

Case No. SCSL-2004-15-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ISSA SESAY
MORRIS KALLON
AUGUSTINE GBAO

WEDNESDAY, 22 MARCH 2006
9.48 A.M.
TRIAL

TRIAL CHAMBER I

Before the Judges:	Pierre Boutet, Presiding Bankole Thompson Benjamin Mutanga Itoe
For Chambers:	Ms Candice Welsch Mr Matteo Crippa
For the Registry:	Ms Maureen Edmonds
For the Prosecution:	Mr Peter Harrison Mr Alain Werner Mr Karim Agha Mr Mark Wallbridge(Case Manager)
For the Principal Defender:	NO APPEARANCE
For the accused Issa Sesay:	Mr Wayne Jordash Ms Sareta Ashraph
For the accused Morris Kallon:	Mr Shekou Touray Mr Melron Nicol-Wilson Ms Ayesa Touré
For the accused Augustine Gbao:	Mr Andreas O'Shea Mr John Cammegh

1 [RUF22MAR06A - SGH]
2 Wednesday, 22 March 2006
3 [Open session]
4 [The accused present]
09:38:10 5 [Upon commencing at 9.48 a.m.]
6 PRESIDING JUDGE: Good morning, counsel. Good morning,
7 Mr Prosecutor. Good morning, Mr Witness.
8 THE WITNESS: Good morning, thank you.
9 PRESIDING JUDGE: Thank you. Your next witness, from what
09:49:02 10 I can see, will be giving evidence in the public in the open
11 without any protective measures of any kind.
12 MR WERNER: Yes, Your Honour.
13 PRESIDING JUDGE: Just for the record, can you confirm the
14 number and the name of the witness who is giving evidence in the
09:49:15 15 public forum.
16 MR WERNER: Yes. The number is TF1-288.
17 PRESIDING JUDGE: Yes.
18 MR WERNER: The family name of the witness is Kasoma,
19 K-A-S-O-M-A. The first name is Edwin.
09:49:43 20 PRESIDING JUDGE: He is to give evidence in English?
21 MR WERNER: In English, yes. He is a Christian and he is
22 the 67th witness and the 66th Prosecution witness.
23 PRESIDING JUDGE: Thank you. Yes, you may take the oath.
24 JUDGE ITOE: Sorry, you say it's the 66th PW? Is it
09:50:17 25 the 66th or 67th?
26 MR WERNER: Your Honour, it is the 67th witness.
27 JUDGE ITOE: But the 66th for the Prosecution?
28 MR WERNER: Yes, Your Honour.
29 WITNESS: TF1-288 [Sworn]

1 PRESIDING JUDGE: Yes, please proceed.

2 MR WERNER: Thank you, Your Honour.

3 EXAMINED BY MR WERNER:

4 Q. Good morning, Mr Witness.

5 A. Good morning, thank you.

6 Q. I am going this morning to ask you some questions, if you
7 can answer my questions. If you have any problems with my
8 accent, just ask me to repeat and we will go slowly. Mr Witness,
9 when were you born?

09:51:40 10 A. I was born on 16 August 1958.

11 JUDGE ITOE: '58?

12 MR WERNER: Yes, Your Honour.

13 JUDGE ITOE: '58.

14 MR WERNER:

09:51:58 15 Q. Where were you born?

16 A. I was born in Zambia.

17 Q. What are you doing for a living today?

18 A. I am also in the Zambian army. I come from the corps of
19 infantry. Currently I am employed in the administration branch
09:52:25 20 of the Zambian army in charge of manpower and personnel
21 administration.

22 THE INTERPRETER: Your Honours, would the witness please be
23 instructed to go slow so that the interpreters could interpret
24 for the records.

09:52:42 25 PRESIDING JUDGE: Thank you.

26 MR WERNER:

27 Q. Yes, Mr Witness, even if you are giving your evidence in
28 English, there is still translation going on in Krio. So if you
29 can just go very slowly it will assist everybody.

1 PRESIDING JUDGE: Just to take that part back, Mr Witness.

2 You are with the administrative headquarters and you are in the
3 personnel branch; is that what you have said?

4 THE WITNESS: I am at the Zambia headquarters in the
09:53:13 5 administration branch.

6 PRESIDING JUDGE: Yes.

7 THE WITNESS: I am in charge of manpower and personnel
8 administration. I am lieutenant-colonel by rank.

9 PRESIDING JUDGE: Thank you.

09:53:25 10 MR WERNER:

11 Q. Mr Witness, do you remember January 2000?

12 A. Yes, I do.

13 Q. Where were you living in January 2000?

14 A. I was living in Lusaka, Zambia.

09:54:23 15 Q. What was your rank at the time?

16 A. I was the lieutenant-colonel.

17 Q. Did you go anywhere in January 2000?

18 A. Say again.

19 Q. Did you go anywhere in January 2000?

09:54:53 20 A. Yes, My Lord. In January 2000 I travelled to this country.

21 PRESIDING JUDGE: Meaning?

22 THE WITNESS: I came to this country on duty.

23 MR WERNER:

24 Q. Which country, Mr Witness? Which country are you talking
09:55:10 25 about?

26 A. Sierra Leone.

27 PRESIDING JUDGE: Thank you.

28 MR WERNER:

29 Q. Why did you go to Sierra Leone in January 2000?

1 A. I travelled to Sierra Leone in January 2000 basically to
2 come for a reconnaissance mission prior to the deployment of my
3 battalion on a UN peacekeeping mission.

4 Q. Did you go by yourself to Sierra Leone?

09:56:12 5 A. No, My Lord, I came with the other senior officers from the
6 Zambia army. Amongst them was the director of transport for the
7 Zambia army. I was also accompanied by someone who was in charge
8 of the operations at the headquarters, and a general staff
9 officer, class two, who are four in number.

09:56:59 10 Q. You said you came in view of a peacekeeping mission. When
11 was this peacekeeping mission schedule to take place, Mr Witness?

12 A. The peacekeeping mission was scheduled for end of April
13 2000.

14 Q. In January 2000, did you do anything during this
09:57:39 15 reconnaissance mission?

16 A. Yes, My Lord. I travelled to Sierra Leone and during my
17 visit here, I came to meet --

18 JUDGE ITOE: Mr Witness, do we take it that you were the
19 head of this reconnaissance mission?

09:57:55 20 THE WITNESS: Say again.

21 JUDGE ITOE: Do we take it that you were the head of this
22 reconnaissance mission?

23 THE WITNESS: Unfortunately, there was somebody senior.

24 JUDGE ITOE: I see.

09:58:03 25 THE WITNESS: Yes.

26 JUDGE ITOE: Yes, you can go on.

27 MR WERNER: Thank you, Your Honour.

28 Q. Can you carry on in your explanation of this reconnaissance
29 mission, Mr Witness?

1 A. The reconnaissance mission is just an undertaking to get on
2 the ground and find out the situation before planning for a
3 pending mission.

4 Q. Where did you go in Sierra Leone?

09:58:47 5 A. When I came to Sierra Leone, I reported to force
6 headquarters and met the first commander at force headquarters
7 who briefed me of what was expected of my battalion upon coming
8 here, and he indicated to me the possible place of deployment,
9 and he allowed me to travel there to go and assess the situation
09:59:25 10 on the ground and I did just that.

11 Q. Where did you travel?

12 A. I travelled to Koidu.

13 Q. Did you meet anyone in Koidu when you travelled there,
14 Mr Witness?

09:59:47 15 A. Yes. When I travelled to Koidu I had the chance to meet a
16 brigade commander for RUF by the name of Lansana who gave us the
17 reception and assisted us in our mission in that area.

18 Q. And what did you do after that?

19 A. After that I travelled back to Freetown and I reported back
10:00:37 20 to the force commander about our movement. And after that we
21 left for Lusaka, Zambia.

22 Q. And did anything happen when you went back to Zambia?

23 A. Yes. When I went back to Zambia I embarked on preparing my
24 battalion for the pending mission by training the battalion in
10:01:21 25 the UN peacekeeping concepts. And during that period I had the
26 chance to be visited by officials from the United Nations
27 headquarters who came to brief us, equally on the situation in
28 Sierra Leone and what was expected of us and, equally, on the
29 mandate.

1 Q. And what were you told about the mandate of your mission?

2 A. Basically about the mandate I was told that we were getting

3 deployed for peacekeeping and it involves basically creating

4 peace between the warring factions and the Sierra Leonean

10:02:48 5 government and the provision of humanitarian assistance to the

6 many people who were displaced because of the conflict that had

7 been going on for some time.

8 Q. Were you told anything about the use of force during your

9 mission?

10:03:17 10 A. Yes. I was told that with the mandate that we were moving

11 in, we were to place maximum emphasis on minimum use of force.

12 We were only expected to use the force to protect our lives or

13 possibly when our lives were threatened.

14 Q. Just for the sake of clarity, what was your own assignment

10:03:56 15 for this mission -- for this forthcoming mission?

16 A. The initial assignment was to deploy in Koidu and carry out

17 duties in relation to peacekeeping.

18 Q. And who was going to be the most senior officer for this

19 mission?

10:04:47 20 A. I was the commanding officer and I was supposed to be the

21 most senior officer.

22 PRESIDING JUDGE: So you were deployed into Koidu with

23 whom?

24 THE WITNESS: I beg your pardon?

10:05:21 25 PRESIDING JUDGE: Who was deploying with you? You were the

26 commanding officer of what?

27 THE WITNESS: Below me I had the company commanders, then I

28 also had the platoon commanders and the board of men. That is,

29 soldiers.

1 PRESIDING JUDGE: Was it a battalion that was deploying
2 with you, full battalion?

3 THE WITNESS: It was a fully fledged battalion.

4 PRESIDING JUDGE: Which meant how many people?

10:05:44 5 JUDGE ITOE: Composed of who?

6 MR WERNER:

7 Q. How many men?

8 A. The total strength of the battalion was about 800 plus men
9 who were broken down in the four fighting companies of about 100
10:06:03 10 plus each and, apart from that, there was a logistics company of
11 about 150 plus and a mechanised platoon.

12 PRESIDING JUDGE: Thank you.

13 MR WERNER:

14 Q. What happened after that, Mr Witness?

10:06:36 15 A. After our training and towards mid-April I travelled to
16 Sierra Leone with an advanced party to come and set the ground
17 for the coming of the rest of my men. I was based at Lungi
18 airport whilst waiting for the arrival of the rest of the men.

19 Q. And when did they arrive, the rest of the men?

10:07:18 20 A. Finally just about the end of April the rest of my men
21 arrived in Sierra Leone.

22 Q. And where did they arrive?

23 A. At Lungi airport.

24 Q. And how long were you deployed at Lungi airport?

10:07:51 25 A. They were there for barely a week.

26 Q. And during that week did you do anything yourself,
27 Mr Witness?

28 A. Yes. During that week and prior to the arrival of the men
29 I had the chance to get back to the force commander in Freetown

1 who further gave me a brief that I was still going to deploy in
2 Koidu and he asked me to wait for further orders. And when my
3 men were arriving, we embarked on the normal pre-deployment
4 training.

10:08:53 5 Q. When you say "force commander," what do you mean exactly?

6 A. Say again.

7 Q. You said that you met the force commander?

8 A. Yes, I met the force commander for the final brief.

9 Q. What do you --

10:09:09 10 A. And he told me that we were still going to be deployed in
11 Koidu.

12 Q. Do you remember his name, Mr Witness?

13 A. Yes, he was the Lieutenant-General Jetley from India.

14 JUDGE ITOE: Can you spell the name for us, please?

10:09:21 15 MR WERNER:

16 Q. Jetley, could you spell?

17 A. Jetley is Juliet Uniform -- no, correction. Juliet Echo
18 Tango Lima Echo Yankee.

19 Q. Did anything else happen after that, Mr Witness, after your
10:10:12 20 meeting with Jetley?

21 A. After that brief from the force commander, on 1st May I had
22 a message which came from Freetown from the force commander to
23 inform me that I was required to move to Makeni within 24 hours
24 for the purpose of going to stabilise the situation that had
10:10:47 25 arisen in Makeni. And he directed that I move with at least two
26 companies from the board of men I had.

27 PRESIDING JUDGE: So the order was for you to move to
28 Makeni with two companies?

29 THE WITNESS: Yes.

1 MR WERNER:

2 Q. And what was your understanding of the situation in Makeni
3 when you received this order?

4 A. Basically apart from being told that I was going to
10:11:26 5 stabilise the situation there, I was not given further
6 information of what was actually on the ground. The only further
7 information that came in is that there had been a bit of problems
8 between the Kenyan contingent which was deployed in Makeni and
9 the RUF.

10:12:08 10 PRESIDING JUDGE: So this was information that you had been
11 given prior to your deployment?

12 THE WITNESS: Yes, My Lord.

13 MR WERNER:

14 Q. And what happened after that, Mr Witness?

10:12:31 15 A. The following day I prepared my force and at about
16 8 o'clock in the morning I left Lungi for Makeni.

17 Q. Just pause for just one second. Do you remember the date?

18 A. That was on 2nd May.

19 JUDGE ITOE: Of what year?

10:13:06 20 MR WERNER:

21 Q. Can you remember the year?

22 A. 2nd May 2000.

23 Q. And how were you to find your way to Makeni?

24 A. There were two military observers who came to give me an
10:13:33 25 escort. There was one lieutenant-colonel, British
26 lieutenant-colonel and another major from a West African country.
27 I am not able to remember their names.

28 Q. And did anyone else go with you?

29 A. Apart from that, I was also assigned to move with the

1 sector headquarters from the Kenyan contingent who had travelled
2 to go and set up the headquarters under which my battalion was
3 going to form. So they are just arrived in the country and I was
4 made to move with them. They were a strength of about 30.

10:14:31 5 Q. And do you remember the name of this sector headquarter
6 commander?

7 A. The sector headquarter commander was Brigadier-General
8 Mulinge.

9 Q. Are you able spell this name for the Court?

10:14:43 10 A. Yes, My Lord, I will spell. Mike Uniform Lima India
11 November Golf Echo.

12 PRESIDING JUDGE: And this brigadier-general is Kenyan?

13 A. Yes, My Lord. I spell. Mike uniform Lima India November
14 golf echo, M-U-L-I-N-G-E.

10:15:00 15 PRESIDING JUDGE: And this Brigadier-General is Kenyan?

16 THE WITNESS: He was a Kenyan by nationality, yes.

17 MR WERNER:

18 Q. Can you explain to the court what do you mean by sector
19 headquarter commander?

10:15:24 20 A. The establishment was such that there were going to be a
21 number of sector headquarters within the mission and the
22 Brigadier-General Mulinge sector headquarters was going to cover
23 the Zambian contingent which was going to deploy in Kono, and the
24 Kenyan contingent which was deployed in Makeni, and there should
10:15:52 25 have been another contingent under the same sector headquarter
26 which I couldn't remember exactly. So General Mulinge was
27 supposed to be based in Magburaka as the headquarters for this
28 sector.

29 Q. You said that he came with a number of his men. Can you

1 remember with how many men did he go?

2 A. Approximately about 30 inclusive officers and the ordinary
3 soldiers.

4 Q. What happened after that, Mr Witness? Sorry, what happened
10:16:53 5 after that?

6 A. After that with the direction of the two military observers
7 who accompanied us we left Lungi at about 8.00 for Makeni. We
8 drove through Port Loko then went to Lunsar where we had a night
9 stop.

10:17:33 10 Q. Did anything happen in Lunsar?

11 A. Yes. Whilst we had the night stop in Lunsar I received
12 some information to the effect that RUF had set up roadblocks
13 along the Makeni road and the nearest roadblock was actually
14 about 12 kilometres away from Lunsar and I was cautioned that the
10:18:16 15 situation may not be very good so that there was need for me to
16 take necessary precautions.

17 Q. And who sent you this information?

18 A. The information came from the local populace within Lunsar
19 and apart from that, there was a Nigerian company which was
10:18:39 20 deployed in Lunsar. They equally gave me this information.

21 Q. Did you do anything when you received this information?

22 A. Yes, My Lord. Upon receipt of this information, I decided
23 to reduce my convoy by dropping off most of the logistical
24 components. I organised the convoy in such a way that it was
10:19:13 25 more on the fighting convoy basis.

26 Q. Can you elaborate a little bit. What did you do exactly?

27 A. What I am saying is that I dropped off most of the
28 logistical components with a view that when I moved as I get to
29 Makeni, then the logistical components could come and join us.

1 So what I left was the purely a force that would easily react to
2 a given situation in case -- in other words, a combat-ready
3 force.

4 Q. And what was the size?

10:20:19 5 A. Basically the size that there were two companies and the
6 total strength was about 200 plus. I dropped off about 100 plus.

7 Q. Did you communicate with anyone at that point?

8 A. Yes, My Lord. Upon doing that I communicated to the force
9 commander in Freetown to inform him about the situation and he
10:20:55 10 gave me a go ahead that I should proceed.

11 Q. And during this communication did he tell you anything
12 else?

13 A. Yes. My Lord, he mentioned to me that he was actually
14 sending a quick reaction force from the Indian Battalion which
10:21:27 15 was going to move through Magburaka so that we were able to link
16 up in Makeni.

17 Q. You told us that you had left Lungi with two military
18 observers. Did you speak with them at Lunsar?

19 A. Yes. When that information reached me and during the
10:22:10 20 organisation, the observers indicated to me that they would not
21 go further than that. They were turning back to get back to
22 Freetown. So they wished me the best.

23 Q. Did they explain to you why they were going back to
24 Freetown?

10:22:33 25 A. Apparently they never gave me any good reason. So I took
26 it they thought they had done enough and from there it was a
27 straightforward route.

28 Q. What happened after that, Mr Witness?

29 A. After that about 7.00 in the morning I started off from

1 Lunsar along Makeni way and basically after about 10, 11,
2 12 kilometres my leading company commander reported to me that he
3 had heard some gunshots and he saw something which looked like a
4 roadblock. So I requested him to verify and he report back to
10:23:38 5 me.

6 Q. Where were you at that point?

7 A. That was after driving for about 11 or 12 kilometres from
8 Lunsar.

9 Q. Then what happened?

10:24:02 10 A. My company commander report back that there was actually a
11 roadblock in front and I also wanted to find out from him whether
12 the gunshots he was hearing were aimed shots. But he told me
13 it's like they were not aimed, the shots. So I told him to go
14 ahead and approach the roadblock.

10:24:28 15 Q. How were you communicating with him at that point?

16 A. By radio.

17 Q. So what happened after that, Mr Witness?

18 A. After that he made contact with the one who was in charge
19 of the roadblock and he identified himself that we are a
10:25:06 20 contingent from Zambia who -- we were proceeding to Kono where we
21 were going for deployment on a peacekeeping mission. After he
22 said that the one who was in charge of the roadblock agreed that,
23 yes, they were aware that Zambian contingent was coming to deploy
24 in that area and that he, as far as they were concerned, they had
10:25:44 25 no harm with Zambians coming into their area. If anything, they
26 were happy. But he requested my company commander that there was
27 need for me as the commander for that force to meet their
28 commander who was slightly ahead of that roadblock, just to iron
29 out one or two things before we could be allowed passage. When

1 my company commander told me his --

2 PRESIDING JUDGE: Before you go there, Mr Witness, you said
3 that you mentioned something about being armed. The roadblock
4 commander told you that they were not armed. Can you explain on
10:26:31 5 that what you meant? You said that your campaign commander
6 reported to you of his discussion with the roadblock commander
7 and it was something about being armed. Who was and who was not?
8 I may have misunderstood your evidence, that is why I am trying
9 to clarify that.

10:27:00 10 THE WITNESS: Maybe let me repeat the whole statement.

11 MR WERNER:

12 Q. Yes. No, no. Did your company commander tell you anything
13 about the fact that the RUF were armed or not armed at that
14 point?

10:27:11 15 A. Yes, My Lord. I mentioned that when he first reported to
16 me first of all he indicated that he heard gunshots in front, and
17 I requested him to verify whether those gunshots were aimed
18 shots.

19 PRESIDING JUDGE: Yes, aimed shots.

10:27:33 20 THE WITNESS: Yes. So from that point the people who were
21 at the roadblock were armed.

22 JUDGE ITOE: And your brigade commander assured you that
23 they were not aimed shots?

24 THE WITNESS: Yes.

10:27:49 25 JUDGE ITOE: That is why you encouraged him to continue.

26 PRESIDING JUDGE: His campaign commander.

27 JUDGE ITOE: Company commander.

28 THE WITNESS: Yes. He confirmed that they were not aiming
29 shots, so from that there was no requirement for me to either

1 give further orders that they should fire back. I allowed him to
2 go ahead and get in contact with them and identify himself that
3 he was coming from the Zambian contingent and our mission was to
4 proceed to Kono. I told him not to tell them that we are going
10:28:29 5 to Makeni, but to tell them that we were going to Kono because I
6 did [inaudible] come and we had agreed that Zambian contingent
7 was going to deploy in Koidu.

8 PRESIDING JUDGE: Yes, that is fine. Thank you.

9 MR WERNER:

10:28:52 10 Q. So what happened after that, Mr Witness.

11 A. When we contacted the roadblock commander, like I said, he
12 agreed that he was aware about our coming and he wanted myself as
13 commander to meet his commander who he said was in front. When
14 my company commander reported back this information, I wanted him
10:29:15 15 to verify whether he was very sure that the RUF were talking from
16 a genuine point of view or they were trying to lure us. From the
17 approach he got from the RUF, he was convinced that they would do
18 no harm. So he assured me that all was okay if I met their
19 commander, there was not going to be a problem.

10:29:46 20 Q. And the one who assured you was your company commander?

21 A. Yes.

22 Q. So what happened after that?

23 A. After a bit of consultation within myself and my company
24 commanders who were convinced that I could go ahead and I moved
10:30:22 25 ahead from my position, went forward. I carried barely a section
26 of protection force.

27 Q. How many of them?

28 A. There were about 10. They were armed. Then I moved with
29 the one Land Rover and one BRDM.

1 Q. Can you explain what is a BRDM?

2 A. A BRDM is an armoured fighting vehicle with the personnel
3 protection from light armed fire.

4 Q. At that point did you know who you were going to meet, who
10:31:10 5 was this RUF commander?

6 A. No. All I knew is that I was going to meet their commander
7 but I didn't know who he was.

8 Q. So what happened after that, Mr Witness?

9 A. After moving forward, we had only moved about one and a
10:31:48 10 half kilometres in front. We turned the bend then another 500
11 metres, I found myself in this small village. Not knowing that
12 as I was going at the outside, I actually entered an RUF ambush.
13 Upon arrival at the village, I found myself and my protection
14 party surrounded.

10:32:19 15 PRESIDING JUDGE: So you are at that moment 500 metres past
16 the roadblock?

17 THE WITNESS: Yes, yes.

18 PRESIDING JUDGE: Okay.

19 MR WERNER:

10:32:26 20 Q. Do you know the name of the village?

21 A. I came to know the village later as Moria.

22 Q. Could you spell it?

23 A. I spell. Mike Oscar Romeo India Alpha.

24 Q. So what happened at that point, Mr Witness?

10:32:55 25 A. What happened was that I found myself and my men surrounded
26 and the RUF quickly moved in and they disarmed us. The whole
27 incident was so sudden that you -- that I and my men could not
28 react. So after being disarmed, I was isolated from my men. My
29 men were taken somewhere where they were locked in some house.

1 Q. Just pause one second. How many RUF soldiers did you see
2 at that point?

3 A. Apparently it was difficult to determine the actual number,
4 but there were well over 100 and it was a mixture of ages, young
10:33:59 5 ones and elders. Most of them armed, some with light weapons.
6 Others had rocket launchers. Others had grenades.

7 Q. You say some were young. How old were the youngest that
8 you saw?

9 A. The youngest should have been about 10, between 10 and 12
10:34:25 10 years of age.

11 Q. Did they carry anything?

12 A. Yes. There were armed rebels had rocket launchers. Others
13 had rifles or grenade.

14 PRESIDING JUDGE: You mean the young people? When you say
10:34:47 15 they had rocket launchers, rifles or grenade launchers, these
16 were the young soldiers you have seen?

17 THE WITNESS: Yes. What I'm saying is that all of them
18 with either -- one was armed with a rifle or he's carrying a
19 rocket launcher or grenade of some kind.

10:35:09 20 PRESIDING JUDGE: So when you talk about that, are you
21 talking of the young people you saw or are you talking of all of
22 them together young and older? Because I thought the last
23 question you had been asked was how old would you describe them.
24 You said 10 to 12, the youngest.

10:35:23 25 THE WITNESS: Yes.

26 PRESIDING JUDGE: I think you were asked if they were armed
27 and that is the part that I'm trying to better understand;
28 talking of the youngest.

29 THE WITNESS: Yes. I said the youngest was about 10, 12

1 and they were also armed -- either armed with AK-47 --

2 JUDGE ITOE: It is these young ones?

3 THE WITNESS: Yes, they are the young ones also.

4 PRESIDING JUDGE: Yes, please carry on.

10:35:53 5 MR WERNER:

6 Q. So what happened after that, Mr Witness?

7 A. After that I was isolated from the rest of my protection
8 party. I was taken on -- there was a small shelter where I found
9 this gentleman who I later identified it was the commander for

10:36:21 10 that area.

11 Q. Do you know his name?

12 A. Later on I came to learn that he was Morris Kallon.

13 Q. What happened at that point?

14 A. At that point this gentleman held me at gunpoint. He
10:36:57 15 pointed a pistol just by my ear and he told me to get his orders
16 very, very correctly. His orders were that I should pass back
17 information to my men behind that they should send forward at
18 least -- about five Land Rovers and three armoured fighting
19 vehicles to come forward.

10:37:27 20 JUDGE ITOE: He held a gun at what? At your ear? You say
21 he pointed a gun.

22 THE WITNESS: He pointed a pistol, yes, just below my ear.

23 MR WERNER:

24 Q. You said that they should send some vehicles. Who are
10:37:47 25 "they"?

26 A. Yes, he requested that I write a note to inform my second
27 in command to send forward five Land Rovers and three armoured
28 vehicles.

29 Q. Where was your second in command at that point?

1 A. My second in command --
2 JUDGE THOMPSON: Could we have that part before you move
3 on?
4 MR WERNER: Sure, Your Honour.
10:38:17 5 JUDGE THOMPSON: You said your second in command to do
6 what?
7 THE WITNESS: The order --
8 JUDGE THOMPSON: He asked you to write a note to your
9 second in command.
10:38:28 10 THE WITNESS: My second in command had remained with the
11 first --
12 JUDGE THOMPSON: No, no, I don't want that part. I am
13 asking what this gentleman told you to do.
14 THE WITNESS: What this gentleman told me to do was to send
10:38:42 15 a note --
16 JUDGE THOMPSON: Yes, okay.
17 THE WITNESS: -- to my second in command and request him to
18 send forward five Land Rovers and three armoured vehicles.
19 JUDGE THOMPSON: Yes, that was the point at which -- I got
10:39:08 20 up to that point before the intervention of the Prosecution
21 counsel cutting it off. Yes, quite. Go ahead.
22 MR WERNER:
23 Q. Just for the sake of clarity, where was your 2IC at that
24 point?
10:39:23 25 A. He had remained behind with the rest of the convoy.
26 Q. So what happened when he asked you that?
27 A. When he asked me to do that, I had no option. I got the
28 paper. I wrote something on the paper using the Zambian
29 language. Of course I was trying to disguise so that I warned

1 my 2IC of what was happening.

2 Q. What happened after that?

3 A. After that, when this gentleman got the paper and he read
4 it, he refused. He said I cannot send that paper there. So he
10:40:37 5 instead wrote for me, and he ordered me to sign the paper at
6 gunpoint.

7 Q. Now, you said the word "gentleman" Mr Witness. Which
8 gentleman refused it and wrote the note for you? Who are you
9 talking about?

10:41:07 10 A. Say again.

11 Q. You talked about a gentleman who refused the note in the
12 Zambian language and wrote a note instead. Who are you talking
13 about?

14 A. This was Morris Kallon at that time.

10:41:29 15 Q. What happened after that, Mr Witness?

16 A. After that, I was made to sign the note and he got it.
17 Then he ordered two RUF -- I mean three RUF, who were armed, to
18 remove me from that point and they took me to the bush.

19 Q. So what did you think at that time?

10:42:08 20 A. Basically I was a bit worried that maybe they are going to
21 kill me.

22 Q. What happened?

23 A. I was taken to the bush and moved for about two kilometres
24 away from the village. Then I was put on the tree and they
10:42:37 25 started guarding me.

26 Q. How long did they guard you under the tree?

27 A. Three RUF --

28 Q. How long did it last?

29 A. That lasted about three hours. I was with them in the

1 bush.

2 Q. What happened after that?

3 A. After that I was brought back to the village and upon
4 arrival I was ordered to get into a small van, red in colour,
10:43:26 5 which was being driven by some RUF, and behind there were a lot
6 of armed RUF. I was put in front and on the passenger side there
7 was Morris Kallon.

8 MR TOURAY: I am sorry, may I get the description of the
9 van.

10:43:47 10 THE WITNESS: I cannot remember the make.

11 MR TOURAY: Did you say red van?

12 PRESIDING JUDGE: Yes, that's what he said, a red van. You
13 were ordered to get into a van that you described red in colour;
14 is that what you said?

10:44:01 15 THE WITNESS: Yes, My Lord.

16 PRESIDING JUDGE: The van was, you said, driven by RUF and
17 you mentioned something about Kallon.

18 THE WITNESS: Yes, My Lord.

19 PRESIDING JUDGE: Was he driving?

10:44:14 20 THE WITNESS: He was on the passenger side.

21 MR WERNER:

22 Q. You said that there were RUF soldiers with you. How were
23 they dressed?

24 A. They were dressed in assorted colours. Some of them at
10:44:32 25 that time were dressed in Zambian combat uniforms.

26 Q. Where did you go, Mr Witness?

27 A. Say again.

28 Q. Where did you go?

29 A. From that point we drove forward to Makeni.

1 JUDGE ITOE: Let me get this clear. You said some of them
2 at that time were dressed in the Zambian combat uniforms?
3 THE WITNESS: Yes, My Lord.
4 PRESIDING JUDGE: When you say "some of them" you mean the
10:45:11 5 RUF people?
6 THE WITNESS: Yes, My Lord.
7 PRESIDING JUDGE: Those in the van or those outside? Where
8 are they?
9 THE WITNESS: They were behind in the van.
10:45:19 10 PRESIDING JUDGE: Behind in the van.
11 THE WITNESS: Yes, My Lord.
12 PRESIDING JUDGE: So you said that then proceeded forward
13 to Makeni.
14 THE WITNESS: Yes, My Lord.
10:45:37 15 MR WERNER:
16 Q. What did you see in Makeni, Mr Witness?
17 A. When I arrived in Makeni I discovered that the soldiers who
18 had remained behind had arrived in Makeni and most of them had
19 been stripped of their uniforms, they were disarmed.
10:46:18 20 Q. When you say "the soldiers who had remained behind," what
21 are you talking about?
22 A. The soldiers who had remained in the convoy behind.
23 PRESIDING JUDGE: Soldiers, you mean the Zambian soldiers?
24 THE WITNESS: The Zambian soldiers, yes, had already
10:46:39 25 arrived in Makeni, disarmed and been stripped of their uniforms.
26 MR WERNER:
27 Q. Did you meet anyone in Makeni?
28 A. Yes. Upon arrival in Makeni I was taken to this gentleman
29 who I later came to learn as Issa Sesay.

1 Q. Where did you meet him?

2 A. At some house in Makeni.

3 Q. Was anyone else there?

4 A. Yes. There were a lot of armed RUF and, apart from that,
10:47:36 5 my soldiers were also within the vicinity being guarded strictly.

6 Q. And what happened when you met Issa Sesay?

7 A. I was introduced to him as the commander for the Zambian
8 forces and after that I was made to sit down where the rest of
9 the soldiers were seated.

10:48:17 10 Q. And who introduced you to Issa Sesay?

11 A. Morris Kallon.

12 Q. What happened after that, Mr Witness?

13 A. Afterwards Issa gave orders that I and the rest of the
14 soldiers were moved from that place to an unknown destination and
10:48:53 15 we were made to mount our vehicles, Zambian vehicles which we had
16 come with, but now being driven by RUF. And that's how we left
17 Makeni. That was about 9 o'clock in the night.

18 Q. So who left Makeni at that point? Who left? Who left
19 Makeni?

10:49:22 20 A. I and the rest of my soldiers, under guard of RUF who had
21 taken over the vehicles and they were driving.

22 [RUF22MAR06B - EKD]

23 Q. And where did you go?

24 A. Apart from following their order, there was nothing else I
10:49:55 25 did.

26 Q. Sorry, it's my accent. Where did you go?

27 A. At that point I didn't know where we went, but I later came
28 to know the place as Yengema.

29 Q. Could you spell it for the Court?

1 JUDGE THOMPSON: Did you want him to spell it for us? It's
2 phonetic.

3 MR WERNER: Very good, Your Honour.

4 THE WITNESS: Can I proceed, My Lord?

10:50:50 5 MR WERNER:

6 Q. What happened after that when you arrived at Yengema,
7 Mr Witness?

8 A. We drove there one night. We arrived in that area at about
9 0600 in the morning and on arrival the group of soldiers who were
10:51:08 10 with me in that area were taken to a school block. Then myself
11 with --

12 JUDGE ITOE: You refer to them as Zambian soldiers, if you
13 can. The group of soldiers, is it Zambian soldiers?

14 THE WITNESS: Yes, a group of Zambian soldiers who were
10:51:31 15 with me in that area.

16 MR WERNER:

17 Q. How many of them?

18 A. There were roughly about a hundred.

19 Q. And anyone else taken to the school?

10:51:44 20 A. Apart from that there was also a few Kenyan officers and
21 soldiers inclusive of the sector commander General Mulinge.

22 PRESIDING JUDGE: General Mulinge, he was part of that
23 group as well?

24 THE WITNESS: Yes.

10:52:09 25 PRESIDING JUDGE: So he was -- you say Kenyan officers, so
26 he was one of those officers plus some of his soldiers?

27 THE WITNESS: I beg your pardon?

28 PRESIDING JUDGE: You said that at that place, in addition
29 to you and the Zambian soldiers, there were some Kenyan officers

1 and some other soldiers. So the Kenyan officers are
2 General Mulinge and some of his officers?

3 THE WITNESS: Yes, General Mulinge and the other Kenyan
4 soldiers and officers.

10:52:37 5 PRESIDING JUDGE: How many of them?

6 THE WITNESS: In that area there were roughly about 15.

7 MR WERNER:

8 Q. Now, the Kenyan soldiers and officer, you told this Court
9 before that when you left Lungi Mulinge came with you with the

10:53:04 10 troop. So were these Kenyan soldiers and officers part of
11 Mulinge's group?

12 A. Yes, My Lord.

13 Q. And where did you go yourself?

14 A. Thereafter the rest of the soldiers were taken to a school
10:53:23 15 block within Yengema. Then myself and the General Mulinge were
16 taken to this house where there was some woman from the RUF who I
17 later came to know as Colonel Monica.

18 PRESIDING JUDGE: Can you repeat that name again?

19 THE WITNESS: Colonel Monica.

10:53:52 20 PRESIDING JUDGE: Monica, yes.

21 THE WITNESS: Yes. So me and the general were taken to
22 this house and we stayed there throughout our period.

23 MR WERNER:

24 Q. You said you arrived in Yengema. Did you see anything at
10:54:16 25 Yengema?

26 A. Beg your pardon?

27 Q. Did you see anything at Yengema?

28 A. Yes. Of course there were a lot of RUF, armed RUF, in that
29 area who were guarding myself and equally the soldiers who were

1 in the school block.

2 Q. Okay. How long did you stay in Monica's house, Mr Witness?

3 A. I stayed in that house for consecutive 23 days.

4 JUDGE ITOE: For?

10:55:01 5 MR WERNER: Twenty-three days.

6 THE WITNESS: Twenty-three.

7 MR WERNER:

8 Q. And you said that General Mulinge was brought to the house
9 with you. How long did he stay in this house?

10:55:20 10 A. There, 23 days we were in that area.

11 Q. Together?

12 A. We were staying together in this amount.

13 Q. Now, during that period of time did you see anyone when you
14 were in Monica's house?

10:55:44 15 A. Yes. Like I said, I saw a lot of RUF personnel in that
16 area, and Issa Sesay, Morris Kallon and Lansana, who was brigade
17 commander for that area, visited that area from time to time.

18 Q. And when you said "visited that area," what are you talking
19 about? What did they visit?

10:56:20 20 A. I mean they used to come to Monica's residence.

21 Q. And how many times did they come?

22 A. For Lansana who was in that area, he came there almost on
23 daily basis. But for Issa and Kallon, for the period we were
24 there, they were there about four times.

10:56:54 25 Q. And how do you know that?

26 A. I was seeing them and Monica would tell me that, "Our
27 commander" - the name of Issa Sesay - "has come."

28 Q. And you said they came about four times, Kallon and
29 Issa Sesay. When they came did you see anyone else with them?

1 A. Yes. Every time they came, they came in a group of -- a
2 lot of RUF soldiers. Some of them were child soldiers and they
3 were always very heavily armed.

4 Q. When you say "child soldiers," how old were they?

10:57:49 5 A. Say again.

6 Q. How old were these child soldiers you saw?

7 A. About 10, 12 years.

8 Q. And how many -- could you say how many did you see there?

9 A. Well, for this grouping you could have maybe about 10 to 12
10:58:15 10 young ones out of the other RUF who were guarding him.

11 Q. And why did Sesay and Kallon come to Monica's house?

12 JUDGE ITOE: Of the other ones who were doing what?

13 MR WERNER:

14 Q. Could you just repeat the last part of your previous
10:58:39 15 answer, Mr Witness?

16 JUDGE ITOE: You say there were about 10 to 12 young ones
17 amongst or out of the other ones who --

18 THE WITNESS: Yes, what I was saying, My Lord, is that
19 every time Issa and Kallon came there they had a protection party
10:58:58 20 of about 30 to 40 RUF and, out of this group, about 10 to 12
21 could be child soldiers.

22 JUDGE ITOE: Thank you.

23 MR WERNER:

24 Q. Why did Sesay and Kallon come --

10:59:35 25 MR JORDASH: Objection. It is an invitation to speculate.
26 This witness cannot know what was in Mr Sesay's mind. I do
27 object to -- could I make this objection in the absence of the
28 witness, please?

29 PRESIDING JUDGE: Yes. Can the witness be assisted,

1 please.

2 [The witness stood down]

3 PRESIDING JUDGE: Yes, Mr Jordash.

4 MR JORDASH: My overall objection is this: This
11:00:40 5 examination-in-chief is not of a type which I would submit is
6 proper. A proper and fair examination-in-chief involves asking a
7 witness to say what happened and where and how. A proper
8 examination -- a fair examination-in-chief, one which doesn't
9 implicitly lead a witness through a well-trodden path which has
11:01:14 10 been set out in proofing sessions, is one which simply elicits
11 from a witness what happened and when and where. It doesn't
12 involve simply regaling a rehearsed set of detailed testimony
13 which involves key questions which trigger a witness's set-up
14 response.

11:01:46 15 How did you observe Mr Sesay, when did you observe
16 Mr Sesay, what was he doing, is, I would submit, fair. What
17 isn't fair is to simply ask a witness to say, "What was in
18 Mr Sesay's mind?" It is a question which the witness is
19 expecting; that's clear. It is an answer which no doubt my
11:02:09 20 learned friend has clear in mind -- my learned friend clearly has
21 in mind an answer which the witness can give to that question.
22 "What did Mr Sesay do" is fair, "How did he behave" is fair, "Why
23 did he come" is not fair. It might be what my learned friend has
24 proofed a witness to expect. It is not a fair question, I would
11:02:35 25 submit.

26 PRESIDING JUDGE: Repeat that, please. That last part.
27 Why he came is not a fair question?

28 MR JORDASH: He cannot say why Mr Sesay came. With the
29 best will in the world he cannot say it.

1 PRESIDING JUDGE: Well, what if Sesay has told him, "I've
2 come to" whatever.

3 MR JORDASH: So the proper question is did you have any
4 interaction with Mr Sesay, did you speak to him? The best that
11:03:01 5 the witness can say is what Mr Sesay told him he'd come to do.
6 He can never say why Mr Sesay came. Only Mr Sesay can say that.
7 That's the objection I have to many of these
8 examinations-in-chief. It is the kind of questions which are, in
9 effect, designed to implicate but they are simply speculative,
11:03:27 10 because like this question, no one can say what was in Mr Sesay's
11 mind. He may have told the witness he came to release the
12 hostages. He might have said that, but it might, in fact, not be
13 true. Maybe Mr Sesay didn't come to release the hostages, so
14 this witness can only assist this Court insofar as he can say
11:03:50 15 what Mr Sesay said. Mr Sesay can say what he was thinking and it
16 is for Your Honours to decide why he came. It is not for this
17 witness to decide that.

18 PRESIDING JUDGE: It is not for the witness to decide, but
19 the witness can certainly testify as to what he has observed and
11:04:07 20 what he may have heard.

21 MR JORDASH: He can.

22 PRESIDING JUDGE: I don't know --

23 MR JORDASH: He can, I agree with that.

24 JUDGE THOMPSON: I am of the view myself that the way the
11:04:33 25 question is framed is argumentative, it is speculative. And I
26 think one would have thought that counsel should phrase the
27 question in such a way as to elicit, as you suggest, the
28 possibility of some interaction with Mr Sesay.

29 MR JORDASH: Yes.

1 JUDGE THOMPSON: But the way it is framed now seems to
2 invite argument and speculation. I mean a bold question why did
3 Mr Sesay come there, in my view, is speculative and I
4 respectfully disagree from the learned Presiding Judge on this
11:05:11 5 one.

6 MR JORDASH: All down to Justice Itoe then.

7 PRESIDING JUDGE: I have made no decision on this. I was
8 simply asking questions.

9 JUDGE ITOE: I think I understood the learned
11:05:25 10 Presiding Judge's position to be asking questions to clarify the
11 situation. But I think that -- I also think that the question as
12 it stands is speculative and improper, because only Mr Sesay
13 would have known why he came there, and I think that is my stand
14 on this.

11:05:52 15 MR JORDASH: It is --

16 JUDGE ITOE: Mr Jordash, you don't need to press this
17 issue.

18 MR JORDASH: But I do want to make it clear for the record
19 that when we go back to the transcripts in this case, we do see
11:06:05 20 this time and time again, of the Prosecution wanting to reach a
21 conclusion, wanting to arrive at why, but not wanting to deal
22 with facts and observations. And I do submit and I don't want to
23 belabour the point but I do submit this is a good example of
24 that. They appear not to be interested in what they saw. They
11:06:32 25 want the conclusion. What was Mr Sesay doing? He was guilty,
26 wasn't he? That's what he was doing.

27 JUDGE THOMPSON: Well, I don't want to join you in that
28 kind of -- [Overlapping speakers].

29 MR JORDASH: I wanted to make it for the record though.

1 JUDGE ITOE: I wouldn't go that far because if you rise --
2 I mean, I wouldn't want to go back in retrospect to the evidence
3 that we have already collected. If you find a case like that, I
4 mean, the Prosecution has its own way their rules of
11:07:01 5 examination-in-chief and if you find a question objectionable, as
6 you have always done, you will spring up on your feet and you
7 raise your objection and then we rule on it. Like you raised
8 this objection at this point in time.

9 MR JORDASH: I haven't always done it because often the
11:07:19 10 horse has bolted before I have the opportunity to, that's the
11 problem. I say that --

12 PRESIDING JUDGE: Mr Jordash, we have listened to you
13 carefully and we may not agree all the time but we have given you
14 every single opportunity to object. I would not agree with you.
11:07:35 15 If you have objection on the way the Prosecution is leading its
16 case, please object and we will listen to you.

17 MR JORDASH: This is not a criticism of Your Honours. This
18 is a criticism of the Prosecution.

19 JUDGE ITOE: But we have taken the evidence. The evidence
11:07:49 20 is on the record for the Court, you see.

21 MR JORDASH: But this is not a criticism of the Court.
22 This is a criticism of the Prosecution and I am hoping that the
23 Prosecution might try to bring their question in to the type of
24 question in which all of us in this Court are more used to.

11:08:06 25 JUDGE THOMPSON: It is an implied criticism of the Court
26 that perhaps we are not, in fact, vigilant or monitoring the
27 Prosecution. But remember that it is your duty to raise
28 objections.

29 JUDGE ITOE: It is not for us.

1 MR JORDASH: But time and again it is too late often.

2 JUDGE THOMPSON: We are not proactive judges [Overlapping
3 speakers].

4 JUDGE ITOE: But Mr Sesay you will remember look back in
11:08:26 5 retrospect to these proceedings you should be fair to this Court
6 that at times in certain cases we step in and say that that
7 question is improper, even before you rise to do so. We do some
8 of the objections for you, but that is not -- that is not the
9 role of the Court. It is only when it is flagrant that we decide
11:08:48 10 to step in on your behalf where we consider that the interests of
11 justice are at stake. But like the Presiding Judge has said, we
12 have been fair and we think if there is any objection at any
13 stage of the proceedings which you think has an impact on the
14 rights of the person you are defending, please raise it and we
11:09:16 15 will consider it as we have always done. This is what we are
16 saying. You have raised this and I think we have stated our
17 positions on this. I think we should move on it.

18 PRESIDING JUDGE: That is why I say to you, I take issue
19 with the fact you are trying now to brush all the evidence that
11:09:37 20 has been introduced into this Court as being of a questionable
21 quality because the way the Prosecution -- this is essentially
22 the essence of what you are saying now. You have not objected
23 but --

24 MR JORDASH: I have objected to many of the questions.

11:09:51 25 PRESIDING JUDGE: I know, but we are saying that you should
26 have objected to more. Well, if that is the way you feel, object
27 to it and we will deal with it.

28 MR JORDASH: Your Honours have taken this as a critique of
29 the Court. I have made my objections at the time and

1 Your Honours have generally ruled against me. It has to be said.

2 So to that extent it is a criticism of the Court.

3 JUDGE ITOE: We have ruled in your favour too.

4 MR JORDASH: Not very often, it has to be said.

11:10:16 5 JUDGE ITOE: Well, that is --

6 PRESIDING JUDGE: It is not because you object as well
7 that --

8 JUDGE ITOE: We are not supposed to rule for you at all
9 times. I hope you should be professionally forthright to admit
11:10:24 10 that. You would be very happy if at all times we ruled: Yes,
11 you are right, Mr Jordash. You are sustained. You are
12 sustained. You are sustained. Is that what you want?

13 MR JORDASH: Yes. [Overlapping speakers]

14 JUDGE ITOE: I don't think that is what justice requires.

11:10:35 15 MR JORDASH: I am not suggesting it does require that, but
16 I am suggesting the Court ought to rule so that the evidence
17 produced is likely to be amenable to an assessment of reliability
18 and --

19 PRESIDING JUDGE: Well, Mr Jordash, you will be given all
11:10:48 20 the time to argue that. The problem now appears to be that once
21 you come up with an objection you are trying to put in that
22 objection every single argument you may have put in the past.

23 MR JORDASH: No, I'm not.

24 PRESIDING JUDGE: Well, that is exactly the essence of what
11:11:01 25 you are saying now.

26 MR JORDASH: I said it was for the record. In due course I
27 will make submissions about much of this evidence. I wanted to
28 make an objection to this evidence and I have and I wanted to say
29 that I objected generally to the Prosecution's tactic and the way

1 that they elicit some of this evidence. I have objected to that
2 in the past. I was simply linking this objection to those
3 objections. This was not a critique of the Court. It wasn't a
4 critique of anything but the Prosecution's past questioning and
11:11:32 5 the present questioning. I simply put it on the record
6 [Overlapping speakers].

7 JUDGE THOMPSON: It sounded very much like that because the
8 judges are in control of the proceedings and if you really
9 impeach one particular segment of the proceedings over which we
11:11:44 10 are in control, then there is some kind of implied criticism or
11 censure of the Court. The very fact that you said we have
12 sometimes not ruled in your favour. Of course, I am sure you are
13 mature enough to know that the business of justice is not to rule
14 in favour of particular individuals, but to rule on the merit of
11:12:07 15 positions taken. And I do not in any way feel it is a proper
16 thing to say that we have overruled you on a number of occasions.
17 We have examined the merits of the objections. And I think the
18 danger here this morning was linking a particular, specific
19 objection, which I believe and I make no bones about it, I think
11:12:29 20 had merit, with a kind of the entire process as if this is
21 systemic. That is the point I am a little worried about.

22 MR JORDASH: Well -- [Overlapping speakers].

23 JUDGE THOMPSON: Perhaps it was not wise or prudent for you
24 to have linked what, in my view -- and I say it again - is an
11:12:48 25 objection that has merit, with that kind of general criticism of
26 the Prosecution.

27 MR JORDASH: Well, I do not understand why the Court would
28 be so offended by a criticism of the Prosecution.

29 JUDGE ITOE: We are not offended. No, there is no offence

1 at all. This is a professional dialogue between the Chamber and
2 learned counsel for the Defence. It is normal. I do not think
3 this Bench is not annoyed the way you -- no, no, never. We
4 should not. We should not get to that stage. Why should we?
11:13:25 5 After all, this is a game, you know, of how legal rules should be
6 applied and our role is to call to order any party that is seen
7 to be going astray. Like you have raised it now. That is our
8 role. Please, do not -- I, at least, I am sure I am speaking for
9 my colleagues, we are not annoyed about anything. It is just a
11:13:55 10 professional dialogue.

11 PRESIDING JUDGE: I take issue with the way you have framed
12 that comment. That is basically what I have been saying and I
13 will repeat again. Because the evidence led by the Prosecution,
14 even though it is led by the Prosecution, obviously we determine
11:14:09 15 its admissibility or not and what you are saying is this evidence
16 should not have be admitted because it does not follow the normal
17 and standard rules of procedure as such. If I follow that
18 reasoning, you are telling us that we didn't observe the Rules
19 that we should have applied to that and therefore we
11:14:25 20 [indiscernible] and the conclusion to that is this is not a fair
21 and it is not a fair determination of the process that. That is
22 basically what you are conveying to this Bench that. That is why
23 I say I take issue with this comment because it is not the case
24 in isolation. It is the Prosecution's case trying to establish
11:14:43 25 certain facts and we are on the receiving end of that. If it is
26 admissible fine, if it is not, well, object to it. But the way
27 you have framed that comment is the -- that is the issue I take
28 with.

29 MR JORDASH: Your Honours are, of course, the final

1 arbiters of what is fair. Now, I as a representative of Mr Sesay
2 do not have to agree with that.

3 PRESIDING JUDGE: I agree entirely with that.

4 JUDGE ITOE: Absolutely, that is why -- you are not
11:15:14 5 entitled, but you are at least, once the position is taken by the
6 Bench, you are supposed to go by that position even if you do not
7 agree with it. Are we agreed on that point?

8 MR JORDASH: I don't think anything I have said has
9 contravened that principle.

11:15:36 10 PRESIDING JUDGE: In any event, let's go back -- in spite
11 of the perception of things I did not disagree with my learned
12 brothers on the objection you made. I was just questioning you
13 as to what you were saying at that time as to whether it was in
14 all circumstances that the example you were giving that only
11:15:52 15 Mr Sesay knew why he went there, and I questioned you as to
16 whether or not there would be other circumstances and I have to
17 say I had not ruled on the objection. But given the majority and
18 I rally the majority and sustain your objection. So there is no
19 ambiguity on the record on this matter. Thank you.

11:16:13 20 MR NICOL-WILSON: Your Honour, Mr Kallon would like to
21 leave the courtroom for a few minutes.

22 PRESIDING JUDGE: Very well. We should -- just a moment.
23 Given the time and as we are close to the usual recess time in
24 the morning, we will recess now and take it once we come back.
11:16:41 25 Thank you.

26 [Break taken at 11.16 a.m.]

27 [Upon resuming at 11.49 a.m.]

28 PRESIDING JUDGE: So we are back with the witness and,
29 Mr Prosecutor, the objection made by counsel for the first

1 accused was sustained and your question was not an appropriate
2 question.

3 MR WERNER: Yes, Your Honour.

4 Q. Mr Witness, you said that Sesay and Kallon came to Monica's
11:50:47 5 house. Did anything happen when they came to Monica's house?

6 A. Basically when they come to Monica's house, they come to
7 give orders to Monica.

8 Q. How do you know that?

9 A. Monica would brief us every time they come.

11:51:17 10 Q. When you say "us," who are you talking about?

11 A. Myself and General Mulinge.

12 Q. What did she tell you?

13 A. Say again.

14 Q. You say that "Monica would brief us." So what did she tell
11:51:41 15 you?

16 A. Of course she would tell us that Issa was the supreme
17 commander and they were under orders to follow his instructions.

18 Q. Did she tell you anything else?

19 A. Say again.

11:52:10 20 Q. Did she tell you anything else?

21 A. Yes. Apart from that she indicated that as far as she was
22 concerned she was taken by surprise that we were taken there in
23 the form of or as hostages, but because she was working under
24 instruction from Issa there is nothing she would have done about
11:52:46 25 it but to follow his orders.

26 Q. And did she tell you anything about what would have
27 happened if the instructions given by Issa were not followed?

28 A. She indicated that it was basically a very serious offence
29 in as far as the RUF constitution was concerned if orders passed

1 by the supreme command were not followed.

2 Q. Did she tell you what would happen?

3 A. Of course, then by disobeying was subject to execution.

4 Q. You told this Court that Monica told you about Issa Sesay.

11:54:00 5 Were you told anything about other commanders in the RUF?

6 A. Of course. Monica did indicate that Issa Sesay, who was
7 the supreme commander, was in charge of all RUF operation
8 activities and under him he had the commanders in all areas. He
9 had the commander in Kono area, he had commander in Magburaka and

11:54:42 10 other areas. But at top of it it was him who was in supreme
11 command.

12 Q. Can you remember if she talked about any other commander?

13 Did she tell you anything about any other commander?

14 A. Yes. According to the organisation of the RUF, she

11:55:10 15 indicated that apart from the operational command they also had
16 the political wing, which was headed by Foday Sankoh.

17 Q. Did she say anything else about Foday Sankoh?

18 A. Yes. She indicated that at the time Foday Sankoh was in
19 Freetown and he was carrying out political activities.

11:55:47 20 Q. Now, Monica told you about Issa Sesay and Foday Sankoh.

21 Did she tell you anything about any other commanders in the RUF?

22 A. Apart from the various brigade commanders who were in the
23 various areas of the Kono area.

24 [RUF22MAR06C-RK]

11:56:21 25 Q. Okay. And could you remember any names Monica told you
26 about who were RUF commanders?

27 A. I remember like for Kono area there was somebody called
28 Lansana who was the brigade commander for that area.

29 Q. Mr Witness, you mentioned Morris Kallon. Who is

1 Morris Kallon?

2 A. From what I came to understand Morris Kallon happened to be
3 one of the commanders under Issa Sesay and he was very close to
4 Issa Sesay and most of the time he is the one who immediately
11:57:42 5 executed his order.

6 Q. How did you know that?

7 A. I came first of all -- I used to see them together most of
8 the time. Every time we came to Yengema they were together and
9 from information that was given to me from Monica.

11:58:12 10 Q. Now, Mr Witness, you said that you stayed in Monica's house
11 with Mulinge for 23 days. How were you treated during these 23
12 days?

13 A. Of course the treatment there was not very good, especially
14 in the first few days of our captivity. For one we were being
11:58:45 15 kept without any beddings. We were stripped of our shoes. We
16 were not fed normally. We never had a bath and so on.

17 Q. Can you remember if anything happened you can remember
18 about your detention during these 23 days?

19 A. During the period we were there, after about one week a few
11:59:39 20 of my men who were kept in the school block were removed from
21 that area and they were taken to a destination I did not know at
22 that time, but I later came to learn that they were being
23 released.

24 Q. How many of your men?

12:00:04 25 A. Basically that was about between 40 and 50.

26 Q. Now, talking about yourself, did anything happen in
27 Monica's house during what you describe as your captivity?

28 A. After the first group of my soldiers were released, there
29 was information which came to the effect that Mr Foday Sankoh had

1 been arrested in Freetown. When this information came, it raised
2 a lot of hostilities from the RUF and in the process they betted
3 that as long as their leader was not released or not going to be
4 released and basically the treatment at that time became very
12:01:17 5 rough. There were a lot of threats of being killed at any time.

6 Q. Who was threatening you?

7 A. The threats were coming from the RUF leadership within the
8 Yengema area.

9 Q. What do you mean the RUF leadership?

12:01:41 10 A. By RUF leadership there were commanders, low commanders
11 within there -- among us and the brigade commander was based in
12 Yengema by the name of Lansana.

13 Q. Where was Monica at that time?

14 A. Monica was with us throughout our period.

12:02:15 15 Q. Did she do anything at that time?

16 A. Of course, she mentioned that in the process of
17 Foday Sankoh not being released anything could happen to us.

18 Q. Mr Witness, coming back for one second to your living
19 conditions, did you have any personal belongings at that time in
12:02:54 20 Monica's house?

21 A. My Lord, all our personal belongings at that time had been
22 stripped off us. I personally remained in a combat jacket and
23 combat trousers. I had no shoes and nothing personal.

24 Q. Did you keep anything?

12:03:14 25 A. I mean I had nothing else apart from a combat jacket and
26 combat trousers.

27 Q. Now during these 23 days did anything else happen you can
28 remember?

29 A. I remember there was a time when I was discovered to have

1 been taking some notes in a small diary. When this happened I
2 was threatened with execution and I was informed that as far as
3 the RUF code of conduct was concerned, if somebody is caught
4 either releasing information about the RUF or that person was
12:04:19 5 subject to execution and during that period I actually suffered a
6 lot of threats and torture.

7 PRESIDING JUDGE: Who suffered threats and torture? Who
8 suffered threats and torture during that time?

9 THE WITNESS: Say again, My Lord.

12:04:41 10 PRESIDING JUDGE: You have just said suffered threats and
11 torture. Who are you talking about?

12 THE WITNESS: The RUF leadership located in that area with
13 the instructions coming from their brigade commander in that
14 area.

12:05:04 15 PRESIDING JUDGE: I understand, but you did say somebody
16 suffered threats. Who is it that suffered? Who was suffering
17 from these threats?

18 THE WITNESS: Myself and General Mulinge.

19 MR WERNER:

12:05:32 20 Q. You said you talked about the risk of execution; who told
21 you about that?

22 A. Colonel Monica mentioned it to us.

23 Q. Did anything happen after that?

24 A. After that it was the release of the other group of my men
12:05:58 25 that was during the second week. The other group was released
26 from my side. I was not told where they were going, but I could
27 just see them disappear. But later I came to learn that they had
28 been released.

29 Q. Now, I will come back to that in a second, Mr Witness. You

1 told this Court about some of your soldiers being escorted to the
2 school. Did you see any of them during your captivity?

3 A. Once in a while I would go to the school and see them.

4 Q. Could you describe how did you go there?

12:06:53 5 A. I was being escorted by armed RUF soldier.

6 Q. And did you meet anyone there? In the school, did you meet
7 anyone?

8 A. Yes, in the school, I met other RUF who were guarding the
9 soldiers in that area.

12:07:17 10 Q. And when you say "the soldiers", who are you talking about?

11 A. I'm talking a combination of RUF combatant, both the
12 elderly and the young combatants.

13 Q. But you said these RUF were guarding the soldiers, so which
14 soldiers are you talking about?

12:07:50 15 A. Can you say again?

16 Q. You said that in the school the RUF were guarding the
17 soldiers?

18 A. Yes, my soldiers who were in that block of --

19 Q. Did you speak with your soldiers?

12:08:00 20 A. I did.

21 Q. And did they tell you anything?

22 A. Yes, they told me a lot of things about how they were being
23 mistreated. How they were going without food. How they could --
24 they had no beddings. How they were stripped of their uniforms.

12:08:39 25 Q. When you say they were mistreated, what do you mean?

26 A. I mean once in a while they were being beaten. They were
27 going without food. They could not be allowed to take a bath.
28 They were not allowed to have communication with anybody, not
29 even to listen to a radio.

1 Q. Who was beating them?

2 A. The RUF, the ones who were guarding them. They were given
3 instruction they told me directly they had instructions from
4 their superior commanders to treat them the way they were doing.

12:09:23 5 Q. Who told you that?

6 A. The -- my soldiers informed me they were told by the people
7 who are guarding them and apart from that, Colonel Monica herself
8 indicated it to me.

9 Q. What did Colonel Monica tell you?

12:09:44 10 A. She indicated that the strict instructions from their
11 superior commander was Issa Sesay to treat them the way they were
12 being treated.

13 Q. Mr Witness, you said in the school you saw RUF soldiers.
14 Were they all from the same age group?

12:10:13 15 A. No, I indicated the area. Throughout the RUF were a mixed
16 age group. There were child combatants and the elder combatants.
17 Normally in the ratio of about one quarter could be a child
18 soldiers and three quarters would be ordinary soldiers.

19 Q. When you say "child soldiers," how old were they, as far as
12:10:45 20 you can say?

21 A. Say again.

22 Q. How old were they, the youngest?

23 A. Between 10 and 12.

24 Q. Now I'm just talking about the ones you saw in the school.
12:11:06 25 How do you know that?

26 A. I saw them and, some of them, I was able to speak to them.

27 Q. What did they tell you?

28 A. Say again.

29 Q. What did they tell you when you spoke with them?

1 A. Most of them indicated that they found themselves by no
2 choice, they were conscripted into being members of the RUF.

3 Q. Now, Mr Witness, you told us that two groups of your men
4 were released. Concerning the second group, how many men were
12:11:59 5 released in the second group?

6 A. In the second group it was almost an equal number. There
7 were about 40 to 50.

8 Q. Okay. At the time the second group was released did you
9 understand where they were going?

12:12:21 10 A. No, I had no idea, especially that they were being moved at
11 night.

12 Q. What happened after that, Mr Witness, after the second
13 group was released?

14 A. After the second group was released, it remained myself and
12:12:39 15 the General Mulinge who remained with the Colonel Monica and we
16 didn't know our fate. Colonel Monica had indicated to me that
17 our fate hinged on the release of Mr Foday Sankoh, possibly if he
18 was not released we may face execution.

19 Q. What happened after that?

12:13:17 20 A. Afterwards the information reached to the effect that --
21 that was after -- well after a week after the other group had
22 been released that Issa had sent a vehicle to come and pick us,
23 myself and General Mulinge.

24 Q. How did you know that?

12:13:45 25 A. The Colonel Monica came to --

26 JUDGE ITOE: It's not a dialogue between you and the
27 witness. You're being recorded. Do you appreciate that?

28 MR WERNER: I apologise.

29 JUDGE ITOE: Yes, Mr Witness, you were at a point where you

1 were saying that Issa sent a vehicle.

2 THE WITNESS: Say again, My Lord.

3 JUDGE ITOE: That Issa sent -- is it that Issa also sent a
4 vehicle for you?

12:14:22 5 THE WITNESS: Colonel Monica came to inform me and the
6 General that the supreme commander had sent his vehicle to come
7 and pick us, but she didn't indicate where we were going.

8 MR WERNER:

9 Q. What happened after that, Mr Witness?

12:14:50 10 A. We were put in two vehicles. I was in one white van, a
11 twin cab. General Mulinge was also in another different vehicle
12 and we moved in a convoy to a destination which I later came to
13 remember as Koidu.

14 Q. Was anyone with you when you moved from Yengema to Koidu?

12:15:30 15 You said you were with Mulinge and yourself?

16 A. Mulinge was in a separate vehicle. I was also in a
17 different vehicle. There were two vehicles.

18 Q. Who were in the vehicles? Was anyone else in the vehicles?

19 A. RUF were guarding us.

12:15:54 20 Q. Did anything happen when you arrived at Koidu?

21 A. When we arrived at Koidu we found mobile RUF combatants and
22 I remember seeing Issa Sesay, Morris Kallon at that area. And
23 the one who came to collect us went and reported to Issa. Then
24 he gave him instructions that we come out of those vehicles to
12:16:29 25 get into another vehicle, both myself and the General.

26 Q. Just pause here, Mr Witness. You say he gave him an
27 instruction. Who gave him an instruction?

28 A. Issa Sesay gave instructions that we move out of the two
29 vehicles to get into a different vehicle, one vehicle which

1 happened to be one of the Zambian Land Rovers which were being
2 driven by RUF soldiers.

3 Q. What happened after that, Mr Witness?

4 A. After that we were driven to a destination within Kono not
12:17:30 5 too very far from that house. I think we moved for about 30
6 minutes to a location where I found a group of other Zambian
7 soldiers who were not with me in Yengema. Among the soldiers was
8 my second in command with that group. They were basically a
9 group of about 50 to 60.

12:18:01 10 Q. And where was Mulinge at that time?

11 A. I was with him.

12 Q. What happened after that, Mr Witness?

13 A. After that the whole group were fitted in about two Land
14 Rovers and we set off to some unknown destination.

12:19:03 15 Q. What happened after that, Mr Witness?

16 A. After that, after having driven for almost half a day, we
17 found ourselves in a place I later came to know as Pendembu.
18 From there we found a military helicopter, which I later came to
19 know was a Liberian military helicopter, which picked us from
12:19:44 20 that point and flew us to Monrovia.

21 Q. When you say "us," who are you talking about?

22 A. Myself, General Mulinge and the group of soldiers that I
23 reunited with in Koindu.

24 Q. And what date was this?

12:20:14 25 A. Say again.

26 Q. What date? Do you remember the date when that happened?

27 A. I'm not able to remember the date, but that was the 23rd
28 day. That was the 23rd day, but I cannot remember the date it
29 was.

1 Q. Do you remember the year?

2 A. That was in 2000.

3 Q. What happened after that, Mr Witness?

4 A. After getting on the helicopter, we were flown to Monrovia
12:20:57 5 airport. Upon arrival we found an arrangement of medical
6 personnel and we were taken straight for a physical medical
7 examination. After the physical medical examination we were
8 taken to a hotel in Monrovia that I came to learn to be, I think,
9 Boulevard Hotel.

12:21:25 10 Q. Can you give the name of the hotel again?

11 A. Boulevard.

12 Q. How long did you stay in Monrovia?

13 A. It was just a day and we left the following day.

14 Q. Where did you go?

12:21:58 15 A. We were flown to Lungi airport by UN helicopter.

16 Q. What happened when you arrived at Lungi airport?

17 A. At Lungi airport we were reunited with the rest of the
18 soldiers who were released earlier and I met several UN officials
19 from force headquarter and we had to go through psychological
12:22:48 20 counseling to determine our status at that time.

21 Q. Now, you have told this Court that when you had arrived at
22 Lunsar you decided to leave some of your men behind. Do you
23 remember that?

24 A. Yes, My Lord.

12:23:18 25 Q. Did you see these soldiers -- the ones that you left behind
26 at Lunsar, did you see them again?

27 A. Yes, upon arrival at Lungi I found these soldiers, except
28 for three.

29 Q. And did you speak with your soldiers?

1 A. Yes, My Lord.

2 Q. What did they tell you?

3 A. They narrated the ordeal that had happened to them when I
4 left them at Lunsar. What happened was that after RUF who
12:24:07 5 disarmed us at Moria, some of them marched towards Lunsar and
6 they came and attacked Lunsar.

7 Q. Just pause there, Mr Witness. Pause there. You said some
8 of them attacked Lunsar. Who are you talking about?

9 A. I mean they came to attack the position where I left my
12:24:39 10 soldiers and my soldiers retreated within the Nigerian company's
11 position and they fought side by side with the Nigerian company.

12 Q. Who attacked your soldiers?

13 A. RUF combatants, who were at this time armed with the
14 weapons that they captured from the Zambian soldiers.

12:25:15 15 Q. Did they tell you anything else what had happened to your
16 soldiers?

17 A. Yes. After fighting back they had to retreat and the RUF
18 overran the position. And it was in the process of this fight
19 that three of my soldiers went missing.

12:25:42 20 Q. And did you see any one of them again, these three
21 soldiers?

22 A. Say again.

23 Q. You said three soldiers went missing?

24 A. Three soldiers went missing.

12:25:56 25 Q. At that time did you see them again?

26 A. Yes, My Lord. After about a month one of the missing
27 soldiers reappeared, but for the other two, they never came back
28 and they have since been declared dead.

29 Q. Now, when you were back at Lungi you told this Court that

1 you spoke with your soldiers. Did you speak with anyone else?

2 A. Yes, apart from speaking to my soldiers I also had an
3 audience with --

4 JUDGE ITOE: Mr Witness, if you want to drink your water,
12:27:04 5 please do.

6 THE WITNESS: Thank you.

7 MR WERNER:

8 Q. Please go ahead.

9 A. Apart from speaking to my soldiers, I also had an audience
12:27:27 10 with my counterpart from the Kenyan contingent, the one who
11 happened to have been the commanding officer in Makeni at the
12 time of the hostility with the RUF.

13 Q. Do you remember his name?

14 A. Apparently I cannot remember his name today.

12:27:57 15 Q. Did he tell you anything?

16 A. Yes, he narrated the row, the differences that arose
17 between him and the RUF in Makeni. Basically he indicated that
18 it was a problem that arose over the aspect of disarmament and
19 through that the RUF decided to disrupt the disarmament process
12:28:39 20 and that is how they ended up attacking them and they overran his
21 headquarter.

22 Q. Who overran his headquarter?

23 A. RUF.

24 Q. Did he tell you anything else?

12:29:05 25 A. Yes, My Lord. He indicated that in the process a number of
26 his soldiers were abducted by the RUF and even others were
27 killed.

28 Q. Did you speak with anyone else at Lungi?

29 A. Apart from him I also had an audience with the commander

1 from the Nigerian contingent, who narrated what had transpired in
2 Lunsar when I left my soldiers in that area.

3 Q. What did he tell you?

4 A. Basically he talked about how the RUF came to attack their
12:30:07 5 position and how they fought side by side with the Zambian
6 soldiers until RUF overran their positions.

7 Q. Did he tell you anything else?

8 A. Basically that is what we discussed.

9 Q. So what did you do after that, Mr Witness?

12:30:43 10 A. After that I stayed at Lungi with my soldiers for about a
11 month, trying to rehabilitate ourselves, having lost a lot of
12 equipment in the process. The Zambian government was requested
13 to bring a number of logistics so that we could go back to form.
14 After a month I moved from Lungi to Lungiloi [phon], where I
12:31:27 15 deployed.

16 Q. For how long were you deployed at Lungiloi?

17 A. I was at Lungiloi for about a month. Then within the same
18 area I relocated, fly to [indiscernible] Mabom. Mabom was just
19 about a kilometre away from Lungiloi. Then after a few weeks, I
12:32:02 20 moved from Mabom to Kenema, where I deployed throughout the
21 period that I was there.

22 Q. What was that period? How long did you stay in
23 Sierra Leone?

24 A. After that incident I stayed for on for another ten months.

12:32:41 25 Q. Mr Witness, did you or your men return to some of the
26 locations where the events you have told us about took place?

27 A. Yes, My Lord. After some time there were negotiations that
28 came in between the UN and RUF to an extent that they allowed us
29 to get into some of the areas to go and recover the equipment the

1 that was damaged. And one the places I went was Moria and
2 Makeni, where we managed to recover some of the equipment that
3 was abandoned in that area.

4 Q. Describe what did you see. How was the equipment?

12:33:35 5 A. So far we found a number of equipment which was in
6 unsensible state. Things like the armoured vehicles, we found a
7 number of them in that area in a disusing state.

8 Q. Mr Witness, during this month you remained in Sierra Leone,
9 did your mission and its mandate remain the same?

12:34:16 10 A. No, My Lord. Following the May incident, the UN mandate
11 changed. This time peacekeepers were authorised to use force
12 whenever necessary.

13 Q. Where did this authorisation come from?

14 A. From force headquarter through the Security Council.

12:35:05 15 MR WERNER: Thank you very much, Mr Witness. I don't have
16 any further questions.

17 PRESIDING JUDGE: Thank you. Mr Jordash, you are prepared
18 to start your cross-examination now?

19 MR JORDASH: Yes, I can deal with a few preliminaries,
12:35:20 20 Your Honour.

21 CROSS-EXAMINED BY MR JORDASH:

22 Q. Good morning, Mr Witness.

23 A. Morning.

24 Q. I would like to ask you first about your various meetings
12:35:32 25 with the Prosecution over the last two years. How was it that
26 you were first contacted by the Prosecution about giving evidence
27 in this Court?

28 A. I would say several times.

29 Q. When and how, please, the first time?

1 A. The initial contact was through a phone call.

2 Q. What were you asked to do?

3 A. I gave a statement.

4 Q. What were you asked to do in the phone call, please?

12:36:16 5 A. I was asked to give a statement.

6 Q. And were you asked to speak to anyone else about giving a

7 statement?

8 A. Apart from the same person who was in touch with me.

9 Q. Sorry, I don't understand that answer. Could you repeat

12:36:43 10 that answer, please?

11 A. I'm saying I was requested to speak to the person who was

12 in touch with me, who was trying to get authority if it was

13 possible for me to come and testify before this Court.

14 Q. Before I proceed, is anybody else from the Zambian -- the

12:37:11 15 Zambians who were taken by the RUF coming to give evidence? We

16 don't need to know the names, just whether you know of any

17 others?

18 A. Not to my knowledge.

19 Q. Do you know why that is? Why you are the only one out of

12:37:28 20 this whole Zambian contingent who are coming to give evidence

21 about this experience?

22 A. Say again?

23 Q. Do you know why you are the only Zambian taken by the RUF

24 to Yengema who is able to come and give evidence about the

12:37:52 25 experience?

26 A. I believe because I was the overall commander.

27 Q. But presumably, if what you say about your experience is

28 right, other Zambian soldiers would have been able to confirm

29 your account. Do you know why they are not coming to give that

1 kind of evidence?

2 A. It is not for me to determine that.

3 JUDGE THOMPSON: Yes, I was wondering --

4 JUDGE ITOE: It is not for him to determine whether others
12:38:25 5 are coming or not. It is for the Prosecution to determine who it
6 brings.

7 MR JORDASH: But he might know why it is the Court isn't
8 going to benefit from that evidence.

9 JUDGE THOMPSON: Wouldn't that be argumentative and also
12:38:39 10 speculative. I mean -- it could be, because suppose it puts
11 forward two or three possibilities. How does the Court -- how
12 does that help the Court? I mean, we are here trying to find
13 facts. On your very thesis which you put forward that we are in
14 search of facts and whether another witness will be called who
12:39:05 15 had a similar experience or not, how would that assist us if this
16 witness were to answer us, considering that there is a
17 prosecutorial discretion to call whom they want to call to come
18 and testify as to experiences?

19 MR JORDASH: It depends what information or knowledge he
12:39:27 20 had. If he was --

21 JUDGE THOMPSON: Can we have him out. Because I feel
22 strongly about this question. Would someone escort him.

23 PRESIDING JUDGE: Thank you, Mr Witness.

24 [The witness stood down].

12:40:00 25 JUDGE THOMPSON: Learned counsel, let me go back. The
26 premise of my intervention here is that there clearly is a
27 prosecutorial discretion to call whom they want to call to come
28 and prove whatever facts they allege. And, for me, to what
29 extent would the Court be assisted if one of those witnesses were

1 to come here and be allowed to answer a question as to whether he
2 knows why some other person who might have had the same
3 experience as he alleges will be called to testify or not to
4 testify? What assistance will the Court gain from that other
12:40:56 5 than speculative answers or various theories put forward for the
6 Court.

7 MR JORDASH: He might have been told by other Zambians
8 present in Yengema --

9 PRESIDING JUDGE: But isn't it the same nature as the
12:41:15 10 objection this morning.

11 JUDGE THOMPSON: Wouldn't that come under
12 cross-examination?

13 PRESIDING JUDGE: I mean, you objected to this kind of
14 question this morning, we sustained your objection and now you're
12:41:23 15 asking this witness a question of the same nature, asking this
16 witness to speculate. My comments to you this morning when you
17 raised that objection was exactly that; "Well, what if the
18 witness had told him that?" You said, "Well, yes, but that was
19 not the question." The question you're asking now of this
12:41:35 20 witness is to speculate. If your question is, "Were you told by
21 these other soldiers" it is not speculative, then you will know
22 yes or no. But the way you frame your question is very, very
23 speculative.

24 JUDGE THOMPSON: And, knowing how candid you are, I'm sure
12:41:50 25 you would agree that you are being hoisted by your own petard.

26 JUDGE ITOE: I mean, this is --

27 MR JORDASH: I agree.

28 JUDGE ITOE: I am sure -- you agree. I don't need to go
29 further, do I. I just wanted to say that what you are insisting

1 on is you want some corroboration from his evidence, isn't it?

2 MR JORDASH: I can reframe the question.

3 JUDGE ITOE: If you want corroboration, that's a matter for
4 address. If the Prosecution decides to call him and he himself
12:42:29 5 is now speculating on why he was called, he said, "Maybe it's
6 because I was a force leader." If the Prosecution calls no other
7 person, then it is a matter for you to address the Court at a
8 later stage on the issue of corroboration and what have you. Of
9 course, during your cross-examination to puncture the evidence of
12:42:54 10 this witness as best as you can with the resources at your
11 disposal.

12 JUDGE THOMPSON: Mr Jordash, I appreciate your candour.

13 PRESIDING JUDGE: Can we have the witness back again,
14 please.

12:43:17 15 JUDGE ITOE: Mr Jordash, we're prepared to have this
16 witness in and out, in and out depending on --

17 MR JORDASH: I hope that won't be necessary.

18 JUDGE THOMPSON: Can we have the witness back, please.

19 MS EDMONDS: The witness is on his way, Your Honour.

12:44:07 20 [The witness entered court]

21 MR JORDASH:

22 Q. Of the soldiers who were taken to Yengema, are any of those
23 men friends of yours?

24 A. Say again.

12:44:51 25 Q. Of the Zambian men taken to Yengema with yourself, are any
26 of those men friends of yours?

27 A. Yes.

28 Q. You are in touch with them today? At this time, I mean.
29 Not literally today.

1 A. I am not.

2 Q. You're not?

3 A. Yes.

4 Q. You are in touch with them at around this time? If you go
12:45:18 5 back to Zambia will you be able to contact any of them?

6 A. Yes.

7 Q. Have you spoken to them about coming to give evidence?

8 A. Say again.

9 Q. Have you spoken to them about coming to give evidence?

12:45:36 10 A. No.

11 PRESIDING JUDGE: I'm not sure your question is whether
12 this witness has spoken to them about they coming to give
13 evidence or about him coming. I mean, it's a very ambiguous
14 question in that sense.

12:45:51 15 MR JORDASH: I'm sorry. I'll make it clearer.

16 Q. Have you spoken to your friends about you coming to give
17 evidence?

18 A. No.

19 Q. You have not once over the last two years spoken to any
12:46:08 20 Zambian who was with you in Yengema and this Court and you coming
21 to give evidence?

22 A. Not about coming to give evidence.

23 Q. About this Court?

24 A. No.

12:46:20 25 Q. It's never come up in subject when you have spoken to your
26 friends; what happened to you in Yengema and you coming to give
27 evidence in this Court? Never?

28 A. There was no requirement for me to discuss anything with
29 them.

1 Q. But this was - if you are right - a harrowing experience
2 shared by you and your friends; correct?

3 A. But as far as giving evidence is concerned, it was between
4 me and the Prosecution.

12:46:55 5 Q. Well, after you'd received your phone call from the
6 Prosecution about giving evidence, did you not point the
7 Prosecution to other possible witnesses who had experienced what
8 you had in Yengema?

9 A. I did.

12:47:15 10 Q. Can you name some of those, please, in Yengema with you?

11 A. I can't remember the names that I called. It's a long time
12 ago.

13 Q. Well, I'm sure -- how long had you known the troop of men
14 you were with who were taken to Yengema?

12:47:40 15 A. Say again.

16 Q. Can you name any of the men you were with that day besides
17 Mulinge? Can you name any of the other Zambians, please?

18 A. Just any?

19 Q. Well, we've got an investigator, we'd like to investigate
12:48:06 20 your account. Could you give us the names of some Zambians,
21 please, who were with you in Yengema?

22 A. I had Jeff, I had Phillip.

23 Q. Please take it slowly. Could you spell the names as you
24 say them, please?

12:48:23 25 A. I had Jeff.

26 Q. Could you spell it, please?

27 A. Yes. Juliet Echo Foxtrot Foxtrot.

28 Q. Jeff?

29 A. Yes.

1 Q. Jeff who?
2 A. Zyele.
3 Q. Spell it, please?
4 A. Zulu Yankee Echo Echo Lima Echo.
12:48:49 5 Q. Was that man kept in the school?
6 A. Unfortunately he was in a different area from me.
7 Q. Well, I'm interested in those taken to Yengema and kept in
8 the school, please?
9 A. There was Kampamba.
12:49:06 10 Q. Spell it, please?
11 A. Kilo Alpha Mike Papa Alpha Mike Brave Alpha.
12 Q. Was that a friends of yours?
13 A. Say again.
14 Q. Is he a friend of yours?
12:49:27 15 A. He was my subordinate, not a friend.
16 Q. In Zambia now?
17 A. He is still my subordinate.
18 Q. Did he ever talk to you about him coming to give evidence?
19 A. Not at all.
12:49:44 20 Q. Did you not put him forward as someone to give evidence?
21 A. Not at all.
22 Q. Who did you put forward as potential people to give
23 evidence for the Prosecution?
24 A. Who did what?
12:49:58 25 Q. Who, out of --
26 PRESIDING JUDGE: Yes, Mr Harrison.
27 MR HARRISON: He's never said he put anyone forward. He
28 said he gave names and there might be a different connotation in
29 the witness's mind.

1 MR JORDASH: Well, the witness could have answered that if
2 that had been the case. I'm sure that the witness doesn't need
3 Mr Harrison to assist.

4 MR HARRISON: I don't think the witness does need
12:50:24 5 Mr Harrison to assist, but I think Mr Harrison, as the
6 Prosecution, is entitled to object if the question is misleading
7 or if it simply is stated in such a way that it's confusing to
8 the witness.

9 MR JORDASH: Well, it wasn't confusing to Mr Harrison.

12:50:35 10 JUDGE THOMPSON: Again, perhaps I would add if it is
11 phrased in such a way that it encroaches, however mildly, upon
12 prosecutorial discretion -- are we on the same wavelength?
13 Prosecutorial discretion to call their witnesses.

14 MR JORDASH: That wasn't Mr Harrison's objection.

12:50:59 15 JUDGE THOMPSON: No, I'm in fact saying for the additional
16 reason.

17 MR JORDASH: But they're not objecting to that, so.

18 JUDGE THOMPSON: But I would in fact think that since the
19 Court, the Bench, recognises that there is a prosecutorial
12:51:08 20 discretion here as to who the Prosecution could call or not call,
21 and even if they have a list of 100 witnesses, persons who
22 someone might have given them as possible witnesses, the ultimate
23 decision - and this is elementary, prosecutorial manner - the
24 ultimate discretion to call who they want to call resides with
12:51:35 25 the Prosecution.

26 MR JORDASH: Of course it does. But what Your Honours
27 might want to take into account is at the end of the day whether
28 the evidence provided is sufficient and the reasons why it might
29 not be sufficient. That's the area which is of concern to the

1 Defence.

2 JUDGE THOMPSON: Certainly, of course we are not suggesting
3 that the -- or my response does not take away that aspect of it.
4 It's just that if a witness comes and says, "I gave 10 names" I
12:52:11 5 am saying - and that's how I understand the process - it is
6 entirely a matter for prosecutorial discretion whether those 10
7 people should be called or not. I'm just saying it's an
8 additional reason to the objection raised by Mr Harrison.

9 MR JORDASH: If Your Honours looked at the evidence at the
12:52:31 10 end of the day and came to the conclusion it wasn't sufficient --

11 PRESIDING JUDGE: Well, that's their problem.

12 JUDGE THOMPSON: That's their problem [overlapping
13 speakers] they prove their case.

14 MR JORDASH: But what might assist Your Honour in coming to
12:52:44 15 that conclusion is knowing that there were others who had been
16 spoken to who did not come.

17 JUDGE THOMPSON: I respectfully disagree.

18 PRESIDING JUDGE: Well, you are asking the Court to
19 speculate.

12:52:54 20 MR JORDASH: I'm not.

21 JUDGE THOMPSON: I respectfully disagree, no.

22 MR JORDASH: If there were no witnesses to the event, then
23 Your Honours could say, "Well, this is the evidence."

24 JUDGE THOMPSON: No, that would be adopting an
12:53:05 25 inquisitional approach. This is an adversarial process. The
26 parties present their case before the Court and they stand or
27 fall by what they present. I, as a judge, do not have
28 inquisitorial powers to speculate when I'm evaluating evidence as
29 to whether they could have brought somebody else to come and help

1 them pursue the case. I don't see my role as that.

2 MR JORDASH: I'm happy to move on from that.

3 JUDGE ITOE: Mr Jordash, I want to look at it from the
4 other side. As Defence counsel, do you have the intention of
12:53:47 5 calling any one of these Zambian soldiers as a defence witness in
6 the course of -- I mean, from where you have indicated that you
7 have investigators and you would like to look more deeply into
8 that. Will you intend to call any one of these Zambian soldiers
9 as a witness for the Defence?

12:54:09 10 MR JORDASH: Until I know the names - and we have never,
11 sadly, had them disclosed to us by the Prosecution - of those
12 present in Yengema, then I cannot answer that question. But it
13 would have been nice to have the names from the Prosecution.

14 JUDGE ITOE: Nobody obstructs you from having the names.

12:54:23 15 MR JORDASH: Well, we haven't been given them so far.
16 Hence why I need to --

17 JUDGE ITOE: But they're coming in. They're trickling in
18 now.

19 MR JORDASH: Well, I'm not sure the Zambians are. I think
12:54:34 20 [Overlapping speakers].

21 JUDGE ITOE: I mean the Zambians. I mean, we have Kampamba
22 and the rest of them. And I'm sure if the witness is given an
23 opportunity --

24 MR JORDASH: That's all I'm trying to do.

12:54:43 25 JUDGE ITOE: -- he might call some other names of those who
26 were kept in the school.

27 MR JORDASH: That's what I'm trying to find. That's my
28 inquiry. And if my question is misleading, and Mr Harrison says
29 it was, then I'll accept that and I'll put it again in a

1 different manner.

2 PRESIDING JUDGE: I understand and I agree with you that
3 the overall subject matter of your last question was an inquiry
4 as to who and who was not there, but you moved from that to come
12:55:08 5 back to a question that we have said we sustained the objection
6 was to list of witnesses. The last question: Who did you put
7 forward as a witness to come? Which is quite different. If
8 you're asking a question as to who was there, give me names and
9 so on, he started to give you names, but you moved from there to
12:55:28 10 another area. That is why we got into this discuss now.

11 MR JORDASH: What is wrong with the question who did you
12 put forward to come? What is wrong with that? Who did you think
13 was going to be a useful witness?

14 JUDGE THOMPSON: That is the point and that is my
12:55:43 15 difficulty here, and I think the answer does not help us.

16 MR JORDASH: It helps us with investigation.

17 JUDGE THOMPSON: What I'm saying is it comes very close to
18 encroaching upon prosecutorial discretion.

19 MR JORDASH: Asking the witness who he put forward to the
12:56:03 20 Prosecution as a potential witness so that we might know who was
21 in a position to give [Overlapping speakers].

22 JUDGE THOMPSON: I'm not sure myself whether the
23 Prosecution when they go out to do their investigation are in
24 fact conceding their expertise as to who will be a potential
12:56:18 25 witness to the -- to someone who is himself a potential witness.

26 MR JORDASH: I don't follow that last point, Your Honour,
27 sorry.

28 JUDGE THOMPSON: In other words, I'm saying the question of
29 who is a potential witness is a prosecutorial decision.

1 MR JORDASH: It is not. It is the basis upon which we can
2 both investigate.

3 JUDGE THOMPSON: Yes, of course, it can also be a witness
4 for the Defence who is a potential witness for the Defence is a
12:56:50 5 matter which the defence counsel will make. It is a decision
6 that the defence counsel will make. I'm saying that who becomes
7 a potential prosecution witness is pre-eminently a matter for the
8 Prosecution, not for a witness who now is in the witness stand.

9 MR JORDASH: Well, Your Honours, might think that who this
12:57:17 10 witness thought might be a useful witness might assist the
11 defence to find useful witnesses.

12 PRESIDING JUDGE: [Microphone not activated] I don't have
13 any problem with that [Overlapping speakers].

14 JUDGE THOMPSON: All right.

12:57:27 15 MR JORDASH: That is the question I asked: Who did you put
16 forward to be a witness? That is what I asked and apparently it
17 was misunderstood by the witness and Your Honours think it is
18 trampling on prosecutorial discretion.

19 JUDGE THOMPSON: Well, perhaps I should restrain myself and
12:57:46 20 seeing that perhaps it might be a question on the borderline, I
21 would like to just restrain myself and let you go on.

22 PRESIDING JUDGE: Ask him if he has provided names.

23 MR. JORDASH: Well [overlapping speakers].

24 JUDGE ITOE: We were in enumeration of names.

12:57:56 25 MR. JORDASH: What is the difference between that question
26 then the one I asked ten minutes ago?

27 JUDGE THOMPSON: I have restrained myself.

28 MR. JORDASH: Can I restrain myself, since it is 1.00,
29 please.

1 PRESIDING JUDGE: Finish that question.

2 MR. JORDASH: Do I have to?

3 JUDGE ITOE: No. We want the witness to reply to that
4 question because we want to imagine that you might use some of
12:58:22 5 these -- of the names enumerated as defence witnesses, you never
6 know.

7 JUDGE THOMPSON: I don't have an intention of foreclosing
8 you exercising that privilege or right, in fact.

9 MR. JORDASH:

12:58:43 10 Q. Mr Witness, I'm sure you have followed --

11 JUDGE ITOE: Of course, I see much more in your
12 questioning, but these are all matters which can come up in
13 addresses. If you don't use them as defence witnesses, you may
14 later on, maybe, if he is the only one who is going to be called
12:59:03 15 address the Court on the legal principles of corroboration and
16 the fact that there were many more who were not and so on and so
17 forth. This is how I see it might go.

18 MR JORDASH: I'm grateful for the indication.

19 PRESIDING JUDGE: Mr Jordash, could you ask that question
12:59:21 20 so we could move ahead, please.

21 MR JORDASH:

22 Q. Mr Witness, could I just simplify this: Could you give us
23 some names of Zambian soldiers held in Yengema, please. And if
24 you know any who are no longer part of the Zambian Army, I would
12:59:45 25 be particularly interested in them, please?

26 A. I mentioned Kampamba.

27 PRESIDING JUDGE: He is still in the military? This last
28 name you mentioned, he is still in the Zambian Army?

29 THE WITNESS: Yes, he is still in the army.

1 MR JORDASH:
2 Q. Is that one name, Kampamba?
3 A. I am not able to remember the first name. This is the
4 surname.
13:00:12 5 Q. He is stationed in Zambia?
6 A. He is in Zambia.
7 Q. Anyone else, please?
8 A. Chilengwe.
9 Q. Could you spell it, please?
13:00:22 10 A. C-H-I-L-E-N-G-W-E.
11 Q. He is still in the Zambian military?
12 A. Apparently he is no longer in the Zambian military.
13 Q. Where is he, do you know?
14 A. He is based in Zambia working for a civilian organisation.
13:00:56 15 Q. Which civilian organisation is he working for?
16 A. The Ministry of Health.
17 Q. Ministry of Health based in which town or city?
18 A. Ndola, Zambia.
19 Q. Ndola?
13:01:10 20 A. Yes.
21 Q. Could you spell that, please.
22 A. N-D-O-L-A.
23 Q. Any others you can name who are not in the Zambian
24 military, please?
13:01:24 25 A. Apparently he happens to be the only one.
26 Q. He is the only one from those held in Yengema?
27 A. Yes.
28 Q. Could I have, please, two or three more names from those
29 held in Yengema --

1 MR JORDASH: I don't know if Your Honours would consider
2 this: That overnight the witness be given an opportunity or
3 perhaps when he comes back to Court tomorrow just to give us a
4 list.

13:01:53 5 PRESIDING JUDGE: Ask him if he could provide a list or
6 not.

7 MR JORDASH:

8 Q. Could you provide a list from your memory tomorrow morning?

9 A. Yeah, I think I would require time to maybe think about it.

13:02:06 10 PRESIDING JUDGE: Yes. Mr Witness, we are adjourning now
11 and you will be asked to come back tomorrow morning at 9.30, so
12 you could have the afternoon to yourself to look into this if you
13 want to. Ask the question again ask him if it is only Yengema,
14 because your questions are directed to Yengema, because there
13:02:30 15 were more Zambians, from what I understand his evidence to be,
16 than those just in Yengema. I say this because if you're only
17 asking this and all of a sudden you want to know more but you
18 haven't asked the witness to think about it, we may get into the
19 same circular argument.

13:02:50 20 MR JORDASH:

21 Q. Would you be able to write do you, please, Mr Witness,
22 overnight a list the Zambian soldiers taken to Yengema as best
23 you remember and the list of Zambians who --

24 JUDGE ITOE: He should provide a whole list?

13:03:10 25 MR JORDASH: As much as he can remember.

26 PRESIDING JUDGE: Those he can remember by name --

27 MR. JORDASH: Yes.

28 PRESIDING JUDGE: -- that were there because I don't have a
29 number but we're talking more than 50 individuals, so --

1 MR. JORDASH: Yes. No, I'm not expecting for him to --
2 well, I don't know, the witness might have a good memory.

3 Q. As much as you can remember, witness, and including in that
4 list, please, any who were with you when you set off on the route
13:03:36 5 to Koidu from the beginning of that -- the day when you were
6 taken by the RUF?

7 PRESIDING JUDGE: To Lunsar.

8 MR JORDASH:

9 Q. To Lunsar. Do you understand what I'm asking?

13:03:51 10 JUDGE ITOE: And, Mr Jordash, maybe of use to you where
11 those he can remember are now based, in case you want to get in
12 touch with them.

13 MR JORDASH: Yes, that is the point.

14 Q. Do you follow, Mr Witness?

13:04:06 15 A. I followed.

16 MR. JORDASH: Thank you.

17 PRESIDING JUDGE: Very well. The Court is now adjourned to
18 9.30 tomorrow morning, thank you, Mr Witness.

19 [Whereupon the hearing adjourned at 1.05 p.m.,
20 to be reconvened on Thursday, the 23rd day of
21 March, 2006, at 9.30 a.m.]

22

23

24

25

26

27

28

29

WITNESSES FOR THE PROSECUTION:

WITNESS: TF1-288	2
EXAMINED BY MR WERNER	3
CROSS-EXAMINED BY MR JORDASH	52