

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO.: SCSL-04-15-T
TRIAL CHAMBER I

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

TUESDAY, 13 JULY 2004
10.10 A.M.
CONTINUED TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For the Registry:

Mr. Robert Kirkwood
Ms. Maureen Edmonds
Mr. Geoff Walker

For the Prosecution:

Ms. Lesley Taylor
Mr. Abdul Tejan-Cole
Ms. Boi-Tia Stevens
Mr. Alain Werner
Mr. Christopher Santora
Ms. Sharan Parmar

For the Accused Issa Sesay:

Mr. Timothy Clayson
Mr. Wayne Jordash
Ms. Sareta Ashraph

For the Accused Morris Kallon:

Mr. Raymond Brown
Ms. Wanda Akin
Mr. Melron Nicol-Wilson

For the Accused Augustine Gbao:

Mr. Andrea O'Shea
Mr. John Cammegh
Ms. Glenna Thompson
Mr. Ben Holden

Court Reporters:

Ms. Roni Kerekes
Ms. Gifty C. Harding
Ms. Susan G. Humphries

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1 [Tuesday, 13 July 2004]

2 [Accused Sesay, Accused Kallon present]

3 [Accused Gbao not present]

4 [Open session]

5 [Upon commencing at 10.10. a.m.]

6 MS. EDMONDS:

7 All persons having anything to do before this Special Court Trial Chamber draw near and give your
8 attendance.

9
10 Interpreter, please take your oath.

11 [Interpreter sworn]

12 MR. PRESIDENT:

13 Yes, the Chamber would like to find out if the issue of interpretation or translation has been resolved
14 between the Defence and the Prosecution.

15 MR. CLAYSON:

16 Your Honour, yes, thank you.

17 MS. TAYLOR:

18 Yes, it has, Your Honour.

19 MR. PRESIDENT:

20 It has been resolved?

21 MR. CLAYSON:

22 Yes, thank you.

23 MR. PRESIDENT:

24 All right.

25 MR. CLAYSON:

26 Your Honour, thank you. Over night the Defence teams have been able to consider the observations
27 made by the Prosecution yesterday in which they made it clear that this next witness is considered to
28 be a lady who is, sadly, particularly traumatised, and we have also borne in mind the observations of
29 the Trial Chamber concerning the Chamber's desire for expediency and efficiency. That has led us all
30 to consider whether it is, in the interests of our clients, unnecessary for this witness actually to give
31 testimony in Court, or whether we are content that the witness's statement can be read to the Court
32 and adopted as her evidence. We have reached that conclusion that we do not, in fact, require this
33 witness to give live testimony to the Trial Chamber, and I've been able to briefly discuss that with the
34 Prosecution. And I understand that in principle they may be in agreement with that course, but
35 obviously they can explain their approach to that point to Your Honours. I thought immediately I
36 should let Your Honours know of the joint view of the Defence about this. We're concerned to save
37 any witness from the possibility of unnecessary trauma and that's something we can achieve in this

1 case.

2 [Trial Chamber confers]

3 MR. PRESIDENT:

4 What is the Prosecution's stand on this matter, please?

5 [Trial Chamber confers]

6 MR. PRESIDENT:

7 Yes, Prosecution, learned counsel, proceed.

8 MS. STEVENS:

9 Morning, Your Honours, morning, members of the Defence team. Your Honours, we have discussed
10 this matter with the Defence and we have no problems with the adoption of the statement.

11 MR. PRESIDENT:

12 You have what?

13 MS. STEVENS:

14 We have no problems.

15 MR. PRESIDENT:

16 Yes, please speak up, please.

17 MS. STEVENS:

18 We have no problems admitting the statement of the witness into evidence. However, we would
19 require that the witness come to Court and have the statement read to her for her to adopt the
20 statement as indeed one that she made. And procedurally, Your Honour, we submit that this would
21 be the proper course. This way the contents of the statement would also be on record. Thank you.

22 MR. PRESIDENT:

23 Yes, Mr. Clayson.

24 MR. CLAYSON:

25 Your Honour, thank you. Your Honours, yes. The difficulty, as we see it, is that this would, at the very
26 least, risk traumatising the witness which is precisely what the Defence are trying to avoid. We're
27 trying to avoid the witness having to undergo the experience of coming into Court, hearing her
28 account of it read over to her again when the position is admitted and accepted and the facts to which
29 she speaks are wholly admitted by the Defence. We cannot see any good reason for her to be forced
30 to come into Court in these circumstances. And we, as I've tried to make fully plain, have no issues
31 with the statement of this witness being read to the Court and adopted by the Court as uncontroverted
32 fact. So I don't really understand why the Prosecution think it necessary to go through a procedure
33 which seems to have no purpose. And those are the submissions I would make.

34 MR. CAMMEGH:

35 Your Honours, can I --

36 MR. PRESIDENT:

37 Mr. Cammegh.

1 MR. CAMMEGH:

2 May I adopt what Mr. Clayson has just said, and at the risk of importing national jurisdictional law into
3 this Court, the procedure that I am used to, and I hope that that would fit very neatly with this
4 Chamber this morning, is that documents can be admitted into the trial. They have the force of sworn
5 testimony provided all parties agree. On this occasion, it is quite clear that all parties do agree, and I
6 am with Mr. Clayson, I do not want, having read this statement, which is extremely harrowing, to
7 afford any risk of this young lady being traumatised in any way.

8
9 The statement will be read, she doesn't have to be here to vouch for it, we accept it.

10 MR. PRESIDENT:

11 Yes.

12 MS. AKIN:

13 May it please the Court, Your Honours, I, on behalf of the Kallon Defence team adopt the arguments
14 made by Mr. Clayson and Mr. Cammegh, and we are in full agreement with those positions as they
15 have stated. Thank you.

16 [Trial Chamber confers]

17 MR. PRESIDENT:

18 The chamber is going rise for five minutes in order to advise itself on the issues raised. We will rise,
19 please.

20 [Break taken at 10.21 a.m.]

21 [On resuming at 10.44 a.m.]

22 [Ruling]

23 MR. PRESIDENT:

24 The trial session resumes. The Chamber for examination of the submissions by the parties on this
25 issue decides that this witness will be called in Court and that the statement will be identified by her
26 and received in evidence and it will be read for her to be able to reconcile herself with the declarations
27 she made. This is how we intend to proceed. It is our perception as a Chamber that because of the
28 preoccupations of re-traumatising this witness that the -- there will be no form of examination of this
29 witness after the witness -- after the statement is tendered and admitted and examinations in all
30 forms, that is, in chief, cross-examination and re-examination. That is the understanding of the
31 Chamber.

32
33 Is this the understanding of learned counsel on this issue?

34 MS. STEVENS:

35 Yes, Your Honour.

36 MR. PRESIDENT:

37 The Prosecution, says, yes. All right.

38

1 MR. CLAYSON:

2 The position -- and I can only speak for the defendant I represent -- the position that we adopt is that
3 we have no substantive questions for this witness. If I say anything to her, it would be simply to
4 indicate that that is our position.

5 MR. PRESIDENT:

6 When you say, no substantive questions --

7 MR. CLAYSON:

8 Yes.

9 MR. PRESIDENT:

10 Are you intending to ask her any questions at all, Mr. Clayson?

11 MR. CLAYSON:

12 My position is that I would like to make it clear to the witness that she is not in Court at the behest of
13 the Defence. That is what I would like to make clear to her.

14 MR. PRESIDENT:

15 Right. Mr. Cammegh.

16 MR. CAMMEGH:

17 Your Honour, assuming she adopts the statement, of course, it would be my intention to leave it there.
18 My concern is, if this is adopted as a general principle or rule of practice, and this situation arises
19 again, there may will be situations where the witness fails to adopt the entire contents of the
20 statement, either A, by denying a portion of it, saying it's been misconstrued by the interpreter or B,
21 wishing to add something to it. Of course in those circumstances, it may well be that notwithstanding
22 our attempts to prevent her from coming into Court, lest she be traumatised. We may, because of any
23 disclosure that witness may make, feel compelled to do what we never intended to do, which is
24 cross-examine her on certain issues which she or he has raised. Now, I am confident that won't
25 happen with this witness, but as a general rule of procedure, in my submission, it does import some
26 degree of a risk to the future.

27 JUDGE THOMPSON:

28 Learned counsel, I'm sure that you in fact -- I take it you're not suggesting that the decision reached
29 by the Chamber is meant to be of general applicability.

30 MR. CAMMEGH:

31 I wasn't sure. If Your Honour is making it clear that it is not --

32 MR. PRESIDENT:

33 No two cases could be on all fours. It is very difficult. Some could, but it is very, very difficult.

34 MR. CAMMEGH:

35 I'm obliged to that.

36 JUDGE THOMPSON:

37 For my part, I would suggest that clearly there is no such suggestion on this Chamber to treat this

1 particular decision as a matter of general --

2 [Overlapping microphones]

3 MR. CAMMEGH:

4 I'm very grateful for that indication, thank you.

5 MS. AKIN:

6 Your Honours, at this time we cannot confirm -- we cannot anticipate just how the witness will confirm
7 and adopt her statement. Should she do that in an ordinary course without additional comment or
8 elaboration on the statement, then there will be no questions by this team for the second Accused;
9 however, we would like to reserve and be able to put questions to the witness should there be any
10 deviation whatsoever from what it seems we all anticipate will occur here today.

11 MR. PRESIDENT:

12 The Chamber understands that it is the statement that will be identified, tendered, you know, that
13 would form the agenda for these proceedings and nothing more. We do not perceive that there would
14 be any addition. It would be a question of the statement, you know, being read to her, for her to
15 confirm it, and that is it. We do not expect, and I don't think, you know, that that is a perception of the
16 Chamber, you know, that new material will be added into the statement by the witness. Excepting, of
17 course, certain situations arise which we cannot now anticipate. I think it is better, you know, that we
18 get into the procedure and see how we move, how we proceed.

19 MS. AKIN:

20 Exactly, Your Honour. That is what I would like to reserve to see how we move and proceed along
21 the course of asking the questions, unless something unusual or unforeseen develops during this
22 process. Thank you.

23 MR. PRESIDENT:

24 I think the screens should be drawn before this witness is brought in.

25 [The witness entered court]

26 MR. PRESIDENT:

27 Just a minute. We see that the witness is accompanied by somebody. There will be no two people
28 giving evidence. What is the position?

29 MS. STEVENS:

30 My apologies, Your Honour. Your Honour, the Prosecution would request that someone sit with the
31 witness, given her handicap, to assist her with any need that might arise, for instance, if she has need
32 to move the microphone, if she has a need to move the headphones. The Koran, I just see, has been
33 handed to her, and as Your Honours can see, the witness's hands are amputated and she may have
34 problems doing some of the things that ordinarily someone with two hands would have no problems
35 doing.

36 MR. PRESIDENT:

37 Yes, the Defence, please.

1 MR. CLAYSON:

2 Your Honour, thank you. This is exactly the sort of problem that we were keen to obviate and I'm
3 entirely in the hands of the Chamber as to how we proceed. We've no difficulty about the procedure
4 at this stage whatsoever, take no objection to it; we simply wish that this witness's position and her
5 difficulties be fully respected, and we have no issue about how she takes the oath, or even, indeed,
6 whether she takes the oath. Her statement, as we said earlier, is accepted.

7 MR. PRESIDENT:

8 You're re-opening an issue which the Court has decided upon, Mr. Clayson. I don't think we need any
9 further argument on this and the Court will proceed, please.

10

11 Can you swear in the witness, please.

12 MR. CLAYSON:

13 Forgive me, am I not to complete my submission?

14 MR. PRESIDENT:

15 We understand, you know, what your position has been. Can the witness be sworn in, please.

16 MS. AKIN:

17 Your Honours, may it please the Court.

18 MR. PRESIDENT:

19 Just hold on, please. Yes.

20 MS. AKIN:

21 Your Honours, may we have an identification of the person who is in the witness box with the witness
22 just to have it indicated who that person --

23 MR. PRESIDENT:

24 You are very right, indeed. Yes, can the Prosecution give the identification, please.

25 MS. STEVENS:

26 Your Honours, this is TF1-196.

27 MR. PRESIDENT:

28 TF1?

29 MS. THOMPSON:

30 196.

31 JUDGE THOMPSON:

32 Did you say 196?

33 MS. STEVENS:

34 Yes.

35 JUDGE BOUTET:

36 And who is the person with TF1-196.

37

1 MS. STEVENS:

2 The person with TF1-196 is a member of the Witness Management Unit, Your Honours. And at this
3 point I would ask her to stand and introduce herself to the Court.

4 MS. BARRIE:

5 I'm Neneh Binta Barrie. I work for the witness protection as a counsellor.

6 MR. PRESIDENT:

7 Your name is?

8 MS. BARRIE:

9 Neneh Binta Barrie.

10 JUDGE BOUTET:

11 Can you repeat it again now that your mic is open.

12 MS. BARRIE:

13 My name is Neneh Binta Barrie. I'm working for the Witness Protection as a counsellor.

14 MR. PRESIDENT:

15 Yes, please, you may proceed with swearing in the witness.

16 MS. EDMONDS:

17 Please repeat the oath.

18 MR. PRESIDENT:

19 What is your religion?

20 MS. STEVENS:

21 Your Honours, we're not getting any translation.

22 MR. CLAYSON:

23 Might I be heard?

24 MR. PRESIDENT:

25 Yes, Mr. Clayson.

26 MR. CLAYSON:

27 I've noticed there was a brief discussion. I have no complaint except I would like to know what is
28 between the lady from Court Management and the lady accompanying the witness.

29 MR. CAMMEGH:

30 Your Honours, I respectfully agree. Thank you.

31 MR. PRESIDENT:

32 Mr. Clayson, can you repeat what you've said, please.

33 MR. CLAYSON:

34 Yes. I noticed that there was a brief discussion between the lady from Court Management and the
35 lady accompanying the witness. I have no complaint about that except I would just like to know what
36 was said, that's all.

37

1 MR. PRESIDENT:

2 What was the discussion? No, no, speak to this hearing.

3 [Microphone not activated]

4 MR. CLAYSON:

5 Thank you, that's all I need to know. Thank you.

6 MR. PRESIDENT:

7 And what was the discussion, Mr. Clayson? We didn't hear. What was the discussion? Mr. Clayson,
8 can you tell us what the discussion was since you are satisfied now.

9 MR. CLAYSON:

10 What I just heard from the lady from Court Management is that she didn't have headphones and there
11 was a difficulty as a result of that. I'm happy with that. Thank you.

12 WITNESS: WITNESS TF1-196

13 [Witness answered through interpretation]

14 Examined by Ms. Stevens:

15 MS. STEVENS:

16 Good morning, madam witness.

17 MR. PRESIDENT:

18 Put the microphone closer to her. Drag it further down, yes. Are we getting any translation or having
19 none?

20 THE INTERPRETER:

21 Yes, the translation is being done.

22 MR. PRESIDENT:

23 We are not getting it here. Go ahead, let's see, let's see how it goes.

24 MS. STEVENS:

25 Q. Madam witness I'm going to ask you some questions.

26 A. Um-hum.

27 Q. I want you to listen carefully.

28 A. I do agree.

29 Q. Madam witness, do you recall giving a statement to investigators of the Office of the Prosecutor on
30 September 15th, 2003?

31 A. [No translation]

32 Q. There was no translation, Your Honour.

33 MR. PRESIDENT:

34 There was no translation, really.

35 JUDGE THOMPSON:

36 Yes.

37

1 MS. STEVENS:

2 I can take the question, again.

3 THE WITNESS:

4 Um-hum.

5 Q. Is that a yes?

6 A. Yes.

7 Q. Madam witness, was that statement recorded?

8 A. Yes.

9 Q. Now when they finished taking the statement, was the statement read back to you?

10 A. Yes.

11 Q. Was that statement read back to you in *Temne*?

12 A. Yes.

13 Q. Now, madam witness, I'm going to read the statement that has been attributed to you. I want you to
14 listen carefully and at the end --

15 A. Okay.

16 Q. -- at the end I'm going to ask you some questions.

17 A. What happened?

18 Q. No, you just listen to me. I will ask the questions to you, okay?

19 MR. PRESIDENT:

20 Where is the statement?

21 THE WITNESS:

22 Okay.

23 MR. PRESIDENT:

24 Is there no form of identification of the statement?

25 MS. STEVENS:

26 Yes, Your Honour, I would ask this witness further questions.

27 MR. PRESIDENT:

28 Yes.

29 MS. STEVENS:

30 Q. Madam witness, when --

31 A. I do hear.

32 Q. -- when the statement was taken, were you given the statement to read?

33 A. Yes.

34 Q. Do you read and write, madam witness?

35 A. No, I cannot read and write.

36 Q. Was the statement shown to you at all?

37 A. Yes, I would like to know that.

1 Q. Madam witness, let me repeat the question to you. Was the statement shown to you at all?

2 A. Yes.

3 Q. Madam witness, I am going to read to you the statement --

4 A. Okay.

5 MR. PRESIDENT:

6 You cannot be reading a statement, learned counsel, at this stage because it is not yet part of the
7 record of the Court.

8 JUDGE THOMPSON:

9 Not at this stage.

10 MS. STEVENS:

11 Your Honours, that is exactly what I'm trying to do is put the statement into the record. The witness --

12 MR. PRESIDENT:

13 Yes.

14 MS. STEVENS:

15 May I proceed, Your Honour?

16 MR. PRESIDENT:

17 Yes, since you cannot be reading a statement which is not yet a part of the record of the Court. At
18 least we would like to -- I mean, you're reading a statement that the Court has not seen it, the
19 Defence has not seen it, and I think it is proper because this statement was disclosed to the Defence
20 and it is on the basis of the content that the Defence made its application this morning or made its
21 suggestion to the Court.

22 MS. STEVENS:

23 Your Honour, just given the fact that the Defence had expressed that they were content that this was
24 indeed the statement of the witness, I was dispensing with that formality.

25 MR. PRESIDENT:

26 We want to be sure that is the same statement that you have there that they also have and the Court
27 would like to satisfy itself on this issue.

28 JUDGE THOMPSON:

29 I need to be satisfied in terms of the legal foundation for it because your intention is to receive the
30 statement -- to put the statement in evidence as an exhibit.

31 MS. STEVENS:

32 Yes, Your Honour.

33 JUDGE THOMPSON:

34 Then I think we cannot dispense with the requirement of the proper legal foundation being laid.

35 MS. STEVENS :

36 Fair enough.

37

1 JUDGE BOUTET:

2 If I may, in this respect, I would like to know how many pages, how it was recorded, who did the
3 recording, what language was being used, I mean, just the fundamentals before we get into any
4 admission of the evidence.

5 JUDGE THOMPSON:

6 These are the foundations I see.

7 MS. STEVENS:

8 Yes, Your Honour. I will go through the formalities then.

9 Q. Now, madam witness, during the interview with the investigators from the Office of the Prosecutor,
10 which language --

11 A. Yes.

12 Q. -- in which language --

13 A. It is under a mango tree.

14 Q. Madam witness, just listen to me please. Which language was used during the interview?

15 A. I was asked in *Temne* and I was asked in *Krio*.

16 Q. And you understand *Temne* very well, madam witness?

17 A. I'm a *Temne* by tribe.

18 Q. Does that mean you understand *Temne* very well?

19 A. Certainly, yes.

20 Q. What about *Krio*, do you understand *Krio* very well, madam witness?

21 A. No, I don't understand *Krio*.

22 Q. Now, after the statement had been taken, was it read back to you, madam witness?

23 A. Yes.

24 Q. And did you verify the accuracy of the contents of the statement?

25 A. Yes, I would like to know that very well.

26 Q. My question to you, madam witness, was whether or not you had the -- was whether or not you
27 actually verified whether or not the contents of the statement were correct?

28 A. Yes, that's true.

29 Q. Did you sign the statement?

30 A. I was not able to sign, but somebody did it on my behalf.

31 Q. Madam witness, what do you mean that someone did it on your behalf?

32 A. I wasn't able to sign because I did not have any hands to sign so I asked somebody to do it for me.

33 Q. Madam witness, was that the only statement that you made to the Office of the Prosecutor?

34 A. That's not -- in fact, that is not what I said.

35 Q. My question, madam witness, was whether or not this was the only statement that you made to the
36 Office of the Prosecutor?

37 A. No, that is not what I said.

1 Q. Then could you please tell me what you said.

2 A. Okay. Tell me.

3 Q. Madam witness, let me ask you a different question. Do you remember --

4 A. Yes, I can think.

5 Q. You remember the number of statements that you made to the Office of the Prosecutor?

6 A. Yes.

7 Q. How many statements did you make?

8 A. What I said, I said that I was hiding at Xxxxx , in the bushes of Xxxxx. When I was hiding there --

9 MS. STEVENS:

10 Madam witness --

11 MR. PRESIDENT:

12 Control the witness, madam prosecutor, please.

13 MS. STEVENS:

14 Madam witness, I just want you to listen carefully to what I'm asking you.

15 A. I'm sitting quietly.

16 JUDGE BOUTET:

17 Maybe ask her if she had met with the Prosecutors more than once or more than three times or what
18 have you.

19 MS. STEVENS:

20 Q. Madam witness --

21 [Microphone not activated]

22 MR. PRESIDENT:

23 Can you pull these monitors and these screens. Are you seeing -- do you have the witness. I see
24 one on the monitor. Please look that the monitor over there. Are there images on that monitor? The
25 other monitor. The one which is at the extreme left, are there any --

26 [Microphone not activated]

27 MR. PRESIDENT:

28 I'm not able to hear. Please go ahead, go ahead.

29 MS. STEVENS:

30 Your Honours, the witness has testified that she did indeed make a statement to the Office of the
31 Prosecutor. She recalled that the statement was read back to her and that she verified the accuracy
32 of the statement. She has said that she did not sign the statement, but nonetheless she did adopt --
33 confirm that indeed the contents of the statement were true.

34 MR. PRESIDENT:

35 She was shown -- she was shown the statement even if she couldn't read it.

36 MS. STEVENS:

37 Your Honour, I can show the witness the statement, but given the -- if -- as Your Lord pleases.

1 Q. Madam witness, could you take a look at the document that is in front of you.

2 A. I see it, but I cannot read it.

3 JUDGE BOUTET:

4 Maybe you can ask her to look at the last page.

5 MR. PRESIDENT:

6 The last page. Let the person, you know, assisting her open the statement.

7 MS. STEVENS:

8 Your Honour, the witness has said that she did not sign the statement.

9 JUDGE BOUTET:

10 No, but she said somebody else signed it for her.

11 JUDGE THOMPSON:

12 Yes, quite right.

13 MS. STEVENS:

14 Q. Madam witness --

15 A. Yes.

16 Q. -- I want you to take a look at the last page on that statement on that document.

17 A. Okay.

18 Q. Okay. Now do you -- do you recognise the writing in the middle of the page?

19 A. Yes, I see the writing, but I cannot decipher anything because I'm not literate.

20 MS. STEVENS:

21 If I could have the statement back, please.

22 MR. PRESIDENT:

23 Yes. Do you have the statement? Please show the statement to the Defence, please. Show the
24 statement to the Defence.

25 MS. STEVENS:

26 May I proceed?

27 MR. PRESIDENT:

28 You have the statement back with you?

29 MS. STEVENS:

30 I have a copy.

31 MR. PRESIDENT:

32 The statement is still being passed around, you know, for the Defence to look at.

33 MR. CAMMEGH:

34 Your Honour, I'm loathe to extend this poor lady's discomfort any further. Can we just establish,
35 please, whether or not that statement was signed by the individual in this young lady's presence?

36 MR. PRESIDENT:

37 You've heard Mr. Cammegh observation, learned counsel.

1 MS. STEVENS:

2 Q. Madam witness, was the statement that you indicated was signed, was it signed in your presence?

3 A. Yes.

4 MR. PRESIDENT:

5 Can we see the statement, please?

6 MS. STEVENS:

7 I was just about to ask that.

8 [Trial Chamber confers]

9 JUDGE THOMPSON:

10 Counsel, what do you intend to do now?

11 MS. STEVENS:

12 I intend to tender it as an exhibit, Your Honour. And that would be Exhibit number 3, if my memory
13 serves me right.

14 MR. PRESIDENT:

15 Don't label it yet until it is admitted.

16 JUDGE THOMPSON:

17 Any objections?

18 MS. AKIN:

19 Your Honour, if it pleases the Court, I would respectfully ask that my learned friend just establish that
20 the two signatures on the statement -- and this is the first time that we've had the opportunity to see a
21 copy of the statement that has been signed in the two respective signature sites -- we would just like it
22 established that -- who the preparer was and who the approver was. It doesn't seem clear to the
23 Defence who these persons were. And if it indeed was the statement, the initial statement that was
24 signed in the witness's presence or if there was a handwritten statement that would have been
25 signed.

26 MR. PRESIDENT:

27 The point is taken. The point is taken. Yes, the point is taken. Yes.

28 MS. STEVENS:

29 Your Honour, this witness has just testified --

30 MR. PRESIDENT:

31 The Court is of the view -- of the view that has been expressed. Can you, you know, tread on those
32 grounds because we're doing this, you know, in a situation which is very delicate. I think we need to
33 know, you know, who may have recorded the statements, who may have witnessed the statements,
34 because the witness said she couldn't sign it because she was not -- she didn't have any hands, you
35 know, to sign. So who recorded it, who witnessed it, it is important. Can counsel take it from there,
36 please.

37

1 MS. STEVENS:

2 Your Honours, may I just have a few seconds to confer with my colleagues?

3 MR. PRESIDENT:

4 Yes, please go ahead.

5 [Prosecution counsel confer]

6 MR. PRESIDENT:

7 Yes, learned counsel, you can proceed.

8 MS. STEVENS:

9 I am in a difficulty here because this witness has testified that she cannot read and write. She could
10 not identified the marks or writings on this document. The Defence had indicated that they have no
11 problems tendering the statement into evidence. But Your Honours, I'm mindful of the Court's time
12 and if at this point in time there are issues with the admissibility of the statement into the evidence, I
13 would just rather lead the witness as we had planned on doing all along.

14 JUDGE THOMPSON:

15 But learned counsel, isn't it important for the Court to know who recorded the statement and also who
16 witnessed it as part of establishing the proper legal foundation for receiving that statement in
17 evidence? I'm sure no arguments have been canvassed here for dispensing with the proper legal
18 requirements for receiving statements into evidence. It would seem to me this would be the normal
19 practice in our tribunals.

20 MS. STEVENS:

21 I fully appreciate the Court's observation, however, as I said, my hands are a bit tied here because
22 this is witness whom the statement was presented to her, but she could not identify the markings or
23 writings on the statement. I could ask the witness further if she recalls the names of the investigators
24 or the persons who were present when the interview was done.

25 JUDGE THOMPSON:

26 Yes. Why shouldn't that be legitimate questions to put to the witness?

27 MS. STEVENS:

28 Q. Madam witness, do you recall the names of the investigators who took your statement or the
29 investigator?

30 A. Yes.

31 Q. Could you tell me the name of the investigator who took your statement?

32 A. What?

33 Q. The investigators who took your statement did they identify themselves to you?

34 A. They showed me their names but I've forgotten them.

35 Q. Do you remember the name of anyone else who was present when your interview was being
36 conducted?

37 A. I cannot remember.

1 JUDGE BOUTET:

2 Maybe you can lead her bit with names and suggest names.

3 MR. PRESIDENT:

4 And maybe, you know, she said she couldn't sign so somebody signed on her behalf. Who is this
5 person.

6 MS. STEVENS:

7 I'm getting to that, Your Honour.

8 Q. Madam witness --

9 A. Yes.

10 Q. -- you told this Court that somebody signed your statement. Can you tell us the name of this person?

11 A. Yes.

12 Q. Can you tell us the name of this person who signed your statement?

13 A. Signed the statement that I gave to the Prosecution?

14 Q. Yes, madam witness.

15 A. The one that signed the statement is the person you want to know?

16 Q. Yes.

17 A. I've forgotten his name.

18 Q. Madam witness?

19 A. Yes.

20 Q. Do you recall the name Louise Taylor?

21 A. What?

22 Q. Do you recall the name of Louise Taylor?

23 A. Louise Taylor, yes.

24 Q. Was this the person who took your statement?

25 A. Yes.

26 Q. Do you recall the name of Cecilia Williams?

27 A. Yes.

28 Q. Was she present when your statement was being taken?

29 A. Yes.

30 Q. Did she serve as an interpreter when your statement was being taken?

31 A. Yes.

32 Q. Do you recall the name of Isatu Jalloh?

33 A. Yes.

34 Q. Was she present when your statement was being taken?

35 A. Yes. She interpreted what I was saying to the Prosecution.

36 MS. STEVENS:

37 Your Honours, at this point we would like to tender the statement as a Prosecution exhibit.

1 MR. PRESIDENT:

2 Well the statement has been shown around the Defence team. The concerns of -- I hope that to
3 some extent your concerns have been addressed.

4 MS. AKIN:

5 They have been, Your Honour.

6 MR. PRESIDENT:

7 Okay. Is there any objection to the admission of that statement?

8 MR. CLAYSON:

9 None whatsoever, thank you.

10 MR. PRESIDENT:

11 The first Accused no objection. The second Accused.

12 MR. CAMMEGH:

13 Under the circumstances we don't object, no.

14 MR. PRESIDENT:

15 Third Accused.

16 MS. AKIN:

17 No. The second Accused counsel and no objection. Thank you, Your Honour.

18 MR. PRESIDENT:

19 That statement is accordingly admitted into evidence and marked as Exhibit 3.

20 MR. PRESIDENT:

21 Learned counsel, you can now proceed.

22 MS. STEVENS:

23 Your Honours, I am in your hands at this point. I do have a copy of the statement which I can read
24 from, but if you prefer that I read from the document that has been tendered as the exhibit, I can do
25 that as well.

26 MR. PRESIDENT:

27 We would prefer that you read from the document that has been tendered as an exhibit.

28
29 Now the situation is this: We -- it is a Court document and I would presume that you have copies of
30 this statement -- I mean the Defence. I wonder if you have any objection to the Prosecution reading it
31 so that, you know, there can be a translation of it to the witness as we proceed. I do not know how
32 you perceive this or you want some other person who is independent to read it. I don't know.

33 First Accused, we would like to start from the first.

34 MR. CLAYSON:

35 No observations, Your Honours, on this. I'm entirely content with whatever procedure commends
36 itself to the Court.

37

1 MR. PRESIDENT:

2 Second Accused, please.

3 MS. AKIN:

4 Your Honour, if it pleases the Court, we would prefer that an independent and court personnel read
5 the statement and advise Ms. Witness what is occurring and what she would be expected to do, if
6 anything. Thank you.

7 MR. PRESIDENT:

8 Third Accused.

9 MR. CAMMEGH:

10 Your Honour, we have no real opinion one way or the other as to who should read it. In the interests
11 of justice, if the reader -- and I say this with all due respect -- could avoid any temptation to become
12 emotive because it is a painful statement, but we have no objections as to whoever reads it.

13 MR. PRESIDENT:

14 You have no objections?

15 MR. CAMMEGH:

16 We don't mind who reads it provided it is not read in an overly emotive manner.

17 MR. PRESIDENT:

18 I see.

19
20 Yes, counsel for the Prosecution, please, putting aside any emotions, you read that statement very,
21 very slowly and ensure that the translation gets to the maker of the statement.

22 MS. STEVENS:

23 I'm grateful, Your Honour.

24 Q. Madam witness, I'm going to read the statement that has been attributed to you.

25 A. Yes, yes.

26 Q. The statement -- I want you to simply listen and at the end I will put forward some questions to you.

27 The statement was taken on the 15/9/03 in Freetown by Louise Taylor with Cecilia Williams and Isatu
28 Jalloh as interpreters.

29 Witness speaks --

30 A. Yes.

31 MR. PRESIDENT:

32 Slowly, slowly.

33 MS. STEVENS:

34 Q. Witness speaks and understands *Krio* but felt more comfortable speaking a mix of *Temne* and *Krio*.

35 A. Yes, it is good.

36 MR. PRESIDENT:

37 I didn't get the translation before that. Please be translating. You should translate everything that

- 1 counsel is saying, please.
- 2 MS. STEVENS:
- 3 Languages used were therefore Temne, Krio and English. Witness never went to school.
- 4 A. No.
- 5 Q. Witness was living with in Xxxxx where she was married --
- 6 A. Yes, yes.
- 7 Q. -- where she was married when the rebels reached the area around Xxxxx.
- 8 A. Yes.
- 9 Q. Madam witness?
- 10 A. Yes.
- 11 Q. Let me just remind you at this stage I just merely want to you listen to the statement.
- 12 A. Yes.
- 13 Q. At the end I will ask you some questions. At that time you can give your response to those questions;
- 14 do you understand?
- 15 A. Yes, I do understand.
- 16 Q. Xxxxx is 2 miles from Xxxxx. Madam witness?
- 17 A. Yeah.
- 18 Q. Please wait until the end when the statement has been read before making any response; is that
- 19 understood?
- 20 [Overlapping microphones]
- 21 MR. PRESIDENT:
- 22 Why not.
- 23 A. Okay.
- 24 MR. PRESIDENT:
- 25 Why not if her response -- I mean why not? If she wants to progress with you, why not, by giving her
- 26 responses?
- 27 MS. STEVENS:
- 28 As Your Honour pleases.
- 29 Q. She was hiding --
- 30 A. Okay. Yes.
- 31 Q. -- in Xxxxx bush when the rebels came.
- 32 A. Yes.
- 33 Q. The rebels had attacked other villages in the same area before attacking Xxxxx.
- 34 A. Yes.
- 35 Q. The rebels had attacked Melemami, which is about 5 miles --
- 36 A. Yes.
- 37 Q. Five miles from Xxxxx towards Xxxxx.

- 1 A. True.
- 2 Q. Witness, heard this from the young male civilians who went through the bush to see which locations --
- 3 A. Yes.
- 4 Q. -- to see which locations the rebels had attacked.
- 5 A. Yes.
- 6 Q. **Xxxxx** which is two files from Mateboi was also attacked.
- 7 A. Yes.
- 8 Q. As were Mateboi, Rosos, and Batkanu?
- 9 A. Yes.
- 10 Q. Witness does not remember the exact date of these attacks.
- 11 A. Yes. That was the first place they attacked.
- 12 Q. Or when both her hands were amputated.
- 13 A. Yes.
- 14 Q. But it happened before the January 6 invasion of Freetown.
- 15 A. Yes.
- 16 Q. Witness said that the rebels passed through **Xxxxx** on their way to Freetown.
- 17 A. Yes.
- 18 Q. She knows this because the rebels told her that they were heading to Freetown when she was
- 19 captured.
- 20 A. No, I was not captured there. They captured me before coming to Freetown.
- 21 Q. Madam witness, just listen carefully.
- 22 A. Yes, okay.
- 23 Q. I'm going to repeat the sentence. She knows this because the rebels told her that they were heading
- 24 to Freetown when she was captured.
- 25 A. Yes.
- 26 Q. Witness clarified that the incident happened at the beginning of the rainy season.
- 27 A. Yes.
- 28 Q. When the rebels started attacking villages in the area --
- 29 A. Yes.
- 30 Q. -- witness hid in the bush near **Xxxxx**.
- 31 A. Yes, indeed.
- 32 Q. Witness was hiding in **Xxxxx** bush near **Xxxxx** with her husband.
- 33 A. Yes.
- 34 Q. As well as many other civilians.
- 35 A. Yes.
- 36 Q. Witness does not remember the names of these civilians as they were strangers to her.
- 37 A. Yes.

-
- 1 Q. Witness explained that the rebels entered **Xxxxx** village during the night.
- 2 A. Yes.
- 3 Q. Witness heard them making a lot of noise.
- 4 A. Yes.
- 5 Q. The rebels were shouting, "you bastards."
- 6 A. Yes, yes.
- 7 Q. "We will find in the morning and when we find you in the morning – "
- 8 A. Yes.
- 9 Q. "-- you will know who we are when we have dealt with you."
- 10 A. Yes.
- 11 Q. Witness was at this point hiding in the bush near **Xxxxx**.
- 12 A. Yes.
- 13 Q. The rebels attacked **Xxxxx** the next morning.
- 14 A. Yes.
- 15 Q. Witness said that more than 40 rebels attacked.
- 16 A. Yes.
- 17 Q. Some of the rebels wore uniforms.
- 18 A. Yes.
- 19 Q. Whilst others wore civilian or mixed combat and civilian.
- 20 A. Yes.
- 21 Q. Some of the others were armed.
- 22 A. Yes.
- 23 Q. And had their guns slung around their shoulders?
- 24 A. Yes.
- 25 Q. Witness said that the rebels had RPGs.
- 26 A. Yes, indeed.
- 27 Q. And AK-47s?
- 28 A. Yes, indeed.
- 29 Q. Which were big and black guns.
- 30 A. Yes.
- 31 Q. Some rebels had knives.
- 32 A. Yes.
- 33 Q. Whilst others had cutlasses.
- 34 A. Yes.
- 35 Q. Witness saw child soldiers.
- 36 A. Affirm.
- 37 Q. Which were aged from five years up.
-

- 1 A. Affirm.
- 2 Q. And they were armed.
- 3 A. Yes.
- 4 Q. Witness does not remember how many child soldiers there were.
- 5 A. There were many, yes.
- 6 Q. Witness explained that the rebels captured the civilians who were hiding in the bush.
- 7 A. Yes.
- 8 Q. And brought them into **Xxxxx** village.
- 9 A. Yes.
- 10 Q. Witness and her husband were captured and taken to **Xxxxx**.
- 11 A. Yes.
- 12 Q. Witness does not remember the exact number of civilians captured.
- 13 A. No.
- 14 Q. But said that there were more rebels than civilians.
- 15 A. Yes.
- 16 Q. Witness said that when she and her husband were captured.
- 17 A. Yes.
- 18 Q. The rebels told her that they will kill her husband.

19 *(Pages 1 to 22 by Roni Kerekes)*

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- 1 [11.52]
- 2 MS. STEVENS:
- 3 Q. And they give her a pain that will last for ever.
- 4 A. Affirmed.
- 5 Q. Witness and her husband were captured by five rebels.
- 6 A. Yes.
- 7 Q. The leader of these rebels was called Mosquito.
- 8 A. Yes.
- 9 Q. And he wore a uniform.
- 10 A. Yes.
- 11 Q. The other four rebels wore civilian.
- 12 A. Yes.
- 13 Q. Mosquito talked *Krio* and *Mende*.
- 14 A. Yes.
- 15 Q. He was slim and tall.
- 16 A. Yes.
- 17 Q. He was older than witness's daughter who is about 25 years old.
- 18 A. Yes.
- 19 Q. Mosquito told witness that he was AFRC.
- 20 A. Yes.
- 21 Q. Witness and her husband were given three large pans of millet ("*Fundeh*") to pound as well as rice.
- 22 A. Yes.
- 23 Q. Some of the other captured civilians were forced to fetch water.
- 24 A. Yes.
- 25 Q. Some of them managed to escape.
- 26 A. Yeah.
- 27 Q. The civilians who returned with water --
- 28 A. Yes
- 29 Q. -- told the rebels that some of the civilians had escaped.
- 30 A. Yeah.
- 31 Q. Rebels said that because some civilians had escaped the remaining civilians will be amputated.
- 32 A. Yes.
- 33 Q. Mosquito passed the order for the amputations.
- 34 A. Yes.
- 35 Q. Mosquito also passed the order to kill witness's husband.
- 36 A. Yes.
- 37 Q. Witness said that her husband was chopped up with a cutlass.

- 1 A. Yes.
- 2 Q. Witness witnessed the killing of her husband.
- 3 A. Affirm.
- 4 Q. The rebels shouted at her husband that he is a bastard and he was going to die.
- 5 A. Yes.
- 6 Q. After the rebels killed her husband the rebels surrounded witness.
- 7 A. Yes.
- 8 Q. The rebels surrounded witness and took her right hand and chopped it with a cutlass.
- 9 A. Yes.
- 10 Q. A rebel cut her right hand four times.
- 11 A. Yes, indeed.
- 12 Q. And then cut her left-hand four times.
- 13 A. Yes.
- 14 Q. Both hands were chopped off.
- 15 A. Yes.
- 16 Q. The rebel who chopped her hand was not one of the rebels who captured her.
- 17 A. No.
- 18 Q. But he met him in ~~Xxxx~~.
- 19 A. Yes
- 20 Q. Witness said that she can recognise the rebel who amputated her hands.
- 21 A. Yes.
- 22 Q. She said that his name is Foyoh Fayia.
- 23 A. Yes.
- 24 Q. And he is a *Mende*.
- 25 A. Yes.
- 26 Q. Witness described Foyoh as a tall man.
- 27 A. Yes.
- 28 Q. With a dark complexion.
- 29 A. Yes.
- 30 Q. And older than witness.
- 31 A. Yes.
- 32 Q. Although he did not have white hair.
- 33 A. Yes.
- 34 Q. He had a full beard.
- 35 A. Yes.
- 36 Q. But no markings on his face.
- 37 A. No.

- 1 Q. Witness said that he wore *Gara* clothes.
- 2 A. Yes.
- 3 Q. And a wool hat.
- 4 A. Yes.
- 5 Q. Witness saw him in Grafton --
- 6 A. Yes.
- 7 Q. -- about three years ago.
- 8 A. Yes.
- 9 Q. He was wearing a combat uniform.
- 10 A. Yes.
- 11 Q. And came from Grafton police barracks.
- 12 A. Yes, indeed.
- 13 Q. Witness was told his name by a civilian who lives in Grafton.
- 14 A. Yes.
- 15 Q. After she was amputated witness said --
- 16 A. Yes.
- 17 Q. Witness said that another male rebel untied her scarf --
- 18 A. Yes.
- 19 Q. -- that was on her head --
- 20 A. Yes.
- 21 Q. -- and tied it around her waist so that her *lappa* would not fall off.
- 22 A. Yes.
- 23 Q. The rebels told her that she should go to Kabbah who would give her hands.
- 24 A. Yes.
- 25 Q. One of the rebels accompanied her out of **Xxxxx**.
- 26 A. Yes.
- 27 Q. Witness walked up the hill and managed to escape from the rebel.
- 28 A. Yes.
- 29 Q. Witness said that she was the only one amputated in **Xxxxx**.
- 30 A. Yes.
- 31 Q. Witness said that after she was amputated the rebels killed other civilians by shooting them.
- 32 A. Yes.
- 33 Q. And cutting them with a cutlass.
- 34 A. Yes.
- 35 Q. She witnessed the killings as she was leaving **Xxxxx**.
- 36 A. Yes.
- 37 Q. But because she was in pain she cannot remember how many civilians were killed.

- 1 A. No.
- 2 Q. She thinks that her relatives were killed as she has not seen her husband's relatives since that day.
- 3 A. No.
- 4 Q. Witness knew that Mosquito was a big commander --
- 5 A. Yes.
- 6 Q. -- but does not know the names of other commanders. The translation did not come through.
- 7 A. No, I did not.
- 8 Q. Witness did not see Mosquito kill or rape any civilians.
- 9 A. No.
- 10 Q. Witness said that she heard the rebels saying they were going to rape women.
- 11 A. Yes.
- 12 Q. And virginate the young girls.
- 13 A. Yes.
- 14 Q. Witness said that girls and women who were abducted were also forced to carry loads.
- 15 A. Yes.
- 16 Q. Witness says that she cannot remember any names or numbers --
- 17 A. No.
- 18 Q. -- as the events happened a long time ago.
- 19 A. Yes.
- 20 Q. Witness also said that she overheard the rebels talking about one woman who had been raped by ten
- 21 rebels.
- 22 A. Yes.
- 23 Q. And that after being gang raped the woman just laid on the ground motionless.
- 24 A. Mmm.
- 25 Q. Could the interpreter put the response again?
- 26 A. No.
- 27 Q. Witness said that this happened in another village whose name she did not know.
- 28 A. No.
- 29 Q. At this point let me ask the witness: Madam witness, when you are saying no, do you mean no this is
- 30 not what you told investigators, or are you merely confirming what is being read to you?
- 31 A. I'm affirming.
- 32 Q. Witness said that some of the rape victims from **Xxxx** were treated in Makeni government
- 33 hospital --
- 34 A. Yes.
- 35 Q. -- by Mr. Dumbuya.
- 36 A. Yes.
- 37 Q. The latter treated witness as well.

1 A. Yes.

2 Q. I'm sorry, was the interpreter saying something?

3 THE INTERPRETER:

4 I think you need to repeat the last question.

5 MS. STEVENS:

6 Q. Let me repeat the one previous to that. Witness said that some of the rape victims from **Xxxxx** were
7 treated in Makeni government hospital by Mr. Dumbuya.

8 A. Yes.

9 Q. The latter treated witness as well.

10 A. Yes.

11 Q. Witness does not know where the other rape victims are now.

12

13 Mr. Interpreter, the translation did not come through.

14 A. No, I did not.

15 Q. Witness then -- I will strike that. Let me ask the witness if she could clarify her response. Madam
16 witness, you said, "No, I did not." Are you saying no you did not know where the other rape victims
17 are, or are you saying no you did not tell this to the investigators?

18 A. What?

19 Q. Let me take this statement again. Witness does not know where the other rape victims are now.

20 A. No, I did not know [*inaudible*] they are.

21 Q. Witness then clarified that she was raped vaginally by a rebel when she was captured in the bush --

22 A. Yes, indeed.

23 Q. -- before she was amputated.

24 A. Yes.

25 Q. Witness said that one of the five rebels who captured her said that they will rape her until she is
26 helpless.

27 A. Yes.

28 Q. The rebel who said this was the one who raped her.

29 A. Yes, indeed.

30 Q. Witness does not know his name --

31 A. No, I did not know his name.

32 Q. -- but described him as a short, muscular man --

33 A. Yes.

34 Q. -- who was younger than her daughter who is about 25 years old.

35 A. Yes.

36 Q. Witness said that he hit her and pushed her legs apart.

37 A. Yes. Indeed.

-
- 1 Q. The rebel threatened to kill her if she refused to have sex with him.
- 2 A. Yes. Yes.
- 3 Q. He placed his gun on the ground next to her.
- 4 A. Yes.
- 5 Q. Witness said that the rape happened in the bush --
- 6 A. Yes.
- 7 Q. -- and was witnessed by another rebel.
- 8 A. Indeed, yes.
- 9 Q. Witness said she felt some pain in her vagina after she was raped.
- 10 A. Yes.
- 11 Q. Witness said that she felt bad and was angry because she did not want to be raped.
- 12 A. No.
- 13 Q. Madam witness, I am going to seek clarification from you.
- 14 A. Yes.
- 15 Q. Are you saying, no, this is not what you told the investigators, or when you are saying no you are
- 16 merely confirming the content of the sentence that I just read out?
- 17 A. I'm confirming that what you said was right.
- 18 Q. The rebel who witnessed the rape told the rebel who raped her not to rape her.
- 19 A. Yes. Yes.
- 20 Q. Witness felt ashamed that she was raped in public.
- 21 A. Yes.
- 22 Q. After witness had escaped from the rebel who at first accompanied her, witness walked until she came
- 23 to an area where she found fruit on the trees.
- 24 A. Yes.
- 25 Q. She ate --
- 26 A. Yes.
- 27 Q. She ate the fruit with her mouth as her hands had been amputated.
- 28 A. No.
- 29 Q. Madam witness, are you saying no, this is not how it happened, or are you confirming this is how it
- 30 happened?
- 31 A. Yes, I'm confirming that your statement is correct.
- 32 Q. She met her relatives in the bush near **Xxxxx**.
- 33 MR. CAMMEGH:
- 34 Your Honour, forgive me. The translation -- forgive me, the translation is causing us all some concern.
- 35 The witness just gave a one word answer, it was translated however as, "Yes, I am confirming." It
- 36 doesn't follow. The witness was given a choice of two -- was led in actual fact, led a choice of two
- 37 answers either yes or no. Either to be specific or to put it in -- if I can just try and remember what my
-

1 learned friend put, it was either are you confirming -- by saying no are you confirming that this
2 happened, or are you denying that it happened? There was a one-word answer and it was furnished
3 by the translator with the words, "I am confirming," it was a one word answer from the witness. We
4 really have to have clarity as to what is being translated.

5 JUDGE BOUTET:

6 I agree with you, it's not the first time the witness has answered a single word and the translation
7 comes out to being five or six words. So I don't know *Temne*, but I doubt very much whether one
8 word translated in English in five words. So translation – translator, please, you have to interpret what
9 the witness is saying and if she says yes, you say yes, if it's no, you say no, not your own
10 interpretation of what she might be saying.

11 MR. CAMMEGH:

12 Thank you very much.

13 JUDGE BOUTET:

14 And, Madam Prosecutor, maybe it will be easier if you ask one question as to are you repeating or --
15 and then wait for the answer, or you are denying this. Because if you put two or three options that's
16 where you get the confusion.

17 MS. STEVENS:

18 Q. I am going to take the last sentence again. She ate the fruit with her mouth as her hands had been
19 amputated.

20 A. Yes. Yes.

21 Q. He met her relatives in the bush near **Xxxxx**.

22 A. Yes.

23 Q. And they took her to **Xxxxx** --

24 A. Yes.

25 Q. -- where they spent the night.

26 A. Yes.

27 Q. They walked to **Xxxxx** --

28 A. Yes.

29 Q. -- where they got from (*inaudible*) the car to Makeni. The translation didn't --

30 THE INTERPRETER:

31 It's -- yes was the response.

32 MS. STEVENS:

33 Q. The witness said that she was treated by Mr. Dumbuya.

34 A. Yes.

35 Q. And was given local anaesthetic --

36 A. Yes. Yes.

37 Q. -- so that her hands could be washed and dressed.

- 1 A. Yes.
- 2 Q. A man called Allieu took down her testimony in the hospital.
- 3 A. Yes.
- 4 Q. Witness was operated on by ICRC.
- 5 A. Yes.
- 6 Q. And has what is commonly known in Sierra Leone as “cucumbers.”
- 7 A. Yes.
- 8 Q. I.e. her wrists had been fashioned into “two fingers.”
- 9 A. Yes.
- 10 Q. If your Honours -- I will repeat that last sentence again. I.e. wrists had been fashioned into “two
- 11 fingers” in quotation marks.
- 12 A. Yes.
- 13 Q. I am not a *Temne* speaker, but I heard the witness say “ah”. I just --
- 14 THE INTERPRETER:
- 15 That means yes. That is to affirm your statement.
- 16 JUDGE THOMPSON:
- 17 Leave the translation to the translators, you are expert in [*inaudible*].
- 18 MS. STEVENS:
- 19 Yes, Your Honour.
- 20 Q. She is not able to wash herself.
- 21 A. Yes.
- 22 Q. And is looked after by her daughter.
- 23 A. Yes.
- 24 Q. Witness remembers two other amputees who were also treated in Makeni government hospital.
- 25 A. Yes.
- 26 Q. The woman was called **Xxxxx Xxxxx**.
- 27 A. Yes.
- 28 Q. And was amputated in **Xxxxx** before the rebels amputated witness.
- 29 A. Yes.
- 30 Q. Witness met her in Makeni government hospital.
- 31 A. Yes.
- 32 Q. **Xxxxx Xxxxx** is also a double amputee.
- 33 A. Yes.
- 34 Q. **Xxxxx Xxxxx** was amputated in Melemami after witness.
- 35 A. Yes.
- 36 Q. He is also a double amputee.
- 37 A. Yes.

1 Q. Prepared by -- there is a signature approved by, there is a signature.

2 A. Yes.

3 Q. Madam witness.

4 A. Yes.

5 Q. Do you confirm that this is an accurate and correct reflection of your statement to the investigators?

6 A. Yes.

7 MS. STEVENS:

8 I have no further questions of this witness.

9 MR. PRESIDENT:

10 I have a question. There has been a reference to an amputation. Is the Court -- could the Court see
11 the materiality, you know, of this evidence?

12 MS. STEVENS:

13 Q. Madam witness.

14 A. Yes.

15 JUDGE THOMPSON:

16 Could we -- just a minute.

17 *[Trial Chamber confer]*

18 MR. PRESIDENT:

19 Yes, please.

20 JUDGE THOMPSON:

21 Let me just indicate that I am not asking that question.

22 MR. PRESIDENT:

23 Please proceed.

24 MS. STEVENS:

25 Q. Madam witness, can you please stand up?

26 A. Okay.

27 *[Witness complies]*

28 Q. Could you please raise your hands, Madam witness?

29 A. Okay.

30 *[Witness complies]*

31 MR. PRESIDENT:

32 Thank you.

33 THE WITNESS:

34 Yeah.

35 MR. PRESIDENT:

36 The extent of the amputations, and as we have been able to verify the two finger description which is
37 on the statement. And I hope it goes in the records.

1 Yes, the Defence, please.

2 MR. CLAYSON:

3 Thank you, your Honour.

4 Cross-examined by Mr. Clayson:

5 MR. CLAYSON:

6 Q. Madam witness, can you hear me?

7 A. Yes.

8 Q. Thank you.

9 A. Yes.

10 Q. I have no questions to put to you save that I would like you to help about one small matter of detail, if
11 you would. Did you hear me?

12 A. Yes.

13 Q. You spoke about being operated in the hospital at Makeni.

14 A. Yes.

15 Q. Are you able to say approximately when that was?

16 A. No, I couldn't remember.

17 Q. All right, thank you. Can I just explain to you that we have not asked that you should come into court
18 today, you are not here at our request. Thank you.

19 A. Yes.

20 MR. CLAYSON:

21 Thank you, Your Honours, that is all. Thank you.

22 MR. PRESIDENT:

23 Counsel for the second Accused, please.

24 MS. AKIN:

25 May it please the Court, my learned friends. We just want to indicate to the witness that we have no
26 questions for her and thank her for her appearance here today. Thank you.

27 MR. CAMMEGH:

28 We too are grateful.

29 JUDGE BOUTET:

30 Wait, wait, wait.

31 MR. PRESIDENT:

32 Wait for the translation [*inaudible*].

33 Cross-examined by Mr. Cammegh:

34 MR. CAMMEGH:

35 Q. Can you hear me?

36 A. Yes.

37 Q. Thank you. We are grateful for you coming today.

1 A. Yes. Yes.

2 [Overlapping microphones]

3 MS. STEVENS:

4 Your Honours, if someone from the registry could come and receive the exhibit. [Exhibit handed] And
5 I would request that it be kept under seal because it does contain the name of the witness.

6 MR. PRESIDENT:

7 I am sorry.

8 MS. STEVENS:

9 The exhibit.

10 MR. PRESIDENT:

11 Yes.

12 MS. STEVENS:

13 I am making a request that it be kept under seal because it contains the name of the witness.

14 MR. PRESIDENT:

15 I see. It is so ordered by the Court.

16 *[Exhibit 3 entered as an exhibit under seal]*

17 JUDGE BOUTET:

18 As it appears that we are finished with this witness at this particular time, and it is 12.30 so we will be
19 about time to break for lunch anyhow. Is the Prosecution ready to proceed with their witness after this
20 pause?

21 MS. TAYLOR:

22 Yes, Your Honour, the following witness will be witness number TF1-214.

23 JUDGE BOUTET:

24 And can we expect the Prosecution to be able to do the interrogation in chief this afternoon?

25 MS. TAYLOR:

26 That is so, Your Honour.

27 JUDGE BOUTET:

28 Thank you.

29 MR. CAMMEGH:

30 Can I just ask the Court please, because we have not kept a record or lost it, which exhibit number
31 the statement is?

32 MR. PRESIDENT:

33 Three.

34 MR. CAMMEGH:

35 Three. Thank you

36 MR. PRESIDENT:

37 Well, the Court will rise and will resume its session at three o'clock, at three o'clock. The Court rises,

1 please.

2 [Luncheon recess taken at 12.30 p.m.]

3 [On resuming at 3.12 p.m.]

4 MR. PRESIDENT:

5 We are resuming the session can we take the second witness?

6 MS. TAYLOR:

7 Yes, your Honour. The third witness, I believe.

8 MR. PRESIDENT:

9 I'm sorry the third, the third.

10 MS. TAYLOR:

11 Yes. The third witness, TF1-214, will be led by my learned friend Mr. Werner.

12 MR. PRESIDENT:

13 What did you say the number of the witness is?

14 MS. TAYLOR:

15 It is TF1-214.

16 MR. PRESIDENT:

17 TF1-214?

18 MS. TAYLOR:

19 That's correct.

20 [Witness entered court]

21 MR. PRESIDENT:

22 Can learned counsel for the Prosecution please give his name, you know, for the records -- for the
23 records, please.

24 MR. WERNER:

25 My name?

26 MR. PRESIDENT:

27 Yes, please, we want the records to identify you.

28 MR. WERNER:

29 Sure. My name is Alain Werner.

30 MR. PRESIDENT:

31 Alain?

32 MR. WERNER:

33 Alain.

34 MR. PRESIDENT:

35 A-L-L-A-I-N?

36 MR. WERNER:

37 It's a French name, Your Honour. It is Alain.

1 MR. PRESIDENT:

2 Alen. That's E-N, then. No, no, no, but there are two versions of that name. I know there is
3 A-L-L-A-I-N. So spell -- spell your version of Alain because I am used to very many Alains in French.

4 MR. WERNER:

5 A-L-A-I-N, Your Honour.

6 MR. PRESIDENT:

7 That's right.

8 MR. WERNER:

9 Your Honour --

10 MR. PRESIDENT:

11 Alain who? I'm sorry, I'm not finished.

12 MR. WERNER:

13 Werner, W-E-R-N-E-R.

14 MR. PRESIDENT:

15 W-E-R-N-E-R.

16

17 Yes, can you swear the witness in, please?

18 JUDGE BOUTET:

19 Can I ask in which language the witness is testifying?

20 MR. WERNER:

21 In *Krio*, Your Honour.

22 JUDGE BOUTET:

23 So do we have translators in *Krio* now?

24 MR. WALKER:

25 I don't think she can hear me.

26 JUDGE BOUTET:

27 Can the translators speak to the witness and see if it works and see if she is on the right channel.

28 THE INTERPRETER:

29 Can you hear me?

30 JUDGE BOUTET:

31 Can you speak to the witness, translators.

32 THE WITNESS:

33 Yes, I can hear.

34 JUDGE BOUTET:

35 Okay, thank you.

36

[Witness TF1-214 sworn]

37

1 JUDGE BOUTET:

2 Translate for her.

3 MR. PRESIDENT:

4 I saw the lady who was there earlier, the social worker, her name is Binta Barrie, does she have a role
5 to play in this case?

6 MR. WERNER:

7 I don't think, Your Honour.

8 MR. PRESIDENT:

9 Okay. All right. Yes, you can proceed.

10 MR. WERNER:

11 Thank you, Your Honour.

12 MR. PRESIDENT:

13 Mr. Werner.

14 MR. WERNER:

15 Yes. Your Honour, as it is my first appearance in front of this Court, and as the language of the Court
16 is English, I would like to apologise for what seems to be my very slight French-flavoured accent.

17 MR. PRESIDENT:

18 That's all right. We welcome your bi-lingual culture particularly because you can express yourself in
19 the language of this Court.

20 JUDGE BOUTET:

21 I appreciate the slight accent, as you say.

22 MR. WERNER:

23 Thank you. Your Honour. The Prosecution is calling witness TF1-214.

24 WITNESS: WITNESS TF1-214

25 [Witness answered through interpretation]

26 Examined by Mr. Werner:

27 MR. WERNER:

28 Q. Good afternoon, madam. I am going to ask you some questions, if you could simply answer my
29 questions.

30 MR. PRESIDENT:

31 Mr. Werner.

32 MR. WERNER:

33 Yes, sir.

34 MR. PRESIDENT:

35 You will go very slowly so that you can be interpreted to the witness. It takes some time so you will go
36 slowly, okay?

37

1 MR. WERNER:

2 I will -- I will, Your Honour.

3 MR. PRESIDENT:

4 All right.

5 MR. WERNER:

6 Q. Madam, where were you born?

7 A. I don't know.

8 Q. Madam, do you know where you are living now?

9 MR. PRESIDENT:

10 Ask that question again, where were you born; ask the question again, Mr. Werner.

11 MR. WERNER:

12 Q. Madam, where were you born?

13 A. I don't know that.

14 Q. Do you know in which district you were born, madam?

15 A. No.

16 Q. Do you know where you are living now?

17 A. No.

18 Q. Madam, do you understand my questions?

19 MR. PRESIDENT:

20 I hope the translation is all right.

21 MS. EHRET:

22 The translation is all right.

23 MR. WERNER:

24 Q. Madam, do you live in Freetown?

25 A. Yes, that's where I am at the moment.

26 Q. And where do you live normally?

27 A. I don't know.

28 MR. PRESIDENT:

29 There is something wrong somewhere.

30 JUDGE BOUTET:

31 Prior to coming into Freetown where were you?

32 MR. WERNER:

33 Q. Madam, before you came to Freetown where did you live?

34 A. I don't know that question.

35 Q. Do you understand my question?

36 A. I understand, but I don't know that question.

37

1 MR. PRESIDENT:

2 Madam, madam, madam --

3 THE WITNESS:

4 Yes, yes.

5 MR. PRESIDENT:

6 You say you are now in Freetown -- what is happening?

7 JUDGE BOUTET:

8 Do you understand the question?

9 MR. PRESIDENT:

10 You are now in Freetown, madam, you are staying in Freetown now.

11

12 Is the translation cabin, you know, communicating with this witness?

13 MS. EHRET:

14 The translation cabin is, yes.

15 THE WITNESS:

16 Yes. Yes.

17 JUDGE BOUTET:

18 Try slowly again. It is obvious the witness has some difficulties at this moment, so try slowly. Try
19 again.

20 MR. WERNER:

21 Yes, Your Honour.

22 MR. WERNER:

23 Q. Madam, do you know where did you live before coming here?

24 A. Where I was -- where I came from until I reached here? No.

25 Q. Yes, that's my question. Where were you before you came here to Freetown?

26 A. Where I was before I came here? I don't know that question.

27 MR. PRESIDENT:

28 Madam, where were you -- you are now in Freetown, where were you staying? Where were you
29 staying? Where were you living before you came to Freetown?

30 THE WITNESS:

31 I don't know there.

32 JUDGE BOUTET:

33 Maybe you can suggest some of the names in the statement of city, town --

34 MR. WERNER:

35 It has been my request, if I may lead the witness?

36 JUDGE THOMPSON:

37 Yes, quite right, asking whether or not --

1 MR. PRESIDENT:

2 Good, but, I mean --

3 JUDGE THOMPSON:

4 It could be led on those questions up to a point and I don't see why that should not be possible.

5 MR. WERNER:

6 Thank you, Your Honour.

7 JUDGE THOMPSON:

8 Unless these are contentious issues.

9 MR. WERNER:

10 I do not think --

11 JUDGE BOUTET:

12 I don't have the statement, but presumably in the statement she must be talking of a city, town,
13 district, chiefdom whatever --

14 MR. WERNER:

15 Yes, Your Honour.

16 JUDGE BOUTET:

17 And take her to a place.

18 MR. WERNER:

19 Yes, sure.

20 JUDGE THOMPSON:

21 As long as they are not contentious.

22 MR. WERNER:

23 They are not.

24 MR. WERNER:

25 Q. Madam --

26 A. Yes.

27 Q. Were you born in Kondembaia?

28 A. No.

29 Q. Now did you live before coming to Freetown? Did you live in Kabala?

30 A. I do not know that question.

31 JUDGE BOUTET:

32 Do you know a place named Kabala?

33

34 We'll come to you, Mr. O'Shea.

35

36 Madam witness, do you know a place named Kabala?

37

1 THE WITNESS:

2 No.

3 MR. PRESIDENT:

4 Look, where is this lady who came here been, Binta whatever? We would like to know, there must be
5 something wrong somewhere.

6 JUDGE BOUTET:

7 Mr. O'Shea.

8 MR. PRESIDENT:

9 There is something wrong somewhere.

10 JUDGE BOUTET:

11 Mr. O'Shea, yes.

12 MR. O'SHEA:

13 Your Honours, a thought has occurred to me, it's a concern that I've had before in this case. It seems
14 to me that one reason for this may be that this lady may feel nervous --

15 JUDGE BOUTET:

16 Yes, I think so.

17 MR. O'SHEA:

18 -- about the personal nature of the questions.

19 JUDGE BOUTET:

20 Well, she certainly appeared nervous to me where she is, so I --

21 MR. PRESIDENT:

22 Please, that is why, you know, we are asking for the lady who is a social worker to let us know, you
23 know, what the background situation is about this particular witness because she works in the
24 Witness Protection Unit.

25 MS. MICHELS:

26 Your Honour, if I may? I am the psychologist of the Witness Unit and we would ask a support person
27 to come and have a word with her if it is okay.

28 JUDGE THOMPSON:

29 Prosecution.

30 MR. WERNER:

31 Yes, Your Honour.

32 JUDGE THOMPSON:

33 I think the Chamber is minded to ask to recess for some reasonable while so that something can be
34 done.

35 MR. WERNER:

36 Sure, Your Honour.

37

1 JUDGE THOMPSON:

2 Yes.

3 MR. PRESIDENT:

4 We shall rise, please.

5 MR. BROWN:

6 Your Honour, before — I was hoping to be heard, Your Honour, before something is done.

7 [Recess take at 3.29 p.m.]

8 [On resuming at 3.38 p.m.]

9 MR. PRESIDENT:

10 Mr. Brown, the Court will hear you now.

11 MR. BROWN:

12 Yes, Your Honour. My concern is that -- first to indicate that this Court and the Prosecution and my
13 colleagues have, I think -- have and continue to show great concern for the safety and welfare of
14 witnesses who clearly come from traumatic circumstances. But it is also true that, as My Lords have
15 reminded all of us, that the OTP has a burden of proof involving producing credible and competent
16 witnesses. And while it is clearly disturbing what has happened in the last few moments, at some
17 point the question of approaching witnesses in mid-testimony and the manner in which it is done and
18 by whom and what is said, is relevant to us and it seems to me that it ought to be done at least in a
19 way in which there is a clear record of what is said and by whom, because on the one hand, there
20 may be someone *in extremis* here who needs assistance and that may be a critic -- I am swiping a fly,
21 not gesturing to the Court — and that may be the critical concern. But there is a fair trial question as
22 well and my reason for rising is that as we proceed I would like to know precisely who speaks to the
23 witness, about what, and when so that we can be aware and be in a position to protect our clients,
24 because sometimes people say things because they are not the same person in the statement or
25 something has changed factually. It isn't always a question that they are in need of counselling in
26 mid-testimony, it would seem. We would like to be heard before such a thing happens.

27 MR. PRESIDENT:

28 Well, we have taken note, you know. Your concerns are our concerns as well. I mean, the burden is
29 on the Prosecution, you know, to prove its case, to prove the guilt of the Accused person and it is for
30 them to use their arms, you know, placed at their disposal to prove their case and I don't think that
31 that rule can be substituted by any stop-gap measure, not at all. I mean, we would not be prepared,
32 you know, to do that and in any event the Accused also has rights, you know, to cross-examine and it
33 is important, you know, for the Prosecution to manage its case in a way that it would be understood,
34 clearly understood, not only by the Bench, but by the Defence as well.

35

36 So this is the situation. I am not saying it is created by the Prosecution, you know, in this sort of a
37 situation it is certainly -- maybe a circumstance which I would say is beyond the control of anybody,

1 but it remains the baby of the Prosecution to carry. So this said, I hope that we can be able to
2 proceed and that the witness is in a better shape of mind, you know, to be able to go through her
3 examination-in-chief. And if not, then it is for the Prosecution, you know, to know what to do at a
4 particular time.

5 MS. TAYLOR:

6 Your Honour, if I may just respond to that. In the few minutes that Your Honours had risen from the
7 Bench, it is my understanding and that of my learned friends, that the witness has expressed fear that
8 she will be identified and fear about testifying in this Court.

9
10 I am not -- I understand that the Witness and Victims Unit do brief the witnesses before they come into
11 court to explain the procedures to them. I, of course, do not know whether it is the fact that there are
12 suddenly lots of people in black gowns and Your Honours sitting on the Bench that has caused an
13 additional problem for this witness.

14
15 In discussion with my learned friends, we wondered whether it was appropriate for your Honours to
16 deputise a specific person, perhaps the psychologist from the victims -- the Witness and Victims Unit,
17 to speak in specific terms to this witness about the measures that this Court has put in place for her
18 protection and to listen to any fears that she has about testifying and then report back to Your
19 Honours, so that there may be a record of who has spoken to a witness after they have been sworn
20 and at least the issues that have been covered. Because at the moment the Prosecution is still
21 unclear whether this witness is currently in a state to be able to continue to testify and I wonder
22 whether Your Honours might consider that course of action.

23 JUDGE THOMPSON:

24 Yes, well, speaking for the Bench, I think that should be one of the options, but, of course, another
25 option would be for the Prosecution to consider the advisability as to whether they want to proceed
26 with this witness or whether in fact to stand this witness down and re-think your case and the role of
27 this witness and get another witness who may well be amenable for examination-in-chief.

28
29 Well, I think, of course, certainly it makes a lot of sense to have somebody delegated by the Court, an
30 expert, and I would have no problem with the psychologist. This will depend again on how the
31 Defence sees this scenario, if they would like to respond to that. But I would certainly think that in
32 terms of a very viable option at this point is that you advise yourselves as to whether you want to
33 proceed with this witness today or in the next couple of days and re-think your prosecutorial strategy.

34 MS. TAYLOR:

35 Indeed, Your Honour, and that is clearly one issue that does arise. The difficulty being that, if I may
36 use a colloquialism, the witness is simply experiencing stage fright and something -- which is
37 something she may get over. Having been sworn, the Prosecution is now prevented from speaking to

1 the witness and we would need Your Honour's deputy to speak to her. Now, whether that is done
2 now or whether that is done later and the Prosecution calls this witness out of the order in which we
3 have filed, that is obviously something which the Prosecution can make decisions on.

4
5 The only thing that I would say that if we cannot proceed with this witness this afternoon, the
6 Prosecution is not in a position to call the next witness on the list until tomorrow morning because we
7 were not, of course, expecting this to happen and that witness is not, as I understand it, on the court
8 premises and by the time that witness is obtained it will be very late in the day to start the next
9 witness's evidence. And I do apologise for that. Obviously this situation was unforeseen by the
10 Prosecution, and we simply do our best to have witnesses available.

11 *[Pages 23 to 43 by Susan G. Humphries]*

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1 [15.45]

2 MR. PRESIDENT:

3 Certainly. Of course, you know, if -- as you desire, a psychologist or so has to talk to the witness in
4 order to explain to her the measures that have been put in place for her protection for which she is
5 scared and so, it cannot be in open court certainly. These are matters which I do understand -- we do
6 understand should happen in the Witness Protection, you know, Unit.

7
8 And if it has to happen, it should be within the context, you know, of the Witness Protection Unit. The
9 Court is only interested in the evidence that is coming, you know, from this witness.

10
11 And I don't know, we were wanting, you know, we would like to -- I don't know what the Defence
12 thinks because we have a lot of time. We don't want to lose a lot of time, if we could stand this matter
13 down, you know, for about some 30 minutes to enable the -- in fact, we were going to say that we
14 should see if the situation has changed, at least she can now at least -- whether she has adjusted
15 herself, you know, to be able to testify, but we wouldn't want to rush. We were thinking that if we
16 stood the matter down for about 30 minutes, those who have to intervene -- she could be taken out
17 and those who have to intervene can advise her on the measures which have been put in place for
18 her, and we may be able to proceed after, I mean, when we do resume.

19
20 When we come back we would verify, you know, whether it is indeed possible to proceed or not in
21 which event we would take the measures which would be necessary at that time.

22

23 Yes, Mr. Brown.

24 MR. BROWN:

25 Your Honour, I would request that if we follow what the Court has just outlined that such persons
26 intervening be persons approved or designated by the Court, and this is not in any way to express any
27 mistrust or any -- anything towards learned counsel on the other side. And I would ask that while it
28 may be confidential, that there be some record kept of what is said, and if the Court maybe perhaps
29 make the first decision as to whether anyone else needs to see it, but there ought to be a record of
30 what's said in light of the fact that this is a sworn witness who has begun however -- with however
31 difficult the circumstance, to testify.

32 JUDGE BOUTET:

33 Absolutely.

34 JUDGE THOMPSON:

35 But now, Counsel, we are on the same wave length.

36 MR. BROWN:

37 Thank you.

1 JUDGE BOUTET:

2 The person we are talking about is the psychologist that is present in court and she would have to
3 identify herself for the record later, and we hope and expect that she would be able to make a report
4 to the Court about her meeting and discussion, whatever it is, so we all know where to stand on this
5 issue.

6 MR. PRESIDENT:

7 And we also have miss -- Madam Binta Barrie who is -- who was introduced to us this morning as a
8 social worker in the Witness Protection Unit. I think that these two can be charged, you know, with
9 the responsibility of putting things right so that we proceed.

10 JUDGE THOMPSON:

11 Counsel, I need to assure you of the sensitivity on the part of the Bench, and it is a pre-eminent
12 sensitivity to the need to have a fair trial here.

13 MR. BROWN:

14 I think -- I hope the Court can see that I would be willing to put myself and more importantly
15 Mr. Kallon, in the hands of the Court and persons that it deputises but I wanted to it to be clear that
16 they are functioning with the Court's charge and that they report to the Court and will make a record of
17 what occurs should there be further complications.

18 MR. CAMMEGH:

19 Can I delay Your Honours for just one minute.

20 MR. PRESIDENT:

21 That's all right, Mr. Cammegh, we are still sitting down, we are not up yet.

22 MR. CAMMEGH:

23 We are all grateful for the position Your Honours have indicated in relation to this matter. Can I make
24 one respectful suggestion based on the -- or our anticipation that this is probably not going to be the
25 last time this situation arises. And that is this that the witness support, who obviously play a very
26 important role, have an opportunity to speak to each and every witness prior to giving evidence just to
27 remind them of their rights and of whatever protective measures can be taken on their behalf. Not to
28 re-rehearse their evidence, but simply to put them at rest because otherwise, I think we can all see
29 this scenario is going to be -- arrived at time and time again. It's going to waste a lot of time. So I simply
30 ask, and I know it's difficult for the Prosecution, but I simply ask the court staff to take those measures
31 because it's might save us a lot of trouble in the future.

32 MR. PRESIDENT:

33 I think the Court is *ad idem* with you on this issue and there is no problem at all. It's a question of
34 putting here in the right frame of mind and not to start rehearsing the evidence, you know, with her.
35 Because there is no point reversing evidence, you know, when she would not even be able to give the
36 evidence.

37

1 JUDGE THOMPSON:

2 *[Overlapping microphones]* she must be averse to that.

3 MR. CAMMEGH:

4 I think I said myself, we wouldn't dream of anybody rehearsing the evidence with the witnesses,
5 simply putting them at ease so that we don't have this situation right into the future.

6 JUDGE BOUTET:

7 I am understanding that that has been done and is being done by the Witness Protection Unit as
8 such. This is part of their work and as you know, they are not attached to Prosecution or the Defence,
9 they are a witness protection for witnesses of the Court.

10

11 It is my understanding that they have been doing that consistently with every witness. Whether or not
12 they did it with this witness and it has not functioned, well, it may be so, but that's the standard
13 procedure as I'm led to believe. So -- but maybe they need to adjust that procedure. We'll have to
14 wait and see.

15 MR. CAMMEGH:

16 Yes.

17 JUDGE BOUTET:

18 Thank you.

19 MR. PRESIDENT:

20 Yes, Mr. Clayson.

21 MR. CLAYSON:

22 There is nothing that we wish to add to the observations that have been. We agree with them. Thank
23 you.

24 MR. PRESIDENT:

25 Pardon me? Can you --

26 MR. CLAYSON:

27 Nothing -- there is nothing that we wish to add. We agree with the observations that have been by our
28 colleagues. Thank you.

29 MR. PRESIDENT:

30 And, of course, like we did put across to you, we would like to stand this matter down for about
31 30 minutes.

32 MR. CLAYSON:

33 So be it.

34 MR. PRESIDENT:

35 In order to give the Witness Protection Unit, you know, time to put this witness right so that she can be
36 placed at the disposal of the Court.

37

1 MR. CLAYSON:

2 Thank you very much, Your Honour.

3 MR. PRESIDENT:

4 So we shall rise, you know, for 30 minutes, and the Witness Protection Unit, please, Madam Barrie
5 and the psychologist, you know, should please be able to put things, you know, right so that this
6 witness is put at the disposal of the Court.

7

8 The court will rise, please.

9 *[Recess taken at 3.55 p.m.]*

10 *[Upon resuming at 4.40 p.m.]*

11 MR. PRESIDENT:

12 We are resuming the session. May we have the psychologist – please, may --

13 MS. MICHELS:

14 Yes, Your Honour.

15 MR. PRESIDENT:

16 Yes, the witness had problems and we thought that the nature of the problems she was experiencing,
17 you know, should be investigated and you were charged with doing this. Can you give us your names
18 and make a brief report to the Court as to what you have found out, you know, about this witness,
19 please.

20 MS. MICHELS:

21 Yes, Your Honour. My name is An Michels. I'm the psychologist of the WVS.

22 MR. PRESIDENT:

23 You are An?

24 MS. MICHELS:

25 Michels, Michels.

26 MR. PRESIDENT:

27 Michels with two Ls.

28 MS. MICHELS:

29 One L, M-I-C-H-E-L-S.

30 MR. PRESIDENT:

31 Again, it's the French -- I come from an English/French speaking country, so we are very particular
32 about these spellings.

33

34 Yes, you are An Michels, and you are a psychologist.

35 MS. MICHELS:

36 Yes, I work as a psychologist for the WVS, the Witness and Victims --

37

1 MR. PRESIDENT:

2 You are working with who?

3 MS. MICHELS:

4 The Witness and Victim Support Section.

5 MR. PRESIDENT:

6 With the witness protection?

7 MS. MICHELS:

8 Yes.

9 MR. PRESIDENT:

10 Yes, can you please -- we don't want to swear you in. So as an official of the Court -- the witness
11 protection unit is one of the subsidiary organs of this Court. So can you give us, as an official of this
12 Court your findings of what has been happening really.

13 MS. MICHELS:

14 Of course, Your Honour. I spoke to the witness together with the psych-social assistant, who is sitting
15 now with the witness, Neneh Barrie, and our findings are that the witness was clearly -- is clearly
16 scared. She is overwhelmed by the -- by what is happening, by seeing so many people in the
17 courtroom. This, despite the courtroom briefing that has been given to her a few days prior to her
18 testimony. But she is generally scared and a bit overwhelmed. Particularly -- she is particularly
19 concerned about naming places and things that might reveal her identity. That's very specific in
20 those -- but she very -- she is still very -- she told me she is very motivated to testify and she would
21 like to continue.

22 MR. PRESIDENT:

23 So you are assuring us that she says she is prepared to testify?

24 MS. MICHELS:

25 Well, I personally think that the issue of naming places might be a difficulty and therefore I ask for
26 advice from the chief of section who can maybe give some explanation about that.

27 MR. PRESIDENT:

28 Yes, can you introduce yourself? We know you very well any way.

29 MR. VAHIDY:

30 I am Saleem Vahidy. I'm Chief of the Witness and Victims Support Section.

31

32 We have been talking, like An said, during this period with the witness. And as she said in spite of
33 court familiarisation, she is still a bit overwhelmed and a bit scared about the whole process of
34 testimony. But she insisted that she does not like to take names of places and people because it
35 would reveal her identity, so we suggested, via media, and suggested that, "if there is a major concern
36 you ask the judge that" -- if she could reply in writing and she tells it to the support person next to her
37 and if the person -- this was just a possible suggestion to expedite the proceedings, and it was

1 discussed by the counsel, and I think they will have their own position on it and perhaps be in a better
2 position to help you decide.

3 MR. PRESIDENT:

4 Well, thank you.

5
6 Do I -- do we have any comments from the first Accused? We would like to start from the first
7 Accused -- from the first Accused, please.

8 MR. JORDASH:

9 As we understand the suggested procedure, in effect, it would be the witness being asked to confirm
10 in some way the written down location of where she or he lives or where he or she would be testifying
11 about. It is of some concern to the Defence for Mr. Sesay since it doesn't seem to present the
12 Defence with a proper opportunity of testing whether that piece of evidence, as confirmed through this
13 procedure, is in fact correct and we are not, of course, just talking about where the witness lives, but
14 also where the witness will be -- where her evidence concerns. And this particular witness mentions
15 several villages in a particular area. The procedure adopted, in our respectful submission, or the
16 procedure suggested doesn't allow the witness -- Defence, it seems, to properly investigate whether
17 that witness is telling the truth or whether in fact that witness is seeking, in some way, to hide behind
18 this procedure. That would be our concern.

19 MR. PRESIDENT:

20 Second Accused, please.

21 MR. BROWN:

22 My Lord, the Defence for the Accused Kallon is strongly opposed to this proposed procedure. Names
23 and places are important. For a witness who cannot write or read to then have answers given by any
24 other person seated in the box, answers on paper which this witness cannot affirm or avow by virtue
25 of not being able to read or write with the intermediation of another person, is attenuating cross-
26 examination in a way that defies either counsel's ability to press the point and seek credible --
27 credibility assessment by the fact finder, but also to do subsequent following up examination. We are
28 opposed and think that it flies in the face of our opportunity to cross-examine effectively.

29 MR. PRESIDENT:

30 Third Accused.

31 MR. CAMMEGH:

32 Your Honour, in our submission, it flies in the face of the Defendants being able to receive a fair trial.
33 There are two very brief points I'd like to make. The first one, and his Honour Judge Thompson I think
34 earlier referred to the ill-advised notion of leading questions. Of course leading questions cut to the
35 fundamentals of prosecution. They should not be allowed and that is precisely what will be imported
36 into this Chamber if the names are written on a piece of paper. The witness in effect will be -- being
37 led.

1 The second point that I wish to make is that this is a publicly constituted Chamber.

2 MR. PRESIDENT:

3 If I understand the procedure as it is outlined, it is the question of the witness getting the translation
4 through and then instead of naming -- instead of naming the place, you know, on the microphone --

5 MR. CAMMEGH:

6 Yes.

7 MR. PRESIDENT:

8 -- at least giving the name for it to be written and submitted, you know. That is the way I perceive it. I
9 don't know.

10 MR. CAMMEGH:

11 Well, if I have misunderstood the position, then I fall back on the point that Mr. Brown has just made
12 for the same reasons that he's made it.

13
14 The second point that I make is a rather more constitutional importance, and it is that this is a publicly
15 convened or constituted special court. The purpose of it, *inter alia*, is for this trial to be heard in public
16 in order that not just the public of Sierra Leone but the world can see justice being done here. If for
17 reasons of nothing more than convenience, and I say that with the greatest of respect to this victim,
18 but if for no other reason than convenience for the Prosecution, we reach a position where the naming
19 of individual or places are facilitated in a closed session; in other words if this Chamber is -- becomes
20 seized of the ability to pick and choose as to what evidence goes into the public domain and when it
21 doesn't, then that, in my submission, fundamentally cuts across the entire purpose of this Trial
22 Chamber. And it really would be wrong to set a precedent at this stage for this Court to hear evidence
23 in such a way. And so we are very much opposed to the suggestion, however -- however laudable it
24 may appear to be, it simply won't do. We object to it.

25 MR. PRESIDENT:

26 Thank you. The Prosecution. Can we hear from the Prosecution, please.

27 MS. TAYLOR:

28 If I can just respond to the issues about leading questions first. To my understanding the procedure
29 was exactly the same as Your Honours, and that is that there would be no leading of the identity of
30 the location through this witness.

31
32 What my learned friends for the Defence have not said is that in relation to this specific witness -- and
33 we are dealing with this specific witness, we are not dealing with the general application, only in
34 relation to this witness.

35 MR. PRESIDENT:

36 But we do not know how many of them you have in stock. That is the suspense in which we are. I'm
37 sure the Bench and also the Defence is -- we don't know how many of these witnesses are likely to

1 come. That's our concern.

2 MS. TAYLOR:

3 No, we do not, Your Honour, and wouldn't a minute suggest that if a solution can be found for one
4 witness it would necessarily be the same solution for all witnesses. As Your Honours have said this
5 issue is going to be taken upon a case by case basis.

6
7 I have not heard any of my friends for the Defence say that the location of the events to which this
8 witness will testify are contentious. If they are contentious and the Defence wish to cross-examine
9 that the events to which she will testify did not occur in the place where she says that they occurred,
10 then a solution must be found to allow my friends to cross-examine on that issue. If the location is not
11 contentious, then my learned friends are deprived of no opportunity to test an important point for the
12 Defence, because cross-examination must be to a point. It's not just simply testing credibility on
13 every issue that you can think of, there has to be a point to the cross-examination and if a location is
14 not contentious, then there is no reason to seek that the Defence would be deprived of an opportunity
15 on a material effect.

16
17 As regards the public nature, it would be my submission that a very small portion of this witness's
18 evidence, which will be given either on paper or in closed session, does not rob these proceedings of
19 their essentially public nature.

20
21 As is apparent from Your Honour's decision as to protective measures, Your Honours accept the
22 position that there is a tension between the right of the Accused to a full public trial and your
23 obligation to protect the witnesses who come before this trial. And depending upon the type of
24 witness and the special circumstances, different levels of protection had been given and Your
25 Honours have made a general rule as to categories of evidence.

26
27 We now find ourselves in a position where a particular witness is willing to testify, has told Your
28 Honours' delegate that she is willing to testify, but that she has a great fear about the naming of
29 names. And as my friends for the Defence would appreciate, there are not that many names in this
30 statement. And it would be my submission that if the person who is sitting next to this witness in the
31 box is sworn in to faithfully transcribe what she is told, if it comes to the mention of a place name then
32 that place name can be written down and it can be passed to my friends -- my learned friends, it can
33 be passed to the Prosecution, and it can be passed to Your Honours. If then during cross-
34 examination -- before I move to that -- at that point this Chamber is still public. The nature of this
35 witness's evidence goes to the public. The events to which this witness will testify will still be public.
36 The only thing that will not be public is a place name.

37

1 If it comes to cross-examination and if my friends, who had had this statement and must be prepared
2 for their cross-examination, think that the location is a contentious issue and it is something that they
3 would suggest to the witness she is not telling the truth about or she is mistaken about and that matter
4 is crucial to the Defence, then those portions of the cross-examination can be done in closed session
5 and the rest of the cross-examination could be done in open session.

6
7 It seems to the Prosecution that where -- we have gone through this process and Your Honours'
8 delegate has said this witness is willing to testify but she has a real fear about being identified from
9 place names, that the solution that has been proposed is both workable for the witness, workable for
10 the Court, and in keeping with the rights of the Accused to challenge anything that they might see as
11 being contentious and also to have a fair and public hearing.

12
13 If Your Honours please.

14 MR. PRESIDENT:

15 Yes, Mr. Brown, we saw you have been on your feet for quite some time. Let's hear you.

16 MR. BROWN:

17 Yes, I just wish to address a legal element that I think my learned trial adversary introduced into this
18 cause that is not appropriate from a legal point of view, and that is the question of contentiousness. I
19 don't think Article 17 turns at any such concept. As we stand here now, other than the
20 representations accepted by our learned adversaries, I don't know that this person is indeed
21 Witness 214. I mean, we know that only because we've been told. That's how little we know about
22 the record. Times and places and dates and names are the hoax under which real role testimony is
23 echoed, and in this case where they've represented that his person has relevant testimony against
24 Morris Kallon, it's got to be because certain things happened at certain places. And so I wanted to be
25 clear in terms of the analysis here that there is no *a priori* analysis of what is contentious required for
26 us to say of the rights of the Accused under Article 17 are limited by this procedure and I just wanted
27 to differ with that because I think it's an undermining of the fundamental question that is at stake here.

28 MR. PRESIDENT:

29 Well --

30 MR. BROWN:

31 Can I sit down because I thought you were still addressing me?

32 MR. PRESIDENT:

33 No, no, no. Mr. Brown, you are fine.

34
35 Mr. Jordash, yes.

36 MR. JORDASH:

37 May I just pick up from what Mr. Brown has said, just submit the following: it's very difficult for the

1 Defence to identify, prior to a witness giving evidence, exactly what is or not contentious. Potentially
2 everything is contentious, notwithstanding an initial assessment on paper. A witness may not confirm
3 the evidence which is in or her statement. The evidence may become contentious as the evidence is
4 given. It's not simply as the Prosecution would have an issue of whether the location is contentious,
5 it's an issue as to what evidence surrounding or within that location might be contentious. And looking
6 at this particular witness's statement, it's a statement which is littered with locations.

7
8 In my respectful submission, if the suggestion of the Prosecution was taken up, effectively most of this
9 evidence would potentially be in closed session because it would be very difficult to cross-examine on
10 the contents of the statement and these locations, going all the way through it without breaching the
11 confidentiality which the Prosecution seeks.

12
13 Those are my submissions, Your Honour.

14 MR. PRESIDENT:

15 Thank you.

16 MR. CAMMEGH:

17 Just briefly, Your Honour. I agree with what my two learned friends have said. In particular with
18 reference to location, I would have hoped that it goes without saying that the location is contentious,
19 as far as we are concerned, in particular, in Mr. Gbao's case of course one of the charges that he was
20 in charge in Makeni. That might not be relevant to this particular statement, but in principle of course
21 it is. The location is always contentious to us.

22
23 I am reliably informed by Mr. O'Shea that the rules pertaining to closed sessions -- I'm sure I don't
24 need to tell Your Honour this, but it's in Rule 79, the various preconditions have to be met. If I can
25 refer to them: "The Trial Chamber may order that the press and the public be excluded from all or
26 part of the proceedings for reasons of; one, national security; or, two, protecting the privacy of
27 persons as in cases of sexual offences or cases involving minors; or, three, protection the interest of
28 justice from prejudicial publicity."

29
30 Now, I really find it difficult, in my submission, to see how this scenario can be placed within the
31 context of those three preconditions.

32 MR. PRESIDENT:

33 Even in the protection of --

34 JUDGE THOMPSON:

35 You mean even in the interest of justice?

36 MR. PRESIDENT:

37 Even in protecting the interest of justice --

1 JUDGE THOMPSON:

2 *[Inaudible]*

3 MR. PRESIDENT:

4 *[Overlapping microphone]* of the witness -- with the --

5 JUDGE THOMPSON:

6 Would that not be broad enough to encompass a situation like this?

7 MR. CAMMEGH:

8 No, as I understand it, the Prosecution is not is citing prejudicial purposes, you see, they are simply
9 saying the witness is afraid in case her identity be discovered. And there --

10 MR. PRESIDENT:

11 But it is giving, you know, the disclosure of locations, you know, a prejudicial publicity that may, that
12 may -- I'm not saying we are there yet, you know -- that may lead to this particular case qualifying, you
13 know, for a closed session as specified by the Rules.

14 MR. CAMMEGH:

15 Well, if I can deal with that point --

16 JUDGE THOMPSON:

17 But before you deal with that I would like you to address -- perhaps in dealing with that to say, based
18 on the jurisprudence whether, the interest of justice from the judicial publicity is a limited concept. Are
19 the categories limited in terms of definition?

20 MR. CAMMEGH:

21 In practice, Your Honour, I'd suggest that they must certainly have to be limited because --

22 JUDGE THOMPSON:

23 Are they exhaustive?

24 MR. CAMMEGH:

25 Well, if the crown or the Prosecution are to waive the words "freedom from prejudicial publicity" in
26 respect of every single witness, then I'm sure they could mount an argument for every single witness
27 in this case to give evidence pursuant to protective measures, in particular, in closed session. Now,
28 it's a question of degree. And for that reason I come back to his Honour Judge Itoe's point in relation
29 to limiting the powers of the Court to implement this Rule. It really has to be a dividing line which is
30 very finely determined on a case by case basis.

31

32 Now, the problem that we have here, if I might put it this way, is that we may be setting a precedent
33 for any witness who claims to be afraid. I say this as I've said before with great respect to this
34 witness, it basically may be writing a blank cheque for the Prosecution to invoke this provision every
35 time the witness says they are afraid, thus robbing the public, not just the Defendants, but the public,
36 of the due process of a publicly heard trial. All I ask is that this provision -- and it can only be the
37 intention of the legislature to have had this provision sparingly used. I ask that this provision is most

1 sparingly used.

2

3 And I refer -- and I think it was His Honour Judge Thompson who said earlier on today that really if we
4 reach a point where a witness is too afraid to -- who is unable to testify, we really have to come to the
5 difficult decision "should this be allowed to go on much further?"

6

7 We remind ourselves of Your Honours repeated warnings and encouragements for us to observe
8 expediency. How much time must we spend on making these decisions where it's quite clear that this
9 witness is incapable of providing the testimony on her own behalf.

10 JUDGE BOUTET:

11 Counsel, we are not in a decision-making purpose of having to determine closed session. There were
12 other proposals on the table.

13

14 Further more, I would say I do not agree with your cause. This witness, through the report we've had,
15 is prepared to testify -- would like to testify. I would like you to appreciate that we are sitting in
16 Freetown, in Sierra Leone, in a very difficult situation. You cannot compare the situation with any
17 other situation where international tribunals are sitting and, therefore, this Court is very much aware of
18 that difficulty. And we have to make sure that we allow witnesses that are prepared and willing to
19 come to testify are given every possible latitude to testify, so your approach is not to try to exclude
20 witnesses because they may fear and have some apprehension. It's exactly the opposite. So I will
21 not certainly sustain your position in this respect.

22

23 And again, you are arguing about closed session, we've not made a decision about closed session.
24 The proposal was not to go in closed session but to allow the witness to testify through a means
25 where the witness would give the name of the place or location or whoever it is to the person
26 accompanying her, and that they would be provided to everybody. We were not in a closed session in
27 that scenario, it's all in public.

28

29 The next step may be -- that's an option that is available may be going into closed session but that's
30 not where we are at this particular moment.

31 MR. CAMMEGH:

32 Well, I hear what Your Honour says. I don't think I can improve on what I have said and I will leave it
33 there.

34 JUDGE THOMPSON:

35 Well, I want to assure you that I was not in any way suggesting that whatever procedure we adopt as
36 proposed, if we adopt it at all, should in fact be of general applicability. I don't share that thinking. I
37 think every case would have to be determined on its own merit. So, even if we are inclined to accept

1 what the Prosecution is proposing, I don't think we -- it would be fair to say that we are in fact laying
2 down a general rule that would be applicable to all witnesses who find themselves in the same
3 position. And the Court is free to think of other options, to adopt other options. But following from
4 what my learned brother Boutet said, I am in agreement also with the Defence that whatever
5 procedures we adopt should not unduly prejudice or disadvantage the Accused persons in terms of
6 their right to fair trial.

7 MR. CAMMEGH:

8 I'm obliged to that, Your Honour.

9 *[Trial Chamber confer]*

10 MR. PRESIDENT:

11 Well, I'm sorry to have kept you waiting, it's all housekeeping.

12
13 The Chamber does not want to travel the road, you know, traced by the Prosecution. The Chamber is
14 of the opinion that locations are very material in terms of the indictment that has been drawn up
15 against the Accused persons, and I recollect that Mr. Jordash -- I haven't seen the statement --
16 Mr. Jordash has said, you know, that most of the statements of TF1-214, that is this witness, has a lot
17 of mention of locations. There are some locations which are mentioned there. So it is for the
18 Prosecution to organise itself, you know, for the evidence of this witness to be taken in the normal
19 form and the normal circumstances that evidence would ordinarily be taken. And I'm sure, you know,
20 that if the Witness Protection Unit also makes a further effort, this witness would be reassured of her
21 safety and that she could testify without any particular fear that she is now -- any particular fears, you
22 know, fear or fears that she is now entertaining.

23
24 So in the light of this, we would be adjourning this matter to tomorrow at ten o'clock in order to take
25 this witness on the understanding, of course, that the Witness Protection Unit would go the length of
26 at least assuring this witness that she is in safe hands. I mean, she doesn't mind all the reds and the
27 blacks, you know, that are surrounding her. It is normal -- for her background it is normal; I
28 understand. I come from her own part of the world. I understand that she should be scared because
29 coming into this room, I don't think if you brought a villager from my own village he will be able to
30 stand the lights, just the lights alone. So we are asking the head of the Witness Protection Unit and
31 Madam An Michels to reassure this lady, this witness, that she is safe and that she can testify without
32 any fear of reprisal or any fear, you know, to her life. I think all we need is basically the evidence
33 which she has to give to us, and after that, we should be able, you know, to proceed. I don't think --
34 it's a question of building around her, you know, some confidence measures which I think will
35 reassure her that she is in a safe environment. She is not in the sort of an environment where she
36 was before, you know, coming here.

1 But this, again, I was -- the Prosecution should be ready every day with at least two witnesses, you
2 know, waiting because if we had another witness we would have taken this witness and maybe
3 adjourn this other witness. So we would like the Prosecution to come not only with this witness, but
4 with maybe another witness, depending on the length, or two because it's good to have them waiting
5 so that we don't lose time.

6 MS. TAYLOR:

7 Indeed, Your Honour. That point is taken and shortly after Your Honours left the Bench I was actually
8 informed that the witness that the Prosecution intends to call after this witness would have been
9 available this afternoon, and that was something which I was not aware. But the Prosecution takes,
10 Your Honours' comments on board and will ensure that adequate witnesses are available.

11 MR. PRESIDENT:

12 Well, learned counsel, I think we have to thank you for your understanding in this very, very difficult
13 task that we had to face today and we will continue to count on your understanding and your
14 cooperation in this regard. We would in this spirit, you know, adjourn to tomorrow at ten o'clock when
15 we would again take this witness and possibly, you know, another witness. Thank you.

16

17 The Court will rise.

18 *[Whereupon the hearing adjourned at 5.22, p.m. to be*
19 *reconvened on Wednesday, the 14th day of July 2004, at*
20 *10.00 a.m.]*

21 *(Pages 44 to 57 by Gifty C. Harding)*

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CERTIFICATE

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

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

Roni Kerekes

Susan G. Humphries

Gifty C. Harding