

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-14-T
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
v.
SAM HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA

TUESDAY, 2 NOVEMBER 2004
9.40 a.m.
TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For Chambers:

Ms Sharelle Aitchison

For the Registry:

Ms Maureen Edmonds

For the Prosecution:

Mr Joseph Kamara
Mr Raimund Sauter
Mr Kevin Tavener
Ms Bianca Suciu

For the Principal Defender:

Mr Ibrahim Yillah

For the Accused Sam Hinga Norman:

Ms Quincy Whitaker
Claire da Silva

For the Accused Moinina Fofana:

Mr Michiel Pestman.

For the Accused Allieu Kondewa

Mr Charles Margai
Mr Yada Williams

1 Tuesday, 2 November 2004
2 [Open session]
3 [The three accused not present]
4 [Upon commencing at 9.45 a.m.]
09:42:22 5 PRESIDING JUDGE: Good morning, learned counsel. For those of
6 you who have travelled from afar, from across the seas
7 and the desert, you know, you're very welcome. I hope
8 you had a safe trip to Freetown. You're very welcome,
9 indeed. And, of course, for those who were on holiday,
09:42:51 10 like the Margais, the Williams and the Bockaries, they
11 have also covered a distance, you know, to come here for
12 the beginning of this third session, so you are all
13 welcome and we hope that we shall have a pleasant -- or a
14 successful and pleasant session, you know, during this
09:43:16 15 third trial -- third go, you know, at the CDF trial that
16 is on from today.
17 We assure you that the Bench remains very
18 understanding and attentive to problems which will arise
19 and we will endeavour to the best of our ability to find
09:43:42 20 legal solutions that may confront us in the course of
21 this session of the trials. So this said, I wish all of
22 you the very best and that we'll proceed smoothly,
23 harmoniously and, above all, very expeditiously, please.
24 The Chamber was informed informally about some
09:44:08 25 unfortunate events that touched Mr Pestman and we feel
26 very grieved, you know, like he is, and we extend to him
27 our sympathies and also our concerns for what has
28 happened to him in his family. So, Mr Pestman, please,
29 you have the condolences and the concerns and sympathies

1 of the Tribunal for what you are going through at this
2 moment. I know it isn't easy, but like we say in Africa,
3 and I'm sure in Europe, "Well, you're a man and once you
4 are a man, you're born to the world to face whatever
09:44:50 5 comes your way." So let's put it all in prayer and hope
6 that it evolves positively. Thank you very much.

7 This said, I think we would start. I don't know
8 whether there any preliminary issues, but I just want to
9 say that we would first of all proceed to delivering what
09:45:27 10 I would call an oral decision which would be followed by
11 written decisions.

12 MS WHITAKER: Your Honour, I do apologise. Is Your Honour
13 planning to deliver a judgment relating to one of the
14 motions that was issued by Chief Norman?

09:45:45 15 PRESIDING JUDGE: No, those will come not today. They will
16 come on not today, we're sorry. We're trying to adjust
17 to a number of things and they will not come on today.

18 MS WHITAKER: Are you able to give some indication as to when
19 they are, because -- I mean, there are certain
09:46:01 20 professional issues arising for me which I think may
21 follow on from your decisions which I need to consider,
22 certainly with the chief.

23 PRESIDING JUDGE: Well, I cannot be very precise, but we'll
24 come back to you to let you know when it -- when we could
09:46:21 25 be ready with the ruling on those particular motions.
26 You are referring to the motions on service of the
27 indictment and the arraignment?

28 MS WHITAKER: Indeed, and protective measures on the
29 witnesses, which I believe are the two issues which are

1 leading my client to boycotting the trial proceedings.
2 And I understand that we've been appointed or you're
3 endeavouring to appoint us as court-appointed counsel. I
4 have -- potentially have professional difficulties about
09:46:52 5 that subject to discussing the matter with the chief,
6 because I have -- my material is legally privileged, all
7 my instructions are legally privileged and that privilege
8 remains with the chief irrespective of -- it may be
9 following your decision -- consequentially following your
09:47:09 10 decision that further -- it may be that it's no longer
11 necessary for us to be court-appointed, in which case the
12 matter is resolved. It may be that you intend to retain
13 us as court-appointed counsel, in which case I would then
14 have to seek instructions from the chief regarding the
09:47:25 15 status of the privileged material.

16 PRESIDING JUDGE: Well, we are aware of all these issues and I
17 can assure you we're going address them. We're already
18 addressing them and we'll make the -- a stand, you know,
19 of the Chamber, you know, known on these particular
09:47:39 20 issues. Our attention has been drawn to this and we are
21 trying to see what can be done in the circumstances.

22 MS WHITAKER: I'm grateful, because I don't think I can
23 properly professionally cross-examine until that issue of
24 my status has been resolved. So I don't think I can
09:48:00 25 participate effectively until that issue has been --

26 JUDGE BOUTET: I would like to understand a little bit more.
27 I'm a bit confused as to what it is that is causing you
28 this kind of trouble, because as far as I understand the
29 situation to be of you, vis-a-vis this Court, you've been

1 court appointed, as such, and therefore, whether you have
2 or have not been receiving instruction from Mr. Norman is
3 irrelevant. Obviously we wish and we hope that you do
4 get instructions and you do talk to Mr Norman, but you
09:48:27 5 are no more the counsel appointed by Mr Norman. Your
6 status has changed when we appointed you as
7 court-appointed counsel. And, therefore, if you look at
8 the order that appointed you at that time, there is
9 nothing in those conditions that stated that you had to
09:48:43 10 receive any instructions from Mr Norman. As I say, it is
11 being encouraged, but it is not a condition of and was
12 not a condition of your appointment, so I'm at a bit of a
13 loss to understand what you are stating this morning.
14 MS WHITAKER: Well, if I can endeavour to explain. Firstly,
09:48:59 15 under my code of conduct, I have to accept instructions.
16 I can't be appointed without accepting instructions. I
17 can't accept instructions unless I'm sure I'm not
18 professionally compromised in that acceptance. All my
19 instructions -- I have instructions is my difficulty, and
09:49:14 20 that matter is legally privileged, and I cannot use that
21 material unless my clients, or the person who owns the
22 privilege, which is the chief, gives permission for me to
23 use that material. So my difficulty is not that I don't
24 have instructions --
09:49:30 25 PRESIDING JUDGE: And if he does not give the instructions to
26 you not to use the material, or let me take the most
27 extreme case, if he says, you know, that you should not
28 appear for him, how would you place his instructions to
29 you, vis-a-vis the decision, you know, which the Court

1 has taken?

2 MS WHITAKER: Yes. Well, obviously I've sought guidance from

3 my professional body regarding this serious issue. I've

4 endeavoured to raise it with the Principal Defender, but,

09:50:02 5 sadly, have had little assistance from her. The -- if

6 I can't -- it is not a proper instruction for me to be

7 instructed not to attend court. I can't accept an

8 instruction like that from a client, because under my

9 code of conduct, that's not a proper instruction. That

09:50:20 10 would place me in contempt of court. All the chief can

11 do in those circumstances is sack me if he wants me not

12 to go to court, or allow me to go to court to represent

13 his interests if I'm representing him. And, of course,

14 I've both represented him as his ordinary counsel and

09:50:33 15 then as standby counsel and obtained privileged material,

16 and the privilege remains his. If he then sacks me --

17 and the difficulty is I both appear to be standby counsel

18 and court-appointed in that he hasn't actually sacked me.

19 If he sacks me, potentially I could be court-appointed

09:50:50 20 counsel, but I cannot use any of the material which is

21 legally privileged, so I can't cross-examine on any

22 matter. It may be that I could be court-appointed

23 counsel to sit on a restricted basis, restricted to the

24 legal issues, and that is the guidance of my professional

09:51:04 25 body, that if I feel able to do that, then that is a role

26 that I could accept instructions for, but I first have to

27 ascertain whether my client will allow me or the

28 person -- whether chief will allow me to use any of the

29 material that is privileged, otherwise I cannot

1 cross-examine. I certainly can't instruct myself
2 factually. You will appreciate that that's --
3 JUDGE THOMPSON: Do you currently have a contract for your
4 presence here? Do you have a contract?
09:51:35 5 MS WHITAKER: Not signed as such. We have a standby --
6 I mean, a case plan, as such, but not --
7 JUDGE THOMPSON: So you don't have a contract with the Court?
8 MS WHITAKER: Not as such, not yet --
9 JUDGE THOMPSON: Because I want to find -- [overlapping
09:51:49 10 speakers]
11 MS WHITAKER: -- standby counsel hasn't changed. What there
12 is is an unsigned case plan concerning my role as standby
13 counsel.
14 JUDGE THOMPSON: In other words, there is no contract spelling
09:52:02 15 out your obligations in the context of this litigation?
16 MS WHITAKER: No, because of the hiatus between this team and
17 the previous team. In any event, I'm bound by my -- the
18 England and bar code of conduct.
19 JUDGE THOMPSON: Yes, understand that. That's I'm worried
09:52:24 20 about, in other words, what's your locus now? You saying
21 that there is some kind of ambivalence about that. Thank
22 you.
23 JUDGE BOUTET: I still have some uncertainty as to your saying
24 that. My understanding of your position, and correct me
09:52:48 25 if I'm wrong in my description of the scenario, you were
26 no more representing Mr Norman at a given stage. Then
27 you were sort of called back into action when you became
28 standby counsel. At that time you were standby under the
29 condition that applied. Mr Norman was doing -- was

1 self-representing himself with certain limitations with
2 the help and assistance of standby counsel, one of whom
3 you are. But we did change that status to say, "You are
4 now court-appointed counsel." Standby does not apply any
09:53:21 5 more. So that is the change that applied and that
6 followed the decision of this Court when we appointed you
7 as court-appointed counsel way back when Mr Norman
8 decided not to come any more. So whatever status you had
9 at that time was changed by a court order.

09:53:37 10 MS WHITAKER: If I may interrupt. My difficulty is, of
11 course, I'm instructed by the chief until he sacks me. I
12 retain that instruction. I've got -- I'm currently
13 conflictingly instructed and in any event, I have this
14 privileged material.

09:53:48 15 JUDGE BOUTET: The privileged material I understand. That's a
16 related but separate issue.

17 MS WHITAKER: I'm not quite clear, to be honest, what the
18 status of standby counsel is.

19 JUDGE THOMPSON: Okay, let me help. It would seem therefore
09:54:04 20 that your kind of role that is been a checkered one. You
21 moved from counsel for the first accused until he
22 requested to be granted a right of self-reputation.

23 MS WHITAKER: I had, in fact, resigned before that.

24 JUDGE THOMPSON: Before that, good point. So there was a
09:54:28 25 severance of any kind of attorney-client relationship
26 between you and the chief. Then he asked this Court to
27 grant him the right of self-representation. This Court,
28 acting under the Rules and Statute decided to do that,
29 but at the same time the Court said that the only way

1 that this right of self-representation could be
2 meaningfully operationalised, having regard to the need
3 for the judicial guarantees as to the fairness of the
4 trial of the accused, was to appoint standby counsel.
09:55:14 5 And the Court in an order spelled out, as far as I
6 recollect, the duties of standby counsel. Did you accept
7 that?
8 MS WHITAKER: Well, yes. I mean, I appeared.
9 JUDGE THOMPSON: And you've been acting as standby counsel?
09:55:30 10 MS WHITAKER: Yes.
11 JUDGE THOMPSON: Right. At that point in time did you enter
12 into any contract with the Principal Defender's office?
13 MS WHITAKER: No.
14 JUDGE THOMPSON: Right. So then your status changed from
09:55:44 15 standby counsel, and let me tell you what I understand
16 standby counsel to mean. It meant that there was, in
17 fact, a severance of the attorney-client relationship
18 simplicitor between you and the chief, but that you were
19 now standing as a result of an arrangement by the Court
09:56:10 20 and that the chief had no authority to fire you, because
21 chief, or the accused does not -- he did not appoint you
22 standby counsel. Was that your understanding? He could
23 not fire you.
24 JUDGE BOUTET: If I may add to my brother's comment on that.
09:56:29 25 I specifically said so at the time in open court. I said
26 to Mr Norman: "You have to understand that from now on
27 you cannot fire your counsel." And I was talking at that
28 time of standby counsel, not court-appointed.
29 JUDGE THOMPSON: He did not hire you. The standby arrangement

1 means that did he hire you, therefore he could not fire
2 you. But the Court trying to be realistic and to be fair
3 to the accused said there would be some meaningful,
4 practical and logistical relationship between the first
09:57:07 5 accused and standby counsel so as to ensure his effective
6 representation. In other words, you were assisting him
7 to represent himself effectively. That's my
8 understanding of standby counsel. Is that your
9 understanding too?

09:57:27 10 MS WHITAKER: I would certainly hope -- try to make it
11 effective, but --

12 JUDGE THOMPSON: No, is that your understanding? Because I
13 don't want us to be at cross-purposes, because I want to
14 lead on to my next premiss.

09:57:34 15 MS WHITAKER: Yes, but if I could qualify my answer, the -- I
16 was always -- I always understood that I was acting on
17 the chief's instructions, so the chief could instruct me
18 to say something or not say something. I was not
19 reaching my own decision, nor was I instructed by the
09:57:44 20 Court --

21 JUDGE THOMPSON: No, I don't have any problem with that, as
22 long as you understand that the role of standby counsel
23 was completely different from the ordinary
24 client-attorney relationship.

09:57:58 25 MS WHITAKER: Except what Your Honour says in relation to
26 being fired or sacked.

27 JUDGE THOMPSON: Good point. You were realistic enough to
28 know that as standby counsel you need to have constant
29 consultations with the first accused and then we moved

1 away from the standby counsel status to court-appointed
2 status and that is the one you now say you're having
3 difficulty with.
4 MS WHITAKER: Well --
09:58:32 5 JUDGE THOMPSON: Is the transition from standby to
6 court-appointed that is causing you this affliction,
7 professional affliction?
8 MS WHITAKER: Yes.
9 JUDGE THOMPSON: Why? If you can try and persuade me, I may
09:58:44 10 be able to come round to seeing your own position.
11 MS WHITAKER: Because I'm in possession of legally privileged
12 material, all my instructions are legally privileged and
13 I have them both from being ordinary counsel and from
14 standby counsel and obtained them -- the status of
09:59:03 15 standby counsel, I would submit, that my instructions
16 remain legally privileged vis-a-vis the client.
17 JUDGE THOMPSON: All right. Let us concede that.
18 MS WHITAKER: Okay. So on that basis I am now -- the Court
19 are now asking me to act in the chief's interests and
09:59:15 20 unless he consents to my use of this legally privileged
21 material, I can't use that.
22 JUDGE THOMPSON: So that is your difficulty. It is not the
23 difficulty of being characterized court-appointed counsel
24 with all the appurtenances and duties and obligations.
09:59:32 25 That is not your problem.
26 MS WHITAKER: Not as -- provided I'm -- I'm fully -- we don't
27 have -- it's not something I'm used to being appointed --
28 JUDGE THOMPSON: Yes, quite right. In other words it's --
29 MS WHITAKER: But what the -- and I -- and I sought guidance

1 from my professional body and they instruct me that I can
2 accept instructions from the Court provided I'm not
3 professionally compromised if the Court instruct me
4 exactly what I'm going to do. They can't instruct me --

09:59:51 5 JUDGE THOMPSON: Quite right.

6 MS WHITAKER: -- because they act in the client's--

7 JUDGE THOMPSON: Good point. Excellent point. In other
8 words, they're asking for some specificity and clear
9 demarcation of the parameters.

10:00:04 10 MS WHITAKER: Exactly.

11 JUDGE THOMPSON: All right. I understand now where you're
12 coming from.

13 PRESIDING JUDGE: And that is why I said, you know, we're
14 looking at these matters and we're going to, you know,
10:00:14 15 clarify the issues, you know, before getting to these --
16 the debate we have gone into is a useful one. We have
17 been able at least to have a feel of what is running
18 through your mind, you know, as far as your appearance as
19 a court-appointed counsel is concerned. But what we
10:00:37 20 would like to say here is that -- I mean, we are not,
21 like my brothers have said, you know, disputing the
22 privileged relationship you have with your client, you
23 know, as far as the documents, you know, which concern
24 his defence and our concerns, but we hope and we would
10:00:57 25 like to feel that you're not trying to get to a point,
26 you know, where you will decline your role, you know, as
27 a court-appointed counsel in circumstances which led, us,
28 you know to that situation, because we if got to that
29 situation, it was created, you know, largely by your

1 client who slams the doors. It is not your fault but we
2 had to proceed.

3 MS WHITAKER: But the privilege remains his. It may be that
4 if it comes to this stage -- and I certainly can't
10:01:33 5 guarantee to Your Honour that that may not be the result
6 of his -- my discussions with him, but I need to
7 ascertain exactly what the status of the privileged
8 material is and then to consider whether I can do any
9 meaningful role at all. It is very difficult,
10:01:48 10 potentially, for me to cross-examine when I've got
11 instructions that I can't use, if you understand my
12 difficulty. But I do need to discuss this in detail with
13 the chief, which I feel would only really be productive
14 once we know where your rulings are, because it may all
10:02:00 15 be academic if -- if he gets some satisfaction or solace
16 from your rulings, then he may be prepared to return to
17 court and this may be not so much as of an issue, but
18 this as conversation I need to have --

19 PRESIDING JUDGE: [Overlapping speakers] we are not yet at
10:02:12 20 level of cross-examination. Maybe we can, you know,
21 proceed, you know, with taking the evidence of the
22 witness --

23 MS WHITAKER: Certainly.

24 PRESIDING JUDGE: -- the Prosecution may call and then, you
10:02:22 25 know, when the time comes, we would able to maybe -- I'm
26 not sure they're going finish this witness before break
27 time. Maybe at break time you will be able to see your
28 client to sort matters out.

29 JUDGE THOMPSON: I certainly understand the position now with

1 the clarity that I --

2 MS WHITAKER: I'm grateful. And I think matters can't be

3 fully resolved until your rulings are given, but the

4 sooner those are given, the easier it would be from my

10:02:48 5 professional position.

6 PRESIDING JUDGE: I would like to get your defence team. I

7 think, if my recollections are right, you know, the

8 person who signe the legal services contract was Mr Tim

9 Owen.

10:03:05 10 MS WHITAKER: No.

11 PRESIDING JUDGE: Oh, I see.

12 MS WHITAKER: I don't think any one signed a contract.

13 PRESIDING JUDGE: Who was that?

14 MS WHITAKER: For this one, I don't think anyone signed it.

10:03:14 15 PRESIDING JUDGE: That is what I appear to be have been told.

16 In any event, the Principal Defender is not even in town,

17 but she should be back, you know before --

18 MR YILLAH: May it please, My Lord, Ibrahim Yillah. I appear

19 on behalf of the Office of the Principal Defender. I

10:03:33 20 observed there are issues that have arisen this morning --

21 during the course of this morning's proceedings that

22 touch and concern the office and if Your Lordships are so

23 inclined, I may address you on any questions or any

24 issues that you may raise at this stage, My Lords.

10:03:53 25 [Trial Chamber confer]

26 JUDGE BOUTET: Ms Whitaker, I do have one question, if I may,

27 so I do understand a little bit more about who is who in

28 the organisation. We do have Mr Tim Owen QC as a member

29 of your team. He was -- certainly my understanding was

1 that he was the lead counsel, but --

2 MS WHITAKER: No, he was never lead counsel.

3 JUDGE BOUTET: I know you said no, but let me ask another

4 question. Was he the team leader prior to? No? He has

10:07:19 5 never been the team leader?

6 MS WHITAKER: No, never. He was only really ever a consultant

7 on the legal -- the international legal matters and he

8 was going to -- and he came to the appeals hearing. He

9 was going to come for the legal submissions. The lead

10:07:32 10 counsel was Mr Jenkins-Johnson in the original team and

11 Tim Owen was consultant and then we have no lead counsel

12 in the standby team, but Dr Jabbi and Mr Wesley Hall are

13 senior counsel.

14 JUDGE BOUTET: So they acted as if they were co-leading

10:07:45 15 counsel?

16 MS WHITAKER: Well --

17 JUDGE BOUTET: But nobody was -- as you say,

18 Mr Jenkins-Johnson was the lead counsel when he was --

19 his services were no more required by the first accused,

10:08:02 20 then there was no more leader of that team officially.

21 There was no more lead counsel.

22 MS WHITAKER: We had no lead counsel of standby counsel

23 because we we're standby counsel.

24 JUDGE BOUTET: Thank you very much. I was under the

10:08:15 25 impression that Mr Owen was lead counsel, so --

26 MS WHITAKER: No.

27 JUDGE BOUTET: Thank you, very much.

28 PRESIDING JUDGE: Just for purposes of clarification, now that

29 it has been made clear, because the Chamber was under the

1 impression, you know, that it was Mr Tim Owen who signed
2 the legal services contract. That's the impression we
3 had all along. Mr Yillah, can you clarify for us on this
4 issue? I mean, what has the Defence Office done, you
10:08:41 5 know, as far as the legal services contract, you know,
6 is -- in this particular matter is concerned?

7 MR YILLAH: If it please, My Lords, a brief background into
8 the -- the legal services contract was originally entered
9 into by Mr Jenkins-Johnson on behalf of the former
10:09:03 10 Defence team.

11 My Lord, on the dissolution of that Defence team,
12 the Defence Office, together with the accused in
13 question, appointed -- even though they were designated
14 standby counsel, My Lord, in line with the principle of
10:09:25 15 the accused's consent, his consent played a major role in
16 their appointment and that culminated in the
17 reappointment of learned counsel Ms Quincy Whitaker here.

18 My Lords, it is my understanding, subject to any
19 further consultation or discussions I may have with the
10:09:47 20 Principal Defender, that Mr John Wesley Hall has held
21 himself out as acting as lead counsel in the standby team
22 on to their re-designation as court-appointed, My Lord.
23 And I submit, with respect, that having regard to the
24 practice and procedure of signing legal services
10:10:10 25 contract, it is only the lead counsel who would be in a
26 position to sign the legal services contract and
27 certainly not counsel who is addressing Your Lordships
28 now. That is my understanding and I believe she will
29 agree with me in that regard. And the proper person to

1 address Your Lordships with respect to -- on that issue
2 will be Mr John Wesley Hall, because he was in the team
3 prior to the coming of Dr Jabbi, so he has always been
4 holding himself out as lead counsel.

10:10:47 5 And further, My Lord, notwithstanding the change of
6 designation from standby to court-appointed counsel,
7 counsel have submitted papers, they have submitted bills,
8 they have submitted requests in their capacity as
9 court-appointed counsel and they have, with respect,
10:11:12 10 benefitted from the procedures and processes of the
11 Defence Office and that of the court and I -- I would
12 find it a bit strange to backtrack at this stage and give
13 with your right hand and take with your left hand.

14 JUDGE THOMPSON: Learned counsel, clearly there must be some
10:11:35 15 document evidencing a contractual relationship and the
16 fact that they may have been receiving benefits and also
17 performing obligations in pursuance of their new
18 designation, we're lawyers, aren't we, that class of
19 people or professionals who insist on legal propriety.

10:12:00 20 And so what appears to me here is if you're saying that
21 there is no new legal services contract evidencing their
22 current -- or the status of standby, what we have is a
23 kind of administrative snafu, as the Americans would say.
24 I think the position ought to be regularised and, of
10:12:14 25 course, I understand the point you make that the lead
26 counsel signs or concludes the contract on behalf of the
27 team, so I'm sure that Ms Whitaker would not be saying
28 that she is not part of the arrangement, but she does not
29 have an individual contract, that is enlightening. But

1 the question of just leaving it at a de facto level seems
2 to be legally unsatisfactory. I mean, I would think that
3 the new status as court-appointed counsel should be
4 evidenced by some legal services contract incorporating
10:13:03 5 the Court order that appointed, probably as an annex, and
6 that would have been done for standby counsel, because
7 these are innovations in terms of the standby counsel. I
8 don't -- I don't see why there shouldn't be a contract so
9 that we know what the obligations are.

10:13:20 10 MR YILLAH: If I may, My Lord. My Lord, I don't want to waste
11 Your Lordship's precious time. May I just seek leave of
12 the court to confer with the Principal Defender My Lord
13 and to refer to Your Lordships at any point on that issue
14 as to whether this exists a legal documentation or not,
10:13:40 15 My Lord.

16 MS WHITAKER: I cant help my learned friend. There is no
17 contract. No contract has been signed. I understand --
18 whether or not Mr Hall was holding himself out to be lead
19 counsel, I don't know, but the Principal Defender always
10:13:50 20 made it clear there was no lead counsel, because we were
21 standby counsel. We were different. No one has signed a
22 contract.

23 JUDGE THOMPSON: We have a legally untidy situation here.

24 MS WHITAKER: Most unsatisfactory. And I'm sightly surprised
10:14:04 25 that the Defence Office should think it appropriate to
26 take such a contradictory line without having discussed
27 it with -- [overlapping speakers]

28 JUDGE THOMPSON: I don't think you need to develop your point
29 further. I am taking the point that we do have a legally

1 untidy, unsatisfactory situation here.

2 MS WHITAKER: And would ask the Principal Defender to try and
3 resolve this if it was a different contractual status.
4 Forget the standby counsel not having a contract for
10:14:27 5 that, but I wish to have a separate contract as a
6 court-appointed, but she refused to do that and said that
7 wasn't necessary. I do find that an unsatisfactory legal
8 situation -- [overlapping speakers]

9 PRESIDING JUDGE: Anyway, Ms Whitaker, we have taken note of
10:14:46 10 the concerns you've expressed. He have heard Mr Yillah
11 on this issue and I think, like Mr Yillah has said, we
12 would need to revert to the Principal Defender for the
13 situation to be clarified. I think the situation is
14 more -- it borders more on an administrative
10:15:07 15 clarification, you know, than on a legal solution, you
16 know, from us, so we understand. I don't know -- when is
17 she coming back?

18 MR YILLAH: My Lord, she comes in on Thursday, but I have
19 means to contact her immediately.

10:15:23 20 PRESIDING JUDGE: No, no, it is -- you know those means. We
21 want her to be physically present. Emailing, and what
22 have you, electronic communications don't say everything,
23 so we want her to be physically present. But you can
24 inform her, you know, of the problems -- the issues that
10:15:40 25 have been raised so that she can be bracing herself, you
26 know to solving them as she's coming back.

27 MR YILLAH: As My Lord pleases.

28 PRESIDING JUDGE: This said, I can we would proceed with --
29 unless there are other -- oh, yes, Mr Pestman.

1 MR PESTMAN: I'm sorry, just to clarify my position. I've
2 discussed this issue -- this issue was discussed
3 yesterday at the status conference. I don't want to
4 repeat what I said yesterday, but the fact that I'm here
10:16:10 5 shows that my client has allowed me to be here. He has
6 not given me instructions not to represent him in court,
7 otherwise, as I said yesterday, I would not have been
8 allowed to be here.
9 Yesterday I also announced I was going to contact my
10:16:25 10 own bar in Amsterdam. I managed to speak to the Dean,
11 the President of the Dutch bar -- the Amsterdam bar, and
12 he basically told me that I am not allowed to act
13 contrary to my client's instructions. If I would do so,
14 I would be in violation of the Dutch code of conducts.
10:16:46 15 But we managed to solve the possible confrontation or
16 clash between these two legal systems yesterday afternoon
17 and my client has allowed me to be here. But I cannot
18 exclude that he will withdraw his permission or change
19 his instructions and then I will be forced to step
10:17:07 20 down -- not step down, but not to appear in court, but so
21 far that situation has not arisen yet .
22 JUDGE BOUTET: As I told you yesterday, we will cross that
23 bridge when we get there.
24 MR PESTMAN: I hope we don't have to cross that bridge.
10:17:21 25 JUDGE BOUTET: I hope so too.
26 PRESIDING JUDGE: I hope we don't get there.
27 JUDGE BOUTET: I'm concerned, too, of this conflict between
28 national bars and you being a lawyer now appearing at an
29 international tribunal. This Tribunal per se -- I know

1 you to be appearing here you need to be a lawyer
2 somewhere in the world and, therefore, in your case you
3 belong to the Dutch bar and it has some conditions
4 imposed upon you, but at the same time, we're not bound
10:17:51 5 by any particular bar. We have Rules and the Rules are
6 the Rules of the Court, not the rules of the Dutch bar or
7 any other bar. We're trying to be respectful of that and
8 we don't want to be placing people in jeopardy their
9 professional ability, as such, but we need to find ways
10:18:12 10 to reconcile of this, because if you push that to the
11 extreme in your scenario, if an accused decides not to
12 give you any instruction, it means that that would be a
13 total prohibition for to us proceed against any accused,
14 which would lead, I would suggest to you, to a total lack
10:18:28 15 of common sense and absurdity. So we need to have a good
16 common understanding as to what it is and what the
17 objectives are.
18 MR PESTMAN: I don't want to suggest that I would be pushing
19 things to the extreme. Following my client's
10:18:48 20 instructions is the basis for every trial.
21 JUDGE BOUTET: We agree this morning that you're here because
22 your client has so instructed you, or instructed you not
23 to.
24 MR PESTMAN: And I hope that you will be able to show some
10:19:00 25 consideration for the difficult position I'm in. And, by
26 the way, the Dutch Dean -- the Amsterdam Dean has told me
27 the Dutch code of conduct applies to me also when
28 appearing before international court. So if the --
29 PRESIDING JUDGE: Mr Pestman, that is a surprise, because I

1 don't know whether the Dutch Dean is not taking
2 cognisance of the practices, you know, of international
3 criminal tribunals, you know, whose rulings of procedure
4 and practices are not necessarily ad idem with the rules
10:19:34 5 of municipal assistance. To be more precise, you know,
6 with the Dutch system. I mean, if the notion of standby
7 counsel or court-appointed counsel is unknown to the
8 Dutch municipal system, it is, of course, a very
9 notorious and known concept in international criminal
10:19:53 10 tribunals, and if you are appointed here to serve in an
11 international criminal tribunal on the qualification of
12 your being a registered member of the bar of the
13 Netherlands, I think that the Dean, I would like to say
14 should, understand, you know, that if you're so
10:20:17 15 appointed, you should submit yourself, you know, to the
16 rules that govern, the rules and procedure of, you know,
17 of international criminal tribunals. And in this
18 particular case, you know, the notions of standby
19 counsel, court-appointed counsel, and I don't need to go
10:20:39 20 into the lengthy explanation as to why we have to travel
21 this road, you know, to come -- if the proceedings were
22 not, you know, disrupted, if we had everything going
23 normally, I mean, the Court, of course, would not have
24 changed the notion of designated counsel for which the
10:21:00 25 Principal Defender had signed legal services contracts
26 with the representative Defence teams. Here we are. We
27 know what has happened, and we know why we moved, you
28 know, from the designated counsel to standby counsel and
29 then, you know, to court-appointed counsel. If your bar

1 is prepared to let you come and plead in international
2 tribunals, I think they should also accept that it is
3 implicitly a submission to the rules that govern those
4 tribunals and also to the decisions that are taken by
10:21:38 5 those tribunals. This is what I want to, you know, say
6 from here and I think that we -- we have to see things,
7 you know, very, very clearly and you will please convey
8 our opinion, our stand on this matter to the Dean. And
9 I'm sure, you know, if he examines it properly, he would
10:22:03 10 see that there is a lot of reasoning in what we're saying
11 here. Otherwise, I mean, we could as well say that well,
12 no international criminal tribunal should accept Dutch
13 counsel, you know, Dutch advocates to appear before them.
14 JUDGE BOUTET: Which is the most surprising when you realise
10:22:25 15 that the international tribunals have their seat in The
16 Hague which is in the Netherlands, as such, the ICTY and
17 now ICC, so I have a lot of problems -- [overlapping
18 speakers]
19 JUDGE THOMPSON: Let me underscore that by saying that the
10:22:39 20 Dutch have been among the finest supporters of
21 international criminal justice and universal
22 jurisdiction, so this position that you expand on seems a
23 little strange to me, because they've always been very
24 much in the vanguard of establishing supra national
10:23:00 25 jurisdictions and also, of course, I concede, too, that
26 when you make this point, I'm reminded of how we resolve
27 conflict laws. This Chamber I think has the jurisdiction
28 to say which particular code of conduct would apply when
29 there is a conflict between courts. And I don't think we

1 would shirk that responsibility. I mean, I'm very much
2 eminently aware that they should not be an obstacle or a
3 stumbling block to our efforts here to dispense
4 international justice.

10:23:43 5 MR PESTMAN: I will convey the message to my Dean, with
6 pleasure. And if the Court is interested, I could ask
7 the local bar, the Amsterdam bar to write an explanation
8 of the Dutch rules. But to reverse the argument, if the
9 Court were to push this matter to the extreme, that could
10:24:05 10 mean that civil lawyers would be excluded from acting
11 before this Court.

12 PRESIDING JUDGE: It is not our intention at all. It has
13 never been our intention. This is a court, you know,
14 which is a hybrid. You have a common law approach; you
10:24:19 15 have the civil law approach. And I think the merit of
16 international criminal tribunals, you know, is that you
17 have these two major legal systems of the world
18 interacting in the various procedures and in the various
19 forms. It isn't our intention and, Mr Pestman, if we're
10:24:39 20 making this appeal, it is to convince the Dean, you know,
21 that we are interested in having lawyers of a civil law
22 system and also the common law system coming to play
23 before us.

24 JUDGE THOMPSON: When there are is a clash of legal cultures,
10:24:57 25 there are always compromises that we can make.

26 PRESIDING JUDGE: All right. Is there any other housekeeping
27 issue to be raised? No. I see Mr Margai smiling and --

28 MR MARGAI: I have no problem.

29 PRESIDING JUDGE: And Mr Williams is equally smiling. I can

1 imagine from the smiles that, like himself has stated,
2 that there is no problem.

3 We shall proceed with presenting the oral ruling on
4 motion for modification of protected measures for
10:25:37 5 witnesses, which was one of the motions that was raised
6 orally in this Court, I think, by Ms Whitaker. As
7 I said, the ruling on the service of the indictment,
8 arraignment, the double jeopardy and what have you, which
9 was filed regularly, will come in due course and you will
10:26:02 10 be duly informed, please.

11 This oral ruling which willing followed by a written
12 ruling will be read by Judge -- Honourable Judge Boutet.

13 JUDGE BOUTET: Thank you, Mr Presiding Judge.

14 The Trial Chamber of the Special Court for Sierra
10:26:25 15 Leone composed of Honourable Judge Benjamin Mutanga Itoe,
16 Presiding Judge, Honourable Judge Bankole Thompson, and
17 Honourable Judge Pierre Boutet;

18 Seized of the oral motion made by Ms. Quincy
19 Whitaker, standby counsel for the accused Sam Hinga
10:26:44 20 Norman, first accused, during trial on the 17th of
21 September, 2004;

22 Noting the oral response given by the Prosecution to
23 the oral motion during trial on the 17th of September
24 2004 and the oral reply from Ms Whitaker on the same day;

10:27:00 25 Seized of the Norman and Fofana joint request for
26 variation of protective measures of Prosecution witnesses
27 pursuant to Rule 75(G)(i), filed by Defence for the first
28 and second accused on the 27th of September 2004, hereby
29 referred to as request;

1 Noting the confidential Prosecution response to
2 Norman and Fofana joint request for variation of
3 protective measures of Prosecution witnesses pursuant to
4 Rule 75(G) (i), filed by the Prosecution on the 7th of
10:27:34 5 October 2004;

6 Noting the Samuel Hinga Norman and Moinina Fofana
7 reply to the Prosecution response to request for
8 variation of protective measures, filed by the Defence
9 for the first and second accused on the 12th of October
10:27:52 10 2004;

11 Recalling the Trial Chamber's decision on
12 Prosecution motion for modification of protective
13 measures for witnesses, dated the 8th of June 2004;

14 Issues the following oral ruling, which will be
10:28:08 15 followed which the Trial Chamber's written reasoning on
16 this ruling;

17 The Trial Chamber denies the Defence request and
18 orders as follows:

19 1. That the testimony of the witness FT2-082
10:28:24 20 should remained sealed and not disclosed to the
21 public and the media or posted on the Court's
22 website;

23 2. That the identities of witnesses TF2-159,
24 TF2-151, TF2-032, TF2-033, TF2-040 and TF2-082
10:28:51 25 should remained sealed and their protective
26 measures should remain in force;

27 3. That the protective measures granted to all
28 prosecution witnesses remain in force and that
29 no voir dire assessment on protective measures

1 is necessary before hearing testimony of each
2 individual witness;

3 Finds that the Defence have violated their
4 obligation under the Trial Chamber's decision on
10:29:16 5 protective measures by identifying data of a protected
6 witness and information provided in closed session and
7 orders that the Defence comply with decision on
8 Protective measures and refrain from disclosing any
9 information that discloses the identities of protected
10:29:31 10 witnesses; and

11 Orders that both parties should comply with their
12 respectively obligations under the Trial Chamber's
13 decision on protective measures and all orders of the
14 Trial Chamber regarding protective measures for witnesses
10:29:44 15 and closed sessions.

16 Done in Freetown, Sierra Leone, this 2nd day of
17 November 2004.

18 And as indicated, the full reasoning will be
19 provided shortly. When I say shortly, maybe by the end
10:29:59 20 of the day today or tomorrow at the latest. Thank you
21 very much.

22 Is the Prosecution ready to proceed with their first
23 witness?

24 MR KAMARA: Your Honours, before going to that, I would like
10:30:45 25 to extend our condolences to Mr Pestman on behalf of the
26 Prosecution.

27 And, Your Honours, yesterday at the status
28 conference we made an indication to the Bench that the
29 second Prosecution witness for this session we intend to

1 call a closed session, and if I may be guided by the
2 Bench here as to whether you would want to hear that
3 motion this morning so that come by the end of the day,
4 if we have to hear that witness, we go into closed
10:31:16 5 session, or we wait until tomorrow.
6 PRESIDING JUDGE: I have nothing against closed session. It
7 is a part of the system, but I wonder whether we want to
8 open the third session of the trial, you know, with a
9 closed session, you know. Is there no witness, you know,
10:31:35 10 who we can --
11 MR KAMARA: Yes, we do have one. It is one immediately after
12 this one.
13 PRESIDING JUDGE: Can we take that one?
14 MR KAMARA: As Your Lord pleases.
10:31:44 15 PRESIDING JUDGE: Yes. Well, what I imagine you want to do is
16 make the application for the --
17 MR KAMARA: For the closed session for the next one.
18 PRESIDING JUDGE: For the closed session, okay. Well, you
19 know, our practices also have been that, you know, an
10:31:56 20 application for closed session is made in a closed
21 session, so -- no, I think you'll bring application, you
22 know, later. Let us proceed with -- I call him a normal
23 witness, not a veiled witness.
24 MR KAMARA: Thank you, My Lord.
10:32:27 25 JUDGE BOUTET: Are you prepared to proceed?
26 MS PARMAR: Yes, Your Honours.
27 JUDGE BOUTET: Ms Parmar?
28 PRESIDING JUDGE: Ms Parmar?
29 MS PARMAR: Thank you, Your Honours. The Prosecution calls

1 witness TF2-021. This witness is a Muslim and will be
2 testifying in the Krio language.
3 PRESIDING JUDGE: This would be your 19th witness, am I right?
4 MS PARMAR: Yes, that is correct.
10:33:17 5 PRESIDING JUDGE: Nineteenth.
6 [The witness entered court]
7 PRESIDING JUDGE: Ms Parmar, you say it is TF --
8 MS PARMAR: TF2-021, Your Honour.
9 PRESIDING JUDGE: Good. Okay. Thank you.
10:33:45 10 WITNESS: TF2-021 sworn
11 [Witness answered through interpretation]
12 EXAMINED BY MS PARMAR:
13 MS PARMAR:
14 Q. Witness, how old are you?
10:36:51 15 A. I am 18 years of age.
16 Q. How do you know how old you are?
17 A. Well, the time I was captured, the one that captured me
18 gave me the age.
19 Q. Where were you born?
10:37:22 20 A. I am born of Kailahun District.
21 Q. What is the name of the village where you grew up?
22 A. Pendembu.
23 Q. What district is Pendembu in?
24 A. Kailahun District.
10:37:47 25 Q. Did you ever leave Pendembu?
26 A. Yes.
27 Q. Why did you leave Pendembu?
28 A. There I was born. There I stayed with my mother.
29 Q. And why did you leave the village?

1 A. Well, rebels attacked there.

2 Q. What happened when the rebels attacked the village?

3 A. When they attacked the village, we separated with our

4 parents.

10:38:30 5 Q. What happened after you were separated from your parents?

6 A. The rebels captured me.

7 Q. What did you do after you were captured by the rebels?

8 A. When I was captured -- I was not the only one captured.

9 They captured most of the boys.

10:38:56 10 Q. Witness, I'm going to ask you to talk slowly to assist

11 the translators?

12 PRESIDING JUDGE: Ms Parmar, as he says "Rebels caught them".

13 What does he mean by "rebels", please?

14 MS PARMAR:

10:39:14 15 Q. Witness, please explain what you mean by rebels?

16 A. Well, rebels is somebody who is in the bush who has a

17 gun, but not a soldier.

18 [HN021104B 10.45 a.m.]

19 Q. Did the rebels ever give themselves a name?

10:42:57 20 A. Well, they had their commander's name.

21 Q. What was his name?

22 A. The commander's name was CO Monami.

23 Q. Describe what you did when you were with the rebels.

24 A. When I was captured by the rebels, they looted the town

10:43:31 25 where I was captured. Me, and together with the boys

26 they captured, they gave us the load to carry to their

27 base that they called Ngeihun. We went to Ngeihun.

28 PRESIDING JUDGE: Not too fast.

29 MS PARMAR:

1 Q. Witness, please take your time to answer the questions.
2 Where were you taken by the rebels?
3 A. Ngeihun.
4 Q. What did you do when you stayed at Ngeihun?
10:44:28 5 PRESIDING JUDGE: Do you perchance have the spelling of
6 Ngeihun?
7 MS PARMAR: Yes, Your Honour. It's N-G-E-H-U-N [sic].
8 PRESIDING JUDGE: Ngeihun, okay, thank you.
9 MS PARMAR:
10:44:45 10 Q. Witness, what did you do when you stayed at Ngeihun?
11 A. We were together with the rebels in Ngeihun.
12 Q. What were you doing while you stayed there?
13 A. When we were caught and brought to that village, they
14 either used to take us, go around to find food for them,
10:45:18 15 together with my companions that we were captured.
16 Q. How did you feel about going on food-finding missions?
17 A. Well, I was not feeling too good about it.
18 Q. Why did you not feel fine?
19 A. Because when we used to go for food finding, the loads
10:45:52 20 that were given to me to carry was too much for me, so
21 I was unable usually to carry them.
22 Q. What would happen if you could not carry the loads?
23 THE INTERPRETER: My Lord, the witness is not waiting for the
24 interpretation.
10:46:17 25 MS PARMAR:
26 Q. Witness, I'm going to ask you to wait for the interpreter
27 to interpret my question, listen to the interpretation in
28 Krio, and then give your answer in Krio.
29 A. Okay.

1 Q. Let's go back. What happened to your parents after the
2 attack by the rebels?
3 THE INTERPRETER: It appears the witness is not getting the
4 Krio interpretation. It appears that he's not getting
10:47:07 5 the interpretation.
6 JUDGE BOUTET: Let's try again. Mr Witness, go slowly,
7 please. Take your time, take your time.
8 MS PARMAR: Can we have an interpretation of what the witness
9 just said?
10:47:51 10 THE WITNESS: I was separated with my parents. I could not
11 see them any longer when we separated.
12 MS PARMAR:
13 Q. How long did you stay with the rebels, witness?
14 PRESIDING JUDGE: Ms Sharan [sic], he was given a load, he
10:48:15 15 wasn't happy that he was going for food, he was given a
16 load that was very heavy for him and what have you. How
17 old was he at the time?
18 MS PARMAR:
19 Q. Witness, do you remember your age at this time?
10:48:36 20 A. Well, I could remember my age -- at the time we had not
21 separated with my parents, my mother told me my age.
22 Q. What did she tell you your age was?
23 A. I was nine years of age.
24 Q. How long did you stay with the rebels?
10:49:12 25 A. Well, I was captured in 1995 to 1997.
26 Q. How do you remember those dates?
27 A. Well, at the time I had not separated with my mother, she
28 told me, "My child" -- she said, "Now you are nine years,
29 you're supposed to be in class 4." It was true that

1 I was able to remember my age.

2 Q. When did you first meet with the CDF?

3 PRESIDING JUDGE: Has he ever stated that he met with the CDF?

4 MS PARMAR: No, Your Honour. I will rephrase that question.

10:50:16 5 MR MARGAI: No, there's no such evidence with respect, My

6 Lords.

7 PRESIDING JUDGE: That's why I'm putting the question.

8 MR MARGAI: I think counsel is pre-empting.

9 PRESIDING JUDGE: That's why I put the question; that's why

10:50:29 10 I interjected. Ms Sharan [sic], can you put your

11 question, you know, otherwise?

12 MS PARMAR: Certainly, Your Honour.

13 PRESIDING JUDGE: Please, go ahead.

14 MS PARMAR:

10:50:42 15 Q. Witness, describe what happened when you stayed at

16 Ngeihun.

17 A. Well, Ngeihun is a place when we were captured by the

18 rebels. There they took us -- they had their base there.

19 Q. And what did you see happen in Ngeihun while you stayed

10:51:05 20 there?

21 A. Well, we used to live to go around for food finding. On

22 our way we captured civilians to carry loads for us.

23 Q. What else happened while you stayed in Ngeihun?

24 A. That was what I saw happening.

10:51:39 25 Q. What events did you see in Ngeihun while you were staying

26 with the rebels?

27 A. Well, when I was with the rebels Kamajors came and

28 attacked the village.

29 Q. How did you know that they were Kamajors who attacked the

1 village?

2 A. Well, after they attacked the village, they captured

3 seven of us little boys.

4 Q. When did this attack occur?

10:52:45 5 A. Well, from 1997 to 1998 -- by then AFRC was in power.

6 Q. What happened when the Kamajors attacked the town?

7 A. When they attacked the town, they captured seven of us

8 little boys with three women.

9 Q. How old were the little boys?

10:53:26 10 A. We were all in the same age group. There was only one

11 that was older.

12 Q. How old was the one who was older?

13 A. He was 15 years of age.

14 Q. What happened to the three women who were captured with

10:53:52 15 you?

16 A. When they captured us in the town, we were gathered

17 together in one place, they entered the huts and looted

18 some properties and brought them outside and then set

19 some houses ablaze and the things that they looted, they

10:54:30 20 gave some to us to carry on our heads. They said we

21 should come down to Kenema. On our way to Kenema the

22 three women that were captured --

23 PRESIDING JUDGE: Not too fast.

24 MS PARMAR:

10:54:59 25 Q. Witness, I'll ask you again to go slowly so that everyone

26 can follow what you're telling us.

27 PRESIDING JUDGE: You said they gave them the looted property

28 to carry -- to where, to Kenema? Take it from there,

29 please.

1 MS PARMAR:
2 Q. Witness, what type of properties did you carry?
3 A. Well, the properties I saw were tape and some clothes --
4 some clothing, some seed rice. That was what they gave
10:56:00 5 to us to carry.
6 Q. And what happened to --
7 MR MARGAI: I am sorry, My Lords, the evidence seems to be
8 rather incohesive. I mean, a question was asked as to
9 what happened to the three women captured with him, and
10:56:25 10 he started and we moved on to some other --
11 JUDGE THOMPSON: Quite; rather incomplete responses and
12 leaving gaps in the evidence -- the answers.
13 MS PARMAR: Your Honour, I'm sure the Court appreciates the
14 age of the witness and the conditions under which he is
10:56:51 15 testifying.
16 JUDGE THOMPSON: I certainly do. It's just that clearly it's
17 so difficult. If you have, right in the middle of an
18 answer, everything else just peters away, then you have
19 an incomplete testimony. That's our only problem.
10:57:11 20 Perhaps the best thing would be to wait until the witness
21 has completed one episode, and then lead the witness to
22 another episode, rather than have this overlap. It's to
23 enable us to evaluate the evidence in a meaningful and
24 intelligible way.
10:57:28 25 MS PARMAR: Certainly, Your Honour, I can direct the witness
26 to answer specifically the question that's being asked.
27 JUDGE BOUTET: Please take him back to the capture of the
28 three women and ask him the question again and we'll take
29 it from there.

1 MS PARMAR:
2 Q. Witness, I asked you what happened to the three women who
3 had been captured. Tell us just what happened to those
4 women.
10:57:57 5 A. When they gave us the loads to carry, we were all coming
6 on the way, we met a river called Moi. There they placed
7 the three women and shot them and they fell into the
8 river.
9 Q. Who shot the women?
10:58:25 10 PRESIDING JUDGE: Let's have the name of the river first,
11 please. What's the name of the river? Let's have the
12 spelling.
13 THE WITNESS: Moi.
14 JUDGE BOUTET: And the question was who shot them.
10:58:57 15 MS PARMAR:
16 Q. Who shot the women?
17 A. Well, it was the Kamajors that captured us.
18 Q. Witness, you described things that happened in the town
19 when it was attacked. Let's go back to what happened in
10:59:20 20 the town. Going slowly, describe what you saw happen
21 during this attack.
22 A. We were in Ngeihun when the Kamajors attacked. When they
23 attacked, there they captured seven of us together with
24 three women. After that we were placed on the ground and
11:00:10 25 that we should sit there. Then they entered into the
26 houses in the village and took some properties out and
27 set four houses ablaze. The properties that were looted,
28 they gave them to us to carry, together with the three
29 women.

1 PRESIDING JUDGE: Is this not repeating the same evidence?
2 MS PARMAR: Your Honour, I was only going back, because
3 I understand that you hadn't followed everything the
4 witness said initially, because he was going too quickly.
11:00:57 5 PRESIDING JUDGE: All right.
6 MS PARMAR:
7 Q. Witness, describe where you were taken from the Moi
8 River.
9 A. When they took us to the village, we went through a bush
11:01:22 10 path, then we went to the Moi River and crossed. We used
11 a boat to cross. Before crossing the river, there they
12 killed the three women. Then we crossed.
13 Q. Witness, why were the three women killed?
14 A. They said they are wives of rebels.
11:02:00 15 Q. Where did you go after you crossed the Moi River?
16 A. We went through [Krio word], a bush path.
17 Q. Where did you go after the bush path?
18 A. We entered into Kenema.
19 Q. Where were you taken in Kenema?
11:02:42 20 A. Well, they took us to the CDF office at Kaisamba Terrace.
21 Q. How did you know that this was the CDF office?
22 A. Well, the one that captured us told us that that is the
23 CDF office.
24 Q. What was the name of the person who had captured you?
11:03:20 25 A. His name is German.
26 Q. Who was German?
27 A. He's a Kamajor.
28 Q. How long did you stay in Kenema?
29 A. When we went there, it didn't take too long, a vehicle

1 came for us.

2 Q. What did you do in Kenema while you were there?

3 A. You mean the time when we were captured when I came?

4 Q. Yes.

11:04:26 5 A. Well, the seven of us that were captured, they brought us

6 at the CDF office, then most of the men that captured us,

7 they were staying in Kenema, and the one that captured

8 me, he came from Talia Yawbecko.

9 Q. Where did you go from Kenema?

11:05:15 10 A. After Kenema, we were in Kenema, then we saw a vehicle

11 come to the CDF office. The man that captured me told me

12 we were going to his village.

13 Q. What was the name of this village?

14 A. The name of the village is called Talia Yawbecko.

11:05:47 15 Q. Why did he want to go to this village?

16 PRESIDING JUDGE: For the records, let's have the spelling of

17 that village.

18 MS PARMAR: Your Honour, it's Talia, T-A-L-I-A, and Yawbecko,

19 Y-A-W-B-E-C-K-O.

11:06:29 20 PRESIDING JUDGE: Thank you.

21 MS PARMAR:

22 Q. Witness, why were you going to Talia Yawbecko?

23 A. Well, the man that captured me told me that that is his

24 village and there he is going to take me.

11:06:48 25 Q. What happened when you were taken to Talia Yawbecko?

26 A. Well, the man that captured me at -- German -- were there

27 for some days, and he told me he was going to initiate me

28 into the Kamajors. Then I told him that I'm afraid of

29 being initiated into the Kamajors. Then he held my hand,

1 he took me to the gate, and said, "You see the small
2 boys? They are all Kamajors." He said, "So I don't see
3 anything why you should be afraid." That gave me the
4 zeal. He held my hand and took me to the bush. Before
11:08:10 5 we entered the bush they gave something -- they placed
6 something in my hand that is a white cloth.
7 Q. Describe what happened during your initiation.
8 A. When we went into the Society bush, the others who were
9 there for us to enter the bush, we entered the bush. We
11:08:56 10 were stripped naked, all of us. We only had on our
11 pants. Then we started singing. After the song, they
12 brought a razor blade.
13 Q. How many of there were you in the bush to be initiated?
14 A. In the bush, together with the ones we met, there were
11:09:33 15 about 400 and something.
16 Q. How old were the people you were initiated with?
17 A. How?
18 Q. How old -- what was the age of those that you were being
19 initiated with?
11:10:05 20 A. Well, I was older than some of them. Then we were of the
21 same age as some others.
22 JUDGE BOUTET: Does that mean that there were 400 of that age
23 group with you? When you say there were 400, you mean --
24 THE WITNESS: No, no. No, all of us who joined the Society,
11:10:34 25 we were elderly people now -- we were big men.
26 JUDGE BOUTET: So how many of your age group were there in the
27 bush?
28 THE WITNESS: We were about 20, those whom I counted of the
29 same age group.

1 MS PARMAR:
2 Q. What happened with the initiation of your own age group?
3 A. When we entered the bush and we stripped naked, there was
4 a razor blade and they started putting some marks on our
11:11:26 5 bodies. After they had marked -- placed these marks on
6 our bodies, there was something in a drum, which was
7 black.
8 JUDGE BOUTET: Slowly, slowly, please.
9 MS PARMAR:
11:11:51 10 Q. Let's go back to when you were marked with the razor
11 blades. Where were you marked with the blades?
12 A. They marked me all over my body.
13 Q. And what happened after you were marked?
14 A. They gave me that thing that was in that drum -- that
11:12:19 15 black thing.
16 Q. What did you do with what you were given?
17 A. The thing that was in a drum, we would go there and take
18 it and smear it on our bodies.
19 Q. What did you do after you smeared this on your body?
11:12:50 20 A. When we had smeared it on our bodies, they told us not to
21 bathe for one week.
22 Q. Who told you not to take this off for one week?
23 A. Well, it was Papay Konde.
24 Q. Who was Papay Konde?
11:13:22 25 A. Well, he was my sowe -- he joined me into the Kamajor.
26 Q. Who else did you see while you were joining the Kamajors?
27 PRESIDING JUDGE: Is it joining him, initiating him, or what?
28 What does he mean? Papay Konde, he's the one that said
29 that they should not bathe for one week. The translation

1 I have is he's the one who joined me into the Kamajors.
2 What does that mean? Can that be clarified? I mean --
3 MS PARMAR: I think it's perhaps a question of translation,
4 but I will ask the witness what he means by "joined".
11:14:09 5 PRESIDING JUDGE: Yes.
6 MS PARMAR:
7 Q. Witness, when you say Papay Konde joined you, what do you
8 mean by the word "joined"?
9 A. It's a particular site -- when you enter the bush, when
11:14:34 10 you've been marked with a razor blade, then that means
11 you've been initiated into the Kamajor society.
12 Q. Who initiated you into the Kamajor society?
13 A. Well, it's Papay Konde.
14 MS PARMAR: Is that satisfactory, Your Honour?
11:14:55 15 PRESIDING JUDGE: Yes, it is.
16 MS PARMAR:
17 Q. What else happened during your initiation?
18 A. After the one week had elapsed, at night, at about
19 2.00 o'clock in the night they took us to a graveyard.
11:15:28 20 Q. What happened at the graveyard?
21 A. We were there until 4.00 o'clock. Then we came back into
22 the bush.
23 Q. What did you do when you came back to the bush?
24 PRESIDING JUDGE: Before coming back into the bush, the
11:16:05 25 graveyard, what did they do there?
26 MS PARMAR:
27 Q. Witness, what did you do at the graveyard?
28 A. We were told that if anybody sleeps there you would be
29 sleeping -- if anybody had died for you, whether it's

1 your grandfather or any of your family members, he would
2 come and give you something, which would make you very
3 powerful to fight. That's why they took us to the
4 graveyard.

11:16:40 5 Q. What happened after you left the graveyard?

6 A. Well, we came back into the bush. Then we had our bath.
7 Then it was in the morning.

8 Q. What did you do that morning?

9 A. Well, on the morning after we had all had our bath, we
11:17:22 10 came back into the bush, then there was something else
11 which we had to do. 40 people were standing on one side
12 and another 40 on the other side. All of them had
13 different canes in their hands.

14 Q. What happened after you were lined up into two lines?

11:18:01 15 A. We ran in between those two lines. As we were running,
16 we were being beaten.

17 Q. Who was beating you?

18 A. It was the other Kamajors.

19 Q. What were their names?

11:18:27 20 A. Well, I cannot remember most of their names.

21 Q. How were you being beaten?

22 A. They had different canes. They would come from up --
23 running in a line, and they would start whipping us. As
24 they are beating us, some people fell and collapsed. As
11:19:04 25 for me, I had some swellings on my body.

26 JUDGE BOUTET: So how is this done? You're walking in front
27 of those two lines, or were you running? Were you all
28 running together? How is this done -- one after the
29 other?

1 THE WITNESS: Well, they stood 40 this way and 40 the other
2 way and we would run -- we wouldn't walk, because the
3 line was long.
4 MS PARMAR:
11:19:44 5 Q. Where would you run?
6 A. In between the lines, that's where I was running.
7 Q. Where were your swellings?
8 A. My jaw was swollen and I had my body -- the skin was
9 getting off.
11:20:11 10 Q. What happened after these beatings?
11 A. After they had beaten us, they made something inside a
12 drum, which they called in Mende nesi -- it's a potion.
13 Q. What was done with this potion?
14 A. We all brought a rubber -- a sass-man rubber, and it was
11:20:58 15 put in it, but before they could put it in the rubber,
16 they told us that that potion is our protection and, when
17 we go to fight, that's what we would smear on our body
18 for the fight, together with a ronko. That's what was
19 given to us in the Society bush.
11:21:38 20 Q. By this point how many of you had finished the initiation
21 of your age?
22 A. My age group, we were more than 20 people, and I saw some
23 other people.
24 Q. When German took you to be initiated, what did he do?
11:22:15 25 A. I saw him give palm oil, rice and white cloths -- satin.
26 That's what I saw him give.
27 Q. Who did he give these things to?
28 A. They were the people who were registering the names.
29 Q. Who was registering your names?

1 A. The man was there, he was called Dr Gibao.

2 Q. And who was Dr Gibao --

3 JUDGE BOUTET: Can you spell it you out, please.

4 MS PARMAR: I believe it would be G-I-B-A-O, Your Honour.

11:23:30 5 Q. How was Dr Gibao registering your names?

6 A. We would queue. As they called you, on registering you,

7 they ask you where you're coming from, but as for me, my

8 questions were answered by German.

9 Q. And what did Dr Gibao do with this registration?

11:24:13 10 A. What I saw -- when he finishes with the registration,

11 I saw Papay Konde, who had come to them and collect some

12 money -- the moneys that were paid by the other people.

13 Q. What was done with this money?

14 A. But I'm not able to tell that now. The money was given

11:24:48 15 to Papay Konde.

16 Q. What happened after your initiation?

17 A. After I had been initiated, I was at Base Zero.

18 Q. What did you first do at Base Zero?

19 A. Well, German had to go on one mission. When he was

11:25:31 20 coming back, he came with an arm for me.

21 Q. What was this arm?

22 A. It was a two-pistol grip.

23 Q. Why did he bring you a two-pistol grip?

24 A. Because the two-pistol grip had a handle under and in

11:26:06 25 front, so you could use that to shoot without it shaking

26 you up.

27 Q. What did you do with your two-pistol grip?

28 A. When he brought it, he called me. Then he started

29 teaching me how to cock the gun and shoot it. Then

1 I knew how to do it.

2 Q. When you were at Base Zero, what did you see?

3 A. After German had given me that gun, we went on a mission

4 in the surrounding villages. We would attack those

11:27:08 5 villages. We would catch people -- women.

6 Q. Where did you go on these missions?

7 A. The first mission, we went to Masiaka.

8 Q. How many of you went to Masiaka?

9 A. The boys, we were many. Even the elderly people were

11:27:49 10 many as well.

11 Q. What else did you do when you were at Masiaka?

12 A. When we entered the town, they deployed us.

13 Q. What did you do once you were deployed?

14 A. After we had been deployed, we were waiting to shoot.

11:28:30 15 Q. And what did you do after that?

16 A. After we had been deployed, we started shooting in the

17 town.

18 Q. What were you shooting at?

19 A. Well, we were shooting against the rebels.

11:28:54 20 Q. Once you began shooting, what did you do?

21 A. When I started shooting, I changed my location and

22 shooting at the same time.

23 Q. For how long were you shooting your gun?

24 A. We were on it for over two hours.

11:29:23 25 Q. What happened after the two hours?

26 PRESIDING JUDGE: We'll make a break here for a couple of

27 minutes. The Court will rise and resume in the next

28 couple of minutes, please.

29 [Break taken at 11.30 a.m.]

1 [On resuming at 11.48 a.m.]

2 PRESIDING JUDGE: We are resuming the session. Ms Parmar, you

3 may proceed with your examination-in-chief.

4 MS PARMAR: Thank you, Your Honour.

11:49:08 5 Q. Witness, before we went on the break, you were talking

6 about what happened at Masiaka.

7 A. Yes.

8 PRESIDING JUDGE: He said they were shooting towards the town

9 and they shot for about two hours.

11:49:31 10 MS PARMAR:

11 Q. What happened after you finished shooting?

12 A. The other boy, who was shooting near me, was shot and

13 they fell on the ground.

14 Q. What happened, though, after you finished shooting?

11:50:04 15 A. After the boy had been killed, by then I was now vexed

16 and I thought that I was going to die. After I left the

17 boy and had taken a position, I saw a woman running

18 towards me. Then I fired her in the stomach. Then they

19 fell down -- then she fell down.

11:50:41 20 Q. What did you do after you shot this woman?

21 A. When I shot her, I left her and went to where my

22 colleagues were.

23 Q. And what did you do with your colleagues?

24 A. Where I fired her is where I left her.

11:51:19 25 Q. You said then you went to your colleagues. What did you

26 do after that?

27 A. When I went to them and then we captured the town, we

28 started looting in the town.

29 Q. What were you looting?

1 A. We looted a lot of property, things like tape, things
2 like machines --
3 PRESIDING JUDGE: When he says "tapes", what does he mean by
4 "tapes"? This is the second time he's talking of looting
11:52:04 5 tapes. What is he referring to?
6 MS PARMAR:
7 Q. Witness, when you say you were looting tapes, what were
8 these tapes?
9 A. Well, the tapes that we were looting were those
11:52:25 10 10-battery tapes, and then other items that were
11 household items.
12 PRESIDING JUDGE: Those were tape-recorders?
13 MS PARMAR:
14 Q. Witness, what are 10-battery tapes?
11:52:44 15 A. Well, it's a big tape, sir.
16 Q. What do you do --
17 JUDGE BOUTET: This is a machine on which you play music with
18 the tapes, that's what you mean by this?
19 THE WITNESS: Yes, sir; yes, sir.
11:53:09 20 PRESIDING JUDGE: Looted tapes and what else was under
21 enumeration?
22 MS PARMAR:
23 Q. What other properties were you looting?
24 A. Well, like bicycles, then clothings that were of value.
11:53:40 25 Q. Why were you looting with the others?
26 A. Why were we looting with the others?
27 Q. Yes.
28 A. I don't understand this question clearly.
29 Q. Why did you take these properties?

1 A. Well, those properties that we used to take, sometimes we
2 go and sell them, and there we survive.
3 Q. Did these properties belong to you?
4 A. No.
11:54:37 5 Q. Were you not worried about taking properties that did not
6 belong to you?
7 A. I was worried.
8 Q. So why did you take the properties anyway?
9 MR WILLIAMS: Objection. It appears my learned friend is
11:55:13 10 cross-examining her own witness. I mean, the witness has
11 stated why they looted -- for survival.
12 JUDGE BOUTET: Ms Parmar?
13 MS PARMAR: I'll proceed with my questions, Your Honour.
14 JUDGE BOUTET: Thank you.
11:55:31 15 MS PARMAR:
16 Q. What did you do after you looted these properties?
17 A. Well, we caught some women.
18 Q. How many women did you catch?
19 A. There were more than nine women.
11:55:59 20 Q. Who had caught these women with you?
21 A. Together with the other groups who went.
22 Q. What did you do with these women?
23 A. Well, after Masiaka, we walk through Moyamba until we get
24 to Base Zero.
11:56:39 25 Q. What happened to these women at Base Zero?
26 A. Those women, when we brought them, they were 16,
27 17 years. Papay Konde will say he wants them to -- he
28 want to woo them -- marriage.
29 JUDGE BOUTET: Who said that?

1 MS PARMAR:
2 Q. Witness, who told you --
3 A. Papay Konde -- Papay Konde.
4 Q. What did Papay Konde do at Base Zero?
11:57:24 5 A. Like what?
6 Q. What did you see him doing at Base Zero?
7 A. Well, he was the initiator. That was the reason why he
8 was at Base Zero.
9 Q. So what then happened to these women who had been brought
11:57:48 10 to Base Zero?
11 A. The ones that were in the ages of 17 and 18, about four
12 of them.
13 Q. What happened to those women?
14 A. Papay Konde took them.
11:58:23 15 Q. And what did he do with them?
16 A. They were with him at his house.
17 Q. What did they do with him at his house?
18 MR WILLIAMS: Your Honour, I --
19 PRESIDING JUDGE: How does he know?
11:58:42 20 MR WILLIAMS: Yes, Your Honour. Furthermore, My Lord,
21 I believe the prejudicial effect of this bit of evidence
22 would outweigh the probative value. I have the
23 indictment with me. I cannot see any count dealing with
24 forced marriage, so -- yes.
11:59:04 25 JUDGE BOUTET: You're talking about forced marriage. Nobody
26 has talked of that yet.
27 MR WILLIAMS: That is the purpose -- otherwise, what is the
28 significance?
29 JUDGE BOUTET: Well, we don't know.

1 MR WILLIAMS: That's why I'm saying the probative value --
2 JUDGE BOUTET: Yeah, but probative value of what?
3 MR WILLIAMS: Of the evidence, My Lord.
4 JUDGE BOUTET: Yes, but we're not there yet. He has women at
11:59:25 5 his house. You're talking of forced marriage. There's
6 no evidence of force marriage here. Anything can happen
7 in a house other than forced marriage.
8 MR WILLIAMS: The objection, My Lord, is that that bit of
9 evidence that my learned friend is seeking to elicit from
11:59:41 10 this witness would not substantiate any of the counts in
11 the indictment.
12 JUDGE BOUTET: Fine. We'll hear from the Prosecution.
13 JUDGE THOMPSON: Let me intervene. I'm not sure whether I got
14 the evidence right, because at some point this witness
11:59:58 15 said that Papay Konde wanted to have these women in
16 marriage; is that correct? Is that what the witness
17 said?
18 MS PARMAR: Your Honour, that's my recollection.
19 JUDGE THOMPSON: That's my recollection. So the concept of
12:00:15 20 marriage has been brought out in the testimony of this
21 witness.
22 JUDGE BOUTET: But it is not clear to me that what he's
23 talking about now is the same thing, so, yes, the
24 concept --
12:00:28 25 JUDGE THOMPSON: All I'm saying is, with the greatest respect
26 to my learned brother, the word "marriage" has emerged
27 from the testimony, so it would not be completely fair to
28 say that a notion of marriage has not yet been introduced
29 in the testimony. Of course, I'm not suggesting that

1 I heard the word "forced", but of course what I know so
2 far is that according to the witness the women were
3 captured.

4 MR MARGAI: If it pleases Your Lordships, what I have - and
12:01:03 5 I hope it is in consonance with what Your Lordships
6 have - the witness did say that these women who were
7 between the ages of 16 and 17 years, Papay Konde
8 expressed a desire of marrying them. That was as far as
9 we got. We have not gone beyond the expression of a
12:01:31 10 desire and, furthermore, four of these women, aged
11 between 17 and 18 years, Papay Konde took them to his
12 house.

13 JUDGE THOMPSON: That's the evidence -- I got the concept of
14 marriage seems to have emerged from the testimony. It's
12:01:53 15 a question of whether the issue of forced marriage and
16 [microphone not activated]

17 MR MARGAI: As My Lord pleases. We shall confine our
18 objection to the first point, that he cannot testify as
19 to what happened in Konde's house unless he was there,
12:02:11 20 and there's no such evidence. I believe that Judge
21 Boutet had ruled --

22 PRESIDING JUDGE: That is why I intervened and said --

23 MR MARGAI: Sorry, not Justice Boutet, the Presiding Judge
24 intervened.

12:02:24 25 PRESIDING JUDGE: How does he know --

26 MR MARGAI: Precisely. So we shall leave the entire objection
27 to that.

28 PRESIDING JUDGE: -- what he did -- what Papay Konde did with
29 them in his house?

1 MR MARGAI: Much obliged, My Lord.

2 JUDGE BOUTET: But I stand firm on this issue, because the
3 witness may tell us information we may not know, but
4 there might be information that he did beat them. I do
12:02:43 5 not know. We're speculating now. Let the witness answer
6 those questions. If the question is irrelevant, then
7 it's irrelevant. I don't see how we can speculate on
8 that without hearing the witness.

9 MS PARMAR: Your Honours, would you like me to proceed with
12:02:57 10 the witness, or would you like me to address the more
11 substantive areas of the objection?

12 PRESIDING JUDGE: You know, your questions must be relevant to
13 the indictment which you brought.

14 JUDGE THOMPSON: Quite right.

12:03:07 15 PRESIDING JUDGE: So you may proceed, because you know very
16 well -- you have the indictment before you, and you
17 should not bring it in by the back door. Let me tell you
18 very clearly, you should remember the particular
19 circumstances in which you are leading evidence. You
12:03:25 20 sought an amendment of this indictment where you wanted
21 to add some sexual offences. This was refused. So you
22 have to be very, very careful, because you will not bring
23 evidence on matters which were refused to be joined in
24 the indictment through the amendment you sought.

12:03:44 25 JUDGE THOMPSON: I associate myself with the learned Presiding
26 Judge; that is precisely my point. We should stick to
27 legality. There was no approval for the concept of
28 forced marriage to be incorporated in this indictment,
29 and until there is a higher authority overruling that,

1 evidence to that effect would, in my respectful judgment,
2 be inadmissible.

3 MS PARMAR: May I respond to Your Honour's --

4 PRESIDING JUDGE: So you may proceed.

12:04:15 5 MS PARMAR: Should I first respond to your comments --

6 PRESIDING JUDGE: Yes, yes, please do.

7 MS PARMAR: You were correct in saying that I do have the
8 indictment in front of me, and under counts 3 to 4 the
9 Prosecution is charging physical violence and mental
10 suffering. Furthermore, under counts 6 to 7 the
11 Prosecution is charging terrorising the civilian
12 population and collective punishments, and it is
13 respectfully submitted that while forced marriage is not
14 explicitly charged in this indictment as a crime for
12:04:51 15 which we are accused the accused of, circumstances
16 surrounding abductions of women to which the witness may
17 or may not testify may indeed fall under these counts and
18 the Prosecution respectfully submits that this type of
19 evidence is indeed relevant to the current charges under
12:05:14 20 the indictment.

21 [HN021104C 12.05 p.m.]

22 JUDGE THOMPSON: Then my position would be why was then an
23 amendment sought to include forced marriage?

24 JUDGE BOUTET: For more precision of details, but, in any
12:02:08 25 event, I -- [Overlapping speakers]

26 JUDGE THOMPSON: [Overlapping speakers]

27 PRESIDING JUDGE: Learned counsel for the defence, do you have
28 any reply to this, please -- to what she has submitted?

29 MR WILLIAMS: We don't intend to add anything, My Lord. Just

1 to say that the particularity, My Lord, with which the
2 witness is now testifying, does not go towards
3 substantiating the offences in the indictment. I mean,
4 these are sexual offences and they are quite
12:02:36 5 fundamentally different from --
6 JUDGE BOUTET: But how do you know it is sexual offences? How
7 do you know this at this particular time, based on the
8 evidence of this witness? How do you know?
9 MR WILLIAMS: No. What did Papay Konde do with them in his
12:02:46 10 house?
11 JUDGE BOUTET: Well, maybe he did beat them up. Who knows? I
12 don't know either.
13 MR WILLIAMS: As it please, Your Lordship. But at the end of
14 the day, we are saying this bit of evidence will be
12:02:58 15 prejudicial and irrelevant, and if at all it goes in, we
16 would ask for it to be explored at the end of the day.
17 PRESIDING JUDGE: Learned counsel, please take your seat.
18 Proceed with your examination. Let us see how far you
19 want to go.
12:03:16 20 MS PARMAR: Thank you, Your Honours.
21 PRESIDING JUDGE: On the understanding that you will not
22 adduce evidence that was refused in the leave to amend,
23 because causing havoc or so to the population, and so on
24 and so forth, has other characteristics -- other ways of
12:03:40 25 being committed. It is a controversial point, you know,
26 where you want to say that sexual assaults and so on and
27 so forth constitute part of that. I think that you
28 should proceed in a manner that will give some value to
29 the decision that was taken on this matter.

1 So can you ask him the question you want to ask him?
2 What did Papay Konde do? You cannot answer that question
3 anyway, because -- he cannot answer the question, unless
4 you have evidence that he knows. So you can proceed on
12:04:22 5 that.
6 JUDGE THOMPSON: May I make explicit my imposition? Just
7 shortly, may I?
8 PRESIDING JUDGE: Yes, yes, you may.
9 JUDGE THOMPSON: That I certainly would be disinclined to
12:04:34 10 allow any evidence - that would be my imposition, I would
11 like to go on record - that would, in fact, be elicited
12 from this witness to suggest that certain women were
13 forced into marriage or there was an intention to have
14 them forcibly married by Papay Konde. It would, in fact,
12:05:01 15 undermine the integrity of these proceedings, because
16 this Court is on record as having refused any count of
17 forced marriage to be included in this indictment.
18 JUDGE BOUTET: To alleviate the concern of my brother Judge
19 Thompson, I agree with him. And we're not talking here
12:05:30 20 about the -- I do know the decision of the Court, that
21 forced marriage has not been accepted as an additional
22 count, but, in addition to forced marriage, there are
23 many, many things that may happen other than forced
24 marriage - beating of these women; physical, mental abuse
12:05:43 25 of these women, which are some of the allegations in
26 counts 3, 4 and 5.
27 PRESIDING JUDGE: Yes.
28 JUDGE BOUTET: I subscribe to the majority decision.
29 JUDGE THOMPSON: It is just a question of how the question is

1 formulated and how the answer emerges. I mean, remember
2 that we also -- we are the Trial Chamber. There is a
3 higher chamber.

4 PRESIDING JUDGE: You can proceed with this witness now that
12:06:14 5 you are fully armed with the sentiment of how the
6 Tribunal is reasoning on this matter. Maybe you can
7 proceed with the witness on what he knows and not on what
8 he was told.

9 MS PARMAR: Your Honour, the Prosecution appreciates the
12:06:31 10 guidance from the Bench in this area and assures you that
11 the Prosecution was proceeding to elicit elements under
12 the counts to which I've already alluded, namely,
13 physical violence and mental suffering.

14 JUDGE THOMPSON: I'm reassured.

12:06:49 15 MS PARMAR: And we will proceed to establish the basis of
16 knowledge for this witness.

17 JUDGE BOUTET: So on that ground, the objection is not
18 sustained, Mr Williams, but it is taken note that we're
19 not talking forced marriage. So obviously if we move in
12:07:04 20 that direction, I invite you to stand up again and we'll
21 hear you.

22 MR MARGAI: Thank you.

23 JUDGE BOUTET: Thank you.

24 MS PARMAR:

12:07:10 25 Q. Witness, you described what you did with the women when
26 you took them from Masiaka. When you arrived at Base
27 Zero, what did you, yourself, see being done when you
28 arrived at Base Zero?

29 A. Well, the time we captured those women, we went to Base

1 Zero.

2 Q. What did you see happen to these women at Base Zero?

3 A. Well, those women, most of them we captured, Papay Konde

4 was in favour of them to take them.

12:08:11 5 Q. How did you know that Papay Konde was in favour of taking

6 them?

7 PRESIDING JUDGE: Papay Konde had already taken them. He had

8 already taken them and they had gone to his house.

9 That's where we are, and you were asking him what

12:08:30 10 happened in the house.

11 MS PARMAR: Your Honour, just because we had had this lengthy

12 debate, I wanted to bring the witness back to where he

13 had left off.

14 PRESIDING JUDGE: Yes.

12:08:41 15 MS PARMAR: But I will continue.

16 PRESIDING JUDGE: Yes.

17 MS PARMAR:

18 Q. Witness, what did you see Papay Konde do with these

19 women?

12:08:53 20 A. Well, he got those women and initiated them in the Bondo

21 society.

22 Q. How do you know this?

23 A. Well, I saw that with my eyes, when he was taking them

24 along to the other village.

12:09:21 25 PRESIDING JUDGE: Initiated them into what society?

26 MS PARMAR: The Bondo society, Your Honour.

27 THE WITNESS: Bondo.

28 PRESIDING JUDGE: And he said he saw it with his eyes?

29 MR MARGAI: No, My Lord. He said that he saw Papay Konde

1 taking them to another village.

2 PRESIDING JUDGE: To another village, yes.

3 MS PARMAR:

4 Q. How did you know they were being taken to the Bondo

12:09:58 5 society?

6 A. Papay Konde took them to the other village. I was there

7 when they sent a vehicle to take them.

8 Q. What happened when they were taken to this village?

9 MR MARGAI: Objection. Objection, My Lords. We do not know

12:10:37 10 whether he went with them or he stayed behind. The

11 evidence so far is that he initiated the women into the

12 Bondo society. 'I saw Papay Konde take them to another

13 village. I was present when they bought a vehicle,'

14 that's the evidence.

12:10:57 15 JUDGE BOUTET: What's your objection? Based on what?

16 MR MARGAI: My objection, My Lord, is that he is endeavouring

17 to give evidence about something which the Court and us

18 here are not aware of. Whether, in fact, he was

19 present --

12:11:12 20 JUDGE BOUTET: So?

21 MR MARGAI: -- at the village where the initiation took place.

22 JUDGE BOUTET: So?

23 MR MARGAI: Sorry?

24 JUDGE BOUTET: So what? Hearsay evidence is perfectly

12:11:19 25 admissible, as you know, in this Court.

26 MR MARGAI: I'm saying it's not admissible, My Lord.

27 JUDGE BOUTET: Pardon me?

28 MR MARGAI: I'm saying the evidence is not admissible.

29 JUDGE BOUTET: Why?

1 MR MARGAI: Because there is no evidence as to whether, in
2 fact, the witness remained at this village or he went to
3 the next village where the initiation took place.
4 JUDGE BOUTET: What I'm saying is the evidence, as you know,
12:11:43 5 is admissible in this Court. It gets to the question of
6 probative value of such evidence, but hearsay evidence
7 is -- and we've ruled consistently that hearsay evidence
8 is admissible. So I don't know what he will be
9 reporting. If he's reporting somebody who has told him
12:12:02 10 what happened at that particular society, we'll have to
11 determine what it is. We don't know.
12 MR MARGAI: We're not even sure whether he's reporting.
13 JUDGE THOMPSON: Learned counsel, if you say we are not even
14 sure whether he is reporting or not, isn't any objection,
12:12:18 15 with the greatest respect, premature, and perhaps we
16 should hear learned counsel for the Prosecution to find
17 out.
18 MR MARGAI: My Lord, I prefaced my objection by referring to
19 the evidence.
12:12:28 20 JUDGE THOMPSON: Yes.
21 MR MARGAI: And that there was nothing before this Court to
22 indicate that this witness left the village and
23 accompanied Papay Konde and these women to the next
24 village, where the initiation took place.
12:12:42 25 JUDGE THOMPSON: I appreciate that from the state of the
26 evidence so far. But the difficulty, of course, I have
27 is that, even though he's given this testimony, nothing
28 as yet -- the manner in which he came to know this --
29 MR MARGAI: Precisely, My Lord.

1 JUDGE THOMPSON: -- has not yet been put to the witness.
2 MR MARGAI: As My Lord pleases.
3 JUDGE THOMPSON: So wouldn't it seem, therefore, that your
4 objection may be just a bit premature?
12:13:06 5 MR MARGAI: Well, I shall tarry a while.
6 JUDGE THOMPSON: All right.
7 MR MARGAI: As My Lord pleases.
8 MS PARMAR: Your Honours, perhaps it will assure my learned
9 friend that we can proceed to establish the basis of
12:13:19 10 knowledge for which this witness will answer this
11 question.
12 JUDGE THOMPSON: Yes, because I agree with learned counsel to
13 say that women were initiated into the Bondo society is a
14 very big claim for anyone to make without -- right, thank
12:13:41 15 you.
16 MS PARMAR: I'll proceed, Your Honours.
17 Q. Witness, I had asked you earlier -- what happened to
18 these women when they were initiated?
19 A. After they have been initiated, they were at Papay
12:14:06 20 Konde's house.
21 Q. What do you know about when they were initiated?
22 A. Like what?
23 JUDGE THOMPSON: Isn't it "how", really? I mean, what would
24 be the basis of the knowledge, wouldn't it be a "how"
12:14:32 25 question, rather than a "what"?
26 MS PARMAR:
27 Q. Witness, how do you know these women were initiated into
28 this society?
29 A. Well, all of us that were in the village, we knew about

1 that, that Papay Konde had initiated a society -- that he
2 initiated girls into a society. That was what they told
3 us.
4 PRESIDING JUDGE: So you were only told that he had initiated
12:15:09 5 them?
6 THE WITNESS: Well, the village that we were and where Papay
7 Konde took the girls, is not so far off, so I knew about
8 it. Papay Konde only told us that those children that he
9 has initiated in a society were his women. That was what
12:15:43 10 he told us.
11 JUDGE THOMPSON: So, counsel, the knowledge came from Papay
12 Konde.
13 MS PARMAR: Thank you, Your Honour.
14 Q. What does it mean to be initiated into the Bondo society?
12:16:04 15 A. Well, I don't know; I don't have any idea.
16 MR WILLIAMS: [Overlapping speakers]
17 JUDGE THOMPSON: Learned counsel --
18 MR WILLIAMS: Sorry, My Lord?
19 JUDGE THOMPSON: -- the witness has said he doesn't have any
12:16:13 20 idea.
21 MR WILLIAMS: All right; as My Lord pleases.
22 MS PARMAR:
23 Q. Witness, what else did you see when you were staying at
24 Base Zero?
12:16:27 25 A. When I was at Base Zero, I saw so many big men that were
26 all together at Base Zero.
27 Q. Who were the big men you saw at Base Zero?
28 A. Like Papay Konde, Moinina Fofana, Hinga Norman --
29 JUDGE THOMPSON: Slowly, slowly, slowly.

1 MS PARMAR:
2 Q. What did you see Hinga Norman do when you were at --
3 [Overlapping speakers]
4 PRESIDING JUDGE: [Overlapping speakers] What do I have here?
12:17:24 5 Papa Konde, Moinina Fofana and Hinga Norman. Okay.
6 THE WITNESS: And Kosseh Hindowa.
7 MS PARMAR:
8 Q. What did you see Hinga Norman do at Base Zero?
9 A. When we were at Base Zero, when Hinga Norman went there?
12:18:06 10 Q. Yes.
11 A. He went with an helicopter and stepped down at a small
12 field.
13 Q. What did you see in the helicopter?
14 A. When Papay Norman went to the helicopter, I saw arms and
12:18:39 15 ammunition in the helicopter.
16 Q. What was done with these arms and ammunition?
17 A. Well, they brought it to fight with it.
18 Q. Who took these arms and ammunition?
19 A. Well, we used to carry it with the older boys to carry it
12:19:10 20 to the armoury store.
21 Q. Where did you see these arms and ammunition being used?
22 A. Well, it was where they used to send us to go and fight.
23 Q. Where did you go and fight?
24 A. Well, like me? I went to Kenema to fight, I went to
12:19:46 25 Joru.
26 Q. When you were at Base Zero, what --
27 PRESIDING JUDGE: Joru, what's the spelling of Joru? Kenema,
28 yes, but Joru?
29 MS PARMAR: J-U-R-U [sic], Your Honour, Joru.

1 Q. Witness, when you were at Base Zero, what did you see
2 Hinga Norman do after he arrived in the helicopter?
3 A. Well, when he came with the helicopter he called a
4 meeting at the Barri.
12:20:34 5 Q. Who attended this meeting?
6 A. Well, all the big men that were -- the Kamajor big men
7 attended the meeting.
8 Q. Where were you during this meeting?
9 A. Well, we were there listening to them.
12:21:06 10 Q. What was said at this meeting?
11 A. Well, before he handed over the arms and ammunitions to
12 the commander, he had wanted to give -- he said the arms
13 and ammunition he came with was to go to Koribundu.
14 Q. What did he say after that?
12:21:32 15 A. Well, the commander that was to lead the group to
16 Koribundu, there he called him in the Barri. Then he
17 said Koribundu is a base where rebels are based, that
18 they were doing all sorts of bad things. He said, "So,
19 when you allowed to go there, those that you meet at
12:22:20 20 Koribundu, they are all rebels; you should kill all of
21 them and burn all the houses." That is what I heard he
22 said in the meeting.
23 Q. What was the name of the commander --
24 PRESIDING JUDGE: Please wait.
12:23:38 25 MS PARMAR:
26 Q. Witness, what was the name of the commander who was going
27 to Koribundu?
28 A. Well, he was CO Joe Tamidey.
29 Q. What happened after this meeting?

1 A. We all dispersed and Papay Norman went into his
2 helicopter.
3 Q. Where did you go?
4 A. Well, that time I was in the town.
12:24:31 5 Q. So what happened while you were in the town?
6 PRESIDING JUDGE: Which town? He was in town. Which town?
7 MS PARMAR:
8 Q. Which town did you remain?
9 A. Base Zero, Talia Yobehko
12:25:06 10 JUDGE THOMPSON: I am confused, learned counsel. He said that
11 he was at the meeting, not so? He was there listening,
12 himself. And then you say 'After the meeting we all
13 dispersed and Norman went in to his helicopter.' What
14 time are you talking about? Just after the meeting or --
12:25:32 15 because he's already said he was present at the meeting.
16 He heard what Norman allegedly said.
17 MS PARMAR: Your Honour, I had asked what happened after the
18 meeting.
19 JUDGE THOMPSON: After the meeting.
12:25:46 20 MS PARMAR: So I presume his answer -- [Overlapping speakers]
21 JUDGE THOMPSON: Then he said -- what timeframe was this?
22 MS PARMAR: I can ask the witness immediately.
23 JUDGE THOMPSON: Okay, fine.
24 MS PARMAR:
12:25:54 25 Q. Witness, you said that after the meeting Hinga Norman
26 left in a helicopter. How long after the meeting did he
27 leave?
28 A. After the meeting, he came down and spoke with Papay
29 Konde and the other dignitaries. Then they went into his

1 helicopter. That time we had dispersed. We were at the
2 field -- near the field.

3 Q. Witness, while you remained at Talia Yobehko, what did
4 you -- what happened to you while you were there?

12:26:36 5 A. After Papay Norman spoke about that Koribundu mission, we
6 had another mission to attend to, which was to go to
7 Gendema.

8 Q. What did you do at Gendema?

9 A. Gendema was the Kamajor base at that time.

12:27:14 10 MS PARMAR: Do Your Honours need a spelling for this village?
11 JUDGE BOUTET: Yes, please.

12 MS PARMAR: I believe it's G-B-E-N-D-E-M-A [sic].

13 Q. Witness, describe what happened at Gendema?

14 A. At Gendema, when we were there, Papay Norman was coming
12:27:56 15 to us there from Liberia.

16 Q. What did Hinga Norman do at Gendema?

17 A. Well, he brought arms and ammunition there again.

18 Q. What was done with these arms and ammunition?

19 A. Well, these arms and ammunition, he brought them for the
12:28:43 20 Kenema mission.

21 Q. Who did he give the arms and ammunition to?

22 A. Well, he called the commanders who were on the ground.

23 Q. What were the names of these commanders?

24 A. Like Eddie Massaley --

12:29:31 25 Q. Do you have any other names?

26 A. -- and CO Kallon and O'Jallay and Colonel Hukpa, and the
27 other ones whose names I cannot recall now.

28 PRESIDING JUDGE: Colonel who?

29 THE WITNESS: Colonel Hukpa, Colonel Hukpa.

1 MS PARMAR:
2 Q. Witness, where did you go from Gendema?
3 A. Well, Gendema, when we heard that they had caught BS
4 Massaquoi in Kenema --
12:30:46 5 Q. What happened after you had heard that BS Massaquoi had
6 been caught in Kenema?
7 A. Well, when heard that, our commander told us that we
8 should go and set BS Massaquoi free.
9 Q. Who was your commander?
12:31:18 10 A. It was CO Kportay.
11 Q. Can you repeat that name?
12 A. CO Kportay, CO Kportay.
13 Q. What happened next?
14 A. So after we had gone to Kenema, we walked from a village
12:31:49 15 called Ngegbema -- we walked from Ngegbema to SS camp.
16 Q. Where was SS camp?
17 A. That was near Kenema.
18 Q. What did you do at SS camp?
19 A. We met an enemy first there. Then we started shooting
12:32:32 20 against them.
21 Q. Who was the enemy?
22 A. It was the rebels whom we were fighting against.
23 Q. What happened after you were fighting with the rebels?
24 A. We cleared the highway to Kenema. Then we reached --
12:33:08 25 Q. How did you clear the highway to Kenema?
26 A. Through firing.
27 Q. Who were you firing at?
28 A. The rebels who we met there, who were firing against us,
29 they were the ones we were firing against as well.

1 Q. How big was your group that was travelling to Kenema?
2 A. We were many. I was not able to count, but we were many.
3 We had elderly people amongst us and we had young boys
4 amongst us - like, who were of my age.

12:34:07 5 Q. What did you do after you cleared the road to Kenema?
6 A. We went to Kenema because we had heard that BS Massaquoi
7 was at the police station in the hands of the policemen.
8 As we entered -- as we went in the middle of the town,
9 which was at the Bank of Sierra Leone, for us to go and
12:34:47 10 set BS free, the policemen opened fire against us.

11 Q. What happened after the policemen fired on you?
12 A. Well, we weren't able to confront them because we hadn't
13 too much -- the location where we were, because Mosquito
14 was there, they would have killed all of us. That's why
12:35:29 15 we stopped; we retreated.

16 Q. Who had told you that BS Massaquoi had been arrested?
17 A. It was Kamoh Brima.
18 Q. Who was Kamoh Brima?
19 A. He was an initiator.

12:36:03 20 Q. Who was Mosquito?
21 A. He was a rebel commander.
22 Q. What did you do after you retreated from Kenema?
23 A. We walked on foot to a village called Ngegbema, where the
24 commander was.

12:36:46 25 Q. And what did you do at this village?
26 A. When we reached the commander who brought us, he reported
27 to Kamoh Brima. He said we had gone Kenema to go and
28 free -- set BS free, but that the policemen shot at us,
29 and that we're not able to set him free.

1 Q. What was the name, again, of the commander you were with
2 at this time?

3 A. He was CO Kportay.

4 Q. So after you received this information, what did you do
12:37:45 5 next?

6 A. It was not just me, it was all of us who were present.
7 So Kamoh Brima convened a meeting, together with the
8 Kamajors whom he had initiated to get our -- including
9 us, who were Kondewa's Kamajors.

12:38:20 10 Q. What was said at this meeting?

11 A. Kamoh Brima said, "Well, you've gone and seen Kenema
12 yourself; policemen have turned against you." He said,
13 "Any time you go there, any young man that you catch or
14 they say he's a collaborator, we should capture him. And
12:38:58 15 we do not kill him. Will be killed by bullet." That is
16 what Kamoh Brima told us.

17 Q. Why had Kamoh Brima given you this order?

18 A. One, he told us that, "We've heard Papay Norman say that
19 anybody who's against us, when we capture that person, we
12:39:36 20 should kill him."

21 Q. So what did you do after this meeting, with the group you
22 were with?

23 A. After the meeting, they distributed the arms. The arms
24 which we were supposed to take along to Kenema to attack
12:40:10 25 Kenema.

26 Q. What type of arms were distributed?

27 A. Well, I had my own gun, so they didn't give me any gun.
28 The others were given guns.

29 Q. What weapon did you have at this time?

1 A. I still had this two pistol grip.

2 Q. What was done after the arms were distributed?

3 A. After the arms had been distributed, we mobilised to

4 Kenema.

12:41:14 5 Q. How many of you mobilised to go to Kenema?

6 A. We are many. We had three commanders; every commander

7 had his own group.

8 Q. What were the names of these three commanders?

9 A. One of them was my own commander, CO Kportay. The other

12:41:54 10 one was CO Kallon, and the other one was Colonel Hukpa.

11 Q. Where did you go after you mobilised?

12 A. We walked from Ngegbema to Kenema.

13 Q. What happened after you arrived in Kenema?

14 A. We are all -- we are mobilised by the commanders in

12:42:38 15 fours. Then we started shooting at the rebels who were

16 in the town. There was a heavy exchange of firing

17 against them. As we are firing against them -- at that

18 time we had many artillery than them. They had to

19 withdraw. After they had withdrawn --

12:43:26 20 Q. What happened after they withdrew?

21 A. After they withdrew, we entered the town and our batch,

22 we entered the police barracks.

23 Q. Why did you enter the police barracks?

24 A. We had known at that time that policemen were rebels,

12:43:59 25 they had turned against us.

26 Q. How did you know the police had turned against you?

27 A. Because when we first came to set BS free, they opened

28 fire against us.

29 Q. What did you do at the police barracks?

1 A. When we had entered, we started searching the houses.
2 Three of us were searching the houses. One was there to
3 open the doors, another to fire -- to shoot under the
4 bed, and another to shoot through the ceiling. After
12:44:59 5 that, we kill some policemen under the beds.
6 Q. What did you do after you killed these policemen?
7 A. When we kill the policemen, I held one by his clothes,
8 together with my companion, and we dragged the other one
9 and took him to the centre of the field. Then we brought
12:45:43 10 a tyre.
11 Q. What did you do with this tyre?
12 A. After we had brought the tyre and placed it on the man,
13 we entered the room again and there was a volumant [sic]
14 mattress. We dragged it, and we placed it on the
12:46:18 15 policeman and we smeared it with petrol and we set it
16 ablaze. He was burning when we left. Then we started
17 going around capturing some other people who were
18 collaborators.
19 Q. Witness, let's go back to the field that you brought the
12:46:50 20 policeman to. What did you see happening at this field?
21 A. The field was a football field.
22 Q. Who else was at the field?
23 A. All the people that were at the field, they were our
24 companions, Kamajors.
12:47:28 25 Q. What were these people doing?
26 A. Just what we were doing -- just what we are doing to that
27 man, that is what they were doing to the other people;
28 they were burning them.
29 Q. Who were these other people who were being burned?

1 A. One was someone we had caught who was a collaborator, who
2 was with the rebels in the town. Those were the people
3 we did that to.
4 Q. You called these people "collaborators". What is a
12:48:21 5 "collaborator"?
6 A. A collaborator was someone who was with the rebels. He
7 is not a rebel.
8 Q. Why were they called collaborators, the people who were
9 with the rebels?
12:48:51 10 A. Because they were against us completely.
11 Q. How did you know this?
12 A. Well, when we came in an attempt to set BS free, we
13 realised that they had all turned against us, even the
14 young men.
12:49:23 15 Q. Why were you using a tyre and a mattress on the policeman
16 that you brought to the field?
17 PRESIDING JUDGE: Is that very relevant? Is that relevant?
18 He said he used and he used it, they burnt a man; that's
19 it. Is it very relevant to -- we are taking a lot of
12:49:52 20 time on matters which I don't consider very, very
21 relevant. You can move on, you know. Move on, please.
22 MS PARMAR:
23 Q. Witness, what else did you see when you were in Kenema?
24 A. We had another group, which was called the Yamorto.
12:50:25 25 Q. What did this group do?
26 A. Well, Yamorto, it was a group that was meant to eat
27 people.
28 Q. How did you know this?
29 A. Well, the commander who was leading the group, I was with

1 him.

2 Q. And what group did this commander belong to?

3 A. He was with the Yamorto squad.

4 Q. What did you see the Yamorto squad do?

12:51:22 5 A. When we entered Kenema, when we caught the collaborators,

6 we tie them with an FM, and we would ask them -- say,

7 "You were with the rebels," and they were doing business

8 with them; and they would deny that, and they would say

9 they were just with them in the town. As time went on,

12:52:00 10 after we had tied them with that FM, as we tie them, we'd

11 tell them to tell us the truth. And they would tell us

12 that they were with the rebels, but they weren't carrying

13 guns. After they had told us that, we would take them to

14 the base, which was the Yamorto base.

12:52:34 15 Q. Where was the Yamorto base?

16 A. It was in Kenema, Nyandeyama.

17 Q. What happened to these people when they were taken to the

18 Yamorto base?

19 A. When we took them there, in most cases it was to eat them

12:53:04 20 at the base.

21 Q. How did you know that they were to be eaten?

22 A. Yeah, we caught the people to take them to the base --

23 would all be there to take them to the base.

24 Q. Were you at the base?

12:53:30 25 A. Yes.

26 Q. Describe what you saw at this base?

27 PRESIDING JUDGE: Ms Parmar, before describing what he saw at

28 the base, I just wanted to draw your attention to the

29 fact that it will soon be 1.00 o'clock. Maybe it's a

1 convenient point to stop.

2 MS PARMAR: Sure.

3 PRESIDING JUDGE: We will continue at 2.30 this afternoon. So

4 you should know that, you know, we stopped at the Yamorto

12:54:19 5 base and it will be for him to give his experiences at

6 the Yamorto base. Is that all right?

7 MS PARMAR: That's fine. Thank you, Your Honour.

8 PRESIDING JUDGE: Good. The Court will rise, learned counsel.

9 We will resume at 2.30.

12:55:18 10 [Luncheon recess taken at 12.59 p.m.]

11 [On resuming at 2.47 p.m.]

12 [HN021104D]

13 [The three accused not present]

14 [The witness entered court]

14:44:17 15 PRESIDING JUDGE: Good afternoon, learned counsel. We're

16 resuming our session and, Ms Parmar, you may proceed with

17 your examination-in-chief.

18 MS PARMAR: Thank you, Your Honour.

19 Q. Witness, before we left for the break, you were talking

14:45:41 20 about the Yamorto squad?

21 A. Yes.

22 Q. Can you --

23 A. Yes.

24 Q. -- please describe --

14:45:58 25 PRESIDING JUDGE: Ms Parmar, how much more time do you think

26 you still have on your examination-in-chief?

27 MS PARMAR: Your Honour, it is difficult to give you an idea,

28 but certainly at least an hour.

29 PRESIDING JUDGE: Okay. Proceed.

1 MS PARMAR:
2 Q. Can you describe the base for the Yamorto squad?
3 A. Yes. Well, the base that Yamorto had was in Kenema.
4 Q. What did you see happen at the base?
14:46:49 5 A. Well, the base when we captured collaborators or rebels,
6 we take them there.
7 Q. What would you do at the base to these rebels or
8 collaborators?
9 A. When we captured them, we take them to the base to eat
14:47:20 10 them.
11 Q. You described capturing them. How would you capture
12 them?
13 A. Well, when we entered the town, we searched the houses
14 one after the other. The houses we searched, we met
14:47:54 15 people in there with combats; we captured them. When we
16 asked them who they are, they tell us they are civilians.
17 We tell them it's a lie. We say they are a rebels.
18 After we've said that, we tie them up with FM. We say
19 they don't want to say the truth.
14:48:41 20 Q. When you say you tied them with the FM, what is the FM?
21 A. Well, FM is a very small stick that we tie a rope to it.
22 Q. How would you tie people with this stick?
23 A. When we captured them, we put them on the ground. From
24 there we take their hands behind their backs or put it
14:49:25 25 behind -- we put their elbows together at their back and
26 we put the FM there and we turn it round. When we turn
27 it, he shouts. Then we ask them to tell us the truth.
28 Some will tell us they were with the rebels; some would
29 tell us they were old soldiers; some tell us they are

1 former police. And after that we take them to the base.
2 We had a stick with thorns on it. Whenever we get a
3 person that we want to eat there, we take them and tie
4 them.

14:50:36 5 MS PARMAR: Your Honours, the witness has told the Prosecution
6 that he knows how to tie the FM stick and the Prosecution
7 asks the Court if they would be interested in a
8 demonstration of this method of tying people, who had
9 been captured, by the witness. If you feel it is
14:51:06 10 necessary.

11 JUDGE BOUTET: Can he do that sitting down or has he got to
12 stand up to do that?

13 MS PARMAR: In order to effectuate this demonstration we would
14 request that the curtain to the public be closed and the
14:51:57 15 camera turned off but the live audio be left on.

16 THE WITNESS: I'm unable to do it.

17 MR MARGAI: Then who is going be tied?

18 MS PARMAR: Perhaps my learned friend would like to volunteer.
19 We have a member from the Witness Support Unit who is
14:52:22 20 willing to do be used for this.

21 JUDGE BOUTET: I am not sure if it is the interpreter, but
22 somebody mentioned that he cannot do it.

23 MS PARMAR: Perhaps I'll confirm again with the witness.

24 JUDGE BOUTET: Yes.

14:52:31 25 MR MARGAI: My Lords, on a more serious note, if it is going
26 to be a painful exercise, then I think, as a court of
27 law, we should be very cautious in allowing a volunteer
28 to expose himself or herself to such exhibition for fear
29 of repercussions.

1 JUDGE BOUTET: I agree with it. It is not my understanding
2 that it is -- it could be painful, but it depends on how
3 it is done. That is my understanding
4 MR MARGAI: I don't know what the views of my colleagues are.
14:53:05 5 I don't really see the necessity for that. The evidence
6 is quite clear for what is worth. I think it would a
7 grave risk for this Court to embark upon that just in
8 case there might be consequences.
9 JUDGE THOMPSON: Speaking for myself, I would like to
14:53:21 10 disassociate myself from that kind of exercise.
11 JUDGE BOUTET: Let's move ahead then.
12 MS PARMAR:
13 Q. Witness, do you know how to tie the FM rope?
14 A. Yes.
14:53:40 15 Q. Would you like to show us how to tie the FM rope?
16 JUDGE BOUTET: Okay. He will describe it. We don't want to
17 have a demonstration.
18 THE WITNESS: Yes.
19 MS PARMAR:
14:53:55 20 Q. Can you describe in detail how you would tie the FM rope?
21 A. Yes. The FM rope is a small stick that we tie a rope to
22 it. After we have captured the person, we put him on the
23 ground. When we want to tie him with the FM, we step on
24 his back, then the hands will go at the back. They would
14:54:40 25 put the FM inside. They will turn it round. That's the
26 way we used to tie people.
27 Q. How big was the stick that you would use for the FM?
28 A. Well, it is a small stick, a small one.
29 Q. What was the size of the rope that you would attach to

1 the stick?

2 A. Well, it is the rope used to -- it is a line used to hang
3 clothes.

4 Q. What would happen after you used the FM?

14:55:45 5 A. Well, you use the FM when you capture the person and he
6 denies that he is not a rebel or a collaborator. When we
7 tie him with the FM, then he would tell us the truth if
8 he was with the rebels or not a rebel. Just so that we
9 can untie him.

14:56:16 10 Q. You described eating people by the Yamorto squad who had
11 been captured. Explain what you meant when you said
12 that.

13 A. Well, Yamorto squad were there to eat any collaborator.
14 That was what we were.

14:56:56 15 Q. What would be eaten?

16 A. Well, they were people that we used to capture, the
17 collaborators and the rebels.

18 Q. Can you describe how they would be eaten?

19 A. Yes, sir. When we captured them, we tied them to a stick
14:57:31 20 with a tong. From there there was a commander called
21 Colonel Biko. He would come. He would give us the order
22 to put the man on the stick with the tong. Where our
23 base was was close to a swamp. There we take the person
24 to be killed. When we take him there, when we reached,
14:58:06 25 we hold him, we put him on the ground. From there we
26 start to choke him with a bayonet, then he will die.
27 When he die, then the heart, the liver and the other
28 parts in his stomach we remove it and the legs. Then the
29 head, we find a stick and put it on it. We take it to

1 the gate. After that we would come. We heat some water
2 and remove the body parts in bits and place it the hot
3 water, then remove the first skin. After that we have
4 oil. We place that over the fire. After that those body
14:59:41 5 parts which had been removed and the skin removed as
6 well, we place it in the oil and fry it. After that we
7 prepared some gravy. Some people would eat it with
8 bread.

9 MR WILLIAMS: I take objection to this line of
15:00:02 10 examination-in-chief, My Lord. This bit of evidence does
11 not go towards substantiating any of the offences
12 charged. My Lord, it is highly prejudicial. We are
13 not -- none of the accused persons are facing a charge
14 for cannibalism. I mean, up to the time of the death or
15:00:24 15 killing, one can understand, but what transpires after,
16 you know, I mean, it is completely different. There is
17 no basis for this line of examination-in-chief.

18 JUDGE BOUTET: Prosecution?

19 MS PARMAR: Your Honours, I was just going to let the witness
15:00:45 20 finish describing this and move on to another area.

21 JUDGE BOUTET: So you're not responding to the objection?

22 MS PARMAR: I'm simply stating, Your Honour, that the
23 Prosecution is happy to continue with a separate question
24 with this witness.

15:01:04 25 JUDGE BOUTET: Fine, thank you.

26 MS PARMAR:

27 Q. Witness, how did you know about these events?

28 MR JABBI: My Lord, in view of that, will there be a directive
29 as to expunging the bits of evidence that came out in

1 that regard?

2 JUDGE BOUTET: Are you moving to ask that now?

3 MR JABBI: Well -- at least I want an indication to be made,

4 My Lord.

15:01:33 5 JUDGE BOUTET: Well, are you making an application?

6 MR JABBI: Yes, indeed, My Lord.

7 JUDGE BOUTET: Prosecution?

8 MS PARMAR: Your Honours, the response that had been given by

9 the witness was describing the circumstances under which

15:01:46 10 these groups of people would be killed by this squad with

11 the Kamajors and the Prosecution has stated in the past

12 that it is not common practice to actually expunge or

13 remove information from the record per se. The Court

14 could direct itself to disregard that, but the

15:02:13 15 Prosecution would argue that the answer that is given by

16 the witness was appropriate to the question and that

17 we're moving on with another line of questioning.

18 MR WILLIAMS: Your Honours, if I may be heard on this issue of

19 the application made by my learned friend. The response

15:02:29 20 is that it is not a practice. I would submit, My Lord,

21 that it is never too late. Even the Appellate's Chamber

22 can expunge, I mean, inadmissible evidence that was

23 erroneously admitted, My Lord.

24 JUDGE BOUTET: You may disregard expunge. I have some

15:02:49 25 problems with that. But as regards -- is more

26 appropriate, but expunge meaning removing from the

27 record?

28 MR WILLIAMS: Yes, Your Honour. I mean -- I don't -- how

29 can --

1 JUDGE BOUTET: Are you also asking for it to be removed?

2 JUDGE THOMPSON: I'm inclined to think that we can approach

3 this particular piece of evidence from two perspectives.

4 One is the perspective of relevance. In other words,

15:03:22 5 taking the indictment and the charges as laid in the

6 indictment, is there a place for this kind evidence? The

7 second perspective would be that this may be evidence if

8 properly valuated, assuming the indictment does not lay

9 any charge for which this evidence has been led in

15:03:54 10 support, but it may be argued that this -- the probative

11 value of this evidence or the prejudicial effect would

12 outweigh the probative value. Whichever perspective one

13 takes, perhaps I think at the end of the day, this not

14 being a jury trial, the judges sitting here are

15:04:18 15 disciplined and trained in the process of judicial

16 evaluation of evidence. I think our professionalism can

17 be trusted as providing us with the insight to determine

18 at the end of the day. In other words, at the end of the

19 day when we come to determine the ultimate question

15:04:44 20 whether this piece of evidence has any probative value at

21 all. This would be my own responses as to the question

22 of expunging the evidence from the record. I'm not

23 particularly -- or advocating any particular approach

24 since we haven't any standard practice here, but these

15:05:12 25 are my own thoughts, that counsel for the Defence would

26 be entitled in an address to argue as forcefully as they

27 can that the probative value of this evidence, in their

28 submission, may be nil, or that this is a worthless piece

29 of evidence. They may be entitled to do that. That

1 would be the way I would approach it given the principle
2 of what? Flexible admission of evidence. But I think
3 the issue of relevance, as my learned bother had
4 suggested here, is critical too.

15:06:01 5 MR MARGAI: My Lords, my only problem with that is the
6 question of admissibility precedes probative value.
7 I mean, if the evidence it is not supportive of any
8 particular charge as laid in the indictment, then, of
9 course, the questioned of admissibility comes.

15:06:28 10 JUDGE THOMPSON: I'm prepared to concede that if you can
11 convince the Chamber that it cannot even be admitted
12 under the first limb of Rule 89, then, because the
13 Chamber is authorised to admit evidence that is relevant
14 and has probative value, so if this piece of evidence
15:06:48 15 does not pass the test of relevance then, of course, it
16 is here only to multiply the issues.

17 MR MARGAI: Well, the question of relevance, I submit, is
18 correlative to the charges laid as you've rightly stated.

19 JUDGE THOMPSON: I'm not, in fact, in disagreement with you.

15:07:10 20 I was just putting the various perspectives to you. I
21 was just assuring you that we're not jurors; we are a
22 trained judges.

23 MR MARGAI: I know that, My Lord. I mean, the moment that
24 such piece of evidence goes in, then, of course, at the
15:07:25 25 end of day my learned friends there would be at liberty
26 to address the Court on that evidence because it is
27 already part and parcel of the record. This is our
28 worry.

29 JUDGE BOUTET: But I would like to say that the record does

1 speak not about eating and this kind of process. This
2 is -- the allegations in the indictment refer to Base
3 Zero, unlawful killing, and so on, so in the evidence
4 that was just led, it would appear to be unlawful killing
15:07:57 5 on the face of it. The subsequent actions is more than
6 just unlawful killing. It may not be. In this respect,
7 I agree with you, I don't see anything in the allegations
8 that do relate to eating human flesh. This is not there.

9 JUDGE THOMPSON: And clearly your ground is ground of
15:08:14 10 relevance. In other words, this is evidence -- if it
11 does anything, it is multiplying the issues and it may
12 will be prejudicial. But, of course, the question of
13 prejudicial is a matter for trained judges to evaluate.
14 I think we can sense prejudicial evidence when we hear
15:08:31 15 it.

16 MR MARGAI: My Lords, I think we would ground our objection on
17 the question of relevance. Thank you.

18 JUDGE BOUTET: The objection is sustained in this respect.
19 Certainly that portion of the evidence dealing with the
15:08:51 20 eating of the human being, as such, based on what we have
21 in the allegations, doesn't appear to be supported.

22 MR TAVENER: Is Your Honour saying that --

23 JUDGE BOUTET: It doesn't appear to be relevant. Well, we
24 have decided on this. Now, we don't want to re-argue
15:09:06 25 this. The decision has been made, so we move ahead. If
26 it is something new, fine, we'll hear you.

27 MR TAVENER: I'll just clarifying. Are you saying that
28 evidence is expunged from the record? Is that what
29 you're saying?

1 JUDGE BOUTET: It is relevant -- [overlapping speakers] I
2 mean, it is there. We will not erase the record. It is
3 there, but it will serve no purpose because it is not
4 relevant.

15:09:27 5 MR TAVENER: If its relevance becomes obvious later on in the
6 trial, it can still be then used.

7 JUDGE BOUTET: We will not give any consideration to that.
8 [Overlapping speakers]

9 JUDGE THOMPSON: We're making a preliminary determination,
15:09:38 10 that this is evidence that has gone into the record
11 inadvertently and is clearly irrelevant, so -- but
12 clearly our determinations here are subject to appeal.

13 MR TAVENER: It remains that case unless something changes.
14 Thank you.

15:09:52 15 PRESIDING JUDGE: I think we can go as far as even saying that
16 that piece of evidence should be disregarded, if not even
17 expunged from the records, because it is irrelevant.

18 JUDGE THOMPSON: Well, we're virtually advising ourselves.

19 PRESIDING JUDGE: We'll proceed on that note. Let's move
15:10:14 20 ahead, please.

21 MS PARMAR: Certainly, Your Honour.

22 Q. Witness, you described fighting with the Kamajors. Can
23 you tell us what you would do during an attack?

24 A. Yes. When we were mobilised to go and fight, I always
15:10:52 25 have my own arm with two magazines. Each of those arms
26 is 30 rounds. That is what I used to get. When we go to
27 the frontline, I shoot at my colleagues -- together with
28 my colleagues -- when I shoot, I take my position with my
29 colleagues. When they gave meet gun, that was the way

1 I used to fight.

2 Q. Do you remember where you fought?

3 A. Yes. I fought at Masiaka, Kenema, Joru, Daru.

4 Q. What else would you do while you were fighting?

15:12:04 5 A. Well, usually we fight and capture a town. We had a

6 special thing that was a pass. When we are now in the

7 town -- by then the town is now under our control.

8 People that move from other areas and come to us, you

9 shall have a pass, which is a Kamajor pass. At times

15:12:45 10 when they come to the gate, they don't come with a pass,

11 so we normally arrest them. We beat them with a cutlass

12 for the pass, after which we put them in the guardroom.

13 Q. Where did this occur?

14 A. Well, I did this in Kenema and Joru.

15:13:23 15 Q. How old were those that you fought with?

16 A. Well, some were in the same age group like I was, some

17 are smaller.

18 Q. How old were you when you were in Kenema fighting?

19 A. Well, I was 12 years by then.

15:14:00 20 Q. How did you know you were 12 years old?

21 A. Well, when you're initiated into the Kamajor, you're

22 given a particular document. That document your age will

23 be written on it, which is 12 years.

24 Q. What was this document called?

15:14:30 25 A. Well, it was a Kamajor certificate.

26 Q. You described, when you were fighting, taking your

27 position and shooting your weapon. How did you know how

28 to do this?

29 PRESIDING JUDGE: What is the question, Ms Sharan?

1 MS PARMAR: How did the witness know how to take position and
2 fire his gun?
3 PRESIDING JUDGE: I see.
4 THE WITNESS: Well, the man who captured me gave me this
15:15:11 5 training on how to take positions and how to fire the
6 gun.
7 MS PARMAR:
8 Q. After you were in Kenema, where did you go?
9 A. After Kenema I went to Joru.
15:15:40 10 Q. How long did you stay in Joru?
11 A. I didn't take up to three months, because we only went
12 there to fight.
13 Q. Where did you go from Joru?
14 A. From Joru I went to Daru.
15:16:04 15 Q. What were you doing in Daru?
16 A. We went there to fight against the rebels.
17 Q. Where did you go after you fought in Daru?
18 A. After we had fought in Daru, our men were in Bo, Kenema
19 and Pujehun, Moyamba, Bonthe. So I came back to Base
15:16:35 20 Zero. That's where I was together with the other
21 commander.
22 Q. Where did you go from Base Zero?
23 A. After that my commander -- Papay Norman convened a
24 meeting in Bo, so he went and to go and attend a meeting.
15:17:15 25 He came back and met us at Base Zero and told us that the
26 meeting that they attended it was meant to come to
27 Freetown, to come and fight.
28 JUDGE BOUTET: Who came to Base Zero, Norman or your
29 commander?

1 THE WITNESS: My commander came to Base Zero.

2 MS PARMAR:

3 Q. What was the name of your commander?

4 A. He is CO Bureh [sic].

15:17:54 5 Q. Can you repeat that name again?

6 A. CO Gobey, CO Gobey.

7 Q. What happened when CO Gobey returned from this meeting?

8 A. He told us that that they held a meeting for us come to

9 Freetown to fight January 6th.

15:18:21 10 Q. So where did you go next?

11 A. After he had told us that, we sat there for two or three

12 days when we saw a helicopter that came. It landed on

13 the field. And Gobey called all of us that were going.

14 Then we started entering the chopper. We were there

15:18:51 15 together with CO Gobey. Then the helicopter left and

16 brought us to Freetown. We disembarked at Cockerill.

17 When we disembarked, Pa Norman secretary was there. He

18 was taking down our names. After he had taken down our

19 names, you would be given a gun.

15:19:33 20 Q. Witness, how many of you were taken in the helicopter?

21 A. The young boys were four in number who would go with

22 Gobey.

23 Q. How many others were there?

24 A. There were many other boys who were brought there by

15:20:00 25 different commanders.

26 Q. When you arrived at Cockerill barracks, how did you know

27 that Hinga Norman's secretary was there?

28 A. Well, I had known him from Base Zero.

29 Q. What was his name?

1 A. I knew him as Moses.

2 Q. Where did you go from Cockerill?

3 A. After our names had been taken down at Cockerill, they

4 gave us arms. The older ones they gave them support,

15:20:59 5 which was G3. The reason why they didn't give us G3,

6 because I couldn't fire, because it is support. So they

7 give me my own weapon, which was the ULIMO AK. After

8 that so we were taken on a vehicle and they left us at

9 Congo Cross. When we came to Congo Cross, there was a

15:21:40 10 heavy firing there, the rebels and the ECOMOG. So we

11 joined them and we started fighting. Wherever we went,

12 if it were ten Kamajors, we would have ten ECOMOG.

13 That's how we fought 'til we drove the men.

14 Q. Where did you go from Congo Cross?

15:22:14 15 A. After Congo Cross we went to Brookfields hotel. And we

16 captured there. That's where we were. Other men were

17 with Major Tanko at Ferry Junction.

18 Q. Who did you see at Brookfields?

19 A. Well, at that time, it was only the fighters, we the

15:22:48 20 fighters and the commander that was with us.

21 Q. What was Brookfields?

22 A. We knew Brookfields as a hotel.

23 Q. Why were you taken there?

24 A. After we had fought, we were fighting 'til we captured

15:23:21 25 there. That's when the Kamajors said this was our base,

26 so we settled there. We put up a checkpoint there.

27 That's where we settled.

28 Q. Who did you see at Brookfields?

29 A. When we went there at that time, firing -- some shooting

1 was on. We the fighters and the commanders were there.

2 Q. What were the names of commanders at Brookfields?

3 A. One was CO Gobey and Bush AK -- Bush Shaking.

4 Q. Where did you go from Brookfields?

15:24:21 5 A. When I was at Brookfields --

6 PRESIDING JUDGE: Can we go to the relevant issues please.

7 You know, we're taking a lot of time actually on an

8 itinerary that does not appear to impact on the relevance

9 of the proceedings. I know you have notes in front of

15:24:44 10 you, but please, you know, move to concrete issues.

11 Let's be done with this business, please.

12 MS PARMAR: Your Honour, I was just moving the witness from

13 Freetown to his next location.

14 Q. Witness, where did you go afterwards from Freetown?

15:25:03 15 A. Well, we left Brookfields after we had fought and the

16 fighting had subsided and we heard that Papay Konde had

17 initiated some more people called Avondo. We left here

18 together with some other Kamajors who were with Dumbuya

19 to join that new society. So we went. The place where

15:25:43 20 this society was initiated was at Bumpe Tabe. So we

21 reached the village --

22 JUDGE BOUTET: Can you spell that out?

23 MS PARMAR: The name of the village, Your Honour, Bumpe,

24 B-U-M-P-E.

15:26:07 25 Q. What happened at Bumpe?

26 A. After we had reached the bush where the initiation took

27 place was in the town and there were many other people

28 who were new Kamajors who had just been initiated. We

29 were the old Kamajors. When it was time for them to

1 graduate, that's the time we went there and we all
2 graduated. The same thing they did for the initial
3 society, that was the same thing they collected from this
4 new society.

15:27:00 5 Q. When did this initiation happen?

6 A. It was in 1999.

7 Q. What was the month?

8 A. I can't -- I can't remember the month. I can only
9 remember the year.

15:27:22 10 Q. Witness, I'm going to show you a document to help
11 remember the date.

12 JUDGE BOUTET: Before you do, show it to the Defence.

13 MS PARMAR: Certainly, Your Honours. The Defence have
14 received copies. I have additional copies if the Defence
15 requires.

15:28:02 16 [Document shown to Defence counsel]

17 JUDGE BOUTET: Dr Jabbi, you have a copy of that. The
18 Prosecution has offered to give a copy if you don't.

19 MS WHITAKER: [Microphone not activated]

15:30:47 20 JUDGE BOUTET: Your copy is not clear?

21 MS WHITAKER: The point we're particularly interested in you
22 can't see on the copy.

23 JUDGE BOUTET: Okay.

24 MR JABBI: My Lord, I would have an objection to the document.

15:31:09 25 JUDGE BOUTET: What is your objection?

26 MR JABBI: Yes, let me have it again, please. The Prosecution
27 intend to use this document to let the witness try and
28 remember when the initiation in Bumpe Tabe took place.
29 However, there is no connection between this document and

1 Bumpe Tabe, or the Bumpe Tabe initiation, or, indeed,
2 with this witness. The name of the initiate on this
3 document is not the name of the witness that has been
4 supplied to the Defence, so this document cannot in any
15:32:26 5 way help the witness answer the question that has been
6 posed to him; that is, when did the Avondo initiation in
7 Bumpe Tabe take place. He says 1999, My Lord. He says
8 he doesn't remember the month and the Prosecution wants
9 to elicit the month, but, as I say, there is no
15:32:56 10 connection at all between this document and the Avondo
11 initiation, nor between this document and the name of
12 initiate on it and this initiate. So we cannot say
13 whether the name of the initiate on this document is
14 connected with the Avondo initiation. This document is
15:33:18 15 completely useless to elicit that information, My Lord.

16 JUDGE BOUTET: Ms Parmar.

17 MS PARMAR: Your Honour, the document does contain a
18 photograph on it to which we can ask the witness to
19 identify who was in the photograph. Further we can
15:33:41 20 inquire with the witness the circumstances rounding a
21 different name that he may have been given.

22 MR BOCKARIE: Yes, Your Honour. Just along with what my
23 learned friend Dr Jabbi said, if you go through the
24 document, Your Honour, there is no nexus between this
15:34:07 25 witness and what it is on the document regarding to the
26 name of the initiate, Your Honour. And that foundation
27 has not been laid by the Prosecution, so we are at a
28 loss. For this document to be admissible, there must a
29 nexus between this witness and what is contained on the

1 document and what is contained on that document, Your
2 Honour? That document bears a name.

3 JUDGE BOUTET: But I'm told there is a photograph on that
4 document too.

15:34:39 5 MR BOCKARIE: Well, Your Honour, what we're saying is the
6 foundation has not been laid. The foundation has to be
7 laid, but there is no connection between the witness and
8 this document, Your Honour.

9 JUDGE THOMPSON: Shall I ask -- so the objection is a narrow
15:34:58 10 one. It is to the failure at this stage to lay the
11 proper legal foundation for the document, so that the
12 objection.

13 MR BOCKARIE: [Overlapping speakers] there is no nexus for
14 now.

15:35:10 15 JUDGE THOMPSON: Nexus, yes. So we've not yet gone into the
16 issue of the admissibility of the document in case --
17 assuming that a proper legal foundation is laid.
18 [Overlapping microphones]

19 MR BOCKARIE: Yes, Your Honour, when we get to that stage.

15:35:27 20 JUDGE THOMPSON: So your objection is in relation to stage 1?
21 MR BOCKARIE: Yes, Your Honour.

22 JUDGE THOMPSON: No proper legal foundation at this stage.

23 MR BOCKARIE: Yes, Your Honour.

24 JUDGE BOUTET: Madam Prosecutor.

15:35:41 25 MS PARMAR: Your Honour, if it would satisfy the Defence, I
26 can proceed --

27 JUDGE BOUTET: It is more than just the Defence. The Court is
28 far from being clear. From what we know, there appears
29 to be a on photograph on that. That's all we know. Now,

1 if there is to be any connection with this particular
2 witness and that document -- so not having seen even the
3 document, I don't even know if the photo on the document
4 is the same as the witness. So you have heard the
15:36:07 5 objection and for the moment the objection is sustained.
6 MS PARMAR:
7 Q. Witness, did you receive anything after your initiation
8 into the Avondo society?
9 A. Yes.
15:36:26 10 Q. What did you receive?
11 A. A certificate.
12 Q. Who gave you the certificate?
13 A. The men with whom we went, because they were older than
14 me.
15:37:02 15 Q. What did they tell you about this certificate?
16 A. They said I should carry the certificate so that wherever
17 I went if it is our own ground, that would prove that I
18 am Kondewa's Kamajor.
19 Q. What did you do with this certificate?
15:37:33 20 A. After they had given it to me, they took my photograph
21 and placed the picture on it.
22 Q. Where was this picture taken?
23 A. Well, they took it at Bumpe.
24 Q. How old were you when your picture was taken?
15:38:11 25 A. That the time I was 13 years.
26 Q. Where had this certificate come from?
27 A. The certificate was made at Base Zero.
28 MS PARMAR: Your Honours, following this line of questioning,
29 the Prosecution would like to show the witness the said

1 document and have him authenticate it.

2 JUDGE BOUTET: Any other observation from the Defence?

3 MR BOCKARIE: For the purposes of identification?

4 JUDGE BOUTET: Well, to identify first, I presume. That's

15:39:07 5 what I've heard.

6 MR BOCKARIE: Well, no objection. For the purposes of

7 identification, no objection.

8 MR JABBI: My Lord --

9 [HN021104E 3.45 p.m.]

15:43:35 10 MR JABBI: Your Honours, I am still concerned as to whether

11 any adequate nexus has been created between this document

12 and the witness. I wish to mention particularly the

13 original purpose of wanting to show this document to the

14 witness. That original purpose, My Lord, was for him to

15:44:15 15 remember the precise date, especially the month, when the

16 Avondo initiation took place. Notwithstanding that it is

17 only for identification, there is no nexus between the

18 date on this document and the Avondo initiation in

19 particular -- none whatsoever.

15:44:46 20 JUDGE THOMPSON: Learned counsel, aren't you jumping the gun?

21 MR JABBI: As Your Lordship pleases.

22 JUDGE THOMPSON: We are talking about whether a proper

23 foundation has been laid for the subsequent, if

24 necessary, admissibility or receptivity of this document.

15:45:12 25 Ought we not confine ourselves to the issue of whether,

26 on the basis of the questions that learned counsel for

27 the Prosecution has put forward and the answers elicited

28 from the witness, there has been laid a proper legal

29 foundation for identification purposes. And I ask you to

1 respond to me in all professional candour.

2 The issue of nexus would seem -- even though it may
3 overlap or straddle the issue of proper legal foundation
4 and the substantive issue of admissibility, but doesn't
15:46:02 5 it belong more to the second segment of the process?
6 When you said "no adequate nexus", what are your criteria
7 for adequate nexus -- legal nexus? Here we have had the
8 answers of the witness clearly indicating some nexus with
9 that document. So I invite you, in all professional
15:46:39 10 candour, to tell me what is lacking in that kind of
11 analysis that we have just had.

12 MR JABBI: My Lord, as I said earlier on, the questions being
13 posed are in connection with a specific incident; that
14 is, the Avondo initiation at Bumpe. My point, My Lord,
15:47:16 15 is that no nexus has been created between that initiation
16 and this document. One just needs to look at the
17 document and that will be clearly apparent. But I am
18 prepared to yield to the Bench if at this stage it is
19 merely for the purpose of identification, My Lord.

15:47:40 20 JUDGE THOMPSON: Yes.

21 MR JABBI: But technically, the line can't be drawn; it's not
22 a hard and fast point.

23 JUDGE THOMPSON: I'm not in fact pontificating that, but I'm
24 only saying that having had -- the question of legal
15:47:55 25 foundation is also mixed law and fact. We've had some
26 answers here tying this witness to the document.

27 MR JABBI: As Your Lordships please.

28 JUDGE BOUTET: So you may proceed to show the document to the
29 witness for identification purposes, as requested.

1 MS PARMAR:
2 Q. Witness, do you recognise this document?
3 PRESIDING JUDGE: I think he has.
4 THE WITNESS: Yes.
15:48:34 5 PRESIDING JUDGE: The witness has described how this document
6 came into his possession -- his photograph, where he took
7 it, it was given to him, the circumstances under which it
8 was given to him. So I think my learned brother was
9 pointing out the nexus is there -- the document has a
15:48:59 10 nexus, you know, to the person who is supposed to be
11 carrying it. That is what we may say at this point in
12 time. He will relate the same things, the same evidence
13 that he has had to give us here if you ask him how the
14 document came by him and so on and so forth. So can you
15:49:25 15 proceed and, you know -- are you wanting the document to
16 be admitted into evidence?
17 MS PARMAR: Your Honour, the Prosecution would first like to
18 authenticate that this document is in fact the document
19 that the witness described earlier, which is why we had
15:49:47 20 asked whether he recognised the document, and nothing
21 more than that.
22 PRESIDING JUDGE: Right, okay. Go ahead.
23 MS PARMAR:
24 Q. Witness, do you recognise this document?
15:50:16 25 A. Yes.
26 Q. What is it?
27 A. It's a certificate.
28 Q. Does it belong to you?
29 A. Yes.

1 Q. Is it the certificate that you described to the Court
2 earlier?
3 A. Yes.
4 Q. Do you see a photograph on that certificate?
15:50:55 5 A. Yes.
6 Q. Who is the photograph of?
7 A. It's me.
8 Q. How old were you when that photograph was taken?
9 A. Well, during the year 1999 I was 13 years old.
15:51:30 10 Q. Looking at that document, can you now remember the date
11 on which you were initiated or received the document?
12 A. Well, no.
13 Q. Witness, can you read?
14 A. No.
15:52:11 15 MS PARMAR: Your Honours, since the witness has stated that he
16 is unable to read, the Prosecution, having established
17 that this document was received by him contemporaneously
18 to his initiation, would like to read the date that is
19 written on this document.
15:52:33 20 JUDGE BOUTET: First accused, any comment?
21 MR JABBI: My Lord, I will not make any comment at this stage
22 until the stage of seeking admissibility of the document.
23 JUDGE BOUTET: Very well. Second accused, no comment?
24 MR BOCKARIE: Yes, Your Honour, it's just for the purposes of
15:53:11 25 clarification. The first question for determination for
26 us is: is the document in evidence. If it is in
27 evidence, then it can be allowed to be read, but if it is
28 not, we have an apprehension. At this stage, is it in
29 evidence? It is not.

1 JUDGE BOUTET: It's not been marked; it's been produced for
2 identification purposes. It is not an exhibit, to my
3 knowledge.
4 MR BOCKARIE: Yes, so he is allowed to read from it?
15:53:33 5 JUDGE BOUTET: He cannot read -- he just said that he does not
6 read. It will not be read by the witness is my
7 understanding. I take it that it would be the
8 Prosecution reading from that document.
9 MR BOCKARIE: Relating to the contents of the document which
15:53:50 10 is not in evidence.
11 JUDGE BOUTET: I'm asking you if you have any objection.
12 MR BOCKARIE: That is our objection.
13 PRESIDING JUDGE: Is the Prosecution seeking to tender this
14 document in evidence?
15:54:02 15 MS PARMAR: Your Honour, provided the Prosecution is permitted
16 to read the date on the certificate, which has been
17 authenticated by this witness, we will not be seeking to
18 enter this document as an exhibit.
19 JUDGE THOMPSON: I would like for my own enlightenment --
15:54:35 20 under what Rule does the Prosecution come in seeking to
21 read a document that is not yet in evidence so as to
22 translate some aspect of the contents of that document
23 into the record, because, remember, the Prosecution is
24 allowed to show a witness a document to refresh his or
15:55:07 25 her memory, that is perfectly -- but under what Rule or
26 rubric of the law does the Prosecution come in asking to
27 be allowed to refer to the content of a document not yet
28 admitted in evidence -- just for my own enlightenment;
29 there may be some new principle.

1 MS PARMAR: Certainly, Your Honour. As Your Honour has
2 indicated, the Prosecution was seeking use of this
3 document in order to assist the witness in refreshing his
4 memory. Now, given the circumstances of many of the
15:55:45 5 witnesses that will appear before this Tribunal, they can
6 neither read nor write, which is why the Prosecution had
7 requested from the Chamber to read from the document
8 itself.

9 JUDGE THOMPSON: Yes, and that's precisely the point; in other
15:56:01 10 words, I need to be convinced that, where the Prosecution
11 comes up against such a legal impediment, there is some
12 authority in the jurisprudence to go, as the Americans
13 would put it, the "route" that you want to go.

14 MS PARMAR: Your Honour, the Prosecution would bring the
15:56:22 15 attention of the Court to Rule 92bis under which the
16 Rules state that the Chamber may admit as evidence, in
17 whole or in part, information in lieu of oral testimony
18 under 92bis(A). Now, since the Prosecution is not
19 seeking admission of this document in its entirety as
15:56:44 20 evidence, we simply wished to establish the date for
21 which the witness has relayed his initiation using the
22 document as an aide-memoire.

23 JUDGE BOUTET: As an aide-memoire to the witness who cannot
24 read?

15:57:05 25 MS PARMAR: Well, Your Honour, we're trying to be creative in
26 dealing with the witnesses that are going to appear --

27 PRESIDING JUDGE: If you want this document, you had better
28 move from one battleground to another one. I don't know
29 why you don't want this document to be admitted into

1 evidence so that we hear arguments from there. It is not
2 said that a person who is an illiterate cannot tender a
3 document that concerns him. I think that the way you are
4 approaching it would create some difficulties.

15:57:51 5 JUDGE BOUTET: We have difficulties with your creativity. We
6 do not follow you. If you could assist us to understand,
7 and maybe there is an easier route; that's what we're
8 saying.

9 PRESIDING JUDGE: You have taken all the time to lay the
15:58:05 10 foundations about the document, you've laid the
11 foundations, you've done everything and you've left us in
12 mid air.

13 MS PARMAR: Perhaps the Prosecution -- it's time to bring the
14 Court down to the ground. We'll proceed --

15:58:20 15 PRESIDING JUDGE: So long as you don't crush any of them in
16 bringing them to the ground.

17 MS PARMAR: The Prosecution, given the guidance of the Bench,
18 will then proceed to request to have this document
19 tendered as an exhibit, having established the
15:58:37 20 authenticity of the document and the fact that it is
21 contemporaneous to the events that have been related to
22 this Court by this witness.

23 JUDGE BOUTET: Now, can we hear from Defence?

24 MS WHITAKER: The difficulty with my learned's friend's course
15:58:58 25 is that this witness has no way of knowing whether it's
26 correct what was written on the document, and yet she's
27 seeking to adduce it for the correctness of the
28 information on the document.

29 JUDGE THOMPSON: Clearly, as a matter of law, Ms Whitaker,

1 even if this document is received in evidence, doesn't it
2 follow -- the jurisprudence -- that the mere admission of
3 the document into evidence does not itself signify that
4 the statements contained therein are necessarily deemed
15:59:27 5 to be an accurate portrayal of the facts?

6 MS WHITAKER: It depends for which purpose my learned friend
7 is seeking to adduce it [overlapping speakers] --
8 JUDGE THOMPSON: Precisely. My understanding of the law is
9 that, in its wisdom, it has provided that even if that
15:59:40 10 document is received, it does not automatically mean that
11 what is reflected there is an accurate portrayal of the
12 facts. Here we have the Bench of judges who are very
13 sensitive and, of course, making the distinction between
14 the authenticity and existence of a document as distinct
16:00:04 15 from the contents.

16 MS WHITAKER: Provided that the document is not admitted as
17 evidence of truth of its contents, then I would have no
18 further objection, My Lord.

19 JUDGE BOUTET: Second accused?
16:00:16 20 MR BOCKARIE: Yes, Your Honour. Our only problem -- may
21 I please have a look at the document again? Your Honour,
22 as far as the records are concerned, this witness is
23 known by a particular name.

24 JUDGE THOMPSON: This witness is known --
16:00:44 25 MR BOCKARIE: Is known by a particular name as far as the
26 records --

27 JUDGE BOUTET: He has said this is his photograph on it and he
28 has described it as being the document that was given at
29 the time. Whatever name is on it, this is his

1 photograph.

2 MR BOCKARIE: Yes, but if you look at the exhibit itself, it

3 shows another name. It has to be established by the

4 Prosecution whether he is also known by this name. Then

16:01:08 5 we will be in a position to say that, yes, although he

6 has been known by this name, he's also known by this

7 name. So which name are we going to follow, Your Honour?

8 Because the name on this --

9 JUDGE BOUTET: The witness has told this Court he cannot read.

16:01:24 10 He cannot read, so whatever name is on it, he can't say

11 if it's his name or a different name; he cannot.

12 MR BOCKARIE: Your Honour, you cannot know your name?

13 JUDGE BOUTET: He does know his photograph. He says, "This is

14 my photograph. This is the certificate I was given

16:01:40 15 then."

16 MR BOCKARIE: Excuse me, Your Honour, what I'm saying is the

17 name which is contained on this exhibit is quite

18 different from the name on record, Your Honour. It has

19 to be put to him in closed session whether, besides his

16:01:54 20 normal name, he's been called by another name. If not,

21 there is not a nexus.

22 JUDGE THOMPSON: Learned counsel, are you trying to set a very

23 high threshold for the admission of documentary evidence,

24 when in fact the international criminal law jurisprudence

16:02:14 25 says that we don't have to set a high threshold for the

26 admission of documentary evidence. The fact that they

27 are admitted does not prove the accuracy of the contents

28 therein.

29 MR BOCKARIE: I take the queue, Your Honour.

1 JUDGE THOMPSON: And in fact, at the end of the day, a
2 Tribunal can admit a document and then say the probative
3 value is so little that we don't even want to attach any
4 weight to it at all.

16:02:44 5 MR BOCKARIE: I take the queue, and I withdraw the objection.

6 JUDGE BOUTET: Thank you. Mr Margai, I take it you have no
7 objection.

8 MR MARGAI: If she's not going under 92bis, because I would
9 have thought that the more appropriate should have been
16:03:02 10 89(B).

11 PRESIDING JUDGE: It is not 92bis.

12 MR MARGAI: I heard her talk of 92bis.

13 PRESIDING JUDGE: I'm just assuring you. The Tribunal shares
14 your view.

16:03:17 15 JUDGE BOUTET: We are on 89(A).

16 JUDGE THOMPSON: [Microphone not activated] has probative
17 value.

18 PRESIDING JUDGE: This document is admitted in evidence.

19 JUDGE BOUTET: Mr Walker, what exhibit number are we at now?

16:03:30 20 PRESIDING JUDGE: It is marked as exhibit what, Mr Walker?

21 MR WALKER: Number 18, Your Honour.

22 PRESIDING JUDGE: Let's mark it first.

23 JUDGE BOUTET: So the document in question has been marked as
24 Exhibit 18.

16:06:03 25 [Exhibit No. 18 was admitted]

26 MS PARMAR: Your Honours, the Prosecution would like to
27 proceed with the final area of examination with this
28 witness.

29 Q. Witness, after your initiation into the Avondo Society,

1 where did you go?

2 A. After a time we came back to Mamban. We were at Mamban

3 for some time.

4 Q. Can you repeat the name of the place where you were and

16:06:48 5 state it clearly?

6 A. Mamban Bridge.

7 JUDGE BOUTET: Can you spell that out, please?

8 MS PARMAR: Certainly, Your Honour. It's M-A-M-B-A-N, Mamban

9 Bridge.

16:07:20 10 Q. What did you do at Mamban Bridge?

11 A. We were there -- the rebels were at the highway, West

12 Side. We were there. When vehicles left Freetown, we

13 loaded, they passed through -- even if the vehicle is

14 coming from up-country, they use the same route.

16:08:01 15 Q. Which vehicles were these?

16 A. They are transport vehicles -- trucks.

17 Q. Who did they belong to?

18 A. I didn't know who owned the vehicles, but they were

19 transport vehicles.

16:08:23 20 Q. From Mamban, where did you go?

21 A. I returned to get out Dumbuya's men to Freetown.

22 Q. Who was Dumbuya?

23 A. I knew him as a Tamaboro.

24 Q. And what did you finally do in Freetown?

16:09:01 25 A. After we had come, they told us that we should disarm at

26 Brookfields Hotel.

27 Q. Who did you disarm with?

28 A. We disarmed together with my companions.

29 Q. How old were your companions?

1 A. Some were 12 years old, some 10, some 13 -- those are the
2 ages.

3 Q. Describe what happened when you were disarmed.

4 A. When I disarmed at Brookfields Hotel, I was disarmed by a
16:10:10 5 British soldier -- a British man -- a British man, sorry,
6 and he asked me where I was born and I told him. They
7 asked me about my parents. I told them that I had
8 separated from my parents for a long time, so I didn't
9 know there whereabouts. After that they gave me a
16:10:49 10 uniform and they asked me that I had said that I was born
11 in Kailahun. They asked DDR to take me to Kenema.

12 Q. What did the DDR people do with you and this yellow form?

13 MR MARGAI: My Lord, I wonder what the relevance of this is.
14 As the President of the Court has said time and time
16:11:21 15 again, we have to confine ourselves to the material
16 particulars vis-a-vis the charges.

17 MS PARMAR: Your Honour, if the Defence will allow us to
18 proceed with the questioning, the line of questioning
19 relates to the age of the witness as he had at this time.

16:11:43 20 MR MARGAI: The witness had clearly told us what his age was
21 and in fact how he came to know his age. As My Lords
22 please.

23 JUDGE THOMPSON: But isn't it fair to the Prosecution that if
24 some clarifications are necessary to clear areas of doubt
16:12:11 25 perhaps which, from their perspective, in presenting
26 their own scope, as long as they do not violate any of
27 the Rules relating to the scope of
28 examination-in-chief --

29 MR MARGAI: I suppose that's a very worrying aspect if the

1 Prosecution starts to entertain doubt about their own
2 case.

3 JUDGE THOMPSON: Well, I'm not putting it at that level. I'm
4 only saying that there might be times when the witness's
16:12:38 5 answer may be that perhaps he or she does not understand
6 the nuance of the question. I'm in favour of fundamental
7 fairness. They are presenting their case. As long as
8 they do not multiply the issues, but if there are some
9 aspects which the Prosecution here in their discretion
16:13:01 10 think are necessary to put to clarify things, and we
11 don't find it violating any Rule, and you don't find it
12 violating any Rule --

13 MR MARGAI: I couldn't agree more with you, My Lord.

14 JUDGE THOMPSON: You have liberty, too.

16:13:12 15 MR MARGAI: I appreciate that.

16 JUDGE THOMPSON: Much more liberty --

17 MR MARGAI: We seem to be having a multiplicity of issues.
18 This question of age has been addressed at least three or
19 four times.

16:13:24 20 JUDGE THOMPSON: Let's go on the good faith of your learned
21 colleague and hope that she's winding up this final
22 episode so that she can pull down the curtain on this
23 witness.

24 MR MARGAI: Very well, My Lord.

16:13:35 25 MS PARMAR: Thank you, Your Honours.

26 Q. Witness, describe specifically to the Court what the
27 disarmament people did with you and this yellow form.

28 A. When I went to disarm, I took an arm along, and they
29 said, "There is money in disarmament," and I said,

1 "I want money for my weapon." They refused to give me
2 the money. They said I was a child, but then my age
3 was -- it was 18 on the yellow form; I was 14 years.
4 Q. How did they come to write the age of 14 years on your
16:14:33 5 yellow form?
6 A. Well, they assessed all of us, our ages, and that's how
7 they wrote my name [sic] on the yellow form.
8 Q. Witness, when you were giving your testimony today, you
9 talked about taking properties that didn't belong to you.
16:15:10 10 Were you ever punished for doing this?
11 A. No, they never punished me for looting.
12 Q. What about the killings that you had described?
13 A. Well, for all of that, nobody had punished me.
14 Q. What of the others who had done the same thing?
16:15:59 15 A. It's the same thing.
16 Q. One final question, witness. How did you feel while you
17 were fighting for the Kamajors?
18 A. I wasn't feeling good.
19 Q. Why?
16:16:32 20 A. Well, the things we were doing were things I was not
21 supposed to be doing.
22 Q. What would happen if you didn't do these things?
23 MR WILLIAMS: Your Honour, this is hypothetical.
24 MS PARMAR: The Prosecution takes the objection. With the
16:16:52 25 Court's indulgence, just one moment. Thank you,
26 Mr Witness. Your Honours, the Court appreciates the
27 indulgence and patience of the Bench today with this
28 particular witness, and has no further questions for this
29 witness.

1 JUDGE BOUTET: Thank you.

2 MS WHITAKER: Could I raise a relevant matter before any
3 cross-examination takes place? We're still awaiting
4 details of payments from the Victims Support relating to
16:17:23 5 this witness, and if we could ask for payments for all
6 witnesses for this session so that I do not have to ask
7 for every witness on a daily basis.

8 JUDGE BOUTET: I thought the Court's direction was quite clear
9 at the last session, that it had to be produced all the
16:17:43 10 time, not that you had to request it on a daily basis.
11 I am a bit at a loss to understand.

12 MS WHITAKER: Perhaps that could be passed on to Victims
13 Support so that everybody understands that.

14 [Document handed to Defence team]

16:18:20 15 MS WHITAKER: It is not in the format that we're used to
16 including details of clothing and other medical and
17 hospital appointments, which is the stage we got to.
18 This is now back to a list of payments, which I'm not
19 sure is complete. We were previously getting a report
16:18:36 20 setting out exactly the benefits that had been provided.

21 PRESIDING JUDGE: What's that document?

22 MS WHITAKER: This is what I have been provided with by
23 Witness Support.

24 PRESIDING JUDGE: For today?

16:18:45 25 MS WHITAKER: Yes, which is a list of payment of moneys, but
26 not hospital visits, clothes, et cetera, which were also
27 included under the order, and it's a very different
28 format from the other.

29 PRESIDING JUDGE: What about proceeding -- is there any

1 representative of the Witness Protection Unit?

2 MS MICHELS: Your Honour, I will sort this out with the Chief
3 of Section immediately.

4 PRESIDING JUDGE: But in the meantime we're held up. We shall
16:19:20 5 rise and within that period you will please get in touch
6 with the Chief and see if he can provide further
7 particulars for the document or other documentation which
8 is not yet available or made available to the Defence.
9 So we will rise and, when the documents are ready, we
16:19:51 10 should be called in, please. The Court will rise,
11 please.

12 [Break taken at 4.20 p.m.]

13 [On resuming at 4.55 p.m.]

14 JUDGE BOUTET: Cross-examination, first accused, Dr Jabbi.

16:58:04 15 CROSS-EXAMINED BY MR JABBI:

16 Q. Now, Mr Witness, can you tell the Court how long you have
17 been in Freetown this last time?

18 A. Yes.

19 Q. When did you come to Freetown?

16:58:40 20 A. This is my fourth month now.

21 Q. Do you know the month you came?

22 JUDGE BOUTET: Dr Jabbi, I have difficulty hearing what you
23 say. The papers are in front of you.

24 MR JABBI: Sorry, My Lord.

16:59:00 25 Q. Do you know the month you came?

26 A. I don't know the date, but I know I have taken four
27 months here.

28 Q. But do you know the month -- if not the date, at least
29 the month in which you came?

1 A. No, I cannot -- I cannot show the month now, because my
2 attention was not focused on that now.

3 Q. You have been in Freetown for four full months according
4 to you?

16:59:33 5 A. Yes, sir.

6 Q. May I suggest to you that perhaps it was in May that you
7 came?

8 A. Well, I don't know. I've told you I don't know.

9 Q. How are you taken care of during that time?

17:00:05 10 A. Like how?

11 Q. You eat, maybe you move around.

12 A. Yes, I do eat, I do walk and, when I am with them, they
13 give me an allowance every week.

14 Q. "Them" meaning -- what do you mean by "them"? When you
17:00:36 15 are with them, they give you an allowance every week;
16 what do you mean by "them"?

17 A. Well, the Prosecution that came with me.

18 Q. Okay. Can you tell the Court how much you have been
19 receiving from the Prosecution?

17:00:56 20 A. Yes, sir.

21 Q. Please go on.

22 A. When I came initially, every week they gave to me 70,000.

23 Q. For how many weeks?

24 A. [No interpretation]

17:01:14 25 Q. 70,000, how many times was that given to you?

26 A. Well, I cannot exactly remember how many times.

27 Q. Once, twice?

28 A. I have told you, sir, I cannot exactly remember the
29 times.

1 Q. [Microphone not activated] 70,000?

2 A. Then they called me into the office, that the money they

3 have been giving me, 70,000, have been increased to

4 112 -- that's what they give to me every week.

17:01:51 5 Q. Was the increase at your request?

6 A. No.

7 Q. They volunteered it, did they?

8 A. Yes.

9 Q. How long have you had the 112,000?

17:02:17 10 A. Well, from the time they stopped giving me the 70,000.

11 Q. Would you say perhaps it's up to three months?

12 A. I have told you, sir, all of that I cannot exactly give

13 the dates.

14 Q. But you know that you have been here for four months?

17:02:41 15 A. Yes.

16 Q. So you should be able to say --

17 PRESIDING JUDGE: But you can deduce. We have had problems --

18 he has not been to school. Calculations appear to be a

19 problem, Dr Jabbi.

17:02:55 20 MR JABBI: Well, My Lord I don't know whether that's a

21 calculation. He has said by himself that he has been

22 here for four months, a period for which he has received

23 the very attractive sum of 112,000 a week. I think

24 perhaps --

17:03:11 25 PRESIDING JUDGE: Beginning with 70,000.

26 MR JABBI: Yes, My Lord, for a short while.

27 PRESIDING JUDGE: Then it was increased.

28 MR JABBI:

29 Q. Now, may I suggest to you that, in all, you have received

1 from the Prosecution in cash -- that is the allowance
2 you're talking about - 2,440,000 Leones in all for the
3 period of four months you have been here -- 2,440,000
4 Leones?

17:03:49 5 THE INTERPRETER: My Lord, can learned counsel wait for the
6 interpretation?

7 MR JABBI: Sorry, sorry.

8 THE WITNESS: Well, I cannot exactly tell, because I've not
9 been counting the money. What they come with is what
17:04:01 10 I receive.

11 MR JABBI:

12 Q. Did you receive any clothing allowance?

13 PRESIDING JUDGE: Dr Jabbi, you say it's 2 million --

14 MR JABBI: 2,440,000, but he doesn't remember.

17:04:17 15 PRESIDING JUDGE: 2,440,000.

16 MR JABBI: 2,440,000 Leones, My Lord.

17 Q. Did you receive a clothing allowance?

18 A. No, they bought the clothes for me.

19 Q. Including what you're wearing now?

17:04:38 20 A. Yeah, it is what I'm wearing now.

21 Q. Right. Apart from that general allowance and the
22 clothing, did they provide food for you as well?

23 A. Yes, they give me food.

24 Q. And you are satisfied with the food they give you? They
17:05:08 25 give you enough food, do they?

26 A. Yes, I do eat.

27 Q. So you will agree with me that for the past four months
28 that you have been here your financial circumstances have
29 been very healthy, will you?

1 A. Well, how is it improved?

2 Q. Well, maybe it's the translation there. I have not said
3 it has improved. I said it has been very healthy -- you
4 had very good support, in other words, financially.

17:06:01 5 A. You mean I've got the support from the money given to me?

6 Q. That the money given to you, the clothes bought for you,
7 and the food you are given every day all come together to
8 make a very attractive circumstance for you.

9 A. Well, yes.

17:06:45 10 Q. Surely far better than your own earnings when you were
11 out of Freetown?

12 A. I appreciate that.

13 Q. You appreciate that it's far better than your earnings
14 before you came to Freetown; is that what you say?

17:07:09 15 JUDGE THOMPSON: Before he expresses his own response to that,
16 why not put it to him what had been his position before
17 he came to Freetown. I was going to record,
18 "I appreciate that," but --

19 MS PARMAR: Your Honour, if counsel is going to do that, I ask
17:07:32 20 that we be careful in case the response reveals any
21 identification of the witness.

22 JUDGE THOMPSON: I take the point.

23 MR JABBI: My Lord, if he were able to answer that question,
24 then I would have got around the concern --

17:07:49 25 JUDGE THOMPSON: Discard what I said. Go ahead, counsel.

26 MR JABBI:

27 Q. So you say you appreciate what they have done. My more
28 specific question was: what they have done for you for
29 the last four months is far better than your own earnings

1 before you came to Freetown as a witness.

2 A. Well, yes, sir.

3 Q. I would have thought the "Yes, sir" would be more
4 enthusiastic than it was actually given, but I take it.

17:08:28 5 PRESIDING JUDGE: You wanted him to rejoice?

6 MR JABBI: From the appreciation, I would have thought he
7 would be more enthusiastic.

8 Q. I put it to you that your performance as a witness
9 received a lot of enticement and inducement from what you
17:08:50 10 have got from Prosecution since you were here four months
11 ago.

12 MR TAVENER: I object to that question. The money did not
13 come from the Prosecution. If counsel could be a bit
14 more specific as to where the money came from.

17:09:05 15 JUDGE BOUTET: Dr Jabbi, I thought the list you got was
16 provided to you by the Witness Protection Unit, not the
17 Prosecution.

18 MR JABBI: My Lord, the witness said he got it from
19 Prosecution, My Lord.

17:09:19 20 JUDGE BOUTET: But the information you've been using, was it
21 coming from the Prosecution or coming from the Witness
22 Protection Unit?

23 MR JABBI: My Lord, I have a paper in front of me with a piece
24 of information, but I have tried to elicit information
17:09:32 25 independently from the witness, and he has constantly
26 said "from the Prosecution". When he said "they",
27 I asked him, "What do you mean by 'they'?" And he said
28 "Prosecution", My Lord.

29 JUDGE THOMPSON: Learned counsel, if you have a piece of paper

1 in your hand which gives you particulars about allowances
2 and they purport to come from a different unit, ought we
3 not to have the benefit of your clarification as to
4 whether what you have there is consistent with the
17:10:09 5 answers that the witness has given? I just ask --
6 I mean, if you want our records to reflect Prosecution
7 when perhaps it should reflect victims -- you tell us how
8 we get out of that kind of situation.

9 MR JABBI: My Lord, I do not insist on the Prosecution
17:10:32 10 providing the forms he has referred to.

11 JUDGE THOMPSON: The Prosecution is saying that factually you
12 are getting it wrong [microphone not activated].

13 MR JABBI: That is why I say I will not insist on it.

14 JUDGE THOMPSON: Okay.

17:10:49 15 MR JABBI: Maybe, as a witness, I will change the question
16 slightly.

17 Q. All these support that you have received whilst you have
18 been here over the last four months were in respect of
19 your coming to give evidence before this Court; is that
17:11:12 20 correct?

21 A. No.

22 Q. You do not agree that it was in connection with that?

23 A. Not at all.

24 Q. I will ask the question again. I'm not hearing the
17:11:34 25 translation, My Lord.

26 PRESIDING JUDGE: He may not be understanding what you're
27 saying.

28 MR JABBI: I don't know either what's being relayed to him --

29 PRESIDING JUDGE: You're not telling him the context of your

1 question, that's the problem. He may understand you to
2 say that, because he received this money, that he's
3 coming to give this evidence in court. That's the way
4 I'm reading his mind, you know. I may be wrong, but
17:11:58 5 that's it. That's why he has given you a "no" answer.
6 MR JABBI: My Lord, I also want to raise a technical question.
7 PRESIDING JUDGE: Yes.
8 MR JABBI: I am supposed to be getting the Krio translation to
9 him, but I'm not getting that. I don't know whether the
17:12:14 10 system --
11 JUDGE BOUTET: You are on the wrong channel. I am not sure
12 which one it is, but I think it's FLO that you need to
13 have Krio. If you are on the English one, you're going
14 to get English.
17:12:30 15 MR JABBI: This one? Okay, I will try on this one.
16 Q. Now, I said you have received all these moneys that you
17 yourself named, and I was asking whether you were given
18 that money because you came down to give evidence in this
19 court. Do you know that?
17:13:01 20 A. Well, I know it is not for the evidence that I was given
21 the money.
22 THE INTERPRETER: My Lord, can learned counsel wait for the
23 answers, please?
24 JUDGE BOUTET: He has heard you. I hope he will follow your
17:13:13 25 advice.
26 PRESIDING JUDGE: He's smiling; he's heard you. So, learned
27 counsel, wait for the translation.
28 MR JABBI: I'm sorry, Mr Interpreter.
29 Q. Can you tell the court why you were given all this money

1 and support?

2 A. Well, I can explain some --

3 MR JABBI: I'm not getting the -- My Lord, when they put it

4 into what I think is Krio, I get nothing at all from the

17:13:55 5 interpreter.

6 JUDGE BOUTET: Unfortunately, I don't know which channel you

7 should be on to hear it.

8 MR JABBI: I will ask the question again.

9 JUDGE THOMPSON: Try N2.

17:14:22 10 MR JABBI: Yes, I'm hearing the Krio now.

11 JUDGE THOMPSON: Yes, it's N2.

12 MR JABBI:

13 Q. Now, I ask you again: why do you think you have been

14 given all this money and support?

17:14:50 15 A. Well, people brought me here, that's one, and they know

16 that --

17 MR JABBI: I did not hear any of that.

18 JUDGE THOMPSON: Which channel are you on?

19 MR JABBI: N2.

17:15:20 20 JUDGE THOMPSON: N2 is the Krio channel.

21 MR JABBI: When it came there first, I heard the Krio, but

22 since then, I heard nothing.

23 JUDGE THOMPSON: But you want to have it on both sides -- if

24 you can have N2 on both sides, it works.

17:15:33 25 MR JABBI: Thank you very much.

26 MS WHITAKER: Then I can't hear the English, because I get it

27 translated into Krio, but I need to hear English on my

28 side. I would like to have it in English, but

29 I understand it has to be on N2.

1 JUDGE THOMPSON: Put it on English on both sides.

2 MR JABBI: Okay.

3 Q. I'm sorry this question is coming so many times. It's
4 just because of a technical problem. So please let me
17:16:14 5 ask it again. Why do you think you have been given all
6 this financial and other support whilst you have been in
7 Freetown for the last four months?

8 A. Well, they brought me here, that is one.

9 PRESIDING JUDGE: Number 2?

17:16:51 10 THE WITNESS: Then the people know that I always need money to
11 buy a few things when I need them.

12 MR JABBI: I hear the witness, but I don't hear the
13 interpretation -- still.

14 PRESIDING JUDGE: You don't hear the interpretation to what?

17:17:19 15 Do you really need the interpretation to Krio, Dr Jabbi?

16 MS EHRET: May I quickly interfere and tell you, if you want
17 to follow both --

18 MR JABBI: Sometimes --

19 JUDGE BOUTET: Just hold on, because we have the Head of the
17:17:35 20 Interpretation Unit trying to --

21 MS EHRET: May I quickly --

22 JUDGE BOUTET: She will give you an explanation as to why
23 I don't think you can have both English and Krio on the
24 same channel.

17:17:48 25 MS EHRET: You would have to change channels all the time.

26 JUDGE BOUTET: If you put your system on Krio, you will have
27 everything in Krio. So if you want to have Krio when you
28 ask the question and you want to hear the answer in
29 English, you have to switch channels, because you can't

1 have it on the same earphone for both channels. You have
2 to decide which one you want.
3 MR JABBI: I want both, actually.
4 MS EHRET: Then you have to keep changing the channels
17:18:16 5 constantly.
6 PRESIDING JUDGE: If you cannot change the channels constantly
7 and efficiently, you may be advised to stop complaining,
8 if you want to be floating from one language to another.
9 MR JABBI: Just to answer the question that came from the
17:18:31 10 Bench, I like to hear the Krio translation for my
11 question so that I am sure that it goes to him as I have
12 intended it.
13 JUDGE BOUTET: As you know --
14 PRESIDING JUDGE: It's technically very difficult.
17:18:47 15 JUDGE THOMPSON: You want to overstretch the technology,
16 Dr Jabbi.
17 JUDGE BOUTET: -- we don't have that ability.
18 MR JABBI: As Your Lordship pleases. I will stay on English
19 for a while.
17:19:01 20 MS EHRET: If you want to hear the Krio interpretation, then
21 after you've spoken in English, you have to switch
22 quickly to N2, then you get the Krio interpretation and
23 then quickly switch back to FLO, and then you get the
24 voice of the witness and then quickly back to English and
17:19:16 25 then you get the interpretation.
26 PRESIDING JUDGE: That's how the technology works. You may
27 become more of a technician than counsel for an accused
28 person.
29 [HN021104F 5.20 p.m.]

1 MR JABBI:

2 Q. So may I ask, further, why you were brought down to
3 Freetown? You have said you have been given all this
4 support and assistance because you were brought down to
17:16:31 5 Freetown. Do you know why you were brought down to
6 Freetown?

7 A. Yes.

8 Q. Can you explain to the Court?

9 A. Yes.

17:16:51 10 Q. Please explain.

11 A. Well, when they went and took me, they brought me here to
12 testify about what happened to me and what I saw. That's
13 why they brought me here.

14 Q. And would you say that includes what you are doing now,
17:17:17 15 giving evidence in this Court?

16 A. I do not understand this question properly. Repeat it.

17 Q. According to you, you were brought down so that they can
18 ask you various questions as to what you know, and the
19 series of questions have led to what you are doing in
17:17:47 20 this Court now, giving evidence before this Court. So is
21 it right to say that you were brought down to Freetown in
22 order to come and give evidence before this Court?

23 A. Of course.

24 Q. Thank you. So all the payments you have received, and
17:18:22 25 the support and assistance you have received whilst you
26 have been here, is because of this evidence you have to
27 come and give before the Court; is that correct?

28 MR TAVENER: I objection to the question. To put the question
29 in that form is not proper. The witness has had his

1 expenses and other issues paid for him by the Court. To
2 suggest to him now that he's giving evidence in return
3 for payment of money, which is in effect the nature of
4 the question, is not proper. I can appreciate where my
17:18:59 5 friend is going, but there is a correct way to do it and
6 he's not doing it.

7 MR JABBI: My Lord, I have tried to be as systematic as
8 possible. I have asked him why he thinks the support he
9 has been given has been given, and he said it was because
17:19:19 10 they brought him down to ask him questions. I then asked
11 him whether the questions they asked him have led to the
12 evidence he's given here in Court, and he said of course.
13 And I was just now trying to relate the earlier part of
14 the question with the fact of his giving evidence now,
17:19:40 15 which I would have thought was obvious from the
16 answers -- [Overlapping speakers]

17 JUDGE THOMPSON: No, that's not what I think you're trying to
18 do. With the greatest respect to learned counsel, you're
19 trying to establish a possible nexus between the
17:19:53 20 allowances that he admits that he has received and the
21 fact of coming to testify. I could look at it this way,
22 that probably that question is argumentative, and I'm not
23 sure how else you can put it, but I think from the nature
24 of the evidence that he has given so far, he's given
17:20:13 25 specific answers as to why he's here. And the last one
26 was, 'They brought me to testify about what happened to
27 me and what I know. Of course, I was brought down to
28 Freetown to give evidence.' And the previous answers
29 indicate that he has not come here to testify because he

1 has received any kind of financial inducement. But, of
2 course, you are entitled to pursue that line if that is
3 your hypothesis, but I think at some point in time it can
4 become argumentative.

17:20:48 5 MR JABBI: As Your Lordship pleases. My Lord, I was not
6 trying to trace a causal link, although, of course --
7 JUDGE THOMPSON: I think what you were trying to do was to put
8 forward a theory.
9 MR JABBI: Yes, but --

17:21:06 10 JUDGE THOMPSON: And quite rightly.
11 MR JABBI: But not a causal link.
12 JUDGE THOMPSON: All right.
13 MR JABBI: It's just a question of necessary connection
14 between his coming down to Freetown, his making
17:21:18 15 statements, his being paid certain allowances --
16 JUDGE THOMPSON: [Overlapping speakers] considering your
17 latitude in cross-examination.
18 MR JABBI: Thank you very much, My Lord.

19 Q. Is it fair -- or I put it to you that the inducements you
17:21:45 20 have received since you came have been of considerable
21 help to you.
22 JUDGE BOUTET: I'm not sure I agree with you on this question.
23 The inducement he has received -- first, the witness has
24 never admitted that he has received any inducement. You
17:22:10 25 are saying so. I don't think it is a proper question to
26 this witness, certainly not in that format. I know what
27 you're trying to do, but I don't think that question is
28 proper, nor fair.
29 MR JABBI:

1 Q. You stated earlier on, Mr Witness, that you appreciate a
2 lot what has been done for you since you came?
3 A. Well, yes, that's what I said.
4 Q. I am sure it has put you in a much better position --
17:22:46 5 PRESIDING JUDGE: He had said so.
6 MR JABBI: My Lord, I have not finished the question.
7 PRESIDING JUDGE: No, I am saying -- [Overlapping speakers]
8 MR JABBI: The earlier one.
9 PRESIDING JUDGE: You remember he answered -- we shouldn't
17:22:54 10 belabour certain issues. You asked him -- you put a
11 question, you know, to him, 'I am sure that what you're
12 getting here is better than what you used to have or used
13 to earn before you came to Freetown.' He said, 'Yes'.
14 So what else do you want to establish, Dr Jabbi?
17:23:16 15 MR JABBI: The next thing I wanted to make is the different
16 connection.
17 PRESIDING JUDGE: Right. Go ahead, then.
18 JUDGE THOMPSON: But before learned counsel goes on. Counsel,
19 I'm troubled, and let me tell you what my trouble is and
17:23:27 20 you can give me a short answer. If you pursue that line
21 of cross-examination -- in other words, you're trying to
22 develop a theory of some possible connection, whether
23 it's factual or causal, between alleged inducement and
24 testimony. Suppose I say to you, and you're entitled to
17:23:45 25 disagree with me, that you may be reflecting upon the
26 integrity of the prosecutorial process.
27 MR JABBI: My Lord, let me first of all say that I withdrew
28 the use of the word "inducement" at the insistence of
29 Judge Boutet, and, although you have repeated it in

1 paraphrasing what I've been saying, and certainly using a
2 word that I used earlier on, the summary has come after
3 I've abandoned the term.

4 JUDGE THOMPSON: All right. I just thought that it concerns
17:24:19 5 me, because if you pursue that as theory, there is one
6 sense in which you can say that the prosecutorial process
7 tainted.

8 MR JABBI: No, My Lord, I do not intend at all to raise that.

9 Q. So I will ask this last question on this issue. Would
17:24:37 10 you agree with me that the support and assistance you
11 have received since you were in Freetown has put you in a
12 much better position to give evidence before this Court
13 today?

14 A. Well, it's not because of that money that I'm giving
17:25:06 15 evidence in this Court.

16 Q. No, I was not asking whether it is because of it.

17 PRESIDING JUDGE: Just a minute; we want to record that reply.
18 It is not because of the money.

19 MR JABBI:

17:25:59 20 Q. I was not asking whether it was because of the money. My
21 question was whether your having received all that
22 assistance for these past 4 months has put you in a much
23 better position to give evidence today?

24 A. What type of position?

17:26:23 25 Q. You're certainly more composed than you might have been
26 if you gave evidence the day you arrived from where you
27 came from.

28 PRESIDING JUDGE: That would be argumentative. It's
29 argumentative.

1 MR JABBI: As Your Lordships please.
2 PRESIDING JUDGE: Yes.
3 MR JABBI: Now --
4 PRESIDING JUDGE: He could as well have been comfortable in
17:26:45 5 his poverty. Oh, yes --
6 MR JABBI: I'm not suggesting that he was poor, My Lord.
7 PRESIDING JUDGE: Yeah, that's it.
8 MR JABBI:
9 Q. Right, we leave the financial payments and assistance now
17:27:03 10 and come to the actual evidence that you have given so
11 far. Now, do you remember the year you were first
12 captured by the rebels?
13 A. Yes.
14 Q. What year was it?
17:27:31 15 A. It was in 1995.
16 Q. And that was in Pendembu, was it?
17 A. Yes.
18 Q. How old were you?
19 A. I was 9 years of age.
17:27:57 20 Q. By the time you were captured by the rebels, you were 9
21 years of age. How did you know that?
22 A. You were here when I said that before I was separated
23 from my mother, she told me that I was 9 years of age and
24 I was supposed to be in class 4. It was through that I
17:28:34 25 knew my age.
26 Q. Fine. Do you know how long before your capture your
27 mother told you that?
28 A. When my mother told me, it was not long when they
29 captured me, it was in the same year.

1 Q. So more or less around the same time?

2 A. Yes.

3 Q. Now, do you remember making a statement for the

4 investigators in February 2003 -- that is, last year,

17:29:32 5 February?

6 A. Yes.

7 Q. I will ask the next question carefully, because I do not

8 want it to reveal your background, so I hope you also

9 will be equally careful in answering it. Was that

17:30:24 10 statement made in your place of normal residence - your

11 statement made in February last year?

12 A. Go over the question again. I do not understand it

13 properly.

14 Q. I'm asking if that statement made in February 2003 was

17:30:52 15 made in the place where you were residing -- in the town

16 where you were residing? Don't name the town.

17 A. Yes.

18 Q. It was made in [Overlapping speakers] residing?

19 A. Yes.

17:31:13 20 Q. Was that statement read over to you when you made it?

21 A. Yes.

22 Q. And did you sign it in any shape or form?

23 A. Yes, I signed it.

24 Q. How did you sign it?

17:31:56 25 A. I signed it with my finger, my finger-thumb.

26 Q. You used your thumbprint?

27 A. Yes.

28 Q. Now, do you remember telling the person interviewing you

29 how old you were when you were captured for the first

1 time?

2 A. Yes.

3 Q. What answer did you give?

4 A. Well, I said the time that I was captured, I was 9 years
17:32:40 5 of age.

6 Q. Would you be surprised if I tell you that, in fact, what
7 you said was that you were 5-years-old when you were
8 captured?

9 A. What -- I didn't alter that particular statement.

17:33:13 10 Q. If I may also ask who showed you your age when you were
11 captured?

12 A. Sorry, sir, repeat the question.

13 Q. Who showed you your age when you were captured?

14 JUDGE BOUTET: I'm not sure I understand your question either.

17:33:49 15 Who showed you your age? I don't understand what you
16 mean.

17 MR JABBI: My Lord, this is from evidence given in
18 evidence-in-chief today. I believe that was, in fact,
19 the second statement he made. I recorded it as
17:34:05 20 follows --

21 JUDGE BOUTET: That somebody showed him his age?

22 MR JABBI: Yes, My Lord. Told him his age.

23 JUDGE BOUTET: Told him?

24 MR JABBI: Somebody else told him his age when he was
17:34:24 25 captured, according to him.

26 JUDGE BOUTET: That's fine, but that is a bit different as a
27 question. Fine, go ahead.

28 MR JABBI:

29 Q. So can you answer the question now; who told you your age

1 when you were captured?

2 A. The only time I knew my age was when I was taken to the
3 society bush, when I was initiated and they gave me the
4 document. They wrote my age at 12 years of age. That
17:34:54 5 was in 1998.

6 Q. I will wait for that to be recorded. You have just
7 said -- I will just repeat your statement. You have just
8 said that the only time you knew your age was when you
9 were initiated into the Kamajor society and you were
17:35:30 10 given a certificate on which your age was recorded as 12
11 years of age; is that correct?

12 JUDGE THOMPSON: Learned counsel, don't interrupt the witness.

13 PRESIDING JUDGE: No.

14 JUDGE THOMPSON: I think, to be fair to this witness, it would
17:35:47 15 seem right that you put specifically to him the answer
16 that he gave in examination-in-chief, as to someone else,
17 because I remember that clearly. Apart from the mother
18 telling him that he was -- [Overlapping speakers]

19 MR JABBI: Yes, My Lord. The reason why I repeated this
17:36:07 20 question is -- [Overlapping speakers]

21 JUDGE THOMPSON: Isn't it to entrap him?

22 MR JABBI: No, no, My Lord.

23 JUDGE THOMPSON: All right.

24 MR JABBI: First of all, I took a little bit of time because I
17:36:17 25 saw Your Lordships recorded it, so that the last answer
26 he gave would be correctly and accurately recorded. I
27 just wanted to be sure that he also reflects that that is
28 the answer he gave.

29 JUDGE THOMPSON: I see. Then I misconstrued your intention.

1 MR JABBI: No, My Lord.

2 PRESIDING JUDGE: The thing is, we have the first time he got
3 to know of his age, from the evidence-in-chief, was when
4 the mother --

17:36:46 5 [Overlapping speakers]

6 MR JABBI: With respect, My Lord --

7 PRESIDING JUDGE: Please, I'm talking.

8 JUDGE BOUTET: One at a time, please.

9 MR JABBI: No, My Lord, with respect, the evidence --

17:37:00 10 PRESIDING JUDGE: May I make the point I'm making before you
11 continue, please.

12 MR JABBI: I thought you had finished, My Lord, sorry.

13 PRESIDING JUDGE: No, I haven't finished.

14 MR JABBI: I'm sorry, My Lord.

17:37:10 15 PRESIDING JUDGE: Yes. The mother said, and this was before
16 he was captured, "My son, you are 9 years old, you should
17 have been in class 4 by now." That is when he first knew
18 what his age was. Then there was this other one. So
19 when you say when did you first know or who told you of
17:37:26 20 your age for the first time and so on, it's a bit
21 confusing, but you may go on. You may go on and clarify,
22 you know, the questions, so that you don't get this
23 witness, who has a handicap, to give replies which he
24 does not intend to really give. Proceed, please.

17:37:47 25 MR JABBI: I will ensure that I do not do that. But with
26 respect, My Lord, my question was not when first he knew
27 his age. I said, "When you were captured by the rebels,
28 who told you your age?"

29 JUDGE THOMPSON: That's in evidence.

1 MR JABBI: Yes.

2 JUDGE THOMPSON: It's just that I thought if you were specific
3 enough then the witness would not be confused. That's
4 all I was pleading for.

17:38:11 5 MR JABBI: I thought by referring to when he was captured by
6 the rebels, I thought that was specific enough, My Lord.

7 JUDGE THOMPSON: Point is taken.

8 MR JABBI: Thank you.

9 PRESIDING JUDGE: There again, you should know what he has
17:38:24 10 said, it is good to bear it in mind, it was not long
11 after the mother revealed his age to him that he was
12 captured by the rebels. That is part of his testimony.

13 MR JABBI: Yes, indeed, My Lord.

14 PRESIDING JUDGE: Yes, that's right. You may proceed.

17:38:43 15 MR JABBI: So, My Lord, my question was, "Who showed him his
16 age on his capture by the rebels?" He has specifically
17 given evidence to that effect, My Lord. I'm sorry I'm
18 insisting on it, but it's in evidence.

19 JUDGE BOUTET: By the rebels, I don't recall that. You may be
17:39:05 20 right, but recollection is that his evidence - but I may
21 be wrong on this - is his being 12-years-old was when he
22 was with the Kamajors upon being initiated. To my
23 recollection, when he was captured by the rebels, he was
24 not given an age, but put the question to him. That's
17:39:19 25 not my recollection; I may be wrong, as I say. If I'm
26 wrong I stand to be corrected.

27 MR JABBI: Yes, My Lord, with respect, the witness did say, I
28 think in the second sentence of his examination-in-chief,
29 that somebody did show him his age when the rebels

1 captured him.

2 JUDGE THOMPSON: I'd like to intervene. I'd like to

3 intervene. That distinction was clearly made by learned

4 counsel for the Prosecution. It's clearly the case that

17:39:47 5 two features of how he came to know his age -- I remember

6 that and learned counsel did stress that as if it was

7 very pertinent for the Prosecution's case.

8 JUDGE BOUTET: You're absolutely right, I have that in my

9 note. 'At the time I was captured they give me my age.'

17:40:07 10 MR JABBI: Yes. Thank you very much, My Lord. So My Lord, if

11 I may just pose it again. If he doesn't remember, fine,

12 but I will just want to ask it again.

13 Q. Now, once more, who told you your age when you were

14 captured by the rebels?

17:40:22 15 A. Nobody showed me my age who was a rebel who captured me.

16 Q. What rebel captured you?

17 A. It was CO Mohamed.

18 Q. I put it to you that in your evidence-in-chief this

19 morning you did say that your age was shown to you by

17:40:55 20 someone who captured you, specifically?

21 A. No, I didn't say that.

22 Q. I also put it to you that you said the same thing,

23 specifically, in your statement in February 2003?

24 A. What did I say?

17:42:16 25 MR JABBI: My Lord, may I read to the witness from the

26 statement of February 4, 2003 in respect of this piece of

27 information? In the first two sentences on page 9401 of

28 the statement February 4, 2003 - first two sentences -

29 this is what is recorded as your statement: "When I was

1 5-years-old, I was abducted by CO Mohamed of the RUF from
2 Kailahun District. He told me my age. Otherwise I do
3 not know anything."
4 A. Well, that particular statement is not my statement.
17:43:25 5 Q. I will proceed, My Lords, I will come to that later.
6 Now, you said in your evidence-in-chief that when the
7 rebels attacked Pendembu, you were separated from your
8 parents; is that correct?
9 A. Yes.
17:43:59 10 Q. At that time how many parents did you have?
11 A. Well, by then my father was not in town, but my mother
12 and my sisters were there.
13 Q. Was your father alive at that time?
14 A. Yes, yes, he was alive, yes.
17:44:25 15 Q. From the time that you were separated from your parents
16 by the capture by the rebels, have you ever been brought
17 together with them since then?
18 A. Since our separation I've never seen them.
19 Q. From the time you were abducted by the rebels, and
17:45:05 20 thereby separated from your parents, you have not met
21 your parents again?
22 A. At all.
23 Q. It's a sorry situation. Do you by any chance know if any
24 of them is alive?
17:45:26 25 A. Well, if I tell you that, then I'm telling lies.
26 Q. Did you know your parents' names by the time you were
27 abducted?
28 A. I knew my father's name and I knew my mother's name and
29 the names of my sisters.

1 Q. Since you were disarmed and returned to Sunbase [sic] as
2 a home, have you made any attempt by yourself to check
3 where your parents might be?
4 A. Well, that's the reason when I disarmed they sent me
17:46:36 5 there, so that I'll be able to trace my mother and my
6 father.
7 Q. Yes. So my question is have you done that?
8 A. Well, it was being done by NGOs, but they've tried and
9 they've not succeeded. I was not doing it by myself.
17:46:57 10 Q. You have not attempted to do it on your own?
11 A. At all. It was being done by NGOs.
12 Q. How long did you stay with the RUF rebels when you were
13 captured?
14 A. Well, from '95 to '97 to '98, that's when I left them.
17:47:33 15 Q. '97, '98 you left the rebels. Can you be specific there?
16 A. No, no, wait. From '95, when they caught -- when the
17 rebels caught me, I was them till '97. From '97 to '98,
18 that's when I separated with them.
19 Q. Okay, so let's try and be specific. You separated from
17:47:59 20 the rebels in 1997?
21 A. To '98.
22 Q. How long did it take you to separate from them?
23 A. No, I'm not -- I can't show the day.
24 Q. When you were captured by the rebels and you stayed with
17:48:26 25 them for let us say at least two years, what sort of
26 experiences did you go through with them?
27 A. Well, the experience that I went through was when they
28 were taking us to go on a food-finding mission. Then
29 when we go for the food, we will bring it for them in the

1 village. We work for their wives. That's the kind of
2 experience I had from that place.

3 Q. What sort of work were you doing for the wives?

4 A. Well, one, we would help them to cook, and to launder for
17:49:23 5 them.

6 Q. Any more?

7 A. Well, that's what we did for them -- for the wives.

8 Q. When you talk about transporting things for them, what
9 sort of distances were in question?

17:49:44 10 A. Well, I was not the only person. We would go out for two
11 days, finding for food. We would meet civilians and when
12 they see us, they would run away, and we'd take some of
13 their food and capture some of them. That's what we did.

14 Q. So, my question is what sorts of distances would be
17:50:14 15 covered in the process? Like, you go and capture food
16 somewhere, or loot food somewhere, which you have to
17 take, I presume, to your base. Can you tell us the sort
18 of distances you had to walk in that process?

19 A. I cannot exactly state the mileage.

17:50:52 20 Q. But you would travel for about two days and then capture
21 something and then travel back over the distance; is that
22 so?

23 PRESIDING JUDGE: I got him to have said that they would go
24 food searching for about two days -- would go, remain
17:51:12 25 searching food for about two days, then they would
26 capture the civilians -- I mean, they would seize food
27 from civilians and would capture them and take the food
28 away from them. That was food searching. They could
29 stay out for about two days doing that, not that they

1 trekked for two days. Maybe he may clarify the situation
2 anyway.

3 MR JABBI: Yes, that was what I was seeking, a clarification
4 by him as to the relative time spent travelling either
17:51:45 5 way.

6 Q. Yes, you said you would go for about two days, loot or
7 seize food and travel back. Let me just be more
8 specific. Did you on any occasion travel for one whole
9 day, from where you captured food to where you returned
17:52:06 10 it, or from where you left to where you ultimately
11 captured food?

12 A. Well, that's the reason why we used to take two days,
13 because we don't exactly know where the food is. We go
14 around searching for it.

17:52:30 15 Q. I suppose that also meant that you would not have food
16 for yourselves during the process of search, until you
17 saw some food to loot; is that so?

18 A. Yes.

19 Q. Were you free to leave the rebels during that period of
17:53:07 20 two years or so, if you wanted to leave?

21 A. Well, I was not free to leave them, but I was determined
22 to do so.

23 Q. You were determined to leave them?

24 A. Yes, but I was not chanced.

17:53:30 25 Q. For the two years no opportunity at all?

26 A. At all.

27 Q. So would you agree with me if I say you said in your
28 evidence-in-chief that you did not feel fine about your
29 activities when you were staying with the rebels? May I

1 suggest that --

2 JUDGE THOMPSON: Is that correct, learned counsel? I thought

3 it was when he was staying with the Kamajors.

4 MR JABBI: No, My Lord. He did say that even before he was

17:54:13 5 captured by the Kamajors.

6 JUDGE THOMPSON: All right.

7 MR JABBI: I have, in part of the evidence --

8 JUDGE THOMPSON: I apologise. The Prosecution concurs with

9 you.

17:54:22 10 MR JABBI: Yes.

11 JUDGE THOMPSON: Thank you.

12 MR JABBI: Thank you, My Lord.

13 Q. So let me just repeat that. You did say in your evidence

14 that you did not feel fine about your activities when you

17:54:34 15 were staying with the rebels. In view of all that you

16 have said in cross-examination, and your desire -- you

17 say you were determined to escape, but you never had an

18 opportunity for two years, may I put it to you,

19 therefore, that you were very disturbed -- not just that

17:54:59 20 you did not feel fine, but that you were very disturbed

21 and perturbed by what you had to do during your stay with

22 the rebels?

23 A. Yes.

24 Q. And that ultimately the Kamajors drove away the rebels;

17:55:38 25 not so?

26 A. Yes.

27 Q. And that, according to you, was in 1997?

28 A. Yes, it was '98.

29 PRESIDING JUDGE: You should be rounding up for today. I

1 forgot to inform learned counsel that, because of staff
2 problems, we ordinarily should be closing at 5.30. Yes,
3 we ordinarily should be closing at 5:30. I forgot to let
4 you know about this, so you should take note of that,
17:56:26 5 until further notice.

6 MR JABBI: In that case, My Lord, may I --

7 PRESIDING JUDGE: You'll continue tomorrow.

8 MR JABBI: Yes, indeed, My Lord, and take my last question as
9 my first question next time.

17:56:38 10 PRESIDING JUDGE: Yes, not a problem.

11 MR JABBI: Thank you very much.

12 PRESIDING JUDGE: Did you want to tidy up a loose end?

13 MR JABBI: No, I just wanted to --

14 PRESIDING JUDGE: What was your last question?

17:56:50 15 JUDGE BOUTET: When he was captured by the Kamajors --

16 [Overlapping speakers]

17 MR JABBI: My last -- well, not really question; it was a
18 statement preliminary to a question I wanted to ask.

19 JUDGE BOUTET: So we'll break before we get the answers to
17:57:02 20 that.

21 MR JABBI: Yes, My Lord.

22 PRESIDING JUDGE: Okay.

23 MR JABBI: Thank you, My Lord.

24 MR TAVENER: I'm not objecting to that question, Your Honour.
17:57:08 25 I just rise to inform the Court that the witness 2, which
26 is TF2-201, the witness intended to go tomorrow, we may
27 have to change the order to witness TF2-096. I've been
28 informed that the witness we proposed to call might have
29 malaria, so we won't know until tomorrow. He may well be

1 able to go ahead, we're just not quite sure.

2 PRESIDING JUDGE: Okay. I think you should discuss that with

3 your colleagues.

4 MR TAVENER: Certainly.

17:57:39 5 PRESIDING JUDGE: So that we should -- at least so that we

6 know how we'll proceed tomorrow.

7 MR TAVENER: Thank you.

8 PRESIDING JUDGE: Yes. And, of course, as usual, you know

9 that tomorrow we shall only be sitting in the morning up

17:58:01 10 to 12.00, 1.00, depending on how we move, and we're not

11 sitting in the afternoon. Tomorrow is Wednesday, isn't

12 it? Well, those are the rules of the game. Since you

13 have just come from a long holiday, you may have

14 forgotten. So I just felt I should remind you, so that

17:58:22 15 you arrange your schedules accordingly. Yes, Mr Pestman?

16 MR PESTMAN: Sorry, I just missed the schedule for tomorrow.

17 Is it only in the morning?

18 PRESIDING JUDGE: In the morning, yes. From 9.30 to 12.00,

19 1.00. In the afternoon, you know, there is no Court

17:58:36 20 session.

21 JUDGE BOUTET: And this is not by exception. This is the norm

22 that we have established. On Wednesday afternoon we

23 don't normally sit.

24 PRESIDING JUDGE: You appear to have forgotten, Mr Pestman.

17:58:49 25 MR PESTMAN: Yes, I have.

26 PRESIDING JUDGE: That's okay. Right, so the Court will rise

27 and we shall resume tomorrow at 9.30. Court rises,

28 please.

29 [Whereupon the hearing adjourned at 6.03 p.m., to be

1 reconvened on Wednesday, the 3rd day of November 2004, at
2 9.30 a.m.]

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C E R T I F I C A T E

We Roni Kerekes, Maureen P Dunn, and Ella K Drury

Official Court Reporters for the Special Court

for Sierra Leone, do hereby certify that the

foregoing proceedings in the above-entitled cause were taken

at the time and place as stated; that it was taken in

shorthand (machine writer) and thereafter transcribed by

computer, that the foregoing pages contain a true and

correct transcription of said proceedings to the best of our

ability and understanding.

We further certify that we are not of counsel nor related

to any of the parties to this cause and that we are in

nowise interested in the result of said cause.

Roni Kerekes

Maureen P Dunn

Ella K Drury

EXHIBITS:

Exhibit No. 18	101
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WITNESSES FOR THE PROSECUTION:

WITNESS: TF2-021	28
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EXAMINED BY MS PARMAR	28
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CROSS-EXAMINED BY MR JABBI	107
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