

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

THURSDAY, 09 FEBRUARY 2006
9.44 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

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 appearances

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

For the accused Moinina Fofana: Mr Arrow Bockarie
Mr Andrew Ianuzzi

For the accused Allieu Kondewa: Mr Charles Margai

1 [CDF09FEB06A-EKD]

2 Thursday, 09 February 2006

3 [Open session]

4 [The accused present]

09:33:18 5 [Upon commencing at 9.44 a.m.]

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

7 Mr Witness.

8 THE WITNESS: Good morning.

9 PRESIDING JUDGE: Mr Bockarie, we were at you yesterday and

09:45:06 10 you said you were ready to proceed with the cross-examination of

11 the witness.

12 MR BOCKARIE: Yes, Your Honour. After further

13 consultation, we have decided not to ask any questions.

14 PRESIDING JUDGE: That's fine.

09:45:18 15 MR BOCKARIE: Thank you, Your Honour.

16 PRESIDING JUDGE: Mr Margai, you wish to ask any questions

17 in cross-examination?

18 MR MARGAI: Yes, My Lord, I do.

19 PRESIDING JUDGE: And you are ready to do so?

09:45:28 20 MR MARGAI: Very much so, My Lord.

21 PRESIDING JUDGE: Please proceed.

22 MR JABBI: My Lords, sorry to interpose at this stage. My

23 Lords, just before the cross-examination begins, I would like to

24 crave the indulgence of Your Lordships to permit me to be absent

09:45:48 25 from the Chamber this morning, because I am supposed to appear in

26 the Supreme Court this morning at 10 o'clock on a very important

27 matter that had been adjourned from December. My Lord, it is

28 possible that the cross-examination may well be completed this

29 morning and in the afternoon we will be prepared to take our next

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1 witness and I will certainly be present. But I do not have a way
2 of trying to have the Supreme Court matter adjourned to a future
3 date, because they had adjourned to this definite date today and
4 we had been hoping that I would be free by then. My Lord, it is

09:46:44 5 just for this morning that I wish to seek absence in order to
6 appear in front of the Supreme Court which will take less than
7 two hours, I am sure.

8 PRESIDING JUDGE: But if we are to finished with the
9 cross-examination of the witness early this morning, what do we
09:47:00 10 do? I don't know how long it will be, but based on past

11 experience, we may be through in an hour, an hour and a half.
12 And you are to proceed with your next witness.

13 MR JABBI: Yes, indeed, My Lord.

14 PRESIDING JUDGE: May I ask you who is your next witness?
09:47:19 15 Is it the next witness that was listed as number two on the
16 witness list, this Dr Demby?

17 MR JABBI: Number three, My Lord. The President is number
18 two, if he is coming to give evidence. Dr Demby, in any case,

19 will be our next witness.

09:47:36 20 PRESIDING JUDGE: And he is ready to be heard?

21 MR JABBI: Yes, My Lord.

22 PRESIDING JUDGE: That is my concern. I have absolutely no
23 knowledge how long it will take this morning.

24 MR JABBI: May I ask for 12 o'clock to be back in court
09:47:52 25 here?

26 PRESIDING JUDGE: Very well.

27 MR JABBI: I will endeavour to ensure that I am back here
28 before 12 to be able to proceed at 12, if need be.

29 PRESIDING JUDGE: Very well. As I say, 12 will be cutting

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1 it close, but we will accept that you can be absent this morning.
2 I take it that your assistant is well briefed, well aware. I
3 know he was present during the examination-in-chief of this
4 witness and he is aware of the case. In case there is a problem

09:48:25 5 he is quite able to carry on --

6 MR JABBI: I have no doubt at all.

7 PRESIDING JUDGE: -- in your absence?

8 MR JABBI: Yes, indeed, My Lord.

9 PRESIDING JUDGE: Very well.

09:48:35 10 MR JABBI: Thank you very much, My Lord.

11 MR MARGAI: My Lord, will this include re-examination after
12 cross?

13 PRESIDING JUDGE: Yes.

14 MR MARGAI: Very well.

09:48:49 15 PRESIDING JUDGE: You may proceed.

16 MR MARGAI: Thank you, My Lords.

17 WITNESS: PETER ALFRED PENFOLD [continued]

18 CROSS-EXAMINED BY MR MARGAI:

19 Q. Good morning, Mr Witness.

09:48:56 20 A. Good morning, Mr Margai.

21 Q. Now, please watch the pens of Their Lordships and try as

22 best as possible to keep pace with the pens. Thank you.

23 Now, Mr Witness, in your testimony yesterday, reading from

24 the transcript --

09:49:22 25 MR MARGAI: My Lords, I am reading from page 2, line 29 and

26 page 3, line 1.

27 Q. This is what you said: "I am the former High Commissioner.

28 I was High Commissioner to Sierra Leone from 1997 to 2000." Is

29 that correct?

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1 A. That's correct.

2 Q. Could you tell Their Lordships precisely when you became

3 High Commissioner in terms of month? Which month?

4 JUDGE ITOE: I think he did that yesterday. It must be on

09:50:10 5 the records.

6 PRESIDING JUDGE: That very question was asked I think by

7 my learned brother Justice Itoe.

8 MR MARGAI: Well, I mean, maybe emphasis --

9 JUDGE ITOE: [Overlapping speakers] Anyway he may take that

09:50:24 10 again.

11 MR MARGAI: Very well.

12 Q. Which month, Mr Penfold?

13 A. I arrived by road from Senegal on 10th March 1997 to take

14 up my appointment as British High Commissioner.

09:50:37 15 Q. And do I take it that you arrived in Sierra Leone on 10th

16 March?

17 A. That's correct.

18 Q. Thank you. Now, between 1997 and the year 2000, could you

19 tell Their Lordships how many heads of state had been in
09:51:11 20 Sierra Leone within that period?

21 A. Between that period of 1997 until I left in 2000, there was

22 one only recognised head of state.

23 Q. Was there one that was not recognised?

24 A. During the period from May 1997 until February 1998 there
09:51:49 25 was an illegal junta here in Sierra Leone, called the AFRC; Armed

26 Forces Ruling Council, headed by a chairman; Johnny Paul Koroma.

27 But at no time did my government or, as far as I can determine,

28 any other government recognise him as the legal head of state of

29 Sierra Leone.

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1 Q. Thank you very much. Now, the British government, which
2 you represented as High Commissioner in Sierra Leone, was very
3 much instrumental in ensuring the restoration of democratic rule
4 in Sierra Leone after the coup of May 25th, 1997. Would that be

09:53:17 5 correct?

6 A. I would say that is definitely correct.

7 Q. Thank you very much. Would it also be correct to say that
8 as the British High Commissioner in Sierra Leone you were
9 personally involved in the process leading to the restoration of

09:53:45 10 the democratic government in Sierra Leone?

11 A. Given the leading role which the British government was
12 taking, and the fact that I was the representative of the British
13 government here as British High Commissioner, it would be correct
14 to say that I took a leading role in that event.

09:54:14 15 Q. Thank you. Now, would I also be correct in saying that
16 during the effort to restore the democratically elected
17 government in Sierra Leone, the British High Commissioner,
18 meaning yourself, the American ambassador in the person of John

19 Hirsch, and the UN special representative in the person of
09:54:58 20 Ambassador Dinka were foremost in championing this cause?

21 A. Certainly in the efforts to restore President Kabbah's
22 government as well as the British government, the United States'
23 government and the United Nations directly and through their
24 representatives also played important parts.

09:55:21 25 Q. Thank you. Was it in the effort of restoring the
26 democratically elected government in Sierra Leone that you,
27 amongst others, suggested a cordial relationship between
28 President Kabbah and Chief Norman in Guinea?
29 A. Yes, it was.

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1 Q. Thank you. Mr Witness, do you know how frosty the
2 relationship was between President Kabbah and Chief Norman before
3 this wise counseling came from you and others?

4 A. That is a little difficult to describe. Clearly from the
09:56:44 5 conversations that I had separately, both with Chief Norman and
6 with the President, they did not appear to be talking to one
7 another. How frosty that was I can't particularly say.

8 Q. Thank you very much, you've been most helpful. At the time
9 of the suggestion for cordiality between the President and

09:57:42 10 Chief Norman, was Chief Norman deputy defence minister?

11 A. Yes, he was.

12 Q. Thank you. With your determination to restore the
13 democratic government, taking the relationship you have just
14 described between the President and Chief Norman as deputy

09:58:22 15 defence minister, how helpful or otherwise was that in your
16 effort to restore democracy in Sierra Leone?

17 A. I, and I believe my colleagues John Hirsch and Berhanu
18 Dinka, considered it was essential that there should be a close

19 working relationship between President Kabbah and Chief Norman,

09:59:01 20 because at that time, with the army having rebelled, with the

21 police force in disarray --

22 Q. Please keep pace with Their Lordships' pen.

23 PRESIDING JUDGE: We are okay. We are okay. If we run

24 into difficulties [overlapping speakers]

09:59:26 25 MR MARGAI: I am watching your colleague on the left-hand

26 side. He was writing.

27 PRESIDING JUDGE: I know. But he is not afraid to say so

28 when he is having problems.

29 MR MARGAI: Well, he expects me to make use of the eyes I

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1 have to ensure we do not encroach.

2 PRESIDING JUDGE: Very well.

3 MR MARGAI: Thank you, My Lords.

4 Q. Yes, Mr Witness.

09:59:47 5 A. As I said, with the army having rebelled and the police

6 force in disarray, other than the ECOMOG forces, the only

7 indigenous Sierra Leone forces prepared to resist the illegal

8 junta were the civil militia, notably at that time, the Kamajors.

9 Q. Thank you. What period are we talking about, Mr Witness?

10:00:27 10 A. We are talking of the period from the May 1997 coup -

11 25 May - until, certainly in the first instance, the restoration

12 of President Kabbah in February or February/March 1998.

13 Q. Thank you. You held separate discussions with Chief Norman

14 and the President in pursuit of this reconciliation, did you not?

10:01:12 15 A. Yes, I did.

16 Q. Let us start with Chief Norman, if we may. Did

17 Chief Norman tell you what he believed was the reason for this

18 sour relationship between himself and the President, his boss?

19 A. I don't recall him saying anything in particular.

10:01:49 20 Q. Thank you. In your discussion with the President, did he

21 advance reasons as to why the relationship wasn't cordial between

22 himself and his deputy?

23 A. There too, I don't recall any specific reasons being put.

24 Q. Thank you. Did the President give any explanation

10:02:34 25 concerning this relationship?

26 A. From the conversation regarding that point, it would be --

27 it was apparent that he was not talking to Chief Norman. He

28 alluded to just a general wariness about the position of

29 Chief Norman, but it did not go into any specific details.

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1 Q. Very well, thank you. Now, I'm going to ask you a specific
2 question, Mr Penfold. Did the President at any time, whether in
3 Sierra Leone or out of Sierra Leone, say to you that he had
4 reason to suspect that Chief Norman and the then Vice-President

10:03:54 5 Joe Demby wanted to use the Kamajors to overthrow him, or words
6 to that effect?

7 A. No, I never recall that.

8 Q. You do not recall that. Did the President in any of his
9 discussions with you refer to Chief Norman as a loose cannon?

10:04:42 10 A. On one occasion the President did use that description.

11 Q. In respect of?

12 A. In respect of Chief Norman.

13 Q. Thank you. And what --

14 JUDGE ITOE: May we have that expression again?

10:05:02 15 MR MARGAI: "Loose cannon", My Lords.

16 JUDGE ITOE: "Loose cannon"?

17 MR MARGAI: Yes, My Lords.

18 Q. And what was your understanding of that reference, "loose

19 cannon"?

10:05:21 20 A. I took that to mean that as Chief Norman was primarily
21 either in Sierra Leone or certainly not in Conakry, and with
22 communications so difficult, it was difficult for the President
23 to maintain contact and keep a eye on how things were developing
24 in the efforts to restore his government.

10:05:59 25 Q. Thank you. Could it also mean someone who is

26 uncontrollable, "loose cannon"?

27 A. I'm sure in other contexts that description could say that,
28 yes.

29 Q. Thank you very much.

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1 PRESIDING JUDGE: But your first question was the witness's
2 understanding of that the meaning of that expression when it was
3 made?

4 MR MARGAI: Yes, My Lord.

10:06:39 5 PRESIDING JUDGE: Not what other meanings it could have.

6 MR MARGAI: No, that was the first question. The second
7 question was whether it allowed for other meanings or rather
8 interpretations besides his own understanding of what it meant.

9 Q. Was there any response from you, Mr Penfold, when the

10:07:13 10 President referred to Chief Norman as loose cannon? Were you
11 taken aback?

12 A. If I can recall at the time, I somewhat smiled and said to
13 His Excellency the President that in naval warfare what you did
14 on the ship if the cannon was loose, you tied it down and made

10:07:47 15 sure it was firing at the enemy.

16 Q. Thank you.

17 PRESIDING JUDGE: This is what you recall yourself having
18 reacted and said to the President's comment?

19 THE WITNESS: Yes, My Lord.

10:08:03 20 PRESIDING JUDGE: Thank you.

21 JUDGE ITOE: You tied it down and?

22 THE WITNESS: Yes, I described how in the olden days on a

23 ship if the cannon was moving around, you fixed it in place, back

24 in its position to fire.

10:08:18 25 MR MARGAI: To contain it.

26 Q. Now, did the President react in any way?

27 A. I mean, I think he sort of smiled back. This was --

28 Q. Cynically?

29 A. No, I don't think cynically. I think this was a little bit

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1 of banter between the President and myself.

2 Q. Thank you. Did you have unlimited access as the British
3 High Commissioner to Sierra Leone to the President during your
4 tenure of office?

10:09:13 5 A. Yes, I believe I did. I could usually, obviously subject
6 to the President's diary, see him at very short notice at any
7 time.

8 Q. Formal or informal?

9 A. Both formal and informal.

10:09:32 10 Q. Thank you. Did the President confide in you about his
11 political agenda?

12 A. I'm not quite sure of the question, but certainly we would
13 discuss issues such as particularly in Conakry what he would
14 propose to do when he returned, the priorities that he felt he

10:10:16 15 and his government would have.

16 Q. Dr Joe Demby was his vice-president then?

17 A. That's correct.

18 Q. Did he discuss with you what plans, if any, he had as to

19 his choice of a running mate as the 2000 elections were
10:11:00 20 approached?

21 PRESIDING JUDGE: Sorry, Mr Witness. What is the question
22 again? If the President did discuss with the witness about the
23 choice of his running mate?

24 MR MARGAI: Running mate.

10:11:13 25 PRESIDING JUDGE: For?

26 MR MARGAI: The 2000 elections.

27 PRESIDING JUDGE: At the time, you mean?

28 MR MARGAI: At the time, yes, My Lord.

29 THE WITNESS: At the time that we were in Conakry, no, I do

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1 not recall any conversation about a running mate for the next
2 elections.

3 MR MARGAI:

4 Q. Thank you. What about after we return to Sierra Leone?

10:11:37 5 A. I do recall much later, and this would be I suspect the
6 early 2000 before, and I'd completed my tour, when there was much
7 speculation in the country and in the media over who the
8 President would choose as his running mate at the next elections.

9 And we were together. I recall specifically I had accompanied

10:12:29 10 him on a visit to Bo, and we had a general and not detailed
11 discussion over various names that were being suggested in,
12 particularly, the local media, over who might be his running mate
13 at the next elections.

14 Q. Did Chief Norman discuss with you the question of who was

10:13:29 15 to be the running mate to President Kabbah come 2000? Did he
16 ever discuss that with you?

17 A. I cannot recall such a conversation.

18 Q. You cannot, thank you. Now, in the quest to restore

19 democracy in Sierra Leone, could you, Mr Witness, recall the
10:14:19 20 fighting forces on behalf of the government? Apart from the CDF
21 were the other fighting forces fighting to restore democracy?
22 A. By far the prime fighting force were the ECOMOG forces,
23 but, as I mentioned yesterday, we were aware of a few loyal army
24 supporters based at Lungi, and SSD, which is the paramilitary
10:15:09 25 wing of the police force.
26 Q. Thank you. Did the British government, during the rebel
27 war, supply arms to the CDF directly?
28 A. No, British government supplied no arms directly to the
29 CDF.

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1 Q. Thank you. Did the British government supply logistics to
2 the CDF directly?

3 A. No, there were no logistics supplied directly to the CDF.
4 Any assistance that was provided was provided to ECOMOG.

10:16:19 5 PRESIDING JUDGE: And this assistance, Mr Witness, could
6 include arms and ammunition, or we're talking here only of
7 logistic support to ECOMOG?

8 THE WITNESS: The assistance that we were providing to
9 ECOMOG, My Lord, was we provided some vehicles, we provided some
10:16:45 10 communications equipment. We paid for a helicopter, which was

11 used to fly the senior ECOMOG forces around the country. And at
12 some stage shortly before I left some training ammunition was
13 brought in to help the British military who were beginning to
14 train the new Sierra Leone Army.

10:17:28 15 MR MARGAI:

16 Q. Thank you. Now, Mr Penfold, on the question of command and
17 control, bearing in mind that we had ECOMOG, CDF, the loyal
18 Sierra Leonean army personnel, the loyal police personnel, which

19 of these forces would you say, from your knowledge as an

10:18:06 20 in-player, had command and control during this rebel incursion of

21 which the British played such a prominent role in the restoration

22 of democracy?

23 A. I mean, the command and control of all the fighting forces,

24 fighting for the restoration of President Kabbah's government,

10:18:34 25 was vested clearly in ECOMOG.

26 Q. Thank you. Now, you had told this Court yesterday that the

27 President was at the pyramid of the CDF activities; is that

28 correct?

29 A. Yes, in terms that I told the Court yesterday of the

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1 establishment of the committee for the CDF, which was established
2 whilst we were in Conakry, a committee chaired by Vice-President
3 Demby and Vice-President Demby was answerable directly to the
4 President.

10:19:48 5 Q. Thank you. One final question. Of the President, who was
6 at the pyramid of the CDF activity, assisted by his then
7 vice-president and Chief Norman, who in your opinion bears the
8 greatest responsibility?

9 A. The greatest --

10:20:14 10 JUDGE THOMPSON: Counsel.

11 MR MARGAI: Yes, My Lord.

12 JUDGE THOMPSON: Why is that question necessary?

13 MR MARGAI: To round up My Lord and to --

14 JUDGE THOMPSON: Why is it necessary as a matter of

10:20:26 15 evidence? Why isn't it a question that should be reserved for

16 legal debate and exchange?

17 MR MARGAI: I will be addressing Your Lordships on the

18 legal aspect of that question, but then I believe it is

19 necessary, having regard to the role that was played by the

10:20:44 20 witness in the restoration of the legitimate government in

21 Sierra Leone --

22 JUDGE THOMPSON: Hasn't sufficient evidentiary foundation

23 been laid by him for a possible argumentation by you that that

24 inference could be drawn? Why should he do it for the Court?

10:21:06 25 Wouldn't that amount to an encroachment upon the province of the

26 Bench to determine that particular issue based on all the

27 evidence that would have been presented in this Court? That is

28 my own -- [overlapping speakers]

29 MR MARGAI: I couldn't agree with you more, My Lords, but

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1 quite frankly, we do not have any intention of encroaching on the
2 domain of the Bench. But I believe it is of fundamental
3 importance that that evidence comes from the witness in his
4 testimony. It may be superfluous.

10:21:47 5 JUDGE THOMPSON: Well, the point I am making --

6 PRESIDING JUDGE: We will not allow the question.

7 MR MARGAI: You will not allow it?

8 JUDGE THOMPSON: Yes, it is an opinion and it is an opinion
9 of law which this Chamber is by statute authorised to draw,

10:21:59 10 guided by counsel who are able and enlightened sufficiently to

11 tell us what kind of inferences of law -- [overlapping speakers]

12 MR MARGAI: Can I rephrase the question then?

13 JUDGE THOMPSON: Well, if you are going the same route, I
14 would find it very difficult, to be slightly American here, to

10:22:24 15 [Overlapping speakers]

16 PRESIDING JUDGE: To support my brother Justice Thompson on
17 this matter, it is not the way you have framed your question, it
18 is the subject matter of your question that is objectionable.

19 MR MARGAI: I see.

10:22:31 20 PRESIDING JUDGE: So whether you frame it differently, if

21 you are aiming to the same result, the objection of the Bench

22 will be the same.

23 MR MARGAI: I will definitely not attempt that, My Lord.

24 JUDGE ITOE: Yes, I was going to say, let's see how you go

10:22:44 25 in the process of reframing the question and see whether it will

26 be acceptable.

27 MR MARGAI: As My Lords please.

28 JUDGE ITOE: Yes.

29 PRESIDING JUDGE: And we know, Mr Margai, that you are

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1 experienced enough to know the difference between the two, but we
2 will see what that question is.

3 JUDGE THOMPSON: I am sure that you are having second
4 thoughts.

10:23:07 5 MR MARGAI: Well, I shall take the cue from the Bench and
6 leave it at that. As My Lords, please. As My Lords please.

7 JUDGE THOMPSON: Yes, thanks.

8 MR MARGAI: Let me not rub it in.

9 PRESIDING JUDGE: Thank you. So that concludes

10:23:16 10 [overlapping speakers]

11 MR MARGAI: Thank you very much, Mr Penfold.

12 PRESIDING JUDGE: Thank you, Mr Margai. Mr Prosecutor, are
13 you ready to proceed with the cross-examination of the witness?

14 MR De SILVA: My Lords, yes.

10:23:30 15 PRESIDING JUDGE: Please do so.

16 CROSS-EXAMINED BY MR De SILVA:

17 Q. Mr Penfold, you and I know each other.

18 A. We do, indeed.

19 Q. Chief Norman, of course, is a great friend of yours and has
10:23:55 20 become a friend over the years.

21 A. I would say that I've come to know Chief Norman fairly well
22 and now consider him to be a friend.

23 Q. And indeed a family friend.

24 A. He always sends greetings to my wife and I respond by
10:24:16 25 talking regularly to members of his family.

26 Q. So my use of the phrase "a family friend" would not be
27 inappropriate?

28 A. Not in the context that I just replied.

29 Q. You will not, of course, not forget your utterances at the

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1 very end of your evidence yesterday that invoked objection from
2 My Lordships. Do you recall that?
3 A. I do indeed and still regret having caused disrespect to
4 the Bench.

10:25:14 5 Q. It is not disrespect to the Bench I am concerned with,

6 Mr Penfold. Do you feel that when you were making those
7 utterances you were an objective and impartial witness?
8 A. I do feel deeply about the situation, but I do it also
9 partly in relation to my activities in seeking to resolve

10:25:52 10 conflicts throughout the world, particularly in Africa.

11 Q. I don't want to stop you, Mr Penfold. No doubt you will be
12 re-examined at length on any matters that require re-examination
13 or any matters that may be left in doubt. But you will agree
14 with me, won't you, that to the casual observer your observations

10:26:27 15 yesterday at the very end of your evidence may be seen as being
16 without objectivity and with some partiality. Would you agree
17 with that?

18 MR SESAY: My Lord --

19 PRESIDING JUDGE: What's the objection?

10:26:41 20 MR SESAY: My Lords, it's very speculative and the question

21 itself is double-barreled and it is open to several

22 interpretations, My Lord.

23 PRESIDING JUDGE: And so you think the witness is not

24 capable of making those differences?

10:26:55 25 MR SESAY: My Lord, it is not so much as whether he is

26 capable or not. But My Lord it is so much as to the basis of the

27 question, My Lord.

28 PRESIDING JUDGE: Your objection is overruled.

29 MR De SILVA:

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1 Q. Now, yesterday you were good enough, Mr Penfold, to
2 apologise for the remarks you made. Do you remember that?

3 A. I remember.

4 Q. And you know with your very great experience - and you
10:27:33 5 don't have to be a diplomat to work this out - that it may have
6 seemed to some that you weren't being entirely objective or
7 impartial. Would you agree on that?

8 MR MARGAI: Objection, My Lord. My Lords, we have a trial
9 chamber here presided over by --

10:27:54 10 PRESIDING JUDGE: Open your microphone, please.

11 MR MARGAI: I am sorry. We have a trial chamber here
12 presided over by you, the judges. It is not the opinion of
13 others that matters here and therefore it is my submission
14 here -- objection, that the question is improper.

10:28:18 15 PRESIDING JUDGE: Can we hear from you, Mr Prosecutor?

16 MR De SILVA: There is nothing, with respect, objectionable
17 about it. I am asking a highly intelligent witness as to whether
18 his remarks have the hallmarks of partiality or impartiality

19 behind them. And I am perfectly entitled to explore that given
10:28:42 20 the remarks that were made by this witness. If the witness
21 chooses not to answer it or avoid the question, then, of course,
22 the Court can draw its own conclusions. But it is a fairly
23 straightforward question in my respectful submission.

24 JUDGE THOMPSON: Actually, I think also in the context of
10:29:04 25 cross-examination which has a wider scope and latitude, the
26 question would seem to me to be a fair question and if there is
27 an answer which counsel on the other side think might in a way
28 prejudice their client's interests, they would be entitled to
29 re-examine on that, because here the witness volunteered that

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1 particular evidence at the end and, of course, that triggered off
2 a reaction from the Bench. At some stage the question is whether
3 we should have expunged it, but it is on record and since that
4 was the ruling of the Bench. And I don't, quite frankly,

10:30:04 5 speaking for myself, see why he cannot be asked as to whether he
6 thought by volunteering that judgment he was making -- giving us
7 an objective assessment. Yes, Mr Margai.

8 MR MARGAI: My Lords, what I am saying in effect is that
9 the --

10:30:29 10 PRESIDING JUDGE: Mr Margai, your objection is overruled.

11 MR MARGAI: I was invited by your brother Judge Thompson --
12 JUDGE THOMPSON: I am, of course, bound by the direction of
13 the Presiding Judge.

14 MR De SILVA:

10:30:43 15 Q. Mr Penfold, you have heard what My Lord Thompson has just
16 had to say. I don't want to prolong this, but can you help us
17 about this? For a very long time you have championed the cause
18 of Chief Norman; is that correct?

19 THE WITNESS: That is correct.

10:31:07 20 Q. For a very long time it has been - and correct me if I am

21 wrong? - it has been your belief for your own reasons that he

22 should not indicted.

23 A. I believe that.

24 Q. And therefore when you made the remarks that you made

10:31:36 25 yesterday, it follows as night follows day, does it not, that

26 they were not meant either to be objective or impartial?

27 A. I believe when I made those remarks at the end of the

28 statement yesterday I was asked by the counsel to conclude with

29 my personal feelings towards Chief Norman. Therefore, naturally,

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1 I would express that way. But I can assure this Court,
2 throughout my testimony yesterday, that I was very objective in
3 all of the answers that I gave to the questions. And indeed, the
4 friendship, that I have accepted that I now have with

10:32:37 5 Chief Norman, arose more over a period of time and most of the
6 time that we were talking about yesterday that would not be an
7 occasion to say that we had a -- we were very close or very
8 friendly at that time, which increases, therefore, my view that
9 what I said was very objective on looking at the events at that

10:33:03 10 time.

11 Q. Yes. Don't get me wrong, Mr Penfold. During the course of
12 this cross-examination I shall seek to demonstrate that we agree
13 with 99.9 per cent of what you have said. You follow me? And
14 you took half a day to give evidence about matters about which,

10:33:29 15 so far as the Prosecution is concerned, there is no dispute. So
16 I want you to clearly understand the area of dispute between us
17 being very narrow.

18 Can I ask you this: When you made the remark yesterday

19 "his indictment is a grave injustice" - that was a reference to

10:34:03 20 the indictment of Chief Norman - were you making, by any chance,

21 any imputations on the motives of the Prosecution? I just want

22 to understand your position.

23 A. No. I mean, I -- I'm guided by you, My Lord. I certainly

24 don't want to offend you again.

10:34:30 25 PRESIDING JUDGE: Please. No, you may answer that

26 question.

27 THE WITNESS: But in essence, if I can put it --

28 PRESIDING JUDGE: If it goes too far -- Mr Penfold, if it

29 goes too far, we are not afraid to intervene. I know you

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1 understand what has happened yesterday and we have accepted your
2 apology. You are being asked a question by counsel and it is a
3 fair question in those circumstances.

4 THE WITNESS: I mean, in simple terms I believe

10:34:51 5 Chief Norman is not guilty, and therefore, if he is not guilty,
6 it is an injustice that he is therefore having to face these
7 charges.

8 JUDGE THOMPSON: But the question really is a little
9 specific and quite narrow. Was that question meant to be any

10:35:09 10 imputation on the Prosecution? That is the question.

11 PRESIDING JUDGE: On their motives.

12 JUDGE THOMPSON: On their motive. If you keep it narrow --

13 MR De SILVA:

14 Q. You see, Mr Penfold, you have taken another opportunity -

10:35:24 15 yet another opportunity - to make the same remark that you made
16 last night.

17 JUDGE THOMPSON: Counsel, we don't want you to get too
18 confrontational on this. If you have asked a question that you

19 think is of assistance to the Court, why not let him answer the
10:35:40 20 question in the narrow context in which you have so ably put it?

21 Why get to a stage whereby you might in fact be generating

22 confrontation which may not be necessary?

23 MR De SILVA: Well, My Lord, my question I hope didn't

24 generate confrontation. I simply want to know from Mr Penfold if

10:36:02 25 he was making any imputations on the motives of the Prosecution

26 in indicting his friend, Chief Norman.

27 THE WITNESS: As I understand it, in the Statute

28 establishing this Court the Prosecution is free to indict

29 whomever they wish if they consider they have committed or they

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1 bear the greatest responsibility for human rights violations
2 during the said period. I cannot disagree with that position.

3 MR De SILVA:

4 Q. Do I take it, then, that you are making no imputations on
10:36:57 5 the motives of the Prosecution in having brought these charges
6 against Chief Norman?

7 A. I don't see any personal negative motivation on the part of
8 Prosecution to specifically charge Chief Norman.

9 Q. You are not suggesting -- I want to clear the air
10:37:28 10 completely. You are not suggesting any bad faith on the part of
11 the Prosecution?

12 A. No.

13 Q. Thank you. That is gratifying to hear. Mr Penfold, you
14 have told us of your support for Chief Norman over a period of
10:37:57 15 time. In fact, you have publicly stated that this Court should

16 be disbanded, haven't you?

17 A. Yes, I have.

18 Q. But yesterday you said to this Court, when you apologised

19 to My Lords -- you used these words: You apologised to the Court
10:38:39 20 for the remarks you made and complimented, and to use your own
21 words in inverted commas, "the Court on the fine things it is
22 trying to achieve." So I just want to ask you this: On the one
23 hand you have taken up the position that the Court should be
24 disbanded, and yesterday you were complimenting this Court on the
10:39:08 25 fine things it is trying to achieve. Now which of those two
26 positions is your true position?
27 A. My position on the Special Court - and I trust
28 Your Lordship, you will allow me time to explain this - when the
29 Court was first established I supported the idea of the Court in

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1 that in a general nature we should not let people who commit mass
2 atrocities in conflicts around the world get away with them
3 impunity. I welcomed the indictment of Foday Sankoh, as I felt
4 personally that he did or he was one of those who bore the

10:40:15 5 greatest responsibility for the atrocities here. I did at the
6 time and still do express concern at indictments served on
7 Chief Norman and the other CDF members. When Foday Sankoh died
8 in detention, and despite efforts to bring Charles Taylor to this
9 Court, which have so far not succeeded, it seemed to me that the

10:40:59 10 Court no longer served any real purpose in what it was attempting
11 overall to achieve.

12 However, the remarks that I made yesterday was in
13 recognition of the reality of the situation we are here, that
14 there are nine people here indicted and this Court clearly and

10:41:33 15 very thoroughly is trying to determine the truth of those
16 indictments against those nine people. Therefore, I personally
17 do not see a difference between my overall position on the
18 overall position of the Court and specifically what the Court is

19 doing now.

10:41:55 20 Q. I am very grateful for that because I was trying to

21 reconcile, as you appreciate, your publicly stated observations

22 that the Court should be disbanded with the remarks you made

23 yesterday, and I am indebted to you for your help in that regard.

24 So Foday Sankoh you thought certainly deserved to be indicted and

10:42:17 25 brought before an international criminal court?

26 A. I did.

27 Q. I don't wish to speak ill of the dead, but I don't think

28 you had too high an opinion of Mr Bockarie, did you? Mosquito

29 Bockarie.

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1 A. I put him in the same category.

2 MR De SILVA: I'm not referring to you, my learned friend.

3 My learned friend was looking at me in such a worried fashion;

4 Mr Bockarie.

10:42:47 5 THE WITNESS: The Bockarie alias Mosquito.

6 MR De SILVA:

7 Q. Yes. He is someone else I think you must have felt

8 deserved to be hauled before an international criminal court?

9 A. Yes, I do.

10:43:02 10 Q. And I think, if I understand you right, you bemoaned the

11 fact that we don't enjoy the company of Mr Charles Taylor?

12 A. I think he has much to answer for for what Sierra Leone

13 suffered.

14 Q. Was the object of your evidence - and correct me if I am

10:43:33 15 wrong - to try to convey to Their Lordships that apart from those

16 possible three, there would be little reason for the existence of

17 this Court?

18 A. No, that was not my motive.

19 Q. Thank you. I just want to ask you about a matter and I

10:44:19 20 would be grateful for a straightforward answer. The rebels, and

21 I think we all know who we are talking about when we speak of the

22 rebels - the rebel forces, AFRC - they did terrible, terrible

23 things in this country from your own observations?

24 A. From directly my own observations.

10:44:57 25 Q. Yes.

26 JUDGE ITOE: Is the answer yes, Mr Penfold?

27 THE WITNESS: It is, yes, My Lord. I received, at one time

28 on a daily basis, victims of terrible atrocities coming to my

29 residence.

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1 MR De SILVA:

2 Q. And clearly, from what you learnt, they were atrocities of
3 a kind that normally bring the perpetrators of such atrocities
4 before tribunals of this kind?

10:45:32 5 A. I've had no previous experience of special tribunals like
6 this. One normally would use the courts to deal with such
7 crimes.

8 Q. But you know that the atrocities that were committed were
9 atrocities of a particularly nasty kind that to a great extent

10:46:04 10 not just shocked you but has shocked the conscience of mankind?

11 A. Yes, indeed.

12 [CDF09FEB06B-SV]

13 Q. So it would come as no surprise to you that persons from
14 that particular group have ended up before a tribunal such as

10:46:29 15 this. It would come as no surprise to you?

16 A. It's not a surprise. I mean, one would normally expect
17 such matters to be directed to the International Criminal Court,
18 although, of course, I understand that the ICC could not cover

19 these events because they took place before the ICC had been
10:47:00 20 established.

21 Q. You're quite correct. Absolutely right, but I think I got
22 my answer. It couldn't go to the ICC for reasons that the
23 lawyers know about. And so those who had to fight these rebel
24 forces, who embarked upon atrocities of every kind, had
10:47:28 25 sometimes - and I just want your view, your view - do you think
26 they sometimes had to fight fire with fire?

27 A. I would have to say yes because I have used that expression
28 in an article I wrote.

29 Q. Oh, did you write that the CDF had to fight fire with fire?

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1 A. No, I did not specifically refer to CDF. I believe what I
2 said was that if a bunch of rebels come to your village and start
3 killing your mothers and fathers, chopping your arms and legs
4 off, burning your villages, your huts, you can't just wag your
10:48:23 5 finger at them and accuse them of violating human rights.

6 Q. I'm going to ask you a fairly straightforward question.
7 You gave -- you were interviewed, were you not, for a very
8 respected journal, the Journal of African Affairs, only last
9 year?

10:48:52 10 A. Yes, I was.

11 Q. And I just want you to -- you remember that well, don't
12 you?

13 A. I remember it, but it's some time since I have read that
14 article.

10:49:11 15 Q. Do you accept, or do you dispute, can I put it this way,
16 that the CDF, members of the CDF, may have committed some
17 terrible deeds?

18 A. I believe I said that in that article.

19 Q. Was it true?

10:49:33 20 A. I cannot say it's specifically true. It's true that it was

21 in the article, but I --

22 Q. Did you --

23 A. But I never personally met anybody who said to me

24 specifically that they had suffered atrocities at the hands of

10:49:48 25 the CDF.

26 Q. Come, come, Mr Penfold - and I'm going to question your

27 impartiality again. When you said publicly in one of the most

28 respected journals around, as you've admitted just now, that the

29 CDF may have committed some terrible deeds, you must have

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1 intended the readers of that journal to understand just that,
2 isn't it?

3 MR MARGAI: Objection, My Lords. My Lords, let us look at
4 the very language. Unfortunately, my learned friend has not

10:50:41 5 furnished us with a copy of that document, but the use of the
6 word "may", "may have", that presupposes uncertainty. If he were
7 that certain he would have said, "The CDF did commit". That is
8 the difference, My Lord, and I'm objecting to the question put.

9 PRESIDING JUDGE: Mr Prosecutor, do you wish to respond to
10:51:10 10 this objection?

11 MR De SILVA: Yes, and now that the -- I don't think the
12 witness needed the assistance of Mr Margai to answer the
13 question.

14 MR MARGAI: I object to that, My Lord, the insinuation.

10:51:22 15 JUDGE ITOE: Mr Margai is representing the interests of his
16 client. He is perfectly entitled to reply.

17 PRESIDING JUDGE: I still have some difficulties with
18 objections by Mr Margai when he was cross-examining and this is

19 not a witness called by his client, but a witness called by the
10:51:39 20 first prosecution [sic]. But I still have a lot of difficulties.
21 I would prefer you confer with counsel for the first accused and
22 who should make those observations and comments rather than you.
23 I know what you're going to say because of the joint criminal
24 enterprise and your client being one of those as such, but still
10:51:55 25 you were cross-examining this witness, you are not the counsel
26 that called this particular witness.
27 MR MARGAI: Accepted, My Lord, but the question is not
28 directed at words or activities by Chief Norman, but the CDF in
29 its entirety of which my client --

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1 PRESIDING JUDGE: It doesn't change the picture.

2 MR MARGAI: My Lord, with the greatest respect, I beg to
3 differ.

4 PRESIDING JUDGE: As to what? As to your right to
10:52:26 5 intervene and object to questions by the Prosecution to this
6 witness?

7 MR MARGAI: In this particular instance, where the generic
8 term is used, I believe I should, as a matter of right, object if
9 my objection is objectionable.

10:52:46 10 PRESIDING JUDGE: But on what ground based on the procedure
11 we are following? You know by your experience that you may
12 intervene to a question that is being asked of a witness if this
13 witness is your own witness that is being called. You have
14 cross-examined that witness. You've not examined this witness as

10:53:01 15 a witness in chief. You cross-examined him.

16 MR MARGAI: My Lord, it is true that I did not call this
17 witness. He is not my witness. But the testimony this witness
18 is giving affects my client as much as it does the first accused.

19 PRESIDING JUDGE: Indeed, the same -- that's the purpose

10:53:20 20 why you cross-examined that witness in the interests of your

21 client.

22 MR MARGAI: Conceded.

23 PRESIDING JUDGE: Fine, then that's the role you have to

24 play. But if there is any objection to be made to any of these

10:53:32 25 questions, I suggest to you it should be made by the counsel for

26 the first accused who has the same interests as you do in this

27 respect. Presumably, if you're talking of CDF, the first accused

28 is also involved in CDF in this respect in the overall picture.

29 So what gives you the right to stand up at that time? The same

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1 would apply to the first accused, isn't it so?

2 MR MARGAI: My Lord, then where, I believe, that a question

3 posed will adversely affect my client --

4 PRESIDING JUDGE: Well, in the same respect, if it is to

10:54:03 5 adversely affect your client, I would suggest to you that it

6 would adversely affect all of you, your clients.

7 MR MARGAI: But, My Lord, if the other counsel there do not

8 think it fit to object, should I sit down and not take the

9 opportunity to protect the interests of my client?

10:54:19 10 PRESIDING JUDGE: Maybe you should confer with the counsel

11 for the first accused and he should make the objection. In any

12 event, we've heard your objection. You know my concern about

13 that and I want to make sure that we do act in accordance with

14 the procedure that we have established. You are cross-examining

10:54:34 15 these witnesses, you're not examining them in chief. You will

16 have that opportunity in due course.

17 MR MARGAI: My Lord, if I may, with the greatest respect,

18 may we hear the views of your two colleagues because these are

19 very important matters. I appreciate that you are the Presiding
10:54:51 20 Judge, but this is very important for future conduct.

21 PRESIDING JUDGE: Please give me a good explanation as to
22 why you should be involved in this kind of a scenario and I
23 understand that your client is being charged with the same
24 offences and the other ones and you're presumably here making
10:55:10 25 these comments and intervening on the ground of the joint
26 criminal enterprise.

27 MR MARGAI: That's correct, My Lord.
28 PRESIDING JUDGE: That's basically my understanding of your
29 position.

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1 MR MARGAI: That is correct. Your Lordship has provided
2 the answer, joint criminal enterprise. That is the vehicle upon
3 which I'm riding to raise an objection on behalf of the third
4 accused whom I represent.

10:55:32 5 PRESIDING JUDGE: But the same joint criminal enterprise
6 applies to your client, to the client of -- to the second accused
7 and to the first accused. I mean, this notion is no different
8 for your client than it is for the first accused.

9 MR MARGAI: Conceded, My Lord.

10:55:46 10 PRESIDING JUDGE: But this is in accordance with the
11 procedure we follow. If there is any objection to be made to any
12 of these questions, it should be done by counsel for the first
13 accused whose witness it is. Because if you have this matter at
14 heart, I say confer with the counsel for the first accused and

10:56:00 15 come to common understanding of these issues. We will never see
16 the end of the day if we keep having intervention of that nature
17 all the time when it is not the normal procedure.

18 MR MARGAI: If I understand Your Lordship correctly, Your

19 Lordship seems to be saying that since the witness is not my
10:56:18 20 witness --

21 PRESIDING JUDGE: And it is not a common witness either.

22 MR MARGAI: And not a common witness, as long as I have

23 completed my cross-examination I should have nothing to do with

24 the proceedings?

10:56:29 25 PRESIDING JUDGE: Absolutely.

26 MR MARGAI: As My Lord pleases. If that is the view of the

27 Court, then.

28 PRESIDING JUDGE: You're asking to have the views of the

29 other judges on the Bench. Obviously you will not get these

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1 views, but we're quite prepared to adjourn and discuss this
2 matter --

3 MR MARGAI: As My Lord pleases. I would very much
4 appreciate that because it's a very, very crucial point for

10:56:49 5 future conduct.

6 PRESIDING JUDGE: Very well. The Court will recess.

7 [Break taken at 10.57 a.m.]

8 MR MARGAI: I'm obliged.

9 [Break taken at 10.57 a.m.]

11:40:34 10 [Upon resuming at 11.40 a.m.]

11 PRESIDING JUDGE: Mr Margai, after discussion and
12 consultation with my brother judges, we will allow you to make
13 that objection given the nature of the question and given what
14 you have stated to the Court, that this goes to the CDF rather

11:41:45 15 than specifically to your client. However, that decision shall
16 not be understood to allow you to object as a right to all the
17 questions asked by the Prosecution in cross-examinations. If you
18 want to object in the future, you have to convince the Court that

19 this is one of those situations because you should be allowed to

11:42:09 20 object as you were cross-examining. Normally the process to be

21 followed is once you've completed your cross-examination, that

22 completes your role. But given this particular question, we will

23 allow to make that objection at this time.

24 MR MARGAI: I'm grateful, My Lords.

11:42:26 25 PRESIDING JUDGE: We have heard your objection, in any

26 event.

27 MR MARGAI: I do not wish to restate it.

28 PRESIDING JUDGE: So that was on this issue that we were to

29 discuss and we have discussed and this is the decision of the

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1 Court. We will deal with it on a case-by-case basis as this
2 comes along in the future, should it come along.

3 MR MARGAI: Much obliged.

4 PRESIDING JUDGE: Thank you.

11:42:47 5 MR MARGAI: I hope the frequency will not be as frequent.

6 PRESIDING JUDGE: I hope so too. Thank you very much. As
7 to the -- you had responded, Mr Prosecutor, if I'm not mistaken
8 to the objection raised.

9 MR De SILVA: My Lord, it was so long ago I can't remember,

11:43:02 10 but it doesn't matter. I don't propose to raise any new matter.

11 PRESIDING JUDGE: The objection is overruled, Mr Margai,
12 because this is a question that is permissible in
13 cross-examination.

14 MR MARGAI: As My Lords please.

11:43:22 15 PRESIDING JUDGE: Mr Prosecutor, you may proceed.

16 MR De SILVA:

17 Q. Mr Penfold, just to recapitulate on where we were, you had
18 agreed with me that you had used the words "some members of the

19 CDF may have committed some terrible deeds." I think you agreed
11:43:46 20 with that.

21 A. Yes. Can I just say, My Lord, the article we're referring
22 to was, I understand, an article that was written by somebody
23 else, Lansana Gberie, and it took the form of an interview that
24 he carried out with me which was then published. So I mean,
11:44:10 25 perhaps just -- and it was conducted some time ago. Perhaps you
26 could just read the actual extract from the article so I can make
27 sure I have refreshed my memory on that.
28 Q. You are going to get the whole article, Mr Penfold. Don't
29 worry. I'm not trying to put words in your mouth. You will get

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1 the whole article and you will see it all in context.
2 A. Thank you very much.
3 Q. But I am taking things stage by stage. You do accept that
4 you did use the words "some members of the CDF may have committed

11:44:45 5 some terrible deeds"?

6 A. May have committed some terrible deeds, yes.
7 Q. When you used those words, was that your honest belief?
8 A. It was a belief based, as I said, not upon any direct
9 evidence that had come to me from any particular person saying

11:45:08 10 they had directly suffered from CDF, but on other observations

11 such as, for example, what was contained --
12 JUDGE THOMPSON: Slowly. Slowly, please. Based on any
13 direct evidence from any particular person, you said.
14 THE WITNESS: Yes, who directly told me that they had

11:45:29 15 suffered at the hands of CDF members, but observations based on,
16 for example, the report of the Truth and Reconciliation
17 Commission, which I had read.

18 MR De SILVA:

19 Q. And was it your belief that deeds -- terrible deeds done by
11:46:03 20 the CDF might have been the result of fighting fire with fire?

21 A. They would have been deeds done, yes, in protection and
22 consequence of the attacks upon them.

23 Q. But you know, as a senior diplomat, that the conduct of
24 conflict is governed by rules, rules of humanitarian warfare.

11:46:50 25 You know that, don't you?

26 A. Ideally it is, yes.

27 Q. We don't live in an ideal world. That's why we have
28 conflict.

29 A. Sadly, that's the case.

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1 Q. Yes. So let's talk about the real world. Not a world that
2 doesn't exist. In the world that exists, you know that conflict
3 carries its own responsibilities. The responsibility of abiding
4 by and conforming to international humanitarian law. That's

11:47:34 5 trite, isn't it? You agree with that?

6 A. Yes, I think so, yes.

7 Q. What do you mean you think so? Do you think -- what do you
8 mean you think so?

9 A. Well, I suspect that those who were committing such

11:47:54 10 atrocities were -- I doubt if they were aware of such

11 well-meaning conventions and legislations.

12 Q. Yes.

13 JUDGE THOMPSON: Shall we have that answer. Slow down,

14 Mr Prosecutor.

11:48:13 15 MR De SILVA: I'm so sorry.

16 JUDGE THOMPSON: Should you repeat that, please.

17 THE WITNESS: I said, I doubt if those committing such

18 atrocities were aware of such well-meaning conventions and

19 legislations.

11:48:36 20 MR De SILVA:

21 Q. The one thing of course is certain, that the people

22 perpetrating these atrocities could hardly be said to be

23 well-meaning in what they were doing?

24 JUDGE THOMPSON: He didn't say -- he said "well-meaning

11:48:50 25 conventions and legislations". That's the characterisation.

26 MR De SILVA: Well, My Lord, I'm grateful and of course the

27 courts will deal with the principle of whether the ignorance of

28 the law is a defence.

29 Q. But I want to deal with a lot of the evidence you have

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1 given that I wholly agree with and don't dispute in any way. We
2 do not dispute your narration of events leading up to the coup of
3 April 1997, the detail you give. We are indeed indebted to you
4 for that detail. We do not dispute with you the events during

11:49:50 5 the coup that took place in April. We do not dispute your
6 narration of the events leading up to the departure of the
7 President to Conakry, or indeed the events in Conakry. There is
8 one aspect of the incidents in Conakry that I wish to deal with
9 and that is this. But before I come to deal with that, I want to

11:50:42 10 remind you of an answer you gave to my learned friend Mr Margai
11 who this morning asked you a question about "a loose cannon". Do
12 you remember that?

13 A. Yes, I do.

14 Q. And you gave us a vivid description of guns being tied down

11:51:02 15 and no doubt in stormy seas and it was all very dramatic. But my
16 learned friend Mr Margai asked you whether on one occasion the
17 President had called Chief Norman a loose cannon. Do you
18 remember that?

19 A. Yes, I do.

11:51:23 20 Q. And you gave a very considered answer. Would you agree
21 with that?

22 A. I believe so.

23 Q. And your considered answer, as I recorded it, was as
24 follows: "I took that to mean that as Chief Norman was in Sierra

11:51:57 25 Leone, it was difficult for the President to keep an eye on

26 developments in the country", that's in Sierra Leone. That's the
27 answer you gave?

28 A. Yes, because of poor communications.

29 Q. Yes. So there was the President in Conakry, and your

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1 answer, which I recorded as faithfully as I could, for reasons
2 you give that because of poor communication it was difficult for
3 the President, President Kabbah, to keep an eye on developments
4 in Sierra Leone. That is your evidence?

11:52:49 5 A. Yes.

6 Q. Thank you. Now in Conakry there was the President in
7 exile, there were ministers who had accompanied him into exile;
8 correct?

9 A. Yes.

11:53:23 10 Q. And, of course, I want you to paint the picture to this
11 Court. The international community was outraged at this military
12 coup d'etat in Sierra Leone. That's right, isn't it?
13 A. They voiced their concern, yes.
14 Q. And everybody, all governments, as far as you could tell,
11:54:00 15 wanted to see the restoration of the democratically elected
16 President Kabbah back in office?
17 A. Yes.
18 Q. So there had to be some sort of plan, perhaps a number of

19 plans?

11:54:31 20 A. Yes. I mean, there were a number of initiatives directed
21 towards achieving that goal.

22 Q. And, of course, ECOMOG forces were in the field; correct?

23 A. As I said, initially there were Nigerian forces but ECOWAS
24 designated them as an ECOMOG force.

11:55:04 25 Q. Yes. I think you know I'm using this shorthand. ECOMOG
26 forces were in the field and then, of course, there were the
27 Kamajors; correct?

28 A. Yes.

29 Q. Were many groups of people, as I understand it, with long

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1 and great traditions as hunters?

2 A. Yes, I believe so.

3 Q. In Conakry there was a desperate need, was there not, I

4 think to use your own words, "to find a person, a suitable

11:55:58 5 person, to be an interface between the CDF and ECOMOG."

6 A. Yes.

7 Q. And as I understand your evidence, Chief Hinga Norman, with

8 his military background, was an obvious person for this vital

9 role?

11:56:44 10 A. That is how I saw it.

11 Q. Yes. Well, I agree with you. There's no dispute. It was

12 a critically important position, was it not, given the military

13 situation on the ground, that somebody with suitable military

14 training, background and leadership qualities should be appointed

11:57:19 15 to such a post?

16 A. Yes.

17 Q. Good. And so His Excellency the President appointed

18 Chief Hinga Norman the CDF co-ordinator?

19 A. That was the designation within the committee that was

11:57:45 20 established.

21 Q. Yes, but we understand, and I don't dispute the evidence of

22 Chief Norman, that President Kabbah went on the air and announced

23 to the world that Chief Hinga Norman was the chosen one to be the

24 CDF co-ordinator. You remember that broadcast?

11:58:18 25 A. Not specifically, but I'm aware one was made.

26 Q. Yes, thank you. In a real sense you were there in Conakry

27 and you can help us. This is when the CDF as an organisation, as

28 it were, really first took shape?

29 A. Specifically because before that there were the individual

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1 civil militias.

2 Q. Thank you. So the CDF as an organisation first took shape,
3 this would have been in what sort of month in 1997, do you think?

4 A. It would have been towards the latter half -- latter half

11:59:15 5 and towards the end of 1997.

6 Q. Thank you. As I understand it, it was the umbrella under
7 which Kamajors and Kapras and so on were to operate; is that
8 correct?

9 A. Yes.

11:59:42 10 Q. Right. So we know exactly what we're talking about. So
11 CDF organisation springs into existence towards the end of 1997
12 with Hinga Norman as the co-ordinator. Now, his functions, as
13 you've told us, were largely to be performed in the theatre of
14 war where the war was taking place, I mean in Sierra Leone?

12:00:23 15 A. They were to be performed -- yes, partly in Sierra Leone
16 and partly in areas, say, such as Monrovia or wherever else there
17 were ECOMOG forces.

18 Q. Yes?

19 A. ECOMOG officers.

12:00:37 20 Q. Yes, but you anticipated and you knew, I think you learnt,

21 in due course, that a larger percentage of his activities were in

22 what I'm going to call the theatre of war in Sierra Leone.

23 That's right, isn't it?

24 A. I mean, I'm not sure how the fighting theatre of war -- the

12:01:07 25 fighting, as such, was not rampant throughout the whole of the

26 country at all at one time, but, I mean, it took place in parts

27 of Sierra Leone. I mean, theatre of war and equating that with

28 Sierra Leone creates an image of the whole country being under

29 fighting and --

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1 Q. Perhaps I should put it differently. It was obvious and it
2 is obvious to you now that Chief Hinga Norman spent most of his
3 time in Sierra Leone where the conflict was taking place;
4 correct?

12:01:46 5 A. I can't say specifically that I'm aware how much time
6 exactly Chief Hinga Norman was in Sierra Leone as opposed to
7 outside of Sierra Leone. But certainly I was aware that he was,
8 for part of the time, in Sierra Leone.

9 Q. I didn't ask you for an exact percentage but, again, I want
12:02:06 10 to press you on this. You were in Conakry. You have told us
11 about the poor communications as between Sierra Leone and the
12 President, as it were. Didn't you gather that the larger part of
13 Chief Hinga Norman's time was spent on these very activities he
14 was sent to perform, the larger part of his time was spent in

12:02:37 15 Sierra Leone?

16 A. As I say, I find it difficult to be specific. I know he
17 was parts of the time in Sierra Leone. I'm also aware that from
18 time to time he was in places like Monrovia.

19 Q. Yes, thank you. To move to another subject, which I hope

12:02:59 20 will be more agreeable. You yourself are a revered figure in

21 Sierra Leone, aren't you? Don't be so modest. I mean, don't

22 fail to answer it out of modesty, but you are a revered figure,

23 aren't you?

24 A. I had the honour of being made a paramount chief by the

12:03:29 25 people of Sierra Leone and being given the freedom of the city of

26 Freetown, for which I'm very grateful.

27 JUDGE ITOE: So you were a revered figure? Does that not

28 confirm it? You were a revered figure in Sierra Leone.

29 THE WITNESS: Modestly I would agree with you, My Lord.

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1 JUDGE ITOE: With the paramounts of your chieftaincy, which

2 I hope we shall have the pleasure of seeing you in those attire.

3 MR De SILVA: He should have come in them today.

4 JUDGE ITOE: And of course because you were Her Majesty's
12:04:00 5 representative in this country, you were a revered figure,

6 weren't you?

7 THE WITNESS: Modestly, I agree with you, My Lord.

8 MR De SILVA:

9 Q. You played a most distinguished role in saving lives and in
12:04:19 10 arranging for evacuations and so on and so forth by staying in

11 Freetown when many other people may have fled?

12 A. Yes, I believe I was, as I mentioned, the last diplomat to

13 leave and, indeed, the first diplomat to return - head of a

14 mission, certainly.

12:04:47 15 Q. Yes. You have already told the Court -- you have already

16 told My Lords, of course in answer to a question asked by my

17 learned friend Mr Margai, that the UK played a hugely significant

18 role in the restoration of President Kabbah and, indeed, in

19 resolving the conflict as a whole?

12:05:19 20 A. I believe in terms of international assistance, if it had

21 not been for the role of the United Kingdom and Nigeria, we would

22 not be sitting here today.

23 Q. Yes, I was going to come to Nigeria. I was going to come

24 to Nigeria as well. To those two countries, Sierra Leone owes an

12:05:38 25 eternal debt of gratitude; would you agree with that?

26 A. I believe they do and they have expressed it so.

27 Q. Whilst in Conakry, life must have been pretty drab, mustn't

28 it? I don't know Conakry very well but there might be some

29 particular pleasures you're aware of that I'm not. But here you

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1 all were in Conakry concerned with the President -- finding a way
2 for the President to return to Sierra Leone and, as I think you
3 told my learned friend Mr Margai, you really were a constant
4 visitor to the President?

12:06:39 5 A. Yes, I was. I mean, life was extremely busy, but apart
6 from breaks to the UK, 10 months in one room in a hotel, you soon
7 exhaust the menu at the restaurant and life was difficult.

8 Q. Yes.

9 A. But much more difficult, I would like to say, for the

12:07:00 10 Sierra Leoneans who had fled to Conakry than me.

11 Q. So escaping from your one room in the hotel - the name of
12 which I can't remember, but it doesn't matter - you were very
13 often to be found in the company of His Excellency the President.
14 Would that be correct?

12:07:29 15 A. Yes. As I have said, when I was in Conakry and when the
16 President was in Conakry, I would visit him, I estimate, three or
17 four times a week.

18 Q. Yes. Of course, no doubt, discussions involved burdensome

19 political issues?

12:08:03 20 A. The discussions revolved around the efforts to get

21 President Kabbah's government back to Sierra Leone.

22 Q. But I take it there must have been an element over all that

23 time of a social relationship where you sat around and talked

24 about things, not just politics?

12:08:34 25 A. Yes. I mean, there would be small talk about other events

26 going on in the world.

27 Q. Yes.

28 A. But we always maintained a very proper relationship in that

29 I always referred to him as His Excellency and he always referred

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1 to me as Your Excellency.

2 Q. Yes. Of course you knew that His Excellency President

3 Kabbah had been a lawyer, had qualified as a lawyer?

4 A. Yes, I did.

12:09:10 5 Q. Then he had gone to work for the United Nations?

6 A. Yes. In some of our discussions he discussed what he had
7 done with the United Nations.

8 Q. Did you like him?

9 A. I admired him. I felt that he had been -- I had welcomed

12:09:46 10 having to become the British High Commissioner to work alongside

11 such a president who was obviously deeply committed to helping
12 the people of Sierra Leone and helping his people after some very
13 difficult times.

14 Q. That is one reason why you and others supported him so

12:10:06 15 powerfully, because there was something very committed about him

16 to the welfare of the people of Sierra Leone. Do you agree with
17 that?

18 A. We were deeply committed because he was the democratically

19 elected president of Sierra Leone. It was fortunate, as far as,

12:10:36 20 for example, I was concerned that he happened also to be a

21 decent, honest and likeable man.

22 Q. Thank you. I'm grateful for those observations. A decent,

23 likeable and honest man. But I think you'll agree with this: a

24 lawyer with a UN background, decent, likeable and honest -- would

12:11:11 25 you agree with this in general terms: he seemed to be pretty

26 inexperienced with regard to military matters?

27 A. I would certainly agree with that.

28 Q. Thank you. That's why, of course, no doubt, he saw in

29 Chief Hinga Norman the ideal person for appointment as the CDF

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1 co-ordinator with his military experience?

2 A. I would presume so. Certainly with the army having
3 rebelled and all the other senior officers having rebelled, there
4 were very few, if any, other people in the government and around

12:12:05 5 the government with any military experience.

6 Q. Yes. Although, in theory, President Kabbah -- as you know,
7 all heads of state tend to be commanders-in-chief. The reality
8 was he was a likeable, decent man, inexperienced in military
9 matters, as you've just told us. That's correct, isn't it?

12:12:50 10 A. Yes. He was also Minister of Defence.

11 Q. Yes, I know. He was Minister of Defence inexperienced in
12 military affairs; with that qualification that you've just given
13 us. Now I just want to ask you about whether you received a
14 document. It's Exhibit 112, it's a calendar. You've got a

12:13:42 15 glossy version. I haven't.

16 PRESIDING JUDGE: What was your question, Mr De Silva? If
17 he has seen that?

18 MR De SILVA: Yes.

19 Q. Could you just look at it, Mr Penfold. You'll see it's a

12:13:56 20 CDF calendar for 2001. I anticipate it is something you probably

21 saw at the time.

22 A. I believe this is the first time I've ever seen this

23 calendar.

24 Q. If you can go over to the second page where there's a

12:14:19 25 picture of Chief Norman, it says - and I think you'll probably

26 agree with all this - "The Honourable Samuel Hinga Norman, Deputy

27 Minister of Defence and regent chief of the Jiamma Bongor

28 Chiefdom, Bo District, is the founder of the Kamajors." I am

29 going to pause there for a moment mid-sentence. Of course,

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- 1 Kamajors have been going for a long time, haven't they?
- 2 A. Yes, and patently that's untrue. He's not the founder of
- 3 the Kamajors.
- 4 Q. Historically it's inaccurate?

12:15:02 5 A. Very much so. I mean, for example, I'm aware of meetings
6 that were taking place in London in the early '90s where it was
7 being explained to people in the UK about the Kamajor movement.
8 People in UK have told me about those meetings.

- 9 Q. Yes. The Kamajors, of course, had been going for a very

12:15:32 10 long time, centuries old; correct?

- 11 A. Yes. I mean, I'm not a great historian on that point but I
- 12 believe Kamajors or people to protect the villages were in
- 13 existence --

- 14 Q. Yes. There's no dispute. We've heard this evidence from

12:15:45 15 Chief Norman that the Kamajors have got an ancient history and
16 fairly noble traditions. There's no dispute about that and so
17 they --

- 18 JUDGE ITOE: They existed before he was born.

19 MR De SILVA: Apparently, My Lord. Indeed, yes.

12:16:04 20 Q. But, you see, this was the first time, in 1997, when the

21 Kamajors, all of them, came together, as it were, under the

22 umbrella of the CDF, isn't it? This is the very first time they

23 came together under an umbrella organisation to carry on a fight

24 for freedom?

12:16:34 25 A. Yes. I mean, I'm not sure exactly what you mean by "came

26 together." I mean, my understanding of the Kamajors is that

27 essentially they had been under -- they'd been called by their

28 paramount chiefs within the chiefdoms and each chiefdom would

29 have a group who were known as Kamajors. How much relationship

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1 went on between one group of Kamajors in a chiefdom to another,
2 I'm not sure.

3 Q. Yes. Mr Penfold, we know that, but cast your mind back
4 historically. We know -- you've told us when the CDF came into

12:17:21 5 existence. You've told us the CDF was to be the umbrella under
6 which the Kamajors were going to function. But this was the
7 first time in history, wasn't it --

8 JUDGE THOMPSON: But is he a social historian on the
9 Kamajor movement?

12:17:43 10 MR De SILVA: No, My Lord.

11 JUDGE THOMPSON: I just pose that question.

12 MR De SILVA: I'm most grateful for Your Lordship's
13 intervention in that regard.

14 Q. But, to your knowledge, can you think of any -- you know
12:17:59 15 something about Sierra Leone's history. When you come out as a

16 diplomat from the Foreign Office, that is something you make a
17 deep study of, isn't it; the country to which you're going to be
18 accredited and certainly if you're going to be head of mission?

19 A. You try to brief yourself as well as you can about the

12:18:17 20 country that you're being assigned to. "Deep study" might be an

21 exaggeration.

22 JUDGE THOMPSON: I said "social historian" because I think

23 that's a subdiscipline of history which requires, again,

24 specialised knowledge. But you can familiarise yourself with a

12:18:37 25 history of a country, but you necessarily -- if you want to be a

26 social historian, you probably have to go deeper.

27 MR De SILVA: I never had the intelligence to be a social

28 historian, My Lord. That's why I stuck to the law.

29 Q. Mr Penfold, can you think of any -- since independence in

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1 Sierra Leone, can you think of any national upheaval of the kind
2 that took place with the coup by the AFRC that required the
3 coming together of the Kamajor forces to fight for democracy and
4 to restore the democratically elected government? Are you aware

12:19:34 5 of any such previous incident?

6 A. I'm aware, of course, that Sierra Leone had gone through
7 many years of turmoil since independence. But, I mean, my
8 knowledge doesn't go that deep. I am aware, as I've mentioned
9 yesterday, that as part of the campaign against the RUF in the

12:19:55 10 early '90s that the Kamajors were protecting their villages

11 against the RUF. But, I mean, I don't think I'm knowledgeable
12 enough to make a specific answer to that question.

13 Q. Very well. We'll leave that aspect. There is no dispute -
14 and I want to make it quite clear on behalf of the Prosecution -

12:20:33 15 that Chief Norman, the Kamajors and the CDF came to the aid of

16 democracy and the lawfully elected government. There is no
17 dispute; you and I agree on that.

18 A. Yes.

19 Q. There is no dispute between us, I don't think, that
12:21:21 20 Chief Hinga Norman, his Kamajors and the CDF --

21 A. What do you mean by "his Kamajors"?

22 Q. Well, the Kamajors who were fighting under this banner of
23 the CDF. There is no dispute that the CDF, can I put it this
24 way, conducted its war to achieve the noble aim of democratic
12:22:03 25 restoration in Sierra Leone. You would agree with that?

26 A. They were an integral part of all the forces fighting for
27 the restoration of President Kabbah's government.

28 Q. Yes. I'm leaving ECOMOG out of it for the moment and I'm
29 just looking that CDF on its own as a component. And you agree

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1 with me that the CDF fought vigorously for the restoration of
2 the -- democratic restoration of government in Sierra Leone?

3 A. Yes.

4 Q. You see, coming back to a question I asked you earlier on
12:23:08 5 when you said that people don't always understand the niceties of
6 international humanitarian law or words to that effect -- do you
7 remember?

8 A. I remember.

9 Q. You know that in this case we're concerned not with who
12:23:51 10 somebody fought for, but how the war was conducted. You

11 appreciate that, don't you?

12 A. I understand that's what your concern is. I mean, I saw it
13 clearly as two sides; one which was a side of the democratically
14 elected government and the other was a side of people who wanted

12:24:17 15 to overthrow that government and create terror throughout the
16 country.

17 [CDF09FEB06C - SGH]

18 Q. Quite right. But I am going to put to you a proposition

19 and I am going to put it to you in rather stark terms for your

12:24:43 20 views. Would you agree that you could fight on behalf of the

21 angels and nevertheless commit war crimes?

22 MR JABBI: My Lords, objection. That, My Lord, is a matter

23 of opinion and --

24 PRESIDING JUDGE: Objection sustained.

12:24:58 25 MR JABBI: Thank you, My Lord.

26 MR De SILVA: My Lord, is it the "angels" that are being

27 objected to?

28 JUDGE THOMPSON: It is also the hypothetical and

29 theoretical nature of it. Probably inviting something like an

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1 academic exchange, which is not particularly productive for us
2 here.

3 MR De SILVA: Very well.

4 JUDGE ITOE: And above all and in addition, it is sounds

12:25:25 5 argumentative, very argumentative.

6 MR De SILVA: I bow to Your Lordships' greater wisdom in
7 these matters.

8 Q. In all the time that you spent with President Kabbah in
9 Conakry, would I be right in thinking that you never heard any

12:26:13 10 order at any time that prisoners taken in battle should be
11 killed?

12 A. I certainly never heard the President say anything like
13 that.

14 PRESIDING JUDGE: Mr de Silva, what's the question? Never
12:26:24 15 heard him giving orders --

16 MR De SILVA: Any orders to the effect that prisoners taken
17 in battle should be killed. Or that anyone working for the junta
18 should not be spared. Never heard anything of that kind?

19 A. Not when we were in Conakry, but of course, there did arise

12:27:05 20 later the question of the treason trials, and when those found

21 guilty of treason were to be executed, His Excellency had to

22 consider which of the executions should go ahead. And in that

23 context I was asked, on behalf of my government, to make

24 representations to the President expressing the view of my

12:27:32 25 government that we were against capital punishment.

26 PRESIDING JUDGE: What time frame are we talking about of

27 that scenario you have just described?

28 THE WITNESS: This would be in 1998, My Lord, after

29 government was restored. I believe the dates would be round

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1 about the middle of 1998. There must be some clear evidence on
2 that, but there were treason trials conducted at that time.

3 MR De SILVA:

4 Q. But you also know that these were people who were found
12:28:13 5 guilty by a court of law and capital punishment was the mandatory
6 penalty?

7 A. That is correct.

8 Q. You never heard President Kabbah give any orders when he
9 was in Conakry that houses should be burnt or shops should be
12:28:46 10 looted or anything of that kind, did you?

11 A. No, I did not.

12 Q. From what you knew of him, all these matters I have been
13 putting to you you would be absolutely astonished if he did any
14 such thing?

12:29:09 15 A. I would not have been privy to any of the meetings that
16 would have discussed these sort of things.

17 Q. The man you knew -- the man you have described to us is not
18 the man who would have done these things, is it, in your view?

19 A. I cannot say that the man that I knew as President Kabbah
12:29:36 20 would order people to commit atrocities.

21 Q. No, thank you. Did he ever say to you when you were in
22 Conakry, "By the way, Excellency, I have had reports of the CDF
23 doing terrible things"?

24 A. I don't recall him ever saying that.
12:30:19 25 Q. "What should I do?" No such conversations took place?

26 A. As he never mentioned them, no, he certainly wouldn't have
27 asked me what to do.

28 Q. And, in any case, you say the communications between Sierra
29 Leone and those of you in Conakry were rather poor?

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1 A. They were poor initially. They began to get better once we
2 were able to establish satellite phones around and ECOMOG itself
3 was able to establish better communications.

4 Q. Right. Now in May 1997, when most people had fled

12:31:10 5 Freetown, Chief Norman stayed behind, didn't he, to rally forces
6 loyal to the President?

7 A. That is what I was told.

8 Q. And no doubt he did so, to his credit, at considerable risk
9 to himself?

12:31:27 10 A. Yes.

11 Q. And so he can properly be seen as a heroic figure; do you
12 agree with that?

13 A. I have described him as a hero.

14 Q. Not just heroic figure, but man of action; rallying the
12:31:59 15 forces loyal to the President. Would you agree with that?

16 A. Yes.

17 Q. You, of course, knew that he had been picked at an early
18 stage for training by British -- by the British administration to

19 be groomed for future leadership?

12:32:30 20 A. I was aware that he'd undertaken British military training

21 of which he was very proud of and, indeed, the links with Britain

22 he was very proud of.

23 Q. Yes. Indeed, as you know - we all know - he went to the

24 Officer Cadet School at Mons in 1966; correct?

12:32:43 25 A. Yes.

26 Q. Where he was commissioned. Of course his other military

27 experience I think you probably knew about. He had served with

28 the British Army on the Rhine; did you know that?

29 A. I'm not sure if I knew that specifically.

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1 Q. And he had served with the UN military in the Congo?

2 A. I knew that.

3 Q. Yes. It's evident from everything from you say, hero, man
4 of action -- it is manifest that he has got great leadership

12:33:33 5 qualities, wouldn't you agree?

6 A. I believe he has leadership qualities, yes.

7 Q. Not only leadership qualities, I think you might agree with
8 me that he has got inspirational qualities. He can inspire
9 people by rallying them?

12:34:00 10 A. Yes, he can inspire people.

11 Q. Yes. The one thing he is not, to use a colloquialism -- he
12 is not a back seat driver, is he? He's a leader and he leads
13 from the front?

14 A. Well, I have seen him sitting in committees where he has
12:34:50 15 happily sort of sat there quietly and let the other discussions

16 go on. I mean, I think he has proved himself to be also a loyal
17 member of the team, as he did with the government in the cabinet.

18 Q. Not quite the question I asked you. In the context of

19 everything you described him as - a hero, a leader, a person who
12:35:15 20 can rally forces, a person who can inspire people - he is
21 somebody who leads from the front, isn't he?
22 A. Well, it would depend. If he is appointed a the leader,
23 yes, but otherwise it would depend on what position he has. As I
24 say, in cabinet he was just a deputy minister of defence.

12:35:41 25 Q. He was a shrinking violet, was he?

26 A. No, I did not say that.
27 Q. Sitting on the edge of his seat saying nothing; is that the
28 picture you're trying to paint of him?
29 A. Well, I have certainly sat in meetings where he has sat

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1 there and not said anything.

2 Q. If anyone said to you, "This man you described as a hero, a
3 man of action, he never went near combat, never directed any
4 combat, avoided combat at all costs", would you think that that

12:36:39 5 was an accurate description of him?

6 A. Well, I mean, I find that difficult to understand. What do
7 you mean? While he was working with the British Army or --

8 Q. No, I'm not talking about the Congo and I'm not talking
9 about the British Army on the Rhine. I think you know exactly

12:37:11 10 what I'm talking about and if anybody said to you that during the

11 war we're concerned about in Sierra Leone, with all the qualities
12 that you and I have agreed that Chief Norman has, qualities of
13 leadership -- if anyone said to you, "He never went near combat,
14 he never directed any combat, he avoided combat all costs", would

12:37:51 15 that be a sort of description you would identify with him?

16 MR JABBI: My Lords, these questions are the same sort of
17 hypothetical question with an open-ended, speculative texture
18 which the Prosecution counsel has put to this witness a few times

19 for which I objected before.

12:38:20 20 PRESIDING JUDGE: And for which you were overruled.

21 MR JABBI: No, My Lord, I was in fact sustained by your

22 Lordship.

23 PRESIDING JUDGE: What is your objection exactly now?

24 MR JABBI: My objection is that this question is

12:38:34 25 hypothetical, "If anyone were to put it to you that" so on and so

26 on, et cetera. Also it is speculative and it is unnecessarily

27 open textured by saying he never went near combat at all. That

28 is what has confused the witness. He talks about the Rhine, he

29 talks about the Congo, all those were areas of combat. But the

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1 question is so open-ended that it is not easy for the witness to
2 give a focused answer to it. In any case, it is structurally
3 hypothetical.

4 JUDGE THOMPSON: We sustain the objection and ask counsel
12:39:22 5 to try again.

6 MR De SILVA: Well, I will try. I will assist the Court --
7 JUDGE THOMPSON: Quite right.

8 MR De SILVA: -- hopefully by referring the Court to
9 27th January this year, page 99, line 28, in case it's suggested
12:39:41 10 it's hypothetical. However, I am anxious that this witness

11 doesn't know the author of that remark.

12 JUDGE THOMPSON: The point, of course, is not that there
13 may not be something on the record in respect of the matters that
14 you are alluding to, but it's the way the question has been

12:40:07 15 formulated. It can be - and clearly from our perspective -
16 inviting speculation and endless, unproductive speculation.
17 Probably if it is a little more focused and narrowed down, or
18 tailored towards the material that you may be adverting to which

19 you have before you, we might make some progress. I think the
12:40:27 20 way it is phrased now really would attract criticisms like
21 vagueness, open-endedness and I think there is merit in that
22 objection.

23 MR De SILVA: Very well.
24 JUDGE THOMPSON: I think you must try again. Of course,
12:40:52 25 with your experience in these matters, I am sure that you can
26 have a go -- a second go at it and see how you can satisfy the
27 Bench.
28 MR De SILVA: My Lord, there is to be an old expression:
29 If you at first you don't succeed try, try and try again. I am

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1 getting too old to try again, so I shall move on.

2 JUDGE THOMPSON: But I understand that with age comes
3 wisdom in these matters. I am not sure how controversial that
4 may be sometimes. I reckoned that the law of diminishing returns

12:41:27 5 does have its toll.

6 MR De SILVA: My Lord, wisdom is all right but I think
7 Dr Alzheimer is knocking on my door. So let me move to something
8 else, My Lord.

9 Q. I'm going to show you a name and I understand the practice
12:41:48 10 is that I hand it first round to the Defence and then My Lords.

11 I am going to ask you about this person. Don't mention his name,
12 because he gave evidence, I think, in closed session.

13 PRESIDING JUDGE: Please do not display the name either.
14 Thank you.

12:42:43 15 MR De SILVA: Do My Lords need to see?

16 PRESIDING JUDGE: We will, obviously, if we are to follow
17 the question and understand what it is.

18 MR De SILVA: Yes, of course. My Lords, to assist the

19 Court, he was TF2-011.

12:43:30 20 Q. It's very important, Mr Penfold, that we don't identify

21 him; you understand. You, of course, have met that gentleman,

22 haven't you?

23 A. Yes, I have.

24 PRESIDING JUDGE: I would caution you as well,

12:43:46 25 Mr Prosecutor, that if you are digging into the meeting as such,

26 as to where and how and so on, it may lead to some --

27 MR De SILVA: Quite. I shall try to tiptoe around.

28 PRESIDING JUDGE: Thank you.

29 MR De SILVA:

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1 Q. You know him?

2 A. I've met him.

3 Q. You have met him. And you had a conversation with him?

4 A. Yes.

12:44:19 5 Q. Did he seem to be an open, likeable sort of person?

6 A. The meeting was too short to really form much of an
7 opinion.

8 Q. You see, did he strike you as being a man who was in any
9 way unreliable, or had a grudge or anything of that kind?

12:44:55 10 A. I find it difficult. I mean, the meeting I had with him

11 was in a bigger meeting with other people there, and it really
12 wasn't that long to form an opinion about the personality as
13 such.

14 Q. In the course of that meeting with him or whatever

12:45:47 15 conversation you had with him -- for Your Lordships' assistance,

16 I am referring to the evidence given on 8 June, 2005, page 21,
17 line 24 -- did you learn from him of course that Chief Norman had
18 formed a squad known as the Death Squad at Base Zero?

19 A. No, I did not.

12:46:36 20 Q. Didn't he tell you that he had saved the life of a prisoner

21 who was due to be executed by that Death Squad at Base Zero?

22 A. No, he certainly did not. He did seem to have a high

23 opinion of himself.

24 Q. Did he? I think if you have saved somebody's life you are

12:46:58 25 entitled to.

26 A. No, I mean he didn't say anything about saving lives, just

27 generally what his position was; briefing us on what he had

28 been -- what they were doing.

29 Q. Yes.

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1 MR De SILVA: To assist My Lords with regard to that, it is
2 evidence on 8 June 2005, page 25, line 10.
3 Q. Did he ever tell you in those discussions that Hinga Norman
4 had given orders that certain places be looted in Bo?

12:47:52 5 A. My Lord, I am in a bit of a quandary here because if I
6 answer some of these questions, I would have to refer to the
7 testimony I made yesterday. And that, in turn, may reveal the
8 name of this person.

9 MR De SILVA: My Lord, I --

12:48:04 10 PRESIDING JUDGE: I understand the difficulty.

11 MR De SILVA: Yes.

12 PRESIDING JUDGE: I am not sure if you could phrase your
13 question a bit differently? Because we may be moving on into a
14 difficult area if you are seeking these kind of answers.

12:48:25 15 MR De SILVA: Can I just assist by giving Your Lordships
16 the actual reference? Again, it is 8 June, page 29, lines 13
17 to 17.

18 Q. To ease your difficulties, Mr Penfold, you would probably

19 say, "Nobody ever told me about Hinga Norman giving orders for
12:48:55 20 the looting of anywhere"; is that correct?

21 A. No. I mean, what I would say to you is that this person,
22 somewhat surprisingly, didn't mention the name Hinga Norman at
23 all.

24 PRESIDING JUDGE: We are talking about the same meeting,
12:49:21 25 Mr Witness.

26 THE WITNESS: Yes.

27 PRESIDING JUDGE: So the name Hinga Norman was not
28 mentioned at that meeting by that person?

29 THE WITNESS: As far as I can recall, no.

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1 MR De SILVA:

2 Q. Did you know of the fact that at Base Zero -- you know what

3 Base Zero was, don't you?

4 A. I do now. I was not aware of Base Zero at the time.

12:49:42 5 Q. Well, everybody is familiar with what Base Zero was. Did
6 you know there was a squad called the Death Squad, for a start?

7 A. No, I did not.

8 Q. You didn't? Of course, if you had known -- well, I suppose
9 there will be an objection if I ask you the question, so I won't.

12:50:24 10 Does it come to you as some surprise that there was a squad at
11 Base Zero with the chilling name of the Death Squad?

12 A. I am aware, for example, of some of the sort of incredible
13 names that the RUF used going around Freetown. There was no
14 [overlapping speakers] --

12:50:53 15 JUDGE ITOE: Mr Penfold, Mr Penfold.

16 THE WITNESS: No -- sorry, Your Honour.

17 JUDGE ITOE: It's not the RUF, it's not the AFRC. Do you
18 know --

19 MR De SILVA: That's a point, yes.

12:51:07 20 Q. On your friends --

21 JUDGE ITOE: You know of other names of RUF, that is not

22 what concerns us, you know.

23 MR De SILVA:

24 Q. On Base Zero, does it come to you as some surprise that

12:51:14 25 there was a squad known as the Death Squad?

26 A. Yes, it does.

27 Q. And no doubt if you had known that at Base Zero there was a

28 squad known as the Death Squad, in your meetings with your friend

29 Chief Norman, you would have said to him, wouldn't you, "Why on

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1 earth has that squad got that name?"

2 MR JABBI: Objection, My Lord, objection. For the very,
3 very same reasons of hypothetical and argumentative et cetera, et
4 cetera.

12:51:55 5 PRESIDING JUDGE: Mr de Silva?

6 MR De SILVA: I have given up. I will move to something
7 else.

8 PRESIDING JUDGE: Thank you.

9 MR De SILVA: I don't always give up.

12:52:15 10 PRESIDING JUDGE: Oh, we know that.

11 MR De SILVA:

12 Q. Anyway, you didn't know about the Death Squad and,
13 therefore, you wouldn't have known about people sent -- a man
14 called John Hota was sent to it for execution?

12:52:36 15 A. I knew nothing of that.

16 Q. No. You see, the fact is, and I use the word "if" - please
17 understand this - if atrocities were committed by the CDF forces,
18 you have no first-hand knowledge. That's the short point. If;

19 would I be correct in saying that?

12:53:04 20 A. That's correct.

21 Q. Thank you. I just want to ask you about a matter that

22 might just take us to the luncheon adjournment. You told the

23 Court that on 17 May 1997 you visited President Kabbah together

24 with the US Ambassador and Ambassador Dinka?

12:53:42 25 A. That's correct.

26 Q. Did you give us that date with the benefit of a diary

27 you've got or something of that kind?

28 A. No, it's very clear, the date, because I remember it was a

29 Saturday morning, and exactly the weekend before the coup took

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1 place the following weekend, which was the 25th, so I just
2 counted back from the 25th. So if I have counted correctly, it
3 is the Saturday before the 24th was the 17th, and that was time
4 it took place.

12:54:42 5 Q. Yes. I want just want to ask you this: One of the
6 purposes of going to see President Kabbah was to alert him to
7 what you all thought was going to be an imminent coup?

8 A. That was what -- yes, I mean, we went generally to discuss
9 our concerns about the situation generally. In that meeting, we

12:55:01 10 also mentioned to him that we had picked up stories of a possible
11 coup.

12 Q. Did President Kabbah say to you, "I know all about that.
13 In fact, Chief Hinga Norman came to see me the other day with a
14 bag." I don't know what sort bag it was, it's never been

12:55:34 15 described. Whether a plastic bag, a canvas bag, or a handbag, I
16 don't know. But did he ever say, "He turned up the other day
17 with a bag and told me there was going to be a coup"?
18 A. No, President Kabbah did not mention that. What he did say

19 was he had also heard stories about a possible coup.

12:55:59 20 Q. He mentioned no question of a bag?

21 A. No question of a bag or a meeting with Chief Norman or

22 anyone else.

23 Q. So Chief Norman never went with you to this meeting with

24 President Kabbah?

12:56:10 25 A. No.

26 Q. Did Chief Norman go to any meeting with you together with

27 the American ambassador, together with Ambassador Dinka and

28 yourself? Did he go to any meeting with you to see

29 President Kabbah to talk about a possible coup?

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1 A. I can't recall a meeting with that group talking about a
2 possible coup. As I referred yesterday, we had a meeting with
3 President Kabbah with the chief of defence staff and chief of the
4 army staff, talking about the problems within the army.

12:57:05 5 Q. Do you ever remember going to a hotel? I am sorry, it's my
6 mistake. Do you ever remember going to see Chief Norman at his
7 hotel in Conakry, together with Ambassador Dinka and the American
8 ambassador and taking Chief Norman with you to shake hands with
9 as, it turned out, President Kabbah?

12:57:57 10 A. This meeting took place in a hotel?

11 Q. Well, yes, in Conakry.

12 A. In Conakry. I mean, President Kabbah never came to a hotel
13 in Conakry.

14 Q. He was in a villa of some kind, I understand, because, as

12:58:10 15 you've told us -- donated to his use by the government of Guinea.

16 But did you ever remember travelling with Chief Norman, the
17 American ambassador and Ambassador Dinka and, of course,
18 yourself, to see President Kabbah in his villa?

19 A. I -- no. I mean, I can't recall --

12:58:44 20 Q. If you don't remember, don't bother.

21 A. -- meeting him in a villa with those people.

22 Q. As I don't in the least bit wish to be unfair to you, and I

23 want to refer in its entirety to the matter you wanted me to --

24 PRESIDING JUDGE: This is the article in the publication?

12:59:05 25 MR De SILVA: Yes, the relevant part I put to you. I have

26 got copies for My Lords.

27 PRESIDING JUDGE: Yes, Mr Court Officer. Do you have

28 copies for your colleague on the Defence?

29 MR De SILVA: I have got three copies. It is my fault -- I

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1 have got four copies, yes. I have one copy for the witness and
2 three -- I hope each team will be happy with one copy.

3 Q. It is the main question on that page, that is what I was
4 asking you about. You were asked the question, "You have

13:00:23 5 expressed strong views about the indictment of Hinga Norman."

6 Now, I pause there. Those are the very views you expressed at
7 the end of your evidence yesterday; is that correct, Mr Penfold?

8 A. Yes.

9 Q. So, in other words, when you came to this Court to give

13:00:48 10 evidence yesterday, did you intend making that utterance at the
11 end of your evidence?

12 A. I mean, I didn't rehearse anything. No, I just answered
13 the questions as they were put to me.

14 Q. I see. "You have expressed strong views about the

13:01:06 15 indictment of Hinga Norman by the UN created Special Court for

16 Sierra Leone. Why are you so passionate about this one case?"

17 So even the person questioning you seems to be casting you in the
18 role of somebody who is passionate, quite passionate, about this

19 issue. Is that right?

13:01:30 20 A. Yes.

21 Q. Yes, as indeed you indicated to us yesterday. And this is

22 how it unfolds. "Penfold: I am appalled at the way Chief Sam

23 Hinga Norman has been treated." That is why I asked you whether

24 you had any misgivings about the propriety of the Prosecution, do

13:02:05 25 you understand? I just wanted to make certain and you said no.

26 A. No, I mean, can I explain why I say I was appalled at the

27 treatment?

28 Q. Well, have you not already?

29 A. No.

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1 Q. Oh all right, tell us then.

2 A. I was appalled at the manner in which he was arrested. As
3 a serving minister of this government, to have people just come
4 to his office, slap handcuffs on him and drag him out. I was

13:02:31 5 appalled at the way he was taken from Freetown and put miles away

6 in a place called Bonthe, totally far removed and making it very
7 difficult for his family, his friends and indeed even his lawyers
8 to visit him. That type of treatment --

9 MR JABBI: My Lords, I am sorry to interpose, but can the

13:02:52 10 witness be asked to go at a pace slow enough? Thank you.

11 THE WITNESS: I am sorry, My Lords, but that is what I
12 referred to by or what I meant when I talked of being appalled at
13 the treatment.

14 MR De SILVA:

13:03:21 15 Q. Yes, yes, I mean it does not -- it goes neither to guilt or

16 innocence, but you complain about the treatment; is that it?

17 A. Yes.

18 Q. Right. So no doubt it's all my fault or something of that

19 kind. Then it goes on, "In my experience, Sam Hinga Norman was
13:03:40 20 the one government minister who tried to stop the illegal coup in
21 May 1997 at great personal risk to himself." Now, as you know, I
22 have agreed with that in the course of my cross-examination of
23 you. "After President Kabbah and most of his ministers had fled
24 the country, Norman remained behind trying to rally forces loyal
13:04:05 25 to the President." Again we are in agreement on that because
26 this is where you draw your heroic image from, is it not?
27 A. Partly that, yes.
28 Q. Yes. "For days we kept him in hiding and eventually had to
29 spirit him out of the country on board the USS Kearsage. After

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1 that, he helped organise the resistance against the AFRC junta
2 inside Sierra Leone with Civil Defence Forces, CDF, the only
3 indigenous force under the command of the President." Now that
4 is why I was asking you about the President and what sort of

13:04:45 5 control the President had. Then you go on: "The CDF made a
6 significant contribution towards the restoration of the
7 democratic government."

8 PRESIDING JUDGE: Mr de Silva, please, not too fast because
9 it needs to be translated.

13:05:05 10 MR De SILVA: I am so sorry.

11 PRESIDING JUDGE: Thank you. If you can just take it back,
12 "The CDF made".

13 MR De SILVA: Yes. "The CDF made a significant
14 contribution towards the restoration of the democratic

13:05:27 15 government." I pause there, as you know, you and I have agreed
16 with that. "And although I do not dispute that some members of
17 the CDF may have committed some terrible deeds, fighting fire
18 with fire, I do not believe that these were part of an

19 orchestrated and deliberate policy in contrast to the RUF. Nor
13:06:06 20 do I believe that Chief Norman should be held personally
21 responsible for them." That, of course, is your own view; is
22 that right?
23 A. It is.
24 Q. It is your own view, as you have said, without any
13:06:26 25 knowledge of any of the evidence that has been deployed before
26 My Lords in this Court?
27 A. This article was written, of course, some time ago.
28 Q. Yes. Then you had even less knowledge. Yes. Then you go
29 on to say: "Chief Norman also played a key role in the

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1 subsequent peace process. In the eyes of most Sierra Leoneans
2 and me he is a hero." That is what you said loudly and clearly
3 yesterday. Correct?
4 A. That's correct.

13:07:12 5 Q. "That he should now find himself indicted for war crimes is
6 an outrage and an injustice." Those were the very words that
7 fell from your lips yesterday.
8 A. I don't believe I said in the Court it was an outrage. I
9 think I did say it was an injustice.

13:07:44 10 Q. These are practised words you used when it comes to
11 Chief Hinga Norman, is not it? These are words that come off
12 your tongue whenever you have to deal with the situation in which
13 your friend finds himself; that's right, is it not?
14 A. No, it is not. I am not sure what you are trying to infer

13:08:12 15 here. I mean, I don't rehearse these things. I mean, I speak as
16 I choose to believe. I mean, clearly a case like this I discuss
17 it with many people at different times. I might occasionally use
18 the same terminology, but I refute the suggestion that I have

19 some sort of learned practice speech that I make from here and

13:08:31 20 there, or that I would deign to therefore say it in this Court.

21 JUDGE ITOE: Mr de Silva, would you not think it is more

22 appropriate to advert to this particular portion in terms of when

23 you be addressing this Court?

24 MR De SILVA: Yes. Perhaps I can leave it at that, My

13:08:57 25 Lord.

26 PRESIDING JUDGE: We would appreciate if you would. I

27 think we expressed our concern about this yesterday and we had an

28 apology from the witness. We know enough about that unless you

29 have an angle that we can see that is so crucial to your case

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1 that we need to hear of that. Otherwise, we would appreciate
2 moving away from that.

3 MR De SILVA: My Lord, should this be given an exhibit
4 number?

13:09:18 5 PRESIDING JUDGE: You mean the document? Yes it should.

6 Obviously subject to any comment.

7 MR JABBI: Yes, My Lord. The first point I would make is
8 that this is obviously part of a long interview and in fact --

9 PRESIDING JUDGE: It would appear, I don't know whether it

13:09:45 10 was long, but it is only part of an interview.

11 MR JABBI: An interview longer than the first page. I
12 mean, the page here shows. That's all I mean. It is an
13 interview longer than what is shown on this page. And in fact
14 the question before us which provoked this answer, refers to,

13:10:00 15 "you have expressed strong views about the indictment". That is

16 before this point in the interview, some crucial views have been
17 expressed about which the interviewer is asking. My Lord, I
18 believe if this page should be admitted into evidence, the

19 totality of this document comprising the interview would -- it

13:10:32 20 would be advisable that the totality of that document be admitted

21 into evidence if the Prosecution want to tender it. Especially

22 because of the back references for which this area is only

23 seeking a clarification.

24 PRESIDING JUDGE: Mr Prosecutor.

13:10:54 25 MR De SILVA: My learned friend is completely wrong. He is

26 completely wrong for a number of reasons. Firstly, I am

27 referring only to a part of the document and I can assure my

28 learned friend that this is the only part that refers directly to

29 Mr Hinga Norman. I mean, I think the witness will be the first

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1 to agree that it is a ranging interview covering matters in
2 Africa generally and in Uganda and so on and so forth.
3 JUDGE ITOE: But, Mr de Silva, do you have a complete
4 document before you?

13:11:34 5 MR De SILVA: Yes.

6 JUDGE ITOE: Is it possible for you to -- you know, we
7 should short-circuit certain issues and make things short for
8 ourselves. I think that what learned counsel is saying is not
9 very much out of place. I don't see it being out of place and I

13:11:54 10 see you flirting through a document before you.

11 MR De SILVA: I prefer to flirt with other things, My Lord,
12 if I am given half a chance. But, be that as it may, My Lord, my
13 learned friend -- I shall make the whole document available and
14 the --

13:12:13 15 JUDGE ITOE: It does not look big. Is that not the
16 document in front of you?

17 MR De SILVA: Yes, it is. I will have it copied. I will
18 have it copied. I don't think my learned friend will be

19 assisted, but he may well be better informed.

13:12:36 20 PRESIDING JUDGE: How many -- Mr de Silva, how many pages

21 has this article? We have page 122. [Overlapping speakers]

22 MR De SILVA: It runs from page 117 to 125. So eight

23 pages.

24 JUDGE ITOE: It is nice to have that document in its full

13:12:50 25 context.

26 PRESIDING JUDGE: And can I ask you, what is the -- it

27 appears that it would be coming out of a publication called

28 African Affairs.

29 MR De SILVA: Yes.

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1 PRESIDING JUDGE: What is the title, if any, of the article
2 in question?

3 MR De SILVA: It is called, "An interview with Peter
4 Penfold".

13:13:21 5 PRESIDING JUDGE: And what is the date of the interview or
6 the publication if not the --

7 MR De SILVA: There is no date, but it is -- I believe it
8 was 2005. Yes, it is Royal African Society 2005, that is the
9 only date given.

13:13:44 10 PRESIDING JUDGE: Thank you.

11 MR De SILVA: So it is last year. I shall make sure copies
12 are made.

13 PRESIDING JUDGE: Thank you very much. Yes, Mr Penfold, we
14 will come to you soon.

13:14:00 15 THE WITNESS: I was just going to say, it was published
16 in 2005; interview was carried in 2004, My Lord.

17 PRESIDING JUDGE: In 2004.

18 THE WITNESS: But it didn't -- but it was not published

19 until 2005.

13:14:13 20 PRESIDING JUDGE: Thank you. Dr Jabbi, the objection was

21 essentially that you should have the totality of the document in

22 evidence. Other than that you have no comment or no objection.

23 MR JABBI: None, My Lord.

24 PRESIDING JUDGE: I am not saying you should, I am just

13:14:25 25 asking.

26 MR JABBI: No, none, My Lord.

27 PRESIDING JUDGE: Mr Bockarie.

28 MR BOCKARIE: No objection, My Lord.

29 PRESIDING JUDGE: Mr Margai.

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1 MR MARGAI: None, My Lord.

2 PRESIDING JUDGE: Thank you. So, subject to your providing
3 the Court and counsel with the full document, that will be marked
4 as an Exhibit, but we will wait until you have that done. But

13:14:43 5 that will complete your cross-examination of the witness?

6 MR De SILVA: It does, indeed.

7 PRESIDING JUDGE: So, on this note we will adjourn
8 until 2.30 to proceed with re-examination, if any.

9 [Luncheon recess taken at 1.15 p.m.]

14:28:13 10 [CDF09FEB06D-RK]

11 [Upon resuming at 2.40 p.m.]

12 PRESIDING JUDGE: Dr Jabbi.

13 MR BOCKARIE: Yes, Your Honour, before Dr Jabbi commences,
14 we have been informed that the learned Attorney General has asked

14:41:34 15 for an adjournment in respect of the subpoena motion. Your

16 Honours, we're not opposed to the application, however --

17 JUDGE ITOE: Why don't you wait to raise it tomorrow on
18 motion day? That takes our time. Let's move to the essentials

19 and visit that tomorrow.

14:42:05 20 MR BOCKARIE: I will, I will.

21 PRESIDING JUDGE: Have you any questions for the witness in

22 re-examination?

23 MR JABBI: We took it for granted that the document --

24 PRESIDING JUDGE: Thank you. Mr Tavener, I guess my

14:42:18 25 question will be directed to you as the lead Prosecutor does not

26 seem to be in court now.

27 MR TAVENER: Mr de Silva asked me to extend his apologies.

28 He is occupied in a matter this afternoon he couldn't get out of.

29 I have provided the Defence with copies of that article and on

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1 that basis, they may want time to read it, but at this time I
2 would ask that the document, the single page be formally
3 tendered.

4 PRESIDING JUDGE: Well, the objection was and it was my
14:42:51 5 understanding that you were tendering the whole of the document
6 with the intent that of having the specific page that the Court
7 should be looking at but the comments were if we were to accept
8 that, we would have the document in total.

9 MR TAVENER: On that basis the Prosecution is obviously
14:43:12 10 only seeking to tender that one particular page so that it is in
11 context.

12 JUDGE ITOE: No, no, Mr Tavener, not tendering that
13 particular page. Tendering that document with reference to that
14 particular page. It is a document that we thought was going to

14:43:26 15 be tendered.

16 MR TAVENER: Yes, I'm handing up the document. As I
17 understand matters we are only seeking to tender --

18 JUDGE ITOE: When you tender a document, the page is

19 standard. Do you understand that to be the case? With a

14:43:37 20 particular reference to a page if you wish to be that specific.

21 When a document is in, it is in.

22 JUDGE THOMPSON: Clearly don't those pages cover the entire
23 interview?

24 MR TAVENER: Yes.

14:43:50 25 JUDGE THOMPSON: If they do, why is it in the interest of

26 justice and having the regard to the supreme purpose of us

27 ascertaining the entire truth, why is it not better for the

28 entire interview to be tendered rather than excepts so that the

29 Court will have the benefit in case the other side, consistent

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1 with the principle of fairness, would like to explore some
2 aspects of the interview in the total context? The Prosecution
3 has always advised this Court about the need to look at documents
4 having regard to their context. So why is it different now, may

14:44:36 5 I ask?

6 MR TAVENER: It is not different, Your Honour. What we're
7 saying is there is a piece of that interview which has been
8 raised with the witness. If it is necessary to see that portion
9 of the interview in context, then obviously the Court can have

14:44:53 10 reference to the entire document.

11 JUDGE THOMPSON: That is the point I'm trying to make and
12 remember also that when the Court admits document into evidence,
13 they are not directly relevant to the issue of guilt or
14 innocence. So what is the difficulty? I just want to be

14:45:12 15 educated as I always want to be.

16 MR TAVENER: As we all do, Your Honour. There is no
17 difficulty, Your Honour. I'm tendering then the interview of
18 Peter Penfold as has been identified as belonging to the

19 publication African Affairs. It gives the page numbers to 117 to

14:45:34 20 125, Royal African Society 2005. Mr Penfold has testified that

21 he gave this interview in 2004. The purpose of tendering the

22 document I have just discussed with particular reference to that

23 highlighted page.

24 JUDGE THOMPSON: That's fine. Thank you. We are on the

14:45:55 25 same radar screen, Mr Tavener.

26 MR TAVENER: I think we always were, Your Honour.

27 PRESIDING JUDGE: Court Officer, what is the number of

28 exhibit we are at now?

29 MR TAVENER: 125, Your Honour.

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1 PRESIDING JUDGE: Thank you. So this document consisting
2 of an interview with title of which is an interview with Peter
3 Penfold, published in African Affairs, pages 117 to 125, and this
4 document is marked as Exhibit 125.

14:46:58 5 [Exhibit No. 125 was admitted]

6 PRESIDING JUDGE: That was to be entered in before you
7 concluded the cross-examination. I take it that the
8 cross-examination is now concluded

9 MR TAVENER: Thank you. Yes, that is correct.

14:47:13 10 PRESIDING JUDGE: Dr Jabbi, we are now back to you.

11 MR JABBI: Well, I do intend to do re-examination. But, My
12 Lord, in view of the document that has just been tendered, I
13 would want to seek the leave of the court for a short time to
14 read it and consider it before I do the re-examination, My Lords.

14:47:45 15 PRESIDING JUDGE: You were not given a copy of it during

16 the --

17 MR JABBI: Just a minute or so before Your Lordships
18 entered.

19 PRESIDING JUDGE: How much time do you need? I would have
14:48:05 20 thought honestly, Dr Jabbi, that if that was your intent you
21 would have made efforts to speak to the Prosecution to try to get
22 a copy before we were to come back to Court. But, that being
23 said, we will give you -- I mean, this is not a very long
24 document and it has eight pages. So that shouldn't take you
14:48:28 25 very, very long to get through that and to get the essence of
26 what is written in this document. I'm just asking you how much
27 time you need.

28 MR JABBI: May I ask for 30 minutes, My Lord?

29 PRESIDING JUDGE: No, that is too long.

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1 MR JABBI: My Lord, each of these pages is going to take
2 about three minutes for reading, comprehension, inter-comparison.
3 MR TAVENER: The Prosecution would also have an objection
4 to Dr Jabbi specifically --

14:49:13 5 PRESIDING JUDGE: Due to the question for an adjournment?
6 MR TAVENER: Yes. The interview, as we have just said, is
7 tendered for a specific purpose - entire interview. It did not
8 come up in cross-examination. It is not a new matter. The only
9 matter that came up in cross-examination is that individual

14:49:33 10 excerpt. So the only part that Dr Jabbi can then cross-examine
11 on is the context in which that small section is placed.

12 JUDGE ITOE: Supposing, Mr Tavener, the Prosecution sought
13 to tender just one page.

14 MR TAVENER: Yes.

14:49:51 15 JUDGE ITOE: Dr Jabbi objected and said the entire document
16 should be tendered.

17 MR TAVENER: Yes.

18 JUDGE ITOE: If it is true that the single page you are

19 referring to does not raise any issues, what if the entire

14:50:09 20 document that is now in evidence as Exhibit 125 raises certain

21 issues which he may wish to re-examine on?

22 MR TAVENER: He can't.

23 JUDGE ITOE: Certain new issues.

24 MR TAVENER: He is not allowed. He is not allowed

14:50:22 25 because --

26 JUDGE ITOE: Because the document is now entirely, you

27 know, in evidence.

28 MR TAVENER: Which is why I want to make the purpose clear.

29 As His Honour Justice Thompson pointed out, it is in there to

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- 1 place the matter in context, the section upon which we rely.
- 2 It's not in there -- because we're not relying on anything else.
- 3 Therefore no new matters have arisen, except for that paragraph.
- 4 Therefore the only matters Dr Jabbi can then cross-examine on is

14:50:53 5 matters that may place that excerpt into context. Nothing else.

- 6 PRESIDING JUDGE: We will deal with this matter if it comes
- 7 up. I think it is a bit premature. But his request is for an
- 8 adjournment to be able to read this document and come to his own
- 9 conclusion as to what it is and what it is not. And if indeed he

14:51:15 10 is to raise any question, as such, I will remind the learned

- 11 counsel for the Defence as well that indeed this is
- 12 re-examination and it has a very limited scope. I hope you bear
- 13 that in mind when you review this document as well. This is not
- 14 to be understood as a ruling on the objection made by your

14:51:31 15 learned brother for the Prosecution. I just want to remind you

- 16 of that.

- 17 MR JABBI: I will then defer the comment I wanted to make
- 18 just now until we come back.

19 PRESIDING JUDGE: So the Bench is agreeable to your

14:51:48 20 request. We will grant you the adjournment for 30 minutes and we

21 will back in 30 minutes. Thank you.

22 [Break taken at 2.52 p.m.]

23 [Upon resuming at 3.35 p.m.]

24 PRESIDING JUDGE: So, Dr Jabbi.

15:33:55 25 MR JABBI: Yes, My Lord.

26 PRESIDING JUDGE: We are back to you now with

27 re-examination, if any.

28 MR JABBI: Yes, indeed, My Lord.

29 RE-EXAMINED BY MR JABBI:

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1 Q. Mr Witness, do you have Exhibit 125?

2 A. Yes, I do.

3 Q. And you agree that that is your interview which you say was
4 given in May 2004 and published in African Affairs in 2005 at

15:34:56 5 pages 117 to 125? Is that it?

6 A. Yes, I don't have information saying it is precisely May,
7 but I know it was some time in 2004.

8 PRESIDING JUDGE: It does say so apparently on that page,
9 118.

15:35:13 10 MR JABBI:

11 Q. 118.

12 A. Sorry, yes, My Lord.

13 JUDGE ITOE: What is that magazine again? What is the name
14 again?

15:35:23 15 PRESIDING JUDGE: African Affairs.

16 MR JABBI: African Affairs, My Lord. It is at the top of
17 the exhibit on page 1.

18 JUDGE ITOE: African Affairs.

19 MR JABBI: Yes, My Lord. Copyright African Society, 2000.

15:36:04 20 Q. And you, of course, have already been referred to your

21 answer to the question put by the interviewer on page 122, which

22 the Prosecutor dutifully read out in stages.

23 A. Yes, I have.

24 Q. Now, can you turn to page 118 of the document. The last

15:36:51 25 paragraph on that page is part of your answer to the following

26 question posed to you by the interviewer. The question goes

27 thus: "Can you reflect on lessons learned from Sierra Leone's

28 peace process? What in your view was distinctive about the

29 country's transition from war?" And part of your answer is --

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1 MR TAVENER: I object to this question. It is not
2 necessary to read that part, page 118, to understand the context
3 of the answer given to the question referred to on page 122. It
4 is not the position, for instance, that during the course of

15:37:53 5 Chief Norman's evidence he referred a number of times to

6 Revelations and other parts of the Bible. It is not the case
7 that the entire Bible is then tendered and read. So all we have
8 here is an article and the only relevant portion of it relates to
9 that that has been identified by the Prosecution and that which

15:38:10 10 assists in understanding the answer. So these matters, they may

11 well be the thoughts of Mr Penfold, but the mere fact that he
12 expressed those thoughts to an interviewer who has typed them up
13 does not mean it can now be introduced by way of re-examination.

14 PRESIDING JUDGE: Dr Jabbi, can we hear your response?

15:38:33 15 MR JABBI: My Lords, first of all, the document that has

16 been tendered is a total entity and it is tendered by the
17 Prosecution in the process of their cross-examination. It is
18 entirely a new element in the proceedings arising from the

19 cross-examination by the Prosecution.

15:39:17 20 My Lords, as to whether part only of the document arises

21 for re-examination and referring to the analogy drawn by the

22 prosecuting counsel that Chief Norman in fact in his evidence did

23 read portions that of the Bible and that did not bring the Bible

24 into the -- the whole Bible into evidence, that analogy is

15:39:46 25 totally inappropriate. The Bible, nor any part of it, was ever

26 tendered in the evidence of Chief Norman. Indeed, quite apart

27 from that, however, the aspect of the document that I have

28 referred to is certainly related to the portion that was

29 cross-examined upon, the specifically cited paragraphs, those

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1 paragraphs being those on page 122 which, as I have said, the
2 Prosecutor dutifully read out.

3 Now, that paragraph deals -- those paragraphs deal
4 primarily with the organisation of the resistance against the

15:40:43 5 AFRC junta inside Sierra Leone with the Civil Defence Forces and
6 it also refers to the effort of Chief Norman in the subsequent
7 peace process. My Lord, that portion, therefore, raises the
8 question of the nature of the issue and the problems facing the
9 peace effort and the paragraph I am referring to deals precisely

15:41:24 10 with that.

11 My Lord, for those reasons --

12 PRESIDING JUDGE: I would like to be able to understand
13 what you're saying when you say that this paragraph that you're
14 talking about does refer to 122, pardon me, does refer to this

15:41:45 15 paragraph at page 118.

16 MR JABBI: Yes, indeed, My Lord.

17 PRESIDING JUDGE: I have read both and I cannot make that
18 connection at face value, but maybe I can be enlightened.

19 MR JABBI: My Lord, I have already referred to the
15:42:06 20 resistance effort which has been organised against the AFRC
21 junta and also that is on page 122, the first paragraph under the
22 question that was posed to the witness. And I have also referred
23 to the portion referring to the subsequent peace process, the
24 effort of the first accused in the subsequent peace process.

15:42:34 25 Now, that raises the whole question of the difficulties and the
26 obstacles in that peace process, which Chief Norman was playing a
27 role in counteracting. The passage that I have suggested to
28 refer to deals with one of those peculiar problems of the effort
29 to both resist the AFRC and the RUF and also, of course, to

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1 establish peace.

2 PRESIDING JUDGE: You mean the paragraph at the bottom of
3 page 118?

4 MR JABBI: Yes, My Lord.

15:43:21 5 PRESIDING JUDGE: The very last paragraph?

6 MR JABBI: The very last paragraph ending with two lines on
7 the next page.

8 PRESIDING JUDGE: I do not have the same reading that you
9 have about that particular paragraph, so I don't see how you can

15:43:46 10 infer from that that this is a resistance movement to the AFRC.

11 The witness in this particular paragraph is talking in the
12 previous paragraph of national resistance movement as a whole, as
13 such, as to what was happening in the world and he did not make
14 any reference directly or obliquely at that time with AFRC.

15:44:09 15 MR JABBI: No, My Lords.

16 PRESIDING JUDGE: He is talking about the -- how the
17 conflict in Sierra Leone at that time -- at the time it was
18 happening was understood and viewed by the world, and he

19 expressed his views as to how the world misunderstood the
15:44:32 20 conflict. So that is basically what the import of this paragraph
21 is all about.

22 MR JABBI: My Lord, with respect, what you have said so far
23 refers to the first paragraph which I am not citing. The first
24 paragraph under that answer -- under that question.

15:44:44 25 PRESIDING JUDGE: I can quote to you "Some people", this is
26 the last paragraph, "Some people tended to view the Sierra Leone
27 conflict as simply an internal struggle for the control of the
28 diamonds. This is too simplistic a view and is not accurate."
29 So, I mean, this is a further explanation of the previous

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1 paragraph by the witness as to what was his view, because that
2 was the question he had been asked, "Why is this conflict
3 distinctive from the country's transition from the war?" And he
4 is explaining why he saw it that way and what was happening. I
15:45:17 5 cannot see any relationship at all between this and the
6 organisation of the AFRC and the resistance to the AFRC in this
7 particular paragraph. I'm not saying in this article it doesn't
8 speak to that.

9 MR JABBI: My Lord, let me read the rest of the paragraph.
15:45:38 10 In fact, that is what I want to emphasise in that paragraph. The
11 first sentence and the last two. The first sentence and the last
12 two are actually what I want to emphasise in the paragraph and if
13 I may read them aloud, My Lord.
14 PRESIDING JUDGE: The fact that you read it aloud would not
15:45:52 15 necessarily assist to make it more acceptable or not.
16 MR JABBI: Well, My Lord, but just to focus attention on
17 what I'm referring to.
18 PRESIDING JUDGE: Just a second, Dr Jabbi, please.

19 MR JABBI: Thank you very much.

15:46:20 20 JUDGE THOMPSON: Learned counsel, I thought the objection

21 was that this was not a matter that arose, a new matter that

22 arose out of cross-examination. Is that how you understand the

23 objection to your question?

24 MR JABBI: The objection by the Prosecution?

15:46:41 25 JUDGE THOMPSON: Yes, that it did not arise out of

26 cross-examination, the particular question that you put to the

27 witness. It did not arise --

28 MR JABBI: My Lord, his objection was two-fold.

29 JUDGE THOMPSON: How did you understand it?

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1 MR JABBI: The first was that --

2 JUDGE THOMPSON: The question you are putting.

3 MR JABBI: No, My Lord, the objection raised by the

4 Prosecution, the first part of it was that I cannot refer to a

15:47:18 5 different part of the exhibit --

6 JUDGE THOMPSON: Of exhibit. Quite.

7 MR JABBI: -- because they have cited or referred to only

8 one part in cross-examination.

9 JUDGE THOMPSON: In other words, that the parts they --

15:47:33 10 that is to say the parts that arose out of cross-examination or

11 they directed your attention to in cross-examination?

12 MR JABBI: That's right, My Lord.

13 JUDGE THOMPSON: Yes. What was the second part of the

14 objection?

15:47:45 15 MR JABBI: My Lord, I will come to the second very soon.

16 It is not just that part that arose in cross-examination, it is

17 the document itself that has arisen in cross-examination. In

18 leading the witness there has been no reference to this document

19 at all by the Prosecution raising it. They have necessitated the

15:48:09 20 tendering of this document as an exhibit and when once it is

21 tendered as an exhibit, all its content is thereby before the

22 Court as part of evidence and if therefore a portion of it is

23 relevant, both to the case generally and also to the particular

24 portion of that document that was actually cited and read out in

15:48:37 25 cross-examination, then it is legitimate that in re-examination

26 that portion be dealt with that, that portion which is considered

27 to be relevant to the case and also to the portion cited in

28 cross-examination.

29 JUDGE THOMPSON: If that particular portion which you seek

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1 to re-examine on did not arise specifically out of
2 cross-examination.

3 MR JABBI: Well, My Lord, it did --

4 JUDGE THOMPSON: You say that did --

15:49:07 5 MR JABBI: -- arise and that is the second point. That is
6 to say that a proper reading of the portion that was specifically
7 read out in cross-examination, a proper reading of it invokes the
8 portion of the rest of the document that I want to refer to, My
9 Lord.

15:49:26 10 JUDGE THOMPSON: So, in short, you are saying once a
11 document is in, the entire contents become a kind of
12 free-for-all, so to speak, for re-examination?
13 MR JABBI: So far as relevance.
14 JUDGE THOMPSON: And that is the point?

15:49:41 15 MR JABBI: Yes, My Lord.
16 JUDGE THOMPSON: So, in other words, even though the
17 document may contain matters not directly related to the specific
18 piece of evidence that was given by this witness in answer to the

19 question under cross-examination, you say that as a matter of

15:50:03 20 procedure, you are entitled to re-examine on the entire document?

21 Is that what you're saying?

22 MR JABBI: No, My Lord, that is not what I am saying, with

23 respect.

24 JUDGE THOMPSON: I mean, well again, you need to enlighten

15:50:19 25 me further because I want to know the rule.

26 MR JABBI: What I am saying, My Lord, is that if the

27 portion of a document which has been tendered is deemed relevant

28 to the proceedings and to the specific portion of it that has

29 actually been cited in cross-examination, then that second

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1 passage is legitimate material for [overlapping speakers]
2 JUDGE THOMPSON: But isn't it only on the assumption that
3 that second passage has some kind of nexus, logical nexus, with
4 what was in fact put to the witness in respect of which he gave

15:50:59 5 the answer.

6 MR JABBI: Indeed, My Lord [Overlapping speakers]
7 JUDGE THOMPSON: Because otherwise the document becomes a
8 free-for-all.
9 MR JABBI: That is not what I am saying, My Lord.

15:51:04 10 JUDGE THOMPSON: In other words, if the document talks
11 about some introductory matter, which does not have anything to
12 do with the specific question put, then everything is open
13 season.

14 MR JABBI: That is why there is so much very --

15:51:20 15 JUDGE THOMPSON: I would like to see the law on that.
16 MR JABBI: Yes, there is so much very useful material here
17 of an introductory nature which I am not touching at all
18 precisely on the point your Lordship has just made. I am not

19 saying that everything in the document by just having been
15:51:38 20 tendered becomes material for re-examination, that is not at all
21 what I am saying.

22 JUDGE THOMPSON: Yes, because that would really not be good
23 law.

24 MR JABBI: That is not what I'm saying at all. That is not
15:51:47 25 what I am saying at all. But what I am saying, My Lord, is that
26 the portion of the remaining part of the document that was not
27 specifically mentioned, the portion which I now wish to treat in
28 re-examination is one relevant to the proceedings, the
29 indictment --

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1 JUDGE THOMPSON: In other words, it has a direct or
2 indirect logical nexus with the particular excerpt that was in
3 fact put to the witness.

4 MR JABBI: Yes, My Lord. Yes, My Lord.

15:52:11 5 JUDGE THOMPSON: All right.

6 PRESIDING JUDGE: But that was my understanding indeed of
7 your asking that question. Now I'm trying to see the connection
8 between that particular paragraph that you are alluding to and
9 the one that was read to the witness at page 122.

15:52:21 10 MR JABBI: Yes, My Lord.

11 PRESIDING JUDGE: And at least my reading of that is not
12 the same as yours. So I need to be satisfied there is indeed
13 that connection, as you call it, with what is described at page
14 122.

15:52:46 15 MR JABBI: My Lord, even the sentence in the second
16 paragraph in the recited passage, even the first sentence refers
17 to the peace process. "Chief Norman also played a key role in
18 the subsequent peace process. In the eyes of most Sierra

19 Leoneans and me, he's a hero."

15:53:14 20 PRESIDING JUDGE: Yes, that is fine.

21 MR JABBI: Now, my point, My Lords, is that this reference

22 to the peace process raises the issue of elements in the peace

23 process that were being tackled by somebody who is said to have

24 been playing a key role and indeed, everybody else who was

15:53:35 25 involved in that peace process. And when you turn to the passage

26 that I have tried to highlight, the three sentences from it, the

27 first sentence in the paragraph and the last two, I think, are

28 pertinent to that question of those elements in the peace process

29 that posed problems. And if I may read those sentences, My Lord.

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1 JUDGE THOMPSON: Before you proceed. Shall we adopt
2 another methodology? Look at the document, the particular
3 excerpt which was cross-examined on by the Prosecution.
4 MR JABBI: Yes, indeed.

15:54:20 5 JUDGE THOMPSON: Let us take that as our controlling
6 excerpt --

7 MR JABBI: Yes, My Lord.
8 JUDGE THOMPSON: And let us see -- in other words, go this
9 way and say, "What theme is reflected by that excerpt?" In other

15:54:37 10 words, what is it talking about? What is the specific theme
11 there from your analysis? What is the theme that that excerpt
12 focuses on?

13 MR JABBI: My Lord, I will not say that it focuses on the
14 one thing.

15:55:00 15 JUDGE THOMPSON: But what's the main thread that runs
16 throughout that entire excerpt.

17 MR JABBI: I would say that the main one --
18 JUDGE THOMPSON: Yes, the main thread.

19 MR JABBI: -- was the role of Chief Norman in the
15:55:24 20 resistance.

21 JUDGE THOMPSON: Right. Now relate that back to the
22 excerpts that you are seeking to connect and give us --
23 demonstrate to us the logical connection between the two.
24 Remember you have identified that as a main thread running
15:55:44 25 through that excerpt, because that's the only way we will
26 understand the relevance.

27 MR JABBI: Indeed, My Lord. My Lord, when you look at:
28 "Not only did outsiders fully understand" -- I am now reading
29 from the passage I have selected.

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1 "Not only did outsiders not fully understand the RUF, they
2 did not appreciate that the Sierra Leone conflict was part
3 of a sub-regional conflict."

4 Then I go to the other sentence which I say they were the

15:56:18 5 ones I wanted to emphasise. In other words, I am jumping the
6 next three sentences in the passage. That one says:

7 "But diamonds did have a role to play in that the rebels
8 were able to acquire arms and ammunition in return for
9 diamonds, especially from Taylor. Therefore the targeted

15:56:45 10 UN diamond sanctions were very helpful in resolving the
11 conflict although it took the international community a
12 long time to realise this."

13 Now, My Lord, I think it is quite clear there that this is
14 one of major causes of conflict and the areas of attention of any

15:57:02 15 resistance movement and therefore of anybody's participation in
16 that resistance movement. If I may also, adopting your
17 methodology --

18 PRESIDING JUDGE: [Overlapping speakers] you are really

19 taking this part and these parts out of context. You are trying

15:57:22 20 to put it in a different scenario than the one that you're trying

21 to apply it to, that is at page 122, the peace process. I just

22 cannot follow your logic in this respect.

23 You're saying that the witness has said at page 122 when,

24 he -- "Chief Norman played a key role in the subsequent peace

15:57:50 25 process." You're claiming that this part here that you just read

26 has a linkage to that part because we're talking there of the

27 peace process.

28 MR JABBI: My Lord, certainly. What I'm saying is that the

29 total peace process and the participation in it had elements

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1 which every participant had to confront. And one of those
2 elements has been highlighted in the context of a sub-regional
3 character. Even the placing of Chief Norman as national
4 co-ordinator, partly in Liberia, partly in Sierra Leone, and to

15:58:33 5 co-ordinate between ECOMOG, a sub-regional force, and the
6 disparate groups that were fighting the resistance, and one of
7 the so-called theatres of war, Tongo Field, was mainly a theatre
8 of war because of diamonds. So, My Lords, I think it is quite
9 obvious that the issue of diamonds is not only one of the things

15:59:07 10 that fuelled the war, but one of the targets that peacemaking had
11 to be addressed to. So, My Lord, I think it is complete
12 relevance here.

13 JUDGE THOMPSON: But the difficulty I have, and still is,
14 is what is the object of putting this question? To illicit what?

15:59:45 15 Perhaps if we use that approach we might make some progress.
16 Because remember that re-examination is two-fold. One, to deal
17 with new matter. To, in other words, answer any new issues that
18 are raised under cross-examination, which of course, in the

19 judgment of the person re-examining, counsel re-examining, needs

16:00:09 20 to be dealt with. And then to clarify matters that may have been

21 left ambiguous or inconsistent. So what's the purpose of this

22 exercise? In other words, why do you want the tribunal to know

23 that diamonds were in fact one of the -- how did you put it,

24 using your language?

16:00:40 25 MR JABBI: One of the elements that fuelled the war and

26 also one of the targets of any peacemaking process.

27 JUDGE THOMPSON: And my point is that are we not moving

28 away from the controlling theme which the Prosecution put to the

29 witness, if we get that far? Are we not moving away from that?

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1 Because, if we are, then of course the degree of relevance from
2 your perspective even gets more remote.

3 MR JABBI: My Lord, the sentence, for example, concerning
4 the subsequent peace process which was read out to the witness by

16:01:29 5 the Prosecution is evoking this situation as precisely as

6 possible. I believe this aspect gives a sub-regional character
7 to that peace process and therefore helps to define more
8 appropriately the key role played by Chief Norman, especially in
9 reference to evidence that has already been given. This is new

16:02:03 10 material that has been evoked, as it were, by the Prosecution

11 itself in tendering this document.

12 MR MARGAI: May it please Your Lordships, if I may be
13 heard. Following on the question posed by Justice Thompson as to
14 what was the thrust of the objection, it seems to me that there

16:02:27 15 were two limbs of the objection. Namely, one, that much as the

16 entire document Exhibit 125 has been tendered, re-examination
17 should only be confined to the particular document which was
18 referred to under cross-examination. That is one. And,

19 secondly, whether in fact, the question posed in re-examination

16:02:56 20 is addressing a matter that has arisen anew.

21 Now I would be very much interested in Your Lordships'

22 guidance on the first question because this is going to guide us

23 in the future, especially in matters where an extract of a

24 document is tendered, albeit holistically, whether or not

16:03:30 25 questions could be asked outside of the particular page referred

26 to under cross-examination. I believe Justice Itoe, in passing,

27 made a pronouncement when in fact the issue of the tendering of

28 the document in its entirety was a matter of must, or whether the

29 particular page ought to be separated from the document in its

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1 wholesome form.

2 JUDGE THOMPSON: My response to that would be, of course
3 the Honourable Justice Itoe will speak for himself -- my response
4 was that in having regard to the nature and scope of

16:04:30 5 re-examination, if the Prosecution puts a particular issue to the
6 witness from a document that is tendered as a whole, it would
7 seem to me that if that is the issue being put to the witness -
8 and remember it's the witness's answer that constitutes the
9 testimony, albeit on a document - the response in terms of

16:05:05 10 re-examination should be confined to the specific issue --

11 MR MARGAI: I agree.

12 JUDGE THOMPSON: -- but of course can exceed that if the
13 specific issue also relates to the context of the document. But
14 not that every page or every item in that document becomes, as I

16:05:27 15 said before, open season for re-examination. Because if that
16 were the case, then we will run into the difficulty of
17 multiplying the issues and, as I say, a whole introductory part
18 that may not in fact have any relevance to the specific issue

19 will also become subjects for re-examination. That's my own
16:05:56 20 thinking and my understanding of the process.

21 MR MARGAI: Do I take it, My Lord, that -- I accept what

22 Your Lordship --

23 JUDGE ITOE: Mr Margai, take it from me that I subscribe to

24 the view expressed by Honourable Justice Thompson on this issue.

16:06:08 25 MR MARGAI: I would have thought so.

26 JUDGE ITOE: Yes, that is the way I perceive it and it is

27 the way I continue to perceive the approach to this document that

28 has been tendered.

29 MR MARGAI: As My Lord pleases.

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1 MR JABBI: My Lords, if I may say, I agree entirely with
2 what Justice Thompson has just expressed insofar as the general
3 nature of the document is concerned. I have considered that.
4 But what I am saying is that the portion I am drawing attention

16:06:50 5 to is not of that nature, that indeed it is relevant --

6 JUDGE ITOE: Dr Jabbi, what you have to address your mind
7 to is how related is that part of that document to the specific
8 portion of 125?

9 MR JABBI: 122, My Lord.

16:07:08 10 PRESIDING JUDGE: Of document 125, but of page 122.

11 JUDGE ITOE: Sorry, you meant 125, Exhibit 125?

12 MR JABBI: Yes, sorry, My Lord.

13 JUDGE ITOE: It is the connection -- what is the connection
14 between the portion you want to rely on and the specifics that

16:07:28 15 have been raised and relied upon by the Prosecution in

16 Exhibit 125. This is the crux of the matter and I think if you
17 are able to address us sufficiently on that, we will be able to
18 close the issue.

19 MR JABBI: Which I thought I had already done, but I will
16:07:50 20 summarise on the issue, My Lord.

21 My Lord, the passage that was cited in the Prosecution's
22 cross-examination deals mainly with the organisation of the
23 resistance against the AFRC junta, the role of the first accused
24 in it and the peace process that emanated from it. I would say

16:08:24 25 that is the subject of the passages that were cited in
26 cross-examination; the organisation of the resistance movement to
27 the AFRC/RUF phenomenon, the role of the first accused in it and
28 that effort as part of the peace process.

29 PRESIDING JUDGE: The paragraph in question deals with

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1 "Chief Norman also played a key role in a subsequent peace
2 process." So when we're talking of peace process, this is where
3 the witness has referred to peace process, at page 122.

4 MR JABBI: Yes, My Lord.

16:09:11 5 PRESIDING JUDGE: And you're saying that the portions that
6 you're making reference to at page 118 in the bottom paragraph,
7 that relates to subsequent peace process, if I do understand your
8 position. And therefore should be allowed.

9 MR JABBI: My Lord, there is a preliminary aspect of it

16:09:34 10 that is not stated in your restatement just now; the organising
11 of the resistance movement and the peace process. Your Lordship
12 has emphasised the peace process aspect more. But I have said
13 that the passage that was used in cross-examination on page
14 122 --

16:09:55 15 PRESIDING JUDGE: Indeed.

16 MR JABBI: -- deals with the organising of resistance
17 against the AFRC/RUF and the peace process arising from the
18 conflict caused by that. Now, one of the major elements, both in

19 the conflict itself, that is one of the major elements that

16:10:24 20 fuelled that conflict, and therefore one of those major issues

21 that any organised resistance had to focus on, and any peace

22 process had also to focus on was the question of diamonds. And

23 I've already said that the war effort, insofar as Tonga Field for

24 example was concerned, was based principally on this question of

16:10:46 25 the diamonds as an element that fuelled the conflict and also

26 directed a sub-regional focus on the conflict. And to that

27 extent, therefore, it is equally relevant to the portion cited on

28 page 122.

29 PRESIDING JUDGE: Well, Dr Jabbi, I have read both and I

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1 have given consideration to what you're arguing, and I fail to
2 see that connection and therefore your question in this respect
3 is not allowed as not raising a new matter. It does not deal
4 with the new matters that have been raised. There has been

16:11:31 5 absolutely no discussion in the cross-examination of this witness
6 about diamond trafficking and any such matter. I'm not saying
7 diamond trafficking is not involved in the conflict. I'm just
8 saying this was not a matter that was dealt with in
9 cross-examination. Your question is not allowed.

16:11:52 10 MR JABBI: Thank you very much, My Lord.

11 Q. Now, Mr Witness, may I direct your attention to another
12 passage in this document, on page 124. The first part of your
13 answer to the question "What keeps you so attached in Sierra
14 Leone even after the cruel way you were treated by your

16:12:47 15 government after it?", the first two parts of your answer to that
16 question are the ones I want to focus your attention. If I may
17 read the particular portions in question. Your answer to that --
18 MR TAVENER: I'm sorry, I object on two grounds. One is

19 the original ground raised with the other question, and the

16:13:07 20 second one, having quickly skimmed over those two paragraphs, is

21 a question of relevance.

22 JUDGE THOMPSON: Well, let us hear it. Let's hear counsel

23 read first and since we are going to make the determination I

24 think we need to have the benefit. But the objection is noted

16:13:25 25 prematurely. You will have to restate it. Can we hear?

26 MR JABBI: Yes, My Lord. I was just about to read the

27 first portion of the answer given to that question by this

28 witness in the interview. Which reads as follows:

29 "My love for Sierra Leone is part of my wider commitment to

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1 Africa, where I have spent the majority of my working life.
2 It has been both rewarding and frustrating, but never dull.
3 Sierra Leone is a special country. I have written recently
4 that what attracts one to the country is the people. One
16:14:17 5 cannot help but admire their courage and resilience as they
6 grapple to achieve peace and embrace democracy. Every
7 single Sierra Leonean has suffered a personal tragedy in
8 recent times, whether it is the loss of a loved one or a
9 limb or a home or a job, and yet they have demonstrated an
16:14:48 10 amazing capacity to pick themselves up and move on. They
11 have suffered so much. They deserve better."
12 That is the portion I wish to refer to, My Lords. And, in
13 fact, I would suggest it is merely a continuation of the question
14 that was posed originally in the cross-examination, and that is
16:15:13 15 the question: "You have expressed strong views about the
16 indictment et cetera, et cetera. Why are you so passionate about
17 this one case?" I submit, My Lords, that the question I have
18 just read and the answer given to it are mere extensions to this

19 question that was put in cross-examination, and the answer that

16:15:38 20 the witness gave to it, the subject matters are intimately

21 connected and the last portion I am trying to deal with is a due

22 and proper amplification of the earlier one.

23 JUDGE THOMPSON: What specifically -- [Microphone not

24 activated]

16:15:54 25 MR JABBI: Pardon, My Lord?

26 JUDGE THOMPSON: What specifically --

27 MR JABBI: The mic, please, My Lord.

28 JUDGE THOMPSON: What specifically at page 122 are you

29 referring to as having this logical nexus with those two

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1 paragraphs that you read from page 124? Why not proceed again
2 using the suggested methodology to demonstrate this connection?
3 It is well and good to say on a philosophical level the theme as
4 general connection with -- but let's now go to the level of

16:16:35 5 specificity. So if you can refer us to the corresponding
6 paragraphs or sentences at page 122, that might help the Bench to
7 follow your trend of thought here.

8 PRESIDING JUDGE: If I may, before you answer that
9 question, Dr Jabbi, don't you think that this is far from a new

16:16:58 10 matter that has been raised? The subject matter of what has just
11 been read at page 124 has been a lot of the essence of what this
12 witness has testified about; as to why he was involved, what he
13 did and why he did all of this and his love of this country.
14 This is nothing new that came out in cross-examination. There is

16:17:19 15 nothing new in this paragraph, that I can see, that I'm learning
16 just by looking at this particular paragraph. I have difficulty
17 to see how you can now argue that this is a new matter that has
18 been raised in cross-examination. This is, I would say, a lot of

19 why you called this witness to come here today and yesterday.

16:17:37 20 MR JABBI: Yes, indeed, My Lord. But, My Lord, when you

21 look at the issue that was raised in cross-examination, the

22 question, or the final part of it at any rate, was "Why are you

23 so passionate about this one case?" My suggestion is that this

24 is indeed merely amplified by "What keeps you so attached to

16:18:10 25 Sierra Leone", et cetera, in the section that I'm citing. And to

26 that extent, the logical connection is quite clear, and the issue

27 therefore, having been raised by the Prosecution in

28 cross-examination, is appropriate to be raised in the

29 re-examination.

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1 JUDGE THOMPSON: But have you been taken by surprise? If
2 you yourself say that what has flowed from there already comes
3 from the general conspectus. So are you surprised? If it's new,
4 all right. Let's concede ex-arguendo that it's new. But are you
16:18:53 5 surprised by it, if you say it already flows from the very
6 general tone of the witness's evidence and therefore you are
7 entitled to re-examine?

8 MR JABBI: I do not know whether the test of --
9 JUDGE THOMPSON: I am just asking because, really, the
16:19:10 10 whole idea of re-examination on new matter is that the
11 Prosecution or one side may have been taken by surprise and if
12 they don't answer then it goes against it. Isn't that the
13 equation that we work out when we give you this liberty to
14 re-examine on new matter? In other words, if the record is not
16:19:29 15 clarified, or if there is not any evidence coming from that side
16 to rebut, it would be to the disadvantage of the side that --
17 isn't that the presumption behind --

18 MR JABBI: My Lord, I would also say that if an item raised

19 anew in cross-examination is incomplete, the element in the same
16:20:00 20 instrument brought into evidence which completes it --

21 JUDGE THOMPSON: Yes.

22 MR JABBI: -- is a legitimate --

23 JUDGE THOMPSON: Of course, gives us a total picture. But
24 the question sometimes is that incompleteness works to the
16:20:20 25 prejudice of the party seeking to have the complete picture.

26 MR JABBI: Or potentially works to the prejudice of --

27 because ultimately whether it works to the prejudice will have to
28 be left to the judges to determine. But if one apprehends -- the
29 Defence apprehends that it might so operate --

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1 JUDGE THOMPSON: Then it sets the record straight.

2 MR JABBI: Yes, My Lord.

3 JUDGE THOMPSON: That is what I am asking. How are you
4 setting the record straight now?

16:20:38 5 MR JABBI: By completing the character and nature of the
6 element that has been brought into the cross-examination.

7 JUDGE THOMPSON: But this witness has given such a very
8 glowing tribute of the first accused in terms of his role in this
9 matter, and --

16:20:59 10 PRESIDING JUDGE: And why he himself was involved in trying
11 to assist the people of Sierra Leone. As I say, that has been a
12 lot of the essence of what this witness has testified about. So
13 what is new in this and why are we again to have this -- it may
14 be said in different words, but it is essentially the same

16:21:23 15 message.

16 MR JABBI: My Lord, my duty is to raise issues as I
17 perceive them, and if I believe that they ultimately operate to
18 the benefit of my defence of the accused to draw the attention of

19 the Court to it, and if that element has arisen as a result of

16:21:55 20 cross-examination, for the purposes of completing that element

21 raised in cross-examination, I apprehend the need to bring it to

22 the attention of the court.

23 PRESIDING JUDGE: We thank you for [Overlapping speakers]

24 MR JABBI: I leave it to Your Lordships to determine,

16:22:20 25 indeed, whether I should proceed on that basis. That is the

26 reason why I have brought it forward.

27 PRESIDING JUDGE: Well, we are of the opinion that you

28 shall not proceed with this particular question because this is

29 not a new matter that has arisen as a result of

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1 cross-examination. This is a matter, as I said, that has been
2 amply discussed in the whole of the evidence of this witness.

3 MR JABBI: Thank you very much, My Lords.

4 Finally, My Lords, I wish to ask a question to the witness

16:23:03 5 in the area of the use of the phrase "theatres of war" in the
6 cross-examination, where I think serious ambiguity and perhaps
7 even a blockage of the truth coming through was embedded in the
8 questions and the exchanges.

9 PRESIDING JUDGE: I will just ask you to expand on that

16:23:33 10 particular issue, if you wouldn't mind, and which part of the
11 evidence of the witness you want to clarify as to the term you
12 have just used, that is "theatre of war".

13 MR JABBI: My Lord, the phrase was used by the Prosecutor
14 when posing certain questions to the witness. The series of

16:23:54 15 questions he posed was roughly whether the first accused was
16 present in theatres of war during the conflict and actively led
17 participants in those theatres of war. He wanted to know whether
18 this witness knew that the first accused was present in those

19 theatres of war.

16:24:30 20 PRESIDING JUDGE: I thought the answer was in the negative.

21 I think the witness has said he did not know.

22 JUDGE ITOE: He says he wants to visit it to clarify

23 certain issues. [Overlapping speakers]

24 MR JABBI: Yes, I thought the witness was not clear about

16:24:47 25 what was meant by "theatres of war". I just want to pose that

26 very same question in very simple terms so that that answer can

27 be clarified.

28 PRESIDING JUDGE: Proceed.

29 MR JABBI: Thank you very much, My Lord.

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1 Q. Now, Mr Witness, do you know whether the first accused was
2 present in the fighting in various areas during the conflict,
3 areas of fighting?

4 A. No, I don't know whether he was present in specific areas

16:25:29 5 of fighting.

6 MR JABBI: Thank you very much, My Lord. That is all for
7 the witness.

8 PRESIDING JUDGE: Thank you. So with this last question,
9 Mr Witness, that concludes your evidence in this trial. We thank

16:25:42 10 you very much for coming to this Court and you may proceed back

11 to wherever you want to as we were told you had to go back
12 sometime this week. So we thank you again for coming.

13 THE WITNESS: Thank you very much, My Lord.

14 JUDGE ITOE: We wish you a safe journey back home,

16:26:00 15 Mr Penfold.

16 PRESIDING JUDGE: So, Mr -- that is, Dr Jabbi --

17 MR JABBI: Yes, My Lord.

18 PRESIDING JUDGE: -- are you ready to proceed with your

19 next witness?

16:26:16 20 MR JABBI: Yes, My Lord.

21 PRESIDING JUDGE: It is still early. We still have an hour

22 to go, so we would like to hear your next witness.

23 MR JABBI: Yes, My Lord.

24 PRESIDING JUDGE: Please call your next witness. And I

16:26:37 25 take it it is Dr Demby?

26 MR JABBI: Yes, Dr Demby, My Lord.

27 [The witness withdrew]

28 MR JABBI: My Lords, whilst the witness is coming, may I

29 raise this question of the agenda for tomorrow, My Lord? We have

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1 been informed --

2 PRESIDING JUDGE: Is it the same question that your brother
3 and colleague Bockarie has raised before?

4 MR JABBI: It borders on it, but my concern is what happens
16:28:00 5 tomorrow, not so much whether the motion happens tomorrow.

6 PRESIDING JUDGE: Tomorrow is a full day as usual.

7 MR JABBI: Still no idea of when the motion itself --

8 PRESIDING JUDGE: We will deal with that tomorrow morning.

9 MR JABBI: Thank you, My Lord.

16:28:31 10 [The witness entered court]

11 WITNESS: ALBERT JOE EDWARD DEMBY [Sworn]

12 PRESIDING JUDGE: Dr Jabbi your witness.

13 MR JABBI: Thank you, My Lord.

14 EXAMINED BY MR JABBI:

16:28:59 15 Q. Now, Mr Witness, can you tell the Court your full names?

16 A. Dr Albert Joe Edward Demby.

17 Q. I would like to take an example from what you have just
18 said, the pace of your answers should be as cadenced as the last

19 statement you made, please. Thank you.

16:29:43 20 PRESIDING JUDGE: Maybe you should explain to the witness
21 why.

22 MR JABBI: Yes, indeed, My Lord, thank you.

23 Q. The reason for that, very good reasons indeed, one, you are
24 being interpreted into other languages and the interpreters will
16:30:00 25 find difficulty if your pace is too fast.

26 A. Thank you.

27 Q. And then you will soon see that the pens on the high table
28 will be in feverish motion when you're talking. You want to be
29 sure that they keep pace with you and they don't leave out what

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1 you say. And finally, what you say is so crucial in the attempt
2 to discover the truth in this Court that the Court does not want
3 any portion of it left out by any of those processes.
4 A. Thank you.

16:30:20 5 [CDF09FEB06E-CR]

6 Q. Now, you have just given your full names to the Court. Can
7 you tell the Court your age?
8 A. 71 plus years. Born in 1934, 20th August.
9 Q. And your nationality?

16:31:29 10 A. Sierra Leonean.

11 Q. Can you also give the Court a brief background of your -
12 let's say professional life, if any?
13 A. Leaving school, I proceeded to India, SMS medical college
14 where I qualified as a medical doctor in 1969. I returned home
16:32:25 15 in 1970, joined the government medical service as a medical
16 officer from 1970 to 1975. I worked in Freetown, Kenema,
17 Kailahun, and Kenema Government Hospital. In 1975, I resigned
18 from the government service and set up my private practice in

19 Kenema, where I remained until 1996 when I was appointed
16:33:49 20 vice-president of the Republic of Sierra Leone.

21 Q. How long were you vice-president?

22 A. Six years.

23 Q. From when to when?

24 A. From February 1996, I think, to June 2002, something like
16:34:22 25 that.

26 Q. Thank you. Can you tell the Court where in Sierra Leone
27 your native home is?

28 A. Gerihun.

29 Q. What chiefdom?

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1 A. Baoma Chiefdom, Bo District, Southern Region of Sierra
2 Leone.
3 Q. Thank you. Do you happen to know when the civil war
4 started in Sierra Leone?

16:35:22 5 A. Yes, My Lords. I think in March 1991, if my memory serves
6 me well.

7 Q. If March 1991 is the starting point, what event makes you
8 say it was the starting point of the civil war?

9 A. Well, that was a date in that month that with heard from
16:36:08 10 Focus - BBC Focus on Africa that the rebels had entered Bomaru,

11 in the Kailahun District.

12 MR JABBI: Bomaru, My Lords, official is spelt B-O-M-A-R-U.

13 Bomaru.

14 Q. Where is Bomaru?

16:36:35 15 A. Kailahun District, eastern region of Sierra Leone.

16 Q. In the Kailahun District. Where were you living at the
17 time?

18 A. I was living in Kenema during my private practice.

19 Q. Do you know who were the perpetrators of that incident?

16:37:21 20 A. Yes, My Lord. They called themselves the RUF, headed by

21 one Corporal Foday Saybana Sankoh.

22 Q. By RUF, what does that mean?

23 A. They called themselves Revolutionary United Front,

24 something like that.

16:38:02 25 MR JABBI: My Lords, Foday Saybana Sankoh, spelling: Foday

26 F-O-D-A-Y --

27 PRESIDING JUDGE: I think we know that spelling.

28 MR JABBI: Thank you very much, My Lords.

29 JUDGE THOMPSON: Yes, and it is phonetical, in fact.

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1 MR JABBI: Not all our spellings are phonetical.

2 JUDGE THOMPSON: I know that. I just know that this one is
3 phonetical.

4 MR JABBI: Yes, indeed.

16:38:24 5 JUDGE ITOE: He is an historical monument.

6 MR JABBI:

7 Q. Now, Mr Witness, your evidence is that the war started in
8 Bomaru in the Kailahun District. You were living in Kenema Town?

9 A. Yes.

16:38:50 10 Q. Did the war ever reach Kenema, by the way?

11 A. Yes.

12 Q. Can you give the Court an idea of the time frame it took
13 from the beginning of the war to its coming to Kenema, roughly?

14 A. 1991 -- Kenema Town, you mean, or Kenema District?

16:39:25 15 Q. Let us say the district first of all?

16 A. The district. In 1990 -- '92, it went very fast. By 1993,
17 part of Kenema District was already engulfed in the war.

18 Q. Now, you say it went very fast. Was there any form of

19 resistance to it?

16:40:07 20 A. Yes, the Sierra Leone Army resisted them.

21 Q. Do you know if there was any other form of resistance?

22 A. Up to this moment, I'm saying no.

23 Q. Up to around?

24 A. 1993. Yes, 1993. Thereafter, there was another

16:40:54 25 resistance.

26 Q. Another form of resistance?

27 A. Form of resistance.

28 Q. So, according to you, what other form of resistance arose

29 around 1993?

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1 A. By 1993, or before 1993, the military has staged a coup,
2 the NRPC, and the then Secretary of State East, Tom Nyuma.
3 Q. Now, can you say when that military coup took place?
4 A. 29th April 1992.

16:42:10 5 Q. 29th April 1992.

6 A. Yes.
7 Q. What do you mean by NRPC?
8 A. National Provisional Ruling Council. That was the name
9 they gave themselves.

16:42:32 10 Q. So a group of military men staging a coup in April 1999
11 gave themselves the name National Provisional Ruling Council?

12 A. Yes.
13 JUDGE ITOE: Counsel, did I hear you say 1999?
14 MR JABBI: 1992, My Lord.

16:42:57 15 THE WITNESS: 1992.

16 MR JABBI: 29th April 1992. Did I say 1999, My Lord?
17 JUDGE ITOE: Yes, you did.
18 MR JABBI: Lapsus linguae. I have no reason to misstate

19 the date of that coup.

16:43:15 20 JUDGE THOMPSON: It could be a lapsus memoriae.

21 MR JABBI: My Lord, this one was just linguae.

22 Q. You were about to say something about a military -- a

23 member of that military government.

24 A. Yes. That Lieutenant Tom Nyuma, the then Secretary Of

16:43:45 25 State East --

26 MR JABBI: Nyuma, My Lords is N-Y-U-M-A. Nyuma.

27 THE WITNESS: Convened a meeting of the paramount chiefs

28 from Kailahun, Kono and Kenema and other people who were resident

29 in Kenema, having been displaced by the war.

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1 MR JABBI:

2 Q. From where?

3 A. From Kenema, Kono, Kailahun, they were now in Kenema Town.

4 So they and the citizens of Kenema attended this meeting which

16:45:06 5 was convened by Tom Nyuma.

6 Q. Thank you.

7 A. In that meeting he said a decision had been taken in

8 Cabinet that they should request the services of the traditional

9 hunters, called Kamajoisia.

16:45:55 10 MR JABBI: Kamajoisia would be K-A-M-A-J-O-I-S-I-A.

11 Q. By Kamajoisia, you mean the Kamajors?

12 A. The traditional hunters. There are differences between the

13 Kamajor movement, Kamajoisia and Kamajor society, which I will

14 explain to this Court.

16:46:26 15 Q. Thank you very much.

16 JUDGE THOMPSON: Let him go over that again. It sounds

17 interesting.

18 THE WITNESS: There are --

19 JUDGE THOMPSON: Differences.

16:46:39 20 THE WITNESS: -- Kamajoisia --

21 JUDGE THOMPSON: No, give us the --

22 MR JABBI: The statement you made just now.

23 JUDGE THOMPSON: The statement you made. Then, before
24 you --

16:46:41 25 THE WITNESS: There are differences --

26 JUDGE THOMPSON: Then you can expand after that.

27 THE WITNESS: -- between Kamajoisia --

28 MR JABBI:

29 Q. Slowly, please.

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1 A. -- Kamajor movement and Kamajor society. The reason he
2 gave for requesting this Kamajoisia was that they realised that
3 their army did not know the terrain. So the rebels had advantage
4 over them by using bypasses. He cited the situation in Vietnam,
16:48:29 5 that Americans with all the sophisticated weaponry failed --
6 Q. Pace, please. Watch your pace, please.
7 A. Yes, sorry. That the Americans, with all their
8 sophisticated weaponry, failed in Vietnam because they did not
9 know the terrain. We therefore formed the Eastern Region Defence
16:49:51 10 Committee with the late Dr Alpha Lavalie as chairman and I,
11 Dr Demby, as treasurer.
12 Q. Thank you. Now, what did the -- this military officer in
13 the east who started this arrangement, what did he think the
14 Kamajoisia would do?
16:50:30 15 A. The Kamajoisia were to be drawn from their respective
16 chiefdoms, brought to Kenema Town, and handed over to the brigade
17 commander, who will use them as and when he requires for
18 deployment.

19 Q. Did he explain what the Kamajoisia would be used for?

16:51:36 20 A. Yes, they were to be as guides to show them, since they

21 know the terrain.

22 Q. The terrain in the bush?

23 A. Yes, the terrain in the bush. The bypasses, the paths.

24 Q. Were the Kamajoisia, in fact, procured for --

16:52:14 25 A. Yes, we procured them. They came from their villages with

26 their traditional shotguns and we provided cartridges for them.

27 We, I mean the Eastern Region Defence Committee. We derived our

28 funds for such exercise by extra levy on the local tax in the

29 district.

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1 Q. In which district?

2 A. In Kenema District. It was the only district -- part of
3 the Kenema District was the only area in the east that was not
4 engulfed by the war.

16:53:32 5 Q. At that time?

6 A. At that time.

7 Q. Now, on whom was this extra levy imposed? On whom?

8 A. On the local -- the chiefdom people. Adults that usually
9 pay local tax, wherein they were to pay 500 leones, an additional

16:54:12 10 20 cent was -- sorry, not -- 500 leones. Sorry, 20 cent was

11 levied or added to whatever they were to pay. By that I mean
12 extra money was raised from them.

13 Q. Twenty cent or 20 per cent?

14 A. Twenty leones, I think.

16:54:41 15 Q. Twenty leones?

16 A. Yes. Yeah, 20 leones was added to the 500 -- sorry, 500
17 leones, the monies -- I'm confused.

18 Q. The basic local tax was 500 leones?

19 A. Yes.

16:54:51 20 Q. And on each adult taxpayer another 20 leones was levied?

21 A. Yes, to meet the cost. Added to that --

22 Q. First of all, what portion of that levy went to this

23 Kamajor exercise?

24 A. The 20.

16:55:38 25 Q. The 20. When you say taxpayers in Kenema, from what areas

26 did these taxpayers derive?

27 A. From chiefdoms that were not already under rebel control.

28 The rebels occupied Kono District, Kailahun District and part of

29 Kenema District. Four or five chiefdoms were occupied at that

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1 time.

2 Q. In Kenema District?

3 A. Kenema, yes, out of I think 16 chiefdoms.

4 Q. Okay, my question now is -- I'm focusing attention on the
16:56:22 5 individuals on whom the tax was levied. From what areas did such
6 individuals come?

7 A. From the respective other chiefdoms which I cannot now -- I
8 think out of 16, normally adults, male, pay local tax in these 16
9 chiefdoms.

16:56:44 10 Q. In Kono District?

11 A. In all the districts in Sierra Leone normally. But in this
12 particular eastern region, two of the districts were 100 per cent
13 under rebel control: Kono and Kailahun. But 4 out of the 16 or
14 so chiefdoms in Kenema District were not under rebel control, and

16:57:10 15 the then district officer, Ngaoja was taxed with that

16 responsibility.

17 MR JABBI: Ngaoja, My Lords, I believe, is N-G-A-O-J-A.

18 Q. Is that correct?

19 A. Yes. So it is local adult local -- normal local taxpayers.

16:57:41 20 Q. Now, you spoke about displaced paramount chiefs coming to

21 Kenema. Did you have displaced adults in Kenema from those areas

22 who had been occupied --

23 A. [Overlapping speakers]

24 Q. -- by the war? Insofar as the levying of the tax was

16:58:24 25 concerned, did you take those displaced adults from chiefdoms

26 taken up by the war -- did you take them into account?

27 A. I cannot tell, it was done by the district officer. But

28 that was not the only area we got money from, My Lord.

29 Q. Yes.

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1 A. That Tom Nyuma occasionally brought money from the central
2 government, from the NRPC, and subsidised us.

3 Q. Yes.

4 A. And the military also subsidised by giving them shotgun
16:59:36 5 cartridges and military uniform when going into deployment.

6 Q. What about the actual guns?

7 A. They provided their shotguns.

8 Q. Who provided?

9 A. The hunters that were the Kamajoisia who were brought from
17:00:18 10 the villages, each had his own shotgun. Those who had no

11 shotgun, we borrowed from older people in those villages. We
12 promised that at the end of that mission, we would return their
13 guns. So all the Kamajoisia who came had shotguns.

14 Q. You augmented that with shotguns from older Kamajoisia --

17:01:03 15 A. Yes.

16 Q. -- who could not go into conflict?

17 A. Yes.

18 Q. Now, you have used two terminologies: hunters and

19 Kamajoisia. Are those two the same?

17:01:45 20 A. Yes. The traditional hunter in Mende language is called

21 Kamajoisia.

22 Q. So what would one traditional hunter be called? One, only

23 one.

24 A. Kamajoi.

17:02:21 25 Q. Kamajoi. So Kamajoisia is --

26 A. Plural.

27 Q. -- plural. And Kamajoi is the single?

28 A. Single.

29 Q. Now, you say these would be given over to the brigade

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1 commander, who would deploy them as necessary --

2 A. Yes.

3 Q. As he deemed fit?

4 A. Yes, My Lord.

17:03:11 5 Q. Roughly how long would they be under such deployment?

6 A. One month, three weeks; depending on the deployment.

7 Example, they were used --

8 Q. Watch your pace, please. Carry on.

9 A. One month, three weeks; depending on the deployment.

17:03:38 10 Example, they were used to liberate Kono -- the entire Kono

11 District.

12 Q. When?

13 A. It's 1993 I'm telling you of.

14 Q. 1993?

17:03:58 15 A. Yes, within 1993. Nearly the whole of Kailahun District

16 and the remaining, the four districts -- the four chiefdoms in

17 Kenema, and we even arranged the victory --

18 Q. Watch your pace, please.

19 A. And we even arranged a victory parade, which did not take
17:04:42 20 place.

21 Q. Now, before we come to the victory parade and why it did
22 not take place, the last question was: how long were these
23 Kamajoisia deployed with the soldiers at a time?

24 A. Two weeks, one month, as the case may be. It was between
17:05:13 25 one week and two months or so.

26 Q. After such deployment, what happened to the Kamajoisia?
27 A. They would return them to ERECOM in Kenema and we would
28 take them back to their respective communities.

29 MR JABBI: ERECOM, My Lords --

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1 THE WITNESS: It is the Eastern Region Defence Committee.

2 MR JABBI: E-R-E-C-O-M.

3 Q. You spoke about a victory parade. When roughly was
4 arranged, even if you say it did not ultimately take place?

17:06:22 5 A. December 1993.

6 Q. December 1993. Why did it not take place?

7 A. There were security lapses in December in which --

8 Q. December 1993?

9 A. Yes, My Lord.

17:07:01 10 Q. In which?

11 A. The military abandoned their operations, came to Kenema to
12 collect logistics for the Christmas party.

13 Q. What area were these positions?

14 A. Nomo Faiama chiefdom by Liberian border.

17:07:34 15 Q. Nomo Faiama, My Lords, N-O-R-M-O -- correct me if I'm

16 wrong, Mr Witness. N-O-R-M-O - F-A-A-M-A [sic]?

17 A. Faiama, F-A-R-M-A [sic].

18 Q. F-A-R-M-A [sic]. Where is Nomo Faiama and what is Nomo

19 Faiama?

17:08:08 20 A. Well, Nomo Faiama is a name -- I don't know how it was

21 given and why, but it is a name given to a chiefdom in Kenema

22 District bordering the Liberia boundary.

23 Q. Kenema District bordering on the Liberia boundary; not so?

24 A. Yes.

17:08:25 25 Q. Nomo Faiama Chiefdom. Yes, you said there were security

26 lapses there?

27 A. Yes, in which the senior military officers came to Kenema

28 to collect logistics for a Christmas party. During that time,

29 the rebels invaded their deployment areas.

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1 Q. The deployment areas of the soldiers?

2 A. Yes, and a large cache of arms and ammunitions were
3 collected.

4 Q. By whom, from whom?

17:09:27 5 A. By the rebels. While the senior army officers were in
6 Kenema, these rebels attacked their deployment, took over the
7 place and the arms and ammunition were carried by them. And the
8 war escalated from then on.

9 Q. So roughly around that time, that is the time when the

17:10:14 10 rebels had overrun the deployment positions of the military?

11 A. Yes.

12 Q. Around that time, what areas were affected by the war,
13 roughly speaking?

14 A. Nearly the whole of the area had been liberated, as I have

17:10:34 15 said earlier, and that we had arranged for a victory parade. So
16 only, perhaps, a pocket of rebels might have remained --

17 Q. In those areas?

18 A. In some unknown areas. Then, because they were coming from

19 Liberia, usually these rebels came from across the Liberian

17:11:03 20 border and attacked Sierra Leone. So they were -- when we said

21 the area was liberated, the rebels were driven out of the

22 Sierra Leone territory into Liberia. Not all of them were

23 killed.

24 Q. Okay. My question now concerns the influx back into

17:11:33 25 Sierra Leone by the rebels.

26 A. Yes.

27 Q. When they overran the military deployment positions.

28 A. Yes.

29 Q. What area was retaken by the rebels? The area --

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- 1 A. They went at such a fantastic speed. It was very fast.
- 2 Within a week or two, they had already reached Blama and near
- 3 Kenema Town.
- 4 MR JABBI: Blama, B-L-A-M-A, My Lords.

17:12:06 5 Q. Roughly what is the position of Blama from Kenema?

- 6 A. About 11, 12 miles.
- 7 Q. In what direction?
- 8 A. Southern direction.
- 9 Q. Towards Bo?

17:12:24 10 A. Yes, towards Bo, along the Bo-Kenema Highway.

- 11 Q. What about the Kono and Kailahun Districts you had spoken
- 12 of earlier? Were they also retaken?
- 13 A. Well, yes. In time, by two, three, four months, the rebels
- 14 had gone too far into the country.

17:13:02 15 Q. So what happened after that?

- 16 A. The war escalated. Then I left Kenema for my home town,
- 17 Gerihun.
- 18 Q. What is the position of Gerihun?

19 A. Gerihun is 12 miles from Bo, northward -- eastwards, it's
17:13:31 20 eastwards.

21 Q. Along which road?

22 A. The Bo-Kenema Highway.

23 Q. And that comes through Blama?

24 A. Yes, the highway passes through Blama.

17:13:58 25 Q. Yes, what did you want to do in your hometown?

26 A. I went and informed my uncle, Paramount Chief AS Demby and
27 his subchiefs --

28 Q. AS Demby the what?

29 A. AS Demby III.

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1 Q. And his sub-chiefs?

2 A. About the successes of the Kamajoisia when fighting with
3 the soldiers, the army.

4 Q. Why did you need to do that; to come and tell your uncle
17:14:56 5 about the successes?

6 A. Because I wanted them to know the importance of the civil
7 militia in war, and I was able to convince them --

8 Q. Watch your pace, please. You wanted them to know what the
9 civil militia could do in war.

17:15:27 10 A. Yes.

11 JUDGE ITOE: The importance of the civil militia.

12 MR JABBI:

13 Q. The importance of civil militia in war?

14 A. Yes.

17:15:30 15 Q. And you were able to persuade your uncle and his

16 sub-chiefs?

17 A. Yes.

18 Q. To do what?

19 A. So that we can replicate what the Kamajoisia are doing in
17:15:51 20 the east.

21 Q. Roughly what time was that?

22 A. 1994, March/April.

23 Q. By that time, had the war reached the chiefdom of your
24 uncle?

17:16:27 25 A. No, but it was already in Blama, the adjacent chiefdom.

26 Q. In what province of Sierra Leone is Blama?

27 A. Blama is in the eastern region, or Eastern Province,

28 whereas Bo is in the south. Gerihun is in Bo District, southern
29 region.

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1 Q. Are you saying, therefore --

2 JUDGE ITOE: Did you say Blama is in the Eastern Region?

3 THE WITNESS: Yes, My Lord. Kenema District. Blama is in
4 Kenema District.

17:17:18 5 MR JABBI:

6 Q. And Bo and Gerihun, according to you, are in the
7 Bo District in the southern region?

8 A. Yes. We then decided to invite --

9 Q. Just before that, please.

17:17:41 10 A. Yes.

11 Q. By that time, were you able to know whether the war had
12 reached the southern region?

13 A. Yes. Wunde Gboyama is in the Bo District. Yes. There
14 were -- civilians were running away from Wunde Gboyama, which is

17:18:06 15 part of Bo District, yes.

16 Q. By early 1994?

17 A. Yes.

18 Q. Any other areas of the Southern Province affected by that

19 time by the war, apart from Wunde Gboyama --

17:18:24 20 A. Yes, well, Pujehun.

21 MR JABBI: Wunde Gboyama, My Lords, is spelt W-O-N-D-E

22 [sic], hyphen, G-B-O-Y-A-M-A. Wunde Gboyama, Bo District.

23 Q. Yes, you were naming another place?

24 A. Yes, part of Pujehun District.

17:18:51 25 Q. Parts of Pujehun District. And location of

26 Pujehun District, roughly?

27 A. It is in the southern region by Liberia border. Southern

28 Province.

29 Q. The south of Sierra Leone?

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1 A. Yes.

2 Q. In the Southern Province?

3 A. South. [Overlapping speakers]

4 Q. Liberian border?

17:19:25 5 A. Yes.

6 Q. But the chiefdom in which Gerihun was, had it been affected
7 by the war by that time?

8 A. No.

9 Q. Yes. So you came to inform your uncle and you made what

17:19:42 10 arrangement?

11 A. We decided to invite the two adjacent chiefs and their
12 sub-chiefs --

13 Q. What chiefdoms are those?

14 A. Jiamma Bongor, whose regent chief was Chief Sam Hinga

17:20:11 15 Norman.

16 Q. What other chiefdom?

17 A. And Bagbe Chiefdom, Bagbe.

18 Q. Also in Bo District?

19 A. Also Bo District.

17:20:35 20 Q. Bagbe Chiefdom.

21 A. Yes. Paramount chief, Chief Gbenga.

22 Q. Gbenga?

23 A. Gbenga, G-B-E-N-G-A.

24 Q. G-B-E?

17:20:51 25 A. N-G-A.

26 Q. G-B-E-N-G-A. Gbenga. PC Gbenga.

27 A. Yes.

28 Q. Of Bagbe Chiefdom?

29 A. Yes.

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1 Q. So how many chiefdoms were, in fact, invited?

2 A. Two, the adjacent chiefdoms.

3 Q. Two chiefdoms adjacent to?

4 A. Baoma Chiefdom.

17:21:07 5 Q. Baoma Chiefdom?

6 A. Yes.

7 MR JABBI: Baoma, My Lords is B-A-O-M-A. Baoma.

8 Q. Yes.

9 A. It was Chief Sam Hinga Norman and his sub-chiefs that first

17:21:42 10 arrived.

11 Q. In?

12 A. Yamandu, the chiefdom headquarter of Baoma.

13 Q. Of Baoma Chiefdom?

14 A. Baoma Chiefdom.

17:21:59 15 MR JABBI: Yamandu, My Lords, is Y-O-M-A-D-U [sic].

16 Yamandu.

17 Q. Yes, did any other chiefs arrive?

18 A. No. The first chief that arrived, which is sub-chiefs, was

19 Chief Sam Hinga Norman.

17:22:37 20 Q. He was the first chief that arrived. Did any other chiefs

21 arrive for that --

22 A. No.

23 Q. Thank you. Now, by that time, was either Bagbe Chiefdom or

24 Jiamma Bongor Chiefdom infiltrated by the rebels?

17:23:08 25 A. No.

26 Q. By that time, no. So what arrangements were made?

27 A. It was then, at that meeting, that I introduced the idea of

28 civil militia to Chief Sam Hinga Norman and his sub-chiefs.

29 Q. This is around April 1994?

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1 A. Yes, March/April.

2 Q. March/April.

3 A. That the idea that we should co-operate in raising --

4 Q. That who should co-operate?

17:24:30 5 A. The two chiefdoms.

6 Q. The chiefdoms.

7 A. The two chiefdoms. Jiam Bongor and Baoma Chiefdom should

8 co-operate in raising volunteers for the civil militia in case

9 either of the chiefdom is attacked --

17:25:13 10 Q. Either of those two chiefdoms?

11 A. Is attacked, the other will go to its aid.

12 Q. With the civil militia, obviously?

13 A. Yes, My Lords.

14 Q. Was there talk of who would constitute the civil militia

17:25:39 15 you were preaching?

16 A. No, we said volunteers. Whosoever volunteered. We just

17 announced it in the chiefdom, whosoever was ready to come up.

18 Q. Your experience in the east in terms of civil militia

19 operation, so far you have recounted only in respect of

17:26:09 20 Kamajoisia --

21 A. Yes.

22 Q. -- or hunters?

23 A. Yes.

24 Q. What was the content of the civil militia you were

17:26:23 25 preaching in Baoma and Bagbe?

26 A. We realised that the army, which I left out were in Kenema,

27 was that some of the soldiers were not acting in good faith. By

28 that I mean the Kamajoisia that went with them in the bush

29 reported to us that some soldiers were conniving with the rebels.

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1 Q. To do what?

2 A. To attack instead of defend and to loot and kill. They
3 changed immediately they are in the bush.

4 Q. That's the eastern region experience?

17:28:44 5 A. Yes, to the extent that some Kamajoisia refused to go with
6 them again.

7 Q. To go into the bush with the soldier?

8 A. To go with them again.

9 PRESIDING JUDGE: Dr Jabbi, it is almost 5.30, so I am not

17:29:12 10 sure --

11 MR JABBI: My Lord, may we finish this segment? It will
12 require only another five minutes.

13 PRESIDING JUDGE: Yes.

14 MR JABBI: Thank you very much, My Lord.

17:29:21 15 Q. So?

16 A. That the army was small and also ill-equipped. That --

17 Q. This is what your Kamajoisia reported to --

18 A. Reported to us.

19 PRESIDING JUDGE: You say the army was small?

17:29:37 20 THE WITNESS: Small in number.

21 PRESIDING JUDGE: Yes, and?

22 THE WITNESS: Ill-equipped. So that made it difficult for
23 them to contain the rebels. So, with this idea, we now, in
24 Yomadu, decided to go into self-defence.

17:30:30 25 MR JABBI:

26 Q. As to raise the Civil Defence Force?

27 A. Yes, Civil Defence Force. But, unfortunately, it did not
28 materialise.

29 Q. What happened?

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1 A. Because the first set of people that went to Telu were

2 attacked.

3 Q. By?

4 A. By the rebels. And many people were killed.

17:31:25 5 Q. Among whom?

6 A. Among these --

7 Q. The group?

8 A. The group and the civilians. We then came to the

9 conclusion that there were more rebels in the town than in the

17:31:49 10 bush, because they must have carried the message, and that

11 continued, My Lord.

12 Q. What continued? You said "that continued". There were

13 more rebels in the town than in the bush and that continued. You

14 mean the rebel informants --

17:32:21 15 A. No, the onslaught. That would be the expansion of the

16 rebels.

17 Q. I see.

18 A. Into the Southern Province continued, whereas the intended

19 raising of the civil militia in those chiefdoms did not
17:32:45 20 materialise. That's all for now.

21 MR JABBI: Yes, My Lords, maybe that is a convenient
22 resting place for today.

23 PRESIDING JUDGE: Thank you very much. The Court will
24 adjourn to 9.30 in the morning.

17:33:26 25 [Whereupon the hearing adjourned at 5.34 p.m.,

26 to be reconvened on Friday, the 10th day
27 of February 2006, at 9.30 a.m.]

28

29

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EXHIBITS:

Exhibit No. 125 71

WITNESSES FOR THE DEFENCE:

WITNESS: PETER ALFRED PENFOLD	4
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