

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

WEDNESDAY, 12 OCTOBER 2005  
9.17 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:	Teresa Doherty, Presiding Julia Sebutinde Richard Lussick
For Chambers:	Mr Simon Meisenberg
For the Registry:	Ms Maureen Edmonds
For the Prosecution:	Ms Wambui Ngunya Ms Melissa Pack Ms Maja Dimitrova (Case Manager) Ms Suzanne Mattler (intern)
For the Principal Defender:	Mr Ibrahim Foday Mansaray
For the accused Alex Tamba Brima:	Mr Kojo Graham
For the accused Brima Bazy Kamara:	Mr Mohamed Pa-Momo Fofanah
For the accused Santigie Borbor Kanuu:	Mr Geert-Jan Alexander Knoop

1 Tuesday, 12 October, 2005  
2 [AFRC12OCT05A - AD]  
3 [Open session]  
4 [The accused present]  
5 [The witness entered court]  
6 [Upon commencing at 9.17 a.m.]

7 PRESIDING JUDGE: Good morning. I note we have a new  
8 witness and unless there are some preliminary matters, I will ask  
9 to have the witness sworn. The language, Ms Ngunya, that the  
09:17:50 10 witness is will be giving his evidence in.

11 MS NGUNYA: Your Honour, for the record, this is TF1-301.  
12 He will be speaking in English and he will be sworn on the Bible.

13 PRESIDING JUDGE: Thank you. Madam Court Attendant, please  
14 swear in the witness.

09:18:31 15 WITNESS: TF1-301 [Sworn]

16 PRESIDING JUDGE: Please proceed, Ms Ngunya.

17 MS NGUNYA: Thank you Your Honours.

18 EXAMINED BY MS NGUNYA:

19 Q. Good morning, Mr Witness.

09:18:41 20 A. Good morning.

21 Q. Witness could you please start by telling the Court your  
22 full name?

23 A. My name is Richard Mortimer Iron.

24 Q. Perhaps for the Court you could spell your middle name,  
09:18:56 25 Mortimer.

26 A. Mortimer is spelt M-O-R-T-I-M-E-R.

27 Q. How old are you?

28 A. I am 48.

29 Q. What do you do for a living?

1 A. I am an army officer.  
2 Q. With which army?  
3 A. With the British Army.  
4 Q. How long have you served in the army?  
09:19:24 5 A. For 31 years.  
6 Q. What is your rank presently?  
7 A. I am a colonel.  
8 Q. Colonel, where do you reside at present?  
9 A. I reside in Norfolk, Virginia.  
09:19:34 10 Q. Colonel, could you give the Court your educational  
11 background.  
12 A. I was educated at school in England, at the King's School,  
13 Canterbury and subsequently went on to do my degree at the  
14 University of Cambridge. Within the military I was commissioned  
09:19:52 15 at Royal Military Academy at Sandhurst and then subsequently  
16 underwent staff courses with the British Army in Camberley and  
17 then subsequently with the United States Army, Fort Leavenworth,  
18 Kansas.  
19 Q. Colonel, I just refer you to two parts of your military  
09:20:10 20 education. You mentioned that you went to the Staff College at  
21 Camberley; is that correct?  
22 A. That's correct, yes.  
23 Q. What did you study at Camberley?  
24 A. This is a course principally aimed at the major level  
09:20:20 25 within the British Army, which is aimed at teaching you about how  
26 to be a senior staff officer and a senior level commander. In  
27 addition, we took time to study -- academic study on the nature  
28 of war and conflicts. That is where I first started becoming  
29 interested in the theory.

1 Q. You also did mention you attended the US Army Staff College  
2 at Fort Leavenworth in the United States.

3 A. Yes, this was a similar course, but based obviously from  
4 the US Army's perspective. We did more academic study there on  
09:21:00 5 past conflicts, wars, including for example the Vietnam War.

6 Q. Thank you. From this institution did you receive any  
7 credentials?

8 A. Yes, I got my Masters degree, Master of Military Art and  
9 Science from there.

09:21:17 10 Q. I would like to show you a copy of your CV.

11 MS NGUNYA: For Your Honours that will page number 14469,  
12 and if I could request the assistance of the court attendant.  
13 Thank you.

14 PRESIDING JUDGE: We have that before us.

09:22:41 15 MS NGUNYA: Thank you, Your Honours.

16 Q. Colonel, I am going to start by going through aspects of  
17 your professional background and experience. What is your  
18 current assignment?

19 A. I'm currently assigned as the United Kingdom's national  
09:22:54 20 liaison representative to NATO Headquarters Allied Command  
21 Transformation in North Virginia, USA.

22 Q. May I just ask what NATO stands for, for the Court?

23 A. NATO stands for the North Atlantic Treaty Organisation.

24 Q. How long have you been on this particular assignment?

09:23:16 25 A. About 10 months.

26 Q. Perhaps you could inform the Court what your  
27 responsibilities are in this assignment?

28 A. I have two principal roles. The first is being the linkage  
29 between this NATO headquarters responsible for the development of

1 future concepts and doctrine and the United Kingdom. So  
2 essentially one of liaison. My second major role is one which I  
3 have continued from my previous job, which is running the NATO's  
4 development of land doctrine, and I still do that role as well.

09:23:55 5 Q. How long have you done the first assignment you have talked  
6 about?  
7 A. About 10 months.  
8 Q. And the second?  
9 A. For the last four and a half years.

09:24:04 10 Q. Thank you, Colonel. Before your current assignment what  
11 were your previous responsibilities?  
12 A. Previously I was based in the United Kingdom running the  
13 British Army's doctrine centre.  
14 Q. What did your duties entail?  
09:24:20 15 A. My duties essentially were developing high level doctrine  
16 for the British Army.  
17 Q. You have mentioned a phrase there, "doctrine". Perhaps you  
18 could explain that?  
19 A. Sure. Doctrine literally means, from the Greek, what is  
09:24:36 20 taught. That is perhaps in the ecclesiastical sense how it is  
21 treated. But in the military sense it encompasses the whole  
22 theory of warfare and the conduct of warfare. At the highest  
23 philosophical level we are looking at the nature of war; at  
24 lower, more practical levels, essentially it encapsulates best  
09:25:06 25 practice for how to plan and conduct operations. It covers the  
26 whole spectrum of military activity, command, organisation,  
27 operation and logistics.  
28 Q. Thank you, Colonel. In this capacity have you had occasion  
29 to conduct study or analyses?

1 A. Yes, I have done a number of analyses. The most important,  
2 recent one was I led the British Army's analysis on the recent  
3 Gulf War, and subsequently published that as a general staff  
4 publication.

09:25:43 5 Q. Besides this publication have you had occasion to author  
6 any other reports or articles?

7 A. Yes, I have written or have led the writing team, and I  
8 just need to be clear it is perhaps a group of people I led  
9 produced a number of doctrine publications. Most recently the  
09:25:59 10 British Army's top-level doctrine publication, ADP - army  
11 doctrine publication - Land Operations as it is called, and a  
12 number of other doctrine publications in the United Kingdom in  
13 the British Army. We are also authoring similar publications  
14 within the NATO domain including the NATO doctrine for  
09:26:31 15 counter-insurgency.

16 Q. Thank you, Colonel. Are you in a position to tell the  
17 Court how these publications have been received by your peers?

18 A. Well, they are all important publications in that they  
19 guide the British Army in its activity and are an important part  
09:26:48 20 for every officer's education. In particular, the ADP Land  
21 Operations I mentioned is the top-level doctrine publication  
22 which has recently been described as the most important  
23 publication the British Army had produced in the last ten years.  
24 So I think they have been received well.

09:27:05 25 Q. Colonel, have you been recognised for any work that you  
26 have done for the British Army?

27 A. Well, a number of times, but most recently probably when I  
28 was a battalion commander I received an OBE award, an Officer of  
29 the Order of the British Empire, in 1999.

1 Q. Thank you, Colonel. I will go to point two in your CV,  
2 again referring to page 14469. It states that you were an  
3 instructor at the United Kingdom Joint Service Command and Staff  
4 College; is that correct?  
09:27:48 5 A. That's correct, yes.  
6 Q. Perhaps you could just explain to the Court what your  
7 duties were in this position?  
8 A. Well, one of my duties as an instructor was to teach, of  
9 course, teach sort of middle ranking officers. But my principal  
09:28:03 10 responsibility there was to develop the curriculum in  
11 campaigning, in campaign design, in operational art. These are  
12 slightly -- they sound esoteric subjects but they prepared me  
13 well, I think, actually for some parts of the analysis which I  
14 had to do here in Sierra Leone in understanding the linkages  
09:28:27 15 between strategic operations and tactical levels.  
16 Q. Okay. We will come to that, strategic operation and  
17 tactical, a bit later.  
18 A. Okay.  
19 Q. So I will ask you that earlier on your previous career  
09:28:38 20 before that was -- it states you were the commanding officer of  
21 the 1st Battalion King's Own Royal Border Regiment; is that  
22 correct?  
23 A. It's a difficult name, but yes.  
24 Q. Excuse my English. What were your duties in this capacity?  
09:28:56 25 A. Well, as the commanding officer you are responsible for  
26 everything that happens in the battalion. Depending on what role  
27 or what operation we were on we varied in strength from say 600  
28 to about 950. And we were based in northern England but we had  
29 two operational tours in the Balkans, one in Bosnia and one in

1 Macedoni a.

2 Q. Further down your CV it states that you were a staff  
3 officer between the years 1996 and 1997; is that correct?

4 A. That is correct. I was based in the United Kingdom's  
09:29:34 5 Ministry of Defence and I was a technical staff officer. I have  
6 a technical background as well and was specifying requirements  
7 principally for infantry weapons.

8 Q. Would that be similar to the one that comes after, staff  
9 officer, HQ Infantry Warmister, UK?

09:29:51 10 A. At a lower level, yes.

11 Q. Prior to that, on page 14470, you were company commander  
12 between the years 1992 and 1993 in Kenya; correct?

13 A. Well, for the two years I was company commander both in  
14 Kenya and in Northern Ireland.

09:30:11 15 Q. And what did your duties entail?

16 A. Well, as a company commander you are responsible for  
17 everybody in the company which again varied in strength from say  
18 100 to 140.

19 Q. Colonel, prior to that you were a major in Londonderry,  
09:30:30 20 Northern Ireland?

21 A. Yes, as a company commander.

22 Q. Okay, you already explained that. Before that you were a  
23 chief of staff, 33 Armoured Brigade in Germany.

24 A. Yes.

09:30:38 25 Q. What were your duties in this regard?

26 A. The chief of staff role is you run the staff which supports  
27 the brigade commander. So I was the principal staff officer in  
28 brigade, responsible for supporting the commander to run  
29 operations and essentially his right-hand man during that period.



1 Q. Thank you. Before that you were operations officer,  
2 39 Infantry Brigade?

3 A. Yes, that was -- two years I ran the -- as a captain. I  
4 was sort of the battle captain, the G3 operations officer that  
09:31:20 5 ran operations in the brigade.

6 Q. Just to be clear, G3 equals operations commander?

7 A. That's correct. But I wasn't operations commander. I just  
8 supported and I coordinated the operations on behalf of the chief  
9 of staff.

09:31:36 10 Q. Thank you, Colonel. Further down your curriculum vitae it  
11 states that you were a company commander in Oman.

12 A. Yes.

13 Q. Could you please tell your duties under this --

14 A. I was on loan from the British Army to the Sultan of Oman's  
09:31:55 15 army for that period.

16 PRESIDING JUDGE: That period doesn't appear in our copy.  
17 There seems to be a figure missing.

18 THE WITNESS: There is, yes. Just over two years, Your  
19 Honour, 1983 to 1985.

09:32:08 20 PRESIDING JUDGE: Thank you.

21 THE WITNESS: And I was sent out initially as a company  
22 second command and for much of the period I was a company  
23 commander, doing a number of duties in Oman both up in the north  
24 in the Strait of Hormuz and down on the Yemen border.

09:32:28 25 Q. Thank you, Colonel. The last position appearing on your CV  
26 is troop commander Royal Engineers, 1980 to 1982, Germany.

27 A. That's correct. That's where I was learning my job.

28 Q. Just to be sure, Colonel, the CV you have before you, did  
29 you prepare that?

1 A. Yes.

2 Q. Is it a current CV?

3 A. Yes.

4 MS NGUNYA: Your Honours, at this stage I would like to  
09:32:59 5 tender the CV of the witness.

6 PRESIDING JUDGE: Counsel for the Defence, who is speaking  
7 on behalf of the Defence? Mr Knoops.

8 MR KNOOPS: Good morning, Your Honour. We have no  
9 objection, Your Honour.

09:33:11 10 PRESIDING JUDGE: Thank you, Mr Knoops. That will be  
11 admitted as P35.

12 [Exhibit No. P35 was admitted]

13 PRESIDING JUDGE: You have got a copy?

14 MR KNOOPS: Yes, thank you.

09:33:34 15 MS NGUNYA: Sorry, Your Honour.

16 PRESIDING JUDGE: Are you going to put the document in?

17 MS NGUNYA: If I could have the assistance of the Court  
18 Attendant.

19 PRESIDING JUDGE: Thank you. Please proceed, counsel.

09:34:14 20 MS NGUNYA:

21 Q. Colonel, in what capacity are you sitting here today?

22 A. I have been invited to come as a military expert witness.

23 Q. Did you get paid for your services?

24 A. During the time that I prepared the report I was paid \$200  
09:34:33 25 per day during the time I was in Sierra Leone, out of which I had  
26 to pay my expenses.

27 Q. Colonel, you said you were invited here as a military  
28 expert. Did you focus on any particular group?

29 A. I looked at three particular groups of which the AFRC is

1 one.

2 Q. In regard specifically to the AFRC, when did you start this  
3 work?

4 A. I started in earnest last year in about May/June last year  
09: 35: 09 5 with my first visit to Sierra Leone. Since then I have been  
6 working on it until I completed my report to August.

7 Q. August this year?

8 A. This year, yes.

9 Q. What methods did you adopt when launching on this  
09: 35: 27 10 assignment?

11 A. The first and most difficult thing was to determine a  
12 methodology. I was asked to determine the extent to which the  
13 AFRC and other organisations were military organisations and the  
14 extent to which command was effective in those organisations.  
09: 35: 47 15 Now there is nothing in the literature to say this is what  
16 defines a military organisation, so I had to develop a  
17 methodology which I could then use to analyse the AFRC to answer  
18 the question to determine the extent to which it was a military  
19 organisation.

09: 36: 10 20 Q. And did you come up with a methodology?

21 A. Yes, I did.

22 Q. Perhaps you could inform the Court what that was?

23 A. Sure. The methodology I derived, and I say now that  
24 actually I derived it in conjunction with a number of my peers  
09: 36: 29 25 when we did a brainstorming in the United Kingdom, was by  
26 answering four questions, conducting analysis against four  
27 questions. The first question was to determine the extent to  
28 which the organisation had a recognisable military hierarchy and  
29 structure. So it was all to do with organisation. The second

1 question related to did it have the characteristics of a  
2 recognisable military organisation and we looked at 13  
3 characteristics which a military organisation might have. The  
4 third was to determine the level of internal coherence of this  
09:37:08 5 organisation. Particularly we looked at the coherence between  
6 strategic, operational and tactical levels. The fourth question  
7 was to determine the extent to which command was effective. So  
8 those are the four questions that we used.

9 Q. Thank you, Colonel. We will come to explain these four  
09:37:30 10 subgroups a bit later.

11 A. Okay.

12 Q. Perhaps the next thing I'll ask you is how did you go about  
13 providing answers to these four questions you posed?

14 A. Initially I thought I could do it by reading witness  
09:37:45 15 statements and testimony. Now whereas these written sources  
16 provided a great deal of information, actually they naturally  
17 tended to focus on crime and my interest was not on crime; my  
18 interest was in military organisation. So I found that were many  
19 gaps of the things that I wanted to know about in the statements  
09:38:11 20 and subsequently testimony. So I decided I needed to question  
21 eyewitnesses myself in order to get the kind of information that  
22 I needed. Also, because I wanted to get a real understanding for  
23 how these organisations ran, or how the AFRC in particular ran,  
24 and how the operations were conducted on the ground, I felt it  
09:38:42 25 important to actually go and visit the sites where the AFRC was  
26 both in terms of where they lived out of the jungle and also the  
27 operations they conducted.

28 Q. Let me interrupt you there for a minute, Colonel. Just to  
29 give the Court a picture, you mentioned visiting some areas in

1 Sierra Leone. Could you perhaps just list the places you  
2 visited, if you can remember?

3 A. If you don't mind me referring to a note here because there  
4 were about 19 places and I can't remember them all off the top of  
09:39:17 5 my head.

6 PRESIDING JUDGE: Just pause. Is the witness refreshing  
7 his memory with some document?

8 MS NGUNYA: Your Honour, at this stage I just want to say  
9 that he has some notes and if he could please refer to them to  
09:39:31 10 refresh his memory.

11 PRESIDING JUDGE: Have you liaised with counsel for the  
12 Defence on this?

13 MS NGUNYA: Actually I didn't know so I will ask counsel  
14 for the Defence if they have any objection.

09:39:40 15 MR KNOOPS: We do have objections, Your Honour. I think  
16 the witness should give his testimony without written  
17 documentation. I am also not familiar whether these are new  
18 notes or notes from the report. I really have no clue what these  
19 notes are.

09:39:59 20 PRESIDING JUDGE: In this circumstance it may be  
21 appropriate to let counsel see those notes before proceeding.

22 MS NGUNYA: That will be -- okay, but first of all let me  
23 proceed to another section and then we can deal with that at a  
24 later time. Would that be okay?

09:40:11 25 PRESIDING JUDGE: Yes. The notes should be taken back from  
26 the witness, please.

27 MS NGUNYA: Okay.

28 Q. Colonel, I will proceed. I will leave that question for  
29 now until we have covered it later. Besides your visits to

1 the -- you said you visited various places. Did you gather your  
2 information in any other way? You talked about witnesses,  
3 visiting various places?

4 A. Sure. As I mentioned, I read the statements and testimony.  
09:41:03 5 I also conducted some consultations with colleagues, academic  
6 colleagues principally and military colleagues, about creating  
7 the methodology which subsequently became Part B of my report. I  
8 also conducted an interview with a British officer who arrived in  
9 Freetown during the 6th January invasion.

09:41:30 10 Q. Colonel, did you record this information in any particular  
11 way?

12 A. At the time I recorded it in my notebooks, and then as I  
13 conducted my analysis I then wrote it into my report.

14 Q. Colonel, I just want to ask you do you recall about how  
09:41:53 15 many interviews you carried out? You don't have to refer to  
16 anything. If you don't remember, that's okay.

17 A. I think it is slightly misleading to refer to them as  
18 interviews. I spent a lot of time with the witnesses. We walked  
19 around battlefields, we walked around towns and villages and we  
09:42:17 20 had conversations and discussions together. Some witness, I  
21 might spend half a day with them. Others I might spend three,  
22 four, five days depending on the importance of what I felt he  
23 could give me. Of course, at that stage I was looking  
24 principally at how this organisation worked, the details of how  
09:42:39 25 it worked.

26 Q. Following the conduct of your research, I just want to know  
27 about how many you conducted in number.

28 A. How many interviews or how many people I spoke --

29 Q. How many people you spoke to?

1 A. I spoke to, I think, seven or eight. It is all in my  
2 notes, but it was seven or eight.

3 Q. Colonel, following the conduct of your research did you  
4 arrive at any findings?

09:43:12 5 A. Yes, I did.

6 Q. Did you present your finding in any form?

7 A. I presented my findings in a report.

8 MS NGUNYA: At this stage I would like to present to the  
9 witness a copy of his report and the original of his report.

09:43:36 10 PRESIDING JUDGE: Please do so.

11 MS NGUNYA:

12 Q. Colonel, allow me to refer to the copy because it has page  
13 numbers. Do you recognise that report?

14 A. Yes, I do.

09:43:53 15 Q. And is it the report that you authored?

16 A. Yes, it is.

17 Q. Colonel, allow me to refer to the four tests that you  
18 mentioned earlier. Following your analysis, does a military  
19 organisation have to possess all four points you mentioned in  
09:44:17 20 order to be considered a military organisation?

21 A. I think so, yes. But it needs to be borne in mind that in  
22 each question there is an area of judgment. This is not black  
23 and white, this is not necessarily yes and no. You need to apply  
24 judgment in each of these questions in order to come up with an

09:44:40 25 opinion. For example, in the second question about  
26 characteristics I named 13 characteristics. Not all of those  
27 characteristics need to be present. I think if the majority are  
28 there then that actually does help to define a military  
29 organisation. But just because, say, one or two are missing

1 doesn't necessarily mean it is not a military organisation.

2 Q. Thank you, Colonel. Perhaps for the Chamber we will break  
3 it down into each of the four points and just explain it and then  
4 proceed on.

09:45:16 5 A. Sure.

6 Q. Colonel, the first point that you analyse is did the group  
7 have a recognisable military hierarchy and structure. I would  
8 like to firstly ask you is there a criteria for establishing if a  
9 group has a recognisable military hierarchy and structure?

09:45:31 10 A. I used three criteria here to help to identify a structure  
11 and hierarchy. The first is the span of command, the second is  
12 chain of command and the third is a staff structure and I will  
13 explain each of those in turn.

14 Q. Please do.

09:45:55 15 A. May I refer the Court's attention to a diagram on page  
16 14417. It is figure 1.

17 MS NGUNYA: Your Honour, may we proceed?

18 PRESIDING JUDGE: Certainly, please do so.

19 MS NGUNYA:

09:46:36 20 Q. Please continue.

21 A. What I've done here is I've shown at the bottom level  
22 something called the span of command which essentially describes  
23 the number of units, organisations or subunits that at any one  
24 level of command that any one person might command. So on this

09:47:01 25 diagram the commander at level two has got three subunits at  
26 level three beneath him. That is called the span of command.  
27 This is really -- the size of the span of command is normally a  
28 function of complexity, complexity of the military operation that  
29 you are involved in. In a rapid-moving operation with a lot of



1 information coming in, the human brain, in terms of their  
2 commander, can only process so much. So he needs to limit the  
3 number of units in his span of command. In an operation which is  
4 more slow moving he might be able to have many more units. So,  
09:47:48 5 for example, in a British brigade conducting manoeuvre operations  
6 you'd have three or four battalions in it, but in Northern  
7 Ireland where it is very much more static than a British brigade  
8 might have eight or 10 battalions in it. So that is the span of  
9 command. The chain of command is essentially the coherent  
09:48:10 10 hierarchy connecting one level of command to the next. So, as  
11 this diagram shows, the commander at level one commands a span of  
12 command with three subordinates at level two and each of those  
13 subordinates will themselves command a number of subunits. That  
14 is called the chain of command. So command level one commands  
09:48:35 15 command level two which commands command level three. That is  
16 essentially a very simple hierarchy which almost any organisation  
17 is in and that is what I'm looking at to see if the hierarchy  
18 exists in the AFRC, for example. Those are two of the criteria I  
19 looked at in terms of structure and hierarchy. The third one  
09:48:56 20 relates to the staff structure.

21 Now, the staff is a generic name we use for those officers  
22 and other personnel who support and assist the commander.  
23 Military operations are generally highly complex and no single  
24 human being, however talented, can possibly coordinate or  
09:49:21 25 understand the totality of the activity that is going on below  
26 him. To help him do this he has a staff, staff officers, if you  
27 like. These are frequently broken down into staff branches as  
28 they are called. If you look at the bottom of that same page,  
29 14417 in paragraph B3.4, it names five staff branches. These are

1 called G1 to G5. This follows NATO and US Army practice and  
2 these are extremely widely used across the globe today, these  
3 staff branches.

4 So G1 branch, for example, looks after personnel issues;  
09:50:14 5 everything to do with administration, recruitment, pay, welfare  
6 issues. G2 looks after the intelligence function, providing  
7 intelligence advice to the commander. G3 helps to run operations  
8 on behalf of the commander; he coordinates operational activity.  
9 G4 is responsible for logistics; ensuring, for example, that  
09:50:34 10 troops do not run out of ammunition during a battle. And G5 is  
11 called civil military relations.

12 I just need to make a note here, because in normal western  
13 armies, from my experience in the western armies and in NATO,  
14 this describes the activity between an army and, say, local  
09:50:57 15 government or local civilian organisations. I was quite  
16 surprised actually when I came here to find G5 was used in a very  
17 different sense. The G5 is essentially the staff branch  
18 responsible for looking after civilians, abducted civilians  
19 usually, and their care for -- deal with welfare and the tasking  
09:51:21 20 of abducted civilian who were used by these organisations. Those  
21 staff branches are all together in a staff and normally headed by  
22 a chief of staff in a military organisation. That chief of staff  
23 reports to the commander and provides him with all the assistance  
24 and advice that he needs.

09:51:44 25 The relationship between the commander and the chief of  
26 staff, of course, depends entirely on human relationships and  
27 whether they get on well or whether they don't, but usually it is  
28 a very close relationship and the chief of staff is normally one  
29 of the commander's most trusted advisors.

1 Q. Thank you, Colonel. I will go to the second point you  
2 mentioned that is required and that is: Did the group exhibit  
3 the characteristics of a traditional military organisation? My  
4 question is: What are the characteristics of a traditional  
09:52:23 5 military organisations?

6 A. Once again, there is no list. So we brainstormed the  
7 activities and we grouped them together and we came up with this  
8 list. One could come up with a different list, if you want, but  
9 actually we think this encompassed all the activities which you  
09:52:45 10 would undertake. You might break them out or group them in other  
11 ways, but basically we looked at intelligence processes,  
12 communications, the planning and orders and lessons learned and  
13 what we call doctrine development - the adaptability of an  
14 organisation to change. We looked at disciplinary systems,  
09:53:05 15 recruiting and training as a single characteristic, a system for  
16 promotions and appointments, logistics supply, including  
17 procurement, repair and maintenance of equipment, medical system,  
18 fund raising and finance, pay, reward systems for soldiers and  
19 then a religious and welfare system.

09:53:29 20 Q. Thank you, Colonel. You had answered this question, I  
21 think in part earlier, but again, to be clear, if any of these  
22 characteristics is missing, does that mean that the organisation  
23 does not qualify as a military organisation?

24 A. No, but we are looking for a majority of these  
09:53:45 25 characteristics to be here, I think.

26 Q. Thank you, Colonel. The third point you mentioned was, was  
27 there coherent linkage between static operational and tactical  
28 levels. Perhaps you could start by explaining what is meant by  
29 strategic, operational and tactical levels?

1 A. The goal of this particular question was to examine the  
2 internal coherence of the organisation. In other words, did the  
3 tactical activity on the ground support the political or  
4 strategic aims of the organisation. This is a most important  
09:54:28 5 test because if one can show that tactical activity on the ground  
6 was in support of the strategic and political goals of the  
7 organisation, then it is internally coherent throughout.  
8 Whereas, if the tactical activity was all at random and did not  
9 support the strategic goals, then you could say it was incoherent  
09:54:54 10 organisation.

11 Now the way that military organisations look at conflict is  
12 in these three levels: strategic, operational and tactical. The  
13 strategic level is at the military political level where we are  
14 looking at the political goals or aims of the organisation, such  
09:55:12 15 as, for example, to take over the government of Sierra Leone, for  
16 example. The operational level is the level at which we look at  
17 the planning of major military campaigns to achieve those  
18 political aims. The tactical level is the level at which the  
19 actual battles are fought, the tactical activity, you know, where  
09:55:36 20 the people on the ground are actually conducting activity to  
21 achieve the objectives of the campaign and hence the operation  
22 level and hence achieve the strategic aims. So those are the  
23 strategic, operational and tactical levels. What I was looking  
24 at was the coherence between these so we could map activity from  
09:56:01 25 tactical to operational to strategic level and back down again.

26 Q. Perhaps you could give an example, if you have one, of how  
27 this would operate on the ground, just so the Court has an idea?

28 A. The certainly. The example which I included in the report  
29 was of the Rhodesia/Zimbabwe war in 1970s where the guerilla

1 armies the ZIPRA and ZANLA had a strategic objective of taking  
2 over the government of Rhodesia or causing the collapse of the  
3 Smith regime in Rhodesia. At the operational level they had a  
4 number of objectives, one of which was to cause the collapse of  
09:56:46 5 the economy of the country. Since the economy was essentially an  
6 agriculture economy, they had to attack agriculture and so their  
7 tactical activity was to attack the white-owned farms and either  
8 kill or intimidate the farmers to withdraw and therefore  
9 undermining the agricultural economy and thereby contributing to  
09:57:16 10 the final political aim.

11 Q. Thank you very much, Colonel. I will now go to your the  
12 fourth point which was: "Was command effective?" Let me start  
13 by asking what does effective command mean?

14 A. First, we need to look at what does command mean. The  
09:57:32 15 model I used for command is the one that is used both in NATO and  
16 in the British Army, and I think is a very good model. It be  
17 encompasses three elements to it. There is decision making,  
18 there is leadership and control. Essentially decision making is  
19 deciding what to do; leadership is about getting your  
09:57:54 20 subordinates to do it; and control is about supervising its  
21 achievement. Together they encompass all of the activities which  
22 we regard -- which contribute to command. So what I did in my  
23 analysis was look at those three subordinate elements of command  
24 to see -- to map the effectiveness of leadership, decision making  
09:58:25 25 and control.

26 Q. Thank you, Colonel. Did you have opportunity to apply  
27 these tests to the AFRC?

28 A. I did.

29 Q. Did you come to any conclusions?

1 A. I did.

2 Q. Perhaps you could tell the Court what conclusions you came  
3 to.

4 MR KNOOPS: Your Honour, sorry. At this point of the  
09:58:48 5 examination-in-chief I would like to raise rather from the point  
6 which may affect the scope of the examination-in-chief of this  
7 witness. I have several fundamental objections to the line of  
8 examination-in-chief by the Prosecution also regarding to the  
9 competence of this witness to answer some of these questions. If  
09:59:15 10 Your Honours allow me to explain it to you, I think, Your  
11 Honours, there are five fundamental points of law which should  
12 preclude the Prosecution from examining this witness at least as  
13 far as concerns the fourth question of his questionnaire. I will  
14 come back to the other three questions.

09:59:44 15 In my humble submission, Your Honour, the fourth question,  
16 which is now put to this witness goes directly to the ultimate  
17 issue of the case. Your Honours are familiar with the decision  
18 of the Appeals Chamber in the Fofana case of 16 May 2005,  
19 paragraph 43 which reads that: "The elements required to  
10:00:23 20 establish responsibility under Article 6(3) of the Statute  
21 includes an assessment of whether an accused is in a position of  
22 superiority with effective command and control over subordinates.  
23 That is the first requirement to establish command  
24 responsibility."

10:00:47 25 Your Honours, are also familiar with the fact that the  
26 indictment in the paragraph 31 and 36 directly refer to the issue  
27 of exercising effective control over their subordinates. That is  
28 to be found in paragraph 36 of the indictment. It means that the  
29 fourth question which is put to this witness goes directly to the

1 ultimate issue of the case and should, therefore, be excluded  
2 from the examination-in-chief. It also leads to the conclusion  
3 that this witness cannot be examined in regards to the sections  
4 B6 and E5 of the report. These are, Your Honours, page B9 to B11  
10:01:48 5 and E6 to E8 at the least. There are two precedents from the  
6 ICTY which support my submission. The case of the ICTY in Kordic  
7 and Cerkez resulted in a decision of the Trial Chamber on 28  
8 January 2000. The transcript pages 13289 and 28825 till 20828  
9 [sic] directly relate to the same issue at stake. In that case,  
10:02:39 10 Your Honours, the prosecution called an military expert analyst  
11 and defence called a military expert. With respect to both  
12 experts the Trial Chamber excluded not only the reports of those  
13 experts but also their respective testimonies in chief. It is  
14 probably illustrative to have a brief look at the ruling of the  
10:03:10 15 Trial Chamber with respect to the OTP expert. This expert was  
16 drawing conclusions on the very matter upon the Trial Chamber was  
17 required to decide thus invading its province, according to the  
18 Trial Chamber. Even though the Prosecution was asserting that  
19 issues of command and control amount to a mixture of law and  
10:03:42 20 fact, the Trial Chamber --

21 JUDGE LUSSICK: Mr Knoops, look, I am sorry to interrupt  
22 you, but aren't we getting ahead of ourselves here? We don't  
23 know what evidence the Colonel is about to give. Surely he is  
24 entitled to give evidence of what constitutes effective command.  
10:04:08 25 He has not said he is going to name people. He is just giving  
26 the elements of effective command. That does not go to the  
27 ultimate issue.

28 MR KNOOPS: Your Honours, with all due respect, the  
29 Prosecution is asking to apply this criteria on the AFRC in this

1 case that directly affects the three accused.

2 JUDGE LUSSICK: Well, how do we know? We don't know what  
3 questions are going to come up. I do not think we can preclude a  
4 military expert from saying what constitutes effective command.

10:04:45 5 MR KNOOPS: That is why, Your Honour, I did not interrupt  
6 this witness during this general part B, but we now are crossing  
7 the line of going from the general part to the specific part.

8 JUDGE LUSSICK: What exactly? What specific matters are  
9 being raised?

10:05:01 10 MR KNOOPS: If I am correct, my learned counsel from the  
11 Prosecution is about to ask the witness to apply the criteria and  
12 his question on the AFRC, therefore on this case. This witness  
13 is about to give testimony on the ultimate issue of this case  
14 regarding these three accused. I am willing to wait with my  
10:05:27 15 objection until that specific question is put to this witness,  
16 but I thought it was more efficient to raise this point now.

17 JUDGE LUSSICK: Let me get clear. You are saying that the  
18 Prosecution can't lead any evidence whatsoever that would  
19 establish that the AFRC, as an organisation, may have had an  
10:05:55 20 effective command, notwithstanding that they may not mention any  
21 of the accused. Is that what you are saying?

22 MR KNOOPS: That is exactly what I am saying, because the  
23 indictment refers to the AFRC and the RUF and, as a derivative,  
24 the names of the three accused are mentioned specifically in the  
10:06:24 25 context of Article 6(1) and Article 6(3) of the statute. If the  
26 witness is going to give evidence about the existence of any form  
27 of effective control and command within the AFRC as a body, as an  
28 institution, it is quite clear that this will affect the ultimate  
29 issue of the three accused, because they are linked as alleged



1 commanders to the AFRC.

2 I have several other objections also relating to the  
3 ultimate issue of other matters, but I can wait with raising  
4 these objections to the proper moment. But I thought that now  
10:07:23 5 the Prosecution is asking directly to this witness to give his  
6 conclusions and also questions --

7 JUDGE LUSSICK: The question before us at the moment, is it  
8 not, that you are objecting to a question from the Prosecution to  
9 this witness to the effect that, "Has the witness applied these  
10:07:51 10 tests that he has just mentioned - that is, decision-making,  
11 leadership, control - to the AFRC"? You are objecting to that  
12 question; is that correct?

13 MR KNOOPS: I am objecting to the question of the  
14 Prosecution to inform the Chamber about the conclusions of the  
10:08:12 15 witness applying the tests he just described on the current case.  
16 It is my understanding that the Prosecution is asking the witness  
17 to summarise his conclusions of the report. The report in B6 and  
18 E5, by the way, do not only mention the AFRC but also refer to  
19 the commanders of the AFRC. So the report and the answers of the  
10:08:45 20 witness given in his report exceed actually the scope of the  
21 matter; the matter being that only the AFRC is about to be  
22 connected to the fourth question. So, with all due respect, I  
23 still believe that this is a violation of the ultimate issue  
24 rule, and I believe that the precedents I just referred to are in  
10:09:24 25 support of this.

26 JUDGE LUSSICK: Look, I must say, Mr Knoops, I don't see  
27 your point, but perhaps we should hear you out. You had reached  
28 that part in your submission where you were referring to the  
29 Kordic case. Can you go on from there?

1 MR KNOOPS: Yes, thank you, Your Honour. I will try to be  
2 brief, because I made quite some notes with respect to this  
3 report. I was informing the Chamber about the fact that both OTP  
4 experts and defence experts were excluded from giving testimony  
10:10:08 5 on the issue of command and control. Your Honours, the witness  
6 himself just testified that all these issues in area of judgment,  
7 and the witness in his report, in B1.4, clearly has written that  
8 he compared the evidence presented, Prosecution's evidence to be  
9 understood, formed an opinion and --

10:10:53 10 JUDGE LUSSICK: What was that reference again to the  
11 report? B1.4?

12 MR KNOOPS: Yes, Your Honour.

13 JUDGE LUSSICK: What page of the report?

14 MR KNOOPS: Page B1, Your Honour, at the bottom of the  
10:11:09 15 page. It is in the introductory paragraph.

16 JUDGE LUSSICK: I have it, thank you.

17 MR KNOOPS: Here the witness states that judgment will be  
18 required and also reference is made to the question of whether  
19 effective command was being exercised. Furthermore, the witness  
10:11:44 20 has on several occasions in his report given opinion on the issue  
21 of military justifications. For instance, on page D17. For  
22 instance, on page E6, where he goes into the justification of  
23 burning of houses in military terms; and on page E7 he clearly  
24 and unequivocally says, I quote: "It can be seen that results of  
10:12:27 25 the four tests of whether the AFRC was a military organisation in  
26 the traditional sense and whether command responsibility exists  
27 are..." and then he comes up with his conclusions, also referring  
28 to commanders. Your Honours, going back now to the rulings of  
29 the Trial Chamber of the ICTY, it is interesting to note that in

1 the Kordic and Cerkez case, the Chamber excluded the evidence in  
2 this regard from a defence expert, reasoning that it totally  
3 relied on the defence evidence. Here this witness relied on the  
4 evidence of the Prosecution.

10:13:17 5 Second, the witness in that case didn't visit any sites  
6 during the conflict himself. Third, in that case the Prosecution  
7 was not able to explore the documents and interviews conducted by  
8 that expert while writing his report. It is also a similar issue  
9 here. Fourth, the Chamber said that this witness merely made  
10:13:44 10 sweeping conclusions without an analysis of all the evidence. I  
11 think this is also an issue which is under scrutiny here.

12 Now, the Chamber excluded these expert reports of this  
13 military historian saying that it purports to deal with the  
14 ultimate issues in the case. That is to be found on page 20825  
10:14:11 15 of the transcript. The Chamber also gave several examples of  
16 such issues, and referred to issues relating to the  
17 responsibility for attacks on various villages, but also whether  
18 these villages were defended; i.e., whether military  
19 justifications existed or not. If Your Honours would have a  
10:14:44 20 brief look through the report, I think the whole report goes into  
21 also the responsibility for crimes. The witness just testified  
22 that he was not interested in crime. That was also the ruling by  
23 Trial Chamber I in the CDF case, where the same witness was not  
24 allowed to testify on any crime matters. Transcript 14807, 14808  
10:15:20 25 and 14765 of the CDF transcript.

26 JUDGE SEBUTINDE: Mr Knoops, before you proceed, where in  
27 this report? If you could cite where the witness refers to  
28 crimes it would be helpful.

29 MR KNOOPS: Yes, Your Honour. There are least seven

1 occasions where this witness goes into the ultimate issue  
2 trespassing his competence with respect to responsibility for  
3 crimes. First of all, page C9, where he refers to beating,  
4 incarceration and the responsibility thereof to **Five-Five**.  
10:16:04 5 Secondly, on page C8.

6 JUDGE SEBUTINDE: Would you refer to the paragraphs,  
7 please, not just the pages?

8 MR KNOOPS: Yes, Your Honour. The first one is C3.30.  
9 Then I refer Your Honours to C3.8; there is paragraph C3.9,  
10:17:14 10 speaking about responsibility for security and the management of  
11 abducted civilians. C6, paragraph C3.2, referring to the use of  
12 child soldiers, the choices the AFRC apparently had to make the  
13 run such training, which goes directly to paragraph 34 of the  
14 indictment. Then, Your Honours, there is page D17, paragraph  
10:18:04 15 D5.4, where the witness literally says, "But I suspect that the  
16 truth is more simply that abductions were now common practice for  
17 the AFRC." The witness there goes into a deliberate policy with  
18 respect to the damage to Freetown during the retreat. Then the  
19 witness says, "There can be little military justification for  
10:18:47 20 what happened. It appears to have been a policy driven more by  
21 spite than any military need." I think this passage is  
22 self-evident. Then D10, and that is the paragraphs D3.5 till  
23 D3.11, including D3.12, where the witness goes into the looting  
24 on part of the AFRC, referring to orders which were given by  
10:19:36 25 **O-Five**. Then D16, that is paragraph D5.2, going into the  
26 ordering of the burning of Freetown, ordered by **Mosquito and**  
27 possible Charles Taylor. Then finally, Your Honours, it is E4,  
28 the fourth column from above, headed by "Fundraising and  
29 finance", the third sentence --

1 JUDGE SEBUTINDE: What was the paragraph?

2 MR KNOOPS: Sorry, Your Honour. That is the paragraph  
3 starting with E3.1, where the witness goes into the  
4 identification of the 13 functions. The second page thereafter  
10:21:20 5 mentions in the fourth column, "Fundraising and finance". The  
6 third sentence, quote: "There is some evidence of AFRC diamond  
7 mining while in the Koidu area. But this is more likely to be  
8 private enterprise by the officers than collective fundraising."  
9 Also here, the witness goes directly to the ultimate issue of the  
10:21:47 10 indictment paragraph 33. As Your Honours know, in paragraph 33  
11 of the indictment, the AFRC is directly linked to alleged mining.  
12 So we have the witness, who was not called as an expert on these  
13 issues going into beating, incarceration, abductees, child  
14 soldiers, abductions, looting, burning and mining. And in all  
10:22:17 15 regards, the witness is giving opinions on these issues, which  
16 can clearly not be seen as to be part of his competence. I refer  
17 Your Honours also to the rulings of the ICTY, where it said that,  
18 "An expert is prohibited to usurp or take over the role of the  
19 Trial Chamber, he is not allow to dwell on conclusions or  
10:22:58 20 speculate speculations which are clearly outside the scope of his  
21 expertise." It is for Your Honours as a Trial Chamber and not  
22 for an expert to make factual findings and inferences on the  
23 evidence. To go shortly back to some other examples, I have  
24 already referred Your Honours to paragraph D5.4 on the military  
10:23:42 25 justifications.

26 PRESIDING JUDGE: Just pause, Mr Knoops, please.

27 [Trial Chamber conferred]

28 PRESIDING JUDGE: Continue, Mr Knoops. You have been  
29 addressing on opinion. We have made notes. Are there other

1 matters you are raising?

2 JUDGE LUSSICK: You were up to paragraph D5.4.

3 MR KNOOPS: Yes, Your Honour. Well, I have lots of  
4 examples, but I will limit my resumé. There is one other  
10:26:30 5 example, Your Honours, which I think is illustrative. It is  
6 paragraph E4.4, starting from the third sentence from below, in  
7 paragraph E4.4 reading: "Although it is impossible to justify  
8 some of actions such as house burning in military terms, most of  
9 the remaining tactical activities were clearly linked to escaping  
10:27:14 10 and ensuring organisational survival." This is in line with the  
11 ruling of the Trial Chamber in the Kordic case, goes to the  
12 ultimate issue, because the Trial Chamber in the Kordic and  
13 Cerkez case said that the question whether villages are defended  
14 or not defended, also in military terms, go indirectly also to  
10:27:35 15 the ultimate issue of a case, which is clearly not within the  
16 scope of the military expert. Surely not a military expert who  
17 is not called to testify on these issues, but is clearly a matter  
18 for the Chamber to decide whether any of the justifications under  
19 international law apply in the instant case.

10:28:01 20 Furthermore, Your Honours, I already draw your attention to  
21 the fact that the witness also dwells on opinions and  
22 conclusions. Just an example, that is paragraph C2.7, third  
23 sentence from below, within that paragraph, saying, "It is  
24 different to decipher Musa's real motivation to split from the  
10:28:59 25 main group. It is my opinion, based on other decisions that Musa  
26 made that he preferred a more independent role than being under  
27 the command of AFRC leaders." This is also clearly outside the  
28 scope of the expertise of the witness. He is, I think, not a  
29 psychologist here to give testimony in chief. In any event, this

1 is an issue which belongs to the discretionary decision-making  
2 process of the Honourable Trial Chamber.

3 C.6, that is paragraph C3.2, saying, "The AFRC had little  
4 choice but to run such training", going into issue of the use of  
10:30:03 5 child soldiers. Then C.10, that is paragraph C4.2, the witness  
6 says, "I consider it likely that Musa always intended to rejoin  
7 and to take command of what was by now the main AFRC force in  
8 Sierra Leone." If Your Honours would look at the fourth  
9 sentence, the witness asserts there that, "There is some  
10:30:41 10 indication that Gullit tried to maintain command of the force and  
11 to make Musa his subordinate when he arrived." This, of course,  
12 goes directly to the ultimate issue of the case. By saying so,  
13 the expert is usurping the role of the Trial Chamber within  
14 international criminal law and he is taking over the position as  
10:31:07 15 judge. That was exactly the objection of the Defence in the  
16 Kordic case, where the Defence says, "If we would allow these  
17 kinds of reports and statements then the Chamber would be  
18 confronted with a phenomenon of closing arguments of the  
19 Prosecution replacing the role of the judge", and especially when  
10:31:39 20 we consider the language used by this witness in his report.

21 To conclude my submissions, Your Honour, and to summarise,  
22 because I have a lot of other examples, but will be brief on this  
23 topic, the Trial Chamber therefore did not accept this report of  
24 this military historian as being from an independent source, but  
10:32:12 25 a report that simply set out in this instant case a Defence, and  
26 that it read like "sustained advocacy and not the independent  
27 report of an expert". Finally, Your Honours, there is the  
28 decision of the Appeals Chamber in Delalic et al of 20  
29 February 2001, paragraph 594 of the ruling of the Appeals

1 Chamber, where the Chamber said that "an expert opinion is  
2 relevant only if the facts upon which it is based are true."

3 "It is for the Trial Chamber and not for the expert to  
4 determine whether the factual basis for an expert report is  
10:33:08 5 truthful. That determination is made in the light of all  
6 the evidence given. Notwithstanding their experience,  
7 experts do not have the advantage of that evidence."

8 [AFRC12OCT05B - EKD.]

9 And if Your Honours take a look at the transcripts of the  
10:33:20 10 CDF case where this witness was examined, especially pages 14794  
11 and 14795, the witness clearly accepted that there were  
12 inconsistencies, "but I was able to clarify or to form a judgment  
13 in my own mind, re-creating the incidents at that time". He used  
14 himself the words "re-creating the incidents", and he also  
10:33:58 15 accepted that you never get a complete story; you can never have  
16 access to everything. That was testified by this witness in the  
17 CDF case.

18 And therefore, Your Honours, based on all these arguments  
19 and examples, which are not exhaustive, by the way, I strongly  
10:34:22 20 object against the admission of any evidence-in-chief of this  
21 witness which goes to at least the answer to question number 4,  
22 and therefore the sections B6 and E5 of the report. In addition,  
23 the other sections I just enumerated, all the examples, which go  
24 directly to the ultimate issue insofar as it relates to any  
10:34:55 25 responsibility for crimes under the current indictment, either  
26 AFRC related or to any individual related inclusive of any  
27 individual of the RUF. Because now, according to this  
28 indictment, RUF and AFRC are linked within the concept of a joint  
29 criminal enterprise, it is clear that such testimony of this



1 expert will also affect the indictment in this regard.

2 And if Your Honours, for instance, have a look - and that  
3 is my last remark - to paragraph E2.1 of the report, third  
4 sentence, "Previously AFRC force had been integrated into the  
10: 35: 55 5 joint RUF/AFRC command structure." Therefore, the witness also  
6 touches upon the issue of a joint command structure, which is to  
7 be envisioned in paragraph 33 of the indictment.

8 Thank you.

9 JUDGE LUSSICK: I have considered your submissions,  
10: 36: 29 10 Mr Knoops. I take it you are objecting to questions that have  
11 not yet been asked. You are saying that if these questions are  
12 asked, you will object. Is that what you are saying?

13 MR KNOOPS: Yes, Your Honour. But my primary objection is  
14 that the witness was about to give an answer to the Prosecution  
10: 36: 48 15 on the application of his tests to the AFRC, inclusive  
16 question 4.

17 JUDGE LUSSICK: Yes, that question did ask for a  
18 conclusion.

19 MR KNOOPS: The summary I just gave to Your Honours was  
10: 37: 06 20 also meant to indicate that these objections are fundamental, and  
21 I think it would be quite ineffective to every time raise an  
22 objection to specific line from the report. We as Defence could  
23 be too late with signaling Your Honours to that specific  
24 objection. That is why I thought that it would be more efficient  
10: 37: 34 25 if Your Honours would take principled stand before we continue  
26 with the examination-in-chief. If Your Honours are able to  
27 clearly define the scope of the examination-in-chief with my  
28 objections in mind, presupposing that they bear any merit, I  
29 think the examination-in-chief of the witness could be prolonged

1 without constant interruptions from the Defence. That was the  
2 reason for my lengthy submission.

3 JUDGE LUSSICK: Thank you, Mr Knoops. We don't know at  
4 this stage -- we will hear from the Prosecution. But we don't  
10: 38: 20 5 know at this stage just how much of that report they are going to  
6 rely on in any event, in view of the fact that the report has  
7 already had an airing apparently in Trial Chamber I. Anyway,  
8 thank you, Mr Knoops.

9 MR KNOOPS: Much obliged.

10: 38: 38 10 PRESIDING JUDGE: Ms Ngunya, your reply to counsel's  
11 objections.

12 MS NGUNYA: Your Honour, Ms Pack was going to respond.

13 PRESIDING JUDGE: Yes, Ms Pack.

14 MS PACK: Thank you, Your Honour. If I can just deal with  
10: 38: 53 15 what I take to be the objections raised by my learned friend.  
16 Dealing with the first point raised, which is the expectation  
17 that the Prosecution will be asking question as to this witness's  
18 conclusion contained in paragraph E5.5 of his report at 14466,  
19 under the heading question "Was command in the AFRC effective?"  
10: 39: 32 20 Yes, those are questions that the Prosecution will be asking of  
21 this witness. I will deal with that objection.

22 This witness is being asked to deal with the AFRC faction  
23 and command in that faction. That is what he is looking at.  
24 What Your Honours are deciding as the ultimate issue in this case  
10: 39: 50 25 is the individual criminal responsibility of these three accused,  
26 as his Honour Justice Lussick identified.

27 Paragraph 36 of the indictment, to which my learned friend  
28 Mr Knoops referred, of course, deals with the command  
29 responsibility of the three accused and what is alleged in

1 paragraph 36 of the indictment is specifically this: "In  
2 addition, or alternatively, pursuant to Article 6.3 of the  
3 Statute, **Alex Tamba Bri ma, Ibrahim Bazzy Kamara and Santi gi e**  
4 **Borbor Kanu**, while holding positions of superior responsibility  
10: 40: 31 5 and exercising effective control over their subordinates, are  
6 each individually criminally responsible for the crimes referred  
7 to", and so on. My learned friend suggested that what is alleged  
8 in the indictment, or what is put, is that these accused are  
9 responsible, as his words "derivative names" -- what my learned  
10: 41: 01 10 friend in fact said was that the indictment refers to the AFRC  
11 and the RUF and as derivative names of the accused are mentioned.  
12 That isn't clearly the case. The organisations aren't on trial,  
13 Your Honour; the individuals are on trial. So there is  
14 absolutely no question of this witness answering the ultimate  
10: 41: 20 15 issue in the case, which goes to the individual responsibility of  
16 these accused in this case.

17 Dealing with the points raised in relation to the Norman et  
18 al trial, and the matters that were raised on that transcript at  
19 that trial. Your Honours, the question in that trial as to  
10: 41: 47 20 whether command in the CDF was effective, as I understood it,  
21 that line of questions was permissible in that case.  
22 Colonel Iron was called in that case to deal with, again,  
23 effectiveness of the CDF faction as an organisation and not to  
24 answer questions on the ultimate individual responsibility of the  
10: 42: 13 25 three accused in that case. Of course, he was allowed to proceed  
26 to deal with those matters which he had addressed in his report  
27 and which he then gave evidence-in-chief in relation to. There  
28 were very specific objections put in questions in  
29 cross-examination, I think, on the applicability of the Geneva

1 Conventions; that was one question put. There was an objection  
2 and Colonel Iron wasn't permitted to answer that question. But  
3 clearly, that question wasn't a matter which he was called to  
4 deal with and able to deal with.

10:42:57 5 So far as the Kordic and Delalic cases are concerned, I  
6 don't have them with me at the moment, so I am unable to address  
7 specifically those paragraphs of aspects of those decisions to  
8 which my learned friend has referred. But one issue which my  
9 learned friend referred in relation to the Kordic case I can deal  
10:43:18 10 with now. My learned friend quoted a part of the Kordic Trial  
11 Chamber decision which found that the military historian called  
12 by the defence in that case was not independent, and that his  
13 report amounted to sustained advocacy on the part of the defence,  
14 and that, therefore, the report wasn't the report of an  
10:43:40 15 independent expert. If that is being suggested of this expert,  
16 that cannot possibly be right. If it is something my learned  
17 friend wants to put then he might want to put it in  
18 cross-examination, but that cannot possibly be the suggestion of  
19 this expert, who has been taken through by my learned friend in  
10:43:58 20 detail aspects of his curriculum vitae and the methodology by  
21 which he created his report. His expertise as a military expert  
22 and his independence as a military expert cannot possibly be in  
23 doubt. Insofar as that is being challenged by my learned friend,  
24 in my submission he is quite wrong to be making that suggestion.

10:44:20 25 My learned friend has gone through in some detail various  
26 sentences in various parts of the report that mention aspects of  
27 abductions and so on, burning, that were part of the narrative  
28 that this expert sets out in then going on to deal with very  
29 specific matters that are relevant to his expertise and his

1 expert judgment. What this expert deals with is the military  
2 perspective. The reason why he is looking at factual matters is  
3 to ascertain from his military perspective how those factual  
4 matters fit in to the judgment that he has to make as to this  
10:45:07 5 organisation that he is dealing with, the AFRC faction, and the  
6 effectiveness of command in that faction, and so on, and the  
7 answers to four tests that he has identified, along with other  
8 experts in his field as being the tests used in order to answer  
9 the question he was asked to deal with by the Prosecution. My  
10:45:30 10 learned friend has gone through in enormous detail the various  
11 aspects in which he suggests Colonel Iron has been, insofar as  
12 the crimes are concerned, drawing judgments or making conclusions  
13 as to the ultimate issues on the crimes. It is not the case that  
14 is what is being done or will be asked of Colonel Iron in  
10:45:51 15 questioning. It is certainly not the case that the report  
16 purports to reach conclusions, judgments, as to these accused's  
17 individual responsibility for crimes. Those parts of the report  
18 that my learned friend cited, on my reckoning as I went through  
19 and each of those paragraphs were quoted, didn't contain any  
10:46:13 20 reference to any individual responsibility, criminal  
21 responsibility, on the part of any one of these accused for those  
22 matters which he was dealing with as part of the narrative in  
23 identifying what facts he was relying upon in writing his report.  
24 It is quite right that Colonel Iron should go through that  
10:46:37 25 narrative so that Your Honours are aware of the factual  
26 foundation upon which he has built his conclusions on the  
27 military aspects of the case. But none of those paragraphs names  
28 an accused. The latter paragraph to which my learned friend  
29 refers - the paragraph that I had mentioned **Gullit** as maintaining

1 command - that does not purport to be judgment or conclusion as  
2 to the ultimate responsibility of that individual for crimes  
3 alleged in the indictment. And the fact of references to use of  
4 child soldiers and so on and so forth is no bar to any of this  
10: 47: 26 5 evidence going in the report because of how that material is  
6 being used and because it does not go to the ultimate  
7 responsibility of these accused in this case.

8 One further matter that was raised by my learned friend was  
9 about sources, again I haven't got the Kordic decision with me,  
10: 47: 49 10 but one part of it that was relied upon by my learned friend I  
11 think, and I am paraphrasing, was that apparently the prosecution  
12 in that case had not been able to explore the documents and  
13 interviews of a defence expert. But the witness in that case had  
14 made sweeping conclusions without analysis of all the evidence.  
10: 48: 14 15 There are no sweeping conclusions in this report, Your Honours,  
16 and there is plentiful analysis.

17 So far as exploration of documents and interviews by my  
18 learned friends for the Defence are concerned, my understanding  
19 is - but it may be Colonel Iron will be able to assist on this -  
10: 48: 28 20 that he has notes with him to which counsel for the Defence may  
21 refer -- to which he may refer in giving evidence and, if  
22 necessary, which may be shown to counsel for the Defence during  
23 the course of the testimony. That obviously wasn't material that  
24 was in the possession of the Prosecution and therefore not  
10: 48: 54 25 disclosed to the Defence, but it being with Colonel Iron now, as  
26 I understand it, it is something to which of course counsel for  
27 the Defence may have reference.

28 In any event, Colonel Iron has made clear during his  
29 testimony that what he has also relied upon, apart from his own

1 personal conversations with individuals, including prosecution  
2 witnesses but also others including a British military officer  
3 who was in Freetown during the 6th January invasion -- what he  
4 has also relied upon is testimony which of course my learned  
10: 49: 26 5 friends all have access to so there is no surprises there as to  
6 what material Colonel Iron is relying upon there.

7 Your Honour, questions have not yet been asked by my  
8 learned friend of this witness, so this is all preempting rather  
9 what it is this witness will be dealing with and I make these  
10: 49: 45 10 submissions now dealing with the broad objections raised. But in  
11 my submission, in the first instance there isn't a specific  
12 objection raised to a specific question and the objection is  
13 premature insofar as it presupposes or speculates what it may be  
14 that the Prosecution will be asking of this witness. But dealing  
10: 50: 04 15 with that very broad proposition that insofar as this witness  
16 deals with the question, the fourth question that he has posed in  
17 his report, he will be dealing with that question but he won't be  
18 seeking to make judgments as to the individual criminal  
19 responsibility of these accused.

10: 50: 21 20 At this stage this is the only way I am able to deal with  
21 this objection, save to say that at a later time it may be  
22 appropriate for the Prosecution to refer to the Kordic and  
23 Delalic cases when at such time we have had an opportunity to  
24 look at those authorities.

10: 50: 38 25 PRESIDING JUDGE: Thank you, Ms Pack. Points of law,  
26 Mr Knoops.

27 MR KNOOPS: Yes, Your Honour, very briefly. First point of  
28 law: If the AFRC, as such, as an organisation would not have  
29 effective command in view of this expert, would that still take

1 away the individual or command responsibility for the individuals  
2 mentioned in the indictment since the allegation is by omission  
3 or commission? I think this is clearly to be distinguished.  
4 Therefore the point of law of my learned colleague that it is  
10:51:18 5 merely the AFRC as an organisation mentioned in the report and  
6 Colonel Iron only referring to the AFRC in the context of  
7 effective command is, I think, not a valid suggestion.

8 Second, in the CDF case were no objections raised by  
9 Defence counsel indeed with respect to the fourth question? I  
10:51:43 10 have gone through the transcripts and I didn't notice any  
11 objection of any of the Defence counsel for specifically this  
12 fourth question. But does that take away the assumption of the  
13 Prosecution that therefore the line of questioning was  
14 appropriate? I still believe that the CDF case also focuses on  
10:52:08 15 quite a different ratio materiae and that the structures,  
16 whichever structures may have been, are quite different perhaps  
17 from this case. So to make a comparison with the fact that in  
18 the CDF case Colonel Iron was allowed to answer questions on this  
19 fourth issue I think is not a valid point of law.

10:52:36 20 Third, sustained advocacy. While we are not challenging  
21 the expertise of Colonel Iron as such, we are challenging the  
22 fact that he in his submissions relied totally on OTP evidence.  
23 That no individual was mentioned in the report is not correct.  
24 In paragraph C3.13, "Discipline for the women was dispensed by  
10:53:04 25 the **mami e queen** who was responsible to Five-Five." I cannot  
26 quote it more clearly than it reads, Your Honour.

27 Fifth, sweeping conclusions, yes. If Your Honours read  
28 into paragraph E6.2, that is the last page of the report, it  
29 concludes this report by saying, fourth sentence from below,



1 "Nevertheless the blame for the failure of 6th January lies  
2 entirely with the senior commanders." I think this is quite a  
3 sweeping conclusion for an expert witness, an expert witness who  
4 is here to testify on military structures. Thank you.

10:54:01 5 PRESIDING JUDGE: Thank you, Mr Knoops.

6 JUDGE LUSSICK: We are going to have to deliberate on this  
7 and the Trial Chamber is faced with the difficult task of  
8 determining what questions are admissible and what questions are  
9 not admissible when those questions have not yet been asked, but  
10:54:29 10 we will take into account what Mr Knoops has put to us.

11 Just one other matter I wanted to mention. Both  
12 prosecution counsel have referred to notes that the witness has  
13 that they wish him to refer to. Well, I think both counsel are  
14 aware that a witness cannot refer to any notes whatsoever. There  
10:55:00 15 are certain limitations as to the notes on which he can refresh  
16 his memory, and no such questions have ever been asked to bring  
17 those notes into the allowable category. I will just point that  
18 out. That is something that we have noticed missing so far when  
19 the Prosecution seeks to qualify those notes.

10:55:26 20 MS PACK: Yes, Your Honour. Just simply to make clear, my  
21 understanding was that those notes are available, should they be  
22 used to refresh memory, for the Defence to look at. Because I  
23 think there was a suggestion that there was nothing available for  
24 the Defence to consult should this witness need to refer to  
10:55:47 25 memory refreshing documents.

26 PRESIDING JUDGE: Yes, Ms Pack but, as my learned brother  
27 has pointed out, there is more than one aspect to that. There is  
28 the actual introduction of the notes and that was not done, as  
29 has already been pointed out.

1           We will deliberate on this matter and we will also note it  
2 is just past the time for the usual mid-morning break for counsel  
3 and accused and we will therefore adjourn for -- just pause,  
4 please. We will advise the Court Attendant when we are ready to  
10:56:25 5 resume, having deliberated on this.

6           MR KNOOPS: Your Honour, I'm sorry, just to make it utterly  
7 clear, we as Defence, we did not ask for these notes. We just  
8 observed that this was one of the elements in one of the  
9 decisions of the Trial Chamber. The Defence is not asking for  
10:56:46 10 access to these notes. It is not being put by us. We just  
11 observe that this was one of the aspects in the Chamber's  
12 decision as one of the many factors. Thank you.

13           JUDGE LUSSICK: I didn't understand the Defence to be  
14 asking for the notes. I was merely pointing out that the  
10:57:06 15 Prosecution wanted the witness to refresh his memory from those  
16 notes without asking any questions about what sort of notes they  
17 were.

18           MR KNOOPS: That was my understanding, indeed, of your  
19 remark. Much obliged.

10:57:19 20           PRESIDING JUDGE: Please adjourn court temporarily.

21                                           [Break taken at 10.57 a.m.]

22                                           [Upon resuming at 11.50 a.m.]

23           PRESIDING JUDGE: The decision of the Trial Chamber on this  
24 objection will be read by my learned colleague Justice Sebutinde.

11:49:42 25                                           [Ruling]

26           JUDGE SEBUTINDE: The following is the ruling of the Trial  
27 Chamber, having listened to submissions on both sides. The  
28 question asked just before the Defence objected was: "Thank you,  
29 colonel. Did you have an opportunity to apply these tests to the

1 AFRC and did you come to any conclusions?" That was the question  
2 to which the Defence objected, primarily on the ground that the  
3 answer thereof does or would go to the ultimate issues before the  
4 trial. We are of the view -- first of all each of the accused  
11:50:25 5 persons in this trial is charged with superior criminal  
6 responsibility, as defined under Article 6(3) of the Statute of  
7 the Special Court. The elements required to establish this  
8 responsibility include an assessment of whether an accused is in  
9 a position of superiority with effective command and control over  
11:50:46 10 his subordinates and knew or had reasons to know of their acts,  
11 et cetera, thus establishing the chain of command. It is our  
12 view therefore that establishing the chain of command is an  
13 element that is inextricably linked with individual criminal  
14 responsibility of each of the accused indictees, which in turn is  
11:51:11 15 the ultimate issue, or one of the ultimate issues, in this trial.

16 We are of the view that the Defence objection raises a  
17 fundamental point, which is that what this witness is effectively  
18 doing is to provide an opinion or conclusion upon the very matter  
19 upon which the Trial Chamber is going to have to rule; namely,  
11:51:37 20 whether there was effective command and control appertaining  
21 within the AFRC during the period in question when certain acts  
22 were allegedly committed, either by the accused persons or their  
23 alleged subordinates. We therefore uphold the Defence objection  
24 to the question read out at the beginning and rule that the  
11:51:57 25 Prosecution cannot ask that question.

26 PRESIDING JUDGE: Proceed, Ms Ngunya.

27 MS NGUNYA: Thank you, Your Honour.

28 Q. I will proceed to another line of questioning, witness.

29 Witness, my next question is: Did your study cover any

1 particular period of time?

2 A. Yes, I started the study in February -- the time scale of  
3 the study extended from February 1998, which was the time of the  
4 ECOMOG intervention, through until the subsequent withdrawal from  
11:52:38 5 Freetown a year later, in February 1999. So about 12 months  
6 coverage.

7 Q. Witness, how did you go about examining this time period?

8 A. What I did was I split it into time chunks, if you like.  
9 There was the time starting with the withdrawal from Freetown,  
11:53:02 10 the move with the RUF into Kono District of many of the AFRC  
11 fighters, the subsequent withdrawal from there of most of the  
12 AFRC fighters up into the Northern Jungle, which is where we  
13 start seeing the formation of what I subsequently call the "AFRC  
14 faction", and the establishment of this faction in the  
11:53:27 15 Northern Jungle. So I include all that in one time frame, and  
16 also including the movement south towards the Freetown peninsula.  
17 The second half of my time frame was the operations in Freetown  
18 peninsula, the attack on Freetown itself and the subsequent  
19 withdrawal.

11:53:46 20 Q. Colonel, you used a phrase there, "AFRC faction". Could  
21 you perhaps explain what this means?

22 A. Yes, I found I needed to use an expression such as this to  
23 distinguish it from the AFRC more generally. The "AFRC", the way  
24 I have used is to describe the organisation principally made up  
11:54:11 25 of ex-SLA soldiers, drawing after the ECOMOG intervention,  
26 excluding the RUF. I then use the term "RUF/AFRC" to include the  
27 forces when they were both operating together and, indeed, after  
28 many of the AFRC soldiers left into the Northern Jungle to  
29 account for the fact that with the RUF there were still AFRC

1 elements throughout the whole of this year. And the "AFRC  
2 faction" I then use to describe those members of the AFRC that  
3 withdrew from Kono up into the Northern Jungle, subsequently  
4 reinforced and planned and executed the attack on Freetown on the  
11:54:56 5 6th January 1999.

6 Q. Colonel, at this point I would like to find out, are these  
7 points included in your report?

8 A. They are; they're on page 14414, which is part A, paragraph  
9 A.4.

11:55:15 10 MS NGUNYA: With Your Honours permission, I would like to  
11 tender the report, as we will be making reference to it in  
12 sections.

13 PRESIDING JUDGE: Mr Knoop, are you replying on behalf of  
14 the Defence to the application to tender?

11:55:35 15 MR KNOOPS: Your Honours, we at this stage object against  
16 tendering of the report. As Your Honours may have noticed, the  
17 Defence, prior to your Your Honours' ruling, raised some  
18 fundamental arguments against the report, inclusive also the fact  
19 that the report elaborates, in our view, on other ultimate  
11:56:05 20 issues. So tendering the document at this stage seems to us  
21 premature as we are not sure what other portions of the report  
22 are going to be used in the examination-in-chief. So we would  
23 suggest to Your Honours that the decision on the acceptance of  
24 this document as an exhibit could be delayed until after the  
11:56:35 25 cross-examination by the Defence.

26 PRESIDING JUDGE: Is that objection raised on behalf of all  
27 three accused defence teams?

28 MR KNOOPS: I will just confer with my colleagues, if I  
29 could have one second please.

1 PRESIDING JUDGE: Certainly.

2 [Defence counsel conferred]

3 MR KNOOPS: My colleagues concur with my view that we  
4 should object against the report. If Your Honours would seek  
11:57:28 5 further clarification, in addition to what we already put forward  
6 to the Honourable Trial Chamber in our preliminary objection, we  
7 would like to do so preferably in the absence of the witness.

8 PRESIDING JUDGE: Allow me to confer, please, Mr Knoops.

9 MR KNOOPS: Thank you.

11:57:49 10 [Trial Chamber conferred]

11 PRESIDING JUDGE: We uphold the objection. The report will  
12 be marked for identification pending cross-examination.

13 MR KNOOPS: Much obliged, thank you, Your Honour.

14 PRESIDING JUDGE: I think we are back to MFI1, I think,  
11:58:28 15 Madam Court Attendant, or is it MFI2?

16 MS EDMONDS: One.

17 PRESIDING JUDGE: MFI1, please.

18 MS NGUNYA: Thank you, Your Honour.

19 Q. Witness, earlier you stated you broke up your research into  
11:58:47 20 four broad phases at the beginning and four other phases during  
21 the invasion of Freetown. Perhaps the best way for me to go  
22 about to is to break it down one by one. The first phase you  
23 mentioned was the retreat from Freetown and the formation of the  
24 AFRC faction, resulting in the split from RUF and AFRC. My  
11:59:11 25 question is, Witness: During this period was there an  
26 identifiable hierarchy in the structure?

27 A. Initially, as the forces retreated from Freetown, there was  
28 very little in terms of structure. There was still an  
29 identifiable hierarchy, since officers were still officers. The

1 senior members of the AFRC government still held high positions  
2 and they still retained authority. But in the complete chaos of  
3 that withdrawal, and essentially it was a rout, all structure  
4 broke down. The force eventually managed to get together with  
12:00:05 5 the RUF, eventually managed to get to safety in Masiaka, where  
6 they remained a number of days. Here we see for the first time  
7 some semblance of organisation being re-created. But I think the  
8 most important step is when they moved then to Makeni, into Teko  
9 Barracks in Makeni, where they stayed several days more. There,  
12:00:32 10 for the first time, we start seeing, for example, muster parades,  
11 parades each morning with men under their officers being formed  
12 up in ranks and with identifiable bodies and structures being  
13 once again created. At this stage, the AFRC is essentially a  
14 unitary body within the RUF/AFRC force, and that is how they are  
12:01:00 15 when the attack on Koidu takes place. And during the month or  
16 two that they are in Koidu Town, the AFRC force, as it is, is  
17 primarily in one area operating as one body under this joint  
18 AFRC/RUF command in Koidu.

19 Subsequently, when the AFRC faction is created by the  
12:01:29 20 withdrawal of AFRC forces from Koidu, as ECOMOG advanced and the  
21 RUF moved into the jungle, we see the first, I think, elements of  
22 what became the brigade structure. This was after they had  
23 retreated and met up with Musa for the first time and we see a  
24 brigade structure which consists of four elements, a span of  
12:02:02 25 command of four units. Initially they were called companies, but  
26 later on these evolved to become battalions. Now that initial  
27 structure that was created in that period essentially was the  
28 same structure that then lasted in the AFRC for the following  
29 year. With the number of battalions expanded the brigade

1 headquarters, the brigade staff expanded, it was known as the  
2 brigade administration. Various people changed appointments and  
3 became more refined, but essentially at that point the AFRC  
4 faction structure was recognisably formed.

12:02:46 5 Q. Thank you, Witness. You also mentioned a second time phase  
6 when your report took place, when you did your research. You  
7 mentioned, if I'm not wrong, the split of Gullit --

8 A. Yes.

9 Q. -- from the main faction. And I think you said he moved  
12:03:17 10 somewhere. What I want to find out is that was there a  
11 recognisable structure at that time?

12 A. Yes. Well, my last question part answered that -- my last  
13 answer part answered that question. As the force withdrew from  
14 Koidu, the split, the creation of the AFRC faction, we start

12:03:28 15 seeing the first brigade structure being created with these four  
16 sub-units which subsequently became more of course as they moved  
17 into Major Eddie Town later on.

18 Q. Do you have any -- do you have references?

19 MS NGUNYA: Your Honours, I would like to refer you to a  
12:03:50 20 particular page in the report.

21 Q. Witness, do you have reference to the chain of command, if  
22 any? You mentioned Colonel Eddie Town and Rosos.

23 A. Yes.

24 MR KNOOPS: Your Honour, I'm sorry. At this stage I have  
12:04:14 25 to object because the Prosecution is indirectly trying to put  
26 questions to the witness regarding the ruling Your Honours made.  
27 Namely, the Prosecution tries to get the witness in the area of  
28 the chain of command. Learned counsel of the Prosecution already  
29 mentioned the name of Gullit without any foundation. So I am



1 assuming that the Prosecution wants to continue with this line of  
2 questioning. In light of your ruling I think the questioning on  
3 any issues of command -- chain of command should be not admitted.

4 JUDGE SEBUTINDE: Sorry, counsel, what was the question  
12:05:11 5 that you asked?

6 MS NGUNYA: Your Honour, based on what the witness had said  
7 earlier, he had mentioned a split between Gullit and the main  
8 faction. My next question was was there a shift in the chain,  
9 because he mentioned there were structures, structures in the  
12:05:30 10 chain of command. Brigade was formed which moved from companies  
11 to brigades.

12 JUDGE LUSSICK: We just want the question.

13 MS NGUNYA: So my question to the witness was was there a  
14 change once they moved to the next stage, which was Camp Rosos  
12:05:44 15 and Eddie Town, which the witness has already mentioned.

16 PRESIDING JUDGE: Thank you.

17 MS NGUNYA: I did not at all introduce any new evidence,  
18 Your Honour.

19 PRESIDING JUDGE: Thank you. Your reply to the objection,  
12:05:57 20 Ms Ngunya. There is an objection made. Your reply?

21 MS NGUNYA: Your Honours, if I may answer learned counsel,  
22 the witness has stated that at some point there was a split  
23 between the main faction and Gullit moved to a different area and  
24 joined -- in fact he did mention a name, SAJ Musa. My question  
12:06:20 25 to the witness was simply was there a change in the structure,  
26 the command structure, which he had mentioned had formulated as  
27 the battalions moved from Masiaka to Makeni and he even mentioned  
28 the split between Gullit and SAJ Musa. I just want to know if  
29 there was a change in the structure. That is all. I am not

1 trying to incriminate or to adduce any evidence towards crimes.

2 That is all, Your Honour.

3 JUDGE LUSSICK: You are seeking a yes or no answer?

4 MS NGUNYA: That's right.

12:07:05 5 PRESIDING JUDGE: We allow the question.

6 MS NGUNYA:

7 Q. Just to refresh, Witness, I will ask that question again.

8 Was there any particular change that you're aware of once the

9 group moved to Rosos and Eddie Town?

12:07:32 10 A. There was a change and it was a result of two things. One

11 was the fact that during their time, particularly at Major Eddie

12 Town, two further groups of AFRC fighters came to join the

13 faction thereby swelling the numbers. The second change was that

14 with the second group arrived SAJ Musa, who then took over

12:07:59 15 command of the AFRC factions, commander in chief. And as a

16 result of his arrival he reorganised the brigade structure or

17 brigade faction -- the brigade, not fundamentally changing the

18 structure, but adding additional battalions. So we now see a

19 span of command which includes six numbered battalions - number

12:08:27 20 one battalion through to number six battalion, the RDF Battalion,

21 the Red Lion Battalion. So eight manoeuvre units, as we might

22 describe it, and an expanded brigade staff. Within each of these

23 battalions there would be companies, typically four companies

24 within the battalion.

12:08:52 25 So within each battalion you have a span of command of four

26 companies and within the brigade we have a span of command of six

27 named battalions, plus the other two I mentioned. And then at

28 higher levels we have the commander in chief, Musa, second in

29 command, chief of staff running the staff, as I would call it, or

1 the brigade administration as they described it.

2 JUDGE LUSSICK: I thought you were looking for a yes or no  
3 answer, counsel. That is what you told me.

4 MS NGUNYA: I was, Your Honour, but that's okay.

12:09:31 5 THE WITNESS: I apologise, Your Honour.

6 JUDGE LUSSICK: It is not okay. It is your witness. No,  
7 Witness, an apology is not due from you. You're counsel's  
8 witness and it is up to you to control your witness. You told us  
9 you were looking for a yes or no answer and then made no attempt  
12:09:50 10 to limit the witness to that answer.

11 MS NGUNYA: My apologies, Your Honour.

12 JUDGE SEBUTINDE: And Prosecution counsel, maybe we should  
13 also emphasise the ruling of the Court was to guide you in  
14 avoiding those questions the answers of which go to the ultimate  
12:10:06 15 issue of criminal responsibility of command hierarchy, the naming  
16 of names. You can still lead your evidence and avoid -- steer  
17 clear of questions the answers of which would go to the ultimate  
18 issue. We don't know what those questions will be but we expect  
19 you, in light of that ruling, to respect the straight and narrow.

12:10:29 20 MS NGUNYA: My apologies, Your Honours.

21 MR KNOOPS: Your Honours, if I can just make a brief  
22 additional comment. It is for us, as Defence, very difficult to  
23 get on our feet every time and object. That was also the purpose  
24 of my remarks which led to your ruling. I observed that the  
12:10:50 25 witness is voluntarily giving answers to questions and putting  
26 his own conclusions and opinions in his answers, such as just a  
27 few seconds ago he said that Musa was the commander. So I  
28 respectfully ask the assistance of the Honourable Trial Chamber  
29 in instructing the witness that he is not voluntarily giving

1 answers on these important issues. I am not able to stop the  
2 witness when he is answering questions, yet he is giving evidence  
3 on certain important matters. So in addition to the respect of  
4 Your Honours' ruling by the Prosecution, I think also the witness  
12:11:36 5 should pay respect to your ruling and not voluntarily giving  
6 answers on matters --

7 JUDGE SEBUTINDE: Mr Knoops, we do not address the witness  
8 in this regard. He simply answers the questions put to him by  
9 counsel. But I think the caution we have given Prosecution  
12:11:53 10 counsel is adequate. We are not going to add to it and I don't  
11 think you should either. I am sure that the Prosecution has  
12 taken note and they know exactly what we mean by keeping on the  
13 straight and narrow and not going to issues that determine the  
14 ultimate issue for the Trial Chamber.

12:12:11 15 MR KNOOPS: Much obliged, Your Honour. Thank you.

16 MS NGUNYA: Your Honours, my apologies again.  
17 Q. Witness, let me just start off by saying that please avoid  
18 mentioning names. You have mentioned some command structure  
19 positions during this period. All I will ask you is what those  
12:12:33 20 positions entail, what a particular position entail and again no  
21 names, please. Witness, you did mention a position. Again I  
22 think I stand guided by the Court but I will phrase this  
23 question. You did mention a position commander in chief during  
24 this time. Just for clarity, what does that position entail?

12:13:00 25 A. Traditionally the commander in chief of a military force of  
26 course is responsible for all military aspects of that force and  
27 he commands through a staff. Within the AFRC faction he had  
28 broader responsibilities, because unlike traditional armies who  
29 are answerable to a political government of some kind, political

1 authority, the AFRC was not responsible to political authority.  
2 So whereas in a normal army the development of strategy is both a  
3 political and a military activity, here with AFRC faction we see  
4 the development of strategy is a purely military function. So  
12:13:55 5 within the command in chief responsibility is the development of  
6 strategy and the major decisions affecting the AFRC.

7 Q. Thank you, Witness. Am I right to assume that that would  
8 be the most senior position at this time?

9 A. That is correct.

12:14:10 10 Q. Are you familiar with the positions below the chief of  
11 staff -- sorry, I apologise, commander in chief at this time?

12 A. Yes.

13 Q. Could you kindly list them for the Court?

14 JUDGE LUSSICK: Counsel, are we referring to any particular  
12:14:27 15 army here or are you say just saying general military ranks below  
16 the commander in chief?

17 MS NGUNYA: Shortly before I was warned by the Honourable  
18 Court we did get to the point where the witness was describing  
19 the chain after the -- of the AFRC.

12:14:45 20 JUDGE LUSSICK: All I want to know is when the colonel  
21 gives some evidence about the subordinate ranks is he talking  
22 about the general army structure or a specific one?

23 MS NGUNYA: Your Honour, I'm sorry, at this time it is the  
24 AFRC.

12:15:00 25 MR KNOOPS: Your Honour, then I have to object again. We  
26 have no objections that this expert is being examined on the  
27 functions in a traditional army as such and gives evidence on the  
28 whereabouts of these positions, but we do have objections against  
29 a question which directly relates to the AFRC. Because, in my

1 humble submissions, a description by this expert witness on and  
2 of these functions will of course interrelate with the underlying  
3 chain of command and therefore will affect the ultimate issue  
4 after all in the indictment. So I think that -- it was my  
12: 15: 54 5 submission or my assumption that the Prosecution was going to  
6 examine the witness on these functions in the traditional sense  
7 of the wording within a normal traditional army structure, not as  
8 much as with respect to the AFRC. But now she specifically  
9 intends to question the witness on these positions within the  
12: 16: 20 10 AFRC, that will also go to the very ruling of Your Honours, it is  
11 at least my belief. Thank you.

12 PRESIDING JUDGE: Thank you. Your reply, Ms Pack?

13 MS PACK: I will just add to my learned friend Ms Ngunya's  
14 earlier submissions.

12: 16: 37 15 The objection raised by my learned friend that questions  
16 going to the positions in an AFRC force at this time, the time  
17 being in the Camp Rosos/Eddie Town time frame, those questions  
18 aren't objectionable, in my submission, with my learned friend  
19 having clearly identified to the witness and the witness being  
12: 17: 06 20 aware of the limitations of his replies to her questions.

21 Namely, the non-naming of specific individuals. My learned  
22 friend was very cautious about limiting answers to her questions  
23 to the positions that existed at that time, and to identifying  
24 what it meant to hold those positions, having in mind this  
12: 17: 35 25 witness's expertise on issues of the military, in being able to  
26 ascertain from the facts which he has within his knowledge from  
27 his communications with witnesses, from his reading of testimony  
28 what it meant to hold those positions as a matter of military  
29 structure. And that is a matter which is well within his

1 expertise. It is not seeking to go to any ultimate issue,  
2 because, as Your Honours have identified, the ultimate issues go  
3 to command under Article 6(3) of this Court's statute, and the  
4 two legal issues which go to that being superior responsibility  
12:18:21 5 of these accused and the effectiveness of their command and  
6 control.

7 PRESIDING JUDGE: Thank you, Ms Pack.

8 [Trial Chamber conferred]

9 PRESIDING JUDGE: We overrule the objection and allow the  
12:19:54 10 question. Please put the question.

11 MS NGUNYA: Thank you, Your Honours. If I may request the  
12 Court's assistance just for the last question, if you don't mind.

13 PRESIDING JUDGE: I have a note, "Who was below the  
14 commander in chief?"

12:20:13 15 MS NGUNYA: Thank you, Your Honour.

16 Q. Witness, as the Court has reminded me, my last question  
17 was --

18 PRESIDING JUDGE: Pause. Not in a person, but who was the  
19 next level of command.

12:20:28 20 MS NGUNYA: Yes.

21 PRESIDING JUDGE: What was the next level of command? I  
22 try to make sure I do not mislead by wording that incorrectly.  
23 "What was the next level?"

24 MS NGUNYA: Yes, Your Honour, I will be careful about that.

12:20:42 25 Q. Without naming names, what was the rank next below the  
26 commander in chief?

27 A. It wasn't a rank; it was a position. The ranks changed  
28 over time within the AFRC as people were promoted. But the  
29 position below the commander in chief, the appointment if you

1 like, was known variously as the "second in command" or the  
2 "deputy commander". Now, traditionally this position has two  
3 functions. The first is to be an advisor and confidante of the  
4 commander --

12:21:21 5 MR KNOOPS: Your Honour, I think the witness is voluntarily  
6 answering on functions, whereas this question was not to him. He  
7 was simply asked who was the next position after the commander in  
8 chief, and he starts off with explaining the functions of this  
9 second in chief. So I think the witness is still continuing with  
12:21:43 10 extending the scope of the questions and answering and putting  
11 evidence which my result in a circumvention of Your Honour's  
12 ruling.

13 MS PACK: Your Honours that isn't the position. As I  
14 recall, the question which preceded the argument went to the  
12:22:02 15 position and the function below, and the objection initially made  
16 was as to evidence being heard on the function of those  
17 individuals holding the positions that the colonel is about to  
18 identify. I have already made submissions on that objection;  
19 namely, this witness is perfectly able to deal with the specific  
12:22:21 20 functions, being a military expert, of persons holding the  
21 positions that he identifies from either his own personal  
22 knowledge and expertise and experience, and/or his communications  
23 with the sources which were used for the compilation of this  
24 report. My learned friend, I would suggest, is seeking to go  
12:22:44 25 behind Your Honours' own ruling to the last question, which is  
26 that these questions were allowable, because my learned friend Ms  
27 Ngunya has specifically limited answers to questions to not  
28 naming individuals.

29 MR KNOOPS: Your Honours, if I may just have a brief



1 comment on this. I am not suggesting what the Prosecutor is  
2 saying; I am saying that the witness is still giving answers to  
3 questions which are not put to him. He was simply asked who is  
4 the second in command or what is the position after the commander  
12:23:17 5 in chief. And then for the Defence not identifiable and subject  
6 to any timely objection, he starts off with giving a job  
7 description thereof, the functions. This is my objection.

8 JUDGE LUSSICK: I understand your objection, Mr Knoops. I  
9 think the ramification of that objection that you are pointing  
12:23:44 10 out is that if the witness volunteers more than he is asked for  
11 then Defence could be taken by surprise and would not have a  
12 chance to object to what was coming up. So I think it would be a  
13 good identify for the Prosecutor, if you want answers to  
14 questions and you want embellishments on those answers, to make  
12:24:08 15 them the subject of a different question to give the Defence a  
16 chance to know what is being asked. In any event, I understood  
17 the witness to say that he was giving evidence of the traditional  
18 structure. Is that right, Witness?

19 THE WITNESS: Your Honour, what I was intending to do was  
12:24:31 20 to give an explanation of what would happen in the traditional  
21 structure and then what I found in the AFRC.

22 JUDGE LUSSICK: I see, thank you. We have to rule on that  
23 objection.

24 [Trial Chamber conferred]

12:25:31 25 PRESIDING JUDGE: The question asked was what was the rank  
26 below commander in chief. That question was answered by an  
27 explanation, but then went further. The witness should confine  
28 himself to the questions asked, and it is for the Prosecutor to  
29 ensure that that is done. Therefore, I am not allowing the

1 elaboration. The question has been partly answered. If there  
2 are matters arising please ask them as questions.

3 MS NGUNYA: I will do so, Your Honours.

4 Q. Witness, you have answered the first part of the question,  
12:26:11 5 who the second position was. My question is what was his  
6 function? You had just started on that.

7 A. In a --

8 Q. In a traditional sense.

9 A. -- traditional army, the second in command or the deputy  
12:26:33 10 commander has two specific roles. The first is to be a close  
11 advisor and confidante to the commander. The second role is to  
12 be prepared to stand in as the commander in chief if the  
13 commander is killed, away or otherwise incapacitated. In the  
14 first of these roles, how effective this is depends very much on  
12:26:58 15 personalities in any situation.

16 Q. I will have to interrupt you now so that we can maintain  
17 what the Court has ruled. Perhaps I will now ask you what this  
18 position entailed, if you know, in the AFRC?

19 A. I think this position fulfilled all the traditional roles  
12:27:17 20 in the AFRC, both of being a confidante and advisor, and, if  
21 necessary, standing in as the commander if the commander is  
22 killed.

23 Q. Thank you, Witness. Was there a rank below that, below the  
24 deputy commander?

12:27:33 25 A. As I mentioned, these weren't ranks, these were positions  
26 or appointments. Normally at this stage within a traditional  
27 organisation you wouldn't have a third in command. We would have  
28 a chief of staff and we would have the units, the span of  
29 command. But within the AFRC, if I am allowed to say this --

1 Q. Please go ahead?

2 A. There was a third in command. I have not been able to  
3 deduce any specific role or function for this position.

4 Q. Witness, if we might clarify for the Court what period we  
12:28:19 5 are talking about? You mentioned it earlier, but if can we just  
6 be clear, which period are we talking about at this time?

7 A. Well, those comments really apply throughout the time the  
8 AFRC faction is in Rosos, Major Eddie Town, the advance to  
9 Freetown and during the fighting for Freetown.

12:28:39 10 Q. Thank you, Witness. Witness, was there a position below  
11 the third in command?

12 A. Well, at this stage we have two positions. One is the  
13 chief of staff and the other is the operations commander.

14 Q. Perhaps you --

12:28:57 15 JUDGE SEBUTINDE: Again, we don't know when you switch from  
16 the AFRC to a traditional army. Could you place this difference?

17 MS NGUNYA: That was my next question.

18 Q. Perhaps, Witness, we can start with a chief of staff in a  
19 traditional army. What is their function?

12:29:12 20 A. The chief of staff in a traditional army is literally the  
21 chief of the staff officers who support the commander. He is  
22 responsible for the management of their output of all their work,  
23 he is, as well as the second in command -- sorry, he is not the  
24 second in command, but he is another close advisor to the

12:29:36 25 commander in chief, and is really responsible for running and  
26 implementing the commander in chief's decisions. This is typical  
27 across all armies and -- can I extend the question to the AFRC  
28 now?

29 Q. I was going to ask you that next.

1 A. Okay.

2 Q. Just to be clear, just to pause for my question, and what  
3 about in the AFRC, if you know?

4 MR KNOOPS: I object because the witness answered the  
12:30:11 5 question on the traditional army with reference to any  
6 responsibilities for the running commands or running activities.  
7 So by answering the next question the witness would go into any  
8 responsibilities within the AFRC. I think this is outside the  
9 scope of the ruling you made.

10 MS PACK: Your Honour, it isn't outside the scope of your  
11 ruling. It is simply identifying the functions of someone who  
12 held the position of a chief of staff during this AFRC period.  
13 It is not naming an individual, it is not allocating individual  
14 criminal responsibility, answering the legal questions that  
12:30:54 15 Your Honours have to decide after hearing evidence from both  
16 parties. It is simply going to the functions of anyone who held  
17 that position in the AFRC period, what that position meant from a  
18 military point of view from someone who is a military expert,  
19 able to provide a judgment as to what it is militarily that that  
12:31:15 20 position entailed.

21 PRESIDING JUDGE: Thank you.

22 [Trial Chamber conferred]

23 MS PACK: Your Honour, I hesitate to -- I do apologise for  
24 interrupting your deliberations but there was one matter on a  
12:37:48 25 matter of an earlier decision of Your Honours which I forgot to  
26 raise and I perhaps should have which was early decisions on  
27 objections during the evidence of a witness, not an expert, a lay  
28 witness, an insider witness, 334, where objections were raised as  
29 to this witness as a non-commissioned officer -- other ranks

1 member of the military from answering questions going to the  
2 functions of the various positions held by various members of the  
3 AFRC command structure at the time, during this period in the  
4 jungle and in Freetown. There were objections raised to those  
12: 38: 32 5 questions being put to the witness as to the functions of the  
6 various positions in the structure because the witness didn't  
7 have requisite expertise to deal with those issues, as I recall.  
8 I am paraphrasing, but that is my recollection. I only raise  
9 that, Your Honour, because I forgot to raise that. Because in my  
12: 38: 53 10 submission that is an important matter to have in mind because of  
11 course the expert now being here to deal with that issue.

12 PRESIDING JUDGE: Thank you, Ms Pack.

13 JUDGE LUSSICK: Yes, Mr Knoops, you want to reply to that?

14 MR KNOOPS: Yes. I think if now that the Prosecution is  
12: 39: 24 15 seeking for further elaboration on their point, I just want to  
16 emphasise that what we should not forget is the distinction  
17 between the description of the functioning pertaining to a  
18 certain position on the one hand, and the responsibilities  
19 pertaining to such a function, even in a military sense, which  
12: 39: 49 20 clearly are different issues. We have no objection that this  
21 witness will give a description of the function as such in a  
22 traditional military sense, but when the witness is going into  
23 description of these functions within the AFRC inclusive the  
24 responsibilities which go along with these functions, while this  
12: 40: 17 25 witness was not a member of either the AFRC or the SLA and is  
26 relying on documentary evidence or at least statements of  
27 Prosecution witnesses, I think it is not fair to say that this  
28 witness is able to describe, as an independent expert, the  
29 responsibilities pertaining to these functions. I think this

1 distinction should clearly be made while assessing our objection  
2 in this regard. Thank you.

3 MR FOFANAH: Excuse me, Your Honours, may I, with your  
4 leave, further elaborate on the issue raised by my learned  
12:41:00 5 colleague, the Prosecutor.

6 JUDGE LUSSICK: See what you've done, Ms Pack. You go  
7 ahead, Mr Fofanah.

8 MR FOFANAH: As Your Honour pleases. I was just about to  
9 indicate that what my learned colleague has done is to put  
12:41:18 10 forward to the Court our objection without necessarily indicating  
11 the ruling of the Court on that issue. If I can vividly recall,  
12 and I stand guided by the transcripts of 334 when he was  
13 testifying, he in fact went into issues relating to command  
14 responsibility as well as elaborated a lot on functions of the  
12:41:41 15 various commanders within the AFRC at that time, and he was even  
16 very specific as to mentioning names and the like. But then  
17 suffice it to say that he was speaking from the point of view of  
18 an insider, member of the SLA, and that is what I think my  
19 learned colleague Professor Knoops is indicating in this  
12:42:04 20 instance; that the witness who is before the Court is an expert,  
21 he was not a member of the SLA and he is now giving an expert  
22 opinion as an independent witness. Suffice it to say that he  
23 based that purely on his observations, interviews and the like  
24 from the statements and testimonies of Prosecution witnesses. I  
12:42:30 25 just needed to make that clarification. Thank you.

26 PRESIDING JUDGE: Thank you, Mr Fofanah.

27 [Trial Chamber conferred]

28 PRESIDING JUDGE: We note that this issue has arisen in  
29 several objections and it would appear that it may keep arising.

1 Therefore for the benefit of the Court we think it would be  
2 wise -- we have decided to formulate a ruling on this objection  
3 and to give that ruling tomorrow because we are now up to the  
4 normal time to adjourn and some of us have other matters to deal  
12:47:30 5 with in the course of the afternoon.

6 We will therefore reserve our ruling on this particular  
7 objection and I will remind the witness of his oath and we will  
8 reconvene tomorrow and give that ruling.

9 Colonel, we normally sit only for half day on Wednesday.  
12:47:47 10 We have other commitments on Wednesday afternoons and therefore  
11 we are going to adjourn now. This is our normal time. As you  
12 have taken the oath this morning, I would remind you that between  
13 now and the time that all of your evidence is finished you are  
14 not to discuss your evidence with any other person. You  
12:48:07 15 understand this?

16 THE WITNESS: Yes, I do, Your Honour.

17 PRESIDING JUDGE: Thank you. Madam Court Attendant, please  
18 adjourn court to tomorrow at 9.15.

19 [Whereupon the hearing adjourned at 12.49 p.m.,  
12:48:45 20 to be reconvened on Thursday, the 13th day of  
21 October 2005, at 9.15 a.m.]

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EXHIBITS:

Exhibit No. P35 10

WITNESSES FOR THE PROSECUTION:

WITNESS: TF1-301 2

EXAMINED BY MS NGUNYA 2