

THE SPECIAL COURT FOR SIERRA LEONE

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

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

FRIDAY, 5 NOVEMBER 2004
9.43 a.m.
TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For Chambers:

Ms Roza Salibekova
Ms Sharelle Aitchison

For the Registry:

Ms Maureen Edmonds
Mr Geoff Walker

For the Prosecution:

Mr Jim Johnson
Mr Joseph Kamara
Mr Kevin Tavener
Ms Adwoa Wiafe
Ms Leslie Murray (intern)

For the Principal Defender:

Mr Ibrahim Yillah

For the Accused Sam Hinga Norman:

Dr Bu-Bubakei Jabbi
Ms Quincy Whitaker
Ms Claire da Silva

For the Accused Moinina Fofana:

Mr Arrow Bockarie
Mr Andrew Ianuzzi

For the Accused Allieu Kondewa:

Mr Charles Margai

1 [Friday, 5 November 2004]
2 [The accused not present]
3 [Open session]
4 [Upon resuming at 9.45 a.m.]
09:43:57 5 PRESIDING JUDGE: Good morning, learned counsel. I hope
6 everybody had a nice night. I didn't. I think it's
7 okay. There is no cause for alarm. We separated
8 yesterday in a closed session, but since we have to take
9 a motion from Ms Whitaker this morning, we would like to
09:45:30 10 move into an open session. I don't know whether we are
11 in an open session already. We are in an open session
12 already? Good, okay. Yes, Ms Whitaker, you may move the
13 Court on the motion you indicated yesterday.
14 MS WHITAKER: Thank you, Your Honour. I trust Your Honour's
09:46:24 15 referring to the application to invite the Court to
16 direct the Prosecution to call the investigators, rather
17 than the other matter I was endeavouring to pursue.
18 JUDGE BOUTET: Well, you indicated yesterday that you had one
19 motion to present this morning, which was related to the
09:46:42 20 issue that Mr Pestman raised, and that you had been asked
21 to do that on his behalf. So that is what we are hearing
22 this morning.
23 MS WHITAKER: Yes, okay. I was also endeavouring to pursue a
24 reconsideration, but I gather that that's been
09:46:57 25 effectively determined.
26 Your Honours, this is an application on behalf of
27 the first and second accused to ask the Court to require
28 the Prosecution to call one investigator and the relevant
29 interpreter to attest to the veracity or otherwise of

1 the -- or to attest to the statements that were taken
2 with the witness previously, as to whether they represent
3 the words that the witness actually told the
4 investigators. Your Honours will remember that the
09:47:41 5 witness --

6 JUDGE BOUTET: Witness number 19, presumably.

7 MS WHITAKER: I'm grateful, Your Honour, thank you. Witness
8 19 refuted --

9 JUDGE BOUTET: Which is TF2-021, if that helps.

09:47:54 10 MS WHITAKER: I'm grateful, thank you, I don't have his
11 pseudonym on my -- that the witness refuted significant
12 parts of the testimony he purported to record in his
13 statement on crucial matters and leading to the
14 production of two exhibits in this Court.

09:48:10 15 In our submission, the Court has to evaluate the
16 credibility of the witness in relation to those exhibits,
17 and the witness said time and time again that he did not
18 make those statements -- that he did not make the
19 statements that were recorded as being made by him. In
09:48:30 20 our submission, the Court can only evaluate the weight to
21 be attributed to both the exhibits and the witness's
22 testimony, on the other hand - forming possibly the other
23 side of the same coin - without being able to evaluate
24 the integrity of the process by which those statements
09:48:50 25 were obtained.

26 It may be that we are doing a great injustice to
27 this witness in suggesting that he is less than truthful
28 with Your Honours because of the extent to which he has
29 refuted his testimony. It may be that the investigators

1 were not faithfully recording what he said, or that the
2 interpreters went off on a frolic of their own in
3 interpreting his words. But, in our submission, the
4 Court can only properly decide what weight to be given to
09:49:20 5 the witness's evidence once they understand whether or
6 not the exhibits - statements taken on his behalf - are
7 credible representations of what he said on a previous
8 occasion.

9 Your Honours, the two statements that we are
09:49:42 10 concerned with are those two that have become Exhibits
11 19A and 19B, and one has one investigator and the other
12 has two investigators. We'd only, of course, require one
13 investigator per statement and an interpreter, in order,
14 I think, to understand the process by which these
09:50:02 15 statements came about, and whether they really are to be
16 accorded any weight as a previous inconsistent statement
17 or whether that does an injustice to the witness.

18 Your Honour, essentially those are the grounds of
19 our application. It is, in our submission, highly
09:50:17 20 relevant evidence in the assessment of -- in your
21 assessment of the credibility of this witness and the
22 weight that you should accord his evidence.

23 JUDGE BOUTET: Before you sit down, I do have a few questions,
24 if I may. Just for greater clarity, you're talking of --
09:50:37 25 I know that you're making reference to Exhibits 19A and
26 B, which are the two statements.

27 MS WHITAKER: Your Honour, yes.

28 JUDGE BOUTET: And you talk about three persons but you only
29 need two. I just want to know -- so there's two

1 investigators in one and one in the other one. Am I
2 misquoting you?

3 MS WHITAKER: No, Your Honour, there are two -- there is one
4 investigator took the statement of the 4th of February,
09:51:01 5 which is --

6 JUDGE BOUTET: Do you have the names?

7 MS WHITAKER: Yes, Virginia Chitanda, forgive me my
8 mispronunciation. And that's a statement of the 4th of
9 February, which is Exhibit 19A.

09:51:21 10 PRESIDING JUDGE: You say 19A was recorded by who?

11 MS WHITAKER: Virginia Chitanda.

12 JUDGE BOUTET: Chitanda, she was the investigator, not the
13 interpreter?

14 MS WHITAKER: That's what it says. There is no name for an
09:51:35 15 interpreter on our statements, but it may be that the
16 Prosecution have records that could assist.

17 PRESIDING JUDGE: Please, can you spell the name for us?

18 MS WHITAKER: Yes, it's handwritten unfortunately, but I think
19 it's -- so Virginia, V-I-R-G-I-N-I-A, and then Chitanda
09:51:54 20 appears to be C-H-I-T-A-N-D-A, I think.

21 JUDGE BOUTET: So that's 19A?

22 MS WHITAKER: That's 19A, Your Honour, yes.

23 JUDGE BOUTET: And 19B?

24 MS WHITAKER: 19B is the statement of the 13th of January
09:52:12 25 2003. The two investigators were Adwoa Wiafe, who I
26 believe is in Court currently, and Tamba Gbokie, who I
27 also believe is still in the country.

28 PRESIDING JUDGE: The two investigators in 19B are?

29 MS WHITAKER: Adwoa Wiafe, sir, counsel. Wiafe, sorry my

1 mispronunciation, learned counsel over --

2 JUDGE BOUTET: She's in Court now?

3 MS WHITAKER: Indeed, and I do apologise if I'm mispronouncing

4 her name. Does Your Honour have the spelling of Ms

09:52:43 5 Wiafe's name?

6 PRESIDING JUDGE: Let's have it please.

7 JUDGE BOUTET: That's okay.

8 MS WHITAKER: I stand to be corrected, W-A-I-F-E [sic].

9 PRESIDING JUDGE: And who else?

09:52:59 10 MS WHITAKER: And Tamba --

11 JUDGE BOUTET: Gbekie -- and what's the name, other name,

12 Gbekie?

13 MS WHITAKER: Yes, Tamba first name, and then Gbeki, I think

14 G-B-E-K-I is how it's spelt here.

09:53:20 15 JUDGE BOUTET: So that answers my first question. My second

16 question to you is I would like to hear some argument

17 from you as to why -- as these are not exhibits that have

18 been tendered by the Prosecution, why would it be for the

19 Prosecution to call this evidence and not you or whoever

09:53:44 20 as part of their case in defence.

21 Because I say this, just because -- your argument is

22 really focused on - and this is true - that the Court

23 needs to appreciate the evidence, and it's true context

24 and such and what weight to be attached to the evidence

09:53:58 25 of this witness by comparison to the statements that have

26 been given. This is a duty that the Court will have to

27 accomplish at some given time; not now, but in due

28 course. And at that time, obviously any information or

29 evidence that the Court may have will be appreciated.

1 Now, having said that, obviously we are not at the
2 Defence case at this particular moment; we are part of
3 the Prosecution case. But is this -- and that is what I
4 would like to hear from you. Is it proper that the Court
09:54:26 5 orders the Prosecution to produce these witnesses so the
6 Defence could question them as to how and what, or would
7 it be more proper for the Defence to do that as part of
8 their case when they move on their case? That's my
9 question to you, if I may.

09:54:40 10 MS WHITAKER: Yes, Your Honour, thank you. Well, I would
11 submit that this is the appropriate course - either for
12 the Court to direct the Prosecution to call these
13 witnesses, or, alternatively, for the Court to call them
14 of their own motion, but interpose them during the
09:54:52 15 Prosecution case, which I would submit is an alternative
16 route, although possibly with no difference in substance.

17 In our submission, it is the Prosecution's
18 responsibility to call these witnesses for this reason.
19 In my submission, in other criminal proceedings -- other
09:55:09 20 methods of obtaining criminal evidence, one would
21 normally be presented with both the statement and an
22 interpretation statement, which would enable the Court to
23 make a greater assessment, really, of the credibility of
24 the witness, because the witness could be confronted with
09:55:24 25 the words that he spoke in the language that he spoke,
26 and in my submission that would have been the proper way
27 to have obtained the evidence in this case. The Defence
28 are at a great disadvantage by the method which the
29 Prosecution have chosen to record this evidence. They

1 chose not to record the original statement and the
2 interpretation statement, so that the process of
3 challenging the witness could really be done effectively.
4 Had they chosen to collect the evidence in what we submit
09:55:53 5 is the proper way, like that, this application would not
6 have been necessary, because I would suggest the Court
7 would be in a position to make that evaluation, really,
8 without the investigators.

9 However, in fairness to the witness, if it is in
09:56:08 10 order to identify or assess whether or not these are
11 translation errors -- huge translation errors, in which
12 case there is something going terribly wrong with the
13 whole evidence collection process, which in our
14 submission clearly a matter the Court would be required
09:56:25 15 to consider most carefully; or there haven't been any
16 errors in the translation and recording process, in which
17 case you may think this witness's credibility is very
18 severely dented indeed.

19 And, in our submission, the reason it is for the
09:56:42 20 Prosecution to call these witnesses is because it is part
21 of the assessment of the credibility of the evidence
22 which they are putting forward; it is their process.
23 Your Honours may not think it, for instance, appropriate
24 for us to proof the Prosecution counsel as to her
09:56:56 25 methodology for taking a statement - which I certainly,
26 professionally, would be required to have a statement
27 from any witness I was intending to call on behalf of the
28 Defence - and it may be for very proper reasons she feels
29 she's completely unable to speak to us about this process

1 prior to giving evidence because of issues of privilege
2 perhaps and things of that nature.

3 So there are practical reasons why it is impossible,
4 really, for the Defence to call these witnesses. And, in
09:57:24 5 our submission, it properly forms part of the Prosecution
6 case, because they put this witness forward as a witness
7 of truth, they also put these statements forward as an
8 accurate record of what this witness has said. It is a
9 further -- and yet those two propositions are completely
09:57:43 10 in conflict at the moment.

11 JUDGE BOUTET: May I stop you there. The Prosecution, to my
12 knowledge, has not put any of these statements in Court.
13 That is not in evidence in front of us.

14 MS WHITAKER: No, no, Your Honour, but the Prosecution have
09:57:54 15 served these statements on the basis that they are an
16 accurate record of what the witness has said, and that is
17 pursuant to their disclosure obligations under the Rules.
18 And those two duties, both to put forward witnesses of
19 truth and to supply statements which are an accurate
09:58:08 20 record of what they say the witness said to them, are
21 currently in conflict before Your Honours; and we would
22 submit it is entirely proper that that matter should be
23 resolved within the Prosecution case, because it is
24 properly, in our submission, a matter which you could be
09:58:22 25 addressed at the end of the Prosecution case upon. It
26 may be there are going to be submissions advanced to you
27 that there are insufficient evidence on various counts
28 for there to be a case to answer, and the credibility of
29 the Prosecution witnesses would obviously be essential to

1 any such submission. In our submission the Court cannot
2 make that evaluation unless they either accept the
3 Prosecution's assertion that these statements are an
4 entirely accurate record of what was said -- and I don't
09:58:53 5 think we have any difficulty with that. If the
6 Prosecution make the admission that these statements were
7 exactly what the witness said, and were faithfully
8 translated, then we would have no need to call the
9 witnesses.

09:59:05 10 However, our difficulty is there's conflict between
11 their assertion that these statements are what the
12 witness said and the witness's assertions, who they also
13 put forward as a witness of truth, saying he never said
14 any of these things, never said anything of the sort.
09:59:22 15 For that reason we submit this is properly part of their
16 function in satisfying you that there is a case to answer
17 on credible evidence. And, as I say, it arises entirely
18 because of the way they have chosen to collect evidence;
19 it's a rather novel and unusual, and, in our submission,
09:59:36 20 improper way of collecting evidence without not having
21 the original language statement in their possession.

22 Does that answer Your Honours --
23 JUDGE THOMPSON: Yes. Well, let me -- my learned brother
24 Judge Boutet has addressed what I would call the
09:59:55 25 procedural and methodological aspects of your
26 application. I want to, just for an avoidance of doubt,
27 formulate what I understand to be the legal rationale
28 behind your application, and correct me if I am wrong. I
29 take it that the pith of your legal submission is that

1 the Court at this point in time does not have sufficient
2 evidentiary material before it to make, when the time
3 comes, a proper and objective evaluation of the testimony
4 of this witness as to credibility. Is that --

10:00:54 5 MS WHITAKER: Yes, Your Honour. The reason why the exhibits
6 were admitted, which were evidence of previous
7 inconsistent statement, in our submission it is a
8 difficult for the Court at this stage to make the
9 evaluation of what weight to give a previous inconsistent
10:01:06 10 statement unless the Court can really be satisfied that
11 inconsistent statement was actually made. And I say, the
12 difficulties with both translation and also having an
13 illiterate witness, where the normal process by which you
14 would put a statement to him which he had signed and
10:01:21 15 which he had purported to read through --

16 JUDGE THOMPSON: So, in other words, you're saying that we
17 cannot simply look at those exhibits and the oral
18 testimonies, and recalling the demeanour of the witness
19 and all the other nuances, we will not be able, when the
10:01:41 20 time comes in future, to make the final determination as
21 to the proper weight to attach, if any, to the testimony
22 in the light -- even if we agree that the inconsistencies
23 are material enough -- you're saying, in other words,
24 there is some kind of -- we're in a difficulty somehow.

10:02:08 25 MS WHITAKER: I would submit, I mean, of course Your Honours
26 will take into account the witness's demeanour and such
27 like, and you may have already decided for those reasons
28 his evidence was entirely uncredible.

29 JUDGE THOMPSON: I can assure you that we haven't.

1 MS WHITAKER: But on the assumption that Your Honours are
2 still intending to give some consideration to that
3 witness, I would submit whether or not he has made
4 previous inconsistent statements is relevant to your
10:02:30 5 assessment.

6 JUDGE THOMPSON: In other words, you're saying that the
7 evidence that you now seek, or asking the Court to bring
8 in, will strengthen the judicial evaluation process --

9 MS WHITAKER: Indeed.

10:02:43 10 JUDGE THOMPSON: -- of the evidence of this witness in the
11 light of your observations.

12 MS WHITAKER: Indeed. And, Your Honour, if the Prosecution
13 are prepared to admit that they say this is a faithful
14 record of what the witness said and was faithfully
10:02:56 15 translated, then there would be no -- and that applies to
16 all other witnesses, then we wouldn't necessarily -- we
17 wouldn't need to pursue our application. But it is this
18 - my concern is the Prosecution disclosed these
19 statements saying they are a faithful record, the witness
10:03:09 20 completely refutes them, the Prosecution says well --

21 JUDGE THOMPSON: Quite, it gets us into a difficult situation.

22 MS WHITAKER: Yes.

23 JUDGE THOMPSON: Right, thank you.

24 JUDGE BOUTET: Before you sit, I do have one more question
10:03:17 25 that follows up on what my brother Judge Thompson has
26 raised. You have alluded to and made reference to the
27 fact that after the case for the Prosecution there might
28 be a motion on no case to answer because there is not
29 enough evidence on whatever count it might be. It is my

1 understanding, and I stand to be corrected on this, that
2 when you do that, you don't proceed to assess individual
3 witnesses, because individual witnesses is only dealt
4 with on whether you have evidence or you have no evidence
10:03:55 5 on whatever counts and certain elements of counts, and in
6 doing so normally you don't take into consideration the
7 credibility of witness. As I say, this is a normal
8 process; I haven't done any research this morning on this
9 particular matter, as such, but I'm just talking of my
10:04:09 10 general knowledge of that at this moment. And if that is
11 the case, then why is this evidence required as part of
12 the Prosecution's case, when this is not a matter to be
13 considered at that juncture? You understand my question?

14 MS WHITAKER: I do, thank you, Your Honour, yes. Well, in my
10:04:25 15 submission the test that ought to be applied at the end
16 of the Prosecution case is whether any reasonable
17 tribunal could convict on the evidence -- potentially
18 convict.

19 JUDGE BOUTET: Absolutely, this is the -- [Overlapping
10:04:37 20 speakers]

21 MS WHITAKER: Certainly.

22 JUDGE BOUTET: -- as I know it.

23 MS WHITAKER: I'm afraid I don't know what the authority in
24 Canada is, but certainly in Britain it is a case called
10:04:47 25 Galbraith of which the decision -- and the phrase used is
26 "plums and duff". I don't know what that means, but in
27 the plum pudding you can't pick out the plums and leave
28 the duff behind, is the metaphor that's used repeatedly
29 in the British Common Law. And that is that the

1 Prosecution case must be taken as a whole in assessing
2 whether a reasonable tribunal could convict, and if a
3 witness has been so discredited in cross-examination that
4 no reasonable tribunal could convict on his evidence,
10:05:11 5 then that is a matter which can probably be taken into
6 account.

7 And certainly under the UK system, submissions of no
8 case -- as a result of discrediting through
9 cross-examination are a ground for dismissing a case,
10:05:18 10 because it may be that a witness is not credible of
11 belief and that can be determined at the half time stage.
12 That whatever -- as I say, no reasonable tribunal could
13 convict on that witness's evidence, and that is, I would
14 submit, a proper decision that you would take at half
10:05:39 15 time.

16 JUDGE BOUTET: Thank you.

17 MS WHITAKER: Is there any matter on which I can assist

18 Your Honours further?

19 JUDGE BOUTET: Nothing with me, thank you very much.

10:05:51 20 MS WHITAKER: I'm grateful.

21 JUDGE BOUTET: Yes, Mr Prosecutor?

22 MR TAVENER: Thank you, Your Honour. The application clearly
23 is opposed by the Prosecution. It's opposed on
24 fundamental principles, in that evidence is produced
10:06:10 25 before the Tribunal to assist the Tribunal in coming to
26 its final determination. Therefore, the evidence must be
27 both relevant and admissible. There are other
28 qualifications, but relevant and admissible are probably
29 the best two principles to start with. There also must

1 be finality in dealing with issues that arise during the
2 course of the trial, and the proposition put forward by
3 my learned friend would lead to an endless inquiry, not
4 only with this witness, but other witnesses, and it would
10:06:40 5 not assist the Court, in the Prosecution's submission, in
6 their determination. The Court simply --

7 PRESIDING JUDGE: You mean, you're saying that the evidence
8 she's asking for will not assist this Court in the
9 determination of this matter?

10:06:57 10 MR TAVENER: Yes.

11 PRESIDING JUDGE: That's what you're saying?

12 MR TAVENER: That's what I'm saying, and I'll come on to that.
13 I'm saying that any further inquiry will not be helpful.
14 It is time wasting, it is futile. The statements were
10:07:12 15 taken in a normal course. The statements are not the
16 evidence, the evidence is the witness's testimony before
17 the Court.

18 Here the Defence is seeking to have the Prosecution
19 call witnesses, or a number of witnesses - four witnesses
10:07:28 20 at least - during the course of the Prosecution's case.
21 Those witnesses will not be testifying as to the facts in
22 issue, but, in effect, a collateral issue. And, again,
23 to that there must be finality.

24 The important or the core evidence, if I can put it
10:07:44 25 in those terms, of this particular witness was that he
26 was a child soldier, that he was a child soldier who was
27 attached to the CDF - the Kamajors, and that he engaged
28 in combat. That was the crucial core of his evidence,
29 and that's ultimately what the Court must determine. The

1 main issue -- and I won't quibble about how much evidence
2 relates to the RUF and how much relates to the CDF, but
3 the Prosecution submission is most of his evidence was
4 about being a child soldier with the CDF. The RUF issue,
10:08:23 5 which was the area mostly cross-examined by Defence
6 counsel, really only, in terms of this trial, goes to the
7 credibility of the witness and whatever weight
8 Your Honours ultimately decide to apply to his evidence.

9 The Prosecution would submit that, looking at the
10:08:43 10 details of the procedure requested by the Defence,
11 emphasises the futility and pointlessness of their
12 application. It's not simply a matter of calling these
13 four witnesses and asking them had they taken the
14 individual statements. It's not disputed by the
10:09:03 15 Prosecution those statements were taken. They were
16 disclosed. That's not in dispute. They were taken
17 through an interpreter, there was an investigator
18 present, as well. That is already known to the Court.
19 So, again, there is no point in simply calling those four
10:09:20 20 persons to answer those questions.

21 Indeed, as the Court has already experienced during
22 the course of the trial, and has been emphasised a number
23 of times by the bilingual Defence counsel, there are
24 difficulties with interpretation, even under the
10:09:44 25 conditions of the Court. So even when we're sitting in a
26 situation where, in a court precinct, there's time,
27 there's no rush, people understand the nature of the
28 proceedings, there are still arguments put forward that
29 there is interpretation problems.

1 So I would suggest that, firstly, that somehow in
2 the course -- that the statement is not accurate, and
3 then it's said well, it's not accurate because either the
4 witness said something that wasn't recorded and somehow
10:10:10 5 he's now lying -- there are many explanations. And,
6 again, calling these four witnesses that are proposed
7 will not assist the Court. All they will be able to say
8 is yes, the investigator wrote down the statement, the
9 interpreter interpreted. That's as far as they really
10:10:27 10 can take it.

11 Unless you then make inquiries as to whether the
12 interpreter's familiar with the particular dialect or
13 expressions of the person being interviewed, whether or
14 not the investigator or the interpreter was familiar with
10:10:40 15 the circumstances. There are a number of issues that
16 would have to be cross-examined on as to ability of the
17 investigator, their experience, and the interpreter,
18 their particular experience, whether they were qualified,
19 whether they interpreted before. It just becomes an
10:10:53 20 endless exercise when we come back to the fundamentals.

21 The fundamentals are a witness has been called, a
22 statement has been taken from him, that statement is in
23 effect a guide. The evidence is from the witness, not
24 from the statement. Part of the statement has been
10:11:10 25 tendered, that part of the statement which is in dispute;
26 nothing unusual about that.

27 The Prosecution may have had more sympathy with this
28 application if the accused person said "I did not make
29 any statement," but that's not the position here. Then

1 you may call the investigator to say, "Well, in fact, I
2 took a statement." The position here is a statement was
3 taken, the witness was available, he was cross-examined.
4 It doesn't take us any further to bring along the
10:11:38 5 investigators to say, "Yes, I took a statement", "Yes, I
6 interpreted a statement."

7 It does not help, and it does not help, as I've
8 mentioned, for many reasons, one of which is there are
9 clearly difficulties in interpretation. Indeed, as I've
10:11:59 10 said, the statement taker can only recall what is said to
11 him, the interpreter can only say "I interpreted".

12 The Defence counsel appears to be concerned about
13 the witness being treated fairly. The Prosecution
14 submission is the usual procedures have applied to this
10:12:15 15 witness as should apply to all other witnesses: A
16 statement is provided, he is in Court, he can be
17 examined, he is cross-examined, he is re-examined.
18 Nothing unusual about that. The Prosecution isn't
19 concerned with the process, and the Prosecution would
10:12:30 20 submit that the witness has been treated according to the
21 proper practices of this Court.

22 Again, it is not in dispute the statement was made
23 by the witness, and when the time came, the Prosecution
24 didn't dispute the tendering of the statement. There is
10:12:57 25 no issue about the provenance of the statement.
26 Importantly -- and this has not arisen in the Defence
27 submission. Importantly, the Defence have had an
28 opportunity to cross-examine this witness. They have had
29 an opportunity to cross-examine about the discrepancies.

1 Your Honours have had an opportunity to assess the
2 witness in his ability to respond to those questions.
3 That is the proper manner in which to address the issue.
4 Again, the statement has been tendered, the differences
10:13:31 5 highlighted by the Defence. The witness said he could
6 not read or write; in fact, he had no education
7 whatsoever. But he was available to be cross-examined
8 and that's how matters are dealt with. He did not deny
9 making a statement. The Prosecution consented, in
10:13:48 10 effect, to the tendering of the statements for the
11 purpose of a prior inconsistent statement.

12 The issue comes back to the fundamentals again.
13 That is, the weight Your Honours place on the testimony
14 of the witness. The point cannot be stressed enough,
10:14:04 15 that he was examined and cross-examined and present in
16 Court. On one view, certainly the Prosecution view, his
17 evidence -- his core evidence was not effectively
18 challenged. He was a child soldier, he was a child
19 soldier who fought for the Kamajors - for the CDF. He
10:14:23 20 was there to be challenged, and whether or not he was
21 effectively challenged is a question to be resolved by
22 Your Honours in the light of his testimony.

23 Instead, rather than challenge the witness through
24 cross-examination, it's now sought that -- rather than
10:14:39 25 challenge the evidence of an illiteral young man, through
26 the normal process of cross-examination, it's intended to
27 somehow impune his credibility, by adding another level
28 of inquiry as to whether or not he was faithfully
29 interpreted when a statement was taken from him.

1 Your Honours know about the circumstances; it does not
2 take us anywhere. The witness gave his evidence, was
3 cross-examined, and that should be the end of the matter.
4 And, indeed, the witness's statements, for the limited
10:15:11 5 purpose for which they are tendered, are now before the
6 Court.

7 The Court then, the Prosecution would submit, should
8 follow the correct procedures that have been enunciated
9 throughout the trial. In particular, the principle of
10:15:25 10 orality, which is outlined, for example, by the learned
11 authors May and Wierda in their publication -- book, "The
12 International Criminal Evidence". The learned authors in
13 that particular book put forward the importance of
14 witnesses and the importance of -- the weight that should
10:15:49 15 be given a testimony in Court.

16 As the learned authors say at page 166 of the 2000
17 edition, "Inconsistencies need not be fatal to the
18 testimony of a witness provided they are not material,
19 and, even then, the Trial Chamber may still accept the
10:16:09 20 evidence of a witness. What is a material inconsistency
21 is a matter for the Court. The Trial Chamber engages in
22 the usual process of a decider of fact." That is, accept
23 some evidence; reject some; accept some, not all, and so
24 on. That can be done with this witness. To add in the
10:16:28 25 additional layer - that is, make an inquiry behind the
26 taking of the statement, the statement not being evidence
27 in itself - does not help. It simply is a waste of time.

28 Your Honours have made a decision, for example, on
29 the 16th of July 2004, relating to a decision on

1 disclosure of witness statements and cross-examination.
2 In that particular decision it's outlined how
3 inconsistent statements are dealt with, and that was a
4 process followed here. If one looks at the procedure
10:17:06 5 suggested by Defence counsel, which could take, for
6 instance, a day -- four people have to be called,
7 statements have to be taken prior to that, they have to
8 be examined, cross-examined, re-examined. At the end of
9 all that procedure suggested, we'll know that a statement
10:17:22 10 was taken; that the people who took the statement did the
11 best they could, but they were difficult circumstances in
12 which they were working; that there were interpretation
13 issues that arose. That is all the Court will know.
14 None the wiser, in the Prosecution's submission. None
10:17:44 15 the wiser for taking a day out of precious time to hear a
16 matter that is, in effect, a collateral matter; that, in
17 the Prosecution's submission, does not assist the Court
18 in its final determination, or even, indeed, assisting
19 the credibility of this particular witness.

10:18:01 20 As I've mentioned, the Court has dealt with this
21 matter, to date, correctly. There has been the use of
22 the prior inconsistent statement procedures, there is a
23 principle of orality, the witness being present. The
24 Prosecution relies on the professionalism of Your Honours
10:18:19 25 to assess that witness, to place what weight is
26 appropriate. That is what is being done.

27 Again, the Prosecution does not dispute the
28 statements. As in, they were taken, they were disclosed,
29 they're being used in the manner suggested, recommended

1 by Your Honours in your own decision. To engage in any
2 further inquiry is meaningless and futile. The
3 discrepancies, as put to the witness by Defence counsel,
4 have been raised, they've been highlighted, and the
10:18:53 5 witness has given his evidence. In the Prosecution view,
6 it should not be taken any further.

7 The alternative is every witness, in effect, that
8 has been cross-examined -- sorry, that has a statement
9 taken from him not through an interpreter, would require
10:19:09 10 the same process. It's simply not helpful. It's a
11 matter for Your Honours as to what you regard as helpful,
12 what will assist you in your final determination, but, in
13 the Prosecution view, the procedure suggested by my
14 friend is of no value.

10:19:31 15 Excuse me for one minute, Your Honour.

16 Certainly, and Your Honour Justice Boutet raised the
17 point of why would the Prosecution call this witness --
18 call the additional four witnesses? It serves no purpose
19 in the Prosecution case. The Prosecution have complied
10:19:50 20 with the requirements of the Court, they have supplied
21 statements, they have called the witness. In the
22 Prosecution view, there is no legal authority for the
23 Prosecution to take this matter any further. If we did
24 that, we'd only be aiding the Defence in wasting time.

10:20:06 25 Thank you.

26 PRESIDING JUDGE: Yes, Mr Tavener, we have listened to you
27 very attentively. One of the submissions you made is
28 that the evidence of the investigators who she seeks to
29 call will not help this Court in any way in the fair

1 determination of this matter. What the Defence is
2 raising in their motion is that the witness denies
3 certain parts of the statements of Exhibits 19A and 19B.
4 MR TAVENER: Yes.

10:20:58 5 PRESIDING JUDGE: Would you say that, in the determination of
6 the credibility issue, eventually, the evidence of the
7 investigators who the Defence is asking to call would not
8 be material in assisting the Court in arriving at the
9 issue of credibility of that witness?

10:21:21 10 MR TAVENER: Yes, that's exactly what I'm saying, Your Honour.
11 And the reason why I'm saying that is, as Your Honour has
12 simply outlined it, Your Honour is fully aware of all the
13 facts. There is a statement, there is a statement that
14 contains certain --

10:21:33 15 PRESIDING JUDGE: [Overlapping speakers] circumstances, you
16 know. The statement is there.

17 MR TAVENER: That's right.

18 PRESIDING JUDGE: It was even tendered, it was not objected to
19 by the Defence. But under cross-examination certain
10:21:41 20 issues have arisen, which touch on the credibility in
21 Court of this witness at this time.

22 MR TAVENER: That's correct, and --

23 PRESIDING JUDGE: Are you saying that the circumstances under
24 which this statement was recorded -- or these two
10:22:01 25 statements were recorded, you know, are not material in
26 assisting this Court in determining the credibility of
27 this witness?

28 MR TAVENER: Yes, that's exactly what I'm saying. And the
29 reason why I'm saying that is you have the statement --

1 you have the statement and it contains certain material.
2 That material, as far as discrepancies are concerned, has
3 been highlighted to the Court in the usual procedure.
4 That is the proper way to deal with these matters. The
10:22:27 5 witness has then been cross-examined on those
6 discrepancies. It then falls to Your Honours to apply
7 what weight you feel is appropriate on his evidence.

8 All the investigators can do is say they took the
9 statement, which is not in dispute; you have the
10:22:45 10 statement. They took the statement. They probably took
11 it to the -- well, they took the statement; that's what
12 they did. That's it, that's all they can say. They may
13 say there was difficulties, they may say there was not
14 difficulties, but it is irrelevant. It is almost a
10:22:59 15 collateral matter and shouldn't be taken any further,
16 because the procedures had been followed.

17 Your Honours are fully aware of the discrepancies.
18 They've been effectively highlighted by Defence counsel.
19 Whether Your Honours regard that as being fatal, as I've
10:23:08 20 just read from the learned authors -- whether Your
21 Honours regard that as fatal to his evidence, whether or
22 not to accept some, not all of that particular --

23 PRESIDING JUDGE: That brings me to the point of his evidence.
24 You appear to be a bit separationist in your position of
10:23:28 25 the globality of the evidence given by this witness. You
26 have said, Mr Tavener, that the essence of this witness's
27 testimony is that he is a child soldier.

28 MR TAVENER: Yes.

29 PRESIDING JUDGE: And that that is it. To you that is it. He

1 was a child soldier with the CDF and -- a child soldier
2 with the RUF and then with the CDF, and that that was
3 what, to you, matters in this matter. I mean, are you
4 suggesting that we should pick and choose, you know, from
10:23:57 5 the totality of the evidence which is given by a
6 particular witness in a matter?

7 MR TAVENER: What I'm suggesting to you - and again that's a
8 matter for you -- a matter for the Court - the main issue
9 of discrepancy, I would submit, related to the child's
10:24:13 10 time in the RUF, which is obviously not relevant, except
11 as background to this trial. The Prosecution would say
12 that, in terms of that evidence, it may go to his credit,
13 because he says "I didn't say that," and, again, that is
14 an issue of what weight you place on his statement and
10:24:31 15 the nature of the cross-examination. So the RUF
16 evidence, which is most of the evidence in challenge --
17 not all, and I accept that, there are other issues. It
18 mainly relates to credibility. It does not relate to the
19 substance or the focus of this trial.

10:24:50 20 In relation to this trial, as I say, there are some
21 minor issues, but the core evidence, in summarising down,
22 is his experience as a child soldier in the CDF. I'm not
23 going to go through the details; Your Honour has seen the
24 witness give evidence. He killed people, he engaged in
10:25:13 25 combat, he was a child. That is a very brief summary.
26 Most of the discrepancies, we would submit, relate to the
27 RUF, which is a question of credibility, but we would say
28 the core nature of his evidence has not been challenged.
29 But, again, I can't tell you that. I am merely

1 submitting that from our point of view.

2 We would say that to call extra witnesses to say
3 statements were taken from him, which were supplied to
4 the Defence, upon which they relied to cross-examine him,
10:25:43 5 that's part of the process by which Your Honours decide
6 the facts in the matter. It is not assisted by going
7 behind, in this case, how the statement was actually
8 taken. You have the witness, you have the statements,
9 you have the discrepancies; that's how the process works.

10:26:04 10 To engage in an exercise, which will at the end of the
11 day not assist you, in our submission, except to know
12 that the statements were taken -- to put it in one way,
13 they were taken to the best of the ability of the people
14 taking them. That's all Your Honours know at the end of
10:26:23 15 the day.

16 PRESIDING JUDGE: And then, Mr Tavener, whilst we're still on
17 the grounds of credibility, Exhibits 19A and 19B were
18 tendered in these proceedings during cross-examination.
19 Do you dispute the fact that cross-examination is to test
10:26:44 20 the credibility of the witness?

21 MR TAVENER: Of course not.

22 PRESIDING JUDGE: On the globality of the evidence which he
23 has given?

24 MR TAVENER: Of course not. And that is exactly what was
10:26:54 25 done, the process was followed.

26 PRESIDING JUDGE: Because you put across an argument,
27 Mr Tavener, you know, that since the Defence has
28 cross-examined the witness, you know, the matter should
29 rest there, and that calling further witnesses on the

1 statements is a futile exercise. Do you very seriously,
2 you know, stand by that submission?

3 MR TAVENER: Yes, I certainly do. I haven't changed my mind.
4 Again, what you have now is the normal process. You have
10:27:26 5 a witness who has made a statement, the statement is not
6 evidence. He has been cross-examined on that statement
7 by the Defence. Discrepancies have been identified, the
8 statement has been tendered. The Prosecution does not
9 dispute the provenance of the statements. They're before
10:27:47 10 Your Honours to make what use of them as you would. To
11 go any further, as I say, is a futile exercise, because
12 what more would you know at the end of that exercise?
13 You would know the statements had been taken, you would
14 know who took the statements --

10:28:05 15 PRESIDING JUDGE: What if those witnesses came and said what
16 the Defence is alleging or what the witness is saying is
17 true. I mean, we are nowhere; you know, we are in the
18 air. You are presuming that the witnesses will come and
19 say, "Yes, these are the statements we took," that's all.
10:28:21 20 If a translator comes, "Yes, this is what I translated."
21 You're already presuming that this will be the nature of
22 the evidence. I don't think the Tribunal is prepared to
23 assume the nature of this evidence.

24 MR TAVENER: I'm not presuming anything, Your Honour. I'm not
10:28:36 25 presuming anything, because all I'm say submitting is a
26 statement was taken, the statement was provided, the
27 statement was used for cross-examination. I'm presuming
28 nothing.

29 PRESIDING JUDGE: No, you're presuming that they will come and

1 confirm that that is the statement. That is what you
2 want, yes. That they would come and say this is the
3 statement, this is the translation, you know, to that
4 statement.

10:29:03 5 MR TAVENER: But the Court already knows that. What we're
6 looking at is how further -- or how the Court would be
7 assisted in adding this extra layer. The Court already
8 knows the statement was taken; the Court already knows
9 who took those statements. How would the Court be
10:29:20 10 assisted by hearing from the people who took the
11 statements?

12 PRESIDING JUDGE: That is for the Court to determine.

13 JUDGE THOMPSON: But my trouble is that the Court does not
14 know whether that was a faithful reproduction. Does the
10:29:32 15 Court know that? That, in fact, what was recorded there
16 was a faithful reproduction of what the witness allegedly
17 told the interrogator? How does the Court know that at
18 this stage?

19 MR TAVENER: In effect, Your Honour, the Court does not need
10:29:48 20 to know that.

21 JUDGE THOMPSON: That is the point I am making, but you assert
22 that the Court already knows that. I don't know that at
23 all.

24 MR TAVENER: No, I didn't say that.

10:29:55 25 JUDGE THOMPSON: The Court does not know whether, in fact,
26 what we have in the exhibits in question, in respect of
27 alleged or perceived material inconsistency by the
28 Defence, is a faithful reproduction of what the witness
29 told the interrogator in the light of the witness's own

1 denial under examination-in-chief.

2 MR TAVENER: Exactly, Your Honour. Nothing exceptional has
3 happened. The statement is not evidence. The statement
4 is only a guide.

10:30:33 5 JUDGE THOMPSON: Conceded. But let me remind you, too, that
6 at page 167 of the work that you cited, the jurisprudence
7 also shows that there are certain key factors to be used
8 in assessing the credibility of witnesses. The strength
9 of cross-examination in rebutting the evidence is only
10:30:56 10 one such factor. Prior inconsistent statements is
11 another factor. The evidence of other witnesses is also
12 a factor. So why are you foreclosing us at this stage?

13 MR TAVENER: Because in reference to that -- in regards to the
14 reference you just cited, Your Honour, the reference to
10:31:19 15 "other witnesses", means other witnesses as to the fact.
16 It is not a reference --

17 JUDGE THOMPSON: There is no such distinction. "Other
18 witnesses", it maybe witnesses for the Prosecution, it
19 may also be witnesses for the Defence. There is no such
10:31:35 20 restriction in the jurisprudence.

21 MR TAVENER: If I might read from page 167: "The Trial
22 Chamber assess the various witness testimonies on their
23 credibility in terms of internal inconsistency and
24 detail" - Your Honour has the opportunity of seeing the
10:31:50 25 witness in that form - "constraint under
26 cross-examination, consistency against prior statements
27 of the witness" - Your Honour has those statements -
28 "credibility vis-a-vis other witness accounts, or" --
29 [Overlapping speakers]

1 JUDGE THOMPSON: "Other evidence admitted in the case." Other
2 witness accounts is not restrictive.

3 MR TAVENER: In normal practice one doesn't call the person
4 who took the statement, unless it is challenged that
10:32:18 5 the -- unless the witness says the statement wasn't
6 taken. Here -- [Overlapping speakers]

7 JUDGE THOMPSON: Well, this is precisely the issue here. The
8 witness is denying that that was -- in fact, the witness,
9 "That was not my statement," when some of those parts
10:32:33 10 were put to him. How do you respond to my own contention
11 that under certain national criminal law systems, where a
12 witness who is illiterate or an accused who is illiterate
13 is being interrogated by the police, there should be
14 compliance with the Illiterate Protections Act. A
10:32:56 15 certificate should be indicated that everything was
16 faithfully recorded and translated, and the witness or
17 the accused admitted that. So if you're saying this
18 witness is illiterate, and therefore we should in fact,
19 sort of, overlook this, in fact, the law provides greater
10:33:18 20 protection for witnesses in the national criminal
21 systems, so that what they tell the police or prosecution
22 will, in fact, in the end, be faithful reproduction of
23 what they intended to tell them. How do you respond to
24 that?

10:33:36 25 MR TAVENER: There are no, as I understand it -- or there were
26 no clear procedures on the taking of statements, and
27 certainly it is not normally the practice to adopt one
28 national process in preference to another. I understand
29 what Your Honour is saying. I'm not unfamiliar with what

1 Your Honour's saying. We don't quite express it in those
2 terms in my jurisdiction.

3 However, in this particular case -- or in these
4 particular proceedings, the Prosecution relies on
10:34:04 5 orality. A statement is taken, it is a guide, it is not
6 evidence. The person can be cross-examined. I
7 differentiate between a witness who says "that is not my
8 statement" from a witness who says "I didn't say that
9 particular part of that statement". Once that is said,
10:34:21 10 then the normal procedures, as outlined in Your Honour's
11 own judgment, comes into play. That relates to prior
12 inconsistent statement. That's exactly what happened
13 here. The witness was cross-examined about those
14 differences. Then it becomes a question of weight; a
10:34:35 15 question of what credibility you place on that particular
16 witness. Calling the people who took the statement will
17 not assist.

18 PRESIDING JUDGE: When he was cross-examined, Mr Tavener, he
19 said -- on those portions he said he did not say that,
10:34:55 20 that is not what he said - consistently. And then in the
21 end it was put to him, "You're a liar." He says, "I'm
22 not lying". He said, "I'm not lying." Well, that's
23 where we are.

24 MR TAVENER: That's right. I object to that question, because
10:35:10 25 that's an opinion.

26 PRESIDING JUDGE: Yes, I mean, well, that is it. I mean,
27 you're not telling the truth, something like that.

28 MR TAVENER: It's like asking someone when did you stop
29 beating your wife? It's an improper question.

1 PRESIDING JUDGE: Yes.

2 MR TAVENER: But that aside, that's exactly what happens when
3 you have a prior inconsistent statement. He did not deny
4 the existence of the statement. If he said, "I did not
10:35:34 5 make that statement," the whole statement, then I would
6 agree. You would call along a person to say, "Yes, I
7 took that statement from him." When a witness simply
8 says, "I didn't make a portion of that statement," that's
9 when you have a prior inconsistent statement and the
10:35:47 10 procedures come into play.

11 PRESIDING JUDGE: Anyway, we would let the matter, you know --
12 we will just wrap up because we would not explain --

13 MR TAVENER: In wrapping up then, Your Honour, in response to
14 what Your Honour has said, the procedures adopted and
10:35:59 15 used by this Court were used and applied appropriately to
16 this witness. In the Prosecution submission, nothing
17 further would be gained, time will be wasted, and
18 Your Honours would be no better informed to assist you in
19 making your final determination by adding another laying,
10:36:21 20 another process. It all comes down to professionalism of
21 the Bench in assessing the witness and his responses to
22 the cross-examination, and explaining whether or not he
23 said those areas which have been highlighted as
24 inconsistent by Defence counsel. Thank you.

10:36:39 25 PRESIDING JUDGE: Thank you, Mr Tavener.

26 MS WHITAKER: Your Honour, if I could briefly respond.

27 PRESIDING JUDGE: Very briefly, please.

28 MS WHITAKER: Picking up on the issues that my learned friend
29 was dealing with, it is quite incorrect and misleading to

1 suggest, Your Honours, that the matters which are in
2 dispute, that he refuted, related to the RUF and are
3 collateral issues. By way of example --
4 MR TAVENER: I've heard this from my friend from yesterday.
10:37:03 5 I'll just interrupt you briefly. That is not what I
6 said.
7 MS WHITAKER: Please sit down. By way of example, the --
8 PRESIDING JUDGE: No, no, no, no, no.
9 [Overlapping speakers]
10:37:08 10 JUDGE BOUTET: Well, please, please. We control the process.
11 You do not control the process. We will inform counsel
12 to sit down. You don't have to.
13 MS WHITAKER: I apologise.
14 JUDGE BOUTET: We'll listen to you.
10:37:16 15 MS WHITAKER: I'm grateful. If I could read from page 9413
16 the portion that was exhibited states, "The initiation
17 was in 1996. I could remember this date because I was
18 older. Certificates were issued after the initiation.
19 My certificate has been destroyed." In response to that,
10:37:32 20 our note of the witness's response was, "I never made
21 that statement, sir."
22 Now, in our submission, precisely the reasons that
23 my learned friend have addressed you, that is why you
24 need to hear from those witnesses. He has said if it's
10:37:46 25 the case this witness never made the statement -- says he
26 never made the statement, then, of course, you must hear
27 the statement taker as to whether that statement was
28 made.
29 And, indeed, that is not the only example. The

1 second example concerns his denial that he'd ever said
2 that all policemen in Kenema had already been killed,
3 central to the charges that are faced, and also that
4 there was no forced recruitment of people as Kamajors,
10:38:10 5 potentially central to the charges that are faced.

6 And, furthermore, I would submit that matters
7 relating to the conduct of the RUF are by no means
8 collateral matters to the charges that are faced, and, in
9 fact, may will central to the legal decisions that Your
10:38:23 10 Honours have to --

11 JUDGE THOMPSON: Quite frankly, I didn't buy that distinction
12 between collateral and noncollateral.

13 MS WHITAKER: I'm grateful, Your Honour.

14 JUDGE THOMPSON: I think it was slightly a little of an
10:38:32 15 oversimplification of --

16 MS WHITAKER: I'm grateful for that. I've no need to pursue
17 that.

18 But in our submission, then, the very issue -- the
19 logical difficulty and flaw in my learned friend's
10:38:43 20 position has been amply demonstrated to you by his
21 submissions. He submits that the Prosecution consented
22 to the admission of this statement because it was a
23 previous inconsistent statement. The witness says he
24 never made this statement. For the matter to be
10:38:58 25 admissible -- not even a question of weight, but to be
26 admissible, then you must be satisfied --

27 PRESIDING JUDGE: No, the witness did not say he never made
28 the statement.

29 MS WHITAKER: With respect, Your Honour, he specifically said

1 those portions.

2 PRESIDING JUDGE: Yes, he said the portions.

3 MS WHITAKER: Yes, and in my submission each --

4 PRESIDING JUDGE: Portions.

10:39:13 5 MS WHITAKER: -- each statement of evidence is what we're

6 concerned about, because --

7 PRESIDING JUDGE: Portions.

8 MS WHITAKER: Yes, but those portions cannot of a previous --

9 that portion is what has been admitted as a previous

10:39:23 10 inconsistent statement. Not the entire statement; it is

11 those lines. If he didn't make that statement, it is not

12 admissible as a previous inconsistent statement. Yet the

13 Prosecution have consented to its admission as a previous

14 inconsistent statement. The witness says he never said

10:39:37 15 those things. In my submission, you cannot determine the

16 admissibility, unless you are satisfied that a statement

17 was made, let alone the weight to be attached to it.

18 My learned friend has suggested that these matters

19 are irrelevant, and, of course, if it is irrelevant, then

10:39:56 20 it is inadmissible for the Prosecution and equally for

21 the Defence, and we can't call this evidence as part of

22 the Defence case. And I submit it's so clearly relevant

23 to Your Honours on the issue of admissibility, as to

24 whether this statement was ever made, for the very

10:40:14 25 reasons suggested by my learned friend. It will not be

26 admissible as a matter of law unless you are satisfied it

27 was, in fact, a previous statement.

28 My learned friend suggests that you will gain

29 nothing from hearing this evidence. I would submit that

1 preempts the evidence. It may well be that the
2 translators have notes. Your Honours have already, on a
3 previous occasion, ruled that these are discloseable in
4 relation to another witness and assist the Defence.

10:43:13 5 [HN051104B 10.45 a.m.]

6 My learned friend says that there were
7 interpretation issues. In our submission it must be
8 relevant to the Court to know how bad did these get. Are
9 we talking about wholesale statements being inserted that
10:44:07 10 were never made, or are we talking about nuances of
11 words? In our submission, unless Your Honours are able
12 to satisfy yourselves that these interpretation issues do
13 not extend to wholesale rewriting of statements,
14 inserting incidents that never happened, you are not
10:44:23 15 going to be able to make an assessment of not just the
16 witness's credibility in general, but his credibility on
17 central issues which you must determine.

18 If my learned friend wishes to invite the Court
19 really to disregard all the rest of the content of this
10:44:42 20 witness's evidence other than he was a child soldier,
21 then I may not pursue this matter any further and simply,
22 if that is all they are relying on this witness for and
23 don't rely on any other matters he put forward in
24 evidence, I will sit down now.

10:44:55 25 Again, if my friend is concerned about the time
26 being lost, I invite him to make the admission that this
27 was an entirely accurate record of what the witness said.
28 We submit that this is not a multiplication of issues by
29 any means -- this is absolutely the central issue before

1 you. And it may well be that once we have an
2 understanding of the process by which these statements
3 are obtained, we don't need to repeat this exercise time
4 and time again. I must say there has not been a witness
10:45:21 5 who has refuted quite such a large extent of his
6 statement before. Where there is the odd difference in a
7 statement, one would not pursue it. But here we have a
8 witness who, on very central issues, on charges that are
9 faced by these accused, has absolutely said, "I never
10:45:35 10 said that." In our submission, it's absolutely central
11 to your task for you to understand whether or not the
12 witness said that, or something similar to it.

13 Your Honour, these problems have entirely arisen
14 because they have chosen not to provide a translation
10:45:55 15 statement, which in my submission is the proper
16 procedure.

17 PRESIDING JUDGE: Ms Whitaker, you are taking more than five
18 minutes in reply --

19 MS WHITAKER: Yes, Your Honour, I am trying to --

10:46:03 20 PRESIDING JUDGE: -- which you were supposed to limit yourself
21 to five minutes in presenting your motion yesterday.

22 MS WHITAKER: I did say 10, Your Honour.

23 PRESIDING JUDGE: I just want to remind you that you are
24 getting a bit long.

10:46:11 25 MS WHITAKER: But I just --

26 PRESIDING JUDGE: You need to move.

27 MS WHITAKER: Yes, indeed, Your Honour. I could not
28 anticipate all the points that my learned friend was
29 going to raise, but just simply in conclusion then, what

1 the Prosecution are endeavouring to do is to remove a
2 central plank of the Defence's ability to test the
3 credibility of a witness. In light of all the other
4 difficulties we have with protective measures and the
10:46:32 5 difficulties with investigation, in my submission it is
6 quite improper. They are submitting to you it is
7 irrelevant what's written in these statements; you do not
8 need to concern yourself with what's in them, because
9 they may or may not bear any relation to what the witness
10:46:47 10 says. And they are attempting to deny you the
11 opportunity of investigating that proposition and
12 removing from yourselves, and particularly from us, a
13 central part of the Defence's capacity to test the
14 credibility of the Prosecution witnesses.

10:47:04 15 They are effectively saying you can't rely on these
16 statements at all; they are irrelevant; ignore them. As
17 I say, in which case, there are fundamental difficulties
18 about them consenting to the admissibility of these
19 documents as exhibits. In the light of Your Honour's
10:47:18 20 suggestion, I won't continue unless there's any
21 particular matter.

22 PRESIDING JUDGE: Just one question, Ms Whitaker.

23 MS WHITAKER: Yes, Your Honour.

24 PRESIDING JUDGE: Are you suggesting that we have to walk down
10:47:32 25 your road each time we come by problems like this, that
26 we have to summon the investigators from all over the
27 world each time we come by difficulties of this nature?

28 MS WHITAKER: Happily, it's not a question of summoning them
29 from across the world; rather, from just across the floor

1 in this case. I'm not submitting that this process will
2 be necessary in each case. Your Honours of course will
3 judge each application --
4 PRESIDING JUDGE: That's all right.
10:47:58 5 MS WHITAKER: -- on a case-by-case basis --
6 PRESIDING JUDGE: That's all right; I've taken the point.
7 MS WHITAKER: -- to understand the process and it may not be
8 necessary --
9 PRESIDING JUDGE: That's right; I've taken the point.
10:48:04 10 MR TAVENER: I'm not seeking the right of reply, Your Honour.
11 PRESIDING JUDGE: With leave, Mr Tavener; with leave.
12 MR TAVENER: That's right. I am not seeking the right of
13 reply, but there were a number of misstatements in my
14 friend's --
10:48:12 15 PRESIDING JUDGE: I'm reminding you with leave -- you can now
16 speak, with leave.
17 MR TAVENER: Thank you, Your Honour. I'll be very brief then.
18 PRESIDING JUDGE: Good.
19 MR TAVENER: I was attempting to summarise the statement of
10:48:18 20 witnesses by simply saying as a child soldier -- I was
21 trying to avoid wasting time. As to the collateral
22 issue, that related more to the calling of an additional
23 layer, when the issue is something that can be resolved
24 by Your Honours; that is, in terms of having heard the
10:48:33 25 witnesses.
26 There seems to be some confusion in my friend's mind
27 between the entire statement made by a witness and a
28 portion of a statement. I hope that is not confused -
29 thank you - in Your Honours' mind. Again, I'll simply

1 say the procedures were applied, the witness was
2 cross-examined, and the trial should proceed on that
3 basis. Thank you.

4 PRESIDING JUDGE: Thank you.

10:49:03 5 [The Trial Chamber confers]

6 PRESIDING JUDGE: Learned counsel, we have heard the arguments
7 on both sides and the Chamber will deliver a written
8 decision on this issue after a full deliberation on the
9 law and the facts as they have been presented to us. We
10:50:33 10 will come with our decision when it is ready. We have
11 some housekeeping issues to take care of, so the Chamber
12 will rise now and will be resuming at about 11.30. We
13 will rise and resume at 11.30. So the Court will rise,
14 please.

10:51:14 15 [Break taken at 10.51 a.m.]

16 [On resuming at 11.40 a.m.]

17 JUDGE BOUTET: So, Mr Prosecutor, we carry on where we were at
18 the end of the day yesterday; that is, we were then in a
19 closed session, so we're going back into closed session
11:39:57 20 to carry on with the evidence of the witness you had in
21 the witness box at that particular moment. So we are now
22 moving into closed session to continue with your
23 examination-in-chief. So those members of the public
24 that are there in the gallery, you should know that we're
11:40:22 25 moving into a closed session now.

26 WITNESS: TF2-201 [Continued]

27 [Witness answered through interpretation]

28 MR KAMARA: Your Honours, the witness is still sworn on the
29 Koran.

1 MS EDMONDS: The Court is not yet in closed session.
2 PRESIDING JUDGE: The witness is reminded that he's still on
3 his oath -- he's reminded.
4 MS EDMONDS: The Court is in closed session now.
11:42:29 5 [At this point in the proceedings, a portion of the
6 transcript, pages 41 to 136 was extracted and sealed
7 under separate cover, as the session was heard in camera]
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C E R T I F I C A T E

We, Maureen P Dunn and Ella K Drury, 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.

Maureen P Dunn

Ella K Drury