer to the national co-ordinator in
17:29:08 15 directing -- in giving suggestions to fighters in respect of the
16 combat?

17 A. This was a body entrusted with authority to always
18 supervise, direct and give instruction on policy matters. They
19 did not give orders for combat.

17:29:56 20 MR JABBI: Maybe we will stop there for today.

21 PRESIDING JUDGE: Very well, right on the dot at 5.30, we
22 said we would stop. Thank you very much.

23 THE WITNESS: My Lords, I want to make a simple request.

24 PRESIDING JUDGE: Yes.

17:30:14 25 THE WITNESS: I would prefer not for this request to be on
26 record. I will turn off my microphone and stand up. My Lords, I
27 have been listening to the application.

28 THE INTERPRETER: Your microphone is not on, Mr Witness.
29 Your Honours, the witness's microphone is not on.

1 THE WITNESS: Thank you, My Lord. I was saying I was
2 listening to the application made by the counsel representing me
3 and I would prefer to thank Your Lordships and to request that I
4 be protected and not to be contacted. I have my future at stake
17:31:03 5 in this country, so I would not want to have such doubt to be
6 cast on my integrity. When before I left this Court, I often
7 said that I was part of the Bench of your Lordships in a very,
8 very junior way, that I was a justice of the peace. The
9 integrity of this Court is also my own business to seek and to
17:31:36 10 protect, so I will prefer to remain as I am, uncontacted, until
11 when your Lordships are convinced that you should allow it.
12 Thank you, your Lordships.

13 PRESIDING JUDGE: Thank you, Mr Norman. Have a good
14 weekend. Court is adjourned.
17:32:12 15 [Whereupon the hearing was adjourned at
16 5.32 p.m., to be reconvened on Monday, the 30th
17 day of January 2006, at 9.30 a.m.]

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EXHIBITS:

Exhibit No. 120	18
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WITNESSES FOR THE DEFENCE:

WITNESS: SAMUEL HINGA NORMAN	9
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EXAMINED BY MR JABBI	9
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