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SCSL-03-01-T
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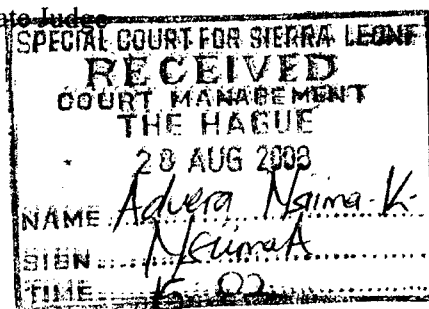
18397

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: 28 August 2008



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC WITH CONFIDENTIAL ANNEXES D TO G

**PROSECUTION NOTICE UNDER RULE 92bis FOR THE ADMISSION OF EVIDENCE RELATED
TO INTER ALIA KONO DISTRICT**

Office of the Prosecutor:

Ms. Brenda J. Hollis

Ms. Leigh Lawrie

Counsel for the Accused:

Mr. Courtenay Griffiths Q.C.

Mr. Andrew Cayley

Mr. Terry Munyard

Mr. Morris Anyah

I. INTRODUCTION

1. The Prosecution submits this filing under Rules 73, 89(C) and 92*bis* of the Rules of Procedure and Evidence of the Special Court for Sierra Leone ("**Rules**").
2. The Prosecution gives notice under Rule 92*bis* of its intention to seek admission of the prior trial transcripts and exhibits which relate to the testimony of TF1-072, TF1-074, TF1-076 and TF1-077 in other proceedings before the Special Court for Sierra Leone ("**SCSL**")¹.
3. The material which is the subject of this filing is relevant to the crimes charged in the Second Amended Indictment² and committed predominantly in the Kono District of Sierra Leone.

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*bis* of the Rules provides that:
 - (A) In addition to the provisions of Rule 92*ter*, a Chamber may, in lieu of oral testimony, admit as evidence, in whole or in part, information including written statements and transcripts, that do not go to proof of the acts and conduct of the accused.
 - (B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.
 - (C) A party wishing to submit information as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.
6. Rule 89 constitutes the basic rule regulating the admission of evidence which

¹ TF1-072 testified in *Prosecutor v. Brima et al* (SCSL-04-16-T) ("**AFRC trial**") on 1 July 2005; TF1-074 testified in *Prosecutor v. Sesay et al* (SCSL-04-15-T) ("**RUF trial**") on 12 July 2004 and in the AFRC trial on 5 July 2005; TF1-076 testified in the AFRC trial on 27 June 2005; and TF1-077 testified in the RUF trial on 20 & 21 July 2004. The Prosecution has identified the portions of the prior testimonies of these witnesses and any related exhibits which it seeks to admit via this motion and these portions and exhibits are provided in **Annexes A to G**.

² *Prosecutor v. Taylor*, SCSL-03-01-T-263, "Prosecution's Second Amended Indictment", 29 May 2007.

applies in addition to the more specific provisions contained in Rule 92bis.³ Rule 89(C) only requires that evidence be *relevant* to be admissible. There is no requirement that the evidence be both relevant and probative.⁴

7. The procedural requirements of Rule 92bis must be met by the party seeking admission of a transcript or statement *in lieu of oral testimony*, in addition to the requirements of Rule 89. Accordingly, for witness specific material to be admitted pursuant to Rules 89(C) and 92bis, the evidence must not go to proof of the acts and conduct of the accused, must be relevant and its reliability susceptible of confirmation. Rule 92bis does not otherwise limit the evidence which might be admitted under it.
8. The Prosecution, therefore, notifies the Court of its intention to seek the admission under Rules 89(C) and 92bis of the prior trial transcripts provided in the **Annexes** hereto which relate to the prior testimony of witnesses TF1-072, TF1-074, TF1-076 and TF1-077 and the exhibits provided in **Annexes C and E** which relate to the prior testimony of witness TF1-074.

III. BACKGROUND

9. On 4 April 2007, the Prosecution filed its Rule 73bis Pre-Trial Conference Materials.⁵ 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 some witnesses through the admission of prior testimony under Rule 92bis. TF1-072, TF1-074, TF1-076 and TF1-077 were included on the Witness List and identified as being such witnesses.
10. TF1-072 testified in the AFRC trial on 1 July 2005. The witness' testimony consisted of under a day of examination-in-chief and of cross-examination. No exhibits were admitted through this witness. The prior trial transcript of TF1-072

³ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.4, "Decision on Interlocutory Appeal on the Admissibility of Evidence-In-Chief in the Form of Written Statements", 30 September 2003, paras 9-10.

⁴ *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.

⁵ *Prosecutor v. Taylor*, SCSL-03-01-PT-218, "Public Rule 73bis Pre-Trial Conference Materials", 4 April 2007 ("**Pre-Trial Conference Materials**").

was disclosed in redacted format to the Defence on 17 May 2006 and in unredacted format on 2 July 2008.

11. TF1-074 testified in the RUF trial on 12 July 2004. The witness' testimony consisted of a day of examination-in-chief and of cross-examination. In the RUF trial, RUF Prosecution Exhibit No. 2 was admitted as a confidential exhibit through TF1-074. The prior trial transcript of TF1-074 was disclosed in redacted format to the Defence on 17 May 2006 and in unredacted format on 8 July 2008. RUF Prosecution Exhibit No. 2 was disclosed on 4 August 2008.
12. TF1-074 subsequently testified in the AFRC trial on 5 July 2005. The witness' testimony consisted of half a day of examination-in-chief and of cross-examination. In the AFRC trial, AFRC Exhibit No. P.27 and No. D.8 were admitted as exhibits through TF1-074, AFRC Exhibit No. D.8 being admitted confidentially. The prior trial transcript of TF1-074 was disclosed in redacted format to the Defence on 17 May 2006 and in unredacted format on 8 July 2008. AFRC Exhibit No. P.27 was disclosed on 18 August 2008 and AFRC Exhibit No. D.8, being a prior statement of TF1-074, was disclosed to the Defence unredacted on 8 July 2008.
13. TF1-076 testified in the AFRC trial on 27 June 2005. The witness' testimony consisted of about an hour of examination-in-chief and of cross-examination. No exhibits were admitted through this witness. The prior trial transcript of TF1-076 was disclosed in redacted format to the Defence on 17 May 2006 and in unredacted format to the Defence on 2 July 2008.
14. TF1-077 testified in the RUF trial on 20 and 21 July 2004. The witness' testimony consisted of about an hour of examination-in-chief on 20 July and a day of cross-examination on 21 July. No exhibits were admitted through this witness. The prior trial transcripts of TF1-077 were disclosed in redacted format to the Defence on 17 May 2006 and in unredacted format to the Defence on 2 July 2008.

IV. SUBMISSIONS

15. The jurisprudence of the SCSL clearly establishes that the Rules "favour a

flexible approach to the issue of admissibility of evidence.”⁶ The jurisprudence of the SCSL also supports the view that expedient and fair trials are promoted where sworn testimony before the Court is admitted in a subsequent trial.⁷ This jurisprudence applies the principles enshrined in Article 17 of the SCSL’s Statute regarding the Accused’s right to a fair and expeditious trial, and the principles underlining Rule 26*bis* which require that trial proceedings be conducted in a fair and expeditious manner.

The evidence is relevant

16. As required under both Rules 89(C) and 92*bis*, the evidence of TF1-072, TF1-074, TF1-076 and TF1-077 is relevant to the current proceedings as it concerns *inter alia* crimes committed in Kono District during the Indictment period.⁸
17. Witness TF1-072 gives evidence of physical violence, forced labour and looting occurring in Tombodu in Kono District, all during the Indictment period. Witness TF1-074 gives evidence of physical violence in Kaima or Kayima in Kono District, the conscription of child soldiers, and the abduction and forced labour of civilians occurring in Kono District, all during the Indictment period. Witness TF1-076 gives evidence of physical violence, sexual violence and looting in Kono District. Witness TF1-077 gives evidence of unlawful killings, physical violence, the conscription of child soldiers, the abduction and forced labour of civilians and looting occurring in Koidu and Tombodu in Kono District, all during the Indictment period.
18. In addition to specific crime base evidence, the witnesses also provide evidence relevant to the chapeau requirements of the crimes charged in the Second

⁶ *Prosecutor v. Sesay et al.*, SCSL-04-15-T-618, “Decision on Prosecution Notice Pursuant to Rule 92*bis* to Admit Information into Evidence”, 2 August 2006, p. 3, quoting with approval *Prosecutor v. Sesay et al.*, SCSL-04-15-T-391, “Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker”, 23 May 2005, para. 4.

⁷ See: *Prosecutor v. Sesay et al.*, SCSL-04-15-T-448, “Decision on the Prosecution Confidential Notice under Rule 92*bis* to Admit the Transcripts of Testimony of TF1-026, TF1-104 and TF1-169”, 9 November 2005; *Prosecutor v. Sesay et al.*, SCSL-04-15-T-557, “Decision on the Prosecution Notice under Rule 92*bis* to Admit the Transcripts of Testimony of TF1-256”, 23 May 2006; and *Prosecutor v. Sesay et al.*, SCSL-04-15-T-559, “Decision on the Prosecution Notice under Rule 92*bis* to Admit the Transcripts of Testimony of TF1-334”, 23 May 2006.

⁸ See also the summaries of the witnesses’ evidence provided as part of the Pre-Trial Conference Materials.

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.

Susceptible of Confirmation

19. As also required under Rule 92bis, the transcripts and exhibits referred to in this notice are susceptible of confirmation. At this stage the Prosecution is not required to prove that the evidence is in fact reliable, only that the reliability of the evidence is susceptible of confirmation.⁹ The phrase “susceptible of confirmation” contained in Rule 92bis (B) has been interpreted by the Appeals Chamber in the CDF trial to mean that the “proof of reliability is not a condition of admission: all that is required is that the information should be capable of corroboration in due course.”¹⁰
20. This Trial Chamber in the AFRC trial reiterated that “evidence may be excluded because it is unreliable, but it is not necessary to demonstrate the reliability of the evidence before it is admitted.”¹¹ The Trial Chamber further considered that “reliability of the evidence is something to be considered by the Trial Chamber at the end of the trial when weighing and evaluating the evidence as a whole, in light of the context and nature of the evidence itself, including the credibility and reliability of the relevant evidence.”¹²

⁹ *Prosecutor v. Norman et al.*, SCSL-04-14AR73, “Fofana – Decision on Appeal Against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, 16 May 2005, para. 27.

¹⁰ *Ibid*, para. 26, which dicta was recently referred to by this Chamber in *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 (“**Taylor Rule 92bis Decision**”), p. 4.

¹¹ *Prosecutor v. Brima et al.*, SCSL-04-16-T, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis”, 18 November 2005, page 2 (last para), citing *Prosecutor v. Brima et al.*, SCSL-04-16-T, “Decision on Joint Defence Application for Leave to Appeal from Decision on Defence Motion to Exclude All Evidence from Witness TF1-277”, 2 August 2005, para. 6.

¹² *Prosecutor v. Brima et al.*, SCSL-04-16-T, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis”, 18 November 2005, page. 3 (second full paragraph). See also *Prosecutor v. Norman et al.*, SCSL-04-14-T-447, “Decision on Prosecution’s Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C)”, 14 July 2005, page 3.

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

21. The evidence which the witnesses provide on the RUF command structure, the AFRC/RUF command structure and the relationship between the RUF and the AFRC during the Indictment period is all relevant to the several forms of liability alleged by the Prosecution in this case, including the Accused's participation in a common plan, design or purpose, and his liability based on superior authority for the crimes committed by the AFRC and RUF alliance. In relation to this evidence, it is acknowledged that Rule 92bis specifically excludes witness statements or transcripts which go to proof of the acts and conduct of the accused.
22. However, as noted by this Trial Chamber in its recent decision on Rule 92bis, "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 92bis."¹³
23. The prior trial transcripts and related exhibits for TF1-072, TF1-074, TF1-076 and TF1-077 which the Prosecution seeks to admit under Rule 92bis do not go to proof of the acts and conduct of the Accused as that term is defined and limited by the jurisprudence.

Cross-examination

24. In the recent *Taylor* Rule 92bis Decision, this Chamber noted that it is within its inherent power to order cross-examination where the evidence to be admitted under Rule 92bis: (i) is so "pivotal to the Prosecution's case and ... the person whose acts and conduct [the evidence] describes is so proximate to the accused"; or (ii) goes to a critical element of the Prosecution's case.¹⁴
25. The Prosecution considers that the following factors support the conclusion that a further cross-examination of TF1-072, TF1-074, TF1-076 and TF1-077 is not

¹³ *Taylor* Rule 92bis Decision, p. 4, citing *Prosecutor v. Galić*, IT-98-29-AR73.2, "Decision on Interlocutory Appeal Concerning Rule 92bis (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 92bis, or in the alternative, Under Rule 92ter", 12 March 2008, p. 2-3.

¹⁴ *Taylor* Rule 92bis Decision, p. 4.

required. First, the evidence provided by all four witnesses is crime base evidence, evidence which the Defence has indicated on previous occasions it will not seek to challenge.¹⁵ Although TF1-077 makes reference to Colonel Issa and states that Issa visited Tombodu many times including on one occasion to receive a diamond, the evidence does not primarily concern persons who might be considered so proximate to the Accused as to require cross-examination. Secondly, the evidence has already been tested by cross-examination by defence counsel in other proceedings; TF1-074 having been cross-examined in both the RUF and the AFRC trials. Trial Chamber I has considered this testing of evidence to be a relevant factor to be considered when determining whether to order cross-examination.¹⁶ Indeed, Trial Chamber I went so far as to find that if evidence *similar* to that being sought to be admitted under Rule 92bis had been given by other witnesses in the proceedings and this *similar* evidence had been subject to cross-examination, then a cross-examination of the *actual* Rule 92bis evidence might *not* be necessary.

26. Notwithstanding the foregoing, the Prosecution advises that, should the Chamber order cross-examination of any or all of the witnesses in question, then the Prosecution will not seek to examine-in-chief these witnesses. The Prosecution has made this determination despite any disadvantage that may occur where it

¹⁵ See Defence Counsel's statements at the Status Conference held on 20 August 2007: "We further submit that time allowed now will reduce the length of the trial in due course and hence save a great deal of money. I observe in that regard that given the nature of the case and the way in which it appears to us prima facie that the Prosecution have made this allegation against the accused, at first sight we are unable to see the relevance of the crime base witnesses, and it's an aspect of the case I would like to examine carefully in collaboration with my learned friends both for the Defence and the Prosecution with a view to seeing if we can avoid calling any such witness, save where the evidence of such a witness might impact on other aspects of the case. And of course we will need time in order to examine that. But it seems to us at first blush that none of such evidence really needs to trouble this Court." (Trial Transcript, 20 August 2007, pages 20-21 (emphasis added)). See also Defence Counsel's statements on 14 February 2008: "your Honours will recall as long ago as August of last year we outlined the way in which we intended to defend this case and indicated that as far as the crime base witnesses are concerned we didn't see the need to call any of them to give evidence. We indicated that because, as far as this degree of detail is concerned, it seems to us that we are not in a position to challenge any of it. Now, if this witness were to be naming this accused as being personally present, supervising and ordering this behaviour, then one could see that there was grounds upon which this witness should be called and should be cross-examined. I still fail to see the relevance, particularly as this Tribunal has already heard copious evidence of this nature. So, to what extent does it assist the Court to repeat that experience? Maybe I am missing something here." (Trial Transcript, 14 February 2008, page 3857, lines 7-20 (emphasis added)).

¹⁶ *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1125, "Decision on Sesay Defence Motion and Three Defence Applications to Admit 23 Witness Statements under Rule 92bis", 15 May 2008, para. 40.

does not elicit the impact of the crimes on the witnesses during examination-in-chief. In this regard, should further cross examination be allowed, limiting it to matters not previously covered would be efficient and would not impact the fair trial rights of the Accused.

V. NOTICE

27. The Prosecution gives notice of its intention to submit for admission into evidence the parts of the prior trial transcripts relating to TF1-072, TF1-074, TF1-076 and TF1-077 provided in **Annexes A, B, D, F and G**. As permitted under Rule 92bis, the Prosecution seeks to admit *parts* only of the prior testimony into evidence and wishes to exclude those sections which concern: (i) legal argument which had no impact on the evidence of the witness; (ii) trial administrative matters; and (iii) evidence of the acts and conduct of the Accused. Accordingly, portions of the transcripts set out in the aforementioned **Annexes** have been redacted on this basis.¹⁷
28. Witnesses TF1-072, TF1-074, TF1-076 and TF1-077 are protected witnesses.¹⁸ The protective measures ordered in the other proceedings before this Court continue to have effect *mutatis mutandis* in these proceedings pursuant to Rule 75(F)(i) and so their identities and any other identifying information must not be disclosed to the public or included in the public record.¹⁹ Pursuant to the witness' protected status, the public version of the transcript of TF1-074's testimony given on 5 July 2005 in the AFRC trial and published on the Special Court's website

¹⁷ This procedure also conforms to the procedure adopted at the ICTR. At the ICTR statements tendered pursuant to Rule 92bis are reviewed. Where a statement is tendered that includes information that falls within Rule 92bis and information that falls outside the Rule, the statement is admitted but the paragraphs or information that fall outside the Rule are simply not admitted into evidence. See for example *Prosecutor v. Bagosora et al*, ICTR-98-41-T, "Decision on Prosecutor's Motion for the Admission of Written Witness Statements Under Rule 92bis," 9 March 2004. This procedure has now been adopted at the SCSL – see *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.

¹⁸ The protective measures decision applicable to TF1-072, TF1-074, TF1-076 and TF1-077 is the decision given in the RUF trial, *Prosecutor v. Sesay et al.*, SCSL-05-15-T-180, "Decision on Prosecution Motion for Modification of Protective Measures for Witnesses", 5 July 2004. Pursuant to this decision, TF1-072 testified as a Category 1 witness in the AFRC trial; TF1-074 testified as a Category 1 witness in the RUF trial and in the AFRC trial; TF1-076 testified as a Category 1A witness (screen + pseudonym + voice distortion) in the AFRC trial; and TF1-077 testified as a Category 1 witness in the RUF trial.

¹⁹ See 5 July 2004 RUF decision referred to in the footnote above.

contains a redaction made by WVS. This redaction made by WVS is not included in the transcript provided in **Annex D**; accordingly **Annex D** is filed on a confidential basis. In relation to the protected witness TF1-076, the public version of the transcript of this witness' testimony given on 27 June 2005 in the AFRC trial and published on the Special Court's website contains redactions made by WVS. These redactions are not included in the transcripts provided in **Annex F**; accordingly **Annex F** is filed on a confidential basis. Finally, the protected witness TF1-077, testified in closed session in the RUF trial on 21 July; accordingly **Annex G** is filed on a confidential basis.

29. The Prosecution gives notice of its intention to submit for admission into evidence the exhibits related to the testimony of TF1-074 which are provided in **Annexes C and E**. For information, extra colour copies of AFRC Prosecution Exhibit No. 27 and RUF Exhibit No. 2 have been provided to CMS for distribution to the parties as some of the quality of the images might be compromised when they are scanned during the filing process.²⁰ **Annex E** is filed on a confidential basis as RUF Exhibit No. 2 and AFRC Exhibit No. D.8 were admitted in the RUF and AFRC Trials on a confidential basis.

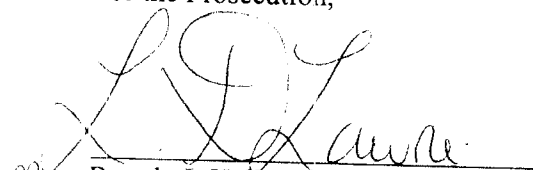
VI. CONCLUSION

30. The Prosecution hereby gives notice under Rule 92*bis* of its intention to seek admission into evidence the material identified in paragraphs 27 and 29.

Filed in The Hague,

28 August 2008

For the Prosecution,


Brenda J. Hollis
Principal Trial Attorney

²⁰ 6 extra copies have been provided for distribution as follows: 4 x judges, 1 x Chambers Legal Officer, 1 x Defence.

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LIST OF AUTHORITIES

SCSL

Prosecutor v. Taylor, SCSL-2003-01-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-T-263, "Prosecution's Second Amended Indictment", 29 May 2007

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcript, 20 August 2007

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcript, 14 February 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. Norman et al., SCSL-04-14-T

Prosecutor v. Norman et al., SCSL-2004-14AR73, "Fofana – Decision on Appeal Against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence", 16 May 2005

Prosecutor v. Norman et al., SCSL-04-14-T-447, "Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C)", 14 July 2005

Prosecutor v. Sesay, Kallon & Gbao, SCSL-2004-15-T

Prosecutor v. Sesay et al., SCSL-04-15-T-391, "Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker", 23 May 2005

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-448, "Decision on the Prosecution Confidential Notice under Rule 92bis to Admit the Transcripts of Testimony of TF1-026, TF1-104 and TF1-169", 9 November 2005

Prosecutor v. Sesay et al., SCSL-04-15-T-557, "Decision on the Prosecution Notice under Rule 92bis to Admit the Transcripts of Testimony of TF1-256", 23 May 2006

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

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Prosecutor v. Sesay et al., SCSL-04-15-T-559, "Decision on the Prosecution Notice under Rule 92bis to Admit the Transcripts of Testimony of TF1-334", 23 May 2006

Prosecutor v. Sesay et al., SCSL-04-15-T-618, "Decision on Prosecution Notice Pursuant to Rule 92bis to Admit Information into Evidence", 2 August 2006

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. Sesay et al., SCSL-04-15-T-1125, "Decision on Sesay Defence Motion and Three Defence Applications to Admit 23 Witness Statements under Rule 92bis", 15 May 2008

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

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

Prosecutor v. Brima et al., SCSL-04-16-T, "Decision on Joint Defence Application for Leave to Appeal from Decision on Defence Motion to Exclude All Evidence from Witness TF1-277", 2 August 2005

Prosecutor v. Brima et al., SCSL-04-16-T, "Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis", 18 November 2005

ICTY Cases

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

Prosecutor v. Slobodan Milošević, Case No. IT-02-54-AR73.4, "Decision on Interlocutory Appeal on the Admissibility of Evidence-In-Chief in the Form of Written Statements", 30 September 2003

<http://www.un.org/icty/milosevic/appeal/decision-e/030930.htm>

ICTR Cases

Prosecutor v. Bagosora et al., ICTR-98-41-T, "Decision on Prosecutor's Motion for the Admission of Written Witness Statements Under Rule 92bis," 9 March 2004

<http://69.94.11.53/ENGLISH/cases/Bagosora/decisions/040309.htm>

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AUTHORITIES PROVIDED

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

UNITED
NATIONS

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

64 KB
18410



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

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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,¹ 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.² 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.³ 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.⁴
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

¹ 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.

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

³ *Ibid.* par 68.

⁴ Indictment, par 11.

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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 92*bis*, 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 92*bis* 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:

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- (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.

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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".⁵ 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,⁶ 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,⁷ and (c) the evidence is in any event admissible under Rule 89(C) without the restrictions of Rule 92bis.⁸
 - (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".⁹ The prosecution responds that the appellant has misread the requirements of Rule 92bis(C)(i).¹⁰
 - (3) The appellant says that the Trial Chamber "did not engage in establishing the question of reliability".¹¹ 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.¹²
 - (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.¹³ 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,¹⁴ 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.¹⁵

⁵ 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.

⁶ 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.

⁷ *Ibid*, pars 7-14.

⁸ *Ibid*, pars 15-32, 58-62.

⁹ Interlocutory Appeal, pp 3-4, 11.

¹⁰ Response, pars 50-57.

¹¹ Interlocutory Appeal, p 3.

¹² Response, pars 63-68.

¹³ Interlocutory Appeal, p 9.

¹⁴ Response, par 72.

¹⁵ *Ibid*, par 71.

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- (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.¹⁶ The appellant also argues that, if the statement includes material which is irrelevant, the whole statement must be rejected.¹⁷ 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.¹⁸

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.¹⁹

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 92bis(A) of statements which go to proof of “the acts and conduct of the accused as charged in the indictment”.²⁰ 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 92bis 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*.²¹ 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

¹⁶ Interlocutory Appeal, p 11.

¹⁷ *Ibid*, p 11.

¹⁸ Response, par 69.

¹⁹ Communication, 22 May 2002.

²⁰ Certificate, p 2.

²¹ 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".²² 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.²³ This argument was rejected by the Trial Chamber.²⁴

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,²⁵ 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.

²² *Ibid*, p 6.

²³ *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.

²⁴ 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.

²⁵ This is not any part of the prosecution case in this present matter.

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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,²⁶ 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.²⁷

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.²⁸

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.²⁹ 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)³⁰ was to qualify the previous preference in the Rules

²⁶ 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.

²⁷ *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.

²⁸ 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.”

²⁹ *Tadić Judgment*, par 248.

³⁰ 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”.

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for "live, in court" testimony,³¹ 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*.³² Far from being an "exception" to Rule 89, as the appellant claims,³³ 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.³⁴ (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.³⁵ The proximity to the accused of the acts and conduct which are described in the written statement is relevant to this further determination.³⁶ 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.

³¹ *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.

³² 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*.

³³ Interlocutory Appeal, p 10.

³⁴ 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; *Artner v Austria*, Judgment of 28 Aug 1992, Series A no 242-A, pars 22, 27; *Saïdi 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.)

³⁵ Rule 92bis(E).

³⁶ *Milošević* Decision, par 22.

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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.³⁷ 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.³⁸ 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]",³⁹ or "[the accused] had to have been aware of the genocidal objectives [of his subordinates]".⁴⁰

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.

³⁷ *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.]

³⁸ *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".

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

⁴⁰ *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,⁴¹ 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.⁴² 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.⁴³ 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.⁴⁴ In these circumstances, and in the light of the

⁴¹ First Decision.

⁴² *Ibid*, p 3.

⁴³ *Ibid*, p 3.

⁴⁴ 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.⁴⁵

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.⁴⁶ 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*.⁴⁷ 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

⁴⁵ Response, pars 7-8.

⁴⁶ *Ibid*, pars 12-13.

⁴⁷ 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.⁴⁸

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.⁴⁹ Hearsay evidence may be oral, as where a witness relates what someone else

⁴⁸ Response, pars 15-24.

⁴⁹ *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*.⁵⁰ 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,⁵¹ and only where the Trial Chamber was satisfied that the evidence was reliable.⁵² 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,⁵³ 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

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].”

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

⁵¹ *Kordić & Čerkez* Decision, par 20.

⁵² *Ibid*, pars 22-24.

⁵³ *Ibid*, par 19.

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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.⁵⁴ 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,⁵⁵ from knowledge gained in many trials before the Tribunal as to the manner in which those written statements are compiled.⁵⁶ Rule 92bis has introduced that emphasis.

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

⁵⁵ *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 Mežić and Arif Pasalić, 22 Jan 2002, p 4.

⁵⁶ 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.

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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 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)”.⁵⁷ 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.⁵⁸ 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”.⁵⁹ 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.”⁶⁰

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:

⁵⁷ Interlocutory Appeal, p 3.

⁵⁸ *Ibid*, p 4.

⁵⁹ *Ibid*, p 4.

⁶⁰ *Ibid*, p 11.

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- (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 92bis(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.⁶¹ The requirements of Rule 92bis(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 92bis(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".⁶² 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 92bis(C)(ii),⁶³ but also that each had "probative value within the meaning of Rule 89(C)".⁶⁴ The appellant has criticised the Trial Chamber's reference to Rule 89(C) as "an error on a question of law",⁶⁵ saying that there was no need to have recalled the general provisions of Rule 89 as Rule 92bis 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).⁶⁶ The Trial Chamber need not have referred to Rule 89(C), but it did have to be satisfied that the evidence in

⁶¹ Emphasis has been added to the word "so".

⁶² Interlocutory Appeal, p 3.

⁶³ First Decision, p 3; Second Decision, p 4.

⁶⁴ First Decision, p 3; Second Decision, p 4.

⁶⁵ Interlocutory Appeal, p 9.

⁶⁶ Paragraph 31, *supra*.

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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.⁶⁷ 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,⁶⁸ or that they were invalidated by an error of law.⁶⁹ 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.⁷⁰ 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

⁶⁷ Response, par 22.

⁶⁸ *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.

⁶⁹ *Milošević* Appeal Decision, par 6.

⁷⁰ Interlocutory Appeal, p 9.

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contrary, must be regarded as being subject to the same formal distinction.⁷¹ 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.

⁷¹ *Ibid.*, p 9.

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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:⁷²

[...] 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.⁷³

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.⁷⁴ 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

⁷² Interlocutory Appeal, p 11.

⁷³ *Ibid*, p 11.

⁷⁴ 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 92bis(C) makes specific provision for the admission of part only of a written statement of a witness,⁷⁵ and that it is for the Trial Chamber to decide, after hearing the parties, whether to admit the statement in whole or in part.⁷⁶ Notwithstanding the argument of the prosecution to the contrary,⁷⁷ 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 92bis(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.⁷⁸

47. The appellant's objection is rejected.

⁷⁵ Rule 92bis(A).

⁷⁶ Rule 92bis(E).

⁷⁷ Response, par 69.

⁷⁸ Interlocutory Appeal, p 11.

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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 7th day of June 2002,
At The Hague,
The Netherlands.



Judge David Hunt
Presiding Judge

[Seal of the Tribunal]

ANNEX A

PUBLIC TRIAL TRANSCRIPT OF TF1-072

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1. TF1-072, AFRC trial transcript, 1 July 2005

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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, 1 JULY 2005
9.15 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Teresa Doherty, Presiding Julia Sebutinde Richard Lussick
For Chambers:	Mr Simon Meisenberg
For the Registry:	Ms Maureen Edmonds
For the Prosecution:	Mr Jim Hodes Ms Wambui Ngunya Ms Maja Dimitrova (Case Manager)
For the Principal Defender:	No appearances
For the accused Alex Tamba Brima:	Mr Kojo Graham
For the accused Brima Bazy Kamara:	Mr Mohamed Pa-Momo Fofanah Mr Ibrahim Foday Mansaray
For the accused Santigie Borbor Kanu:	Mr Ajibola E Manly-Spain

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
09:17:44 5 [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED]
8 [REDACTED] [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED] [REDACTED]
09:23:45 10 [REDACTED] [REDACTED] [REDACTED]
11 [REDACTED] [REDACTED]
12 [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED] [REDACTED]
09:24:05 15 [REDACTED] [REDACTED] [REDACTED]
16 [REDACTED] [REDACTED] [REDACTED]
17 [REDACTED]
18 [REDACTED] [REDACTED] [REDACTED]
19 [REDACTED]
09:24:21 20 [REDACTED] [REDACTED] [REDACTED]
21 [REDACTED]

22 WITNESS: TF1-072 [Sworn]
23 [Witness answered through interpretation]
24 EXAMINED BY MS NGUNYA:

09:25:27 25 Q. Good morning, Mr Witness.
26 A. Yes.
27 Q. Mr Witness, could you please start by telling the Court how
28 old you are?
29 A. Yes.

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1 Q. How old are you?
2 A. 55 years old.
3 Q. Where were you were born?
4 A. Excuse me, 56 years old. I'm born in Tombodu, Kamara in
09:25:56 5 Kono.
6 MS NGUNYA: Tombodu, Your Honours, is spelt T-O-M-B-O-D-U;
7 Kamara is spelt K-A-M-A-R-A; Kono, K-O-N-O District.
8 Q. Have you ever attended school?
9 A. I went to school a long time ago, at UMC school and I
09:26:33 10 stopped at standard 3.
11 Q. Mr witness, can you read and write?
12 A. When I was young, a long time ago I used to write. Now I
13 can't write because I do not have hands.
14 Q. Do you speak any other language other than Kono?
09:27:12 15 A. I speak a little bit of Krio and a very little bit of
16 English.
17 Q. Mr witness, are you married?
18 A. I'm married. One wife.
19 Q. Do you have any children?
09:27:39 20 A. We had nine children, eight alive right now.
21 Q. What is your occupation?
22 A. I work in the bush, meaning I'm a farmer.
23 Q. Mr witness, where did you and your family live in 1998?
24 A. We were settled in Tombodu, Kamara Chiefdom.
09:28:26 25 Q. Did anything happen in Tombodu in 1998?
26 A. Yes, at that time things happened.
27 Q. Please tell the Court.
28 A. It's okay, I will. While we were in Tombodu with my
29 children, they said people came running and everybody said, "why

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1 are these people running?" And I said, "why are they running?"
2 I told my wife, "when you see people moving, you should run."
3 Before I finished this thought a red vehicle arrived. Large
4 quantity of soldiers were in that vehicle.

09:29:07 5 Q. Mr witness, just talk slowly for the translation. Please
6 proceed.

7 A. Then this vehicle, red vehicle, came and stood.

8 Q. what happened next?

9 A. When the motor vehicle stopped, one of my friends came and
09:29:40 10 told me that vehicle that arrived, the soldiers have alighted and
11 they are giving money to people.

12 Q. Mr Witness, did you see these soldiers that arrived?

13 A. I saw the vehicle but I told my friend who told me they
14 were distributing money. I said, "I'm not waiting for money." I
09:30:08 15 told my wife and children, "Let us move."

16 Q. So, Mr witness, you tell your wife and your children "Let
17 us move." what happened next?

18 A. We didn't wait. We moved and we went as far. On arriving
19 close to wordu --

09:30:36 20 Q. What happened, Mr witness?

21 A. There's a hill on arriving at wordu and the hill is called
22 Igbeda. We heard gunshots.

23 Q. From which direction were these gunshots coming,
24 Mr witness?

09:30:54 25 JUDGE SEBUTINDE: Could we have some spellings of these
26 names, please.

27 THE WITNESS: The gunshots came from the rear where we came
28 from, Tombodu where we left. So we didn't want to go back there
29 so we decided to continue ahead.

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1 MS NGUNYA: Please hold on, Mr witness. Your Honour, I
2 think I've spelt all the names mentioned. Perhaps I missed.
3 JUDGE SEBUTINDE: There was a hill. There was wordu and
4 then a hill after that.

09:31:28 5 MS NGUNYA: Okay, my apologies, Your Honour. The spelling
6 of wordu is W-O-R-D-U.

7 Q. Mr witness, could you repeat the name of the hill from
8 where you heard the shooting?

9 A. Igbeda.

09:31:58 10 MS NGUNYA: Your Honours, I don't have the spelling of that
11 hill, but it sounds like I-G-B-E-D-A.

12 Q. Mr witness, so you hear this shooting from this hill. What
13 happened next?

14 A. We didn't wait. We continued on to wordu.

09:32:27 15 Q. Mr witness, do you recall the date that you moved from
16 Tombodu?

17 A. We left Tombodu in February.

18 Q. Do you remember the year?

19 A. 1998.

09:32:52 20 PRESIDING JUDGE: Mr Manly-Spain, where are you wandering
21 off to?

22 THE INTERPRETER: That time, witness misunderstood this
23 question.

24 MR MANLY-SPAIN: Your Honour, to get my reading glasses.

09:33:11 25 PRESIDING JUDGE: I see. I apologise, I interrupted the
26 witness. Please, Mr witness, could you repeat what you said. I
27 interrupted you.

28 MS NGUNYA:

29 Q. Mr witness, you had said it was 1998. So you went to

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1 wordu. what happened next?

2 A. On arriving at wordu, I told my wife, "what I told you
3 earlier is what's happening. Look, we still see people running
4 around." So we moved from wordu again and went Gbaima.

09:33:50 5 MS NGUNYA: Your Honours, Gbaima is spelt G-B-A-I-M-A.

6 Q. what happened next, Mr witness?

7 A. It was late in the evening when we arrived at Gbaima so we
8 didn't go ahead.

9 Q. Did anything happen after that, the next day?

09:34:21 10 A. I told my wife, "where we are sitting is not safe, because
11 I can still see people trickling by and they are running away.
12 Let's not wait, let's move ahead."

13 Q. where did you move to, Mr Witness?

14 A. I went to my in-laws home, Kobedenja.

09:34:44 15 MS NGUNYA: Your Honours, that is spelt K-O-B-E-D-E-N-J-A.

16 Q. Mr Witness, you moved to your in-laws in Kobedenja. what
17 happened next?

18 A. We were there for a while. I don't remember the exact
19 date, because when you have a large number of people and you are
09:35:20 20 running away you're always in a hurry.

21 Q. Did anything happen in Kobedenja?

22 A. Yes, we used to have bush yams. That's what we fed on.

23 Q. Please proceed, Mr Witness.

24 A. We ate as much bush yams in our neighbourhood, the bush
09:35:48 25 yams got finished. One day one of my friends came and said,
26 "Let's go further into the bush and have bush yams." I told my
27 wife, "We should go, because we have to go that far and get food
28 for us and the children." So we got up. We went. We went as
29 far -- we went to Gbaima Town, where we came from, and we went a

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1 little bit ahead.

2 MS NGUNYA: Gbaima has already been spelt for Your Honours.

3 Q. So, Mr witness, you go beyond Gbaima. What happened next?

09:36:48 4 A. We went looking for bush yams. On arriving, we climbed up
5 a certain hill. So we saw people that were dressed in soldier
6 uniform, seven of them. One of them had a rope tied around his
7 waist in front of them. We met them and we stood. They asked us
8 to stand.

9 Q. Please repeat that, Mr witness. Did you say one of the
09:37:18 10 soldiers was tied? It's not very clear. You said you saw seven
11 soldiers. Please repeat that answer.

12 A. The one that was tied was in front of all of them. The
13 soldiers who were dressed in their uniform were seven of them and
14 they were behind. The person who had the rope tied around his
09:37:48 15 waist did not have any soldier uniform.

16 Q. So, to be clear, the person with no soldier uniform was
17 walking ahead of the seven soldiers?

18 A. Yes. The rope was held by one of the soldiers. All of
19 them were behind him and he was going ahead. They were going
09:38:20 20 towards where we came from.

21 Q. Mr witness, what happened next?

22 A. When we met them, they told us -- they told both myself and
23 my friend, they said, "Stand here," and we stood. They asked us
24 where we were going to. We said, "we're going looking for bush
09:38:44 25 yams." They said, "why are you going looking for bush yams and
26 we have arrived in the town and we have food? why did you not go
27 to us for food and we had come here to save you?"

28 Q. What happened next, Mr witness?

29 A. One of them looked down at us. They saw that we have torn

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1 shorts and torn shoes, and he looked down at my crepe. He took
2 my shoes off my feet. First my right feet was removed out of my
3 shoes and the other, and they took the lace out of my crepe shoes
4 and they asked one of his friends to tie me up. My hands were
09:39:50 5 passed behind me and they were tied with crepe shoes. They tied
6 my friend also. My friend was tied. They were heading towards
7 where we came back from and they asked us to go with them.

8 Q. If I may interrupt, Mr witness. When you say they took you
9 back where you came back from, where is that?

09:40:25 10 A. We were going to Gbaima, because they were taking us back
11 to Gbaima. These were big people at that time. We could not
12 refuse them.

13 Q. Mr witness, so you're heading back towards Gbaima. What
14 happened next?

09:40:47 15 A. It was not a long distance between where they caught us and
16 Gbaima. On arriving at Gbaima, they told us to lie down, and
17 they took guns and they gave one of the soldiers, and he took
18 cartridges out, two cartridges, and one of the cartridges was in
19 the gun. He said, "These people who are lying down, if any of
09:41:22 20 them attempt to escape, shoot them." We were lying there. We
21 didn't say a word. We stared at each other intermittently. And
22 the guy who was the guard came and stood over us.

23 Q. Mr witness, do you recall when this incident happened, the
24 date?

09:41:53 25 A. I know the month. It was in March. I can't remember
26 exactly the date, but I do remember the month. It was in March.

27 Q. Do you remember the year?

28 A. 1998, March.

29 Q. Mr witness, so you are lying down and you're guarded by one

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1 soldier with a firearm. What happened next?

2 A. One of them was left guarding us, six of them went into the
3 town with one of the guy -- the guy that was tied. We could hear
4 them and we heard gunshots in the town, and we saw a lot of
09:42:41 5 people running away, some going into the bush. One of the ladies
6 wanted to come towards us and she saw this guard. So she ran
7 into the bush. We were tied, so we were just lying there waiting
8 for an uncertain end. We asked him whether he could not untie
9 us, because we told him, "We are not running away." He said he
09:43:09 10 doesn't have the command to untie us, he said so he can't do it.
11 Then I told him, I said, "Okay, we are not saying anything. We
12 are lying here." We laid for a long time and the other soldiers
13 were in the town. While they were in town, they sent another
14 soldier to us and he came.

09:43:38 15 Q. So one soldier has been sent to you?

16 A. Yes.

17 Q. What happened next?

18 A. They took us still tied and we were brought in to the town
19 itself. We came there and we started looking around. All we saw
09:43:58 20 were properties, bags and bundles. We didn't know what were in
21 these bundles. We were untied. I looked down, I saw one man in
22 short pants. I looked at him and I looked away. They took the
23 luggages and placed them on our head, myself and my friend. And
24 this other guy who was tied with the rope around his waist was
09:44:31 25 also untied.

26 Q. What happened next, Mr witness?

27 A. When he was untied, he was with the luggages on our heads.
28 We came. We travelled far. We arrived where we were captured,
29 where we went looking for yams. We were now heading towards

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1 Tombodu. We arrived at a particular spot. We were not now in
2 Tombodu, nor were we in Gbaima any more. We met two people; they
3 also came from foraging for food. And the soldiers also met them
4 and they asked them, "Where do you come from?" They said, "We
09:45:27 5 came from looking for food." One of the soldiers, he took the
6 cutlass that he had and slapped him with the cutlass on his back.
7 we couldn't say anything. He said, "Drop what you have on your
8 head," and he dropped what he had on his head. Then the soldier
9 placed -- tore the bag open and raised the bag, and all that was
09:45:51 10 in it was raw bananas. The banana was quite strong. This raw
11 bananas and some kola nuts that were not even strong. He slapped
12 the other guy with this machete and he tore his own bag as well,
13 and all that was in it was raw bananas. And he told him, "We are
14 here to save you. We have settled in Tombodu and we have food.
09:46:21 15 why don't you come to us?" He said, "Let's go back." One of the
16 soldiers was carrying some luggage and he placed that luggage on
17 the head of the two people we just met and we started going.
18 Q. So, Mr witness, you start moving. What happened next?
19 A. We were going towards Tombodu. We arrived close to wordu.
09:46:53 20 we couldn't speak any more. We were just in front of them,
21 moving.
22 MS NGUNYA: Your Honours, wordu has been spelt for the
23 Court.
24 Q. Please continue, Mr witness. You are at wordu.
09:47:10 25 A. When we arrived at wordu -- are you listening? When we
26 arrived at wordu, as we descended, one of the soldiers left our
27 midst and ran to one room, into a parlour. We couldn't look
28 around too much because they all had guns, we were afraid. When
29 he entered, he entered one of the rooms in the house. He came

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1 out again running and he was crying. And we just looked at each
2 other. He came out running. He told the others, he said, "I
3 have finished him. You see the blood on my cutlass, I've
4 finished him." We didn't say a word. We continued going. We
09:48:10 5 are now coming towards Tombodu.

6 Q. Mr witness, did anything happen in Tombodu?

7 A. While arriving in Tombodu we also met another young man
8 coming towards Tombodu. They saw him from afar. One of the
9 soldiers shouted, "Hey you, where are you going? Come here."

09:43:41 10 And he came. "Where are you going," he asked him. The man said,
11 "I am coming to wordu." He said, "What's on your head." He
12 said, "It's palm wine." He said, "Put it down," and he placed it
13 down and the palm wine was seated on the ground and they put all
14 our luggages down and we sat down on the ground and they stood on

09:49:08 15 top of us. They were our bosses. They said they were here to
16 save us. We didn't have any power. We did nothing, we sat on
17 the floor. And they put the palm wine down. There was a big
18 gallon and we call it five-gallon. They were two gallons -- two
19 five-gallons. One of the soldiers took one of the two cups that

09:49:35 20 was in the big bowl. He took one of the cups, he poured the palm
21 wine into the cup. Another one took the other cup and poured
22 palm wine into the cup. They started drinking and were seated.
23 We were watching them and they drank. They drank for a while.
24 One of them left us and sat apart. He took something from his

09:50:01 25 pocket, white paper. He looked into his other pocket and that
26 thing was in a plastic bag. It was some leafy stuff. I didn't
27 know what leafy stuff. He wrapped that leafy stuff in the paper
28 and they wrapped it and they lit it. They started smoking. They
29 smoked for a while. They smoked in turns. When the one smoked

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1 he came back and drank palm wine and went back to smoke. They
2 said, "We are now in a small party, all of us together." So they
3 smoked in turns. One would smoke, come back, drink palm wine, go
4 back and smoke. We were watching them.

09:51:53 5 Q. So, Mr Witness, did you leave this place eventually --

6 PRESIDING JUDGE: Could you repeat the question please, a
7 little closer to your microphone.

8 MS NGUNYA: My apologies. Okay.

9 Q. Mr Witness, so did you leave this place?

09:51:10 10 A. We were going towards Tombodu. We were now moving to

11 Tombodu. They said there was a party, so they had a party while
12 we were watching. So we all got up and started going towards
13 Tombodu. We travelled until we arrived at the first house in
14 Tombodu, just across the river on the left-hand side. We found

09:51:32 15 one other soldier there and he came outside and said, "Where are
16 you from, all of you?" He said, "Where are you from?" He said
17 where we come from -- one of them replied that he didn't know the
18 villages they came from. He said, "These things that you've
19 brought, won't you leave some of them with us here?" They said,

09:51:53 20 "We are taking this to our boss, we are not leaving anything with
21 you. Our bosses have not seen anything yet, and we should leave
22 them here?" He said, "Okay, we'll meet you where are you going."
23 I didn't know where they were going to meet us. We went ahead.

24 We went and arrived in the town. One of the soldiers said, "Let
09:52:09 25 us move apart." We went to another house and stood there. The

26 luggages were alighted, they took some of them and put them into
27 that house. Whether he was sleeping there or not I didn't know.

28 So he came out of the house. One of the soldiers came out.

29 "Where did you come with the slaves from?" He said, "We don't

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1 know where we caught them from, I don't know the name of the
2 town."

3 Q. Mr witness, just to be clear for the court, is it the same
4 soldier who went into the house who came out again?

09:53:08 5 A. The one we arrived, it is the one that entered the house.
6 When he came out, another person that was not with us came out
7 and asked where did you bring the slaves from. He said, "These
8 slaves were wandering in the bush and we came." And he said,
9 "look at me. It is me that they refer to as Small Mosquito." He
09:53:48 10 said, "My name is Small Mosquito." we said okay. They said, "we
11 are going to our boss." we stood in front of them. Some of them
12 were behind us, others were ahead of us. We went up and we
13 arrived at their boss's house. They said we should sit down.

14 Q. Mr witness, you said their boss's house. Can you identify
09:53:50 15 this house where you went to?

16 A. Yes. There was once a court chairman and his name was
17 Chief Tei. It was at Chief Tei's house.

18 Q. Okay, Mr witness, we had reached where --

19 PRESIDING JUDGE: Spelling.

09:54:23 20 MS NGUNYA: I'm sorry, T-E-I.

21 THE INTERPRETER: He is spelling Tombodu for us.

22 MS NGUNYA:

23 Q. Mr witness, we had reached the place where you had reached
24 this compound. What happened next?

09:54:48 25 A. When we arrived at the compound they removed the luggages
26 from our head and they placed them at the centre of the open
27 space. One of the soldiers came out and we looked at them and
28 they were all sitting down, large number of them, everyone with a
29 gun, all their guns were leaning. We didn't know if they were

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1 having a meeting or not. Then one of them got up.

2 Q. Mr Witness, can you estimate about how many soldiers you
3 saw in this compound?

09:55:33

4 A. I have sworn on the Bible and I will not be able to tell
5 the exact number because I don't remember. But it was a large
6 number of them. Many of them were sitting down and their guns
7 were leaning. Maybe they were having a meeting. We don't know
8 what meeting they were having.

09:55:54

9 Q. Okay. So, Mr Witness, we had reached where one of the
10 soldiers got up. What happened next?

09:56:32

11 A. He got up, left the crowd and stood apart. That's when I
12 knew the boss. So he saluted. He stamped his feet and saluted,
13 he raised his hand towards the side of his head and he said,
14 "Mr Savage, sir." He called him, he said he is called Savage.
15 Then he told Savage, "Where you sent us we have arrived. Here
16 are the luggages that we've brought." Then he turned round and
17 looked at us and said we should sit down. We sat on the steps.
18 Then Savage arrived.

09:56:55

19 Q. Mr Witness, at this time can you recall how many captives
20 you were?

09:57:24

21 A. Those of us who were sitting on the same side, there were
22 14 of us, 14 of us civilians. Fourteen of us when I counted.
23 Those of us who were sitting apart, those civilians. I mean,
24 civilians would know each other when they are in the middle of
25 large number of soldiers. There were 14 of us.

26 Q. Okay. So, Mr Witness, there are 14 of you and you are on
27 the side. What happened next?

28 A. While we were seated, now they've told us that this man's
29 name was Savage. So Savage came and he brought a cutlass. I was

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1 the first person in front. He asked me, he said, "where were
2 you?" He said, "we came to free you." The same thing that the
3 others told us where they found us. He said, "Those of us, we
4 have come here to free you, to save you. Why didn't you come in
09:58:16 5 time?" We said we didn't know. We heard gunshots and we heard
6 jets moving ahead so we were not able to sit in town. We were
7 afraid. Then I got up, then he slapped me on my back with a
8 cutlass and I shouted. Everybody was watching. Then he said,
9 "You, you are the people who killed soldiers." And I said, "It's
09:58:35 10 not possible. We don't kill soldiers. Ever since I've been
11 born, now I am growing old, if you see me holding a machete, I am
12 brushing a bush, to farm. Myself and my wife, we make potato
13 heaps, we plant potatoes, we plant cassavas, we plant different
14 crops. Do you think I have enough power myself to kill a
09:58:55 15 soldier?" I said, "This is very fearful for me. I can't kill a
16 soldier." I said, "That's not possible. I can't kill a
17 soldier." He didn't believe me. He came, he said I've lied. He
18 hit me on my leg with a cutlass and cut me, cut me on the other
19 leg as well.

09:59:25 20 Q. Mr witness, could you indicate to the Court which leg was
21 cut?

22 A. You can see the marks on my feet.

23 THE INTERPRETER: He is taking his feet out.

24 THE WITNESS: See, I have a mark on my right leg. See it's
09:59:41 25 a long mark. You see this other one on the other, left leg. Do
26 you see it? I was flogged and I was wounded. I was flogged. My
27 eyes were all flogged and I can't see properly right now.

28 MS NGUNYA: For the record, Your Honours, could the record
29 show that the witness has indicated a part on his upper right

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1 calf and also indicated his left calf.

2 Q. Please proceed, Mr Witness.

3 A. Then the one who called himself Small Mosquito, I said,
4 "Look at this amount of beating that I have received, can't you
10:00:07 5 speak to them?" He had a gun and they were drinking. He took
6 his gun and I was standing complaining to him about my -- I want
7 you to come closer. He stuck the bayonet on my side, this is my
8 side, my left side. This is the mark. The scar. Can you see
9 the scar?

10:00:48 10 MS NGUNYA: Your Honours, for the record, could the record
11 show that the witness has indicated an area, left rib area.

12 Q. Please continue, Mr Witness.

13 A. Then, I couldn't say anything. All my friends were sitting
14 down, look at me. I didn't say anything. All I thought about,
10:01:24 15 maybe this is time for me to die. Then he said, he said, "All of
16 you sitting here, you civilians" --

17 Q. Mr Witness, when you say "he said", who said "all of you
18 civilians"? Okay, Mr Witness, you mentioned that somebody said
19 that, "all of you civilians sitting here", who said that?

10:01:55 20 A. Savage himself. Savage. He was standing up. He said,
21 "All of you sitting down," when this guy stabbed me with the
22 bayonet on my left side, Savage said, "All of you sitting down,
23 I'm going to cut off your hands". The one that stabbed me with
24 the bayonet said, he said we should be tied. He said we should
10:02:27 25 be tied. Then he told the other soldier, "Call them all to come
26 over here". These were big men, they had power at the time. We
27 were at their mercy. It was up to them. They tied us up. They
28 tied me. They laid us criss-crossed, yes. They laid one and
29 crossed the other on top of it and they crossed the other on top.

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1 That's how they laid us. They criss-crossed us on top of each
2 other tied up. The 14 of us all. The one that said his name was
3 Mosquito and they were still drinking, they were standing at a
4 higher ground and we were lying down on the floor. He took out
10:03:11 5 his penis and while we were lying down he pissed on us. He
6 pissed on us. And I said to myself, "This is now the hour. This
7 is the hour. This is the hour." He took one mattress out. We
8 refer to it as local mattress. It's grass tucked into sacks. He
9 looked at the sack of mattress. He said, "Bring the mattress
10:03:37 10 here," and they brought the mattress. While we were lying down
11 tied, he said let them lay the mattress on top of us. They laid
12 the mattress on top of us. He said let them bring fire. They
13 brought fire. They lit the mattress. And they lit the mattress
14 while we were lying underneath. Well, the fire started blazing
10:03:59 15 and they were just standing there looking at us, Mosquito and the
16 other soldiers. The fire caught. What, 14 of us are all going
17 to die here under this fire? Then they tied me, but my rope was
18 loosened and I started moving. You can look at my back, I think
19 fire burnt me. My shoulder. [Witness indicates] You want to
10:04:29 20 come and look at it? The fire burnt me on my shoulder. I didn't
21 wait.

22 MS NGUNYA: Your Honours, for the record, could the record
23 show that the witness has indicated his right shoulder area, the
24 back of the shoulder.

10:04:51 25 Q. Please continue, Mr Witness.

26 A. Then the fire started burning us. So I wriggled myself
27 out. I said, "Let it happen. I'm not going to lie here and get
28 burnt." I pushed myself out and I kicked the mattress and
29 everybody scattered. I knew that was fearful. Savage got up.

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1 He said, "You see, that's what I said. These are the ones who
2 kill soldiers." He came and repeated. He swept my feet from
3 under my feet and I fell down on the ground. He struck me on my
4 face. I can't see properly with my eyes. Up to this moment I
10:05:31 5 can't see very well. I went to hospitals. Anything that God has
6 said for you is what in return. I mean, they're still giving me
7 medication, but I can't see properly. I can see with only one
8 eye. I was badly flogged. My back, my lower waist; so much
9 flogging.

10:05:35 10 Q. So, Mr Witness, you were beaten by Savage. What happened
11 next?

12 A. Therefore, then he said, "I have told you that and you
13 don't believe. These are the ones who kill soldiers." He
14 said -- he told the soldiers to go and look for vehicle tyres.
10:06:15 15 He wanted to show them that we are the ones -- these are the ones
16 that kill soldiers. So I said to him, "I can't kill a soldier.
17 I have never touched a gun in my life. Cutlass, yes, I use for
18 working in the bush. I don't touch guns. I am afraid of guns.
19 Me to kill soldiers?" They looked around for tyres and they
10:06:37 20 couldn't see any vehicle tyres. They wanted to place the tyre
21 around my neck.

22 Q. Mr Witness, they don't find a tyre. Did anything happen
23 after that?

24 A. They didn't find it. Then, when they didn't see the tyres,
10:06:51 25 they came. He said, "I'm going to amputate all your hands, all
26 of you here." Then I said, "Oh, my God". I said, "This is the
27 worst moment." I said that in my mind. I couldn't speak out.
28 As he moved around I also followed him. I just -- you cut off a
29 human hand. I just didn't believe that. I cried. I cried in my

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1 mind. Can you cut off a human hand? We are made in the same
2 way. Do you cut my own hand? I just felt afraid. I followed
3 him. He said, "This is where we cut people's hands." There was
4 an orange tree standing there. He said, "Come here." I came.
10:07:37 5 He said, "You are going to place your hand on this orange root.
6 You see the cutlass marks there?" I said my mother gave birth to
7 me, my hands were not cut, in my mind. He said, "Come on, lay
8 down your hands. Lay it." Then I laid my hand. I said, "Here
9 it is." I said, "But my mother gave birth to me and I had no
10:08:03 10 amputation. Now you are cutting my hand." He raised the cutlass
11 and he wanted to bring it down. I removed my hand. The cutlass
12 actually cut into the root. He removed the cutlass. He said,
13 "Let me tell you, if I missed you the next time I'm going to cut
14 you on the back of your neck. I will cut you on the back of your
10:08:17 15 neck. I will cut you on the back of your neck, yes." I said to
16 myself, "Can he do that to me?" What could I do? These were the
17 biggest human beings in the world at that time. I laid my hand.
18 In my mind -- I didn't have the mind, but I just laid my hand. I
19 was so afraid. These were big men at the time. I have not been
10:08:45 20 amputated when I was -- and the cutlass cut my hand. Cut my
21 bone. And I toileted on myself. Yes, I shit in my trousers. I
22 really shit -- look, a big man like me. He said, "This is not
23 enough, so lay it down." So -- I laid my hand. He raised the
24 cutlass and cut my hand off. Can you see it? [Witness indicates]
10:09:17 25 THE INTERPRETER: He raised his right hand.
26 MS NGUNYA: For the record, Your Honours, could the record
27 show that the witness has raised his right hand and that there is
28 a scar on the outside of his right hand and that the fingers are
29 mangled.

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1 Q. Please hold up your hand for the Court. [Witness
2 indicates]

3 A. Do you see? I have sworn on the Bible. I will not lie. I
4 was not born like this. Savage did this to me. Savage did this
10:09:54 5 to me. Then I took my hand that was cut --

6 Q. Okay, so you take your hand that is cut. What happened
7 next?

8 A. All my friends were looking at me. They were looking at
9 me. I raised my hand and lay it on my head. The blood started
10:10:15 10 coming down my eyes, my face and everything and they all got up
11 and they ran away. They ran away. And then Savage shouted. He
12 said, "Commander, you take the guns," and they shot and one of
13 the people fell. I shouted myself, I said, "This is the moment."
14 I brought down my hand. I sat down. I started going backwards
10:10:43 15 slowly. I know Tombodu a little bit. While I started going
16 behind and I escaped. But I heard gunshots and I went into the
17 bush with my hand. I went back to where my children --

18 MS NGUNYA: Mr witness, I would like to thank the witness
19 for his testimony. That's the end of my examination-in-chief.

10:11:09 20 PRESIDING JUDGE: Thank you, Ms Ngunya.

21 THE WITNESS: Thank you.

22 PRESIDING JUDGE: Mr Manly-Spain, do you have questions for
23 the witness?

24 THE WITNESS: Should I not speak any more?

10:11:30 25 PRESIDING JUDGE: Just wait a little bit, Mr Witness. The
26 other lawyers may have some questions for you. So please wait
27 patiently.

28 MR MANLY-SPAIN: Just a few questions, Your Honour.

29 PRESIDING JUDGE: Thank you, Mr Manly-Spain.

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1 CROSS-EXAMINED BY MR MANLY-SPAIN :

2 Q. Mr witness, good morning.

3 A. Yes, good morning.

4 Q. Mr witness, during this period, March 1998, did you come
10:12:00 5 across any other group of soldiers apart from Savage's men?

6 A. At that time, the ones I saw, these are the only ones I
7 saw. I just didn't see others. I just saw the same people.

8 Q. Mr witness, did you see any soldiers at Tombodu?

9 A. This is what I have said. I saw a lot of them there. This
10:12:56 10 is what I have been saying.

11 Q. Mr witness, did you see Savage amongst them?

12 A. I knew Savage at that period, the time I was -- my
13 amputate -- my hand was chopped. And it was Savage himself that
14 did it.

10:13:22 15 Q. Mr witness, I'm asking about Tombodu, when you first -- was
16 that where you first saw soldiers in this red vehicle?

17 MS NGUNYA: Your Honour, with your permission, may I ask
18 that the question be put more clearly, because he's been to
19 Tombodu twice. He started off there and he's back there now at
10:13:46 20 the last incident.

21 MR MANLY-SPAIN:

22 Q. Mr witness, when was the first time that you saw soldiers
23 in 1998?

24 A. It was that time, what I said, that was the time I saw.

10:14:09 25 Not the time I was in school when I used to see soldiers. The
26 period in which I was amputated or my hand was chopped, that was
27 when I saw the soldiers. I saw soldiers in Tombodu.

28 Q. Was it before you left Tombodu to go to wordu?

29 A. They caused our flight from Tombodu before I even went to

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1 wordu.

2 Q. When you first saw them in Tombodu did you see Savage
3 amongst them?

4 A. I didn't know him. I said the only time I could identify
10:15:08 5 him was when we were brought to Tombodu and his name was called
6 and they said his name is Savage and he was their boss and they
7 gave everything that they brought back from the spree to him.
8 That's when I knew he was Savage.

9 Q. Mr witness, do you remember making a statement to the
10:15:38 10 Office of the Prosecutor -- sorry, investigators of the Special
11 Court?

12 A. I don't quite understand what you've said.

13 Q. Please explain to me if you could remember making a
14 statement to the investigators of the Special Court on 26th
10:16:12 15 January 2004?

16 A. I don't know. I don't want to lie. I don't know.

17 Q. Do you remember making a statement at all to the office of
18 the -- to the investigators of the Special Court?

19 A. I won't lie. What I saw, investigator or inspector, I
10:16:58 20 don't know.

21 Q. Have you ever met somebody called Morie Lengor?

22 A. That's what I've said. I've said I don't know. I mean, I
23 have not -- I don't write. I mean, my hand is destroyed, how can
24 I write? How will I know Morie Lengor? I don't know.

10:17:36 25 Q. Mr witness, have you ever been in 2004, January 2004, to
26 Ahmadiyya Secondary School Tombodu?

27 A. That's our school and when we go around town we go there.
28 I go there. My children go to school at that school. So I do go
29 there.

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1 Q. Did you go there in January 2004 to make a statement to an
2 investigator of the Special Court?

3 A. I don't remember. I mean, people used to come around.
4 Many people have come to that place. After the war many people
10:18:38 5 have been going to the place. But I do not remember.

6 Q. Mr Witness, before you came to give evidence today did you
7 speak to anybody from the Special Court?

8 A. How?

9 Q. Did they interview you about what happened to you?

10:19:15 10 A. Those who had sympathy for us, and they saw my hand
11 deformed, so they told us that they were going to redress some of
12 these evil things that have happened to us. So if I've come here
13 I've explained exactly what has happened.

14 Q. Mr Witness, did anybody from this Court at any time
10:19:45 15 interview you and wrote down what you were saying?

16 A. Many people have gone to our village and many writings have
17 been taking place and we go to meetings in the barri and people
18 say we are here for this, we are here for that and they write
19 down things. But I really don't specifically remember someone
10:20:25 20 going to me and writing things down, what I say.

21 Q. Mr Witness, when was the first time that you came to this
22 complex, this Special Court complex?

23 A. Well, this person that is asking me, I have seen him today.
24 Today is the day that I have entered this building.

10:21:11 25 Q. Is today the first time that you have been to this
26 building?

27 A. Well, both of us saw each other only today. I mean, what
28 do you mean, is today not the first day.

29 Q. Mr Witness, can you write your name?

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1 A. I did write, but look at my hand. Do you think I can write
2 with this hand at this moment? Look at my hand, sir. Look at my
3 hand. Can you see my hand? Do you think I will be able to write
4 with this hand? Look at my eye. I can't even see with one of my
10:22:05 5 eyes and you can see my hand. How can I write with this hand?
6 Can you look at my hand? How can I write with this hand? I used
7 to write, yes. But with all what has happened to my hand, I
8 can't write any more. This is not how my mother gave birth to
9 me. Are you laughing at me? Is this how my hand was when I was
10:22:23 10 born? Are you seeing me? Look at my hand. This is not how my
11 mother gave birth to me. I swore to the Bible and I spoke the
12 truth. Is this how my hands were with my eight children, how can
13 I work for them? And you are asking me whether I can write. How
14 can I write? You are not sympathising with me.

10:22:45 15 [TB010706B - EKD]

16 Q. Mr witness, would you please just answer my question?

17 MR HODES: Objection, Your Honour. The witness was
18 answering his question. The question was can you write and the
19 witness is free to explain his answer.

10:23:07 20 MR MANLY-SPAIN: I am surprised my learned friend has
21 stated that is an answer to my question. He was asking me
22 several questions. I don't think questions can answer a
23 question. But with your leave, Your Honour, I am applying for
24 the original of his statement that has been disclosed to us and
10:23:30 25 copies which have been served to us. It starts at page 7917.
26 Unfortunately, it is undated. I would like to show this witness
27 his statement to ask him whether he signed that statement.

28 PRESIDING JUDGE: Ms Ngunya, do you have the original
29 document?

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1 MS NGUNYA: Your Honours, we will need about 10 minutes to
2 bring it down because it is not in court. With your permission
3 perhaps we could take a short break.

4 PRESIDING JUDGE: Mr Manly-Spain, we have got a logistical
10:24:11 5 problem. There is a copy -- a handwritten copy on supply both to
6 yourself and to the Bench.

7 MR MANLY-SPAIN: If we can get a copy that has not been
8 written on, a clean copy, I do not mind. Because I have things
9 all over mine.

10:24:40 10 PRESIDING JUDGE: I understand. Is there an unmarked,
11 clean copy that can be used to put to the witness?

12 MR MANLY-SPAIN: Please, can you pass it up to the witness.

13 THE WITNESS: I don't see very well. I mean, what is this?

14 PRESIDING JUDGE: [Microphone not activated]. Wait a
10:25:46 15 moment, please.

16 [Trial Chamber confers]

17 PRESIDING JUDGE: Ms Ngunya, the original will be brought
18 to court, won't it, during the break?

19 MS NGUNYA: Yes, it will, Your Honour.

10:27:18 20 PRESIDING JUDGE: Very well. Proceed on, Mr Manly-Spain.

21 THE WITNESS: I have finished explaining. I mean, I don't
22 have anything to say. What they did to me in the bush --

23 JUDGE SEBUTINDE: Mr Witness, we on the Bench would like to
24 advise you this is a trial, you are a witness giving evidence.
10:27:42 25 There are two sides to this trial. The one side of the lawyers
26 has asked you some questions and that part is now finished. Now
27 we have to look at the other side as well, and they also have to
28 ask you questions and you are required under the law to answer
29 those questions. So it is not as if you have just come to tell

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1 your story. We are conducting a trial. We would, please, kindly
2 request you to respect those rules of the Court and just listen
3 to what the lawyers are asking and try your best to answer the
4 questions truthfully. Do you understand?

10:28:2 5 THE WITNESS: I am here, I am sitting.

6 MR MANLY-SPAIN:

7 Q. Mr witness, do you see the document before you?

8 A. This written document, yes, I've seen it. This written
9 document, I've seen it.

10:28:45 10 Q. Can you read a little?

11 A. My eye, I have told you -- I have told you my eye when I
12 was flogged was destroyed. I can't see very well. How can I
13 read?

14 Q. Mr witness, please assist the Court. Can you see a little?
10:29:15 15 Can you read your name?

16 A. My name -- I can scribble my signature, but I can't write,
17 I can't read. They write for me right now.

18 Q. Okay, Mr witness. Please look at the document. I don't
19 want you to call out your name. I am simply asking you if you
10:30:00 20 can see your name at the top of that document on the left-hand
21 side.

22 A. There are many names, so I can see Mr SK.

23 Q. Look at the top, Mr witness, right at the top on the
24 left-hand side.

10:30:40 25 MR MANLY-SPAIN: Your Honour, may I ask respectfully for
26 assistance from Court Management to the direct him to what I am
27 asking him about?

28 PRESIDING JUDGE: Madam Court Attendant, could you please
29 indicate -- first take an indication from counsel and then

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1 indicate that same place to the witness on the document in front
2 of the witness.

3 MR HODES: Your Honours, I would ask the Court's assistance
4 also to make sure that the witness understands that he does not
10:31:21 5 have to read his name and not even use the initials. And if
6 Mr Manly-Spain could direct his questions in a very succinct yes
7 or no; do you see your name, do you recognise your name, yes or
8 no, in certain locations that would perhaps facilitate this line
9 of questioning.

10:31:39 10 PRESIDING JUDGE: Mr Witness, we do not want you to read
11 your name out or to read any other names out. We don't want you
12 to read the initials, but just to answer the questions. Do you
13 understand me?

14 THE WITNESS: Yes, I understand.

10:31:46 15 MR MANLY-SPAIN: Madam Court Attendant, please direct him.

16 THE WITNESS: I can see it. I can see the writing.

17 MR MANLY-SPAIN:

18 Q. Last page, please. I want you first to direct him to where
19 we have written affirmation. Again I am asking you not to read
10:32:40 20 out the name there. Just to answer whether you see your name
21 written there.

22 A. I see a name written there.

23 Q. Is that your name?

24 A. Though I see it is my name you have asked me not to call my
10:33:07 25 name.

26 Q. Just say yes, it is my name or no, it is not my name.

27 A. He has asked me to answer yes whether it's my name or not
28 my name, and I have seen a name written down. What does he want
29 me to do? To say it is my name or to say it is not my name?

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1 Q. Yes, that is what I want you to do.

2 A. It is my name.

3 Q. Finally, I want you to direct him, please, to where we have
4 signature. Written. Have you seen it, Mr Witness?

10:34:05 5 A. Yes, I've seen it.

6 Q. Is that your signature?

7 A. Yes.

8 Q. Who wrote it?

9 A. I can write my signature, I can't write continuously. I
10:34:32 10 can manage, I can scrawl and press and sign a signature.

11 Q. Thank you, Mr Witness. I am just asking you who wrote that
12 signature or who signed that signature?

13 A. That's what I've said. I've said I can sign. I can manage
14 to sign, but I can't write continuously.

10:34:57 15 Q. Yes, I thank you for saying that. But what I am asking you
16 is who did that on that document?

17 JUDGE SEBUTINDE: Mr Manly-Spain, the witness has answered.
18 Do not protract questions.

19 MR MANLY-SPAIN: I beg to differ, Your Honour. He has not
10:35:15 20 answered --

21 JUDGE SEBUTINDE: The witness has answered and done more
22 than answered.

23 MR MANLY-SPAIN: No, Your Honour.

24 JUDGE SEBUTINDE: But you're protracting your questions as
10:35:31 25 if you're engaging in an argument.

26 MR MANLY-SPAIN: No, Your Honour, I'm sorry.

27 JUDGE SEBUTINDE: The witness has answered and I take
28 exception to you arguing with me over that.

29 MR MANLY-SPAIN: I'm sorry, but I've --

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1 JUDGE SEBUTINDE: He said he's the one who put that
2 signature.

3 MR MANLY-SPAIN: No, he has not said that, Your Honour. He
4 has not said that. He is saying I can scribble, I can sign, I
10:35:43 5 can do that --

6 JUDGE SEBUTINDE: Then please ask the witness again
7 regarding his signature and Mr witness, please answer yes or no
8 to the question.

9 MR MANLY-SPAIN:

10:35:54 10 Q. Mr witness, did you sign that signature on that piece of
11 paper?

12 A. I have said this three times. I've answered three times.
13 I don't know what he wants. I've said yes three times. I've
14 said I do not write continuously. I can manage to sign my

10:36:14 15 signature. If I could write I would have written and they would
16 give me paper I would write. What do you want me to say? I have
17 said yes, I managed to sign my signature and that is it.

18 Q. Did you sign that?

19 PRESIDING JUDGE: He has answered this time,
10:36:30 20 Mr Manly-Spain. I have recorded as follows: I have said three
21 times yes. Three times yes.

22 MR MANLY-SPAIN: As Your Honour pleases.

23 PRESIDING JUDGE: That is the record.

24 MR MANLY-SPAIN: I'm much grateful.

10:36:45 25 Q. Mr witness, do you now remember making a statement to the
26 investigators of the Special Court?

27 A. The evidence I have given, is that not what we are
28 discussing. He has asked me in the first place whether this was
29 my first day of entering the Court and I said yes. He doesn't

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1 know me, I never knew him before. This was the first day both of
2 us are meeting. I'm just giving the truth here.

3 PRESIDING JUDGE: Mr witness, we understand what you said
4 and we understand this is the first day in court. What the
10:37:39 5 lawyer is asking you about is a meeting. Was there a meeting
6 with you and an investigator of the Special Court on a different
7 day? That is what the question is about. Do you understand the
8 question?

9 THE WITNESS: I understand.

10:37:56 10 PRESIDING JUDGE: We would like to hear your answer to the
11 question about a meeting on a different day if there was a
12 meeting. Please answer those questions.

13 THE WITNESS: People went to Tombodu and they asked for all
14 those who've been amputated or injured during the war. They
10:38:29 15 wanted all of us to come up and we came. And they asked me how I
16 was injured, how I was amputated or chopped, and I explained.
17 And it was in the court barri, the chiefs were there, those who
18 were injured, those who were mutilated. All of us went there.
19 And they wrote everything and they asked us to sign and it was
10:38:48 20 not me alone. There was large number of us. Some of them had
21 amputations; some of them had their ears cut off; some had their
22 legs cut off; some were injured in various kinds of ways. And
23 they called us and they called our names some had right
24 thumbprints they had stamp pads and some were given pens and told
10:39:12 25 to sign. Some had two hands cut off, people signed on their
26 behalf. Some of them had their wives sign for them because they
27 had both hands cut off. Those who had one hand could manage to
28 scribble our signatures. That's why I'm here in the Court. This
29 man see me, see this, I'm not alone. There were a large number

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1 of us who were injured and each time they called us we would come
2 to the court barri. They would ask us where did they amputate
3 your legs, we explain who did it, we explain; who cut off your
4 hands, we explain. That is why I am here in this Court today.

10:39:50 5 MR MANLY-SPAIN:

6 Q. Mr Witness, please listen to my questions. I want to read
7 a section of your statement to you, the one you have admitted
8 that you made.

9 MR MANLY-SPAIN: Your Honours, may I respectfully refer to
10:40:06 10 page 7918. From the 6th line in the handwritten statement.

11 PRESIDING JUDGE: Incidentally, just before you put it to
12 the witness, Mr Manly-Spain. Will you have many questions -- we
13 will let this one go -- will you have many?

14 MR MANLY-SPAIN: I have a few more, quite a few more.

10:40:38 15 PRESIDING JUDGE: We will take a break at the end of this
16 question.

17 MR MANLY-SPAIN: Yes.

18 Q. Please listen, Mr Witness. "Whilst in Tombodu, a red Land
19 Rover drove to the Ekuma Junction from which one Sahr Buffa alias
10:40:59 20 Savage alighted." Did you say to the person who took down your
21 statement?

22 A. That is why I said the day, the day he cut my hand. That
23 was the day I knew that he was Savage.

24 MR MANLY-SPAIN: Please Mr witness -- please,
10:41:36 25 Mr Interpreter, put my question again. Did he say that to the
26 person who took my statement?

27 Your Honour, I've not been getting the translation.

28 PRESIDING JUDGE: Mr Interpreter, did the witness answer
29 the question.

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1 THE INTERPRETER: No, he didn't.

2 PRESIDING JUDGE: I see. Mr Witness, we did not hear your
3 answer. Did you hear the question?

4 THE WITNESS: Let him please repeat.

10:43:45 5 MR MANLY-SPAIN:

6 Q. I will read again what the investigator wrote down in your
7 statement which you have signed: "Whilst in Tombodu a red Land
8 Rover drove to the Ekuma Junction from which one Sahr Buffa alias
9 Savage alighted." Did you say that to the investigator who took
10:43:21 10 down your statement?

11 A. I said the day the vehicle arrived, soldiers came down,
12 many of them. Then we ran away. I said I wasn't going there and
13 I said my children were small, I'm not going there. At that time
14 I did not know his name.

10:43:40 15 Q. Mr witness, my question is whether you said that to the
16 investigator. I did not ask you what happened.

17 A. On that day, the day the red Land Rover arrived. The day
18 the Land Rover arrived, is that the day that you're talking about
19 that I knew that name on that day?

10:44:13 20 PRESIDING JUDGE: No, we are asking about the words you
21 used when you spoke to the man at the court barri or sorry, at
22 the secondary school at Tombodu. What words did you use there?

23 MR MANLY-SPAIN:

24 Q. Do you want me to read it again?

10:44:38 25 A. I understand. What I said on that day, those who called us
26 and took our statements, those said, "Come all of you that have
27 been injured during this war." And the town crier used to go
28 around and really say, "Hey, the people have come who want to get
29 information from you." So we all went there and they wrote down

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1 what we said. And someone will be asking at that time, "Hey,
2 maybe Savage did that to you, maybe Savage did that to you."
3 Then I said I didn't know the name at that time.

4 JUDGE SEBUTINDE: Mr Witness, please gather your thoughts
10:45:17 5 and listen to the question. The lawyer has read certain words
6 out to you. You heard those words. And he is asking you did you
7 say those words to the people who interviewed you. The answer is
8 yes or no. The answer is yes or no. What is your answer?

9 THE WITNESS: Yes, I said so when they called me. I told
10:45:48 10 them what happened to me.

11 MR MANLY-SPAIN: Mr Witness, let me --

12 PRESIDING JUDGE: Mr Manly-Spain, I think maybe it is
13 appropriate to have our brief adjournment at this time. We will
14 have 15 minutes adjournment. Madam Court Attendant, please
10:46:06 15 adjourn court for 15 minutes.

16 [Break taken at 10.40 a.m.]

17 [Upon resuming at 11.00 a.m.]

18 MR HODES: I just wanted to advise the Court that the
19 original of that document is now available if necessary.

10:46:57 20 PRESIDING JUDGE: Thank you, Mr Hodes.

21 MR MANLY-SPAIN: Thank you.

22 PRESIDING JUDGE: It should be shown to counsel for the
23 Defence before we proceed on.

24 JUDGE SEBUTINDE: Madam Court Attendant, please assist.

11:07:33 25 MR MANLY-SPAIN: Madam Court Attendant, please pass it to
26 the witness and retrieve the other one. Thank you.

27 Q. Mr Witness, I am going to continue to read from your
28 statement.

29 JUDGE SEBUTINDE: Mr Manly-Spain, maybe we should explain

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1 to the witness. He saw an exchange of documents and I am not
2 sure he understood what is going on. Mr Witness, they have taken
3 away the previous document from you and put another document in
4 front of you. Now, this new document is the original document.

11:08:26 5 The first document was a photocopy of that document so it is
6 really the same document, but this is now the original document
7 which is in front of you. And the lawyer is now going to proceed
8 and ask you questions, continue asking you questions from this
9 original document. Do you understand that?

11:08:45 10 THE WITNESS: Yes.

11 MR MANLY-SPAIN: Thank you, Your Honour.

12 Q. Mr Witness, I am going to continue to read from that
13 document. After I read a section I will ask you a question.

14 "Savage was then an SLA soldier. He was born in Nimikoro to
11:09:10 15 Pa Buffa." Did you say that to the person who wrote down your
16 statement?

17 A. I said -- I told you that no, I didn't say so. Three
18 times.

19 Q. As Your Honour pleases. I will read again -- continue to
11:09:35 20 read. "But because he was born in Freetown and, according to my
21 information, to a Krio woman, that was why he was given the name
22 of Savage." Did you say that to the investigator, the person who
23 took your statement?

24 A. I did not say anything about that. I said I did not know.

11:10:01 25 Q. Again I will continue. "I saw him giving out 5,000 Leones
26 to bystanders, but at this time also I saw many soldiers dressed
27 in military uniform walking about." Did you say that to the
28 person who took your statement?

29 A. They told me that combats have arrived. I did not go there

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1 and I did not see him.

2 Q. Mr Witness, I want to ask you whether, when I was
3 questioning you before we went on a break, you said that answers
4 were suggested to you by the people who took your statement.

11:11:20 5 PRESIDING JUDGE: I don't think that's entirely fair,
6 Mr Manly-Spain. That was not what was conveyed to me. What was
7 conveyed to me was that people were talking and were saying to
8 him maybe it was Savage.

9 MR MANLY-SPAIN: Yes. Well, let me put it that way.

11:11:42 10 Q. whilst the investigator was taking your statement, did he
11 suggest to you that maybe it was Savage who did it to you?

12 MS NGUNYA: Again, Your Honour, a repeat of what you have
13 just said.

14 PRESIDING JUDGE: Mr Manly-Spain is entitled to put that
11:11:58 15 precise question in the way he has put it. He has put it in a
16 different way now.

17 MS NGUNYA: As the Court pleases.

18 MR MANLY-SPAIN: Much obliged.

19 PRESIDING JUDGE: Mr Manly-Spain, repeat your question to
11:12:23 20 the witness as he may not have heard it.

21 MR MANLY-SPAIN: Yes.

22 Q. Mr Witness, I am asking whether at the time your statement
23 was being taken it was suggested to you by the person taking your
24 statement that maybe it was Savage who had cut your hand?

11:12:43 25 A. I did not understand. Please repeat the question.

26 Q. I am asking you whether it is the case that whilst your
27 statement was being taken by the investigator, this investigator
28 suggested to you that maybe it was Savage who had cut your hand?

29 A. I did not understand again. Please, help me understand

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1 this clearly.

2 MR MANLY-SPAIN: Your Honour, may I preface my question
3 with something else?

11:13:36

4 PRESIDING JUDGE: You may preface it and we will listen to
5 it.

6 MR MANLY-SPAIN: Yes.

7 PRESIDING JUDGE: And then if there is anything necessary
8 to be said, it will be said.

9 MR MANLY-SPAIN:

11:13:43

10 Q. Mr Witness, before we had the break, when you were
11 answering to my question, did you say that sometimes whilst the
12 statement was being taken people would be suggesting that maybe
13 this person did it, maybe that person did it?

14 A. Nobody told me about that and I did not say so.

11:14:12

15 MR MANLY-SPAIN: As Your Honour pleases. I will go on.
16 Your Honour, I will wish to turn to -- go on to page 7920.

17 Q. Mr Witness, I'm going to read to you what you have in your
18 statement -- what is in your statement about the incident
19 involving Mosquito or Small Mosquito that you have spoke about

11:14:54

20 today, and Savage in this compound, in the compound where you
21 were taken. I will read from the beginning of the page,
22 Your Honour. "One of them Sahr Kpakama, a born of Koidu, alias
23 Mosquito, and also an SLA urinated on us and gave orders that the
24 mattress be lit up. This was done. After a while I felt a
25 burning sensation on my back, so I kicked the mattress off and
26 Savage asked who did it." Did you tell the Prosecutor -- the
27 person who took your statement that?

11:15:23

28 A. At that time there was no prosecutor.

29 Q. I am asking about the person who wrote down your statement.

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1 Did you tell him that?

2 A. Yes.

3 Q. I will read on, Mr Witness. "I answered and he took me
4 out, beat me with an iron rod, slashed my right leg with a

11:16:09 5 machete and stabbed me with his bayonet on my side." Mr Witness,
6 did you say that to the person who took down your statement?

7 A. Yes.

8 Q. Mr Witness, am I right that this morning you said it was
9 Small Mosquito who stabbed you with his bayonet?

11:16:36 10 A. Yes. It was him who stabbed me and he called his name. He
11 said that was his name.

12 Q. That is Small Mosquito?

13 A. Yes.

14 Q. Mr Witness, at this time -- did you know at the time 1998,
11:17:13 15 February to April -- did you know of the RUF?

16 A. No, I didn't. I don't know.

17 Q. Is it the case that before then you had never heard of the
18 RUF?

19 A. No, then I didn't know about RUF.

11:17:47 20 Q. When did you first hear about the RUF?

21 A. When I was injured. At the time I was slashed with the
22 cutlass.

23 Q. Mr Witness, were you in Kono in 1994?

24 A. I was born in Kono.

11:18:21 25 Q. Do you remember that the RUF was in control of the entire
26 Kono District in 1994?

27 A. I wouldn't know, because I was in the bush.

28 MR MANLY-SPAIN: That is all, Your Honour.

29 PRESIDING JUDGE: Yes, Mr Graham.

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1 MR GRAHAM: Respectfully, Your Honours, I don't have any
2 questions for this witness at this moment.

3 PRESIDING JUDGE: Thank you. Just a moment, Mr Graham.
4 When you say at this moment, it is at this moment or not at all.

11:19:11 5 MR GRAHAM: Not at all.

6 PRESIDING JUDGE: Very well. Mr Fofanah.

7 MR FOFANAH: Your Honours, my colleague is always taking
8 the wind out of my sail. I also do not have any questions for
9 the witness. Thank you very much, Your Honour.

11:19:16 10 PRESIDING JUDGE: Thank you, Mr Fofanah.

11 JUDGE SEBUTINDE: Mr Witness --

12 PRESIDING JUDGE: Re-examination by Prosecution?

13 MS NGUNYA: Your Honour, no re-examination.

14 PRESIDING JUDGE: Thank you.

11:19:43 15 QUESTIONED BY THE COURT:

16 JUDGE SEBUTINDE: Mr witness, I have two questions
17 for you relating to the injuries that you sustained whilst you
18 were in the company of Mr Savage and Mr Small Mosquito. The
19 first question relates to your evidence where you said, "He took
11:20:15 20 a cutlass and slapped me on the back". What did you mean by
21 slapping you on the back with a cutlass?

22 A. When he use a machete on someone the intention is to kill
23 him. He slapped me, he wanted to kill me.

24 JUDGE SEBUTINDE: Did he just hit you with a cutlass or did
11:20:42 25 he actually cut you with a cutlass.

26 A. [No interpretation]

27 JUDGE SEBUTINDE: What is the interpretation?

28 A. He slapped me with a cutlass, then later on he cut my hand
29 with the cutlass.

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1 JUDGE SEBUTINDE: Mr Interpreter.

2 THE INTERPRETER: Yes, madam.

3 JUDGE SEBUTINDE: The problem we have is with the word
4 "slapped". Are you using the right interpretation? Is it
11:21:23 5 slapped or slashed?

6 THE INTERPRETER: No, not slash. He use the flat side of
7 the cutlass to slap him on the back.

8 JUDGE SEBUTINDE: I understand. The second question is:
9 You said that you were flogged on the head, which affected your
11:21:41 10 eyesight. Is that correct?

11 A. He swept me off my feet and flogged me on my eyes. My
12 right eye, I still can't see.

13 JUDGE SEBUTINDE: With what did he flog you on your face?

14 A. He used the flat side of the cutlass and slapped me on my
11:22:18 15 face with it. And what I saw was like fire, so I couldn't do
16 anything, I fell down.

17 JUDGE SEBUTINDE: That is all, thank you.

18 PRESIDING JUDGE: Thank you, Mr Witness. That is your
19 evidence in the Court today. You are now free to leave the
11:22:37 20 Court. We have no more questions to ask you and we thank you for
21 coming.

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

11:23:00 25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

29 [REDACTED]

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ANNEX B

PUBLIC TRIAL TRANSCRIPT OF TF1-074

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1. TF1-074, RUF trial transcript, 12 July 2004

18476

THE SPECIAL COURT FOR SIERRA LEONE

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

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

12 JULY 2004
1008H
CONTINUED TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For the Registry:

Mr. Geoff Walker
Ms. Maureen Edmonds

For the Prosecution:

Ms. Lesley Taylor
Mr. Abdul Tejan-Cole
Ms. Boi-Tia Stevens

For the Accused Issa Hassan Sesay:

Mr. Timothy Clayson
Mr. Wayne Jordash
Ms. Sareta Ashraph

For the Accused Morris Kallon:

Mr. Shekou Touray
Mr. Raymond Brown
Ms. Wanda Akin
Mr. Melron Nicol-Wilson

For the Accused Augustine Gbao:

Mr. Andreas O'Shea
Mr. John Cammegh

Court Reporters:

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

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1 THE INTERPRETER:

2 Yes, Your Honour.

3 [Witness sworn]

4 [WITNESS: WITNESS TF1-074:

5 [Witness answered through interpretation]

6 THE INTERPRETER:

7 Your Honours, I don't think the witness hears what we are saying from the booth. Your Honours, I
8 don't think the witness hears what we are saying from the booth.

9 JUDGE BOUTET:

10 We've heard, we've heard. That's okay. Mr. Walker, can you check if the witness can hear what's
11 going on? Check his earphones, please. His speaker may not be on the right channel too.

12 MR. PRESIDENT:

13 You said this is witness no. TF1-074?

14 MR. TEJAN-COLE:

15 Yes, Your Honour.

16 MR. PRESIDENT:

17 Yes, please. Go ahead.

18 Examined by Mr. Tejan-Cole:

19 MR. TEJAN-COLE:

20 Q. Mr. Witness, can you tell this Court how old you are?

21 A. I am 26 years old.

22 Q. And where were you born?

23 A. I was born in the eastern province, Sando Chiefdom --

24 MR. O'SHEA:

25 Your Honours, I apologise for interrupting. It just seems to me that we are entering into information at
26 this point in time which is not sensible to be brought into public. May I make a suggestion, that the
27 personal information on the sheet which the Prosecution has is shown to the witness, and the witness
28 is asked if the information on that sheet is correct.

29 MR. PRESIDENT:

30 We want to go with it orally, Mr. O'Shea, please. We want to go -- we want to proceed orally.

31 MR. O'SHEA:

32 Fair enough. I'm just concerned about the protective measures.

33 MR. PRESIDENT:

34 We should lead the witness, you know, orally so that we get along.

35 MR. TEJAN-COLE:

36 Sorry, Your Honour, I did not get the answer for the last question I asked the witness. So I will pose
37 this question again to the witness.

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- 1 MR. PRESIDENT:
2 He says he is 26 years old.
3 MR. TEJAN-COLE:
4 Yes, then I asked this further question again.
5 MR. TEJAN-COLE:
6 Q. Where were you born?
7 MR. PRESIDENT:
8 Where were you born, yes.
9 THE WITNESS: [Answered through interpretation]
10 I was born in Kono.
11 MR. TEJAN-COLE
12 Q. Can you tell the Court the name of the town where you were born?
13 A. Yes, I will do so.
14 Q. What's it?
15 A. Sando Chiefdom, Yomadu Town.
16 Q. Mr. Witness, can you read in English?
17 A. No I can't.
18 Q. Can you write in English?
19 A. No, I'm not that educated.
20 MR. PRESIDENT:
21 So the reply is that he cannot write in English?
22 MR. TEJAN-COLE:
23 Cannot read or write in English.
24 MR. PRESIDENT:
25 Where is the technician? They don't appear to be getting us in the gallery. Can they see what they
26 can do to adjust? Where is the technician? The witness was saying that he can neither read, nor
27 write English. I think its all right now. Prosecution, I think you can go on.
28 MR. TEJAN-COLE:
29 Q. Mr. Witness, do you recall or do you remember February 1998?
30 A. Yes, I can remember.
31 Q. Where were you in February 1998?
32 A. I was in the town where I was born, Yomadu.
33 Q. Did you see anything happen in February 1998?
34 A. Yes, I did.
35 Q. Can you tell this Court what you saw?
36 A. Yes, I can.
37 Q. Go ahead?

1 A. I was in Yomadu 1998. We were there, by then the intervention has taken place. We were in
2 Yomadu and we saw people coming from Freetown, both soldiers and civilians. In fact, we were there
3 the population was so much that we became panic. So we moved from there and went to a town that
4 is called Dandabu. So from time to time we leave Dandabu and come to Yomadu. One time we left,
5 we saw soldiers coming in a vehicle. They came and they stopped by us.

6 Q. Could I ask you how many vehicles you saw?

7 A. Initially they came with only one van from Koindu.

8 Q. Can you describe that van to the Court?

9 A. That vehicle was a Toyota. So they asked us whether there were any youths in town.

10 Q. Who asked you if there were any youths in town?

11 A. It was the soldiers, the junta.

12 MR. PRESIDENT:

13 He said they asked them whether there were any youths in town.

14 MR. TEJAN-COLE:

15 Yes, Your Honour.

16 A. Yes, there were youths in town. Yes, so we answered that there were no youth.

17 Q. Did anything happen after that?

18 A. When they had left we went back to Dandabu. There was a certain time when I and my brothers and
19 worker left Dandabu. We came to Yomadu and stayed there up to two o'clock. From two to three,
20 we saw two vehicles -- three vehicles. So when these three vehicles came, we were all panicked in
21 town. We were trying to run away. When we were running away, we saw one soldier. So I ran away
22 from the town and hid somewhere. I was there when they took Osman and went with him. I stayed
23 there for sometime. After sometime I saw Osman coming back. I saw Osman coming with rice in a
24 pan. He told me and said we should not sit down here. I asked him and he said it was Johnny Paul
25 that was going. He said, in fact, they took me in one of those three vehicles. I asked him, I said was
26 that true, and he said, "Yes, it is the truth that I am telling you. They asked me to show them a road
27 and I told them that I did not know a road and they said they wanted a route to Kailahun." The junta
28 begged him and asked them to show them a route to Kailahun.

29 MR. O'SHEA:

30 Yes, Your Honours. I think we are entering into an area of unnecessary hearsay here. I would
31 suggest that the Prosecution counsel takes things a little more slowly so that he is able to control the
32 witness.

33 MR. PRESIDENT:

34 Yes, we've taken note of that. Please, control your witness.

35 MR. TEJAN-COLE:

36 Your Honour, I'm simply allowing the witness to tell his story, and tell exactly what he stated in his
37 statement which was disclosed to the Defence.

- 1 Q. Now, you said you saw three vehicles. Can you describe these three vehicles to the Court?
- 2 A. Yes. Those three vehicles the time when they held my sister, they had one Nissan and two Toyotas.
- 3 Q. Was anything written on any of these vehicle?
- 4 A. The first motorcar in which the juntas were, that particular vehicle they wrote AFRC on it. That is the
- 5 vehicle in which the men asked us for a route to Kailahun.
- 6 Q. Can you describe the men in these three vehicles?
- 7 Can you tell us how they were dressed?
- 8 A. Yes, they had full combat.
- 9 Q. Were they carrying any weapons?
- 10 A. Yes, they had weapons.
- 11 Q. Now, after this incident that Osman narrated to you, did you do anything as a result of what Osman
- 12 said to you?
- 13 A. Yes, we moved and we went to a village called Dandabu but we did not meet the Pa there.
- 14 Q. What Pa are you referring to?
- 15 A. Yes, I'm talking about my father. We went to the second village and we met them there.
- 16 Q. Do you know the name of the second village?
- 17 A. The second village was Dumbadu. We were all together with my father, and they started attacking us
- 18 there again.
- 19 Q. Who attacked you?
- 20 A. The rebels who attacked the village and one of them was called Kanaboy.
- 21 Q. So what happened when the rebels attacked?
- 22 A. When they attacked, they took some of our property, and they left the town. And when they left the
- 23 town, we decided to go to Guinea. We moved and went. We were on our way, and we decided to
- 24 stay in one village and we had firing before us. So we took another branch and went into the bush
- 25 and met a farmhouse where we stayed. We stayed there on to the evening time, and, there again,
- 26 the junta went and met us there. They captured me and my younger brother and they took us along.
- 27 Q. What village were you captured?
- 28 A. The village was called Baiwandu. That is the name of the village.
- 29 Q. Do you know --
- 30 MR. PRESIDENT:
- 31 We want to get the name of the village on record.
- 32 MR. TEJAN COLE:
- 33 Baiwandu, Your Honour.
- 34 THE INTERPRETER
- 35 Baiwandu.
- 36 MR. PRESIDENT:
- 37 Yes, you can proceed.

- 1 MR. TEJAN-COLE:
- 2 Q. Were you captured alone?
- 3 A. No, I was captured with my younger brother.
- 4 Q. Do you know who were these people who captured you?
- 5 A. Both troops went but those people who appeared to us in the farmhouse were the junta.
- 6 Q. What do you mean when you say the two troops?
- 7 A. I mean the RUF and the AFRC.
- 8 Q. Could you recall the names of any of the commanders who captured you?
- 9 A. Those that captured us, one of them was Francis and his rebel name is Kill Man No Blood.
- 10 Q. Do you recall any other name?
- 11 MR. PRESIDENT:
- 12 Francis.
- 13 MR. TEJAN-COLE:
- 14 Francis, also known as --
- 15 THE INTERPRETER:
- 16 Kill Man No Blood. That is his rebel name.
- 17 MR. TEJAN-COLE
- 18 Q. Any other person?
- 19 A. The other was Gbessay.
- 20 MR. PRESIDENT:
- 21 What?
- 22 MR. TEJAN-COLE:
- 23 Gbessay. G-B-E-S-S-A-Y.
- 24 MR. PRESIDENT:
- 25 Yes.
- 26 MR. TEJAN-COLE:
- 27 Q. Now what happened after you were captured in Baiwandu?
- 28 A. When they captured us, they took us to another farmhouse where they had captured the first people
- 29 Q. Do you know where the farmhouse was? Do you know what town?
- 30 A. The farmhouse was near Wordu and they took us to Wordu.
- 31 Q. You said you were taken to meet some of the other people whom they captured first. How many
- 32 other people did you meet in captivity? Can you tell this Court roughly the number of people?
- 33 A. We all were 18 that were captured that same day.
- 34 Q. Did anything happen after this?
- 35 A. They moved with us and took us to Wordu.
- 36 MR. PRESIDENT:
- 37 We want to have the names of these towns.

- 1 MR. TEJAN-COLE:
2 Wordu.
- 3 MR. PRESIDENT:
4 They took them to Wordu.
- 5 MR. TEJAN-COLE:
6 Wordu. Yes, Your Honour. The spelling is W-O-R-D-U.
- 7 Q. So they took you to Wordu?
- 8 A. Yes. When they took us to Wordu, we slept there two days. The other night, they told us that, in fact,
9 all the junta should report by 10.00.
- 10 Q. You said --
- 11 MR. TEJAN-COLE:
12 Sorry, Your Honour, can I get again exactly what the interpreter said. I'm not too sure whether the --
13 can he repeat what he said in answer to that question?
- 14 MR. PRESIDENT:
15 Can you take your question again so that you can get the reply.
- 16 MR. TEJAN-COLE:
17 Q. What happened after you were captured in Wordu -- after you were taken to Wordu?
- 18 A. When they took us to Kaima --
- 19 MR. PRESIDENT:
20 Not Kaima, we are in Wordu.
- 21 MR. TEJAN-COLE:
22 Q. What happened after Wordu? When you were captured in Wordu, you said you spent two nights in
23 Wordu.
- 24 MR. PRESIDENT:
25 He said they were taken to a farmhouse in Gbessay and that, you know, thereafter -- they were about
26 18 of them, and they took them to Wordu and there they slept for two days.
- 27 MR. TEJAN-COLE:
28 Q. Yes, you slept for two days in Wordu, what happened after the two days in Wordu?
- 29 A. They came with a paper to one of the big people and they told all of them to report to Kayima which is
30 the chiefdom headquarter.
- 31 Q. When you say they, who came with this paper? Who came with this document?
- 32 A. The man who came with the document was called Orfungbey, and his rebel name is Colonel Terry --
33 Colonel Open Terry.
- 34 MR. PRESIDENT:
35 Colonel Open Terry -- his real name was what, that was his military name.
- 36 THE WITNESS: [Answered through interpretation]
37 His real name is Orfungbey.

1 MR. TEJAN-COLE:

2 Q. And what did this document say?

3 A. All of them should report at Kayima before ten o'clock.

4 MR. O'SHEA:

5 Your Honour, I apologise for being on my feet again. We smell quite a strong burning smell from this
6 side of the room. Perhaps, we could investigate what it is.

7 MR. PRESIDENT:

8 Can we rise? Can we break and reassure ourselves as to what is happening. We will resume as
9 soon as things come true. We will rise, please.

10 [Recess taken at 10.50 a.m.]

11 [On resuming at 11.05 a.m.]

12 MR. PRESIDENT:

13 The session resumes. The Prosecution, go on, please.

14 MR. TEJAN-COLE:

15 Yes, Your Honour. Your Honour, my recollection is that we stopped at the point where the witness
16 said that they received a letter for them to be moved to Kayima, the chieftom headquarters.

17 MR. PRESIDENT:

18 Can we have that for the record?

19 MR. TEJAN-COLE:

20 K-A-I-M-A. (sic) Your Honour.

21 MR. BROWN:

22 Your Honour, is it possible for us to know what he said. I don't recall him saying a letter -- in the
23 content of a letter. Perhaps we can go back and ask him what the letter said.

24 MR. PRESIDENT:

25 Can you stand, please.

26 MR. BROWN:

27 I'm sorry, forgive me. I wanted to point out that it wasn't -- I'm not sure we got a clear answer
28 previously about the content of the letter, and asked if he could ask him about the letter again.

29 TEJAN-COLE.

30 Q. Now, Mr. Witness, you said that you received -- whilst you were in Wordu, you received a letter. What
31 did that letter say?

32 A. The letter -- the boss man who was Komba Gbundema said that all of them should report to Kayima.
33 In fact, they gathered everything that they had and put them in the motorcar. The rest of the things
34 were carried by us. We were at Kayima two days. At night when we were sleeping, one fellow came
35 who was called Alhaji.

36 Q. Who is this Alhaji?

37 A. Alhaji was a fellow that was captured and was with them. So he called me, and told me that,

1 "Tomorrow you will be called, and they would ask each and every one of you as to who wants to go to
2 his people; that it is not by force, and that you would be left to go. So please, don't say that you are
3 going and when they ask you to go and escort them, you should know that they are going to execute
4 you." And they said, "Well, no problem, I will be with them." So in the morning, around 11.00 they
5 gathered all of us.

6 Q. Who gathered all of you?

7 A. They had already combined, the rebels and the AFRC at Kayima. They gathered us.

8 Q. Could you specifically tell this Court who asked you to stand up in a line?

9 A. Yes, the man who told us to be in a line was an AFRC junta.

10 Q. Do you recall his name?

11 A. His name is Bangalie.

12 Q. Could you tell this Court how this Bangalie was dressed, how he was attired?

13 A. Yes, I can.

14 Q. How was he dressed?

15 A. He was in full combat and had an MP badge on his left arm.

16 Q. You've also mentioned the name of Major Komba Gbundema. Who was this Major Komba
17 Gbundema?

18 MR. BROWN:

19 Your Honour, I object. I don't recall him testifying to Major --

20 MR. PRESIDENT:

21 I don't recall either.

22 MR. TEJAN-COLE:

23 Your Honour, the evidence is that they received a letter from Major Komba Gbundema. I stand to be
24 guided by the records.

25 MR. PRESIDENT:

26 Maybe you have it in your own record, but it hasn't come out in evidence.

27 JUDGE THOMPSON:

28 Yes, he said they received the letter.

29 MR. TEJAN-COLE:

30 As Your Honour pleases.

31 MR. TEJAN-COLE:

32 Q. So, when you were in Kayima you said in the morning you were asked to lined up. Could you tell the
33 Court did anything happen after this?

34 A. Yes, when we had queued, the man came and greeted us.

35 Q. Who was this man?

36 A. The man, Bangali himself who was AFRC.

37 Q. Yes?

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- 1 A. After queuing, when he had greeted, he told us that he was the one that summoned us. He said
2 whosoever wanted to go to his people there is no problem because God has not made anybody to
3 become a warrior. "So if you want to go, you can tell us and we will release you, and whosoever want
4 to stay with us can do so. And whosoever want to go, let him go this way, and whosoever did not
5 want to go, let him go this way." In fact, he gave us that over-confidence, and some other people
6 choose to go to their people
- 7 Q. Can you tell how many people went to that direction?
- 8 A. So we that remained --
- 9 Q. Can you tell -- you said some people went in the direction saying that they wanted to return back to
10 their families. Can you tell how many people went in that direction indicating that they wanted to go
11 back to their families?
- 12 A. Yes.
- 13 Q. How many?
- 14 A. We were 18, 15 were the ones that decided to go to their parents.
- 15 Q. And you said there were three of you on the other side?
- 16 A. Yes.
- 17 Q. Who were those three?
- 18 A. I, with my younger brother, with one old man that was called Pa Sesay.
- 19 Q. What is name of your younger brother?
- 20 A. He was called Muhammed.
- 21 Q. Yes, did anything happen after this?
- 22 A. When they have seen that some have decided to go to their parents, and those who wanted to stay
23 with them, he stood there and wanted to join the group. I raised up my head and I saw Alhaji, and he
24 winked to me. He showed me signs so that I could not join those people. He did that for three times,
25 and Bangalie then said, "So you people that remained have decided to stay with us," and we said,
26 "Yes we've decided to stay with you." And they said, "Okay, you have decided to go to your people,
27 not so." He said, "Okay, now you people that have decided to go to your parents. If we release you,
28 you will go and tell the government that we are here, and that we have people here, and that they
29 would commission a jet to come and bomb us; isn't that so?" And he said, "Now they are going to kill
30 all of you." In fact, they were there when one woman shouted and her name was Water. She said,
31 "Umm!" She said, "You, the rebels are you here? Now the junta have decided to go and kill these
32 people. At the latter part they would not say that it was the junta that killed these people or that cut
33 their hands, they would say it was the rebels." And the man then said, "Well, we are not going to do
34 anything."
- 35 Q. What man?
- 36 A. The same Bangalie that I have been talking about. He said, "We were not going to kill them, we were
37 going to cut their hands, but we are coming to carve AFRC on their bodies. They are going to stay in

1 this way, they are going to stay with us and they are going to work for us." And they told these 15
2 people to come and join us. And they told all of us to take off our clothes, and we took all of our
3 clothes and put them under the orange tree. And he sent one of his fellows to go and take a surgical
4 blade, and they started carving AFRC on our bodies. I, in particular, was carved -- was marked by
5 Bangalie. By then, my younger brother was so much afraid. In fact, he came by me and I held his
6 hand, and they marked AFRC on our bodies.

7 Q. What was marked on your body?

8 A. On my own body, they marked AFRC and RUF, and on some other peoples' bodies, they just marked
9 AFRC.

10 Q. Who marked you?

11 A. It was Bangalie.

12 Q. Could you just repeat? You said you were marked specifically AFRC/RUF. What was marked on the
13 others who were present, some of the others captives?

14 A. Some were marked RUF, some AFRC. Some had both AFRC/RUF, and me in particular I had AFRC
15 and RUF.

16 Q. Who marked you?

17 A. It was Bangalie, the AFRC man

18 Q. What did he use to mark you?

19 A. It was called a surgical blade.

20 Q. And where did he put this mark on you?

21 A. On my chest.

22 Q. Were all the 18 captives marked?

23 A. All of us were marked on that same day.

24 Q. Now whilst you were at Kayima, could you tell roughly how many people held --

25 MR. PRESIDENT:

26 Look, let me get this right. There were 15 of them who said they wanted to join their parents?

27 MR. TEJAN-COLE:

28 Yes, Your Honour.

29 MR. PRESIDENT:

30 Three of them decided to remain?

31 MR. TEJAN-COLE:

32 Yes, Your Honour.

33 MR. PRESIDENT:

34 Are you now saying they decided to mark all of them, all the 18 of them?

35 MR. TEJAN-COLE:

36 The evidence is that they were later joined together. All 18 of them were joined together and then
37 they decided that instead of allowing them to go, that they were going to mark all of them. That is the

1 evidence that the witness has said, Your Honour. So they marked all 18 of them, and he said further
2 that some of them were marked RUF/AFRC, others were marked -- as Your Honour pleases.

3 Q. What happened after you were marked?

4 A. After marking me, I was there for two days. The third day, one of their big men who was called
5 Bangalie, asked us to pick up his load and take it to Yomadu. And I and that old man and other
6 people, they asked us to pick their load and go to Yomadu.

7 Q. Before you left for Yomadu can you tell us roughly, how many soldiers or how many people were
8 there in this group that held you in Kayima? Not you the captives but those who captured you. You
9 said they were mixed, can you tell us how many of them?

10 MR. BROWN:

11 Your Honour, when there is a partial answer, I think counsel has to wait for the interpreter to give us
12 the partial answer before he interrupts the witness, because the normal thing I would think, he would
13 like the witness to finish and then he ask for relief from the Court if he feels that the answer is
14 unresponsive. I missed what the witness said at this latter part.

15 MR. PRESIDENT:

16 Please, you would try to go a bit slowly.

17 MR. TEJAN-COLE:

18 As Your Lordship pleases. I apologise to my learned friend, My Lord.

19 MR. PRESIDENT:

20 You have to time your questions with the cabin, you know, so that --

21 MR. TEJAN-COLE:

22 I apologise, My Lord. My learned friend may understand that I understand *Krio*, I listened to him in
23 *Krio* and I assumed that the Court -- I forgot about the translator, Your Honour.

24 MR. PRESIDENT:

25 That's okay

26 MR. TEJAN-COLE:

27 I apologise, Your Honour.

28 MR. TEJAN-COLE:

29 Q. Could you tell this Court how many people held you in captivity in Kayima?

30 A. Is it by Yomadu?

31 Q. I'm referring to Kayima. Whilst you were in Kayima, how many people were there that held you in
32 captivity; do you know how many? If you don't know, you don't know.

33 A. We were held by both the junta and the rebels.

34 Q. Do you know of anybody who was in charge of that group in Kayima.

35 MR BROWN:

36 I object.

37

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Page 15 omitted

1 MR. BROWN:

2 That's true, Your Honour. It's fair to do this line of questioning. There have been more than one
3 occasion when a fairly simple appointed question is laid to a nullity, and I'm trying -- I can't get away
4 from your choice that I acted pre-emptively, but I think it is with some cause.

5 JUDGE THOMPSON:

6 It's just to appeal to the sense of fairness of the Prosecutor. Well, he is making an appeal and as I
7 said, we can't rule you out of order because there is no rule that has been infringed. But counsel is
8 virtually saying that what might follow might be perhaps a loaded gun.

9 MR. TEJAN-COLE:

10 My Lord, I note counsel's concerned. When I posed the preceding question, I posed to the witness:
11 "Do you know how many people captured you?" And his answer was, "I do not know." So I think
12 learned counsel, as he himself admits, was being very pre-emptive in this particular case, and I think
13 we should wait for the witness to answer the question and then I will take it up from there.

14 Q. Now, do you know who was in charge of these men in Kayima; this mixed group that you've
15 described?

16 A. Yes, I do.

17 Q. Do you know who gave instructions in Kayima?

18 MR. PRESIDENT:

19 No, no, no, don't mix it. Who was in charge?

20 MR. TEJAN-COLE:

21 He said yes, he knows.

22 MR. PRESIDENT:

23 Yes, follow it from there.

24 MR. TEJAN-COLE:

25 I'm laying the proper foundation. I notice my learned friend, Mr. Brown's hand is already on the button
26 ready to object. So I am laying a proper foundation, Your Honour, before I asked.

27 MR. PRESIDENT:

28 Go ahead.

29 MR. TEJAN-COLE:

30 Q. Do you know who gave instruction to these troops in Kayima? Do you know the person who gave
31 instructions, generally?

32 A. It was Gbundema.

33

34

■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

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**Pages 17 to 19
omitted**

[illegible]

20 MR. PRESIDENT:

21 Well, we have taken note of these observations and I think counsel can continue, you know, in the
22 light of the position of the Court not to sustain the objection by Mr. Brown. So, can counsel continue,
23 please.

24 MR. TEJAN-COLE:

25 Thank you, My Lord.

26 Q. You'd said in your answer to the last question that Gbundema was in charge. Do you know the full
27 name of this Gbundema?

28 A. His full name is Komba.

29 Q. How did you know he was in charge?

30 MR. PRESIDENT:

31 Is it Gbundema?

Q2 MR. TEJAN-COLE:

3 It's Gbundema. It's G-B-U-D-E-M-A (sic).

4 MR. PRESIDENT:

15 Yes, go ahead.

16 MR. TEJAN-COLE:

37 Q. How did you know that Komba Gbundema was in charge?

- 1 A. Because we were under his battalion.
- 2 Q. You were under his battalion?
- 3 MR. PRESIDENT:
- 4 How did he know that it was Gbundema who was in charge? He has not answered the question.
- 5 MR. TEJAN-COLE:
- 6 Yes.
- 7 MR. TEJAN-COLE:
- 8 Q. How did you know that Komba Gbundema was in charge? How did you find this out?
- 9 A. When we were captured, we were with them in the bush and whatever they -- whatever decision they
- 10 wanted to take they always referred to him.
- 11 Q. Do you know what group he belonged to?
- 12 A. Komba Gbundema was a rebel.
- 13 Q. And who do you refer to as rebel?
- 14 A. Rebels? These are the first people who started the war during 1991.
- 15 Q. Do you know them by any other name?
- 16 A. They are called RUF.
- 17 Q. Now, after you were marked were you given any medication?
- 18 A. No.
- 19 Q. How long did it take the marks on your chest to heal?
- 20 A. It took up to two months with me.
- 21 Q. It took about two months to heal. Did anything else happen after you had been marked?
- 22 A. When I was marked, they told us to go and take Barry's load to Yomandu.
- 23 Q. Who was Barry? Who do you refer to as Barry?
- 24 A. He was the commander in our town that is called Yomandu Town.
- 25 Q. What commander -- what type of commander did you -- what type of commander was he?
- 26 A. He was company commander.
- 27 Q. Do you know what group he belonged to?
- 28 A. He was in the RUF group.
- 29 MR. PRESIDENT:
- 30 What's the name again? Let's have the name again.
- 31 MR. TEJAN-COLE:
- 32 Barry, Barry. He just said Barry.
- 33 Q. Do you know the full name?
- 34 A. No, I don't know.
- 35 Q. How was he referred to?
- 36 A. His rank was Captain Barry.
- 37 Q. Yeah, what did Barry say to you?

- 1 A. When we were with him?
- 2 Q. No, could you explain what were you supposed to do with Barry?
- 3 A. I was with him; I was working for him.
- 4 Q. What type of work did you do?
- 5 A. We used to clear his place and we used to cook for him because he had no woman. And we used to
6 do household work, sweeping and fetching wood, and we used to launder for him.
- 7 Q. Did anything happen whilst you were with Captain Barry?
- 8 A. Well, when I was with him, we had taken some time with him and they said there was a mission in
9 which we were commissioned to go to one village that was in the Northern Province. The town was
10 called Efin. We went there.
- 11 Q. *[Overlapping microphones]*
- 12 A. It was in the Northern Province.
- 13 Q. Do you know the name of district that this town was in?
- 14 A. It was under Kabala, Koinadugu District.
- 15 Q. And what was this mission to Efin?
- 16 A. They said they were to go and attack at Efin.
- 17 Q. Yes.
- 18 A. And they said we had to take all the cartridges and we took them and went away. We went to Kaima.
19 We reached at Kaima and they mobilised some other people and we went to Efin. We went to Efin
20 and they launched an attack.
- 21 Q. Did you take part in this attack?
- 22 A. The attack took place before me.
- 23 Q. Did you fire any gunshots during this attack?
- 24 A. No, I did not because they did not give us any gun. You see, our own objective was to take the
25 cartridges.
- 26 Q. All right.
- 27 A. So when they launched the attack, they captured the town and they took all the little property and
28 brought it to us. And even that was Barry, you see, I was the one that was by it. And they came with
29 seven people.
- 30 Q. Who came with seven people?
- 31 A. It's Barry. When he came with these seven people, he said I was coming -- he said, "I would come
32 and cut your hands --"
- 33 MR. PRESIDENT:
- 34 Please sit down, please sit down.
- 35 *[Counsel Tejan-Cole complies]*
- 36 Yes, Mr. O'Shea.
- 37

1 MR. O'SHEA:

2 Yes. Your Honours, it is an important principle that before a witness is called the Defence be on
3 proper notice as to what evidence that witness is going to give.
4

5 Now, it would seem that the area that's being going into now, this attack at Efin, is an area which we
6 have absolutely no notice. I don't know if my -- the -- we were earlier taking about other international
7 tribunals. There is a decision by the International Criminal Tribunal for Rwanda by the
8 name of *Bagasora* and there is another decision in the *Government II* case, both of which effectively
9 exclude evidence which has been tendered in open Court of which the Defence have absolutely no
10 notice.
11

12 The general practice which has developed in other international tribunals is that the Prosecution, if
13 they believe -- if they wish other evidence to come out, what they need to do is to produce what has
14 come to be known as a will-say statement, which is a statement that they produce to the Defence in
15 reasonable time in advance of the evidence being given, which can fairly put the Defence on notice as
16 to any additional evidence which is likely to come out from the witness.
17

18 It would be submit -- my submission that it does not appear that the Prosecution is taken by surprise
19 by this additional information, so this is information that before we came into court this morning it
20 would appear that they were aware it was going to come out of this witness, and in my submission, in
21 the absence of proper notice to us, it must be excluded because we do not have a fair opportunity to
22 consider it.

23 MR. JORDASH:

24 Can I support that --

25 MR. PRESIDENT:

26 Yes, Mr. Jordash.

27 MR. JORDASH:

28 Can I support what my learned friend has just said. Now, clearly the Rules of Procedure and
29 Evidence, in particular, Rule 66, are designed to ensure that Defence do have adequate notice of a
30 witness's testimony.
31

32 The evidence which the witness has just given sounds, from his first few statements, as if this is going
33 to be a substantial part of his evidence, dealing with an attack in which he took part. It is important, in
34 our submission, that the Defence have notice of such allegations. They may concern or they may be
35 alleged to concern our clients.

36 MR. PRESIDENT:

37 Well, this issue you are raising has come up before this Court in an earlier trial, and a ruling is

expected on it. But may we hear from the Prosecution, you know, on this particular issue.

1 MR. TEJAN-COLE:

2 Sorry, Your Honour. The -- in response to what my learned friends have said, Your Honour, we have
3 disclosed our obligation and we have brought -- we've given the Defence notice of this information.

4 The --

5 MR. PRESIDENT:

6 Including the one which is being testified to this morning?

7 MR. TEJAN-COLE

8 Yes, Your Honour. Your Honour, the statement of the witness -- in his statement he didn't specifically
9 mention this particular incident. Subsequently -- in a subsequent interview he mentioned the incident.
10 We have an interview note which was served on the Defence on the 30th of June 2004 disclosing this
11 material and this information to them. So we have complied with our obligations. We've given them
12 the necessary information and I really don't know what they are complaining about.

13 JUDGE THOMPSON:

14 Do you have evidence of service?

15 MR. O'SHEA:

16 Your Honours will remember -- sorry.

17 MR. PRESIDENT:

18 Mr. O'Shea, please wait, Mr. O'Shea.

19 MR. TEJAN-COLE:

20 Sorry, Your Honour. We have a letter here dated the 30th of June 2004 which was sent to all three --
21 solicitors for all three Accused persons and in that letter, Your Honour, the second paragraph we
22 said -- we noted that these are supplemental statements which were inadvertently omitted when the
23 primary statements were disclosed unredacted. "You have been previously served with redacted
24 versions of these supplemental statements." This -- the document I have before me is a letter which
25 was sent to the solicitor for the third Accused.

26 MR. PRESIDENT:

27 Counsel.

28 MR. TEJAN-COLE:

29 Counsel for the third Accused, Your Honour. So we have drawn their attention to it. We served them
30 the necessary documents, we've put them on notice, and it's my humble submission, Your Honour,
31 that they suffer no prejudice. We have given them the necessary material. They knew well in
32 advance of this trial commencing that we were going to lead such evidence, supplemental evidence
33 that the Accused gave (*sic*).

34

35 JUDGE THOMPSON:

36 The question really is, do you have proof of service?

37

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MR. TEJAN-COLE:

Yes, Your Honour. Yes, Your Honour.

JUDGE THOMPSON:

Could you show them?

MR. TEJAN-COLE:

This is the receipt for one of the Accused persons.

MR. PRESIDENT:

Has the Defence seen the document?

MR. O'SHEA:

Your Honour, yes. Your Honour will remember that I raised this once before that we've been served with one extra page in relation to this witness. The extra page that I've received I have in front of me and it says nothing about this attack at Efin. I have received one page dated the 28th of January 2004. I see the dates on that document which we've just been shown as the same, 28th of January 2004, but what I've got in front of me is a note of additional evidence but it seems to have no correlation whatsoever with what we're hearing now.

JUDGE BOUTET:

There seems to be some confusion somewhere. You -- Mr. Prosecutor, you have mentioned that the interview notes were on 30 June.

MR. TEJAN-COLE:

It was served on the 30th of June, Your Honour, but it's dated the 28th of January 2004.

JUDGE BOUTET:

So the document you are talking about is a document of 21 January 2004?

MR. TEJAN-COLE:

28th January 2004.

JUDGE BOUTET:

28th January 2004.

MR. TEJAN-COLE:

Yes, Your Honour. In that document it specifically mentions the evidence which the witness is about to testify which occurred in Efin near Yomandu.

JUDGE THOMPSON:

Well, for an avoidance of doubt would you read this document? Would you read, because apparently counsel on the other side is saying that there is no mention. I mean, the issue now is that the question of an attack was not one of the pieces of evidence or statements provided to the Defence, and you say that you served them on a supplemental cover.

MR. TEJAN-COLE:

If I may read the document as Your Honours requested.

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1 JUDGE BOUTET:

2 I have just read it.

3 MR. TEJAN-COLE:

4 Yes, Your Honour.

5 JUDGE BOUTET:

6 We were given a copy of it. And I have to say that I subscribe to the comments made because there
7 is absolutely no reference in that document of 21 January to an attack on whatever (*sic*).

8 MR. TEJAN-COLE:

9 Your Honour, there is --

10 JUDGE BOUTET:

11 Maybe you can read that as --

12 JUDGE THOMPSON:

13 Let him read it for us.

14 JUDGE BOUTET:

15 Okay, go ahead.

16 MR. PRESIDENT:

17 Is it not the one-page document?

18 MR. TEJAN-COLE:

19 One paragraph, short.

20 MR. PRESIDENT:

21 One paragraph?

22 MR. TEJAN-COLE:

23 Yes, Your Honour. It reads: "Captain Barry was under the command of Komba Gbundema. I never
24 saw him actually performing amputation but I saw him in possession of an axe with human blood,
25 other cutting implements and seven hands which he had amputated. These amputations actually took
26 place at a village called Efin, a distance from Yomandu, near the border with Koinadugu. We spoke
27 to amputees."

28

29 The witness has already mentioned seven, he was about to talk about --

30 MR. BROWN:

31 Your Honours, two just technical -- I'm sorry.

32 MR. PRESIDENT:

33 Now, in your opinion, learned counsel for the Prosecution, I mean, would you say that the evidence he
34 is giving here, you know, is substantially the same as the one in this document which you say you
35 subsequently disclosed to the Defence?

36 MR. TEJAN-COLE:

37 That is my humble submission, My Lord. The material evidence which we are trying to adduce from

1 this witness is exactly as stated in the additional -- the supplemental interview notes.

2 MR. PRESIDENT:

3 But we are not yet -- we are not yet there. We have not --

4 MR. TEJAN-COLE:

5 As My Lord pleases. I've not been even given the time --

6 MR. PRESIDENT:

7 Yes, but you should not. They should pre-empt you, you know, when you start going into material
8 which has not been disclosed to them. I mean, it's their perfect right, you know, to raise the objection.
9 You can understand why.

10
11 Yes, the Defence please, Mr. Brown.

12 MR. BROWN:

13 Yes, just two technical matters. When learned counsel read, he misread and I have done this so
14 often I want it to be clear I'm not being critical of him, but it doesn't say "which he had amputated," it
15 says in the third line, "which had been amputated," which is a passive reference. And the copy I have
16 says "W" spoke to amputees, which I've actually taken to mean the witness and that's what the form
17 says. And those were actually two minor technical differences which I've subscribed to just reading
18 quickly but which actually do make a difference in the meaning of the statement.

19 [Trial Chamber confers]

20 MR. CAMMEGH:

21 Your Honour.

22 MR. PRESIDENT:

23 Yes.

24 MR. CAMMEGH:

25 Forgive me for interrupting. Can I just make one rather astonishing observation? Is my learned friend
26 for the Prosecution seriously saying that the document just four lines long, prepared at the end of
27 January, not served on the Defence until the end of June, what, ten, maybe less days before the trial
28 commenced, represents proper service, particularly in circumstances where the evidence which we
29 are now hearing not only departs from what is in that four-line statement, but appears to be the thrust
30 of what may be this witness's evidence? It's quite shocking, and in my respectful submission, it's
31 utterly unacceptable.

32 MR. PRESIDENT:

33 As I said, this objection is not -- is not novel to this Court and we -- we would -- so we would re-visit
34 this issue. We've taken note of it. We'll re-visit it and counsel for the Prosecution will continue and at
35 the appropriate time we will know what the status of this evidence, you know, would be in the light of
36 the objection by the Defence and after we would have re-visited the issue. So, please let the
37 counsel --

1 JUDGE BOUTET:

2 May I, Mr. Presiding Judge, just before you allow the Prosecution to proceed, ask the Prosecution if at
3 all they have any response to the last objection as to why this document dated 28th January 2004 has
4 been served two weeks ago or did not serve but disclosed to the Defence two weeks ago?

5 MS. TAYLOR:

6 Your Honour, in response of that, I no longer have the copies of (*inaudible*) in front of me, it was being
7 handed up to Your Honours. The copy that was served on the 30th of June was an unredacted copy.
8 This was one of the supplemental statements that was raised by my learned friend, Mr. O'Shea, last
9 week saying that he thought that they were served late but they caused no prejudice to the Defence.

10

11 The reason that no prejudice has arisen is because a redacted copy of this supplemental copy was
12 served much earlier -- I don't at the moment have the date to hand -- and the only matter that was
13 redacted when that supplemental statement was served was the name of the witness. And so the
14 Defence have had the name of this witness for the 42-day period that is mandated by the Court. It will
15 simply come to light when the unredacted version of the primary statement was served, this
16 supplemental statement was omitted, and so therefore the 30th of June came about.

17 JUDGE BOUTET:

18 Thank you.

19

20 Yes, you may proceed, Mr. Prosecutor.

21 MR. TEJAN-COLE:

22 Thank you, Your Honours.

23 Q. Mr. Witness, you said that Captain Barry brought seven people. What happened to those seven
24 people, could you tell the court?

25 A. Yes.

26 Q. What happened to them?

27 A. When he caught the seven people --

28 MR. BROWN:

29 I object.

30 THE WITNESS: [Answered through interpretation]

31 -- he came with them.

32 JUDGE THOMPSON:

33 Objection is sustained.

34 MR. TEJAN-COLE:

35 Sorry, Your Honour.

36 JUDGE THOMPSON:

37 The objection is sustained.

1 MR. TEJAN-COLE:

2 Your Honour, what was the --

3 JUDGE THOMPSON:

4 You said what happened to them.

5 MR. TEJAN-COLE:

6 Q. Did anything happen -- sorry, did anything happen to these seven people?

7 A. When he came with these seven people, he brought them. During the time, all the rice and other
8 things that had been looted, you see, were brought by me and he told them that he was going to cut
9 off their hands. He said, "Now you should go and tell the SLA" -- which was the national army -- "that
10 I Rebel Barry, I am on the way coming." And he took the axe and started chopping off these people's
11 hands. By then I was standing by the rice that was looted. From there they told us to take all the
12 loads and to go away. We took the load and came back on our base. I was with him and he went to
13 a particular mission and did not come back. The people who captured us, they met me in the house
14 and they took me and explained to me that they were the ones that captured me the other time. And
15 they took with me (*sic*) and I was with their boss.

16 Q. Can you describe them to this Court?

17 A. The man who took me? They took me to their boss who was called S.K. That S.K was a rebel. We
18 were there and we were there, we were being sent, you know, to cut sticks and to burn charcoal.
19 Because we used to -- yes, because we used to cook with charcoal. We were not allowed to cook
20 with wood because when you use wood to cook there will be some smoke, and if they see the air raid
21 camps, they would notice that people are here. We were there burning charcoal. The other time they
22 sent us to go in search of rice. And they sent us to our own chiefdom, which was Sowa Chiefdom, to
23 get rice and we went there to get rice.

24 Q. How did you find this rice?

25 A. They would lead us. We would go to people's old farm and get rice from there. By then people had
26 already run away. We would go from bush to bush searching and getting husk rice. We'd come and
27 beat it in mortar and put the rice in rubbers (*sic*). And so from there, therein a particular stick thrust
28 me. When I was coming the foot had already swollen. We reached at Tombudu, but I couldn't go any
29 further because the thing was so swollen that I couldn't walk anymore. So I stayed with one man that
30 was called Ibrahim. I was with Ibrahim for some time.

31 Q. Do you know the full name of this Ibrahim?

32 A. Yes, I do.

33 Q. What is his full name?

34 A. His name is Ibrahim Tucker.

35 Q. Was he a member of any of the groups that you mentioned earlier?

36 MR. PRESIDENT:

37 No, don't answer that question. Turn it round, turn it round. Turn the question round.

1 MR. TEJAN-COLE:

2 Q. Did Ibrahim belong to any group?

3 MR. PRESIDENT:

4 Who was Ibrahim?

5 THE WITNESS: [Answered through interpretation]

6 Ibrahim was a rebel.

7 MR. TEJAN-COLE:

8 Q. Did you stay with Ibrahim?

9 A. Yes, I was with Ibrahim up to after the disarmament.

10 Q. Do you recall when the disarmament was?

11 A. Yes.

12 Q. Do you know the year?

13 A. Yes.

14 Q. What year?

15 A. 2002.

16 Q. What did you do -- did you do anything whilst you were with Ibrahim?

17 A. Yes.

18 Q. Could you tell this Court what you did, what?

19 A. Yes.

20 Q. Can you tell the Court what you did?

21 A. Yes, I would.

22 Q. So go ahead.

23 A. I was with him. We would go for rice, we would go fishing, we would get -- fetch wood for his wife. If
24 his wife wasn't able to do any work, I would do it for him -- I would do it for her. You see, I was in this
25 particular job up to the time of disarmament.

26 Q. Now, you said earlier in evidence that you were marked on your chest AFRC/RUF. Do you still have
27 this mark on your chest?

28 A. Yes. Yes, I have the marks. I will not lie.

29 Q. Could you show the Court this mark?

30 A. Certainly, yes, I would show them. I will show the Court so that the Court will know that it is true that
31 they marked me.

32 Q. Can you show them where the mark is?

33 A. Yes, I would.

34 MR. TEJAN-COLE:

35 In answer to Mr. Walker's comments I don't think there would be a problem, Your Honour. If he
36 stands up I don't know there would be a problem, Your Honour.

37 Q. Can you just stand up and show the Court the marks?

1 MR. PRESIDENT:

2 The closet is even taller than him.

3 MR. TEJAN-COLE:

4 As Your Honour pleases.

5 [Witness complies]

6 MR. TEJAN-COLE:

7 Your Honour, would the record reflect that the witness has shown his chest with the marks AFRC,
8 RUF marked on his chest.

9 JUDGE BOUTET:

10 Marked on the upper portion of his chest.

11 MR. TEJAN-COLE:

12 On the upper portion of his chest.

13

14 May the witness -- You can put on your clothes again and sit down.

15 JUDGE BOUTET:

16 Before you carry on with your questions I just would like to ask in the translation booth I seem to have
17 some problem with my -- the sound on my earphones. There is a lot of echo, so I suspect a mic is
18 open somewhere or there are two mikes open in the translation booth. Whatever it is, we need to
19 correct that because it's very, very difficult to follow closely the evidence as it's being given.

20 THE INTERPRETER:

21 Your Honour, the mikes are well adjusted. I don't think there is any problem here.

22 JUDGE BOUTET:

23 We need to solve that problem because it is absolutely impossible on occasion to hear what the
24 witness is saying because of this echo.

25 THE INTERPRETER:

26 There is no problem here, Your Honour, with the mics.

27 JUDGE BOUTET:

28 Then there is a problem with the sound system somewhere.

29

30 Sorry, carry on.

31 MR. TEJAN-COLE:

32 Yes, sir. Your Honour, with Your Honour's leave I would want to show the witness a photograph.

33 JUDGE BOUTET:

34 Your mic.

35 MR. TEJAN-COLE:

36 With your leave, Your Honour, I would want to show the witness and the Defence a photograph.

37

MR. PRESIDENT:

Give that photograph back to the Prosecution. Give it back to the Prosecution, please.

Can you lay grounds on that photograph, you know, before we even look at it.

MR. TEJAN-COLE:

Your Honour, we --

MR. PRESIDENT:

You are showing him a photograph, what's the purpose of the photograph? The photograph is just coming from nowhere and --

MR. TEJAN-COLE:

Your Honour, we had in our list of exhibits to the Defence disclosed this photograph to the Defence and this photograph is numbered 142, and all we intend to do is to get the witness to identify the photograph, Your Honour. That is all.

MR. PRESIDENT:

If he is concerned with the photograph, ask him questions about the photograph.

MR. TEJAN-COLE:

As Your Honour pleases.

MR. O'SHEA:

It serves to -- Your Honours, it serves to expedite matters. Can I just say at the outset that I object to this exhibit going in at all on the basis of the best evidence rule. The photograph is essentially a repetition of the evidence which has just been produced before Your Honours. The witness was asked to show Your Honours the markings on his chest, he has done so. That is the best evidence. The photograph adds nothing at all.

MR. PRESIDENT:

Your response. And the Court would like in any event, after that, you know, to see the photograph.

MS. TAYLOR:

Your Honour, while undoubtedly it is true that the evidence is the markings on this man's chest, the photograph merely is a reminder of that. There is nothing that is offended, in fairness, by tendering this photograph. When Your Honours come to the end of this trial and consider your analysis of this evidence, the record will merely show that this witness showed you his chest. And identification of himself with the marks will aid your recollection of what was shown in this courtroom today.

JUDGE THOMPSON:

Learned counsel for the Prosecution, is it intended to be tendered in evidence, as distinct from tendering for identification purposes, the document described as a photograph?

MS. TAYLOR:

It was the intention of the Prosecution to tender the photograph in evidence, but if the Court would be assisted by merely being marked for identification, then the Prosecution has no objection to that

1 cause.

2 JUDGE THOMPSON:

3 Thank you.

4 MR. PRESIDENT

5 Yes, please, lay your grounds for that photograph --

6 MR. TEJAN-COLE:

7 As Your Honour pleases.

8 MR. PRESIDENT:

9 -- learned counsel for the Prosecution. We want to follow you very methodically on what you want to
10 do.

11

12 Yes, Mr. Jordash.

13 MR. JORDASH:

14 I'm sorry to jump to my feet at this stage, it's -- having spoken to everybody in this camp nobody has
15 seen that photograph, and it doesn't appear to be on the exhibit list. It may be that that's just some
16 miscommunication, I don't know, but we would seek clarification from the Prosecution as to when that
17 was served.

18 MR. PRESIDENT:

19 Why don't we listen to -- let's follow the counsel for the Prosecution. We have already taken note of
20 Mr. O'Shea's objection, you know, that there is already primary evidence of this. We would like to
21 see, you know, what the photograph, you know, is going to add to the proceedings

22

23 Yes.

24 MS. TAYLOR:

25 Pursuant to the order of the Chamber dated the 5th of April of this year, the Prosecution filed on the
26 26th of April of this year a list of exhibits and copies of exhibits that were given to my learned friends.
27 This photograph is one of a bundle that was numbered 142, item 142 in the list of exhibits and copies
28 of exhibits filed by the Prosecution on that date. It's my understanding that copy -- a copy of this
29 photograph was given to the Defence on that date.

30

31 As -- does Your Honour wish me to address you further as to why the Prosecution seeks to put this
32 photograph in evidence before you?

33 MR. PRESIDENT:

34 You have sought to tender a photograph, you should lay, you know, a nexus, you know. You must lay
35 a foundation for tendering whatever document. It's not addressing the Court; no, it's not a question of
36 addressing the Court.

37

- 1 MS. TAYLOR:
2 Then I will leave my learned friend Mr. Tejan-Cole to do so.
- 3 MR. PRESIDENT:
4 Yes.
- 5 MR. TEJAN-COLE:
6 Q. Mr. Witness –
7 A. Yes, sir.
8 Q. Was your photograph ever taken?
9 A. Yes.
10 Q. You do you recall who took this photograph?
11 MR. PRESIDENT:
12 Let him speak up, please. Let the microphone go close to him, please.
13 THE WITNESS: [Answered through interpretation]
14 I know the people who took this snapshot of me.
- 15 MR. TEJAN-COLE:
16 Q. Do you know their names?
17 A. No, I don't know their names.
18 Q. Where was this photograph taken?
19 A. It was in Koidu.
20 Q. Do you recall when this photograph was taken?
21 A. I will not remember exactly but that was the time when I went for this statement.
- 22 MR. TEJAN-COLE:
23 May I, with Your Honours' leave, now show the witness the photograph?
24 MR. PRESIDENT:
25 Show him.
- 26 MR. TEJAN-COLE:
27 Q. Can you identify the person in that photograph?
28 A. Yes.
29 Q. Who is the person in that photograph?
30 A. It is I. It is I sitting here.
31 Q. And that was the photograph that was taken of you?
32 A. Yes, sir.
33
- 34 MR. TEJAN-COLE:
35 Your Honour, we produce that photograph for -- we tender that photograph in evidence, Your Honour.
- 36 MR. PRESIDENT:
37 Can you show it to the Defence, please.

1 JUDGE BOUTET:

2 Please, be careful with that photograph because it may disclose the identity of the witness if people
3 behind you saw it in the public gallery. Thank you.

4 MR. TEJAN-COLE:

5 Your Honours, I have just been reminded that the application of the Prosecution is that the
6 photograph, since it reveals the face of the witness, be tendered under seal.

7 MR. O'SHEA:

8 I'm not going to add anything, Your Honours --

9 MR. PRESIDENT:

10 Please wait, others are still looking at the photograph.

11

12 Yes, Mr. O'Shea.

13 MR. O'SHEA:

14 Yes, I'm sorry, Your Honour. I just wanted to say that I'm not adding anything to the submission that I
15 have already made.

16 MR. PRESIDENT:

17 Yes.

18

19 Yes, we've -- the Chamber has taken note of Mr. O'Shea's observation that we have the best
20 evidence, but we would nonetheless, since the photograph is merely maybe corroborative of the best
21 evidence, admit it in evidence and mark it as Exhibit 2, I think, Exhibit 2. Is it two? Exhibit 2, and
22 following the application by the Prosecution it will be kept under seal in order to avoid divulging the
23 identity of this witness.

24 *[Exhibit No. 2 was admitted]*

25 MR. TEJAN-COLE:

26 I'm most grateful, Your Honour.

27 MR. PRESIDENT:

28 Don't be too grateful, it's our duty. Yes.

29 MR. TEJAN-COLE:

30 Your Honour, that is all for this witness.

31 MR. PRESIDENT:

32 That is all for this witness?

33 MR. TEJAN-COLE:

34 Yes, Your Honour.

35 MR. PRESIDENT:

36 Yes, we are now at the stage of cross-examination. Can we have the cross-examination by the first
37 Accused, please.

Cross-examination by Mr. Jordash:

1

2 MR. JORDASH:

3 Q. We've just got a -- very few questions for you. It won't take long. If there is anything you don't
4 understand, please say so. Okay?

5 A. Okay, sir.

6 Q. You mentioned going to Koidu. Do you remember going to Koidu about a year and a half ago,
7 November 2002, to see -- to have a statement taken?

8 A. Yes.

9 Q. And you also made a second statement this year on the 28th of January. Do you remember that?

10 A. 20th January?

11 Q. 28th of January of this year.

12 A. Yes.

13 Q. And in-between those two statements you came to Freetown to see the Prosecution. Do you
14 remember that?

15 A. At the time when they brought me to Freetown?

16 Q. Yes, firstly in December of last year.

17 A. Yes, yes, yes.

18 Q. And I think also on the 4th of January of this year.

19 MR. PRESIDENT:

20 Mr. Jordash, take him stage by stage. You have moved from January to December, why don't you
21 start from December and move from there.

22 MR. JORDASH:

23 I apologise.

24 Q. Firstly, you came on the 10th of December of 2003 to Freetown to see the Prosecution. Do you
25 remember that?

26 A. Yes, I can remember that.

27 Q. Then you came again on the 4th of January to see the Prosecution. Do you remember that?

28 A. I only came once when they came with me.

29 Q. Okay. Now, I want to just take you back to the first time you saw the Prosecution to make your first
30 statement in November 2002. Did you hear that the Prosecution were coming and wanted to obtain
31 witnesses for the Special Court? What was it that you heard?

32 A. Yes.

33 Q. And did they -- I'm being very careful, I don't want to know anything about where you live -- but did
34 you go to the Prosecution or did they come to you to your village?

35 A. The people who went to obtain statements from me?

36 Q. Yes.

37 A. I was in the village when I saw them. They said they had come to obtain statements from me.

- 1 Q. And did they say what statement they wanted? What was the question they asked?
- 2 A. When I came, I asked and they told me.
- 3 Q. What did you ask?
- 4 A. I asked them to tell me what they came to do and they said they came to obtain statements; that is,
- 5 they were coming to take statements from people who had been with the rebels during the war. I told
- 6 them that I had something to say, that I was going to give statements.
- 7 Q. The next -- is this right, is the next time you saw the Prosecutor the time you came to Freetown in
- 8 December 2003?
- 9 A. When I came -- the first time that I came, they took me to hospital for this mark that I have on my
- 10 body. The second time that I came for this case that was the time that I saw them.
- 11 Q. And the second time was -- just so that we are clear -- where was that?
- 12 A. It was in May. They met me and they told me that the time was near, and they asked me whether I
- 13 was willing, you know, to give evidence and I told them that yes, I was willing.
- 14 Q. That was May of which year?
- 15 A. May 2004.
- 16 Q. And where was that? Can you remember where it was that you saw the Prosecution in May of this
- 17 year?
- 18 A. Well, I don't know Freetown well, but we had met together.
- 19 Q. It was in Freetown though?
- 20 A. We met together but I do not know the exact location, because I do not understand Freetown.
- 21 Q. Okay, thank you. Now, just moving back again to the time in December 2003 when you came to
- 22 Freetown. Were you contacted by the Prosecution to come to Freetown or did you contact the
- 23 Prosecution and asked to come to Freetown?
- 24 A. Are you saying that if it was I that went and told them that I was coming to Freetown?
- 25 Q. Was that the situation or did the Prosecution ask you to come because they wanted to speak to you?
- 26 A. They brought me directly for this mark.
- 27 Q. Did they speak to you about what you were going to say when you came to the Special Court to give
- 28 evidence?
- 29 A. What I should come and say here in court?
- 30 Q. Did you talk to the Prosecution about that when you came in December 2003?
- 31 A. They told me -- they told me whether I was willing to give evidence and I told them that yes, I was
- 32 willing to do so.
- 33 Q. And did you talk to them about what it was you were going to say?
- 34 A. Yes, the statement that I gave them, I said I was coming to say this public so that everybody would
- 35 know.
- 36 Q. Did you look at your statement with the Prosecution and go through it?
- 37 A. You mean the statement that I gave them?

- 1 Q. Yes.
- 2 A. If we went through them?
- 3 Q. Yes.
- 4 A. What I told them is what I repeated.
- 5 Q. So, just so we are clear, there was a discussion about what -- about the content of your statement; is
6 that right?
- 7 A. I don't understand what you are saying.
- 8 Q. Just this: When you met the Prosecution, did you sit down with them with your statement to discuss
9 what was in your statement?
- 10 A. Yes, they read the statement to me repeatedly, and I said yes, that was what I said.
- 11 Q. So you -- I see. Just in relation to your visit to the hospital, were you given treatment at the hospital?
- 12 A. I don't understand what you are trying to say.
- 13 Q. You said a few moments ago that the Prosecution, in December 2003, took you to the hospital as
14 concerns your -- the markings on your chest. Did you have treatment at the hospital?
- 15 A. No.
- 16 Q. Did you see a doctor?
- 17 A. No, the doctor who should have done the operation to take off these marks was not there, so I had to
18 come back.
- 19 Q. And is that an operation planned for the future?
- 20 A. I don't understand. Please repeat that.
- 21 Q. Well, you went to the hospital to see a doctor about removing the marks from your chest; is that
22 correct?
- 23 A. Yes, it is.
- 24 Q. And doctor wasn't there?
- 25 A. Yes, it is true he wasn't there.
- 26 Q. Are you intending to have an operation some time in the future to have the marks removed?
- 27 A. Yes, I gave the report. I gave the report so that these marks -- these marks could be taken off my
28 body because it's risky and it involves life.
- 29 Q. And had the Prosecution agreed to help you with that?
- 30 A. Well, I was not given full assurance for that.
- 31 Q. Were you given any assurance?
- 32 A. Assurance like what?
- 33 Q. For example, transportation to the hospital.
- 34 A. When I was coming here they brought me.
- 35 Q. Is the operation going to cost any money?
- 36 A. Well, I wouldn't know because they just brought me.
- 37 Q. Have the Prosecution offered to pay for any expenses for that operation?

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- 1 A. Well, I wouldn't be able to tell.
- 2 Q. Have they spoken to you about it?
- 3 A. About what?
- 4 Q. About assisting you financially to have the operation.
- 5 A. I don't get you clearly.
- 6 Q. Have the Prosecution spoken to you about helping you financially to have the operation?
- 7 A. They did -- the Prosecution did not tell me about money. They did not even tell me that they were
- 8 going to give me money so as to get these things operated.
- 9 Q. Who will pay for the operation?
- 10 A. Well, just like I keep telling you, I was in the provinces and they said they will take me and get these
- 11 marks operated. I wouldn't know anything, whether they are the ones that are going to foot the bill or
- 12 it's the government.
- 13 Q. Who was it who said about coming to Freetown to have a look at the marks?
- 14 A. It's one man that is called John.
- 15 Q. He is a Prosecutor, part of the Prosecutor team?
- 16 A. Well, when they were taking statements from me I did not see John, but a little bit later he came. He
- 17 came and asked and he found out where I was. Both of us, we went together and started talking. He
- 18 showed -- he showed me my name and he said I should prepare on Monday and that I was coming to
- 19 be taken to Freetown for these marks. Monday, he came for me and he took me and brought me
- 20 here. And who is to foot the bill, I do not know at all.
- 21 Q. But just so that we are clear -- and I'm going to move on -- that man, John, was from the Prosecution;
- 22 was that your understanding?
- 23 A. Yes, I asked him, you know, for his name and he told me that he was called John but when they were
- 24 taking statements -- obtaining a statement from me, he was not there.
- 25 Q. Did he ever say he was from the Prosecution? Who did you understand him to be?
- 26 A. I don't understand the question.
- 27 Q. Did you understand that John was part of the Prosecution, part of the group looking for your
- 28 statement?
- 29 A. Just like what I told you, I was in the village. John came to me. I had never known him before. You
- 30 know, he came and asked and they started searching for me, and he saw me, because the people
- 31 who obtained statements from me were one man and one lady. The man was black and the woman
- 32 was white. But John went and -- in search for me. I did not see him during that time. But I had given
- 33 my name to that woman. You see, I think it was he (*sic*) that gave the paper to him to go and search
- 34 for me.
- 35 Q. Thank you. Now, when you came in May of this year to see the Prosecution, what did you come for
- 36 that time? What was the purpose?
- 37 A. Why I came?

- 1 Q. Yes.
- 2 A. One reason was -- the purpose for which I came is why I am sitting here for. Yes, the purpose of my
3 being here is the burning issue for which I am here, that is, these marks that they put on my chest.
4 That is the reason why I came here. If I should tell you that I came for some other business, it's a lie.
5 This is the main purpose for my being here, and it really burns me.
- 6 Q. Specifically, what did you do in May of this year when you saw the Prosecution? What did you, for
7 example, talk to them about?
- 8 A. May, which year?
- 9 Q. This year.
- 10 A. When I came to the Prosecutor?
- 11 Q. When I was asking you questions you said that you saw the Prosecution in May of this year, 2004. Is
12 that correct?
- 13 A. Well, I saw them. I saw them.
- 14 Q. In Freetown?
- 15 A. Yes, inside Freetown.
- 16 Q. They asked you to come and see them in Freetown?
- 17 A. They went and met me and they told me that it was almost time, you know, for me to come, and this is
18 the reason why I came. They went and met me.
- 19 Q. And did you sit with the Prosecution and again go through your statement?
- 20 A. He read the statement and I said yes, that was what I said.
- 21 Q. And did you go through it several times?
- 22 A. He read the statement for me. He read the statement twice.
- 23 Q. On that occasion in May, were you given any money for expenses?
- 24 A. When they met -- when they met me -- when they met me, they said that it was almost time for me to
25 come and whether I was willing to and I told them yes, I was willing. And I left all the work that I was
26 doing. They took me in their vehicle and we came.
- 27 Q. Now, I just want to ask you a little about Efin. When you went through your statement -- your
28 statements, when you went and saw -- when you saw the Prosecution, did you ever mention then to
29 them an attack on the town of Efin?
- 30 A. Yes.
- 31 Q. When you'd given your two statements to the Prosecution, they were both read back to you; is that
32 correct?
- 33 A. Yes, when they read them to me it was correct.
- 34 Q. Were you aware that they made no mention of an attack in Efin?
- 35 A. The Efin attack took place as I told you, you know. I was there.
- 36 Q. Just listen to the question. When you gave your statement they were read back to you by the
37 Prosecutor; is that correct?

- 1 A. Yes.
- 2 Q. And read back to you on several occasions -- read back to you about several occasions?
- 3 A. Yes, they read the statement to me about twice.
- 4 Q. And there was nothing in those statements about a specific attack on Efin; is that correct?
- 5 A. Efin attack took place. You know, I saw all that happened just like what is happening here.
- 6 Q. Are you aware that the -- your two statements do not mention an attack in Efin; are you aware of that
- 7 fact?
- 8 A. Are you saying that the statement that I gave nothing was reflected about the attack at Efin?
- 9 Q. Yes.
- 10 A. Are you talking about my own statement that I gave to these people? I told them about this attack; I
- 11 did tell them. Except if they did not write that.
- 12 Q. Thank you. Now, my final subject concerns Efin again and Captain Barry. In your evidence when you
- 13 answered questions to my learned friend for the Prosecution you talk about Captain Barry saying he
- 14 was going to cut the hands of seven people. Do you remember that?
- 15 A. Yes, I do remember.
- 16 Q. When Captain Barry said that, where were you in relation to Captain Barry?
- 17 A. Yes, it was not that far; I was just by him.
- 18 Q. Can you use this Court to show us how far I was from you? Can you estimate the distance?
- 19 A. The distance is just between me and the Judges. It's just like from here to where the Judges are
- 20 sitting.
- 21 Q. Thank you. And after you'd heard Captain Barry say that, what happened after that? What did you
- 22 see happen after that?
- 23 A. When he said that he was going to cut these people hands, he did cut these people. In fact, he cut
- 24 them and you see the hands shivering like that.
- 25 Q. Did you see him actually cut the hands?
- 26 A. Yes, with my own naked eyes. I did not -- I was not drunk. I saw all that happened.
- 27 Q. I want to ask you about your second statement, which is dated the 28th of January 2004. This is what
- 28 you say --
- 29 A. Like what?
- 30 Q. This is about Captain Barry: "I never saw him actually performing amputations, but I saw him in
- 31 possession of an axe with human blood." I'll read it again just so that you understand what I'm asking
- 32 you: "I never saw Captain Barry actually performing amputations, but I saw him with an axe with
- 33 human blood."
- 34 A. No, I said I saw him. Perhaps the man who did -- who obtained the statement from me did not take
- 35 me -- did not write that, but I saw him with my own eyes.
- 36 Q. Do you remember telling the Prosecutor -- the Prosecutor Tamba Kebeki --
- 37 A. That's my fellow who is called Tamba.

- 1 Q. Do you remember telling the Prosecutor that you had never seen Captain Barry actually performing
2 amputations?
- 3 A. No. He told me -- he asked me whether I saw this man cutting the hands and I told him that yes, and
4 he asked me the area, and I told him that it was at Efin.
- 5 Q. Did the investigator read the statement back to you before you left to go back home?
- 6 A. I gave two statements for two hours.
- 7 Q. Just -- I'm almost finished. But just dealing with this second statement where you say Captain Barry --
8 you hadn't seen Captain Barry performing amputations, did you have that sentence read back to you
9 by the investigator after you'd made that statement?
- 10 A. The first day that I -- they obtained statements from me, just after I finished they took me and brought
11 me.
- 12 Q. No, just listen to the question and then I'll be finished. Your second statement says you had never
13 seen Captain Barry carry out amputations. Okay? You understand what I'm saying?
- 14 A. Yes, I have understood now.
- 15 Q. Okay. When that statement had been completed, did the investigator read it back to you so that you
16 could know what had been written?
- 17 A. At that time when I gave the statement, they came and read the statement back to me. I told him that
18 I saw all that happened, and he said that he did not write that on the paper but I told him that I saw
19 everything.
- 20 Q. So you would say it's the investigator who wrote down something different to what you told him. Is
21 that what you are saying?
- 22 A. Well, it's possible.
- 23 Q. Thank you.
- 24 MR. JORDASH:
25 I have nothing further.
- 26 MR. PRESIDENT:
27 Well, the Court will rise and will resume its session at 3.00, 3.00 p.m. when we'll continue with the
28 cross-examination.
29
30 The Court will rise, please.
- 31 *[Luncheon recess taken at 13.02]*
32 *(Pages 19 to 42 by Gifty C. Harding)*
33
34
35
36
37

1 [On resuming at 15.06]

2 MR. PRESIDENT:

3 Resuming the session. The second Accused, counsel for the second Accused, cross-examination.

4 MR. BROWN:

5 Thank you, Your Honour

6 WITNESS TF1-074

7 Cross-examined by Mr. Brown

8 MR. BROWN:

9 Q. This morning you indicated that the Prosecution came to Koidu to take statements from people who
10 had been with rebels during the war. Is that correct?

11 A. Repeat it.

12 Q. This morning –

13 MR. PRESIDENT:

14 Mr. Brown, you go slowly.

15 MR. BROWN:

16 I will, sir.

17 MR. PRESIDENT:

18 It takes time for the message, you know, to go through. Right, go ahead.

19 MR. BROWN:

20 Q. This morning you testified that the Prosecution came to Koidu town to take statements from those
21 who had been with the rebels. True?

22 A. I was in the village and they went there and took me from there. So we went to Koidu and it was there
23 that I gave them the statement.

24 Q. Did the prosecution tell you why they were in Koidu town?

25 A. Repeat what you have said.

26 Q. Let me try in a different way. Do you see in the courtroom one of the people who you spoke to in
27 Koidu town?

28 A. None of the people are here.

29 Q. So when you gave an interview in November of 2002 and a man took notes, that man who took those
30 notes is not here?

31 A. I have not seen him around here, but if I seen him then I wouldn't know him.

32 Q. I'm not sure how good your field of vision is from where you sit, but if you look to the far left, do you
33 see a man in the back row on the prosecution side of the courtroom?

34 MR. PRESIDENT:

35 [Cannot distinguish speaker] He does not appear to be seeing his far left. Is the far left seeing him?

36 MR. GBOYOR:

37 I mean, I can only see his whole body, I can't see [Cannot distinguish speaker] view.

- 1 MR. BROWN:
2 Could I ask that Mr. Gboyor to rise and come into the field of vision of the witness?
3 MR. PRESIDENT:
4 Yes, you can stand this way. Let him stand, stand. Here.
5 THE WITNESS: [Answered through interpretation]
6 Yes, I have seen the man.
7 MR. BROWN:
8 Q. Would you point to him?
9 A. Yes, sir.
10 MR. BROWN:
11 Your Honour, I think the record can reflect that he is directing his attention to Mr. Gboyor who is in the
12 back row of the prosecution side *[Cannot distinguish speaker]*.
13 JUDGE THOMPSON:
14 Indeed, indeed.
15 MR. PRESIDENT:
16 Now, Mr. Who?
17 MR. BROWN:
18 Bobby Gboyor is how I have been introduced to him, Your Honour.
19 Q. When the man you just saw met you in Koidu, he wrote down what you said. True?
20 A. Yes, what I told him he wrote it down.
21 Q. Before he began writing he said some words to you. Yes?
22 A. Yes.
23 Q. He told you he wanted you to tell the truth. Yes?
24 A. Yes.
25 Q. He asked you whether you had been with the rebels during the war.
26 A. Yes, he asked me whether I've been with them.
27 Q. He asked you whether or not you had turned in any weapons during the demobilisation. Yes?
28 A. Yes, I told him that I have disarmed.
29 Q. And you disarmed by turning in weapons. Yes?
30 A. Yes. We all went and disarmed.
31 Q. What weapons did you turn in?
32 A. I disarmed with the grenade.
33 Q. And when you gave in the grenade you received money?
34 A. They disarmed first, we went back home. When we were taken back and we were calmed, myself and
35 the man with whom I was staying -- when we were calmed we were given -- go over that again. They
36 were given rubber buckets with 60,000 Leones with some blankets, with shoes and towels. So we
37 were calmed for one week and we were discharged. After we discharged we were asked to go and

- 1 register our names again and we were given another three -- three -- 300,000 Leones each after the
2 disarmament. From then on after that we were asked to give statements and I gave my statement.
3 After I've given my statement I went in search of my family members.
- 4 Q. The statement you refer to, is that different from the statement you gave to the gentleman seated in
5 the courtroom?
- 6 A. I didn't get you clear.
- 7 Q. You said first you received 60,000 Leones, blankets and a towel.
- 8 A. That was the disarmament time. That was the money for the disarmament.
- 9 Q. Then you received 300,000 Leones some time later.
- 10 A. Yes, after the disarmament and we were asked -- all the people who disarmed to go and register.
- 11 Q. And when you use the word -- the phrase, "After we gave a statement," are you talking about the
12 statement you gave to the gentleman in the courtroom or another statement?
- 13 A. Yes.
- 14 Q. You began by answering a question about giving a statement to the man to your left. Correct?
- 15 A. Yes, that man on the left-hand side, I gave him my statement.
- 16 Q. Is that the statement you were referring to as being given after you received 300,000 Leones?
- 17 A. He is not the one that gave me the money.
- 18 Q. When you received the blanket and the towel, did you get 60,000 Leones or did you get 30,000
19 Leones?
- 20 A. When we disarmed, when we were with the rebels, the man with whom I was staying gave me a
21 grenade. He asked me to go and disarm to it. We all went to together and disarmed. We were
22 calmed.
- 23 Q. When you disarmed and you were calmed you had a grenade in your hand. Yes?
- 24 A. Yes. It was during the disarmament, the time of the disarmament, that is a time when I had the
25 grenade with me.
- 26 Q. During the disarmament.
- 27 A. Yes, yes.
- 28 Q. You gave the grenade to the people in charge of the disarmament?
- 29 A. Yes.
- 30 Q. Did you sign a piece of paper at the time?
- 31 A. When I handed over the grenade we were given yellow forms and we were asked to go home.
- 32 Q. And you were asked to fill out the yellow form. Yes?
- 33 A. Yes.
- 34 Q. And on the yellow form you were asked to indicate what organisation you had been with. Yes?
- 35 A. Yes.
- 36 Q. And you wrote RUF?
- 37 A. Yes, I told them that I was under the RUF.

- 1 Q. You then went and got 300,000 Leones.
- 2 A. When we are calmed – listen, when we were calmed, after we were given the blankets, shoes and
3 pots, when we were discharged they gave us the 30,000.
- 4 Q. Now when you met the gentleman with the Prosecution on the left side of the courtroom, did you tell
5 him that you had disarmed, handed in a grenade and signed a form which you filled out saying RUF?
- 6 A. The man asked me and I told them that I was with the RUF and the *[inaudible]*. This man who wrote
7 this -- this form.
- 8 Q. My question is when you spoke to the man who wrote the form --
- 9 A. Yes.
- 10 Q. -- did you tell him you had handed in a grenade, received money and identified yourself as RUF?
- 11 MS. TAYLOR:
12 I object to this, Your Honour. I submit that the question is confusing. My learned friend has used form
13 in one sense and statement in another and it is now not clear whether he is talking about the yellow
14 form or the statement and I would ask that he makes that clear.
- 15 MR. BROWN:
16 I was -- I'm sorry, may I respond?
- 17 MR. PRESIDENT:
18 You are moving from the form to the statement and so and there was a yellow form.
- 19 MR. BROWN:
20 I will change.
- 21 MR. PRESIDENT:
22 There was a statement which we are referring to and which might have been recorded by the
23 gentleman on the right. So, I think you can retake --
- 24 MR. BROWN:
25 I will reform.
- 26 MR. PRESIDENT:
27 Reformulate your questions, please.
- 28 MR. BROWN:
29 Q. You spoke to the man from the Prosecution who is in the courtroom and he wrote while you spoke.
30 Correct?
- 31 A. Yes.
- 32 Q. And when he finished writing he read back to you the statement he had written.
- 33 A. Yes. I'm getting you, go on.
- 34 Q. And he read it in a language you understood.
- 35 A. He read it in *Krio*, we spoke in *Krio*.
- 36 Q. And he said to you, "This is an accurate and truthful statement." Yes?
- 37 A. Yes, go on.

- 1 Q. And he then handed you the statement and you signed it.
- 2 A. Go ahead, I'm getting you.
- 3 Q. He handed you the statement and you wrote your name at the bottom.
- 4 A. Yes.
- 5 MR. BROWN:
- 6 Your Honour, might I show through your officer a copy of what I believe is the statement with the
- 7 witness's initial?
- 8 JUDGE BOUTET:
- 9 Can I ask you what you are intending to do? I suspect I do, but I would like to hear from you what you
- 0 are intending to do now.
- 1 MR. BROWN:
- 2 I simply wish, given all the possible variables in terms of language and a witness who does not read
- 3 or write English, to be certain that this is a copy of the piece of paper that he signed and that he
- 4 identifies his signature.
- 5 JUDGE BOUTET:
- 6 You want to show that document to the witness?
- 7 MR. BROWN:
- 8 Yes, sir, I do.
- 9 JUDGE BOUTET:
- 0 Please do.
- 1 MR. PRESIDENT:
- 2 *[Cannot distinguish speaker]*
- 3 MR. BROWN:
- 4 Your Honour, the personal approach that I was --
- 5 MR. PRESIDENT:
- 6 -- that he is an illiterate, that statement was recorded and read to him.
- 7 MR. BROWN:
- 8 But he signed it after it was read back to him in *Krio*.
- 9 MR. PRESIDENT:
- 0 I am just reminding you that he is illiterate.
- 1 MR. BROWN:
- 2 Your Honour, I can --
- 3 MR. PRESIDENT:
- 4 Go ahead.
- 5 MR. BROWN:
- 6 Only in English, as I understand it.
- 7 MR. PRESIDENT:

1 Pardon.

2 MR. BROWN:

3 I believe the testimony is that he is illiterate in English.

4 MR. PRESIDENT:

5 Oh yes, that's right.

6 JUDGE BOUTET:

7 That is what I have heard that he does not write or read English.

8 MR. BROWN:

9 Your Honour, I believe the witness spoke, but I didn't hear a translation.

10 THE INTERPRETER:

11 He did not say anything. The witness did not say anything. He did not say anything.

12 MR. BROWN:

13 I have been wrong before.

14 Q. Is that your signature that you were just shown?

15 A. Yes, that is my signature.

16 JUDGE BOUTET:

17 Because you have a document that has more than one page. How many signatures do we have on
18 that document that you have?

19 MR. BROWN:

20 I would be happy to mark this document --

21 JUDGE BOUTET:

22 No, I was just wondering for certainty, I am not sure -- I was not looking at the witness when the
23 document was shown to the witness. If you look at the last page, the first page --

24 MR. BROWN:

25 It is the last page, Your Honour.

26 JUDGE BOUTET:

27 Thank you.

28 MR. BROWN:

29 And under the English word, "Witness Affirmation" and a paragraph and the word, "signature".

30 JUDGE BOUTET:

31 Thank you.

32 MR. BROWN:

33 Q. While you were speaking to the man who was writing, he was courteous to you. Yes? And while he
34 was speaking to the man who was writing he was polite to you?

35 A. I did not get it clear.

36 Q. You were speaking and the man to your left was writing. Yes?

37 A. Yes.

- 1 Q. The man was friendly to you.
- 2 A. Yes. We were together and I was talking to him while he was writing -- he did the writing.
- 3 Q. While you were talking and he was writing --
- 4 A. Yes.
- 5 Q. -- did you tell him about the grenade that you handed in?
- 6 A. Well he did not ask me about the disarmament business. He only came to take statement from me. If
- 7 he had asked me, but he did not ask me whether I disarmed or not.
- 8 Q. So, your testimony is that he never asked you whether you had disarmed?
- 9 A. No, he did not ask me that.
- 10 Q. He never asked you whether you had signed a yellow form with the letters RUF?
- 11 A. No, no.
- 12 Q. And he never asked you whether you had received money as part of the disarmament process.
- 13 A. No, we did not reach the disarmament part of it.
- 14 Q. You understood that he wanted you to tell him the entire truth about your experience with the rebels.
- 15 Yes?
- 16 MR. PRESIDENT:
- 17 Do not precede your question with a yes. Ask the question plainly and leave out the word yes.
- 18 Please.
- 19 MR. BROWN:
- 20 Q. You understood that he wanted you to tell him the entire truth about your experience with the RUF.
- 21 A. Yes.
- 22 Q. Earlier this morning --
- 23 A. Yes.
- 24 Q. -- you explained there came a time --
- 25 A. Yes.
- 26 Q. -- in the presence of AFRC Bangalie --
- 27 A. Yes.
- 28 Q. -- that people were *[inaudible]*.
- 29 A. Yes.
- 30 Q. And this morning you told this Court that you told the rebels that you wanted to join the RUF.
- 31 A. Yes, say I am with them.
- 32 Q. You didn't say that to the man when you made that statement, did you?
- 33 A. I told him.
- 34 Q. This morning you indicated that a man you knew who -- named Alhaji, came to you the night before
- 35 and said you should say, "I want to join the rebels."
- 36 A. They said when they asked me if I say I was going away they would have killed all of us. So, if they
- 37 asked me, I should say that I was with them. So when they asked me who wants to go -- those who

1 want to go let them go this way, and those who don't want to go, let them go this way, so I joined the
2 others on the other side.

3 Q. And this morning you told this Court that you, your brother and an old man said you wanted to be with
4 them.

5 A. Yes.

6 Q. When you spoke to the man who wrote down what you told him, you told him that, "All 15 of us lined
7 up and asked to be released as we did not want to join the rebels."

8 A. No. When -- the three -- when -- only three of us really came out of the lot and the 15 said they were
9 going away. We said we were going to remain with them and join them.

10 Q. My question is directed to the conversation you had with the man on the left in Koidu. Do you
11 understand that?

12 A. Yes.

13 Q. When you spoke to the man in Koidu and told him that all [inaudible] "We had asked to be released
14 as we did not want to join the rebels."

15 A. I did not get you clear.

16 MR. PRESIDENT:

17 Go Slow.

18 MR. BROWN:

19 Okay, I will go slower.

20 Q. I am now focusing your attention on your conversation --

21 MR. BROWN:

22 Forgive my pointing, Your Honour, I don't mean to be rude.

23 Q. With the friendly man, an investigator, who took a statement from you in Koidu. And I am now going
24 to ask you whether you said these words to him, "All 15 of us lined up and asked to be released as we
25 did not want to join the rebels."

26 A. We were 18 not 15. 18 of us were caught and not 15.

27 Q. Well, in fact, in two places in your conversation with the man on the left you told him there were 15 of
28 you when you talked in Koidu. Is that true?

29 A. I said we were 18, those of us who were caught I say we are 18.

30 Q. So, if he wrote 15 he was mistaken; is that correct?

31 A. He is mistaken, we were 18.

32 Q. Do you know of any reason why he would deliberately misrepresent what you said?

33 MS. TAYLOR:

34 Your Honour, I object to that.

35 JUDGE THOMPSON:

36 Sustained.

37

- 1 MR. BROWN:
- 2 Q. Had you ever met that man before the day you gave him the statement in Koidu?
- 3 A. What? Go over -- go over that again.
- 4 Q. There is a day in November 2002 in Koidu you were talking to the man on the left. Is that correct?
- 5 A. Yes, that is so.
- 6 Q. Before that day had you ever met him before?
- 7 A. That was the first day I met him.
- 8 Q. Now, let me put this question to you and I will try to read this slowly. Did you say the following words
- 9 to him in Koidu on November 2002? "All 15 of us lined up and asked to be released as we did not
- 10 want to join the rebels."
- 11 A. I told the man that 18 of us were captured. We were 18. In fact, they *[inaudible]* we are 18 and the
- 12 farm -- on the farm. On the farm huts.
- 13 Q. Putting aside for the moment the number, did you tell the man who is on the left there, when you
- 14 spoke to him in Koidu in November 2002, that all of you lined up and asked to be released, "As we did
- 15 not want to join the rebels."
- 16 A. I did not get you, repeat that.
- 17 Q. This morning you told the Court that three said you wanted to join the rebels and the rest said no. Is
- 18 that a fair statement?
- 19 A. I said -- listen I am repeating -- we were in bed at night, Alhaji called me in secret. He said, "Tomorrow
- 20 they will call us, the man will talk to us in a very fine way. Then whoever is going to his family
- 21 member it's not by force he can go. Whosoever wants to be with us, let him be with us. So don't say
- 22 that you are going, if you say that you are going -- if they said they are going to escort you, they will
- 23 execute you there." And indeed that is how it happened. Early in the morning around 11.00 we were
- 24 gathered and put us in a line. And the man spoke to us nicely and give us his confidence. He said,
- 25 "It's not by force." He said, "God cannot make all of us warriors. Whosoever wants to go to his family,
- 26 go this way. But those who don't want to go to their family, who wants to be with us, let him come on
- 27 this other side." They over -- confidence he gave us, I was also determined to go. But I raise up my
- 28 head and I saw Alhaji and he made a sign, he gestured to me with his eye. He winked to me and then
- 29 he shook his head and then I took note of that and I stood. Three -- he did that three times. So I was
- 30 there standing now. That's -- after that, when Alhaji made that gesture to me, then the man came and
- 31 asked whether we were with them. Then I said, "Yes, brother, I'm with you." So -- so they decided to
- 32 escort the others. When it was there that they were going to kill them -- the woman made a comment,
- 33 she said, "You the rebels *[inaudible]* and the juntas are going to kill the people or to cut their hands.
- 34 When this thing happens tomorrow they will not say the junta, but they will say it was the rebels." She
- 35 says, they say that, they will be told the 15 and they joined the three of us. So we were asked to
- 36 remove our clothes and they started marking us. That is what I said.
- 37 Q. When you spoke to the man on the left in Koidu, did you tell him that you had said, "Brother I'm with

- 1 you."?
- 2 A. Yes, I said I was with them. How it happened that's what I'm saying.
- 3 Q. No, I'm asking you whether you told that to the man on the left when you gave your statement in
- 4 Koidu. Did you tell him that?
- 5 A. Yes, I told them that, told them that, "Whosoever is willing to be with them, let them go this way and
- 6 those who are not willing let them go the other way."
- 7 Q. And you are telling this Court that that is what you told the man in Koidu that you told the rebels,
- 8 "Brother, I am with you."?
- 9 A. Yes. I said I was with them.
- 10 Q. So, if that is not in the statement, that is another mistake he made?
- 11 A. That is what I said.
- 12 Q. Well, when the man in Koidu read the statement back to you before you signed it, did you stop him
- 13 and say, "No, no, no, I said to the rebels, 'Brother I will join you.'"?
- 14 A. No, I did not tell him that. I didn't get the word, but what I did is what I have just said.
- 15 Q. This man Alhaji, how old is he? How old was he then?
- 16 A. No, Alhaji was already *[inaudible]* he is older than me. There were two Alhajis, the other Alhaji was a
- 17 small one and the other Alhaji was a big one, he would give me -- who made the signs to me he was
- 18 already a big man.
- 19 Q. Did you tell the man on the left about your conversation with big Alhaji the night before the line took
- 20 place?
- 21 A. The conversation between me and Alhaji?
- 22 Q. Yes.
- 23 A. Like I told you that he called me in Kono.
- 24 Q. Yes. Did you tell that to the man?
- 25 A. Yes, I said it. All what I have told you is what I have said.
- 26 Q. When you spoke to the man --
- 27 A. Yes.
- 28 Q. -- did you understand that he represented Prosecutors at the Special Court?
- 29 A. He told me that he is working for the Special Court and had been there to take statement from us.
- 30 Q. And did you understand that his office would decide who would be witnesses and who would be the
- 31 accused?
- 32 A. Sir.
- 33 MR. PRESIDENT:
- 34 *[Inaudible]* to this witness.
- 35 MR. BROWN:
- 36 Because -- I'm sorry.
- 37

1 MR. PRESIDENT:

2 [Inaudible] this question to this witness.

3 MR. BROWN:

4 May I respond? I don't know whether that was rhetorical or --

5 MR. PRESIDENT:

6 I do not see the relevance as to his distinguishing who will be the witness or whatever, you know.

7 MR. BROWN:

8 I have a response, I would not proffer it unless I am invited.

9 MR. PRESIDENT:

10 No, [inaudible] some attention to that.

11 MR. BROWN:

12 May I respond to you?

13 MR. PRESIDENT:

14 I have just made a remark, it calls for no question, no response rather.

15 MR. BROWN:

16 When the Court speaks it always raises a question.

17 MR. PRESIDENT:

18 Right.

19 MR. BROWN:

20 Q. Do you know why the man on the left did not put in the statement the explanation you gave this
21 morning to the Court?

22 JUDGE THOMPSON:

23 Argumentative. It is speculative too, because -- what would it elicit --

24 MR. BROWN:

25 I'm sorry.

26 JUDGE THOMPSON:

27 Yes.

28 MR. BROWN:

29 It could elicit knowledge as to why there is -- what I respectfully urge -- is a profound discrepancy
30 between the statement and the testimony, that's what it could elicit, but you are also correct, it could
31 have elicited something else.

32 JUDGE THOMPSON:

33 But here is this -- the investigator is presumed to be an expert.

34 MR. BROWN:

35 Yes.

36 JUDGE THOMPSON:

37 He knows the methodologies and the modalities of what he is doing.

1 MR. BROWN:

2 Yes, sir.

3 JUDGE THOMPSON:

4 He is speaking to an illiterate witness, potential witness. If you ask the witness why the investigator
5 did not record certain things that allegedly he has said, wouldn't that be speculating?

6 MR. BROWN:

7 It would depend on the reason, Your Honour, but I --

8 JUDGE THOMPSON:

9 How would that assist the Court?

10 MR. BROWN:

11 Well, if he knew of some motive -- I agree with your characterisation, I am not raising any question as
12 to Mr. Gboyor's integrity [*inaudible*].

13 JUDGE THOMPSON:

14 I see.

15 MR. BROWN:

16 I am raising questions that I think are relevant to the assessment of the witnesses, but --

17 JUDGE THOMPSON:

18 I think clearly the idea of discrepancies, alleged discrepancies, would be sufficient at the end of day
19 for probative value.

20 MR. BROWN:

21 I am guided by the Court's help.

22 Q. You mentioned this morning Captain Ibrahim Tucker.

23 A. Yes, yes.

24 Q. How long were you with Captain Ibrahim Tucker?

25 A. I was with Ibrahim for one year before we disarmed.

26 Q. And you provided assistance to his household?

27 A. Yes.

28 Q. Including sometimes going to get rice?

29 A. Yes.

30 Q. What was the furthest distance you travelled to get rice for Captain Ibrahim Tucker?

31 A. We went together, I went together with him. So, he did not leave me behind and then send me on my
32 own.

33 MR. BROWN:

34 May I just have a moment, Your Honour? I am actually asking after I have taken, can I just have a
35 moment to confer?

36 MR. PRESIDENT:

37 Yes, if you please.

1 MR. BROWN:

2 Your Honour, I have no further questions of the witness. I am sorry, I have no further questions of the
3 witness.

4 MR. PRESIDENT:

5 Thank you.

6 MR. BROWN:

7 Does the Court wish to mark this so that subsequently -- I don't -- I suspect the Prosecution has no
8 difference over the contents, but I don't know whether it's important for the record to mark items that
9 are shown to witnesses. We could do it later, but I just wanted the Court's guidance and by this I am
10 referring to --

11 MR. PRESIDENT:

12 At this stage -- at this point in time -- no, really. Yes. Yes, the third Accused, please.

13 Cross-examined by Mr. O'Shea

14 MR. O'SHEA:

15 Q. Thank you, Your Honours. Mr. Witness, my name is Andreas O'Shea, I will be asking you a few
16 questions. Could I ask you first of all, have you spoken to anyone during the course of this lunch
17 break about this case?

18 A. No, when we went out I didn't talk to anybody.

19 Q. All right. Now there have been quite extensive questions about your meetings with the prosecution.
20 And I will try not to cover ground which has already been covered but I would like to ask a few matters
21 about that. When you were being asked questions by one of the other gentlemen, you mentioned a
22 meeting in May, is that right, between you and the Prosecutor's office?

23 A. Which meeting?

24 Q. Well, let me put it this way. How many times have you met with a person or persons from the
25 Prosecutor's office?

26 A. The man at my left -- the Prosecutor on my left-hand side that took the statement from me, that is what
27 I want to know. Because we have met only once that he took the statement from me.

28 Q. Have you met any other individuals other than that man working for the Special Court?

29 A. Yes, we have met.

30 Q. Who have you met other than that man?

31 A. The man that -- the man that went and took me. And when I came back here and the man that
32 provided lodging for me, we've met also.

33 Q. Have you given statements to any other individuals apart from the gentleman in this courtroom? Did
34 the question come through?

35 A. You have not passed the question yet.

36 MR. PRESIDENT:

37 Mr. O'Shea.

1 MR. O'SHEA:

2 All right, I'll put it again.

3 Q. Apart from the gentleman sitting in this courtroom that you have spoken about, have you given
4 statements to any other individual?

5 A. I've not got the question yet, you have not passed the question yet to me, I've not got the question yet.

6 JUDGE THOMPSON:

7 Are the translators –

8 THE INTERPRETER:

9 My Lord, I think there is a technical problem because the translators are translating exactly to the
10 witness.

11 MR. PRESIDENT:

12 But the witness is not getting them, that is the problem.

13 THE INTERPRETER:

14 But this is what I am saying, we need to consult the technicians.

15 JUDGE BOUTET:

16 Can Court Management check the system and see what the witness is having – maybe it's his -- you
17 are hearing it now?

18 MR. PRESIDENT:

19 Are you hearing it now?

20 THE WITNESS: [Answered through interpretation]

21 Yes, yes.

22 MR. PRESIDENT:

23 Okay.

24 THE WITNESS: [Answered through interpretation]

25 Yes, yes, I'm getting.

26 MR. PRESIDENT:

27 Mr. O'Shea, you can go on.

28 MR. O'SHEA:

29 Thank you, Your Honour.

30 Q. You have spoken about giving a statement to the gentleman in this courtroom. Would you know him
31 as Bobby, would that be – do you know him as Bobby or do you know him by another name?

32 A. He showed me his name, but I have forgotten his name.

33 Q. All right. Well, you gave one statement to this gentleman, did you give any statement to any other
34 individual about this case?

35 A. Only when I came back I met with the judges, they repeated my statement, and I spoke with them.

36 MR. BOUTET:

37 Maybe you can ask him what judges.

1 MR. PRESIDENT:

2 Which judges, we want to know which judges?

3 MR. O'SHEA:

4 Q. Mr. Witness, you are aware of the fact that the three gentlemen seated facing you with the red and
5 black gowns are the judges in this case. You are aware of that, are you?

6 A. Well, it is now I am knowing, now that you've told me. I know now.

7 Q. All right. So when you say that you have repeated your statement to judges, who do you mean?

8 A. The people that brought me.

9 Q. Do you remember when that was?

10 MR. PRESIDENT:

11 Mr. O'Shea, ask him, the people that brought him from where?

12 MR. O'SHEA:

13 All right.

14 MR. O'SHEA:

15 Q. You say that people brought you, where were they bringing you from and where were they bringing
16 you to?

17 A. They brought me from Kono to this Court especially when I knew that something is bugging me in my
18 heart. So they brought me to explain exactly what is happening.

19 Q. When did that happen?

20 A. It did -- they went and took me. That was in May. They said, "The time has come for the Court," and
21 I've given them statement. They asked me if I'm willing, that the time is near. I said, "Yes, I'm willing."
22 They took me and brought me here. When they brought me, what I saw, what I hear -- what I hear is
23 what I'm saying.

24 Q. And this is May of 2004?

25 A. Yes, yes.

26 Q. So you repeated your statement in May of 2004?

27 A. Sir.

28 Q. Are you saying that you repeated your statement to these people in May of this year?

29 A. When I came, they read my statement in front of me and I told them that what exactly I said is what is
30 in the statement.

31 Q. Right. So have you only ever made one statement?

32 A. The only statement I made is the one they took from me in Koidu, that's what they read to me.

33 Q. And after you gave that statement are you saying that you have never given any further information in
34 addition to that one statement?

35 A. After the first statement I have given, they asked me if I know about any big man. I said, "Yes, I know
36 them."

37 Q. When did this conversation take place, was this in May?

- 1 A. The first statement that I made that they replied, it was there they asked me if I know about any big
2 man and the big people I know I named them, I told them.
- 3 Q. Have you ever received any payments of money from any individual working with the Special Court?
- 4 A. Well I've not received money.
- 5 Q. So, can I be clear about this, you have never received any payment of money from any individual
6 working for the Special Court? Is that right?
- 7 A. That did not stick in my mind. I did not receive any money from anybody.
- 8 Q. Are you sure about that?
- 9 A. Yes, I'm sure, I didn't receive any money from person.
- 10 Q. Have you been told by any person working for the Special Court that you will receive any money for
11 any reason?
- 12 A. No, it did not stay in my mind. They didn't give me money. They came -- I came -- they took me in a
13 vehicle and they brought me here. They have not given me money. If they have given money it did
14 not come to me, I didn't see money.
- 15 Q. Now, the translation that came through to us in English was that, "It did not stay in my mind." What do
16 you mean by, "It did not stay in my mind."?
- 17 A. It is like somebody giving you money, then you say, "I've forgotten about it," but they didn't give me
18 money, so I cannot say they gave money to me.
- 19 Q. I wonder if you could help me with some of the names of the places that you have mentioned during
20 the course of your evidence. I will come back to that subject. You mentioned a place called -- and I
21 don't know if the translator could try and say the name of the place exactly the way I say it because I
22 just want to be sure that we have got the places correct -- you mentioned a place called Yomandu. In
23 which district is Yomandu?
- 24 A. Yomandu is under Kono District.
- 25 Q. And then you mentioned a place called -- and forgive me if I've got it incorrect -- but Dandabu, is that
26 correct, Dandabu?
- 27 A. Dandabu
- 28 Q. Dandabu, and in which district is that?
- 29 A. That is also under Kono District, it is the chiefdom in Sandor Chiefdom.
- 30 Q. How far is Dandabu from Yomandu? Are you good with distances?
- 31 A. Well, it is not a far distance. Let me say, I walk with this one hour.
- 32 Q. Then you mentioned a place by the name of -- and please correct me if my pronunciation is wrong --
33 you mentioned a place by the name of Baiwadu.
- 34 A. Yes.
- 35 Q. Where is Baiwadu?
- 36 A. It's in the Sandor Chiefdom.
- 37 Q. How far is Baiwadu from Yomandu?

- 1 A. That one is really far, it's not a short distance.
- 2 Q. Are you able to estimate at all?
- 3 A. Well let me say it is about ten miles.
- 4 Q. Then you mentioned a place called Wordu. Correct?
- 5 A. Yes. Wordu.
- 6 Q. And where is Wordu?
- 7 A. Wordu? It is by the north. But it is inside Kono in the Sando Chiefdom. When you are in our own
8 town -- our own town, you point your finger towards the north to locate that town.
- 9 Q. Yes, thank you. Now am I to understand your evidence correctly that in your mind the RUF were the
10 rebels?
- 11 A. Yes.
- 12 Q. And the AFRC were the junta?
- 13 A. Yes, they are they are juntas.
- 14 Q. Now, you mentioned -- and you have already been asked about this by Mr. Brown -- you spoke about
15 this lining up in Kayima where you were asked to go into two lines: those who wished to join the
16 rebels or the junta, and those who wished to be released. Correct? And, correct me if I am wrong
17 about this, but my recollection of your evidence is that at the beginning there was a suggestion that
18 you should be executed that morning. Is that right?
- 19 A. Yeah.
- 20 Q. And then a gentleman by the name of Bangalie, an AFRC man, intervened and said, "No, don't
21 execute them, but they should have AFRC and RUF carved on their chests." Is that a fair summary of
22 your evidence?
- 23 A. The woman made the comments, Bangalie and others planned to kill the people. When the woman
24 say, "Eh, tomorrow they will not say -- it is not juntas but rebels that did the act." That's the reason
25 why Bangalie was afraid and said, "Well let's mark them." We were put in a line and marked.
- 26 Q. Was there any suggestion from anybody in the morning, not the night before, in the morning was there
27 any suggestion from anybody that you should be executed?
- 28 A. That Bangalie said that, "Those of you who said you are leaving," that, "When you leave you tell the
29 government that we are in Kayima and they should take a jet and bomb us there. That you people
30 say you are going now, we are going to kill you."
- 31 Q. So would it be correct to say that on that morning there was a suggestion that you should be killed?
- 32 A. That is what I'm saying, that Bangalie said they should kill all the people, they were now arranging to
33 go about to kill the people, that was what Bangalie said, that they should be killed.
- 34 Q. When you gave your statement to the gentleman in court, who I will now refer to as Bobby, if that is all
35 right --
- 36 A. I gave him statement, yes.
- 37 Q. Did you say in that statement --

- 1 A. Yes.
- 2 Q. Did you say in that statement that somebody had said on that morning that you should be executed?
- 3 A. Particularly Bangalie that he said the people should be escorted. I heard that.
- 4 Q. So why were you not executed?
- 5 A. I said the woman made comment that if they do that tomorrow, they will not say it is the junta that did
- 6 it, but they will say the rebels did it.
- 7 Q. You described the way Bangalie dressed and you said that he had a badge on his shoulder saying
- 8 "MP." Correct?
- 9 A. Yes, it is correct, that is what I saw "MP" on the left-hand side.
- 10 Q. Did he have any other kind of sign on his shoulder?
- 11 A. He had two ropes with that mark "MP". He had two ropes.
- 12 Q. Do you know what rank he held in the AFRC?
- 13 A. They used to call him Lieutenant Bangalie. I don't know if that is his correct rank, but that was the way
- 14 they used to call him, Lieutenant Bangalie.
- 15 Q. Would you say that he had a strong personality?
- 16 A. Yes, they know him, that man they know him.
- 17 Q. During the course of your evidence this morning you mentioned the fact that rebels had taken some of
- 18 your property.
- 19 A. Yes, they took them.
- 20 Q. Did you say that to Bobby when you gave your statement?
- 21 A. Not asked me whether they took away my property.
- 22 Q. So, did you also not say anything about pillage or property being taken during the course of your
- 23 discussions with Bobby?
- 24 A. No, he did not ask me that question.
- 25 Q. If we go back to the evening before the morning when you were asked to line up, you spoke to a
- 26 gentleman by the name of Alhaji, is that correct? Alhaji? Is it Alhaji?
- 27 A. Yes, yes.
- 28 Q. And he told you that he believed that you would be executed if you asked to be released the following
- 29 day. Correct?
- 30 A. Yes, I had the confidence that he will do it.
- 31 Q. Now, you say that there were 18 of you in total -- were there at that time.
- 32 A. Yes.
- 33 Q. Did you know any of those -- any of the other people among those 18?
- 34 A. [Inaudible] And my younger brother.
- 35 Q. Did you not know any of the others?
- 36 A. Another boy amongst us, he was called Alhaji, he was a small boy.
- 37 Q. When you spoke to Bobby, when you gave your statement to Bobby, did you mention some other

- 1 names of people?
- 2 A. I told him that there was another boy among us, his name was Alhaji.
- 3 Q. Did you not give any other names to Bobby?
- 4 A. The ones I knew are the ones that I've just named. But if I really did give another name, if he should
- 5 call that name if it is correct then I will tell him that it's correct.
- 6 Q. Did you give the name Tamba Sesay?
- 7 A. Yes, that is -- that is Tamba Sesay, he is an old man that is why I called him Pa Sesay.
- 8 Q. Right.
- 9 *[By order of the Court this portion of the evidence (page 61 lines 14 and 15) has been extracted and*
- 10 *filed under seal]*
- 11 JUDGE BOUTET:
- 12 Mr. O'Shea --
- 13 MR. O'SHEA:
- 14 Yes.
- 15 JUDGE BOUTET:
- 16 -- there are protective measures, as you know.
- 17 MR. O'SHEA:
- 18 Thank you, Your Honour, yes.
- 19 JUDGE BOUTET:
- 20 Now, you should know that we have to be very careful about this.
- 21 MR. O'SHEA:
- 22 Yes, I wasn't thinking about that, Your Honour, I apologise.
- 23 JUDGE BOUTET:
- 24 I appreciate, I am just -- now we may have another problem now.
- 25 MR. O'SHEA:
- 26 Yes, the difficulty was that I hadn't appreciated that these people were as close to this gentleman.
- 27 MS. TAYLOR:
- 28 Your Honour, just before my friend continues, I wonder whether that last response might actually be
- 29 struck from the record.
- 30 JUDGE BOUTET:
- 31 We will strike it from the record, it is in front of the public and there is nothing we can do about that at
- 32 this particular moment.
- 33 MS. TAYLOR:
- 34 Yes, Your Honour.
- 35 JUDGE BOUTET:
- 36 It's a concern I have. We go to these extremes to try to protect the identity of witnesses, but I'm not
- 37 saying, Mr. O'Shea, that you did that on purpose, I understand it does happen, but I'm just trying to

1 caution you again to be careful.

2 MR. O'SHEA:

3 Yes.

4 JUDGE BOUTET:

5 You knew the name of the witness in addition to his identification number, I guess and he had been
6 talking of his younger brother so – but, anyhow.

7 MR. O'SHEA:

8 Yes, thank you, it didn't occur to me that that response would come out. Thank you.

9 Q. So, you did not know any of the others out of the 18 by their face or by their name?

10 A. Even today I know some of them. Where they have – who have his mark on them. There is another
11 friend whose name was Tamba that died, Tamba that died.

12 Q. That person Tamba, is this a different Tamba from Tamba Sesay?

13 A. Yes, it's different from Tamba Sesay.

14 Q. And this person is not a relative of yours?

15 A. No, he is not and we met in the jungle during the war.

16 Q. Was he one of the 18?

17 A. No, he was not there that day *[inaudible]* but we met together under the same boss. The same boss.

18 Q. When you were asked by Alhaji or was told by Alhaji *[inaudible]* what might happen the following
19 morning, did you warn anybody else?

20 A. We were – we were not in the same place, we were all distributed, we were not together. I was
21 together with my younger brother, there were others in other rooms.

22 Q. At the time that you were lined up and stated to these people that you wanted to join them, at that time
23 of your life were you working?

24 A. I was working. I really did some – I worked like a jackass and that is why I made my statement.

25 Q. I'm sorry, I need to put the question in a different way. Before you used the word "captured" you in
26 fact indicated that you did not want to be released, whether that was your real wish or not that is what
27 you indicated to the rebels, before that incident in your home town or village, did you have work?
28 Were you employed? So before you were with the rebels were you employed when you were at
29 home?

30 A. The question is so many, there is little. Put it down, simplify your questions.

31 MR. PRESIDENT:

32 *[Inaudible]* answer the questions asked you. Before you joined the rebels were you working?

33 THE WITNESS: *[Answered through interpretation]*

34 I was working.

35 MR. PRESIDENT:

36 Mr. O'Shea, go on.

37

1 MR. O'SHEA:

2 Q. What were you doing?

3 A. I was in school.

4 Q. Well, if you were in school, you weren't working, were you, or were you working and in school?

5 A. I was working as well as attending school.

6 Q. What work were you doing?

7 A. I was doing some house -- domestic work. So when school closed I will go to get out my sister in the
8 bush and then take gravel and we wash this gravel together.

9 Q. Did you receive any income for your work?

10 A. No, that was done for the family, I wasn't paid.

11 Q. Did you have a big family?

12 A. Sir, go over that again, I can't get it clear.

13 Q. Did you have a large family?

14 A. I didn't get you clear.

15 Q. Did you have a large family?

16 A. Yes, I have a large family.

17 Q. I think I am safe in asking this question. How many people were in your family? No?

18 JUDGE BOUTET:

19 That's fine if we stay at that level for now.

20 THE WITNESS: [Answered through interpretation]

21 You want me to call the names of all my family?

22 MR. PRESIDENT:

23 No.

24 JUDGE THOMPSON:

25 The number.

26 MR. O'SHEA:

27 Q. The number. In fact, let me warn you, if I may, don't mention the names of your family members for
28 your own safety. Do you understand? In fact, let me add that if I accidentally ask you a question
29 which might reveal your identity you must stop me. All right?

30 So, how many people were there in your family?

31 A. Well, we are many. By the time the war was coming I had my younger sister, my elder sister, my
32 father and my mother, and my stepmother because I have lost my mother. And two of my nephews.
33 We were all on the way when we were captured, the others are all away in other camps.

34 Q. Was anybody earning any income in that family at the time?

35 A. No.

36 Q. So, would it be fair to say that the general situation of your family was quite a desperate one?

37 A. No, we were not really desperate. We were living with our family. When I said we are not working, it

1 doesn't mean that we are desperate. Our brothers are out and they used to send for our father. We
2 have our house where we stay, we eat. When we are ready to go to bed, we can go to bed at any
3 time we want to. And when we are [inaudible] we can get up at any time we want to get up. It doesn't
4 mean that when I say that we are desperate it means that we are beggars going about begging.

5 Q. No, no, I can understand that, but times were difficult. Right?

6 MS. TAYLOR:

7 Your Honour --

8 A. When the time -- the time when things were really difficult was during the war and things were difficult
9 during the war. And I'm the only man.

10 MS. TAYLOR:

11 Your Honour, this line of questioning has gone on for quite some time, and I do now raise the issue of
12 relevance. What fact in issue are these matters relevant to?

13 MR. PRESIDENT:

14 Mr. O'Shea, please go on and let it not be on and on and on, you know, we -- try to start wrapping up,
15 please, if you could.

16 MR. O'SHEA:

17 Well, I apologise if that is the general feeling but, I do have a direction in these questions.

18 MR. PRESIDENT:

19 Go ahead, go ahead, but try to remain within the domain of relevance. I know you are there, but it is
20 turning round and round and round and round and I hope we shall have a point where it will stop. Go
21 ahead, please.

22 MR. O'SHEA:

23 Q. When you were with the rebels --

24 A. Yes.

25 Q. -- did you ever try to escape?

26 A. I was not able to run away, the security was too tight.

27 Q. Did you ever fight?

28 A. I cannot lie that I fired a weapon, but they used to put loads on our head to go to the battlefield. From
29 there -- from there after that I will come back with another load on my head.

30 Q. Have you been in the battlefield?

31 A. Go over that again.

32 Q. Have you been in the battlefield yourself?

33 A. We used to take loads on our head and they used to attack. I know how to load the magazine of the
34 gun, I know how to load it.

35 [Pages 43 to 64 by Susan G. Humphries]

36

37

1 [16.30]

2 Q. Earlier you mentioned that you had handed in a grenade during the disarmament process?

3 A. Yes, I gave it. The man who I was staying with gave it to me to go and disarm together, and we went
4 and disarmed.

5 Q. So you are saying this was not your grenade, or it was not a grenade in your possession?

6 A. No, I didn't have it before that time. You cannot disarm twice. So there was no way that man could
7 have kept that grenade with him. So we went together and we disarmed. If it remained in the corner,
8 it can lead to armed robbery.

9 Q. Can I suggest to you that at the time you went along with the rebels you did so, in fact, voluntarily?

10 A. I did not go there with my clear heart. There was no way to do it, we were forced to join. The men
11 were with the weapons and I cannot sit down. When they asked you to sit down, you have to sit
12 down. If they asked you to lie down, you have to lie down. If I did not honour that, I wouldn't have
13 been alive today. I was subject to order in their care until they disarmed.

14 Q. Did you personally feel that there would be some benefit for your family in going along with the
15 rebels?

16 A. What? Go over that again.

17 Q. Did you not feel at the time you went along with the rebels that there might be some ultimate benefits
18 for your family who were not working?

19 A. That is no benefit. I cannot see that as a kind of benefit. I will show you the example. You cannot
20 take a cow from somebody and give him a rat. That is no benefit. What kind of help is that? All our
21 homes were damaged -- our home was destroyed. Is that benefit?

22 JUDGE THOMPSON:

23 I'm sure learned Counsel you don't want to pursue this line of argumentative kind of -- what
24 speculative answers -- how does it assist us? I don't know what to record.

25 MR. O'SHEA:

26 Well, I'm trying to be fair to the witness --

27 JUDGE THOMPSON:

28 All right.

29 MR. O'SHEA:

30 -- by suggesting to the witness that there may be another avenue for his route to this Court which
31 was rather more voluntary than he suggested to the Court.

32 JUDGE THOMPSON:

33 Well, I follow that. It's just that you can see the answers flowed out in such a very argumentative way
34 of rejoinders and things, and we are trying to ascertain facts.

35 MR. PRESIDENT:

36 You may also have been suggesting that may be because they were living in misery he was better off
37 in joining not only the rebels, but the junta and he has replied to that anyway.

1 MR. O'SHEA:

2 Yes. I just felt that it was fair to put it to the witness.

3 Q. When you spoke about the first incident with the AFRC vehicles coming, you remember that part of
4 your evidence?

5 A. Sir, repeat that. Go over that again.

6 Q. At the beginning of your story you told us that there were a number of vehicles that arrived at, I think it
7 was Yomandu; is that correct?

8 A. Is correct. Go ahead.

9 Q. So you described the AFRC, and you described the fact the vehicles were marked AFRC?

10 A. That is exactly, but I did not say there were many, many vehicles. The first one, there was only one
11 vehicle which was a Toyota and it was marked AFRC. There was not a long distance between us.
12 They came down, they alighted and asked us for the youths. The second one that was the time they
13 caught my sister's worker, three vehicles; two Toyotas, and one Nissan. There were not many, many
14 vehicles, there were only four. They not come on the same day. The three came on the same day,
15 the one came alone.

16 Q. Were all the vehicles that you saw marked AFRC?

17 A. It was not all of them were marked. The first one with the soldiers which came from Koindu was
18 marked AFRC. The three vehicles that came later had no mark on them; the two Toyotas and one
19 Nissan.

20 Q. Can I just ask you this one last question? You said that you can't read or write in English. Can you
21 read or write in *Krio*?

22 A. When I told you that I cannot read or write, I did not tell you that I did not go to school. If you tell
23 somebody in class one, he knows. What about me? I went above that. I know how to read A-B-C-D.
24 When I saw the vehicle marked AFRC, so I can know that, I should know that. I cannot read *Krio*
25 book, I cannot read *Krio*, but I know that -- there is no *Krio* book.

26 Q. Can I ask this one last short question? When you spoke to Bobby, you spoke to him in *Krio*?

27 A. I spoke in *Krio* to Bobby.

28 MR. O'SHEA:

29 Could I just have one moment, Your Honour?

30 MR. PRESIDENT:

31 Yes, and may be to ask another short, short question. Go ahead, please.

32 MR. O'SHEA:

33 Thank you.

34 MR. PRESIDENT:

35 Is that all?

36 MR. O'SHEA:

37 Yes, Your Honour.

ANNEX C

12541

PUBLIC EXHIBIT FOR TF1-074

1. AFRC Prosecution Exhibit No. 27





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