

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

22 JUNE 2004
1013H
CONTINUED TRIAL

Before the Judges:

Benjamin 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:

Mr. John Wesley Hall
Ms. Quincy Whitaker
Mr. Ibrahim Yillah

For the Accused Moinina Fofana:

Mr. Arrow Bockarie
Mr. Michel Uiterwaal

For the Accused Allieu Kondewa:

Mr. Charles Margai
Mr. Yada Williams

Court Reporters:

Mr. Momodou Jallow
Ms. Gifty C. Harding

I N D E X

WITNESSES

For the Prosecution:

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1 MS. EDMONDS:

2 All persons having anything to do before this Special Court Trial Chamber draw near and give your
3 attendance.

4 MR. PRESIDENT:

5 We are resuming the session and I take it that appearances are as before. And the interpreters are
6 reminded that they are still on their oath.

7 MR. HALL:

8 May it please the Court, I have something concerning our cross-examination, please.

9 MR. PRESIDENT:

10 Yes.

11 MR. HALL:

12 The Prosecutor provided us this morning, as he should, the receipts for the subsistence allowances
13 paid to the witness and we -- I asked the witness on cross-examination whether or not he had
14 received any funds at all from the Prosecution for testifying. And they provided us receipts to show
15 that he did, in fact, do so and I would like to cross-examine the witness concerning just this limited
16 issue, further sensitive new evidence which came in our hands this morning.

17 MR. PRESIDENT:

18 Prosecution?

19 MR. CARUSO:

20 What has been stated is correct, Your Honour. We have no objection to this cross-examination so
21 long as it is limited to the new material in possession of counsel.

22 MR. PRESIDENT:

23 Right. Mr. Hall, you can go on.

24 MR. HALL:

25 Thank you, Your Honour.

26

WITNESS TF2-012

27

CROSS-EXAMINATION (continued)

28 BY MR. HALL:

29 Q. Mr. Witness, you remember yesterday when you were here testifying and we asked you concerning
30 did you receive any funds for testifying. Do you remember that?

31 A. Yes, I could remember.

32 Q. So as a witness in this case you've received 10,000 Leones a day for your attendance?

33 A. I'm not learned but they gave me.

34 MR. PRESIDENT:

35 They give you -- is it -- they give you. Is it -- answer the question. Is it 10,000 per day? 10,000
36 Leones, not dollars anyway.

37

1 THE WITNESS:

2 Yes, they give me money that I use to find food, at least something I can feed myself with.

3 MR. HALL:

4 And they pay --

5 MR. PRESIDENT:

6 Mr. Hall, please. The transcriber (sic) is not getting the translations. Can you just hold on a while?

7 Just sit down a while. Please, sit down. Please, test the equipment. The transcriber (sic) is not
8 getting the translation. Court management, can you ensure that a technician is here on a permanent
9 basis so that he will be able to take care of all these technical and electronic difficulties.

10

11 Can we go on? Yes, Mr. Hall, please.

12 MR. HALL:

13 Thank you, Your Honour.

14 BY MR. HALL:

15 Q. Mr. Witness, you were paid 10,000 Leones for the month you've been here every day; is that correct?

16 A. Yes, they give me money. Yes, they give me money.

17 Q. And the five day --

18 MR. PRESIDENT:

19 Excuse me, Mr. Hall, please. I want this witness to answer this question.

20

21 They give you money. How much money? They are saying it is 10,000, do you receive 10,000?

22 Answer the question please.

23 THE WITNESS:

24 Is not every day that they give me money. Sometimes when I am indoors they take money to me for
25 my feeding.

26 MR. PRESIDENT:

27 Mr. Hall, please, continue.

28 BY MR. HALL:

29 Q. Would they pay you weekly, sometimes 30,000 Leones at a time?

30 A. Yes, they give it to me weekly.

31 Q. And I have a receipt for 40,000 Leones paid at one time. Do you remember that?

32 A. Yes.

33 Q. Another receipt for 200,000, do you remember that?

34 A. Yes.

35 Q. Do you also remember yesterday --

36 MR. PRESIDENT:

37 Hold on, please. You said 200,000 Leones?

1 MR. HALL:

2 Yes, in a separate payment.

3 MR. PRESIDENT:

4 Please, go ahead.

5 BY MR. HALL:

6 Q. Also, Mr. Witness, do you remember yesterday I asked you how you were taking care of your family
7 when you are here and you said you had family to do that. Do you remember that?

8 A. Yes.

9 Q. And this is a fact that on May 12th the Prosecution paid you 300,000 Leones for family assistance and
10 to take care of your farm?

11 A. Yes.

12 Q. So if my math is correct you have been paid a total of 660,000 Leones so far and there are still more
13 payments to come?

14 A. Well, I have not been recording it.

15 Q. But you do agree that you will receive more money?

16 A. Well, I don't understand that one because they've not told me that's exactly what they were going to
17 do.

18 Q. One of the receipts says payment is based on 2000 per person in your family and as 12 dependants,
19 its 24,000 Leones a day whilst you were gone, and this was dated May 12. If you've been here for a
20 month and your family is getting 24,000 Leones a –

21 THE MENDE INTERPRETER:

22 Can he take it slowly?

23 JUDGE BOUTET:

24 It is very difficult for the translator to translate that. You have a very, very long question. If you won't
25 mind bringing it back by segments.

26 MR. HALL:

27 Thank you, Your Honour.

28 BY MR. HALL:

29 Q. Mr. Witness on May 12th, they paid you 24,000 per day for your family whilst you were gone; is that
30 correct?

31 A. When I have been here?

32 Q. Whenever you are away from home?

33 A. How much are you talking about?

34 Q. A receipt says 24,000 Leones per person in you fam -- excuse me, for your family, 12 dependants per
35 day whilst you were gone for a seven-day period. Then they paid you 132,000 for the farm, a total of
36 300,000 in one payment. If that is true, are you going to receive 720,000 leones more just for family
37 subsistence for your month you've been here to testify?

1 A. Well, I don't know except that they are saying it now.

2 MR. HALL:

3 Thank you.

4 JUDGE BOUTET:

5 You have completed your questions this morning, Mr. Hall, with respect to these payments?

6 MR. HALL:

7 With respect to the payments, one last question.

8 BY MR. HALL:

9 Q. When we asked you this yesterday, why did you not respond --

10 MR. PRESIDENT:

11 Please, we would like -- we would like -- you see, we want to move orderly, Mister -- I mean, you have
12 to make sure that when you finished and you are granted leave exceptionally to cross-examine that
13 you exhaust -- any way, you can't at any time you stand, you know, ask one more question. Again,
14 don't you think you need leave, you know, to ask that one more question? We have to ensure, you
15 know, the parity of the procedure and ensure that, you know, there is no disparity in the treatment,
16 you know, of either the Defence or the Prosecution. So, I don't know --

17 MR. HALL:

18 With respect, Your Honour, but I thought I wouldn't put any more to this witness.

19 MR. PRESIDENT:

20 Because the leave that was granted, it was very exceptional. So, go ahead please, but let this not
21 continue.

22 MR. HALL:

23 It's the last question, Your Honour.

24 BY MR. HALL:

25 Q. We asked you about these payments yesterday, you did not volunteer that. Could you tell us why?

26 A. Are you asking me if I can tell the Court why I didn't answer yesterday?

27 Q. Yes, I am?

28 A. Yes, I'm not here -- I was here to testify. I didn't know I was going to talk about any monetary matters.
29 What I knew is what I spoke about and that is exactly what I did yesterday. That is why I didn't
30 answer the question.

31 Q. The question was put to you directly and you just choose not to answer it, is that it?

32 A. When you ask me a question, I can only answer the question that I'm able to answer. If I'm not able
33 to answer a particular question, I won't answer it.

34 Q. You were paid 600,000 Leones and you just forgot it?

35 A. No, I can't forget about money matters.

36 Q. You swore to tell the truth when you came in here, did you not?

37 A. Yes.

1 Q. You also swore to tell the whole truth, did you not?

2 A. Yes.

3 Q. When you were asked about the money you did not tell the whole truth; did you not?

4 A. Yes, I can't just answer a question like that.

5 MR. HALL:

6 That's all I have, Your Honour. Thank you.

7 JUDGE BOUTET:

8 Thank you. Mr. Margai, before you proceed with the cross-examination of the witness as you have
9 indicated yesterday, I would like to inform you of what this Chamber considers to be the appropriate
10 procedure when dealing with cross-examination on prior inconsistent statements. As a matter of law,
11 this Trial Chamber considers that where a party seeks to cross-examine a witness on prior
12 inconsistent statement they may seek permission to do so from the Trial Chamber in circumstances
13 where the prior statement constitutes an old statement that has been recorded by someone else, for
14 example, investigators for the Prosecution upon interviewing the witness and is not signed by the
15 witness. The Trial Chamber directs counsel to provide the witness with the copy of this statement, or
16 to read the portion from the statement to which it intends to rely, and to seek from the witness whether
17 or not he or she adopts this portion of the statement as his or her own. Counsel may then proceed to
18 cross-examine the witness whether on the basis of the witness has accepted the statement as being
19 his or her own, or on the basis that the witness has denied the statement. The portion of the
20 statement relied upon by counsel may then be admitted in evidence as a means to impeach the
21 credibility of the witness where the Trial Chamber determines that it bears relevance and, the Trial
22 Chamber will then determine what weight to place upon it.

23
24 So this is for your guidance this morning, and I will add that the Court will issue further guidelines on
25 this matter in the future. Thank you.

26 MR. MARGAI:

27 My Lord, if I may -- sorry, much obliged, My Lord. If I may seek further clarification I take it from what

28 Your Lordship has said that the caution only applies to statements not signed by the witness.

29 JUDGE BOUTET:

30 It applies to any statement.

31 MR. MARGAI:

32 Whether signed or not.

33 JUDGE BOUTET:

34 Whether signed or not.

35 MR. MARGAI:

36 Very well. And further more, My Lords, may I further seek clarification as to what Your Lordships
37 regard as statement, with regard to the -- or in relation to the witness?

1 JUDGE BOUTET:

2 Can you be a little bit more specific? I presume you are saying that given the facts as we know them
3 up to now, it would appear that witnesses, at least this witness -- we are talking of this witness -- has
4 spoken to investigators or any investigator wherever it may be in his own language, *Mende*, and that
5 was eventually written down in English. What you have in front of you -- you have available to you, I
6 presume, is a recorded witness statement signed or not signed, but in English and that statement in
7 question was at the beginning given by the witness in *Mende*.

8 MR. MARGAI:

9 With respect, My Lords, what I have in mind is not exactly what Your Lordship has talked about.

10 JUDGE BOUTET:

11 Please.

12 MR. MARGAI:

13 I recall my learned friend Jabbi's address to this Chamber drawing a distinction between a statement
14 which he submitted, and I associate with that submission, that such statements should be in the first
15 person, not a reported speech -- or, rather in the third person.

16

17 Now we have referred -- sorry.

18 JUDGE BOUTET:

19 Proceed.

20 MR. MARGAI:

21 I want your entire attention, My Lord.

22 MR. PRESIDENT:

23 Please, go ahead. We are not distracted, you can go ahead.

24 MR. MARGAI:

25 We drew this Court's attention to documents purporting to be statements from the Accused but which,
26 in fact, were in the third person. So it is not surprising that I'm seeking the Court's guidance as to
27 what the Court considers in law to be a statement from a witness.

28 JUDGE BOUTET:

29 I thought we have ruled on that yesterday morning saying that that application was denied and that a
30 statement is a statement whether it's in the first or the third person.

31 MR. MARGAI:

32 Unfortunately, when Your Lordships delivered the ruling, reasons we were told, would be given later.

33 JUDGE BOUTET:

34 Absolutely, and they will.

35 MR. MARGAI:

36 I appreciate the highlight.

37

1 JUDGE BOUTET:

2 They, indeed, will be given in writing.

3 MR. MARGAI:

4 As My Lords please.

5 JUDGE BOUTET:

6 In a more amplified way than just my statement this morning.

7 MR. MARGAI:

8 As My Lords please. I'm grateful. So I shall now proceed, with your leave.

9 JUDGE BOUTET:

10 Please.

11 WITNESS TF2-012

12 CROSS-EXAMINATION

13 BY MR. MARGAI:

14 Q. Now, Mr. Witness, when questioned yesterday by my learned friend, Hall, about receipt of monies
15 from the Prosecution you were very emphatic in your denial; isn't that correct?

16 A. Yes.

17 JUDGE BOUTET:

18 What is the problem there?

19 MR. MARGAI:

20 I'm waiting for the answer, My Lord.

21 THE WITNESS:

22 What you just said, I didn't understand.

23 BY MR. MARGAI:

24 Q. I shall repeat the question again. When you were questioned yesterday by Mr. Hall about the receipt
25 of monies from the Prosecution you emphatically denied such receipt; isn't that correct?

26 A. Yes, I said that yesterday -- yes, that's what I said yesterday -- yes, that's what I said yesterday.

27 Q. Could it be that at the time you gave your answer you could not recollect whether or not you received
28 monies from the Prosecution?

29 A. When he asked me yesterday whether they paid me, and they didn't pay me, but they've been feeding
30 me. So if he asked me whether they've paid me, I don't know; I am not sure. I don't know whether it
31 is a payment they are making to me that's why I didn't answer.

32 Q. Mr. Witness, the question posed yesterday by Mr. Hall was not whether you were paid, he said
33 whether you received monies?

34 A. What I heard yesterday was whether they paid me with money. That's what I heard yesterday, and
35 that's what I answered.

36 Q. Would I be right in saying that you have had in-between yesterday and today time to refresh your
37 memory?

1 A. Yes.

2 Q. Thank you. In refreshing your memory, were you by any chance aided?

3 A. No, I am the only person who sleeps in my house. When I was sleeping, I thought about it.

4 MR. MARGAI:

5 Now, My Lords, I'm seeking your leave to cross-examine the witness on his statement of 19th January
6 2003.

7 JUDGE BOUTET:

8 What we described as the first time, is it?

9 MR. MARGAI:

10 The first statement, yes, My Lords.

11 JUDGE BOUTET:

12 Please proceed.

13 MR. MARGAI:

14 As My Lords please.

15 BY MR. MARGAI:

16 Q. Now, Mr. Witness, you were cross-examined yesterday by Mr. Hall on the first statement you made
17 which I have just referred the Court to, 19th Feb -- 19th January 2003; were you not?

18 A. Yes, they asked me yesterday.

19 Q. Refreshing your memory, Mr. Hall did put it to you that, in fact, the statement you made was read over
20 and interpreted to you in *Mende* and you admitted it to be so; isn't that correct?

21 A. Yes.

22 Q. And you admitted the contents of that statement as being yours, and true and correct; isn't that
23 correct?

24 A. I didn't say that. There were some aspects of it that I denied that they didn't come from me.

25 Q. Mr. Witness, the statement you made, did you admit it as true and correct when it was interpreted to
26 you in *Mende*?

27 A. When I had explained and they had written it down, yes, I answered them.

28 Q. Did you, in acknowledgment, append your thumbprint to that statement, Mr. Witness?

29 A. Yes.

30 Q. In fairness to you, before you appended your thumbprint, did you tell the person who took down the
31 statement that part of what was alleged to have been said by you was not, in fact, so said?

32 MR. CARUSO:

33 Objection, Your Honour.

34 JUDGE BOUTET:

35 What is your objection?

36 MR. CARUSO:

37 With due respect, Your Honour, we are now apparently impeaching an out-of-Court statement. In my

1 view, that is an error. I have laid forth the reasons yesterday, I would be happy to do so again. I
2 would be happy to provide authority in the ICTY and ICTR.

3
4 There is no in-court statement here being impeached, we are discussing something that was made
5 out of court. That is irrelevant and it is not proper subject for impeachment for this Court.

6 MR. MARGAI:

7 Thank you. May it please you, My Lords. The question of whether or not a question is relevant, I
8 would have thought, is within the purview of the Court. That having been said, My Lords, evidence
9 was led yesterday by my learned friend -- sorry, in cross-examination by my learned friend, Hall, as to
10 portions of the first statement, i.e. whether the witness did say that he was a section commander. In
11 fact, it was not Mr. Hall it was Mr. Arrow Bockarie, whether he was a section commander of the
12 *Kamajors* and he said no, he did not say that. My Lords, that is evidence on oath and, as Mr. Norman
13 rightly stated yesterday, and in -- sorry, statements were submitted to the Court for approval for an
14 indictment to be filed as well as warrants of arrest to be issued for the Accused persons based on the
15 contents of those statements.

16 JUDGE BOUTET:

17 I would like to correct you because when the Court approved indictments, we were not provided with
18 these statements.

19 MR. MARGAI:

20 The Courts were not provided --

21 JUDGE BOUTET:

22 No, in fact, the Court is not provided with any statement.

23 JUDGE THOMPSON:

24 May I intervene?

25 MR. PRESIDENT:

26 And if you look at the law you will see what is expected to be provided to a judge who is called upon
27 to approve an indictment.

28 MR. MARGAI:

29 As My Lord pleases, as My Lord pleases.

30 JUDGE THOMPSON:

31 Perhaps you need to -- perhaps you need to look at Rule 47 of the Rules of Procedure and Evidence
32 of the Court, it sets out clearly what is required for the approval of an indictment.

33 MR. MARGAI:

34 As My Lords please.

35 JUDGE THOMPSON:

36 And, as my learned brothers have said, statements were not part of the package.

37 MR. MARGAI:

1 Very well, My Lords, accepted.

2

3 Be that as it may, My Lords, I still -- I'm of the opinion, subject to what Your Lordships may say, that
4 the fact that a witness on oath denies making certain statements as contained in what is supposed to
5 be a statement made by him, calls into question a very serious situation, if the ends of justice were to
6 be met.

7 JUDGE THOMPSON:

8 Would it be that if the alleged inconsistency were material?

9 MR. MARGAI:

10 Sorry, My Lord?

11 JUDGE THOMPSON:

12 If the alleged inconsistency were material.

13 MR. MARGAI:

14 Well, material, yes, My Lords. Yes.

15 JUDGE THOMPSON:

16 Because if a witness says that in a statement that is made out of court that on the 2nd of February
17 1999, and then in his testimony here he says on the 1st of February 1999, would that be --

18 MR. MARGAI:

19 My Lord, I would not straight away say that that would be very material to regard the statement -- I
20 mean, the witness as being untruthful, it depends. But what I am saying here is that taking the
21 evidence as it is that there was a statement made by a witness, this witness and, the witness under
22 oath tells this Court in no uncertain terms that A,B,C,D, was not what I said. Then what calls to mind,
23 and calls for question on the part of the Prosecution, is how did that portion of that piece of statement
24 now denied by the witness come to be in that statement? My Lord, justice is a two-way street, and
25 we are on a very serious crossroad in the sense that this is a Special Court. A lot of what is
26 happening here now will set precedence for future trials assuming that there will be.

27 MR. CARUSO:

28 Excuse me, Your Honour, I couldn't agree more and that's why I have made the record, or try to make
29 the record I've made. I have no --

30 MR. PRESIDENT:

31 Speak (*overlapping microphones*) Mr. Caruso.

32 MR. CARUSO:

33 Sorry, Your Honour, I beg your pardon.

34

35 I couldn't agree more with the theory that precedence is being set here, not only for this Court but for
36 many others and, therefore, I am insisting, to the extent that I have the temerity to do so, that the
37 process that has been laid down for a long time and well-documented, and documented in

1 international law be followed here. The statements that are to be impeached are statements made
2 under oath from that stand. You can do that by prior inconsistent statements, but they are the only
3 things that can be impeached. In these terms, I have, as I said yesterday, laid out that process. I am
4 perfectly willing and would give -- you have now authority for that process to the extent that this record
5 must be complete in the event that it needs to be reviewed.

6
7 I agree it is very important. I disagree that the impeachment or the attempt that is going on now, and I
8 say that in all respect to my colleague, Margai, is not proper impeachment.

9 JUDGE THOMPSON:

10 But Learned Counsel, is counsel for the Accused person not entitled to point out inconsistencies in
11 statements made, you know, by the Accused whether they were consistent or inconsistent with oral
12 testimony. In other words, if an Accused person is on record as having made two statements -- a
13 witness as having made two statements and then counsel seeks to cross-examine on alleged
14 contradictions or inconsistencies in those two statements, what rule of law precludes that, particularly,
15 having regard to the fact that this is cross-examination.

16 MR. CARUSO:

17 With respect, Your Honour, I suggest respectfully whether it is cross-examination or otherwise, the
18 evidence must be probative. I suggest the following to you:

19
20 What is being attempted here, and what I understood this Court to be addressing, was the fact that
21 substantive use may be made of prior inconsistent statements following their proper and appropriate
22 use in Court here, and those statements would then be substantively used.

23
24 What I am suggesting to you is that process does not include comparing two out-of-court statements
25 not made under oath before this Tribunal. That does not include that. Those statements, if they were
26 to be impeached, assuming this Court were to allow that and were to come to the conclusions that
27 they were inconsistent, they still wouldn't be able to be used substantively because they were not
28 made under oath before this Court. The only time that can be -- the only time that can be done is
29 when there is a statement made under before this Court and another statement, a prior inconsistent
30 statement, is then followed through the procedures that I outlined yesterday, is then put before this
31 Court. At that point, there is a discretion, and, as Judge Thompson rightly pointed out, there is a
32 bifurcation in the authority as to whether even at that point it can be done. But I will admit that there is
33 authority to suggest that it can be. It just simply cannot be done on this fashion, and that's the point
34 I'm trying to make.

35 JUDGE THOMPSON:

36 So what is the procedural discrepancy here in your submission?

37

1 MR. CARUSO:

2 What I am suggesting is this witness is not being asked, "Give us an answer to question No. 8," what
3 he is being asked is, "What was the answer to two statements you made out of court that were not
4 under oath?" My suggestion to you is that the results of that can never be used substantively before
5 this Court. That's my suggestion.

6 JUDGE THOMPSON:

7 But the question really for me is that if the witness has admitted making those statements, isn't it fair
8 game that counsel on the other side could cross-examine him on those statements.

9 MR. CARUSO:

10 Not under circumstances of this rule, Your Honour. I mean, we are talking here –

11 JUDGE THOMPSON:

12 Not within the context of prior inconsistent statements?

13 MR. CARUSO:

14 That's correct, and that's what I'm suggesting.

15 JUDGE THOMPSON:

16 But you're not suggesting that counsel is not entitled to cross-examine a witness who has admitted
17 making two out-of-court statements as to possible inconsistency or contradictions?

18 MR. CARUSO:

19 That may be true for the worth that they have but what I am –

20 JUDGE THOMPSON:

21 Yes, I mean, I am not going into probative value now, I'm just asking whether there is some rule of
22 law, or some case law authority precluding cross-examination on that point.

23 MR. CARUSO:

24 No, sir, and that is not -- not that I am aware of and that is what I'm pointing out. What I am pointing
25 out is that the process that you have just outlined that would under some circumstances and under
26 some authority allow the admission of these statements is not being followed and is incorrect at this
27 point and I want to record -- it is my suggestion that the record be absolutely perspicuous in this
28 respect, in view of the fact that it may well be reviewed.

29 JUDGE THOMPSON:

30 Thank you very much.

31 MR. MARGAI:

32 My Lords, with respect I disagree with my learned friend's interpretation of the law that where one is
33 impeaching a witness on the grounds of inconsistency between a statement and the witness's
34 evidence on oath in court, such impeachment could only be done relative to a statement on oath. I
35 know of no authority and, unfortunately, my learned friend has not furnished this Court with an
36 authority for our edification. My Lords, the law is very clear in all of the authorities. Whether a
37 statement on oath, as long as it is a statement that is inconsistent with a testimony of a witness on

1 oath, when one's counsel has followed the laid-down procedure, that witness can be impeached.

2 JUDGE THOMPSON:

3 So, your suggestion, Learned Counsel, is that statements not given under oath may also be used to
4 attack the credibility of a witness.

5 MR. MARGAI:

6 As My Lords please.

7 JUDGE THOMPSON:

8 Right. In other words, although those statements may carry less probative value than those made
9 under oath --

10 MR. MARGAI:

11 That is conceded, My Lords.

12 JUDGE THOMPSON:

13 What does the learned Prosecuting counsel say to that?

14 MR. PRESIDENT:

15 Well, whilst Mr. Margai is on his feet -- this witness had said, you know, from what I have on the
16 record here, he said he was asked whether he was paid, he did not understand, you know, the nature
17 of the payment and that is where he said that -- he refused that he -- he did not, you know, receive
18 any payment. Won't you agree that the questions this morning coming from Mr. Hall are more specific
19 to the point and that yesterday there was really no attempt, you know, to put these questions in their
20 real perspective?

21 MR. MARGAI:

22 My Lord, the question of impeachment, as at now, is grounded on a question under cross-
23 examination by my learned friend, Arrow Bockarie, as to whether in fact the witness did say in his first
24 statement that he was a section *Kamajor* commander. That is the predication.

25 MR. PRESIDENT:

26 But you've taken us, you know, to payments and --

27 MR. MARGAI:

28 No, no, no, My Lord. It was as a result of a document furnished us this morning by the Prosecution
29 trying to correct what was perceived to be an attempt to run away from the truth. So, my learned
30 friend, Hall, tried to set the record straight. That is not in his statement, I'm not contesting that on the
31 grounds of inconsistency. It is not in his statement.

32 MR. PRESIDENT:

33 Your ground of inconsistency is on whether he was a *Kamajor* section commander, section
34 commander.

35 MR. MARGAR:

36 A section commander, *Kamajor* --, a *Kamajor* commanding a section.

37

1 JUDGE BOUTET:

2 Maybe the -- if I may suggest again -- in my instruction this morning when I read it, I said, and I will
3 quote again, "In circumstances where the prior statement constitutes an old statement that has been
4 recorded by someone else and is not signed by the witness, the Trial Chamber will direct counsel to
5 provide the witness with the copy of this statement or to read the portion from which -- from the
6 statement to which he intends to rely and to seek from the witness whether or not he or she adopts
7 this portion of the statement as his or her own.

8

9 So what I will suggest you do is to direct attention -- you've been talking of the statement of 19th
10 January 2003. Well, bring his attention to whatever paragraph or line in that statement and ask him if
11 he has or not made that specific statement you're talking about, and the statement in question and the
12 statement in question obviously has to do with section commander. So, pose that question to him
13 directly.

14 MR. MARGAI:

15 As My Lord pleases.

16 MR. CARUSO:

17 Excuse me, Your Honour, (*inaudible*) the risk of trying your patience. My friend keeps asking me for
18 the authority to which I make reference. May I give it to you before he poses his question?

19 MR. PRESIDENT:

20 You could, you should always.

21 MR. CARUSO:

22 Yes, sir, I asked you, I suggest your attention to *Prosecutor v. Musema*, ICTR 9613-T, the judgment,
23 27 January 2000.

24 MR. PRESIDENT:

25 That is the *Prosecutor v. Musema*?

26 MR. CARUSO:

27 Yes, sir. Paragraph 86 and thereabout. *Prosecution v. Akayesu*, ICTR 9645, paragraph 137. And
28 contrary to both of those, and in my view, the better part --

29 MR. PRESIDENT:

30 The second case?

31 MR. CARUSO:

32 *Akayesu*. A-K -- you have it.

33

34 And finally K-V-O-C-K-A , 2 November 2000 -- 1 -- 2001, paragraph 800.

35 MR. PRESIDENT:

36 What did those cases decide, Mr. Caruso?

37

1 MR. CARUSO:

2 The cases before the ICTR basically suggest actually what Judge Thompson suggests today, that
3 where --

4 MR. PRESIDENT:

5 In other words, these cases decided a number of other issues, but on the particular issue that is in
6 question, yes.

7 MR. CARUSO:

8 As far as this particular issue is concerned, the cases before the ICTR came into conclusion and I
9 must respectfully suggest, without in-depth analysis, that the use of prior inconsistent statements was
10 acceptable under certain conditions and could be accepted as substantive evidence although -- and
11 they went on to clearly point out the evidence given from this stand, was more probative than these
12 prior inconsistent statements, that was a judgment made by the court.

13
14 The last case I cited to you came from the ICTY and came to the opposite conclusion. Now to be fair
15 and to be honest about it, the reality was there was some question there about authenticating that
16 statement and it had to be done through handwriting. What -- and I only mentioned that to you
17 because the judgment mentions it. I don't know what they have had to do with it. All I am saying to
18 you is the opposite conclusion was reached. They came to the more standard conclusion that is
19 found in the common law systems that indeed this cannot be done. It is the statement from the
20 witness stand that must be considered by the Court. I give you both of those --

21 JUDGE THOMPSON:

22 Yes.

23 MR. CARUSO:

24 And I believe now my objection to the process is on record and I thank you for the opportunity.

25 JUDGE THOMPSON:

26 But the predominant view is that they are generally admissible.

27 MR. CARUSO:

28 Sir.

29 JUDGE THOMPSON:

30 The predominant position is that they are generally admissible -- generally admissible, and that was
31 *Akayesu*.

32 MR. CARUSO:

33 Yes, sir, that's correct.

34 MR. MARGAI:

35 My Lords, I think this question was laid to rest, as was cited here by my learned friend, Williams. In
36 the case of the *Prosecutor v. Clément Kayishema and Obed Ruzindana*, 17th April 1997, "Order on
37 the probative --" sorry, ICTR-95-1-T, "Order on the probative value of alleged contradiction between

1 the oral and written statements of a witness during examination." I honestly would have preferred my
2 learned friend to have read from the judgment not just to tell you what he understands the judgment to
3 mean, as indeed, I'm doing with your leave. The caption here is, "The tribunal orders that whenever a
4 counsel -- whenever a counsel for the Prosecution or Defence perceives that there is a contradiction
5 between the written and the oral statement of a witness, counsel for the parties should only raise such
6 a question formally by putting to the witness the exact portion in issue to enable the witness to explain
7 the discrepancy, inconsistency or contradictions, if any, before the Tribunal. Counsels should then
8 mark the relevant portion of such a written statement and formerly exhibit it so as to form part of the
9 record of the Tribunal. It will determine the probative value of the alleged contradiction in question at
10 a later stage." I mean, I definitely would appeal to the Bench for our guidance that in future when we
11 are referring to authorities let us read so that the Court (*Microphone not activated*)

12 MR. CARUSO:

13 (*Microphone not activated*) we agree that case have probative value. I believe, and again in all due
14 respect, there is a certain lack of analysis in that judgment. However, the fact is we cited to you
15 before my friend, Margai, did. Apparently, he's forgotten that. Thank you.

16 MR. MARGAI:

17 And, My Lords, I might add that I followed the guidelines as said to us this morning by Justice Boutet.

18 MR. PRESIDENT:

19 The Court will rise for ten minutes. The Court rises.

20 (*Court recessed at 1103H*)

21 (*Pages 1 to 16 by Momodou Jallow*)

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1 (Court resumed at 1130H)

2 MR. PRESIDENT:

3 The session resumes.

4 JUDGE BOUTET:

5 Mr. Prosecutor, we have noted your comments as to the proper procedure and we would ask

6 Mr. Margai to proceed as I had indicated in my direction to you.

7 MR. MARGAI:

8 As My Lord pleases.

9 JUDGE BOUTET:

10 Which is -- again, I will just make sure that there is no confusion.

11

12 You have to provide the witness with a copy or read that portion of the statement that you intend to
13 rely on and to seek from the witness whether or not he adopts this portion. So, in other words, you
14 have to be specific as to which part or portions of the statement, whichever statement, and then as if
15 he -- or did he -- if he did make or not that particular statement.

16 MR. MARGAI:

17 I'm grateful, My Lord.

18 JUDGE BOUTET:

19 Thank you.

20 BY MR. MARGAI:

21 Q. Now, Mr. Witness, referring to your first statement made on the 19th of January 2003, did you say,
22 and I quote: "I was the section commander of the *Kamajors* for Wunde Chiefdom"?

23 THE ENGLISH INTERPRETER:

24 Mike. Mike. His mike is not on. His mike is not on.

25 THE WITNESS:

26 I didn't say that. I only said that I was sent by the section chief, and it is he who sent me.

27 BY MR. MARGAI:

28 Q. I'm putting it to you that you did say so in your statement.

29 THE ENGLISH INTERPRETER:

30 The speaker's mike is not on.

31 BY MR. MARGAI:

32 Q. I'm putting to you that you did say so in your statement.

33 A. What I have said, I have said again that I was sent by the section chief.

34 Q. And did you say that when Hinga Norman addressed the meeting at **Xxxx** in early March of 1998, that
35 he said he expected only four houses to be spared?

36 A. I only spoke about three houses. I talked about three houses.

37 Q. I'm putting it to you that not only did you say so, using four instead of three, but you mentioned it twice

1 in your statement.

2 JUDGE BOUTET:

3 And, again, Mr. Margai --

4 MR. MARGAI:

5 Yes, My Lord.

6 JUDGE BOUTET:

7 If he did say a second time, I would appreciate it if you would read to him whatever it is that he said a
8 second time.

9 MR. MARGAI:

10 Yes, My Lord.

11 BY MR. MARGAI:

12 Q. Now, on the first occasion --

13 MR. MARGAI:

14 My Lords, I'm reading -- sorry, it's okay.

15 BY MR. MARGAI:

16 Q. Now, you said, and I quote: "Hinga Norman commended xxxx and admitted he sent him to capture .
17 He went further to say that he was responsible for the destruction of and not the *Kamajors*. He said
18 he was annoyed at seeing a lot of houses standing since he was only expecting to see four houses."

19 JUDGE BOUTET:

20 Ask him the question.

21 BY MR. MARGAI:

22 Q. How -- having heard that, Mr. Witness, again, I'm putting to you, did you say Hinga Norman expected
23 to see four houses?

24 A. I said three houses. I said three houses.

25 Q. Thank you. On the next page, you also said, and I quote: "He then said that the four houses at the
26 junction by xxxx-xxxxRoad belonged to *Kamajors*." Did you refer to four houses as having been so
27 said by Hinga Norman?

28 A. Only one house should be standing there and that was the storey building. That was where the
29 *Kamajors* should stay. I only talked about one house. Maybe that's the house because it's a storey
30 building. Maybe that's the house they understood as two.

31 Q. Yes. Mr. Witness, in the same statement, page 1, did you say, and I quote: "The first meeting was
32 early March 1998"? The first meeting was attended by Hinga Norman --

33 A. Yes.

34 Q. Moinina Fofana.

35 A. I didn't say that.

36 Q. And Charles Moiwo?

37 A. Yes, I called his name. I called Charles Moiwo's name.

1 Q. I am putting to you, Mr. Witness, that you mentioned Moinina Fofana; did you or did you not?

2 A. I don't know him. I didn't call his name. I have been hearing his name.

3 Q. Thank you.

4 MR. MARGAI:

5 My Lords, I'm seeking your leave to refer to the statement made on the 25th of May 2004. It is, in
6 fact, an abstract.

7 MR. PRESIDENT:

8 He said he mentioned the name of some other person, not Moinina Fofana. What --

9 MR. MARGAI:

10 Charles Moiwo.

11 MR. PRESIDENT:

12 Charles Moiwo.

13 MR. MARGAI:

14 M-O-I-W-O, the same Charles as Charles Caruso.

15 MR. PRESIDENT:

16 Charles Taylor.

17 MR. MARGAI:

18 No, I prefer to refer to my learned friend and brother.

19

20 Yes, My Lord, I'm seeking your --

21 JUDGE BOUTET:

22 You may proceed.

23 MR. MARGAI:

24 Thank you very much.

25 BY MR. MARGAI:

26 Q. Now, Mr. Witness, did you make a statement on the 25th of May -- in the month of May -- let's forget
27 about the date, you might not recall -- in the month of May 2004 about this matter? Would you look at
28 me, please? Thank you.

29 A. Yes.

30 Q. Was that statement read and interpreted to you after it had been written down in *Mende*?

31 A. Yes, they were just asking me questions which I answered. When they ask me, I answer; when they
32 ask, me I answered.

33 Q. Yes, and when you answered it was written down by the person who was questioning you. Was that
34 not the case?

35 A. Yes, I did see him with a pen and I did see him writing, but I didn't know whether he was writing what I
36 was saying.

37 Q. Thank you. That is what the Court is here to investigate. Now, at the conclusion of his writing, did he

1 interpret to you in *Mende* what he had written?

2 A. I have said so. They were just asking me questions and I answered. I have said that they would ask
3 me and I'll answer.

4 Q. Mr. Witness, did they --

5 MR. PRESIDENT:

6 They were asking you questions and you were answering; they were asking you questions and you
7 were answering, um? Did they translate it to you in *Mende*?

8 MR. MARGAI:

9 This specific statement.

10 MR. PRESIDENT:

11 Yes, this specific -- this one, this particular one of May, May 2004, just last month.

12 BY MR. MARGAI:

13 Q. Did they?

14 A. No, they didn't do that. I said they just asked me, and I answered and they'd write.

15 Q. So at no time was it read over to you and explained to you in *Mende* for you to understand; is that
16 what you want this Court to believe?

17 A. Except that they called me and asked me, then I answered. Now, they didn't do it in a way when they
18 finished and they tell me. Is that what you said? No, they didn't do that.

19 JUDGE BOUTET:

20 But did they, at the end, read to you in *Mende* what they had written down?

21 MR. MARGAI:

22 Thank you, My Lord.

23 THE WITNESS:

24 When they asked me and I answered, is that what you are talking about? That they would explain to
25 me in *Mende*, is that what you're talking about? No, No.

26 JUDGE BOUTET:

27 Yes, yes. So they talked to you in *Mende*? They asked you the questions in *Mende*?

28 THE WITNESS:

29 Yes, they questioned me in *Mende*.

30 JUDGE THOMPSON:

31 Mr. Margai, what was your question, was it whether they recorded it and read it over to him and --

32 MR. MARGAI:

33 And explained it to him in *Mende* to acknowledge --

34 JUDGE THOMPSON:

35 In other words --

36

37 MR. MARGAI:

1 -- the authenticity of what was --

2 JUDGE BOUTET:

3 -- after the questioning?

4 MR. MARGAI:

5 Yes, My Lords.

6 JUDGE THOMPSON:

7 All right.

8 JUDGE BOUTET:

9 That was my understanding of your question.

10 MR. MARGAI:

11 As My Lord pleases.

12 JUDGE BOUTET:

13 Mr. Witness, after the questions were being asked to you in *Mende* and you had answered that
14 question in *Mende* --

15 THE WITNESS:

16 Yes.

17 JUDGE BOUTET:

18 -- they were writing something on a piece of paper.

19 THE WITNESS:

20 Yes.

21 JUDGE BOUTET:

22 When they were finished with writing something on a piece of paper, did they read to you what was
23 written on that piece of paper and did they do so in *Mende*?

24 THE WITNESS:

25 No. They would just ask me and I'd answer; they would ask me and I answer; they would ask me and
26 I'd answer, and when I finished asking (*sic*) the questions, they thanked me. And that's the end.

27 MR. MARGAI:

28 I will accept it, My Lord. I will accept it.

29 BY MR. MARGAI:

30 Q. Now, Mr. Witness, notwithstanding the fact that it was not read and interpreted to you in *Mende*, did
31 you at any time in that statement say that --

32 THE ENGLISH INTERPRETER:

33 Will the speaker take it slowly please.

34 MR. MARGAI:

35 Thank you.

36

37 BY MR. MARGAI:

1 Q. Did you in that statement say that, I quote -- no, that you did not know Moinina Fofana?

2 A. Yes, I said so.

3 MR. PRESIDENT:

4 That is in the statement of May?

5 MR. MARGAI:

6 May --

7 MR. PRESIDENT:

8 May 2004?

9 MR. MARGAI:

10 May 25th, My Lord.

11 MR. PRESIDENT:

12 Well, you wanted to avoid the date but --

13 MR. MARGAI:

14 May 2004, but for the record.

15 MR. PRESIDENT:

16 May 25th, 2004.

17 MR. MARGAI:

18 2004.

19 THE WITNESS:

20 Yes, I don't know him.

21 MR. MARGAI:

22 Did you also in that statement say that --

23 JUDGE THOMPSON:

24 I did not-- I did not get that answer.

25 MR. MARGAI:

26 *(Microphone not activated)*

27 JUDGE THOMPSON:

28 You say whether he did say --

29 MR. MARGAI:

30 That he did not know Moinina Fofana.

31 THE WITNESS:

32 Yes, I did not know him.

33 JUDGE THOMPSON:

34 That --

35 MR. MARGAI:

36 He did not know Moinina Fofana. He said he did not know Moinina Fofana in that statement.

37 JUDGE THOMPSON:

1 Yes, thank you.

2 MR. MARGAI:

3 Thank you.

4 BY MR. MARGAI:

5 Q. And did you further say in that statement that Moinina Fofana was not present at the meeting
6 purportedly addressed by Hinga Norman at ?

7 A. Yes. I don't know him, how would I say he was there? I don't know him.

8 JUDGE BOUTET:

9 That's fine.

10 BY MR. MARGAI:

11 Q. I'm putting to you, Mr. Witness, that the purpose of making this latter statement was to correct what
12 you had earlier said in your previous statement about Moinina Fofana.

13 A. No, it's not so. No, I don't need to think about that. If I saw him there I'll tell you I saw him there.

14 MR. MARGAI:

15 My Lords, at this juncture, assuming that all the parameters are in place, I am applying for the
16 statement, the previous statement of the witness dated 19th January 2003, and the statement of the
17 witness made on the 25th of May 2004, to be furnished to us by the Prosecution.

18 MS. WIAFE:

19 Your Honour, I object to the tendering of the statement of 25th May 2004. The Defence has not
20 shown any inconsistency in that statement to what the witness has said on the stand. And I don't
21 know for what purpose they are tendering that statement.

22 JUDGE BOUTET:

23 Mr. Margai.

24 MR. MARGAI:

25 My Lords, the purpose of tendering the statement is to establish contradiction in both statements,
26 relative to the presence of Moinina Fofana at the meeting addressed by Hinga Norman.

27 JUDGE BOUTET:

28 I understand, but you have already covered that in your questioning of the witness as to the statement
29 of --

30 MR. MARGAI:

31 Nineteenth?

32 JUDGE BOUTET:

33 -- of 19th January 2003. You asked him, "Did you say," and he said --

34 MR. MARGAI:

35 He said no.

36

37 JUDGE BOUTET:

1 He said no.

2 MR. MARGAI:

3 Yes, My Lord.

4 JUDGE BOUTET:

5 So, that statement, and presumably that portion, speaks for itself. You've asked after that question
6 about 25 May. 25 May, he agrees with you that's what he says. So, there is no contradiction in his
7 statement of 25 May. The contradiction, if any, has to do with 19th January, not May.

8 MR. MARGAI:

9 The contradiction has to be between two statements. Now, the statement of 25th May corrected -- or,
10 rather, retracted the statement of 19th January, relative to the presence of Moinina Fofana at the
11 Hinga Norman meeting.

12 JUDGE THOMPSON:

13 Yes, so if it's a retraction what is the contradiction then?

14 MR. MARGAI:

15 My Lords, the contradiction --

16 JUDGE THOMPSON:

17 From a logical -- from a logical perspective if one statement retracts the other, isn't the effect
18 neutralising, so to speak, an alleged contradiction? In other words, virtually this witness is saying both
19 cannot be true; one is true the other is not. Isn't that what the witness is saying?

20 MR. MARGAI:

21 Conceded, My Lord, but in the present circumstance, it is not -- it is not correcting one another. What,
22 in fact, the witness said to my question, relative to the mention of Hinga -- sorry, of Moinina Fofana at
23 that meeting, he denied that he ever said so. And in the latter statement, he admitted saying that
24 Moinina Fofana was not at that meeting because he did not know Moinina Fofana, and he could not
25 have said so in his earlier statement.

26 JUDGE THOMPSON:

27 All right, taking the -- taking the issue from its philosophical level --

28 MR. MARGAI:

29 Yes, My Lord.

30 JUDGE THOMPSON:

31 -- to the practical level --

32 MR. MARGAI:

33 Yes, My Lord.

34 JUDGE THOMPSON:

35 -- what is the prejudice to your client?

36

37 MR. MARGAI:

1 My Lord, all I'm trying to establish here is the unreliability of this witness. I'm trying to impugn his
2 reliability.

3 MR. PRESIDENT:

4 Credibility.

5 MR. MARGAI:

6 Credibility.

7 JUDGE THOMPSON:

8 In so far as a statement which is incriminating?

9 MR. MARGAI:

10 Obviously, My Lord.

11 JUDGE THOMPSON:

12 Is his answer --

13 MR. MARGAI:

14 But, My Lord, as you rightly said earlier --

15 JUDGE THOMPSON:

16 Is it -- are his answers of an inculpatory or exculpatory nature?

17 MR. MARGAI:

18 Well, depending on which angle one looks at it. If it is viewed from the statement of the 25th, it is
19 exculpatory.

20 MR. PRESIDENT:

21 Mr. Margai.

22 MR. MARGAI:

23 Yes, My Lord.

24 MR. PRESIDENT:

25 The evidence he has given --

26 MR. MARGAI:

27 Yes, my Lord.

28 MR. PRESIDENT:

29 -- how does that prejudice the case of Mr. Moinina Fofana?

30 MR. MARGAI:

31 My Lord, this is a court of fact and a court of credibility. This is why Your Lordships need to watch the
32 demeanour of the witness.

33 MR. PRESIDENT:

34 We are watching him.

35 MR. MARGAI:

36 I know that, very keenly too.

37 MR. PRESIDENT:

1 Yes, which we have done very keenly. We are watching him.

2 MR. MARGAI:

3 Very, very keenly; microscopically, in fact, I would say, if I may.

4 JUDGE THOMPSON:

5 Thank you.

6 MR. MARGAI:

7 But be that as it may, My Lords, all I'm saying is that at the end of the day, as Justice Thompson
8 rightly stated, with regard to impugning the credibility of a witness based on inconsistency goes to
9 weight at the end of the day. So when Your Lordships come to consider the totality of the evidence,
10 both from the Prosecution and the Defence, Your Lordships will have to decide what weight to place
11 on such testimony. This is the whole purport of the exercise.

12 JUDGE BOUTET:

13 Mr. Margai --

14 MR. MARGAI:

15 Yes.

16 JUDGE BOUTET:

17 -- thank you.

18 MR. MARGAI:

19 Thank you.

20 JUDGE BOUTET:

21 Just so I do clearly understand the purpose of your tendering the statement of 25 May '04, you are
22 saying that when the witness was asked questions on the presence or not of Mr. Fofana in the -- in his
23 first statement, he said he never said so, or words to that effect.

24 MR. MARGAI:

25 Yes, My Lord.

26 JUDGE BOUTET:

27 And you are saying in his statement of 25 May he says, "I said so but I was wrong." So basically
28 that's your position?

29 MR. MARGAI:

30 As My Lords please.

31 JUDGE BOUTET:

32 Okay.

33 MR. MARGAI:

34 Because there would have been no necessity for the latter statement if what he said about Fofana
35 stood its ground.

36

37 JUDGE BOUTET:

1 Okay.

2 MR. MARGAI:

3 As My Lords please.

4 JUDGE BOUTET:

5 We are quite prepared to accept for the purpose established, that is, only admissibility going to the
6 credibility of the witness, and for no other purposes.

7 MR. MARGAI:

8 That is the intended purpose and nothing else.

9 JUDGE BOUTET:

10 Thank you.

11 MR. MARGAI:

12 I assure Your Lordships. I'm most grateful. Thank you.

13 JUDGE BOUTET:

14 You were -- well, before we went into this questioning -- our question on this issue, you were asking
15 the Prosecution if they would produce the statement -- the statement or statements, and we embarked
16 upon this discussion at that time, so we still don't have an answer on that issue.

17 MR. MARGAI:

18 Well, I made an appeal to the Court to order the Prosecution to -- the Prosecutor to furnish us with the
19 statement. I'm sure they are waiting to hear from the Bench.

20 MR. PRESIDENT:

21 We want to hear their reply first to that application.

22

23 Yes, the Prosecution.

24 MS. WIAFE:

25 Your Honour, we have disclosed everything that we have. We don't have anything that the Defence
26 doesn't have at this time. So we don't have any statements.

27 JUDGE BOUTET:

28 They are asking presumably for the original statement.

29 MS. WIAFE:

30 The original statement has been furnished to the Defence.

31 JUDGE BOUTET:

32 You mean a copy of --

33 MS. WIAFE:

34 Yes.

35 JUDGE BOUTET:

36 -- or the original statement?

37 MS. WIAFE:

1 We have a copy of that original statement.

2 JUDGE BOUTET:

3 The question is, do you have the original statement or a copy of? They are asking that the original
4 statement be produced in court, not a copy of.

5 MS. WIAFE:

6 Well, we made photocopies of all the original statements.

7 JUDGE BOUTET:

8 I hear what you are saying, that's why I'm asking. Where is the original? Do you have the original?
9 And can you tender the original?

10 MS. WIAFE:

11 Yes, we do have the original.

12 JUDGE BOUTET:

13 Please, tender the original.

14 JUDGE THOMPSON:

15 Because the --

16 MR. JOHNSON:

17 We don't have it here in court with us, Your Honour, but we could -- we could give the original
18 statement.

19 JUDGE THOMPSON:

20 And because one would think that the original is the best -- is the best evidence for the Court to see.

21 JUDGE BOUTET:

22 So that concludes your cross-examination, Mr. Margai.

23 MR. MARGAI:

24 No, My Lords, I think I have just about three more questions.

25 JUDGE BOUTET:

26 Fine. Please proceed. Well --

27 JUDGE THOMPSON:

28 On the same -- on the same episode?

29 MR. MARGAI:

30 No, no, no, no, My Lords. I mean, I do not -- that would be superfluous.

31 JUDGE BOUTET:

32 We -- if you would mind carrying on with your cross-examination, subject to the Prosecution tendering
33 the original of that -- of those statements to be produced as exhibits.

34 MR. MARGAI:

35 My Lords, quite frankly I would have preferred them to be produced and tendered as identified and
36 tendered as exhibits, identified and tendered.

37 JUDGE THOMPSON:

1 So it's a two stage process?

2 MR. MARGAI:

3 Yes.

4 JUDGE THOMPSON:

5 In other words tendered for identification, and then tendered in evidence. Is that what you're saying?

6 MR. MARGAI:

7 No, My Lords, I am saying that -- my understanding is that when once the conditions -- the
8 preconditions have been satisfied, and the Court orders production of the document, the document
9 becomes an exhibit.

10 JUDGE BOUTET:

11 Yes.

12 MR. MARGAI:

13 It becomes an exhibit, going according to the guidelines.

14 JUDGE BOUTET:

15 Yes, but identifying the document to make sure that the document that they will produce is indeed the
16 documents we've been talking about.

17 MR. MARGAI:

18 And that's why Your Lordships are insisting on the production of the original. I wouldn't agree more
19 with Your Lordships.

20 JUDGE THOMPSON:

21 Quite right. There must be identification first.

22 MR. MARGAI:

23 So, My Lords, if I would not be presumptuous, I was going to suggest that perhaps Your Lordships
24 might grant us a few minutes so that the original could be brought for the records to be tidy.

25 MR. PRESIDENT:

26 Are you suggesting that you cannot conclude your cross-examination -- or you cannot go on with the
27 rest of your cross-examination whilst waiting --

28 MR. MARGAI:

29 My Lord, I can go on. I have no more than three witnesses (*sic*), but it's just for the record.

30 MR. PRESIDENT:

31 Three questions.

32 MR. MARGAI:

33 Three questions, I'm sorry.

34 MR. PRESIDENT:

35 Yes. Why don't you go on with this and then, you know, we can revisit this issue, you know, in due
36 course.

37 MR. MARGAI:

1 If it pleases Your Lordships.

2 MR. PRESIDENT:

3 Yes, please go ahead.

4 BY MR. MARGAI:

5 Q. Now, Mr. Witness, you told the Court that you joined the *Kamajor* society at -- after the conclusion of
6 the war?

7 A. Yes.

8 Q. Did you join as a fighting *Kamajor* or merely to be a member of the society?

9 A. I just joined because I was chief. That was the only reason why I joined. I didn't join because I
10 wanted to fight. I only joined because I am chief, and they said chiefs should join.

11 Q. Thank you.

12

13 Now, tell me, Mr. Witness, are all *Kamajors* fighters, including you?

14 A. No, it's not all *Kamajors* that are fighters.

15 Q. Thank you. Now, finally, Mr. Witness, you told this Court that your identification of *Kamajors* was
16 based on their attire, that is the *Ronko*?

17 A. Yes, the *Kamajor* that goes to war, they would normally put on the *Ronko*.

18 Q. Thank you. The final of the finalities. Mr. Witness, did you during the war, the rebel war, hear that the
19 AFRC were impersonating the *Kamajors* by wearing the *Ronkos*?

20 A. During the time of the AFRC I didn't go out, I was only in the bush, so I can't tell.

21 Q. Did you hear of the rebels impersonating the *Kamajors* by wearing *Ronkos*?

22 A. No, I didn't hear of that.

23 Q. Thank you very much, for your cooperation.

24 MR. MARGAI:

25 That would be all for the witness, My Lords.

26 JUDGE BOUTET:

27 Thank you, Mr. Margai.

28

29 Any re-examination by the Prosecution?

30 MR. PRESIDENT:

31 How long does it take the Prosecution to produce the statements which -- the statements in issue,
32 which you say are not around here? Because we want to stand down this matter for some time.

33 MR. JOHNSON:

34 Okay, I mean, I could certainly have it this afternoon, Your Honour. We have in there -- we have a lot
35 to weigh in our evidence room and the evidence room is not on this site, but I can have it this
36 afternoon.

37 MR. PRESIDENT:

1 You can?

2 MR. JOHNSON:

3 I could have the original of this statement for you this afternoon, Your Honour.

4 MR. PRESIDENT:

5 This afternoon?

6 MR. JOHNSON:

7 Yes.

8 MR. PRESIDENT:

9 Because Mr. Margai cannot close his cross-examination of this witness, you know, without going
10 through the procedure, you know, of having that statement, you know, tendered, and we have -- we
11 have up to one o'clock for break. It's just about 12 now.

12 MR. JOHNSON:

13 It's just that the originals of these are not located on the site, they are off site.

14 MR. PRESIDENT:

15 I see, okay.

16 MR. JOHNSON:

17 We just have to get someone to pick it up, Your Honours.

18 MR. PRESIDENT:

19 All right.

20

21 This matter is adjourned to three o'clock, three o'clock this afternoon in order to enable the
22 Prosecution to produce the original of the statement in question, and to enable Mr. Margai to wrap up
23 his cross-examination of the fourth Prosecution witness.

24

25 The Court will rise and we resume at three o'clock.

26 *(Court recessed from 1205 to 1506H)*

27 MR. PRESIDENT:

28 We are resuming the session.

29 JUDGE BOUTET:

30 So, has the Prosecution found the original document?

31 MS. WIAFE:

32 Yes, Your Honour.

33 JUDGE BOUTET:

34 You have the document with you?

35 MS. WIAFE:

36 Yes, Your Honour.

37 JUDGE BOUTET:

1 Can you show it to the Defence, please?

2

3 Yes?

4 MS. WIAFE:

5 Your Honour, we would like to request that the original be returned to the Prosecution. We have
6 copies of the original here that we can hand over to the Court.

7 JUDGE BOUTET:

8 Mr. Counsel, Defence counsel?

9 MR. MARGAI:

10 My Lords, I have no objection, provided we can compare the original with the copies.

11 JUDGE BOUTET:

12 Mr. Walker.

13

14 Mr. Defence Counsel, you've seen and you've been able to compare?

15 MR. MARGAI:

16 Yes, My Lord.

17 JUDGE BOUTET:

18 And what we have is a true copy of --

19 MR. MARGAI:

20 It's a replica.

21 JUDGE BOUTET:

22 Thank you.

23 MR. MARGAI:

24 Thank you.

25

26 JUDGE BOUTET:

27 So for better clarity and then -- and clear understanding, when I said this morning when we were
28 discussing this issue and you were asking for some guidance, I'd said that we would admit those
29 portions, and I quote to you: "The portion of the statement relied upon by counsel may then be
30 admitted into evidence." Obviously, if I understand your position correctly, this is not the whole
31 statement that is --

32 MR. MARGAI:

33 Not at all, My Lord.

34 JUDGE BOUTET:

35 I would like you, if I may, to tell the Court which portions or part. I know you've referred to page 2,
36 page 3, the bottom of page 4.

37 MR. MARGAI:

1 As My Lords please, I'll do that.

2 JUDGE BOUTET:

3 Because these are the portions we will be admitting for that particular purpose, as such, and strictly
4 for that --

5 MR. MARGAI:

6 Absolutely, absolutely, absolutely.

7 JUDGE BOUTET:

8 -- purpose. So you have a copy with you of the statement in question -- of the statements? Let's start
9 with statement of 19-1-03.

10 MR. MARGAI:

11 Page one.

12 MR. PRESIDENT:

13 Mr. Margai, how many-- how many statements were you referring to?

14 MR. MARGAI:

15 Two statements.

16 MR. PRESIDENT:

17 Two statements, isn't it?

18 MR. MARGAI:

19 Only one has been tendered, yeah.

20 JUDGE BOUTET:

21 One which has four pages and one of one page.

22 MR. MARGAI:

23 That's the one of the 19th of January 2003.

24 MR. PRESIDENT:

25 Yes.

26 MR. MARGAI:

27 So we are still waiting for the one of the 25th of May 2004.

28 MR. PRESIDENT:

29 Okay.

30 JUDGE BOUTET:

31 So what we have in front of us is the one for 19th January 2003?

32 MR. MARGAI:

33 As My Lord pleases.

34 JUDGE BOUTET:

35 So the portions in question you were about to say were?

36

37 MR. MARGAI:

1 Page 1 --

2 JUDGE BOUTET:

3 Yes.

4 MR. MARGAI:

5 -- first paragraph --

6 JUDGE BOUTET:

7 Yes.

8 MR. MARGAI:

9 -- first sentence, "I was the section commander of the *Kamajors* for Wunde Chiefdom."

10 JUDGE BOUTET:

11 Very first sentence, okay?

12 MR. MARGAI:

13 That's all on that page.

14 JUDGE BOUTET:

15 On page 1, fine.

16 MR. MARGAI:

17 Sorry, then -- sorry, on the same page, second paragraph --

18 JUDGE BOUTET:

19 Yes.

20 MR. MARGAI:

21 Fourth line.

22 JUDGE BOUTET:

23 "The first meeting"?

24 MR. MARGAI:

25 "The first meeting was attended by Hinga Norman, Moinina Fofana and Charles Moiwo."

26

27 JUDGE BOUTET:

28 Thank you.

29 MR. MARGAI:

30 Yes, My Lords, page 3 --

31 THE ENGLISH INTERPRETER:

32 The speaker's microphone is not on.

33 MR. MARGAI:

34 Sorry. Page -- page 2.

35 JUDGE BOUTET:

36 Yes.

37 MR. MARGAI:

1 Paragraph 2, line 7 --

2 JUDGE BOUTET:

3 Of paragraph 2? Yes, "He said he was"?

4 MR. MARGAI:

5 -- of paragraph 2, "He said he was" --

6 JUDGE BOUTET:

7 Yes.

8 MR. MARGAI:

9 -- "annoyed at seeing a lot of houses standing since he was only expecting to see four houses."

10 JUDGE BOUTET:

11 Thank you.

12 MR. MARGAI:

13 And page 3.

14 MR. PRESIDENT:

15 Please, don't rush.

16 MR. MARGAI:

17 I'm so sorry, My Lords. I'm so sorry. I beg your pardon unreservedly.

18

19 The next page, page 3, paragraph 2, the first three lines, "He then said that the four houses at the
20 junction by the Sumbuya-Bo Road belonged to *Kamajors*." That's all in so far as the statement of
21 19th of January 2003 is concerned.

22 JUDGE BOUTET:

23 Thank you.

24 MR. MARGAI:

25 We are still awaiting the production of the statement of 25th May 2004.

26

27 JUDGE BOUTET:

28 You have that statement?

29 MS. WIAFE:

30 Yes, Your Honour.

31 JUDGE BOUTET:

32 Could you produce the --

33 MR. PRESIDENT:

34 Let the Court Management come and pick the statement from there, please.

35 MS. WIAFE:

36 Okay.

37 Your Honours, the second statement is an unsigned statement.

1 JUDGE BOUTET:

2 But this is the statement of 25 May '04?

3 MS. WIAFE:

4 Yes.

5 JUDGE BOUTET:

6 So is this the original?

7 MR. PRESIDENT:

8 Mr. Margai, have you seen the statement of the 25th of May, have you seen it?

9 MR. MARGAI:

10 Yes, My Lords.

11 MR. PRESIDENT:

12 Sorry?

13 JUDGE BOUTET:

14 So this is the original or this is a copy of?

15 MS. WIAFE:

16 This is the original. It's an electronic copy and we didn't -- it wasn't handwritten or anything like that.

17 MR. PRESIDENT:

18 And you say it's unsigned?

19 MS. WIAFE:

20 It's unsigned, yes.

21 MR. PRESIDENT:

22 Do you mean that there is no signed copy of that statement in your records?

23 MS. WIAFE:

24 Yes, Your Honour.

25 JUDGE BOUTET:

26 So that's the way it's been right from the moment this statement was given; in other words, there's
27 never been a signature on that document?

28 MS. WIAFE:

29 Yes, Your Honour.

30 MR. MARGAI:

31 We accept it, My Lord.

32 JUDGE BOUTET:

33 So, Mr. Margai, about this document, date of interview, 25 May 2004, titled "Interview Notes". It has
34 one, two, three -- three lines and a half.

35 MR. MARGAI:

36 Yes, My Lord.

37 JUDGE BOUTET:

1 Which -- which is which?

2 MR. MARGAI:

3 The entirety of that document.

4 MR. PRESIDENT:

5 You mean the entirety of the statements?

6 JUDGE BOUTET:

7 Which --

8 MR. MARGAI:

9 Yes, My Lord.

10 JUDGE BOUTET:

11 Which is from the -- that he did not say that?

12 MR. MARGAI:

13 The three and a half lines.

14 JUDGE BOUTET:

15 Yes, okay.

16 MR. MARGAI:

17 As My Lords please.

18 JUDGE BOUTET:

19 Thank you.

20 MR. PRESIDENT:

21 Yes.

22 MR. MARGAI:

23 Just for the exhibits to be numbered, My Lords.

24 JUDGE BOUTET:

25 Do we need to number that when we admit only those portions or --

26 MR. MARGAI:

27 Well, they are in as exhibits and we have had Exhibits 1 to -- 1 to 5.

28 MR. PRESIDENT:

29 We did say, Mr. Margai, that we are only, for the records, accepting the extracts of what you consider
30 as inconsistencies in the statements, you know, made by this witness, not necessarily to admit the
31 statements in evidences. And that is what the records are doing now. You have drawn the attention
32 of the Court to -- to the inconsistencies in the statements -- in the first statement, you know, the
33 statement of the 29th of January 2003 (*sic*), you have made four -- you have highlighted four
34 inconsistencies.

35 MR. MARGAI:

36 Yes, My Lord.

37 MR. PRESIDENT:

1 In the second statement, you know, of the 25th of May, you -- you, in fact you have not addressed us
2 sufficiently on what you see in the entire statement, you know. You say it is -- you are questioning the
3 consistency of this witness on the entire statement.

4 MR. MARGAI:

5 Yes, My Lord.

6 MR. PRESIDENT:

7 You have not addressed us specifically on that. And even if you did, the purpose of this exercise is to
8 ensure that we take for the records those inconsistencies which you have noted without necessarily --
9 without necessarily admitting the document in evidence.

10 MR. MARGAI:

11 My only worry, My Lord -- or, rather my concern is, if I were to refer to that document containing the
12 evidence referred to therein, how would I address that issue?

13 MR. PRESIDENT:

14 Just the way you have been referring to them now, by their dates and since the records, you know,
15 have them on, we would be able to identify them.

16 MR. MARGAI:

17 My Lords, I --

18 MR. PRESIDENT:

19 There are no two statements made. You know, there are two specific statements made on two
20 particular dates.

21 MR. MARGAI:

22 I appreciate that, My Lords. I honestly would have thought that they would be exhibits whatever
23 number is given to them, but then the purpose is simply not beyond what Your Lordships have stated,
24 and that is conceded.

25 MR. PRESIDENT:

26 You see --

27 MR. MARGAI:

28 But for ease of reference if I want to identify --

29 MR. PRESIDENT:

30 Let me say this. The witness has given evidence, you know, to the fact that -- I mean, it's for us to
31 assess, you know, the nature of that evidence.

32 MR. MARGAI:

33 Granted.

34 MR. PRESIDENT:

35 That he was -- that the statements were not read back, you know, to him.

36

37 MR. MARGAI:

1 The latter statement.

2 MR. PRESIDENT:

3 Yes, latter statement, yes. Which was -- it was just recorded and it was not read to him, you know, in
4 *Mende* and the rest of it, and he has always been pleading illiteracy and contesting, you know, parts
5 and parcels of the statement and so on. So, for purposes of this exercise, we have gone as far as I
6 think we should go.

7
8 We have you on record, Mr. Margai, as having highlighted certain inconsistencies, and these
9 inconsistencies, you know, relate to issues that you have raised on the two statements.

10 MR. MARGAI:

11 Yes.

12 MR. PRESIDENT:

13 But I would like you to address us more, you know, on the second statement because we haven't
14 perceived what your submissions are, you know, or your observations are on the second statement.

15
16 Now, having said this, you know, I think we'd be able to get to --

17 MR. MARGAI:

18 My Lords, quite frankly I sympathise with the witness and I was watching Your Lordship's expression
19 when my learned friend on the other side was asked the question whether, in fact, there is no
20 signature or thumbprint of -- on the statement, and the answer was in the positive. But, My Lords,
21 again, I sympathise with the witness because, I mean, our practice -- when I talk of our practice, the
22 Common Law practice -- is that once you are dealing with an illiterate, you obtain his statement, you
23 are supposed to read back and interpret the statement to that witness.

24
25 MR. PRESIDENT:

26 It's a protected person.

27 MR. MARGAI:

28 Precisely, precisely, you see? But be that as it may, My Lords, as I referred you to the earlier case of
29 *Kayishema and Ruzindana*, which states that, "Counsel should then mark the relevant portion of such
30 a written statement and formally exhibit it," it meaning the statement, "so as to form part of the record
31 of the Tribunal."

32 MR. PRESIDENT:

33 Exactly.

34 MR. PRESIDENT:

35 "It" meaning the statement (*overlapping microphones*).

36
37 MR. PRESIDENT:

1 Exactly. It has been exhibited and it is part of the records from what has been said here. What you
2 are --

3 MR. MARGAI:

4 So if --

5 MR. PRESIDENT:

6 Saying is being recorded. It's being recorded, not only -- I mean, we have a -- if you doubt it it can be
7 produced, you know, tomorrow for you to see, you know, that you are fully recorded and that these
8 transcripts will be what you will be relying on, you know, if you have to need these records, you know,
9 for any purpose.

10 MR. MARGAI:

11 My Lords, the reason why I am being very cautious in this particular situation is, I do not want to find
12 myself in a similar predicament in which I found myself when we were defending *Mina and others* in a
13 treason trial where oral testimony was tendered, the judge admitted it and deliberately I rose up and
14 asked to see that document. How could you possibly tender an oral statement? But that is not the
15 point. The reason why I'm asking, My Lords, is that perhaps in the course of the trial I may have
16 cause to have recourse to this document, how would I ask for it, as exhibit what?

17 MR. PRESIDENT:

18 You will ask for it in terms that you have asked for it today and it will be supplied to you.

19 MR. MARGAI:

20 As My Lords please. We better not belabour that point. As My Lords please.

21 THE ACCUSED NORMAN:

22 My Lords, may I say something in respect of that statement being exhibited?

23 MS. WIAFE:

24 Your Honour, I object to the comments to be made by Hinga Norman. He's already had his time.
25 He's cross-examined this witness, and I don't think that he should be heard on this matter.

26 MR. PRESIDENT:

27 Yes, we have taken note of your objection, but let us hear what he has to say. Let us hear what he
28 has to say.

29 THE ACCUSED NORMAN:

30 Thank you, My Lord.

31

32 My interest in that document being marked as an exhibit is that it may well be one of those documents
33 that we were presented --

34 MR. PRESIDENT:

35 Yes, Mr. Norman, no, we have -- we have taken a decision on that. We are not going back on that
36 decision.

37 THE ACCUSED NORMAN:

1 My Lord, I have the right as a man defending himself that may be locked up for his life --

2 JUDGE BOUTET:

3 No, Mr. Norman, Mr. Norman, please, please. You are assisted by stand-by counsel. You have been
4 given all possible opportunity to cross-examine this witness. It has been fully exercised by you and
5 your counsel. You have completed your cross-examination and now we've completed with the cross-
6 examination by counsel for the third Accused, and you had been given every single possible
7 opportunity to cross-examine and to exercise your right. I regret, but you have -- you have no right to
8 speak at this particular moment.

9 THE ACCUSED NORMAN:

10 My Lord, it's not cross-examination.

11 JUDGE BOUTET:

12 Mr. Norman.

13 THE ACCUSED NORMAN:

14 I'm emphasising a point. In the interest of justice, My Lords -- in the interest of justice that that
15 document may well have been one of those documents that were presented to the judge who was
16 convinced, and I was indicted and arrested.

17 MR. PRESIDENT:

18 Mr. Norman, Mr. Norman, please. This morning it was made abundantly clear that those statements
19 were not part of the documents that were represented to the judge that was looking at the issue of
20 approving the indictment. Why do you need to come back to that? You do not believe the judge
21 when he says, you know, that these statements were not part of the package that was presented to
22 him before he approved the indictment?

23 THE ACCUSED NORMAN:

24 With all due respect I do not have that intention, My Lord. I am only saying, out of cautious --
25 abundance of cautiousness at least for transparent justice.

26 JUDGE THOMPSON:

27 May I address this question to Mr. Margai.?

28
29 Learned Counsel, in this particular situation, isn't the proper methodology to having put the relevant
30 portions in evidence and they form part of the records, to expect or request the Chamber to have the
31 documents or the statements kept in the custody of the Court so that when the time comes they will
32 be produced and made available for any further purpose, particularly the purpose of addressing, for
33 example, from your side, addressing the Judges on the issue of credibility or probative value? Isn't
34 that for the practice for the Court to take the document into its custody and, in fact, produce it when
35 that becomes necessary or when some enquiry is made in request of that particular document?

36

37 MR. MARGAI:

1 Indeed, My Lord, that is the practice and I believe it still is. As long as a document has been
2 tendered, whether in its entirety or partially, once tendered, it should from that moment be in the
3 custody of the Court and I believe that is the case.

4 JUDGE THOMPSON:

5 And then -- and then can be produced from inspection by counsel and the Court for purposes for
6 which counsel has sought to put in evidence the portions of that statement.

7 MR. MARGAI:

8 I agree with Your Lordship.

9 JUDGE THOMSON:

10 The difficulty of course in which one finds itself -- oneself now is whether we should, in fact, give these
11 statements a particular or particular exhibit numbers, we would mean more or less admitting the
12 statements in their entirety. Of course, the second statement presents a tricky situation where,
13 according to you, you are relying upon the three lines that in fact constitute the statement. But the
14 question really is whether this Court can, under the procedure that we outlined this morning, can
15 actually give each of those documents an exhibit number. That's the difficulty.

16 MR. MARGAI:

17 My Lords, I am not for one moment attacking the entirety of the statements. I have, on guidance of
18 Justice Boutet, highlighted the portions I am concerned with. And even if those documents were to be
19 given an exhibit number, at the end of the day when I come to attack the credibility of the witness, I
20 would expect, and I believe I would limit myself just to the portions highlighted. This is why the
21 authority I cited said that they should be clearly marked.

22 MR. PRESIDENT:

23 Mr. Margai.

24 MR. MARGAI:

25 Yes, My Lord.

26

27 MR. PRESIDENT:

28 We have heard you on your insistence on having these exhibits, you know, marked. We have
29 assured you as a Chamber --

30 MR. MARGAI:

31 I have no doubt about that, no doubt about that.

32 MR. PRESIDENT:

33 When the time comes to that, these exhibits will be produced and they will be used by you for any
34 purposes that you require --

35 MR. MARGAI:

36 So be it, My Lord.

37 MR. PRESIDENT:

1 -- without necessarily marking them as exhibits.

2 MR. MARGAI:

3 So be it, My Lord.

4 MR. PRESIDENT:

5 Thank you. Are you now through with the cross-examination of this witness?

6 MR. MARGAI:

7 Yes, My Lords, that would be all for this witness. And thank you very much for your cooperation.

8 JUDGE BOUTET:

9 Re-examination.

10 MS. WIAFE:

11 Your Honours, we would like you to take judicial notice of a practice direction issued by the Registry
12 on 13th May 2004, dealing with allowances for witnesses and expert witnesses. Article 4 of that
13 directive stipulates that, "the daily attendance allowance for witnesses appearing before the Special
14 Court --"

15 MS. WHITAKER:

16 Could we have the document which is being referred to? Could we have this document, please,
17 before you address the Court on it?

18 MR. PRESIDENT:

19 Please get along, get along please.

20 MS. WIAFE:

21 Article 4 of that practice direction states that, "the daily attendance allowance for witnesses appearing
22 before the Special Court shall be 16,000 Leones per day." And I believe that the Registry can furnish
23 this Court with this document.

24

25 Your Honours, it is based on this directive that the Prosecution -- that the Registry gave allowances to
26 witnesses.

27 MR. MARGAI:

28 Objection. Objection, My Lords. We are cognisant of the practice direction referred to, but I do not
29 believe that we -- the Prosecutor can go beyond that because that is now venturing into the realm of
30 giving testimony. If she wishes, she could sit there.

31 MR. PRESIDENT:

32 Objection sustained in as far as --

33 MR. MARGAI:

34 As My Lord pleases.

35 MR. PRESIDENT:

36 -- in as far as it goes to the last arm of her submission.

37 MR. MARGAI:

1 As My Lord pleases.

2

3 Would you want to show that document to the stand-by counsel of the -- Mr. Walker, can you pick the
4 document, please, and hand it over to Mr. Norman's stand-by team.

5 MS. WHITAKER:

6 Could we keep this document?

7 MR. PRESIDENT:

8 I'm not hearing you at all.

9 MS. WHITAKER:

10 My Lord, we haven't seen this document. We wondered if we could either keep it or have a copy. We
11 haven't had --

12 MR. PRESIDENT:

13 No, you give it back to her. They will arrange to let you have copies. You remember I referred to the
14 Registry for photocopiers and what have you? I'm sure the same authority can give you a copy of that
15 document.

16 MS. WHITAKER:

17 In my understanding, if the Court was to be addressed on a document it is normally --

18 MR. PRESIDENT:

19 Pardon me?

20 MS. WHITAKER:

21 It is normally common to provide a copy if the Court is going to be addressed on a document of which
22 we haven't had sight of before.

23 MR. PRESIDENT:

24 I'm sure a copy can be made to you in due course from the Registry.

25 MS. WHITAKER:

26 Thank you very much. Most interesting.

27 MR. PRESIDENT:

28 All right. What's the date of that document?

29 MS. WIAFE:

30 My Lord, it was adopted on the 13th of May 2004, I'm told by the Registry -- Witness Protection
31 people.

32 MR. PRESIDENT:

33 Yes.

34 JUDGE BOUTET:

35 Has this document been published?

36

37 MS. WIAFE:

1 Your Honour, I received this document from Witness Protection.

2 JUDGE BOUTET:

3 I understand. I heard you saying so, but my question is, has it been published? You are asking this
4 Court to take judicial notice of this document. If you yourself didn't even know it existed before today,
5 how is this Court to take judicial notice of it?

6 MS. WIAFE:

7 My Lord, it was provided to us by Witness Protection.

8 JUDGE BOUTET:

9 I understand, but my question to you is, has it been published, and if so, where and when and how?

10 MS. WIAFE:

11 Your Honour, we would check on this information and authenticate it and resubmit.

12 JUDGE BOUTET:

13 Very well.

14 MS. WHITAKER:

15 My Lord, could the Prosecution also provide any other material regarding what they are entitled to
16 provide to witnesses in this -- in this context. If there is other unpublished material we'd be grateful --

17 JUDGE BOUTET:

18 *(Overlapping microphones)* it's only fair that you be provided with that information, indeed.

19 MS. WHITAKER:

20 Thank you.

21 JUDGE BOUTET:

22 Do you have any questions in re-examination?

23 MS. WIAFE:

24 No, Your Honour.

25 JUDGE BOUTET:

26 Thank you very much.

27

28 Mr. Prosecutor, we are 3:40, twenty to four on the 22nd of June and the session was to be until the
29 22nd of June. Would it be possible, feasible to have a short, I underline short, witness that could be
30 fitted this afternoon?

31 MR. JOHNSON:

32 Well, Your Honours, as much as I would like to be able to fit in a witness this afternoon, I don't know
33 that I can promise that. We could finish our direct, I'm quite sure in the time we have this afternoon,
34 but I can make no promises how long the cross-examination would go.

35

36 I would also, in as much as I hate to -- hate to say maybe we should not put another witness on
37 because I would very much like to and get as many more witnesses as we could on, I would ask that

1 unless we could be allowed some more time in this session, possibly tomorrow or Thursday morning
2 or some time next week, that unless we could have some additional time within this trial session, then
3 I would ask that we not start another witness now and run the risk that that witness could not finish the
4 complete testimony this session.

5 MR. PRESIDENT:

6 I didn't see Judge Boutet, I thought he had disappeared.
7

8 Well, we'll have to adjourn the session to -- to tomorrow at 2:30, 1430 hours. We'll adjourn this case,
9 you know, in order to deliver, amongst other things, a directive -- a ruling on Mr. Norman's -- the first
10 Accused's, you know, requests about the logistics for his self-defence. This will be done at 2:30
11 tomorrow, and thereafter the Court will issue further directives as to the nature of its calendar for
12 weeks that would follow.

13
14 So this matter is adjourned to tomorrow. And I think my -- I take -- we've taken very seriously the
15 advice of Mr. Johnson not to venture into taking another witness because we never know for how
16 long, you know, the witness would last. And, in any event, we were supposed, you know, to -- to sit
17 today for the last time, and we wouldn't want anything that would drag on to Thursday because
18 Thursday is a very busy day for us.

19
20 Yes, Mr. Johnson, you --

21 MR. JOHNSON:

22 I just want to make sure I understand. I assume that then what you are saying is there would be no
23 need to have a witness waiting by tomorrow.

24 MR. PRESIDENT:

25 No. There would be no need to have a witness waiting by tomorrow, absolutely no need.

26 MR. HALL:

27 Your Honour, if it please the Court.

28 MR. PRESIDENT:

29 Yes, Mr. Hall.

30 MR. HALL:

31 The exhibit that the Prosecutor showed to the Court that they asked to take judicial notice, we are not
32 going to have any objection of that, but we would like to review -- we'd like it to be an exhibit so we
33 would request that they do whatever they can to authenticate it. It should not be difficult to do that by
34 tomorrow so that could be made an exhibit in this case because we are going to make applications to
35 them to produce similar exhibits for every witness that they provided us for Witness 012.
36

37 MR. PRESIDENT:

1 We shall address that issue tomorrow, Mr. Hall.

2 MR. HALL:

3 Thank you, Your Honour.

4 MR. PRESIDENT:

5 Right.

6

7 The Court will rise.

8 *(Court adjourned at 1545H)*

9 *(Pages 17 to 47 by Gifty C. Harding)*

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CERTIFICATE

We, Momodou Jallow and Gifty C. Harding, 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.

_____ Momodou Jallow

_____ Gifty C. Harding