



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 [Wednesday, 4 July 2012]

2 [Open Session]

3 [Accused enter court]

4 [Upon commencing at 9.03 a.m.]

09:04:11 5 JUSTICE DOHERTY: Good morning. Before I take appearances,  
6 I will first inquire if we have a decent audible connection with  
7 Kigali.

8 Good morning, Kigali.

9 MR HERBST: Yes, we can hear. Good morning, Freetown.

09:04:34 10 Good morning, Your Honour. We can hear you.

11 JUSTICE DOHERTY: Very good.

12 Appearances, please.

13 MR HERBST: Robert Herbst, Independent Counsel for the  
14 Prosecution.

09:04:45 15 JUSTICE DOHERTY: Thank you, Mr Herbst.

16 MR NICOL-WILSON: Your Honour, good morning and welcome  
17 back. Melron Nicol-Wilson for Hassan Papa Bangura.

18 JUSTICE DOHERTY: Thank you, Mr Nicol-Wilson, both for the  
19 appearance and the welcome back.

09:05:02 20 MS CARLTON-HANCILES: Good morning, Your Honour, and I want  
21 to say not only welcome back, but it appears as if you were all  
22 having a miracle to be here and not to be tired. Because my  
23 counsel this morning, some of them are so tired, but they are  
24 coming to Court. So they called me to stand in and apologise.

09:05:22 25 And I will apologise on behalf of both Mr Metzger, who had his  
26 bags packed and had to sit down again to gain some breath, and  
27 also Mr Serry-Kamal, who is here for the time being represented  
28 by his legal assistant, Ms Serry-Kamal.

29 JUSTICE DOHERTY: Thank you, Ms Carlton-Hanciles.

1 We can proceed on. You've got a brief for the other  
2 counsel; is that correct?

3 MS CARLTON-HANCILES: Yes, Your Honour.

4 JUSTICE DOHERTY: Very good.

09:05:58 5 Mr Herbst, is the witness in position, please?

6 [The witness enters court]

7 MR HERBST: Your Honour, he's in the courtroom. We're  
8 going to ask him to take the witness chair.

9 And, Your Honour, while the witness is taking his chair, I  
09:06:25 10 believe we have received - and all counsel --

11 JUSTICE DOHERTY: Yes, Mr Herbst, continue.

12 MR HERBST: I'm not sure, Your Honour. I'm sorry - okay.  
13 [Overlapping speakers]. We have received from the Court a report  
14 dated October 2 of 2011, from the Rwanda Correctional Service,  
09:07:04 15 entitled "Report on General Searching of Delta Wing Inmates SCSL  
16 at Mpanga Central Prison." It consists of a number of pages.  
17 It's my understanding that this is what the Registrar of the  
18 Court provided to Your Honour's Chambers, and I believe that all  
19 counsel have now had chance to - that it's been distributed to  
09:07:28 20 all counsel.

21 Unless Mr Sengaboover the last few days has found any  
22 additional written reports - and Your Honour may want to ask  
23 him - it seems to me that we should be permitted now to question  
24 the witness with respect to the findings of the investigation  
09:07:59 25 that he conducted. Your Honour will remember that we held off on  
26 that issue pending the receipt of the searching reports.

27 JUSTICE DOHERTY: Yes, I do recall that. I'm getting an  
28 echo of my own voice on my machine, so if I could ask AV to  
29 please check and rectify that while we continue.

1 I have not seen the report. My instruction was, of course,  
2 that it be given to counsel. I will ask the Principal Defender  
3 if other counsel have received it, and I will not proceed on it  
4 until Mr Metzger and Mr Serry-Kamal come into Court.

09:08:53 5 Ms Carlton-Hanciles, has it been received by counsel for  
6 the Defence?

7 MS CARLTON-HANCILES: I have just inquired from  
8 Mr Nicol-Wilson, and he says no.

9 JUSTICE DOHERTY: I see.

09:09:04 10 MS CARLTON-HANCILES: And I have also not been copied on  
11 any such correspondence.

12 JUSTICE DOHERTY: I understand. I was going to ask him.

13 So it would appear, from what I'm informed, that it hasn't  
14 been distributed to counsel here in Freetown, so I will stand  
09:09:17 15 that matter down. I will ask, I think, Mr Court Attendant to  
16 just check with the Registrar's office where the copies for the  
17 Principal Defenders were sent to - for Defence counsel were sent  
18 to. Or maybe more appropriate I ask my associate to do that,  
19 just to check where they are, as obviously it's quite clear that  
09:09:41 20 the Registrar acted upon it because Mr Herbst has it.

21 We will proceed, therefore, on the other matters.

22 Mr Sengabo, good morning, and again I'm grateful that you  
23 have come here today to continue with the evidence as I know you  
24 are very busy and have a lot of other commitments. I remind you  
09:10:06 25 that the day before yesterday you affirmed to tell the truth. As  
26 you know, that obligation is still on you to tell the truth. I  
27 remind you, as I remind every witness, and we will now proceed.

28 WITNESS: HILLARY SENGABO [Continued]

29 JUSTICE DOHERTY: I notice, Madam Court Manager, you are on

1 your feet.

2 THE COURT OFFICER: [In Kigali] Yes, ma'am. I want to say  
3 to say that the Registrar has acted upon the report. It has been  
4 sent to me, and I know that Mr Metzger has a copy; I know  
09:10:38 5 Mr Serry-Kamal has a copy. Can I ask Thomas Alpha to print out a  
6 copy for Mr Nicol-Wilson. I will resend it now to Freetown and  
7 if Thomas Alpha can print out a copy for Mr Nicol-Wilson, and I  
8 shall copy the Principal Defender on the copy I'm sending now,  
9 because I had not copied the Principal Defender initially.

09:11:06 10 JUSTICE DOHERTY: I understand. Counsel have heard and  
11 understand. Again, I will not deal with the matter immediately.  
12 We'll wait until other counsel come.

13 Mr Herbst, please proceed with your examination-in-chief.

14 I have before me the copies --

09:11:28 15 MR HERBST: Your Honour --

16 JUSTICE DOHERTY: Yes, please speak. You were saying  
17 something, Mr Herbst?

18 MR HERBST: Your Honour, I just wanted to add that this  
19 morning we copied and provided a more fuller copy of the page  
09:11:49 20 from the call log book that contains the 30 November 2010 entries  
21 that I had just started to ask the witness about. So hopefully  
22 that has also been distributed.

23 What it does is, it's the same as the copies that had  
24 already been distributed, except that it has the signature column  
09:12:14 25 in the extreme right-hand side.

26 JUSTICE DOHERTY: Yes, I recall the original document --

27 MR HERBST: [Overlapping speakers]

28 JUSTICE DOHERTY: I recall seeing that.

29 Very well. Please proceed on with your questions.

1 Examination-in-Chief by Mr Herbst: [Continued]

2 MR HERBST:

3 Q. Now, Mr Sengabo, good morning.

4 A. Good morning.

09:12:42 5 Q. Would you look - would you take out the original book, log  
6 book, and open it to the page containing the 30/11/2010 entries,  
7 the top of which has Bazzy Kamara and brother and 13.11 p.m. Do  
8 you have that before you?

9 A. Yes.

09:13:13 10 JUSTICE DOHERTY: Mr Nicol-Wilson, do you have a copy of  
11 this document? Because if you don't, I'll ask that my copy be  
12 made available to an extra copy.

13 MR NICOL-WILSON: I do, Your Honour.

14 JUSTICE DOHERTY: Oh, you're fine.

09:13:27 15 MR NICOL-WILSON: Yes.

16 JUSTICE DOHERTY: Mr Sengabo, can you please - I  
17 interrupted your answer, so please proceed.

18 MR HERBST:

19 Q. Mr Sengabo, do you have that original page before you?

09:13:42 20 A. Yes, I have.

21 Q. Now in the time that Mr Kamara has been in your custody in  
22 the Mpanga prison, have you become familiar with his handwriting?

23 A. Yes.

24 Q. And with his signature?

09:14:03 25 A. Yes.

26 Q. Would you tell the Court in whose handwriting the first  
27 entry, 11/30/2010 is?

28 A. It's Bazzy --

29 MS SERRY-KAMAL: Objecti on. I understand.

1 JUSTICE DOHERTY: Just pause, Mr Sengabo [microphone not  
2 activated]

3 MS SERRY-KAMAL: I understand that Mr Sengabo has been in  
4 prison and he's not a handwriting expert and he's testifying to  
09:14:34 5 what he says is Bazzy Kamara's handwriting, but he's not an  
6 expert. We don't know that that's Bazzy handwriting at all.

7 JUSTICE DOHERTY: Mr Herbst, you heard the objection from  
8 counsel for Kamara.

9 MR HERBST: Your Honour, in the rules of evidence that I'm  
09:14:57 10 familiar with, a witness who is familiar with someone's  
11 handwriting can testify to that fact. It does not require a  
12 handwriting expert.

13 JUSTICE DOHERTY: Mr Sengabo, tell me, how long has  
14 Mr Kamara been at Mpanga under your control as Director of that  
09:15:20 15 facility?

16 THE WITNESS: Your Honour, since 2009, December 31st -  
17 October 31st, that's the date he arrived in Rwanda, and I was  
18 with them since then up to now.

19 JUSTICE DOHERTY: And during that period, have you seen his  
09:15:55 20 handwriting?

21 THE WITNESS: Yes, Your Honour.

22 JUSTICE DOHERTY: I am satisfied that the witness is  
23 familiar in his capacity as senior staff responsible for  
24 Mr Kamara to have sufficient experience and competency to  
09:17:21 25 recognise the signature of Kamara and this is not a situation  
26 where an isolated signature is being recognised that would  
27 require an expert.

28 Please proceed.

29 MR HERBST: I thank, Your Honour. The witness answered the

1 question but I'm not sure Your Honour heard it. Did you?

2 JUSTICE DOHERTY: No, I ruled on the objection first.

3 Mr Sengabo, how did you answer the question --

4 MR HERBST: [Overlapping speakers]

09:17:51 5 JUSTICE DOHERTY: -- please?

6 THE WITNESS: Your Honour, I said, yes, I am familiar to  
7 his handwriting.

8 JUSTICE DOHERTY: Thank you.

9 Please proceed.

09:17:59 10 MR HERBST:

11 Q. And in whose handwriting is the first line of the first  
12 entry, 30/11/2010, with the name Bazy Kamara, the brother, the  
13 time and the phone number? You may answer, Mr Sengabo.

14 A. Pardon?

09:18:37 15 Q. Did you hear my question? Do you want me to repeat it?

16 A. Yes.

17 Q. Okay. In whose handwriting is the first entry that says  
18 30/11/2010, Bazy Kamara, brother, 13.11 p.m., and the phone  
19 number?

09:18:59 20 A. It is Bazy Kamara handwriting.

21 Q. And are you familiar with Bazy Kamara's signature?

22 A. Yes.

23 Q. And the signature in the right - the first signature at the  
24 top of the page, it appears to be a squiggle. Whose signature is  
09:19:20 25 that?

26 A. It's for Bazy Kamara.

27 Q. Are you familiar with the handwriting of

28 Santi gie Borbor Kanu?

29 A. Yes.



1 JUSTICE DOHERTY: Mr Herbst, before you proceed with those  
2 questions. Just pause. Because Mr Metzger is now in Court and  
3 he may want to hear this. I also note his appearance.

09:20:01 4 MR METZGER: Good morning, Your Honour. My apologies for  
5 my tardy attendance this morning. Kevin Metzger on behalf of  
6 Santi gie Borbor Kanu with an objection to the question that the  
7 Prosecution is about to put.

8 JUSTICE DOHERTY: I'll hear it in it's entirety and record  
9 it and then hear your objection.

09:20:18 10 MR METZGER: Thank you, Your Honour.

11 JUSTICE DOHERTY: Mr Herbst, please put your question, and  
12 Mr Sengabo, please do not answer until I deal with this  
13 objection.

14 Mr Herbst, please repeat your question.

09:20:33 15 MR HERBST:  
16 Q. My question is: In whose handwriting is the name on the  
17 second line, Santi gie Borbor Kanu? Whose hand is that?

18 MR METZGER: I have an objection to that question, Your  
19 Honour. There appears to be no foundation to the question. And  
09:20:55 20 on the basis of the statement served to the Defence, it had not  
21 been iterated therein that Mr Sengabo was an expert witness in  
22 the area of handwriting.

23 MR HERBST: My response is that a handwriting expert is not  
24 required if the witness states that he's familiar with --

09:21:28 25 MR METZGER: May he not give evidence again. With the  
26 greatest respect to my learned friend, he has not asked the  
27 foundational question. Either he asked the foundational  
28 questions or he makes a submission to the Court in relation to  
29 the abrogation of time honoured principals related to expert

1 witnesses.

2 JUSTICE DOHERTY: Mr Herbst, I asked the foundation  
3 questions for the last witness. Please don't ask me to do them  
4 again for this.

09:22:04 5 MR HERBST:

6 Q. Mr Sengabo, for how long have you had custody and control  
7 of Mr Kanu at the prison? Since when?

8 A. Since 2009 up to now.

9 Q. And during that period of time, have you had occasion to  
09:22:19 10 see his handwriting, Mr Kanu's handwriting, and his signature and  
11 to become familiar with both?

12 MR METZGER: And again I object. First of all, that's two  
13 questions in one.

14 JUSTICE DOHERTY: [Microphone not activated]

09:22:41 15 MR METZGER: Secondly, it seems to me, that, while, as I  
16 say, he should take it slowly and then establish expertise. In  
17 my respectful submission, the area of handwriting evidence is an  
18 area that requires expertise; and therefore, the witness's  
19 expertise in that area needs to be, as it were, examined or put  
09:23:04 20 before Your Honour, and that hasn't happened.

21 MR HERBST: Did you hear the witness's answer?

22 JUSTICE DOHERTY: I was about to rule that you put two  
23 questions in one. Please put them one at a time. I didn't hear  
24 the answer.

09:23:26 25 MR HERBST:

26 Q. Between 2009 and present, Mr Sengabo, have you had occasion  
27 to see Mr Kanu's handwriting?

28 A. Yes. Since 2009 up to now I have been watching and  
29 following their handwritings.

1 Q. And have you had occasion during that same time to become  
2 familiar with Mr Kanu's handwriting?

3 A. Yes.

4 Q. And with respect to his signature, have you had occasion  
09:23:58 5 during that same period of time to see his signature?

6 A. Yes.

7 Q. And have you had occasion during that same period of time  
8 to become familiar with his signature?

9 A. Yes.

09:24:10 10 Q. Would you tell us in whose handwriting on the second  
11 line --

12 MR METZGER: Objecti on, Your Honour.

13 MR HERBST: [Overl appi ng speakers]

14 MR METZGER: Again, there is no foundati on. He has simply  
09:24:25 15 established that Mr Sengabo has had the opportunity over a period  
16 of time, however intimately or otherwise, to become familiar with  
17 handwriting and with a signature. Respectfully, that does not  
18 meet the requirement for an expert witness. He is asking the  
19 witness to give an opinion. Now, that opinion is either based on  
09:24:51 20 the witness's expertise or something else. And in my respectful  
21 submission, the threshold in relation to expertise has not yet  
22 been crossed.

23 MR HERBST: Briefly in reply, Your Honour, I have now asked  
24 the foundational questions that I believe Your Honour asked with  
09:25:08 25 respect to Mr Kamara, and I assert again that in the area of  
26 handwriting, the rules of evidence do not require a handwriting  
27 expert for a witness who is familiar with that handwriting to  
28 testify to that person's handwriting.

29 MR METZGER: May I refer the Court to the Rule relating to

1 expert witnesses, or is Your Honour content?

2 JUSTICE DOHERTY: [Microphone not activated]

3 MR METZGER: Rule 94*bis* seems to be the area that covers  
4 expert witnesses. And if the Prosecution is saying that this is  
09:26:59 5 an expert witness and he wishes to rely on the testimony as an  
6 expert, then in this particular occasion the Defence will have to  
7 ask that the procedures be followed.

8 JUSTICE DOHERTY: To which section did you refer me to?

9 MR METZGER: I beg your pardon, 94*bis*.

09:27:20 10 JUSTICE DOHERTY: [Microphone not activated]

11 MR METZGER: And in all the circumstances, bearing in mind  
12 the occasion on which the statement of Mr Sengabo was served upon  
13 us, if he is to be relied upon as an expert, then the Defence  
14 will ask that the Rules be complied with. If we have to deal  
09:27:42 15 with this on an expert evidence basis, then we would wish to call  
16 our own expert. We haven't had enough time to instruct the same.

17 JUSTICE DOHERTY: This is a ruling on an objection to  
18 questions being put to a witness. The witness, Mr Sengabo, is  
19 giving evidence not as an expert on identifying handwriting but  
09:31:46 20 as an official familiar with the accused Kanu, who has, in his  
21 capacity and control and care of Kanu, maintained records which  
22 include records of Kanu's handwriting.

23 I am satisfied that in that capacity over the period of  
24 time with which he has had control and care of Kanu, he is  
09:32:12 25 sufficiently familiar to recognise the handwriting of Kanu. This  
26 Court is not bound by national laws of evidence, but is charged  
27 under Rule 89(B) to consider evidence that is consonant with the  
28 spirit of the Statute of the Special Court, and I bear in mind in  
29 particular Article 17 of the Statute under the general principles

1 of law, and may admit evidence where it is relevant. In the  
2 circumstances, I overrule the objection and direct that the  
3 question may be put.

09:32:56 4 MR METZGER: Your Honour, may I, then, make a second  
5 objection, and that is that the Prosecution have not laid the  
6 proper foundation to ask the specific question; i.e., the  
7 question is asked in generic terms, and for the benefit of the  
8 Court, it would be appropriate for the foundational questions to  
9 include Mr Sengabo's knowledge of that particular document, and  
09:33:19 10 his presence or otherwise at the time when it was in relation to  
11 the occasion that is being discussed herein being completed or  
12 otherwise.

13 JUSTICE DOHERTY: I was working on the, perhaps, erroneous  
14 assumption that that was going to happen next. We've got his  
09:33:40 15 recognition and we're next coming to the particulars. So I'm  
16 assuming that that's going to happen.

17 MR METZGER: Perhaps I spoke too soon.

18 JUSTICE DOHERTY: Yes. If it doesn't happen then I will  
19 entertain your objection again, but I'm assuming that that's  
09:33:54 20 going to happen.

21 MR METZGER: I'm very much obliged, Your Honour.

22 MR HERBST: I'm sorry, Your Honour, I did not quite get the  
23 second objection and what it is that counsel wants me to ask.  
24 Could I have that repeated?

09:34:12 25 JUSTICE DOHERTY: It's not for Defence counsel to tell  
26 Prosecution counsel, but the objection was that there wasn't a  
27 proper foundation. It was that your questions were in generic  
28 terms; in other words, going to this document, a foundation for  
29 this document as opposed to the general recognition of the

1 handwriting of Kanu. So we're waiting for the next bit.

2 Mr Metzger, I trust I've paraphrased your --

3 MR METZGER: Your Honour has done me proud.

4 MR HERBST: [Overlapping speakers]

09:34:55 5 JUSTICE DOHERTY: Mr Herbst, yes.

6 MR HERBST: I thought I had laid the proper foundation  
7 through the witness for this book, this original book, yesterday.

8 The witness testified about the book how it is maintained,  
9 the fact that it is --

09:35:22 10 JUSTICE DOHERTY: Yes, we did all of that. We are talking  
11 about the book. Now we are talking about specific entries - very  
12 specific entries.

13 Mr Herbst, please continue.

14 MR HERBST:

09:36:07 15 Q. These two entries that we are talking about, Mr Sengabo,  
16 would you tell the Court how you've become familiar with these  
17 particular entries in this book?

18 A. Yeah, I do have that detail of supervising the call log.  
19 And since I was there since 2009 up to now, I have often checked  
09:36:43 20 this book whereby I know the handwriting of each prisoner there.

21 Q. Now I ask you, Mr Sengabo, in whose handwriting --

22 MR METZGER: Your Honour, I object.

23 MR HERBST: [Overlapping speakers]

24 MR METZGER: May I just adjust the standing objection.

09:37:05 25 JUSTICE DOHERTY: Mr Herbst, please pause. There is  
26 another objection.

27 MR METZGER: Yes. I shan't use FE Smith again, but the  
28 question has jumped from the generic to the specific. He has  
29 told us specifically about what he does with the book and his

1 supervisory functions. I still have not heard the questions that  
2 would permit him to ask the question that he has just asked, and  
3 therefore the Defence does have objection to that.

09:37:42 4 MR HERBST: Your Honour, I think that all the foundational  
5 questions have now been asked that permits this witness to  
6 testify to the entries in this book. He's testified that he's  
7 fully familiar with it, he's examined it on various occasions. I  
8 really can't imagine what additional questions would be required.

09:38:04 9 And I also ask, in terms of procedure, whether Mr Metzger  
10 has any other objections to be lodged or any other reasons for  
11 his objections so that we can deal with them all at the same  
12 time.

13 JUSTICE DOHERTY: Objections only arise when the question  
14 comes out. We can't deal with objections in a vacuum, really.  
09:38:22 15 So whilst it might be very nice to be able to do that, I'm afraid  
16 that life doesn't work that way.

17 The question, I didn't get it all written down because I  
18 noted the objection. What was the question again, just to make  
19 sure that I --

09:38:42 20 MR HERBST: Your Honour, it is: In whose handwriting is  
21 the entry on the second line under "name of prisoners", it says  
22 "Santigie Borbor Kanu".

23 JUSTICE DOHERTY: In the circumstances I am satisfied that  
24 the witness has testified that he checks the book, knows the  
09:39:40 25 handwriting, and has a duty to control the book; therefore, the  
26 question relating to this page can be put to the witness.

27 MR HERBST:

28 Q. Mr Sengabo, do you remember the question?

29 A. Yes.

1 Q. In whose handwriting are the words "Santigie Borbor Kanu"  
2 on the second line under "name of prisoners" on the page of that  
3 entry?

4 A. [Overlapping speakers]

09:40:17 5 JUSTICE DOHERTY: Could we have the dates and names of  
6 things as well, Mr Herbst?

7 MR HERBST: Your Honour, you are talking about the second  
8 line which has the date "30/11/2010", and --

9 JUSTICE DOHERTY: Mr Herbst, please don't put the answers  
09:40:34 10 in the witness's mouth. Let the witness describe it.

11 MR HERBST: Your Honour --

12 JUSTICE DOHERTY: Mr Witness, you have the book, the  
13 original in front of you. Please look at the page where the  
14 first line is "30/11/2010" and the word "Bazzy Kamara." Please  
09:41:04 15 read the line that comes under it.

16 THE WITNESS: Your Honour, the first column is "30th  
17 November, 2010"; the second column is "Santigie Borbor Kanu"; the  
18 third is the "brother"; the fourth is "13.11 p.m."; the fifth is  
19 telephone number "+23233285697"; below there is +23233258898,  
09:41:59 20 then the signature of the last.

21 MR HERBST:

22 Q. Okay. Now with respect to the name of "Santigie  
23 Borbor Kanu" on that particular line, in whose handwriting is  
24 that?

09:42:15 25 A. Santigie Borbor Kanu.

26 Q. And on "brother" adjacent to it in the third column, whose  
27 handwriting is that?

28 A. The handwriting for "brother"?

29 Q. Yes. The handwriting for "brother" on the second line



1 adjacent to Mr Kanu's name?

2 A. Yeah, the handwriting for "brother", I dealt with it. But  
3 for Santigie Borbor Kanu's name, I know it is for Borbor.

09:42:54 4 Q. Okay. And the signature - the second signature under  
5 "signatures" column, whose signature is that?

6 A. Yeah, it's for Kanu.

7 Q. Thank you. Now let's - do you have the updated call list  
8 before you?

9 JUSTICE DOHERTY: Mr Herbst, I am not sure if you're  
09:43:31 10 speaking because I cannot see your monitor - your transcriber.  
11 But if you are speaking, we don't hear you.

12 MR HERBST: Your Honour, I just asked the witness whether  
13 in fact he had before him the updated call list which has been  
14 admitted into evidence as P13.

09:43:51 15 JUSTICE DOHERTY: [Microphone not activated]

16 Please proceed. I think we can all hear.

17 MR HERBST: Yes, Your Honour, and I'm just waiting for the  
18 witness to answer that question. He's looking through his  
19 documents.

09:44:08 20 THE WITNESS: Yeah, I've got it.

21 JUSTICE DOHERTY: Please take your time, Mr Sengabo.

22 MR HERBST: Thank you. [Indiscernible] testified that he  
23 had it. So I'm going to proceed if Your Honour permits me to do  
24 so.

09:44:29 25 JUSTICE DOHERTY: Yes, please do so.

26 MR HERBST:

27 Q. If you could look, Mr Sengabo, on the third page of P13 in  
28 the section that contains the names of those on the approved list  
29 for Mr Kamara up in the top portion of the page. Do you have

1 that?

2 A. Yes, I have.

3 Q. How many brothers of Mr Kamara are listed on the approved  
4 list?

09:45:00 5 A. There are just three.

6 Q. Did you say three brothers?

7 A. There are two.

8 Q. Two brothers. And would you read out - first of all, would  
9 you tell us on what number lines those brothers are listed?

09:45:35 10 A. Yeah, they are on number 12 and 13.

11 Q. All right. And would you read out the name, the address,  
12 and the approved phone number for the first brother on line 12?

13 A. It's Hamidu Kamara.

14 Q. And his address?

09:46:02 15 A. 47 Lumley [i ndi scerni bl e] Wilberforce Way [i ndi scerni bl e].

16 Q. And the number?

17 A. You mean telephone number?

18 Q. Yes, sir?

19 A. 033-722-843.

09:46:29 20 Q. And would you read out the same information on line 13 for  
21 the second brother listed?

22 A. It is "Denis Hassan Kamara, brother, New York, USA",  
23 001-34-76-28-36-02.

24 Q. Now would you go back to the entry, the two entries in the  
09:47:06 25 logbook for November 30 - I mean 30/11/2010 that you described a  
26 few minutes ago - and tell us whether any of the three numbers  
27 listed are the numbers that you just read out for Mr Kamara's  
28 brothers?

29 A. You mean to read the numbers in the call log?

1 JUSTICE DOHERTY: Just pause, Mr Herbst.

2 MR HERBST:

3 Q. Why not start with that.

4 JUSTICE DOHERTY: This is something I alluded to yesterday  
09:47:52 5 and I'm alluding to it again now. There are - we've heard  
6 evidence that Mr Kamara's name, the relationship, and the time  
7 have been recognised. We've heard evidence that Kanu's name,  
8 relationship, has been recognised. And if you draw your eye  
9 across that line from "Kanu, brother", et cetera, there is a  
09:48:20 10 number starting "232" and the word "first" in front of it. But  
11 on the evidence before me, I haven't worked out which calls and  
12 which numbers are attributable to Mr Kamara on the first line,  
13 and which calls are attributable to Mr Kanu on the second line.  
14 And I made this observation yesterday, that I would be expecting  
09:48:52 15 to hear evidence on this.

16 The question that you are now asking appears to imply, but  
17 not state, that the first three numbers are attributable to  
18 Mr Kamara. But I wish to have this clarified, and I do so  
19 because I consider the Court is entitled to seek this  
09:49:11 20 clarification.

21 MR HERBST: Thank you, Your Honour. I asked the question  
22 the way I did and I was going to move to Mr Kanu next because --

23 JUSTICE DOHERTY: No, Mr Herbst --

24 MR HERBST: [Overlapping speakers]

09:49:26 25 JUSTICE DOHERTY: -- you did not, with respect. And that's  
26 why I intervened. It's not proper for the Court to be constantly  
27 intervening when counsel, Prosecutor or Defence, is trying to  
28 adduce entry. But you referred to all three.

29 I still say that I don't know which of these three numbers

1 are attributable to Mr Kanu and which are attributable to  
2 Mr Kamara, and if - until I am clear on this, I think there is a  
3 possibility that your question could be considered misleading,  
4 and for that added reason I seek clarification.

09:50:50 5 MR HERBST: Before I ask that question, let me ask the  
6 witness another series of questions that I think will obviate the  
7 [overlapping speakers] --

8 JUSTICE DOHERTY: I would be grateful for that.

9 MR HERBST:

09:51:05 10 Q. Mr Sengabo, would you now turn to page 2 of the updated  
11 list, P13, which contains the section on the approved people and  
12 numbers for Mr Kanu at the top of that page. Do you see that?

13 A. Yes, I have.

14 Q. How many brothers are listed for Mr Kanu on that approved  
09:51:43 15 list?

16 A. I can see one.

17 Q. And on what line is that one?

18 A. It's line 9.

19 Q. And would you read out, please, the name, address, and  
09:52:07 20 phone number for that brother.

21 A. "Andrew Wright, brother, Savage Street, District Freetown,  
22 03-041-47-267."

23 Q. Now, without regard to the question of which of the three  
24 numbers are attributable to whom, my question is: Are any of  
09:52:47 25 those first three numbers on the log, the numbers for the  
26 brothers of either Mr Kamara or Mr Kanu?

27 A. I don't get your question. Is it to compare or to describe  
28 the question in the call log?

29 Q. Yes. The question is with respect to the three numbers in

1 the call log; the first three numbers in the call log. Are any  
2 of them the brothers for either Mr Kamara or Mr Kanu?

3 A. As I can see, this number for the brother is not recorded  
4 in the call log.

09:53:39 5 Q. And if you go back to the third page where Mr Kamara's two  
6 brothers' numbers are listed, are either of those two numbers  
7 listed in the call log?

8 A. Yes.

9 Q. They are?

09:53:59 10 A. Only one, the first one. [Overlapping speakers]

11 Q. Are you talking - I'm sorry?

12 A. It is not there.

13 Q. All right. Now let me address the question that the Judge  
14 asked. Can you tell from looking at this page of the call log

09:54:54 15 which of the three numbers are attributed to Mr Kamara, and which  
16 are attributed to Mr Kanu?

17 A. As I can see on the call log, there is arrow showing the  
18 first two numbers are for Bazy and then the third number is for  
19 Kanu.

09:55:17 20 Q. Thank you.

21 JUSTICE DOHERTY: Thank you, Mr Herbst. I'm now clear on  
22 that point. Please proceed.

23 MR HERBST:

24 Q. [Indiscernible] would you read out the first telephone  
09:55:52 25 number under the column "Called Numbers" on this page of the call  
26 log that you have been testifying about. Would you read out that  
27 number?

28 A. You mean for Bazy?

29 Q. Yes, sir.

1 A. He's +24376337395.

2 Q. And would you read out the second number in that column  
3 under "called numbers."

4 A. +232332850697.

09:56:27 5 Q. And would you please read out the third number in the  
6 column under "called numbers."

7 A. It is +23233258898.

8 MR HERBST: Your Honour, at this point of my questioning of  
9 the witness, I wanted to make inquiry as to whether he and  
09:57:21 10 those - whether he and other staff members under his  
11 investigation - well, without saying more and without saying some  
12 of the findings and [Overlapping speakers]

13 JUSTICE DOHERTY: Put the question and let's hear it.

14 MR HERBST:

09:57:39 15 Q. Mr Sengabo, did you and staff under your supervision ever  
16 conduct an investigation into how it was possible for  
17 Mr Kamara --

18 MR METZGER: Your Honour, I object to the question. Quite  
19 apart from the fact the way in which it is going, it has left me  
09:58:10 20 with some difficulty in understanding it. It seems a general  
21 wide-ranging question which is about to become a leading  
22 question. I'd ask my learned friend to keep his ambit as narrow  
23 as it can to object when necessary.

24 MR NICOL-WILSON: Your Honour --

09:58:34 25 MR HERBST: Let me rephrase the question.

26 JUSTICE DOHERTY: There is another objection. Please  
27 pause.

28 MR NICOL-WILSON: Your Honour, I have not received a copy  
29 of the document that Mr Herbst is about to give the witness.

1 JUSTICE DOHERTY: Oh, are you saying that this is to do  
2 with the report?

3 MR NICOL-WILSON: Yes.

4 JUSTICE DOHERTY: Oh, I didn't know that. I had been  
09:58:53 5 advised earlier this morning by our Court Officer that because  
6 the Lotus Notes are not working here, that's why we didn't get.  
7 So it's - how would I put it? - notionally distributed but it  
8 hasn't reached us.

9 MR NICOL-WILSON: Thank you, Your Honour.

09:59:15 10 JUSTICE DOHERTY: So let me check whether this line of  
11 questioning relates.

12 Mr Herbst.

13 MR HERBST: Your Honour, I have some additional information  
14 from the Court officer. She informs me that she has resent all  
09:59:32 15 the documents to the Court clerk in Freetown using his personal  
16 e-mail. So if the Court Clerk in Freetown checks his personal  
17 e-mail, he may be able to print out those documents and  
18 distribute them thereby.

19 JUSTICE DOHERTY: Apparently it's just come in.

09:59:53 20 Now we've two objections. One is basically that this is a  
21 wide-ranging and unspecific question that could become a leading  
22 question, and I heard you say you were going to rephrase. So I  
23 will wait until it's rephrased.

24 Now the second is a much more practical matter. Counsel  
10:00:25 25 is, of course, entitled to see this document before there is - if  
26 it's the document there is going to be some questions on it, they  
27 are entitled to see it before the questions are asked.

28 So let me hear what this investigation is all about. If it  
29 is, indeed, to do with a report that they have not reached, I

1 will pause to let me let Defence counsel see it.

2 Oh, Mr Serry-Kamal has another question.

3 MR SERRY-KAMAL: I'm sorry I'm late. But I am not very  
4 clear in my mind whether the book had been tendered, accepted in  
10:01:03 5 evidence, and also whether the [indiscernible] has been accepted  
6 in evidence.

7 JUSTICE DOHERTY: Neither of those things has happened,  
8 Mr Serry-Kamal. There has been no application to tender the  
9 book.

10:01:13 10 MR SERRY-KAMAL: Your Honour, I am only concerned about him  
11 referring to something that is not yet tendered in evidence.

12 JUSTICE DOHERTY: Well, in fairness to --

13 MR SERRY-KAMAL: Although you say that the best evidence is  
14 not applicable, but one would think that in circumstances like  
10:01:28 15 this, the book would be tendered in evidence so that reference  
16 could be made to them in later detail.

17 JUSTICE DOHERTY: Well, I see your point. But whether it's  
18 this Court or any other Court, but until most of the questions  
19 are dealt with about the book, then it's tendered rather than  
10:01:47 20 tender it first in a vacuum. So I was anticipating that  
21 questions relating to its content, et cetera, would be asked, and  
22 then after that it maybe would be tendered.

23 MR SERRY-KAMAL: Your Honour, I pause. The usual procedure  
24 in my institution is that a document is to be tendered first  
10:02:10 25 before questions are asked in detail, because you cannot look at  
26 the document if it's not yet been tendered, strictly speaking,  
27 and ask detailed questions as he's doing. And to compound it,  
28 he's trying to introduce --

29 MR HERBST: [Overlapping speakers]



1 MR SERRY-KAMAL: -- another matter between the report, an  
2 investigation and the report. He's just compounding the problem.

3 JUSTICE DOHERTY: Well, I'm not going to entertain a tender  
4 on this book until I hear the questions about it. Well, I  
10:02:42 5 wouldn't say I'm not going to entertain it. That's much too  
6 dramatic a statement. I anticipated that there would be  
7 questions and then a tender. If it's really giving you an awful  
8 lot of concern, I don't know if counsel is going to tender it.  
9 It's not for me to tell any counsel how to run their case, so I'm  
10:03:03 10 not unduly concerned that these questions are being asked without  
11 an exhibit.

12 The practice has grown up in this Court that many documents  
13 are marked for identification until a witness finishes his  
14 evidence, and then they're tendered with objections entertained  
10:03:27 15 all at once. So I am not unduly concerned about it. You can  
16 cross-examine on any part of this book before it's tendered,  
17 Mr Serry-Kamal.

18 MR SERRY-KAMAL: As Your Honour please.

19 JUSTICE DOHERTY: Now, that's three matters dealt with, and  
10:03:45 20 we'll now go to the rephrasing of the question. Then if there is  
21 going to be questions on the report, I'm going to allow counsel  
22 to look at them, because I see they have just been handed to  
23 counsel.

24 So rephrase the question as you were going to do,  
10:04:02 25 Mr Herbst, and then I'll deal with the next part as we proceed.

26 MR HERBST: Yes, Your Honour.

27 Q. Mr Sengabo, sometime in 2011, did you have occasion to  
28 conduct an investigation of the telephoning of the --

29 JUSTICE DOHERTY: Investigation of the what? I'm sorry, I

1 didn't hear you.

2 MR HERBST: Of the telephone by the AFRC convicts in the  
3 special wing and other convicts in the special wing.

4 MR METZGER: Well, I do object to that, Your Honour, on the  
10:04:49 5 basis of the way the questions are asked. It is overtly  
6 provisional, it's outside the timeframe of this document, and in  
7 my respectful submission, the question of relevance to the  
8 particular defendant I represent of those in this case, is yet to  
9 be identified.

10:05:11 10 MR HERBST: Well, Your Honour, the relevance - well, first  
11 of all, the first question was objected to as being too specific.  
12 Now this one is being objected to as being too general. I'm  
13 trying to elicit the fact that - well, withdrawn.

14 I'm trying to ask the witness about the investigation into  
10:05:45 15 the telephone procedures that was conducted after this, and the  
16 relevance of that -- [Overlapping speakers]

17 JUSTICE DOHERTY: First of all, Mr Herbst, the question you  
18 asked was about conducting an investigation. I don't even know  
19 what that investigation was into. Whether it was into telephones  
10:06:09 20 or not. That's not been determined.

21 Secondly, I don't know which date. And there is an  
22 objection to two things: One, to the date, whether it was  
23 relevant to the time and issue which we've seen has been  
24 ascertained on the document, which Mr Serry-Kamal has pointed out  
10:06:29 25 has not been tendered yet. And so let's find out, first of all,  
26 what this investigation was about; and secondly, what the date of  
27 it was before I can hear and deal with Mr Metzger's objection.  
28 If the date is an issue, then I will listen again to his  
29 submission, and I will invite your reply.

1 MR HERBST:

2 Q. Mr Sengabo, what was the investigation about?

3 A. I would not make specific investigation for this case. We  
4 only had the general search, and after we suspected that these  
10:07:18 5 people might be using or abusing a telephone -- [Overlapping  
6 speakers]

7 MR METZGER: Your Honour, at this point I would enter an  
8 objection. And in specific regard that the Prosecution be  
9 stopped from asking questions along the line. The witness's  
10:07:37 10 answer was specific and clear that they did not make a specific  
11 investigation into this case. They had a suspicion, obviously at  
12 some future time, and it would appear to me that he was  
13 indicating they investigated all the inmates at the Delta Wing.  
14 In those circumstances, the Defence would submit there is no  
10:08:02 15 relevance or, if you like, causal link, to the matter Your Honour  
16 is trying.

17 JUSTICE DOHERTY: Well, first of all, it was --

18 MR HERBST: If I may?

19 JUSTICE DOHERTY: Yes, Mr Herbst.

10:08:17 20 MR HERBST: The witness has just testified that the  
21 investigation - that there was a suspicion of abuse of the  
22 telephone system --

23 JUSTICE DOHERTY: No, he did not say that.

24 MR HERBST: [Overlapping speakers]

10:08:32 25 JUSTICE DOHERTY: Mr Herbst, be careful, he did not say  
26 that. Please.

27 MR HERBST: Your Honour, that's what I heard.

28 JUSTICE DOHERTY: Well, if he did. I'm afraid I didn't  
29 hear it.

1 MR SERRY-KAMAL: Your Honour, did he not say that. He said  
2 there was a general investigation.

3 JUSTICE DOHERTY: What he said was that we did not make a  
4 specific investigation. We suspected these people and then  
10:09:00 5 that's all I heard. Then there was an objection. I didn't hear  
6 what they suspected these people of.

7 MR HERBST: [Overlapping speakers] there were additional  
8 words we all heard here about suspicion of abuse of the  
9 telephone.

10:09:14 10 MR METZGER: Which were post my objection, Mr Herbst.

11 MR HERBST: I understand because of the link that not all  
12 the words necessarily come through when there is an objection  
13 that's being tendered, but that's what the witness said.

14 JUSTICE DOHERTY: I --

10:09:34 15 MR HERBST: And I was going to then ask what timeframe - I  
16 was then going to ask what timeframe the suspected abuse was and  
17 to see if it was during the relevant period of time. And then I  
18 was going to elicit from him what investigation was done and what  
19 the timeframe of the investigation was. I think those are all  
10:09:53 20 appropriate questions. And if there is any doubt about what the  
21 witness said, I could ask him to repeat his answer.

22 JUSTICE DOHERTY: That part of the answer was - the  
23 objection was registered before we heard that answer. If that  
24 answer was made, then it's not on our record. Or at least it's  
10:10:18 25 not on mine.

26 I consider that the witness can testify to an investigation  
27 that was held. He has indicated to us in his evidence that he  
28 was responsible for all of the people in what is referred to as  
29 Delta Wing. Therefore, he, in my view, can give evidence of

1 investigations that were held at Delta Wing and I would allow him  
2 to answer the question. If, following on from that, there are  
3 matters relating specifically to the accused, he can answer  
4 questions specifically relating to the accused, but let's get  
10:11:14 5 what the investigation was about and then there will be a  
6 question of when it was held, and at that point we will deal with  
7 the relevance.

8 So there are three aspects I'm waiting to hear evidence  
9 about.

10:11:37 10 MR HERBST: Okay. Let me ask this question.

11 Q. What suspicions - because everybody heard you testify about  
12 suspicions - what suspicions led to the investigation?

13 A. We had a suspicion of telephone abuse by hearing that these  
14 people might have talked to journalist in Freetown and we were  
10:12:04 15 not aware of this, and as other people then, we hurried to  
16 conduct a general search in their premise. And then from there  
17 we found some exhibits, like there is a room that we found there,  
18 a telephone air time, and telephone charger in different rooms.  
19 And then we decided even from there to suspend their telephone  
10:12:41 20 correspondence for about one month. And then we even laid some  
21 measures to protect this again. We started changing the system  
22 where - that's all about my reply to this question.

23 MR METZGER: Your Honour, I'm sorry. Before we continue,  
24 it has just been brought to my attention that Mr Kanu - and I  
10:13:23 25 believe Mr Kamara - have not had sight of the document that has  
26 been provided to counsel.

27 JUSTICE DOHERTY: [Microphone not activated]

28 MR METZGER: May I ask, please, for them to be provided  
29 with same. And then obviously we will do the best that we can,

1 in order to take instructions from them, at the next convenient  
2 break.

3 JUSTICE DOHERTY: Yes, I will direct.

4 Madam Court Manager in Kigali, can you please show this  
10:13:50 5 document to the two accused persons. It's a document headed  
6 "Rwanda Correctional Service", then there is a shield or emblem,  
7 and underneath "Mpanga Central Prison." Myself, I have not read  
8 the document and I do not intend to do so, until it's been dealt  
9 with in evidence.

10:14:17 10 Mr Herbst --

11 THE COURT OFFICER: [In Kigali] [Overlapping speakers]

12 JUSTICE DOHERTY: -- I apologise for the interruption,  
13 please continue.

14 MR HERBST:

10:14:34 15 Q. Did your investigation uncover or make any determinations  
16 about whether the telephone system had been abused in the  
17 timeframe that we are talking about, which is inclusive of  
18 November and December of 2010?

19 JUSTICE DOHERTY: Just pause. Just pause, Mr Herbst. If  
10:15:00 20 we are talking about a report that you were seeking to put before  
21 this Court, and if, indeed, it is a report entitled "Report on  
22 general searching of Delta wing inmates Special Court for  
23 Sierra Leone at Mpanga Central Prison". The date shown on that  
24 document in front of me is 20/10/2011, so I would like to know  
10:15:23 25 when this investigation took place that led to report dated, and  
26 I would also like to know what the exact date of the report is in  
27 case it's not what I think it is.

28 MR SERRY-KAMAL: Your Honour, the date is very important  
29 because you see it's one year after. One year after. It's 2010,

1 almost one year after.

2 JUSTICE DOHERTY: Well, that's why I'm asking the  
3 questions, Mr Serry-Kamal.

4 MR HERBST: Your Honour, I wasn't going to ask specific  
10:16:00 5 questions about the report that you have just identified because  
6 it's my understanding that --

7 JUSTICE DOHERTY: No, I - I Mr Herbst, please listen to  
8 what I said. I am talking about the investigation. And if the  
9 investigation led up to this report, then I am interested in that  
10:16:24 10 date. If, and I say "if" again, the evidence that has just come  
11 from Mr Sengabo is about a different investigation, then we need  
12 to know the dates. The dates are important.

13 MR SERRY-KAMAL: Your Honour, quite apart from that, not  
14 that we are unduly opposed to the report being tendered, but my  
10:16:49 15 learned friend cannot go outside what is reported. There is a  
16 report and the report speaks for itself. Yes.

17 JUSTICE DOHERTY: Well, I stress again I haven't read this  
18 report - and counsel are well aware of my modus operandi when it  
19 comes to evidence - but I can see from just very quickly looking  
10:17:17 20 inside the first couple of pages, there isn't a date of when the  
21 search was actually carried out, and that is what I need to  
22 ascertain. For all I know, it could have been quite a historical  
23 document. But one thing I do know, it's not something that  
24 happened in the future. So let's get the dates right.

10:17:45 25 Mr Herbst, you've heard my --

26 MR HERBST: [Overlapping speakers]

27 JUSTICE DOHERTY: -- observations.

28 MR HERBST: [Indiscernible] yes, Your Honour.

29 Q. Mr Sengabo, when was your investigation conducted?

1 A. I said it was in 2011 after searching. In 2011, in October  
2 20th. Before this, I think I told you, before that we are not  
3 aware of what was happening because this was all done in the  
4 manoeuvre way. We didn't make any investigation regarding these  
10:18:37 5 incidents by the time it was happening, because we are not aware  
6 of it.

7 Q. When did you become aware of what you just called the  
8 manoeuvring and -- [Overlapping speakers]

9 MR METZGER: With the greatest of respect, Your Honour, I  
10:18:51 10 now object.

11 JUSTICE DOHERTY: Wait, Mr Herbst.

12 MR METZGER: Thank you. I object because the witness has  
13 clearly stated this investigation took place in October 2011.  
14 Now, I think both Mr Serry-Kamal and myself have a little bit of  
10:19:09 15 knowledge outside of this case about what the witness is talking  
16 about, and the witness gave us the flavour of that because he  
17 told us they believed that outside journalists were contacted.

18 This is a completely different event. It is completely out  
19 of context, and, respectfully, the Prosecution hasn't laid  
10:19:34 20 groundwork for that investigation or the suspicions in relation  
21 to that investigation to be applied to something that happened at  
22 the very latest, on the Prosecution case, on the 30th of November  
23 of 2010.

24 In those circumstances, we do - I do apply on behalf of  
10:19:56 25 Mr Kanu that the Prosecution be restrained from continuing along  
26 this line and any reference to this record be expurgated. Thank  
27 you.

28 MR HERBST: What evidence counsel was giving or referring  
29 to when he was talking about some journalists. I know nothing



1 about that. The question was --

2 JUSTICE DOHERTY: I am only realising on what the witness  
3 himself said. My note:

4 "We had suspicions of telephone abuse by hearing that these  
10:20:35 5 people were talking to journalists in Freetown."

6 This is what the witness said. And he has said that the  
7 date of this investigation was October 2011, and they had not  
8 made investigations before.

9 Again, without going evidence either from the bar or from  
10:20:56 10 the Bench, I think most of us are aware that a power of search  
11 and investigation is a general power within most prison  
12 authorities, but the witness has clearly stated we did not do  
13 one. We had not made an investigation. So that's - so the  
14 question of the relevance of the report --

10:21:20 15 MR HERBST: [Overlapping speakers]

16 JUSTICE DOHERTY: -- comes into question.

17 MR HERBST: Your Honour, there is an investigation  
18 involving searches. I am not sure that's the same investigation  
19 that involves what he was just talking about in his last answer  
10:21:35 20 relating to abuse of the phone system and the manoeuvring

21 [Overlapping speakers]

22 JUSTICE DOHERTY: Well, then we need to get - if there is  
23 such a search, then we need to hear about it. But it's not in  
24 this report --

10:21:52 25 MR METZGER: Your Honour, if there is some other --

26 MR HERBST: [Overlapping speakers] --

27 JUSTICE DOHERTY: -- the transcriber is not a magician and  
28 cannot do the impossible.

29 So let's start.

1 Now, Mr Herbst, you were saying something. We didn't hear  
2 it. Then I'm going to deal with Mr Metzger's objection.

3 MR HERBST: Yes, Your Honour. May I - am I heard now?

4 JUSTICE DOHERTY: Yes, I do hear you clearly.

10:22:22 5 MR HERBST: What I was saying to the Court was that there  
6 was an investigation that related to searches, but I am not sure  
7 that that is the same investigation that the witness alluded to  
8 in his last answer when he described abuse of the phone system  
9 leading to an investigation of the procedures or the manoeuvring,  
10 I think is what he said.

11 JUSTICE DOHERTY: Well, now --

12 MR HERBST: [Overlapping speakers]

13 JUSTICE DOHERTY: -- we are back to a question of dates.

14 Dates.

10:23:10 15 MR METZGER: May I now make my objection?

16 MR HERBST: [Overlapping speakers]

17 JUSTICE DOHERTY: Mr Metzger has got an objection.

18 MR HERBST: I am not finished.

19 JUSTICE DOHERTY: Oh, sorry, Mr Herbst. I thought you had.  
10:23:23 20 Please finish what you are saying.

21 MR HERBST: [Indiscernible] said to the witness was  
22 designed to ascertain - was designed to ascertain, to conduct the  
23 searches of the rooms that was described in the report that we  
24 all have. That is a different area that I am attempting to  
10:23:51 25 inquire about and whether - and when that was done.

26 Now, if it turns out that that was done at the same time,  
27 okay. But that's when I'm talking about, and counsel knows this  
28 because it's in the witness statement. The witness describes  
29 some of the findings about the investigation of the telephone

1 procedure and how the abuse of the system was able to be done.  
2 That is what I'm - and I've seen no reports of that. But that's  
3 what I'm attempting to elicit from the witness.

4 MR SERRY-KAMAL: Your Honour --

10:24:31 5 JUSTICE DOHERTY: I understand now, Mr Herbst, please.

6 Mr Serry-Kamal.

7 MR SERRY-KAMAL: Your Honour, I stand corrected. My  
8 observation is that the witness did say that they did not conduct  
9 an investigation in relation to this case.

10:24:45 10 JUSTICE DOHERTY: No, he --

11 MR SERRY-KAMAL: The only investigation they conducted was  
12 after they had found they had suspicion that they were talking to  
13 journalists in Freetown.

14 JUSTICE DOHERTY: Well, Mr Serry-Kamal, I didn't hear that  
10:24:58 15 as clearly as you did --

16 MR SERRY-KAMAL: [Overlapping speakers]

17 JUSTICE DOHERTY: So I'm going to allow some questions.

18 To avoid any doubt, it appears that this document is not  
19 relevant to this case.

10:25:11 20 Am I correct, Mr Herbst? The document dated 20/10/2011, is  
21 it relevant or is it not?

22 MR HERBST: Your Honour, it's relevant in so far as the  
23 search of two rooms and some telephone material is found. But  
24 that's different. That is a different subject matter. I do not  
10:25:33 25 know yet, because I haven't had a chance yet to elicit from the  
26 witness, whether, as either part of the same investigation or as  
27 an earlier investigation, there was an investigation of the  
28 telephone procedure and the suspected abuse of the procedure and  
29 what happened pursuant to that.

1 Now, that is what I'm - and I wasn't trying to elicit the  
2 telephone searches, because Your Honour had indicated it had not  
3 yet been distributed to people. So I was attempting to inquire  
4 into the other aspects of either that investigation or an earlier  
10:26:07 5 investigation. That is what I'm trying to do.

6 JUSTICE DOHERTY: I understand, Mr Herbst. Thank you.

7 MR METZGER: May I be heard now, Your Honour, on the point?

8 JUSTICE DOHERTY: Yes. What's your point?

9 MR METZGER: Simply this: It's my understanding that when  
10:26:25 10 one prosecutes a case, one generally asks questions to which one  
11 expects that the answer that will be elicited is an answer that  
12 has been provided or information has been provided about.

13 So I'm a little concerned when Mr Herbst says, "I don't  
14 know yet because I haven't elicited an answer." The witness has  
10:26:46 15 been very clear on the evidence that he's given. Respectfully,  
16 it is my submission that the report - the so-called report for  
17 the 20th of October, 2011, is irrelevant. Any such material that  
18 the Prosecution seek to rely on has been found relates to persons  
19 other than the persons in this indictment. It is a year later.  
10:27:10 20 And perhaps, if, as Your Honour suggests, we can look at dates  
21 and searches and so on, it would assist us all. Because then I  
22 can know whether I am objecting in the entirety to evidence about  
23 investigations which postdate this event or not.

24 JUSTICE DOHERTY: Mr Herbst has indicated --

10:27:37 25 MR HERBST: Your Honour --

26 JUSTICE DOHERTY: -- the evidence about the search. The  
27 evidence did not specify. He did say there was a search done on  
28 the 20th of October 2011. He did specify that. And he did also  
29 say they were not aware before that of what was the manoeuvring.

1 He also, in my hearing, said he did not make an investigation.  
2 But I accept Mr Herbst's observation that that entire answer may  
3 not be on record.

4 I will therefore ask the witness to - or possibly it was  
10:28:21 5 Mr Serry-Kamal's observation. I correct myself.

6 Mr Sengabo, you were interrupted when you were making an  
7 answer just now. You told us that you - there was an  
8 investigation on the 20th of October, 2011, and before that you  
9 weren't aware of manoeuvring. Then you started saying something,  
10:28:46 10 We did not make investigation, and I didn't hear the rest of that  
11 answer.

12 So can I hear the rest of that answer before I make a full  
13 ruling on these various procedural objections?

14 THE WITNESS: Your Honour, I said we did not make any  
10:29:05 15 specific investigation over this case because we didn't know it  
16 when it was occurring.

17 JUSTICE DOHERTY: I now thank you, Mr Sengabo, for that  
18 clear answer.

19 Mr Herbst, please continue with your questions.

10:29:39 20 MR HERBST:

21 Q. Did you make - after this case came to light, did you make  
22 any investigation of how the prisoners in the special wing were  
23 making telephone calls?

24 A. Yeah. In 2011, November 20th, I said we conducted a  
10:30:05 25 general search.

26 Q. Apart from the general search, did you make any inquiry --

27 MR METZGER: Objection, Your Honour, asked and answered.  
28 It is his witness. I think it is the third time he's asking  
29 him - yeah.

1 JUSTICE DOHERTY: Mr Metzger, you're right. But just let's  
2 get this clear, because I want to make sure that the witness  
3 fully understands the question.

4 Mr Herbst, put the question again, please.

10:30:42

5 MR HERBST:

6 Q. After this case came to light, did you make any  
7 investigation, analysis, or inquiry into how the prisoners were  
8 able to make phone calls or the procedure that was in place that  
9 permitted them to make the phone calls? Did you make any inquiry  
10 of that kind?

10:31:08

11 MR METZGER: I object to the question on the basis that I  
12 don't really understand it.

13 JUSTICE DOHERTY: Mr Herbst, I'm having difficulty. The  
14 witness has said twice that they made an investigation on the  
15 20th of 2011. They didn't make any specific investigation over  
16 this case because they were not aware of it. So when you're  
17 talking about when after this case came to light, are you  
18 saying - I'm trying to be clear what the questions are about.

10:31:23

19 The witness has clearly stated they weren't aware of the  
20 case at the time, so they were now making an investigation. Are  
21 you now asking some form of general questions about procedures  
22 following allegations that arose in this case, a sort of a  
23 general type of internal regulation and procedure adopted; or  
24 what exactly are you asking?

10:31:48

25 MR HERBST: The witness has already testified that they  
26 instituted new procedures in 2011 as a result of this. I am  
27 trying to ask him what occasioned that; what investigation or  
28 inquiry or analysis they made into the old procedures to see why  
29 they were defective and why they needed changing. That's what

10:32:13

1 I'm asking.

2 JUSTICE DOHERTY: Well, Mr Herbst, with respect --

3 MR HERBST: Because the witness statement --

4 JUSTICE DOHERTY: I don't have the witness statement. And  
10:32:46 5 it seems to me if new procedures --

6 MR HERBST: Your Honour --

7 JUSTICE DOHERTY: -- were put in place in 2011, and the  
8 indictment relates to a period in or about the 20th of November,  
9 2010 or a period from 27 November 2010 to the 16th of December  
10:33:14 10 2010, procedures that were put in place in 2011 following an  
11 investigation in October 2011, a question of relevancy occurs in  
12 my mind, and therefore I want to be sure what we are talking  
13 about here.

14 MR HERBST: I understand that. I understand the witness  
10:33:48 15 has testified that while these events were going on, no  
16 investigation was made because they were not aware of it.

17 JUSTICE DOHERTY: Indeed.

18 MR HERBST: But I'm trying to elicit what inquiry they did  
19 make after they came to light. I am talking about inquiry about  
10:34:05 20 the procedures at the relevant time. Because he's already  
21 testified that they changed the procedures to deal with it, so --

22 JUSTICE DOHERTY: Well, you're in danger - I am not  
23 inviting any comment from the Defence counsel at the moment  
24 because I am trying to get in my mind clear what happened here.  
10:34:36 25 Your witness has clearly stated that in an earlier answer they  
26 did not make investigation over this case. So questions of, for  
27 example, similar fact evidence, how could it apply to something  
28 that happened in the future? That could only happen in the past.  
29 So if you're saying the new procedure came in in 2011 as a result

1 of something that happened in 2011, I need to be clear in my mind  
2 why we're - how it applies to events in 2010.

3 MR HERBST: [Indiscernible] trying to elicit that answer  
4 and still follow all the Rules that Your Honour has asked me to  
10:35:31 5 follow. I am attempting to do it. Maybe let me go about it a  
6 different way -- [Overlapping speakers]

7 JUSTICE DOHERTY: It would help, yes.

8 MR HERBST: -- another series of questions.

9 Q. Mr Sengabo, in 2011, did you have occasion to change the  
10:35:49 10 entire staff that had been dealing with the prisoners in the  
11 special wing?

12 A. Yes.

13 Q. Would you tell the Court why you changed the entire staff?

14 A. Yeah, it's of a different kind. We normally change our  
10:36:10 15 staff. They deploy them to other prisons, and the - either to -  
16 other issues relating to this wing and so. We changed them maybe  
17 to give them new instructions and to have a refresh in the  
18 administration.

19 Q. Did it have anything to do with your findings of --

10:36:38 20 MR METZGER: Objection, Your Honour, that sounds like a  
21 leading question.

22 JUSTICE DOHERTY: It is. It is. Mr Herbst, that's  
23 leading.

24 Mr Herbst, I think we've frozen; have you?

10:37:03 25 MR HERBST: Your Honour, I'm just trying to formulate my  
26 next question.

27 JUSTICE DOHERTY: Yes, please take your time.

28 MR HERBST: Let me try to go about it this way.

29 Q. How did you change the system in 2011?



1 A. By changing the system, we first of all had to remake the  
2 call list. We applied the list to the Special Court and they  
3 made a new vetting to the telephone numbers that the prisoners  
4 had offered, and then we took this call list again to MTN as  
10:38:12 5 service provider to have this in their database such that if you  
6 dialed any different number from the accepted call list, it  
7 shouldn't go through. And, of course, for monitoring. So today  
8 we are using that telephone system. And the prisoners are now  
9 obliged to be in the room, security room, not moving like before,  
10:38:41 10 in the open area to attend the - the security on duty, to  
11 facilitate that telephone. And, of course, we changed some  
12 staff, not to get familiar with prisoners, in order to avoid all  
13 those that happened before.

14 Q. And what is it that had happened before that caused you to  
10:39:12 15 change the staff?

16 A. Yeah, it is telephone abuse and the dialings the different  
17 numbers, as we found out later on in the call log that there were  
18 some numbers registered in this book were not on the call list.

19 Q. Okay. Now before the system was changed, did you ever have  
10:39:46 20 occasion to observe Mr Kanu, Mr Brima, Mr Kamara making calls  
21 together?

22 A. Yeah, because they have friends. They tell us that they  
23 have close friends that they share, so passing telephone to their  
24 colleague. We didn't see it as a problem --

10:40:09 25 JUSTICE DOHERTY: Sorry, Kigali, we've lost you. I note  
26 Mr Sengabo's light is on.

27 Mr Sengabo, please pause. We have lost connection.

28 [Technical difficulties]

29 THE COURT OFFICER: Your Honour, I'm informed that Kigali

1 went out of electricity, so that's why we had the problem.

2 JUSTICE DOHERTY: Is it back on line yet,  
3 Mr Court Attendant?

4 THE COURT OFFICER: I am told that they have reinstalled  
10:41:40 5 power. They are trying to reconnect.

6 JUSTICE DOHERTY: Fine, we'll wait.

7 THE COURT OFFICER: Your Honour, I'm told they lost power  
8 again and so they are reinstalling or reconnecting.

9 JUSTICE DOHERTY: I'll just note that there is a problem  
10:45:56 10 with connection to Kigali. I'm just checking how long we will  
11 need.

12 [Court Officer and Judge confer]

13 JUSTICE DOHERTY: Counsel, apparently there is a problem  
14 with the machinery and the contact. Our technicians are working  
10:48:38 15 hard on it, but they are not sure what the problem is. I have  
16 made inquiries about an early lunch break, but that may not be  
17 entirely practical either. Just give it a minute or two and if  
18 it's not reconnected in the next, say, few minutes, then I think  
19 we will just have to take a bit longer than usual for lunch break  
10:49:08 20 for Kigali.

21 [Court Officer and Judge confer]

22 JUSTICE DOHERTY: Counsel, we're not really - apparently,  
23 we haven't any concrete information about reconnection with  
24 Kigali. We are coming very close to the time that Kigali  
10:51:37 25 normally have their lunchtime break of three quarters of an hour,  
26 and I think we could all use our time more productively.

27 If we take these extra few minutes, adjourn, and reconvene  
28 at 12.45 to allow the - yes, 12.45. Our - we're almost up to  
29 12.00 - no, 11.00.

1 MR METZGER: 11.00, Your Honour. It's the time zones. I'm  
2 suffering from the same thing, Your Honour.

3 JUSTICE DOHERTY: I'm getting very confused. That is why I  
4 like digital clocks. So we'll take it up to 11.45. That will  
10:52:22 5 allow both our hard-working AV people to try to get our  
6 reconnection and also to let the Kigali have their lunch break.  
7 I will ask Mr Court officer to transmit this information to  
8 Kigali by phone as they may not be hearing us.

9 Please adjourn Court to 11.45.

10:53:07 10 [Break taken at 10.53 a.m.]

11 [Upon resuming at 11.50 a.m.]

12 JUSTICE DOHERTY: Good morning or afternoon, Kigali. Can  
13 you hear us now?

14 MR HERBST: Yes, Your Honour, we can hear you; we can see  
11:51:16 15 you. All of the power went out and so everything was down for  
16 some time, but apparently it's been restored.

17 JUSTICE DOHERTY: That's fine. We'll continue on with the  
18 evidence, please.

19 MR HERBST: Your Honour, the last question had to do with  
11:51:38 20 whether -- [overlapping speakers]

21 JUSTICE DOHERTY: The witness stated --

22 MR HERBST: [Overlapping speakers]

23 JUSTICE DOHERTY: The witness stated that passing the  
24 phone, they did not see it as a problem. That's the last part of  
11:51:54 25 the answer I recorded in my notes. Continue, please --

26 MR HERBST: [Overlapping speakers] the question I think was  
27 whether he observed the three gentlemen, Mr Brima, Mr Kamara and  
28 Mr Kanu making a call or calls together and I'm not sure whether  
29 there was an actual "yes" answer that actually got into the

1 transcript on that.

2 JUSTICE DOHERTY: I have a note of a reply --

3 MR HERBST: [Overlapping speakers]

4 JUSTICE DOHERTY: -- which I'm sure the transcriber got.

11:52:29 5 It was, Yes, they said they had friends in common. They would  
6 pass the phone and we did not see it as a problem, is the answer  
7 I have. Continue from there, please.

8 MR HERBST: [Overlapping speakers] Your Honour, and I'll  
9 move on. I'll just move on.

11:52:58 10 Q. Mr Sengabo, I'm going to hand you a set of telephone  
11 records. I'll going to have the Court attendant hand it to you.  
12 Sorry, Your Honour. I'm going to first ask the witness after  
13 he's had a chance to look at it whether he has seen these records  
14 before. I'll stop there.

11:53:49 15 A. Yes, I have.

16 Q. And would you tell the Court what that exhibit is?

17 A. This call record is from MTN.

18 Q. And for which telephone?

19 A. The telephone used in the Delta Wing for prisoners.

11:54:22 20 Q. And is that at the telephone number that you earlier  
21 testified to as what that phone number was?

22 A. Yes.

23 MR HERBST: Your Honour, it's my understanding, from the  
24 colloquy we had when all counsel were here, there's not going to  
11:54:47 25 be an objection to this exhibit. So I'm going to move its  
26 admission, unless counsel wants - or Your Honour wants some  
27 further foundation.

28 JUSTICE DOHERTY: I haven't seen the document, so -  
29 Mr Metzger?

1 MR METZGER: May I just ascertain, Your Honour, that this  
2 is the document which has 39 - I beg your pardon, it starts with  
3 page 1 of 39, and then it appears that there's a further document  
4 which starts with page 1 of 10, so in total, 49-odd pages. I  
11:55:29 5 don't object to the Prosecution using it to assist the pursuance  
6 of this case, but make no admissions as to its content.

7 JUSTICE DOHERTY: Mr Herbst, is this the document you're  
8 referring to described by Mr Metzger?

9 MR HERBST: It is. Those are the pages, and I can further,  
11:55:57 10 for the record, give the dates; in other words, from when to  
11 when.

12 JUSTICE DOHERTY: First of all let me hear what other  
13 counsel have to say.

14 MR HERBST: [Overlapping speakers]

11:56:08 15 JUSTICE DOHERTY: Mr Nicol-Wilson, you heard the  
16 application.

17 MR NICOL-WILSON: Your Honour, I have no objection.

18 JUSTICE DOHERTY: Thank you. Mr Serry-Kamal?

19 MR SERRY-KAMAL: I have no objection. We discussed it.

11:56:20 20 JUSTICE DOHERTY: Very well, Mr Serry-Kamal, thank you. I  
21 will ask Mr Court Officer to let me have a copy of this document  
22 so I can, if necessary, refer to it. It's being admitted as  
23 Prosecution exhibit P14, I think is the last number.

24 MR HERBST: That is correct, Your Honour.

11:57:12 25 JUSTICE DOHERTY: I have these documents.

26 MR METZGER: For clarification purposes there are two sets  
27 of documents and I was wondering whether they would all be  
28 collectively entitled P14 or whether they are going to be 14 and  
29 15.

1 JUSTICE DOHERTY: I was going to ask the same question,  
2 because, without going through them bit by bit, I'm not sure how  
3 they work out. Are they in some sort of sequence? Are they two  
4 different documents that I need to give - mine, in fact, are  
11:57:45 5 three different documents, but I can see that they are all part  
6 of the same. Is it one number, or are they two separate  
7 documents, Mr Herbst, that need two separate exhibit numbers?

8 MR HERBST: Your Honour, it's my respectful view that it  
9 only needs one number because, in fact, the records are  
11:58:07 10 consecutive. In other words, the first set of pages 1 to 39,  
11 goes from November 1 to November 30; and then the second set,  
12 even though they are numbered 1 to 10, pick up on December 1. I  
13 don't know if Your Honour sees that. So in effect, it's one  
14 chronological record from November 1 to December 7, but again I  
11:58:35 15 yield to Your Honour's preference in that regard.

16 JUSTICE DOHERTY: It appears to me from looking at this,  
17 that the documents I've been given start page 10 of 39, 11 June,  
18 2010. More correctly, 11/6/2010. Then 39 finishes at  
19 11/30/2010, which I guess is 30 November 2010 written in the more  
11:59:38 20 American way. And the next one starts at 1/12/2010, which I  
21 understand to be 1 December. So on the surface, it appears to be  
22 a continuous record, although there is a break between - a gap in  
23 the November. When I say a gap, there is a piece of paper left  
24 blank, so it appears to be consecutive. So I'm going to mark it  
12:00:03 25 as one exhibit number, exhibit P14.

26 MR HERBST: Your Honour is missing some of the initial  
27 pages then apparently. Can Your Honour hear me?

28 JUSTICE DOHERTY: [Microphone not activated] I can hear  
29 you, Mr Herbst. And from what you said it sounds as though I'm

1 missing pages 1 to 10 of the first set. But it will come soon  
2 enough because it appears those earlier pages precede the time in  
3 question. So there may be questions of relevance. So please  
4 continue and I will ensure that I get a proper record in due  
12:00:46 5 course. Please continue.

6 MR HERBST: The Court attendant has advised me that the  
7 documents were scanned in pieces, so the Court attendant in  
8 Freetown should be able to locate the first pages that Your  
9 Honour doesn't have before her.

12:01:10 10 JUSTICE DOHERTY: Well, as it happens, all our servers are  
11 down in Freetown, so he may well have a problem. But don't worry  
12 about continuing without them. Once our server is up and  
13 reading, we'll get it. Continue, Mr Herbst.

14 MR HERBST: Thank you, Your Honour.

12:01:33 15 Q. Mr Sengabo, have you had a chance to review these phone  
16 records?

17 A. I have them before me, but I haven't checked inside.

18 Q. My question was have you had a chance before today - before  
19 your testimony today to look at and review these records?

12:02:06 20 A. From MTN?

21 Q. Yes, these records from MTN that you have before you?

22 A. Yes.

23 Q. Now I want to direct your attention to pages 38 of 39 and  
24 39 of 39 in those records. Would you turn to those two pages,  
12:02:32 25 please. I would ask that you turn to two specific pages in those  
26 records: Pages 38 of 39 and 39 of 39, and I would also ask you  
27 to have in front of you the manual call log on the page that  
28 we've discussed this morning that starts "30/11/2010". Now,  
29 directing your attention to the last phone entry on page 38 of

1 39, would you read out the number called and tell us the date and  
2 time of that call?

3 A. I beg your pardon, is it in the column or in the MTN --

4 JUSTICE DOHERTY: Mr --

12:04:00 5 MR HERBST: [Overlapping speakers] that's a good question.

6 JUSTICE DOHERTY: -- Herbst, please ask Madam Court  
7 Attendant to point - indicate to her, and she in turn can  
8 indicate to the witness.

9 Have you seen it, Mr Sengabo?

12:05:06 10 MR HERBST: Having difficulty locating it.

11 Q. Okay, I'm asking you the number that is - was called - not  
12 the number of the cell phone, but the number --

13 JUSTICE DOHERTY: Oh, Mr Herbst, please, I need to know who  
14 is calling who. There's a whole list with the same number. I  
12:05:29 15 don't know who it is.

16 MR HERBST: Okay. Would you read out the line - the whole  
17 last line.

18 A. 2250788966848.

19 Q. Let me interrupt you there. What number is that?

12:06:08 20 A. It is the number used to call in Freetown.

21 Q. Would you read out the second number?

22 A. It is 23276337395.

23 Q. And what is that number? Is that the number that --

24 JUSTICE DOHERTY: Don't lead.

12:06:35 25 MR HERBST:

26 Q. What is that number?

27 A. It is a Freetown number.

28 JUSTICE DOHERTY: Continue.

29 Q. Going back to the first page - going back to the first page



1 of the document, page 1 of 39, look at that?

2 A. Yes, I have it before me.

3 Q. The numbers in the second column under "called number",  
4 what are those numbers?

12:07:23 5 A. Freetown number.

6 Q. Okay. My question is: In all of these records in the  
7 numbers that are in that second column, are those the numbers  
8 called?

9 A. Yes.

12:07:44 10 Q. Now I would like you to go back to page 38 of 39 and ask  
11 you similarly, even though there's no heading at the column on  
12 that number, whether that number that you just read out,  
13 23276337395, was the number called?

14 A. Yes.

12:08:13 15 Q. And what is the date and time of that call listed in the  
16 fourth column?

17 A. It is 11/13/2010, 12 and 45 seconds.

18 Q. P.m., right? Okay?

19 A. P.m.

12:08:56 20 Q. Now I would like you to look at the phone log - the manual  
21 phone log. Put those pages aside for a minute from the phone  
22 records and look at the manual phone log and tell us what the  
23 first number under "called numbers" is that is listed in the  
24 first entry of that page at 1311 p.m.?

12:09:31 25 A. It is +232276337395.

26 Q. And is that the same number that's listed at the bottom of  
27 page 38 of 39 in the phone record that you just read out?

28 A. Yes.

29 Q. Now I would like you to look at the first three numbers at

1 the top of the next page of the MTN phone records; that is, 39 of  
2 39?

3 A. At the call log or MTN records?

4 Q. The MTN records?

12:10:22 5 A. Which line, excuse me?

6 Q. Page 39 of 39, the first three lines. Page 39 of 39, the  
7 first three lines. The first three calls?

8 A. Just that line?

9 Q. The first line - let's take the first line first.

12:11:03 10 JUSTICE DOHERTY: Could Madam Court Manager be close to the  
11 witness and point out what is required. Proceed.

12 MR HERBST:

13 Q. Do you have the first call at the top of page 39 of 39 --

14 A. Yes.

12:11:38 15 Q. -- before you?

16 A. Yes.

17 Q. Would you read out the number called, that is, the called  
18 number from the second column of the first line?

19 A. It is 23233495715.

12:12:09 20 MR HERBST: [Microphone not activated]

21 JUSTICE DOHERTY: Mr Herbst, I can't hear you. Are we  
22 talking about page 39 of 39?

23 MR HERBST: Yes, we are. I don't think the witness had  
24 that page in front of him so I'm going to ask the Court attendant  
12:12:29 25 to do that, put it in front of him again.

26 THE WITNESS: Yes, I can see it.

27 MR HERBST:

28 Q. The second number on the first line, would you read out  
29 that number. That is, the number from the second column of the

1 first line?

2 A. It is 23233255597.

3 Q. Thank you. And what is the time - date and time of that  
4 call?

12:13:10 5 A. It is 9 past 1 p.m.

6 Q. On same day, November 30?

7 A. Yes.

8 Q. Now I would like you to go to the second call listed on  
9 that page, the very next call listed on that page. Would you

12:13:39 10 read out that number called, please?

11 A. It is 23233255597.

12 Q. And is that the same number of the previous call that you  
13 just read out?

14 A. Yes.

12:13:59 15 Q. And what is the date and time of that second call to that  
16 number on the second line? What is the date and time listed for  
17 that second call on that page, the number of which you just read  
18 out in the fourth column on the second line of that page?

19 A. It is 30/11/2010.

12:14:27 20 Q. What time?

21 A. That is 7 past 1 p.m.

22 Q. Thank you. And the third call on that page, the very next  
23 call, would you read out that number called?

24 A. It is 23233255597.

12:14:51 25 Q. And is that the same number called as the last two calls  
26 you just read out?

27 A. Yes.

28 Q. And what is the date and time of that third call to that  
29 same number?

1 A. It is 30/11/2010, 49 past 1 p.m.

2 Q. Thank you. Now I would like you to look at the call log at  
3 that very same page that we've been discussing before. The call  
4 log now, Mr Sengabo. Do you see among the next two numbers on  
12:15:35 5 that page from the first one you read out - in other words, the  
6 numbers on the second line and the third line under the column  
7 "called numbers", are either of those numbers - the numbers that  
8 you just read out from the first three calls on page 39 of 39 of  
9 the MTN phone records for the prison cell phone?

12:16:04 10 JUSTICE DOHERTY: Mr Herbst, I don't know if it's a prison  
11 cell phone. I've absolutely no idea in God's good earth what  
12 this number ending in 848 is, where it is or who uses it or  
13 anything about it.

14 MR HERBST: The witness testified as to what that number  
12:16:33 15 was earlier but I'll ask him to repeat it. There was testimony  
16 [microphone not activated] repeat it.

17 JUSTICE DOHERTY: Please refer me to it. Maybe I've got it  
18 wrong.

19 MR HERBST:

12:16:45 20 Q. [Microphone not activated] Mr Sengabo, the number in the  
21 first column of all these pages of the MTN phone records, that is  
22 the number 250788966848, what is that telephone number?

23 A. It is the telephone number used by prisoners at Mpanga  
24 Prison to call in Sierra Leone.

12:17:20 25 Q. And are you referring me - what you earlier testified to  
26 was the cell phone and cell phone number used at the special wing  
27 in November and December 2010?

28 A. Yes.

29 Q. Now to go back to my question. You've already testified

1 that the first number listed in the phone log, that is  
2 23276337395, was the number listed on the call at the bottom of  
3 page 38 of 39 that you read out a few minutes ago. Do you recall  
4 that testimony?

12:18:14 5 A. Yes.

6 Q. Now, I'm asking you about the next two numbers which you  
7 earlier read out from the manual phone log. Are those numbers  
8 [microphone not activated]?

9 A. I can see them.

12:18:36 10 Q. Are those numbers the same or different from the numbers at  
11 the top of the - of page 39 of 39, the phone number which you  
12 read out which was called on the first three calls on that page?

13 A. Yes, they are different.

14 Q. They are different. Now I want you to look at the second  
12:19:06 15 number on the manual call log on the second line under "called  
16 numbers." It says "23233285697." If you compare that to the  
17 number called on the first three calls at the top of 39 of 39,  
18 how many digits are the same and how many digits are different?

19 A. From 2 to 33, they are similar; but from 2 to 5 are not  
12:20:24 20 similar - to 7 are not similar.

21 Q. All right, thank you.

22 MR HERBST: Your Honour, if you could just bear with me for  
23 one minute, please.

24 JUSTICE DOHERTY: Certainly.

12:21:19 25 MR HERBST: Your Honour, I believe the proper foundation  
26 has been laid, so I would like to introduce - move to introduce  
27 into evidence the manual phone log.

28 JUSTICE DOHERTY: Mr Herbst, there was some discussion  
29 yesterday about retention, et cetera. You're putting in the

1 whole original book now, are you? Just to make sure I have my  
2 records correct.

3 MR HERBST: Your Honour, in light of Mr Sengabo's testimony  
4 yesterday that it would be possible for the Court to retain the  
12:22:02 5 original book through the conclusion of appellate proceedings, I  
6 think the easiest thing to do is just to move into evidence the  
7 original.

8 JUSTICE DOHERTY: Thank you for that clarification. I'll  
9 seek --

12:22:18 10 MR HERBST: [Overlapping speakers]

11 JUSTICE DOHERTY: I'll seek responses now.

12 Sorry, Mr Nicol-Wilson, I didn't address you properly.

13 Have you any comment on this tender?

14 MR NICOL-WILSON: I have no objections, Your Honour.

12:22:46 15 JUSTICE DOHERTY: Thank you. Mr Metzger?

16 MR METZGER: I have no further comment.

17 JUSTICE DOHERTY: Mr Serry-Kamal?

18 MR SERRY-KAMAL: No objection.

19 JUSTICE DOHERTY: Just before I rule on this admission, I  
12:23:07 20 wish to have some clarification. I possibly - unnecessarily so,  
21 in light of evidence - but I just want to make sure, Mr Sengabo,  
22 you have told us that you recognised writing, et cetera. Who  
23 actually wrote those phone numbers that are in the column called  
24 "called numbers".

12:23:34 25 THE WITNESS: It is written down by the caller, because I  
26 can see the handwritings for the callers.

27 JUSTICE DOHERTY: Thank you for that clarification. I will  
28 now admit the entire book of - we will call it the manual phone  
29 call register for purposes of identification, and it will become

1 Exhibit P15.

2 Now, it will be retained by the Special Court until the end  
3 of appellate proceedings, if any appellate proceedings should  
4 come about, and then it will be returned to the Government of  
12:24:21 5 Sierra Leone - to the Government of Rwanda. Exhibit P15. Is it  
6 intended to also move, in light of the conversations yesterday,  
7 any of the photocopies? We will need to have a historical  
8 document.

9 MR HERBST: Yes, your Honour. I was just about to address  
12:24:47 10 that. I believe that the photocopy provided this morning of the  
11 page containing the specific entries we've discussed today on  
12 30 November 2010 - and it does contain the signature column at  
13 the end - should be marked as P15A or P15(1) so it's clear  
14 there's a relationship between that photocopy and the original.

12:25:22 15 JUSTICE DOHERTY: So you are moving the tender of that copy  
16 as well.

17 MR METZGER: I object to that, your Honour. The original  
18 document has been exhibited. There's no need for a copy to  
19 become an exhibit. The only reason why we have the copies, as I  
12:25:35 20 understand it, and I would be grateful for one that has a  
21 signature on it, is so that we can follow the case. There's no  
22 need to duplicate the - and confuse, in my respectful submission,  
23 the issue by having 15 and 15A. It's the same document, as far as  
24 I understand it.

12:25:58 25 JUSTICE DOHERTY: I can appreciate your point, Mr Metzger.  
26 The original document is always the best. We don't have a best  
27 evidence rule, but it is the best. I'm really only thinking of  
28 historical purposes. There is a copy with the signatures and I'm  
29 not thinking of it in its evidentiary role. On the basis of a

1 purely historical record. So the original is returned and there  
2 has to be something, then we have this page and it's purely for  
3 that reason.

4 MR METZGER: So be it, your Honour.

12:26:35 5 JUSTICE DOHERTY: I will call it - Mr Serry-Kamal.

6 MR SERRY-KAMAL: Your Honour, I have no objection to it  
7 being called P15A.

8 JUSTICE DOHERTY: Very well, Mr Serry-Kamal. That's most  
9 helpful. We'll call this one page 15 - Exhibit P15A, however,  
12:26:54 10 everyone acknowledges that the exhibit is in fact the original  
11 book.

12 Please continue, Mr Herbst.

13 MR HERBST: Your Honour, I think the only other area of  
14 direct examination for the witness now has to do with the search  
12:27:12 15 reports - search report that we earlier alluded to before we lost  
16 power, and I just want to inquire whether now everybody has had a  
17 chance to see it and look at it before I question the witness  
18 about it.

19 JUSTICE DOHERTY: Which search report is this, Mr Herbst?  
12:27:36 20 So as I know what I'm talking about.

21 MR HERBST: It's headed "Rwanda Correctional Service" dated  
22 20/10/2011 consisting of eight pages.

23 JUSTICE DOHERTY: I'll allow questions but if they are  
24 objected to, I'll have to deal with them.

12:28:06 25 MR METZGER: May I indicate my objection to the whole of  
26 this, because --

27 JUSTICE DOHERTY: Just because, Mr Herbst. Yes, please.

28 MR METZGER: It seems to me on any logical perusal of this  
29 document and consideration of the evidence before the Court, the



1 only thing that the Prosecution can do is to try and ask the  
2 witness to link this report to what happened in November or  
3 December of 2010. There is no basis for that link, and therefore  
4 I object to the entire line of questioning on behalf of Mr Kanu.  
12:28:45 5 I'm prepared to object to specific questions if that is the way  
6 that Your Honour wishes to proceed. But that's my stance on the  
7 entire line of questioning.

8 JUSTICE DOHERTY: Thank you. I'm clear on that point.  
9 Mr Serry-Kamal.

12:28:58 10 MR SERRY-KAMAL: I agree with what my learned friend has  
11 said. I want to add that as far as I'm concerned, this report is  
12 irrelevant. There's no nexus between it and the events of the  
13 previous [i ndi scerni ble].

14 MR NICOL-WILSON: Your Honour, I support both counsel.

12:29:34 15 JUSTICE DOHERTY: Thank you.

16 MR HERBST: Does your Honour wish to hear from me at this  
17 point?

18 JUSTICE DOHERTY: Yes, Mr Herbst. Your response, please.

19 MR HERBST: On the issue of relevance.

12:29:48 20 JUSTICE DOHERTY: Yes, please.

21 MR HERBST: Your Honour, in response to an objection of  
22 this kind we would normally make a proper showing of what we  
23 believe the relevance of the information is. I hesitate to do  
24 that for fear of being accused of mentioning what the evidence  
12:30:10 25 is, and again I understand the legal cultures are different, but  
26 I don't want to put my foot in a prohibited place again, so can I  
27 do this outside the presence of the witness who could be excused,  
28 if that would assist my learned friends and the Court in  
29 permitting me to explain the relevance. And it is limited. It

1 would take me about a minute to do it. But there's no way for me  
2 to actually do it without explaining.

3 JUSTICE DOHERTY: Well, there has been a pertinent  
4 objection raised. If you have an equally pertinent reply, in  
12:30:51 5 fairness I would like to consider it.

6 So Mr Sengabo, could I ask you to retire temporarily from  
7 the courtroom so that some procedural matters relating to  
8 evidence - not to you personally - can be heard and a ruling  
9 made.

12:31:07 10 [The witness withdrew]

11 MR HERBST: [Microphone not activated] I will explain if  
12 your Honour wishes at this point - permits me to do so.

13 JUSTICE DOHERTY: Yes, please explain.

14 MR HERBST: Your Honour will remember, in my opening  
12:31:40 15 statement I said that after these events, there was a search of  
16 the quarters of the residents of the special wing, and in the  
17 case of two of those convicted, there were found telephone  
18 paraphernalia which suggested that the prisoners generally had  
19 available to them another cell phone or cell phones for use other  
12:32:18 20 than the official prison one - prison cell phone that they were  
21 supposed to use, which Your Honour has now heard has the number  
22 in the MTN telephone records.

23 The document in question - this report - documents the  
24 discovery of those two elements. In Mr Tamba Brima's room there  
12:32:52 25 was air time in the amount of 1,000. That's on page 7 of this  
26 report. And on page 8, the description of what was found in  
27 Morris Kallon's quarters included a telephone charger - one  
28 telephone charger. That's also recorded on line 16 of page 8 and  
29 the air time was recorded on line 16 of page 7 from Mr Brima.

1 Now, it's not the Prosecution's submission that anything  
2 was found on the - of this nature in the premises of [microphone  
3 not activated]

4 JUSTICE DOHERTY: I've lost you, Mr Herbst, I'm afraid.

12:33:53 5 [Technical difficulties]

6 JUSTICE DOHERTY: Mr Herbst? Mr Court Attendant, could you  
7 check, please.

8 Mr Herbst, can you hear me?

9 MR HERBST: I'm sorry.

12:34:10 10 JUSTICE DOHERTY: You were cut off for a moment there. You  
11 were saying it is not the Prosecution's submission that something  
12 of this nature was found, and that's when you cut off.

13 MR HERBST: Okay, let me try to repeat that. It's not our  
14 submission that any telephone paraphernalia was found in the  
12:34:34 15 rooms of either Mr Kamara or Mr Kanu, the accused here. It is  
16 merely a showing to demonstrate that there may have been other  
17 telephones available for calling, in which telephone calls,  
18 pertinent phone calls that do not show up in these records -  
19 there's an alternative explanation. And that's the limited  
12:35:04 20 purpose of the offer.

21 I'm just anticipating some of the objections we've heard  
22 earlier that, in fact, the - that the - either the air time or  
23 the telephone charger didn't come from the rooms of the two  
24 accused, and I fully acknowledge that. But I think it's relevant  
12:35:27 25 nevertheless as an alternative explanation for how it could be  
26 that other phones - other phone calls from the prison - from the  
27 prisoners, that Your Honour has heard testimony about, may not  
28 show up in these particular phone records.

29 MR METZGER: May it please Your Honour --

1 JUSTICE DOHERTY: Mr Sengabo can be brought back in.

2 MR METZGER: May it please Your Honour, I did not want to  
3 disturb your Honour's cognitions but I should say that the  
4 explanation given by my learned friend for the Prosecution does  
12:40:49 5 found the basis, in my respectful submission, for even stronger  
6 objection under Rule 95. But of course, I understand that Your  
7 Honour's cognitions were probably because you were writing a  
8 ruling, and I don't know if it is an appropriate point in time  
9 for me to address Your Honour on it. So.

12:41:11 10 JUSTICE DOHERTY: I've made a decision.

11 MR METZGER: Okay. This report was made following a search  
12 of the Delta Wing of Mpanga Prison on 20 October 2011, which is  
13 approximately eleven months to a year after the events at issue  
14 in this case.

12:41:38 15 The witness Mr Sengabo testified that there it followed  
16 from abuse, that is, abuse of talking to journalists, and as a  
17 result the system was changed. But they did not make an  
18 investigation following the allegations that are in issue in this  
19 case. So for that reason, I do not consider that this report is  
12:42:06 20 relevant to the proceedings before me.

21 Further, I have considered if this report - or the evidence  
22 relating to it - could fall within the provisions of Rule 93,  
23 that is, similar factor, similar pattern evidence, since these  
24 events took place afterwards, I'm not at all sure that it shows -  
12:42:34 25 could go to prove - a consistent pattern is a debatable point.  
26 But I do not consider that it falls within Rule 93A, given both  
27 the time, and in the case of one of the personnel involved, who  
28 is alleged to be a person who has not been named in evidence in  
29 this case. So for that reason, mainly of relevance, I do not

1 admit the - I do not hear evidence on this report.

2 [Witness returns to courtroom]

3 JUSTICE DOHERTY: Mr Sengabo, welcome back. Mr Herbst,  
4 please continue.

12:43:17 5 MR HERBST: That was my last area of inquiry and since Your  
6 Honour has excluded the subject matter of the inquiry, if Your  
7 Honour just gives me one minute, I'm prepared to hand the witness  
8 over for cross-examination.

9 JUSTICE DOHERTY: Thank you, Mr Herbst. Please take your  
12:43:31 10 time.

11 MR HERBST: No further questions.

12 JUSTICE DOHERTY: Thank you. Counsel for the Defence?  
13 Yes, Mr Nicol-Wilson, please proceed.

14 Cross-examination by Mr Nicol-Wilson:

12:44:07 15 MR NICOL-WILSON: Good afternoon, Mr Sengabo.

16 A. Afternoon, sir.

17 Q. You are a trained and qualified lawyer, correct?

18 A. Yes.

19 Q. You are not an expert in telecommunications data; is that  
12:44:53 20 correct?

21 A. Yes.

22 Q. As such, you are not in a position to verify the  
23 authenticity of exhibit P14, which is the telephone logs?

24 A. I can by experience.

12:45:23 25 Q. You cannot say with absolute certainty that the records  
26 provided by MTN is correct?

27 MR HERBST: I object to that question on the grounds that  
28 absolute certainty is not required for authentication.

29 JUSTICE DOHERTY: That's true, Mr Nicol-Wilson.

1 MR NICOL-WILSON: I'll proceed, Your Honour.

2 Q. The records, Exhibit 14, were prepared by both the police  
3 and MTN in Rwanda?

4 A. Yes.

12:46:25 5 Q. And as such, it's not records coming directly from MTN?

6 A. Directly from MTN to Special Court, or directly from Rwanda  
7 to Sierra Leone?

8 Q. You said just now that you agree with me that the records,  
9 Exhibit 14, were prepared both by the police in Rwanda and MTN in

12:47:03 10 Rwanda. I am now asking that as a result of your last answer,  
11 you will agree with me that the records exhibit P14, is not  
12 coming to the Court from MTN?

13 MR HERBST: Your Honour, [microphone not activated] that  
14 question on the grounds that it was asked and it was answered  
15 contrary to what counsel just put to the witness.

12:47:28 16 JUSTICE DOHERTY: I don't recall mention of the police.  
17 When was this? When was this put, Mr Herbst?

18 MR HERBST: Your Honour, counsel asked in the penultimate  
19 question whether the records came both from MTN and the police  
12:48:00 20 [overlapping speakers] --

21 JUSTICE DOHERTY: And the witness asked for clarification.

22 MR HERBST: [Overlapping speakers]

23 JUSTICE DOHERTY: And I was about to point out that that's  
24 actually two questions in one, so I will allow the question  
12:48:14 25 because I want to hear the answer.

26 THE WITNESS: [Microphone not activated] came from MTN.

27 MR NICOL-WILSON:

28 Q. Mr Sengabo, I did not get the entire answer?

29 JUSTICE DOHERTY: I heard Mr Sengabo say "they came from

1 MTN".

2 MR NICOL-WILSON:

3 Q. Now look at the first page of exhibit P14, which says  
4 "Confidential - for Police Use Only".

12:49:02 5 MR HERBST: Your Honour [microphone not activated] to this  
6 - to this attempt to - well, I'll just say in addition to that,  
7 the records also contain an MTN logo, so it's not inconsistent at  
8 all with what the witness has said --

9 JUSTICE DOHERTY: Mr Herbst, please, this is  
12:49:23 10 cross-examination. You are at liberty to put those things in  
11 re-examination if you consider it appropriate. But for the  
12 moment, we're dealing with cross-examination.

13 Mr Nicol-Wilson, put your question.

14 MR NICOL-WILSON:

12:49:35 15 Q. Have you seen at that portion of the records, the first  
16 page 1 - page 1 of 39?

17 A. The first page. I have seen it.

18 Q. Yes. Do you see the portion which reads "Confidential -  
19 for Police Use Only"?

12:50:06 20 A. Yes, sir.

21 Q. So you will agree with me that these records did not come  
22 directly from MTN to the Court?

23 JUSTICE DOHERTY: Mr Nicol-Wilson, that is not entirely  
24 fair, because they're being tendered through a witness. They  
12:50:29 25 didn't come direct from the Court. They must have come via a  
26 witness, so the question should really relate to how they got to  
27 be tendered.

28 MR NICOL-WILSON:

29 Q. Now, Mr Witness, who did you receive these records from?

1 A. From the Prosecutor.

2 Q. Now, as of November 2010, the Delta Wing had no system in  
3 place for recording of telephone conversations; is that correct?

4 A. You mean audio or call log?

12:51:33 5 Q. Audio. Voice recording of telephone conversation. You had  
6 no system in place to record conversations, the discussions?

7 A. Yes. Yes.

8 Q. You will therefore agree with me that you are not in a  
9 position to say what was discussed between Rwanda and Freetown?

12:52:05 10 A. Yes.

11 MR NICOL-WILSON: That will be all for this witness, Your  
12 Honour.

13 JUSTICE DOHERTY: Thank you, Mr Nicol-Wilson. Who is next  
14 now in our line of seniority? Yourself, Mr Metzger? Well, no, I  
12:52:19 15 don't know about you. I think you're next on the indictment.

16 MR METZGER: I'm next on the indictment, but I'm ready to  
17 ask questions at any point in time which the Court sees  
18 appropriate.

19 JUSTICE DOHERTY: That would be good.

12:52:30 20 MR METZGER: Would Your Honour like Mr Serry-Kamal to ask  
21 questions first, or shall I go next?

22 JUSTICE DOHERTY: Please proceed, Mr Metzger.

23 MR METZGER: Thank you very much.

24 Cross-examination by Mr Metzger:

12:52:41 25 Q. Mr Sengabo, good afternoon to you.

26 A. Good afternoon to you, sir.

27 Q. Can you help me with a few things, please, Mr Sengabo. If  
28 we look, please, at P15, or, more properly, P15A, you've been  
29 asked questions about those three telephone numbers that appear



1 against two names on the 30th of November; do you see them?

2 MR HERBST: I don't think the witness has 15A before him.

3 MR METZGER: I would be grateful if it could be placed  
4 before him.

12:53:30 5 JUSTICE DOHERTY: Yes, Mr Herbst, please ask Madam Court  
6 Officer to put 15 - the original document, in front of  
7 Mr Sengabo.

8 MR HERBST: The original log?

9 JUSTICE DOHERTY: Yes. The situation is, we here in  
12:53:55 10 Freetown are looking at a photocopy, whereas you have the  
11 original document.

12 MR METZGER: I'm very much obliged. If there's a copy of  
13 the original document he can have both of them at the same time.

14 Q. Mr Sengabo, have you at least got Exhibit 15 in front of  
12:54:21 15 you now?

16 A. Maybe you are using different terminology.

17 Q. All right, the call records; the manual log; have you got  
18 that?

19 A. Yes, thank you.

12:54:36 20 Q. Can you go to the page for 30 November 2010?

21 A. Yes, I have.

22 Q. First of all, just to ask you about procedure, is it  
23 correct that in recording this log in November/December 2010, the  
24 prison expected the prison officers to actually complete this  
12:55:03 25 log?

26 A. Yes, sometimes when spelling this - the names of the  
27 foreign - you see our people are not used to the names from  
28 Sierra Leone. Sometimes they would request them to fill the  
29 book.

1 Q. Exactly. So because of the difference in the spellings and  
2 the strange names, from time to time a system was employed where  
3 the staff asked for the assistance of the prisoner in writing  
4 names down; is that correct?

12:55:54 5 A. Yes.

6 Q. Now, what about in relation to the telephone numbers that  
7 were called; was it expected that the numbers would be written by  
8 the staff?

9 A. Yes.

12:56:15 10 Q. Right. And in fairness to them, the way of checking the  
11 number called was by looking at the telephone and checking the  
12 last number dial led; is that something that you can say?

13 A. I beg your pardon, sir?

14 JUSTICE DOHERTY: Is this by the staff member, Mr Metzger?

12:56:38 15 MR METZGER: Your Honour, yes.

16 Q. Mr Sengabo, what I'm suggesting is, when the staff member  
17 was going to write down the number that was called, he could  
18 check it by interrogating the mobile phone that was being used;  
19 is that not the case?

12:56:58 20 A. Yes. But then, you see, by virtue of using this telephone  
21 mobile, it is movable and it can be dialled and it can be changed  
22 at any time.

23 Q. Yes.

24 A. So that's why I told you before that it was a challenge for  
12:57:13 25 us to use this mobile phone. People who have different --  
26 [overlapping speakers]

27 Q. Indeed. But the point about it --

28 MR HERBST: [Overlapping speakers]

29 MR METZGER: I'm sorry, I think I hear Mr Herbst. I'll

1 stop, because it may be an objection.

2 JUSTICE DOHERTY: Mr Herbst, we're getting --

3 MR HERBST: My only objection --

4 JUSTICE DOHERTY: Please address --

12:57:44 5 MR HERBST: Your Honour, my request is that the witness be  
6 permitted to complete his answer before the next question is put  
7 to him.

8 JUSTICE DOHERTY: Very well. I thought he had answered,  
9 but I will make sure. He must be allowed to finish his answer  
12:58:01 10 before another question is put, both for his sake and for the  
11 fact that two people speaking at once, it's impossible for the  
12 transcribers to deal with.

13 Proceed, Mr Metzger.

14 MR METZGER: I'm waiting for the end of answer.

12:58:17 15 JUSTICE DOHERTY: Did you finish your answer, Mr Sengabo?  
16 Could you please pick up from where you said: So it was a  
17 challenge for us. Continue from there, please.

18 THE WITNESS: Yeah, I said this. It was a challenge for  
19 the staff to manage this mobile phone with prisoners where they  
12:58:41 20 had different intentions of changing their numbers and dialling  
21 different numbers. Whereby the staff would go to read after the  
22 call and find out there is different numbers and they will record  
23 that. Because you find that the names and numbers that are  
24 listed sometimes are different from the numbers were called from  
12:59:05 25 MTN log.

26 MR METZGER:

27 Q. Thank you, Mr Sengabo. What I asked you was in relation to  
28 the staff member who was completing this log. What were his or  
29 her instructions about getting the number in order to write it

1 down?

2 A. To read the numbers from the telephone and record them.

3 Q. So that the number written down in the "called numbers"  
4 section ought to be a number picked up from the telephone?

12:59:55 5 A. Yes.

6 Q. And you would agree with me that, in relation to the three  
7 instances here where we see the telephone numbers, these are all  
8 written by the same person on 30 November call log?

9 A. Yes.

13:00:11 10 Q. And the person who wrote those numbers was a staff member?

11 A. I don't think so.

12 Q. You don't think it was a staff member?

13 A. Yes.

14 Q. Well then, let me put it this way to you: The person who  
13:00:39 15 wrote those numbers down, I'm submitting, was not Mr Kanu?

16 A. I hope so, because that is his handwriting before the  
17 numbers.

18 Q. I meant the numbers themselves under the "called numbers"?

19 A. The numbers I think are being by Kanu, because the  
13:01:15 20 handwriting is for Kanu.

21 Q. Let me ask you, Mr Sengabo, about handwriting. Are you a  
22 graphologist?

23 JUSTICE DOHERTY: What's that?

24 THE WITNESS: No.

13:01:33 25 MR METZGER: The answer is no. For the record of the  
26 Court, a graphologist is generally an expert who not only  
27 compares handwriting, but also uses a scientific method of doing  
28 so by measuring curves, the angle of curves, the length of  
29 straight lines, and comparing them in order to make a scientific,

1 as it were, analysis of two different specimens.

2 JUSTICE DOHERTY: Thank you, Mr Metzger. I did mishear the  
3 word you were saying, but I'm also very glad, for purposes of  
4 record, we've got it clearly defined now.

13:02:13 5 MR NICOL-WILSON: Your Honour, Mr Bangura would like to be  
6 excused.

7 JUSTICE DOHERTY: Proceed, Mr Metzger.

8 MR METZGER:

9 Q. Mr Sengabo, are you a handwriting analyst?

13:02:27 10 A. No.

11 Q. In fairness to you, you have been asked by the Prosecution  
12 today firstly to give an opinion of whose writing is in this  
13 document; is that not the case?

14 A. As I said, by experience I'm familiar to this handwriting.  
13:02:53 15 I say it is for Kanu.

16 Q. All right. I'll leave that series of questions there for  
17 the moment. Can you go to the signature, please. You say that  
18 this is Mr Kanu's signature?

19 A. Yes.

13:03:16 20 Q. Now, bear with me one moment. I want to refer you to  
21 another page that does have Mr Kanu's signature. Could you  
22 please go to the - to an entry on 26 November 2010.

23 MR METZGER: Your Honour, I'm just looking to see if I can  
24 find the documents served by the Prosecution. Does Your Honour  
13:04:06 25 have the first attempt with something like six pages from the  
26 logs that were photocopied for us?

27 JUSTICE DOHERTY: Mr Metzger, it would appear that what I  
28 have starts at 30/11/2010 and continues through to various dates  
29 in December 2010.

1 MR METZGER: Well, then might I ask for the copy that was  
2 provided to us by the Prosecution starting with the 30th of  
3 November 2010, but with selected pages, whose dates I cannot now  
4 exactly tell, but going, it seems, backwards to 25 November 2010.  
13:05:08 5 Because it would be of assistance to Your Honour. The witness,  
6 of course, has the original book. I shall see if I can identify.

7 [Ms Serry-Kamal leaves Court]

8 MR METZGER: Unfortunately, I cannot identify it in that  
9 document, Your Honour.

13:06:17 10 JUSTICE DOHERTY: [Microphone not activated] seen Mr Kanu's  
11 name a few times just flicking backward.

12 MR METZGER: Yes. What I'm going to ask is that the  
13 witness be shown a document that was appended to a statement that  
14 he made on 15 May of this year headed "HS/2" and I will see if I  
13:06:47 15 can make a copy available for Your Honour. It would appear, Your  
16 Honour, that I don't have a spare copy of this and it would  
17 probably be best if the Court Manager can photocopy these. This  
18 is a copy of the document that I served on Mr Herbst - what seems  
19 like eons ago now - before his rapid departure for Kigali.

13:08:20 20 JUSTICE DOHERTY: He has the document you're going to refer  
21 to.

22 MR METZGER: Mr Herbst does have the document that I'm  
23 going to refer to. Copies were made. I think my learned friends  
24 sought copies of that document.

13:08:35 25 JUSTICE DOHERTY: If you could identify it for him so he  
26 can have it and be prepared.

27 MR METZGER:

28 Q. Mr Sengabo, do you have the photocopy from the book  
29 entitled "HS/2" appended to the statement you made on 15 May this

1 year?

2 A. I don't have it now.

3 Q. Do you recall that a copy was left in your possession on 15  
4 May 2012 together with a copy of a statement that you made on  
13:09:12 5 that day?

6 A. [Microphone not activated]

7 Q. I'm sorry, was that a "yes"?

8 JUSTICE DOHERTY: [Microphone not activated]

9 MR METZGER: Thank you.

13:09:24 10 THE WITNESS: Yes.

11 MR METZGER:

12 Q. Can you tell us what happened with those documents, please?

13 A. We had to make a photocopy from original book and then we  
14 signed on it. We even had a statement with you.

13:09:43 15 Q. Yes, thank you, Mr Sengabo. But there were two original  
16 copies. One was left in your possession, your statement and a  
17 document entitled "HS/2" and sorry, also a document entitled  
18 "HS/1" which has now been produced to this Court as exhibit P13;  
19 isn't that correct?

13:10:18 20 A. Yes, but I don't have the copy. I don't know where it is.  
21 The statement maybe I can find it.

22 Q. You say you don't know where it is. You kept all these  
23 documents together. Did you give them to the Prosecutor,  
24 Mr Herbst?

13:10:33 25 MR HERBST: Your Honour --

26 THE WITNESS: No.

27 MR METZGER: Your Honour, I'm asking a direct question of  
28 the witness. If there's an objection --

29 JUSTICE DOHERTY: Mr Herbst, are you making an objection or

1 what? I can't hear you clearly.

13:11:00 2 MR HERBST: [Microphone not activated] Your Honour, the  
3 communication is different from here. What I'm saying is, I have  
4 a photocopy of the four pages that were served that I got from  
5 Mr Metzger. Could I ask that a copy be scanned or copied here,  
6 if that's possible, by the Court attendant and she can put that  
7 before the witness? I think that might be -- [overlapping  
8 speakers]

13:11:18 9 JUSTICE DOHERTY: Mr Herbst, that might be helpful in the  
10 long run, but at the moment we're dealing with - what would you  
11 say in a chain of custody. So I'm not going to make a ruling on  
12 that, helpful though it may be.

13 MR METZGER: Thank you, Your Honour.

13:11:35 14 Q. Now, Mr Sengabo, did you give those documents to Mr Herbst  
15 when he came to Kigali in - was it June this year?

16 A. No, no.

17 Q. Did you - what did you do? Did you show him a copy of the  
18 documents?

19 A. No, I didn't do that. He did not even request it.

13:11:56 20 Q. What about the statement that you made, Mr Sengabo, did you  
21 show him a copy of that?

22 A. No.

23 MR METZGER: Bear with me, Your Honour.

13:13:01 24 Q. Would it surprise you, Mr Sengabo, to learn that Mr Herbst  
25 has told Defence counsel that he's obtained a copy of the  
26 statement that you gave to the Defence in this case?

27 A. Pardon?

28 Q. Would it surprise you to learn that the Prosecutor,  
29 Mr Herbst, has told the Defence that he has obtained a copy of



1 the statement you gave to the Defence on 15 May 2012?

2 A. No. What I know when I meet him, he told me he has a  
3 statement from you, that we had with you, so --

4 Q. Are you saying Mr Herbst told you that he had in his  
13:13:51 5 possession a statement that had been taken from - by the Defence  
6 from you?

7 A. Yes.

8 Q. And in due course, did you provide him with a copy of the  
9 one that was in your possession?

13:14:13 10 A. I don't remember. But I had to make a photocopy of the  
11 call log - original call log, especially the page of 30 November  
12 2010. I remember giving him that copy.

13 Q. Are you saying that you don't remember giving him a copy of  
14 the statement that you had given to the Defence on 15 May 2012?

13:14:44 15 A. Yes. Yes, I don't remember.

16 Q. Thank you, Mr Sengabo. In any event, I don't know what  
17 arrangements have been made for you to have available the  
18 document formerly known as HS/1, but I was inviting you to look,  
19 please, for - at an entry for 26 November 2010. I'm hoping Your  
13:15:31 20 Honour can find it in that bundle of papers. The first line  
21 starts with "Morris Kallon".

22 JUSTICE DOHERTY: Just make sure, you were speaking to the  
23 witness about a statement. Are you now looking at this manual  
24 log?

13:15:52 25 MR METZGER: I am, Your Honour. Yes, the one that should  
26 be marked "HS/2".

27 JUSTICE DOHERTY: [Microphone not activated]

28 THE COURT OFFICER: Your Honour, I have scanned and sent a  
29 copy to Madam Court Manager in Kigali. So if she can check her

1 e-mail, that might help.

2 JUSTICE DOHERTY: Thank you. For purposes of record,  
3 Ms Madam Court Manager, top right-hand corner is the word "HS/2".  
4 That's the document you're referring to, Mr Metzger, is it?

13:16:26 5 MR METZGER: Your Honour, yes.

6 THE COURT OFFICER: [In Kigali] Yes, ma'am, I'll check my  
7 e-mails now.

8 MR METZGER: It may be that we can proceed, because, of  
9 course, Mr Sengabo has the original document.

13:16:43 10 JUSTICE DOHERTY: That would be very helpful if we could do  
11 that.

12 MR METZGER:

13 Q. Mr Sengabo, can you go to the page of 26 November 2010 and  
14 at the top of the page should be an entry for Morris Kallon,  
15 followed by Bazzy Kamara, and then Allieu Kondewa?

16 A. I have got it.

17 Q. The seventh, if you want to put it that way, on the list is  
18 Santiage Kanu; is that correct?

19 A. Yes.

13:17:23 20 Q. Do you recognise that as being done in Mr Kanu's  
21 handwriting?

22 A. No.

23 Q. I'm going to suggest to you that when Mr Kanu has to enter  
24 his name, he always spells his name K-H-A-N-U. Is that something  
13:17:47 25 you're aware of?

26 A. The handwriting I'm seeing now, be it - I don't know  
27 whether it is his or somebody's.

28 Q. All right. But I'll therefore ask you a supplementary  
29 question: Do you know that when Mr Kanu enters his name on the

1 book, he would write K-H-A-N-U, the spelling of his surname?

2 A. Yes.

3 Q. Thank you. And if you go to the right-hand column, the  
4 penultimate one, the one before the last, the signature there,  
13:18:35 5 that is Mr Kanu's signature, isn't it?

6 A. Yes.

7 Q. Thank you. Now, I take it you still have Exhibit 15A in  
8 front of you - P15A. Look at the signature in respect to 30  
9 November 2010. Would you agree with me that the signature you  
13:19:31 10 have ascribed to Mr Kanu there is different from the one we can  
11 see on 26 November 2010?

12 A. I can see that the first signature as of the 26th is bigger  
13 than that one of 30 November 2010, but has some similarities.

14 Q. I'm suggesting to you that the 30 November is a completely  
13:20:11 15 different signature. The loops [overlapping speakers] --

16 A. [Microphone not activated] completely different --

17 Q. The loops relating to that signature --

18 MR HERBST: [Overlapping speakers]

19 MR METZGER: I'm sorry, I think there's an objection.

13:20:27 20 MR HERBST: No, there's no objection. But I'm asking  
21 whether - the answered the question, but because Mr Metzger  
22 started to put his next question, I'm not sure that the answer  
23 was heard.

24 JUSTICE DOHERTY: I heard the witness say "not completely".

13:20:50 25 Was there something else?

26 MR HERBST: Yes, there was. He started talking about  
27 similarities, and he was interrupted by counsel.

28 JUSTICE DOHERTY: Mr Sengabo, can you please answer fully  
29 the question.

1 THE WITNESS: Yes. I said the difference is that the first  
2 signature of the 26th and the 30th November is from the size.  
3 The first one is bigger than the last one. But there is just  
4 slight difference.

13:21:33

5 MR METZGER:

6 Q. Can you tell us what the difference is, please, Mr Sengabo?

7 A. The size.

8 Q. In that case, Mr Sengabo, can I ask you to go to the next  
9 page of - well, for us the next page of HS/2, but for you, if

13:22:05

10 you've got the original book, please, 27 November 2010, where the  
11 first name recorded is "Augustine Gbao"?

12 A. I've seen.

13 Q. The fourth entry, in terms of names, there is Santigie  
14 Borbor Kanu?

13:22:32

15 A. [Microphone not activated]

16 Q. And there's a signature next to the two telephone numbers  
17 that appear to relate to his call. You agree that that is  
18 Mr Kanu's signature?

19 A. Yes.

13:22:54

20 Q. And that signature accords with the signature on the  
21 previous page, 26 November 2010?

22 A. Yes.

23 Q. But I submit does not with the signature on 30 November  
24 2010?

13:23:28

25 A. To me they are similar.

26 Q. Mr Sengabo, have you ever given evidence before in a Court  
27 in relation to the identification of handwriting?

28 A. No.

29 Q. Thank you. Before I leave this topic entirely, can I ask

1 you to look at our exhibit P15A. The entry on 30 November 2010?

2 A. Pardon?

3 Q. If you look, please, at 30 November 2010, the three  
4 telephone numbers you have been referred to by Mr Herbst, there  
13:24:30 5 are some arrows. Can you tell us what your understanding of  
6 those arrows is in relation to the texts?

7 A. They are just to show - to divide the numbers of Bazy  
8 Kamara and the number called by Santi gie Borbor Kanu.

9 Q. So according to those arrows, the number attributed to  
13:25:05 10 Mr Kanu is the last of those three numbers; is that correct?

11 A. Yes.

12 Q. And is it also correct that there are no further timings on  
13 the page until after 1700 hours?

14 A. Yes.

13:25:29 15 Q. So that we cannot, from looking at this manual log, tell  
16 how long each of these calls lasted for; is that correct?

17 A. Yes, that one I cannot tell [overlapping speakers] --

18 Q. From looking at this record, can you identify the prison  
19 staff or officer?

13:26:02 20 MR HERBST: Again excuse me, Your Honour.

21 JUSTICE DOHERTY: Oh, Mr Herbst. Yes?

22 MR HERBST: Again the witness was trying to complete his  
23 answer and was interrupted by counsel, who I'm sure is doing it  
24 inadvertently, because he is in a different place. I understand  
13:26:23 25 that. I would just ask that he try to make sure that the witness  
26 is not in the middle of an answer before. If he just gives some  
27 pause so that the witness can fully answer the question.

28 JUSTICE DOHERTY: Yes, Mr Herbst, I'll direct Mr Metzger on  
29 this point, because we have said there has to be a break. This

1 was one of the technological points made at the beginning - at  
2 the beginning of this trial, there must be a pause for the  
3 interpreters and the technical workings of the - so if you could  
4 pause, Mr Metzger.

13:27:08 5 MR METZGER: Indeed, Your Honour.

6 JUSTICE DOHERTY: And I will ask --

7 MR HERBST: [Overlapping speakers] his answer.

8 JUSTICE DOHERTY: I will ask Mr Sengabo to complete your  
9 answer, please.

13:27:19 10 THE WITNESS: Yes. I said I cannot tell the time spent on  
11 this telephone because it is not recorded here.

12 JUSTICE DOHERTY: Thank you. Proceed.

13 MR METZGER:

14 Q. Can you tell from looking at this document who the prison  
13:27:39 15 officer was or staff member who was responsible for handing over  
16 the phone at this time?

17 A. He is also not recorded. I can't tell the one.

18 JUSTICE DOHERTY: Proceed.

19 MR METZGER:

13:28:10 20 Q. Can we please go to page 39 of 39 of exhibit P14?

21 JUSTICE DOHERTY: Do you have that before you, Mr Sengabo?  
22 That's the MTN log.

23 Kigali, have we got a connection? Can you hear?

24 UNIDENTIFIED SPEAKER: You are currently the only  
13:29:21 25 participant in the conference.

26 MR METZGER: May I be excused while this is going on?

27 JUSTICE DOHERTY: Mr Metzger, I was hoping we would come to  
28 a sort of natural pause in your line of questioning, but it is  
29 actually the normal time for the Freetown break. So I'm going to

1 take our lunchtime adjournment now, and we'll reconvene at 2.15.  
2 And I would ask that that message is passed on to Kigali, please,  
3 when the line --

13:30:11 4 MR HERBST: Your Honour, I think we can hear you now. Can  
5 Your Honour hear us?

6 JUSTICE DOHERTY: Yes, I can hear you. We had a breakdown  
7 in the line - in the connection. It's just after the normal time  
8 for our break here in Freetown for staff and counsel and the  
9 detainees, and therefore I'm taking the break and we're resuming  
13:30:33 10 at 2.15. Hopefully --

11 MR HERBST: The only thing was that - could your Honour  
12 just tell us what the last thing was before we lost the link, the  
13 last thing your Honour heard.

14 JUSTICE DOHERTY: The last thing I got was a question by  
13:30:55 15 Mr Metzger asking the witness to go to page 39, item - of 39 of  
16 prosecution Exhibit 14, and that's as far as we got.

17 MR HERBST: I thank the Court. We'll see you at 2.15.

18 JUSTICE DOHERTY: Thank you, counsel. Please adjourn Court  
19 until 2.15.

13:32:19 20 [Break taken at 1.32 p.m.]

21 [Upon resuming at 2.21 p.m.]

22 JUSTICE DOHERTY: Apologies for the delay. I got caught up  
23 in some administrative matters. It took longer than - I was  
24 going to say they deserve, but that would not be the correct  
14:21:44 25 thing to say.

26 Mr Metzger, you were in midst of cross-examination before  
27 we lost our link with Kigali, and you were dealing with Exhibit  
28 14, page 39 of 39.

29 MR METZGER: Indeed. I'm very much obliged.

1 Q. Mr Sengabo, do you now have page 39 of 39 in front of you?

2 A. Not yet. Yes, yes.

3 Q. Thank you. Now, can I just go through those first three

4 entries with you. First of all, you've already answered in

14:22:40 5 relation to Mr Nicol-Wilson that nothing was recorded. There was

6 no audio recording of those calls. That's correct, isn't it?

7 JUSTICE DOHERTY: Nothing was recorded. What does that

8 mean, Mr Metzger?

9 MR METZGER: There was no audio recording, Your Honour.

14:23:00 10 JUSTICE DOHERTY: Audio recording. Yes, yes. I agree that

11 was said.

12 MR METZGER:

13 Q. Now I wanted you, please, to look at the first line, and we

14 see after the date and time recorded the number "175"; is that

14:23:18 15 correct?

16 A. Yes.

17 Q. And that is 175 seconds; is that correct?

18 A. I don't think that they are seconds. Is it? They are

19 serial numbers of, I think, telephone numbers.

14:23:51 20 Q. All right. Let me ask you to look. It's really the sixth

21 column, which would be under the heading "Duration" if they had

22 tabulated the first page properly. So I'm asking you to look at

23 the "duration" column, please, Mr Sengabo.

24 A. On which line?

14:24:31 25 Q. If you're on page 39, the very first line. It's the

26 seventh item immediately after the date and the time which you've

27 recorded as 11.30 - sorry, the 30th of November, 2010, at 1.09

28 and 13 seconds p.m. After that there is the number 175. Do you

29 see that?



1 A. Yes.

2 Q. And I'm suggesting to you the number "175" stands for the  
3 number of seconds for which the call was open.

4 A. I don't know.

14:25:15 5 MR HERBST: Your Honour, the Prosecution will so stipulate  
6 with the Defence if it wishes.

7 MR METZGER: I'm very much obliged.

8 Q. So that call lasted a total of just under three minutes.  
9 The next call is made some 25 minutes later, would you agree with  
14:25:45 10 that?

11 A. Okay.

12 Q. And that call lasts for 654 seconds, just short of 11  
13 minutes; would you agree with that?

14 A. Yes. I can see it there.

14:26:05 15 Q. At the conclusion of that call, another call is apparently  
16 made at 1.49 and 46 seconds.

17 A. Yes [Overlapping speakers].

18 Q. That is in total 222 seconds, so just over three and a half  
19 minutes.

14:26:37 20 A. Yes.

21 Q. Now if we go back, please, to Prosecution Exhibit 15A,  
22 would you agree that you cannot tell us where the defendants were  
23 at the time those calls were being made?

24 JUSTICE DOHERTY: Which calls? Is this the one on the MTN,  
14:27:12 25 page 39, Mr Metzger?

26 MR METZGER: The three calls that the Prosecution referred  
27 the witness to at 1.09, 1.37, and 1.49.

28 THE WITNESS: Is the request made to mention the location  
29 where they are at the time by then?

1 MR METZGER:

2 Q. I am just saying that by perusal of this document, you  
3 cannot say where Mr Kanu was at the time those calls were being  
4 made; is that correct?

14:27:54 5 A. He was at Mpanga Prison.

6 Q. Yes, of course. I mean where within Mpanga Prison.

7 A. Yes.

8 MR METZGER: Maybe, Your Honour, that's a matter now for  
9 submission. Just bear with me while I just check my notes.

14:28:51 10 Q. Just a couple of things I wonder if you can help me with,  
11 please, Mr Sengabo. Can I ask you to take P13 and go to the  
12 second page.

13 JUSTICE DOHERTY: Mr Sengabo, have you found the document?

14 THE WITNESS: Yes, yes.

14:30:13 15 JUSTICE DOHERTY: Please proceed, Mr Metzger.

16 MR METZGER: Indeed, Your Honour. Thank you.

17 Q. Mr Sengabo, can you go to the second page of that and look  
18 for the entries relating to Mr Kanu.

19 A. [Indiscernible].

14:30:36 20 Q. Do you see that?

21 A. Yes.

22 Q. And can you confirm that Mr Kanu's name is spelt there  
23 K-H-A-N-U?

24 A. Yes. It is K-H-A-N-U.

14:31:06 25 Q. Thank you. And this is a document that was sent to you, I  
26 think, from the Special Court, I think you told us, in 2010.

27 A. [Indiscernible].

28 MR METZGER: I'm sorry, I didn't hear an answer from the  
29 witness, although he may have answered.

1 THE WITNESS: Yes, yes.

2 MR METZGER:

3 Q. Thank you, Mr Sengabo. Now, in this list there are three  
4 names for which there are no telephone numbers. Do you agree  
14:31:57 5 with that?

6 A. [Indiscernible]

7 MR HERBST: Your Honour, if Your Honour [indiscernible]  
8 wanted to instruct Mr Sengabo to speak up just a little bit so  
9 that his answers can be heard.

14:32:17 10 JUSTICE DOHERTY: Mr Sengabo, we didn't hear an answer. So  
11 if you could give us your answer, and also make sure you press  
12 the transmission button.

13 THE WITNESS: Yes. I said there are three numbers missing.

14 MR METZGER: For the record, that is number 5, Mr Conteh;  
14:32:47 15 number 8, Yatteh Kamara; and number 13, Ulo Jackson.

16 Q. Is that correct?

17 A. [Indiscernible].

18 JUSTICE DOHERTY: Mr Sengabo, did you hear the question?

19 THE WITNESS: Yes, Your Honour.

14:33:17 20 JUSTICE DOHERTY: And your answer, please?

21 MR HERBST: The witness answered "yes," Your Honour, but I  
22 don't think it was heard.

23 JUSTICE DOHERTY: Thank you.

24 MR METZGER:

14:33:26 25 Q. Mr Sengabo, what was your understanding, bearing in mind  
26 this list had been provided by the Special Court, if, for  
27 example, Mr Kanu wanted to call Mr Ulo Jackson, who was an  
28 approved person, what was the procedure in this November/December  
29 2010?

1 A. The procedure we used, at first the prisoner could request  
2 for the call and then decide the person to call. So - so they  
3 would choose among them the members on the list and call.

14:34:21 4 Q. Yes, Mr Sengabo, but in a case where there was no telephone  
5 number on the list, how would you resolve that problem? Would  
6 the prisoner provide a telephone number for you?

7 A. No, no. They were obliged to call the preset numbers on  
8 the [i ndi scerni bl e].

9 Q. All right. I shall leave that matter there. I don't think  
14:34:46 10 I'll get any further on it.

11 Are you aware that Mr Kanu has got, I think it is a diary  
12 and a planner, in which he has a list of telephone numbers  
13 relating to people he wants to have contact with?

14 A. I don't know, because I am not interested in that. I only  
14:35:12 15 have that current list that came from Special Court, and that's  
16 what I gave to our staff for it.

17 Q. Have you, during the course of any investigation, looked  
18 through Mr Kanu's books or notebooks to check telephone numbers?

19 A. No, no, no. I have never did this.

14:35:48 20 Q. And can you confirm that you have never been requested by  
21 someone for the Prosecution to check for any written material in  
22 Mr Kanu's possession for the number that we can see on Exhibit  
23 P14, pages 39 of - page 39 of 39 that you've been referred to?

24 A. Excuse me, repeat the question?

14:36:24 25 Q. Quite right. Sorry. Can you confirm that no one from the  
26 Prosecution has asked you to look through Mr Kanu's possessions  
27 to see if you can identify this telephone number, the one ending  
28 "597"?

29 A. I've never checked this call - this MTN call records and

1 call log in comparison to the call list by Prosecutor.

2 Q. Thank you, Mr Sengabo. I'm --

3 JUSTICE DOHERTY: Mr Metzger, I understood your question to  
4 relate to personal materials?

14:37:16 5 MR METZGER: Your Honour, yes. I am going to can ask the  
6 question in a way - I understand that with the distance and all  
7 sorts of difficulties, I'm going to ask the question, I hope, in  
8 a clearer way.

9 Q. If you look, please, Mr Sengabo, at page 39 of 39, in  
14:37:32 10 Exhibit 14, P14, you see the telephone number in the third column  
11 23233255597. That telephone number. Have you specifically been  
12 asked to check Mr Kanu's personal belongings to see if that  
13 number is written down anywhere?

14 A. No.

14:38:09 15 Q. Thank you, Mr Sengabo. Finally this please, Mr Sengabo.  
16 When you were giving evidence two days ago in answer to  
17 Mr Herbst, you stated that the mobile phone, the cell phone, had  
18 a speakerphone; is that correct?

19 A. Yes.

14:38:56 20 Q. By that do you mean the normal loudspeaker function on the  
21 prison cell phone?

22 A. Yes, yes.

23 Q. And therefore, in order to activate the function, one would  
24 have to use the facilities provided on the mobile phone to put  
14:39:23 25 the call on speaker; is that correct?

26 A. I beg your pardon?

27 Q. In order to use the speakerphone, the person using the  
28 mobile phone would have to use the functions on the mobile phone  
29 for that purpose?

1 A. I don't know because it was business between the staff and  
2 the prisoner. But what I know is that that telephone has that  
3 function.

4 Q. Have you ever used that function on that particular phone?

14:40:08 5 A. Yes.

6 Q. What buttons do you have to press in order to utilise that  
7 function on that phone?

8 A. You mean that specific telephone of the prisoners or mine  
9 or on another telephone?

14:40:31 10 Q. I - that specific phone or one that is identical to it.

11 A. I don't know the exact button, but it is there.

12 Q. Do you know whether you have to press one specific button  
13 or more than one in order to engage the speakerphone?

14 A. It must be one.

14:41:04 15 Q. Do you know that for yourself?

16 A. For my telephone or that one?

17 Q. Do you know for a fact that it is just one button to press  
18 or are you guessing?

19 A. [Indiscernible] I hope.

14:41:36 20 Q. I didn't get your answer, Mr Sengabo. There was a  
21 technical problem. Could you repeat, please.

22 A. I guess it is one.

23 Q. Thank you. Now just to close up this particular topic,  
24 from the records available to us, in relation to those three

14:42:04 25 calls on the 30th of November, there is nothing to tell us that a  
26 speakerphone was used, is there?

27 A. It depends on the questions asked me by then.

28 Q. What I'm asking, Mr Sengabo, is if we take the two  
29 documents, P14, page 39 of 39 that I was asking you about, there

1 is no evidence on this document that shows that a speakerphone  
2 was in use, is there?

3 A. Yes.

14:43:02 4 Q. Does that mean that you're agreeing with me, Mr Sengabo,  
5 for the record?

6 A. Yes.

7 Q. Thank you, Mr Sengabo. Can I ask you to carry out the same  
8 exercise now looking at P15A, or the entries relating to the call  
9 log from the prison of the 30th of November, 2010?

14:43:48 10 A. Excuse me, which page?

11 Q. The page with - for the 30th of November, 2010, which the  
12 first name is Bazzy Kamara, followed by Santi gie Borbor Kanu.

13 A. Yes, I've got it.

14 Q. Again, can you confirm that there is nothing on this record  
14:44:12 15 which suggests the use of a speakerphone?

16 A. There is no sign of speakerphone.

17 Q. Thank you. And the last question on this topic, just in  
18 case I didn't make it clear when I asked you before, there is  
19 also nothing on this document which assists us as to which staff  
14:44:40 20 member was responsible for the custody of the phone at the time  
21 of these calls, is there?

22 MR HERBST: Your Honour, that's been asked and answered.

23 JUSTICE DOHERTY: [Microphone not activated]

24 MR METZGER: I didn't ask it in quite that way and I'm  
14:44:58 25 seeking clarification, but if my learned friend --

26 JUSTICE DOHERTY: No, no --

27 MR METZGER: -- has objection, I won't ask it again.

28 JUSTICE DOHERTY: No, it's cross-examination.

29 Please answer the question, Mr Sengabo.

1 THE WITNESS: Yeah, we can't identify any.

2 MR METZGER:

3 Q. Mr Sengabo, thank you very much.

14:45:21 4 MR METZGER: Your Honour, those are all the questions I  
5 have for this witness.

6 JUSTICE DOHERTY: Thank you, Mr Metzger.

7 Mr Serry-Kamal, do you have questions of the witness?

8 MR SERRY-KAMAL: Yes. Just a few questions.

9 Cross-examination by Mr Serry-Kamal:

14:45:43 10 MR SERRY-KAMAL: Now, is it Exhibit P13? P13?

11 JUSTICE DOHERTY: [Microphone not activated]

12 MR SERRY-KAMAL:

13 Q. Now, Exhibit P13, what is the exact date you got Exhibit  
14 P13, the exact date? Exact date.

14:46:10 15 A. I received this copy?

16 Q. Yes.

17 A. I don't remember exact date. Keep it [indiscernible]

18 Q. But was it after the investigation which you did in 2011  
19 that you received Exhibit 13?

14:46:46 20 A. It is before.

21 Q. Before?

22 A. We received this in 2010.

23 Q. I don't know, but my - my - whose signature appears in  
24 Exhibit 13? Because mine - the document I have used to date as  
14:47:16 25 13 of May, 2012.

26 JUSTICE DOHERTY: It would be helpful for the witness if  
27 you specify where this signature is.

28 MR SERRY-KAMAL: At the front - the first page, Your  
29 Honour.



1 JUSTICE DOHERTY: [Overlapping speakers] Mr Serry-Kamal,  
2 he's not able to see when you hold it up, so you should be more  
3 specific, please.

4 MR SERRY-KAMAL: Oh, I have just been corrected by my  
14:47:41 5 learned friend, that, in fact, he made him sign it on that day.  
6 So I will not press that point.

7 Q. So you --

8 JUSTICE DOHERTY: As a matter of fact there is a signature  
9 and an initial on each page.

14:47:55 10 MR SERRY-KAMAL: Yes, there is an initial on it and that  
11 [indiscernible]

12 JUSTICE DOHERTY: So anyway, we move on from there, please.

13 MR SERRY-KAMAL:

14 Q. So are you sure it is not after the investigation that the  
14:48:06 15 Registrar insisted that she should give you a new list? Because  
16 you remember, Mr Sengabo, that you said after discovery they had  
17 spoken to - there is an allegation that one of them may have  
18 spoken to a journalist in Sierra Leone - their calls were  
19 suspended for one month. Do you recall that?

14:48:41 20 A. Yes, yes.

21 Q. Now after that, the Registry here conducted a further  
22 investigation to verify each and every number that they gave.  
23 Each and every number given by Bazzy. Everyone here, the  
24 Registry verified the numbers. They just didn't accept them but  
14:49:07 25 they actually verified and telephoned people to make sure that  
26 the numbers were correct.

27 JUSTICE DOHERTY: When you say telephoned the people,  
28 Mr Serry-Kamal --

29 THE WITNESS: Yes, yes.

1 JUSTICE DOHERTY: -- do you mean the prospective recipients  
2 of the calls?

3 MR SERRY-KAMAL: Yes, yes, Your Honour. That is exactly  
4 what I mean. Before this list was prepared, so that is why I  
14:49:28 5 took the long time to get it.

6 JUSTICE DOHERTY: Your answer, Mr Sengabo, I think I did  
7 answer --

8 THE WITNESS: [Overlapping speakers] The list I was  
9 meaning --

14:49:41 10 JUSTICE DOHERTY: Yes, Mr Sengabo.

11 THE WITNESS: The list I was meaning after making  
12 [Indiscernible]. We came to find that these people had abused  
13 the call list, I mean the initial call list. Then we had to make  
14 a review on it by requesting prisoners to write it down the new  
14:50:08 15 numbers, or their updated numbers, and then we take it back for  
16 vetting it in Sierra Leone bring it back. So the list we have  
17 today, the current list, is in the database of MTN. So this list  
18 is no longer used today.

19 MR SERRY-KAMAL:

14:50:30 20 Q. So, in fact, --

21 A. [Overlapping speakers]

22 Q. -- P13 is no longer in use. Is that what you're telling?

23 MR HERBST: Again, Mr Serry-Kamal, Your Honour, has jumped  
24 on the witness's answer. And I don't think, Your Honour, all of  
14:50:55 25 the answer was heard although we heard it here.

26 JUSTICE DOHERTY: Just pause.

27 Mr Sengabo, the last part I said, that the numbers were  
28 vetted by Sierra Leone. Then they were entered by MTN. The list  
29 is not used today. Was there another part of your answer we did

1 not hear?

2 THE WITNESS: Yes. This current list we are using is not  
3 this one on the table.

4 JUSTICE DOHERTY: Thank you.

14:51:26 5 THE WITNESS: This one was for 20/10/2011.

6 MR SERRY-KAMAL: That is the answer I needed, Your Honour.  
7 I am sure Mr Herbst is now satisfied that P13 is no longer in  
8 use.

9 Q. Now I want you to look at Exhibit 15 - P15A. Can you  
14:51:53 10 explain to me - or do you agree with me, let me say this, that  
11 the first entry involving Mr Bazy, line 1, and the next through  
12 three lines on the column of the number called were gone over  
13 more than one time?

14 JUSTICE DOHERTY: When you say "gone over more than one  
14:52:27 15 time," what does that mean, Mr Serry-Kamal?

16 MR SERRY-KAMAL: Well, there - there is something written  
17 there, and then, you know, emboldened so, more or less.

18 JUSTICE DOHERTY: Ah. So did you understand the question,  
19 Mr Sengabo?

14:52:43 20 MR HERBST: Your Honour, Mr Sengabo is trying to find P15  
21 and the page in P15 that corresponds to 15A, so I don't think he  
22 fairly heard either --

23 MR SERRY-KAMAL: That the document that was given today  
24 which has the signature - signature of the caller --

14:53:07 25 THE WITNESS: [Overlapping speakers] repeat the page.

26 MR SERRY-KAMAL: -- or purported callers.

27 MR HERBST: Your Honour, Mr Sengabo has the right page on  
28 15 opened, and I think if Mr Serry-Kamal permits him to use that  
29 page while Mr Serry-Kamal uses 15A, I think the witness will

1 understand.

2 MR SERRY-KAMAL: I have no problem with that if that will  
3 expedite matters.

4 JUSTICE DOHERTY: Yes. Please put the question again,  
14:53:49 5 Mr Serry-Kamal.

6 MR SERRY-KAMAL:

7 Q. I said the entry there is emboldened on the first line  
8 involving Bazzy Kamara?

9 A. Yes.

14:54:05 10 Q. I know you - you are not usually in control of the ledger.  
11 You give it to your juniors to do that for you; not so?

12 A. Yes, yes.

13 Q. Yes. So - but you agree with me that somebody must have  
14 gone over what was originally written? Somebody. I'm not  
14:54:34 15 accusing anybody. I'm just saying somebody went over what was  
16 written?

17 A. Yeah, I don't know whether it is, but - but I just  
18 witnessed the handwriting.

19 Q. Now let's leave the handwriting. I'm just saying the  
14:54:58 20 handwritings on the first line. Anyway, let's go back four -  
21 four names down. The fifth one for the 30th of November is  
22 another Bazzy Kamara; not so? On the same page; do you see it?

23 A. I see it, sir.

24 Q. That is not --

14:55:33 25 A. Yes, yes.

26 Q. That is not emboldened. In fact, the only one that is  
27 emboldened is the line on line 1, the first entry; yes?

28 A. Yes, sir.

29 Q. Now, further you said at the beginning you did not keep

1 proper records, is that right, of all calls made.

2 A. At the beginning, do you mean [overlapping speakers] --

3 Q. The system of keeping records is different from what now  
4 obtains?

14:56:31 5 MR HERBST: I'm sorry, Your Honour. Perhaps Mr Serry-Kamal  
6 didn't hear the witness ask the question which date  
7 Mr Serry-Kamal is talking about when he asked the question about  
8 in the beginning.

9 MR SERRY-KAMAL: Your Honour, there are only two periods:  
14:56:46 10 Post-newspaper suspected newspaper calls and pre-newspaper calls.  
11 Maybe I should put it in a more practical way. I am talking  
12 about the period pre the calls and the censure action taken by  
13 the Registry.

14 Q. At the period before you sent --

14:57:17 15 A. [Overlapping speakers].

16 Q. -- the numbers to MTN, that was a different procedure?

17 A. The procedure was this: To -- [Overlapping speakers] --

18 Q. I didn't want you to answer that.

19 JUSTICE DOHERTY: No, please let him answer. Please let  
14:57:38 20 him answer.

21 Answer the question, Mr Sengabo.

22 THE WITNESS: The procedure we are using is this call log.

23 JUSTICE DOHERTY: Please proceed, Mr Serry-Kamal.

24 MR SERRY-KAMAL:

14:57:57 25 Q. Now what I'm saying is that after - after the Registry  
26 intervened and sent you new numbers, the procedure adopted now is  
27 different from what obtained before. Now the numbers are with  
28 MTN. If you give a number which is not with MTN, the call does  
29 not go. In the past, you did not have that procedure?

1 A. Yes. It is yes.

2 Q. Thank you, Mister. Now my learned friend was showing you  
3 that 39 of 39 for the 30th. Now, you agree with me in looking at  
4 39 of 39 and all the calls that were alleged to have been made,  
14:59:13 5 you cannot tell who made those calls; correct?

6 A. You mean the use of MTN records?

7 Q. No, even looking at MTN - yes. Looking at MTN records, it  
8 doesn't say who made the calls.

9 A. Yeah, from MTN records we can't tell the past call.

14:59:55 10 Q. Thank you, Mr Sengabo. I have no further questions for  
11 you.

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

13 MR METZGER: Your Honour, may I just have briefly - I  
14 forgot. I did ask Mr Sengabo about the document they call HS/2.

15:00:09 15 I would like to tender that in evidence, because I did ask two  
16 questions relating to the signatures and the handwriting. It may  
17 be the first Defence exhibit. I'm in Your Honour's hands as to  
18 what it should be called.

19 JUSTICE DOHERTY: Please pause, Mr Metzger. You referred  
15:00:25 20 to two pages --

21 MR HERBST: [Overlapping speakers].

22 JUSTICE DOHERTY: -- and I have four pages, so do you wish  
23 to tender the four or the two pages?

24 MR METZGER: I am content, Your Honour, for such pages as  
15:00:40 25 the Court thinks fit. Perhaps just the two pages, as they were  
26 the ones that I asked questions about, and it was only so that we  
27 could see the spelling and the different signatures.

28 JUSTICE DOHERTY: Thank you. I will ask Mr Herbst.

29 Mr Herbst, you have heard Mr Metzger seek to tender this

1 document. What is your response, please?

2 MR HERBST: Your Honour, I have no objection to the two or  
3 the four pages, either one.

4 JUSTICE DOHERTY: Thank you. That is a two-page  
15:01:23 5 handwritten document which has at the top of the page the name  
6 "Morris Kallon" followed by the name "Adelma." I will admit the  
7 two pages which show records going from an unclear date in 2010  
8 to the 26th of the 11th, 2010, with the final name on the list  
9 "Fofana". That becomes Defence Exhibit D1.

15:02:01 10 ADMITTED AND MARKED "D1"

11 MR METZGER: Thank you, Your Honour.

12 JUSTICE DOHERTY: Mr Herbst, have you any re-examination of  
13 the witness, Mr Sengabo?

14 MR HERBST: I do have a few questions, Your Honour, the  
15:02:12 15 first of which deals with actually that exhibit which has just  
16 been introduced.

17 JUSTICE DOHERTY: Yes. I have it before me.

18 Re-examination By Mr Herbst:

19 Q. Mr Sengabo, look at the second page of that exhibit which  
15:02:38 20 was shown to you in your cross-examination with Mr Metzger, and  
21 it's the page that starts with August, the fourth one down which  
22 is what Mr Metzger directed your attention to, the fourth one  
23 which --

24 THE COURT OFFICER: Your Honour, Mr Kargbo wants to use the  
15:02:57 25 restroom.

26 THE WITNESS: Yes, I have the page.

27 MR HERBST:

28 Q. Now, in Mr Metzger's questioning of you about the  
29 signature, in the last column he indicated that that was, in

1 fact, Mr Kanu's signature. Do you remember that?

2 A. Yes.

3 Q. And I would just ask you, going back to the second column

4 where the name is, is there an "H" in "Kanu" or is there no "H"

15:03:34 5 in "Kanu"? Again, on that same page, on the fourth entry down --

6 A. The first page?

7 Q. No, the second page of the document.

8 A. There is no "H" here, and the second page there is "H".

9 Q. I didn't hear correctly. Would you just give him --

15:04:10 10 MR HERBST: Ms Court Attendant, could you just put the page  
11 that I was directing his attention to before him, that is, this  
12 one.

13 Q. Do you see the fourth entry down, Mr Sengabo, with the name  
14 "Kanu" in the second column?

15:04:30 15 A. I've seen it. There is no "H".

16 Q. Thank you.

17 JUSTICE DOHERTY: Any further questions, Mr Herbst?

18 Please proceed.

19 MR HERBST: Yes, Your Honour. Yes, Your Honour, just a  
15:04:58 20 few. I apologise for the delay. I'm just going back over my  
21 notes.

22 Q. Now, looking at the first page of the MTN records in  
23 evidence, P14, page 1 of 39, what is that logo on the right-hand  
24 side - upper most in the right-hand corner of the page?

15:05:35 25 A. It is MTN.

26 Q. And do you recognise that as MTN's official logo?

27 A. Yes.

28 Q. Now, do you know how - do you know who requested the  
29 records of this --



1 MR METZGER: Objection, Your Honour. It doesn't arise from  
2 cross-examination.

3 JUSTICE DOHERTY: It does. It arises from  
4 Mr Nicol-Wilson's whose question the police thing, et cetera. So  
15:06:18 5 it does arise.

6 Put your question again, Mr Herbst, sorry. I was just  
7 making a ruling while you spoke.

8 MR HERBST: Yes, Your Honour. Thank you.

9 Q. Mr Sengabo, do you know who requested these records from  
15:06:39 10 MTN?

11 A. I understand it is Special Court requested the Rwanda  
12 Correction Service, and then Rwanda Correction Service requested  
13 this to MTN. After getting it, they forwarded this to  
14 Special Court.

15:07:07 15 MR HERBST: Your Honour, I don't have any further questions  
16 of the witness. But I do have the e-mail traffic that I would  
17 like to introduce, or have the Court take judicial notice of,  
18 since they are official Court e-mails showing the train of the  
19 transmission of the documents from the MTN official to the --

15:07:39 20 JUSTICE DOHERTY: I don't know that that would be necessary  
21 because it's already an exhibit so that's the end of the matter.  
22 It's in evidence as an exhibit.

23 MR NICOL-WILSON: And I will object to any attempt to  
24 introduce that e-mail.

15:07:53 25 JUSTICE DOHERTY: Well.

26 MR METZGER: And I would buttress the same.

27 MR HERBST: [Overlapping speakers]

28 JUSTICE DOHERTY: The document is in as an exhibit. It  
29 speaks for itself.

1 MR METZGER: If I may remind my learned friend that we  
2 agreed that the document would be put in. I preface that by  
3 saying that I do not accept that he has provided us with material  
4 which allows it to go in but we were prepared to concede the  
15:08:15 5 document as, I think, the record will show. But if he seeks to  
6 introduce it via these e-mails, I would object because for proper  
7 purposes they do not serve to produce the document.

8 MR HERBST: Your Honour, I was responding to the  
9 cross-examination of Mr Nicol-Wilson, which attempted to suggest  
15:08:39 10 that there was - that the records may not be genuine, may not be  
11 the genuine records.

12 JUSTICE DOHERTY: That hasn't been put to this witness.  
13 If in the event of someone being produced from MTN to challenge  
14 the authenticity of this document, then - and it hadn't been put,  
15:09:03 15 I will look at such matters and I will hear application at the  
16 time, either by submission, or an application under Rule 85. But  
17 for the moment, the document is in and it speaks for itself, or  
18 it doesn't speak for itself, depending on whose submission I am  
19 going to listen to.

15:09:32 20 MR HERBST: That's fine and I have no further questions of  
21 this witness.

22 JUSTICE DOHERTY: Thank you, Mr Herbst.

23 Mr Sengabo, I'm very grateful, as I've already said, for  
24 all the time you've spent and - and for the government of Rwanda,  
15:09:46 25 for making both these records and yourself available to come and  
26 give your evidence today. And you are at liberty to now leave  
27 the Court or, if you wish, to remain within the Court precincts.  
28 You are also at liberty to do that. Thank you, Mr Sengabo.

29 THE WITNESS: Thank you, Your Honour.

1 JUSTICE DOHERTY: Mr Herbst, do you have any further  
2 witnesses?

3 MR HERBST: No, Your Honour. I just wish to point out to  
4 the Court that the Court has heard evidence already that the  
15:10:23 5 phone number in the first three calls on 39 of 39 was Mr Kargbo's  
6 phone number [Overlapping speakers] --

7 JUSTICE DOHERTY: Submissions, submissions, submissions. I  
8 mean, the Defence may want to call evidence, and after they do so  
9 will be an appropriate time to consider these submissions.

10 So may I take it now that you - when you say you're not  
11 calling further evidence that you are closing your case,  
12 Mr Herbst?

13 MR HERBST: [Indiscernible] Your Honour, we are closing our  
14 case.

15 JUSTICE DOHERTY: Thank you, Mr Herbst.

16 Okay. The Prosecution have closed their case. I don't  
17 think, in the circumstances, it's necessary to go through the  
18 whole provisions of a pre-Defence Conference, but let me look at  
19 the Rule.

20 MR NICOL-WILSON: Your Honour, Mr Bangura wants to be  
21 excused.

22 JUSTICE DOHERTY: Certainly. He may be escorted out.

23 [Accused Bangura exits courtroom]

24 MR SERRY-KAMAL: Rule 73 *ter*.

25 JUSTICE DOHERTY: Oh, thank you. That's very helpful,  
26 Mr Serry-Kamal.

27 The Rule is not mandatory, and in the circumstances since  
28 it is fairly discreet issues before us, I don't think it's  
29 necessary to hold a Pre-Defence Conference.

1           Gentlemen, Mr Nicol-Wilson, will you be calling evidence,  
2           as your client, of course, is not obliged to call evidence. I  
3           don't for a moment suggest he is. However, if he is calling  
4           evidence and he himself is giving evidence, he is obliged under  
15:12:46 5           the Rules to proceed first before he calls any witnesses.

6           MR NICOL-WILSON: Your Honour, I want to seek clarification  
7           as to whether we will proceed along Rule 98.

8           JUSTICE DOHERTY: To put it mildly, the ball is in your  
9           court. However, I would point out that the provision of Rule 98  
15:13:19 10          is after the close of the Prosecution case there is no evidence  
11          capable of supporting, et cetera. So the matter is a  
12          discretionary matter and there is no mandatory obligation to make  
13          it and, as you know yourself, in our national jurisdictions, the  
14          no case submission or national equivalent is not entirely common.  
15:13:44 15          That's as best I can put it. .

16          MR NICOL-WILSON: Your Honour --

17          JUSTICE DOHERTY: So it's a matter for counsel's  
18          discretion.

19          MR NICOL-WILSON: Your Honour, that's entirely what I  
15:13:54 20          intend to do. The discretion is mine and I intend to exercise  
21          it. We intend to do all your submissions on Rule 98.

22          JUSTICE DOHERTY: Well, please proceed and I will hear you  
23          out. Thank you. Please proceed with your Rule 98 submission.

24          MR NICOL-WILSON: Your Honour, certainly not today.

15:14:12 25          JUSTICE DOHERTY: What do you mean certainly not today?  
26          I've just said go ahead.

27          MR NICOL-WILSON: Your Honour, I cannot do the submissions  
28          now because I need to prepare the submission if I do it orally,  
29          Your Honour.

1 JUSTICE DOHERTY: Mr Nicol-Wilson, I'm not sure how long  
2 you've been in practice but I know it's a fair old while, and I  
3 know you may stand up in a court down at the cotton tree and you  
4 make your no case submission as we all have done over the years.

15:14:43 5 MR NICOL-WILSON: Your Honour, I have indicated to Court  
6 that I will be making a no case submission, not that I intend to  
7 do it now.

8 JUSTICE DOHERTY: Well, if I tell you to do it now, you may  
9 find yourself -- Mr Metzger.

15:14:54 10 MR METZGER: May it please Your Honour, it is the intention  
11 also to make a submission in the terms of Rule 98 and it was our  
12 intention also to ask for time to prepare it. This case has not  
13 been exactly the kind of case that we have been able to proceed  
14 with like any other case. There have been technical  
15:15:23 15 difficulties, there are issues in relation to transports, there  
16 have been logistical problems in relation to transport, and  
17 whilst it may be possible to make a simple submission for  
18 judgement of acquittal according to Rule 98, I think Your Honour  
19 would thank me more if I would be able to take Your Honour to  
15:15:51 20 specific passages in the transcript, as I have sought to do,  
21 where I've been asking questions, and to formulate my argument in  
22 a way that will be, shall we say, much easier to digest for all  
23 concerned.

24 And it was in those circumstances that one had anticipated  
15:16:09 25 that we wouldn't be asked to bring together something like I  
26 believe over 1,000 pages now of evidence, despite the discreet  
27 matters that this Court has to deal with on the hoof, immediately  
28 after the Prosecution has closed his case.

29 Even Mr Herbst, when he travelled from here to Rwanda, had

1 some time to, as it were, collect his thoughts. I understand he  
2 wasn't feeling well. I think Your Honour knows that we've done  
3 what he did twice over and - well, we've gone there, we've come  
4 back, and we've only stopped, as it were, for travel and purposes  
15:16:50 5 of resting the human carcass that we carry with us. I wouldn't  
6 want to say that I am in a fit state to do justice to Mr Kanu's  
7 case by making submissions to Your Honour, and I don't think Your  
8 Honour will thank me for saying that there is no evidence on  
9 either count 1 or count 2 without, as it were, seeking to take  
15:17:15 10 Your Honour to the reasons why I say that this case is absent.

11 So I support Mr Nicol-Wilson's submissions.

12 JUSTICE DOHERTY: Well, I think in the circumstances, since  
13 the Prosecution is closed, we will be - have a seat Mr Metzger.  
14 The Defence are exercising the discretion vested in them to make  
15:17:44 15 the submission which I obviously will not either predetermine or  
16 comment upon. As you all know - and I'm sure you all know - the  
17 history of this Rule. It is now an oral submission. But I think  
18 in the circumstances, since we're all in different jurisdictions,  
19 two are in one, one of you in another, me in a third, and the  
15:18:11 20 Prosecutor a fourth, the more sensible approach would be to have  
21 it in writing, notwithstanding the amendment to the Rules that  
22 were made following the AFRC decision.

23 So I will, instead of inviting oral submissions, I would  
24 ask for written submissions. Would ten days be enough time, and  
15:18:37 25 ten days to respond, would that be a reasonable period?

26 MR NICOL-WILSON: Your Honour, we've just conferred and we  
27 think 14 days would be enough.

28 JUSTICE DOHERTY: I'm looking at my famous calendar here.  
29 Mr Herbst, I haven't invited you to speak on this just yet.

1 I will do in due course.

2 Mr Herbst, you have heard both Mr Nicol-Wilson and  
3 Mr Metzger make applications, and I'm going to ask Mr Serry-Kamal  
4 if he is joining in those applications.

15:19:34 5 MR SERRY-KAMAL: Yes, Your Honour. Very much so. I am  
6 extremely tired.

7 JUSTICE DOHERTY: Counsel for the Defence have requested 14  
8 days in which to make written submissions. The written is as a  
9 result of indications from me and not from the Rules.

15:19:58 10 First of all, Mr Herbst, have you any comment on the time  
11 period; and then secondly, a reply from you. Time period,  
12 please.

13 MR HERBST: Your Honour, I did want to comment on the  
14 question of oral versus written submissions, because it was my  
15:20:25 15 understanding that submissions would be oral, and I understand  
16 that there has been travel and I understand that people may be  
17 tired, but I have to say that my entire case was fully disclosed  
18 quite some time ago. There have been surprises about the case.  
19 The case has gone in just the way - and the facts have gone in  
15:21:00 20 basically the way it was described in the opening statement, with  
21 the exception of the witnesses, and in a few cases certain  
22 evidence which was excluded by the Court - and I'm speaking of  
23 the Principal Defender and, for example, the issues with respect  
24 to the 2011 report which was excluded.

15:21:23 25 But I really see no reason why oral submissions cannot be  
26 made. There have been no surprises and frankly, I had hoped that  
27 oral submissions would be made. We would respond to them this  
28 afternoon. And whatever case remained would remain. And then we  
29 could hear from the Defence, frankly, before we adjourned for a

1 lengthy period of time, what case or cases we were going to get  
2 from the Defence, so we could judge as to how long the next round  
3 of trial in this case would be.

4 Yes, I am fully apprised of the fact that there have been  
15:22:20 5 technical difficulties that have made the case longer than we  
6 anticipated. But the flip side of that is that the case, the  
7 outline of the case, has been clear for quite some time. So my  
8 comment is that the oral submissions should go forward in the  
9 time we have left. However, if Your Honour --

15:22:51 10 JUSTICE DOHERTY: But the facts of life are, Mr Herbst, is  
11 that we've got four minutes left.

12 MR HERBST: Okay. That I didn't realise. All right.  
13 Look, I have no comment on the 14 days.

14 JUSTICE DOHERTY: My intention is this: I am --

15:23:20 15 MR HERBST: [Overlapping speakers]

16 JUSTICE DOHERTY: -- as anxious as everybody else to  
17 complete the hearing in an expeditious matter. That's a duty  
18 imposed on the Court. This has taken longer for many reasons,  
19 most of which were outside our control. Normally I would expect,  
15:23:43 20 as you may have noted from my exchange with Mr Nicol-Wilson, to  
21 have an oral hearing. I'm only looking at a written one in order  
22 to make as much use of the time between now and reconvening that  
23 I can possibly make.

24 So my intention is to have them in, to have your response,  
15:24:05 25 and to render an oral decision - excuse me, I correct myself. To  
26 render a written decision as soon as I possibly can. I was as  
27 anxious as everybody else --

28 MR HERBST: Thank you, Your Honour.

29 JUSTICE DOHERTY: -- to have this finished. So that is -



1 I'm looking at both the legal, the fair trial rights, and the  
2 logistical limitations put upon us.

3 So what I'm going to do is I think 14 --

4 MR HERBST: Can I --

15:24:48 5 JUSTICE DOHERTY: -- days is a bit generous. I'll allow  
6 Defence counsel 12 days, to the 16th of July. And --

7 MR METZGER: May I just address, Your Honour.

8 JUSTICE DOHERTY: Yes.

9 MR METZGER: As Your Honour may know, some of us do have a  
15:25:10 10 life outside these proceedings.

11 JUSTICE DOHERTY: My husband thinks that I should have a  
12 life outside these proceedings as well, but he's beginning to  
13 think there isn't any.

14 MR METZGER: As indeed does my wife.

15:25:21 15 Now when I return to the UK, which will be on Friday, I  
16 will be outside the jurisdiction of the UK between the 10th and  
17 the 16th on a long-standing arrangement, which is why I was quite  
18 happy for the 14 days because I could conclude and send the  
19 material to Your Honour immediately upon my return to the  
15:25:42 20 United Kingdom.

21 JUSTICE DOHERTY: Very well. In that case I'll not  
22 challenge it any further because --

23 MR METZGER: Thank you.

24 JUSTICE DOHERTY: -- I too have a long-standing commitment  
15:25:55 25 which I have been reminded, forcibly, has been broken twice  
26 because of my Court commitments, and I better not make it a third  
27 time.

28 MR METZGER: I'm sure Your Honour's reminders are at least  
29 as forceful as the reminders I receive.

1 JUSTICE DOHERTY: So we'll leave it at the two weeks, and  
2 that brings us to the 18th of July. And Mr Herbst, you are  
3 entitled to the same consideration as counsel and you should file  
4 your response by the 1st of August.

15:26:25 5 If, of course, either counsel files it early, all well and  
6 good. I have no problem with that.

7 So Defence, by close of business on the 18th of July,  
8 Prosecution by close of business 1st of August. I'm not setting  
9 a page limit, either minimum or maximum. But counsel are  
15:27:03 10 professional enough to know that the more succinct and to the  
11 point the better.

12 That will bring me now to the second point that we have to  
13 determine and that is the reconvening of this Court.

14 MR HERBST: Well, Your Honour, could I ask an intervening  
15:27:22 15 question which I think is relevant to that, but which has not yet  
16 been asked, but I think - well, it was asked with respect to one  
17 Defence counsel, but not the others. I think it entirely  
18 appropriate to ask counsel at this point, assuming that a case  
19 against their clients remain, whether they intend to put a case  
15:27:51 20 on, and if so whether they have any additional witnesses that  
21 they intend to call, other than those that have been tendered, so  
22 that we could then get a better idea of how long the second phase  
23 of the trial will take.

24 JUSTICE DOHERTY: Counsel, Mr Nicol-Wilson, it would be  
15:28:29 25 helpful to have such information on the very clear caveat that  
26 (a), it is dependent on the outcome of Rule 98; and (b), the  
27 Defence are never obliged to call evidence and are at liberty to  
28 make decisions once a Rule 98 decision is rendered. With those  
29 two caveats in mind, can you indicate if you will be calling

1 witnesses?

2 MR NICOL-WILSON: Your Honour, I hope to succeed with the  
3 Rule 98, but if I fail, I intend to call two witnesses.

4 JUSTICE DOHERTY: Thank you.

15:29:12 5 MR NICOL-WILSON: And they will not be longer than two  
6 hours each in direct examination.

7 JUSTICE DOHERTY: Thank you. That's helpful.

8 Mr Metzger, again, the same question, with again the same  
9 caveats.

15:29:28 10 MR METZGER: And again the same prefix. It is anticipated  
11 that there will be strong submissions under Rule 98 as far as  
12 Mr Kanu is concerned. And if the unthinkable, as far as Mr Kanu  
13 is concerned, should happen, well, then, it would be my intention  
14 to call, at this present point in time, at least one witness who  
15:29:52 15 I believe will not be longer than two hours in chief. But I will  
16 consider the question of obtaining the assistance of a forensic  
17 expert in view of evidence that we've heard today. Subject,  
18 obviously, to the logistics of seeking and securing the services  
19 of said expert, I will be in a better position to answer the  
15:30:24 20 question of how that impacts on the case of Mr Kanu in due  
21 course. I don't know if there is any way in which I can further  
22 assist Your Honour organise, indeed, my learned friend,  
23 Mr Herbst, who makes the inquiry.

24 JUSTICE DOHERTY: Mr Serry-Kamal, again, the same questions  
15:30:40 25 with the same caveats and reservations.

26 MR SERRY-KAMAL: Your Honour, in my case it will be a very  
27 short witness who will only last, perhaps, an hour and a half in  
28 examination-in-chief, in the unlikely event that my submission is  
29 not upheld.



























