



Case No. SCSL 2011-02-T  
THE INDEPENDENT COUNSEL

-V-

HASSAN PAPA BANGURA, SAMUEL KARGBO, SANTIGIE BORBOR KANU AND  
BRIMA BAZZY KAMARA

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Before the Judge:	Justice Teresa Doherty
For Chambers:	Elizabeth Budnitz
For the Registry:	Elaine-Bola Clarkson Thomas Alpha
For WVS:	Tamba D. Sammie
For the Prosecution:	Robert L. Herbst
For the accused Hassan Papa Bangura:	Melron Nicol-Wilson
For the accused Samuel Kargbo:	Charles Taku
For the accused Santigie Borbor Kanu:	Kevin Metzger
For the accused Brima Bazy Kamara:	Abdul Serry-Kamal Wara Serry-Kamal
For the Principal Defender:	Claire Carlton-Hanciles

1 [Monday, 27 August 2012]

2 [Open Session]

3 [Accused enter court]

4 [Upon commencing at 8.59 a.m.]

5 JUSTICE DOHERTY: Good morning. I understand we may not  
6 have a connection with Kigali. Could you advise us of the  
7 situation, please.

8 THE COURT OFFICER: [In Kigali] Yes, your Honour. At the  
9 moment we are trying to get connection with Kigali. We had  
10 connection all this morning for the last 45 minutes or so, but  
11 suddenly some technical difficulties arose, and the technicians  
12 are working on it.

13 JUSTICE DOHERTY: Have we any estimate how long it will be?

14 THE COURT OFFICER: [In Kigali] I'll have to find out from  
15 them, your Honour.

16 JUSTICE DOHERTY: Please do.

17 THE COURT OFFICER: [In Kigali] Your Honour, I'm told it  
18 will take something like 10 to 15 minutes.

19 JUSTICE DOHERTY: [Microphone not activated].

20 THE COURT OFFICER: [In Kigali] I am told it will take  
21 them about 10 or 15 minutes.

22 JUSTICE DOHERTY: It appears to me there is not much to be  
23 gained sitting here looking at each other for 10 minutes. So  
24 we'll adjourn temporarily, and as soon as it's ready to resume,  
25 please inform everyone.

26 THE COURT OFFICER: [In Kigali] Very well, your Honour.

27 JUSTICE DOHERTY: Thank you.

28 THE COURT OFFICER: [In Kigali] The court is adjourned.

29 [Break taken at 9.01 a.m.]

1 [Upon resuming at 9.28 a.m.]

2 JUSTICE DOHERTY: Good morning. I understand that the  
3 connection has been reinstated, and we're now able to start,  
4 admittedly, later than we all anticipated or arranged. I will  
5 first take appearances. Kigali.

6 MR HERBST: Good morning, your Honour. Robert Herbst,  
7 counsel for the prosecution. I hope everyone had a good Sunday.

8 JUSTICE DOHERTY: Indeed. Thank you, Mr Herbst.  
9 And for Defence?

10 MR SERRY-KAMAL: Good morning, your Honour.

11 MR NICOL: Good morning, your Honour.

12 JUSTICE DOHERTY: We have two people speaking at once. We  
13 might as well finish our appearances for Kigali, and then I'll  
14 turn to Freetown.

15 MR SERRY-KAMAL: Good morning, your Honour. Abdul F  
16 Serry-Kamal for the fourth accused.

17 JUSTICE DOHERTY: Thank you.

18 MR METZGER: Good morning, your Honour. Kevin Metzger for  
19 the third accused.

20 JUSTICE DOHERTY: Good morning. Thank you.

21 And here in Freetown?

22 MR NICOLE-WILSON: Good morning, your Honour. Melron C  
23 Nicol-Wilson for Hassan Papa Bangura.

24 JUSTICE DOHERTY: Thank you, Mr Nicole Wilson.

25 CHIEF TAKU: May it please, your Honour. Chief Charles  
26 Taku for Mr Samuel Kargbo.

27 JUSTICE DOHERTY: Thank you, Chief Taku.

28 Is Mr Kamara in the witness box? I can see him from here,  
29 but I just want to confirm for purposes of record.

1           Mr Kamara, I want to remind you again that you have taken  
2 the oath to tell the truth. You should answer questions  
3 truthfully, and I will now ask Mr Herbst to continue his  
4 cross-examination.

5           Mr Herbst, please proceed.

6           MR HERBST: Thank you, your Honour.

7                   BRIMA BAZZY KAMARA:

8                   CONTINUING CROSS-EXAMINATION:

9           MR HERBST:

10    Q.    Good morning, Mr Kamara.

11    A.    Good morning.

12    Q.    I don't hear anything now. Can anybody hear me?

13           JUSTICE DOHERTY: I can hear you very clearly, and I also  
14 heard both Mr Kamara and the interpreter very clearly.

15           MR HERBST:

16    Q.    Now, Mr Kamara, when we broke on Saturday, you were just  
17 finished telling us that you left the area where you had made the  
18 phone calls to Mr Kanu and Mr Brima; do you remember that?

19    A.    I can't hear the interpretation.

20           JUSTICE DOHERTY: Mr Interpreter, your counterparts are  
21 also in their booths, are they?

22           THE INTERPRETER: Yes, they are, and they are doing the  
23 interpretation, your Honour.

24           JUSTICE DOHERTY: So it's a technical problem. Thank you.  
25 Can someone in Kigali please assist.

26                   [Technical difficulties]

27           JUSTICE DOHERTY: Mr Herbst, please put the question again  
28 so that the witness can hear it.

29    BY MR HERBST:

1 Q. Mr Kamara, when we broke on Saturday, you had just finished  
2 telling us that after your phone calls that you and Mr Kanu and  
3 Mr Brima had together, when your air time ran out in the area of  
4 the telephoning, do you remember that testimony?

5 A. Yes.

6 Q. And where did the three of you then go?

7 A. We went back to our blocks.

8 Q. And your blocks, is that the area of the prison where you  
9 have your rooms?

10 A. Yes.

11 Q. How long did you stay there?

12 A. I stayed in my block.

13 Q. For how long?

14 A. That's where I spend all my time. I spend all my time  
15 there.

16 Q. Now, Mr Kamara, from your testimony it appears that you  
17 called Mr Kargbo's phone on that day one or two times; am I  
18 correct?

19 A. What day are you talking about?

20 Q. On November 30th that you - I'm sorry, Judge.

21 I'm talking about November 30 in the early afternoon  
22 between 1 and 2 o'clock when you were making these calls that you  
23 testified to when you were speaking to at Sweissy.

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

25 Q. I'm asking you how many - after you say that Keh-For-Keh's  
26 phone was breaking up and so you called back on Mr Kargbo's  
27 phone, I'm asking did you call back one time on the phone - on  
28 Mr Kargbo's phone or two times? Because it appeared from your  
29 testimony --

1 [Speaking Krio]

2 THE INTERPRETER: Your Honour, he would have to repeat this  
3 answer because there was so much static on the line, he was  
4 breaking it up.

5 JUSTICE DOHERTY: Mr Kamara, we didn't hear you clearly.  
6 So please repeat your answer. You started saying something about  
7 three. Please repeat.

8 THE WITNESS: I said three times it appeared on the  
9 transcript.

10 MR HERBST:

11 Q. The first time you spoke to whom?

12 A. I think I had answered that question.

13 MR HERBST: Your Honour, if one goes back over Mr Kamara's  
14 testimony, I think you'd agree with me that he has not testified  
15 to three calls to three calls to Mr Kamara on Mr Kargbo's phone.  
16 So I was going to try to explore that with him, but I'll be  
17 guided by your Honour's view.

18 JUSTICE DOHERTY: Without thoroughly examining the  
19 transcript, my initial reaction is also I don't recall three. So  
20 unless it's - something is actually presented to me to show that  
21 there was three, I'm allowing the question.

22 MR HERBST: Thank you, your Honour.

23 Q. Now, you testified that after Mr Keh-For-Keh's line was  
24 [indiscernible], you called back on Mr Kargbo's phone. Do you  
25 remember that testimony?

26 A. Yes, I called on that number.

27 Q. Yes. And the first time you called that number, who was  
28 the first person you spoke to?

29 A. It was Sammy Ragga who received the call and I told him

1 to --

2 JUSTICE DOHERTY: I'm not hearing anything, so I don't know  
3 if we've had a breakdown.

4 Mr Court Officer, can Kigali hear me speaking.

5 MR HERBST: Yes, we can, your Honour.

6 JUSTICE DOHERTY: I didn't hear all of the answer. It  
7 seemed to go silent. So Mr Interpreter had said Sammy Ragga  
8 receive a call.

9 Mr Kamara, please pick up your answer again from there.

10 THE WITNESS: When they gave me the number that I called,  
11 it was Sammy Ragga who picked up the call. Then I told him to  
12 give the phone to Eddie.

13 MR SERRY-KAMAL: Your Honour was asking for where that is a  
14 repeat of the cross-examination. I would respectfully refer your  
15 Honour to 1416 of the records, the top of the page.

16 JUSTICE DOHERTY: And what does it say, Mr Serry-Kamal?

17 MR SERRY-KAMAL: Page 1416, your Honour says - from 1416 --

18 JUSTICE DOHERTY: Is it dealing with the line of questions  
19 we have before us now, Mr Serry-Kamal? I don't have that page.

20 MR SERRY-KAMAL: It said at that time the phone was  
21 [Indiscernible] link. They gave me a number which I never knew  
22 as Sammy's number. Then I told them to hold on for me. Then I  
23 called the number and Sammy pick up the phone and gave it to -  
24 the phone back to Eddie.

25 JUSTICE DOHERTY: Yes. It would appear, Mr Herbst, that  
26 that particular aspect has been dealt with. However, you have  
27 the matter of whether it was two or three times has not been  
28 dealt with, so you should deal with that aspect of the evidence.

29 MR HERBST: Yes, your Honour. That's what I was trying to

1 do. I'm trying to elicit from the witness who he talked to on  
2 the first call and then go to the second. Because if you look at  
3 the transcript, regardless of what was on 1416, look at the whole  
4 transcript, at most he testified to only calling Mr Kargbo's  
5 phone twice. And at one point it was once.

6 MR SERRY-KAMAL: That is not correct, your Honour. If you  
7 look further on the page, you will see again he was cross  
8 examined [indiscernible] it says that they give me the number for  
9 me to call. Then I called on the line and Sammy Ragga picked up  
10 the phone. Then I told him to give the phone back to Eddie.  
11 Eddie and I continued to talk. At that time there was no more  
12 air time, so I gave the next man the phone and so on and so on.

13 MR HERBST: But that's the point. If you go on, he says he  
14 was the last person he spoke to and then [indiscernible] Five  
15 came. All right. And it goes --

16 MR SERRY-KAMAL: -- [Indiscernible] was the last person he  
17 spoke to.

18 MR HERBST: And then Five Five came. Then if you go on to  
19 1417, and all the way --

20 JUSTICE DOHERTY: The question that we are seeking to  
21 clarify the answer was an answer a few minutes ago, in which the  
22 witness stated, and my notes are as follows: "I said three  
23 times."

24 Now, Mr Serry-Kamal, what you are quoting me is one time.  
25 I want to know about the other two times. So let us concentrate  
26 on the other two times.

27 MR HERBST: Thank you, your Honour.

28 Q. Mr Kamara, who did you speak to during the first call  
29 with --



1 JUSTICE DOHERTY: Mr Herbst, we have that on record, the  
2 first call. Mr Serry-Kamal is correct. We're now concentrating  
3 on the other two.

4 MR HERBST: Well, let me go about it this way.

5 Q. How long were you on the phone with Keh-For-Keh on  
6 Keh-For-Keh's line before you called back on Sammy Ragga's line?

7 A. Say that again.

8 Q. How long were you on the phone on Keh-For-Keh's phone  
9 before you called back Sammy Ragga's phone?

10 A. I can't recall the time, but I'm not sure it was even up to  
11 two minutes.

12 Q. And in those two minutes, you say you spoke to Eddie and  
13 all the people in succession that you've testified to earlier on  
14 cross-examination?

15 MR METZGER: No, that is not what he said --

16 MR SERRY-KAMAL: [Overlapping speakers] Your Honour, that  
17 is not the evidence.

18 MR HERBST: That is the evidence.

19 MR SERRY-KAMAL: That is not the evidence. It's not borne  
20 out by [microphone not activated] --

21 JUSTICE DOHERTY: Counsel, stop arguing among yours. If  
22 there is an objection; address it to the Bench.

23 MR SERRY-KAMAL: Your Honour, I [indiscernible] objection.  
24 At page 1416 up through 1417, the same thing appears.  
25 [Indiscernible] Eddie and there was a scrambling and then a  
26 number was given to him and then he called again. And he  
27 continued talking to Eddie. That is the evidence, borne out by  
28 those pages.

29 MR HERBST: On direct examination, your Honour, he

1 testified otherwise. All these people he spoken to on the first  
2 call to Keh-For-Keh, and then put the phone to Mr Ragga. The  
3 line was breaking up and he called Mr Ragga back. So...

4 MR SERRY-KAMAL: That is not correct, your Honour.

5 JUSTICE DOHERTY: Just pause while I get these two pages  
6 that are being referred to. You say it's a transcript of which  
7 date and the page you said was 1416. Let me ask.

8 MR SERRY-KAMAL: 1416, 1417, 1428, 1429. [Indiscernible]  
9 for a long, long time.

10 MR HERBST: Your Honour, I agree that at that point he's  
11 describing the first [indiscernible] act on Mr Kargbo's phone,  
12 and there is he's attributing all his conversations to the first  
13 [indiscernible] Mr Kargbo.

14 MR SERRY-KAMAL: Your Honour --

15 MR HERBST: Excuse me just a minute. Then if you go on  
16 further in the cross, he says that Mr Kanu - that they wanted to  
17 speak to Mr Kanu, and Mr Brima put the phone down and he went to  
18 call them and then he called back. And then the rest of the  
19 transcript of Saturday reflects that the different people spoke  
20 to Mr Kanu and Mr Brima, and then the air time ran out. And they  
21 left the area and never made a call again.

22 MR SERRY-KAMAL: No, that is not correct. That isn't  
23 correct. That is not the evidence. [Indiscernible] 25 you will  
24 see where he was first begin [indiscernible] "Mr Kamara when the  
25 line was breaking up, why didn't you just call Keh-For-Keh's  
26 phone back?" [Indiscernible] "I called Keh-For-Keh's phone  
27 back."

28 MR HERBST: First of all, 1435 --

29 MR SERRY-KAMAL: 25, I said.

1 MR HERBST: That's earlier with the first call, your  
2 Honour. That's when he was talking about his - the line on  
3 Keh-For-Keh's phone and the line was breaking up, so he called  
4 back on Mr Kargbo's phone. The testimony so far only reveals -  
5 only reflects two calls back on Mr Kargbo's line. I understand  
6 the witness realizes [indiscernible] the calls reflected on the  
7 MTN record, but that's what I'm trying to get at.

8 JUSTICE DOHERTY: I have looked quickly at this record that  
9 I've been referred at the, 416, 417, 428, 429, I note that the  
10 witness said that he phoned, there was scrambling, then they  
11 asked me to call the police line. He gave the number. Then I  
12 called the line. It was Ragga who picked up the phone. Then he  
13 goes through all the people he spoke to, there is a series of  
14 questions on that. He repeats - they gave me - I'm now looking  
15 at page 1417 of the transcript. I said, when the phone was  
16 breaking, they gave me a number, which I did not know was Sammy  
17 Ragga's, but when I called it was Sammy Ragga who picked the  
18 call. Then he speaks of who he spoke to. And then at 1428 the  
19 question is: The understanding is when you called back on  
20 Ragga's phone you spoke to Ragga? And he said hello.

21 And then on 1429, I said the last person I spoke to  
22 was Nat Conteh Junior. I told him I was switching the phone off.  
23 So those are two calls. He then called Kanu and Brima.

24 So I'm not clear because I don't have - maybe I need the  
25 next page of the transcript if, in fact --

26 MR HERBST: That's right, your Honour.

27 JUSTICE DOHERTY: There was when Brima --

28 MR HERBST: If you look at --

29 JUSTICE DOHERTY: I'll ask --

1 MR SERRY-KAMAL: Your Honour, page 139 also. I refer you  
2 to line 9, Mr Herbst, 1429. 1429.

3 JUSTICE DOHERTY: Mr Serry-Kamal, I've already quoted 1429.  
4 I'm just now going to wait and ask for 1430 page because that is  
5 a part where he said it follows on that he said, "Kanu was in  
6 front and Brima behind." So I'm just going to get that page.

7 MR SERRY-KAMAL: There's also --

8 MR HERBST: Your Honour, I have -- excuse me,  
9 Mr Serry-Kamal. I have it and can I very briefly summarise it  
10 for your Honour. At the top of 1430, he says, "When the men  
11 came, I dialed the phone and I gave it to this man" - meaning  
12 Mr Kanu, and then he says no, he didn't dial it. The officer  
13 dialed it. And then he gave the phone to Mr Kanu and Kanu spoke,  
14 and then Mr Brima was the last one to speak. And then if you go  
15 to 1431 at the top, he says that the air time finished, so the  
16 phone had to go off and that was it. And then we finished for  
17 the day, and then today I just asked him after that, after he  
18 left the area, you went back, spent the rest of the day in his  
19 cell block. So there were only two calls.

20 JUSTICE DOHERTY: From my reading of this transcript, I see  
21 the way it is presented here, there was a call to Keh-For-Keh,  
22 the line was breaking up, another call was made to a different  
23 number that turned out to be Ragga's. The witness was not aware  
24 it was Ragga's. The call was made and the call -- the phone was  
25 passed around various people in Sierra Leone. Then the phone was  
26 switched off. When they went and got another two people to speak  
27 and it was dialed -- a number was dialed again. I quote from  
28 page 1430. "The officer dialed the number. He gave the phone  
29 back" - that was a question. Sorry. "So the officer dialed the

1 number." And the witness said, "I gave it to Mr Kanu." And that  
2 was the phone call - and that was the one where the air time ran  
3 out. So on the face of that record. There appears to have been  
4 two dialings of Kargbo's number. That's what it appears.

5 If the witness now says there were three, then I must allow  
6 that clarification. But it does not include going over exactly  
7 the same evidence because it is not an issue as yet that he spoke  
8 to a series of people. That has not been challenged. So if  
9 there was three calls on the record, as I've quoted appears to be  
10 two, then that has to be clarified.

11 So on that point alone, not on who he talked to on the  
12 first call or who Kanu and Brima spoke to on the second, I allow  
13 that part of the evidence to be pursued.

14 MR SERRY-KAMAL: Your Honour, just one small point. If you  
15 look at line 4 on the same page, 1431, your Honour is recorded as  
16 saying, "Mr Herbst, I'm afraid our time has finished as well  
17 because the accused in Rwanda have to be taken back. We are just  
18 up to that time limit now." So no further question was asked on  
19 that.

20 JUSTICE DOHERTY: That, Mr Serry-Kamal, is exactly why I'm  
21 directing that there has to be a clarification by way of  
22 cross-examination of the difference between this transcript  
23 showing two calls to Kargbo and the witness's answer this morning  
24 that he dialed Kargbo's number three times.

25 MR SERRY-KAMAL: Your Honour, I'm not objecting to that.  
26 All I'm saying is its interpretation being put on it by my  
27 learned friend. Because --

28 JUSTICE DOHERTY: Mr Serry-Kamal, please stop arguing with  
29 me. I've directed that the question will be - go - questioning

1 will go to the difference between this transcript and the witness  
2 saying this morning three times. It will not go to all of the  
3 people they spoke to and the other details that have not been put  
4 in issue.

5 Mr Herbst, proceed.

6 MR SERRY-KAMAL: Your Honour, I don't wish to argue with  
7 the Bench.

8 JUSTICE DOHERTY: Thank you, Mr Serry-Kamal.

9 MR HERBST:

10 Q. Mr Kamara, when you called Mr Kanu and Mr Brima to come and  
11 they came over, either you or the officer dialed Mr Kargbo's  
12 phone number, correct?

13 A. I have told you I don't dial. It's the officer that dials.

14 Q. Now, by the way, at that point how much -- approximately  
15 how much time had you spent on the phone with Mr Kargbo during  
16 that first call? Let me withdraw that.

17 How much time had you spent on the line to Mr Kargbo's  
18 phone before you called Mr Kanu and Mr Brima. Approximately how  
19 long?

20 A. I spent some time because I spoke to many of them.

21 Q. I'd like you to tell us as best you recall approximately  
22 how many minutes you were on that phone?

23 A. No. No.

24 JUSTICE DOHERTY: No. No. Please stop while I give a  
25 direction. The question, Mr Kamara, was: How long did you speak  
26 on the line to Mr Kargbo. We're not talking about how long you  
27 spent talking to other people. Just to Kargbo. Answer that  
28 question.

29 THE INTERPRETER: Is that the question? The witness asked

1 me to ask the question again because the question was broad.

2 JUSTICE DOHERTY: No, the question I heard was not broad.  
3 It was directed to one person. Mr Herbst, your question, as I  
4 have recorded it, was: How much time on the line to Kargbo. If  
5 that is not correct or that - if you're talking - if you're  
6 meaning how long on Kargbo's - be clear.

7 MR HERBST: I had originally asked the question that your  
8 Honour recorded, and then I withdrew that essentially, and I did  
9 ask the broader question. The question was -- that I had last  
10 asked was - and Mr Kamara is right - was: How long he spent on  
11 the phone, regardless of who he talked to, but how long was that  
12 first call with Mr Kargbo's line on that phone before Mr Kanu -  
13 before he left to call Mr Kanu and Mr Brima on the phone.

14 JUSTICE DOHERTY: My apologies, counsel. I will withdraw  
15 my comment and allow the question to go on.

16 MR HERBST:

17 Q. Can you tell us, Mr Kamara, to the best of your  
18 recollection approximately how many minutes you spent talking on  
19 the phone during that call to Mr Kargbo's telephone before you  
20 went to call - you stopped to call Mr Brima and Mr Kanu to come?

21 A. I don't know the time. I don't know. I don't know the  
22 time.

23 Q. Well, can you tell us whether it was 10 minutes or more or  
24 10 minutes or less?

25 A. I don't know, my friend.

26 Q. Can you tell us whether it was one minute or less, or one  
27 minute, or more than one minute?

28 A. I spoke to one or two people. I believe it's more than one  
29 minute, but I don't know the precise time.

1 Q. Well, of course, Mr Kamara, I'm not asking you for the  
2 precise time because no one can give precise times except the  
3 computer, but I'm asking you - you said it was likely more than  
4 one minute. Was it more than four or five minutes?

5 A. I don't know. I don't know, Mr Herbst. I don't know.

6 Q. All right. Now, when you went to call Mr Kanu and  
7 Mr Brima, and they came and you called back or you had the police  
8 officer or the prison officer call back Mr Kargbo's telephone,  
9 how long did Mr Kanu and Mr Brima talk on Mr Kargbo's telephone?

10 A. I can't tell you the duration that they spoke for, but they  
11 spoke.

12 Q. So you don't have any recollection as to how long it was  
13 before the air time ran out, as you say?

14 A. No.

15 Q. And I think earlier on direct examination you said that you  
16 had about -- how much was the allocation -- I don't recall  
17 exactly what you said. What was the allocation of air time that  
18 you had, if you had 1500, how many minutes was that?

19 A. Say that again.

20 Q. You said earlier - you testified several days earlier now  
21 on cross-examination in response to my question as to how much  
22 air time - how many minutes of air time 1500 was. Do you  
23 remember that testimony?

24 A. Yes.

25 Q. How many minutes was 1500?

26 A. I said it's 27 minutes. 1500?

27 Q. Yes.

28 A. 1500. Because 3000 - 500 is 3 minutes; 1000 is 6 minutes.  
29 So I spent 9 minutes. So 9 minutes equals 1500 air time MTN.



1 Q. Thank you. So can you tell us how many minutes of air time  
2 was left? Withdrawn. How many minutes - can you tell us whether  
3 the call, the second call to Mr Kargbo's line was, in which  
4 Mr Kanu and Mr Brima spoke? Was it longer than the first call  
5 before they came? As long? Shorter? Do you have any  
6 recollection at all?

7 A. For the first call we did not take long. It was longer  
8 than the first call.

9 Q. All right. However long that second call in which Mr Kanu  
10 and Mr Brima spoke, however long that was, your testimony is the  
11 air time ran out and that was the end of the call for the day,  
12 right?

13 A. I did not say that. I did not say I did not call again.  
14 The same day I called again. Just after I have spoken to - after  
15 those men have spoken to the men --

16 THE INTERPRETER: Your Honour, the line is breaking up. I  
17 can't hear him clearly.

18 JUSTICE DOHERTY: Can the technicians in Kigali assist,  
19 please. Mr Kamara's line is not being received clearly.

20 MR HERBST: Your Honour, I'm not sure it was the line.  
21 Perhaps Mr Kamara could repeat his answer.

22 JUSTICE DOHERTY: Mr Kamara, please repeat your answer. We  
23 heard the interpreter say, "I did not say that." Please continue  
24 from there.

25 THE WITNESS: The man asked me if that was my last call for  
26 that day. I told him that that was not my last call, that I  
27 called later, I called Keh-For-Keh later.

28 MR HERBST:

29 Q. How long after you went back to your cell block with Kanu

1 and Brima did you call Keh-For-Keh?

2 A. Let me explain this to you for you to understand, okay?

3 THE INTERPRETER: Your Honour, the line is breaking up  
4 again. I cannot hear him clearly.

5 JUSTICE DOHERTY: Mr Kamara, I can see you gesticulating,  
6 but we're not hearing you. Again, could the technicians help?

7 THE WITNESS: I said the place where we make the calls and  
8 where our block is are very close. When I told you that - after  
9 they had spoken to those men - it does not mean that we went  
10 inside the blocks - in the rooms. I did not say we went in the  
11 rooms. It does not mean that we went in the rooms. Where I make  
12 the call, I can stand there and call anybody. I don't even have  
13 to shout. So look at where Mr Brima was and look at the place  
14 where I make the call.

15 MR HERBST: I didn't understand the last part of the  
16 translation, your Honour, the last part. Could I have that  
17 repeated?

18 JUSTICE DOHERTY: Mr Herbst, if it's not clear, I think it  
19 should be clarified by way of a question. The witness had said  
20 he did not even have to shout. I think it's best to ask another  
21 question.

22 MR HERBST: Yes, I will, your Honour.

23 Q. I don't think I heard an answer, so let me try and ask it  
24 again.

25 A. Go ahead, go ahead.

26 Q. How much time elapsed between the time that you went back  
27 to your cell block with Mr Kanu and Mr Brima? Even if you didn't  
28 go into your room, but how much time elapsed between the time you  
29 went back to your cell block area and the time you returned to

1 the telephone area to make another call?

2 A. It was not even - if it was more than two minutes - it did  
3 not even take two minutes. It was very close. The men were  
4 sitting on the steps while I was calling. It was not a long  
5 time. It was a very short time.

6 Q. All right. And then you say you went back to the telephone  
7 area and made another call, is that your testimony?

8 A. I told you that the telephone area and the block are very  
9 close, okay?

10 JUSTICE DOHERTY: That does not answer the question,  
11 Mr Kamara. Answer the question.

12 THE WITNESS: That is the question I'm answering, my Lord.  
13 I need to explain.

14 MR HERBST:

15 Q. My question was how much time - I think my question was how  
16 much time elapsed before you went back to the telephone area,  
17 even if it was one or two minutes away?

18 A. I have no watch on my wrist.

19 Q. All right. So I understand you don't know how much time it  
20 was. All right. Now, when you went back to make the call,  
21 whatever call you made, did you again sign the book?

22 A. That call that I made, I only signed once the same day at  
23 the time that I made that call. All those calls that I made,  
24 those three numbers, I only signed once.

25 Q. By the way, Mr Kamara, since some time had elapsed during  
26 that first call that you had made with - on Mr Kargbo's line  
27 before you had to make - before Mr Kanu and Mr Brima came and you  
28 were going to call back the people in Sweissy, why didn't you  
29 make that second call to Mr Kanu and Mr Brima on Keh-For-Keh's

1 number? Why did you make it on Mr Kargbo's number?

2 A. Because I have told you that Keh-For-Keh's phone was  
3 breaking up.

4 MR SERRY-KAMAL: May it please your Lordship, I think I  
5 have pointed out to the Court last time that that question was  
6 asked again at page - I think it's 128.

7 MR HERBST: Well, if it was, I'll withdraw the question. I  
8 did not recall that I had gotten an answer.

9 MR SERRY-KAMAL: Sorry, 125. Page 125, lines 5 and 6.  
10 1425, lines 5 and 6, I'm sorry. "Mr Kamara, when the line was  
11 breaking, why didn't you just call Keh-For-Keh's phone back?"

12 MR HERBST: No, that's actually a different question. That  
13 question was directed to the first call to Mr Kargbo's line.  
14 This question is directed to the second call back to Mr Kargbo's  
15 line when Mr Kanu and Mr Brima were going to speak, because by  
16 that time, time had elapsed and maybe the line wasn't breaking  
17 up. That's the reason I asked the question.

18 In any event, I believe the witness answered the question.  
19 I'm sorry, your Honour.

20 JUSTICE DOHERTY: He has. The answer is on record.

21 MR SERRY-KAMAL: Thank you, your Honour.

22 MR HERBST:

23 Q. Now, if the air time had finished, Mr Kamara, how were you  
24 able to come back and call Mr Keh-For-Keh's phone again?

25 A. Did I tell you that my air time finished?

26 Q. Yes, that's my question. Since you testified that your air  
27 time had finished --

28 A. No. I said the air time on the phone. When Mr Alex  
29 finished talking, that finished - I did not tell you that my air

1 for the day finished. The air time that they give us is 500  
2 each. If you want to, you can put 1000. If you want to, you can  
3 put 1500. So I did not tell you that my air time finished.

4 Q. Well, when you went back to make the second call to  
5 Keh-For-Keh's line, how much air time did you have left?

6 A. At that time I think I had 1000 in reserve. Yes, I think  
7 1000. At those times if I wanted an air time, they would give me  
8 in advance and then I'll sign.

9 Q. Mr Kamara, since Keh-For-Keh's phone had been breaking up  
10 and not much time had elapsed before you came back and wanted to  
11 call again for Mr Keh-For-Keh, how come you didn't call  
12 Mr Kargbo's number a third time and ask him to put Keh-For-Keh on  
13 the line at Sweissy?

14 MR METZGER: That question wasn't interpreted --

15 THE WITNESS: Ask that question again. Ask that question  
16 again.

17 MR HERBST:

18 Q. Well, the question is I know you wanted to speak to  
19 Keh-For-Keh when you came back. After the calls to Mr Kargbo's  
20 phone and you went away and you came back, you wanted to speak to  
21 Keh-For-Keh. My question is since Keh-For-Keh was at Sweissy and  
22 not much time had gone by, and Keh-For-Keh's line had broken up,  
23 why didn't you try to reach Mr Keh-For-Keh on Mr Kargbo's line  
24 first? Why did you call Keh-For-Keh's line?

25 A. Because it was Keh-For-Keh that I wanted to talk to.

26 Q. And what did you want to say to Mr Keh-For-Keh?

27 A. I have told you that I have a lot of things to discuss with  
28 Keh-For-Keh. Sometimes I will send Keh-For-Keh and he'll go  
29 there. Sometimes I'll send him to my family. The man was close

1 to my family.

2 Q. And I put it to you - withdrawn. Before I do that, when  
3 you called Keh-For-Keh back, what did you say to him in substance  
4 and what did he say to you?

5 A. I have told you that that man - I have a lot of places  
6 where I send that man, and the man is close to my family, and  
7 when I'm talking to him, I talk to him about my family business.  
8 Those are the things I talk to him about.

9 JUSTICE DOHERTY: Mr Kamara, the question was what did you  
10 talk about on that particular occasion. You're making a general  
11 statement.

12 A. About my family, that's all.

13 MR HERBST:

14 Q. What specifically about your family did you talk to  
15 Keh-For-Keh about during that call?

16 A. Say that again.

17 Q. What specifically did you talk to Keh-For-Keh about during  
18 that call? I know you say it was about your family, but what?

19 A. What I told him about my family is personal to the two of  
20 us.

21 Q. I put it to you, Mr Kamara, that what you were talking  
22 about after the calls that you and Mr Kanu had with Mr Kargbo on  
23 November 30 was about raising money for 334 and Mr Kargbo in aid  
24 of your plan to have 334 recant his testimony.

25 A. Well, I'm putting it to you too, Mr Lawyer --

26 THE INTERPRETER: Your Honour, the line is breaking up  
27 again. I can't hear him clearly.

28 JUSTICE DOHERTY: I agree with you, Mr Interpreter.

29 Can we have some technical assistance in Kigali so the

1 client is clearer?

2 Mr Kamara, please pause for a moment while we rectify the  
3 line.

4 THE WITNESS: I'm getting it clearly. Like I said, I don't  
5 have anywhere to get money from. I am a prisoner.

6 THE INTERPRETER: Your Honour, the line is breaking up  
7 again. I can't hear him clearly.

8 JUSTICE DOHERTY: Again, Mr Kamara, please pause.

9 THE WITNESS: To come and recant his statements, no. I  
10 don't have that money, and I don't have anybody to discuss that  
11 with.

12 JUSTICE DOHERTY: Continue, Mr Herbst, it appears that  
13 Mr Kamara has finished his answer.

14 MR HERBST:

15 Q. Now, Mr Kamara, I'd like you to look at the tenth page of  
16 the blue book, and the Court Officer can assist me. It's the one  
17 that relates to the 30 November calls that we've been discussing  
18 this morning.

19 A. Yes. November 30. Yes, I have it now.

20 Q. Now, the entries at the top that relate to the calls made  
21 around 1.11 p.m. and thereafter, when Mr Brima and Mr Kanu came  
22 and used the telephone during that second call to Mr Kargbo's  
23 line, did he write his name in the book or did the police officer  
24 or the prison officer write Mr Kanu's name in the book?

25 A. Who? Who? Me?

26 Q. My question, Mr Kamara, is when Mr Brima and Mr Kanu came  
27 at your call and used the phone to call Mr Kargbo's line, did  
28 Mr Kanu put his name in the book?

29 A. It was not Mr Kanu who - Mr Kanu does not write. Mr Kanu

1 does not write. I did not see him write.

2 Q. Did the prison officer write his name in the book when he  
3 and Mr Brima came down to use the telephone in your presence?

4 A. No, they did not write their names. They wrote my name,  
5 because I made the call.

6 Q. Well, I know the first number is your brother-in-law's  
7 number, Keh-For-Keh, right?

8 A. Yes.

9 Q. And the second number is Mr Kargbo's number with two digits  
10 different, is that right?

11 A. What? What? Ask that again.

12 Q. The second number, 23233285697, whose number is that?

13 A. No, I don't know. Ask the prison guards.

14 Q. Well, I thought you said that the prison guard wrote your  
15 name down because of the two numbers there in the book. Is that  
16 not right?

17 A. No, I did not say that. I said I made the call --

18 THE INTERPRETER: Your Honour, the line is breaking up  
19 again. Can he repeat his answer.

20 JUSTICE DOHERTY: Mr Kamara, please repeat your answer.

21 THE WITNESS: I repeat. I said I made the call. That's  
22 what I said. I did not tell him I want two, three numbers. I  
23 called the number that is up. You see that I called it. Because  
24 I've been used to calling it. It's in the transcript.

25 MR HERBST:

26 Q. All right. But you did call the first number listed,  
27 that's Keh-For-Keh, right?

28 A. Yes, it's Keh-For-Keh's number.

29 Q. And Mr Kargbo's number is 2323325, instead of 8, 5 - 5



1 instead of 6 - 97. You're the one who first called Mr Kargbo's  
2 number, right?

3 A. I did not enter a number, okay? You see the number. You  
4 see the number that I entered.

5 Q. But you called Mr Kargbo's number, which varies only by two  
6 digits from the number - the second number that's recorded in  
7 this box, right?

8 A. I can't deny that. I did not deny that I called.

9 Q. Now let's look at the third number there. 23233258898,  
10 whose number is that?

11 A. I don't know.

12 Q. You didn't call that number, did you?

13 A. No, I did not call it.

14 Q. That number appears to be attributed to Mr Kanu. Do you  
15 see that?

16 A. Well, I don't know. I don't know that.

17 Q. Well, there is a signature in the last column right  
18 adjacent to that number. Do you see that signature?

19 A. I've seen it.

20 Q. That's Mr Kanu's signature there, isn't it?

21 A. I don't think so. I don't think this is Mr Kanu's  
22 signature, no.

23 Q. Well, of the other prisoners, do any of the other prisoners  
24 have a signature like this one?

25 MR METZGER: Objection; your Honour. It calls for  
26 experience. Again he's asking the witness to be an expert. He  
27 hasn't laid the groundwork for this. In the past he was allowed  
28 to ask questions on the basis of this witness's familiarity,  
29 supposedly, with Mr Kanu's. This goes beyond your Honour's

1 ruling, in my respectful submission.

2 JUSTICE DOHERTY: Mr Herbst, your response?

3 MR HERBST: I'll try to lay the foundation.

4 Q. In the three years that you've been in the Mpanga Prison  
5 and making telephone calls, have you had occasion to see Mr  
6 Augustine --

7 JUSTICE DOHERTY: I heard you clearly, Mr Herbst.

8 MR HERBST: I didn't have my mic on. I have to repeat.

9 Q. In the three years that you've been in Mpanga Prison, have  
10 you had occasion to become familiar with the signature of  
11 Mr Gbao?

12 A. I can't identify someone's signature. People write  
13 differently.

14 Q. Have you had occasion to become familiar with the signature  
15 of Mr Kallon?

16 A. No, I don't have that time.

17 Q. How about Mr Brima, have you had occasion to become  
18 familiar with his signature?

19 A. Mr Brima - once in a while he signs and I can tell, but  
20 sometimes he will sign and I can't tell.

21 Q. By the way, Mr Kamara, you and Mr Brima and Mr Kanu have  
22 access to another cell phone at the prison; isn't that true?

23 A. Oh, God, say that again.

24 Q. I said you, Mr Brima, and Mr Kanu had access to another  
25 telephone --

26 MR METZGER: Your Honour, I object very strenuously. We  
27 went through this before the last time we were before the Court.  
28 Apparently, there was a subsequent investigation which had  
29 nothing to do with Mr Kanu. I request that the learned

1 prosecutor remove Mr Kanu's name from inclusion in something  
2 where there is no basis for said question.

3 MR HERBST: But, your Honour, just to temporarily  
4 accommodate my learned friend, I'll revise the question, but I  
5 think the question was proper. But I will - this is  
6 cross-examination. But I will break it down.

7 JUSTICE DOHERTY: Actually, it is cross-examination. The  
8 issue has come up at least once. But if you're going to amend  
9 your question, I will let you amend it. But it is an avenue that  
10 will be looked at at some point.

11 MR HERBST:

12 Q. Mr Brima had access to another cell phone in Mpanga Prison,  
13 did he not?

14 A. One. Check.

15 JUSTICE DOHERTY: Do not be cheeky, Mr Kamara. Answer the  
16 question properly.

17 THE WITNESS: I cannot answer for Mr Brima. I cannot, my  
18 Lord. Let him ask Mr Kamara and Mr Kamara would answer.

19 JUSTICE DOHERTY: Let him ask who?

20 THE WITNESS: Mr Kamara. I, sitting in front of the Court.

21 JUSTICE DOHERTY: I thought the questions were directed at  
22 Mr Kamara.

23 THE WITNESS: No, it's for Mr Brima. The question is for  
24 Mr Brima.

25 MR HERBST:

26 Q. I'm asking you, Mr Kamara, whether to your knowledge  
27 Mr Brima had access to another cell phone at any time during the  
28 three years that you've been incarcerated with him at Mpanga  
29 Prison?

1 A. No. Mr Bri ma --

2 THE INTERPRETER: Your Honour, the line is breaking up. I  
3 can't hear him clearly.

4 JUSTICE DOHERTY: Mr Kamara, please repeat your answer.

5 THE WITNESS: I said --

6 JUSTICE DOHERTY: Is someone speaking in Kigali? I'm not  
7 hearing anything. Mr Interpreter, are you hearing anything?

8 THE INTERPRETER: No, I can't.

9 MR HERBST: Can you hear me, Judge?

10 JUSTICE DOHERTY: I can hear you clearly, Mr Herbst,  
11 indeed, I can. But Mr Interpreter has not heard Mr Kamara.

12 MR HERBST: Mr Kamara was speaking, your Honour. I just  
13 wanted to inform you of that. He was answering the question.

14 THE WITNESS: You said -- go over that. I said we're in a  
15 prison. For the three years that we've been here in Mpanga, they  
16 search us properly -- the search us. They have never found any  
17 phone on anybody.

18 JUSTICE DOHERTY: Mr Kamara, that does not answer the  
19 question. The question was --

20 MR METZGER: He hadn't finished, your Honour.

21 JUSTICE DOHERTY: Well, I thought he had. Was there  
22 something else you said, Mr Kamara?

23 THE WITNESS: I have just answered the man that they have  
24 never found any phone with us.

25 JUSTICE DOHERTY: That is not --

26 THE WITNESS: And Mr Bri ma has not got any other phone that  
27 he uses.

28 MR HERBST:

29 Q. Mr Kamara, I know that you're familiar because you've just

1 answered -- familiar with the results of the investigation that  
2 was made because you said there was no telephone found. But in  
3 fact you know, do you not, that air time was found in Mr Brima's  
4 room, correct?

5 A. That's an allegation. I've already told you that it's an  
6 allegation. Even that record that you have in front of you, they  
7 said they had -- they [indiscernible] shirts in some man's rooms.  
8 At the end they proved that it's a lie, that document is all  
9 lies.

10 Q. So you're saying that you know the prison officials say  
11 they found air time in Mr Brima's room, but you're saying that  
12 was a lie?

13 A. It's a lie. That's why I have given an example.

14 Q. Let me ask you this question, Mr Kamara: You know that a  
15 telephone charge was found in Mr Kallon's room, correct?

16 A. I have answered you that it's a lie. The man that you  
17 operated with gave you a lying information.

18 Q. So are you saying that you know that the prison authorities  
19 say they found a telephone charger in Mr Kallon's room but that  
20 was a lie?

21 A. It's a big lie.

22 Q. Were you present in Mr Kallon's room when they did the  
23 search?

24 A. No. But I can tell you that after the search they  
25 displayed everything in front of the eight of us. They took  
26 inventory of everything that they found in everybody's room.  
27 That's why I'm telling you that they lied to you.

28 Q. And so you say -- withdrawn. You know that the search --  
29 that they did the search because some of those in the special

1 wing at Mpanga Prison had called some journalists in Sierra  
2 Leone, right?

3 A. Yes. But they did not tell you that it was on a different  
4 line, it was on that same line.

5 Q. And were you one of those who called the journalists?

6 A. I was not a part of it anyway.

7 Q. Who called the journalists?

8 A. I don't know.

9 Q. Now, Mr Kamara, I want you to go to page 10 of 10, the last  
10 page of P-14, the MTN record?

11 A. Page 10 of 10? Yes, I've got it.

12 Q. Now, your Honour, this is not the prison log but the MTN  
13 records.

14 JUSTICE DOHERTY: Yes, I have it before me.

15 MR HERBST:

16 Q. Now, the third call on that page is a call to Mr Bangura's  
17 phone on December 7th, 2010, at 4.02.52 p.m. Do you see that?

18 A. Yes.

19 Q. 270 seconds or about a little more than six minutes; do you  
20 see that?

21 A. Yes, I've seen it.

22 Q. Did you make that call?

23 A. No. I don't recall making this call.

24 Q. Do you know who made the call?

25 A. Bomb Blast's, it's either me or Alex. We call him most of  
26 the time. Mr Kanu does not call him.

27 Q. Okay. And immediately after or -- not immediately but  
28 shortly after that call, within five minutes of that call ending,  
29 there was a call placed to Mr Kargbo's phone; do you see that?

- 1 A. I've seen the number.
- 2 Q. And you know that number is Mr Kargbo's number, right?
- 3 A. Yes, I've seen the number.
- 4 Q. And that lasted for 220 seconds, right?
- 5 A. Yes, that's what I've seen here.
- 6 Q. And did you call that number?
- 7 A. No.
- 8 Q. Who else had been given Mr Kargbo's number besides you?
- 9 A. Minus me? I have told you that the three of us spoke to  
10 the same number.
- 11 Q. Yes, but this was a week later, right? Is that right?
- 12 A. I don't know.
- 13 Q. December 7 is about a week later than November 30, right?
- 14 A. Yes.
- 15 Q. Are you telling me that you retrieved - you or one of the  
16 other two, Mr Kanu or Mr Brima, retrieved Mr Kargbo's number from  
17 the cell phone a week later, after all the calls that - all those  
18 calls had been made?
- 19 A. It's impossible.
- 20 Q. Impossible. Who had Mr Kargbo's phone number?
- 21 A. Wait for them to translate for me, please.
- 22 Q. Who had Mr Kargbo's phone number?
- 23 A. I have told you they give the number to me. On the first  
24 day that I called it. Okay? The number stays in the phone. It  
25 was Mr Alex who last called on the phone after I had called  
26 Keh-For-Keh. So it is possible Mr Alex will take the number. It  
27 does not mean that I am the only person who has the number here.
- 28 Q. Mr Kargbo [sic], are you telling us --
- 29 A. Mr Kamara.

1 Q. [Overlapping speakers] I apologize. Well, first of all,  
2 are you telling us that someone saved the phone number of  
3 Mr Kargbo in the phone? Or the phone just recorded the number  
4 and it was in the phone, just like the hundreds of other calls  
5 and numbers that were made between --

6 THE INTERPRETER: Your Honour, counsel will have to take  
7 this question very slowly for the interpreter to keep up with  
8 him.

9 JUSTICE DOHERTY: Mr Herbst, you have heard the  
10 interpreter.

11 MR HERBST: Yes, I have, and I will restate the question.

12 JUSTICE DOHERTY: Thank you.

13 BY MR HERBST:

14 Q. When you say the number was in the phone, Mr Kamara, do you  
15 mean that it was in the phone from the calls - the 3 calls that  
16 had been made on November 30th or do you mean that - or do you  
17 mean that someone took the trouble to save the number in the  
18 phone?

19 A. Well, you have a mobile phone. When you make a call a  
20 number with a mobile phone, it stays in the phone except if you  
21 want to delete it. Okay. If you check all the transcripts that  
22 you brought, that man's number can only see them in these two  
23 places.

24 THE INTERPRETER: Your Honour, the line is breaking up. I  
25 didn't get the tail end of his answer.

26 JUSTICE DOHERTY: Mr Kamara, please repeat your answer so  
27 that the interpreter can hear you. Pick up from where you said  
28 "that man's number." Continue from there.

29 THE WITNESS: I said --



1 THE INTERPRETER: It's still breaking up, your Honour. I  
2 can't hear him clearly.

3 JUSTICE DOHERTY: Could we have some technical help in  
4 Kigali? The line is breaking when Mr Kamara answers.

5 THE WITNESS: I said all the transcripts from MTN from that  
6 day that I told you that they gave me that number that I called  
7 that man, I never called him again. If you see his number and  
8 you tell me that the number was saved on the phone, I don't know  
9 about that. I called that man only once.

10 MR HERBST:

11 Q. Well, I put it to you, Mr Kamara, that you called Mr  
12 Bangura and then you called Mr Kargbo, and it was in aid or in  
13 furtherance of your plan to continue to contact - have people  
14 contact on your behalf 334 and those two gentlemen in aid of your  
15 petition for review. What do you say about that?

16 A. It's a lie.

17 Q. Now, I don't know about the cell phone at the prison, but  
18 the cell phone that I have here in Rwanda will save a certain  
19 number of calls --

20 MR SERRY-KAMAL: Your Honour, this is in evidence.

21 MR HERBST: Well, this is a predicate for my question, your  
22 Honour, to explore what the witness was saying about the number  
23 being saved in the phone. I'm trying to ascertain whether he is  
24 telling us the prison phone --

25 MR SERRY-KAMAL: Your Honour, I believe counsel is not  
26 allowed to give evidence.

27 JUSTICE DOHERTY: The witness answered a question with the  
28 word impossible. There should be - I am allowing some  
29 clarification of that answer; however, counsel should not give

1 evidence from the Bar table. So rephrase.

2 MR SERRY-KAMAL: Your Honour, I [overlapping speakers]  
3 wonder if you will allow me to make one point. That the witness,  
4 whether, in fact, he mentioned "impossible", I don't think he  
5 did.

6 JUSTICE DOHERTY: We have a transcript here, and I will  
7 have it checked. Just wait, please.

8 MR SERRY-KAMAL: [Microphone not activated] related to  
9 Mr Alex, for him to [indiscernible] some assistance to the Court.

10 MR HERBST: Your Honour, rather than taking the time to  
11 check the transcript, I'm adverse to it but, I was --

12 JUSTICE DOHERTY: Mr Herbst, are you addressing me because  
13 - just a minute, Mr Herbst. I'm trying to see if I can find a  
14 transcript. I've got a note that the witness said impossible.  
15 Mr Serry-Kamal is challenging it. I'm trying to read the  
16 transcript. If you're speaking to me, I didn't have my earphones  
17 on.

18 MR HERBST: That's quite all right, your Honour. Very  
19 well.

20 MR SERRY-KAMAL: Just for assistance to the Court, I think  
21 it related to Alex. He said that it's quite possible that Alex  
22 will take the number.

23 JUSTICE DOHERTY: You have heard the official record, Mr  
24 Serry-Kamal, it was said. I'm, therefore, allowing the question.  
25 I again make the caveat that there cannot be evidence from the  
26 Bar table.

27 MR HERBST: I'm going to approach it another way, your  
28 Honour.

29 Q. Mr Kamara, in one of your recent answers you alluded to the

1 MTN records, P-14, which you have in front of you. With the  
2 Court Officer's assistance, I would like you to look at pages 1  
3 of 10 and 10 of 10, the last 10 pages of that exhibit. My  
4 question is: Would you agree with me that there are several  
5 hundred calls listed on those 10 pages?

6 A. Yes. The calls are many, there are many calls here.

7 Q. And is it your testimony that on December 7th, the last day  
8 of this record, that someone would be able to retrieve a number  
9 called several hundred calls before on the phone if the number  
10 had not been specifically saved in the contact list?

11 A. Say that again.

12 Q. Is it your testimony that on December 7th, on the last day  
13 of this record, that the person could have gone back several  
14 hundred calls and retrieved a call placed on November 30th to  
15 that same phone if the number had not specifically been saved in  
16 the contact list of the phone?

17 A. I do not understand your question. Break it down for me,  
18 please.

19 Q. Well, I'm asking you whether it's your understanding that  
20 the phone records every number called and that every number  
21 called can be retrieved on the phone by just looking at the  
22 register of received or called calls.

23 A. Whatever calls you make are registered in the phone. All  
24 incoming calls are registered.

25 Q. But you're telling this Court that you didn't -- that you  
26 didn't have Mr Kargbo's phone number either memorised or in a  
27 separate place other than on the phone?

28 A. That is why I told you that I called him once. I don't  
29 have his number. I did not even write it down.

1 MR HERBST: If your Honour just give me one minute.

2 MR HERBST:

3 Q. Now, if you go to the page in the prison logbook for  
4 December 7. And the Court Officer will be kind enough to assist  
5 you, this is the 14th page of the book, your Honour, for  
6 everybody's use.

7 MR METZGER: It actually starts on page 30.

8 MR HERBST:

9 Q. Mr Kamara, I see you have that page in front of you.

10 A. Yes.

11 Q. You'll notice that it covers the period -- the first call  
12 is at 12.09 p.m. on the 7th and there are calls reflected there  
13 that afternoon. There are only five lines of calls reflected.  
14 And you're not - Mr Kanu is on the third line placing some calls  
15 at around noon, and you're below him, two lines down, as having  
16 placed a call at 4.44 in the afternoon. Do you see that?

17 A. Yes.

18 Q. Neither of these calls, the call to Mr Bangura's phone or  
19 the call to Mr Kargbo's phone at 4.02 and 4.13 p.m., are listed  
20 in this book, are they?

21 A. Say that again.

22 Q. Neither the call to Mr Bangura's phone nor the call to  
23 Mr Kargbo's phone that were on page 10 of 10 of the MTN phone  
24 records are recorded in the prison log; am I right?

25 A. I did not see it there, I did not see it. I called my  
26 brother. It's his name that is there.

27 Q. But you were in the area of the telephone - of the phone  
28 area at least around 4.45, about a half hour or so of the call to  
29 Mr Kargbo, correct?

1 A. No, it's not correct.

2 Q. Isn't that you listed on the fifth line, 7/12/2010, Bazzy  
3 Kamara, brother, 1644?

4 A. Yes, I called my brother, you see his number there, 1644.

5 Q. I understand the two numbers are not listed, neither  
6 Mr Bangura's number nor Mr Kargbo's number are listed in the  
7 book, but you are listed in the book as having been making a  
8 call, at least one call, at around 4.45 p.m. on that same day,  
9 within a half hour of the call to Mr Kargbo, right?

10 A. Yes, I called at 4.45. 4.44, sorry, 4.44. What is in  
11 Mr Kargbo's number is 4.18, so you can't tell me that I called  
12 him. 4.13.

13 Q. Mr Kamara, did you ever call Keh-For-Keh or any other  
14 relative of yours and tell them that you wanted to speak to  
15 someone else and ask them to assist you in permitting you to  
16 speak to that person?

17 A. Say that again.

18 Q. Did you ever call your brother-in-law, Keh-For-Keh, or any  
19 other friend or relative from the prison phone and say I would  
20 like to speak to X - doesn't matter who it is - but I would like  
21 to speak to this person, give them the name, and say would you  
22 see if you can arrange that.

23 A. Yes, I used to do that.

24 Q. And how would -- with your friend or relative who wants to  
25 assist you to do that, how would he do that? He would go to that  
26 person and what would happen?

27 A. If I want to talk to someone, for example, and I don't know  
28 the person's number, I would tell -- send Keh-For-Keh to the  
29 person and I'll tell him if he reaches the person, to call me. I

1 used to do that.

2 Q. Would he put the two phones together or how would you do  
3 that? Physically how would it happen?

4 A. It's not possible for me to put two phones together. I  
5 will talk through Keh-For-Keh's phone. That is why I would send  
6 him there.

7 Q. Would you ever ask Keh-For-Keh to have that person call you  
8 on that person's cell phone rather than using Keh-For-Keh's  
9 phone?

10 A. Why I should use Keh-For-Keh's phone?

11 Q. No, I'm asking you, would you ever tell Keh-For-Keh,  
12 instead of going to the person, just to have that person call you  
13 and flash you on your prison phone so you can speak to them.

14 A. No.

15 MR HERBST: Your Honour, the next series of questions are  
16 going to be about Mr 033 and it seems to me that we may want to  
17 do that in the closed session.

18 JUSTICE DOHERTY: Yes, that I think would be prudent. I  
19 also note that we're over the normal -- a little over the normal  
20 time that we have the Kigali three-quarters of an hour break.  
21 The reason for that of course is because we started late due to  
22 the technical problems. I'm also been alerted to the fact that  
23 the tape is going to run out fairly soon. So given all of those  
24 parameters, I think the most practical thing to do now is to take  
25 Kigali's three-quarters of an hour lunchtime break and resume at  
26 a few minutes past the hour. I think it's five past 12 Freetown  
27 time which I think would be 5 past 2 your time. Is that correct,  
28 gentlemen in Kigali?

29 MR HERBST: Yes, that's correct, your Honour.

1 JUSTICE DOHERTY: I'm looking at a clock in the courtroom  
2 in Freetown. It's 20 past 11 on that clock in Freetown, so  
3 that's why I'm putting it at 5 past 12, giving you three-quarters  
4 of an hour.

5 MR HERBST: Yes, your Honour.

6 JUSTICE DOHERTY: Please, I cannot listen to three of you  
7 speaking at once. It's not possible.

8 MR HERBST: The clocks appear to be synchronised.

9 JUSTICE DOHERTY: I'm adjourning this Court to five minutes  
10 past 12 Freetown time, five minutes past 2 Kigali time. Please  
11 adjourn Court.

12 [The Court adjourned at 11:18 a.m.]

13 [Upon resuming at 12.10 p.m.]

14 JUSTICE DOHERTY: Mr Herbst, please continue with your  
15 cross-examination. The last question related to whether the  
16 witness Kamara could have called Keh-For-Keh and have him phone  
17 back.

18 MR HERBST: Right. I understand. I'm finished with that.  
19 Actually, before I go to the 033 questions, your Honour, there's  
20 a couple of others that I would like to ask before we go into  
21 closed session.

22 MR METZGER: [Indiscernible] questions about flashing.

23 MR HERBST:

24 Q. Add afternoon, Mr Kamara?

25 A. Good afternoon.

26 Q. When you spoke on November 30th to Mr Edward Williams,  
27 Pastor Eddie, did you recognise his voice on the phone?

28 A. Yes.

29 Q. When you spoke to Vamboi on the phone, did you recognise

1 his voice?

2 A. Yes.

3 Q. You spoke to - when you spoke to Manga, that is Lansana  
4 Bangura, did you recognise his voice?

5 A. Yes.

6 Q. When you spoke to Nat Conteh, did you recognise his voice?

7 A. Yes.

8 Q. When you spoke to Samuel Kargbo, did you recognise his  
9 voice?

10 A. Yes. My Lord?

11 JUSTICE DOHERTY: Yes, Mr Kamara. Please speak.

12 THE WITNESS: I'm not getting the interpretation. I'm not  
13 getting interpretation.

14 JUSTICE DOHERTY: I understand. I will ask our people here  
15 to check, as the interpreters are here.

16 Mr Herbst, please pause while that is done.

17 Could - Mr Court Officer, if you could ask --

18 THE INTERPRETER: Your Honour, the interpreters are  
19 redialling. Apparently, they were not connected.

20 JUSTICE DOHERTY: Mr Interpreter, if you could let me know  
21 when they are connected, then I will ask both the witness and  
22 counsel to proceed.

23 THE INTERPRETER: I will, your Honour.

24 THE COURT OFFICER: [In Kigali] Madam.

25 JUSTICE DOHERTY: You're speaking to me? Yes.

26 THE COURT OFFICER: [In Kigali] Yes, ma'am. Can we please  
27 ask the translators not to put the phone down, because we might  
28 have difficulty connecting again. But once we've established  
29 connection, they must not put the phone down.



1 JUSTICE DOHERTY: Mr Interpreter, did your colleagues hear  
2 the advice from Kigali.

3 THE INTERPRETER: Yes, we have. But we've not actually  
4 been putting it down since we've been told not to. It just went  
5 off by itself.

6 JUSTICE DOHERTY: I understand. It's something outside the  
7 interpreters' control. So we'll have it rectified, and  
8 Mr Interpreter is going to tell me when it is rectified.

9 THE INTERPRETER: Your Honour, we've now reconnected.

10 JUSTICE DOHERTY: Thank you very much.

11 Mr Herbst, Mr Kamara, the interpreters are now connected.  
12 Please proceed on.

13 MR HERBST:

14 Q. Mr Kamara, before we broke for lunch, you testified that  
15 the calls to the journalists in Freetown were made from the  
16 prison cell phone that we've been talking about throughout. Do  
17 you remember that testimony?

18 A. Yes.

19 Q. What is your understanding as to - if those calls were made  
20 from the prison cell phone, why they searched the rooms?

21 A. Say that again.

22 Q. Why did the prison authorities search the rooms if they  
23 thought the calls to the journalists had been made from the  
24 prison cell phone?

25 A. It was not because of the journalists that they searched.  
26 I can tell you why they searched. Can I tell you why they  
27 searched?

28 Q. Yes. If you want to complete your answer, of course.

29 A. Yes. The reason they searched was --

1 THE INTERPRETER: Your Honour, the line is breaking up. I  
2 can't hear him.

3 JUSTICE DOHERTY: Mr Kamara, please pause. Mr Kamara, can  
4 you repeat your answer again? Because the interpreters' line is  
5 not good.

6 THE WITNESS: I said the reason why we reported was that we  
7 made reports about the way we were being treated. The ill  
8 treatment, that was the title of the report. So that was what  
9 caused the search, because we complained that we were not getting  
10 water in time, we were not getting our supplies in time, we were  
11 not getting good food. That was what caused the search.

12 MR HERBST: This would be a good time to go into the closed  
13 session.

14 JUSTICE DOHERTY: I think I've heard your application for a  
15 closed session, Mr Herbst. You have already indicated to me it  
16 was in relation to TF1-033. Is that still the situation?

17 MR HERBST: It is.

18 JUSTICE DOHERTY: Very well. For the purposes of the  
19 public and those hearing the case, the Court will now go into a  
20 closed session to deal with a particular witness whose identity  
21 should not be revealed for his own security and protection.  
22 People in Court in the public gallery can see but will not hear.

23 Mr Court Officer, please put the Court in closed session -  
24 or what is called private session as well.

25 [Closed session]

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1 [Open session]

2 JUSTICE DOHERTY: Thank you.

3 Mr Herbst, we're now in open session. Please continue with  
4 your questions.

5 MR HERBST: Thank you, your Honour.

6 Q. In or about November or December 2010, Mr Witness, did  
7 Mr Mansaray's name ever come up in a discussion that you had with  
8 Mr Brima?

9 A. No.

10 Q. And during that same time period, did Mr Mansaray's name  
11 ever come up in a discussion that you had with Mr Kanu?

12 A. No.

13 Q. Now, isn't it true that you contacted Mr Bangura in late  
14 2010 to tell him that he would be needed to start looking again  
15 for witnesses for you and Mr Kanu and Mr Brima?

16 A. No.

17 Q. Mr Witness, on 23 April 2011, I came to Mpanga Prison  
18 during my investigation, and I interviewed you in the presence of  
19 Mr Serry-Kamal?

20 MR SERRY-KAMAL: My Lord, again I have to object. My  
21 learned friend cannot give evidence about what he did during his  
22 investigations. That would be giving evidence from the Bar.

23 MR HERBST: I asked a question.

24 JUSTICE DOHERTY: Mr Serry-Kamal, what is the basis of -  
25 what are you saying? Are you saying that he cannot ask this  
26 question?

27 MR SERRY-KAMAL: That is exactly what I'm saying. Because  
28 he was an investigator at the time, and if he gives any  
29 information about being an investigator, he will be giving

1 evidence from the Bar and that is not allowed.

2 MR HERBST: Well, your Honour --

3 JUSTICE DOHERTY: Mr Herbst, your response, please.

4 MR SERRY-KAMAL: The evidence [i ndi scerni bl e] l et me  
5 fi ni sh, please.

6 MR HERBST: Mr Serry-Kamal, I've been asked for a response  
7 by the Court.

8 MR SERRY-KAMAL: [I ndi scerni bl e].

9 MR HERBST: My response, your Honour, is that I think it's  
10 perfectly appropriate to ask the witness about answers that he  
11 gave to me during my investigation in the presence of his counsel  
12 that are inconsistent with his testimony here. The only way I  
13 can do that is by laying the foundation and asking him, which I  
14 attempted to do, if on a certain date I interviewed him in the  
15 presence of his attorney, which was my first question.

16 JUSTICE DOHERTY: I consider that in cross-examination  
17 counsel is entitled to put a prior inconsistent statement, and if  
18 that prior inconsistent statement was oral, then it can be put  
19 just as much as a prior written alleged inconsistent statement  
20 can be put. I allow the question.

21 MR METZGER: May it please your Honour, at some point in  
22 time I would like to make the same objection in relation to  
23 Mr Kanu, and I want to have that objection heard by reference to  
24 the code of conduct for counsel and --

25 JUSTICE DOHERTY: Mr Metzger, indeed, when your turn comes  
26 and if the question comes up in the course of Mr Kanu's evidence,  
27 then I will deal with it. But at the moment, Mr Kanu has not  
28 been mentioned, and therefore a theoretical objection would not  
29 be appropriate. This was put on the basis of evidence from the

1 Bar table. I've ruled upon it.

2 Mr Herbst, put the question.

3 MR HERBST: Thank you, your Honour.

4 Q. Mr Kamara, is it true that on 23rd of April 2011, I came to  
5 Mpanga Prison with Mr Serry-Kamal and interviewed you?

6 A. I'm only seeing you here. I can't recall.

7 Q. I didn't hear the translation other than "I don't recall."  
8 There was something before that. There was something before that  
9 which I didn't hear, your Honour.

10 JUSTICE DOHERTY: I heard Mr Interpreter say, "I am only  
11 seeing you here. I do not recall." That is what I heard.

12 MR HERBST: I thank the Court.

13 Q. Mr Witness, is it your testimony that you do not remember  
14 talking to me in the presence of your attorney Mr Serry-Kamal in  
15 April 2011 at the prison?

16 A. Except if you identify yourself now that you were the one I  
17 spoke to. But I do not recall.

18 Q. If you don't remember me, do you remember Mr Serry-Kamal  
19 coming with an investigator in April 2011?

20 A. Yes, a white man.

21 Q. Fair enough. And you talked to the white man in the  
22 presence of Mr Serry-Kamal?

23 A. Yes.

24 MR HERBST: I don't think he heard me.

25 JUSTICE DOHERTY: Mr Herbst, did you hear the answer?

26 MR HERBST: I did, your Honour. Thank you.

27 Q. And, Mr Witness, you were asked questions by the white man  
28 in the presence of Mr Serry-Kamal and you answered them; is that  
29 right?

1 A. Yes.

2 Q. And prior to being asked any questions by that gentleman,  
3 he advised you of your rights; isn't that right?

4 MR SERRY-KAMAL: My Lord, again this is evidence now -  
5 evidence from the bar again. I'm objecting.

6 MR HERBST: Your Honour, this was a question. It is  
7 cross-examination, and this is part of the foundation that I  
8 believe needs to be laid before I can elicit answers that the  
9 witness gave to the investigator during that interview.

10 JUSTICE DOHERTY: This is not evidence. This is a question  
11 that is being put --

12 MR METZGER: Can I just state --

13 JUSTICE DOHERTY: -- being put in cross-examination,  
14 putting a choice of answer that could be could be elicited from  
15 the witness, and therefore, it can be put in its present form.

16 MR METZGER: Your Honour, I wish to make an objection at  
17 this stage.

18 JUSTICE DOHERTY: Mr Metzger, how can you make an objection  
19 when your client has not been mentioned?

20 MR METZGER: Your Honour, it seems to me that the strict  
21 rule of not being able to make an objection when one's client is  
22 not actually questioned cannot possibly apply in a case where  
23 fundamental material is sought to be put before the Court in a  
24 manner which, in my respectful submission, could lead to bringing  
25 the Court into disrepute.

26 I argue it in this way: With reference to the code of  
27 conduct for counsel, it seems to me under Article 12 counsel  
28 cannot be witness and counsel in the same case, one. Please see  
29 Articles 12A and B.

1           Secondly, under Article 15 there should not arise a  
2           situation where counsel is placed in conflict. That is the  
3           potential of the questions that my learned friend is seeking to  
4           ask the witness, because he has referred to himself as counsel  
5           being present. He is asking about a document that was created by  
6           him as counsel. I beg your pardon, as an investigator but who is  
7           now counsel in this case. It can therefore never be used in  
8           evidence when one interprets the Rules, in my respectful  
9           submission, not just literally, but applying the rules of  
10          interpretation such as *aestim generis* and even just looking at  
11          fairness in general.

12          Finally in relation to this second point of conflict, it  
13          places Mr Serry-Kamal as a potential witness in this case if  
14          there is any dispute between the parties, because he attended at  
15          that time in a different capacity looking after the interests of  
16          all present at Mpanga Prison that were being interviewed, and it  
17          may place Mr Serry-Kamal where he falls foul of Article 15B,  
18          respectfully through no fault of his own.

19          I also wanted to refer your Honour to Article 25, in  
20          particular Article 25B, and I read, "Prosecution counsel shall  
21          not act in connection with any matter in which Prosecution  
22          counsel participated as an official or staff member of the  
23          Special Court, or in any other capacity before the Special Court,  
24          unless the Registrar approves after consultation with the  
25          parties."

26          Respectfully, in this particular case whilst Prosecution  
27          counsel was entitled to carry out his investigation, and, indeed,  
28          make recommendations to the Trial Chamber which are generally  
29          done on a confidential basis, it must infringe the principles of



1 - the fair trial principles that that same person can act as a  
2 lawyer in a matter which he is interested as a witness.  
3 Therefore, for him to be able to put questions based on his  
4 notes, based on his thinking, to a witness whilst he is counsel  
5 in the case, is not only, in my respectful submission, inherently  
6 unfair and offends against these codes, but it places, in my  
7 respectful submission, the defendants concerned in an adverse  
8 position which is more than just the adversity brought about by  
9 bringing charges against people.

10 Those are my submissions.

11 MR HERBST: Your Honour --

12 JUSTICE DOHERTY: I'm just having the Articles in front of  
13 me before I invite your response, Mr Herbst. Yes, I have those  
14 articles in front of me now of the Code of Conduct referred to.  
15 Please let me have your response.

16 MR HERBST: And I do too for the first time, and I was  
17 looking for them while Mr Metzger was speaking. I couldn't find  
18 [indiscernible]. Could I ask - I've heard it mentioned Article  
19 15, but I lost track of the other articles he was talking about.

20 JUSTICE DOHERTY: Those I noted were 12A, 15, and 25B.  
21 Those are what I noted.

22 MR METZGER: In addition, Article 12B.

23 MR HERBST: Your Honour, (1), I don't intend to act as  
24 counsel - as a witness in this case; I just intend to act as  
25 counsel and putting questions to the witness. So that's the  
26 first clarification.

27 Secondly, in our practice it's appropriate, if one has a  
28 good faith basis, to put a question to the witness and to hear  
29 the witness's answer.

1           Let me say as a précis, as a preamble, that what happened  
2 in terms of the investigation was that Mr Serry-Kamal and I came  
3 to the prison and we interviewed individually the three gentlemen  
4 there, Mr Brima, Mr Kamara, and Mr Kanu.

5           As part of my Rule 66 disclosures, early on in the case  
6 back in - more than a year ago, in July 2011 I filed the Rule 66  
7 disclosures and all of the statements that I had elicited from  
8 each individual listed in those confidential reports. So there's  
9 no secret as to what I was going to intend to elicit and the  
10 substance of it.

11           So my intention had been to put the question to the witness  
12 and hear the answer. I was not going to call myself as a  
13 witness, and I was not going to call Mr Serry-Kamal as a witness.  
14 I was just going to hear the answer. Now, that takes care of  
15 Article 12A and B. Let me just see.

16           I don't see anything in conflict with that procedure in  
17 Article 15.

18           I'm looking now at Article 25 for the first time in recent  
19 months, and I've read A, which is not applicable. I'm now  
20 looking at B.

21           Article 25, in my respectful submission, couldn't possibly  
22 prevent my putting these questions to the witness because I was  
23 authorised - I was appointed pursuant to order of the Court by  
24 the Registrar as independent counsel when I was conducting my  
25 investigation, and I was reappointed to prosecute the case, I  
26 believe, if my recollection serves me correctly - I don't have  
27 the paperwork with me - but I believe that was also done by the  
28 Registrar of the Court. So I think I'm empowered to act in  
29 connection with this matter as independent counsel, both in my

1 prior investigative capacity and my current prosecutive capacity,  
2 and I see nothing in Article 25 that would prohibit my putting  
3 questions to the witness. But again I will abide by whatever  
4 your Honour rules on this.

5 JUSTICE DOHERTY: I'm not sure if anybody in Kigali is  
6 still speaking. I see Mr Herbst's light is on, but we're not  
7 hearing anything. Can you hear us? It would appear the line is  
8 down.

9 Mr Court Officer, could you please check the situation.

10 THE COURT OFFICER: Your Honour, I'm advised that there is  
11 a power cut in Kigali, so the lines are down.

12 JUSTICE DOHERTY: Well, there's nothing we can do until  
13 that is rectified in Kigali. Please advise when that is done.

14 MR HERBST: Your Honour, can you hear me?

15 JUSTICE DOHERTY: I can hear you now, Mr Herbst. You  
16 stopped transmitting at one point.

17 MR HERBST: [Indiscernible].

18 JUSTICE DOHERTY: So if you had made a further submission  
19 after the words that you're empowered to act as independent  
20 counsel - so you submitted there was nothing therefore to  
21 prohibit you putting the questions - if there was something after  
22 that, I did not hear it. So please repeat it.

23 MR HERBST: Yes, your Honour, I think everything except my  
24 last sentence was heard. What I said was I don't see anything in  
25 the provisions of the Code that counsel cited that would prohibit  
26 me from putting these questions to the witness, but I will of  
27 course, as in all matters, abide by whatever Your Honour thinks  
28 is most appropriate and just.

29 JUSTICE DOHERTY: Thank you. I'll consider this.

1 MR HERBST: Your Honour, I wonder if I could just say one  
2 additional quick thing to alert your Honour to where in my Rule  
3 66 disclosures the inconsistent statement is reflected. It's on  
4 page 26 of those disclosures, just in case your Honour thought  
5 that relevant to your Honour's consideration of the legal issue.

6 JUSTICE DOHERTY: I won't, as a matter of principle, read  
7 that until I make a ruling. I don't think it would be  
8 appropriate for me to do so. But I have noted - and I'm sure  
9 other counsel have noted - the information you've given us.

10 MR HERBST: Thank you.

11 MR SERRY-KAMAL: Your Honour, if I may also say so, also  
12 the requirement of proof of the previous inconsistent statement.

13 JUSTICE DOHERTY: This is a ruling on an objection made by  
14 counsel for Kanu to a line of cross-examination of the accused  
15 Kamara, who is not his client and whose locus standi, in my view,  
16 is a consideration.

17 In consideration these grounds for this objection, I have  
18 taken account of the provisions of Rule 89B of the Rules of  
19 Procedure and Evidence which permit a Trial Chamber, where there  
20 are not otherwise Rules provided for, to apply rules of evidence  
21 which best favour a fair determination of the matter before it  
22 and are consonant with the spirit of the statute and the general  
23 principles of law.

24 It is an accepted procedure in trials to put an alleged  
25 prior inconsistent statement to test the memory and/or the  
26 credibility of a witness. There have been such examples relating  
27 to Prosecution witnesses in this very case.

28 This objection appears to raise a novel point; that is,  
29 that the code of conduct precludes a prosecuting counsel who has

1 also investigated a matter of an alleged contempt as directed by  
2 the Registrar under 77C(iii) of the Rules from also being a  
3 Prosecutor.

4 Rule 77C(iii) clearly envisages an investigating counsel  
5 also being prosecuting counsel, that they are the same person.  
6 This is because Rule 77C provides that if there is reason to  
7 believe that a person may be in contempt of the Special Court,  
8 the Trial Chamber will direct the Registrar to appoint "an  
9 experienced independent counsel" to investigate a matter and  
10 report back to the Chamber. Then the Chamber, if it there are  
11 grounds to proceed against a person, may issue an order in lieu  
12 of an indictment and direct the independent counsel to prosecute;  
13 in other words, the same person. It does not say "a different  
14 counsel". It is intended to be the same counsel.

15 Article 12 of the Code of Conduct does not specify that a  
16 counsel cannot act in a certain situation. It precludes him from  
17 acting "if there is a substantial probability" that it will be  
18 necessary for him to be a witness.

19 Whether an inconsistency between a statement given by a  
20 potential witness or a potential accused and evidence under oath  
21 will arise in the course of a trial is a matter of speculation.  
22 It is not a substantial probability that could cause a counsel to  
23 ask himself if he should be disbarred ab initio.

24 Article 12B does not arise in this case as a light of  
25 independent counsel's undertaking not to call Mr Serry-Kamal, and  
26 I do not therefore need to comment on it further.

27 Article 15 of the Code refers to Defence counsel. Article  
28 15A directs that Defence counsel must take certain actions.  
29 Article 15B also directs Defence counsel, as does article 15C, D

1 and E. It refers only to Defence counsel. It does not refer to  
2 prosecuting counsel.

3 As I've already noted, Rule 77 of the Rules intend the  
4 investigating counsel and the prosecuting counsel in a contempt  
5 case to be the same person. He is not a Defence counsel.

6 Further, as the Rules, including Rule 77, existed some  
7 years before the Code of Conduct was drafted and approved, the  
8 drafters were aware of the provisions of Rule 77. This may have  
9 been one consideration that limited Article 15 to the Defence  
10 only. We cannot know, but that Rule 77 takes precedence over a  
11 Code Of Conduct applying to Defence counsel only.

12 I am not entirely sure the grounds of the Rule 25B  
13 objection, as counsel has said that Prosecution counsel are  
14 entitled to carry out and make recommendations on a confidential  
15 basis and it would offend fair trial principles under Rule 25B.

16 If in fact counsel is submitting is that there should have  
17 been an objection to the appointment of the independent counsel  
18 by the Registrar for some procedural failure under Rule 25B, then  
19 that objection should have been raised at the date of the  
20 appointment, which is more than a year ago. And in any event, as  
21 I have already noted, the limitation is put on the Registrar as  
22 to who she can appoint under Rule 77C(iii).

23 I note the submissions that there has been full disclosure  
24 of the statements that were made to the prosecuting independent  
25 counsel in his capacity as investigator, and therefore there is  
26 no grounds to allege an ambush or surprise in this case.

27 I therefore overrule the objections under the Code Of  
28 Conduct. I note Mr Serry-Kamal has already made submissions  
29 concerning the proof of a previous inconsistent statement. As I

1 have noted, there has been a full disclosure, and if he is saying  
2 that there is no proof, proof is now being elicited by way of  
3 cross-examination. At this point of time it is disclosure that  
4 was required.

5 In the circumstances, particularly the unique circumstances  
6 of Rule 77C(iii), I allow this line of cross-examination. Please  
7 proceed.

8 MR HERBST:

9 Q. Mr Witness, prior to the gentleman's putting questions to  
10 you, he advised you of your rights; isn't that right?

11 A. I do not recall any more. It's been a long time.

12 JUSTICE DOHERTY: Proceed, Mr Herbst. If you asked a  
13 question, I'm afraid we did not hear it. It may be that there's  
14 a break. Can you hear me speaking? It would appear that Kigali  
15 - we've lost Kigali.

16 Mr Court Officer, can you assist, please.

17 THE COURT OFFICER: The Court Manager on the other side  
18 advises that there is a thunderstorm going on in Kigali at the  
19 moment, so that explains the frequent power cuts they are  
20 experiencing.

21 JUSTICE DOHERTY: This is another power cut, is it?

22 THE COURT OFFICER: Yes, your Honour. She tells me that  
23 the power is back on and the system is rebooting itself, so it  
24 will take a few minutes.

25 I've been considering the time and the entitlement of the  
26 parties here to have their break. It is roughly - very roughly  
27 an hour and 25 minutes since we resumed, so it would appear to me  
28 to be a good time to take the Freetown break of three quarters of  
29 an hour.

1           So we will adjourn the Court until 2.15 our time, 4.15  
2 Kigali time, and I will ask Mr Court Officer to call Kigali and  
3 let them know. It would also give our technicians some realistic  
4 time to try and reconnect.

5           Please adjourn Court to 2.15, and please advise counsel and  
6 the parties in Freetown.

7                                 [The Court adjourned at 1.35 p.m.]

8                                 [Upon resuming at 2:15 p.m.]

9           JUSTICE DOHERTY: I just want to ensure that the link is  
10 back with Kigali. I can see you. Can you hear me?

11          MR HERBST: Yes, we can, your Honour.

12          JUSTICE DOHERTY: Thank you.

13          MR HERBST: I'd like to inquire whether the witness's last  
14 answer was heard before the power went out.

15          JUSTICE DOHERTY: The answer in question that I've recorded  
16 in my notes are that you asked the witness if he'd been advised  
17 of his rights and he answered, "I do not recall, it's been a long  
18 time." That's my note of the answer, the last answer I heard.

19          MR HERBST: All right. I think that's right. So shall I  
20 continue from there then, your Honour?

21          JUSTICE DOHERTY: Please do.

22          MR HERBST:

23 Q.       Mr witness, do you remember the gentleman in the presence  
24 of Mr Serry-Kamal telling you that you did not have to answer any  
25 questions?

26 A.       Say that again.

27 Q.       Did the gentleman tell you that you had a right not to  
28 answer his questions?

29 A.       What gentleman?



1 Q. The white gentleman who you said was with Mr Kamara in  
2 April of --

3 JUSTICE DOHERTY: With Mr Serry-Kamal.

4 MR HERBST:

5 Q. With Mr Serry-Kamal.

6 A. Yes.

7 Q. All right. But you did agree to answer questions, right?

8 A. Yes, I answered some questions.

9 Q. And didn't you tell the gentleman that you contacted Bomb  
10 Blast, who had helped the Rwanda convicts collect the Defence  
11 witnesses for the AFRC trial, to tell Bomb Blast that he would be  
12 needed to start looking again for witnesses for you?

13 A. There is a question that required that answer. Maybe  
14 you've forgotten, but I know what I said.

15 Q. I'm asking you whether you told that white gentleman that  
16 you contacted Bomb Blast to tell him that he would be needed to  
17 start looking again for witnesses for you.

18 A. I said when the Registrar told us about a review, if we  
19 were to do those things I may have to contact Bomb Blast to talk  
20 to Alhaji Bio, Savage, Leather Boot. These are the men that I  
21 call to you. That's I would tell Bomb Blast if we are ready to  
22 do that.

23 Q. And didn't you tell the white gentleman with Mr Serry-Kamal  
24 that you in fact did contact Bomb Blast to tell him that he would  
25 be needed to start looking again for witnesses for you.

26 A. I did not tell him to start looking for witnesses for us.  
27 I did not tell him that. I said when the time comes, if we were  
28 to have new witnesses I would talk to Bomb Blast, because he's my  
29 own brother that I can rely on.

1 Q. And did you call Bomb Blast to tell him that he would be  
2 needed or might be needed to start looking for witnesses?

3 A. It was not necessary for me to call him any more because we  
4 hadn't any intention --

5 JUSTICE DOHERTY: Mr Kamara, that does not answer the  
6 question. Answer the question as put.

7 THE WITNESS: How can I answer, my Lord?

8 JUSTICE DOHERTY: You were asked did you contact him. The  
9 answer is either yes or no.

10 THE WITNESS: I did not contact him.

11 MR HERBST:

12 Q. You never spoke to Bomb Blast to tell him that you would  
13 call him at a later time to have him get witnesses for you?

14 A. I have told you no.

15 Q. But my question to you is didn't you tell the white  
16 gentleman during the interview in April of 2011 that you did  
17 contact Bomb Blast and that you placed the call to Bomb Blast's  
18 cell phone from the prisoner's cell phone in the prison in  
19 Rwanda?

20 A. Say that again.

21 Q. Isn't it true that - withdrawn. Would you agree with me  
22 that you told the gentleman during the April 2011 interview that  
23 you did call Bomb Blast to tell him that he would be needed at a  
24 later time, perhaps, to start looking for witnesses and that you  
25 called him on Bomb Blast's cell phone from the prison cell phone.

26 A. No, I did not tell you that. I told you that when the time  
27 comes if we were going to do that, I'll contact Bomb Blast.

28 Q. Okay. When did you learn that an investigator was going to  
29 come see you in the Rwanda prison?

1 A. On that date that I saw you.

2 MR HERBST: Sorry, I didn't hear the interpreter, your  
3 Honour.

4 JUSTICE DOHERTY: Mr Interpreter, could you repeat the  
5 answer, please.

6 THE WITNESS: On that date that I saw you --

7 MR HERBST:

8 Q. Are you saying that you didn't know before April 2011 that  
9 an investigator was going to come along with your lawyer,  
10 Mr Serry-Kamal?

11 A. [Indiscernible] told us that they were investigating the  
12 case, so I was aware that the investigator - an investigator was  
13 coming.

14 Q. And when were you told that an investigator was going to  
15 come?

16 MR SERRY-KAMAL: Just a minute, sir, I don't believe the  
17 interpretation was correct.

18 MR HERBST: I don't know what to say to that, your Honour.

19 THE WITNESS: I am repeating it.

20 JUSTICE DOHERTY: Repeat it, but the transcript is the  
21 transcript, and the official interpretation is the official  
22 interpretation.

23 But if you want to repeat the answer, Mr Kamara, repeat it,  
24 and I will listen to see if it's the same.

25 THE WITNESS: But your Honour, what I'm saying is what the  
26 interpreter should interpret. Repeat your answer.

27 JUSTICE DOHERTY: That's why I'm asking you to say it.

28 THE WITNESS: I said I was expecting an investigator to  
29 come. I was not expecting a white man. I was thinking that it

1 would be a Special Court investigator.

2 MR HERBST:

3 Q. How long before the white man came on April 23, 2011, did  
4 you learn that an investigator would be coming or might be  
5 coming?

6 A. There was a problem between us and the Registrar because  
7 she just wanted to send the investigator to come without our  
8 lawyer. Then when we say we're not going to talk to the  
9 investigator if our lawyer was not present, that is why they  
10 brought Pa Serry. That was about a week before you came.

11 Q. So a week before I came you ironed it out, and you knew  
12 that your lawyer was going to come also?

13 A. Yes, because we requested that we wouldn't talk to you --

14 THE INTERPRETER: Your Honour, can the witness repeat the  
15 answer because the line was breaking up. I did not get the last  
16 bit.

17 JUSTICE DOHERTY: Very well.

18 Mr Kamara, the interpreter didn't hear you clearly because  
19 of the line, so can you repeat the last part of your answer  
20 concerning the week before.

21 THE WITNESS: I said we knew that you were coming a week  
22 before you came.

23 MR HERBST:

24 Q. You didn't know earlier than a week - withdrawn. The first  
25 time that anyone mentioned to you that an investigator would  
26 come, that was only a week before I came?

27 A. No, I did not say so.

28 Q. When is the - I want to know when you first were told that  
29 an investigator would come. The first time you learned that an

1 investigator would come was how long before I came?

2 A. I can't tell you a definite date. I can't recall the  
3 dates.

4 Q. I put it to you, Mr Kamara, that in March of 2011 you  
5 learned that an independent counsel or an investigator would  
6 come, and you called Mr Kargbo and you told him that if he was  
7 questioned about 334 recanting his statement --

8 MR SERRY-KAMAL: May it please your Honour, there are so  
9 many questions rolled up in that one question.

10 MR HERBST: I hadn't even finished. I'll break it down,  
11 Judge.

12 JUSTICE DOHERTY: Very well.

13 MR HERBST:

14 Q. I put it to you that in March of 2011 you learned that an  
15 independent investigator would be coming to investigate the  
16 allegation that you had committed contempt. Is that true?

17 A. It's a lie. It's a lie. You're telling lies.

18 Q. And I further put it to you that you called Samuel Kargbo  
19 and you told him that if he was questioned about 334 recanting  
20 his testimony, he should deny anything about it.

21 A. You're telling lies. The transcript can tell.

22 Q. And I further put it to you that you told Sammy Kargbo that  
23 even if he were questioned about when you and he had even talked  
24 on the phone, that he should deny knowing anything about it.

25 A. You have an MTN transcript.

26 THE INTERPRETER: Your Honour, the line is breaking up, I  
27 can't hear him clearly.

28 JUSTICE DOHERTY: Mr Kamara, there is a problem with the  
29 line. Repeat your answer, please. You said something about a

1 MTN transcript. Start again from the beginning.

2 THE WITNESS: I said you have the MTN transcript from 2010.  
3 This is nothing there to show that I called him before you came.  
4 It's a lie. You are lying.

5 MR HERBST: Your Honour, I have no further questions of the  
6 witness.

7 JUSTICE DOHERTY: Thank you. Mr Nicol-Wilson, questions of  
8 this witness?

9 MR NICOL-WILSON: I have no questions of this witness.

10 JUSTICE DOHERTY: Thank you, Mr Nicol-Wilson.  
11 Chief Taku.

12 CHIEF TAKU: Your Honour, I have just a few questions that  
13 concern the statement he made about the credibility of Mr Kargbo.

14 JUSTICE DOHERTY: Certainly. Please proceed with your  
15 questions.

16 MR SERRY-KAMAL: May it please Your Lordship --

17 JUSTICE DOHERTY: Just pause one moment. I hear  
18 Mr Serry-Kamal's voice on the line.

19 Mr Serry-Kamal, I think you're addressing me, are you? I'm  
20 not sure.

21 MR Serry-Kamal: Yes, your Honour, I'm addressing you. My  
22 objection to Mr Taku taking any further part in this proceeding  
23 is that his client has pleaded guilty. He's no longer an  
24 accused. He has pleaded guilty, and all that remains to be done  
25 is for him to be sentenced, and he has also testified against the  
26 accused. I do not think that he has any locus standi with  
27 respect to continue even in general criminal legal practice apart  
28 from even international practice - apart from the provisions in  
29 the statute of the Court to mention a fair trial. His client has

1 pleaded guilty. That is the end; he's no longer an accused.  
2 He's a convicted prisoner.

3 JUSTICE DOHERTY: Mr Serry-Kamal, could you refer me to  
4 either a rule or a jurisprudence in relation to this submission,  
5 please.

6 MR SERRY-KAMAL: Just one moment, your Honour. [Microphone  
7 not activated].

8 JUSTICE DOHERTY: Mr Serry-Kamal, I haven't heard your  
9 response - sorry, your answer.

10 MR SERRY-KAMAL: What I said was that the rule that comes  
11 immediately to mind is Rule 62 of the Rules Of Procedure and  
12 evidence. 62B is what I was referring to.

13 JUSTICE DOHERTY: So you're referring me to Rule 62B. I  
14 will therefore ask --

15 MR SERRY-KAMAL: And also Rule 100. It deals with the  
16 status of a convicted person. Rule 100 and 102, those two rules.

17 THE COURT OFFICER: [In Kigali] Madam, Mr Kamara would  
18 like to be excused to the bathroom.

19 JUSTICE DOHERTY: Please have Mr Kamara escorted.  
20 Chief Taku, your response to this objection, please.

21 CHIEF TAKU: Your Honour, I regrettably wish to reply as  
22 follows: With due respect, the objections of my learned  
23 colleague are misplaced. I intended to cross-examine for a very  
24 limited purpose and that limited purpose concerns an issue of  
25 credibility of Mr Kargbo.

26 In your ruling on the scheduled order for the conduct of  
27 the trial dated 1st of June 2012, in paragraph 8, the Court  
28 decided that at the sentencing of Mr Kargbo you'll consider any  
29 material circumstances or [indiscernible] circumstances. In the

1 conduct of this trial, learned counsel for Mr Bazy decided to  
2 expand the scope of the trial according to the procedures issues  
3 that were not strictly within the remit of the content  
4 proceedings here, impugning the integrity and the conduct of  
5 Mr Kargbo on issues we otherwise - and I say this with utmost  
6 respect if you look at the proceedings of the 21st and 22nd of  
7 June when I was away on permission, and the answers given by  
8 Mr Kargbo, which if I were here were objected because Mr Kargbo  
9 addresses that these allegations, the learned counsel of Mr Bazy  
10 here was one of the counsel that defended [i ndiscernible]. In  
11 other words, they brought information about the [i ndiscernible]  
12 in which he might have represented Mr Kargbo from the answer he  
13 gave to the Court here into these proceedings. And it is  
14 legitimate that in the course of considering the demeanor and  
15 prior conduct of Mr Kargbo, your Honour will look at the entire  
16 record before you. Except my colleague next undertaking that  
17 that material should not be used, must not be considered, I think  
18 now that I'm back here, I should be entitled to put questions in  
19 that regard as far as Mr Kargbo is concerned. You remember that  
20 they tend to say that he was involved in some criminal conduct,  
21 he was detained at Pademba Road, and Mr Serry-Kamal put these  
22 questions to him. It had nothing to do with this proceeding  
23 whatsoever. It had nothing to do with the content proceedings as  
24 such, but introduced, he widened the scope of these proceedings.  
25 Quite a number of things that ought ordinarily not to be in these  
26 proceedings, but they have deliberately put them there. And I  
27 think except they, themselves, will be [i ndiscernible] know which  
28 shall be attached to them. I think I'm entitled, your Honour, in  
29 all fairness, for the limited purpose of the material that would



1 be available for the Court to consider during sentencing, either  
2 in mitigation or [indiscernible] of sentence to inquire into  
3 those issues.

4 JUSTICE DOHERTY: Thank you.

5 MR HERBST: Your Honour, I wonder if I may be heard briefly  
6 on this. I'm at your Honour's discretion.

7 MR NICOL-WILSON: I also would like to respond to --

8 JUSTICE DOHERTY: I will hear you, Mr Herbst.

9 MR HERBST: Your Honour, I don't know how in the ordinary  
10 course when four accused are indicted together and one pleads  
11 guilty, whether generally the accused who pleaded guilty  
12 participates in the trial thereafter or not. I suspect that the  
13 procedure is different in different jurisdiction, national  
14 jurisdictions. I know that in my own, generally, once a guilty  
15 plea is made, the accused does not sit at the defence table with  
16 the co-indictees. However, in this trial, the accused who pled  
17 guilty, Mr Kargbo, has sat and has participated, and it seems to  
18 me that this objection is untimely. It comes a little too late.  
19 That the die, in effect, has been cast and that Mr Kargbo's  
20 defence counsel, who obviously has an interest in the facts as  
21 they are presented, and who at sentencing would not have another  
22 opportunity to question Mr Kamara, obviously has an interest in  
23 asking questions. And if the questions are limited in number, it  
24 seems to me that at this point it's too late for Mr Serry-Kamal  
25 to object.

26 Other than that, I can't give the Court much guidance  
27 because the Court and everybody here knows that my experience in  
28 the international criminal tribunals before this is limited.  
29 This is my maiden voyage, and I've enjoyed it and learned a lot.

1 But it just seems to me that in the current status where we are  
2 it's a little late.

3 JUSTICE DOHERTY: Thank you. Yes. Mr Serry-Kamal, your  
4 reply, on points of law.

5 MR SERRY-KAMAL: The points of law I wish to raise is that  
6 my learned friend has not assisted the Court to give us a legal  
7 basis --

8 JUSTICE DOHERTY: Which of your learned colleagues are you  
9 referring to? Two have spoken, Mr Serry-Kamal.

10 MR SERRY-KAMAL: The objection was made to Chief Taku,  
11 Charles Taku. He has not told us on what basis he's seeking to  
12 address the Court. Because the Rules, as they exist, Rule 62,  
13 Rule 100, and 102 only talk about sentencing procedure. He only  
14 has local standing when it comes to sentencing his client. He  
15 has no more - even in the local Court, even in our courts here,  
16 the procedure is that when he has pleaded guilty, he takes no  
17 further part in the proceedings. Normally, he would be sentenced  
18 immediately. He could give evidence on behalf of the  
19 prosecution, as he has done in this case. But he takes no  
20 further part in the other proceedings because he's a  
21 [i ndi scerni ble]. And that's what these rules envisage. This is  
22 exactly what these rules envisage. Rule 100 sets out the  
23 sentencing procedure, and Rule 102 talks about the status of a  
24 convicted person. And nowhere in 102 does it say he has the  
25 right to cross-examine any witness. If the rules do not say so,  
26 then I don't think he ought to be given [i ndi scerni ble] he has  
27 any local standing to even say anything, other than the  
28 sentencing of his client. And this is not the sentencing of his  
29 client.

1 MR METZGER: Your Honour, for the record, may I support  
2 Mr Serry-Kamal's application.

3 MR HERBST: The only additional rule I wish to state is the  
4 rules are silent on this matter. This appears to not be covered.  
5 I looked at the rules that are cited, but I didn't see the  
6 question answered one way or the other.

7 JUSTICE DOHERTY: I do not find any help in the Rules cited  
8 that gives a clear indication or answer to this objection and  
9 those rules that deal with the status or rights of a convicted  
10 person to cross-examine a witness.

11 I recall the line of questioning put to Kargbo concerning  
12 prior activities. I do not have the transcript before me, but I  
13 do recall. There was questions arising about the West Side Boys  
14 which appeared to me - and I'm definitely make no ruling on this  
15 - to be directed to Kargbo's credibility. This has the potential  
16 of being evidence against him that will be taken into account  
17 when weighing up matters at mitigation, both before and against  
18 him.

19 I look at the provisions of the statute, Article 17E, which  
20 permits a person to obtain and examine witnesses against him and  
21 to obtain the attendance and examination of witnesses on his own  
22 behalf in the same condition as witnesses against him; in other  
23 words, witnesses against him can be examined.

24 A question of his credibility, if that's what it is, and  
25 his prior conduct, if that's what it is, are matters that do go  
26 against him, and therefore I think he should have the right to  
27 question on that extremely limited aspect - that aspect only of  
28 the evidence. So on that limited aspect, I will allow questions  
29 on behalf of the convicted person Kargbo.

1           Before you start, Chief Taku, I'm just looking logistically  
2 at the time. As I understand, Mr Kamara wishes to speak to his  
3 counsel before the day ends. So I'd just ask Mr Metzger will he  
4 be asking questions of the witness. I just have to bear in mind  
5 when we can release him.

6           Mr Metzger?

7           MR METZGER: Your Honour, I was intending to ask the  
8 witness a few questions which I don't think will be contentious,  
9 but I must consider my position if I am to hold the fort for  
10 Mr Serry-Kamal as we discussed in another session. I would  
11 obviously much prefer to have that out of the way whilst  
12 Mr Serry-Kamal is there to make sure that the consent remains  
13 [overlapping speakers].

14          JUSTICE DOHERTY: I understand.

15          Well, Chief Taku, just for matters of our logistics, I'll  
16 have Mr Metzger put his questions first, because he will be  
17 retaining a watching brief on behalf of the accused Kamara. So  
18 if you could defer for that, and I will then proceed with yours.

19          CHIEF TAKU: Thank you, your Honour.

20          JUSTICE DOHERTY: Mr Metzger, I was going to say you go  
21 first. But you proceed on now, because I want to watch this time  
22 to allow Mr Kamara to consult with his counsel.

23          MR METZGER: I'm grateful, your Honour.

24                    CROSS-EXAMINATION BY MR METZGER:

25 Q.       Mr Kamara, first question, please: In relation to the  
26 interview that you'd told us about with the investigator who  
27 came, was that conducted in English?

28 A.       Yes.

29          THE INTERPRETER: Your Honour, the line is breaking up. I

1 can't get his answer completely.

2 JUSTICE DOHERTY: Mr Kamara, please repeat your answer for  
3 the interpreter, who didn't hear it all because of the line.

4 THE WITNESS: It was in English that it was conducted, and  
5 I told him that we should do it in Krio. I told him - he said he  
6 hasn't got a Krio interpreter, so it was English. We managed in  
7 English.

8 MR METZGER:

9 Q. Thank you, Mr Kamara. Do you think, Mr Kamara, that there  
10 was scope for misunderstanding in the course of that interview?

11 A. Yes, because the way the man was talking, you do not  
12 understand him well. You will see that I was asking him over and  
13 over to repeat.

14 THE INTERPRETER: Your Honour, the line is breaking. I  
15 don't know if he's still asking the question.

16 JUSTICE DOHERTY: Mr Kamara, did you finish your answer?

17 MR METZGER: [Indistinct].

18 JUSTICE DOHERTY: Mr Metzger acknowledges that he'd  
19 finished.

20 Mr Metzger, proceed.

21 MR METZGER: Thank you, your Honour.

22 Q. Second question, please: When you talk about air time for  
23 making calls, does that mean that you are provided with a card or  
24 some other voucher with which you can use to make MTN calls from  
25 the prison?

26 A. We have one SIM card. That is what all of us use. The air  
27 time - it's the number air time that you scratch, and the officer  
28 in charge would enter it.

29 Q. [Microphone not activated].

1 JUSTICE DOHERTY: Mr Metzger, I didn't hear your question  
2 clearly. Please repeat it more loudly.

3 MR METZGER: Indeed, your Honour.

4 Q. Where do you get the air time from or the card that you  
5 scratch?

6 A. It is the officers who have the card. We don't scratch it;  
7 they scratch it. They would scratch it and enter it into the  
8 phone.

9 Q. Thank you. Now, when you say in relation to 30 November  
10 that you called Mr Kargbo's number only once - at one stage you  
11 said that - what do you actually mean in relation to the three  
12 numbers that are on the log - MTN log?

13 MR HERBST: I'm going to be object to the form --

14 THE WITNESS: What I mean --

15 JUSTICE DOHERTY: Mr Kamara. Yes, Mr Herbst, you object?

16 MR HERBST: I'm objecting to the form of the question,  
17 because counsel was suggesting that he was meaning something  
18 other than what he said.

19 MR METZGER: I am entitled to cross-examine the witness,  
20 your Honour, which is what I'm doing.

21 JUSTICE DOHERTY: Yes, he is entitled to cross-examine.  
22 Put the question.

23 MR METZGER: Thank you.

24 Q. Mr Kamara, do you recall the question?

25 A. Yes.

26 Q. You can answer it first, please.

27 A. Yes. What I mean, I called it once and it appeared twice,  
28 and I called him only once. I called him for only a day, and  
29 that day - on that day that I called him, I called him first --

1 THE INTERPRETER: Your Honour, can the witness kindly  
2 repeat his answer so I can get it clearly.

3 JUSTICE DOHERTY: Mr Kamara, please repeat your answer for  
4 Mr Interpreter. You said you called him first. Pick up from  
5 there, please.

6 THE WITNESS: Yes. The reason that the number appeared  
7 three times - when they first gave me the number, I called it.  
8 Then I told him to pass the phone to the person I wanted to talk  
9 to. That's Eddie. Then when I spoke to Eddie, I told Eddie that  
10 the air time was about to finish, so he should pass the phone on  
11 to Manga - to V-Boy. Sorry, V-Boy. When the air time finished,  
12 we put another air time and called him for the last time. Tamba  
13 was on the phone when the air time finally finished.

14 Q. Thank you. Last question, please. Or maybe not the last  
15 question. Simply this: Are you aware of an incident that  
16 occurred in 2000 relating to a vehicle that Mr Kanu was looking  
17 after and the witness Alimamy Bobson Sesay?

18 A. Yes.

19 MR HERBST: Your Honour, beyond the scope on both the  
20 direct and the cross so far.

21 JUSTICE DOHERTY: This is cross-examination. Counsel has  
22 considerable leeway to put matters, even if they did not arise in  
23 chief or in cross-examination by prosecuting counsel.

24 Answer the question. I think the answer was yes.

25 MR METZGER: It was indeed, your Honour.

26 Q. In relation to that incident, Mr Kamara, are you aware that  
27 Alimamy Bobson Sesay was arrested and taken to Pademba Road?

28 A. Yes.

29 Q. And are you aware that that was because he and others had

1 gone and fired some ammunition or shot?

2 A. Yes.

3 Q. Can you confirm that that was all as a result of Mr Bobson  
4 Sesay trying to prevent Mr Kanu from repossessing a motor vehicle  
5 that he was looking after?

6 A. Yes.

7 MR METZGER: Thank you, your Honour, those are the  
8 questions I want to ask. I will, of course, adduce evidence in  
9 due course of the matters that I had [indiscernible].

10 JUSTICE DOHERTY: Thank you.

11 Chief Taku, as I said already, I'm looking at the time.  
12 Because as you are well aware, the persons in Rwanda have to be  
13 taken back. How long will your questions last?

14 CHIEF TAKU: I have about four or five questions. Probably  
15 less. I just want to clarify one thing.

16 JUSTICE DOHERTY: Well, we'll give it a try. I may break  
17 you off because of the situation that Mr Kamara wishes to speak  
18 to Mr Serry-Kamal, so start. I may break you off. Please  
19 proceed.

20 CROSS-EXAMINATION BY CHIEF TAKU:

21 Q. Good afternoon, Mr Bazzy.

22 A. Good afternoon, sir.

23 Q. I want to ask just about two or three questions if  
24 possible, and they concern your relations with Mr Kargbo.

25 Now, in the transcript of 22 August 2012, you were asked by  
26 learned counsel Mr Serry-Kamal this question. Let me read it to  
27 you to refresh your memory. At page 1225, number 3: "Were you  
28 ever close friends with him?" That is, you were asked the  
29 question Were you ever close friends with Mr Kargbo. And you



1 said, "That man is not my friend. That man lives in the east.  
2 We are not on the same level even."

3 What did you mean when you said that you are not in the  
4 same level even with Mr Kargbo?

5 A. What I mean?

6 Q. Yes.

7 A. I said we're not at the same level. I wasn't at the same  
8 level with him.

9 THE INTERPRETER: Your Honour, the line is not very clear.  
10 I can't hear him clearly.

11 JUSTICE DOHERTY: Mr Kamara, please repeat your answer so  
12 the interpreter can hear you clearly.

13 THE WITNESS: I said when I say that he and I were not at  
14 the same level, the rank and institution where the troubles were  
15 were not the same and we were not friends, because he was staying  
16 far away from where I was. So the two of us are not - he and I  
17 are not at the same level in rank. He and I were not at the same  
18 level.

19 CHIEF TAKU:

20 Q. In other words, if I understood you, would you by that mean  
21 that in the Army institution in which you served, he would be  
22 your subordinate. If he were working under you, he would be your  
23 subordinate?

24 A. Yes.

25 Q. And therefore required to respect orders given by you.

26 A. Yes, according to the military work.

27 Q. Now, on that very page - page 1225, your Honour - I learned  
28 counsel said - so go right again from 16 to 25. With your  
29 permission, I'll read it to refresh his memory before I put my

1 question.

2 You said, "That man and I are not on the same level. My  
3 rank does not permit me to be friends with that kind of man. The  
4 level at which I was, that man couldn't have been a friend. He  
5 was staying in the east, while I was staying in the west. So  
6 yeah, he's not my friend. So if he saw me, maybe he will just  
7 pay compliment maybe if we met on the highway. That was all."

8 Question: "Now, whilst you were in the jungle during the  
9 conflict in Sierra Leone, were you deployed together with him in  
10 any unit? Were you deployed together?"

11 The next page, the answer, "I said during the time of the  
12 jungle, when we were in the jungle, I did not know Sammy Ragga's  
13 whereabouts. Even when I became commander at the West Side, up  
14 to the time that I left there and went to Freetown, Sammy Ragga  
15 was not with me. I never saw him there."

16 Now, witness, you said that when you were a commander at  
17 the West Side up to the time that you went to Freetown, you did  
18 not see Sammy Ragga "... until we were arrested and taken to  
19 Pademba Road. That was when I saw Sammy Ragga."

20 Now, "... until when we were arrested and taken to Pademba  
21 Road," were you arrested - did you mean by that statement to mean  
22 that you were arrested with Sammy Ragga, or you were arrested  
23 separately?

24 A. How could they arrest me and Sammy Ragga? I was arrested  
25 alone.

26 Q. Thank you. And the counsel asked, "Where in Pademba Road?"  
27 Your answer, "Pademba Road prison during this ATC coup case."  
28 Can you tell the Court what you mean by "ATC coup case"?

29 A. Yes. That ATC coup case - every Sierra Leonean knows about

1 eight. They arrested all of us in this case, me and my three  
2 brothers, but I was not arrested on the same day.

3 THE INTERPRETER: Your Honour, the witness is sounding too  
4 disturbed. I can't hear him clearly.

5 JUSTICE DOHERTY: Mr Kamara, please speak slowly and calmly  
6 and answer the question.

7 THE WITNESS: I said they were looking out for me. I was  
8 arrested at Central. Then I was taken to the Central prison at  
9 King Jimmy, Dr Abaas Bundu's building. That was where I was. I  
10 spent two weeks, then they took me to Pademba Road.

11 JUSTICE DOHERTY: Chief Taku --

12 CHIEF TAKU: Just about two more questions and I will stop.

13 JUSTICE DOHERTY: I really have to allow Mr Kamara - so are  
14 they short questions?

15 CHIEF TAKU: Very short.

16 JUSTICE DOHERTY: In that case I will allow them, but I  
17 really must allow him time to speak to Mr Serry-Kamal, and  
18 there's only 8 minutes left, so ask [overlapping speakers].

19 CHIEF TAKU:

20 Q. Now, while at Pademba Road prison where you were detained  
21 for - about this ATC coup case, you testified that you saw  
22 Mr Ragga but you didn't discuss with him; is that correct?

23 A. Yes.

24 Q. And would I be right therefore that while there, you didn't  
25 discuss Mr Ragga or anybody about the reason for which Mr Ragga  
26 was there; am I correct?

27 A. What? Say that again?

28 Q. Since you did not discuss with Mr Ragga while in Pademba  
29 Road, surely you didn't discuss with him about the reasons for

1 which he was there, am I correct?

2 A. No.

3 Q. You did not discuss --

4 A. At that time we were under escort.

5 Q. And because you didn't discuss with him, you didn't  
6 speculate or discuss with anybody about the reasons for which  
7 Mr Ragga was in - or you didn't provide information to anyone  
8 about the reasons for which Mr Ragga was in Pademba Road; would I  
9 be correct to say so?

10 A. Mr Ragga was not important to me. I didn't want to know  
11 about him. I didn't care.

12 CHIEF TAKU: That will be all.

13 JUSTICE DOHERTY: Thank you, Chief Taku.

14 Mr Kamara, that's the end of your evidence. You are now -  
15 there is no further questions. I do not have questions. I am  
16 going to discharge you to speak to Mr Serry-Kamal, so you can  
17 leave the witness box and go to Mr Serry-Kamal, wherever they  
18 have a place where you can speak in private.

19 Once you do that, I've got one other matter to mention  
20 before we adjourn, but the tape has run out. We need to put in a  
21 new tape.

22 So Mr Serry-Kamal, please speak to your client, and we wish  
23 you a safe journey tonight. I'll pause for a moment while the  
24 tape is changed.

25 MR SERRY-KAMAL: Your Honour, I thought we were allowed to  
26 re-examine the witness.

27 JUSTICE DOHERTY: You're quite right, Mr Serry-Kamal.  
28 Improper of me to discharge him. You're quite right. You have a  
29 right of re-examination. I think in fairness to everyone that

1 should be stood down until you come back. So I will stand your  
2 re-examination down until you're able to do it.

3 Mr Kamara, I withdraw what I said just now. You are still  
4 under oath. You must not discuss your evidence with anyone else.  
5 Does this cover it, Mr Serry-Kamal?

6 MR HERBST: Well, then he won't be able to meet with  
7 Mr Serry-Kamal tomorrow, your Honour.

8 JUSTICE DOHERTY: You're technically correct. But in these  
9 very unusual circumstances, I'm going to trust Mr Serry-Kamal not  
10 to discuss the evidence with his client, given the exigencies  
11 under which we work.

12 MR SERRY-KAMAL: I only have one question for him and I'll  
13 be done. Just one question.

14 JUSTICE DOHERTY: If tape runs out, we'll be stuck. Put  
15 the question in re-examination.

16 RE-EXAMINATION BY MR SERRY-KAMAL:

17 MR SERRY-KAMAL:

18 Q. The question is: Mr Kamara, in response to my learned  
19 friend, you said you made these calls. Now, you admitted - what  
20 I want clear is that whether after 30 November you made any  
21 further calls to the witness Sammy Ragga.

22 A. No.

23 MR SERRY-KAMAL: That will be all.

24 JUSTICE DOHERTY: That's fine. That completes his evidence  
25 now. I don't have questions.

26 Mr Kamara, I now say that all your evidence is finished.  
27 You are free to leave the witness box and be escorted to speak to  
28 Mr Serry-Kamal before returning to the detention centre.

29 We'll now change the tape while that's happening.

1 CHIEF TAKU: May it please your Honour --

2 THE COURT OFFICER: The tape has already been changed  
3 whilst you were explaining. It ran out, so they had to just  
4 change it.

5 JUSTICE DOHERTY: I'm sorry, transcribers, this is over and  
6 above the call of duty.

7 The one matter - before we adjourn for the day, the one  
8 matter I want to note is something that was heard here, but  
9 apparently not - and possibly in Kigali, but some things I said  
10 were not heard. I said I would mention them this afternoon.

11 The matter I wanted to mention is a statement made by the  
12 witness Mr Kamara as we were going into closed session. We may  
13 or may not have been in closed session when it was said, but he  
14 said, and I quote, "They have cassettes that they sell in town  
15 and they say 'closed Session.'"

16 Now, that implies to me that matters that are put in closed  
17 session for the protection and security of victims are available  
18 for public sale. If that is what is suggested, this is a very  
19 serious situation and I will therefore refer this statement to  
20 the Registrar in accordance with Rule 33 for more proper  
21 investigation.

22 Mr Nicol-Wilson, you wish to say something?

23 MR NICOL-WILSON: Yes, your Honour. I want to assist the  
24 Court in this particular deliberation. During the testimony of  
25 witness TFI-334, he spoke about tapes being sold around town of  
26 his testimony in the Hague. I'm sure that is exactly what  
27 Mr Kamara was referring to. He thought when we said we're moving  
28 into closed session, we want to talk about 334. So I have the  
29 Krio translation - I was on the Krio channel and I heard exactly

1 what I said. He was referring to this 334 situation.

2 JUSTICE DOHERTY: I'm glad you reminded me of that because  
3 when I was formulating my views on this one statement, I also  
4 recalled the many statements made by 334, for example, about a  
5 plate and tapes, and I was also going to refer those in total to  
6 the Registrar --

7 THE COURT OFFICER: I'm sorry to interrupt, your Honour, I  
8 have just been informed that there was a power cut, so when you  
9 started this issue, Kigali was not connected, so you might want  
10 to go over that, please.

11 MR HERBST: Your Honour, if I may amplify. Can you hear  
12 me?

13 JUSTICE DOHERTY: I can hear you now, Mr Herbst, very  
14 clearly.

15 MR HERBST: Your Honour, the last thing we heard was  
16 Mr Nicol-Wilson getting up and saying that he thought he might be  
17 able to clarify the deliberations with respect to that matter.  
18 That is precisely when the power went out.

19 JUSTICE DOHERTY: Mr Nicol-Wilson very helpfully reminded  
20 me of matters raised by 334 and - maybe I should ask  
21 Mr Nicol-Wilson to - who was listening to the Krio version of  
22 this particular statement by Kamara, maybe he would be better  
23 able to repeat what he said rather than have me paraphrase it.  
24 Mr Nicol-Wilson.

25 MR NICOL-WILSON: Yes, your Honour. I think prior to us  
26 going into closed session --

27 [Overlapping speakers]

28 JUSTICE DOHERTY: It's not to do with Mr Kamara personally,  
29 Mr Metzger, rest assured about that. Yes, Mr Nicol-Wilson.

1 MR METZGER: For the record, neither myself nor Mr Herbst  
2 heard those words.

3 JUSTICE DOHERTY: Well, Mr Nicol-Wilson has been invited to  
4 speak and I would ask you not to interrupt. Mr Nicol-Wilson.

5 MR NICOL-WILSON: Your Honour, I think prior to the Court  
6 moving into closed session on the application of the independent  
7 counsel, independent counsel mentioned that he's going to ask  
8 some questions about 033, and I am sure the witness thought he  
9 was referring to 334. And then the witness, retorted that the  
10 tape has been sold around town. And this reminds me about the  
11 statement 334 made during his evidence-in-chief that there is a  
12 cassette or there is a tape being sold around town about his  
13 testimony in the Hague. So I'm sure that is what the witness was  
14 referring to, not that matters discussed during closed sessions  
15 at the Special Court have been sold downtown. I've never heard  
16 about something like that, your Honour.

17 JUSTICE DOHERTY: I thanked Mr Nicol-Wilson for that  
18 reminder of what was said because as I mentioned, I did also  
19 recall 334 talking about a plate and tapes.

20 So what I will do, because there are now issues concerning  
21 protection and security of witnesses, I will refer each of those  
22 two or three statements to the Registrar pursuant to Rule 33 for  
23 a proper investigation because it raises an issue. I think  
24 Mr Nicol-Wilson, who heard the Krio, has a more accurate  
25 recollection.

26 Sorry, Mr Metzger, you were saying something but I didn't  
27 hear it.

28 THE COURT OFFICER: [In Kigali] Madam, can I address the  
29 Court, please? Madam, the prison officers are asking for Mr Kanu



1 to be released.

2 JUSTICE DOHERTY: Oh indeed, he should have gone. I'm  
3 sorry if that wasn't clear. It was the intention that they would  
4 both go. Mr Kanu should be taken right away, indeed.

5 THE COURT OFFICER: [In Kigali] Thank you, ma'am.

6 JUSTICE DOHERTY: Mr Metzger, we will commence tomorrow  
7 with the evidence of Mr Kanu and I will now adjourn Court until  
8 tomorrow, 9 o'clock Freetown time, 11 o'clock Kigali time. If  
9 there is no other matters, please adjourn Court.

10 MR METZGER: Will your Honour before adjourning hear me on  
11 one very small matter?

12 JUSTICE DOHERTY: Yes, but you must - your client must be  
13 taken to the detention area. Has he left the Court?

14 MR METZGER: Yes, he's gone. I have his permission to  
15 raise this with you. Because he's being taken directly, can I  
16 ask that we start at 11.05 tomorrow morning which will allow me  
17 to at least take material from him that he may want to refer to,  
18 make sure that we've got relevant copies and he can be ready to  
19 go at 5 past 11 instead of 11 o'clock.

20 JUSTICE DOHERTY: That's fine.

21 MR METZGER: Unfortunately they didn't - yes, thank you.

22 JUSTICE DOHERTY: So I will amend the matter and say that  
23 we will adjourn now to 9.05 Freetown time, 11.05 Kigali time.  
24 Please adjourn.

25 [The Court adjourned at 3.30 p.m. until  
26 9.00 a.m. the following day]

27

28

29