

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO.: SCSL- 04 – 15 - T
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
v.
ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO

WEDNESDAY, 14 JULY 2004
10.08 A.M.
CONTINUED TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For the Registry:

Ms. Maureen Edmonds

For the Prosecution:

Ms. Lesley Taylor
Mr. Alain Werner
Mr. Christopher Santora

For the Accused Issa Hassan Sesay:

Mr. Timothy Clayson
Mr. Wayne Jordash

For the Accused Morris Kallon:

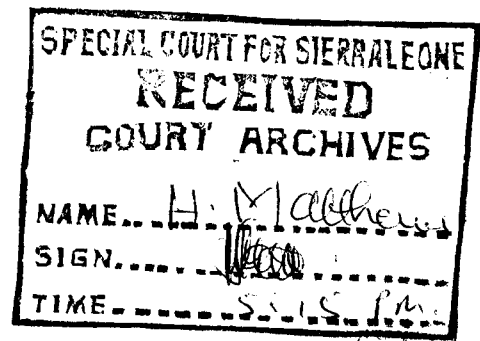
Mr. Raymond Brown
Ms. Wanda Akin

For the Accused Augustine Gbao:

Mr. Andreas O'Shea
Mr. John Cammegh

Court Reporters:

Mr. Momodou Jallow
Ms. Gifty C. Harding
Ms. Roni Kerekes
Ms. Susan G. Humphries



INDEX

WITNESSES

For the Prosecution:

WITNESS TF1-214

Examined by Mr. Werner continues1

[Wednesday, 14 July 2004]
[The Accused entered Court]
[Accused Gbao not present]
[Open session]
[Upon commencing at 10.08]

MS. EDMONDS:

All persons having anything to do before this Special Court Trial Chamber draw near and give your attendance.

MR. PRESIDENT:

We are resuming the session and we are asking the Prosecution to proceed. I hope they are in a position to proceed with the examination of this witness.

MR. WERNER:

I hope so, Your Honour.

WITNESS: WITNESS TF1-214

[Witness answered through interpretation]

Examination by Mr. Werner: [Continues]

MR. WERNER:

Q. Good morning, madam. How do you feel?

A. Good morning, sir. I'm feeling well.

MR. WERNER:

Your Honour, it appeared to me that there is still the voice distortion system, and it was not required for this witness.

JUDGE BOUTET:

Can we ask the technician to remove the voice distortion and can we be informed if it has been removed? Apparently it has been removed.

MR. WERNER:

Q. Madam, did you speak yesterday or this morning with An Michels and Neneh Barrie, people of the Witness Protection Unit?

A. Yes, this morning.

Q. And did they reassure you about your safety?

A. Yes.

Q. Did they reassure you about the fact that you are protected even if you mention this morning, names of districts or locations?

A. Yes.

Q. And did you still agree to come this morning here?

A. Yes, I personally agreed to come this morning.

1 MR. WERNER:

2 I do not get any translation.

3 JUDGE BOUTET:

4 Check if your channel is on English.

5 MR. WERNER:

6 Q. So, madam, you are still willing to tell this Court your story?

7 A. Yes, I'm ready.

8 Q. Madam, are you married?

9 A. Yes.

10 Q. How long have you been married, madam?

11 A. It has taken a long time. It has taken a long time since I have been married.

12 MR. WERNER:

13 I'm still not getting the translation.

14 JUDGE BOUTET:

15 Check your system because we are getting the translation.

16 JUDGE THOMPSON:

17 Yes, quite, because we are getting it.

18 JUDGE BOUTET:

19 Are you on the English channel?

20 MR. WERNER:

21 I am, Your Honour.

22 JUDGE BOUTET:

23 Then it is your system that does not work because everybody is hearing the answer from the
24 translation.

25 MR. WERNER:

26 Can I repeat the last question?

27 JUDGE BOUTET:

28 Yes.

29 MR. WERNER:

30 Q. How long have you been married, madam, with your husband?

31 A. Yes, it has taken a long time.

32 Q. Madam, can you tell the Court, what does your husband do for a living?

33 A. My husband is a farmer.

34 Q. Could you tell the Court, madam, how many children you have?

35 A. Yes, currently I have four children.

36 Q. Could you tell the Court their names?

37 A. Yes.

1 JUDGE BOUTET:

2 Is it required? As you know, this is the kind of information that may not be -- given the protective
3 measures as such, it may be information that should not be disclosed at this time.

4 MR. WERNER:

5 As Your Honour wishes. It appears to me -- it is coming back in the evidence but as Your Honour
6 wishes.

7 JUDGE BOUTET:

8 Thank you.

9 MR. WERNER:

10 Q. Madam, did you ever go to school?

11 A. I have never gone to school.

12 Q. And is it the first time or the second time for you in a courthouse?

13 A. This is the first time.

14 Q. Now, madam I would like to bring you back to February 1998. Do you remember February 1998,
15 madam?

16 A. Yes.

17 Q. Madam, can you tell the Court in which district did you live at that time?

18 A. Yes.

19 Q. In which district did you live at that time, madam?

20 A. I was in Koinadugu District, Diang Chiefdom, Kondembaia.

21 Q. And in Kondembaia, where did you live at that time?

22 A. In Kondembaia town, except around the place where we farm.

23 Q. Madam, could you describe to this Court a typical day at that time in Kondembaia?

24 MR. PRESIDENT:

25 Is that question not complicated? It's complicated. It's a very complicated question.

26 JUDGE THOMPSON:

27 That's right.

28 MR. WERNER:

29 I will try to leave that, Your Honour.

30 MR. WERNER:

31 Q. Madam, were you farming at that time along with your husband?

32 A. Yes, myself and my husband.

33 Q. Did you go to the farm during the day?

34 A. Yes.

35 MR. PRESIDENT:

36 Is she a farmer too?

37 THE WITNESS: [Answered through interpretation]

1 I am a farmer and my husband also is a farmer.

2 MR. WERNER:

3 Q. So did you use to help your husband?

4 A. Yes, myself and my husband. In fact, I can say I was almost doing the rest of the job because my
5 husband was an old man then. So I was doing the bulk of the job.

6 Q. And at night did you sleep in the farm?

7 A. Yes.

8 Q. Now, madam, how long, if you can say how long does it take to go from Kondembaia to the place
9 where you and your husband were farming?

10 A. It's about a mile and a half to the place.

11 Q. Now, madam, do you remember in that time of February 1998 what did happen in Kondembaia?

12 A. What happened in Kondembaia town, we are farmers and we are always in our farms, but whilst we
13 were there we used to hear of rebel incursions. So there was a time whilst we were on the farm, we
14 went to weed the farm. Then I was pregnant. We were doing that and after which we heard that
15 ECOMOG had entered this town, Freetown. At the farm we used to work there for the rest of the day
16 and come back to sleep in town. Whilst we were doing that, there was a time whilst we were
17 sleeping in town, at that night for the rest of the night there were vehicles passing and going towards
18 the Kono end. Then I was asleep. When I woke finally in the morning, I was told by people that for
19 the rest of the previous night vehicles were going to the Kono end, after which, it didn't take too long
20 then we saw people in military uniform and they tied a red piece on their heads and they said they
21 were called the Peoples' Army.

22 Q. Madam, sorry to interrupt you. Let me ask you a question at this point. Who told you that these
23 people in Kondembaia town at that time were Peoples' Army?

24 A. The people themselves were saying it because they had the full military uniform on them and they had
25 a red piece of cloth tied around their heads.

26 Q. And, madam, did you see or hear anything special then?

27 A. Yes.

28 Q. Could you tell the Court what did you hear?

29 A. That time, they spent two to three days and they left the town, then they went to towards Kono. After
30 it had taken some time, we were hardly hearing of them any more. Then there was a time we were
31 sitting and we saw people carrying loads on their heads coming towards our own town. Then when
32 we asked where they were coming from, they said the rebels were coming from particular locations
33 and they were burning houses at particular places. Then after we had heard that, we became
34 panicked and we took our things and went into the bush. But after it took some time, we would come
35 back to the town to look for food. So, there was a time when one Pa Issa met me and I saw both
36 arms of his were chopped off.

37

1 MR. WERNER:

2 Can I consult with my colleagues just for few seconds?

3 MR. PRESIDENT:

4 You see, when this witness who is in very particular circumstances is testifying, I think it is good to
5 give her the liberty, you know, to tell her story because we may run into problems again.

6

7 Yes, you can consult, please.

8 MR. WERNER:

9 Thank you, Your Honour.

10 Q. Madam, could you please tell me again about these people with the red headbands on their head?

11 What did you hear about them? Could you repeat that for me, please?

12 A. Yes, the time they went into our town when they were there with their red piece of cloths tied around
13 their heads, they were in the town walking and, whenever they should reach at a particular place, they
14 would just gather around at a particular place. They were saying that if ever Tejan Kabbah would
15 ever come back to power they would go into the bush. That was when we actually began panicking
16 and we were terrified.

17 Q. Madam, when the people came to the bush carrying things, as you described, on their heads as you
18 just described previously, what did they say about the army, soldiers?

19 A. Those who were coming with the bundles on their heads to our place, we were asking them and they
20 were saying that they were hearing of rebels burning houses and they were killing people. So, that is
21 the reason at times when they were in some towns or some villages the way they saw some houses
22 were set on fire and the destruction caused, that was what actually made them to be panicked and
23 they left.

24 Q. Now, madam, you said that you left and hid in the bush along with your family. How long did you stay
25 in the bush?

26 A. I was in the bush for about three months

27 Q. Madam, how do you know it was three months?

28 A. To us, we are farmers. Even the farming that we do we used to count everything like harvesting by
29 months. So it is not difficult for us to count or to know the number of months.

30 Q. Now, when you were in the bush what did happen?

31 A. We were in the bush together with our family. We were there; myself, my husband and my children till
32 I delivered finally.

33 Q. Madam, are you saying that you gave birth at that time in the bush?

34 A. No, I gave birth in the town, but we were running helter-skelter because whilst we were in the bush,
35 the rainy season met us in the bush and the place was also cold. So whenever it would rain the place
36 would be very cold. Then we were there until the child became very sick because there were no
37 medical people around because all of them had run away because of the situation. So I had to lose

1 my child; my child finally died.

2 Q. Madam, do you know someone called Sundu Koroma?

3 A. Yes, I know her.

4 Q. Did you see her during this period?

5 A. Yes, I saw her the first time they attacked our town because at that time we were all together in the
6 bush with Sundu Koroma, together with their father. The first day they went to attack then she met us
7 in the bush. Whilst we were in the bush, they came in the morning because then we were sleeping in
8 the bush. Then we were in the bush because where we used to farm is on top of the hill but we were
9 down the hill at the valley. One morning while we were working on the farm Sundu and others left for
10 the town. They said they were going to look for some mangoes, but Sundu's father was up the hill
11 where we used to farm, and the hill is a kind of advantageous place because whilst you are there if
12 someone is coming from the town, you will see that person that is coming from the town. While we
13 were there we saw Sundu's father coming to our place and said he had looked into the town and saw
14 smoke coming from the town and he called me and said "Mama, Mama," because he is the nephew of
15 my husband so he used to call me mama and he said that, "I saw smoke coming from the village."
16 Then he said, "Look up and see." Then we looked up and we saw smoke coming from the town and
17 we all shouted and said, "Oh my God, they are burning our houses and they are burning the town.
18 Then we left there and we ran farther into the bush to hide our children. Then we hid them and stood
19 elsewhere where we could see the town whilst we were watching, but we had then hidden our
20 children. Then it did not take too long when we saw Sundu and others coming from the town. Then
21 when they came they told us that, "Rebels met us in the town and they caught us." Then we asked
22 them, "How did you free yourselves from them?" Then they said, "Well, God saved us." Then she,
23 Sundu, said, "Even myself, I was caught." And she showed a mark on her leg and she said that was
24 the place that the man said her leg would be amputated. Then she said, "Why I was able to escape
25 was when they saw the people escaping and coming with bundles on their heads, so they all ran
26 away and went to the people's direction because they thought the people had brought some money or
27 property that they could take with them. So when they left towards the people's direction, we also ran
28 away."

29 Q. So, madam, just to be clear at that point, are you saying that some soldiers tried to amputate Sundu
30 and that she managed to escape; is that what you are saying?

31 A. Yes.

32 Q. Now, madam, let me ask you: Do you know who were these soldiers?

33 A. No, because I was not there but what that girl told us -- we were on the farm, she met us in the farm.
34 They went to the town to look for mangoes and she said, "We met the rebels and they caught us." I
35 was not there, but she met us in the farm and explained to us.

36 Q. So did Sundu Koroma tell you that the rebels tried to amputate her, is that correct?

37 A. Yes.

1 MR. O'SHEA:

2 Could my learned friend not put words into the witness's mouth.

3 JUDGE BOUTET:

4 Sustained.

5 MR. PRESIDENT:

6 Sustained.

7 MR. WERNER:

8 As Your Honour pleases.

9 MR. PRESIDENT:

10 You got away with it the first time. You'd better watch it.

11 MR. WERNER:

12 As Your Honour pleases.

13 Q. Madam, did anything else happen that precise day?

14 A. Yes, on that day we were there in the evening because usually when the rebels entered into the town,
15 in the evening some elders would go back into the town and look and see what might have happened.
16 On that day even my husband went to the town and saw one boy was amputated. Yunku Sesay, both
17 his arms were amputated.

18 Q. Now, madam, did Yunku Sesay tell you who tried to amputate him?

19 A. Yes, even when our husbands went back to the bush to tell us that Yunku Sesay's hands had been
20 chopped off, the following day I myself went to the town because I was told that my sister's child had
21 got missing. So I went to the town the following day and I met Yunku Sesay lying down with both
22 arms amputated. Then we there telling him sorry and after which we left the place and we went.

23 MR. PRESIDENT:

24 Mr. O'Shea.

25 MR. O'SHEA:

26 Yes. I'm just cautious here. We have been quite relaxed with some of the hearsay that has being
27 coming in. The question which was put was, "Were you told who was responsible for the
28 amputation?" Now, I think that when one is dealing with the identification of individuals, this is where
29 hearsay becomes particularly dangerous. The Prosecution are calling a very large number of
30 witnesses in this case.

31 MR. PRESIDENT:

32 You don't need to go too far. I think that it is wrong to ask this woman to identify the person who
33 carried out the amputation. I don't think that –

34 MR. O'SHEA:

35 I just wanted to explain my particular difficulty with this type of hearsay.

36 MR. PRESIDENT:

37 Please, let the Prosecution confine itself, you know, to evidence that -- we would know when hearsay

evidence can be admitted, you know, but when it goes so far as being told as to who amputated, it becomes very controversial. Please, limit yourself, you know, within the acceptable standards of proof.

MS. TAYLOR:

Indeed, Your Honour. I would submit, however, that the question, who -- what were you told by someone else, is a permissible question in this Court. That is not beyond the boundaries.

MR. PRESIDENT:

When you are asked a question as to "Were you told who amputated X" and then, of course, the next thing would be, "Who were you told amputated X," that deals with identifying somebody, and is very material; it is controversial.

MS. TAYLOR:

It may be controversial, Your Honour, but the question was, did the person who was amputated tell you who amputated him. With respect, in my submission, that is a permissible question.

JUDGE THOMPSON:

What is the purpose of the question because certainly -- clearly the Rule -- the law that whether hearsay is admissible or not turns on the purpose of the evidence.

MS. TAYLOR:

It does. The --

JUDGE THOMPSON:

Is it? Yes, go ahead.

MS. TAYLOR:

The purpose of the question is to not necessarily identify the individual by name, but whether there was an identification of an individual by name or by group or by any other identifying mark which is something that is of relevance in this Tribunal, and it is something which Your Honours would be interested to know the answer. And in respect of hearsay generally, I know that we've had passed discussions about this issue, but the general practice of international tribunals is that because there is no jury, and because Your Honours are professional judges, that the general application is to allow this evidence in and to relax --

JUDGE THOMPSON:

It's to relax the rule of prohibition against hearsay evidence.

MS. TAYLOR:

Exactly so.

JUDGE THOMPSON:

But it is still the question of the times when the issue turns on whether the piece of evidence is being proffered as evidence of the facts stated therein -- truth of the facts stated therein, or whether it is proffered for other purposes.

1 MS. TAYLOR:

2 Well, if it is proffered for the truth of the facts therein –

3 JUDGE THOMPSON:

4 The contents.

5 MS. TAYLOR:

6 -- Including hearsay evidence and if it is tendered for some other reason, then it is not hearsay
7 evidence.

8 JUDGE THOMPSON:

9 Then, of course, it can come within the permissible exceptions.

10 MS. TAYLOR:

11 Well, my respectful submission is that it is not hearsay evidence if it is tendered to something other
12 than the truth of the content of the statement.

13 JUDGE THOMPSON:

14 I agree with you myself.

15 MS. TAYLOR:

16 And that, with respect to this issue, it wasn't firsthand hearsay. The question was, "Did the person
17 who was amputated tell you who amputated him?" So, it's not a person reporting what a person who
18 has been amputated said, it's the person who was amputated.

19 JUDGE THOMPSON:

20 Not that there was an amputation.

21 MS. TAYLOR:

22 Well, it's already been established that there was an amputation in the witness's evidence.

23 JUDGE THOMPSON:

24 Yes.

25 MS. TAYLOR:

26 And in my respectful submission, it was a permissible question, given the practice of international
27 courts relying, of course, that if Your Honours find, as professional judges, that there is to be no
28 weight accorded to this evidence, then accordingly you will give no weight to it when you come to give
29 your deliberations.

30 JUDGE THOMPSON:

31 I would like to hear the Defence.

32 *(Pages 1 to 9 by Momodou Jallow)*

1 [10.45]

2 MR. O'SHEA:

3 Your Honours, there is, to my knowledge, no clear authority in either the International Criminal
4 Tribunal for the former Yugoslavia or the International Criminal Tribunal for Rwanda on hearsay
5 identification.

6
7 If I may, just by way of guidance, refer to an English authority which I know that at least two of Your
8 Honours will be aware of, the case of *Crown vs. Turnbull* in England, which goes in detail into the
9 question of how judges should deal with the question of identification.

10
11 Identification is a very delicate area because not only is it one of the crucial aspects to the elements of
12 the commission of a crime, but there are inherent --

13 JUDGE THOMPSON:

14 Can you repeat the case.

15 MR. O'SHEA:

16 The *Crown vs. Turnbull*. It's quite a famous case in England.

17 JUDGE THOMPSON:

18 And it turned an identification of whom; a suspect or witness? A suspect.

19 MR. O'SHEA:

20 Yes, but the reason why I'm referring to that authority, Your Honour, is because the facts of the case
21 are not that important --

22 JUDGE THOMPSON:

23 Yes.

24 MR. O'SHEA:

25 -- what's important is the principles which are set out by the Court because what the Court says is that
26 there are inherent dangers in the identification of -- of a suspect.

27 JUDGE THOMPSON:

28 Suspect, isn't that critical?

29 MR. O'SHEA:

30 Well, it's not, Your Honour, because here we are dealing with a --

31 JUDGE THOMPSON:

32 [*Overlapping microphones*] particular decision.

33 MR. O'SHEA:

34 Here we are dealing with a situation where the Prosecution is alleging command responsibility, and if
35 we have an individual identified here as being an individual who identified -- who amputated a person
36 and then the Prosecution can establish some kind of link between that person and one of these
37 Accused, then they have gone halfway down the line -- road to command responsibility.

1 JUDGE THOMPSON:

2 Is that how -- is that where the evidence is leading?

3 MR. O'SHEA

4 We don't know. We don't know, but the point is --

5 JUDGE THOMPSON:

6 Yes.

7 MR. O'SHEA:

8 -- that because what the Prosecution is doing is leading the witness down the path to identifying a
9 "rebel", one has to have regard to the inherent dangers in identification, which are we have to know,
10 we have to -- we as Defence have to be able to cross-examine on questions like, "well, that person,
11 who've identified that person, how well did they know that person? Did they look at their face," et
12 cetera, et cetera. Now, all of those issues can't be properly examined on if it's hearsay identification.

13 JUDGE THOMPSON:

14 But in terms of jurisprudence, isn't it the law -- I mean, of course it's still evolving that in the practice of
15 international tribunals the principle is one of extensive admissibility of evidence and the questions of
16 credibility would be determined according to the weight which professional judges would, in fact,
17 attach to them. Isn't that what the Prosecution is saying that this ban on hearsay evidence is clearly
18 an entrenched feature of national legal systems, particularly in common law systems? In civil law
19 system there is a free evaluation of evidence.

20 MR. O'SHEA:

21 Yes.

22 JUDGE THOMPSON:

23 And the question -- of course, what the Prosecution is saying that as professional judges we are
24 trained to determine what weight to attach --

25 MR. O'SHEA:

26 Yes.

27 JUDGE THOMPSON:

28 -- to evidence of this nature. Of course, the records will reflect that you have raised the objection, but
29 this is -- and the case -- the British case is not really on all fours because we can see the reason why
30 that kind of analysis would be adopted in the case cited by you in respect of a suspect, but there is no
31 direct link yet, even though your speculation that we may get there may be reasonable with anybody
32 who is in this Court.

33 MR. O'SHEA:

34 Well, if we can put it this way, Your Honour, if the Prosecution is not going to go down the road of
35 command responsibility then this evidence is irrelevant. The Prosecution needs to go down that road
36 in order to attach this evidence to these Accused. So this is a very clear danger, it's not just
37 speculation on our part.

1 JUDGE THOMPSON:

2 Yes.

3 JUDGE BOUTET:

4 But it may not be through this witness.

5 MR. O'SHEA:

6 It may not be through this witness, but I would suggest respectfully that every time there is question of
7 an identification of somebody who is said to be a rebel, that in order for that evidence to become
8 relevant the Prosecution is going to have to take the next step and go towards command
9 responsibility or, alternatively, joint criminal enterprise, which of course is the central basis of their
10 indictment. So whether we are dealing with a third-party rebel or the Accused themselves, the
11 question of identification and its inherent dangers are still there, because the whole point of that
12 command responsibility is that a person is responsible by virtue of their leadership position, not for
13 their own acts, but for the acts of another person.

14 JUDGE THOMPSON:

15 But would it be wrong to state the law, as I said, that clearly because of the complexity of trials of this
16 nature and the nature of the indictment and the problematic aspects of the evidence that would be
17 led, that the proper approach for tribunals of this nature is not to be bound by the strict rules of
18 evidence, and that at the end of the day the tribunal should admit any evidence which they consider
19 relevant and determine what probative value to attach to it. My response here is that you are virtually
20 asking us to rule on the inadmissibility on this line of examination-in-chief on grounds of hearsay. It's
21 not supported by the jurisprudence of international -- the evolving jurisprudence of international
22 tribunals.

23 MR. O'SHEA:

24 Well, can I say this first of all that the rule that we are applying here -- and I believe it's Rule 89 -- is
25 that this Tribunal shall adopt various rules of evidence which are most fair and expeditious.

26

27 Now, if I can respectfully disagree with Your Honour on the underlying assumption of the evolution of
28 the law. The law in international terms is still in --

29 JUDGE BOUTET

30 Mr. O'Shea, that particular rule as such says --

31 MR. O'SHEA:

32 Yes.

33 JUDGE BOUTET:

34 -- "In cases not otherwise provide for -- "What is provided for in this particular section is that, "A
35 chamber may admit any relevant evidence." If you are telling us that this evidence is not relevant
36 then we are prepared to entertain what you are saying, but --

37

1 MR. O'SHEA

2 Well, Your Honour, with respect, the word "may" clearly indicates that this Court still has the ability
3 to --

4 JUDGE BOUTET:

5 We have the discretion --

6 MR. O'SHEA:

7 [*Overlapping microphones*] of evidence.

8 JUDGE BOUTET:

9 But that's discretion, obviously.

10 MR. O'SHEA:

11 Well, a discretion which I respectfully say is to be judicially exercised.

12

13 If I may just come back to His Honour Judge Thompson, on this issue of the state of the law. In my
14 respectfully submission, this Court should not accept the position which has been taken by the
15 International Criminal Tribunal for Rwanda.

16 JUDGE BOUTET:

17 We have heard that from you before. I have the experience of Rwanda; you know the experience of
18 international tribunals, you know that this kind of evidence, hearsay evidence, is generally admissible
19 and admitted subject to the court assessing the probative value to be given to that kind of evidence
20 for the very reason that has been stated that we are professional judges and we should be able to
21 make those differences provided -- and I underline provided -- the evidence is relevant and has some
22 probative value. Those are the criteria essentially being -- governing the admissibility of this kind of
23 evidence.

24

25 So this is the essentially -- this is essentially what is being done at ICTR; this is essentially what is
26 being done at ICTY, now you are asking us this morning to divorce ourselves from that kind of
27 jurisprudence and to establish a different rule. That's basically your submission.

28 JUDGE THOMPSON:

29 And, of course, it is important also that this goes back to Nuremberg too. The flexibility approach, in
30 other words, that the judges are not supposed to be bound by the technical rules of evidence because
31 experience has shown that adherence to the technicalities of national rules of evidence have at times
32 actually impeded, if not frustrated, the search for truth. And here we are in a different scenario where
33 the nature of the allegations themselves require a different kind of treatment. And so if you are
34 suggesting we mustn't follow ICTY and ICTR, what is so peculiar now in terms of your own perception
35 or rationalisation why this Court should in fact depart from ICTY and ICTR?

36

37 I would have thought that, noting some of the peculiarities of the Sierra Leone situation, there should

in fact be a greater degree of flexibility and latitude on the issue of admissibility. And if we are going to err, we should err on the side of probative value.

MR. O'SHEA:

I have no difficulty --

JUDGE THOMPSON:

But I need to be persuaded.

MR. O'SHEA:

I have no difficulty with the issue of flexibility and latitude, Your Honours. I can understand, you know, that Your Honours would be anxious. This is a -- quite a difficult and extensive question which perhaps we can come back to at a later stage, but let me just deal with this particular evidence for now.

JUDGE THOMPSON:

Yes.

MR. O'SHEA:

And assume for the moment that Your Honour's instincts about following the jurisprudence are correct -- let me just for a moment assume that Your Honour's instincts about following the jurisprudence are correct.

JUDGE THOMPSON:

Yes.

MR. O'SHEA:

In those circumstances what I am saying here is that to my knowledge, neither in the Yugoslavia Tribunal nor in the International Criminal Tribunal for Rwanda, do we have an authoritative decision which says that hearsay identification evidence is admissible. And what I am saying --

JUDGE THOMPSON:

But you see, with the greatest respect, we do have an authority which says that international tribunals in adjudicating on matters of such complexity where the evidence itself has been difficult to combat sometimes, should adopt a greater degree of flexibility on the issue of admissibility. There is authority for that. In fact, there is not only just case law authority, there is textual authority. There are academics who have written on this subject have actually cited this as the approach. And we are saying that that is the general approach that we are adopting and if you want to carve out for us the need to make some specific rule as to hearsay identification, then you have not yet made a case from my perspective.

JUDGE BOUTET:

And I would suggest we move ahead on this issue. We have heard you and we have stated our position on that. We have taken note of your concerns and we allow the Prosecution to move ahead. Let's move ahead.

1 MR. PRESIDENT:

2 Yes, Counsel, move on.

3 Mr. Jordash.

4 MR. JORDASH

5 Could I lend my voice to Mr. O'Shea but in a slightly different way.

6

7 There are clearly dangers in adducing hearsay evidence. I am not standing on my feet to suggest that
8 it may not have some probative value, but there are dangers of identification evidence. We all have
9 the experience of recognising people and realising later that we've misidentified them. What I would
10 just urge the Prosecution to do is to take caution. The slightly suggestive question which was asked
11 of this witness, who did -- "were you told who did it?", involves, I would submit, the particular -- well, it
12 engages those two particular difficulties; the difficulties of hearsay, the difficulties of identification. I
13 would submit the proper approach when we are dealing with these two very difficult subjects is to ask
14 the witness what was -- "what did the victim of the amputation talk to you about, or tell you?", not load
15 a question which engages those two difficult areas. That's the way I would put my objection to what
16 the Prosecution did a moment ago.

17 JUDGE THOMPSON:

18 We have ruled on this. In any way, that's a very probably useful postscript if the Prosecution wants to
19 take that, but I can also assure you that the position we have taken is correct from my reading of the
20 jurisprudence, that we, as professional judges, are not going to allow ourselves to be carried away by
21 any undue weight. In fact, some of us come from the common law tradition where we are even
22 trained to have some aversion to hearsay evidence, but at the same time, we must work within the
23 parameters of the Tribunal, but that may be helpful.

24 MR. JORDASH:

25 And I would simply add to His Honour Judge Boutet's observations about the evidence having to be
26 relevant and probative --

27 JUDGE THOMPSON:

28 Yes.

29 MR. JORDASH:

30 -- but it must also lead to a fair determination of the matter.

31 JUDGE THOMPSON:

32 Quite right.

33 JUDGE BOUTET:

34 I agree.

35 MR. JORDASH:

36 I know Your Honour is completely aware of that, that's why I raised the particular difficulties of
37 hearsay and identification, that there are areas which might be difficult for the Defence to challenge if

the evidence isn't adduced in a very careful and cautious manner.

JUDGE THOMPSON:

But I have no doubt that there would be vigorous cross-examination on these matters.

JUDGE BOUTET:

Mr. Jordash, I can assure you I fully agree with you that even though hearsay evidence is -- it might be admissible, we still have to move cautiously. This doesn't mean that the door is wide open, you can throw in anything. We have to move cautiously with this, but --

MR. JORDASH:

In no way was I suggesting Your Honour didn't have those matters in mind. It was as much for the Prosecution as it was for any good reason. Thank you.

MR. PRESIDENT:

Thank you. I think what is certain is that we are treading on very, very delicate grounds because even in common law jurisdictions where there is a lot of literature, a lot of (*inaudible*) on the issue of hearsay. It remains very controversial. I mean, the rules are not very, very definite. But I think the fact that we are treading on very delicate grounds, you know, sends a message to the parties to be very careful about the way they address issues of hearsay. I do not think that the message we are sending from here is that all of hearsay evidence is admissible in whatever form. I do not think that that is the message, so we have to be very, very careful. The parties should be very much aware of this, but you should also be aware of the fact that in international tribunals there is a larger -- a more extensive latitude as to the admissibility of evidence than there is, you know, in municipal tribunals.

But this said, it does not mean, you know, that we are not treading on delicate ground as far as hearsay evidence is concerned and I would like the parties to take note of this.

Can the Prosecution continue, please.

MS. TAYLOR:

Your Honour, my learned friend will continue with the examination but there was one issue, with your leave, that I would like to raise.

MR. PRESIDENT

Yes, please go ahead.

MS. TAYLOR:

I have noticed that on occasions where there have been legal debates between the Defence teams and the Prosecution, that occasionally one of the Defence teams would raise an issue, the Prosecution would respond, that Defence team will reply, and then someone else from a different Defence team would stand up and plainly speak about that issue.

I would ask, as a question of form, that if any of the Defence wish to associate themselves with

another Defence team's application or objection, that that be done before the Prosecution speaks so that the Prosecution has an opportunity to respond to everything that is said by the Defence.

MR. PRESIDENT:

You would agree that in delicate matters like this, you know, it's a question of -- it's like a ping-pong and it's very delicate to create rules, hard and fast rules as to how we proceed. It is delicate just as it is difficult, you know, to observe those rules, even if they are created. So we have taken note of --

JUDGE THOMPSON

One person sit down.

MR. PRESIDENT:

We have taken note of --

MR. BROWN:

I'm sorry, I'm sorry.

JUDGE THOMPSON:

All right, go ahead.

MR. PRESIDENT:

We have taken note of this and we will proceed --

MS. TAYLOR:

We will consider this, you know, when proceeding and I'm sure the Defence has taken note of your comments.

MS. TAYLOR:

Thank you, Your Honour. As I said --

MR. PRESIDENT:

Mr. Brown.

MR. BROWN:

Yes, Your Honour.

MR. PRESIDENT:

Are you still on your feet?

MS. TAYLOR:

I'm sorry, Your Honour. I was just going to say it was precisely to avoid the ping-pong situation where -- whereby the Prosecution has not responded a number of times to issues that have been raised subsequent to what has been put before Your Honours that I raise this issue. But I take note of Your Honour's comments and we will no doubt deal with this as they progress.

MR. PRESIDENT:

Right.

Mr. Brown.

1 MR. BROWN:

2 My Lord, two things. I'm not fully familiar with the ping-pong principle what I would understand what
3 our adversary is concerned about.

4

5 First, I wish -- I rise to associate myself with -- and Mr. Kallon -- with the principles articulated by co-
6 counsel. I had assumed that in the interest of order of the movement that we wouldn't have to rise
7 each time there is an argument to say we associate, but I would do so if that's the rule of the Court. I
8 had thought that --

9

10 But one other point that really is very important, there are a number of nuance issues, as the one that
11 was just discussed, and an extraordinary number of facile minds in this room -- and I don't mean that
12 in any sense of derogatory way -- so that to feel that one has to anticipate each argument that's going
13 to be made and to be precluded because one wishes to respond seems to me to be difficult and I
14 don't know whether the Court is adopting learned counsel's rule, but I'm concerned, one, that it be
15 clear that we associate ourselves with positions articulated by the Defence and I didn't realise that
16 each of you wanted all of us to say that but I'm willing to do so, especially if there are evidentiary
17 points that clearly reflect -- affect all of us.

18

19 But the second is, I would object to a rule that precluded us from responding to the very cogent
20 arguments that sometimes come from across the way that didn't seem in the issue until they were the
21 subject of comments. So I'm concerned about any rules that are established and that aren't clear on
22 that as far as it goes to the nature of how we raise our objection and how we press our points.

23 JUDGE BOUTET:

24 I did not understand the comments to mean that every time all of you to say, "We agree, disagree or
25 associate ourselves", it was more in a scenario where there has been a fairly lengthy argument and
26 discussion and the Prosecution had responded to that and then there was a different submission
27 along the same lines, but a different argument that was being raised, and at that time the Prosecution
28 was not asked whether they had any comment. It was more along these lines rather than to say --
29 and we are not trying to compel and make the situation more difficult obviously, because you may
30 indeed have a related argument but not necessarily from the same angle and, therefore, we would like
31 to hear about that. Otherwise, if it's the very same thing, we would invite you not to necessarily stand
32 up and say we associate ourselves unless you feel compelled to do that.

33 JUDGE THOMPSON:

34 And I would like to add that in this kind of situation flexibility would seem to be the virtue, rather than
35 rigidity.

36 MR. BROWN:

37 My Lord, I'd think till this point that the Bench had been extraordinarily flexible nor had counsel

engaged in any conduct that was questionable. I just thought the last principle -- if our adversary is saying she would like to be heard again after Defence counsel's comment on rebuttal I couldn't object to that at all. I just wanted not to be in a position where if I can anticipate the brilliant arguments made by my co-counsel that somehow I am precluded at the end from having my argument heard.

MR. PRESIDENT:

I think because of the flexibility factor, it's difficult to make hard and fast rules as to how we can move. The Court will control the proceedings and will call the parties to order if it comes to that.

Yes, Mr. O'Shea, you are on your feet again.

MR. O'SHEA

I apologise, Your Honour. I just want to seek clarity in relation to Your Honour's ruling. It's my understanding -- and correct me if I'm wrong -- it's my understanding that what Your Honours have done is ruled on my objection to the question being put by the Prosecution and no more than that. In other words, a general rule hasn't yet been created.

JUDGE BOUTET:

A, it was not the intention to create a general rule when I said the decision has to -- let's move along with the questions. Yes, it's on your objection to that particular question, nothing more than that for the time being.

MR. O'SHEA:

Yes, thank you. It's just that it's such a crucial and difficult area I think it needs to be fully argued.

JUDGE BOUTET:

We have had some discussions and I am sure we'll have further discussion on that very issue.

MR. O'SHEA:

Yes.

JUDGE BOUTET:

We are trying to move along now on --

MR. O'SHEA:

Of course.

JUDGE BOUTET:

-- that part of your question.

MR. O'SHEA:

I'm grateful, thank you.

JUDGE THOMPSON:

We need to be very emphatic so that we are not propounding a general rule at all.

MR. PRESIDENT:

It is dangerous to propound rules in matters where we need -- which have been governed all along traditionally through an elastic process of interpretation and, depending of course on circumstances

which vary from case, you know, to case. So please, we will move on.

Yes, Mr. Jordash.

MR. JORDASH:

Mr. Sesay would like to go to the toilet, so would Your Honours mind to rising for a short while?

MR. PRESIDENT:

We don't mind.

MR. JORDASH:

I'm grateful.

MR. PRESIDENT:

The Court will rise for how many minutes?

MR. JORDASH:

I think for five minutes.

MR. PRESIDENT:

For five minutes. Right, okay.

MR. JORDASH:

Thank you very much.

MR. PRESIDENT:

The Court will rise.

[Recess taken at 11.09 a.m.]

[On resuming at 11.20 a.m.]

MR. PRESIDENT:

We are resuming the session. Yes.

MR. WERNER:

Thank you, Your Honour.

Q. Madam, I'm going to put to you the same -- exactly the same question before the break. You were talking about your Yunku Sesay. My question is, did Yunku Sesay tell you who double-amputated him?

A. He said they were rebels.

Q. Now, madam, do you know a woman called Fanta Camara?

A. Yes.

Q. Did you hear anything about her that precise day?

A. Yes, it was that day they came to our town. The rebels, when they entered our town, when they cut Yunku Sesay's hand, it was the day they captured Fanta and went with him -- with her.

Q. Now, madam, do you know someone called Issa Bangura?

A. Yes.

Q. Did you see him during that period?

- 1 A. Yes.
- 2 Q. And what happened to him?
- 3 A. They amputated his two hands.
- 4 Q. Did Issa Bangura tell you who amputated his arm?
- 5 A. Well, he came to our village. He was passing by, and he was passing to go to Kabala, there he met us
6 in our village. He met us in the town, then he said rebels chopped off his hands. He was trying to go
7 to Kabala.
- 8 Q. Now, madam, did you see anything happening in villages around the place where you were in the
9 bush during that time?
- 10 A. Yes.
- 11 Q. What did you see?
- 12 A. Around that town, the villages near my hometown, even where Pa Issa Bangura came from, some
13 villages were very close to us. When they entered there they put fire to houses. We see smoke (*sic*).
- 14 Q. Madam, do you know the names of these villages?
- 15 A. Yes.
- 16 Q. Could you tell the Court the name of these villages?
- 17 A. Yes. Sokrala, we have Madina, Bedukolo, Salko.
- 18 Q. Are there any other names; do you remember?
- 19 A. The villages are so many around us there, it is only the names I could not remember.
- 20 Q. I understand. Madam, what did -- happened to you next?
- 21 A. After that when they amputated the boy's arm, I also came to the town and saw with -- and saw it with
22 my eye the houses burnt. They took the boy to Kabala until they came with him here. All that time we
23 were in the bush. We were unable to come to the town.
- 24
- 25 On one occasion when we were in the bush they told us that everybody should leave the bush
26 because a jet would be coming to bomb the bush where the rebels are hiding.
- 27 Q. Madam, who told you that?
- 28 A. Well, we were in the bush. The people that were in the town, whatever news they get they run to the
29 bush to tell us. That's the reason why they were in the town for them to get news and relay it to us in
30 the bush.
- 31 Q. And after having heard that, what did you do?
- 32 A. When I heard that -- because I was in the bush with my family, so when we heard that, so all of us
33 came back to the town. When we came to town, we took some days. On one occasion my husband
34 and my mate and those then working for us, my husband went there to work with them. In the
35 morning I stood up and said I'm going to plant my groundnut. I left my children in the town and went
36 to the farm. When I reached in the farm, planted -- after planting my groundnut, I returned to the town
37 and said I'm going to cook for my children. When I returned to the town I told my children to go and

1 fetch water so that we can cook, because their father had gone to the bush so that before the time the
2 father would return I should have finished cooking.

3
4 I was in the town cooking when Pa C.F. Mansaray visited me. He said he has harvested some palm
5 kernel and asked me to buy them. He told me he has people working for him. I told him to wait for
6 me that after cooking I will go and collect the palm kernel.

7
8 We were there discussing that, because the farm I went to along the route ECOMOG was there but
9 they were not so in a large number. Normally when they are there they fire their guns to indicate that
10 -- to indicate that to the rebels that they were there.

11
12 The farm road I used to come to the town, it is from there the rebels came from. Little did I realise that
13 they had already arrived and surrounded the town. They were so many. During that time we were
14 still discussing with the man that came to me that we heard firing. I told the man to wait, then we
15 stood up. In the town everybody was concerned, standing, started asking ourselves if it were
16 ECOMOG. Little did we realise that they had already surrounded the town. It was during that time we
17 heard them firing rampantly everywhere, using all sorts of abusive languages: *mammy bombo*,
18 *mammy toto*, *mammy pima*, using the vagina -- talking about the vagina, your mother's vagina and
19 they said to wait. They told us to wait. During that firing a fragment came and hit my child on the
20 chest and then also it came and hit me also.

21 Q. Sorry to interrupt you, I didn't get -- I do not think the interpretation was correct in the last.

22 JUDGE THOMPSON:

23 How did you know that?

24 MR. WERNER:

25 I do not think that the translation is correct.

26 JUDGE THOMPSON:

27 How did you know that?

28 MR. WERNER:

29 Your Honour, I'm not fluent in *Krio* but (*overlapping microphones*).

30 JUDGE THOMPSON:

31 Let her repeat it.

32 MR. WERNER:

33 Q. Please could you repeat just what you said about the fragment?

34 A. Yes.

35 Q. Thank you.

36 A. During the time they started firing, the fragment came and hit my child on the chest, then also the
37 fragment came and hit me at the back. My child was shouting, I was also shouting because the way I

1 was getting the heat of it, it was burning. My child also was -- the chest was oozing with blood.

2 It was not too long another rebel boy came. Then he asked, "Who are those? Are you the people?"

3 He held me and then took my clothes from me and asked me for the money. He stripped my clothes

4 off and said, "You have the money." He held the gun in his arm. He threw me out and said to go out.

5 MR. PRESIDENT:

6 Yes, Mr. O'Shea.

7 MR. O'SHEA:

8 Sorry, Your Honours, this is all going a bit fast for me. I have to take a note. I wonder if there is a

9 way --

10 MR. PRESIDENT:

11 Your learned colleague says he is taking notes, so --

12 MR. WERNER:

13 I am in your hands but --

14 MR. PRESIDENT:

15 No, you are not in my hands, control your witness, you know, control your witness. Let her go a bit

16 slowly.

17 MR. WERNER:

18 As Your Honour pleases.

19 MR. PRESIDENT:

20 Please ask her to speak a bit slower.

21 MR. WERNER:

22 Sure, Your Honour.

23 Q. Madam, it is important that you are telling your story to the Court slowly for everybody to be able to

24 understand you. You were telling the Court just before being interrupted about the money. Could you

25 -- could you tell us again about that?

26 A. They gave me money and it was for food.

27 Q. Madam, I was asking you to tell the Court about what you've just said, which is you just said that --

28 MR. PRESIDENT:

29 Just a minute. I notice that the witness is wiping her eyes. Is she in tears? I want to know.

30 MR. WERNER:

31 I do not think, Your Honour. If you want --

32 JUDGE BOUTET:

33 Is she okay?

34 MR. WERNER:

35 She is okay.

36 THE WITNESS: [Answered through interpretation]

37 Yes.

1 MR. WERNER:

2 Q. Madam, are you feeling okay?

3 A. Yes, yes.

4 MR. PRESIDENT:

5 Why are you wiping your eyes?

6 THE WITNESS: [Answered through interpretation]

7 I'm feeling fine.

8 MR. PRESIDENT:

9 All right.

10 MR. WERNER:

11 Q. Madam, do you -- would you like to break for a while or are you able to --

12 MR. PRESIDENT

13 No, continue with your examination, please.

14 MR. WERNER:

15 As Your Honour pleases.

16 Q. So you were telling us the fact that -- what you described that the soldiers asked you for money on
17 that day in Kondembaia when they invaded the town as you just described. Could you carry on?

18 A. Yes.

19 *(Pages 10 to 24 by Gifty C. Harding)*

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1 [11.37]

2 A. Permit me now. When they came, they met me together with my children. He held me by my clothes,
3 he stripped the clothes from me and asked me for the money. I told him I don't have money. He said
4 it is a lie. He stripped the [inaudible] from me. I was standing naked. Then he instructed me to go
5 out. He pushed me out. At the same time they entered the house and took what they wanted to take.
6 My husband used to have two tapes, one given by his child to be his -- they took the two tapes. The
7 man took the tape and said I should hold on to it. I was having the other child on my back. Then he
8 instructed me to go with them. We went together and they placed us on the veranda.

9 Q. When you say "we went," what do you mean? Who went to that place?

10 A. Myself together with my children.

11 Q. What happened then?

12 A. When they placed us on the veranda, my child was crying because of the fragment that hurt him -- cut
13 him. The other rebel came and met the child crying. He saw blood oozing out of his chest, then he
14 asked: "What is this?" I told him he has been hurt by fragment. Then he looked at it and said, "This
15 is nothing."

16
17 We were seated there, they took us from there again. We were placed somewhere else. We were
18 seated there when I saw another rebel come in running. Then he told me to put the tapes down. He
19 told me to put it down and step on them. Then I placed it on the ground. When I placed them down,
20 he started stepping on them and destroyed them completely and said that is the way he should have
21 done. Then he instructed me to go and sit down again.

22
23 It was not too long that another came holding two crepes in his arm. When he came with them, he
24 slapped it -- slapped my jaw with it. He slapped the other cheek. I saw darkness in my face and then
25 he told me just to wait.

26 Q. I want to interrupt you at that point. Were your children present when that man slapped you with that
27 shoe?

28 MR. O'SHEA:

29 Your Honours, where were the children?

30 A. Yes, my children were there, they were those to me.

31 JUDGE BOUTET:

32 What is your objection, Mr. O'Shea?

33 MR. O'SHEA:

34 My objection was to the leading question: Were your children there, present? I'm just suggesting the
35 question ought to be: Where were your children?

36 MR. PRESIDENT:

37 Yes, that is how the question should have been put.

1 MR. WERNER:

2 As Your Honour pleases.

3 JUDGE BOUTET:

4 The objection was sustained.

5 MR. WERNER:

6 Q. Who was on the veranda at that time, madam?

7 A. In that veranda so many people were there, even my mate was there. During that time my mate
8 managed to escape, but my own children were with me. My children were with me at that time, so I
9 was unable to leave them behind. Then there was no way for me to escape because the rebels were
10 -- the rebels were present there and they were many.

11 Q. Now, madam, let me ask you this question: How did you feel when you were beaten by these soldiers
12 with your shoes in front of your children?

13 A. I didn't feel so fine. Even right now where I'm seated I'm not feeling fine. That is -- that is -- in our
14 village, in our village we don't allow that kind of thing. Even my husband has never done that to me to
15 beat me with his shoes. To take his shoes and beat somebody is only good for a dog that you have in
16 the house, but for him being in our village, we don't do that.

17 Q. Now, madam, what else -- did anything else happen at that time?

18

19 Are you feeling okay?

20 MR. PRESIDENT:

21 This lady is sobbing, she is in some form of tears.

22 A. During that day what happened when we were seated there, it was not too long another rebel, a boy,
23 came running. He met on that day a girl standing by me. When he came and met this girl standing by
24 me he said, "Hey, so you were with the people. Hey, lie down on the ground." He told the girl to lie
25 down on the ground. The girl started begging. He said, "Lie down on the ground to let me have sex
26 with you."

27 [Voice interruption]

28 MR. WERNER:

29 There seems to be -- Your Honour, I just heard some shouting.

30 MR. CLAYSON:

31 I heard something, if I may add, along the lines of "No" from a female voice.

32 JUDGE BOUTET:

33 Yes, I heard the same as well.

34 JUDGE THOMPSON:

35 Same here.

36 THE INTERPRETER:

37 I wanted to make sure that it is the correct translation. It was: "I want to fuck you."

1 MR. PRESIDENT:

2 The translation was accurate, yes, it is it. It is accurate.

3 Yes, go ahead, please.

4 MR. WERNER:

5 Thank you, Your Honour. And then -- she was just in the middle of a description when she was
6 interrupted.

7 JUDGE THOMPSON:

8 Why not repeat it.

9 MR. WERNER:

10 Q. Could you -- yes, could you just repeat what you were saying?

11 A. Then he met this girl, then he told the girl, then the girl was -- started begging and he said, "Fuck off"
12 in front of me. Then he told the girl to lie down -- to "fuck you." Then the girl dropped on the ground,
13 then he started stripping the girl off and removing his pant. When the girl started removing her pants,
14 he stood on top of her. The girl -- on that day the girl was in her menstrual period. Then he told the
15 girl to, "Fuck off, you are the people who give bad luck to people." Then he said, "Get up." Then the
16 girl stood up. Then he said, "This girl, this one we will take her along. Like when she's fearing
17 complexion, we are taking her away." The girl was with them, we were going up and down with her.
18 Then they told us to stand up and go together with her under the cotton tree.

19 Q. I'm going to interrupt you at this point. Who was this woman? Do you know her?

20 A. She went to --

21 MR. PRESIDENT:

22 The record is reflected that this lady is testifying and sobbing. She is under a lot of stress although
23 she continues to do testify. You can go on, please.

24 MR. WERNER:

25 Thank you, Your Honour.

26 Q. Let me put the question to you again, madam. Who was this woman? Did you know her?

27 A. She is in the town. She used to go there to sell; I don't know her.

28 Q. Then what happened next, madam?

29 A. He ordered us to get up so that we can get to a particular location. We are going -- as we were going,
30 some were behind us, some were in front. When we arrived at the cotton tree we meet their boss
31 man on there seated on a rock.

32 Q. Sorry to interrupt you, madam at this point. When you say, "some were behind us, some were in front
33 of us," who were they?

34 A. The rebels in their groups. Some were before us, they were by us walking along with us.

35 Q. What happened next?

36 A. When we arrived at the cotton tree, their commander, boss man said -- ordered us to sit on the
37 ground. During that time I had my child on my back. And as we were going I said, "Oh, this my child."

1 It was this my child that I brought to the hospital to fetch some medicine for him. Then they
2 contemptuously told me "Fuck off, just go and sit there." As we went we sat. Their boss was there
3 under the cotton tree; he sat on a rock. Two men have tied -- they've tied two men already, Lamin
4 Kamara. They were tied properly -- properly tied. They have took their hands and brought them on
5 their backs and tied them.

6 MR. WERNER:

7 Excuse me. Do you know the name of the second man who was tied along with Lamin Kamara?

8 A. Abbas Kargbo.

9 Q. What happened next?

10 A. After they tied and they were on the floor, lying on the floor, we sat down. Their boss man --
11 commander who sat on the rock, he was saying -- he was talking. Then he said -- he said, "Since you
12 say you love a civil government, we are going to chop off your hands. We will not let you go free. If
13 we don't chop off your hands, we'll kill you." He was talking about this thing and that time I was
14 seated as well. Well, my heart was in a tremendous situation because we met dead individuals under
15 the cotton tree. One of the men killed there was stripped naked as he was in his birthday suit. As I
16 was trying to look at the man, but the way I saw him, then I had to turn my face. The others were
17 lying down by him.

18 Q. Let me interrupt you, madam, just to have your story as clear as possible. How many corpses were
19 under the cotton tree?

20 A. I cannot tell the number; there were many. I cannot tell the number.

21 Q. Now, did anything happen to Abbas Kargbo and Lamin Kamara?

22 A. Yes. Abbas Kargbo, that Abbas Kargbo was my sister's husband. Their commander who sat on the
23 rock, they captured one man and brought him. He said the man was an SSD man. Said, "Let's don't
24 waste time with him, let's kill him at once." The man was trying to plead to them. He said, "I'm not an
25 SSD man. Before this time I was captured by the ECOMOG alleging that I'm a rebel, but I tried to
26 defend myself. And at that time I was victorious because they never killed me. If you say I'm an SSD
27 man, I'm not an SSD man." They started using some, you know, insulting language, the man saying
28 "Fuck off." He was cheated or scolded and they came with him.

29
30 When they came with the man, they brought him before their commander. When they dropped him,
31 the commander stood. He had a pistol. He had a pistol that he produced. He had a pistol and he
32 stood on the man, over the man. During that time the man wore a white vest. Then he shot the man
33 on his chest, then I saw blood oozing. After that Abbas Kargbo, my sister's husband, they shot him
34 on his head.

35 MR. PRESIDENT:

36 The Court further notes that while narrating the incident of the shooting the witness burst into tears.
37 We'll pause awhile. We're not rising, but let's pause. We'll pause awhile before we continue.

1 JUDGE BOUTET:

2 Mr. Prosecutor, I just wish to draw your attention to identification of witnesses.

3 MR. WERNER:

4 Thank you, Your Honour.

5 MR. PRESIDENT:

6 Thank you for the assistance from the psychologist and the social worker, both staff from the Witness
7 Protection Unit. I hope that the witness can continue to testify.

8

9 Yes, learned counsel for the Prosecution can continue.

10 MR. WERNER:

11 Thank you, Your Honour.

12 Q. Madam. Madam?

13 A. Yes.

14 Q. Just to be as clear as possible, did Lamin Kamara die?

15 A. No, he didn't die. They were untied. Lamin Kamara he didn't die.

16 Q. What happened to him?

17 A. His hand was chopped off.

18 Q. Did you see it?

19 A. Yes.

20 Q. Who did that?

21 A. The rebels.

22 Q. Now, did the SSD man you described as Kai [, did he die?

23 A. Yes, he died.

24 Q. And what happened with Abbas Kargbo?

25 A. Abbas Kargbo was shoot (sic) on his head by their boss.

26 Q. Did he die?

27 A. He died.

28 Q. Now, madam, do you know a man called Alhaji?

29 A. Alhaji, he came from Temne Moria [phonetic]. He came with beef to sell. That was the day they
30 came to attack the town. Well, they met him and he was killed.

31 Q. Who killed Alhaji?

32 A. Rebels killed him.

33 Q. Did you see it?

34 A. Yes.

35 Q. Madam, what happened next?

36 A. So he killed these people, their boss said, "These ones if you don't kill them, cut off their hands
37 because they say they want a civilian government. If you are ready to cut off their hands, begin with

1 the child so that they should know that they are not going to be spared." That's my child.

2 Q. Madam, did you see your child being amputated?

3 A. Yes.

4 MR. PRESIDENT:

5 Ask her what happened to her child.

6 MR. WERNER:

7 As Your Honour pleases. Sorry, I didn't follow you. You want me to ask what happened to the child?

8 JUDGE BOUTET:

9 Yes, don't suggest the answer, ask her what happened.

10 MR. WERNER:

11 As Your Honour pleases.

12 Q. So, madam, what happened to your child?

13 A. Well, my child after their boss man had passed the order said his hand should be cut. Then he said,
14 "Operation No Living Thing." That time, during that time my child was a little child and he doesn't
15 understand what was -- what the man was saying.

16 Q. How old was your child?

17 A. Six years.

18 Q. Then what happened?

19 A. Then the man told these other rebel boys, said, "Go for a machete and come with it. If you don't cut
20 off their hands so that they sleep as these ones are, let them sleep so that -- as these ones are
21 sleeping". Then the boy went. Then he went until -- he came and said he hadn't a cutlass. Then the
22 boss man ordered that they should go and fetch a cutlass so that when he comes he starts with the
23 little child.

24
25 The rebel boy went and searched for the cutlass. When he went, the boss man got up. When he
26 came, then he called the child, "Come." Then he begin weeping, the child begin weeping. As he was
27 cutting the child, the child was weeping. Then the child started saying, "Oh, mother, they've cut my
28 hand." Then the rebel boy threw my child, he threw him on the floor. He cut his hand, then he came
29 and sat near me. When he sat nearer to me, then he drew me too, then he said, "Come on, come
30 here." He drew me and laid me on the ground and they chopped off my hand. And they said, "Come
31 on get up and go and sit down there." And I sat there with my child, the blood oozing out. Then the
32 other man came and said, "Well, now you're beautiful. It is now that you're beautiful. Right now
33 where you are, you are very beautiful." And I said, "Eh, no human being can look at me and say I'm
34 beautiful."

35
36 My child was sitting down there, the blood oozing out, just like a cut has been opened, his body wet,
37 blood all over. We were sitting down there. This boy who had chopped off my hand -- who had

1 chopped off my child's hand, when I went to look at him, he said, "If you look at me, I will chop off the
2 other hand," and I stopped looking at him.

3
4 We were sitting down there. We sat there with our colleagues, Papay, Finnah Daboh, Fofi who was
5 sitting down there, and they told him, "We're going to chop off your hand too." When this one said,
6 "Place your hand," this other one said, "Please don't chop off the hand yet, they have not passed the
7 order. If you chop that hand off when no order was been passed -- don't chop that hand off." And
8 they told that man -- they hold him to raise his head, and he raised his head, and they told him they
9 were going give him a mark, and they pierced him under the chin.

10
11 After that, as we were sitting there and he told us about five Finna Daboh, Mami Sarah, and they
12 chopped their hands off with the other girl who was pregnant. She was pregnant and she was full, the
13 pregnancy. Her pregnancy was full and they chopped off her hand. And we were sitting there and
14 they said, "Come on, get up, go to Kabala. When you reached there, tell ECOMOG that they are not
15 going to overpower us. We were born here and we are brought up here. They are strangers. Go and
16 tell them that we are on our way." We departed from there.

17
18 The other rebel boy who chopped off my hand, as I was going he called me and told me to come to
19 him and he said, "Come here. Let me put acid on you." And I turned round but one of his colleagues
20 was standing nearer to him and he said, "No." And he said, "No." As we were going we met another
21 group in front of us. The other one was carrying a very long machete and he was giving a very big
22 blow with the machete twice. As he was going to give me this blow, I heard, "Hey" behind me. One
23 of his colleagues stopped him.

24
25 As we were going and I was dropping, you know, I was kind of dizzy, dropping as I went going along.
26 As I fell, stumbled and fell, this same man was still chasing me, telling me I'm beautiful now. He told
27 me that "You're beautiful now, eh." When I reached a particular place I sat down there. We left there
28 and my child too. My child fainted and fell down. At that time they had put the town on fire. My child
29 was falling down, and he said, "Mama, I want to drink." At that time there was no water close by and
30 at that time I was still feeling dizzy, I couldn't do anything. I sat close to him. After some time I would
31 get up. And I told him that I was going to fetch water for him, but I was still dizzy. As I was going -- as
32 I was going I met another rebel boy and he asked me where I was going. I told him I was going to
33 fetch water for my child and he told me, "Come on, go away." And I went -- and I went to one way or
34 another and I met a kettle there with some water in it, and I took that water and I came to where my
35 child was, where my child was lying down. And I sat down on the floor and I raised him with one hand
36 and I called him and I sat close to him and I gave him the water. After he drank I drank the rest. And
37 I sat down on the floor and I told him to come on my back so I will strap him. I strapped him on my

back.

As we were going I was still finding how to reach my family members along our farm road. As we were going there was a particular place behind the compound that were there. They were parked there with their wives. I had this child on my back, so we were going. The other girl who saw me as I was coming, she stood up and told me, "You, if you reach here, come and stop there. If you reach here, I will shoot you if you come near."

(Pages 25 to 32 by Roni Kerekes)

1 [12.15]

2 A. And he cocked the gun in front of me and I turned around. I went back and my other child who was
3 behind me was crying because he was hungry and one place. I went there, I laid him down and I sat
4 down by him. As I laid him down, as he was lying down, I went -- I went and fetched one mango. And
5 I came with it, I peeled it, but because blood was on it, as I wanted to give the child -- as I wanted to
6 give it to him so he would eat it and become lively a little bit, he would refuse to eat it because,
7 according to him, there was blood on it. And I told them that you should lie down here for the moment
8 because -- because fighting was going on. As we were lying down there it was not long when we
9 heard -- when we heard them saying, "Time, time, time. The time has come, we should go." We were
10 lying down there, we were hearing their voice coming from afar, but coupled with gun sounds.

11
12 I got up, took my child and strapped him on my back. When I reached the particular place, I laid him
13 down because I was so tired. When I laid him down there, I found some leaves and covered his hand
14 with them to ward away the flies. Then I looked for a road that would reach the men who had -- the
15 farm road where my husband had gone to work. But my mate who had escaped, when she went to
16 the farm and met my husband, she told my husband and said, "Oh, they captured my -- Fina, they
17 captured my -- my -- my -- they captured Fina. They captured Fina." That's a friend that they
18 chopped off her hand, her husband came and they met us there.

19
20 When they met us there and it was not long, her mother came. When she came and met me and it
21 was not too long and my husband came. After my husband had come and they started crying. And
22 my mother too started crying.

23
24 As we were sitting down there and I said, "Eh," I told them that my child is lying down there, and I told
25 them that they had chopped off his hand. Because that other friend Fina Dabo, my mother and my
26 husband, they strapped the child, my mother took some water, washed my body of the blood, the
27 blood that had been on my body. And they strapped me on the back.

28 MR. PRESIDENT:

29 Yes, Mr. O'Shea.

30 MR. O'SHEA:

31 It's important, I think the witness needs to be cautioned with regard to names and compromising her
32 safety.

33 JUDGE BOUTET:

34 Yes, Mr. Prosecutor.

35 MR. WERNER:

36 I do not think that what she is saying now it's compromising her safety and I can assure you that we
37 are quite careful on that.

1 JUDGE BOUTET:

2 No, but if she does name the name of her brother or other relatives that may --

3 MR. WERNER:

4 It was not the case -- the name that she used.

5 JUDGE BOUTET:

6 No, I understand. The comment is to be preventing.

7 MR. WERNER:

8 I understand. Thank you.

9 Q. Could you carry on, madam, and then what did happen?

10 A. They strapped the child in their back together with me and they took us to the farm. When we reached
11 the farm, we slept there and when we reached there we met one old man because there was no
12 medicine. And the old man said even in Kono when they chop off people's hands we used tobacco
13 leaf to tie it round the wounded place. And at that time my husband had tobacco leaves and he
14 brought it out and tied it round my hand.

15 Q. I have one question on that point. You just said one sentence, and I quote, "In Kono when they
16 chopped people's hands," what do you mean by "they," do you know who are "they"?

17 A. In Kono, yes. Even the man he had run away -- he had run away to come there, he was an old man
18 and he said in Kono when the rebels chop off people's hands it was wrapped in tobacco leaves until
19 they reach a particular hospital.

20 Q. Carry on -- sorry, what did happen next?

21 A. When they brought the tobacco leaf, as we were there, and they tied it round my hand. In the morning
22 they told me to go to the -- they told us to go to the hospital and I told them that I couldn't walk to go to
23 the hospital. And they said and my mate told my husband, she asked him to go with us, my husband
24 to go with us.

25 Q. Please, at that point, please do not mention his name. Could you carry on?

26 A. And she said, "Go along with them, because if they stay here till their hands get rot," and I couldn't
27 stand that. In the morning my husband took us, they took us and we departed. As we were going we
28 passed through the town. We met corpses -- corpses of people who have been killed.

29 Q. Sorry to interrupt you, which town?

30 A. Koneibaia Town.

31 Q. Who did you see?

32 A. Corpses of people, corpses. Corpses of people who have been killed.

33 Q. But how many corpses about?

34 A. No, I don't know the count because at that moment when we reached there -- no, we couldn't stay
35 there for long because we had the feeling that we don't want them to meet us there. It was not for me
36 because my hand has been chopped off, it was for the other people, my man, my husband. We just
37 passed through quickly.

1 Q. Did you know some of the corpses that were there at that time?

2 A. Yes. I know Abass. After we passed there, as we were going on the road I met one girl, the other girl
3 who was killed, but with the other man we met those corpses on the road. They were on the main
4 road. I watched their faces and passed by. We were trying to reach the hospital. We went, but we
5 were unable to reach because my child was unable to walk. And besides my husband was sick.

6
7 We were only going at regular intervals and reached a particular place. I will strap my child on my
8 back, as the pain is about to overpower me I will put him down. After some time I will strap him again
9 on my back. When he starts crying I will strap him on my back. When I reach a particular place I will
10 put him down. That's how we went until we reached one village, that's where we slept. In the morning
11 we went. As we were entering the town they said, "It's better that you have tried hard to reach here.
12 There's a chopper on its way. When it comes it will take you along."

13
14 We went to the hospital and when we reached there they fixed a drip on me. But that drip couldn't
15 finish, it was not long that we heard the chopper, the sound of the chopper and the chopper landed on
16 the field. And they took us in the car and took us where the chopper was and we came here. And
17 when we came here, we were taken by car and taken to a hospital. The day we reached here that
18 was not the day they did the operation on me.

19
20 On Monday, they took me to the theatre and I was operated upon. Myself and my child. After that,
21 we were in the hospital. I left my child where we were. We were in the hospital. After long -- one day
22 the child asked me -- asked me, "Mama, when would my hand grow again?" I told him that -- and I
23 told him that, that is when we were at the hospital, and everybody was crying, even his dad. The
24 nurses. We were there for long until we were discharged and taken to Waterloo. When we were
25 there and they started chasing us, the rebels, and I came back in town here. That day that I entered
26 here I went to the stadium, that's where we were for long. And we were removed, we were asked out
27 of there and they located us in a camp.

28 Q. Madam, I would like at that point -- I am almost finished -- I would like at that point to ask you just two
29 or three more questions. Do you remember the date of the day what you just described and
30 particularly the amputations occurred? Do you remember when was it?

31 A. The day, it was on Thursday.

32 Q. Now do you remember the month?

33 A. Yes, the month. No, the month is -- it was in May.

34 Q. Now that precise day, madam, that precise day -- I'm sorry, I would like just to ask you two more
35 questions. Do you know -- do you know someone called Sirah Sesay?

36 A. Yes.

37 Q. Did you see Sirah Sesay that day?

1 A. Yes.

2 Q. Can you tell the Court what did happen to her that day?

3 A. Yes. Sirah Sesay was together with us when they captured us. She too was amputated.

4 Q. Madam, do you know a woman called Sieh Mansaray?

5 A. Yes.

6 Q. Did you see her that day?

7 A. Yes.

8 Q. Can you tell the Court what did happen to her?

9 A. She too was amputated.

10 Q. Do you know someone called Musu Sesay?

11 A. Yes.

12 Q. Did you see her that day?

13 A. Yes, she was pregnant and she was full of the pregnancy. She too had her hands chopped off.

14 Q. Now do you know someone called Sirah Faye --

15 A. Sirah -- Sirah Faye Koroma?

16 Q. Did you see him that day?

17 A. Yes. I saw him, we were all there.

18 MR. CAMMEGH:

19 Your Honour, sorry for interrupting. With respect, I think we need to establish a rule in relation to
20 leading questions. Quite apart from the possibility that the listing of these names may prejudice this
21 lady's identity, we have heard this morning, on several occasions, leading questions being uttered.
22 This is perhaps the most blatant example of that. And I respectfully suggest that we come to an
23 arrangement now as to how we are to deal with this or it is ruled out altogether. In my submission, it
24 should be ruled out. It is a plain, blatant, leading question.

25 JUDGE THOMPSON:

26 Why didn't you object? You can take as many objections and the Chamber will decide whether to
27 sustain or overrule the objection.

28 MR. CAMMEGH:

29 Well, Your Honour --

30 JUDGE THOMPSON:

31 What rule do you want us to establish?

32 MR. CAMMEGH:

33 Well the long-standing rule against leading questions.

34 JUDGE THOMPSON:

35 Well, I mean --

36 MR. PRESIDENT:

37 Is there no rule against leading questions?

1 JUDGE THOMPSON:

2 There is, I mean --

3 MR. PRESIDENT:

4 That is precisely why you are on your feet, there is a rule against leading questions, there are rules
5 surrounding --

6 MR. CAMMEGH:

7 That's right.

8 MR. PRESIDENT:

9 -- the putting of leading questions. So what rule do you want the Court at this point in time to put in
10 place about leading questions?

11 MR. CAMMEGH:

12 Well I am asking Your Honour to impose the ancient rule that --

13 JUDGE THOMPSON:

14 Well, we have sustained -- we have sustained objections on leading questions and the only thing I
15 would say is that I don't believe the Chamber should take a proactive approach and intervene any
16 time a leading question is asked.

17 MR. CAMMEGH:

18 I understand that.

19 JUDGE THOMPSON:

20 I can assure you that if you had objected to some of the leading questions, which I myself agree they
21 were leading questions, and we think that the objection is meritorious, I would sustain the objection.

22 MR. CAMMEGH:

23 Your Honour, on this occasion I chose to wait until my learned friend had finished, I didn't want to
24 interrupt him.

25 JUDGE THOMPSON:

26 No, but you should protect the interests of your client. I mean, we understand the circumstances, the
27 very delicate circumstances under which examination-in-chief is taking place, but this should not
28 necessarily mean that we are going to abandon all the rules or be flexible about them. I was thinking
29 that the Defence would be perfectly within their rights to object if they find some questions
30 impermissible on grounds of being leading questions.

31 MR. CAMMEGH:

32 One would have hoped, with respect, that rather than us reach the situation where we have to jump
33 up and down like a Jack-in-a-box every five or ten minutes -- and I say this with the greatest respect
34 to my learned friend -- I would be grateful if the Prosecution could take some caution in relation to the
35 asking of leading questions in the future.

36 JUDGE THOMPSON:

37 I would agree with you, but the point I am making is that it would not, in fact, be in the interests of

justice if the Bench were to be intervening in a proactive way every time a leading question is asked.

MR. CAMMEGH:

I understand that, Your Honour.

MR. WERNER:

Your Honours, I understand -- if it was an objection, I understand it was sustained. So I am moving forward.

Q. I have one final question, madam. At the time amputations occurred, did the rebels say anything about what they were going to do next?

A. I do not understand.

Q. I am going to repeat the question, madam. At the time the amputation occurred, did the soldiers -- did what you described as the rebels say anything about what they were going to do next after they left the town of Koneibaia?

A. They left -- they left -- after they chopped off our hands, they told us to go -- they told us to go and tell to Tejan Kabbah to give us hands. That he has hands for us.

Q. But did you hear them saying what they, the soldiers, were going to do after that? Madam, if you don't know, you don't know, it is perfectly all right. Did you hear them say anything?

A. No, no.

Q. Thank you, madam.

MR. WERNER:

The Prosecution finished its examination-in-chief.

MR. PRESIDENT:

The Chamber would like to observe for the records that this witness in her narration of the incidents of amputation up to about the tail end of her evidence was virtually testifying sobbing and was under a lot of stress. It would be nice for the records, you know, to reflect that and in the light of the stress under which she has been placed, we would want to have her cross-examination on for tomorrow at 10 o'clock.

You will know that we have a general rule that on Wednesdays in the afternoons we would not sit, but this is not a hard and fast rule, we could take decisions to the contrary. But having regard to the present circumstances, I do not think that it would be humane for us to subject this witness to any further questioning after a rather lengthy examination-in-chief given the particular circumstances in which she finds herself.

So, we will be adjourning and we will be resuming the session tomorrow at 10 o'clock when the witness will be made available to the Defence -- to the Defence teams for purposes of cross-examination.

1 So the Court will rise and we will resume tomorrow.

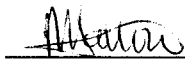
2 *[Whereupon the hearing adjourned at 12.43, to be reconvened on*
3 *Thursday, the 15th day of July 2004, at 10.00 a.m.]*

4 (Pages 33 to 39 by Susan G. Humphries)
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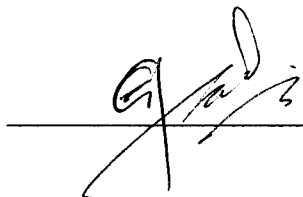
CERTIFICATE

We, Momodou Jallow, Gifty C. Harding, Roni Kerekes and Susan G. Humphries, Official Court Reporters for the Special Court for Sierra Leone, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*machine writer*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

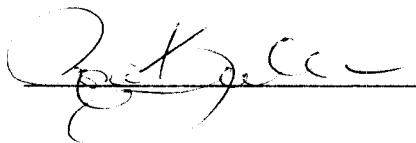
We further certify that we are not of counsel nor related to any of the parties to this cause and that we are in nowise interested in the result of said cause.




Momodou Jallow



Gifty C. Harding



Roni Kerekes



Susan G. Humphries