

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-15-T
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
V.
ISSA SESAY
MORRIS KALLON
AUGUSTINE GBAO

WEDNESDAY, 12 JANUARY 2004
10.08 A.M.
TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For Chambers:

Ms Candice Welsh
Mr Matteo Crippa

For the Registry:

Ms Maureen Edmonds
Mr Geoff Walker

For the Prosecution:

Mr Peter Harrison
Mr Robert Braun

For the accused Issa Sesay:

Mr Wayne Jordash
Ms Chloe Smythe

For the accused Morris Kallon:

Mr Shekou Touray
Mr Melron Nicol-Wilson

For the accused Augustine Gbao:

Mr Andreas O'Shea
Mr John Cammegh

1 Wednesday, 12 January 2005

2 [Open session]

3 [The three accused not present]

4 [Upon commencing at 10.08 a.m.]

5 PRESIDING JUDGE: Good morning, learned counsel, we are
6 resuming our session and I see that the back bench of the
7 defence is empty. We are not surprised to learn that and
8 we would, however, like we indicated, proceed.

9 JUDGE THOMPSON: Learned counsel for the first accused.

10 MR JORDASH: Your Honours, just if I can give you what
11 information I have. The first accused doesn't wish to
12 attend court. He has indicated that that position
13 applies for from now henceforth. He does, however, wish
14 his legal team to continue to represent him.

15 JUDGE THOMPSON: On the representation, you will still
16 represent him?

17 MR JORDASH: Yes.

18 JUDGE THOMPSON: Thank you.

19 MR JORDASH: Presently my learned colleague Ms Ashraph is in
20 consultation with him. If there is any more news from
21 that consultation I would, of course, inform Your
22 Honours.

23 JUDGE THOMPSON: Yes. So, you have his consent to represent
24 him?

25 MR JORDASH: Yes.

26 JUDGE THOMPSON: Continue to represent him.

27 MR JORDASH: Yes.

28 JUDGE THOMPSON: Thank you. Learned counsel for the second
29 accused.

1 MR NICOL-WILSON: Your Honour, the second accused, Mr Morris
2 Kallon, also does not wish to attend proceedings of this
3 court any more. He does, however, wish to have his legal
4 team to continue representing him. Added to that, he
5 gave me a letter this morning which he said I must pass
6 over to Your Honours, and I have done so, which states
7 his position.

8 PRESIDING JUDGE: Would you confirm that this is the letter?

9 MR NICOL-WILSON: Yes, Your Honour, that is the letter I have
10 given.

11 JUDGE THOMPSON: In that regard we -- would you --

12 PRESIDING JUDGE: Can you show this to the Prosecution.

13 JUDGE THOMPSON: To the Prosecution side, yes.

14 MR HARRISON: I can indicate that one of the legal officers
15 showed it to me earlier.

16 PRESIDING JUDGE: Right. Yes.

17 MR HARRISON: I would like to have the opportunity to address
18 certain procedural matters later on this morning after
19 this is concluded.

20 JUDGE THOMPSON: Very well. The Chamber is minded to receive
21 this letter and mark it as an exhibit.

22 MR NICOL-WILSON: No objection, Your Honour.

23 JUDGE THOMPSON: And the Prosecution, what is your response?

24 MR HARRISON: Again it is our view that it ought not to be an
25 exhibit and perhaps you will indulge me and allow me to
26 address a couple of points at this point.

27 What I would like to say, first of all, is that
28 generally speaking any document ought to be submitted to
29 the Registry and not to the Trial Chamber. From the

1 Registry a determination can be made if it should be
2 disseminated to the Prosecution or Defence counsel,
3 whichever the case may be, and then it can be tendered in
4 open court.

5 PRESIDING JUDGE: A document which is supposed to be examined
6 by the judges of the Chamber --

7 MR HARRISON: Any document.

8 PRESIDING JUDGE: Should first of all be submitted for an
9 appreciation by the Registry?

10 MR HARRISON: Correct.

11 PRESIDING JUDGE: Before it comes to the Chamber, is that what
12 you mean to say?

13 MR HARRISON: Correct.

14 JUDGE THOMPSON: Do you have any authority to support that or
15 any jurisprudence, because I would like to say that we
16 are dealing with documents here relating to accused
17 persons who believe that for some reason their presence --
18 or they are attempting to either expressly or impliedly
19 waive their right to come to court? Why should such
20 correspondence be subject to the regime of rules which
21 you seem to be importing to this? I mean, your
22 suggestion of any document does it really include
23 documents of this extraordinary nature?

24 PRESIDING JUDGE: And I would add --

25 JUDGE THOMPSON: Do you have any jurisprudence to support
26 that?

27 PRESIDING JUDGE: And I would add, to subject those documents
28 to the scrutiny of the Registry before their Lordships,
29 you know, can look into them? Are you conferring a

1 judicial prerogative on the Registry to scrutinise these
2 documents before their Lordships have had the opportunity
3 of seeing them and pronouncing on them?

4 MR HARRISON: Not at all. The mischiefs that can arise in
5 this circumstance are at least two-fold. One, a document
6 of perhaps damning prejudicial value could be put before
7 the Court which may be entirely beyond the pale of any
8 perception of what could be admissible. The Court may go
9 through the exercise of reviewing it, contemplating it,
10 and there may -- the greatest risk would be that one or
11 more members of the Court may be in a position where they
12 would have to be in a position of recusing themselves if
13 such a document is not first of all considered and looked
14 at by the Registry and disseminated to both parties so
15 that they can make submissions to the Court on whether or
16 not it ought to be --

17 JUDGE THOMPSON: Admitted.

18 MR HARRISON: -- a document before the Court. That would be
19 one concern. The second concern is simply a matter of
20 fairness. Documents ought to be disseminated between the
21 parties before they go to the Court. The Registry serves
22 that function. A document goes to the Registry, the
23 Registry makes sure that all of the parties have it.
24 That did not happen with this document or with the other
25 two that were tendered yesterday. And again, this is all
26 part of the Prosecution's case still and yet these
27 exhibits keep on re-appearing and that's a second concern
28 that arises. You asked me for some authority that I
29 could give you some guidance with.

1 JUDGE THOMPSON: Yes.

2 MR HARRISON: I can say that it is contained in practice
3 directions and in the rules of court within national
4 jurisdictions that it is always improper to try to
5 communicate directly with a judge without going through
6 the Registry first.

7 JUDGE THOMPSON: Well, let me give you a very a short response
8 to that. Of course, you are eminently aware as learned
9 counsel that the Rules of Procedure and Evidence
10 expressly say that this Court is not bound by national
11 rules of evidence and procedure. I am saying to you that
12 the reason for this is that the drafters of the Statute
13 of this Court envisioned for this Court in the discharge
14 of its delicate mandate a philosophy that crystallises
15 itself into almost absolute freedom from technicalities
16 in the adjudicatory process. And I would like to
17 emphasise that this particular document relates not to
18 issues which are germane to the Prosecution's case or to
19 the Defence case. It relates to the issue of whether an
20 accused person should be properly tried in his absence or
21 not. A very narrow issue and I need to be persuaded why
22 should we import into this kind of discussion or
23 deliberation those technical rules that you seem to be
24 standing for.

25 MR HARRISON: I think there is another aspect of the document
26 that ought to bear some consideration. My reading of it
27 was a submission asking the Court to acquit the accused
28 now. I am not aware of anything in the Rules which allow
29 an accused to bring a no evidence motion at this point in

1 time. He can do it at the close of the Prosecution case,
2 but I don't think they can do it now.

3 JUDGE THOMPSON: But why are you assuming, Mr Harrison, that
4 in the process in which we are engaged, as I have stated
5 already, that we are enjoined to adopt a flexible
6 approach to admissibility of evidence, but we are also
7 cautioned that when it comes to weight we may admit 50
8 exhibits here, but when it comes to weight we probably
9 write them off as not even worthy of any probative value.
10 We are very sensitive to that. It is just that we are
11 adopting what the jurisprudence seems to suggest. Leave
12 all the technical rules of national systems as regards
13 admissibility, get to the truth, but at the end of the
14 day take the issue of weight very seriously.

15 MR HARRISON: Yes, I appreciate that, your Lordship, and I
16 have gone down this road before.

17 PRESIDING JUDGE: Mr Harrison, do you think we would very
18 seriously will -- seriously we will consider the
19 submission, the application on this exhibit on this
20 proposed exhibit that the accused, the second accused, be
21 acquitted?

22 MR HARRISON: No, the point is this, it ought not to be an
23 exhibit in the first place. And secondly, the manner in
24 which it went before the Court was improper. It is
25 incumbent upon counsel to at least show a level courtesy
26 amongst themselves and distribute documents between
27 themselves before they put it before the Court. That did
28 not happen. I am suggesting a proper procedure is
29 documents ought to go to the Registry and be disseminated

1 therefrom. I think you have my points.

2 JUDGE THOMPSON: Yes, but on that we disagree with you and, as
3 I say, I would be persuaded if were you to bring forward
4 some case law authorities from the international
5 tribunals to support that very rigorous position that you
6 are in fact advocating. It may well be the *lex ferenda*,
7 what you think the law ought to be, but I am sure you
8 will take the point from me that it is not yet the *lex*
9 *lata*.

10 MR HARRISON: If I can just clarify a point. Is it the
11 Court's wish that documents not be distributed amongst
12 counsel?

13 JUDGE THOMPSON: Oh no, no, certainly not. On that point I
14 agree with you. It is just a question of the discretion
15 of this Court to adopt judiciously a flexible philosophy
16 in terms of admissibility. And that is what I am saying
17 to you that we are not prepared to allow the Prosecution
18 to in any way place constraints upon that discretion
19 because we are acting within the context of the existing
20 jurisprudence. We are not bound by national rules. That
21 is an area that I am disagreeing with you, but in other
22 areas I do agree. It is a matter of courtesy. You
23 should see these things. You should have the right to
24 object to them, as you are doing now, but I am just
25 disagreeing with you on the law itself. And I am sure it
26 must have been a reason why we are told to leave all of
27 those strict rules, technical rules of common law
28 admissibility in your proceedings, leave them alone.

29 MR HARRISON: I won't repeat myself.

1 JUDGE BOUTET: I would like to, for your information, restate
2 what we said yesterday and the scenario that was brought
3 forward by Mr O'Shea that in the case of Gbao the very
4 same process was followed. I don't know remember if you
5 were on record as the Prosecutor at that time or not, but
6 that's what we did. It was tendered. We admitted it,
7 and it was marked as an exhibit. So we are not acting
8 differently now than we did in the past. What we tried
9 to do yesterday and today is try to find a solution to a
10 difficult scenario as such. We are not trying to change
11 the normal process of introducing exhibits. It's to the
12 opposite. So we will insist that in the future, not this
13 kind of scenario, this is evidence, because whether it is
14 an exhibit, but that evidence will be looked at with very
15 special scrutiny for whatever purpose. But having said
16 that, the normal process for tendering exhibits is not
17 being changed by this decision this morning. So we
18 expect in the future, indeed, that if exhibits are to be
19 tendered they are to be registered with the Registry,
20 then passed to the opposite parties and that's the way it
21 should be proceeded with.

22 I have referred to you, Mr O'Shea, not, as I say, I
23 am not going to invite you to comment.

24 MR O'SHEA: I am sorry, Your Honour, if I am appearing to be
25 reactive, but I just thought I might be able to assist
26 the Court a little on the subject. I understand --

27 JUDGE THOMPSON: We always welcome that assistance.

28 MR O'SHEA: Your Honour, thank you. The Prosecution's concern
29 with regard to the nature of an exhibit as a form of

1 evidence is a concern that I fully understand, but I
2 think that one aspect that perhaps he is overlooking is
3 what happens in the Appeals Chamber once this case is
4 over. You have exhibits which are there as evidence for
5 the trial and this is clearly not that kind of document.
6 But you can also have documents which are potentially
7 forms of evidence before the Appeals Chamber if, for
8 example, a question of representation is raised. Now, in
9 the system in the United Kingdom and probably in Canada,
10 because these countries have been going on for hundreds
11 of years, there is a an established procedure through
12 practice directions for documents of this nature and
13 there is absolutely no doubt that the document will not
14 get lost or mislaid. In this system, in this
15 international system, these are matters which have not
16 been properly thought through and so there is a danger,
17 unless it is officially on the record, that it might
18 somehow get mislaid between now and arriving at the
19 Appeals Chamber. I know it is unlikely, but in the
20 absence of a specific procedure it is a possibility.

21 With regard to this specific letter I am with my
22 learned friend to this extent that I would submit that it
23 is good practice, generally speaking, that a document
24 which is not coming from counsel should not go to the
25 Bench directly for the reason that my learned friend has
26 explained because there is, of course, the rule on the
27 protection of the impartiality of the judges, and simply
28 in the abundance of caution it is good practice to avoid
29 situations where parties other than counsel are handing

1 documents directly up to the Chamber. That having been
2 said, there are situations where that can't be
3 controlled, so it is a matter of good practice, but it is
4 not something that should be prohibited with a
5 consequence simply because we have a situation like my
6 client, for example, who says that he is not represented
7 and the Court says he is represented. Now, what does he
8 do if he wishes to communicate with the Court? He is not
9 going to hand a letter to me. He will hand it directly
10 to the Chamber. If it is not addressed to the Registry,
11 it should not go to the Registry, and we have to as
12 counsel believe that the judges will, as Your Honours
13 have this morning, act in good faith and hand that letter
14 down to counsel. So that is the way I would view that
15 matter.

16 While I am on my feet I would also like to, just
17 simply for the sake of completeness, indicate that we
18 have spoken to Mr Gbao for the first time in a long time.
19 His position has not changed so far as I can see and,
20 furthermore, he has, as far as I can see, made it quite
21 plain that he does not want us to visit him. So that is
22 the position so far as our client is concerned at this
23 point in time.

24 We intend to write a letter to our client to the
25 effect that if he wishes to communicate with us with
26 regard to legal advice for the trial he may do so and we
27 intend to copy that letter to the judges and I hope that
28 that does not cause any difficulty for my learned friend.

29 JUDGE THOMPSON: Thank you. Proceed learned counsel.

1 MR NICOL-WILSON: Yes, Your Honour. My colleague, Mr O'Shea
2 mentioned the fact that documents should not be going
3 directly to the judges because of the issue of prejudice,
4 but then this is a document in which an accused has
5 decided to waive his right to attend court proceedings
6 pursuant to Rule 60(B) and I also did not go directly to
7 the judges. I went to one of the legal officers attached
8 to Chambers and handed over the documents. So this is
9 just to clarify the issue about what this document deals
10 with.

11 JUDGE THOMPSON: Thank you.

12 MR O'SHEA: Could I just say that I wasn't aware that counsel
13 had actually handed it to the Bench. That is an entirely
14 different situation.

15 JUDGE THOMPSON: Yes.

16 JUDGE BOUTET: But I could add to counsel that nothing
17 precluded you to give a copy of that document to your
18 colleagues on the Defence bench and to the Prosecution
19 before giving to it the judges as such which is
20 essentially what the Prosecution is arguing. So what
21 precluded you this morning to make a copy of that
22 document and give it to the other parties, which is the
23 normal process? But accepting that there might be
24 exceptions to the rule and that's what we have been
25 dealing with this morning, but in as much as possible and
26 feasible the normal practice is to copy colleagues and
27 especially the other side of the house.

28 MR NICOL-WILSON: Your Honour, the instruction from my client
29 precluded me from doing so. He said that this is a

1 letter that is addressed to the judges and he has not
2 copied anyone else and I should basically hand over the
3 letter to the judges.

4 JUDGE BOUTET: Okay, thank you.

5 JUDGE THOMPSON: Well, we recognise that these problems pose
6 us with peculiar situations really and we are trying to
7 develop sensible rules as we go along. I would like to
8 assure the Prosecution that they quite rightly have made
9 certain points which are very useful, but we must be very
10 sensitive to the fact that some of the difficulties we
11 are experiencing are quite novel. They don't often occur
12 in the national systems, and therefore the importing the
13 national rules would not necessarily help us. Trials in
14 absentia is not a general rule in the national system.
15 Breakdown of communication between clients and their
16 lawyers is not a general rule and here we have a
17 situation which seems to be endemic in the international
18 tribunals and that is why we need to be a little more
19 circumspect and sensitive how we develop rules. But the
20 points they have made from our perspective are well
21 grounded except my disagreement on the substantive
22 aspects of the law. But I think, having said that, we
23 are minded to receive the document in evidence with the
24 caution that by admitting we advert not to any aspect of
25 its probative value. We receive it and mark it exhibit
26 13.

27 Yes, learned counsel.

28 MR HARRISON: I just have a point that I wish to draw to the
29 Court's attention.

1 JUDGE THOMPSON: Yes.

2 MR HARRISON: It may be of assistance or it may not, and it is
3 about Rule 60(B). We all know that none of the accused
4 are present today and if I could just read out 60(B) and
5 I will draw the Court's attention to the words that may
6 be of note at this time.

7 JUDGE THOMPSON: Very well.

8 MR HARRISON: 60(B) states:

9 "In either case the accused may be represented by
10 counsel of his choice or as directed by a judge or
11 Trial Chamber. The matter may be permitted to
12 proceed if the judge or Trial Chamber is satisfied
13 that the accused has expressly or impliedly waived
14 his right to be present."

15 I simply ask the Court to reflect on the words
16 whether or not the Court is satisfied that either of the
17 two accused, Mr Sesay and Mr Kallon, have expressly or
18 impliedly waived their rights to be present. You may, I
19 suspect, look at the letters which have been tendered as
20 exhibits and accepted and draw a conclusion from that,
21 but I think the Court has to turn its mind to whether
22 there has been a waiver.

23 PRESIDING JUDGE: Mr Harrison, the Tribunal is very conscious
24 of these provisions and it has already been adverting its
25 mind to the full contents of those provisions and we will
26 do nothing more than what those provisions have provided.
27 Thank you.

28 JUDGE THOMPSON: We have the Chief of the detention facility
29 here. We would like him to take the witness stand.

1 [10.37 A.M.]
2 WITNESS: RONALD BARRY WALLACE, Sworn
3 QUESTIONED BY THE COURT:
4 Q. Please state your name for the Court?
5 A. My name is Ronald Barry Wallace.
6 Q. What is your occupation?
7 A. I am the Chief of Detention for the Special Court of
8 Sierra Leone.
9 Q. In that capacity what are your responsibilities?
10 A. I am responsible for the maintenance of order and
11 for the application of the rules of detention as
12 determined by the Registrar in accordance with those. I
13 am responsible also to treat all detainees in detention
14 according to those rules.
15 Q. So in that capacity you have in your custody detainees of
16 the Special Court?
17 A. I do your Honour.
18 Q. Do you know one Issa Hassan Sesay?
19 A. I do, Your Honour.
20 Q. You also know one Morris Kallon?
21 A. I do, Your Honour.
22 Q. Are they detainees of the Special Court?
23 A. They are, Your Honour.
24 Q. Apart from your range of duties, do you also have a
25 specific duty to warn them to attend their trial?
26 A. That is correct, Your Honour. Each day Court Chambers or
27 Court Management issue a cause list with the names of the
28 detainees who are required for court that day and we then
29 see each individual listed and advise them that they are

1 required to attend court on that specific day. And that
2 was carried out this morning -- -

3 Q. So you saw Issa Hassan Sesay this morning?

4 A. I didn't personally see Mr Sesay. One of my
5 international staff saw him this morning and reported to
6 me his response.

7 Q. He warned him to come to court?

8 A. He told him he was required for court this morning at
9 9.30.

10 Q. What was his response?

11 A. He indicated that he did not intend attending court
12 today. He gave no specific reason as to why.

13 Q. Yes. Was your representative in a position to know
14 whether he was in a fit condition to come to court?

15 A. Yes, Mr Sesay is healthy. There is no medical reason why
16 he would have been precluded from attending court today.

17 Q. Now for Morris Kallon, was he warned to come to court
18 today?

19 A. He was, Your Honour. He was seen also by an
20 international detention officer and advised that he was
21 required for court this morning. He indicated he did not
22 wish to attend and gave no other reason.

23 Q. As to his condition, did he appear fit to your
24 representative?

25 A. That is correct, Your Honour, there is no medical
26 condition to preclude him from attending court today.

27 Q. Do you, Mr Wallace, know of any other circumstances that
28 would justifying their absence today at their trial?

29 A. I do not, Your Honour.

1 JUDGE THOMPSON: Does the Defence have any questions for
2 Mr Wallace?
3 MR JORDASH: No, thank you.
4 JUDGE THOMPSON: Mr Shekou Touray?
5 MR NICOL-WILSON: None, Your Honour.
6 JUDGE THOMPSON: Does the Prosecution have any questions?
7 MR HARRISON: No, thank you.
8 JUDGE THOMPSON: Thank you, Mr Wallace, you are released.
9 MR WALLACE: Thank you, Your Honour.
10 PRESIDING JUDGE: Learned counsel, we will adjourn for ten
11 minutes. We will resume in ten minutes. The Court will
12 rise, please.
13 [Break taken at 10.42 a.m.]
14 [HS120105B]
15 [Upon resuming at 10.56 a.m.]
16 PRESIDING JUDGE: We are resuming the session and it looks
17 like even the lawyers have decided to exclude themselves
18 from the session.
19 MR CAMMEGH: Yeah, I think they've had enough as well,
20 Your Honour.
21 PRESIDING JUDGE: We'll wait for them anyway.
22 MR CAMMEGH: Yeah, I think they're just outside conferring.
23 PRESIDING JUDGE: Conferring. That's all right; we'll wait
24 for them. But let's take advantage of this and bring in
25 the witness, I think. We can bring in the witness. If
26 he can come in.
27 [Defence counsel entered court]
28 MR JORDASH: May I apologise. Nobody told us we'd begun.
29 PRESIDING JUDGE: That's okay, that's all right.

1 MR O'SHEA: Apologies, Your Honour. All our watches seem not
2 to work simultaneously.

3 PRESIDING JUDGE: Okay. Let them take out the screens,
4 please, because we want the witness to be in.

5 MR BRAUN: Good morning, Your Honours. Sorry.

6 PRESIDING JUDGE: Yes. Yes, please.

7 MR BRAUN: The Prosecution calls witness --

8 PRESIDING JUDGE: No, Mr Braun; not yet, please. Mr Braun,
9 can you wait?

10 MR BRAUN: Of course, Your Honour.

11 PRESIDING JUDGE: Just wait. We are not yet at that stage
12 now, please.

13 MR BRAUN: Thank you, Your Honour.

14 PRESIDING JUDGE: You had already called the witness anyway.
15 We just want him in; that's it. Are they bringing the
16 witness? Yes, okay.

17 [The witness entered court]

18 PRESIDING JUDGE: We are resuming the session and the oral
19 ruling of the Chamber on the arguments we've heard will
20 be delivered by Honourable Justice Bankole Thompson and
21 the reasoned ruling will be published later on.

22 JUDGE THOMPSON: Thank you, Mr Presiding Judge. This is a
23 brief ruling of the Chamber.

24 In the light of the evidence of Barry Wallace, Chief
25 of the detention facility of the Special Court for
26 Sierra Leone, this Chamber is satisfied that the accused
27 Sesay and Kallon have waived their right to be present at
28 their trial; and in the case of the second accused, as
29 evidenced by Exhibit 13, pursuant to Rule 60(B) of the

1 Rules for the Special Court for Sierra Leone, the Chamber
2 also acknowledges that Mr Wayne Jordash and other members
3 of his team, with the consent of the first accused,
4 continue to represent said first accused, Sesay; and that
5 Mr Shekou Touray and other members of his team, with the
6 consent of the second accused, as evidenced by Exhibit
7 13, continue to represent the said second accused,
8 Kallon.

9 The Court accordingly orders, pursuant to Rule 60 of
10 the Rules, that the trial proceeds in the absence of the
11 aforementioned accused persons. It is also ordered that
12 the Chief of the detention facility of the Special Court
13 shall maintain, on a daily basis, a record of the waiver
14 of the accused Sesay and Kallon to appear in court during
15 each trial session of the RUF group of indictees. As
16 already stated by the Presiding Judge, a reasoned ruling
17 will be delivered in due course.

18 PRESIDING JUDGE: Yes, Mr Harrison?

19 MR HARRISON: I just have one brief comment with respect to
20 the order. I had a word with Mr Wallace and I understand
21 that there is a common area in the detention area and
22 there is also a television there. The Court, in its
23 wisdom, may or may not consider whether it is wise to
24 have the proceedings transmitted to that television so
25 that the accused, should they choose to do so, could keep
26 current with the proceedings in the Court.

27 PRESIDING JUDGE: We do not want to address that issue now.
28 When the time comes, if there is any application to that
29 effect, we will look at it on the merits.

1 JUDGE THOMPSON: In other words, we don't want to be
2 proactive.
3 PRESIDING JUDGE: Yes. Mr Robert Braun, you may proceed with
4 examining your witness.
5 MR BRAUN: Thank you, Your Honour.
6 PRESIDING JUDGE: Has the witness been sworn in already? Not
7 yet.
8 WITNESS: TF1-304 sworn
9 [Witness answered through interpretation]
10 PRESIDING JUDGE: Yes, Mr Braun, you may proceed please.
11 EXAMINED BY MR BRAUN:
12 MR BRAUN: Thank you, Your Honour.
13 Q. Good morning, Mr Witness.
14 A. Yes.
15 Q. Mr Witness, I'm going to ask you some questions now.
16 A. Okay.
17 MR BRAUN: Your Honour, I don't get the translation.
18 JUDGE THOMPSON: Have you switched on the right channel?
19 MR BRAUN: Your Honour, I think I have the right channel now.
20 JUDGE THOMPSON: Well try again.
21 MR BRAUN:
22 Q. Mr Witness, I ask you to listen carefully to my
23 questions.
24 A. Okay.
25 Q. I ask you to answer slowly.
26 A. Okay.
27 Q. And in case you don't understand the question, I ask you
28 to tell me so that I can repeat my question.
29 A. Okay.

- 1 Q. Mr Witness, where were you born?
- 2 A. I was born in Kono.
- 3 Q. In which village?
- 4 A. I was born in Tombodu.
- 5 Q. Do you know the Chiefdom in which Tombodu is located?
- 6 A. Yes.
- 7 Q. Please tell us?
- 8 A. Kamara Chiefdom.
- 9 Q. Do you know what year you were born?
- 10 A. Yes.
- 11 Q. Please tell us?
- 12 A. I was born in 1959.
- 13 Q. Have you ever attended any school?
- 14 A. Yes.
- 15 Q. What is the highest grade you have attained?
- 16 A. Class 7.
- 17 Q. What is your native language?
- 18 A. Kono language.
- 19 Q. Do you speak any other languages than Kono?
- 20 A. I speak Krio.
- 21 Q. Are you married?
- 22 A. Yes.
- 23 Q. Do you have any children?
- 24 A. Yes.
- 25 Q. Can you tell this Court how many children you have?
- 26 A. Yes.
- 27 Q. Please do so?
- 28 A. I have seven children.
- 29 Q. What is your occupation?

- 1 A. I am a farmer.
- 2 Q. In which district do you presently reside?
- 3 A. I am Kono District.
- 4 Q. Were you ever a member of any armed group at any time?
- 5 A. No.
- 6 Q. Did you ever use a weapon during the conflict in
7 Sierra Leone?
- 8 A. No.
- 9 Q. Where did you and your family live before 1998?
- 10 A. We were settled in Tombodu.
- 11 Q. Is there another town near Tombodu?
- 12 A. Yes.
- 13 Q. Can you tell the name of this town?
- 14 A. Yes.
- 15 Q. Please tell us?
- 16 A. Koidu.
- 17 Q. Mr Witness, did you reside in Tombodu in 1998?
- 18 A. No, I ran away from Tombodu.
- 19 Q. Why did you run away from Tombodu?
- 20 A. We were in Tombodu one time when we heard gunshots all
21 over.
- 22 Q. Do you know when this was?
- 23 A. Yes.
- 24 Q. Please tell us?
- 25 A. It was in March 1998.
- 26 Q. Mr Witness, can you tell the Court why you run away from
27 Tombodu in March 1998?
- 28 A. Yes.
- 29 Q. Please do so?

- 1 A. We were settled in Tombodu. One day we saw and heard
2 people shooting and we saw them coming with guns and
3 shooting all over the place, so we ran away with my
4 family into the bush.
- 5 Q. Do you know why there was firing?
- 6 A. Yes.
- 7 Q. Can you please tell us?
- 8 A. We heard that the junta had arrived and they were
9 shooting all over the place, and they said, "If you see
10 any civilian, that civilian will be killed." So we also
11 ran away.
- 12 Q. How do you know that it was the junta?
- 13 A. We heard that the rebels and the soldiers had combined
14 and they were called junta. That's why we knew that they
15 were junta.
- 16 Q. How did you know that it was the junta who was firing in
17 Tombodu?
- 18 A. We heard about them and we also saw people shooting.
- 19 Q. Did you see persons who were shooting?
- 20 A. Yes, while we were running we saw people shooting, but we
21 didn't stand to look.
- 22 Q. Can you describe the persons who you saw shooting?
- 23 A. When you hear shooting you just don't run away like that.
- 24 Q. Mr Witness, do you know a person called Rambo?
- 25 A. Yes.
- 26 Q. Do you know what group Rambo belonged to?
- 27 A. Yes.
- 28 Q. Please tell us?
- 29 A. He was a soldier.

- 1 Q. How do you know that?
- 2 A. I saw him dressed in military uniform and he told us that
3 he was a soldier.
- 4 Q. Mr Witness, would you please tell us about Rambo?
- 5 A. Yes.
- 6 Q. Please go ahead.
- 7 A. When we ran into the bush with my family, while we were
8 in the bush --
- 9 Q. Go on, Mr Witness.
- 10 A. Rambo came into the bush with some of his fellow rebels
11 who were with him.
- 12 Q. What happened after that?
- 13 A. When we were with my people, they shot around and they
14 even shot at us.
- 15 Q. Do you know why they were shooting at you?
- 16 A. Yes. When they shot, we ran away with my people into the
17 bush. They caught me.
- 18 Q. Who caught you?
- 19 A. Rambo.
- 20 Q. Do you know why Rambo caught you?
- 21 A. When he caught me, he said I was a youth, a young man
- 22 Q. Were you a youth at that time?
- 23 A. I was a youth.
- 24 Q. Did you belong to a youth organisation at that time?
- 25 A. Yes.
- 26 Q. Can you tell the Court about the type of this kind of
27 organisation?
- 28 A. Yes. Even before the war, in every town or village the
29 young men and boys were youth. If it was time to have

- 1 the roads brushed, it is the youth or young men who went
2 to do the brushing. That was what we did, the youth.
- 3 Q. Were the youth a political organisation?
4 A. No.
- 5 Q. Mr Witness, did anything happen after you were caught by
6 Rambo?
7 A. Yes.
- 8 Q. Please tell the Court?
9 A. When Rambo caught me, he took all my belongings from me
10 and placed it on the head of one of his rebels.
- 11 Q. What happened after that?
12 A. They brought me to town.
- 13 Q. Which town, Mr Witness?
14 A. Tombodu Town.
- 15 Q. Mr Witness, can you please tell the Court how you were
16 brought to Tombodu?
17 A. Yes.
- 18 Q. Go on.
19 A. When I was caught, the gun was over my head and we were
20 coming to town.
- 21 Q. Whose gun was over your head?
22 A. Rambo.
- 23 Q. Mr Witness, how far is the distance between Tombodu and
24 the place you were caught by Rambo?
25 A. Two miles.
- 26 Q. Did you walk through the bush?
27 A. Yes.
- 28 Q. Where was your family at this time?
29 A. At that time my wife and my mother-in-law all went into

- 1 the bush and went somewhere else.
- 2 Q. Were there other civilians with you after you were caught
3 by Rambo?
- 4 A. There were civilians, but I was much worried about
5 myself.
- 6 Q. Did anything happen when you came to Tombodu?
- 7 A. Yes.
- 8 Q. Please tell us?
- 9 A. When I was brought to Tombodu, they took all my clothes
10 off me.
- 11 Q. Who is they, Mr Witness?
- 12 A. The juntas. They undressed me.
- 13 Q. What happened after that?
- 14 A. They said I was a youth and they'll kill me.
- 15 Q. Who said to you that he will kill you?
- 16 A. Him, Rambo, who caught me and brought me.
- 17 Q. What happened next?
- 18 A. When they said they'll kill me --
- 19 Q. Go on.
- 20 A. They said a reason they'll kill me was because it was us,
21 the youth, who took their guns from them.
- 22 Q. So what happened next?
- 23 A. I said, "If God willing."
- 24 Q. Go on, Mr Witness.
- 25 A. They came out with twine. They said, "When we kill you,
26 we'll tie these around you and drag you around until we
27 throw you away."
- 28 Q. How did you feel when you heard that they will do that to
29 you?

- 1 A. When they tell anybody that you are going to be killed,
2 your life is now in the hands of God.
- 3 Q. So what happened next?
- 4 A. They had a boss at that time called Staff Alhaji.
- 5 Q. Do you know what group Staff Alhaji belonged to?
- 6 A. Yes.
- 7 Q. Please tell us?
- 8 A. He was a soldier.
- 9 Q. Did you know Staff Alhaji before?
- 10 A. Yes.
- 11 Q. How come, Mr Witness?
- 12 A. I knew him before. He was a soldier and I used to see
13 him.
- 14 Q. So what happened after Staff Alhaji showed up?
- 15 A. They said, "This man is a youth."
- 16 Q. Go on, Mr Witness.
- 17 A. Then Alhaji said --
- 18 Q. Yes, Mr Witness?
- 19 A. He told me to stand up.
- 20 Q. Why did he tell you to stand up?
- 21 A. He told me to stand up to put on my shirt and my
22 trousers.
- 23 Q. What happened after that?
- 24 A. He told me to go away.
- 25 Q. Do you know why Staff Alhaji saved your life, Mr Witness?
- 26 A. Yes. I said at that time, "If God willing," and God
27 didn't will me being killed, so I was not killed.
- 28 Q. What did you do next?
- 29 A. I went away.

- 1 Q. Where did you go?
- 2 A. I went looking for my people.
- 3 Q. Did you find your people?
- 4 A. I found my wife and my two children.
- 5 Q. How many children did you have at that time, Mr Witness?
- 6 A. Five children.
- 7 Q. At that time did you know where your other three children
8 were?
- 9 A. When I saw my wife and my two children, they told me --
10 they said, "Your mother-in-law has taken the three
11 children to Fakuniya."
- 12 Q. Where is Fakuniya, Mr Witness?
- 13 A. Fakuniya is towards Guinea -- in Guinea.
- 14 Q. So what did you do next, Mr Witness?
- 15 A. I told my wife and my children to go and look for my
16 mother-in-law and the two children -- the three children.
- 17 Q. So where did you go next?
- 18 A. We travelled a long distance and it took me three -- many
19 months before I saw them at Fakuniya.
- 20 Q. Do you recall the month when you started your journey for
21 Fakuniya?
- 22 A. We arrived in Fakuniya, it was about the rainy season,
23 around the August period.
- 24 Q. Mr Witness, please listen to my question. My question
25 was: Do you recall the month when you left Tombodu?
- 26 A. Yes. I left Tombodu. We were in the bush for a long
27 while before we went to Fakuniya.
- 28 Q. Mr Witness, why did it take you a long time to get to
29 Fakuniya?

1 A. Any place you do not know very well it is difficult to
2 get there easily. You have to find your way out and
3 follow through routes that you don't know, and ask people
4 until you're directed until you get where you want to go.

5 Q. How did you travel to Fakuniya?

6 A. When we left the Wardu-Sandor, we went to Sandu. From
7 there we went to Koya, we went through Bomanja, we went
8 to Yadu Sandor. We left Yadu Sandor --

9 PRESIDING JUDGE: Is that all relevant?

10 MR BRAUN: It is not all relevant.

11 PRESIDING JUDGE: Please, keep what is relevant and let us
12 proceed. I think the important thing is he arrived
13 Fakuniya and saw the wife -- I mean, saw the
14 mother-in-law and the three children.

15 MR JORDASH: Your Honour, this section of this witness's
16 evidence may be disputed.

17 PRESIDING JUDGE: It may be?

18 MR JORDASH: Disputed.

19 PRESIDING JUDGE: It may be disputed?

20 MR JORDASH: Yes.

21 PRESIDING JUDGE: So you want it in?

22 MR JORDASH: Yes, please.

23 PRESIDING JUDGE: All right, okay.

24 MR BRAUN:

25 Q. So, Mr Witness, can you once more describe exactly your
26 way from Tombodu to Fakuniya?

27 A. Yes.

28 Q. Please do so?

29 A. We left Yadu Sandor, we went to Sandu, we went to Koya,

1 we went to Kondea, we went and arrived at Bomanja. Then
2 we went to Dombardu, we went to Dandu, went to
3 Wardu-Sandor. It was from there, we went to Masofiniya
4 and we started on the route to Fakuniya.

5 Q. Mr Witness, do you recall --

6 PRESIDING JUDGE: Mr Jordash, are you satisfied with that
7 enumeration?

8 MR JORDASH: Yes, thank you.

9 PRESIDING JUDGE: Can we proceed from there?

10 MR JORDASH: Yes, please.

11 PRESIDING JUDGE: Yes, Mr Braun, you may proceed.

12 MR BRAUN: Thank you, Your Honour.

13 Q. Mr Witness, do you recall the month when you arrived in
14 Fakuniya?

15 A. Yes.

16 Q. Please tell us?

17 A. We arrived there around August time.

18 PRESIDING JUDGE: Would that be August 1998?

19 THE WITNESS: Yes.

20 MR BRAUN:

21 Q. Mr Witness, can you tell the Court where Fakuniya is
22 located?

23 A. Yes.

24 Q. Please do so.

25 A. It's in Guinea.

26 Q. Can you be a bit more specific, Mr Witness?

27 A. I don't know Guinea very well, but Fakuniya is between
28 the boundary -- between Guinea and Sierra Leone. It's in
29 that area.

- 1 Q. Where did you stay in Fakuniya?
- 2 A. We were in one village called Gbesendor.
- 3 Q. Can you tell the Court why?
- 4 A. Yes.
- 5 Q. Why did you stay in Gbesendor?
- 6 A. When we went, we heard that rebels do come to Fakuniya.
- 7 Q. So how long did you stay there?
- 8 A. We stayed there for over one month.
- 9 Q. What happened next, Mr Witness?
- 10 PRESIDING JUDGE: When he says they stayed there, was it in
- 11 Gbesendor or in Fakuniya for one month?
- 12 MR BRAUN:
- 13 Q. Mr Witness, did you stay in Gbesendor or Fakuniya for one
- 14 month?
- 15 A. The distance between Gbesendor and Fakuniya is not so
- 16 long, but we spent most of our time in the bush and at
- 17 night we'd come to Gbesendor.
- 18 Q. So what happened next, Mr Witness?
- 19 MR O'SHEA: Your Honours -- sorry, Your Honours, I've already
- 20 consulted with my learned friend; there is a reason for
- 21 this.
- 22 MR BRAUN:
- 23 Q. So, Mr Witness, the question was what happened next after
- 24 you spent one month in Fakuniya?
- 25 PRESIDING JUDGE: In Fakuniya, Gbesendor.
- 26 MR BRAUN: Thanks.
- 27 THE WITNESS: We stayed there for a while. After this one
- 28 month we heard that ECOMOG had entered Kono.
- 29 MR BRAUN:

- 1 Q. So what did you do when you heard that ECOMOG had
2 captured Tombodu?
- 3 A. Kono, Kono.
- 4 Q. Kono, sorry.
- 5 A. Well, those of us who were civilians were very many, so
6 we all got up and prepared ourselves and started coming
7 slowly.
- 8 Q. So where did you go after you left Fakuniya?
- 9 A. When we came down, we came as far as to Yorkodu.
- 10 Q. Do you recall when you came to Yorkodu?
- 11 A. Yes.
- 12 Q. Please tell us.
- 13 A. We arrived at Yorkodu in September.
- 14 MR O'SHEA: Can we have a spelling of that word?
- 15 MR BRAUN:
- 16 Q. Mr Witness, can you spell Yorkodu?
- 17 A. Yes.
- 18 Q. Please do so?
- 19 A. Y-O-R-K-O-D-U.
- 20 Q. Mr Witness, what happened when you came to Yorkodu in
21 September 1998?
- 22 A. When we arrived at Yorkodu, that was when hunters called
23 Donso in Kono, they come and take civilians and bring
24 them over to Kwakoyima where ECOMOG was stationed.
- 25 PRESIDING JUDGE: Took them to what town?
- 26 MR BRAUN: Kwakoyima, K-W-I-K-U-M-A [sic].
- 27 Q. What happened after that, Mr Witness?
- 28 A. Those of us who were in Yorkodu, the civilians, there
29 were many of us.

- 1 Q. How many civilians were with you, Mr Witness?
- 2 A. I don't know the amount. There were many of us.
- 3 Q. Please go on, Mr Witness.
- 4 A. The hunters will come and collect civilians and bring
5 them over to the ECOMOG station. We were the last batch
6 that they brought. That was around December.
- 7 Q. Mr Witness, where were you in December 1998?
- 8 A. 1998, when I left Tombodu and went to Fakuniya, I came
9 back to Yorkodu and I was there until December.
- 10 Q. So what happened next?
- 11 A. Those of us who were in the last batch civilians that
12 were brought, found that ECOMOG had been attacked by
13 rebels.
- 14 Q. So what did you do next, Mr Witness?
- 15 A. The hunters told us, "Well, we can't take you any further
16 I think," so we stayed at Kpakiyor, in that village.
- 17 Q. Where did you go next?
- 18 A. So we were taken back to Yorkodu where we were first
19 taken from.
- 20 Q. What happened next, Mr Witness?
- 21 A. When they brought us to Yorkodu, we didn't stay in
22 Yorkodu.
- 23 Q. Where did you go?
- 24 A. Went on to Wardu-Sandor in the bush. That was where we
25 were.
- 26 Q. What happened next, Mr Witness?
- 27 A. We were in that bush when the rebels took over all the
28 place.
- 29 Q. Go on, Mr Witness.

- 1 A. When the place was taken over, they asked all the
2 civilians that were in the bush to come to town because
3 they were no longer going to kill anybody.
- 4 Q. Who told you that?
- 5 A. The rebels themselves. They went into the bush, talking
6 to civilians to come to town.
- 7 Q. What is the name of the town?
- 8 A. The town we came into was called Yaryah.
- 9 Q. Mr Witness, do you recall when you came to Yaryah?
- 10 A. Yes.
- 11 Q. Please tell us?
- 12 A. This was in February when we came to Yaryah Town.
- 13 MR O'SHEA: Can we have a spelling of Yaryah, please?
- 14 MR BRAUN:
- 15 Q. Witness, can you please spell Yaryah for the Court?
- 16 A. Yes. Y-A-R-Y-A-H.
- 17 [HS120105C]
- 18 Q. What happened when you came to Yaryah?
- 19 A. When we came to Yaryah, that was where we were when a
20 rebel commander by the name of Colonel Hector.
- 21 Q. Do you know which group Colonel Hector belonged to?
- 22 A. Yes.
- 23 Q. Tell us.
- 24 A. He was in the RUF.
- 25 Q. So what happened after you met Colonel Hector?
- 26 A. Colonel Hector told all the civilians to go back to their
27 villages so that they can brush around their villages.
- 28 Q. Did the rebels support the civilians to return to their
29 home villages?

- 1 A. Yes.
- 2 Q. How did they do that?
- 3 A. They told us that they have taken over the whole country.
- 4 Q. Go on.
- 5 A. That's why they told us to return to our villages, and
6 they asked us to go to each village and brush around or
7 villages. We didn't have any other place to go.
- 8 Q. So what did you do next, Mr Witness?
- 9 A. I raise it with my family, and I told them I think it
10 would be nice for me to go to our village and see what's
11 there.
- 12 Q. So what did you do next, Mr Witness?
- 13 A. My family told me, well, it's not a bad idea. Then the
14 rebels wrote a pass. They did write passes to give
15 people.
- 16 Q. Do you know the reason why the rebels were giving passes
17 to you?
- 18 A. Yes.
- 19 Q. Please tell us.
- 20 A. They gave those passes so that another rebel who doesn't
21 know you did not do you any evil.
- 22 Q. So what did you do next?
- 23 A. They wrote the pass and gave it to me on the 29th of
24 February, and I took off to -- on the 19th of February,
25 I'm sorry. And I set off.
- 26 Q. Did you go with your family?
- 27 PRESIDING JUDGE: 19th of February of what year, please?
- 28 Would that be 1999 or ?
- 29 MR BRAUN:

- 1 Q. Mr Witness, what year?
- 2 A. 1999.
- 3 Q. So did you have your family with you when you went to
- 4 Tombodu on the 19th of February 1999?
- 5 A. No.
- 6 Q. Why did you go by yourself?
- 7 A. I wanted to just go and find out in our village what was
- 8 going on.
- 9 Q. On your way to Tombodu, did you see anything unusual?
- 10 A. Yes.
- 11 Q. Please tell us about it.
- 12 A. When I arrived in Tombodu, I arrived at Bendu II.
- 13 Q. Go on, Mr Witness.
- 14 A. Across the bridge, on the right a little bit, I arrived
- 15 at the crossroads before I arrived in Tombodu. I looked
- 16 ahead, and there was a huge pit close to the main road.
- 17 Q. So what did you see, Mr Witness?
- 18 A. When I looked ahead, I saw human.
- 19 Q. Were those humans alive?
- 20 A. I saw huge quantity of human heads decapitated, many,
- 21 many of them.
- 22 MR HARRISON: Could I just inquire if Court was taking on a
- 23 very brief morning break. Because if it is, it might be
- 24 an advantageous time for the witness to compose himself.
- 25 If not, perhaps we can proceed. I leave it in the
- 26 Court's hands.
- 27 PRESIDING JUDGE: I think he needs some attention. He's under
- 28 some stress, I think.
- 29 Yes. Can Court Management -- can the witness

- 1 receive some attention, please.
- 2 MR HARRISON: Could we stand down for five minutes so he could
3 be escorted out to the washroom.
- 4 PRESIDING JUDGE: Let's see what happens on the spot first
5 before we think of standing down.
6 Can he continue? He can continue, okay.
- 7 MR BRAUN:
- 8 Q. Are you all right, Mr Witness?
- 9 A. Yes, I can continue.
- 10 Q. Can you just describe for this Court what you saw in that
11 pit.
- 12 A. Yes.
- 13 Q. Can you please do so.
- 14 A. When I arrived at that place, my hair stood on edge.
15 There were so many skeletons, human bones packed over
16 each other.
- 17 Q. Do you know whether this place has a name, Mr Witness?
- 18 A. Yes, I knew the name. I later on knew how the place was
19 called.
- 20 Q. So please, tell us the name of this place.
- 21 A. They call that place Savage Pit.
- 22 Q. Who told you that this was Savage Pit?
- 23 A. When I saw all those human skeletons and bones, the
24 rebels who were there told me that the place was called
25 Savage Pit.
- 26 Q. Where did you meet these rebels?
- 27 A. When I saw the bones, I was afraid, and I said "I'm not
28 going into town."
- 29 Q. Go on, Mr Witness.

- 1 A. And I said to myself, "Well, I'm born around this area.
2 If I say I'm not going into town, it won't be a very
3 pleasant thing." Then I went into town.
- 4 Q. Did you see anything unusual when you entered Tombodu?
- 5 A. Yes.
- 6 Q. What did you see?
- 7 A. When I came into town, I saw more human bones, and I saw
8 that all our houses were burnt down. It was so burnt,
9 you couldn't understand what town it was.
- 10 Q. Do you recall how many houses exist in Tombodu before you
11 left in March 1998?
- 12 A. Yes.
- 13 Q. Please tell us.
- 14 A. Three hundred and sixty houses.
- 15 Q. How do you know that?
- 16 A. I said 360 houses.
- 17 Q. I understood, Mr Witness. My question was, how do you
18 know that there were 360 houses?
- 19 PRESIDING JUDGE: There were 360 houses in the village before
20 the burning? Before the burning.
- 21 THE WITNESS: Yes, before the burning.
- 22 MR BRAUN:
- 23 Q. Mr Witness, you said there were 360 houses in Tombodu
24 before the burning. Can you tell the Court how do you
25 know that?
- 26 A. Yes.
- 27 Q. Please do so.
- 28 A. Every year, we had a census of houses.
- 29 Q. Mr Witness, can you tell the Court how many houses were

- 1 undamaged when you came back.
- 2 A. Yes.
- 3 Q. Please tell us.
- 4 A. When we arrived and counted the houses that were
5 undamaged, there were 21 houses.
- 6 Q. Mr Witness, what happened when you came to Tombodu?
- 7 A. When I entered Tombodu town, I found some civilians.
- 8 Q. Go on.
- 9 A. They told me that the rebels were having a meeting in the
10 church.
- 11 Q. What happened next?
- 12 A. They went and informed them that one civilian born in
13 this town has arrived.
- 14 Q. Who told that to whom?
- 15 A. The civilians I found in the town.
- 16 Q. Go on.
- 17 A. They asked me to come in.
- 18 Q. Who is "they," Mr Witness?
- 19 A. The rebels asked me to come in.
- 20 Q. Mr Witness, how do you know they were rebels?
- 21 A. When I entered, they asked me for my name. I told them
22 my name. I asked them their name, too. And they told me
23 their names.
- 24 Q. Do you recall the names, Mr Witness?
- 25 A. Yes.
- 26 Q. Please tell Court.
- 27 A. The commander that was sitting there was called
28 Colonel Junior. Sylvester Kieh. CO Biabia. Major Saw.
- 29 Q. Did those persons tell you what group they belonged to?

1 PRESIDING JUDGE: Has he finished the enumeration?
2 MR BRAUN: Your Honour, I didn't understand you.
3 PRESIDING JUDGE: Has he finished the enumeration of the
4 names? He stopped with Major Saw. Is that all?
5 MR BRAUN:
6 Q. Mr Witness, are there any other names you recall at this
7 moment?
8 A. These are the ones I found in the church.
9 Q. Thank you.
10 Did those persons tell you what group they belonged to?
11 A. Yes. They said they were from the RUF.
12 Q. So what happened after you met those rebels in the
13 church?
14 A. They told me, "we are having this meeting for you, the
15 civilians."
16 Q. So what was the meeting about, Mr Witness?
17 A. They said "you should go and bring all your relatives
18 from the bush. We are not killing any more people."
19 Q. Who told you that?
20 A. The rebels.
21 Q. So what did you do next, Mr Witness?
22 A. I said, okay. Because we had no place to go. I
23 returned.
24 Q. You returned to where?
25 A. I went to Yaryah.
26 Q. So what happened next?
27 A. I went to Yaryah and found my people. I told them that
28 I'm from our home. I said they asked us to return to our
29 home.

- 1 Q. What did you do next?
- 2 A. When I told my relatives I was afraid at the beginning.
- 3 Q. Why were you afraid?
- 4 A. They were also afraid. But when I told them to come
5 back, I said, well, where we are there are rebels, and
6 where we are going to, there are rebels, so let's go.
- 7 Q. Were you not concerned about going back to Tombodu,
8 Mr Witness?
- 9 A. They sat down and thought about it, and they all said,
10 well, okay, maybe we should go to Tombodu.
- 11 Q. So did you go to Tombodu after that?
- 12 A. Yes.
- 13 Q. Did you bring your family with you?
- 14 A. Yes.
- 15 Q. Do you recall the date when you went back with your
16 family to Tombodu?
- 17 A. Yes.
- 18 Q. When was it?
- 19 A. Twenty-sixth of February.
- 20 Q. What year, Mr Witness?
- 21 A. 1999.
- 22 Q. When you came to Tombodu, Mr Witness, did you see other
23 civilians?
- 24 A. By the time we returned to Tombodu, there were now more
25 civilians, and the number was large.
- 26 Q. What happened next?
- 27 A. When we arrived, the rebels asked us to brush around the
28 village, so we started brushing and cleaning around the
29 village.

- 1 Q. Did you observe anything unusual when you were cleaning
2 the township?
- 3 A. Yes.
- 4 Q. What did you observe?
- 5 A. When we went, there was a house up the hill on which the
6 inscriptions "Captain Savage" were written.
- 7 Q. What happened next?
- 8 A. It was written on it "Captain Savage," and it was also
9 written underneath "6.000 people more will die."
- 10 Q. What happened next, Mr Witness?
- 11 A. When we saw that, we started brushing.
- 12 Q. Yes, Mr Witness.
- 13 A. While we were brushing, there was a house up
14 Yusufuya Road.
- 15 PRESIDING JUDGE: There was a house where?
- 16 THE WITNESS: Yusufuya, Yusufuya Road.
- 17 MR BRAUN:
- 18 Q. Go on, Mr Witness.
- 19 A. At Yusufuya Road, we saw another house in which were
20 human skulls and bones in every one of the rooms. Skulls
21 and bones in every one of the rooms.
- 22 Q. Do you know what happened to those persons?
- 23 A. The rebels we found in the town told us that it was
24 Savage and Staff Alhaji that locked all of those people
25 into that house and set it on fire.
- 26 Q. Mr Witness, do you know what a G5 commander is?
- 27 A. Yes.
- 28 Q. Can you please explain this to the Court.
- 29 PRESIDING JUDGE: Do you know what? What is it?

- 1 MR BRAUN: G5.
- 2 PRESIDING JUDGE: G5.
- 3 MR BRAUN: G5 commander.
- 4 Q. Go on, Mr Witness.
- 5 A. The G5 commander was in charge of all the civilians in
6 the rebel-held territory.
- 7 Q. Was there a G5 commander in Tombodu?
- 8 A. Yes.
- 9 Q. What group did he belong to?
- 10 A. He was from RUF.
- 11 Q. How was the relationship between the G5 commander in
12 Tombodu and the civilians?
- 13 A. Whatever the civilians required, they were told to ask
14 the G5 commander.
- 15 Q. Mr Witness, do you know a person called Yomba Ngekia?
- 16 A. Yes.
- 17 MR O'SHEA: Your Honours, may we just have a moment to consult
18 on that last question.
- 19 JUDGE BOUTET: Yes.
- 20 [Defence counsel confer]
- 21 MR O'SHEA: Thank you, Your Honours.
- 22 MR BRAUN:
- 23 Q. Mr Witness, my question was do you know a person called
24 Yomba Ngekia?
- 25 A. Yes.
- 26 Q. Who is he?
- 27 PRESIDING JUDGE: Can that name be spelled? Yomba?
- 28 THE WITNESS: Yomba Ngekia.
- 29 MR BRAUN:

- 1 Q. Mr Witness, can you please spell the name.
- 2 A. Yes.
- 3 Q. Please do so.
- 4 A. Y-O-M-B-A. Yomba. N-G-E-K-I-A.
- 5 Q. So who is Yomba Ngekia?
- 6 A. When all of us civilians returned to Tombodu.
- 7 Q. Yes.
- 8 A. He was selected as our chief.
- 9 Q. What kind of chief?
- 10 A. Caretaker of the chiefdom. He was like the paramount
- 11 chief until our people returned.
- 12 Q. Do you know why Yomba Ngekia was elected?
- 13 A. Yes.
- 14 Q. Please tell us.
- 15 A. He came from the ruling house, so that's why they
- 16 selected him to look after the people until everybody
- 17 returned.
- 18 MR BRAUN: Your Honour, I've reached now the point where I
- 19 want to proceed in closed session.
- 20 MR JORDASH: Before -- I beg your pardon for interrupting.
- 21 Could we just clarify who did the selecting, please.
- 22 MR BRAUN:
- 23 Q. Mr Witness, who selected Yomba Ngekia as a paramount
- 24 chief?
- 25 A. It was the civilians who chose him.
- 26 JUDGE THOMPSON: Learned counsel, what was your interjection
- 27 there?
- 28 MR BRAUN: As I indicated yesterday, I'm coming now to some
- 29 questions that could reveal the identity of this witness.

1 So that's why I'm asking for closed session for a very
2 short moment of time. I've spoken to the Defence lawyers
3 yesterday, and my learned friends didn't oppose to this
4 application, to my understanding.

5 JUDGE THOMPSON: Because the standard practice is to hear the
6 application for closed session testimony in closed
7 session.

8 MR BRAUN: Your Honour, I noticed that.

9 JUDGE THOMPSON: That's the standard practice, that we'll hear
10 the application for closed session testimony, whether
11 it's portions of the testimony or the entire testimony in
12 closed session. So if you're ready to proceed, we may
13 have the necessary adjustments to the technology so that
14 we go into closed session.

15 MR BRAUN: Your Honour, forgive me, I'm not ready to proceed
16 from this point.

17 JUDGE THOMPSON: You're not ready to proceed. You're just
18 giving us notice.

19 MR HARRISON: I think there might be an misunderstanding. We
20 are ready to proceed. If you wish to go into closed
21 session now, we'll proceed.

22 JUDGE THOMPSON: If he wants to ask the questions in closed
23 session, as I understand the practice of the Court we go
24 into closed session to hear the application for closed
25 session testimony. So if you're ready to proceed with
26 your application, then I would ask the experts to put in
27 place the necessary adjustments for that purpose. Yes,
28 and ask the public quietly to retire for about -- how
29 many minutes, learned counsel?

1 MR HARRISON: I would suggest 10 to 15 minutes.

2 JUDGE THOMPSON: Members in the public gallery, we'll retire
3 for -- probably to come back -- ought to take the rest of
4 the day off because this is a Wednesday afternoon.

5 MR HARRISON: That was a point that I had wanted to raise with
6 the Court. I can indicate now that the remainder of the
7 evidence-in-chief is likely to take approximately an hour
8 and a half. The Prosecution would ask the Court to
9 consider in view of the need to assist the Court in
10 providing information in an efficient way to perhaps
11 consider extending today's session just to complete the
12 evidence-in-chief. My indication is it's likely to be a
13 further hour and a half from now.

14 JUDGE THOMPSON: The Chamber is not disposed to proceed that
15 way. That is why we really wanted to have the
16 application quickly made in closed session and make a
17 determination, and then adjourn for the rest of the day
18 and come back tomorrow.

19 May we be advised whether the adjustments have been
20 made for us to be in closed session?

21 THE REGISTRAR: It's not ready yet, sir.

22 JUDGE THOMPSON: All right. Well, advise us when you're
23 ready.

24 What's the position? Are we in closed session? Not
25 yet. Okay.

26 PRESIDING JUDGE: [Microphone not activated]

27 JUDGE THOMPSON: We're advised that we're in closed session.

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1 [Open session]

2 THE REGISTRAR: Court's now in open session.

3 JUDGE THOMPSON: Thank you.

4 This is the oral ruling of the Trial Chamber on the
5 application of the Prosecution to hear portions of the
6 testimony of Witness TF1-304 in closed session. Mindful
7 of Article 17(2) of the Statute of the special Court
8 which provides that the accused shall be entitled to a
9 fair and public hearing subject to measures ordered by
10 the Special Court for the protection of victims and
11 witnesses, and pursuant to Rule 75 and 79 of the Rules of
12 Procedure and Evidence of Court, the Trial Chamber rules
13 that considering the information provided to the Chamber
14 in support of this application, portions of the testimony
15 of Witness TF1-304, as indicated by the Prosecution, will
16 be heard in closed session. This exceptional measure is
17 required for this witness because as submitted by the
18 Prosecution, if the portions of his testimony indicated
19 by the Prosecution are heard in public, his identity
20 will, thereby, be revealed with a high potential of
21 exposing him to threats and retaliation.

22 Furthermore and significantly, XXXX on
23 account of the XXXX in the
24 XXXX. It is the
25 considered opinion of the Trial Chamber, therefore, that
26 if the said portions of his testimony are heard in
27 public, it would lead to his identification and would
28 compromise his safety and security. The application is,
29 accordingly, granted.

1 PRESIDING JUDGE: We may proceed. We are in closed session
2 now.

3 JUDGE THOMPSON: We have to go back to closed session. Will
4 the necessary adjustments be made.

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WITNESSES FOR THE PROSECUTION:

WITNESS: RONALD BARRY WALLACE 14

QUESTIONED BY THE COURT 14

WITNESS: TF1-304 19

EXAMINED BY MR BRAUN 19

C E R T I F I C A T E

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

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

Roni Kerekes
Chief of Stenography