

Case No. SCSL-2004-14-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA

TUESDAY, 07 FEBRUARY 2006
9.55 A.M.
TRIAL

TRIAL CHAMBER I

Before the Judges: Pierre Boutet, Presiding
Bankole Thompson
Benjamin Mutanga Itoe

For Chambers: Ms Roza Salibekova
Ms Anna Matas

For the Registry: Mr Geoff Walker
Ms Maureen Edmonds

For the Prosecution: Mr Desmond de Silva
Mr Kevin Tavener
Mr Joseph Kamara
Ms Bianca Suciu (Case Manager)
Ms Lynn Hintz (intern)

For the Principal Defender: No appearance

For the accused Sam Hinga Norman: Dr Bu-Buakei Jabbi
Mr Alusine Sesay
Mr Kingsley Belle (legal assistant)

For the accused Moinina Fofana: Mr Arrow Bockarie

For the accused Allieu Kondewa: Mr Charles Margai
Mr Ansu Lansana

1 [CDF07FEB06A-RK]

2 Tuesday, 07 February 2006

3 [Open session]

4 [The accused present]

09:30:58 5 [Upon commencing at 9.55 a.m.]

6 PRESIDING JUDGE: Good morning, counsel. Good morning,

7 Mr Prosecutor and good morning, Mr Witness.

8 THE WITNESS: Morning, My Lords.

9 PRESIDING JUDGE: When we adjourned yesterday afternoon we

09:55:07 10 took under advisement a matter that had been raised by Defence

11 counsel and we wish to inform you that we have not yet come to a

12 firm decision on this matter because we felt in our discussion

13 that there was some matters that could be further explained. So

14 I would ask my brother Justice Thompson to carry on from here,

09:55:28 15 because I know he has some specific questions to ask.

16 JUDGE THOMPSON: Learned counsel, Dr Jabbi. Could you

17 restate the objection for the Bench, for the Court? Restate the

18 objection. Not reformulate, restate it here.

19 MR JABBI: Thank you, My Lord. My Lord, yesterday a
09:55:57 20 question was posed to the witness in respect of certain radio
21 announcements.

22 JUDGE THOMPSON: And please moderate your pace.

23 MR JABBI: Thank you, My Lord. In respect of certain radio
24 announcements and his immediate response --

09:56:32 25 PRESIDING JUDGE: You mean the witness's response?

26 MR JABBI: The witness's immediate response was to refer to
27 what he called Black December.

28 JUDGE ITOE: But, Dr Jabbi, let's get it clear.

29 Mr Tavener, in posing that question, did not mention anything

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1 like Black December. Are we agreed on that?

2 MR JABBI: Yes, indeed, My Lord. I hope the way I have
3 stated the first sentence --

4 JUDGE ITOE: I just wanted us to be clear on this.

09:57:22 5 JUDGE THOMPSON: Continue.

6 MR JABBI: Yes. The next question from the prosecuting
7 counsel sought to further explore circumstances relating to the
8 Black December issue. It was at that stage that I raised my
9 objection.

09:58:25 10 My objection was that the references to Black December,

11 elicited from the witness, even if not clearly, deliberately or

12 intentionally by the prosecuting counsel - even if not clearly,

13 deliberately or intentionally by the prosecuting counsel -

14 nonetheless provoked and evoked - nonetheless provoked and

09:59:49 15 evoked - references and allusions to the Black December

16 phenomenon, which this Court had ruled was in its totality not

17 part of the indictment, and that therefore it should not be

18 invoked for the purpose of evidence before this Court, however

19 unintentionally or obliquely it turns out to be elicited.

10:02:10 20 My Lords, a series of explanations then ensued, both from

21 the Bench and from the prosecuting counsel, in respect of the

22 Black December, and I then requested that those exchanges be

23 expunged from the records. A series of explanations then ensued

24 in respect of the Black December, from both the Bar and the

10:03:22 25 Bench, and I then requested that they be duly expunged from the

26 records for essentially the same reason as my earlier objection.

27 My Lords, I believe that is a fair summary of the objection

28 I raised yesterday.

29 JUDGE THOMPSON: Having started so methodically, perhaps it

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1 is important to ask learned counsel Tavener whether his own -- to
2 the best of his recollection, whether the sequence of events
3 leading to the objection and the objection have been accurately
4 restated, or whether he needs to add anything to that before we
10:04:41 5 get to the pith of it all.

6 MR TAVENER: I believe the main issue is the fact that the
7 witness mentioned Black December upon a fairly open question from
8 myself. I was not eliciting anything about Black December and I
9 accept more or less what Dr Jabbi has said.

10:05:02 10 JUDGE THOMPSON: Yes, apart from that part, that you did
11 not trigger the response of Black December.

12 MR TAVENER: Thank you, yes.

13 JUDGE ITOE: Dr Jabbi.

14 MR JABBI: Yes, My Lord.

10:05:14 15 JUDGE ITOE: You would agree with me that the response that
16 has given rise to this polemic was volunteered by the witness.
17 That would be correct, wouldn't it be? The response that has
18 triggered this polemic was volunteered by the witness without his

19 having been asked a question.

10:05:41 20 MR JABBI: My Lord, the nature of language is such that

21 specific matters need not be mentioned in order that they are

22 evoked by generalities in a question. And I believe the nature

23 of the question naturally gives rise to that response and it is

24 at all not unreasonable or unexpected that such a response could

10:06:22 25 have come to the open question that was raised, the particular

26 open question that was raised. So I will not unqualifiedly say

27 that the response of the witness was totally unprovoked and

28 therefore it was volunteered by him.

29 JUDGE THOMPSON: But, counsel, how do you reconcile that

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1 with your own submission or your recollection of the sequence of
2 events that in fact, by use of trilogy here, and I quote you,
3 "not clearly, not deliberately or intentionally". How do you
4 reconcile that with this, your second explanation? It does not
10:07:23 5 seem to me that they are at par. If you say that the response
6 naturally flowed from the question that was asked, how then do
7 you reconcile that with your own admission that the question did
8 not intentionally, deliberately or clearly elicit a response in
9 relation to the allegedly offending phrase.

10:07:55 10 MR JABBI: With the greatest respect, My Lord, my reference
11 to the deliberately, indirectly, et cetera was a suppositional or
12 conditional statement. Even if it was not directly,
13 deliberately, et cetera, it was a suppositional or conditional or
14 contingent statement. I would not say categorically that this
10:08:30 15 particular question did not evoke that answer. But I was saying
16 that the question was such that even if it did not intentionally
17 provoke such an answer, it was such that it could give rise to
18 that question. So my reference to indirect, deliberately, et

19 cetera, in the statement that Your Lordship just read, was in
10:08:53 20 fact given in that conditional mode. Even if it was not
21 intentional, even if it was not deliberate, et cetera, My Lord,
22 that wasn't a categorical statement the particular question was
23 not intentional.

24 JUDGE THOMPSON: But that is a distinction with a
10:09:16 25 difference, which of course again I'm not sure I do agree with.
26 The question really is how does the question put by learned
27 counsel for the Prosecution naturally evoke a response as to
28 Black December, when in fact it wasn't a question event-focused
29 in respect of Black December? And I'm now taking issue with you

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1 on this natural connection between that question and the
2 response. I need to be satisfied. I need to be educated, as I'm
3 always wanting to.

4 MR JABBI: Thank you, My Lord. My Lord, I will give an
10:10:11 5 explanation. I do not necessarily offer it as an education of
6 Your Lordship, which is a very Herculean task if I was to
7 undertake it. My Lord, even from the explanation of prosecuting
8 counsel when the objection was raised, he did say he was posing
9 general questions on radio announcements made by the national
10:10:39 10 co-ordinator during the war time.

11 JUDGE THOMPSON: Not general questions on operations
12 undertaken or directed by.

13 MR JABBI: My Lord, at that stage we were talking about
14 general questions on radio announcements, My Lord.

15 JUDGE THOMPSON: Announcements, yes.

16 MR JABBI: Yes, My Lord.

17 JUDGE THOMPSON: But not specifically on operations ordered
18 or undertaken by.

19 MR JABBI: Indeed, My Lord. If I may just continue, that
10:11:09 20 the prosecuting counsel raised the point that he was asking
21 general questions about radio announcements, and I think in the
22 further explanations that followed it was clearly stated that the
23 Black December commenced after a radio announcement by the
24 national co-ordinator. And so if a question is posed about the
10:11:44 25 national co-ordinator making radio announcements during the war,
26 it was a natural thing, My Lord, that the Black December debate,
27 which indeed issued from a radio announcement, would be evoked in
28 the mind of the witness. That is what I'm referring to by the
29 nature of language when one cites a generality capable of

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1 accommodating specificities and particularities, putting that
2 generality is most apt to evoke the particularity.

3 JUDGE THOMPSON: Granted that is possible within the
4 context of the linguistic dynamics. It is sometimes the case
10:12:36 5 that the so-called dynamics of language come into direct
6 collision with logical postulates. Because much as you are
7 saying that, linguistically speaking, naturally one flows from
8 the other, I am inclined to say, and I do so with all the
9 authority I can muster, that it would appear to be from a logical
10:13:02 10 perspective a quantum leadership.

11 MR JABBI: My Lord, logic of course is a phenomenon of the
12 mind. But it is also well known that the mind, and particularly
13 exchanges between two minds or more, do not always proceed
14 exclusively or even mainly on logical basis. So as much as logic
10:13:31 15 is a product of the mind, it does not entirely always control
16 operations of the mind. And there are many operations of the
17 mind and interchanges between minds that do not tend to follow
18 strictly logical principles.

19 JUDGE THOMPSON: Perhaps we'll leave that debate for
10:13:56 20 another day. I think I have asked enough questions that should
21 help me arrive at what I consider to be fair in the
22 circumstances.

23 JUDGE ITOE: Dr Jabbi, why do you think that the reply or,
24 rather, the content of the reply that is now contested, having
10:14:20 25 been -- I know you have stated the point, but not very fairly.
26 Why do you think that this reply having been volunteered should
27 be struck off the records?

28 MR JABBI: Thank you very much, My Lords. My Lords, this
29 is a court of record. It is also a court of criminal prosecution

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1 and prosecution proceeds on the basis of precise charges and
2 indictments before the Court and relevance is a principal
3 criteria of what should come before the Court in evidence. If,
4 therefore, the Court has proved that references to Black December
10:16:01 5 in the indictment have been expunged and are no longer part of
6 the indictment, then it will certainly be preaching the principle
7 of relevance wasting -- also wasting the time of the court, and
8 potentially subverting the principle of fairness and ultimate
9 justice if references to what is irrelevant and what has been
10:16:49 10 expressly expunged by the order of the Court are nevertheless
11 allowed to continue to parade the corridors of evidence in this
12 Court. That would be my answer to the question, My Lord.

13 JUDGE ITOE: Thank you.

14 MR JABBI: Thank you, My Lord.

10:17:27 15 PRESIDING JUDGE: Mr Tavener, would you restate your
16 position in this respect?

17 MR TAVENER: Yes, just two brief comments and I will
18 restate my position.

19 The Court has not ruled that the references to the Black
10:17:38 20 December have been expunged. The Court has ruled according to
21 the decision of the Court, which in no way expunges the
22 references to words "Black December". As to the process of
23 expunging, that is something I am not familiar with. However,
24 the Court consists of three professional judges. This is not the
10:18:04 25 situation involving a jury which needs to be protected in some
26 way from inappropriate evidence. The evidence should remain.
27 What has been said in this Court should remain. It simply
28 becomes a matter of the Court to place what weight they feel
29 appropriate on a particular piece of evidence rather than

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1 expunging as a process. All that needs to happen is the Court
2 place no weight on that particular piece of testimony.

3 The Prosecution would not support the concept, I suggest,
4 of editing records when those records are subject to review and
10:18:45 5 they also form an important historical document, that they should
6 be left untouched. The solution is what I have previously
7 suggested.

8 The position of the Prosecution remains, as stated
9 yesterday, and that is in paragraph 131, a decision on motions
10:19:08 10 for judgment of acquittal. That was 21st October 2005. The
11 Trial Chamber found that for the purposes of the Rule 98
12 standard, the accused participate in each of the crimes charged
13 in Counts 1 to 8 of the indictment. As I mentioned yesterday,
14 the Trial Chamber did not dismiss any of the modes of liability
10:19:30 15 in relation to those counts. Those that they obviously arise
16 under 6(1) and 6(3), as I said.

17 The Prosecution accepts that subparagraph 25(g) of the
18 indictment concerning unlawful killings during Operation Black

19 December is no longer operative and that the question of the
10:19:57 20 accused's responsibility for these precise killings is no longer
21 an issue. Concomitantly, the Prosecution accepts that these
22 unlawful killings are no longer relevant as particulars of Counts
23 6 and 7. That is clear from Your Honours' decision to clarify
24 the decision.

10:20:32 25 As submitted yesterday, the Prosecution says that the
26 decisions of the Trial Chamber do not affect the Prosecution's
27 ability and, indeed, duty to cross-examine on issues related to
28 all modes of liability during all periods relevant to the
29 indictment.

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1 Operation Black December occurred in late 1997 through to
2 1998. It occurred within the time period of the indictment. The
3 Prosecution case is that the first accused was in a position of
4 command and control throughout the period of the indictment and
10:21:17 5 that he issued both legal and illegal orders and planned both
6 legal and illegal operations. This pattern of activity is
7 relevant to the Prosecution's case of superior responsibility
8 pursuant to 6(3) and ordering, planning, and joint criminal
9 enterprise pursuant to 6(1).

10:21:51 10 The Prosecution submits that the Trial Chamber may draw
11 relevant inferences in relation to all counts on the indictment
12 from the position and the conduct of the accused during the time
13 frame of the Operation Black December, notwithstanding the
14 removal from the indictment of paragraph 25(g).

10:22:16 15 Consequently, while the Prosecution accepts it must not
16 refer to killings during Operation Black December, it does not
17 understand that it is barred from making any reference to the
18 operation as such. The accused man's involvement in that

19 activity, as I have just said, relates to other issues which the
10:22:40 20 Court has decided are still live issues.

21 As an aside, I would also submit that Count 8, relating to
22 child soldiers, is unaffected as the child soldiers' count does
23 not relate to particular crime bases.

24 So, for those reasons, we would say that we accept the
10:23:05 25 Court's decision, but there are still issues that relate to
26 matters that are relevant to the Court flowing from the
27 indictment. And on those matters the Prosecution would seek
28 permission to continue to cross-examine. For instance, to use
29 the example now before the Court, we intend to ask that we be

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1 allowed to follow up with the first accused about radio
2 announcements. Whether they relate to Black December or not is
3 irrelevant. The important issue, we would say, is that they show
4 this man, the accused man, issuing orders, being in a position of
10:23:47 5 superior responsibility. For that reason they remain both
6 relevant and important.

7 We accept, as I have said, the consequences of the Court's
8 decision in relation to unlawful killings and what flows from
9 that. But there are still other issues from which the Court can
10:24:09 10 derive, we would say, facts and then from the facts draw the
11 appropriate inference.

12 JUDGE ITOE: Mr Tavener, I don't think anybody disputes
13 your rights to establish the superior criminal responsibility of
14 whoever you have before you and who is standing trial. There is
10:24:38 15 no dispute on that at all. But this said, you must carefully
16 have read that decision and you have seen how what preceded 25(g)
17 was merely generally stated, and the decision was fashioned in a
18 way, you know, that we would ordinarily maybe suggest that what

19 is related to the specificity as a generality does not
10:25:17 20 necessarily stand. Can you advise, can you submit, you know, on
21 this and clarify certain doubts, because if it is said that Black
22 December is no more it is because (g) fell and the generalities
23 that preceded (g) are supposed, you know, to have fallen with
24 (g). What would you say about this?

10:25:46 25 MR TAVENER: We do not want to mention Black December. It
26 is not part of -- we accept the decision.

27 JUDGE ITOE: My second point is that you are perfectly
28 entitled to eliciting evidence as to announcements made by the
29 accused, but it happens that this strikes on Black December,

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1 which is the subject of the bone of contention between you and
2 the Defence. What would you say about this? Is this the only
3 mode of establishing superior responsibility that is open to you?
4 Is Black December the only mode that you have to establish
10:26:31 5 superior responsibility?

6 MR TAVENER: Two points, Your Honour. Firstly, it is not
7 the only mode. However, secondly, it shows the first accused in
8 a position of superiority at a relatively early stage. We are
9 not interested in Black December per se, as Mr Norman would
10:26:51 10 understand. All we're asking about is did he go on the radio, if
11 he did, what he said? And I'll even limit that, if I'm allowed
12 to cross-examine, to what orders or directions he gave. We are
13 not trying to bring in Black December. If it comes from
14 Mr Norman all we then ask from the Court is that they ignore that
10:27:13 15 or place no weight on it, they don't give it any value.

16 We only want to lead evidence about 6(1) and 6(3). That is
17 all. And it is part of the chronological process, that is the
18 chronological order of how this accused exercised control and

19 superior responsibility over a period of time. It would be
10:27:38 20 artificial, for instance, to simply block out a period of time
21 during the course of the indictment and the Prosecution cannot
22 refer to it, there is some void --
23 JUDGE ITOE: Even if a judicial decision so intended or may
24 have so intended?
10:27:56 25 MR TAVENER: I don't understand Your Honours' -- the
26 Court's decision was meant to simply turn --
27 JUDGE ITOE: You still do not understand the Court's
28 decision; is that your argument?
29 MR TAVENER: I have further to say on that. I understand

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1 Your Honours' decision, but I understand it was not the intention
2 of the Court to turn a period of time in the indictment into a
3 void about which no evidence could be led. We understand what
4 evidence cannot now be led. That does not mean that that time
10:28:30 5 period did not exist, because within that time period there is
6 relevant evidence relating to the modes of criminal liability of
7 this accused. So we have taken out what Your Honours have said,
8 but what remaining is the question of his -- evidence that goes
9 towards 6(1) and 6(3). So we understand, we believe, Your
10:28:59 10 Honours' decision, but it did not create a void of several weeks
11 or several months about which no evidence can be led. That
12 clearly wasn't the consequence of Your Honours' decision.

13 JUDGE ITOE: Thank you.

14 PRESIDING JUDGE: Thank you.

10:29:17 15 MR JABBI: My Lord. Yes, My Lords, I just want to make a
16 point.

17 PRESIDING JUDGE: Just a moment, Dr Jabbi. Yes, Dr Jabbi,
18 Justice Thompson has one question for you before. After you have

19 finished, fine.

10:29:43 20 MR JABBI: My Lord, maybe I had better take the question.

21 JUDGE THOMPSON: It follows from your earlier set of

22 recollections of what transpired yesterday. In fact, the

23 re-statement of the objection and the part dealing with, and I

24 quote you here, "A series of explanations then ensued between the

10:30:13 25 Bench and the Bar in respect of the Black December issue, and I

26 requested that these exchanges be duly expunged from the records

27 for essentially the same reason as my earlier objection." So

28 what was the purport of that particular -- I mean, that was the

29 request. You only wanted the exchanges between the Bench and the

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1 Bar to be expunged from the records. Am I right? Because that
2 is what I gather from what you said.

3 MR JABBI: Yes, My Lord, insofar as they reflected the
4 Black December situation.

10:31:02 5 JUDGE THOMPSON: No, just the exchanges between the Bench
6 and the Bar.

7 MR JABBI: Yes, My Lord.

8 JUDGE THOMPSON: That is all you asked for yesterday to be
9 expunged from the records.

10:31:15 10 MR JABBI: I raised an objection first of all.

11 JUDGE THOMPSON: Yes, yes, I follow that. I'm just
12 following you. You say that you requested that the series of
13 explanations that ensued between the Bench and the Bar, or the
14 exchanges between the Bench and the Bar be duly expunged from the
10:31:36 15 records. Does that remain your position today?

16 MR JABBI: That is assumed to be a follow-up of the
17 objection.

18 JUDGE THOMPSON: I see.

19 MR JABBI: So the point I was objecting to - for example,
10:31:51 20 the question and the answer given to the extent that they
21 reflected the Black December situation - were also, of course,
22 being requested to be expunged.

23 JUDGE THOMPSON: Well, you didn't say that. That was why I
24 asked you to re-state your position. When you restated it, at no
10:32:11 25 point during that re-statement did you say that you were asking
26 the Court to expunge from the records the witness's own voluntary
27 answer to a question which did not include any reference
28 explicitly, or in my judgment implicitly, to Black December. You
29 merely stated that you want it expunged.

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1 MR JABBI: My Lord, I thought that was --

2 JUDGE THOMPSON: No, there is no room for implication here.

3 We're dealing with subtle legal issues. That was why you were

4 given the opportunity to re-state as carefully your position as

10:32:59 5 you stated it here yesterday. And that was why I was following

6 with such meticulousness.

7 MR JABBI: Thank you, My Lord. My Lord, the objection I

8 raised was intended to have the matter objected to expunged from

9 the records. I thought it was obviously part and parcel of the

10:33:27 10 objection itself. But that was the purport of the objection

11 initially.

12 JUDGE THOMPSON: As I say, I followed your own language and

13 your own recollection. Of course, one could admit that the

14 imperfections of language do play tricks with us sometimes. But

10:33:48 15 I was thinking that in law we make these very subtle

16 distinctions. You were asking for exchanges to be expunged, but

17 now you say it was also the answer to the question.

18 MR JABBI: Yes, indeed, My Lord. My Lord, the

19 clarification I just wanted to make after the prosecuting
10:34:06 20 counsel's last statement is his point that a period of the
21 indictment -- a period which is part of the total period of the
22 indictment cannot just be blocked off by a decision and the
23 Prosecutor is not allowed to refer to that period. My Lord, I
24 wish to point out that I do not understand the decision as
10:34:44 25 blocking out a period about which no evidence may be given.
26 Rather, it is a set of incidents and episodes which the decision
27 refers to and on which evidence is not any longer required to be
28 adduced. A set of incidents and episodes which went into the
29 phrase Black December in the paragraph 25(g).

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1 So it is not that that period is not available for the
2 adducing of evidence in respect of other offences, but that that
3 incident and a piece of it is not open for the adducing of
4 evidence. If, indeed, other eventualities and other offences not
10:35:37 5 related to Black December did however take place during the
6 period also covered by Black December without reference to Black
7 December, I do not believe the decision of this Court on this
8 matter is precluding evidence to be adduced in respect of those
9 other offences.

10:35:58 10 JUDGE THOMPSON: To the best of my understanding, that is
11 what I thought the decision was saying.

12 MR JABBI: I just wanted to clarify that because of the
13 point he emphasised in his last statement. Thank you very much,
14 My Lord.

10:36:14 15 JUDGE THOMPSON: Thank you.

16 PRESIDING JUDGE: We will adjourn to again consider the
17 matter. Court is adjourned.

18 [Break taken at 10.37 a.m.]

19 [CDF07FBE06B - EKD]

11:15:48 20 [Upon resuming at 11.30 a.m.]

21 PRESIDING JUDGE: Here is the Court's decision on the
22 objection.

23 [Ruling]

24 In the Chamber's view, the question put to the witness by
11:31:09 25 counsel for the Prosecution was a very appropriate and relevant

26 one that did not seek to elicit the answer given by the witness
27 when the witness referred to Operation Black December.

28 Accordingly, the record will not be expunged of that
29 answer, which was volunteered by the accused himself for the

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1 record when asked that question by counsel for the Prosecution,
2 but that answer will be given whatever weight the Chamber deems
3 appropriate in due course.

4 We come back to you, Mr Prosecutor. As this whole area has
11:31:54 5 caused all of these concerns, I would appreciate if we move out
6 of there if at all possible and feasible now.

7 MR TAVENER: I had proposed to ask the witness about one
8 aspect of the radio broadcast that occurred on
9 22nd December 1997. There is one paragraph I want to ask whether
11:32:20 10 he authorised or arranged for that particular statement to be
11 made.

12 PRESIDING JUDGE: Could you repeat that again, please?

13 MR TAVENER: What I want to ask, I have a --

14 PRESIDING JUDGE: You have a copy of the broadcast
11:32:37 15 presumably; that is what you mean?

16 MR TAVENER: Yes. We have it in our exhibit list as 61. I
17 have copies. We have it as a CDF statement of FM98.1 on
18 22nd December 1997. It appears to be a transcript of a

19 broadcast.

11:33:00 20 PRESIDING JUDGE: And this is in evidence as an exhibit?

21 MR TAVENER: No, it is not an exhibit. It is only one of
22 our exhibits. I want to direct the witness's attention to the
23 document and ask him about one particular paragraph. One,
24 whether it was said; if so, did he authorise it?

11:33:17 25 JUDGE ITOE: By taking due note of the concerns of the
26 Court to let this controversy to be laid to rest?

27 MR TAVENER: Yes, I understand that. This does not mention
28 the operation. It simply is a direction for civilians and I want
29 to ask whether the witness was aware of it and whether he

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1 authorised it. I am sure he has appropriate knowledge of it by
2 now. Perhaps if I could distribute copies for what I would like
3 to put to the witness? Sorry, I forgot Mr Norman. The paragraph
4 I would seek to ask the witness about is on the second page. It
11:34:51 5 commences with the words, "that anyone working in the interests
6 of the junta."

7 JUDGE THOMPSON: Does he recognise this document?

8 MR TAVENER: First of all, I will give him an opportunity
9 and then I will ask him.

11:35:04 10 JUDGE THOMPSON: Okay.

11 WITNESS: SAMUEL HINGA NORMAN [Continued]

12 CROSS-EXAMINED BY MR TAVENER: [Continued]

13 Q. Mr Witness, I am particularly interested in paragraph 2.

14 Obviously you can read the entire document, but that second
11:36:09 15 paragraph on the second page, starting with the words, "that
16 anyone working in the interests of the junta". Sorry, you may
17 have to turn your microphone on.

18 A. Sorry, My Lords. Number?

19 Q. Yes, second page.

11:36:23 20 A. Second page, number?

21 Q. Number 2.

22 A. Number 2.

23 Q. "That anyone working in the interests of the junta."

24 Firstly --

11:36:30 25 JUDGE THOMPSON: Wouldn't it be important if he recognises

26 this document? There is a title on it, isn't there?

27 MR TAVENER: He may not have seen the document per se. It

28 is a transcript.

29 JUDGE THOMPSON: I see what you mean.

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1 MR TAVENER: Yes.

2 JUDGE THOMPSON: Probably familiar with the contents.

3 MR TAVENER: Exactly, that's what I --

4 JUDGE THOMPSON: Since it is not yet in evidence.

11:36:51 5 PRESIDING JUDGE: Yes, Mr Bockarie.

6 MR BOCKARIE: Sorry, Your Honour, I will leave that for

7 now.

8 MR TAVENER:

9 Q. Perhaps then I can ask Mr Norman --

11:37:01 10 MR JABBI: My Lords, may we have it clear what the present

11 state is --

12 THE INTERPRETER: Your Honours, learned counsel's

13 microphone is not on.

14 MR JABBI: We do not know the status of this document for

11:37:16 15 the moment and can that clarification can be made? I don't know

16 whether there is going to be an effort to make it an exhibit or

17 whatnot.

18 PRESIDING JUDGE: Mr Prosecutor?

19 MR TAVENER: It is a transcript of -- we say a
11:37:32 20 transcript -- appears to be a transcript of a broadcast. I want
21 to ask Chief Norman whether or not he made these words or said
22 these words, and whether or not they were broadcast. It may not
23 be necessary to tender the documents once the words -- should the
24 witness acknowledge those words came from him.

11:37:54 25 MR BOCKARIE: Yes, Your Honours. Your Honour, I have got
26 some objection. Just from the introduction of the document it is
27 clearly stated that press release dated -- press release from the
28 movement for the restoration of democracy, MRD, Civil Defence
29 Secretariat, Freetown. They are the author of this press

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1 release. How does it relate to the witness?

2 PRESIDING JUDGE: Well, the witness will answer that
3 question, Mr Bockarie. Clearly, if he does not recognise that,
4 that is the end of it presumably. I understand your objection,

11:38:27 5 but we are not there yet. The witness is shown this document, he

6 is asked if this document means anything to him. If he says no,

7 well --

8 MR BOCKARIE: As Your Honour pleases.

9 MR TAVENER: That's the process, Your Honour, thank you.

11:38:39 10 Q. Chief Norman, you have read those words. Have you heard --

11 sorry, I will start again. Have you seen those words before, in

12 that did you authorise those words to be spoken on the radio?

13 A. My Lords, any answer to this question will only throw me

14 back into difficulties that has just been discussed in this

11:39:14 15 Court.

16 Q. Mr Norman, if you confine your answer to yes or no, there

17 will be no difficulties.

18 PRESIDING JUDGE: Indeed, you may answer --

19 THE WITNESS: My Lords, I cannot just say yes and no to
11:39:27 20 this question. This is in defence of the witness himself. This
21 period that this document is referring to is the period covered
22 by some portion of the controversy that we have just come from.
23 So any answer to this will only throw that reference to it. So I
24 better not answer any question relating to any date between
11:39:53 25 December 15 and December 25.

26 JUDGE THOMPSON: My difficulty really is a procedural one.
27 Learned counsel for the Prosecution, what is the intention of
28 showing him this document? Could you restate that for me?

29 MR TAVENER: The purpose of showing him the document is

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1 that that is the most accurate record of what we are trying to
2 find out -- was a broadcast on behalf of the CDF on a particular
3 radio station.

4 JUDGE THOMPSON: Right.

11:40:27 5 MR TAVENER: In order to avoid unfairness to Chief Norman,
6 I am showing him those words we believe were used in that
7 broadcast.

8 JUDGE THOMPSON: Right. Don't go ahead. Let's do it step
9 by step methodically. In other words, there is a presumption on
11:40:44 10 the part of the Prosecution that he is familiar with the contents
11 of this document.

12 MR TAVENER: The words, yes.

13 JUDGE THOMPSON: Right. So this presumption established,
14 and you want him to confirm whether some of the contents or all
11:40:57 15 of the contents --

16 MR TAVENER: The particular paragraph, yes.

17 JUDGE THOMPSON: -- were matters either emanated from him
18 or within his knowledge.

19 MR TAVENER: Exactly.

11:41:07 20 JUDGE THOMPSON: In other words, you are saying that this

21 document is relevant to the issues before the Court.

22 MR TAVENER: Yes.

23 JUDGE THOMPSON: So then, if that is correct, then it means

24 at the end of the day, assuming that his answers are in the

11:41:19 25 affirmative, what do you want this Court to do with the answers

26 as they've emerged from the document? I need to be satisfied on

27 that.

28 MR TAVENER: The document, I would not seek to tender.

29 There is no particular need to tender it, except it reflects

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1 the accurate -- it has an accurate record, we would say, of the
2 words. Once the words are spoken, and if Chief Norman agrees
3 that they were the words that were spoken, there is probably no
4 further need to tender the document. It is simply --

11:41:51 5 JUDGE THOMPSON: Right, but if he does not?

6 MR TAVENER: Then we may have to go to somewhere else.

7 JUDGE ITOE: Are you alleging, in addition to wanting him
8 to look at this document, are you going as far as alleging that
9 he is the author of the document for him to recognise the

11:42:06 10 contents?

11 MR TAVENER: I am asking him that. That is exactly what I
12 am asking. Was he the author or did he authorise the speaking of
13 these words over the radio? Only paragraph 2. I am confining it
14 to paragraph 2.

11:42:20 15 JUDGE ITOE: Because this statement is a press release from
16 the Movement for the Restoration of Democracy.

17 MR TAVENER: Yes.

18 JUDGE ITOE: Civil Defence Secretariat and so on and so

19 forth. I mean, movement for the -- I have not heard of this one
11:42:36 20 before. That is intriguing. In any event, you should take
21 particular note of this, because for him to confirm -- maybe you
22 are asking him to state whether he is familiar with --
23 MR TAVENER: Yes.
24 JUDGE ITOE: -- with what is stated in that document.
11:42:55 25 MR TAVENER: That is all I am asking at this stage and we
26 will proceed slowly, piece by piece. The document --
27 JUDGE ITOE: Which he may not have authored.
28 MR TAVENER: But he may have authorised. So I just need to
29 ask him.

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1 Q. Chief Norman, you have now had time to read paragraph 2 of
2 the document.

3 A. Please repeat.

4 Q. You have read paragraph 2 of the document before you, which
11:43:22 5 has the words, "that anyone working in the interest of the junta
6 from local to national level will be considered an enemy of the
7 state and therefore a target with the exception of health
8 workers."

9 A. Where does that start from?

11:43:38 10 Q. That is paragraph 2 on the second page.

11 A. Second page.

12 Q. That is all I am asking about.

13 A. Second page number?

14 JUDGE THOMPSON: Forgive me for insisting again on what I
11:43:51 15 consider to be a procedural propriety. He is identifying it now
16 as a document bearing a title. Can we have that for the records?
17 I see a document here titled so and so and so. So that we don't
18 have a lacuna in our records. Just to say I see a document and

19 paragraph 2 says so and so does not really tie things up neatly.

11:44:14 20 MR TAVENER: It is the words more than the document.

21 JUDGE THOMPSON: But indeed there is a title.

22 MR TAVENER: I will give the title, but it is the

23 particular words.

24 JUDGE THOMPSON: So that it can connect what he is trying

11:44:24 25 to say. Otherwise we have these things in the air.

26 MR TAVENER: Right. We have it recorded, which the witness

27 may not accept, as "CDF statement of 98.1, 22 December 1997".

28 JUDGE THOMPSON: You say that is the title?

29 MR TAVENER: That's the title. The other title on the next

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1 page --

2 JUDGE THOMPSON: That's okay.

3 MR TAVENER: Again, it's the words that are important.

4 JUDGE THOMPSON: Yes, I mean, the title is important to
11:44:57 5 introduce the document.

6 MR JABBI: My Lords, I'm really sorry to interpose at this
7 stage, but to all intents and purposes, notwithstanding that the
8 Prosecution have suggested that they are dealing with only one
9 paragraph from this document, however, the totality of the
11:45:23 10 document, I believe, clearly shows that it is wholly connected

11 with the Black December issue and any element in it is

12 accordingly concerned with that issue. I find it difficult to

13 see how it can possibly be used in order to adduce evidence in

14 respect thereof in view of the decision of this Court. So,

11:46:06 15 My Lord, I think that question and the use of this document

16 itself should not be allowed and I accordingly object to it,

17 My Lord.

18 PRESIDING JUDGE: Thank you. Mr Tavener, you wish to

19 respond?

11:46:21 20 MR TAVENER: Yes. It relates to one of the modes of
21 criminal liability. Therefore it is relevant. Dr Jabbi will be
22 in a position to re-examine should he wish to explore this
23 document any further, but I am not seeking to lead any material
24 relating to the operation per se.

11:47:10 25 PRESIDING JUDGE: Dr Jabbi, you wish to reply?

26 MR JABBI: My Lord, I find it difficult to see the
27 distinction the Prosecution is drawing. The content of the
28 document, as I have said, is very clearly dealing with the
29 Black December issue, and whilst the Prosecution may generally

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1 adduce relevant material indicating criminal responsibility, I do
2 not think, in view of the decision of the Court, it is material
3 from the Black December episode that necessarily has to be used
4 for that. Surely from other material outside that area it will
11:48:16 5 be easy for the Prosecution to indicate individual criminal
6 responsibility. He does not need to use material substantively
7 related to the Black December movement in order to create the
8 sense of individual criminal responsibility. It is just another
9 way of bringing through the back door material relating to what
11:48:52 10 has been -- what the Court has said is of no relevance and must
11 not be used in the trial. I cannot see how the content of this
12 can be dissociated from the substance of the Black December
13 movement. Thank you, My Lord.
14 PRESIDING JUDGE: We overrule your objection for the time
11:49:25 15 being and we will see where we are going with this. But, again
16 just looking myself at that document that you have shown to the
17 witness, it would appear to me to be a so-called press release
18 and it would appear from the face of the document - I am not

19 going into the substance of it - that this is indeed a speaker
11:49:42 20 given at this broadcast, on the face of it. This is not the
21 witness speaking on BBC, but a speaker, whoever it may be on --
22 MR TAVENER: Yes.
23 PRESIDING JUDGE: -- I don't know what FM 98.1 is, but on
24 that radio presumably. I take it from looking at the document
11:50:02 25 that the speaker would, in theory, have read this piece of paper.
26 Is it essentially -- am I factually describing what is the
27 background to this document?
28 MR TAVENER: That's correct and this witness has spoken
29 about having a reporter at Base Zero and him making certain

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1 statements to radio. I just want to see whether he either spoke
2 those words or authorised those words. That is all I am -- we
3 may stop there; it depends on what Mr Norman says in response to
4 the question. The reason the document is before him is not
11:50:37 5 because I am seeking to tender it, but simply so we all know what
6 I am speaking about. At the end of the day I am happy not to
7 tender the document, but I think the witness should at least be
8 shown the words so there is no confusion about what I am speaking
9 about. That's all I'm doing. It's an aid to him, not as a means
11:50:55 10 to tender a document.

11 JUDGE THOMPSON: So you clearly do not intend to have this
12 tendered as an exhibit?

13 MR TAVENER: No, that's correct. Now the words are on the
14 transcript, because I read them, there is no need for this
11:51:11 15 document to be tendered, I would say. It is available for
16 Dr Jabbi should he wish to re-examine on it.

17 JUDGE THOMPSON: My view clearly is the Prosecution is not
18 doing anything which is outside the rules and I would definitely

19 think it's proper to cross-examine on it, provided the witness is
11:51:34 20 able to say whether he is familiar with the contents of the
21 document.

22 MR TAVENER: Thank you.

23 JUDGE THOMPSON: That would be a proper basis upon which
24 cross-examination can proceed.

11:51:48 25 MR TAVENER: That is what I am trying to establish.

26 Q. Chief Norman, you will definitely have had time to have
27 read the document by now. In particular, the second paragraph on
28 the second page. Did you speak those words on the radio or did
29 you authorise the speaking of those words on the radio, that is

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1 98.1?

2 A. I did neither, My Lord.

3 PRESIDING JUDGE: Thank you. So that shall conclude this
4 issue, hopefully.

11:52:25 5 MR TAVENER: Yes, Your Honour.

6 PRESIDING JUDGE: Thank you.

7 MR TAVENER:

8 Q. I asked you a question yesterday from your testimony. It
9 is on 30th January, page 24. You said the words: "CDF,

11:53:04 10 co-jointly with the civilian and the superior military force,

11 proposed to apply any means within acceptable conditions

12 applicable to overcoming forces that were heavily armed with all

13 sorts of weapons."

14 PRESIDING JUDGE: Sorry, Mr Tavener, you are quoting from

11:53:23 15 30 January. Which page and line?

16 MR TAVENER: Lines 2 to 5. Sorry, lines 2 until line 5,

17 page 24, as I have it, around 11.10.

18 Q. What did you mean by the expression "apply any means within

19 acceptable conditions"?

11:54:11 20 A. That is means that are not criminally questionable.

21 Q. Does it mean that all rebels were to be killed?

22 A. No.

23 Q. What does it mean?

24 A. I have told you the meaning.

11:54:37 25 Q. Could you expand? I don't quite understand what you're
26 saying.

27 A. Means that are not criminally questionable.

28 Q. When you addressed the Kamajors at Talia on the big field,

29 did you tell them what acceptable means they were allowed to use

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1 when fighting or overcoming forces that were heavily armed with
2 all sorts of weapons?

3 A. They were told they were moving to join superior forces and
4 they were to operate under their orders.

11:55:25 5 Q. Did you tell them, the Kamajors, they had to operate within
6 acceptable means?

7 A. That isn't the -- what I, the co-ordinator, told this Court
8 was that that was a condition under which they were to operate
9 with the superior forces, My Lords.

11:55:59 10 Q. Are you saying you told the Kamajors they had to operate
11 within acceptable means? Is that what you're saying?

12 A. I'm saying that they were to operate under the orders of
13 superior forces, My Lord.

14 Q. So you didn't tell them to operate within acceptable means?

11:56:21 15 A. Not as a statement to them. I made that statement in this
16 Court.

17 PRESIDING JUDGE: So in this Court you were explaining how
18 you proceeded?

19 THE WITNESS: Yes.

11:56:36 20 PRESIDING JUDGE: But this is not the statement that you

21 made at the time?

22 THE WITNESS: No, My Lords. Yes.

23 PRESIDING JUDGE: So what you told them at the time was

24 that they were to operate on the --

11:56:56 25 THE WITNESS: Under orders.

26 PRESIDING JUDGE: The superior orders of your forces.

27 THE WITNESS: Yes, My Lord.

28 PRESIDING JUDGE: Meaning ECOMOG in most instances?

29 THE WITNESS: Yes.

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1 PRESIDING JUDGE: Thank you.

2 MR TAVENER:

3 Q. So, according to you, what the Kamajor forces or the CDF
4 forces did at the front, you gave them no advice as to what to
11:57:21 5 do?

6 A. Yes, My Lords, no specific.

7 Q. Moving on now to the attack on Koribundu, is it your
8 evidence that the only involvement you had with that attack - and
9 tell me if I'm wrong - was to send a commander to Koribundu to
11:57:48 10 meet up with Kamajors who were already there?

11 A. That was what the co-ordinator and the members of the
12 War Council at Base Zero did, My Lords.

13 Q. You were present in court when TF2-198, on 15th June 2004,
14 gave evidence. You may remember.

11:58:29 15 A. I remember, My Lords.

16 Q. He was a person from --

17 JUDGE ITOE: What date is that, please?

18 MR TAVENER: 15th June.

19 Q. He was a person from Koribundu --

11:58:39 20 JUDGE ITOE: Of what year?

21 MR TAVENER: 2004.

22 JUDGE ITOE: Thank you.

23 MR TAVENER:

24 Q. He was a person from Koribundu.

11:58:52 25 MR JABBI: My Lord, may we have the pseudonym number of the

26 witness, please?

27 PRESIDING JUDGE: TF2-198. At least that's what I wrote

28 down.

29 MR TAVENER: That's correct, Your Honour.

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1 Q. Now you say you didn't leave Talia until after 10th March
2 1998; is that correct?

3 A. No, I did not say so. I said I did not go into the areas
4 of operation during that time.

11:59:28 5 Q. Okay. At some time in -- or some time you became aware
6 that the attack on Koribundu had been successful; there had been
7 a successful attack?

8 A. Yes.

9 Q. Did you learn that from runners or from someone else?

11:59:50 10 A. Yes, from runners.

11 Q. Subsequently you visited Koribundu?

12 A. After the restoration of democracy and the reinstatement of
13 His Excellency the President.

14 Q. And did you give a speech at Koribundu?

12:00:08 15 A. I addressed my people, that is the people of my chiefdom,
16 My Lords.

17 Q. And as you have said, the people of Koribundu didn't like
18 you, most of them --

19 A. Most of them, yes.

12:00:23 20 Q. -- did not like you? There are a number of witnesses who

21 spoke about the speech you gave the first time you went to

22 Koribundu after it was recovered from the rebels.

23 A. Yes, My Lord.

24 Q. Did you tell the crowd at Koribundu, which had both

12:00:45 25 Kamajors and civilians in it - the crowd - that the Kamajors had

26 not done the work they should have done?

27 A. No, My Lords.

28 Q. Did you say that, "I told you" --

29 JUDGE ITOE: Please wait.

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1 MR TAVENER: Sorry, Your Honour.

2 Q. Didn't you say these words: "I told you that I wanted the
3 mosque, the barri and one house where I would have to reside, but
4 look at all the crowd that I'm seeing here." Did you say those
12:01:30 5 words?

6 A. No, My Lords.

7 Q. Didn't you give orders that everything be destroyed in
8 Koribundu except a few buildings?

9 A. I did not, My Lords.

12:01:39 10 Q. Didn't you say these words: "The soldiers killed, nothing
11 happened. Kapras killed, nothing happened. The rebels killed,
12 nothing happened. Why are you afraid of killing? Why? Really
13 you have not done my work. You disappointed me." Did you say
14 those words?

12:02:06 15 A. No, My Lords.

16 MR JABBI: My Lords -- sorry, please. My Lords, may we be
17 guided as to whether these citations are coming from the
18 transcript and what the specific reference points are?

19 PRESIDING JUDGE: Mr Tavener?

12:02:36 20 MR TAVENER: Thank you. A number of witnesses testified as

21 to these speeches, but the particular one I am referring to is

22 the witness I mentioned, TF2-198. The page reference is page --

23 that is on 15th June. The page reference is around 37, 38.

24 Pages 37 to 38.

12:03:06 25 Q. When do you say you first went to Koribundu after the

26 restoration?

27 A. Any time around April, My Lords.

28 PRESIDING JUDGE: We are talking April '98?

29 THE WITNESS: April 1998, My Lords.

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1 MR TAVENER:

2 Q. And you went there twice around that time?

3 A. No, I went there first in April and thereafter I made
4 several visits, My Lords.

12:03:36 5 Q. The second time you went back did you make another speech
6 from the barri?

7 A. I talked to my people, to the chiefdom people.

8 Q. And by that, you spoke to a crowd of -- well, you spoke to
9 the people of the town?

12:03:58 10 A. There was always a crowd whenever I was there, My Lords.

11 Q. At that second meeting -- do you know when that was?

12 A. No, I don't know precisely when.

13 Q. Do you recall saying the words, "The Kamajors did do what I
14 told them to do. We should stop slaying people's children. All

12:04:30 15 the destruction that the Kamajors did, you have to -- they swore
16 at me because I asked them to do it." Did you say those words?

17 A. No, My Lords.

18 PRESIDING JUDGE: Are you still quoting from that same

19 witness?

12:04:49 20 MR TAVENER: Same witness.

21 PRESIDING JUDGE: TF2-198?

22 MR TAVENER: That's correct.

23 PRESIDING JUDGE: What's the page?

24 MR TAVENER: 38.

12:05:04 25 Q. Wasn't the case, Chief Norman, that Koribundu had resisted

26 the efforts of Kamajors to take the town? That is the people in

27 the town had resisted the efforts, assisted the soldiers?

28 MR JABBI: My Lords, just before the witness answers that

29 question -- what I am saying is not connected with that question.

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1 But just before the witness answers that question can we have the
2 line numbers of these statements that are put to the witness? I
3 am sure the line numbers are clearly indicated in the transcript.
4 It is quite a material.

12:05:47 5 JUDGE ITOE: Why don't you ask for copies of those
6 transcripts? I mean, they are limited in terms of maybe pages 37
7 to 38, I think.

8 MR JABBI: My Lord, only one page?

9 JUDGE ITOE: Yes. Why don't you ask for them and you do
12:06:08 10 that? Do you want them to specifically refer you to the lines?

11 MR JABBI: They normally are there on the transcript. The
12 line numbers are there on the transcript; very easy to indicate,
13 My Lords.

14 JUDGE ITOE: I would have thought that copies of those
12:06:22 15 pages would be more useful to you. Anyway.

16 MR JABBI: That will enhance the usefulness of the copies
17 of those pages. I don't need to read the whole page if I already
18 have the line numbers, My Lord. Thank you very much.

19 PRESIDING JUDGE: Mr Tavener, can you assist?

12:06:42 20 MR TAVENER: Not at this stage, but I can provide line

21 numbers over the luncheon break. Once you get to the page you

22 are almost there, but I will endeavour to assist my friend.

23 Q. I will start again, Mr Norman. With Koribundu, the people

24 there, as we have agreed, most of them didn't like you. During

12:07:10 25 the war is it correct to say they assisted the soldiers? Is that

26 correct; people of Koribundu assisted the soldiers?

27 A. That is normal.

28 Q. They provided some early warning to the rebels, because we

29 are now speaking about 1998. They provided early warning to the

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1 rebels that the Kamajors were about to attack?

2 A. Yes, I did.

3 Q. You said that. Isn't it the case that you ordered that

4 Koribundu be burned down?

12:07:55 5 A. No.

6 Q. And you did so because the people didn't like you and they

7 had sided with the rebels?

8 A. No.

9 Q. And you're saying you told the Kamajors -- I will start

12:08:14 10 again. According to your evidence, the only Kamajor that went

11 from Talia to attack Koribundu was one commander?

12 A. I didn't say so.

13 Q. There was more?

14 A. No.

12:08:27 15 Q. What are you now saying?

16 A. I'm not now saying. I did not say the only Kamajor that

17 went to Koribundu was the one I knew. I said the War Council and

18 their co-ordinator gave instructions to one commander. That's

19 what I said here, My Lords.

12:08:55 20 Q. Are you now saying that more than one Kamajor went from

21 Talia?

22 A. I am not now saying that. I am not -- I have never said

23 one Kamajor. I said instructions were given to one commander.

24 Whether there were other people who went and so they were not

12:09:16 25 asked or they were not giving instruction and they were not told

26 by me.

27 Q. As the National Co-ordinator, do you know how many Kamajors

28 went from Talia to attack Koribundu?

29 A. No.

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1 Q. You don't know?

2 A. I don't.

3 Q. No one told you?

4 A. No.

12:09:35 5 Q. But you were in charge.

6 A. I don't deny.

7 Q. You don't deny --

8 A. That I was the co-ordinator. I have told you that there

9 was a battalion commander in the area where I was who was in

12:09:49 10 charge.

11 Q. Are you saying that you have no idea how many Kamajors were

12 attacking Koribundu?

13 A. No idea.

14 Q. You didn't know what was going on at the front?

12:10:01 15 A. I did not tell you I did not know. I said that I was told

16 thereafter what happened, that is the taking of Koribundu.

17 Q. Before the attack on Koribundu, are you saying you knew

18 nothing about the attack in terms of how many Kamajors were

19 involved?

12:10:17 20 A. That is exactly what I'm saying.

21 Q. And you gave them no orders?

22 A. I didn't.

23 Q. When you went to Koribundu after it had been retaken, what

24 do you say you said at this meeting?

12:10:59 25 A. My Lords, I told the people of Koribundu that whatever had

26 happened to Koribundu happened because of the conflict, that part

27 of the people of Koribundu had interest in either side of the

28 conflict. Therefore, whatever that had happened was now in the

29 past. Democracy had been restored, government had been

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1 reinstated, that we should all now be engaged in reconstruction
2 and repairs and development. There should no more be bitterness
3 and animosity. I may have said many other words, but these are
4 the few that I could remember among.

12:13:12 5 Q. There were many people at that meeting?

6 A. Yes, My Lords.

7 Q. The witnesses who testified were at the meeting, was it
8 suggested to any of them, or the one who was present when you
9 cross-examined him, did you suggest to him, "All I said was

12:13:42 10 everything should be forgiven"?

11 A. I did not know who they were. I only know that there was a
12 crowd.

13 Q. You were very angry at the people of Koribundu, weren't
14 you?

12:13:58 15 A. No, I wasn't. I was not only pleased that I saw among them
16 divisions.

17 Q. When you went to Koribundu were there still corpses in the
18 street?

19 A. Repeat, please.

12:14:20 20 Q. When you went to Koribundu was there still corpses in the

21 street?

22 A. No, I never saw one.

23 Q. Did you see any houses that had been destroyed?

24 A. Yes, I saw some houses.

12:14:20 25 [CDF07FEB06C - CR]

26 Q. You may have already answered this question, but it's your

27 understanding that ECOMOG had nothing to do with the attack on

28 Koribundu?

29 A. No, I've told you so. The only thing ECOMOG did was to

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1 supply the needs of the hunters who took part in the attack.

2 Q. By that, you mean the guns, the ammunition?

3 A. Everything.

4 Q. If I can refer to the evidence of TF2-008, 16th November
12:15:33 5 2004, page 51. Is it correct to say that yourself, Mr Fofana,

6 Mr Kondewa, were the military centre of the Kamajors, the CDF?

7 A. Repeat, please.

8 Q. You, Mr Fofana and Mr Kondewa were the military centre of
9 the Kamajors.

12:16:12 10 A. If that was correct?

11 Q. Is that correct?

12 A. No.

13 Q. All the Kamajors looked up to you, did they not?

14 A. No, not in the sense that I was the only one that should
12:16:29 15 tell them things to do and they did.

16 Q. You were the leader of the Kamajors?

17 A. No. I was a member of the Kamajors.

18 Q. Who was the leader of the Kamajors, according to you?

- 19 A. The Kamajors were a group of people in their respective
12:16:47 20 chiefdoms. Those were the Kamajors.
- 21 Q. Are you saying there was no one leader of the Kamajors?
- 22 A. Not at all.
- 23 Q. Superior leaders --
- 24 A. They all had their own leaders in the chiefdoms.
- 12:17:04 25 Q. Were you ever introduced as the leader of the Kamajors?
- 26 A. If I was, it was not upon my request, but not to my
27 knowledge.
- 28 Q. Did you ever introduce yourself as leader of the Kamajors?
- 29 A. No, My Lords.

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1 Q. Without going back to the calendar, Mr Fofana was,
2 according to the calendar, and to you, appointed by the NCC to be
3 the director of war. He was the director of war.

4 A. According to the calendar.

12:17:41 5 Q. And also the organigram.

6 A. That's what the calendar says.

7 Q. Yes. I just want to clarify one point. When you say
8 people didn't have positions, is it your view that until the NCC
9 was established, there were no official positions?

12:18:07 10 A. This is what I'm saying, My Lord. That the NCC came to put
11 together formally the group of fighters that were known in
12 Sierra Leone as hunters.

13 Q. Prior to that, were there informal positions?

14 A. Was that they belonged to their chiefdom authorities.

12:18:48 15 Q. What I'm suggesting to you is that Mr Fofana held the
16 position of director of war informally before the NCC was
17 created.

18 A. It's a suggestion.

19 Q. Do you agree with it?

12:19:07 20 A. It's your suggestion. I do not have any authority to

21 disagree or to agree.

22 Q. You appointed Mr Fofana director of war. You.

23 A. I didn't, My Lord.

24 Q. Whether it was unofficial or official, you appointed Fofana

12:19:35 25 the director of war.

26 A. I did not, My Lord.

27 Q. Are you saying you did not appoint Fofana to any position?

28 A. That is not what I'm saying.

29 Q. What are you saying?

SCSL - TRIAL CHAMBER I

1 A. I'm saying I did not appoint him director of war.

2 Q. What did you appoint him as?

3 A. Nothing, My Lord.

4 Q. Who in Talia decided how many Kamajors would go to the war

12:20:18 5 front?

6 A. The director of operations.

7 Q. Who was that?

8 A. That was the director of operations.

9 Q. In Talia, who was that?

12:20:27 10 A. It was a young man called Koroma that was directing

11 operations under whom a witness here was working.

12 Q. Did the director of operations come under your control?

13 A. No.

14 PRESIDING JUDGE: We're talking here of Talia?

12:20:58 15 MR TAVENER: That's correct, yes, Talia.

16 Q. Is that because you are maintaining no one came under your

17 control?

18 A. Please repeat.

19 Q. Are you maintaining that no one came under your control?

12:21:16 20 A. These were people who had come to Talia from their various

21 chiefdoms, assisting the War Council and the national

22 co-ordinator. So I was not a commander to have anyone under my

23 control like that.

24 Q. At the first meeting at Koribundu did you tell people that

12:21:57 25 you were the one who sent the Kamajors to Koribundu? Did you

26 tell the meeting, the people assembled before you, that you sent

27 the Kamajors to Koribundu?

28 A. No, My Lords.

29 Q. The first you addressed the crowd at Koribundu from the

1 barri was Mr Fofana with you?

2 A. He was.

3 Q. And Mr Kondewa was with you?

4 A. No, My Lord.

12:22:42 5 Q. Did Mr Fofana speak at that meeting?

6 A. I don't remember if he did.

7 Q. Who introduced you at that meeting?

8 A. I believe it was Alhaji Daramy Rogers, My Lord.

9 Q. Did you regard the people at Koribundu as being

12:23:10 10 collaborators?

11 A. No, My Lords.

12 Q. But they assisted the rebels?

13 A. They may have.

14 Q. Did you regard them as --

12:23:30 15 JUDGE ITOE: As collaborators, can you be specific? As

16 collaborators to who?

17 MR TAVENER: Collaborators to the rebels.

18 JUDGE ITOE: Be specific.

19 MR TAVENER: I'll ask it again so there is no confusion.

12:23:42 20 Q. Did you regard the people of Koribundu as collaborators to

21 the rebels?

22 A. They may have.

23 Q. Did you regard them as collaborators?

24 A. I did not regard them as collaborators.

12:24:01 25 JUDGE ITOE: Collaborators to the rebels?

26 MR TAVENER: That's correct.

27 JUDGE ITOE: Is that so?

28 MR TAVENER: Collaborators with the rebels.

29 THE WITNESS: My Lord --

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1 JUDGE ITOE: I did not regard it as collaborators --

2 THE WITNESS: As collaborators of the rebels.

3 JUDGE ITOE: Mmm?

4 THE WITNESS: The rebels, My Lord. That is his question,
12:24:23 5 that is my answer.

6 MR TAVENER:

7 Q. Wasn't it your view, and you told people, that anyone who
8 helped the rebels was an enemy?

9 A. That was never my views and I never expressed such words to
12:24:47 10 anybody, My Lords.

11 JUDGE ITOE: Take that again, Mr Tavener.

12 MR TAVENER:

13 Q. Can you repeat your answer, please?

14 A. Repeat your question, please.

12:25:09 15 Q. Did you ever tell anyone that the people of Koribundu were
16 the enemy?

17 A. No, My Lord.

18 Q. So having visited Koribundu on at least two occasions,

19 where did you go to?

12:25:34 20 A. From Koribundu?

21 Q. Yes.

22 A. I visited other places. I told this Court, My Lord.

23 PRESIDING JUDGE: Is your question related to within

24 Koribundu, or are you asking if he went elsewhere?

12:25:54 25 MR TAVENER:

26 Q. Sorry. From Koribundu, you went elsewhere?

27 A. Yes, My Lord.

28 Q. Did you have any role in the attack on Tongo?

29 A. No, My Lord.

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1 Q. Did you know the attack was going to happen?

2 A. I did, My Lord.

3 Q. How long before the attack did you know about it?

4 A. Long time that ECOMOG was moving into that direction,

12:26:22 5 My Lord.

6 Q. You don't know whether or not ECOMOG attacked Tongo, do

7 you?

8 A. I don't.

9 Q. Did you plan the attack on Tongo from Talia?

12:26:37 10 A. No, My Lords.

11 Q. Did you give any orders in respect of Tongo?

12 A. No, My Lords.

13 JUDGE ITOE: Mr Tavener, there is a recital, you know. Can

14 we record your -- can you proceed more cautiously? If you don't

12:26:59 15 mind, you may wish to take that again.

16 MR TAVENER: Okay.

17 Q. I asked you, Mr Norman, did you give any orders about the

18 attack on Koribundu -- sorry, Tongo?

19 A. No, My Lords.

12:27:13 20 Q. Did you have any involvement at all on the attack on Tongo?

21 A. No, My Lords.

22 Q. Did you ever say whoever takes Tongo and keeps it wins the

23 war?

24 A. I did say that on the BBC, on the telephone, My Lords.

12:27:41 25 Q. Did you also say at the same time --

26 JUDGE ITOE: Please. Please.

27 MR TAVENER: Sorry, Your Honour.

28 PRESIDING JUDGE: Yes.

29 MR TAVENER:

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1 Q. And, therefore, Tongo should be taken at all costs?

2 A. I don't remember saying that, My Lords.

3 Q. Why were you speaking on the radio about Tongo when,

4 according to you, you had nothing to do with the attack on Tongo

12:28:28 5 at all?

6 A. It was a BBC question. A battle was going on over Tongo,

7 and the question was, "How important was Tongo in the war?"

8 That's when I said Tongo was a mining area and that if the rebels

9 were there mining that might help their war effort, and that if

12:29:01 10 Tongo was taken, then that would put an end to financing the war.

11 Q. Therefore, Tongo should be taken at all costs?

12 A. I didn't go to that extent.

13 Q. You remember some words, but not all of what you've said?

14 A. Well, that's what you say I said, but I do not remember

12:29:17 15 saying so.

16 Q. You also said, "Anybody found there working with the junta

17 there or mining for them should not be spared."

18 A. No, My Lord, I did not say this.

19 Q. When you spoke to the Kamajors in Talia when they gathered
12:29:53 20 on the big field, Mr Fofana was always with you?

21 A. No, My Lords.

22 Q. Most of the time?

23 A. Some of the times.

24 Q. Mr Kondewa was always there?

12:30:00 25 A. Not always.

26 Q. You had an important job as the national co-ordinator, did

27 you not?

28 A. That was important, that's why the President had allocated

29 to me.

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1 Q. When you left Talia, who took over your position?

2 A. Nobody. Up to today, nobody.

3 Q. You found out that Tongo was taken, then retaken and so

4 on - is that correct? - by way of runners.

12:30:39 5 A. That was the information that Tongo had been reoccupied, so

6 on, so it was a ding-dong issue.

7 PRESIDING JUDGE: But you found that out by runners?

8 THE WITNESS: Yes, My Lord.

9 MR TAVENER:

12:31:06 10 Q. Why did you need to be informed about the progress of

11 battles when you had no role to play in the fighting at all,

12 according to you?

13 A. Why did I need to be?

14 Q. Why did you need to be informed about the progress of

12:31:22 15 battles when you had no role in the fighting at all?

16 A. I was the co-ordinator. I should be informed how the

17 hunters were assisting the ECOMOG in the field. Those were

18 information that I should get, and I got them, occasionally.

- 19 Q. According to you, Talia was just a place where Kamajors
12:31:53 20 were trained.
- 21 A. According to me?
- 22 Q. Yes.
- 23 A. Talia was just a training place?
- 24 Q. Yes. Isn't that what you are saying?
- 12:32:03 25 A. That is not what I am saying. I was there and training was
26 going on, that is what I'm saying.
- 27 Q. So Talia was a training place and you were there?
- 28 A. I was there and those who came were being trained there.
- 29 Q. According to your evidence, you did nothing there; you were

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1 of no importance to the war.

2 A. I never said so.

3 Q. You had no importance to the war; you did not contribute to
4 the Kamajors during the war?

12:32:41 5 A. I did not say - I have never said so in this Court,
6 My Lords.

7 Q. What did you do to contribute to the Kamajors during the
8 war?

9 A. I co-ordinated.

12:32:51 10 Q. What do you mean?

11 A. Making their assistance to the ECOMOG to assist in the
12 restoration -- to assist in the restoration of democracy and the
13 reinstatement of the President and his government.

14 Q. According to you, ECOMOG was communicating directly with
12:33:13 15 the Kamajors in the field.

16 A. That is what I've said.

17 Q. According to you. Your only communication were the
18 runners.

19 A. That is what I've said.

12:33:23 20 Q. Listening to the radio; yes?

21 A. Yes.

22 Q. And you had the satellite phone?

23 A. Yes.

24 Q. You did nothing. According to you, your story is that

12:33:40 25 ECOMOG was controlling the Kamajors. You had nothing --

26 A. That is what I am saying. I was not a commander. I was

27 just a -- I was just a co-ordinator, not a commander, not to give

28 them battle orders and so on. That is what I have incessantly

29 said here.

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1 Q. According to you then, even the role you described was
2 unnecessary, because --

3 A. According to me, no, that is not unnecessary.

4 Q. -- ECOMOG was dealing directly with the troops in the
12:34:21 5 field. Why did anyone need to talk to you, according to your
6 story?

7 A. That is their question, not my own, My Lords.

8 Q. You gave no orders?

9 A. Orders as to battle?

12:34:31 10 Q. Yes.

11 A. No.

12 Q. Did you ever watch the training?

13 A. If I ever watched the training?

14 Q. Watch the training at Talia?

12:34:51 15 A. Yes, I did.

16 Q. If I was to ask you did you notice children under 15 being
17 trained, what would your answer be?

18 A. I said -- I said nothing of the sort happened.

19 Q. You saw no one under 15 being trained?

12:35:22 20 A. That is what I'm saying, My Lord.

21 Q. Later, you became aware that the Kamajors were using

22 children under 15 in battle, did you not?

23 A. I did.

24 Q. When did you become aware of that?

12:35:34 25 A. That was when the government had been reinstated, and

26 because of this, I gave advice to His Excellency the President.

27 Q. When did you actually become aware? Can you put a date on

28 when you became aware the Kamajors were using children under the

29 age of 15?

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1 A. I can only bracket the period, not a date.

2 Q. Do that.

3 A. This was after the reinstatement of the government,

4 My Lords.

12:36:07 5 Q. Was that after 10 March 1998?

6 A. After that 10 March, and not only the Kamajors that -- I

7 observed that people, to my observation, that could well be

8 children were involved in the war and the government should do

9 everything to discourage this.

12:36:39 10 Q. How did you become aware? Actually, how did you become

11 aware?

12 A. The government had been reinstated and I was making tours

13 around the country as I became aware, My Lords.

14 Q. Did you become aware by seeing children under the age of 15

12:37:05 15 carrying arms, wearing Kamajor outfits? Is that how you became

16 aware?

17 A. Not only wearing Kamajor outfits. I said I became aware of

18 people, observed by me, to be considered children were involved

19 in the war and that His Excellency should do everything to let
12:37:31 20 this be discouraged, My Lords.

21 Q. You're telling this Court that you lived in Talia for
22 September through to approximately March 1997, 1998. You saw no
23 children under the age of 15 carrying arms?

24 A. In Talia, no.

12:38:09 25 Q. There were thousands of Kamajors there; you didn't see one
26 child soldier?

27 A. I did not, My Lord.

28 Q. Subsequently, after the restoration of the government, you
29 saw child soldiers?

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1 A. I did.

2 Q. Did that come as a surprise to you?

3 A. It did.

4 Q. You spoke about the evidence of TF2-140. That was

12:39:01 5 someone -- again, you were present in Court when this person gave

6 evidence on 14 September of 2004?

7 JUDGE ITOE: TF?

8 MR TAVENER: TF2-140.

9 Q. You may remember him as a person to whom you said, "I'm

12:39:24 10 glad to see you." Do you remember that young person?

11 A. I did.

12 Q. Is it correct to say you first met that person, TF2-140, at

13 CAW, as you described, Children Affected by the War, is that --

14 A. Bo, in Bo, Sierra Leone.

12:39:49 15 Q. CAW in Bo.

16 A. Yes.

17 Q. That's when you first saw him?

18 A. Yes, My Lord.

19 Q. You gave the Court a detailed description of how you
12:39:57 20 subsequently looked after him.

21 A. And others, My Lord.

22 Q. And others. He gave evidence that he was involved in
23 fighting for the CDF.

24 A. Pardon?

12:40:23 25 Q. He testified that he was involved in fighting for the CDF.

26 A. I don't remember, but if he said so, that would be wrong.

27 Q. That would be wrong?

28 A. Yes.

29 Q. He said he initially fought with the rebels, and then he

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1 was captured by the CDF and then --

2 A. Brought to Bo, into CAW.

3 Q. He was immunised with other people, including boys of 10 and

4 11; do you remember that evidence?

12:40:59 5 A. I remember that evidence.

6 Q. You heard his evidence that he was immune -- that he was

7 immunised, I should say, with boys of 10 and 11?

8 A. That is what he said.

9 Q. You heard his evidence. Did you know at the time that boys

12:41:20 10 as young as 10 and 11, at least, if not younger, were being

11 immunised?

12 A. No, My Lords.

13 Q. Were you aware that Mr Kondewa was charging money for the

14 services, the immunisation services?

12:41:39 15 A. I was not aware, My Lord.

16 Q. At any time, did you become aware of the fee involved in

17 order to be passed through the methods practised by Mr Kondewa?

18 A. No, My Lords.

19 Q. You never knew that?

12:41:57 20 A. I was not aware.

21 Q. The witness TF2-140 said he fought at Kenema.

22 A. That was what he said?

23 Q. Were you aware of that?

24 A. No, My Lord.

12:42:13 25 Q. Did you later bring him to Freetown by helicopter?

26 A. No, My Lord.

27 Q. Did you go to Guinea with TF2-140?

28 A. No, My Lord.

29 Q. Did you ever go to Guinea where you had a meeting with

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1 President Kabbah, Joe Temby [sic], Peter Penfold in Guinea where
2 you were given money --

3 A. Repeat the names.

4 Q. President Kabbah, Deputy President Joe Temby --

12:43:00 5 A. Joe Demby.

6 Q. Joe Demby - sorry, my mistake - the British High

7 Commissioner Peter Penfold.

8 A. I don't remember ever Demby, British High Commissioner,

9 myself meeting before the President, My Lord.

12:43:12 10 Q. Do you recall a meeting in Guinea in which the President
11 gave you 32 million Leones?

12 A. I don't recall, I don't remember, and that did not happen.

13 Q. Did the President ever give you money to assist in the
14 fighting?

12:43:28 15 A. Yes, he did.

16 Q. Where were you when you received that money?

17 A. The first money -- I was in Monrovia when the first 10,000
18 was sent and, subsequent to that, the moneys were brought to

19 Monrovia and I was airlifted to receive the money in Monrovia, My
12:43:51 20 Lords.

21 PRESIDING JUDGE: When you say the first time in Monrovia,
22 10,000, we're talking of what? Leones?

23 THE WITNESS: No, My Lords, \$10,000, sorry.

24 PRESIDING JUDGE: Thank you. Then the subsequent times you
12:44:17 25 were --

26 THE WITNESS: I was at Base Zero, and the heli lifted me to
27 Monrovia.

28 MR TAVENER:

29 Q. You have spoken about Peter Penfold, the British High

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1 Commissioner.

2 A. Yes, My Lords.

3 Q. In your evidence, the only meeting you spoke about him

4 being present was the time when the four ambassadors or senior

12:44:50 5 officials of some sort came to see you to ask you to go and see

6 the President.

7 A. To go with them to see the President.

8 Q. During the period of the war, that is after the coup until

9 the war was finished, did you have any other meetings with Peter

12:45:14 10 Penfold?

11 A. No, My Lord.

12 Q. The only meeting you had was the one you have spoken about.

13 A. During the overthrow.

14 Q. In Guinea?

12:45:27 15 A. In Guinea, My Lords.

16 Q. I might now go to 15 September 2004. The witness TF2-082?

17 PRESIDING JUDGE: What's the date again, September?

18 MR TAVENER: 15th September 2002.

19 PRESIDING JUDGE: 2004.

12:46:00 20 MR TAVENER: Sorry, 2004. My mistake, sorry. For the

21 witness's benefit, I might write the name of the person. He may

22 not be familiar with the -- I'll get it back off him just so he

23 knows.

24 PRESIDING JUDGE: We will ask the Court officer to show it

12:46:21 25 to your colleagues on the other side.

26 MR TAVENER: Yes.

27 PRESIDING JUDGE: On that piece of paper, Mr Tavener, this

28 is the name of TF2-082?

29 MR TAVENER: Yes, the actual name. He was in closed

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1 session.

2 Q. You know that person?

3 A. Yes, very well, My Lords.

4 Q. Were you present in court when he testified?

12:46:59 5 A. I was, My Lord.

6 Q. Do you recall his evidence that you had him called to

7 Talia?

8 A. I heard him say so.

9 Q. And did you do that?

12:47:13 10 A. Yes, My Lord, I did.

11 PRESIDING JUDGE: Can you repeat that question, if he did

12 call him?

13 MR TAVENER: Call him to come to Talia, arrange for him,

14 and the witness agreed he did. I'm looking at page 8 again of

12:47:43 15 15th September 2004.

16 Q. He gave evidence that you called him to go and capture

17 Koribundu?

18 A. That is what he said.

19 Q. Is that true?

12:47:58 20 A. I did not call him to go and capture Koribundu.

21 Q. Why did you call him, according to you?

22 A. He was to come and be examined by the appointment -- the

23 promotion and appointment committee to see if he was fit enough

24 for command.

12:48:18 25 Q. And you approved him to attack Koribundu?

26 A. When he was recommended and promoted, the War Council and

27 myself decided that he will be fitted enough.

28 Q. We have been through that system before. You were the one

29 who finally approved a promotion, a position to commander?

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1 A. After recommendation.

2 Q. And you approved this man to be the commander and to go and
3 capture Koribundu?

4 A. Not, he was approved as the commander. Later he was given
12:49:05 5 an assignment, My Lords.

6 Q. You also told him - I'm looking at page 10, line 3 -

7 "Whenever you capture a rebel, kill that rebel and burn the place
8 again." That was the order you gave him.

9 A. That was not the order I gave him. I never gave such
12:49:29 10 orders, My Lords.

11 Q. Did that man then go and lead the attack on Koribundu?

12 A. Pardon?

13 Q. Did he then do that; did he lead the attack?

14 A. Did he?

12:49:55 15 Q. Yes.

16 A. He did.

17 Q. You told him to kill Shekou Gbao, did you not?

18 A. No, My Lord, I did not.

19 Q. You testified that Shekou Gbao was a --

12:50:38 20 A. It's Gbao. Shekou Gbao.

21 Q. We're speaking about the same person. He was a competitor

22 to you for the job as regent chief, was he not?

23 A. No, My Lord, he competed with his own brother for the

24 chieftaincy, paramount chieftaincy, My Lords.

12:50:55 25 Q. He did not support you, though? He did not support you to

26 be the Regent chief?

27 A. There was no reason why he should. Regent appointment is a

28 prerogative of government.

29 Q. TF2-082 was also at the meeting at Koribundu. Sorry, I

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1 take that back. He was at a meeting in which you said these
2 words, page 49: "In that first meeting he said he greeted his
3 brothers and he said he was the one that sent the capture there."
4 Speaking about Koribundu. He said: "The war at Koribundu, the
12:52:02 5 people kept the rebels there, they were going to destroy other
6 places. That they were going and killing people and I was there.
7 They were all there still being harboured." Did you say those
8 words?

9 A. That's what he said, but I didn't.

12:52:26 10 Q. Page 50, he described the second meeting at Koribundu.

11 THE INTERPRETER: Your Honours, we would like to appeal to
12 learned counsel to take it very slowly.

13 MR TAVENER: I will try to speak slowly.

14 Q. He said at the second meeting, page 49:

12:52:43 15 "I have been hearing you cursing Kamajors. Don't you know
16 that when those guys were here, that they overthrew the
17 government? If you want to curse these Kamajors, don't
18 curse them, just curse me, because I sent them here."

19 Did you say those words?

12:53:26 20 A. No, My Lord.

21 Q. Were there any prisoners taken at Koribundu, to your

22 knowledge?

23 A. Not to my knowledge.

24 Q. In the time that Talia was set up in September of 1997

12:54:07 25 through to the war finishing, did the Kamajors take any

26 prisoners?

27 A. I did say yes, they did. They brought one prisoner who

28 later became an assistant trainee officer.

29 Q. Once the government was reinstated, or the President came

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1 back, was there any provision for prisoners being detained,
2 prisoners of the Kamajors or the CDF?

3 A. That would be a policy for ECOMOG under whom the hunters
4 were operating.

12:54:51 5 Q. Did you give any direction as to the treatment of
6 prisoners?

7 A. No, My Lords.

8 PRESIDING JUDGE: What time frame are we talking about?

9 Any time?

12:55:09 10 MR TAVENER: Any time from the beginning of Talia from when
11 Mr Norman went there until the end of the war.

12 Q. Did you ever visit SS Camp?

13 A. Yes, I did.

14 Q. Where was SS Camp?

12:55:31 15 A. Kenema, My Lords.

16 Q. What was the purpose of SS Camp?

17 A. It was a camp for displaced people, My Lords.

18 Q. Were prisoners kept there during the war?

19 A. I don't know.

12:55:54 20 Q. When did you visit there?

21 A. Several times. Once before the overthrow, several times

22 after the reinstatement of the government, My Lords.

23 Q. When you went there, would you review the occurrence book

24 that was maintained there?

12:56:38 25 A. No, My Lords.

26 PRESIDING JUDGE: Sorry, what is the question again?

27 MR TAVENER: When the witness went SS Camp, I asked him did

28 he review or look at the occurrence book that was maintained

29 there.

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1 Q. SS Camp was captured from the rebels?

2 A. It was a displaced camp, My Lord.

3 Q. At all times?

4 A. It started as a displaced camp, it ended up as a displaced

12:57:17 5 camp.

6 Q. At one time during the war, it was used for executing

7 prisoners; isn't that correct?

8 A. No, My Lords.

9 Q. When you went there, you would review the occurrence book,

12:57:40 10 and if it was full, you would supply another one?

11 A. No, My Lord, there was no book of such.

12 Q. Are you saying that when you went to SS Camp, all you ever

13 saw was displaced persons?

14 A. Repeat.

12:58:02 15 Q. Are you saying that when you went to SS Camp, all you ever

16 saw was displaced persons?

17 A. There were displaced people there. I went to see them,

18 talk to them.

19 Q. You saw no prisoners?

12:58:24 20 A. No, My Lords.

21 Q. You're not aware of any executions?

22 A. I'm not aware of such, My Lords.

23 Q. Did you ever say that civilian collaborators, those who

24 were sympathising with the AFRC and the RUF rebels should be

12:59:02 25 killed?

26 A. I never said such words anywhere in this country.

27 Q. Did you ever make any statement about how sympathisers or

28 collaborators - collaborators with rebels - should be treated?

29 A. Yes.

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1 Q. Is that what you have already told the Court today?

2 A. I said that whoever sympathised and collaborated, if they
3 were caught, they should be treated as Sierra Leoneans and not as
4 enemies.

12:59:42 5 Q. Did you ever make a statement as to what should happen to
6 captured combatants?

7 A. This is what I have just said.

8 Q. The same?

9 A. That if they capture anybody who was considered an enemy,
12:59:59 10 that person should be treated as a Sierra Leonean and not as an
11 enemy any more.

12 Q. Thank you.

13 MR TAVENER: I'm moving on to another crime base,
14 Your Honour. This might be an appropriate time.

13:00:13 15 PRESIDING JUDGE: Yes, indeed, it is 1.00. We will adjourn
16 for lunch. We'll resume at 2.30.

17 [Luncheon recess taken at 1.00 p.m.]

18 [CDF07FEB06D-SV]

19 [Upon resuming at 2.45 p.m.]

14:45:57 20 PRESIDING JUDGE: Good afternoon. Good afternoon,

21 Mr Prosecutor. When we left before the lunch you were to move

22 into a different area. We just left Koribundu, if I'm not

23 mistaken.

24 MR TAVENER: That's correct, Your Honour.

14:46:21 25 PRESIDING JUDGE: Just for the information of the Chamber,

26 can we have some indication as to how long you expect your

27 cross-examination to be carried on and, again, it's just

28 indicative?

29 MR TAVENER: I expected I'll be completed in one --

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1 PRESIDING JUDGE: Today.

2 MR TAVENER: Today, yes. Somewhere around 4 o'clock I
3 would expect, maybe less.

4 PRESIDING JUDGE: Okay. So before I ask you to carry on, I
14:46:51 5 just wanted to talk to the Defence, considering their application
6 to hear the next witness. So, if the cross-examination is over
7 with by roughly 4 o'clock, we will be close to the afternoon
8 break. After that, if you have any re-examination we'll do
9 re-examination. So would you be prepared to proceed with your
14:47:12 10 next witness this afternoon?

11 MR JABBI: It is unlikely, My Lord.

12 PRESIDING JUDGE: Assuming we are finished by 4.00. It has
13 to be given some flexibility. The best prognosis is rarely
14 accurate.

14:47:36 15 MR JABBI: Because I may do a little bit of re-examination
16 and I may well finish after 5.00, just after 5.00.

17 PRESIDING JUDGE: That's fine. If that were the case, you
18 would be ready -- your witness is standing by by now and would be

19 ready to be called first thing in the morning?

14:48:01 20 MR JABBI: Yes, My Lord.

21 PRESIDING JUDGE: Very well.

22 MR MARGAI: My Lord, before we proceed, I am sorry again to

23 bring this up, but I think because of the importance of this

24 application, although it has nothing to do with the third accused

14:48:19 25 directly, but I believe it will have an impact indirectly. May

26 we again seek your guidance as to how soon the oral submissions

27 will be entertained vis-a-vis the application relative to the

28 subpoena?

29 PRESIDING JUDGE: Indeed.

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1 MR MARGAI: Thank you.

2 PRESIDING JUDGE: I thank you to remind me about that,

3 Mr Margai. I can tell you that our intent was to do it the

4 soonest and we would have preferred to do it even tomorrow

14:48:47 5 morning, as we had announced, but given the change of calendar

6 and the request by the Defence to have this witness heard at this

7 time, we've pushed it back. We are still intending to do it the

8 soonest. Our preference would be to do that after that next

9 witness. So I was going to ask for some indication as to how

14:49:10 10 long the Defence and the Prosecution expect that witness to be

11 and to give us some indication and maybe we can hear that

12 application on Friday, at the latest by Monday next week.

13 JUDGE THOMPSON: That was a factor in my initial reluctance

14 when the idea of interposing another witness after the

14:49:32 15 cross-examination of the first accused is concluded. We thought

16 the Chamber had attached, as a result of the prompting and the

17 urging of the Defence, a high priority to hearing that motion

18 tomorrow morning. Then, through no fault of the Chamber, there

19 was in fact this other pressing application. So we had to
14:50:02 20 reconcile the conflicting equities and if there is an application
21 to withdraw this witness we are ready to come tomorrow morning.
22 I speak here with the conviction that we thought that motion
23 needed to be disposed of as expeditiously as possible.
24 MR MARGAI: As My Lord pleases. Based on the assurance
14:50:26 25 given to the Chamber and to us by my learned colleagues
26 representing the first accused that this interposing witness will
27 not be a lengthy one, I was just thinking, My Lords, with all
28 humility, if perhaps the motion could be heard tomorrow after the
29 completion of the cross-examination and, of course, the

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1 re-examination and I'm sure that will still leave my colleagues
2 with ample time -- sorry.

3 PRESIDING JUDGE: Tomorrow is Wednesday.

4 MR MARGAI: I know tomorrow is Wednesday.

14:51:06 5 PRESIDING JUDGE: We are not sitting in the afternoon. So
6 that's why I'm mentioning it's Wednesday.

7 MR MARGAI: I do not want to make the mistake of dictating
8 or perhaps even attempting to suggest to Your Lordships as to how
9 Your Lordships' calendar should be.

14:51:25 10 JUDGE ITOE: The calendar has [overlapping speakers] of
11 your own interests, the interests of counsel.

12 MR MARGAI: I am sure, My Lords --

13 JUDGE ITOE: It's a mid-term break for everybody to be able
14 to sort out of some papers at all levels. This includes counsel

14:51:37 15 on both sides as well. It's not just for the Bench.

16 MR MARGAI: We do appreciate that, My Lords. I am sure the
17 Bench is taking cognisance and being very magnanimous to us here,
18 time-wise. But because of the nature of the application and the

19 circumstances in which we find ourselves, I'm sure, speaking for
14:51:56 20 us here on this side without attempting to speak for my
21 colleagues on the left, subject to the convenience of the Bench,
22 we would not mind sitting full day of Wednesday.
23 PRESIDING JUDGE: I take it from all of these comments and
24 given the fact that counsel for the first accused has not
14:52:40 25 responded to that, that the totality of the evidence of your next
26 witness will not be - and I mean by this examination-in-chief and
27 presumably cross-examination - of more than a day in total. Am I
28 assuming the right facts?
29 MR JABBI: Your Honour, that undertaking cannot be made at

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1 all by us. In any case, we're not in control of the other side's
2 cross-examination.

3 PRESIDING JUDGE: But what about your examination-in-chief?

4 In your estimate it will be what, half a day?

14:53:14 5 MR JABBI: Maybe just over half a day.

6 PRESIDING JUDGE: Very well. We will fix the hearing of
7 that motion at Friday 9.30 in the morning. So that gives a day
8 and a half to deal with that witness.

9 MR JABBI: Thank you very much.

14:53:34 10 PRESIDING JUDGE: Thank you. So the answer to your
11 question, Mr Margai, and I thank you again, the hearing, the oral
12 hearing of that motion is scheduled now for 9.30 this particular
13 Friday.

14 MR MARGAI: Thank you, My Lord.

14:53:59 15 PRESIDING JUDGE: And this Friday being 10th February, 9.30
16 and the Attorney General's office should be informed accordingly
17 that this will be taking place Friday morning.

18 MR MARGAI: Thank you, My Lord.

19 PRESIDING JUDGE: So we're back to you, Mr Prosecutor.

14:54:18 20 MR TAVENER: Thank you, Your Honour.

21 JUDGE ITOE: We see the learned prosecutor before us. Is

22 this just a routine presence or does he have any special matters

23 before us?

24 MR MARGAI: That's reinforcement, I presume.

14:54:37 25 MR De SILVA: No, no, no. I don't think reinforcements are

26 required by my learned friend Mr Tavener. I am here as a matter

27 of courtesy and it is always a pleasure to appear before Your

28 Lordships and so I decided to, instead of whiling away my time --

29 in any case it keeps me off the streets.

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1 PRESIDING JUDGE: Welcome.

2 JUDGE ITOE: You're welcome. So, Mr Tavener.

3 MR TAVENER: Thank you, Your Honour.

4 Q. If I could turn just briefly back to the witness TF2-082.

14:55:17 5 That's the person whose name I showed you?

6 PRESIDING JUDGE: So this is the last witness you were
7 dealing with in cross-examination this morning.

8 MR TAVENER: That's correct.

9 Q. And Chief Norman cross-examined that person?

14:55:29 10 A. Yes, I did.

11 Q. In cross-examining him, you put a number of matters to him,
12 and this is on 16 September -- 15 and 16 September? Did you say
13 to him --

14 PRESIDING JUDGE: What's the pages you have?

14:55:50 15 MR TAVENER: It will be general questions, firstly. The
16 page is on 16 September -- he was the first witness, starting at
17 page 1 on 16 September 2004.

18 PRESIDING JUDGE: Thank you.

19 MR TAVENER:

14:56:01 20 Q. Did you ever say to that witness what you're saying about

21 the meetings at -- or the meeting at, either meeting, at

22 Koribundu did not happen, "I did not say the words you said"?

23 A. No, My Lord. I was saying that the date that they were

24 mentioning may not be correct.

14:56:18 25 Q. But you didn't dispute the words he said, the words he

26 quoted from you at that meeting were correct?

27 A. I did tell him, My Lord, that his statement about what I

28 said at Koribundu were not correct.

29 Q. That's in the transcript. Did you also not challenge him

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1 on the fact that you called him to appoint him to lead the attack
2 on Koribundu?

3 A. I didn't because of the understanding that you, meaning the
4 War Council and the co-ordinator.

14:57:21 5 Q. Thank you. During the course of your evidence you spoke
6 about a particular witness, TF2-190. Do you know which one that
7 is?

8 A. Not the number.

9 Q. Okay. If I might show you the name.

14:57:57 10 PRESIDING JUDGE: Mr Court Officer. Please Mister --

11 MR TAVENER: Sorry, if it could be shown to the Defence
12 counsel first.

13 THE WITNESS: Sorry.

14 PRESIDING JUDGE: You've seen it, seen the name, Mr Norman?

14:58:33 15 THE WITNESS: Yes, My Lord.

16 MR TAVENER:

17 Q. You know that man?

18 A. I know that name.

19 Q. You gave evidence about him during the course of your
14:58:43 20 testimony?

21 A. I did, My Lords.

22 Q. In your time at Talia, did you learn that he was the head
23 of the Death Squad?

24 A. I learnt he was a member, My Lord.

14:59:14 25 PRESIDING JUDGE: Mr Tavener, I think I know what the name
26 is on that piece of paper. What I don't recall is whether this
27 witness testified in a closed session or not.

28 MR TAVENER: In fact, you're right, Your Honour. I'm just
29 looking at the transcript. He testified in an open session, so I

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1 may be acting too cautiously. Perhaps his name can be mentioned.

2 PRESIDING JUDGE: It's not that, because I don't know. If
3 at that time in his evidence he referred to the fact that he was
4 the leader or not of the Death Squad, whether that will disclose
14:59:48 5 his identity or not, I don't know. I leave it to you. He was
6 your witness.

7 MR TAVENER: That's correct. Your Honour is correct. He
8 did testify in open session, so although I'm not -- I'm noW in
9 the practice of not disclosing witnesses, it's just a habit,
15:00:02 10 their identities. But it Was an open-session situation. I can
11 continue as we all know who I'm speaking about without --

12 PRESIDING JUDGE: Yes, you may, in your questions, but if
13 you describe some qualifiers of that witness, it may lead to his
14 identity being revealed in court. That's what I mean.

15:00:21 15 MR TAVENER: I accept that. In this particular case it
16 doesn't matter, but I'll be conscious of it in regards to others.

17 PRESIDING JUDGE: I don't know if that is the case with
18 this one or not. I leave it to you.

19 MR TAVENER: Thank you.

15:00:32 20 PRESIDING JUDGE: Thank you.

21 MR TAVENER:

22 Q. Mr Norman, that witness said at page 75 on 10 February

23 2005: "I received instructions from Pa Norman directly himself."

24 Perhaps if I'll take one step back. The question put to him was:

15:00:53 25 "The War Council gave direction to the Death Squad; isn't

26 that correct."

27 That was at line 18, 19, to which he replied:

28 "No, sir, I received instructions from Pa Norman directly

29 himself. That is why he had a private place where he

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1 talked to me. They called the place Walehun II."

2 Isn't it the case that you gave orders directly to that

3 witness?

4 A. My Lords, if the reference to Pa Norman meant Chief Hinga

15:01:29 5 Norman, then I deny making or giving any instruction to that

6 witness.

7 Q. Thank you. Do you know the term "tevi", T-E-V-I? Is that

8 a term you're familiar with?

9 A. Well, the pronunciation is tevi. I know it, My Lord.

15:01:54 10 Q. What does it mean?

11 A. A dust of a kind.

12 Q. What sort of dust?

13 A. Any dust of a kind that is implanted or is supposed to be

14 implanted into the skin of the human being, My Lord.

15:02:34 15 Q. Where does this dust come from?

16 A. Where does?

17 Q. The dust come from?

18 A. It can come from any source, My Lords.

19 Q. Can it come from bodies, human bodies being burnt?

15:02:50 20 A. No, I will not localise it to that because I don't implant

21 tevi.

22 Q. At Talia, were you present when Mr Kondewa conducted his

23 ceremonies or his rites?

24 A. No, My Lords.

15:03:19 25 Q. Do you know a person called Alpha Dauda Kanu, A-L-P-H-A

26 D-A-U-D-A K-A-N-U?

27 A. No, My Lord.

28 Q. A Kapra?

29 A. No, My Lord.

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1 Q. Are you aware of him being killed in an oil palm plantation
2 when going towards Makosi?

3 A. No, My Lord.

4 Q. Were you present when he was hacked to death?

15:03:53 5 A. No, My Lord.

6 Q. Were you present when his skin was removed --

7 JUDGE THOMPSON: Counsel, moderate your pace.

8 PRESIDING JUDGE: What was your last question?

9 MR TAVENER:

15:04:28 10 Q. Were you present when the skin of that Kapra was removed?

11 A. No, My Lord.

12 Q. Were you with Dr Kondewa, Allieu Kondewa, and

13 Moinina Fofana at the time?

14 A. At what time? At the site of the incidents that you are --

15:04:51 15 Q. Yes.

16 A. No, My Lord.

17 Q. Did you attend ceremonies --

18 JUDGE ITOE: Please, may we record the responses, please.

19 MR TAVENER: Sorry, Your Honour.

15:05:02 20 JUDGE THOMPSON: These are quite interesting allegations.

21 Why not let us have the record.

22 MR TAVENER:

23 Q. You were initiated as a Kamajor?

24 A. Yes, My Lord.

15:05:31 25 Q. And that was by --

26 A. Moalem Sesay.

27 Q. Did you engage in other forms of immunisations or --

28 immunisation?

29 A. No, My Lord.

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1 Q. There is more than one type of Kamajor society?

2 A. Well, in Mende there is just Kamajor society.

3 Q. Allieu Kondewa established different levels, did he not, of
4 initiations?

15:06:23 5 A. He established?

6 Q. Yes, different levels?

7 A. I don't know, My Lord.

8 Q. There was more than one type of ceremony he performed?

9 A. I don't know. It is his ceremony, not mine.

15:06:54 10 Q. Other than your first ceremony, were you a participant in
11 any other ceremonies at Talia?

12 A. I was not a participant in any of the Kamajor ceremony.

13 Q. You have never heard the name Alpha Dauda Kanu?

14 A. No, My Lord.

15:07:27 15 Q. Human bodies parts were used at some of the ceremonies
16 conducted by Dr Kondewa, were they not?

17 A. I don't know, My Lord.

18 Q. Did you ever speak to Dr Kondewa about his ceremonies?

- 19 A. Meaning I wanted to know what he does? No, My Lord.
- 15:08:18 20 Q. A person of your importance would have needed special
- 21 protection. Did Dr Kondewa give you special protection?
- 22 A. No, My Lord.
- 23 Q. You used to have a walking stick that was given to you by
- 24 Dr Kondewa?
- 15:08:43 25 A. No, My Lords.
- 26 Q. Other than being bullet- proof, what other powers did
- 27 Dr Kondewa give you?
- 28 A. None, My Lord.
- 29 Q. Did you have a particular shirt you would wear that would

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1 also give you additional protection?

2 A. No, My Lord.

3 Q. As part of the process of these powers given to you by

4 Dr Kondewa, did anyone actually fire --

15:09:49 5 MR MARGAI: Objection, My Lord. There is no such evidence

6 that powers were given to the witness by Dr Kondewa.

7 PRESIDING JUDGE: Mr Tavener.

8 MR TAVENER: I'll rephrase the question,

9 MR MARGAI: Thank you,

15:10:02 10 MR TAVENER:

11 Q. You've indicated who your initiator was. Did you ever test

12 whether or not you were bullet-proof?

13 A. I did, My Lord.

14 Q. When did you do that?

15:10:16 15 A. I was among a group when shots were fired and I was never

16 hit, nor were the others.

17 Q. Did anyone fire at you?

18 A. After the immunisation shots are always fired at those that

19 are immunised, My Lords.

15:10:44 20 Q. Was this the ambush you were speaking about, or the attack

21 that you were present at at one stage, the one time you were

22 fired upon? I may be mistaken, but did you not give evidence

23 that you were present -- you were attacked at one stage?

24 A. In my chieftom as a chief I was.

15:11:02 25 Q. And is that the attack you're speaking about?

26 A. No.

27 Q. What attack are you speaking about?

28 A. I'm not speaking about an attack, My Lord. I'm giving an

29 answer to the Prosecution's question, My Lord.

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1 PRESIDING JUDGE: So it was part of the testing after the
2 immunisations?

3 THE WITNESS: Part of the group that was tested after being
4 immunised.

15:11:33 5 PRESIDING JUDGE: And in a group you're being shot at,
6 fired at?

7 THE WITNESS: Shots were fired at us and none of us was hit
8 by the missiles.

9 MR TAVENER:

15:11:42 10 Q. Were you fired at by a shotgun?

11 A. Shotgun, yes, you're right.

12 Q. Had the cartridges been tampered with at all, do you know?

13 A. I don't know. That's why I was saying to Your Lordships
14 that maybe you will like it being tested.

15:12:00 15 JUDGE THOMPSON: Again, we want to reiterate our
16 repudiation of that invitation.

17 THE WITNESS: With due respect, My Lord, I did not mean
18 anything at all. Thank you.

19 JUDGE THOMPSON: Right. We're not going to be enticed.

15:12:34 20 MR TAVENER:

21 Q. You also gave evidence about your response to the testimony
22 of Albert Nallo?

23 A. Yes, My Lords.

24 Q. You appointed Nallo to his position as national director of
15:12:43 25 operations?

26 A. No, My Lords.

27 PRESIDING JUDGE: I think his evidence was national deputy
28 director.

29 MR TAVENER: Deputy director, that's correct.

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1 PRESIDING JUDGE: So is it the same question again?

2 MR TAVENER: I believe the answer will be the same
3 regardless of the question, Your Honour, but I'll ask the
4 question again.

15:13:02 5 Q. You appointed Albert Nallo as the national deputy director
6 of operations?

7 A. No, My Lord.

8 Q. You agree that he was appointed the national deputy
9 director of operations?

15:13:16 10 A. I don't agree, My Lord.

11 Q. At one stage he was sacked from that position; is that
12 right?

13 A. He was sacked from a position.

14 Q. How long had he held that position?

15:13:30 15 A. The position he was sacked from?

16 Q. Yes.

17 A. I don't know, My Lords.

18 MR MARGAI: My Lords, I wonder whether we can be clear of

19 the position.

15:13:39 20 MR TAVENER: National deputy director of operations.

21 MR MARGAI: And the witness's answer was in the negative.

22 So can we be sure of which position we're talking about?

23 PRESIDING JUDGE: Yes. The witness has answered that as

24 far as he knew he did not occupy the position of national deputy

15:13:56 25 director of operations. But you asked the question if he was

26 sacked from his position, and the answer was yes. But I'm not

27 sure the two work together.

28 JUDGE ITOE: He was sacked from a certain position. From a

29 certain position. What is not clear is this position from which

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1 he was sacked.

2 MR TAVENER: I'll ask the question.

3 Q. Do you know what position Albert Nallo was sacked from?

4 A. I was only informed he was sacked from an appointed

15:14:38 5 position, My Lords.

6 Q. In the organigram, Exhibit 123 - you may not need to look

7 at it - there's a position called high priest and traditional

8 advisor to His Excellency, HE.

9 A. Yes, My Lords.

15:15:01 10 Q. That's the question I want to ask. Was Dr Kondewa

11 appointed to that position?

12 A. Dr Allieu Kondewa was high priest at one time and at

13 another time he was not. He was recommended for a position of

14 advisor to His Excellency the President in the area of

15:15:45 15 initiators.

16 Q. And was he removed from that position?

17 A. Dr Kondewa was indeed removed from the position of high

18 priest.

19 Q. Why?

15:15:56 20 A. These were issues relative exclusively to the initiators.

21 They know the reason why they did not want Allieu Kondewa to be

22 their high priest any more.

23 Q. And do you know that reason?

24 A. No, My Lords.

15:16:24 25 MR MARGAI: My Lords, I am sorry again to interject, but I

26 think this question had been amply answered when the witness said

27 that it was the prerogative of the initiators to select who their

28 head should be, and as a matter of compensation Allieu Kondewa

29 was appointed advisor to the President. I stand to be guided by

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1 your notes.

2 JUDGE ITOE: Yes, since you say you stand to be guided, I
3 think what you're saying is correct.

4 MR MARGAI: Thank you, My Lords.

15:16:54 5 JUDGE ITOE: But he did not give the reasons why he was
6 relieved of that position.

7 MR MARGAI: He did --

8 JUDGE ITOE: He did not give the reasons as to why his
9 peers in that group of initiators decided to do away with him. I

15:17:12 10 think that is why --

11 MR MARGAI: I couldn't agree more with Your Lordship. But
12 Your Lordship will note from your records that when the question
13 was posed as to why he was sacked, in other words the reason, he
14 said he did not know, and that was when he went forward to say

15:17:29 15 that was the prerogative of his peers. I stand to be corrected.

16 JUDGE THOMPSON: My position is that that question was
17 never, ever put and answered under cross-examination. It
18 probably was put under examination-in-chief. It's very possible

19 learned counsel for the Prosecution is trying to clarify certain
15:17:45 20 things under cross-examination. It was never put by Mr Tavener.

21 The answers that you have highlighted were put by one of counsel
22 on the Defence side in their own examination-in-chief or
23 cross-examination by you.

24 MR MARGAI: With respect, My Lord, that question emanated
15:18:07 25 from the Prosecutor and, as Justice Itoe rightly stated, an
26 answer was not given by the witness.

27 JUDGE THOMPSON: I don't remember that.

28 PRESIDING JUDGE: Therefore we allow the question.

29 MR MARGAI: As My Lords please.

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1 MR TAVENER: My memory was it was one of the questions I
2 objected to because I said it wasn't answered at that time, and I
3 was told this is the time now to ask that question.

4 JUDGE THOMPSON: Yes.

15:18:33 5 MR TAVENER: Thank you. So I'm now asking it.

6 Q. Why was Dr Kondewa relieved of the position of high priest?

7 A. I don't know, My Lords.

8 Q. Thank you. How many bodyguards did Dr Kondewa have?

9 A. I don't know the number, My Lord.

15:18:57 10 Q. More than 10, less than 10?

11 A. I don't know.

12 Q. When you were in Talia you lived in a house that was 20, 30

13 metres from Dr Kondewa?

14 A. I didn't measure. I only told the Court that they were

15:19:17 15 about two houses --

16 Q. Difference?

17 A. -- separating off.

18 Q. You saw him every day?

- 19 A. When we were there, yes.
- 15:19:26 20 Q. You would have seen his bodyguards?
- 21 A. I would have seen them, yes.
- 22 Q. How many bodyguards did he have?
- 23 A. I don't know.
- 24 Q. You don't remember or you don't know?
- 15:19:41 25 A. I don't know is what my answer is, My Lord.
- 26 Q. You would see Dr Kondewa every day though, wouldn't you?
- 27 A. When I was, yes.
- 28 Q. And you'd see Mr Fofana every day?
- 29 A. When I was, yes, when he was there.

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1 Q. And you'd talk every day?

2 A. I suppose so.

3 JUDGE ITOE: Please, Mr Norman, answer the question.

4 THE WITNESS: Thank you, My Lords.

15:20:19 5 JUDGE ITOE: "Suppose so", no, that doesn't advance us.

6 Give answers to certain questions.

7 THE WITNESS: Thank you, My Lords.

8 JUDGE ITOE: "Suppose so" does not help the Tribunal.

9 THE WITNESS: I'm sorry, My Lord, I do not intend not to

15:20:32 10 help you, but I may have on occasions, I may not have on some

11 occasions. That was the reason for my answer.

12 MR TAVENER:

13 Q. You've heard evidence that the three of you were referred

14 to as the Father, Son and the Holy Ghost, you've heard that

15:20:54 15 evidence?

16 A. I've heard that.

17 Q. Is it fair to suggest that the three of you spent a lot of

18 time together at Talia?

19 A. No, My Lord.

15:21:00 20 Q. You didn't?

21 A. It is not fair to state that. I had time with almost all

22 of them who were there. There were chiefs, members of the War

23 Council and other leaders who were commanders and so on. So not

24 exclusively with these two people who I see around me now as my

15:21:18 25 co-accused.

26 Q. I'm not suggesting exclusively, but the three of you worked

27 together as a team, did you not?

28 A. That's why I am saying exclusively no.

29 Q. You were a team?

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1 A. We were in one town, we were in one place, like the others,
2 almost other elders, who were more with me and often with me than
3 these two.

4 Q. Other than your two co-accused, who did you have more to
15:22:02 5 deal with --

6 A. Like the chairman of the --

7 MR MARGAI: Objection, My Lord. Objection. I mean, "other
8 than your co-accused" pre-supposes that he was with them most of
9 the time, as had been suggested, which the witness has denied.

15:22:26 10 JUDGE ITOE: Mr Jabbi, please.

11 PRESIDING JUDGE: Mr Tavener, do you wish to respond?

12 MR TAVENER: I don't quite understand the objection, but I
13 will rephrase the question. I'm not quite sure why Mr Margai is
14 objecting, though. I'll start again.

15:22:37 15 Q. You mentioned that you didn't spend all your time
16 exclusively with the two co-accused?

17 A. As has been supposed.

18 Q. Who did you -- who else would you speak to -- I'll start

19 again. Was there anyone other than the two co-accused you would
15:22:52 20 spend more time with?

21 A. Yes.

22 Q. Who?

23 A. Like the chairman of the War Council, the members of the
24 War Council, the resident-based battalion commander, like the
15:23:09 25 director of training, like the director of appointment and
26 promotions. Those were people who were always around me, with
27 whom I was even eating breakfast, lunch and dinner.

28 Q. But you weren't talking to any of them about the war, were
29 you?

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1 A. I wasn't talking to any of them?

2 Q. About the war, were you?

3 A. We were all there because of the war.

4 Q. Did you give anyone directions as to how the war should be

15:23:39 5 conducted?

6 A. No.

7 Q. Do you know the name Mustapha Fallon?

8 A. No, I've only heard it here, My Lord.

9 Q. And here you've heard that he was killed?

15:24:00 10 A. Only here, My Lord.

11 Q. A description was given that he was killed in the Poro

12 bush, P-O-R-O. I'm sure that's the wrong pronunciation.

13 A. No.

14 Q. He was killed in the Poro bush. Was there such a place in

15:24:21 15 Talia or near Talia?

16 A. There are always Poro bush in Mende settlement areas.

17 JUDGE ITOE: Was there one in Talia?

18 THE WITNESS: There was one in Talia?

19 JUDGE ITOE: Was there one in Talia?

15:24:33 20 THE WITNESS: My Lord, I did not go there, but because it

21 is a Mende settlement there is supposed to be a Poro bush.

22 PRESIDING JUDGE: But do you know if there was one or not

23 at -- if you don't know you don't know.

24 THE WITNESS: I don't know, My Lord.

15:24:49 25 PRESIDING JUDGE: Fine.

26 MR TAVENER:

27 Q. So you don't know whether there was a Poro bush at Talia?

28 A. I don't know whether there was Poro bush in Talia.

29 Q. And obviously I need your assistance here. In Mende

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1 society are you saying that all villages have Poro bushes?

2 A. In Mende settlements.

3 Q. Settlements?

4 A. Wherever male residents are there is always Poro bush.

15:25:13 5 Q. So is it a place where men go to speak or whatever?

6 A. No, it's the place where men go for Poro initiation.

7 Q. And in Talia you did not know where that place was?

8 A. No, My Lord.

9 Q. And you never went there?

15:25:36 10 A. No, My Lord.

11 Q. And you have never heard the name Mustapha Fallon?

12 A. No, My Lord.

13 Q. Except in this Court?

14 A. Here.

15:25:42 15 Q. It's not the case that Dr Kondewa chose Mustapha Fallon as

16 a sacrifice, human sacrifice?

17 A. I don't know. I don't know.

18 Q. No one ever told you that?

19 A. No, My Lord.

15:25:54 20 Q. Did you ever give Mustapha Fallon's brothers money after he

21 was killed? I'll break that up. Did you ever give Mustapha

22 Fallon's brothers 300,000 leones?

23 A. I did not come across anybody known as Mustapha Fallon 's

24 brother while I was staying at Talia. And so I did not give any

15:26:30 25 amount of money like that, and I did not give any money to that

26 amount to anybody in Talia, My Lords.

27 Q. Coming back to the evidence of Albert Nallo, do you agree

28 that he was a Kamajor commander entrusted with the attack upon

29 Bo?

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1 A. No, My Lord.

2 Q. Ultimately did you send him to Bo to take over that attack?

3 A. No, My Lord.

4 Q. I should ask you this question: You had nothing to do with
15:27:28 5 the attack on Bo?

6 A. The ECOMOG did. I did not.

7 Q. Was there any place in Sierra Leone -- sorry, I've gone
8 through that. I won't repeat that again. Albert Nallo gave
9 evidence that a surrendered soldier was brought to him in Bo,
15:27:52 10 called John Hota. H-O-T-A. Do you recall that evidence?

11 A. H-O-T-A?

12 Q. Yes.

13 A. I recall that evidence, My Lord.

14 Q. And he sent -- that is Albert Nallo sent a message to you
15:28:11 15 in Talia as to what to do or how to treat John Hota. Do you
16 recall that evidence?

17 A. No. I recall the evidence, yes.

18 Q. And he says -- Nallo says that you sent back members of the

19 Death Squad and they killed John Hota. Did you send the Death
15:28:37 20 Squad to kill John Hota?

21 A. Nallo was saying he was Bo, he sent to me in Base Zero and

22 I sent the Death Squad from Base Zero to come and kill Hota in

23 Bo? No, My Lord, that is wrong. It's not true.

24 Q. Not true? Did you ever give any directions to the Death

15:28:57 25 Squad about anything?

26 A. I never met the Death Squad and I never commanded them, nor

27 gave them any direction, My Lord.

28 Q. The chairman of the War Council you have mentioned, do you

29 recall him testifying that the Death Squad was under your

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1 control, that of Mr Fofana and Mr Kondewa?

2 A. I was not here. I don't know if he did.

3 Q. Were you shown the transcripts?

4 A. If he did, then it would be wrong.

15:29:43 5 Q. He's wrong too?

6 A. He's wrong, My Lord.

7 Q. Excuse me.

8 A. Quite.

9 Q. If I could just go back now to the time when you were

15:30:26 10 involved in resettling or disarming the child soldiers.

11 A. Yes, My Lords.

12 Q. You, as the deputy minister of defence, was responsible for

13 that or involved in that process, were you not?

14 A. I was involved in that process.

15:30:44 15 Q. And you met with various representatives of NGOs and United

16 Nations organisations?

17 A. Yes, My Lord.

18 Q. And it was at that time you became aware, is it, or

19 earlier, about the percentage or the numbers of child soldiers,
15:31:10 20 children under 15, fighting on behalf of the CDF?

21 A. I have said that soon after the reinstatement of the
22 government, that was when I brought that issue to the attention
23 of government through His Excellency the President, My Lords.

24 PRESIDING JUDGE: But the question was: Was it at the time
15:31:38 25 that you became aware of the number of child soldiers with the
26 CDF?

27 MR TAVENER:

28 Q. Was that the time you became aware of how many child
29 soldiers had been fighting for the -- with the CDF?

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1 A. No --

2 PRESIDING JUDGE: At the time of disarmament, that's the
3 question.

4 MR TAVENER: That's correct.

15:31:56 5 Q. Was that the time?

6 A. Number was not involved, My Lord.

7 Q. Do you know of any example -- can you tell the Court any
8 examples of when Kamajors or CDF military forces, CDF fighting
9 forces, killed civilians?

15:32:25 10 A. No time.

11 Q. Do you know of any example when -- or are you aware of any
12 time when Kamajors or CDF fighting forces looted?

13 A. No time.

14 Q. Are you aware of any time --

15 PRESIDING JUDGE: I'm sorry. When you say "no time", you
16 mean you are not aware or it didn't happen?

17 THE WITNESS: At any time, My Lord, I was not aware.

18 PRESIDING JUDGE: Thank you.

19 MR TAVENER:

15:32:56 20 Q. Are aware at any time of Kamajors or CDF personnel

21 terrorising civilians?

22 A. No, I was not aware.

23 Q. So is it correct to say you're not aware of CDF or Kamajors

24 committing any of the offences that have been outlined in the

15:33:24 25 allegations against you contained in the indictment?

26 A. I was aware of one incidence.

27 Q. Yes?

28 A. For which one Kamajor was tried and was about to be

29 punished by death, when the War Council stopped me and told me I

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1 did not have state power to inflict punishment. That I was aware
2 of.

3 Q. That's the only incident you're aware of?

4 A. That one was brought to me, was dealt with by the
15:33:57 5 disciplinary committee, and that was the one I was aware of.

6 Q. So, to put it simply, your defence is you deny each and
7 every criminal allegation made against you by the witnesses that
8 have been called by the Prosecution?

9 A. I deny them, My Lord.

15:34:11 10 Q. At the beginning of your evidence you sought some time --
11 your counsel sought some time on your behalf to speak to you
12 further about your defence. If your defence was you deny
13 everything, why was more time necessary?

14 A. That is his question, not me, My Lord.

15:34:32 15 Q. Isn't the truth, Chief Norman, that you find yourself
16 wholly unable to answer these allegations and have simply
17 resorted to a blanket denial of everything to escape the
18 consequences of your action?

19 A. No, My Lord. It is only because the Prosecution never
15:34:55 20 asked me to make statement about allegations that have now been

21 laid against me before this Court.

22 Q. Your statement, as you've testified, is that you knew

23 nothing and you did nothing?

24 A. You did not ask me. If you had, I would not have been
15:35:17 25 here.

26 Q. You have told the Court you gave no orders, that you knew

27 nothing about what was happening at the war front?

28 A. I have told you here that I did not.

29 Q. And that is your evidence?

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1 A. That is my evidence before Your Lordship on oath.

2 MR TAVENER: Thank you.

3 PRESIDING JUDGE: So that conclude your cross-examination,

4 Mr Tavener; that's what it means? Thank you. Dr Jabbi, do you

15:36:22 5 have --

6 MR MARGAI: My Lords, before we come to the re-examination,

7 may I just observe that throughout the cross-examination by the

8 Prosecutor he was interchangeably using the words "Kamajor" and

9 "CDF", which is not in consonance with the indictment. I concede

15:36:45 10 that Kamajors are components of the CDF, but they are not

11 synonymous. Thank you.

12 PRESIDING JUDGE: Well, this is an argument you can

13 certainly put forward at any time.

14 MR MARGAI: It's just an observation at this stage,

15:37:00 15 My Lords. Thank you.

16 PRESIDING JUDGE: Well, as I say, this is proper for

17 argumentation in due course. But not at this stage. It is my

18 recollection that, in fact, there is allegation that CDF and

19 Kamajors could be used to mean the same thing somewhere in the
15:37:16 20 indictment. But, anyhow, I've --

21 MR MARGAI: Thank you. I shall wait for the appropriate
22 time.

23 PRESIDING JUDGE: Indeed. Dr Jabbi, do you wish to proceed
24 with any re-examination of the witness?

15:37:32 25 MR JABBI: Yes, indeed, My Lord. But, My Lord, I wonder if
26 we could take a break at this stage so that I do my
27 re-examination in one fell swoop.

28 PRESIDING JUDGE: Fine, but you know the rules about
29 re-examination and it has to be circumscribed to new matters that

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1 have been raised in cross-examination. So I just want to draw
2 your attention to that so we don't get into debates that may be
3 avoided.

4 MR JABBI: Yes [Overlapping speakers].

15:38:04 5 PRESIDING JUDGE: So how much time do you need? Until
6 4 o'clock?

7 MR JABBI: That will be okay, My Lord.

8 PRESIDING JUDGE: Is that enough?

9 MR JABBI: That will be okay, My Lord.

15:38:10 10 PRESIDING JUDGE: That's fine. Court is adjourned until
11 4.00.

12 [Break taken at 3.40 p.m.]

13 [CDF07FEB06E - SGH]

14 [Upon resuming at 4.10 p.m.]

16:10:47 15 PRESIDING JUDGE: Dr Jabbi, we are back to you.

16 MR JABBI: Yes, My Lord.

17 PRESIDING JUDGE: Do you have any re-examination?

18 MR JABBI: Yes, My Lord.

19 PRESIDING JUDGE: And are you ready to proceed?

16:10:52 20 MR JABBI: Indeed, My Lord.

21 PRESIDING JUDGE: Please do so.

22 RE-EXAMINED BY MR JABBI:

23 Q. Now, Mr Witness, you will remember the Prosecution asked

24 you a question concerning your evidence as to the failure of His

16:11:31 25 Excellency to respond to certain warnings that you had given

26 before the coup?

27 A. Yes, My Lord.

28 Q. And the Prosecution asked that notwithstanding the failure

29 to respond to those warnings by His Excellency, you still

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1 maintained that you wanted to reinstate him after the coup?

2 A. Yes, My Lords.

3 Q. Why did you want to reinstate the government

4 notwithstanding the failure of His Excellency to respond?

16:12:11 5 MR TAVENER: Objection to this question, Your Honour. This

6 topic has been covered many times by this witness. Many, many

7 times over eight days, why about --

8 PRESIDING JUDGE: I agree with you, so objection

9 maintained. This is not the subject matter of re-examination,

16:12:30 10 Dr Jabbi. I wish to remind you again of what I said before we

11 had this pause; that re-examination is very focused, very limited

12 and essentially has to deal with new matters - I underline here -

13 and/or issues that might have been raised in cross-examination

14 that were not dealt with in examination-in-chief.

16:12:50 15 MR JABBI: That was my understanding. The reason why he

16 did so has not been --

17 PRESIDING JUDGE: This is certainly an issue that you

18 canvassed quite extensively with the witness in

19 examination-in-chief. You were given every possible latitude in
16:13:04 20 chief on this issue. In fact, the witness has spent a lot of
21 time to explain what happened before and when he went to Guinea
22 and what happened when the President did not answer his first
23 calls at all. So it has been canvassed and therefore this is not
24 a subject matter that should --

16:13:24 25 MR JABBI: It is the reason why he pressed with one thing
26 to reinstate the President --

27 PRESIDING JUDGE: He has said so.

28 MR JABBI: -- notwithstanding.

29 PRESIDING JUDGE: Yes, but this is not a new matter that

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1 has been raised in cross-examination.

2 MR JABBI: As My Lordship pleases.

3 Q. Now, Mr Witness, you will also recollect that the

4 Prosecution asked you various questions on the issue of your

16:13:50 5 knowledge of any atrocities by Kamajors and whether you reported

6 any of those to His Excellency the President and you said you

7 never reported. Why did you not report any such atrocities?

8 MR TAVENER: Again, I object to this question. It has been

9 answered. There was a long -- for several days there was

16:14:17 10 evidence given about this witness in Guinea, his interchange with

11 the President. It didn't arise out of cross-examination. It's

12 not to the point to say I asked questions about it. The point is

13 did it arise out of cross-examination, and it did not.

14 JUDGE THOMPSON: Perhaps learned counsel needs to be

16:14:41 15 reminded that the purpose of re-examination is not to seek to

16 repair what might be called defective examination-in-chief.

17 MR JABBI: No, My Lord. It is just the doubts and

18 ambiguities raised in cross-examination which are as much

19 required for clarification as new matters.

16:14:58 20 PRESIDING JUDGE: Counsel, the purpose of re-examination is

21 not to clarify ambiguities, if any, as such. It is to deal with

22 new matters that might have been raised in cross-examination and

23 were not dealt with and we say no.

24 MR MARGAI: My Lords, if I may be heard.

16:15:25 25 PRESIDING JUDGE: Mr Margai, with all due respect, you are

26 not to address the Court in re-examination. I told you yesterday

27 you are to cross-examine that witness. You have done so. You

28 have done your role. I think Dr Jabbi is quite capable of

29 defending himself and addressing the Court.

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1 MR MARGAI: I have no doubt about that. Dr Jabbi was my
2 pupil, as he told you here. I am very proud of him and his
3 performance, but like I told the Bench my concern here is on the
4 basis of the joint criminal enterprise. And that being so, I
16:15:53 5 believe I will be remiss in my duty if I do not render assistance
6 to the Court. I mean, the final decision rests with Your
7 Lordships.

8 My Lord, on this question of the omnibus question put by
9 the Prosecutor to the witness on the question of his wanting to
16:16:26 10 restore President Kabbah to office, notwithstanding the bad
11 blood, if I may put it so.

12 PRESIDING JUDGE: On that issue, Mr Margai, I have already
13 ruled and I said this not permissible in re-examination. If you
14 want to deal with that, that has been disposed. So if you want
16:16:46 15 to deal with the second question, that is a different issue.

16 MR MARGAI: No, My Lord, before I come to that, I would
17 have thought or it is my understanding that the purpose of
18 re-examination is two-fold; One, to clear ambiguity and number

19 two, to deal with matters arising anew.

16:17:01 20 PRESIDING JUDGE: True.

21 MR MARGAI: That being so --

22 PRESIDING JUDGE: We have applied a very, very strict rule

23 to the Prosecution through their case, as such, and if you have a

24 good recollection of what happened, and I know you do, the

16:17:12 25 Prosecution had very little latitude in re-examination and when

26 they have used it, it was in a very limited way and only on new

27 matters and not to clarify any ambiguity. That was not done.

28 MR MARGAI: No. We are going to use it very sparingly,

29 especially in this case only addressing matters that are arising

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1 for the first time. That is the only area where I want to be of
2 assistance.

3 PRESIDING JUDGE: But that's why I say matters that are
4 arising for the first time is an issue, that is what I meant by
16:17:48 5 new matters that arose.

6 MR MARGAI: I agree with you.

7 PRESIDING JUDGE: But we are not in this scenario for time
8 being here.

9 MR MARGAI: No. I shall confine myself to matters arising
16:17:55 10 for the first time.

11 PRESIDING JUDGE: Yes, okay. So you want to be able to
12 intervene and be able to address the Court --

13 MR MARGAI: Only in that limited capacity.

14 PRESIDING JUDGE: I am still unable to see, in spite of
16:18:17 15 what you are saying, of joint criminal enterprise that you are
16 allowed to re-examine a witness who is not your witness.

17 MR MARGAI: No. I am not re-examining him. I am merely
18 taking a point of law.

19 PRESIDING JUDGE: And your point of law you have just made
16:18:29 20 it and we appear to agree to that issue, so that is it.

21 MR MARGAI: So I will leave to it Dr Jabbi then. Thank
22 you, My Lords.

23 PRESIDING JUDGE: Thank you.

24 JUDGE THOMPSON: But I am a little in a quandary. It is
16:18:41 25 not sufficient just to say that one of the --

26 MR MARGAI: [Microphone not activated]

27 JUDGE THOMPSON: Yes. One of the purposes -- of course,
28 the principal purpose of re-examination is to deal with matters
29 that arise under cross-examination which are new and even if we

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1 extend the scope, as some authorities do, to clarifying or
2 explaining matters arising under cross-examination, it does not
3 give a carte blanche. What it does, because it is not enough
4 just to say: "Oh, this matter arose under cross-examination. It
16:19:23 5 is new." But to show how new it is. Or it is not enough to say:
6 "We want to clarify or explain certain matters that need to be
7 clarified or explained as a result of cross-examination," but to
8 demonstrate why they require clarification or explanation. And
9 that is my difficulty with Dr Jabbi.

16:19:41 10 MR MARGAI: I am on the same radar screen as Your Lordship.

11 JUDGE THOMPSON: Good. Well, I appreciate that.

12 MR MARGAI: That being so, I shall now give Dr Jabbi the
13 opportunity to --

14 MR JABBI: My Lords, I think that the issue of the reports
16:20:03 15 to President Kabbah as to atrocities allegedly committed by
16 Kamajors or CDF was, in fact, a new issue introduced in the
17 cross-examination by the Prosecution. They need to report to
18 President Kabbah what happened. This was an issue raised by the

19 Prosecution itself. It was not in examination-in-chief and that
16:20:32 20 is why I have elected to pose the questions to him, both to
21 clarify and to deal with new matter that arose.

22 PRESIDING JUDGE: This was a series of questions having to
23 do with the relationship the accused had or did not have with the
24 President at the time prior to and after the coup and so on and
16:20:54 25 whatever communication he had while he was at Base Zero and so
26 on. So, I mean, all of these questions are related to that.
27 Yes, they may have asked one question that you did not ask, but
28 that does not make it a new matter, as such. I mean, the subject
29 matter was their relationship and/or communications that the

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1 witness has had at that time with the President. And I can see
2 on that that the witness has testified extensively as to the
3 whys, that he has talked to the President, that he was acting
4 under the -- he was the superior commander and he did this and so
16:21:28 5 on. So, I mean, I don't know how many hours a witness has spent
6 on this but many, many, many minutes of this Court's time. So we
7 understand this particular issue as the evidence has been led in
8 this respect and I say to you this not a matter that is to be
9 subject of re-examination.

16:21:51 10 MR JABBI: As Your Lordships please.

11 Q. Now, Mr Witness, I come to the question of Exhibit 112, the
12 calendar, so-called CDF calendar. Now, in answer to questions
13 posed by the Prosecution - can the witness please be given the
14 exhibit. Do you have it?

16:22:48 15 A. I have, My Lord.

16 Q. Thank you. You said in answer to the Prosecution that you
17 approved the publication of that calendar. Now, was your
18 approval before the calendar was drafted or thereafter?

19 A. My Lord, The approval was upon request, not upon compiled
16:23:45 20 documents.

21 JUDGE THOMPSON: In other words, can you keep the answer to
22 the context. The operative words that were used by counsel
23 "before or after". Can we stick to that so that you don't
24 multiply the issues and necessitate objections or anything.

16:24:13 25 Counsel has a asked a simple question "before or after," and I
26 guess those they are operative words. Am I right?

27 MR JABBI: Yes, My Lord.

28 Q. Was your approval before publication of the calendar or
29 thereafter?

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1 A. The approval was before, My Lords.

2 Q. Now, just an ancillary question. Did you have the draft of
3 the calendar before it was ultimately published?

4 A. No, My Lord.

5 Q. Thank you very much.

6 MR JABBI: My Lord, that is all for the witness in

7 re-examination.

8 PRESIDING JUDGE: Thank you very much.

9 Mr Witness, Mr Norman, that concludes your evidence. You

16:25:32 10 may, after we break or when, or when we resume the court sitting

11 tomorrow, you may wish to return to your seat in court and with

12 your defence team and obviously from now on they can talk to you

13 and communicate with you and work with you for the preparation of

14 the examination-in-chief of other witnesses as they may wish to

16:25:55 15 do and as you may wish to do. So you may recall that there was

16 an application made by your counsel so that they could consult

17 with you, so obviously the restriction that applied at the time

18 and whilst you were giving evidence. Now that you have completed

19 your evidence, that restriction does not apply any more. So it
16:26:10 20 is your decision and their decision to do as best they can. So I
21 thank you very much. And this will conclude the day and we will
22 proceed tomorrow morning to hear your next witness. Is it
23 Dr Penfold?

24 MR JABBI: Mr Penfold. Thank you very much. The Court
16:26:23 25 is --

26 MR De SILVA: Might I be heard. I don't intend to take up
27 a great deal of Your Lordships' time, but Your Lordships, of
28 course, have before Your Lordships a summary of what Mr Penfold
29 proposes to say. It was served at an earlier point in time when

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1 in fact the Defence were required to supply a summary of the
2 witness's evidence.

3 My Lords, I have that summary in front of me at the moment
4 and all I need to say is that there seems to be no issue between
16:27:22 5 the Prosecution and anything this witness has to say on the face
6 of it, absolutely none whatsoever. And when my learned friend
7 indicated that this witness may not take very long, I could see
8 why, because there is absolutely no material in this summary that
9 goes to what I regard as being the heart of the indictment Tongo,
16:28:02 10 Kenema, Bo, Koribundu, Moyamba, Bonthe. Nothing. So according
11 to the evidence of Chief Hinga Norman, one of the last questions
12 he answered was that the only connection he had with this
13 witness, Mr Penfold, was, I think, in Conakry. He said: "During
14 the period of war I had no meeting" -- "no other meeting with
16:28:31 15 Peter Penfold.

16 PRESIDING JUDGE: May I just interject, Mr Prosecutor, at
17 this particular moment. What is the purpose of your addressing
18 the Court at this moment? Are you making an application for

19 something, or are you prepared to make admissions as to the
16:28:47 20 evidence of Mr Penfold?

21 MR De SILVA: I probably will. If it is confined to what
22 is in the summary, there is absolutely no dispute which is an
23 indication -- which is an indication and I have made this
24 position, I hope, clear before that these summaries may be
16:29:13 25 grossly inadequate and therefore if in fact this witness goes
26 beyond the scope of that which is set out within the summary,
27 then I hope the Court will forgive me if we ask for time.

28 PRESIDING JUDGE: Well, we have said so. We have clearly
29 indicated that if there is not enough information provided, the

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1 Prosecution will be allowed, in due, course to make application
2 and we will give due consideration to that application. It is
3 only fair if you have little indication and information, well --
4 MR De SILVA: My Lord, that is --

16:29:50 5 JUDGE THOMPSON: I would also like to intervene by
6 suggesting that remember the Court ordered summaries. Of course,
7 the Court when we ordered summaries did.

8 MR De SILVA: My Lord, that is --

9 JUDGE THOMPSON: I would also like to intervene by
16:29:53 10 suggesting that remember the Court ordered summaries. Of course
11 the Court, when we ordered summaries, did so on the understanding
12 that the summaries would be comprehensive and which, of course,
13 is a relative concept and sufficient to give the other side some
14 indications of the core issues. But, also, let me remind you
16:30:16 15 that this Court functions pre-eminently on the doctrine of
16 orality and the Prosecution was in fact very charitable to
17 endorse that principle.

18 MR De SILVA: I am very glad Your Lordship says that.

19 JUDGE THOMPSON: As the overriding principle here, that
16:30:38 20 even though a witness might have made statement to one of the
21 adversarial parties, yet that witness will still be able to
22 amplify, elucidate or elaborate upon the statement through the
23 instrumentality of the principle of orality.

24 MR De SILVA: My Lord, I couldn't agree with Your Lordship
16:31:05 25 more. But, with the greatest respect, we may end up in
26 situations where witnesses travel thousands of miles to come here
27 and it turns out that their evidence is not in dispute. That
28 would be a tragedy because, as Your Lordships know, the cost of
29 these witnesses is borne by the Court. All I do is flag up a

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1 warning, really, that if we have a more fulsome account of what a
2 witness can say, the Prosecution can say, well, we don't dispute
3 any of this.

4 JUDGE THOMPSON: Right. Well, my point would be simply
16:31:50 5 that I remember at the last status conference we did call upon
6 both sides to work together to identify areas where there is no
7 dispute at all and, clearly, there was no attempt to jump-start
8 the process.

9 MR De SILVA: My Lord, if we had a fuller account of what
16:32:12 10 witnesses are going to say, I would be the first one on behalf of
11 the Prosecution to say, "We don't dispute this, we don't dispute
12 that, we don't dispute that," and so on and so forth down the
13 line, which may make it unnecessary for certain witnesses to be
14 called, but in the absence of or in the presence of such vague
16:32:42 15 and restricted summaries, our hands are tied. I can't say
16 anything more than that. But the first major witness, we
17 understand, for the Defence is going to be Mr Penfold, a
18 well-known figure in these parts and, indeed, other parts as

19 well, and were his evidence to turn out to be totally
16:33:07 20 uncontentious and not going to the issues in the case as we see
21 it, then I must say there will be a complaint made by the
22 Prosecution. I simply fire a warning shot, not, of course, at
23 the Bench and not, indeed, at Chief Hinga Norman, of course, who
24 is protected from my shots, as I understand it, and is
16:33:33 25 invulnerable to my words.

26 PRESIDING JUDGE: That's true, he is protected.

27 MR De SILVA: I fire them at Mr Jabbi, who may not be so
28 protected.

29 JUDGE ITOE: You never know.

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1 PRESIDING JUDGE: Let's not go there, please. I thank you,
2 Mr de Silva. I can only say we have the same summary that has
3 been provided to the Court. It is very summary, indeed, but it
4 does make reference to some paragraphs in the indictment, and
16:34:03 5 although it does not make reference to specific crimes, it does
6 make reference that this witness will testify as to paragraphs 4,
7 13, 14, 15, 18 and 19, which are allegations of a general nature
8 as to the structured components organisation of CDF and/or
9 Kamajors, which are an important part of the allegations that
16:34:26 10 have been preferred against this accused. So whether this
11 witness is indeed testifying to that, we will know soon. I can
12 certainly tell you as well that, when I look at this summary, I
13 see that the witness number four is essentially to testify about
14 the very same paragraphs and so is witness number five, Mr John
16:34:55 15 Hirsh, the American Ambassador to Sierra Leone, and the same with
16 former UNDP representative in Sierra Leone. Maybe the first
17 witness will give us some indication as to what the other
18 witnesses are to say. If that is the case, we are here to try to

19 proceed with this trial as expeditiously as we can and it is
16:35:19 20 possible while maintaining fairness of the process. If we have
21 witnesses who come here just for the sake of coming here, we are
22 not interested. We are interested only in progressing and
23 getting to the truth and to the facts of the matter. So if
24 witnesses are repetitive in nature, well, we hope the Defence
16:35:34 25 will take note of that, and we are not really interested whether
26 they are ambassador or not.
27 MR De SILVA: I am indebted to Your Lordships for hearing
28 me out.
29 PRESIDING JUDGE: We thank you very much. Having said

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1 that --

2 MR MARGAI: All I can say, My Lords, is that my learned
3 friend seems to be oversighting the participation of the third
4 accused in this matter who will be cross-examining the witness.

16:35:52 5 MR De SILVA: With the same effect as before.

6 MR MARGAI: Thank you.

7 PRESIDING JUDGE: You mean to say that these witnesses that
8 will be called will be cross-examined by you?

9 MR MARGAI: Indeed, My Lords.

16:36:09 10 PRESIDING JUDGE: This is your privilege.

11 MR MARGAI: Thank you.

12 PRESIDING JUDGE: So the Court is adjourned until 9.30
13 tomorrow morning.

14 [Whereupon the hearing adjourned at 4.40 p.m.,
15 to be reconvened on Wednesday, the 8th day of
16 February 2006, at 9.30 a.m.]

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