

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

FRIDAY, 28 JANUARY 2005
9.40 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

For the Prosecution:

Mr Peter Harrison
Mr Alieu Iscandari
Mr Mark Wallbridge (Case Manager)

For the Principal Defender:

No appearance

For the accused Issa Sesay:

Mr Wayne Jordash
Ms Sareta Ashraph
Ms Chloe Smythe

For the accused Morris Kallon:

Mr Shekou Touray
Mr Melron Nicol-Wilson

For the accused Augustine Gbao:

Mr John Cammegh

1 [HS280105A - RK]

2 Friday, 28 January 2005

3 [The witness entered court]

4 [The three accused not present]

5 [On commencing at 9.40 a.m.]

6 [Open session]

7 PRESIDING JUDGE: Good morning, learned counsel, we're
8 resuming our session. The ruling of the closed session
9 will be delivered by Honourable Justice Bankole Thompson.

10 JUDGE THOMPSON: This is a ruling by the Trial Chamber by the
11 Prosecution to hear portions of the testimony of witness
12 TF1-015 in closed session. Mindful of Article 17(2) of
13 the Statute of Special Court for Sierra Leone which
14 provides that "the Court's accused shall be entitled to a
15 fair and public hearing, subject to measures ordered by
16 the Special Court for the protection of victims and
17 witnesses," and pursuant to 75 and 79 of the Rules of
18 Procedure and Evidence of the Special Court the Trial
19 Chamber rules that, considering the information provided
20 to the Court in support of the application, portions of
21 the testimony of witness TF1-015 as indicated by the
22 Prosecution will be heard in closed session. This
23 exceptional measure is required for this witness
24 primarily because as submitted by the Prosecution if the
25 portions of his testimony indicated by the Prosecution
26 are heard in public, his identity will thereby be
27 disclosed with the possibility of his personal security
28 and that of members of his family be in peril.
29 Furthermore, and significantly, he is well known in his

1 community, having regard to his role in a particular
2 capacity. The Chamber therefore holds that if the
3 indicated portion of his testimony are heard in public,
4 it will lead to his identification, thereby putting in
5 peril his personal security and that of the members of
6 his family. The application, as indicated yesterday, is
7 accordingly granted.

8 We'll now move into -- we're now in open session, and
9 Mr Iscandari, are you ready to proceed with this witness?

10 MR ISCANDARI: I certainly am. Good morning, Your Honours.

11 Good morning, sir.

12 THE WITNESS: Good morning.

13 WITNESS: TF1-015

14 [Witness answered through interpretation]

15 EXAMINED BY MR ISCANDARI: [Continued]

16 Q. Sir, where we left off yesterday, we left off at the
17 point where after the vote had been taken and you were
18 handed over to Major Rocky.

19 A. When I was handed over to Major Rocky, he took me we went
20 to Wundidu.

21 Q. How did you get to Wundidu?

22 A. I was handed over to Major Rocky and he was settling in
23 Wundidu so he asked to go with him to Wundidu so that he
24 can protect me.

25 Q. How far is Wundidu from the Sunna mosque?

26 A. Approximately 4 miles.

27 Q. Did you walk that 4 miles to Wundidu?

28 PRESIDING JUDGE: How did you get to Wundidu?

29 MR ISCANDARI:

1 Q. How did you get to Wundidu?

2 A. I say, I was handed over to Major Rocky. He told me that
3 he was staying at Wundidu, so he took me to Wundidu.

4 PRESIDING JUDGE: We agree that you went to Wundidu. How did
5 you get to Wundidu? We have the story. You were handed
6 over to him he said you should accompany because he had
7 to protect you. How did you get to Wundidu?

8 THE WITNESS: We went on foot.

9 MR ISCANDARI:

10 Q. What district is Wundidu in?

11 A. It is in Kono District.

12 Q. When you went to Wundidu did you meet anyone there?

13 A. Yes.

14 Q. Please tell this Court who you met when you went to
15 Wundidu with Major Rocky.

16 A. At first when we arrived there, we met soldiers, the
17 rebel soldiers, they were there about 500. Secondly,
18 I met some civilians also there.

19 Q. With regard to the civilians you met there, were any of
20 them free to leave at any time they could?

21 A. No.

22 Q. Mr Witness, I want to take your attention back a little
23 ways to the Sunna mosque. You had earlier testified that
24 there were two groups that you considered rebels. I'm
25 going to ask you the names that you had named and I would
26 like you to tell the Court what group you know they
27 belonged to. You named Captain KS Banya as one the
28 members you met at the Sunna mosque; do you know what
29 group he belongs though?

- 1 A. Yes, I do know.
- 2 Q. What group does Captain KS Banya belong to?
- 3 A. He was in the AFRC.
- 4 Q. You named someone called Alpha Momoh?
- 5 A. Yes.
- 6 Q. What group does Alpha Momoh belong to?
- 7 A. RUF.
- 8 Q. You named someone called Alhaji Bayo?
- 9 A. Yes.
- 10 Q. What group does Alhaji Bayo belong to?
- 11 A. AFRC.
- 12 Q. You named someone called Amara Peleto?
- 13 A. Yes.
- 14 Q. What group does Amara Peleto belong to?
- 15 A. RUF.
- 16 Q. You named someone called. You named someone named
- 17 Captain Ranger?
- 18 A. Yes.
- 19 Q. What group does Captain Ranger belong to?
- 20 A. RUF.
- 21 Q. You named someone called Tikero?
- 22 A. Yes.
- 23 PRESIDING JUDGE: Tikero? What Tikero?
- 24 JUDGE BOUTET: I don't have that in my notes either.
- 25 JUDGE THOMPSON: I don't either.
- 26 PRESIDING JUDGE: That is why the name struck me, because
- 27 I couldn't recollect that name.
- 28 MR ISCANDARI:
- 29 Q. My mistake. You named someone called Major Kailondo?

- 1 A. Yes.
- 2 Q. What group does Major Kailondo belong to?
- 3 A. RUF.
- 4 Q. You named someone called Colonel Rambo?
- 5 A. Yes.
- 6 Q. What group does Colonel Rambo belong to?
- 7 A. RUF.
- 8 Q. You named someone called Captain Hungry Lion?
- 9 A. Yes.
- 10 Q. What group does he belong to?
- 11 A. RUF.
- 12 Q. You named someone called Amara Ambush Commander?
- 13 A. Yes.
- 14 Q. What group does Amara Ambush Commander belong to?
- 15 A. RUF.
- 16 Q. You named someone called Major Rocky?
- 17 A. Yes.
- 18 Q. What group does Major Rocky belong to?
- 19 A. RUF.
- 20 Q. You named someone called Morris Kallon also known as
- 21 Bilai Karim?
- 22 A. Yes.
- 23 Q. What group does Morris Kallon also known as Bilai Karim
- 24 belong to?
- 25 A. RUF.
- 26 Q. Mr Witness, would you recognise the person called Morris
- 27 Kallon if you saw him?
- 28 A. Yes, very well.
- 29 Q. Would you look around this courtroom and tell us if you

1 recognise anyone that looks like Morris Kallon?

2 PRESIDING JUDGE: Where is he?

3 JUDGE BOUTET: I don't know why we're going through this
4 exercise this morning.

5 PRESIDING JUDGE: If you prepared your notes you should update
6 them, learned counsel. You should update your notes.

7 JUDGE BOUTET: You don't start something like that by the
8 negatives.

9 PRESIDING JUDGE: Update your notes, counsel. You certainly,
10 of course, prepared your notes on the understanding that
11 the accused persons would be here. They are not here.
12 Look at their place; they are not there.

13 MR ISCANDARI: I thought the witness could tell us that he was
14 not here.

15 PRESIDING JUDGE: No, we don't want to go through that.

16 JUDGE BOUTET: You think that we need witnesses to tell us
17 that?

18 PRESIDING JUDGE: When we know that they are not here?

19 MR ISCANDARI:

20 Q. Let's go back to Wundidu. What kind of work did the
21 civilians do at Wundidu?

22 A. We went in search for food for they, the rebels.

23 Q. How many times did you have to do that?

24 A. Several times.

25 Q. Were there any women in the group?

26 A. Yes.

27 Q. Were there any children in the group?

28 A. I did not understand you. To find food or within Wundidu
29 town?

1 Q. Witness, the group of civilians that you met at Wundidu,
2 were there any children included in that group?

3 A. Yes.

4 JUDGE THOMPSON: The impression is not that -- though I seem
5 not to have followed your question whether were asking
6 whether there were children in the group that went on
7 food-finding. Now you seem to have broadened it. What
8 do you want.

9 MR ISCANDARI: No the witness testified that he met civilians
10 at Wundidu.

11 JUDGE THOMPSON: And then you put a specific question, what
12 functions or what did they do. He said they went to
13 search of food and they did several times, he even said
14 countless times and then you said were there any women in
15 the group, so that has been localized to the food-finding
16 mission.

17 MR ISCANDARI: No, it's not, Your Honour. I'll make myself
18 clear. I'm trying --

19 JUDGE THOMPSON: The context in which it was asked I thought
20 I gathered that, but if it was a broader context, that's
21 fine.

22 MR ISCANDARI: Yes, Your Honour.

23 JUDGE THOMPSON: So you're saying how many women there were --
24 there were women and children in the group of civilians
25 that he met at Wundidu.

26 MR ISCANDARI: Right.

27 Q. Sir, do you have any personal knowledge of how the
28 civilians were treated while at Wundidu by the rebels?

29 A. Yes.

1 Q. Do you have any personal knowledge of how the women were
2 treated by the rebels while at Wundidu?

3 A. Yes.

4 Q. Please tell this Court how the women were treated at
5 Wundidu.

6 A. While we were at Wundidu, there were women there. During
7 the night we do hear screaming. The screaming are not
8 coming from one angle, from several houses. Then they
9 started shooting in the air that very night. The
10 shouting which we did hear, I do hear: "Leave me, leave
11 me, leave me alone. You didn't bring me for this. I'm
12 not your wife."

13 Then in the morning then I go closer and asked them,
14 "what screaming were you screaming last night?" Because
15 I was not supposed to go there during that night because
16 I was in captivity and there were gunshots all over. She
17 said: "Those men are the people who used us last night.
18 That which our husband never did to us, is what they did
19 to us last night."

20 Q. Sir, how many commanders were present in Wundidu during
21 the period that you were there?

22 A. The commanders were many, I don't know them all, but the
23 rebels that were there, I know them, I know their number.

24 Q. Was Major Rocky there with you?

25 A. Yes.

26 Q. Do you recall the names of any other commanders?

27 A. Yes.

28 Q. Please tell the Court the names of any other commanders
29 present at Wundidu that you recall.

- 1 A. CO Pepe was there. He was an SBU commander.
- 2 Q. What do you mean by SBU?
- 3 A. I asked them. What they told me Small Boy Unit. They
4 called it Small Boy Unit.
- 5 Q. Do you recall the name of any other commander that was
6 there?
- 7 A. Yes.
- 8 Q. Please tell this Court the name of any other commander
9 that was there.
- 10 A. Rebel Father.
- 11 Q. Is that all you recall?
- 12 A. Well, for now, as I'm sitting here, that is the only
13 thing I can remember in my memory.
- 14 Q. Do you recall whether or not any of the commanders there
15 had their families living with them?
- 16 A. The only people I know is that those I met with them whom
17 they claimed to be their wives. They are the ones that I
18 know.
- 19 Q. What do you mean "they claimed to be their wives", sir?
- 20 A. Where there is no wedlock from the family. Just because
21 of gun you've taken her to be your wife, using her as
22 your wife. That is what I mean.
- 23 Q. And how do you know that it was under these kinds of
24 circumstances that these people became wives to these
25 commanders?
- 26 A. The first instance I explain to you that they did rape
27 these women, that is one. Secondly --
- 28 PRESIDING JUDGE: We don't have it on record that they raped
29 these women. We do not have it clearly on record that

1 they raped these women. "Those men who used us last
2 night and did to us what our husbands had not done to us
3 before." It did not connote rape. It did not clearly
4 connote the offence of rape.

5 MR ISCANDARI: I'll make it clear for you, Judge Itoe. I'll
6 do that.

7 Q. The judge is not clear on something you said earlier.
8 You had testified that you heard noises at night and when
9 you asked the women in the morning they told you that
10 they had been used by the men; do you recall that
11 testimony?

12 A. [No interpretation]

13 Q. When you say that they had been used by the men could you
14 make it clear for the judge, please, what exactly you
15 mean.

16 A. It is something abominable, but I will say it. They sex
17 with them.

18 Q. Do you know whether or not that sex was with or without
19 the consent of the women involved?

20 A. Yes.

21 Q. Please tell the Court.

22 A. It was not with consent, because they were screaming and
23 crying.

24 Q. What is that what you meant when you testified earlier
25 that the women were used by the men?

26 A. Yes.

27 Q. You testified earlier that you couldn't go out at night
28 when you heard these screams and noises because you were
29 in captivity. Do you recall that testimony?

1 A. Yes.

2 Q. Please tell this Court what you mean by that you were in
3 captivity.

4 A. When the rebels, Major Rocky carried me to Wundidu, he
5 handed me over to some of his rebels. In captivity I was
6 not permitted to move about on my own. Even to go out to
7 urinate, I must ask them. I wouldn't go there. That is
8 what I mean.

9 Q. While you were at Wundidu, did you at any point in time
10 feel that you could leave Wundidu on your own without any
11 repercussions?

12 A. I said no. I could not move about on my own even to go
13 and ease myself I could not do on my own. I must ask for
14 an escort to do that.

15 Q. Is that what you meant when you said you were in
16 captivity?

17 A. Yes.

18 Q. You did mention that one of the commanders at Wundidu was
19 CO Pepe; do you recall that?

20 A. Yes.

21 Q. And you also testified that he was commander of the SBUs;
22 do you recall that?

23 A. Yes.

24 Q. While you were at Wundidu, did you observe any SBUs?

25 A. Yes.

26 Q. About how many SBUs did you observe while you were at
27 Wundidu?

28 A. They were within 25 to 30.

29 Q. Could you give this Court an estimate of the age range of

1 these SBUs that you observed while you were at Wundidu?

2 A. Yes.

3 Q. Please do so?

4 A. The one with the highest age who is older than them all
5 could be 16.

6 Q. While you were at Wundidu, did you make any observation
7 as to the age of the youngest member of the SBUs that you
8 observed?

9 A. At that time, yes, I could remember, even up to this
10 date.

11 Q. Please give us the age of the youngest member of the SBUs
12 that you observed.

13 A. 12 years.

14 MR NICOL-WILSON: Your Honour, I'm objecting to this piece of
15 evidence for the simple fact that it is not part of the
16 statement that was disclosed to the Defence.

17 JUDGE THOMPSON: Which, the entire thing?

18 MR NICOL-WILSON: The evidence relating to the SBUs.

19 JUDGE THOMPSON: It was not disclosed.

20 MR NICOL-WILSON: No. As well as the name of the commander
21 called Pepe.

22 JUDGE THOMPSON: Yeah, we think that this is part of the
23 Prosecution's case, and of course we're on record as
24 according primacy to the principle of orality. I think
25 you can take it up in cross-examination. The objection
26 is overruled.

27 MR ISCANDARI:

28 Q. Do you recall the month that you were in Wundidu?

29 A. Yes.

1 Q. What month was that?

2 A. It was in April 1998.

3 Q. Just one last thing before we get away from this point.

4 Do you have any knowledge of what role the SBUs played
5 while they were at Wundidu?

6 A. Yes, I can explain that portion.

7 Q. Please tell the Court.

8 A. While I was in Wundidu, I said Major Rocky took me to
9 Wundidu. Few days later he told me that he had been
10 transferred to Tombudu, then he left me with KS Banya.
11 Banya came. He was now overseeing me. He was telling
12 Pepe, he said he should light a candle.

13 Q. What do you mean he should light a candle?

14 PRESIDING JUDGE: Have we finished, Mr MR ISCANDARI, have we
15 finish with the evidence which you started off with?
16 What was the role? Your question was specific.

17 MR ISCANDARI: That is what he just explained.

18 PRESIDING JUDGE: He was in Wundidu for some time under the
19 control of Major Rocky. Are you suggesting in your case
20 that he did not take note of the role of SBUs whilst he
21 was under the control of Major Rocky.

22 MR ISCANDARI: Not at all, Your Honour. If Your Honour will
23 have a little bit of patience with me, I know were the
24 witness is going and I will make it very clear for the
25 Court.

26 PRESIDING JUDGE: You may proceed, please.

27 MR ISCANDARI: Thank you very much.

28 Q. You had earlier testified that CO Pepe was the CO of the
29 SBUs; correct?

1 PRESIDING JUDGE: He says Major Rocky handed him over to who?

2 THE WITNESS: Yes, sir.

3 MR ISCANDARI:

4 Q. The judge would like to know after major Rocky left who
5 did he hand you over to?

6 A. Captain KS Banya.

7 Q. About how old is CO Pepe?

8 A. I think back to him, I cannot tell his age, but to my own
9 understanding he can be 16 years.

10 Q. Now I want you to listen clearly to this question.

11 During the period of time that you were at Wundidu, what
12 role did you observe the SBUs get involved in?

13 A. They sent them to burn houses. I saw them burning
14 houses.

15 Q. How many houses did you see them burn?

16 A. Five houses.

17 Q. How many houses were in Wundidu at the time you were
18 there?

19 A. There were many. I didn't count them.

20 Q. Was there a term that was used with reference to burning
21 houses that you can recall?

22 A. Yes, I said it earlier on.

23 Q. Please say it again for the Court.

24 A. Banya did tell the young boys to light candle, go and
25 light candle.

26 Q. How long was CO Rocky at Wundidu before he got
27 transferred?

28 A. When he carried me to Wundidu it was just few days, it
29 was not even up to a week.

- 1 Q. Did you come to learn who ordered the transfer of CO
2 Rocky from Wundidu?
- 3 A. No.
- 4 Q. Do you know where he was transferred to?
- 5 A. Yes.
- 6 Q. Where was he transferred to?
- 7 A. He said Tombudu.
- 8 PRESIDING JUDGE: Well, the witness had said so.
- 9 MR ISCANDARI: I wanted to make it clear for the Court.
- 10 PRESIDING JUDGE: But we want to gain time. We don't want
11 repetitions.
- 12 JUDGE BOUTET: We can get you the first time. You need not to
13 repeat the same thing three times for the Court to hear
14 and make it clear.
- 15 MR ISCANDARI: Thank you, Your Honour.
- 16 Q. After he left, you were with Captain Banya; correct?
- 17 A. Yes, he left me with him.
- 18 Q. During the period of time that you were with
19 Captain Banya, did you have any conversations with him?
- 20 A. Yes, we had a conversation. He told me something.
- 21 Q. What did he tell you?
- 22 A. He said, "See me". He said he was born in Kailahun,
23 Kailahun District, and Kailahun Town. He said, "But my
24 father is a doctor."
- 25 Q. Did he tell you the name of his father?
- 26 A. Yes.
- 27 Q. Who did he tell you -- what did he tell you was the name
28 of his father?
- 29 A. He said his father's name was Dr Sama Banya.

1 Q. Did there come a time when something happened between you
2 and Captain KS Banya?

3 A. Yes, it did happen.

4 Q. Could you please tell this Court what happened between
5 you and Captain KS Banya?

6 A. Yes. When I was left in the hands of Captain Banya in
7 Wundidu Town, did he send us for food-finding. When he
8 was about to go to the battle front, he sent other
9 people, but I was not sent. He said I should pray for
10 them, some of the civilians who were my colleagues.

11 PRESIDING JUDGE: Please, please, let him [Microphone not
12 activated] he sent other people. He didn't send you. He
13 said you should stay and pray for them.

14 MR ISCANDARI:

15 Q. Please continue, sir?

16 A. Then he said they should go and find food. He said
17 I should stay back so that I could pray for them.

18 Q. What happened after that, sir?

19 A. Then my colleagues went to find food behind Koranko.

20 Q. How far away is Kwanko?

21 A. I didn't say Kwanko, I said Koranko.

22 Q. Could you spell that for the Court?

23 A. Yes, I can try.

24 Q. Please do.

25 A. Capital K-O-R-A-N-K-O. Koranko.

26 Q. So what happened after that, sir?

27 A. They went for a week.

28 Q. Do you know how far away that town is from Wundidu?

29 A. I have not been there. I don't know.

1 Q. Do you know whether that town is in the Kono District?

2 A. No, it is not in Kono. It is within Koinadugu District.

3 Q. Go ahead, sir, what happened after that?

4 A. When they went, they were there for one week. They came
5 back. They came, I saw them. Most of them who came had
6 problem with their feet, with loads on their head. Some
7 could not even walk properly. They brought the loads.
8 They gave it to one of them. Then they went to their
9 houses.

10 Q. What happened after that?

11 PRESIDING JUDGE: "They gave it to one of them." To one of
12 who?

13 THE WITNESS: They gave the loads to KS Banya, who was the
14 commander, because they said it was a government
15 property, the food was the government's.

16 MR ISCANDARI:

17 Q. Do you have any knowledge as to whether or not the food
18 that was brought was paid for or not?

19 A. They didn't buy it. No money was paid for it. They ran
20 after people, then they take their belongings. While
21 they were on their way coming before they could reach
22 home, while I was in my room I was listening through the
23 window, there I saw a group of them around Captain
24 Banya's residence, where he was staying.

25 PRESIDING JUDGE: You saw a group of what?

26 THE WITNESS: The rebel groups were seated at Captain Banya's
27 house, not the civilians. There I overheard them, the
28 rebels, saying -- they said they will be coming. "We
29 know they will be coming today and when they bring this

1 food, tomorrow, they will go in search of meat."

2 Q. And what did you do when you heard this information?

3 A. When they came, in the night then I called them. I've
4 heard a word.

5 PRESIDING JUDGE: In the night he called who? This them,
6 them, them. I want you to be specific. When they called
7 in the night he called who. We don't want to presume
8 things here.

9 MR ISCANDARI:

10 Q. When you say you called them, the judge wants you to be
11 clear who you are refer to go as "them".

12 A. My fellow civilians who went in search of food.

13 Q. So what did you tell your fellow civilians who had gone
14 in search of food, if anything?

15 A. I told that I have overheard that you will be going back
16 tomorrow in search of meat. What shall we do? Early in
17 the morning go out, you go in the bush.

18 Q. Why did you give them that advice?

19 A. Because they were my fellow civilians and I was sorry for
20 them.

21 Q. So what happened after you gave them that advice?

22 A. Very early in the morning they went out and went to the
23 bush.

24 Q. What happened after they had gone to the bush?

25 A. I got up in the morning, then Captain KS Banya asked me.

26 Q. What did he ask you?

27 A. He asked me: "Where are those civilians who just came
28 from food-finding, where have they gone?"

29 Q. And what did you tell them?

- 1 A. I told them that I am just getting up from bed. I don't
2 know where they have gone. I have not even seen them.
- 3 Q. What happened after that?
- 4 A. He said, "Oh, okay, it is not bad, maybe they are tired."
- 5 Q. What happened next?
- 6 A. Round about 4.00 in the evening.
- 7 Q. What happened then?
- 8 A. One of those who went for this food-finding came to town.
- 9 Q. What happened after this person came to town?
- 10 A. Then Captain Banya called him and asked him, "Where have
11 you gone today?"
- 12 Q. What was his response?
- 13 A. He didn't say anything at first. He asked for the
14 others. They asked him to go and call the others to
15 come. He asked them all again. The first person they
16 asked for them to say we came last night, who is my own
17 colleague civilian. He told him that pastor said we are
18 going back again in search of meat and then we are tired.
19 "He told us to go and hide ourselves in the bush and when
20 you ask him he will say he has not seen us."
- 21 Q. What was Captain Banya's reaction to this information?
- 22 A. Where I was now I was trembling and he sent to call me.
- 23 Q. How many people came to get you?
- 24 A. I cannot remember the number again. It was not one
25 person.
- 26 Q. Did you walk freely into Captain Banya's presence or were
27 you taken into his presence?
- 28 JUDGE THOMPSON: A double-barrelled question.
- 29 MR ISCANDARI:

1 Q. How did you get to Captain Banya?

2 A. I said they arrested me. They even arrested me. I was
3 now in trouble.

4 Q. So what happened after that?

5 A. He was -- he positioned me in an open.

6 Q. When you say, "he positioned you in the open," could you
7 tell this Court, describe for this Court where you were?

8 MR CAMMEGH: I'm sure my learned friend knows what the answer
9 to this question is expected to be. We don't. Now
10 I would like to know from my learned friend where he is
11 getting this information because we haven't been given
12 anything remotely like it.

13 JUDGE THOMPSON: Counsel, sit down, please.

14 MR CAMMEGH: I said yesterday and I don't mince my words when
15 something as serious as this happens.

16 JUDGE THOMPSON: Let us go properly, Mr Cammegh.

17 MR CAMMEGH: Well, Your Honour --

18 JUDGE THOMPSON: Will you hold on, please?

19 MR CAMMEGH: It is simply an abuse of process.

20 JUDGE THOMPSON: Mr Cammegh, would you listen to me.

21 MR CAMMEGH: Very well.

22 JUDGE THOMPSON: Are you making an objection?

23 MR CAMMEGH: I am certainly.

24 JUDGE THOMPSON: Let us have it recorded. Let's go
25 methodically.

26 MR CAMMEGH: Very well. My objection is this, Your Honour.

27 JUDGE THOMPSON: Mr Cammegh, the protocol is, and I think
28 you're senior counsel, that when the judge is talking
29 unless you have had leave to interrupt you wait until we

1 clarify things. I wanted you to indicate whether you
2 were making an objection and then followed by the grounds
3 so that we can deal with this in a methodical way.
4 Please let's proceed according to that way. So there is
5 an objection.

6 MR CAMMEGH: Could the witness please close his microphone.

7 JUDGE THOMPSON: Yes, will the experts do that, please. We
8 can't have you just throw things across as if you are in
9 a kind of shooting match. Could I finish.

10 MR CAMMEGH: Of course.

11 JUDGE THOMPSON: Let's have your prefatory remark. You're
12 making an objection to --

13 MR CAMMEGH: Your Honour, I'm objecting.

14 JUDGE BOUTET: Mr Cammegh, you asked the mic be closed. It
15 doesn't change anything, does it? Because you don't want
16 him to hear what you are saying. The only way is to ask
17 the witness to be excused because he does understand
18 English, if I'm not mistaken. The mic does not allow him
19 to speak, but he can hear.

20 JUDGE THOMPSON: Do you so apply.

21 MR CAMMEGH: I do, please.

22 JUDGE THOMPSON: Right, then we will have the witness retire
23 temporarily whilst we hear the objection. Witness
24 protection, please take him out.

25 [The witness stands down]

26 JUDGE THOMPSON: Mr Cammegh, please proceed.

27 MR CAMMEGH: We've heard this morning about SBUs. I let that
28 go, because there was a reference in a statement to, I
29 think it was Rocky, getting his boys to burn down

1 buildings -- Banya. There was no explicit reference to
2 SBUs. The statement leaves open to question what exactly
3 the word "boys" refers to because there is no reference
4 to age in the statement either. Boys could easily mean
5 those above the age of 15, 16. I think there was a joint
6 understanding on the Defence side here to let that go,
7 but Your Honour, what I'm concerned about and it makes
8 one -- and I apologise for appearing cross but it really
9 is extremely irritating.

10 JUDGE THOMPSON: Yes I wanted you to calm down. Let's go
11 through this thing in a very calm way.

12 MR CAMMEGH: What I'm driving at is simply disclosure. Now,
13 we did receive a statement on October the 18th that
14 includes a three-line paragraph, which makes a rather
15 cryptic, if I can use that word, reference to Captain
16 Banya threatening to kill the witness, threatening to
17 break all of his teeth and tying him behind his back.
18 I accept that that was disclosed on October the 18th --
19 or that's the date of the statement. I forget when it
20 was disclosed, but it was a three-line paragraph that's
21 apropos of nothing whatsoever. And although I was
22 expecting to hear that evidence, one could not possibly
23 have foreseen the connection with forced food-finding,
24 which appears to be what led to this particular incident.
25 And within or pursuant to the forced food-finding trip,
26 the fact that this witness advised those food finders, or
27 various captive civilians, overnight to flee the village,
28 pursuant to that, no reference to the witness being
29 arrested the following morning after Banya's inquiry.

1 Now, my learned friend probably knows where
2 this is going, but I don't. Will this, for example --
3 because this is the dilemma that we face, this is the
4 problem we have to deal with. What's going to happen to
5 the civilians who did run away, who came back. Is there
6 going to be some revelation about that? Is the paragraph
7 that I referred to going to be the direct consequence of
8 what we just heard? We don't know. Now, of course we
9 all accept the principle of orality, but I think I've
10 outlined two examples now, one in relation to the SBUs,
11 and I do acknowledge that the statement used the word
12 "boys," but of course, for the purposes of this trial,
13 SBUs is 15 and under. Boys, within common parlance,
14 means perhaps anybody below the age of 18 or 19, maybe
15 even older. But the acronym SBUs does not appear in the
16 statement, the use of an SBU unit doesn't appear in the
17 statement. And of course I've just enunciated my
18 objection to what is going on now. I apologise again for
19 appearing frustrated, but it is extremely frustrating
20 when, in effect, we have to deal with this witness with
21 at least one hand tied behind our backs. We don't know
22 what's coming next.

23 JUDGE THOMPSON: Let me ask two short questions for my
24 clarification. Are these -- yes, are you all right
25 with -- is that all you need to say in support of your --

26 MR CAMMEGH: It is in conjunction with the points I and
27 Mr Jordash made yesterday. I'm surprised and
28 disappointed that a little more care and, shall I say,
29 discrimination has not been applied to the

1 examination-in-chief, because we find ourselves in
2 precisely the same dilemma and precisely the same, if I
3 can use the word, danger that we found ourselves in
4 yesterday. That is why it really raises the hackles on
5 this side of the room. It is, in my submission, simply
6 not fair.

7 JUDGE THOMPSON: Right. Are you associating?

8 MR JORDASH: I do associate and could I just add two things?

9 JUDGE THOMPSON: Most welcome.

10 MR JORDASH: If I may, Your Honour. It's in relation to the
11 two examples given by Mr Cammegh. I completely agree.
12 There may be circumstances where evidence pursuant to the
13 principle of orality is expanded, but both of those
14 examples it is very difficult to believe when a witness
15 when being taken through his evidence and his statement
16 taker when mentioned the word "boys" is then not asked:
17 How old were the boys? It is difficult to imagine that
18 that reflects anything other than a logical question when
19 that word is raised.

20 In relation to the second example given by
21 Mr Cammegh, the statement reads: "I had problems with
22 Captain KS Banya before. Once Captain Banya threatened
23 to kill me and used his pistol to break all of my upper
24 and lower incisor teeth. After he had done this, he had
25 me tied behind my back and I was freed by Alpha Momoh,
26 who was senior to Banya." The same applies here. The
27 most logical question to follow from that is why. Why
28 did Captain KS Banya threaten to break your teeth? My
29 submission is that that question would logically have

1 been asked by the Prosecution. That question would have
2 led to the evidence we've just heard in court, as it did
3 when my learned friend asked the witness a various
4 sequence of questions, such as why, what happened next?
5 It is very difficult to believe that what is in that
6 statement reflects all that the witness said at that
7 time. Of course the statement will not include
8 everything a witness says, but the question why would
9 have elicited what was the basis for this incident, what
10 was the basis for the threat.

11 In my respectful submission, it appears like
12 information has been left out because it is an advantage
13 to the Prosecution to do so and it is an advantage to the
14 Prosecution to have that information disclosed in court
15 at the last moment.

16 JUDGE THOMPSON: Thank you. Does learned counsel for the
17 second accused have anything to say?

18 MR NICOL-WILSON: Yes, Your Honour. I am in support of the
19 objections raised by Mr Cammegh and the position stated
20 by Mr Jordash. But I even want to add further, that
21 within the Sierra Leonean context when the word "boy" is
22 used, it doesn't necessarily mean somebody below the age
23 of 18. It means somebody subordinate to another person.
24 It can even mean a man of the age 50. So when I saw the
25 word "boy", I did not associate it with somebody
26 belonging to the SBU. I thought somebody inferior to
27 Captain Banya, somebody he considered subordinate.

28 JUDGE THOMPSON: In other words, a variation in the sort of
29 ordinary meaning?

1 MR NICOL-WILSON: Yes, because the statement specifically says
2 "They used to send his boys to burn houses in the
3 village", so he thought it was just one of his --
4 JUDGE THOMPSON: Could have been his what?
5 MR NICOL-WILSON: Bodyguard.
6 JUDGE BOUTET: "He was a small boy", so I don't know how you
7 can relate that. At page 9782, talking of Pepe, "He was
8 a small boy", so I don't know how you can relate that to
9 what you've just been saying.
10 MR NICOL-WILSON: Yes, sir, but nothing came out in the
11 statement talking about SBUs.
12 JUDGE BOUTET: Well, you were not talking about the SBU now,
13 you were talking about the word "boy". I'm telling you
14 that in the statement it does refer to a small boy.
15 MR NICOL-WILSON: But in the one context when he said use of
16 boys, I thought --
17 JUDGE BOUTET: The context is CO Pepe.
18 MR NICOL-WILSON: As Your Honour pleases.
19 JUDGE THOMPSON: Yes, well, let me -- go ahead.
20 MR CAMMEGH: Could I just say one thing. I saw the word
21 "small boy" as well, but I took that to mean small boy,
22 not a Small Boy Unit. It is not in capital letters,
23 small boy or SBU. It is ambiguous at best. This is one
24 of the problems that is inherent with these statements.
25 It is nobody's fault. It is simply the way they are
26 typed sometimes. But there is nothing in the statement
27 that really elucidates what the reference in small case
28 to small boy means in that particular context. And
29 Mr Nicol-Wilson is right. There is no reference to SBUs

1 in the statement anywhere. So I repeat the comments that
2 I made in relation to that earlier.

3 JUDGE THOMPSON: Before I turn it over to the Prosecution.

4 I need to get some clarity also in respect of the
5 submissions, Mr Cammegh. First of all, I need to be
6 satisfied in my mind before I'm able to sort of apply my
7 mind to the objection and also the law. Are these highly
8 contentious matters, from your perspective?

9 MR CAMMEGH: Well, they must be because --

10 JUDGE THOMPSON: This for me is so critical. Are they highly
11 contentious matters?

12 MR CAMMEGH: Yes, of course they are.

13 JUDGE THOMPSON: They are highly contentious matters.

14 MR CAMMEGH: Because on the one hand, of course, it involves
15 or concerns the counts on the indictment, which Gbao
16 faces on the basis of command responsibility or joint
17 criminal enterprise in relation to child soldiers. And
18 furthermore, it relates to the use of civilians for
19 food-finding, forced labour, and, of course violence
20 against individuals.

21 JUDGE THOMPSON: In other words, this evidence is a key
22 evidence in relation, having regard to the charges in the
23 indictment?

24 MR CAMMEGH: It has to be, yes.

25 JUDGE THOMPSON: That is your position?

26 MR CAMMEGH: Absolutely.

27 JUDGE THOMPSON: And therefore if it is key, you are saying
28 that there is a mandatory obligation on the Prosecution
29 to have disclosed that.

1 MR CAMMEGH: Well, in this particular context most definitely,
2 because what we've heard is testimony that, with the best
3 will in the world, one would not necessarily have
4 expected from having read the statement.

5 JUDGE THOMPSON: Precisely. That is what I'm trying to get.

6 MR CAMMEGH: And where my client, although I hope to have
7 established through the last witness that there doesn't
8 appear to be any suggestion that he was in Kono in this
9 particular time, he is still charged on the basis of
10 joint criminal enterprise as part of a command structure.

11 JUDGE THOMPSON: Yes, we're eminently aware of that.

12 MR CAMMEGH: So it is incumbent upon me, I think, to protect
13 his interests by drawing the Court's attention to areas
14 such as this where the testimony goes well outside the
15 ambit of the statement, notwithstanding the principle of
16 orality. I've made the point already. It goes outside
17 that in my humble submission.

18 [HS280105B 11.01 a.m. - SGH]

19 PRESIDING THOMPSON: Yes, in other words, you are saying that
20 even if this Court adheres to the principle of orality,
21 yet there may be situations where the piece of evidence
22 which has been led in Court is of such a nature that if
23 it had not been disclosed, and it is on very highly
24 contentious matters, it may well go outside the principle
25 of orality.

26 MR CAMMEGH: Indeed.

27 JUDGE THOMPSON: Of course, we having set the parameters, the
28 boundary lines of the principle of orality.

29 MR CAMMEGH: Of course.

1 JUDGE THOMPSON: But we are required as judges to do justice
2 in a situation like this.

3 MR CAMMEGH: Well, my understanding of that particular rule or
4 doctrine is that I think on day one of this session I
5 referred to let's wait and see.

6 JUDGE THOMPSON: Yes.

7 MR CAMMEGH: We, of course, implicitly trust Your Honours to
8 exercise discretion in --

9 JUDGE THOMPSON: From time to time.

10 MR CAMMEGH: -- the employment of the doctrine and the
11 boundaries are not always clear, they are always up for
12 discussion. My submission is that in this case we have
13 encountered two aspects of this evidence that clearly, in
14 my submission, lie outside that principle and that
15 doctrine. And I don't want to suggest mala fides or
16 anything underhand within the Prosecution team and I stop
17 short of that, but Mr Jordash, in my submission, must be
18 right. It is implicit, is it not, that with the incident
19 yesterday involving the death of this unfortunate man's
20 wife the two aspects that I have referred to this
21 morning, SBUs and the incident that we are now hearing
22 about, it would appear to be a common sense conclusion
23 that we draw on this side of the room that the
24 Prosecution are in possession of certain information
25 which extends beyond the remit of this statement? That
26 is to say, when these questions are asked it appears that
27 the answers are expected because something else has been
28 imparted that we don't know about.

29 JUDGE THOMPSON: Well, thank you. Mr Jordash, one point

1 before I turn it over to the Prosecution. You have gone
2 further than Mr Cammegh and alleged that there may well
3 have been here a deliberate non-disclosure of key pieces
4 of evidence which perhaps, by reason of their
5 non-disclosure, gives the Prosecution a tactical
6 advantage.

7 MR JORDASH: As I understand it, Your Honour --

8 JUDGE THOMPSON: You put it very high.

9 MR JORDASH: Yes.

10 JUDGE THOMPSON: So I want to be clear that that is what you
11 are saying.

12 MR JORDASH: As I understand it, it was the present
13 Prosecutor, Mr Iscandari, who took this supplemental
14 statement. So is it he can elicit this information in
15 court, but he couldn't elicit it behind the scenes for
16 his statement.

17 JUDGE THOMPSON: Well, I am not prepared to engage in dialogue
18 on that, but I just wanted to be sure that I understand
19 the thrust of that part of your own response that in fact
20 you are saying, here we have a situation of a deliberate
21 non-disclosure that might well have been done to give the
22 Prosecution some tactical advantage.

23 MR JORDASH: I do say that.

24 JUDGE THOMPSON: Right. Thanks.

25 MR JORDASH: Your Honour, could I just add one small thing?

26 JUDGE THOMPSON: Go ahead.

27 MR JORDASH: Your Honour asked Mr Cammegh whether these were
28 highly contentious issues.

29 JUDGE THOMPSON: Yes.

1 MR JORDASH: My answer to that would be slightly different.

2 In relation to this - and I will restrict my comments to
3 this incident involving Captain Banya and the teeth. The
4 problem with this type of disclosure is on the statement
5 I have no idea if it's a contentious issue. But with the
6 present --

7 JUDGE THOMPSON: But in relation to the indictment --

8 MR JORDASH: Well, it still may not be. It may reflect
9 something personal done between Captain Banya and this
10 witness. It may fall outside the remit of war crimes,
11 crimes against humanity, I don't know, it may be
12 completely motivated by something unconnected to the
13 indictment. The problem is now we are getting these
14 extra details which include a link to forced labour and
15 we have the contribution of various commanders who were
16 arresting this man and bringing him to Captain Banya. I
17 didn't know whether this witness when asked who went to
18 fetch you to bring him to Captain Banya, whether he was
19 going to say Mr Sesay. I have no idea and that is the
20 problem. From the statement Mr Sesay is not involved.
21 From his evidence he well could -- he might be, we just
22 don't know until he is finished telling his story.

23 JUDGE THOMPSON: Right. Thank you. Learned counsel for the
24 Prosecution.

25 MR HARRISON: There was one other reference that I wish to
26 draw the Court to and I think there may have noted it
27 already. But at 9779, there is a reference to the use of
28 small small soldiers in addition to the one that
29 Mr Justice Boutet pointed out already at 9782.

1 The Prosecution denies any kind of deliberate
2 attempt to withhold information. The significant
3 evidence is that which Mr Cammegh and Mr Jordash has
4 already referred to and that is the evidence which the
5 witness would be given of what took place with him - and
6 that evidence was that one Captain Banya threatened to
7 kill him and then Captain Banya used his pistol to strike
8 the witness in the mouth and break his upper teeth. That
9 is the evidence that we were seeking to lead. The
10 evidence in advance of that was, in our view, simply
11 introductory evidence and amplifies the circumstances
12 that led up to the significant event which is the assault
13 that this witness personally suffered and was going to
14 testify to.

15 I think Mr Nicol-Wilson made the point that there is
16 no reference to the words "small boy unit" in the
17 statement. That is a fair comment. The response is that
18 there is use of small small soldiers, there is a use of
19 small boys, and there is a use of boys in the statement.
20 It is also the context of this entire case that everyone
21 knows what a small boy unit is and knows of their
22 existence, but that is not a fact which would take anyone
23 by surprise.

24 I have heard criticisms, I do not dismiss them, but
25 what is significant is that this witness has given a
26 statement which has been produced with respect to the
27 significant event to which he is going to testify to,
28 which has been fully disclosed and the information
29 surrounding that is simply information that amplifies on

1 that incident and places it in context. I can't recall
2 if it was Mr Cammegh or Mr Jordash who raised a concern
3 about [inaudible] what happened further with respect to
4 civilians, if anything, that there will be no evidence
5 led on that.

6 The conclusion of the evidence will be with respect
7 to the actual assault on the witness by
8 Captain K S Banya.

9 JUDGE THOMPSON: Thank you.

10 JUDGE BOUTET: I would like, before you sit down, one of the
11 objections based on the fact that it would appear, given
12 the line of questions and the manner of the questioning
13 and of framing the question, that the Prosecution is
14 indeed in possession of information that may not have
15 been disclosed at this time to the Defence, and they gave
16 a few examples, small boy units being a different issues,
17 but especially making reference now to the incident with
18 Captain Banya as such. The nature of the question leads
19 one to believe that the Prosecution has indeed at this
20 stage information in the hands or in their possession
21 that allows the Prosecution to ask these types of
22 questions that the Defence does not have in its
23 possession. So, this is one -- that is my understanding
24 of one of their key objections, that is the Prosecution
25 should have disclosed all of the information they have.
26 I would like to hear your comments on that, especially in
27 reference to the incident with Captain Banya.

28 MR HARRISON: My understanding, from speaking to my colleague,
29 is that there was some information imparted to him on

1 that point.

2 JUDGE BOUTET: So this is the same scenario that we had
3 yesterday where one name -- the Prosecutor had been given
4 information and had forgotten to provide this information
5 to the Defence. Now you are saying that there might be
6 some additional information that he had in his
7 possession?

8 MR HARRISON: But what we are saying the significant -- the
9 only evidence that we are interested in leading and the
10 Court taking note of is the personal circumstances of
11 what happened in respect of Banya.

12 JUDGE BOUTET: I understand what you are saying. You are
13 trying to limit the damage, but the problem is not that,
14 the problem is there is a complete obligation of
15 disclosure of any information you may have in your
16 possession, even though you get it this morning. So the
17 concern that they raise is information has not been
18 disclosed. This is the second such incident with the
19 evidence of this witness and you are not even through
20 half of his evidence. So, how are they, and that's their
21 position, to prepare properly with this witness when they
22 don't know what is coming up.

23 MR HARRISON: Yes, this witness's evidence is almost completed
24 and there is nothing further that I am aware of that will
25 be of concern.

26 JUDGE THOMPSON: Any short responses? Very short.

27 MR JORDASH: Your Honour, no. I think the point has been
28 made. Thank you.

29 JUDGE THOMPSON: Mr Cammegh?

1 MR CAMMEGH: Just to repeat that we know that Mr Harrison is
2 not responsible for taking that final statement.

3 JUDGE THOMPSON: Yes, all right. Mr Touray?

4 MR TOURAY: None, Your Honour.

5 [Judges confer]

6 PRESIDING JUDGE: Learned counsel, we shall rise for a couple
7 of minutes. The Court will rise, please.

8 [Break taken at 11.15 a.m.]

9 [On resuming at 11.50 a.m.]

10 PRESIDING JUDGE: Learned counsel, we are resuming the session
11 and we have been deliberating and have come out with a
12 ruling on the issues raised before we went for the
13 deliberation and will be asking the Honourable Justice
14 Thompson to read the ruling of the Chamber.

15 [Ruling]

16 JUDGE THOMPSON: This is the unanimous ruling of the Chamber
17 on the objection raised by the Defence to certain
18 pertinent portions of the testimony of TF1-015.

19 The Chamber is of the opinion that in relation to
20 the matters complained of by the Defence, regarding the
21 circumstances of the alleged arrest and mistreatment of
22 this witness by Captain Banyan, there has been a breach of
23 Rule 66 of the rules of the Court.

24 In the circumstances, we order that the Prosecution
25 disclose fully at the latest by the end of this 28th day
26 of January 2005, all information in their possession on
27 the aforesaid matters and any undisclosed related
28 information provided by this witness to the Office of the
29 Prosecutor.

1 Consequentially, the trial is adjourned to Monday,
2 the 31st day of January 2005 at 9.30 a.m.

3 PRESIDING JUDGE: In the light of the fact that they are
4 pending -- there is a pending ruling which would have
5 enabled us to proceed with the child witness, which is
6 not yet ready, we are saying that the Tribunal will
7 adjourn its sitting till Monday and that material, which
8 would be disclosed to the Defence by the close of today,
9 would be properly exploited by the Defence so as to
10 enable them to be ready for the continuation of the
11 testimony of this witness on Monday at 9.30 a.m., because
12 we shall take the evidence of this witness first on
13 Monday at 9.30 a.m. before we proceed with any other
14 business.

15 So this said, I don't know if there are any -- Yes,
16 Mr Harrison?

17 MR HARRISON: I am sorry I tried to take as accurate a note
18 about the order that was made, but I fear I wasn't able
19 to move my pen as quickly as the words were uttered.

20 PRESIDING JUDGE: I see.

21 MR HARRISON: I know it is October[sic] 28th, I am afraid --
22 is it 4.00 o'clock, is that the time?

23 PRESIDING JUDGE: Close of the day. We didn't want to get
24 into that.

25 JUDGE THOMPSON: Close of the day. At the close of this the
26 28th day of January 2005.

27 MR HARRISON: As I was trying to take the note, the
28 Prosecution will comply with the order, I just want to
29 make sure I have understood exactly what it is the Court

1 has in mind.

2 PRESIDING JUDGE: You couldn't comply with the order before
3 the close of the day.

4 MR HARRISON: Of course. Of course.

5 JUDGE THOMPSON: Yes. We said by the latest the close of the
6 day.

7 MR HARRISON: And my note was that all information on the
8 aforesaid matter --

9 JUDGE THOMPSON: Yes.

10 MR HARRISON: And any other matters --

11 JUDGE THOMPSON: Any other undisclosed related information.

12 MR HARRISON: All right.

13 JUDGE THOMPSON: Related information provided by the witness
14 to the Office of the Prosecutor.

15 MR HARRISON: Yes, thank you.

16 PRESIDING JUDGE: Well, this said, learned counsel, Chamber
17 staff, I think we wish everybody a relaxed weekend so
18 that we can resume on Monday with our full energies to
19 continue more expeditiously, I hope. Thank you. Have a
20 wise weekend.

21 [Whereupon the hearing adjourned at 11.57 p.m., to be
22 reconvened on Monday, the 31st day of January 2005 at
23 9.30 a.m.]

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WITNESSES FOR THE PROSECUTION:

WITNESS: TF1-015 2

EXAMINED BY MR ISCANDARI 2