

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

FRIDAY, 06 OCTOBER 2006
9.50 A.M.
TRIAL

TRIAL CHAMBER I

Before the Judges:	Bankole Thompson, Presiding Pierre Boutet Benjamin Mutanga Itoe
For Chambers:	Ms Roza Salibekova Ms Anna Matas
For the Registry:	Mr Thomas George
For the Prosecution:	Mr Joseph Kamara Mr Mohamed Bangura Ms Miatta Samba Mr Vincent Wagana
For the accused Sam Hinga Norman:	Mr Alusine Sesay Mr Kingsley Belle (legal assistant)
For the accused Moinina Fofana:	Mr Arrow Bockarie Mr Andrew Ianuzzi Mr Steven Powles
For the accused Allieu Kondewa:	Mr Charles Margai Mr Yada Williams Mr Ansu Lansana

1 [CDF060CDF06A-RK]
2 Friday, 6 October 2006
3 [The witness entered court]
4 [The accused present]
5 [Open session]
6 [Upon commencing at 9.50 a.m.]
7 WITNESS: BRIMA TARAWALLY [Continued]

8 PRESIDING JUDGE: Morning counsel. We will continue where
9 we left off yesterday. The Prosecution was cross-examining the
10 witness, and I recall that we got to a point where some objection
11 was taken to the line of cross-inquiry and submissions were being
12 canvassed. Our disposition this morning is to hear some more or
13 less summary of the positions that you have taken, if you have
14 not abandoned your original position, and the same will apply to
15 the Prosecution. And once we have heard your summary, on both
16 sides, and any useful additions that you want to advance, we
17 will, in fact, take a short break and deliberate on what should
18 be the appropriate ruling in the circumstances. So, Mr Powles.

19 MR POWLES: I'm very grateful, Your Honour. May I inquire
20 as to whether Your Honours have received the short document
21 entitled further argument on the scope of Prosecution
22 cross-examination, which contains seven points.

23 PRESIDING JUDGE: I received it. I think the learned --

24 JUDGE ITOE: I have just received it. I have not read it.

25 MR POWLES: Your Honour, it really amplifies and puts in
26 context of the various statutory provisions and rules, the
27 arguments that I set out yesterday. And it really puts those
28 arguments within the framework of the Rules, as they exist at the
29 present time. There are seven submissions contained on the first

1 page, and on the second page is really set out, for assistance,
2 the various rules of the Statute of the Special Court of Sierra
3 Leone and the various provisions from the Rules of Procedure and
4 Evidence that, we would submit, are relevant.

5 PRESIDING JUDGE: At this point in time, perhaps it would
6 not be necessary to have the witness stay in court. We can have
7 him escorted, for a brief while, out. Will the representative of
8 the Victims and Witness Unit escort him out of court, so that he
9 can be comfortable somewhere whilst we go through this exercise.
10 Continued, Mr Powles.

11 MT POWLES: I'm grateful, Your Honour. The first three
12 submissions are really predicated upon Article 17(4) of the
13 Statute of the Special Court for Sierra Leone. Of course,
14 Article 17 is, in essence, taken from the principles set out in
15 Article 14 of the International Covenant on Civil and Political
16 Rights, and Article 6 of the European Convention on Human Rights.

17 The first principle that we wish to articulate, is that in
18 subsection B of subsection 4 of Article 17; namely, in the
19 determination of any charge against the accused pursuant to the
20 present Statute, the accused is entitled to the following minimum
21 guarantees. And B states: "To have adequate time and facilities
22 for the preparation of his or her defence..."

23 We would submit, that for the Prosecution to attempt to
24 elicit information pertaining to an accused who has not called
25 the relevant witness through the witness of another accused --

26 PRESIDING JUDGE: Just slowly repeat that. It is being put
27 as a proposition of law, isn't it. Repeat it for us. For the
28 Prosecution to seek to call --

29 MR POWLES: We would submit that for the Prosecution to

1 seek to elicit information --

2 PRESIDING JUDGE: Is it information or evidence?

3 MR POWLES: Information and/or evidence potentially
4 pertaining to another accused to the one who has called the
5 particular witness, effectively denies that accused, namely the
6 accused against whom the Prosecution seek to elicit the evidence
7 and/or information. The guarantee contained in Article 17(4)(b),
8 we submit that, because, of course, the accused will have no
9 indication of the evidence or information that the Prosecution is
10 likely to seek to elicited from that witness, unlike, for
11 example, a witness who is called by the Prosecution for whom they
12 must provide a statement in advance of so calling that witness.
13 The absence of any indication --

14 PRESIDING JUDGE: In other words, that particular accused,
15 who is now the target of the cross-inquiry, would not have had
16 the opportunity of access to that statement, the information
17 being elicited. The prior access, is that what you are saying?

18 MR POWLES: The accused would not have prior access or
19 notice of the areas upon which the Prosecution would seek to
20 elicit evidence and information. As a result of that, we would
21 submit, that the accused is denied adequate time and facilities
22 for the preparation of his defence. Counsel for the accused are
23 unable to take, for example, to take instructions from the
24 accused; they are not able to carry out investigations in
25 relation to that evidence. And potentially, in relation to the
26 witness against whom the Defence may seek to put various things
27 in relation to his or her credibility, were it to know, that the
28 Prosecution were going to be seeking evidence that potentially
29 incriminates him, an accused, who is not the accused, has called

1 that particular witness.

2 PRESIDING JUDGE: In other words, your short submission is
3 that there is, in fact, in law a violation of Article 17(4)(b).

4 MR POWLES: Your Honour, yes.

5 PRESIDING JUDGE: Right. Okay, let's move on to the other
6 submission.

7 MR POWLES: The second submission is similarly contained in
8 Article 17(4) of the Special Court Statute, which stipulates that
9 an accused must be in a position to examine or have examined a
10 potential witness against him. Now, Rule 85(B) sets out the
11 order in which evidence is to be elicited. The party calling him
12 takes him through evidence-in-chief, it is then for the parties
13 for the other accused to have an opportunity to cross-examine
14 him, it is then for the Prosecution to cross-examine him, and
15 then it is for the party who called him to re-examine him. That,
16 of course, is after -- the cross-examination by the Prosecution
17 is after the counsel for the other accused who have not called
18 the witness have had an opportunity to cross-examine him. As an
19 as a result of that, when the witness testifies, and if the
20 Prosecution elicits information potentially against an accused
21 who has not called him, that party is effectively denied the
22 right contained this Article 17(4) to examine that witness, or
23 the witness against him, as he would have done, had that witness
24 been called by the Prosecution, and the Defence been in a
25 position to cross-examine him accordingly.

26 When the Prosecution elicits information from a witness
27 called by a co-accused, the other accused against whom the
28 Prosecution may seek to elicit evidence against, do not have that
29 right to cross-examine him. Unless, of course, the issue is

1 raised by the Defence -- unless, of course, the evidence is
2 elicited by the party calling him, that potentially incriminates
3 him, then the Defence will be in a position to cross-examine him,
4 because that would have been established prior to the
5 cross-examination by the counsel for the other co-accused, but
6 that is not what occurred.

7 JUDGE BOUTET: Mr Powles, can you just repeat that last
8 part. I'm not sure I follow you on this. I just want to make
9 sure I understand clearly what you said. The very last part.

10 MR POWLES: The very last part, Your Honour, is this: When
11 the Prosecution seek to elicit potential evidence against an
12 accused who has not called the witness, the Defence does not have
13 the ability to cross-examine the witness, because it is after the
14 point at which the Defence had an opportunity to cross-examine
15 him. It is different from the situation where the party that has
16 called the witness elicits evidence that potentially affects or
17 incriminates a co-accused, because a cross-examination by the
18 co-defendants occurs after the examination-in-chief. Now, in
19 this case, there was no reference or journey into any material or
20 information that in any way effected the second accused. And it
21 was on that basis that the --

22 JUDGE BOUTET: By the examination-in-chief by counsel for
23 the third accused?

24 MR POWLES: Your Honour, yes.

25 JUDGE BOUTET: Okay, thanks.

26 PRESIDING JUDGE: In other words, you say, again, there is
27 a violation of Article 17(4)(d), the right to cross-examination
28 in those circumstances is for closed?

29 MR POWLES: Your Honour, yes. And there is a secondary

1 argument arising from that subsection.

2 PRESIDING JUDGE: What is it?

3 MR POWLES: That is that, where the Defence have -- the
4 subsection provides that the Defence must have not only the
5 ability to examine witnesses against him, but must have the right
6 to obtain the attendance and examination of witnesses on his or
7 her behalf under the same conditions as witnesses against him.
8 Now, that is a different and distinct right, in that the Defence
9 must have a right to call witnesses on their behalf. Now, at
10 this stage in the proceedings, after evidence has been called on
11 behalf --

12 PRESIDING JUDGE: Are you on three now, or --

13 MR POWLES: Your Honour, yes. Where evidence is elicited
14 by the Prosecution during the course of their case, to
15 incriminate an accused, the accused is in a position to carry out
16 investigations and call witnesses to rebut and challenge the
17 evidence so elicited from Prosecution witnesses. However, where
18 evidence is obtained by the Prosecution via a witness for another
19 accused, the accused is not -- the accused, against whom such
20 evidence and information is elicited, is not in position to carry
21 out investigations and to potentially bring witnesses to Court
22 rebut and undermine the evidence of that witness, and the
23 credibility of that witness.

24 The fourth point, I'm very helpfully assisted my learned
25 legal assistant, Mr Ianuzzi, who points out that it is not
26 Article 17(4)(d) but, in fact, 17(4)(e). My apologies for that.

27 PRESIDING JUDGE: You mean, is that an amendment to
28 submission 3?

29 MR POWLES: To submission 3 and the 2 that the d should

1 read e. And again in the notes accompanying the page -- well, it
2 is correctly stated in the notes accompanying the --

3 PRESIDING JUDGE: So read d for e?

4 MR POWLES: Well, read d for e in relation to those two
5 points. My apologies for that, Your Honours.

6 PRESIDING JUDGE: Or, rather, the other way. Read e for d?
7 Yes, thanks.

8 MR POWLES: The fourth point relates to the disclosure of
9 exculpatory evidence. When the Prosecution call a witness,
10 against an accused, they are, of course, under a duty under that
11 Rule 68(B) to disclose evidence to the accused that may undermine
12 the credibility of that witness and that would include
13 information such as previous convictions, any inconsistent
14 previous statement, any demand for payment by that witness, any
15 psychiatric history and any medical problems and, particularly
16 psychiatric problems, that the witness may have, so on and so
17 forth.

18 When an accused or defendant calls a Witness, of course,
19 they are not under a similar obligation, so, of course, unlike a
20 witness called by the Prosecution, when they are eliciting
21 evidence against an accused, they are under a duty to provide
22 evidence against that accused -- evidence to assist the accused
23 against whom the evidence is sought. When a co-defendant calls a
24 witness, they are not under a similar and corresponding duty.
25 Accordingly, the defendant against whom such evidence may be
26 elicited, is left in the unenviable position of the possibility,
27 and I put it no higher than that, of the possibility that there
28 may be exculpatory evidence and material in the possession of a
29 co-accused that has not been disclosed to any of the parties,

1 because they are under no obligation, necessarily, to do so and
2 thereby have that evidence elicited against them by the
3 Prosecution. So the Prosecution, in a sense, are gaining an
4 unfair advantage when they would, in those circumstances, have
5 had to disclose possible exculpatory evidence to the Defence.

6 JUDGE BOUTET: You are raising a scenario, that is not here
7 today, from what I understand the evidence that I heard today is,
8 and the Prosecution has not made any reference to that. I'm just
9 trying to see where that leads us given the situation we have
10 today. You seem to be expanding, quite extensively, the issue on
11 this --

12 PRESIDING JUDGE: I join my colleague in seeking some
13 further enlightenment on that subject, because, as he rightly
14 says, it is not on all fours with what we are dealing here. The
15 evidence being challenged is one which is, again, potentially
16 incriminating and not exculpatory, so aren't you, with the
17 greatest respect, muddying the legal waters to bring us to that,
18 unless there is some analogical advantage in helping to advance
19 our reasoning on that. You can answer both of those.

20 MR POWLES: I can. What may assist, is that -- I can
21 answer that question by moving on to the fifth point and thereby
22 trying to encapsulate the concerns raised by Your Honours, when
23 articulating the fifth point. Of course, under Rule 82(A) of the
24 Rules of Procedure and Evidence, the following is stated: "In
25 joint trials each accused shall be accorded the same rights as if
26 he were being tried separately."

27 Now using the example of the disclosure of exculpatory
28 evidence and material, were the Prosecution to call a witness to
29 attempt to incriminate a defendant, they would be under a duty

1 under Rule 68(B) to disclose exculpatory material in relation to
2 that witness. And being the party that had found the witness,
3 taken a statement and obtained various materials, one would
4 suspect that they may be in position of such material. However,
5 when a witness is called by a co-defendant, they are not under
6 any corresponding duty in the same way that the Prosecution are
7 and, accordingly, the Defence are denied the provision of
8 potentially exculpatory material from the party who has taken the
9 statement from the witness, who has met the witness, who has
10 carried out potentially extensive investigations into the
11 witness, and thereafter the Prosecution can seek to obtain
12 evidence from that witness without there necessarily being the
13 same checks and balances that exist when the Prosecution call the
14 witness themselves.

15 JUDGE BOUTET: Leaving that issue aside, if it were not a
16 joint trial, and we are sitting today in this trial as a result
17 of applications made by the Prosecution to have joint trials, but
18 if we were not in a joint trial, what would be the situation in
19 that scenario? In other words, would you be facing -- if this
20 was a trial of one accused, Kondewa, what would be the impact?
21 In other words, how would you relate the scenario we have today
22 if your client was tried separately from the third accused and
23 this would be, let's say, the trial of the third accused.

24 MR POWLES: Your Honour, of course, makes an excellent
25 point. Of course, if it were a trial of one accused alone, there
26 are only two sources, essentially, of evidence: Either from the
27 Prosecution or the Defence.

28 Now, if the Prosecution call the evidence, they have a duty
29 of exculpatory disclosure. If the Defence call the witness, they

1 do so at their own risk and at the risk that the witness may give
2 evidence both for and/or against that accused. However, in a
3 situation of a joint trial where a co-accused called a witness,
4 the defendant who does not call that witness is left unprotected
5 and does not have the same safeguards and guarantees that exist
6 under Rule 68 when the Prosecution calls the witness. And in
7 this situation, where the Prosecution are seeking to, for the
8 first time in re-examination, elicit information from a witness
9 against an accused who has not called that evidence, then the
10 accused is denied the guarantee set out in Rule 68. We submit
11 that the same principles are applied to the denial of the same
12 rights as if he were being tried separately, that the guarantees
13 of those rights being provided under Rule 82(A). The point I
14 have just made in relation to Rule 68(B) similarly applies to
15 Article 17(4)(b) (e), as well as the points made previously. So,
16 in effect, Rule 82(A) reinforces the submissions already made in
17 relation to Article 17(4)(b) (e) and, of course, Rule 68.

18 JUDGE ITOE: Mr Powles, in the context of the arguments you
19 are making, would you like to address the Court on your position
20 as far as evidence of a co-accused that, on the position, you
21 know, [indiscernible] the value of the evidence of a co-accused
22 or its witness that implicates another co-accused who does not
23 have the opportunity of responding to that?

24 MR POWLES: In the situation where an accused has not got
25 an opportunity to respond to it, I would submit that the evidence
26 is extremely limited evidential value in weight, because if it
27 has not tested by the party against whom it is elicited, then, of
28 course, its weight is severely undermined, because it has not
29 been tested by the other party. If the evidence was being called

1 by the party calling the witness, we would be in a totally
2 different situation. If, for example, this were a case where
3 each accused were seeking to say: "It wasn't me, it was the
4 other accused. I did not do it. It was him." We would be in a
5 different situation, because the accused against whom such
6 evidence is elicited would be in a position to cross-examine
7 those witnesses and challenge the evidence being called by that
8 other party against him. In this scenario, the accused is denied
9 that right because the Prosecution, of course, cross-examine
10 last, and the defendant, against whom such evidence is elicited
11 and sought, does not have the right to come back and
12 cross-examine in that way.

13 PRESIDING JUDGE: Developed further, is the Prosecution
14 precluded by any rule of impermissibility of leading evidence,
15 whether from a co-accused or not, of matters or acts and
16 declarations, allegedly in pursuance of a joint criminal
17 enterprise? Allegedly in pursuance of a joint criminal
18 enterprise.

19 MR POWLES: Your Honour, for all the reasons articulate in
20 points, 1, 2, 3, 4 and 5 of the submissions advanced, we would
21 submit that it is incredibly prejudicial to the accused for the
22 Prosecution to be allowed to do so. In particular, where the
23 matter has not been raised by the party calling the witness,
24 thereby giving the Prosecution a platform to come back and
25 challenge the evidence given by that witness. These are issues
26 that are being raised for the first time by the Prosecution
27 during their cross-examination. They do not relate to issues
28 that were raised in examination-in-chief by the party calling the
29 witness.

1 PRESIDING JUDGE: But allowing for the open-ended system of
2 cross-examination, would they be so limited? Remember there are
3 two systems, the open system and the closed system. At least
4 here, what we have done is to allow the closed system -- the open
5 system, would therefore the cross-examination have to be limited
6 to matters only arising in examination-in-chief? I thought they
7 have a right to cross-examine as to credibility. Even if it has
8 nothing to do with matters that have already been unfolded
9 through the machinery of the examination-in-chief.

10 MR POWLES: Your Honour makes an excellent point. Of
11 course, in addition to challenging the evidence called by the
12 party calling the witness, the Prosecution, of course, are
13 entitled to rebut and meet that evidence as so given by the
14 witness. And in addition to that, of course, as Your Honour
15 states, the Prosecution are entitled to examine and explore
16 issues pertaining to credibility. However, what I would submit,
17 is that they are not allowed to go a step further, and all the
18 reasons articulated in the submissions set out, to seek to elicit
19 potentially incriminating evidence against another accused, for
20 all those reasons, because the accused is not in a position to
21 meet or challenge the evidence that has been elicited.

22 JUDGE ITOE: That is the point. To what extent can the
23 Prosecution be allowed to go to elicit incriminating evidence
24 from one accused against another in the conduct of the case of a
25 particular accused person? This is the crux of the problem, and
26 I think I would be asking the Prosecution, at a later stage, to
27 clarify the Chamber on this. Because it is very crucial.

28 PRESIDING JUDGE: Clearly, it goes to the heart of the
29 distinction between cross-examination as to the substantive

1 issues and cross-examination as a credit. Clearly, you can see
2 my way judicially clear to accepting the right of the Prosecution
3 to cross-examine, even in respect of the joint criminal
4 enterprise on matters relating to credibility or credit, but not
5 necessarily -- I have grave doubts, unless my mind is still
6 opened, whether, in fact, there is a rule of permissible allowing
7 them to go that far, as my brother Justice Itoe has just said.

8 MR POWLES: The only question is, and perhaps premature to
9 get into it, is whether a question in relation to joint criminal
10 enterprise does actually go to the credit of the witness.

11 PRESIDING JUDGE: That is an open question.

12 MR POWLES: [Overlapping speakers].

13 PRESIDING JUDGE: I'm not prepared to enter into any
14 jurisprudential exchange with you on that. I have not really
15 organised my thoughts along those lines yet.

16 MR POWLES: Your Honour, the sixth point, and potentially
17 and perhaps one of the most significant in the instant case, is
18 it appears, and I put it no higher than that, pursuant to the
19 clear and unambiguous obligations that the Prosecution has,
20 pursuant to Rule 68(B) of the Rules, it appears, and I put it no
21 higher than that, that there has been a failure, in this case, to
22 disclose potentially exculpatory evidence to the second accused
23 if, and I stress if, and when the Prosecution formed a decision
24 and state of mind that they wish to seek to elicit, through this
25 witness, evidence that potentially impacted upon and dealt with
26 the second accused.

27 There was reference made yesterday to my learned friend for
28 the Prosecution to materials obtained by the Prosecution that
29 emanated from the witness that is before Your Honours today.

1 Before exit, I wonder whether you like me to deal with this in
2 closed session, given that part of the issue was dealt with in
3 closed session yesterday. I'm content with either course, but I
4 raise it just as a matter of caution with Your Honours, whether
5 you would like me to go into closed session or not.

6 PRESIDING JUDGE: If the language that you intend to use
7 can be so disguised as to keep it within, more or less, legal
8 verbiage, that will not necessarily be intelligible to the
9 public, but I'm not sure [Microphone not activated].

10 JUDGE ITOE: If you do not delve into the details of the
11 documents which we have.

12 JUDGE BOUTET: That's right.

13 PRESIDING JUDGE: [Microphone not activated].

14 JUDGE ITOE: Remain within the context, instead of taking
15 all the time to go into closed session.

16 Mr POWLES: And I don't need to go into the details of the
17 documents.

18 PRESIDING JUDGE: Fine. So confine yourself to --

19 MR POWLES: In sum, it seems that there was evidence in
20 possession of the Prosecution, as long ago as 2005 and certainly
21 at the beginning of this year, material that -- from the
22 Prosecution's point of view, undermines the credibility of this
23 witness. Now, the Prosecution have been in possession of that
24 material, certainly for some time, it seems, certainly since the
25 beginning of this year and it hasn't been -- it certainly wasn't
26 disclosed to the Defence until this morning.

27 Now --

28 JUDGE BOUTET: Well, you say, based on what the statement
29 is made, because I don't recall the evidence, even in a closed

1 session, to be to that effect. It maybe that you have some
2 additional information that I am not aware of. I don't know. If
3 it is to be an argument, and this is in support of some of your
4 argument, I just -- I do not want to cause difficulties to you
5 here. I'm just trying to make sure that what you are telling us
6 is supported somewhere in the evidence.

7 MR POWLES: I can put it as highly as this: The materials
8 we have been given this morning, which was alluded yesterday but
9 given to us today, indicates, quite clearly, in my submission,
10 that there is evidence, in the possession of the Prosecution that
11 may, and this is the wording of Rule 68(B), that may affect the
12 credibility of Prosecution evidence. Now, the question then is:
13 Were the Prosecution under a duty to disclose it to the Defence,
14 and if so, when? Now, of course, the Prosecution may not be, and
15 I do not put it higher than that.

16 PRESIDING JUDGE: Is it just affecting the credibility of a
17 Prosecution witness or did you earlier on say of an exculpatory
18 nature?

19 MR POWLES: I can read out the rule.

20 PRESIDING JUDGE: I know what the rule says, but what your
21 specific submission here is, in relation to the documents, that
22 you say or the information in the possession of the Prosecution,
23 is it simply, or simpliciter, material that may affect the
24 credibility of Prosecution witnesses or is it also exculpatory?
25 It is entirely your judgment call. I do not know what your
26 submission is.

27 MR POWLES: It is about 50 pages that we have been given.

28 JUDGE ITOE: And you have not had the time to read it.

29 PRESIDING JUDGE: Right. Then I take back the question.

1 MR POWLES: Certainly what I can say, in the short time
2 that I have had to review it, there is certainly information
3 contained within those documents that may effected credibility.

4 PRESIDING JUDGE: You will leave it at that.

5 MR POWLES: I will leave it at that at this time.

6 PRESIDING JUDGE: Okay.

7 JUDGE ITOE: What of the exculpatory aspect of it, which
8 you mentioned, did you, at that quick glance, see anything in it
9 that would suggest that there might be exculpatory evidence
10 contained in those documents?

11 MR POWLES: It might be exculpatory to this extent: If the
12 witness had been called by the Prosecution and the Prosecution
13 were in possession of this information, I would submit, that it
14 would be potentially exculpatory because it would be information
15 upon which the Defence could rely to carry out investigations and
16 potentially there after severely cross-examine the witness to
17 undermine his credibility. And in that way could be exculpatory.

18 JUDGE ITOE: Which you could not do, of course, when you
19 were asked to cross-examine at that stage, and which you would
20 have done if this material were available to you.

21 MR POWLES: I cannot necessarily say that I would have done
22 it without having had an opportunity to fully review it.

23 JUDGE ITOE: That's what I am saying, if this material,
24 which you say was available since 2005, were it available to you
25 now, long before now, you might have visited some of the material
26 for purposes of your cross-examination.

27 MR POWLES: Might have, if the witness had given evidence,
28 or the Prosecution sought to elicited from witness, evidence
29 potentially affecting my client. Now, the crucial question is:

1 When was this material disclosable by the Prosecution and --

2 PRESIDING JUDGE: Before you go on with that, could you
3 tell us, in your view, as a matter of law, could the issue of
4 whether a particular piece of evidence in the Prosecution's
5 possession could be exculpatory or not, a matter of difference of
6 opinion in terms of judgment, a prosecutorial judgment vis-a-vis
7 the judgment of the Defence. Is it possible that both sides can
8 differ as to whether a piece of evidence is exculpatory or not
9 exculpatory and, of course, in the alternative, whether it
10 impairs or has the potential of impairing the credibility of a
11 Prosecution witness?

12 MR POWLES: Your Honour, again, makes an excellent point.
13 History has taught us that the Defence and Prosecution often do
14 have very different ideas as to what is potentially exculpatory
15 evidence and what is not. And Your Honours are, no doubt, aware
16 of many of the miscarriages of justice cases that have occurred,
17 certainly in my jurisdiction and also in other jurisdictions
18 around the world. One of the principle and fundamental causes of
19 miscarriages of justice has arisen in cases where there has been
20 difference in opinion as to what is exculpatory material. Not
21 surprisingly, the Prosecution normally take a somewhat more
22 restrictive view than the Defence as to what is exculpatory. And
23 as result of that --

24 PRESIDING JUDGE: The matter becomes one for the
25 determination of the tribunal, at end of day.

26 MR POWLES: Your Honours, what sometimes happens is that as
27 a result of that opinion, the Prosecution withhold information
28 that is, in their view, not exculpatory, but on another view
29 clearly is, and it is only discovered some years later down the

1 road that information and evidence existed and is then disclosed
2 and thereafter leads to a quashing of a conviction.

3 PRESIDING JUDGE: At the appellate level. Quite right.
4 I'm satisfied with your exposition on that. You can pursue your
5 other arguments.

6 JUDGE BOUTET: If I may on that last line of exchange of
7 discussions, but Rule 68 deals with that issue of disclosure, and
8 that is the portion you are making reference to that may affect
9 the credibility of Prosecution evidence shall be disclosed within
10 30 days. I'm quoting from 68(B). I'm just trying to see how
11 that particular portion here -- obviously, this witness, as we
12 know, has not been called by the Prosecution and he was not part
13 of the Prosecution's case. It is a witness called now on behave
14 the third accused. How do you equate that to that particular
15 obligation on the Prosecution if they had this evidence, and let
16 us assume just for the sake of discussion, that they had this
17 information in their files about this particular witness, who is
18 not their witness, are you suggesting that they had that
19 obligation, in spite of the fact that this witness was not being
20 called to disclose that information?

21 MR POWLES: Yes, Your Honour. Because under Rule 68(B) the
22 Prosecution shall be under a continuing obligation to disclose
23 any such exculpatory evidence. It is a continuing obligation.
24 Now, they have had this potentially exculpatory, and certainly
25 evidence that undermines the evidence of this witness, as long
26 ago as the beginning of this year. My learned friend for the
27 Prosecution indicated to me that he decided to seek to elicit
28 evidence from this witness that could affect and impact upon,
29 certainly, my client. The words of my learned friend were "a

1 long time ago." Now, I would submit, that at that point, a long
2 time ago --

3 MR KAMARA: Objection My Lord. That is not a true
4 reflection of the discussions we had a few minutes ago.

5 MR POWLES: Perhaps I will sit down and allow my learned
6 friend --

7 PRESIDING JUDGE: Yes, could you make the correction.

8 MR KAMARA: Yes, My Lord. The question was: When did you
9 decide to cross-examine my client on the issues? I said I have
10 decided. I prepared my script a long time ago. A long time ago
11 there meant, that the moment I received notice of the witness
12 list.

13 PRESIDING JUDGE: Right. Learned counsel, do you accept
14 that clarification?

15 MR POWLES: I, of course, apologise to any
16 misclarification. I asked my learned friend to expand upon what
17 "a long time ago" meant. At that stage -- I'm now assisted by my
18 learned friend by giving a somewhat fuller answer as to what a
19 long time ago meant. If a long time ago meant when counsel for
20 the third accused indicated they sought to call this witness,
21 which I understand was certainly sometime in August, as I
22 understand 30 August, an indication was given that this witness
23 was called. If at that point it was decided by the Prosecution,
24 that through this witness they were going to try and elicit
25 evidence that impacted upon my client, I would submit that if
26 they wanted to rely on this witness to provide information and
27 evidence against the other accused, they had an obligation to
28 disclose to that accused evidence that could undermine the
29 credibility of that witness, and undermine the evidence with

1 which -- undermine the evidence which they sought to elicit from
2 that witness.

3 JUDGE BOUTET: Your submission is that Rule 68(B) came into
4 action, sort of, and should -- and should have been apparent from
5 the moment the Prosecution decided to use this information or
6 evidence or whatever it is in relation to your client, which was
7 through -- [Overlapping speakers].

8 JUDGE ITOE: That is when they saw the witness list.

9 JUDGE BOUTET: That is right. If the witness list was
10 disclosed in August 2006, whenever that list was disclosed to
11 them?

12 MR POWLES: Your Honours, yes. Just as an aside, of
13 course, the Prosecution are in a curious position in that, on the
14 one hand, they are seeking, through this witness, to elicit
15 information and evidence that they apparently seek to rely upon.
16 And, on the other hand, through this evidence, they thereafter
17 seek to undermine and attack the credibility of the witness and
18 say to Your Honours, this isn't a witness that you can believe.
19 Now, of course, that leaves, in a pretty unsatisfactory state,
20 what Your Honours, may make of that, but that is an aside and not
21 necessarily --

22 PRESIDING JUDGE: Could you repeat that part for emphasis?

23 MR POWLES: Your Honours, yes.

24 PRESIDING JUDGE: On the one hand they are doing what?

25 MR POWLES: They are in a curious position, on the one hand
26 they are seeking to elicit, it seems, from the witness, evidence
27 that they want to potentially rely upon and invite Your Honours
28 to place some emphasis on. Yet at the same time --

29 PRESIDING JUDGE: In other words, to accept as credible and

1 at the same time --

2 MR POWLES: They are seeking to potentially undermine the
3 credibility of the witness through presenting to him these
4 statements which they provided to us earlier. And, of course,
5 some of --

6 PRESIDING JUDGE: Your allegation is virtually in familiar
7 legal vocabulary --

8 MR POWLES: To an extent, Your Honour, yes.

9 Your Honours, in sum, those really conclude our submissions
10 and submission 7 is really setting out the sorts of issues that
11 Your Honours will undertake when determining this issue. Of
12 course, under Rule 95 of the Rules of Procedure and Evidence: "A
13 Trial Chamber should not admit evidence, the admission of which
14 would bring the administration of justice into disrepute."

15 We would submit that admitting evidence against an accused,
16 which that accused has not had an opportunity to investigate
17 and/or challenge, potentially could bring the administration of
18 justice into disrepute, because it is so far removed from the
19 protections enshrined in Article 17 of the Special Court Statue.

20 PRESIDING JUDGE: Could it be as high as that? Could it
21 not be, perhaps, characterised, if that is correct, as evidence
22 whose prejudicial effect might outweigh its probative value? I
23 do not use bringing the administration of justice into disrepute
24 as a concept which is synonymous with evidence that -- whose
25 probative effect is outweighed by the prejudicial value.

26 MR POWLES: Your Honour, I only put it in those terms
27 because of the fundamental rights that are contained in Article
28 17(4) that are being denied to the accused if this evidence is
29 admitted. I would submit, that a denial of such fundamental

1 rights could -- [Overlapping speakers].

2 PRESIDING JUDGE: Could bring the administration of justice
3 into disrepute.

4 MR POWLES: That's why I put it no higher than that. My
5 fallback position, of course, is reliance on Rule 89(B) whereupon
6 it is stated: In cases not provided for in the Rules, the Trial
7 Chamber should apply rules of evidence which best favour a fair
8 determination of the matter before it. And I would submit that a
9 fair determination of this matter requires the Prosecution to be
10 prohibited from eliciting evidence and information that could
11 impact upon another accused when that accused has not had an
12 equal opportunity to -- and had the safeguards contained in
13 Article 17 and/or Rule 68.

14 PRESIDING JUDGE: Thank you.

15 JUDGE BOUTET: Would there be, in your view, another
16 appropriate remedy, such as allowing re-cross-examination of that
17 witness on behalf of the second accused? I'm asking your views
18 on that. Would that cure that problem?

19 MR POWLES: Your Honours, there is that aspect of it, but
20 of course, the more crucial aspect of it is investigation and, of
21 course, under Rule 66, when the Prosecution seek to rely on the
22 evidence of the witness, ordinarily a pretty substantial amount
23 of time is provided to the accused to carry out investigations
24 before that witness is called, so that witness can be sought that
25 would undermine and attack the credibility of that witness and
26 those witnesses can be called on behalf of the Defence. And of
27 course, in this situation, it would lead inordinate delays if the
28 Defence were to be provided that opportunity.

29 PRESIDING JUDGE: So your preference would be to rule this

1 line of cross-inquiry as impermissible and the evidence as
2 inadmissible?

3 MR POWLES: Your Honours, yes.

4 PRESIDING JUDGE: All right. Learned counsel for the
5 Prosecution your response.

6 MR KAMARA: Good morning, My Lords. The Prosecution gave
7 its position yesterday. We will take and compound paragraph 1,
8 2, 3 together; that is, the issue relating to Article 17(4)(b)
9 and (e), as amended.

10 My Lord, the general statement is that the postulates of
11 the Defence, with regards to those paragraphs, are bare
12 statements of the law without particular reference to how they
13 apply to the specifics in the very case before this Chamber.

14 My Lord, the issue before the Court is a question posed by
15 the Prosecution, to wit, whether the second accused is a person
16 known to settled disputes. My Lord, that is an issue all too
17 familiar to the Defence of the second accused. It formed part of
18 their --

19 JUDGE BOUTET: I would like you to address the issue which
20 is not the question, per se, because I asked you that very
21 specific question yesterday. What is it you are intending to do
22 with this evidence? I mean, whether it is that question or the
23 question before or the question after, was your purpose and the
24 purpose of your cross-examination intended to undermine or attack
25 the credibility of the witness, or is it intended to use this
26 evidence, in this case, against accused number two or accused
27 number one? My understanding of your answer to my question was
28 you intend to use that evidence as against the second accused, or
29 the first accused, as the case may be. This is the issue that I

1 would like you to address.

2 PRESIDING JUDGE: Let us give you a methodology here. You
3 will answer learned Justice Boutet's question again for the
4 purpose of the record, and restate it as amply as you can, and
5 then you will answer the positions put forward by counsel for the
6 Defence, so that I -- I think the Bench, would like to be
7 enlightened as to what your answers are to some of the very
8 important issues that he has raised. That would be the
9 methodology.

10 MR KAMARA: Thank you My Lord.

11 JUDGE ITOE: Particularly in relation to his submission
12 that that evidence [indiscernible] should be excluded. You are
13 not entitled to, in a way, taking the benefit of that evidence
14 adduced in those circumstances.

15 MR KAMARA: Yes, My Lord.

16 PRESIDING JUDGE: So proceed as I have directed.

17 MR KAMARA: I will take the question from Justice Boutet,
18 and I recall yesterday that I said the purpose of that question
19 was to set out the theory of the Prosecution in a joint criminal
20 enterprise, as it effects the second accused. My Lord, it is the
21 Prosecution's position that we are entitled to do so in
22 cross-examination, not only to contradict the evidence of a
23 witness and not only to impeach the witness by way of
24 discrediting him.

25 PRESIDING JUDGE: Slowly, counsel. Let's get this. You
26 are entitled to do so not only to contradict the evidence of the
27 witness?

28 MR KAMARA: Yes, My Lord.

29 PRESIDING JUDGE: What else?

1 MR KAMARA: And also to impeach the witness as to credit.

2 PRESIDING JUDGE: Also to impeach the witness.

3 MR KAMARA: Also impeach the witness as to credit. But we
4 ae allowed, in law, My Lord, I submit, to raise issues that are
5 relevant to the Prosecution's theory, as it affects the subject
6 matter of the case.

7 PRESIDING JUDGE: When you say to raise, I mean, raise
8 issues with this witness as to the Prosecution's theory?

9 MR KAMARA: Yes, as it affects the Prosecution's case.

10 JUDGE BOUTET: Would you please expand on this, in the
11 scenario that we have where it is the third accused's witness
12 being called and you are trying to expand that to the first
13 accused and second accused? I would like to hear what law you
14 are using to support that view, and given that it is a joint
15 trial where each accused is entitled to his fundamental rights,
16 as we have said, as if they were tried separately. I would like
17 to hear you on this.

18 MR KAMARA: Yes, My Lord.

19 PRESIDING JUDGE: Develop that proposition, the second
20 part. It sounds very novel.

21 Mr KAMARA: It may sound novel but --

22 PRESIDING JUDGE: No, I'm not suggesting that it is not
23 supportable.

24 MR KAMARA: Thank you, My Lord. I appreciate that, My
25 Lord. The position here is that a witness has been called by the
26 third accused. And, My Lord, the Prosecution's theory in this
27 joint trial is that the three accused persons are charged with a
28 joint criminal enterprise. My Lord, in sum, that they planned,
29 instigated unlawful acts against ordinary citizens of this

1 country. My Lord, in pursuance of that theory, a witness of this
2 Court can have questions properly put to him.

3 JUDGE ITOE: A witness of this Court called by one or more
4 accused persons --

5 MR KAMARA: [Overlapping speakers] -- a witness before this
6 Court, called by one of the accused persons, can properly have
7 questions put to him to establish or substantiate the charge of
8 the joint criminal enterprise.

9 JUDGE BOUTET: Against this particular accused who is
10 calling that witness, I agree with you. How do you expand? In
11 other words, tell me how, if we were not in a joint trial, in a
12 single trial here, how this evidence could ever come in through a
13 witness and try to get evidence against another accused who is
14 not even there. I would like you to explain to me, how evidence
15 called by a witness now for the third accused -- what you are
16 saying, I have no absolutely no problem with it, if it is to be
17 put against the third accused who is calling this witness. My
18 difficulty to understand your position has to do with use you are
19 tending to do of that evidence against accused number one or
20 number two. If it were a trial of accused number three, what use
21 could you make ever of that evidence against second accused? I
22 mean, the fundamental right here is they are entitled, each and
23 every one of them, even though tried jointly, to be afforded the
24 same rights as if they were tried separately. Now, if they were
25 tried separately, how would you do this? I am just curious to
26 see how you would achieve this? If the witness now called on
27 behave of the third accused and in the trial of the third
28 accused, how would you do that to impeach or to go and prove your
29 joint criminal enterprise about accused number two? I am not

1 saying you cannot do that vis-a-vis the third accused. And
2 again, I want that to be clear, I'm talking here of your intent
3 to use this evidence against other co-accused, not the third
4 accused.

5 PRESIDING JUDGE: Perhaps you should have the opportunity
6 of expanding or expounding your theory, your proposition, then
7 proceed. Do it as carefully as possible, because you really
8 are -- as you can see from the exchange you are having with the
9 Bench, you are really on very delicate ground. It is absolutely
10 important that we understand the nuances and the intricacies of
11 your position so that we will be able to deliberate
12 appropriately. So take your time. I mean, if you -- I expect
13 somewhere you might, in fact, be guiding us with some
14 authorities, case law authorities on the subject and I am
15 prepared to listen.

16 JUDGE BOUTET: And Mr Kamara, I will try to remain silent
17 and let you develop your position.

18 MR KAMARA: My Lord, I was not going to say it, but I would
19 appreciate it.

20 PRESIDING JUDGE: Let's go on.

21 MR KAMARA: Thank you, My Lord. My Lord, in such a
22 scenario, in a charge of conspiracy, the Prosecution is at
23 liberty to bring in evidence of the conspiracy to any particular
24 charge and to any particular witness.

25 My Lord, the joint criminal enterprise we have in this, our
26 situation in Court, affects the three accused persons jointly.
27 And, My Lord, the Prosecution would submit it's not restricted to
28 elicit evidence of that joint criminal enterprise only to one
29 particular witness called by an accused.

1 My Lord, at the end of the day, it is for the Bench to make
2 an inquiry as to the probative value as against the prejudicial
3 effect of the admission of such evidence. My Lord, the issue of
4 breach of Article 17 does not arise at all. The Defence had an
5 opportunity to cross-examine this witness and I do recall that my
6 learned friend, Mr Powles, said he has the benefit of not having
7 to call -- to cross-examine the witness yesterday.

8 JUDGE ITOE: Learned counsel.

9 MR KAMARA: Yes, My Lord.

10 JUDGE ITOE: Supposing Mr Powles was seized of this pile of
11 documents before he was called upon to cross-examine, would he
12 have taken the same position?

13 MR KAMARA: My Lord, I want to believe that, honestly --

14 JUDGE ITOE: Let me go further, even before what was
15 disclosed in the closed session yesterday. If you were aware of
16 all that, would you think that he would have just said no, he has
17 no cause to cross-examine that particular witness?

18 MR KAMARA: My Lord, I believe that he would want to
19 cross-examine. As a prudent counsel, I believe he would want to
20 cross-examine.

21 JUDGE ITOE: Without having been seized of these facts,
22 which I would imagine were not to his knowledge before they were
23 revealed yesterday.

24 MR KAMARA: Yes, My Lord. I want to separate the two
25 issues of what was served to him this morning and as to the right
26 of the Prosecution to elicit information, and then I will come to
27 the issue of what he has in his possession.

28 JUDGE ITOE: Put that also in the context of what we had
29 also yesterday in the closed session.

1 MR KAMARA: Yes, My Lord.

2 JUDGE ITOE: Because it is part of the proceedings.

3 MR KAMARA: Yes, My Lord. In the context of yesterday's
4 proceedings, now that the Prosecution is in possession of this
5 information -- My Lord, we rightfully disclosed this information
6 to the Defence. My Lord, as the learned Justice Boutet
7 mentioned, that even in the event of any lapse on the side of the
8 Prosecution having to disclose this information yesterday, even
9 though we got it yesterday, the meaningful redress could be an
10 opportunity for the Defence to do a re-cross, as they say in the
11 United States, but not and expunge or make the evidence
12 inadmissible.

13 PRESIDING JUDGE: The question really would not be whether
14 it's meaningful for not. It's a question of what the legal
15 options are available to the Prosecution and the Defence.
16 Suppose there's a legal option available for the exclusion of the
17 evidence, why would you make a judgment that it would only be
18 meaningful for them to opt for the second option?

19 MR KAMARA: My Lord, I'm taking it that, at the worst,
20 because I'm saying there is no case for exclusion of the
21 evidence.

22 PRESIDING JUDGE: Well, that's your submission.

23 MR KAMARA: Yes, My Lord, that's our submission.

24 PRESIDING JUDGE: But you cannot say that this would be
25 meaningful or not meaningful. I would have thought that the
26 legal option is there, either to seek exclusion or, in fact, to
27 ask for the possibility of an adjournment to investigate or to
28 re-cross or rebut, as the case may be.

29 MR KAMARA: Yes, My Lord. I appreciate your comment, My

1 Lord.

2 PRESIDING JUDGE: Go ahead, yes.

3 MR KAMARA: In response to Justice Itoe's issue about a
4 disclosure of the matter, My Lord, Rule 68, the Prosecution
5 submits, does not affect the matters in issue before this Court
6 now. The materials that have been disclosed, the Prosecution has
7 conceded not to be exculpatory material, My Lord, and does not
8 fall within Rule 68.

9 PRESIDING JUDGE: In your submission?

10 MR KAMARA: Yes, My Lord.

11 PRESIDING JUDGE: But would it also -- what is your
12 position, then, on whether the material would have the potential
13 of impairing the credibility of a Prosecution witness? Do you
14 have anything --

15 MR KAMARA: My Lord --

16 PRESIDING JUDGE: Because remember they have actually
17 submitted on both limbs.

18 MR KAMARA: Yes, My Lord. That will not arise.

19 PRESIDING JUDGE: That will not arise. Yes, okay.

20 MR KAMARA: Yes, My Lord. Therefore, My Lord, references
21 to a breach of Rule 68 or Rule 17(D) are superfluous and are of
22 no consequence.

23 My Lord, I would like to make reference to the case of
24 Bagosora, My Lord. It is an ICTR case, dated 26 April 2005. It
25 is titled "Decision on Modalities For Examination of Defence
26 Witnesses." My Lord, the Special Court does not have the
27 equivalent of Rule 90(G)(i) as in the ICTR, but it would equally
28 throw light on this issue before us, My Lord.

29 At page 4 of that decision, the second paragraph reads, My

1 Lord: "The requirement in Rule 90(G)(ii) that cross-examining
2 counsel identify the proposition which is in contradiction of the
3 evidence given by the witness. It's not a [indiscernible]. Rule
4 90(G)(i) does not limit cross-examination to contradictory
5 matters and authorises questions relevant to the subject matter
6 of the case of the cross-examining party."

7 JUDGE ITOE: The case of the cross-examining party?

8 MR KAMARA: Yes, My Lord.

9 JUDGE BOUTET: Is this a scenario that we have? I don't
10 take an issue with that statement, as such. I agree with this.
11 This is not the question. The question here is you're trying to
12 elicit evidence in support of your position through a witness
13 called by the third accused to ascribe that evidence against the
14 second or the first accused. This is quite different. This
15 is -- if you're trying to use the cross-examination to bring this
16 evidence against the third accused, I have -- this is not the
17 issue I have. I have no problem, and this is squarely on line
18 with that case that you are putting. But you're going beyond
19 that. As I say, if that evidence you're trying to use was to be
20 used against the accused Kondewa, we wouldn't be in that
21 discussion. Your position, you want to use that against the
22 second or the first accused and that's why we're having this
23 discussion. That case you're quoting has no bearing on that
24 issue.

25 MR KAMARA: My Lord, I beg to differ. What we're trying to
26 seek to do here, My Lord, the second defence stated that we could
27 only do -- elicit information if it affects the credit, but if it
28 goes to the substance, we can't. My Lord, here is a case that
29 matters, that shows that if the cross-examination is relevant, it

1 goes to the subject matter of the case of the cross-examining
2 party; it is permissible. My Lord, that is why I brought this
3 case in Court.

4 PRESIDING JUDGE: In other words, your citation of Bagosora
5 is merely for that limited part of the proposition?

6 MR KAMARA: Yes, My Lord.

7 PRESIDING JUDGE: But a question of whether this can be
8 extrapolated in terms of where you are seeking to elicit, in
9 cross-examination, potentially incriminating evidence from a
10 witness called by, say, accused A against accused B, Bagosora
11 does not seem to help you; would you concede that?

12 MR KAMARA: Yes, My Lord. We're on the same radar screen.

13 PRESIDING JUDGE: That is a proposition I described earlier
14 on as novel. The fact that it is novel does not mean that it
15 cannot be supportable if there's some kind of persuasive
16 argument, but do you have any case law authorities to support
17 this particular proposition which is of a narrow one. Can you,
18 in law, be allowed to elicit potentially incriminating evidence
19 from a witness called by one of the accused persons in a bid to
20 incriminate another accused person who did not proffer that
21 witness, is not a common witness, either. I think that issue
22 seems to crystallise itself to that.

23 MR KAMARA: I'll take the first part of the issue. That
24 the Prosecution, at the point in cross-examination was not
25 seeking to incriminate the second accused -- was not seeking to
26 incriminate the second accused. And, moving further, My Lord to
27 answer your question --

28 PRESIDING JUDGE: What were you doing then?

29 JUDGE ITOE: Yes.

1 PRESIDING JUDGE: It's important that you don't leave it in
2 a state of uncertainty. You were not seeking to incriminate;
3 what were you seeking to do?

4 MR KAMARA: To present contradictory information over what
5 the Defence theory is.

6 PRESIDING JUDGE: In other words, to contradict the witness
7 on matters going to the issues.

8 MR KAMARA: My Lord, not the witness to be contradicted,
9 it's contradict the theory of the Defence case.

10 JUDGE BOUTET: About the second accused.

11 MR KAMARA: Yes, My Lord.

12 PRESIDING JUDGE: Yes, quite frankly, that's what it is.

13 MR KAMARA: Yes, My Lord.

14 PRESIDING JUDGE: When you say theory, you take us into a
15 kind of theorial atmosphere. Remember, it's cross-examination,
16 you're eliciting facts.

17 MR KAMARA: Yes, My Lord.

18 PRESIDING JUDGE: And it's facts that you are eliciting.
19 You're not eliciting theories, as such. It would seem to me,
20 really, there's a nuancy which I'm not following. What you are
21 seeking to do is contradict --

22 MR KAMARA: The case of the Defence.

23 PRESIDING JUDGE: Yes.

24 MR KAMARA: My Lord, it is the Defence case that the second
25 accused --

26 JUDGE ITOE: And to some extent, would you admit -- to some
27 extent, not just to contradict, to some extent, you know, to also
28 use that evidence in incrimination of the second accused; would
29 that not be a fair conclusion to arrive at?

1 MR KAMARA: It will be, My Lord. I concede to that.

2 PRESIDING JUDGE: So then it would be slightly disingenuous
3 to say that the object of the cross inquiry was not, in the
4 ultimate analysis, to elicit potentially incriminating evidence.
5 Do you want to agree with that?

6 MR KAMARA: No, My Lord. I disagree with that entirely.

7 PRESIDING JUDGE: Where are we now? In one breath you seem
8 to be saying yes but in another breath you are modifying. Of
9 course, I'm not going to --

10 MR KAMARA: My Lord, if I may be --

11 PRESIDING JUDGE: Yes. Please. I apologise.

12 MR KAMARA: Sorry, My Lord. I apologise, too.

13 PRESIDING JUDGE: I didn't want to cut short my thoughts.
14 That's okay. Go ahead.

15 MR KAMARA: I'm saying that at the time the question was
16 posed, it was not to incriminate the second accused, and then the
17 learned Justice Itoe said if it can be drawn to the extent that
18 it could lead to incriminating the second accused by virtue of
19 the Defence's case, then I agree to him.

20 PRESIDING JUDGE: If you see a difference there, I will
21 rest, but, of course, in my humble position, it's a distinction
22 without a difference.

23 JUDGE BOUTET: Absolutely. I share, completely, your
24 views, Mr Presiding Judge.

25 MR KAMARA: My Lord --

26 PRESIDING JUDGE: Proceed, counsel. You can wind up
27 your -- the various submissions that you have and see how you
28 can, again, articulate your final position so that you will give
29 us a summary of your response to the Defence lawyer.

1 MR KAMARA: I will try, My Lord.

2 PRESIDING JUDGE: Right. Do the best you can. Thanks.

3 MR KAMARA: My Lord, the position, as we have it in Court
4 today, is one that is at variance, is one that has different
5 conclusions, depending on jurisdictions. I'm responding to the
6 question of the Presiding Judge as regards to incriminating
7 evidence coming from a witness called by another accused person,
8 leading incriminating evidence from a witness called by another
9 accused person.

10 My Lord, in the United States, there are different
11 jurisdictions that have different conclusions as regards this
12 matter. The learned Presiding Judge did ask for case law
13 authority.

14 MR KAMARA: Last night I was looking at this, and I do have
15 materials. Unfortunately, I wasn't expecting that I may have to
16 produce them this morning. My Lord, before the end of the day, I
17 would endeavour to make before the Court the different positions
18 as I saw them yester night, as to the different conclusions on
19 the approach as to this issue.

20 My Lord, my final conclusion on the issue, from my readings
21 last night, is that such evidence can be admitted, and for the
22 probative value to be placed on that information is to be done by
23 the Bench at the end of the day, My Lord, and that does not
24 affect the admissibility of such information.

25 In summary, My Lord, it is the Prosecution's position that,
26 in pursuance of our theory of a mode of liability, that is to
27 say, a joint criminal enterprise --

28 JUDGE ITOE: And not just individual criminal
29 responsibility?

1 MR KAMARA: Yes, My Lord. Thank you, My Lord. And in
2 addition to the wider latitude in cross-examination that this
3 Court has exercised before in this case, that the Prosecution can
4 properly elicit information from the witness before this Court
5 that affects the substance of the mode of liability of joint
6 criminal enterprise.

7 JUDGE BOUTET: Which means what?

8 MR KAMARA: That the three accused persons are charged
9 together, that they planned, instigated and ordered attacks and
10 lawful killings --

11 JUDGE BOUTET: Yes.

12 MR KAMARA: -- that form the charges of the indictment.

13 JUDGE BOUTET: There is no dispute on this. The question
14 is not whether it causes the substantial background you are
15 alleging against these particular accused. The issue is not
16 that. The issue is can you, through cross-examination of a
17 witness of the third accused, elicit evidence against another
18 accused. That's the question.

19 MR KAMARA: My Lord, that is what we are saying: Yes, we
20 can. And in pursuit of a theory of a mode of liability, we can
21 properly so do and the probative value to be placed on this
22 information that will be so adduced is for the Court, at the end
23 of the day, if it affects, prejudicially, the case of the second
24 accused.

25 PRESIDING JUDGE: Remember the presumption during that kind
26 of analysis you put forward, is that the evidence ought to be
27 elicited, even if it has a highly incriminating nature, must be
28 evidence, in a sense, purportedly, in pursuance of the joint
29 criminal enterprise.

1 MR KAMARA: Yes, My Lord.

2 PRESIDING JUDGE: Why would the Prosecution be allowed to,
3 because three persons are charged with a joint criminal
4 enterprise, be allowed to go fishing for evidence when, in fact,
5 the only evidence that they can legitimately lead in a Court of
6 law to prove that particular mode of liability would be evidence
7 in pursuance of the joint criminal enterprise.

8 MR KAMARA: Yes, My Lord.

9 PRESIDING JUDGE: That's the presumption. Otherwise the
10 joint criminal enterprise would be quite a Draconian concept, it
11 would admit everything, just because they are jointly charged.
12 The evidence that would be properly led would be evidence
13 purportedly in pursuance of the joint criminal enterprise.

14 MR KAMARA: That would bring us to a case-by-case basis.

15 PRESIDING JUDGE: That's the point I'm making. It's as if
16 all -- along as they are brought together, you are virtually
17 saying birds of a feather flock together and, therefore, by their
18 various association anything can go on. It's not it. It's that
19 the evidence that a Court must hear should be evidence which
20 clearly is purportedly or allegedly in pursuance of the joint
21 criminal enterprise.

22 MR KAMARA: My Lord, what you're saying is correct. But
23 that is not what is applicable in the instant case. I'm saying
24 it is a case-by-case basis. Was the question or the evidence
25 that was sought to be elicited, was it in relation to a joint
26 criminal enterprise theory.

27 PRESIDING JUDGE: That's a judgement call, too. That's why
28 we're saying this whole line of cross-examination should be
29 examined with a great circumspection, because if it's really

1 allowed to lead evidence, even if we agree with you, in respect
2 of a second accused and it turns out that the evidence which is
3 being elicited, properly speaking, is not even purportedly in
4 pursuance of the joint criminal enterprise, then what we've done,
5 we've said, okay, the fact that they are associated gives you
6 unrestricted liberty to bringing everything.

7 That's my fear. As I say, it is a very delicate
8 borderline. I think we, on the Bench here, would be very
9 vigilant about this, where we're going. That's why the initial
10 question of my Honourable Justice Boutet, buttressed by
11 Honourable Justice Itoe is important. Where are we going; what
12 road are you leading us down?

13 MR KAMARA: My Lord, it's one road. My Lord, I am
14 suggesting to the Court one road. And that is this: That the
15 Prosecution is entitled to pursue, in cross-examination, matters
16 affecting the other two accused persons in pursuit of its
17 theorial joint criminal enterprise. It is for the Bench to make
18 a determination whether, what the Prosecution seeks to do amount
19 to going down the road of joint criminal enterprise or not. My
20 Lord, again, as I see it, even the Defence cannot complain about
21 the issues that we have before the Court. They've had an
22 opportunity to cross-examine, and if they want to have a bite at
23 the cherry again, then it's up to the Bench to use its
24 discretion.

25 My Lord, it is such that they've been asked to
26 cross-examine; they say, no, we don't have cross-examination.
27 Then the Prosecution puts questions; they say, now I feel like
28 asking something. My Lord, there is an orderliness in the
29 process.

1 PRESIDING JUDGE: I will impose some orderliness now and
2 ask you -- you have given us your conclusion.

3 MR KAMARA: Thank you, My Lord.

4 PRESIDING JUDGE: I would like the other side to reply.
5 Gentlemen, I'm only asking -- or, Mr Powles, I'm only asking you
6 to reply to any new material that you may not have had the
7 opportunity of covering in your original submissions.

8 MR POWLES: Your Honours, yes.

9 PRESIDING JUDGE: This is not an opportunity for a second
10 bite at the cherry.

11 MR POWLES: I'm not a fan of cherries, in any event. I
12 certainly won't be seeking to gorge on any cherries.

13 PRESIDING JUDGE: I am fond of cherry pies.

14 MR POWLES: Your Honours, I would seek to respond to the
15 points raised by my learned friend. In relation to the last
16 point; ie that no attempt was made to cross-examine the witness
17 by counsel for the second accused at the stage when counsel had
18 such an opportunity, of course no such cross-examination was
19 undertaken by counsel for the second accused at that stage,
20 because at that stage there was not one iota of evidence from the
21 witness that pertained to and related to the second accused. If
22 it had been known that the Prosecution were going to seek,
23 through that witness, to elicit information that could impact
24 upon my client, it's possible that questions would have been put,
25 only, however, after the proper investigation's inquiries being
26 carried out.

27 In relation to the point where my learned friend says he's
28 not seeking to incriminate the second accused through this
29 witness, in my respectful submission, that's precisely what he's

1 trying to do when one refers to joint criminal enterprise. I
2 understand yesterday there was reference to Article 6.3 of the
3 Special Court Statute; namely, command responsibility, and that
4 some of the questions my learned friend seeks to pose could go to
5 that issue. Both of those, command responsibility and joint
6 criminal enterprise, are modes of liability and any questions
7 relating to them of course seek to incriminate the second
8 accused.

9 The three bases of cross-examination which my learned
10 friend indicates that he's entitled to pursue, the first, no
11 point is taken to contradict the evidence of the witness and to
12 impeach the witness's credibility. It's the third that I would
13 take issue with, and that is where the cross-examination raises
14 issues relevant to the Prosecution's theory of its case. The
15 Prosecution had the best part of a year and a half to call
16 witnesses to prove its theory of the case against the second
17 accused, and it's not appropriate, in my respectful submission,
18 for the Prosecution to seek, through a witness for the
19 third accused and another accused, to put its theory of its case
20 against the second accused when that witness did not deal or give
21 evidence in relation to the second accused during his
22 examination-in-chief.

23 My learned friend, of course very fairly and properly,
24 referred to the test -- a possible test being whether the
25 probative value of the witnesses outweighs its prejudicial
26 effect. Taking the first point, probative value, as I alluded to
27 earlier, this is a situation where the Prosecution are seeking
28 to, on the one hand, elicit information from the witness that
29 they were potentially at one stage going to rely upon, yet at

1 another stage, and have already done so, seek to undermine the
2 credibility of the witness. In those circumstances, I would
3 submit that its probative value is of very limited value.

4 That's compounded, of course, by the fact that the evidence
5 will be untested and unchallenged and the Defence would not have
6 been afforded the due process, guarantees and rights contained
7 within the Statute of the Special Court where such evidence is
8 elicited without those guarantees and protections. In my
9 submission, it's of very limited, if any, probative value
10 whatsoever. When that's contrasted to the prejudicial effect
11 being caused by evidence being elicited that's not been subject
12 to all the rigorous checks and balances that exist within the
13 Statute and the Rules, I would submit that the prejudicial effect
14 far outweighs any limited probative value that the evidence may
15 have.

16 Just two final points, and I will deal with the second
17 point first, because the last point may entail going into closed
18 session. My learned friend made reference to national
19 authorities from the United States and the United States'
20 position. Of course, pursuant to the Rules of this Court,
21 national rules of evidence are not binding upon this Court.
22 They're only of some guidance and I would ask my learned friend,
23 when he's conducting his inquiries, to bear in mind the US
24 Federal rules of evidence, which provides that cross-examination
25 is to be limited to the scope of the evidence given in
26 examination-in-chief and evidence that goes to the credit of the
27 witness and not the third basis of cross-examination that my
28 learned friend alluded to.

29 The final point I would seek to address Your Honours on is

1 in relation to the further material that's been disclosed to the
2 Defence this morning. My learned friend said that he received
3 this material yesterday. Now, that, in my respectful submission,
4 raises very serious and profound concerns. Because if this
5 potentially relevant and exculpatory evidence has been in the
6 possession of the Prosecution since the beginning of this year,
7 if it only reached my learned friend's hands yesterday, that, in
8 my submission, raises very serious concerns about the proper
9 mechanisms and operations of the transfer of evidence and
10 materials from the Prosecution's investigatory arm to counsel who
11 seek to present the evidence for the Prosecution in Court. An
12 investigator, who spends most of his time out in the field, is of
13 course not apprised of all the issues that are going on in Court
14 and how and when the evidence that he's in possession of may
15 become relevant and disclosable by the Prosecution in the trial
16 proceedings. I don't know how the OTP works at the Special Court
17 for Sierra Leone, but I would have very real concerns if there's
18 not a proper flow of information from those gathering evidence
19 that could --

20 MR KAMARA: My Lord, I'm sorry. If my learned friend wants
21 to cast aspersions --

22 PRESIDING JUDGE: Counsel, sit down for a while. Let me
23 hear. What's the point of the intervention?

24 MR KAMARA: I can understand if my learned friend is making
25 legal positions, but, My Lord, if he's attempting to cast
26 aspersions on the Office of the Prosecution, we do take exception
27 to that. The matter is already a subject before the Court, and
28 the Court can make inquiries as to the processes involved. It is
29 not for my learned friend to pass commentary or to make an

1 assessment as to the value judgment of the work of the Office of
2 the Prosecutor.

3 PRESIDING JUDGE: Even if that is germane to his concern?
4 He can make submissions, whether they -- of course, submissions
5 of fact, as well as submissions of law, whether they are
6 substantiated or not is a different question.

7 MR KAMARA: Yes, My Lord.

8 PRESIDING JUDGE: I would have given you a right of reply
9 to that. I will allow the intervention to continue.

10 MR KAMARA: Thank you, My Lord. These are matters that go
11 beyond what are the issues before the Court, and to make personal
12 -- casting aspersions on the work of the opposite side or the
13 office, in general, I think it is unprofessional.

14 PRESIDING JUDGE: Right.

15 MR KAMARA: If that is the case, we had a closed session
16 yesterday.

17 PRESIDING JUDGE: It's not conventional to do that.

18 JUDGE ITOE: Were these documents only released -- from
19 what the OTP says, from what you say, were they only released to
20 you yesterday?

21 MR KAMARA: Yes, My Lord.

22 JUDGE ITOE: Only yesterday?

23 MR KAMARA: Yesterday, yes, My Lord.

24 JUDGE BOUTET: Don't you think, Mr Kamara, it is fair for
25 the Defence to raise issues about impropriety with the
26 Prosecution as an organisation? Not necessarily you, I mean,
27 your office, because you are here on behalf of the Office for the
28 Prosecution, and because it is important that this Court knows
29 about either negligence of the Office for the Prosecution, good

1 faith or bad faith; all of these are important factors to make
2 the determination. So if your organisation acted improperly, I
3 think it is very important for this Court to know about it. You
4 say, and we take your word, that you got these documents only
5 yesterday. Well, I think it is important. It is fair for them
6 to raise these matters and if your organisation has been, has
7 worked improperly, let's use this word now, why can they not
8 raise that, especially if they do suffer or may suffer
9 consequences as a result of that? It may not be you personally,
10 we're talking here OTP as an organisation.

11 MR KAMARA: My Lord --

12 PRESIDING JUDGE: And consistent with the doctrine of
13 even-handed justice, where they too are guilty of dereliction of
14 duty or some mala fides, the Prosecution is entitled to raise
15 those issues. Of course, that does not mean that you do not have
16 a right of reply. I'm allowing you to exercise that during this
17 intervention, and you will not have a second opportunity to do
18 that.

19 MR KAMARA: I'm grateful, My Lord.

20 PRESIDING JUDGE: So continue.

21 MR KAMARA: My Lord, raising the issue is one thing and
22 going beyond the issue to characterise a statement, I think, My
23 Lord, it's unfair. It is correct for the Bench to make the
24 assessment at the end of the day, and the Bench is inquiring into
25 this issue. For my learned friend to cross that threshold, to
26 start making aspersions on the Office of the Prosecutor, I think
27 that is where he crossed the limit.

28 PRESIDING JUDGE: Both sides are perfectly within their
29 discretion to make allegations of impropriety or dereliction of

1 duty if they have evidence to substantiate it. So, we are in a
2 position to hear both sides. I don't think the rules are clear
3 as to what the threshold is. If counsel says, "Look, we got this
4 yesterday, and this has been in the possession of the Prosecution
5 since 2005," and if the facts support that, then I think they are
6 entitled to complain. All they're doing is complaining, and all
7 you're doing is replying. We will determine whether the
8 complaints are justified or not.

9 MR KAMARA: I agree, My Lord.

10 PRESIDING JUDGE: Learned counsel, please wind up.

11 MR POWLES: Your Honours, yes. May I make crystal clear,
12 to reassure my learned friend, all I'm doing is raising a
13 concern, and I put it no higher than a concern, as to how
14 information is shared by one arm of the Prosecution; namely, the
15 investigators, with those who appear in Court on their behalf,
16 and a concern that if there's not a proper free flow of
17 potentially exculpatory information from one arm to another,
18 there is scope for a potential miscarriage of justice. That's
19 all I was seeking to do, is to raise that concern.

20 PRESIDING JUDGE: And sometimes these are matters which are
21 peculiar to little bureaucracies.

22 MR POWLES: Your Honours, yes. No in relation to whether
23 it's appropriate to do that or not, I put it no higher than a
24 concern, but Your Honours may recall that, last week, my learned
25 friend for the Prosecution made a very serious allegation against
26 the Defence team for the second accused; namely that there had
27 been potential misleading. I invited him to reconsider that very
28 serious allegation overnight and either put up or shut up. There
29 was no comeback from that.

1 Now, in those circumstances, I would submit it is not
2 really appropriate for my learned friend to cast aspersions
3 whether it is professional or not to raise concerns as to the
4 propriety of how one conducts their investigations.

5 PRESIDING JUDGE: I think we have laid that aspect of it to
6 rest by our own pronouncements here.

7 MR POWLES: The only final point I'd raise, Your Honour, is
8 of course whether this information could have been exculpatory or
9 not. I would submit --

10 JUDGE ITOE: Haven't you addressed us sufficiently on that?

11 MR POWLES: Your Honours, yes. In those circumstances, I
12 wouldn't seek to address Your Honours further.

13 PRESIDING JUDGE: Do you have any -- I think it's
14 appropriate that we take the tea break at this stage and come
15 back and make sure that counsel do not go beyond the time usually
16 allotted for tea. We'll take a tea break at this time.

17 [Break taken at 11.27 a.m.]

18 [Upon resuming at 12.10 p.m.]

19 PRESIDING JUDGE: We resume the proceeding. This is the
20 ruling of the Court: Having heard arguments on both sides on the
21 objection of the permissibility of the Prosecution's line of
22 cross-examination and at eliciting evidence involving the second
23 accused from the first witness for the third accused purportedly
24 to contradict the Defence theory, and having grave doubts as to
25 the fairness of the said line of cross-examination, we rule that
26 it is impermissible. A written reason decision will be published
27 in due course. Counsel, let's proceed.

28 MR KAMARA: Thank you, My Lords.

29 PRESIDING JUDGE: Let's bring the witness back to Court.

1 [The witness entered Court]

2 PRESIDING JUDGE: Mr witness, you are still under oath.

3 Let's proceed with your cross-examination.

4 MR KAMARA: Thank you, My Lord.

5 PRESIDING JUDGE: Yes, Mr Witness.

6 THE WITNESS: I would like to make new statements.

7 PRESIDING JUDGE: A statement?

8 THE WITNESS: Yes, in connection with the article presented
9 yesterday by the Prosecution in respect of press interview being
10 conducted. I want to --

11 PRESIDING JUDGE: Just a minute. Counsel, were you advised
12 of this position?

13 MR WILLIAMS: I didn't have any access to this witness
14 [overlapping speakers].

15 PRESIDING JUDGE: Yes, you cannot, really. Quite. Do you
16 want to -- remember you were being cross-examined on that
17 exhibit.

18 THE WITNESS: It's just a brief statement, My Lord.

19 PRESIDING JUDGE: Wouldn't it be appropriate at the end of
20 your testimony to do that?

21 THE WITNESS: Okay.

22 PRESIDING JUDGE: I think it would be appropriate, because
23 we would not know how to interject the statement that you want to
24 make, you know.

25 THE WITNESS: Okay.

26 PRESIDING JUDGE: And it would not fit into the mold of
27 cross-examination, but we'll give you the opportunity to do that
28 at the end of your testimony.

29 THE WITNESS: Thank you, My Lord.

1 PRESIDING JUDGE: Counsel, continue.

2 MR KAMARA: Thank you, My Lord.

3 CROSS-EXAMINED BY MR KAMARA: [Continued]

4 Q. Good afternoon, Mr Tarawally.

5 A. Good afternoon.

6 Q. You're feeling well today?

7 JUDGE ITOE: Was he not feeling well yesterday?

8 THE WITNESS: No, I am feeling well.

9 PRESIDING JUDGE: Excuse me, did you also have medical
10 qualifications, doctor, Dr Kamara? Go ahead. You don't need to
11 answer that. Continue.

12 MR KAMARA:

13 Q. You are an ulcer patient, aren't you?

14 A. Please be audible.

15 Q. You are an ulcer patient, ulcer patient.

16 PRESIDING JUDGE: You suffer from ulcers, that's what he's
17 saying.

18 THE WITNESS: Yes, that's correct.

19 MR KAMARA:

20 Q. And you are undergoing medical treatment at the moment?

21 A. Yes, that's correct.

22 Q. And where is that? Where?

23 A. Currently?

24 Q. Yes.

25 A. At the Zulu Centre.

26 Q. Now, let me take your mind --

27 JUDGE ITOE: At the want centre?

28 THE WITNESS: Zulu Centre.

29 MR KAMARA:

1 Q. Let me take your mind back to the days at Base Zero. While
2 you were at Base Zero, you'll agree with me that several meetings
3 were held by the Kamajor leadership.

4 A. Repeat yourself, please.

5 Q. While you were at Base Zero, several meetings were held by
6 the Kamajor leadership.

7 A. By the Kamajor leadership, which leadership?

8 Q. The leaders of the Kamajor at Base Zero.

9 A. I only knew about meetings being held there by the former
10 War Council of the CDF.

11 Q. Thank you. You were present in some of those meetings?

12 A. I have never witnessed any, because I was not a member of
13 the War Council.

14 JUDGE ITOE: So you were not present at any of these
15 meetings?

16 THE WITNESS: I was not present at any of those meetings.

17 MR KAMARA: Thank you, My Lord.

18 Q. There were other meetings apart from War Council meetings;
19 correct?

20 A. Where?

21 Q. At Base Zero. General meetings of all Kamajors present.

22 A. The only meeting that I knew of was meeting being conducted
23 at the place where the Kamajors were undergoing militia training.

24 Q. Thank you.

25 A. Welcome.

26 Q. What was the purpose of that meeting?

27 A. It was specifically for those who were under recruitment.

28 Q. What was the purpose of that meeting?

29 A. It was intended to sensitise the recruits and those who

1 were interested to be recruited as militia fighters.

2 Q. Were you there as a recruit?

3 A. My age did not permit to join those people, but I observed
4 it.

5 Q. Were you there as a recruit?

6 A. At the recruit, I say I was there and observed that they
7 were holding meetings there, the training commandant, and the
8 recruits and those who were interested.

9 Q. You were there as an interested party then?

10 A. As an observer.

11 Q. An observer with no interest?

12 A. With no interest, absolutely.

13 Q. Thank you. Who addressed that meeting?

14 A. That meeting was addressed by Mr MS Dumbuya, the training
15 commandant, or director of training.

16 Q. Is he the only one that addressed the meeting?

17 A. He -- I mean, I only witnessed -- at the time he was giving
18 the address, I was there. But after he got through addressing, I
19 did not witness any other activity there.

20 Q. How long was that meeting, do you know?

21 A. I cannot give an estimate of the length of time the meeting
22 took place.

23 Q. You do not know the other persons that addressed that
24 meeting?

25 A. I said, Mr MS Dumbuya, who gave the address was the only
26 one whose address I witnessed.

27 Q. Yes. You do not know --

28 A. Any other person.

29 Q. -- if any other person addressed that meeting?

1 A. No, I don't know.

2 Q. I will suggest to you that, at that meeting, Chief Norman
3 made an address; would you agree to that?

4 A. I do not know whether Chief Norman was there or not. I do
5 not know. The person who initially deliver an address was the
6 training -- director of training, Mr MS Dumbuya.

7 Q. Thank you.

8 A. Thank you. Welcome.

9 Q. Are you aware of a meeting that was described as an all out
10 offensive; a meeting, the purpose for which was an all out
11 offensive by the Kamajors?

12 A. I did not attend any meeting -- where? In fact, where?

13 Q. At Base Zero.

14 A. I did not attend that meeting. I was only told by Albert
15 Nallo that it is being declared that an operation known as
16 Black December had been announced. That is what he told me.

17 Q. Thank you. Now, whilst at Base Zero, were you aware of
18 looted items being brought to Base Zero?

19 A. I was not aware.

20 Q. You're not aware?

21 A. No.

22 Q. You were also not aware of looted coffee and cocoa?

23 A. I am not aware.

24 Q. Thank you. Now, Mr Witness, let me take you to the
25 Koribundu attack. You gave evidence yesterday that you directly
26 participated in the Koribundu attack.

27 A. I did admit to that, with the condition that the man who
28 was led into the Jiama Bongor Chiefdom by me, Mr Joe Tamidey, did
29 not understand the terrain and, therefore, I was obligated to

1 follow him to Koribundu in the offensive.

2 Q. And that offensive took place on the 14th -- 13th or
3 14th February 1998?

4 A. The offensive started on Friday, 13th February 1998 and,
5 finally, the CDF was capable of overcoming the enemies who were
6 occupying Koribundu.

7 Q. You saw Joe Tamidey at Base Zero before the attack, didn't
8 you?

9 A. Pardon?

10 Q. You saw Joe Tamidey at Base Zero before that Koribundu
11 attack?

12 A. I did not see Joe Tamidey at Base Zero. The first time I
13 set eyes on Joe Tamidey was at Golahun, Tikonko. Golahun,
14 Tikonko.

15 Q. When was that?

16 A. That was in February.

17 Q. Was it just before you led him to Koribundu?

18 A. Just before I led him to Jiama Bongor Chiefdom, that was
19 the time I saw him there.

20 Q. You're telling this Court you met him by accident; is that
21 what you're saying?

22 A. I didn't meet him by accident.

23 Q. It was calculated then; is that not so?

24 A. Repeat yourself, please.

25 Q. The meeting was calculated.

26 A. Which meeting?

27 Q. Joe Tamidey.

28 A. That -- my meeting with Joe Tamidey was as a result of the
29 directive of the deputy or national deputy director for

1 operation, Mr -- how they call him --

2 Q. Albert Nallo.

3 A. Albert Nallo. Thank you.

4 Q. And this Albert Nallo was responsible for mobilising
5 Kamajors for operations; is that not so?

6 A. According to Albert Nallo, he received directives from the
7 War Council, and he was responsible -- not he directly. He had a
8 superior authority, but he hijacked the functions of his superior
9 authority.

10 MR KAMARA: My Lord, I crave the indulgence of the Bench --

11 PRESIDING JUDGE: To do what?

12 MR KAMARA: -- to let this witness answer the questions.

13 PRESIDING JUDGE: Witness, please listen to the question
14 carefully.

15 THE WITNESS: Okay.

16 PRESIDING JUDGE: Don't volunteer information not sought to
17 be elicited. Just be as precise as you can. Of course, where
18 you need to add to explain, you are entitled to do that, but
19 don't take us on a merry-go-round.

20 THE WITNESS: All right.

21 PRESIDING JUDGE: Thank you. Go on, counsel.

22 MR KAMARA: Thank you.

23 Q. Albert Nallo was responsible for mobilising Kamajors for
24 operations; is that not so?

25 A. Yes.

26 Q. Thank you. He was equally responsible for the distribution
27 of weapons for those operations?

28 A. He was not responsible for the distribution of weapons, but
29 the national director of logistics.

1 Q. Thank you. You will agree with me that Nallo was a central
2 and key figure with the Kamajors?

3 A. I will not agree with you.

4 Q. He was not a central figure?

5 A. No. Functionally.

6 Q. Thank you. At Kpetewoma, the commanders gathered before
7 the Koribundu attack; is that not so?

8 A. That did not happen, not to my knowledge.

9 Q. Do you know one Mohamed Musa Orinko?

10 A. I don't know him.

11 Q. Mohamed Musa Orinko was the deputy director of war; do you
12 now know him?

13 A. I don't know him.

14 Q. Mr Witness, at Kpetewoma, that is where Nallo distributed
15 the arms and ammunition to other commanders for the Koribundu
16 attack; were you there?

17 A. I was not there. And it's not true.

18 Q. Mr Witness, you gave evidence that you were with
19 Joe Tamidey --

20 PRESIDING JUDGE: Let's have that again. It's a little
21 convoluted here. Put the question back.

22 MR KAMARA: Thank you.

23 PRESIDING JUDGE: Witness, please answer questions as they
24 are formulated.

25 THE WITNESS: All right.

26 MR KAMARA:

27 Q. Mr Witness, at Kpetewoma, that is where Nallo
28 distributed --

29 JUDGE ITOE: There was a first question.

1 PRESIDING JUDGE: Yes. Shall we stop there. Distributed

2 what?

3 MR KAMARA: Arms and ammunition.

4 JUDGE ITOE: He said he was not in Kpetewoma.

5 MR KAMARA: I asked the first question.

6 JUDGE ITOE: Yes, that was the first question.

7 PRESIDING JUDGE: So what did you want him to -- what's

8 your question now?

9 MR KAMARA: My question to him was --

10 PRESIDING JUDGE: Having given him that information.

11 MR KAMARA: Yes, if he was there.

12 PRESIDING JUDGE: What's your answer, witness?

13 THE WITNESS: I was not there.

14 MR KAMARA: Thank you.

15 PRESIDING JUDGE: Now, then can move on.

16 MR KAMARA: Yes. Thank you, My Lord.

17 Q. Are you aware that other commanders were present at the

18 Kpetewoma meeting?

19 A. I am not aware.

20 Q. Do you know Commander Lahai George?

21 A. I don't know him.

22 Q. Do you know Commander Joe Nunie?

23 A. I don't know him.

24 Q. But of course you know Commander Bob Tucker?

25 A. Who?

26 Q. Commander Bob Tucker.

27 A. Which of the Tuckers?

28 Q. Borbor Tucker, Jegbeyama.

29 A. Jegbeyama, yes, I know him.

1 Q. Thank you. You entered Koribundu with Joe Tamidey's team;
2 is that correct?

3 A. I entered Koribundu with Joe Tamidey.

4 Q. Thank you.

5 JUDGE BOUTET: Does that mean he was not with his team?
6 What does that mean? The question was: Did you enter Koribundu
7 with Joe Tamidey's team?

8 THE WITNESS: No, he was with us. He came with, I think,
9 less than ten persons. So the bulk of Kamajors in the Jياما
10 Bongor Chiefdom were led on the offences by Joe Tamidey, the
11 offensive on Koribundu.

12 PRESIDING JUDGE: So then what is the answer, because
13 counsel used the word "team," T-E-A-M; am I right, counsel?

14 MR KAMARA: Yes, My Lord.

15 PRESIDING JUDGE: What would be your final answer to that
16 question?

17 THE WITNESS: No.

18 PRESIDING JUDGE: So he didn't --

19 THE WITNESS: Have a team, I said.

20 PRESIDING JUDGE: Okay.

21 MR KAMARA:

22 Q. You entered together with Joe Tamidey and other Kamajors?

23 A. Yes.

24 Q. Are you aware that other commanders attacked from other
25 flanks of Koribundu?

26 A. Other commanders attacked Koribundu from other flanks, I am
27 not aware.

28 Q. You're suggesting to this Court that your group was the
29 only group that attacked Koribundu on that day?

1 A. It would be difficult to tell. Based on the number of
2 Kamajors who were in readiness to join forces in order to
3 dislodge the enemy forces from Koribundu, it would be difficult
4 for me to determine whether other groups joined the Jiama Bongor
5 group for that offensive.

6 Q. When you entered Koribundu, didn't you meet other Kamajors
7 already present in town?

8 A. No.

9 Q. Mr Witness, you said you're a supervisor, a CDF supervisor.

10 A. For the Jiama Bongor Chiefdom.

11 Q. Yes. At the time of the attack, were you a supervisor?

12 A. At that time of the attack, I was a supervisor.

13 Q. And you're telling this Court that you supervised from the
14 front line?

15 A. I supervised, not on the front line but, administratively,
16 I was supervising the activities of the Kamajors.

17 Q. Yesterday you gave evidence that your functions were purely
18 administrative.

19 A. Administrative.

20 Q. Yes. Did you, at any point in time, engage in combat?

21 A. I did not engage directly in combat. As I stated earlier
22 yesterday, that my only reason to have joined forces along with
23 Joe Tamidey to enter Koribundu was primarily because Joe Tamidey
24 did not understand the terrain, as he was a stranger, and I led
25 him into that chiefdom.

26 Q. Thank you. Did your duties include mobilisation of
27 Kamajors for operations?

28 A. My duty, as an administrator --

29 Q. Supervisor.

1 A. Oh, supervisor, at that time. No.

2 Q. At any point in time in your life, as a supervisor, did you
3 mobilise troops for any operation?

4 A. I did not mobilise troops for any operation.

5 Q. Do you recall yesterday in your evidence with regards to
6 Vanjawai, you testified before this Court that once Vanjawai was
7 unable to defend the town, you mobilised Kamajors towards that
8 town.

9 A. On a fact-finding mission, based on report or complaint
10 received that Vanjawai had failed to defend the civilians. I
11 went there on fact-finding mission, and there was no
12 confrontation between those Kamajors who went with me and the
13 Kamajors who were with Vanjawai.

14 PRESIDING JUDGE: Counsel.

15 MR KAMARA: Yes, My Lord.

16 PRESIDING JUDGE: Put your specific question to him. I
17 think the emphasis of your question, if I'm right, is
18 mobilisation.

19 MR KAMARA: Yes, My Lord.

20 PRESIDING JUDGE: Why not isolate that and press him on
21 that, because the answer does not seem to --

22 MR KAMARA: My Lord, I'm looking at the transcript for
23 yesterday.

24 Q. A question was put to you, Mr Witness. Listen carefully.

25 "Q. And what were your functions?"

26 A. I was a supervisor.

27 PRESIDING JUDGE: Just a minute, he's reading something for
28 you. Witness, just wait for him to read.

29 MR KAMARA:

1 Q. Your answer was, "My functions were purely administrative
2 in nature." And, in a question posed to you by the learned
3 Justice Itoe with regards to whether you were present, and then
4 you said, "I was not present, but I was at Telu," talking about
5 the attack. And then you said, "When I heard of the incident" --
6 I'm referring to Vanjawai's incident -- "I mobilised men and we
7 went there. We came across him just on the outskirts of the
8 town." This is what you said.

9 A. That was what I said.

10 Q. Now, I am putting it to you that, amongst your duties as a
11 supervisor, you also mobilised men for fighting purposes; is that
12 not so?

13 A. No, it's not true.

14 Q. Are you now suggesting to the Court that upon hearing of a
15 battle a few miles away, you would mobilise men for fact finding;
16 is that what you want this Court to believe?

17 A. Based on the information received by the negligence of
18 Vanjawai to protect the lives of civilians at Kponima in the
19 Jiama Bongor Chiefdom, at the time, I was compelled by prevailing
20 circumstances to mobilise men to go there on fact-finding
21 mission. But those people, or those Kamajors, who went with me
22 never engaged the forces or the Kamajors who were with Vanjawai,
23 nor did they confront the enemy, because the enemies were already
24 gone.

25 Q. How many men did you go with?

26 A. Five in number. Five.

27 Q. Were they armed?

28 A. They were not armed. They were not armed. We were short
29 of arms and ammunition.

1 Q. Mr Witness --

2 A. But they were only dependent on the protection that we had.

3 Q. Thank you. You want this Court to believe that you had an
4 attack a few miles away, you gathered unarmed Kamajors and made
5 an advance to that town; is that what you are telling this Court?

6 A. Yes, this is what I'm telling the Court.

7 Q. Thank you. What was that protection that you referred to?

8 A. Pardon?

9 Q. What was the protection you referred to?

10 A. The mobilisation of Kamajors to the location about two
11 miles away; is that what you mean?

12 Q. No. You said you were dependent upon your protection.

13 A. Protection.

14 Q. Yes. What is that protection?

15 A. I believe that protection had to do with our initiation
16 into the Kamajor society, which makes us invulnerable to
17 gunshots. That's the protection.

18 Q. Now, the people of Koribundu, before the attack of February
19 1998 had a peaceful co-existence with the AFRC and RUF; is that
20 correct?

21 A. I am not aware, because I was not in Koribundu at that
22 time. I am not aware.

23 Q. You are also not aware that there were intermarriages
24 between the women of Koribundu and the AFRC/RUF soldiers?

25 A. I am not aware. I am not there.

26 Q. Mr Witness, you made a statement to the Defence, didn't
27 you, the defence of the third accused?

28 A. Yes, yes, I made statement.

29 Q. And, in that statement, didn't you tell them that

1 intermarriages occurred between the AFRC soldiers and the women
2 of Koribundu? Didn't you tell them --

3 A. I can't remember saying that.

4 Q. Now you said you cannot remember?

5 A. I cannot remember saying that.

6 Q. But is it true that there were intermarriages between the
7 soldiers?

8 A. I am not aware.

9 Q. You are not aware.

10 A. I was not living in Koribundu; I am not aware.

11 Q. When did you make that statement to the Defence; do you
12 remember?

13 A. I cannot remember making that statement to the Defence.

14 Q. I'm talking about the entire statement. You put something
15 in writing to the Defence; right?

16 A. Which?

17 Q. A statement was obtained from you by the defence of the
18 third accused, a written statement.

19 A. Written statement. In my own handwriting, you mean?

20 Q. You tell me.

21 JUDGE BOUTET: Mr Witness, you were asked a question: Did
22 you make a statement to the Defence? You said: Yes.

23 THE WITNESS: Yes, I made statements.

24 JUDGE BOUTET: This is the question again. What do you
25 mean yourself when you say you made a statement. What does that
26 mean? Did you write it, or somebody wrote it? What does that
27 mean?

28 THE WITNESS: Well, normally people come and ask you
29 question --

1 JUDGE BOUTET: Well, not normally. What did you do in this
2 case? When you say, "I made a statement," what does that mean?
3 Tell us what you meant by that.

4 THE WITNESS: That's oral statement.

5 MR KAMARA:

6 Q. When you were interviewed orally by the defence, was it put
7 in writing?

8 A. Put in writing?

9 PRESIDING JUDGE: Counsel, is there a particular time
10 frame?

11 MR KAMARA: He doesn't remember, so I'm just taking it --

12 THE PRESIDING JUDGE: I'm just thinking, if you have
13 something there that indicates a time frame, whether you can sort
14 of try to jog his memory, whether the statement was something
15 that was written down when he was making his statement.

16 MR KAMARA: No, My Lord. I'm only guided by the summary.

17 PRESIDING JUDGE: Quite. Well, then proceed.

18 MR KAMARA:

19 Q. You said it was put in writing.

20 A. It was put in writing.

21 Q. Did you sign that statement?

22 A. Yes.

23 Q. In the summary that was given to us, Mr Witness, a summary
24 of that statement, it states that, "Intermarriages occurred
25 between the AFRC and RUF soldiers and the women of Koribundu and
26 the soldiers occupied the houses of the families of their wives."
27 Do you recall making that statement to the defence?

28 A. I can't remember.

29 MR KAMARA: My Lord, at this point the Prosecution would

1 seek to have the statement produced to the Prosecution, My Lord.

2 PRESIDING JUDGE: To whom?

3 MR KAMARA: To the Prosecution.

4 PRESIDING JUDGE: Right. Do you have the -- Mr Williams,
5 do you have the statement available?

6 MR WILLIAMS: My Lord, we do have the statement, but we are
7 opposed to the application, My Lord.

8 PRESIDING JUDGE: What are you looking for now is a
9 statement itself; not so?

10 MR KAMARA: Yes, My Lord.

11 PRESIDING JUDGE: You already have the summary.

12 MR KAMARA: We have the summary and it's indicating
13 something that the witness has denied.

14 PRESIDING JUDGE: Yes.

15 MR WILLIAMS: Correct, my learned friend. The witness did
16 not deny making what my learned friend is alleging, My Lord. He
17 said, "I cannot recall."

18 PRESIDING JUDGE: I cannot remember.

19 MR WILLIAMS: [Overlapping speakers] My Lord, to deny.

20 PRESIDING JUDGE: Counsel, do you take that point? The
21 answer really was that I cannot remember whether I made the
22 statement.

23 MR KAMARA: Yes, at the first time.

24 PRESIDING JUDGE: What would be the option that you want to
25 adopt here? Is it just merely if the statement were made
26 available to the Prosecution, would you be using it merely for
27 the purpose of refreshing his memory, or would you be going
28 beyond that legal option?

29 MR KAMARA: My Lord, the first --

1 JUDGE ITOE: I'm interested in the date that that statement
2 was made.

3 PRESIDING JUDGE: Yes.

4 JUDGE ITOE: To determine, you know, whether he can
5 remember it.

6 MR KAMARA: Yes, My Lord.

7 PRESIDING JUDGE: Counsel, would you, on reflection, now
8 that counsel concedes that the answer does not amount to a
9 denial -- if counsel intends to refresh the witness's memory, why
10 is it difficult for you to have the statement made available to
11 Court? Would there be any objection in terms of --

12 MR WILLIAMS: No, My Lord. It's --

13 JUDGE BOUTET: Mr Williams, before you answer that
14 question, if I can just clarify something for the record.

15 PRESIDING JUDGE: Yes.

16 JUDGE BOUTET: The witness says he does not remember having
17 said that in his statement. However, the question that was asked
18 of him: Are you aware that there was peaceful cohabitation and
19 there was intermarriage in Koribundu, he said, "I am not aware of
20 that." So he has denied knowledge of that. It's not that he was
21 not aware.

22 MR WILLIAMS: I didn't get --

23 JUDGE BOUTET: After that, the question was asked about the
24 statement.

25 MR WILLIAMS: I didn't get what Your Lordship had said he
26 denied. I didn't get that.

27 JUDGE BOUTET: The witness, was asked a question if he was
28 aware of peaceful cohabitation in Koribundu and intermarriage
29 with soldiers. His answer to that was, "I am not aware of this."

1 Subsequent to that, he was asked if he made a statement. He has
2 denied the knowledge of that cohabitation existing in Koribundu.
3 What he has said he's not aware, what he does not remember is
4 whether or not he has said anything about that in his statement.

5 MR WILLIAMS: My Lord, I don't know, but I seem to hold a
6 different view. If he says I'm not aware, it doesn't mean he's
7 denying. This was not to his knowledge, My Lord, more or less.

8 PRESIDING JUDGE: All the more why, perhaps, because of
9 this divergence of views or positions I would direct, in fact, in
10 the interests of justice, there shouldn't be any reason why the
11 Defence should not make available the statement with, of course,
12 the liberty to re-examine, in case there's any disadvantage that
13 the Defence might perceive as a result of counsel's line of
14 cross-examination.

15 MR WILLIAMS: My Lord, seeking or applying for the Defence
16 to provide a written statement to the Prosecution is not granted
17 as a right, My Lord.

18 PRESIDING JUDGE: Of course, that is what I'm saying. In
19 other words, we are exercising here our judicial discretion. We
20 have the discretion. We've done that in the past in the two
21 cases that we're trying and, unless there is some compelling
22 reason which makes it so difficult for us to accede to the
23 request of the Prosecution -- well, let's hear you then.

24 MR WILLIAMS: My Lord, basically there's been a consistent
25 pattern, My Lord, in circumstances in which the Prosecution has
26 made the application.

27 PRESIDING JUDGE: Yes.

28 MR WILLIAMS: That is that the witness should have denied
29 certain portions of his statement, My Lord, which is not the case

1 in this particular instance, My Lord.

2 PRESIDING JUDGE: The difficulty, of course, is that there
3 is a dispute whether there is a denial or not. In that kind of
4 situation, the Court has the right to ask that the document be
5 produced so that we clear the air. It is in that respect that
6 I'm -- from that perspective that I'm saying that the interests
7 of justice here would demand that the statement, the original, be
8 made available to the Prosecution. I'm sure you have nothing to
9 hide.

10 MR WILLIAMS: No, it is just consistency, My Lord --

11 PRESIDING JUDGE: I mean consistency, but when we do come
12 up against a legal roadblock, there are options to adopt. We
13 just want to get over this particular aspect of it and the
14 production of the statement, in my own judicial estimation, would
15 clear the air. Don't you share that view?

16 MR WILLIAMS: If Your Lordships have ruled, we are obliged
17 to supply, My Lord.

18 PRESIDING JUDGE: Quite. We don't want to make heavy
19 weather of this. It's just one side says it is not a denial, the
20 other side says it amounts to a denial. We say, well, let's see
21 what's in the statement.

22 JUDGE ITOE: I'm now particularly interested in the dates
23 that the witness made the statement to you.

24 PRESIDING JUDGE: Is the statement available in Court?

25 MR WILLIAMS: What we have in Court is an unsigned
26 document, My Lord, which is a typewritten --

27 PRESIDING JUDGE: Would counsel be content with that, of
28 course with the proviso that the original will in fact be made
29 available at some point?

1 MR KAMARA: Yes, My Lord.

2 PRESIDING JUDGE: All right. Let me interject at this
3 point and say that we had planned to take the lunch break at this
4 point, that is 12.50, because of some other important engagement
5 which we have in Chambers. I think it would be convenient for us
6 to recess for lunch now and resume at 3 p.m. and then give
7 counsel for the third accused the opportunity of retrieving the
8 original document for you. Would that be --

9 MR WILLIAMS: We shall do that, My Lord, save for the
10 caveat that if we are unable to provide the original, a photocopy
11 of the original would be available, certainly, My Lord.

12 PRESIDING JUDGE: Very well. Of course, we'll decide
13 what -- at the end of the day, we don't know whether counsel
14 would be taking the step of tendering it. If he wants to exhibit
15 it, then we'll demand the original as the best evidence.

16 [Luncheon recess taken at 12.52 p.m.]

17 [Upon resuming at 3.08 p.m.]

18 PRESIDING JUDGE: Mr Prosecutor, have you now gained access
19 to the original of the document that you were referring to?

20 MR KAMARA: Yes, My Lord.

21 PRESIDING JUDGE: Good, so we can take it from there.

22 MR KAMARA: Yes. Thank you, My Lord.

23 Q. Good afternoon, Mr Witness.

24 A. Good afternoon.

25 Q. You recall that this morning I did ask you about knowledge
26 of the cordial relationship between the civilians of Koribundu
27 and the RUF and the AFRC personnel? And your answer was, no, you
28 do not have knowledge about that cordiality; am I correct?

29 A. Yes, you are correct.

1 Q. Thank you. And you recall telling this Court that you made
2 a statement to the defence, and I will help you with the date; on
3 16th March 2005. You also testified that you signed that
4 statement; is that not so?

5 A. Yes.

6 Q. Where was that statement obtained?

7 A. Telu.

8 Q. In Telu.

9 A. Yes.

10 Q. In what language?

11 A. In Krio.

12 Q. Was that statement reduced in writing; do you know?

13 A. Whether it was reviewed?

14 Q. Reduced to writing; that is, it was --

15 A. Oh, reduced.

16 Q. Yes.

17 A. I cannot tell whether it was reduced.

18 PRESIDING JUDGE: Well, perhaps you need to --

19 MR KAMARA: Was it written down.

20 PRESIDING JUDGE: Yes, was it written down. Reduced to
21 writing is very technical in terms of investigative language. Go
22 ahead. Yes.

23 MR KAMARA:

24 Q. Was that statement written down?

25 PRESIDING JUDGE: Was it written down? In other words, was
26 it recorded in writing?

27 THE WITNESS: It was.

28 MR KAMARA:

29 Q. You said you signed the statement; right?

1 A. I did.

2 Q. When you signed it, did you look at it before signing?

3 A. I didn't.

4 Q. You didn't look at it?

5 A. I didn't.

6 Q. Now, take a look at this document, Mr Witness. Take a look
7 at the last page. It is numbered 20. Do you recognise your
8 signature on that last page?

9 A. Yes.

10 Q. And the Brima Tarawally referred to on the first page, is
11 that you?

12 A. That's correct.

13 Q. And your date of birth is marked as 1946.

14 A. 1945.

15 Q. What you have in the document, is it '46.

16 A. Where?

17 Q. The first page, date of birth.

18 A. Well, I think that was the mistake on the part of the
19 person who did the entry.

20 Q. Never mind. The date there is 1946.

21 A. It's 1946.

22 Q. Thank you.

23 A. I was born in 1945.

24 Q. Thank you.

25 MR KAMARA: My Lord, the Prosecution tenders that document
26 as an exhibit for the Court.

27 MR WILLIAMS: My Lord, I don't know the basis of my learned
28 friend seeking to tender this document.

29 PRESIDING JUDGE: So you're objecting?

1 MR WILLIAMS: Yes, My Lord.

2 PRESIDING JUDGE: When you say you don't know the basis,
3 would you be a little more --

4 MR WILLIAMS: My Lord, he has not laid any foundation
5 whatsoever to tender the document. I mean, what is the purpose
6 of tendering the document?

7 PRESIDING JUDGE: Counsel for the second accused, do you
8 have any --

9 MR POWLES: No observations, Your Honour.

10 PRESIDING JUDGE: No observation. I'm not asking for an
11 observation, I'm asking for an objection.

12 MR POWLES: No objection at this stage, Your Honour.

13 PRESIDING JUDGE: Okay. Well, I'll take that. Counsel for
14 the first accused, any objection?

15 MR SESAY: No, Your Honour.

16 PRESIDING JUDGE: How do you respond to your colleague's
17 objection that you have not laid the foundation? I take it you
18 mean the proper legal foundation?

19 MR WILLIAMS: Yes, My Lord.

20 PRESIDING JUDGE: That's your contention?

21 MR WILLIAMS: That this Court has a long established
22 standing --

23 PRESIDING JUDGE: Counsel, how do you respond to that?

24 JUDGE BOUTET: Before you respond, I would like to know why
25 you're introducing this document.

26 MR KAMARA: Yes, My Lord, that is what I was going to -- I
27 thought my learned friend meant the purpose rather than the
28 foundation. The foundation has been laid by the Prosecution.
29 The purpose is, it goes to the credit of this witness. A

1 question was put to him by the Prosecution, and then he answered
2 in the negative.

3 My Lord, in this statement, now there is an assertion as to
4 the positive aspect for that question, the response. So, My
5 Lord, it goes to the credit of this witness and the highlighted
6 portions we'll show to the Bench when we go to the content.

7 JUDGE BOUTET: But the procedure we have prescribed with
8 respect to and, presumably, what you're attempting to do is to
9 show inconsistencies or something along these lines between his
10 evidence in Court and what he may have said on some other
11 occasions.

12 MR KAMARA: Yes, My Lord.

13 JUDGE BOUTET: If that is the case, the procedure is that
14 you put: Isn't it true that you have done, said, what have you,
15 in this particular page so he can comment on that. Because we
16 don't know. All we know is you have asked the witness if he has
17 made a statement. He has given some explanation, that this is
18 his signature on page 20, but whichever part -- obviously you are
19 trying to introduce this for a specific purpose, not the totality
20 of the statement but some portions, but then procedure, normally,
21 is that you put those portions to the witness to say: Is it what
22 you've said on that occasion or not, words to that effect.

23 MR KAMARA: My Lord, I will take that purpose -- that
24 direction.

25 JUDGE BOUTET: If that is what you want to do, that's what
26 I'm asking. What is it?

27 MR KAMARA: My Lord, I was only waiting that the document
28 goes in --

29 PRESIDING JUDGE: We have evidently two problems from the

1 discussion with the statement: One, your colleague's objection
2 that you have not laid the proper legal foundation; and Justice
3 Boutet's observation that the purpose is not clear. So will you
4 deal with those now?

5 MR KAMARA: Yes, My Lord.

6 MR MARGAI: My Lord, before he deals with that, it seems to
7 me that learned counsel is now shifting ground. Because when
8 this document was first mentioned before the Presiding Judge
9 ordered that we should make the document available, Justice
10 Boutet asked the Prosecutor, what was his purpose of wanting this
11 document presented to him, and he clearly stated that the purpose
12 was to refresh the memory of the witness. He's at liberty to
13 shift grounds, but at least for us to know where we are. I stand
14 to be corrected.

15 PRESIDING JUDGE: I recall that that transpired. Of
16 course, there was also the possibility left open that, having
17 refreshed from memory of the witness, if some other possible
18 legal option was open, he would pursue that. I remember that
19 one.

20 MR MARGAI: I concede, but then even the question of
21 refreshing the memory of the witness has not been done.

22 PRESIDING JUDGE: So you're saying --

23 MR MARGAI: We're still at the primary stage.

24 PRESIDING JUDGE: In other words, here we have a couple of
25 difficulties: One, Mr Williams' position that you have not laid
26 the proper legal foundation; and the Bench's observation that the
27 purpose has not been spelt out; and here we have this other one
28 that you had indicated you wanted to refresh the witness's memory
29 and no such exercise has been done. So, let him tidy --

1 MR MARGAI: May I say that Mr Williams' objection is
2 incorporated in my observation.

3 PRESIDING JUDGE: All right. Fine.

4 MR MARGAI: Because the approaches are different.

5 PRESIDING JUDGE: Yes, quite.

6 MR MARGAI: If you are merely seeking the document for the
7 purpose of refreshing the memory of the witness, then the
8 procedure is different --

9 PRESIDING JUDGE: Well, yes.

10 MR MARGAI: -- from challenging.

11 PRESIDING JUDGE: Quite right. It is very possible that
12 you can seek to refresh a witness's memory and not even exhibit
13 -- you don't need to exhibit the document.

14 MR MARGAI: Indeed.

15 PRESIDING JUDGE: Well, let counsel -- counsel, won't you
16 take care of those lapses, or perhaps you don't even agree with
17 my characterisation of them as lapses.

18 MR KAMARA: Yes, My Lord, it's your adjective that I
19 disagree with.

20 PRESIDING JUDGE: That's okay. Go ahead.

21 MR KAMARA: Thank you, My Lord. Addressing the first
22 objection as to the laying of foundation, I believe the
23 Prosecution has laid the necessary foundation, and with reference
24 to the issue of refreshing the witness's memory, My Lord, the
25 first questions I did ask goes back to the issue to be raised in
26 the statement, and the witness confirmed what is said in
27 cross-examination.

28 My Lord, to go into the details, the contents of a
29 statement, without it being tendered, My Lord, practice-wise, I

1 thought I had to wait until the statement goes in before we were
2 able to make reference to the contents of the statement. My
3 Lord, if the Bench is now requesting I do it the other way
4 around, I will.

5 PRESIDING JUDGE: We've always said that when it comes to
6 establishing prior inconsistency, there is a two-fold requirement
7 here. First, your proper legal foundation should be laid, and
8 then you must seek, even though you don't go into the entire
9 content of the document, to establish what indeed is the
10 perceived inconsistency here --

11 MR KAMARA: Yes, My Lord.

12 PRESIDING JUDGE: -- without necessarily rummaging through
13 the entire document. And that, I think, is the point that
14 Justice Boutet was saying, that we don't know --

15 MR KAMARA: I take the cue.

16 PRESIDING JUDGE: -- even if you're taking us down that
17 road, we have not yet been sensitised to what is the perceived
18 inconsistency that you may be calling the Court, at some later
19 stage, to pronounce upon.

20 MR KAMARA: Thank you, My Lord.

21 Q. Mr Witness, you did say that you made a statement to the
22 Defence; correct?

23 A. I did.

24 Q. Do you recall telling the Defence that you observed there
25 had been a cordial relationship between the established AFRC and
26 the combined forces and townspeople?

27 A. At Talia or where?

28 Q. Koribundu, Koribundu. We're talking about Koribundu.

29 A. I cannot remember saying that, and to comment on that --

1 Q. Wait, wait, wait.

2 PRESIDING JUDGE: Do not comment. Just give us some
3 precise answers. Do you remember saying that to the Defence?

4 THE INTERPRETER: Your Honour's mic has gone off.

5 PRESIDING JUDGE: I take your advice, Mr Interpreter. I
6 apologise. Go ahead, counsel. Put the question again.

7 MR KAMARA: Yes, My Lord.

8 Q. Do you recall telling the defence, in that statement you
9 made, that there had been a cordial relationship between the
10 AFRC/RUF and the townspeople of Koribundu?

11 PRESIDING JUDGE: Mr Witness, you either recall or you do
12 not.

13 THE WITNESS: I don't recall that.

14 JUDGE ITOE: He said yes.

15 PRESIDING JUDGE: He said yes.

16 MR WILLIAMS: May I be guided by the Prosecutor, My Lord,
17 as to the exact portion --

18 PRESIDING JUDGE: Counsel, guide your colleague on that.

19 MR KAMARA: Sorry. It's page 20, the first paragraph of
20 that page. It starts with, "I observed."

21 PRESIDING JUDGE: Yes. So what is the answer?

22 MR KAMARA: He said, "I do not recall."

23 PRESIDING JUDGE: Yes. Proceed, counsel.

24 THE WITNESS: I want to say something, My Lord --

25 PRESIDING JUDGE: Yes, what is it?

26 THE WITNESS: -- in connection with this issue. Being told
27 by somebody and witnessing something are two different things.

28 PRESIDING JUDGE: No, you don't need to tell us that. You
29 can't instruct us on that. You can leave that for your own

1 tutorials which you probably conduct outside this Court.

2 MR MARGAI: We apologise, My Lord.

3 PRESIDING JUDGE: Counsel, continue.

4 MR KAMARA: Thank you, My Lord.

5 Q. And you also recall -- if not, tell the Court -- that there
6 were intermarriages between the AFRC and RUF combatant and the
7 women of Koribundu?

8 A. I cannot recall.

9 Q. Take a look at this document. Do you have the document
10 with you?

11 A. On which page?

12 Q. Page 20, the one starting with, "I observed." Do you see
13 that sentence there?

14 A. Where?

15 Q. The first paragraph, the continuing paragraph on page 20,
16 the first line, "I observed."

17 PRESIDING JUDGE: It's right at the top of the page.

18 MR KAMARA: The first sentence is, "We launched an attack.
19 I observed."

20 PRESIDING JUDGE: You want him to read -- just to look at
21 the sentence, the whole sentence; not so?

22 JUDGE ITOE: The whole paragraph, I think.

23 PRESIDING JUDGE: There is a whole paragraph there. Do you
24 want him to look at the whole paragraph, or just the sentence?

25 MR KAMARA: The whole paragraph.

26 PRESIDING JUDGE: That's okay. Then let him do that. Take
27 your time, witness.

28 THE WITNESS: Yes, I have read it.

29 MR KAMARA:

1 Q. Would you agree with me then that that position in the
2 statement is different from what you've maintained this
3 afternoon?

4 A. I will agree with you.

5 MR WILLIAMS: My Lord --

6 PRESIDING JUDGE: Counsel, your colleague is objecting.

7 MR WILLIAMS: First and foremost, that is argumentative, My
8 Lord, whether it is consistent with what he said earlier. My
9 Lord, it is my opinion that he has not said -- it is my
10 submission, My Lord, that he has not said anything inconsistent
11 with what is in the statement. He said, "I do not recall," My
12 Lord. That is not inconsistent with what is in the statement.
13 If my learned friend wants to refresh the witness's memory, let
14 him do so, My Lord. It is incorrect for my learned friend to say
15 that the witness has said something contrary to what is in the
16 statement. He has not done that, My Lord.

17 PRESIDING JUDGE: Clearly, this kind of argument virtually
18 introduces the very issue that is in contention, whether there
19 is, in fact -- and which, of course, is ultimately a matter for
20 the Bench, if you establish that, that there is a perceived
21 inconsistency. But which particular sentence of that paragraph
22 are you contending, counsel for the Prosecution, is different
23 from what he has said here in Court? Is it the entire thing, or
24 just a particular theme or sub-theme of that paragraph? Because
25 the paragraph talks about so many other things. It talks about
26 dumping of -- ammunition dumps; it talks about --

27 JUDGE ITOE: Their homes.

28 PRESIDING JUDGE: Homes and all that. So which particular
29 sub-theme of the paragraph are you contending is allegedly

1 inconsistent with what he's said? Let's be precise.

2 MR KAMARA: Yes, My Lord.

3 PRESIDING JUDGE: And clear.

4 MR KAMARA: My Lord, the question was posed to this witness
5 as to whether he had knowledge of the cordiality between the
6 people of Koribundu and the RUF and AFRC.

7 PRESIDING JUDGE: Okay, so that's the first --

8 MR KAMARA: He said he had no knowledge.

9 PRESIDING JUDGE: Yes. All right. Yes, he had no
10 knowledge of that.

11 MR KAMARA: No knowledge. It's not, "I do not know." It's
12 no knowledge, and that is for my learned friend.

13 PRESIDING JUDGE: Okay.

14 MR KAMARA: In this statement, he said, "I observed there
15 had been a cordial relationship established between the AFRC/RUF
16 combined forces and townspeople."

17 PRESIDING JUDGE: Yes.

18 MR KAMARA: That's the first part.

19 PRESIDING JUDGE: That's your contention?

20 MR KAMARA: That's my contention.

21 PRESIDING JUDGE: In other words, you are saying both
22 cannot be true at the same time.

23 MR KAMARA: That is what I want to do.

24 PRESIDING JUDGE: Counsel, are you withdrawing your
25 position?

26 MR WILLIAMS: No, My Lord. I don't recall the witness
27 saying what my learned friend just narrated. I stand to be
28 guided by --

29 PRESIDING JUDGE: The records will speak abundantly to

1 this. And we don't want the danger of having this witness go
2 through it all over again. It is unfair to the Prosecution to
3 give him the chance of rethinking anything. I think, at this
4 point, subject to what the records say, if that is the two,
5 according to the Prosecution's own appreciation of the state of
6 the evidence, if the two -- if that's what he said in this Court,
7 then the two -- both statements cannot be true at the same time.

8 MR WILLIAMS: My Lord, my contention is that he did not use
9 those words. The only way we can prove that, My Lord, is for the
10 Court officials to assist us, My Lord.

11 PRESIDING JUDGE: Let us ask the witness to --
12 representative of the Victims and Witnesses Unit, please take
13 this witness out for a while.

14 [Witness stood down]

15 JUDGE ITOE: What I have in my records is that he was not
16 aware. He was not aware that the Koribundu people were living
17 cordially with the AFRC. He was not also aware there were
18 intermarriages between the women Koribundu and the soldiers.
19 That is what I have on my record.

20 PRESIDING JUDGE: I recollect that was the tenor of the
21 evidence and, it would seem to me, that resolves the issue and
22 I'm sure that, with his usual candour, counsel Williams will want
23 to withdraw his original position.

24 MR WILLIAMS: My Lord -- I so do, My Lord.

25 MR KAMARA: And apologise, My Lord.

26 PRESIDING JUDGE: You can bargain that out of Court.

27 MR WILLIAMS: My Lord, from the inception, I said I stand
28 guided by --

29 PRESIDING JUDGE: That's right, and it would have been

1 unfair to read this back to -- in the presence of the witness,
2 unless the witness's memory gets triggered off otherwise, that
3 kind of thing.

4 MR WILLIAMS: I'm most grateful.

5 PRESIDING JUDGE: We can have the witness back in Court.

6 MR KAMARA: Thank you, My Lord.

7 [The witness entered Court]

8 PRESIDING JUDGE: Counsel for the Prosecution, how do we
9 proceed from there?

10 MR KAMARA: My Lord, we tender this document as an exhibit,
11 with the highlighted portion starting with, "I observed," on to
12 "AFRC/RUF combatants."

13 PRESIDING JUDGE: Right. Counsel for the third accused?

14 MR WILLIAMS: We do not object, My Lord.

15 PRESIDING JUDGE: No objection. Counsel for the first
16 accused?

17 MR SESAY: No objection, My Lord.

18 PRESIDING JUDGE: Counsel for the second accused?

19 MR POWLES: No objection, My Lord.

20 PRESIDING JUDGE: The document will be received in evidence
21 and marked Exhibit 163.

22 [Exhibit No. 163 was admitted]

23 PRESIDING JUDGE: Let's move on.

24 MR KAMARA:

25 Q. Mr Tarawally, you did say you signed that statement,
26 Exhibit 163.

27 JUDGE ITOE: He has said he did.

28 PRESIDING JUDGE: I must add, sorry, that this document has
29 been received --

1 JUDGE ITOE: But he did say that he did not look at it, you
2 know, before signing.

3 THE WITNESS: Yes, My Lord.

4 PRESIDING JUDGE: This document is being received in
5 evidence for the restricted purpose of prior inconsistency.

6 MR KAMARA: Yes, My Lord.

7 PRESIDING JUDGE: And nothing else.

8 MR KAMARA: Yes, My Lord.

9 PRESIDING JUDGE: Right, let's go on.

10 MR KAMARA:

11 Q. Now, Mr Tarawally, tell this Court what you want us to
12 believe. You have said today that you are not aware of any
13 cordial relationship and yet in your signed statement, it is
14 there, clearly, that you do observe the relationship between the
15 AFRC/RUF and the townspeople of Koribundu; what do you want us to
16 believe?

17 MR MARGAI: My Lords, I believe this is a matter for the
18 Court to --

19 PRESIDING JUDGE: Quite right.

20 JUDGE ITOE: I would think so, too.

21 PRESIDING JUDGE: Yes. The objection is sustained, because
22 this is multiplying the issues. You have put the document in
23 evidence. It is right before the Court.

24 JUDGE ITOE: The document is there. It's for us now. The
25 ball is in our court for us to see --

26 PRESIDING JUDGE: It speaks for itself.

27 JUDGE ITOE: -- why you have tendered. We know why you
28 have tendered it. We'll give it due appreciation in due time.

29 MR KAMARA: I'll take it, My Lord.

1 PRESIDING JUDGE: Counsel, move on to another area, or any
2 related area.

3 MR KAMARA:

4 Q. Mr Witness, the Kamajors regarded the civilians of
5 Koribundu as collaborators and sympathisers; is that not so? Of
6 the AFRC?

7 A. That's not true.

8 Q. During that period, the Kamajors would treat collaborators
9 the same way as they would treat rebels; correct?

10 A. Where?

11 Q. I`m talking during the period --

12 MR MARGAI: My Lord, sir, that question is so open-ended
13 that it leads to speculation. I mean, how were the rebels
14 treated?

15 JUDGE ITOE: Yes, I think I will have to observe here, that
16 although we have evidence on the record from some other witness
17 on this situation, this witness -- there is no evidence from this
18 witness as to how the rebels were treated, so far, so far. So
19 let's not bring in any form of confusion between what we already
20 have in evidence, and you're trying to assume, you know, that
21 this witness has said so. He has indeed not said so, so far. I
22 mean, so far. If you want him to, then you have to elicit that
23 evidence during the course of your cross-examination.

24 MR KAMARA: Thank you, My Lord.

25 Q. Mr Witness, when you came to Koribundu, did you observe any
26 burning of houses?

27 A. I observed burning going on while the enemy, the AFRC/RUF
28 were pulling out.

29 Q. Were you in Koribundu when this enemy you described were

1 pulling out?

2 A. They were pulling out. We were entering Koribundu. As
3 they were pulling out, we were entering Koribundu.

4 Q. And you say that while they were pulling out, you observed
5 burning?

6 A. I observed burning.

7 Q. Who was doing the burning?

8 A. The burning was carried out by the enemies.

9 Q. Who were the enemies?

10 A. Those who were occupying there, the AFRC/RUF.

11 Q. Mr Witness, did you, at any point in time, state that the
12 burning was done by Kamajors?

13 A. I cannot remember saying that.

14 Q. Thank you. Mr Witness, do you recall writing a letter to
15 one Alhaji Daramy Rogers?

16 A. That has been stated yesterday that Alhaji Daramy Rogers --

17 PRESIDING JUDGE: Witness, don't go on an excursion. The
18 question was precise: Do you recall writing a letter?

19 JUDGE BOUTET: Mr Prosecutor --

20 THE WITNESS: I did copy writing --

21 JUDGE BOUTET: Mr Witness, please. Mr Prosecutor, much of
22 this matter was discussed in the closed session. So I don't know
23 if you are embarking upon that direction now, and in fairness to
24 the witness, so we can explore that, that if this is the way
25 you're planning to go, we should go into closed session, because
26 we cannot have it one way and then in open session after that.

27 So --

28 MR KAMARA: Very well, Your Honour.

29 PRESIDING JUDGE: Was that the trend which you were

1 developing? Were you moving into an area which was, in fact,
2 adverted to or alluded to during his narration to us in closed
3 session yesterday?

4 MR KAMARA: Yes, My Lord.

5 PRESIDING JUDGE: That's the area you want to go?

6 MR KAMARA: Yes, My Lord.

7 PRESIDING JUDGE: Then of course what Justice Boutet said
8 is on target?

9 MR KAMARA: It is on target. And, My Lord, I will make an
10 application.

11 PRESIDING JUDGE: At this stage?

12 MR KAMARA: Yes, My Lord.

13 PRESIDING JUDGE: Let me ask you now: Are there other
14 areas of your cross-examination which can conveniently be dealt
15 with in open session and which you can, in a way switching gears,
16 sort of cover right away and leave this rather sort of -- this
17 area for the final part of your cross-examination? Would it do
18 any harm to your presentational approach?

19 MR KAMARA: It will, My Lord, but I'll proceed.

20 PRESIDING JUDGE: But I'm just asking, because it's a
21 question of in and out of closed session, something that this
22 Bench has always viewed with some disfavour, unless it becomes
23 absolutely necessary.

24 JUDGE ITOE: And the public, too, is there. They are
25 following the proceedings. You know, we want to limit -- they
26 are going in and out. See, it's not --

27 PRESIDING JUDGE: So, I don't think, with your experience
28 and prosecutorial adroitness, I think you can conveniently leave
29 it to the end. It may well be an isolated chunk that you might

1 want to deal with effectively at the end.

2 MR KAMARA: I will, My Lord. I will leave it to the end.

3 MR MARGAI: My Lord, may I seek clarification, based on
4 what the Presiding Judge has just said, that, perhaps, this
5 aspect ought to be reserved to the end?

6 PRESIDING JUDGE: Yes.

7 MR MARGAI: We were this morning served with a pile of
8 documents, and these documents relate to what was addressed in
9 closed session.

10 PRESIDING JUDGE: Yes.

11 MR MARGAI: And one of the documents sought to be addressed
12 now is part of this. So I'm seeking guidance as to what the
13 position should be, since we are still awaiting the ruling from
14 the Bench as to the way forward.

15 PRESIDING JUDGE: Yes; that's a very important question.

16 MR MARGAI: As My Lords please.

17 JUDGE BOUTET: But was there an application to the Bench as
18 to what to do or not to do with these documents?

19 MR MARGAI: No. What I'm saying, sorry, My Lords, is that
20 yesterday in closed sessions certain references were made to
21 documents and this morning we were served with a bundle of
22 documents. And some of those --

23 JUDGE ITOE: Mr Margai, I would add the witness also said
24 yesterday, and I would have appeared to have understood him to
25 have said that he has a pile of documents which were not with
26 him.

27 MR MARGAI: Which were not with him, and if given time he
28 could produce them.

29 JUDGE ITOE: That were in his home and that if, given time,

1 he could produce them.

2 MR MARGAI: And pre-emptorily. Pre-emptorily, these
3 documents have now been served.

4 PRESIDING JUDGE: I`m not sure that's where the lacunae is.

5 MR MARGAI: Precisely.

6 PRESIDING JUDGE: We don't know the origin or the identify
7 of this document, whether in fact what this witness was saying
8 yesterday in fact has any nexus with this, or whether this is
9 something just coming out from --

10 MR MARGAI: There is, indeed, a nexus having regard to what
11 was said in closed session.

12 PRESIDING JUDGE: I see. So you have already perused this
13 document, the package?

14 MR MARGAI: I have perused the document, yes. I have.

15 PRESIDING JUDGE: So counsel for the Prosecution, how do
16 we -- again, this means that you will need to disclose to us your
17 prosecutorial strategy now, in terms of the rest of your
18 cross-examination. In other words, how do you intend to proceed?
19 What is your methodology, with regard to the bundle that you have
20 provided us with?

21 MR KAMARA: My Lord, if I were to respond to the issue and
22 leave the cross-examination as it is for the moment. The bundle,
23 I have selected certain documents that we intend to use in
24 cross-examination.

25 PRESIDING JUDGE: Out of this bundle?

26 MR KAMARA: Yes, My Lord. And, as officers of the Court,
27 My Lord, and in the pursuit of the truth, whatever we have in our
28 possession that will assist the Court in that mission, we will
29 provide to the Court.

1 PRESIDING JUDGE: Good. Do the documents that you have
2 selected out of this bundle, do they touch and concern what he
3 had, in fact, given to us in his narration in closed session?

4 MR KAMARA: Yes.

5 JUDGE ITOE: If I may follow up with this question from the
6 Presiding Judge.

7 MR KAMARA: Yes, My Lord.

8 JUDGE ITOE: Did you have a bigger pile of documents than
9 the one you've presented to Court?

10 MR KAMARA: My Lord --

11 JUDGE ITOE: Was it a bigger pile or this was all that you
12 have --

13 MR KAMARA: That's the entire package.

14 JUDGE ITOE: That's the entire package?

15 MR KAMARA: Yes, My Lord.

16 JUDGE ITOE: So no other document -- these documents were
17 not presented here on a selective basis?

18 MR KAMARA: Yes.

19 JUDGE ITOE: No.

20 MR KAMARA: No, My Lord. It is out of that bundle that we
21 have chosen just a few that I intend to use, which I believe will
22 be in fairness to the Defence. And that is what we'll do when we
23 go to closed session.

24 PRESIDING JUDGE: But the position now, the Defence, there
25 are two aspects of it. Of course, one is not complicated. We
26 will eventually move to closed session.

27 MR KAMARA: Yes, My Lord.

28 PRESIDING JUDGE: The question which is, of course,
29 slightly complicated is the question raised by Mr Margai on which

1 he seeks direction whether, since there is a pending ruling, it
2 may be proper for you to cross-examine on these -- whatever
3 selected document. Is that how I understand you?

4 MR MARGAI: That's quite correct, Your Honours.

5 PRESIDING JUDGE: Yes, quite.

6 MR KAMARA: My Lord, the issue --

7 PRESIDING JUDGE: You can guide us on that.

8 MR KAMARA: Yes, My Lord. The issue that we will have to
9 go into closed session for was a collateral issue. The
10 collateral issue that did not form part of the substance of the
11 case. My Lord, when it comes to the determination of that
12 collateral issue --

13 JUDGE ITOE: You would agree, it's a collateral issue that
14 impacts on a number of things in these proceedings.

15 MR KAMARA: Agreed.

16 JUDGE ITOE: Yes. So it might not be as collateral as
17 such. It might be, you know -- what is said, you know, could
18 impact on the substance of these proceedings.

19 MR KAMARA: Yes, My Lord.

20 JUDGE ITOE: And particularly on his testimony as a
21 witness.

22 MR KAMARA: Yes, My Lord.

23 MR MARGAI: My Lords, I would not even go as far as to say
24 that they are collateral. I would submit most respectfully that
25 they are intrinsic.

26 PRESIDING JUDGE: Right. Well, I was going to let counsel
27 finish before you have a chance to reply.

28 MR MARGAI: As My Lord pleases. I'm sorry.

29 PRESIDING JUDGE: Otherwise we'll disturb his trend of

1 thought, which he's so carefully collected. Go ahead counsel.

2 MR KAMARA: My Lord, you have been taunting me all
3 afternoon.

4 PRESIDING JUDGE: No, I'm not.

5 MR KAMARA: I want to say that we want to have issues that
6 go to the credit of this witness. My Lord, and the purpose of
7 cross-examination, notwithstanding that the collateral issue
8 arose yesterday, we still want to pursue the impeachment of this
9 witness, matters that would go to his credit. And, My Lord, it
10 is helpful to the Court to have access to the information that we
11 have come across.

12 PRESIDING JUDGE: And you say that the documents that you
13 so selected will assist us in, in fact, assessing whether this
14 assault which you intend to launch on his credibility is a valid
15 one or not?

16 MR KAMARA: Yes, My Lord.

17 PRESIDING JUDGE: That's what you're saying?

18 MR KAMARA: Yes, My Lord.

19 PRESIDING JUDGE: Okay. Continue.

20 MR KAMARA: And, in all fairness to the Defence, My Lord,
21 the matters that are going to be raised in that process will
22 affect his credibility, and not the substance of the charge.

23 PRESIDING JUDGE: You give that undertaking?

24 MR KAMARA: Yes, My Lord, I give that undertaking as it
25 relates to the second and the first accused. From the ruling
26 this morning, it will apply to the third accused.

27 PRESIDING JUDGE: Anything else?

28 MR KAMARA: That is all.

29 PRESIDING JUDGE: Learned counsel for the third accused;

1 how do you respond to this?

2 MR WILLIAMS: Well, firstly, I would have thought that my
3 learned friend would have restricted service on us, My Lord, of
4 those documents that he intends using.

5 JUDGE ITOE: But you would have said he has not
6 disclosed -- he was fulfilling a duty.

7 MR WILLIAMS: As My Lord pleases.

8 JUDGE ITOE: He was fulfilling a duty, and I think you
9 should not complain about his having been charitable.

10 MR WILLIAMS: I agree, My Lord.

11 JUDGE ITOE: In disclosing to you, because what he's
12 disclosed to you could also serve some of your purposes, why not?
13 He may restrict himself to three documents, you may extend your
14 choice to ten. Why not?

15 MR WILLIAMS: Another alternative, My Lord, is he could
16 have specified a few minutes ago the documents that he intends to
17 use, My Lord. And, to cut matters short, I would say that we are
18 opposed to any of those documents going in. I mean, vehemently
19 opposed to any of those documents going in, but, as my learned
20 friend Mr Margai has said, those documents are intrinsic to what
21 transpired in closed session yesterday. And the manner in which
22 those documents were obtained, My Lord, came out yesterday in
23 closed session, and we would submit that they breach certain
24 rules of this Court, My Lord.

25 PRESIDING JUDGE: When you say intrinsic, to what
26 transpired in closed session, I thought I may be missing
27 something here. I think when counsel was saying that these
28 documents are going to collateral issues, I thought he was
29 adverting while alluding to the credibility aspect; am I right?

1 MR KAMARA: Yes, My Lord.

2 PRESIDING JUDGE: If that is the case, then when your
3 learned colleague, as Mr Margai said intrinsic, I thought he was
4 adverting to matters relating to substantive issues.

5 MR WILLIAMS: I don't think so, My Lord.

6 PRESIDING JUDGE: Well, help me clarify that.

7 MR WILLIAMS: Intrinsic in the sense that --

8 PRESIDING JUDGE: But when you said intrinsic to what was
9 stated in closed session yesterday, I thought -- that was why I
10 missed the point whether it's -- is it just intrinsic to that,
11 which of course was in a sense a collateral issue too that came
12 out in closed session, from our perspective.

13 MR WILLIAMS: What I mean by intrinsic is that these
14 documents were manufactured in the circumstances the witness
15 narrated yesterday.

16 PRESIDING JUDGE: I see. Okay. I will not go further -- I
17 will not press you further on that. So do you have anything
18 else?

19 MR WILLIAMS: No, My Lord, I have not couched any legal
20 objection. I don't know whether it's --

21 PRESIDING JUDGE: No, I think we left at a point where we
22 were asking counsel to be as astute as possible to cover other
23 areas that may not require our moving in and out of closed
24 session with any frequency. Are there other areas that you need
25 to cover which you can cover? Try and go through quickly, so
26 that we can move into closed session, and then stay there until
27 the cross-examination is concluded?

28 MR KAMARA: Yes, My Lord, I will.

29 Q. Mr Witness, you said you knew that Allieu Kondewa was the

1 high priest?

2 A. Yes.

3 Q. And, at that time at Base Zero, Kondewa was conducting his
4 initiations at Makossi; is that correct?

5 A. He was not conducting at Makossi. It was upon the request
6 of the War Council, as I explained yesterday.

7 JUDGE ITOE: No, Mr Witness, please, follow the question.
8 Counsel wants to know whether he was conducting these initiations
9 in Makossi.

10 THE WITNESS: He conducted --

11 JUDGE ITOE: Whether it was upon the request of the War
12 Council or not doesn't appear to be material for now.

13 THE WITNESS: He conducted --

14 JUDGE ITOE: For the purpose of this particular question.

15 THE WITNESS: Okay. He conducted an initiation once at
16 Makossi, to the best of my knowledge.

17 MR KAMARA:

18 Q. Thank you. And you said Kamoh Lahai Bangura was your
19 initiator; correct?

20 A. Yes.

21 Q. And where were you initiated?

22 A. At Kpetewoma.

23 Q. Kpetewoma?

24 A. In the Lugbu Chiefdom.

25 Q. When?

26 A. In 1997.

27 Q. After the ceremony of initiation, initiates are usually
28 deployed to frontline positions; is that not so?

29 A. By who?

1 PRESIDING JUDGE: That's a different question. That may
2 come, but answer the first question.

3 THE WITNESS: After the initiation -- repeat your question,
4 please.

5 PRESIDING JUDGE: Yes. Don't anticipate him. Just listen
6 to his questions. Mr Prosecutor, he wants you to --

7 JUDGE ITOE: He`s apprehensive of being trapped by Mr
8 Kamara.

9 MR KAMARA: I will take my time. I will ask again.

10 Q. Mr Tarawally, listen carefully.

11 A. Okay.

12 Q. And just answer to the question.

13 A. Okay.

14 Q. After initiations, usually were initiates deployed to the
15 front lines?

16 A. No.

17 Q. Thank you. They deployed to their chiefdoms; is that not
18 correct?

19 A. No.

20 Q. What happens after initiations; please tell this Court.

21 A. The initiates are handed over to the authorities in the
22 various chiefdoms from where they hail.

23 Q. To defend their chiefdoms?

24 A. They hand them over to the chiefdom authorities.

25 Q. You will agree with me, the purpose of handing them over is
26 to help defend their chiefdoms; is that not so?

27 A. Yes.

28 Q. Thank you. You'll also agree with me that the purpose of
29 initiation was to embolden the fighting speed of the Kamajors?

1 A. Repeat, please? Pardon?

2 Q. The purpose of initiation was to embolden the speed, the
3 fighting speed of the Kamajors; am I correct?

4 A. No.

5 Q. You said to this Court you got initiated so that you could
6 be invincible; is that not so?

7 A. Not invincible, to have protection against invulnerability
8 to gunshots, but not invisibility.

9 Q. To be invulnerable against bullets?

10 A. Yes.

11 Q. You'll agree with me that is one of the primary purposes
12 for being initiated?

13 A. Into the Kamajor society.

14 Q. Yes.

15 A. Yes.

16 Q. And that will help your fighting spirit, because you feel
17 you are invulnerable, is that not so?

18 A. No.

19 Q. Now, tell this Court, what else will help someone's
20 fighting speed within the Kamajor society?

21 A. Bravery.

22 Q. Thank you. And that bravery comes from where?

23 A. Bravery is inborn character.

24 Q. Thank you very much. And you'll also agree with me, that
25 if you are also brave by being inborn, then you don't need any
26 more invincibility?

27 PRESIDING JUDGE: He has taken issue with your term
28 invincibility. And I hope you don't --

29 JUDGE ITOE: Invincible.

1 PRESIDING JUDGE: You can become very argumentative. So
2 stay away from invincibility.

3 MR KAMARA: I will stay away.

4 JUDGE ITOE: Vulnerability. That has been his --

5 PRESIDING JUDGE: Leave invincibility for the ancient
6 Romans. Let's proceed.

7 MR KAMARA: I will.

8 Q. You said bravery is inborn; correct?

9 A. Yes.

10 Q. I'm suggesting to you that if bravery was inborn, then
11 there was no need for the Kamajors to get invulnerability against
12 bullets?

13 MR WILLIAMS: The question is hypothetical, My Lord.

14 PRESIDING JUDGE: Yes. I think it is definitely
15 argumentative. We'll sustain it, the objection at this stage,
16 and subject to your rephrasing it in less controversial terms.

17 MR KAMARA: Yes, My Lord.

18 Q. Mr Witness, without the initiation, not so many Kamajors
19 would endure the front line; would you agree with that?

20 MR MARGAI: Again, My Lord, that is subjective. He can
21 only answer for himself, not for others who might have been
22 Kamajors. It is very subjective.

23 PRESIDING JUDGE: Yes, but there is another way. He's a
24 member of the group. He's familiar with the group culture. He's
25 familiar with the group psyche. We'll allow the question.

26 MR MARGAI: As My Lord pleases.

27 PRESIDING JUDGE: Quite. He can give an opinion. Proceed.

28 MR KAMARA: Thank you, My Lord.

29 Q. Without initiation, not so many Kamajors would have endured

1 the front lines?

2 A. That's not correct.

3 Q. Mr Witness, now, with regards to the process of initiation,
4 there were moments of casualties in the process; are you aware?

5 A. I am not aware.

6 Q. Casualties in the sense that persons get killed in the
7 process; are you not aware of that?

8 A. I am not aware of that.

9 Q. Are you aware that High Priest Kondewa was driven away from
10 Sogbini Chiefdom?

11 A. I am not aware.

12 Q. Are you aware that certain of his initiates got killed in
13 the process of initiation he handled at Sogbini Chiefdom?

14 A. I am not aware.

15 Q. In 1997, Mr Witness, how far were you from Sogbini
16 Chiefdom?

17 A. What time in 1997?

18 Q. The entire year of 1997, you were in and out of Base Zero?

19 A. Before the coup in 1997 I was in Liberia. And after the
20 coup, in 1997, it was only in October that I arrived in Base
21 Zero.

22 Q. When?

23 A. October 1997.

24 Q. Let's take October 1997.

25 A. Yes.

26 Q. Whilst for the most part at Base Zero, you were close to
27 Sogbini Chiefdom?

28 A. I did not take that road in the course of my travel from
29 Jiama Bongor Chiefdom to Base Zero. There were other routes --

1 JUDGE BOUTET: This is not the question, Mr Witness.
2 Please, again, just listen to the question and answer the
3 question. You were not asked what road you took. You were asked
4 if you were close to.

5 PRESIDING JUDGE: Counsel, when you said close, were you
6 thinking of proximity?

7 MR KAMARA: Yes.

8 PRESIDING JUDGE: Quite. Well, let him answer.

9 THE WITNESS: I was not close to Sogbini Chiefdom.

10 MR KAMARA:

11 Q. How far is Base Zero to Sogbini Chiefdom?

12 A. I don't know the distance.

13 Q. If I suggest to you that it's less than 12 miles?

14 A. I don't know the terrain in that area. That's not my home.
15 We only used to go there because that was the place that was
16 established for the purpose of pursuing the war. I don't
17 understand the terrain.

18 Q. Do you know Baowa Junction?

19 A. I don't know there.

20 Q. Now, tell us what route you used from Telu to go to Base
21 Zero on your motorcycle?

22 A. Bicycle.

23 JUDGE ITOE: He didn't say motorcycle, he said bicycle,
24 which had a gear, mechanical proportion.

25 MR KAMARA: Yes.

26 THE WITNESS: From Telu, from Telu in the Jiama Bongor
27 Chiefdom, I want to begin with the route I used to travelled
28 with. From Telu, to Baoma, to Sulehun, there was a road, a
29 pushbike path bypassing Sembehun 17, through a village called

1 Gwala and to Maboima, to Magehun, Fairo, Yengesa, Kpetewoma and,
2 from Kpetewoma, there's another diversion to Kaleh bypassing
3 Tisana, which is located on the highway between Sumbuya and
4 Koribundu. Then, through those bypasses, we have to arrive at a
5 town called Kpatebo very close to Sumbuya, crossing the river,
6 the Sewa River from Sumbuya to Tisana. And from Tisana to the
7 junction where I described yesterday, then from that junction, I
8 think there are two or three, four villages. There is another
9 diversion on the left-hand side without reaching Baowa Junction.

10 Q. How long does that take you?

11 A. With the bicycle, I told you -- I said it yesterday in my
12 testimony, that one day, sometime. One day. From Telu, with the
13 bicycle to Base Zero, the other day, or two days after I return,
14 just one day ride.

15 Q. Good. Seems you have a good knowledge of that area then,
16 except for Baowa Junction.

17 A. Except for Baowa Junction.

18 Q. Yes, you know everywhere else so well, as you have
19 narrated.

20 A. Those areas being described are not areas associated or
21 connected to Sogbini Chiefdom.

22 Q. All right.

23 A. There's Tikonko Chiefdom, Lugbu Chiefdom.

24 Q. That's okay.

25 A. Bumpe Chiefdom, Kpandakemo Chiefdom, et cetera.

26 Q. Are you aware whether Allieu Kondewa was a member of the
27 War Council?

28 A. I am not aware.

29 JUDGE ITOE: He has said so yesterday.

1 MR KAMARA: Yes, My Lord, just keeping him on track.

2 Q. Are you aware that he attended meetings of the War Council?

3 A. I am not aware. But I can remember seeing him visiting the
4 place where the War Council normally meet.

5 Q. And that is the Walehuns?

6 A. Well, I don't know whether, or for which purpose he used to
7 go there. I'm not aware.

8 Q. But you know that the War Council met at the Walehuns?

9 A. I know that.

10 Q. And you saw Kondewa going to the Walehuns?

11 A. The Walehun where I saw Kondewa was an open place, the
12 first Walehun. I even myself went there one time, and I'm not a
13 member of the War Council, so I cannot determine whether being to
14 Walehun I would automatically declare the individual is a member
15 of that group.

16 Q. Mr Witness, there were three different Walehuns; do you
17 know?

18 A. It is true, yes.

19 Q. And these meetings are held in these different Walehuns,
20 based on the importance of the issue to be discussed; is that
21 correct?

22 A. I cannot remember that.

23 Q. You cannot remember.

24 A. I don't know about that.

25 Q. You testified this afternoon that you were aware of
26 training going on at Base Zero; correct?

27 A. Militia training, yes.

28 Q. Are you aware that certificates were given to persons
29 graduating after such a training?

1 A. I was not present. I'm not aware of that.

2 Q. You've never seen a Kamajor certificate of training?

3 A. I have never seen one before.

4 Q. Now, take a look at Exhibit 26.

5 PRESIDING JUDGE: Mr Thomas, do we have that in Court?

6 MR GEORGE: No, Your Honour.

7 PRESIDING JUDGE: Does the Prosecution have a copy of it?

8 MR KAMARA: Yes, My Lord.

9 PRESIDING JUDGE: Show the Defence and see if they have a
10 copy, or if it is the same document we are talking about.

11 MR KAMARA:

12 Q. Take a look at Exhibit 26, the one I have just given you.
13 Do you recognise that certificate?

14 A. Now?

15 Q. Are you familiar with that certificate?

16 A. I'm not familiar with it. I am not familiar with it.

17 Q. You have never seen a certificate like that in your life?

18 A. I've never seen it. This is my first time seeing it.

19 Q. You're a Kamajor since 1997; you've never seen a Kamajor
20 certificate?

21 A. I have never seen this certificate.

22 JUDGE ITOE: He was not trained.

23 THE WITNESS: I was not trained. I have never seen it.

24 MR KAMARA:

25 Q. Now, look at that certificate. There are signatures in
26 that certificate; correct?

27 A. Signature?

28 Q. Stamps. [Indiscernible] stamps?

29 A. Only the stamp or the signature.

- 1 Q. There are about three stamps.
- 2 A. Yes, I can see three stamps here.
- 3 Q. Thank you. The first one is the stamp of whom?
- 4 A. I don't know.
- 5 Q. It's not written there?
- 6 A. I'm seeing CDFSL, director of training.
- 7 Q. Yes.
- 8 A. Yes, that's what I'm seeing there.
- 9 Q. Look at the next one.
- 10 A. I'm seeing the next one. I've seen it.
- 11 Q. What does it say?
- 12 A. I'm seeing co-ordinator and a signature.
- 13 Q. Thank you. And the third one?
- 14 A. I'm seeing a stamp there, High Priest. I don't know what
- 15 is here.
- 16 Q. Thank you.
- 17 A. Okay.
- 18 Q. Now, were there other forms of identification for Kamajors,
- 19 apart from certificates?
- 20 A. Yes, there were other forms of identification for Kamajors.
- 21 Q. Such as ID cards?
- 22 A. Such as ID cards.
- 23 Q. You had an ID card?
- 24 A. I had an ID card.
- 25 Q. Do you have it with you?
- 26 A. It is in your possession.
- 27 Q. You gave it to the Prosecution?
- 28 A. Yes. They demanded --
- 29 JUDGE ITOE: To Mr Saffa?

1 MR KAMARA: Yes, he gave it to Mr Saffa.

2 THE WITNESS: Saffa.

3 MR KAMARA: Yes, good. Thank you.

4 THE WITNESS: Joseph Saffa.

5 MR KAMARA:

6 Q. We'll get to those documents. I see you are in a hurry to
7 get there. Now, Mr Witness, Kondewa was also instrumental in the
8 general welfare of the Kamajors; would you agree to that?

9 A. Not to my knowledge.

10 Q. Are you aware that Kondewa had concerns that affected the
11 well being of the Kamajors at Base Zero?

12 A. I'm not aware.

13 Q. Whilst at Base Zero, there were children at Base Zero;
14 correct?

15 A. There were children there.

16 Q. Children under 15; you saw them?

17 A. There were children even under one year.

18 Q. That's not the question. There were children under 15?

19 A. In the township of Talia?

20 Q. Yes.

21 A. Yes.

22 Q. Thank you. Are you also -- is it to your knowledge that
23 these children were used in manning checkpoints?

24 A. Not to my knowledge.

25 Q. Is it to your knowledge --

26 A. Not to my knowledge.

27 Q. I'm coming with another question.

28 PRESIDING JUDGE: Wait, witness, wait. Don't be too
29 pre-emptive.

1 MR KAMARA:

2 Q. You are aware that there were several checkpoints before
3 getting to Base Zero, manned by Kamajors?

4 A. I am only aware of one checkpoint, and that was the
5 checkpoint described yesterday.

6 Q. That was the only one you know?

7 A. That's the only one.

8 Q. And that is the one you refer to as the Death Squad?

9 A. Checkpoint.

10 Q. Death Squad checkpoint.

11 A. Yes.

12 Q. Were there other checkpoints that you know of that were not
13 around Base Zero?

14 A. Not around Base Zero?

15 Q. Yes. Are you aware of any checkpoint manned by Kamajors
16 anywhere?

17 A. Yes.

18 Q. Are you aware that children, Kamajor children, were manning
19 those checkpoints?

20 A. I am not aware.

21 Q. Is it to your knowledge that children under 15 were also
22 used in spying missions for the Kamajors?

23 A. I am not aware.

24 Q. It is also not to your knowledge, I believe, that children
25 under 15 would dance in front of the Kamajors during an attack;
26 you are not aware of that as well?

27 A. Repeat, please.

28 Q. You are not aware of the fact that children under 15
29 usually dance in front of the Kamajors before they launch an

1 attack; are you aware of that?

2 A. I am not aware.

3 Q. Yes. Now, you're equally not aware that children
4 participated in hostilities, Kamajors used children in combat
5 activity?

6 A. I am at aware.

7 Q. Do you know what is a controller?

8 A. I know what is a controller.

9 Q. Is it not usual for Kamajor children to hold the
10 controller?

11 A. No, it is not usual.

12 Q. Now, Mr Witness, would you be surprised to learn that even
13 Chief Norman himself admitted that children participated in
14 hostilities on both sides --

15 MR SESAY: My Lord, I object to that question.

16 PRESIDING JUDGE: Yes.

17 MR SESAY: It seems my colleague has now --

18 JUDGE ITOE: It is sustained. It is sustained.

19 MR SESAY: He has breached his undertaking.

20 MR KAMARA: My Lord, I withdraw that question.

21 PRESIDING JUDGE: Right. Move on to another aspect.

22 MR KAMARA: Yes, My Lord. May the witness be shown Exhibit
23 110?

24 PRESIDING JUDGE: Mr Thomas, please show him Exhibit 110.

25 MR KAMARA: I don't think Mr Thomas has it. Yes, Exhibit
26 110A.

27 JUDGE BOUTET: Before you do so -- can you wait just a
28 moment before you show this exhibit to the witness?

29 MR KAMARA: Yes, My Lord.

1 JUDGE BOUTET: Mr Prosecutor, I thought this exhibit you
2 were intending to show to the witness is confidential? It was
3 introduced by a protected witness.

4 MR KAMARA: 110B, My Lord.

5 JUDGE BOUTET: And this one is not?

6 MR KAMARA: Is that not our Rule 92bis submissions, My
7 Lord?

8 JUDGE BOUTET: Yes, that was the previous one that was
9 protected, not that one.

10 MR KAMARA: Yes, sorry, My Lord.

11 JUDGE BOUTET: So it's B?

12 MR KAMARA: 110B.

13 PRESIDING JUDGE: What's the rubric on that?

14 MR KAMARA: It's on children --

15 PRESIDING JUDGE: Recruitment of children?

16 MR KAMARA: Yes.

17 PRESIDING JUDGE: Recruitment of child soldiers.

18 MR KAMARA: Yes.

19 PRESIDING JUDGE: Which one are you interested in? This is
20 a four-part document.

21 MR KAMARA: 110B, Your Honour.

22 PRESIDING JUDGE: Yes, it was in four parts.

23 MR KAMARA: The first paragraph on page 25. Under the
24 heading, "Recruitment of Child Soldiers."

25 PRESIDING JUDGE: Yes. Are there any specific portions you
26 want him to read?

27 MR KAMARA: Yes, My Lord.

28 PRESIDING JUDGE: Which paragraph or paragraphs?

29 MR KAMARA:

1 Q. Have you seen the rubric, "Recruitment of Child Soldiers?"

2 A. Yes.

3 Q. Could you read for the Court the sentence starting,
4 "CDF" --

5 PRESIDING JUDGE: Well, let him read it to himself. Don't
6 you want to question him on that?

7 MR KAMARA:

8 Q. Read it quietly to yourself.

9 PRESIDING JUDGE: Yes. Is this paragraph one only or
10 paragraphs one and two?

11 MR KAMARA: Let's start with paragraph one.

12 PRESIDING JUDGE: Okay.

13 THE WITNESS: Yes, I've read it.

14 MR KAMARA:

15 Q. What does it say?

16 A. It stated that the CDF --

17 Q. Now you're reading it.

18 A. -- was having problems by getting children involved in
19 recruitment as soldiers.

20 Q. Yes. Mr Witness, that's a Human Rights Watch report --

21 JUDGE ITOE: That's a report written by whoever.

22 MR KAMARA: Yes, I'm going to ask him to respond to that.

23 PRESIDING JUDGE: Yes. Yes, quite.

24 JUDGE ITOE: He has responded to all this about recruitment
25 of children and so and so forth.

26 PRESIDING JUDGE: Counsel --

27 MR KAMARA: Having read this report now, does he still
28 maintain the same position.

29 PRESIDING JUDGE: Counsel, I'm joining my brother here.

1 Here, he's read the paragraph. If you have anything specific to
2 put to him, why not do that? I mean, to ask even for his opinion
3 would be just like inviting him to meander, wander all over the
4 place. Don't you have a specific question, or specific set of
5 questions that you want to put to him arising out of that
6 paragraph?

7 MR KAMARA: Yes, My Lord.

8 PRESIDING JUDGE: Well, do that. That will help us.

9 MR KAMARA:

10 Q. Mr Witness, you've read the paragraph I've highlighted to
11 you?

12 A. Yes, that's correct.

13 Q. Having read that paragraph, do you still subscribe to the
14 view that children were not part of active hostilities?

15 A. Be specific. You have to be specific, please.

16 Q. Having read that paragraph, do you still subscribe to the
17 view that children were not used in active combat by the
18 Kamajors.

19 PRESIDING JUDGE: That's a specific question, Mr Witness.

20 THE WITNESS: That they were not actively participating in
21 war-related activities?

22 MR KAMARA:

23 Q. You do not understand the question, I'll put it again.

24 A. Yes, I don't understand the question.

25 Q. Having read the paragraph --

26 A. Yes.

27 Q. -- do you still hold the view that Kamajors did not use
28 children in fighting?

29 MR MARGAI: My Lords, I believe that is an unfair question.

1 First of all, we do not even know whether the witness here has
2 ever heard of the people who wrote that report, or the
3 institution that wrote it, whether he's seeing it for the first
4 time. It's like inviting him to comment on the authenticity or
5 the veracity of what is therein contained. It is in evidence.
6 As the learned judge said, It is a question of whether any
7 weight, if so, what weight will be attached to it at the end of
8 the day.

9 PRESIDING JUDGE: But he can answer the question, and then
10 you can re-examine if you think --

11 MR MARGAI: As My Lord pleases.

12 PRESIDING JUDGE: Yes, this man is a man with professed
13 knowledge in the whole culture. He's here to help the Court.

14 MR MARGAI: As the Court pleases.

15 PRESIDING JUDGE: He can give his own position.

16 JUDGE BOUTET: He could be asked if he agrees or disagrees
17 with the position. That would be the clearest way to put it to
18 the witness.

19 MR MARGAI: I would have thought so, My Lord.

20 PRESIDING JUDGE: But counsel has quite a number of
21 variations of his forensic style and we can't inhibit that. Go
22 ahead, counsel.

23 MR KAMARA: The witness has answered. He has told you.

24 MR WILLIAMS: The witness did not answer the question, My
25 Lord. He merely repeated what my learned friend said.

26 PRESIDING JUDGE: Right. Then let's have it put again to
27 the witness.

28 MR KAMARA:

29 Q. Mr Witness, having read the paragraph that I highlighted to

1 you, do you agree to what is contained there?

2 A. I don't agree with it.

3 Q. Thank you.

4 PRESIDING JUDGE: Well, let us take our afternoon break and
5 come back at the usual time.

6 [Break taken at 4.30 p.m.]

7 [Upon resuming at 5.04 p.m.]

8 THE PRESIDING JUDGE: Mr Kamara continue.

9 MR KAMARA: Yes, My Lord.

10 Q. Mr Witness, did you ever see Kondewa with a Mercedes Benz
11 at Base Zero?

12 A. I didn't.

13 Q. Is it to your knowledge that between 1997 and 1998 he was
14 in possession of a looted Mercedes Benz from Sembehun?

15 A. Not to my knowledge.

16 Q. Thank you.

17 JUDGE ITOE: What was the time frame you gave again?

18 MR KAMARA: 1997 to 1998, My Lord.

19 JUDGE BOUTET: What was your first question, Mr Kamara, if
20 he had seen him with a Mercedes Benz?

21 MR KAMARA: Mercedes Benz, yes.

22 JUDGE BOUTET: There was no qualification, just that.

23 MR KAMARA: Just that.

24 JUDGE BOUTET: And the answer to that was no.

25 JUDGE ITOE: At Base Zero, you said.

26 MR KAMARA: At Base Zero, yes.

27 JUDGE BOUTET: At Base Zero, and the answer to that is no.

28 MR KAMARA: Yes. My Lord, that is the last question in
29 line of the issues that do not border on the closed session

1 matters.

2 PRESIDING JUDGE: In other words, if we were to move into
3 closed session now, you will embark upon those areas which are
4 amenable to treatment within closed session?

5 MR KAMARA: Yes, My Lord.

6 PRESIDING JUDGE: And then you will conclude your
7 cross-examination.

8 MR KAMARA: Yes, My Lord.

9 PRESIDING JUDGE: Well, let's ask the witness to retire
10 while we take your application in closed session. Could the
11 representative of Witness and Victims Unit escort the witness.

12 [The witness stood down]

13 PRESIDING JUDGE: Members of the public, this Court is
14 about to go into closed session to hear some matters which we
15 think are not, in a way, amenable to public hearing. So I will
16 ask you to retire, and, it is safe to say that you shouldn't come
17 back today. Come back on Monday at 9 -- probably, let's say,
18 10.30 a.m..

19 JUDGE ITOE: It depends on the guidance of Mr --

20 PRESIDING JUDGE: Counsel, is that a fair estimate.

21 MR KAMARA: Yes, My Lord, it is a fair estimate.

22 PRESIDING JUDGE: Between 10.30 and 11.

23 JUDGE BOUTET: Mr Presiding Judge, if I may. Mr Kamara,
24 how long do you estimate your -- you talk only of a few
25 documents. If, it is a big if, you are allowed to proceed that
26 way, how long do you expect to be?

27 MR KAMARA: My Lord, I will be done before the 5.30
28 deadline. If we have arguments back and forth, that is what will
29 delay the process. My Lord, it is just three documents. I have

1 already identified those to the defence of the third accused.

2 PRESIDING JUDGE: Well, let's hear the application then.

3 Are we in closed session yet? Just wait.

4 [At this point in the proceedings, a portion of the
5 transcript, pages 113 to 129, was extracted and sealed under
6 separate cover, as the proceeding was heard in a closed session]

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1 PRESIDING JUDGE: The trial is adjourned to Monday,
2 9th October at 9.30 a.m..
3 [Whereupon the hearing adjourned at 5.46 p.m.,
4 to be reconvened on Monday, the 9th day of October
5 2006, at 9.30 a.m.]

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EXHIBITS:

Exhibit No. 163 81

WITNESSES FOR THE DEFENCE:

WITNESS: BRIMA TARAWALLY 2

CROSS-EXAMINED BY MR KAMARA 49