

Case No. SCSL-2004-15-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ISSA SESAY
MORRIS KALLON
AUGUSTINE GBAO

TUESDAY, 28 MARCH 2006
9.35 A.M.
TRIAL

TRIAL CHAMBER I

Before the Judges:	Pierre Boutet, Presiding Bankole Thompson Benjamin Mutanga Itoe
For Chambers:	Ms Candice Welsch Mr Matteo Crippa
For the Registry:	Mr Geoff Walker Ms Maureen Edmonds
For the Prosecution:	Mr Peter Harrison Mr Mohamed Bangura Ms Shyamala Alagendra Ms Charles Hardaway Mr Mark Wallbridge (Case Manager)
For the Principal Defender:	Mr Vincent Nmehielle Ms Elizabeth Nahamya Ms Claire Carlton-Hanciles Ms Haddijatou Kah-Jallow Ms Charles Jalloh Mr Ibrahim Foday Mansaray
For the accused Issa Sesay:	Mr Wayne Jordash
For the accused Morris Kallon:	Mr Melron Nicol-Wilson Ms Rachel Irura Mr Charles Taku
For the accused Augustine Gbao:	Mr Andreas O'Shea Mr John Cammegh

1 [RUF28MAR06A - CR]
2 Tuesday, 28 March 2006
3 [Open session]
4 [The accused present]
09:35:07 5 [Upon resuming at 9.35 a.m.]
6 PRESIDING JUDGE: Good morning, counsel. Good morning,
7 Mr Principal Defender. Mr Principal Defender, we had indicated
8 yesterday when you appeared at our request that we would like to
9 hear from you this morning. So I would like to ask you, before I
09:43:43 10 ask you to address the Court, if you've had the occasion to read
11 the transcript of what happened -- that is, the draft transcript
12 of what transpired yesterday morning. I would first invite you
13 to make comments as you deem appropriate. When I say "invite
14 your comments as appropriate," it's not necessarily about the
09:44:12 15 application per se but about the role of your office and the role
16 and the actions that may have taken place or not. We'll hear
17 from you first and then see how we proceed from there.
18 MR NMEHIELLE: Thank you, Your Honour. Before I proceed to
19 address the Court, I would like to have on record that --
09:44:35 20 PRESIDING JUDGE: Excuse me, Mr Principal Defender, I'm
21 sorry. I just want to make sure that we are in an open session
22 because yesterday when we adjourned we were in a closed session.
23 So I just want to confirm that we are indeed in open session.
24 MR WALKER: We are, Your Honour.
09:44:47 25 PRESIDING JUDGE: We are. Thank you. Sorry, Mr Principal
26 Defender.
27 MR NMEHIELLE: That's fine. I just want to place on record
28 that I'm appearing before the Court with Mrs Elizabeth Nahamya,
29 Deputy Principal Defender; Mr Charles Jalloh, legal adviser to

1 the Principal Defender; Mrs Haddijatou Kah-Jallow, duty counsel
2 to the RUF trial.

3 Your Honours, I have read the draft transcript and I'm
4 quite worried that perceptions can be formed about the Defence
09:45:41 5 Office or about the Principal Defender the way I see in the
6 transcript without the benefit of being heard. I thank you for
7 this opportunity of hearing me. However, I think there is now,
8 unfortunately, a very high burden for my office to dispel that
9 perception. It is indeed my intention to do just that, because
09:46:21 10 it does not necessarily follow that the manner in which a matter
11 is reported is the same manner that it can be sustained. I'm
12 quite confident and optimistic that the Honourable Justices of
13 the Trial Chamber will afford me and my office every reasonable
14 presumption in determining the allegations against the Defence
09:46:57 15 Office that I somehow have found in the draft transcript.

16 Also, reviewing the transcript, it is conveyed that
17 Mr O'Shea, lead counsel, and Mr Cammegh, co-counsel, respectively
18 to Mr Gbao, have undergone untold stress over this issue in which
19 Mr Gbao sought the dismissal of his defence team.

09:47:38 20 Your Honours, it is not only Mr O'Shea and Mr Cammegh that
21 have been heavily stressed about this matter. I have, my entire
22 staff have. I have had sleepless nights on Mr Gbao's continued
23 direct attack that I have connived with Mr O'Shea, the judges and
24 the Prosecution to deny him counsel of his choice. My task as
09:48:09 25 Principal Defender is a very challenging one that needs to
26 balance the very competing interests of the accused, counsel and
27 that of the Court.

28 Your Honours, the role played by my office and by me as
29 Principal Defender in resolving this matter has been a

1 professional one in accordance with the mandate of my office
2 under Rule 45 of the Rules of the Court and as directed by the
3 Honourable Trial Chamber.

4 The chronology of events that I will show Your Honours will
09:49:00 5 attest to this.

6 Let me stress one point, which is that the issue of Mr Gbao
7 withdrawing his defence team preceded my tenure as Principal
8 Defender and as the Court will bear me out, it is not a new
9 matter. My office cannot, therefore, be said to have created or
09:49:35 10 precipitated it. On the contrary, I have been emotionally spent
11 trying to find a lasting solution to this matter because losing
12 any counsel at this stage of the proceedings would not serve my
13 office or the Court any good purpose.

14 From my understanding, prior to this current session of the
09:50:09 15 RUF trial, Mr O'Shea has neither received instructions or made
16 any meaningful contact with Mr Gbao, because of Mr Gbao's stance
17 not to attend Court and not to appear before the honourable
18 justices of the Trial Chamber and not to recognise the lawyers
19 that are defending him. On the part of Mr Cammegh, the
09:50:53 20 relationship between him and Mr Gbao had been an on-and-off
21 relationship.

22 In my role as Principal Defender, to ensure the rights of
23 the accused, the interests of the accused persons, I have
24 encouraged Mr Gbao and others like Chief Hinga Norman that it was
09:51:16 25 in their best interests to co-operate with their counsel and the
26 courts and participate in their defence. In fact, counsel
27 oftentimes solicited my input in this regard, more so regarding
28 Mr Gbao. John Cammegh particularly, who seemed to have some kind
29 of a epileptic relationship with Mr Gbao had always enlisted my

1 input in this regard.

2 In this matter I have maintained in my communications with
3 Mr Gbao, with counsel and the honourable Chamber that I cannot
4 endorse or recommend the withdrawal of any member of his defence
09:52:13 5 team. I still maintain that position. I have not, either
6 directly or covertly, acted or been convinced any other way. I
7 have only added that in view of the domestic dimension of the
8 trial, it was important that a competent Sierra Leonean lawyer
9 should be added to Mr Gbao's team, which the learned honourable
09:52:43 10 Presiding Judge of the Trial Chamber agreed with when I met with
11 him to discuss this matter. At no time did I suggest any
12 particular Sierra Leonean lawyer or Mr Shears Moses in
13 particular. Contrary to what Mr O'Shea emphatically informed the
14 Court, as stated on page 17 of the draft transcript of yesterday,
09:53:19 15 27 March, particularly lines 11 and 15.

16 PRESIDING JUDGE: Pardon me, you said page 17?

17 MR NMEHIELLE: Page 17 of the draft transcript,
18 particularly lines 11 and 15.

19 It is important to note that I did not know Mr Shears Moses
09:53:52 20 or who he was, neither did I suggest his name to Mr Gbao, neither
21 did my office. As the Court is aware, Mr Shears Moses happens to
22 be a Sierra Leonean lawyer that the accused person himself
23 nominated to take over his case and to be his lead counsel.

24 It is also important to note that I've copied Mr O'Shea as
09:54:28 25 lead counsel on every relevant communication on this matter.
26 What I have not done is to copy Mr O'Shea on communication
27 directed at the Presiding Judge, which on many occasions are
28 replies to memos from the Presiding Judge on which Mr O'Shea was
29 not copied.

1 Your Honours, I want to go into the chronology of events on
2 this matter and supply the relevant documentation in this matter
3 between myself, counsel, Chamber and the accused persons as well
4 as counsel. Your Honours, I have with me two handwritten letters
09:55:32 5 from Mr Gbao dated 17 February.

6 PRESIDING JUDGE: Are these the letters that were sent to
7 the Chamber as well?

8 MR NMEHIELLE: Yes, the letter which Gbao wrote on
9 withdrawal of power of attorney and the replacement of counsel.
09:55:54 10 Your Honours, the said letters --

11 PRESIDING JUDGE: I find that rather interesting to talk
12 about withdrawal of power of attorney when there was no such
13 power of attorney. That being said --

14 MR NMEHIELLE: I don't know. That is what I saw.

09:56:10 15 PRESIDING JUDGE: I know. That is how the letter was
16 drafted. I would like, for the completeness of the record, once
17 you have been through these documents, Mr Principal Defender,
18 that we file them as exhibits for this particular motion so we
19 have a complete record of these matters.

09:56:24 20 MR NMEHIELLE: Yes, please.

21 PRESIDING JUDGE: You were making reference to the letter.

22 MR NMEHIELLE: I was making reference to two handwritten
23 letters by Mr Gbao dated 17 February, which my office received
24 towards the end of the working hour, the 17th being a Friday. I
09:56:53 25 sent the said documents to Mr O'Shea as soon as we received them
26 and as soon as was practicable, via email attachments by my
27 administrative assistant, Ms Sylvia Pyne-Caulker. The emails are
28 dated 20th and 21st March, which is a Monday and a Tuesday.

29 Your Honour, I want to present copies of those handwritten

1 letters as well as evidence by email of the circulation to lead
2 counsel.

3 PRESIDING JUDGE: Mr Court Officer, we will just follow up
4 in a sequence of exhibits as we have them, otherwise we are going
09:58:04 5 to get confused.

6 MR O'SHEA: Can I just indicate, as I did yesterday, it is
7 admitted that I received these documents.

8 PRESIDING JUDGE: Thank you, Mr O'Shea. It is just, as I
9 have indicated, I would like to see these documents as part of
09:58:19 10 the file for completeness for the special issue of your
11 application. So this is solely for this purpose, for no other
12 purpose. Thank you.

13 MR NMEHIELLE: The second chronology of events was a call
14 from Mr Gbao to me on the same day.

09:58:39 15 PRESIDING JUDGE: If I may stop you here, Mr Principal
16 Defender, just to make sure we have this marked as the proper
17 exhibit. We are 89, is it?

18 MR WALKER: Yes, Exhibit 89.

19 PRESIDING JUDGE: So these letters of 17 February 2006, one
09:58:58 20 a two page document, revocation of power of attorney and the
21 other one being replacement of legal counsel, will be marked as
22 89A for the revocation of power of attorney and B for the
23 replacement of counsel.

24 [Exhibit No. 89A was admitted].

09:59:16 25 [Exhibit No. 89B was admitted]

26 MR NMEHIELLE: The second event in the chronology of events
27 was a call from Mr Gbao on the same day, 17 February, inquiring
28 if I saw his letter. I replied in the affirmative and told him
29 it was not up to me, but to the honourable justices of the Trial

1 Chamber and that I needed to inform his counsel, upon which he
2 told me, "I have no counsel," and I told him, "I guess you know
3 what I mean by your counsel," because there is a counsel on
4 record.

10:00:03 5 Thereafter, I met with the Presiding Judge on 22nd February
6 pursuant to his memo on the same date on Mr Gbao's said letters,
7 which memo did not copy defence counsel. Your Honours, I would
8 like to tender the memo from the honourable Presiding Judge on
9 this issue, on how -- solicited my recommendations on how to
10:00:50 10 resolve this matter.

11 PRESIDING JUDGE: Yes. Mr O'Shea, do you want to see that?
12 Have you seen it?

13 MR O'SHEA: I haven't, Your Honour. I would like to see
14 all the relevant correspondence, thank you.

10:01:11 15 PRESIDING JUDGE: What's the date of my letter to you?

16 MR NMEHIELLE: The letter was dated 22nd February.

17 PRESIDING JUDGE: 21st February we met and 22 is when I --

18 MR NMEHIELLE: No, we met the same day. If you do recall,
19 while we had fixed to meet, on my way to you the memo crossed my
10:01:26 20 path and then we talked about it.

21 PRESIDING JUDGE: Yes. That memorandum will be marked as
22 Exhibit 90.

23 [Exhibit No. 90 was admitted]

24 MR NMEHIELLE: At the meeting with the honourable Presiding
10:01:47 25 Judge, the Presiding Judge indicated to me that he had always
26 wondered why there was no Sierra Leonean lawyer in the Gbao
27 defence team. We agreed that a local lawyer was necessary as
28 additional resource to the Gbao team, given the local dimensions
29 of the case against Mr Gbao, but that neither me, as Principal

1 Defender, nor the Chamber could authorise the sacking of
2 Mr Gbao's lawyers in view of the Chamber's decision on this issue
3 and which was affirmed by the Appellate Chamber's decision on the
4 same matter when Gbao asked for a motion for the withdrawal of
10:02:41 5 counsel, or filed a motion for the withdrawal of counsel.

6 The next in the chronology of events was my letter to
7 Mr Gbao on 24th February on his request. The request in this
8 case being his request to me to replace his counsel. And in my
9 said letter of 24 February, I communicated my meeting with the
10:03:32 10 honourable Presiding Judge and my inability or that of the
11 Chamber to authorise the dismissal of his counsel for a new lead
12 counsel. In the letter, which Your Honours will receive in a
13 moment, but if you can oblige me, I state, I quote, "In this
14 regard, my recommendation to the Chamber would be that a
10:04:02 15 competent Sierra Leonean lawyer should be added to your defence
16 team, possibly as co-lead counsel, in the recognition of the
17 domestic dimensions of the trial." The letter was copied to
18 Mr O'Shea as lead counsel and sent via email attachment by my
19 administrative assistant, Mrs Sylvia Pyne-Caulker.

10:04:49 20 Your Honours, it appears that the document that was
21 submitted originally is this document I'm referring to. The
22 first document I submitted, can I just have a look at it?

23 PRESIDING JUDGE: 89A and B?

24 MR NMEHIELLE: Yes, please. I need to replace that with
10:05:27 25 this. Your Honours, there is a mistake of just the position of
26 the particular papers. What was submitted was my letter I'm
27 referring to now while what I'm withdrawing -- what I'm sending
28 is replacement of counsel's handwritten letter. Just to swap it
29 and be marked as such.

1 PRESIDING JUDGE: 89A, as I indicated, should have been the
2 letter of 17 February.
3 MR NMEHIELLE: That's right.
4 PRESIDING JUDGE: Which are the letters sent by Mr Gbao?
10:06:01 5 MR NMEHIELLE: That's right.
6 PRESIDING JUDGE: That's A and B.
7 MR NMEHIELLE: Yes, as the Court please.
8 PRESIDING JUDGE: And Exhibit 90 was a letter to counsel.
9 Now we have a letter of 24th February marked as Exhibit 91?
10:06:23 10 [Exhibit No. 91 was admitted]
11 MR NMEHIELLE: Thank you, Your Honour.
12 PRESIDING JUDGE: Mr O'Shea, you have seen this letter and
13 had seen that letter before?
14 MR O'SHEA: Yes. I don't know about the email attachment,
10:06:32 15 but this was certainly shown to me during the status conference.
16 I'm talking about the letter of 24th February.
17 PRESIDING JUDGE: That's what I'm making reference to.
18 MR NMEHIELLE: Yes, 24th February. I said it was sent by
19 email attachment by my administrative assistant on 24th February,
10:06:50 20 the same day, to Mr O'Shea, which I submit in evidence.
21 MR O'SHEA: I would like to see that, please.
22 PRESIDING JUDGE: Yes.
23 MR NMEHIELLE: That is the one you just marked as --
24 PRESIDING JUDGE: Yes, but I don't have an email with this.
10:07:15 25 MR NMEHIELLE: There is an email attached to it.
26 PRESIDING JUDGE: So the letter of 24 February is a
27 two-page document?
28 MR NMEHIELLE: Yes.
29 PRESIDING JUDGE: Together with an attachment which is an

1 email?

2 MR NMEHIELLE: Email indication that it was sent to
3 Mr O'Shea.

4 PRESIDING JUDGE: Very well. And it's an email from your
10:07:32 5 office?

6 MR NMEHIELLE: From my office, from my administrative
7 assistant.

8 PRESIDING JUDGE: Of 24th February?

9 MR NMEHIELLE: On the 24th, a Sunday, yes. May I further
10:07:43 10 in this regard submit that if Mr O'Shea did not read his email
11 before he came to Freetown is another matter entirely.

12 MR O'SHEA: Can I just see that document, please?

13 PRESIDING JUDGE: Yes.

14 MR NMEHIELLE: Your Honours, if I may proceed.

10:09:01 15 PRESIDING JUDGE: Yes.

16 MR NMEHIELLE: My Lords, regarding that letter I want to
17 emphasise "a competent Sierra Leonean lawyer," and I also want to
18 emphasise "possibly as co-lead counsel." At no time, either in
19 the said letter, did I mention Mr Shears Moses or make a definite
10:09:26 20 recommendation as to the status of the Sierra Leonean lawyer
21 within the Gbao defence team.

22 Your Honours, I want to draw an analogy to the Kallon team,
23 where Mr Sheku Touray is lead counsel one and Mr Taku is lead
24 counsel two. Just an analogy and a workable possible compromise,
10:10:03 25 I thought, in the case of Mr Gbao who had insisted on eliminating
26 his lead counsel.

27 Please, Your Honours, I emphasise at no time did I name
28 Shears Moses.

29 PRESIDING JUDGE: Mr Principal Defender, you may not have

1 in that letter, but certainly in our discussion and communication
2 the name was very clear. In fact, we did discuss Mr Gbao's
3 letter, which the name of Shears Moses was mentioned. Maybe your
4 letter does not make reference to it, but there was absolutely no
10:10:41 5 doubt between you and I that when we were talking of a
6 Sierra Leonean at that time we were talking of Shears Moses,
7 nobody else.

8 MR NMEHIELLE: I'm coming to that, Your Honour.

9 JUDGE ITOE: In addition to what the Presiding Judge has
10:11:08 10 said, if I understand the records well, Shears Moses is alleged
11 to have visited Gbao in the detention centre.

12 MR NMEHIELLE: We will address that issue, Your Honour.

13 JUDGE ITOE: Because Mr Shears Moses was in the picture all
14 along.

10:11:23 15 MR NMEHIELLE: We'll address that issue.

16 Your Honours, I also refer to my memo dated 24th February
17 to the honourable Presiding Judge on my recommendation as above,
18 "above" meaning reference to the same letter that I sent to
19 Mr Gbao in reply to his response. My memo is in reply to your
10:12:24 20 memo, the memo of the honourable Presiding Judge, dated 22nd
21 February 2006, which asked me to find a way to sort this matter
22 out. As a reply to your memo, it was not copied to Mr O'Shea.
23 Also, in view of the fact that your memo to me was not copied to
24 Mr O'Shea, administratively speaking, I did not think it proper
10:12:58 25 to copy the same reply to you to Mr O'Shea.

26 Could I please submit this particular document for the
27 records?

28 PRESIDING JUDGE: Yes. That will be marked as Exhibit 92.

29 [Exhibit No. 92 was admitted]

1 PRESIDING JUDGE: Would you show that to Mr O'Shea, please?

2 MR O'SHEA: I'm looking at it, thank you.

3 JUDGE ITOE: Mr Principal Defender, what's the date of this
4 memo?

10:13:26 5 MR NMEHIELLE: 24th February.

6 JUDGE ITOE: 24th February, okay.

7 MR NMEHIELLE: Let me emphasise that even though Mr O'Shea
8 was not copied, the letter communicated exactly the same thing,
9 though for the benefit of the Presiding Judge, as communicated to
10:13:55 10 Mr Gbao, which letter was sent to Mr O'Shea via email attachment.

11 PRESIDING JUDGE: You're making reference here to the
12 letter that has now been marked as Exhibit 91?

13 MR NMEHIELLE: Yes, Your Honour.

14 The next event in the chronology of events was a
10:14:16 15 handwritten letter from Mr Gbao, dated 25th February, to me
16 rejecting my reply and recommendation. Your Honour, I did not
17 reply to that letter, because no sooner than he sent it he called
18 me. I told him that I could not in good conscience recommend or
19 support the sacking of his lawyers.

10:15:23 20 Your Honours, may I put that handwritten letter?

21 PRESIDING JUDGE: Yes. That will be Exhibit 93, which is a
22 handwritten letter by Mr Gbao dated 25th February 2006. It is
23 from Gbao to your office?

24 MR NMEHIELLE: To my office.

10:15:47 25 JUDGE ITOE: That is where there is a mention of "Subject:
26 Response". Is that the letter?

27 MR NMEHIELLE: Yes, "Subject: Response."

28 JUDGE ITOE: Thank you.

29 Mr NMEHIELLE: "Your response" or something.

1 [Exhibit No. 93 was admitted]

2 MR NMEHIELLE: Your Honours, I will also, in the chronology
3 of events refer Your Honours to the status conference of
4 27th February, presided over by the honourable Justice Bankole
10:16:28 5 Thompson, during which Mr Gbao's legal representation was an
6 agenda item. The honourable justice asked my input and I
7 reiterated that I could not endorse or authorise the withdrawal
8 of any member of the defence team and that I had made it known to
9 the accused persons, but I do recommend the addition of a
10:17:13 10 competent Sierra Leonean lawyer to the team as an additional
11 resource.

12 Your Honours, I would like to refer the Court to the
13 transcript of 27 February 2006, particularly page 6, lines 15 to
14 29, and continuing on page 7, lines 1 to 29, and page 8, lines 1
10:18:30 15 to 6. Your Honours, if you do permit me, I would like to
16 possibly read out portions of the transcript. I don't know if I
17 have the permission of the Court.

18 JUDGE ITOE: Oh, yes, please. You said portions.

19 MR NMEHIELLE: Portions, yes. On page 6, line 16, the
10:19:26 20 Honourable Presiding Judge of the status conference asked, "Legal
21 representation of the third accused." I stood up and I said,
22 "Thank you, Your Honour, I do," because he had asked if I had
23 something to say. I said:

24 "Just to -- as Your Honour is very much aware about I got a
10:19:56 25 letter on the 17th February from the third accused seeking
26 to withdraw his counsel, generally his defence team and, of
27 course, I had a meeting with the Presiding Judge wherein we
28 discussed a number of issues and I clearly told the accused
29 it is not within my power to withdraw his counsel, but that

1 at most, what I could recommend is an addition of a Sierra
2 Leonean counsel in his team. And the accused person has
3 promised to be in Court today and here he is. So I
4 would -- my recommendation, based on the decision of this
10:20:25 5 Chamber, is that I do not have -- I am not in a position,
6 neither me or the Chamber, as clearly indicated, is in a
7 position to withdraw his defence team, but I could
8 recommend and I do recommend that an additional counsel,
9 local counsel, senior local counsel be added to his team."
10:20:43 10 And it goes on and on, and my position, which is reiterated
11 in this transcript.

12 Your Honour, I want to draw your attention, also, to
13 page 8, line 8, where Mr O'Shea spoke to the Court on the
14 invitation of the Presiding Judge of the status conference. On
10:21:11 15 line 8, Mr O'Shea says:

16 "Actually, Your Honours, I have read the correspondence,
17 some of it, this morning. There is nothing really that I
18 need to add because I am ad idem with the thinking of the
19 Trial Chamber and the Principal Defender. Of course, as
10:21:30 20 counsel for Mr Gbao, my duty is to act in his best
21 interests, whatever they are. I agree with the Trial
22 Chamber's thinking on the matter; anything which would
23 facilitate Mr Gbao giving instructions in his case is
24 something that I'm very open-minded to."

10:21:45 25 That is the end of my reference. All that remains is
26 available as I have cited.

27 JUDGE ITOE: That was Mr O'Shea speaking?

28 MR NMEHIELLE: Yes. The next event in the chronology of
29 events was various discussions with Mr O'Shea and John Cammegh on

1 this issue and the need to resolve it. We all agreed there was a
2 need for continued encouragement to Mr Gbao to leave all past
3 issues behind and co-operate with his team. In my contact with
4 Mr Gbao in this regard, he continued to maintain a very negative
10:23:06 5 stance on Mr O'Shea being his lead counsel or even a member of
6 his defence team because, according to him, he had lost
7 confidence in him and that it was not at this session that he
8 started.

9 In this regard, I met with Mr O'Shea and John Cammegh on
10:23:36 10 7 March on the need to find a way to continue to resolve this
11 matter --

12 JUDGE ITOE: Would you confirm, Mr Principal Defender, that
13 Gbao's stand on this issue was premised on the fact that he lost
14 confidence in Mr O'Shea because he lost the Lome accord argument,
10:24:07 15 or that Mr O'Shea did not get through the issue of the
16 re-arraignment? Do you confirm that?

17 MR NMEHIELLE: Yes, I would confirm to some certain extent
18 that, in a sense, Mr Gbao had told me O'Shea was introduced to
19 me -- in fact his exact words, if I do remember, "The Defence
10:24:29 20 office deceived me," and he mentioned John Jones, who was acting
21 Principal Defender, that O'Shea was highly recommended to him as
22 an amnesty expert and that O'Shea did not file --

23 JUDGE ITOE: The amnesty decision, was it Mr O'Shea's
24 decision?

10:24:45 25 MR NMEHIELLE: No.

26 JUDGE ITOE: The decision with the re-arraignment, was it
27 Mr O'Shea's decision?

28 MR NMEHIELLE: Not at all. I told him in that regard it
29 was the Court's decision and I would have passed the issue of

1 amnesty because the Court had made a ruling on the jurisdiction
2 of the Court and we needed to move forward.

3 PRESIDING JUDGE: Was he also informed that we had clearly,
4 unequivocally, stated that Mr O'Shea and Cammegh were - and this
10:25:16 5 is our decision - on their obligation to conduct this case to its
6 finality. I thought that beared no ambiguity whatsoever. I
7 thought that case, as you will recall, was allowed to proceed on
8 appeal, was reviewed by the Appeals Chamber, and confirmed. I
9 don't understand why all this at this particular moment, given
10:25:37 10 the very, very clear statement of this Court as to what Mr Gbao
11 wanted or didn't want, as such, as to the counsel appointed to
12 represent him. Mr O'Shea, as you know, had absolutely no more
13 liberty to move out at that particular time. We ordered him to
14 stay on the case. So whatever Mr Gbao said, he should have been
10:25:57 15 out of there or not, was beyond Mr O'Shea's capability at that
16 particular moment.

17 MR NMEHIELLE: It was also beyond me, Your Honour.

18 PRESIDING JUDGE: I agree with you.

19 MR NMEHIELLE: I clearly indicated that in my memo in a
10:26:10 20 letter to Mr Gbao. I quoted clearly the decision of the Trial
21 Chamber on the motion to withdraw counsel that Mr O'Shea and
22 Cammegh were to defend him to the finality of the case. I did
23 explain that to Mr Gbao.

24 I was just trying to allude to my meeting on 7 March with
10:26:34 25 Mr O'Shea and Mr John Cammegh as the next event in the chronology
26 that I am giving. At that meeting, we agreed that we all needed
27 to continue to work on Mr Gbao to get his full co-operation to
28 work with his team. Mr O'Shea informed me that he needed to
29 write me on some issues of concern to him on this matter. In

1 that regard, Mr O'Shea and John Cammegh wrote a letter dated
2 10 March, expressing some concerns as to the involvement of
3 Shears Moses, and the letter was copied to the honourable
4 justices but I would like also, as part of the record, to bring
10:28:02 5 that letter to the attention of the Court, at least from my
6 perspective.

7 PRESIDING JUDGE: Mr O'Shea?

8 MR O'SHEA: I have seen my letter, Your Honour.

9 PRESIDING JUDGE: I would hope so. This letter dated 10
10:28:22 10 March 2006 addressed to the Principal Defender and via Professor
11 Mr O'Shea and Mr Cammegh is marked as exhibit 94.

12 [Exhibit No. 94 was admitted]

13 MR NMEHIELLE: Your Honours, in reply to that, I wrote a
14 letter dated 14 March to Mr O'Shea and Mr Cammegh in reply to
10:28:53 15 theirs, addressing their concerns. The same letter I copied to
16 the honourable justices, but I would like also to present that
17 letter to the Court in evidence.

18 PRESIDING JUDGE: This is your letter of 14 March?

19 MR NMEHIELLE: Yes, Your Honour.

10:29:21 20 PRESIDING JUDGE: The letter of 14 March 2006 from the
21 Office of the Principal Defender by the Principal Defender to
22 Mr O'Shea and Cammegh, subject: "Recent developments relating to
23 Mr Gbao's legal team" is marked as Exhibit 95.

24 [Exhibit No. 95 was admitted]

10:29:41 25 PRESIDING JUDGE: Mr O'Shea, you have seen that letter?

26 MR O'SHEA: Yes, I have, Your Honour.

27 PRESIDING JUDGE: Thank you.

28 MR NMEHIELLE: As the honourable Presiding Judge had seen
29 me about the morning of 13 or 14 March, as we both met around his

1 office container as he was arriving to work and requested me to
2 advise the Chamber as to whether or not Mr Shears Moses met the
3 qualifications to be listed as counsel on the list maintained by
4 the Principal Defender to enable him and the Chamber make a
10:30:42 5 decision on this matter.

6 On 14 March 2006, in direct compliance with that request, I
7 wrote a memo to the honourable Presiding Judge in which I
8 indicated the qualifications of Mr Shears Moses and I said that
9 Mr Shears Moses, "Meets the requirements to be listed as
10:31:24 10 qualified counsel and has been so listed in the list maintained
11 by my office." I conclude by saying, "I hope you will find my
12 recommendations useful in disposing this issue regarding an
13 additional counsel for Mr Gbao." Your Honour, I would like to
14 present this document also to the honourable Court.

10:31:55 15 PRESIDING JUDGE: This is your letter of 14 March 2006 to
16 me?

17 MR NMEHIELLE: Yes, my memo.

18 PRESIDING JUDGE: On the subject of additional counsel
19 for Augustine Gbao. In this letter you are speaking of Mr Shears
10:32:10 20 Moses' qualifications.

21 MR NMEHIELLE: Yes, Your Honour.

22 PRESIDING JUDGE: This memorandum is marked as Exhibit 96.

23 [Exhibit No. 96 was admitted].

24 MR NMEHIELLE: Your Honour, the next event in the
10:32:41 25 chronology is a memo from the Presiding Judge to me dated
26 17 March, deciding on how to proceed with this matter. Though
27 not copied to counsel because it had a final representation --

28 JUDGE ITOE: Dated what?

29 MR NMEHIELLE: Dated 17 March, Your Honour. Though not

1 copied to counsel because it had a final determination on how to
2 proceed on this matter, I directed my administrative assistant to
3 circulate this letter -- no, I directed the duty counsel for the
4 RUF trial, Mrs Haddijatou Kah-Jallow, to make the letter
10:33:42 5 available to both Mr O'Shea and Mr John Cammegh. I want to --
6 well, Your Honour, it is your letter --

7 PRESIDING JUDGE: For the completeness of the record, it
8 should be there as well. So that's the letter to you from my
9 office of 17 March 2006?

10:34:03 10 MR NMEHIELLE: Yes, Your Honour.

11 PRESIDING JUDGE: The subject matter again being additional
12 counsel for Augustine Gbao.

13 MR NMEHIELLE: Yes, Your Honour.

14 PRESIDING JUDGE: That will be Exhibit 97.

10:34:18 15 [Exhibit No. 97 was admitted].

16 PRESIDING JUDGE: Mr O'Shea, you have seen this letter?

17 MR O'SHEA: Yes, I have now, Your Honour.

18 PRESIDING JUDGE: Thank you.

19 MR NMEHIELLE: In response to the honourable Presiding
10:34:35 20 Judge's deciding memo, I called a meeting of both Mr Gbao --
21 sorry.

22 JUDGE ITOE: I would like to say, it was not just a
23 decision, you know. Was this communicating to you the decision
24 of the Chamber?

10:34:52 25 MR NMEHIELLE: That's right.

26 JUDGE ITOE: So it was not the honourable Presiding Judge
27 who unilaterally took that decision.

28 MR NMEHIELLE: No, not at all.

29 JUDGE ITOE: It was a collegial decision taken by the

1 Chamber.

2 MR NMEHIELLE: That's right. In compliance with that memo
3 or the directives contained in the memo, I called a meeting of
4 both Mr O'Shea and Mr Cammegh on 23 March. Mr O'Shea was not
10:35:34 5 available due to transportation problems and rescheduled for
6 24 March. The 24 March meeting was aborted because we could not
7 proceed.

8 Finally on the chronology of events --

9 JUDGE ITOE: You say you could not proceed. Why could you
10:36:20 10 not proceed? Why did it abort?

11 MR NMEHIELLE: Well, Your Honour, I want to say that we
12 could not agree, due to events of Friday, which I really want to
13 keep -- it is a privileged discussion we had which I may not be
14 in a position to divulge, unless counsel are in agreement that we
10:36:55 15 do.

16 [RUF28MAR06B - SV]

17 JUDGE ITOE: I just asked a question. Since the reply is
18 not forthcoming, you may proceed and if necessity arises we could
19 maybe revisit the issue.

10:37:23 20 Mr NMEHIELLE: As a final event in the chronology, I wrote
21 a letter to Mr O'Shea, as lead counsel, dated 25th March, on the
22 need to resolve this matter as directed by the honourable
23 Presiding Judge's memo communicating the decision of the Chamber
24 of 17th March. Your Honours, clearly I just want to make a
10:38:07 25 comment that the letter is dated 25th March, which is a Saturday,
26 because the meeting of Friday 24th could not hold. I was working
27 round the clock over the weekend to make sure these issues were
28 addressed, and it's dated 25th March and I directed that it be
29 circulated -- well, of course, counsel and the honourable judges

1 of the Trial Chamber are copied in the letter. I want to tender
2 this as well.

3 PRESIDING JUDGE: So this letter of 25 March 2006 from
4 yourself, your office, to Mr O'Shea "Reference: Decision of
10:38:54 5 Trial Chamber I regarding additional counsel for Augustine Gbao"
6 is marked Exhibit 98.

7 [Exhibit No. 98 was admitted]

8 Mr NMEHIELLE: That is the chronology of events in this
9 matter as it relates to me. Maybe Ms Haddijatou Kah-Jallow, the
10:39:29 10 RUF duty counsel, will have something to say. But before she
11 does that, I would like to answer the question that the
12 honourable Justice Benjamin Itoe posed as to his understanding
13 that Mr Shears Moses had visited the detention.

14 PRESIDING JUDGE: And we know as well now that another
10:39:51 15 counsel by the name of King had also visited. So it's not one
16 but two. At least that's what we were told yesterday.

17 Mr NMEHIELLE: Okay. Well, Mrs Kah-Jallow --

18 JUDGE THOMPSON: Learned counsel, perhaps just to save
19 time, I have that very question but I'm also linking it with some
10:40:14 20 other issues which I would request that, with the leave of the
21 Presiding Judge, you address us on. I mean, from your
22 presentation so far, from my own perspective, it's becoming
23 difficult to see the wood from the trees. Of course, I may be
24 even presumptuous to pose the question what then is the
10:40:42 25 conclusion of the matter?

26 But let me say to you that from my judicial perspective
27 there are four key issues that raise some judicial concerns for
28 me. I would feel a little more responsive, whichever way you
29 want to take us to, if you could address those issues for me from

1 the perspective of their legal propriety.

2 The first relates to the allegation that you authorised, as
3 my learned brother honourable Justice Itoe has queried, a visit
4 or visits to the third accused by counsel other than those on
10:41:27 5 record as his assigned counsel without their concurrence. Of
6 course, the transcript refers to that -- I think page 5 of the
7 transcript is full of that kind of allegation, lines 7 to 15 on
8 page 15 we have this repeated theme.

9 Then the second relates to the allegation that you may have
10:42:00 10 communicated to the third accused details of what may well have
11 been a privileged and confidential discussion between you and
12 Mr O'Shea, the leader of his defence team.

13 The third is that of the possibility, and here I put it at
14 the level of mere possibility, of your having held out to the
10:42:17 15 third accused that the Sierra Leonean lawyer who may be selected
16 for addition to his team may well become the leader of that team,
17 even though at some point in time you were privy to the Bench's
18 disinclination in that regard. I remember an official
19 conversation that I had with you on that subject.

10:42:47 20 The fourth one, I think one could describe this as an issue
21 relating to some legal misconception as to the institutional role
22 of the office of the Principal Defender within the Court system.
23 Here I refer to Exhibit 95, the letter from counsel O'Shea and
24 Cammegh at page 3, paragraph 4, where they complain about the
10:43:28 25 protocol that may well have been adopted here.

26 So these are all matters which for me are of some judicial
27 concern and as we go along may well call for some judicial
28 observations. I would at this point just require that as soon as
29 you answer the issue raised by Justice Itoe you also couple these

1 others and give us some guidance.

2 Mr NMEHIELLE: Your Honour, may I preface my response with
3 regard to taking into consideration whatever judicial -- I don't
4 know, I'm lost for words as to -- whatever decision -- commentary
10:44:21 5 that may be made will take into consideration also every issue
6 that I have addressed, not in this address only, but also in my
7 letters. But on the issue of the legal propriety of the visit of
8 Shears Moses, I also have replied to Mr O'Shea and I make the
9 same point again. Now, if you look into when Mr Shears Moses
10:44:46 10 went to detention, it was on 16th. Mrs Kah-Jallow will elucidate
11 on this because she is the duty counsel who is responsible for
12 things of this nature, but let me give a preface. It was on
13 16th --

14 PRESIDING JUDGE: You are making a statement that would
10:45:06 15 seem to indicate that we know about this. I don't know what is
16 duty counsel assigned to RUF and what that means in those
17 circumstances? To my knowledge she has not been appointed to be
18 a counsel to the RUF. You may, within your own administration,
19 direct certain things to happen, but we don't know this, and we
10:45:24 20 don't know what her official role and position could be vis-a-vis
21 an accused person in relation to the defence team. This is what
22 is raising all these complexities as such, if I can put it to
23 you.

24 Mr NMEHIELLE: Yes.

10:45:38 25 JUDGE THOMPSON: And perhaps again to save time, because
26 really we need to save time, I'm asking you to enlighten us on
27 the legal propriety. I follow the chronology and the sequence.
28 I'm asking you as a lawyer of noted seniority and rank and great
29 professional experience to address me or address the Court on the

1 legal propriety of such visits.

2 Mr NMEHIELLE: Your Honour, I will address you on that.

3 But I thought the Court would crave me the indulgence of
4 explaining these things also.

10:46:19 5 PRESIDING JUDGE: Please, yes, we will.

6 Mr NMEHIELLE: Because, as I was saying, this visit --
7 well, particularly in relation to the duty of the duty counsel,
8 Your Honours, you will appreciate with me that this is the
9 structure I met 10 months ago when I came here, and that has been
10:46:45 10 the practice of the Court from inception. These counsel were
11 hired and assigned as duty counsel to each of the trials and that
12 was not my making. I met it here and I implemented the way I see
13 it.

14 On the legal propriety of the visit, I want Your Honours --

10:47:03 15 JUDGE ITOE: Let me be fair to you. Let me say here that
16 when we were sitting in Bonthe and before legally assigned
17 counsel were available, the duty counsel were appearing as ad hoc
18 counsel, as duty counsel, for these accused persons during their
19 preliminary experiences before the judges. This I can confirm.

10:47:27 20 PRESIDING JUDGE: And that included the Principal Defender
21 himself at that time.

22 Mr NMEHIELLE: Yes. And the point I'm making is that it
23 was not the creation of my particular tenure as Principal
24 Defender.

10:47:37 25 PRESIDING JUDGE: This is not a suggestion I made either.
26 I just mentioned the notion because you have used that "she was
27 the duty counsel". I'm not saying that you created it, but you
28 are the Principal Defender responsible for the defence office.
29 So we're talking to you in that capacity, not to you personally.

1 And I want to make that difference.

2 Mr NMEHIELLE: I do appreciate that and that is really
3 comforting.

4 JUDGE THOMPSON: Perhaps, learned counsel, you and I are at
10:48:07 5 cross purposes. Actually I'm not going to be enlightened by some
6 historical overview of the office of duty counsel. I think the
7 specific problematic aspect for me here, which raises some
8 judicial concern, is whether it was legally proper or not for
9 Mr Shears Moses and a Mr King to have been allowed to visit the
10:48:46 10 third accused. So let me narrow the issue for you and don't put
11 you to the task of giving us a lecture on the history of the
12 creation of the office of duty counsel. In other words, I shift
13 ground.

14 Mr NMEHIELLE: Your Honour, it is not my intention
10:49:02 15 whatsoever to give a lecture.

16 JUDGE ITOE: Please, let me be very fair to the duty
17 counsel who appeared before us in Bonthe. I would say here that
18 Mrs Jallow, who appeared for Foday Sankoh during those
19 preliminary experiences, executed her duties very well and very
10:49:25 20 professionally at the time she did appear, and contributed a lot
21 to the determination of issues that were raised. So, also, did
22 Mr Yillah who appeared in certain cases.

23 Mr NMEHIELLE: The CDF.

24 JUDGE ITOE: Nobody is questioning the professional
10:49:46 25 competence of these very competent lawyers who have been in the
26 defence teams and who are lawyers as of right. That is not the
27 issue.

28 Mr NMEHIELLE: I'm going to address the legal propriety
29 within the context of what happened. I'm sure Your Honours will

1 give me that opportunity to address it within the context of what
2 happened.

3 JUDGE THOMPSON: Well, I'll exercise patience provided you
4 do not unnecessarily multiply the issues.

10:50:16 5 Mr NMEHIELLE: I don't intend to, Your Honour. Within the
6 context and within the practice that I met in the Defence office
7 when I came, when a lawyer or when counsel is not in town and
8 requests are made for visitation, it is the practice of the
9 Defence office for the duty counsel to stand in to evaluate the
10:50:45 10 visitation. On this particular day was reported to me by the
11 duty counsel, eventually, on 16th February Mr Gbao had requested
12 a visit from one Shears Moses, whom I did not know about, and I
13 said, "Duty counsel, make sure you are there to find out what the
14 visit was all about." Remember this is the 16th. In the
10:51:19 15 practice of lawyer not being available -- counsel not being
16 available and duty counsel being there --

17 JUDGE ITOE: On 16th of what month?

18 MR NMEHIELLE: Of February. Prior to Mr Gbao's
19 communicating in his letter of the 17th was when this visit
10:51:38 20 happened. And I said, "Duty counsel, make sure you are there to
21 find out what the visit is all about."

22 Now, in my letter in response to Mr O'Shea's communication
23 on these concerns, I noted clearly that duty counsel went there
24 as is usual practice and reported to me that it was only when she
10:52:10 25 saw, when she was at that meeting, that she was aware that
26 Mr Gbao had invited this man to talk about legal representation.
27 My letter clearly indicates clearly that Mr Shears Moses -- I am
28 not interested in Mr Shears Moses as a person or whatever, which
29 was reported to me by the duty counsel, that's why I continued to

1 refer to her -- that Mr Shears Moses said, "Mr Gbao, where is
2 your counsel?" Now, it was only after that that I received a
3 letter from Mr Gbao in which he names a particular counsel and
4 the communication ensued. So under legal propriety from the
10:53:03 5 practice that I met at the Defence office, duty counsel is
6 required to cover any issues that pertain to detention and visits
7 when counsel is not available.

8 JUDGE THOMPSON: But you had to make the judgment. Was
9 that an exercise of sound legal judgment for you to have
10:53:23 10 authorised the visit of someone who was a lawyer, even if duty
11 counsel was there to carry out some kind of monitoring process,
12 having the knowledge that the third accused already had lawyers
13 assigned to him?

14 Mr NMEHIELLE: Your Honour, I did not know who Mr Shears
10:53:48 15 Moses was.

16 JUDGE THOMPSON: Would you then have gone on inquiry?

17 Mr NMEHIELLE: Yes, I did and I did not know what he was
18 visiting for when I eventually found out who he was.

19 PRESIDING JUDGE: But you knew that he was a lawyer.

10:54:04 20 Mr NMEHIELLE: Yes, I did. She communicated to me. I
21 asked for what he was visiting and she did not know.

22 PRESIDING JUDGE: Yes, but you knew that he was visiting in
23 his capacity as a lawyer.

24 Mr NMEHIELLE: No.

10:54:08 25 PRESIDING JUDGE: You didn't know that?

26 Mr NMEHIELLE: No, not whatsoever.

27 PRESIDING JUDGE: Okay. Did you inquire as to what this
28 lawyer would be visiting Gbao for?

29 Mr NMEHIELLE: From Mr Gbao?

1 PRESIDING JUDGE: From your representative.

2 Mr NMEHIELLE: I did and she didn't know. It was only
3 after that meeting that Gbao's intentions were made clear in his
4 letter.

10:54:28 5 JUDGE THOMPSON: Ought you not to have gone on inquiry
6 before authorizing the visit, on reflection, having regard to
7 hindsight?

8 JUDGE ITOE: Because knowing fully well that Mr Gbao had a
9 legal team which you say you recognise.

10:54:44 10 MR NMEHIELLE: Yes, I do.

11 JUDGE ITOE: And knowing fully well that the person who was
12 rendering the visit to Mr Gbao was a lawyer, wouldn't you have,
13 in your judgement, felt that it was necessary for you to go into
14 an inquiry as to why a lawyer was going to visit this gentlemen.

10:55:10 15 It was not a family visit, mark you. It was not a family visit
16 which is usually controlled at the gates.

17 MR NMEHIELLE: Yes, Your Honour.

18 PRESIDING JUDGE: And also, if I may, given the fact that
19 you had been informed about the discussion between your duty
10:55:24 20 counsel with Gbao prior to the 16th February letter, as such,
21 Gbao having expressed concerns about his counsel. So there was
22 some -- you have mentioned that Ms Jallow had met with Gbao
23 because he was expressing, I don't know what it was, but you have
24 alluded to the fact that there was another meeting before Shears
10:55:48 25 Moses.

26 MR NMEHIELLE: No, Your Honour, never. I didn't say that.

27 PRESIDING JUDGE: Okay. Then I misunderstood your
28 comments.

29 JUDGE THOMPSON: But counsel, even then, given the facts

1 and the circumstances as you now present them, would it really
2 have taken the ingenuity of a rocket scientist to have clicked
3 quickly to say ha, something here is not right?

4 MR NMEHIELLE: Your Honour, under the circumstance no, on
10:56:16 5 my part. That is why I directed the duty counsel to find out
6 exactly what this visit is all about.

7 JUDGE ITOE: Just one question.

8 MR NMEHIELLE: Yes, Your Honour.

9 JUDGE ITOE: Can you confirm whether the allegation that
10:56:28 10 another lawyer, Mr King, also visited Gbao in the detention
11 facility?

12 MR NMEHIELLE: I'm not aware.

13 JUDGE ITOE: You're not aware?

14 MR NMEHIELLE: Not at all.

10:56:37 15 JUDGE ITOE: Thank you.

16 JUDGE THOMPSON: Counsel, I think perhaps you can address
17 the second issue. I think nothing more you can say on the first
18 issue would be of much enlightenment to me. So with the
19 Presiding Judge's leave you can address the other issue.

10:56:58 20 MR NMEHIELLE: The issue of communication of confidential
21 details. Your Honour, I did not in any way communicate to
22 Mr Gbao any confidential discussions between Mr O'Shea and
23 myself.

24 PRESIDING JUDGE: Well, this is not quite the allegation.
10:57:14 25 The allegation was either -- it was on both grounds. Maybe
26 confidential information or misinformation. The word that has
27 been used by Mr O'Shea in his comments yesterday in his
28 submissions were in his own perception, and he used the word
29 "perception" because I looked at that transcript on that, was

1 that when he met Mr Gbao after all of this, clearly then the
2 communication was completely broken down at that particular
3 moment and although there was a slight hope at the beginning that
4 it might improve when the Court decision would be known, at that
10:57:49 5 moment because of what he perceived, that is Mr O'Shea's
6 perception at that time, of misinformation communicated by your
7 office to Mr Gbao, then nothing worked any more. I'm
8 paraphrasing and it is my summary of the submission in this
9 respect by Mr O'Shea.

10:58:10 10 MR NMEHIELLE: Sorry, Your Honour. Your honourable
11 Presiding Judge, I have not informed or misinformed Mr Gbao of
12 any information that Mr O'Shea would have related to me. Maybe I
13 will leave that to the duty counsel --

14 PRESIDING JUDGE: I said to you, Mr Principal Defender, you
10:58:33 15 and/or your office. Certainly I'm talking to you because you are
16 the head of that particular office. You're the Principal
17 Defender.

18 MR O'SHEA: Your Honours, to cut things short, there's no
19 allegation that Mr Nmehielle was involved in that incident. It
10:58:49 20 involves one of his legal officers and I think it's for that
21 legal officer to inform him as to the facts surrounding that.

22 PRESIDING JUDGE: You have read the transcript,
23 Mr Principal Defender.

24 MR NMEHIELLE: Yes, I did.

10:59:03 25 PRESIDING JUDGE: So there is no reference clearly in there
26 that you were the one. The discussion and the submission had to
27 do with your office.

28 MR NMEHIELLE: Well, I would ask the duty counsel who was
29 in direct contact with -- because my office and the only officer

1 of my office who was in communication with Mr Gbao on this issue
2 is Mrs Haddijatou Kah-Jallow.

3 PRESIDING JUDGE: But again, to come back to your own
4 submission, you say at times perception may be quite deceiving as
10:59:35 5 such. We were clearly informed yesterday by Mr O'Shea that that
6 was his perception and his understanding at that particular
7 moment, that all of this -- the fact that somebody from your
8 office had met with Mr Gbao and would appear to have communicated
9 information that was inaccurate as such, to use the words of
10:59:57 10 Mr O'Shea misinformed Mr Gbao, has caused even sort of
11 irreparable damage to the relationship. This is at page 19 of
12 the transcript, if I can put your mind to it.

13 MR NMEHIELLE: Yes, Your Honour, I read it and I was aware
14 of it. The only officer that was in communication with Gbao on
11:00:16 15 this issue is Ms Haddijatou Kah-Jallow, and Mr O'Shea in my
16 meeting with him expressed his concerns as to how he felt.
17 Because he had asked me as to whether or not there was any
18 communication and I said no, and he said, well, maybe
19 Ms Haddijatou Kah-Jallow may have informed Mr Gbao what he didn't
11:00:45 20 intend Mr Gbao to have. Your Honour, I would like Ms Haddijatou
21 Kah-Jallow to address this issue.

22 PRESIDING JUDGE: We will get to her after that. We would
23 like to finish with your own presentation.

24 JUDGE THOMPSON: Learned counsel, my third concern was that
11:01:11 25 there may well have been, and I here I put it merely at the level
26 of possibility, that you did hold out to the third accused that
27 whoever may have been selected as an addition to his team would
28 in fact become the head of the team.

29 MR NMEHIELLE: No. I vehemently say no because my letters

1 do communicate clearly. Mr Gbao approached me in his letter that
2 he would dismiss his lead counsel and appoint a new lead counsel
3 and I said, sorry, I am not in a position to authorise or
4 recommend you to dismiss your counsel.

11:01:53 5 Now, Your Honour, the context of this is that Mr Gbao was
6 trying to pitch his participation in court with dismissing his
7 team. And I said no, it is not. For me to have held that a
8 particular Sierra Leonean lawyer, the events do not indicate that
9 and it's not so because Mr Shears Moses, as I have pointed out to
11:02:18 10 this Court, was not nominated by me, was nominated by Mr Gbao
11 himself whom he eventually informed Mr O'Shea and Mr Cammegh that
12 Shears Moses is a personal lawyer to his father-in-law and
13 therefore he will want to have him. It was not in my position to
14 appoint one for him. So I never held out any.

11:02:40 15 Now, if Mr Gbao, in my opinion as Principal Defender, was
16 to give instructions to his team, as he claimed that he wants to
17 come to Court, my recommendation which was rejected by Mr Gbao
18 that a competent Sierra Leonean lawyer be appointed possibly as
19 co-lead counsel.

11:03:05 20 Now what was working on my mind that I had mentioned to
21 this Court was taking an analogy of other cases like the Kallon
22 trial, where Mr Touray is lead counsel one and Mr Taku lead
23 counsel two. Possibly. If that happens, that remains without
24 naming any particular lawyer, that there may be this tendency for
11:03:28 25 them to work together and for Mr Gbao to give instructions
26 eventually in the defence of his case.

27 So I never held out any particular Sierra Leonean lawyer
28 and any, again, there was no definitive recommendation in this
29 regard.

1 JUDGE THOMPSON: With the leave of the Presiding Judge, in
2 the interests of time, I think the fourth issue I raised and the
3 last issue was it may well be that some of the troubles that
4 we're experiencing in respect of this representation issue may
11:04:02 5 well have been contributed to by some legal misconception as to
6 the institutional role of the office of Principal Defender within
7 the court system. Could you address us shortly on that because
8 that is something that learned counsel for Mr Gbao in their
9 letter, Exhibit 95, raised very strongly at page 3, paragraph 4
11:04:26 10 of their letter.

11 MR NMEHIELLE: Your Honours, very well and I will address
12 you on that issue.

13 JUDGE ITOE: This is a very important issue because it's
14 been responsible for misunderstandings that have mired the
11:04:42 15 procedures in court from time to time. It is important that we
16 hear your submission on this.

17 MR NMEHIELLE: Yes, Your Honour.

18 PRESIDING JUDGE: For the record, I'd like to indicate that
19 I've asked you for this answer and yourself for a submission as
11:05:00 20 to what is exactly the role of the Principal Defender. I have
21 raised that at least at two status conferences as such, and I
22 think at one of those you were there yourself when you first came
23 on board. But I am still waiting for this report. I can give
24 you the exact quotation, if you want, in the transcript as to
11:05:17 25 when that request was made. If it was not you, I can assure you
26 from your predecessor I was promised that such a report would be
27 filed in due course. I'm still waiting for it.

28 MR NMEHIELLE: On that ground I don't recall addressing me
29 particularly on a particular conference, but I am aware that my

1 office has filed a report to the Court on the role of the Defence
2 office. I remember it was in my absence. The deputy principal
3 defender had prepared a report and filed in that regard. I'm
4 aware of that, Your Honour.

11:05:52 5 PRESIDING JUDGE: It must have been filed in a particular
6 file because it was never conveyed to me.

7 MR NMEHIELLE: Okay, Your Honour. I will follow that up
8 and find out what the situation is.

9 PRESIDING JUDGE: Thank you.

11:06:01 10 MR NMEHIELLE: On the role of the, as requested by the
11 honourable --

12 JUDGE THOMPSON: Probably you can give us something in a
13 nutshell since you say you already have a document to that
14 effect.

11:06:13 15 MR NMEHIELLE: Yes, Your Honour. I'm only saying what I
16 want to say as to the role. I believe that the Court prides
17 itself as having created the office of the Principal Defender and
18 it is enshrined in Rule 45 of the Rules of Procedure, which
19 clearly sets out the role of the Office of the Principal
11:06:41 20 Defender.

21 PRESIDING JUDGE: To do what? To do what? Because I think
22 the language is quite clear. I mean, I would like you to clearly
23 spell out for my understanding what is your own understanding of
24 what the role is. You say it does. Indeed it does, but I would
11:06:56 25 like to hear from you what this role is pursuant to Rules of
26 Procedure and Evidence 45.

27 MR NMEHIELLE: Yes. My interpretation of my function or
28 the function of the Office of the Principal Defender, as
29 articulated in Rule 45, is one that facilitates the Defence of

1 the accused persons in a number of ways. One, ensuring the
2 rights and the interests of the accused persons.

3 PRESIDING JUDGE: That's the *raison d'etre* of the Defence
4 office. It's not the role as such. This is the *raison d'etre*
11:07:40 5 where we have a defence office.

6 MR NMEHIELLE: Yes.

7 PRESIDING JUDGE: It's not the role.

8 MR NMEHIELLE: Well, if I look at Rule 45(A), it clearly
9 provides a role for the Defence office by saying,.
11:07:56 10 "The Defence office shall, in accordance with the statute
11 and rules, provide advice, assistance and representation
12 to:

13 (i) suspects being questioned by the Special Court or
14 its agents under Rule 42, including custodial
11:08:14 15 questioning.

16 (ii) accused persons before the Special Court."

17 PRESIDING JUDGE: And this is to be done in accordance with
18 (B), "The Defence office shall fulfil its function by providing,"
19 and then it spells out --

11:08:26 20 MR NMEHIELLE: Yes.

21 "Initial legal advice and assistance by the duty counsel
22 who shall be situated within reasonable proximity to the
23 Detention facility and the seat of the Special Court and
24 shall be available, as far as practicable, to attend the
11:08:47 25 Detention facility in the event of being summoned."

26 Legal assistance, which is the second ambit that I want to
27 submit, which is the provision of legal aid as directed by the
28 court. Legal assistance, as ordered by the Special Court in
29 accordance with Rule 61, if the accused does not have any

1 sufficient means to pay for it as the interests of justice may so
2 require. Thirdly, adequate facilities for counsel in the
3 preparation of the defence. And C, the maintenance of a list of
4 qualified counsel to be assigned to accused persons.

11:09:26 5 Now --

6 JUDGE ITOE: That is where the question comes in. Once
7 legal counsel have been assigned to the Defence team, what is the
8 role of the Principal Defender's office in this context when we
9 have legally established teams which have been put in place by
11:09:48 10 the Principal Defender himself, and to whom he may have signed
11 legal services contracts in relation to their responsibility with
12 their clients?

13 MR NMEHIELLE: Very well, Your Honour.

14 PRESIDING JUDGE: Again, to carry on what my brother
11:10:06 15 Justice Itoe just said, when you look at B, it is clearly -
16 clearly - providing for the role and function of the Defence
17 office in line with what Justice Itoe mentioned. When we had the
18 initial appearance of these accused at that time, they had
19 absolutely no representation. It was only proper and fair to
11:10:25 20 ensure the protection of their rights that they be represented by
21 duty counsel at that time. But we have moved to a totally
22 different stage now. Your office has appointed defence teams, as
23 such, and we're moving into C. We're no longer at the B scenario
24 at all.

11:10:41 25 MR NMEHIELLE: Very, very, very well taken, Your Honour,
26 but I want to stress that under the particular circumstances that
27 we face at the Special Court and within the practice that I met
28 at the Court, it has been sometimes endorsed and ordered by the
29 Chamber -- it has been that in the particular circumstances of

1 the Special Court, lawyers are not based in Freetown and where
2 lawyers are not based in Freetown, despite the appointment of
3 counsel, the Defence office has been called upon by the Chamber,
4 by the registry, by detention to attend to the needs of all
11:11:22 5 accused persons and in the practice that my office maintains, the
6 duty counsel responsible for the trial, which this Court has
7 endorsed since 2003, and I having just been here for 10 months,
8 has allowed duty counsel to attend to legal needs of detainees in
9 the absence of lawyers because they step in when lawyers are not
11:11:45 10 available on a number of issues. For example --

11 PRESIDING JUDGE: I would like to have a clear indication
12 as to where and when this Chamber has asked and requested that a
13 duty counsel attends to the needs of detainees that were
14 represented by assigned counsel. I would like to see this
11:12:03 15 because I have absolutely no recollection of that. Absolutely
16 none. So I would like to --

17 MR NMEHIELLE: Your Honour, I use the word "endorsed"
18 because from the practice of the Special Court when there is no
19 lawyer in court or -- the duty counsel have always covered for
11:12:26 20 lawyers. I do recall in the last session of the RUF trial when
21 Mr Cammegh was going to be away and would not stay to end.

22 PRESIDING JUDGE: I have clearly that recollection indeed.

23 MR NMEHIELLE: They asked me that I should try as much as
24 possible to ensure that there is representation for Mr Gbao while
11:12:56 25 they are away, and I requested the duty counsel -- in fact, I
26 directed duty counsel to appear on their behalf.

27 PRESIDING JUDGE: This is quite different than having duty
28 counsel to attend to the needs of detainees. This is a totally
29 different subject matter.

1 MR NMEHIELLE: Your Honour, I will make a final submission
2 on this, and my submission is this: the Defence office -- the
3 Court prides itself as having set up the Defence office as a
4 fourth pillar in the Court and as an innovation in international
11:13:31 5 criminal justice administration.

6 PRESIDING JUDGE: But at the same time, Mr Principal
7 Defender, we have Rules of Procedure and Evidence that govern the
8 way this Court should function. Whatever we do must be done
9 within the framework of legality, as such, and something within
11:13:50 10 the framework of the rules that are applicable. So that's why my
11 brother Justice Thompson has asked you the question, and I ask
12 you the question: Where do you find support under Rule 45 for
13 what you're asserting at this particular moment? I don't see
14 anything in this rule that says this is a fourth pillar and you
11:14:13 15 should have these kinds of privileges and duties, as such. I
16 don't see this in Rule 45.

17 MR NMEHIELLE: Your Honour, I did not create the term the
18 fourth pillar. I met it here. The Court raised the profile of
19 the Defence office by its -- for instance, Your Honour, if I
11:14:27 20 could draw your attention --

21 JUDGE THOMPSON: Recall that we used the terminology of the
22 fourth pillar?

23 MR NMEHIELLE: Yes.

24 JUDGE THOMPSON: That's not the language with which we are
11:14:37 25 familiar.

26 MR NMEHIELLE: Okay. If I can address you on the fact that
27 Rule 45(B) states that the Defence office shall --

28 JUDGE ITOE: The pillars are stated by the statute. The
29 pillars are recognised by the statute, not by the Rules.

1 MR NMEHIELLE: I agree.

2 PRESIDING JUDGE: And the Appeals Chamber has clearly
3 stated in a recent decision that your office comes under the
4 Registrar, as such, the Registrar being the third pillar of the
11:15:01 5 Court, not the Principal Defender.

6 MR NMEHIELLE: Which we do acknowledge.

7 PRESIDING JUDGE: Yes.

8 MR NMEHIELLE: Of course the decision by the Appellate
9 Chamber also clearly indicates as to what they want to see
11:15:06 10 regarding the Defence office. Let me refer the honourable
11 justices to paragraph B of Rule 45: "The Defence office shall
12 fulfil its function by providing," among other things, the
13 specifics required there, and those "among other things" are yet
14 to be clarified by the Court. If the Court that created the
11:15:32 15 Defence office is recognised determines that there is no use for
16 the Defence office or determines the parameters for the Defence
17 office, it is not mine to determine, it is that of the Court, and
18 I so submit.

19 PRESIDING JUDGE: Your duty counsel was to inform the Court
11:15:59 20 about the particular scenario. We would like to hear from her.

21 MR NMEHIELLE: Yes, Your Honour.

22 JUDGE ITOE: In view of the Principal Defender's
23 engagements soon hereafter, I think the duty counsel should be
24 very brief, please.

11:16:17 25 MS KAH-JALLOW: Your Honours, I wish to register my
26 appreciation at the opportunity of being granted audience in your
27 Court. I promise to be brief, but I do think it would be
28 necessary to revisit the issue of counsel visiting Mr Gbao within
29 the detention facility on the 16th --

1 PRESIDING JUDGE: Of February.

2 MS KAH-JALLOW: -- of February, 2006.

3 PRESIDING JUDGE: You were the duty counsel.

4 MS KAH-JALLOW: I am the duty counsel of the RUF and have
11:16:52 5 been duty counsel since 2003. I received a telephone call from
6 Mr Gbao on 9, 10 and 15 February, in which he requested that we
7 facilitate a visit from a gentleman called Mr Shears Moses. At
8 the time I did not know that Mr Shears Moses was a lawyer and
9 that he had any intention to invite him to join his legal team.
11:17:59 10 Prior to meeting Mr Shears Moses on the 16th, I had never met him
11 before.

12 PRESIDING JUDGE: But why would you be involved in advising
13 a detainee at that particular moment about a particular visit by
14 a visitor, if you didn't know he was a lawyer? Why are you
11:18:14 15 normally consulted about visitors to detainees?

16 MS KAH-JALLOW: My understanding of the duty of duty
17 counsel is that we try, as best as practical, within the
18 absence -- where there is absence of assigned counsel to address
19 their concerns.

11:18:36 20 PRESIDING JUDGE: But have you ever, ever - and I'm not
21 trying to put any blame on you, I'm just trying to understand the
22 scenario and the situation - have you ever been mandated, and
23 let's take the case of Mr Gbao, by the Gbao defence team, either
24 Mr Cammegh or Mr O'Shea to act on behalf of their client?

11:19:02 25 MS KAH-JALLOW: Indeed, if I may say so, I acted very
26 innocently because as this honourable Court is aware, Mr Gbao was
27 not participating in the trial process.

28 PRESIDING JUDGE: No, no, this is not my question. My
29 question is very clear. Have you been mandated by either

1 Mr Cammegh or Mr O'Shea to act on their behalf and meet with Gbao
2 or any other persons related to the Defence of the accused?
3 Because they are the assigned counsel.

4 MS KAH-JALLOW: This has been the practice since 2003.

11:19:32 5 PRESIDING JUDGE: I am not saying it is or it was not. My
6 question is have you been?

7 MS KAH-JALLOW: Expressly, no, but we can say tacitly
8 because they have never questioned their contact with duty
9 counsel. Never. I have no communication to that.

11:19:49 10 PRESIDING JUDGE: Very well. You were to explain on the
11 16th that when you were first --

12 MS KAH-JALLOW: Yes, when we visited Mr Gbao within the
13 detention facility --

14 PRESIDING JUDGE: With Shears Moses?

11:20:03 15 MS KAH-JALLOW: Mr Shears Moses and the gentlemen who came
16 with Mr Shears Moses, called Mr King, on that date, I learnt that
17 Mr King was the legal assistant to Mr Shears Moses.

18 PRESIDING JUDGE: So when there was information to the
19 Court that two persons had visited, you're confirming that, that
11:20:23 20 they were visiting both at the same time?

21 MS KAH-JALLOW: I can provide the Court with evidence as to
22 the time that we --

23 PRESIDING JUDGE: That's fine. I don't think this is --

24 MS KAH-JALLOW: We were there for less than 45 minutes.
11:20:35 25 But I must state that it was at that meeting that Mr Gbao made
26 known to both myself and, evidently, Mr Shears Moses that he
27 wanted him to join his legal team. Indeed, during that meeting,
28 acting on behalf of the Defence Office, I vigorously opposed and
29 Mr Shears Moses, if called upon to do so by the Trial Chamber

1 will attest to this -- I vigorously opposed any substantive
2 discussion into Mr Gbao's case. Mr Shears Moses, if invited to
3 do so by this Trial Chamber, will also corroborate the fact that
4 I defended Professor O'Shea against the numerous allegations that
11:22:03 5 Mr Gbao catalogued in the hearing of Mr Moses.

6 There is mention in the draft transcript of visits. The
7 second alleged visit that I presume Mr O'Shea is referring to was
8 precipitated by the instructions. I was instructed to facilitate
9 a meeting between Mr Cammegh, Mr Shears Moses and
11:22:59 10 Professor O'Shea. Now, at the time I didn't have Mr Shears's
11 phone number.

12 JUDGE THOMPSON: At what juncture was that?

13 MS KAH-JALLOW: This was on the Saturday, I think 4th
14 March. It was on the Friday -- sorry, February. I'm sorry. It
11:23:23 15 was after the first meeting.

16 PRESIDING JUDGE: Your first meeting was 16th February.

17 MS KAH-JALLOW: I first met him on 16th and I was
18 instructed --

19 JUDGE THOMPSON: By?

11:23:35 20 MS KAH-JALLOW: By the Office of the Principal Defender.

21 JUDGE THOMPSON: To do what?

22 MS KAH-JALLOW: To facilitate a meeting with all three
23 counsel and this meeting was initiated, was requested for, by
24 Mr Gbao. That was the following Saturday. That was for the
11:24:00 25 following Saturday.

26 PRESIDING JUDGE: When you say following Saturday, this
27 is --

28 MS KAH-JALLOW: After 16th.

29 PRESIDING JUDGE: After 16th February.

1 MS KAH-JALLOW: 16th February, yes. By the time I got the
2 message, I made several attempts to obtain, because it was after
3 working hours -- I made several attempts to obtain Mr Shears
4 Moses's phone number. I didn't have his phone number. On the
11:24:37 5 morning, on the Saturday preceding the 16th, I called. In fact,
6 I had to call the President of the Bar Association Mr Abdul Tejan
7 Cole. I called Ms Glenna Thompson to provide me with Mr Shears
8 Moses's phone number. I also made several attempts to contact
9 Mr O'Shea. Unfortunately, the number which we had listed for
11:25:11 10 him -- and I must add that he was the first person I attempted to
11 call. I called him the entire Friday night and Saturday and
12 could not get in touch with him. The Saturday morning I called
13 Mr Cammegh and informed him of this proposed meeting. In
14 response he said to me, "I had intended to visit the detainee at
11:25:40 15 10 o'clock anyway." That was his response. So he, at that
16 point, knew of the proposed meeting. This is a meeting that was
17 scheduled for the Saturday after 16th, that was the first meeting
18 with Shears Moses. By the time I got in touch with Mr Shears
19 Moses it was past the scheduled time of the so-called meeting.
11:26:11 20 We arrived at the detention facility and I was informed by
21 Mr Gbao that Mr Cammegh had waited for us in vain and had
22 rescheduled a meeting for the following Monday at 5.30. On the
23 Monday --

24 JUDGE THOMPSON: Before you proceed, what was to be the
11:26:39 25 agenda of that meeting, that proposed meeting?

26 Mr NMEHIELLE: Your Honour, can I --

27 JUDGE THOMPSON: Yes.

28 Mr NMEHIELLE: Your Honour, the point is this:

29 Mr O'Shea -- Mr Gbao had requested -- when I knew about --

1 JUDGE THOMPSON: Because you don't just call meetings
2 without agendas.

3 Mr NMEHIELLE: No, Your Honour. Your Honour, the point is
4 this: When Gbao requested a meeting, after I found out who
11:27:07 5 Mr Shears Moses was and he requested a meeting, I had directed
6 his duty counsel to make sure that no meeting takes place between
7 Mr Gbao and Shears Moses without Professor O'Shea and
8 John Cammegh and she should make sure that if Gbao wants
9 Mr Shears Moses to be there, she should make sure -- she should
11:27:36 10 inform Mr Cammegh and Mr O'Shea as to Gbao's request and make
11 sure that he makes them to be there to make sure that they know
12 what Mr Gbao is asking. That was the basis.

13 JUDGE THOMPSON: Wouldn't it have been proper to have their
14 concurrence first, whether they wanted such a meeting? I would
11:27:57 15 have thought that that's the proper way.

16 Mr NMEHIELLE: Your Honour, that was the essence of, "Make
17 sure you get in touch with them," to say that Mr Gbao had
18 requested a meeting on Saturday. "Get in touch with them."
19 That's what I told her.

11:28:12 20 MR CAMMEGH: May I --

21 PRESIDING JUDGE: I'll come to you, Mr Cammegh. There
22 seems to be some confusion as to the dates now because, according
23 to counsel, she's talking of Mr Cammegh. It would appear, from
24 what I hear, that Mr Cammegh was in town and obviously Mr Cammegh
11:28:28 25 is not in town in February. He comes in town --

26 Mr NMEHIELLE: No, this is March.

27 PRESIDING JUDGE: Yes, but she was talking of the Saturday
28 following 16th February.

29 Mr NMEHIELLE: No, this is 4th March.

1 MS KAH-JALLOW: I'm sorry. The error is mine. I was not
2 even in the jurisdiction that Saturday.

3 PRESIDING JUDGE: Can we have the dates now because there
4 was confusion as to when it was. Can we get this right for the
11:29:01 5 record because, obviously, the meeting you're talking about was a
6 meeting -- Mr Principal Defender, you were saying that this
7 meeting that you are talking about was around 4th March or --

8 MR NMEHIELLE: About that. About 3rd or 5th March. I
9 don't remember clearly.

11:29:21 10 MR O'SHEA: I believe it's 4th.

11 PRESIDING JUDGE: But this is after Mr Gbao had sent his
12 letter?

13 MR NMEHIELLE: Yes, long after.

14 PRESIDING JUDGE: His letter was on 17th February.

11:29:30 15 MR NMEHIELLE: 17th February. Lawyers were in town.

16 PRESIDING JUDGE: The lawyers were in town.

17 MR NMEHIELLE: And I had told her to make sure that she got
18 in touch with Mr O'Shea and Mr Cammegh that Mr Gbao had requested
19 this gentleman, to make sure that it does not happen without
11:29:48 20 these gentlemen being there. That's exactly what I told her to
21 do.

22 MR CAMMEGH: Can I assist. I'm sorry to cut in, but I
23 think my recollection of this is quite clear. I believe that
24 Mrs Jallow called me at 7.30 in the morning on a Saturday. I
11:30:05 25 believe it's actually Saturday 11th.

26 PRESIDING JUDGE: Of March.

27 MR CAMMEGH: Yes, because my recollection was that this was
28 after Mr O'Shea and I and the Principal Defender met to discuss
29 this issue. I informed Mrs Jallow immediately that I was not

1 prepared to have a meeting with Mr Shears Moses foisted on me or
2 anyone in my team that day. I wasn't blaming her for that
3 because I was aware that she was merely conveying a request, or
4 maybe a demand, from our client.

11:30:46 5 What I did inform her, and she has correctly stated this,
6 was that I was going to see Mr Gbao that morning anyway which I
7 did. But I'm surprised at any suggestion that may have been
8 relayed to Mrs Jallow to the effect that I was waiting in vain
9 for other parties to turn up because I certainly wasn't. Had
11:31:06 10 they turned up, I would not have partaken in a meeting. So I
11 think it's right to state the facts and indeed the date.

12 As for my proposing a meeting the following week, I think
13 that is also correct. But, unfortunately, as I said to the Court
14 yesterday, we have never heard from Shears Moses. He has never
11:31:22 15 contacted us personally or attempted to contact us via the
16 Defence Office. I hope that clarifies that particular proposed
17 meeting.

18 PRESIDING JUDGE: Yes, thank you.

19 MS KAH-JALLOW: If I may, I do have a copy of the
11:31:33 20 visitation and it was on 4th March '06.

21 MR O'SHEA: The information that I received from the
22 detention centre was that there was a visit by Mr Shears Moses to
23 the detention centre on 4th March, but that that visit was
24 unaccompanied.

11:31:59 25 PRESIDING JUDGE: It was unaccompanied?

26 MR O'SHEA: That's according to the information from the
27 Chief of Detention.

28 MS KAH-JALLOW: My Lord, I have evidence here that I was
29 present with Mr Moses on 4th March '06. This is a copy. If you

1 would -- I wish to tender it.

2 PRESIDING JUDGE: Could there have been two meetings that
3 day? Two visits that day; one where he was accompanied by you,
4 another one where he was not?

11:32:32 5 MS KAH-JALLOW: Well, I have in my possession the detention
6 log and there is no indication that Mr Moses made a second visit.
7 I have it here, if I may.

8 MR CAMMEGH: If it assists, the day that I say was 11th --
9 and I don't have a diary so I'm not going to swear by this but
11:32:50 10 I'm quite sure it took place after the meeting.

11 PRESIDING JUDGE: But 4th March -- we're talking two
12 different things here. The 4th March was the visit by Shears
13 Moses to Gbao and you're talking of the week following.

14 MR CAMMEGH: I think we're all clear now.

11:33:03 15 PRESIDING JUDGE: Yes.

16 MR NMEHIELLE: Can I allude to Mr Cammegh's subsequent
17 issue of meeting after they had met with me was that when they
18 said, "We would love to meet this Mr Moses" and --

19 PRESIDING JUDGE: This is subsequent to the letter I wrote
11:33:27 20 back to you.

21 MR NMEHIELLE: After their letter or so. I think that
22 meeting he's talking about on 11th was in relation to after we
23 had met they said, "We would love to meet this Shears Moses of a
24 man" -- and of course any proposal -- because Mr Gbao kept
11:33:46 25 calling, asking that he was -- I said, "Mr Gbao, I cannot let
26 Mr Shears Moses meet with you without meeting the lawyers."

27 PRESIDING JUDGE: Thank you.

28 MS KAH-JALLOW: In order to get the picture [inaudible]. I
29 really am cognizant of the time, but I think it is important.

1 PRESIDING JUDGE: Yes.

2 MS KAH-JALLOW: So on the Monday morning after this
3 proposed meeting --

4 PRESIDING JUDGE: So this is 13th March?

11:34:10 5 MS KAH-JALLOW: No, it would be 4th March. The 5th, sorry.

6 The 5th because the meeting was on 4th. I was in a vehicle which
7 was conveying counsel and myself to the Court. On meeting

8 Mr O'Shea I informed him -- I said, "Professor O'Shea, I have
9 been trying to get in touch with you this entire weekend," and

11:34:35 10 there are witnesses to this. And I said to him, "Your client has

11 scheduled a meeting for 5.30 with Mr Moses." Mr O'Shea, in

12 response, asked, "Has the Defence Office facilitated a visit

13 between a local lawyer" -- I may not have got that exactly. It

14 may not have been his response verbatim, but he said -- his

11:35:10 15 question, he says, "Have they facilitated a visit between a

16 lawyer and my client?" In response I said to him, "Yes, the

17 Defence Office facilitated a visit between a Mr Shears Moses,"

18 who, at the time, we had no idea that the Gbao team had

19 intended -- Mr Gbao, sorry, had intended to join his team. And

11:35:39 20 no mention was made of that matter. So these are my submissions

21 in respect of the visitation.

22 Now I would like to make submissions in respect of

23 allegations that duty counsel, which I presume must be myself,

24 has misinformed his client and as a result of which any glimmer

11:36:20 25 of hope for --

26 PRESIDING JUDGE: Indeed. You're addressing the issue that

27 was raised, as I said, at page 17 of the transcript, I think it

28 was. No, not page 17. I think it's page 19.

29 MS KAH-JALLOW: May I state from the outset, Your Honours,

1 that I am deeply saddened by Mr O'Shea's decision to make an
2 application for withdrawal. I say this because Mr O'Shea, as he
3 has informed the Court -- [overlapping speakers]

4 THE INTERPRETER: For the attention of the Court, the
11:36:58 5 interpreters would like the counsel to talk through the mic.

6 PRESIDING JUDGE: Yes. Counsel, can you speak closer to
7 the microphone because it is very difficult for the interpreters
8 to hear you.

9 MS KAH-JALLOW: Was indeed one of the first to be assigned,
11:37:24 10 temporarily assigned. But it would not be fair, if we are to
11 document the chronology of events, to omit - what was his name? -
12 the Okaya [phon] incident. Shortly after Mr O'Shea was
13 provisionally assigned as counsel, Mr Gbao made several
14 representations to the Defence Office that he wished to be
11:38:10 15 represented by a gentleman by the name of Mr Chidozi Okaya
16 [phon].

17 Now, there are communications as early as 2005 when Mr Gbao
18 makes reference to the Defence Office or the Registrar's denial
19 of him being granted the right to have counsel of his choice.

11:38:53 20 PRESIDING JUDGE: But all of this is taking place after we
21 had issued our decision.

22 MS KAH-JALLOW: We agree. No, this was in 2003.

23 PRESIDING JUDGE: You said 2005.

24 MS KAH-JALLOW: No, no, no. The communication -- there was
11:39:05 25 a communication that was written to Mr Gbao, but the issue of
26 Mr Okaya arose in 2003. But it's an illustration. It's just to
27 buttress the fact that it has been lingering since 2003, this
28 perception of Mr Gbao that the Defence Office had imposed
29 Mr O'Shea on him and that he was never wanted as counsel since

1 2003. In his communication of 2005 he reiterates this. And
2 again in the letter of 17th March where he says the Defence
3 Office deceived him. Deceived him. He says the Defence Office
4 deceived him.

11:39:57 5 PRESIDING JUDGE: Yes, but we don't want to get into all of
6 this at this particular moment. I think what we were asking you
7 to speak about is what Mr O'Shea has said about miscommunication
8 or misinformation.

9 MS KAH-JALLOW: In the performance of my duties I can say
11:40:12 10 that I have never acted in a manner that is inappropriate or in
11 any way detrimental to Mr O'Shea's case. We are sensitive of the
12 very strained relationship between Mr O'Shea and his client. I
13 would, if Mr O'Shea -- I would be interested to know what is the
14 issue of misinformation because mister -- I am sure that even --

11:40:51 15 MR O'SHEA: Well, can I just intervene. I have had a
16 discussion with Ms Haddi Kah-Jallow where I have confronted her
17 on this very issue and I invite her to candidly discuss it with
18 the Court because she is exactly aware of what this relates to.

19 MS KAH-JALLOW: If I may?

11:41:17 20 PRESIDING JUDGE: Yes.

21 MS KAH-JALLOW: Mr O'Shea came to my office and expressed
22 his concern that the only reason Mr Gbao wished to appoint
23 Mr Shears Moses was because he believed that there would be fee
24 splitting. He was of the opinion that there was -- that may not
11:41:44 25 have been his exact words.

26 PRESIDING JUDGE: Yes.

27 MS KAH-JALLOW: In a telephone conversation to Mr Gbao I
28 did not mention the conversation between myself and
29 Professor O'Shea, but I did make it clear to Mr Gbao that it was

1 against the professional conduct of any legal practitioner to
2 engage in acts that tantamounted to fee splitting. That,
3 Your Honours, is the only recollection of any information that I
4 have conveyed to Mr Gbao.

11:42:52 5 On the contrary, I think it has been an omission on our
6 part that we have not -- we have shielded Mr Gbao from the
7 consistent tantrums and verbal abuse at the mere mention of his
8 name. Mr O'Shea, sorry. We have endeavoured to protect him from
9 being further demoralised.

11:43:29 10 PRESIDING JUDGE: By who?

11 MS KAH-JALLOW: By Mr Gbao. This is a point in time that I
12 wish the detention facility was recording the conversation
13 between counsel and client. We have been accused of being an
14 obstacle for him to attain justice. We have been accused of
11:43:53 15 siding with Mr O'Shea. We have been accused of conspiring with
16 Mr O'Shea and the Prosecution.

17 There is no adjective that I can use today to describe the
18 verbal abuse and disrespect that we have received on behalf of
19 Mr O'Shea because the Defence Office has been firmly behind him
11:44:26 20 being retained as counsel. Perhaps if we had conveyed those
21 sentiments -- perhaps if the Honourable Court would on inquiry
22 visit the detention personnel, they will tell you the numerous
23 times that Mr Gbao has insulted us.

24 PRESIDING JUDGE: Thank you, Mrs Jallow.

11:45:00 25 [RUF28MAR06C - RK]

26 MR NMEHIELLE: I don't know where I stand. I was supposed
27 to be addressing the management committee at 11.15.

28 JUDGE ITOE: We saw on the programme that it is 11.30. We
29 are sorry.

1 MR NMEHIELLE: I'm in the hands of the Court as far as this
2 issue is concerned.

3 PRESIDING JUDGE: Mr Principal Defender, we don't have any
4 more information to get from you at this particular moment. But
11:45:33 5 if you just wait a moment, Mr O'Shea would like to say something,
6 in case you need to be here.

7 MR O'SHEA: I would like to indicate to the Chamber that
8 there are certain matters that I do need to allude to. It would
9 be in the interests of the Principal Defender if he was to be
11:45:50 10 here when I say these things, but that is a matter for him. I'm
11 not going to stand in the way of him leaving if he wishes to.

12 PRESIDING JUDGE: This is a very important issue that has
13 caused now this Court to sit on this matter for almost a full
14 day. So we may as well see it through. I'm sure the Principal
11:46:10 15 Defender will agree that in his functions and duties as such, his
16 primary duty is to be here to try to see this matter through
17 rather than -- as important as it may be for him to do a
18 presentation -- [Overlapping speakers]

19 MR NMEHIELLE: I will oblige.

11:46:27 20 PRESIDING JUDGE: Thank you very much, Mr Principal
21 Defender.

22 MR O'SHEA: I'm afraid that I have to address these issues
23 again.

24 PRESIDING JUDGE: But Mr O'Shea --

11:46:39 25 JUDGE ITOE: Mr O'Shea, would you be brief, please.

26 PRESIDING JUDGE: We invite you be to brief and to the
27 point of any matter that you wish to raise that would be of
28 assistance to this Court to dispose of your obligation.

29 MR O'SHEA: Yes. Let me begin then by drawing the

1 attention of the Chamber to an authority which I think is
2 relevant to these proceedings, which is in the case of Prosecutor
3 and Blagojevic, which is B-L-A-G-O-J-E-V-I-C, before the
4 International Criminal Tribunal for the Former Yugoslavia. It is
11:47:22 5 a decision on the independent counsel of Vidoje Blagojevic's
6 motion to instruct the registrar to appoint new lead and
7 co-counsel. The decision is dated 3rd July 2003. The relevant
8 paragraph is paragraph 120.

9 This is a case which is different from ours in the sense
11:47:57 10 that in that case the lead counsel --

11 JUDGE ITOE: Paragraph 120, you say?

12 MR O'SHEA: 120, yes, Your Honour.

13 In that case the lead counsel adamantly insisted that he
14 should stay on the case, which is obviously different from the
11:48:13 15 situation here, and the application came from the accused. In
16 the response to His Honour Judge Thompson's inquiry yesterday,
17 the case does usefully discuss the issue of a client asserting
18 that he has no trust and confidence in his lawyer.

19 Now, with regard to the specific matters that have been
11:48:51 20 raised by the Defence office on the issue of the lawyers' visits,
21 I ask the following questions: Why would a lawyer come to the
22 detention centre with a legal assistant if his purpose was not a
23 legal one?

24 Two, when Mrs Haddi Kah-Jallow met with Mr Shears Moses and
11:49:28 25 Mr King prior to them going into the detention centre, did it not
26 become clear during their introduction that she was speaking to
27 two lawyers? Were they not attired like lawyers? How did they
28 introduce themselves to her? I find it very surprising that up
29 until the moment we reached the detention centre there is no hint

1 that they are lawyers.

2 Three, there is a specific procedure for family visits
3 which does not require the intervention of the Defence office.
4 So it must have been known that this was not a family visit.

11:50:17 5 Does that not beg for further inquiry?

6 Most importantly I ask this question: Why was I not
7 informed? I would also like to indicate in relation to this
8 lawyer issue that I have consistently taken the position that I
9 will not have, at that stage of the proceedings, that is to say
11:50:45 10 prior to today, any joint meeting between the client, a lawyer I
11 did not know and myself and Mr Cammegh. I have consistently made
12 that clear.

13 With regard to the incident where matters were reported
14 back to my client, I'm afraid the way in which the matter has
11:51:21 15 been reported to the Chamber reinforces my suspicions that
16 Mr Gbao was not correctly conveyed the exact nature of the
17 discussions between Mrs Haddi Kah-Jallow and myself, which
18 yesterday I described as privileged. But I question how can it
19 be in this sensitive environment that a discussion that revolves
11:51:47 20 around such a delicate issue can in any way be reported back to
21 the client? Again, without the knowledge of the assigned
22 counsel.

23 With regard to the final issue raised by His Honour Judge
24 Thompson, as to the suggestion with regard to head of the team,
11:52:20 25 Your Honour has before you a letter in which the Principal
26 Defender framed the words "possibly as co-lead counsel," a letter
27 addressed to the client, at a time when there had been no
28 discussions with myself.

29 It wasn't my purpose to make these submissions when I made

1 my application, but I'm afraid that these are questions which I
2 cannot escape from in my own mind and I think are properly
3 brought to the attention the Court. Thank you.

4 PRESIDING JUDGE: Thank you very much, Mr O'Shea.

11:53:15 5 Mr Principal Defender you wish to --

6 MR NMEHIELLE: Particularly the last issue, in terms of my
7 letter. The letter in question, I still maintain, does not make
8 any definite recommendation as to Shears Moses. The letter was
9 intended to convey the possible arrangement as currently

11:53:44 10 subsisting in other teams in relation to a competent Sierra
11 Leonean lawyer being part of the team if that will help the team
12 receive the instructions that they need to receive to go on with
13 Mr Gbao's case, and all working together in cohesion in doing
14 their job.

11:54:09 15 Now, I clearly, with all good intentions, did not in any
16 way have Mr Shears Moses in mind and all my letters and
17 communication clearly indicate that, because, first of all, I
18 needed to evaluate Shears Moses before I could make a definite
19 recommendation and my recommendation would not be as to the

11:54:38 20 particular role or status of Shears Moses. If you look at my
21 letter responding to the concerns of Mr Gbao, of Mr O'Shea and
22 Mr Cammegh, I said if you want to make Shears Moses your legal
23 assistant or junior counsel, how you arrange your team is up to
24 you. I clearly indicate that.

11:55:01 25 So I will answer that question, there was nothing untoward
26 as far as I was concerned as to recommending that a possibly
27 whichever Sierra Leonean lawyer, competent Sierra Leonean lawyer,
28 that may be involved due to the local dimensions of this case. I
29 stressed that point clearly. Due to the local dimensions of this

1 case could possibly be co-lead counsel was not directed at any
2 particular individual. That is my point and that is my answer on
3 this.

4 PRESIDING JUDGE: Thank you, Mr Principal Defender.

11:55:32 5 MS KAH-JALLOW: Your Honours, I just want to address you on
6 the other two issues. I think I have been misquoted by Mr O'Shea
7 when he said that I only knew that was a lawyer at the detention
8 facility. I said I only knew on the day he went to the detention
9 facility. He came to the office straight from court with his
11:55:59 10 legal assistants. But at the time I did not know there was any
11 intention on his client's part to have him in the legal team.

12 Again, in respect to misinformation, his client will concur
13 that on numerous occasions when the issue -- long before Mr Gbao
14 raised this issue of fee splitting, that even in respect of
11:56:29 15 investigators, I have consistently advised the accused persons
16 that it is illegal for any lawyer to give them money or to bestow
17 any favours when they have made demands.

18 JUDGE ITOE: Let us have this clear on record. Who asked
19 for the benefit of fee splitting?

11:56:54 20 MS KAH-JALLOW: No. My Lord, what I'm say is according to
21 the allegations that have been proffered by Professor O'Shea, all
22 glimmer of hope was destroyed due to my misinformation to his
23 client. I'm saying he has asked me to reveal the so-called
24 misinformation and it was alluding, he said, to fee splitting.

11:57:25 25 In response to that, I wish to inform Your Lordships that that is
26 a discussion that I have had with all of the accused long before
27 Mr O'Shea.

28 PRESIDING JUDGE: But --

29 MS KAH-JALLOW: So if he takes it within this context, then

1 believe you me, it was innocently done, because this is not the
2 first time it has been raised with Mr -- and I did not say,
3 Your Honours, forgive me, but Mr O'Shea suspects, it was not
4 reported as he alleges.

11:58:04 5 PRESIDING JUDGE: No, and I don't think this is what he
6 stated either. The question was that in the circumstances that
7 existed then, where there were discussions about having a new
8 counsel and so on, that the next day after you have had that
9 discussion with him, that is with Mr O'Shea, you have made
11:58:25 10 reference to fee splitting to Mr Gbao. Not that you did say, and
11 I don't think this is the allegation, that you did say that
12 Mr O'Shea has told me that. It is the mere fact that at that
13 time you made reference in your discussion with Gbao of fee
14 splitting was what caused this.

11:58:45 15 MS KAH-JALLOW: With the utmost respect to Your Lordship,
16 the issue of fee splitting has never been risen by me just after
17 Mr O'Shea spoke to me. I have risen it with the client in
18 relation to his appointment of an investigator. So you should
19 not look at this in isolation. In my opinion, his client is in a
11:59:09 20 more amicable frame of mind and it's due to the tirelessness of
21 the Defence office. It's on record that for over a year he has
22 not had instructions.

23 PRESIDING JUDGE: It is on record too that he decided not
24 to come to court and he decided not to give instructions. This
11:59:29 25 is on record that this was his decision. This is on record, too,
26 that we have issued a decision to say that they would be counsel.

27 MR CAMMEGH: I am so sorry to interrupt, but I really have
28 to correct something Mrs Jallow said. I kept it very quiet, but
29 Mr O'Shea knows this, Mr Jordash knows this. Mr Gbao was giving

1 me very limited instructions on occasions in the last session,
2 and I do rather resent the assertion that it is entirely due to
3 the Defence office that he's come back to Court. I have been
4 here for nearly two years and I never gave up. I tried very hard
12:00:12 5 and I, in the end, was partly successful. I'm grateful for
6 Mr Nmehielle, who helped as well, and he's right, I did ask him
7 to, but it's not all the Defence office's credit, please.

8 PRESIDING JUDGE: This is not the issue and the question is
9 not whether or not the Defence office is or should be on trial.
12:00:25 10 The question is we're trying to solve the issue of the
11 application by Mr O'Shea as to his representation or not of
12 Mr Gbao. As I say, this is an important matter and that is why
13 we have devoted this very precious time to hear all of that.

14 Mr Principal Defender, you can dispense with attending
12:00:46 15 court, if you wish to and leave is granted for you to --

16 MR NMEHIELLE: Can I make a final submission before I
17 leave?

18 PRESIDING JUDGE: If it is to assist the Court, yes.

19 MR NMEHIELLE: Yes, to assist the Court in terms of --

12:01:01 20 JUDGE THOMPSON: If it will enable us to look at the
21 conclusion of the matter.

22 MR NMEHIELLE: To assist the Court in this issue. I want
23 to reiterate my opposition to the withdrawal of Mr O'Shea or any
24 member of Gbao's legal team from the defence of Mr Gbao, which I
12:01:24 25 have maintained over time. Because at this crucial stage of the
26 proceedings, it will serve no good purpose for my office nor for
27 the Court that that happen because it will take us back a number
28 of days, if not years. In that regard, if the Principal Defender
29 is still an institution that the Court created and I could

1 recommend to the Court and persuade the Court, I would conclude
2 by saying I'm opposed to Mr O'Shea's application to withdraw. At
3 most, I will urge the court to seal, for once, this matter by
4 possibly - and I use the word "possibly" again -- emphatically as
12:02:23 5 was done in the case of Hinga Norman to designate counsel to
6 Mr Gbao as court-appointed counsel and leave the hazy status that
7 we now don't know whether or not, strictly speaking, they're
8 court-appointed, which of course Mr O'Shea several times has told
9 me he does not believe is his status. That is my recommendation.

12:02:52 10 Thank you very much for your attention.

11 PRESIDING JUDGE: Thank you. We thank you for these
12 comments, Mr Principal Defender. That concludes the application
13 on this matter. We will take this application under advisement
14 at this particular moment. We will not issue our decision now,
12:03:05 15 although I am inclined to do so. We will do that as speedily as
16 possible, because I think this is very important that you know
17 where you stand, Mr O'Shea, on this matter.

18 MR O'SHEA: I am grateful, Your Honour. Thank you.

19 PRESIDING JUDGE: Thank you very much, Mr Principal
12:03:21 20 Defender. The Court will adjourn for 15 minutes.

21 [Break taken at 11.55 a.m.]

22 [Upon resuming at 12.34 p.m.]

23 WITNESS: TF1-174 [Continued]

24 PRESIDING JUDGE: Mr Cammegh, we'll just ask you to bear
12:34:24 25 with us for a few moments because we are still in an open
26 session. So we will close the Court to complete your
27 cross-examination.

28 JUDGE ITOE: We observe that you look in good shape this
29 morning, Mr Cammegh, compared to what you were yesterday.

1 PRESIDING JUDGE: For members of the public, we will be
2 moving into a closed session at this particular moment to
3 complete the closed session. We have been given some indication
4 that it shall not exceed an hour. Therefore certainly for the
12:35:02 5 remainder of the morning we will be in a closed session and we
6 will see this afternoon. So, having said that, Mr Court Officer,
7 can you arrange for the Court to be in a closed session, please.

8 [At this point in the proceedings, a portion of the
9 transcript, pages 62 to 108, was extracted and sealed under
10 separate cover, as the session was heard in camera.]

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1 [RUF28MAR06E - CR]

2 [Open session]

3 MS EDMONDS: Court is now in open session.

4 PRESIDING JUDGE: So we are back in open session now?

5 MS EDMONDS: Yes, Your Honour.

6 PRESIDING JUDGE: Thank you very much. Before I ask you,

7 Mr Prosecutor, about your next witness I will ask Justice

8 Thompson to give the reasoned decision for the closed session

9 because we had not done so at the beginning. So we will deliver

16:04:00 10 that decision now. Thank you. Mr Justice Thompson.

11 [Ruling]

12 JUDGE THOMPSON: This is the ruling of the Chamber in

13 respect of the closed session hearing of the entire testimony of

14 TF1-174. Consistent with the general requirement that criminal

16:04:17 15 proceedings are to be held in public as mandated by Rule 78 of

16 the Rules of Procedure and Evidence of this Court, and taking

17 into account Article 17(2) of the Statute of the Court, but

18 exceptionally as authorised by Rule 79(A)(ii) of the said Rules

19 of Procedure and Evidence and the need to protect witnesses as

16:04:47 20 provided for in Rule 75, this Chamber, on the application of the

21 Prosecution for the entire testimony of Witness TF1-174 to be

22 heard in closed session did, by way of an exceptional procedure,

23 grant the said application on the grounds advanced by the

24 Prosecution.

16:05:17 25 MR CAMMEGH: Sorry to jump up. Could Mr Gbao be accused

26 for two minutes, please, to visit the restroom?

27 PRESIDING JUDGE: Yes. Mr Prosecutor, who is your next

28 witness?

29 MR BANGURA: Your Honour, the next witness for the

1 Prosecution would be TF1-165.

2 PRESIDING JUDGE: And this is a witness that will give
3 evidence in English?

4 MR BANGURA: Yes, Your Honour.

16:05:44 5 PRESIDING JUDGE: Anything special about this particular
6 witness that the Court should be made aware of?

7 MR BANGURA: Your Honour, he will be testifying without any
8 of the normal protective measures that are provided for
9 witnesses.

16:05:58 10 PRESIDING JUDGE: So you mean to say that we will remove
11 the screen?

12 MR BANGURA: Yes, Your Honour.

13 MR JORDASH: Your Honour, I don't want to obviously delay
14 the Court, but there are protective measures. In my respectful
16:06:13 15 submission, the Prosecution ought to apply to get rid of those
16 special measures and give reasons for that. Those reasons may,
17 in fact, impact on other witnesses in their special measures. It
18 may be that if reasons are given Your Honours may come to a view
19 that later witnesses do not also require special measures. I
16:06:34 20 don't want to be difficult, but it's not, with due respect to the
21 Prosecution, in their gift to take away special measures.

22 PRESIDING JUDGE: Mr Prosecutor, do you wish to respond to
23 this?

24 MR BANGURA: Your Honour, the Prosecution makes it a duty
16:06:59 25 upon itself to assess every witness, even though these measures
26 have been provided by order of this Court for witnesses, but we
27 make it a duty to assess every witness and also inquire about
28 their safety and security. It has emerged from this particular
29 witness that, first of all, he is a witness who is not resident

1 in Sierra Leone, he is resident abroad and has travelled to come
2 and testify. He does not feel the need for any particular
3 measures of protection as he is not very much concerned that what
4 his testimony might trigger anything that affects his security.

16:07:43 5 PRESIDING JUDGE: The issue is in part that, but the real
6 issue is whether or not this is a decision to be taken by the
7 Prosecution when these measures have been granted by an order of
8 the Court. It may be that you have good cause and good
9 justification, but don't you think it would be a matter to be
16:08:02 10 submitted to the Court before a decision is made, rather than
11 say, "Well, this witness will testify without measures."
12 Because, as pointed out, it may be that we disagree with you for
13 a number of reasons.

14 We granted these protective measures at your request
16:08:22 15 because you had advanced, at that time, grounds to justify these
16 measures. It may be, as you say, that these grounds do not exist
17 any more, but don't you think it would be proper for a submission
18 to be made that these measures have no application any more
19 because -- yes, Justice Thompson.

16:08:43 20 JUDGE THOMPSON: Let me just support that by saying in fact
21 that I think it's much stronger than that. That clearly once the
22 orders have been made, the only way that the situation can be
23 altered is for the Prosecution to come for an order of variation,
24 not to unilaterally change the situation. So it's not a question
16:09:06 25 of -- or the Prosecution has a carte blanche and they can come
26 any time and say, "Well, we don't want it any more." I
27 understand the law to be much stronger than that, saying that if
28 protective measures are no longer necessary, then the Prosecution
29 comes and asks for a variation of the order. Otherwise the Court

1 would be, in respect of protective measures, at the whim and the
2 caprice of the Prosecution and I do not understand that to be the
3 law. So I support strongly what the Presiding Judge has just
4 said.

16:09:46 5 MR BANGURA: May it please Your Honours, I have no --

6 JUDGE ITOE: I have no difficulty in upholding Mr Jordash's
7 point of view. Absolutely none.

8 MR BANGURA: Your Honours, I have no reason to disagree
9 with this position -- this reasoned position. Your Honours, it
16:10:00 10 may be that we, perhaps, on this side have been going about this
11 process without any proper procedure. I do recall personally
12 that this is not the first time that a witness is to be taken
13 without these protective measures applying. Your Honours, I do
14 not recall in previous cases that we have actually adopted this
16:10:28 15 procedure. I'm not saying that we should not do that now.

16 PRESIDING JUDGE: You may not have been asked by the Court,
17 but I am informed that you were asked by our legal officers to
18 follow the proper procedure.

19 MR BANGURA: Yes, Your Honour.

16:10:45 20 PRESIDING JUDGE: But we never gave any direction to that
21 respect. We felt that there was no need to give such a direction
22 when orders have been issued. In any event, you know our
23 position. We support the objection made in this respect and if
24 you want the orders to be varied, you should apply and we'll deal
16:11:02 25 with it accordingly.

26 MR BANGURA: Your Honours, I can make that application, but
27 this is all in an effort to also ensure that the --

28 PRESIDING JUDGE: We concede that. But what we do not
29 concede is that this is a decision to be made solely by the

1 Prosecution as they wish. This is no more a decision of the
2 Prosecution. It is a Court decision that these measures be
3 granted. They have been granted and therefore, if you seek to
4 have these measures varied, we're prepared to listen to it. But
16:11:33 5 can I suggest as well that this is not a new subject matter that
6 must have come up to you today and you should have taken the
7 procedure to a seek a variation of this order before the witness
8 is called.

9 MR BANGURA: I take the point, Your Honour. May I ask for
16:11:49 10 a moment to confer?

11 PRESIDING JUDGE: Yes.

12 MR JORDASH: In the meantime can I just --

13 JUDGE ITOE: Can you allow him to confer so that he can
14 listen to you, please.

16:11:59 15 MR JORDASH: I was just going to ask if Mr Sesay could go
16 to the bathroom.

17 JUDGE ITOE: Okay, okay. All right. That's all right.

18 MR BANGURA: Your Honours, I am sorry to say that we would
19 rather not go by that procedure any longer, but we would have the
16:12:26 20 witness take the normal protective measures at this point.

21 JUDGE ITOE: Why?

22 PRESIDING JUDGE: Why? I mean, you can't have it both
23 ways. You informed --

24 JUDGE ITOE: It's the principle of a public hearing and if
16:12:36 25 these measures were granted to the Prosecution, it was as an
26 exception to the rule. If you have now have indicated to the
27 Court that a witness will be testifying in the open without the
28 measures, why should you retract it because of the reaction of
29 the Court? We want the Prosecution to be very, very forthright

1 with the Court. Why should you change? Why do you expect that
2 we would allow you to hide this witness? I am not prepared to.
3 I will not go by that decision to shield this witness, not after
4 you have given us the indication --

16:13:11 5 MR BANGURA: We do not particularly want to hide the
6 witness --

7 PRESIDING JUDGE: No, Mr Harrison, this is a very clear --
8 I don't see why you are making this gesture. This is quite
9 clear. I mean, this witness had protective measures, you
16:13:21 10 informed the Court that there is no need for it. Now you say,
11 because of our comments, you will go with protective measures.
12 You either have good grounds or justification to have protective
13 measures. If you do not, we expect that to be your duty to
14 inform the Court accordingly and we will vary the measures. It
16:13:38 15 is not a game being played, because the Court reacts one way
16 we'll go the other way. It's either a witness that can testify
17 in public or not.

18 We agreed with your submission that these witnesses should
19 be and could be granted measures. We granted that on your
16:13:50 20 submission. Now you are making a submission that there is no
21 requirement. That is not a question to say, well, because of the
22 reaction of the Court, we want this witness to testify with
23 protective measures. I mean, what is this?

24 MR BANGURA: Your Honour, I'm sorry if I'm giving the
16:14:04 25 impression as though we want to play with the question of
26 protective measures with witnesses as our whim and caprice. Your
27 Honour, that is not the position. Perhaps at this point we have
28 a problem with what procedure to follow in making that
29 application for a variation.

1 JUDGE ITOE: What is the difficulty with making -- you can
2 make a verbal application. Have you attempted to make a verbal
3 application and the Court says no?

4 MR BANGURA: Not at all, Your Honour. I may then proceed
16:14:30 5 to do that at this point.

6 PRESIDING JUDGE: Please do so.

7 MR BANGURA: May it please Your Honours, I am respectfully
8 applying that the testimony of TF1-165 be taken in open session.

9 PRESIDING JUDGE: It was to be in open session. So what
16:15:10 10 you're applying is not that it be in open session, that it be --

11 MR BANGURA: That the orders made in respect of protective
12 measures -- Your Honours, that the order which was made by this
13 Court in respect of protective measures for witnesses be varied
14 in respect of TF1-165, who is a group A witness. In effect, the
16:16:06 15 witness will testify without the normal protective measures that
16 were ordered by this Court in respect of witnesses of that
17 category.

18 PRESIDING JUDGE: By this, you mean without any of the
19 measures? That is, protected identity?

16:16:32 20 MR BANGURA: Yes, Your Honour.

21 PRESIDING JUDGE: And would testify with no screens behind
22 and completely open to the public?

23 MR BANGURA: Yes, Your Honour.

24 PRESIDING JUDGE: What's the reason for that application?

16:16:43 25 MR BANGURA: Your Honour, the reason is that the witness,
26 based on an assessment conducted by the Prosecution, does not
27 feel the need for any particular protection of his identity.

28 JUDGE ITOE: Because he's not based in Sierra Leone?

29 MR BANGURA: He's not resident in Sierra Leone. Your

1 Honour, that is my application.

2 PRESIDING JUDGE: Mr Bangura, I thought the justification
3 that had been submitted -- I don't know for this witness in
4 particular, but I thought that the reasons submitted for a group
16:18:04 5 of witnesses of this type, as such, were more than just to
6 protect their identity, because they were or were not living in
7 Sierra Leone. I thought it had to do with because if their
8 identity is revealed, there could be security threats against
9 themselves and/or members of their family and so on. I thought
16:18:23 10 it was much more than just "I don't want my identity to be
11 revealed because I live in Sierra Leone or I don't."

12 MR BANGURA: Your Honour, the witness personally does not
13 feel that what he says in Court by his testimony will affect his
14 identity personally. But Your Honour, his family is also living
16:18:47 15 outside Sierra Leone and he does not feel that they will be
16 affected in any way by his testimony in Court.

17 PRESIDING JUDGE: May I ask why you asked for protective
18 measures for this particular witness then?

19 MR BANGURA: Your Honour, I believe that when the
16:19:05 20 application was made, about two years back, it was made generally
21 for all witnesses, because at the time it was believed that it
22 was necessary to protect the identities of witnesses,
23 particularly those witnesses who were resident here in
24 Sierra Leone. In particular cases of witnesses who were not
16:19:30 25 resident in Sierra Leone, certain other measures were meant to
26 also affect them. Your Honour, subsequent to that order, the
27 conditions, the circumstances which existed then, as far as this
28 witness is concerned do not exist today and we do not see any
29 point in continuing to maintain those protective measures for

1 witnesses who do not feel the need to have them when there is no
2 particular concern for his security or his safety.

3 PRESIDING JUDGE: Thank you. Mr Jordash, you wish to
4 address this issue?

16:20:10 5 MR JORDASH: Yes. We obviously don't oppose the
6 application, but with Your Honour's leave, I would make the
7 following submission. I would respectfully ask the Prosecution
8 to review their witness list and make decisions like this at a
9 time which might be of benefit to the Defence. This is a
16:20:36 10 witness, as I understand it, from Kenya. If clearly disclosing
11 his name to the Defence within the 42-day period and the
12 Prosecution leave it up to the 42-day period means that the
13 Defence could not possibly have got to Kenya and investigated, or
14 it would have been extremely difficult to get to Kenya to
16:21:04 15 investigate this witness. But if they'd made this application a
16 year ago, we could have investigated this witness sufficiently,
17 perhaps, to have been of benefit to cross-examination. We cannot
18 and have not investigated this witness in the time available.

19 I would ask the Prosecution to consider their witnesses who
16:21:27 20 live outside the country and perhaps all of their witnesses and
21 make a sensible review of their position as regards their
22 security. Those are my submissions.

23 PRESIDING JUDGE: I'm not sure I'm prepared at this
24 juncture to go that far, Mr Jordash, but on that very issue, I
16:21:49 25 would like to think about it. I certainly find some merit in
26 your application. We need to look at that to see how we should
27 be dealing with that. I agree with you. There has got to be
28 some review process by the Prosecution in their list of
29 witnesses, because this is a prime example of information that if

1 it is not to be protected, then why do we keep this information
2 protected? Let the Bench think about how to deal with that. I
3 find merit in your comments, Mr Jordash.

4 MR JORDASH: Thank you.

16:22:51 5 [Trial Chamber conferred]

6 JUDGE ITOE: Mr Taku?

7 PRESIDING JUDGE: Mr Taku, I was not forgetting about you.
8 I was coming to you and then I will ask counsel for the third
9 accused as well. Yes?

16:23:20 10 MR TAKU: Your Honours, we do not oppose the application.
11 I would rely on the submissions of Mr Jordash. I'm not in the
12 position at this point in time to say whether the reason advanced
13 by the Prosecutor in support of the application is reasonable in
14 the circumstance, because the Prosecutor knew or had reason to
16:23:45 15 know that this particular witness resided out of the country. He
16 knew his address, he knew his country of origin and I would
17 presume he knew he resided out of the country. So that ought not
18 to be the only reason to seek a variation. But in this case, in
19 order to advance these proceedings, and in the interests of
16:24:11 20 justice, I hope that this application will be granted.

21 PRESIDING JUDGE: Yes, Mr O'Shea?

22 MR O'SHEA: Your Honour, we on the Gbao team are always in
23 favour for a public trial as far as possible and would not oppose
24 the Prosecution application to review the protective measures in
16:24:27 25 relation to this witness.

26 I would invite the Prosecution to review their entire
27 position on protective measures, given the comment made by my
28 learned friend. I think I heard him say that the situation in
29 regard to this category of witnesses in his perception was no

1 longer the same. If that's the case, then it would be
2 appropriate for the Prosecution to review their entire position
3 on protective measures and put in a fresh motion. They do have
4 the duty, in my submission, to review this position continually
16:25:03 5 and I extend that invitation to them and hope to see a motion
6 soon.

7 PRESIDING JUDGE: Thank you.

8 MR BANGURA: May it please My Lord. I just want to make a
9 clarification. My learned friend is saying that the measures for
16:25:19 10 witnesses of this category, by my words that those measures do
11 not exist any more. I don't believe that is what I said. I said
12 in respect of this particular witness, who is a Category A
13 witness. I think I did make the point that the Prosecution
14 strives to assess witnesses on the question of their security and
16:25:42 15 safety on a case-by-case basis. I believe he is not the first
16 witness to be tendered to the Court who is to testify without
17 these measures. If my memory serves me right, two witnesses back
18 we had somebody here who was testifying without these measures.

19 PRESIDING JUDGE: What would preclude the Prosecution to
16:26:06 20 review its list of group A witnesses to make that determination
21 now and do that on a continuous basis? We are quite advanced in
22 the trial and this is clear evidence that the conditions that may
23 have existed have changed over the years and facts and conditions
24 that might have existed a year and a half or two years ago might
16:26:29 25 not be there any more. So why is it you would not review that
26 position and assess the conditions of these witnesses, certainly
27 for this group A witness?

28 JUDGE THOMPSON: May I just, before you respond, add to
29 that by saying wouldn't such a review become now imperative in

1 the light of the observation of Mr Jordash that their side may be
2 prejudiced if we leave this just on a case-by-case basis and then
3 every now and then, when a particular witness has to testify, you
4 come and peremptorily make an application for variation. Would
16:27:15 5 the present approach, which of course we have conceded to in the
6 interests of time and making sure that we don't delay this trial,
7 would the present approach be satisfactory if we were to leave it
8 just to be done on a case-by-case basis as the circumstances
9 dictate rather than an en bloc review from time to time so that
16:27:43 10 you give us advance notice and make the application for variation
11 in advance. Which is the better option, having regard to the
12 interests of the Defence and to the overly interests of justice?

13 MR BANGURA: Your Honours, this suggestion is taken into
14 good part and the Prosecution will obviously go back to the
16:28:05 15 drawing board and see where we can have a review. But
16 Your Honour, I also need to point out that in respect of
17 witnesses who are resident in Sierra Leone, the position has
18 hardly changed in terms of the concern they have for safety and
19 their security. I must say we have hardly had any case where
16:28:26 20 that concern has not been expressed, even up to now.

21 JUDGE THOMPSON: Comments would not apply to that
22 particular subcategory of category A witnesses in that context if
23 you make the point considering that the fact that the trials are
24 taking place in Sierra Leone has always been an overriding and
16:28:51 25 supreme consideration in the protective witnesses. It's the
26 other category of your subcategory A where our comments may well
27 be appropriately directed to.

28 MR BANGURA: Your Honour, the Prosecution as I said will
29 take this advice very well and we'll go back to the drawing

1 board.

2 PRESIDING JUDGE: Very well. The Court will take advantage
3 of the recess in the afternoon now and we'll look at this matter
4 and come back.

16:29:19 5 MR JORDASH: Would Your Honours mind if I just make this
6 comment. In relation to the if I can refer to it as the UNAMSIL
7 counts, then I would invite the Prosecution to do that overnight.
8 Because if they can disclose the identities and full statements
9 of other UNAMSIL evidence, it might assist in cross-examining
16:29:44 10 this witness. It is not some illusory right we are trying to
11 insist upon. It might in fact be useful for cross-examination.

12 PRESIDING JUDGE: I'm in your hands and the hands of the
13 Prosecution. I don't know how many witnesses being called are
14 UNAMSIL-related.

16:30:06 15 MR JORDASH: I think there might be three or so more, I
16 think, off the top of my head. I'm not altogether sure.

17 MR BANGURA: Your Honour, for this session, this will be
18 the only -- the next one and not any more for this session.

19 MR JORDASH: Not this session, I'm talking in totality. If
16:30:24 20 I could sit down with all the statements unredacted and assess
21 that evidence, I would be in a much better position to
22 cross-examine each individual person than I would not knowing
23 quite the substance of every other piece of UNAMSIL evidence. If
24 the Prosecution take the view that those who are outside of the
16:30:43 25 country are secure, then why do we not have the evidence?

26 PRESIDING JUDGE: I'm not sure they were going that far,
27 but I hear what you're saying. Yes, Mr Harrison.

28 MR HARRISON: Part of the process is that victims and
29 witnesses services has to speak to each of the witnesses. Until

1 the witness is brought here, they are not spoken to by witness
2 and victims services and they provide the guidance to the
3 Prosecution whether, in their judgment, in addition to that of
4 the Prosecution, any witness, including the so-called UNAMSIL
16:31:18 5 witnesses, ought or ought not to testify in a manner different
6 than what was originally --

7 JUDGE THOMPSON: So there is no prior consultation with the
8 witnesses before they come here?

9 MR HARRISON: With the Prosecution, but not with the
16:31:31 10 witness and victims services unit, who also provide guidance on
11 whether any witness should or should not testify in a manner that
12 is different from that contemplated by the existing orders.

13 PRESIDING JUDGE: What would preclude them from doing this
14 assessment?

16:31:49 15 MR HARRISON: Nothing would. If they wish to travel to
16 wherever the location might be they could --

17 PRESIDING JUDGE: I'm not saying travel, they can use the
18 phone. I mean, this is -- [Overlapping speakers]

19 JUDGE ITOE: [Overlapping speakers].

16:32:00 20 MR HARRISON: Part of what is sought is a witness attending
21 the jurisdiction for them to review the circumstances in the
22 jurisdiction. Then to have a discussion with witness and victims
23 services, also to have a discussion with the Prosecution, so that
24 the witness is apprised of what is taking place within
16:32:26 25 Sierra Leone. I think that is part of the information that
26 witness and victims services go through with each of the
27 witnesses, where there is any issue.

28 JUDGE THOMPSON: They can devise some creative method to
29 meet the situation which now we are confronted with. I'm sure if

1 they are approached and given a resume of what we have discussed
2 here and the need to have this option which we are proposing put
3 in place, they, based on their own professional experiences, may
4 come out with some kind of option which [indiscernible]. We
16:33:07 5 shouldn't just throw our hands up and say there is nothing we can
6 do about it.

7 MR TAKU: Your Honours, with your kind permission, I think
8 what is important here are the personal circumstances of each
9 witness. It is not generally merely the situation of Sierra
16:33:24 10 Leone as [indiscernible] because --

11 JUDGE ITOE: The situation in Sierra Leone is very, very
12 important in terms of determining these measures and leaving them
13 to remain in place.

14 MR TAKU: Yes, Your Honour.

16:33:48 15 JUDGE ITOE: Particularly for witnesses who are resident in
16 Sierra Leone.

17 MR TAKU: Exactly, Your Honour. For witnesses in
18 Sierra Leone, that's another issue. I say this, Your Honours, I
19 was not here when that decision was taken.

16:33:58 20 PRESIDING JUDGE: But it is in writing and we have issued
21 fairly detailed decisions on that. You may not have been here,
22 but it is available for you to read.

23 MR TAKU: Yes, Your Honour. I say so because the witness
24 statements, the interview notes that have been communicated to us
16:34:16 25 by the Prosecutor indicates that they communicated with some of
26 the witnesses by telephone. The Prosecutor used that means of
27 communicating with witnesses. Nothing stops the Witness
28 Protection from doing the same.

29 PRESIDING JUDGE: Thank you.

1 MR O'SHEA: Just very briefly, Your Honour. I would just
2 like to remind the Prosecution, as you, Mr President have already
3 done, but I think it needs to be said again in light of the
4 intervention by my learned friend that the question of protective
16:34:46 5 measures is not just a question of the personal wishes of a
6 witness. It is also a question of that and the objective
7 criteria with regard to the general situation of Sierra Leone.
8 That is a matter which is within the prerogative of the
9 Prosecution to review.

16:35:01 10 PRESIDING JUDGE: Thank you. The Court will recess at this
11 particular moment.

12 [Break taken at 4.29 p.m.]

13 [RUF28MAR06F - SV]

14 [Upon resuming at 5.05 p.m.]

17:10:44 15 PRESIDING JUDGE: Mr Prosecutor, your application is
16 granted and the order for protective measures of Witness TF1-165,
17 who is the next witness to be called, is varied, and therefore he
18 may testify in a completely public forum without any protective
19 measure.

17:11:07 20 We further order that you review the witness list, the
21 Group A witnesses, more specifically, those in that group that
22 reside outside of Sierra Leone, to determine if protective
23 measures that have been granted are still of application, and if
24 they are not of application that you apply to vary the order
17:11:32 25 accordingly.

26 MR HARRISON: I think we understand the intent of the
27 order. Just to clarify though, it's Group 1 and then A, B and C
28 were the variations within. So the review will be of all Group 1
29 witnesses. We understand that.

1 PRESIDING JUDGE: You're quite right, Mr Harrison. I only
2 used Group A because your learned friend has referred to Group A.
3 But it's A in Group 1, this is the group of witnesses we want you
4 to look at.

17:12:16 5 MR HARRISON: It's Category 1. All Category 1 to be looked
6 at?

7 PRESIDING JUDGE: Yes, thank you. Mr Bangura, are you
8 ready to proceed with your witness?

9 MR BANGURA: Yes, Your Honour. Your Honour, the
17:12:33 10 Prosecution calls witness TF1-165.

11 PRESIDING JUDGE: What is the name of TF1-165?

12 MR BANGURA: Leonard Ngondi, N-G-O-N-D-I.

13 PRESIDING JUDGE: So maybe the Witness Protection Unit can
14 assist and remove the protection behind.

17:13:01 15 MR BANGURA: I do not see anybody present in court from
16 that unit. Maybe he is with the witness.

17 PRESIDING JUDGE: Yes, possibly. Presumably somebody is
18 getting the witness now.

19 MR BANGURA: Yes, Your Honour.

17:13:17 20 JUDGE ITOE: And this is the --

21 MR BANGURA: This is the 67th prosecution witness and 68th
22 in the trial.

23 PRESIDING JUDGE: And this witness, as you have indicated,
24 is to give evidence in the English language?

17:13:33 25 MR BANGURA: Yes, Your Honour.

26 WITNESS: LEONARD NGONDI [Sworn]

27 PRESIDING JUDGE: Thank you. Mr Bangura, you're ready to
28 proceed with the examination of your witness?

29 MR BANGURA: Yes, Your Honour.

1 EXAMINED BY MR BANGURA:

2 Q. Good afternoon, Mr Witness.

3 A. Good afternoon to you.

4 Q. I'm going to ask you questions this afternoon to which you
17:18:47 5 are expected to give your answers. I will ask that when you do
6 answer the questions that I ask you should try not to speak too
7 fast because you're being recorded as you speak. Is that okay?

8 A. It's okay, Your Honour.

9 PRESIDING JUDGE: It's not only because you're recorded,
17:19:11 10 it's because your evidence is also translated for the benefit of
11 the accused in a different language. So you need to give to the
12 interpreters the time to translate what you're saying in the
13 other language. So that's why we're asking you not to speak too
14 fast, and if at all possible, keep the same pace. But we'll
17:19:32 15 remind you if you go too fast. Thank you very much, Mr Witness.

16 THE WITNESS: Thank you, Your Honour. I'll oblige.

17 MR BANGURA:

18 Q. Your name is Leonard Ngondi; is that correct?

19 A. That's correct, Your Honour.

17:19:46 20 Q. And how old are you?

21 A. I'm 46 years old, Your Honour.

22 Q. What is your profession?

23 A. I'm a soldier in the Kenyan army. Kenyan Armed Forces,
24 Your Honour.

17:20:08 25 Q. What is your present rank?

26 A. I am a brigadier in the Kenyan army.

27 Q. How long have you served in the army?

28 A. I've served for 28 years, My Lord.

29 Q. Where are you presently deployed?

1 A. I'm deployed in my country, My Lord.

2 Q. Mr Witness - I'll call you Mr Witness - have you served on
3 any tour of duty outside your country before?

4 A. Yes, I have, My Lord.

17:21:06 5 Q. Do you recall the year 2000?

6 A. Yes, I do, Your Honour.

7 Q. Where were you in that year?

8 A. Most part of that year, Your Honour, I was in Sierra Leone.

9 Q. When did you arrive in Sierra Leone?

17:21:34 10 A. I arrived in Sierra Leone on 21st February in the year
11 2000.

12 Q. And why were you in Sierra Leone at that time?

13 A. I came to Sierra Leone as a commanding officer for our
14 KENBATT battalion, which was part of United Nations mission in
17:22:14 15 Sierra Leone.

16 Q. And when you say "United Nations mission in Sierra Leone,"
17 is there an acronym for that name?

18 A. Yes, Your Honour, it was UNAMSIL.

19 Q. Thank you. What was the name of your force within UNAMSIL?

17:22:40 20 A. My force was known as KENBATT 5, Your Honour.

21 Q. Do you know when the Kenyan battalion, KENBATT 5, first
22 took up this role in Sierra Leone?

23 A. Yes, Your Honour.

24 Q. When was this?

17:23:12 25 A. They had come the previous year in December to this
26 country, Your Honour.

27 Q. Specifically in what year?

28 A. In the year '99. 1999, Your Honour.

29 PRESIDING JUDGE: You said in December of '99?

1 MR BANGURA: Yes, Your Honour.

2 THE WITNESS: Correct, Your Honour.

3 MR BANGURA:

4 Q. Now, you have just said that the Kenyan battalion was part
17:23:42 5 of UNAMSIL. Are you able to tell this Court what was the overall
6 aim of UNAMSIL in Sierra Leone?

7 A. Yes, Your Honour.

8 Q. As far as you can remember, please?

9 A. Yes, Your Honour. Can I go ahead?

17:24:04 10 Q. Yes, please.

11 A. Your Honour, UNAMSIL was established by United Nations
12 resolution, Security Council resolution, to assist the Government
13 of Sierra Leone in bringing peace, stability, reconciliation and
14 development in this country. The main efforts within the mandate
17:24:51 15 was to carry out the disarmament, demobilisation and
16 reintegration of all the combatants who were party to the
17 conflict in this country.

18 Q. Thank you, Mr Witness. Mr Witness --

19 JUDGE ITOE: Please, can you go at a pace that is
17:25:22 20 acceptable.

21 MR BANGURA: I'm sorry, Your Honour.

22 Q. Mr Witness, what was the specific mandate of your force
23 within UNAMSIL at this time?

24 A. The specific tasks of my force within the UNAMSIL were to
17:26:22 25 assist in disarmament, demobilisation and reintegration program
26 or plan through provision of security of reception centres and
27 the camps, through provision of other assistance such as security
28 of all the weapons that were surrendered.

29 PRESIDING JUDGE: All the weapons that you were handed

1 over, is it? When you say "security of all the weapons," which
2 weapons are we talking about?

3 THE WITNESS: Which were handed over within my area of
4 responsibility, Your Honour.

17:27:26 5 PRESIDING JUDGE: Thank you.

6 THE WITNESS: Facilitation of the carrying out of
7 humanitarian agencies -- humanitarian operations by humanitarian
8 agencies within my area of operation.

9 MR BANGURA:

17:27:50 10 Q. If I may ask you, Mr Witness, what was your area of
11 operation at this time?

12 A. My area of operation was in the north of the country,
13 mainly in Bombali and Tonkolili Districts.

14 Q. What particular towns in these districts were you -- was
17:28:21 15 your mission focused on?

16 A. In the towns of Makeni and Magburaka.

17 MR BANGURA: Your Honours, Magburaka is M-A-G-B-U-R-A --

18 JUDGE THOMPSON: It's phonetical. Yes, quite. We're
19 familiar by now.

17:28:46 20 PRESIDING JUDGE: We're familiar with that by now.

21 JUDGE THOMPSON: We know it very well and by heart.

22 MR BANGURA:

23 Q. Mr Witness, what was the composition of your force that was
24 deployed in these areas you've just mentioned?

17:29:07 25 A. My force was one battalion.

26 JUDGE ITOE: But has he finished the enumeration of the
27 tasks?

28 JUDGE THOMPSON: Did he complete that? Because you
29 interjected something whilst he was trying to give his tasks.

1 JUDGE ITOE: Because he ended up with the facilitation.
2 You know, that one of the missions was to facilitate the
3 operation of humanitarian agencies which were operating in the
4 country and that is when you interjected.

17:29:32 5 JUDGE THOMPSON: And you used mandate, he used tasks. So I
6 thought he was going to give us a multiplicity of tasks.

7 MR BANGURA: Thank you, Your Honours. I'll get the witness
8 to go back to that.

9 Q. Mr Witness, you mentioned a number of tasks that you were
17:29:49 10 supposed -- that you were assigned to within UNAMSIL. You were
11 already mentioning some. Are there any more that you would wish
12 to mention?

13 A. Yes, Your Honour, there are still some important ones I
14 would like to mention.

17:30:05 15 Q. Please, go on.

16 A. Such as ensuring the adherence of the ceasefire as had been
17 agreed upon by the parties to the conflict. Ensuring and
18 encouraging freedom of movement.

19 JUDGE ITOE: Mr Witness, you've talked of a ceasefire. Are
17:31:05 20 you referring to a particular ceasefire that was agreed upon by
21 the parties to the conflict?

22 THE WITNESS: Yes, Your Honour.

23 JUDGE ITOE: What is the ceasefire?

24 THE WITNESS: The stop of hostilities in the country.

17:31:29 25 PRESIDING JUDGE: But the ceasefire was to be between
26 parties. Can you describe these parties as they were then?

27 THE WITNESS: Yes, Your Honour. The major parties were the
28 Government of Sierra Leone itself and the Revolutionary United
29 Front.

1 MR BANGURA:

2 Q. Thank you, Mr Witness. The question I was going to go to
3 was the composition of your force.

4 A. My composition of -- the composition of my force was one
17:32:25 5 battalion and had four companies, combat companies.

6 PRESIDING JUDGE: That was four combat companies?

7 THE WITNESS: Correct, Your Honour.

8 MR BANGURA:

9 Q. Is that all? Are there any other components of the force
17:32:57 10 that you have not mentioned?

11 A. Yes, the headquarter company and my battalion headquarters.
12 Those were the major entities within my battalion.

13 Q. Mr Witness, you have said that you had one battalion.
14 Roughly how many men were within the battalion?

17:33:22 15 A. Roughly, Your Honour, 921 men and women under my control.

16 PRESIDING JUDGE: So 921, these are all the members of your
17 battalion, officers and non-officers?

18 THE WITNESS: Yes, Your Honour.

19 PRESIDING JUDGE: Okay.

17:33:50 20 MR BANGURA:

21 Q. Can you tell this Court how your battalion was deployed in
22 the areas that you were assigned to for these tasks that you have
23 explained?

24 A. Yes, Your Honour. I had three companies at Makeni area in
17:34:18 25 different locations within Makeni Town, or Makeni area, for that
26 matter. The other two companies were in Magburaka in different
27 locations, Your Honour.

28 Q. Can you tell this Court in what particular locations these
29 companies were in their respective areas you've mentioned? First

1 with Makeni, where particularly were these companies located or
2 deployed within Makeni?

3 A. Okay, Your Honour. A Company was deployed on the road
4 between Freetown and Makeni, just before you enter Makeni. My
17:35:32 5 headquarter, battalion headquarter and headquarter company, were
6 located in the same location on the road between Makeni Town
7 towards Kabala, about four kilometres or so from Makeni Town.
8 D Company was deployed on the same road between Makeni and Kabala
9 at a place known as Panlap.

17:36:38 10 Q. Mr Witness, can you endeavour to spell the name of this
11 location, please?

12 A. I spell Panlap P-A-N-L-A-P.

13 Q. Thank you.

14 A. Then in Magburaka one company was deployed at Islamic
17:37:10 15 centre and the other company was deployed near the river at
16 Waterworks, a station. That's all, Your Honour.

17 Q. Thank you, Mr Witness.

18 JUDGE ITOE: One was deployed in a river?

19 THE WITNESS: No, near the river at Waterworks. At
17:37:54 20 Waterworks station.

21 PRESIDING JUDGE: Waterworks, yes.

22 JUDGE ITOE: Okay.

23 PRESIDING JUDGE: Mr Prosecutor, it is 5.30. I know you
24 haven't been long with this witness but it might be before you
17:38:16 25 move to a different area, as such, unless you want to close this
26 particular area of deployment.

27 MR BANGURA: I would just want to ask one or two questions
28 in this area of deployment and then we'll tie it up for today.

29 PRESIDING JUDGE: Yes.

1 MR BANGURA:

2 Q. Mr Witness, in terms of deployment for the -- were there
3 any specific tasks assigned to these forces within these
4 locations you've mentioned?

17:38:49 5 A. Yes, Your Honour.

6 Q. Please explain. First starting with Makeni, if you can.

7 A. There were many tasks but I will go to the major task with
8 regard to disarmament, demobilisation and reintegration program.

9 Your Honour, in my area of responsibility there were to be two
17:39:51 10 disarmament, demobilisation and reintegration -- and I will be
11 referring to that long name as DDR. Meaning, disarmament,
12 demobilisation and reintegration. There were to be two camps;
13 one for Magburaka and the other one for Makeni.

14 Q. Apart from the camps, were there to be any other facilities
17:40:50 15 in these locations?

16 A. Correct. Relating to the same DDR plan, there were to be
17 reception centres and each camp was served by a reception centre.

18 Q. Now you've just mentioned DDR camps and reception centres.
19 Were these two -- for each location were these two in one place?
17:41:40 20 Were these two facilities in one place?

21 A. No, Your Honour. Our reception centres were away from the
22 DDR camps themselves.

23 MR BANGURA: Your Honours, this is more or less a
24 convenient point to tie up for today.

17:42:08 25 PRESIDING JUDGE: Thank you.

26 MR BANGURA: We shall continue on the same theme tomorrow
27 but this is a convenient point to tie up.

28 PRESIDING JUDGE: Thank you very much. So the Court will
29 now adjourn until 9.30 tomorrow morning. Thank you. Court is

1 adjourned.

2 [Whereupon the hearing adjourned at 5.35 p.m.,
3 to be reconvened on Wednesday, the 29th day of
4 March, 2006, at 9.30 a.m.]

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EXHIBITS:

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