

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO.: SCSL- 04 – 15 - PT  
TRIAL CHAMBER I

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

MONDAY, 19 JULY 2004  
10.20 A.M.  
CONTINUED TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding  
Bankole Thompson  
Pierre Boutet

For the Registry:

Ms. Maureen Edmonds  
Mr. Geoff Walker

For the Prosecution:

Ms. Lesley Taylor  
Mr. Christopher Santora  
Ms. Sharan Parmar  
Mr. Alain Werner

For the Accused Issa Hassan Sesay:

Mr. Wayne Jordash  
Ms. Sareta Ashraph

For the Accused Morris Kallon:

Mr. Raymond Brown  
Mr. Melron Nicol-Wilson

For the Accused Augustine Gbao:

Mr. Andreas O'Shea  
Mr. John Cammegh

Court Reporters:

Mr. Momodou Jallow  
Ms. Gifty C. Harding  
Ms. Susan G. Humphries  
Ms. Roni Kerekes

I N D E X

WITNESS/ES

For the Prosecution:

WITNESS TF1-064

Examined by Mr. Santora .....	44
Cross-examined by Mr. Jordash .....	69
Cross-examined by Mr. Brown.....	79

1 [Monday, 19 July 2004]

2 [Accused Sesay and Kallon entered court]

3 [Accused Gbao not present]

4 [Open session]

5 [Upon commencing at 10.20.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 MR. PRESIDENT:

10 Well, we hear there were technical problems, that is why we are starting at about this time. I hope  
11 that they've been sorted out. We've been informed that there were some interpreters to be sworn in  
12 this morning. Yes, can the Court Management proceed to swear in the interpreters, please?

13 MS. TAYLOR:

14 Your Honour, if I may? Just before that is done, there maybe no need to do so. The interpreters that  
15 were due to be sworn in are interpreters in the Loko language, and those interpreters were required  
16 not for the witness that is due to be called first this morning, but for Witness TF1-155 who is to be the  
17 next witness. I have informed my learned friends this morning that the Prosecution is now  
18 withdrawing this witness from its list. This witness is simply unable to testify before this Chamber and  
19 so there would be no need for interpreters of the Loko language. She was to be the only witness that  
20 would speak in that language during this session of the trial.

21 JUDGE BOUTET:

22 What is the TF number for that witness?

23 MS. TAYLOR:

24 155, Your Honour. She is Witness No. 6 on the list that we have filed.

25 MR. PRESIDENT:

26 Well, I think the stand we would take is to swear them in. Let's swear all of them in and when the time  
27 comes we would do the necessary adjustments. How many of them are there, please?

28 MS. EHRET:

29 Four.

30 MR. PRESIDENT:

31 Four of them. I think you can swear all of them in, you know. We've taken note of what the  
32 Prosecution has said. I hope that the Defence has no observation of what the Prosecution has said  
33 because they've talked of withdrawing this witness for now.

34 MR. JORDASH:

35 No observation at this stage.

36 MR. PRESIDENT:

37 Right, okay. But swear them in and we will know who goes into the cabin. How many were to testify

1 in Xxxxx? Pardon me. Okay, go ahead, please, go ahead. Yes, go ahead.

2 MS. EDMONDS:

3 Interpreters, please take your oath.

4 [Interpreters sworn]

5 MR. PRESIDENT:

6 Yes, can you please call your witness.

7 MS. LESLEY:

8 Your Honour, the Prosecution is prepared to do so. There is this one issue in relation to this witness  
9 that I want to bring to Your Honours' attention, and then there is another matter in relation to another  
10 witness that I would like to raise, but that matter is when Your Honours wish to deal with that  
11 secondary issue.

12  
13 The issue concerns the witness that the Prosecution is just about to call which is Witness TF1-064.

14 On the 8th of July, the Prosecution served on the Defence a supplemental --

15 MR. PRESIDENT:

16 You said TF1 --

17 MS. TAYLOR:

18 064.

19 MR. PRESIDENT:

20 Yes.

21 MS. TAYLOR:

22 On the 8th of July, the Prosecution served on the Defence a supplemental statement of information  
23 disclose by the witness to the Prosecution for the first time on the 6th of July. That informed disclosed  
24 that she was a victim of sexual violence. When the Prosecution filed, in accordance with Your  
25 Honours' order, the application for renewed protective measures, witness 064 was not listed as a  
26 category A witness; that is, a witness who is subject to sexual violence. According to the information  
27 now in the possession of the Prosecution and the Defence, she would properly fall into that category,  
28 and in accordance with Your Honours' ruling in relation to category A witnesses, the Prosecution  
29 would now ask that the voice distortion equipment be turned on for this witness. I understand that it  
30 causes no technical difficulty; it is merely flicking the switch. But now that the Prosecution is in  
31 possession of material that it hadn't been in possession at the time that motion was filed, this witness  
32 would have been listed as a category A witness, and the Prosecution now asks Your Honours leave  
33 that she be regarded as a category A witness in terms of protective measures and that the voice  
34 distortion equipment be used.

35 JUDGE THOMPSON:

36 Defence.

37

1 MR. JORDASH:

2 There is an issue generally and specifically about the supplemental statement which Your Honours  
3 may consider that you would like to hear before addressing this issue. The Prosecution served an  
4 additional statement on Friday and it's about this additional statement -- a supplemental statement  
5 which relates to the first trial period witnesses, and since we are dealing at the moment with  
6 supplemental witness statements, it might be productive to hear that first. On the face of it, I have no  
7 objection to the Prosecution's application. What I have an objection to in due course is the  
8 continuation of these supplemental statements.

9 JUDGE THOMPSON:

10 Okay, counsel for the second Accused, carry on.

11 MR. BROWN:

12 Your Honour, I join in that concern expressed by counsel and, indeed, I would think that it might have  
13 been necessary to re-categorise this witness before the application concerning late statements  
14 because the allegations concerning sexual misconduct take place only in or reflected only in this  
15 supplemental statement. So I agree both as to counsel's suggestion as to the sequence and as to the  
16 importance of this issue.

17 JUDGE THOMPSON:

18 Learned counsel for the third Accused.

19 MR. O'SHEA:

20 Well, Your Honours, I don't want to say I have no objection or that I have an objection. I want to just  
21 raise this with the Court because I am not sure what the thinking of the Court was behind the voice  
22 distortion in relation to sexual matters, and it may be relevant and that's the reason why I raised this.  
23 It would appear that this extra statement in relation to Witness TF1-064 deals with an alleged offence  
24 not as between a rebel, an alleged subordinate of one of the Accused and the victim, but between  
25 victim and another victim. And I suppose it is relevant to inquire what is the thinking behind voice  
26 distortion for sexual victims. If it is because it's felt that the individual responsible for the wrongful  
27 sexual act is going to be highly motivated to go after the victim, then it doesn't apply here. If, on the  
28 other hand, the concern is the stress of the witness in the witness box, then that's another matter,  
29 although for my part, I still haven't establish the link in my mind between the stress of the witness in  
30 the witness box and voice distortion. So I only flagged up that issue for Your Honours consideration in  
31 dealing with this matter, not really knowing fully what thinking behind voice distortion is in sexual  
32 matters.

33 JUDGE THOMPSON:

34 Prosecution, do you want to clarify that aspect for Mr. O'Shea?

35 MS. TAYLOR:

36 Yes, and we will do so gratefully with Your Honours words. The decision of Your Honours –  
37

1 JUDGE THOMPSON:

2 Yes.

3 MS. TAYLOR:

4 -- on the protection motion for modification of protective measures for witnesses, dated 5th July 2004,  
5 deals with all of the argument both from the Prosecution and from the Defence concerning voice  
6 distortion in relation to our category A witnesses, that is witnesses of sexual violence.

7 Paragraphs 33 of Your Honours' judgment deals with both category A and C, but just limiting to  
8 category A, Your Honours said: "Regarding category A, victims of sexual violence, the Prosecution  
9 pointed out the re-traumatisation and rejection by the victim's family community and the possibility to  
10 recognise the voice of the witness." You then have a sentence by category C witnesses, and in  
11 relation to both, Your Honours go on to say, "In the opinion of the Trial Chamber, these submissions  
12 once more, demonstrate convincingly the risk for the security and danger to which both categories of  
13 witnesses could be exposed if disclosed and the requirement to grant appropriate measures for their  
14 protection." So it's an issue of re-traumatisation and the impact to the witness testifying as oppose to  
15 any particular identification of the actual perpetrator of the alleged sexual violence. And it is because  
16 of those matters that the Prosecution now request the witness, 064, be allowed to use the voice  
17 distortion equipment.

18 JUDGE THOMPSON:

19 Thank you. Would Learned Counsel, O'Shea sit down? Are you finished?

20 MR. O'SHEA:

21 I just want to say that I'm grateful for that indication.

22 JUDGE THOMPSON:

23 Good, thanks. And learned counsel for the Prosecution, if we grant the application, do we have the  
24 technology in place right now?

25 MS. TAYLOR:

26 The Prosecution, in anticipation of making this application, contacted the technical staff associated  
27 with the Court and we were told that it is simply flicking the switch that would allow the voice distortion  
28 equipment to come or be turned off. So it will cause no interruption to the Court proceedings.

29 JUDGE THOMPSON:

30 It would not be disrupted.

31 MS. TAYLOR:

32 That's correct.

33 JUDGE THOMPSON:

34 Thank you. Sit down.

35

36 Learned counsel on both side, at this point, the Chamber is minded to reserve any ruling on the issue  
37 of the supplemental nature of statements, and at this point in time we would like to rule on the re-

1 categorisation and the need for voice distortion. And we are granting the application of the  
2 Prosecution for the re-categorisation and also the use of the technology. But from an abundance of  
3 caution, the Court will --

4 MR. PRESIDENT:

5 We will rise and make sure that the technology is in place. Yes, Mr. Jordash.

6 MR. JORDASH:

7 The issue of the supplemental statement which relates to TF1-060 which was served at 5:20 on  
8 Friday last, I would --

9 MR. PRESIDENT:

10 5:20 on Friday?

11 MR. JORDASH:

12 Yes. I would respectfully request that Your Honours hear the application with regard to that reason,  
13 the reason being this, that within that supplemental statement, there is a fresh allegation against  
14 Mr. Sesay which --

15 JUDGE THOMPSON:

16 I think it would be appropriate if we come back and hear that application, not at this stage.

17 MR. JORDASH:

18 Certainly. I was just requesting --

19 JUDGE THOMPSON:

20 You are putting us on notice.

21 MR. JORDASH:

22 As soon as possible.

23 JUDGE THOMPSON:

24 Very well.

25 MR. JORDASH:

26 Thank you.

27 JUDGE THOMPSON:

28 That's okay.

29 MR. PRESIDENT:

30 All right. The Court will rise for 10 minutes.

31 [Recess taken at 10.40 a.m.]

32 [On resuming at 10.54 a.m.]

33 MR. PRESIDENT:

34 Yes, before we proceed we would like to hear Mr. Jordash on the application he was intending to  
35 make before we rose.

36 MR. JORDASH:

37 It's an application to exclude the supplemental statement of TF1-060.

1 JUDGE BOUTET:

2 60 or 64?

3 MR. JORDASH:

4 60. As I understand, Your Honours have been given a copy of that additional statement.

5 MR. PRESIDENT:

6 We want to see what you have. Let's see what you have. I mean, we want to make sure that we are  
7 talking about the same thing because --

8 MR. JORDASH:

9 It starts of with when the witness --

10 MR. PRESIDENT:

11 You say you want that excluded.

12 MR. JORDASH:

13 Indeed.

14 JUDGE THOMPSON:

15 Let me clarify something. Is that witness testifying today?

16 MS. TAYLOR:

17 No, Your Honour. That witness is listed No. 10 on the list of anticipated witnesses to testify at the end  
18 of this week.

19 JUDGE THOMPSON:

20 Would there be any prejudice if we entertain that application at some subsequent stage?

21 MR. JORDASH:

22 Certainly -- I beg your pardon.

23 JUDGE THOMPSON:

24 Would there be any prejudice?

25 MR. JORDASH:

26 Certainly.

27 JUDGE THOMPSON:

28 You articulate that first.

29 MR. JORDASH:

30 The first statement of that witness, and I can put it quite simply, does not mention at all Mr. Sesay.

31 The second statement not only mentions him, but raises a fresh allegation which supports a different  
32 count, Count 14. If Your Honours were to rule against this application, then the Defence will have to  
33 find our investigator because we know roughly where he is, but not exactly where he is, in order to  
34 have him attend Kenema to investigate this allegation. So the time, I would respectfully submit, to  
35 deal with this must be now because if Your Honours are against me then the clock is ticking for the  
36 time we've got remaining to investigate this allegation before the witness is called to testify.

37



1 MR. PRESIDENT:

2 Mr. Jordash, who is this witness? You say TF –

3 MR. JORDASH:

4 TF060.

5 MR. PRESIDENT:

6 TF1-60?

7 MR. JORDASH:

8 Yes.

9 MR. PRESIDENT:

10 Please, let me have it right? TF1 –

11 MR. JORDASH:

12 60.

13 MR. PRESIDENT:

14 060?

15 MR. JORDASH:

16 Yes.

17 MR. PRESIDENT:

18 That you are making this application to exclude the supplemental statement --

19 MR. JORDASH:

20 Yes.

21 MR. PRESIDENT:

22 -- of witness TF1-060?

23 MR. JORDASH:

24 Yes.

25 MR. PRESIDENT:

26 Go on, Mr. Jordash.

27 MR. JORDASH:

28 The application is made because in our submission, to allow that evidence to be adduced this week  
29 would be a breach of Article 17 of the Statute, and the right of Mr. Sesay particularly, to be informed  
30 promptly of the nature and cause against him, and more importantly in this regard, to give him  
31 adequate time to prepare his defence. It is also a breach of Rule 66, we would submit. In so far as  
32 the Prosecution have or are seeking to introduce new evidence after the date ordered by this Court to  
33 be the last date for the Prosecution to serve witness testimony without seeking a ruling from the  
34 Chamber, that they had shown good cause, pursuant to Rule 66.

35

36 If I can put the application in some context, the redacted witness statement of TF1-060 was originally  
37 served on the 2nd of June 2003. The Prosecution indicated in updated compliance report --

1 MR. PRESIDENT:

2 The 2nd of June 2003?

3 MR. JORDASH:

4 Yes.

5 JUDGE THOMPSON:

6 That is the first one served?

7 MR. JORDASH:

8 Yes, Your Honour, served on the 2nd of June 2003, and on the 11th May 2004, the Prosecution, in  
9 their updated compliance report, indicated that that witness would testify in relation to counts 1, 2, 3,  
10 4, and 5, 6 and 8 and 11 and 12. That original statement, as I have mentioned, makes no direct  
11 reference to Mr. Sesay, and moreover, makes no reference to pillage, Count 14, nor was it indicated  
12 by the Prosecution in their compliance report that this witness would testify, and that evidence would  
13 support Count 14.

14 JUDGE THOMPSON:

15 Count 14 is a pillage count?

16 MR. JORDASH:

17 Yes, Your Honour. The supplemental statement, as Your Honours are aware, were served on Friday  
18 last, the 16th of July and as Your Honours will observe from the statement, Mr. Sesay is now placed  
19 within Kenema and there is a specific allegation made against him as regards stolen property, and  
20 there was a specific allegation made against him in relation to an assault on an officer in charge of the  
21 secretariat and Your Honours would observe the final paragraph –

22 JUDGE THOMPSON:

23 Are the allegations the same, paragraphs 3, 4, and 5? Are we on the same wave length? Which  
24 paragraphs are these allegations?

25 MR. JORDASH:

26 The second paragraph starts on the --

27 MR. PRESIDENT:

28 Please, please, Mr. Jordash, the letter you have before you has how many paragraphs?

29 MR. JORDASH:

30 It has --

31 MR. PRESIDENT:

32 From the first which is just one line.

33 MR. JORDASH:

34 Including the first one line, the paragraphs are five.

35 MR. PRESIDENT:

36 Five?

37

1 MR. JORDASH:

2 Yes.

3 MR. PRESIDENT:

4 So we are reading from the same document?

5 MR. JORDASH:

6 Yes.

7 MR. PRESIDENT:

8 Okay.

9 JUDGE THOMPSON:

10 In other words, the allegations are in 3, 4 and 5?

11 MR. JORDASH:

12 Yes, Your Honour.

13 JUDGE THOMPSON:

14 You could say specific allegation?

15 MR. JORDASH:

16 Specific in so far as they make specific allegation vague in so far as the detail is, we would submit is  
17 lacking. It would be our submission that this statement could no way be classified as a clarification of  
18 the previous statement, nor has it in any real sense of the word an expansion of the evidence  
19 contained in the first statement. It is a new statement, with new allegations, new alleged crimes,  
20 supporting a new count, Count 14.

21

22 We would submit that the Prosecution have breached the letter of Rule 66. They were ordered by  
23 Your Honours to serve statements and the evidence they were seeking to rely upon by the 26th of  
24 April 2004. Your Honours will appreciate that Rule 66 does allow the Prosecution to serve further  
25 witness statements upon a showing of good cause, pursuant to Rule 66. The purpose of the Rule, we  
26 would submit, is clear. It limits the Prosecution's case, and gives effect more importantly to Article 17  
27 of the Statute. And to protect the rights within that Article is that the Defence, in a nutshell, have the  
28 case outlined against them with clarity and to have adequate time and facilities to address their case,  
29 and specifically to investigate it so as to rebut allegations contained therein.

30

31 This statement is a particularly stark example of a number of supplemental statements which have  
32 been served on the Defence in relation to the witnesses to be called in this first trial period. And it's  
33 particularly stark because if Your Honours put a rule against this application, and to allow the  
34 Prosecution to call this evidence this week, it would be practically impossible, we would submit, to  
35 investigate it in any depth.

36 JUDGE THOMPSON:

37 You said stark example of what?

1 MR. JORDASH:

2 Of the dangers inherent in the Prosecution's approach which appears be to serve witness statements,  
3 and then to go back to their witnesses and obtain further statements, clarifications or additions, whilst  
4 in some cases, a witness will inevitably offer further clarification of an original statement. That seems  
5 to be a pattern developing here, where the Prosecution attend their witnesses both with counsel and  
6 the investigator present. And either, we don't know because we haven't been told, but either re-  
7 question them or during the process of reconfirming their statements, obtain additional clarifications,  
8 modifications, and in this case, additional statements. And it is a stark example, I would submit, of  
9 the real problems that this approach can and is causing firstly, the investigation and the Defence --  
10 possibility of the Defence investigating these fresh allegations so close to the time these witnesses will  
11 testify.

12  
13 But, secondly, and importantly, the right of the Accused to an expeditious trial. If Your Honours were  
14 to take the view that instead of excluding that, Your Honours would put the evidence back to another  
15 trial period, and if this were to happen regularly, we have a trial which extends already into the distant  
16 future, but with additional witnesses providing additional statements being put back to another trial  
17 period, the whole trial length is expanded according to the approach of the Prosecution. And that's  
18 why first of all, we would submit, the right approach respectfully, would be to exclude this evidence.  
19 It's not simply a case of an expeditious trial, not simply the case of investigating for the Defence; it's a  
20 case where the Prosecution's approach appears to be to their witnesses such that the formation of the  
21 trial potentially is ever changing. If the Prosecution continue to keep returning to their witnesses and  
22 obtaining further evidence, then this trial and it's structure and it's length will lie within the  
23 Prosecution's camp, and not within their compliance report of the 11th May 2004, which set out  
24 succinctly and clearly which witnesses would support which count, and thereby indicating clearly what  
25 the Prosecution case was.

26  
27 And perhaps, we had had a further example this morning of what may happen in relation to special  
28 measures. New allegations arise in a new witness statement that the Prosecution have to return to  
29 the Trial Chamber to seek re-categorisation of that witness. That is just perhaps a more technical  
30 consequence of the Prosecution's approach. We all complained, it's a breach of Article 17 and  
31 Rule 66.

32 JUDGE BOUTET:

33 Mr. Jordash, I would like to hear what you mean by a breach of Article 17.

34 MR. JORDASH:

35 Well, Article 17, as Your Honour appreciates --

36 JUDGE BOUTET:

37 Because I always understood 17(4)(a) to mean at the time a person is being charged.

1 MR. JORDASH:

2 Well, I rest my submission to mainly upon (4)(b), "To have adequate time and facilities for the  
3 preparation of his or her defence."

4 JUDGE BOUTET:

5 Okay, because I understood your position to be (a) and (b).

6 MR. JORDASH:

7 Well, insofar as the spirit of (a) --

8 JUDGE BOUTET:

9 No, no, I'm not talking about spirit, I'm talking of the language and case law on this issue.

10 MR. JORDASH:

11 Well, perhaps I should have been clearer and said spirit, to be informed promptly and in detail which, I  
12 would submit, goes beyond simply having an indictment which --

13 JUDGE BOUTET:

14 You have case law in support of that?

15 MR. JORDASH:

16 Not directly at hand. But my main submission is the impossibility of being able to prepare Mr. Sesay's  
17 defence.

18 JUDGE BOUTET:

19 I'm not talking of (b), I'm talking of (4)(a).

20 MR. JORDASH:

21 I do not have case law which says that that is restricted only to the indictment, but I would submit, it  
22 must as a minimum guarantee, apply across the board or else it would, in its detail be specified to the  
23 indictment. It must, I would submit, apply in its spirit, at least, to the obligation on the Prosecution to  
24 provide, in as much detail as they are able, the case against an Accused as soon as is possible.

25 JUDGE THOMPSON:

26 Could you clarify this to me? You're suggesting that the pieces of evidence contained in paragraphs 3  
27 to 5 amount to new charges or -- because I think you referred to Count 14, do they relate to Count 14  
28 or --

29 MR. JORDASH:

30 Looking at paragraph --

31 JUDGE THOMPSON:

32 Because the point, from what you said, it would seem as if these pieces of evidence relate to existing  
33 counts in the indictment.

34 MR. JORDASH:

35 Sorry, I have probably been unclear. It is an existing count.

36 JUDGE THOMPSON:

37 They relate to existing counts.

1 MR. JORDASH:

2 Count 14.

3 JUDGE THOMPSON:

4 And so it would not be correct to say that they amount to new or pieces of evidence upon which new  
5 charges can be based. That would not be correct.

6 MR. JORDASH:

7 No, it's new allegations --

8 JUDGE THOMPSON:

9 New allegations.

10 MR. JORDASH:

11 -- which support a different --

12 JUDGE THOMPSON:

13 Existing counts.

14 MR. JORDASH:

15 -- an existing count, but a different count to what that witness was intending to testify to.

16 JUDGE THOMPSON:

17 Yes. And the question then would be that this particular statement was first of all characterised as a  
18 supplemental statement, and they say it's also clarifications and additions which means that there was  
19 an original statement. But in your submission you are saying that this is an entirely new statement.

20 MR JORDASH:

21 It's entirely new in so far as -- it's not a new witness statement.

22 JUDGE THOMPSON:

23 But it can't be new because if it's already supplementing allegations in the original statement and  
24 relating to the existing indictment, it would be proper actually to characterise this as clarifications or  
25 additions, and that would not be the gravamen of your complaint. The gravamen of your complaint  
26 would seem to be based on alleged infringement of Rule -- Article 17 of the Statute of the Court,  
27 Rule 66. Am I getting you rightly, because to call this a new statement would not be right if we put  
28 things in their proper perspective. It's clearly, I mean, clarifications, additions, supplemental.

29 MR. JORDASH:

30 I would agree that it's additional, but I certainly wouldn't agree that it's clarification.

31 JUDGE THOMPSON:

32 Well, all right. Let me consider it is additional. It could be supplemental also.

33 MR. JORDASH:

34 Yes.

35 JUDGE THOMPSON:

36 But then the gravamen of your complaint to be that it's not so much the characterisation of the  
37 statement and the contents, the alleged infringement in your submission of Article 17 of the Statute

1 and Rule 66. Of course, from there you say that if we agree with you that there are infringements of  
2 those statutory provisions, then the statement must be excluded. Did I follow you rightly? In some  
3 parts, not all.

4 MR. JORDASH:

5 No, I think almost no, if not all.

6 JUDGE THOMPSON:

7 Yes, because the result you are asking for is exclusion of this piece of evidence, and of course, from  
8 my perspective the evidence seems to still target your client, instead of saying something more  
9 incriminating about your client.

10 MR. JORDASH:

11 Well, it says something directly incriminating and --

12 JUDGE THOMPSON:

13 Quite right.

14 MR. JORDASH:

15 -- and his original statement didn't.

16 JUDGE THOMPSON:

17 And, of course, there is no rule of law which says that because evidence from the Prosecution is  
18 incriminating it should be excluded, otherwise we would not be here.

19 MR. JORDASH:

20 Yes.

21 JUDGE THOMPSON:

22 But the question, of course, is that if you are able to satisfy us that Article 17 has been violated, and  
23 also Rule 66, whichever section has been violated, then you are saying to us the remedy open to the  
24 Court to give you is to suppress the evidence. In other words, apply some American doctrine of the  
25 exclusionary rule. Is that what you are saying?

26 MR. JORDASH:

27 Well, my first submission is that this evidence should be excluded because this witness is about to  
28 testify. The Defence have considered that evidence and are prepared for it and ready to  
29 cross-examine that witness. The Defence therefore ask for it to be excluded because the alternative  
30 would be, we would submit -- and this is my second submission -- would be for the Prosecution to  
31 accept to release a supplemental statement raising new allegations which they then must approach  
32 the Trial Chamber and show good cause as to why that evidence should be served and disclosed  
33 upon the Defence. That would be my second submission.

34 JUDGE THOMPSON:

35 Suppose they show good cause and we are of the view that they've shown good cause why the  
36 evidence should -- in fact, in compliance with Rule 66, to what extent is the Court permitted to provide  
37 some other remedy? If we agree that by the evidence coming in late your client has been deprived of

1 the opportunity of effectively preparing his case, won't the Court have another remedy than exclusion?

2 MR. JORDASH:

3 The second remedy, I would submit, would be to have the Prosecution show good cause, if they can,  
4 if –

5 JUDGE BOUTET:

6 But based on what? Because 60 (ii) (sic) and I will read to you, "Upon good cause being shown by  
7 the Defence or otherwise as ordered by a judge of a Trial Chamber either before or after the  
8 commencement of the trial upon good cause being shown by the Prosecution --" is that the portion  
9 you are relying upon? I'm quoting from, pardon me, 66(A)(ii). That's what you are basing your  
10 argument upon.

11 MR. JORDASH:

12 66.

13 JUDGE BOUTET:

14 (A)(ii)?

15 MR. JORDASH:

16 (A)(ii) yes, which apply to the Prosecution to disclose to the Defence copies of statements of all  
17 additional Prosecution witnesses whom the Prosecution intends to call to testify, but not later than 60  
18 days before the date for trial or as otherwise ordered by a judge of the Trial Chamber either before or  
19 after commencement of the trial. That they did on the 26th of April this year: "Upon good cause being  
20 shown by the Prosecution." What I would submit is that that should be read to include this type of  
21 statement which was not an additional witness per se, it's in effect an additional witness or a  
22 supplemental witness statement which basically provides the Prosecution with a fresh new allegation  
23 against the Accused. That Rule, and the purpose behind that Rule, I would submit, is to limit the  
24 Prosecution's case at a particular stage of the proceedings, so as to give the Defence the opportunity  
25 to prepare it's case, and to investigate it's case and to rebut, if it can, those allegations.

26 JUDGE BOUTET:

27 So you are making an analogy between statements of additional witnesses with additional statement  
28 of a witness that was already listed. That's your position?

29 MR. JORDASH:

30 Yes.

31 JUDGE BOUTET:

32 Okay.

33 MR. JORDASH:

34 Because -- we would submit that Rule 66(A)(ii) is a mechanism by which the Trial Chamber can  
35 supervise the Prosecution's case, supervise, pursuant to Article 17, equality of arms for the Defence.  
36 Without reading that into this Rule, the Prosecution could effectively double, triple or quadruple this  
37 case, simply by approaching each and every witness and asking them questions to elicit fresh new



1 allegations. If this were to happen in relation to every witness, this case could, without exaggeration,  
2 double and that's why I would invite this Trial Chamber to exclude the evidence first of all.

3  
4 But secondly, there is a bare minimum to characterise this supplemental statement as fresh  
5 allegations and read into Rule 66(A)(ii) the good cause clause and oblige the Prosecution to show  
6 good cause. And the reason why that is important, if Your Honours decide not to exclude this  
7 evidence, is that we can, or I should say the Trial Chamber can supervise what is going on with the  
8 Prosecution's investigation. Why is it witnesses suddenly announcing new allegations, and the  
9 Defence are quite concerned about this, particularly in relation to this witness, because as Your  
10 Honours will see from the final paragraph, the witness describes Mr. Sesay wearing full military  
11 uniform. A coincidence perhaps, but the same point was put to a witness last week by each and  
12 every Defence advocate here. The point being that the description of attacks in Kondembaia was  
13 carried out by men in military uniform. We would say, certainly Mr. Sesay says that they were AFRC  
14 and not the RUF and nothing to do with him.

15  
16 Now, I don't think any higher than a coincidence, but there is a real possibility, unless the Prosecution  
17 are put to task either by excluding the evidence, or by obliging them to show good cause, that as this  
18 trial progresses, the case against the Defence is tailored advertently or inadvertently, and I do not  
19 accuse the Prosecution of doing so, but there is a real risk that when they approach their witnesses  
20 for a second or third or a fourth time, knowing precisely or more precisely what it is the Defence case  
21 is as we progress, that those witnesses subsequently approached then provide evidence which rebut  
22 those Defence submissions. The Defence points ways to previous [Inaudible]

23 JUDGE BOUTET:

24 But don't you think this is a subject matter for public cross-examination to try to bring these facts out  
25 when you do cross-examined these witnesses, and seek to clarify that matter? This is a suggestion  
26 that have been made by the Prosecution as an example. I'm not saying it is, but to follow up on your  
27 example, don't you think it would be quite proper for you and your colleagues to exploit that and try to  
28 find out what it is that happened? If it is indeed a true recollection of that witness or a suggestion that  
29 has been planted in their mind by the Prosecution, I mean, this is in my view, quite proper a field for  
30 cross-examination.

31 JUDGE THOMPSON:

32 Yes, I would like to strengthen what my learned brother has said that I would have thought that  
33 perhaps the greatest weapon against this trend, as you put it -- you submit that this would seem, from  
34 what you were saying, to be a standard prosecutorial technique. I thought you put it as high as that.  
35 You're not saying that this is just isolated, and, if it is, then it's so difficult for the Court to say that if the  
36 Prosecution in exercise of their autonomy feel that there are some -- their investigation need some  
37 kind of confirmation or clarification, it would not be for this Court to want to block the use of some

1 legitimate prosecutorial strategy, but at the same time, under the good cause concept, the Court can  
2 say, "Look, we think you've gone too far." But complementing this supervisory role of the Court, is  
3 the powerful weapon of cross-examination which can really seek to prove that these supplemental  
4 statements or evidence should not be given as against the original statements any high probative  
5 value.

6 MR. JORDASH:

7 The Defence have two protections, I would submit. [Microphone not activated] which is if Your  
8 Honours wishes to supervise the good cause. We don't know what was going on when the  
9 Prosecution saw the witnesses because there is no indication on the supplemental statement what  
10 questions were asked of this witness. We have not been provided with any notes from the  
11 investigator, any questions that the investigator asked. We simply have –

12 JUDGE THOMPSON:

13 Now, do we have any evidence as to know whether it was the witnesses themselves who volunteered  
14 this clarification or it was as a result of prosecutorial prompting?

15 MR. JORDASH:

16 Certainly.

17 JUDGE THOMPSON:

18 We don't have it.

19 MR. JORDASH:

20 And whilst cross-examination --

21 MR. PRESIDENT:

22 Mr. Jordash, you know, I'm sure you've made your point sufficiently. I would like to hear the  
23 Prosecution on this matter.

24 MR. JORDASH:

25 Certainly.

26 MR. PRESIDENT:

27 I would like to hear the Prosecution on this matter to reply to what you have raised as objections,  
28 unless you want to continue because we shall not be here for a whole day. But I am very interested in  
29 hearing from the Prosecution.

30 MR. JORDASH:

31 I think I have covered my submissions. Thank you.

32 MR. PRESIDENT:

33 All right.

34 (Pages 1 to 16 by Momodou Jallow)

35  
36  
37

1 [11.30]

2 MR. O'SHEA:

3 Your Honours, I'd just like to indicate that we have something to add to this and I believe that  
4 Mr. Brown does as well.

5 JUDGE THOMPSON:

6 Learned Counsel, since this is a subject that's detaining us more than we anticipated, and we also  
7 have a sensitivity for judicial economy, as you do, if it's -- if it's -- if whatever you want to submit is  
8 generally and specifically in line with what Mr. Jordash has said, why not adopt? Except if there is  
9 something new which might shed some light on the debate that has been going on, the discussion,  
10 perhaps in the interest of expedition, you can adopt and we'll reflect you on the records as adopting.

11 MR. O'SHEA:

12 Well --

13 JUDGE THOMPSON:

14 But if you have anything novel and interesting for us that would help the Chamber, I am pretty sure  
15 the Presiding Judge would not be averse to --

16 MR. O'SHEA:

17 Well, it's in Your Honours' judgment as to whether what we say is novel and interesting, but with the  
18 greatest of respect --

19 JUDGE THOMPSON:

20 No, I wasn't suggesting that, I'm only saying that if -- if what you are going to say more or less would  
21 be consistent generally and specifically with what Mr. Jordash has said, perhaps in the interest of  
22 time, and this is a question of time, one would expect in the tradition of the profession to adopt and  
23 probably add whatever small new point you want to add. I mean, I am not in anyway trying to apply  
24 the guillotine here. I don't think we do that here; the Presiding Judge doesn't do that. It's just to  
25 remind us that we are sensitive to the issue. We are familiar with Rule 66; we are familiar with  
26 Article 17; these are not new issues. They have been cropping up since we started and so now we  
27 are fully sensitised. Unless there is something new and novel --

28 MR. O'SHEA:

29 Well, I can assure Your Honours that each and every time I decide whether to stand up or not, I  
30 exercise my professional judgment as to whether anything needs to be added. Your Honours may  
31 ultimately disagree with my analysis, but the -- each and every one of these Accused have the right to  
32 be heard which Your Honours fully acknowledge of course.

33 JUDGE THOMPSON:

34 Point is taken.

35 MR. PRESIDENT:

36 This said, I think you've taken note of what -- of what my learned colleague, you know, has said, it is  
37 pertinent, I mean, if you think you have anything to add to the arguments which have been presented

1 at length by your learned brother Mr. Jordash, Mr. O'Shea, you can do that and we move ahead. Do  
2 you have any -- anything to add to this, please?

3 MR. O'SHEA:

4 I do. The reason why I stood up of course is because of Ms. Taylor's point about wishing to hear us  
5 all before she responds. I think it would be more appropriate for Mr. Brown to speak first.

6 MR. PRESIDENT:

7 All right, Mr. Brown.

8 MR. BROWN:

9 Now, my colleague, in conjunction with the Bench, has raised the Bar to novel, interesting and  
10 concise. And, I have two points that I think are relevant and helpful, the other standards are perhaps  
11 beyond my abilities. But one is to respond to one comment from the Bench which related to cross-  
12 examination which is certainly fair to point out as one of the tools of which the Accused is to be  
13 defended. But I think -- but the Court is right to point out that my colleague, Mr. Jordash has spoken  
14 eloquently and effectively. But the question of cross-examination warrants or requires us to keep in  
15 mind that not one advocate in this room from what I've seen, and I suspect never in the past with  
16 respect to any of the Court's participation as -- why would any of us stand up to cross-examine a  
17 witness without adequate investigation and having thought through the implications of that witness's  
18 testimony? That is, what may not be apparent to those who are not in this arena is that for virtually  
19 every moment spent on cross, there are hours, days, weeks spent in preparation. And to the extent  
20 that there is a pattern that manifests itself on both 060 and 064, the issue of new allegations  
21 concerning in each case a discrete crime not previously mentioned by that witness.

22

23 The issue of our opportunity to effectively use cross-examination is raised and that is why, as  
24 advocates, it's our first job to seek that prophylactics, that protection, which can come only from the  
25 Court with this understanding of equality of arms in Article 17. So I wanted to make it clear that while I  
26 share the Court's belief in the utility of cross-examination, cross-examination without time when the  
27 context of being confronted with constant surprise, is different from cross-examination when adequate  
28 time for preparation is there.

29 JUDGE THOMPSON:

30 Counsel, I take the point that effective cross-examination, effective investigation, is in fact a  
31 prerequisite for effective cross-examination.

32 MR. BROWN:

33 Yes, Your Honour.

34 JUDGE THOMPSON:

35 I take that point.

36 MR. PRESIDENT:

37 And that when -- and that when facts spring *ex improvisor*, you need time to cross-examine, you

1 know.

2 MR. BROWN:

3 Especially when the Court has set out for us a -- excuse the phrase "road map" because that's a  
4 political phrase -- but, I mean, a guide post, and structures designed to allow the Prosecution to do its  
5 job but us to have an adequate opportunity. And I think what we are concerned about and the  
6 reason, despite the Court's concern about economy which we respect, that we press this point now is  
7 that the two may not be a pattern but it certainly is prologged to be a pattern. And we are concerned  
8 that this be addressed now, both as to these specific witnesses and also as to what is to come. No  
9 one would suggest that our adversary should stop interviewing witnesses; it's their job to do that, nor  
10 do they stop disclosing to us the fruits of those.

11 JUDGE THOMPSON:

12 And particularly, because there is a continuing obligation.

13 MR. BROWN:

14 Absolutely.

15 JUDGE THOMPSON:

16 So the question is that we are really treading a very delicate boundary between permissibility and  
17 impermissibility.

18 MR. BROWN:

19 Absolutely.

20 JUDGE THOMPSON:

21 And this is why the Bench ought to be very careful to know at what point to intervene and enforce the  
22 good cause clause and concept.

23 MR. BROWN:

24 Exquisite is a term I would apply to describe the level of chaos. I will forego the temptation to respond  
25 to the Court's characterisation of exclusion as a particularly American remedy. Perhaps we'll have a  
26 chance to talk about that another day.

27 MR. PRESIDENT:

28 Yes, Mr. O'Shea.

29 MR. O'SHEA:

30 Yes, Your Honours, I'm grateful for the opportunity to be heard on this point.

31

32 I'd like to make a submission with regard to Rule 66 of the Rules. Rule 66A(i) and (ii), the relevant  
33 portion which one of Your Honours have read out earlier being that, "Continuously disclose to the  
34 Defence copies of the statements of all additional prosecutor witnesses whom the Prosecutor intends  
35 to call to testify but not later than 60 days before the date of trial, or as otherwise ordered by a Judge  
36 of the Trial Chamber either before or after the commencement of the trial, upon good cause being  
37 shown by the Prosecution."

1 Now, what I'd like to draw to Your Honours attention is that in the decision of this Trial Chamber in the  
2 case of Norman, Fofana and Kondewa, which was delivered on the 16th of July 2004, Your Honours  
3 said this in its decision, entitled decision --

4 JUDGE THOMPSON:

5 Paragraph?

6 MR. O'SHEA:

7 This is Paragraph 23 of the decision of this Trial Chamber, where Your Honours stated that "Any  
8 statement or declaration made by a witness in relation to an event which is witnessed or recorded in  
9 any form by an official in the course of an investigation, falls within the meaning of witness statement  
10 under Rule 66(i)."

11 JUDGE THOMPSON:

12 Yes.

13 MR. O'SHEA:

14 It is therefore my respectful submission that these supplemental statements clearly fall within the  
15 parameters of that meaning and 66(i) and (ii) accordingly.

16  
17 In my respectful submission what the Prosecution has done in this case and what they have been  
18 doing throughout this trial so far, is not seeking leave from Your Honours and not attempting to show  
19 good cause why they should come out with these additional statements at such a late stage. This  
20 Rule is different from the rule in the Statute for Rwanda. So while the jurisprudence of Rwanda is still  
21 relevant, it is not on par, and in this particular case it would be my submission that each and every  
22 time the Prosecution wishes to put forward one of these supplemental statements, they must first  
23 seek leave from Your Honours showing good cause why they should. It may be that they are able to  
24 do so. But they must follow that procedure, because as things stand at the moment, they are in non-  
25 compliance with the Rules, and I would suggest, in a manner which is prejudicial to the Accused.

26 JUDGE BOUTET:

27 Which rules are you talking about?

28 MR. O'SHEA:

29 Which rules are they in non-compliance with?

30 JUDGE BOUTET:

31 That's right.

32 MR. O'SHEA:

33 Well, in my submission, they are in non-compliance with Rule 66.

34 JUDGE BOUTET:

35 A(ii)?

36 MR. O'SHEA:

37 A(ii).

1 JUDGE BOUTET:

2 So you read as well the beginning of A(ii) of "additional Prosecution witnesses" to equate to this  
3 scenario? So even though it's not an additional witness you are saying it applies to additional  
4 statement of a witness? I'm just trying to follow your reasoning.

5 MR. O'SHEA:

6 Yes.

7 JUDGE BOUTET:

8 Because A(ii) reads, "continuously disclose to the Defence copies of the statements of all additional  
9 Prosecution witnesses," and so on and so on. So the scenario we have here, with all due respect,  
10 doesn't seem to be encompassed in (ii), unless you convince this Bench otherwise. I'm just trying to  
11 following your reasoning.

12 MR. O'SHEA:

13 Yes.

14 JUDGE BOUTET:

15 Because the good cause and leave from the Court as described in A(ii) applies, and I will concede  
16 that to all, and I quote, "statements of all additional Prosecution witnesses" obviously to witnesses that  
17 the Prosecution is intending to call in addition to those that have all been listed, disclosed and so on.  
18 So that's my understanding of the import of 66 A(ii).

19 MR. O'SHEA:

20 Yes.

21 JUDGE BOUTET:

22 While you are suggesting that the Court should read into this further that it applies to additional  
23 witnesses -- additional statements of a witness who has already been disclosed. If -- I'm just --

24 MR. O'SHEA:

25 Yes.

26 JUDGE BOUTET:

27 I just want to make sure that I do understand clearly your position.

28 MR. O'SHEA:

29 Yes.

30 JUDGE THOMPSON:

31 And I'd like you -- I'd like you to satisfy me too much in the same line as my brother requests. If you  
32 characterise the statement on the reference as supplemental, supplemental to what in the context of  
33 Rule 66(A)(ii)?

34 MR. O'SHEA:

35 Yes.

36 JUDGE THOMPSON:

37 Supplemental to what?

1 MR. O'SHEA:

2 Yes, I --

3 JUDGE THOMPSON:

4 Is it supplemental to a statement that -- of a witness that the Prosecution intends to call to testify at  
5 the trial? If that is the correct analysis or perception, then the concept of good cause does not apply  
6 to those statements.

7 MR. O'SHEA:

8 Well, Your Honours --

9 JUDGE THOMPSON:

10 Am I right in that?

11 MR. O'SHEA:

12 Your Honours, I am certainly grateful for the direction on 66(ii) --

13 JUDGE THOMPSON:

14 Yes.

15 MR. O'SHEA:

16 -- and I do see -- I do see Your Honour's point very clearly. The *prima facie* when one reads 66(iii),  
17 one is dealing with additional Prosecution witnesses. Now, that is -- that would be according to the  
18 plain meaning of 66(ii); that I accept. It would, however, be my submission -- just one moment,  
19 please, Your Honours.

20  
21 It would, however, be my submission that these Rules need to be interpreted in the line -- in line with  
22 the ordinary rules of interpretation applied to international instruments, and the ordinary rules of  
23 interpretation of international instruments are those which are reflected in Article 31 of the Vienna  
24 Convention on the Law of Treaties of 1969. Now, while that rule applies to treaties, it is in my  
25 submission generally accepted that it is appropriate -- this is certainly reflected in the *Tadic* decision  
26 and probably other decisions. The Rule says that treaty -- and I would say any other interpreted  
27 instruments -- should be interpreted according to its ordinary meaning, in its context, and in the light of  
28 its object and purpose.

29  
30 Now, unlike the rules of interpretation in England or Sierra Leone, where one starts with the ordinary  
31 meaning and only if one can't find one, one then goes to the mischief, on the international level there  
32 is no hierarchy between those three prongs of Article 31.

33 JUDGE THOMPSON:

34 Gives an attempt to synthesise the ordinary meaning rule or the golden rule with the theological or  
35 purposive --

36 MR. O'SHEA:

37 Exactly.



1 JUDGE THOMPSON:

2 -- rules of interpretation. So what Article 31 of the Vienna Convention does is to bring the golden rule  
3 concept from the national system and then bring in this new concept of the purposive or theological  
4 approach to interpretation of statutes.

5 MR. O'SHEA:

6 Well, in summary, Your Honour, the essence of the reasoning behind Article 31 is that in civil law  
7 jurisdictions, the theological approach has a fundamental place, whereas in common law jurisdictions  
8 --

9 JUDGE THOMPSON:

10 It's the golden rule.

11 MR. O'SHEA:

12 -- it's -- one refers to the golden rule or the plain meaning test. Now, it's a combination of the two as  
13 Your Honour rightly points out. Now, what I am saying is that if we go to 66(A)(i), in principle, there is  
14 a basic obligation on the Prosecution to put forward all of its witness statements. That basic  
15 obligation is there. Anything outside of that, really is sort of in a way, an exception to (A)(i).

16

17 Now, I accept that there are going to be occasions when the Prosecution are going to get statements  
18 from a witness later which they could not have foreseen, right? And the reason why I wish Your  
19 Honours still to rely on 66(ii) is because I say this is exactly the type of circumstance where one does  
20 have to apply a theological interpretation, because otherwise it would defeat the purpose of Rules (i)  
21 and (ii) read together.

22

23 The reason I say that is because what Mr. Jordash submitted was that in the supplemental statements  
24 there are new allegations. Now imagine if those new allegations were coming out of the mouth of a  
25 new witness. What would be the essential difference between the two situations in so far as the  
26 prejudice to the Defence? In my submission, there would be no significant difference. The prejudice  
27 to the Defence would virtually be identical in both cases. So in other words, whether those new  
28 allegations come out of from a -- the mouth of a new witness or through a supplemental statement of  
29 an existing witness, either way, they are new allegations which take us by surprise. And that is why I  
30 say that interpreting Rule 66(ii) theologically, it should be expanded beyond this plain meaning. While  
31 I fully accept Your Honour -- Your Honour's indication that on its plain meaning, this is not what we  
32 are dealing with. And I think Your Honours understand the point now.

33

34 You see, what we are concerned about here is that if I may respectfully and humbly refer to practice in  
35 the International Criminal Tribunal for Rwanda, one's experience of that practice is that we -- these  
36 so-called will-say statements, in other words, supplemental statements, are the exception rather than  
37 the rule. Here what we are discovering in this trial session, in this Court, is that they are becoming the

1 rule rather than the exception, because in the case of almost every witness we've been hearing there  
2 has been a supplemental statement.

3  
4 The situation we should be seeing, in my submission, we should be seeing a situation where the  
5 Prosecution has not just interviewed a witness once, but has interviewed a witness more than once  
6 and perhaps the witness has two or three witness statements which were compiled much earlier  
7 which does not cause any prejudice to us. What we are seeing is the Prosecution seeing a witness  
8 once, long ago, and then leaving it right up until closely before the witness gives the evidence --

9 JUDGE THOMPSON:

10 But as I said to Mr. Jordash, we don't even know whether these witnesses are volunteering  
11 clarifications or additions to their original statements or whether this is being done at prosecutorial  
12 prompting.

13 MR. O'SHEA:

14 Well, if Your Honours were to accept my submission that the Prosecution have to go to show good  
15 cause, then this is a matter we can investigate. And clearly what we can say on the face of the  
16 evidence is the Prosecution have not attempted to interview these witnesses more than once  
17 previously. I'm not going to motive here, but what I am saying is that the Prosecution need to be  
18 discouraged from defeating the object of Rule 66 and the 42-day rule simply by waiting to a moment  
19 closely before the trial to re-interview the witness. And if Your Honours accept that these are  
20 circumstances where the Prosecution does have to go to show good cause, then the Prosecution  
21 would have to say what procedure they've attempted. Did they attempt to interview this witness more  
22 than once? If not, why not? Why is it that he is only being or she is only being interviewed for the first  
23 time now shortly before giving testimony? So that's essentially my point.

24 JUDGE THOMPSON:

25 Thank you, Counsel.

26 MR. PRESIDENT:

27 Thank you, Mr. Jordash -- Mr. O'Shea, sorry.

28  
29 Yes, may we have a reply from the Prosecution on this --

30 MS. TAYLOR:

31 Thank you, Your Honours.

32 MR. PRESIDENT:

33 -- on the facts that have been detailed and the law as has been detailed on the interpretation of Rule  
34 66 generally, and particularly with disclosure of new facts which are contained in this statement.

35  
36 Yes, you have the -- you can address us on this, please.

1 MS. TAYLOR:

2 If Your Honours will look first to that statement, you will notice that in the information that is contained  
3 in the heading of that document there is an item that says "date of interview", and the date of that  
4 interview here is the 16th of July 2004, that is last Friday. It says "location of the interview", which  
5 says "Special Court" and further down it says "other persons present" and it says "Counsel Alain  
6 Werner".

7  
8 My learned friends have assumed, I think what's been called a prosecution technique, that the  
9 Prosecution is continuing to interview witnesses. They, of course, have absolutely no basis for  
10 suggesting that other than the fact that in two cases of the witnesses that have been listed for trial  
11 during -- for testimony during this first session of trial, there have been supplemental statements  
12 within the 42 -- day period.

13  
14 What I say to Your Honours is that it is a perfectly proper practice to prosecuting counsel to meet with  
15 witnesses a week before they give their evidence to explain to them the process by which the  
16 Prosecution will call them, the fact that they must answer questions put to them by prosecuting  
17 counsel, by Defence counsel, by Your Honours, to explain to them the entire process through which  
18 their evidence will be heard. And there is absolutely nothing improper in the Prosecution doing that.  
19 It is common in international jurisdictions, it is common in domestic jurisdictions.

20  
21 As a result of that process, occasionally a witness will volunteer facts that until that point in time are  
22 completely unknown to the Prosecution. This does not amount to an investigation by the Prosecution,  
23 but it does put the Prosecution in a position of having previously disclosed what that witness will say  
24 and now having new information. And under Rule 66, the Prosecution has an obligation of continuous  
25 disclosure, and had the Prosecution not disclosed this within an hour of this information being given to  
26 it, then the Prosecution would have been in breach of Rule 66. So much -- it's not so much that the  
27 Prosecution should not have disclosed this, but the Prosecution is required by Rule 66 to disclose  
28 this.

29  
30 And before I move on from this point, my learned friend Mr. Jordash, put what he said was perhaps a  
31 co-incidence that the information contained within the supplemental statement referred to military  
32 uniforms, and there'd been some cross-examination about military uniforms. As all of my learned  
33 friends to the Defence would realise, because they have received all of the witness statements, and  
34 as Your Honours will have gleaned from the witness statements that have been filed with Chambers  
35 with accordance with Your Honours order to the Prosecution to file copies to the statements one week  
36 in advance in respect of testimonies, most of the witnesses discuss what the rebels, the Junta, the  
37 RUF, however they referred to the combatants, most of them described what they were wearing. So

1 they can -- if there is any implicit criticism or any implicit suggestion of *mala fides* on the part of the  
2 Prosecution by the suggestion that this is a coincidence, it is most strenuously rejected.

3  
4 In relation to Rule 66, as I have said to Your Honours, it is the Prosecution -- Prosecution's obligation  
5 under this Rule to disclose information that it gains in its possession. And as I had explained, this  
6 information was disclosed to the Defence within an hour of the Prosecution containing it.

7  
8 The interpretation which my learned friends, Mr. Jordash and Mr. O'Shea, have argued for in respect  
9 of Rule 66(A)(ii) is, with respect, not one, but is justified either by the text or by the spirit or the  
10 mischief of what this Rule is aimed at. Well, I do not wish to get into Article 31 of the Vienna  
11 Convention on the Interpretation of Treaties.

12  
13 Even if we accept for the purposes of argument that section, this sub-paragraph (ii) should be  
14 interpreted not only according to its ordinary meaning, but in relation to its context and in light of its  
15 purpose, then the Prosecution is not in breach and the Prosecution has no obligation to show good  
16 cause in respect of a supplemental statement of an existing Prosecution witness.

17  
18 Your Honours issued an order of the 1st of April of this year requiring that the Prosecution file a list of  
19 witnesses and a list of exhibits by the 26th of April, and if the Prosecution was not able to put a  
20 witness on that list or an exhibit on that list, then the Prosecution will be required to show good cause  
21 pursuant to Rule 66(A)(ii).

22  
23 The witness, in relation to this supplemental statement, TF1-060, was on the list of 266 witness that  
24 was filed on the 26th of April. This witness is not an additional prosecution witness. And in my  
25 respectful submission, Rule 66(A)(ii) could not be any clearer: "Continuously disclose to the Defence  
26 copies of the statements of all additional Prosecution witnesses whom the Prosecution intends to call  
27 to testify." Not additional information, not supplemental statements, additional prosecution witnesses.  
28 TF1-060 is not an additional prosecution witness and does not fall within this sub-paragraph.

29  
30 I will also refer Your Honours to the decision that Your Honours handed down in the CDF matter on  
31 Friday last, that is the 16th of July 2004, the decision on disclosure of witness statements and cross-  
32 examination, and I will take Your Honours to paragraph 27 of that decision. And in that case, Your  
33 Honours issued an order, again on the 26th of April, that a witness list needed to be filed, and Your  
34 Honours had this to say: "The Trial Chamber recalls that on 26 April 2004 the Prosecution disclosed  
35 to the Defence copies of all witness statements for witnesses they intended to call at the trial that had  
36 not already been disclosed.

1 "The Prosecution, in keeping with the continuing obligation to disclose additional materials, had  
2 continued to disclose such materials prior to and during trial, in some instances up to a day before the  
3 witness is due to testify. The Trial Chamber does not have any evidence before it at this time that the  
4 continued disclosure of witness statements by the Prosecution has violated the disclosure rules.

5  
6 "Rule 67(D) provides that if either party discovers additional evidence that should have been  
7 produced earlier pursuant to the rules, that party should notify the other party and the Trial Chamber  
8 of the existence of such material. In circumstances where the Prosecution obtains additional  
9 evidence from a witness that is subject to disclosure, then the Prosecution is required, pursuant to this  
10 Rule, to continuously disclose this material.

11  
12 "Should there be evidence however that the Prosecution has failed in its duty to prepare and disclose  
13 witness statements in accordance with these rules, the Defence should provide concrete evidence of  
14 this violation." As previously stated, there is no material before the Trial Chamber from which it may  
15 be concluded that the Prosecution is in breach of its disclosure obligations."

16  
17 In my submission, Your Honours, except in that ruling that should the Prosecution come into material  
18 which is supplemental to the material that was served on the 26th of April of this year -- and for the  
19 purposes of this trial and the CDF trial, those dates are the same -- then the Prosecution has a  
20 continuing obligation to disclose that to the Defence, and it has done so. There is absolutely nothing  
21 in the Rules in their ordinary meaning, in their purpose or their context, which would justify a complete  
22 departure from Rule 66(A)(ii) to extend the rule to have -- the Prosecution having to show good cause  
23 when it is in possession of supplemental material that has been volunteered to it by a witness when  
24 that witness has been met by prosecuting counsel.

25 JUDGE THOMPSON:

26 And then, Counsel, Mr. O'Shea directed us to Paragraph 23 of our decision, recent decision --

27 MS. TAYLOR:

28 Yes.

29 JUDGE THOMPSON:

30 -- the first sentence. Does that -- do you want to respond to that, paragraph 23, in an attempt to  
31 characterise what you served them as a statement? Does that help us? Does that provide any --

32 MS. TAYLOR:

33 I would say that whether it's a statement, whether it's called supplemental additional clarification is not  
34 the point, because there is nothing that helps, with respect to Mr. O'Shea's argument that this  
35 amounts to something that the Prosecution must show good cause for. For Mr. O'Shea to jump that  
36 hurdle, he would have to convince you that Yours Honour would have to torture the language of sub-  
37 paragraph two and somehow read, through some purpose or some context, that additional

1 prosecution witnesses doesn't mean additional prosecution witnesses at all; it means existing  
2 prosecution witnesses.

3  
4 Mr. O'Shea, asked the rhetorical question in support of his argument: what difference would it be if  
5 there was additional material from an existing witness as opposed to a new witness for which the  
6 Prosecution would have to seek good cause from Your Honours to be allowed to call?

7  
8 I know it's quite a bit of difference but the Defence have been in receipt of the unredacted version of  
9 the statement of Witness O60 since June of last year, June of 2003. They have been in receipt of the  
10 unredacted version of that outside of the 42-days as required by Your Honours' ruling.

11  
12 The Prosecution -- I beg your pardon, the Defence have been in a position to conduct what enquiries  
13 about the witness, I'm not talking about the allegations within the supplemental statement, but the  
14 witness, for a year now. They can make enquiries as to whether he is a known liar, whether there is  
15 any information in his background. Any information in relation to this witness, probably the Defence  
16 have been able to do some investigation in relation to it and absolutely since the 42-days disclosure  
17 of the unredacted material.

18  
19 So there is a big difference between a completely new witness and an existing witness who simply  
20 provides additional information. And that leads on to the point about cross-examination being the  
21 remedy. And with respect, I would agree with Your Honours that cross-examination is the great tool  
22 for eliciting these matters in this Court.

23  
24 As Your Honours will notice from the copy of this statement that we are discussing before you, all of  
25 the additional material relates to the first Accused. In those circumstances one might wonder what  
26 investigations the Defence are prejudiced in, because this relates to an allegation directly concerning  
27 the first Accused, the first Accused is the person who can provide instructions to his counsel. He can  
28 say it never happened; it's a complete lie, or he can say it happened but it happened slightly  
29 differently. The Defence need not conduct further investigations to be in a position to cross-examine  
30 this witness.

31  
32 There are two possibilities to the Defence.

33 MR. PRESIDENT:

34 Isn't that a very simplistic view of looking at this?

35 MS. TAYLOR:

36 Well –

1 MR. PRESIDENT:

2 They may well -- they may well want to get deeper into some investigations in order to -- to rebut  
3 these allegations, and what --

4 MS. TAYLOR:

5 They may --

6 MR. PRESIDENT:

7 What do you say about that? I mean, it sounds very simplistic.

8 MS. TAYLOR:

9 They may well want to rebut the allegations, but they will rebut them by leading evidence during the  
10 Defence case. In cross-examining this witness, if they wish to dispute these allegations, there are two  
11 possibilities: one is to say to the witness, "you are lying, it never took place"; the other is to say, "it  
12 took place but wouldn't it be correct that it wasn't X, it was Y?" In respect of rebutting, if they then  
13 wish to lead positive evidence that it never took place or that it took place in a way to the witness -- to  
14 what the witness says, the Defence will have that opportunity during their case.

15  
16 In very simple terms, the rules of cross-examination are put before you prove -- put the allegations to  
17 the Prosecution witness before you are allowed to prove them in your own case. There is no  
18 prejudice that will arise in the cross-examination of this witness by the Defence. They can carry out  
19 whatever investigations they want and if they have information or positive evidence that they wish to  
20 lead, they can do so in their own case.

21  
22 In my submissions, Your Honours, it is precisely because these allegations concern the first Accused  
23 that is the first Accused can give instructions to counsel. He can tell his counsel exactly what he  
24 thinks about this. It's either completely untrue or there is a different spin on it. And all of those  
25 matters --

26 MR. PRESIDENT:

27 Are you suggesting -- are you suggesting for one moment that besides what the first Accused will tell  
28 his counsel, counsel, in the exercise of their professional duty as counsel, wouldn't want to look into  
29 more than what their client has told them in order to prepare the grounds to cross-examine the  
30 witness?

31 MS. TAYLOR:

32 If the instructions from the first Accused are it never happened, then there can be no further  
33 investigation; it never happened according to the instruction. There is nothing -- there is nothing more  
34 to look at.

35  
36 If the instructions are, it's kind of half true but the witness has got the wrong end of it, it was different,  
37 then those matters can be relayed from the first Accused to his counsel and those matters can be put

1 to the witness in the witness box. And any further investigations which will then go to support the  
2 version of events put by the first Accused in terms of finding a witness that would support him, can be  
3 put during the Defence case. The toll here is of cross-examination and it would be my submission  
4 that there is no prejudice arising to the ability of my learned friend, particularly Mr. Jordash, since this  
5 concerns the first Accused that arises from this material.

6 JUDGE THOMPSON:

7 But you must concede that in some cases effective cross-examination will depend upon effective and  
8 thorough investigation.

9 MS. TAYLOR:

10 Indeed, I do, Your Honour, but I come back to -- if this was an at large allegation, shall I say, that it  
11 wasn't tied to something that the first Accused is alleged to have done, then that argument would  
12 have more force.

13  
14 The investigation of this matter must start with the Accused himself and he is the person that can give  
15 his counsel instructions, either it didn't happen or that they'd got it wrong; there was an incident but  
16 this wasn't the way that it occurred. And investigations, in relation to those matters, can then be led  
17 through evidence during the Defence case.

18 JUDGE THOMPSON:

19 I'm sure the Defence have a different perception of their own ground rules as to how to carry out  
20 investigations in some of these complexities.

21 MS. TAYLOR:

22 I'm sure they do but I come back to the fact that this is an allegation about the first Accused and he is  
23 the person that can say either it didn't happen, it did happen or it happened in a slightly different way.

24  
25 My learned friends have also referred to Article 17 of the Statute in relation to the rights of Accused,  
26 and with respect, I would adopt what Your Honour Judge Thompson has said with paragraph A in  
27 relation to that. So this isn't a new count that has been alleged, it's just material going to an existing  
28 count on the indictment, and the Accused has been --

29 MR. PRESIDENT:

30 What about paragraph B?

31 MS. TAYLOR:

32 Paragraph B?

33 MR. PRESIDENT:

34 Yes.

35 MS. TAYLOR:

36 In terms of adequate time to prepare his defence?

37



1 MR. PRESIDENT:

2 Yes.

3 MS. TAYLOR:

4 The purpose --

5 MR. PRESIDENT:

6 "To have adequate time and facilities for the preparation of his or her Defence," and this of course  
7 would include cross-examination.

8 MS. TAYLOR:

9 Yes. The -- we've anticipated that this witness will not be called to testify until the end of this week.

10 The Defence have been in possession of this -- of the original statement of this witness for some time  
11 and of course have been at liberty to prepare cross-examination of those parts of that statement for all  
12 of that period of time. We are talking about four paragraphs on a supplemental statement. And  
13 assuming that the first Accused can give instructions to his counsel about the matter, then in my  
14 submission, the Defence have adequate time to prepare for the cross-examination of these four  
15 paragraphs of this statement. It's not as though a new witness has been sprung on the Defence at  
16 the last minute, it is simply --

17 MR. PRESIDENT:

18 It's not a new witness, it's new facts that have sprung in the court of the Defence, you see. This is the  
19 -- that is -- that's the crux of the problem; that's the gravamen, you know, of the Defence's stand as far  
20 as this matter is concerned.

21 MS. TAYLOR:

22 Indeed, Your Honour, and it is --

23 MR. PRESIDENT:

24 It's not a new witness, it's new facts.

25 MS. TAYLOR:

26 Indeed, and it is to them --

27 MR. PREISDENT:

28 Which they still require investigations for purposes of conducting a proper cross-examination under  
29 Article 17(4)(b).

30 MS. TAYLOR:

31 And what I am saying to Your Honour in response to that is that because these are allegations that  
32 concern the first Accused directly, then he can give instructions of his counsel about them. It's not as  
33 though these new facts relate to, hypothetically speaking, an incident to which the Defence have  
34 never been told about in Bo, for example; these relate to something that the first Accused is alleged to  
35 have done and therefore, the starting point has to be instructions from the first Accused to his  
36 counsel: "I did do that, I did not do that", or something in the middle.

37

1 All of those matters, and given that there is a matter of approximately a week between the Defence  
2 receiving this material and when it's expected that this witness will testify, no prejudice can arise to  
3 the Defence in the preparation of their cross-examination. Any investigation that they do would simply  
4 be corroborative of the first Accused's instructions. And any material that is corroborative would be  
5 late in the Defence case, not put to the prosecution witness. All that my friends have to do -- my  
6 learned friends have to do to satisfy the rules of cross-examination is put their instructions to the  
7 prosecution witnesses, and if they say that the prosecution witness is lying in respect to this, they may  
8 put to him that he is lying. If they say that this is a recent invention, they put to him that it's a recent  
9 invention. If they say that it happened in a slightly different way, they put the version that they say is  
10 correct to the prosecution witness and give him the opportunity to say "yes, now that you've said that  
11 I've changed my mind," or "no, that's not right. What I say is correct." There is no prejudice arising to  
12 the Defence in their cross-examination but the service of this information which the Prosecution came  
13 into its possession on Friday afternoon and expecting that this witness will testify at the end of this  
14 week.

15  
16 In my submission, there will be no breach of paragraph B of Article 17 because the Defence had  
17 adequate time to prepare for their defence and for the cross-examination of this witness. And, in my  
18 respectful submission, there is no ground for the exclusion of this evidence, and the situation can be  
19 compared with what will inevitably happen at some point in this trial that the Prosecution will call a  
20 witness and material that the Prosecution has never heard before will be given in evidence. It is  
21 conceivable, of course, that this witness might not have volunteered this information to prosecuting  
22 counsel last Friday afternoon and might have, for the very first time, given it in evidence.

23  
24 The Defence then would have said to Your Honours, may we have some time to consult with our  
25 clients. They would have consulted with their clients and either put the instructions then and there or  
26 said, we need some more time, can we have the witness recalled. There would have been absolutely  
27 no ground for excluding the evidence and it would be a matter of wait for Your Honours, once the  
28 cross-examination process had taken place and given the time at which this information had first been  
29 sent by the witness, as to how much probative value it, in fact, has, but they are all matters for Your  
30 Honours.

31  
32 The Defence, in my respectful submission, has not been prejudiced by this. There is no technique of  
33 the Prosecution in continuing to investigate its witnesses. The Prosecution has complied with its  
34 obligation under Rule 66 to disclose -- to continuously disclose information that it comes by. And  
35 rather than there being a breach of Rule 66(A)(ii), the Prosecution has complied with Rule 66. And in  
36 my respectful submission, this witness should be allowed to testify and should be allowed to testify to  
37 the material in the four paragraphs that had been served on Friday afternoon.

1 If Your Honours please.

2 JUDGE THOMPSON:

3 Continue, learned counsel for the first Accused.

4 MR. JORDASH:

5 I'm grateful, thank you. I'll make my response brief.

6  
7 Firstly, we are not accusing the Prosecution of *mala fides*. I can assure the Prosecution when and if  
8 that situation arises we will proceed with caution and make the allegation explicitly.

9  
10 Secondly, in relation to the Prosecution's continuous duty to disclose, pursuant to Rule 66, the  
11 Prosecution's approach, I would respectfully submit, is somewhat contradictory. They seek to assert  
12 that they must, pursuant to Rule 66, continuously disclose these witness statements, but yet refuse to  
13 -- refused to continue to read into that obligation a need and obligation to serve those statements in a  
14 particular time period. Rule 66 does not say that they must keep continuously disclosing statements,  
15 it says they must disclose witness statements continuously up until a particular time. After that time,  
16 they must show good cause. They cannot rely upon part of the rule because it's convenient and  
17 ignore the rest of the rule because it's not.

18  
19 Thirdly, in relation to whether Rule 66 can be read to include supplemental and additional witness  
20 statements, respectfully I would submit that the Rules are not the be all and end all; the Rules  
21 implement Article 17. If the Rules do not implement Article 17, then the Rules must either be read in  
22 light of Article 17 or a new rule, I would submit, must be provided. Article 17 is the minimum  
23 guarantee. If the rule appears to conflict with the minimum guarantees, then the Rule, I would submit,  
24 and in this case, it must, I would submit, be the case.

25 JUDGE THOMPSON:

26 Does the Rule really conflict with Article 17?

27 MR. JORDASH:

28 Well, I would.

29 JUDGE THOMPSON:

30 What is your submission on that?

31 MR. JORDASH:

32 My submission is that --

33 JUDGE THOMPSON:

34 Because it's not a question of whether it appears to or not, because I can take the view that the rule is  
35 within the spirit of Article 17, and remember that article -- the Statute is a meticulously detailed code, it  
36 only provided a general framework and that I would take the view from the Bench that that rule is  
37 consistent, whether explicitly or implicitly with Rule 17 -- with Article 17. But I would like to know

1 whether your submission is that that the Rule is *ultra vires*, Rule 17 (*sic*), if that's not your submission  
2 then I'd rest.

3 MR. PRESIDENT:

4 Yes, Mr. Jordash, I am also very interested in that aspect of it because it is important for us to get out  
5 of this impasse, you know, by putting -- you've raised arguments that relates to the right of your client  
6 under Article 17(4)(b). You've also raised arguments, you know, under article -- under Rule 16(B) and  
7 you've been dovetailing, you know, your arguments, you know, on these two sections of the law up to  
8 arriving at a submission to convince -- to urge the Court to consider that, you know, it is not only  
9 disclosing -- a continual disclosure, you know, of new witnesses but also, you know, a continual  
10 disclosure of fresh evidence which the Defence -- which the Prosecution says is not included, you  
11 know, it's not envisaged in Article 66 (*sic*).

12  
13 So, it's important. You know, the question which my learned colleague has asked is for you to  
14 address us properly, you know, on the scope and extent of the co-existence, you know, of these -- of  
15 the Rules as you see them in 66, and the provisions of the Statute as we see them in Articles 21 and  
16 the rest of it, particularly 4(b) which you appear to be relying on in this particular matter.

17 JUDGE THOMPSON:

18 Yes, because you'll get yourself into a jurisprudential bind if you assert that their serving you this  
19 particular statement violates Article 17, violates Rule 66, and probably violates some other mandatory  
20 provisions, and then you now say that there is some kind of mutual inconsistency between Article 17  
21 and Rule 66. You will get yourself into a jurisprudential bind and, therefore, the Bench will put you to  
22 your election.

23 MR. JORDASH:

24 I was probably slightly unclear. As a general proposition what I was putting forward was that if the  
25 Rules -- any rule which is under consideration -- appears to conflict with Article 17 or appears not to  
26 cover a situation which would allow the rights of Article 17 to be given voice, then the particular rule  
27 and the question must either be supplemented by an additional rule or interpreted in order to give  
28 proper effect --

29 JUDGE THOMPSON:

30 But that's hypothetical.

31 MR. PRESIDENT:

32 Where shall we bring the additional rule from? There is no plenary here, Mr. Jordash.

33 MR. JORDASH:

34 Well, that is why of the two possibilities I put forward, either a new rule or interpreting or re-interpreting  
35 the existing rule, in this case what we are submitting is the existing rule can be read to cover this  
36 particular situation.

37

1 JUDGE THOMPSON:

2 But this is refreshing because as I say otherwise you get into a jurisprudential bind. The question  
3 really is what we have now is it sufficient to cover the situation and either in -- by a plain ordinary  
4 interpretation or, even if you invite us to do the purposive or theological interpretation, of course there  
5 is a fundamental principle of statutory interpretation, but no rule can be interpreted or must be  
6 interpreted to contradict its purpose. I mean -- and for now, the Bench does not see any  
7 inconsistency between Rule 66 and Article 17. So if we accept that as our premise, then all you need  
8 to do is to urge us to come to the position that the Prosecution has done something which in fact is  
9 likely to prejudice your client, but believe leave not that the Rule itself is a contributory factor to the  
10 problem which you are experiencing.

11 MR. JORDASH:

12 Well, I can put my submission quite simply.

13 MR. PRESIDENT:

14 If you want to say that, you are perfectly entitled to. Oh, yes.

15 MR. JORDASH:

16 Well, I can put my submission quite simply on this point. It appears as though there is agreement  
17 between the Prosecution and the Defence, that Rule 66 -- in so far as the continuous obligation to  
18 disclose applies. Now if that is right, then the remainder of the Rule must also apply. Simply that.

19  
20 And finally, in relation to my learned friend's submissions about the investigation, I would submit it is  
21 quite wrong for the Prosecution to suggest that the investigation of this witness can take place after  
22 the cross-examination. My learned friend attempts to limit the Defence case to the memory of the  
23 Accused. What if -- and I'm not saying this is the case -- what if Mr. Sesay, when he's looked at  
24 whether -- when he's looked at this evidence cannot remember this incident, cannot remember any  
25 incident which even remotely resembles it, but when we send an investigator into the field he finds out  
26 more about this alleged incident, is the Defence to be simply limited to what Mr. Sesay, over a four or  
27 five-year period can actually remember, or are we able to investigate in order to either add to or  
28 supplement instructions? Can this then be a supplement to our complaint, if -- once that investigation  
29 is taking place and there are substantial factors, substantial aspects arising from the investigation  
30 which are not then put to the witness?

31 JUDGE THOMPSON:

32 Well, the learned Presiding Judge warned her about the simplistic nature of the methodology she was  
33 prescribing for investigating from a Defence perspective, and I myself do not think it's as simple as  
34 she was trying to present it.

35 MR. JORDASH:

36 Well, I would complete my submissions by simply saying it is fair to their witnesses to put the fruits of  
37 our investigations to that witness for them to deal with it; it is fair to Mr. Sesay to have this Trial

1 Chamber evaluate that witness's response to those specific allegations or specific Defence points in  
2 order to ascertain whether a particular witness is telling the truth or, over all, to evaluate that witness's  
3 credibility.

4  
5 Those are my submissions.

6 MR. PRESIDENT:

7 Mr. Brown, just sit down a while, please.

8 MR. BROWN:

9 You will remember me, Your Honour?

10 MR. PRESIDENT:

11 I'll remember you. We're always remembering you, all of you in fact.

12  
13 Yes, Mr. Brown, please.

14 MR. BROWN:

15 Your Honours, it did seem to me that the question of prejudice is I don't want to shift your analysis of  
16 the gravamen, but certainly the important reason for being before you. And on the methodological  
17 point made by our learned adversary, I would point out that I think Mr. Kallon stands in a different  
18 posture than Mr. Sesay. I can represent to you that other than to greet him good morning I've never  
19 spoken to Mr. Sesay and have no right to do so. So even assuming that there is some special  
20 relationship that the Accused has to these facts gives him a special advantage investigatorially. And  
21 not to concede that point but to assume it, the disadvantage to Morris Kallon here is substantial,  
22 unless -- and I did not hear my learned adversary ask the Court to give itself a limiting instruction not  
23 to consider this evidence under any theory of joint criminal liability, therefore, we face the allegation  
24 and are disadvantaged doubly in terms of an opportunity to respond to it, should the Court give any  
25 credence to the methodology suggested by the Prosecution. So, in 30 years of defending criminally  
26 accused, I have not heard it argued that the only source of investigative leads or even the best come  
27 from the accused in all circumstances.

28 MR. PRESIDENT:

29 Yes, Mr. O'Shea.

30 MR. O'SHEA:

31 Your Honours, I shall also be brief and I'll just make two points in reply.

32  
33 First of all, my learned friend Ms. Taylor raises the question of where is the context and where is the  
34 purpose, for purposes of my suggested form of interpretation. And it's quite simple, the context is  
35 66(i) which sets out the basic principle that we should have everything in relation to a witness as early  
36 as possible. And the purpose is to ensure that the Defence has proper notice of the case against it,  
37 and -- in order to prevent situations of ambush. And what I say is that having regard to that purpose,

1 given that this particular witness in her original statement makes no mention of Issa Sesay at all, and  
2 given the fact, to my knowledge, that this is the first suggestion in a supplemental statement of  
3 someone being in full military uniform among these Accused, that those very fresh allegations are  
4 tantamount to a new witness having regard to the purpose of the Rules. That's the way I would put it.

5  
6 Then, secondly, on the question of cross-examination and would cross-examination be effect -- an  
7 effective remedy for the problem that we've identified, I would assert that at least in one sense there  
8 has been some irredeemable prejudice here because there have been at least two witnesses where  
9 the Defence have made an issue around the question of military uniforms and it has appeared to us to  
10 be an issue of significance.

11  
12 Now, without going into that in too much detail and revealing our defence to much of an extent, it must  
13 be said that if this witness is coming out with this very significant point of one of the Accused being in  
14 full military uniform after we have just gone through cross-examination on the question of [Inaudible]  
15 military uniforms in relation to two other witnesses, there is, in at least one sense here, irredeemable  
16 prejudice which gives rise to the possibility of exclusion of evidence, I would submit.

17  
18 The other remedy, which Your Honours might consider, of course, is granting additional time to the  
19 Defence and of course that would not cure the particular problem I have just outlined. But when --  
20 also when reading Rule 66, one must read Rule 66, in my submission, in the light of Article 17, and  
21 this is also relevant to the question whether Your Honours should apply a purposive interpretation.  
22 And I would rely not only on 17(b) dealing with preparation of the defence, but also on 17(c) regarding  
23 the -- you know, the right to a prompt trial, the right to a trial without delay simply because if we apply  
24 66(ii) in two different ways depending on which mouth comes out with the information, the result will  
25 be that if the new information comes out of an existing witness, that in those circumstances the  
26 Prosecution will be in a position to regularly use these supplemental statements with impunity, if I may  
27 put it that way, and the Court will be in a position where it feels regularly bound in order to be fair to  
28 the Accused to give the Accused additional time to deal with that particular witness. And 66(ii) as it  
29 reads in relation to additional witnesses, effectively cures that problem by requiring the Prosecution to  
30 show good cause. Thank you.

31 MR. PRESIDENT:

32 Thank you, Mr. O'Shea.

33 The Court will rise and will resume sitting at 2.30, 2.30 please. The Court rises.

34 [Luncheon recess taken at 12.37 p.m.]

35 (Pages 17 to 37 by Gifty C. Harding)

36

37

[On resuming at 2.40 p.m.]

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MR. PRESIDENT:

We are resuming the session. May I announce to learned counsel that the Chamber will advise itself on the very interesting arguments that were raised this morning on the application or applicability of Rule 66 and we will deliver a ruling on this on Friday. On Friday. And this, of course, you know, would necessarily -- it would necessarily affect the dates when this witness will be called to give evidence. So that is what I thought I should communicate to learned counsel.

Yes, this said, we are prepared -- I hope the Prosecution is prepared to go on with a witness other than that one.

MS. TAYLOR:

Indeed, Your Honour, the next witness to be called is witness 064. The Prosecution is prepared to do that immediately. There is one issue that I would just raise now and then it will be -- I am in your Honour's hands as to whether you want to hear the issue now or subsequently. As I said, the next witness is witness number TF1-064. The witness after that is witness TF1-199, and witness 199 is the first of the Category B witnesses, that is the child witnesses to whom the Court has ordered may give testimony via the closed circuit television.

There was some trial of the closed circuit television in your Honours' absence on Friday and there are some issues that arise with how that might proceed, some technical issues and some issues that the Court will need to consider. I don't want necessarily to take up the Court's time now, as I said, it is the witness after this one, but I simply raise that because there will be some discussion that will need to be had prior to Witness 199 giving evidence.

MR. PRESIDENT:

Judge Boutet has some questions to put across to you.

JUDGE BOUTET:

That witness presumably will be giving evidence through closed circuit TV?

MS. TAYLOR:

Yes.

JUDGE BOUTET:

So what is the problem?

MS. TAYLOR:

The problem is --

JUDGE BOUTET:

We will not dispose of it, but at least if we know of the problem it may help a bit.

MS. TAYLOR:

There was a trial done with some representatives from my learned friends and witness protection on



1 Friday just as [Inaudible] was going to go. The screen can be split so that the majority of the screen is  
2 the witness and a small segment of the screen will be the person who is speaking to the witness so  
3 that there can be some monitoring both ways. All of that is fine. Your Honours' order and the  
4 protective decision in paragraph H, if my memory serves me correctly, said that the image on the  
5 screen in the public gallery was to be distorted. All of that is well and good. The difficulty is that  
6 members of the public sitting in the public gallery can see through these windows and see the screens  
7 for counsel.

8 MR. PRESIDENT:

9 I agree with you. In fact, in our tour, you know, of this Court the other day we came to that conclusion  
10 and we did say that when it comes to time we would have to turn -- maybe turn the screens so that  
11 they are not visible to the public and then counsel -- learned counsel may wish to confine themselves  
12 to screens which are not easily visible, you know, from the public. I think we need to do that, we saw  
13 it and, you know, yes.

14 MS. TAYLOR:

15 I'm pleased. That --

16 MR. PRESIDENT:

17 So in fact your own screen is even more visible to the public. If these screens here are working,  
18 maybe in the course of the evidence, you know, we could move here and also we would expect  
19 learned counsel to understand and to move because we shall turn those screens, you know, off --  
20 your screen and so on and so forth. So, I don't know, we need to organise ourselves because we  
21 went round the Courts and we saw that we would be disclosing the identity of the witness, you know,  
22 if we didn't turn off some of the monitors.

23 MS. TAYLOR:

24 I'm pleased that your Honours have been alert to the same issue that counsel was alert to.

25 JUDGE BOUTET:

26 I am not sure that the system is ready either because for that system to work properly we should in  
27 court here have a non-distorted image and a distorted image is only for the public.

28 MS. TAYLOR:

29 Yes.

30 JUDGE BOUTET:

31 To my knowledge they don't have the technology to do it now, I am told that it may be available next  
32 week or in two weeks' time, but --

33 MS. TAYLOR:

34 That was not my understanding from the other day, from Friday. Your Honour, my understanding was  
35 that the technology existed to distort the public screen, but for counsel's screen to be non-distorted.

36 JUDGE BOUTET:

37 If that is the case it's because they have improved their technology since Friday.

1 MS. TAYLOR:

2 As I said, I only wanted to raise that, I don't know whether my friends have any issues with turning off  
3 the screen. Obviously, my friends are a little more cramped on their side of the courtroom than the  
4 Prosecution is. And we were talking about perhaps other ways of trying to protect the identity of the  
5 witness, but have a workable arrangement, but I won't take up your Honours' time with that now. I  
6 simply raise it as an issue.

7 JUDGE THOMPSON:

8 Yes, the principle is not to protect the identity of the witness from the Court, but for the public.

9 MS. TAYLOR:

10 Exactly so.

11 JUDGE THOMPSON:

12 That's the basic principle of our – of what we understand and if the technology is not able to support  
13 that principle, then I think there is a serious question as to whether we can proceed might well arise.

14 MS. TAYLOR:

15 Might I request, Your Honours, that the Prosecution be informed, if my understanding is correct, that  
16 the technology does currently exist because, as I said, Witness 199, to whom this discussion applies,  
17 is to be the witness called after the immediate witness to be called this afternoon.

18 JUDGE BOUTET:

19 We will look into that this evening. May I ask -- I don't know, I don't know, because I have not done  
20 the testing, if we close the curtains on that side -- on the side of the Defence and leave the curtains  
21 open on the Prosecution side, but you move this closer to the Bench and turned your screen off,  
22 would that be -- in other words if members of the public are sitting behind you I have a feeling that  
23 they are unable to see the screens on the Defence side, but again I have not done the testing, I am  
24 just raising the issue.

25 MS. TAYLOR:

26 We would, as I said, in informal discussions between counsel and between witness protection, it  
27 seems that the screens on the Defence side are far more visible from the public gallery than from the  
28 Prosecution. And we were talking about the possibility of closing the screens of course, but there is  
29 an issue then of whether it's a closed session or not, but the audio will still be in the public gallery, but,  
30 I mean, there are ways of dealing with this. I simply raise it at this stage.

31 JUDGE BOUTET:

32 We will look into it.

33 MS. TAYLOR:

34 Thank you, your Honours. Unless my friends wish to raise --

35 MR. PRESIDENT:

36 Now the thing is we have to identify the screens because we did -- we did and we tried to adjust them,  
37 you know. I think the screens which are easily accessible to the public are one, two, three. That is

1 one, two and three.

2

3 This -- Mr. O'Shea's screen does not appear to be very easily accessible to the public. So if we could  
4 adjust ourselves, you know, this is one here -- and then, you know, some Defence counsel can move  
5 maybe this way because I see one, two, three screens and of course we did also say, you know, that  
6 the screen of the Prosecution is vulnerable. The first screen --

7 MS. TAYLOR:

8 Yes, that is right, yes.

9 MR. PRESIDENT:

10 And the second maybe, you know, so it is a question, you know, of using one, two, three, four, five,  
11 six, screens, you know, those six monitors, you know, would be the answer to this. I would not -- I  
12 think if we did that, we would dispense with screening the public, you know, on one side or on the  
13 other.

14

15 So how do we materially arrange ourselves? I think what we did was we turned those screens, you  
16 know, to face this way and then, you know, I'm sure you know what the Chamber is talking about, I  
17 mean you can easily your screen -- your screen will be off, the other one and then this one. So can  
18 we do something and see how it works? It's just a question of turning, you know, just turning this way.

19

20 Where are the technicians, please? Where are the technicians because we would --

21 [Trial Chamber confer]

22 MR. PRESIDENT:

23 Well we have taken note. We will do that again tomorrow.

24 MS. TAYLOR:

25 If your Honours please.

26 MR. PRESIDENT:

27 Okay. All right.

28 MS. TAYLOR:

29 The Prosecution would call witness number TF1-064, and that witness will be led in his evidence by  
30 my learned friend, Mr. Santora.

31 JUDGE BOUTET:

32 We need to pull the curtain to get the witness in?

33 MS. TAYLOR:

34 Yes, Your Honour.

35 MR. O'SHEA:

36 Just while that is being done, Your Honours --

37

1 MR. PRESIDENT:

2 You said this is witness number?

3 MS. TAYLOR:

4 064, Your Honour.

5 MR. PRESIDENT:

6 Yes, Mr. O'Shea.

7 MR. O'SHEA:

8 Your Honours, just while that is being done just a small practical issue I would like to raise, perhaps I  
9 can get guidance from the victims unit and the Prosecution. I was thinking about this issue of the  
10 coincidence of the last paragraph of the supplementary statement we were talking about this morning  
11 and it just occurred to me to enquire whether measures had been put in place to ensure that  
12 witnesses who have not yet testified do not in fact come in the public gallery. Not knowing much  
13 about how witnesses are looked after or where they are kept or what liberty of movement they have, I  
14 am not sure what the position is in relation to that.

15 [Witness Enters]

16 But of course it would not be appropriate for a witness who has not yet testified to be in a --- be able to  
17 sit in the public gallery to hear the testimony of other witnesses who are testifying. And I am just  
18 making enquiries as to what measures are in place for ensuring that that does not happen.

19 MR. PRESIDENT:

20 Yes, I think it is a pertinent question. I don't know --- the head of the witness protection unit is not  
21 here, but can the Prosecution, you know, provide a reply to Mr. O'Shea's question?

22 MS. TAYLOR:

23 Certainly, Your Honour, I don't presume to speak on behalf of Mr. Vahidy. However, from the  
24 Prosecution's point of view no witness is brought into the public gallery at all. The witnesses that are  
25 in Freetown to testify ---

26 MR. PRESIDENT:

27 You say none is in the public gallery at all?

28 MS. TAYLOR:

29 No, none at all, and the Prosecution would not take a witness into the public gallery prior to them  
30 giving evidence. And despite whatever my learned friends think about coincidences, they are going to  
31 have to accept that a coincidence is a coincidence and that the Prosecution has not been coaching or  
32 fishing with any of the witnesses that are due to give evidence in this session, or indeed, any other  
33 witnesses.

34 MR. PRESIDENT:

35 Mr. O'Shea, are you --

36 JUDGE THOMPSON:

37 Mr. O'Shea, does that satisfy?

1 MR. O'SHEA:

2 I do think further enquiries need to be made.

3 JUDGE THOMPSON:

4 Did your question or was your question predicated on some compliance with Rule 90 or something?  
5 Rule 90(D), is that what you were asking because I was not following that?

6 MR. O'SHEA:

7 I hadn't actually thought about which Rule I was relying on.

8 JUDGE THOMPSON:

9 Rule 90(D).

10 MR. O'SHEA:

11 Well thank you, I am grateful for that, I hadn't actually thought about that Rule.

12 JUDGE THOMPSON:

13 Yes.

14 MR. O'SHEA:

15 Yes, but I mean what the Prosecution has clarified is that they themselves are not bringing witnesses  
16 into the public gallery, but my question really goes beyond that. Is -- to what extent do witnesses  
17 have the freedom of movement to allow them to get into the public gallery if they decide to do so, to  
18 what extent have they been told that they not allowed to do so, and to what extent are those that  
19 come into the public gallery screened to ensure that they are not witnesses in the case? So I would  
20 request that a further inquiry be made into this, perhaps it is not a matter we need to deal with in open  
21 court.

22 MR. PRESIDENT:

23 Well I think -- the point is, Mr. O'Shea, your point is taken. I think we will charge the Prosecution to  
24 make further enquiries on this with the witness protection unit and to report to the Court, you know, at  
25 an appropriate time, you know, so that witnesses who are supposed to testify, you know, don't sit in  
26 the public gallery and again, it goes to the security arrangement -- it goes to the security  
27 arrangements as well. It is very difficult to identify the people --

28 MS. TAYLOR:

29 Your Honour --

30 MR. PRESIDENT:

31 --- to identify the people, members of the gallery, those who have access to the gallery.

32

33 Yes, Ms. Taylor.

34 MS. TAYLOR:

35 Your Honour, since you have requested that I do so, I will undertake to ask Mr. Vahidy to report to  
36 your Honours in due course. What I can say is that no witness has been brought into the public  
37 gallery at all and no witness will be brought into the public gallery at all. The witnesses that come to

1 the site of the Court in Freetown are under the -- or in the custody, if I can use it in a non-legal sense,  
2 of witness protection and or the OTP at all times and there has been no witness that has come into  
3 the public gallery.

4 JUDGE BOUTET:

5 All witnesses that have testified to now were protected witnesses. All of them. All witnesses that  
6 testified on behalf of the Prosecution at this -- up to this moment were protected witnesses.

7 MS. TAYLOR:

8 Yes.

9 JUDGE BOUTET:

10 Thank you.

11 MR. PRESIDENT:

12 I suppose we can move on.

13 MR. PRESIDENT:

14 Swear the witness in.

15 [Witness TF1-064 sworn]

16 MR. PRESIDENT:

17 This is the fifth witness, is it? Fifth witness?

18 MR. SANTORA:

19 Yes, your Honour.

20 MR. PRESIDENT:

21 Yes, please.

22 MR. SANTORA:

23 Your Honour, before I proceed I would like to introduce myself to the Chamber, my name is

24 Christopher Santora.

25 MR. PRESIDENT:

26 Chris.

27 MR. SANTORA:

28 Christopher Santora. And, as we noted I will be leading the examination, this is TF1-064.

29 WITNESS: WITNESS TF1-064

30 [Witness answered through interpreter]

31 Examined by Mr. Santora:

32 MR. SANTORA:

33 Q. Good afternoon, madam witness. I am going to ask you some questions and I want you, if you do not  
34 understand any question that I ask, that you tell me that you don't understand and I will go ahead and  
35 ask the question so you can understand it. I would first like to ask you, where were you born?

36 A. I don't know when I was born.

37 Q. Where were you born?

1 MR. PRESIDENT:

2 What was the first --

3 A. Yes, the next question.

4 MR. SANTORA:

5 The first question [Inaudible]

6 MR. PRESIDENT:

7 Where?

8 MR. SANTORA:

9 Where.

10 MR. PRESIDENT:

11 What did she say?

12 MR. SANTORA:

13 She said she did not know when she was born, so I asked the question again where was she born.

14 MR. PRESIDENT:

15 The first question was when, the second was where?

16 MR. SANTORA:

17 The first question was where. [Inaudible]

18 A. Am I supposed to show where I was born? I was born in **Xxxxx**.

19 Q. What Chiefdom is **Xxxxx** in?

20 A. **Xxxxx** Chiefdom.

21 Q. What district is **Xxxxx** Chiefdom in?

22 A. **Xxxxx** district.

23 Q. Madam witness, where did you grow up as a child?

24 A. I grew up in **Xxxxx** Chiefdom.

25 Q. Madam witness, have you ever been outside of Sierra Leone?

26 A. I've never lived outside of Sierra Leone, it hasn't happened.

27 Q. Madam witness, are you married?

28 A. Yes.

29 Q. About how many years ago were you married?

30 A. This is the third year.

31 Q. Now is this the first time that you have been married?

32 A. No, it's the second.

33 Q. And when were you married before?

34 A. I was married in [Inaudible]

35 Q. Do you remember approximately how long ago you were married to your first husband?

36 A. I don't remember the year.

37 Q. Madam witness, do you have children with your current husband?

- 1 A. We have one child.
- 2 Q. With your first husband did you have children?
- 3 A. We had two children, my first husband.
- 4 Q. Madam witness, what do you do for work?
- 5 A. I am a -- I am a vegetable gardener and I also sell -- I buy goods and sell to people. We do farming.
- 6 Q. Madam witness, have you ever attended school?
- 7 A. No, I never went to school.
- 8 Q. Do you know how to read and write?
- 9 A. No.
- 10 Q. Madam witness, can you tell this Court what languages you speak?
- 11 A. I only speak *Krio* and my own language.
- 12 Q. What is your own language?
- 13 A. **Xxxxx** language.
- 14 Q. Madam witness, where were you living with your first husband?
- 15 A. We were in **Xxxxx**.
- 16 Q. Where were you living during the war in Sierra Leone?
- 17 A. We lived in **Xxxxx**.
- 18 MR. PRESIDENT:
- 19 Lived where? I don't have the name. Please, we want to have the names.
- 20 A. **Xxxxx**.
- 21 MR. SANTORA:
- 22 Q. Madam witness, were you living then with your first husband during the war in Sierra Leone?
- 23 A. Yes.
- 24 Q. And did you stay in **Xxxxx**?
- 25 A. We were there when the war started.
- 26 Q. And what happened to you?
- 27 A. In the war?
- 28 Q. Yes, during the war while you were living in **Xxxxx**.
- 29 A. During this war a lot of things happened, they killed my parents, they killed my mother and my two
- 30 children with my first husband.
- 31 Q. I want to take you to the time you were living with your first husband and the first time that you
- 32 experienced the war. Can you explain what happened?
- 33 A. I will explain. That's what I'm coming to explain. They killed my mother and they killed three of my
- 34 brothers. They killed my two sons. They also killed my mother-in-law. They killed my father-in-law.
- 35 They killed my husband's aunt. They also killed my husband's cousin. And they killed my husband's
- 36 grandchildren and the town chief. And one other child who was a stranger, but I don't remember the
- 37 child's name. The person who brought this group, they killed his father also.



- 1 Q. Before you go any further I would like you to explain to this Court how this happened from beginning  
2 until end. So if you could please explain where you were living when things first started to happen.
- 3 A. What happened during this war, we were running away from the war and someone brought these  
4 people.
- 5 Q. Where were you living exactly?
- 6 A. We lived in **Xxxxx**.
- 7 Q. Where were you running to?
- 8 A. We were running away trying to pull out and go to some other country.
- 9 Q. Why were you running?
- 10 A. We were running away from the war.
- 11 Q. So who was with you when you left where you were living?
- 12 A. I was with my husband.
- 13 Q. Who else was with you?
- 14 A. My mother.
- 15 Q. Was there anybody else with you?
- 16 A. My mother-in-law and my father-in-law, but the names I have just called these, they are the people.
- 17 Q. Where exactly did you go?
- 18 A. We ran away to the nearest village. It's called **Xxxxx**, where I grew up.
- 19 Q. When this happened, can you remember what the season was at the time this happened? The  
20 season meaning was it the rainy season or the dry season?
- 21 A. I am not quite certain, but it appears like it was between the rainy season and the dry season.
- 22 Q. Where exactly did you go and hide?
- 23 A. When we ran away we ran to **Xxxxx** for a long time. We went back to the bush.
- 24 Q. Where were you hiding in the bush?
- 25 A. It was in **Xxxxx** in the bush.
- 26 Q. I want to take you to that time when you were hiding in the bush in **Xxxxx**. Who was with you in the  
27 bush in **Xxxxx** when you were hiding?
- 28 A. I was there with my family.
- 29 Q. Who else was with you?
- 30 A. There were other people behind us, there were people from **Xxxxx**.
- 31 Q. Who were you hiding from?
- 32 A. We were hiding from the rebels.
- 33 Q. Why were you hiding from them?
- 34 A. Because they killed people.
- 35 Q. How do you know that?
- 36 A. Well how did I know this? They told us that they killed people.
- 37 Q. Now at the time you were hiding in the bush near **Xxxxx**, what were you eating?

- 1 A. We ate potato leaves and cassava leaves and they were ground and boiled without oil or salt. We  
2 had no rice, we only ate cassava leaves and potato leaves.
- 3 Q. Aside from your family, were there other people hiding there as well?
- 4 A. I -- I can't say. The ones I've just talked about are the ones I can remember. I don't know about  
5 another group.
- 6 Q. Explain what happened to you while you were hiding in the bush near **Xxxxx**.
- 7 A. What happened? When we were hiding in the bush the only thing that happened to me was the  
8 sufferings we went through.
- 9 Q. Explain what you mean by the sufferings.
- 10 A. The sufferings I had when we were in the bush. When we were in the bush we only heard, "Rebels,  
11 rebels." I was very pregnant. They didn't do anything to me at that time. When they captured us,  
12 they also released me and I went back.
- 13 A I was in that bush when I gave birth. One week after giving birth in the second week my child had just  
14 been born and it was that very morning that they caught us.
- 15 Q. Can you explain when you say "they", who caught you?
- 16 A. Those who killed people, they were the ones who caught us.
- 17 Q. Can you tell to this Court exactly who came and caught you, what they looked like?
- 18 A. The rebels caught us, but I knew only one person among them, I didn't know the rest.
- 19 Q. Who was the person you knew?
- 20 A. **Xxxxx**.
- 21 Q. Who was **Xxxxx**?
- 22 A. He was a son of **Xxxxx**. He grew up together with my husband in **Xxxxx**.
- 23 Q. When these men came to your camp in the bush near **Xxxxx**, explain what happened when they first  
24 encountered you.
- 25 A. When they arrested us, they asked us to produce guns, but we didn't have the native guns.
- 26 Q. Did they say anything else to you?
- 27 A. Well my husband's sister was with us and they caught her and asked her to took (*sic*) down her pants  
28 and they took out a knife and they were going to place a knife into her genitals.
- 29 Q. What happened then?
- 30 A. She begged, he tried to push the knife
- 31 Q. And then what happened?
- 32 A. The man told the woman to go with her (*sic*) into one of the houses so that they can have sex. The  
33 little child held onto the woman's *rappers* and **Xxxxx** told the girl not to take the little child.
- 34 Q. And then what happened?
- 35 A. Afterwards they went together with the man. The girl didn't come back, but it is the man who came  
36 and asked me.
- 37 Q. What did the man ask you?

- 1 A. He said, "Where is this woman?" And I said, "But you went together with this woman and you are now  
2 coming to ask me."
- 3 Q. Did you ever see the woman again?
- 4 A. She is still alive. I think she hid herself.
- 5 Q. Do you know what happened to this woman?
- 6 A. I really don't know what happened to her.
- 7 Q. What happened after they asked you about the woman. What happened next while you were in the  
8 camp -- while you were in the bush in **Xxxxx**?
- 9 A. What happened to me afterwards was one of the other abductees who was a *Temne* man, they asked  
10 me to have sex with him.
- 11 Q. What did you say?
- 12 A. I refused because I was just a young nursing -- suckling mother.
- 13 Q. What happened then?
- 14 A. They took a whip and started flogging the man and they were flogging me also, so I was forced to  
15 accept to have sex with him.
- 16 Q. So did you have sex with him?
- 17 A. Yes, they cut me and they spread my legs away and parted my legs and they asked the man to start  
18 making love to -- sex with me.
- 19 Q. Who was present when they forced you to have sex with this *Temne* man?
- 20 A. This **Xxxxx** was there. The other people who were also *Limba* men were there, but I don't know their  
21 names.
- 22 Q. Where were your children at the time?
- 23 A. My child was standing by me crying and they started flogging the child also.
- 24 Q. What happened after they forced you to have sex with the *Temne* man?
- 25 A. Afterwards, after he had finished making sex with me, they asked me to get up and take my children,  
26 so I took one of the elder children and tied him on my back.
- 27 Q. What happened next?
- 28 A. We went to where my mother-in-law was.
- 29 Q. And then what happened?
- 30 A. When we arrived they said they were hungry. We had bread fruits and they roasted it for them.  
31 We poured palm oil on it and gave it to them. They ate it. There was some alcohol, they gave it to  
32 them, they drank it and they asked us to go to town. They said we are punishing ourselves in the  
33 bush so we should go to town, they are ECOMOG.
- 34 Q. Okay, before you proceed, when you say they were forcing -- they were eating and they were drinking  
35 the wine, who was "they" when you say they were doing this?
- 36 A. The rebels.
- 37 Q. And after they ate and drank, what did they do?

- 1 A. They placed us in a single file and asked us to go to town. Some of them were at the back and others  
2 were ahead of us.
- 3 Q. Okay, how many of these rebels can you say were there at the time, approximately?
- 4 A. There were lots of them, I can't even tell the number.
- 5 Q. Can you remember how they were dressed?
- 6 A. Some of them had combats, some of them had civilian dress on.
- 7 Q. After they lined you up, what happened next?
- 8 A. We came to town and they asked us to place the children.
- 9 Q. Okay, tell the Court which town you came to.
- 10 A. We came to **Xxxxx**.
- 11 Q. So approximately how long did it take you to walk from the bush where you were to the village of  
12 **Xxxxx**?
- 13 A. It was more than one hour.
- 14 Q. And besides yourself and the people you mentioned in your family, were other people forced to march  
15 to **Xxxxx** as well?
- 16 A. Except the *Temne* man.
- 17 Q. When you say except the *Temne* man, do you mean that he came with you or that he stayed?
- 18 A. We came and found him in town with them.
- 19 Q. What happened after you arrived in **Xxxxx**?
- 20 A. When we arrived they said we should place all our children under the orange tree.
- 21 Q. Did you place your children under the orange tree?
- 22 A. Yes, we placed them under the orange tree, my young child that was just walking held onto my  
23 clothes and they drew -- snatched him from me and threw him away and said he shouldn't follow me.
- 24 Q. About how many children were put under the orange tree?
- 25 A. My husband's sister had three grandchildren and I had two children and my three little brothers.
- 26 Q. Madam witness, how old were your children?
- 27 A. The other one was three years.
- 28 Q. And the second child was how old?
- 29 A. He was not one year old yet.
- 30 Q. When you were -- when they put the children under the orange tree, you just said that one of your  
31 children grabbed, which child was the one who grabbed you, the older one or the younger one?
- 32 A. It was the elder one.
- 33 Q. What exactly happened?
- 34 A. When they took the child away from me and threw him away, they undressed all of us, men and  
35 women, and they placed us in one room in a house.
- 36 Q. Before you proceed, when you say they threw your child away, explain exactly what you mean when  
37 you say that.

- 1 A. They grabbed the child by the arm and threw the child away. I attempted to go and take my child and  
2 one of the men pushed me and said, "Go into the house."
- 3 Q. What did your child do after they pulled him from you and threw him?
- 4 A. My child cried and started crying. There was no way I could come out and take my child, the house  
5 was locked from outside.
- 6 Q. Okay, explain to the Court what happened after they pulled your child from you. What exactly  
7 happened next?
- 8 A. When they placed us into the house all the children started crying. They started crying.
- 9 Q. How did you know they started crying?
- 10 A. The house in which we were placed wasn't far from the children, I could hear them.
- 11 Q. What exactly did you hear?
- 12 A. Children crying, they cried. After sometime I heard no more crying and I tried to peep through the  
13 window, they put the nozzle of the gun in the window and said, "Anybody who peep outside will be  
14 shot at."
- 15 Q. Who was with you, who was guarding you in the house?
- 16 A. There was -- it was one man whom they threw into house to guard us there. I don't know his name.
- 17 Q. And what -- did he say anything else to you aside from not peeping out the window?
- 18 A. He said -- the man didn't say anything to us. When the children stopped crying, I scratched my  
19 mother on the leg and said, "Mom, I think these children may have been killed," so my mother shouted  
20 back at me and she even fainted. They thought I was telling my mother to hide with me, so they  
21 surrounded the house again.
- 22 Q. Who exactly was in the house with you at this time?
- 23 A. I don't know their names, I don't know the person's name.
- 24 Q. Aside from the people that were guarding you, who were being held in the house at this time?
- 25 A. My relatives, members of my family, whose names I had called earlier on, were all in the house.
- 26 Q. And you stated that you heard screaming outside and then you heard the screaming stop. Do you  
27 remember approximately how long you heard screaming for?
- 28 A. No, I can't tell -- I don't know how long it took until the children stopped crying.
- 29 Q. What happened after the children stopped crying?
- 30 A. Well the children are our children, we are taking care of them and if they see that they parted us, they  
31 stayed out with the other people whom they didn't know, so they started crying.
- 32 Q. Okay, after the crying stopped while you were in the house, what happened next?
- 33 A. Afterwards we didn't hear them cry any more until they gave us -- opened the door and we came  
34 outside and all we saw were their corpses.
- 35 Q. Explain exactly what happened when they opened the door and you came outside?
- 36 A. They opened the door -- the first thing they had done actually was to catch the town chief and kill him.
- 37 Q. Okay, where was the town chief when they killed him?

- 1 A. We were all in the bush and they caught him where he was hiding and they brought us all together.
- 2 Q. Okay, after they brought you all together and they brought you to the house in **Xxxxx**, I want you to tell
- 3 the Court what happened after you heard the crying of the children stop.
- 4 A. They started killing the adults.
- 5 Q. Who is "they"?
- 6 A. The rebels.
- 7 Q. Explain exactly what you mean when you say the rebels started killing the other adults.
- 8 A. How they started? They cut off the head of the town chief.
- 9 Q. Did you see this happen?
- 10 A. I didn't see it myself, except when I came out and I saw it.
- 11 Q. Okay, when you were in the house with the other people, who came out of the house first?
- 12 A. The guard who was guarding us was the first person who came out, after that they took the chief out
- 13 and they killed him.
- 14 Q. Who came out after the chief?
- 15 A. My brother-in-law's -- my father-in-law's little sister.
- 16 Q. What happened to her?
- 17 A. They killed her also.
- 18 Q. Who else was in the house with you after they killed her?
- 19 A. The man -- **Xxxxx's** father was with us, **Xxxxx** who brought the group.
- 20 Q. What happened to **Xxxxx's** father?
- 21 A. They killed him also.
- 22 Q. When you say they killed him, but you didn't see it, how did you know that these people were being
- 23 killed?
- 24 A. They didn't throw away the corpses or bury them, they left them out there so when they brought us
- 25 outside I saw the dead bodies.
- 26 Q. So where were they killing these people who came outside the house?
- 27 MR. BROWN:
- 28 I object to that.
- 29 A. **Xxxxx**.
- 30 MR. BROWN:
- 31 My objection was -- I am sorry, if the witness said she did not see it, how can she then be asked
- 32 whether was it taking place?
- 33 JUDGE THOMPSON:
- 34 Sustained.
- 35 MR. SANTORA:
- 36 Q. After **Xxxxx's** father left the house, who else was with you in the house at this time?
- 37 A. Those of us who stayed there, me, my father and my father-in-law and my father-in-law's nephew.

- 1 Q. Was there anybody else with you at this time in the house?
- 2 A. No other person except that *Temne* man.
- 3 Q. What happened next after *Xxxxx*'s father walked out of the house, what happened after that?
- 4 A. They killed all of them, but they killed them one after the other.
- 5 Q. Okay, when you say they killed them one after the other, explain exactly what you mean.
- 6 A. What happened, I saw them take the people out one by one and they had guns and the machetes.
- 7 One of the people will shout aloud and then it will be quiet.
- 8 Q. What did you hear being shouted?
- 9 A. They cried about their dead, they said, "Eh God, this is the end of our lives."
- 10 Q. Now I would like you to tell the Court the people that came out of the house one by one, if you can.
- 11 A. It is my relatives, the relatives I have been living with, the ones I have just talked about.
- 12 Q. Can you tell us which relatives were in the house with you and came out one by one in terms of --
- 13 MR. BROWN:
- 14 I object, this is the second time we have been through here and the second time we have gotten the
- 15 same answer which was her relatives, the ones she had identified before. She has been asked and
- 16 answered twice.
- 17 JUDGE THOMPSON:
- 18 I was thinking in fact that you may be getting close to your danger line in terms of identification --
- 19 MR. SANTORA:
- 20 Okay.
- 21 JUDGE THOMPSON:
- 22 -- having regard to the protective measures.
- 23 MR. SANTORA:
- 24 Well I was going to base it on the relationship -- family relationship. But I will proceed.
- 25 Q. After the people in the house with you came out one by one, what happened next?
- 26 A. I was the last person to be taken out of the house when they took them out one after the other --
- 27 Q. What did you see when you came out of the house?
- 28 A. When I came outside that was the only time I was able to make sure that these people had been killed
- 29 because I saw all their corpses lying around.
- 30 Q. When you say you saw all of their corpses, do you mean the people in the house with you?
- 31 A. I came outside --
- 32 MR. PRESIDENT:
- 33 [Inaudible]
- 34 A. -- and I saw my -- I saw my child.
- 35 MR. PRESIDENT:
- 36 [Inaudible] to sobbing, please [Inaudible] please. The psychologist, are you there, please? Can you
- 37 ask the lady, the welfare -- the welfare officer to come in, please.

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No, no, please wait.

JUDGE BOUTET:

Close your mic.

MR. PRESIDENT:

We will rise for ten minutes to enable this lady to regain her -- to continue. The Court will rise, please.

[Recess taken at 3.45 p.m.]

(Pages 38 to 54 by Susan G. Humphries)



[On resuming at 4.06 p.m.]

1 MR. PRESIDENT:

2 Madam witness, are you all right?

3 JUDGE BOUTET:

4 Open her mic.

5 MR. PRESIDENT:

6 Open that mic, please. Madam witness, are you all right?

7 A. Yes.

8 MR. PRESIDENT:

9 Are you all right?

10 A. Yes.

11 MR. PRESIDENT:

12 So you can now continue talking?

13 A. Yes.

14 MR. PRESIDENT:

15 You can, okay. Hold your hat, huh, and speak, okay. That lady will help you, hmm.

16 Okay, can the Prosecution go on, please.

17 MR. SANTORA:

18 Q. Madam witness, I know this is difficult but I want to ask you few more questions about what happened  
19 when you came out of the house in **Xxxx**. Aside from the body of your child that you saw, about how  
20 many other bodies did you see when you came outside of the house?  
21

22 A. [No response]

23 JUDGE BOUTET:

24 Are we having problems with translation or is it just that the witness has not responded?

25 MR. SANTORA:

26 I can ask the question again unless there is a problem with the translation.

27 JUDGE BOUTET:

28 Translation, can you – [Overlapping microphones]

29 THE INTERPRETER:

30 There is not a problem with the translation, but obviously she doesn't hear.

31 JUDGE THOMPSON:

32 Then there's a problem.

33 JUDGE BOUTET:

34 Yeah, there may not be a problem with translation, but there is a problem with translation going to the  
35 witness, so... can translation try again?

36 THE INTERPRETER:

37 The witness is not hearing us.

1 MR. SANTORA:

2 Shall I ask the question again and try again or is it just not coming through?

3 JUDGE BOUTET:

4 I understand that whatever the translation is trying to achieve, they are not getting through to the  
5 witness.

6 THE INTERPRETER:

7 She's being asked repeatedly, but she's not hearing, apparently.

8 JUDGE BOUTET:

9 So can we get the technician to try to fix it?

10 MR. PRESIDENT:

11 Mr. Walker, are you the technician? Good luck. Go ahead.

12 THE INTERPRETER:

13 She can hear us now. No, no. She can hear us now.

14 JUDGE BOUTET:

15 Speak to her.

16 A. Yes, I can understand -- I can hear now.

17 MR. SANTORA:

18 I'm going to ask the same question again.

19 MR. PRESIDENT:

20 Yes, please.

21 MR. SANTORA:

22 Q. Madam witness, I know this is difficult but I'm going to ask you just a few more questions about what  
23 happened when you came outside of the house in **Xxxxx**. When you came outside, aside from the  
24 body of your own child that you saw, about how many other bodies did you see?

25 A. The corpses I saw was the town chief's corpse and my father-in-law and my mother-in-law and my  
26 father-in-law's nephew and a man called Kongoney the father of the leader of the troop that came,  
27 and my father-in-law's little sister's three grandchildren. There was also another adopted child  
28 belonging to one Temne woman. Those are the ones I remember seeing.

29 Q. When you walked outside, were the rebels that put you in the house outside when you walked  
30 outside?

31 A. Yes.

32 Q. What did they say to you?

33 A. They said, "Look around. Among all these corpses are they your relatives?" I said, "Yes."

34 Q. Then what did they say?

35 A. They told us to take the luggages and go with them and they had placed all the heads, the human  
36 heads that were decapitated into a bag, and that bag was placed on top of -- on the head of a Temne  
37 boy.

- 1 Q. When you say they asked you to come with them, did they say specifically where they wanted you to  
2 go with them?
- 3 A. Yes. They told me to go to **Xxxxx** with them.
- 4 Q. And when you said they put the heads in a bag, what kind of a bag did they put the heads?
- 5 A. It was in a bulgur bag.
- 6 Q. Who put the heads in the bag?
- 7 A. I couldn't tell because I found the bag tied.
- 8 Q. How did you know the heads were in there?
- 9 A. Blood was dripping out of the bag.
- 10 Q. What happened then after you saw the bag?
- 11 A. When I saw the bag and I turned around and I saw the corpses, they asked me to laugh.
- 12 Q. Who asked you to laugh?
- 13 A. The rebels.
- 14 Q. Did you laugh?
- 15 A. A gun was pointed to my head so I pretended to be laughing.
- 16 Q. What happened next?
- 17 A. They placed the sack of heads on the head of the Temne boy and they told us to go and they took the  
18 other luggages and placed it on my own head.
- 19 Q. And where did you go?
- 20 A. We went to **Xxxxx**.
- 21 Q. How long, approximately, did it take you to get to **Xxxxx**?
- 22 A. It is a very short distance. It is just like since we started these trials, we have arrived.
- 23 Q. And who exactly went with you on this walk from **Xxxxx** to **Xxxxx** ?
- 24 A. I was with the rebels.
- 25 Q. Do you remember approximately how many were with you walking to **Xxxxx**?
- 26 A. I can't remember. When we left **Xxxxx** those who came from **Xxxxx** to **Xxxxx**, those who came with us  
27 were few, but initially there were a large number of them. So I'm not sure how many there were.
- 28 Q. Aside from yourself and the Temne boy that you just mentioned who was carrying the bag of heads,  
29 was there anybody else with you who was captured going to **Xxxxx**?
- 30 A. Un-huh. I only know the two of us.
- 31 Q. What happened when you arrived in **Xxxxx**?
- 32 A. When we arrived in **Xxxxx**, they opened the bag and turned the heads and that was the only time I  
33 noticed my son's head because I didn't see the body but I saw the head, the only head (sic).
- 34 Q. Was this your younger child or your older child that you saw the head of?
- 35 A. Both of them. The elder one I saw his corpse, but I did not see the little one's corpse, I only saw his  
36 head but I saw both heads in **Xxxxx**.
- 37 Q. After they emptied out the bag, what happened next?

- 1 A. They asked the females among them to go and throw away the heads. They counted heads and they  
2 gave it to the women to go and throw the heads in the river, and they did that.
- 3 Q. Do you remember how many they counted?
- 4 A. I don't remember the amount again.
- 5 Q. And did you see them throw the heads away in the river?
- 6 A. Yes.
- 7 Q. Who told them to go throw the heads away in the river?
- 8 A. Their boss that was in **Xxxxx**, their boss they took us to.
- 9 Q. Who was their boss man in **Xxxxx**?
- 10 A. I saw them call him a particular name in that movement, Kapay.
- 11 Q. Can you tell the Court how this man Kapay was dressed?
- 12 A. Well, he didn't have a shirt on, he only had short trousers, but he didn't have any shirt on.
- 13 Q. And how do you know he was their boss?
- 14 A. Because I saw the havoc they had committed; it was him whom they went to and reported everything.
- 15 Q. Did you see them reporting things to him?
- 16 A. Yes.
- 17 Q. You stated that you came to **Xxxxx** with a Temne boy. What happened to him when you arrived in  
18 **Xxxxx**?
- 19 A. When we arrived in **Xxxxx**, I didn't see when they were killing the other people but this Temne boy I  
20 was present, just like we're all sitting down now. They placed him on a mortar, an old mortar and they  
21 slit his throat open.
- 22 Q. Who slit his throat open?
- 23 A. Their boss man.
- 24 Q. What happened after they slit his throat open?
- 25 A. They called the females again and asked them to drag the body and they dragged the body and took  
26 him and threw him away. I couldn't say whether he was thrown in the water or some other place, but I  
27 saw them dragging him away.
- 28 Q. When the boss man killed this Temne boy, approximately how far away were you when this  
29 happened?
- 30 A. It is like the distance between myself and this Prosecution lawyer.
- 31 Q. After this happened, did they say anything to you?
- 32 A. This fellow **Xxxxx** who brought these people to the village said that he didn't think they were going to  
33 keep me alive until now, he didn't think any member of my family should live, not even an aunt should  
34 have lived. He hasn't seen my husband nor has he seen my brother, but he thinks that I should not  
35 be left alive.
- 36 Q. What happened after **Xxxxx** said this?
- 37 A. Okay. The man who was responsible for the killing said, "Well, I didn't want to kill this woman

1 because she is a young nursing mother and she has lost her children, but since you know her and you  
2 say we should kill her, then I think we should kill, so I'm going to kill her. So I ran away and went to  
3 the security of a Kissy man and he begged for me.

4 Q. What happened after you ran to the security of a Kissy man who begged for you?

5 A. Okay. What happened afterwards was that there was an argument between this Kissy man and this  
6 **Xxxxx**. He kept insisting that I should have been killed. In fact, he joined this movement so that even  
7 if he saw his own mother he would kill her, so that was the argument that went on between them. And  
8 this Kissy man was begging for me not to be killed.

9 Q. When you say **Xxxxx** said he joined this movement, what movement are you referring to?

10 MR. CAMMEGH:

11 No, I'm sorry, that is not the evidence. Can my learned friend be a bit little more careful before he  
12 asserts that.

13 JUDGE THOMPSON:

14 But she just answered and in the translation there was movement. Are you disputing the translation?

15 MR. CAMMEGH:

16 No, I'm not. I'm disputing the way my learned friend has reflected the translation. The recollection I  
17 have is that it didn't come out in just the way my learned friend has just put it.

18 JUDGE THOMPSON:

19 No, no, no. Let us clarify this from the translators. I heard distinctly the word "movement" when --  
20 and I heard this piece of evidence. Perhaps this should resolve this dispute between the Bench and  
21 the Bar. Translation.

22 THE INTERPRETER:

23 Yes.

24 MR. PRESIDENT:

25 Please repeat the translation.

26 THE INTERPRETER:

27 She said that **Xxxxx** said, "I joined this movement so that even if I see my mother, I'll kill her."

28 JUDGE THOMPSON:

29 Learned counsel, what is your complaint? Mr. Cammegh.

30 MR. PRESIDENT:

31 That was when the Kissy man was begging.

32

33 JUDGE THOMPSON:

34 What is your complaint?

35 MR. CAMMEGH:

36 My complaint was that I didn't hear the translator say affirmatively that it was **Xxxxx** who had said  
37 those words.

1 MR. PRESIDENT:

2 But are you now satisfied?

3 MR. CAMMEGH:

4 Well, if that's the translation, then yes.

5 JUDGE THOMPSON:

6 Of course, we are not experts in translating.

7 MR. CAMMEGH:

8 No, no. But all I can do is --

9 A. Is he asking that Xxxxx didn't say that he did not want anybody to survive in my family, even aunts?

10 JUDGE THOMPSON:

11 I was just trying to persuade counsel that we do not know the Xxxxx language and we're relying on  
12 the fidelity of the translators, and I just wanted to know whether counsel is satisfied now.

13 MR. CAMMEGH:

14 I'm certainly satisfied now. The reason I got to my feet was the original translation appeared to me to  
15 be ambiguous.

16 JUDGE THOMPSON:

17 The point is taken.

18 MR. CAMMEGH:

19 Yes, thank you.

20 MR. PRESIDENT:

21 Yes, Mr. Brown.

22 MR. BROWN:

23 Your Honour, my objection is not to the translation at all, but to the anticipated political identification  
24 that I presume is to follow. I take it that the focus on the word "movement" has to do with that term  
25 generically and the fact that there is absolutely nothing in any of the statements supplied to us that  
26 there will be a political identification of a movement, and it is clear that the Prosecution is asking a  
27 question to which it presumably knows the answer and we do not. And that is a considerable  
28 departure if not in quantity of words, then in quality of evidence and in thrust of evidence from  
29 anything we had any reason to anticipate from this witness.

30 JUDGE THOMPSON:

31 So the pith of your objection is not to the answer given by the witness.

32 MR. PRESIDENT:

33 You're anticipating something.

34 MR. BROWN:

35 It is to the further question proposed by the Prosecution accompanied by a presumption that he  
36 knows the answer, and that that answer far exceeds the bounds of anything for which we were  
37 prepared or have anticipated.

1 JUDGE THOMPSON:

2 And are you, in other words, in familiar language being pre-emptive?

3 MR. BROWN:

4 I don't know how much closer to the edge I can get than to object to what I anticipate to be -- or what I  
5 think is already the beginning of the next question.

6 JUDGE BOUTET:

7 And what would be your objection? I would like to know based on what?

8 MR. BROWN:

9 Well, we have seen quite -- could the witness's earphones be removed while I make this argument?

10 JUDGE BOUTET:

11 Why?

12 MR. BROWN:

13 Because I don't think --

14 JUDGE BOUTET:

15 If the witness was speaking English, would you ask the witness to be excluded from the Court?

16 MR. BROWN:

17 Absolutely.

18 JUDGE BOUTET:

19 You would for this argument?

20 MR. BROWN:

21 I absolutely would. It has nothing do with language, it has to do with whether or not the witness  
22 should partake of our discourse, any argument I would like to record, any response from the  
23 Prosecution and questions of the Court. I think the witness ought not to be influenced by that in any  
24 way.

25 JUDGE THOMPSON:

26 Let me interject and ask, what prejudice would your side suffer if the witness hears legal arguments  
27 because we're not -- we're not suggesting that this witness would be --

28 THE INTERPRETER:

29 She didn't say anything to me.

30 MR. PRESIDENT:

31 [Overlapping microphones]

32 JUDGE THOMPSON:

33 [Overlapping microphones] ...that you've put forth.

34 MR. BROWN:

35 Your Honour, first of all, I heard a sound from the witness interpreter saying she didn't say anything,  
36 which I accept. But it does seem to me that we are all subject to being influenced, not necessarily in  
37 an improper way, but in a way that it can affect the testimony since I wish to address Your Honours on

1 the very subject of what her possible answer is and/or whether or not it varies from things we've heard  
2 before.

3 JUDGE BOUTET:

4 And if it were, what is the objection?

5 MR. BROWN:

6 The objection, Your Honour, is that this is a qualitatively different subject that we haven't had notice  
7 about.

8 JUDGE BOUTET:

9 And?

10 MR. BROWN:

11 And that we should have the opportunity to be prepared for it, at least by a representation from  
12 counsel as to what the answer is. There is a difference between night and day, between a witness  
13 who comes in only to identify activities in a crime base for reasons to be tied up later by the  
14 Prosecution, and a witness who is going to identify what that witness believes to be political elements  
15 involved.

16 JUDGE THOMPSON:

17 But, learned counsel, the word "political" has not been used here.

18 MR. BROWN:

19 I introduced it in response to the word "movement."

20 JUDGE THOMPSON:

21 Precisely. Well, why -- aren't you making a quantum leap. The word "movement" -- the word  
22 that has been used there is "movement," and I'm not sure whether we should, in fact, accept your own  
23 pre-emptive anticipation of political --

24 MR. BROWN:

25 I respectfully defer with your term quantum. I think it is a leap, it is a reasonable leap, it is a leap  
26 compelled by the nature of this case, the nature of this evidence and I have noted that our learned  
27 adversaries only elicit testimony which they believe to be relevant. What other kind of movement  
28 would they think relevant? I mean, I can only object in a pre-emptive way because once it is out, it is  
29 out. I think we have a right to know and to be heard on whether it is a significant departure from what  
30 we've been told in the statements provided.

31 JUDGE BOUTET;

32 But -- [Overlapping microphones].

33 JUDGE THOMPSON:

34 Can you educate me a little?

35

36 MR. BROWN:

37 Yes.



1 JUDGE THOMPSON:

2 How would you describe a political movement? How would you define that? Because the term that  
3 has been used here is "movement." I wouldn't know -- we the Judges don't know what movement is  
4 being --

5 MR. BROWN:

6 I'm prepared to withdraw as improvident my use of the word political and say that movement, if it be  
7 identified and if it be identified as belonging to one of the various factions or groups that are at issue  
8 with respect to this trial, is something of which we have no notice and that is a critical point. So if I  
9 was -- if the pre-emptive nature of my argument was because I used the word "political," I accept your  
10 correction.

11 JUDGE BOUTET:

12 You are presumably familiar with the decision we rendered on Friday.

13 MR. BROWN:

14 I am.

15 JUDGE BOUTET:

16 And I thought we had addressed this kind of issue in that decision saying essentially -- I'm not quoting  
17 verbatim, but essentially the fact that the witness is now testifying to something that is not contained in  
18 a statement is indeed admissible.

19 MR. BROWN:

20 I would -- sorry, I didn't meant to --

21 JUDGE BOUTET:

22 That's essentially what we were saying, so what is the difference between what we've said in that  
23 decision and in what you are trying to raise at this moment, even though it would not be contained in  
24 the statement as you say, so what is the objection?

25 MR. BROWN:

26 Well, I think that there are -- I did not read, although I will re-read your opinion to say that any  
27 circumstance, any new evidence not anticipated is never the subject of a proper motion by counsel. I  
28 will go back and re-read it. I -- my observation of this Court is that it is a much more careful and  
29 focused on craft than that. And assuming there are some parameters, I submit the answer we are  
30 going to hear exceeds those parameters because it is a quantum leap beyond a description of things  
31 observed by this witness thus far, which are reasonably consonant with that which was said before,  
32 and something --

33 JUDGE THOMPSON:

34 Counsel, I'm not interested in you citing from principle some case law authority relating to the nature  
35 and scope of examination-in-chief factually precluding learned counsel for the Prosecution asking the  
36 question which you anticipate. What rule somewhere, what rule because I am now taking myself back  
37 to my law school days and learning the nature and scope of examination-in-chief and also

1 cross-examination and re-examination, which particular rule is about to be infringed, in your  
2 submission, by any answer which achieves the purpose as you are articulating it?

3 MR. BROWN:

4 This is not a rule concerning direct examination, but rather the question of surprise and the  
5 opportunity for counsel to be prepared. It is article 17. If, in fact, a witness who has never hitherto for  
6 identified the conduct of this person **Xxxxx** with any group is now called upon to do so and the  
7 Prosecution is aware of that and we are not, despite having two statements of this witness, then we  
8 are being surprised and ambushed in a way --

9 JUDGE THOMPSON:

10 What would be your response if I said to you that this Court and tribunals of this nature place greater  
11 emphasis on the principle of orality? It is the very -- it is what the witness states from the witness  
12 stand that is of central importance to the Court in the ascertainment of the truth.

13 MR. BROWN:

14 That's why I'm on my feet because I recognise that.

15 JUDGE THOMPSON:

16 Precisely. And so therefore at the end of day if you say you'd been surprised, surprised how? By  
17 what? What had you had notice prior of which makes what she will be about to say a surprise?

18 MR. BROWN:

19 A fair question and I apologize if I have not answered that because I was trying to do so, so do not  
20 hold against Morris Kallon my inarticulateness. We have significant -- we have a four-page statement  
21 from December of 2002 and a much shorter statement -- a two-paragraph statement from July from  
22 this witness. Much of, to use Your Honour's term, the gravamen of the testimony is reflected there,  
23 and I do not quarrel with it in any way in terms of surprise. The phrase "movement" and the fact that  
24 my learned adversary presumably knows what movement is going to be identified --

25 MR. PRESIDENT:

26 Mr. Brown, why don't we proceed and see how we go so that you may found maybe your objection on  
27 something, you know, more concrete? Why don't we move?

28 MR. BROWN:

29 I certainly will obey Your Honour's direction, but I think I am pretty concrete in my --

30

31 MR. PRESIDENT:

32 When the time comes, you know.

33 Yes, Mr. O'Shea, you were on your feet. I saw you fresh on your feet.

34 MR. O'SHEA:

35 Your Honours, I've noted that Your Honours are not terribly convinced by the problem of the witness  
36 and the earphones, but for my part I would respectfully submit that it is on occasions, not always, but  
37 on occasions quite important that the witness do remove their headphones. If counsel wishes to

1 present legal argument on a matter which may suggest to the witness what the Prosecution wants to  
2 hear, that is an area of potential prejudice for us, in my submission. And I'm not suggesting that the  
3 witness should always have their headphones off, but if in counsel's professional judgment they are  
4 about to say something which they believe may be suggestive for the witness in a similar manner as a  
5 leading question, in my respectful submission, we need to be accorded that request.

6 JUDGE THOMPSON:

7 Even if where the legal arguments had not being translated?

8 MR. O'SHEA:

9 Is that the case here Your Honour?

10 JUDGE BOUTET:

11 No, I think they are being translated.

12 JUDGE THOMPSON:

13 I see, well, that puts a different complexion on it, counsel.

14 MR. PRESIDENT:

15 Yes, Mr. Jordash.

16 MR. JORDASH:

17 Simply to adopt what my learned friends have just said --

18 MR. PRESIDENT:

19 Okay, you adopt it.

20 JUDGE BOUTET:

21 Which friends? You have two friends now.

22 MR. JORDASH:

23 Firstly, Mr. O'Shea.

24 MR. PRESIDENT:

25 He's adopting -- the others are adopting themselves.

26 MR. JORDASH:

27 Although I would take it further and request that during any legal argument the witness should not  
28 receive translation; one never knows what will influence a witness.

29 JUDGE BOUTET:

30 [Overlapping microphones]

31 JUDGE THOMPSON:

32 I am inclined to --

33 JUDGE BOUTET:

34 I am not.

35 [Overlapping microphones]

36 MR. PRESIDENT:

37 Let us allow please, may we -- can we allow counsel to follow his argument - I mean, can we allow

1 him to continue with his examination so that we see where we go, please.

2 MR. O'SHEA:

3 Your honour, yes. May I just ask that Your Honour Judge Thompson's last comment be said again  
4 because His Honour did not have his microphone --

5 JUDGE THOMPSON:

6 Yes, I think I myself, from an abundance of caution, I would like to agree with Learned Counsel  
7 Jordash.

8 JUDGE BOUTET:

9 But I said that I would not agree with that either, so we will have to sort the issue ourselves first.

10 MR. JORDASH:

11 I will address the Presiding Judge then.

12 MR. PRESIDENT:

13 May we continue and see how we move, please.

14 MR. SANTORA:

15 Your Honours, may I respond to some of the arguments that were just laid out by my learned  
16 colleague just on this point specifically or --

17 MR. PRESIDENT:

18 No. Let us go on, please. We don't want any further debate, but you followed the objection and what  
19 have you. We are not -- I mean, just go on with the examination-in-chief and let's see how you go on  
20 as an examiner-in-chief.

21 MR. SANTORA:

22 Okay. I'm going to move on from this point and continue where we left off.

23 Q. Madam witness, you were describing for this Court what happened to you in Xxxxx and there was  
24 argument between a Kissy man and Xxxxx as to what they were going to do with you. Can you go  
25 ahead again and explain what precisely they were arguing about?

26 A. All these arguments they are doing now, I can't come all the way from Xxxxx to come and lie here and  
27 something that is bothering me that has happened to me and is hurting and people are saying I did  
28 not say that and it hurts me a lot.

29 MR. PRESIDENT:

30 Yes, we know. We know it may hurt but, madam, put yourself together, don't you worry. Don't mind  
31 whatever is happening you know, here. For now, please, madam, try to answer the questions of this  
32 gentleman who is talking to you, just answer his questions and we shall come to the end of this, don't  
33 you worry. Okay, madam?

34 A. I have heard.

35 MR. PRESIDENT:

36 Okay, madam.

37 MR. SANTORA:

- 1 Q. Madam witness, I don't have many more questions for you. I'm just going to ask you a few more  
2 questions.
- 3 Again, the time you were in Xxxxx and there was an argument between this Kissy man and Xxxxx,  
4 what exactly were they arguing about?
- 5 A. Well, I don't know which one are you talking about, the Kissy man who was killed or the one who was  
6 begging for me?
- 7 Q. The argument between the Kissy man who you stated you went to for security and Xxxxx.
- 8 A. They were arguing concerning me?
- 9 Q. What were they saying exactly?
- 10 A. The man said, "Well look, you used to stand for people and beg for them, you Xxxxx, now I'm  
11 standing for this person and begging for her and you know that I'm senior to you in this group, so it  
12 won't happen."
- 13 Q. What did Xxxxx say?
- 14 A. Their boss man gave the last order and they did not follow what Xxxxx wanted.
- 15 Q. So what happened?
- 16 A. After that they asked me to identify a husband that I want.
- 17 Q. From among whom were you asked to identify a husband?
- 18 A. Among them, among the rebels.
- 19 Q. Did you identify a husband?
- 20 A. Well, they asked me to identify a husband and I tried to identify some and they said they don't want  
21 me, so they themselves identified a husband for me. In fact, at that time I was just a new nursing  
22 mother, my condition was terrible, and I was very unsightly.
- 23 Q. What happened next?
- 24 A. They brought an old man and they said he is my husband and I am his wife.
- 25 Q. Then what happened after they brought the old man?
- 26 A. I was -- it was towards evening, very late in the evening now and the old man asked me to go with him  
27 to his house.
- 28 Q. Then what happened?
- 29 A. When we were in his house at night he asked me to have sex with him so I told the old man, "Oh, old  
30 man, won't you sympathise with my condition," and I did not agree.
- 31 Q. What happened after you did not agree?
- 32 A. Well, he said he was going to bring my complaints to their boss man, and I knew if the complaint went  
33 to the boss man that would be the end of my life, so in the morning I gathered all his belongings that  
34 were to be washed and I washed them so that he did not complain me to the boss man any more.
- 35 Q. What happened after you gathered his things and washed his belongings?
- 36 A. Well, I went in the evening with the other women there to get -- fetch water, so when we got there, I  
37 told them I was going to the toilet. So I really didn't even go the toilet, I hid.

- 1 Q. Where did you hide?
- 2 A. I hid myself there in **Xxxxx**.
- 3 Q. And for how long did you hide?
- 4 A. I hid from them for three nights and three days, and it was pouring rain and the rain was soaking me
- 5 all the time.
- 6 Q. Was anyone else with you?
- 7 A. I was all alone in that bush, nobody was with me.
- 8 Q. What did you eat?
- 9 A. I didn't eat anything. I couldn't -- I did not even feel like drinking. I didn't feel like crying, I didn't feel
- 10 like eating or drinking, but I found out that I started swelling, my feet started swelling, so I decided to
- 11 come and if they catch me and they would want to kill me, let them kill me.
- 12 Q. So where did you go?
- 13 A. I met -- I travelled in the bush for a long distance. I met some people who were in a place where they
- 14 were gathered and I told them, "You are sitting here very close to this town and so much death is
- 15 happening so they took me and brought me to **Xxxxx**."
- 16 Q. What happened when you arrived in **Xxxxx**?
- 17 A. When I arrived in **Xxxxx** I met my mother's elder sister, and when they told them I was around and I
- 18 arrived, they never believed. They started arguing among themselves, they thought I was a ghost
- 19 because they thought I would be dead by now.
- 20 Q. What happened then?
- 21 A. They were afraid of me, they didn't want to come closer, but I told them, "No, aunt, don't run away
- 22 from me, this is me. They didn't kill me, they arrested me and I have just hidden from them."
- 23 Q. After you explained this to your aunt, what happened?
- 24 A. After that, they took me to hospital. I was there.
- 25 Q. Did you ever find your first husband?
- 26 A. Yes, I found my first husband. He was in **Xxxxx**.
- 27 Q. What happened after you found him?
- 28 A. By that time he had had another wife, a Temne woman, but even though we had the problem between
- 29 us, I followed him, I travelled with him throughout until we came to the Mende land.
- 30 Q. Then what happened after that?
- 31 A. What happened after that, even though my parents, my relatives told me not to go with this husband,
- 32 but I said, "Well I was with him when this problem started, so I can't leave him". So we travelled, he
- 33 took me on to Mende land, but, in fact, when we arrived in Bo, that is where he left me. I had to
- 34 struggle on my own. I came back until I found my aunt.
- 35 Q. Madam witness, that is all the questions I have for you. Thank you, very much.
- 36 MR. SANTORA:
- 37 That is all the questions I have for this witness, Your Honours.

1 MR. PRESIDENT:

2 Madam, we will ask you some questions, it is for you to answer the questions if you know the  
3 answers. They're going to ask you some more questions, so don't be annoyed, okay. Have you  
4 heard me?

5 A. Yes, I heard you.

6 MR. PRESIDENT:

7 Don't be annoyed, take your time, take your time and answer the questions. Have you heard me?

8 A. Yes, I heard you.

9 MR. PRESIDENT:

10 Cross-examination by the first accused, please.

11 Cross-examination by Mr. Jordash:

12 MR. JORDASH:

13 I just have a few questions for you. If there's anything you don't understand, please say so.

14 Q. Do you remember giving to the Prosecution two separate statements?

15 A. I gave one statement, not two.

16 Q. Do you remember seeing the Prosecution in December 2002; do you remember that?

17 A. I don't remember.

18 Q. Do you remember giving a statement to the Prosecution?

19 A. At the beginning?

20 Q. Just, do you remember giving a written -- a statement to the Prosecution at any time?

21 A. The people I gave the statement to, I don't remember them.

22 Q. But do you remember meeting them to tell them what happened in Xxxxx and Xxxxx; do you  
23 remember that?

24 A. You standing there --

25 Q. Sorry, could you repeat that. I didn't quite --

26 A. You mean you and the others sitting with you there?

27 [Overlapping microphones]

28 MR. JORDASH:

29 Q. No, let me start again. The people on your left are the Prosecution, you know that, the people over  
30 there. Do you know that?

31 A. I don't know the difference.

32 Q. Do you remember giving a statement at a time when the man who has just been asking you questions  
33 was present?

34 A. The person asked me, except my lawyer --

35 Q. Sorry, I missed half of that translation. Could the translation be repeated, please.

36 A. Which person are you talking about? I don't know understand the question.

37 Q. The man who has just been asking you questions, the man who is sitting over there, he has been

1 asking you questions, do you remember giving a statement to the Prosecution when he was present?

2 A. The time I gave the statement, I don't remember that time.

3 Q. How long have you been in Freetown?

4 A. I want to ask the Defence: Can I answer that question with the same question?

5 MR. PRESIDENT:

6 Yes, madam, for how long have you been in Freetown?

7 A. One month and two weeks.

8 MR. JORDASH:

9 Q. Thank you. Now within that time, have you seen that man there, Mr. Santora, have you seen him?

10 A. Which one? I don't understand this particular question.

11 Q. You remember the man who has just been asking you questions. Do you remember him?

12 MR. PRESIDENT:

13 Madam, madam. You have been in Freetown for one month and two weeks. Do you know that man?

14 A. Which one, the one that has been talking to me earlier on?

15 MR. PRESIDENT:

16 Yes, the one that has been talking to you.

17 A. The one that was speaking to me earlier?

18 MR. JORDASH:

19 Q. Yes.

20 A. Yes, I know him.

21 Q. When have you seen him before today?

22 A. Well, I want to answer this question, but I don't quite understand it, so I want the Defence to please  
23 explain to me properly. What do you mean?

24 Q. When is the time in the last month and a half that you have seen the man Mr. Santora?

25 A. The time I last saw him?

26 Q. Yes.

27 A. I don't remember the number of times I've seen him, but I have seen him maybe twice or three times.

28 I don't know the number of times.

29 Q. Do you remember meeting him and giving a statement in his presence?

30 A. Not -- I don't remember, not one day.

31 JUDGE BOUTET:

32 Mr. Jordash, it may be the word "statement" that is confusing a bit. Maybe try a different technique.

33 MR. JORDASH:

34 I've tried a few.

35 Q. Did you meet Mr. Santora in a room or outside?

36 MR. PRESIDENT:

37 Don't refer to him as Mr. Santora. This man, refer to him as this man.



1 MR. JORDASH:

2 Excuse the pointing.

3 MR. PRESIDENT:

4 Yes.

5 MR. JORDASH:

6 Q. Did you meet this man outside or in a room?

7 A. These sort of questions they are asking me, I want them to sort it out for me whether I should answer  
8 or not answer.

9 MR. PRESIDENT:

10 Madam, try to answer. If you have an answer, answer. You understand? If you can answer, answer.  
11 Please put the question to her again.

12 MR. JORDASH:

13 Q. Madam, did you meet this man outside or in a room, where?

14 A. No, I didn't see him outside, I saw him in a house.

15 Q. Were you sitting down at a desk or were you standing up?

16 A. We were sitting down.

17 Q. What were you doing?

18 A. I'm not sure. I can't answer this question, I don't know how to answer this question.

19 Q. What did you do in that house when that man was present?

20 JUDGE THOMPSON:

21 If you're trying to elicit from her whether she spoke to him about this case and there was a record of it,  
22 won't you try that way. That line of questioning may well be a little problematic in certain  
23 socio-cultural contexts. I don't need to say anything more.

24 MR. PRESIDENT:

25 Taking her down the lane, you know, of possible intimacy.

26 JUDGE THOMPSON:

27 I didn't mean to go that far. I didn't mean -- that's why I just left it as socio-cultural. [Overlapping  
28 microphones ] she spoke to the lawyer about this case, about coming to give evidence, something  
29 along those lines.

30

31 MR. JORDASH:

32 Thank you.

33 Q. When you were in the house with that man, did you talk about the evidence, about what happened to  
34 you?

35 A. That is what I'm saying, the things that went on there, do I talk about them? Is it okay for me to talk  
36 about them? That's what I'm trying to find out.

37 MR. PRESIDENT:

- 1 Yes, madam, that is what this man is asking you, that is what this man is asking you. When you met  
2 the other man in that room, what were you people talking -- what were you talking about?
- 3 A. I explained to him my story of what happened to me during the war. He didn't tell me any other thing,  
4 that was all I did, I just explained to him my story during the war.
- 5 MR. JORDASH:
- 6 Q. Just moving backwards in time, do you remember explaining to somebody else what happened and  
7 your story when you were in Xxxxx?
- 8 A. I still want to ask Defence, can I answer this question?
- 9 MR. PRESIDENT:
- 10 Madam, you had met this man and you told him your story about the war, what happened to you  
11 during the war. Before this man, did you meet some other person, did you tell your story about the  
12 war to some other person?
- 13 A. Yes, I explained to other people and these people told me that they were sent by Prosecution.
- 14 MR. PRESIDENT:
- 15 Can the translator take that again, please.
- 16 THE INTERPRETER:
- 17 Yes, I explained to other people and they told me that they sent them to me, the Prosecution.
- 18 MR. JORDASH:
- 19 Q. Was that in Xxxxx?
- 20 A. Yes, they met me in Xxxxx and they asked me there.
- 21 Q. When you were in Xxxxx, you gave the Prosecutor your story; is that correct?
- 22 A. I don't know. I don't know.
- 23 MR. PRESIDENT:
- 24 She doesn't know the word prosecutor.
- 25 MR. JORDASH:
- 26 Q. The person you met in Xxxxx, you gave them your story; isn't that correct?
- 27 A. I don't know who they are, but that's all.
- 28 Q. But do you know the person -- do you remember the person in Xxxxx who you met and told your story  
29 to?
- 30 A. I'm waiting.
- 31 Q. So am I?
- 32 A. Those people?
- 33 Q. Those people that you met in Xxxxx, did you give them your story in Xxxxx?
- 34 A. Yes. What I have just explained is the same thing I explained to them.
- 35 Q. Did somebody read back that story to you after writing it down?
- 36 A. Yes, those who took down my story, they read it over again to me.
- 37 Q. When you gave your statement in the presence of that man, when you were in the house, you talked

1 about being raped. Do you remember that?

2 MR. PRESIDENT:

3 Learned counsel, distinguish between -- there are many men now, you know, try to be specific as to  
4 which man so that she doesn't get confused or lost.

5 MR. JORDASH:

6 Thank you.

7 Q. In your first statement which you gave to a person in **Xxxxx**, there is no mention of you being raped by  
8 the Temne man.

9 A. No. I didn't give that.

10 Q. So I ask why?

11 A. Well, for what the reason is?

12 Q. Why did you miss it out in your first statement but then put it into a second statement --

13 JUDGE THOMPSON:

14 Counsel, why not keep the questions separate otherwise it confuses the witness.

15 MR. JORDASH:

16 Certainly.

17 Q. You've just told us that you didn't tell the story of your rape in the first statement.

18 JUDGE THOMPSON:

19 Why?

20 MR. JORDASH:

21 Q. Why?

22 A. There is nobody who does not forget. As a matter of fact, it was not forgetfulness. This was an  
23 incident that occurred to me and it was very painful and shameful, so I'm only talking about it now  
24 because I have to talk about it, otherwise I wouldn't like to talk about it.

25 Q. Why did you decide to give the story when you were in the presence of that man?

26 A. It had taken a long time and I thought within myself, you know, this is painful so I have to talk about it.  
27 When I talk about it, it is shameful, it is disgraceful to me, but it is so painful I have to talk about it, that  
28 is why I talked about it.

29 Q. Thank you. Now I just want to deal, if I can, with when these incidents occurred, when your story  
30 happened. You were in **Xxxxx** when you heard that President Kabbah had been overthrown; is that  
31 correct?

32 A. I don't know about that.

33 Q. When -- you were in **Xxxxx** when you heard that the war was coming to **Xxxxx**; is that correct?

34 A. Yes, of course. When we were there we saw, we heard gunshots and people were running away, we  
35 saw them.

36 Q. Had you heard about President Kabbah being overthrown at that time, or at all?

37 A. I knew nothing about that. I only heard about the war. I didn't know where it came from, what it was

1 for, what reasons the war was caused for, but I didn't know about overthrow of the president.

2 Q. Do you -- you said earlier that you had taken your children and gone with your family to hide and it  
3 was some time between the dry season and the rainy season. Do you remember saying that?

4 A. What I have just said, I said that the killings took place between the dry season and the rainy season.  
5 I mean, don't you believe what I have said?

6 Q. I'm just trying to identify the time that you're referring to, madam. Which year was that?

7 MR. PRESIDENT:

8 You expect her to know the year?

9 MR. JORDASH:

10 I don't know. I don't know if she does or not.

11 MR. PRESIDENT:

12 Go ahead.

13 MR. JORDASH:

14 Q. Do you know the year, madam?

15 A. I don't remember. Don't ask me questions I can't answer.

16 Q. I'll try not to. From the time you went into hiding to the time at the end when you went to **Xxxxx**, are  
17 you able to give any indication of the time between the beginning when you hid and your arrival in  
18 **Xxxxx**?

19 A. Well, what happened was between the dry season and the rainy season when we moved from where  
20 we were to **Xxxxx**. I have explained this. The only thing I can't remember is the exact year, but it  
21 happened between the rainy season and the dry season when we moved to **Xxxxx**. Even yourself, do  
22 you think after going through all these horrendous things that have happened you will be able to  
23 remember every detail, if not only God is helping us?

24 MR. PRESIDENT:

25 Okay. Madam, we understand, we understand. Try to cool yourself down and answer these  
26 questions, just manage. Forget about all that, you know. Answer these questions, if you can answer  
27 them.

28 Madam have you understood me?

29 A. Yes, I understand.

30 MR. PRESIDENT:

31 Take your time and answer just his questions. Don't bother -- don't ask him questions, just answer his  
32 questions.

33 Am I translated to her? Has she gotten my message? Madam, have you heard me?

34 A. I have heard.

35

36 MR. PRESIDENT:

37 Okay, go ahead, then.

1 MR. JORDASH:

2 Thank you.

3 Q. When you arrived in **Xxxxx**, ECOMOG was based there; is that correct?

4 JUDGE THOMPSON:

5 Just a minute. Did she --

6 A. Yes.

7 MR. JORDASH:

8 I beg your pardon. I can't hear Your Honour.

9 JUDGE THOMPSON:

10 No, it's okay.

11 MR. JORDASH:

12 Q. Sorry, I missed the answer, madam. [Overlapping microphones]

13 I want to ask you, if I can, about **Xxxxx**.

14 A. Yes, I can hear.

15 Q. **Xxxxx**, you told us the group with you in **Xxxxx**; isn't that right?

16 A. Yes. They all grew up in the same town.

17 Q. How do you know that?

18 A. The time I -- the time I went to **Xxxxx**, that's when I found all of them, my husband and **Xxxxx** and their families and their mothers and their children, they were all in the same town. I mean, how do you call these people? They all grew up together.

21 Q. When you travelled to -- is what you're saying this: When you travelled to **Xxxxx** you saw them all in the same town? Is that why you say they grew up together?

23 A. The reason I said they were all born in the same town, because my husband's younger sister was married to the other man's younger brother.

25 Q. So **Xxxxx** was part of your extended family; is that correct?

26 A. He is not part of my own extended family, he is part of my husband's extended family.

27 Q. Before you went to hide in the bush, had you met **Xxxxx** yourself?

28 A. Well, **Xxxxx** was even with us when we were running away from the attack in **Xxxxx**, so we didn't know that he was ever a member of the people. So the day they arrived in **Xxxxx**, we just saw him appear. We were all surprised.

31 Q. Before you saw him turn up with the people, how many times do you think you had seen or spoken to -- well, seen **Xxxxx**?

33 A. Not entrance fired between us -- [Overlapping microphones] we talked to him and I used to discuss things with him because I can't come to a town and I meet someone who talks to my husband, plays with my husband and I decide not to be friendly with that person.

36 Q. Did **Xxxxx** know where you were hiding in the bush from his contact with you?

37 A. We were all hiding together with **Xxxxx**. He left us and went and the other time we saw him, he was

1 with the rebels.

2 Q. So **Xxxxx** had been with you in the bush before leaving and then coming back to the same place; is  
3 that correct?

4 A. Well, when **Xxxxx** with himself and his family and he moved away from us, and they said they were  
5 trying to hide and go into the town, we heard that they were living in another town. So when he  
6 arrived with the people, we were all surprised.

7 Q. When **Xxxxx** left saying that he was going to hide somewhere else, were you still in the same place  
8 when **Xxxxx** came back?

9 A. They didn't find us in the same place but **Xxxxx** was born in that area, so they know all the bush, so  
10 wherever else we went, he knew where we were.

11 Q. Did anything happen when **Xxxxx** was hiding with you to make **Xxxxx** angry with you or your family?

12 A. I don't remember having wronged **Xxxxx** at all.

13 Q. Do you know if anybody else had any disagreement with **Xxxxx**, anybody else from your family?

14 A. I cannot tell.

15 *(Pages 55 to 76 by Roni Kerekes)*

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- 1 [17.35]
- 2 Q. When Xxxxx came back, did you ask him whether he had a problem with you or your family?
- 3 A. The time he arrived with the group?
- 4 Q. Yes?
- 5 A. How could you ask in such a situation? These people have caught us so we couldn't even ask.
- 6 Q. Did Xxxxx tell you why he wanted to kill you?
- 7 A. I didn't ask because at that time I did not have my mind by myself. Even now this explanation I am  
8 doing it is only God who is protecting me and helping me to go along.
- 9 Q. When Xxxxx left, when he'd been hiding with you, do you know how many days passed before he  
10 returned?
- 11 A. When he left us it was more than three months when he came back, and on arrival when my mother-  
12 in-law saw him, she wanted to go forward to greet, but she hit her left foot and this bad omen. So she  
13 stood back, not knowing that it was death that was awaiting them.
- 14 Q. And the people who came with Xxxxx some of them were wearing combat uniforms; Is that correct?
- 15 A. Yes, some of them wore uniform, other wore civilian dress.
- 16 Q. Can you remember what Xxxxx was wearing?
- 17 A. He had civilian dress, but the overcoat he had was in the form of a military combat.
- 18 Q. When you arrived in Xxxxx when you met the boss man, he was dressed in military uniform; Is that  
19 correct?
- 20 A. He was simply dressed. He only had his shorts on and no soldier uniform. He didn't have a shirt, he  
21 had only short pants on or trousers.
- 22 Q. I just want to refer you to your statement, your first statement, madam, and I want to ask you if you  
23 remember saying this, "When we got to Xxxxx, we went to the house of Pa Xxxxx where there boss  
24 man was." Do you remember that?
- 25 A. Yes, that's where we were on that hill.
- 26 Q. Do you remember telling the person who took your statement that when you got to Xxxxx, you went to  
27 the house of Pa Xxxxx where their boss man was?
- 28 A. Yes, they asked me that question. They asked me where did they take the human heads and I  
29 showed them.
- 30 Q. And do you remember saying this, "I was told," this is the boss man, "The boss man, I was told, he  
31 was called Kapay, and dressed in military uniform?"
- 32 A. Yes, when we arrived everybody referred to him as "boss boss," and he was the one who killed the  
33 boy we came with. They called him boss. I think he was their boss.
- 34 Q. And you said -- well, let me put it different. Your statement says that the boss was dressed in military  
35 uniform. Do you remember telling the person who took your statement that the boss was dressed in  
36 military uniform?
- 37 A. No, I didn't say that he was dressed like that .

- 1 Q. Do you remember having that statement read back to you by the person who took your statement?
- 2 A. They told me that what I have just told them is what they are reading back to me, but --
- 3 Q. Do you think your memory would have been better a year ago than it is now?
- 4 A. Well, all I have explained is exactly what happened.
- 5 Q. I have nearly finished. I just want to ask you about when **Xxxxx** first turns up whether you can give
- 6 some idea of the number of people who were with him?
- 7 A. They came in this group. I have told you I don't know the number. I have said that, I don't know the
- 8 number.
- 9 Q. Just try to help if you can. Do you think there was more than the number of people in this room or
- 10 less than?
- 11 A. There were many of them. I don't know whether there were 8 of them, or 10 or 20, but I knew that
- 12 there were a lot of them.
- 13 Q. I have only, I think, one or two questions. I'm sorry to jump around. Can I just ask you again about
- 14 **Xxxxx**. What did he do? Did he have a job before you went into the bush to hide?
- 15 A. We were all farmers and sometimes they will burn charcoal and sell it. That's the only kind of work I
- 16 knew him do. He didn't have any other job but farming.
- 17 Q. And you made mention of the man who argued with him about whether to kill you. You made
- 18 mention then of **Xxxxx**, I think, what you said was something like begging people --
- 19 MR. PRESIDENT:
- 20 The Kissy man.
- 21 MR. JORDASH:
- 22 I beg your pardon.
- 23 MR. PRESIDENT:
- 24 The Kissy man who --
- 25 MR. JORDASH:
- 26 Thank you. Let me start that again, if I can?
- 27 MR. PRESIDENT:
- 28 Yes. She went -- when **Xxxxx** threatened to kill her she went to the Kissy man. The Kissy man
- 29 intervened, you know, for her and said they should spare her life. You can take it from there.
- 30 A. Yes, the Kissy man stood for me. He begged that I should not be killed.
- 31 MR. JORDASH:
- 32 Q. And the Kissy man said to **Xxxxx** that **Xxxxx** used to beg for people. Is that what he said?
- 33 A. Yes, that's what he said that **Xxxxx** also used to stand and beg for other people.
- 34 MR. JORDASH:
- 35 Thank you very much madam.
- 36
- 37 MR. PRESIDENT:



1 Madam, how are you feeling? Can you take a few more questions? How are you feeling? Tell us.  
2 A. Well, I'm only doing this because I have to, otherwise I'm really feeling a lot of trouble within because  
3 I'm now talking for people who are all dead, and I'm here standing talking about them and talking of  
4 them. So, it's not easy for me.

5 MR. PRESIDENT:

6 It is not easy. You just -- you see, we are here -- it is for us to find out the truth. Nobody is saying that  
7 you are lying at all. Nobody is saying that you are lying. We only have to find out the truth, that's why  
8 we say you should try and persevere. Hold your heart, persevere, you know, and take some of these  
9 questions. So don't be disturbed about the questions.

10  
11 Can we have the cross-examination by the second Accused, please? I wonder whether it would be  
12 as long as -- anyway, go ahead, please.

13 Cross-examination by Mr. Brown:

14 MR. BROWN:

15 Q. You first met Xxxxx in Xxxxx. Is that true?

16 A. Yes, I met him in Xxxxx.

17 Q. And at this time he was friendly to your husband and friendly to you?

18 A. Yes, because he was kind to me and we were in good terms.

19 Q. And when you say he was kind to you, he was polite to you when you met him?

20 A. Well, we did not exchange gifts, although I was very nice to him. He was at logger heads with his  
21 parents. So most of the time I used to give him food and at least -- we would chat about, but not that  
22 we were exchanging gifts.

23 Q. But you fed him and chatted with him and you were friendly with each other?

24 A. Yes, we were on good terms. Before the war we were doing things in common.

25 Q. And he was also on good terms with your husband?

26 A. Yes, they had good relationship.

27 Q. And he was in good terms with your husband's family?

28 A. He married to one of their daughters, so at least they were in good terms.

29 Q. And he was in good terms with your mother-in-law?

30 A. Yes.

31 Q. And when you all went to hide in the bush together, those good terms -- may I withdraw and reframe  
32 it? When you all went to hide in the bush, Xxxxx remained friendly with you and your husband's  
33 family?

34 A. The time we left the town and we went into the bush we had no problems. He had no problem with  
35 my husband. It was in the bush that things change, we were surprised.

36 Q. You say things changed, was that before Xxxxx moved and left you in the bush or before?

37 MR. BROWN:

1 Your Honours, I didn't hear any answer to that.

2 JUDGE THOMPSON:

3 What is the translated version? What's the response?

4 A. You mean they left the bush? No, we were still in the bush.

5 MR. BROWN:

6 Q. You said things changed in the bush between Xxxxx and your husband's family. Did that change  
7 come before he left and moved away or after he moved away?

8 A. Whether they had a quarrel or they quarrel with my mother-in-law or my husband, I really don't know.  
9 The only thing I know is that on that day he came with these people and they did all these bad things  
10 to us.

11 Q. So the first time you saw Xxxxx had changed was when he came with the armed men?

12 A. Yes, that was the day I know that he has now changed and now he is working together with bad  
13 people.

14 Q. Your mother-in-law approached Xxxxx and he stepped on her foot?

15 A. The day he met us with the group?

16 Q. Yes, when he came with the armed men?

17 A. No, she did not step on his foot. What happened, she was going forward because she knew Xxxxx,  
18 to greet Xxxxx. So he backed his left foot, and that was a bad omen so she came back.

19 Q. You are saying that as your mother-in-law approached Xxxxx, he did something with his left foot.

20 JUDGE THOMPSON:

21 No, that's not the answer. She, in fact, hit her left foot and for them, in their own culture, it would be a  
22 sign of bad omen. That's what I understand from the evidence.

23 MR. PRESIDENT:

24 Yes. It's generally the conception, you know, in most African societies, if you are going to somewhere  
25 and you hit your left leg, the immediate reflect is, "I'm not going, I may run into problems."

26 JUDGE THOMPSON:

27 Of course, we don't have the know-how to -- that's not scientific.

28 MR. BROWN:

29 It sounds scientific to me, Your Honour.

30 MR. PRESIDENT:

31 And so that is why she did not go.

32 MR. BROWN:

33 Q. That bad omen was the moment when you realised that Xxxxx had changed?

34 A. Yes.

35 Q. And you were surprised that a man who was friendly before had changed?

36 A. When they arrived we all expected then since we knew him, he would be someone who would speak  
37 for us. But when he stood by and saw all these evil things we now realised that he was no longer with

- 1 us, he is now with the other people.
- 2 Q. You were surprised because you thought he would speak for you, but instead he had become a bad  
3 man?
- 4 A. Yes.
- 5 Q. And after the omen, the bad thing he did was to lie to you?
- 6 A. Except when my mother-in-law hit her left foot.
- 7 Q. After that omen, Xxxxx told you a lie?
- 8 A. When she hit her left foot, she knew straight that something was wrong, and this was a sign of bad  
9 omen. So she never spoke to Xxxxx or discussed with him until they were all killed.
- 10 Q. Didn't Xxxxx tell you -- I would like to withdraw that question, Your Honour. Xxxxx spoke for the  
11 armed men when he came back?
- 12 A. He spoke for armed men?
- 13 Q. Xxxxx came with eight armed men, is that correct?
- 14 A. The ones that really were around where we were arrested, that's the number, eight. But I really don't  
15 know the total number because there was a large number of them that came.
- 16 Q. But Xxxxx was with eight men when he approached you and your mother-in-law, and your family in  
17 the bush?
- 18 A. I have said this over and over again that I don't know the total number. We were in two different  
19 places. We had two huts. The hut in which I was with my sister-in-law, and the hut where my mum  
20 and my aunt and other people were. So the ones that went to them, I don't know their number, but  
21 the ones that came to our own hut were eight of them.
- 22 Q. At that point, Xxxxx lied to you?
- 23 A. After they came and they did all what they had to do, I had no business with Xxxxx any more. I didn't  
24 sit down to talk with him. So lied to me, for what? I mean, I didn't even talk to him any more.
- 25 Q. Did Xxxxx tell you that he had come with ECOMOG to pull you out of the bush?
- 26 A. It was not Xxxxx who said that, it was the other people who came together with Xxxxx who said that  
27 they were ECOMOG. But I'm intelligent. I knew that they were not ECOMOG.
- 28 Q. When you --
- 29 MR. PRESIDENT:
- 30 Mr. Brown, we have a technical problem, you know. The tape which is recording our proceedings,  
31 you know, will soon run out.
- 32 MR. BROWN:
- 33 Two questions.
- 34 MR. PRESIDENT:
- 35 Yes, please. Go ahead, quickly.
- 36
- 37 MR. BROWN:

1 Q. When you spoke to the people in Xxxxx and told your story, you told them that Xxxxx had told you  
2 that he had come with ECOMOG to pull you out of the bush and take you back to town. Is that not  
3 what you said to the people who you met in Xxxxx when you told your story?

4 A. I said the people that he went with, the people that we went with, they are the ones who said this. I  
5 did not say Xxxxx.

6 Q. So, when the people read your words back to you, they did not read the words, "We saw -- Xxxxx told  
7 us that he had come with ECOMOG to pull us out of the bush and take us back to town?"

8 MR. PRESIDENT:

9 Mr. Brown, let's stand the matter down for just a very short while. They will effect the technical  
10 changes, you know, in the tape and, you may continue from there. So you may sit down. Can the  
11 technicians, please proceed with changing the tape and informing us immediately, please? We are  
12 not rising, we are sitting here.

13 MS. TAYLOR:

14 Your Honour, might I take this opportunity to ask that Court Management look at the drip under which  
15 the Prosecution is sitting at the moment. It's quite --

16 MR. PRESIDENT:

17 Pardon me?

18 MS. TAYLOR:

19 There is leakage from the roof and it's dripping on us at the moment. It's quite severe, we are getting  
20 quite wet. I was just wondering if Court Management might be able to look [Inaudible]

21 MR. PRESIDENT:

22 Thank you for drawing our attention to that. The Court Management is asked to draw the Registrar's  
23 attention to this, and let the contractors, who I hope are still around, address that leakage because the  
24 rains are not yet very, very heavy. But when they become heavy, I'm afraid -- I mean, I hope we shall  
25 not have any more of that. So Court Management, can you please inform the Registrar about it?

26 JUDGE BOUTET:

27 Is it going on the Defence side as well?

28 MR. CAMMEGH:

29 Well, I was just about to thank Court Management for transferring the leak which I suffered earlier on  
30 to Ms. Taylor, but whilst on my feet I have experienced it back here again.

31 MR. PRESIDENT:

32 Mr. Cammegh, you are celebrating a bit too early.

33 MR. O'SHEA:

34 Your Honours don't need to rise, please. I am dealing with the cross-examination of this witness, and  
35 I have to answer a call of nature. I just would request that you just bear in mind that I would like to  
36 leave the room for a moment --

37 MR. PRESIDENT:

1 You would –

2 MR. O'SHEAR:

3 I would like to answer a call of nature for one moment. You don't need to rise.

4 MR. PRESIDENT:

5 All right. Can the Court now rise for ten minutes. The court will rise for ten minutes.

6 [Break taken at 6.07 p.m.]

7 (Pages 77 to 83 by Momodou Jallow)

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1 [18.23]

2 MR. PRESIDENT:

3 We are resuming the session.

4  
5 Madam, if you will just persevere a bit, persevere a bit, we shall soon release you. Is she hearing  
6 me? We will persevere --

7 A. Yes, I am hearing you.

8 MR. PRESIDENT:

9 Pardon me.

10 A. I'm hearing you.

11 MR. PRESIDENT:

12 Persevere a bit, madam. Answer just a few more questions. Keep your mind together. Keep your  
13 courage, you have been very courageous. Answer a few more questions and after that we shall  
14 release you, we will ask you to go and rest and to come back, you know, tomorrow.

15  
16 So, please, Mr. Brown, can you please on the understanding, of course, that you know she is under  
17 some stress -- we hear she is a nursing mother, that is what we hear and that should be true anyway.  
18 There is no reason why -- in fact, when she came in the impression I had from the Bench here is that  
19 she was pregnant or [Inaudible] she is not far from the two, so that is -- well, please go on, go on.

20 MR. BROWN:

21 Q. You say you did not tell the people in Xxxxx to whom you told your story that Xxxxx had said he had  
22 come with ECOMOG.

23 A. I did not say he came with -- he said he came with ECOMOG, I said he came with rebels. It is them  
24 who came that told us that they were ECOMOG.

25 Q. In fact, during the time you spoke to the people at Xxxxx you never once used the word rebel; is that  
26 correct?

27 A. What I know is what I told them, I told them about what the rebels had done to me.

28 Q. My question to you is, is it not a fact that when you spoke to the people in Xxxxx to tell your story you  
29 did not use the word rebels?

30 A. I had talked about the rebels when I talked to the people and you are saying I did not talk about the  
31 rebels?

32 Q. I am focusing you on one word; rebels. Is it not a fact that you did not use the word rebels when you  
33 spoke to the people in Xxxxx about your story?

34 A. What I know is what I explained to them. I talked to them about the rebels. The things that happened  
35 to me is true. It is the truth that I'm saying and I believe it happened to me, so that is all I told them  
36 about the rebels.

37 Q. Is it fair to say that when you spoke to them in Xxxxx you used the words killers or armed men?

- 1 A. I explained to them about killers and armed men. You've asked me and I answered, you've asked me  
2 and I answered it
- 3 Q. And when you spoke to the gentleman to your left in July you used the phrase "armed men" not the  
4 phrase "rebel".
- 5 A. They asked me and I said rebels, they asked me again and I said rebels, and they said, "What does  
6 rebel mean?" And I said, "Those who kill people."
- 7 Q. So if the word rebels does not appear in the statements written down, there has been some mistake?
- 8 A. I don't know about that.
- 9 Q. Well, you insist that you did say rebels when you spoke to the people in **Xxxxx**, correct?
- 10 JUDGE THOMPSON:  
11 Isn't this line too argumentative?
- 12 MR. PRESIDENT:  
13 She said -- this is what she said, she said, "It is the rebels who did this to us. It is the rebels," she  
14 said. How did you know that there were rebels here? And she said, "Those ... it was those people  
15 who are killing people." So that is --
- 16 MR. BROWN:  
17 I think the use of the terminology in light of the Prosecution opening and the language of the  
18 indictment is important. I will move on, but I think it is important.
- 19 MR. PRESIDENT:  
20 Yes, please.
- 21 JUDGE BOUTET:  
22 We are not saying it's not important, Mr. Brown, we are just saying -- you are asking the question of  
23 the witness and the witness is saying to you these were the armed men and those that were killed,  
24 they were the rebels.
- 25 MR. PRESIDENT:  
26 They were the rebels.
- 27 JUDGE BOUTET:  
28 We are not disputing your argument.
- 29 MR. BROWN:  
30 I will be happy to move on.
- 31 JUDGE THOMPSON:  
32 Let me add here that she is using the term synonymously.
- 33 MR. BROWN:  
34 She is using it now synonymously.
- 35 JUDGE THOMPSON:  
36 Well, I mean, she is using these terms "killers," "armed men," "rebels," synonymously. I would have  
37 thought that perhaps the interesting thing from your perspective would be to reserve this for

1 addresses, but that's her evidence. I mean --

2 MR. BROWN:

3 Your Honour, I have been willing to abandon the point in light of --

4 JUDGE THOMPSON:

5 Well, that is what I understand, she is saying the define -- in other words, from her own native  
6 perspective, she is defining rebels as killers and armed groups. That is her evidence.

7 MR. BROWN:

8 I understand, Your Honour, I am prepared to move --

9 JUDGE THOMPSON:

10 I was thinking that that was inviting a little argumentative response. Now she is saying to you that my  
11 definition of rebels are killers and armed groups.

12 MR. BROWN:

13 Fair enough, Your Honour, I am willing to move on.

14 MR. PRESIDENT:

15 I think it is better to move on.

16 MR. BROWN:

17 Sure.

18 Q. Returning to the time in the bush, one of the armed men said that they had come with ECOMOG; is  
19 that correct?

20 A. It wasn't true, they were rebels.

21 Q. I'm not at the moment asking you whether it was true or not, but asking you simply whether one of the  
22 armed men said, "We have come with ECOMOG."

23 A. I said these people were not ECOMOG, they were rebels.

24 MR. PRESIDENT:

25 Q. Madam, madam, you saw all of those people, did any one of them say that they were from ECOMOG  
26 or they were ECOMOG? Did any one of them, you know -- did you hear any one of them saying that  
27 he is ECOMOG or so?

28 A. One of them said so, but I don't know the person's name.

29 MR. BROWN:

30 Q. When you moved from the bush to Xxxxx it was Xxxxx who separated the adults from the children;  
31 correct?

32 A. It was not Xxxxx. It was not Xxxxx specifically, it was another man. All of them who said "Separate  
33 the children, you the adults stand on one side and the children sit under the orange tree."

34 Q. Let me read a sentence to you and tell me if it sounds like a sentence that was read back to you by  
35 the people who talked to you in Xxxxx. "When we got to Xxxxx, Xxxxx separated us from the children,  
36 about eight of them, and left them outside while we the adults, men and women, were put into the  
37 Chief's house and locked up." Did they read those words to you?





1 JUDGE THOMPSON:

2 I am asking whether you are putting to her that she said here from the witness stand.

3 MR. BROWN:

4 She did say that -- my best recollection is she did say that.

5 JUDGE THOMPSON:

6 Yes, okay. Well, let her know she is referring to what she said from the witness stand as distinct from  
7 what you say that she said to the --

8 MR. BROWN:

9 I have no problem.

10 JUDGE THOMPSON:

11 It's very important.

12 MR. BROWN:

13 Q. This afternoon you indicated that the adults were called one by one from the house; is that correct?

14 A. Yes.

15 Q. And when you heard cries and then came outside it became clear to you that the people had been  
16 killed as they left the house; is that correct?

17 A. Yes, that's the time that I knew that these children have been killed. For me to be sure that they have  
18 been killed is when I came outside and I saw their corpses.

19 Q. And it was **Xxxxx** who called the people one by one from the house; is that correct?

20 A. **Xxxxx** was outside and there was another guard who was inside with us and the guard will bring the  
21 people outside and hand them over to **Xxxxx**.

22 Q. Did **Xxxxx** call each person from the house?

23 MR. PRESIDENT:

24 The lady is saying that the guard was handing over the people to **Xxxxx**.

25 MR. BROWN:

26 That's right. I believe I have the right, if you will not limit it, to ask her, based on what I think is good  
27 cause, whether in fact **Xxxxx** called each person from the house. I will do so only if you permit it, but I  
28 think it is fair. I will establish a foundation if the Court prefers.

29 MR. PRESIDENT:

30 Go ahead. Go ahead, please. My problem is the time, you know. Go ahead.

31 MR. BROWN:

32 Q. Did **Xxxxx** call the people from the house?

33 A. Yes, he gave orders to the guard who was inside and the guard will bring the person outside and  
34 hand him over to **Xxxxx**.

35 Q. And one of the people **Xxxxx** called to his death was **Xxxxx**'s own father; correct?

36 A. His father was the second person called out.

37 Q. When you think about the **Xxxxx** with whom you had been friendly before and the conduct of **Xxxxx** in

1           Xxxxx, were you surprised by what you saw?

2   A.    Yes, that was very surprising to me because I have never known him to be doing that kind of a thing  
3           one day.

4   Q.    In fact, you could not ever have believed before that Xxxxx would do such things.

5   A.    At all, never.

6   Q.    When was the last time you saw Xxxxx?

7   A.    From the very day I hid from them in Xxxxx I've never seen him.

8   MR. BROWN:

9           Your Honour, I have no further questions.

10   MR. PRESIDENT:

11           Yes, Mr. O'Shea.

12   MR. O'SHEA:

13           Thank you very much Your Honours.

14   MR. PRESIDENT:

15           Always I have two names on my lips when I am at that [Inaudible]. So that Jordash or O'Shea or vice  
16           versa. I have to orientate my memory. Yes, Mr. O'Shea.

17   MR. O'SHEA:

18           Thank you, Your Honours.

19   Q.    Madam --

20   MR. PRESIDENT:

21           Mr. O'Shea, you want to start with your cross-examination?

22   MR. O'SHEA:

23           Well --

24   MR. PRESIDENT:

25           No, no, please, we just wanted to inform you, you know, because she has to cater for her newly born  
26           baby, we would adjourn at this stage and resume with your cross-examination tomorrow morning.

27   MR. O'SHEA:

28           Well, I don't expect to be long, Your Honours, but if that is what Your Honours feel is best, then I am  
29           happy to go along with that.

30   MR. PRESIDENT:

31           We think it is the best, we have to really put her, you know -- we have to consider her situation, a very  
32           delicate and particular situation. We have to be humane in this and I'm not doubting that you will not  
33           be long, you know, but --

34   MR. O'SHEA:

35           I appreciate it.

36   MR. PRESIDENT:

37           I'm very particular -- I'm very particular about her particular situation.

1 MR. BROWN:

2 Might I just point out --

3 JUDGE BOUTET:

4 We see it -- we see it --

5 MR. BROWN:

6 -- relocate it.

7 MR. PRESIDENT:

8 Mr. Cammegh has escaped from that, he has celebrated a bit too early and escaped. All right. Well  
9 Mr. O'Shea, for this reason -- for the reasons that we have given to you, we would adjourn and  
10 resume -- yes.

11 [Trial Chamber confers]

12 We will adjourn this matter and resume tomorrow morning.

13

14 Madam, we see you are tired and you are nursing -- you are nursing your baby, so we -- because we  
15 want you to go and rest; you have stayed here for very long, we want you to go and rest and take care  
16 of your child.

17

18 We are adjourning this matter to tomorrow. You will come back here again tomorrow in the morning  
19 at ten o'clock so that we can finish with the few questions which are left for you to answer. So we  
20 hope that you will be able to have a nice rest and return here tomorrow for us to finish with you. Is  
21 that all right, madam?

22 A. Yes, it's all right.

23 MR. PRESIDENT:

24 Okay. Madam, goodnight, have a nice night, we will see you tomorrow. Okay?

25

26 The Court will rise.

27

[Whereupon the hearing adjourned at 6.49 p.m., to be reconvened  
28 on Tuesday, 20<sup>th</sup> July 2004, at 10.00 a.m.]

29 (Pages 84 to 91 by Susan G. Humphries)

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CERTIFICATE

We, Momodou Jallow, Gifty C. Harding, Susan G. Humphries and Roni Kerekes, 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.

\_\_\_\_\_  
Momodou Jallow

\_\_\_\_\_  
Gifty C. Harding

\_\_\_\_\_  
Susan G. Humphries

\_\_\_\_\_  
Roni Kerekes