

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

TUESDAY, 21 FEBRUARY 2006
11.13 A.M.
TRIAL

TRIAL CHAMBER I

Before the Judges:	Pierre Boutet, Presiding Bankole Thompson Benjamin Mutanga Itoe
For Chambers:	Ms Roza Salibekova Ms Anna Matas
For the Registry:	Mr Geoff Walker Ms Maureen Edmonds
For the Prosecution:	Mr Desmond De Silva Mr Kevin Tavener Mr Joseph Kamara Ms Lynn Hintz (intern)
For the Principal Defender:	Mr Lansana Dumbuya
For the accused Sam Hinga Norman:	Dr Bu-Buakei Jabbi Mr Alusine Sesay Ms Claire da Silva (legal assistant) Mr Kingsley Belle (legal assistant)
For the accused Moinina Fofana:	Mr Arrow Bockarie Mr Andrew Ianuzzi
For the accused Allieu Kondewa:	Mr Charles Margai Mr Ansu Lansana

1 [CDF21FEB06A - EKD]
2 Tuesday, 21 February 2006
3 [Open session]
4 [The accused present]
10:57:57 5 [The witness entered court]
6 [Upon resuming at 11.13 a.m.]
7 PRESIDING JUDGE: Good morning, counsel. Good morning,
8 Mr Witness. Dr Jabbi, we even gave you 15 more minutes for your
9 preparation this morning. So I would hope that you are ready to
11:14:23 10 proceed with the examination-in-chief of your witness.
11 MR JABBI: Pardon, My Lord? I did not hear the earlier
12 part of the statement.
13 PRESIDING JUDGE: I said we even gave you 15 minutes more
14 for the preparation.
11:14:35 15 MR JABBI: I believe I have a technical problem.
16 PRESIDING JUDGE: Are you on the English channel?
17 MR JABBI: Yes, My Lord. Let me use the other one.
18 JUDGE ITOE: You prefer the Mende channel maybe.
19 MR JABBI: My Lord, it is likely to be the best channel,
11:15:00 20 actually.
21 PRESIDING JUDGE: Do you hear me now?
22 MR JABBI: Very clearly, My Lord.
23 PRESIDING JUDGE: Thank you. I was saying to you that we
24 have given you 15 minutes more for your preparation of this
11:15:11 25 witness, so we hope that you are ready to proceed now.
26 MR JABBI: Indeed, My Lord..
27 PRESIDING JUDGE: Can you do so, please, and we will
28 proceed to take the oath of the witness.
29 MR JABBI: Thank you.

1 WITNESS: LIEUTENANT GENERAL RICHARDS [Sworn]
2 PRESIDING JUDGE: So, Dr Jabbi, this is defence witness
3 seven?
4 MR JABBI: Yes, My Lord.
11:15:59 5 PRESIDING JUDGE: Please proceed.
6 MR JABBI: Thank you.
7 EXAMINED BY MR JABBI:
8 Q. Good morning, Mr Witness.
9 A. Morning.
11:16:15 10 Q. Can you please tell the Court your full names?
11 A. I'm Lieutenant General David Julian Richards.
12 Q. Thank you, General.
13 JUDGE ITOE: Lieutenant General David --
14 THE WITNESS: Julian Richards, My Lord.
11:16:46 15 JUDGE ITOE: Would it be J-U-L-I-A-N?
16 THE WITNESS: J-U-L-I-A-N, sir.
17 MR JABBI:
18 Q. Yes, General, can you tell the Court how old you are?
19 A. I'm 53 years old.
11:17:26 20 Q. And your nationality, please?
21 A. British.
22 Q. Your present occupation?
23 A. I'm commander of NATO's Allied Rapid Reaction Corps based
24 in Germany.
11:17:55 25 JUDGE ITOE: NATO's Allied?
26 MR JABBI:
27 Q. Can you please go over that?
28 A. Allied Rapid Reaction Corps and I'm based in Germany.
29 Q. At this stage if I may, at least for the sake of the

1 convenience of the Court, it would be welcome if you are as slow
2 as possible. Mainly because whatever you say is actually being
3 interpreted into other languages and time should be allowed for
4 that interpretation to go over. Also Their Lordships will be
11:18:54 5 writing it down. So we allow a little bit of time for all that
6 and it will be good to speak slowly.
7 A. Thank you.
8 Q. Thank you. I take it, of course, that you belong to the
9 British Army?
11:19:19 10 A. That's correct, 35 years man and boy in the British Army.
11 Q. Can you tell the Court what areas of the world you have
12 served in, if any, in your time as a British Army officer?
13 A. I've served throughout many parts of the world, but
14 principally in the Far East, Germany, Northern Ireland on
11:20:25 15 operations on five occasions -- five tours of duty in
16 Northern Ireland. Lots of places where one trains, like Canada,
17 Central America and so on. But in more recent years, principally
18 as an operations officer, I have served in East Timor --
19 Q. Please watch your pace and the pens up there.
11:20:56 20 A. I will judge by the pens. In 1998 I served in Indonesia in
21 an evacuation operation, and also in that year in Albania. In
22 1999 I commanded the British forces in East Timor which was a
23 successful United Nations operation, but was initially led by an
24 Australian coalition and I was the deputy to the Australian
11:21:41 25 commander. I also visited Sierra Leone in that year, to which I
26 know we will return.
27 Q. Indeed.
28 A. And then in 2000 I came here. I also commanded a flood
29 relief operation in Mozambique in the beginning of 2000. Since

1 then I have been in Iraq, but not for a long period, but I have
2 been there. And otherwise I've been preparing for an operation
3 in Afghanistan.

4 Q. Okay, let's watch the pace, please.

11:22:40 5 PRESIDING JUDGE: That's okay. If we run into difficulties
6 we will let you know. That's fine

7 JUDGE ITOE: These are introductory matters that have to do
8 with his profile. They don't go to the essence.

9 MR JABBI: Indeed, My Lord.

11:22:55 10 Q. Continue, please.

11 A. I am currently preparing to command the NATO operation in
12 Afghanistan and that's been the focus of my efforts in the last
13 12 months or so. And obviously I have been to other parts of the
14 world, but those are my main areas. Including the Balkans as
11:23:12 15 well, actually, which I forgot to mention, Bosnia.

16 Q. Thank you. And as you said, we would have to come to your
17 visits to Sierra Leone. Can you set out what times you have
18 visited Sierra Leone?

19 A. Right. I first -- I have been here until today on five --
11:23:41 20 for five periods.

21 Q. This time a little more slowly, please.

22 A. Okay. The first occasion was in January 1999 for about
23 eight days. The second occasion was in February 1999 for the
24 same period, seven or eight days. The third occasion was for
11:24:20 25 five days in April 2000. The fourth occasion was for six and a
26 half weeks in May and June 2000, and the last occasion was for
27 seven weeks in late September, October and November of 2000.

28 Q. Thank you. Now, before you came to Sierra Leone for the
29 first time, as you say in January 1999, did you know anything of

1 the situation in Sierra Leone?

2 A. My job at the time was -- I think it's best described as a
3 military troubleshooter. I worked in the headquarters near
4 London whose task was to monitor unstable situations --

11:25:39 5 Q. Let's watch the pace and the pens, please.

6 A. -- anywhere in the world.

7 JUDGE ITOE: Please, you go slowly, General. Mr Witness,
8 you go slowly because the evidence is more related to why you're
9 here now, so we need to record you very faithfully. Is that all

11:25:58 10 right?

11 THE WITNESS: Yes, absolutely.

12 JUDGE ITOE: I got you up to when you said your job at the
13 time was that of a military troubleshooter and that you were
14 based somewhere in London.

11:26:09 15 THE WITNESS: In London. Okay, thank you. And in that
16 role one of my tasks was to monitor unstable situations anywhere
17 in the world, one of which was Sierra Leone. But before I came
18 here in January 1999 --

19 JUDGE ITOE: Please, can you --

11:26:52 20 THE WITNESS: Sorry, sir. I hadn't actually taken a great
21 interest in it. I just knew the bare facts.

22 MR JABBI:

23 Q. Although you have merely said unstable situations in the
24 world, what were the facts - the bare facts - that you knew
11:27:30 25 before January 1999 about the Sierra Leone situation as a trouble
26 area?

27 A. There was a conflict here. There was a democratically
28 elected government.

29 Q. Please watch the pace.

1 A. And there was a group, historically over a number of years,
2 who had been opposing the government. I knew that a year or so
3 before '99 the government had been forced -- or the President,
4 anyway, had been forced to flee to Conakry, along with most of
11:28:42 5 the diplomatic community. And I knew that there was an
6 undemocratic government here, and that there was a lot of
7 fighting.

8 Q. Thank you. Now, if we may take your visits in turn.
9 Taking the first one in January 1999, can you tell the Court what
11:29:53 10 the purpose of your visit was?

11 A. As far as London was concerned, in January 1999 all
12 communications with the country appeared to have been severed.

13 Q. Which country?

14 A. This country.

11:30:17 15 Q. Sierra Leone?

16 A. Mm. In my trouble-shooting role, I was ordered to go to
17 Sierra Leone to establish what was happening here and to see if
18 there was anything Her Majesty's government could do to help. I
19 flew to Dakar in Senegal.

11:31:16 20 Q. From London?

21 A. From London. And with a team, a small team of staff
22 officers, and a royal navy ship, a frigate, was diverted from
23 another task in the West Indies to come and pick me up in Dakar.
24 We then sailed from Dakar, via Conakry, to the Freetown area, off
11:32:09 25 the coast.

26 Q. Let's watch the pens, please. Did you come ashore at
27 Conakry at all on your way to Freetown?

28 A. Yes, I went to see President Conte at his request, and I
29 had two hours or so with him finding out his view. And then we

1 set sail to come to Freetown.

2 Q. Finding out President Conte's view about what?

3 A. About what was happening here in Sierra Leone.

4 Q. About what was happening in Sierra Leone. And then you
11:33:23 5 finally sailed to Freetown?

6 A. Yes. I can't remember the date now, I'm afraid. But we --
7 there was still very heavy fighting here when I arrived, and we
8 had some trouble establishing communications with anybody here.

9 Q. Now, did you by any chance know the groups that were
11:33:54 10 fighting?

11 A. I -- one of -- if you're doing the sort of job that I did
12 then you make it your task to learn as much as you can about what
13 is happening.

14 Q. Watch the pace, please. Yes.

11:34:22 15 A. And so, yes, I had an understanding at -- on one side, with
16 the Revolutionary United Front and some of the AFRC, and I
17 roughly knew what they consisted of. And on the other were those
18 forces that were loyal to the government, including ECOMOG, most
19 importantly.

11:34:58 20 Q. Did you know any other group that was loyal to the
21 government at that time?

22 A. Well, obviously when I arrived I didn't know anybody. But
23 I came ashore --

24 Q. I mean a group. You have named the RUF, you have named the
11:35:16 25 AFRC and --

26 A. Oh, yes, sorry.

27 Q. Any other groups of fighters that were loyal to the
28 government at that time?

29 A. Our understanding was that ECOMOG was the

1 principal defender of the government, assisted by the SLA.

2 Q. What is SLA?

3 A. Sierra Leone Army. And the Civil Defence Force, who were
4 acting together to try to push the RUF out of Freetown.

11:36:17 5 Q. Thank you. So did you ultimately come ashore?

6 A. Yes. As I said, there was a lot of fighting and indeed a
7 number of corpses in the water as we approached the coast. And
8 Nigerian Alpha jets were still dropping bombs quite visibly from
9 the ship - we could see this - on, we assumed, RUF positions near

11:36:47 10 Freetown. I am watching -- we had some problems getting ashore
11 safely. But we did so in a helicopter once we had established
12 communications with ECOMOG forces.

13 Q. How long did you take in Freetown on that occasion?

14 A. The first time I came ashore?

11:37:50 15 Q. Yes, indeed:

16 JUDGE ITOE: Eight days he said.

17 THE WITNESS: Yes, I stayed in the -- I actually lived on
18 the ship and came ashore daily. For an eight-day period I lived
19 on the ship. But every day we would come ashore to liaise, find
11:38:11 20 out what was happening, and draw up my report for London. And on
21 that first occasion I remember being -- there was a lot of
22 excitement around, because the RUF were still quite near where I
23 landed, which was in Cockerill Barracks.

24 PRESIDING JUDGE: That's where you landed with the
11:38:53 25 helicopter?

26 THE WITNESS: I did, sir, yes.

27 MR JABBI:

28 Q. Did you at any stage get in contact with the leader of the
29 government forces at the time?

1 A. I did. I first met General Shelpidi, I think his name
2 was --

3 MR JABBI: My Lords, Shelpidi, I believe, My Lords, is
4 S-H-E-L-P-I-D-I.

11:39:34 5 Q. Yes, carry on, please.

6 A. He was commander of the ECOMOG forces here. He then took
7 me to meet in the cellars of Cockerill Barracks
8 Chief Hinga Norman, very briefly. I then went in a vehicle --

9 JUDGE ITOE: Please, can you take it slowly. Please.

11:40:03 10 THE WITNESS: Yes. So I met Shelpidi and then went --

11 JUDGE ITOE: He took you to the cellar of?

12 THE WITNESS: The cellar of the Cockerill Barracks. Well
13 the car park, the garages in the base of Cockerill Barracks,
14 where there was a rudimentary, what would we call a command post.

11:40:32 15 JUDGE ITOE: And there you met Chief Norman?

16 THE WITNESS: Chief Norman. And Brigadier General Maxwell
17 Khobe.

18 MR JABBI:

19 Q. Thank you.

11:40:45 20 A. And that was a very brief meeting, but I then went up to
21 see President Kabbah.

22 Q. Just before going to President Kabbah, did you know who
23 Chief Hinga Norman was at that time?

24 A. Not really. We had not picked up his role within the
11:41:24 25 country as much as I then discovered it was. So I was more
26 focused on ECOMOG and Brigadier General Khobe at that time on
27 that first day.

28 Q. Let's watch the pace, please. Was he introduced to you on
29 that occasion?

1 A. Yes.

2 Q. As what?

3 A. Well, I remember meeting General Shelpidi, who for about 20
4 minutes - and you must remember that this was a very chaotic
11:42:21 5 period --

6 Q. Indeed.

7 A. -- not least for me, just coming ashore to find a crisis.
8 But I met General Shelpidi who then sent a senior staff officer
9 to take me to what was the SLA command post because what was
11:42:59 10 happening was ECOMOG was running their operation in their
11 headquarters, and the SLA and others were in the Cockerill
12 barracks garages and they were co-ordinating their activity. So
13 he took me there to meet the other half, if you like, of the
14 defence of the town.

11:43:19 15 Q. Thank you. Let's watch the pace, please.

16 PRESIDING JUDGE: Can you expand a bit on what you mean by
17 ECOMOG were running the operations? Were they at Cockerill but
18 in a different part of the building?

19 THE WITNESS: Yes, they were in a different building.

11:43:38 20 PRESIDING JUDGE: But at Cockerill?

21 THE WITNESS: At Cockerill.

22 PRESIDING JUDGE: So they had their own separate command
23 post?

24 THE WITNESS: Yes.

11:43:45 25 PRESIDING JUDGE: And the SLA, as you call it, they were in
26 the garage somewhere?

27 THE WITNESS: That is the impression I drew from my visit.

28 JUDGE THOMPSON: Learned counsel, unless we diverge, the
29 precise question, as I recall, was did he eventually meet

1 Chief Hinga Norman?

2 MR JABBI: Yes, My Lord.

3 JUDGE THOMPSON: Is he coming to that?

4 MR JABBI: The even more specific question was whether he
11:44:13 5 was introduced to him and as what.

6 JUDGE THOMPSON: Yes, that was the specific, precise
7 question.

8 MR JABBI:

9 Q. Was Chief Hinga Norman introduced to you on that occasion?

11:44:23 10 JUDGE THOMPSON: That occasion, yes.

11 THE WITNESS: Yes, he was. But I think, if I may
12 elaborate, I didn't really understand who Chief Hinga Norman was
13 on that occasion. He was just another --

14 JUDGE THOMPSON: Well, we can just get the first part and
11:44:39 15 then if you want to elaborate, elucidate that, because that was a
16 precise question. "I did meet him on that occasion, but" --

17 MR JABBI: Yes, My Lord.

18 JUDGE ITOE: In fact, what you have said so far is that you
19 saw him but you didn't pay much attention to him and that you
11:45:12 20 focused more on Khobe and the ECOMOG officials. Is that not what
21 you said?

22 THE WITNESS: That is correct, sir.

23 JUDGE THOMPSON: But the question was, after that, whether
24 you, on that occasion, were introduced to him.

11:45:23 25 THE WITNESS: I was.

26 JUDGE THOMPSON: And I am sure that the answer is what we
27 are trying to figure out. At this point in time there was a
28 precise question: Were you on that occasion -- am I
29 misrepresenting your position?

1 MR JABBI: No, My Lord.

2 JUDGE THOMPSON: Because I thought that was also important,
3 apart from the first answer that he did focus on Shelpidi and
4 Khobe. That was a previous answer.

11:45:49 5 MR JABBI: Yes, My Lord.

6 JUDGE THOMPSON: And I thought you took it a stage further.

7 MR JABBI: Indeed, My Lord.

8 Q. So were you introduced to each other then?

9 A. Yes.

11:45:59 10 Q. You and Chief Hinga Norman?

11 A. Correct.

12 Q. Would you recognise Chief Norman if you saw him?

13 A. Absolutely. I know he's over there.

14 Q. Over where?

11:46:23 15 A. Behind you, sir.

16 Q. Thank you.

17 PRESIDING JUDGE: For the record, the witness indicates the
18 first accused, Chief Hinga Norman.

19 MR JABBI:

11:46:38 20 Q. Now, according to you, you were in Sierra Leone on that
21 occasion for a very short time. Did you have any further
22 encounter with Chief Norman during that time?

23 A. Yes, I did. Do you want me to run through the two or three
24 occasions?

11:46:55 25 Q. If you can.

26 A. Okay.

27 Q. And please watch the pens.

28 A. I will. Remember my primary task was to make a military
29 assessment of the situation here in this country.

1 Q. Watch the pace, please.

2 A. That meant me talking to all the major parties to the
3 crisis on the government side. I had to decide whether to
4 recommend to the British government that Sierra Leone was able to
11:48:11 5 be helped, to be saved, if you like, from a very ferocious attack
6 on the capital.

7 Q. And who were the attackers of the capital?

8 A. The RUF and AFRC working in concert.

9 Q. Yes.

11:48:53 10 A. So I met everyone, as I said, from the President two or
11 three times in that visit, did a lot of work with ECOMOG, with
12 Brigadier General Khobe who had tactical control of the
13 government forces, and also Chief Hinga Norman who was the Deputy
14 Minister of Defence.

11:49:57 15 Getting to the specifics of your question, I did have a
16 final meeting with all the parties before I left and I know
17 Chief Norman was at that meeting. But before that there was one
18 occasion that stands out in my memory.

19 Q. Keep watching the pace, please.

11:50:37 20 A. I will. And that was when General Khobe took me to observe
21 some fighting on and around a bridge.

22 Q. Where? In Freetown or out of Freetown?

23 A. In Freetown and you will have to help me which one it was.
24 It was not the Aberdeen bridge, it was the next one. Is it Congo
11:51:30 25 bridge? Congo Cross or --

26 Q. Congo Cross bridge?

27 A. Congo Cross bridge, that's it. At the Congo Cross Bridge.
28 That was essentially as far as the RUF reached as they advanced
29 through Freetown from the east to the west.

1 Q. On that occasion?

2 A. On that occasion. And I stood behind some cover, because
3 there was quite a lot of firing going on, with a pair of
4 binoculars, and we watched the government forces who were a
11:52:39 5 mixture of SLA and ECOMOG - a few ECOMOG were there - and CDF.
6 Khobe explained to me that if the RUF got over the bridge, they
7 would then be able to fan out. And there was also an armoury --

8 Q. Please watch your pace.

9 A. -- that contained arms and ammunition which they would try
11:53:48 10 to capture.

11 Q. Can you explain where that armoury was?

12 A. I know where it is, but it is between the bridge and the --
13 and Aberdeen. It was the main logistic depot for the army in
14 Freetown.

11:54:14 15 Q. Between the Congo Cross bridge and Aberdeen village?

16 A. Roughly.

17 Q. Thank you.

18 A. I observed the government forces successfully stopping the
19 RUF advance and they got across the bridge -- the government
11:54:53 20 forces got across the bridge and took some prisoners. I had
21 observed 10, 15 minutes before that, through my binoculars, the
22 killing of some people on the far side of the bridge, the RUF
23 side of the bridge, which everyone had seen from the safe side,
24 if you like. It was clear that the government forces were very
11:55:45 25 excited and angry when they captured the prisoners and I think --
26 I remember the atmosphere. It was very dynamic, a lot of
27 shouting, excitement. There were still bodies on the road from
28 the fighting. All this sort of thing. And I then saw a group of
29 people go across the bridge to where the prisoners were being

1 held --

2 Q. A group of people from what side?

3 A. From the government side.

4 Q. From the government side.

11:56:58 5 A. And I said to Khobe, "What are they doing?" And he said,
6 "That's Chief Norman." And I then remembered that I had been
7 introduced to him on my first day here. And he --

8 Q. Please watch the pens.

9 A. He remonstrated with the government forces, the group, I'd
11:57:56 10 say there were about 10 or 12 of them, who had captured the RUF
11 or AFRC, I don't know which they were, and --

12 Q. When you say the RUF or AFRC, they had captured the RUF or
13 AFRC --

14 A. Yes.

11:58:21 15 Q. Are you talking about a person or a group of persons?

16 A. A group of persons who had been fighting -- I mean,
17 basically the RUF and the AFRC were on one side of the bridge and
18 the government forces were on the other. They had attacked
19 across the bridge and another group came down the line of the
11:58:45 20 river or stream. And they had -- it was a very neat little
21 operation. And they had captured -- there was a fight and they
22 had captured some of the RUF.

23 Q. Some of the people on the other side?

24 A. Yes.

11:58:59 25 Q. Yes, carry on, please.

26 A. And --

27 JUDGE ITOE: Did you tell us -- you mentioned 10. Was it
28 10 of the soldiers? A group of 10.

29 THE WITNESS: About 10 to 12 --

1 JUDGE ITOE: Of government soldiers?

2 THE WITNESS: No, of RUF.

3 JUDGE ITOE: Who were captured.

4 THE WITNESS: Who were captured.

11:59:16 5 JUDGE ITOE: Right, thank you.

6 THE WITNESS: Sorry, I misled you. And there were -- it is

7 difficult to know but those who were actually holding weapons,

8 guarding the prisoners, was probably about the same number, but

9 there were many more around. And I saw Hinga Norman -- well,

11:59:43 10 General Khobe said, "That's Hinga Norman," because I said, "What

11 is he doing?" And he went up to the group and, through my

12 binoculars and from what I could hear --

13 MR JABBI:

14 Q. He went up to the group?

12:00:03 15 A. Hinga Norman went up to the group and remonstrated with

16 them. And it was clear that he was, even from what I could see,

17 telling them that they must behave and stop getting so excited.

18 And they were threatening to shoot these prisoners.

19 Q. Watch your pace, please.

12:00:28 20 JUDGE THOMPSON: So he remonstrated with the government

21 forces, for the sake of clarity?

22 THE WITNESS: Yes, remonstrated with the government forces

23 who were very excitable. They had seen some unpleasant sights

24 and some of their friends had been killed. So my impression, no

12:00:49 25 more than an impression, was that they wanted to kill or mutilate

26 or do something angry against the prisoners they had taken. And

27 from what I saw, the impression I gained was that Chief Norman

28 prevented that abuse from happening.

29 MR JABBI:

1 Q. By "that abuse" you mean what you took to be the angry
2 intention of the government troops against the captured persons?

3 A. Yes. I mean, during the fighting I and everyone had seen
4 at least one apparently innocent person killed by the RUF group
12:02:16 5 on the far side of the bridge. They were firing their weapons
6 indiscriminantly. And so everyone was very angry. I was very
7 angry. I couldn't believe what I was seeing.

8 PRESIDING JUDGE: Slowly, please.

9 THE WITNESS: Sorry. I think everyone was upset.

12:02:34 10 PRESIDING JUDGE: When you say at least one person being
11 killed, you mean a civilian?

12 THE WITNESS: Yes, I think he was a civilian, sir. He was
13 a male. But they not only -- I have to get rather gruesome, if I
14 may. They not only killed him, they then chopped an arm off him.
12:02:51 15 I don't know what actually led him to die. And we had all seen
16 that happen.

17 MR JABBI:

18 Q. And what did you observe the government troops wanted to do
19 in reaction?

12:03:20 20 A. It's only my impression, because I was 200 yards away, but
21 there was a lot of shouting within the group; a lot of pointing
22 at the prisoners and people pointing their rifles at them.
23 [Witness indicated]. And to remind you, there were dead -- there
24 were bodies around. So it was a very febrile atmosphere. And
12:03:57 25 the impression I gained was that they were going to dispatch them
26 themselves, because of their anger.

27 MR JABBI: My Lords, I was almost tempted to spell febrile.

28 JUDGE THOMPSON: Why would you want to do that? That is
29 very presumptuous.

1 MR JABBI: Indeed, My Lord. So I resisted the temptation.

2 Q. Carry on, please.

3 A. Well, that was it, really. The situation was calmed down.

4 I didn't speak to Norman, Chief Norman at that time, because

12:04:36 5 General Khobe wanted to take me to another area of fighting. And

6 apart from that occasion and the final conference, I suppose

7 would be the right --

8 JUDGE THOMPSON: Before you continue, you say the situation

9 was calmed down?

12:04:53 10 THE WITNESS: Yes.

11 JUDGE THOMPSON: Did you -- that's okay; is that what

12 you -- that's your final decision on that?

13 THE WITNESS: Well, I left --

14 JUDGE THOMPSON: So far as that particular scenario was

12:05:05 15 concerned.

16 THE WITNESS: Yes, I saw the prisoners be marched away and

17 the situation was definitely calming down.

18 JUDGE THOMPSON: Thanks. I just wanted to be sure that I

19 got that right.

12:05:21 20 THE WITNESS: Thank you.

21 MR JABBI:

22 Q. Who calmed that situation down?

23 A. Well, in my judgment, Chief Hinga Norman calmed it down.

24 Because if he hadn't gone across the bridge, what might have

12:05:33 25 happened, I don't know. So I say, in my judgment, it was him

26 that calmed the situation.

27 Q. Thank you. And you just said another situation?

28 A. I then went with General Khobe, Brigadier General Khobe, to

29 the -- up to the barracks near the presidential lodge - I forgot

1 the name of the barracks - which is where ECOMOG were based.

2 Q. Yes?

3 A. And from there I went to -- I went around the town, making
4 a judgment on what was happening. But I didn't see any more

12:06:34 5 close quarter fighting in my time there. Not at 200 yards.

6 Maybe half a mile away, but no more than that.

7 Q. Just for the records, you said you went to the barracks
8 near the presidential lodge?

9 A. Yes.

12:06:51 10 Q. Would that be Wilberforce Barracks?

11 A. Yes, sorry, Wilberforce Barracks. Correct.

12 Q. So as far as your first visit was concerned in January
13 1999, do you have anything else about it you want to tell the
14 Court?

12:07:16 15 A. Well, two things if I may. First of all, as far as the
16 nature of the fighting was concerned, I think it was a very
17 chaotic situation. There were groups of armed men - as I've
18 said, ECOMOG, some ex-SLA - Sierra Leone Army, and CDF - working
19 to a sort of common plan, which was to push the RUF out of the

12:08:08 20 city, and they were successful in that. By the time I left I
21 think they had been evicted from the city completely. But they
22 had -- there was a lot of destruction, particularly in the east.

23 Q. In the east of?

24 A. Freetown.

12:08:39 25 Q. Freetown.

26 A. And --

27 Q. Watch the pens, please.

28 A. Yeah. I would not say it was a -- and this, I do not mean
29 to be rude about some very brave people. But as a professional

1 soldier, it was not a well organised operation. It was quite, as
2 I said, chaotic. There were groups that were often doing as they
3 wished, as far as I could see, but working to a common plan,
4 which is to push them out.

12:08:48 5 [CDF21FEB06B - CR]

6 Q. Thank you.

7 A. And, if I may, there's one other thing which I think is
8 pertinent.

9 Q. Yes?

12:09:27 10 A. That is that I was sent here to make a judgment on whether
11 the British government should provide material assistance to
12 ECOMOG and to the government and, specifically, to the Sierra
13 Leone Army.

14 Q. Yes.

12:09:55 15 A. And my judgment, which was fully accepted in London, was
16 that the country merited support, logistic and other support,
17 from the UK and they agreed a package of approximately, and I
18 can't remember the exact amount, but approximately 10 million
19 pounds --

12:10:41 20 Q. Sterling?

21 A. Sterling. To be matched by another 10 million pounds from
22 other international donors.

23 Q. The first 10 million pounds from what source?

24 A. The UK.

12:10:56 25 Q. UK.

26 A. One of the reasons the government accepted my advice beyond
27 a natural desire to help the country --

28 Q. Watch your pace, please.

29 A. That is held in high affection in London. Beyond that,

1 because they had confidence in President Kabbah, the Deputy
2 Minister of Defence Chief Norman, and in ECOMOG's determination
3 with them to defend the country and to bring the RUF to some sort
4 of peace process.

12:12:02 5 Q. Thank you. That was obviously the report made after you
6 returned to London; is that so?

7 A. Yes.

8 Q. Now, you also said earlier that you returned to Freetown a
9 second time?

12:12:25 10 A. I came back in February because my government gave me the
11 privilege of coming to report to President Kabbah that this aid
12 package had been agreed and, because I had established good
13 relations with him and with some people here, they let me come
14 back and, also, to help co-ordinate how that money would be used.

12:12:57 15 So I came back in February to tell the President the good news.

16 Q. That visit in February, was that in 1999?

17 A. Yes, sir.

18 Q. According to you, you were coming -- part of your
19 responsibility or duty was to help co-ordinate, in your words --

12:13:36 20 to co-ordinate how that assistance would be utilised. How long
21 did you stay in Freetown that time?

22 A. About a week.

23 Q. About another week.

24 A. I also, sorry, brought back in the British High

12:14:03 25 Commissioner, because by then I was able to say it was safe
26 enough for him to return to the country.

27 Q. Thank you. Where did you stay at that time? The first
28 time was on board the ship.

29 A. I think I stayed on board another ship for most of that,

1 but I seem to remember spending one night with Mr Penfold to
2 prove with him it was safe enough for him to live here.

3 Q. Who is Mr Penfold?

4 A. He was the British High Commissioner here at the time.

12:14:46 5 Q. Now, on the second visit did you have any encounter with
6 any of the leaders in Sierra Leone?

7 A. Yes. Obviously with the President, primarily. He was
8 running the country and it was his -- it was to him that I was
9 reporting. But I had a team of about seven or eight staff

12:15:20 10 officers with me who did the detailed work of how the money
11 should be spent. Most of that work I led personally with
12 Brigadier-General Khobe and with Chief Hinga Norman. So they
13 were the two people I dealt with mostly on what they would need,
14 weapons, lorries, all the sort of things that make an army
12:15:58 15 effective; radios, for example.

16 PRESIDING JUDGE: You yourself met mostly with Khobe and
17 Chief Hinga Norman, not your staff. You said you had a staff
18 that were looking at other aspects, but yourself --

19 THE WITNESS: Yes, My Lord, it was normally -- no decisions
12:16:19 20 were taken without me being there to confirm the staff advice,
21 although I do know that the staff dealt particularly with
22 Brigadier Khobe who had tactical control of the government
23 forces, whereas Chief Norman was the Deputy Minister of Defence.
24 So he might establish policy, but how it was spent in detail, how
12:16:51 25 the forces were organised, that was all General Khobe's job.

26 MR JABBI:

27 Q. Now, did you also allow --

28 PRESIDING JUDGE: Would you allow us to take that down.

29 JUDGE THOMPSON: Yes.

1 THE WITNESS: Watch the biros.

2 PRESIDING JUDGE: Yes.

3 MR JABBI:

4 Q. Did you directly observe the participation of Chief Norman
12:17:35 5 in those transactions?

6 A. Yes. We must have had two or three meetings.

7 Q. With him?

8 A. With him in a collegiate atmosphere. But one of our
9 concerns was that the equipment we provided would leave this
12:18:08 10 country when ECOMOG left, whereas we wanted it to remain behind
11 for the Sierra Leone Army. So we had to build in safeguards in
12 our negotiations --

13 Q. Watch the pens, please. Yes.

14 A. -- to ensure that ECOMOG understood that, while the
12:18:54 15 equipment could be used collectively for as long as necessary,
16 ultimately it was for the Sierra Leone Army. And Chief Norman
17 was robust in making sure that ECOMOG knew that it was for the
18 Sierra Leoneans, not for ECOMOG. So he was fully involved in the
19 policy. The detail, i.e. how many radios, how many lorries, that
12:19:31 20 was something we dealt with primarily with Brigadier-General
21 Khobe over.

22 Q. Now, what was your assessment of the effectiveness or
23 otherwise of Chief Norman's role in those discussions?

24 A. He had military acumen. He was very determined. Kept
12:20:44 25 talking about this was for everybody, not just for ECOMOG. And
26 did have a view on some of the detail. But I suppose I had
27 already formed the opinion on my first visit that he was a very
28 effective minister. He was dynamic. He took decisions and had
29 the courage of his convictions, if you like. What's very

1 difficult for a soldier is when people keep changing their mind.
2 And although that's something we get used to, in Chief Norman
3 there was a minister who understood not to get involved in the
4 tactical issues, but to keep at the right level for him, and he
12:21:53 5 let the military get on and run their own affairs in line with
6 the policy that had been agreed by the government. So it was
7 refreshing.

8 Q. Thank you. On that second visit, did you have any other
9 engagements in Freetown or in Sierra Leone?

12:22:42 10 PRESIDING JUDGE: What's the question again, Dr Jabbi? If
11 he had other engagements?

12 MR JABBI: If he had any other engagements in Freetown or
13 Sierra Leone, on that second episode, My Lord.

14 PRESIDING JUDGE: That I understood, thank you.

12:22:57 15 THE WITNESS: I don't think so. It was a very busy period.
16 We had a limited time in which to make the announcement of the
17 aid package. I remember there was a delay from London as I was
18 waiting and waiting and the media were waiting. Then the
19 detailed work on what would be in the aid package took quite a
12:23:24 20 lot of hard work. My officers were up till midnight every night
21 with the ECOMOG and Sierra Leone Army. So I didn't have much
22 time for anything else.

23 MR JABBI:

24 Q. Thank you. Now, on your two visits so far, did you observe
12:23:56 25 the presence of children under the age of 15 on the side of any
26 fighting or the fighting at all.

27 A. To be certain they were under 15 would be difficult. I saw
28 some at the fighting at the bridge that I told you about. There
29 were certainly some very young people, young men on the other

1 side of the bridge.

2 Q. Which other side?

3 A. On the RUF side of the bridge, and the group -- amongst the
4 group of prisoners that I mentioned, who Chief Norman intervened
12:24:52 5 over, there were some there who were young. How old, I don't
6 know. I never saw them at that time. I never saw anybody on the
7 government forces that would be -- I could say was that young.

8 Q. Thank you. In your various visits, not only the first two
9 now, but the ones you outlined, in those various visits did you
12:25:42 10 have anything to do with this problem of children under 15 being
11 involved in the conflict?

12 A. Yes. Even in February of '99, there were strings attached
13 to the aid package. One of them was an absolute - no acceptance
14 of child soldiers and any suggestion of child soldiers in the
12:26:27 15 government forces would immediately put the aid package at risk.
16 Then I --

17 Q. Let's watch the pens, please. Yes, then?

18 A. I came back in May of 2000 and two occasions spring to mind
19 where the subject of child soldiers came up. One was when I went
12:27:24 20 to the CDF headquarters here in Freetown, very near here, in an
21 old hotel, I think it was.

22 Q. In an old?

23 A. Hotel.

24 Q. Hotel?

12:27:38 25 A. I think it was called -- is it Brookfield?

26 Q. Brookfields.

27 A. Brookfields Hotel, which the CDF were using as a temporary
28 headquarters. I went down there for a meeting to talk to the CDF
29 who, in May, were again fighting on behalf of the government

1 under our overall co-ordination.

2 Q. Please watch the pace.

3 A. And Chief Norman gave a talk to a group of CDF there, quite
4 a large group, who I had gone along to meet to thank, actually,
12:28:42 5 for all they were doing; fighting the RUF. And in his speech to
6 them he emphasised how, colloquially, what an own goal any use of
7 child soldiers would be, because international support would be
8 put severely at risk. He said, "This must not happen." I
9 remember physically then reinforcing that point from my

12:29:18 10 perspective. So irrespective of any ethical issues, there was a
11 very clear practical issue also at stake. The only other time I
12 was involved practically with child soldiers was when we went to
13 a home to visit a centre where there were a number from upcountry
14 and we talked to them and Chief Norman talked to them and, you
12:30:10 15 know, they were a very sad group of people.

16 Q. Outside Freetown?

17 A. Lungi. Somewhere near Lungi there was a home. An NGO had
18 set up a centre, because I remember Mr Cook, Robin Cook, our
19 foreign secretary visited it as well, subsequently, with a number
12:30:34 20 of Sierra Leone officials.

21 PRESIDING JUDGE: Is this still in 2000?

22 THE WITNESS: All in 2000, sir.

23 PRESIDING JUDGE: That is when you came to visit
24 in May/June 2000?

12:30:54 25 THE WITNESS: Yes, sir.

26 PRESIDING JUDGE: Or April?

27 THE WITNESS: No, April I only stayed for a week, less than
28 a week and went back to England. It was a routine visit which I
29 conducted a number of trouble spots. But I went back and said,

1 "There's trouble brewing in Sierra Leone" again. But I then came
2 back in May. When things got very bad, they sent me back.

3 PRESIDING JUDGE: At the meeting you are describing where
4 Chief Hinga Norman talked to that group about child soldiers.

12:31:21 5 THE WITNESS: Yes, that's in May, sir.

6 PRESIDING JUDGE: That's May?

7 THE WITNESS: May.

8 PRESIDING JUDGE: Thank you.

9 MR JABBI:

12:31:25 10 Q. And that's when you stayed, according to you, earlier on
11 for up to about six weeks?

12 A. About six weeks or so, yes.

13 PRESIDING JUDGE: May/June 2000.

14 THE WITNESS: May/June 2000.

12:31:38 15 MR JABBI: That was his earlier evidence, My Lord.

16 THE WITNESS: It was May 6th to June 16th, I think.

17 PRESIDING JUDGE: So you had said at that time you stayed
18 for six and a half weeks at that time.

19 THE WITNESS: Would it help if I explained roughly what we
12:31:56 20 did in that period to set it in context? The UN had a number of
21 units up in the country and the RUF had taken a lot of them
22 hostage. Again, things looked very difficult here, because the
23 force that the UN, that had been sent to protect the government
24 and to further the pursuit of peace had themselves been -- was
12:32:35 25 starting to be captured by the RUF. Therefore, the UN had become
26 a neutered organisation in military terms. Mr Kofi Annan.

27 JUDGE ITOE: A what?

28 THE WITNESS: Neutered. They weren't capable at that time
29 of doing their job. Mr Kofi Annan had asked a number of nations

1 if they would go to Sierra Leone to see if they could help. The
2 UK said they wouldn't act as part of the UN operation, but they
3 would send a team to find out what was happening and to see how
4 they might help unilaterally. I commanded that team and I
12:33:49 5 arrived here I think on May 6th, Saturday, May 6th. And we found
6 again a very troubled country.

7 The RUF had not disarmed after the -- I think it was the
8 Lome Accord of the previous year, whereas the government forces,
9 the Sierra Leone Army and the CDF had disarmed, give or take, and
12:34:41 10 that would have been fine if the UN had filled the vacuum, but
11 for a number of military reasons, the UN were not able to do that
12 and, as I said, a number had been taken hostage.

13 So I arrived in May, one, to be prepared to evacuate
14 British nationals and others that might want to flee the country,
12:35:34 15 but also to try and stabilise the situation for sufficiently long
16 to allow the United Nations to recover, reinforce themselves and
17 to become more focused on what they were doing. So the British
18 government felt that they were acting in line with Mr Annan, Kofi
19 Annan's request, albeit not as part of a single UN operation.

12:36:15 20 Over the next five or so weeks --

21 Q. Please watch the pace.

22 A. -- we conducted an evacuation because on, I think it was
23 Monday, 8th May, there was a riot, is the best description, up
24 near Foday Sankoh's house and --

12:36:57 25 MR JABBI: Foday, My Lords F-O-D-A-Y.

26 PRESIDING JUDGE: I think we know that one.

27 MR JABBI: And Sankoh, that as well, My Lord?

28 JUDGE THOMPSON: We can spell that one.

29 JUDGE ITOE: I hope Dr Jabbi is not running a phonetic

1 class here.

2 MR JABBI: I don't want to be so, My Lord.

3 JUDGE ITOE: Let us get along anyway.

4 MR JABBI: Thank you.

12:37:19 5 Q. Yes, you said there was a riot.

6 A. There was a riot and it was sufficiently serious for the
7 British High Commissioner to request me formally to initiate an
8 evacuation. There were a lot of excited people running around
9 the town, some armed, mainly with clubs and things and machetes.

12:37:49 10 But it was a very frightening atmosphere and I agreed with the
11 High Commissioner it was appropriate to start an evacuation.
12 Over the weekend the 6th, 7th and again on the 8th, I had a lot
13 of British troops arrive to enable me to conduct the evacuation.

14 Q. Yes.

12:38:14 15 A. And four Chinook, big Chinook helicopters, without which we
16 couldn't have done it. Because we had to secure a point on this
17 side of the estuary and Lungi airport on the far side because we
18 were flying them out. So we did that. It then became clear to
19 me with the full support of my government that we could do more

12:38:43 20 than just do an evacuation. We could actually stabilise the
21 situation and I then got permission to go ahead and do that. We
22 moved British troops into key places to the east of Freetown and
23 to the east of Lungi airport. And along with the SLA, a small
24 number who were still prepared to come back in, really, because

12:39:16 25 they were being reformed at that time, the CDF and largely
26 Nigerian troops who had remained behind from ECOMOG to become
27 part of the UN, we conducted an offensive operation against the
28 RUF. That allowed the UN time to focus on what they were doing
29 to reorganise and to be reinforced. I left, as I said, in

1 mid-June, having bought enough time for the UN to start again,
2 effectively.

3 Q. Thank you. Now, in your encounters with Chief Hinga Norman
4 and your observation of his role as deputy minister of defence,
12:40:49 5 were you able to assess his attitude to the government, the
6 civilian government?

7 A. Well, it never occurred to me to have to assess it, in that
8 he was clearly absolutely devoted to what he was doing, which was
9 defending the government and defending the country's rather
12:41:26 10 fledgeling democratic process. I never even -- I mean, it just
11 didn't occur to me to question it. He was very often at some
12 personal risk. He was defending the country against the
13 country's enemies, and would always defer to the President when
14 he -- sometimes he'd say, "That's an issue for the President," or
12:41:55 15 whatever. So it rather surprises me, your question.

16 Q. Thank you. But we have evidence here, which is merely
17 allegations by some people, that it was thought in certain
18 quarters that Chief Hinga Norman and others, even including the
19 CDF, were inclined to overthrow the civilian government they were
12:42:28 20 purportedly defending. So that is the context of that question.

21 A. Okay. Well, all I can tell you in my professional judgment
22 is that both in '99 and in 2000, if that is what they had wanted
23 to do, they could very easily have done it.

24 JUDGE ITOE: Did they do it? Answer the question directly,
12:42:57 25 please.

26 THE WITNESS: Well, they --

27 JUDGE ITOE: It is not as if they wanted to.

28 THE WITNESS: Well, they didn't.

29 JUDGE ITOE: We want a direct answer, Mr Witness, to this

1 question.

2 THE WITNESS: Okay. They clearly didn't.

3 JUDGE THOMPSON: Just a minute. Could you reformulate it.
4 Could you formulate it again for us, or restate it?

12:43:10 5 MR JABBI: The question, My Lord.

6 JUDGE THOMPSON: Yes, what was the question? Let's restate
7 it. Because I thought it was coming on an opinion question. Of
8 course, I'm not suggesting that opinion questions are not
9 permissible from witnesses who come to testify to matters within
12:43:26 10 their own ordinary knowledge. But I would request, kindly, that
11 you restate it, not reformulate it.

12 MR JABBI: My Lord, my question was whether from his
13 observation what he observed the attitude of Chief Hinga Norman
14 as Deputy Minister of Defence to be towards the civilian
12:43:55 15 government.

16 JUDGE THOMPSON: He said -- of course, he said it didn't
17 occur to him to want to assess that.

18 MR JABBI: Yes, My Lord.

19 JUDGE THOMPSON: But you went further to say that there is
12:44:05 20 evidence in this Court that Chief Norman --

21 MR JABBI: That some people thought that Chief Norman and a
22 few others, including --

23 JUDGE THOMPSON: Wanted to overthrow --

24 MR JABBI: Including the CDF were inclined --

12:44:21 25 JUDGE THOMPSON: Quite. And invited his response to that.

26 MR JABBI: His observation on that, My Lord. For that
27 period that he was here and could directly observe the
28 participation of the deputy defence minister in the exercise --

29 JUDGE THOMPSON: In other words, your question is trying to

1 elicit an opinion response?

2 MR JABBI: Yes, My Lord, but --

3 JUDGE THOMPSON: Because I don't know how else he could
4 elicit any factual response as to whether this happened or did
12:44:53 5 not happen.

6 MR JABBI: Well, My Lord, for example, he had interaction
7 with Chief Norman. It is quite possible that Chief Norman may
8 have said things from which he could get --

9 JUDGE THOMPSON: He could draw an opinion. He could form
12:45:10 10 an opinion.

11 MR JABBI: Or get information.

12 JUDGE THOMPSON: Remember your question is premised on the
13 fact of intention.

14 MR JABBI: Yes, My Lord.

12:45:20 15 JUDGE THOMPSON: That he intended to do something.

16 MR JABBI: Yes.

17 JUDGE THOMPSON: I'm only saying that if he responds, he
18 will only give us an opinion as to whether that intention was
19 well-founded or not.

12:45:33 20 MR JABBI: My Lord, it is also possible -- as I've said, it
21 is possible that in his interaction with Chief Norman, Chief
22 Norman may have told him things directly.

23 JUDGE THOMPSON: I will restrain myself.

24 PRESIDING JUDGE: In your question you may ask if the
12:45:51 25 witness has observed any objection albeit --

26 JUDGE ITOE: His observations. Exactly. That is it.

27 PRESIDING JUDGE: Rather than form an opinion, as such.
28 Because he saw him at times when maybe comments were made or
29 whatever.

1 JUDGE ITOE: He's an actor in the scene and he's able, I
2 think, to tell the Court, you know, what he must have noticed.

3 MR JABBI: Yes, My Lord.

4 Q. So you have heard what --

12:46:13 5 JUDGE ITOE: Or what he may have perceived.

6 MR JABBI:

7 Q. -- Their Lordships have also said.

8 A. Yes, I'm very clear. So far as my direct observations are
9 concerned, at no stage did Chief Norman say anything that
12:46:28 10 suggested he was anything but completely loyal to the President,
11 in my hearing.

12 PRESIDING JUDGE: Or actions?

13 THE WITNESS: Or any actions. And as far as my judgment,
14 my opinion is concerned, if he had wanted to overthrow the
12:46:47 15 government in the way --

16 JUDGE ITOE: That is where, you know, I come into some -- I
17 have problems, you know. That portion of your reply, to me, is
18 not relevant. If he had, if he had. I think you should limit
19 your answers, you know, to what your observations were. To your
12:47:15 20 knowledge, what you noticed in this particular episode where you
21 have referred to Norman, you know, and his associates being a
22 coup plotter against the government. Not that, you know, if they
23 had wanted to, that's a bit -- it is very argumentative.

24 JUDGE THOMPSON: That's the difficulty about the question
12:47:37 25 itself and the evidence. The evidence talks about intent and the
26 question is not as simple. It is a far more intricate question.
27 It cannot be answered in just a kind of yes or no form. It talks
28 about -- it's predicated upon intent that there is evidence here
29 from some people that Chief Norman and some other persons

1 intended to. That's my difficulty. That's why it is not as
2 simple as it appears to be. It is a very loaded question, it has
3 to do with intent, and I don't see how this witness can usefully
4 assist this Court in ascertaining the truth if he's not given
12:48:26 5 some latitude to explain some of his observations and draw some
6 kind of opinion. Whether the Court will, in fact, attach much
7 weight to the opinion that he gives is an entirely different
8 matter.

9 MR JABBI: Thank you, My Lord. But, My Lord, I believe I
12:48:53 10 have also explained that intent or evidence of intent does not
11 necessarily remain entirely subjective.

12 JUDGE THOMPSON: The devil himself does not know the intent
13 of man.

14 MR JABBI: But man is capable of stating his intent or
12:49:11 15 intention in objective exchanges.

16 PRESIDING JUDGE: That's why I suggested to you that you
17 ask a more direct question; not about intent, whether the witness
18 has observed actions and so on, or --

19 MR JABBI: That was my question. It is the comments that
12:49:30 20 brought the intent factor in. My question was whether he
21 observed -- I mean, what he observed --

22 PRESIDING JUDGE: Indeed.

23 MR JABBI: -- as to the attitude of Chief Norman to the
24 government --

12:49:44 25 JUDGE THOMPSON: That's the difficulty about it. Because
26 the observation based on -- I mean, the piece of evidence itself
27 talks about intent. The question of attitude goes to intent, and
28 I don't see how he can answer this question without expressing
29 some opinion for the Court to evaluate. I mean, the whole idea

1 of intent is complex. Who really knows anybody's intent and who
2 can really, based on observations, merely know intent? I
3 remember Shakespeare said there's no art to find the mind's
4 construction on the face.

12:50:29 5 MR MARGAI: Could I be heard, My Lords?

6 PRESIDING JUDGE: Why? No, Mr Margai. No. Mr Margai,
7 please, you know the rules. You know that we are in
8 examination-in-chief. I don't see how you could ever stand up to
9 be heard on this particular issue. Mr Margai, you are an
12:50:47 10 experienced counsel and you know this is not your place to be
11 heard at this particular moment.

12 MR MARGAI: As your Lord pleases.

13 PRESIDING JUDGE: Even though you are offering your help to
14 the Court, if we need your help and assistance, we'll come to
12:50:58 15 you, Mr Margai.

16 MR MARGAI: As My Lord pleases.

17 THE WITNESS: If I may, picking up Your Lordship's point, I
18 infer from the 18 months or so of observing Chief Norman over
19 those five visits that he lacked intent from my perspective.
12:51:21 20 Because, in my professional judgment, over an 18-month period, he
21 could have done what was being suggested a minute ago. He had
22 the military power to do it. That is, I hope, the answer that
23 you were seeking. But specifically, in terms of fact, I also can
24 confirm that at no stage did he say anything that would even hint
12:51:44 25 of anything but loyalty to the government of which he was a part
26 and specifically to the President.

27 MR JABBI:

28 Q. Did anybody say anything to you about him in that regard
29 during the times he visited Sierra Leone?

1 A. No, certainly not specifically. I mean, it was well
2 understood that Chief Norman, as Deputy Minister of Defence, was
3 playing a key role in the defence of the country. But why I said
4 I'm rather surprised, from my narrow perspective, that you even
12:52:37 5 asked the question --

6 Q. At all.

7 A. It wasn't a topic of conversation at all. He was
8 absolutely a key partner in what we were all doing.

9 Q. Thank you. Now, did you ever directly observe the CDF in
12:53:05 10 action whilst you were here?

11 A. Yes, on a number of occasions. I mentioned the little
12 battle at the bridge, of which they were a part, but it was a
13 very confused situation there. You could always tell the CDF -
14 well normally - because they wore different clothes, coloured
12:53:36 15 woollen jackets and things like that. Not always, but quite
16 often they would be wearing that. But, in 2000, I --

17 Q. Watch your pace, please.

18 PRESIDING JUDGE: Mr Jabbi, I just want to remind you that
19 the indictment - I'm not looking at the time, I'm just looking at
12:53:57 20 you - alleges crimes of such up to December 1999.

21 MR JABBI: Indeed, My Lord.

22 PRESIDING JUDGE: I am wondering what is the relevancy of
23 anything that happened after December 1999. I want to be
24 reassured it is indeed relevant. So the actions of the CDF
12:54:15 25 post-1999, how is this relevant to what may have happened before?

26 MR JABBI: My Lord, I don't understand the --

27 PRESIDING JUDGE: All the allegations that the first
28 accused is facing have to do with allegations of matters that
29 would have happened between November 1996 and December 1999.

1 There are no allegations that the accused is facing having to do
2 with anything in 2000 or past 2000. That's why I'm asking what
3 is the relevancy of what the CDF may or may not have done in
4 2000.

12:54:51 5 MR JABBI: My Lord, my question was not confined to 2000 or
6 even expressly referred to 2000.

7 PRESIDING JUDGE: I know, but your question did not refer
8 to any specific time. It was a very broad question.

9 MR JABBI: Yes, indeed. Over the period -- I said for the
12:55:10 10 periods he had been here.

11 PRESIDING JUDGE: Yes, but the period in 2000 the witness
12 may have been here is not necessarily relevant, that's what I'm
13 saying to you, unless you can convince me it is relevant to the
14 charges as we have them. Especially now, you are talking of the
12:55:26 15 actions of the CDF that the witness may have observed in May
16 2000, as such.

17 MR JABBI: My Lord, I did not specify May 2000.

18 PRESIDING JUDGE: I know you did not, but when the witness
19 visited, he visited in 2000. So I'm saying to you, in 2000 it
12:55:42 20 may not be relevant, so why should we hear that?

21 MR JABBI:

22 Q. General, you have said you visited Sierra Leone about five
23 times, two of which visits fell in 1999. In so far as your
24 observation of the CDF was concerned in 1999, can you give what
12:56:12 25 your observation was of them?

26 A. Brave, sometimes almost stupidly brave. They had a belief
27 in their own --

28 Q. Please watch the pace.

29 A. -- their own invincibility, which made them very brave

1 fighters, but they were not very well disciplined and there were
2 groups that seemed to me to be on the periphery, if you like, of
3 the main CDF who fought very bravely, but tended to do what they
4 wanted to do rather than what they were broadly being told to do.
12:57:28 5 They were more like a militia. I would characterise them as a
6 militia.

7 JUDGE THOMPSON: Did you say that the groups on the
8 periphery did what they wanted to do, not what they were told,
9 that marginal group?

12:57:43 10 THE WITNESS: Yes.

11 JUDGE THOMPSON: Not the entire --

12 THE WITNESS: No, I'd say most were pretty coherent, but
13 there were elements. You could call them rogue elements.

14 JUDGE THOMPSON: Well, let's call them groups on the
12:57:55 15 periphery. Just a minute.

16 MR De SILVA: I do apologise, My Lord, but it's a point at
17 which I must raise an objection, for a number of reasons. The
18 first reason is this --

19 PRESIDING JUDGE: An objection to what, may I ask,
12:58:21 20 Mr De Silva?

21 MR De SILVA: The question being asked about the CDF. As I
22 understand, this witness is being asked questions, in effect,
23 that go to the way in which the military command structure of the
24 CDF may have appeared to him, and matters of that kind. These
12:58:40 25 were matters dealt with by an expert report which Your Lordships
26 will recall, I think, which was produced by Colonel Iron.

27 My Lords, on a particular day, I think My Lord Thompson
28 asked my learned friend Mr Jabbi as to whether General Richards -
29 it was on 13 February this year and line 10, line 18 and line 23

1 are relevant - My Lord asked my learned friend Mr Jabbi as to
2 whether General Richards was going to be an expert witness in any
3 shape or form, to which the answer was no. My Lords will also
4 recall that when General Richards was filed as a witness, there
12:59:43 5 was no suggestion that he was to be in any shape or form an
6 expert witness. The whole nature of the structure of the CDF as
7 a military organisation, its command and control, these are
8 matters, in our respectful submission, that are and go to issues
9 to be dealt with by an expert witness. It is only wrong, in our
13:00:24 10 respectful submission, when I look at the very skimpy half-page
11 document I have, which is called a "Detailed Summary" of what
12 General Richards' testimony is going to be.

13 PRESIDING JUDGE: Mr Da Silva, let's keep it to the issue
14 you are raising. You are raising many issues at the same time.
13:00:48 15 You are saying this witness may not speak to certain matters that
16 he may have observed, because only an expert can speak to that.

17 MR De SILVA: My Lord, no, I am not saying that, with
18 respect. If the questions go to inviting this witness to comment
19 on any question that goes to either the military organisation or
13:01:11 20 the command and control structure of the CDF, bearing in mind the
21 shortness of the time, and Your Lordship has already drawn the
22 attention of this Court to the fact that the cut-off point in
23 this indictment is December 1999. My Lord, I really do think we
24 are straying into an area where we have had no report from this
13:01:37 25 witness.

26 JUDGE THOMPSON: Learned counsel, you are hoisted by your
27 own petard. You are virtually saying that the witness has been
28 invited to respond to a question about the command structure. I
29 thought I got that question to mean some assessment of the

1 characteristics in terms of there being a fighting force, what
2 you observed from them as they fought. I don't see how the
3 question, unless one is trying to be a little too narrow here --
4 what the question seems to be eliciting is not what the command
13:02:20 5 structure was, if I understand the question correctly, and, of
6 course, Mr Jabbi will correct us, is what were the
7 characteristics exhibited by this group of so-called fighting
8 force when they were in action? I mean, am I missing something?

9 MR De SILVA: My Lord --

13:02:41 10 JUDGE THOMPSON: I thought the idea of command structure
11 seems to be a much more different question, unless we are at
12 cross-purposes, but I stand to be enlightened.

13 MR De SILVA: My Lord, I hesitate to enlighten your
14 Lordship because I don't think it falls within my capabilities.
13:02:59 15 My Lord, all I want to say this: It is, if anything, a -- I was
16 flagging up danger.

17 JUDGE THOMPSON: Yes.

18 Mr De SILVA: Can I put it this way: I didn't want my
19 learned friend Mr Jabbi to go too far. Perhaps that is what I
13:03:16 20 was merely saying, because there comes a point when this line
21 could turn into what would be expert evidence --

22 JUDGE THOMPSON: In other words, we might open up a
23 Pandora's box or something like that. If it is pre-emptive,
24 that's fine. Really, I thought I would be with you if this
13:03:36 25 witness, whom I had cautioned, has not been indicated as an
26 expert witness were to come and testify on expert matters. But
27 the question of -- based on your observations, how did they
28 appear, you know, at that particular time as fighters, why
29 shouldn't he as a fighter himself not be able to tell us that and

1 if he was here at the time.

2 MR De SILVA: My Lord, I thought we had all that, that they
3 were brave, so on and so forth.

4 JUDGE THOMPSON: That is precisely what I thought he was
13:04:07 5 continuing, then I interposed the question: Were you saying that
6 the entire group of CDF were.

7 PRESIDING JUDGE: Well, I disagree.

8 JUDGE THOMPSON: [Overlapping speakers] quite, then we were
9 talking about the groups of them on the periphery. Is that a
13:04:24 10 matter for expert analysis?

11 MR De SILVA: No.

12 JUDGE THOMPSON: I think not.

13 MR De SILVA: I have flagged up my observation and as long
14 as my learned friend keeps within the rules, of course, I have no
13:04:37 15 further objection.

16 PRESIDING JUDGE: We can assure you, Mr De Silva, we take
17 note of your comments and, I agree with you, this is an area that
18 is fraught with danger. The witness has a lot of experience in
19 military affairs and obviously it is very tempting to speak -- to
13:04:53 20 give an opinion on certain matters, so we'll try to be careful
21 when we look at this evidence. Because, again, as you said and
22 as my brother Justice Thompson has said, this witness has not
23 been called as an expert witness, just as a factual witness, so
24 this is what we are dealing with. It is not to deny your
13:05:13 25 experience or expertise, but this is the quality of witness that
26 has been described.

27 MR De SILVA: It is no a criticism of the General at all.

28 PRESIDING JUDGE: Certainly not.

29 MR De SILVA: But there it is, I have made my point.

1 PRESIDING JUDGE: Thank you. We will not ask you to pursue
2 unless you want to respond, Dr Jabbi.

3 MR JABBI: I want to make a short observation.

4 PRESIDING JUDGE: It is 1.00, we will hear your
13:05:36 5 observation.

6 MR JABBI: I will be a minute, My Lord.

7 JUDGE THOMPSON: After we come back.

8 PRESIDING JUDGE: After we come back.

9 [Luncheon recess taken at 1.06 p.m.]

14:39:54 10 [CDF21FEB06C - SV]

11 [Upon resuming at 2.40 p.m.]

12 PRESIDING JUDGE: Dr Jabbi.

13 MR JABBI: Yes, My Lord.

14 PRESIDING JUDGE: So there were some comments made about
14:41:07 15 the nature of the evidence being led at this particular moment.
16 I'll just caution you as well and remind you that, indeed, this
17 witness has not been qualified as an expert witness and therefore
18 you should avoid asking questions where the witness is asked to
19 express his opinion on matters, because he is called as an
14:41:35 20 ordinary witness. Therefore, just a reminder, Dr Jabbi.

21 MR JABBI: Yes, My Lord. However, My Lords, if I may refer
22 to the transcript in the cross-examination by the Prosecution of
23 witness Dr Demby, former vice-president.

24 PRESIDING JUDGE: I don't want to get into these arguments,
14:42:00 25 Dr Jabbi. We just told you and advised you what the position is.
26 This witness has not been qualified as an expert witness. We're
27 not saying he may not be, but that's not why he's being called.
28 When we allowed some questions to be asked of Dr Demby, it was
29 questions of a general nature, as such, not specific to him as a

1 specialist in medicine.

2 MR JABBI: My Lord, if I may just refer to a portion of the
3 transcript.

4 PRESIDING JUDGE: Which transcript?

14:42:30 5 MR JABBI: With your leave. Transcript of the
6 cross-examination of Dr Demby.

7 PRESIDING JUDGE: But for what purpose? What does it serve
8 to the issue that we have to deal with today?

9 MR JABBI: My Lord, it is the issue of the same nature and
14:42:47 10 the attitude of the Court then.

11 PRESIDING JUDGE: We have adopted a relatively flexible
12 approach and that's what we've done with this particular witness
13 and your questions in this respect. However, we've just said,
14 and I just remind you, that this witness is not here as an expert
14:43:03 15 witness.

16 JUDGE ITOE: He certainly has the military expertise.

17 PRESIDING JUDGE: No doubt. This is not the issue.

18 JUDGE ITOE: He's an extraordinarily qualified witness in
19 this respect but he is not called here as such.

14:43:16 20 PRESIDING JUDGE: You have called him based on what you
21 have described in court and the information provided to the Court
22 as a witness as to facts, as such, and the witness only may
23 testify as to facts. As I say, we've allowed you flexibility in
24 this respect in your examination-in-chief up to now but we are
14:43:35 25 just warning you that there is a limit to that flexibility and
26 you will be just crossing over.

27 JUDGE THOMPSON: With regard to the specific question which
28 was put to the witness before we adjourned for the lunch break,
29 the question was clearly one that required him to indicate what

1 his observations in terms of the characteristics of the CDF were
2 as a fighting group. I recall that he was enumerating those
3 characteristics and then the objection was taken and I took the
4 position that, clearly, not being an expert witness, and as the
14:44:25 5 learned Presiding Judge has said, he cannot testify as an expert
6 on those matters, but I also took the position, and I thought the
7 fine line needs to be drawn, that if he observed certain
8 characteristics of a fighting force in the position in which he
9 was, there should be no difficulty in him giving that kind of
14:44:48 10 observation because then he is reporting to us what he observed
11 in terms of their characteristics. In other words, the profile
12 of these groups as a fighting force, not any authoritative expert
13 view as to whether their profile conformed with some western
14 paradigm or model and that kind of thing. I find no difficulty
14:45:21 15 with this line of questioning, provided it doesn't really go over
16 the line which the learned Presiding Judge has so ably advised
17 you on.

18 MR JABBI: Thank you very much, My Lords.

19 Q. Now, General, we have shared that with our respective
14:45:57 20 heirs, as the Mende man would say. So may I ask what your
21 observation of the CDF was during your visits?

22 PRESIDING JUDGE: Yes, Mr De Silva?

23 MR De SILVA: My Lord, if the question is what the
24 General's observations were during the period of the indictment,
14:46:25 25 I would have no objection. Your Lordship has made that comment
26 before and I simply invite my learned friend to obey what the
27 Court has required him to do.

28 MR JABBI: Thank you very much. My question that I have
29 just posed --

1 JUDGE ITOE: I'd like to be very clear. I mean, how much
2 time did General Richards spend in observing the military
3 characteristics or behaviour of these forces he's talking about?
4 We have an isolated case here of an observation of combat on the
14:47:03 5 Congo Cross Bridge and it involved how many people? It involved
6 just maybe 10 to 15 on each side, from what the witness has said.
7 Would this sort of evidence really go to show a pattern of how
8 the CDF, you know, was either as a force or a paramilitary force
9 and so on and so forth? That is my worry.

14:47:32 10 JUDGE THOMPSON: My position would be that, clearly, the
11 General is entitled to give us his own perceptions in terms of
12 his observations of the fighting force. Whether the inference is
13 drawn from his own observations of individual instances as to
14 whether there is a system or not is not for the General. It's
14:47:52 15 for the Court if that position is canvassed, and I think it would
16 be clearly procedurally irregular to preclude someone who
17 witnessed certain events, incidents and episodes which in fact
18 form part of the substratum of the indictment and who is here to
19 talk about these matters, of course not to exceed the parameters
14:48:20 20 of the indictment, from giving his own position, his own
21 observations. The question of whether the evidence will amount
22 to system or whether it amounts to much is not at this stage an
23 issue. It is for the Court at the appropriate stage to determine
24 that evidence, what weight to give to it, alongside other pieces
14:48:47 25 of evidence.

26 PRESIDING JUDGE: Thank you, Justice Thompson. Dr Jabbi, I
27 just want to remind you again that we are concerned with the
28 period that ends in December 1999 and, as suggested by my learned
29 brother Justice Itoe, if we could have some background as to how

1 long the witness was in that position to observe and how many,
2 because we do have some facts but maybe the witness may expand on
3 that. So that's what we're concerned about and, in due course,
4 as Justice Thompson has said, we'll make the appropriate
14:49:23 5 assessment and weight to be attached to this witness. With all
6 of this in mind, please resume your examination-in-chief.

7 MR JABBI: Thank you very much, My Lords.

8 Q. General, may I just say that the question I posed to you
9 just now is referable only to the period up to December 1999, and
14:49:52 10 if you may proceed with your answer now, please?

11 A. Thank you. I make these observations from observing the
12 battle that I described at the bridge, Congo Cross, but also
13 spending a total of 14 days or so observing the CDF in preparing
14 for combat.

14:50:22 15 Q. Please watch your pace as you go along.

16 A. Watching how the overall command and control of government
17 forces functioned. So although I take the point about only
18 observing a battle once, of course I'm forming, as a professional
19 soldier, a view of them all the time from all the other
14:50:53 20 activities that an army of any kind manifests. My view remains
21 that which I said briefly before we adjourned, and that is that
22 they were a very brave and, at a low level, effective fighting
23 force. They exhibited what to me could best be described as a
24 militia force. Some were well trained, others came along for a
14:51:40 25 few weeks and then would go away again, which I know frustrated
26 their commanders.

27 As we discussed also earlier, there were those that were,
28 if you like, mainstream CDF and those that appeared to me to be
29 on the periphery of the organisation that, nevertheless, were

1 described as CDF and I never really could quite -- I never really
2 knew which was which except some clearly were more cohesive in
3 their approach. What I do know is that they were vital to the
4 defence of Freetown in January '99. I observed very little
14:52:49 5 fighting in February '99, but we already discussed with the
6 President the idea that they ought to be brought into the
7 mainstream of government defence forces, which of course
8 happened, I think, in 2000 - some time later. But there was a
9 clear desire to bring them in to the mainstream to ensure they
14:53:25 10 acted in line with the government's intentions and could be part
11 of a coherent defence force. I think that's probably enough.

12 Q. Thank you very much. Finally, General, do you know one
13 Colonel Iron?

14 A. I do.

14:54:04 15 Q. Would it surprise you to learn that he depicted the --
16 MR De SILVA: I object.

17 PRESIDING JUDGE: Yes, Mr De Silva, what's your objection?

18 MR De SILVA: Colonel Iron was an expert witness whose
19 expert report was laid before the Court. What my learned friend
14:54:32 20 Mr Jabbi is now trying to do is to get this very distinguished
21 senior officer, General Richard, to comment on an expert whom the
22 Court has already heard about. This was the very thing that I
23 have been trying to avoid. In our respectful submission, it is
24 quite wrong that expert evidence should be dealt with in this
14:55:04 25 way. My Lord --

26 PRESIDING JUDGE: We agree with you, Mr De Silva. Your
27 objection is sustained.

28 MR De SILVA: Thank you.

29 MR JABBI: Thank you, My Lord.

1 PRESIDING JUDGE: And again, it doesn't go to your
2 qualifications. It's a question of proper procedure to be
3 followed. Yes, Dr Jabbi.

4 MR JABBI: My Lord, the last statement, I take it, was
14:55:27 5 directed to the witness, was it?

6 PRESIDING JUDGE: Yes, yes.

7 MR JABBI: Thank you.

8 PRESIDING JUDGE: Not to you.

9 MR JABBI: Nor to my learned friend, Mr De Silva.

14:55:40 10 PRESIDING JUDGE: It was indeed directed to the witness.

11 MR JABBI: Thank you.

12 PRESIDING JUDGE: We're back to you, Dr Jabbi.

13 MR JABBI: Yes.

14 Q. Now, General, you spoke earlier on about child soldiers.
14:56:12 15 Apart from your observation at the single battle you narrated,
16 did you come across the phenomenon of child soldiers anywhere in
17 Sierra Leone on any side?

18 PRESIDING JUDGE: I thought you had covered that.

19 JUDGE ITOE: He has covered that, hasn't he?

14:56:40 20 JUDGE THOMPSON: Learned counsel, one would have thought
21 that the concept of phenomenon of child soldiers introduces a
22 notion of expertise and you want to avoid this forbidden
23 territory, as the learned Presiding Judge has indicated. I mean,
24 as you say "phenomenon," are you trying to elicit some expert
14:57:06 25 response as to the phenomenon of child soldiers, using child
26 soldiers? It would be suggestive of that. Why have an expert
27 come here with a dissertation written on the phenomenon of child
28 soldiers or that kind of thing and give us some kind of
29 considered professorial thoughts on that.

1 MR JABBI: My Lord, I can see the temptation to regard
2 somebody who is obviously an expert, notwithstanding that he's
3 not giving evidence as an expert witness -- the temptation to
4 consider questions to him as being of expert -- trying to elicit
14:57:52 5 his expert opinion. Unfortunately, My Lords, the witness can
6 only give evidence out of his own knowledge and out of his own
7 expertise.

8 PRESIDING JUDGE: No, not his expertises. His own
9 observation.

14:58:06 10 JUDGE THOMPSON: He may have seen children. He may have
11 seen young people, as he said, participating in hostilities. But
12 he's not clearly -- he's not here to profess any knowledge of
13 having studied over a period of time the specialisation or
14 sub-specialisation in respect of the phenomenon. It's your
14:58:34 15 words, not mine. The phenomenon of child --

16 MR JABBI: "Phenomenon" does not import expertise of any
17 particular nature.

18 JUDGE THOMPSON: With the greatest respect to you, the word
19 "phenomenon" suggests that, in fact, this is something which may
14:58:48 20 well be a recurring experience and all that, and it would be
21 really unfortunate if we allow you to probe General Richards on
22 this issue of phenomenon of child soldiers. It should be for
23 another witness.

24 MR JABBI: As Your Lordships please.

14:59:08 25 PRESIDING JUDGE: And the issue of child soldiers you have
26 covered with the witness. I will just remind you that you asked
27 a question if the witness has observed children under the age of
28 15 on either side. The answer you got was it was very difficult
29 to ascertain the age of 15 per se, but he did testify that he

1 observed, on the RUF side at the Congo Cross bridge, young people
2 as such.

3 MR JABBI: That is exactly the point, My Lord. The
4 question then was confined to -- [Overlapping speakers]

14:59:37 5 JUDGE ITOE: And that some of those young people were part
6 of the captives.

7 PRESIDING JUDGE: Yes.

8 MR JABBI: That is what I'm saying, My Lord; that that
9 question was confined to that encounter.

14:59:46 10 JUDGE THOMPSON: No.

11 PRESIDING JUDGE: He said I never saw anybody on the
12 government side that was that young.

13 MR JABBI: In that encounter, My Lord.

14 JUDGE THOMPSON: Counsel, we are not the architect of the
14:59:59 15 phrase "phenomenon of child soldiers". That is the troubling
16 phrase. It imports expert analysis. Has he studied that?

17 MR JABBI: Thank you very much, My Lords. General, I take
18 this opportunity finally to thank you for appearing before this
19 Court.

15:00:19 20 PRESIDING JUDGE: Thank you, Dr Jabbi.

21 MR JABBI: Thank you very much, My Lords.

22 PRESIDING JUDGE: Counsel for second accused,
23 cross-examination? This is not a common witness, I understand.

24 MR BOCKARIE: No, Your Honour.

15:00:33 25 PRESIDING JUDGE: No cross-examination?

26 MR BOCKARIE: None.

27 PRESIDING JUDGE: Thank you.

28 MR BOCKARIE: Thank you.

29 PRESIDING JUDGE: Counsel for the third accused, do you

1 have any cross-examination?

2 MR MARGAI: Yes, My Lords, I do.

3 PRESIDING JUDGE: Are you ready to proceed? My question,
4 Mr Margai, was you're ready to proceed with your

15:01:05 5 cross-examination?

6 MR MARGAI: Yes, My Lords, I am if Your Lordships are ready
7 to hear me.

8 PRESIDING JUDGE: Yes, please.

9 MR MARGAI: Thank you.

15:01:14 10 JUDGE THOMPSON: You are so assured.

11 MR MARGAI: Always assured. Thank you.

12 CROSS-EXAMINED BY MR MARGAI:

13 Q. Good afternoon, General Richards. General, you described
14 the CDF as a militia force; is that correct?

15:01:37 15 A. I did.

16 Q. Thank you. What is the difference, if any, between a
17 militia force and a conventional force?

18 MR De SILVA: My Lord, I object again. I'm sorry to do
19 this, but it is apparent, in our respectful submission, that what
15:02:31 20 my learned friend Mr Jabbi was unable to do, a co-defendant is
21 seeking to do. My Lord, it is wrong, in our respectful
22 submission, for a witness to be called on behalf of one defendant
23 as a witness as to fact possibly to be used as an expert witness
24 on behalf of another defendant.

15:03:07 25 That is for three reasons. One, it is a device for getting
26 round Rule 94 of our Rules of Procedure and Evidence which
27 require an expert report. Secondly, it is a way of circumventing
28 the order of this Court on 28th November 2005, where this Court
29 ordered that a list of expert witnesses whose names must appear

1 on the list of witnesses referred to and so on and so forth had
2 to be given. My Lords, the object of these Rules is not to
3 enable one defendant, as I've indicated, to call a witness who is
4 then used to get round Rule 94 by cross-examining on the basis of
15:04:39 5 the witness being an expert in that regard.

6 My Lords, if my learned friend Mr Margai wants someone in
7 the nature of an expert witness, he must call that witness with
8 the appropriate report. The Defence are entitled to have their
9 own expert here in the event of any cross-examination as to
15:05:15 10 matters of an expert kind. To seek to ask this witness to
11 distinguish between a militia force and a conventional force goes
12 to the very heart of the matters, in our respectful submission,
13 that were dealt with by Colonel Iron. This Court has to be
14 watchful to avoid the Prosecution being totally disadvantaged,
15:05:43 15 because this is a technique of avoiding Rule 94.

16 I would submit that my learned friend Mr Margai, if he
17 reflects upon it, from his great experience of these matters,
18 would not wish to violate the spirit of the Rules, nor indeed go
19 against the order of the Court. My Lord, that is my submission
15:06:08 20 and I'm sorry to object in this way, but I am trying to ensure
21 that the orders of the Court and indeed the Rules of Procedure
22 and Evidence are obeyed so that there is equality on all sides.

23 PRESIDING JUDGE: Thank you, Mr De Silva.

24 MR MARGAI: My Lords, my learned friend has my unqualified
15:06:30 25 assurance of not violating the Rules of Procedure and the order
26 of this Court. I am fully conscious of the fact that the General
27 is not here in an expert capacity. But, be that as it may, the
28 General has introduced in his evidence-in-chief a term of art,
29 that is to say militia. I am not a military man and I'm sure

1 neither of you judges, except perhaps, I don't know, the
2 Presiding Judge might have some experience or knowledge about
3 that. But I think in the interests of justice we ought not to
4 take for granted words that are being said here if we are here to
15:07:22 5 seek the aims of justice and to ensure that justice prevails
6 though the heavens may fall.

7 PRESIDING JUDGE: But the problem -- and I agree with you
8 that the witness has testified as to the -- and qualified this
9 group that he observed as being more like militia, and these are
15:07:44 10 essentially the words spoken by the witness. That was based on
11 his overall experience in the military, not necessarily as an
12 expert and that's why we've allowed that question. But now
13 you're pushing that one step further, as such. You're asking the
14 witness to make a comparison between that and conventional
15:08:05 15 military forces as such, and that's where your learned friend
16 Mr De Silva objected to that question. You may rephrase that
17 question in a different format.

18 MR MARGAI: I think, My Lords, we seem to be narrowly
19 circumspecting the word "expert". From the evidence of the
15:08:27 20 witness here, giving an account of his qualifications, the Court
21 is in no doubt that he has a wide experience.

22 JUDGE ITOE: We have stated that. I mean, this is a very
23 competent witness in all matters that are characterised as
24 military.

15:08:45 25 MR MARGAI: Thank you very much. Therefore, I'm sure
26 Your Lordships would not want to limit him in his effort to
27 assist this Tribunal.

28 JUDGE ITOE: No, but we have to.

29 PRESIDING JUDGE: With respect on this issue, we will limit

1 this evidence if the procedure is not followed. Yes, this
2 witness might have been qualified as an expert. There would
3 appear to be no doubt about that. But that is a procedure that
4 has not been followed and therefore you are precluded to go into
15:09:14 5 the expertise of the witness. That's the answer to your
6 observation.

7 MR MARGAI: My Lords, I am not asking him for his opinion.
8 As a military man, having used the word "militia", what is the
9 difference between a militia and a conventional army, I don't
15:09:33 10 think that is asking for an opinion.

11 JUDGE THOMPSON: You say that's not an expert question?

12 MR MARGAI: No, My Lord, in my humble opinion it is not. I
13 stand to be guided by Your Lordships.

14 JUDGE THOMPSON: And you say the -- suppose the question is
15:09:48 15 rephrased or reformulated, would it offend the principle that an
16 ordinary witness is not supposed to give expert opinion?

17 MR MARGAI: I shall endeavour to rephrase it, My Lords.

18 JUDGE THOMPSON: I think you can. But of course, you say
19 that the word "militia" is a term of art. I was probably
15:10:07 20 thinking that we might invoke the assistance of the Oxford
21 Dictionary on this.

22 MR MARGAI: I thought you were going to refer to Dr Jabbi.

23 JUDGE THOMPSON: No.

24 PRESIDING JUDGE: We recognise as well, Mr Margai, that you
15:10:21 25 have indeed in your list of witnesses listed a military expert,
26 as such, that you will call in due course and therefore we'll
27 listen to --

28 MR MARGAI: Yes, we shall address that when we get to that
29 bridge.

1 PRESIDING JUDGE: Yes, absolutely. That's why I say -- I
2 mean, it's not whether you can call. The problem is in this
3 case, this witness, we were not asked to accept him and he was
4 not asked to produce a report. In other words, the procedure has
15:10:45 5 not been followed. So let's keep it to that narrow issue if we
6 can, Mr Margai.

7 MR MARGAI: Yes, My Lords. I shall rephrase the question.

8 PRESIDING JUDGE: Thank you.

9 MR MARGAI:

15:10:55 10 Q. General Richards, who are militias?

11 A. A militia, I suppose, is best characterised as a citizens'
12 army. But it does not exhibit, to my mind --

13 JUDGE THOMPSON: Slowly.

14 MR MARGAI:

15:11:17 15 Q. Slowly, slowly, slowly.

16 A. Thank you. It does not exhibit, to my mind, many of the
17 traits of a conventional army. If I could just elaborate?

18 Q. Please.

19 A. Their training is normally far less thorough, their chain
15:11:54 20 of command is much looser, their discipline is less good. But if
21 I may to elaborate further, because I see the importance of this
22 issue. Even a conventional army will have elements that act
23 contrary to the will of the generals, of their superiors. For --

24 PRESIDING JUDGE: Mr Witness, I don't think we should
15:12:39 25 embark upon this.

26 THE WITNESS: Okay.

27 MR MARGAI:

28 Q. No, let's not go into that, General. Now, would I be right
29 in saying the converse of all what you have highlighted would be

1 true of a conventional army?

2 PRESIDING JUDGE: You're asking a question now that we
3 indirectly -- that we objected to before. I think for all your
4 purposes Mr Margai, you have achieved your goal. The witness has
15:13:06 5 told you a militia is not normally as trained, there's not as
6 much discipline and so on.

7 MR MARGAI: As My Lord pleases.

8 PRESIDING JUDGE: I think that again we can draw the
9 inference --

15:13:15 10 MR MARGAI: If Your Lordships are satisfied and the
11 inference will be drawn, I'm happy.

12 JUDGE ITOE: Mr Margai, you will have all the time to
13 conduct the case for your client, and you have indicated a number
14 of witnesses you will call. You can even call one, two or three
15:13:31 15 military experts if this particular issue is fundamental to the
16 defence of your client. I think that would be an appropriate
17 time, rather than seeking to cross some red lines at this stage
18 of the proceedings.

19 MR MARGAI: In addition to what Your Lordship has just
15:13:48 20 advised, I believe I could also establish my client's case
21 through other witnesses.

22 JUDGE ITOE: Yes, you could but not by breaking --

23 MR MARGAI: That's what I'm trying to --

24 JUDGE ITOE: By observing the procedural rules on which the
15:14:01 25 objection of the learned Prosecutor's objection was based. Which
26 objection, I think, was very reasonable in the circumstances.

27 MR MARGAI: Very much so, My Lord. I accept. That's why I
28 have rephrased the question and I thought by splitting them I was
29 not offending the Prosecutor or, rather, infringing on his

1 concerns. Be that as it may, I shall take the cue from the
2 learned Presiding Judge.

3 PRESIDING JUDGE: Mr Margai, we want to reassure you as
4 well that in cross-examination of witnesses you are indeed
15:14:36 5 entitled to present the case of your client as best as you can
6 and to the utmost of your abilities.

7 MR MARGAI: Within the confines of the Rules.

8 PRESIDING JUDGE: Absolutely.

9 MR MARGAI: I shall endeavour to.

15:14:49 10 PRESIDING JUDGE: Let's proceed, please.

11 MR MARGAI: Thank you.

12 Q. Now, General Richards, I think you said the longest period
13 you spent in Sierra Leone was six weeks?

14 A. Seven weeks.

15:15:05 15 Q. Seven weeks. Thank you. And you visited Sierra Leone five
16 times, if I got you correctly?

17 A. Correct.

18 Q. And the main thrust of your visit was to advise the British
19 Government as to how best you might assist - meaning the British
15:15:54 20 Government - assist, stabilise the situation in Sierra Leone?

21 A. Particularly in 1999. In 2000 I had more of an executive
22 role, in that I was asked by the President to co-ordinate his
23 defence forces with those of the British Army that were here.

24 Q. I really want to limit my question period-wise to 1999,
15:16:23 25 because, as the learned Presiding Judge said, anything beyond
26 that will be superfluous, although superfluity is not necessarily
27 an offence. Now, putting the question again, the main thrust of
28 your visit within that period was to see how best you could
29 advise the British Government to assist in stabilising the

1 situation in Sierra Leone?

2 A. That was the main thrust.

3 Q. That was the main thrust. And would you agree with me that
4 because of your commendable military experience as highlighted

15:17:20 5 here, General Khobe, General Shelpidi and others relied very much
6 on your advice?

7 A. I like to think I was of use to them.

8 Q. Thank you. And therefore they relied on your advice?

9 A. I thought they were taking it seriously, yes.

15:17:45 10 Q. Thank you very much. And the advice you gave was not
11 limited to the defence of Freetown, but Sierra Leone in its
12 entirety?

13 A. Correct.

14 Q. Thank you very much. Now, General, in terms of ferocity,
15:18:32 15 how would you describe the war in Sierra Leone?

16 PRESIDING JUDGE: Just for greater - pardon me,
17 Mr Witness - for greater precision, you mean the war, are you
18 extending that now to prior 1999 or are we still focused in your
19 question to --

15:18:45 20 MR MARGAI: Focusing it to 1999.

21 PRESIDING JUDGE: 1999. That's fine, thank you.

22 THE WITNESS: At a low tactical level it was extremely
23 violent.

24 MR MARGAI:

15:19:00 25 Q. Extremely violent. Thank you.

26 A. If I may though, at a higher level it was - I mean the
27 conduct, which is what you asked me - I'd say it was rather
28 chaotic.

29 Q. Thank you.

1 JUDGE ITOE: Where was it chaotic and where was it violent?

2 THE WITNESS: It was violent --

3 JUDGE ITOE: At a tactical level?

4 THE WITNESS: At a low tactical level. Where the fighting
15:19:34 5 was happening it was very intense and very violent.

6 JUDGE ITOE: Yes.

7 THE WITNESS: But, of course, soldiers and others don't
8 fight except when they are directed to a point in time and a
9 point on the ground as a result of more senior officers
15:19:51 10 conducting the overall fight. And at that level, if I may, I
11 felt it was -- like a lot of wars, it was very chaotic.

12 JUDGE ITOE: [Microphone not activated]

13 THE WITNESS: At a higher level it was chaotic. But again,
14 I know I'm not here as an expert, but of course that is quite
15:20:14 15 common.

16 JUDGE ITOE: This is what you observed. I mean, it's --

17 MR MARGAI: Thank you.

18 Q. Now, General Richards, in terms of brutality how would you
19 describe the war, again limiting it to the period 1999?

15:20:35 20 A. I've taken part, as you heard at the beginning, in a number
21 of military operations. I had never experienced the depths of
22 brutality that I witnessed in this country. That said, very few
23 people were actually doing it relative to the population as a
24 whole.

15:20:55 25 Q. Would you agree with me in saying that the level of
26 brutality was unprecedented in military history?

27 A. Well, sadly we all know that in Rwanda a few years earlier
28 it was on the same levels of brutality.

29 PRESIDING JUDGE: Again, I would say to you, Mr Margai,

1 that you're now venturing outside the scope of the evidence of
2 this particular witness. I mean, how do you compare the
3 brutality of what may have happened with the holocaust during
4 World War II. You're now asking the witness to make, really, a
15:21:39 5 judgment about this particular conflict vis-a-vis other
6 conflicts.

7 MR MARGAI: I'll be satisfied by just saying it was the
8 most brutal war. I'll accept that.

9 JUDGE THOMPSON: [Overlapping speakers]

15:21:49 10 JUDGE ITOE: [Overlapping speakers] it cannot be said to be
11 the most brutal war.

12 JUDGE THOMPSON: Yes, quite. I think it's difficult --

13 JUDGE ITOE: It means we'll go into comparison as to what
14 happened in World War I, World War II, Rwanda, which he has just
15:22:02 15 mentioned.

16 MR MARGAI: All right. My Lords, I will [overlapping
17 speakers]

18 JUDGE ITOE: [Overlapping speakers]

19 MR MARGAI: [Overlapping speakers] it was a brutal war. It
15:22:05 20 was a brutal war.

21 JUDGE THOMPSON: I join my colleagues in taking this
22 position because clearly historians have recorded conflicts in
23 the past and the controversy remains intense as to whether wars
24 that were fought over generations in this world were more brutal
15:22:25 25 than others. There are some historians I hear who are now
26 apologising for even saying that there was never a holocaust.

27 MR MARGAI: That intensity I'm sure will continue. Thank
28 you, My Lords. I'll be satisfied with the answer that it was a
29 brutal war. Emphasis brutal.

1 Q. Now, General Richards, do bulletproofs form part of the
2 military apparel in times of war? Bulletproofs.
3 A. Bulletproof vests?
4 Q. Bulletproof vests, yes.
15:23:17 5 A. Yes, they do nowadays in modern war.
6 Q. Thank you. And did you say in your evidence that CDF
7 fighters believed in some mystical power?
8 A. I remember --
9 JUDGE THOMPSON: He didn't say that.
15:23:40 10 MR MARGAI: Not quite that, but words to that effect.
11 JUDGE THOMPSON: He talked about invincibility; not
12 mystical. Nothing about mystical.
13 MR MARGAI: Invincibility, okay. I accept that, My Lord,
14 thank you.
15:23:50 15 THE WITNESS: Yes, and then --
16 JUDGE ITOE: Mr Margai, I know you may be haunted by the
17 lot that you know about this war --
18 MR MARGAI: I know very little about it, My Lord.
19 JUDGE ITOE: No, from your briefings.
15:23:59 20 MR MARGAI: Oh, I see.
21 JUDGE ITOE: You know, so don't allow a lot of words, you
22 know, to --
23 MR MARGAI: I shall use his own words, invincibility.
24 JUDGE ITOE: Okay, all right. Please go ahead.
15:24:11 25 PRESIDING JUDGE: So what's your question again?
26 MR MARGAI: He has answered the question.
27 Q. During your stay --
28 JUDGE ITOE: When you say he has answered the question, is
29 it something related to bulletproof jackets or so?

1 MR MARGAI: Yes, he had answered the bullet vest and also
2 in his testimony he talked about invincibility.

3 JUDGE THOMPSON: In other words, they believed in their
4 invincibility.

15:24:52 5 MR MARGAI: Yes, My Lords.

6 Q. Now, General, did they at any time tell you where they got
7 this invincibility?

8 A. I didn't know the detail. I knew there was a procedure
9 that they believed in that gave them this invincibility, but I
15:25:15 10 don't know more than that. I never witnessed it.

11 Q. Thank you. Now, General, in the British Army I take it
12 that there are rules of engagement, no doubt?

13 A. Yes.

14 Q. And are these rules made known to every military personnel?

15:25:56 15 A. Yes, very strictly.

16 Q. Very strictly. And naturally you would expect strict
17 adherence?

18 A. It's a disciplinary offence not to adhere to them.

19 Q. Thank you very much. In your strategising with General
15:26:35 20 Khobe, General Shelpidi, were you at any time told about rules of
21 engagement for the CDF?

22 A. Not to my knowledge. I can't remember any discussion of
23 them.

24 Q. Thank you very much. Now, talking about the forces that
15:28:08 25 fought together in the restoration of democracy, you had ECOMOG,
26 you had the remnants of the Sierra Leone Army and you had the
27 CDF. These were allied forces, if I may so use that word.
28 Allied forces.

29 A. Correct.

1 Q. Now, when you said that General Khobe had tactical control
2 over the Sierra Leone Army, did this include the other forces I
3 have mentioned, namely CDF and the remnants of the loyal Sierra
4 Leone Army?

15:29:21 5 A. Yes. I believe that he essentially ran the SLA and the CDF
6 albeit that ECOMOG was a distinct, different organisation. So
7 the Sierra Leonean element was being co-ordinated by Maxwell
8 Khobe.

9 Q. By Maxwell Khobe.

15:29:47 10 MR MARGAI: Thank you. Thank you very much, General, not
11 only for testifying but for stabilising the nation. Thank you.

12 PRESIDING JUDGE: Mr Prosecutor, you are ready to proceed
13 with your cross-examination now?

14 MR De SILVA: My Lord, I am.

15:30:39 15 PRESIDING JUDGE: Thank you.

16 CROSS-EXAMINED BY MR DE SILVA:

17 Q. General, as you've told us, you arrived first in Freetown
18 in January 1999 and it is clear from that alone, is it not, that
19 from your own knowledge you're in no position to tell us how CDF
15:31:09 20 forces conducted themselves before January 1999?

21 A. Correct.

22 Q. That's correct, isn't it? You're in no position to tell us
23 how they may have conducted themselves prior to January 1999. It
24 is quite clear, is it not, that from your presence in Sierra
15:31:39 25 Leone you got to know President Kabbah quite well?

26 A. Yes, sir.

27 Q. I'm going to put to you a description of President Kabbah
28 that was given to us by Mr Penfold on 9th February, page 42,
29 lines 20 to 27?

1 PRESIDING JUDGE: What's the date, Mr De Silva?

2 MR De SILVA: 9th February, page 42, lines 20 to 27.

3 PRESIDING JUDGE: Thank you.

4 MR De SILVA:

15:32:20 5 Q. He described President Kabbah as a decent, honest and
6 likable man, pretty inexperienced in military matters. Would you
7 agree with that?

8 A. At a tactical level, yes, because unless you're a soldier
9 you're going to be inexperienced in military matters.

15:32:44 10 Q. Would you agree with the first part as well that you found
11 him a decent, honest and likable man?

12 A. Yes.

13 Q. Well, you've told us about President Kabbah's -- your views
14 on his experience or otherwise in military matters. Did you get
15:33:18 15 the impression that President Kabbah delegated to Chief Norman
16 the vital role of defending this country?

17 A. No. That role was filled by General Maxwell Khobe who was
18 his chief of defence staff. I gained the impression that Chief
19 Norman was running the day-to-day business of the Ministry of
15:33:48 20 Defence and obviously had a relationship therefore with General
21 Khobe. But this, if I may, is why I emphasised the word
22 "tactical". That a politician, a statesman, can have good
23 military instincts but he may not translate those instincts into
24 effect on the ground for which he pays soldiers, and that was
15:34:19 25 General Khobe's task.

26 Q. Now, of course, your observations are being drawn entirely
27 from after your presence in Freetown in January 1999?

28 A. Yes, sir.

29 Q. There is no dispute, I don't think, that Chief Norman was a

1 loyal patriot. I think you described Chief Norman as a man of
2 determination and courage; correct?

3 A. Correct, sir.

4 Q. Those are qualities vital in a commander; would you agree?

15:35:04 5 A. And in many other walks of life, sir.

6 Q. I agree with that. But my question was vital in a
7 commander?

8 A. Certainly.

9 Q. That was the only question I asked, I think you'll
15:35:21 10 remember, General. You found him to be decisive and resourceful;
11 would you agree with that?

12 A. Yes, sir. He was.

13 Q. Also a good quality to have in any other walk of life. You
14 even told my learned friend Mr Jabbi at one stage this morning
15:35:49 15 that -- and correct me if I'm wrong -- Chief Norman was in a
16 position to take over the reins of government if he chose but did
17 not choose to do so. Is that correct?

18 A. I believe that is a fair judgment, given the chaotic
19 situation the country was in.

15:36:19 20 Q. You can't take over the reins of government unless you
21 control some military power. Would you agree with that?

22 A. If that's the way you want to take it over, yes.

23 Q. That is the way I put it to you. You were a witness to the
24 battle that drove the RUF out of Freetown in January 1999;
15:36:44 25 correct?

26 A. Correct.

27 Q. Would you agree that Chief Norman's leadership of the CDF
28 put up a remarkable showing? I mean the CDF under his leadership
29 put up a remarkable showing?

1 A. I think he was an inspirational figurehead but, as I've
2 emphasised, the hour-to-hour control of the CDF was exercised by
3 General Khobe. That's my observation, because it was part of
4 what purported to be a coherent defensive strategy.

15:37:33 5 JUDGE THOMPSON: Could you repeat that, did you say
6 inspirational figure?

7 THE WITNESS: I think he was an inspirational figurehead
8 and that had an effect on people's morale, My Lord.

9 MR De SILVA:

15:37:50 10 Q. I'm very glad you said that, General, because he was a man
11 people looked up to. When you look up to people you tend to obey
12 them. Do you agree with that?

13 A. Normally I would hope that's the case, yes, sir.

14 Q. His name was synonymous with the CDF, wasn't it?

15:38:28 15 A. At the time I arrived in January '99, I hadn't really
16 picked that up. He was there and met me as Assistant Deputy
17 Minister of Defence. It then became clear as I got to know the
18 situation that he was also, I think, termed a co-ordinator of the
19 CDF.

15:38:45 20 Q. Yes, but his name was synonymous with the CDF?

21 JUDGE THOMPSON: That is argumentative, isn't it?

22 MR De SILVA: Not really.

23 JUDGE THOMPSON: It could be.

24 MR De SILVA: Well, I'm sorry Your Lordship finds it
15:39:09 25 argumentative, but I shall try --

26 JUDGE THOMPSON: The "synonymous", I think it's
27 argumentative, isn't it? If I said the learned queen's counsel
28 De Silva's name is synonymous with making forthright objections.

29 MR De SILVA: I would agree with that.

1 JUDGE THOMPSON: It's still argumentative.

2 MR De SILVA: Your Lordship's trying to tease me.

3 JUDGE THOMPSON: I'll restrain myself.

4 MR De SILVA:

15:40:02 5 Q. Hinga Norman is a man - you know the expression, General -
6 who leads from the front. Would you agree with that?

7 A. Yes, I think he is exactly that sort of man but it's the
8 level at which he's leading that I'm perhaps not entirely in
9 agreement with you over. I think this is the nub of your

15:40:14 10 examination.

11 Q. It's not the nub, but I shall come to the nub in due course
12 if the nub's what we're looking for. You see, there were a
13 combination of people on the scene in January 1999. There were
14 the ECOMOG forces with their own commanders, there was the SLA
15:41:07 15 and there were the CDF forces. From the dealings you had with
16 the ECOMOG -- the senior ECOMOG officers, how did they treat
17 Chief Norman; as a subordinate or as an equal?

18 A. I think they would rather not have had to depend so much on
19 the Sierra Leone forces, both SLA and CDF, because they felt
15:41:44 20 rather --

21 JUDGE ITOE: Please.

22 MR De SILVA: It's a simple question.

23 JUDGE ITOE: You had better put the question again because
24 we want an answer to a very simple question.

15:41:53 25 MR De SILVA:

26 Q. It's a very simple question, General, and generals are
27 meant to be quite direct, aren't they? Did the ECOMOG commanders
28 treat Chief Norman as an equal or as a subordinate?

29 A. I would say as an equal.

1 Q. Thank you. It wasn't such a difficult question, was it,
2 really? Now, in the battle for Freetown you have described a
3 very vivid moment when you tell My Lords of an incident where
4 Chief Norman intervened to save the life of a captive, as I
15:43:08 5 understand your evidence. Is that correct?

6 JUDGE ITOE: The lives of captives.

7 MR De SILVA:

8 Q. The lives of captives. Is that correct?

9 A. It certainly had that effect. Whether his primary purpose
15:43:23 10 in crossing the bridge was to save their lives, I don't know, but
11 it had the effect of saving their lives.

12 Q. Yes. It is a most significant fact that you have given
13 evidence about because what you're telling the Court is that,
14 with your own eyes, you observed Chief Norman playing his part in
15:43:45 15 saving the lives of captured enemy combatants. Would that be
16 correct?

17 A. Correct.

18 [CDF21FEB06D - SGH]

19 Q. To kill a captured enemy combatant it would be a war crime,
15:44:04 20 wouldn't it? Would you agree?

21 A. It would, sir.

22 Q. If you learnt that a man under your command had murdered a
23 surrendering enemy combatant, what would you do?

24 MR JABBI: My Lords, that is a hypothetical question.

15:44:53 25 JUDGE THOMPSON: Probably a hypothetical question in a
26 sense that it is put to someone who may well venture perhaps an
27 answer budding on being an expert, although he's a commander --
28 because I don't know how a hypothetical -- you are trying to
29 elicit from the witness what he would do as a commander if that

1 happens. Is that what you say?

2 MR De SILVA: My Lord, perhaps I can put the matter beyond
3 doubt in this way. Sorry, My Lord.

4 JUDGE THOMPSON: Go ahead.

15:45:21 5 MR De SILVA:

6 Q. You knew, of course, that Chief Norman had been
7 commissioned at Mons Officer Cadet School? You did, didn't you?

8 A. I discovered it during that week I was here.

9 Q. Yes, yes. He was a military man, wasn't he? Do you agree
15:45:46 10 with that?

11 A. He started life as a military man. I don't know what he
12 did after he left the army, but yes.

13 Q. He exhibited all the -- from what you saw of then, all the
14 sort of leadership which we have been talking about that you
15:46:00 15 would come to associate with a military man?

16 A. I felt here was a man that we could do business with, yes.

17 Q. Yes. You knew he had served with UN forces in the Congo.

18 A. Again, I was told that subsequently, yes.

19 Q. You knew he had served with the British Army on the Rhine?

15:46:31 20 A. I discovered it later, yes.

21 Q. Yes. From all those matters we have been going into, you
22 would say, would you not, that here was a man who clearly did or
23 ought to have understood the rules of humanitarian warfare?

24 A. Which is why I assumed he stopped the killing of those
15:46:59 25 prisoners.

26 Q. Thank you very much.

27 A. But if I may just add - I know I am treading into areas of
28 expertise - at the same time on the -- on the same day he tried
29 to do something similar and he failed to do it.

1 Q. Well, did he? You see, I am a little bit troubled because
2 I have here -- because you know, General, that the killing of
3 captured enemy combatants forms part of this indictment against
4 Chief Hinga Norman, don't you?

15:47:44 5 A. I am sorry if I'm meant to, but I don't know what the
6 indictment is against him.

7 Q. Well, we know -- we know that -- I don't have to refer to
8 every count, but we know that the killing of people taken in
9 combat - captives - forms part of this indictment.

15:48:01 10 A. Okay.

11 Q. That being so, your evidence that you have just given about
12 him playing this role that you have described, you now see how
13 significant it is?

14 A. Okay.

15:48:17 15 Q. We have been given a detailed summary of your evidence and
16 can you take these take a look at it. Half a page.

17 PRESIDING JUDGE: What are you trying to achieve with that
18 if I may, Mr DeSilva?

19 MR De SILVA: Well, My Lord, what I am trying to -- it will
15:48:37 20 be apparent from my next question, the moment the witness has had
21 a chance to glance at it.

22 THE WITNESS: Yes.

23 MR De SILVA:

24 Q. General, is there -- on this very significant matter --

15:49:06 25 JUDGE ITOE: He has read it now, Mr De Silva.

26 MR De SILVA: Yes.

27 JUDGE ITOE: What do you intend to do? I am re-echoing the
28 question put to you by my learned colleague.

29 MR De SILVA: Yes, My Lord, I am going to ask the witness.

1 Q. Is there a single word in that about the evidence you have
2 just given about Chief Norman acting to save the lives of
3 captured enemy combatants?

4 JUDGE ITOE: Mr De Silva, is that statement, that summary,
15:49:42 5 even if it were a detailed statement, was it supposed to be
6 exhaustive of all the testimony that this witness was supposed to
7 proffer before this Court?

8 MR De SILVA: No, My Lord. My next question is going to
9 be, I suppose -- My Lord, the witness has agreed that the
15:50:04 10 evidence he gave in relation to Chief Hinga Norman's acting to
11 save the life of captured enemy combatants is highly significant.
12 I am asking him to look at the summary we have got in order to
13 answer my next question, which is:

14 Q. Would you say that was a fair summary of your evidence?

15:50:30 15 MR JABBI: My Lords.

16 JUDGE ITOE: No, no, no.

17 PRESIDING JUDGE: No. Why would the witness [Overlapping
18 speakers]. How is this relevant to what we have to deal with
19 today? It may be that the summary is indeed a summary of a
15:50:42 20 summary. But what does it change to the value of the evidence of
21 this witness?

22 MR De SILVA: Very well, My Lord.

23 JUDGE THOMPSON: Let me complicate it. Did he prepare that
24 summary?

15:50:52 25 MR De SILVA: My Lord.

26 JUDGE ITOE: He only arrived yesternight.

27 JUDGE THOMPSON: Did he prepare that summary?

28 MR De SILVA: My Lord, he does not have to prepare the
29 summary to say that it doesn't adequately represent his evidence.

1 JUDGE THOMPSON: Oh, no, that is not what he is here for.
2 Certainly not. He is not here to do that and let me complicate
3 the matter further by saying he is here to give evidence on oath.

4 THE WITNESS: Exactly.

15:51:13 5 JUDGE THOMPSON: And it is the principle of orality that
6 governs this Court. Even if he produced a two paragraph summary,
7 he is entitled to amplify, elaborate and elucidate upon what he
8 might have given to the Defence. In much the same way as this
9 Court allowed prosecution witnesses over a period of time to
15:51:37 10 amplify, elaborate and extend their witness statements under the
11 principle of orality, saying at the end of the day it is what
12 these witnesses say from the witness stand that will be evaluated
13 and not what they might have told the investigators earlier on.
14 Of course, this does not deprive the adversarial party of the
15:52:06 15 opportunity to put to them prior inconsistent statements. But
16 remember, as my learned brothers have warned you, this is a
17 summary. It is not a witness statement.

18 MR De SILVA: My Lord, I shall take your Lordship on
19 Your Lordship's invitation.

15:52:29 20 Q. I take it that you have supplied details of this incident
21 to counsel for the Defence?

22 A. I think "details" is the wrong word. I, like you, sir, I
23 am in a very busy job. I was asked for something that I can see
24 this was based on, which I e-mailed about five days ago.

15:52:45 25 Q. Yes. Can I ask you this: Have you provided a much more
26 extensive statement to the Defence?

27 A. More extensive but not much more extensive.

28 Q. Right. Does that statement deal with the very incident you
29 have been giving evidence about?

1 MR JABBI: My Lords, after this sort of explanation that
2 Your Lordships have made, especially with the references to
3 orality and the fact that a witness is entitled to amplify his
4 statement or his evidence in court, I think that question is
15:53:21 5 totally irrelevant, unnecessary and unfair.

6 PRESIDING JUDGE: Well, your objection is overruled.

7 JUDGE THOMPSON: Yes, I think counsel can put it.

8 MR De SILVA:

9 Q. Is that -- this goes to -- I don't want to say credibility
15:53:36 10 because you are much too distinguished an officer for me to put
11 that to you in that way. But what I say to you is this: In a
12 fair representation of your evidence to the Defence, the incident
13 you spoke of, in which Chief Norman saved somebody's life or
14 saved people's lives, did you incorporate that in the statement
15:54:02 15 you made?

16 A. I did, yes.

17 MR De SILVA: As My Lord Thompson mentioned previous
18 inconsistent statements, well I call for that statement. I call
19 for that statement.

15:54:20 20 PRESIDING JUDGE: We have allowed that to be done with a
21 previous witness and if there is any statement there - and
22 obviously the evidence in Court would appear just on the face of
23 my reading as well - the descriptive under what the General is
24 likely to have said in Court, that part is not contained therein
15:54:39 25 and I would say that that statement should be provided to you and
26 we will give you the time to look at it in this recess that we
27 are going to take.

28 MR De SILVA: My Lord, how long is Your Lordship's recess
29 likely to be?

1 PRESIDING JUDGE: How long do you need?

2 MR De SILVA: I am a quick reader. I am slow learner, but
3 a quick reader.

4 PRESIDING JUDGE: It will be the usual recess of the
15:55:02 5 afternoon, so we will not take another recess after that.

6 MR De SILVA: If your Lordship please.

7 PRESIDING JUDGE: Please have that statement available to
8 the Prosecution.

9 MR JABBI: As your Lordships please.

15:55:12 10 PRESIDING JUDGE: Thank you. Court is in recess.

11 [Break taken at 3.55 p.m.]

12 [Upon resuming at 4.30 p.m.]

13 PRESIDING JUDGE: So you have been given a copy of the
14 statement?

16:31:10 15 MR De SILVA: Yes, I have.

16 PRESIDING JUDGE: And you have had enough time to peruse
17 the documents?

18 MR De SILVA: I have, Your Honour.

19 PRESIDING JUDGE: Are you ready to proceed?

16:31:20 20 MR De SILVA: I am.

21 PRESIDING JUDGE: Thank you.

22 MR JABBI: My Lords, I am sorry to interpose at this stage,
23 but I have just been given a copy of a decision by Your
24 Lordships, the written version of the oral decision on this issue
16:31:37 25 which --

26 PRESIDING JUDGE: That was filed this morning.

27 MR JABBI: Yes, My Lord. I got a copy only during the
28 recent break. My Lords, I just want to draw attention to
29 paragraph 13 of that decision.

1 PRESIDING JUDGE: Have you read the conclusion in the very
2 last paragraph and the order at the end?

3 JUDGE ITOE: At the tail end.

4 MR JABBI: Yes, My Lord, I have. It is merely paragraph 13
16:32:12 5 I just want to draw attention to which, of course, leads
6 ultimately to that order, the final order.

7 My Lord, paragraph 13 reads --

8 PRESIDING JUDGE: But we know the decision, we filed it
9 this morning. So what is it you want to address the Court about?

16:32:30 10 MR JABBI: My Lord, in the light of what has just happened
11 in respect of the request for the statement of this witness to be
12 disclosed to the Prosecution, it would not seem that paragraph 13
13 has been satisfied. Notwithstanding that the disclosure has been
14 now done, I thought nonetheless I should bring it to the
16:32:45 15 attention of the Court.

16 PRESIDING JUDGE: But you should read the --

17 JUDGE ITOE: Read it. Read paragraph 13 and then the tail
18 end of the decision. You may read it to the Court.

19 PRESIDING JUDGE: For the benefit of all concerned, read
16:33:12 20 paragraph 13 as well as the last paragraph and the order.

21 MR JABBI: Well, the order doesn't --

22 JUDGE ITOE: You can start from paragraph 13 which you
23 referred to.

24 MR JABBI: Yes, My Lord. The last paragraph --

16:33:32 25 JUDGE ITOE: From paragraph 13 which you referred to.

26 MR JABBI: Yes, My Lord, I'm going to read paragraph 13, I
27 just want to make an observation. The last paragraph is the
28 disposition and it is paragraph 15. So I now read 13:

29 "For the Prosecution to succeed in its application for said

1 disclosure pursuant to the Chamber's discretionary
2 authority" --

3 THE INTERPRETER: Learned counsel is going too fast.

4 MR JABBI: My Lord, I am sorry. I forgot that.

16:34:13 5 Paragraph 13 of the Chamber's decision of 21st February 2006,
6 being the Decision on Prosecution Request For Order to Defence
7 Pursuant to Rule 73 Ter (B) to Disclose Written Witness
8 Statements. Paragraph 13 reads as follows:

9 "For the Prosecution to succeed in its application for such
16:35:03 10 disclosure pursuant to the Chamber's discretionary
11 authority in the matter, the Prosecution must demonstrate
12 by prime facie evidence that by failure to disclose such
13 defence witness statements the Prosecution will suffer
14 undue or irreparable prejudice."

16:35:40 15 The last paragraph which is sub-headed "Disposition,"
16 paragraph 15, reads as what follows:

17 "Based on the foregoing analysis, the Chamber, at this
18 point in time, denies the Prosecution motion for the
19 disclosure of defence witness statements."

16:36:12 20 JUDGE ITOE: Dr Jabbi, there is a paragraph before that.

21 MR JABBI: That is paragraph 14, My Lord.

22 JUDGE ITOE: Yes.

23 MR JABBI: May I read as one as well, My Lord?

24 JUDGE ITOE: Yes, read it.

16:36:25 25 MR JABBI: Paragraph 14 reads as follows:

26 "Guided by the foregoing principles, the Chamber finds that
27 no prima facie showing of undue or irreparable prejudice
28 has been demonstrated by the Prosecution to justify the
29 exercise by the Chamber its discretion in the matter. The

1 fact that summaries of defence witness statements are not
2 comprehensive is not a conclusive factor in determining the
3 issue, given that such an assessment cannot be meaningfully
4 embarked upon without the presentation of oral testimonies.
16:37:42 5 However, the Chamber does not rule out the possibility of
6 ordering the production of defence witness statements if
7 such actions were appropriate to satisfy the interests of
8 justice in the future."

9 That is paragraph 14, My Lords.

16:38:19 10 PRESIDING JUDGE: So what is your observation?

11 MR JABBI: My Lord, my observation is that, first of all,
12 having not had access to this decision during the exchange
13 concerning the witness statement of the present witness, we were
14 not in the position to refer to these portions that I have read.

16:38:44 15 PRESIDING JUDGE: I can assure you, Dr Jabbi, that I am and
16 I was very much aware of that decision that we wrote unanimously
17 and filed this morning. So when we ordered you to produce the
18 statement to the Prosecution we were very much aware, even though
19 you were not. So it is not without our own knowledge of that
16:38:57 20 decision.

21 MR JABBI: As Your Lordships please. I will stop that far,
22 My Lord.

23 JUDGE THOMPSON: I wanted merely to say that from the
24 wording of Rule 73 ter which was the subject or the provision
16:39:26 25 under which the Prosecution moved their motion in respect of
26 which their decision was given, doesn't it follow logically that
27 the rubric under which Rule 73 ter falls is that for the purpose
28 of pre-defence conference. In other words, the disclosure
29 obligation there is in the context of pre-defence conference, not

1 a disclosure or production of a statement for the purposes of
2 establishing prior inconsistent statements.

3 PRESIDING JUDGE: And we were quite precise to say, "At
4 this point in time."

16:40:00 5 JUDGE THOMPSON: Yes.

6 PRESIDING JUDGE: "Point of time" meaning the pre-defence
7 conference.

8 JUDGE THOMPSON: Quite right. Rule 73 ter is only under
9 the rubric of pre-defence conference. In other words, there is
16:40:14 10 no compelling obligation on the part of the Defence to disclose
11 to the Prosecution by way of what I would call a corollary right
12 to witness statements of the defence. Whilst in this particular
13 context where we have in fact ordered you to produce for their
14 inspection the previous statement -- is in the context of
16:40:52 15 establishing prior inconsistent statements. It is not a
16 disclosure per se.

17 MR JABBI: As Your Lordships please.

18 PRESIDING JUDGE: Thank you, Dr Jabbi.

19 MR JABBI: Thank you.

16:40:58 20 JUDGE ITOE: And I think we need to make it clear to
21 learned counsel in the Defence teams that what we are saying, in
22 effect, is that should it become necessary for the Court to order
23 the disclosure of a defence witness's statement to the
24 Prosecution --

16:41:17 25 PRESIDING JUDGE: Of all of them.

26 JUDGE ITOE: -- we would do that. As far as all defence
27 witnesses are concerned. I think that's the message that
28 decision is sending across.

29 THE WITNESS: My Lord, may I --

1 PRESIDING JUDGE: Yes.

2 THE WITNESS: I think, if I can, as someone who is new to
3 this process -- that if that is the case, it must be spelled out
4 to your witnesses that what they write in a hurry on a Sunday
16:41:47 5 evening may end up being discussed in detail here in this Court,
6 because that certainly was not explained to me.

7 PRESIDING JUDGE: Well, Mr Witness, this is the work and
8 the duty of whoever is calling you as a witness to do so with
9 you. We have to take it as it is. So I don't know what
16:42:04 10 transpired between you and counsel. This is --

11 THE WITNESS: I wasn't getting at you, sir. It is for the
12 Court generally to make sure they understand.

13 PRESIDING JUDGE: Thank you, Mr Witness.

14 MR De SILVA:

16:42:19 15 Q. General, if I might come back to the battle for Freetown
16 which you observed during which you gave us evidence of the
17 actions of Chief Norman. Can I get certain things absolutely
18 clear. You were observing that battle. Were you in uniform of
19 any kind?

16:42:41 20 A. I was.

21 Q. Were you the only British officer there observing?

22 A. Almost certainly yes. I can't be a hundred per cent
23 certain. I didn't have my immediate protection team in the
24 vicinity, but they were taking up positions from which they could
16:43:17 25 engage anyone who might wish to attack us.

26 Q. Yes. So anyone with their wits about them may well have
27 seen what I am going to call "foreign observers" observing the
28 battle for Freetown?

29 A. Yes, that is a possibility. I can't guarantee it.

1 Q. Yes. Quite apart from you and any other British officers
2 there may or may not have been, there was General Khobe of
3 course?

4 A. I was with General Khobe.

16:43:59 5 Q. Yes. Therefore, when you tell us that you saw and
6 witnessed Chief Norman remonstrating with, to use your words,
7 government forces to spare a captive or captives, that's got to
8 be seen in the light of this battle being observed by people such
9 as yourself?

16:44:48 10 A. I saw someone taking some risk with his own life, going
11 across a bridge 200 yards from me. Whether he saw me or not, you
12 can put that light on it.

13 Q. Yes. Thank you.

14 A. I saw someone taking some risk with his own life, going
16:44:48 15 across a bridge 200 yards from me. Whether he saw me or not, you
16 can put that light on it.

17 Q. Yes. Thank you. I do. You saw chief Norman risking his
18 life in the thick of battle?

19 A. The immediate action was over, but there was obviously a
16:45:17 20 lot of excitement in the air. But not in the thick of battle,
21 no. It was just finished.

22 Q. You told us he was remonstrating with government forces.
23 In fact, he was trying to prevent a CDF unit from carrying out an
24 execution?

16:45:46 25 A. I think they were combined SLA and CDF.

26 Q. Would you like to look at your statement, please. And I do
27 this only to refresh your memory.

28 A. This is why I said this is dangerous to use this, when I
29 wrote it on a Sunday evening. I have already said on oath that

1 there was a combined CDF/SLA counterattack co-ordinated by
2 ECOMOG. I did put in this CDF, but this is why I would have
3 liked to have had the opportunity to go through it again, because
4 I am not certain, on oath, that it was exclusively the CDF.

16:46:25 5 Q. General, My Lords have heard what you have to say. Can you
6 remember when you produced this statement for the Defence? On
7 which Sunday?

8 A. I think it was nine days ago now.

9 Q. Just nine days ago?

16:46:33 10 A. Yes.

11 Q. You knew you were going to come here to give evidence
12 before an international war crimes tribunal. You have heard, and
13 you have agreed with Mr Margai, that this was a particularly
14 brutal war. Agreed?

16:47:18 15 A. Agreed.

16 Q. It is a conflict that has brought us all to this Court. As
17 a military man of considerable distinction, is it your suggestion
18 that you prepared a report --

19 MR JABBI: My Lord.

16:47:38 20 MR De SILVA: Please.

21 MR JABBI: Yes, My Lords, the witness is not talking about
22 preparing a report.

23 PRESIDING JUDGE: Agreed. Objection sustained. We have
24 evidence that he did prepare a statement.

16:48:04 25 MR De SILVA: A statement.

26 Q. You prepared a statement, I am sorry. As an officer of
27 distinction, you know how important it is as a military man to
28 prepare reports and statements when required to do so with
29 accuracy and forte, don't you?

1 A. Of course. And if I had been preparing a report for
2 Their Lordships, I would have per force taken more time over it.
3 But it was explained to me that I was supposed to give, if I had
4 time, a summary of what I would say, and then on oath I would be
16:48:53 5 able to elucidate. And that is what I have done, sir.

6 Q. Just help us. Can you please refresh your memory from the
7 second paragraph of your statement?

8 A. Yes.

9 Q. Does the second paragraph of your statement deal with the
16:49:25 10 fact that it was a CDF unit that was about to carry out the
11 executions; yes or no?

12 A. It doesn't mention anyone other than the CDF, correct.

13 Q. Yes, thank you very much. Indeed, is it correct that you
14 were actually present with Chief Norman when it was drawn to his
16:50:11 15 attention that a surrendered combatant had been killed?

16 A. That is not in my summary and I don't recall seeing, as I
17 said earlier, Chief Norman until he appeared on the bridge,
18 because he was not with me and General Khobe. And I said to
19 General Khobe, "Who is that man going across the bridge?" So no,
16:50:51 20 I'm afraid I don't agree with that.

21 Q. Well, let's look at this a little more carefully. Have you
22 read the whole of the second paragraph, which isn't very long?

23 A. Yes.

24 MR JABBI: My Lords, it would seem at this stage, My Lord,
16:51:06 25 that the Prosecutor is, in fact, going into the detailed content
26 of this document. And if indeed that is what he is doing, then
27 the need to tender it should be considered by him and put to the
28 Court, My Lord.

29 PRESIDING JUDGE: Well, as you know, there is two ways to

1 deal with that and that has been quite consistent in this trial
2 and the other trials we are presiding to. That one is entitled
3 to either use the statement to refresh the memory of a witness
4 and/or use a statement to put a prior inconsistent statements.
16:51:44 5 So it has been done by yourself or your colleagues for the
6 Defence on occasions when dealing with prior witnesses for the
7 Prosecution. So there is nothing improper for the time being.
8 They may wish to proceed that way but we have to wait and see
9 where they are.
16:51:59 10 JUDGE ITOE: Or what they will do with the statement later
11 on.
12 MR JABBI: As Your Lordships please.
13 MR De SILVA: To make it quite plain, for the moment I am
14 using it as a memory refreshing document.
16:52:09 15 JUDGE THOMPSON: Quite.
16 PRESIDING JUDGE: That's what we understood.
17 MR De SILVA: And that's why I am inviting the General to
18 read with some care paragraph 2 of his statement. Particularly
19 the last sentence.
16:52:43 20 Q. General, can you please answer this question: In your
21 statement do you say that you were together with Chief Norman
22 when he received certain information? I am paraphrasing it?
23 A. That was after the incident which we have been discussing.
24 We met together with General Khobe and I, at that stage, was with
16:53:14 25 him, yes.
26 Q. Very well. When you were with Chief Norman, was some
27 information received?
28 A. Yes, at that point some more information about another
29 crisis further up the river line was received.

1 Q. Was the information -- well, I'm sure a lot of information
2 was received, but was one of the items of information that a
3 prisoner had been killed?

4 A. Yes. We were told by one of my liaison officers of an
16:54:03 5 incident rather similar to what we had just witnessed, but on
6 this occasion, despite Chief Norman making clear he wanted the
7 prisoners -- this is my understanding through the liaison
8 officer, I hasten to add this is not something I observed with
9 myself, but I had confidence in the liaison officer. He is very
16:54:22 10 good man.

11 PRESIDING JUDGE: He was your liaison officer?

12 THE WITNESS: My liaison officer, because if I may, My
13 Lord, what we did was sent teams out doing what I was doing, but
14 about four or five people. And there was a similar incident and
16:54:41 15 there was some captured RUF, and they were clearly going to, we
16 thought, kill them -- the liaison officer thought kill them, and
17 Chief Norman, apparently, told them to behave themselves and they
18 weren't to do that. But as soon as he disappeared, the liaison
19 officer said they went ahead and killed, to my knowledge, at
16:55:01 20 least one of them. I don't know about any more.

21 MR De SILVA: Very well.

22 Q. Now, you didn't tell us that this morning, did you?

23 A. No, I wasn't asked that and I would have done, but I was
24 prevented.

16:55:26 25 Q. Oh, right. So you were together with Chief Norman. Let me
26 get this absolutely right, so there is no doubt about things.
27 You were with Chief Norman; correct?

28 A. After the incident we have been discussing, we then stood
29 together for a short period, yes.

1 Q. When you were with Chief Norman, a trusted liaison officer
2 brought you notice that at least one of the prisoners had been
3 murdered; correct?

4 A. Not exactly. If I may, what happened was the group broke
16:55:59 5 up at the bridge; i.e. General Khobe, myself and Chief Norman,
6 having discussed what had happened there, we then broke up and
7 went our separate ways. I stayed with General Khobe who was my
8 host as the nearest equivalent to me. The liaison officer had
9 radioed to me on my radio that there was another little battle
16:56:25 10 starting at another place further up the river line. He said he
11 thought that it looked as if they might, having captured some
12 CDF, might kill them. Sorry, the CDF having captured the RUF
13 might kill them. And I use term generically CDF/SLA. We didn't
14 really know who was who.

16:56:57 15 Chief Norman then appeared. This is what my liaison
16 officer told me and, again, remonstrated with this group of
17 government forces CDF or SLA, and they behaved for a while while
18 he was there, but when he left at least one of those people was
19 still then killed. That is the message I got from my liaison
16:57:19 20 officer which I recount in the bottom of the second paragraph.

21 Q. Yes. Which you have told us about, I think, two or three
22 times. When this information was relayed that a prisoner had
23 been killed, were you with Chief Norman at the time?

24 A. Yes. We then met again in what was a very confused
16:57:44 25 situation to have a conference, for want of a better term, which
26 we'd already agreed to hold to sort of take stock and at that
27 meeting, and I think it was in Cockerill Barracks Chief Norman
28 was told that it had gone wrong at the second incident, that he
29 hadn't been obeyed, and I remember him saying how angry he was,

1 and that is all that had happened.

2 Q. He was angry that he had not been obeyed; is that correct?

3 A. Yes, correct.

4 Q. Obeyed by CDF forces?

16:58:20 5 A. Well, as I said, sir, I wasn't certain if it was CDF or SLA
6 but government forces. I thought it was CDF, but I can't be
7 certain. It was very confused.

8 Q. CDF is what you say in your statement?

9 A. I do.

16:58:58 10 Q. Thank you. Now, as a military man, if you will receive a
11 report of the matter of a prisoner taken in battle, what is it
12 your duty to do?

13 MR JABBI: My Lord, in so far as that question refers to
14 the witness, it is hypothetical, and in so far as it probably
16:59:25 15 refers to Chief Hinga Norman, it is an unfair question and
16 inapplicable because there is no evidence before this Court that
17 Chief Norman was a military man in the context. The question is:
18 "As a military man, if so and so and so, what would be your duty
19 to do so?" If Chief Norman is being portrayed in that statement
16:59:59 20 as the military man then, of course, it is inaccurate and unfair
21 and if the witness is the one being referred to in that
22 statement, then the statement is hypothetical, My Lord.

23 PRESIDING JUDGE: Well, I don't know what the Prosecution
24 is aiming at exactly in this respect, so we will see how the
17:00:20 25 response --

26 JUDGE THOMPSON: Before he responds, but what makes it so
27 logical to move from the specific hypothetical situation to the
28 extended reasoning that the question is aimed at eliciting some
29 response in respect of what would have been Chief Norman's role

1 in terms of a response to the situation. Why is it necessary to
2 extend logically that question? Because I thought a hypothetical
3 question simpliciter.

4 MR JABBI: It is.

17:01:00 5 JUDGE THOMPSON: Why are you being so argumentative about
6 it? I don't think that that question is ambiguous. He was
7 addressing -- he said as a military man.

8 PRESIDING JUDGE: Which the witness is.

9 JUDGE THOMPSON: Which the witness is.

17:01:13 10 PRESIDING JUDGE: Not only now, but then as well.

11 JUDGE THOMPSON: Yes, quite. What would have been your
12 response? It's you now who are extending that question.

13 MR JABBI: My Lord --

14 JUDGE THOMPSON: Yes, go ahead.

17:01:25 15 MR JABBI: In the context and in view of the previous
16 questions and answers that have been adduced, I believe it is
17 completely legitimate to come to that inference.

18 JUDGE THOMPSON: But I don't think, with respect, learned
19 counsel, it is legitimate for counsel to read into questions
17:01:41 20 asked by the Prosecution, straightforward questions, quite
21 specific questions, even though hypothetical, what they do not
22 intend at this stage. If a second question had come after the
23 answer to that, bringing Chief Norman into the context, then
24 perhaps your objection would have been appropriate.

17:02:09 25 MR JABBI: That is to say the objection in relation to
26 Chief Norman.

27 JUDGE THOMPSON: Well, that is what I'm saying. But I am
28 now asking I don't follow you on this one.

29 MR JABBI: There are two aspects of my objection, My Lord.

1 First of all --

2 JUDGE THOMPSON: The second one, I am saying, is perhaps
3 premature. You are being pre-emptive.

4 MR JABBI: My Lord, my learned senior, the Prosecutor, has
17:02:32 5 been quite pre-emptive in that way.

6 JUDGE THOMPSON: I, quite frankly, do not see how
7 impermissible this question is at this point in time.

8 MR JABBI: My Lord, I raise two objections to the question.
9 One, that it is hypothetical.

17:02:46 10 JUDGE THOMPSON: And the other that it extends to your
11 client.

12 MR JABBI: Yes, My Lord.

13 JUDGE THOMPSON: In other words, there is some insinuation
14 there?

17:02:55 15 MR JABBI: So even if the second objection is not upheld,
16 the first objection still stands and a ruling may be necessary on
17 it now.

18 PRESIDING JUDGE: But before we do ask the Prosecution to
19 respond to this, I would like to understand what you mean by
17:03:11 20 hypothetical when I understand the evidence of this witness to be
21 that he was there himself with Chief Norman when this information
22 was reported to Chief Norman. So there is nothing hypothetical
23 about that because this is his evidence, as such. He has been
24 given a factual scenario and Chief Norman was informed of that,
17:03:34 25 these facts at that time, so this is the evidence of this
26 witness. He is asking the question, I understand it, is to be:
27 You were there at that time, you were a military officer, and
28 what is a military officer supposed to be doing when there is a
29 report of this? There is nothing hypothetical about that. I

1 need to be enlightened. I am missing something here.

2 MR JABBI: With respect, even in your restatement of that
3 question, the word "supposed" has been used and that makes it
4 equally objectionable, being suppositional.

17:04:14 5 JUDGE THOMPSON: But isn't the suggestion: What would you
6 have done? Is that hypothetical? If, in your capacity -- in
7 other words, given the scenario that you have narrated to us, you
8 were there, and the question is asked: What would you have done?
9 Would that be hypothetical?

17:04:29 10 MR JABBI: Yes, My Lord.

11 JUDGE THOMPSON: Why?

12 MR JABBI: By my understanding of that terminology. If you
13 were the one, as a military officer what would you have done?
14 That is the full statement, My Lord. I do not know if a
17:04:53 15 hypothesis can be otherwise better founded than that formulation.

16 JUDGE THOMPSON: I would have thought it was merely in the
17 subjunctive mode, that is all.

18 MR JABBI: My lord, subjunctives are not of factual nature.

19 PRESIDING JUDGE: Very well, we heard you.

17:05:09 20 Mr Prosecutor --

21 JUDGE THOMPSON: Not necessarily of a hypothetical nature.

22 PRESIDING JUDGE: You wish to respond to this, Mr De Silva?

23 MR DE SILVA: [Microphone not activated] I will. My Lord
24 Thompson accurately portrayed the situation when we've got this
17:05:33 25 witness saying something which we never heard about before in his
26 evidence-in-chief about an incident relating to the murder of a
27 captive being brought to the attention of the first accused
28 whilst this witness is in a position to testify about it.

29 Now, one of the things that this Court has got to

1 examine -- whether Your Lordships find that the first accused was
2 a person in command or not is matter for Your Lordships at the
3 end of the day. But it is relevant, in my respectful submission,
4 at this stage for me to lay the ground work for submissions to be
17:06:16 5 made on evidence at the end of the case. And that is all I'm
6 seeking to do. That is all I'm seeking to do in our respectful
7 submission. We are perfectly entitled to pursue this line of
8 cross-examination with the one witness who was there.

9 PRESIDING JUDGE: Please proceed.

17:06:34 10 MR De SILVA: I am obliged.

11 Q. Now, General, you heard this interchange, of course. And
12 so I can come back to question, if I can remember it, that I
13 asked you. As an officer, if you learn that a prisoner --
14 captured prisoner has been killed, murdered, what is it your duty
17:07:12 15 to do?

16 A. I would do what General Khobe did on that occasion, which
17 was to say I will investigate this allegation and let you know
18 what the outcome is. It was up to the military chain of command
19 to deal with that incident. And, of course, I don't know what
17:07:36 20 subsequently happened, but we all left convinced that
21 General Khobe would be taking robust action to investigate the
22 details and the facts. Of course, all of it was second-hand.
23 None of us saw that incident happen. So I felt it was right to
24 do that.

17:07:57 25 Q. Is there one word of that in the statement you made?

26 A. No, but there are lots of things I have said that aren't in
27 the statement. Which is why I thought I had come here to the
28 court.

29 Q. Clearly. When you were making this statement to the

1 Defence were you endeavouring to assist the Court in every way
2 you could?

3 A. As it was explained to me - and I have a letter from one of
4 the defence team - because of some confusion about what my role
17:08:47 5 and that potentially of General Riley was, people in London asked
6 for more information essentially and I was sent, via the Ministry
7 of Defence in London, a list of things that I might be questioned
8 on and the Court would like to hear my evidence and views on. I
9 then took some trouble on that Sunday evening, when I have many,
17:09:17 10 many things to do in preparation for Afghanistan, to write what
11 you now have in front of you. And that the questions relate to
12 the information I was given by the defence team through the
13 London Ministry of Defence. So, of course, to answer your
14 question, I was doing everything I could to help the Court. But
17:09:45 15 it was not clearly explained to me what the Court really wanted
16 and I thought I am coming here to give -- many thousands of miles
17 to give oral evidence. I didn't understand the significance of
18 what I wrote, which was really to help the team -- defence team
19 understand what I might be able to say subsequently.

17:10:07 20 Q. Can you please go to the second page of that statement. It
21 is the second main paragraph, which begins "Throughout my time"?

22 A. Yes.

23 Q. And if you go to the third sentence.

24 MR JABBI: My Lords, this question about the need for this
17:10:42 25 statement to be in evidence before this extensive consideration
26 of its content.

27 PRESIDING JUDGE: No, no. We are still -- there is
28 absolutely no application to have the statement introduced, and a
29 statement is to be introduced into evidence at the request of a

1 party - in this case the Prosecution - if they are trying to
2 prove inconsistency between what is written down and what the
3 witness is saying. The Court has not been asked to rule any
4 inconsistency, as such. So why should that statement be
17:11:08 5 produced?

6 MR JABBI: My Lord --

7 PRESIDING JUDGE: You have the right to refresh the memory
8 of a witness and once he has the statement and looks at it, he
9 may expand or not on it.

17:11:16 10 MR JABBI: So in effect, a statement is disclosed and
11 whilst it has been requested for the purpose of considering
12 whether it can make prior inconsistent statements and submissions
13 thereon, nonetheless that can be abandoned, that statement
14 extensively put in evidence by question and answer, and that does
17:11:48 15 not qualify as disclosure?

16 JUDGE THOMPSON: Well, the difficulty we have is that there
17 are two options here. One, either to use a statement to refresh
18 the memory of a witness, and we have accepted that that is a
19 recognised legal option and counsel for the Prosecution indicated
17:12:06 20 that that was the purpose. But of course, the second option we
21 all know, that it is trite knowledge that a party can use a
22 statement made by a witness to challenge the credibility of the
23 witness on grounds of prior inconsistent statements. That is
24 option two.

17:12:31 25 It is entirely within the discretion of the cross-examining
26 party to determine whether the answers that he gets, as a result
27 of his attempt to refresh the memory of the witness, are such as
28 to justify exercising the second option. That is to say, does he
29 want to tender the statement to show prior inconsistent

1 statements? In other words, prior inconsistent, out-of-court
2 statement.

3 I don't see the difficulty at this stage. Counsel has
4 given us the assurance that he is trying to refresh the witness's
17:13:16 5 memory. At the end of the day, or the exercise, he may find that
6 there are no inconsistencies in respect of which he intends to
7 have the question or the statement produced as an exhibit. Isn't
8 it the process that we have always adopted in this Court?

9 I mean, so what is the complaint about? Are you being too
17:13:40 10 pre-emptive? You are probably reading too much into what counsel
11 is doing. We gave the liberty to the Defence to do the same.
12 The times when defence lawyers would extensively refresh a
13 witness's memory on statements that he made out of court prior to
14 the testimony here. So how is your side prejudiced, Dr Jabbi, by
17:14:10 15 this line of cross-examination.

16 MR JABBI: Well, My Lord, my concern is that this is
17 effectively producing the statement in evidence ultimately and
18 may under the guise of wanting to --

19 JUDGE THOMPSON: But all we will record is answers to the
17:14:35 20 questions put.

21 MR JABBI: Pardon, My Lord?

22 JUDGE THOMPSON: All the records would show would be the
23 answers and questions put. I mean, the statement need not be
24 incorporated into the records, as we know it wouldn't be, unless
17:14:51 25 the Court gives leave that counsel has established the foundation
26 for prior inconsistent statement.

27 PRESIDING JUDGE: And it would be admitted for a very
28 limited purpose.

29 JUDGE THOMPSON: Purpose, yes.

1 PRESIDING JUDGE: To establish that there are indeed
2 inconsistencies between what the witness says and what he wrote
3 down. We are not there. The fact that the Prosecution is asking
4 the witness to look at page 2 or 3 or 4 of paragraph 25 is not of
17:15:20 5 relevance. I mean, he has the right to ask the witness to
6 refresh his memory about any paragraph in the statement.

7 MR JABBI: As Your Lordships please.

8 PRESIDING JUDGE: Yes, Mr Margai, I know you are burning to
9 make comments. I will allow you to do so.

17:15:32 10 MR MARGAI: Thank you, My Lords. My Lords, the question is
11 why did the Prosecutor ask the witness whether he had made a
12 statement? There must have been a reason.

13 PRESIDING JUDGE: Yes.

14 MR MARGAI: And before he asked that question he had asked
17:15:55 15 him certain questions which I am sure the Prosecutor thought
16 would not be in that statement. That was the intention.

17 JUDGE THOMPSON: Well, I would stop you and say the reason
18 perhaps he asked him whether he made a statement or not was
19 because he admitted having seen a summary of what he was coming
17:16:12 20 to talk about here and it was after that that flowed this
21 question: Did you make a statement? So a summary was disclosed
22 to the Prosecution pursuant to the order of the Court.

23 MR MARGAI: Your Lordship will recall that the Prosecutor
24 complained about the sparseness of the statement that was
17:16:35 25 furnished him.

26 JUDGE THOMPSON: The summary.

27 MR MARGAI: The summary that was furnished him.

28 JUDGE THOMPSON: Not a statement.

29 MR MARGAI: The summary that was furnished him.

1 JUDGE THOMPSON: Yes.

2 MR MARGAI: He then went on to ask him whether in fact what
3 he had said about the remonstrations of Hinga Norman, whether that
4 was contained in that summary.

17:16:55 5 PRESIDING JUDGE: Yes.

6 MR MARGAI: And think the Presiding Judge said, or was it
7 your Lordship who said --

8 JUDGE THOMPSON: I don't remember who.

9 MR MARGAI: No, one of you said to him that there was
17:17:07 10 nothing preventing the witness from elucidating. I am sure it
11 was you, My Lord. Elucidating, amplifying, et cetera.

12 JUDGE THOMPSON: Yes, consistent with the principle of
13 orality.

14 MR MARGAI: So, My Lord, quite frankly, I am of a view, and
17:17:21 15 I so submit, that the reason why my learned friend asked for that
16 statement and Your Lordships ordered for that statement to be
17 produced was on the basis of a suspected prior inconsistent
18 statement or, rather, perceived inconsistent statement.

19 JUDGE THOMPSON: Let us grant that, but the practice in
17:17:43 20 this Court has been that counsel could come and say, "We want a
21 statement because we perceive an inconsistency here. But,
22 anyway, let us refresh the memory of the witness in case the
23 witness is able to agree that what he said there in the statement
24 is what he's saying now," and then abandon that. My difficulty
17:18:04 25 is that what prejudice is done to the Defence if counsel seeks to
26 establish that perhaps a witness may have forgotten what he told
27 the investigators or the Defence and may now want to set the
28 record straight?

29 MR MARGAI: What worries me, My Lord -- it is the seeming

1 imputation on the credibility and character of the witness. That
2 is what worries me.

3 JUDGE THOMPSON: But every witness who comes to testify in
4 the Court must be ready to have his or her testimony tested under
17:18:47 5 cross-examination, either as to credit or as to credibility, and
6 I don't think this witness has protested about the testing of his
7 credibility.

8 MR MARGAI: He cannot protest, My Lords. I mean, he knows
9 he's in a court of law and he is here to assist the Court --

17:18:59 10 JUDGE THOMPSON: [Overlapping speakers]

11 MR MARGAI: But I think it is our duty, bounding duty --

12 JUDGE THOMPSON: To protect him.

13 MR MARGAI: -- as officials of the Court, to at least
14 assist this Court in every way possible by protecting the
17:19:17 15 integrity and dignity of a witness, as has been said in this
16 Court time and time again.

17 JUDGE THOMPSON: I concede that. But the rules will remain
18 the same. No witness comes here and enjoys exemption from
19 cross-examination as to credit because of his or her status.

17:19:32 20 MR MARGAI: I concede that.

21 JUDGE THOMPSON: All witnesses are treated equally. The
22 General comes from the system that gave us this great heritage of
23 the common law and I am sure that there has been vigorous and
24 more aggressive cross-examination in some British courts. I do
17:19:54 25 not think that he enjoys any special status here in terms of
26 credibility.

27 MR MARGAI: Conceded.

28 JUDGE THOMPSON: His credibility has to be challenged with
29 the same vigour as the credibility from a witness from backwoods

1 of Sierra Leone.

2 MR MARGAI: Conceded, My Lords. I believe Dr Jabbi knows
3 what to do. If the Prosecutor does not tender, he could go on to
4 tender the statement.

17:20:18 5 PRESIDING JUDGE: Well, we will have some difficulties with
6 that too. Why would he tender the statement?

7 MR MARGAI: We shall attempt to cross that bridge when we
8 get there, My Lord. We shall act within the ambit of the
9 procedural rules.

17:20:28 10 PRESIDING JUDGE: Absolutely.

11 MR MARGAI: Thank you.

12 PRESIDING JUDGE: Mr Prosecutor.

13 MR De SILVA:

14 Q. General, we will try to avoid that bridge and come back to
17:20:37 15 the bridge on which you were watching the battle.

16 JUDGE ITOE: That bridge which is very difficult to cross.

17 MR MARGAI: Not impossible, My Lord. Difficult, but not
18 impossible.

19 MR De SILVA: Yes.

17:20:50 20 Q. Well, General, I want to help you really. It may be
21 thought I am not trying to help you. But the reason why I was
22 anxious that you should have your full statement is that you can
23 refresh your memory and assist us better; you follow me? I am
24 not making any imputations against you, I'm trying to assist you
17:21:15 25 and thereby assist the Court. The passage of time affects
26 memory.

27 Now, when you made this statement -- and I just want to ask
28 you about the second page, the second paragraph, main paragraph.
29 Do you there deal with the relationship between the Deputy

1 Minister of Defence and the President; yes or no?

2 A. Yes.

3 Q. Thank you. Is what you say there true?

4 A. I would say everything there is true. That the President
17:22:14 5 delegated much of the task of defending the country to him,
6 confident in his judgment.

7 Q. Thank you very much. So if I asked you the question: as
8 deputy minister of defence, the President delegated much of the
9 key tasks of defending the country to him, confident in his
17:22:39 10 judgment, that was what you said in your statement and that is
11 true?

12 A. It is, but I would emphasise one thing for the Court. Your
13 period that you're addressing, and it has been emphasised me to
14 is up until December 1999, that judgement is a summary of what
17:22:58 15 happened throughout the two years or so that I have been
16 associated with the country. In, and this is why, if I may, it
17 is relevant. In April 2000, General Maxwell Khobe had died. The
18 ECOMOG forces were in the process of withdrawing, and the UN had
19 not yet built up their strength. At that period, and that is
17:23:27 20 when I returned in May of that year --

21 PRESIDING JUDGE: Of 2000?

22 THE WITNESS: Of 2000, no one, other than Chief Norman, was
23 in a position to run the defence of the country. Because his
24 professional military people were either going or had died, and
17:23:44 25 there was a very distinguished man, but perhaps not always the
26 most effective man who was put in as a stop gap as chief of
27 defence, and I know that judge -- Chief Norman had, at that time,
28 to do more. So I would like to place that judgment you have got
29 me to emphasise in context, please, Mr De Silva.

1 Q. Than you very much, General.

2 MR JABBI: My Lord, with that explanation by the witness,
3 it is clear that this portion of the statement is outside the
4 time frame that this Court is dealing with, and not only is it a
17:24:27 5 waste of the time to continue dealing with it, but it is also
6 irrelevant to the issues that the court is looking at.

7 JUDGE THOMPSON: Does it multiply the issues?

8 MR JABBI: Certainly, My Lord. Here are issues that are
9 not before the Court.

17:24:52 10 JUDGE THOMPSON: That are not in controversy between the
11 parties?

12 MR JABBI: That are not before the Court.

13 PRESIDING JUDGE: Well, the witness is simply explaining
14 why he has put this particular statement, explaining why he has
17:25:03 15 used these words; essentially to say that this applied more to
16 the period in April 2000, given the scenario, rather than before.
17 And before, if the inference from that is Norman didn't play that
18 role up to April 2000. So it would mean, if you'd rather see the
19 inference that I do that in January 1999 and before he may not
17:25:27 20 have played that role. So that's very, very relevant.

21 MR JABBI: My Lords, the issue is --

22 PRESIDING JUDGE: Your objection is overruled.

23 MR JABBI: As your Lordship pleases.

24 THE WITNESS: My Lord, can I also, I know at the risk of
17:25:48 25 extending this particular debate, but in January 1999 General
26 Shelpidi and General Maxwell Khobe were actually running the
27 tactical conduct of the defence of Freetown. That, I think, was
28 not the situation in April 1999 when both people had gone.

29 PRESIDING JUDGE: In April 2000.

1 THE WITNESS: In April 2000. Thank you.

2 MR DE SILVA:

3 Q. General, as far as you could see, was there anyone to whom
4 the CDF forces looked up more to than Chief Norman?

17:26:32 5 A. No. He was a figurehead, as I said earlier, that they much
6 respected quite clearly.

7 Q. From what you could gather, because you saw President
8 Kabbah, didn't you, prior to December 1999?

9 A. I saw him, yes, about five or six occasions in January and
17:26:57 10 February.

11 Q. As far as you could gather, is it correct to say that the
12 President appeared confident in the trust that he had placed in
13 Chief Norman?

14 A. Yes, as far as I could see he had confidence in him as his
17:27:28 15 deputy minister of defence, and it was in that context that I had
16 most dealings with him, looking at the re-equipping of the Sierra
17 Leone Army, along with ECOMOG forces. But if I may, sir, when I
18 discussed with President Kabbah what was happening in January and
19 February from a military perspective, it was always with General
17:27:49 20 Shelpidi and General Khobe, not with Chief Norman, because he
21 wasn't running the battle. That was their job.

22 Q. Yes, thank you very much. So as far as you could see,
23 President Kabbah wasn't giving any instructions to Chief Norman?

24 A. He was present at the meetings, along with one or two other
17:28:12 25 members of his cabinet. The key had a sort of war cabinet, I
26 suppose, one might call it. But I did not see him give military
27 orders to Chief Norman. He gave those to General Shelpidi and
28 General Khobe. Again, if it would help, I saw Chief Norman's
29 primary task as focusing on the reconstruction of the Ministry of

1 Defence and of defence policy and of the re-equipping of the
2 army, rather than in the day-to-day conduct of the defence of
3 Freetown.

4 Q. Yes. This all post-January 1999?

17:29:05 5 A. In January it was explained to me that my principal
6 interlocutor in the case of the Sierra Leoneans would be Chief
7 Norman in terms of where the money would go, how it would be used
8 and what it would be spent on. But, clearly, things were very
9 bad in January '99 and I think it is fair to say, as I have
17:29:32 10 already told the Court, that there were occasions when all hands
11 went to the pump and tried to stem the RUF tide. I have talked
12 about what happened at the bridge and my observations.

13 Q. Yes.

14 JUDGE THOMPSON: General, did you use the expression -- was
17:29:50 15 that sentence Chief Norman was not running the battle.

16 THE WITNESS: Yes.

17 JUDGE THOMPSON: That is what you said?

18 THE WITNESS: In tactical terms - I know it is a rather
19 military terms - but the hour to hour, minute to minute conduct
17:30:01 20 of the fighting was being conducted by General Khobe and General
21 Shelpidi. That's what they were being paid to do.

22 JUDGE THOMPSON: Thank you. I just wanted to get the
23 assurance that that is what you said.

24 MR De SILVA:

17:30:31 25 Q. Help us about this. Can you go to the penultimate
26 paragraph, please, and refresh your memory from the third
27 sentence.

28 A. Sorry, which page?

29 Q. Sorry, page 2. The penultimate paragraph begins "I have

1 already stated." You have already told My Lords that if
2 Hinga Norman wanted to do so, he had the military power to take
3 over the government of Sierra Leone, but chose not to do so.

4 MR JABBI: My Lords, that specific piece of statement was
17:31:12 5 rejected by the Court and the Court specifically said language of
6 that nature should not be put to the Court, and it is unfair that
7 the Prosecutor should be quoting it to the witness. The witness
8 attempted to make a statement of that nature earlier on and the
9 Court rejected.

17:31:39 10 PRESIDING JUDGE: But later on the witness has repeated
11 that statement in cross-examination a few minutes ago.

12 MR JABBI: My Lord, it is from what is being read from the
13 statement, not from any evidence he has been giving.

14 PRESIDING JUDGE: Mr De Silva, do you wish to comment?

17:32:05 15 MR De SILVA: Yes. My Lord, the witness has said more than
16 once - and this is really complimentary of the first accused - it
17 is really a compliment to the first accused - that although he
18 had the power to do so, he never sought to seize the reigns of
19 power. And that is what --

17:32:31 20 JUDGE THOMPSON: I was going to ask what prejudice is that
21 now that -- I mean, to the Defence. Much as I agree that this
22 takes us, as I said this morning, into a rather speculative area,
23 inconclusive in terms of people's intentions and whether they
24 carried out their intentions or had constraints on those. But my
17:32:59 25 own response here is that what prejudice is being done to this
26 defence if this question is asked and an answer is given in a
27 positive way?

28 MR JABBI: It is just that if the Court has frowned upon
29 that piece of evidence before --

1 JUDGE THOMPSON: Yes.

2 MR JABBI: -- the nature of that evidence being
3 complimentary to whoever does not justify going back upon what
4 the Court had earlier said.

17:33:34 5 PRESIDING JUDGE: In a context where that question was
6 being asked at the time, it was the expression of an opinion.
7 But as I said, we allowed that already in cross-examination and
8 we allow the question to be asked.

9 Before we proceed, I would just like to remark that it
17:33:48 10 is 5.30. We do not intend to prolong much further unless you
11 tell me that you only have one more question. Otherwise we will
12 adjourn.

13 MR De SILVA: My Lord, I probably have five minutes of
14 cross-examination. I hope that is not too much.

17:34:07 15 PRESIDING JUDGE: Dr Jabbi, do you have any re-examination
16 after that?

17 MR JABBI: Well, My Lord, my learned friend's five minutes
18 may bring up anything, and I cannot --

19 PRESIDING JUDGE: Indeed. But assuming that he does not
17:34:20 20 bring any new matter. I am just trying to see if we should
21 adjourn now or --

22 MR JABBI: I have some re-examining to do already.

23 PRESIDING JUDGE: Which means we will have to come back
24 tomorrow morning with the witness anyhow.

17:34:35 25 MR De SILVA: Is your Lordship minded to --

26 PRESIDING JUDGE: Go ahead. Five minutes.

27 MR De SILVA: Yes.

28 Q. All I want to know, General, perhaps is this: You have
29 looked at the paragraph I have drawn your attention to, where we

1 have already dealt with Hinga Norman could have taken over the
2 government of Sierra Leone had he wanted to do so. Is it correct
3 that it was your view that Hinga Norman had the military power to
4 take over the government?

17:35:08 5 A. Although he did not control through all the forces loyal to
6 the government, including some elements I would call them the
7 peripheral elements we discussed earlier of the CDF, it is true
8 to say that I think he had sufficient power, sufficient
9 influence, if he had wanted to to have taken over the government.

17:35:33 10 There would have been those who I don't think obeyed him or did
11 not always obey him, but he had sufficient power to do it if he
12 wanted to.

13 Q. He had sufficient power, military power, to take over the
14 government had he wished to do so; would that be correct?

17:35:49 15 A. Yes. I'd emphasise, if I may, the word "sufficient."

16 Q. Yes. So do I. He had sufficient.

17 A. He had sufficient but not total. There were others who did
18 not answer to him. But if I may again, I did write that largely
19 in the context of the situation we discovered ourselves in in

17:36:17 20 April 2000, when he was undoubtedly, for one month or so, the
21 only man on whom President Kabbah could turn to. The only one he
22 could turn to because all his military men had basically given up
23 on him or died. So I think, although it does apply to 1999 to a
24 degree, it must be seen in the context of the overall statement.

17:36:40 25 Q. General, when you are talking about military power, you are
26 talking about the leadership qualities he had that brought to him
27 that military power, isn't it?

28 A. It is one aspect --

29 Q. Thank you.

1 A. But if I may, you can have great leadership and charisma,
2 but if you haven't got the means or the forces to follow you, it
3 is not going to be any good.

4 Q. But he did?

17:37:04 5 A. He had sufficient.

6 Q. Thank you. And finally, to deal with a question I think my
7 learned friend Mr Margai was dealing with, that the invincibility
8 matter about which we have heard some evidence in this Court,
9 your understanding, because you used the word "invincibility,"

17:37:36 10 was that it was brought about by some mystical process that made
11 people invulnerable to bullets.

12 A. I said they believed they were invincible and there was a
13 process through which they went that gave them that belief.

14 Q. Yes.

17:38:00 15 JUDGE ITOE: I don't think the witness specifically
16 mentioned bullets. Invincibility. I mean, he did not explore
17 further details on the connotation of invincibility.

18 MR De SILVA: But we have heard, My Lord --

19 JUDGE ITOE: Others, I know. You may be taking into
17:38:20 20 consideration the evidence that we have from others about it.

21 MR De SILVA: Indeed.

22 JUDGE ITOE: The bulletproof, what have you.

23 MR De SILVA: My learned friend was asking about
24 bulletproof vests. He was not talking about arrows or atomic
17:38:37 25 bombs; he was talking about bullets. And invincibility in that
26 context.

27 Q. Don't you think the benefits of these mystical qualities
28 should be bestowed upon the British troops in Iraq?

29 A. At the time I did ask if we could borrow this technique.

1 Q. And --

2 A. Because it made them very brave. I watched them do things
3 which I think British soldiers might not have done.

4 Q. I know. But on the whole, did the whole prospect make
17:39:11 5 everybody laugh?

6 A. Well, I would think it would be wrong and I wouldn't agree
7 with your use of the word "laugh." It was a very serious
8 business. People were fighting and dying and the CDF were, I
9 think, known to be the bravest of those engaged in the combat.
17:39:33 10 And if it was a result of this belief of invincibility, I said
11 I'd like some of this. That is about it. So I never laughed at
12 it.

13 Q. Well, I hope you get some of it before you go to
14 Afghanistan.

17:39:43 15 A. Thank you.

16 Q. But on the whole, you realised, of course, didn't you, that
17 it was a form of bravery with which people paid with their lives?

18 A. I don't know. I mean, I know that they were better
19 soldiers for the bravery they displayed. But soldiers die in
17:40:18 20 fighting and sadly that's a fact of life. Whether it led to more
21 casualties - but I don't want to go into areas whether I am an
22 expert or not - I wouldn't like to say.

23 MR De SILVA: Yes, thank you, General.

24 PRESIDING JUDGE: Dr Jabbi?

17:40:28 25 MR JABBI: Yes, My Lord.

26 PRESIDING JUDGE: Do you have any re-examination?

27 MR JABBI: Yes, My Lord.

28 PRESIDING JUDGE: If you do, we will have to postpone that
29 to tomorrow morning at 9.30.

1 MR JABBI: Thank you.

2 PRESIDING JUDGE: Before we adjourn I would like to ask you
3 if you have another witness ready, because tomorrow is only
4 Wednesday. And although the session goes until -- I know the
17:40:56 5 witness will be finished sometime tomorrow morning, so that
6 leaves us with Thursday and Friday and the rest of the morning
7 tomorrow. I just mention that so you have witnesses available.
8 But bear in mind the period of time that we have. It has to be a
9 witness that can fit in that period of time so we can finish the
17:41:14 10 evidence of that witness.

11 MR JABBI: Yes, My Lord. My Lord, I believe we have about
12 two witnesses to fill the remaining time.

13 PRESIDING JUDGE: That is fine. Thank you very much,
14 Dr Jabbi. Court is adjourned to 9.30 tomorrow morning.

15 [Whereupon the hearing adjourned at 5.42 p.m.,
16 to be reconvened on Wednesday, the 22nd day of
17 February 2006, at 9.30 a.m.]

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WITNESSES FOR THE PROSECUTION:

WITNESS: LIEUTENANT GENERAL RICHARDS	3
EXAMINED BY MR JABBI	3
CROSS-EXAMINED BY MR MARGAI	52
CROSS-EXAMINED BY MR DE SILVA	64