

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, 7 DECEMBER 2004  
9.28 a.m.  
TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding  
Bankole Thompson  
Pierre Boutet

For Chambers:

Ms Sharelle Aitchison  
Ms Roza Salibekova

For the Registry:

Mr Geoff walker

For the Prosecution:

Mr Raimund Sauter  
Mr Kevin Tavener  
Ms Sharan Parmar  
Ms Marie-Helene Proulx  
Mr Alieu Iscandari  
Mr Mohamed Stevens  
Ms Leslie Murray (intern)

For the Principal Defender:

No Appearance

For the Accused Sam Hinga Norman:

Dr Bu-Buakei Jabbi  
Mr Kingsley Belle  
Ms Claire da Silva

For the Accused Moinina Fofana:

Mr Arrow Bockarie  
Mr Andrew Ianuzzi

For the Accused Allieu Kondewa:

Mr Charles Margai  
Mr Yada Williams

1 Tuesday, 7 December 2004

2 [The three accused not present]

3 [Open session]

4 [Upon commencing at 9.28 a.m.]

5 PRESIDING JUDGE: Good morning, learned counsel, we are  
6 resuming our session and, as I said, we'll have to break  
7 at certain point, either between 10.25 or 10.30 and  
8 thereafter -- it will not be for a long time. We'll  
9 break just for a short while and resume the session soon  
10 thereafter, so there's no question of our leaving the  
11 courtroom, because I think it is good for counsel to know  
12 that the German delegation is likely to come into the  
13 gallery or to be somewhere to follow the proceedings of  
14 this Court. For those of you who don't know, the Germans  
15 are very active and interested in the seeing to the  
16 smooth running and functioning of this Court. They are  
17 very active in financing the Court and ensuring that  
18 things go well, so these are small details which  
19 I thought I should let you have this morning, and this  
20 said, we'll proceed.

21 JUDGE BOUTET: So, Mr Margai, are you the one opening the  
22 motion that you presented yesterday?

23 MR MARGAI: As I said yesterday, My Lords, there are two  
24 motions before the Chamber. One, dealing with the  
25 permission for Defence investigators to sit in court  
26 during closed sessions and the other dealing with the  
27 recall of witness TF2-057.

28 Now, the first motion will be dealt with by my  
29 learned friend Williams.

1 JUDGE BOUTET: So you want to deal with --  
2 MR MARGAI: I'm dealing with the recall of TF2-057.  
3 JUDGE BOUTET: Which motion are you proceeding with first, the  
4 presence of investigators in court?  
5 MR MARGAI: Yes, My Lord, because that is not contested and I  
6 think we can move faster with that one.  
7 JUDGE BOUTET: On -- fine, we'll hear what you have to say,  
8 because we certainly have some questions in this respect,  
9 from the Prosecution as well, so we would like to know  
10 very clearly what the status is on one side or the other.  
11 So we'll hear what you have to say and we certainly  
12 reserve the right to question you.  
13 MR MARGAI: When I said it is not contested, I was referring  
14 to my colleagues on the other side.  
15 JUDGE BOUTET: I understood that, but we may have questions  
16 for your colleagues on the other side.  
17 PRESIDING JUDGE: And we would like to caution -- I said this  
18 yesterday, we would like to caution the Chamber sees  
19 absolutely -- I mean, there is everything good in  
20 concessions and mutual agreements between the parties,  
21 but we would like to caution that those agreements should  
22 not border on issues that are contested in law or that  
23 would bring the Court to a situation where it might be  
24 called upon to caution or to approve an arrangement which  
25 is not in conformity with the law. So in making your  
26 mutual agreement, we would like counsel to bear this in  
27 mind, because it is not always that the Tribunal will  
28 take these agreements into consideration as representing  
29 the law in a particular situation. Thank you.

1 MR MARGAI: I want to assure the Bench that the overriding  
2 factor and consideration in such agreement is the  
3 forbearance of the rule of law, subject to what the Bench  
4 may say.

5 JUDGE THOMPSON: And the principle of legality.

6 MR MARGAI: Precisely, thank you.

7 PRESIDING JUDGE: That is precisely what I'm saying. That if  
8 we remain with in that, there's no problem.

9 MR MARGAI: We're on the same wavelength.

10 PRESIDING JUDGE: Right.

11 JUDGE BOUTET: So, Mr Williams, if are you ready to proceed,  
12 we're listening to you.

13 MR WILLIAMS: My Lord, my motion filed on the 1st of December  
14 2004 is a joint motion by all three Defence counsel,  
15 My Lords. We are seeking to an order -- we're seeking an  
16 order of this Court that will allow Defence  
17 investigators --

18 PRESIDING JUDGE: Is it an order or orders?

19 MR WILLIAMS: An order, My Lord.

20 PRESIDING JUDGE: Just an order?

21 MR WILLIAMS: Yes. An order of this Court that would allow or  
22 permit Defence investigators to sit in court during  
23 closed sessions. My Lord, it has hitherto been the  
24 practice of asking investigators -- Defence investigators  
25 to leave the court during such sessions. My Lords, the  
26 rationale behind the application is that firstly,  
27 investigators are an integral part of the Defence team.

28 My Lord, in the Directive of -- of the Directive on  
29 the Assignment of Counsel for the Special Court, a

1 Defence team is defined in Article 1 as: "The  
2 individuals providing services to a suspect or accused in  
3 accordance with a provisional assignment, agreement or  
4 legal service contract described in Article 16 of this  
5 directive."

6 My Lord, it cannot be argued that the Defence  
7 investigators do not provide services to a suspect or the  
8 accused.

9 PRESIDING JUDGE: It cannot be argued that --

10 MR WILLIAMS: That investigators, our investigators --

11 PRESIDING JUDGE: Defence investigators?

12 MR WILLIAMS: Yes, our investigators, My Lord, do not provide  
13 services to a suspect or accused. My Lord, based on that  
14 interpretation, we have been given statements disclosed  
15 by the Prosecution to our investigators in furtherance of  
16 their work.

17 JUDGE BOUTET: Mr Williams, the reference you made was to  
18 Article 1 on the definition of assigned counsel  
19 or contracting counsel?

20 MR WILLIAMS: Directive on the assignment of counsel.

21 JUDGE BOUTET: Yes, that is the one I'm looking at.

22 MR WILLIAMS: Yes, that's the one.

23 JUDGE BOUTET: Article 1, which sub-definition? Definition of  
24 assigned counsel?

25 MR WILLIAMS: No, defence team, defence team. I believe it is  
26 on the second page.

27 JUDGE BOUTET: Yes, thank you.

28 MR WILLIAMS: Your Honour, based on that interpretation, we've  
29 been furnishing our investigators with statements

1 disclosed by the Prosecution to assist them in the  
2 performance of their functions.

3 My Lord, it is my submission that that practice is  
4 also in consonance with the directive -- the order of  
5 this Court, My Lord, dated the 8th of June 2004, entitled  
6 Decision on Prosecution Motion For Modification of  
7 Protective Measures For Witnesses, part 3, paragraph  
8 2(G).

9 JUDGE THOMPSON: What is the date of that?

10 MR WILLIAMS: 8 June 2004, My Lord.

11 PRESIDING JUDGE: 2004?

12 MR WILLIAMS: Yes, My Lord. My Lord, that reads that: "The  
13 Defence shall maintain a log indicating the name, address  
14 and position of each person or entity which receives a  
15 copy of or information from a witness statement,  
16 interview report or summary of expected testimony or any  
17 other non-public material, as well as the date of  
18 disclosure, and that the Defence shall ensure that the  
19 person to whom such information was disclosed follows the  
20 order of non-public disclosure."

21 My Lord --

22 PRESIDING JUDGE: This is paragraph what, Mr Williams?

23 MR WILLIAMS: Paragraph 2(G), part 3.

24 PRESIDING JUDGE: Page, first, please. That is a ruling.

25 Page what?

26 MR WILLIAMS: I don't have the page, My Lord.

27 PRESIDING JUDGE: This is paragraph?

28 MR WILLIAMS: Paragraph 2(G), part 3.

29 My Lord, usually before we hand over these

1 materials, we give them the necessary caution as to the  
2 sensitivity of these documents and the Defence office  
3 have also been organising courses for them about  
4 confidentiality.

5 JUDGE BOUTET: Do they sign any particular agreement with you  
6 and/or undertaking with --

7 MR WILLIAMS: No, no, My Lord. They've not signed any  
8 undertaking with us, except it is verbal. Whatever  
9 arrangements between us is verbal, but we keep a log --  
10 we keep a record of what we give to them.

11 JUDGE BOUTET: So we have to trust you that you're doing your  
12 work of making sure that they've being properly  
13 instructed of their rights, obligations and so on without  
14 any further evidence of that if need be in the future?

15 MR WILLIAMS: My Lord, we can provide an undertaking --

16 JUDGE BOUTET: No, no, I'm just asking you. I'm not blaming  
17 you. I'm just asking.

18 MR WILLIAMS: what is the question, My Lord?

19 JUDGE BOUTET: The question is: what if there is any breach  
20 and how do we -- what is our authority to intervene to  
21 protect a witness if information has been leaked out  
22 through one of those people? How do we enforce these  
23 measures?

24 MR WILLIAMS: Contempt proceedings, My Lord.

25 JUDGE BOUTET: But how do you prove the contempt when you  
26 don't have evidence that they've been breached, that they  
27 have not signed any agreement not to disclose anything?

28 MR WILLIAMS: My Lord, I do not know of any rule which says  
29 something should be on paper, My Lord.

1 JUDGE BOUTET: I'm not suggesting that there is a rule that  
2 says you shall. I'm just asking you the question.  
3 MR WILLIAMS: My Lord, these are employees of --  
4 PRESIDING JUDGE: Are you saying that everything, the practice  
5 of law, all facets of the law, should be codified?  
6 MR WILLIAMS: No, My Lord.  
7 PRESIDING JUDGE: Should be factored somewhere in the law?  
8 MR WILLIAMS: By not getting them to sign a written document,  
9 we're not in breach of any laid-down rule.  
10 JUDGE BOUTET: I'm not saying that you are in breach. I'm  
11 just saying, if there were a breach by that particular  
12 investigator, how are we to make sure? Because the whole  
13 purpose of this is to make sure that witnesses to whom  
14 the process and the Court is guaranteeing the protection  
15 of nondisclosure, in fact, that that information is not  
16 disclosed in any way shape, or form. If you are  
17 providing, you, as part of the Defence team, to your  
18 investigator that information and allow them to have  
19 access to that information and if -- I hope it doesn't  
20 happen, but if it does happen that they leaked  
21 information, and you say, "well, we can proceed by  
22 contempt," how are we to establish the contempt? How is  
23 it to be established that there is a contempt, because  
24 they have never made any undertaking to you or to the  
25 Court?  
26 MR WILLIAMS: My Lord, with respect, I do not think for the  
27 Court to try anybody for contempt, that person needs to  
28 have signed any document, just like a journalist would  
29 come into court and disclose certain things that he is



1 not supposed to, he's not signed anything with the court,  
2 but he can still be punished for contempt.  
3 JUDGE BOUTET: Okay. I'm asking you the questions.  
4 MR WILLIAMS: And this is an employee of the Court who should  
5 be more responsible and should be more aware of his  
6 obligations.  
7 PRESIDING JUDGE: Is he an employee of the Court, the  
8 investigator of the Defence?  
9 MR WILLIAMS: Yes.  
10 PRESIDING JUDGE: You say he is an employee of the court?  
11 MR WILLIAMS: Yes, My Lord.  
12 PRESIDING JUDGE: The investigator for the Defence to you is  
13 an employee of the Court?  
14 MR WILLIAMS: The Defence contracts them, My Lord. They are  
15 paid by the Defence.  
16 JUDGE BOUTET: The Defence office that pays them, it's not  
17 your team, for example, that pays out of your own budget?  
18 MR WILLIAMS: It is a separate budget.  
19 JUDGE BOUTET: I'm just trying to understand how it works.  
20 I'm not familiar with your organisation. So you have an  
21 investigator assigned to your team?  
22 MR WILLIAMS: Yes, My Lord.  
23 JUDGE BOUTET: And that investigator is assigned to you by the  
24 Defence office?  
25 MR WILLIAMS: No, we get an investigator and then the  
26 investigate -- the Defence office contracts him.  
27 JUDGE BOUTET: So you refer the person for financial  
28 arrangement to the Defence office?  
29 MR WILLIAMS: Yes.

1 JUDGE THOMPSON: Mr, Williams?  
2 MR WILLIAMS: Yes, My Lord.  
3 JUDGE THOMPSON: You were spelling out the rationale for the  
4 motion. I got only one, that the investigators are an  
5 integral part of the Defence team. Are you going to  
6 articulate some further rationale for this, because  
7 I need to be satisfied that the application is well  
8 predicated upon some issue of the interest of justice,  
9 and also the concept of equality of arms and that kind of  
10 thing.  
11 MR WILLIAMS: My Lord, firstly, they are an integral part of  
12 the Defence team and, secondly, that we've been  
13 working -- or complying -- basically complying with the  
14 decision of this Court dated the 8th of June, 2004.  
15 My Lord, the reason I canvassed this point, My Lord,  
16 is that we have been --  
17 JUDGE THOMPSON: Let me ask, what is the present -- what, if  
18 any, disadvantage to your side exists in relation to the  
19 status quo? In other words, that they are not now  
20 permitted to be present during closed sessions hearings.  
21 MR WILLIAMS: As I mentioned, we've been handing over  
22 disclosed materials to them.  
23 JUDGE THOMPSON: Yes.  
24 MR WILLIAMS: And some of these materials are quite --  
25 statements or summaries are quite brief and they've taken  
26 us by surprise on several occasions. But the knowledge  
27 of these investigators are quite significant, My Lord.  
28 Looking at the statement disclosed or the summary  
29 disclosed, some of them say practically nothing. And so

1 most of the time we're taken by surprise in court, but if  
2 they're present whilst testimony is being given, My Lord,  
3 they take notes, they confer with us before  
4 cross-examination and that has proved of tremendous --

5 JUDGE THOMPSON: So that will enhance the efficiency of the  
6 preparation of the Defence case, rather than the existing  
7 system, which you say is a setback for you?

8 MR WILLIAMS: Yes, to some extent, My Lord.

9 PRESIDING JUDGE: Mr Williams, I would like you to address a  
10 little worry that I have in my mind. And I think the  
11 same goes to the worries also addressed to the  
12 Prosecution. Investigators are potential witnesses for  
13 either party in the proceedings. If they are potential  
14 witnesses of either party in the proceedings, would it be  
15 faithful to -- I mean, these are principles that we have  
16 adopted that witnesses should be out of court and out of  
17 hearing, you know, in terms of following the evidence of  
18 the witnesses. Would it be healthy - this question goes  
19 to both sides - would it be healthy to have  
20 investigators, because I'm not aware that -- honestly I  
21 have not been aware that there have been any  
22 investigators for the Prosecution in court. I have not  
23 been aware of this. Let me say this very, very clearly.  
24 I know that there has been a suggestion here that some  
25 Prosecutors have been playing the role of investigators  
26 and so on, well, that is another issue. They are  
27 Prosecutors, and it is still a matter that is quite a  
28 worry at a certain stage, but, you know, that is the  
29 question I'm putting on both sides of the aisle, because

1 it would look like we would have people who are witnesses  
2 coming into this Court, listening to the evidence and  
3 then coming to testify as investigators. We've run into  
4 problems with some witness statements and, in fact, the  
5 Chamber is seized with a motion from the Defence for the  
6 recall of certain investigators who took down the  
7 statements of a certain witness. I don't have the number  
8 here. I mean, it is in this light that I imagine that at  
9 certain stage, at a certain point in time the Prosecution  
10 may have to, in proving its case - I do not know what  
11 their strategy is - to call in some investigators who  
12 went through most of these processes in order to close up  
13 the Prosecution's case. Should they be sitting in court?  
14 That is my question.

15 MR WILLIAMS: My Lord, my brief response to that is that it is  
16 quite true that investigators are competent -- I mean,  
17 compellable witnesses. They can, you know, make both a  
18 competent and compellable witnesses, but there would be  
19 conflict of interest, My Lord, if somebody who has been  
20 employed by this Court, and they're doing work for the  
21 Defence, were to be called as a Defence witness. I mean,  
22 there's manifest conflict of interest there. So  
23 I mean --

24 PRESIDING JUDGE: What if he proffers into the record certain  
25 facts which the Court would want to look into? How do we  
26 get around the difficulty? I mean, if you're trying to  
27 convince the Court -- the Defence brings in certain facts  
28 which are contestable and we need to have the source of  
29 those facts to testify before us, are you saying that we

1 cannot do that?

2 MR WILLIAMS: I don't quite understand the scenario Your  
3 Lordship is --

4 PRESIDING JUDGE: Your Defence investigator has done some  
5 investigations. The facts which he has brought out, you  
6 know, during his investigation are before this Court.  
7 They are contested.

8 MR WILLIAMS: Yes, My Lord.

9 PRESIDING JUDGE: You mean we cannot call him to clarify  
10 certain issues which are contested in the evidence?

11 MR WILLIAMS: I believe, Your Lordship, has the discretion to  
12 call anybody as a witness. I mean, the Court on its  
13 motion can call somebody --

14 PRESIDING JUDGE: No, I am putting the question to you.

15 MR WILLIAMS: We, as a Defence team, we would not call  
16 investigators to come and testify on behalf of any of the  
17 accused persons, but, yes, the Court could. I mean --

18 PRESIDING JUDGE: My question is not answered, but I'll let it  
19 go.

20 JUDGE THOMPSON: Let me follow one aspect of that up. So the  
21 Defence investigators are not the same official-like  
22 investigators for the Prosecution? Are there any  
23 similarities or are there any very significant  
24 dissimilarities, because if you say that you're not  
25 likely to call any of your investigators as Defence  
26 witnesses, then it means that the roles they are  
27 performing would apparently be different from the roles  
28 that the -- for example, a Prosecution investigator who  
29 records a statement from a witness. Are there

1 similarities or dissimilarities you would like to  
2 enlighten me on?

3 MR WILLIAMS: They perform basically the same functions except  
4 that the Prosecution investigators double as something  
5 else. I mean they are investigators and some of them are  
6 prosecutors as well. But our investigators also go out  
7 and obtain statements, record them and have the witness  
8 sign. So I mean, there are a lot of similarities, but  
9 theirs go some stages beyond what --

10 JUDGE THOMPSON: Therefore if I would develop the learned  
11 Presiding Judge's theory here, suppose your investigator  
12 records a statement from a potential witness for the  
13 Defence and the issue of whether the statement was  
14 accurately recorded were to become a live issue before  
15 the Court, and one way the Court would be assisted in  
16 resolving the matter is to have some kind of testimony by  
17 way of clarification or explanation as to why there is  
18 some discrepancy between -- on the statement, probably  
19 between the evidence of the witness in the witness box  
20 and the statement made to the investigator. Would that  
21 not be a possibility?

22 MR WILLIAMS: It would be -- it is a possibility, My Lord,  
23 but, I mean, the evidence that that person would adduce  
24 would be very superficial.

25 JUDGE THOMPSON: Yes, yes. So the fact that such a witness  
26 has been in a closed session hearing relating to that  
27 very matter would not create a situation which would be  
28 really conflictual for the ends of justice?

29 MR WILLIAMS: I don't think so, My Lord. What the motion is

1 seeking to achieve, My Lord, is not too far-fetched from  
2 what is already in practice.

3 JUDGE THOMPSON: I see.

4 MR WILLIAMS: Now they have access to all the documents. That  
5 small -- very limited occasions that we go into closed  
6 sessions that we want them in. Except if the Bench would  
7 say, we're not supposed to have given them the witness  
8 statements or summaries, then we'll be in a very  
9 difficult situation, but I mean, if Your Lordships hold  
10 that the practice of giving statements or summaries to  
11 the investigators is in accordance with the Rules, then  
12 this extra thing that we're asking for is not  
13 substantial, My Lord.

14 JUDGE THOMPSON: My difficulty is, why is the existing system  
15 not efficacious enough in achieving the ends which you  
16 are trying to achieve, and why do they need to go this  
17 extra mile, considering sensitivity of the closed session  
18 and the entire machinery of protecting witnesses?

19 MR WILLIAMS: My Lord, this was not clearly stated in -- it  
20 was not stated in the motion, but we were not seeking --  
21 or asking that the investigators be present in this room.  
22 They can be in the gallery just listening to the  
23 evidence, which is almost synonymous to them reading the  
24 witness statements or summaries, but, I mean, our concern  
25 is that -- because of the length of some of these  
26 documents, when disclosed a paragraph, two paragraphs, a  
27 page and the witnesses come and testify for four hours,  
28 My Lord, it is -- it is -- it has created a lot of  
29 problems for the Defence, My Lord. There is very little

1 we can put by way of cross-examination to such witnesses.  
2 But if our investigators who have been working out there,  
3 present listening to them, just 15 or 20 minutes  
4 conference with them, My Lord, can make a lot of  
5 difference.

6 PRESIDING JUDGE: So what you're saying is, as the Defence  
7 investigator who is present in the closed session, he's  
8 following the evidence. We would have to break for you  
9 to consult with him in order to see what way your  
10 cross-examination will go.

11 MR WILLIAMS: No, My Lord, it can be -- we've been doing it  
12 when witnesses -- when it is open session they've been  
13 taking notes and it is done contemporaneously and there  
14 are times when they just indicate to us and we go out and  
15 pick up, you know records of -- comments they've made.

16 PRESIDING JUDGE: Can you wind up, Mr Williams, so that we  
17 hear the Prosecution in reply before we rise.

18 MR WILLIAMS: The application, My Lord, is also made pursuant  
19 to Article 17(4)(B) of the Statute of the Special Court,  
20 which states, My Lord, that the accused person shall be  
21 given adequate time and facilities for the preparation of  
22 their defence. My Lord, it is our submission that the  
23 presentation of these investigators in closed session  
24 would provide the accused person with some additional  
25 facility for the preparation of their defence.

26 JUDGE BOUTET: Mr Williams, in your motion at paragraph 7 you  
27 say, and I'm quoting you, "The Defence notes that on  
28 numerous occasions Prosecution investigators have sat in  
29 the courtroom during closed sessions." I have no such --



1 I'm not saying it is wrong. I'm just asking you, can you  
2 give and provide the Court with some additional details,  
3 because I don't have that recollection. I've seen a lot  
4 of people sitting on the Prosecution side who are all  
5 dressed with proper court accouterment, so I could not  
6 tell you that they were investigators or lawyers, as  
7 such. So we assume that they were all legally trained  
8 and qualified.

9 MR WILLIAMS: My Lord, most of the Prosecutors, My Lord, were  
10 doing -- as I mentioned earlier, were doubling as  
11 investigators as well. And they did --

12 JUDGE BOUTET: Most of them?

13 MR WILLIAMS: Yes, a good number of them, My Lord. And even  
14 the statement that they've disclosed, clearly states the  
15 name of the person who obtained the statement and they've  
16 been doing that as investigators. And most of the time  
17 it is these people who come and lead these witnesses  
18 in-chief.

19 JUDGE BOUTET: Yes, but these investigators - let's use the  
20 term investigator for that purpose - you are also saying  
21 they are all lawyers on their own, so they're -- but are  
22 your investigators also lawyers?

23 MR WILLIAMS: No, My Lord. We're not asking this Court to  
24 give them the privileges that are accorded to out  
25 colleagues on the other side. That's why I said, just  
26 sitting in the galley would be fine by us. They need not  
27 see the witnesses. Just listening to the testimony would  
28 be fine.

29 My Lord, in the response filed by the Prosecution,

1 they're not opposed to the application in principle. My  
2 Lord, their only caution is that somebody should take  
3 responsibility for the conduct of these investigators,  
4 somebody in the Defence team should take responsibility  
5 for the conduct of the investigators. My Lord, we're not  
6 adverse to providing such guarantee or guarantees,  
7 My Lord.

8 My Lords, that is all I wish to say at this stage.

9 JUDGE BOUTET: Thank you. Can we ask the Prosecution if they  
10 have any -- I would like to hear you, as well, on the  
11 fact that the investigators for the Prosecution have been  
12 sitting in court.

13 MR TAVENER: Firstly, Your Honour, as has just been mentioned  
14 by Mr Williams, the Prosecution doesn't oppose the  
15 application in principle. It is how it is to be  
16 practically applied. I'm surprised that the words  
17 "equality of arms" has not been mentioned during the  
18 course of my friend's submission. But in this case, the  
19 Prosecution accepts there needs to be some balance  
20 between the facilities and resources available to the  
21 Prosecution and those available to the Defence. Again,  
22 that being said, one has to look at how that is  
23 practically applied.

24 In terms of Prosecutors who have taken statements,  
25 I understand that was the position at some stage  
26 relatively early in the investigation, Prosecutors or  
27 lawyers did take statements. Those Prosecutors - and  
28 there wasn't many - have subsequently appeared in court,  
29 so there was that crossover. However, because they

1           were -- are legal practitioners --

2   PRESIDING JUDGE: Please, be very concrete. You know, we want

3           to be very sure of this, because I'm hearing for the

4           first time that your investigators have been in court.

5           We want you to be very -- to come up front, you know,

6           with what has been happening.

7   MR TAVENER: No, our investigators --

8   PRESIDING JUDGE: You see, you remember Mr Margai premised a

9           similar application on the presence of certain interns,

10          either -- I mean, on the side of the Prosecution and we

11          said well, it could be -- this could be something that

12          affects both the Prosecution and the Defence and that

13          they are matters which should be addressed in order to

14          know, you know, who is inside this arena. This is very

15          important.

16   MR TAVENER: what has happened is some legal officers took

17          statements and that is contained on the statement itself,

18          and that's how they're identified.

19   PRESIDING JUDGE: Not legal officers. You mean some

20          Prosecutors; is that what you're saying?

21   MR TAVENER: Yes, some Prosecutors took statements.

22   PRESIDING JUDGE: Some Prosecutors took statements.

23   MR TAVENER: Yes, those Prosecutors subsequently appear in

24          court, but I differentiate them from investigators in

25          that they are Prosecutors who took some statements at an

26          early stage of the investigation, as I understand it.

27   PRESIDING JUDGE: what are you saying? what distinction are

28          you making? You say they are not like investigators, or

29          so?

1 MR TAVENER: I'm saying they took statements, however, they  
2 are legal practitioners, prosecutors, who took  
3 statements. Subsequently, as Mr Margai has pointed out,  
4 they sat in court. The position --

5 PRESIDING JUDGE: In taking those statements, how do you  
6 categorise them? Are they investigators or prosecutors  
7 or are they investigators and prosecutors the same time?

8 MR TAVENER: well, I would categorise them as prosecutors who  
9 took statements.

10 PRESIDING JUDGE: You would categorise them as prosecutors who  
11 took statements.

12 MR TAVENER: The issue here --

13 PRESIDING JUDGE: Please just wait.

14 MR TAVENER: Sorry.

15 PRESIDING JUDGE: And at what stage did they take these  
16 statements?

17 MR TAVENER: As I understand matters, and I wasn't here, but  
18 as I understand matters --

19 PRESIDING JUDGE: You know there is a first contact with the  
20 witness. Once the witness is identified, there is a  
21 first contact with him. At what stage did these  
22 prosecutors who took statements, at what stage did they  
23 come in in recording these statements from the accused  
24 persons or the suspects -- or the witnesses, I'm sorry.

25 MR TAVENER: As I understand matters, they took, on occasions,  
26 the original statement, the first statement from the  
27 witness. Whether or not that witness had earlier contact  
28 with some other person from the office, I can't say, but  
29 they, on occasions, took the first statement. Is that

1 what Your Honour is asking?

2 PRESIDING JUDGE: You say on occasions you took --

3 MR TAVENER: As I said, they took the first statement, whether  
4 or not that was the first contact the witness had with  
5 the office of the Prosecutor, I don't know, but on  
6 occasions, as I understand it, in the early stages of the  
7 investigation, prosecutors took statements. And as  
8 I understand from reading the statements, they took  
9 statements often with the aid of an investigator and/or  
10 an interpreter.

11 JUDGE BOUTET: You seem to be saying as well that that's the  
12 practice that existed, but it is not being done any more?  
13 Or what is the status now?

14 MR TAVENER: well, what happens now is, obviously, the  
15 Prosecutors speak to witnesses for the purpose of  
16 proofing and if additional material comes from that, then  
17 that is filed as part of the disclosure. And I think  
18 we've moved along the process some way since the initial  
19 investigations started. So now the contact between the  
20 Prosecutors and the witnesses are the usual getting up of  
21 a --

22 JUDGE BOUTET: So the contact there is a prosecutor  
23 interviewing a witness for the purpose of giving  
24 evidence? In other words, it is in preparation for  
25 testimony at that time rather than the initial  
26 determination of whatever.

27 MR TAVENER: Yes, the initial taking of a statement. The  
28 contact now is the usual contact of a --

29 JUDGE BOUTET: For example, if you are the one conducting the

1 interview of a witness in Court, you would meet that  
2 witness prior to and go through the statement with that  
3 witness and so on. That is the normal process, so that  
4 is what you mean by that. So it is not conducting an  
5 investigation per se, but getting ready for trial --  
6 preparation for trial.

7 MR TAVENER: Exactly. And occasionally, as has been noted in  
8 this Court, additional material is generated which is  
9 then disclosed.

10 JUDGE BOUTET: As a result of that meeting?

11 MR TAVENER: That's right, but I understand earlier on there  
12 were some statements taken by investigators and it is  
13 clearly identified by the name on the statement as the  
14 person who took it all, the investigator, or whether  
15 there was an interpreter present.

16 JUDGE BOUTET: But for -- I know the Prosecution is not  
17 opposing the application made by the Defence in this  
18 respect, but do I take it, too, from your comments that  
19 we are not likely to see investigative prosecutors in  
20 court any more, other than those working in preparation  
21 for their case.

22 MR TAVENER: That's correct. That no investigators -- we  
23 don't expect any investigators. There is one  
24 investigator who has been present in court, but that  
25 person is a lawyer, so occasionally, but that's only on  
26 occasion.

27 JUDGE THOMPSON: Let me pursue that line of reasoning of my  
28 learned brother. I need to be -- need some further  
29 clarifications myself. Perhaps you need to cover

1 familiar ground with a little more clarity. You say when  
2 a prosecutor takes a statement from a witness, as has  
3 been the practice in some cases, what role is he  
4 performing?

5 MR TAVENER: At that stage the prosecutor is taking a  
6 statement.

7 JUDGE THOMPSON: No, what I'm saying is what role is he  
8 performing considering the familiar categorisations which  
9 we lawyers are used to in our tradition? Is he  
10 performing the role of what, a prosecutor or an  
11 investigator? I mean, we have certain -- we're all  
12 members of the legal profession; we have certain  
13 categorisations. For example, we cannot expect a member  
14 of the executive to come and prosecute here whilst he is  
15 member of the executive. We have the differentiation  
16 between prosecution sometimes and investigation, the  
17 processes. I'm asking the question for my own  
18 edification. When a Prosecutor takes a statement from a  
19 witness, because -- I follow the distinction you sought  
20 to make in answer to my learned brother, when he seeks to  
21 take a statement from a witness, what role is he  
22 performing?

23 MR TAVENER: I don't have the same strict separation or  
24 definition that Your Honour has between a prosecutor and  
25 an investigator. On occasions prosecutors take  
26 statements.

27 JUDGE THOMPSON: In other words, on occasion, a prosecutor is  
28 an investigator.

29 MR TAVENER: On occasion, they take statements.

1 JUDGE THOMPSON: A procurator general kind of concept which is  
2 familiar more in the civil law system.

3 MR TAVENER: But it is not a concept unknown to me for a  
4 prosecutor to take a statement. It depends on the  
5 circumstances.

6 JUDGE THOMPSON: In other words, for the purpose of  
7 investigation.

8 MR TAVENER: For the purpose of taking a statement from a  
9 witness.

10 JUDGE THOMPSON: So then, what that really means is that --  
11 and take a hypothetical situation: If a statement is in  
12 issue as to whether it was properly recorded or not by  
13 whoever took that statement, and the Court wants some  
14 clarification or explanations as to the manner and  
15 procedure adopted in taking that statement, and the Court  
16 intends to clarify this problem, what would be the --  
17 what would be one recourse, from your perspective?

18 PRESIDING JUDGE: I would add, and the statement was recorded  
19 by the prosecuting counsel.

20 JUDGE THOMPSON: what would be your advice as a lawyer to the  
21 Chamber, if the Chamber says we need some further  
22 evidence to explain, or to remove some doubts as to  
23 whether the procedure was properly followed and that that  
24 statement is a correct and accurate portrayal of the  
25 facts as stated?

26 PRESIDING JUDGE: would the counsel in question switch places  
27 from where you're standing to the -- I just want to  
28 complement what my colleague is putting across.

29 MR TAVENER: Now I appreciate what Your Honour raised earlier



1 with Mr Williams on that same point as to whether or not  
2 they would call the investigator should that issue arise.  
3 The position would be - and I'm sure Your Honour knows  
4 the answer - the position would be that when the -- when  
5 the Prosecutor took statements - and I'm just trying to  
6 refer to statements off the top of my head - they were  
7 normally accompanied by an investigator and I say and/or  
8 an interpreter, depending on whether they needed an  
9 interpreter. So on the first instance, the investigator  
10 would be called as opposed to the prosecutor who was also  
11 present. So that would be the solution. As Your Honours  
12 indicate, if necessary, yes, the prosecutor may be placed  
13 in the position of being a witness, but as I understand  
14 it, they normally took statements with an investigator  
15 who would be the prime witness as to the manner in which  
16 the statement was taken.

17 PRESIDING JUDGE: Mr Tavener, you're saying that the  
18 prosecutors took the statements in the presence of  
19 investigators.

20 MR TAVENER: They're normally accompanied by an investigator  
21 and often an interpreter, so should that issue arise, as  
22 His Honour Judge Thompson has raised, then the  
23 investigator could also give that same evidence and then  
24 nominate on the statement. That is as how I understand  
25 it, and that is the usual procedure. And as we're now at  
26 the stage where we simply speak to witnesses and disclose  
27 further material, that issue does not arise, but it would  
28 arise in the circumstances Your Honour has identified,  
29 which is why, again, the Prosecution has no objection in

1 principle to the application. Our only concern is the  
2 manner in which the Court can exercise control over those  
3 persons. The Prosecution wasn't -- didn't have full  
4 understanding of how the investigators were connected to  
5 the individual Defence teams and therefore, we were  
6 concerned that control had to be exercised. The persons  
7 who have been nominated by Defence as being present in  
8 Court are legal practitioners and control can be  
9 exercised over them relatively easily by the Court.  
10 That's why the Prosecution --

11 JUDGE THOMPSON: So in this context, the concern would revolve  
12 around the concept of non-public disclosure?

13 MR TAVENER: Yes.

14 JUDGE THOMPSON: So that would be at the end of the day,  
15 because if that is the interest which we're trying to  
16 safeguard at the end of day, because if we concede that  
17 by reason of the doctrine of equality of arms they're  
18 entitled to have their own investigators also, then the  
19 issue at the end of the day is: Can we guarantee  
20 non-public disclosure?

21 MR TAVENER: Exactly. That is why we don't oppose it in  
22 principle. It is merely the application of allowing  
23 equality of arms to the Defence in this particular  
24 regard, ensuring that non-public disclosure is  
25 maintained. The suggestion by the Prosecution in our  
26 submission is that the individual team leaders accept  
27 responsibility, they being legal practitioners, officers  
28 of the court, to ensure that the persons they brief --  
29 they instruct fully understand their obligations and if

1           they fail on those obligations, then the leader of the  
2           team becomes directly responsible for that failure.

3   JUDGE BOUTET: Yes, but when you're dealing with lawyers, as  
4           such, you have a diversity of recourses. You may be  
5           precluded from acting in front of this Court, you could  
6           face contempt of court, you may be referred to your own  
7           bar for disciplinary action. I mean, there are various  
8           recourses possible.

9   MR TAVENER: That is the advantage.

10   JUDGE BOUTET: But what recourses, other than possible  
11           contempt, does the Court have for violation of an order  
12           by an investigator, a non-lawyer investigator?

13   MR TAVENER: The only one that immediately comes to mind would  
14           be contempt, and that is why the Prosecution asks that  
15           there be a nominated person from the Defence team  
16           responsible. And as Your Honour said, there is a range  
17           of options available to deal with a person whose agent  
18           has acted in that manner, and that may encourage the  
19           Defence to ensure compliance with the Rules. That is all  
20           the Prosecution is seeking.

21   JUDGE BOUTET: Do you wish to add anything else, Mr Tavener?

22   MR TAVENER: No, thank you.

23   PRESIDING JUDGE: Maybe a reply from Mr Williams also, if  
24           there is any.

25   MR WILLIAMS: Yes, My Lord, we --

26   JUDGE BOUTET: Mr Williams, before you do, I do have one  
27           question for you. Based on what you've informed the  
28           Court as to how you proceed and the work you do with your  
29           investigator, when you have a witness that has given

1 evidence in a closed session - let's use that as an  
2 example as this is the basis of your application - do you  
3 disclose that evidence to that witness afterwards at this  
4 particular moment?

5 MR WILLIAMS: Disclose the evidence to the investigator?

6 JUDGE BOUTET: To the investigator because, presumably, if you  
7 need to pursue some avenues that came out during the  
8 closed session, you are likely to give that information  
9 to your investigator; am I right?

10 MR WILLIAMS: There are times we do discuss the evidence with  
11 them, but most of the time we almost cross-examine  
12 immediately thereafter.

13 JUDGE BOUTET: I'm not trying to put you on the spot. My  
14 question is not hiding anything. It is only in order  
15 to -- what I'm trying to ascertain is -- let's forget  
16 about closed session witnesses. Other witnesses your  
17 investigators are, in most cases, in the public gallery  
18 and, therefore, they hear the evidence. But the other  
19 cases, if you need to pursue a line of investigation that  
20 came out during the cross-examination or  
21 examination-in-chief of a witness in a closed session,  
22 surely you are to ask the investigator either to look at  
23 the evidence, or to give him part of the evidence to say,  
24 "well, would you pursue and look into this matter at this  
25 stage."

26 MR WILLIAMS: Yes, My Lord --

27 JUDGE BOUTET: You do?

28 MR WILLIAMS: Yes, we do. And, Your Honours, the  
29 investigators have so far been under the direct

1 supervision of our legal assistant. My learned friend is  
2 talking about taking direct responsibility. What I said  
3 to him yesterday was that I would not be prepared to go  
4 to jail for the breach of an investigator. I mean, we  
5 can tell them all the consequences, but I mean, to say  
6 direct responsibility, going to jail for somebody is  
7 something we're not prepared to take.

8 PRESIDING JUDGE: I don't want to see Mr Williams there.

9 MR WILLIAMS: As My Lord pleases.

10 JUDGE THOMPSON: There would be, clearly, in your situation a  
11 fiduciary relationship between you and your  
12 investigators, wouldn't there?

13 MR WILLIAMS: Yes, My Lord.

14 JUDGE THOMPSON: So wouldn't that kind of scenario also be  
15 important in providing some supervisor control?

16 MR WILLIAMS: Certainly, My Lord.

17 JUDGE THOMPSON: I mean, nobody is suggesting that we would  
18 like to see you behind bars for something that you didn't  
19 do, even in the context of vicarious liability. I think  
20 it is corporations that we make that kind of attribution  
21 to. But I would have thought that the internal  
22 arrangement should provide for a fiduciary relationship.

23 MR WILLIAMS: That is in existence, My Lord, and we would be  
24 prepared to go even a step further and prepare an  
25 undertaking that would spell out the allegations and the  
26 consequences --

27 JUDGE BOUTET: We need to be satisfied that indeed there are  
28 protections that are in existence and there are limits to  
29 that. We need to be satisfied with that. I mean, I have

1           been through this process of issuing directions, orders  
2           to protect witnesses and their identity and so on, and it  
3           is very important in the context of Sierra Leone, as you  
4           know, and we are deeply concerned about that, so we want  
5           to make sure that whatever we have in place is indeed  
6           functioning.

7                       Now to come to your question, obviously the fact  
8           that you may not be the one who has disclosed the  
9           information, but if it is the investigator who is working  
10          for you, but you failed to supervise that investigator  
11          properly, well, we'll take you to account for that. So,  
12          yes, you may not be the one who has disclosed, but if you  
13          do not do your work as a legal assistant or supervisor,  
14          you may have been held responsible for it.

15       MR WILLIAMS: As My Lord pleases. But so far they've been  
16          conducting themselves properly and I could even give an  
17          instance or instances where -- I mean, it is so  
18          stringent, My Lord, that they are not even allowed to  
19          disclose their work to the other teams. I mean, they go  
20          out investigating. What they get, they cannot disclose  
21          to even other defence teams. And they have been strictly  
22          abiding by that rule, My Lord.

23       JUDGE BOUTET: That's fine. As I say, we are also learning,  
24          because that's why we're asking all these questions. I  
25          don't know how the work of the investigators and the  
26          intricacies of that is really operating on a daily basis.  
27          That is why we're asking these questions.

28                       Yes, Mr Margai.

29       MR MARGAI: With your leave, My Lords, this is a matter that

1 has arisen for the first time and, as I said, we're still  
2 in the process of learning and trying to put forward a  
3 jurisprudence that will perhaps justify the course of  
4 time. I was going to go suggest, subject to the  
5 convenience of the Court, if both sides, meaning the  
6 Prosecution and the Defence, could work out some form of  
7 modality in the application of such a request and submit  
8 it for the consideration of the Bench. You see, because  
9 these are very, very important issue and --

10 PRESIDING JUDGE: You mean that you will prepare a practice  
11 directive for the Bench to follow?

12 MR MARGAI: No, it is not a practice directive, My Lord.

13 PRESIDING JUDGE: It is. I consider it a practice directive.

14 MR MARGAI: No, it is not our function, because I remember in  
15 the course of the application - I'm sure it came from  
16 Justice Boutet - that perhaps some arrangement ought to  
17 be worked out to ensure that these investigators keep  
18 within the ambit of the accepted norms. That was why  
19 I said, subject to the convenience of the court. I mean,  
20 the question of practice directive is something within  
21 the purview the Court, not the Bar. And I don't think  
22 any of us is thinking at the moment of usurping  
23 Your Lordships' functions.

24 PRESIDING JUDGE: We have it on record that Mr Margai says it  
25 is not one of his ambitions to become a judge. So we  
26 don't suspect you to take any of our functions, and even  
27 if you had to, maybe it is not at this point in time.

28 MR MARGAI: No, I'm not speaking for myself. I'm speaking for  
29 all of us here. I'm sure there are amongst us people

1 hoping to become judges.

2 PRESIDING JUDGE: Oh, yes, that is a normal profile, you know,  
3 of a lawyer, either from the Bar or from wherever.

4 I mean --

5 MR MARGAI: It is only for the distraction.

6 PRESIDING JUDGE: I am sure you will not -- even though you do  
7 not want to become one, you will not disagree with me  
8 that it is an achievement for a lawyer to become a judge.

9 MR MARGAI: I'm looking forward to that as a last resort.

10 PRESIDING JUDGE: well, this said, I think we would rise, a  
11 convenient time for us to rise in order for us to take  
12 care of some other preoccupations, but we shall resume  
13 session here before it is 11.00. So, please, we would  
14 rise and resume at any time before 11.00 as soon as we're  
15 done with the German President. The court will rise,  
16 please.

17 [Recess taken at 10.30 a.m.]

18 [HN071204B]

19 [Upon resuming at 11.45 a.m.]

20 PRESIDING JUDGE: Learned counsel, we are resuming our  
21 session. There were two motions on the table today. We  
22 finished with one aspect of it and we are prepared to  
23 take arguments on the other arm of the motion. Is it  
24 Mr Margai? Is it Mr Williams?

25 MR MARGAI: It's me, My Lord.

26 PRESIDING JUDGE: Mr Margai.

27 JUDGE BOUTET: This is your application for the recall of the  
28 witness?

29 MR MARGAI: That is correct, My Lords.



1 JUDGE BOUTET: Just for greater clarity, is the second accused  
2 - because I know you've joined on all of these - also  
3 making another motion here today about the evidence --  
4 about the Exhibit to be filed?  
5 MR BOCKARIE: Your Honour, the interests of the second accused  
6 lie with --  
7 JUDGE BOUTET: I'm not asking you to make the motion now. I'm  
8 just asking if you're going to make that motion.  
9 MR BOCKARIE: Yes, Your Honour, if at all the Court permits me  
10 I would like the motion to be heard.  
11 JUDGE BOUTET: Okay. Mr Margai?  
12 MR MARGAI: My Lords, I'm seeking your directive as to which  
13 of the two motions I should proceed with, because I filed  
14 a motion on the 3rd of December 2004 and one dated 6th  
15 December 2004. Both motions are substantially the same.  
16 JUDGE BOUTET: The one on the 6th of December is an amendment  
17 to the one of the 3rd.  
18 MR MARGAI: That is correct.  
19 JUDGE BOUTET: Proceed on the one on the 6th. I've looked at  
20 both; there is not much difference, but slight  
21 differences.  
22 MR MARGAI: As My Lord pleases.  
23 JUDGE BOUTET: But go on the 6th.  
24 MR MARGAI: I have sought your directive in the light of the  
25 response from --  
26 PRESIDING JUDGE: Let me put it this way, Mr Margai: We are  
27 more focused on the motion that relates to the recalling  
28 of the witness.  
29 MR MARGAI: That's the one I'm talking about. In fact, both

1 are dealing with the same issue.  
2 JUDGE THOMPSON: Doesn't one supersede the other?  
3 MR MARGAI: The latter supersedes the former.  
4 JUDGE THOMPSON: Then we have one motion paper before us;  
5 isn't it? Unless you want to consolidate.  
6 MR MARGAI: No, no, My Lords. I sought your directive in the  
7 light of the response from the Prosecution. They were  
8 contending in their introductory paragraph, paragraph 1,  
9 line 7, "However, on Monday 6th December, as the  
10 Prosecution was ready to file its response, the Defence  
11 filed, without leave of the Court, a second motion that  
12 supersedes the first motion, entitled 'Allieu Kondewa  
13 Amended Motion for the Recall of Witness TF2-057'."  
14 JUDGE THOMPSON: So it is likely they are going to take issue  
15 with you on that one.  
16 MR MARGAI: Well, I'm anticipating it's going to be --  
17 [Overlapping speakers]  
18 JUDGE THOMPSON: well, I will just rest my position.  
19 PRESIDING JUDGE: In which event it is premature to imagine or  
20 to conclude that the second motion supersedes the earlier  
21 one.  
22 MR MARGAI: I would have thought so; that was why I sought  
23 your leave. But then, when your learned brother on your  
24 left gave me the green light to proceed, I was going to  
25 proceed albeit with caution.  
26 PRESIDING JUDGE: I am sure he did not mean to grant you the  
27 leave on that.  
28 JUDGE BOUTET: I would suggest to you that the substantial  
29 differences between the two are not that -- what you have

1           been asking in the first one is exactly the same thing in  
2           the second one. It's in the arguments.  
3 MR MARGAI: Except for the addition of an authority.  
4 JUDGE BOUTET: That's right, that's what I mean.  
5 MR MARGAI: And also incorporating in the amended motion the  
6           address of the witness is mentioned therein.  
7 JUDGE THOMPSON: For me, the issue now is a procedural one,  
8           because your colleagues on the other side would seem to  
9           be insisting on a right to object.  
10 MR MARGAI: Which is their right, indeed.  
11 JUDGE THOMPSON: Should they be deprived of that?  
12 MR MARGAI: I don't think so, My Lords, in fairness.  
13 JUDGE THOMPSON: And that would be my own position.  
14 MR MARGAI: Well, that is why I sought your leave.  
15 JUDGE THOMPSON: Subject to what my learned Honourable  
16           brothers would say here.  
17 PRESIDING JUDGE: But is the Prosecution still standing its  
18           ground on the objection raised?  
19 MR TAVENER: The additional material submitted by the Defence  
20           is not such to cause us a problem in terms of addressing  
21           the crucial issue of this motion, so we are quite happy  
22           to proceed. We simply want to note it is preferable to  
23           follow procedure as much as possible.  
24 JUDGE BOUTET: It is noted.  
25 MR MARGAI: It is a very vital point that has been raised as  
26           to the question of amendment without leave; at what  
27           stage. But I am sure we will have the opportunity at a  
28           future date to go into the merits and demerits of such an  
29           application, but for now, since my colleagues have

1           graciously withdrawn whatever objection they were  
2           contemplating, I will be too glad to proceed subject to  
3           your convenience.

4   PRESIDING JUDGE: You may proceed, Mr Margai. Leave is  
5           granted for you to proceed.

6   MR MARGAI: Thank you.

7           My Lords, having granted the leave, may I seek your  
8           leave again in the light of the application I made  
9           yesterday so as to ascertain the clarity of the position  
10          to amend the submission under paragraph 5 of the motion  
11          -- 5.14. 14 reads: "Counsel request that the Trial  
12          Chamber recall witness TF2-057 for further examination  
13          after witness TF2-067 finishes giving his testimony."  
14          That was an issue that was raised yesterday by Justice  
15          Boutet and rightly so. I wish, with your leave, to amend  
16          it to read, "Counsel requests that the Trial Chamber  
17          recall witness TF2-057 for further examination in the  
18          course of the testimony of witness TF2-067."

19          The reason for that is quite obvious, My Lords,  
20          except if you wish me to elucidate. You see, assuming  
21          that the application which is about to be made is  
22          granted, then, of course, the witness to be recalled will  
23          have to be identified by witness TF2-067 and I would not  
24          want to be faced with a situation of making yet another  
25          application after the grant of the relief sought.

26   JUDGE BOUTET: We have no objection to grant you that leave  
27          for that at this particular moment.

28   MR MARGAI: As My Lords please, thank you. My Lords, the  
29          third accused seeks, by way of motion, that this Trial

1 Chamber orders the recall of witness TF2-057 for further  
2 examination in the course of the testimony of witness  
3 TF2-067. My Lords, the reason for this application is as  
4 stated in the motion paper, to wit, under the rubric  
5 "Background", but with your leave I shall highlight --

6 JUDGE BOUTET: I don't have any problem in principle with  
7 highlighting. My concern is what the Prosecution has  
8 raised in their response to your application, that much  
9 of the information -- some of the information you will be  
10 using, that you're describing in some of your motion, is  
11 information that was disclosed only in closed session.

12 MR MARGAI: That is correct, My Lords.

13 JUDGE BOUTET: And the Prosecution has filed a response in a  
14 confidential manner. Your application is not  
15 confidential and you're describing, certainly in part 3,  
16 facts of the relationship that may be of concern, let's  
17 put it this way.

18 MR MARGAI: I understand the apprehension of the Prosecution,  
19 but as couched in the language under "Facts", there is no  
20 apprehension that the identities would be disclosed. I  
21 deliberately chose the language as couched.

22 JUDGE BOUTET: Then, in your submission now be careful about  
23 that as well, if I may invite you.

24 MR MARGAI: No, I will, but let me put your mind at ease, My  
25 Lord. In fact, the question of the confidentiality was  
26 not the fault of our team. It was the fault of the Court  
27 Management who effected service, because the cover note  
28 which was given to us to accompany the motion was clearly  
29 indicated that the motion should be confidential. I

1 understand from the legal assistant that, in fact, this  
2 omission on the part of Court Management was brought to  
3 the attention of the Prosecution followed by an apology.  
4 I stand to be corrected. But as you have cautioned, I  
5 shall be very cautious.

6 JUDGE BOUTET: I am not trying to blame you. I am just  
7 inviting caution.

8 MR MARGAI: As My Lord pleases. My Lords, on the 1st of  
9 December 2004 Prosecution witness TF2-057 testified in  
10 open session before this Trial Chamber. During the  
11 cross-examination of TF2-057 counsel for the first  
12 accused showed the witness, TF2-057, a piece of paper  
13 bearing the name of witness TF2-067. Counsel for the  
14 first accused then asked witness TF2-057 if he knew the  
15 identity of the person bearing that name. My Lords, the  
16 witness TF2-057 stated that he did not know anyone by  
17 that name.

18 On the 2nd of December 2004, Prosecution witness  
19 TF2-067 testified in closed circuit before the Trial  
20 Chamber. During the cross-examination of TF2-067 counsel  
21 for the second accused applied to this Trial Chamber to  
22 cross-examine witness TF2-067 in closed session. The  
23 purpose of the application in part was to question  
24 witness TF2-067 about his relationship with witness  
25 TF2-057.

26 My Lords, counsel for the third accused also sided  
27 himself with this application and further asked for the  
28 recall of witness TF2-057 in order to clarify the  
29 relationship between the two witnesses, namely TF2-057

1 and TF2-067. Your Lordships ordered that the application  
2 be reduced into writing. This is as a result of  
3 Your Lordships' order that this motion has been so filed.

4 My Lords, the Prosecution disclosed to counsel for  
5 the third accused - that is myself - the witness  
6 statement of TF2-057. In this witness statement the wife  
7 of TF2-057 is named and the current address of witness  
8 TF2-057 is also given. My Lords, the Prosecution  
9 disclosed to counsel the witness statement of witness  
10 TF2-067. In this witness statement the mother of witness  
11 TF2-067 is named and the current address of witness  
12 TF2-067 is also given.

13 The name of the wife of TF2-057 is the same as the  
14 name of the mother of witness TF2-067. The current  
15 address of witness TF2-057 is the same as the current  
16 address of witness TF2-067. My Lords, it is our  
17 submission that by any stretch of the imagination there  
18 is clearly a relationship -- paternal relationship  
19 between TF2-057 and 067, which we on this side wish to  
20 establish in pursuit of this application now before  
21 Your Lordships; namely, the recall of witness TF2-057.

22 My Lords, we are relying on Rule 90F of the Rules of  
23 Procedure and Evidence of the Special Court of  
24 Sierra Leone in support of our application, and the rule  
25 provides thus: "The Trial Chamber shall exercise control  
26 over the mode and order of interrogating witnesses and  
27 presenting evidence so as to: 1, Make the interrogation  
28 and presentation effective for the ascertainment of the  
29 truth, and; 2, Avoid the wasting of time."

1 My Lords, we are cognizant of the fact that we  
2 could, as Defence, call witness TF2-057, but then we are  
3 not so certain of the wisdom of calling him, he having  
4 been called by the Prosecution as a witness for the  
5 Prosecution. The question is: Can we have one witness  
6 testifying both for the Prosecution and the Defence?  
7 That we doubt very much.

8 My Lords, we have no doubt in our mind here that  
9 this Court has the inherent jurisdiction to order the  
10 recall of a witness in the pursuit of justice.

11 In the final analysis, the guilt or otherwise of the  
12 third accused will very largely depend on the credibility  
13 to be attached by Your Lordships to the evidence borne  
14 out here by the Prosecution. Assuming that the guilt of  
15 the third accused will be dependent on the testimony of  
16 TF2-057 -- what we as a defence team are trying to do now  
17 is to prove to this Court that in fact TF2-057 in his  
18 testimony, when he was shown that piece of document  
19 bearing that name, categorically denying any knowledge of  
20 that name or the individual bearing that name, we will be  
21 submitting that that borders on perjury. And if we  
22 succeed in convincing the Chamber that, in fact, the  
23 testimony of that witness ought not to be believed, then,  
24 of course, Your Lordships will be in a better and  
25 fortified position to dispense justice. This is the  
26 purport of the application.

27 My Lords, we are relying on the Commonwealth  
28 authority of R v Sullivan 16 CAR 121, which is reported  
29 in --



1 PRESIDING JUDGE: I know you're in Archbold. It is usually  
2 good to have the details -- the reports. If you have  
3 that volume, volume 16, of the Criminal Appeal Reports,  
4 we would like to have it, because looking at the report  
5 in detail -- [Overlapping speakers]

6 MR MARGAI: Yes, I appreciate that. We shall photocopy it and  
7 furnish the Court.

8 My Lord, it is reported in the 2004 edition of  
9 Archbold Criminal Pleading, Evidence and Practice, page  
10 1214 paragraph 8-251, captioned "Recalling witnesses  
11 including Defendant". "The Judge has a discretionary  
12 power to recall or allow the recall of witnesses at any  
13 stage of the trial prior to the conclusion of the  
14 summing-up and of putting such questions to them as the  
15 exigencies of justice require." Those are the operative  
16 words: "The exigencies of justice require." "And the  
17 Court of Appeal will not interfere with the exercise of  
18 that discretion unless it appears that an injustice has  
19 thereby resulted." One of the cases cited is  
20 R v Sullivan.

21 Also in that, at page 1215, the case of R v Grant  
22 Criminal Law Report 42 CCA --

23 PRESIDING JUDGE: These criminal reports are in volumes. Is  
24 there no volume referred to there? Normally it is either  
25 16 or 17. It is usually reported in volumes.

26 MR MARGAI: Yes, but this is a different one, My Lord.  
27 1958 Criminal Law Report 42. That is of the Criminal  
28 Court of Appeal. Paragraph 8-253: "Both counsel went to  
29 see the Judge during an adjournment in the course of the

1 summing-up. They told him of certain information they  
2 had which indicated that two Prosecution witnesses might  
3 have committed perjury" -- and this is the road we're  
4 treading on. "The judge felt there was nothing he could  
5 do but conclude his summing-up. Held: Allowing the  
6 appeal the witness should have been recalled."

7 But, as I said, My Lords, I will photocopy the  
8 comprehensive reports and furnish the Court.

9 PRESIDING JUDGE: If we can have the volume itself, that's  
10 fine, just on a temporary basis.

11 MR MARGAI: I will be getting it, I hope, from the law  
12 libraries. I'm not sure whether I will have the luxury  
13 of retaining it for more than perhaps a day or two, but I  
14 shall photocopy the entire --

15 JUDGE THOMPSON: I would prefer to read the actual volume. I  
16 was going to say myself that we need the original, and  
17 I'm sure there shouldn't be any problem.

18 MR MARGAI: That is what your brother is saying.

19 PRESIDING JUDGE: Those reports are usually very discussive of  
20 the issues that are raised.

21 JUDGE THOMPSON: Yes.

22 MR MARGAI: I agree.

23 PRESIDING JUDGE: And there are other cases which are factored  
24 in them which enable us to make a determination.

25 MR MARGAI: That is appreciated, My Lords.

26 My Lords, still on the question of recalling of  
27 witnesses, I refer you to Phipson On Evidence 15th  
28 Edition page 224 paragraph 10-45, captioned "Recalling  
29 witnesses". It states:

1           "The Judge may at any stage of the trial, either at  
2 his own instance or that of a party, recall a witness  
3 including the defendant for further examination or  
4 cross-examination. For example, if a witness has not had  
5 an opportunity of giving his evidence on a matter of  
6 significance, which emerges later in the trial, it may be  
7 in the interests of justice for him to be recalled to  
8 give such evidence. If a witness is recalled, the other  
9 party has a right to cross-examine on the new evidence  
10 given, and, in appropriate circumstances, to call  
11 evidence in rebuttal."

12           So My Lords, there is no doubt that this Chamber has  
13 the mandate to recall or order the recall of a witness or  
14 witnesses to ensure that justice is not only done, but  
15 must be seen to be done. And, My Lords, by recalling  
16 TF2-057 no injustice will be done to the Prosecution. It  
17 is my belief that both the Prosecution and we on this  
18 side are all seekers of justice, and I hope I am right in  
19 my assumption.

20   PRESIDING JUDGE: It would be too much to let the Prosecution  
21 accept that they are there to administer injustice.

22   MR MARGAI: No, I have always known of prosecutors being  
23 ministers of justice, although in exceptional  
24 circumstances they might be persecutors, but very  
25 exceptional circumstances which I believe do not apply in  
26 the present case.

27           My Lords, the Prosecution have filed a response and  
28 the gravamen of their response is that Your Lordships  
29 should exercise such discretion sparingly and only upon

1 showing of good cause. That is in subparagraph 4 of  
2 paragraph 2 under "Submission" at page 2 of their  
3 response.

4 PRESIDING JUDGE: Sparingly and only upon showing good cause?

5 MR MARGAI: Only upon showing of good cause.

6 JUDGE THOMPSON: which paragraph again?

7 MR MARGAI: Paragraph 2 subparagraph 4 under the heading  
8 "Submission" at page 2. Although the Prosecution have  
9 gone on to also state, in the same subparagraph, that a  
10 collateral matter would not amount to good cause, I do  
11 not intend to pursue this because I think we have laid  
12 this to rest when I first intimated this Court of my  
13 desire to seek the recall of this witness.

14 JUDGE THOMPSON: But it has resurfaced in their papers, so why  
15 are you assuming that it has been laid to rest?

16 MR MARGAI: Well, I thought Your Lordships had exhaustively  
17 dealt with it, but be that as it may, out of abundance of  
18 caution I shall deal with it briefly.

19 JUDGE THOMPSON: Yes, quite right.

20 PRESIDING JUDGE: We took arguments on this, but we have not  
21 regularly put it to rest as such.

22 MR MARGAI: As My Lords please. My Lords, it is my response  
23 to that aspect of their response that this application is  
24 not a collateral matter or peripheral matter. The  
25 substratum of this application clearly hinges on the  
26 credibility or otherwise --

27 MR TAVENER: Sorry. I don't wish to interrupt Mr Margai, but  
28 I would ask him not to use particulars when addressing  
29 this issue. If he can speak in generalities. We

1 understand the basis of your application, but prefer not  
2 to mention the relationship or the identity of the  
3 witnesses if that can be avoided.

4 MR MARGAI: I think I have assured this Court that I would not  
5 venture into such confidential areas and I believe I have  
6 kept to my promise.

7 What I'm now saying is that I'm responding to what  
8 the Prosecution calls a collateral matter or otherwise  
9 peripheral. I am saying that it is neither collateral  
10 nor peripheral, because the substratum of this  
11 application hinges on the credibility of TF2-057, which  
12 no doubt is an important factor, if not an important  
13 determining factor, for this Chamber to pronounce on the  
14 guilt or otherwise of the third accused. That being so,  
15 My Lords, it is my humble submission that such an  
16 important issue cannot be described as collateral or  
17 peripheral. It is the very rudiment of the application.

18 On the question of showing good cause, it is my  
19 submission that I am in total agreement with the  
20 Prosecution that in the exercise of such discretion  
21 Your Lordships should only grant such application for  
22 good cause, which good cause I submit has been abundantly  
23 shown to this Court as highlighted in my submission.

24 That is to say, one, the --

25 PRESIDING JUDGE: This Court is getting hot. You better hurry  
26 up.

27 JUDGE THOMPSON: One?

28 MR MARGAI: One, the statement of TF2-057 relating to the name  
29 of his wife; two, the statement of TF2-057 relating to

1 the abode of both TF2-057, TF2-067, and, of course, the  
2 wife of TF2-057, who happens to be the mother of TF2-067.  
3 Just supposing that, My Lords, alongside his testimony in  
4 relation to the document shown to him by counsel for the  
5 first accused -- that was on the 1st of December 2004,  
6 and his response thereto, it is my final submission, My  
7 Lords, that his testimony definitely comes within the  
8 contemplation of the case of R v Grant as cited by me.

9 JUDGE THOMPSON: Before you wind up, I am a little confused  
10 here. You are relying on R v Sullivan as authority for  
11 this Chamber to order the recall of a witness or allow  
12 the recall of a witness at any stage during the  
13 proceedings.

14 MR MARGAI: Yes, My Lord.

15 JUDGE THOMPSON: And to put such questions to the witness. Of  
16 course, in Sullivan the test there seems to be as the  
17 exigencies of justice require.

18 MR MARGAI: Precisely, My Lord, and I'm relying on those  
19 expressions.

20 JUDGE THOMPSON: You're relying on that, quite. And also  
21 you're relying on Grant, which says that a decision not  
22 to recall a witness is clearly appealable, particularly  
23 in a situation where information might have existed that  
24 the witness might have committed perjury.

25 MR MARGAI: Passive perjury, yes.

26 JUDGE THOMPSON: Then if you concede the Prosecution's point  
27 that the criterion is good cause, do we for the same  
28 application look to the satisfaction of two different  
29 criteria? Because the concept of the exigencies of

1 justice seem to be, in your submission using Sullivan, an  
2 overriding criterion here.

3 MR MARGAI: It is my understanding of both authorities that  
4 they are not mutually exclusive.

5 JUDGE THOMPSON: I can see that.

6 MR MARGAI: They are not. They are both heading towards the  
7 satisfaction of justice.

8 JUDGE THOMPSON: But the question for me is that if good cause  
9 is also a criterion, then it is a much narrower criterion  
10 than the exigencies of justice, which I think is a very  
11 broad criterion. When you made the concession, I was  
12 wondering whether this Chamber should apply the good  
13 cause test in determining the merit of the application or  
14 should really rely on Sullivan, which says as the  
15 exigencies of justice require.

16 MR MARGAI: My Lord, some people would say that it is a  
17 question of semantics. Both are talking about the same,  
18 although I believe there is a difference, there is no  
19 doubt. It may be subtle, but there is a difference.

20 JUDGE THOMPSON: well, lawyers take words very seriously and  
21 distinctions and nuances. When you say to me the  
22 exigencies of justice require, it is a much broader  
23 concept.

24 MR MARGAI: I concede.

25 JUDGE THOMPSON: whilst the concept of good cause is much  
26 lower. So I just find myself in a little judicial  
27 quandary with my own simple judicial mind.

28 PRESIDING JUDGE: And at times, I would add and say, that even  
29 if we take as an operative the concept of just cause, you

1           could take a subjective view of it, you could take an  
2           objective view of it, it still remains a very elastic  
3           term.

4 MR MARGAI: It sure does.

5 PRESIDING JUDGE: It depends on who is -- [Overlapping  
6           speakers]

7 MR MARGAI: [Overlapping speakers]

8 PRESIDING JUDGE: Yes, prevailing circumstances.

9 MR MARGAI: Precisely.

10 PRESIDING JUDGE: Which vary from case to case.

11 MR MARGAI: Precisely.

12 PRESIDING JUDGE: And, of course, depending also on the judge  
13           who is exercising the discretion to interpret what just  
14           cause is in those particular circumstances.

15 MR MARGAI: I agree, My Lord. Quite frankly, if one were to  
16           go by the standards set by the Prosecution, I believe I  
17           have gone far beyond satisfying the Court. But because  
18           of the nature of the application, I decided to go much  
19           further gunning for the exigency rather than just good  
20           cause, and I believe that has been satisfied in my humble  
21           opinion.

22           Except if Your Lordships wish me to address you on  
23           any particular issue, My Lords, I would conclude by  
24           inviting this Court, by reason of the premise, to grant  
25           the application in furtherance of justice.

26 PRESIDING JUDGE: I have no further questions.

27 MR MARGAI: Thank you, My Lords.

28 JUDGE BOUTET: Thank you, Mr Margai. Prosecution?

29 MR TAVENER: Thank you, Your Honour. The submissions of the



1 Prosecution are contained within the written reply and it  
2 appears we are now at the stage where it becomes a  
3 question of what is just cause to recall the witness, and  
4 that is obviously not an easy practical matter to achieve  
5 a result.

6 Here we have two witnesses, both witnesses have been  
7 cross-examined about a particular issue. I will try to  
8 not deal with the particulars, because they're familiar  
9 to the Court, to retain some shred of confidentiality.  
10 We have witnesses who, as have been identified by Defence  
11 counsel, have a number of matters in common. What is  
12 asked is that one witness, who has already testified and  
13 said certain things about an issue, is at odds, and then  
14 a document was put to him and he denied the name on that  
15 document; another witness has been called. So we are at  
16 that stage.

17 The question is: Is just cause achieved by calling  
18 the first witness back on a point over which he has been  
19 cross-examined, and, as has just been identified by my  
20 learned friend, there are a number of points which lead  
21 to a conclusion? Is there need to take it that extra  
22 step further in the name of just cause.

23 JUDGE THOMPSON: Mr Tavener, could you go a bit slowly so that  
24 I can get your submissions right.

25 MR TAVENER: I'm sorry, Your Honour. What I'm saying is  
26 Mr Margai outlined a number of factors which he says lead  
27 to an inevitable conclusion about the two witnesses. Is  
28 it now necessary, under the heading just cause, to recall  
29 that witness in order to complete that process? The

1 Prosecution view is that there is no need to take that  
2 step, which is described in the decision cited in our  
3 submission: That recall should be granted only in the  
4 most compelling of circumstances where the evidence is of  
5 significant probative value and not of a cumulative  
6 nature.

7 PRESIDING JUDGE: You were going to take us to why you think  
8 it is not necessary. You were giving a reason.

9 MR TAVENER: It is not necessary, in the Prosecution view, in  
10 that both witnesses have testified about that particular  
11 area. Mr Margai has summarised those factors which he  
12 says lead to a certain conclusion, the factual basis from  
13 which inferences can be drawn. It is now asked by the  
14 Defence to call back this witness to take it yet another  
15 step further. Now, I won't go too deeply into the  
16 question of a collateral issue.

17 PRESIDING JUDGE: From what you are saying, you're saying that  
18 inferences can be drawn from the testimony of this  
19 witness?

20 MR TAVENER: Both witnesses.

21 PRESIDING JUDGE: Of both witnesses?

22 MR TAVENER: That's right, and those factual matters have been  
23 put to you by Mr Margai. It is then a question whether  
24 or not the Court --

25 PRESIDING JUDGE: Do you consider that inferences are  
26 conclusively -- could be very conclusive to prove  
27 particular cases or the particular situation that the  
28 Defence is asking for.

29 MR TAVENER: It may not be for me to say that. Certainly

1           there are facts available and what the Court does with  
2           those facts is entirely a matter for Your Honours.

3           But the Prosecution would say this matter has gone  
4           as far as it need go. If, however, Your Honours take the  
5           view that just cause has been shown, then the Prosecution  
6           submission would be upon the recall of that witness, all  
7           that is then required -- he would then give evidence  
8           about that very confined area and, as I think one of the  
9           authorities relied upon by Mr Margai says, that would  
10          then enable the Prosecution to cross-examine that witness  
11          on that very confined area.

12          The only reason I don't wish to speak too much about  
13          collateral issues, there is a mention in Mr Margai's  
14          submission about perjury. As an example of a collateral  
15          issue, the Prosecution would submit that perjury wouldn't  
16          exist here simply because the Prosecution maintains the  
17          particular point upon which the witness has been examined  
18          and has been asked to be recalled is not a matter that  
19          goes to the issue of the trial. It is not a material  
20          matter, it goes to credibility. I don't wish to go any  
21          further on that, but we would --

22        PRESIDING JUDGE: Mr Tavener, are you suggesting that it  
23          doesn't go to the credibility of this witness?

24        MR TAVENER: That's why I didn't want to go there,  
25          Your Honour.

26        PRESIDING JUDGE: This is very important, because there is a  
27          proposal here that the recall of the witnesses under the  
28          circumstances is a collateral matter -- is a peripheral  
29          matter. Counsel for the third accused has submitted that

1 it goes to the very core issue of determining the  
2 credibility of the witness, which, of course, will be  
3 factored into determining the guilt of his client. Are  
4 you saying that it is a peripheral matter or that it  
5 isn't legitimate for the Defence to ask for this?

6 MR TAVENER: I made submissions the other day about what the  
7 Prosecution regards a collateral matter as being, and in  
8 that I --

9 JUDGE THOMPSON: Perhaps I should intervene so that you can  
10 answer my own question alongside the learned Presiding  
11 Judge's question. Are you saying that credibility is a  
12 collateral issue as a matter of law -- always a  
13 collateral issue?

14 MR TAVENER: It can be raised to a higher level.

15 JUDGE THOMPSON: But the point is: Do we have a kind of  
16 judicial crystal ball, so to speak, as judges to  
17 determine ahead of time, before the case is finished --  
18 is concluded, whether credibility can be a collateral  
19 issue or a central issue in regard to the set of facts  
20 and circumstances which we're dealing with?

21 MR TAVENER: The Prosecution would say, in answering your  
22 question, the important issues are whether or not  
23 Your Honours are satisfied on the elements of the  
24 respective offences. Whether or not Your Honours are  
25 satisfied on each of the elements of each of the  
26 respective offences. That is the important --

27 JUDGE THOMPSON: That is the central issue.

28 MR TAVENER: The central issue.

29 JUDGE THOMPSON: Go ahead.

1 MR TAVENER: In arriving at that, obviously credibility is an  
2 important issue, but questions about credibility,  
3 depending how far removed they are, become collateral.  
4 JUDGE THOMPSON: Always?  
5 MR TAVENER: Not always, mostly.  
6 JUDGE BOUTET: You're not responding to the question. What  
7 you're saying is it is or it is not at the same time. I  
8 would like you to say it is or it is not. You're saying  
9 it may or if it is, at some distance. So are you  
10 admitting that in some instances credibility is not a  
11 collateral issue?  
12 MR TAVENER: By definition I would submit that credibility is  
13 a collateral issue. By definition. However, depending  
14 on the importance upon which the Court places a witness's  
15 response to a particular issue that relates to his  
16 credit, that may then raise it to a level at which the  
17 Court wishes to be satisfied. Therefore, it becomes, for  
18 instance --  
19 PRESIDING JUDGE: Let me rephrase the question, Mr Tavener.  
20 Would you admit, in any sense, that credibility of the  
21 witness is a very primary and determinant factor in  
22 arriving at a decision one way or the other?  
23 MR TAVENER: Of course.  
24 PRESIDING JUDGE: Then why do you consider that if this is the  
25 case, that it is either a peripheral or a collateral  
26 issue -- because credibility of a witness in the  
27 proceedings under the law is very important. It's an  
28 important factor to determining the truth of what he has  
29 said, which, like learned counsel Mr Margai has said,

1 could contribute a lot to either acquitting or convicting  
2 his client. This is our worry.

3 MR TAVENER: We're not at odds, Your Honour. As strange as it  
4 may seem, we are not actually at odds. I just have a  
5 particular definition of what is a material matter. A  
6 material matter in my definition is one that goes towards  
7 establishing one of the elements of an offence.

8 JUDGE THOMPSON: But why is it so difficult for you to -- why  
9 is it necessary to argue that there is some kind of fixed  
10 position as to the concept of credibility? Why isn't the  
11 conclusion whether credibility is a collateral or central  
12 issue not dependent upon the nature of the crimes, the  
13 nature of the allegations as alleged in the indictment,  
14 how the issues are defined in the pleadings and the  
15 totality of the circumstances of the case?

16 MR TAVENER: The reason, Your Honour, is --

17 PRESIDING JUDGE: If I may, just a simple question. Can you  
18 determine a main issue in a case on incredible  
19 evidence -- on evidence which comes from an incredible  
20 witness?

21 MR TAVENER: That is an easy question, Your Honour. The  
22 answer is no.

23 PRESIDING JUDGE: It is an easy question, but it goes to  
24 addressing the core -- the core issue here.

25 MR TAVENER: The reason, to answer Your Honour's question -- I  
26 think this is why we're at odds. The answer to Your  
27 Honour's question is: Because credibility, as I say,  
28 does not go directly to one of the issues before the  
29 Court, it then becomes a question of how far down the

1 track -- how removed from that question do you allow  
2 questions? which arises in such instances as  
3 cross-examination. How wide is that ambit? That's what  
4 I'm saying.

5 In this regard, having looked at the circumstances,  
6 is the matters raised by the Defence counsel so close to  
7 assisting Your Honours in determining the matter that you  
8 require an answer or is it getting further removed that  
9 you don't need the answer, and, therefore, you don't need  
10 to continue your inquiry? The reason I categorise --

11 JUDGE THOMPSON: And that is what would determine whether the  
12 credibility is collateral or central.

13 MR TAVENER: Yes, how far --

14 JUDGE THOMPSON: It's that kind of analysis that will  
15 determine it.

16 MR TAVENER: That's right. What Your Honours determine as  
17 being important in assisting you in arriving at an  
18 assessment of the case. So if a matter is not of great  
19 significance in doing that, then really there should be  
20 finality at quite an early stage into an inquiry about  
21 that issue. If the matter is such it does assist you,  
22 then obviously greater leniency should be allowed by the  
23 Court.

24 JUDGE THOMPSON: Such as proving a material element of the  
25 offence.

26 MR TAVENER: That's right.

27 JUDGE THOMPSON: The credibility there would not be a  
28 collateral issue in that context.

29 MR TAVENER: Yes, and that is how I differentiate. That's

1 what I'm submitting to the Court.

2 Now, the question for the Court then is, in this  
3 matter, whether or not the issues raised by Mr Margai are  
4 of such a nature that it would not be in the interests of  
5 justice not to recall that person. Are those issues of  
6 such -- or should it be said this matter should not be  
7 taken any further? We have the two witnesses examined,  
8 they have given evidence about a particular point, that's  
9 as far as the Court needs to draw any inferences that are  
10 necessary.

11 Alternatively, the Court may well take the view no,  
12 we need to take it one step further. The concern is how  
13 far you take an inquiry.

14 JUDGE THOMPSON: So, in other words, it is the Court that  
15 determines whether the issue is a collateral --  
16 credibility is collateral or not depending upon the --

17 MR TAVENER: That's correct.

18 JUDGE THOMPSON: In other words, there must be a prior  
19 preliminary determination of --

20 [Microphones deactivated due to power failure]

21 MR TAVENER: I have virtually concluded, Your Honour.

22 Returning to the authority of the  
23 Prosecutor v Bagosora, the question is whether the  
24 evidence is of significant probative value, and that  
25 answers the question whether or not it is of just cause.  
26 So the Prosecution relies upon the Court to identify  
27 whether or not you need to take this matter further in  
28 terms of expending further time.

29 I would mention, however, that the Prosecution would



1 oppose the recalling of the other witness. The  
2 prosecution would submit that the other witness can be  
3 released. There is no provision or technique by which  
4 one witness can be confronted with another. I am simply  
5 totally unfamiliar with that proposition. What the  
6 prosecution would submit, if Your Honours agree to recall  
7 the first witness, that that may be the end of the matter  
8 depending on how the questions and answers go. Because  
9 of the nature of the witness who is currently in limbo, I  
10 would ask that his evidence be completed and his position  
11 be reconsidered after, should Your Honours so desire, if  
12 Your Honours recall the witness being --

13 PRESIDING JUDGE: You object to confrontation of the two  
14 witnesses?

15 MR TAVENER: Yes, I am just not familiar with that practice at  
16 all; I don't see how that would work. But I would ask  
17 that that witness be released -- his evidence be  
18 completed and he be released. Your Honours are certainly  
19 entitled to reconsider his position should the witness  
20 being sought to be released be recalled. So I would ask  
21 today that that witness be completed. It will only take,  
22 I understand, two minutes -- one minute to release that  
23 witness.

24 PRESIDING JUDGE: Are you through?

25 MR TAVENER: I think so, Your Honour; thank you.

26 PRESIDING JUDGE: Mr Margai, any reply?

27 MR MARGAI: I do not think so.

28 PRESIDING JUDGE: Thank you. We shall be rising to resume the  
29 session at 3.00 o'clock because of the crowded afternoon

1 that we are likely to have. I'm not even very sure of  
2 3.00 o'clock, but I think 3.00 o'clock is a reasonable  
3 estimation as to when we would have concluded with our  
4 august visitor. So, learned counsel, we'll rise and  
5 resume at 3.00 o'clock, please.

6 [Luncheon recess taken at 12.44 p.m.]

7 [HN071204C]

8 [Upon resuming at 3.27 p.m.]

9 PRESIDING JUDGE: Learned counsel, we are resuming our  
10 session. And again, we are starting 30 minutes late. We  
11 were held by the usual deliberations. And you see,  
12 judges by their culture --

13 MR MARGAI: The Presidential visit.

14 PRESIDING JUDGE: No, no, the Presidential visit. This is  
15 purely professional. You lawyers are always quarrelling  
16 with words and what this or that should be. And since we  
17 always have as a primary preoccupation the resolution in  
18 a just manner of what the expectations of both the  
19 Defence and the Prosecution are, we're always carefully  
20 making sure that we do the best we can at our level. And  
21 it is in this regard that we would be delivering our  
22 ruling on the two motions which are consolidated, in a  
23 sense, for the third accused, for the Defence team of the  
24 third accused person, in relation to recalling a witness,  
25 witness Number TF2-067 -- 057.

26 MR MARGAI: 057, My Lord.

27 PRESIDING JUDGE: Are you sure, 057?

28 MR MARGAI: 057.

29 PRESIDING JUDGE: 057. 057. That, we shall be able to talk

1 about now. we'll make a statement on the other  
2 motions on the --

3 MR MARGAI: The investigators.

4 PRESIDING JUDGE: Investigators. we'll talk about that in the  
5 course of the day. we have a very crowded day, and we  
6 might as well have a very late day here today because we  
7 must wrap up our proceedings today. And I think  
8 everybody shall be called upon to pay for any sins he has  
9 committed to delay the proceedings up to this day.  
10 Atonement. Including the Bench, of course.

11 MR MARGAI: The Bench can do no wrong.

12 PRESIDING JUDGE: No, the Bench can do some wrong. Never  
13 mind. That's why you have the appellate jurisdictions,  
14 to take care of whatever the Bench does that goes wrong.  
15 We would, as first hat, present our oral ruling on the  
16 first motion. It will be followed by a reasoned  
17 decision, because there are issues we have to address in  
18 order to, in the words of Mr Margai who is on his feet,  
19 to develop the jurisprudence of our Court. Right.  
20 Honourable Judge Boutet would give the oral ruling on  
21 this very matter.

22 JUDGE BOUTET: Thank you, Mr Presiding Judge.

23 The Trial Chamber, after careful consideration of  
24 the application made by the Defence, in accordance with  
25 the Rules of Procedure and Evidence 90, grants the  
26 application of the Defence that witness TF2-057 be  
27 recalled at this stage of the trial proceedings and  
28 during the case of the conduct for the Prosecution. The  
29 witness is being called at the instance of the Court.

1           The Trial Chamber denies the application for  
2           witness TF2-067 to be recalled in the course of the  
3           testimony of witness TF2-057.

4           The Trial Chamber further denies the request of the  
5           Defence that the further confrontation of witness TF2-067  
6           in the course of the evidence of witness TF2-057. That  
7           application is denied. Consequently, witness TF2-067 is  
8           discharged unless otherwise ordered by this Chamber. A  
9           written reasoned ruling will be published in due course  
10          after this session. It should also be clearly understood  
11          that the recalling of the witness is to be done in the  
12          course of the next sitting session of this trial, which  
13          will be in February. So we have not fixed nor determined  
14          any specific date, but that witness is to be recalled at  
15          that particular time.

16          So that should dispose of these two issues for now.  
17          So essentially, your application is granted as to  
18          TF2-057, and denied as to the other.

19 MR MARGAI: Thank you.

20 PRESIDING JUDGE: You've won partially. In life, you should  
21          learn to lose and to win.

22 JUDGE BOUTET: So that disposes of those motions at this  
23          particular moment. As I say, we will provide written  
24          reasons in due course, certainly before the next session.

25 MR MARGAI: Well, in the light of the second limb of the  
26          ruling, then there is no need really to further  
27          cross-examine TF2-067.

28 PRESIDING JUDGE: But we thought otherwise. We thought that  
29          you could conclude with the cross-examination -- with the

1 cross-examination of TF2 -- you don't have any questions?  
2 MR MARGAI: No, the only reason --  
3 PRESIDING JUDGE: Because we wanted to officially -- to  
4 legally close up the cross-examination.  
5 MR MARGAI: I'm prepared to do that. It wouldn't take two  
6 minutes because the reason why I did not close my  
7 cross-examination of TF2-067 was assuming that the second  
8 limb of the application was granted for him to confront  
9 TF2-067 for identification purposes no longer stands. So  
10 there is really no reason for me to put another question.  
11 I'm prepared formally to announce to the Court that that  
12 is --  
13 JUDGE BOUTET: That was your last question. You have no  
14 further questions?  
15 MR MARGAI: Yes, My Lord.  
16 PRESIDING JUDGE: Do we understand, does the Chamber  
17 understand that it is the end of your cross-examination?  
18 MR MARGAI: That is the end of my cross-examination of  
19 TF2-067.  
20 JUDGE BOUTET: 067. Not to be confused with 057.  
21 MR MARGAI: That is right, My Lord.  
22 JUDGE BOUTET: So the recalling is for 057.  
23 MR MARGAI: Yes, My Lord.  
24 JUDGE BOUTET: So, Madam Prosecutor, that concludes the  
25 cross-examination of 067. Do you have any re-examination  
26 of 067?  
27 MS PARMAR: Your Honours, the Prosecution has no  
28 re-examination of 067.  
29 PRESIDING JUDGE: we would like to have him on the monitor,

1           please.

2   MS PARMAR: Provided protective measures are put in place on  
3           the side of the Defence.

4   PRESIDING JUDGE: You see around, because I want to talk to  
5           him.

6   MS PARMAR: Certainly, Your Honour. We just are mindful of  
7           the fact that his image will appear on the monitors on  
8           the side of the Defence. And so --

9   PRESIDING JUDGE: Do you want us to rise, Mr Walker?  
10           Mr Walker?

11   JUDGE BOUTET: It can be done in a few minutes.

12   PRESIDING JUDGE: In a few minutes? Do you want us to rise  
13           before it is done?

14   MS PARMAR: No, Your Honour. It is simply a matter of closing  
15           the curtains.

16   JUDGE BOUTET: Mr Walker informs me that it will take five  
17           minutes. Let's take five minutes, please.

18   PRESIDING JUDGE: Mr Walker, please.  
19           Mr Bockarie, we know that you have a motion. We  
20           know that you are seeking to present something as to us,  
21           but let's wrap up this other business.  
22           I cannot call him by his name. I know the name, but  
23           I cannot call him by his name. Is the gallery with me?  
24           Well, I can't even call him by his name. Let them put  
25           him on, please. Please, put him on.  
26           I'm not seeing him yet. We have to be patient,  
27           because we are still waiting for the image, for the  
28           witness to appear on the monitor.  
29           We have some technical problems. It's usual with

1 modern technology. The Chamber legal advisors are very  
2 much on the monitor. The Judges. I hope it's a not a  
3 conspiracy to put across.

4 Maybe whilst waiting, we may listen to Mr Bockarie.  
5 We may hear Mr Bockarie on his motion. I'm sure he's  
6 going to be very brief.

7 MR BOCKARIE: Yes, Your Honour. Your Honours, we associate  
8 ourselves in part with the motion made by counsel for the  
9 third accused --

10 PRESIDING JUDGE: Only in part.

11 MR BOCKARIE: Yes, Your Honour, insofar as we  
12 recognise -- insofar as we recognise the legitimacy of  
13 the argument advanced in support of recalling witness  
14 TF2-057.

15 PRESIDING JUDGE: That is granted.

16 MR BOCKARIE: Yes. However, given our own strategic concerns,  
17 we do not seek to recall that witness. Your Honour, as  
18 submitted in our written motion, we merely seek the  
19 introduction into evidence of the proposed exhibit;  
20 namely, the paper previously shown in open court to  
21 witness TF2-057 which bears the name of witness TF2-067.  
22 Your Honour, our proposal is thoroughly unopposed by the  
23 Prosecution - I stand to be corrected - however, we  
24 should note that we have not as yet received a written  
25 response and wish to know whether the Prosecution  
26 intends --

27 PRESIDING JUDGE: Let's be expeditious.

28 MR BOCKARIE: Yes, Your Honour.

29 PRESIDING JUDGE: We would like you to save us from getting

1 into the literature that you're reading. Summarise,  
2 please, and let us get to somewhere, please.

3 MR BOCKARIE: Your Honour, the government of our motion, as  
4 stated earlier on, is the introduction of the proposed  
5 exhibit into evidence. That's all, sir.

6 PRESIDING JUDGE: The paper that was shown to --

7 MR BOCKARIE: Yes, Your Honour.

8 PRESIDING JUDGE: That is it, is it? Thank you.

9 Mr Tavener.

10 MR TAVENER: Thank you, Your Honour. As previously noted, we  
11 have no objection to that document being tendered. It  
12 was simply the process that we made some comment about  
13 earlier. So that there's certainly no objection. There  
14 may be written responses, but I don't know where they are  
15 at this stage. But that's the position of the  
16 Prosecution.

17 [Trial Chamber deliberates]

18 JUDGE BOUTET: Mr Bockarie, your application is indeed  
19 granted, but it is to be done when witness TF2-057 is  
20 being recalled. So you can at that time. So we need at  
21 that time to make some, for the record, direct connection  
22 between your piece of paper and the witness at that time.  
23 So for better neatness, I ask you when that witness is  
24 recalled to show him that piece of paper again, and then  
25 we'll mark it as an exhibit at that particular moment.

26 MR BOCKARIE: As Your Honour pleases.

27 JUDGE BOUTET: But the timing of --

28 MR BOCKARIE: May I probably at this stage observe the Court  
29 take custody of the document, or shall I wait?



1 JUDGE BOUTET: You should wait. We trust that you are a good  
2 custodian of documents as well.  
3 MR BOCKARIE: I will, Your Honour.  
4 [The witness entered court]  
5 WITNESS: TF2-067 [Resumed]  
6 [Witness answered through interpretation]  
7 [The witness testified via video link]  
8 JUDGE BOUTET: We do have the split screen now.  
9 PRESIDING JUDGE: [Microphone not activated]  
10 Young man, how are you this morning? How have you  
11 been since this morning?  
12 THE WITNESS: This morning, I said thanks to God. I felt all  
13 right.  
14 PRESIDING JUDGE: You were feeling all right. And now you  
15 still feel all right? You're fine?  
16 THE WITNESS: Except for the cold.  
17 PRESIDING JUDGE: [Microphone not activated] your jacket is not  
18 by you any more?  
19 THE WITNESS: No, I don't have any jacket.  
20 PRESIDING JUDGE: Okay. All right.  
21 We have finished with you. Are you hearing me?  
22 THE WITNESS: Yes, sir.  
23 PRESIDING JUDGE: And you may go home and go to school. All  
24 right?  
25 THE WITNESS: Yes, sir.  
26 PRESIDING JUDGE: After you leave this place, they will  
27 arrange to take you home so that you can go to school and  
28 attend some classes before Christmas, before the  
29 Christmas holiday.

1 THE WITNESS: Okay, sir.  
2 PRESIDING JUDGE: So we thank you for coming. And  
3 notwithstanding what you say, what you say has happened  
4 to you, we wish you a brilliant career and that you make  
5 a very successful Sierra Leonean of tomorrow. You should  
6 work for that. Will you?  
7 THE WITNESS: Yes, sir.  
8 PRESIDING JUDGE: Forget about the past --  
9 THE WITNESS: Yes, sir.  
10 PRESIDING JUDGE: Okay. And work for the future.  
11 THE WITNESS: Okay, no problem.  
12 PRESIDING JUDGE: And give our regards to your parents and to  
13 your friends. Okay?  
14 THE WITNESS: Okay, sir.  
15 PRESIDING JUDGE: You should be very quiet about this matter.  
16 Don't make any noise about it. And make sure that you  
17 remain as quiet and as serene as you have been all along.  
18 Okay?  
19 THE WITNESS: Okay, sir.  
20 PRESIDING JUDGE: All right. Have a very safe journey back  
21 home, and all the best.  
22 THE WITNESS: Okay. Thank you, too, sir.  
23 PRESIDING JUDGE: Bye-bye.  
24 [The witness withdrew]  
25 PRESIDING JUDGE: We shall be continuing with the next -- with  
26 the 38th Prosecution witness. And for him to be brought  
27 in, we will rise for just five minutes. The Court will  
28 rise.  
29 [Break taken at 3.56 p.m.]

1 [Upon resuming at 4.04 p.m.]  
2 [The witness entered court]  
3 PRESIDING JUDGE: This is Witness TF2?  
4 MR SAUTER: 056, Your Honour.  
5 PRESIDING JUDGE: And this is the 38th witness.  
6 MR SAUTER: Correct, Your Honour.  
7 PRESIDING JUDGE: Before we start, please, I would like both  
8 learned counsel for the Prosecution and the Defence to  
9 understand that we have to come to the end of the  
10 testimony of this witness during this session. And  
11 indeed, if possible, before it is 6.00 if we can.  
12 Because we don't need to get into digressions which are  
13 not to the point, either in examination-in-chief or in  
14 cross-examination. I count on the understanding of  
15 counsel on both sides, please. Thank you very much.  
16 MR SAUTER: I promise to cut it as short as possible.  
17 PRESIDING JUDGE: You were at 30 minutes yesterday. We hope  
18 you will be at 10 or 15.  
19 MR SAUTER: I'll try.  
20 PRESIDING JUDGE: Thank you.  
21 JUDGE BOUTET: Please proceed.  
22 WITNESS: TF2-056 [Resumed]  
23 [Witness answered through interpretation]  
24 EXAMINED BY MY SAUTER: [Continued]  
25 Q. Mr witness, we continue at the point we stopped  
26 yesterday. Do you understand me? Mr witness?  
27 THE WITNESS: My Lord, I don't think witness is getting us.  
28 Something must be wrong with his mic.  
29 PRESIDING JUDGE: The microphone is lit.

1                   Is he getting you now?  
2 JUDGE BOUTET: Mr interpreter, do you -- can you try to speak,  
3                   the witness, again.  
4 THE WITNESS: I'd like to speak in Limba.  
5 PRESIDING JUDGE: Yes. But you have been speaking in Limba  
6                   all along. It's no problem.  
7 THE INTERPRETER: The witness is not getting the  
8                   interpretation from here. Something is wrong with his  
9                   mic.  
10 JUDGE BOUTET: Can somebody check the channel on his mic.  
11                   He's not getting interpretation in Limba.  
12                   Can you try again, Mr Interpreter.  
13 PRESIDING JUDGE: [Microphone not activated]  
14 THE INTERPRETER: He's still not getting us.  
15 JUDGE BOUTET: He does now, I think.  
16 PRESIDING JUDGE: He's getting you now, I think.  
17 THE INTERPRETER: He's still not getting us.  
18 PRESIDING JUDGE: But he says he's hearing you.  
19 THE INTERPRETER: He's not getting the Limba interpretation.  
20                   He gets the Krio interpretation but not the Limba.  
21 JUDGE BOUTET: He does now. Okay.  
22 PRESIDING JUDGE: Is he getting it now?  
23 THE WITNESS: Yes, I hear you now.  
24 MR SAUTER:  
25 Q.   So, Mr witness, we continue at the point we stopped  
26       yesterday. Just yesterday, you spoke about a man who was  
27       arrested by the Kamajors who was forced to roll on the  
28       street, whose house was seized. Did you pay anything for  
29       the release of this man? And if so, to whom you paid?

- 1 THE INTERPRETER: My Lord, I think counsel is going too fast.
- 2 MR SAUTER: Okay.
- 3 PRESIDING JUDGE: He's not going very fast, but you should go  
4 very slowly. Follow him very attentively, please.
- 5 MR SAUTER:
- 6 Q. Mr witness, we stopped yesterday at the point when you  
7 were saying that a man was arrested by the Kamajors, he  
8 was forced to roll on the road, and his house was seized.  
9 You intervened in order to get his house released and the  
10 person released. Did you pay anything for the release of  
11 this man?
- 12 A. Yes.
- 13 Q. How much did you pay?
- 14 A. 300.000.
- 15 Q. And to who did you pay this 300.000?
- 16 A. I paid it to xxx xxx.
- 17 Q. The writing was spelled yesterday. Did this payment lead  
18 to the release of the person and the release of the  
19 house?
- 20 PRESIDING JUDGE: After you paid the money, what happened to  
21 the man who was detained?
- 22 MR SAUTER:
- 23 Q. So, Mr witness, after you paid the money, what happened  
24 to the man who was arrested?
- 25 A. He was released to me.
- 26 Q. And what about the house?
- 27 A. I was given the house, but it was empty. Everything  
28 inside the house was stolen.
- 29 Q. Do you know who stole what was in the house before?

- 1 A. The Kamajors. They were the only people in the house,  
2 the Kamajors.
- 3 Q. Mr witness, did you pay for any other person, for the  
4 release of any other person?
- 5 A. Yes.
- 6 Q. Please tell us what happened, and please cut it short.
- 7 A. One lady came.
- 8 Q. Go on, please.
- 9 A. She was caught.
- 10 Q. Carry on, please.
- 11 A. Because she was a cook for Mosquito.
- 12 Q. By who was this lady caught?
- 13 A. She was caught by Moses Sandy, the Kamajor.
- 14 Q. what happened to this lady after she was caught?
- 15 A. She was taken to ECOMOG headquarters.
- 16 Q. Do you know what happened to her while being at the  
17 ECOMOG headquarters?
- 18 A. She was given a good beating almost every day.
- 19 Q. who was beating this woman by being in the ECOMOG  
20 headquarters?
- 21 A. The ECOMOG were beating her.
- 22 Q. Do you know for what reason or for what purpose they beat  
23 her?
- 24 A. Yes.
- 25 Q. Please tell the Court.
- 26 A. She was being beaten because they said she was a cook for  
27 Mosquito.
- 28 Q. You said earlier you paid for the release of this lady.  
29 Did you pay?

1 A. Yes.

2 Q. How much did you pay?

3 A. 100.000.

4 Q. Who you gave these 100.000?

5 A. I gave it to the Kamajors.

6 PRESIDING JUDGE: Which Kamajors? Specific names, try if he  
7 can remember. Referring to Kamajors, there are so many.

8 MR SAUTER: I come to this point.

9 Q. You said this lady was in the custody of ECOMOG. So why  
10 did you pay the Kamajors?

11 PRESIDING JUDGE: No, to the Kamajors. Which Kamajor? Which  
12 Kamajor?

13 MR SAUTER:

14 Q. So to which Kamajor you paid this money?

15 A. I would not be able to tell you his name. I don't know  
16 his name. He was working together with the ECOMOG.

17 Q. What happened to the lady after you had paid this 100.000  
18 to a Kamajor?

19 A. That was not the only money I paid. I had earlier on  
20 given 100.000 to the ECOMOG.

21 Q. Do you know the person to whom you gave --

22 PRESIDING JUDGE: Mr Sauter, please wait.

23 So he gave 100.000 to the Kamajors. He does not  
24 remember the name because they were working with ECOMOG.  
25 And then he had earlier given 100.000 to ECOMOG, to the  
26 ECOMOG people.

27 MR SAUTER: Yes.

28 PRESIDING JUDGE: Was it to one ECOMOG soldier or to many of  
29 them?

1 MR SAUTER: That's the question I'm about to put.  
2 PRESIDING JUDGE: Yes.  
3 MR SAUTER:  
4 Q. To who you gave -- to who within the ECOMOG you gave the  
5 100.000?  
6 A. I gave it to the ECOMOG near the commander.  
7 Q. Did you say near --  
8 PRESIDING JUDGE: I want you to be specific. [Microphone not  
9 activated]  
10 MR SAUTER:  
11 Q. So what happened to the lady after you have paid to  
12 ECOMOG --  
13 PRESIDING JUDGE: No, no, "I gave it to ECOMOG near the  
14 commander." Let him be specific. When he says near, to  
15 who did he give the money? We know that he gave it to  
16 ECOMOG. The commander was near. Was it to the ECOMOG  
17 commander or to who? We want to be very sure of this.  
18 MR SAUTER:  
19 Q. Do you know the person to who you gave the 100.000 on  
20 ECOMOG side?  
21 PRESIDING JUDGE: I imagine he wouldn't anyway. The name, he  
22 wouldn't.  
23 THE WITNESS: I know him, but I don't know his name. He is  
24 next in command to the commander. When the commander is  
25 away, he takes his place.  
26 PRESIDING JUDGE: Mm-hmm.  
27 MR SAUTER:  
28 Q. So once again, what happened to the lady --  
29 PRESIDING JUDGE: Please wait. Wait. He gave it to the next



1 in command of ECOMOG. Was the commander -- you say the  
2 commander of ECOMOG was present, was near? Did he see  
3 you giving the money? Did the commander of ECOMOG see  
4 you giving the money?

5 THE WITNESS: He was not there.

6 PRESIDING JUDGE: You said near the --

7 JUDGE BOUTET: He gave the money to the deputy commander.

8 PRESIDING JUDGE: He earlier said it was near the commander.

9 Now he says -- it's because of specificity I asked him,  
10 and he now says that he gave it to the deputy. The  
11 answer to the question was he gave it to ECOMOG. I said  
12 that's not specific. To who -- and he said it was near  
13 the commander. Then he becomes more specific and said he  
14 gave it to the deputy. When the commander is not there,  
15 it is he who acts, which means he's the deputy.

16 So the next question is, was the commander near?

17 You said the commander was not there.

18 MR SAUTER: I understood that the word "near" was related to  
19 the function of the person who has got the money and not  
20 to the vicinity. Anyway, his answer was this person --  
21 the commander was not there.

22 PRESIDING JUDGE: Go ahead, please.

23 MR SAUTER:

24 Q. So once again, Mr witness, what happened to the lady  
25 after you have paid as well to ECOMOG as to the Kamajors?

26 A. The commander looked into the matter and found out that  
27 it was false.

28 PRESIDING JUDGE: which commander? which commander? I want  
29 you to be specific. There is a top commander and a

1 junior commander.  
2 THE WITNESS: The ECOMOG commander.  
3 MR SAUTER:  
4 Q. You said you found out it was false. What was false?  
5 PRESIDING JUDGE: That they said she was cooking for Mosquito.  
6 That is what was false. I imagine that is it.  
7 MR SAUTER: I imagine it was, too. But I'd like to hear it  
8 from the witness.  
9 PRESIDING JUDGE: Right. Let him give the answer.  
10 THE WITNESS: They found out the fact that it was untrue that  
11 this woman was cooking for Mosquito. They went into the  
12 matter, and they found out it was false.  
13 PRESIDING JUDGE: Can we now proceed, Mr Sauter.  
14 MR SAUTER:  
15 Q. So what did he do after he has found out that this  
16 allegation was false?  
17 A. He called xxxx xxxx and myself.  
18 Q. Please go ahead.  
19 A. And he told xxxx xxxx that he knows very well that the  
20 Kamajors do not like the Limba men.  
21 Q. Was this lady a Limba?  
22 A. The woman was a Mende, but she got married to a Limba  
23 man.  
24 Q. So --  
25 PRESIDING JUDGE: Please, can you wait, Mr Sauter.  
26 Yes.  
27 MR SAUTER:  
28 Q. So did he release -- the commander, ECOMOG commander, did  
29 he release the lady after that?

1 A. Yes, he said I should sign for her. I signed for her,  
2 and she was given back to me.

3 Q. Mr witness, do you know anything about Kamajor actions  
4 directed against Limba and other tribes?

5 PRESIDING JUDGE: That question, to me, is -- that question to  
6 me --

7 THE WITNESS: Yes.

8 PRESIDING JUDGE: -- is not pertinent at this stage. It is  
9 not relevant. It's loaded. It's not relevant. Like the  
10 Defence has always pointed out, there is no charge on the  
11 indictment against the accused persons for genocide  
12 against either the Limbas or the Temnes. So you should  
13 rephrase your question.

14 MR SAUTER: Your Honours, sometimes those actions lead to  
15 murders, and murders is a count in this indictment.

16 PRESIDING JUDGE: well, we don't dispute the fact, but we  
17 don't want it to take the form, you know, of a genocidal  
18 act by those who are accused because there is no  
19 indictment -- there is no charge on the indictment,  
20 there's no count in the indictment for genocide against  
21 X, Y, or Z Tribe.

22 [HN071204D 4.30 p.m.]

23 MR SAUTER: Yes, Your Honour.

24 PRESIDING JUDGE: But in the course of the evidence he can  
25 reveal certain details.

26 JUDGE THOMPSON: I am just wondering really on the same lines  
27 as my learned brother, if there is no charge for genocide  
28 and there is no -- why would this particular piece of  
29 evidence be relevant to a proof for alleged murder if

1 motive is not a requirement for proving the offence of  
2 murder, is it? Motive is never one of the --  
3 MR SAUTER: Certainly not.  
4 JUDGE THOMPSON: Yes, as a matter of law, you don't have to  
5 prove motive for an unlawful homicide. You get what I'm  
6 saying, because if you say conduct like this would lead  
7 to murder you virtually are saying that you may require  
8 motive as a requirement, as a material element of  
9 murder -- unless there is a charge for genocide.  
10 MR SAUTER: Certainly not. So may I continue?  
11 PRESIDING JUDGE: Mr Sauter, you may proceed. Your question  
12 is not out of place. It is just the formulation.  
13 MR SAUTER: I will rephrase it.  
14 PRESIDING JUDGE: Yes, please.  
15 MR SAUTER:  
16 Q. Mr witness, do you know anything about killings committed  
17 by Kamajors during this time?  
18 A. Yes.  
19 Q. Please tell the Court.  
20 A. One day there were Limbas who came from xxxxx.  
21 PRESIDING JUDGE: There were Limbas who came from --  
22 MR SAUTER: xxxxx, x x x x x .  
23 PRESIDING JUDGE: x x x x x? He must know the spelling. This  
24 man must know the spelling.  
25 MR SAUTER: He's illiterate.  
26 PRESIDING JUDGE: He would know the spelling.  
27 THE WITNESS: xxxxx xxxxxx, not Tongo Limba. xxxxx xxxxx.  
28 PRESIDING JUDGE: Okay.  
29 MR SAUTER:

1 Q. And what about these persons?  
2 A. They came and told me that people with whom he come from  
3 the same village had been killed, and there were four of  
4 them.  
5 Q. Do you know any details about these killings?  
6 A. Not understand what you are asking.  
7 PRESIDING JUDGE: They were killed by who?  
8 THE WITNESS: Said it was the Kamajors who killed them.  
9 PRESIDING JUDGE: Is he saying that these four people were  
10 from the same Limba village like himself?  
11 MR SAUTER: No.  
12 PRESIDING JUDGE: Then he says who came from the same village?  
13 which village?  
14 THE WITNESS: From the same town. We come from the same town.  
15 PRESIDING JUDGE: Yes, that's it.  
16 MR SAUTER: Sorry, My Lord. I did not catch this.  
17 Q. Mr witness, did you stay all the time in xxx during the  
18 rule of the Kamajors after they had returned in 1998?  
19 A. That was the place I was.  
20 Q. Do you say you never left xxx during this time?  
21 A. Left there one Saturday at about 10.00 o'clock.  
22 Q. What happened this Saturday?  
23 A. The RUF -- [Interpretation interrupted]  
24 PRESIDING JUDGE: [Microphone not activated]  
25 THE WITNESS: The RUF came from Mile 91 at 10.00 o'clock in  
26 the morning, 10.00 a.m.  
27 PRESIDING JUDGE: They came where? To xxx?  
28 THE WITNESS: They came to xxx.  
29 MR SAUTER:

- 1 Q. What did you do when the RUF came to xxx on this Saturday?
- 2 A. That was the time when everybody was frightened in town,  
3 even the Syrians had to close their shops.
- 4 PRESIDING JUDGE: Even who had to close their shops?
- 5 THE WITNESS: Nobody opened the shop, even the Syrians closed  
6 their shops.
- 7 MR SAUTER: Syrians which is a synonym used for "Lebanese" as  
8 far as I know.
- 9 Q. Mr witness, the question was what did you do when you  
10 learnt that the rebels came to xxx?
- 11 A. I ran towards xxxxx.
- 12 MR SAUTER: xxxxx is xxxxxxxx.
- 13 PRESIDING JUDGE: Not xxx. Okay, thank you.
- 14 MR SAUTER:
- 15 Q. Did you arrive at xxxxx?
- 16 A. I was not able to get to xxxxx.
- 17 Q. Why were you not able to get to xxxxx?
- 18 A. There was a junction. There was a checkpoint in one  
19 junction; one road going to xxxxx and the other road  
20 going to xxxxx. That was the place a checkpoint was  
21 placed.
- 22 Q. Who had set up this checkpoint?
- 23 A. This checkpoint was manned by the Kamajors.
- 24 Q. What happened at this checkpoint?
- 25 A. They started asking us by tribes.
- 26 Q. And what happened?
- 27 A. They asked me whether I was a Limba and I said yes, then  
28 I should stand on the right side.
- 29 Q. And if you were from another tribe, what happened to

- 1 those people?
- 2 A. If you are also a Temne, you would go in the same  
3 direction.
- 4 Q. Do you know about the treatment of any other tribes apart  
5 from Limba and Temne?
- 6 A. Even if you are a local you'll go the same direction.
- 7 Q. Have you personally been asked what tribe you are?
- 8 PRESIDING JUDGE: He had been asked. He had been asked his  
9 tribe. Yes, I am confirming that he had been asked his  
10 tribe and he confirmed that he's a Limba. It is already  
11 on the record, it is on my record here.
- 12 MR SAUTER: He did not mean it in this sense. I'm sorry, I --
- 13 PRESIDING JUDGE: No, that's all right. You can proceed.
- 14 MR SAUTER: Unrelated to the previous statement.
- 15 PRESIDING JUDGE: No, that is okay, he has confirmed that.  
16 You can move to some other question, please.
- 17 MR SAUTER:
- 18 Q. So what happened to you exactly at this checkpoint?  
19 Could you pass or could you not pass?
- 20 A. Not go through the checkpoint.
- 21 Q. You went through the checkpoint? I did not get it  
22 properly.
- 23 A. I didn't go through the checkpoint. I had to return.
- 24 Q. To return to where?
- 25 A. Return to xxx.
- 26 Q. Final question is this: what happened to all the people  
27 who were either Limbas or --
- 28 MR BOCKARIE: Your Honours, objection.
- 29 PRESIDING JUDGE: Your objection is overruled. He said that

1           there were three of them. There were three groups who  
2           were sent to the same side.  
3 MR BOCKARIE: He was saying is this what happened to the other  
4           group, Your Honour.  
5 PRESIDING JUDGE: Yes, let him continue. The objection is  
6           overruled. Please continue, Mr Sauter. We have it in  
7           evidence that the three groups were put on one side. He  
8           now left. What happened to the locals and the Temnes?  
9 MR SAUTER:  
10 Q. Did you get my question, Mr witness? What happened to  
11       the Temnes, Limbas and locals who were put to one side at  
12       this checkpoint?  
13 A. Placed on the right-hand side of the checkpoint, I knew  
14       six of them. Then I returned.  
15 Q. Sorry, it was not a final question, but now do you know  
16       what happened to the six of them you knew?  
17 A. Six I knew in that group, I have never seen them up to  
18       this very day. I do not know their whereabouts.  
19 MR SAUTER: Now I'm able to keep my promise. That's all for  
20       this witness, thank you.  
21 JUDGE BOUTET: That concludes your examination-in-chief?  
22 MR SAUTER: Yes.  
23 JUDGE BOUTET: Dr Jabbi?  
24                                   CROSS-EXAMINED BY MR JABBI:  
25 Q. Mr witness, according to your evidence --  
26 A. Sir?  
27 Q. -- you were not present when the Kamajors entered xxx  
28       through the end of the new Police Barracks; not so? You  
29       were not present there at that time?



- 1 A. I was not in the barracks, but I was in xxx xxxxx.
- 2 Q. At the time that the Kamajors entered, which part of xxx  
3 xxxxx were you?
- 4 A. I was in xxx in the middle of xxxxx xxxxx.
- 5 PRESIDING JUDGE: Be very specific. Counsel is asking you  
6 which part of xxx xxxxx. Say the part of xxx xxxxx where you  
7 were. I have not been there, but it is a big town. I  
8 understand it is the second biggest city after Freetown.  
9 So what part were you? Centre. What's the centre? Tell  
10 us in what part of xxxxx xxxxx you were.
- 11 THE WITNESS: I was in a place called xxxxxxxx.
- 12 MR JABBI: I believe it is x x x x x x x, My Lords.
- 13 Q. Now, can you tell the Court roughly how far xxxxxxxx is  
14 from the Police Barracks?
- 15 A. It is about half a mile.
- 16 Q. What attracted you to go to the Police Barracks from  
17 xxxxxxxx that morning?
- 18 A. Well, in the morning we heard that they had killed  
19 policemen in the barracks. That is why we went there, to  
20 see.
- 21 Q. Did you in fact hear that there had been fighting at the  
22 Police Barracks that morning?
- 23 A. Yes, we heard of it. Even ourselves we had to run away.
- 24 Q. You said you had to run away. Were you running away from  
25 fighting?
- 26 A. That was why we ran away.
- 27 Q. So what part of xxx xxxxx was the fighting?
- 28 A. It was in the barracks. They were shooting guns in the  
29 barracks.

- 1 Q. And so when finally did you decide to go to the barracks?
- 2 A. In the morning the firing had ceased, that was the time  
3 we left to go and see in the barracks.
- 4 Q. You said in your evidence-in-chief that the Kamajor  
5 commander at that time in xxx was one Kosseh Hindowa; is  
6 that correct?
- 7 A. It is correct.
- 8 Q. Did you know him personally?
- 9 A. I know him.
- 10 Q. As far as you know, how long was he commander there?
- 11 A. He became commander in 1998.
- 12 Q. The question was for how long did you know him as  
13 commander there -- Kamajor commander?
- 14 A. No, I will not be able to tell you the number of years he  
15 served as a commander.
- 16 PRESIDING JUDGE: His evidence is that he has been in Bo all  
17 along, so if he has been there from 1998, you can deduce  
18 for how long he knew him to be a commander there. Don't  
19 you think so?
- 20 MR JABBI: My Lord, I was just trying to see whether he has  
21 any time scale for the time Kosseh was commander in xxx.
- 22 PRESIDING JUDGE: You may proceed, please.
- 23 MR JABBI:
- 24 Q. Now, was Kosseh commander in xxx for all the time the  
25 Kamajors were there in 1998?
- 26 A. I say he was the commander.
- 27 Q. Now, since 1998 --
- 28 PRESIDING JUDGE: what does he say? 1998 for what time?
- 29 MR JABBI: He didn't specify a period, My Lord.

1 PRESIDING JUDGE: Mr Witness, you have told us that you lived  
2 in xxx all along.  
3 THE WITNESS: Yes.  
4 PRESIDING JUDGE: Mr Kosseh Hindowa became a Kamajor commander  
5 in 1998. Was he commander for all this time or was he  
6 changed -- all the time you're talking about?  
7 THE WITNESS: Yes, during that time he was called xxx District  
8 commander.  
9 PRESIDING JUDGE: For all the time you're talking about --  
10 throughout this period? Please, be very clear.  
11 THE WITNESS: From the time he became commander in 1998 he  
12 continued up to the end of the war.  
13 MR JABBI:  
14 Q. Since the end of the war have you seen Kosseh Hindowa?  
15 A. Yes, I usually see him.  
16 Q. Where do you usually see him since the end of the war --  
17 in what town?  
18 A. I usually see him in xxx at xxxx xxxx.  
19 PRESIDING JUDGE: Dr Jabbi, can we have the spelling of xxxxx  
20 xxxx?  
21 MR JABBI: xxxxxx, plus Road as in English.  
22 PRESIDING JUDGE: Thank you.  
23 MR JABBI:  
24 Q. So for all you know, since the war Kosseh Hindowa lives  
25 in xx; is that correct?  
26 A. It is so.  
27 Q. You also spoke about somebody you called a Kamajor  
28 leader, called xxxx xxxx; do you remember that?  
29 A. Yes, I remember it well.

- 1 Q. Was he a commander?
- 2 A. Yes, he was a commander who came from xxxxxxxx.
- 3 Q. And do you also know him well?
- 4 A. I know him very well because he stays near me.
- 5 Q. Mr witness, I would like to advise that when you give  
6 your answers, you take care they don't lead to  
7 discovering your identity. Just as a warning. Now, with  
8 this xxxxx xxxxxx, has he also lived in xxx since the war?
- 9 A. Yes, he's there and he's still there.
- 10 Q. You also mentioned one xxx xxxx, whom you called a  
11 Kamajor leader as well; do you remember?
- 12 A. Yes.
- 13 Q. Did you also know xxx xxxx well?
- 14 A. He knows me and I know him.
- 15 Q. And he also has lived in xxx since the war, has he?
- 16 A. Yes, he was there.
- 17 PRESIDING JUDGE: He's still there?
- 18 MR JABBI: I thought that was what he said.
- 19 Q. Is he still living in xxx?
- 20 A. He has died. He died this year.
- 21 Q. I take you to your story about the RUF coming from  
22 Mile 91 to xxx. You merely said the RUF came from Mile 91  
23 at around 10.00 a.m. one Saturday to xxx. Were you in  
24 fact --
- 25 A. Yes.
- 26 Q. -- saying that the RUF attacked Bo one Saturday morning?  
27 Is that what you were saying?
- 28 A. Yes, that was the very day.
- 29 Q. Can you give us an idea of the month in which that

1           happened?

2    A.    It was in March.

3    Q.    March, according to you in your evidence-in-chief, was

4           also the month that the Kamajors had returned to xxx since

5           1996; is that correct?

6    A.    That was what I said.

7    PRESIDING JUDGE:  That is in March they --

8    MR JABBI:  He had said in his evidence-in-chief that the

9           Kamajors entered xxx in 1998, and he has now said that the

10           RUF attacked xxx from Mile 91 in March 1998.

11   THE WITNESS:  That's what I said.

12   MR JABBI:

13   Q.    Now, were there Kamajors in Bo when the RUF attacked xxxx

14           in March 1998?

15   A.    They were there, they were both there.  They took over

16           the whole of xxx.

17   Q.    whom are you calling "they" when you say "they took over

18           the whole of xxx"?

19   A.    The Kamajors.

20   Q.    So what you are saying is that the same month that the

21           Kamajors entered and took over xxx was the same month that

22           the RUF attacked them from Mile 91; is that so?

23   A.    Wait, let me explain to you.

24   Q.    Yes, answer that question.

25   A.    Yes.

26   PRESIDING JUDGE:  Yes what?

27   MR JABBI:  Yes, the month that the Kamajors entered and took

28           over xxx was the month that the RUF attacked them from

29           Mile 91.

- 1 Q. That's what you are saying; not so?
- 2 A. It was the same month.
- 3 Q. And that was the reason for your fleeing from xxx towards  
4 xxxx in your evidence -- the attack was the reason why  
5 you decided to flee towards xxxx; is that correct?
- 6 A. Yes.
- 7 Q. Now, have you ever made any report of any of these  
8 incidents that you narrated in your evidence since the  
9 war?
- 10 A. There was no place to complain. The only people in town  
11 were the Kamajors.
- 12 PRESIDING JUDGE: I have two replies, yeah? I suppose they're  
13 in order. "I've made no reports because the only people  
14 in town were the Kamajors." That's what he means to say,  
15 I suppose.
- 16 MR JABBI: That's what he said, My Lord.
- 17 PRESIDING JUDGE: He didn't say he has made a report, but he  
18 said the only people in town were the Kamajors. So these  
19 two responses I hope are in their proper place in this  
20 context.
- 21 MR JABBI: Yes, My Lord.
- 22 Q. So since the war have you made any report about the  
23 incidents?
- 24 PRESIDING JUDGE: To anybody other than the Kamajors.
- 25 MR JABBI: Yes, My Lord.
- 26 THE WITNESS: I have nowhere to report.
- 27 MR JABBI:
- 28 Q. That is even after the end of the war you have nowhere to  
29 report?

1 A. Well, the war has already ended, everything is over. Why  
2 is there need again for me to report anywhere.  
3 MR JABBI: That is all for the witness.  
4 JUDGE BOUTET: Thank you. Mr Bockarie? Yes, you may proceed.  
5 CROSS-EXAMINED BY MR BOCKARIE:  
6 MR BOCKARIE:  
7 Q. Mr witness, you told this Court that during the reign of  
8 the juntas in xxx they did no wrong; am I correct?  
9 A. I didn't say that.  
10 Q. Mr witness, I'll write -- mention a name. You need not  
11 call it. I'll just write it on a piece of paper and I'll  
12 ask you whether you know that name.  
13 PRESIDING JUDGE: On a white piece of paper, not on the yellow  
14 piece of paper in front of you.  
15 MR BOCKARIE: Yes. Maureen, can I --  
16 JUDGE BOUTET: You will have to have somebody who can read it  
17 to the witness. He does not read to my knowledge.  
18 PRESIDING JUDGE: I see him nodding an approbation -- in  
19 approval. Can you put the date and his pseudonym on it,  
20 please.  
21 MR BOCKARIE: I'd like to have it marked as an exhibit,  
22 My Lord.  
23 PRESIDING JUDGE: The Prosecution has not seen it. Mr Sauter  
24 has seen it; that's all right.  
25 JUDGE BOUTET: It should be marked as Exhibit 48.  
26 [Exhibit No. 48 was admitted]  
27 MR BOCKARIE:  
28 Q. Mr witness, that name shown to you, is he your son?  
29 A. He's not my son.

1 Q. Mr witness, who is he to you?  
2 A. I don't know.  
3 PRESIDING JUDGE: what does he not know?  
4 THE WITNESS: It is my name that is written on that paper --  
5 my name.  
6 MR BOCKARIE: I've just been told that the name will have been  
7 read out to him. I don't know what was discussed.  
8 JUDGE BOUTET: well, there appears to be some confusion.  
9 MR BOCKARIE: Yes, can the exhibit be brought again. I want  
10 that name to be read to him.  
11 JUDGE BOUTET: Yes.  
12 PRESIDING JUDGE: Ask him whether he's known by another name  
13 in addition to that one, and, if he is, he should whisper  
14 it into the ears of Mr Williams and Mr Sauter.  
15 MR BOCKARIE:  
16 Q. Mr witness, you now remember this name; am I correct?  
17 JUDGE BOUTET: Be careful with that name, please.  
18 MR BOCKARIE: Sorry.  
19 THE INTERPRETER: The witness's mike is not on.  
20 JUDGE BOUTET: Ask it again, Mr Bockarie.  
21 MR BOCKARIE:  
22 Q. Mr witness, you now remember this name; am I correct?  
23 A. Yes.  
24 Q. who is he to you, Mr witness?  
25 A. He's my son.  
26 Q. Mr witness; isn't it true that your son was a junta  
27 soldier based in xxx during the reign of the junta in xxx?  
28 A. Yes.  
29 Q. Mr witness, you told this Court that your properties were



- 1 looted, which included television and freezer, by the  
2 Kamajors and ECOMOG; am I correct?
- 3 A. It is true.
- 4 Q. Mr witness, isn't it true that in the course of this  
5 looting, according to you, an AK47 gun and an LMG gun  
6 were discovered in your house?
- 7 A. No.
- 8 PRESIDING JUDGE: An AK47?
- 9 MR BOCKARIE: Yes, Your Honour, and an LMG -- AK47 and LMG  
10 gun.
- 11 Q. Mr witness, your house had no electricity. Do you have  
12 electricity in your house in xxx?
- 13 A. Yes, I have electricity.
- 14 Q. Mr witness, I am putting it to you that your house was  
15 used for storing looted property by the juntas?
- 16 A. It is not so. These are my actual properties.
- 17 MR BOCKARIE: That will be all for him.
- 18 JUDGE BOUTET: Thank you, Mr Bockarie. Cross-examination by  
19 third accused?
- 20 PRESIDING JUDGE: Mr Williams, please wait. Mr Williams, you  
21 may proceed.
- 22 CROSS-EXAMINED BY MR WILLIAMS:
- 23 MR WILLIAMS:
- 24 Q. Witness, do you know Captain xx xxxxx who used to be  
25 based at xxx?
- 26 A. I heard the name, but I don't know him.
- 27 PRESIDING JUDGE: Mr Williams, it's xx xxxxx?
- 28 MR WILLIAMS: xx.
- 29 PRESIDING JUDGE: He's a captain?

- 1 MR WILLIAMS: Yes, captain, My Lord.  
2 [HN071204E 5.25 p.m.]  
3 Q. Did that captain hold any position in xxx during the junta  
4 period?  
5 A. well, you have already said he was a captain. I don't  
6 know any other post, except the captain you yourself have  
7 called him.  
8 Q. Did he hold a position in the RUF government?  
9 A. Yes, I heard his name there.  
10 Q. And what was that position?  
11 A. I heard that he was a minister in Bo and that he was a  
12 minister in xxx.  
13 Q. And you saw him quite often during the days of the AFRC;  
14 is that correct?  
15 A. Yes, I saw him in xxx. I usually see him in xxx.  
16 Q. Is it correct to say that there are three houses in your  
17 compound? Three houses -- there are three houses in your  
18 compound in xxx?  
19 A. In my own compound or the whole of xxx?  
20 Q. In your compound.  
21 PRESIDING JUDGE: Three houses only in xxx, Mr witness?  
22 THE WITNESS: I have four houses.  
23 MR WILLIAMS:  
24 Q. You have four houses in xxx; is that correct? That is  
25 what you said; you have four houses?  
26 PRESIDING JUDGE: But that does not answer your question. In  
27 your compound you said. Is it true that you have four  
28 houses? Is that not what you asked?  
29 MR WILLIAMS: [Overlapping microphones] -- whether he has three

1 houses.

2 PRESIDING JUDGE: But now he says he has four houses. where  
3 are they? I mean, ask him: Are they scattered or are  
4 they in the same complex?

5 MR WILLIAMS:

6 Q. These four houses, are they in the same compound?

7 A. Yes, they are all in the same compound.

8 Q. And all of those four houses are made of mud; is that  
9 correct? They are mud houses?

10 A. Yes.

11 PRESIDING JUDGE: when you say mud, do you have a tradition  
12 here of making mud blocks or you just pile the mud and it  
13 is --

14 MR WILLIAMS: It is either of the two, My Lord. You can make  
15 bricks out of them or pile it up.

16 PRESIDING JUDGE: Okay, they are built of mud, hmm?

17 MR WILLIAMS:

18 Q. And you would agree with me, Mr witness, that ~~xx xxxxxx~~  
19 came to your house quite often during the days of the  
20 AFRC?

21 A. Astafulai [phon].

22 MR WILLIAMS: That's "God forbids it", My Lord.

23 PRESIDING JUDGE: Astafulai.

24 MR WILLIAMS: It's Arabic.

25 PRESIDING JUDGE: That's astafulai. God forbid.

26 MR WILLIAMS: God forbid it.

27 PRESIDING JUDGE: "God forbid it, ~~xx xxxxxx~~ never came to my  
28 house." Mr williams, did you say frequently?

29 MR WILLIAMS: Yes, quite often.

1 PRESIDING JUDGE: "Never came to my house quite often." Did  
2 he ever?  
3 MR WILLIAMS:  
4 Q. Did he ever go to your house?  
5 A. He has never been to my house one day. He doesn't even  
6 know my house.  
7 Q. Mr witness, can you read and write the English language?  
8 A. No, I didn't go to school.  
9 Q. In answer -- in answer to a question put by Mr Bockarie,  
10 you said an AK-47 and LMG were not found at your  
11 premises; is that so?  
12 PRESIDING JUDGE: That is so.  
13 MR WILLIAMS: May I refresh his memory before I put the  
14 question?  
15 PRESIDING JUDGE: That is so. Go ahead.  
16 THE WITNESS: It was not found in my house. I am not a  
17 soldier. why should I keep such things in my house?  
18 MR WILLIAMS:  
19 Q. Were any rifles found at your property?  
20 PRESIDING JUDGE: But he has accepted that his son was --  
21 [microphone not activated]  
22 MR WILLIAMS:  
23 Q. would you answer the question, please. Were --  
24 PRESIDING JUDGE: He has answered the question.  
25 JUDGE BOUTET: He has answered yes, that it was found on his  
26 property, not in his house.  
27 MR WILLIAMS: Not in his house?  
28 JUDGE BOUTET: But he said yes to your last question, it was  
29 on his property not in his house. And your question was:

1 He has four houses in his compound, so --

2 PRESIDING JUDGE: He has said, you know, in his evidence that  
3 Exhibit 48, which he denied before, is -- I mean,  
4 contains a name. He said, first of all, it was his name  
5 and he changed and said it was the name of his son and  
6 that that son of his -- I hope I got him right. He was a  
7 junta soldier during the junta reign in xxx. Hmm?

8 MR WILLIAMS: Yes.

9 PRESIDING JUDGE: Yes, that is what he said. So when he says  
10 he was not a soldier, I'm saying the son was, so it is a  
11 pertinent question to ask him.

12 MR WILLIAMS: It is a pertinent question, My Lord.

13 PRESIDING JUDGE: It is a pertinent question.

14 MR WILLIAMS: As My Lord pleases.

15 PRESIDING JUDGE: Yes.

16 MR WILLIAMS:

17 Q. You said two rifles were found at your house?

18 PRESIDING JUDGE: He did not say so. He did not say. It was  
19 suggested to him.

20 MR WILLIAMS: I believe he answered that question.

21 JUDGE BOUTET: He did. He said it was not in his house, but  
22 on the property, whatever it means, and you can ask him  
23 where.

24 MR WILLIAMS:

25 Q. You just said that two rifles were found on your  
26 property. Where exactly were they found?

27 A. It was in my house. This was a hunting gun. I usually  
28 kill monkeys with that gun that was found in my  
29 possession. The other one was an old one and it doesn't

- 1 work at all.
- 2 JUDGE BOUTET: Mr Williams, I suggest you repeat the question,  
3 because I know what he has answered, but I thought the  
4 question was about an AK-47 and other guns.
- 5 PRESIDING JUDGE: LMG.
- 6 MR WILLIAMS: Yes, His Lordship Justice Itoe didn't allow me  
7 to put that question because it was merely re-echoing  
8 what he had said earlier on.
- 9 PRESIDING JUDGE: You may go ahead now.
- 10 MR WILLIAMS: I've taken the cue, My Lord.
- 11 PRESIDING JUDGE: You are on the right terrain now.
- 12 MR WILLIAMS:
- 13 Q. Yes, this your son, who you said was a soldier, did he  
14 stay at barracks in xxx?
- 15 A. He was in my house. But he has his own house. He has  
16 his own area separately.
- 17 PRESIDING JUDGE: His own in that same complex of four houses?
- 18 MR WILLIAMS: Yes, My Lord.
- 19 PRESIDING JUDGE: well, let him confirm that. He has not  
20 confirmed that. I just want us to move fast.
- 21 MR WILLIAMS:
- 22 Q. Yes, your son's house, is it in your compound?
- 23 A. Yes, it was in the same compound.
- 24 Q. Mr witness, were you happy when ECOMOG went to xxx?
- 25 A. So much.
- 26 Q. And could you tell the Court what they were doing in xxx  
27 when they went there?
- 28 A. which ones?
- 29 Q. The ECOMOG, what were they doing in xxx?

- 1 A. Well, wherever they met the Kamajor wanting to kill a  
2 civilian, they will always release the civilian. They  
3 will not allow the Kamajors to kill any civilian.
- 4 Q. Did ECOMOG have any control over the Kamajors?
- 5 A. No, they were unable to control the Kamajors.
- 6 Q. And on those occasions, you said the -- on those  
7 occasions you said ECOMOG came across Kamajors, did the  
8 Kamajors comply with the orders of the ECOMOG?
- 9 A. Yes, at times if they meet them, they will answer.
- 10 Q. Did they comply with?
- 11 PRESIDING JUDGE: He says at times. He says at times.
- 12 MR WILLIAMS: They will answer, My Lord.
- 13 PRESIDING JUDGE: Yes, they will answer -- at times they will  
14 comply.
- 15 MR WILLIAMS: All right. As My Lord pleases.
- 16 PRESIDING JUDGE: Yes.
- 17 MR WILLIAMS:
- 18 Q. Yes, Mr witness, I'm putting it to you that you never  
19 paid any money to xxxxx xxxxxx?
- 20 A. I paid -- I paid xxxxx xxxxxx. I took that money from  
21 my pocket.
- 22 Q. And I'm also putting it to you that you never paid a  
23 single cent to xxxx xxxxx.
- 24 A. I paid him.
- 25 Q. And I'm also putting it to you that you never paid any  
26 monies to xxx xxxx?
- 27 A. I paid him.
- 28 Q. And could you tell the Court when electricity was  
29 connected to your house?

- 1 A. Yes.
- 2 Q. When was that?
- 3 A. 1995.
- 4 Q. 1995?
- 5 A. 1995.
- 6 Q. Mr witness, finally I'm putting it to you that the  
7 Kamajors never targeted the Limbas and the Temnes, as you  
8 mentioned.
- 9 A. I was not told; I saw it myself.
- 10 MR WILLIAMS: That will be all, My Lord.
- 11 JUDGE BOUTET: That concludes the cross-examination?
- 12 MR WILLIAMS: Yes, My Lord.
- 13 JUDGE BOUTET: Thank you. Mr Prosecutor, any re-examination?
- 14 MR SAUTER: Just briefly, Your Honour.
- 15 RE-EXAMINED BY MR SAUTER:
- 16 Q. Mr witness, on cross-examination by the Defence for the  
17 first accused you said you saw fighting when you went to  
18 the police compound. What do you mean with fighting?
- 19 A. They were shooting guns.
- 20 MR WILLIAMS: I take an objection, My Lord. The evidence is  
21 very clear and unambiguous, My Lord, and there is no  
22 basis to re-examine on that.
- 23 PRESIDING JUDGE: He feels it is not clear. The issue of  
24 shooting in the police barracks arose during the  
25 cross-examination.
- 26 MR WILLIAMS: Yes, My Lord, except fighting -- [overlapping  
27 speakers]
- 28 PRESIDING JUDGE: Yes, there was fighting or shooting there.  
29 Listen to the evidence of this witness. The witness said



1           that they heard shooting there in the police barracks.  
2           In the morning the shooting had died down, so they went  
3           and saw what they saw. So there is evidence of shooting  
4           and there is evidence that they went there. So this  
5           question arose from cross-examination.  
6 MR WILLIAMS: My Lord, for him to ask what he means by -- what  
7           he meant by fighting, My Lord, well, that is clear to  
8           everybody.  
9 PRESIDING JUDGE: Not only fighting. He said there was  
10          fighting there. That is how it arose during  
11          cross-examination, so I think he can re-examine on that,  
12          Mr Williams.  
13 MR WILLIAMS: As My Lord pleases.  
14 MR JABBI: My Lord, the evidence was not that the witness saw  
15          fighting in the police barracks.  
16 PRESIDING JUDGE: He said fighting was going on around the  
17          police barracks and there was shooting.  
18 MR JABBI: Yes, before he went there.  
19 PRESIDING JUDGE: Before he went there, yes, that is what  
20          I have said.  
21 MR JABBI: The premise to his question just now was that he  
22          saw fighting in the police barracks when he was there.  
23 PRESIDING JUDGE: Seeing fighting, I didn't --  
24 MR JABBI: That was the premise to the question.  
25 PRESIDING JUDGE: Mr Sauter, was that your question? Can you  
26          rephrase your question. I didn't understand you to have  
27          said that.  
28 MR SAUTER: Mr Jabbi is right in his allegation. This was  
29          indeed my question.

1 PRESIDING JUDGE: What is your question?  
2 MR SAUTER: May I re-phrase it to make clear what I said?  
3 PRESIDING JUDGE: Ask that question again. Take the question  
4 the way you asked it.  
5 MR SAUTER: I'm not sure whether I clearly remember, but as  
6 far as I remember, it was what Mr Jabbi repeated that you  
7 said on cross-examination that you saw fighting.  
8 PRESIDING JUDGE: Okay, rephrase it that there was fighting  
9 over there.  
10 JUDGE BOUTET: The examination is exactly -- the  
11 cross-examination was: "You heard fighting that  
12 morning." That was a question asked by Dr Jabbi and the  
13 answer was "yes." And we heard, "And I ran away".  
14 MR SAUTER: If you allow just one question.  
15 Q. Mr witness, did you see any exchange of fire, two groups  
16 firing at each other?  
17 A. It was only the Kamajors that were there.  
18 MR SAUTER: Thank you, Mr witness, that is all.  
19 [Trial Chamber confer]  
20 PRESIDING JUDGE: Learned counsel, as you would remember,  
21 there was before us an application by counsel for the  
22 first and the second accused to which the -- to which  
23 counsel for the third accused also associated themselves  
24 on the 5th of November 2004, to call some OTP  
25 investigators who took down in writing the statements of  
26 Prosecution witness TF2-021. The decision of this  
27 Chamber will be read at this point in time by  
28 Honourable Justice Bankole Thompson.  
29 JUDGE THOMPSON: The Trial Chamber of the Special Court for

1 Sierra Leone, the Special Court composed of Honourable  
2 Judge Benjamin Mutanga Itoe, Presiding Judge, Honourable  
3 Judge Bankole Thompson, and Honourable Judge  
4 Pierre Boutet, seized of an oral application by Defence  
5 counsel for the first and second accused, Sam Hinga  
6 Norman and Moinina Fofana respectively, the Defence, and  
7 their supporting grounds and submissions during the trial  
8 proceedings on 5th November 2004 for an order that the  
9 Prosecution call as witnesses Virginia Chitanda, Office  
10 of the Prosecutor, OTP investigator, and Tamba Gbekie,  
11 OTP investigator, who respectively took down in writing  
12 the statements dated 4th February 2003 and the 13th  
13 January 2003 of Prosecution witness TF2-021 to explain  
14 alleged inconsistencies between the aforesaid statements  
15 and the witness's oral testimony; and the Prosecution's  
16 response to the said application and the reply of the  
17 Defence thereto; considering the recent ruling of this  
18 Chamber in this case that prior inconsistent statements  
19 are generally admissible in international criminal trials  
20 as a means to impeach the credibility of a witness; after  
21 deliberation hereby issues the following ruling:

22 This is the unanimous ruling of the Trial Chamber of  
23 the Special Court on the oral application by counsel for  
24 first and second accused with whom counsel for the third  
25 accused associated on 5th November 2004 for an order that  
26 the Prosecution in this case call as witnesses  
27 Virginia Chitanda, Office of the Prosecutor investigator  
28 and Tamba Gbekie, OTP investigator, who respectively took  
29 down in writing the statements dated 4th February 2003

1 and 13th January 2003 of Prosecution Witness TF2-021 on  
2 the grounds that there are alleged inconsistencies  
3 between the witness's statements and his oral testimony  
4 before the Court.

5 The application was argued by Ms Quincy Whitaker,  
6 then counsel for the first accused. In support of the  
7 said application, counsel contended that during  
8 cross-examination of Prosecution Witness TF2-021, the  
9 Defence demonstrated several major inconsistencies  
10 between certain specific portions of the witness's  
11 statements made to the OTP investigators through  
12 interpreters or translators.

13 The Defence stated that they have not been provided  
14 with the original statements but only with the translated  
15 versions and submitted that the Chamber should order the  
16 Prosecution to call the investigators to testify so as to  
17 enable the Chamber adequately and effectively to (i) test  
18 the credibility of the said witness; (ii) test the  
19 veracity of the statements given by the said witness to  
20 the OTP investigators; and (iii) determine what weight to  
21 attach to the witness's testimony.

22 Ms Whitaker further submitted that the Defence is  
23 placed at a great disadvantage, because the OTP  
24 investigators did not record the original statements but  
25 only the interpretation, thus the statements were not  
26 recorded in the proper way; and that in fairness to the  
27 witness, calling the investigators to testify would  
28 assist the Chamber in determining whether the  
29 inconsistencies resulted from erroneous translation or

1 not.

2 Counsel also submitted that it was the  
3 responsibility of the Prosecution and not that of the  
4 Defence to call the investigators to testify to clarify  
5 these matters since the Prosecution served the statements  
6 as accurate records of the witness's testimony, and if  
7 the Court accepted the Prosecution's assertion that the  
8 statements were entirely accurate, then there would have  
9 been no need to call the witness to testify.

10 Concluding, Ms. Whitaker submitted that the legal  
11 rationale behind the application was to the assist the  
12 Court in assessing the demeanour of the witness and  
13 whether or not he made previous inconsistent statements.

14 In response, the Prosecution strenuously opposed the  
15 application and submitted that the exercise of calling  
16 the investigators would be time-wasting and futile. It  
17 argued that it was the witness's viva voce testimony that  
18 was in force and not his prior statements. In addition,  
19 the Prosecution contended that the statement is just a  
20 guide and that the testimony is the evidence.

21 It is also the Prosecution's contention that the  
22 core feature of the witness's testimony is that he was a  
23 child soldier attached to the CDF and was engaged in  
24 combat, there being no inconsistency as regards this core  
25 evidence, and that the only inconsistency was in respect  
26 of the evidence relating to the RUF.

27 It is further submitted by the Prosecution that  
28 there is no dispute that the statements were taken down  
29 in writing by the investigators, and that the accepted

1 procedure for doing so was regularly followed, and that  
2 it is a matter of common knowledge that difficulties do  
3 exist regarding interpretation of witness's statements.

4 Another submission put forward by the Prosecution is  
5 that the Defence had the opportunity of cross-examining  
6 the witness and that this is how credibility should be  
7 assessed, citing page 166 of May and Wierda,  
8 International Criminal Evidence, ed 2000, and the  
9 decision of this Chamber in this case dated 16th July  
10 2004 on cross-examination and prior inconsistent  
11 statements.

12 Finally, the Prosecution argues that the Defence  
13 request is not a proper application of the principle of  
14 orality emphasized by this Court as regards the treatment  
15 of prior inconsistent statements.

16 In their abbreviated reply, the Defence disagreed  
17 with the Prosecution, (i) that the alleged  
18 inconsistencies relate only to "minor issues"; and (ii)  
19 that the alleged inconsistencies were occasioned by  
20 "interpretation issues".

21 Merits of application:

22 The key issue for determination by the Chamber in  
23 this application is whether, in the light of the  
24 repudiation by witness TF2-021 of significant and highly  
25 contentious portions of Exhibits 19A and 19B statements  
26 taken down in writing by OTP investigators  
27 Virginia Chitanda and Tamba Gbokie on 4th February 2003  
28 and 13 January 2003 respectively, the Chamber will, at  
29 the appropriate phase of this trial proceeding, be able,

1 without more, to adequately, fairly and effectively  
2 evaluate the probative value of this witness. The  
3 Defence submits that the court will not be able to do so  
4 without the testimonies of investigators. The  
5 Prosecution also submits that it is a futile and  
6 time-wasting exercise and that there is no dispute that  
7 investigators did take down Exhibits 19A and 19B in  
8 writing and that the accepted procedure for taking such  
9 statements was regularly followed.

10 We do emphasise that in the sphere of criminal law  
11 the doctrine of *Omnia praesumuntur rite esse acta*, has a  
12 limited application. It generally applies to the diverse  
13 aspect of the judicial administration covering the  
14 services of legal processes, production of official  
15 documents from lawful custody and the exercise of  
16 supervisory roles in the context of judicial  
17 administration. It does not, we maintain, apply to  
18 matters of proof in the domain of criminal adjudication  
19 in respect of the very factual and legal issues, directly  
20 or indirectly, in controversy before the Court. In the  
21 context of the instant application, the presumption of  
22 regularity cannot legitimately apply to the specific and  
23 contentious issues, factual and legal, forming the  
24 substratum of the Defence application.

25 In effect, in our considered view this Chamber finds  
26 no legal basis for presuming that an investigator who  
27 took down a witness's statement in writing did comply  
28 with every rule, requirement or practice governing the  
29 recording of witness statements. There is no judicial

1 warrant to apply such a presumption in criminal trials.

2 Given, therefore, the state of the portions of the  
3 testimony of TF2-021 on those significant and highly  
4 contentious issues between the parties herein, coupled  
5 with the equally significant repudiations of what the  
6 witness allegedly told or did not tell the investigators,  
7 we find it extremely difficult, at this stage, to come to  
8 the conclusion that we do have before us all the  
9 necessary and relevant evidence upon which to evaluate  
10 adequately and effectively the probative value of the  
11 witness's testimony.

12 It is the Chamber's view that to adopt the approach  
13 canvassed by the Prosecution is tantamount to  
14 acknowledging a novel principle in international criminal  
15 law whereby the courts are precluded from looking into  
16 the investigator's record of the statement in absence of  
17 an irregularity ex facie, implying that to probe beyond  
18 the pale of the investigator's record of a witness's  
19 statement is not a proper matter for judicial inquiry.  
20 Such a position flies in the face of the doctrine that  
21 the persuasive burden of proof which it must discharge  
22 beyond a reasonable doubt rests on the Prosecution. The  
23 Chamber is of the opinion that we can properly look  
24 behind the scenes and inquire whether a statement taken  
25 by investigators from witnesses was properly taken down  
26 in writing and is an accurate portrayal of the facts as  
27 stated.

28 A related issue that needs to be disposed of at this  
29 point is on whom the burden of producing the



1 investigators as witnesses rest? Our considered reply to  
2 this question is that it is on the Prosecution. To  
3 suggest that it is on the Defence or the Bench is to  
4 shift some of the burden for establishing the guilt of  
5 the accused person on to the Defence or the Bench.

6 It is noteworthy, as that matter of law, that the  
7 Prosecution is right in its citation of page 166 of  
8 International Criminal Evidence in support of the  
9 proposition that inconsistencies need not be fatal to the  
10 testimony of a witness provided that they are not  
11 material. However, it is also the law that one of the  
12 key factors in assessing credibility is consideration of  
13 other witness accounts or other evidence submitted in the  
14 case and not only that on the strength under  
15 cross-examination.

16 Significantly, this Chamber recognises that one  
17 operative doctrine on this subject is the doctrine of  
18 collaterality. The essence of the principle is that  
19 questions in cross-examination designed solely at  
20 discrediting a witness or impeaching the witness's  
21 credibility are essentially collateral in nature if they  
22 do not touch on an issue which the Court is necessarily  
23 required to determine such as an element of the offence.  
24 The typical legal situation calling for the application  
25 of the so-called collateral-fact rule is where an effort  
26 is made to discredit a witness in a manner unrelated to  
27 the subject matter of the offence. The law is that under  
28 cross-examination, in the context of the application of  
29 the collateral-fact rule, there is, generally, no

1 opportunity to call evidence to refute answers which have  
2 been given by a witness, after asking further questions.  
3 Exceptionally, the Defence may be afforded the  
4 opportunity, where proper foundation has been laid, to  
5 call evidence where a prior inconsistent statement is  
6 alleged to contradict a witness's testimony.

7 In this regard, whether an issue in a trial is  
8 collateral or central, it not determined by reference to  
9 some judicial crystal ball. It depends upon the nature  
10 of the charges, the factual allegations in support, the  
11 definition of the issues in controversy, and the totality  
12 of the circumstances of the case. It is, therefore, the  
13 considered opinion of the Chamber that some  
14 clarifications from the OTP investigators will provide an  
15 evidentiary basis upon which TF2-021 can be judged, on  
16 the grounds that TF2-021's credibility is central to the  
17 proof of the Prosecution's case in respect of the matters  
18 to which he has testified. Having regard to the nature  
19 of his testimony, some explanation as to why he has  
20 repudiated significant portions of his out-of-court  
21 statements may assist the Court in accurately evaluating  
22 his credibility. It is certainly within the realm of  
23 probability that the OTP investigator's evidence might  
24 remove any doubt that might be cast on the witness's  
25 credibility and emanating from his unequivocal  
26 repudiation in court of certain significant portions of  
27 the said out-of-court statements to them.

28 In R. v. Krause, the Court laid down this guiding  
29 principle: "In the cross-examination of witnesses

1 essentially the same principles apply. Crown counsel, in  
2 cross-examining an accused, are not limited to subjects  
3 which are strictly relevant to the essential issues in a  
4 case. Counsel are accorded a wide freedom in  
5 cross-examination which enable them to test and question  
6 the testimony of the witnesses and their credibility.  
7 Where something new emerges in cross-examination, which  
8 is new in the sense that the Crown had no chance to deal  
9 with it in its case in chief, there was no reason for the  
10 Crown to anticipate that the matter would rise, and where  
11 the matter is concerned with the merits of the case, that  
12 is, it concerns an issue essential for the determination  
13 of the case, then the Crown may be allowed to call  
14 evidence in rebuttal. Where, however, the new matter is  
15 collateral, that is, not determinative of an issue  
16 arising in the pleadings or indictment or not relevant to  
17 matters which must be proved for the determination of the  
18 case, no rebuttal may be allowed."

19 Continuing, the Court opened: "An early expression  
20 of this proposition is to be found in Attorney-General v.  
21 Hitchcock, [1847] 1 Ex. 91, 154 E.R. 38 and examples of  
22 the application of the principle may be found in  
23 R. v. Cargill, [1913] 2 K.B. 271; R. v. Hrechuk (1951),  
24 58 Man. R. 489; R. v. Rafael, [1972] 3 O.R. 238; and  
25 Latour v. The Queen, [1978] 1 S.C.R. 361. This is known  
26 as the rule against rebuttal on collateral issues".

27 Conclusion:

28 In the light of the foregoing considerations, the  
29 Chamber has no alternative option, given the state of the

1 evidence of TF2-021 and the repudiations of significant  
2 portions of those statements, but to grant the  
3 application. We must emphasise, however, that in  
4 granting the order sought, we do not suggest that every  
5 application of this nature will be granted as a matter of  
6 course. This Chamber will exercise its discretion on a  
7 case-by-case basis and will examine each application  
8 according to its merits having regard to the nature of  
9 the crimes, the nature of the pleadings, the definition  
10 of the issues, and the particular facts and circumstances  
11 of the case. It is important to mention that in this  
12 peculiar and almost extreme case we are confronted with  
13 the testimony and out-of-court statements of a  
14 Prosecution witness, a child witness, who, without  
15 equivocation or hesitation, repudiated significant and  
16 highly contentious portions of his statements to the  
17 investigators, bearing in mind of course, that the  
18 testimonies of this category of witnesses should, either  
19 as a matter of law or practice, be examined with some  
20 degree of judicial vigilance in view of their particular  
21 susceptibilities.

22 For all the above stated reasons, the Trial Chamber,  
23 accordingly, grants the Defence application and hereby  
24 orders the Prosecution to call as witnesses in this case,  
25 Virginia Chitanda and Tamba Gbekie, investigators of the  
26 Office of the Prosecutor, to testify before this Court as  
27 to the taking down in writing of the statements of  
28 Prosecution witness TF2-021 dated 4th February 2003 and  
29 13 January 2003, marked Exhibits 19A and 19B



1 PRESIDING JUDGE: This is in relation to which witness?  
2 JUDGE BOUTET: This is in relation to the testimony of  
3 TF2-058. And the document in question here has been done  
4 in Freetown on 7 December 2004 and signed by the  
5 Prosecution and the Defence for the third accused.  
6 PRESIDING JUDGE: And the document is dated?  
7 JUDGE BOUTET: 7 December.  
8 There is nothing else for the Prosecution at this  
9 moment?  
10 MR TAVENER: That is all.  
11 JUDGE BOUTET: Counsel for the first accused?  
12 MR JABBI: Yes, My Lord. My Lord, when the ruling was read on  
13 the first accused's application for service and  
14 arraignment on the consolidated indictment the point was  
15 specifically made that the ruling did not apply to the  
16 prior applications by the second and third accused.  
17 JUDGE BOUTET: That is true.  
18 MR JABBI: It can be expected that perhaps the rulings on  
19 those applications --  
20 JUDGE BOUTET: There was one on the second accused that was  
21 filed yesterday or this morning, so second accused should  
22 know by now.  
23 MR JABBI: If I may ask, is a similar thing being done the  
24 third accused, as well?  
25 PRESIDING JUDGE: [Overlapping speakers] -- the dissenting  
26 opinions. There is a similar dissenting opinion on the  
27 two applications.  
28 MR JABBI: The two applications?  
29 PRESIDING JUDGE: Yes, we treated them separately. We did not

1 want to consolidate them.

2 JUDGE BOUTET: They were filed as separate application motions  
3 without -- with them separately, so the decision we  
4 rendered on the first accused was given orally in court.  
5 As to the second accused and the third accused, we did  
6 not read the decision in court. We filed them, so for  
7 the second accused that decision has been filed, if I'm  
8 not mistaken, this morning, so it is now with Court  
9 Management, and for the third accused any moment.

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

11 JUDGE THOMPSON: And for the third accused, I should add  
12 perhaps that will be filed tomorrow morning. There will,  
13 in fact, be a majority decision, a separate concurring  
14 and a dissenting. That will be filed tomorrow morning or  
15 the latest tomorrow afternoon.

16 PRESIDING JUDGE: The dissenting not tomorrow morning. It  
17 will follow later on. In any event, you know what it is.  
18 You should know what it is. It is textually, basically  
19 on the same reasoning as the dissenting opinion on the  
20 application by the first accused.

21 JUDGE BOUTET: Any other matter? Thank you. Mr Presiding  
22 Judge.

23 PRESIDING JUDGE: Are there any other issues? We have no  
24 other issues on the table to sort out. Yes, Mr Witness.

25 THE WITNESS: Yes.

26 PRESIDING JUDGE: We have finished with you. We thank you  
27 very much for coming to testify before us and even though  
28 we are finished with you now --

29 THE WITNESS: Yes, sir.

1 PRESIDING JUDGE: -- there could be a possibility that we will  
2 recall you here again. It is not the case now, but there  
3 is the possibility. It could be possible. And if and  
4 when such a necessity arises, you will be informed and we  
5 will be pleased to have you back here.

6 We wish you a safe journey back and again thank you  
7 very much for coming to assist the Court.

8 THE WITNESS: Yes, sir.

9 PRESIDING JUDGE: well, this said, I think we've come to the  
10 end of the third session of this trial. It has been  
11 gruesome, but I think smooth. It has been rough at  
12 certain stages and it has smoothed out at other stages.  
13 We have nothing to complain about. That is part of the  
14 judicial process that we're here to serve. I would like  
15 to go thank all learned counsel on both sides for the  
16 very positive contribution, to the success we've  
17 registered. In fact, the success we've registered the  
18 session is quite remarkable. I would say much more  
19 remarkable than we have -- then we did during the first  
20 and the second sessions and I think if we continue at  
21 this pace, we should be able to get very close to the  
22 case for the Defence in a very short time. And this, of  
23 course, will depend on the Prosecution and the  
24 possibility of their pruning their list of witnesses so  
25 that we can get, as fast as possible, to the case for the  
26 Defence and also, as fast as possible, to the end of the  
27 trial in this matter.

28 We have taken notice of the fact that the Defence  
29 intends to call about 56 witnesses. Well, if the



1 Prosecution was able to revise their list from about 150  
2 to 100, we expect -- I do hope -- we sincerely hope  
3 that -- 56 is just a preliminary estimation and that it  
4 would be much less than that. Again, it is not the  
5 intention of the Chamber to limit the number of  
6 witnesses, but we will not hesitate to invoke the  
7 provisions of Rule 90(F) which were used this morning by  
8 learned counsel Margai to ensure that we limit ourselves  
9 to the essentials and avoid matters which are very  
10 extraneous and irrelevant to these proceedings.

11 I would like on this occasion, before we separate on  
12 behalf, of my colleagues and on my own behalf, to wish  
13 every one of you learned counsel, our legal staff and  
14 everybody who has been assisting us in these proceedings  
15 a very happy -- very merry Christmas and a prosperous new  
16 year. We need it as we're breaking for the Christmas and  
17 for those who are travelling, I do seize this opportunity  
18 to wish you a very safe journey and a prosperous, happy  
19 stay with your families who most of us have abandoned in  
20 our homes because we had to come here to render a service  
21 to our brothers and the people of Sierra Leone.

22 So we thank you very much for what we have achieved  
23 and we hope to see you during the next session, which is  
24 in the month of February. February is just around the  
25 corner. I'm sure we shall soon -- but I think we've done  
26 everything to make sure we've rendered all the rulings  
27 which we thought are important so that everybody goes  
28 with a focus on where we are and where we shall start  
29 from in the month of February. Thank you, very much

1 indeed.

2 MR MARGAI: With your leave, My Lords. I'll be very brief.

3 We take this opportunity, meaning the Prosecution and  
4 ourselves, to express our thanks and appreciation to the  
5 Bench and the Court staff, without whose industry we  
6 could not have reached where we have reached, for the  
7 cordiality which has prevailed throughout this trial. We  
8 take this opportunity to wish the Bench, the Court staff  
9 and all of us here present a happy, happy Christmas and a  
10 prosperous 2005. And we also pray that the good Lord  
11 will grant those who may be travelling, travelling  
12 mercies and look forward to all of us being here next  
13 year invigorated to continue the process in the pursuit  
14 of justice. Thank you very much.

15 PRESIDING JUDGE: Thank you very much.

16 MR TAVENER: Thank you, Your Honour. On this occasion

17 Mr Margai has accurately reflected the Prosecution case.

18 PRESIDING JUDGE: That is one of those agreements between the  
19 Prosecution and the Defence. We wouldn't ask you to put  
20 it down in a document. Let it remain on the records.

21 We will shall rise and resume in February. The  
22 Court will rise.

23 [Whereupon the hearing adjourned at 6.25 p.m. sine die]

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EXHIBITS:

|                |     |
|----------------|-----|
| Exhibit No. 48 | 86  |
| Exhibit No. 49 | 108 |

WITNESSES FOR THE PROSECUTION:

|                                    |    |
|------------------------------------|----|
| WITNESS: TF2-067                   | 64 |
| WITNESS: TF2-056                   | 66 |
| EXAMINED BY MY SAUTER: [Continued] | 66 |
| CROSS-EXAMINED BY MR JABBI         | 79 |
| CROSS-EXAMINED BY MR BOCKARIE      | 86 |
| CROSS-EXAMINED BY MR WILLIAMS      | 88 |
| RE-EXAMINED BY MR SAUTER           | 95 |

C E R T I F I C A T E

We Roni Kerekes, Ella K Drury and Joanne Mankow, 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

Ella K Drury

Joanne Mankow