

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO.: SCSL-04-14-T
TRIAL CHAMBER I

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

18 JUNE 2004
0937H
CONTINUED TRIAL

Before the Judges:

Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For the Registry:

Ms. Maureen Edmonds
Mr. Geoff Walker

For the Prosecution:

Mr. Charles Caruso
Mr. James C. Johnson
Ms. Adwoa Wiafe

For the Accused Sam Hinga Norman:

Dr. Bu-Buakie Jabbi
Mr. Ibrahim Yillah
Mr. John Wesley Hall
Ms. Quincy Whitaker

For the Accused Moinina Fofana:

Mr. Arrow Bockarie

For the Accused Allieu Kondewa:

Mr. Charles Margai
Mr. Yada Williams
Mr. Ansu Lansana

Court Reporters:

Ms. Gifty C. Harding
Ms. Susan G. Humphries
Mr. Momodou Jallow

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MS. EDMONDS:

All persons having anything to do before the Special Court Trial Chamber, draw near and give your attendance.

MR. PRESIDENT:

We are resuming the session. And the interpreters are reminded that they are still on their oath.

And I think we will call on the -- on the Defence to open its cross-examination of this witness. That was where we separated yesterday from. You have our guidelines as to how, you know, it should go, so you can -- you can go on.

JUDGE BOUTET:

Before -- I would like to ask Mr. Norman if you want to proceed first or what are his --

THE ACCUSED NORMAN:

My Lord, I just want the learned counsel to introduce my other lawyers who have arrived this morning.

JUDGE BOUTET:

Yes. And Mr. Norman, please, after that are you prepared to do your cross-examination or you want your counsel to do that this morning for you?

THE ACCUSED NORMAN:

Like I indicated to Your Lordships, I would want them to take the lead in that respect. If there is anything, I will make a separate request to join in.

JUDGE BOUTET:

So you are going to do that after if required?

THE ACCUSED NORMAN:

Yes, My Lord.

JUDGE BOUTET:

Thank you.

THE ACCUSED NORMAN:

And when the introduction is done I would like the team to be just like it was that the lead is at the base.

JUDGE BOUTET:

Thank you.

So would you do the introduction or the presentation of the new members of the team. Was it what you were going to ask, Mr. Norman?

MR. YILLAH:

May it please you, My Lords, we have got two additions to the stand-by team for the first Accused, Mr. Sam Hinga Norman. They are Mr. John Wesley Hall.

1 MR. HALL:

2 Good morning, Your Honours.

3 JUDGE BOUTET:

4 Good morning.

5 MR. YILLAH:

6 And Ms. Quincy Whitaker.

7 MS. WHITAKER:

8 Good morning, Your Honour.

9 JUDGE BOUTET:

10 Good morning. Thank you.

11

12 Are you ready --

13 MR. PRESIDENT:

14 I suppose the representation of the other teams remain the same.

15 MR. MARGAI:

16 Yes, My Lord.

17 MR. BOCKARIE:

18 Yes, My Lord.

19 MR. PRESIDENT:

20 They remain the same. All right.

21 JUDGE BOUTET:

22 So, Mr. Norman's team, are you ready to proceed?

23 MR. JABBI:

24 Indeed, My Lord.

25 JUDGE BOUTET:

26 Please do so.

27 WITNESS TF2-176

28 CROSS-EXAMINATION

29 BY MR. JABBI:

30 Q. Now, Mr. Witness, you are xxxx years old, born in Xxx town and have lived there since your birth,
31 leaving it only for short periods at a time. Can you tell this Court --

32 JUDGE BOUTET:

33 Dr. Jabbi, please, you have to go slowly. As you know, it has to be translated.

34 MR. PRESIDENT:

35 Microphone, microphone.

36 JUDGE BOUTET:

37 And your microphone is not on.

1 MR. JABBI:

2 I'm using this one.

3 JUDGE BOUTET:

4 But go slowly, please, because we are going to get everybody confused. Thank you.

5 BY MR. JABBI:

6 Q. Mr. Witness, you are xxxx years old, born in Xxxx, lived there all your life, and left it only a few days at
7 a time, according to your evidence. Can you tell this Court whether you lived in Xxxx between 1991
8 and 1998?

9 A. Yes.

10 Q. Can you also tell the Court when soldiers arrived to stay for some time in Xxxx for the first time in that
11 period, between 1991 and 1998?

12 A. Yes, in 1991.

13 Q. So soldiers arrived to stay there for a while for the first time in 1991?

14 A. Yes.

15 Q. Do you know why?

16 A. Yes.

17 Q. Yes, carry on.

18 A. When they met us there and they told us that -- they told us that rebels have entered the country and
19 that's why they came there. It was the soldiers that told us that.

20 A. Yes.

21 Q. The soldier said that rebels had entered the country and that is why they had gone there.

22 A. Yes.

23 Q. Did you yourself know whether rebels had entered the country at all?

24 A. No, I did not know previously. It's only when they came and told us that was the time I knew.

25 Q. You knew that rebels had entered the country after you had been so informed?

26 A. No, at that time we saw people coming from Liberia and -- saying that rebels have come and we
27 heard that.

28 MR. JABBI:

29 My Lords, I'm not getting the translation.

30 JUDGE BOUTET:

31 Are you on the right channel on your --

32 MR. JABBI:

33 I'm using this other one.

34 JUDGE BOUTET:

35 No, but you have to use the English channel on the *(inaudible)*.

36 MR. JABBI:

37 It may have been rectified; I will see, Your Honour.

1 JUDGE BOUTET:

2 Let's try it again.

3 BY MR. JABBI:

4 Q. Now, I will go over the question. Do you know why the soldiers went to stay a while in *Xxxx* before
5 1998, or in 1991 as you said?

6 MR. JABBI:

7 I'm still not getting it.

8 THE WITNESS:

9 Yes, when they told us that the rebels have entered the country that is why they came to stay with us
10 in *Xxxx* to defend us.

11 BY MR. JABBI:

12 Q. Now, can you also say whether *Kamajors* went to *Xxxx* during that period?

13 A. At the same time -- at the time that the soldiers were around, the *Kamajors* did not go there.

14 Q. Can you say when the *Kamajors* went in that period?

15 A. When the soldiers were in *Xxxx*, there were no *Kamajors*.

16 Q. I'm talking about the period 1991 to 1998. Were there *Kamajors* in *Xxxx* at any time during that
17 period?

18 A. Yes, in 1998 the *Kamajors* were there.

19 Q. Before 1998. Were there any *Kamajors* in *Xxxx* before 1998?

20 A. I don't understand the question.

21 Q. You started giving evidence from -- in so far as the presence of the *Kamajors* were concerned in *Xxxx*,
22 your evidence started from 1998. I want to know whether before 1998 there were *Kamajors* at any
23 time in *Xxxx*?

24 A. I don't understand this question either.

25 MR. PRESIDENT:

26 Before -- you say -- you have said that *Kamajors* came to *Xxxx* in 1998. Before 1998, did *Kamajors*
27 come to *Xxxx*?

28

29 Is that the question you mean to ask?

30 MR. JABBI:

31 Yes, My Lord. Thank you very much, My Lord.

32 THE WITNESS:

33 I knew that *Kamajors* came to *Xxxx* in 1998.

34 BY MR. JABBI:

35 Q. Were you living in *Xxxx* between 1991 and 1998?

36 A. Yes.

37 Q. Well, I put it to you that, in fact, during that period *Kamajors* did go to *Xxxx* between 1991 and 1998.

1 JUDGE BOUTET:

2 Can you answer the question, please?

3

4 Mr. Witness, you can answer yes or no, or I don't know, but you need to answer the question that has
5 been asked of you. If you don't know just say you don't know.

6 THE WITNESS:

7 I don't know.

8 MR. JABBI:

9 My Lords, may I request that the posture of the witness is slightly changed, so that he looks more in
10 my direction than otherwise, you know?

11 JUDGE BOUTET:

12 Mr. Witness, would you please look at the one who is asking you the question so he can see you and
13 your reaction.

14 MR. PRESIDENT:

15 But you don't have a monopoly of having a direct look at him, the Court also would like to watch his
16 demeanour.

17 MR. JABBI:

18 Yes, indeed. I'm not saying he should not be available to the Court to examine his demeanour, I am
19 sure that will still be ascertained if he were to slightly adjust his posture, My Lord, so that he looks
20 more right than left.

21 JUDGE BOUTET:

22 Please, carry on.

23 MR. JABBI:

24 As Your Lordships please.

25

26 My Lord, I would also want to -- I don't know whether the technical arrangements is for the translation
27 from English to the witness to by-pass the microphone, because I'm not getting that one. The
28 translation from me to the witness, I am not getting it over the microphone.

29 JUDGE BOUTET:

30 Do you mean the translation you want to hear in *Krio* version or you want to hear the English part?
31 Because your question is in English, obviously.

32 MR. JABBI:

33 My Lord, if it were possible I want to hear both translations, if it were possible.

34 JUDGE BOUTET:

35 I don't think it is possible. I don't think we have that technical ability, because when it translates from
36 your question in English to *Krio*, they have to shut off that portion of the mike. But we can ask; I am
37 not technical expert of this, so --

1 MR. JABBI:

2 The reason being, My Lord, that sometimes the translation does not carry the exact statement that
3 has been made and if I were to hear it I would be able to verify that.

4

5 I remember when a witness was giving evidence here and speaking in *Mende*, I was able to hear
6 what he was being told and one or two occasions I could say whether it accurately reflected what has
7 been said. But I don't know whether it is possible.

8 JUDGE BOUTET:

9 Let us check. I really don't know if it's possible technically.

10

11 In the translation booth, when you are translating in *Krio*, is it possible to have that live for Defence
12 counsel?

13 THE INTERPRETER:

14 No, it isn't possible, it goes directly to the witness.

15 MR. JABBI:

16 I will endeavour to put up --

17 THE ENGLISH INTERPRETER:

18 But the best thing we could do is to ask the CITS people because they are the experts.

19 JUDGE BOUTET:

20 Can we try to sort this problem at the next pause, but for the time being, we can't. We'll ask the
21 technical advisers to see if it's possible to do it.

22 MR. JABBI:

23 You see, because, My Lords, at least some time before when somebody was testifying in *Mende* and
24 I was able to hear him straight across the hall, I was able to see whether the translation was accurate.

25 JUDGE BOUTET:

26 Yes, but you were not getting that through the system, you were getting it from his voice because you
27 could hear the voice of the witness but this witness does not speak in a loud voice and therefore you
28 cannot hear that. So you were not getting it through the system, you were getting it directly from the
29 witness. We are talking of the previous witness.

30 MR. JABBI:

31 I'm sorry, my Lord, but I had thought it was both, I will try. I had thought I was both getting it across
32 and also through the system.

33 JUDGE BOUTET:

34 Maybe you are right. As I do not understand *Krio*, I was not paying attention to that. I know you do.

35 MR. JABBI:

36 Okay, thank you, My Lord.

37 Now, I don't know whether the witness answered the last question. I was putting it to him --

1 JUDGE BOUTET:

2 Try it again, please.

3 MR. JABBI:

4 I was putting it to him that *Kamajors* did in fact go to *Xxxx* between 1991 and 1998.

5 MR. CARUSO:

6 Excuse me My Lord, I have an observation. It may perhaps be that we understand that as a question,
7 but this witness doesn't in the form that's in. Perhaps it could be put in an absolute question form that
8 he knows he's required to answer. That may be the problem.

9 MR. PRESIDENT:

10 It's just like counsel can put it to him because he has -- he's been on that question for long, and
11 counsel has not received a definite, you know, reply, so he is putting it to him that this is in fact the
12 situation. And it's for him -- he has already answered anyway because from my notes here he said, "I
13 do not know whether they were here before -- before -- I do not know that they were there before
14 1998." That's the question I have on my notes here -- or, rather, the reply to the question.

15 JUDGE BOUTET:

16 Mr. Technician, would you make sure that the mike of the witness is open.

17

18 Thank you.

19 BY MR. JABBI:

20 Q. Now, I put it to you that evidence has been led in this Court that *Kamajors* -- that *Kamajors* came to
21 *Xxxx* Town around 1996.

22 JUDGE THOMPSON:

23 Excuse me, learned counsel what is your question?

24 MR. JABBI:

25 The question -- notwithstanding he had given a general answer, no, I am --

26 JUDGE BOUTET:

27 His answer was not no, it was "I don't know."

28 JUDGE THOMPSON:

29 No, the question really --

30 MR. JABBI:

31 No, for the general question -- he had said I don't know to the general question.

32 JUDGE THOMPSON:

33 My intervention related to when you told him that evidence has been given in this Court.

34 MR. JABBI:

35 My Lord, I did not hear the beginning of your question, My Lord.

36

37 JUDGE THOMPSON:

1 I was asking what was the question. You told him that evidence has been led in this Court that
2 *Kamajors* did go to **Xxxx** between 1991 and 1998. You -- 1996. You told him what evidence has
3 been led. What is the question, you left him in a limbo. He was -- having told him that, what's your
4 question? In other words, what's your question? You were recapping. Yes, you were recapping but
5 then you -- there is a hiatus, there is no question to him. What do you want him to answer? You said
6 evidence had been led in this Court that the *Kamajors* did go to **Xxxx** between 1991 and 1998,
7 precisely 1996, and then there was a hiatus, so what is the question?

8 MR. JABBI:

9 My next question is more specific, My Lord.

10 JUDGE THOMPSON:

11 All right. Well, let's hear it.

12 MR JABBI:

13 The earlier one is more general. The specific question now is, that I am putting it to him that
14 *Kamajors* went to **Xxxx** town around 1996 for the first time.

15 JUDGE BOUTET:

16 Is this the question or it's a statement?

17 MR. JABBI:

18 Pardon?

19 JUDGE BOUTET:

20 Is this a question or a comment on your part?

21 MR. JABBI:

22 My Lord, it is a question.

23 JUDGE BOUTET:

24 Very well, we'll see what the witness has to say.

25 BY MR. JABBI:

26 Q. Do you know --

27 JUDGE THOMPSON:

28 Can I intervene?

29

30 I mean, clearly we need to -- we need to have these matters put before the Tribunal with a note of
31 clarity, consistent with our traditions. And I don't see any difficulty in saying, "I put it to you," and then
32 following it up with, "Do you agree?" But just leaving it -- I mean, this is not an educated witness. He
33 doesn't -- he is not a member of the Bar. He is not familiar with terminologies and stylistic nuances
34 like that. So, much as I do not intend to insist that we depart from our traditions, but what's -- why not,
35 "I put it to you, do you agree or do you not agree?"

36

37 MR. JABBI:

1 My Lord, thank you. There is no harm in being over explicit, but I believe, My Lords, that in every
2 language the phenomenon of ellipses, oral and written, is a common phenomenon. But I will try and
3 fill the gap.

4 JUDGE THOMPSON:

5 I will defer to your judgment as the linguist.

6 BY MR. JABBI:

7 Q. Now, I am putting it to you that *Kamajors* were in *Xxxx* around 1996, would you agree with that?

8 A. No, I don't agree; I know 1998.

9 Q. Do you know one Chief Sam Hinga Norman?

10 A. Yes.

11 A. Yes, I do.

12 Q. Who was he in your chiefdom?

13 A. He was our Regent Chief.

14 Q. Do you remember him introducing *Kamajors* in your chiefdom before 199 -- before 1998?

15 A. Yes, I remembered 1998, that was the time that he introduced them to us.

16 Q. So you were not at all aware of the presence of *Kamajors* in *Xxxx* town before 1998?

17 A. All that I know is what I have said.

18 Q. You can say yes or no to that answer (*sic*).

19

20 What would be your answer to the last question I asked? As far as you know there were no *Kamajors*
21 in *Xxxx* town before 1998, not so?

22 JUDGE BOUTET:

23 Mr. Witness, you have to answer that question. Again, it's either yes or no, or I don't know.

24 THE WITNESS:

25 Repeat the question.

26 BY MR. JABBI:

27 Q. So far as you know, there had been no *Kamajors* in *Xxxx* town before 1998, not so?

28 A. What I know is that they were there in 1998.

29 Q. Okay. So as far as you know it was only in 1998 that *Kamajors* came to *Xxxx* town for the first time; is
30 that so?

31 MR. PRESIDENT:

32 But I think he has said so. He had said so. Continue.

33 BY MR. JABBI:

34 Q. For the first time; yes or no?

35 JUDGE BOUTET:

36 Mr. Witness, please answer the question again.

37 MR. JABBI:

1 There may be something wrong with his communication system.

2 JUDGE BOUTET:

3 Have you heard the question?

4 THE WITNESS:

5 Yes, I heard the question. You see, all I know is that they were there in 1998.

6 JUDGE BOUTET:

7 That's fine, thank you.

8 MR. JABBI:

9 I will take that for an answer.

10 BY MR. JABBI:

11 Q. Now, how long did you stay in **Xxxx** town after the rebels arrived there for the first time in 1998?

12 MS. WIAFE:

13 Your Honour, I object. Counsel is misstating the facts. The witness never said the rebels arrived in
14 **Xxxx** in 1998 (*sic*).

15 JUDGE BOUTET:

16 Sustained. You have stated -- in your question you said, "When the rebels arrived in 1998 --"

17 MR. JABBI:

18 My Lord, I'm sorry I did not hear the objection.

19

20 I'm sorry I did not hear the objection clearly.

21 JUDGE BOUTET:

22 The objection is that you were mis-stating the facts in your description in the question you were asking
23 the witness.

24 MR. JABBI:

25 Oh, I'm sorry if I said rebels, My Lord.

26 JUDGE BOUTET:

27 Let's try it again.

28 MR. JABBI:

29 I'm sorry if I said rebels.

30 JUDGE BOUTET:

31 That's what you'd said.

32 MR. JABBI:

33 I'm sorry, please. It was a slip of tongue.

34 JUDGE BOUTET:

35 Okay.

36

37 BY MR. JABBI:

1 Q. Now, how long did you stay in *Xxxx* after the *Kamajors* arrived there for the first time, according to
2 you, in 1998?

3 A. I have been there throughout except if I go to *xxxx* to buy a few things and come back.

4 Q. Now, listen to this question, please. According to you, *Kamajors* came for the first time to *Xxxx* town
5 in 1998. From the time of their arrival, how long did you stay in *Xxxx* town before you left?

6 A. I was there throughout.

7 Q. Now, in your evidence you said when the rebels arrived, you left --

8 MR. JABBI:

9 I'm sorry, My Lord, I'm sorry.

10 JUDGE BOUTET:

11 You meant *Kamajors*.

12 BY MR. JABBI:

13 Q. In your evidence you said that when the *Kamajors* arrived, you left for *Xxxx*. How long was it between
14 their arrival time and your departure for *Xxxx*?

15 JUDGE BOUTET:

16 Is your mike open?

17 THE WITNESS:

18 I -- it was at six o'clock that they entered, you know, *Xxxx* and I left --

19 BY MR. JABBI:

20 Q. That was the same day?

21 A. -- and I left to go to *Xxxx*. Yes, it was on the same day.

22 Q. Now, you also went beyond *Xxxx* to Bo Town, did you?

23 A. Yes, the following morning I went to Bo.

24 Q. That -- that would be Saturday morning; is that true?

25 A. Yes, it was true.

26 Q. How long were you in Bo Town?

27 A. No, it's on the same Saturday. I slept in Bo and I came back to *Xxxx* on Sunday.

28 Q. So, indeed, you went back to *Xxxx* the Sunday after the arrival of the *Kamajors* in *Xxxx* town?

29 A. Yes.

30 Q. Now, when you were in *Xxxx* did you have the opportunity to come into contact with any *Kamajor* who
31 was in command there?

32 A. Yes.

33 Q. Can you tell us who the *Kamajor* commander was?

34 A. Yes.

35 Q. Yes, tell us the name, please.

36 A. It was C.O. Mohammed.

37 Q. Please give his name as fully as you know it, his full name that you know?

- 1 A. He told me that his name was C.O. Mohammed.
- 2 Q. Did he perhaps tell you -- you may have forgotten that he said he was C.O. Lansana?
- 3 A. No, I wouldn't forget what he told me.
- 4 Q. Do you remember making a statement to the Prosecution?
- 5 A. Yes.
- 6 Q. And do you remember saying in that statement that you were taken before C.O. Lansana in **Xxxx**?
- 7 A. All I know is it is C.O. Mohammed.
- 8 Q. Apart from C.O. Mohammed, whom you now tell the Court you knew, did you know any C.O. Lansana
- 9 in **Xxxx**?
- 10 A. No.
- 11 MR. JABBI:
- 12 My Lords, I wonder if the witness's statement that he made to the Prosecution, a transcript of which
- 13 was supplied to us, can be shown to him?
- 14 JUDGE BOUTET:
- 15 If I'm not mistaken, he does not read. So if you do show him a transcript of that, I don't know what
- 16 difference it would make. At least that's my recollection.
- 17 MR. JABBI:
- 18 As Your Lordships please. As Your Lordship pleases. I had forgotten that limitation. I wish it had
- 19 been written in *Arabic* or *Fula*, though.
- 20 BY MR. JABBI:
- 21 Q. Now, C.O. Mohammed, if that is how you know him, how do you remember him? What is your
- 22 impression of C.O. Mohammed from the way he treated you?
- 23 A. I remember him because he saved my life.
- 24 Q. Yes, anything more? How did he save your life, for instance?
- 25 A. Because he saved me from dying. That's how he saved my life.
- 26 Q. Yes, anything more? If not, say so. If not, say so.
- 27 A. Nothing more.
- 28 Q. Thank you. Now, you finally went back to **Xxxx** town from **Xxxx**. How long did you stay in **Xxxx**
- 29 before you went to **Xxxx** town?
- 30 A. I stayed there between one and two weeks, in fact, in two weeks time. I was there for two weeks.
- 31 Q. You are quite clear it was two weeks, not one week, for instance?
- 32 A. I'm sure that it was for two weeks.
- 33 Q. Now, how long did you stay in **Xxxx** after your return there from **Xxxx**?
- 34 A. When I went there I did not sleep, I returned.
- 35 Q. The first day you arrived in **Xxxx** from **Xxxx** you did not sleep in **Xxxx**, you went back to **Xxxx**?
- 36 A. Yes.
- 37 Q. Where did you go?

1 A. I went back to **Xxxx**.

2 Q. How long did you stay in **Xxxx** that second time -- this last time?

3 A. I spent a week there.

4 Q. After the one week, where did you go?

5 A. I returned to **Xxxx**.

6 Q. Now, for all this time you had gone from **Xxxx** originally to **Xxxx** to Bo, back to **Xxxx**, then to **Xxxx** and
7 back to **Xxxx**, where was your family?

8 A. Some of my -- the members of my families were with me in **Xxxx**, some were in Bo.

9 Q. Okay, and those travels that you have outlined were done by yourself alone and did they stay put in
10 those different places?

11 THE ENGLISH INTERPRETER:

12 Would you please repeat the question.

13 MR. JABBI:

14 The translation was slightly different, My Lord.

15 BY MR. JABBI:

16 Q. My question was whether the family stayed put in those different places whilst he was moving about
17 from place to place.

18 A. In fact, I have been moving in a bid to get my family to bring them together.

19 Q. Now, let's get something clear. You were moving around alone whilst your family were in those
20 respective places, not so?

21
22 Were you moving from place to place with the whole family, from **Xxxx**, to **Xxxx**, to Bo, back to **Xxxx**
23 and then to **Xxxx** and back to **Xxxx**?

24 A. No.

25 Q. So they stayed put in those places whilst you did those movements on your own, by yourself -- on his
26 own and by himself?

27 MR. PRESIDENT:

28 Look, Witness, you were going to **Xxxx**, **Xxxx**, Bo, eh?

29 THE WITNESS:

30 Yes.

31 MR. PRESIDENT:

32 Were you moving around with your family? Was your family with you when you were going to these
33 places?

34 THE WITNESS:

35 No, they were in Bo, and I was in **Xxxx**.

36 MR. PRESIDENT:

37 So you were going to these places alone and they were in Bo and in **Xxxx**?

1 THE WITNESS:

2 In fact, I went to Bo to visit them.

3 BY MR. JABBI:

4 Q. Was it you alone who went to Bo -- when you were going to look for them.

5 MR. PRESIDENT:

6 Couldn't -- couldn't we imply this? I mean --

7 MR. JABBI:

8 Well, My Lord --

9 JUDGE THOMPSON:

10 Well, go ahead, but I thought that --

11 MR. JABBI:

12 It can perhaps be implied, My Lord, but a lot can be left unsaid --

13 JUDGE THOMPSON:

14 Go ahead.

15 MR. JABBI:

16 -- and it is just good to clarify things sometimes.

17 MR. PRESIDENT:

18 Well, go ahead. Go ahead.

19 BY MR. JABBI:

20 Q. Were you alone or were you going with your family in those --

21 A. I had answered the question.

22 Q. Okay. In **Xxxx** when you arrived there the second time after -- after the arrival of the rebels (*sic*), did
23 you stay there for long?

24 MS. WIAFE:

25 Your Honour, I object to that question.

26 MR. JABBI:

27 I am sorry, I'm sorry, please. I am being told that I used the word "rebel" instead of "*Kamajor*". I'm
28 sorry, My Lord. I don't know what is happening. Why should they be so wrong in my mouth?

29 MR. PRESIDENT:

30 We understand, you know, rebels are your target. Rebels are your target, Dr. Jabbi, isn't that right?

31 That's why you always have them in the forefront of your lips. Go ahead. Go ahead.

32 MR. JABBI:

33 I'm sorry, My Lord. I will put the question again or let me ask this:

34 BY MR. JABBI:

35 Q. How long did you stay in **Xxxx** after your second return there, following the arrival of the *Kamajors*?

36 A. I had answered to this question.

37 MR. PRESIDENT:

1 No, you must try to answer, um? Don't say you have answered that question.

2 MR. JABBI:

3 My Lord, if I may put it again. He may be assimilating it to a previous question.

4 MR. PRESIDENT:

5 Answer the question. Try to answer all questions if you can answer --

6 BY MR. JABBI:

7 Q. You returned --

8 MR. PRESIDENT:

9 Wait, wait, wait.

10 MR. JABBI:

11 Sorry, My Lord.

12 MR. PRESIDENT:

13 Try to answer all questions he asks you if you can answer them; you understand? You can say you
14 do not know, you know and you give explanations. There is no war about this, eh? So, please, try to
15 answer his questions, um? Okay?

16 BY MR. JABBI:

17 Q. Okay, and please listen very carefully to the question. According to you, you went back to **Xxxx** two
18 times within two weeks after the arrival of the *Kamajors*. So after your second return to **Xxxx**, how
19 long did you continue to stay there thereafter?

20 A. Repeat the question so that I can understand.

21 MR. PRESIDENT:

22 Split it, split it, you know, make it more comprehensible for him, you know, by splitting it a bit. You can
23 also put --

24 MR. JABBI:

25 Okay, I will --

26 MR. PRESIDENT:

27 You can put in even four questions in order to get what you want, you know, from the witness
28 provided, you know, you make it very clear to him, you know.

29 BY MR. JABBI:

30 Q. In the first question I am going to trace your journeys after the arrival -- after the arrival of the
31 *Kamajors* in **Xxxx**.

32

33 On the day of the arrival of the *Kamajors*, you left **Xxxx** by 6 p.m. the same day, the same day, not
34 so?

35 A. Yes.

36 Q. And you went to **Xxxx**, not so?

37 A. Yes.

- 1 Q. And then proceeded to Bo, not so?
- 2 A. No, the next day morning.
- 3 Q. The next day, yes, indeed, you went to Bo, not so?
- 4 A. Yes.
- 5 Q. Then you went back to **Xxxx**, not so from Bo?
- 6 A. No, it wasn't on the same day.
- 7 Q. Not the same day, not the same day, but from Bo whenever you left there you went back to **Xxxx**?
- 8 A. Yes.
- 9 Q. Then after a week in **Xxxx** you went to **Xxxx**?
- 10 A. Yes.
- 11 Q. And then the same day you returned to **Xxxx**?
- 12 A. Yes.
- 13 Q. After another week in **Xxxx** you went back to **Xxxx**, not so?
- 14 A. Yes.
- 15 Q. This last time now you were there in **Xxxx**, how long did you stay there?
- 16 A. I did not go anywhere again when I went.
- 17 Q. So you stayed there continuously thereafter?
- 18 A. Yes.
- 19 Q. For several weeks, may I say?
- 20 A. Yes.
- 21 Q. Now, whilst there, did you have any interaction with the *Kamajors*? Whilst you were there, did you
22 see any *Kamajors* in **Xxxx**?
- 23 A. Yes.
- 24 Q. Did you have any interaction with them? Can you give your answer? May I say you did not have
25 anything to do with the *Kamajors* on that return?
- 26 A. You see, you said business, I don't understand what you mean by business.
- 27 Q. Any type of interaction, you in particular, I mean.
- 28 A. This transaction that you are talking about, I don't understand it.
- 29 MR. JABBI:
- 30 Okay, let's move on.
- 31
- 32 MR. PRESIDENT:
- 33 The impression I have is maybe they are translating to him that he did business with the *Kamajors*,
34 you know, transaction, business. You can break it down, break it down, you know, for him to --
35 interaction is --
- 36 MR. JABBI:
- 37 But it may well be that the only way I can break it down --

1 JUDGE THOMPSON:

2 And perhaps, yes, probably the term interaction is what is creating the confusion.

3 MR. JABBI:

4 Did you ask --

5 JUDGE THOMPSON:

6 Could you give one or two instances? Would that hurt your case if you gave him one or two examples
7 of what you are talking about? If you're trying to search for the facts; in other words, if you said
8 interaction, for example.

9 MR. JABBI:

10 Okay.

11 BY MR. JABBI:

12 Q. Whilst -- whilst you were -- whilst you were in **Xxxx** on that last return from **Xxxx**, were you talking with
13 the *Kamajors* from time to time?

14 A. Yes, when they met we (*sic*) they will talk to we -- they will talk to us and sometimes I was afraid
15 because I am a civilian.

16 Q. I did not get the reason why you were afraid of them.

17 A. The way they dressed and they had been going with guns, so we were civilians and we were afraid.

18 Q. However, you lived with soldiers for some time, not so, earlier on?

19 A. Yes.

20 Q. Okay. Now, notwithstanding that the *Kamajors* had guns and they were dressed in the way they were
21 dressed, were you -- were you talking with them from time to time? Were they sitting with you and
22 talking with you?

23 MR. PRESIDENT:

24 The witness has provided an answer to this question.

25 MR. JABBI:

26 As Your Lordship pleases.

27 MR. PRESIDENT:

28 He has provided an answer.

29 MR. JABBI:

30 As Your Lordship pleases.

31

32 BY MR. JABBI:

33 Q. Now, we have to come --

34 MR. PRESIDENT:

35 You have a lot of latitude in cross-examination but, please, you know, I would like us to be expeditious
36 by avoiding, you know, repetitive, you know, questions, you know, that have already been catered for.

37 MR. JABBI:

1 As Your Lordship pleases.

2 BY MR. JABBI:

3 Q. How long after you returned to **Xxxx** did it take before the meeting in the court *barray* that you spoke
4 about?

5 MR. PRESIDENT:

6 There is an impasse. I mean, can you ask the question again? Put the question to him again, please.

7 BY MR. JABBI:

8 Q. My question is towards time frame. From the time you returned to **Xxxx** to the time when the meeting
9 took place in the *Barray*, how long was it?

10 A. I had told you. I had shown you the time.

11 JUDGE BOUTET:

12 You still have to answer that question.

13 BY MR. JABBI:

14 Q. So if I may ask it again, how long did it take from the time you went back to **Xxxx** to the time the
15 meeting was held?

16 A. It's around three weeks.

17 Q. Good. Now, when, according to you, the *Kamajors* told you that Chief Norman was coming to talk to
18 them were you eager to go and hear Chief Norman? Eager, eager, anxious to go and hear Chief
19 Norman.

20

21 Did you, for instance, tell yourself, "I must go there quickly"?

22 MR. PRESIDENT:

23 Let him answer that question the way you put it. He should answer that question.

24 MR. JABBI:

25 My Lord, because of his --

26 MR. PRESIDENT:

27 Let him answer that question. He should answer it.

28 BY MR. JABBI:

29 Q. The first question -- the earlier question: Were you eager or anxious to go to that meeting that the
30 *Kamajors* said Chief Norman was coming to hold?

31

32 JUDGE BOUTET:

33 Again, the problem seems to be a problem -- I'm not sure if it's translation or language but --

34 MR. JABBI:

35 This time I heard the translation, My Lord, it's very -- to me at least it's quite clear and accurate.

36 JUDGE BOUTET:

37 Okay. Okay.

1 MR. PRESIDENT:

2 Witness, um? You say chief -- Mr. Norman *na man wae you sabi*, huh? You know him very well,
3 huh? You know him very well, isn't it?

4 THE WITNESS:

5 Yes, sir.

6 MR. PRESIDENT:

7 Right. He is your chief?

8 THE WITNESS:

9 Yes, sir.

10 MR. PRESIDENT:

11 He was coming to hold a meeting with you.

12 THE WITNESS:

13 Yes, sir.

14 MR. PRESIDENT:

15 Were you happy to go to the meeting?

16 THE WITNESS:

17 Yes, I was glad.

18 BY MR. JABBI:

19 Q. Now, how -- when you went to that meeting, was the meeting already in progress?

20 A. Yes, sir.

21 Q. Whom did you find speaking there at the time you arrived?

22 JUDGE BOUTET:

23 Can you answer the question, Mr. Witness, please? When you got there at that meeting --

24 THE WITNESS:

25 Yes sir.

26 JUDGE BOUTET:

27 Was there anybody speaking?

28 THE WITNESS:

29 Yes, sir.

30 JUDGE BOUTET:

31 Who was speaking?

32 THE WITNESS:

33 It was Chief Hinga Norman.

34 BY MR. JABBI:

35 Q. Did you stay to the end of his speech?

36 A. No.

37 Q. You were present only during part of his speech?

1 A. Yes, sir.

2 Q. Did you hear any other person speak at that meeting?

3 JUDGE BOUTET:

4 Do you understand the question?

5 MR. PRESIDENT:

6 Mr. Norman -- you came there, Mr. Norman was speaking. Whilst you were there, did you see any
7 other person speaking at that meeting?

8 THE WITNESS:

9 It was only his speech that I witnessed and after that I went back to my house.

10 BY MR. JABBI:

11 Q. So you left the meeting on, and went back home?

12 A. Yes.

13 Q. Did you see any people you can remember at the meeting whilst you were there?

14 JUDGE BOUTET:

15 Again, the question, Mr. Witness, is: At that meeting there were many people attending.

16 THE WITNESS:

17 Yes.

18 JUDGE BOUTET:

19 And they were people from **Xxxx**?

20 THE WITNESS:

21 Yes.

22 MR. JABBI:

23 Okay, My Lord, that would be all for the witness.

24 JUDGE BOUTET:

25 Thank you, Mr. Counsel.

26

27 Mr. Norman, you wish to ask questions in a domain different than what your counsel has asked?

28 THE ACCUSED NORMAN:

29 Just one or two.

30 JUDGE BOUTET:

31 Yes.

32 THE ACCUSED NORMAN:

33 Thank you, My Lord.

34

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35

CROSS-EXAMINATION

36 BY THE ACCUSED NORMAN:

37 Q. Mr. Witness -- Mr. Witness, I want to call you a name that will not give your pseudonym away.

1 MS. WIAFE:

2 Your Honour, I object to that.

3 THE ACCUSED NORMAN:

4 Thank you.

5 JUDGE BOUTET:

6 Sustained.

7 THE ACCUSED NORMAN:

8 Thank you. I will refer to you only as Mr. Witness.

9 BY THE ACCUSED NORMAN:

10 Q. I ask you, do you know me, Mr. Witness? Do you know me?

11 A. Yes.

12 Q. Mr. Witness, do you know I know you? Do you know I know you?

13 JUDGE BOUTET:

14 Please answer these questions, Mr. Witness.

15 THE ACCUSED NORMAN:

16 Quick, quick we want to go quick. I want to go home too.

17 MS. WIAFE:

18 Your Honour, I just object to gestures like that about quick, quick and comments like that. I do object.

19 JUDGE BOUTET:

20 Proceed, Mr. Norman.

21 THE ACCUSED NORMAN:

22 Thank you, My Lord.

23 BY THE ACCUSED NORMAN:

24 Q. Mr. Witness, I am saying to you, you know I know you well?

25 JUDGE BOUTET:

26 You have to answer these questions: yes or no, I don't know.

27 THE WITNESS:

28 I don't know whether you know me.

29 BY THE ACCUSED NORMAN:

30 Q. Mr. Witness, did you used to see me in **Xxxx** many times?

31 A. Yes, at the time that you were our Regent Chief.

32 Q. Mr. Witness, when I was Regent Chief of **Xxxx**, do you know where I was living -- the town in which I
33 was living, to help you?

34 A. Yes.

35 Q. What is the name of that town?

36 A. **Xxxx**.

37 Q. Thank you, **Xxxx**. And you know in that town there was an old man who was representing your own

1 people with me? They called him a tribal chief of your own tribe.

2 A. Yes.

3 Q. I don't want to go very close to identifying yourself so that your pseudonym can remain intact. So,
4 and the name of that old man, do you know?

5 A. Yes.

6 Q. What do you call him man?

7 A. I know he is a driver (*sic*), a chief.

8 Q. It is the tribal chief of your tribe who was with me in **Xxxx**, that is his name I want you to call.

9 MS. WIAFE:

10 Your Honour, I object to the witness answering this question. This -- the mention of this name may
11 identify the witness.

12 MR. JABBI:

13 My Lord.

14 JUDGE THOMPSON:

15 Will the Defence reply.

16 MR. JABBI:

17 With your leave, My Lord.

18 JUDGE THOMPSON:

19 Yes.

20 MR. JABBI:

21 There cannot be any certainty that any name that he may call can be a way of identifying that witness
22 with our circumstances of names across ethnic divides in Sierra Leone. There is no possibility for
23 merely the name of one person being called from another member of his tribe being identified, or
24 indeed, of his tribe being identified merely from the name.

25

26 Thank you, My Lord.

27 JUDGE THOMPSON:

28 I'm not persuaded. I'd probably like to hear some reinforcement of the Prosecution's objection.

29 MS. WIAFE:

30 Your Honour, the Defence has already stated that there is some -- that the witness may know him in a
31 certain way and he is asking the question about a certain man through whom -- who the witness
32 knows and who the Accused also knows. And I think that that name may provide a link to who the
33 Accused person is (*sic*).

34 JUDGE THOMPSON:

35 Well, of course, the objection seems predicated upon a hypothesis and I am not persuaded this is --
36 this objection has merit. Unless the Prosecution can convince us that there will be a definite link, I
37 don't think this Court should be -- should yield to speculative thinking on the part of the Prosecution.

1 MR. PRESIDENT:

2 Just one question.

3

4 The gentleman, I mean, the tribal chief, is he a protected witness?

5 MS. WIAFE:

6 Your Honour, I wouldn't know at this point.

7 MR. PRESIDENT:

8 You see, this man is just one individual who is the chief of a whole community, representing that
9 community in the Royal Court. I really, like my learned brother said, do not see the prejudice that the
10 disclosure of his name, you know, would cause. I mean, he is just one individual out of the many. He
11 is just one individual out of the many in that community which that chief, you know, the local chief
12 represents. So, that is our worry here. Unless he is a protected witness, I am reasoning the way my
13 learned brother has reasoned on my right.

14 MS. WIAFE:

15 Your Honour, if I can just make a comment.

16

17 Communities are very small in Sierra Leone, so I just want you to bear that in mind in making this
18 decision.

19 JUDGE BOUTET:

20 Your objection is overruled.

21

22 Carry on, Mr. Norman.

23 THE ACCUSED NORMAN:

24 Thank you, My Lords.

25 *(Pages 1 to 23 by Gifty C. Harding)*

26

27

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1 1100H

2 THE ACCUSED NORMAN:

3 To assist the Prosecution, the name that is going to be called cannot and would never be a witness,
4 and the witness knows the reason and I know the reason.

5 BY MR. NORMAN:

6 Q. Mr. Witness, the name of the man who was the chief attached to me responsible for your own group
7 of people is what I want you to call. Can I help you if you want to --

8 MR. PRESIDENT:

9 No, he should answer the question, Mr. Norman.

10 THE ACCUSED NORMAN:

11 Thank you, My Lord.

12 MR. PRESIDENT:

13 He should answer that question.

14 THE ACCUSED NORMAN:

15 Thank you.

16 MR. PRESIDENT:

17 What is the name of that man? You say you know him, what is his name, the man who represented
18 you, you know? What is his name?

19 JUDGE BOUTET:

20 Speak up, please.

21 THE WITNESS:

22 Mr. ~~Xxxx~~.

23 BY THE ACCUSED NORMAN:

24 Q. Thank you very much. You know the name. Is he alive?

25 JUDGE BOUTET:

26 Again, Mr. Witness, you have to answer these questions. I mean, this is a simple question, you can
27 say yes or no or I don't know.

28 THE WITNESS:

29 Repeat your question so that I can understand.

30 BY THE ACCUSED NORMAN:

31 Q. Mr. Witness, I want you to feel at ease. You are not on trial.

32 MR. PRESIDENT:

33 Mr. Norman, please go straight to the question, please.

34 THE ACCUSED NORMAN:

35 Thank you, My Lord, but the witness, if he has been answering, would have been gone a long time.

36 MR. PRESIDENT:

37 Go straight to the answer, please. (*sic*)

1 BY THE ACCUSED NORMAN:

2 Q. Thank you. Is Mr. Xxxx alive now as you are sitting there? Do you know whether Mr. Xxxx is alive?

3 A. He is not alive.

4 Q. When did he die, do you know?

5 MR. PRESIDENT:

6 When did he die? Please, these are straight questions. When did he die, do you know?

7 THE WITNESS:

8 Yes.

9 BY THE ACCUSED NORMAN:

10 Q. Say it.

11 A. Yes, I know when he died, I know.

12 Q. When?

13 A. I'll not, sir, tell you the dates because at that time I went to xxxx on business.

14 Q. How did he die, you know? It is a sorrowful incident, I know it hurts, but tell this Court, please --

15 A. Yes.

16 Q. -- how he died.

17 A. I heard that there was an attack in Xxxx and in the course of the attack, he died.

18 Q. And you know he was a very close man to me. Mr. Witness, this incident is very painful, I know. But
19 help me and help this Court.

20 JUDGE BOUTET:

21 Mr. Witness, again if you don't know, will you say, "I don't know." The question was, "You know that
22 he was close to me." If you don't know that say, "I don't know." It's a simple question, so please try to
23 help the Court in understanding what is going on.

24 THE WITNESS:

25 I heard that there was an attack in Xxxx and in the course of that he died. But during that day I was
26 not in xxxx, I was in xxxx

27 BY THE ACCUSED NORMAN:

28 Q. But when you came back your group led a delegation to me.

29 MR. PRESIDENT:

30 Mr. Norman, let him answer the question.

31 THE WITNESS:

32 Well, I thought that.

33 THE ACCUSED NORMAN:

34 Thank you, My Lord.

35 MR. PRESIDENT:

36 Was he close to you or not?

37

1 BY THE ACCUSED NORMAN:

2 Q. Did you know he was a close man to me of -- among your own people?

3 A. Yes.

4 Q. And when you came back, you and others were in a delegation to me over that incident, not so?

5 JUDGE BOUTET:

6 I would like to be re-assured on this issue that -- because, Mr. Norman, you are talking of a
7 delegation. If it's a delegation of two or three, we are getting -- I don't know what you mean by
8 delegation, so --

9 THE ACCSUED NORMAN:

10 A group of people representing an opinion of a larger group.

11 JUDGE BOUTET:

12 I understand that is what you mean, but the group in question, is it a group of two or is it a group of 25
13 or a group of 50? I am talking simply, Mr. Norman, as to again to protect the identity of the witness.

14 That is my concern.

15 THE ACCUSED NORMAN:

16 Thank you, thank you, My Lord.

17 BY THE ACCUSED NORMAN:

18 Q. You and some people went to see me over Pa **Xxxx**'s death.

19 A. I did not go there during that time.

20 Q. Do you know others went?

21 A. Yes, I heard about that, but I did not go and I did not know the people who went.

22 Q. But you cannot remember the year that that attack took place?

23 A. No.

24 Q. If I remind you, would you agree ?

25 JUDGE BOUTET:

26 Ask him -- give him the date, Mr. Norman, or the year and ask him.

27 BY THE ACCUSED NORMAN:

28 Q. Well, I want to help you, I want to assist you, it was in 1995. Do you agree? The attack on me in
29 which Pa **Xxxx** died.

30 JUDGE BOBUTET:

31 Can you answer the question, please?

32 THE WITNESS:

33 I cannot remember the year because I am not literate in English.

34 BY THE ACCUSED NORMAN:

35 Q. But, Mr. Witness, you told this Court you can write Arabic and you can write your own language in
36 Arabic. You have no year in your own language and there is no year in Arabic?

37

1 JUDGE BOUTET:

2 Can you answer the question? Mr. Norman, just a minute. Can you answer the question; can you
3 write in Arabic?

4 THE WITNESS:

5 Yes, I can write a little because I'm not that literate in Arabic.

6 BY THE ACCUSED NORMAN:

7 Q. Mr. Witness, I am not educated in Arabic, but I want to say one word for you to understand and
8 perhaps tell. (*Arabic words – no translation*) What does that mean?

9 A. God is great.

10 Q. And you know God is great?

11 MR. PRESIDENT:

12 Look at me, Mr. Witness, look at me and answer.

13 JUDGE THOMPSON:

14 I have some very serious doubts about this line of cross-examination. Mr. Norman, it is argumentative
15 particularly -- suppose you get an answer in the negative, how does that assist the Court?

16 THE ACCUSED NORMAN:

17 My Lord, you will put down that God is not great.

18 MR. PRESIDENT:

19 And this is an area where the faith notion makes these kinds of questions argumentative.

20 THE ACCUSED NORMAN:

21 I will take your caution into consideration, My Lord. I will proceed.

22 BY THE ACCUSED NORMAN:

23 Q. Mr. Witness, apart from soldiers and RUF and CDF, who else do you know that was involved in the
24 fighting in Sierra Leone? Do you know whether there was any other group apart from these?

25 MR. PRESIDENT:

26 In the fight in this country, you know there was a fight in his country? There was a fight in this country.

27 Which groups were involved in the fighting? Which groups? Which people, which groups, which
28 various groups were involved in the fighting?

29 THE WITNESS:

30 I know of three groups.

31 BY THE ACCUSED NORMAN:

32 Q. Who are those?

33 A. First I heard rebels.

34 Q. Then?

35 A. After that we heard CDF, the *Kamajors*.

36 Q. So those are the only three you know; rebel, soldier, *Kamajor*?

37 A. Yes.

1 Q. Did you know of any group involved called ECOMOG?

2 A. Yes, we used to see the ECOMOG when they came.

3 Q. Did you know of any group where -- did you know of any group called *Kapra*?

4 A. Where I was I did not see them.

5 Q. *(inaudible)* did you know?

6 A. No, I don't know.

7 Q. Do you know any group called --

8 MR. PRESIDENT:

9 Sorry, is Apra, spelled Apra, Apra?

10 THE ACCUSED NORMAN:

11 *Kapra*. K-A-P-R-A.

12 MR. PRESIDENT:

13 *Kapra*.

14 THE ACCUSED NORMAN:

15 *Kapra*, I will identify them to Your Lordship at the appropriate time.

16 BY THE ACCUSED NORMAN:

17 Q. *Tamaboro* is T-A-M-A-B-O-R-O. Did you know them?

18 JUDGE BOUTET:

19 Please answer the question.

20 MR. PRESIDENT:

21 It is simple, if you know, you know. If you don't know say so, please.

22 THE WITNESS:

23 No, I don't know about them.

24 BY THE ACCUSED NORMAN:

25 Q. You don't know of another group called Donso, D-O-N-S-O -- D-O-N-S-O, Donso?

26 JUDGE BOUTET:

27 Mr. Witness, do you know of that group or not?

28 THE WITNESS:

29 No, I don't saw that group.

30 BY THE ACCUSED NORMAN:

31 Q. Do you know of another group called Jbeties, J-B-E-T-I-E-S, Jbeties?

32 MR. PRESIDENT:

33 Called what?

34 THE ACCUSED NORMAN:

35 Jbeties, J-B-E-T-I-E-S, My Lord, Jbeties. I will tell Your Lordship about that.

36 BY THE ACCUSED NORMAN:

37 Q. Quick, if you give me an answer --

1 A. No, I don't know that group.

2 Q. The other group, they are called O.B.H.S. This is now -- we are now going from one to (inaudible)
3 and I'm sure you know O.B.H.S., Organise Body of Hunting Societies, is the meaning of O.B.H.S. Do
4 you know them?

5 JUDGE BOUTET:

6 You have to answer.

7 THE WITNESS:

8 No, I don't know them.

9 BY THE ACCSUED NORMAN:

10 Q. Did you know of the other group, they were referred to as vigilantes?

11 THE ACCSUED NORMAN:

12 I will spell, My Lord, V-I-G-I-L-A-N-T-I-E-S, vigilantes. Vigilantes – I have been corrected by master
13 of languages. It is T-E-S, not T-I-E-S, correction, My Lord.

14 JUDGE BOUTET:

15 Mr. Witness, can you answer the question, please?

16 BY THE ACCUSED NORMAN:

17 Q. I am begging you.

18 A. No, I don't know them, all that I know is what I have said.

19 Q. Do you know about the other group called Border Guards?

20 THE ACCUSED NORMAN:

21 Border guards. Border, then guards, My Lord.

22 JUDGE BOUTET:

23 Thank you. Mr. Witness, even though you may have said so in the past you still have to answer these
24 questions yes, no, or I don't know.

25 THE WITNESS:

26 I don't know that group.

27 BY THE ACCUSED NORMAN:

28 Q. Now, Mr. Witness, in all the groups I have called, there were 11 groups involved in the fighting in Sierra
29 Leone. Do you know that?

30 JUDGE BOUTET:

31 Mr. Witness, can you answer the question?

32 MR. PRESIDENT:

33 He says that there were 11 groups fighting. What is your answer? Do you know or you do not know?

34 THE WITNESS:

35 I do not know all the 11 groups.

36 BY THE ACCUSED NORMAN:

37 Q. I am putting to it you that there were these 11 groups.

1 JUDGE BOUTET:

2 Mr. Norman, he has already answered, he doesn't know.

3 THE ACCUSED NORMAN:

4 Yes.

5 BY THE ACCUSED NORMAN:

6 Q. Well, before 1998, were there *Kamajors* in *Xxxx*?

7 JUDGE THOMPSON:

8 May I intervene here?

9 MS. WIAFE:

10 Your Honour --

11 JUDGE THOMPSON:

12 I think, Mr. Norman, your learned stand-by counsel, Dr. Jabbi, did cover that particular subject.

13 THE ACCUSED NORMAN:

14 Thank you for reminding me, My Lord.

15 MR. PRESIDENT:

16 And in my judgment exhaustively.

17 BY THE ACCUSED NORMAN:

18 Q. By 1995, Mr. Witness, did you know that there were *Kamajors* in *Xxxx*?

19 MS. WIAFE:

20 Your Honour, I think this subject ---

21 JUDGE BOUTET:

22 Sustained. This area of *Kamajor* where they were, when and so on, has been widely covered by your
23 counsel and therefore this is an area that, when we mentioned to you at the beginning, you must not
24 cover the same ground, as such. You are --

25 THE ACCUSED NORMAN:

26 Yes, My Lord, but the witness is not on record that he knew that there were *Kamajors* in *Xxxx*.

27 JUDGE BOUTET:

28 We know this, but this is --

29 MR. PRESIDENT:

30 And we don't want to go back to that.

31 JUDGE BOUTET:

32 We know this, he has answered what he could answer at that time, we will not allow further question
33 on this because it has already been covered.

34 THE ACCUSED NORMAN:

35 He was not asked whether there were *Kamajors* in *Xxxx*. I can testify to that because I was listening
36 to the line of question, My Lord, that the witness was never questioned --

37 JUDGE BOUTET:

1 You are quite right.

2 THE ACCUSED NORMAN:

3 -- the witness was never questioned on the extent of *Kamajors* in *Xxxx* in 1995 right up to that --

4 JUDGE BOUTET:

5 Fine, we will allow that question. Go ahead.

6 MR. PRESIDENT:

7 I want to get one thing, you know, right. *Xxxx*. is it a town or a chiefdom?

8 THE ACCUSED NORMAN:

9 It is an amalgamated chiefdom, composed of many towns and many villages.

10 MR. PRESIDENT:

11 Yes, that is my -- that is my understanding.

12 THE ACCUSED NORMAN:

13 That is it.

14 MR. PRESIDENT:

15 So when you say in *Xxxx*, I mean, are you -- are you just spreading the question around the place?

16 THE ACCUSED NORMAN:

17 I'm not spreading the question, he lived in the chiefdom.

18 MR. PRESIDENT:

19 Yes.

20 THE ACCUSED NORMAN:

21 And, if I am not pre-empting, he knows and I know that we met and we made arrangements in his own
22 presence of forming *Kamajors*.

23 MR. PRESIDENT:

24 No, we are not -- we are not interested in that, we are not interested in that.

25 THE ACCUSED NORMAN:

26 My Lord --

27 MR. PRESIDENT:

28 You are not leading any evidence --

29 THE ACCUSED NORMAN:

30 My Lord, I am not leading evidence, but --

31 MR. PRESIDENT:

32 No, no, Mr. Norman, please, remain within your legal limits, please.

33 THE ACCUSED NORMAN:

34 Thank you, My Lord. Thank you, My Lord. My legal limits allows me to ask the witness a question,

35 My Lord.

36 JUDGE THOMPSON:

37 Yes. And I would like to add a little point to that, that you are now defending yourself, you know.

1 THE ACCUSED NORMAN:

2 For my life, My Lord, I would emphasise.

3 JUDGE THOMPSON:

4 Yes, you are representing yourself and --

5 THE ACCUSED NORMAN:

6 For my life.

7 JUDGE THOMPSON:

8 -- therefore, keep to that parameter.

9 THE ACCUSED NORMAN:

10 For my life, My Lord, it's not for anything else, but I will be staying in jail for my life --

11 JUDGE THOMPSON:

12 Yes. I mean, Mr. Norman, don't be pre-emptive of the Bench.

13 THE ACCUSED NORMAN:

14 No, I'm not pre-emptive, My Lord, I am only emphasising the importance --

15 JUDGE THOMPSON:

16 We are very much sensitive to that, but we should proceed with the judicial process and ascertain the
17 facts as they come out.

18 THE ACCUSED NORMAN:

19 So a man on trial for his life should be given at least as much chance as the protection of the
20 witnesses' exposure.

21 MR. PRESIDENT:

22 You have all the chances, Mr. Norman, but within legal limits, please. You can go ahead.

23 BY THE ACCUSED NORMAN:

24 Q. Mr. Witness, did the investigators on the Prosecution side talk to you?

25 JUDGE BOUTET:

26 Can you answer the question? You don't understand what is meant by investigators?

27 THE WITNESS:

28 I don't understand that question.

29 BY THE ACCUSED NORMAN:

30 Q. I will put it this way. Up to the time you were brought to sit over there, did anybody talk to you about
31 this matter?

32 JUDGE BOUTET:

33 Mr. Norman, maybe you could ask the question in two phases as such. I am not sure if your question
34 has to do -- whether or not he did talk to the Prosecution's investigators or others while here, or your
35 question is to do with whether he met with them prior to coming here today. So let us try it that way
36 first and we will see.

37 THE ACCUSED NORMAN:

1 My Lords, I am on trial for my life. I don't want to say this to hurt, but it seems that the laxity given to
2 the Prosecution witness to keep quiet until you almost go to the extent of near begging him to answer
3 is ominous.

4 JUDGE BOUTET:

5 Well, just by observing the reaction of the witness quite often he does not appear to understand the
6 substance of your question.

7 THE ACCUSED NORMAN:

8 But, My Lords, the witness was not brought here by me, he was brought by people. How did he get
9 here, he cannot understand even that?

10 JUDGE THOMPSON:

11 Mr. Norman, let me say here that our duty as judges is to ensure the fairness and integrity of the
12 process. The Prosecution have brought certain charges upon which they must stand or fall. And we
13 are here to adjudicate with the greatest degree of impartiality and objectivity, but at the same time,
14 there are principles and rules that govern how the judicial process functions. And we cannot, because
15 of the special position you find yourself in as representing yourself, necessarily allow you the kind of
16 latitude that you are looking for to the prejudice of the Prosecution. Indeed, under cross-examination
17 we have agreed that you can cross-examine as exhaustively as you can on the substance of the
18 examination-in-chief and even on matters that have not arisen out of examination, just to test the
19 credit, as the Americans say, the believability of the witnesses. But here it is important to let you
20 know that if you are asking a question about whether he spoke to the Prosecution, it's important to
21 know whether the -- you are talking about the interview that he might have given as a potential
22 Prosecution witness, or whether after that we have a clear structure in our minds as judges what he
23 has said to the Prosecution when he was being interviewed as a potential witness may be different
24 from what he --

25 THE ACCUSED NORMAN:

26 Thank you, My Lord, I will reframe my question.

27 JUDGE THOMPSON:

28 Would you do that?

29 THE ACCUSED NORMAN:

30 And thank you for my education.

31 BY THE ACCUSED NORMAN:

32 Q. Mr. Witness, did you make a statement to anyone about this matter before coming here?

33 MR. PRESIDENT:

34 Please answer the question.

35 THE WITNESS:

36 Yes.

37 MR. PRESIDENT:

1 Answer the question.

2 THE WITNESS:

3 Yes. Yes.

4 MR. PRESIDENT:

5 Don't wait to be asked to answer the question. If you have the reply to the question, please, react
6 immediately.

7 BY THE ACCUSED NORMAN:

8 Q. Did you make one statement or more than one statement?

9 MR. PRESIDENT:

10 Please answer the question. Please answer the question, don't keep the Court waiting. We won't
11 sleep here. Did you make only one statement or you made many more statements? Please, answer
12 the question.

13 THE WITNESS:

14 I made one statement. Yes.

15 BY THE ACCUSED NORMAN:

16 Q. Thank you. You remember when you made that statement?

17 A. Yes.

18 Q. When was it?

19 A. I can't remember the date because I was asked, and as they asked me I had been giving the
20 statement.

21 Q. You cannot remember when? You remember it was only one time?

22 A. Yes.

23 Q. How long has that been, is it one week, two weeks?

24 A. It's more than one month.

25 Q. It is more than one month? Can you go to two months?

26 JUDGE BOUTET:

27 Please answer the question.

28 THE WITNESS:

29 I have answered, I've said what I knew.

30 BY THE ACCUSED NORMAN:

31 Q. You have said more than one month. I am saying did it go to two?

32 A. I have told you that I cannot tell you the dates, but all I can say is it's more than one month.

33 Q. And from that time it is only now that you are talking on that statement?

34 MR. PRESIDENT:

35 Mr. Witness, please.

36 JUDGE THOMPSON:

37 Perhaps, Mr. Norman, you want to clarify that a bit?

1 THE ACCUSED NORMAN:

2 Yes, My Lord.

3 JUDGE THOMPSON:

4 Maybe the question itself is –

5 THE ACCUSED NORMAN:

6 Yes, My Lord, I want to clarify it a bit.

7 BY THE ACCUSED NORMAN:

8 Q. Can that one month be in last year or this year?

9 A. It is this year.

10 Q. So that one month cannot be in December 2003 at all?

11 THE ACCUSED NORMAN:

12 My Lord, when he finishes with the answer that will be my last question to him. I think (*inaudible*).

13 JUDGE BOUTET:

14 Thank you.

15

16 Would you answer his last question, please?

17 TH ACCSUED NORMAN:

18 My Lords, that will be all.

19 JUDGE BOUTET:

20 Thank you very much.

21

22 Mr. Witness, you have not answered that very last question. Can you answer the question, please?

23 THE WITNESS:

24 I don't understand that question.

25 JUDGE BOUTET:

26 Can you try it again, Mr. Norman, please?

27 BY THE ACCUSED NORMAN:

28 Q. I will help you. You said you made the statement only one time and it has taken one month since.

29 That was why I was asking, could that month be last year or this year? Would one month be in 2003
30 or in 2004?

31 A. I know 1999, 2004. I don't understand the years of this English month.

32 Q. You know, surely, when the year past to this year, 2004, from January to this -- now, this is June,
33 January, February, March, April, May, June. I know you do remember February very well because
34 February xxxx is a date you cannot forget. But now I am saying that one month, was that one month
35 in January or in February or in March or in April or in May, and then now this June? Which of the
36 month?

37 A. After this – after the past month and this other month. The coming of this month.

1 Q. That is the month before this, May?

2 MR. PRESIDENT:

3 Mr. Witness, this is your statement. Did you make that last year or this year?

4 THE WITNESS:

5 It's this year.

6 BY THE ACCUSED NORMAN:

7 Q. It is this year. This year, one month, it is in this year.

8 MR. PRESIDENT:

9 I think that is what he has said, Mr. Norman.

10 THE ACCUSED NORMAN:

11 That is the answer to Your Lordship, yes, to say you have to answer my question, that is why I
12 insisted, but if that is the answer, then I can leave him to the –

13 MR. PRESIDENT:

14 I suppose that is what you are driving at, that it wasn't made last year, but it was made this year.

15 THE ACCUSED NORMAN:

16 Thank you, My Lordship.

17 MR. PRESIDENT:

18 But if you are not very clear you can still go ahead. You can still go ahead.

19 THE ACCUSED NORMAN:

20 No, no, no, no, no, I will keep quiet, Your Lordships. That will be the end, Your Lordships.

21 JUDGE BOUTET:

22 Thank you.

23 MR. PRESIDENT:

24 The Court will rise for 15 minutes. The Court rises.

25 *(Court recessed from 1147 to 1214H)*

26 JUDGE BOUTET:

27 Counsel for second Accused, please.

28 MR. BOCKARIE:

29 Yes, Your Honour. I have no questions for this witness. However, at the end of Mr. Margai's cross-
30 examination I would like to make a very brief statement, Your Honour.

31 JUDGE BOUTET:

32 We will see then. Thank you.

33 Mr. Margai.

34

35 MR. PRESIDENT:

36 I am sorry, can I have you on record again, please? Let me have you on record.

37 MR. BOCKARIE:.

1 Yes, Your Honour, we have no questions for this witness.

2 MR. PRESIDENT:

3 Yes.

4 MR. BOCKARIE:

5 However, at the end of Mr. Margai's cross-examination, with your leave, I would like to make a very
6 brief statement, sir.

7 MR. PRESIDENT:

8 You would like to make a brief statement?

9 MR. BOCKARIE:

10 Yes, with your leave.

11 MR. PRESIDENT:

12 That's all?

13 MR. BOCKARIE:

14 Yes, Your Honour.

15 JUDGE BOUTET:

16 Mr. Margai, counsel for the third Accused.

17 MR. MARGAI:

18 My Lords, Mr. Williams will take this witness.

19 JUDGE BOUTET:

20 Very well. Please proceed.

21 WITNESS TF2-176

22 CROSS-EXAMINATION

23 BY MR. WILLIAMS:

24 Q. Yes, Mr. Witness, I would do a follow-up to the line of cross-examination that was being done by the
25 first Accused.

26 MR. PRESIDENT:

27 I am sorry?

28 MR. WILLIAMS:

29 I well do a follow-up, My Lord.

30 MR. PRESIDENT:

31 Pardon me?

32 MR. WILLIAMS:

33 A follow-up to the line of cross-examination that the first Accused was pursuing before the break.
34

35 MR. PRESIDENT:

36 When you say it is a follow-up, what do you mean, by the first Accused?

37 MR. WILLIAMS:

1 My Lord, about the statement.

2 MR. PRESIDENT:

3 Well, let us see what your questions will look like, because the first Accused has closed his cross-
4 examination.

5 MR. WILLIAMS:

6 It is for the Court now, My Lord, but it is along similar lines, but it's for the third Accused I am cross-
7 examining.

8 MR. PRESIDENT:

9 I hope you will tread -- you will tread a very safe path, you know, because we have to go by the rules
10 of the game. You can go ahead; let us see.

11 JUDGE THOMPSON:

12 May I just say one thing. Is it -- it's not the tradition to tell the witness how you intend to proceed. You
13 address the Bench on that issue. And --

14 MR. WILLIAMS:

15 My Lord, I believe I was addressing the Bench.

16 JUDGE THOMPSON:

17 But, I mean, you were saying to the witness that you intend to cross-examine along the lines of that
18 done on behalf of the first Accused, and then this would sound very novel. You address the Bench,
19 you let us know.

20 MR. WILLIAMS:

21 As My Lord pleases, but I thought I was addressing the Bench, My Lord.

22 JUDGE THOMPSON:

23 No, I thought I heard you say, "Mr. Witness," you were addressing that to the witness.

24 MR. WILLIAMS:

25 Oh, I apologise, My Lord.

26 JUDGE THOMPSON:

27 Thank you, yes.

28 BY MR. WILLIAMS:

29 Q. Yes, you mentioned that you made just one statement to the Prosecution, is that correct?

30 A. Yes.

31 Q. And on that occasion when you spoke, the person that was interviewing you recorded it -- recorded
32 what you were saying?

33 A. Yes.

34 Q. At the conclusion you were asked to sign the document or to append -- I mean, your -- you put your --
35 to affix your thumbprint.

36 A. Yes.

37 Q. Did you -- this you said was not in 2003, but some time this year?

- 1 A. Yes, this year.
- 2 Q. Did you, subsequent to that first interview or, I mean, subsequent to you making that first statement,
3 did you speak with the Prosecution again?
- 4 A. Yes.
- 5 Q. Several times?
- 6 MR. PRESIDENT:
7 Why don't you ask him how many times?
- 8 MR. WILLIAMS:
9 I said several times, My Lord.
- 10 MR. PRESIDENT:
11 Why don't you ask him how many times.
- 12 BY MR. WILLIAMS:
13 Q. Could you recall how many times you spoke with the Prosecution?
- 14 JUDGE BOUTET:
15 Can you answer the question, please?
- 16 THE WITNESS:
17 Repeat, I don't understand what you are asking.
- 18 BY MR. WILLIAMS:
19 Q. Well, could you tell the Court how many times you spoke with the Prosecution after you made that first
20 statement to them?
- 21 A. Yes.
- 22 Q. Please tell the Court.
- 23 A. Only two times they spoke to me.
- 24 Q. Would you recall when was the last time you spoke with them?
- 25 A. I know I have spoken to them, but I cannot remember the time because I am not educated.
- 26 Q. Did you talk to them during the course of this morning? This very June?
- 27 A. Yes.
- 28 Q. On all of those occasions you actually spoke and they wrote what you said, is that correct?
- 29 A. Yes.
- 30 Q. Did you sign what they recorded?
- 31 A. No.
- 32 Q. Mr. Witness, you will agree with me that on one such occasion (*inaudible*) you did rectify or correct
33 certain inconsistencies that you had mentioned to them earlier, is that correct? Certain things you had
34 said earlier to them, on that occasion you told them that it was incorrect.
- 35 A. What I told them is correct.
- 36 Q. What you told the Prosecution is correct? Yes?
- 37 A. Yes. What I know is what I told them.

1 Q. What I am saying, Mr. Witness, is the first time you spoke with them they recorded it, is that correct?

2 Yes or no?

3 A. Yes.

4 Q. And some time this month did you talk -- did you tell them or inform them about anything you had said
5 to them earlier which was incorrect?

6 A. I don't understand that question.

7 Q. Did you tell the Prosecution that, "I told you certain things which were recorded which I now say was
8 incorrect." Did you say that to them?

9 A. No.

10 Q. When you first spoke with the Prosecution, you told -- you mentioned names to them about people
11 that were present when Mr. Norman addressed a meeting at **Xxxx**, is that correct?

12 A. Yes.

13 MR. WILLIAMS:

14 My Lord, I wish to tender the statement, My Lord, which was made by this witness on the 14th of June
15 2004. It is in the possession of the Prosecution and I would be grateful if the Court could ask that
16 they produce it for the purpose of us tendering it, My Lord.

17 JUDGE BOUTET:

18 How do you intend to do this?

19 MR. WILLIAMS:

20 My Lord, I would refer Your Lordship to *Phipson on Evidence*. And where a witness, My Lord, says
21 something in the witness stand which is inconsistent with a previous statement you can confront him
22 with that statement and have it tendered, My Lord.

23 JUDGE BOUTET:

24 How will you confront that witness with that statement?

25 MR. WILLIAMS:

26 My Lord, if he is illiterate, I mean, we want justice to be done, it can be tendered through the Court.

27 JUDGE THOMPSON:

28 But before you do that, before you cite the law on the subject, perhaps one would like to hear the
29 citation on which you are relying. Just a minute. Have you laid sufficient foundation --

30 MR. WILLIAMS:

31 Yes, My lord.

32 JUDGE THOMPSON:

33 -- for the reception of this document into evidence?

34

35 MR. WILLIAMS:

36 Yes, My Lord.

37 JUDGE THOMPSON:

1 Could you go over the foundation that you have laid for us?

2 MR. WILLIAMS:

3 My Lord, that may -- that statement that it was inconsistent with what he has said in Court, on oath,
4 My Lord. Those are the two bases for tendering a previous statement, My Lord. That in the
5 statement, that what he has said on oath is inconsistent with what was said in that statement, My
6 Lord.

7 JUDGE THOMPSON:

8 But doesn't that statement need to be tendered for identification purposes first before we --

9 MR. WILLIAMS:

10 My Lord, I thought it has to be tended as exhibit, My Lord.

11 JUDGE THOMPSON:

12 Yes, I mean, isn't it a step-by-step process. First of all, if you show him the document and he
13 acknowledges that this is what --

14 MR. WILLIAMS:

15 That is why I am asking that the Court orders the Prosecution, they have it, My Lord, to produce it, My
16 Lord. I mean, it's for them to furnish the Court. I mean, the Criminal Procedure Act of Sierra Leone is
17 very clear on that.

18 JUDGE THOMPSON:

19 Yes.

20 MR. WILLIAMS:

21 Section 190, My Lord. But I refer to Your Lordship to *Phipson on Evidence*.

22 JUDGE THOMPSON:

23 Quite right. Well, probably we -- perhaps I am being pre-emptive, we will wait to hear the law later. I
24 think the Prosecution needs to have an opportunity to respond.

25 MR. WILLIAMS:

26 As My Lord pleases.

27 MS. WIAFE:

28 Your Honours --

29 MR. JOHNSON:

30 Yes, Your Honour, in this case, because I am familiar with the statement that the Defence wants to be
31 tendered before the Court, we do agree that the Court should see it. This is really -- we agree, the
32 Court should see it in light with your order that witness statements be produced in an unredacted form
33 to the Bench. This is a statement -- this is a recording of some interview notes that were taken since
34 this witness's statement was initially provided to the Bench a couple of weeks ago, pursuant to your
35 order. This was some new information that was taken up in discussion with one of your clerks about
36 ways that we can pass these along to you if these things happen after we make the initial tendering of
37 statements to you, in compliance with your order, to tender statements to you before a witness

1 testifies. So, in that sense, we certainly agree that this should come before the Bench. As far as
2 tendering an exhibit, I am not sure if that is necessary. The witness's interview notes recorded by the
3 person who took the notes from the individual, they are not sworn, they are not signed, they are not in
4 any way those -- these were just, as I said, some contrary information that came out to what we have
5 provided you earlier and we, when we got this information, we served it on the Defence quickly. And
6 we want the Bench to have it, in light with your order, to have copies of witness statements.

7 MR. PRESIDENT:

8 Yes, Counsel, you can continue laying your grounds, make your arguments and let us see how far
9 you want to go.

10 MR. WILLIAMS:

11 My Lord, I refer Your Lordships to -- I would refer Your Lordships to *Phipson on Evidence*, My Lord. It
12 is a very old edition, but the eleventh edition, My Lord. It's under the rubric -- under the rubric,
13 previous inconsistent statements.

14 MR. PRESIDENT:

15 (*inaudible*) is that?

16 MR. WILLIAMS:

17 It is 656, paragraph 15-50.

18 JUDGE THOMPSON:

19 Just read it.

20 MR. WILLIAMS:

21 My Lord, it refers to the Criminal Procedure Act 1865, that's an English Statute, My Lord, which is
22 Section 4, My Lord. I will read Section 4 out for Your Lordships. It says, "If a witness, upon cross-
23 examination as to a former statement made by him relative to the subject-matter of the indictment or
24 proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made
25 such statement, proof may be given that he did in fact make it; but before such proof can be given the
26 circumstances of the supposed statement, sufficient to designate the particular occasion, must be
27 mentioned to the witness, and he must be asked whether or not he has made such statement."

28 My Lord, I believe I have fulfilled, My Lord, all the prerequisites, My Lord, for the tendering of the
29 statement he made on the 14th, My Lord.

30 MR. CARUSO:

31 If I might, Your Honour, perhaps I can help some. I don't disagree with certainly what Mr. Williams
32 has said. I do happen to have at hand something perhaps a little more contemporaneous and relative
33 to the ICTR relative to this -- Oh, I am sorry, excuse me. Perhaps a little more contemporaneous and
34 relative to the ICTR that may help us out some here.

35 My understanding is -- and from national jurisdictions as well as international jurisdictions -- that the
36 proper method of impeachment and use of this statement is one, to ask the witness, one, whether he
37 knows about this -- whether he remembers making the statement, whether he made the statement,

1 and then to give him the opportunity to confront the inconsistency and explain saying thereafter to the
2 extent that it is necessary and of course in this case it is a moot point because we have delivered this
3 statement to the Court it can then be marked as an exhibit and entered into evidence at that point. As
4 soon as the Court comes to the conclusion that he one, admits to having made this statement; two,
5 finds it to be truly inconsistent; and, three, finds it to be material to the issue at hand. That is my
6 understanding. I don't know that that disagrees much from what Mr. Williams said. The difficulty I
7 have here is not leading this witness, but I have yet to hear the question and the answer to which he's
8 -- with which he is concerned. It may be my overlooking it.

9 JUDGE THOMPSON:

10 My difficulty here -- I myself do agree that the law has been correctly cited by learned counsel for the
11 third Accused and also the law has been correctly cited by you. And, in fact, the ICTR position would
12 seem to be a reflection of the common law kind of tradition. My difficulty here, of course, from the
13 Bench's perspective is to what extent can it be -- the statement that is sought to be tendered be
14 legally characterised as the statement of the witness? In other words, do we have unequivocal
15 evidence that he was the author of the statement. That is the issue that I need to be satisfied on.

16 MR. WILLIAMS:

17 A brief -- a brief -- a brief answer to that, My Lord, is that if that statement was coming from us, My
18 Lord, then -- I mean, the room for impeachment would have been understood, My Lord. But it is their
19 witness, they are the ones who are adducing that statement, My Lord. They cannot rely on their own
20 witness, My Lord. My Lord, I cannot say otherwise, Your Honour, and they have served us, My Lord. I
21 mean, we would -- I mean, we treat ourselves as honourable people, My Lord, and I would definitely
22 not impeach what they are saying, My Lord.

23 JUDGE THOMPSON:

24 Right, well, let me hear the Prosecution on that because that is a lingering doubt in my mind.

25 MR. CARUSO:

26 And therein is the disagreement between Mr. Williams and I. The fact of the matter is, Your Honour,
27 precisely what I understand the rule of impeachment to be under these circumstances is that the
28 statement which they have received, which is what we have said this individual has communicated to
29 us, is that with which he must be confronted. Now, on the occasion in which he assumes -- he says
30 that, "Yes, that is the statement I made. Yes, I do remember having made it." He then is allowed the
31 opportunity to explain it to the extent that it is inconsistent with what he has said in court, presuming
32 this Court says that it is a true inconsistency. In that fashion, we thus establish that it is, indeed, his
33 statement. Now, in the event he were to say "No, that is not my statement," this Court then has to
34 make a decision as to whether or not he was worthy of impeachment. The difficulty becomes -- and
35 the ICTY and frankly it goes one step -- or ICTR, pardon me, goes one step further than what most
36 national -- or most national jurisdictions that I am familiar with anyway goes --

37 MR. PRESIDENT:

1 Please, when you say ICTR, do you have a particular jurisprudence in mind?

2 MR. CARUSO:

3 Yes, sir, I do.

4 MR. PRESIDENT:

5 Yes, we would like to see that citation.

6 MR. CARUSO:

7 I would suggest to you, Your Honour, I did not come here with this intention otherwise I would have
8 something for everyone.

9 MR. PRESIDENT:

10 Okay. Right, can you then make available the authority on which you are relying?

11 MR. CARUSO:

12 Yes, sir.

13 THE PRESIDENT:

14 Right.

15 MR. CARUSO:

16 *The Prosecutor versus Ruzindana*, 95 – ICTR-95-1-T, dated 17 April 1997.

17 MR. PRESIDENT:

18 But that's --

19 MR. CARUSO:

20 That is my understanding of the process, Your Honour. I don't argue with Mr. Williams, other than
21 perhaps as to some of the nuances, but the fact of the matter is that if there is a statement that he
22 feels has been made under oath on the stand which is inconsistent with an out of court statement,
23 then there must be a comparison made, there must be a recognition made that the statement is
24 indeed that as this Court has pointed out, that of the witness, and at that point an explanation can be
25 given for it by the witness, assuming he has one. If not, it seems to be at the ICTR the statement is
26 thus -- is then accepted into evidence in any event. That seems to me to be somewhat different from
27 what I am used to, but -- or from what national systems have, but nonetheless it does seem to be the
28 rule.

29 MR. PRESIDENT:

30 We have -- Mr. Williams, we have taken note of your application and we have also taken note of the
31 reply by the Prosecution on the application you are trying to make and we would put this question, you
32 know, in reserve and maybe if the parties are ready you could address us further, you know, on this,
33 you know, this afternoon because we are taking on two issues this afternoon, as you very well know,
34 and as was announced to you yesterday. I did not know if you appear to be ready. I don't know if the
35 Prosecution would be ready to come up with arguments on this, you know, later on today or --

36 MR. CARUSO:

37 I think so, Your Honour, I think we can do that particularly in light of the process that has been had

1 before this Court because I actually think at this point it is a matter of method as opposed to what
2 really ultimately will occur. But I think we can be prepared for that, Your Honour.

3 MR. PRESIDENT:

4 Okay. In that event, I would shelve this for this afternoon. Are you minded to continue with your
5 cross-examination having taken note of this point? You can now proceed, please.

6 BY MR. WILLIAMS:

7 Q. Yes, Mr. Witness, I would like to take you back to **Xxxx**. You said there was an
8 O.C. Mohammed that you met, is that correct?

9 A. C.O. Mohammed.

10 Q. Have you seen a C.O. Mohammed subsequent to you meeting him at **Xxxx**?

11 MR. PRESIDENT:

12 Is his microphone lit?

13 THE WITNESS:

14 No.

15 BY MR. WILLIAMS:

16 Q. C.O. Mohammed was at **Xxxx**.

17 A. Yes.

18 Q. He is a Sierra Leonean, I suppose?

19 A. Yes.

20 Q. And would you say that he treated you nicely?

21 A. Yes, he treated me well.

22 Q. And did you explain to him what had happened to you before you were brought to him?

23 A. Yes.

24 Q. What was his reaction?

25 A. I was tied.

26 Q. When you explained what the others had done to you how did he react?

27 A. I was released.

28 Q. He set you free?

29 A. U-huh.

30 Q. Did he speak with the other *Kamajors* about what you explained to him?

31 A. Yes.

32 Q. Now let me ask you this, was he annoyed with them that they had treated you so badly?

33 A. I don't understand this question.

34 Q. I mean, you were brought to him by *Kamajors* who had mistreated you. You explained what had
35 transpired to him and he said they should set you free. My question is this, when you explained the
36 terrible way these people had treated you, was he annoyed with them?

37 A. Yes, when I explained to him, say, "When I came from **Xxxx**, that was why I was tied and I was

1 brought before you."

2 Q. You don't understand my questions.

3 MR. PRESIDENT:

4 Please, he is answering your question.

5 MR. WILLIAMS:

6 No, My Lord, he is repeating what he had said, My Lord.

7 MR. PRESIDENT:

8 No, no, no, he is coming, he is coming on, follow his trend. He is an illiterate, you know, he has his
9 own way of arriving at answers.

10 MR. WILLIAMS:

11 At answers.

12 MR. PRESIDENT:

13 Yes.

14 THE WITNESS:

15 Yes, when I was tied because I come from **Xxxx**, I answered, I said yes. So C.O. Mohammed said I
16 should be released because I come from **Xxxx**. It is because we have soldiers at **Xxxx**, that's why I
17 was tied. I told them **Xxxx** is my home. C.O. Mohammed says, "This man is my man as well. If we
18 should say civilians should not be with us," that was the reason why I was left.

19 Q. You know -- let me ask you this. You said that you came across somebody called **Xxxx** at **Xxxx**.

20 A. Yes.

21 Q. **Xxxx** or **Xxxx**?

22 A. Yes.

23 Q. How did you know that?

24 A. Yes, he was -- he was born at **Xxxx**? We all lived in the same (*inaudible*) I knew him before. **Xxxx**
25 **Xxxx**.

26 Q. He is saying he came from **Xxxx**?

27 A. **Xxxx** is his village.

28 Q. You know somebody called **Xxxx**?

29 A. Yes.

30 Q. And when you returned to **Xxxx** you reported to that commander. He was commander for **Xxxx**,
31 correct?

32 A. Yes.

33 Q. You reported yourself to him?

34 A. Yes.

35 Q. What did he say to you? Did he say anything to you?

36 A. No, he did not do anything to me.

37 Q. (*inaudible*).

1 A. Yes.

2 Q. What did he say to you?

3 A. He said I should go to my house and I went there and I saw my house burnt.

4 Q. At that first meeting did you come by him subsequently?

5 A. Yes.

6 Q. I would -- I want to ask you your opinion about **Xxxx**. Was he a good commander?

7 A. Yes, he told me so.

8 Q. That's what he told you?

9 MR. PRESIDENT:

10 Ask the question again.

11 BY MR. WILLIAMS:

12 Q. Yes, was he a good commander?

13 A. Yes.

14 Q. And you felt very safe when he was around? I mean, because, I mean, you have mentioned that you
15 were a little bit afraid, you were panicked because of what had happened. Right. Did you feel at
16 ease? Did you feel comfortable when he was around?

17 A. Yes.

18 Q. Did he discipline soldiers? Sorry, did he discipline *Kamajors* who did wrong to the people of **Xxxx**? I
19 mean --

20 A. I don't understand.

21 Q. Did he discipline *Kamajors* who -- or people who did wrong to residents of **Xxxx**? Okay, let me ask
22 you this. I mean the -- the ordinary *Kamajors* at **Xxxx**, did they have a lot of respect for him?

23 A. I don't understand your question.

24 Q. It is a simple and straightforward question.

25 MR. PRESIDENT:

26 To you, Counsel, not to him. Take your time, have some patience with him.

27 MR. WILLIAMS:

28 As My Lord --

29 MR. PRESIDENT:

30 Reframe your questions, you know.

31 MR. WILLIAMS:

32 Yes, My Lord. I don't know whether it's interpretation that is faulty, but, I mean, I cannot --

33

34 MR. PRESIDENT:

35 Take your time. It demands a lot of patience, you know, examining a witness who is illiterate. We
36 have all gone through those experiences. Take your time, please.

37 MR. WILLIAMS:

1 Yes.

2 BY MR. WILLIAMS:

3 Q. The ordinary *Kamajors*, I mean, the lower rank *Kamajors*, did they have a lot of respect for
4 **Xxxx** as commander?

5 A. That I would not know because I am a civilian.

6 MR. WILLIAMS:

7 Sorry, My Lord.

8 JUDGE THOMPSON:

9 How -- it is a little problematic how these questions can come within his province. And I was just
10 going to intervene that (*inaudible*).

11 MR. WILLIAMS:

12 As My Lord pleases.

13 JUDGE BOUTET:

14 Just one moment, please. You have asked that question, he has just answered you that he is a
15 civilian, he does not know how it works or maybe you should --

16 MR. WILLIAMS:

17 My Lord, I am satisfied. He has answered the question, My Lord.

18

19 My Lord, I would wish to -- My Lord, I would wish to ask for an adjournment at this stage until we
20 clarify this -- the statement I intend to put in there and I can round up -- but I would want to assure the
21 Bench that I do not have too much -- I mean, I don't have long to go, My Lord.

22 JUDGE BOUTET:

23 I want to know if you are finished save and except the question of the statement.

24 MR. WILLIAMS:

25 It will depend -- it will depend on that question. I might do a lot of follow-up on that, but other issues
26 might arise, My Lord.

27 MR. PRESIDENT:

28 Yes, Mr. Bockarie, you did indicate that you wanted to make a statement with the leave, you know, of
29 the Court. I think the Court has granted you the leave.

30 MR. BOCKARIE:

31 Yes, Your Honour.

32

33 MR. PRESIDENT:

34 Can we listen to your statement, please?

35 MR. BOCKARIE:

36 Yes, Your Honour. Fortunately, my apprehension has now been taken care of, Your Honour.

37 MR. PRESIDENT:

1 I see.

2 MR. BOCKARIE:

3 Yes, Your Honour. Thank you.

4 MR. PRESIDENT:

5 Right, okay. Thank you.

6

7 The session, you know, will rise and this matter stands -- in the Court stands adjourned until 3:30. We
8 would ask counsel who had -- there were some interlocutory matters that were raised and which the
9 Court would like to address, you know, the arguments of counsel. And when we do resume at 3:30
10 we would spell out a definite calendar of how we proceed with further examinations in this particular
11 matter. Is there any question? Yes.

12 MR. JOHNSON:

13 Yes, Your Honour, one question. Depending on how long this takes, will we be resuming with another
14 witness today?

15 MR. PRESIDENT:

16 I think it's -- the definite answer is no.

17 MR. JOHNSON:

18 Thank you, Your Honour, we just have one standing by. We will take care of that.

19 MR. PRESIDENT:

20 No, I don't think -- because we cannot even say how long the process of Mr. Williams' application, you
21 know, would take to dispose of, and we do not know when your re-examination -- for how long your
22 re-examination would also take. So the day is fast spent already. So --

23 MR. JOHNSON:

24 Thank you, Your Honour, then we will not keep --

25 MR. PRESIDENT:

26 You will get the next series of witnesses maybe ready for Monday.

27 MR. JOHNSON:

28 Absolutely, Your Honour, thank you.

29 MR. PRESIDENT:

30 Thank you.

31

32 The Court stands adjourned to 3:30 today.

33 *(Court recessed at 1258H)*

34 *(Pages 24 to 49 by Susan G. Humphries)*

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1 1542H

2 MR. PRESIDENT:

3 This session is resumed and, as we did indicate, we are going to, before any other thing, take -- tackle
4 three issues which were raised by counsel and also by the first Accused on certain facilities which he
5 intends to have placed at his disposal in the detention facility.

6
7 May I call on the first Accused to please go through his application. It wasn't very long, I know it was
8 not very long. It was placed -- it was put very clearly and very succinctly.

9
10 So, Mr. Norman, can you, please, put your application on the table, please.

11 JUDGE BOUTET:

12 Take your time -- take your time.

13 MR. PRESIDENT:

14 Take your time, please -- take your time. And, Mr. Norman, for these purposes, we -- we -- the
15 Registrar has been asked to be present, so that he listen to your application because he is in charge
16 of your facility as you very well know.

17 THE ACCUSED NORMAN:

18 Yes, My Lord. I did say that I make this request pursuant to my rights guaranteed by Article 17 of the
19 Statute of the Special Court for Sierra Leone, pursuant to Rule 54 of the Rules of Procedure of the
20 Special Court, in order to ensure adequate and effective self-defence. In this regard, My Lords, I was
21 praying that Your Honours' order that I be granted the following, but not limited to, a complete
22 computer set, a telephone that would be different from the one I am given now -- I have been given
23 now, to enable me communicate with my team -- Defence team -- stand-by Defence team at home
24 and abroad at any time of the day and night; a regular supply of stationary and assistant and
25 investigators; I also prayed for modification of detention condition that may not hamper my adequate
26 and effective self-defence, My Lords.

27
28 And I did go further to inform Your Lordships that presently my lock up time is 10:00 p.m. at night, and
29 the opening up of my cell because I attend court is at seven o' clock -- 7:00 a.m. And that between
30 10:00 p.m. and 7:00 a.m., that I use plastic bucket for convenience and I clean also that plastic
31 bucket, and that I wash my dishes for food and I clean -- help to clean the surrounding inside of the
32 cells and outside the yard that is *(inaudible)*.

33
34 And, in addition to these, I have not been given any opportunity beyond the enclosed yard for any
35 exercise whatsoever, physical exercise. And that for quite some time, I, and the others have been
36 complaining about quality and quantity of our food in every respect.

37

1 These are some of the few things that I would like Your Lordships to assist me in modifying and in
2 making available. Thank you.

3 MR. PRESIDENT:

4 Are you through, Mr. Norman?

5 THE ACCUSED NORMAN:

6 Yes, through. Thank you, Your Lordship.

7 MR. PRESIDENT:

8 Thank you. Can you sit down, please.

9

10 Is the Prosecution -- can we hear the Prosecution, please.

11 MR. JOHNSON:

12 Thank you, Your Honour. Your Honour, first of all, the Prosecution would just like to point out that in
13 your order on the role of the stand-by counsel, just to name a few of the things, that you've said that
14 their role would be defined as follows, and again just to name a few, "To assist the Accused -- to
15 assist the Accused in preparation and presentation of his case; to investigate relevant facts on law; to
16 be present in the Court; to offer legal advice; to be actively engaged in the preparation of the case
17 and to participate in the proceedings; to be prepared to takeover the case; and to assemble and
18 present information relevant to all stages of the proceedings." I only Point that out, Your Honours,
19 because in light of the role that you seemed to have envisioned here for the stand-by counsel, the
20 Prosecution could certainly understand you looking to deny this request, in that you envisioned that
21 many of these things, particularly the research of computers, the internet and such, would be
22 performed by stand-by counsel.

23

24 However, the Prosecution would like to say that if you are inclined to grant any of these requests that
25 you hold these requests in abeyance until you could get a report from the Registrar on the security
26 implications of some of these requests. Specifically, the Prosecution would just like to highlight that, if
27 you recall back in January, this Accused had his phone privileges suspended for 14 days, and for very
28 good reason, by the Registrar. That you have just made a decision on updated witness protection
29 measures that have pointed out the threat that exist to the witnesses throughout Sierra Leone. With
30 that in mind, the Prosecution would be very concerned about the computer and does that computer
31 include for internet and network access to include e-mails; and what kind of provisions could be made
32 for the monitoring of that kind of use, as well as unfettered telephone access? The same concern --
33 how would that -- how would that telephone be monitored, for security reasons, for good order within
34 the detention facility reasons and such.

35

36 Of course, an assistant, that's what the -- he has the assistance of four highly qualified stand-by
37 counsel. I believe investigators are part of that package. As I understand, investigators are part of

1 the package already assigned to each Defence team.

2
3 We are very concerned about the specifics of this request for modification to the conditions of
4 detention and thus it goes to be (*inaudible*) some kind of request under Rule 64. I'm just not sure on
5 where he is going on with his modification on the condition of his detention. Again, the Prosecution is
6 very concerned about security implications associated with that request, and so, for that reason, the
7 Prosecution -- well, we could understand, you will deny this request. If you are considering part of this
8 request, that before you would act on it, you would get a report from the Registrar addressing some of
9 these considerations. Thank you, Your Honour.

10 MR. PRESIDENT:

11 Mr. Norman, you heard -- you made the application, you heard the Prosecution and what Mr. Johnson
12 had to say. Do you have any reply to what he has said?

13 THE ACCUSED NORMAN:

14 Yes, Your Honour.

15 MR. PRESIDENT:

16 Very briefly.

17 THE ACCUSED NORMAN:

18 This much, briefly --

19 MR. PRESIDENT:

20 As brief as you were yesterday.

21 THE ACCUSED NORMAN:

22 This much, briefly, I would like to state, much as I sympathise with the Prosecution, but I want to at
23 least express that my confinement is within, I believe, the authority of the Bench. Although the
24 Prosecution has got their case against me and would not want me to escape until they see justice, but
25 I would prefer that the Prosecution being upfront rather than the Registrar, to the Bench, is seen by
26 me as an effort to prove the Prosecution's expression that when he -- when they finish with me, I may
27 not, in the end, see the light of day.

28
29 This much being said, January incident had been referred to. I again do not want to open that wound
30 because it hurts very seriously -- it hurt me because I appealed and that appeal has not been heard
31 up to now; that I was punished for an allegation that was never investigated. But I want to push that
32 one behind me. So I thought and I hope that the Prosecution is not being seen dictating to the
33 condition that I go through under an indictment that is now under the control and the command of the
34 Bench.

35
36 I want to let Your Honours know that I am not an ordinary Accused person in this country, I am a
37 chief. I have been a minister of government, holding very senior and responsible responsibility. And

1 presently, even though, I may be indicted and accused, I'm Justice of the Peace and with all these I
2 believe that I know where the limitation of recklessness may end. If I misuse my opportunities and
3 they are investigated and they find out, or Your Lordships find out, that I have been reckless, I'm
4 amenable and open to punishment according to the law as I am under your indictment.

5
6 So I believe that your best judgment would be quite sufficient for me, Your Lords.

7 MR. PRESIDENT:

8 Well, the Registrar has followed Mr. Norman's application and plea, and he has also followed the
9 position of the Prosecution on this application and has equally, of course, you know, followed the first
10 Accused's, you know, response to the Prosecution's comments on his application. This Court is
11 ordering the Registrar to compile a report on this -- on the facts -- on the application and the facts as
12 they are before us now, and to make recommendations to the Court for us to consider our position
13 and how we can dispose of Mr. Norman's application.

14
15 We would like this report in a -- very urgently because as you can -- as you do appreciate, he says
16 that it affects the conduct of his Defence. I do not know whether -- if it would be -- I think if we don't
17 know if you could be ready by Tuesday with this report, by Tuesday next week.

18 MR. VINCENT:

19 Your Honour, the report would be ready whenever you want it. I will have it for you tomorrow.

20 MR. PRESIDENT:

21 You will have it for me -- for us tomorrow.

22 MR. VINCENT:

23 Yes, Your Honour.

24 MR. PRESIDENT:

25 Tomorrow is Saturday so -- yes, you can make it available to us in Chambers. Then we would see
26 how to exploit it thereafter, but the important thing is for us to take a decision on this, you know, as
27 soon as possible, so that the first Accused knows what the position of the Bench is on this application.

28
29 So, Mr. Norman, this matter is -- will be addressed sometime next week, and you will be informed by a
30 decision of this Court as to what results, you know, would accompany the application that you have
31 made.

32 THE ACCUSED NORMAN:

33 Thank you, My Lords.

34 MR. PRESIDENT:

35 You are welcome.

36
37 Mr. Registrar, I don't think there is anything that calls for your attention and your presence in Court. I

1 think you could feel free to go and take care of other duties of the Court which are equally important.

2 MR. VINCENT:

3 Thank you, Your Honour.

4 MR. PRESIDENT:

5 Thank you.

6
7 The other issue that we have and that we kept in abeyance was -- arose from the testimony of the first
8 witness and this was on the 15th of June and it relates to, if I can recollect very well, the evidence of --
9 of the second Prosecution witness -- the first Prosecution witness who gave evidence to the fact that
10 he had bruises, you know, on his back, and that these bruises were as a result of some plastic
11 material that was melted on his back and he removed his dress and showed it.

12
13 Counsel for the Defence said that that aspect of the bruises and the injuries which are apparent were
14 not -- are not contained in the statement that was disclosed, and there was an apparent objection to
15 the admissibility of that particular evidence.

16
17 We would like to address it here today because the disparity is -- what counsel for the Defence raised
18 was that this -- the witness did not make this allegation in his statement that was disclosed, and that
19 he could not testify to that in court. Can we have further argument on this?

20 JUDGE BOUTET:

21 Before we hear further argument, I think it was you, Mr. Williams, that made that objection.

22 MR. WILLIAMS:

23 I believe, I associated with the objection that was raised by Mr. Jabbi, and then added one or two
24 other grounds, My Lord.

25 JUDGE BOUTET:

26 What we would like to hear is what is the foundation -- were these your objections? What is the
27 foundation of your objection?

28 MR. WILLIAMS:

29 Yes, My Lord.

30 JUDGE BOUTET:

31 And if you do have any authority to bring in support of your objection and I will say you and other
32 counsel as well that may have raised the same objection. So, you will recall that the time you made
33 your objection we said we would look into the matter later. So, that's -- that's the later. So, we are
34 prepared to hear your submission and once you've done that, we will ask the Prosecution to respond.

35 MR. WILLIAMS:

36 As Your Lordship pleases. I don't know the sequence in which Your Lordships would want us to
37 proceed, whether is --

1 MR. PRESIDENT:

2 Mr. Jabbi, you want to start because we always want to start from the starting point.

3 JUDGE BOUTET:

4 Before you do, Mr. Jabbi, Mr. Norman is raising his hand and indicating that he might wish to say
5 something about that.

6 THE ACCUSED NORMAN:

7 Yes, Your Lordships. What I said was that the injury had not been indicated under medical condition
8 that what, in fact, he was saying was not as I said on that day, *kro kro*, referring to as burns being
9 planted on his body by a melted rubber. There is no proof, whatsoever, that those burns, if they were
10 burns at all, could have been caused by melted rubber and that there are medical certificates to
11 qualify such allegation. Although I do not have the legal authority now at my disposal, not being a
12 lawyer, to cite any law affecting that. But practically, I cannot -- I don't think I will just appear and say
13 this scar was caused by a knife. It has to be proved that it was caused by -- the wound was caused
14 by a knife and so that was why I said that, My Lord.

15 JUDGE THOMPSON:

16 I was -- I think it was on the basis of that -- that scenario which Mr. Norman, the first Accused, raised
17 that learned counsel -- stand-by counsel, Dr. Jabbi, formulated certain key submissions and
18 objections and I'm sure that what we would like to hear now is a re-statement of those objections, the
19 grounds, so as to enable us to begin deliberation on the issue, after the Prosecution have a chance to
20 respond.

21 MR. MARGAI:

22 Sorry, My Lords. Before my learned friend, Jabbi, starts his address, perhaps I need to seek
23 clarification from the Bench because it seems to me that the issue which the chairman talked about,
24 about the lighted candle and the liquid they are from, is a separate and distinct issue from what
25 Mr. Norman is raising. If I understood Mr. Norman correctly, he is saying that, in fact, the -- there
26 should have been medical evidence to support the allegation of the burns that were displayed here.
27 That is an issue which I believe we on this side will address at the appropriate time. But I think for
28 now, if it pleases Your Lordships, I would request that we confine the present address to the
29 admissibility of that piece of evidence, and the issue raised by Norman will definitely be addressed at
30 the appropriate time.

31 JUDGE THOMPSON:

32 Well, clearly, I was recalling -- sort of recalling the scenario, the sequence of events as I recapitulate
33 there, and, of course, I was not, in fact, suggesting that it would be a tidy legal way to proceed by co-
34 mingling the two issues --

35 MR. MARGAI:

36 As My Lordships pleases.

37

1 JUDGE THOMPSON:

2 -- because I recall clearly that the submissions that came from Dr. Jabbi and with which Mr. Williams
3 associated were clearly submissions of a legal nature, a clear recollection of which I myself have, and
4 will be putting to counsel later on.

5 MR. MARGAI:

6 They are indeed both legal issues, but we will, in fact, deal with them --

7 JUDGE THOMPSON:

8 Yes.

9 MR. MARGAI:

10 -- one after the other.

11 JUDGE THOMPSON:

12 Thank you.

13 MR. MARGAI:

14 As My Lord, pleases.

15 MR. PRESIDENT:

16 Mr. Margai has made the position clear and really that is ideal situation. There are two issues
17 involved. So we want to hear you on the issue of the admissibility of that piece of evidence.

18 MR. JABBI:

19 My Lord, indeed, that is the aspect that I wish to confine myself to, and it is very simple and straight
20 forward, My Lord.

21
22 The objection is founded upon Rule 66(A) of the Rules of Procedure and Evidence, and if with your
23 leave, I may read Rule 66(A)(1). Rule 66(A)(1) reads as follows: --

24 JUDGE BOUTET:

25 Proceed.

26 MR. JABBI:

27 "A, subject" -- sorry, please. The heading is, "Disclosure of materials by the Prosecutor. A, subject to
28 the provisions of Rules 50, 53, 69 and 75, the Prosecutor shall, (l) within 30 days of the initial
29 appearance of an accused, disclose to the Defence copies of the statements of all witnesses whom
30 the Prosecutor intends to call to testify, and all evidence to be presented pursuant to Rule 92 *bis* at
31 trial. Upon good cause being shown, a judge of the Trial Chamber may order that copies of the
32 statements of additional Prosecution witnesses be made available to the Defence within a prescribed
33 time." My Lords, my objection is confined to the first half of Rule 66(A)(1), that is to say, I do not
34 intend to take into account, the second sentence of Rule 66(A)(1), and --

35 JUDGE BOUTET:

36 I just want to make sure that I follow you, Dr. Jabbi. You've been quoting from Rule 66?
37

1 MR. JABBI:

2 Rule 66 –

3 JUDGE BOUTET:

4 (A)(1)?

5 MR. JABBI:

6 - disclosure of materials by the Prosecutor --

7 JUDGE BOUTET:

8 Yes?

9 MR. JABBI:

10 Rule (A)(1).

11 JUDGE BOUTET:

12 Because my Rules are not the same as yours. I want to make sure we have the same, because these
13 Rules were amended at the plenary so you may have the Rule that pre-dated the last plenary,
14 because Rule 66 (A)(1) ends with, "Prosecutor intends to call to testify and all evidence to be
15 presented pursuant to Rule 92 *bis* at trial."

16 MR. JABBI:

17 Thank you very much, indeed, My Lord. In fact, it just complies with the area of the old Rule that I
18 wanted to confine myself to. So the Rule I wish to confine myself to, My Lord, is Rule 66 (A)(1) in the
19 amended Rules and without assistance, if I may read it again. Rule 66, "Disclosure of materials by
20 the Prosecutor, amended 29th May 2004. A, subject to the provisions of Rules 50, 53, 69 and 75, the
21 Prosecutor shall, (I), within 30 days of the initial appearance of an accused, disclose to the Defence
22 copies of the statements of all witnesses whom the Prosecutor intends to call to testify, and all
23 evidence to be presented, pursuant to Rule 92 *bis* at trial." That is the Rule that founds the objection
24 I wish to make, and, My Lords, obviously, the purpose of this Rule is to avoid surprise to the Defence
25 and also to enable the Defence to sufficiently investigate those materials that have been supplied by
26 the Prosecution in accordance with that Rule of Procedure.

27

28 I found cause to object to the evidence given by TF2-198 in respect of what happened to him
29 allegedly at the **xxxx** area in Bo, leading, according to him, to the pouring of burning plastic onto his
30 body, and the sustaining of scalding wounds on his body, which he was invited to demonstrate to the
31 Court..

32

33 My Lords, the Defence has been supplied with interview notes on the statements of TF2-198, which
34 he made on the 18th of February 2004. He -- his statement or interview notes of his statement, which
35 he made on 17th May 2004, have also been supplied to the Defence. In both of those interview notes
36 there is no reference whatsoever to that aspect of evidence, and that evidence was proffered as vital
37 and crucial for the Prosecution. It was probably the most dramatic piece of evidence in the evidence

1 he gave, and to the extent that there is no reference whatsoever, either to the scene of the episode in
2 question or to the particular incident narrated in evidence, there is no reference whatsoever to them in
3 both of those statements that have been supplied to the Defence.

4
5 To that extent, My Lords, that is a violation to the Rule I have already cited. And the effect of that
6 piece of evidence is highly prejudicial to the Defence, and it needed to comply in all respects, with the
7 relevant Rules of Procedure, which as I submit, it does not because of the failure of the Prosecution to
8 appraise and notify the Defence appropriately of that piece of evidence, as required by the relevant
9 Rules of Procedure.

10
11 To that extent, My Lord, it is not a question of weight, but a question of admissibility of the evidence
12 that would have arisen. And my submission, My Lord, is that in those circumstances that piece of
13 evidence is absolutely inadmissible and ought to be expunged from the records.

14
15 My Lord, in brief, I want to confine myself for the moment to the admissibility of that piece of evidence,
16 although indeed, I would have had other submissions to make on other aspects of it, but for the
17 moment it is the admissibility that one is concerned with and I rest the case thus far. Thank you very
18 much, My Lords.

19 JUDGE BOUTET:

20 Thank you, Dr. Jabbi.

21
22 Mr. Williams, I take it that you do not want to speak on this issue.

23 MR. WILLIAMS:

24 My Lords, I wish to commence by restating that I associate with all what my learned friend has said,
25 and to go further, My Lord, and to first of all state what I would require of Your Lordships.

26 JUDGE BOUTET:

27 Please, proceed.

28 MR. WILLIAMS:

29 First, My Lord, that all those bits of evidence which were not disclosed in the interview notes, but to
30 which the witness testified be expunged from the record.

31
32 Two, My Lord, that all those witnesses, My Lord, that have testified and for whom witness statements
33 have not been disclosed to the -- My Lord, this is witness statement as opposed to interview notes.

34 There is a distinction, My Lord, very significant, very fundamental. Yes, My Lord, I mean, the entire
35 testimonies of those witnesses be also expunged, My Lord.

36
37 My Lord, the witnesses who have testified for whom witness --

1 JUDGE THOMPSON:

2 Are you -- are you --

3 MR. WILLIAMS:

4 -- in the alternative, My Lord --

5 JUDGE THOMPSON:

6 Are you compounding your submission because --

7 MR. WILLIAMS:

8 It's a second submission.

9 JUDGE THOMPSON:

10 It's a second submission?

11 MR. WILLIAMS:

12 Yes, My Lord.

13 JUDGE THOMPSON:

14 I see. Okay.

15 JUDGE BOUTET:

16 Please proceed, it's a second submission.

17 JUDGE THOMPSON:

18 All witnesses who have testified --

19 MR. WILLIAMS:

20 Yes, My Lord, be expunged completely, My Lord.

21 JUDGE THOMPSON:

22 The testimonies of all witnesses?

23 MR. WILLIAMS:

24 Yes, who have testified.

25 JUDGE THOMPSON:

26 And whose what?

27 MR. WILLIAMS:

28 And for whom witness statements were not disclosed to the Defence.

29 JUDGE THOMPSON:

30 And whose witness statements were not --

31 MR. WILLIAMS:

32 Were not disclosed to the Defence. That the entire testimonies be expunged from your records.

33 JUDGE BOUTET:

34 Proceed.

35 MR. WILLIAMS:

36 And thirdly, My Lord, that the Prosecution be sanctioned or reprimanded for their continued violation
37 of their disclosure obligations.

1 Again, My Lord, it is my submission that the Rules and Procedure -- the Rules of Procedure and
2 Evidence of this Court does not permit disclosure of interview notes or summaries.

3 JUDGE BOUTET:

4 I would like to ask you a few questions on some of your -- have you finished with this?

5 MR WILLIAMS:

6 Sorry, My Lord.

7 JUDGE BOUTET:

8 Have you finished with your submission?

9 MR. WILLIAMS:

10 No, My Lord.

11 JUDGE BOUTET:

12 Sorry.

13 MR. WILLIAMS:

14 Firstly, My Lord, that the Prosecution could have been or might have been mistaken the Rules of
15 Procedure and Evidence of the ICTR and ICTY to that which obtains in this jurisdiction.

16

17 My Lord, even the ICTY, I mean, I would admit, My Lord, that the ICTY and ICTR Rules, My Lord,
18 used to -- I mean, prior to its amendment, permitted the disclosure of such materials. But that has
19 been amended. Now, its witness statement, period; nothing short of it, My Lord.

20

21 My Lord, I wish to refer Your Lordships to a book by John Jones and Steven Powles: International
22 Criminal Practice, third edition.

23 MR. PRESIDENT:

24 What edition?

25 MR. WILLIAMS:

26 Third edition, My Lords. My Lord, paragraph 85 -- 8.5.306, and if I may read with your Lordship --

27 JUDGE THOMPSON:

28 The rubric?

29 MR. WILLIAMS:

30 Sorry, My Lord.

31 JUDGE THOMPSON:

32 I say the rubric.

33 MR. WILLIAMS:

34 History of ICTY, Rule 66. May I read, with Your Lordship's permission?

35 MR. PRESIDENT:

36 Yes.

37

1 MR WILLIAMS:

2 It says, "Rule 66(A) was amended at the suggestion of the International Law Committee of the
3 Association of the Bar of the city of New York at the fifth plenary session, to broaden the rights of
4 suspects and accused persons. Originally, the Rule provided only that the Prosecutor must make
5 available to the Defence copies of supporting material which accompany the indictment when
6 confirmation was sought. This obligation has now been extended to all prior statements obtained by
7 the Prosecutor from the accused or from Prosecution witnesses." My Lord, our Rule 66 does not talk
8 of supporting materials, My Lord, which is quite ambiguous. I mean, it is restrictive, My Lord, to
9 witness statement.

10 JUDGE BOUTET:

11 Are you suggesting that -- if I follow what you've just quoted, the plenary, I don't have the book in front
12 of me, I'm just relying on what you've just read. That plenary extended the Rule, to say, in fairness to
13 the Defence, there should be a much larger disclosure than what was previously existing.

14 MR. WILLIAMS:

15 Exactly, My Lord.

16 JUDGE BOUTET:

17 Previously, prior to amendments, all the Prosecution was obliged to disclose was the supporting
18 material they had at the time the indictments were filed.

19 MR. WILLIAMS:

20 Yes, My Lord.

21 JUDGE BOUTET:

22 It was amended to say, "Mr Prosecutor, not only you have to disclose that, but you also have to
23 disclose statements."

24 MR. WILLIAMS:

25 Yes, My Lord.

26 JUDGE BOUTET:

27 In other words, they went further. So supporting material was deemed not to be sufficient, they said,
28 "You need to disclose much more than that."

29 MR. WILLIAMS:

30 Yes, My Lord, and it was also deemed not to be synonymous to witness statement. It's not
31 synonymous to witness statement, My Lord.

32 JUDGE BOUTET:

33 Is it what this Article is saying?

34 MR. WILLIAMS:

35 No, no, that is my understanding.

36 JUDGE BOUTET:

37 I'm just asking a question so we understand this is your submission on that aspect.

1 MR. WILLIAMS:

2 Yes. I would also make another submission, My Lord. My Lord, for this, I will rely on Rule 89(B) of
3 the Rules of Procedure and Evidence. My Lord, it reads, My Lord, with your leave, "In cases not
4 otherwise provided --" is under the rubric, "Rules of Evidence." "In cases, not otherwise provided for
5 in this section, a Chamber shall apply Rules of Evidence which will best favour a fair determination of
6 the matter before it and are consonant with the spirit of the Statute and the general principles of law."
7 It is quite, My Lord that -- I mean, I'm sure Your Lordships would agree with me that the *grund norm*,
8 which is a phrase Justice Bankole Thompson likes, the *grund norm*. That is, the *grund norm* of this
9 Court, My Lord, is the Statute. And that Rule specifically mentioned the Statute, My Lord. The Rule
10 of evidence shall be tailored so as to meet what is stipulated in the Statute.

11
12 My Lord, I wish to specifically refer to Article 17(4)(B) of the Statute which reads, My Lord, "In the
13 determination of any charge against the Accused, pursuant to the present Statute, he or she shall be
14 entitled to the following minimum guarantees in full equality. (B), To have adequate time and facilities
15 for the preparation of his or her Defence, and to communicate with counsel of his or her own
16 choosing." That is the first ambit of that paragraph that I wish to refer Your Lordships to.

17
18 My Lord, it was quite clear that the interview notes that were disclosed by the Prosecution in respect
19 of PW1, PW2 and PW3 are not truly reflective of the testimony they gave before this Court. My Lord,
20 they went far beyond what was disclosed and that took us by surprise. It took us unawares, My Lord.
21 My Lord, I mean, jurists are being referring -- are now referring to such practices, My Lord, as trials by
22 ambush. My Lord, it is unacceptable, and then the ICTR and ICTY, My Lord, have so held in several
23 decisions.

24 JUDGE BOUTET:

25 Which decisions?

26 MR. WILLIAMS:

27 My Lord, I would refer, Your Lordship, firstly, My Lord, the *Prosecutor against Dario Kordic and Mario*
28 *Cerkez*, order on motion to compel compliance by the Prosecutor with Rules 66(A) and 68, dated 26th
29 February 1999. My Lord, the paragraphs are not numbered, but if I could count them, My Lord.
30 Paragraph 10, My Lord. My Lord, the presiding judge had this to say, My Lord, "The obligation to
31 provide witness statements, pursuant to Rule 66(A)(2) is intended to assist the Defence in its
32 understanding of the case against the Accused, in accordance with his rights under Article 21 of the
33 Statutes of the international tribunal, and should thus be provided to the Defence as far in advance of
34 the trial as is possible even if this means that statements are disclosed sequentially and that
35 statements are disclosed of witnesses who eventually are not called to testify in the matter." My
36 Lord, the right of the Accused takes precedence. I mean, that is what particularly the judgment is
37 saying, that the right of the Accused to know the case against him, to prepare his Defence takes or

1 take -- sorry, takes precedence over all else, My Lord.

2
3 My Lord, I would -- I mean, there are several others, I don't know whether Your Lordship would want
4 me to go through them or this will suffice.

5 MR. PRESIDENT:

6 If you think -- if you think you've made your case --

7 MR. WILLIAMS:

8 My Lord, I would round up by referring Your Lordships to a book written by George Richard May and
9 Marieka Wierda. It's the first -- the only edition available. I will specifically refer Your Lordships to
10 page 84, under the rubric: "Failure to comply." My Lord, the paragraph is 3.67, and I will just read a
11 portion of it. It says, "Courts must be in a position to enforce disclosure obligations in the interest of
12 ensuring a fair trial. However, as one Trial Chamber observed, there are no expressed powers to
13 discipline the Prosecution. Another trial chamber observed that failure to comply with the obligations
14 is governed less by sanctions, than by the judges' evaluation of the evidence and the possibility that
15 the opposing party will have to contest it. The remedy, therefore, is to exclude evidence that has not
16 been disclosed, or is disclosed so late as to prejudice the fairness of the trial. On the other hand,
17 motions --" My Lord, that is all I would say, My Lord. The remedy, therefore, is to exclude evidence
18 that has not been disclosed or is disclosed so late as to prejudice the fairness of the trial.

19
20 My Lord, I will proceed and try to elucidate on this. "On the other hand, motions to exclude evidence
21 that has been disclosed rather late and not within prescribed time limits have not generally
22 succeeded. The remedy applied often being an adjournment of the proceedings."

23
24 My Lord, I wish to distinguish what has obtained in this Court from the last sentence of what I have
25 read. My Lord that is -- that was talking about late disclosure, but what we have here is non-
26 disclosure, non, absolutely, of what -- of substantial part of what the witness has testified about. That
27 is the distinction, My Lord. The last paragraph is referring -- the last sentence is referring to late
28 disclosure.

29 JUDGE BOUTET:

30 I do have a few questions for you on this issue, if I may.

31 MR. PRESIDENT:

32 Are you through?

33 JUDGE BOUTET:

34 No, he is not through but I have --

35 MR. WILLIAMS:

36 My Lord, I could have accepted questions at this stage, My Lord. I don't have much -- I don't have too
37 long to go, My Lord.

1 JUDGE BOUTET:

2 But I just want to make sure that I fully, completely, understand your position.

3 MR. WILLIAMS:

4 Yes, My Lord.

5 JUDGE BOUTET:

6 Are you suggesting -- is it your position that the Prosecution has not disclosed to you, to the Defence,
7 statements that they had?

8 MR. WILLIAMS:

9 My Lord, in respect of the --

10 JUDGE BOUTET:

11 Of these witnesses.

12 MR. WILLIAMS:

13 Yes, My Lord.

14 JUDGE BOUTET:

15 TF1, 2 and 3?

16 MR. WILLIAMS:

17 That no statements were -- none at all.

18 JUDGE BOUTET:

19 No, no, you do not answer my question. Are you suggesting that they have not disclosed statements
20 that they have, which is -- the fact that the witness may have testified to certain --

21 MR. WILLIAMS:

22 My Lord, I --

23 JUDGE BOUTET:

24 Let me finish my question, please, which is quite different than a witness may testify to certain issues
25 that may or may not have been in the statement. So, is it your position now to support your objection
26 that the Prosecution had statements on these matters and these statements were not disclosed to the
27 Defence? Is it the premise of your objection?

28 MR. WILLIAMS:

29 My Lord, I would state, My Lord, even going by what PW3 said today --

30 JUDGE BOUTET:

31 That is not my question.

32 MR. WILLIAMS:

33 No, if Your Lordship would bear with me. This witness said that, "I made a statement, I signed it." No
34 such statement was disclosed to us. My Lord, that shows that they have statements that they are not
35 disclosing to us.

36 JUDGE BOUTET:

37 Which -- pardon me, I may have missed something in the evidence. I don't recall -- if you are talking

1 about the last witness, I don't recall that witness to have said, "There was a statement and I signed it."

2 MR. WILLIAMS:

3 He said that, My Lord. With respect, My Lord, he said that.

4 JUDGE BOUTET:

5 Fine, I will check the record but I don't have that in memory.

6 MR. WILLIAMS:

7 Yes, My Lord. My Lord, that is –

8 JUDGE BOUTET:

9 But what about the other witnesses?

10 MR. WILLIAMS:

11 I mean, is the same for all of them, My Lord. That, I mean, we -- is for them to say. My Lord, I
12 believe, I mean, give them the opportunity, they are in a better position to say. And speaking from the
13 Bar, My Lord, we would expect that we would divulge nothing but the facts, My Lord.

14 JUDGE BOUTET:

15 My question to you, I think, is very simple. You are raising the issue, objecting to admissibility
16 because you are saying and suggesting to this Court that the Prosecution had statements and these
17 statements were not disclosed to the Defence.

18 MR. WILLIAMS:

19 My Lord, I'm saying that firstly, what they disclose -- the interview notes that they disclosed were
20 insufficient. There are no provisions in our Rules for the disclosure of interview notes or summaries,
21 and secondly, that they have statements that they have not disclosed, My Lord.

22 JUDGE BOUTET:

23 Thank you.

24 MR. WILLIAMS:

25 My Lord, that is all I wish to say, My Lord.

26 MR. PRESIDENT:

27 Some questions. What is the content of interview notes? Of what is it made?

28 MR. WILLIAMS:

29 The contents, My Lord?

30 MR. PRESIDENT:

31 Of what is it made?

32 MR. WILLIAMS:

33 Facts, My Lord.

34 MR. PRESIDENT:

35 Facts given by who?

36 MR. WILLIAMS:

37 Facts given by the Accused, My Lord.

1 MR. PRESIDENT:

2 By the Accused?

3 MR. WILLIAMS:

4 Yes, My Lord.

5 MR. PRESIDENT:

6 By the Accused?

7 MR. WILLIAMS:

8 Sorry, by the witness, My Lord. But the point I would add, My Lord, is that interview notes, My Lord,
9 the length of interview notes are, or the contents are, at the discretion of the maker. I mean, the
10 Prosecution. It could be -- a witness could make a 50-page statement and the interview notes could
11 only be limited to two pages, but it is the statement that should be disclosed.

12 JUDGE BOUTET:

13 And to you a statement is something in writing?

14 MR. WILLIAMS:

15 Yes, My Lord.

16 JUDGE BOUTET:

17 So a statement may not be made orally?

18 MR. WILLIAMS:

19 I mean, when it is reduced into writing it's -- it could be -- it could be oral, My Lord. I mean, it could be
20 oral and reduced into writing. Usually, it's oral and reduced into writing.

21 JUDGE BOUTET:

22 So if interview notes are describing what has been orally reported by a witness --

23 MR. WILLIAMS:

24 Sorry, My Lord.

25 JUDGE BOUTET:

26 If an interview note is describing what has been orally reported by a witness that would not be a
27 statement?

28 MR. WILLIAMS:

29 My Lord, I would refer Your Lordship -- I know the practice within this jurisdiction and in England what
30 we call judges' notes -- judges' notes, My Lord, which actually circulate --

31 MR. PRESIDENT:

32 Judges' rules.

33 MR. WILLIAMS:

34 Sorry, judges' rules, My Lord.

35 JUDGE THOMPSON:

36 Judges' rules?

37

1 MR. WILLIAMS:

2 My Lord, that is a guide for practically all Prosecutors or people investigating and I would be surprised
3 if that was not followed by the Prosecution.

4 JUDGE BOUTET:

5 But judges' rules I thought applies to statements made by an accused and --

6 MR. PRESIDENT:

7 By an accused, by suspects.

8 MR. WILLIAMS:

9 It also refers -- I mean, you could be interviewing somebody as a potential witness and he becomes
10 an accused person. So that caution, I mean, goes to all witnesses. You are not required to say
11 anything. All what you say would be, and could be, used in evidence against you.

12 JUDGE BOUTET:

13 That's your position.

14 MR. WILLIAMS:

15 My Lord, that is the position I understand from the Rules.

16 MR. PRESIDENT:

17 In your practice do you caution -- do you take a statement of a witness in the same form, you know,
18 as you would take that of an Accused person or a suspect?

19 MR. WILLIAMS:

20 I didn't get the question, My Lord.

21 MR. PRESIDENT:

22 The way the statement, you know, volunteered by a suspect is taken, is it taken in the same manner
23 as that which is volunteered by an ordinary witness?

24 MR. WILLIAMS:

25 My Lord, the caution is different, My Lord, but the judges' rules stipulates all the cautions whether it is
26 for witnesses, whether it is for accused, whether it is for potential accused persons.

27 JUDGE BOUTET:

28 I would like to be provided with copy a of this judges' rules.

29 MR. WILLIAMS:

30 I will oblige Your Lordship.

31 JUDGE BOUTET:

32 Because I have that judges' rule, I never read that in it. But maybe, there is a new version of it that
33 I'm not aware of.

34 MR. WILLIAMS:

35 My Lord, I won't deliberately mislead the Court.

36 JUDGE BOUTET:

37 Thank you.

1 Mr. Prosecutor?

2 MR. JOHNSON:

3 Thank you, Your Honour. First, I would just like to say that learned counsel made reference to trial by
4 ambush. I kind of feel that way right now. We can prepare to discuss the contents of statements, and
5 how the witness testify compared to the contents of their statement, and this seems to have
6 developed in a much, much more -- if you would please allow us, I will attempt to address the first
7 part of that and my co-counsel, Mr. Caruso will address the second part of that dealing with the
8 contents, if that's okay that we both address you.

9 MR. PRESIDENT:

10 Yes, go ahead.

11 MR. JOHNSON:

12 Thank you, Your Honour.

13 JUDGE BOUTET:

14 Is on different part, yes.

15 MR. JOHNSON:

16 Yes, Your Honour.

17

18 First of all, many of these issues that were brought up in the past few moments that we were not
19 expecting to be brought up today are concerning disclosure of statements, interview notes, definition
20 of statements and so on. I think for many issues that have been dealt with before this time at status
21 conferences, pre-trial hearings, as well as the in *camera* session that we had when we discussed the
22 issues of turning over statements to the Bench, I believe some of these issues were resolved before
23 now, but I will just try to briefly address a few of those again. Please, bear with me. We did not come
24 prepared to discuss this issue, but I will try.

25

26 First of all, I guess some of it comes down to what counsel's definition of a statement -- and if
27 counsel's definition of a statement seems to be that statement which -- well, first, let me go to one
28 other thing. My recollection of what this witness said when asked if he signed this statement was that
29 he did not sign any statement. Before that, he was asked that if he has (*inaudible*) print to something.
30 I believe the witness said yes, but I'm not sure the witness understood the question. And with that, let
31 me just state that we have given on this, some witnesses that have testified so far, to the Defence
32 what we have, that's been in something that we have called interview notes. That means where we
33 have taken an oral statement of the Accused and put it down into those interview notes and
34 transferred it. Well, if counsel for the third Accused is defining statement as something that has been
35 signed or sworn to by the witness, and going with that definition of a statement, then I would submit
36 that no, the Rule required us to take such a statement from the -- from the witness. And if that's what
37 counsel for the third Accused is defining as a statement, one would not require to take it and we would

1 have been required in that case to disclose very little and nothing concerning the testimony of these
2 witnesses because we are not required to take a signed statement, as we know it. And from any of
3 these witnesses, we have not taken a signed statement.

4 MR. PRESIDENT:

5 Mr. Johnson, the translation cabin has problems.

6 MR. JOHNSON:

7 I understand.

8 MR. PRESIDENT:

9 You are going a bit too fast. The interpreters are in trouble there.

10 MR. JOHNSON:

11 Okay. Thank you, Your Honour.

12

13 What we have done in many cases, and in these cases in particular, we have taken oral statements
14 from these witnesses and these witnesses -- and these oral statements have been committed to -- in
15 this case we have called it interview notes. In some cases, we have called them statement. In some
16 cases they have been called confirmation reports and they have been disclosed to the Defence under
17 a variety of titles, but we have seen them as oral statements of the Accused that we have put to paper
18 and that's what we have passed along. So, therefore, we have certainly -- we have certainly
19 attempted to or we believe we have met our obligations in disclosing this.

20

21 Just to add one last thing, we met our obligation, as you required us to do under Rule 66(A)(ii), which
22 we disclosed as ordered by the trial judge, copies of statements of all additional Prosecution
23 witnesses in light of our continuing disclosure obligation. With that in mind, we -- and as we
24 addressed at the in *camera* that we had, I believe it was on the 1st of June, that we continued -- as
25 witnesses continued to tell us things that have been different from what they have told us before, we
26 will continue to record that in some fashion and quickly pass that along to the Defence in light of what
27 we believe to be a continuing disclosure obligation under Rule 66. Again, the form of that is typically
28 in the form of some kind of interview notes, where we have recorded the oral statement of the
29 witness. We could certainly -- as I said, we were not expecting to discuss this issue, we could
30 certainly provide you more, if you would like, or provide a more thought out written position on this, if
31 you would like.

32

33 At this time, Mr. Caruso will address the contents of this. Thank you, Your Honour.

34 JUDGE THOMPSON:

35 Learned counsel for the Prosecution, let me put to you certain questions. The first is that, do you
36 agree, that the piece of evidence under reference was not disclosed to the Defence? The piece of
37 evidence under reference, in other words which they are complaining about, was not disclosed to the

1 Defence.

2 MR. JOHNSON:

3 No, I would not agree with that.

4 JUDGE THOMPSON:

5 Because -- I asked the question because I understand their submission on this particular issue to be
6 two-fold: One, that the piece of evidence they are complaining about was not disclosed to them.

7 MR. JOHNSON:

8 No, they have -- it was disclosed to them.

9 JUDGE THOMPSON:

10 So, you do not agree that it was not disclosed to them?

11 MR. JOHNSON:

12 I do not agree with that.

13 JUDGE THOMPSON:

14 And their second submission, of course, is a matter of law, that by reason of their perceived non-
15 disclosure of that evidence, the oral testimony on that particular point is inadmissible. Do you
16 understand their submission to be that?

17 MR. CARUSO:

18 Your Honour, may I address you?

19 JUDGE THOMPSON:

20 Yes, quite. In other words, it's a two-fold submission. I tried to remove complications from issues that
21 tend to be so intricate. I understand their position to be factually, maybe right or wrong, allegedly, that
22 the piece of evidence that they are complaining about was not disclosed to them pursuant to Rule 66.

23 MR. CARUSO:

24 And that is an error, Your Honour. That is not true. Pursuant to Rule 66 --

25 JUDGE THOMPSON:

26 Right. So, you contest that?

27 MR. CARUSO:

28 Absolutely.

29 JUDGE THOMPSON:

30 Good. Then they moved on to the legal effect. They said, by reason of their perceived non-
31 disclosure, there has been a violation of Rule 66, do you take that position yourself?

32 MR. CARUSO:

33 Well, of course, we cannot take that position because there has been no violation.

34 JUDGE THOMPSON:

35 Then, their third position is this, which is related to the second, that if we agree with them on one and
36 two, then the legal effect is that such piece of evidence must be inadmissible. In other words, they
37 are asking for an application of some analogous rule which, of course, the Americans have the

1 exclusionary rule.

2 MR. CARUSO:

3 We do indeed have it. We are very careful about how we use it and we most assuredly don't use it in
4 situations like this.

5
6 Your Honour, the first problem is, it seems to me, that the discovery is well defined by these Rules.
7 That is to say the Prosecution is required to turn over statements that it has and that's all that Rule
8 says. My understanding is and my colleague has factual knowledge as he forwarded it either for
9 endorsing. They have what we have. We gave them what we have. We have complied with Rule 66.
10 As far as that is concerned, there is nothing further to say, there is nothing that they can point to in
11 that Rule that we have not given them. It's there.

12
13 Now, I am not so naive as to not understand what my colleagues on the other side say that -- he is
14 complaining about testimony that was given, that wasn't included in those statements. Your Honour,
15 those statements or interview notes, whatever or however they are known, are not meant to, and
16 could not possibly, anticipate all of the testimony of a witness; which leads us to portion three of what
17 you have said. What would the remedy be should there have been such a failure? The fact of the
18 matter is traditionally, and in the jurisprudence before this Court, the remedy cross-examination. The
19 remedy is the exposure of the facts that a witness who had given statement on a prior occasion is
20 now given some different statements, or has omitted something. The remedy never is exclusion
21 because there are too many alternatives to it. Yes, sir.

22 JUDGE THOMPSON:

23 May I just find a supplementary question there then. So is it your submission that this particular issue
24 which they have raised should probably be addressed under the rubric, "Prior inconsistent
25 statement"? Is that your submission?

26 MR. CARUSO:

27 No, it is not particularly, Your Honour, particularly under these circumstances, because it is an
28 omission, but I won't split hairs with you. If, indeed, we have a problem here, we could probably deal
29 with under that rubric of prior inconsistent statement.

30 JUDGE THOMPSON:

31 Yes.

32 MR. CARUSO:

33 And again, as I said, I won't split hairs as to whether or not that admission is consistent or not. That's
34 something that is not necessary here.

35 JUDGE THOMPSON:

36 Thank you.

37

1 MR. CARUSO:

2 The fact is, it can't be dealt with under those circumstances. It is the way it has been dealt with under
3 those circumstances, and it is the appropriate way to deal with it. If, indeed, a witness is deemed to
4 have made a statement under oath, which is different from that which is made on a prior occasion,
5 then, in fact, he can be questioned relative to that. It may be there is a good explanation for what he
6 has -- for why that inconsistency exists. I'm sorry, am speaking too quickly?

7 JUDGE THOMPSON:

8 The final thing. In that case, if it were dealt with under the rubric, "prior inconsistent statement", then,
9 as far as I understand in law, the issue would not be one of admissibility but one of probative value.

10 MR. CARUSO:

11 Absolutely. And that's precisely where it winds up. It's precisely how it is defined because we simply
12 cannot try cases before they are tried. There is no way to do that. Those statements, and I can only
13 make reference -- and I dislike doing this -- but I can only make reference to my experience as well as
14 the positive experience of this Bench. Those statements that are taken from witnesses cannot include
15 every detail of what they are going to say; that is impossible. They were never intended for that.
16 What they have a right to is what we have a right to. We have given them what we have. They have
17 all we have, we are required to give them no more. That is my position, Your Honour. Your Honour,
18 and one thing further, the President asked me this morning, if we could be ready by this afternoon.
19 We are ready this afternoon. I do have supporting jurisprudence for the positions I just stated and I'm
20 happy, without argument, to submit them in terms of a memo form which we have done before, with
21 the absolutely appropriate size. Thank you.

22 MR. PRESIDENT:

23 No problem. Thank you.

24 JUDGE BOUTET:

25 Dr. Jabbi, first do you have any reply?

26 MR. JABBI:

27 Yes, My Lord.

28 MR. PRESIDENT:

29 Dr. Jabbi, a reply is supposed to be very brief, please.

30 MR. JABBI:

31 Certainly, My Lord.

32 MR. PRESIDENT:

33 Yes, please.

34 MR. JABBI:

35 My Lords, first of all, I would like to express our appreciation to His Honour, Lord Thompson, for the
36 three part explication of the issues in the submissions that have been made by the Defence. But in
37 expressing that appreciation, I want to say that the dimension of the issue that was introduced by my

1 colleague, Williams, needs to be added to it because, in fact, most of his submission was on that
2 dimension, that is the dimension of what is required to be disclosed according to Rule 66. Rule 66
3 does not say you disclose what you have, be it what it may, but in the first and second parts of Rule
4 66(A), the terminology used throughout is, "Copies of the statements of all witnesses whom the
5 Prosecutor intends to call to testify." "Copies of the statements of all witnesses." So, what that Rule
6 is, in fact, saying is that what you must and shall disclose is the statement of the witness, not what
7 you have of it. And that takes us, My Lord, to the character of what has been disclosed so far.

8
9 My Lords, what has been disclosed so far is headed, "interview notes" and when the text is examined,
10 it is in the form of what may be called indirect reporting of what was allegedly said to the interviewer.
11 That is the character of all the interview notes that have been disclosed. They are in the third person,
12 not in the first person, "I say so and so, I say so and so," but he will say so and so, or he did say so
13 and so.

14
15 My Lords, I submit that Rule 66(A)(1) and (2), in fact, although my submission is based mainly on
16 Rule 66(A)(1), but what I'm saying about the character of what has to be disclosed is true of both
17 Rule 66(A)(1) and (2). In both of those sub Rules, as I have said, it is copies of the statements of the
18 witnesses. I cannot imagine a third person report of what has allegedly been said to somebody to be
19 a statement by that person. It is by all means a statement at second remove, and the statement is
20 not by the first remove but by the second remove, the interviewer or the reporter.

21
22 So, My Lord, our submission is that Rule 66(A)(1) require statements made by the witness who is
23 coming to testify, not reports of the statements or summaries of the statements that the witness is
24 coming to give. Unfortunately, the Rules of Procedure and Evidence in the definition section do not
25 define the word statement, unfortunately. Maybe this problem was not anticipated, but in common
26 understanding, we submit -- I submit, on behalf of the first Accused, that a statement can only be the
27 first person utterance of the person speaking, not a third person reportage of what that person said.
28 And that is the character of Rule 66(A)(1) and (2), and that is not what we have in any of the interview
29 notes that have been given so far.

30
31 So that fourth dimension of the submission that has been made so far from the Defence is a very
32 crucial dimension indeed and my learned friend, Mr. Williams, emphasised it and was concerned
33 principally with that dimension. In so far as the other dimensions are concerned, My Lords, I will
34 simply restate that particular pieces of evidence which were not disclosed are indeed objectionable on
35 the grounds of Rule 66 and Rule 89(B)(1) -- 89(B) and that the particular piece of evidence that gave
36 rise to this objection is thus being objected to on admissibility grounds, as distinct from matters of
37 probity or weight. Thank you very much.

1 JUDGE BOUTET:

2 Mr. Williams.

3 MR. WILLIAMS:

4 Yes, My Lord. My Lord, my answer would be restricted to what Mr. Johnson said. He stated, My
5 Lord, that they have a discretion to obtain interview notes, confirmation notes, and one other -- he
6 used one other phrase for witnesses, My Lord. My Lord, it is my submission that there is no such
7 discretion -- there is no such discretion. They are obliged to obtain statements from each and every
8 witness, or potential witness.

9

10 My Lord, Prosecution is a process, My Lord. I mean, Order 66 is envisaging the time before and
11 when you come to court. It says it's only witness statement, My Lord, it is because it is intended that
12 is what is required to be obtained from these people.

13

14 My Lord, it is my submission, My Lord, that those words are deliberately put in those Rules, My Lord,
15 because they do not want or the drafters did not want to give the Prosecution a discretion as to what
16 the release was. They should release the entire statement and nothing less. My Lord, if it is
17 otherwise, they would have a discretion. A witness makes a ten page statement, I give a two page
18 summary or interview notes. My Lord, that would be to the detriment of the right of the Accused
19 persons. My Lord, that's all I wish to say.

20 JUDGE BOUTET:

21 Thank you. Mr. Defence Counsel, I'm not sure which one, but this morning there was this issue that
22 was raised and it related to the same matter, that is prior inconsistent statement of a witness and that
23 is an issue which we say would be discussed. We didn't canvass that with you this afternoon, but as
24 we didn't ask you nor give you any prior notice, we will ask you, and that is both the Defence and the
25 Prosecution, to address this issue early next week. We are still in Court on Monday and Tuesday,
26 probably on -- we would like to, at least finish with the witness we have now and may hear another
27 witness and then hear submission on that particular matter before we adjourn. So you are all on
28 notice that we will ask both Defence and Prosecution to address this issue of prior inconsistent
29 statement.

30 MR. JABBI:

31 As Your Lordship pleases.

32 JUDGE BOUTET:

33 Thank you

34 MR. CARUSO:

35 Excuse me, Your Honour. I'm sorry. When you talk about prior inconsistent statement are you talking
36 about the second issue that was raised this morning, relative to the witnesses I understand now, that
37 prior inconsistent statement?

1 JUDGE BOUTET:

2 Indeed.

3 MR. PRESIDENT:

4 Yes.

5 MR. CARUSO:

6 And had you planned to finish with that witness this afternoon, Your Honour?

7 MR. PRESIDENT:

8 Indeed, but –

9 MR. CARUSO:

10 I'll make a suggestion to you that it seems to me that, finish or not, we ought to have this discussion
11 prior to the time that witness is excused. That is a suggestion that I have.

12 MR. PRESIDENT:

13 Well, you know that the re-examination of that witness cannot really start before this issue is
14 addressed.

15 MR. CARUSO:

16 That's correct.

17 MR. PRESIDENT:

18 We have to address this issue next week because if we start addressing this issue now, it would take
19 us until late in the night, the way I see the proceeding, you know, pacing. So the Court -- now, the re-
20 examination of the witness which is still pending will be done on Monday, but we would first address
21 this issue before we go into the re-examination process of the third Prosecution witness.

22 MR. WILLIAMS:

23 My Lord, I believe the records will reflect that I'm not yet through with my cross-examination.

24 JUDGE BOUTET:

25 You are right.

26 MR. PRESIDENT:

27 Oh, yes, you are right. That's why I said we have to address that issue first.

28 MR. WILLIAMS:

29 As My Lord pleases.

30 MR. PRESIDENT:

31 We have listened to the issues raised this afternoon, the Court will advise itself and come out with a
32 decision on the issues that have been raised. This case is adjourned to Monday -- what is the date of
33 Monday?

34 MR. JABBI:

35 I believe it is the 21st, My Lord.

36 MR. PRESIDENT:

37 Right. This matter is adjourned to Monday the 21st at 10 -- at 10 a.m. The Court will rise, please.

1 *(Court adjourned at 1718H)*
2 *(Pages 50 to 76 by Momodou Jallow)*
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CERTIFICATE

We, Gifty C. Harding, Susan G. Humphries and Momodou Jallow, Official Court Reporters for the Special Court for Sierra Leone, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*machine writer*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

We further certify that we are not of counsel nor related to any of the parties to this cause and that we are in nowise interested in the result of said cause.

_____ Gifty C. Harding

_____ Susan G. Humphries

_____ Momodou Jallow