

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-14-T
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA

WEDNESDAY, 16 FEBRUARY 2005
9.45 a.m.
TRIAL (REDACTED)

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For Chambers:

Ms Sharelle Aitchison
Ms Roza Salibekova

For the Registry:

Mr Geoff walker

For the Prosecution:

Mr Mohamed Bangura
Mr Kevin Tavener
Ms Crispina Fynn (intern)

For the Principal Defender:

Mr Ibrahim Yillah

For the Accused Sam Hinga Norman:

Mr John wesley Hall

For the Accused Moinina Fofana:

Mr Arrow Bockarie
Mr Victor Koppe
Ms Claire Da Silva
Mr Andrew Ianuzzi

For the Accused Allieu Kondewa:

Mr Charles Margai
Mr Yada Williams

1 [HN160205 -SGH]
2 wednesday, 16th February 2005
3 [Closed session]
[No accused present]
09:41:57 5 [Upon commencing at 9.45 a.m.]
6 PRESIDING JUDGE: Good morning learned counsel. Good
7 morning, Mr witness, how are you this morning?
8 THE WITNESS: I feel fine.
9 PRESIDING JUDGE: You feel fine. We are resuming the session,
09:42:55 10 please.
11 JUDGE BOUTET: I think so far the first accused are you ready
12 to proceed with the cross-examination of this witness.
13 MR HALL: We are, Your Honour.
14 JUDGE BOUTET: Thank you, please do so.
09:43:07 15 WITNESS TF2-005: [Continued]
16 CROSS-EXAMINED BY MR HALL:
17 Q. Mr witness, will you tell us how many times you
18 have met with the representatives of the Office
19 of the Prosecution?
09:43:25 20 A. Sir?
21 Q. How many times you have met with the representatives of
22 the Office of the Prosecution?
23 A. I met twice with Mr Gbeckie who took my statements.
24 Q. Those were the first statements?
09:43:53 25 A. The first statement.
26 Q. Thank you.
27 A. I met with another lady call Max in Kenema. Then the
28 lawyers went for confirmation of my statement and then
29 last week I was here and I am here again.

1 Q. So, you came to Freetown last week?
2 A. Yes.
3 Q. Back when you first talked to the investigators you
4 didn't hold anything back from them, did you?
09:44:43 5 A. No.
6 Q. You told them everything?
7 A. Yes, I told them everything that I remembered.
8 Q. And you were not in fear when you were telling them this?
9 A. Uh?
09:44:56 10 Q. You were not in fear of anything by telling them this?
11 A. No, I was not in any fear, sir.
12 Q. Since you have been in Freetown preparing for your
13 testimony, how many times have you met with the
14 Prosecution then?
09:45:25 15 A. When I came last week I met with the Prosecution twice
16 and I came back on the Thursday, I met with them on
17 Friday, Saturday, Sunday and Monday.
18 Q. And your meetings were to go over your testimony for this
19 Court; is that correct?
09:46:00 20 A. Pardon.
21 Q. Your meetings were about going over your testimony for
22 this Court?
23 A. Yes.
24 Q. Prior to 1996 did you know Sam Hinga Norman?
09:46:19 25 A. Yes, My Lord.
26 Q. Did you know him personally?
27 A. Yes, My Lord.
28 Q. Was he a kamajor back in '91 when you were, if you know?
29 A. No, he was not.

1 Q. when you became a Kamajor and learned these laws that you
2 testified about yesterday, those laws were told to
3 everybody; is that correct?
4 A. Pardon?
09:47:07 5 Q. The Kamajor laws were told to everybody who was a
6 Kamajor?
7 A. who joined the society, yes.
8 PRESIDING JUDGE: Mr Hall.
9 MR HALL: Yes, sir.
09:47:20 10 PRESIDING JUDGE: I know we cannot adjust the way, you know,
11 you express yourself and that is the way, you know, you
12 are used to. But the witness has some difficulty, I
13 would perceive he has some difficulty in following
14 what -- he has to make an extra effort, you know, to
09:47:36 15 listen. So if you can take it a bit slowly, so that he
16 can get you properly, please.
17 MR HALL:
18 Q. Was the war Council organised prior to your contact with
19 Sam Hinga Norman in Liberia?
09:48:02 20 A. No, it was after.
21 Q. whose idea was it to organise a War Council?
22 A. I suggested it to him.
23 Q. To Mr Norman?
24 A. Yes.
09:48:23 25 Q. Did you also talk to President Kabbah about it?
26 A. About a War Council?
27 Q. Yes, sir.
28 A. No.
29 Q. who, besides you, met with President Kabbah in Conakry?

1 A. I cannot know.
2 Q. Several people?
3 A. Uh?
4 Q. Did several people besides you go to Conakry to be with
09:49:03 5 the President?
6 A. I just knew about my own visit. I did not know if other
7 people went to see him personally.
8 Q. So when you went, did you go alone?
9 A. When I met him, yes. I was taken to his lodge by Teja
09:49:27 10 Lagau [phon].
11 Q. Did a group of people send you to Conakry or did you go
12 on your own?
13 A. The Kamajors who were within the community where I was
14 living among the -- after the coup, decided that I should
09:50:07 15 go.
16 Q. When you came back from meeting with the President, did
17 you go directly to meet with Mr Norman?
18 A. Yes, My Lord.
19 Q. After the meeting --
09:50:38 20 JUDGE THOMPSON: Counsel, will you take it a little slowly.
21 Let me get that.
22 MR HALL: Yes.
23 JUDGE THOMPSON: When he came back from his meeting with the
24 President, you went directly to Mr Norman?
09:51:02 25 THE WITNESS: Yes, My Lord, directly from Conakry to Liberia.
26 JUDGE THOMPSON: Thank you. Yes.
27 MR HALL:
28 Q. The President sent you to Mr Norman essentially; isn't
29 that correct?

1 A. He told me if I thought I would pursue the military
2 option then if I want I can go to Mr Norman who was in
3 Liberia.
4 Q. As a representative --
09:51:42 5 PRESIDING JUDGE: Mr Hall, can you wait, please?
6 MR HALL: Yes, certainly.
7 JUDGE THOMPSON:
8 Q. Would the witness please repeat the last part, if the
9 President could pursue the military option, you said?
09:52:03 10 A. If thought I wanted to pursue the military
11 option --
12 Q. To pursue the military option --
13 A. -- I should talk to Hinga Norman.
14 JUDGE THOMPSON: Yes.
09:52:06 15 MR HALL:
16 Q. What did you have to offer to the President in support of
17 the military option?
18 A. Well, I offered the service of the Kamajors who were
19 within my own -- within the community I live. But he
09:52:43 20 said I should go to Norman to discuss that if I wanted.
21 Q. How many Kamajors did you have at your disposal?
22 A. We had 200 -- over 200 Kamajors in my own chiefdom and
23 there were other chiefdoms who had Kamajors also who were
24 willing to fight with their own number.
09:53:49 25 Q. Early in the war Kamajors fought alongside soldiers?
26 A. Yes, My Lord.
27 Q. And they were under your control, some were?
28 A. Yes, they fought under the control of the military at
29 that time.

1 Q. They were helping the military to understand the local
2 geography; is that correct?
3 A. Yes, My Lord, but they also had shotguns to fight with.
4 Q. This was going on before you went to Conakry; correct?
09:55:28 5 A. Yes, right until the time of the coup, the AFRC coup.
6 Q. You were in Monrovia with Mr Norman. The two of you
7 talked about organising the CDF?
8 A. I found he has re-named the Kamajor organisation CDF now
9 at that time.
09:56:39 10 Q. But at this time the CDF had not yet joined the war?
11 A. The CDF had already started fighting against the juntas
12 at Gendema.
13 Q. Did you know that before you met with Mr Norman?
14 A. Yes.
09:57:33 15 Q. When you went to meet with Mr Norman, did anyone else go
16 with you?
17 A. Just somebody escorted me to show me where Hinga Norman
18 stayed in Monrovia. He also was travelling. He was
19 going to him on his own business. His name was Eddie.
09:58:14 20 Q. How long did you and Mr Norman meet?
21 A. We spent a night in Monrovia before we went to Base Zero
22 and we were there together for about two weeks before I
23 returned to Conakry.
24 Q. So you flew from Monrovia to Base Zero?
09:59:02 25 A. Yes, My Lord.
26 Q. Do you know whose helicopter it was?
27 A. No, but it was not a military helicopter.
28 Q. When the two of you arrived at Base Zero, what did you do
29 then?

1 A. I discussed matters with Sam Hinga Norman -- with
2 Mr Norman. I walked around. I observed the place, how
3 the place looked like. And I met some people with whom I
4 knew before and then went into meeting with Mr Norman.

10:00:50 5 Q. Did the two of you meet fairly constantly during that two
6 weeks?

7 A. Yes.

8 Q. Did you talk about organising a War Council?

9 A. Yes, My Lord.

10:01:22 10 Q. Did you have in your own mind who you wanted on the war
11 Council?

12 A. No, I did not have anybody [inaudible] in my mind.

13 Q. Did Mr Norman have names?

14 A. Yes, he called a meeting of all the elderly people who
10:01:51 15 were at Base Zero at that time and put the suggestions to
16 them.

17 Q. You said elderly people, do you mean chiefs?

18 A. There were chiefs, there were some people who were not
19 chiefs.

10:02:24 20 Q. But they were community leaders?

21 A. Yes, My Lord.

22 Q. Did all these people meet together to talk about creating
23 a War Council?

24 A. Yes, My Lord.

10:03:15 25 Q. At this time was Base Zero building up its forces so it
26 could counter attack the rebels?

27 A. Yes, My Lord.

28 Q. Training was going on?

29 A. Yes, My Lord.

1 Q. People were being initiated as kamajors?
2 A. Yes, My Lord.
3 Q. And you saw this going on?
4 A. Yes.
10:04:15 5 Q. You talked yesterday about the kamajor laws. Were these
6 people all instructed in those kamajor laws?
7 A. well, I was not present when the laws were given to those
8 who were initiated in Base Zero, but where I was
9 initiated those laws were given to us. I was initiated
10:04:40 10 before I went to Base Zero.
11 Q. These laws are vitally important to Kamajor society; are
12 they not?
13 A. They are.
14 Q. And a trained Kamajor thinks about them, talks about them
10:05:21 15 all the time?
16 A. Yes.
17 Q. It becomes a way of life?
18 A. Yes.
19 Q. In that two weeks while you were at Base Zero was the war
10:06:03 20 Council finally put together, all the members?
21 A. Some members were put together in my absence. When I
22 returned to Conakry I found other members have been
23 included.
24 Q. The war Council was to do what its name says and that is
10:06:47 25 direct the war.
26 A. Sorry.
27 Q. The war Council was to do what its name is and that is to
28 direct the war?
29 A. I don't understand that question.

1 PRESIDING JUDGE: Take it slowly, Mr Hall.
2 MR HALL
3 Q. The War Council chose places to attack?
4 A. Yes.
10:07:22 5 Q. How many Kamajors would be committed?
6 A. That was the decision of the Director of War, how many
7 Kamajors should take part in it.
8 Q. The War Council was receiving reports back as to what was
9 going on where things had to happen?
10:08:06 10 A. Yes, My Lord.
11 Q. How would they communicate with Mr Norman in the field?
12 A. Well, the War Council and Mr Norman were all based in
13 Base Zero, so we could easily call on him and talk to him
14 about the report. The War Council could easily call on
10:08:36 15 him and talk to him about the reports that he received.
16 Q. During this time who was keeping the President advised as
17 to what was happening; Mr Norman or the War Council?
18 A. The War Council did not have any direct link to the
19 President. So if there was anything to tell the
10:09:35 20 President, Hinga Norman did.
21 Q. Did Mr Norman have a satellite phone?
22 A. Yes, there was one at Base Zero.
23 Q. And you know he talked to the President on that phone?
24 A. Yes, he sometimes did. But when calls came from the
10:10:47 25 President nobody else had to be there, so we did not
26 know -- I did not know what he spoke to the President
27 about.
28 Q. Mr Norman told you about needing to take calls from the
29 President?

1 A. Sometimes we used to sit near the satellite phone and
2 when the call came that the President wanted to talk to
3 Hinga Norman we handed him the phone and left the place
4 for him to talk to the President in private.

10:12:06 5 Q. If you recall, how regular were these phone calls;
6 everyday, twice a day, every other day?

7 A. Not every day and sometimes I was not by the phone all
8 the time. So I couldn't know if calls came in my absence
9 or not.

10:13:02 10 Q. Is it fair to say that the War Council on its own came up
11 with the Black December operation?

12 A. Pardon.

13 Q. The War Council on its own somehow got the idea to do the
14 Black December operation?

10:13:18 15 A. Yes, but put it to Mr Sam Hinga Norman for his approval.

16 PRESIDING JUDGE: So the idea, Mr witness, the idea came from
17 the War Council?

18 A. Yes.

19 Q. Not from Mr Norman?

10:13:35 20 A. Yes, not from Mr Norman.

21 Q. It was only put to him for approval?

22 A. Yes, sir.

23 MR HALL:

24 Q. The War Council --

10:14:08 25 PRESIDING JUDGE: Mr Hall, can you wait for me, please.

26 MR HALL: Yes, sir.

27 Q. The War Council came up with the idea of
28 closing the roads to keep the rebels from
29 moving around?

1 A. Yes, that was because front line commanders were
2 reporting that whenever they attack one area
3 reinforcement came from the other area to flush them out.
4 So that was why we sat down to find a strategy how we
10:15:02 5 could stop them from providing reinforcements when one
6 area is attacked, and that was the idea we brought of
7 that. They should cut off all roads between AFRC
8 reinforcements so that when you attack one area the other
9 would not be able to supply reinforcements.

10:15:39 10 PRESIDING JUDGE: Was this, Mr Witness, was this an idea put
11 in place by the War Council?

12 A. Yes, My Lord.

13 Q. The War Council?

14 A. Yes, My Lord.

10:16:46 15 MR HALL:

16 Q. Did the war Council also have the idea to publicise that
17 Black December was going to occur?

18 A. No, that was the idea of Mr Norman.

19 PRESIDING JUDGE: Mr Hall, what was your question, please?

10:17:07 20 MR HALL: Was it the War Council's part of the plan for Black
21 December to publicise that they were going to do it.

22 PRESIDING JUDGE: Okay.

23 MR HALL: He said it was Mr Norman's idea.

24 Q. Did Mr Norman clear it with the war Council
10:17:55 25 that he was going to do that, or he just did
26 it?

27 A. well, he told us he was going to tell them first to lay
28 down their arms and if they don't we will attack them all
29 over the country at one time. He told us about it.

1 PRESIDING JUDGE:
2 Q. He told you of his plans to publicise?
3 A. Yes, My Lord.
4 Q. Black September [sic] operations?
10:18:25 5 A. Black December.
6 Q. Black December, I'm sorry, operations?
7 A. Yes.
8 MR HALL:
9 Q. And nobody at the war Council said that there was
10:18:56 10 anything wrong with that. All he said he was going to
11 do?
12 A. Pardon.
13 Q. Nobody in the war Council vetoed him and said, "No,
14 that's not a good idea".
10:19:04 15 A. No, nobody vetoed him.
16 Q. Did anybody oppose him?
17 A. No.
18 Q. By this time, how many Kamajors were ready to join in
19 Black December operation?
10:19:40 20 A. I cannot know the number, because commanders were called
21 from many parts of the country and we didn't know how
22 many Kamajors each one had under his command.
23 Q. Do you know, Mr Witness, how many commanders came in?
24 A. No, I do not. I did not count them.
10:20:29 25 Q. Was it more than 100 or less than 100?
26 A. I think there was less than 100, but I did not count
27 them.
28 Q. You said, I believe, that the press release or maybe it
29 was the instructions said that anybody who was working

1 with the rebels would be considered a collaborator?
2 A. Not a collaborator, as an enemy and treated as such.
3 JUDGE BOUTET: Mr Hall, what was the question, anyone
4 supporting? I got the answer that he was not a
10:22:19 5 collaborator, but [microphone not activated]
6 MR HALL: I think it was anybody supporting or acting with the
7 rebels could be considered a collaborator and he said --
8 PRESIDING JUDGE: Mr Witness --
9 A. Yes, sir.
10:22:41 10 Q. I am not doubting what Mr Hall is saying, but can you
11 clarify, is it working or collaborating or what?
12 A. He said anybody found working with them.
13 Q. Anybody found working with them.
14 JUDGE THOMPSON: Yes, that's what I got here, yes, working.
10:23:11 15 PRESIDING JUDGE: would be considered as an enemy and treated
16 as such.
17 THE WITNESS: Yes, sir.
18 JUDGE THOMPSON: And not as a collaborator as and enemy.
19 THE WITNESS: As an enemy, yes.
10:23:21 20 MR HALL
21 Q. And the war Council agreed with that position; is that
22 correct?
23 A. well, we didn't make any -- the war Council didn't make
24 any comment on it.
10:24:07 25 Q. The war Council, also at Base zero, disciplined Kamajors
26 it accused of doing wrong; did it not?
27 A. It did.
28 Q. It would hold hearings on what somebody was act of and
29 make a decision.

1 JUDGE THOMPSON: Counsel, let's get this -- you are treading
2 a fairly structured path. We want to get the evidence
3 in a methodical way. You asked him whether the council
4 at Base Zero disciplined Kamajors --

10:24:38 5 PRESIDING JUDGE: Kamajors.

6 JUDGE THOMPSON: Yes, who were --

7 MR HALL: Accused of wrong-doing.

8 JUDGE THOMPSON: Right, let's have that first. Yes, we want
9 the next part of it.

10:25:04 10 MR HALL: Yes, they did.

11 Q. And, Mr witness, how would reports of misconduct come
12 into the War Council?

13 JUDGE THOMPSON: Yes.

14 MR HALL:

10:25:11 15 Q. And, Mr witness, how would reports of
16 misconduct come in to the War Council?

17 A. Well, some were reported by their commanders and some
18 were reported by people whom their behaviour affected.

19 Q. And the War Council took the complaints very seriously,
10:25:30 20 didn't they?

21 A. Pardon?

22 Q. The War Council took these complaints seriously?

23 A. The ones that went -- that were brought before them, yes.

24 Q. You would investigate?

10:26:24 25 A. Yes.

26 Q. Talk to witnesses?

27 A. Yes, My Lord.

28 Q. And, if wrongdoing was found, hand out punishment?

29 A. Yes, My Lord.

1 Q. How many times was this done?
2 A. I cannot remember how many times because sometimes I was
3 present, sometimes I was not present.
4 Q. More than ten times when you were present or less?
10:27:26 5 A. No, not up to ten times.
6 Q. Do you remember Mr Vanjawai being investigated?
7 A. No, I was not there when this matter was investigated.
8 Q. But you heard about it?
9 A. I can't remember.
10:27:53 10 Q. Bobor Tucker?
11 A. Bobby Tucker, I was not there when this matter was dealt
12 with.
13 Q. Do you know him?
14 A. Yes, I know him. I knew him.
10:28:31 15 Q. Did he follow the Kamajor law?
16 A. I do not know if he did.
17 Q. Was it ever reported to you that he did not?
18 A. Huh?
19 Q. Was it ever reported to you that he did not follow the
10:28:56 20 Kamajor law?
21 A. That report was not made to me.
22 Q. And what group was Mr Tucker in?
23 A. I do not know. I only knew he was one -- he was a
24 commander. But there are so many commanders in the place
10:29:32 25 there, everybody -- many people called themselves CO, CO.
26 That name was all around the place.
27 Q. Did you personally give any directions, or the War
28 Council give any directions to Mr Tucker?
29 PRESIDING JUDGE: Please clarify the question. You said did

1 you personally and then you went to did the war Council.
2 MR HALL: The war Council.
3 PRESIDING JUDGE: Start from one and end up with the other if
4 you wish to pursue the two, please.
10:30:28 5 MR HALL: I will rephrase it.
6 Q. Did the war Council give directions to Mr Tucker's group?
7 A. The war councils -- the war Council did not give personal
8 orders to any commanders. We took decisions, presented
9 it to Mr Norman. If it was fit for the director of war
10:30:54 10 to handle it he had to choose which commanders shall
11 perform the duty and he had to give the orders.
12 Q. Were you on the War Council to the end of the war or did
13 you leave before the end of the war?
14 A. Immediately Kenema and Bo were taken I left the council
10:31:39 15 and took up duty in Kenema as the xxxxxxxxxxxxxxxxxxxxxxx
16 and the war Council was at that time based in Bo. They
17 left Base Zero, they came and based in Bo. I was in
18 Kenema.
19 JUDGE THOMPSON: where did you take up duty as xxxxxxxxxxxxx
10:32:14 20 xxxxxxxxxxxxx?
21 THE WITNESS: xxxxxxxxxxxxxxxxxxxxxxxxx.
22 JUDGE THOMPSON xxxxxxxxxxxxxxxxxxxxxxxxx.
23 THE WITNESS: Kenema.
24 JUDGE THOMPSON: Kenema, yes.
25 THE WITNESS: For the eastern region.
26 JUDGE THOMPSON: Yes, thanks.
27 MR HALL:
28 Q. So you were in charge of the troops on the eastern side
29 and you directed their day-to-day activities. That is

1 for the Kamajors, not the troops?

2 A. The Kamajors, I was in charge of thexxxxxxxxxxxxxx. We
3 had the director of operations who directed their
4 day-to-day operations.

10:33:37 5 Q. And of the two of you which one would receive orders from
6 Mr Norman?

7 A. Myself.

8 Q. Then you would pass it onto for the director of
9 operations?

10:33:57 10 A. Yes. I received orders from Hinga Norman, I received
11 orders from the War Council and passed it on to the
12 director of operations.

13 Q. Did you leave the War Council of your own accord to go
14 join in the fight on the eastern side?

10:34:32 15 A. At the formation of the War Council I was appointed as
16 xxxxxxxxxxxxxxxxxxxxxxxx for the east and, by virtue of my
17 position, I sat on the War Council.

18 Q. So when you were xxxxxxxxxxxxxxxxxxxxxxxx in the east
19 were you still on the War Council, just not present
10:35:26 20 there?

21 A. Well, I only sat on the War Council when they came to
22 Kenema, but I did not attend War Council meetings again
23 when they were in Bo.

24 Q. Did you consider yourself still on the War Council during
10:36:09 25 that time period?

26 A. Well, I think I did because I was not removed. The only
27 thing was I was far away from them now and I was not
28 attending their meetings.

29 Q. And you didn't quit the War Council either.

1 PRESIDING JUDGE: [Microphone not activated] he didn't.
2 THE WITNESS: I didn't quit it.
3 MR HALL: One moment, Your Honour.
4 Q. One last question, Mr witness. When you were
10:37:29 5 on the War Council did anybody try to
6 discipline you?
7 A. Me?
8 Q. Yes?
9 A. Personally?
10:37:33 10 Q. Yes?
11 A. No, that did not happen.
12 Q. As far as you know, everybody had confidence in you?
13 A. Everybody meaning whom? Everybody on the War Council or?
14 Q. The War Council itself?
10:38:09 15 A. Well, I had no problem with the War Council at all.
16 Q. Thank you, Mr witness.
17 JUDGE BOUTET: Thank you.
18 PRESIDING JUDGE: Are you saying that you did not have any
19 problems with members of the War Council? Is that what
10:38:28 20 you're saying?
21 THE WITNESS: That's what I'm saying, sir.
22 JUDGE BOUTET: The second accused, are you ready to proceed
23 with your cross-examination? Please do so.
24 MR KOPPE: Thank you, Your Honour.
10:39:29 25 CROSS-EXAMINED BY MR KOPPE:
26 Q. Good morning, Mr witness.
27 A. Good morning, counsel.
28 Q. Mr witness, you have given testimony about the existence
29 of a director of war?

1 A. Yes.
2 Q. You have also given testimony about the existence of a
3 director of operations?
4 A. Yes.
10:40:09 5 Q. Was there, in the whole structure of CDF, also a director
6 of intelligence?
7 A. I cannot remember one on the War Council but I created it
8 in the east. I created a position in the eastern region.
9 Q. Do you know whether there was also a director of
10:40:48 10 communications?
11 PRESIDING JUDGE: Mr Koppe, please, may we have the reply
12 recorded.
13 MR KOPPE: Sorry, Your Honour.
14 Q. Was there also a director of communication?
10:41:19 15 A. I did not know about such position, but there were people
16 who were doing communications for us.
17 Q. Was there also a director of logistics?
18 A. Yes.
19 Q. Did the director of war have a deputy director? Was he
10:42:01 20 assisted by a deputy director?
21 A. Yes.
22 Q. The director of operations, was he assisted by a deputy
23 director of operations?
24 A. Yes, My Lord.
10:42:34 25 Q. The director of logistics, was he assisted by a deputy
26 director?
27 A. No, he in fact was holding two positions. He was the
28 director of admin and logistics.
29 Q. Mr witness, how would you describe the divisions of

1 responsibilities and tasks between a director and his
2 deputy?
3 A. well, if there was a decision to be made they sat
4 together and made a decision. But if the director was
10:43:28 5 not there his deputy had to take up his duty.
6 Q. But in terms of hierarchy a director is higher than a
7 deputy director?
8 A. Yes.
9 Q. In other words, a director could give instructions to his
10:44:06 10 deputy?
11 A. Yes, My Lord.
12 Q. Could a director also give orders to a deputy?
13 A. Yes.
14 Q. Mr witness, you testified yesterday that Hinga Norman was
10:44:56 15 Deputy Minister of Defence before the Kabbah government
16 was overthrown, is it not?
17 A. Yes.
18 Q. who was Minister of Defence during the Kabbah rule?
19 A. The president himself. That is what Hinga Norman told
10:45:24 20 us.
21 Q. well, I would assume, and correct me if I am wrong, that
22 a Minister of Defence is an official position. The
23 Minister of Defence is an official position within the
24 government?
10:45:41 25 A. I have not understood you.
26 Q. Okay. The position of Minister of Defence, that is an
27 official position within the government?
28 A. Is an official position within the government. Is that
29 what you are asking?

1 Q. Yes, that is what I was asking?
2 A. Oh yes.
3 Q. So before the overthrow of the Kabbah government
4 everybody would know that Mr Kabbah was Minister of
10:46:06 5 Defence?
6 A. That was what Hinga Norman told us. I did not know him
7 by any other means by myself.
8 Q. So before the overthrow of the of the Kabbah government
9 there was only a Deputy Minister of Defence?
10:46:43 10 A. I said he told me the president was his minister and he
11 was the deputy, but I did not know it by other means on
12 my own.
13 JUDGE BOUTET: Mr Witness, are you saying that you did not
14 know either that Mr Norman was the Deputy Minister of
10:47:07 15 Defence?
16 THE WITNESS: I knew he was the Deputy Minister of Defence,
17 but it was he who told me that the president was his
18 minister.
19 JUDGE BOUTET: But you knew before the overthrow of the
10:47:22 20 government that Mr Norman was the Deputy Minister of
21 Defence.
22 THE WITNESS: Yes, My Lord.
23 JUDGE BOUTET: You did not know who was the minister. That is
24 your evidence. Prior to the overthrow you did not know
10:47:34 25 who was the Minister of Defence?
26 THE WITNESS: I knew.
27 JUDGE BOUTET: You knew?
28 THE WITNESS: From Mr Norman.
29 JUDGE BOUTET: But aside from Mr Norman you did not know?

1 THE WITNESS: At all.
2 MR KOPPE:
3 Q. Mr witness, there is something I don't understand. I am
4 not from Sierra Leone but in my country I know who the
10:48:02 5 Minister of Defence is. Nobody told me but I still know
6 who the Minister of Defence is.
7 PRESIDING JUDGE: Mr Koppe, we are in Sierra Leone. We are in
8 Sierra Leone.
9 MR KOPPE: I know we are in Sierra Leone.
10:48:16 10 PRESIDING JUDGE: Can we proceed knowing that we are in Sierra
11 Leone, please.
12 MR KOPPE: Yes.
13 Q. So I am just trying to find out how it is possible that
14 you don't know who the Minister of Defence was?
10:48:26 15 PRESIDING JUDGE: It is possible. It is possible. It isn't
16 everybody who knows our members of cabinet in this
17 country.
18 MR KOPPE: But I did hear the witness saying earlier that
19 President Kabbah was the minister.
10:48:42 20 PRESIDING JUDGE: You can go on, it is your defence. But if
21 he says that he never knew who it was, it was Norman who
22 told him that Kabbah was Minister of Defence and that the
23 position of the Minister of Defence is a position in
24 government but that he did not know of any Minister of
10:49:07 25 Defence and Norman told him it was Kabbah who was
26 Minister of Defence --
27 MR KOPPE: Very well, Your Honour.
28 PRESIDING JUDGE: That is the analysis I'm making but you may
29 proceed with your questions.

1 MR KOPPE:
2 Q. Mr witness, you have testified earlier that the
3 director of war, the director of operations and
4 the director of logistics are higher in
10:49:36 5 hierarchy than their deputies; correct?
6 A. Yes.
7 Q. If President Kabbah is Minister of Defence and Mr Norman
8 is Deputy Minister of Defence that would suggest -- that
9 would imply that Mr Norman was following orders from the
10:49:52 10 President, is it not?
11 A. I wouldn't know. It is in place for the president to
12 give him orders, but I didn't know if he was obeying his
13 orders at the time.
14 Q. That wasn't my question. My question is whether the
10:50:14 15 minister is giving instructions and orders to his deputy.
16 That is the normal course of affairs, isn't it?
17 A. I don't know how ministries are run.
18 PRESIDING JUDGE: Mr Koppe, please, let's get the first reply
19 clear. You suggested to him that he would know from
10:50:44 20 analogy that Mr Norman was receiving instructions from
21 the president. That was the first suggestion.
22 JUDGE THOMPSON: I think the witness had laid a premise by
23 answering that deputy directors would take instructions
24 from directors and I think that is the purport of the
10:51:06 25 question; would it follow by analogy that a deputy
26 minister would take instructions from the minister, the
27 substantive minister. I think that is how I understand
28 the question of counsel. If you have laid that premise
29 in your evidence, that deputy directors would take

1 instructions from their directors, does it follow based
2 on your reason --
3 PRESIDING JUDGE: If I may add that the deputy director can
4 even give orders. That is the evidence; can even give
10:51:38 5 orders to the director.
6 JUDGE BOUTET: Orders to the deputy, not the opposite.
7 JUDGE THOMPSON: No.
8 PRESIDING JUDGE: I mean the director could give the deputy
9 orders.
10:51:50 10 JUDGE THOMPSON: Orders, yes.
11 PRESIDING JUDGE: Instructions and orders.
12 MR BANGURA: I believe the specific answer of the witness to
13 that question is that he did not know.
14 JUDGE THOMPSON: No, no. The point we are making here -- I
10:52:03 15 mean, we don't want to complicate it, Mr Bangura. The
16 point he is making is that there is evidence on record
17 from his own analysis, the witness's analysis, that
18 deputy directors would take instructions and orders
19 ordinarily, that is what we are saying, administratively
10:52:24 20 speaking, from directors. The question, as I understand
21 it, unless you understand it differently, was that:
22 would it also follow on the basis of reasoning by analogy
23 that a deputy minister would take instructions from the
24 substantive Minister of Defence. I mean, is that
10:52:40 25 complicated?
26 MR BANGURA: It is not, Your Honour. What I want to say
27 here --
28 JUDGE THOMPSON: Unless Mr Koppe wants to correct me is that
29 complicated?

1 MR BANGURA: It is not.
2 JUDGE THOMPSON: Is it problematic from the Prosecution's
3 perspective?
4 PROSECUTION: No, Your Honour, but what I understood the
10:52:55 5 witness to be saying was shifting from the logic --
6 JUDGE THOMPSON: No. But the witness is a very, very composed
7 witness. He laid the premise for that. I think it is a
8 perfectly legitimate and valid question. That is my own
9 thinking anyway, random thought.
10:53:13 10 MR BANGURA: I was just pointing out that [overlapping
11 speakers]
12 JUDGE BOUTET: Pardon me. I don't see the nature of your
13 objection. We are quite capable of understanding the
14 evidence and there is no confusion in the evidence of the
10:53:19 15 witness. Absolutely none.
16 MR BANGURA: Your Honours, I am not actually objecting. I am
17 only --
18 JUDGE BOUTET: We are capable of understanding the evidence of
19 the witness as he speaks.
10:53:28 20 MR BANGURA: Flowing from the question which was asked --
21 JUDGE BOUTET: We do. We do.
22 MR BANGURA: -- he had answered, he had given an answer and I
23 --
24 JUDGE BOUTET: Mr Bangura, we do understand his evidence. We
10:53:39 25 don't need your assistance in this respect at the this
26 moment. Thank you very much.
27 JUDGE THOMPSON: Learned counsel, the Prosecution is not
28 prejudiced. Let's get the answer from the witness.
29 PRESIDING JUDGE: I think it is a legitimate question from

1 counsel.
2 [HN160205B 11.00 a.m. - EKD]
3 MR BANGURA: I am not actually objecting.
4 JUDGE BOUTET: We thank you. We say we need not your
10:54:00 5 assistance.
6 JUDGE THOMPSON: For intervening.
7 PRESIDING JUDGE: Mr Koppe, please continue.
8 MR KOPPE:
9 Q. You still recall the question?
10:54:09 10 A. Please ask it once more.
11 Q. I'm not quite sure what the exact phrasing was but the
12 question was: Is it the case that Hinga Norman, being
13 Deputy Minister of Defence, would take orders from the
14 Minister of Defence?
10:54:29 15 A. Yes, I think he's supposed to take orders from his
16 minister.
17 Q. Mr witness, that means that in principle - I say in
18 principle - every decision made by Mr Norman was
19 instructed so or ordered so by the President?
10:55:32 20 A. I cannot say so because none happened in my presence.
21 Q. I understand that, but let me put it differently to you.
22 Have you ever heard that Mr Norman was disobeying an
23 order or instruction from President Kabbah?
24 A. I never heard of that.
10:55:53 25 Q. Mr witness, do you agree with me --
26 PRESIDING JUDGE: Mr Koppe, please, please.
27 MR KOPPE:
28 Q. Mr witness, do you agree with me that during the war --
29 or let's rephrase it. In a period the second half of '97

1 and the beginning of '98 President Kabbah in conducting
2 the war had the greatest authority?
3 A. Pardon?
4 Q. I will put it to you again. would you agree with me that
10:56:54 5 in conducting the war the greatest authority lied with
6 President Kabbah?
7 A. well, the highest authority we knew at that time was
8 Hinga Norman, as far as the conducting of the war was
9 concerned.
10:57:15 10 JUDGE THOMPSON: In other words, you do not agree that the
11 highest authority lay with the President at the time in
12 conducting the war? That is what you are saying, you are
13 not agreeing with him?
14 THE WITNESS: well, that's not exactly what I'm saying, but --
10:57:31 15 JUDGE THOMPSON: No, but if you say the highest authority for
16 the conduct of the war at the time you knew was Norman,
17 what are you saying to his question, because he is saying
18 that at that time it was the President of this country?
19 I need a clarification anyway. I mean, unless you --
10:57:52 20 remember he says "conduct of the war" and I think that is
21 the answer you were giving.
22 THE WITNESS: The conduct of the war.
23 JUDGE THOMPSON: That's what he said. Unless I get him
24 wrongly, that the greatest authority or the highest
10:58:09 25 authority lay with the President of the country for the
26 conduct of the war.
27 THE WITNESS: I may not know that.
28 MR KOPPE:
29 Q. Mr witness, you may not actually have heard --

1 PRESIDING JUDGE: Mr Koppe, just a minute, please.
2 JUDGE THOMPSON: Mr Koppe, did you prefer the word "highest
3 authority" to "greatest"?
4 MR KOPPE: "Greatest". I used the word "greatest authority".
10:58:52 5 JUDGE THOMPSON: You don't have a preference for --
6 MR KOPPE: Greatest and/or highest, both.
7 JUDGE THOMPSON: Right, okay. It's just that sometimes there
8 is --
9 PRESIDING JUDGE: Are you avoiding some words which --
10:59:02 10 [Overlapping speakers]
11 JUDGE THOMPSON: -- a difficulty.
12 MR KOPPE: I was emphasising the word "greatest" because I
13 will come back to that.
14 JUDGE THOMPSON: Greatest, all right, yeah. well, we'll keep
10:59:08 15 it.
16 MR KOPPE: It's a loaded word, "greatest", isn't it?
17 JUDGE THOMPSON: That's okay. I just want to be clear that
18 you're talking about greatest, not highest.
19 MR KOPPE: Maybe for clarity's sake I'm also asking the
10:59:23 20 question whether Mr Kabbah had the highest authority in
21 conducting the war. So I ask two questions.
22 JUDGE THOMPSON: All right, let's have his response.
23 JUDGE BOUTET: well, I didn't get that one. In my notes I had
24 and my recollection was I heard you to use "greatest",
10:59:39 25 but are you using now "highest"?
26 MR KOPPE: That is the second question.
27 JUDGE THOMPSON: The second question.
28 JUDGE BOUTET: You're asking the question now?
29 MR KOPPE: Yes.

1 JUDGE BOUTET: It's a new question?
2 MR KOPPE: It's a new question, yes.
3 Q. Mr witness, do you agree with me that President Kabbah
4 had the highest authority in conducting the war with the
10:59:59 5 soldiers and rebels?
6 A. At what time?
7 Q. At the time after the overthrow of the Kabbah government,
8 that is May '97 until let's say March '98.
9 A. I don't understand that question by the way.
11:00:36 10 Q. Mr witness, there was a war going on, a war against the
11 rebels and the soldiers?
12 A. Mm-hm.
13 Q. And my question is with the conduct of this war, the
14 organising of the war, the planning of the war, who was
11:00:54 15 having the highest authority within the CDF?
16 PRESIDING JUDGE: Mr Koppe, you gave a time frame too. Are
17 you --
18 MR KOPPE: I'm just limiting myself between May '97 and
19 February '98.
11:01:11 20 PRESIDING JUDGE: Yes, May 1997 to March 1998, yes.
21 MR KOPPE: March '98, yes.
22 THE WITNESS: well, at that time the soldiers were not on our
23 side so they were fighting together with the rebels
24 against CDF, and in CDF Norman was the highest authority.
11:01:24 25 MR KOPPE:
26 Q. So you disagree with --
27 JUDGE THOMPSON: So you disagree. In other words, your answer
28 you disagree that President Kabbah had the highest -- was
29 the highest authority in the conduct of the war during

1 that period of time.

2 THE WITNESS: During that period of time, yes.

3 JUDGE THOMPSON: Right, I disagree. Then you say that Norman

4 had the highest authority?

11:01:53 5 THE WITNESS: Yes.

6 JUDGE BOUTET: But I should add that the question was further

7 amplified by saying planning, organising and so on within

8 the CDF, because the last question you qualified by

9 saying planning, organising of CDF.

11:02:07 10 MR KOPPE: That's it.

11 JUDGE BOUTET: And the answer was: In the CDF Hinga Norman

12 was the highest authority. That's what you said?

13 THE WITNESS: Yes, that's what I said.

14 MR KOPPE:

11:02:51 15 Q. Mr witness, have you ever heard of the Truth and

16 Reconciliation Commission?

17 A. Yes, I heard about it.

18 Q. Would you tell this Court what you've heard about Truth

19 and Reconciliation Commission?

11:03:16 20 A. Yes.

21 Q. Please do.

22 A. People were to go before the Commission and tell things

23 that they knew, either what they did that was wrong and

24 ask for forgiveness, or they went there to tell what

11:03:38 25 people did to them that were hurting them.

26 Q. Many people have testified in front of the Truth and

27 Reconciliation Commission; is that true?

28 A. Yes, so I heard.

29 Q. Do you, Mr witness, agree with me that one of the

1 objectives of the Truth and Reconciliation Commission was
2 to gather facts about the war to try to understand what
3 has happened during the war?
4 A. Yes, I agree to that.
11:04:44 5 Q. Mr witness, the Truth and Reconciliation Commission has
6 issued a report about their findings. Are you aware of
7 that?
8 A. I heard about it but I have not seen it.
9 Q. Mr witness, the Truth and Reconciliation Commission
11:05:57 10 has -- let me rephrase. I put it to you that one of the
11 conclusions of the Truth and Reconciliation Commission
12 was that Mr Kabbah was the greatest authority within the
13 CDF and that he was Commander in Chief of the government
14 forces including CDF?
11:06:22 15 MR BANGURA: I object to that question, Your Honour. First of
16 all, counsel has asked the witness whether he has heard
17 about the Truth and Reconciliation report, and he says,
18 yes, he has heard but he's not seen it. Counsel has
19 premised his question on a finding from that report and I
11:06:40 20 don't think it is a fair question to the witness. The
21 witness has said he has not seen it, he has not read it,
22 and counsel is seeking witness's response to a question
23 based on the findings of that report.
24 JUDGE BOUTET: Mr Koppe, what's your response to that?
11:06:57 25 MR KOPPE: That's exactly the reason why I presented the
26 witness "one of the findings of this report" and I don't
27 think it's relevant whether the witness has read it or
28 not. I'm just putting that to him and I think that's --
29 JUDGE BOUTET: What are you intending to do with this, that's

1 what I want to know. Are you intending to produce this
2 report as evidence?

3 MR KOPPE: I might very well, yes.

4 JUDGE BOUTET: The question you pose is, in addition to that,
11:07:31 5 is a fairly -- the conclusion you're alluding to, we
6 don't know the time frame. You have been asking this
7 witness for a very specific time frame as such. I mean,
8 I don't know what is what.

9 MR KOPPE: Well, I am happy to expand on the time frame if
11:07:58 10 that's -- I'm just --

11 [Trial Chamber confers]

12 PRESIDING JUDGE: Learned counsel, the Chamber will rise and
13 will resume when it is ready.

14 [Break taken at 11.13 a.m.]

11:21:53 15 [Upon resuming at 11.34 a.m.]

16 PRESIDING JUDGE: We are resuming the session.

17 JUDGE BOUTET: Mr Koppe, you are at the stage of asking the
18 witness the question about a conclusion in the TRC
19 report. That's where you were and that is where we broke
11:31:10 20 off. We have consulted on this and we are prepared at
21 this stage to allow that question to be asked, provided
22 you're quoting from wherever you're quoting from the
23 so-called conclusion. You can put that question to the
24 witness and we'll see what his answer is or is not. My
11:31:45 25 notes indicate that you were saying that the TRC
26 concluded that President Kabbah was and so on and so on.
27 I don't know if you were paraphrasing or quoting at that
28 time, but whatever you do I suggest that you use whatever
29 wording the TRC may have used at that time to pose the

1 question to the witness with regard to the objective you
2 are pursuing at that moment.

3 MR KOPPE: I understand, Your Honour. I am just having a
4 quick look at this piece of paper. What I would like to
11:32:25 5 do is read out two paragraphs and then ask --

6 JUDGE BOUTET: Ask the question.

7 MR KOPPE: Yes.

8 JUDGE BOUTET: Take your time and Mr witness, listen carefully
9 to counsel who will be reading for you from a report some
11:32:42 10 findings.

11 PRESIDING JUDGE: Mr Koppe, you'll proceed gently for him to
12 follow.

13 JUDGE BOUTET: Slowly.

14 MR KOPPE:

11:32:54 15 Q. Mr witness.

16 A. Yes.

17 Q. I will read to you two paragraphs. The heading on this
18 paragraph is "Names of CDF Leadership". The first
19 paragraph I will read to you has a number 362 and it goes
11:33:22 20 as follows:

21 "In the Civil Defence Forces there was something of
22 a disparate structure of leadership and command. The
23 Commission found that units of militia men were generally
24 commanded in the vicinity of their communities by local
11:33:53 25 strongmen" --

26 JUDGE BOUTET: Is it strong or straw?

27 MR KOPPE: Strong men. There is a difference.
28 "Or warlords who held a high degree of
29 responsibility for the acts of those under them."

1 That was the first paragraph. Second paragraph,
2 363:
3 "The four categories of leadership below therefore
4 represent the positions found by the Commission to
11:34:34 5 possess the greatest authority within the national CDF
6 organisation as a whole. They are all applicable to the
7 period after May 1997 when the SLPP government was
8 overthrown. In response to the seizure of power by the
9 AFRC at that time, the CDF realigned its structures,
11:35:16 10 expanded its membership and significantly enhanced its
11 military operations. The overwhelming majority of the
12 names listed were members of the Kamajor society,
13 although such membership was not a prerequisite to hold a
14 command position within the CDF."
11:35:53 15 Mr witness, now follows a new heading which says,
16 "The CDF High Command".
17 JUDGE BOUTET: This is a different paragraph or the same
18 paragraph?
19 MR KOPPE: It is still under 363. It is sort of a
11:36:13 20 subparagraph. After this heading, "The CDF High Command"
21 comes one sentence, and this reads:
22 "The high command was partly comprised of the CDF
23 national coordinating committee."
24 Then comes a list of names and the first name on
11:36:42 25 that list of names is, and I quote:
26 "Commander in Chief of pro-government forces,
27 including the CDF, Alhaji Dr Ahmed Tejan Kabbah,
28 President and Minister of Defence."
29 PRESIDING JUDGE: Commander of?

1 JUDGE BOUTET: Commander in Chief.
2 MR KOPPE: "Commander in Chief of pro-government forces
3 including the CDF, Alhaji Dr Ahmed Tejan Kabbah,
4 President and Minister of Defence."
11:37:32 5 JUDGE BOUTET: So now what is your question?
6 MR KOPPE:
7 Q. My question is the following, Mr Witness: From these two
8 paragraphs in the TRC Commission report I have deducted
9 that the person with the greatest authority within the
11:37:54 10 CDF was in fact President and Minister of Defence,
11 Mr Kabbah. My question is do you agree with these
12 findings of the Truth and Reconciliation Commission or do
13 you not agree?
14 MR TAVENER: Your Honour, obviously, the Prosecution objects
11:38:15 15 to this question on a number of grounds. One is it is
16 convoluted --
17 PRESIDING JUDGE: Just a minute, please, just a minute. Yes,
18 Mr Tavener?
19 MR TAVENER: Thank you, Your Honour. The Prosecution objects
11:38:53 20 on the basis that one, the question is convoluted in that
21 it quotes a number of paragraphs of the report, so it is
22 difficult to understand what the witness - although the
23 question has now been asked - exactly what he is obliged
24 or what he's agreeing to. In the same way, it is
11:39:09 25 multifaceted. There's many interpretations of what the
26 question will be.
27 When you get to the actual question, does the
28 witness agree to the findings of the report, then that
29 comes into play what value or impact does the TRC report

1 have in this hearing?

2 JUDGE THOMPSON: Counsel, perhaps for the sake of legal
3 tidiness, wouldn't you give us the grounds first and then
4 amplify them. I've got convoluted as your first ground.
11:39:41 5 That you've mentioned, I followed that. What about
6 ground two --

7 MR TAVENER: Ground two is --

8 JUDGE BOUTET: Before you go to ground two, why is it
9 convoluted? I thought it was a very precise question.
11:39:48 10 "Did you agree with that finding, that President Kabbah
11 was... ?" I mean, what is the convolution about that?

12 MR TAVENER: The danger of the ground is in putting all the
13 paragraphs before and then ending with the question. If
14 the witness answers then is he in effect adopting what
11:40:10 15 went before as a question of fact?

16 JUDGE BOUTET: Before we proceed any further I think we will
17 ask the witness to be excused because this is, I think --
18 Mr Walker, could you please help the witness to --
19 Mr witness, we will hear legal arguments about this
11:40:30 20 particular question so we will ask you to be excused and
21 you will be recalled back shortly. Thank you very much.

22 [The witness withdrew]

23 Yes, Mr Prosecutor, I'm sorry to have interrupted
24 you, but I had a feeling it would be better in the
11:41:02 25 absence of the witness.

26 MR TAVENER: Certainly I agree, Your Honour.

27 JUDGE BOUTET: Thank you. I am just reminded that you were
28 asked by my colleague, Justice Thompson, to give us the
29 grounds of your objection first before you expand on

1 that. So please would you do so first.

2 PRESIDING JUDGE: The first was that the question was

3 convoluted.

4 MR TAVENER: It is convoluted. Secondly, the question is

11:41:40 5 framed in such a way that the counsel has expressed his

6 understanding or his interpretation of the finding which

7 has then been put to the witness. He said, I have

8 assumed, I have divined that -- may not have been his

9 word -- in my view, this is what the finding says.

11:42:00 10 JUDGE THOMPSON: In other words, the second you are saying is

11 the question is an interpretation -- based on an

12 interpretation of learned counsel's findings.

13 MR TAVENER: The exact words I can't recall but it is

14 something along the lines of in my view, the greatest

11:42:16 15 responsibility lies with --

16 PRESIDING JUDGE: The second question is based on the opinion

17 of counsel.

18 JUDGE THOMPSON: On the opinion or the interpretation of

19 counsel.

11:42:21 20 MR TAVENER: It has summarised by counsel and put in terms of

21 his opinion.

22 JUDGE THOMPSON: Good, fine, let's get that clearly. Second

23 ground is that the question is based on the opinion or

24 interpretation of counsel.

11:42:38 25 MR TAVENER: And the third ground is the role of the TRC

26 report in these proceedings.

27 JUDGE THOMPSON: Slowly. The rule of the TRC report in these

28 proceedings. Yes?

29 MR TAVENER: It is not in dispute that the Truth and

1 Reconciliation Commission undertook an inquiry as to
2 certain aspects of the war, it has published a report.
3 JUDGE BOUTET: Are you arguing the third argument now or --
4 MR TAVENER: Sorry, I'll go to the first.
11:43:22 5 JUDGE THOMPSON: Four?
6 MR TAVENER: Three will do.
7 JUDGE THOMPSON: Three will do?
8 MR TAVENER: That's probably fine.
9 JUDGE BOUTET: We would like -- whichever order. Presumably,
11:43:27 10 you are going to start with --
11 MR TAVENER: I will start with the first.
12 JUDGE BOUTET: Issue one, yes, please.
13 MR TAVENER: The danger of reading a slab of a report to a
14 witness and then having him comment on that report or
11:43:37 15 whether he agrees to the report is it's then not clear
16 exactly what part of the material he is agreeing to.
17 Your Honours repeatedly use the term round up or rounding
18 up questions or collective questions. There is quite a
19 lot of material in the preceding paragraphs read to the
11:43:58 20 witness and unless it is very clear and the witness is
21 very clear in the way in which he answers, the witness
22 may then be adopting material it is not clear which
23 material in the preceding paragraphs he is adopting.
24 Secondly, that material is the result of the finding
11:44:19 25 of a report which ultimately comes down to the third
26 objection. So the witness is then being called upon to
27 comment on the findings of a report bearing in mind that
28 this witness has already testified as to his knowledge of
29 that particular area. He has been cross-examined about

1 who he understood was in charge, who had authority and so
2 on. And the witness has testified as to his
3 understanding; his understanding was that as far as the
4 CDF was concerned, Mr Norman was the person in charge.
11:44:46 5 Now another tack has been followed, a finding of the TRC
6 has been put to him, what do you say about that?

7 From the Prosecution's point of view, the question
8 is convoluted and inappropriate in that it is not for
9 this witness to comment on the findings of the TRC. It
11:45:06 10 is irrelevant.

11 JUDGE BOUTET: why?

12 MR TAVENER: On what basis can he comment?

13 JUDGE BOUTET: why is it that he cannot?

14 MR TAVENER: Because he has already testified as to the extent
11:45:17 15 of his knowledge on that particular point.

16 JUDGE BOUTET: We are in cross-examination. why is it they're
17 not allowed to ask these type of questions?

18 MR TAVENER: In one way it is repetitive. He has exhausted
19 himself being cross-examined on that particular point.
11:45:26 20 To what end does it serve the Court in coming to a
21 decision to ask this witness what do you think about that
22 finding, bearing in mind we have his evidence on that
23 topic? He has already testified on it. why is it -- why
24 not ask a witness in effect to comment on -- there has
11:45:45 25 been many books written about the conflict in
26 Sierra Leone, why not ask the witness what does he think
27 about those books?

28 JUDGE BOUTET: why not?

29 MR TAVENER: How does it help the Court arrive at the final

1 decision?

2 JUDGE BOUTET: Maybe it would.

3 MR TAVENER: That I can't answer. That's a matter for Your
4 Honours, whether or not you are assisted by random
11:45:59 5 witnesses being asked to comment on publications or
6 inquiries or views expressed outside this Court.

7 JUDGE THOMPSON: But suppose the particular issue which the
8 witness is being asked to comment on is one which, of
9 course, is so germane to the proceedings here and
11:46:19 10 probably from a defence perspective is critical. Isn't
11 the Court assisted in ascertaining the truth by the
12 witness stating his own position on that, considering the
13 importance of the role of this witness in the movement?
14 when you led him in evidence he gave his profile, his
11:46:42 15 biological profile, his occupational profile; he's part
16 and parcel of the entire structure of which formed the
17 basis of the indictment.

18 MR TAVENER: I agree, and perhaps if I can put it in a
19 nutshell. What most raises the objection from the
11:47:01 20 Prosecution point of view is there is no need to
21 introduce the TRC into the questioning. Why not simply,
22 as it is cross-examination, put to the witness President
23 Kabbah was the person who held authority. Why do you
24 need to bring in the TRC as a justification for the
11:47:18 25 question? There is no need to introduce that issue. It
26 is introduced in order to give some sort of credibility
27 to the question. If you want to cross-examine, just
28 cross-examine and cross-examine the witness about his
29 knowledge and his personal experience. But to say,

1 "well, here's a report that says this, what do you
2 think" --
3 JUDGE BOUTET: What is improper in this question? I am trying
4 to follow your reasoning on it.
11:47:41 5 MR TAVENER: It serves no purpose to introduce the report into
6 the questioning. If, as His Honour Judge Thompson says
7 and I agree, that you want to cover that point - and
8 clearly it is an important point from the perspective of
9 the Defence - then put to the witness Kabbah was the
11:47:57 10 person in charge, President Kabbah was the one who had
11 the greatest responsibility and so on. I object to the
12 use of the need to introduce the TRC report.
13 JUDGE THOMPSON: Well, let's put it the other way. Suppose he
14 is seeking some kind of confirmatory or corroborative
11:48:14 15 evidence to the position that he has taken and he says
16 well, all right, in some report into these very
17 hostilities some organ concluded that so and so and so.
18 How do you respond to that? Why is it impermissible in
19 the context of the adversarial process which we are
11:48:37 20 engaged in, that the other side, if this particular
21 question is so important to their defence, why should the
22 Court -- unless there are some compelling policies, and
23 here of course we are not guided by policy, we are guided
24 by the principles of legality, and, of course, remember
11:49:00 25 too that we are asked to adjudicate upon these matters
26 with minimum freedom from technicalities. Why should the
27 other side not be able to put it to the witness?
28 MR TAVENER: I am not trying to confine their question. What
29 I'm trying to do is take away from their question the

1 need to introduce an extraneous matter: The report. You
2 can't simply take out one section of one conclusion, then
3 as my friend said, put his interpretation on to that
4 conclusion and then ask the witness. If he wants to
11:49:28 5 introduce the TRC report so we know the context in which
6 the finding was made, the way in investigation was
7 conducted and so on, in order for this to be of any use
8 to the Trial Chamber the entire TRC report must go into
9 evidence so you understand the basis on which the
11:49:46 10 conclusion was drawn. It is slightly artificial to just
11 read the last paragraph of a novel, the last paragraph of
12 a report and say, "what do you say about that?" You must
13 know the full context in which that conclusion was drawn.
14 So if that --

11:50:01 15 JUDGE THOMPSON: I'm a little troubled because I was thinking
16 that is what counsel was doing, and I may be -- you may
17 correct me here if I am wrong. Virtually, the question
18 is directed to a limited purpose, whether President
19 Kabbah was the highest authority. And I don't know
11:50:20 20 why -- if that is the purpose of the question, why should
21 it be necessary for us, from your perspective, to have to
22 read the entire report to have a global profile when this
23 is the neat issue, the specific issue. If one accedes to
24 your suggestion then one in fact would be multiplying the
11:50:43 25 issues. He's singled out one particular aspect and you
26 say we will need read the whole thing in context to
27 understand that aspect?

28 MR TAVENER: We almost agree, Your Honour.

29 JUDGE BOUTET: Yeah, but are you disputing that this is a

1 finding of the TRC?

2 MR TAVENER: No.

3 JUDGE BOUTET: We are not here to make any assessment on the

4 findings, whether they were justified or not. I mean,

11:51:06 5 all we're given at this stage is the quote that has been

6 given and the witness is asked a question, "Do you agree

7 with this." He may agree, he may disagree, he may not

8 know anything.

9 MR TAVENER: Exactly.

11:51:19 10 JUDGE BOUTET: So?

11 MR TAVENER: The Prosecution and His Honour Judge Thompson

12 almost agree, that is exactly the question that can be

13 asked in cross-examination. Was it the case that

14 President Kabbah was the person with the greatest

11:51:32 15 responsibility or whatever term my friend likes to use?

16 PRESIDING JUDGE: Without referring to the report of the TRC.

17 MR TAVENER: Exactly. There is no reason to bring in some

18 sort of -- to try to gain some credibility or weight or

19 just grab this part of the report, use that and tack it

11:51:47 20 on to the question. It serves no purpose, it introduces

21 the whole question of the TRC and the TRC report --

22 JUDGE THOMPSON: No, but with the greatest respect to you,

23 too, you are suggesting that the kind of reasoning would

24 be in fact reasoning appropriate in the context of a jury

11:52:03 25 trial. We as judges are trained to be very cautious and

26 vigilant. We're not going to agree with you that to be

27 able to resolve that particular specific question - a

28 neat, tidy specific question - we need to have a global

29 picture as evidenced by the report. We certainly would

1 not agree with you. Because the question that's asked is
2 so specific and it is coming out and I think all he is
3 trying to do is: "Do you agree, can you see I have found
4 some corroborative statement from some report in respect
11:52:43 5 of this particular issue?" That is all I think he is
6 saying.

7 MR TAVENER: But Your Honour --

8 JUDGE BOUTET: And I would add to that that this is for this
9 Court, with professional judges, to make the proper
11:52:54 10 assessment. What weight it will have, it is for us to
11 make that determination. If it is that way, we will give
12 it the weight it deserves. That does not mean that that
13 question may not be asked. The difference -- you are
14 concerned that we may be attaching too much weight to
11:53:10 15 this when we don't know the background. Well, I can only
16 say to you trust that this Court will make the proper
17 judgment. You have not convinced me with your argument
18 at this moment that this is not a proper permissible
19 question as framed. You're concerned about what this
11:53:28 20 Court will do with the answer -- and the answer or the
21 question and the answer.

22 MR TAVENER: That's correct, Your Honour, and I understand.

23 PRESIDING JUDGE: Mr Tavener, I think the Tribunal has
24 listened to you very patiently.

11:53:44 25 MR TAVENER: Yes, I understand.

26 PRESIDING JUDGE: We appreciate the arguments you make.
27 You're skeptical about bringing in the findings of the
28 TRC because you're questioning the status of the TRC
29 report in this tribunal.

1 MR TAVENER: In that limited fashion, that's correct.
2 PRESIDING JUDGE: But you are not denying the propriety of
3 that question and it's relevance to these proceedings
4 MR TAVENER: No, I'm not. I just want to put straight --
11:54:11 5 PRESIDING JUDGE: In this regard, we understand you very well.
6 In this regard, we have taken note. We ourselves know
7 where you are coming from and because of the relevance of
8 this question in these proceedings wherever it comes
9 from, the Tribunal will allow the question to be put to
11:54:29 10 the witness and we'll move from there, please.
11 MR TAVENER: I'll say no more, Your Honour, thank you.
12 PRESIDING JUDGE: Right. Can the witness be brought in
13 please?
14 JUDGE BOUTET: Now, I don't know, Mr Koppe, if because of
11:54:50 15 these discussions the witness will remember. He may
16 remember the question but he may not be remembering --
17 PRESIDING JUDGE: You will ask the question to him again,
18 please.
19 JUDGE BOUTET: -- what led you to that conclusion, so we'll
11:55:02 20 see.
21 PRESIDING JUDGE: The relevance of the question is the status
22 of Kabbah as the Commander in Chief.
23 JUDGE BOUTET: [Overlapping speakers] with the greatest
24 responsibility.
11:55:24 25 PRESIDING JUDGE: Of pro-government forces including the CDF.
26 [The witness entered court]
27 JUDGE BOUTET: Yes, Mr Koppe.
28 MR KOPPE:
29 Q. Mr witness, I will repeat the question which I put to

1 you.

2 A. Yes.

3 Q. Do you agree or do you not agree with the findings of the

4 TRC that the greatest authority within the CDF lies with

11:55:58 5 President Kabbah?

6 A. I do not agree.

7 Q. Mr witness, would you explain to this Court why you don't

8 agree?

9 A. Because to be an authority in the CDF you had to be

11:56:37 10 initiated into the Kamajor society and I never heard of

11 President Kabbah being initiated into the society.

12 Q. So specifically --

13 JUDGE THOMPSON: Just a minute, we need to be very careful.

14 Did I get your question correctly? Because I got his

11:57:27 15 answer that whether he agrees that President Kabbah was

16 the greatest authority within the CDF? That was your

17 question and he said he does not agree with that because

18 to be an authority within the CDF one had to be initiated

19 into the Kamajor society and he never heard that

11:57:51 20 President Kabbah was initiated. Is that your answer?

21 THE WITNESS: Yes.

22 MR KOPPE:

23 Q. So Mr Witness, do you then disagree with the particular

24 finding of the TRC that membership of the Kamajor society

11:58:35 25 was not a prerequisite to hold a command position within

26 the CDF?

27 A. I don't get that clear.

28 PRESIDING JUDGE: Mr Koppe --

29 MR KOPPE: That's a double negative, yes, I understand. I

1 will rephrase.
2 PRESIDING JUDGE: Please.
3 MR KOPPE:
4 Q. Mr witness, I will read again one sentence from the
11:58:58 5 sentences or the paragraphs that I read to you earlier.
6 I will read the following: "The overwhelming majority of
7 the names listed were members of the Kamajor society,
8 although such membership was not a prerequisite to hold a
9 command position within the CDF." So in other words, it
11:59:27 10 was not necessary to be a Kamajor to hold a high-ranking
11 position within the CDF. Do you agree with that or not?
12 A. I do not agree that.
13 Q. Mr witness, do you know a man called Charles Moiwo?
14 A. Yes.
12:00:31 15 Q. Was he --
16 JUDGE BOUTET: What's the spelling of that name, please?
17 MR KOPPE: M-O-I-W-O.
18 JUDGE BOUTET: What was the answer?
19 MR KOPPE: Yes.
12:00:59 20 Q. Mr witness, would you agree me that Mr Moiwo was an
21 authority within the CDF?
22 A. No.
23 Q. No?
24 A. No, to the best of my knowledge he was not an authority
12:01:15 25 within the CDF. He was a personal friend of
26 Hinga Norman.
27 Q. Was he the national public relations officer?
28 A. I do not know about that.
29 MR KOPPE: I will move on, Your Honour.

1 PRESIDING JUDGE: What status do you give to Mr Charles Moiwo?
2 You say he was the public relations officer?
3 MR KOPPE: National public relations officer.
4 PRESIDING JUDGE: And he says he does not know whether he was
5 a national --
6 MR KOPPE: That's it.
7 JUDGE BOUTET: Yes, please proceed.
8 MR KOPPE:
9 Q. Mr witness, I would like to move on to the War Council.
10 You have given testimony to this Court that
11 Moinina Fofana was a member of the War Council?
12 A. Yes.
13 Q. Mr witness, I recall that yesterday you gave testimony to
14 this Court and at one particular instance you referred --
15 you used the sentence "the War Council and Moinina Fofana
16 and Allieu Kondewa." That seemed to suggest to me that
17 Moinina Fofana was not a member of the War Council, but
18 was additional to the War Council. Am I wrong?
19 A. well, whether original member or additional, to me he was
12:03:10 20 a member.
21 [HN160205C - 12.03 p.m. - JM]
22 Q. To you he was a member?
23 A. Yes.
24 Q. But that could still mean that he was not a member.
12:03:52 25 A. I don't understand that question.
26 Q. You are saying that Moinina Fofana to you was a member of
27 the War Council. But --
28 JUDGE BOUTET: His answer was he may not have been an original
29 member of the War Council, but to me, he was a member.

1 MR KOPPE:
2 Q. You considered him to be a member?
3 A. Yes.
4 Q. But could this mean that he was not a member? I mean,
12:04:16 5 you could consider him to be a member, but that could
6 still mean that he wasn't officially a member.
7 A. I don't understand that question.
8 JUDGE BOUTET: I mean, he has told you that as far as he's
9 concerned he was a member. Now you're asking him to
12:04:31 10 confirm that indeed he thought he was a member.
11 MR KOPPE:
12 Q. Let me give an example, Mr Witness. Maybe I could think
13 that my gown was red, but I would be wrong because it
14 would be black. You could think that Moinina Fofana was
12:04:51 15 a member of the War Council, but you could still be
16 wrong.
17 A. I could not be wrong because he sat in war Council
18 meetings with us, and he took decisions together with the
19 war Council. It's only when it came to certain duties
12:05:09 20 that those duties were delegated to him as director of
21 war.
22 Q. Mr witness, for the second time I would like you
23 to -- ask your attention to findings of the report of the
24 Truth and Reconciliation Commission.
12:05:43 25 MR KOPPE: And I would phrase the same question as I have done
26 at your suggestion, Your Honour.
27 Q. I see in front of me a heading to a paragraph, and the
28 heading to this paragraph reads: "The CDF War Council at
29 Base Zero." And then following sentence comes: "This

1 council was created at the behest of certain members of
2 the CDF High Command, but not directly aligned to all of
3 its members. The designation given above each name is
4 the officeholder's position within the CDF War Council
12:06:24 5 itself."
6 Then comes a list of names, of 16 names, the report
7 is listing 16 names.
8 A. 60?
9 Q. 16, 1-6.
12:06:48 10 A. Oh, 16.
11 Q. Supposedly, if I understand correctly, these were the
12 members of the CDF War Council at Base Zero. Chairman of
13 the War Council was Paramount Chief J. W. Quee;
14 vice-chairman/representative for Bonthe district was
12:07:14 15 Paramount Chief C. W. Tucker; there are 14 other names,
16 but I will not mention them all. But I see also your
17 name, Mr Witness. You are referred to as xxxxxxxxxxxx
18 xxxxxxxxxxxxmember. But within these 16 names, I do not see
19 the name of Moinina Fofana. So my question I put to you
12:07:50 20 is are these findings of the Truth/Reconciliation as to
21 the membership of the CDF War Council at Base Zero true
22 or false?
23 A. well, I don't know where they got --
24 MR TAVENER: Sorry, excuse me. At what time? I'm not clear
12:08:07 25 about the time my friend's talking about.
26 MR KOPPE: It's -- well, it's all in the same paragraph, so it
27 is still referring to the period after May -- to the
28 period after May when the SLPP government was overthrown.
29 JUDGE THOMPSON: I want to ask you a question: Is it fair to

1 put the entire thing to him and say the findings are
2 false? why not go back to your specific issue? Because
3 it really doesn't help the tribunal in terms of answer, I
4 mean, what you're putting to him, are these findings
12:08:44 5 false?

6 MR KOPPE: I was just -- I will mention all the 16 names.

7 JUDGE THOMPSON: Your contention, as far as I understand it,
8 is that the name of Moinina Fofana is not there. Is that
9 what you're contending?

12:09:00 10 MR KOPPE: That's it.

11 JUDGE THOMPSON: why not structure your question around that
12 so that we don't get into the difficulty of determining
13 whether this witness agrees or disagrees with the entire
14 findings? we don't know, and we don't want to get
12:09:14 15 entangled in that, do we?

16 JUDGE BOUTET: You see, the witness may agree in part with it.

17 JUDGE THOMPSON: Yes.

18 JUDGE BOUTET: He may disagree about the title, but he may
19 agree with some other parts.

12:09:27 20 JUDGE THOMPSON: I mean, really, I don't think the exercise of
21 whether the findings of the TRC are false or true are
22 germane to our proceedings here. All you're doing now,
23 and you're perfectly entitled to do that, is to say that
24 somewhere your client's name is not reported, and you
12:09:45 25 want to test his veracity on this, whether he agrees with
26 that record, but not the entire thing, and that's my
27 worry. why not just limited it to Moinina Fofana's -- in
28 other words, you're saying that his name is omitted from
29 that list, and you're building a theory on that.

1 PRESIDING JUDGE: He's saying that his name was not there
2 because Moinina Fofana was --
3 JUDGE THOMPSON: Your theory is his name is not there because
4 he was not. Why not put that specifically to him?
12:10:14 5 MR KOPPE:
6 Q. Mr Witness, I put it to you that the name of
7 Moinina Fofana is not on the member list of the War
8 Council at Base Zero.
9 JUDGE THOMPSON: Because he was not a member.
12:10:24 10 JUDGE BOUTET: Because he was not a member.
11 PRESIDING JUDGE: Because he was not a member.
12 JUDGE THOMPSON: Because he was not a member, that's what you
13 want to say.
14 MR KOPPE:
12:10:31 15 Q. Because he was not a member. Do you agree with me?
16 A. What I know is that he was a member.
17 JUDGE THOMPSON: Just for my own understanding of the
18 evidence, you're saying despite the omission of names of
19 members of the War Council in the TRC list, you
12:11:20 20 personally know he was a member. Is that what your
21 evidence is?
22 THE WITNESS: Yes, sir.
23 JUDGE THOMPSON: Notwithstanding that list of the TRC?
24 THE WITNESS: Yes, My Lord.
12:11:28 25 PRESIDING JUDGE: I would prefer "non mention" rather than
26 "omission".
27 JUDGE THOMPSON: That's fine, all right. As long as the
28 comparison is made, because that's the context in which
29 we're trying to understand the evidence. Despite the non

1 mention.
2 MR KOPPE:
3 Q. Mr Witness --
4 MR KOPPE: Can I move on, Your Honour?
12:12:15 5 JUDGE BOUTET: Yes.
6 MR KOPPE:
7 Q. Mr witness, do you recall giving testimony that Moinina
8 Fofana was director of war?
9 A. Yes.
12:12:24 10 Q. Do you recall what point of time he was appointed?
11 A. At the formation of the war Council.
12 Q. At the recommendation of --
13 A. At the formation, when the War Council was formed.
14 Q. When exactly was the War Council formed? Can you give us
12:12:51 15 a date?
16 A. I don't remember the date, but it was during my first
17 visit to Base Zero.
18 Q. Would that be October 1997, November 1997?
19 A. I think November 1997.
12:13:07 20 Q. November 1997.
21 A. Yeah.
22 Q. To get it clear, the moment the War Council was formed,
23 Moinina Fofana was appointed director of war?
24 A. Yes.
12:13:24 25 Q. Could you tell this Court how the appointment of Moinina
26 Fofana as director of war went into -- how did that go?
27 A. He was appointed by Mr Norman.
28 Q. But was there a recommendation of the War Council to do
29 so?

1 A. No. There were two positions that were -- two
2 appointments that were made directly by Hinga Norman.
3 That was the high priest and the director of war.
4 Q. So what you're saying is, if I understand you correctly,
12:14:15 5 is that the war Council had nothing to do with
6 recommending Moinina Fofana as director of war?
7 A. At all.
8 Q. why -- I don't understand. why doesn't the war Council
9 have anything to do with the appointment or recommending
12:14:41 10 the appointment of Mr Fofana as director of war?
11 A. There were certain decisions that were taken exclusively
12 by Mr Norman.
13 MR KOPPE: Your Honour, I would like to bring a document into
14 evidence.
12:15:29 15 JUDGE BOUTET: which document? And I would suggest you show
16 it as well to your colleagues from the Prosecution.
17 Mr walker.
18 I would like to hear from you and from the Prosecution
19 first. what's this document and why you want to tender
12:17:18 20 this document -- you want to tender that as an exhibit or
21 you want to show it to the witness? what's the intent of
22 your application.
23 MR KOPPE: It's an original document, and the content of that
24 document seems to be --
12:17:32 25 JUDGE BOUTET: Do you want to tender that as an exhibit or you
26 just want to show it to the witness? what is it that you
27 want to do with this piece of paper?
28 MR KOPPE: I want to introduce it as an exhibit.
29 JUDGE BOUTET: As an exhibit. Mr Prosecutor.

1 MR TAVENER: Could we know more? Is it possible -- who did
2 it? Is he going to show the witness?
3 MR KOPPE: I will. Of course.
4 MR TAVENER: I understand --
12:17:57 5 MR KOPPE: This is the original document. So, I would like to
6 have copies, yes. But I will show the original document.
7 JUDGE BOUTET: I will just remind you that we have issued
8 instructions when you are tendering exhibits that you
9 should have copies made for all the Judges, for the other
12:18:12 10 side, for the Court. If it's an original document, I
11 don't want to take it away from you, but there's a
12 procedure to be followed in this respect.
13 Mr walker, would you give the document back to the
14 Defence.
12:18:24 15 MR TAVENER: The Prosecution has seen the document. As to
16 what happens now --
17 JUDGE BOUTET: At least we need to know if there is any
18 relevance whatsoever to the case before us before. I
19 haven't looked at the document. I just gave it back to
12:18:44 20 you because presumably --
21 PRESIDING JUDGE: It's for you, Mr Koppe. It's not
22 just -- it's for you to inform us on what the relevance
23 of the document is to the proceedings. You've shown it
24 to the Defence. I don't think the witness -- I don't
12:18:59 25 know if it concerns the -- you can just tell us why you
26 want that document in.
27 MR KOPPE: I will, I will.
28 Q. Mr witness, I'm holding in my hand a piece of paper what
29 seems to be an original document. And in the heading I

1 see the words "Civil Defence Forces of Sierra Leone,
2 headquarters, Base Zero." Then I see a date, 18th of
3 January 1998. Then I see the words "from: The national
4 coordinator, CDF S/L; to: Mr Moinina Fofana. Dear
12:19:49 5 Mr Fofana."
6 Then it says: "Letter of appointment, Director of War
7 and Operations. It is my pleasure to inform you that
8 upon the recommendation of the War Council, I have
9 accepted and approved your appointment as director of war
12:20:04 10 and operation for CDF S/L with effect from 15th of
11 January 1998. You have earned this as a result of your
12 hard work and dedication to the course of our people in
13 the restoration of democracy in Sierra Leone. I wish to
14 urge you to take this appointment as a challenge for you
12:20:23 15 to strive further and redouble your efforts for the
16 restoration of constitutional order and the reinstatement
17 of Alhaji Dr Ahmed Tejan Kabbah as President of Sierra
18 Leone. I wish you good luck and more successes in your
19 services. Yours." Then I see a stamp, within it
12:20:48 20 "coordinator, CDF S/L" with a green signature which seems
21 to be the signature of Honourable Sam Hinga Norman,
22 national coordinator. And on the left side of the page,
23 I see: "cc, chairman of the War Council."
24 I would like to show this document to you,
12:21:09 25 Mr Witness.
26 A. I've seen it.
27 Q. Now, Mr Witness, you have given testimony to this Court
28 today that the appointment of Mr Fofana as director of
29 war and operations was not upon the recommendation of the

1 war Council. However, this letter shows or could show
2 that the appointment of Mr Fofana was indeed upon
3 recommendation of the war Council. Do you keep with your
4 earlier testimony?

12:22:37 5 A. Yes, I keep with it, because by the time we formed the
6 war Council, there were no typewriters at the base. So
7 these documents were made later. In fact, the War
8 Council was not formed in January. It was formed in
9 November. There were no typewriters with us in the base.

12:22:54 10 It was later on that typewriters came. So I think that
11 was the time that these documents were now made.

12 Q. You just stated earlier, Mr Witness, that it was the
13 exclusive authority of Mr Norman to appoint Fofana as
14 director of war. And why would this be a false document?

12:23:14 15 I don't understand.

16 A. Well, I don't know why he phrased his letter like that.
17 But what I know happened is what I've explained.

18 Q. So what you're saying is that the document that has been
19 presented to you is inaccurate and indeed, false?

12:23:33 20 MR TAVENER: Objection. Objection, that's not what the
21 witness has said.

22 JUDGE BOUTET: Objection sustained. Witness has not testified
23 that this is a false document. He says he disagrees with
24 the document.

12:23:51 25 MR KOPPE:

26 Q. Well, I will rephrase it. Does this mean, Mr Witness,
27 that you think that this document is false?

28 A. I don't understand what you mean.

29 Q. You don't agree with the content of the letter. So

1 therefore, my question is do you -- are you of the
2 opinion that this document is false?
3 MR BANGURA: May it please, Your Honours, I think counsel is
4 misstating what the witness had said.
12:24:25 5 MR KOPPE: No.
6 MR BANGURA: The witness did not say he did not agree with the
7 content of the letter. The witness merely explained that
8 there had not been typewriter in Base Zero when the
9 appointment was made in November 1997. I think that's as
12:24:38 10 far as he has gone in his answers.
11 JUDGE THOMPSON: But my own understanding of the line of
12 cross-inquiry is that here is a document which says that
13 his client was appointed on the recommendation of the war
14 Council, and we have the witness's testimony that the war
12:25:01 15 Council did not recommend or had no part to recommend
16 that his appointment was directly by the first accused.
17 And so I think that's what the whole purpose of this
18 cross-inquiry is about; in other words, the explanation
19 about typewriters may well be useful. But the question
12:25:25 20 is, is that document, so to speak, telling a lie about
21 itself when it uses the word "recommendation" or is the
22 witness's testimony the one which is acceptable or
23 represents the correct portrayal of the facts? That's
24 what I understand the cross-inquiry to be.
12:25:48 25 MR BANGURA: Your Honour, I'm not saying he cannot ask the
26 question he's asking. But he's premised the question on
27 the witness's denial that --
28 JUDGE THOMPSON: I put it the way I understand it -- I see
29 clearly a discrepancy here which is the basis of the

1 cross-inquiry, that you have said, "my client was
2 appointed directly by Norman, and there was nothing, no
3 intervention or recommendation emanating from the war
4 Council." I have a document here which says that it was
12:26:25 5 the war Council that recommended. I think that is the
6 point of the cross -- and I think we need to, if counsel
7 feels this is very important for him, he ought to put it.

8 PRESIDING JUDGE: The witness has said, we have it on record
9 here, that he did not know why he phrased the document
12:26:42 10 that way.

11 JUDGE THOMPSON: But that's the point. That's why the -- I
12 mean, what I seem to see that we -- if that document is
13 forming the basis of cross-examination now, we need to
14 explain why document says "recommendation," and that's
12:27:01 15 what the witness is trying to do.

16 MR BANGURA: Very well, Your Honour. I only note that he was
17 asking the witness the question, this document which you
18 have denied, something like you have denied this document
19 is not true --

12:27:12 20 JUDGE THOMPSON: No, no, I don't go that far. I don't go that
21 far. But I think it's a perfectly legitimate line of
22 cross-inquiry. We need to ascertain the truth. Was this
23 man appointed on recommendation of war Council or was he
24 not?

12:27:27 25 MR KOPPE: In addition, Your Honour, I would also like to
26 point out again that this letter was dated the 18th of
27 January and refers to an appointment of Fofana as
28 director of war with effect from 15th of January 1998.
29 And the witness has stated, has given testimony that --

1 JUDGE BOUTET: But we don't want argumentation here.
2 MR KOPPE: I just want to --
3 JUDGE BOUTET: Ask the question of the witness. You ask the
4 question. You think the document is false. So I don't
12:28:02 5 know what you meant by that. A certain portion of the
6 document? The signature? I mean, what is it? The thing
7 is your question is so wide. Presumably, you're aiming
8 at a specific issue.
9 JUDGE THOMPSON: Yes, that's my point. In other words, the
12:28:18 10 recommendation aspect, not the entire document.
11 MR KOPPE: The recommendation aspect plus the date.
12 JUDGE BOUTET: Well, put it to the witness.
13 MR KOPPE:
14 Q. My question, Mr Witness, is this document false?
12:28:32 15 JUDGE BOUTET: I don't think the witness is disputing, if you
16 say it's false means maybe that Mr Norman's signature was
17 falsified and so on. I don't know what -- it's a very
18 -- I'm not sure -- I thought --
19 MR KOPPE: Let me -- is the document inaccurate?
12:28:50 20 JUDGE THOMPSON: In respect of the recommendation issue?
21 MR KOPPE: In respect of the recommendation issue --
22 JUDGE BOUTET: And the date of appointment --
23 JUDGE THOMPSON: Precisely, so isolate them, and that helps
24 the Court. Because clearly, unless we have evidence to
12:29:03 25 the contrary, you produced the document, and I'm sure
26 you're not producing a false document.
27 JUDGE BOUTET: And again, I have no problem you asking the
28 question false about, because your question was wide "is
29 the document false?" It's --

1 MR KOPPE: It's a technical term from my jurisdiction.
2 JUDGE BOUTET: I don't have any problem with the word false,
3 but you have to be precise with what you say is false.
4 There's only a few issues in that document that you're
12:29:34 5 leading --
6 MR KOPPE: My point is if there are two elements in the letter
7 that are not correct, the whole letter is false.
8 JUDGE BOUTET: Rather get into these kind of arguments, if you
9 can be more precise, it would assist.
12:29:46 10 PRESIDING JUDGE: You said the appointment was in effect from?
11 JUDGE BOUTET: 15 January.
12 PRESIDING JUDGE: Of January. The letter is dated the 18th.
13 MR KOPPE: Of 18th.
14 PRESIDING JUDGE: The appointment was from 15th of January
12:30:03 15 1998.
16 JUDGE BOUTET: The letter is 18 of January.
17 PRESIDING JUDGE: Yes.
18 JUDGE BOUTET: And the appointment effective 15 January 1998.
19 That's what I heard you say, Mr Koppe.
12:30:13 20 MR KOPPE:
21 Q. Mr witness, this letter, in respect of these two issues,
22 the recommendation of the War Council -- Mr Norman to
23 appoint Fofana as director plus date of appointment, is
24 that document on these two aspects an inaccurate
12:30:32 25 document?
26 A. It is an inaccurate one because --
27 PRESIDING JUDGE: wait, wait, wait, please.
28 JUDGE BOUTET: Yes, Mr witness. You were giving an answer.
29 THE WITNESS: It is inaccurate because Moinina Fofana was

1 acting as director of war during Black December.
2 MR KOPPE: Your Honour, I would like to tender that as an
3 exhibit. I apologise for not having copies, but we don't
4 have a working photocopier.
12:32:07 5 MR TAVENER: We oppose the production of that document as an
6 exhibit only on the basis that it hasn't been established
7 when that document was made, who made it, on what basis
8 it was made, the circumstances on which it was made.
9 There is no evidence at all in relation to the province
12:32:22 10 of that letter.
11 PRESIDING JUDGE: No, there is evidence, Mr Tavener.
12 MR TAVENER: Only the facts of the letter.
13 PRESIDING JUDGE: Mr Tavener, there was an appointment, and it
14 was said -- the Defence is saying that the War Council
12:32:33 15 recommended Mr Fofana's appointment as director of war to
16 Mr Norman, or rather, to -- yes, to Mr Norman. The
17 witness is saying that Mr Norman made the appointments
18 directly. He made two appointments directly. If the
19 Defence is seeking to put in a document which during the
12:32:57 20 reading, you know, they said was signed by Mr Norman
21 relating to this appointment, would you insist that no
22 foundation has been laid, Mr Tavener?
23 MR TAVENER: Unfortunately, I must, Your Honour. I have no
24 objection to the witness being questioned about this
12:33:08 25 letter. I have no objection to it being marked for
26 identification. I don't know whether Your Honours have
27 dealt with that process.
28 But I object to it being tendered as an exhibit,
29 because although we have my friend's evidence that it was

1 signed by the first accused, that's the only evidence we
2 have as to who wrote it. As to when it was written, we
3 only have what the letter itself says about it, so it
4 doesn't form the basis to allow it to be tendered. We
12:33:32 5 don't know when it was written. It may say the 18th of
6 January, but anyone can type a date. We know nothing
7 about that letter.

8 JUDGE BOUTET: Understood. But again, what you're saying, it
9 will go to the weight that will be attached to this
12:33:45 10 document. It is obvious, because you seem to be
11 indicating that there is relevance to this, and I
12 certainly find some relevance to the issues. And
13 pursuant to the policy as spelled out under Rule 89 as
14 such, and then approach to admissibility of documents of
12:34:03 15 that nature, you have not convinced us that this is not
16 admissible. But again, we're not making any decision on
17 the weight to be attached, and obviously everything
18 you're suggesting are issues that will go to weight, not
19 admissibility per se at this stage.

12:34:16 20 MR TAVENER: Can I just say one point, then I'll sit down.
21 That is because the province of the letter has not been
22 established, I would also submit that no reliability can
23 be placed on this letter; therefore, it doesn't get
24 passed the threshold question of being relevant evidence.
12:34:31 25 It's not relevant because it's not reliable. It's not
26 reliable because we don't know anything about the
27 creation of that letter, though I don't object to the
28 cross-examination, to be fair.

29 JUDGE THOMPSON: With the greatest of respect, that document

1 talks about a war Council. Testimony has been given here
2 about a war Council. That document talks about the first
3 accused being the national coordinator. Testimony has
4 been given on that kind of thing. How more do you want
12:34:59 5 to interpret the relevance?

6 MR TAVENER: I'd like to know --

7 JUDGE THOMPSON: Of course, the question of reliability and
8 orders, those are also aspects to be considered. But
9 coming to the question of even when we're doing the
12:35:15 10 weight thing -- it is sometimes like the chicken and the
11 egg. Reliability might touch on admissibility, but
12 clearly sometimes it's more in the context of weight.

13 JUDGE BOUTET: We've heard your argument. Thank you very
14 much. It will be marked as an exhibit.

12:35:26 15 MR TAVENER: Thank you.

16 JUDGE BOUTET: And with the understanding of our comments.
17 Obviously, weight to be attached is a different issue.

18 MR TAVENER: Yes. As long as Your Honours have in mind we
19 don't know who wrote it or when.

12:35:44 20 JUDGE BOUTET: Absolutely. And I'm sure, Mr Tavener, in due
21 course, you will be making arguments about that, and we
22 will listen carefully to your -- any submission you'll
23 make in this respect.

24 MR TAVENER: Thank you, Your Honour.

12:35:56 25 JUDGE BOUTET: I think we're at 59, if I'm not mistaken,
26 Mr -- 59. So the document which is entitled "Civil
27 Defence Forces of Sierra Leone, headquarters, Base Zero,"
28 with the date 18 January 1998 with the number at the top
29 D-001 is marked as Exhibit 58 -- 59. Pardon me.

1 MR TAVENER: And copies will be provided to the Prosecution?
2 JUDGE BOUTET: Yes. I will ask the Defence to make sure that
3 copies are made and distributed.
4 [Exhibit No.59 was admitted]
12:36:36 5 JUDGE BOUTET: Mr Koppe.
6 MR KOPPE:
7 Q. Mr witness, I would like to move on to the next topic.
8 Do you remember giving testimony as to the oath that
9 Kamajors had to make?
12:37:02 10 JUDGE BOUTET: Did he say oath? I think he talked about
11 initiation. I'm not sure "oath," but maybe.
12 MR KOPPE: I recall oath, but --
13 MR BANGURA: Your Honour, I think you're quite right. There's
14 no such -- I don't remember the witness talking about
12:37:18 15 oath. The evidence, as I recall it, is that they were
16 initiated, and the question was whether they were taught
17 any rules which they observed, and I think the answer was
18 as to the rules they observed.
19 MR KOPPE: I apologise. I had in my memory, but I'm wrong.
12:37:35 20 Q. Mr witness, do you recall giving testimony about certain
21 rules which the Kamajors had to follow?
22 A. Yes.
23 Q. Not to kill any innocent persons, for instance?
24 A. Yes.
12:37:53 25 Q. And Kamajors should not steal or loot?
26 A. Yes.
27 Q. And the Kamajors should not overthrow legitimate
28 government?
29 A. Yes.

1 Q. Have you at any moment in time ever heard Moinina Fofana
2 disagree with these rules?
3 A. No.
4 Q. Have you ever heard Moinina Fofana giving instructions or
12:38:37 5 orders to anybody not to follow these rules?
6 A. No, not to my knowledge.
7 Q. Mr witness, do you consider the attacks on the rebels and
8 the juntas to be legitimate, the military attacks? Do
9 you think the Kamajors were entitled to do that?
12:39:11 10 A. Yes.
11 Q. Can you explain why the Kamajors or the CDF were entitled
12 to do that?
13 A. Because the juntas had overthrown a legitimate
14 government, and we were fighting to bring it back. The
12:39:26 15 Kamajors were fighting to bring the legitimate government
16 back.
17 Q. And also, I assume, to restore democracy?
18 A. Yes. That was the motto of the CDF: "we fight for
19 democracy."
12:39:48 20 Q. So you are saying that the military attacks on Tongo, Bo,
21 Kenema, et cetera, they were all legitimate, armed
22 attacks?
23 A. Yes.
24 Q. Do you know, Mr --
12:40:05 25 JUDGE BOUTET: Mr Koppe, I just -- attacks on Tongo, Bo, and
26 Kenema?
27 MR KOPPE: Koribundu, I should add.
28 JUDGE BOUTET: Thank you. Please proceed.
29 MR KOPPE:

1 Q. Mr witness, do you have knowledge --
2 PRESIDING JUDGE: Just a minute. Just a minute, please.
3 JUDGE BOUTET: I'm sorry.
4 PRESIDING JUDGE: Yes, Mr witness, you talked of -- were you
12:40:53 5 trying to let us have the motto of the Kamajors?
6 THE WITNESS: We fight for democracy.
7 PRESIDING JUDGE: We fight for democracy. What was that?
8 what is that expression? "We fight for democracy," what
9 was it? Is it a motto or what is it?
12:41:15 10 THE WITNESS: It was a motto.
11 PRESIDING JUDGE: Of who?
12 THE WITNESS: Of the CDF.
13 MR KOPPE:
14 Q. Mr witness, do you know whether the so-called ECOMOG
12:41:43 15 forces have knowledge about the military attacks before
16 they took place? So before the attacks took place on
17 Tongo, Koribundu, et cetera, by the Kamajors and the CDF,
18 did ECOMOG know about this?
19 A. Not to my knowledge.
12:42:06 20 Q. Not to your knowledge. Do you know whether they --
21 JUDGE BOUTET: Slowly, please. Slowly.
22 MR KOPPE: Excuse me.
23 Q. Mr witness, do you know whether the ECOMOG command agreed
24 later with the attacks on Tongo, Koribundu, Kenema, and
12:42:53 25 Bo? Or did they disapprove of these attacks?
26 A. By the time they came in, Tongo had already been taken by
27 the CDF. They did not make any comment to my hearing.
28 Q. But when they came, for instance, to Kenema, did ECOMOG
29 attack Kamajors or CDF soldiers?

1 A. In Kenema?
2 Q. Yeah.
3 A. No, they did not.
4 Q. So is it then true that the ECOMOG forces approved
12:43:40 5 later -- approved the armed attacks on, for instance,
6 Kenema? Could one deduct from the fact that ECOMOG
7 forces did not attack the Kamajors, that they agreed with
8 the Kamajors having power, for instance, in Kenema?
9 JUDGE BOUTET: You're asking his opinion, is it?
12:44:01 10 MR KOPPE: Yes.
11 JUDGE THOMPSON: Yeah.
12 THE WITNESS: Of course. If you're asking for my opinion,
13 yes. I feel so. I am of the opinion.
14 MR KOPPE:
12:44:12 15 Q. Mr witness, you've testified this morning that -- in the
16 cross-examination of counsel for the first accused that
17 if any misconduct of a Kamajor was found, that the war
18 Council would investigate.
19 A. If reported to the War Council.
12:44:50 20 Q. Do you know whether any Kamajors were, in fact, sentenced
21 or punished for their misconduct?
22 A. Yes. But I've forgotten the name of the commander. He
23 was suspended for misconduct from his office.
24 Q. So you know -- you are aware of at least one instance of
12:45:22 25 a commander being punished for his misconduct?
26 A. Yes.
27 Q. Mr witness, another subject, and this is my last subject.
28 Do you consider the CDF forces to be a cohesive force
29 under one strict, central command?

1 A. Please simplify the term "cohesive".
2 Q. working closely together --
3 PRESIDING JUDGE: United force, united force under one strong
4 command?
12:46:24 5 MR KOPPE:
6 Q. working closely together, clear hierarchical lines.
7 Commanders know from each other what they are doing, a
8 strict, central command, or would you rather say that the
9 CDF forces were not cohesive, but at every --
12:46:52 10 JUDGE THOMPSON: Let him answer that. You're putting the
11 alternative.
12 MR KOPPE:
13 Q. Was there a unified command structure, Mr Witness?
14 A. Yes, but sometimes some groups --
12:47:19 15 PRESIDING JUDGE: Mm-hmm, wait. Answer the first question.
16 Was there a unified command structure?
17 THE WITNESS: Yes.
18 PRESIDING JUDGE: Never mind. He'll continue to expound. The
19 CDF had a unified -- yes, Mr Witness, you were going to
12:47:57 20 expound.
21 THE WITNESS: Well --
22 PRESIDING JUDGE: You're going to add something to that.
23 THE WITNESS: Yes, but the area of operation was so wide that
24 in some cases, some fighters acted on their own, without
12:48:09 25 the central command knowing.
26 MR KOPPE: Thank you, Mr Witness.
27 Q. Mr Witness --
28 PRESIDING JUDGE: Mr Koppe, please wait.
29 MR KOPPE:

1 Q. Mr witness, we -- that is, the Defence team for Mr Fofana
2 has -- have conducted some investigations of our own in
3 order to try to understand the war. And there have been
4 several people telling us that you have been receiving
12:49:29 5 direct orders from the president who was in Conakry,
6 Guinea. Are these people who say that wrong or right?

7 A. They are wrong.

8 Q. These same people tell us --

9 PRESIDING JUDGE: Please wait. Please wait.

12:50:25 10 MR KOPPE:

11 Q. Please same people tell us, Mr witness, that the order to
12 initiate attacks in the eastern region did not at all
13 originate from Base Zero, but came directly from the
14 president to you. These people are wrong or right?

12:50:43 15 A. They are wrong. Because I was not even in the eastern
16 region by the time Tongo was attacked. I was at Base
17 Zero.

18 Q. So even --

19 PRESIDING JUDGE: Please, please. Let's get the matter, you
12:50:59 20 know, down properly. There are others --

21 JUDGE THOMPSON: Were you going to give a reason why you
22 believe they're wrong?

23 THE WITNESS: Yes, I said by the time Tongo was attacked, I
24 was not in the eastern region. I was at Base Zero, and I
12:51:51 25 had no direct communications with the president at that
26 time.

27 MR KOPPE:

28 Q. Mr witness, I'm putting it to you that between August
29 1997 and early March 1998, the eastern region Kamajor

1 commanders were directly under your command and control,
2 and you were answerable for all your actions to the
3 exiled government in Guinea. And --
4 JUDGE BOUTET: Slowly, please, slowly.
12:53:03 5 PRESIDING JUDGE: Between August 1997 and March 1998?
6 MR KOPPE: Yes.
7 PRESIDING JUDGE: March 1998?
8 MR KOPPE: Yes.
9 Q. I shall say it again. I'm putting it to you, Mr witness,
12:53:17 10 that between August 1997 and early March 1998 the eastern
11 region Kamajor commanders were directly under your
12 command and control and that you were also answerable to
13 the exiled government in Guinea which was headed by
14 President Kabbah.
12:54:05 15 Mr witness, do you agree with me or not?
16 A. I do not agree with you.
17 Q. Mr witness, I'm putting it to you that you received your
18 planning orders, your arms, your ammunitions, and your
19 logistics supply directly from the president in Guinea.
12:55:10 20 Do you agree with me?
21 A. I do not.
22 Q. Mr witness, I am putting it to you that the supply of
23 logistics was, in fact, coordinated by the Ministry of
24 Presidential Affairs, and that the supply of arms and
12:56:12 25 ammunitions was coordinated by the Ministry of Defence in
26 exile in Guinea.
27 JUDGE BOUTET: We're always talking of the same period of
28 time, between August 1997 and early March --
29 PRESIDING JUDGE: Still in that time frame?

1 MR KOPPE: Always, always in that time frame, Your Honour.
2 JUDGE BOUTET: So was coordinated by Ministry of Defence in
3 exile in Guinea? That's your question?
4 MR KOPPE: That's precisely.
12:56:55 5 Q. Mr witness, do you agree with me or not?
6 A. No, I do not agree with you.
7 MR KOPPE: That was it. Thank you, Your Honour.
8 JUDGE BOUTET: Thank you very much, Mr Koppe.
9 THE WITNESS: Can I use the toilet?
12:57:57 10 JUDGE BOUTET: Just a few moments.
11 PRESIDING JUDGE: well, learned counsel, we're not sitting
12 this afternoon. So we are adjourning to tomorrow at 9.30
13 for the cross-examination by the Defence team of the
14 third accused. So we'll adjourn to tomorrow at 9.30.
12:58:23 15 Court will rise, please.
16 [Whereupon the hearing adjourned at 12.58 p.m., to be
17 reconvened on Thursday, the 17th day of February, 2005,
18 at 9.30 a.m.]
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EXHIBITS:

Exhibit No.59	66
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WITNESSES FOR THE PROSECUTION:

WITNESS TF2-005	2
CROSS-EXAMINED BY MR HALL	2
CROSS-EXAMINED BY MR KOPPE	19