

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

MONDAY, 5 JUNE 2006
9.17 a.m.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Richard Lussick, Presiding Julia Sebutinde Teresa Doherty
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff
For the Registry:	Ms Maureen Edmonds
For the Prosecution:	Mr Chris Staker Mr Karim Agha Mr Charles Hardaway Ms Maja Dimitrova (Case Manager)
For the Principal Defender:	Mr Vincent Nmehielle Ms Elizabeth Nahamya Mr Ibrahim Foday Mansaray
For the accused Alex Tamba Brima:	Mr Kojo Graham Ms Glenna Thompson Mr Osman Keh Kamara
For the accused Brima Bazy Kamara:	Mr Andrew William Kodwo Daniels Mr Mohamed Pa-Momo Fofanah Ms Louisa Songwe (legal assistant) Ms Rebecca Cohen (intern)
For the accused Santigie Borbor KanU:	Mr Geert-Jan Alexander Knoops Mr Ajibola E Manly-Spain

1 [AFRC05JUN06A - EKD]

2 Monday, 05 June 2006

3 [Open session]

4 [The accused not present]

09:15:47 5 [Upon commencing at 9.17 a.m.]

6 PRESIDING JUDGE: Good morning. I notice once again that
7 the accused aren't in court. Is there any reason for that?

8 MR GRAHAM: Good morning, Your Honours. I believe they are
9 on their way here. We have no reason as to why they are late,
09:21:18 10 but I am reliably informed they are on their way here.

11 PRESIDING JUDGE: All right. I will direct that
12 Court Management speak to the Registrar and find out why it is
13 not possible to get the three accused here by 9.15. This Court
14 especially set 9.15 as a starting time so that it would not clash
09:21:42 15 with the starting time of the other Trial Chamber and therefore
16 provide plenty of opportunity for the accused to be brought here
17 on time.

18 It is the beginning of the Defence case today. Appearance
19 for the Prosecution are as follows: There is Mr Staker, deputy
09:22:09 20 chief prosecutor, and I see Mr Agha. I am sorry, your name
21 escapes for the moment.

22 MR HARDAWAY: Charles Hardaway, Your Honour.

23 PRESIDING JUDGE: Thank you, Mr Hardaway. I see for the
24 Defence we have the Principal Defender who is sitting at the Bar
09:22:27 25 table, and we have lawyers on record for the three accused. We
26 were informed last week that each counsel for each accused would
27 like to make an opening statement, so have you decided between
28 you who will go first?

29 MR GRAHAM: Your Honours, as per our arrangement, I think

1 Professor Knoops will be starting because he is going to be
2 delivering a common legal response in terms of the opening and I
3 think I will follow and then counsel for Kamara will follow my
4 opening statement.

09:23:13 5 PRESIDING JUDGE: Thank you, Mr Graham. Yes, well, carry
6 on.

7 MR KNOOPS: Good morning, Your Honours.

8 PRESIDING JUDGE: Good morning, Mr Knoops. Mr Knoops --

9 MR KNOOPS: Allow me to wait one second, Your Honours,
09:23:39 10 until the defendants --

11 PRESIDING JUDGE: I was just going to suggest that.

12 [The accused entered court]

13 MR KNOOPS: Thank you.

14 PRESIDING JUDGE: Perhaps before Mr Knoops commences the
09:24:11 15 opening statement we will begin by stating the obvious, that the
16 opening statements are to be confined to the evidence that each
17 party intends to present in support of his case. Yes, Mr Knoops.

18 [Kanu Defence opening statement]

19 MR KNOOPS: Thank you, Your Honours. Your Honours, this
09:24:39 20 opening statement which is partly submitted as a joint opening
21 statement, namely the general parts I would like to address to
22 you, will go into a range of factual and legal issues. We are
23 mindful to the scope of Rule 84 and its interpretation by
24 Trial Chamber I of the CDF case. Yet evidence can and should be
09:25:01 25 led not only on factual issues, but also on legal issues if they
26 serve a functional anticipation to the defence case and
27 foreshadow legal defences to be advanced by the Defence. By
28 doing so we hope to assist the Honourable Trial Chamber in
29 appreciating our position that we will take with reference to the

1 evidence per subject we intend to lead.

2 Preceded by a short introduction, Your Honours, the opening
3 statement addresses the relevance of our evidence divided over:
4 First, the argument of joint criminal enterprise; secondly, the
09:25:46 5 Defence case towards superior responsibility; thirdly, the
6 Defence case towards individual criminal responsibility; in the
7 fourth place, the Defence case to be advanced with respect to
8 criminal law defences; in the fifth place I will shortly address
9 the specific position of Mr Kanu within the conflict; and,
09:26:12 10 lastly, I will conclude the general part of the opening statement
11 while also addressing several substantive issues and conclusions.

12 Your Honours, the Geneva Conventions are at the heart of
13 the indictment. The indictment stresses that the Republic of
14 Sierra Leone acceded to them in the nineties. Statehood and
09:26:41 15 sovereignty that goes with it entail both rights but also legal
16 obligations for states. If states are to meet the obligations
17 imposed upon them by the Geneva Convention and international
18 humanitarian law, then it follows that they cannot meet those
19 obligations in good faith if the armed forces have not been made
09:27:08 20 acquainted with the law of war. The four Geneva Conventions
21 entail this obligation in a common article of mandatory nature to
22 this end, namely the Articles 47 of Convention number 1, Article
23 48 of Convention 2, Article 127 of the third Convention and,
24 finally, Article 144 of the fourth Geneva Convention.

09:27:37 25 Governmental neglect of the primary importance of adequate
26 military training and education to avoid the commission of war
27 crimes, this in contrast with detection and punishment ex post
28 facto, forms the integral obligation of the Republic of
29 Sierra Leone. As a result, it is subjected --

1 PRESIDING JUDGE: I'm sorry to interrupt, Mr Knoops, but is
2 this developing into a legal argument, or are these topics on
3 which you are going to call evidence?

4 MR KNOOPS: It is, Your Honour.

09:28:18 5 PRESIDING JUDGE: It is the latter?

6 MR KNOOPS: It is still an introduction, Your Honour. It
7 is our submission that, as a result, the full scope of the Geneva
8 Conventions are subjected to judicial scrutiny in this case due
9 to the application of the Convention as a whole. Common Article
09:28:40 10 3 cannot be applied abstracted, as a isolated form of the
11 Conventions as such. The primary responsibility of governments
12 for adequate military legal education which precedes the
13 assessment of criminal liability cannot be overlooked.

14 It is the Defence thesis that failure of states to
09:29:06 15 seriously comply with these responsibilities as codified by the
16 four Geneva Conventions and Additional Protocol I affects
17 criminal liabilities of individual soldiers for proper compliance
18 with the very same Geneva Conventions.

19 Additionally, a government instrumental in setting up a
09:29:30 20 tribunal with jurisdiction over that very article, Common Article
21 3, whilst at the same time failing in its dissemination
22 obligations towards soldiers is not acting in accordance with the
23 spirits of the Conventions. This, Your Honours, will be shown in
24 the course of the Defence case.

09:30:00 25 MR AGHA: I apologise for interrupting my learned friend,
26 but just to go back to a point the Court raised earlier and the
27 actual Article for opening statements. It is the submission of
28 the Prosecution that, really, these should be confined to matters
29 of fact, which the Defence intends to call as evidence in its

1 case, rather than questions of law, which are, perhaps, properly
2 put in the closing submissions. The submission of the
3 Prosecution is if the learned counsel of the Defence could be
4 mindful to keep away from the legal arguments and stick more to
09:30:35 5 the facts upon which the Defence seeks to rely on its case, it
6 may be a more correct way of actually conducting the opening.

7 PRESIDING JUDGE: I did mention something along those lines
8 to you to begin with, Mr Knoops. At this stage, it is not the
9 place for legal argument. It is the time to inform the Court of
09:31:02 10 the evidence that you are going to present in your case. The
11 legal arguments can come after the evidence is presented, but to
12 give legal arguments at this stage, really, they're arguments
13 unsupported by any evidence or unsupported by any evidence that
14 the Defence would call.

09:31:24 15 MR KNOOPS: Thank you, Your Honour. It was still merely
16 introduction to the factual arguments, but I will move on.

17 Your Honour, we will show you that there was such a failure
18 of state responsibility on the part of the Republic of
19 Sierra Leone from the 1970s onwards up to 1979 as to the
09:31:48 20 endorsement of all forms of discipline, education and military
21 training within the army.

22 We will also show you that this was not without dramatic
23 effects on the state of the army. The Defence will prove that
24 the marginalisation and the deregulation of the army in all its
09:32:05 25 aspects undermines the three liability modes as embedded in the
26 indictment. We will lead military expert evidence establishing
27 that, in the first place, the history of the SLA shows a total
28 breakdown in terms of military organisation and that before
29 enduring the AFRC regime, all forms of discipline and

1 regimentation of the RSLAF were brought down to zero and,
2 ultimately, finished the image and military nature of the RSLAF,
3 affecting command and control. In the second place, we will be
4 able to show you that the junior ranks within the SLA were
09:32:54 5 totally neglected by the politicians and senior officers. It is,
6 and was, this neglect that was one of the major factors that led
7 to the AFRC coup.

8 In addition, as to the other key factors for the coup, one
9 of our witnesses, a former senior SLA officer up to 2003, will
09:33:20 10 testify that the SLA, as a whole, was marginalised by the
11 politicians and tribalised by the government, meaning that there
12 was tribal influence on military appointments, starting in 1992.
13 We will show that this led to the disintegration of the army as a
14 coherent unit, deteriorating command and control. As a result of
09:33:56 15 this, the Defence case will convince the Honourable Trial
16 Chamber, as we believe, led by military evidence that by the time
17 the AFRC came into power, no integrated, coherent army force
18 existed, which reasonably could have been functioning as one
19 unified fighting force in military doctrinal sense.

09:34:27 20 As a result of this, Your Honours, we will show you the
21 following: First, the precondition assumed by the Prosecution
22 that recognisable groups need to exist to establish a military
23 organisation was not fulfilled during the conflict in which the
24 AFRC faction apparently participated. We will adduce evidence
09:34:52 25 that the various groups were not recognisable.

26 Second, the, AFRC at the maximum, may have had the
27 semblance of a military structure and hierarchy. However, as we
28 will show you, since the essential criteria of the span of
29 command and the span of control were not fulfilled, it was far

1 from a regular force, if any.

2 Third, the AFRC faction did not inhibit the majority of the
3 characteristics of a traditional military organisation. It is
4 the Defence case, and we intend to prove this, that the AFRC
09:35:44 5 faction functioned rather as an irregular force or movement, if
6 any.

7 Fourth, within the AFRC faction, we will prove any form of
8 strategic military level and so-called grand strategic military
9 level was absent. Yet, we will show you that these are
09:36:13 10 preconditions for being a military organisation under
11 international law.

12 Fifth, we will show you that the AFRC faction cannot thus
13 be qualified as a military organisation in military doctrinal
14 sense.

09:36:33 15 Sixth, the Defence will also adduce evidence, Your Honours,
16 that the AFRC, during the war, was never one single unit, but
17 comprised of various groups with constantly changing compositions
18 not related to each other and having different commanders. A
19 chameleonic movement, so to speak. All these different
09:37:03 20 commanders, we will show you, had different supporters operating
21 in different parts of the country, pledging alliance, not to the
22 larger coalition, but rather, to specific commanders.

23 A Defence witness appear before your Court saying that
24 ex-SLAs or AFRCs within the relevant time frame moved in
09:37:31 25 different clusters without any structure and it will be argued
26 that this observation, as well as the other observations, will
27 have ramifications for the asserted liability theories in this
28 case.

29 Finally, seventh place, we will be able to show you that a

1 joint force or joint structure in military operational terms
2 between the RUF and the AFRC was never established. The Defence
3 is able to show you that this will refute the liability theory of
4 joint criminal enterprises.

09:38:22 5 These conclusions, which the Defence will be able to prove,
6 should, in our opinion, also have major evidentiary consequences
7 for this trial. Consequences and arguments which will be
8 developed on the basis of our experts and witnesses among former
9 senior officers of the SLA we will intend to introduce.

09:38:51 10 Your Honours, the evidence led by the Defence as to the
11 seven issues I just enumerated will, in our view, also have
12 consequences for the applicability of Common Article 3 of the
13 Geneva Conventions. It has been argued that some of the
14 individual prohibitions of this provision demand an

09:39:16 15 administration and organisation of discernible proportions on
16 part of both parties to a conflict. Within international law,
17 the view has been transpired that an armed conflict, even if it
18 is a non-international conflict, requires some degree of military
19 organisation and political control on both sides. It is exactly,

09:39:48 20 Your Honours, this organisational element and political control
21 which, and we will be able to show you, is absent in this case,
22 and we will intend to lead evidence from military experts to
23 prove this.

24 Your Honours, it is here that the Defence will elicit
09:40:09 25 military expert evidence whilst touching upon this area of
26 contemporary controversy. The proper ambit of the applicability
27 of Common Article 3 is still not determined in its finality
28 within international law. In particular, the Defence thesis is
29 relevant in view of the evidence to be admitted on our part.

1 This evidence, namely, will show Your Honours, led by witnesses
2 who testified before the Sierra Leone Truth and Reconciliation
3 Commission, the total downfall of Sierra Leonean Army from 1961
4 till 1997, and a total neglect of the junior ranks in the army by
09:41:04 5 the authorities.

6 It will also show the disintegration of a military
7 organisation at the time of the coup of 1997 as a result of this
8 neglect. We will also establish the consequences thereof, namely
9 low morale, no discipline, no training, no leadership, no
09:41:27 10 hierarchy, no equipment, no organisation, no welfare system for
11 rank and file, no prospect, no military command and control, and
12 last but not least, no hope for improvement. Finally, no
13 political oversight as required for the applicability of Common
14 Article 3. A former SLA staff officer who was in the army until
09:41:59 15 2003 will appear before your court to testify about this.

16 Based upon these facts, the Defence case will transpire the
17 ramifications thereof for the alleged operations of the AFRC and
18 its impact on criminal liability theories in this case, including
19 the scope of Common Article 3.

09:42:24 20 Your Honours, based upon this evidence, the Defence will
21 conclude that no reasonable prior effect can arrive at a
22 conclusion that the AFRC was in fact a military organisation
23 within which effective command and control could have been
24 exercised, and which was able to constitute a joint criminal
09:42:46 25 enterprise, including an enterprise in a military sense, neither
26 with the RUF nor with individual members.

27 Your Honours, after this introduction of the general
28 outline of the Defence case, I would like to go into the specific
29 aspects, both factual and legal, of the theory on joint criminal

1 enterprise.

2 PRESIDING JUDGE: Well, we don't really want to hear the
3 legal aspects. I draw your attention again to Rule 84. You are
4 to confine yourself to the evidence that you are going to call in
09:43:24 5 support of your case.

6 MR KNOOPS: Thank you, Your Honour. Your Honours, the
7 evidence of the Defence case to be led here can be categorised
8 into three subjects which run parallel to the three liability
9 modes formulated in the indictment. I will shortly foreshadow
09:43:45 10 the evidence we intend to lead per subject.

11 First, the Defence case will lead evidence to establish
12 that no joint criminal enterprise can be borne by the AFRC and
13 RUF as such; ie organisations. In this respect, it is important
14 to note that according to paragraph 31 of the amended indictment,
09:44:09 15 it is said that the three accused individually or in concert with
16 each other and others, along with the RUF defendants Issa Sesay,
17 Morris Kallon and Augustine Gbao, exercised authority, command
18 and control over all subordinate members of the AFRC junta and
19 AFRC/RUF forces. The key question is whether Your Honours can
09:44:42 20 accept the notion of responsibility for all members and we are
21 going to adduce evidence in refutation of this collective
22 responsibility idea.

23 Secondly, the Defence will adduce evidence to the extent
24 that the liability theory of joint criminal enterprise can also
09:45:07 25 not be established between the three accused persons and members
26 of the AFRC with respect to the alleged commission of atrocities.
27 Evidence will be led showing that no common purpose between the
28 accused and the operatives who committed the alleged atrocities
29 ever existed.

1 The evidence we intend to lead will bring about the
2 following five conclusions and submissions: First, it will be
3 shown by the Defence that the three accused may and can only be
4 held accountable for alleged crimes committed by other persons,
09:45:48 5 such as alleged conduct of any member of the AFRC or RUF, not
6 even based upon this very concept of joint criminal enterprise.

7 We will furthermore show that the three accused cannot be
8 held criminally liable for acts or omissions which are attributed
9 to the AFRC and RUF as such, namely as organisations to which
09:46:12 10 they allegedly belonged. We believe that organisational crime
11 does not warrant the current indictment. Thirdly, we will
12 establish that the three accused, in order to be part of the
13 purported joint criminal enterprise, lacked the requisite frame
14 of mind.

09:46:35 15 Fourth, we will establish that no understanding was
16 entered --

17 THE INTERPRETER: Your Honours, can learned counsel please
18 read slowly so that the statement could be interpreted.

19 PRESIDING JUDGE: The interpreter is having trouble keeping
09:46:53 20 up with you, Mr Knoops, and there is a request that you read a
21 little bit more slowly.

22 MR KNOOPS: In the fourth place, we will establish with
23 evidence that the three accused didn't have any understanding or
24 entered into an agreement with the relevant physical perpetrators
09:47:20 25 to commit the acts which were of natural and foreseeable
26 consequence of the crime agreed upon by the accused and those
27 perpetrators as stated in the indictment.

28 In this regard a defence witness will testify about the
29 SLAs having betrayed the RUF in 1998. Accordingly, the evidence

1 will show that not only in Kono, but throughout all the charged
2 periods in other districts, there was a constant power struggle
3 between the RUF and AFRC, this in a chaotic military conflict.
4 Based upon the evidence we will be able to show you that hardly
09:48:12 5 any form of joint criminal enterprise was imaginable in those
6 days.

7 In the fifth place, with respect to specifically the theory
8 of joint criminal enterprise, we will be able to prove that
9 within the relevant time frame of the indictment an escalation of
09:48:34 10 the original objective emerged and that the objective
11 fundamentally changed in nature and scope from the common plan or
12 design to which the participants originally agreed, if any, and
13 if this all took place.

14 We will establish that at the utmost, a new and distinct
09:49:10 15 enterprise and enterprises were established within a situation of
16 escalation which was not to be seen as a natural and foreseeable
17 consequence of the original enterprise.

18 The Defence case will prove in specific three things.
19 First, the conflict in general and the fighting factions in
09:49:39 20 particular were of a chameleonic nature. Military conduct, if
21 any, shifted from offensive to defensive operations, to,
22 ultimately, survival of the fittest operations. Here we will
23 adduce evidence that those that joined SAJ Musa's group only did
24 so to protect themselves and their families from the variety of
09:50:13 25 threats from ECOMOG and the Kamajors.

26 Secondly, we will establish that the composition of the
27 factions, due to internal rivalry and escalation within them
28 between the AFRC and RUF, constantly changed and fragmented.
29 There was a considerable degree of factional fluidity, all

1 processes which were unforeseeable for the three accused. We
2 will prove that by the end of 1997/early 1998 there was a
3 complete breakdown of relations between SLA soldiers and RUF
4 directly after looting of the Iranian Embassy.

09:51:01 5 Third, infights between AFRC/RUF and even amongst SLA
6 soldiers occurred on many occasions during the time frame of the
7 indictment. Witnesses will appear to this end.

8 Therefore, we will establish that also for these reasons no
9 joint criminal enterprise liability can be incurred by the three
09:51:29 10 accused.

11 Your Honours, based upon the preceding observations and, in
12 specific, taking into account the Defence case with respect to
13 lack of effective command and control, both de jure and de facto,
14 the Defence case will show that no superior responsibility can be
09:51:51 15 vested on the part of the three accused.

16 Witness testimony, Your Honours, will be adduced showing
17 that the three accused, from the time of the retreat from
18 Freetown to the time of the advance on Freetown, never had any
19 command authority. Witnesses will submit that no leadership
09:52:16 20 structure existed, not even in Mansofinia or Rosos. It will be
21 shown that the nature of the retreat from Freetown was so
22 disjointed and disorganised such that there was no central
23 authority. It will be proven that at that time a complete
24 breakdown of command and control occurred. We will show you that
09:52:50 25 these were people on the run and that this is why some of them
26 even had their families and children with them, not akin to an
27 army. Witnesses will testify that in the course of the advance
28 to Freetown, in particular after the death of SAJ Musa, any
29 structure, if any, fell apart.

1 Your Honours, in this regard, speaking about superior
2 responsibility, we will be able to show that even at
3 Colonel Eddie Town under SAJ Musa no operational structure
4 existed, nor such a structure was established, bearing in mind
09:53:38 5 that only SAJ Musa and FAT Sesay were educated staff officers.
6 No one else was a staff officer, except those two.

7 Additionally, it will be shown that the accused even were
8 ostracised after being accused by SLAs/AFRCs of trying to subvert
9 the movement. This conclusion, Your Honours, will lend support
09:54:13 10 from witness evidence showing that the three accused were
11 detained and put under house arrest by Commander O-Five
12 throughout the period they were in Colonel Eddie Town in 1998.
13 We will be able to show that this house arrest was imposed due to
14 internal strife and because the three accused were trying to
09:54:42 15 subvert the movement. After the house arrest, as we will show,
16 the position of the three accused was considerably marginalised
17 on the advance to Freetown. Accordingly, it will be established
18 that the three accused reasonably could not have exercised any
19 form of effective command and control.

09:55:13 20 We are supported in our view with case law indicating that
21 an alleged superior who in fact had been deprived of his
22 authority, although still formally vested with a senior position,
23 cannot be held responsible on this basis.

24 Additionally, Your Honours, will we establish that control
09:55:38 25 must be effective to bear superior responsibility. Mere
26 appearance of an official, or an official's name, on the list -
27 i.e., the presented list with so-called honourables - as such
28 does not qualify superior responsibility of this nature and we
29 will lead evidence to this extent.

1 Furthermore, it will be established that as a result of
2 these events the three accused could not have been endowed with
3 any military authority. In this regard, it should be noted that
4 their qualification as alleged honourables should not be confused
09:56:16 5 with de facto or de jure military or political authority. We are
6 therefore able to show that the nature of the movement in its
7 various formations at all material times was such that there was
8 no effective control.

9 Finally, the evidence led by the Defence as to the element
09:56:42 10 of superior responsibility will indicate that, unlike the three
11 accused persons, other individuals were exercising command and
12 control, if any, during the relevant times in the relevant
13 districts. Witnesses will appear before your court indicating
14 that other individuals than these three individuals which are
09:57:12 15 facing trial before the Court were exercising command and
16 control, if any.

17 In specific, witnesses will appear before the Honourable
18 Trial Chamber, testifying about the control by the RUF of the
19 area of Kono, the diamond areas in Kono, almost throughout all
09:57:35 20 1998, thus excluding the asserted control by the AFRC, let alone
21 the three accused persons. Another witness will be led saying
22 that Makeni Town in 1998 and 1999 was under control of RUF, not
23 the SLA/AFRC.

24 Your Honours, the opening statement arrives now at the
09:58:07 25 specific parts pertaining to the individual criminal
26 responsibility. Addressing this issue, we will vest the factual
27 foundation based on witness statements and expert evidence for,
28 in specific, the following conclusions. I am not exhausting all
29 the conclusions, but just three of them I would like to point out

1 to the Chamber in hope --

2 PRESIDING JUDGE: Excuse me, Mr Knoops. I am sorry to
3 interrupt. I am getting quite a bit of interference from some
4 noise. It seems to be coming from that booth there. I am not
09:58:47 5 sure whether it is a party going on. But is that interfering
6 with you at all? Are you picking that up on your headphones?

7 MR KNOOPS: No, Your Honour. I just heard some laughing a
8 few minutes ago, but that was it.

9 PRESIDING JUDGE: All right. If that's not worrying you,
09:59:24 10 you carry on, Mr Knoops.

11 MR KNOOPS: Your Honours, the factual foundation we are
12 going to lay for some of the conclusions on the issue of
13 individual criminal responsibility based on witness statements
14 and expert evidence will be the following: First, as pointed, a
09:59:51 15 Common Article 3 applies only if the hostile action directed
16 against a legal government is of a collective nature and consists
17 of a minimum amount of organisation. It is our thesis that this
18 criterion is not met and we will lead evidence into the subject
19 that as a result no individual criminal liability can be borne by
10:00:15 20 the three accused for these alleged violations.

21 Second, we will lead evidence proving that the three
22 accused were not present in all of the districts at the relevant
23 times.

24 Thirdly, we'll establish evidence that it is not proven in
10:00:36 25 the instant case that the alleged unlawful attacks on civilian or
26 civilian objects actually resulted in serious damage in all the
27 districts and with its magnitude as asserted in the indictment.

28 Your Honours, with respect to the latter evidence, we will
29 be guided by a decision of the ICTY Appeals Chamber which

1 actually requires the series of results of an attack which must
2 be shown for liability to attach under Article 3 of its Statute.

3 In this respect, Your Honours, we will establish that no
4 result emanated from all the alleged attacks as set forth in the
10:01:33 5 indictment. The Defence will be able to show that no forensic
6 evidence whatsoever can be determined as to the existence, nature
7 and scope of the purported injury and damage inflicted upon
8 civilians and civilian objects as to the various districts and
9 villages. We are mindful in this respect, Your Honours, that the
10:01:58 10 ICTR in a judgment in 2000 held that the absence of forensic
11 evidence of killings --

12 PRESIDING JUDGE: You can argue your law later, Mr Knoops.

13 MR KNOOPS: As a result, Your Honours, some of our
14 witnesses will indicate that the nature and scope of the
10:02:20 15 purported damage was not inflicted in its scope as asserted in
16 the indictment. As a result, we believe to introduce evidence
17 that renders the element of widespread or systematic attack moot
18 and also the qualification of widespread looting and burning of
19 civilians homes.

10:02:43 20 Your Honours, we arrive now at the opening statement in
21 order to foreshadow the criminal law defences to be advanced by
22 the Defence. This as an alternative element and the evidence we
23 are going to lead in order to establish a foundation for those
24 defences which we believe are applicable in this case; namely,
10:03:08 25 the defence of mistake of law and that of military necessity. As
26 such, the provisions in the Geneva Conventions open up a wide
27 range of legal difficulties which are not yet all solved by
28 current case law. Indeed, the conventions are silent about the
29 defence of necessity, duress, mistake of law and fact. Same goes

1 for the Statutes of the various tribunals. It will be our case
2 that these substantive issues can be dealt with on the basis of
3 contemporary principles of international law and as regards the
4 defence of mistake of law, we will rely on Article 32 of the ICC
10:03:59 5 Statute allowing the defence of mistake of law, presupposed that
6 the Defence is able to establish that the facts negates the
7 mental element required by such a crime. Defence case will
8 develop the foundation for this defence of mistake of law relying
9 upon the notion that there is a limit to the knowledge and
10:04:29 10 attribution of criminal liability to the military. Your Honours,
11 we will lead evidence to show you that the defence of mistake of
12 law is admissible upon a lack of knowledge of wrongdoing, not of
13 punishability. When moral and legal culpability coincide, this
14 is usually not a problem. This would be the case with
10:05:06 15 persecution. But it is our brief, and we will establish the
16 facts for this, that this does not count for recruitment of child
17 soldiers and forced marriage. It is our primary defence thesis
18 on this issue, that the concurrence of moral and legal
19 culpability does not count for at least these alleged crimes.
10:05:38 20 Namely, recruitment of child soldiers, forced marriages and the
21 alleged violation of Common Article 3 of the Conventions. Seen
22 in connection with the chaos established by the Defence through
23 witnesses in operational and military legal terms within the SLA
24 just before the coup d'etat. Recruitment of child soldiers, as
10:06:04 25 will be shown by the Defence, was part of an official
26 governmental policy in Sierra Leone at the relevant times and
27 subsequently cannot justify criminal liability of the servicemen
28 or citizens involved therein. Additionally, we will establish
29 that recruitment of child soldiers was only internationally

1 accepted in July of 1998. We will also establish evidence to the
2 extent that the defence of mistake of law reflects that there is
3 limits to the knowledge and attribution of criminal liability to
4 the military. It is here, Your Honours, that our thesis which we
10:06:55 5 started with in the introduction, namely the failure to fulfil
6 the obligations as to the dissemination of the law of war will
7 return. I will briefly refer to my introductory remarks.

8 Secondly, Your Honours, the Defence evidence, in particular
9 several witness statements, will lay the foundation for the
10:07:28 10 invocation of the defence of military necessity with respect to
11 some of the alleged burning, destruction and looting of the
12 property described in the indictment. Also here, now that
13 military necessity as such is not mentioned in the Statute, we
14 will be led by the codification thereof in the ICC statute. As
10:07:59 15 previous judgments have made clear if the relevant attacks and if
16 the Defence is able to show these were carried out as a result of
17 military necessity, they are not unlawful. This is what we are
18 going to prove with respect to some of the alleged activities in
19 the indictment. The Defence evidence will lay the foundation for
10:08:22 20 the argument that some destruction of property served a military
21 objective and thus cannot incur criminal liability. Aside from
22 adducing evidence as to the destruction of civilian property by
23 ECOMOG forces during the relevant times, at the least in
24 Freetown, we will introduce evidence that AFRC members were
10:08:47 25 primarily on the defensive and conducted defensive operations and
26 carried out raids locally only in order to obtain supplies.

27 Your Honours, addressing the particular position of the
28 third accused in the conflict, the evidence led by the Defence
29 will show that he did not fulfil the role as a commanding officer

1 in a military operational sense, neither de jure, nor de facto.
2 Furthermore, our case will elicit evidence to the extent that the
3 third accused did not actively participate in the charges in the
4 crimes neither as a civilian, nor as a combatant. Rather, the
10:09:41 5 Defence evidence will support the argument that the position of
6 the third accused was, and only for a limited time and also with
7 the exception of his time spent under the mentioned house arrest,
8 to secure the family members and relatives of the former SLAs who
9 fled from Freetown. Evidence will be adduced making probable
10:10:08 10 that this was not a regular military retreat, but rather a
11 movement which was one of a group of soldiers, civilians and
12 families who were in chaos on the run, this in desperate
13 conditions.

14 In February 1998, as we will establish, an exodus from
10:10:36 15 Freetown of a whole population took place, rather than that of an
16 army. Mr Kanu's second wife was also forced to leave. On the
17 2nd June 1997 his first wife was killed during a bombardment by
18 the Nigerian forces at Mammy Yoko Hotel. During and after the
19 exodus in 1998, the third accused was mindful to the protection
10:11:08 20 of his second wife and family members and because of this he was
21 called upon by SAJ Musa to take care, for a rather limited time,
22 of the welfare and safety of the relatives and friends of the
23 soldiers who fled Freetown. Hence, the Defence will show that
24 the third accused never functioned as a commander responsible for
10:11:32 25 the crimes set forth in the indictment.

26 Your Honours, furthermore, the evidence to be presented by
27 the Defence will illuminate in a way the third accused was a
28 victim of his alias Five-Five in that his name may have been
29 misused by others. Accordingly, it is our submission that it

1 cannot be conclusively said that it was him who was liable for
2 the crimes. You may remember that one of the OTP witnesses
3 referred to a person with the name Five-Five but gave a totally
4 different description which had no resemblance whatsoever with
10:12:24 5 Mr Kanu. May I also remember, Your Honours, that the initial
6 indictment charged the third accused with hostage taking of
7 UNAMSIL peacekeepers from April till December 2000. Already in
8 2004 the Defence adduced evidence before the Court, this on the
9 basis of a Rule 54 ruling and decision of Trial Chamber I,
10:12:54 10 directing the government of Sierra Leone to disclose detention
11 records of the third accused to the extent that the third accused
12 was detained in the period June until December 2000, the same
13 period as in the initial indictment. Therefore he could not have
14 been involved in this conduct whatsoever. This charge was
10:13:22 15 deleted and we believe this observation, Your Honours, is
16 self-evident.

17 Your Honours, I am arriving at my closing remarks on the
18 general part of the opening statement. Your Honours, the AFRC
19 case is also about fairness, fairness which should be extended
10:13:44 20 also to the application of substantive criminal law principles in
21 addition to procedural law. A trial falling short of
22 international standards of fairness can be said to be contrary to
23 the very purpose of holding international trials. As
24 Justice Murphy of the US Supreme Court --

10:14:11 25 PRESIDING JUDGE: Mr Knoops, this is an opening statement
26 dealing with the evidence that the Defence is going to call in
27 support of its case. What you are giving us now are arguments.
28 They sound as though they may be arguments that might be more
29 appropriate in your final addresses.

1 MR KNOOPS: Your Honours, I will move on then. The opening
2 statement arrives at its conclusions. We have shown,
3 Your Honours, that the case against the third accused, but also
4 the first and the second accused, and the evidence to be led in
10:14:52 5 this case can be broken down to five central questions:

6 Has the evidentiary threshold of the greatest
7 responsibility been fulfilled with respect to these three
8 accused, in particular, seen from the perspective of the total
9 breakdown of the SLA up till 1997? Still an open question in
10:15:18 10 this case.

11 Second, did the third accused exercise, as a corporal, and
12 the first and second accused as alleged sergeants, command and
13 control of all subordinate members of the AFRC?

14 Third, did they act in concert with Charles Taylor, the
10:15:40 15 third accused being a corporal in the army, honourably discharged
16 in 2002?

17 Fourth, did they share a common plan to gain and exercise
18 political power over Sierra Leone, in particular the diamond
19 mining area?

10:16:06 20 And fifth, were the alleged crimes occasioned within a
21 chaotic conflict for the third accused to be seen as a reasonable
22 foreseeable consequence?

23 Your Honours, at the end of the Defence case, we will be
24 able to show that none of this was and is the case. Thank you.

10:16:22 25 PRESIDING JUDGE: Thank you, Mr Knoops. I can see how that
26 would serve as a joint opening statement, but do either of the
27 other two lead counsel have anything to add to that in respect of
28 their clients?

29 MR GRAHAM: Your Honours, nothing else except to say we

1 associate mutatis mutandi [sic] with the submissions made by our
2 learned friend, Mr Knoops.

3 PRESIDING JUDGE: Thank you, Mr Graham. Does that apply to
4 you as well, Mr Daniels?

10:16:52 5 MR DANIELS: That is so, Your Honour.

6 PRESIDING JUDGE: All right. Thank you. We have been
7 informed that only one of the accused wishes to give evidence in
8 his own defence and that is the first accused, Mr Brima. Are you
9 ready to call your client now, Mr Graham?

10:17:20 10 MR GRAHAM: Your Honours, I am sorry, I think there must be
11 a little bit of a misunderstanding. My understanding was that
12 after Professor Knoops completes his joint submission on behalf
13 of the three accused persons, I would then proceed to give a
14 summary opening statement that will just deal with the factual
10:17:39 15 testimony that we expect to present before this Court, and then
16 my learned friend for Mr Kamara --

17 PRESIDING JUDGE: You misunderstood me. That is exactly
18 what I asked you. In view of the fact that what Mr Knoops said
19 could be taken as a joint opening statement, do you have anything
10:17:54 20 to add? That's exactly what I asked you.

21 MR GRAHAM: I'm sorry, Your Honour, I think I misunderstood
22 you. My understanding was whether we had to make additional
23 submissions to the joint legal statement he just made. But we
24 are ready to proceed, Your Honour.

10:18:10 25 PRESIDING JUDGE: Yes, well, go ahead.

26 [Brima Defence opening statement]

27 MR GRAHAM: Good morning, Your Honours.

28 PRESIDING JUDGE: Good morning.

29 MR GRAHAM: Good morning, my learned friends for the other

1 side. I rise this morning as lead counsel for and on behalf of
2 Tamba Brima, the first accused in the matter of The Prosecutor
3 against Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu.
4 Your Honours, this opening statement is being made pursuant to
10:18:38 5 Rule 84 of the Rules of Procedure and Evidence for the
6 Special Court of Sierra Leone.

7 Indeed, for Tamba Brima, today is a great day; a day of
8 monumental relief because for him the moment of truth --

9 THE INTERPRETER: Your Honours, can learned counsel please
10:18:55 10 go slowly to facilitate interpretation?

11 PRESIDING JUDGE: If I might interrupt you. Apparently the
12 interpreter is having trouble keeping up with you. So if you
13 could just slow down.

14 MR GRAHAM: I'll hold my horses. Thank you, I'm grateful.

10:19:11 15 Indeed for Tamba Brima, today is a great day; a day of
16 monumental relief, because for him the moment of truth, though
17 long in coming, has finally been ushered in by the opening of his
18 defence on this momentous day. Tamba Brima is jointly indicted
19 and being tried before this Honourable Court on the 14-count
10:19:40 20 indictment that alleges offences relating to crimes against
21 humanity, violations of Article 3 Common to the Geneva
22 Conventions and of Additional Protocol II and other serious
23 violations of international humanitarian law in violations of
24 Articles 2, 3 and 4 of the Statute for the Special Court for
10:19:58 25 Sierra Leone.

26 [AFRC05JUN06B - CR]

27 Your Honours, some time about 15 months ago, on March 7,
28 2005, the Prosecution opened its case in this elegant Trial
29 Chamber, depicting the three accused persons as the trinity of

1 evil that unleashed, controlled and managed the senseless and
2 grotesque train of massacre and death that visited the districts
3 of Bo, Kenema, Kono, Koinadugu, Bombali, Kailahun, Port Loko,
4 also Freetown and the Western Area, with untold and unfounded
10:20:34 5 pain and suffering. According to the Prosecution's evidence,
6 Your Honours, this trio abdicated their responsibility to the
7 people of Sierra Leone and made violence against their nation and
8 their people their policy.

9 It is the Prosecution's case, Your Honours, that the first
10:20:50 10 accused, Tamba Brima, was the hub of the wheel of evil
11 conspiracy, the kingpin that inflicted and showered on the people
12 of Sierra Leone pain, agony, suffering, sorrow and grief far
13 beyond human description, understanding and reason. Today, Your
14 Honours, the first accused stands indicted before this Court for
10:21:18 15 the crimes of murder, rape, terror, maiming, mutilation,
16 enslavement, sexual slavery, forced marriage, looting, pillaging
17 and conscription of child soldiers, all designated as war crimes
18 and crimes against humanity and other serious violations of
19 international humanitarian law.

10:21:42 20 Your Honours, on March 7, 2005, the chief prosecutor David
21 Crane, in opening the Prosecution's case, triumphantly swore that
22 the Prosecution would prove beyond reasonable doubt that the
23 first accused, Tamba Brima, among others, committed the
24 international criminal acts in the 14 count indictment. To shore
10:22:02 25 up his declaration, the Prosecution summoned 59 witnesses,
26 including experts, to prove his case.

27 Has the Prosecution sufficiently proven its case against
28 the first accused beyond reasonable doubt?

29 THE INTERPRETER: Your Honours, the interpreters are still

1 appealing to learned counsel to please go slowly.

2 PRESIDING JUDGE: We have another request from the
3 interpreter for you to slow down. Also, I direct you to Rule 84
4 again.

10:22:35 5 MR GRAHAM: Thank you, Your Honour. The first accused and
6 witnesses on his behalf will prove, through corroborated
7 testimony, and unequivocally show that the Prosecution has failed
8 to prove its case beyond reasonable doubt. Your Honour, we may
9 ask Alex Tamba Brima, the first accused in this matter -- we will
10:23:01 10 lead evidence to show that Tamba Brima was born at Wilberforce
11 Barracks on 23rd November 1971 to the late sergeant Tamba Brima
12 and Sia Kuyateh Brima and also that he is married with four
13 children. Your Honours, we would also lead evidence to show that
14 he did not join the Sierra Leone Army in 1985 as stated in the
10:23:29 15 indictment, but, rather, in June 1991.

16 Your Honours, we also will lead evidence to show that he
17 retired from the army as a corporal and not as a staff sergeant
18 as stated in the indictment. Further, we will lead evidence to
19 show that he was not one of the coup plotters of the 1997 coup,
10:23:50 20 but, rather, he was appointed an honourable member of the AFRC
21 after the coup had been staged. We will lead evidence to show
22 that at the time of his appointment, he was on admission as a
23 patient of the 34 Armed Forces Military Hospital.

24 We will lead evidence to also show that his appointment as
10:24:11 25 PLO2 in the AFRC regime was as a result of an appreciation for
26 the role played by his late father in the Sierra Leone Army as
27 the army's only admiral. Your Honour, we also will lead evidence
28 that the first accused, Tamba Brima, was never in a position of
29 command in the period under review by the indictment, that he has

1 never even been to most of the places mentioned in the
2 indictment, nor does he have knowledge of what transpired in most
3 of these places. By the same token, Your Honours, we will lead
4 evidence to show that he was never in a position of control or
10:24:50 5 command over activities of others of the SLA or the defunct AFRC.

6 Your Honours, we will also lead evidence that his
7 activities in Kono during the period covered by the indictment
8 were very limited, that at no point in time was the first
9 accused, Tamba Brima, in direct command and control of any of the
10:25:11 10 fighting forces in Kono. Your Honours, we will also lead
11 evidence that after the intervention in February 1998, Tamba
12 Brima, the first accused, attempted to escape, but then was
13 arrested in Koinadugu by the RUF.

14 Your Honour, we will also lead evidence to show that he was
10:25:32 15 again subsequently arrested in Kailahun and detained by the RUF
16 from the period February 1998 to July 1998. Your Honours, we
17 also will lead evidence that from the period July 18th to
18 September 1998, the first accused, Tamba Brima, was living with
19 his family in Yarya, that during the period in question he never
10:25:56 20 at any point in time acted jointly with the RUF.

21 Your Honours, we also will lead evidence to show and
22 establish that the first accused, Tamba Brima, was arrested by
23 Commander O-Five some time in September of 1998 and remained
24 under his arrest until the arrival at Eddie Town in October of
10:26:17 25 1998. Your Honours, we will lead evidence to show that it was at
26 Eddie Town that the first accused, Tamba Brima, met SAJ Musa and
27 his troops. Your Honour, we also will further lead evidence
28 about the death of SAJ Musa at Benguema on December 22nd, 1998
29 and also to establish that the first accused, Tamba Brima, had no

1 hand whatsoever in the death of SAJ Musa.

2 Your Honours, we also will lead evidence that the first
3 accused did not take over the command of the troops after the
4 death of SAJ Musa as alleged by witnesses for the Prosecution,
10:26:56 5 nor did he lead the forces into Freetown at any time, nor was he
6 in command of any of the factions which entered Freetown.

7 Your Honours, we also will lead evidence to establish that
8 in late July 1999, Tamba Brima, the first accused, was under the
9 command of Colonel Mani and so it remained until the Peace Accord
10:27:20 10 was signed in Togo between the RUF and the government of
11 Sierra Leone.

12 Your Honours, I will proceed to give Your Honours an
13 overview of the evidence that the Defence intends to adduce in
14 respect of the Bombali District. Your Honours, the Prosecution
10:27:40 15 alleges that the first accused bears individual and command
16 responsibility for war crimes and crimes against humanity
17 committed between about May 1998 and 30 November 1998 in several
18 locations in Bombali District, including Bornoya, Mayombo,
19 Karina, Mateboi, Rosos, Gbendembu and Mandaha.

10:28:13 20 Your Honours, Karina, the epicentre of the Prosecutions's
21 case. According to the Prosecution and their witnesses, Your
22 Honours, it was there in Karina and Bornoya that the worst
23 atrocities ever in the period covered in the indictment were
24 committed by the first accused by those under his command and
10:28:32 25 control.

26 On the contrary, witnesses for the first accused, Tamba
27 Brima, will show that the first accused did not order or command
28 the attack on Karina and the surrounding villages, nor did he
29 make a declaration that Karina be the number one point of

1 demonstration of the junta forces, especially his own brigade,
2 because it was supposedly the home of President Kabbah.

3 Indeed, the evidence of the Defence will show that it is
4 not true, as alleged by key witnesses of the Prosecution, that in
10:29:08 5 Bornoya and Karina over 500 civilians were killed, 300 amputated
6 and over 200 raped. The evidence will show that these numerical
7 quantifications are gross exaggerations. Further, the Defence
8 will show, through both factual and expert testimony, that the
9 population of Karina at the time of the alleged attack was
10:29:28 10 nowhere near 500 civilians so as to support the Prosecution's
11 evidentiary account of 500 killed and 300 amputated.

12 Your Honours, truly, the evidence of the Defence will show
13 that on the day after the alleged attack, the people of Karina
14 buried those who were killed in two mass graves. One holds five
10:29:48 15 and the other two. What happened to the other 493 allegedly
16 killed by the Prosecution? Your Honours, we deserve to know.
17 The burden of proof beyond reasonable doubt is on the
18 Prosecution.

19 Your Honours, key Prosecution witnesses testified that in
10:30:02 20 Karina on that ill-fated day of the alleged attack, the first
21 accused, Tamba Brima, shot and killed the imam of Karina and 11
22 others in the mosque at Karina. Your Honours, the Defence will
23 show that the imam of Karina prior and during the period of the
24 alleged attack is alive and kicking. From the mosque, situated
10:30:21 25 in Waridala Road in Karina, he still serves in the service of the
26 most merciful Allah, preaching the word of the Prophet Mohamed to
27 the religious, peaceful and friendly people of Karina. The
28 evidence will establish that he has been the imam of Karina since
29 1994 and still holds that revered position today.

1 The evidence of the Defence will further show that no one
2 was killed in the mosque on the day of the alleged attack. Your
3 Honours, the evidence will further show that the word and the
4 name that reverberates on the lips of all the witnesses of the
10:30:56 5 alleged attack stretching from Karina Junction to the village of
6 Bornoya in Daiara, Mayombo all the way to Karina, the name that
7 reverberates on the lips of all the alleged of the victims and
8 witnesses is Adama Cut Hand.

9 Your Honours, the Prosecution has not led any evidence to
10:31:19 10 that effect. Your Honours, we will show unequivocally that the
11 first accused, Tamba Brima, had nothing to do with the attack on
12 Karina, nor command and control and, indeed, was not part of the
13 attack on Karina.

14 Your Honours, the evidence will also show that prior to the
10:31:38 15 attack of Karina, there were groups of soldiers who
16 intermittently resided in Karina over a period of time. The
17 evidence will show that one very popular name -- one very popular
18 gentleman, by the name of Jabbie lived in Karina for a period of
19 time prior to the fateful attack. Your Honours, the evidence
10:32:03 20 will also show that on the day of this fateful attack, Jabbie was
21 seen by the people of Karina as leading the attack into Karina.
22 The evidence will show that in no uncertain terms.

23 Your Honours, the evidence will also show that not long
24 after the attack on Karina the ECOMOG Alpha Jets came swooping
10:32:30 25 by. The evidence will also show how the ECOMOG Alpha Jets, in
26 hot pursuit of the fighting forces, levelled the city of Mandahin
27 in Bombali out of existence.

28 Your Honours, I will proceed also to give an overview of
29 the evidence that we intend to adduce in respect of Kono District

1 at this point. If I may proceed with your permission, Your
2 Honours. The Prosecution alleges that in about mid-February
3 1998, AFRC/RUF fighters and combatants fleeing from Freetown
4 arrived in the Kono District and that between the period from
10:33:12 5 about February 14th, 1998 and June 30th, 1998, these fighters and
6 combatants committed the crimes contained in the indictment in
7 various locations in Kono, including Koindu, Tumbodu, Mortema,
8 Sefadu, Bomboafuidu, Yarya, Manikala, Penduma, Foindu, Kayima,
9 Koidu Ngeiya, Wendedu, Koidu Guma and Njagbwema Fiama.

10:33:39 10 The evidence will show that between mid-February 1998 and
11 about 30 April 1998, Tamba Brima, the first accused, was not and
12 never in control or in direct control of any AFRC/RUF fighting
13 forces in the Kono District.

14 Also, the evidence will show that once fleeing soldiers
10:34:00 15 arrived in Koidu or Kono District, they stayed for only a short
16 period of time, because they became subordinate to the RUF
17 hierarchy in Kono, which hierarchy had ordered the commission of
18 a wide range of attacks and atrocities against the fleeing SLAs,
19 hence the mass movement and migration of SLAs from Kono to
10:34:24 20 targeted areas in the Koinadugu District in order to avoid
21 humiliation and certain death at the hands of the RUF.

22 Your Honours, the evidence will further show that during
23 the period of the rule of the AFRC regime, life in Koidu was
24 normal and peaceful, up until the time of the ECOMOG intervention
10:34:42 25 in February of 1998 when the retreat and withdrawal of the AFRC
26 government from the seat of power in Freetown commenced.

27 Your Honours, the evidence will show that soon after the
28 announcement of the overthrow of the AFRC regime in Freetown, the
29 Kamajors, with the collaboration and backing of certain Lebanese

1 businessmen in the Kono District, attacked and took over Koidu
2 Town and many parts of the Kono District. Your Honours, the
3 evidence will also show that all over Kono, when the word "rebel"
4 is used, it refers exclusively to RUF combatants and fighters.

10:35:22 5 The Prosecution's evidence of the word has been used
6 interchangeably for SLAs and juntas will be challenged.

7 Your Honours, we will, on behalf of the first accused,
8 Tamba Brima, provide evidence from Fiama, Tumbodu, Bumpe, Sewafe,
9 Yengema and Yomadu to the effect that no SLA junta forces were
10:35:55 10 deployed anywhere in these areas.

11 In respect of the Prosecution's evidence and alleged
12 responsibility of the first accused Tamba Brima for the attack on
13 Mortema in the District of Kono, Your Honours, what the evidence
14 will show was that the alleged attack was solely the
10:36:18 15 responsibility of the RUF and, indeed, it was an attack on ECOMOG
16 positions located with the Mortema district. Your Honours,
17 victims and eyewitnesses of these events will be here to say it
18 in their own words.

19 Your Honours, the evidence will also show that the alleged
10:36:41 20 Mortema attack occurred in June of 1998, by which time, according
21 to the Prosecution's own account, the fighting forces were in the
22 Bombali District. It is, therefore, impractical and we will
23 provide evidence to show and establish beyond doubt that the
24 first accused, nor troops of fighting forces under his command,
10:37:03 25 had nothing to do whatsoever with the attack on Mortema.

26 Your Honours, we move on to Tumbodu. In Tumbodu, the
27 evidence will show that at no point in time was the first accused
28 in command of Tumbodu, and at no point in time was the renegade
29 Savage under his command and control. Evidence will be led to

1 show that during the movement of SLA soldiers from Kono to
2 Koinadugu, Savage and Staff Alhaji, associated with the RUF and
3 stayed behind in Tumbodu and Kono. They were the SLA renegades,
4 not subject to the command and control of anyone.

10:37:45 5 Your Honours, we will lead evidence to show that the first
6 accused Tamba Brima at no point in time had Staff Alhaji or
7 Savage under his control. Your Honours, we will bring in
8 witnesses from Jagbwema Fiama, Yengema, stretching all the way to
9 Kayima in the Sandor Chiefdom, who will testify that the RUF and
10:38:06 10 the Kamajors were responsible for the commission of most of the
11 atrocities mentioned in the indictment during the period under
12 reference.

13 Your Honours, we will also lead evidence to show there was
14 no Yarya declaration. We have heard from Prosecution witnesses
10:38:22 15 about the Yarya declaration made by the first accused. Your
16 Honours, we will show evidence, we will bring people from Yarya.
17 In their own words here before this court, they will testify
18 there was no Yarya declaration; never was there a Yarya
19 declaration.

10:38:39 20 In respect of joint criminal enterprise, we will bring
21 forward witnesses from the Kono District who will give evidence
22 designed to refute the Prosecution's theory of the joint criminal
23 enterprises.

24 Your Honours, Defence witnesses will show that in every
10:38:56 25 sense of the word, Johnny Paul Koroma was under the effective
26 arrest of the RUF from Makeni up to the time of his escorted
27 arrival in Kailahun District. The evidence will show that he was
28 under duress and at no mind of his own at the time of his arrival
29 in Kono when he allegedly asked the SLA troops to succumb to the

1 command of the RUF, the key elemental evidence, which, for the
2 Prosecution, is critical to them establishing their case for
3 joint criminal enterprise.

4 The evidence will also show that upon arrival in Kono, most
10:39:34 5 of the SLAs stayed for not more than three weeks because of
6 harassment and atrocities being visited on them by the RUF. The
7 prevailing environment, the evidence will show, allowed for no
8 common purpose, design or collaboration in any form whatsoever
9 between the RUF, the SLA and the AFRC, if we can call it, as
10:39:54 10 alleged by the Prosecution.

11 Your Honours, the evidence in respect of the joint criminal
12 evidence will also show that way back in Freetown during the
13 AFRC/RUF power-sharing arrangements, the collaboration and common
14 purpose between the AFRC and the RUF fell apart after the Mammy
10:40:16 15 Yoko incident. This separation or divergence was further
16 reinforced by the Iranian Embassy incident. The evidence will
17 show that at the time of the retreat and withdrawal from
18 Freetown, there was no form of collaboration whatsoever between
19 the RUF and the AFRC so as to aground any proposition whatsoever
10:40:35 20 in respect of the joint criminal enterprise allegations put
21 forward by my friends from the other side.

22 Your Honours, we will also lead evidence that the first
23 accused, Tamba Brima, at no point in time, acted in contact with
24 Charles Ghankay Taylor. At no point in time did the first
10:40:54 25 accused Tamba Brima act in concert with the RUF or Charles
26 Taylor, as indicated in paragraph 32 of the indictment. Indeed,
27 Your Honours, we will lead evidence also to show that
28 after February 1998, there was no AFRC in the bush except by
29 name.

1 Your Honours, I will move on to the Koinadugu District.
2 For the Koinadugu District, eyewitnesses will lead evidence to
3 the fact that the accused Tamba Brima was nowhere in Koinadugu
4 District. He was never in Koinadugu District, and that the
10:41:42 5 testimony put forward by the Prosecution witnesses to that extent
6 will be challenged by our witnesses.

7 Your Honours, in respect of Kenema, the evidence will also
8 show that in Kenema District during the period May 1997
9 to February 1998, the first accused had no responsibility,
10:42:02 10 individual or command responsibility, for the killings that took
11 place in Kenema. Indeed, the evidence will show that a notorious
12 Mosquito was the one who commandeered most of the killings and
13 mayhem in Kenema; that the first accused's position in the AFRC
14 government as PLO2 cannot automatically attach criminal
10:42:25 15 responsibility for the killings in Kenema. Your Honours, we will
16 lead evidence to that effect.

17 Your Honours, interestingly, as well, we will lead evidence
18 on the key OTP insider witnesses who will show that the common
19 thread running through some of these key OTP witnesses will give
10:42:43 20 background information as to where they came from, the
21 self-serving nature of their testimony and, Your Honours, the
22 evidence will clearly show the motivation behind some of these
23 witnesses and why they came before this Court to testify. We
24 will lead evidence to that fact.

10:43:02 25 Your Honours, in respect of Port Loko, Bo and Kailahun, it
26 is difficult at this point in time to say exactly the scope and
27 nature of the evidence that will be put forward by the Defence.
28 Simply because of logistical and operational constraints, we have
29 never been able to go as far. We have made initial efforts and

1 we will continue to do that. Your Honours, these operational
2 constraints faced by the Defence raises serious challenges in so
3 far Article 17, rights of the first accused are concerned.

4 Your Honours, we believe, in due course, the Court, based
10:43:39 5 on our submissions, will fairly consider some of the difficulties
6 that we are facing. Up to this point, we are not in a position
7 to make any submissions in respect of the scope and nature of
8 evidence that we are expecting from Port Loko, Bo and Kailahun.
9 Your Honours, I have, once again - time and time again - had the
10:44:04 10 opportunity to talk about the constraints that we are facing.

11 Probably this may not be the proper platform to address that, but
12 in so far as it constrains our ability to fully present our case
13 before the Court this morning, to that extent I believe it may be
14 relevant to mention that point.

10:44:22 15 Your Honours, I will end my opening statement this morning,
16 by referring to a statement by Robert H Jackson, chief counsel
17 for the Prosecution in the Nuremburg trials. Your Honours,
18 indeed, I must say that we have full confidence and trust in this
19 Court and we believe in the ability of this Court to assist in
10:44:45 20 our efforts to present and conduct an effective Defence on behalf
21 of the accused persons. Your Honours, I will refer again to the
22 statement by Mr Robert H Jackson, which I think is very relevant
23 to the fair trial issues that are coming up before this Court at
24 this point in time. With your permission, I will read: "Robert
10:45:09 25 H Jackson, chief counsel for the Prosecution" --

26 MR AGHA: Your Honours, if I may kindly interrupt my
27 learned friend, and I apologise for this. I think this
28 submission falls on the same footing as Mr Knoops's earlier
29 submission on the fair trial. I think it is perhaps not

1 appropriate at this juncture, bearing in mind Rule 84 and what is
2 the ambit of an opening statement.

3 PRESIDING JUDGE: I don't know how this is going to connect
4 the proposed evidence. I will let him go on. Yes, you finish
10:45:36 5 that.

6 MR GRAHAM: Your Honour, I will rest my case in a few
7 minutes. It will end. Robert H Jackson, chief counsel for the
8 Prosecution in the Nuremburg trials recognised the need for a
9 fair trial in his opening statement of November 20, 1940,
10:45:48 10 stating:

11 "Before I discuss the particulars of evidence, some general
12 considerations which may affect the credit of this trial in
13 the eyes of the world should be candidly faced. There is a
14 dramatic disparity between the circumstances of the
10:46:05 15 accusers and accused that may discredit our work if we
16 should falter in even minor matters in being fair and
17 temperate."

18 THE INTERPRETER: Your Honours, can learned counsel please
19 go slowly for the interpretation.

10:46:17 20 PRESIDING JUDGE: We're having the same problem as before.
21 You're going too fast for the interpreters, Mr Graham.

22 MR GRAHAM: Okay, Your Honours, I am sorry.
23 "We must never forget that the record, on which we judge
24 these defendants, is a record on which history will judge
10:46:34 25 us tomorrow. To pass these defendants a poisoned chalice
26 is to put it to our lips as well. We must summon such
27 detachment and intellectual integrity to attest that this
28 trial will commend itself to posterity as fulfilling
29 humanity's aspiration to do justice."

1 Your Honours, this statement recognises the importance of a
2 fair trial, highlights the particular obligation of an
3 international tribunal to provide a fair trial, and underlies the
4 role a fair trial plays in the world's perception and judgement
10:47:10 5 of the Court.

6 Your Honours, I rest my case by reaffirming once again that
7 we are full of confidence and trust in this Court. We believe in
8 the superior wisdom of this Court and we believe, at the end of
9 the day, this Court will consider and deliver a fair and
10:47:23 10 open-minded judgment in respect of this matter. I'm grateful for
11 the time, Your Honours.

12 PRESIDING JUDGE: Thank you, Mr Graham. Yes, Mr Daniels.

13 [Kamara Defence opening statement]

14 MR DANIELS: Firstly, I wish to start by stating that we
10:48:06 15 endorse the general legal part submitted by learned counsel,
16 Professor Knoops.

17 Your Honours, let me first on behalf of the defence of
18 Ibrahim Brima Kamara, who is the second accused in this case,
19 thank you for giving us the opportunity to at long last present
10:48:27 20 his case, which, we shall show, has been badly painted,
21 distorted, marred and, to a large extent, taken out of scope by
22 the Prosecution. With me in our defence are Mr Pa-Momo Fofanah,
23 co-counsel for the second accused, and Ms Louisa Songwe, our
24 legal assistant.

10:48:54 25 Your Honours, we start by saying that we are not here to
26 defend crimes against humanity, including murder, rape,
27 mutilation, torture, enslavement, sexual violence, looting and
28 pillage or other serious violations of international humanitarian
29 law, including conscripting or enlisting children under 15 years

1 as combatants, nor are we here to defend crimes under --

2 MR GRAHAM: Your Honours, with your permission, my client
3 wants to use the restroom. The first accused wants to use the
4 restroom.

10:49:34 5 PRESIDING JUDGE: Yes, by all means.

6 MR DANIELS: With your permission, I continue, My Lord.

7 Nor are we here to defend crimes under Sierra Leone law,
8 including abuse of girls and malicious damage to property, all of
9 which are alleged in the indictment proffered by the Prosecution
10:49:51 10 against the second accused. Our case is not about the blatant
11 denial of agony, suffering, grief and horror beyond imagination
12 suffered by the good people of Sierra Leone within the period of
13 the indictment, to wit November 1999 to 2001. We are equally not
14 here to alter or give a different twist to history.

10:50:11 15 We shall show, firstly, that the aforesaid events were
16 inadequately and basically presented to this Court by the
17 Prosecution against the second accused.

18 We shall show, secondly, that the evidence led by the
19 Prosecution to give veracity to the said events were both limited
10:50:29 20 in depth and incredible in scope to sustain the guilt of the
21 second accused for the alleged crimes in the indictment.

22 We will prove that the same evidence fails to situate the
23 second accused in any shape or form as particularly bearing
24 greatest responsibility for the said crimes pursuant to the
10:50:51 25 Statute of the Special Court.

26 We shall also show, fourthly, that it defeats the ends of
27 criminal justice to attach grave criminal responsibility to a
28 junior ranking officer in a military institution, such as the
29 second accused by virtue of his membership of that outfit. This

1 situation is worsened by the fact that very senior officers in
2 the said institution, who, at all times, wielded power, command,
3 and control over senior and junior officers alike of the army,
4 are currently at liberty. They are within the jurisdiction of
10:51:26 5 this Court and are more significantly working with pride in the
6 SLA, which the second accused and other indictees before this
7 Trial Chamber served.

8 Finally, we will lead evidence to show that the second
9 accused is an innocent victim of political circumstances, who had
10:51:42 10 nothing to do with the crimes alleged and with whom witnesses of
11 the Prosecution hardly ever mentioned by name or identified at
12 all.

13 In an attempt to strike at the core of the Prosecution's
14 case, that is, the alleged indictment and the expert military
10:51:59 15 report of Colonel Irons being the Prosecution's military expert
16 who testified and exhibited his report before this Court, our
17 defence will show that the Prosecution sought to strenuously
18 indict the second accused on the evidence that he was a member of
19 the Armed Forces Revolutionary Council that overthrew the
10:52:21 20 Government of the Republic of Sierra Leone, and not because of
21 what he is alleged to have personally done or failed to do.

22 Thus, whilst evidence exists to show that the second
23 accused was a member of the erstwhile AFRC, like numerous other
24 soldiers, tried for treason by the Government of the Republic of
10:52:40 25 Sierra Leone, as well as those currently serving in the SLA, only
26 scant and weak prosecutorial evidence have failed to link the
27 second accused with the crimes in the indictment.

28 The Defence will show that this available evidence, even in
29 this one-sided form, proved under cross-examination to be either

1 inadequate, uncorroborated or non-existent. We will prove to the
2 contrary to show that the second accused is innocent of the
3 charges levelled by the Prosecution against him. We will present
4 to the Court the untainted truth as many ordinary victims and
10:53:36 5 witnesses of their crisis perceived them.

6 By failing to bring those whom we consider to have actually
7 commanded and controlled the SLA and a fortiori bear the greatest
8 responsibility for crimes allegedly committed by members of the
9 AFRC to account for the crimes before this Court, our defence
10:54:04 10 will show that the Prosecution merely attempts to make a

11 scapegoat out of the second accused, being a mere sergeant, by
12 dressing him up as a grand commander who, at all material times
13 to the indictment, commanded senior officers, including
14 brigadiers and colonels in the AFRC. This logic is clear enough
10:54:38 15 to deserve emphasis. In fact, our defence will prove, if any,

16 that the AFRC and its soldiers, as well as members of their
17 respective families, were at a point in the history of the
18 indictment a group of unarmed or heavily under-armed soldiers
19 that had been unlawfully disbanded and, like hunted rabbits,

10:55:11 20 forced to go on to the run, its retreating members comprising of
21 disbanded soldiers and their routed wives, traumatised children
22 and frightened relations were altogether searching for a home and
23 livelihood while desperately escaping reprisals, exterminations,
24 mutilations and inter alia aerial and land bombardments from an

10:56:07 25 invading ECOMOG force and an angry mob of pro-government
26 supporters. Interestingly, ECOMOG's hot pursuit of the
27 retreating SLA was code-named Operation Tiger Tail, and those who
28 were caught in the onslaught were, in many cases, killed in cold
29 blood.

1 To show that the second accused, like many other SLAs were
2 accused of wrongdoing, is an innocent victim of political
3 circumstances who had nothing to do with the crimes alleged in
4 the indictment we will lead evidence in support of a local
10:56:19 5 tabloid called "We Yone" published on Friday, 21st October 2005,
6 about the SLPP's legacy of vengeful executions in Sierra Leone.
7 The said tabloid recounts the execution of 24 military officers,
8 all members of the AFRC, in October 1998 as follows. With your
9 permission, I quote:

10:58:06 10 "The gruesome killing of 24 officers and soldiers,
11 including the first woman to be executed in the history of
12 Sierra Leone after the facade court martial that is widely
13 seen as a travesty of justice has left lasting bitterness
14 in the minds of many Sierra Leoneans and will forever
10:58:06 15 remain a lasting monument to injustice and vindictiveness."

16 Similarly, evidence will support what the TRC report put
17 this way:

18 "President Kabbah and his government proceeded with
19 execution of 24 soldiers in 1998, ignoring an appeal from
10:58:46 20 the United Nations Human Rights Committee not to proceed
21 with the executions. The executions were subsequently
22 declared to have violated both the International Covenant
23 on Civil and Political Rights and the African Charter on
24 Human and People's Rights. The TRC endorses these findings
10:58:46 25 against the Sierra Leone government by the African
26 Commission on Human Rights and People."

27 At this stage, Your Honours, permit me to briefly dwell on
28 the true background of the second accused. The second accused
29 was born on 7th May 1970 at Wilberforce, Freetown in the Western

1 Area of Sierra Leone, and not in 1968, as alleged in the
2 indictment. That he now carries the nickname Bazy, the second
3 accused's actual name of birth was and is Ibrahim Kamara. Having
4 attempted the ordinary level of general certificate of education
10:59:27 5 at age 17, he left high school in search of a job in order to
6 help take care of his poor family, including eight sisters and
7 three brothers.

8 In 1991, at the age of 21, he joined the Sierra Leone Army
9 and rose to the rank of sergeant. The second accused was shortly
10:59:27 10 afterwards deployed at Daru Military Barracks in Kailahun
11 District, Eastern Region of Sierra Leone, eastern Sierra Leone,
12 where he fought bravely to repel advancing forces of the RUF
13 between 1995 and 1997. The second accused was a military driver
14 attached to various military personnel in Sierra Leone. During
10:59:27 15 that period, and in defence of his fatherland, he drove escort
16 vehicles to several battle fronts between the SLA and RUF, which
17 were then in combat.

18 In May 1997, and as indicated in our pre-trial brief of
19 21st February 2005, the second accused was in custody when the
10:59:44 20 coup was staged by members of the AFRC who overthrew the
21 government of President Kabbah. Being a member of the SLA, the
22 second accused was released from prison and he continued to serve
23 in the army as a sergeant until his arrest and detention by
24 security forces, forces acting on instructions of the Special
11:00:08 25 Court for Sierra Leone.

26 During May 1997 and February 1998, the second accused was
27 appointed as a Principal Liaison Officer 3 under the erstwhile
28 Sierra Leone government and assigned to various official and
29 non-military functions in the de facto regime of Major John Paul

1 Koroma. Upon the overthrow of the AFRC, the second accused
2 withdrew to his village in the Port Loko District, northern
3 Sierra Leone, in search of a safe haven from ECOMOG's hot pursuit
4 of AFRC/RUF forces.

11:00:46 5 Regarding the specifics of what our witnesses will say, I
6 shall endeavour to do so by crime base and giving a summary of
7 what some of the witnesses will prove. I will not go into the
8 same detail where there is duplication because my learned friend
9 Mr Graham has already given some of those details. So I will
11:01:08 10 proceed.

11 In Bo, Kailahun and Kenema Districts respectively, none of
12 the witnesses brought by the Prosecution gave evidence about the
13 acts, omissions and command responsibility of the second accused.
14 In each of these places, the Prosecution alleged that the second
11:01:28 15 accused held a leadership position in the AFRC, but failed to
16 prove, through their witnesses, that as a result of holding that
17 position, he was responsible for the alleged crimes committed in
18 the said districts. It is clear that around June of 1997, which
19 is the time the Prosecution alleges that the crimes in the
11:01:53 20 indictment occurred, the commander-in-chief of the Armed Forces
21 of Sierra Leone was Major Johnny Paul Koroma.

22 The defence witnesses shall, on the one hand, testify that
23 the second accused never took part in or ordered the attacks on
24 Bo and Kenema Districts, whilst, on the other hand, they shall
11:02:15 25 confirm the evidence given by the Prosecution witnesses that the
26 entire Kailahun District was an RUF stronghold at all times
27 relevant to the indictment, and was under the command and control
28 of various RUF commanders, including but not limited to
29 Sam Bockarie alias Mosquito, Issa Sesay, Morris Kallon and

1 Manawa.

2 In the Kono, Koinadugu, Bombali and Port Loko Districts
3 respectively, as well as in Freetown and other parts of the
4 Western Area, most prosecution witnesses gave general evidence
11:02:55 5 about the atrocities allegedly committed in these areas, but they
6 failed to prove that the second accused was responsible for the
7 alleged crimes. The few prosecution witnesses that mentioned the
8 second accused did a good job in contradicting themselves and
9 other prosecution witnesses. They had memory lapses, vis-a-vis
11:03:18 10 the venue or the site of the alleged crimes, as well as the true
11 identities of the victims involved.

12 PRESIDING JUDGE: I see Mr Agha is going to object. I
13 understand why he would. You are addressing the Prosecution
14 evidence, or the holes in the Prosecution evidence rather than
11:03:37 15 dealing with the evidence that you, as counsel for the second
16 accused, are going to call in support of your case.

17 MR DANIELS: Respectively, we are just a minute away. I am
18 coming on to that.

19 PRESIDING JUDGE: Go ahead, but don't stray too far from
11:03:57 20 the point, please.

21 MR DANIELS: Your Honour, I will take the cue. Although
22 the defendant in a criminal case is not called upon to prove
23 anything, it is our intention to prove that the second accused
24 was, at all times material to this indictment, never responsible
11:04:20 25 for the alleged crimes. The Defence witnesses have been taken
26 from areas where the alleged crimes were committed and they are
27 here to tell us about the undiluted truth of what happened to
28 them, their families, loved ones, relations and communities.

29 I'm getting to the specifics now, Your Honour. From Kono,

1 the witnesses will testify that the second accused was never a
2 commander in Kono, as alleged in the indictment, and that he
3 never ordered the burning of houses in the area that surrounded
4 Masingbi Road, or any other areas in Kono as alleged by the
11:05:03 5 Prosecution witnesses.

6 The witnesses will testify that the fleeing SLA soldiers
7 were, at all times, under the forceful direct command and control
8 of the RUF forces in Kono. The commanders in Kono included the
9 late Sam Bockarie, alias Mosquito, General Issa Sesay,
11:05:30 10 Denis Mingo, alias Superman, and Morris Kallon in that order.

11 The Defence witnesses will corroborate the evidence given by many
12 of Prosecution witnesses that Denis Mingo, alias Superman, was
13 the overall commander in Kono and that the second accused had no
14 command responsibility, if at all. The witnesses will testify
11:05:53 15 that the attacks in Tumbodu, Koidu, Mortema, Penduma, Kayima,
16 Koidu Ngieya, Koidu Guma and Njagbwema Fiama were all carried out
17 by the RUF and not the fleeing SLA soldiers as the Prosecution
18 witnesses will have us believe.

19 The Prosecution will again testify that the order, planning
11:06:18 20 and attack of the Sewafe Bridge was the work of the late RUF
21 commander Sam Bockarie, alias Mosquito. The SLA soldiers in Kono
22 at that time used this opportunity to escape into the jungle from
23 the forceful command and control of the RUF and their relentless
24 attack of the Nigerian-led ECOMOG forces.

11:06:43 25 In Kono, only witness 033, 167 and 334 mentioned the second
26 accused as being present. By sheer coincidence or otherwise,
27 both witnesses 167 and 334 were former prisoners at the Pademba
28 Road maximum security prison awaiting trial for various felonies
29 when they were approached by the Prosecution. The Prosecution

1 star witnesses traded --

2 PRESIDING JUDGE: This is a matter for final address,
3 Mr Daniels.

4 MR DANIELS: Very well. I will carry on. I will move to
11:07:17 5 the Koinadugu area. The witnesses will testify that the second
6 accused never took part in or ordered the attacks in Koinadugu,
7 specifically Kabala and Yiffin. They will state that when the
8 fleeing SLA soldiers under the command of SAJ Musa were in
9 Kabala, Kabala was a peaceful town until it was attacked by the
11:07:47 10 RUF and the ECOMOG troops. The commanders, we shall prove,
11 during the attack in Yiffin where RUF rebels by the names High
12 Firing, Gowaja and Major Sheku.

13 From Bombali, we will call witnesses who were present
14 during the attacks in the Bombali District, as mentioned by my
11:08:12 15 learned friend, Karina, Bornoya and Makeni come to name. They
16 will testify that the second accused did not command the attack
17 that took place in the Bombali District or at all. We will be
18 told, just as my learned friend has already said, of persons like
19 Adama Cut Hand, SAJ Musa, Olangba as being the commanders of the
11:08:34 20 attack in Karina and Bornoya. The witnesses will testify that
21 five young girls were never killed in a house in Karina by the
22 second accused, as the Prosecution would have us believe.

23 Your Honour, I'm being interrupted to seek permission on
24 behalf of the third accused, who would like to use the bathroom
11:09:15 25 facilities.

26 PRESIDING JUDGE: How much longer are you likely to be,
27 Mr Daniels?

28 MR DANIELS: Not much longer.

29 PRESIDING JUDGE: The third accused can be excused now if

1 he wants to go.

2 MR DANIELS: Counsel for the first accused has also already
3 spoken about the exaggerations that took place -- has already
4 stated that we will prove that the exaggerations took part in --
11:09:59 5 were presented by the Prosecution as regards Karina and Bornoya.
6 I will only repeat that for emphasis, not to bore Your Honours.
7 The witnesses will testify that no 500 civilians were killed, 300
8 amputated and 200 women raped in Bornoya and Karina, figures
9 which were outrageously stated by the Prosecution witnesses. One
11:10:24 10 of the first witnesses will testify that he was the only one
11 amputated in Bornoya.

12 From Port Loko, the witnesses will testify that the RUF had
13 a base in Lunsar and from that base, they attacked Port Loko
14 Town, not less than 15 times. Nonkoba and Tendakom were also
11:10:46 15 attacked by the RUF forces. The commander there was the late
16 Denis Mingo, alias Superman, and his deputy was Bangura. The
17 witnesses will also testify that Tina Musa, the wife of the late
18 SAJ Musa, gave instructions that Nonkoba and Tendakom should be
19 destroyed. They will also prove that almost all the atrocities
11:11:08 20 that were committed in the Port Loko area were done under the
21 direct command and control of the Prosecution star witness,
22 George Johnson, alias Junior Lion, Foday Kallay, and Major AY
23 [indiscernible].

24 From Freetown, the Defence evidence will show contrary to
11:11:36 25 what the Prosecution would have the Court believe, that the
26 decision to attack Freetown was made by the late SAJ Musa who had
27 full command over the disbanded SLA soldiers. The late SAJ Musa
28 led the SLA soldiers up to the outskirts of Freetown to a town
29 called Benguema, which is only a four-hour march from Freetown.

1 Witnesses will confirm that after the death of SAJ Musa, it
2 was major FAT Sesay, the second in command to SAJ Musa, who led
3 the soldiers into Freetown on the morning of January 6, 1999.
4 The witnesses would indicate that, during this period, the second
11:12:14 5 accused, together with the first and third accused, were under
6 arrest without any command responsibility. The witnesses will
7 testify that, at Eddie Town, SAJ Musa appointed certain soldiers
8 as commanders for the Freetown operation, and that the second
9 accused was, at this time, under arrest.

11:12:37 10 The witnesses will recall the names of FAT Sesay, Junior
11 Lion, Commander O-Five, Captain King Tito, and those who took
12 part in the January 6 invasion of Freetown.

13 In conclusion, Your Honours, yours is a job to examine the
14 evidence and to determine whether the Prosecution has made out
11:13:00 15 its case beyond a reasonable doubt. The question is this: has
16 the Prosecution, after the close of its case, led sufficient
17 evidence for you to conclude, beyond a doubt, that the second
18 accused is one of those who bears the greatest responsibility for
19 the crimes committed within the territory of Sierra Leone within
11:13:21 20 the stated period? We hope to raise many doubts.

21 In our submission, at the end of the day, for the
22 Prosecution case to succeed, it must succeed together in every
23 part. If part of it fails, it all fails. We trust that the
24 frailties in the Prosecution's case and the strength in our case
11:13:42 25 would lead you to find that the second accused is a wrongly
26 accused man who deserves to be acquitted and discharged on all
27 counts.

28 Your Honours, this brings me to the close of my opening
29 statement. The Defence is counting on your usual understanding

1 in the accomplishment of this task. We thank you for your
2 attention.

3 PRESIDING JUDGE: Thank you, Mr Daniels. We have gone a
4 little over time from our normal morning break. We will now
11:14:12 5 adjourn until 11.30. We will come back to hear the first of the
6 Defence witnesses.

7 [Break taken at 11.12 a.m.]

8 [AFRC05JUN06C - SV]

9 [Upon resuming at 11.34 a.m.]

11:36:47 10 PRESIDING JUDGE: I see you are on your feet, Ms Thompson.

11 MS THOMPSON: Your Honour, yes. The first accused is ready
12 to give evidence on behalf of the Defence. However, may I just
13 say, Your Honour, that he has complained of some ailment. I
14 think he's decided to make a start. I might flag that up at the
11:37:08 15 moment just in case I later have to make an application on his
16 behalf.

17 PRESIDING JUDGE: All right. Thank you. Has the witness
18 been sworn?

19 MS THOMPSON: He hasn't, Your Honour, no.

11:37:27 20 WITNESS: ACCUSED ALEX TAMBA BRIMA [Sworn]

21 [The witness answered through interpreter]

22 PRESIDING JUDGE: Go ahead.

23 MR GRAHAM: Okay.

24 EXAMINED BY MR GRAHAM:

11:38:44 25 Q. Good morning, Mr Tamba Brima.

26 A. Good morning.

27 Q. Mr Brima. Can you please give the Court your date of
28 birth? Sorry, Mr Brima, can you give the Court your full name?

29 A. I'm called Tamba Brima.

1 Q. On what day were you born?

2 A. I was born on 23rd November 1971.

3 Q. What nationality are you?

4 A. I am a Sierra Leonean.

11:39:33 5 Q. What is your tribe?

6 A. I am a Kono.

7 Q. Can you also tell this Court what your religious

8 denomination is?

9 A. I'm a Christian.

11:39:51 10 Q. Can you please tell the Court the place of your birth?

11 A. I was born in Wilberforce Barracks in Freetown in Sierra

12 Leone.

13 Q. Can you tell this Court which hometown you come from here

14 in Sierra Leone?

11:40:26 15 A. I come from Yarya Town in Sandor Chiefdom in the Kono

16 District, Sierra Leone.

17 Q. Mr Brima, thank you. Can you please tell this Court the

18 name of your father?

19 A. My father's name is Tamba Brima.

11:40:56 20 Q. Can you please tell the Court the name of your mother?

21 A. My mother's name is Sia Kuyateh Brima.

22 Q. Mr Brima, please, are you married?

23 PRESIDING JUDGE: I think you had better spell that for the

24 record, please.

11:41:18 25 MR GRAHAM: Okay. Thank you, Your Honour. I think I will

26 get the spelling rules back in order. Thank you for the

27 reminder. The name of the mother is spelt Sia S-I-A, then

28 Kuyateh is K-U-Y-A-T-E-H, and then Brima as in B-R-I-M-A. Thank

29 you, Your Honours.

1 Q. Mr Brima, if I may ask again, are you married?

2 A. Yes, I'm married. I'm married to two wives. Margaret
3 Brima, a Kono, and Nenneh Galleh Brima, a Fullah whom I married
4 after I have lost my brother, whose name is Komba Brima. I

11:42:19 5 married that woman according to the Kono custom.

6 Q. Could you please spell the name of your second wife for the
7 convenience of the Court?

8 A. She is Nenneh, N-E-N-N-E-H. Galleh is G-A-L-L-E-H.

9 Q. Do you have any children, Mr Brima?

11:43:02 10 JUDGE DOHERTY: I didn't get the brother's name and a
11 spelling.

12 MR GRAHAM: Sorry, Your Honour, I didn't hear you.

13 JUDGE DOHERTY: The witness mentioned his brother. Could
14 we have the spelling of that name?

11:43:17 15 MR GRAHAM:

16 Q. Could you please spell the name for your late brother for
17 the convenience of the Court?

18 A. Komba, K-O-M-B-A, and Brima is the same spelling,
19 B-R-I-M-A.

11:43:41 20 Q. How many children do you have, Mr Brima, could you please
21 tell the Court?

22 A. I have four children.

23 Q. Could you please tell us their names, the four?

24 A. Well, I would like you to give me the paper for me to write
11:44:13 25 their names because my children are now going to school, they are
26 been -- they face a lot of discrimination in school. I wouldn't
27 like to call their names because they are all attending school.

28 MR GRAHAM: Your Honours, I think I'll skip that question.

29 PRESIDING JUDGE: All right, you're withdrawing that

1 question.

2 MR GRAHAM: I'm withdrawing that question, yes, thank you
3 very much, Your Honours.

4 THE INTERPRETER: Your Honours, correction interpreter,
11:44:39 5 please. He used the word "victimisation" instead of
6 "discrimination". That the children were facing victimisation.

7 PRESIDING JUDGE: All right. Thank you, Mr Interpreter.

8 MR GRAHAM:

9 Q. Mr Brima, before May 1997 were you engaged in any gainful
11:44:58 10 employment, tell this Court? Before May 1997.

11 A. Yes, I was a soldier.

12 Q. You were a soldier?

13 A. Yes.

14 Q. Employed by whom, can you tell this Court?

11:45:21 15 A. I was employed by the Government of Sierra Leone.

16 Q. What was your rank, Mr Brima?

17 A. Go over your question, please.

18 Q. What was your rank at the time of your recruitment into the
19 Sierra Leone Army?

11:45:58 20 A. The time I was recruited I was a private soldier.

21 Q. Did you gain any form of training when you were recruited
22 into the army?

23 A. Yes.

24 Q. Where were you first provided any form of military training
11:46:20 25 by the Sierra Leonean Army?

26 A. I did not get you clear.

27 Q. When you were recruited into the army, where were you first
28 provided with military training or instruction?

29 A. The first place I got my military training was Bai Bureh

1 Barracks, Lungi Garrison in the Port Loko District in the
2 Northern Province of Sierra Leone.

3 Q. Can you tell this Court how long that training took?

4 A. Well, overall my training took three months. I did two
11:47:23 5 months in Lungi and I did one month in Benguema.

6 Q. What year was this training provided, Mr Brima? In what
7 year?

8 A. It was in June 1991.

9 Q. Did you have any further military training after this June
11:47:59 10 1991 training?

11 A. No.

12 Q. Did you receive any promotions after this training in 1991?

13 A. After the training in '91 I did not receive any promotion.

14 Q. After the completion of your training was were entrusted
11:48:28 15 with the command of any troops?

16 A. No.

17 Q. And, Mr Brima, can you tell this Court briefly the nature
18 of the training that you received in 1991? The nature of the
19 training that you received in 1991?

11:48:59 20 A. Well, the military training I received in '91 is called the
21 crash training, because there was war, so it was a three-month
22 training that I underwent.

23 Q. Did you receive any form of training or instruction on the
24 Geneva Convention and any of the additional protocols?

11:49:25 25 MR AGHA: Your Honour, I think it's a leading question.

26 PRESIDING JUDGE: I'll allow it.

27 MR GRAHAM:

28 Q. Mr Brima, did you receive any form of training or
29 instructions relating to the conduct of combat within the context

1 of international law?

2 A. No. The only thing that I was trained in was in weapons,
3 tactics, field-craft, weapon training and physical training.

4 Q. Mr Brima, did you receive any promotions whilst you were in
11:50:22 5 the army, whilst you served, during the period that you served in
6 the Sierra Leone Army?

7 A. Yes, I received the promotion in 1991 and I had another
8 promotion in 1992.

9 Q. What was your promotion in 1991, can you tell this Court,
11:50:42 10 please?

11 A. In 1991 I was a lance-corporal.

12 Q. Did you say you were promoted to corporal? I didn't hear
13 you well, Your Honour.

14 A. Yes.

11:51:03 15 Q. And then when did you obtain your second promotion,
16 Mr Brima?

17 A. The second promotion was given to me in December 1992.

18 Q. So am I right in saying that, apart from these two
19 promotions, you did not receive any other promotion at all?

11:51:38 20 A. At all not.

21 Q. Have you --

22 PRESIDING JUDGE: Look, Mr Graham, just to make that clear,
23 he said that he received two promotions. One was in 1991 and
24 1992. 1991 was a lance-corporal. 1992 was a corporal, was it?

11:51:58 25 MR GRAHAM: Yes, Your Honour.

26 PRESIDING JUDGE: I see. All right.

27 MR AGHA: I don't think that was testified to by the
28 accused, Your Honour.

29 PRESIDING JUDGE: It was more a question, I think, put by

1 Mr Graham.

2 MR GRAHAM: Your Honours, I would re-ask.

3 Q. Mr Brima, when did you receive your second promotion?

4 When?

11:52:31 5 PRESIDING JUDGE: He said December 1992, it's just what was
6 that promotion.

7 MR GRAHAM: Your Honour, just for the sake of emphasis.

8 Q. And to what rank were you promoted as a result of your
9 second promotion?

11:52:45 10 A. I was promoted to a corporal.

11 Q. Mr Brima, have you ever been referred to as a brigadier?

12 A. No.

13 Q. Can you tell this Court how old you were when you joined
14 the army?

11:53:12 15 JUDGE SEBUTINDE: Mr Graham, you tend to speak over the
16 interpreter so we lose the question.

17 MR GRAHAM: Your Honour, I'm sorry, I think I need to
18 adjust.

19 JUDGE SEBUTINDE: Please repeat the last question that I
11:53:25 20 didn't hear.

21 MR GRAHAM: Thank you, Your Honour. I think I've got my
22 adjustment right.

23 Q. Mr Brima, I had asked earlier how old you were when you
24 joined the army?

11:53:51 25 A. I was 19 years old.

26 Q. Mr Brima, at the time you recruited into the army what were
27 you doing? What were you doing prior to your recruitment into
28 the army?

29 A. I was in school.

1 Q. Can you please tell the Court which school this was?

2 A. I attended the services primary school and I attended the
3 Wilberforce Army Primary School and my secondary school, I
4 attended the Sierra Leone Grammar School and the Ahmadiyya Muslim
11:55:01 5 Secondary School at Kissy Dockyard.

6 Q. Mr Brima, can you tell this Court whether you completed
7 your courses in all these schools you have mentioned?

8 A. Wilberforce army school, I attended there from class one to
9 four. And class five, class six and seven, it was the services
11:55:41 10 children's school that I did it. And when I entered the
11 secondary school, form one, form two and form three were done at
12 the grammar school. And form four, form five, form six, it was
13 at Ahmadiyya secondary school that I did that.

14 Q. Mr Brima, can you tell this Court whether you received any
11:56:09 15 form of certification after your completion of education at
16 Ahmadiyya school.

17 A. Yes. I had my West African secondary school certificate at
18 ordinary level and at the advanced level.

19 Q. Mr Brima, after your education at Ahmadiyya school did you
11:56:45 20 proceed to engage or undertake any further education?

21 A. Yes.

22 Q. Where was this and when, could you please tell this Court?

23 A. I attended Cardinal Institute of Education.

24 Q. Can you please tell this Court what you studied at this
11:57:19 25 educational institution?

26 A. Well, at Cardinal, I went there to re-sit my examines to
27 the advanced level because I was attending classes there. From
28 there I went to IPAM, which is the Institute of Public
29 Administration and Management. From there I went and attended

1 the Freetown Technical Institute which is under the MMCET at the
2 Congo Cross campus.

3 Q. Mr Brima, can you tell this Court whether you received any
4 certification for these courses you just referred to?

11:58:27 5 A. Yes, I had one certificate referred to as AAT.

6 Q. Mr Brima, could you please explain to the Court what you
7 mean by AAT?

8 A. It is Association of Accounting Technicians.

9 Q. Mr Brima, could you please tell this Court what the age
11:59:04 10 requirement for joining the Sierra Leone Army is?

11 A. During the time I joined the army, the requirement for the
12 army was 21 years.

13 Q. Mr Brima, apart from Tamba, could you please tell this
14 Court whether you are known by any other name?

11:59:42 15 A. Apart from Tamba, except when I'm called T-Man.

16 Q. Could you please spell T-Man for the convenience of the
17 Court?

18 A. T-Man, the letter T with the spelling man, M-A-N.

19 Q. Mr Brima, have you ever been known as Alex?

12:00:28 20 MR GRAHAM: Your Honours, Alex spelt A-L-E-X as in Xerox.

21 Q. Have you ever been known as Alex?

22 A. No, except in this Court that I have had that name Alex.

23 Q. In the army, Mr Brima, could you please tell this Court
24 what names you were known by?

12:01:10 25 A. Repeat the question.

26 Q. I'm saying in the army -- during the period you served in
27 the Sierra Leonean Army what names were you known by?

28 A. They used to call me Corporal Tamba Brima.

29 Q. Mr Witness, the name Tamba, does it have any significant

1 meaning in your language?

2 A. Well, in my language, Tamba refers to the second male born
3 to the family. That is the person they refer to as Tamba in
4 Kono. The first born is referred to as Sahr. So I am the second

12:02:28 5 male born on my mother's side. That is why I am called Tamba.

6 And I have other -- some of my brothers who also carry the name
7 Tamba because they are the second boys on their mother's side.

8 If it were a third boy he would have been called Aiah.

9 Q. Could you please spell that for the Court.

12:03:08 10 A. A-I-A-H. If it were the fourth boy, they called him Komba.

11 Q. Can you please spell that?

12 A. Komba, it is spelt K-O-M-B-A. If it were the fifth male
13 born, they called him Kai.

14 Q. Can you spell that?

12:03:48 15 A. Kai is spelt K-A-I. If it were the sixth male born, they
16 refer to him as Safia.

17 Q. Could you spell that?

18 A. Which is S-A-F-I-A. If it were the seventh male born, they
19 refer to him as Mani.

12:04:34 20 Q. Could you spell that for the Court, please.

21 A. Mani is spelt as M-A-N-I. But the Mani name, from -- in my
22 own tribe, the Kono tribe, a baby boy could be called Mani and a
23 baby girl can as well be called Mani.

24 Q. Could you please spell Mani for the convenience of the

12:05:14 25 Court?

26 A. Mani is spelt as M-A-N-I, Mani.

27 Q. Mr Brima, before you go --

28 A. The --

29 Q. Earlier on you mentioned the name Sahr as being the first

1 born. If you could please just spell that for the convenience of
2 the Court, Sahr.

3 A. Sahr is spelt as S-A-H-R, Sahr.

4 Q. Thank you, Mr Witness.

12:06:04 5 A. Then the eighth male born is called Sundu. But, again, in
6 my tribe, it's a name that could be given to a baby boy as well
7 as a baby girl.

8 PRESIDING JUDGE: What's the objection, Mr Agha?

9 MR AGHA: It's on the lines of relevance. I'm not sure how
12:06:28 10 this is relevant.

11 PRESIDING JUDGE: I was letting him go because I thought
12 perhaps it might be relevant if one of he and his brothers are
13 mixed up. By getting the names of all the brothers perhaps it
14 would show that they were referring to another of the Brimas and
12:06:44 15 not to the accused. That's the way I'm looking at.

16 MR GRAHAM: That's certainly the object of this, but we are
17 moving on Your Honour. I think we've got enough information on
18 that.

19 Q. Thank you, Mr Brima. Mr Brima, do you have any aliases?

12:07:02 20 A. Yes, I have an alias and my alias is T-Man.

21 Q. T-Man, you've heard that before. Mr Brima, have you ever
22 been known as Gullit, spelt G-U-L-L-I-T?

23 A. No.

24 Q. Mr Brima, is your father still alive?

12:07:45 25 A. No.

26 Q. Mr Brima, what did your father do for a living, if you
27 could please tell this Court?

28 A. My father was a soldier.

29 Q. Do you know the date of his enlistment into the army?

1 A. My father, he was enlisted into the Sierra Leone Army on

2 31st March 1970.

3 THE INTERPRETER: Sorry, 1947. Interpreter's correction.

4 MR GRAHAM:

12:08:35 5 Q. Mr Brima, can you tell this Honourable Court your father's

6 rank in the army?

7 A. My father was a sergeant.

8 Q. Can you please also tell this Court the nature of your

9 father's job when he was in the army?

12:09:05 10 A. My father was an expert armourer in the army. He was a

11 weapon repairer. If a weapon had a fault it was my father who

12 repaired that weapon in the army. So that was the work my father

13 was doing.

14 Q. Mr Brima, can you explain further what was mean by

12:09:38 15 armourer?

16 A. Well, armourer is an individual that makes guns. He takes

17 care of guns. If a gun has a problem, he repairs it. So if a

18 gun is brought to my father which has a fault, he repaired it.

19 Since the time I was born until the time he died, I did not know

12:10:07 20 him for any other job except that job. Anywhere that a gun has a

21 problem in the army, Daru, Murray Town, Juba, it was my father

22 who was called upon.

23 Q. Mr Brima, can you tell this Honourable Court your father's

24 name?

12:10:35 25 A. My father's name is Tamba Brima.

26 Q. Mr Brima, was your father married to your mother?

27 A. Yes.

28 Q. Can you tell this Honourable Court how many wives your

29 father had?

1 A. My father used to have four wives including my mother.

2 Q. Mr Brima, can you also tell this Court how many children
3 your father had?

4 A. My father gave rise to us, we were 23 in number.

12:11:32 5 Q. Are they all alive?

6 A. No.

7 Q. How many of them are now living as of today, can you tell
8 this Court?

9 A. Ten have died. Thirteen of us are remaining.

12:12:10 10 Q. Mr Brima, can you tell this Court how many brothers you
11 have?

12 A. Well, at first I had 12 brothers, including myself. I said
13 I had 11 brothers; including myself, totalling to 12. But for
14 now I have four brothers who are now alive.

12:12:49 15 MR GRAHAM: Your Honours, with your permission, the next
16 question I was going to ask the witness was going to relate to
17 the names and occupation of his brothers. I think that probably
18 for security reasons, Your Honour, it would be preferable if the
19 Court would permit me to allow him to write that information on a
12:13:08 20 piece of paper.

21 PRESIDING JUDGE: Yes, that would be satisfactory.

22 MR GRAHAM: Your Honours, with your permission, if I may
23 ask Court Management to pass over a piece of paper to the
24 accused.

12:13:45 25 Q. Mr Brima, what I want you to write now is the names and
26 occupations of your brothers. Mr Brima, I'm asking for the ones
27 that are alive, that are living today. Just by way of a
28 reminder, the brothers that are alive as of today.

29 A. I'm through.

1 PRESIDING JUDGE: Madam Court Attendant, that will need to
2 be shown also to the Prosecution. I take it you're tendering
3 this.

4 MR GRAHAM: [Microphone not activated]

12:16:46 5 THE INTERPRETER: Your Honour, the mic is not on. The
6 lawyer's mic is not on.

7 MR GRAHAM: Your Honour, I was saying I am also going to
8 ask of him some additional questions and I would ask him to write
9 the answers on that piece of paper before we tender that in
12:17:04 10 evidence, with your permission.

11 PRESIDING JUDGE: Thank you, that paper can be given back
12 to Mr Graham.

13 MR GRAHAM: Thank you, Your Honours.

14 Q. Mr Brima, what I will ask of you now is to write down the
12:18:46 15 names of your brothers who are -- to mark of the names of your
16 brothers who are serving soldiers in the army and then to provide
17 the following information, if you will note: One, their age; the
18 year of their enlistment into the Sierra Leonean army; their
19 rank; their number; date of birth and, if within your knowledge,
12:19:23 20 their level of education. If you need me to re-itemise that for
21 your convenience I will do so.

22 PRESIDING JUDGE: It might be easier if you name them one
23 by one and get him to write them down.

24 MR GRAHAM:

12:19:37 25 Q. Okay, Mr Brima, I think it's better if you write the
26 information. I'm asking for, one, the age. The age, the year of
27 enlistment, their rank --

28 JUDGE SEBUTINDE: Mr Graham, you obviously are going too
29 fast. Watch the witness.

1 MR GRAHAM: Yes, Your Honour.

2 Q. The rank, the military number.

3 A. I cannot give you their exact ages because they are older
4 than I am.

12:20:48 5 Q. Where you are not sure you can leave that. Just give the
6 information that you have within your knowledge. And then I said
7 that the --

8 A. Yes, I have written their ranks with their numbers.

9 Q. And I also asked, if you know, their year of enlistment.

12:25:48 10 A. I'm through.

11 MR GRAHAM: Your Honours, please, with your permission I
12 will get Court Management to pass the document.

13 JUDGE SEBUTINDE: Mr Graham, from the question that you
14 asked the witness, are we to assume that these are the names of
12:32:33 15 his serving brothers, they are still serving in the army today?

16 MR GRAHAM: Yes, Your Honour.

17 PRESIDING JUDGE: Can the Court Attendant give this paper
18 back to Mr Graham, please?

19 MR GRAHAM: Your Honours, respectfully, subject to any
12:33:01 20 objections from the Prosecution, we intend to tender this
21 document in evidence.

22 PRESIDING JUDGE: Are there any objections to that?

23 MR AGHA: No, there's no objection, Your Honour, although
24 we suggest it goes in under seal.

12:33:18 25 PRESIDING JUDGE: All right. That would be your
26 application.

27 MR GRAHAM: Yes, Your Honour.

28 PRESIDING JUDGE: All right. We are going to mark this
29 defence exhibit confidential and under seal. Do we have a

1 defence exhibit number there?

2 MS EDMONDS: It's D13, My Lord.

3 PRESIDING JUDGE: All right. That will be admitted as
4 defence Exhibit D13.

12:33:51 5 [Exhibit No. D13 was admitted]

6 MR AGHA: Your Honours, I was just wondering, has it been
7 signed and dated by the accused? That may be helpful.

8 PRESIDING JUDGE: Well, it hasn't but it's on the
9 transcript as being given by the accused on today's date. So
10 unless you wanted to press the point, I don't see --

11 MR AGHA: No, Your Honours, I was just wondering.

12 MR GRAHAM: Thank you, Your Honours. Your Honours, before
13 I proceed, I would want to find out how well the accused is
14 feeling. He's not been well. Indeed, I had to impress on him
15 for the need for us to at least start today. I would probably
16 want to find out exactly how he's doing because I realised his
17 motion has slowed up a little bit a few moments ago.

18 PRESIDING JUDGE: By all means, Mr Graham. I also remind
19 you we've only got about 13 minutes until the lunch break, but
12:35:08 20 please see how your client is.

21 MR GRAHAM:

22 Q. Mr Brima, how are you feeling?

23 A. I'm not really feeling well. Then the names which I have
24 written and the numbers, I will bring it to the notice of the
12:35:40 25 Court that my brothers were facing problems in the army since my
26 arrest. I wrote those names and the numbers, but I really did
27 that in fear because even when I send for them to give me their
28 particulars, they were not willing to do that.

29 PRESIDING JUDGE: Mr Brima, that paper that you've just

1 written has been treated as confidential and it's under seal
2 which means it will be kept in safe custody in the Court and
3 won't be for publication at all. So you need not worry on that
4 account.

12:36:34 5 MR GRAHAM: Your Honour, I need to seek for clarification
6 from the witness in respect of the third name.

7 Q. Mr Brima, the names of your brothers, whose names you just
8 wrote down, are you all from the same mother?

9 A. No, we are not from the same mother.

12:37:16 10 Q. Is that in respect of all of them, all three?

11 A. All of them.

12 JUDGE SEBUTINDE: There are four names, Mr Graham. Why are
13 you referring to three?

14 MR GRAHAM: I'm sorry, Your Honour, four. Four names.

12:37:30 15 Q. In respect of the four names that you gave them is it the
16 case that you don't share the same mother with any one of them?

17 A. At all. We are all from different mothers.

18 Q. Thank you, Mr Brima.

19 A. I don't really feel well. I'm not feeling well.

12:37:57 20 MR GRAHAM: Your Honours --

21 PRESIDING JUDGE: I think we'll take an early lunch and
22 hopefully, Mr Brima, you will recover over the lunch break or the
23 rest will do you good. But, Mr Graham, if you feel that he might
24 need medical treatment then you can mention that to the

12:38:26 25 appropriate people.

26 MR GRAHAM: I'm most grateful. We'll do that, Your Honour.

27 PRESIDING JUDGE: I know you're in a difficult position
28 because you can't talk to him, but you might have some reports
29 about him from the people in charge of the detention centre.

1 MR GRAHAM: Thank you.

2 PRESIDING JUDGE: All right. We'll adjourn now until 2.15.
3 Just before we adjourn, Mr Brima, you've probably heard this said
4 in court many times, but you're giving evidence at the moment so
12:39:06 5 you're not permitted to discuss the evidence or discuss this case
6 with anybody. Do you appreciate that?

7 THE ACCUSED BRIMA: Yes, My Lord.

8 PRESIDING JUDGE: Thank you. We'll adjourn the Court to
9 2.15.

12:40:26 10 [Luncheon recess taken at 12.40 p.m.]

11 [AFRC05JUN06-RK]

12 [Upon resuming at 2.20 p.m.]

13 PRESIDING JUDGE: Yes, Mr Graham.

14 MR GRAHAM: Good afternoon, Your Honours. An incident
14:25:25 15 happened that I think I need to inform the Court. During the
16 recess I was trying to check on the status of my client in terms
17 of how well he was doing. So I called Detention and told them I
18 wanted to reach the doctor, and they gave me a number for the
19 switchboard. So I called and told them to talk to the doctor,
14:25:48 20 but all of a sudden when it connected they got my client onto the
21 phone. Of course, I told him that I was not supposed to be
22 talking to him on the phone. I thought it proper to inform the
23 Court about this development. Indeed, we have taken steps to get
24 direct contact with the deputy chief of detention. I do not
14:26:12 25 think this incident will happen again, but I think it is proper
26 to inform the Court about this.

27 Secondly, the outstanding issues relates to the state of
28 health of my client. I have been informed that his BP is very
29 high and I do not exactly know what his present disposition is.

1 He does not from this distance appear very well, but I would need
2 to confirm how very well he is willing and whether is able to go
3 on this afternoon.

4 PRESIDING JUDGE: Yes, thank you, Mr Graham. As regards
14:26:53 5 the first instance, you have disclosed that you were unwittingly
6 put through to your client instead of the doctor. Personally I
7 would accept what you have told the Court. Does the Prosecution
8 wish to make anything from that?

9 MR AGHA: No, Your Honour. We are grateful for Mr Graham
14:27:20 10 being so candid. We understand that accidents like this can
11 happen from time to time.

12 PRESIDING JUDGE: Thank you, Mr Agha. Secondly, Mr Brima,
13 we have about an hour and a half this afternoon. Do you feel up
14 to continuing your evidence today?

14:27:41 15 THE ACCUSED BRIMA: I will not be able because when I went
16 to my doctor he tested my pressure and my pressure went up to 160
17 over 100. So the doctor advised that I should go and have a bed
18 rest, but I thought it wise to come and tell the Court because as
19 I'm talking now the problem is that the back of my head there is
14:28:07 20 an unusual beating in the back of my head and I do experience
21 this frequently.

22 PRESIDING JUDGE: I do not know whether the Prosecution
23 wants to say anything. I take it, Mr Graham, you are applying
24 for an adjournment for this afternoon.

14:30:55 25 MR GRAHAM: That is all, Your Honour.

26 PRESIDING JUDGE: Do you have anything to say to that,
27 MR Agha?

28 MR AGHA: No. Only that if it is for medical reasons for
29 the witness, the Prosecution would not object to whatever

1 decision the Court may choose to make.

2 PRESIDING JUDGE: Right, thank you. Well, Mr Brima, in
3 view of what you have told us about your health, we are going to
4 adjourn this case until tomorrow morning. And we certainly hope
14:31:29 5 that the break will lead to an improvement in your health. If
6 you are not here tomorrow morning, we will require a medical
7 report from the doctor as to your diagnosis, prognosis and your
8 ability to sit in court and give evidence, is that clear?

9 THE ACCUSED BRIMA: Yes, My Lord.

14:31:58 10 PRESIDING JUDGE: Once again I caution you that you are in
11 the process of giving evidence now and you are not allowed to
12 speak to any person about the evidence you are giving in court.
13 Is that also clear?

14 THE ACCUSED BRIMA: Yes, My Lord.

14:32:17 15 PRESIDING JUDGE: All right. Having said that, we will
16 adjourn the Court to 9.15 tomorrow morning.

17 [Whereupon the hearing adjourned at 2.30 p.m.
18 to be reconvened on Tuesday, the 6th day of
19 June, 2006, at 9.15 a.m.]

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EXHIBITS:

Exhibit No. D13 66

WITNESSES FOR THE DEFENCE:

WITNESS: ACCUSED ALEX TAMBA BRIMA 51

EXAMINED BY MR GRAHAM 51