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SCSL-03-01-T  
(18679-18824)

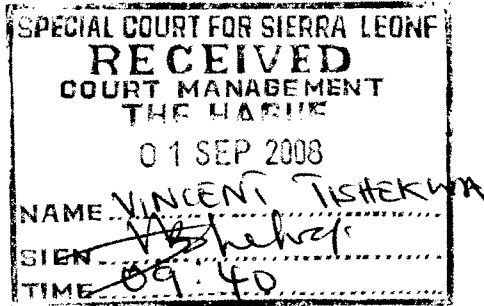
18679

**SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR  
Freetown – Sierra Leone**

Before: Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice El Hadji Malick Sow, Alternate Judge

Registrar: Mr. Herman von Hebel

Date filed: 1 September 2008



**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-T

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**PUBLIC WITH CONFIDENTIAL ANNEXES C TO E**

**PROSECUTION MOTION FOR ADMISSION OF THE PRIOR TRIAL TRANSCRIPTS OF  
WITNESSES TF1-021 AND TF1-083 PURSUANT TO RULE 92<sup>quater</sup>**

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Office of the Prosecutor:  
Ms. Brenda J. Hollis  
Ms. Leigh Lawrie

Counsel for the Accused:  
Mr. Countenay Griffiths Q.C.  
Mr. Andrew Cayley  
Mr. Terry Munyard  
Mr. Morris Anyah

## I. INTRODUCTION

1. The Prosecution submits this motion under Rules 73, 89(C) and 92*quater* of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“**Rules**”).
2. The Prosecution seeks the admission of the prior trial transcripts and exhibits relating to the *viva voce* testimony of the now deceased witnesses, TF1-021 and TF1-083, previously received in *Prosecutor v. Brima et al* (SCSL-04-16-T) (“**AFRC Trial**”) and *Prosecutor v. Sesay et al* (SCSL-05-15-T) (“**RUF Trial**”).<sup>1</sup>
3. The prior testimony and exhibits of the two witnesses meet the threshold for admissibility under Rules 89(C) and 92*quater*. The witnesses are no longer available<sup>2</sup>, and their *viva voce* testimony bears sufficient indicia of reliability and is relevant to the crimes charged in the Second Amended Indictment.<sup>3</sup>

## II. APPLICABLE LAW

4. Rule 89 sets out the basic principles to be applied by the Court in relation to the admission of evidence. Rule 89(B) provides that the Chamber: “... shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law”. Further, Rule 89(C) provides the Chamber with the discretion to admit relevant evidence.
5. Rule 92*quater* specifically addresses the admission of evidence of witnesses who are unavailable, unable to testify orally or to those who, as is the case in this application, have “subsequently died”. The Rule provides that:
  - (A) The evidence of a person in the form of a written statement or transcript who has subsequently died, or who can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to testify orally may be admitted, whether or not the written statement is in the form prescribed by Rule 92*bis*, if the Trial Chamber:
    - (i) is satisfied of the person’s unavailability as set out above; and

<sup>1</sup> TF1-021 testified in the AFRC Trial on 15 April 2005 and in the RUF Trial on 15 July 2004; TF1-083 testified in the AFRC Trial on 8 April 2005. The Prosecution has identified the portions of the prior testimony and related exhibits of TF1-021 and TF1-083 which it seeks to admit via this motion and these are provided in **Annexes A to D**.

<sup>2</sup> Copies of the death certificates for TF1-021 and TF1-083 are provided in confidential **Annex E**.

<sup>3</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT-263, “Prosecution’s Second Amended Indictment”, 29 May 2007.

- (ii) finds from the circumstances in which the statement was made and recorded that it is reliable.
  - (B) If the evidence goes to proof of acts and conduct of an accused as charged in the indictment, this may be a factor against the admission of such evidence, or that part of it.
6. Rule 89 constitutes the basic rule regulating the admission of evidence which applies in addition to the more specific provisions contained in Rule 92*quater*. Rule 89(C) only requires that evidence be *relevant* to be admissible. There is no requirement that the evidence be both relevant and probative.<sup>4</sup>
7. The procedural requirements of Rule 92*quater* must be met by the party seeking admission of a transcript or statement in addition to the requirements of Rule 89. For admission of evidence under Rule 92*quater*, two cumulative conditions must be satisfied, namely the unavailability of a person whose written statement or transcript is sought to be admitted, and the reliability of the evidence therein. It is noteworthy that this is the first occasion on which recourse has been made to Rule 92*quater* at the Special Court. However, as the equivalent rule at the ICTY is drafted in exactly the same terms, guidance may be sought from the ICTY's jurisprudence regarding its application. According to this jurisprudence, a Chamber, in examining the reliability of the evidence of an unavailable witness, may take into account factors such as the fact that the written statement or testimony of a witness was made under oath, that the witness was cross-examined in previous proceedings or that his/her evidence is corroborated by other evidence adduced at trial.<sup>5</sup>
8. Accordingly, for evidence to be admitted pursuant to Rules 89(C) and 92*quater*, the evidence must relate to an unavailable witness, be relevant and bear sufficient indicia of reliability. Additionally, Rule 92*quater* does not preclude the admission of evidence going to the proof of acts and conduct of an accused.

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<sup>4</sup> *Prosecutor v. Brima et al.*, SCSL-04-16-T-280, "Decision on Joint Defence Motion to Exclude all Evidence from Witness TF1-277 Pursuant to Rule 89(C) and/or Rule 95", 24 May 2005, para. 13.

<sup>5</sup> See for example *Prosecutor v. Prilić et al.*, Case No. IT-04-74-T, "Decision on the Prosecution Motion on the Admission of Evidence Pursuant to Rules 92*bis* and *quater*, 27 October 2006, para 10 ("*Prilić Case*") and *Prosecutor v. Prilić et al.*, Case No. IT-04-74-T, "Decision on the Prosecution Motion for Admission of a Written Statement Pursuant to Rule 92*quater* of the Rules (Hasan Rizvić)", 14 January 2008, para. 11.

### III. BACKGROUND

9. On 4 April 2007, the Prosecution filed its Rule 73bis Pre-Trial Conference Materials.<sup>6</sup> As part of these materials, the Prosecution filed a witness list (“**Witness List**”) and, in the introductory pages to the Witness List, advised the Court that it might seek to present the evidence of certain deceased witnesses, including TF1-083, via Rule 92bis as Rule 92quater had not at that time been adopted into the Rules.<sup>7</sup> TF1-021 died after the filing of the Pre-Trial Conference Materials but was also identified therein as a witness whose evidence the Prosecution would seek to admit under Rule 92bis.
10. Witness TF1-021 is a protected witness.<sup>8</sup> TF1-021 testified in the RUF trial on 15 July 2004. The witness’ testimony consisted of just under a half day of examination-in-chief and of cross-examination. He subsequently testified in the AFRC trial on 15 April 2005. The witness’ testimony consisted of just under a half day of examination-in-chief and of cross-examination. The witness’ prior trial transcripts are provided in **Annex A**. During the AFRC Trial, two defence exhibits were tendered in respect of this witness, being D.5-A and D.5-B. These exhibits are provided in confidential **Annex D**.<sup>9</sup> The prior trial transcripts of TF1-021 were disclosed in redacted format to the Defence on 17 May 2006 and in unredacted format on 18 July 2008. The exhibits, being the prior statements of the witness, were disclosed to the Defence in redacted and unredacted form on the same dates as the witness’ prior testimony.
11. Witness TF1-083 is a protected witness.<sup>10</sup> TF1-083 testified in the AFRC trial on 8 April 2005. The witness’ testimony consisted of just under a day of

<sup>6</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT-218, “Public Rule 73bis Pre-Trial Conference Materials”, 4 April 2007 (“**Pre-Trial Conference Materials**”).

<sup>7</sup> Rule 92quater was adopted on 14 May 2007.

<sup>8</sup> TF1-021 testified using a pseudonym and behind a screen pursuant to protective measures granted in *Prosecutor v. Sesay et al.*, SCSL-05-15-T-180, “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses”, 5 July 2004.

<sup>9</sup> As noted above, TF1-021 is a protected witness whose identity has not been disclosed to the public. This witness’ protective measures continue to apply in the current proceedings pursuant to Rule 75(F)(i). Therefore, the exhibits are provided on a confidential basis in compliance with the existing protective measures in place for this witness.

<sup>10</sup> TF1-083 testified using a pseudonym and behind a screen pursuant to protective measures granted in *Prosecutor v. Sesay et al.*, SCSL-05-15-T-180, “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses”, 5 July 2004.

examination-in-chief and of cross-examination. The witness' prior trial transcript is provided in **Annexes B and C**.<sup>11</sup> The prior trial transcript of TF1-083 was disclosed in redacted format to the Defence on 17 May 2006 and in unredacted format on 18 July 2008.

#### IV. SUBMISSIONS

##### The evidence is relevant

12. As required under Rule 89(C), the evidence of witness TF1-021 is relevant to the current proceedings as it concerns *inter alia* crimes committed in Freetown during the Indictment period.<sup>12</sup> In particular, the witness' *viva voce* testimony concerns the mass killing of civilians in Kissy and the burning of civilian houses during the Freetown invasion of January 1999.
13. Further, the evidence of witness TF1-083 is relevant to the current proceedings as it also concerns *inter alia* crimes committed in Freetown during the Indictment period.<sup>13</sup> In particular, the witness' *viva voce* testimony concerns the burning of civilian property, unlawful killings, sexual violence, physical violence including mutilations and looting.
14. In addition to specific crime base evidence, the witnesses also provide evidence relevant to the chapeau requirements of the crimes charged in the Second Amended Indictment such as the widespread or systematic nature of the attack, the nexus between the violation or crime and the armed conflict and the civilian status of the victims.

##### The Witnesses are unavailable

15. The witnesses, TF1-021 and TF1-083, are deceased. Copies of their death certificates are provided in confidential **Annex E**.<sup>14</sup>

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<sup>11</sup> Note: One page (page 45) of the prior trial transcript is provided in confidential Annex C as the public version of this page found on the SCSL website contains a redaction made by WVS. The page is, therefore, provided confidentially.

<sup>12</sup> See also the summary of the witness' evidence provided as part of the Pre-Trial Conference Materials.

<sup>13</sup> See also the summary of the witness' evidence provided as part of the Pre-Trial Conference Materials.

<sup>14</sup> As noted in paragraphs 10 and 11 above, TF1-021 and TF1-083 are protected witnesses whose identities have not been disclosed to the public. These protective measures continue to apply in the current

The evidence is reliable

16. The circumstances in which the evidence of TF1-021 and TF1-083 was made and recorded establishes that it is reliable. Their testimony was:

- (a) given under oath;
- (b) received in open session, albeit that the witnesses testified subject to protective measures; and
- (c) subject to cross-examination.<sup>15</sup>

In relation to the cross-examination undertaken in the previous trials, it is to be noted that the interests of the three AFRC and RUF Accused in attacking and challenging the evidence is very similar to that of the Accused in the current proceedings since it includes the alleged membership in the same joint criminal enterprise. In the AFRC trial, TF1-021 was cross-examined by counsel for the First Accused. TF1-083 was cross examined by counsel for all three accused in the AFRC trial.

17. The ultimate determination of the reliability of evidence is made at the end of the trial; however, an indicium of reliability is provided where evidence is corroborated by other evidence adduced at trial. The focus of the prior evidence of TF1-021 is a mass killing in Kissy in January 1999. At this stage in proceedings, it can be noted that the evidence of this witness is corroborated by TF1-083 and TF1-334.<sup>16</sup> This is an additional factor which weighs in favour of the admissibility of the prior testimony of TF1-021 under Rule 92*quater*.

18. In relation to the evidence of TF1-083, at this stage in proceedings, it can be noted that this witness' evidence is also in part corroborated by other witnesses who provide evidence of: (i) amputations occurring in Freetown including in particular in Kissy on or around 21 January 1999<sup>17</sup> and of victims being told to go to

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proceedings pursuant to Rule 75(F)(i). Therefore, the death certificates are provided on a confidential basis in compliance with the existing protective measures in place for these witnesses.

<sup>15</sup> These characteristics were considered by the Chamber in the *Prilić* Case as factors to be taken into account when examining the reliability of the evidence of an unavailable witness (see footnote 5 above).

<sup>16</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 23 April 2008, pages 8362-8364.

<sup>17</sup> See the evidence of TF1-101, (*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 February 2008 at pages 3924 – 3927) and TF1-143 (*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 5 May 2008, pages 9028 – 9030).

President Kabbah to receive new hands;<sup>18</sup> (ii) the large scale burning and looting of civilian property in Freetown during the January invasion;<sup>19</sup> and (iii) the rape of women during the January invasion.<sup>20</sup> This is an additional factor which weighs in favour of the admissibility of the prior testimony of TF1-083 under Rule 92*quater*.

The Rule 92*quater* evidence does not go to proof of the acts and conduct of the accused

19. Rule 92*quater* does not preclude the admission of witness statements or transcripts which go to proof of the acts and conduct of the accused but this may be a factor against the admission of such evidence, or that part of it. However, this factor does not require to be considered in this case as the prior trial transcripts of TF1-021 and TF1-083 do not include evidence which goes to proof of the acts and conduct of the Accused as that term is defined and limited by the jurisprudence.
20. In relation to the jurisprudence on the issue, this Chamber in its recent decision on Rule 92*bis* notes that “there must be a distinction made between ‘the acts and conduct of those others who commit the crimes for which the Indictment alleges that the accused is individually responsible’ and ‘the acts and conduct of the accused as charged in the Indictment which establish his responsibility for the acts and conduct of others;’ and that only written statements which go to proof of the latter are excluded by Rule 92*bis*.”<sup>21</sup>

<sup>18</sup> See the evidence of TF1-143 (*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 5 May 2008, pages 9028 – 9030).

<sup>19</sup> See the evidence of TF1-101 (*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 February 2008 at pages 3913 & 3916).

<sup>20</sup> See the evidence of TF1-026 (*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 February 2008) and of TF1-028 (*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 7 May 2008).

<sup>21</sup> *Prosecutor v. Taylor*, SCSL-01-03-T-556, “Decision on Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *Inter Alia* Kenema District And on Prosecution Notice under Rule 92*bis* for the Admission of the Prior Testimony of TF1-036 into Evidence”, 15 July 2008, p. 4, citing *Prosecutor v. Galić*, IT-98-29-AR73.2, “Decision on Interlocutory Appeal Concerning Rule 92*bis* (C)”, 7 June 2002, para. 9 and referring to *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1049, “Decision on Defence Application for the Admission of the Witness Statement of DIS-192 Under Rule 92*bis*, or in the alternative, Under Rule 92*ter*”, 12 March 2008, p. 2-3.

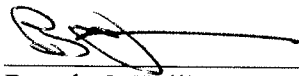
V. CONCLUSION

21. The Prosecution requests that the prior trial transcripts and exhibits relating to TF1-021 and TF1-083 provided in Annexes A to D be admitted into evidence under Rules 89(C) and 92*quater*.

Filed in The Hague,

1 September 2008

For the Prosecution,



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Brenda J. Hollis  
Principal Trial Attorney



## LIST OF AUTHORITIES

**SCSL Cases*****Prosecutor v. Taylor, SCSL-03-01-T***

*Prosecutor v. Taylor*, SCSL-03-01-PT-218, “Public Rule 73bis Pre-Trial Conference Materials”, 4 April 2007

*Prosecutor v. Taylor*, SCSL-03-01-PT-263, “Prosecution’s Second Amended Indictment”, 29 May 2007

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 February 2008

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 23 April 2008

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 5 May 2008

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 7 May 2008

*Prosecutor v. Taylor*, SCSL-01-03-T-556, “Decision on Prosecution Notice under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kenema District And on Prosecution Notice under Rule 92bis for the Admission of the Prior Testimony of TF1-036 into Evidence”, 15 July 2008

***Prosecutor v. Sesay et al., SCSL-05-15-T***

*Prosecutor v. Sesay et al.*, SCSL-05-15-T-180, “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses”, 5 July 2004

*Prosecutor v. Sesay et al.*, SCSL-04-15-T-1049, “Decision on Defence Application for the Admission of the Witness Statement of DIS-192 Under Rule 92bis, or in the alternative, Under Rule 92ter”, 12 March 2008

***Prosecutor v. Brima et al., SCSL-04-16-T-280***

*Prosecutor v. Brima et al.*, SCSL-04-16-T-280, “Decision on Joint Defence Motion to Exclude all Evidence from Witness TF1-277 Pursuant to Rule 89(C) and/or Rule 95”, 24 May 2005

**ICTY Cases*****Prosecutor v. Prilić et al., Case No. IT-04-74-T***

*Prosecutor v. Galić*, IT-98-29-AR73.2, “Decision on Interlocutory Appeal Concerning Rule 92bis (C)”, 7 June 2002 (*Copy provided*)

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*Prosecutor v. Prilić et al.*, Case No. IT-04-74-T, “Decision on the Prosecution Motion on the Admission of Evidence Pursuant to Rules 92*bis* and *quater*, 27 October 2006  
(Copy provided)

*Prosecutor v. Prilić et al.*, Case No. IT-04-74-T, “Decision on the Prosecution Motion for Admission of a Written Statement Pursuant to Rule 92*quater* of the Rules (Hasan Rizvić)”, 14 January 2008  
<http://www.un.org/icty/prlic/trialc/decision-e/080114.pdf>

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**AUTHORITIES PROVIDED**

***Prosecutor v. Prilić et al.*, Case No. IT-04-74-T, “Decision on the Prosecution Motion on the Admission of Evidence Pursuant to Rules 92*bis* and *quater*, 27 October 2006**



International Tribunal for the  
Prosecution of Persons Responsible for  
Serious Violations of International  
Humanitarian Law Committed in the  
Territory of The Former Yugoslavia  
since 1991

Case No.: IT-04-74-T  
Date: 27 October 2006  
Original: ENGLISH  
French

**TRIAL CHAMBER III**

**Before:** Judge Jean-Claude Antonetti  
Judge Árpád Prandler  
Judge Stefan Trechsel  
Reserve Judge Antoine Kesia-Mbe Mindua

**Registrar:** Mr Hans Holthuis

**Decision of:** ~~27 October 2006~~

**THE PROSECUTOR**

v.

Jadranko PRLIĆ  
Bruno STOJIĆ  
Slobodan PRALJAK  
Milivoj PETKOVIĆ  
Valentin ĆORIĆ  
Berislav PUŠIĆ

*Public Redacted Version*

**DECISION ON THE PROSECUTION MOTION FOR ADMISSION OF EVIDENCE  
PURSUANT TO RULES 92 *bis* and *quater* OF THE RULES**

**The Office of the Prosecutor:**

Mr Kenneth Scott  
Mr Daryl Mundis

**Counsel for the Accused:**

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić  
Ms Senka Nožica and Mr Peter Murphy for Bruno Stojić  
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak  
Ms Vesna Alaburić for Milivoj Petković  
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić  
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

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## I. INTRODUCTION

1. Trial Chamber III ("the Chamber") of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 ("the Tribunal") has been seized of the "Prosecution Motion for Admission of Evidence Pursuant to Rules 92 *bis* (A) and (D) and 92 *quater* (REDACTED)," filed confidentially by the Office of the Prosecutor ("Prosecution") on 19 September 2006 ("Motion") in which the Prosecution requests that the Chamber, pursuant to Rules 92 *bis* (A), 92 *bis* (D) and 92 *quater* of the Rules of Procedure and Evidence ("Rules") (1) admit as evidence the transcripts of evidence of (REDACTED) who testified in closed session in the case of *The Prosecutor v. Tihomir Blaškić* ("*Blaškić* case") (REDACTED) and who is now deceased<sup>1</sup> ("Testimony") and (2) grant to this witness the same protective measures under which he testified in the previous case.<sup>2</sup>

## II. PROCEDURAL BACKGROUND

2. On 4 April 2006, Trial Chamber II issued its confidential "Decision on the Admission of Rule 92 *bis* Written Statements" in which it denied the Prosecution Motion of 5 December 2005 requesting that the transcripts of evidence of seven witnesses heard in previous cases before the Tribunal, which included the Testimony, be admitted into evidence. The Chamber based its decision on the fact that it considered it premature at that stage of the proceedings to admit the proposed evidence under Rule 92 *bis* of the Rules since it was not in a position to assess whether the information contained in the written statements was of a cumulative nature or was directly related to the acts and conduct of the Accused. With a view to guaranteeing an expeditious trial, the Chamber did however make a point of assigning a new pseudonym to the witness who gave the Testimony, namely pseudonym AR.<sup>3</sup>

3. On 28 September 2006, Counsel for the six Accused ("Defence") filed confidentially the "Joint Defence Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis* (A), 92 *bis* (D) and Rule 92 *quater* of the Rules (REDACTED)" ("Response"), in which the Defence objects to the admission of the Testimony.<sup>4</sup>

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<sup>1</sup> *Blaškić* case, (REDACTED).

<sup>2</sup> Motion, paras. 1 and 15.

<sup>3</sup> *The Prosecutor v. Prlić et al*, Case No. IT-04-74-PT, Decision on the Admission of Rule 92 *bis* Written Statements, 4 April 2006, p. 5 and Confidential Annex I ("Decision of 4 April 2006").

<sup>4</sup> Response, para. 14.

### III. ARGUMENTS OF THE PARTIES

4. In its Motion, in accordance with Rule 92 *bis* (A) and (D) and Rule 92 *quater* of the Rules, the Prosecution invites the Chamber to admit the Testimony. In support of its Motion, the Prosecution points out that (1) the relevance of the Testimony to the *Prlić* case is identical to its relevance in the *Blaškić* case, in particular insofar as the background, context and issues raised in the two cases, that is, the existence of an international armed conflict, the partition of Bosnia and Herzegovina and its partial annexation with the Republic of Croatia, are identical;<sup>5</sup> (2) the Testimony corroborates the evidence given by Mr Peter Galbraith on many points, such as the territorial ambitions of Franjo Tudjman, among others, concerning Bosnia and Herzegovina, the Banovina, a "Greater Croatia", the partition of Bosnia and Herzegovina between Croats and Serbs and the intervention of the Republic of Croatia and the Croatian army in Bosnia and Herzegovina;<sup>6</sup> (3) the Testimony does not go to the acts or conduct of one of the Accused;<sup>7</sup> and (4) the Testimony bears sufficient indicia of reliability.<sup>8</sup> Lastly, the Prosecution requests that (REDACTED) be given the same protective measures under which he testified in the *Blaškić* case, at least until the Prosecution has made additional inquiries with the United States Government with respect to keeping those protective measures in place.<sup>9</sup>

5. In its Response, the Defence objects to the admission of (REDACTED)'s testimony on the grounds that (1) it would not have the opportunity to cross-examine the said witness even though his testimony goes to the heart of the allegation of a joint criminal enterprise against these Accused;<sup>10</sup> (2) the issues at stake in the *Blaškić* case were different from those concerning the Accused because Tihomir Blaškić had a different level of responsibility in a specific and limited context and the scope of the cross-examination in the *Blaškić* case focused on the allegation of an international armed conflict and not on the allegation of the joint criminal enterprise as alleged in the *Prlić et al.* case;<sup>11</sup> (3) in late 1997, a large number of relevant documents, including the transcripts of presidential meetings, were made available to the Tribunal, documents which the cross-examination of (REDACTED), had it occurred, would

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<sup>5</sup> Motion, para. 6.

<sup>6</sup> Motion, para. 7.

<sup>7</sup> Motion, para. 9.

<sup>8</sup> Motion, para. 13.

<sup>9</sup> Motion, para. 15.

<sup>10</sup> Response, para. 3.

<sup>11</sup> Response, paras. 7 and 8.

have had to take into account;<sup>12</sup> (4) (REDACTED);<sup>13</sup> and (5) (REDACTED)'s testimony differs considerably from that of Mr Peter Galbraith.<sup>14</sup>

#### IV. DISCUSSION

6. The Chamber would first recall that further to a decision taken at the Tribunal's extraordinary plenary session on 13 September 2006, Rule 92 *bis* of the Rules was amended and Rule 92 *quater* was adopted. The amended version of Rule 92 *bis* and new Rule 92 *quater* entered into force on 22 September 2006. Insofar as only the Prosecution's written submissions were recorded before that date, the Chamber will apply new Rule 92 *quater* to the proceedings in this case.

7. The Chamber will first set out the conditions for Rule 92 *quater* of the Rules to apply and, in view of those conditions, then decide whether the Testimony should be admitted.

##### A. Applicable Law

8. Rule 92 *quater* states that:

A) The evidence of a person in the form of a written statement or transcript who has subsequently died, or who can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to testify orally may be admitted, whether or not the written statement is in the form prescribed by Rule 92 *bis*, if the Trial Chamber:

i) is satisfied of the person's unavailability as set out above; and

ii) finds from the circumstances in which the statement was made and recorded that it is reliable.

B) If the evidence goes to proof of acts and conduct of an accused as charged in the indictment, this may be a factor against the admission of such evidence, or that part of it.

The Chamber notes that this new provision replaces former Rule 92 *bis* (C) (i) and (ii) of the Rules. The Chamber first notes that new Rule 92 *quater* (A) does not fundamentally differ from former Rule 92 *bis* (C) in that it also requires that two conditions of a cumulative nature be satisfied, namely the unavailability of the author of the written statement or transcript of evidence and the reliability of the evidence contained therein. The Chamber however notes that

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<sup>12</sup> Response, paras. 9 and 10.

<sup>13</sup> (REDACTED).

<sup>14</sup> Response, para. 13.

contrary to the case law relating to the application of former Rule 92 *bis* (C) of the Rules,<sup>15</sup> new Rule 92 *quater* of the Rules in principle permits the admission of a written statement or transcript of evidence which goes to demonstrate the acts or conduct of an accused. New Rule 92 *quater* (B) clearly states however that this is a factor which can argue against such admission in whole or in part. Moreover, the Chamber finds that Rule 92 *quater* of the Rules now follows a procedure governing the admission of evidence which is autonomous and distinct from Rule 92 *bis* of the Rules.

9. In view of the above, the Chamber must therefore first decide whether it is satisfied that the author of the statement or transcript is unavailable for the reasons set out in Rule 92 *quater* (A) of the Rules.

10. The Chamber must then examine whether, in view of the circumstances in which it was given, the evidence contained in the written statement or transcript of evidence is reliable.<sup>16</sup> In this respect, the Chamber will take account in particular the following indicia of reliability: the fact that the statement was made under oath, that it was the subject of cross-examination or that it is corroborated by any other evidence.<sup>17</sup>

11. Third, using its discretionary power in the matter, the Chamber will decide whether or not to admit the written statement or the transcript of evidence at issue. In its examination, the Chamber will keep several factors in mind. First, as provided in Rule 89(C) of the Rules, “[a] Chamber may admit any relevant evidence which it deems to have probative value”. Accordingly, the Chamber will examine whether the written statement or transcript of evidence has a degree of relevance and probative value. The Chamber notes, however, that since reliability is a component of the probative value of a piece of evidence, it will not be re-examined at this stage insofar as an examination has already been made within the context of Rule 92 *quater* (A) (ii) of the Rules.

12. The Chamber will then consider whether the written statement or transcript of evidence at issue contains a reference to the acts and conduct of the Accused named in the Indictment. In

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<sup>15</sup> *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal concerning Rule 92 *bis* (C), 7 June 2002 (“*Galić Decision*”), paras. 23-25.

<sup>16</sup> Under the case law of the Tribunal, “[r]eliability assumes that the witness is speaking the truth, but depends upon whether the evidence, if accepted, proves the fact to which it is directed”, *The Prosecutor v. Zdravko Mucić, Hazim Delić and Esad Landžo*, Case No. IT-96-21-A *bis*, 8 April 2003, para. 57 citing *The Prosecutor v. Kunarac et al.*, Case No. IT-96-23-T and 96-23/1-T, Decision on Motion for Acquittal, 3 July 2000, para. 7.

<sup>17</sup> *The Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2 –AR73.5, Decision on Appeal regarding Statement of a Deceased Witness, 21 July 2000, para. 27.



this regard, the Chamber recalls that within the framework of a joint criminal enterprise, the terms “acts or conduct of the Accused” must be understood as any act or conduct of the Accused on which the Prosecution relies in order to establish that the Accused participated in the joint criminal enterprise or shared with the effective perpetrator of the crimes charged the requisite intent for these acts.<sup>18</sup> Moreover, the Chamber will review “whether the transcript goes to proof of a critical element of the Prosecution’s case against the accused and whether the cross-examination of the witness in the other proceedings dealt adequately with the issues relevant to the defence in the current proceedings.”<sup>19</sup> The Chamber considers that this latter factor and the circumstance that the testimony goes to proof of the acts or conduct of an accused, are factors which may argue that it not be admitted.

### B. Examination of the Merits

13. Since the Chamber is satisfied that (REDACTED), as is deceased, is unavailable within the meaning of Rule 92 *quater* of the Rules, it will focus on the indicia of reliability of the Testimony and the other factors which might warrant or, on the contrary, argue against its admission as set out above.

14. First, in respect of the Defence submissions that the Defence in this case is not necessarily pursuing the same interests as those of Counsel for the Accused Blaškić, new documents are currently available and (REDACTED), the Chamber finds that, although established, these consideration are not such, *in the current case*, that they affect the reliability of the Testimony. At the very most, a greater latitude in the way (REDACTED) might have been able to respond to the questions put to him in the *Blaškić* case would have, if necessary, made it possible to raise a greater number of issues and, consequently, broaden the cross-examination conducted by Counsel for the Accused Blaškić. Similarly, the availability of new documents might have made it possible to refresh (REDACTED)’s memory and broaden the scope of his cross-examination. The Chamber notes however that it will bear these arguments in mind when evaluating the definitive probative value to accord to the Testimony.

15. The Chamber also notes that (REDACTED) took an oath and was cross-examined in the *Blaškić* case. Furthermore, the Testimony largely corroborates the testimony of Mr Peter

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<sup>18</sup> *Galić* Decision, para. 10. See also *The Prosecutor v. Prlić*, Case No. IT-04-74-T, Decision on the Admission of Prosecution Testimony Pursuant to Rule 92 *bis* (A), (C) and (D) of the Rules, 13 September 2006, p. 6 citing the *Galić* Decision, para. 10

<sup>19</sup> *The Prosecutor v. Sikirica et al.*, Case No. IT-95-8-T, Decision on Prosecution’s Application to Admit Transcripts under Rule 92 *bis*, 23 May 2001, paras. 4 and 35. See also *The Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Prosecution’s Request to Have Written Statements Admitted under Rule 92 *bis*, 21 March 2002, para. 7.

Galbraith who has already been heard in this case, in particular in respect of the political views of Franjo Tudjman, President of the Republic of Croatia at the time, on Bosnia and Herzegovina and his opinion on the Muslims in Bosnia and Herzegovina. (REDACTED).

16. In view of the above, the Chamber is satisfied that the Testimony demonstrates indicia of reliability.

17. Moreover, the Chamber considers that the Testimony is relevant for this case insofar as it concerns both the historical and political background of the case and the role which the Republic of Croatia played in the sequence of the events alleged in the Amended Indictment of 16 November 2005 ("Indictment"), as set out, for example, in paragraphs 23 and 232 of the Indictment. The Chamber notes moreover that the Defence does not dispute the relevance of the Testimony.<sup>20</sup>

18. The Chamber considers moreover that the Testimony makes no mention of the acts and conduct of any of the six Accused within the meaning defined above in the *Galić* Decision. In particular, the Chamber notes that the Testimony does not deal with the alleged participation of the Accused in a joint criminal enterprise.

19. Similarly, in the view of the Chamber, the Testimony does not go to proof of facts so fundamental to this case that it would be unfair to the Defence to authorise its being tendered into evidence in written form since it would not be possible for the Defence to cross-examine the author of the Testimony.

20. In conclusion, the Chamber finds that the Testimony is admissible in accordance with Rule 92 *quater* and Rule 89(C) of the Rules.

21. As regards the request of the Prosecution that the protective measures be maintained, the Chamber recalls that, at the request of the Prosecution, by Decision of 14 April 2006, it already made a point of assigning a new pseudonym to the witness who is the author of the Testimony, namely the pseudonym AR. Consequently, the Chamber decides that this part of the Prosecution Motion has become moot.

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<sup>20</sup> Response, para. 3.

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**V. DISPOSITION****FOR THESE REASONS**

**IN APPLICATION** of Rules 89(C) and 92 *quater* of the Rules,

**GRANTS** the Motion and admits the testimony of (REDACTED) who has been assigned the pseudonym AR in this case and who was heard (REDACTED) in the case *The Prosecutor v. Tihomir Blaškić*,<sup>21</sup> **AND**

**FINDS** that the request of the Prosecution concerning the protection of the said witness' anonymity is moot.

Done in English and French, the French version being authoritative.

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Judge Jean-Claude Antonetti  
Presiding Judge

Done this twenty-seventh day of October 2006  
At The Hague  
The Netherlands

[Seal of the Tribunal]

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<sup>21</sup> (REDACTED).

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**AUTHORITIES PROVIDED**

***Prosecutor v. Galić*, IT-98-29-AR73.2, “Decision on Interlocutory Appeal  
Concerning Rule 92bis (C)”, 7 June 2002**

IT-98-29-AR73.2  
A64-A42  
07 JUNE 2002

18699<sup>64 KB</sup>

UNITED  
NATIONS



International Tribunal for the  
Prosecution of Persons Responsible  
for Serious Violations of International  
Humanitarian Law Committed in the  
Territory of the Former Yugoslavia  
Since 1991

Case: IT-98-29-AR73.2

Date: 7 June 2002

Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge David Hunt  
Judge Mehmet Güney  
Judge Asoka de Zoysa Gunawardana  
Judge Fausto Pocar  
Judge Theodor Meron

**Registrar:** Mr Hans Holthuis

**Decision of:** 7 June 2002

**PROSECUTOR**

v

**Stanislav GALIĆ**

**DECISION ON INTERLOCUTORY APPEAL CONCERNING RULE 92bis(C)**

**Counsel for the Prosecutor:**

Mr Mark Ierace, Senior Trial Attorney

**Counsel for the Defence:**

Ms Mara Pilipović & Maître Stephane Piletta-Zanin

### The background to the appeal

1. Pursuant to a certificate granted by the Trial Chamber in accordance with Rule 73(C) of the Rules of Procedure and Evidence ("Rules"), as Rule 73 then stood,<sup>1</sup> Stanislav Galić (the "appellant") has appealed against the admission into evidence of two written statements made by prospective witnesses to investigators of the Office of the Prosecutor ("OTP"). Both prospective witnesses have died since making their statements.
  
2. The appellant, as the Commander over a period of almost two years of the Sarajevo Romanija Corps (part of the Bosnian Serb Army), is charged in relation to an alleged campaign of sniping and shelling against the civilian population of Sarajevo conducted during that time by the forces under his command and control. He is charged with individual responsibility pursuant to Article 7.1 of the Tribunal's Statute and as a superior pursuant to Article 7.3 for crimes against humanity and for violations of the laws and customs of war. The prosecution concedes that it is no part of its case that the appellant personally physically perpetrated any of the crimes charged himself.<sup>2</sup> Its case pursuant to Article 7.1 is that he planned, instigated, ordered or otherwise aided and abetted the commission of those crimes by others.<sup>3</sup> Its case pursuant to Article 7.3 is that the appellant knew, or had reason to know, that his subordinates had committed or were about to commit such crimes and that he failed to take reasonable steps to prevent such acts or to punish those who carried out those acts.<sup>4</sup>
  
3. The first written statement admitted into evidence was made by Hamdija Čavčić. He was a chemical engineer employed by the Department for Criminal and Technical Investigations in Sarajevo as an expert in investigating the traces in the case of fire or explosions. As such, he investigated a shelling on 12 July 1993 in which twelve people had been killed. He prepared a contemporaneous Criminal and Technical Report in which he deduced the direction from which the particular shell had been fired. His written statement to the OTP investigator, which is dated 16 November 1995, annexes that report and confirms that the findings which he had made in it

<sup>1</sup> Certificate Pursuant to Rule 73(C) in Respect of Decisions of the Trial Chamber on the Admission into Evidence of Written Statements Pursuant to Rule 92bis(C), 25 Apr 2002 ("Certificate"). Rule 73, which deals with motions other than preliminary motions, then provided that, unless the Trial Chamber certified pursuant to Rule 73(C) that an interlocutory appeal during the trial was appropriate for the continuation of the trial, decisions rendered during the course of the trial on motions involving evidence and procedure were without interlocutory appeal.

<sup>2</sup> Prosecutor's Pre-Trial Brief Pursuant to Rule 65ter(E)(i), 23 Oct 2001, par 68.

<sup>3</sup> *Ibid*, par 68.

<sup>4</sup> Indictment, par 11.

were true. He also explains in greater detail how he had reached those conclusions. In addition, the written statement describes a similar investigation of a shelling on 5 February 1994. These two incidents are identified as incidents 2 and 5 in the schedule to the indictment.

4. The second written statement admitted into evidence was made by Bajram Šopi. He was present on 7 September 1993 collecting firewood when a man was killed by a sniper's shot. His statement to the OTP investigator says that both he and the man who was killed were dressed in civilian clothes. It describes his own wounding by shooting and the damage to his house by shelling in two incidents during 1992. It also describes the injuries to his daughter by shelling at an unspecified time. He further states that there were military units behind his house in a school building which had been "levelled". Only that part of the statement which describes the incident on 7 September 1993, which is identified as incident 11 in the schedule, was tendered.

**The relevant Rules**

5. The appeal principally concerns two rules in Section 3 of the Rules (headed "Rules of Evidence"), Rules 89 and 92bis, and the interaction between them. It is convenient, therefore, to quote each of those two Rules in full:

**Rule 89  
General Provisions**

- (A) A Chamber shall apply the rules of evidence set forth in this Section, and shall not be bound by national rules of evidence.
- (B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.
- (C) A Chamber may admit any relevant evidence which it deems to have probative value.
- (D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.
- (E) A Chamber may request verification of the authenticity of evidence obtained out of court.
- (F) A Chamber may receive the evidence of a witness orally or, where the interests of justice allow, in written form.

**Rule 92bis  
Proof of Facts other than by Oral Evidence**

- (A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.
  - (i) Factors in favour of admitting evidence in the form of a written statement include but are not limited to circumstances in which the evidence in question:

- (a) is of a cumulative nature, in that other witnesses will give or have given oral testimony of similar facts;
  - (b) relates to relevant historical, political or military background;
  - (c) consists of a general or statistical analysis of the ethnic composition of the population in the places to which the indictment relates;
  - (d) concerns the impact of crimes upon victims;
  - (e) relates to issues of the character of the accused; or
  - (f) relates to factors to be taken into account in determining sentence.
- (ii) Factors against admitting evidence in the form of a written statement include whether:
- (a) there is an overriding public interest in the evidence in question being presented orally;
  - (b) a party objecting can demonstrate that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value; or
  - (c) there are any other factors which make it appropriate for the witness to attend for cross-examination.
- (B) A written statement under this Rule shall be admissible if it attaches a declaration by the person making the written statement that the contents of the statement are true and correct to the best of that person's knowledge and belief and
- (i) the declaration is witnessed by:
    - (a) a person authorised to witness such a declaration in accordance with the law and procedure of a State; or
    - (b) a Presiding Officer appointed by the Registrar of the Tribunal for that purpose; and
  - (ii) the person witnessing the declaration verifies in writing:
    - (a) that the person making the statement is the person identified in the said statement;
    - (b) that the person making the statement stated that the contents of the written statement are, to the best of that person's knowledge and belief, true and correct;
    - (c) that the person making the statement was informed that if the content of the written statement is not true then he or she may be subject to proceedings for giving false testimony; and
    - (d) the date and place of the declaration.
- The declaration shall be attached to the written statement presented to the Trial Chamber.
- (C) A written statement not in the form prescribed by paragraph (B) may nevertheless be admissible if made by a person who has subsequently died, or by a person who can no longer with reasonable diligence be traced, or by a person who is by reason of bodily or mental condition unable to testify orally, if the Trial Chamber:
- (i) is so satisfied on a balance of probabilities; and
  - (ii) finds from the circumstances in which the statement was made and recorded that there are satisfactory *indicia* of its reliability.
- (D) A Chamber may admit a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused.
- (E) Subject to Rule 127 or any order to the contrary, a party seeking to adduce a written statement or transcript shall give fourteen days notice to the opposing party, who may within seven days object. The Trial Chamber shall decide, after hearing the parties, whether to admit the statement or transcript in whole or in part and whether to require the witness to appear for cross-examination.



### The issues in the appeal

6. The appellant has raised a number of issues in his Interlocutory Appeal:
- (1) The appellant says that both statements did not fall within Rule 92bis because they go to proof of “the acts and conduct of the accused as charged in the indictment”.<sup>5</sup> The prosecution responds to this issue in three alternative ways. Either (a) the statements do not go to proof of the acts and conduct of the accused charged in the indictment,<sup>6</sup> or (if they do go to such proof) (b) Rule 92bis(C) does not exclude proof of the acts and conduct of the accused by a written statement of a deceased person,<sup>7</sup> and (c) the evidence is in any event admissible under Rule 89(C) without the restrictions of Rule 92bis.<sup>8</sup>
  - (2) The appellant says that the Trial Chamber did not evaluate what is said to be the requirement of Rule 92bis(C)(i) as to “the probability of the said statements”.<sup>9</sup> The prosecution responds that the appellant has misread the requirements of Rule 92bis(C)(i).<sup>10</sup>
  - (3) The appellant says that the Trial Chamber “did not engage in establishing the question of reliability”.<sup>11</sup> The prosecution responds that the Trial Chamber correctly determined that there were satisfactory *indicia* of the reliability of each statement in the circumstances in which it was made and recorded.<sup>12</sup>
  - (4) The appellant says that Rule 92bis does not relate to expert witnesses, whose evidence is admissible only under Rule 94bis, so that the statement of Hamdija Čavčić (described in par 3, *supra*) was inadmissible upon that basis also.<sup>13</sup> The prosecution responds that Rule 92bis is directed to any witness whose statement does not go to proof of the acts or conduct of the accused, including expert witnesses,<sup>14</sup> and that Rule 94bis is directed to experts who are not in a position themselves to testify directly about the facts upon which they base their expert opinion.<sup>15</sup>

<sup>5</sup> Appeal of the Decisions on [*sic*] the Trial Chamber of 12 April, and 18 April 2002, 2 May 2002 (“Interlocutory Appeal”), pp 2-3, 4-8.

<sup>6</sup> Prosecution’s Response to Accused Stanislav Galić’s Interlocutory Appeal Pursuant to Rule 73(C) on the Decisions on Trial Chamber I of 12 and 18 April 2002, 13 May 2002 (“Response”), pars 33-49.

<sup>7</sup> *Ibid*, pars 7-14.

<sup>8</sup> *Ibid*, pars 15-32, 58-62.

<sup>9</sup> Interlocutory Appeal, pp 3-4, 11.

<sup>10</sup> Response, pars 50-57.

<sup>11</sup> Interlocutory Appeal, p 3.

<sup>12</sup> Response, pars 63-68.

<sup>13</sup> Interlocutory Appeal, p 9.

<sup>14</sup> Response, par 72.

<sup>15</sup> *Ibid*, par 71.

(5) The appellant says that it is not in the interests of justice to admit into evidence part of a written statement, and that the other party must be given the opportunity to argue that the statement should be admitted in its entirety because he has no possibility of cross-examining the maker of the statement.<sup>16</sup> The appellant also argues that, if the statement includes material which is irrelevant, the whole statement must be rejected.<sup>17</sup> The prosecution responds that it has the prerogative to tender evidence which it deems to be relevant to its case provided that it is *prima facie* credible.<sup>18</sup>

Counsel for the appellant orally informed the Appeals Chamber that his client did not intend to file a reply to the prosecution's Response, but relied upon what is said in his Interlocutory Appeal in answer to the prosecution's arguments.<sup>19</sup>

7. The certificate given by the Trial Chamber pursuant to Rule 73(C) (as it then stood) – that it was appropriate for the continuation of the trial that an interlocutory appeal be determined – related only to the first of these issues, as to the proper interpretation of the exclusion in Rule 92*bis*(A) of statements which go to proof of “the acts and conduct of the accused as charged in the indictment”.<sup>20</sup> It is, however, within the discretion of the Appeals Chamber to determine also other, related, issues where it considers it appropriate to do so, at least where they have been raised in the interlocutory appeal and the respondent to the appeal has had the opportunity to put his or its arguments in relation to those related issues. It is clear, from the present case and from other cases presently being tried in the Tribunal, that it will be beneficial to the Trial Chambers and to counsel generally that all of these matters be resolved in the present appeal. The Appeals Chamber proposes therefore to deal with them all.

**1(a) The “acts and conduct of the accused as charged in the indictment”**

8. The appellant emphasises that Rule 92*bis* excludes from the procedure laid down any written statement which goes to proof of the acts and conduct of the accused *as charged in the indictment*.<sup>21</sup> He says that, as the indictment charges the appellant with individual criminal responsibility –

(i) as having aided and abetted others to commit the crimes charged, and

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<sup>16</sup> Interlocutory Appeal, p 11.

<sup>17</sup> *Ibid*, p 11.

<sup>18</sup> Response, par 69.

<sup>19</sup> Communication, 22 May 2002.

<sup>20</sup> Certificate, p 2.

<sup>21</sup> Interlocutory Appeal, p 5.

(ii) as the superior of his subordinates who committed those crimes, the acts and conduct of those others and of his subordinates “represent his own acts”.<sup>22</sup> The appellant describes those “others” as “co-perpetrators”, and he says that the “acts and conduct of the accused as charged in the indictment” encompasses the acts and conduct of the accused’s co-perpetrators and/or subordinates.<sup>23</sup> This argument was rejected by the Trial Chamber.<sup>24</sup>

9. The appellant’s interpretation of Rule 92bis would effectively denude it of any real utility. That interpretation is inconsistent with both the purpose and the terms of the Rule. It confuses the present clear distinction drawn in the jurisprudence of the Tribunal between (a) the acts and conduct of those others who commit the crimes for which the indictment alleges that the accused is individually responsible, and (b) the acts and conduct of the accused as charged in the indictment which establish his responsibility for the acts and conduct of those others. It is only a written statement which goes to proof of the latter acts and conduct which Rule 92bis(A) excludes from the procedure laid down in that Rule.

10. Thus, Rule 92bis(A) excludes any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish –

- (a) that the accused committed (that is, that he personally physically perpetrated) any of the crimes charged himself,<sup>25</sup> or
- (b) that he planned, instigated or ordered the crimes charged, or
- (c) that he otherwise aided and abetted those who actually did commit the crimes in their planning, preparation or execution of those crimes, or
- (d) that he was a superior to those who actually did commit the crimes, or
- (e) that he knew or had reason to know that those crimes were about to be or had been committed by his subordinates, or
- (f) that he failed to take reasonable steps to prevent such acts or to punish those who carried out those acts.

<sup>22</sup> *Ibid*, p 6.

<sup>23</sup> *Ibid*, p 2. The present appeal is not the occasion to consider whether the expression “co-perpetrator”, rather than “perpetrator” or “principal offender”, is an appropriate description of those persons who actually commit the crimes which the indictment charges the accused with responsibility.

<sup>24</sup> Decision on the Prosecutor’s Motion for the Admission into Evidence of Written Statement by a Deceased Witness, and Related Report Pursuant to Rule 92bis(C), 12 Apr 2002 (“First Decision”), p 4; Decision on the Prosecutor’s Second Motion for the Admission into Evidence of Written Statement by Deceased Witness Bajram Šopi, Pursuant to Rule 92bis(C), 18 Apr 2002 (“Second Decision”), p 4.

<sup>25</sup> This is not any part of the prosecution case in this present matter.

Where the prosecution case is that the accused participated in a joint criminal enterprise, and is therefore liable for the acts of others in that joint criminal enterprise,<sup>26</sup> Rule 92bis(A) excludes also any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish –

- (g) that he had participated in that joint criminal enterprise, or
- (h) that he shared with the person who actually did commit the crimes charged the requisite intent for those crimes.<sup>27</sup>

Those are the “acts and conduct of the accused as charged in the indictment”, *not* the acts and conduct of others for which the accused is charged in the indictment with responsibility.<sup>28</sup>

11. The “conduct” of an accused person necessarily includes his relevant state of mind, so that a written statement which goes to proof of any act or conduct *of the accused* upon which the prosecution relies to establish that state of mind is not admissible under Rule 92bis. In order to establish that state of mind, however, the prosecution may rely upon the acts and conduct of *others* which have been proved by Rule 92bis statements. An easy example would be proof, in relation to Article 5 of the Tribunal’s Statute, of the knowledge by the accused that his acts fitted into a pattern of widespread or systematic attacks directed against a civilian population.<sup>29</sup> Such knowledge may be inferred from evidence of such a pattern of attacks (proved by Rule 92bis statements) that he *must* have known that his own acts (proved by oral evidence) fitted into that pattern. The “conduct” of an accused person may also in the appropriate case include his omission to act.

12. This interpretation gives effect to the intention of Rule 92bis, which (together with the concurrent amendments to Rules 89 and 90)<sup>30</sup> was to qualify the previous preference in the Rules

<sup>26</sup> In *Prosecutor v Tadić*, IT-94-1-A, Judgment, 15 July 1999 (“*Tadić* Judgment”), at par 220, this liability is described as that of an accomplice.

<sup>27</sup> *Tadić* Judgment, par 196; *Prosecutor v Brđanin & Talić*, IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, par 31.

<sup>28</sup> See also *Prosecutor v Milošević*, IT-02-54-T, Decision on Prosecution’s Request to Have Written Statements Admitted Under Rule 92bis, 21 Mar 2002 (“*Milošević* Decision”), par 22: “The phrase ‘acts and conduct of the accused’ in Rule 92bis is a plain expression and should be given its ordinary meaning: deeds and behaviour of the accused. It should not be extended by fanciful interpretation. No mention is made of acts and conduct by alleged co-perpetrators, subordinates or, indeed, of anybody else. Had the rule been intended to extend to acts and conduct of alleged co-perpetrators or subordinates it would have said so.”

<sup>29</sup> *Tadić* Judgment, par 248.

<sup>30</sup> At the same time that Rule 92bis was introduced, Rule 90 was amended by deleting par (A), which stated: “Subject to Rules 71 and 71bis, witnesses shall, in principle, be heard directly by the Chambers”, and Rule 89 was amended by adding par (F), which states: “A Chamber may receive the evidence orally or, where the interests of justice allow, in written form”.

for “live, in court” testimony,<sup>31</sup> and to permit evidence to be given in written form where the interests of justice allow provided that such evidence is probative and reliable, consistently with the decision of the Appeals Chamber concerning hearsay evidence in *Prosecutor v Aleksovski*.<sup>32</sup> Far from being an “exception” to Rule 89, as the appellant claims,<sup>33</sup> Rule 92bis identifies a particular situation in which, once the provisions of Rule 92bis are satisfied, and where the material has probative value within the meaning of Rule 89(C), it is in principle in the interests of justice within the meaning of Rule 89(F) to admit the evidence in written form.<sup>34</sup> (The relationship between Rule 92bis and Rule 89(C) is discussed in pars 27-31, *infra*.)

13. The fact that the written statement goes to proof of the acts and conduct of a subordinate of the accused or of some other person for whose acts and conduct the accused is charged with responsibility does, however, remain relevant to the Trial Chamber’s decision under Rule 92bis. That is because such a decision also involves a further determination as to whether the maker of the statement should appear for cross-examination.<sup>35</sup> The proximity to the accused of the acts and conduct which are described in the written statement is relevant to this further determination.<sup>36</sup> Moreover, that proximity would also be relevant to the exercise of the Trial Chamber’s discretion in deciding whether the evidence should be admitted in written form at all.

<sup>31</sup> *Prosecutor v Kordić & Čerkez*, IT-95-14/2-AR73.5, Decision on Appeal Regarding Statement of a Deceased Witness, 21 July 2000 (“*Kordić & Čerkez* Decision”), par 19.

<sup>32</sup> IT-95-14/1-AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 Feb 1999 (“*Aleksovski* Decision”), par 15. The relevant passage is quoted in a footnote to par 27, *infra*.

<sup>33</sup> Interlocutory Appeal, p 10.

<sup>34</sup> The admission into evidence of written statements made by a witness in lieu of their oral evidence in chief is not inconsistent with Article 21.4(e) of the Tribunal’s Statute (“In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: [...] to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; [...]”) or with other human rights norms (for example, Article 6(3)(d) of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides: “Everyone charged with a criminal offence has the following minimum rights: [...] to examine, or have examined, witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; [...]”). But, where the witness who made the statement is not called to give the accused an adequate and proper opportunity to challenge the statement and to question that witness, the evidence which the statement contains may lead to a conviction only if there is other evidence which corroborates the statement: *Unterpertinger v Austria*, Judgment of 24 Nov 1986, Series A no 110, pars 31-33; *Kostovski v The Netherlands*, Judgment of 20 Nov 1989, Series A no 166, par 41; *Vidal v Belgium*, Judgment of 22 Apr 1992, Series A no 235-B, par 33; *Lüdi v Switzerland*, Judgment of 15 June 1992, Series A no 238, par 49; *Artnér v Austria*, Judgment of 28 Aug 1992, Series A no 242-A, pars 22, 27; *Saidi v France*, Judgment of 20 Sept 1993, Series A no 261-C, pars 43-44; *Doorson v The Netherlands*, Judgment of 26 Mar 1996, par 80; *Van Mechelen v The Netherlands*, Judgment of 23 Apr 1997, Reports of Judgments and Decisions, 1997-III, pars 51, 55; *A M v Italy*, Judgment of 14 Dec 1999, 1999-IX Reports of Judgments and Decisions, par 25; *Lucà v Italy*, Judgment of 27 Feb 2001, 2001-II Reports of Judgments and Decisions, pars 39-40; *Solakov v Former Yugoslav Republic of Macedonia*, Judgment of 31 Oct 2001, appl No 47023/99, par 57.)

<sup>35</sup> Rule 92bis(E).

<sup>36</sup> *Milošević* Decision, par 22.

Where the evidence is so pivotal to the prosecution case, and where the person whose acts and conduct the written statement describes is so proximate to the accused, the Trial Chamber may decide that it would not be fair to the accused to permit the evidence to be given in written form.<sup>37</sup> An easy example of where the exercise of that discretion would lead to the rejection of a written statement would be where the acts and conduct of a person other than the accused described in the written statement occurred in the presence of the accused.

14. The exercise of the discretion as to whether the evidence should be admitted in written form at all becomes more difficult in the special and sensitive situation posed by a charge of command responsibility under Article 7.3 of the Tribunal's Statute. That is because, as the jurisprudence demonstrates in cases where the crimes charged involve widespread criminal conduct by the subordinates of the accused (or those alleged to be his subordinates), there is often but a short step from a finding that the acts constituting the crimes charged were committed by such subordinates to a finding that the accused knew or had reason to know that those crimes were about to be or had been committed by them.<sup>38</sup> Where the criminal conduct of those subordinates was widespread, the inference is often drawn that, for example, "there is no way that [the accused] could not have known or heard about [it]",<sup>39</sup> or "[the accused] had to have been aware of the genocidal objectives [of his subordinates]".<sup>40</sup>

15. In such cases, it may well be that the subordinates of the accused (or those alleged to be his subordinates) are so proximate to the accused that *either* (a) the evidence of their acts and conduct which the prosecution seeks to prove by a Rule 92bis statement becomes sufficiently pivotal to the prosecution case that it would not be fair to the accused to permit the evidence to be given in written form, *or* (b) the absence of the opportunity to cross-examine the maker of the statement would in fairness preclude the use of the statement in any event. It must be emphasised, however, that the rejection of the written statement in any of these situations is not based upon any identification of that person's acts or conduct with the acts or conduct of the accused.

<sup>37</sup> *Prosecutor v Brđanin & Talić*, IT-99-36-T, (*Confidential*) Decision on the Admission of Rule 92bis Statements, 1 May 2002, par 14 [A public version of this Decision was filed on 23 May 2002.]

<sup>38</sup> *Prosecutor v Delalić et al*, IT-96-21-A, Judgment, 20 Feb 2001 ("*Delalić* Judgment"), par 241. There is a helpful list of *indicia* as to whether a superior "must have known" about the acts of his subordinates provided in the Final Report of the UN Commission of Experts (M. Cherif Bassiouni, Chairman), established pursuant to Security Council Resolution 780 (1992), 27 May 1994 (S/1994/674), under the heading "II Applicable Law - D. Command Responsibility".

<sup>39</sup> *Prosecutor v Delalić et al*, IT-96-21-T, Judgment, 16 Nov 1998, par 770.

<sup>40</sup> *Prosecutor v Krstić*, IT-98-33-T, 2 Aug 2001, Judgment, par 648.

16. The Appeals Chamber is very conscious of the fact that, in many cases, the evidence tendered pursuant to Rule 92bis will be relevant at the same time both to (i) the prosecution case that the accused has command responsibility under Article 7.3, and (ii) its case that the accused has individual responsibility under Article 7.1 (including participation in a joint criminal enterprise) other than personally perpetrating the crimes himself. However, Rule 92bis was primarily intended to be used to establish what has now become known as “crime-base” evidence, rather than the acts and conduct of what may be described as the accused’s immediately proximate subordinates – that is, subordinates of the accused of whose conduct it would be easy to infer that he knew or had reason to know. The Appeals Chamber does not believe, therefore, that the concerns which it has expressed as to the use of Rule 92bis in Article 7.3 cases where it relates to the acts and conduct of the accused’s immediately proximate subordinates will unduly limit the advantages to the expeditious disposal of trials which the Rule was designed to achieve. It may be that, where the evidence which the prosecution wishes to establish by extensive use of Rule 92bis in a particular case is specially pivotal to that case because it deals with the acts and conduct of the accused’s immediately proximate subordinates, it will have to elect between the alternative formulations of its case which it has pleaded if it wishes to take advantage of the Rule in relation to that evidence.

17. Returning to the present case, the two statements admitted into evidence by the Trial Chamber pursuant to Rule 92bis(C) did not go to proof of any acts or conduct of the accused, and the objection by the appellant upon this basis is rejected. The issue then arises as to whether they should nevertheless have been rejected in the exercise of the Trial Chamber’s discretion.

18. The written statement by Bajram Šopi, who was present collecting firewood when a man was killed by a sniper’s shot, does not indicate the source of the shot and (on its face and taken by itself) it appears to be of no particular importance to proof of the responsibility of the appellant. No question of discretion arises in relation to that statement. However, the statement of the expert (Hadija Čavčić) concerning his conclusions as to the direction from which the particular shell had been fired, could – for the reasons given in pars 15-16, *supra* – be of substantial importance to the prosecution case if it is the vital link in demonstrating that the shell which is alleged to have caused many casualties was fired from a gun emplacement manned by immediately proximate subordinates of the accused. A question of discretion would therefore

appear to arise as to whether it would be unfair to the accused to permit this evidence to be given in written form in any event, particularly as there can be no opportunity to cross-examine him.

19. The Trial Chamber's Decision in relation to the expert's statement deals in careful detail with the arguments raised as to the statement's compliance with the requirements of Rule 92bis,<sup>41</sup> but it does not discuss any issue of discretion as might have been expected if that issue *had* been considered by the Trial Chamber. This may well be because counsel for the accused appears to have rested her opposition to the application by the prosecution exclusively upon the argument that the acts and conduct of the accused included those of his subordinates and upon the absence of any opportunity to cross-examine the expert, and she did not address the issue of discretion. In the opinion of the Appeals Chamber, however, it would be preferable that a Trial Chamber should nevertheless always give consideration to the exercise of the discretion given by Rule 92bis whenever the prosecution seeks to use that Rule in the special and sensitive situation posed by a charge of command responsibility under Article 7.3 where the evidence goes to proof of the acts and conduct of the accused's immediately proximate subordinates.

20. In the present case, there have been two witnesses who have already given oral evidence concerning the shelling described in the expert's statement (Mirza Sabljica, who conducted the investigation with Hadija Čavčić, and Sead Besić) and a third witness (Muhamed Jusufspahić) has yet to give oral evidence concerning it.<sup>42</sup> The Trial Chamber concluded that the opportunity which the accused had to cross-examine those witnesses made up for the absence of such an opportunity in relation to the now deceased Hadija Čavčić.<sup>43</sup> It may well be – it is not possible to tell on the rather limited material before the Appeals Chamber – that the evidence of those witnesses will reduce or even remove any suggestion that the statement of Hadija Čavčić, despite the absence of the opportunity to cross-examine him, is sufficiently pivotal to the prosecution case that the shell was fired by subordinates of the accused as to render it unfair (because of their immediate proximity to him) to permit the evidence to be given in written form. The Appeals Chamber is, therefore, not in a position in this case to exercise its own discretion in the place of the Trial Chamber as it ordinarily would be.<sup>44</sup> In these circumstances, and in the light of the

<sup>41</sup> First Decision.

<sup>42</sup> *Ibid*, p 3.

<sup>43</sup> *Ibid*, p 3.

<sup>44</sup> cf *Prosecutor v Milošević*, IT-99-37-AR73, IT-01-50-AR73 & IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 Apr 2002 ("*Milošević* Appeal Decision"), pars 4, 6.



Appeals Chamber's rejection of the other issues argued in the appeal, it will be necessary to uphold the appeal against the order made in the First Decision so that the matter may be returned to the Trial Chamber for it to consider the exercise of its discretion in accordance with this present Decision in relation to the statement of Hadija Čavčić.

21. For these reasons, it remains appropriate to deal also with the two alternative responses put forward by the prosecution in relation to the exclusion of any written statement which goes to proof of the acts and conduct of the accused.

**1(b) Does the exclusion apply to Rule 92bis(C) written statements?**

22. The prosecution tendered the two statements in question under Rule 92bis(C), which concerns written statements by persons who have since died or who can no longer with reasonable diligence be traced or who are unable to testify orally by reason of their bodily or mental condition. The prosecution's argument is that Rule 92bis(C) does not exclude proof of the acts and conduct of the accused where the person who made the statement tendered under that Rule has since died. This argument is based upon what is described as a "contextual" interpretation of the Rule.<sup>45</sup>

23. The prosecution submits that Rule 92bis(A) contemplates written statements made by persons who could still be called to give evidence, and that its purpose is to save the time of the evidence being given orally. On the other hand, the prosecution submits, Rule 92bis(C) contemplates statements made by persons who cannot be called to give evidence, and that its purpose is to permit the "best" evidence available to be given.<sup>46</sup> The prosecution claims support for this submission in the fact that, whereas both Rule 92bis(A) and Rule 92bis(D) (which concerns the admissibility of a transcript of evidence given by the witness in proceedings before the Tribunal) refer expressly to the exclusion of such written statements which go to proof of the acts and conduct of the accused, Rule 92bis(C) does not make any reference to that exclusion. The prosecution calls in aid the maxim *expressio unius est exclusio alterius*.<sup>47</sup> Such a maxim must always be applied with great care in statutory interpretation, for it is not of universal application. It is often described as a valuable servant but a dangerous master. Contrary to the

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<sup>45</sup> Response, pars 7-8.

<sup>46</sup> *Ibid*, pars 12-13.

<sup>47</sup> The express mention of one person or thing is the exclusion of another (Co Litt 210a).

prosecution's argument, however, the context which Rule 92bis provides for the particular provision in Rule 92bis(C) demonstrates that the maxim is irrelevant to its interpretation.

24. Rule 92bis(A) makes admissible written statements in lieu of oral testimony, but limits such written statements to those which go to proof of a matter other than the acts and conduct of the accused as charged in the indictment. Rule 92bis(B) sets out the form of a declaration which must be attached to the written statement before it becomes admissible under Rule 92bis(A) in lieu of oral testimony. Rule 92bis(D) provides a separate and self-contained method of producing evidence in a written form in lieu of oral testimony by the tender of the transcript of a witness's evidence in proceedings before the Tribunal. Rule 92bis(C), however, does *not* provide a separate and self-contained method of producing evidence in written form in lieu of oral testimony. Both in form and in substance, Rule 92bis(C) merely excuses the necessary absence of the declaration required by Rule 92bis(B) for written statements to become admissible under Rule 92bis(A).

25. The prosecution argument that Rule 92bis(C) does not exclude proof of the acts and conduct of the accused by a written statement of a deceased person is rejected.

**1(c) Admissibility under Rule 89(C) without Rule 92bis restrictions**

26. The prosecution's third response to the appellant's arguments that the two statements admitted into evidence go to proof of the acts and conduct of the accused was that they were in any event admissible under Rule 89(C) without the restrictions of Rule 92bis.<sup>48</sup>

27. Rule 89(C) – "A Chamber may admit any relevant evidence which it deems to have probative value" – permits the admission of hearsay evidence (that is, evidence of statements made out of court), in order to prove the truth of such statements rather than merely the fact that they were made.<sup>49</sup> Hearsay evidence may be oral, as where a witness relates what someone else

<sup>48</sup> Response, pars 15-24.

<sup>49</sup> *Aleksovski* Decision, par 15: "It is well settled in the practice of the Tribunal that hearsay evidence is admissible. Thus relevant out of court statements which a Trial Chamber considers probative are admissible under Rule 89(C). This was established in 1996 by the Decision of Trial Chamber II in *Prosecutor v. Tadić* [IT-94-1-T, Decision on the Defence Motion on Hearsay, 5 Aug. 1996 ('*Tadić* Decision')] and followed by Trial Chamber I in *Prosecutor v. Blaškić* [IT-95-14-T, Decision on Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability, 26 Jan. 1998 ('*Blaškić* Decision')]. Neither Decision was the subject of appeal and it is not now submitted that they were wrongly decided. Accordingly, Trial Chambers have a broad discretion under Rule 89(C) to admit relevant hearsay evidence. [footnote continued on next page]

had told him out of court, or written, as when (for example) an official report written by someone who is not called as a witness is tendered in evidence. Rule 89(C) clearly encompasses both these forms of hearsay evidence. Prior to the addition of Rule 92bis, the statement of a witness made to an OTP investigator who had died since making it had been admitted into evidence by a Trial Chamber pursuant to Rule 89(C), in *Prosecutor v Kordić & Čerkez*.<sup>50</sup> The Appeals Chamber overruled that decision on the basis that the discretion to admit hearsay evidence under Rule 89(C) had to be exercised so that it was in harmony with the Statute and the other Rules to the greatest extent possible,<sup>51</sup> and only where the Trial Chamber was satisfied that the evidence was reliable.<sup>52</sup> To some extent, the *Kordić & Čerkez* Decision by the Appeals Chamber was dependent upon the preference in the Rules at the time for “live, in court” testimony,<sup>53</sup> but its insistence upon the reliability of hearsay evidence was maintained in relation to hearsay written statements, despite the qualification of that preference (see par 12, *supra*), when Rule 92bis was introduced as a result of that decision.

28. Rules 92bis(A) and Rule 92bis(C) are directed to written statements prepared for the purposes of legal proceedings. This is clear not only from the fact that Rule 92bis was introduced as a result of the *Kordić & Čerkez* Decision but also from its description of the written statement as being admitted “in lieu of oral testimony” in Rule 92bis(A), as well as the nature of the factors identified in Rule 92bis(A) in favour and against “admitting evidence in the form of a written statement”. Rule 92bis(D), permitting the transcript of a witness’s evidence in proceedings before the Tribunal to be admitted as evidence, is similarly directed to material produced for the purposes of legal proceedings. Rule 92bis as a whole, therefore, is concerned

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Since such evidence is admitted to prove the truth of its contents [*Tadić* Decision, pars 15-19], a Trial Chamber must be satisfied that it is reliable for that purpose, in the sense of being voluntary, truthful and trustworthy, as appropriate; and for this purpose may consider both the content of the hearsay statement and the circumstances under which the evidence arose [*Tadić* Decision, pars 15-19]; or, as Judge Stephen described it, the probative value of a hearsay statement will depend upon the context and character of the evidence in question [*Tadić* Decision, p 3 of Judge Stephen’s concurring opinion]. The absence of the opportunity to cross-examine the person who made the statements, and whether the hearsay is ‘first-hand’ or more removed, are also relevant to the probative value of the evidence [*Blaškić* Decision, par 12]. The fact that the evidence is hearsay does not necessarily deprive it of probative value, but it is acknowledged that the weight or probative value to be afforded to that evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined, although even this will depend upon the infinitely variable circumstances which surround hearsay evidence [*Tadić* Decision, pp 2-3 of Judge Stephen’s concurring opinion].”

<sup>50</sup> IT-95-14/2-T, 21 Feb 2000, Transcript p 14,701.

<sup>51</sup> *Kordić & Čerkez* Decision, par 20.

<sup>52</sup> *Ibid*, pars 22-24.

<sup>53</sup> *Ibid*, par 19.

with hearsay evidence such as would previously have been admissible under Rule 89(C). But it is hearsay material of a very special type, with very serious issues raised as to its reliability.

29. Unlike the civil law, the common law permits hearsay evidence only in exceptional circumstances.<sup>54</sup> When many common law jurisdictions took steps to limit the rule against hearsay by permitting the admission of written records kept by a business as evidence of the truth of what they stated notwithstanding that rule, they invariably excluded from what was to be admissible under that exception any documents made in relation to pending or anticipated legal proceedings involving a dispute as to any fact which the document may tend to establish. This exclusion reflected the fact that such documents are not made in the ordinary course by persons who have no interest other than to record as accurately as possible matters relating to the business with which they are concerned. It also rested upon the recognised potential in relation to such documents for fabrication and misrepresentation by their makers and of such documents being carefully devised by lawyers or others to ensure that they contained only the most favourable version of the facts stated.

30. The decision to encourage the admission of written statements prepared for the purposes of such legal proceedings in lieu of oral evidence from the makers of the statements was nevertheless taken by the Tribunal as an appropriate mixture of the two legal systems, but with the realisation that any evidentiary provision specifically relating to that material required considerable emphasis upon the need to ensure its reliability. This is particularly so in relation to written statements given by prospective witnesses to OTP investigators, as questions concerning the reliability of such statements have unfortunately arisen,<sup>55</sup> from knowledge gained in many trials before the Tribunal as to the manner in which those written statements are compiled.<sup>56</sup> Rule 92bis has introduced that emphasis.

<sup>54</sup> See, generally, *Myers v Director of Public Prosecutions* [1965] AC 1001.

<sup>55</sup> *Kordić & Čerkez Decision*, par 27; *Prosecutor v Naletilić & Martinović*, IT-98-34-T, *Confidential Decision on the Motion to Admit Statement of Deceased Witnesses Kazin Mežit and Arif Pasalić*, 22 Jan 2002, p 4.

<sup>56</sup> In the usual case, the witness gives his or her statement orally in B/C/S, which is translated into English and, after discussion, a written statement is prepared by the investigator in English. The statement as written down is read back to the witness in English and translated orally into B/C/S. The witness then signs the English written statement. Some time later, the English written statement is translated into a B/C/S written document, usually by a different translator, and it is this third stage translation which is provided to the accused pursuant to Rule 66. Neither the interview nor the reading back is tape-recorded to ensure the accuracy of the oral translation given at each stage.

31. A party cannot be permitted to tender a written statement given by a prospective witness to an investigator of the OTP under Rule 89(C) in order to avoid the stringency of Rule 92bis. The purpose of Rule 92bis is to restrict the admissibility of this very special type of hearsay to that which falls within its terms. By analogy, Rule 92bis is the *lex specialis* which takes the admissibility of written statements of prospective witnesses and transcripts of evidence out of the scope of the *lex generalis* of Rule 89(C), although the general propositions which are implicit in Rule 89(C) – that evidence is admissible only if it is relevant and that it is relevant only if it has probative value – remain applicable to Rule 92bis. But Rule 92bis has no effect upon hearsay material which was not prepared for the purposes of legal proceedings. For example, the report prepared by Hamdija Čavčić (described in par 3, *supra*) could have been admitted pursuant to Rule 89(C) if it was not prepared for the purposes of legal proceedings (as to which the evidence is silent). The prosecution argument that the two statements admitted into evidence were in any event admissible under Rule 89(C) without the restrictions of Rule 92bis is rejected.

## 2 The “probability of the said statements”

32. The appellant submits that neither of the decisions under appeal indicates that the Trial Chamber had “engaged in evaluation of the requirements prescribed under Rule 92bis(C)(i)”.<sup>57</sup> By admitting the written statement of a deceased witness “without previously attempting to establish its probability”, the appellant says, the decision of the Trial Chamber is opposed to the provisions of that Rule.<sup>58</sup> The “failure to engage in establishing the probability of the said statements” is also alleged to have caused the Trial Chamber to fail “in a reliable manner to establish facts on the basis of which these statements will be assessed”.<sup>59</sup> The submission is later repeated in these terms: “Trial Chamber in the contested decisions [...] did not proceed in accordance with the Rule 92bis(C)(i) and in view of this error, the contested decisions are legally untenable.”<sup>60</sup>

33. The appellant has misread Rule 92bis(C)(i). For convenience, the terms of Rule 92bis(C) are repeated:

- (C) A written statement not in the form prescribed by paragraph (B) may nevertheless be admissible if made by a person who has subsequently died, or by a person who can no longer with reasonable diligence be traced, or by a person who is by reason of bodily or mental condition unable to testify orally, if the Trial Chamber:

<sup>57</sup> Interlocutory Appeal, p 3.

<sup>58</sup> *Ibid*, p 4.

<sup>59</sup> *Ibid*, p 4.

<sup>60</sup> *Ibid*, p 11.

- (i) is so satisfied on a balance of probabilities; and
- (ii) finds from the circumstances in which the statement was made and recorded that there are satisfactory *indicia* of its reliability.

What Rule 92*bis*(C)(i) requires is that the Trial Chamber be satisfied on a balance of probabilities that the written statement was “made by a person who has subsequently died, or by a person who can no longer with reasonable diligence be traced, or by a person who is by reason of bodily or mental condition unable to testify orally”. That is made clear by the use of the words “if the Trial Chamber [...] is *so* satisfied” immediately following those words.<sup>61</sup> The requirements of Rule 92*bis*(C)(i) have nothing to do with the “probability” or any other characteristic of the statement itself. The assessment of the reliability of that statement is the subject of Rule 92*bis*(C)(ii).

34. There was no issue taken by the appellant before the Trial Chamber in relation to the assertion by the prosecution at the trial that the makers of the two statements admitted into evidence were dead, coupled as it was with a death certificate for each of them. This objection by the appellant is rejected.

### 3 The reliability of the statements

35. The appellant submits that the Trial Chamber “did not engage in establishing the question of reliability”.<sup>62</sup> This submission has not been developed in his Interlocutory Appeal in any way. The reliability of the statements had been contested before the Trial Chamber, and the Trial Chamber in each of its decisions made findings not only that it was satisfied that the written statement of each witness and the report of Hamdija Čavčić had satisfactory *indicia* of their reliability within the meaning of Rule 92*bis*(C)(ii),<sup>63</sup> but also that each had “probative value within the meaning of Rule 89(C)”.<sup>64</sup> The appellant has criticised the Trial Chamber’s reference to Rule 89(C) as “an error on a question of law”,<sup>65</sup> saying that there was no need to have recalled the general provisions of Rule 89 as Rule 92*bis* was the special rule applicable. As the Appeals Chamber has already stated, evidence is admissible only if it is relevant and it is relevant only if it has probative value, general propositions which are implicit in Rule 89(C).<sup>66</sup> The Trial Chamber need not have referred to Rule 89(C), but it did have to be satisfied that the evidence in

<sup>61</sup> Emphasis has been added to the word “so”.

<sup>62</sup> Interlocutory Appeal, p 3.

<sup>63</sup> First Decision, p 3; Second Decision, p 4.

<sup>64</sup> First Decision, p 3; Second Decision, p 4.

<sup>65</sup> Interlocutory Appeal, p 9.

<sup>66</sup> Paragraph 31, *supra*.

the statements was relevant in that sense before they could be admitted. No error was made by the Trial Chamber.

36. The prosecution is correct in its assertion that the appellant has not in this appeal contested the finding of the Trial Chamber in accordance with Rule 92bis(C)(ii) that there were satisfactory *indicia* of the reliability of each statement in the circumstances in which it was made and recorded.<sup>67</sup> Those findings of fact can be interfered with only if the appellant demonstrates that they were ones which no reasonable tribunal of fact could have reached,<sup>68</sup> or that they were invalidated by an error of law.<sup>69</sup> There has been no attempt to do so, and the Appeals Chamber, having considered the material before the Trial Chamber, is not satisfied that those findings are open to appellate review.

37. The appellant's complaint is rejected.

#### 4 Application of Rule 92bis to expert witnesses

38. The appellant submits that Rule 92bis does not relate to expert witnesses, whose evidence is admissible only under Rule 94bis, so that the evidence of Hamdija Čavčić, the chemical engineer, was inadmissible under Rule 92bis.<sup>70</sup> Rule 94bis provides:

##### Rule 94bis Testimony of Expert Witnesses

- (A) The full statement of any expert witness to be called by a party shall be disclosed within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge.
- (B) Within thirty days of filing of the statement of the expert witness, or such other time prescribed by the Trial Chamber or pre-trial Judge, the opposing party shall file a notice indicating whether:
  - (i) it accepts the expert witness statement; or
  - (ii) it wishes to cross-examine the expert witness.
- (C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

The appellant says that this Rule makes a formal distinction between witnesses and expert witnesses, so that Rule 92bis, in the absence of a clear and formal statement of intention to the

<sup>67</sup> Response, par 22.

<sup>68</sup> *Tadić* Judgment, par 64; *Prosecutor v Aleksovski* IT-95-14/1-A, Judgment, 24 Mar 2000, par 63; *Prosecutor v Furundžija*, IT-95-17/1-A, Judgment, 21 July 2000, par 37; *Delalić* Judgment, pars 434-435, 459, 491, 595; *Prosecutor v Kupreškić et al*, IT-96-16-A, Judgment, par 30.

<sup>69</sup> *Milošević* Appeal Decision, par 6.

<sup>70</sup> Interlocutory Appeal, p 9.

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contrary, must be regarded as being subject to the same formal distinction.<sup>71</sup> The Appeals Chamber does not accept the appellant's submissions.

39. Rule 94*bis* performs two separate functions. Whereas Rule 66(A)(ii) requires the prosecution to disclose the statements of all prosecution witnesses when a decision is made to call those witnesses, and whereas Rule 65*ter* requires the accused to disclose a summary of the facts on which each of his witnesses will testify prior to the commencement of the defence case, Rule 94*bis* provides a separate timetable for the disclosure of the statements of expert witnesses whichever party is calling that expert. Once the statement of an expert witness has been disclosed, Rule 94*bis* requires the other party to react to that statement within a further time limit and, depending upon whether the other party wishes to cross-examine the expert, provides for the admission of that statement without calling the expert witness to testify. No such provision is made in relation to the witnesses whose statements are disclosed by the prosecution pursuant to Rule 66(A)(ii) or the witnesses whose summaries are to be disclosed by the accused pursuant to Rule 65*ter*. In this sense, there is a clear distinction made in Rule 92*bis* between expert witnesses and other witnesses.

40. However, Rule 94*bis* contains nothing which is inconsistent with the application of Rule 92*bis* to an expert witness. Indeed, Rule 92*bis* expressly contemplates that witnesses giving evidence relating to the relevant historical, political or military background of a case (which is usually the subject of expert evidence) will be subject to its provisions. There is nothing in either Rule which would debar the written statement of an expert witness, or the transcript of the expert's evidence in proceedings before the Tribunal, being accepted in lieu of his oral testimony where the interests of justice would allow that course in order to save time, with the rights of the other party to cross-examine the expert being determined in accordance with Rule 92*bis*. Common sense would suggest that there is every reason to suggest that such a course ought to be followed in the appropriate case.

41. There is perhaps less need for reliance upon Rule 92*bis*(C) where an expert witness has died since making his report, as it is usually possible for the party requiring that expert evidence to obtain it from another source. But, again, there is nothing in either Rule which would debar reliance upon Rule 92*bis*(C) in relation to the report of an expert witness in the appropriate case.

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<sup>71</sup> *Ibid*, p 9.



The objection taken in the present case is to a witness whose expert evidence could not be replaced by another witness. Hamdija Čavčić describes the results of the shellings which he investigated at the time of their occurrence. His deductions as to the direction from which the shells were fired is without doubt expert evidence, but that expert evidence is based upon facts to which only he could testify directly.

42. It is unclear whether this particular objection was taken by the appellant before the Trial Chamber, but it is obvious that, if it had been, the only reasonable conclusion which would have been open to the Trial Chamber *in relation to this issue* was to have admitted the statement under Rule 92bis. The appellant's objection is rejected.

### 5 Admissibility of part of a written statement

43. The appellant submits that, in relation to the statement of Bajram Šopi (described in par 4, *supra*), it is not in the interests of justice, and it is to the detriment of his fair trial, not to have admitted that part of that statement which, it is said, states.<sup>72</sup>

[...] the fact that in the school, which was located in the vicinity of his house, the army was stationed there from where it was going to the first front combat line, that he took part in bringing food for the army, and other facts which prove that he was not a civilian, and that he was present in the zone of legitimate military targets.

The appellant asserts that he should have been given the opportunity to present his stand in relation to this part of the statement, to argue that it should have been admitted because he was unable to cross-examine this witness.<sup>73</sup>

44. The clear suggestion in those submissions that the appellant was not given the opportunity to put these arguments at the trial is entirely without merit. A response to the prosecution's motion to admit the evidence was filed by the appellant on 8 April.<sup>74</sup> Its concerns were directed to what are described as the statement's "many inconsistencies and imprecise information" as to incident 11 in the schedule to the indictment, the absence of detail as to the wounding of the witness's wife (which was recounted in a part of the statement not tendered by the prosecution) and, in very general terms, the "poor and incomplete explanation of the facts from his short written statement". Significantly, the response made no mention of the arguments

<sup>72</sup> Interlocutory Appeal, p 11.

<sup>73</sup> *Ibid*, p 11.

<sup>74</sup> Reply to the Request of the Prosecutor to Present the Evidence in Accordance to [*sic*] Rule 92bis(C), 8 Apr 2002, signed by Ms Pilipović as lead counsel.

now put before the Appeals Chamber. The appeal process is not designed for the purpose of allowing parties to remedy their own failings or oversights at the trial.

45. Moreover, the written statement which was admitted into evidence makes no mention of the witness taking part in bringing food for the army, or any other fact which may prove that he was not a civilian, as the Interlocutory Appeal suggests. Even if the witness could be regarded as a combatant at some earlier time, it is not clear from the statement how he lost his civilian status when he was collecting firewood at the time the other man present was shot. There was no mention in the statement of “legitimate military targets” unless this describes the school building behind the witness’s house which (the statement says) had been “levelled” the year before this incident, but which had at that earlier time been used to house military units. If this interpretation was disputed, it was open to the appellant to raise that issue in the cross-examination of another witness to the same incident, one Nura Bajraktarević. No detriment to the fair trial of the appellant has so far been demonstrated by the non-tender of this part of the statement.

46. It must be emphasised that Rule 92*bis*(C) makes specific provision for the admission of part only of a written statement of a witness,<sup>75</sup> and that it is for the Trial Chamber to decide, after hearing the parties, whether to admit the statement in whole or in part.<sup>76</sup> Notwithstanding the argument of the prosecution to the contrary,<sup>77</sup> it is *not* its “prerogative” to determine how much of the statement is to be admitted. Where that part of the written statement not tendered by the prosecution modifies or qualifies what is stated in the part tendered, or where it contains material relevant to the maker’s credit, the absence of any opportunity to cross-examine the witness (which must be the case where Rule 92*bis*(C) is concerned) would usually necessitate the admission of those parts of the statement as well. There is no foundation for the appellant’s argument that, if the statement includes material which is irrelevant, the whole of the statement must be rejected.<sup>78</sup>

47. The appellant’s objection is rejected.

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<sup>75</sup> Rule 92*bis*(A).

<sup>76</sup> Rule 92*bis*(E).

<sup>77</sup> Response, par 69.

<sup>78</sup> Interlocutory Appeal, p 11.

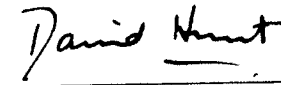
**Disposition**

48. For the foregoing reasons:

- (1) The appeal against the Trial Chamber's First Decision (given on 12 April 2002) is allowed, so that the matter may be returned to the Trial Chamber for it to consider the exercise of its discretion in accordance with this present Decision in relation to the statement of Hamdija Čavčić.
- (2) The appeal against the Trial Chamber's Second Decision (given on 18 April 2002) is dismissed.

Done in English and French, the English text being authoritative.

Dated this 7<sup>th</sup> day of June 2002,  
At The Hague,  
The Netherlands.



---

Judge David Hunt  
Presiding Judge

[Seal of the Tribunal]

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ANNEX A

PRIOR TRIAL TRANSCRIPTS OF TF1-021

1. TF1-021, RUF Trial Transcript, 15 July 2004
2. TF1-021, AFRC Trial Transcript, 15 April 2005

18723

THE SPECIAL COURT FOR SIERRA LEONE

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

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

THURSDAY, 15 JULY 2004  
10.10 a.m.  
CONTINUED TRIAL

Before the Judges:

Mutanga Itoe, Presiding  
Bankole Thompson  
Pierre Boutet

For the Registry:

Ms. Maureen Edmonds  
Mr. Geoff Walker

For the Prosecution:

Ms. Lesley Taylor  
Mr. Abdul Tejan-Cole  
Mr. Alain Werner  
Mr. Christopher Santora

For the Accused Issa 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:

Ms. Gifty C. Harding  
Mr. Momodou Jallow  
Ms. Roni Kerekes

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WITNESS/ES

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WITNESS TF1-021

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1 MR. BROWN:

2 Thank you.

3 MR. PRESIDENT:

4 Yes, Mr. O'Shea.

5 MR. O'SHEA:

6 Yes, thank you, Your Honours. I would just like to add a short note on this. Mr. Jordash is quite right  
7 to raise this issue and also quite right not to seek any specific relief and, indeed, Your Honours are  
8 indeed correct and wise in emphasising the right to freedom of expression which the press have. Of  
9 course, the press needs to be reminded, however, that the rights of freedom of expression is subject  
10 to reasonable limitation in an open and democratic society. And that what the press -- and there is no  
11 suggestion whatsoever here by myself or any of my co-counsel that this is the case here, but the  
12 press needs to be reminded that there are limitations, and what the press cannot do is to compromise  
13 the safety of witnesses or to interfere with the administration of justice by deliberate misreporting.  
14 And again, there's no suggestion of that here, but I just thought it appropriate to add that reminder as  
15 a postscript.

16 MR. PRESIDENT:

17 Thank you. I suppose we can now proceed. Your comments, Mr. Jordash, are taken and they're  
18 appropriate in the circumstances and I'm sure that we are -- the gallery and the Court is in total  
19 communication and total communion on this discourse and that we would at least expect, as they  
20 have been doing, a lot of objective reporting, you know, on our proceedings. We have nothing to hide  
21 here, there's nothing to hide here except for particular legal reasons we go under closed sessions.  
22 Ordinarily our proceedings are public and if we are reported to -- if we're faithfully reported, you know,  
23 as to what has happened here and in a manner which does not prejudice the interests, as were said,  
24 of the accused persons or the integrity of the proceedings, we don't mind it. We're calling on the  
25 press to do just that. They know what they have to do and we expect them to do what they should do.  
26 Yes, could the Prosecution call its witness, please.

27 MR. TEJANCOLE:

28 Yes, Your Honour. Your Honour, the Prosecution calls its next witness. TF1-021. TF1-021.

29 JUDGE BOUTET:

30 This is a protected witness?

31 MR. TEJANCOLE:

32 Yes, Your Honour.

33 [The witness entered court]

34 MR. PRESIDENT:

35 Mr. Walker, have you verified his religion?

36 THE WITNESS:

37 Swear on the Koran.

- 1 WITNESS: WITNESS TF1-021  
2 [Witness sworn]  
3 [Witness answered through interpretation]  
4 MR. PRESIDENT:  
5 Yes, learned counsel for the Prosecution.  
6 MR. TEJANCOLE:  
7 Thank you, My Lord.  
8 Examined by Mr. Tejan-Cole:  
9 MR. TEJAN-COLE:  
10 Q. Mr. Witness, will you tell this Honourable Court how old you?  
11 A. Sixty-seven.  
12 JUDGE BOUTET:  
13 Is the witness giving evidence in English or through translation?  
14 MR. TEJAN-COLE:  
15 Through translation in Krio.  
16 Q. Will you tell this Court where you were born?  
17 A. 1 Quaker Lane, Cline Town.  
18 Q. Did you attend school?  
19 MR. PRESIDENT:  
20 One what?  
21 MR. TEJAN-COLE:  
22 1 Quaker, Q-U-A-K-E-R.  
23 MR. PRESIDENT:  
24 Quaker Oats.  
25 THE WITNESS:  
26 Quaker Lane.  
27 MR. PRESIDENT:  
28 Quaker Lane in Freetown.  
29 MR. TEJAN-COLE:  
30 Cline Town.  
31 Q. And the Cline Town that you referred to is in Freetown?  
32 A. Yes, it is Freetown.  
33 Q. Did you attend school?  
34 A. Partially, partly.  
35 Q. Will you tell us up to what level.  
36 A. Up to form three.  
37 Q. Mr. Witness, do you recall the 6th of January 1999?



- 1 A. Yes, My Lord.
- 2 Q. Do you recall what day of the week it was?
- 3 A. On a Friday.
- 4 Q. Now on that date at about 12.30 p.m. could you tell us where you were?
- 5 A. I was right inside the mosque, Masjeed Douheed Rogbalana Mosque.
- 6 Q. Could you repeat the name of the mosque again, please?
- 7 A. Masjid Douheed Robella Mosque.
- 8 Q. Where is this mosque?
- 9 A. Ramsey Street, Kissy.
- 10 Q. Where is Kissy?
- 11 A. Eastern part, after Shell Company in Freetown, Kissy/Freetown.
- 12 Q. Were you alone in the mosque at that time?
- 13 A. The mosque was packed full. People who came to hide there and plenty were there for prayers.
- 14 Q. So there were people there who came to hide in the mosque and there were others there who came
- 15 for prayers?
- 16 A. Yes, sir. That is what happened, yes, sir.
- 17 Q. Could you tell roughly how many people were in the mosque at the time, could you estimate?
- 18 A. There were a lot of them there, there were so many.
- 19 Q. Can you describe these people who were in the mosque on that day these people who [inaudible]?
- 20 A. Yes. The people that jumped over the fence and then came in.
- 21 Q. [Overlapping microphones]
- 22 A. There were men, women, suckling mother – men, women, suckling mothers, pregnant women,
- 23 children, plenty.
- 24 Q. At about 12.30 p.m. on that day did anything happen in that mosque?
- 25 A. Yes, sir.
- 26 Q. Would you tell this Court what happened.
- 27 A. Yes. I saw people jumping over the fence coming down to the mosque, they were plenty. They were
- 28 all armed.
- 29 Q. Could you tell how many people jumped and came into the mosque?
- 30 A. At that time I was with fear. I couldn't count anybody; there were more than 15 or 20.
- 31 Q. Could you describe to this Honourable Court how these people were dressed?
- 32 A. Yes, sir.
- 33 Q. How were they dressed?
- 34 A. They disguised themselves by wearing plastic bags on their head, some were with blue, all over blue
- 35 and they had cowries on their heads, some they had coal all over their faces, some wore white chalk
- 36 all over their faces but you couldn't recognise them.
- 37 Q. You said these men were armed, could you tell the Court what they were armed with.

- 1 A. Well, I don't know about gun. I saw guns in their hands but I don't know what type of gun is it, how it  
2 was.
- 3 Q. Did all of them have guns?
- 4 A. Some had, some had machete.
- 5 Q. Now you said you saw these men jump over and came into the mosque, did anything happen when  
6 they came in?
- 7 A. Yes, sir.
- 8 Q. Would you tell the Court what happened?
- 9 A. Some of them went to me directly and asked if I was of the one leading the people in prayers. I said,  
10 "Yes" and they told me, "Today your life has finished," and I said to them that "I'm asking you kindly to  
11 spare us. Let's pray the Friday prayer, after the Friday prayers whatever you would like to do with us  
12 would leave us to God." So I had some money which we contributed. I told them, "Hold this as  
13 cigarette money and give us time to pray". They took the money from me, it was about  
14 80,000 Leones. After it was counted they saluted me but told me they would kill me. Then they said,  
15 "We kill you right now," and I told them, "If God agrees." And they asked me, "Where is my God --  
16 where is your God? Bring him now here, we want to see the God." If you don't bring him, shift a bit,  
17 push back, then indeed I shifted a bit. They told me "Go more, go more," and they started firing  
18 randomly, right, left, all about the mosque. I was still standing there.
- 19 Q. Did anything happen as a result of their firing?
- 20 A. Yes, inside the mosque after they had gone, we found out that 36 people were dead.
- 21 JUDGE THOMPSON:
- 22 How many people?
- 23 THE WITNESS:
- 24 Thirty-six dead. I went around the mosque to see another seven dead. I went to the school -- there is  
25 an Islamic school and a mosque, I went there and met another seven dead. Then I came by the  
26 gates, I counted all the dead people that I saw all the way to 71. Then I saw one of the gunmen, he  
27 called me, "You come here. You were the first we shot and you're still standing here, look at the way  
28 you are standing, you're scaring me." Before this period one man who was struggling to die kicked  
29 me at the back of my feet and I fell down.
- 30 Q. When did this man who was struggling to die kick you?
- 31 A. When I stood before them, when they were firing, he had already fell down. He was trying to struggle  
32 'til he's dead and he kicked me and I fell down.
- 33 Q. When these armed men came into the mosque, did they say anything to you?
- 34 A. When I fell down when he kicked me, they jumped, stood on my belly and said, "Now, we're not going  
35 to leave any soul around here to vote for this government for Tejan Kabbah." We came as force and  
36 said we want peace, everybody was dancing, we want peace, everybody was dancing we want  
37 peace. And we said -- he said he was not going to make a peace with us. We are junta, we are

1 people's army, he was not going to make peace with us. So for that, "We'll leave no soul around in  
2 that mosque."

3 MR. CAMMEGH:

4 Your Honour, I'm sorry to interrupt. I'm finding it slightly difficult to understand the English translation.  
5 I wonder if the translator could speak a little more clearly.

6 MR. PRESIDENT:

7 Mr. Translator, please speak clearly, take your time, so that counsel, learned counsel can get you  
8 very, very clearly in your translations. Is that all right?

9 THE INTERPRETER:

10 Yes, it is, My Lord.

11 MR. TEJAN-COLE:

12 Q. Now did these armed men did they say anything to you -- whilst they were in the mosque, did they say  
13 anything to you about where they had been before they came into the mosque?

14 A. No, My Lord.

15 MR. PRESIDENT:

16 Yes.

17 MR. BROWN:

18 I was a little slow rising, but, Your Honour, it seems to me that the question, "Did they say anything  
19 else?" would be appropriate since we've had a question about what they said in the Mosque and not  
20 leading questions as to the subject matter that the learned counsel would like to hear from the  
21 witness.

22 MR. PRESIDENT:

23 Objection is sustained. Please go ahead, rephrase your question, please.

24 MR. TEJAN-COLE:

25 Your Honour, in light of the witness's answer I will move on.

26 MR. PRESIDENT:

27 No, you will not move on. The answer is deleted from the records.

28 MR. TEJAN-COLE:

29 Your Honour, the witness said no, so the answer is --

30 MR. PRESIDENT:

31 It was a leading question.

32 MR. TEJAN-COLE:

33 As Your Honour pleases.

34 MR. PRESIDENT:

35 It is deleted, the response is deleted from the record.

36 MR. TEJAN-COLE:

37 As Your Honour pleases.

1 MR. PRESIDENT:

2 Rephrase your question.

3 MR. TEJAN-COLE:

4 Q. Mr. Witness, could you tell us how long did these armed men stay in the mosque, how long were they  
5 in the mosque? You gave us -- you mentioned that they came into the mosque and you subsequently  
6 mentioned that they left. Could you tell us the total --

7 MR. PRESIDENT:

8 Look, we've been talking about ambushing and ambushing. We're very serious about this.

9 MR. TEJAN-COLE:

10 I'm sorry, My Lord.

11 MR. PRESIDENT:

12 Please, let's adopt, you know, the rules of the game. There's no point in saying since he's answered  
13 you will go along. Let's respect, you know, the rules of examination-in-chief, cross-examination and  
14 re-examination. Please, it's important.

15 MR. TEJAN-COLE:

16 Your Honour, I'm doing my utmost to respect the rules --

17 [Overlapping microphones]

18 MR. PRESIDENT:

19 It is important that we do this.

20 MR. TEJAN-COLE:

21 I'm doing my utmost, Your Honour. I meant no disregard or no disrespect in saying that I'm moving  
22 along in light of the answer the witness has given. Your Honour has given a ruling, I respect Your  
23 Honour's ruling and I will abide by Your Honour's ruling.

24 May I proceed, Your Honour?

25 MR. PRESIDENT:

26 Counsel may proceed.

27 MR. TEJAN-COLE:

28 Thank you, Your Honour.

29 Q. You mentioned that these armed men came into the mosque, you subsequently also mentioned that  
30 they left the mosque, could you tell us how long in total they spent in the mosque? Can you tell?

31 A. At that time of the atrocities I didn't record time, I didn't note time, I just saw them as they were going  
32 and we were ready, we came back.

33 Q. Were you able to identify -- you said you counted 71 people dead, were you able to identify any of the  
34 people who were killed on that day?

35 A. One Mohammed Tombu, another one we used to call Pa Bangura, he was a Christian, he had the  
36 cross -- the crucifix in his arm and a songbook in his hand. Another Mamie, another mosque  
37 member's wife, well the bullet hit her on the left side of her head, and another Ya Memuna. But I was

1 not able to stand there and check all of them because I was trembling with fear, I didn't have any  
2 place to pass, the whole area was littered with the armed people. And there were others at the back  
3 of the mosque, there were seven people there. I knew one who was called Ibrahim, he was an Imam,  
4 he was shot in the head, and my own child, whom I had left, I met -- when I went back he had died  
5 and my house had been burnt. The fire that was lit on the house caused him to get roasted up and  
6 part of my things.

7 Q. Now what happened to the 71 people who you said were killed on that day? Did anything happen to  
8 them?

9 A. Some of them -- their relatives then come and look for them -- the relatives took them and went and  
10 buried them, some of them until Friday, Saturday, Sunday and Monday. I came back to see what had  
11 happened, some bodies had been decomposed, some had been swollen and others that had gone  
12 bad, burst. We took them and dragged them to the cemetery at Parsonage Street and some of the  
13 tombs were open where they put corpses and we put them there and covered them and we buried  
14 them.

15 Q. Now you also said in your evidence that you gave the armed men who came in the sum of  
16 80,000 Leones. Could you tell the Court how you got that money?

17 A. Yes. This was a contribution from the congregation which had filled the mosque and we --

18 THE INTERPRETER:

19 My Lord, the witness is speaking too fast and I need to get what he's saying so that I can interpret  
20 correctly.

21 MR. TEJAN-COLE:

22 Q. Would you repeat that answer for the interpreter.

23 A. This money was a contribution from the people who hidden themselves in the mosque and the people  
24 who had come for prayers and we asked them to give some little contribution, some people placed  
25 1,000, some 3,000, some 500. We put this together and kept it there so that if anybody comes  
26 around to disturb us, we would always give it to them. They took it but they still continued with their  
27 action.

28 The place is very chilly in here.

29 MR. TEJAN-COLE:

30 Your Honour, that will be all for this witness.

31 MR. PRESIDENT:

32 The witnesses is complaining that the place is chilly.

33 JUDGE BOUTET:

34 Can the Court Management provide something to the witness.

35 THE WITNESS:

36 There is something that I'm using at moment, a blanket that I'm using to cover my feet, my legs.

37

1 JUDGE BOUTET:

2 There's no other blanket the witness can have? Is it better now?

3 THE WITNESS:

4 Much, better, My Lord.

5 MR. TEJAN-COLE:

6 Your Honours, that's all for this witness.

7 MR. PRESIDENT:

8 Yes, first Accused anything -- counsel for first Accused.

9 MR. JORDASH:

10 No questions, thank you. Could I just take very brief instructions?

11 MR. PRESIDENT:

12 Please.

13 MR. JORDASH:

14 Thank you.

15 *[Defence counsel and Accused Sesay confer]*

16 MR. JORDASH:

17 No questions and thank you for the time.

18 MR. PRESIDENT:

19 Thank you, counsel. Second Accused please.

20 MR. BROWN:

21 Might I ask for one moment, please, to confer?

22 MR. PRESIDENT:

23 Please go ahead, please.

24 *[Defence counsel and Accused Kallon confer]*

25 MR. BROWN:

26 Your Honour, I have no questions.

27 MR. PRESIDENT:

28 All right. Thank you.

29 MR. CAMMEGH:

30 And nor do we.

31 MR. PRESIDENT:

32 Yes, Mr. Cammegh.

33 MR. CAMMEGH:

34 Nor do we, Your Honour

35 MR. PRESIDENT:

36 No questions. All right. Thank you.

37

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Case No. SCSL-2004-16-T  
THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
ALEX TAMBA BRIMA  
BRIMA BAZZY KAMARA  
SANTIGIE BORBOR KANU

FRIDAY, 15 APRIL 2005  
9.25 A.M.  
TRIAL

TRIAL CHAMBER II

---

<b>Before the Judges:</b>	Teresa Doherty, Presiding Julia Sebutinde Richard Lussick
<b>For Chambers:</b>	Mr Simon Meisenberg
<b>For the Registry:</b>	Ms Maureen Edmonds
<b>For the Prosecution:</b>	Ms Lesley Taylor Mr Mohammed Bangura Mr Alain werner Ms Jennifer Beckley (intern)
<b>For the Principal Defender:</b>	Ms Claire Carlton-Hanciles
<b>For the accused Alex Tamba Brima:</b>	Mr Kevin Metzger Ms Glenna Thompson
<b>For the accused Brima Bazy Kamara:</b>	Mr Wilbert Harris Mr Mohamed Pa-Momo Fofanah Mr Abdul Rahman Mansaray
<b>For the accused Santigie Borbor Kanu:</b>	Mr Abibola Manley-Spaine

1 PRESIDING JUDGE: welcome back, Mr Harris.

2 MR HARRIS: Thank you.

3 PRESIDING JUDGE: This is the Trial Chamber's ruling: The  
4 Defence object to the next witness being called to give evidence  
11:21:07 5 on the grounds that the evidence is not relevant to the  
6 Prosecution case against the AFRC. In support of the objection,  
7 Defence relies on Rules 90(F) and 95. The Prosecution, in  
8 answer, submit the evidence is relevant to a joint criminal  
9 enterprise as alleged in the indictment. We note it is alleged  
10 in the indictment that the accused Alex Tamba Brima was a  
11 commander of the AFRC/RUF -- excuse me, I will reword that -- was  
12 in command of the AFRC/RUF forces and that Brima Bazzy Kamara was  
13 a senior member of the AFRC junta and the AFRC/RUF forces .

14 without hearing the evidence, the Trial Chamber is not in  
11:22:02 15 any position to make a finding on its relevance. It may well be  
16 that this evidence is connected to the evidence of other  
17 witnesses. We are of the view that the Trial Chamber should hear  
18 the evidence; further, we do not consider that Rules 90(F) or 95  
19 have any bearing on the issue. Accordingly, we overrule the  
11:22:28 20 objection.

21 Unless there's some issue, I will ask the Court attendant  
22 to swear in the witness.

23 WITNESS: TF1-021 [Sworn]

24 [Witness answered through interpreter]

11:23:27 25 PRESIDING JUDGE: The interpreters have told us that the  
26 channel is not correct. I'll start again.

27 The interpreters have informed us that the channel isn't  
28 correct. would you be so kind as to check the channel.

29 Ms Stevens, please proceed.



1 MS STEVENS: Thank you, Your Honour. Good morning,  
2 Your Honours. Members of the Defence team, good morning.

3 EXAMINED BY MS STEVENS:

4 Q. witness, good morning again.

11:24:15 5 A. Morning, sir.

6 Q. witness, what year were you born?

7 A. 1936.

8 Q. And without giving me any address, where were you born? I  
9 just need the name of the town or the city.

11:24:40 10 A. Freetown.

11 Q. Did you attend school?

12 A. Yes, I went halfway.

13 Q. Up to what level did you reach?

14 A. The third form.

11:25:03 15 Q. Is that up to secondary or primary school level?

16 A. Secondary.

17 Q. witness, what is your religious affiliation?

18 A. Muslim.

19 Q. Do you attend mosque?

11:25:31 20 A. Yes, every day.

21 Q. In January of 1999, did you attend mosque?

22 A. Yes, My Lord.

23 Q. which mosque?

24 A. Masjid Thauhaed Rogbalan, windsor Street, Freetown.

11:26:05 25 Q. witness, would you please spell for us Masjid.

26 A. Masjid, M-a-s-j-i-d; Thauhaed, T-h-a-u-h-a-e-d; Rogbalan,  
27 R-o-g-b-a-l-a-n.

28 Q. where is Rogbalan mosque located?

29 A. windsor Street, Kissy.

1 Q. And where is Kissi in relation to Freetown?

2 A. Well, it's a part of the western area.

3 Q. Did anything significant happen at Rogbalan mosque in  
4 January of 1999?

11:27:22 5 A. Yes, Your worship.

6 Q. And how do you know that something significant happened at  
7 Rogbalan mosque in January of 1999?

8 A. We went in order to pray. When the congregation had sat  
9 inside, the mosque was full to the brim, and outside also was

10 full. It was on a Friday. And we saw people jumping over the  
11 fence, well armed, coming into the compound.

12 Q. Witness.

13 A. Yes.

14 Q. Where were you on that Friday when you saw people well

11:28:20 15 armed jump into the compound?

16 A. I was in the front of veranda, so I was able to see both  
17 the gates.

18 Q. And how many people did you see who were armed that came to  
19 the mosque?

11:29:00 20 A. I can recall those that had been jumping into the fence,  
21 into the compound, were 15, but there were more than that.

22 Q. And with what were they armed?

23 A. They had guns and machetes.

24 Q. How were they dressed?

11:29:28 25 A. Well, they had mixed up dressings. They had some plastics  
26 on their faces, and they rubbed blue all over their body,  
27 charcoal, which was -- they had an adhesive that was called  
28 Evostick. It was difficult to recognise them.

29 Q. What time of the day was this?

1 A. It was approaching 2.00 prayer. It was around half past  
2 12.00 to 1.00.

3 Q. And were you alone at the mosque that day?

11:30:39

4 A. The mosque was packed full of people because some people  
5 came to pray the Juma. There are some outside and some inside.

6 Q. And these other people who were in the mosque with you --

7 PRESIDING JUDGE: Pause, Ms Stevens. I heard a word. I  
8 think it was Juma. Could you spell it or could it be explained,  
9 please.

11:31:05

10 MS STEVENS:

11 Q. Witness --

12 A. J-u-m-a.

13 PRESIDING JUDGE: Thank you.

14 MS STEVENS:

11:31:12

15 Q. Could you please explain for this Court what Juma means.

16 A. Friday prayers, just like how the Christians pray on  
17 Sundays. We call it Juma prayers.

18 Q. And these other people who were in the mosque who had come  
19 to pray, were they civilians or soldiers?

11:31:49

20 A. They were civilians that came to pray.

21 Q. And to the best of your knowledge, were any of them armed?

22 A. No. When you go to pray, you don't have weapons.

23 Q. And what part of the mosque were these people situated,  
24 these people who had come to pray?

11:32:26

25 A. Some were sitting in the middle of the mosque, some at the  
26 back of the mosque, some at the side of the mosque on the  
27 verandas. Some were outside the mosque, spreading mats.

28 Q. What was the gender composition of this group, the group of  
29 people who had come to pray?

1 A. They were separated. Women were behind, and the men were  
2 behind -- men were in front.

3 Q. When the armed men came into the mosque, did they do  
4 anything?

11:33:34 5 A. They met us -- they met us in the mosque by the pulpit, and  
6 they said "are you people praying here?" And they said yes.

7 Q. Did they say anything else to you?

8 A. They said, well, we've come to kill all of you.

9 Q. And did they say anything else to you?

11:34:11 10 A. Yes.

11 Q. What did they say?

12 A. They said "As you are here now, you are people who voted  
13 for Tejan Kabbah. We are going to kill all of you. And because  
14 of that, we're not going to leave any sort of item. We're going

11:34:33 15 to kill all of you."

16 Q. So they told you they were going to kill you.

17 A. They said they are going to kill all of us. In fact, I  
18 would have been the first individual to be killed.

19 Q. Apart from telling you that they were going to kill you

11:35:11 20 once you voted for Tejan Kabbah, did they say anything else to  
21 you?

22 A. Yes. I begged them. I said we are going to contribute and  
23 give them money so they would go away and leave us in peace. But  
24 they did not accept the money, and they said they are not going

11:35:38 25 to leave us in peace. And they said, If you are not going to  
26 leave us, by the power of God, well, they could kill us.

27 Q. Did these armed men belong to any particular group?

28 A. Well, at that time of this atrocity, I wasn't able to  
29 distinguish a group. But they disguised themselves. It was

1 difficult for me to know who they were.

2 Q. Did they say anything to you to give you an indication of  
3 where they were coming from or who they were?

11:36:46

4 A. No. I took money and give to them. And they said, Even if  
5 you give us money, we will kill you. They said, Even if you give  
6 us money or not, we will kill all of you.

7 Q. And did you give them some money?

8 A. Yes. Yes, we contributed. The whole mosque, everybody  
9 contributed. They said, "Okay, let us give that so we could

11:37:14

10 live." When I give them the money, they said, "Even if you give  
11 us all the money that's in your pocket, we must kill all of you."  
12 And we said, "God willing." And they said, "We want to see the  
13 God. Where is the God? We want to see the God."

14 Q. How much money did you give them, witness?

11:37:41

15 A. At first? At first, I collected 80.000 to give them. And  
16 they said thanks to me, and they saluted me, and they said they  
17 are going to kill me.

18 Q. After you gave them the 80.000 Leones, what did they do  
19 next?

11:38:15

20 A. They fired rampantly. They fired everywhere. They spread  
21 bullets. And people died. People died rampantly. So I was  
22 panic-stricken. I wasn't able to do anything.

23 Q. How many people died as a result of the shooting?

11:39:07

24 A. Well, at the moment, they shot and shot and said we should  
25 forgive them. It was not their fault, but it was the fault of  
26 President Tejan Kabbah, because they came and said they wanted  
27 peace because they did not want to go to the bush again. So he  
28 said, No, he was president, and he did not recognise People's  
29 Army rebels. So he said it wasn't good to talk to them.

1 Q. witness, do you remember how many people died in the mosque  
2 when the armed men opened fire?

3 A. I could remember, I checked within the mosque when the  
4 people had gone out. About 36 were dead. Then at the back of  
11:40:12 5 the mosque, 7. Near the school, there was another 7 in the  
6 toilet. Almost 50. Then outside, summing up to 21 again, making  
7 71 in all.

8 Q. Did the armed men leave the mosque that day, or did they  
9 remain in the mosque?

11:40:59 10 A. They were still around when I had gone to the house because  
11 they had shot at my eldest son on the chin, and it came right up  
12 to the head and he died. So I went home. Then I went to the  
13 mosque and said, "well, let's I myself die in the mosque." So  
14 finally, they went.

11:41:26 15 Q. Before they left, did they say anything?

16 A. They said we should forgive them. They said we should  
17 forgive them. It was not their fault. They don't want to do  
18 that. It was fault of -- they said they came in order to have  
19 peace.

11:41:57 20 THE INTERPRETER: Your Honours, the witness is going too  
21 fast, and let him speak louder.

22 MS STEVENS:

23 Q. witness, slow down, please.

24 A. Okay, okay.

11:42:06 25 Q. And also try to speak a bit louder.

26 A. Okay. It's the cold.

27 Q. You were telling us what the armed men told you before they  
28 left.

29 A. Yes.

1 Q. was there anything else they said before they left?

2 JUDGE SEBUTINDE: Could the witness repeat what he said  
3 when you asked him that last question as he was running fast  
4 because we didn't get it.

11:42:54 5 MS STEVENS: I'll take the question again.

6 Q. witness, and please answer slowly, what did the --

7 A. Okay.

8 Q. what did the armed men say to you, to the crowd, before  
9 they left?

11:43:15 10 A. They said, "We are leaving the mosque. We are asking you  
11 to pardon us. It wasn't our fault. It was the fault of the  
12 President Tejan Kabbah because we met him and said we wanted  
13 peace. We came for peace."

14 Q. Did they say anything else?

11:43:56 15 A. They said, well, the president said he wasn't going to make  
16 any peace with them because they were People's Army and rebels.  
17 He said he wasn't going to make any peace with them.

18 Q. Now, you have told this Court that about 71 people in total  
19 died. Were you able to identify any of --

11:44:41 20 A. 71. Yes.

21 Q. My question to you, sir, is were you able to identify  
22 anyone out of the 71 -- out of the 71?

23 A. There were many. There were many. Memuna Kalokoh,  
24 Mammy Bangura, Pa Bangura, and Sawdatu from Kailahun, and  
11:45:21 25 Mrs Farmer.

26 PRESIDING JUDGE: It would be helpful if the witness would  
27 spell the names as he goes, as he mentions them, please.

28 MS STEVENS:

29 Q. Witness, you heard the Presiding Judge. Please, as you

1 mention a name, if you can spell it, spell out the name. I'm  
2 going to take the question and ask you to --

3 A. Okay.

4 Q. -- to list the people whom you were able to identify.

11:45:53 5 A. Pa Alfred Bangura. Did you get that?

6 Q. Yes, I did.

7 A. Mammy Sawdatu from Kailahun. I don't know her surname.

8 JUDGE SEBUTINDE: Counsel, do help.

9 MS STEVENS: I will assist the court. SaIdatu --

11:46:32 10 JUDGE SEBUTINDE: Start with Alfred what's-his-name.

11 MS STEVENS: Pa Alfred Bangura.

12 THE WITNESS: Pa Alfred. Pa Alfred Bangura.

13 MS STEVENS: Witness, just a moment. I will assist the

14 Court with the spellings. Bangura, Your Honours, would be  
11:46:50 15 spelled --

16 THE WITNESS: Okay.

17 MS STEVENS: -- B-a-n-g-u-r-a. Sawdatu, S-o-w --

18 THE WITNESS: From Kailahun. I don't know her surname.

19 S-a-w-d-a-t-u.

11:47:23 20 MS STEVENS:

21 Q. Anyone else?

22 A. Mammy Bangura. We used to call her Mrs Bangura. She  
23 stayed near the mosque.

24 Q. Is there anyone else you could remember?

11:47:53 25 A. Memuna Kalokoh.

26 MS STEVENS: Memuna would be M-e --

27 THE WITNESS: M-E-M-U-N-A. K-A-L-O-K-O-H.

28 MS STEVENS:

29 Q. Witness, you had also earlier mentioned your son. Was your



1 son killed during this incident -- just a moment. I don't want  
2 you to mention any names. Just listen to the question carefully.  
3 was your son killed during this incident or at some other time?

11:48:54

4 A. It was during the first incident when I went home and I  
5 said I was going to look for the other children. I found out  
6 that he had been killed. He was shot in the jaw, and the bullet  
7 came from his head and he died. In fact, they had already broken  
8 in the house.

9 Q. where was your son killed?

11:49:16

10 A. Back of the mosque. There, my house is.

11 Q. How long did the bodies remain at the mosque?

12 A. I left the mosque on Friday. Saturday, Sunday, Monday,  
13 when I found out that all the bodies were decomposed. Some bust  
14 right inside the mosque.

11:50:12

15 Q. witness, are you okay?

16 A. I'm okay.

17 Q. I only have a few more questions for you, witness.

18 A. Go ahead.

19 Q. what happened to the bodies that were at the mosque?

11:50:59

20 A. Inside this mosque, we have the gravediggers for the  
21 cemetery. They used to pray with us. So I told them that I  
22 would give them something so as to clear them out of the mosque.  
23 So there's a cemetery by. It is a Christian cemetery at  
24 Parsonage Street. So we dragged some. we took some zincs that  
25 were burned from the house, and we dragged them to the cemetery.  
26 And we opened the tombs and put them in there, the rotten bodies,  
27 the bodies that were decomposed.

11:51:24

28 Q. witness, did the armed men do anything to you at all?

29 A. Yes.

1 Q. Please tell the Court what they did to you.

2 A. They put their hands in my pocket and they took the money.

3 And when I was thrown to the ground, they thought that I had

4 died. Somebody jumped on my stomach, and they said, well, I

11:52:47 5 should die by stepping on me, because they didn't have any

6 bullets in their magazines.

7 Q. And how much money was taken from you?

8 A. Just 15.000. when I had given them the 80 --

9 THE INTERPRETER: Your Honours, I couldn't get the witness

11:53:40 10 properly. Let him go a little bit slower.

11 MS STEVENS:

12 Q. witness, go a little bit slower.

13 A. Okay.

14 Q. I'm going to ask you the question again. How much money

11:53:49 15 did the armed men take from you?

16 A. 15.000.

17 Q. And what was the currency? 15.000 what?

18 A. Leones.

19 MS STEVENS: I have no further questions of this witness,

11:54:21 20 Your Honours.

21 PRESIDING JUDGE: Thank you, Ms Stevens.

22 Mr Metzger, please proceed.

23 CROSS-EXAMINED BY MR METZGER :

24 Q. Good morning, Mr Witness.

11:54:44 25 A. Morning, Mr Metzger.

26 Q. I just want to ask you about one thing in relation to the  
27 evidence that you've given us.

28 A. Okay.

29 Q. when Ms Stevens asked you about the people who came to the

1 mosque, you said they were disguised. Is that correct?

2 A. That is what I said.

3 Q. But they said certain things to you, and they asked you to  
4 forgive them or the people to forgive them because it wasn't  
11:55:38 5 their fault; it was the fault of President Kabbah. That's what  
6 they said to you. Is that right?

7 A. That was what they said.

8 Q. And that they wanted peace and did not want to go to the  
9 bush again. Is that also correct?

11:56:02 10 A. Yes.

11 Q. Mr witness, you will be pleased to know that I'm not going  
12 to take a long time with you. I'm sorry to have to ask you  
13 questions on this area and for all the pain that you have  
14 suffered on that day and obviously ever since. But can you help  
11:56:27 15 me for just a few minutes more.

16 A. Help you like how?

17 Q. Just answer these questions that I'm going to ask you now.

18 A. Go ahead.

19 Q. The day this occurred, I think you've told us it was a  
11:56:50 20 Friday in January 1999. Is that correct?

21 A. Okay.

22 Q. Can you remember the date, by any chance? What was the  
23 date on that particular Friday?

24 A. I cannot remember. But I know that it was in 1999, Friday.

11:57:14 25 It was during the Juma prayers when we went to pray.

26 Q. It is just, Mr witness, in case it helps us to pinpoint the  
27 time. You're sure that this was in January of 1999?

28 A. Yes.

29 Q. And was it towards the beginning or the end of January, if

1 you can help us with that.

2 A. well, I cannot remember because all I know is that we were  
3 attacked on Friday inside the mosque during 1999, one Friday.

4 Q. Okay. Thank you, Mr Witness.

11:57:58 5 Now, simply this --

6 A. Thank you.

7 Q. -- prior to that time of the attack, who was controlling  
8 Sierra Leone? Who was in charge of Sierra Leone?

9 A. President Tejan Kabbah.

11:58:20 10 Q. Thank you. And before President Tejan Kabbah came into  
11 power, is it right that it was the NPRC who were ruling the  
12 country before it was handed over to Kabbah after an election?

13 A. I can't remember. I don't know. When this happened to us,  
14 we were confused.

11:58:47 15 Q. All right, witness. I'm just asking you this because - I  
16 think we all know, I'm just asking if you know - that from 1991  
17 in this country, there was a war going on that some people call a  
18 "rebel war." Are you aware of that?

19 A. I knew that there was some fighting.

11:59:10 20 Q. And at that time, certainly in the beginning, the fighting  
21 was going on in what people called "the bush." Is that correct?

22 A. Yes, I used to hear that, that there was some fighting in  
23 the bush, but it came and met us in the mosque.

24 Q. Now, it is -- as far as you are aware, who were the people  
11:59:37 25 who were fighting against President Tejan Kabbah in the bush?

26 A. I cannot remember whether he had any enemy that was  
27 fighting him, except the day that they went and met us in the  
28 mosque. That is the day I knew.

29 Q. Okay, Mr Witness. Let me ask you this: Were you aware

1 that there were these people called rebels who were fighting  
2 against the government in the provinces before that date?

3 A. We used to hear about that, but I never saw them. I had  
4 never met with any one of them. And I knew that if you met them,  
12:00:30 5 that would be a problem, to die. You will die.

6 Q. Thank you, Mr witness. For the moment, I'm just asking you  
7 about what you heard about those rebels. Did you hear that they  
8 were called "the RUF"? Do you know that term, the name, the RUF?

9 A. These ones, I did not know their names. Any name that they  
10 give themselves, well...

11 Q. Mr witness, I'm not, for the moment, asking you about the  
12 people who came to the mosque. I'm talking about what was going  
13 on, as they put it, "in the bush," the people who were fighting  
14 against Sierra Leone, against the government. Did you know  
12:01:17 15 whether they were called the RUF?

16 A. I wouldn't be able to know. I wasn't with them, and I  
17 didn't know anybody who was with them. I was in my house  
18 peacefully. I went and prayed. I would go and pray and go back  
19 to my house.

12:01:39 20 Q. All right, Mr witness. Then let me ask it to you like  
21 this: Those people who said to you they didn't want to go to the  
22 bush again, did they give you the impression that they had come  
23 from the bush?

24 A. That was the first time that I heard that, that President  
12:02:01 25 Kabbah said that he was not going to talk to them because they  
26 are People's Army or rebels. But I don't know the name that they  
27 give themselves in the bush.

28 MR METZGER: Your Honours, I shall now ask the witness  
29 about a statement we have appearing at our page 6.378.

1 Q. Mr witness, do you remember being interviewed by someone  
2 from the special court on the 25th of February 2003?

3 A. I cannot remember because it was taken a long time.

12:03:01

4 Q. Yes. Do you remember speaking to someone and making a  
5 statement, telling them about what had happened to you on this  
6 day in 1999, January 1999?

7 A. I talked to a lot of people, but I did not have any  
8 specific one that is in my heart for that particular issue.

12:03:29

9 MR METZGER: I wonder in the circumstances if there is an  
10 original document with an affirmed -- with an affirmation that  
11 that witness has signed or appended a fingerprint to that can be  
12 shown to him.

12:03:52

13 MS STEVENS: I do have the witness's statement. I do,  
14 however, bring to Court's attention that the witness does have  
15 problems with his eyesight. He doesn't see well.

16 MR METZGER: May I just have opportunity of looking at that  
17 statement first.

18 PRESIDING JUDGE: Madam Court Attendant, please take the  
19 statement to counsel.

12:04:20

20 Madam Court Attendant, counsel first. Please give the  
21 statement, the paper, to counsel first, to Mr Metzger first, and  
22 subsequently other counsel.

23 MR METZGER: Mr witness, we will just take a few minutes to  
24 look at this document.

12:04:54

25 THE WITNESS: Mm-hmm. The place cold.

26 PRESIDING JUDGE: Madam Court Attendant, the witness has  
27 mentioned twice that he's cold. Is there anything that can be  
28 done to assist?

29 MR METZGER: I would ask now that the statement be

1 shown -- if the Bench wishes to see it, this might be  
2 appropriate, and then pass it to the witness.

3 PRESIDING JUDGE: Madam Court Attendant, may I please have  
4 a look at that document first, please.

12:05:53 5 MR METZGER: May I just take a seat while this is...

6 THE WITNESS: Okay, thank you. Much better.

7 Okay.

8 PRESIDING JUDGE: Madam Court Attendant, please return this  
9 document to Mr Metzger.

12:07:31 10 MR METZGER: I'd be grateful if it could be shown to the  
11 witness now.

12 PRESIDING JUDGE: Yes, please proceed to show it to the  
13 witness.

14 MR METZGER:

12:07:45 15 Q. Mr witness, could you just look at that document. I  
16 understand you have some difficulty with your eyes. Are you able  
17 to see the document?

18 A. Yes, I do, but I do not see the place where I signed.

19 Q. Can you please turn it to the very last page, the back

12:08:09 20 page. Can you now see your signature, Mr witness? If there's a  
21 difficulty --

22 A. Well, I don't know whether it was I that signed because I  
23 cannot see properly with this eye.

24 Q. Do you remember signing a document which was made after you  
12:08:48 25 had given your account to someone from the Prosecution?  
26 Mr witness.

27 A. Yes. I don't know the contents of this document.

28 Q. Mr witness, the document that you signed with your  
29 name - we're not using your name here to protect you --

1 A. Okay.

2 Q. -- the document that you signed with your name, was it read  
3 to you before you signed it?

12:09:45

4 A. No, I don't know whether they read any documents to me. In  
5 the mosque or in the house?

6 Q. No, this, Mr witness, would have been when the Prosecution  
7 came to you and asked you about what took place, in the year  
8 2003. Do you now remember that?

12:10:14

9 A. It has taken a long time. I do not know who made it. Now,  
10 I cannot see properly to prove that, yes. Because the people  
11 that went to take my statement, if they call their names, I would  
12 know that they were the people.

12:10:33

13 MR METZGER: Your Honour, might I try that line by asking  
14 him whether he recalls the names of the investigator and the  
15 other person present?

16 PRESIDING JUDGE: I don't think there's anything irregular  
17 with that, Mr Metzger.

18 MR METZGER: I don't see any objection. I'm very much  
19 obliged.

12:10:48

20 Q. Mr witness.

21 A. Yes.

22 Q. Do you recall the name Joseph Saffa?

23 A. Joseph Saffa? Yes.

24 Q. And Thomas Lahume?

12:11:09

25 A. Yes. Yes.

26 Q. Are those the people that you made your statement to, your  
27 first statement to the Prosecution?

28 A. Yes, Your worship. They went to my house. They met me in  
29 the parlour.



1 Q. when they had written down what you said, did they read it  
2 back to you to ask you if you agree with it?

3 A. well, it is this that I don't understand whether they read  
4 it to me and I signed, or whether they just wrote and went. In  
12:11:53 5 fact, they came there more than two or three times.

6 Q. Okay, thank you. Were you asked to sign more than one  
7 document in relation to your statement?

8 A. They made me sign one, but I cannot remember whether I  
9 signed more than one.

12:12:19 10 Q. Okay. So at least you remember signing one. When you  
11 signed that document, Mr Witness, did they read to you what is  
12 called an affirmation?

13 A. Most of these documents, they did not read them to me.  
14 They just said, okay, sign here. We want to go. And I signed in  
12:12:59 15 the parlour.

16 Q. So, Mr Witness, are you saying that you were never asked  
17 before you signed to make sure that the statement was true?

18 A. No.

19 Q. And that you had made that statement of your own free will?  
12:13:25 20 They didn't say that to you to certify that you had made the  
21 statement of your own free will?

22 A. well, they did not read the statement to me. They just  
23 take my statement.

24 MR METZGER: I don't think I can take the matter too much  
12:13:47 25 further than that. I think I've exhausted all possibilities in  
26 relation to that statement.

27 Q. Now, Mr Witness, you said that you were seen by people from  
28 the Prosecution more than two or three times. Is that correct?

29 A. Yes, once up the street, at my house, and they saw me at

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1 the back of my house. You see, I am not at home.

2 Q. Now, Mr Witness, on those other occasions, the two  
3 occasions you mentioned, were you asked to make another statement  
4 or not?

12:14:40 5 A. Each time when they came, they would ask me and they would  
6 discuss. There are times when I signed, and there are times when  
7 I did not sign.

8 Q. Now, Mr Witness, I'm in particular concerned about an  
9 interview with the Prosecution that you had on the 10th of  
10 December 2003.

11 MR METZGER: Your Honours, that's at page 6382, 6.382.

12 THE WITNESS: I can't remember that time.

13 MR METZGER:

14 Q. What I'm suggesting, Mr Witness, is that on that occasion,  
12:15:19 15 the Prosecution went through your statement, which you had  
16 already made, and asked you if you wanted to add or change  
17 anything. Can you remember that happening?

18 A. I can't remember because it has taken so long.

19 Q. Mr Witness, I'm suggesting to you that when they went  
12:15:51 20 through that procedure with you, you confirmed your statement and  
21 said you did not wish to make any alterations. Can you remember  
22 that?

23 A. I cannot remember whether I added or I deleted anything. I  
24 do not remember anything like that.

12:16:12 25 Q. Now, Mr Witness, before coming to Court to give evidence  
26 today, have you seen anybody from the Prosecution about this  
27 case?

28 A. No, My Lord. Before I came to Court today, I did not see  
29 anybody.

1 Q. Within the last few weeks before you came to court, have  
2 you seen anybody from the Prosecution about your case?

3 A. No, My Lord.

4 Q. Are you sure about that?

12:17:02 5 A. I saw my lawyer, but I did not see anybody that came from  
6 the Prosecution.

7 Q. Do you have a lawyer, Mr Witness?

8 A. I saw a lawyer before I came.

9 Q. That lawyer, is that the lawyer that you referred to as  
10 your lawyer?

11 A. The lawyer, within the court?

12 Q. Yes, the lawyer that you saw.

13 A. That's the lawyer, but that is not the time that they went  
14 and obtained the statement.

12:17:53 15 Q. No, Mr Witness. I'm not asking now about the statements  
16 that were obtained. I'm asking about your preparing to come and  
17 give evidence in this case. Okay, there's nothing sinister about  
18 it, just about your preparation for giving evidence in this case.  
19 Do you agree that you saw a lawyer from the Prosecution within  
12:18:15 20 the last few weeks of coming to court to give evidence?

21 A. I saw him.

22 Q. How many times did you see this lawyer from the  
23 Prosecution?

24 A. I saw him last week or the week before last. And I saw the  
12:18:42 25 lawyer again yesterday because I was here yesterday. I even saw  
26 the lawyer today.

27 Q. In view of the pending position, I shan't ask any further  
28 questions about that. I've just established a number of  
29 occasions.

18754

1 Mr witness, I'm now going to put to you something that is  
2 contained in a statement disclosed to us as being your statement  
3 made on the 25th of February 2003. will you listen to me,  
4 please.

12:19:28 5 A. I'm listening.

6 Q. I will start --

7 MR METZGER: In fact, Your Honours, I will read the first  
8 paragraph so that everything is in context, unless I hear any  
9 objection.

12:19:42 10 JUDGE SEBUTINDE: Presumably, page --

11 MR METZGER: 6578, Your Honours.

12 MS TAYLOR: I believe it's 6378. The 3 is not clear.

13 MR METZGER: 6378, I'm very much obliged. Even with my  
14 glasses, I'm having difficulty today.

12:20:09 15 Q. Mr witness.

16 A. Yes, My Lord.

17 Q. I'm going to read.

18 A. Yes, My Lord.

19 Q. "On a Friday during January 6, 1999 invasion on Freetown,  
12:20:22 20 at about 12.30 p.m., we were at Rogbalan mosque preparing for  
21 Friday prayers when a group of armed men entered the compound of  
22 the mosque." I will read the rest of it as we go along,  
23 Mr witness. But just about that, can I ask you, do you remember  
24 making that statement to the Prosecution?

12:20:53 25 A. Friday, 1999. I did not call a date, 6, 7, or 9.

26 Q. But other than that, you agree that that agrees with what  
27 you told the Prosecution when you made your statement?

28 A. You say Friday, 1999. But I did not mention on 6th of  
29 January.

1 Q. The next part of it is this: "By then, a lot of people  
2 from various places like Wellington, Brima Lane, Portee, Calaba  
3 Town, Looking Town, to name but a few had come to the mosque  
4 compound to seek refuge."

12:21:43 5 A. Yes, My Lord. Yes, they came to hide. Some came to pray.  
6 And since they were there for the Friday prayers, so they had to  
7 pray.

8 Q. The next sentence: "There were women, men, and children in  
9 the compound." And I'll continue: "The men who entered the  
10 compound were armed with various guns, some long and others  
11 short, cutlasses and axes. Some of them were wearing long  
12 trousers and black polo shirts, while others had shorts and black  
13 polo shirts."

14 Do you recall saying that to the Prosecution, Mr witness?

12:22:44 15 A. Yes, yes. They disguised themselves because they covered  
16 themselves with plastic. They had chalk. They had shorts. They  
17 had trousers. They had guns. I couldn't identify them.

18 Q. Mr witness, I'm not taking issue with that. It's the next  
19 thing I want to ask you about that appears in your statement.

12:23:03 20 You say, "They were rebels of the RUF. I know this because when  
21 they were addressing us, they told us that they were RUF rebels  
22 and that they were People's Army." Do you recall saying that --

23 A. Okay, yes, yes.

24 Q. And is that true, Mr Witness?

12:23:30 25 A. It's true.

26 Q. Thank you very much, Mr Witness.

27 MR METZGER: I have no further questions.

28 THE WITNESS: Thank you very much, sir.

29 PRESIDING JUDGE: Thank you, Mr Metzger.

1 MR METZGER: I don't know if there will be any further  
2 questions. But I will in due course invite the Trial Chamber to  
3 tender this, or the Prosecution to tender this as an exhibit in  
4 this case. And perhaps in these circumstances, to prevent any  
12:24:01 5 confusion whatsoever, both the witness statement of the 25th of  
6 February 2003 and the interview notes of the 10th of December  
7 2003.

8 PRESIDING JUDGE: I'm not sure which counsel is next.

9 [Trial Chamber confers]

12:24:57 10 PRESIDING JUDGE: Mr Manley-Spaine, is it yourself next?

11 MR MANLEY-SPAINE: Yes, Your Honour.

12 PRESIDING JUDGE: Very well, proceed.

13 MR MANLEY-SPAINE: I have no questions for this witness.

14 PRESIDING JUDGE: Thank you, Mr Manley-Spaine.

12:25:09 15 Mr Harris.

16 MR HARRIS: Your Honour, I have no questions.

17 PRESIDING JUDGE: Thank you.

18 Re-examination.

19 MS STEVENS: None.

12:25:37 20 PRESIDING JUDGE: Thank you.

21 [Trial Chamber confers]

22 PRESIDING JUDGE: Mr Metzger, I note you are on your feet.

23 MR METZGER: Sorry, I just rose so that we can make a note  
24 of, if it's being exhibited, what number --

12:26:21 25 PRESIDING JUDGE: Are you seeking to tender the document as  
26 a Defence document? Is that what you're seeking to tender?

27 MR METZGER: Indeed.

28 PRESIDING JUDGE: There was a little pause. Before I asked  
29 the Prosecution if they had any re-examination, you hadn't

1 tendered. But let's see what Prosecution say to that application  
2 to tender. Has the Prosecution any comment on that application  
3 to tender the document?

4 MS STEVENS: No, Your Honour. We have no objections.

12:26:48 5 JUDGE SEBUTINDE: I just wish, you know, Mr Metzger to  
6 clarify. You wish to tender this document in on what grounds, as  
7 what, as proof of what?

8 MR METZGER: As proof of at the stage of 25th of February  
9 2003, this witness consistent in terms of his last answer at the  
10 end of the first paragraph states that his awareness of the  
11 people attacking the mosque as being rebels of the RUF and his  
12 knowledge or how he came to know that they were rebels of the  
13 RUF.

14 JUDGE SEBUTINDE: And is this inconsistent with his viva  
15 voce evidence?

16 MR METZGER: It seems to have been the position in relation  
17 to the evidence he gave in chief and the early part of my  
18 cross-examination, because he seems to shy away from saying that,  
19 in fact, these people were the rebels of the RUF. He didn't know  
12:27:44 20 where they came from. That was the note that I had. He simply  
21 said, as I recall, that these were people who were saying that  
22 they didn't want to go to the bush and that it wasn't their  
23 fault; it was President Kabbah's fault.

24 But bearing in mind that the Prosecution have adduced this  
12:28:05 25 evidence, in view of the application I made before this witness  
26 was called on the basis that there is a link as between the two,  
27 it was my understanding that that is why they were calling this  
28 witness.

29 JUDGE SEBUTINDE: Mr Metzger, I only seek to get a

1 clarification from you as to whether you're tendering these  
2 documents in proof of a prior inconsistency. That is all I'm  
3 asking.

4 MR METZGER: Yes, Your Honour.

12:28:31 5 JUDGE SEBUTINDE: And that would be the whole statement,  
6 you said?

7 MR METZGER: The part that I referred him to, so the first  
8 paragraph. It's really the last sentence of that which was  
9 inconsistent with his viva voce in-chief and in the early part of  
10 my cross-examination certainly. Yes, the last two sentences of  
11 the first paragraph.

12 JUDGE LUSSICK: Mr Metzger, just to clear this up, are you  
13 only tendering the first paragraph? I understood before you were  
14 tendering not only that statement, but the consequent interview  
15 notes.

12:29:18 16 MR METZGER: Yes. But I am relying on the last two  
17 sentences of the first paragraph and the fact that he confirms it  
18 in the interview of the 10th of December 2003 where, unless we  
19 have evidence to the contrary, the procedure, shall we say,  
20 carried out by the Prosecution in confirming witness evidence  
21 ought necessarily to have included him having his statement read  
22 back to him or discussed in its entirety and seeing whether he  
23 wished to alter or change anything in it.

24 [Trial Chamber deliberates]

12:30:21 25 PRESIDING JUDGE: That will be a Defence exhibit. I think  
26 it's 4 or 5.

27 MS EDMONDS: I think it's number 5.

28 PRESIDING JUDGE: And there are two parts to it. So  
29 therefore, the main statement, the several pages, will be D5-A.



1 And the one-part page affirmation will be D5-B.

2 MR METZGER: Again, just for clarification, I do understand  
3 that this Court will be deciding matters in terms of the evidence  
4 that it hears, and all these documents that are disclosed or  
5 tendered are in order to assist in judging the weight of the  
6 evidence and how to direct one's mind to what issues the evidence  
7 goes to.

12:30:59

8 [Exhibit No. D5-A was admitted]

9 [Exhibit No. D5-B was admitted]

12:31:12

10 MS STEVENS: Your Honour, I was on my feet before you'd  
11 asked for the exhibit number. But I simply want to state for the  
12 record that although we have no objections to the Defence  
13 tendering this statement into evidence, for the record, I do wish  
14 to point out that it is our submission that the last sentence to  
15 which my learned friend made reference to and as contained in the  
16 witness statement, i.e., that they were rebels of the RUF, it is  
17 our submission that that was not inconsistent with the testimony  
18 of this witness.

12:31:44

19 PRESIDING JUDGE: I think that would be -- that type of  
20 submission, Ms Stevens, would be appropriate when making  
21 submissions on weight of evidence, et cetera, at the end.

12:32:07

22 Mr witness, that is the end of your evidence. And we thank  
23 you for coming here to the Court today to tell your story. We  
24 will now adjourn. It seems appropriate, since it's so close to  
25 our usual time. We will adjourn to 2.15.

12:33:15

26 Madam Court Attendant, please adjourn the Court.

27 [The witness stands down]

28 [Luncheon recess taken at 12.33 p.m.]

29 [Tb150405C-CR]

**EXHIBITS:**

Exhibit No. D5-A	49
Exhibit No. D5-B	49

**WITNESSES FOR THE PROSECUTION:**

WITNESS: <b>TF1-256</b>	2
CROSS-EXAMINED BY MR METZGER	2
CROSS-EXAMINED BY MR MANLEY-SPAINE	14
CROSS-EXAMINED BY MR FOFANAH	19
WITNESS: <b>TF1-021</b>	24
EXAMINED BY MS STEVENS	25
CROSS-EXAMINED BY MR METZGER	34
WITNESS: <b>TF1-253</b>	50
EXAMINED BY MR BANGURA	50

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ANNEX B

PRIOR TRIAL TRANSCRIPT OF TF1-083

1. TF1-083, AFRC Trial Transcript, 8 April 2005

[Note: first page of witness' testimony (page 45) provided in Annex C as public version of page contains redaction made by WVS]

18762

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-16-T  
TRIAL CHAMBER I

THE PROSECUTOR  
OF THE SPECIAL COURT  
V.  
ALEX TAMBA BRIMA  
BRIMA KAMARA  
SANTIGIE KANU

FRIDAY, 8 APRIL 2005  
9.25 A.M.  
TRIAL

Before the Judges:

Teresa Doherty, Presiding  
Julia Sebutinde  
Richard Lussick

For Chambers:

Mr Simon Meisenberg  
Mr Matthias Reuss

For the Registry:

Mr Neil Gibson

For the Prosecution:

Ms Lesley Taylor  
Ms Sharan Parmar  
Mr Robert Braun  
Ms Jennifer Beckley (intern)  
Mr Mark wallbridge (Case Manager)

For the Principal Defender:

Ms Claire Carlton-Hanciles

For the accused Alex Tamba Brima:

Ms Glenna Thompson  
Mr Osman K Kamara

For the accused Brima Kamara:

Mr Mohamed Pa-Momo Fofanah  
Mr Abdul Rahman Mansaray

For the accused Santigie Kanu:

Mr Abibola Manley-Spaine  
Ms Karlijn van der Voort

1 A. I do not even know the names of these people that you've called. I  
2 said the man who captured us was at Gberi and he was the commander that I  
3 knew. In fact, all these people that you've called, I have never seen them  
4 with my eyes. I do not know about them. You see, what they did in our  
5 town is what I know. I do not know them at all.

12:03:19

6 MR FOFANAH: That is all. Thank you.

7 PRESIDING JUDGE: Any re-examination?

8 MS PARMAR: Your Honours, there are no questions for re-examination  
9 for this witness.

12:03:43

10 PRESIDING JUDGE: Thank you, Ms Parmar. Mr Witness, thank you very  
11 much for coming to the Court. Your evidence is all finished and you may  
12 now leave the Court. Thank you for coming.

13 THE WITNESS: Okay.

12:04:09

14 PRESIDING JUDGE: I think possibly it would be appropriate to have a  
15 short adjournment now to allow the witness to go and also to have an  
16 adjournment generally. Quarter past 12.00, please, counsel.

17 MR COURT ATTENDANT: All rise.

18 [The witness withdrew]

19 [Recess taken at 12.05 p.m.]

12:08:09

20 [The witness entered court]

21 [On resuming at 12.15 p.m.]

22 PRESIDING JUDGE: Yes, Ms Taylor.

12:15:41

23 MS TAYLOR: Your Honours, the next witness will be TF1-083. This  
24 witness will give evidence in the Temne language and will be led in chief  
25 by my learned friend Mr Braun.

26 PRESIDING JUDGE: Thank you. Where is Mr Braun? Please proceed,  
27 Mr Braun. They have to swear in the witness first, please, Mr Court  
28 Attendant.

29 WITNESS: TF1-083 [Sworn]

1 A. Presently I have nothing to do except in the morning I will go out in  
2 the street to beg for what I will eat.

3 Q. Were you ever a member of any armed group at any time?

4 A. One day I have never joined any group to fight.

12:20:51 5 Q. Did you ever use a weapon during the conflict in Sierra Leone?

6 A. One day I have never held a gun.

7 JUDGE SEBUTINDE: Sorry, I don't understand these answers. Does he  
8 mean that he used a weapon for one day or does he mean never?

9 MR BRAUN:

12:21:31 10 Q. Mr witness, can you clarify your answers, please? When you said "one  
11 day," what do you mean by that?

12 A. To say I'll go to fight. I've never held a gun to fight.

13 MR BRAUN: Your Honour, is your question clarified?

14 JUDGE SEBUTINDE: I will understand that to mean "No, I have never."

12:22:21 15 MR BRAUN: That is what I understood as well.

16 MS THOMPSON: Your Honours, the literal translation from Krio to  
17 English, that is what we are having. One day in Krio is actually never.  
18 And he's actually speaking a mixed Krio and Temne. That's the reason for  
19 the confusion.

12:22:34 20 JUDGE SEBUTINDE: Then could we ask Mr Interpreter, who is supposed  
21 to address us in English, to understand that he should address us in  
22 English and not a mixture of English and some other language.

23 MR BRAUN: May I proceed?

24 Q. Mr witness, where did you live in January 1999?

12:23:11 25 A. I was in Kissy, Kissy, at Kissy.

26 Q. In what town is Kissy located, Mr witness?

27 A. At Kissy in Freetown.

28 Q. Thank you.

29 A. Yeah.

1 Q. Before you answer my question -- before I put my next question,  
2 please remember that you don't have to mention any names. Who lived with  
3 you at that time?

12:24:01

4 A. I was living with my elder brother and his wife and his children, and  
5 our younger sister.

6 Q. How old was your sister at that time?

7 A. She was 15 years old. 15 years old.

8 Q. Mr witness, did anything happen in Freetown in January 1999?

9 A. Yes.

12:24:43

10 Q. Would you please tell us.

11 A. In January 1999, so during that time it was the month of Ramadan. So  
12 we were sleeping. While sleeping -- by the time we were ready to eat the  
13 early morning food, we were woken up.

12:25:37

14 MR BRAUN: Your Honour, I have the impression that there are some  
15 problems with the translation. I have the impression that someone is  
16 assisting the translation. Maybe I am wrong, but I just wanted to clarify  
17 before I proceed.

18 PRESIDING JUDGE: We didn't hear part of what you said, Mr Braun.  
19 You are saying somebody is doing what with the translation?

12:25:50

20 MR BRAUN: I have the impression that the translator is assisted by a  
21 second person, but maybe I'm wrong.

22 JUDGE LUSSICK: I think, Mr Braun, that last answer didn't make  
23 sense. If you want to ask that question again.

12:26:27

24 PRESIDING JUDGE: And on the point of interpreters, I believe there  
25 are more than one interpreter in the booth. But only one is interpreting,  
26 so if someone is interfering, they should not do so.

27 MR BRAUN: Your Honour, I will just move on.

28 Q. I will repeat the question again. Mr witness, could you --

29 A. Yes.

1 Q. Tell us, did anything happen in Freetown in January 1999?

2 A. Yes.

3 Q. Please tell us.

4 A. So in January 1999 it was the month of Ramadan.

12:27:35 5 Q. Do you recall the date you're speaking of now?

6 A. Yes, it was January 6.

7 Q. What happened on January the 6th of 1999?

8 A. What happened in the 6th of January 1999, it was the month of  
9 Ramadan. All of us were fasting. So when we entered, we lied down  
10 sleeping. We were woken up by firing.

12:28:11 11 Q. What happened next?

12 A. During that time, when we were ready to eat the midnight food, when  
13 we were woken up. The rebels started firing. They woke us up. It was  
14 around 4.00. So they started saying, "We have come. We have come. When  
15 you thought we wouldn't be able to come back, we went to the bush, now we  
16 are back. Now we are not going anywhere. We are not going to any bush.  
17 We've come for peace. If the peace does not sustain, then you will know  
18 what will happen."

12:28:48 19 Q. Mr witness, you just said "The rebels have come." What is your  
20 understanding of rebels?

21 A. What I knew about the rebels, so like now if I have money or I have  
22 property and someone move and took my property by violence without me  
23 giving it to him. Saying "You take this. You take it from me." Using  
24 violence with their gun and saying that "If you say anything I am going to  
25 kill you," then that is a rebel.

12:29:56 26 Q. Did you see any rebels on the 6th of January 1999?

27 A. Yes.

28 Q. How did they look like?

29 A. Well, they dressed in combat.



1 Q. Mr Witness, did anything happen after the arrival of the rebels in  
2 Freetown?

3 A. Yes. Yes.

4 Q. What happened?

12:30:57 5 A. So when they entered early in the morning by daybreak whoever is --  
6 if they meet you in your room locked up, you are afraid to come out. If  
7 your door is locked, they will kick at your door and they will say, "We  
8 have come for peace. When the ECOMOG came you were supporting them leaving  
9 us your brothers. Now we have gone to the bush and now we are back. Now  
12:31:36 10 we are back you have locked your door. If anyone locks his or her door, if  
11 we don't kill you, then we are going to punish you severely."

12 Q. Apart from that, did anything else happen, Mr Witness.

13 A. Yes.

14 Q. Please tell us.

12:32:07 15 A. So when they entered in the 6th of January, it took about ten days,  
16 at about 8.00 to 9.00. In the area where we were living there was a  
17 pharmacy.

18 Q. Mr Witness, did anything happen before?

19 A. Yes. In the morning we were sitting in the house, me and my  
12:32:56 20 brothers. We had no place to go, so my brother was a driver. He is an  
21 apprentice. In the morning my brother's friends started coming in and they  
22 said, "Your apprentice brother has been killed by the rebels."

23 Q. Who told you that?

24 A. The friends of my brother.

12:33:33 25 Q. Did they tell you why this man was killed by the rebels?

26 A. Well, when they entered on the 6th of January, early that morning --  
27 when we heard the firing some people were running helter-skelter and he  
28 went out and he was killed. And they burnt down all the vehicles that  
29 morning at Grassfield [phon].

1 Q. Mr witness, you just mentioned a pharmacy. Did anything happen with  
2 this pharmacy?

3 A. Yes, I'm coming up to that. Yes, I am coming to that.

4 Q. Please do so.

12:34:47 5 A. So when they entered on the 6th January, early in the morning, it was  
6 the tenth day at about 8.00, because when they entered, they took over the  
7 entire town, so everybody was -- we were in our house. In that house the  
8 people that we live together there is a pharmacy in the area. The others  
9 went out and they came back to say the pharmacy has been burnt down. So we  
10 were afraid to go out until when three rebels came to our house. When they  
11 came, they kicked at our doors and entered inside. When they entered  
12 inside they started asking us for money. They asking us. When they  
13 entered, we were in the parlour. They were rushing to our rooms and we ran  
14 out. And when we ran out, we went to the other area. When we went --

12:35:19 15 Q. Mr witness, go slowly, please.

16 A. Okay.

17 Q. How many days after the rebels entered Freetown did this incident  
18 with the pharmacy happen?

19 A. When they entered on the 6th of January, the tenth day that -- it was  
12:36:32 20 on the tenth day that they burnt down the pharmacy, so when they kicked at  
21 our doors and we ran out, we looked at the pharmacy and where it used to be  
22 and all the other houses along that lane.

23 Q. Mr witness, when you say the tenth day, do you mean the 10th of  
24 January or the tenth day after the rebels arrived?

12:37:03 25 A. Yes.

26 Q. Now, was it ten days after the rebels arrived?

27 A. Ten days after they had arrived.

28 Q. Thank you.

29 A. Because they entered on the 6th of January and after ten days.

1 Q. Now, did you see the pharmacy burn?

2 A. The pharmacy, when I ran out, I saw the pharmacy on fire. I saw it  
3 and all the other houses along that lane were on fire.

4 Q. Do you know who set the pharmacy and the other houses on fire?

12:38:11 5 A. The houses, it was the rebels. I don't know exactly who burned them  
6 down, but I believe it was the rebels because they were tense. That was  
7 why they came and kicked at our doors.

8 Q. Now, after the rebels came to your house and asked for money, what  
9 did you do?

12:38:53 10 A. Well, what we did -- well, at that time when they entered, I was  
11 having 350, but when they entered, I cut my pants and I -- it was double,  
12 so I cut part of it and I kept the money in the pants. Then I put on my  
13 trousers. I put on my shorts and trousers.

14 Q. And where did you go?

12:39:28 15 A. When they kicked at the door, I ran out. I ran out, because when we  
16 came out, starting from the pharmacy all the other houses in that lane when  
17 they kicked at our doors -- well, everybody ran out.

18 Q. Where did you go, Mr witness?

19 A. When they kicked our doors, we ran out. This house it was in -- they  
12:40:06 20 have just roofed it. It was almost between 8.00 to 9.00. The house was  
21 newly roofed. We entered into the house, me and my brother together with  
22 our younger sister. That is where we took refuge that night.

23 Q. Can you tell us where this house with the new roof was located?

24 A. Well, it was around the area, it was back of -- like where I'm  
12:40:46 25 sitting here. Like if you look at the other lane at the back.

26 Q. So it was very close to your house; is that correct?

27 A. It was before our house. It was -- it is just the same area. You  
28 see, when we talk about an area, you go there. It is not that it is  
29 opposite my house, but it is the same area.

1 Q. So what happened after you took refuge in this house?

2 A. So when we took refuge in this house, at that night we were there,  
3 then two rebels came. They were having some flashlight, lighting. When  
4 they came, they saw us in this house. When they met us there, they took my  
12:41:58 5 brother's wife out and we also dispersed. We ran, me and my brother.

6 Q. Where did you go?

7 A. Well, when my brother came out and ran, I too came out and ran.  
8 There is a river by the side and there are plantations. I went there. My  
9 brother went out and ran at that night.

12:42:33 10 Q. What happened next?

11 A. After that -- after they have taken my brother's wife, the same night  
12 she came back calling. She was calling and I answered. She came where we  
13 were under the bananas and we stood there there by 4.00, between 4.00, 5.00  
14 and 6.00 my brother came shouting for us and the children, and when he  
12:43:15 15 called and I answered. When I answered, he came. He called his wife.  
16 When he called his wife, he asked her: "What did they do with you?" She  
17 said, "When they took me, they raped me."

18 Q. What did you do next, Mr witness?

19 A. After that the rebels were all over Kissy area. My brother said,  
12:44:01 20 "Well, let us leave this area. Let us move to Thunder Hill," and when went  
21 to Thunder Hill.

22 Q. Why did you go to Thunder Hill?

23 A. Well, when we went there for those few days, it was better, peaceful.  
24 It was not like the violence that we used to have in the areas where we  
12:44:36 25 used to live.

26 Q. Where did you stay in Thunder Hill?

27 A. At Thunder Hill. When we ran from our areas, so we went and met a  
28 house. This house it has a fence and the owner -- the owner had ran - his  
29 name is Mr Conteh - when the guys entered. So when we went there, we

1 entered the house. The house is a storey building, but the house is in a  
2 compound. So the owner later came and saw us and he went and collected his  
3 children, so all of us settled in this house.

12:45:28 4 PRESIDING JUDGE: Counsel, I notice it is now time for the lunch time  
5 adjournment. So we will adjourn until 2.15. Mr witness, it is time for a  
6 break for lunch. You have promised to tell the truth on the Koran and the  
7 Rules of Court say you should not be now discussing your story until  
8 [overlapping microphones] do you understand?

9 THE WITNESS: what?

12:45:54 10 PRESIDING JUDGE: You should not talk about your evidence during the  
11 lunchtime break with any other person.

12 THE WITNESS: Um-hum. Okay.

13 PRESIDING JUDGE: Mr Court Attendant, please adjourn court to 2.15.

14 MR COURT ATTENDANT: All rise.

12:47:18 15 [Luncheon recess taken at 12.47 p.m.]

16 [TB 080305 - CR]

17 [Upon resuming at 2.18 p.m.]

18 PRESIDING JUDGE: Mr Braun, before you continue, I remind the witness  
19 of his oath. Mr witness, do you recall this morning swearing to tell the  
14:17:53 20 truth in the Court?

21 THE WITNESS: Yes.

22 PRESIDING JUDGE: That promise is still binding on you and you must  
23 continue to tell the truth; do you understand?

24 THE WITNESS: well, it isn't bad; it's good.

14:18:23 25 PRESIDING JUDGE: Please continue.

26 MR BRAUN: Thank you, Your Honour.

27 Q. Good afternoon, Mr witness.

28 A. Good afternoon.

29 Q. Mr witness, we just left off the morning when you described the

1 compound where you stayed in Thunder Hill. Now, did anything happen in  
2 Thunder Hill?

3 A. Yes.

4 Q. Please tell us.

14:19:07 5 A. Well, when I went to Thunder Hill, the man that we met, that's the  
6 owner of the house, was called PA Conte. So when I arrived there, I did  
7 not meet anybody, so I went into it.

8 Q. Just to clarify, Mr Witness, when did you meet the owner of the  
9 house?

14:19:43 10 A. It was the same day; it was the same day that we went up there.

11 Q. what happened after that?

12 A. So when we entered the house, he himself also wasn't around. He  
13 left -- when we arrived -- when we settled down, a little bit later he came  
14 to check. when he checked, he met us there.

14:20:13 15 Q. Do you know if anything happened on wednesday, 20 January 1999?

16 A. Yes, I'm coming to that. So, in January 1999 -- so, on the 20th,  
17 wednesday, a vehicle came from Waterloo part. It belonged to ECOMOG. It  
18 came shooting. when it came shooting, the rebels that were on the new  
19 road, they all ran away, and they went up to Thunder Hill.

14:21:19 20 Q. Mr witness, can you explain to us where the new road is?

21 A. The new road?

22 Q. Yes, sir.

23 A. It's on the part of Shell company. The new road passed through Shell  
24 company. The old road is on the inside.

14:21:49 25 Q. The area where the new road is, can you mention the name of the area?

26 A. The new road is found at Shell company. It's from there right up to  
27 Calaba Town, right up to Ferry Junction, right up to Uppun. That is where  
28 you have the crossroads.

29 Q. Okay, Mr Witness, go on.

1 A. So when this vehicle passed firing and the rebels went right up to  
2 Thunder Hill -- they went right up to Thunder Hill. When the vehicle had  
3 passed, we did not hear any more firing. We did not hear anything more.  
4 So they themselves did not hear anything, so they came down shooting. By  
14:23:06 5 then, it was in the evening.

6 Q. Who was shooting?

7 A. The rebels.

8 Q. Go on.

9 A. So they came down shooting. When night fell, nobody was able to move  
14:23:30 10 to anywhere. In fact, you couldn't move from my position here up to the  
11 point where the judges are. They started burning houses and they started  
12 firing, so that meant where you were found, you had to stay there.

13 Q. Who started the burning, Mr witness?

14 A. It was the rebels that were burning the houses. By then, they  
14:23:55 15 started burning, right up through the day and they continued shooting.  
16 Because when they ran from the ECOMOG, when they heard the armoured car  
17 passing, when the armoured car passed, so they came down shooting and  
18 burning houses.

19 Q. Did anything else happen?

14:24:23 20 A. Yes. So, night fell. So, in the morning, by then it was the 20th.  
21 Nobody was able to go anywhere during that day until it was around 12. So  
22 right up to Thunder Hill, we were down, so we saw people coming again from  
23 Thunder Hill, two of them, they were coming down. And they told us that  
24 they had burnt some houses and that two people had been killed in this  
14:25:06 25 house. So we turned and saw the billows of the fire.

26 Q. Mr witness, who told you that?

27 A. Those ones that were in the area, when they were coming down the  
28 hill, they were the ones that told us that. When we turned, we saw the  
29 fire.

1 Q. Mr Witness, the ones who told you about that, were these civilians or  
2 rebels?

3 A. They were civilians. They wore civilian clothes, so they were  
4 civilians, sir, because they came running, so I assumed they were  
14:25:51 5 civilians.

6 Q. what exactly did they tell you?

7 A. They told us that they had killed two people there, that is what they  
8 told us when they were going because our house was just by the main  
9 highway. So when we turned, we saw the houses burning.

10 Q. what happened next?

11 A. After that? After that, a child came from Grassfield part. He came  
12 and called his aunty, but in the house in which we were hiding, there his  
13 aunt was. when he came, he said, "Aunty," he said, "My mum is calling  
14 you." He said, "You should go to the new road, because there is no problem  
14:26:54 15 there." Then the aunt said, "No. At this time, I will not go anywhere. I  
16 will not go down anymore, because it's 3.00 and there is a curfew order,"  
17 because that was the curfew order imposed by General Kabbah that after 3.00  
18 nobody should go anywhere else. So if you go out, then you are a rebel.  
19 Because Alpha Jets was up shooting. Then the gunboats were at sea shooting  
14:27:26 20 right up the hills. So she said she wouldn't be able to go, she would wait  
21 in the morning.

22 Q. what happened next?

23 A. After that, night fell. when night fell, nobody had any opportunity  
24 of going out, because we heard shooting and burning of houses, so everybody  
14:27:56 25 was just there, hoping against hope.

26 Q. Go on, Mr Witness.

27 A. After that in the morning -- so in the morning, January 6, 1999 from  
28 the 22nd --

29 Q. Mr Witness, would you just clarify the date. what date are you



1 speaking about now?

2 A. The Thursday.

3 Q. Thursday -- what date, Mr witness?

4 A. So on the 21st.

14:28:57 5 Q. Mr witness, you are speaking of 21 January 1999; is that correct?

6 A. Yes.

7 Q. Thank you. Go on.

8 A. So Friday in the morning, on the 22nd, it was on Friday morning. I  
9 and my brother and my brother's children and our younger sister went in the  
10 morning. My brother came out first and when he came out of the gates, he  
11 stood in another house waiting. I also had my children, so when we went  
12 out, I went and met him and he said, "Fellow" -- yes, sir, he did say that.

14:29:38 13 There was no problem at new road, so what I wanted to do, go and wait, so  
14 that I could go and check at new road. "You go and wait for me in the  
15 house."

14:30:10 16 Q. Mr witness, let me just stop you there.

17 A. Okay.

18 Q. Can you please explain to us why you and your brother left the house?

19 A. why I and my brother left the house? Because on Thursday evening,  
20 for the whole of the night, there was a lot of shooting. So, in the

14:30:34 21 morning, they told us on Thursday in the afternoon, around 3.00, the chap  
22 that was sent to call his aunt, and the aunt said they had to wait until  
23 the morning, so in the morning, we saw that there was a lot of shooting in  
24 the evening, so we are trying to escape to the new road.

14:30:58 25 Q. Thank you, Mr witness. Go on.

26 A. Okay. So, when we were standing in this house, he said, "Fellow, I  
27 want you to go back to the house because yesterday we were told there was  
28 no problem at the new road, so I want to go and check there. If I check  
29 there, if everything is well, then I will come and call you."

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1 Q. who said that you will go to check?

2 A. My elder brother.

3 Q. So what did you do after that?

4 A. So I took my children and went back to the house that's Mr Conteh's  
14:31:54 5 house. When we went there, we did not know that this man had not gone  
6 anywhere; he had been waiting for us. He wanted us to get inside. So he  
7 saw two rebels going down. So we entered the house, but he had not gone.  
8 So when they came to this gate, they stood and they started banging the  
9 door.

10 Q. who was banging the doors?

11 A. The rebels. The rebels, they banged the door and said it should be  
12 opened. They said if it is not opened -- they said if they entered the  
13 house they would create a lot of trouble.

14 Q. what happened next?

14:32:42 15 A. So when we understood that they continued banging the door, so we  
16 heard the man with whom we are at new road, so all the houses are just  
17 adjacent at. He was called Sene. So both of them went to this house in  
18 which we were. When they entered -- so my brother took 50,000 Leones and  
19 said, "Fellow, this house, all my brothers and my aunt are here. Please  
14:33:23 20 don't come into this house." So he took this 50,000 and give to them. One  
21 of the rebels said that he did not want to see the 50,000, so my brother  
22 saw him cocking the gun. When he saw him cocking the gun, he ran away.  
23 This Sene, they shot at him in the leg and he fell down, but we were in the  
24 house.

14:33:45 25 Q. Mr witness, stop there.

26 A. Okay.

27 Q. who shot Sene?

28 A. The rebels.

29 Q. Can you just explain to the Court who was Sene?

1 A. Who Sene was?

2 Q. Yes.

3 A. So, he was with us at the new road. Look at our own house, look at  
4 his and when we ran, we -- we also got into the house just by the one in  
14:34:34 5 which we were hiding, so he was a neighbour of mine.

6 Q. Now, when you said that the rebels shot at Sene, did you see that?

7 A. No. I was at the gate. I did not see where he was shot, but I heard  
8 the gunshot.

9 Q. So how do you know what happened?

14:35:01 10 A. How I knew what happened? So, on Friday in the morning -- see that  
11 was the time that I had this problem. The following day, my brother went  
12 and met me at Connaught Hospital and explained to me just what I had  
13 explained to you people.

14 Q. So you were told by your brother; is that correct?

14:35:27 15 A. Yes, so it is.

16 Q. Thank you, Mr witness.

17 A. welcome.

18 Q. So after you heard the shot, what happened?

19 A. So they tried and they opened the gate. When they opened the gate,  
14:35:53 20 they went inside.

21 Q. who went inside, Mr witness?

22 A. They, the rebels; both of them went inside.

23 Q. what happened after they came inside?

24 A. When they went inside, they started asking people for money. So they  
14:36:25 25 took our money from us and having taken the money, when they wanted to go  
26 out, they said that Sene should be taken into the house.

27 Q. Can you describe how the rebels were dressed?

28 A. well, the things that they wore, they were combat.

29 Q. were they armed?

1 A. Yes, they had guns. Because that is what made them to shoot Sene.

2 Q. So what happened next?

3 A. So when they had come inside and gone outside, three others came.

4 when they came, they entered the house, just the same. They asked for

14:37:26 5 money; they asked for valuable things and when they had given them to them,  
6 they went out, because there were many in the house.

7 Q. Mr witness, you said three came. who were those three?

8 A. It's they themselves, the rebels.

9 Q. were they the same rebels that went to your house before?

14:37:53 10 A. No, that was another set. when those ones left, the others came.

11 Q. Go on.

12 A. when they had taken all the money, others came again. So, they came,

13 because after -- one after the other, and each time they came, they would

14 ask for money and they'd ask us to give them any valuable property that we

14:38:24 15 had.

16 Q. Did you give your property?

17 A. Yes, we gave them money and they asked for some other things, and we  
18 give them. And we were not there. we only went and hid there.

19 Q. when you say "they asked for", what do you mean by that?

14:38:53 20 A. They asked for money, they asked for change. They asked for valuable  
21 things. They asked for things to wear.

22 Q. what happened next, Mr witness?

23 A. Later, they came again, another set of people came. In fact, there  
24 are three. That's another set.

14:39:43 25 Q. what happened when this other set arrived?

26 A. when they came, they asked for money again, and they gave them again.

27 One of the rebels said, "This house, we are too many." He said, "I want

28 all of you to get out of this house." He said, "It's not for us, but the

29 other ones that are coming." He said, "we that are coming, we ask you for

1 money, we ask you for some valuable property, but those that are coming,  
2 perhaps when they came, they will come and kill all of you, so because of  
3 this I would like you people to leave this place."

4 Q. what did you do next?

14:40:29

5 A. So we said - we begged them. We said, "Use your own power and help  
6 us to leave this place." He said, "No. I cannot take you out of this  
7 place, but I will show you a way." He said, "Because today, we are also  
8 trying to escape," and said words. He said, "Do you see this one that is  
9 lying down, this Sene that is lying down?" He said, "You should get a

14:40:59

10 hammock for this Sene that is lying down here, put him there, and at that  
11 time, then you get out. So when you are getting out, so when you meet your  
12 companions, you will give them the impression that this one has been struck  
13 by a stray bullet, so we are taking him to the Red Cross." So during that  
14 time, we escaped from them.

14:41:19

15 Q. what did you do?

16 A. So we tried to get a cloth. This cloth, we made it - we tied it to a  
17 stick and made it in the form of a hammock, and we put him there. So  
18 during that time, I, one other old man that was called Pa Sorie, and  
19 another old man that was called --

14:42:00

20 THE INTERPRETER: I am sorry, Your Honour, I did not get that name.

21 MR BRAUN:

22 A. Mr witness, would you please repeat the names, but be aware that you  
23 don't mention any names of your family members.

24 A. Okay. I and Pa Sorie and Musa, so these two, the other two, I did  
14:42:33 25 not know their names. So five of us, we, the men, besides women, we were  
26 in the house. So we put Sene in the hammock.

27 Q. where did you go next?

28 A. We were trying to get out, just like one of the rebels advised, so we  
29 were trying to find a way to go to new road, because yesterday we were told

1 that everything was calm at new road.

2 Q. So on your way from Thunder Hill to new road, did you notice anything  
3 unusual?

14:43:45 4 A. Yes. When we left the house, I, my brother's children and my  
5 brother's wife and our younger sister, when we were going down the hill, we  
6 saw many corpses. We saw corpses littering the ground while we are going.

7 Q. What were the corpses dressed like?

8 A. They wore civilian clothes.

9 Q. Did you see something on the corpses?

14:44:30 10 A. Yes. Because some had bullet wounds, some had machete wounds.

11 Q. What happened next, Mr witness?

12 A. After that, we went. We went right up to old road at Locust and  
13 Samuels, in Samuels area. When we reached there, there we met several  
14 rebels.

14:45:25 15 Q. Can you describe these rebels?

16 A. Yes. The way they were dressed, they had the caps, but these caps,  
17 the eyes, you could only see the eyes with the mouth and the nose. You  
18 could only see the eyes, the nose and the mouth. That was what they had,  
19 and they had guns and they had machetes, and they had axes and they had  
20 knives, and they called us, and we went.

21 Q. Mr witness, you just mentioned you only saw the eyes. Can you  
22 explain that to us? Why could you only see the eyes?

23 A. Because of the caps that they wore. These caps covered the face, the  
24 eyes, the nose and the mouth. That is they left the nose simply because  
14:46:32 25 they had to breathe. The caps covered all the face, only these three parts  
26 that I mentioned were left.

27 Q. Did anything happen after you met those rebels?

28 A. Yes. When we met them, one of them took my shirt and wore it, and  
29 the other ones captured my brother and called all of us, five of us, and

1 women, and they captured them. And the other one was talking, and the  
2 other one said he was going to marry my sister. And the other one said,  
3 "No, I wouldn't marry her."

4 Q. Who wanted to marry your sister?

14:47:18 5 A. In fact, they had been struggling over marrying my sister. One would  
6 say, "I would marry her," and the other one would say, "I would marry her."

7 Q. Mr witness, my question was who was struggling over your sister?

8 A. The rebels.

9 Q. So what happened next?

14:47:45 10 A. So when they had taken my shirt and worn it, and they said we should  
11 take off our clothes so that they could go and kill us. So when they told  
12 us that, I had my trousers, it was on top, and I had the shorts beneath,  
13 and I kept the money in my pants. So I took off the trousers and I took  
14 the shorts off and when I wanted to take off the pants and one of them took  
14:48:22 15 the knife and struck me on the waist. He saw the money bulging in the  
16 pants and they took out the money.

17 Q. What happened next?

18 A. When they had shared the money amongst themselves, they said we  
19 should go right up the hill so that they could go and kill us. So two of  
14:48:53 20 them were behind us, so -- and the other two were on the right-hand side,  
21 and the other two were on the left-hand side, and the one was leading us,  
22 so we are the middle who are going.

23 Q. Who was with you when you were going with the rebels?

24 A. I, Pa Sorie, Musa and the others that I did not know, and my younger  
14:49:37 25 sister. So the other women who are with us, I did not know their names.  
26 We men were five.

27 Q. So where did you go to?

28 A. So they used another route to take us where they said they are going  
29 to kill us.

1 Q. When you were walking, did you notice anything?

2 A. Yes. When we are going, we saw corpses littering the ground and they  
3 told us, "See these ones that are lying down, they are sleeping. So you  
4 also are going to sleep like this."

14:50:50 5 Q. So what happened next?

6 A. So when we went, we met their commander. When we met the commander,  
7 one of them said, "Commander, these are the people that we brought." And  
8 the commander said, "Now," he said, "These ones, some we are coming to eat  
9 them and the others, we are going to kill them."

14:51:36 10 Q. Mr witness, can you describe the commander?

11 A. Yes, I can. [witness sobs]

12 PRESIDING JUDGE: Mr witness, would you like to have a break?

13 MR BRAUN: Your Honour, I would like to ask for a short break so the  
14 witness can collect himself again.

14:52:30 15 [Upon adjourning at 2.55 p.m.]

16 [Upon resuming at 3.03 p.m.]

17 MR BRAUN:

18 Q. Mr witness.

19 A. Yes.

15:01:58 20 Q. Would you please describe the commander to us?

21 A. Yes. The hat that the commander was wearing was round, so his  
22 bodyguards, the one that was standing on the other hand, and the other one  
23 was standing on the other hand, and they had pistols.

24 Q. What were they dressed like?

15:02:38 25 A. They had combats. The commander was fair in complexion. Then they  
26 had some marks on their ears, and they had plasters on. I'm talking about  
27 the bodyguards, and their eyes were red.

28 Q. So what happened next?

29 A. After that, they told us that, "Commander, these are the ones that I



1 brought." He said, "These ones, we are going to send them and, the others,  
2 we are going to kill them." And they told us to lie down flat on our back.

3 Q. who said that, Mr witness?

15:03:49

4 A. The commander. The commander to whom he said, "well, these are the  
5 people that we brought," and he said, "okay, these people, lay them flat on  
6 their backs and, the others, we are going to send them."

7 Q. what do you mean by send them?

8 A. well, I'm coming to that. That is they are going to cut off their  
9 hands and the others are going to be killed. when they cut off your hand,  
10 that is to say you have been sent, they say, "Go away."

15:04:15

11 Q. Okay, what happened next, Mr witness?

12 A. After that, when they had laid us down on our backs, the two of them  
13 whose names I did not know, these were the ones that were put right in  
14 front of me, and I made the third individual, and the other the individual,  
15 Pa Sorie, he was right behind me. Musa was the last one.

15:04:45

16 Q. Go on.

17 A. So, when they said we were to be sent, so these two people who I did  
18 not know, they took one of them and they took him to a corner. when he was  
19 taken to a corner, when they came, they laid us down on our back. They  
20 came with a knife with some blood. They came and took the other one and  
21 took him to the same place, the same, and when they came back, they came --  
22 the knife had some blood. So I took it for granted that they had killed  
23 him.

15:05:21

24 Q. Did you see that?

15:05:44

25 A. when they took them to the corner, the knives that they had, these  
26 knives had blood.

27 Q. But did you actually see how these persons were killed?

28 A. No, I did not see them being killed, but, when they came back, the  
29 knives that they had had blood.

1 Q. Okay. what happened after they came back?

2 A. When they came back, the commander said, "well, the rest of the  
3 individuals that have remained, they should cut off their hands and  
4 anyone's hand which is cut, they should go to Kabbah and ask for Kabbah to  
5 give him a hand."

15:06:45

6 Q. what happened next?

7 A. So when we were laid, I was number three. So they left the other  
8 one. Because where we were laid on our backs, they surrounded us and they  
9 left the other one and said they should leave me where my hand is to be  
10 cut. when he took me, he took the knife and thrust it on me here.

15:07:18

11 [Witness indicates]. He stabbed me here before he took me. He took me  
12 right off. He stabbed me here.

13 Q. what did he use to stab you?

14 A. A knife. He used a knife to stab me.

15:07:50

15 JUDGE LUSSICK: I think for the record it should be noted that the  
16 witness was indicating his left upper arm towards the back of the bicep.

17 MR BRAUN: Thank you, Your Honour.

18 Q. what happened after that, Mr witness?

19 A. So he took me where my hands were to be cut off, just like where the  
20 judges are sitting. when they took me there, they found out that in fact  
21 they had stabbed me on my left-hand side and I showed him this hand, and he  
22 put it off and he said if I were to straighten it again, I would be shot  
23 at. And the one who took me so my hand could be cut, he took my right hand  
24 and put it on a stick and they chopped it, and they chopped it two times  
25 and they chopped it here right at the ankle [as interpreted] and the second  
26 time, it was taken off.

15:08:24

27 Q. Mr witness, what did the rebels use to chop your hand?

28 A. They used an axe, because they have axes and machetes. They had an  
29 axe but the axe was so short, it was big -- it was big. The hilt is short,

15:08:50

1 but the iron is so big.

2 Q. what happened after that?

15:09:51

3 A. when my hand has been cut off, they left me. But when they left me,  
4 it was just in the same area. I was not able to see. It was a gutter, but  
5 I thought I had crossed the gutter, but I had not passed -- I did not jump  
6 over the gutter, so I fell into the gutter. So I was not able to see.

7 Q. were you able to hear?

8 A. what they had been saying, I understood everything, but I wasn't able  
9 to see, because I wasn't able to see anybody, so they came and they took Pa  
10 Sorie, because when we were laid on our backs, it was Pa Sorie who was by  
11 me, so they took him.

15:10:24

12 Q. So what happened?

13 A. His hand was also cut; he, Pa Sorie.

14 Q. How do you know that when you couldn't see?

15:10:51

15 A. when they had cut our hands, Pa Sorie, we met at Connaught.

16 Q. what is Connaught, Mr witness?

17 A. It's the hospital. The hospital where people are cured.

18 Q. So that's where you came to know that Pa Sorie's hand was cut; is  
19 that correct?

15:11:36

20 A. So it is.

21 JUDGE SEBUTINDE: sorry, counsellor, did the witness refer to a  
22 hospital where people are killed? was that the testimony?

23 MR BRAUN: Cured.

24 JUDGE SEBUTINDE: Cured.

15:11:53

25 MR BRAUN: Thank you.

26 Q. So what happened next, Mr witness?

27 A. After that, it was the turn of Musa and they came for him. When they  
28 took him, they cut off four of his fingers, so the commanders said --  
29 shouted -- said, "You should not cut off Musa's fingers. You should cut

1 off his hand, so that he can go to Kabbah and tell him to give him a new  
2 hand." So Musa started begging. He said brother, "I beg, please, don't  
3 cut off my hand because I am a driver." He said, "Please, take me along.  
4 I'd work for you, I'm driver." So when we were standing there, those that  
15:12:46 5 were surrounding us, the other one said Musa, they said, "Are you fighting  
6 against the commander?" He said, "Okay, shoot at him." So, in fact,  
7 that's where it did not end. So, that was the time that I heard the  
8 gunshot and he fell down.

9 Q. Did you see Musa later?

15:13:22 10 A. When I was laying in the gutter, when it came to a certain time, I  
11 was able to see. You know I had -- I was muddy all over, so I stood up and  
12 I looked, so I tried -- I looked and saw -- I came out of the gutter and  
13 saw Musa lying down. He was already dead.

14 Q. Do you know what happened to your sister?

15:13:58 15 A. Well, they took her along. We were able to see her later,  
16 after January 6. It took a long time. In fact, it took seven months, 10  
17 days before we were able to see her.

18 Q. Who took her away?

19 A. It was rebels who captured us that took her away. They took her to  
15:14:37 20 Occra Hill, because when she came, we asked her; that is what she told us.  
21 She told us that is where they raped her.

22 Q. What did you do after you could see again?

23 A. When I regained my sight, when I came out of the gutter, so I started  
24 shouting. I went on shouting. A man, where he was -- where he wasn't --  
15:15:29 25 when he saw me coming, he cried. He said, "Here, my son. Here, my son."  
26 I myself, you know, they tried to sever my throat, so I turned. I was not  
27 able to get water. So I turned to this old man and I told him, "Dear  
28 father, get me some water to drink," and he brought me the water in these  
29 milk pans and he brought me the water and I drank.

1 Q. So what happened next?

2 A. So when I drunk, the old man told me -- he said, "My son, now the  
3 rebels, ECOMOG and the rebels have a crossfire." So what I wanted to do,  
4 go to the mosque, and this mosque is called Rogbalan Mosque so a stray  
15:16:40 5 bullet cannot strike and kill you. So he said, "Go there and rest for a  
6 while."

7 Q. Go on, Mr Witness.

8 A. So, when I went there, I did not know whether the old man knew that  
9 there were corpses or not. When I went there, this mosque, it already had  
10 a fence right round. But outside, I started meeting corpses littering the  
11 ground. So I was able to enter into the gates. When I went to enter into  
12 the gates, I saw -- I saw corpses, a lot of them, so then I went inside.

13 Q. What were the corpses dressed like, Mr witness?

14 A. They had civilian clothes on.

15:17:49 15 Q. What did you see when you entered the mosque?

16 A. When I entered the mosque, the Imam has a door where he passes  
17 through. Right at that particular door, there was a corpse, and where he  
18 used to stand to pray, there again I met another corpse, on the left and on  
19 the right. It seems to me as before the rebels came in January 6, people  
15:18:24 20 came and hid in this particular mosque, because I met a lot of things  
21 there. They had some tripods, they had spoons, they had rice --

22 MR MANLEY-SPAIN: Your Honour, we have been sitting here, but now he  
23 is going on to opinion. It seems to me that when the rebels came, such and  
24 such happened. We are objecting to that evidence.

15:18:45 25 PRESIDING JUDGE: He has said he saw certain things.

26 MR MANLEY-SPAIN: Yes, we do not object to that, but he's going on  
27 to say that, "It seems to me".

28 PRESIDING JUDGE: He said, "It seems to me people were killed" that  
29 bit is opinion, I accept. But then, as I understand the evidence, he

1 described certain things. Perhaps we could clarify that point, Mr Braun.

2 MR BRAUN:

3 Q. Mr witness, what makes you think that those people hid in the mosque  
4 since 6 January 1999?

15:19:22 5 A. Because of the things that I met there, because -- and the great  
6 number that I met in the mosque, all of them dead. There were tripods.  
7 See, it seemed as if January 6 when the rebels came, that was the place  
8 where they went and hid.

9 PRESIDING JUDGE: Just pause there. He should describe only what he  
10 saw.

11 MR BRAUN:

12 Q. Mr witness, describe what you saw inside the mosque.

13 A. Too many corpses.

14 Q. How many corpses did you see inside the mosque?

15:20:30 15 A. There were many. See, if I can guess, 70: the children; the old;  
16 women; men.

17 Q. You mentioned you saw things in the mosque. what things did you see?

18 A. I met pants, I met tripods, I met spoons. I met a lot of other  
19 things; things to wear.

15:21:12 20 Q. what was the name of the mosque?

21 A. This mosque is called Rogbalan Mosque.

22 MR MANLEY-SPAINE: I'm asking permission for one of the accused to  
23 use the toilet.

24 PRESIDING JUDGE: Yes.

15:21:56 25 MR BRAUN: Can I proceed?

26 PRESIDING JUDGE: Yes, please proceed.

27 Q. Mr witness, did you stay in the mosque?

28 A. When my hand has been cut, when the old man said to go to the mosque  
29 so as not to come across a stray bullet that will destroy me, so I went

1 there. From 12.00 when my hand has been cut, I stayed there up to 6.00 in  
2 the evening. That was the time that I left.

3 Q. What happened after that?

4 A. After that, I came out shouting. When I went out shouting for  
15:22:57 5 sometime, see, I came to the new road and I arrived at Ferry Junction and I  
6 met ECOMOG and they took me to Connaught Hospital.

7 MR BRAUN: I have no further questions for this witness.

8 PRESIDING JUDGE: Cross-examination?

9 MR MANLEY-SPAINE: Just a few questions.

10 CROSS-EXAMINED BY MR MANLEY SPAINE :

11 Q. Mr witness, did you have any military training in your life?

12 A. Not today, not today did they teach me how to fight. I do not know  
13 how to fight.

14 Q. Do you know guns?

15:24:22 15 A. well, when they would pass them, the time that they came, whether I  
16 knew a gun or not, at the time that they came, you must know a gun.

17 Q. Do you know that there are different types of guns?

18 A. Yes.

19 Q. And do you know their names.

15:25:00 20 A. The other guns were short, some were long.

21 Q. I'm asking about names.

22 A. well, the pistol is the one that is short.

23 Q. Are you, Mr Witness, sure of the dates that you have given to this  
24 Court?

15:25:32 25 A. Sir?

26 Q. Are you sure of the dates that you have given to this Court?

27 A. Yes. I will not forget when my hand was cut off and January 6 when  
28 the rebels entered. I would not forget those.

29 Q. You said you met with the commander that you were taken to.

1 A. Yes, when we arrived there, they that took us there, he was the one  
2 that said these are the ones that we brought.

3 Q. Was he a big, tall and well-built man?

4 A. He was not that tall, but he was tall. He was not all that fat, I'm  
15:26:41 5 sorry, but he was tall.

6 MR MANLEY-SPAIN: That is all I have, Your Honour.

7 PRESIDING JUDGE: Thank you, Mr Manley-Spain. Ms Thompson.

8 CROSS-EXAMINED BY MS THOMPSON:

9 Q. Mr witness, you mentioned you had a brother who died. Was this the  
15:27:12 10 same brother you were living with?

11 A. Yes.

12 Q. That is the brother of the wife and children?

13 A. Yes, he was my elder brother. So I am the younger brother.

14 Q. Can you remember when he died?

15:27:37 15 A. It was January 6 when they entered in the morning. In the morning,  
16 my brother's friends came and told me that, because during that time,  
17 nobody was able to come out. They came and told us that they had killed  
18 him.

19 Q. So this happened in Kissy?

15:28:07 20 A. Yes.

21 Q. When you went to Thunder Hill, were you coming from your brother's  
22 house?

23 A. No.

24 Q. Where were you coming from?

15:28:27 25 A. This house, when we run away, the man's whose name was called Pa  
26 Conteh was the owner of the house, we only went there to hide.

27 Q. This house, was it at Thunder Hill?

28 A. Yes.

29 Q. So I will ask you the question again: where were you coming from



1 when you got to Pa Conteh's house?

2 A. From Kissy, new road, that area, that is where we were, so we went  
3 right up to Thunder Hill.

4 Q. At Kissy, you were staying in the house of your brother?

15:29:20 5 A. Yes, because he was only renting. He was not the owner of the house.  
6 Because wherever you rent and you stay there for two days, well, the house  
7 belongs to you.

8 Q. Pa Conteh is a relative of yours?

9 A. Pa Conteh is not a relative of mine. When we run away, that is the  
15:29:53 10 only time that I knew him and when we hid in his house.

11 Q. Now, do you recall making statements to the Prosecution?

12 THE INTERPRETER: Would the attorney please ask that question again?

13 MR THOMPSON:

14 Q. Do you recall making statements to the Prosecution, to the Office of  
15:30:28 15 the Prosecutor?

16 A. Yes.

17 Q. Now, do you recall your first statement?

18 A. Well, I cannot remember any more.

19 Q. Do you recall that you made a statement on 3 March 2003?

15:30:53 20 A. Yes.

21 Q. That statement at the end of it, were you asked to sign your name and  
22 was it read back to you, first of all?

23 JUDGE SEBUTINDE: Ms Thompson, we don't even know yet which language  
24 they were communicating in. Maybe you can lay the foundation. Before it  
15:31:30 25 is read to him, there must be a language used.

26 MR THOMPSON:

27 Q. The person from the Prosecutor's office, what language were you  
28 communicating in?

29 A. He was using English.

1 Q. And was there an interpreter present?

2 A. Yes.

3 Q. what language did the interpreter speak to you?

4 A. English.

15:32:18 5 Q. Did you understand what the interpreter was saying?

6 A. That is what I've explained.

7 Q. Let me ask you the question again. Did you understand what was being  
8 said to you or the questions that were being asked of you?

9 A. Yes.

15:32:52 10 Q. when they finished, was the statement that you had given to them read  
11 back to you?

12 A. Yes.

13 Q. It was read back to you in a language you understood?

14 A. Yes.

15:33:20 15 Q. Let me ask you this question again: what language was that that you  
16 understood?

17 A. The one that was interpreted to me?

18 Q. Yes.

19 A. He was speaking krio.

15:33:53 20 Q. Were you asked to sign or put your thumbprint to confirm that the  
21 statement was correct?

22 JUDGE SEBUTINDE: MS Thompson, I have to insist, if this witness  
23 understands and speaks krio. we have to establish that.

24 MR THOMPSON: I thought I had. Anyway, I'll put the question again.

15:34:15 25 Q. You say the interpreter spoke krio to you. Did you understand the  
26 language which is krio, which was used by the interpreter to you; did you  
27 understand?

28 A. Well, I was not able to understand everything in the language. I am  
29 now speaking Temne, simply because I do not fully understand krio. well,

1 seeing as it is Temne that I understand better, that is why I said that I  
2 was coming to talk Temne in this Court.

3 Q. At the time you told them that you agreed with what was in your  
4 statement, you didn't fully understand what was in that statement?

15:35:18 5 A. Not at all. What I understood was what I explained.

6 Q. Was your statement given -- before I ask that, can I ask this: can  
7 you write your name?

8 A. Not at all.

9 Q. Can you use a thumbprint?

15:35:58 10 A. Yes.

11 MR THOMPSON: Your Honour, at this stage, may I ask -- I don't know  
12 if they have the original here, but may I ask if --

13 MS TAYLOR: I have a photocopy of the original.

14 MR THOMPSON: Thank you.

15:36:55 15 Q. Were you given a pen and asked to write anything on the piece of  
16 paper that the person was writing on?

17 A. Yes.

18 Q. Did you understand the reason for that? Was it explained to you the  
19 reason for getting you to sign, to write your initials on this piece of  
20 paper?

15:37:30 21 A. Yes.

22 Q. And you understood that is to confirm that the statement you had  
23 given was true and correct?

24 A. Yes.

15:38:01 25 MR THOMPSON: Your Honour, I don't want to tender it. I just want  
26 him to identify that in fact he wrote on it.

27 JUDGE SEBUTINDE: What did he write? What is written on it?

28 MR THOMPSON: The initials on each and every page.

29 JUDGE SEBUTINDE: What initials?

1 MR THOMPSON: His initials.

2 JUDGE SEBUTINDE: what are those? Do you see anything?

3 MR THOMPSON: Yes, AS, that is why I ask for him to --

4 PRESIDING JUDGE: Please show the document to the witness.

15:38:36

5 [Document shown to witness]

6 MR BRAUN: Your Honour, I just want to mention that maybe the witness  
7 has been told not to mention his name when he is shown his initials.

8 PRESIDING JUDGE: Yes. Do you understand what was said, Mr Witness;  
9 you should not mention your name. Do you understand this?

15:38:54

10 THE WITNESS: Yes.

11 MR THOMPSON:

12 Q. Now, witness, bearing in mind what you've just been told, if you look  
13 at the bottom right-hand corner of the first page, can you see that? The  
14 bottom right-hand corner. Are you looking at it? Do you recognise  
15 something that you wrote on it?

15:39:32

16 A. Yes.

17 Q. They're big letters. You wrote that; did you?

18 A. Yes.

19 Q. And if you turn the page, you will see on the pages different -- it's  
20 on the next page and the page after that.

15:40:02

21 MR THOMPSON: Perhaps the witness can be assisted.

22 Q. Do you see the same thing on those pages?

23 PRESIDING JUDGE: Mr Attendant, would you please assist the witness.

24 THE WITNESS: Yes.

15:40:31

25 MR THOMPSON: And the page after that. Then we can just go to the  
26 last page.

27 Q. You recognise those letters?

28 A. Yes.

29 Q. That statement was read back to you and you signed it?

1 PRESIDING JUDGE: You mean signed or initialed?

2 MR THOMPSON: Initialed.

3 THE WITNESS: Yes.

4 JUDGE SEBUTINDE: Sorry, that was two questions in one. Is the yes  
15:41:05 5 to the reading back, or is it yes to the initialing?

6 MR THOMPSON: I will ask him again.

7 Q. The statement was read back to you?

8 A. Yes.

9 Q. And initialed?

10 A. Yes.  
15:41:20

11 JUDGE SEBUTINDE: We would like also to know in what language the  
12 statement was read back.

13 MR THOMPSON:

14 Q. Can you tell the Court in what language the statement was read back  
15:41:31 15 to you?

16 A. In Krio.

17 Q. Now, did you mention Pa Conteh, the owner of the house in Thunder  
18 Hill to the person who was interviewing you?

19 JUDGE SEBUTINDE: Sorry to keep interpreting, counsel. Did you ask  
15:41:58 20 the witness whether he initialed the statement, and he said yes?

21 MR THOMPSON: He said yes.

22 Q. Did you mention Pa Conteh to the person who was interviewing you?

23 A. Yes, I mentioned it, because it was in his house that we hid.

24 MR THOMPSON: Your Honour, I'm looking at page 6445 of your bundle.

15:42:41 25 Q. Did you say this to the person interviewing you, "we all run away to  
26 Thunder Hill, to the house of a relative of mine"? Did you tell them that?

27 A. No.

28 Q. You didn't?

29 A. No. Pa Conteh, that was the first time that we knew him. That was

1 the time that I accepted that, because when something pushes us to go to  
2 somebody's house and they accept you, we will take it for granted that he's  
3 a relative of yours. we did not pay him for that, for the time that we  
4 spent in his house.

15:43:25

5 Q. The question, Mr witness, did you say to the Prosecution, "we all run  
6 away to Thunder Hill to the house of a relative of mine"?

7 PRESIDING JUDGE: Ms Thompson, you've already asked that question and  
8 there is an answer.

9 THE WITNESS: No, no.

15:43:47

10 MR THOMPSON: I will go on.

11 Q. Can you tell the Court how long you were in Thunder Hill for?

12 A. Yes.

13 Q. How long?

15:44:22

14 A. well, we left Kissy, because they were - after 10 days, the 11th  
15 day -- in fact, we spent 11 days there because after 10 days, that was the  
16 time that we went up to Thunder Hill.

17 Q. How long were you in Thunder Hill for?

18 A. The days that we spent there?

19 Q. Yes.

15:44:56

20 A. That was after January 6. That was the time they burnt the pharmacy  
21 and the other houses. It was just that particular day that we left that we  
22 went up to Thunder Hill.

23 JUDGE SEBUTINDE: Mr witness, please answer the question directly.  
24 Counsel has asked you how many days did you spend in Thunder Hill. You are  
25 the one who knows that answer.

15:45:21

26 THE WITNESS:

27 A. That is why I said okay. It's around 10 days.

28 Q. And in that 10 days, were you living in the same house all the time?

29 A. Yes.

1 Q. That is Pa Conteh's house?

2 A. Yes, because at that time, we had no way out. Yes.

3 Q. This incident of Sene which you have described to the Court, where  
4 did it happen? In Thunder Hill or in Kissy?

15:46:38 5 A. It was at Thunder Hill.

6 Q. How did you know Sene?

7 A. Sene? When we were at Kissi, new road, so we were in the old house,  
8 so he was on the opposite side, the house on the opposite side.

9 Q. Did you tell the Prosecution -- Your Honours, I'm looking at 6445 --  
10 "Sene was a man about 30 years old and lived close to my brother whose next  
11 house in Thunder Hill we had taken refuge in."

12 A. Your Honour, I do not know Sene's age, because I do not know where he  
13 was born. I only knew him as a man who was living in the same area as me.

14 Q. Did you say to the person interviewing you that he lived close to  
15 your brother whose next house in Thunder Hill you had taken refuge in?

16 A. No. The house in which we were at Thunder Hill, when we came from  
17 Kissi, the house in which -- the house belonged to Mr Conteh, the house in  
18 which we sought refuge. The house did not belong to my brother.

19 Q. So Sene was not a neighbour of your brother's at Kissy -- at Thunder  
20 Hill?

21 A. It was not at Thunder Hill, it was at Kissy, by New Road. We only  
22 went to Thunder Hill, because we were running away and he also ran and went  
23 to the same direction.

24 [TB080405D 4.50 p.m. - SGH]

15:48:22 25 Q. At Thunder Hill do you know where Sene was staying?

26 A. Sene was in the other house just by ours.

27 Q. At Thunder Hill, how many times did rebels go to your house?

28 A. They went there three times.

29 Q. Did you tell the person from the Prosecution who interviewed you that

1 they went to the house at Thunder Hill on three occasions?

2 A. I told -- I said that when the others leave, the others would come.  
3 The first two came. After that, three came. Later, the others that asked  
4 us to leave the house.

15:49:50 5 Q. I know that is what you said today. I am asking you about the time  
6 you made your statement. Did you tell them that at the time you made your  
7 statement?

8 A. What I explained to them was that when others left, the others would  
9 come in. When others left, the others would come in. That is what I told  
10 them.

11 Q. Well, can I just read this to you and you will agree with me or  
12 disagree with me as you see fit?

13 MS THOMPSON: Your Honour, I will start from -- I will start from  
14 "Sene says," and then it makes sense on page 6445. "Sene was a man about  
15 30 years old and lived close to my brother whose next house in Thunder  
16 Hill we had taken refuge in. Some minutes later five rebels entered  
17 inside our compound. They said things like, "'we come, but we weren't  
18 able to achieve peace. So now you will see what we will do.' A few days  
19 earlier I have seen an ECOMOG gunboat in the bay and I knew rebels were

15:51:34 20 not able to withstand them. All five rebels wore combat clothes. One  
21 had a mask that covered his full face except for the eyes. Three had  
22 guns, I had an axe -- one had an axe, one had a machete. They were all  
23 adult men, they spoke Krio to us. They called each other CO or colonel.  
24 One of the five ordered us to come out of the house. It was then that we  
15:52:43 25 saw Sene lying down inside the compound. He had been shot around his  
26 thigh. I think Sene shot..." I think there should be a word there.

27 "Sene shot as he was trying to escape from the rebels as they entered the  
28 compound. These five rebels started stealing from us." Now, you have  
29 told us that three rebels came and then another set. When did these --



1 Did you tell the Prosecution about these five rebels, first of all, let  
2 me ask you that.

3 A. What type of questions?

4 Q. Did you tell the Prosecution about five rebels coming to the house?

15:54:01 5 A. There were seven and when we went up again we met three and those  
6 were the ones that summed up to ten.

7 Q. So now there are ten rebels?

8 A. Yes.

9 Q. This is not to confuse you, I just want to find out. At Thunder Hill  
10 whilst you were staying at the house how many rebels came and when?

11 JUDGE SEBUTINDE: Counsel, are you asking for the sum total?

12 MS THOMPSON: No, no, no.

13 JUDGE SEBUTINDE: Because the witness did allude to the sum total.

14 Do ask your questions in a non-confusing way, please.

15:54:47 15 MS THOMPSON:

16 Q. The first set of rebels that came to your house; how many were there?

17 A. The first set were two.

18 Q. And then they left; is that right?

19 A. Yes, and they left.

15:55:18 20 Q. [Microphone not activated] and another set came?

21 A. Yes.

22 Q. [Microphone not activated]

23 A. Three of them came and they went inside.

24 Q. Did they subsequently leave?

15:55:39 25 A. At that time when the others had left, when they went and the others  
26 came again.

27 Q. [Microphone not activated]

28 A. Yes, the faces. Yes, at that time we saw their faces. Their faces  
29 were different.

1 Q. And how many --

2 A. Different.

3 Q. And how many were they?

4 A. Three of them came.

15:56:16 5 Q. which one of these sets told you to leave the house; the last three?

6 A. The last set that came. The last set that came, they were the ones  
7 who told us to leave the house. Because they saw that we were so many in  
8 the house, men as well as women. So they said that if we did not go out it  
9 was not for them, because they had come only to take what they wanted. But

15:56:46 10 those that were coming they would kill us, because the ones that were --  
11 the wicked ones would come. And that is why we talked to this individual  
12 to help us out.

13 Q. And they were [Microphone not activated]

14 A. Yes.

15:57:08 15 Q. Had you before told the Prosecution that it was two different rebels?

16 A. I told them that. When the others came and they had taken what they  
17 wanted to, they left. And the others came and told us to leave. And the  
18 others said that, "We had only come, you know, to take what we wanted to  
19 take from you people. But do not stay here."

15:57:47 20 Q. It is these others that gave you this advice I am asking about. Did  
21 you tell the person who took your statement that it was two people?

22 A. Yes, I told them so. They were the ones -- the last ones that came.  
23 They were the last ones that came.

24 Q. Shall we take it that your evidence is that these last ones were two  
15:58:17 25 and not three?

26 A. Yes.

27 Q. I just have two short questions for you. The scene at the mosque,  
28 you said that you could guess there were about 70. 70 people, 70 corpses.

29 A. 70, yes. Because was it not only in the mosque. Even within the

1 area, right from the lane where people would get into the mosque. That was  
2 the time -- that is where the corpses started littering right up to the  
3 gates, because the gate was fenced right round. Inside the fence there the  
4 other corpses littered. Right up to where the imam used to stand and where  
15:59:32 5 the other people used to stand we had a lot of corpses.

6 Q. That figure, is it a guess from what you saw, or is it because  
7 someone had told you that 70 people died there?

8 A. You see, I only thought about that. Nobody told me that.

9 Q. [Microphone not activated] On page 6449. Did you tell the  
16:00:05 10 Prosecution this, or the person who interviewed you this: "I later heard  
11 about 70 people died there. "I later heard about 70 people died there."  
12 Did you tell them that you heard about 70 people dying there?

13 A. Which ones?

14 Q. At the mosque.

16:00:44 15 A. That was my guess because the way I saw them littering the ground, it  
16 was a guess.

17 Q. So you didn't tell the person who interviewed you that it was  
18 something someone else told you?

19 A. Not at all.

16:01:12 20 Q. Can I just ask you this, can you recall how many times you met  
21 someone from the Prosecution?

22 A. No, I cannot remember any more.

23 Q. Is it more than once?

24 A. Yes. I cannot remember any more.

16:01:43 25 Q. I am asking if it is more than once. You may not remember.

26 A. Yes.

27 Q. Do you know a place called Sea View?

28 A. Not at all. But it's --

29 THE INTERPRETER: Your Honours, would the attorney please repeat

1 the question.

2 MS THOMPSON:

3 Q. Do you know a place called Sea view?

4 A. CBU?

16:02:08 5 Q. Sea View.

6 A. No, I cannot remember. Because even where I am sitting here I will  
7 not be able to describe here.

8 Q. Your meetings with the people from the Special Court. You just to  
9 need answer yes -- [inaudible]

16:02:46 10 A. Yes.

11 Q. Have they always taken place at the Special Court?

12 A. while we are sitting here?

13 Q. Not in this building, but in this complex?

14 A. Yes.

16:02:59 15 Q. On all occasions?

16 A. Yes.

17 Q. And was the Special Court responsible for your transportation to and  
18 from your place of residence?

19 A. Yes.

16:03:35 20 Q. Including payments for those transportation?

21 A. Yes.

22 MS THOMPSON: Thank you very much, I have no further questions.

23 PRESIDING JUDGE: Thank you, Ms Thompson. Mr Fofanah, have you any  
24 questions for the witness?

16:03:54 25 MR FOFANAH: Yes, I intend to be quite short.

26 CROSS-EXAMINED BY MR FOFANAH :

27 Q. Mr Witness, can you precisely recall the date that you were  
28 amputated?

29 A. Yes.

1 Q. What date was that?

2 A. It was on a Friday, on the 22nd.

3 Q. Of what month?

4 A. January.

16:04:30 5 Q. Was that in 1999?

6 A. Yes.

7 Q. Now, was the pharmacy that you referred to as burnt down, was it  
8 burnt before your amputation?

9 A. It was first burnt. When we ran away we went right up to Thunder  
10 Hill. Around the 22nd. When everybody was mixed up -- when everybody was  
11 mixed up in the country, that is the time that they cut off my hand. That  
12 was on a Friday on the 22nd.

13 Q. I was just saying the pharmacy was burnt before your arm was  
14 amputated; not so?

16:05:40 15 A. No. It was the pharmacy that was first burnt. Later my hand was cut  
16 off.

17 Q. That's what I am saying. Thank you.

18 A. Welcome.

19 Q. Now, you recall telling this Court --

16:06:06 20 A. Today?

21 Q. Yes.

22 A. Yes, I came and testified what happened to me and what I saw.

23 Q. Yes. When was it that the rebels first visited your house? Can you  
24 recall that date?

16:06:31 25 A. No. I cannot remember.

26 MS TAYLOR: Perhaps my friend could specify which house. The  
27 witness has in fact given evidence about two houses.

28 MR FOFANAH: I think at Grassfield. At Grassfield I guess so.

29 Q. You were staying at Grassfield before you went up the hills to

1 Thunder Hill; not so?

2 A. No, no. I did not stay at Grassfield.

3 Q. Where were you staying?

4 A. It was around the Shell Company area.

16:07:43 5 Q. Okay. You indicated to this Court that a curfew order was imposed by  
6 Tejan Kabbah in your testimony; is that true?

7 A. Yes. He imposed a curfew around at 3 o'clock and he said that  
8 whosoever was a civilian should stay in his or her house. So that if you  
9 came out he will take it for granted that you are a rebel because the

16:08:15 10 gunboats were all around. Because the gunboat was there shooting right up  
11 the hills. And the jet was right up so hovering around. Everybody should  
12 be in his house.

13 Q. Thank you very much, witness, you have stated that before. Now, who  
14 is Tejan Kabbah, or who was -- Do you know Tejan Kabbah?

16:08:30 15 A. Tejan Kabbah?

16 Q. Yes. Who is he?

17 A. I did not know him. I only used to hear about him.

18 Q. You have never heard the name Tejan Kabbah; is that what you are  
19 saying?

16:08:53 20 PRESIDING JUDGE: I don't think that is quite fair. He said, "I  
21 used to hear about him."

22 THE WITNESS: You see I used to hear about the name and he is leading  
23 all of us in Sierra Leone.

24 MR FOFANAH: And by that you mean he is the president of Sierra  
16:09:06 25 Leone?

26 A. Yes.

27 Q. So when you said that the curfew order was imposed by Tejan Kabbah,  
28 you actually meant that it was imposed by the President of Sierra Leone  
29 then?

1 A. Yes.

2 Q. Was that curfew order observed in your area where you lived at Shell  
3 Company?

4 A. Well, at that time they said whosoever came out he would be  
16:10:00 5 considered a rebel. The gunboats was up -- the alpha jet was right up and  
6 it was bombarding and that's why everybody was advised to sit in his or her  
7 house.

8 Q. So you happily stayed in doors when the curfew order was imposed; is  
9 that right?

10 JUDGE SEBUTINDE: Counsel, is that a fair question? The curfew he  
11 said would begin at three in the afternoon.

12 THE WITNESS: Yes, he should be there.

13 JUDGE SEBUTINDE: When you asked him did he stay indoors, do you mean  
14 he stayed indoors 24 hours?

15 MR FOFANAH: To determine --

16 JUDGE SEBUTINDE: You ask the question in a clear way so that even we  
17 understand what the question is.

18 MR FOFANAH: I was actually coming to that. I needed to establish  
19 first that there was a curfew order imposed and then I was coming to the  
16:10:44 20 time.

21 Q. Yes, you have just said that were you staying indoors. From what  
22 time to what time were you indoors when the curfew order was imposed?

23 A. Curfew order?

24 Q. Yes.

16:11:10 25 A. At 3 o'clock. At sharp three, everybody should not go anywhere in  
26 the afternoon right up to the next day. Right up to the next day.

27 Q. What time?

28 A. Nobody should get out of his house.

29 Q. What time of the next day?

1 A. Well, out in the morning. Say 8 o'clock or 7 o'clock, 8 o'clock,  
2 then you are free. Because if you have to find something to eat then if  
3 you have somebody to cook for you, he could cook for you. Then the 3  
4 o'clock you should not go anywhere again.

16:11:55 5 Q. So, I take it that between 8 o'clock in the morning and 3 o'clock in  
6 the afternoon you go about your normal business; is that it?

7 A. Well, at that time you wouldn't have anything to do. Except if you  
8 had a way of cooking something. If you had food, but you would not have  
9 anything extra to do.

16:12:31 10 Q. How long did this curfew order continue for?

11 A. Well, that's if I should tell you that this is the duration, I would  
12 be lying. Until when they were ousted, the time that the rebels were  
13 ousted, you know, it took -- it took some time. I wouldn't tell you the  
14 time it took for the curfew order was lifted because it took some time and  
15 I was in the hospital.

16:13:08 16 Q. So you have told this Court that the rebels came to Freetown in  
17 January 6th, 1999. When precisely was the curfew order imposed?

18 A. The time that the curfew order was imposed?

19 Q. Yes.

16:13:32 20 A. This is what I am telling you. The time that the curfew order was  
21 imposed, January 6th, 1999. When the rebels entered that was the time that  
22 Pa Kabbah imposed his curfew order. That is his soldiers -- so anybody's  
23 soldiers to oust the rebels out. So that whosoever was a civilian should  
24 not get out. But if I tell you that I knew the time that the curfew order  
16:14:04 25 was imposed and if I tell you that I knew the time the curfew order was  
26 lifted, I would be lying.

27 Q. So I take it that it was because of this curfew order that you stayed  
28 indoors from 3.00 p.m. to 6 or 7 a.m. in the morning; not so? From  
29 January 6th.



1 A. Yes.

2 Q. Now, you have stated that there were gunboats shooting from the sea  
3 and the jets flying overhead. Are you aware if these gunboats and jets  
4 actually fired anything? Releasing anything in the form of bullets or  
16:14:53 5 bombs?

6 A. Yes, they had bombs and wherever it was dropped that particular area.  
7 whosoever as was there was finished. If it landed where we are then we  
8 here are finished.

9 Q. Are you aware of any area where these bombs fell?

16:15:22 10 A. Well, I will not be able to identify because what I was fearing -- I  
11 was thinking about my life, because they have just been shooting rampantly.  
12 But if I should tell you that no, it dropped in such and such an area, you  
13 see I would be telling a lie.

14 Q. And you are not aware if those bombs fell in around the Shell Company  
16:15:59 15 area where you lived?

16 A. Not at all. I don't know whether when we had left and went up to  
17 Thunder Hill and hid there, they dropped there, I wouldn't be able to tell.

18 Q. Were the bombs dropped or were they shot at you at Thunder Hill when  
19 you were at Thunder Hill?

16:16:41 20 A. They used to shoot.

21 Q. Who used to shoot?

22 A. I didn't know them, but the shooting came from the seaside, from the  
23 gunboats. I didn't know.

24 Q. Yes, go on.

16:17:09 25 A. So, the gunboats were -- the gunboats were the ones that were  
26 shooting from the sea, so as to try to dislodge the rebels.

27 Q. You had earlier indicated that the jets were also flying where you  
28 are when you were at Thunder Hill. Did they drop any bombs on Thunder  
29 Hill, the jets?

1 A. No, the area in which I was, if I tell you that a bomb was dropped  
2 there, I will be telling a lie. But right up in the hills?

3 Q. Yes, that's what I mean right up the hills, in the hills at Thunder  
4 Hill.

16:18:01 5 A. Yes.

6 Q. What is the yes? were bombs dropped at Thunder Hill?

7 A. Yes, yes, when they shot. When the gunboats had been shooting. Yes,  
8 they used to fall there.

9 Q. Did anyone die as a result of that?

16:18:48 10 A. Well, I would not be able to know because that area -- because that  
11 particular area was a little bit above where we were. So nobody had told  
12 me that this and this had happened there or that the bombs had killed such  
13 and such people. I did not hear that.

14 Q. were houses destroyed as a result of that? Or buildings, were  
16:19:06 15 buildings destroyed as a result of that?

16 A. There again, I did not hear that because if I had heard that a bomb  
17 had destroyed the house I say I would say it here.

18 MR FOFANAH: That is all for him. Thank you very much.

19 THE WITNESS: Welcome.

16:19:24 20 PRESIDING JUDGE: Any re-examination?

21 MR BRAUN: Your Honour, there are no questions for re-examination.

22 PRESIDING JUDGE: Thank you.

23 JUDGE SEBUTINDE: Could I ask, Mr Witness, one question.

24 QUESTIONED BY THE COURT :

16:19:42 25 Q. You said to us this morning, I think, or this afternoon, that when  
26 the rebels chopped off your hand you could not see. Is that correct?

27 A. Yes.

28 Q. You fell down and you could not see.

29 A. Yes. I could not see. I fell in the gutter. I wanted to jump the

1 gutter, but by the time -- I was not able to jump the gutter, so I fell  
2 into it. I didn't see, but I heard what they said.

3 Q. The question that I want to ask you, Mr witness, is why could you not  
4 see?

16:20:31 5 A. Well, I fainted. All my blood and water were oozing, so I fell.  
6 That was why I was not able to see.

7 Q. Thank you. That will be all.

8 PRESIDING JUDGE: Thank you, Mr witness. That is your evidence  
9 before the Court. Thank you for coming.

16:21:01 10 THE WITNESS: Okay.

11 PRESIDING JUDGE: MS Taylor, do you have another witness?

12 MS TAYLOR: Yes, there is another witness available.

13 PRESIDING JUDGE: Do you require us to adjourn in order to allow the  
14 protected witness to leave?

16:21:53 15 MS TAYLOR: Well, the curtains certainly need to be closed.

16 PRESIDING JUDGE: MS Taylor, would you please deal with that for the  
17 curtains please so the witness may leave?

18 MS TAYLOR: Your Honours, I don't know if you are aware, but your  
19 microphone is on.

16:22:24 20 PRESIDING JUDGE: I beg your pardon, Ms Taylor.

21 MS TAYLOR: I notice you were having discussion with your learned  
22 sister that your microphone is on.

23 MR FOFANAH: Your Honour, may I be excused to ease myself? I am  
24 grateful.

16:23:17 25 MS TAYLOR: Your Honours, the next witness is TF1-227. He will also  
26 be led in chief by my learned friend Mr Braun. He will give evidence in  
27 English. But Your Honours were discussing having a short adjournment.  
28 Mr Braun has indicated for his own comfort he would not mind if there were  
29 a few minutes adjournment or whether he might be excused for a few minutes

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Name of Officer:

Vincent Tishekwa

Signed: 