

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

FRIDAY, 23 NOVEMBER 2007
9.50 A.M.
TRIAL

TRIAL CHAMBER I

Presiding

Before the Judges:

Benjamin Mutanga Itoe,
Pierre Boutet

For Chambers:

Ms Erica Bussey
Mr Felix Nkongho

For the Registry:

Mr Thomas George

For the Prosecution:

Mr Charles Hardaway
Mr Reginald Fynn

For the accused Issa Sesay:

Mr Wayne Jordash

For the accused Morris Kallon:

Mr Kennedy Ogeto

For the accused Augustine Gbao:

Mr John Cammegh
Ms Prudence Acirokop

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OPEN SESSION

1 [RUF23NOV07A- MD]

2 Friday, 23 November 2007

3 [Open session]

4 [The accused present]

5 [Upon commencing at 9.50 a.m.]

6 [The witness entered Court]

7 WITNESS: DIS-124 [Continued]

8 CROSS-EXAMINED BY MR HARDAWAY:

9 PRESIDING JUDGE: Good morning, learned counsel. We are
09:55:51 10 resuming the proceedings. Mr Hardaway.

11 MR HARDAWAY: Thank you, Your Honours. Good morning.

12 PRESIDING JUDGE: Good morning.

13 MR HARDAWAY:

14 Q. Mr Witness, good morning, sir.

09:55:53 15 A. Yeah, good morning.

listen 16 Q. I have some questions for you. I would ask that you
17 to them carefully and answer them directly; all right?

18 A. No problem.

19 Q. If there's anything you do not understand about the
09:56:05 20 question, please ask me to repeat it; all right?

21 A. Okay.

22 Q. Okay.

23 A. Yes.

the 24 Q. Now, first off, Mr Witness, I want to take you back to
09:56:15 25 part of your testimony regarding jungle time; okay?

26 A. Yes.

27 Q. Now, you had mentioned that jungle time was from 1991 to
28 the overthrow; is that correct?
29 A. Pardon?

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1 Q. You had mentioned that jungle time was from 1991 to the
2 overthrow; is that correct?

3 A. No, that's not correct.

4 Q. Okay. When was jungle time, sir?

09:56:41 5 A. Well, the other person is talking -- I want -- in Krio -

6 is disturbing me. Yes, you can repeat yourself.

7 Q. Is that better now, Mr Witness?

8 A. Yes.

9 Q. Do you need me to repeat my other questions?

09:57:27 10 A. Exactly.

11 Q. Okay. First question I had asked you was: Was it your
12 testimony that jungle time was from 1991 to the overthrow?

13 A. That is the first question?

14 Q. That was the question I asked you, sir, yes. What is
your

09:57:39 15 answer?

16 A. No. It is not from 1991 to 1997.

17 Q. When was jungle time?

18 A. Well, jungle time started towards the ending of 1991 and
19 end at '96.

09:57:56 20 Q. In '96. All right. And from 1996 to the overthrow,
there

21 were combat missions by the RUF; is that correct?

22 A. Pardon?

23 Q. There were combat missions of the RUF. The RUF were
24 engaged in combat from 1996 to the overthrow; is that correct?

09:58:27 25 A. Yes.

26 Q. And part of those combat missions is that you would be
27 raiding towns that would be occupied by the SLAs; is that also
28 correct?

29 A. Exactly.

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your 1 Q. And please correct me if I am wrong, sir, in terms of

2 testimony --

3 A. Yeah, no problem.

are 4 Q. -- this, these towns that you would attack by the SLAs,

09:58:50 5 these the towns that you said you would only occupy for
several

6 days before you were pushed out or did you occupy them for a
7 longer period of time?

8 A. Well, during the jungle times, we are not going
purposely
9 to occupy these big towns.

09:59:05 10 Q. Okay. From 1996 to the overthrow, when you attacked SLA
time
11 towns, were you occupying them as well for long periods of
12 or was it like in jungle time?

13 A. Well, as far as the area where I was operating.

14 Q. Mm-hmm.

09:59:24 15 A. Since the enemy retreated as far as Pendembu, we were
not
16 able to capture any town and base there. We are only on our
17 defensive until the overthrow.

18 Q. Now, when you -- now was it also during this time that
you
19 would be able to hold the towns, if only for a few days?

09:59:47 20 A. This is what I'm saying. At that time, with reference
to
21 the location in which I was --

22 Q. Mm-hmm.

23 A. -- that was not happening. We used to go on attack, but
we
24 were not able to succeed and occupy the town.

10:00:06 25 Q. So they would be classified as hit-and-run missions; is
26 that correct?

27 A. Well, you can talk about that.

28 Q. I am asking you, sir, if you didn't occupy the towns you
29 would attack them, get what you need and then leave; is that

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1 correct?

2 A. Yes.

attacking

3 Q. Okay. Now, it's correct also that the purpose of

is

4 these towns, from 1996 to the overthrow, was to get supplies;

10:00:37

5 that also correct?

6 A. Yes.

these

7 Q. Okay. And among the supplies that you would get from

8 towns would be drugs and medicines; is that correct?

9 A. And ammunition.

10:00:50

10 Q. I'm only focusing on -- just listen to the question,

11 please.

12 A. Yes.

13 Q. Among the items you would get --

he

14 PRESIDING JUDGE: But you should not limit him to what

the

10:01:00

15 wants to say. Ask the question, let him provide the answer,

16 distinction will be made.

17 MR HARDAWAY: Very well, Your Honour.

18 PRESIDING JUDGE: Yes.

19 MR HARDAWAY:

10:01:09 20 Q. The items you would be getting from these towns included
21 drugs and ammunition; is that correct?

22 A. You are correct.

23 Q. Right. Now some of the towns that you attacked had
24 hospitals and pharmacies in them; is that correct?

10:01:29 25 A. Well, with regards to the area I was living, because
26 everybody knows that Kailahun District was the first area
wherein
27 the war started, and the war has made the areas almost be
28 exhausted.

29 Q. But Mr Witness --

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1 A. Yes.

2 Q. -- again, as I said to you before, please listen to my
3 question.

4 A. Yes.

10:01:52 5 Q. Very simply, some of the towns you attacked had
hospitals
6 and pharmacies in them; is that correct?

7 A. It's not all the time.

8 Q. No, I'm not asking all the time. That is why I said
some

9 of the towns you attacked had?

10:02:09 10 A. Yes, some of the towns, yes.

11 Q. Okay. And would it be from these hospitals and
pharmacies

12 that you would take the drugs from to distribute to the RUF

13 medical centres; is that also correct?

14 A. Well, not in all cases.

10:02:25 15 Q. But you would take the medicines from the hospitals and

16 pharmacies to be used by the RUF; is that correct?

17 A. You are correct.

18 Q. Thank you. Now, you had stated earlier, and I'm going
to

19 need your help on this because as you were going through this

10:03:08 20 part of your evidence I admit I needed some clarification.
You

21 had stated earlier in your evidence that in the towns that you

22 attacked food, in small quantities, would go to the soldiers

of

23 the fighting forces; is that correct?

24 A. No, that is not correct.

10:03:08 25 Q. You did not say that?

26 A. I said, food that is in small quantity --

27 Q. Yes.

28 A. -- is sometimes used by the men on the fighting.

29 Q. Okay. So, the question -- all right. And the men who
were

1 fighting that you are referring to would be the men who
attacked 2 the town; is that correct?

3 A. Yes, yes.

4 Q. Okay. And you also said that food that you found in
large 5 quantities would go to all the areas; is that correct?
10:03:38

6 A. Yes.

7 Q. Now --

8 PRESIDING JUDGE: Let me get this right. I mean, small
9 foods, small foods. Is he saying that this was sort of used
by 10 the men who were fighting or so? Mr Witness, can I get you
11 clearly on this?

12 THE WITNESS: The small food in the sense not all the
time 13 that you go and you attack and you happen to meet enough food
14 there.

10:04:21 15 PRESIDING JUDGE: Yes.

16 THE WITNESS: At certain time you can go there, you will
17 not even sometimes see food or certain time you can go there
and 18 find --

19 PRESIDING JUDGE: But where you saw small foods, as you
10:04:21 20 have said --

21 THE WITNESS: Yes, if you don't eat in order to sustain
you 22 to fight --

23 PRESIDING JUDGE: Okay.

24 MR HARDAWAY:

10:04:25 25 Q. And it was when you found food in large quantities that
was
26 when it was taken and distributed; is that right?

27 A. Yes.

28 Q. Now, who made the determination as to whether or not the
29 food was in large or small quantity, to either go to the
fighting

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1 force or to be distributed?

2 A. Well, at any time you have captured a town, and it
happens

3 to find lots and lots of food there, the mission commander is

4 going to send his report directly to Sam Bockarie. He -- we
are

10:05:04 5 given instruction as to how best he can able to arrange about
the
6 food.

7 Q. Now, you would agree with me, Mr Witness, that when you
8 raided the towns, you would take all the food from the town --
if

9 it was in large quantities -- you would take all the food from

10:05:26 10 the town to distribute to the civilians and soldiers within
the

11 RUF; correct?

12 A. Not that you can take all the food. At certain time you
13 cannot be able to collect all the food. Thinking of how we
are,
14 we don't have vehicles to transport it, so we only expect to
take

10:06:02 15 it on their head so, through that, you will not be expect to
16 carry enough food if at all you come to capture lots and lots
of

17 food.

18 Q. So you would agree with me though, that if you had the
19 vehicles and the equipment, and you were on a raid, you would
10:06:12 20 take all the food from the town?

21 A. Yes.

22 Q. Okay. Now, I may be going back in time, Mr Witness, and
if

23 I confuse you please let me know.

24 A. Yes.

10:06:19 25 Q. You had testified that the RUF would protect the houses
in

26 the towns you attacked in order to base there; is that
correct?

27 A. Yes.

28 Q. And also when the RUF occupied a town, you had testified
29 that the chiefs would organise civilians to do brushing?

1 A. That is not my statement.

2 Q. Did you -- please, please explain.

3 A. Yes. What I said is that when RUF has brought --
captured

4 a town --

10:07:01 5 Q. Mm-hmm.

6 A. -- they are to base there. Then they find out that some
7 civilians run away from their places --

8 Q. Mm-hmm.

9 A. -- having the G5 got series of information about those
who

10:07:06 10 left --

11 Q. Mm-hmm.

12 A. -- and he has confirmed the information that they are
not

13 coming back, their places are abandoned --

14 Q. Mr Witness, forgive me for interrupting --

10:07:20 15 A. I'm going.

16 Q. I am only asking about the --

17 PRESIDING JUDGE: Please, Mr Hardaway, allow the witness
to

18 explain himself, please.

19 MR HARDAWAY: Very well, Your Honour.

10:07:28 20 PRESIDING JUDGE: Put him at ease. Let him explain
21 himself.

22 MR HARDAWAY:

23 Q. I apologise, Mr Witness, please explain.

least 24 A. There are certain questions you need explanation. At
10:07:35 25 you have to --
26 PRESIDING JUDGE: No, no, no, Mr Witness, no
confrontation
27 with your lawyer. Okay?
28 THE WITNESS: Yes.
29 PRESIDING JUDGE: You have to give your evidence and you

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1 must be focussed on your responses.
2 THE WITNESS: Okay.
3 PRESIDING JUDGE: Yes, you don't confront the lawyer;
4 okay?
10:07:48 5 THE WITNESS: Yes.
6 JUDGE BOUTET: And please listen to the question
carefully,
7 and answer the question, and if you want to add an explanation
8 afterwards, fine. But answer the question first, please. If
9 it's not clear to you, you can say "I don't understand" and
10:08:00 10 please clarify but if it is clear please answer the question.
11 THE WITNESS: Yes. On certain occasions we do general
12 cleaning. Through this general cleaning everybody is involved
to

are
13 brush, whether you be soldier or whether you be civilian you
14 entitled to clean your territory. Where the civilians have
10:08:19 15 already abandoned the places, and they have no intention of
you
16 coming back, we cannot allow the area to be like that because
the
17 need to clean your environment. That will be the time when
18 G5 would organise with the civilians where their areas for the
19 government, he has there to organise and brush the area.
10:08:41 20 MR HARDAWAY:
21 Q. All right. Now, could the civilians refuse to brush the
22 area?
23 A. They will not refuse.
24 Q. Mr Witness, that is not the question. Could they refuse
to
10:09:01 25 brush the area, if they --
26 PRESIDING JUDGE: Mr Hardaway, this witness is not a
27 lawyer, please. When you say "could," the distinction you
might
28 have in mind may not be relayed to him.
29 MR HARDAWAY: I will rephrase the question, Your Honour.

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1 PRESIDING JUDGE: Yes, rephrase the question.

2 MR HARDAWAY:

3 Q. If the civilians decided they did not want to brush the
4 area, would that be acceptable?

10:09:17 5 A. Well, this sort of thing did not ever arise.

6 PRESIDING JUDGE: No, answer the question. Please
answer
7 the question. Put the question to him again.

8 THE WITNESS: No, they cannot refuse.

9 MR HARDAWAY:

10:09:44 10 Q. What would happen to the civilians if they refused to
11 brush?

12 A. Well, they will not refuse. This is a well-organised
13 work. They know that at certain time they can assist the
14 soldiers, so, and they know their responsibility that they are
to

10:09:58 15 render towards the soldiers. Likewise, the soldiers too knows
16 their responsibility towards the civilian, so they cannot make
17 any objection to that if at all such an issue arise.

18 Q. But, Mr Witness, my question was this: If they
objected,
19 and if they refused, what would happen to them?

10:10:22 20 A. Well, if at all they refused with valid reasons, I think
21 the G5 can understand. They cannot take any sort of, you
know,
22 action against them. I think they have to go into what is
their
23 problem.

24 Q. What if they refused and did not have a valid reason;
what
10:10:52 25 would happen to them?

26 A. Well, such a case did not arise in fact, where I was

27 operating.

without

28 Q. So you don't know what would happen if they refused

29 a valid reason?

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not

1 A. Well, that is what I'm saying, that sort of thing did

2 arise in where I was living.

3 Q. So if I put it to you --

10:11:16
to

4 PRESIDING JUDGE: Mr Witness, you said that if, if they

5 refused to brush, and they explained, they gave good reasons

6 the G5, as to why they refused, nothing would happen. The

7 question is: If they do not give a good reason, if the reason

8 they've given is not good, what would happen?

9 THE WITNESS: Well, that is --

10:11:42

10 PRESIDING JUDGE: Or were the reasons always good?

11 THE WITNESS: Yes, the reason is good.

if

12 PRESIDING JUDGE: Don't follow my words. The reason is

13 good; which reason is good? Where there is reasons, you said

know,

14 the reasons are good, it means that there was a case, you

10:12:14 15 where some reasons were not good.

16 THE WITNESS: Well, let me try to explain that
particular

17 side so that you can --

18 PRESIDING JUDGE: Yes, explain it. Explain it.

19 THE WITNESS: Let's say, for example, civilians have

10:12:14 20 abandoned their place due to the attack, they have left their
peoples

21 area, and their area is in the middle of the town, other

22 are in the town around the bushes, so to make the area clean,
at

23 least they have to tell them. If they refuse of brushing the

24 place, because on certain occasions they say: This is not my

10:12:36 25 place, I'm not entitled to go and clean another man's place

26 because he is not -- he or she is not there, but, if such an

27 issue arise, you know, they will have to call in the G5 will
have

28 to interfere and educate them. Well, if at all you abandon
this

29 area without brushing the place see, you expect that even

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1 yourself you will be harmed because it might be possible,
2 sickness, you would come in contact with sickness. Likewise,

and
through
10:13:11 they
3 there are certain dangerous animals, they will come and hide
4 stay there, and even yourself will be victim of it, so,
5 what they have said, they would give them the ideology that
6 can understand. Then at the end of the day, they will come to
7 one conclusion and they will do the work.

8 MR HARDAWAY: May I continue, Your Honour?

9 PRESIDING JUDGE: Continue. I mean, it's your witness.

10:13:29 10 MR HARDAWAY: Thank you.

11 Q. So, just so I'm clear, Mr Witness --

12 A. Yes.

13 Q. -- it is your evidence today that no one refused to work
14 without a valid reason; is that your evidence?

10:13:52 15 A. Pardon?

16 Q. Is it your testimony --

17 A. Yes.

18 Q. -- that everyone worked, first part; is that your
evidence?

19 A. Yes.

10:14:04 20 Q. It is also your evidence that those who refused to work
21 always had a valid reason?

22 A. Yes.

23 Q. And it's your evidence that nobody ever gave an invalid
24 reason as to why they did not want to work?

10:14:26 25 A. Well, the freedom of speech, in order to express
yourself,

26 their self, was there. They were not under intimidation. The
27 RUF was not fighting in order to harass or do anything like

such.

28 At least it was for the people who they are fighting and were
29 listening to the people more.

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1 Q. So, if you listen to the people more, and there was
someone
2 who did not want to work, and they just gave no reason, they
just
3 said: I don't want to work, would anything happen to that
4 civilian?
10:15:07 5 A. Well, that is the G5 responsibility and the chiefs,
because
6 they were all operating together. This, they -- the G5 only
give
7 this information to the chiefs. The chiefs has to meet their
8 people.
9 Q. Did you --
10:15:26 10 A. And --
11 Q. I am sorry. Please continue.
12 A. No, just talking.
13 Q. Did you ever hear or see of any civilian who refused to
14 work and gave no reason being punished?
10:16:04 15 A. That was not to my knowledge.
16 Q. Not to your knowledge?

17 A. Yes.

18 Q. So, if I put it to you that civilians who refused to
work
19 were beaten and harassed by the RUF, you would have no
knowledge
10:16:04 20 of that; is that correct?

21 A. Well, harassment in the case, is one of the things that
RUF
22 was force against and that was a strict and laid down law,
that
23 nobody, no soldiers will not --

24 JUDGE BOUTET: Mr Witness --

10:16:17 25 PRESIDING JUDGE: Mr Witness, answer the question.
Sorry.

26 Answer the question.

27 JUDGE BOUTET: I have asked you to answer the question.
If
28 you give an explanation afterwards, fine. The question is a
very
29 clear and simple question to answer. You are not asked about
the

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1 philosophy. You want to explain about that afterwards, fine,
but
2 answer the question first.

3 THE WITNESS: Okay.

4 MR HARDAWAY:

10:16:38 5 Q. Do you wish me to repeat the question?

6 A. Yes.

7 Q. So, Mr Witness, if I put it to you that civilians who
8 refused to work were --

9 PRESIDING JUDGE: Can you remove the "if" please.
Remove

10:16:55 10 the "if".

11 MR HARDAWAY: Very well, Your Honour.

12 Q. So when I put it to you, Mr Witness, that civilians who
13 refused to work were beaten and harassed by the RUF, you would
14 have no knowledge of that; is that correct?

10:17:11 15 A. No, I don't have no knowledge about that.

16 Q. Thank you, sir.

17 A. Thank you.

18 Q. Now, you stated that one of the missions of the RUF was
to
19 take care of life and property; is that correct?

10:17:24 20 A. Yes.

21 Q. Now, the towns that you occupied, forgive me, I have to
ask
22 what maybe a very obvious question.

23 A. Yes.

24 Q. Now the towns that you occupied some of them had
civilians

10:17:40 25 in it; is that correct?

26 A. Pardon?

27 Q. Some of the towns that you occupied had civilians; yes?

28 A. Yes.

out

29 Q. Okay. Now, when you were pushed, the RUF were pushed

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1 of those towns, that had civilians, did you take the civilians
2 with you?

us.

3 A. Well, sometimes they follow us. Sometimes they follow

10:18:06
complicating

4 PRESIDING JUDGE: Please, answer the question. You say
5 sometimes. Because you are complicating -- you are
6 matters. Ask the question again, please.

7 MR HARDAWAY: Thank you, Your Honour.

8 Q. When --

10:18:18

9 PRESIDING JUDGE: You are free. You will explain. You
10 know, you will answer the question and then you will explain.

11 THE WITNESS: Okay.

12 PRESIDING JUDGE: Yes.

13 MR HARDAWAY:

10:18:40

14 Q. When the RUF pulled out of the towns, did you take the
15 civilians with you?

16 A. Not in all cases.

go

17 Q. All right. Could the civilians, in the towns, refuse to

18 with you, if they so chose?

19 A. Pardon?

10:18:48 20 Q. If you were pulling out of the town; okay?

21 A. Yes.

22 Q. And the town had civilians -- are you with me so far?

23 A. I'm with you.

24 Q. Could the civilians refuse to leave with you?

10:19:03 25 A. Whether they would refuse to leave with you?

26 Q. Would they be allowed to refuse to go with the RUF when
27 they pulled out?

28 A. That is to their own discretion. If they wish, they can
29 follow, but if they don't, they are not forced to follow.

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1 Q. So --

2 JUDGE BOUTET: So the answer to the question is: Yes,
they
3 could refuse.

4 THE WITNESS: Pardon?

10:19:46 5 JUDGE BOUTET: So the answer to the question was: Yes,
6 they could refuse. Mr Witness, we are just asking you to try
to
7 answer the question, and if you want to add explanation, you
can.

8 The question was: Can they refuse? You say some would, some
9 would not. I --

10:19:55 10 MR HARDAWAY:

11 Q. Did you understand --

12 MR JORDASH: Sorry, I am sorry to leap to my feet but,
with
13 respect, that was a very clear answer, in my submission. This
is
14 not a trained advocate --

10:20:08 15 JUDGE BOUTET: Mr Jordash, Mr Jordash, I know why he
asked

16 the question and, to me, it was not a clear answer.

17 MR JORDASH: With discretion, the witness made it quite
18 clear that a civilian had discretion, which makes it quite
clear,
19 in my respectful submission, that a civilian could refuse.
This

10:20:31 20 is a witness who is not a trained advocate. He has got to be
21 given a little bit of leeway to answer the question.

22 JUDGE BOUTET: Mr Jordan, you need not to be a trained
23 advocate to answer these questions this morning; they are
fairly
24 simple, clear to the issue questions.

10:20:46 25 MR JORDASH: And that, with respect, was a simple, clear
26 answer which left, in my submission, no doubt as to what his
27 response was.

28 MR HARDAWAY: May I, Your Honour?

29 PRESIDING JUDGE: Yes, you may.

you
this

1 MR HARDAWAY:

2 Q. Mr Witness, just so that we are crystal clear: And if
3 could answer just "yes" or "no", I would appreciate it for
4 one question; okay?

10:21:22 5 A. Yes.

6 PRESIDING JUDGE: Supposing he does not have a "yes" or
7 "no"?

8 MR HARDAWAY: I have faith that --

9 PRESIDING JUDGE: It is not as simple as saying "yes" or
10:21:33 10 "no". Put the question to him. If it's a "yes" or "no"
11 response, you know, I would appreciate it.

12 MR HARDAWAY: Very well.

13 PRESIDING JUDGE: Yes.

14 MR HARDAWAY:

10:21:40 15 Q. Mr Witness, the question is this:

16 A. Yes.

17 Q. Were civilians free to stay in the villages when the RUF
18 pulled out?

19 A. Yes.

10:21:52 20 Q. Okay. So, when I put it to you, Mr Witness, that the
21 civilians in the towns were not free to stay behind, that they
22 were forced to go with the RUF, you would disagree; is that

23 correct?

24 A. Yes.

10:22:16 25 Q. Okay.

26 MR OGETO: Sorry, to interrupt, My Lords, can Mr Kallon
use

27 the bathroom, please?

28 PRESIDING JUDGE: Yes, he may, yes.

29 MR HARDAWAY:

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the 1 Q. Now, the civilians that went with you, Mr Witness, from
2 towns, were they -- they were sent to the rear for their own
3 safety; is that correct?

4 A. Yes.

10:22:38 5 Q. And these civilians would sometimes include women and
6 children; is that correct?

7 A. Yes.

8 Q. And at the rear, they would be handed over to the G5; is
9 that correct?

10:22:51 10 A. Yes.

11 Q. And what would the G5 do with them?

12 A. Well, any civilian that is newly entering the RUF
13 territory, he will be registered to the G5 office.

14 Q. Mm-hmm.

10:23:09 15 A. And they will screen him, or her, there. After that,
they
16 will be asked to go and live to some of the abandoned houses
17 there. Or, if it was somebody have grew interest of that
18 particular civilian, he will meet with the G5 and raise his
19 concern to him that I have interest in this particular
civilian

10:23:41 20 or this civilian is my family or my relatives. He would be
21 allowed to take the person home, but he or she has to sign
from
22 the G5 that he is responsible for that particular person,
before
23 carrying him or her at his place.

24 Q. Now, a person who would sign for someone brought to the
10:24:04 25 rear, did it always have to be a family member?

26 A. Not all the time they be family members.

27 Q. So, if there was someone in the rear, and they saw
somebody
28 who they did not know, coming in from the front lines, they
could
29 sign for them and be responsible for them; is that correct?

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1 A. Yes.

2 Q. All right. Now, the civilians who were brought back
from

3 the rear, they were also sent for training; is that correct?

4 A. You mean those who are good, mature for training?

10:24:44 5 Q. No, no, the civilians who came in from the front lines -
-

6 A. Yes.

7 Q. -- they received ideology training; is that correct?

8 A. Yes, from the G5.

9 Q. Okay. And they also, the civilians, received military
10:25:02 10 training, didn't they?

11 A. Not all the time. Training was open. It is left to
your

12 wish. If he wants to join the training.

13 PRESIDING JUDGE: But did some of them receive training?

14 THE WITNESS: Yes, those who have interest in it.

10:25:27 15 PRESIDING JUDGE: Those who had interest in the training
16 received the military training?

17 THE WITNESS: Yes.

18 MR HARDAWAY:

19 Q. Did all of the civilians receive military training such
as

10:25:43 20 how to evade gunfire, how to duck and cover?

21 A. No, no, no.

22 Q. No, they didn't?

23 A. No, no, no.

24 MR HARDAWAY: If I may have a moment, please?

10:25:58 25 PRESIDING JUDGE: Yes, you may.

26 MR HARDAWAY: I thank the Court.

27 Q. Sorry, Mr Witness.
28 A. Okay.
29 Q. So, if there was evidence presented in this Court, that

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military
and
1 everyone, every civilian, including children, received
2 training such as ducking and covering and evading enemy fire
3 bombs, would that be accurate?

4 A. It is.

10:26:49 5 PRESIDING JUDGE: Everyone. Is there evidence --

6 MR HARDAWAY: Every civilian. Every civilian I said --

received
7 PRESIDING JUDGE: Every civilian who was captured

8 that? I don't think I have -- we have --

Honour,
9 MR HARDAWAY: I need to go for the reference, Your

10:27:04 10 but I believe it was DIS-069 who mentioned that. I have to go

11 through that and if I am incorrect in that --

12 PRESIDING JUDGE: Everyone, I'm not very certain about

13 that. Yes.

but
14 MR JORDASH: And my memory is the same as Your Honours

10:27:13 15 I think if my learned friend is going to put it with such
16 certainty we ought to have the reference.

17 PRESIDING JUDGE: We ought to have the records.

18 MR HARDAWAY: I will get that.

19 PRESIDING JUDGE: And as we always would normally expect
10:27:27 20 that you do, you will refer to the witness and the transcript,
21 the portion of the transcript where he gave such evidence.

22 MR HARDAWAY: Very well, Your Honour. I will withdraw
that
23 and move on until such time as I have that information.

24 PRESIDING JUDGE: Right.

10:27:38 25 MR HARDAWAY:

26 Q. Now, Mr Witness --

27 A. Yes.

28 Q. -- you had mentioned that ammunition was sometimes in
short
29 supply in the RUF; is that correct?

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1 A. Yes.

2 Q. And that you sometimes, you could not take all of the
3 ammunition with you because you did not have the manpower; is
4 that correct?

10:28:18 5 A. Yes.

6 Q. And, for the most part, this would be ammunition that
you
7 would get on the raids in towns held by the SLAs; is that
8 correct?

9 A. Yes.

10:28:18 10 Q. And these towns also had civilians in them as well, did
11 they not?

12 A. The towns where the --

13 Q. The towns that you raided the SLAs were --

14 A. Yes. Sometimes they have civilians there.

10:28:27 15 Q. Okay. The truth of the matter, Mr Witness, is that the
RUF
16 did not leave any ammunition behind because the RUF forced
17 civilians to carry it for them, didn't they?

18 A. No, that is not true.

19 Q. It's also true, Mr Witness, that there was no food left
10:28:49 20 behind when you took them from the towns because you forced
the
21 civilians to carry it for you; is that also not correct?

22 A. That is not correct.

23 Q. All right. Now, if a civilian from the rear wanted to
go
24 to an area outside of the RUF control, would they be allowed
to
10:29:17 25 do so?

26 A. Well, we are issuing pass.

27 Q. Okay.

28 A. The passes were only valid within the RUF territory. If
at
29 all you are a civilian, then you go to the SLAs, at that time,

will

1 you yourself, your life will be in danger. They will, they

we

2 disturb you, because you are coming from the RUF territory, so

We

3 cannot mandate anybody to go where he or she will be harmed.

4 only issue pass within the RUF liberated territories.

10:29:51

5 Q. So, if a civilian from the RUF territory wanted to go to
6 Freetown, would that civilian be allowed to go?

7 A. That issue did not arise at the time when I was there.

8 Because they were all fighting -- they were all afraid of the

9 enemies, and their fear was that if at all they leave, how --

10:30:36
to

10 they are spend some time with the RUF, then, later they decide

11 go to the SLAs, they were afraid that maybe when they go there

12 they will decide to take them as somebody very bad, or he has

13 come to spy them, so they were not even thinking of that.

a

14 Q. Mr Witness, my question was simple: Would the RUF allow

10:30:50
its

15 civilian to leave its territory to go to an area outside of

16 territory, for example, Freetown?

17 A. You mean at the time during the jungle time?

18 Q. During the time that the civilians were in the rear, for

19 their own safety, if they wanted to leave and go to an area
10:31:15 20 outside of RUF control, would the RUF let them?
21 A. Well, that is not -- that is what I'm trying to -- I
said
22 that is not to my knowledge.
23 Q. So, when I put to you that civilians were not allowed to
24 travel outside of RUF areas, you would have no knowledge of
that;
10:31:46 25 is that correct?
26 A. I have no knowledge of that.
27 Q. Okay.
28 JUDGE BOUTET: Mr Witness, do I understand -- I
understand
29 what you are saying. You are saying that from -- during the

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1 jungle time, that is from '91 to '96 --
2 THE WITNESS: Yes.
3 JUDGE BOUTET: -- you were not aware of any case where a
4 civilian would go outside the RUF controlled territory to go
to
10:32:11 5 Freetown, for example? During those five, six years, it never
6 happened --
7 THE WITNESS: Well --

8 JUDGE BOUTET: -- that a civilian would ask to go
outside,

9 to go to Freetown. That is the example you were given.

10:32:28 10 THE WITNESS: Well, I did not operate with -- I was not
in

11 the G5 office or the IDU office, who are responsible for all
12 these things. As I told you that I am a combatant. I was all
13 the time at the front line so, talking about passes, that is a
14 different issue pertaining the G5, so I cannot able to tell

much

10:32:49 15 about it. But all what I know that the G5 used to issue
passes

16 to civilians.

17 JUDGE BOUTET: To civilians, according to you, to go to
18 places within RUF held territories?

19 THE WITNESS: Yes, I know of that.

10:33:19 20 MR HARDAWAY:

21 Q. Now, from 1996 to the overthrow, if a civilian from the
22 rear wanted to leave RUF territory and go to Freetown, would

they

23 be allowed to do so?

24 A. From 1996?

10:33:38 25 Q. Yes; to the overthrow.

26 A. Yes. At that time peace was now there, yeah. The
safety

27 of the civilian was a little bit guarantee.

28 Q. So --

29 A. The peace was there.

1 Q. So, a civilian would be allowed to go from the rear to
go
2 to Freetown from 1996 to the time of the overthrow; is that
your
3 evidence?

4 A. Not permanently they were, you know, allowed, but
everybody
10:34:07 5 was given a chance to go anywhere you go, so, the moment the
6 peace was signed, that freedom of movement was there.

7 Q. I'm not talking about when the peace was signed,
8 Mr Witness. From 1996 to the time of the overthrow there were
9 still combat operations going on; is that correct?

10:34:34 10 A. In 1996 to the overthrow?

11 Q. To the overthrow; yes, sir.

12 A. Yes, but not in all areas because the first peace has
been
13 signed by Foday Sankoh. I think that is the Lome Peace
Accord,
14 so everybody was aware of that peace and at least freedom of
10:34:51 15 movement was there.

16 Q. And in your mind, sir, when was the Lome Peace Accord
17 signed?

18 A. Well, it was in -- the first cease-fire was in '96, the
19 first cease-fire.

10:35:07 20 Q. But, do you know when the Lome Peace Accord was signed;

21 what year?

22 A. I cannot remember.

23 Q. Now, I want to take you, now, Mr Witness, to Kenema;
okay?

24 A. Yes, yes.

10:35:29 25 Q. Part of your evidence. Now, during the junta period,
you

26 had testified that, in Kenema, the RUF and the SLAs went on

27 missions together; is that correct?

28 A. Yes.

29 Q. Now, it's true that while in Kenema, the SLAs, and the
RUF,

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1 used child soldiers, didn't they?

2 A. No.

3 Q. So, when I put it to you that, in fact, the RUF and the

4 SLAs used child soldiers while working together in Kenema, you

10:36:01 5 would disagree with that; is that correct?

6 A. Exactly.

7 Q. Okay. I now want to move to Tongo, the first patrol;
okay?

8 A. Yes.

9 Q. Now, when was the first patrol to Tongo again? What
year?

10:36:24 10 A. That was in '97.

11 Q. And would it be correct to say that the first patrol to
12 Tongo had both RUF and SLAs in it?

13 A. Yes.

14 Q. And you would agree, that the RUF and the SLAs worked
10:36:36 15 together to capture Tongo; is that correct?

16 A. Yes.

17 Q. And after taking Tongo, there were meetings with the
18 civilians that were in the towns; is that also correct?

19 A. Yes.

10:36:50 20 Q. And one of the purposes of the meetings, was to convince
21 the civilians -- the other civilians, to come out of the bush;
is
22 that also accurate?

23 A. Exactly.

24 Q. And as a result of these meetings, did civilians come
out
10:37:05 25 of the bush?

26 A. Yes.

27 Q. Now, you also testified that the G5 also had meetings
with
28 the civilians as well; is that accurate?

29 A. Yes.

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towns

1 Q. And these would be civilians who were already in the

2 and civilians who would come out from the bush; is that right?

3 A. Both of them.

meetings

4 Q. Both of them. Right. Now, you had said that the

10:37:26 5 the G5 had with the civilians was to give courage to the

6 civilians; is that correct?

7 A. Yes.

8 Q. So, it would be correct to say, that at this time, the

9 civilians in Tongo were afraid; yes?

10:37:45 10 A. Yes, because of the fighting.

11 Q. Okay.

12 PRESIDING JUDGE: Mr Hardaway you will not be afraid of

13 fighting?

14 MR HARDAWAY: Fortunately Your Honour, I have never been

in

10:37:57 15 that situation.

16 PRESIDING JUDGE: Well well.

17 MR HARDAWAY: I just -- just for clarification, Your

18 Honour, this is going somewhere.

19 PRESIDING JUDGE: If you came under fire here, I would

like

10:38:08 20 to watch your reaction. Anyway, it's just an observation, you

21 know. Go ahead.

22 MR HARDAWAY:

23 Q. Mr Witness --

24 A. Yes.

10:38:16 25 Q. -- the civilians were in fact, were afraid because they

26 heard of the RUF raping and killing civilians in other areas;
27 isn't that accurate?
28 A. No, that was not the information. That was not the
reason
29 why they are afraid.

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1 Q. So when I put it to you that the reason they were afraid
2 was because they heard of RUF raping and killing civilians in
3 other areas you, would disagree with me?

4 A. I would disagree with you.

10:38:41
Sam

5 Q. Okay. Now, you had stated that upon arrival in Tongo,
6 Bockarie did not give approval for mining at first because of
7 safety concerns; is that correct?

8 A. Yes.

upon

10:39:06
over

9 Q. The real reason Sam Bockarie ordered mining suspended
10 arrival was that so that he could establish absolute control
11 mining in Tongo; isn't that right?

12 A. Well, that was also part of the reason.

the

13 Q. Okay. Thank you. Now, is it accurate to say that both

14 RUF and the SLA were mining in Tongo?
10:39:29 15 A. Yes, they were mining, including the civilians.
16 Q. Yes. And the RUF and SLA were mining at Cyborg Pit as
17 well; is that correct?
18 A. Yes.
19 Q. Now, you had mentioned that there was a mining committee
10:39:47 20 used to set up, that was set up to handle the mining issues in
21 Tongo; is that correct?
22 A. Yes.
23 Q. Now, and I didn't get this in your evidence and please
24 explain it to me, the mining committee was made up of
civilians;
10:40:05 25 is that correct?
26 A. Both civilians and soldiers.
27 Q. Okay. And the soldiers who were part of the mining
28 committee were both RUF and SLA?
29 A. Exactly.

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to
1 Q. Right. Now part of the job of the mining committee was
2 get people to work at the mines; isn't that also accurate?
3 A. That was not only their task.

4 Q. But part of their duty was to get people to work at the
10:40:27 5 mines; would you agree?
6 A. No, that is not.
7 Q. So, when I put it to you that part of their duty was to
get
8 civilians to work at the mines you would disagree with me?
9 A. I would disagree with it.
10:40:39 10 Q. Right. So when I put it to you that the mining
committee
11 would get people to mine for them by having the soldiers of
the
12 RUF and SLA capture civilians and force them to mine, you
would
13 disagree with me on that as well?
14 A. Exactly.
10:40:56 15 Q. All right. Now, for the civilians who were mining,
could a
16 civilian choose to stop mining if they wanted to?
17 A. They were requested for mining. I think that is the
only
18 way of getting their, they can able to live in Tongo, through
19 that mining.
10:41:24 20 Q. Mr Witness --
21 A. Yes.
22 Q. -- the question is this: If a civilian did not want --
if
23 a civilian in Tongo did not want to mine, would they be forced
to
24 mine?
10:41:36 25 A. No.
26 Q. So when I put it to you that civilians would be forced
to
27 mine, under fear of punishment, you would disagree with me?

28 A. Yes.
29 Q. All right. Now, during the mining in Tongo were there

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1 guards at the mine?

2 A. Pardon?

3 Q. Were there guards at the mines in Tongo?

4 A. Guards?

10:42:02 5 Q. Guards

6 A. Well, it was only at Cyborg Pit when there was guard
there.

7 Q. So, there were no -- so your evidence is there were no
8 guards at Tongo, at the mines?

9 A. That is what I'm saying; only at Cyborg Pit.

10:42:24 10 Q. Okay?

11 A. But at other areas there were no guard.

12 Q. Okay. So, if I put it to you -- so when I put it to you
13 that there were armed guards in Tongo, to force the civilians
to
14 mine, you would disagree with me?

10:42:38 15 A. Exactly.

16 Q. And when I put it to you that some of those armed guards
at

with 17 the mines in Tongo were child soldiers, you would disagree

18 me on that as well?

19 A. Yes.

10:42:49 20 [RUF23NOV07JS - B]

work 21 Q. And when I put it to you that civilians who refused to

22 the mines, the guards would beat and kill them, you would

23 disagree with that as well; is that correct?

24 A. Yes, I would disagree with you.

10:45:08 25 Q. Okay. Now, Issa Sesay had civilians mining for him in

26 Tongo, didn't he?

27 A. No.

civilians 28 Q. So when I put it to you that Issa Sesay did have

29 mining for him in Tongo, you would disagree; is that correct?

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1 A. Yes, I would disagree with that.

guards 2 Q. And when I put it to you that Issa Sesay had armed

3 guarding the civilians mining for him in Tongo, you would

4 disagree with that as well?

10:45:08 5 A. Repeat your question.

armed
would
10:45:09
in
see
correct?
10:45:09
10:45:09
Don't
were
arm.
29

6 Q. When I put it to you, Mr Witness, that Issa Sesay had
7 guards guarding the civilians mining for him in Tongo, you
8 disagree; is that correct?
9 A. Yeah, I would disagree with you.
10 Q. Okay. Now, Morris Kallon had civilians mining for him
11 Tongo as well, didn't he?
12 A. No, I know of his security who were there, but I don't
13 civilians mining for him.
14 Q. So, Morris Kallon's security was in Tongo; is that
15 A. Yes.
16 Q. And these security were armed, weren't they?
17 A. Pardon?
18 Q. They were armed; they had guns, weapons, didn't they?
19 A. They were all there in order to defend Tongo.
20 Q. So when I put it to you that --
21 PRESIDING JUDGE: They were all there in order to defend
22 Tongo means what? Answer the question.
23 THE WITNESS: They were men --
24 PRESIDING JUDGE: Were they armed or not?
25 THE WITNESS: They were armed.
26 PRESIDING JUDGE: Answer the question. That is it.
27 let us say, "Oh, because they are there to defend Tongo they
28 armed." You may be there defending a cause and not carry an
29 THE WITNESS: Well, they were armed.

I 1 PRESIDING JUDGE: As a soldier you know that better than
2 do here.
3 THE WITNESS: Yes.
4 MR HARDAWAY:
10:45:17 5 Q. So when I put it to you, Mr Witness, that Morris
Kallon's
6 armed security were there to guard the civilians who were
7 mining
8 for him, would you disagree with that?
9 A. I would disagree with that.
10:45:54 10 Q. Now, you had mentioned that there was mining in Cyborg
pit;
11 correct?
12 A. Yes.
13 Q. And that you, yourself, had done some mining in Cyborg
pit?
14 A. Yes.
10:45:54 15 Q. Now, while you were mining in Cyborg pit, did you see or
at
16 hear of Morris Kallon ordering the killings of any civilians
17 Cyborg?
A. No.

ordering 18 Q. At any time did you see or hear of Morris Kallon
19 the killings of civilians at Cyborg pit?
10:46:17 20 A. No.
21 Q. So when I put it to you that Morris Kallon did, in fact,
22 order the killing of civilians at Cyborg pit, you would have
no 23 knowledge of that; is that correct?
24 A. No knowledge of that.
10:46:23 25 Q. Okay. Now, I have a couple of personal questions,
26 Mr Witness. I apologise. None of these questions will reveal
27 your identity, but I feel I must ask these questions.
28 A. Yeah, okay.
29 Q. Okay?

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you 1 A. Yes.
2 PRESIDING JUDGE: In any event, you may go there, well,
3 know what reaction you expect --
4 MR HARDAWAY: I understand, Your Honour.
10:46:47 5 PRESIDING JUDGE: -- from either the Defence or from the
6 Court.

7 MR HARDAWAY: Absolutely, Your Honour.

8 PRESIDING JUDGE: Right.

9 MR HARDAWAY:

10:47:06 10 Q. Now, Mr Witness, during the time that you were in the
RUF,

11 were you paid well?

12 A. Well, I was not paid at the initial stage, but when
there

13 was that combined forces of the RUF at that time they overtook
--

14 overthrowing took over, we were given small, small allowances.

10:47:20 15 Q. Small. And do you remember what amount, what your

16 allowance was, how much that allowance was?

17 A. Well, at a certain time I get 100,000 leones, yeah.

18 Q. And would that be per week, per month?

19 A. That was per month.

10:47:41 20 Q. Per month; okay. Now, during the time you were with the

21 RUF, including when you were with the -- when they joined with

22 the AFRC, did you ever engage in looting?

23 A. The time when I was with RUF?

24 Q. Your entire time with the RUF, both when it was just the

10:48:06 25 RUF by itself, and when they joined the SLAs, did you ever
engage

26 in any looting?

27 A. You're referring -- whether me engaged --

28 Q. Yes, just you personally.

29 A. No.

1 Q. Okay. Did you ever steal any property from civilians?
2 A. That is not my habit.
3 Q. Okay. Did you engage in any illegal activity to get
money?

4 A. No.
10:48:37 5 Q. Okay. So what you're saying is from the time of the
AFRC,
6 your only source of income was the 100,000 leones per month;
is
7 that correct?

8 A. Yes.
9 Q. Okay. I want to now go to the pile system.

10:48:54 10 A. Yes.
11 Q. Okay?
12 A. Yes.
13 Q. Now, you had mentioned that in the pile system the first
14 pile was for the workers and the supporter; is that correct?

10:49:04 15 A. Yes.
16 Q. And you had testified that the supporter would take care
of
17 the food, the medicine and the tools?

18 A. Exactly.
19 Q. Right?

10:49:14 20 A. Yes.
21 Q. Now, you had stated that you had five people mining for

22 you; is that correct?

23 A. Yes.

24 Q. So it would be correct to say that you were a supporter?

10:49:23 25 A. Exactly.

26 Q. All right. And these workers lived with you; yes?

27 A. Yes.

28 Q. And you said -- I don't know the exact term, I'll use my

29 own phrase, and then please correct me -- that you had a
positive

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1 relationship with these workers; is that correct?

2 A. Yes.

3 Q. And you provided three cups of rice a day to the
workers;

4 yes?

10:49:47 5 A. Yes.

6 Q. Now, that would be three cups of rice per worker per
day.

7 A. Exactly.

8 Q. So 15 cups total?

9 A. Yes.

10:49:57 10 Q. You also provided cigarettes for the workers as well;
yes?

11 A. Yes.

12 Q. And if the workers got sick, you would buy medicine for
13 them?

14 A. Medicine was free.

10:50:08 15 Q. Oh, okay. But if they wanted something to drink -- if
they
16 wanted to drink, like palm wine or beer, you took care of that
as
17 well?

18 PRESIDING JUDGE: Poyo.

19 THE WITNESS: Exactly.

10:50:17 20 MR HARDAWAY:

21 Q. Or Poyo?

22 A. Yes.

23 PRESIDING JUDGE: Yes.

24 THE WITNESS: Poyo was the most commonest one there.

10:50:24 25 PRESIDING JUDGE: Yes.

26 MR HARDAWAY:

27 Q. Thank you.

28 A. Yes.

29 Q. Now, and when the workers found diamonds, you would buy
it

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1 from the workers after negotiations; yes?

2 A. Yes.

3 Q. Now, you would agree with me that diamond mining is a
very

4 difficult, tough job; yes?

10:50:42 5 A. Yes.

6 Q. And you would also agree that you can go for long
periods

7 of time without finding any diamonds; is that also correct?

8 A. Yes.

9 Q. So, my question, Mr Witness, is this: Given that you
only

10:51:01 10 made 100,000 leones a month, and you were providing rice,
11 cigarettes, tools, everything for the workers and buying the
12 diamonds, where did the money come from?

13 A. Well, the 100,000 leones is not enough --

14 Q. Right.

10:51:18 15 A. -- to do the mining. That is why, although I'm
16 supporting -- though I also have another person who can, you
17 know, support me too, so that I can able to sustain those
18 particular people.

19 Q. So you have someone supporting you?

10:51:33 20 A. Yes.

21 Q. To support them?

22 A. Yes.

23 Q. Now, you did not mention that in your earlier testimony,
24 did you?

10:51:40 25 A. I think I mentioned that.

26 Q. Very well, Mr Witness, I'll ask that the record can
speak

27 to that. Now, you have said that one of the piles was the
28 government pile; is that correct?

29 A. Yes.

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the 1 Q. Now, actually, let me back-track a little bit. Who was
2 person that was supporting you?

3 A. Well, I was having a civilian dealer by the name of Pa
4 Jabbie. He was assisting me.

10:52:15 5 Q. And it's right to say that you would have to pay Pa
Jabbie
6 back for all the money that he gave to you that you gave to
your
7 workers; is that correct?

8 A. I don't have to pay him. The only agreement between me
and
9 him is that after finding the diamond I will go and sit with
him

10:53:00 10 and he will buy it from me.

11 Q. Oh, okay.

12 A. Yes.

13 Q. Now, would he also negotiate with you about how much to
pay
14 for the diamond?

10:53:00 15 A. Yes.

price 16 Q. So you would make your money by negotiating as low a
to 17 as possible with the workers so that when you sold the diamond
18 Pa Jabbie you would have extra money; is that correct?
19 A. Yes.

10:53:05 20 Q. Now, part of the share for the workers would -- part of
21 their money would be given back to you for the money that you
22 gave them for the food, the medicine -- not the medicine,
excuse 23 me -- the food, the tools and things like that; is that
correct? 24 A. When the money, the diamond is sold, you know, I have to
10:53:27 25 give their own money. Then the one -- my own money that is in
my 26 possession is the same money that I use in order to support
them, 27 to provide food, you know, tools to continue with the work. I
28 don't have no hands for their own money. That is their own
29 personal money. It is my own money that I have to use it,
then

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1 added to the one that Pa Jabbie might be assisting me to
support

2 them.

3 Q. So you're saying is that the workers never paid you back
4 for the money that you used to feed and house them?

10:54:03
refundable.

5 A. That is the agreement. They cannot -- it's not

time,

6 Even if you do not get diamond, they work with you for some

get

7 but it happens that you are there unfortunately, you did not

tell

8 any diamond and they decide to leave you, you don't have to

anyway.

9 them to pay. That is not the agreement. They have to go

10:54:21

10 It's better to go and look for another person to continue the
11 work, but the money is not refundable.

12 Q. Thank you. All right. I now want to move back to the
13 government pile; okay?

14 A. Yes.

10:54:30

15 Q. Now, why was there a government pile?

16 A. Well, the government pile was there for -- one, to cater
17 for the soldiers and also for the civilians.

18 Q. Now, could the workers refuse to have a government pile?

19 A. They will not refused.

10:55:00
government

20 Q. The question is, Mr Witness, could they say, "No
21 pile"?

22 A. No.

23 Q. Why not?

24 A. Well, before ever the mining, the three-pile system, the
25 civilians, including the soldiers, supervise with the G5 and

10:55:19
the

26 mining committee start together and arrange about this pile

27 system. So it was arranged, and the information went there to
28 everybody, so there was no objection to that. They all know
29 that. As long as you are mining, where you are paying

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1 expenditure, you are reliable to satisfy these conditions.

2 Q. But if a miner said, "I will have a worker supporter
pile,"

3 let's just work with the two-pile system for right now.

4 A. Okay.

10:56:00 5 Q. So if the miners said, "We only will have a labour
6 supporter pile, but no government pile," that would not be
7 allowed; is that correct?

8 A. Such an issue did not arise, in fact.

9 Q. It would not be allowed; is that correct?

10:56:29 10 MR JORDASH: The witness has answered the question, with
11 respect.

12 PRESIDING JUDGE: The witness has answered the question,
13 Mr Jordash, you're right.

14 MR HARDAWAY: I'll move on.

10:56:37 15 Q. Now, you had mentioned --

16 PRESIDING JUDGE: The witness said workers could not say

17 there was no government pile.

18 MR HARDAWAY: Very well, Your Honour.

19 PRESIDING JUDGE: Yes.

10:56:47 20 MR HARDAWAY: Thank you.

21 Q. Now, you had mentioned that to wash the government pile,
22 the G5 would get the civilian authorities to get men to wash
the

23 government pile; is that correct?

24 A. Yes.

10:57:05 25 Q. And you had stated that everyone realised they had to do
26 it, and by "it" I mean wash the government pile?

27 A. Yes.

28 Q. And by "everyone" you meant the civilians; is that
correct?

29 A. Yeah.

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1 Q. Now, if the civilians refused to wash the government
pile,

2 they would be punished, wouldn't they?

3 A. They will not be punished. That was why there was a

4 specific day for that. They have the other -- the rest of the

10:57:41 5 day, and for that day, which is meant for the government, they

to 6 have to come, and, in fact, they are not -- no soldiers going
7 go out --

8 PRESIDING JUDGE: Mr Witness, you have answered the
9 question. You say, you know, that if the civilian refused to
10:57:58 10 wash the government pile, he would not be punished; is that
not
11 what you are saying?

12 THE WITNESS: Yes.

13 MR HARDAWAY:

14 Q. So following up on your answer, Mr Witness, you said on
the
10:58:08 15 day for washing the government pile the civilians had to come;
16 yes?

17 A. Yes.

18 Q. Could the civilians refuse to come and wash the
government
19 pile?

10:58:21 20 A. No.

21 Q. If they refused to wash the government pile, they would
be
22 punished, wouldn't they?

23 A. They did not refuse. This was a well-organised
arrangement
24 wherein they contributed; even the civilians contributed. The
10:58:41 25 authorities, they were all there. They came up to this
26 understanding.

27 Q. But, Mr Witness --

28 A. Yes.

29 Q. -- that was not my question. My question was: If they

1 refused to come to wash the government pile, they would be
2 punished?

3 A. No.

4 Q. So when I put it to you that if civilians -- if I put it
to

10:59:03 5 you that civilians who refused to wash the government pile
would

6 be punished, you would disagree with me?

7 A. I will disagree with you.

8 Q. The truth of the matter, Mr Witness, is that there was
no

9 pile system as it related to mining, isn't it?

10:59:22 10 A. No, pile system was operating.

11 Q. I now want to move forward to the second time you were
12 deployed in Tongo; okay?

13 A. Yes.

14 Q. Now, the second time you were in Tongo you had to pull
out

10:59:45 15 because the CDF attacked; is that correct?

16 A. Yes.

17 Q. During the pull-out, it is correct that you were
18 responsible for some of the soldiers and some of the civilians
19 that were fortunate enough to meet you; is that also correct?

11:00:05 20 A. Yes.

21 Q. And I did not get this clearly, so please help me with
22 these; the civilians who were fortunate enough to meet you,
23 were people who lived near you; is that correct?

24 A. I don't understand what you're trying to say.

11:00:24 25 Q. Okay. You said that there were some civilians who were
26 fortunate enough to meet you during the pull-out --

27 A. Yes.

28 Q. -- that you became responsible for; do you remember
29 that?

29 A. Yes, yes.

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1 Q. Okay. And you said that you knew some of them; is that
2 accurate?

3 A. Yes. Yes.

4 Q. Okay. And were these people who lived near you, the
5 people
11:00:44 5 who you knew?

6 A. Some of them, I didn't even know them.

7 Q. Okay. Okay. Now, during the pull-out, where were the
8 workers who lived with you and mined for you? Where did they
go?

9 A. Well, the attack took us surprisingly; we are not all
11:01:09 10 together. But those who managed to reach me, we all pull out
as
11 far as Kenema.
12 Q. Where were you when the pull-out started?
13 A. I was in the town.
14 Q. You were in the town?
11:01:33 15 A. In the fighting front.
16 MR HARDAWAY: The Court's indulgence for a moment,
please,
17 Your Honour.
18 PRESIDING JUDGE: Yes, go ahead.
19 MR HARDAWAY: Thank you.
11:01:55 20 Q. Now, Mr Witness, you had testified earlier that some of
the
21 children of the war were being taken care of by the RUF; is
that
22 correct?
23 A. Exactly.
24 Q. And also in your testimony you stated that some of these
11:02:10 25 soldiers -- that some of the -- excuse me -- some of the
children
26 would be staying with the commanders; is that also correct?
27 A. Yes.
28 Q. And that these children would go where the commanders
would
29 go as well; yes?

1 A. Pardon?

2 Q. The children would go with the commander. So where the
3 commander went, the children would go as well?

4 PRESIDING JUDGE: I didn't hear him testifying to that.

I

11:02:33 5 didn't hear him testifying to that particular fact. The
children

6 were kept with the commanders, they were not used as house

7 children, nor were they used as slaves. That is what I
recollect

8 of the evidence. Going around with the commanders is not

within

9 my reflection.

11:02:53 10 MR HARDAWAY: I'll rephrase.

11 MR JORDASH: The witness said that the children worked
with

12 the commanders and that answer was given in the context of the

13 home.

14 PRESIDING JUDGE: Yes. That is, they were at home and
they

11:03:08 15 were not used, I mean, I heard it, they were not used as
slaves.

16 Yes.

17 MR HARDAWAY:

18 Q. Mr Witness --

19 PRESIDING JUDGE: It is on the record. I remember that

11:03:20 20 very, very precisely.

21 MR HARDAWAY: Very well, Your Honour.

22 Q. Mr Witness.
23 A. Yes.
24 Q. When the commanders would travel, the children would go
11:03:28 25 with them; is that correct?
26 A. Where they can travel to?
27 Q. Okay.
28 A. Where can they travel is the question. To the front
line
29 or to the --

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1 Q. Just travel, Mr Witness.
2 A. They are their homes.
3 Q. Mr Witness, these children served as bodyguards for the
4 commanders they were with, weren't they?
11:03:54 5 A. No, the commander has bodyguards.
6 Q. So when I put it to you that these children who were
with
7 the commanders were, in fact, their bodyguards, you would
8 disagree with me?
9 A. Yes, I would disagree with you.
11:04:12 10 Q. Now, Mr Witness, you had testified that at some point

11 Issa Sesay went to Pendembu; is that correct?

12 A. Yes.

13 Q. And were you in Pendembu at the same time Issa Sesay was
14 there?

11:04:31 15 A. No, I was not in Pendembu.

16 Q. Okay. During the time that Issa Sesay was in Pendembu,
did
17 you ever hear him referred to as battle front inspector?

18 A. Yes.

19 Q. And what was the context in which you heard Issa Sesay
11:04:59 20 referred to as battle front inspector?

21 A. Well, as a battle front inspector his responsibility is
to
22 make sure that they visit the front line, make sure that all
the
23 problems that the front line is facing, everything is
addressed
24 to him and he has to find solutions to it.

25 [By order of the Court this portion of the transcript,
page

26 44, line 25 to 29 and page 45, line 1 to 6, was extracted and
27 filed under seal]

28

29

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7 MR JORDASH: We're in an open session. Can I ask for
this

8 last piece of questioning to be redacted, and if there's going
to

9 be any further questioning on this subject for it to be done
in a

10 closed session? I can explain further in a closed session,
11:06:31 but I

11 hope it's relatively clear why.

12 JUDGE BOUTET: I know the concern you have, obviously it
13 has to do with the identity of some witnesses, as such.

14 MR JORDASH: Yes.

15 JUDGE BOUTET: I'm familiar with that, but we're close
11:06:52 to

16 it, but we're not there as far as I can understand this part
of

17 the evidence, but --

18 MR JORDASH: Well, we -- I cannot --

19 JUDGE BOUTET: I do understand, Mr Jordash, you're
somehow

20 limited in the comments you can make for fear of giving more
11:07:08 information so --

21 MR JORDASH: Yes. But I anticipate -- well, if we are
22 not -- if we're not there, and I submit we are, but if we're
23 not

24 there, then I anticipate we will be with any answer to any
11:07:30 25 question about meetings.

26 PRESIDING JUDGE: Let us put his -- the questions that
27 follow, you know, in a proper scrutiny so that we make sure
that
28 we don't cross the red line.

29 JUDGE BOUTET: If I may, Mr Presiding Judge, Mr Jordash,
I

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about 1 know your concern, I'm aware of it and I'm always concerned
2 identity of witnesses. But I, looking at the broader
3 qualification perspective, I mean, it could be -- there's been no
4 made of this particular witness, whether he was, where and so
on,
11:08:10 5 whether that particular witness gave evidence or not in Court.
I
6 too, I'm limited in the way I can speak to you, so, for fear
of
7 giving additional information. But anyhow, I think we are
still
8 in an acceptable zone. We will see where we go next.

9 MR JORDASH: The --

11:08:50 10 JUDGE BOUTET: The fact that there is nobody in the

11 audience --

12 PRESIDING JUDGE: Never mind. We are still in an open
13 session.

14 JUDGE BOUTET: It may be on the screen.

11:08:56 15 PRESIDING JUDGE: Yes, it may be on the screen. Yes.
16 That's why your first comment, you know, was, to me, quite
17 pertinent, you know, just for those purposes, and that it
should
18 be redacted and so on and so forth.

19 MR JORDASH: And Mr Cammegh has just passed me what the
11:09:09 20 witness said and it's this particular sentence. I'm not going
to
21 read it, but I can pass it up to Your Honours which is over
the
22 line, I would submit, already. I'm happy to pass it up to
Your
23 Honours because that sentence which I objected to, because it
24 establishes a number of things. Could I pass it up to Your
11:09:37 25 Honour, just so Your Honours can see it?

26 PRESIDING JUDGE: Well, when the witness said he arrived
27 here, when that witness, you know, left.

28 MR JORDASH: Exactly. That's -- we're in -- that's the
29 mischief and we should, in my submission --

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1 PRESIDING JUDGE: It depends on what he meant by "here."
2 Is it this Court or "here."
3 MR JORDASH: He said --
4 PRESIDING JUDGE: You know. Anyway, we don't want to
11:10:14 5 explore that further, you know, because --
6 MR JORDASH: Thank you.
7 PRESIDING JUDGE: We don't want to explore that further,
8 you know, at least -- what we are saying is that maybe we are
not
9 yet there. I think you have to be -- because when he said
11:10:25 10 "here," you know, I don't understand where he was. When he
11 arrived here; was it in Freetown or where, you know, I don't
12 know. Mr Hardaway, you know --
13 MR HARDAWAY: I'm aware --
14 PRESIDING JUDGE: You proceed cautiously, please.
11:10:38 15 MR HARDAWAY: I'm not trying to cross the line. As a
16 matter of fact, I only went into this line is because counsel
17 stated the name publicly during his examination-in-chief.
18 MR JORDASH: It's not the name which is objectionable.
Of
19 course it's not the name. It's -- can we go into a closed
11:10:56 20 session, please, because --
21 PRESIDING JUDGE: No, I wouldn't go into a closed
session,
22 please. Let's proceed. I don't have good reasons now to go
in a
23 closed session. It's too long a procedure.
24 MR HARDAWAY: Very well, Your Honour.
11:11:08 25 PRESIDING JUDGE: Please proceed cautiously.

26 MR HARDAWAY: I will, Your Honour.

Did

27 Q. I did not get your last answer, sir. My question was:

28 you speak to O'Jalley?

29 A. When?

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1 Q. When you both were here in Freetown?

2 A. No.

3 Q. Okay. Now, Mr Witness, do you know John Ngevao?

4 A. Yes, John Ngevao, I know him.

11:11:45 5 Q. How do you know him?

6 A. He was an IDU commander.

7 Q. And when was the last time you saw John Ngevao?

8 A. For quite a long time during the time when I was in
Giema.

9 Q. That was the last time you saw him?

11:12:11 10 A. Yes.

11 Q. Okay.

12 A. Far back.

13 Q. Okay. And would it be correct to say that's the last
time

14 you spoke with John Ngevao?

11:12:21 15 A. No.

16 Q. When was the last time you spoke to John Ngevao?

17 A. Yeah, the last time.

18 Q. You spoke to him?

19 A. Yes.

11:12:27 20 Q. When was that?

21 A. That was, you know, it's just I met with him, you know,
we
discussed
22 say hello to each other and then I passed. Not that I
23 any matters --
24 PRESIDING JUDGE: But when was that? That's the
question.
11:12:43 25 MR HARDAWAY:
26 Q. When?
27 A. The year, 1999. Something like that. 1999.
28 Q. Okay. Now, Mr Witness, would it be correct to say that
you
29 are loyal to the RUF, even to this day?

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1 A. Yes.

2 Q. Okay. Mr Witness, you're only testifying here today
3 because of your loyalty to the RUF; isn't that correct?

4 A. No, it's not because of the loyalty, but because of the
11:13:22 5 truth.

6 Q. Thank you, Mr Witness, I have no further questions of
you.

7 MR HARDAWAY: Your Honour, this concludes my
8 cross-examination.

9 PRESIDING JUDGE: Yes, Mr Jordash, any re-examination?

11:14:03 10 MR JORDASH: If I may just re-examine on one small
issue.

11 It's this:

12 RE-EXAMINED BY MR JORDASH:

13 Q. My learned friend for the Prosecution asked whether
14 civilians in RUF territory could refuse to brush the area; do
you
11:14:33 15 remember that question?

16 A. Yes, I know.

17 Q. And you answered that they cannot refuse, they know the
18 responsibility to the soldiers and they, the soldiers, know
the
19 responsibility to civilians?

11:14:52 20 A. Yes.

21 Q. And in -- the question I want to ask you is, in the
context
22 of brushing the area, what would happen to an area if it was
not
23 brushed?

24 JUDGE BOUTET: How is this a matter for re-examination?

11:15:15 25 The witness, I can tell you, has answered that question, and
in
26 fact --

27 PRESIDING JUDGE: He's answered it.

28 JUDGE BOUTET: -- he gave quite ample explanation about

29 that.

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1 PRESIDING JUDGE: Yes: Disease --

2 JUDGE BOUTET: In his -- that's right.

3 PRESIDING JUDGE: -- pests, animals and so on and so
forth.

4 JUDGE BOUTET: In cross-examination to that question.

11:15:29 5 MR JORDASH: Then I will leave the question. I've got
no

6 further questions. Thank you, Your Honour.

7 PRESIDING JUDGE: Good. Right, Mr Witness, we've come
to

8 the end of your testimony.

9 THE WITNESS: Yes.

11:16:02 10 PRESIDING JUDGE: And we thank you for coming to provide
11 the Tribunal with your testimony and to assist it in arriving
at

12 the truth and to do justice in this matter. So, again, we
thank

13 you for coming and we wish you a safe journey back to your
place

14 of abode and, above all, success in your missions which you
are

11:16:33 15 now pursuing. Are you still a mason?

16 THE WITNESS: Exactly, sir.

17 PRESIDING JUDGE: You are still a mason?
18 THE WITNESS: Yes, sir.
19 PRESIDING JUDGE: Continue to be a good mason, you know.
11:16:46 20 Without masons there will be no nation building.
21 THE WITNESS: Your Honour, yes.
22 PRESIDING JUDGE: All right. Thank you. So you may
leave.
23 Please, let the witness protection unit assist the witness out
of
24 the Court. You can take that bottle of water away. Take it
away
11:17:09 25 with you.
26 THE WITNESS: I have to drink it here.
27 PRESIDING JUDGE: No, take it away with you.
28 THE WITNESS: Okay, okay, yes.
29 PRESIDING JUDGE: Yes, take it away with you.

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1 [The witness withdrew]
2 PRESIDING JUDGE: We --
3 MR JORDASH: Your Honours, may I apologise for not
having
4 the hard copies of our submissions.
11:20:31 5 PRESIDING JUDGE: We've been informed. As soon as it is

6 ready, it will be served to us in Chambers.

7 MR JORDASH: I anticipate they are ready, and I think
it's
8 a miscommunication between myself and Ms Ashraph is the reason
--

9 PRESIDING JUDGE: You have already established your
11:20:51 10 communication during this period that we are standing the
matter
11 down. We would resume when we shall be ready with the
12 submissions.

13 MR JORDASH: I'm grateful. I do apologise. They are
ready
14 and after an adjournment, Your Honours can come back in
whenever

11:21:04 15 Your Honours are ready. They're ready and we will get them to
16 you as soon as possible and we await Your Honours --

17 JUDGE BOUTET: 15 minutes?

18 MR JORDASH: No problem at all. I do apologise.

19 PRESIDING JUDGE: Right. We will recess and resume in
the
11:21:47 20 next couple of minutes, please. The Chamber rises.

21 [Break taken at 11.15 a.m.]

22 [RUF23NOV07C - JS]

23 [Upon resuming at 11.55 a.m.]

24 PRESIDING JUDGE: Learned counsel, we will resume our
12:00:38 25 proceedings with the only item that we have on the agenda, and
26 that is the appeal that was presented by learned counsel,
27 Mr Jordash, for us to take some arguments from the parties on
the
28 application of Rule 16 of the Rules of Procedure and Evidence
of
29 the Special Court for Sierra Leone. And this having regard to

1 the pending motion that we are looking into and which concerns
2 either the voluntary withdrawal or the recusal or
3 disqualification of our learned colleague,
4 Honourable Justice Bankole Thompson, for reasons which we are
all
12:01:51 5 very familiar with. So we would, again, say that we wouldn't
6 want the addresses to be oriented towards this motion. We
only
7 want to receive legal arguments on the application of Rule 16,
8 and that is all that interests us.

9 I think it is also edifying for us to be addressed on
this
12:02:21 10 issue, and that's why we decided to grant the application,
which
11 was supported by all the Defence teams, and also by the
12 Prosecution, for us to receive arguments from you on the
13 application of Rule 16.

14 So, please, you will be brief. We have received all of
the
12:02:44 15 written submissions, and I think we would call on Mr Jordash
to
16 set the ball rolling because it is he who made the
application.

17 MR JORDASH: Could I not invite Your Honours to, in the

18 traditional way, ask for the Prosecution's view?

19 PRESIDING JUDGE: You know that before the Prosecution
12:03:12 20 express, we are called upon to express your views -- their
views,
21 you know, we had called on the -- we had called on the entire
22 Defence teams to express their views. In any event, it
doesn't
23 matter which way it starts. All we -- we have all the
24 submissions, and, reading through yours we see that you have
read
12:03:38 25 through what the Prosecution has said, and somewhere, somehow
you
26 are in agreement with --

27 MR JORDASH: Yes.

28 PRESIDING JUDGE: -- their submissions. So I think we
may
29 -- you may proceed with you, and then Mr Ogeto and Mr Cammegh

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1 will follow. And then the Prosecution will come in last.
2 MR JORDASH: I can -- I can be brief.
3 PRESIDING JUDGE: Very brief, indeed, if you may,
because
4 we have understood you and your submissions, in your
submissions

12:04:11 5 which we have read. Be very, very brief indeed. So, you
better

6 be as brief as you are -- as you have been in your
submissions.

7 MR JORDASH: If I can begin by noting that it's almost
8 unprecedented to be having these discussions at this stage of
an

9 international trial. The circumstances are -- or may be
12:04:46 10 exceptional in the truest sense of the word. Rule 16 of this
11 Statute, respectfully, is at best ambiguous, and at worst
12 inadequate, to deal with the discussions we're having.

13 Underlying any interpretation or new amendment to Rule
16
14 at this stage of the proceedings must be, one, the interests
of

12:05:35 15 the parties, fairness to the accused and fairness to the
16 Prosecution, and two, the right of the accused to an
expeditious
17 trial, and/or a termination of the proceedings. Clearly, both
18 must guide any interpretation of Rule 16 or any new fashioning
of
19 a rule to deal with the present potential situation.

12:06:12 20 There's nothing in principle, we would submit, which
would
21 prevent two Judges continuing to the end of the proceedings
until
22 final judgment.

23 JUDGE BOUTET: Why do you say that, Mr Jordash, based on
24 what?

12:06:35 25 MR JORDASH: Based on an assessment of, one, any
26 anticipated or foreseeable prejudice, which isn't the same as
27 submitting that no prejudice could -- no prejudice could
arise,

the

28 but, at this stage, I can see nothing foreseeable in terms of
29 overall fairness to the proceedings and the fairness of the

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to
a

12:07:29
that

are

12:08:00
end,

there

any

1 eventual judgment.

2 I can see some difficulties in terms of split decisions,
3 and that's why we suggest there may well need to be a new rule

4 deal with split interlocutory decisions to prevent there being

5 deadlock. And the suggestion we've made at paragraph 7 is

6 there should be a new rule, or the Judges should consider
7 amending the rules. We would suggest that such an eventuality

8 should be dealt with by an immediate referral to the Appeal

9 Chamber without delay upon such a split decision. So there

10 procedural difficulties with two Judges continuing until the

11 but nothing which is too difficult. It may require some

12 refashioning of rules or some amendments to the rules, but

13 is nothing which is -- creates any great difficulty.

14 So, in short, there's nothing in principle, in terms of

12:08:29 15 obvious unfairness which arises from two Judges continuing to
16 sit, simply some procedural issues to be dealt with.
17 And because we conclude that there is nothing in
principle,
18 we then move to the next issue of expedition. And it's our
19 submission that, when considering this aspect, there is much
to
12:08:59 20 be said for continuing with two Judges. In short, any
proposal
21 of an alternate Judge would undoubtedly delay the proceedings,
22 whether at this stage, whilst any alternate Judge familiarised
23 themselves with the case --
24 JUDGE BOUTET: But as you know, there is no alternate
Judge
12:09:32 25 in existence, none have been appointed. I'm talking of this
26 Trial Chamber. I'm not talking Trial Chamber II.
27 MR JORDASH: Yes.
28 JUDGE BOUTET: I'm talking Trial Chamber I. So there is
29 none in the wing, none in existence and, on this issue, and on

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1 the previous issue, I would like you to address, as well, the
2 interface of the Statute with the Rule; Statute, more
3 particularly, Article 12 of the Statute.

4 MR JORDASH: Article?

12:10:05 5 JUDGE BOUTET: 12.

6 MR JORDASH: Yes. Well, if I can just --

7 JUDGE BOUTET: This is raised in the Prosecution's

8 submission.

9 MR JORDASH: Well, just to briefly finishing off the
issue

12:10:24 10 of the alternate Judge, if there isn't one, the delay would be
retiring 11 significant, if not at this stage then at the stage of

12 to consider a verdict, and giving any alternate Judge the

13 opportunity to catch up, if I can put it that way. So I would

14 submit there is something to be said against --

12:10:51 15 JUDGE BOUTET: No, the reason why I raised that because

16 there might also be some legal difficulty.

17 MR JORDASH: Yes.

18 JUDGE BOUTET: And I'm being cautious here with my

19 language. Legal difficulties, given the stage we're at, to
have

12:11:08 20 any authority to so appoint at this particular moment.

21 MR JORDASH: I think that may be a little --

22 JUDGE BOUTET: If we were to go the route of an
alternate,

23 I'm not saying it is, but I am saying an alternate to you, is
not

24 really an avenue that is open because it would bring further

12:11:34 25 delays and then --

26 MR JORDASH: Well, it's open. I mean, these -- it's our

27 submission that there are advantages and disadvantages of both

28 options, and any decision is a finely tuned one, and delicate

29 one. But it's the prospect of delay and the likelihood of
delay

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1 which militates against that option, we would submit, and puts
2 the --

3 JUDGE BOUTET: My question put differently to you is, in
4 your submission, in your views, can an alternate Judge be now
12:12:18 5 appointed?

6 MR JORDASH: Yes. 16 -- Rule 16 --

7 JUDGE BOUTET: I refer you to Article 12 of the Statute.

8 MR JORDASH: Well, there's nothing in Article 12 which
9 would appear to suggest there could not be an alternate Judge
12:12:54 10 selected at this stage. There's nothing that I can see in
11 Article 12 which -- okay, I see Your Honour's point. I'll let
12 Mr Cammegh deal with that.

13 JUDGE BOUTET: I'm not trying to take you by surprise,
14 Mr Jordash. I was just trying to see if you could assist us
in
12:13:22 15 trying to understand that as well.

16 MR JORDASH: Well, I can deal with, but quite briefly.
17 Exceptional circumstances require creative thinking. No doubt
18 the intention behind Article 12.4, whereby it states that the
19 Judge shall -- such an alternate judge shall be present at
each

12:14:07 20 stage of the trial was designed to ensure that any alternate
21 judge was sufficiently familiar with the case. And I would
22 submit, providing a judge places himself in the de facto
position
23 of somebody who was present at each stage of the trial,
there'd
24 be no objection to that judge becoming a third judge at this
12:14:44 25 stage.

26 If the judge was to study the proceedings, study the
27 filings, study the proceedings, listen to the proceedings,
they
28 would, in effect, be in the same position as a judge who'd
been
29 present at each stage of the trial. And I would submit the

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1 Statute should be read to give -- to give that interpretation,
2 bearing in mind fairness to both parties and the need for
3 expedition and to keep moving.

--
12:15:33 5 a clarification which I would seek because I have a doubt in
my
6 mind at this point in time. Supposing because of a particular
7 situation the Security Council of the UN reviewed the Statute,

8 and amended the clause which requires the presence of the
9 alternate judge at all times of the proceedings, and only
says,
12:16:12 10 you know, when necessity arises an alternate judge, you know,
11 could be appointed to replace a judge who is incapacitated, is
12 dead, or unwilling, what would be -- can I say -- what would
be
13 the constitutionality of that particular amendment in relation
to
14 the stage at which we are with these proceedings?

12:16:40 15 I'm just taking that as one of the hypothesis, one of the
the
16 solutions that may be, that may be envisioned, you know, in
17 relation to this matter. My worry is: What would be its
18 constitutional basis in terms of the Rules of retroactivity
and,
19 whatever view at this stage, of coming as a provision that is
12:17:14 20 enacted to solve a particular situation which has arisen and
21 which is sub judicæ and what have you, what would be your
22 feelings? What would be your thought on this?

23 And I would like the parties who have been
24 intervening, you know, to address us a bit, a little bit on
this
12:17:29 25 because it worries me, and I don't have a solution. I need a
26 solution, really, nor do I have a very clear vision of what
could
27 be done.

28 MR JORDASH: Well, I would submit that --

29 PRESIDING JUDGE: It is not that I don't have my own
ideas

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this

1 on this, but I think I would like to be edified further on

the

2 and to know which way I can lean, in arriving at determining

3 legality of an amendment of that nature.

in

4 MR JORDASH: Well, such an amendment would be procedural

12:18:18

5 nature and not go to -- and not go unnecessarily to the

don't

6 fundamental rights of the accused. And, in that sense, I

7 think there'd be a problem in terms of such a change being

8 applicable.

be a

9 PRESIDING JUDGE: You're saying that it is -- it would

12:19:01

10 procedural amendment that does not go to the substance, the

11 substance of the case?

12 MR JORDASH: Yes.

13 PRESIDING JUDGE: And that it ordinarily should be --

14 should be or could be acceptable?

12:19:15

15 MR JORDASH: Yes. I know that may not be of terrible

relate

16 assistance, but I think the test would have to be did it

of

17 to the substance of the case; did it relate to the substance

greater

18 the accused's rights? And would it put an accused at a

19 risk of conviction? Would it breach that fundamental right
12:20:01 20 relating to retroactivity? And if it didn't, then I would
submit
21 a procedural amendment such as that wouldn't, then there
couldn't
22 be any objection.

23 It wouldn't be the same as amending Article 17, for
24 example, which relate directly to an accused's rights and
12:20:22 25 fundamental fair trial guarantees, fair trial guarantees
which,
26 if amended, may put an accused at a greater risk of being
27 convicted or some other prejudice relating to fair trial
process.
28 That might breach the prohibition on retroactivity.

29 But I would submit such an amendment wouldn't be

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1 required. One could simply read 12 -- Article 12.4 in a
2 practical way, and ensure that any alternate judge placed
himself
3 in the same position as a judge who had been physically
present
4 at each stage of the trial.

12:21:43 5 JUDGE BOUTET: And, obviously, our questions are not to
be

--

6 understood to mean that we have reached any conclusion on the

7 of the issue that has brought these questions here. So I want

8 that to be quite clear.

9 MR JORDASH: Yes.

12:21:59 10 JUDGE BOUTET: So don't try to read into our questions

11 anything of that nature, please.

12 MR JORDASH: It is understood, Your Honour.

13 JUDGE BOUTET: It is, as you say, it is quite

exceptional

14 and it is a very delicate scenario, but we are trying to be

fair

12:22:09 15 to all parties, including this -- and our discussion here,

16 although related to, have nothing to do with the motion per

se,

17 so --

18 MR JORDASH: Your Honours, it's certainly understood

from

19 the Defence side.

12:22:25 20 JUDGE BOUTET: But if that were one of the scenario, an

21 alternate judge, I hear your position to be that that judge

would

22 have to be given some time to read into and familiarise

himself

23 or herself with the case.

24 MR JORDASH: Yes.

12:22:41 25 JUDGE BOUTET: And which would, timewise, would require

a

26 certain -- certainly an amount of time of, I don't know, X

number

27 of months. You agree with that?

28 MR JORDASH: I do agree with that. I'm not suggesting

that

29 any alternate judge would have to be cognisant of exactly the

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be 1 same detail as Your Honours, but they certainly would have to
at 2 familiar with the case, such that any assessment of witnesses
based 3 the time that the witness gives evidence is a realistic one
before 4 on what they have heard before and based on what's gone on
12:23:23 5 in the trial.

size 6 That requires a level of familiarity, and, given the
7 of this case that would necessarily involve, I would put it as
8 several months; certainly not weeks, but months. And, again,
desperate 9 without assuming anything, as Your Honours know, we are
12:23:53 10 to keep to the timetable of 9 January. The trial has been
asked 11 proceeding for a long, long time. That's why, if we were
at 12 to express a preference, it would be to proceed with two, if
13 all possible.

14 JUDGE BOUTET: What about the scenario of two with an
12:24:28 15 alternate that comes in to -- as to break the deadlock, if
any,

16 between -- in a split decision?

17 MR JORDASH: And is Your Honour referring to
interlocutory

18 decisions or the final judgment?

19 JUDGE BOUTET: Both.

12:24:47 20 MR JORDASH: I could see no objection to that for
there

21 interlocutory decisions, no immediate objections. I think
22 would be a problem with an alternate judge coming in at the
23 judgment stage, since such an alternate judge would have to
24 become completely cognisant of all the details of the trial,

12:25:20 25 which I suppose is -- I'm thinking on my feet -- but I suppose
26 it's not impossible at that stage.

27 It's not impossible but it's not -- it doesn't seem like
a
28 terribly efficient or -- but from the perspective of the
accused,
29 it does not seem like a terribly expeditious process since it

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at
1 would require, again, the likelihood of several months' delay
2 that stage, rather than several months delay at this stage.

3 That's why we would suggest the amendment, if at all,

4 should be made to Rule 16(B)(ii) and instead of that provision
12:26:47 5 being mandatory that, in the event of a split, a new
proceeding
6 trial or appeal shall be ordered, we would suggest an
amendment
7 to that Rule to suggest that a new proceeding trial or appeal
may
8 be ordered. And at that stage what could be done, in the
event
9 of a split, is that the two Judges or the Appeal Chamber could
12:27:17 10 consider where the interests lie in terms of adjudicating upon
11 the aspect of the indictment where there had been this split
12 decision. It might be at that stage, for example, if an
accused
13 had been convicted of half the indictment, that the interests
of
14 justice would not lie in continuing, but whether with an
12:27:49 15 alternate judge to decide the remainder, or continuing with
any
16 new proceedings on that remainder of the indictment, in terms
of
17 an accused's culpability are being adequately prescribed by
18 whatever convictions had flown, or in terms of any delay which
19 might ensue by any new proceedings or any alternate judge
being
12:28:20 20 asked to preside over that split decision. And, in that
sense,
21 that -- well, in that sense, that has to be taken into account
in
22 that -- if any procedure is adopted which places the accused
in a
23 position where a final -- a final verdict or a notionally
final
24 verdict delivered by two Judges still leaves the accused with
a

12:29:02 25 whole new set of proceedings, or the burden of waiting whilst
a
26 new alternate judge comes in to decide the issues which have
been
27 split between the two, we would be against that.
28 PRESIDING JUDGE: Can you be rounding up, please.
29 MR JORDASH: Those are my submissions, unless I can
assist

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1 Your Honours further.
2 PRESIDING JUDGE: Thank you very much, unless my
colleague
3 has some questions to put to you; okay. Yes, Mr Ogeto?
4 MR OGETO: Thank you, My Lords. Let me start by saying
12:29:40 5 that this is suddenly not a very easy question because of the
in
6 many grey areas in the law. But I think it's important that
be
7 the interests of an expeditious trial we try and see what can
8 done in order to proceed with the trial with the two Judges
9 without offending the law.
12:30:18 10 Now, our position is that we support the continuation of
11 the trial with the two Judges, notwithstanding the
difficulties

really
understanding
12:31:03
to
to
12:31:41
alternate
open
would
12:32:17
been

12 in interpreting Rule 16. But I must say that our consent
13 depends on the decision of the Chamber, because our
14 of Rule 16 is that it is the Chamber to satisfy itself that no
15 prejudice will be occasioned by the decision to proceed in the
16 absence of the third judge. So that, inasmuch as we consent
17 proceed, we would leave that question entirely to the Chamber
18 decide, bearing in mind the need for an expeditious trial.

19 Now, I wish to briefly address myself to the issue
20 by Honourable Justice Boutet on Article 12, whether an
21 judge can actually be appointed at this stage.

22 Now, I think that is -- that is a matter that may be
23 to challenge; appointing an alternate judge at this stage
24 obviously be open to challenge because the rule contemplates a
25 situation where the alternate judge has been sitting -- has
26 present during the proceedings.

27 But having said that, I do not see any problem with the
28 appointment of an alternate judge at this stage if: One, that
29 judge familiarises himself or herself with the record, and
two,

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I 1 if the parties, and more particularly the Defence, consents to
2 that designation at this stage. And, if that were to happen,
3 do not expect much difficulty as far as the Kallon Defence is
4 concerned.

12:33:16 Itoe 5 The other issue relates to what the Honourable Justice
6 raised regarding amendment of the statute. Supposing the
7 Rules -- the Statute were to be amended at this stage to
provide
8 for an alternate stage -- an alternate judge. Once again, I
9 think if that were to happen, it's an amendment that will be
open

12:33:52 10 to challenge for reasons of constitutionality. But, once
again,
11 I think it may also depend on the formulation of that
particular
12 amendment.

13 If, for instance, the amendment states that the new
judge
14 should, first of all, familiarise himself with the record, my
15 submission is that there would be less controversy regarding
12:34:25 that
16 amendment. Again, if that amendment was formulated to include
17 the consent of the parties before the new judge proceeds,
again,
18 I think it will elicit less controversy.

19 So I think those really are my submissions, unless Your
12:35:06 20 Honourable Judges have a question for me. Our position is
really
21 that we should proceed.

22 JUDGE BOUTET: With two?

23 MR OGETO: With two.

24 PRESIDING JUDGE: Up to the end of the trial, if it
comes

12:35:22 25 with -- if it becomes necessary.

26 MR OGETO: If it becomes necessary. But, of course, we
27 have also raised the difficulties in interpreting Rule 16 in
our

28 submissions, and more specifically on the issue of
interlocutory

29 motions. What happens if there's a split? And we have

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1 recommended that there should probably be an urgent amendment
to
2 Rule 16 to provide for situations where there's a split in
3 interlocutory positions.

4 Those are my humble submissions.

12:36:16 5 PRESIDING JUDGE: Thank you, Mr Ogeto. I don't think I
6 have any questions for you because you have answered the
question
7 which I put across to the parties on a position that could be
8 envisaged in respect to -- that addresses issues of

9 constitutionality and retroactivity. So you have addressed
that.

12:36:44 10 I don't think I need to come back to you. Thank you very
much.

11 MR OGETO: I'm delighted, My Lords --

12 PRESIDING JUDGE: Thank you.

13 MR OGETO: -- that you have no questions.

14 PRESIDING JUDGE: Thank you. Mr Cammegh.

12:36:54 15 MR CAMMEGH: May it please, Your Honours. As I
announced

16 yesterday, our position unequivocally is that the Trial
Chamber

17 currently constituted, should a certain finding be made in

18 relation to the pending motion, should continue seized of this

19 trial.

12:37:23 20 In our respectful submission, as I have stated in
paragraph

21 8 of my submission on this matter, we have drawn the
conclusion

22 that the only practical and reasonable choice available to
this

23 Chamber, under the prevailing and exceptional circumstances,
is

24 to proceed in that manner.

12:37:43 25 And may I also on that point adopt some lines from the
26 Prosecution's submissions in relation to this debate. Within
27 paragraph 12 of the submissions that we received this morning
I

28 note the following:

29 "Where accused persons consent to a trial continuing
before

1 two Judges pursuant to Rule 16(B), there is no apparent
2 prejudice. Their appellate remedies remain unchanged under
3 Article 17 right to a fair hearing and to be tried without
undue
4 delay is complied with."

12:38:24 5 And I think it's at paragraph 17(G) of the same document
6 that the Prosecution, of course, encourage not just consent
from
7 the accused, but informed consent. And it is not without that
8 informed consent that I make these submissions today; Your
9 Honours can be assured of that.

12:38:45 10 Can I return to the vexed subject to Rule 16. I don't
11 think it's controversial, this is an Article -- sorry, a Rule
12 which has been rather opaquely drafted. Notable, in fact,
that

13 it was amended on 29 May 2004, which is interesting, when one
14 considers that despite the references to an alternate judge
15 within this Rule, it was quite clear that no alternate judge
was

16 ever employed. And I mean "alternate" in the sense that we
17 see
18 in the Taylor trial where there are four Judges on the Bench,
as
19 far as I'm aware; those four including an alternate.

Now, it would appear, upon any sensible interpretation
of

12:39:40 20 the reading of Rule 16, in light of the fact that no alternate
21 judge ever appeared in any of the three trials that have taken
22 place in Freetown, that the word "alternate" must surely be
taken
23 to mean "substitute." That would be the only logical
conclusion
24 given the practice of this Court since 2004 to draw.

12:40:06 25 So perhaps, and I don't want to be pedantic, of course,
but
26 perhaps when we talk about alternate what we really do mean is
27 substitute, because, if one looks, and I think the point was
28 referred to earlier on by Justice Boutet, if one looks at -- I
29 think it's -- is it Article 12.4 of the Statute, there is a

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one
1 requirement that the alternate judge shall be present. And
2
present
3 would, perhaps, interpret that to mean "shall have been
4 at each stage of the trial."

12:40:48 5 Well, it's a forlorn hope. It's really closing the door
on
6 after the horse has bolted. It's too late, in my submission,
7 strict interpretation of these Rules, to appoint an alternate
judge to this Chamber. What it really means is a substitute

8 judge.

9 If one takes into account the opaque -- well, the opaque
12:41:08 10 nature of Rule 16, and reminds oneself of Article 14 which, of
11 course, applies a doctrine of mutatis mutandis, one can then
go
12 to the ICTR Rules, and I think it's Rule 15(D), speaking off
the
13 top of my head, but I think that's right, in which there is
14 provision for a substitute judge.

12:41:38 15 Will Your Honours give me a moment while I try and find
16 Rule 15; I've got it here. Now, Rule 15(D) applies strictly
to
17 circumstances where the accused withholds his consent for a
18 further judge being introduced into the Chamber. But that's

19 perhaps not the point. The point is this: "The remaining
Judges
12:42:02 20 may nonetheless decide to continue the proceedings before a
Trial

21 -- Trial Chamber with a substitute judge." And then a series
of
22 provisos come into play which, I suggest, are highly relevant
to
23 Your Honours' deliberation on this matter and, in particular,
in
24 relation to the question of whether it would be good practice,
12:42:25 25 fair and proper, to appoint a substitute judge in this trial.
It

26 reads as follows:

27 "A substitute judge if, taking all the circumstances
into
28 account, they determine unanimously that doing so would serve
the
29 interests of justice. This decision is subject to appeal

party.
1 directly to a Full Bench of the Appeals Chamber by either
2 If no appeal is taken or the Appeals Chamber affirms the
decision
3 of the Trial Chamber, the President shall assign to the
existing
4 Bench a judge who, however, can join the Bench only after he
or
12:43:06 5 she has certified that he or she has familiarised himself or
6 herself with the record of the proceedings."
7 Now, therein lies the rub; that is the point of
contention.
8 This trial is in its fourth year. Nobody for one moment, I
think
9 it's fair to say, anticipated that we would still be here.
And
12:43:37 10 it rather feeds or makes obvious the objection that we state
in
11 paragraph 9 of our submission, and I'm going to read it in
full,
12 lest this point is not given due emphasis:
13 "Rule 16 also allows for the appointment" --
14 PRESIDING JUDGE: What paragraph?
12:43:59 15 MR CAMMEGH: It's my paragraph 9.
16 PRESIDING JUDGE: Nine, okay.

17 MR CAMMEGH: Yes. And I'm -- I, with Your Honour's
leave I
18 want to read this out word-for-word because this is an
essential
19 issue.

12:44:11 20 PRESIDING JUDGE: You have our leave to do so, Mr
Cammegh,
21 please.

22 MR CAMMEGH: I'm obliged.
23 " Rule 16 also allows to the appointment of an
alternate"
24 and where I say "or replacement" there, I must emphasise that
is
12:44:27 25 my interpretation of what "alternate" in that context should
26 mean, "judge."

27 "If this judge were imposed upon the trial, the Gbao
28 Defence cannot see how this could fairly be done until the new
29 judge has had the opportunity to assimilate the entirety of
the

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1 trial proceedings thus far. The incoming judge would likely
have
2 to review the evidence of 102 witnesses" -- I think that's now
3 103 -- "who have testified during the 293 days of proceedings,
4 review 261 exhibits tendered by both the Defence and the

12:45:19 5 Prosecution, as well as analyse most, if not all, of the 887
6 filings, more than 32,000 pages in this case. Regardless of
7 whether this task were to be performed either before
resumption
8 of the trial, in other words, imposing a delay from now until
9 however many months this would take, or following closure of
the

12:45:22 10 Defence case, which would be the alternative, such work would
11 take many months considering that the judge would necessarily
12 have to analyse the aforementioned documentation, as well as
13 simply reading it. This would inevitable cause further delay
to
14 the proceedings and ultimately the delivery of final verdict.

12:45:42 15 Furthermore," and this, perhaps, is a point that needs
to
16 be recognised, "it would place an onerous burden on the
incoming
17 judge who may feel pressured to review the evidence
18 expeditiously."

19 And I say that in view of the prevailing climate
12:45:58 20 surrounding this Court. We're all aware of it. There is
21 pressure for these proceedings to be drawn to a close from
other
22 quarters; we're aware of that.

23 Now, in my submission, Your Honours, it is safe, given
the
24 informed consent that one has from one's client, to rely
purely

12:46:21 25 and simply on the provision of Rule 16(A) -- I'm sorry, Rule
26 16(B)1. "If an alternate judge is not available as provided
in
27 Article 12.4 of the Statute, and the remaining Judges are

in
the

28 satisfied that it would not affect the decision either way,"
29 this context, Your Honours, I would seek to persuade you that

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interests

1 words "it would not affect the decision either way" would
2 probably be best interpreted as meaning, it is in the
3 of justice to do so, "the remaining Judges may continue in the
4 absence of that Judge."

12:47:01
has

5 And that is our position, subject to one point, which
6 been eloquently dealt with by my learned friends already. If
7 decision is taken, which renders this Chamber to a reduced
8 of just two, and if Your Honours decide that you are probably

a

state

--

seized

12:47:52

10 of the trial until its conclusion, then, of course, there are
11 matters which will have to be settled before we continue.

to

12 And perhaps we are fortunate, insofar as we are drawing
13 the end of a lengthy session, and there is time to digest over

matters

14 the Christmas/New Year holidays before we come back some

12:47:59

15 that would need careful attention.

I

16 The predominant one is clearly this: It's touched upon,

17 think, in Rule 16(B)(ii) but perhaps I agree with my learned

(iii)

18 friends, in fact I very much do that, that perhaps a Roman

interlocutory

19 should be inserted here with specific reference to

12:48:50

20 matters.

that

21 Now, as an example, I recall, and I'm sure Your Honours

22 recall, an objection I took to evidence led by the Prosecution

23 during the testimony of 371, and I was fortunate enough on

24 occasion to receive the benefit of a majority decision, which

12:48:53

25 ruled that evidence out. As Your Honours know, that is now

very

26 subject of proceedings in the Appeals Chamber. That was a

27 important issue. There may be further --

that

28 PRESIDING JUDGE: Because there we unanimously decided

29 it should go there.

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1

MR CAMMEGH: Of course.

issues 2 PRESIDING JUDGE: Because of the importance for the
3 that were raised.

they 4 MR CAMMEGH: Yes, yes, and that's not controversial;
12:49:13 5 certainly were important, and I think everyone appreciates the
6 need for this matter to be adjudicated in the Appeals Chamber.
7 Now, we cannot rule out the possibility of something
8 similar happening again and, thereafter, a split decision. In
9 fact, there would have been a split decision. In that case I
12:49:37 10 think all parties to this Chamber need to be reassured at an
11 urgent stage that a procedure or an apparatus can be put into
12 place that will expedite such matters.

13 This, in our submission, need not be an insuperable
14 problem. Mr Jordash has already dealt with this; I think
12:50:00 15 Mr Ogeto did as well. It would require and I would -- I'm not
16 sure how the rules work -- but one would hope without a
Plenary 17 convening, but it would require the insertion, either of a
small 18 (iii) into Rule 16, which would expedite or facilitate
expedition 19 of proceedings to the Appeal Chamber on such a matter or,
12:50:20 20 perhaps, we can jointly agree something in a status
conference; I 21 don't know. I leave that to the legal officers to decide the
22 best way --

23 PRESIDING JUDGE: Well, you know, we always encourage
24 communication between the Prosecution and the Defence. In --
12:50:35 25 everybody has benefits from a Rule amendment initiative,
26 including the Defence. So, you could consult with the

27 Prosecution and --

28 MR CAMMEGH: Well --

29 PRESIDING JUDGE: -- possibly, you know, come up with an

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1 amendment which may be acceptable. We may not be the proper
2 persons, you know, to really appreciate what the problem is --

3 MR CAMMEGH: Yes.

4 PRESIDING JUDGE: -- on an issue that has been raised by
12:51:02 5 you. So --

6 MR CAMMEGH: It's, of course, still --

7 PRESIDING JUDGE: These are all possibilities.

8 MR CAMMEGH: It is still a very much hypothetical
9 situation.

12:51:07 10 PRESIDING JUDGE: Or it could be real.

11 MR CAMMEGH: [Overlapping speakers]

12 PRESIDING JUDGE: It could be real some day, you never
13 know.

14 MR CAMMEGH: But with Your Honours' encouragement, I'm
sure

12:51:14 15 those across the floor would join with us in acting with
16 expedition.

17 Can I finally raise the issue which His Honour Justice
18 Boutet raised in relation to perhaps using an alternate judge
to
19 decide interlocutory matters or to come in where there may be
an
12:51:45 20 occasion of a split on the Bench.

21 In our submission, that would simply not work because it
22 would, in our submission, really, be like treading on a mine
23 field. That alternate judge could not, and with all fairness
to
24 the judge, could not safely be seized of the case to such a
12:52:00 25 standard, unless he or she has performed the Herculean task,
26 which I have already referred to in paragraph 9, that I
needn't
27 repeat, it would be onerous on the judge. It would be
dangerous.
28 It would be inviting all kinds of difficulties, some of which
29 are, perhaps, very difficult to foresee. But I think the
point

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1 is a sensible one, and I submit that it really speaks for
itself.

2 I repeat: So far as possible, we, or the Defence team
for

3 Augustine Gbao, have considered all the contingencies that are

4 foreseeable, and we are of the unequivocal view that we are
12:52:47 5 content, and encourage Your Honours, as presently constituted,
6 should the recusal motion end in the permanent absence of His
7 Honour Judge Thompson, to continue to preside over this case
to
8 its conclusion. And those are my submissions. Unless there's
9 anything further, Your Honours.

12:53:17 10 JUDGE BOUTET: I have no question. Thank you.

11 PRESIDING JUDGE: I have none either, Mr Cammegh. Thank
12 you very much.

13 MR JORDASH: I only leap to my feet because I was -- if
I
14 may just say something more? And I wanted to say it before
the
12:53:31 15 Prosecution --

16 PRESIDING JUDGE: Yes, Mr Jordash, you may please.

17 MR JORDASH: Thank you. It may -- I was caught somewhat
by
18 surprise concerning the suggestion of an alternate judge for
19 interlocutory decisions, or bringing an alternate judge in at
the

12:53:47 20 end for the verdict, and it may be that the two should be
21 considered separately because --

22 JUDGE BOUTET: Yeah, and it came as you were talking
that
23 idea came to my mind. It's not something that I had planned
24 before, so you were trying to propose a solution to a split
12:54:03 25 decision on an interlocutory matters.

26 MR JORDASH: Yes.

27 JUDGE BOUTET: That's why I say, well, other than going
to

to 28 the Appeals Chambers if you have an alternate at least to try
29 sort out the split if any --

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1 MR JORDASH: Yes.
2 JUDGE BOUTET: -- that may be a solution. But on the
final 3 decision, I don't know. As I say, I have not thought this
4 process through either. It may be a possibility too, if there
is 5 a split at the end on one issue, if it's a split on everything
12:54:25 6 then nothing goes. But if there's a split on one issue, on
that 7 issue, that person could be the breaking role to solve that
8 issue. But that's but one suggestion, that's all.
9 MR JORDASH: Well, it may be that the merits of an
12:54:45 10 alternate judge on interlocutory decisions are different to
the 11 merits of an alternate judge for the final verdict, because
the 12 proposal that I was making was that the, in the event of a
split 13 on interlocutory decisions, that it could be directly referred
to

playing 14 the Appeal Chamber, and it may be that an alternate judge
12:55:07 15 the role of the -- well, it may be that an alternate judge
could 16 play that same role, because one can presume that the Appeal
17 Chamber isn't au fait with every single detail of the trial
18 proceedings, but it's being asked to decide issues of law.
And 19 it may be an alternate judge could, in fact, play that role.
So 20 rather than the split decisions going to the Appeal Chamber,
12:55:33 21 going to an alternate judge who would not have to be au fait
with 22 every aspect of the trial proceedings, and it may be there is
23 merit in that, and less merit in an alternate judge coming in
at 24 the end to decide split decisions which relate to both facts
and 12:55:52 25 law. That's all I wanted to add.
26 PRESIDING JUDGE: Thank you very much, Mr Jordash. Yes,
27 the Prosecution, is it Mr Harrison, because it's your --
28 MR. HARRISON: Yes.
29 PRESIDING JUDGE: The French say -- The French say that
the

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1 submissions for the Prosecution have your -- your griffe, your
2 initials. Your griffe, so --

3 MR HARRISON: We tried to provide as much assistance as
we
4 could last night in drafting this, and all I wanted to advise
the
12:56:23 5 Court was that this morning I had a further review of the Rome
6 Statute, the ICC Statute and the rules and acted pursuant,
they
7 were not included in the written submission that was prepared.

8 The Prosecution takes a general position that because
9 that's a permanent Court with a permanent seat and permanent
12:56:46 10 officers, that it may not be as of great assistance to the
Court
11 in trying to assess how to frame the issues before you. But
if
12 the Court is interested in seeing what the drafters there have
13 included we -- I'd advise you that the relevant articles
appear
14 to be --

12:57:10 15 PRESIDING JUDGE: You may circulate them to us,
16 Mr Harrison.

17 MR HARRISON: I can just forward it in an e-mail.

18 PRESIDING JUDGE: Yes, just forward them to us, and
we'll
19 incorporate -- you're seeking that these be incorporated into
12:57:22 20 your arguments?

21 MR HARRISON: I --

22 PRESIDENT JUDGE: Into your submissions on this issue?

23 MR HARRISON: Not quite. I'm just trying to tell the
Court
24 that we don't think they're going to assist you but --

12:57:31 25 PRESIDING JUDGE: But to that extent, to that extent,
26 you're submitting them to the extent that they might assist
the
27 Court or edify us in arriving at whatever conclusions. I
think
28 we can take them in, you know, within that context. We thank
you
29 for that extra research on that, and I think it would be
edifying

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1 in these blurred circumstances in which we find ourselves with
2 our Rule 16.

3 MR HARRISON: The only other point that I wanted to say,
4 that is not perhaps as clearly expressed in the written
document

12:58:09 5 as it should have been, is that there is the prospect that the
6 five day rule, once invoked and exhausted, can then be
converted

7 so that under 16(B) the Court would continue sitting for more
8 than five days in the absence of a third judge. But it may
well

9 be the case that after 20 days a decision is made that the
third

12:58:42 10 judge may then resume as part of the proceedings. And in our
11 submission, so long as there's a reasonable time period, that

12 that absence does not disentitle the third judge from resuming
13 their function.

14 So once the five days are exhausted, which we think is
12:59:11 15 going to happen next week, then it may well be the case that
the
16 Court could determine that two judges can continue sitting for
a
17 reasonable period of time, and then if the decision is
rendered
18 that the third judge can resume sitting, the trial could
continue
19 on with the presence of the third judge and it would simply be
12:59:28 20 the case that the third judge would undertake to familiarise
21 himself with whatever proceedings have taken place in their
22 absence.

23 That's a somewhat different scenario from the one where
the
24 Court has been asked to consider, what would happen if a third
12:59:49 25 judge is disqualified from the proceeding.

26 Those are the points that the Prosecution thought it
could
27 usefully advance this morning.

28 PRESIDING JUDGE: Yes, but let us have -- I would like
to
29 be edified on the thoughts of the Prosecution on the
submissions

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1 that appear to be -- in which the three Defence teams appear
to
2 be ad idem, and that is, that these two judges on this
amputated
3 Bench can continue sitting until the end of the case knowing
full
4 well, of course, what may happen with what we have addressed.
13:00:36 5 What is the position? What is the definitive position of the
6 Prosecution on this?

7 MR HARRISON: Yes, we think that the Trial Chamber can
8 continue constituted as two members.

9 PRESIDING JUDGE: Until the end of the proceedings?

13:00:50 10 MR HARRISON: Yes.

11 PRESIDING JUDGE: Thank you.

12 JUDGE BOUTET: Mr Harrison, you say this because of, in
13 your submission at page 7, paragraph 10, you highlighted the
fact
14 that the obligations created by the Statute are that, when
13:01:11 15 constituted, the Trial Chamber shall be composed of three
judges,
16 and so on. How do you reconcile that with continuing to sit
with
17 two judges?

18 MR HARRISON: The Statute we would suggest is drafted
such
19 that it is stipulating how the Trial Chamber is to be
constituted
13:01:37 20 at the outset, and there can be no doubt that at the outset
the

21 Trial Chamber shall be comprised of three members, one of whom
22 must be appointed by the Government of Sierra Leone.
Thereafter,

23 the Statute is silent after the initial requirement of the
24 composition. The Statute being silent, one can then turn to
the
13:02:11 25 Rules, and the Rules do contemplate under Rule 16(B) two
judges
26 continuing a proceeding or trial in the absence of a third
judge.
27 The Prosecution is suggesting to the Court that there is no
28 apparent inconsistency between the drafting of Rule 16(B) and
the
29 drafting of Article 12 of the Statute.

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1 PRESIDING JUDGE: Go ahead.
2 MR HARRISON: There was, I think, one other point that
the
3 Chamber was inquiring of Defence counsel and perhaps it's
4 expected of the Prosecution to address that.
13:03:01 5 With respect to an alternate judge, the Statute in
6 paragraph 12.4 does contemplate that and the word used is "an
7 alternate judge." But the Prosecution reads the first phrase
to
8 say that it's at the request of the President of the Special
9 Court. The Prosecution doesn't see it as its role to assist
this

13:03:33 10 Trial Chamber in an alternate judge being appointed. There is
a
11 clear demarcation and the various powers that exist within the
12 Special Court and it falls under the scope of powers allocated
to
13 the President to make that determination. And without wanting
to
14 be a bit obscure on the point, it's simply the case that I
don't

13:04:12 15 come before you with instructions from the Prosecutor to make
any
16 submissions on what the President ought or ought not to do in
17 this particular case.

18 PRESIDING JUDGE: Mr Harrison, you raised a very
19 interesting point in paragraphs -- well, 17, it looks like
13:04:50 20 Article 17 of the Statute, 17(g) where you talk of the issue
of
21 the accused consenting to proceeding with this trial and that
the
22 consent should be an informed consent. When you say it's an
23 informed consent, it's quite interesting. Are you saying that
24 the consent must be in writing? The second question. What
about

13:05:23 25 consent from the Prosecution also in writing because the
26 Prosecution is a party in this case and it is equally
interested
27 in the interests of justice as far as such a situation is
28 concerned.

29 MR HARRISON: Yes, generally speaking, the Prosecution
when

1 it invokes a term informed consent it's asking for something
2 greater than a representation made on behalf of the accused
and
3 whether it's in writing or whether it's the accused advising
the
4 Court or --

13:06:00 5 PRESIDING JUDGE: Mr Harrison, you know that in this
Court
6 we have a laid down procedure that if the accused has to
absent
7 himself from the proceedings, he has to sign a waiver in
writing.

8 It's not just a verbal procedure. The waiver has to be in
9 writing for him to say that he authorises us to proceed in his
13:06:24 10 absence. This appears to be a procedure that we can replicate
on

11 a situation like this if at all it did present itself. That's
12 why I'm putting the question to you but I wanted to know, you
13 know, whether -- I have a feeling if I may say, if I may put
it
14 that way, that the Prosecution also has a word to say in this
and

13:06:55 15 to tell the Judges, these two Judges, whether or not the
16 Prosecution accepts that it can continue with these
proceedings
17 until the end of the case. So this is what I wanted to say
and
18 Mr Cammegh did make a point and he went -- he violated our

19 limitations to these arguments but, well, it is interesting
that
13:07:29 20 he raised the issue of the two Judges going on even if their
21 decision came to a disqualification of their colleague in
these
22 proceedings. What is your view on this?
23 MR HARRISON: On the question of whether --
24 PRESIDING JUDGE: If, assuming, assuming, assuming
without
13:07:56 25 deciding for now, you know, that there is a disqualification,
can
26 the Court constituted by these two Judges proceed to the end
of
27 the case without seeking any recourse to announce any judge
28 knowing full well, of course, the constraints that are
contained
29 in the entirety in Rule 16 in its entirety.

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1 MR HARRISON: Yes, we tried to convey in the written
2 submission that we think the Trial Chamber can continue until
the
3 conclusion of the trial constituted with two members.
4 PRESIDING JUDGE: Even if there is a disqualification of
13:08:36 5 one of the judges?
6 MR HARRISON: Yes.

7 PRESIDING JUDGE: Thank you.

8 MR JORDASH: May I simply buttress something that Your
9 Honour's said which is that if there is to be in the event of

a

13:08:53 10 disqualification a procedure fashioned by -- which it is
expected

11 that the accused sign something to say they give their
consent,

12 we for the first accused would say that that ought to be

13 applicable to the Prosecution who are, as Your Honour points
out,

14 parties to the proceedings. And presuming the suggestion of

13:09:19 15 consent and that consent being informed as put forward by the

16 Prosecution is designed to ensure that the very fact of

17 proceeding with two judges does not form the basis of any

18 subsequent appeal and, of course, the Prosecution have equal

19 rights to appeal as do the Defence. But, of course, any

13:09:47 20 signature or any consent to proceed with two, of course, would

21 waive any right to appeal on the basis of proceeding with two

22 but, of course, it would not waive any right to appeal on any

23 unfairness however it may arise or be said to have arisen

24 following that decision. I hope Your Honours appreciate the

13:10:13 25 distinction I'm seeking to make.

26 PRESIDING JUDGE: Yes, we do.

27 MR JORDASH: Thank you.

28 PRESIDING JUDGE: We do. Well, I think the Chamber
would

29 like to convey its gratitude to learned counsel both for the

1 Prosecution and for the Defence for the entire teams for the
2 initiative that was brought to it yesterday by learned counsel
3 Mr Jordash and to which all of them have fully contributed.
We
4 thank you for this contribution which we must confess is very
13:11:03 5 edifying and only points out one thing and that is the
instruments 6 insufficiency of legislative instruments, legislative
order 7 that govern the Court. We know that we must have to act in
applies 8 to give some meaning, you know, to the legislation that
accused 9 here without seeking ourselves as judges, you know, of an
13:11:33 10 to legislate or to assume a mantle that belongs to the
for 11 legislative branch of government. So we thank you very much
12 this and -- yes.
terms 13 MR JORDASH: Just in terms of assisting the Court in
to 14 of witnesses, I was wrong yesterday and the witness we'd like
13:12:02 15 call first on Monday, we've informed the Prosecution but we
are 16 waiting to hear from the Prosecution as to whether they accept
we 17 that or it's convenient for the Prosecution, but the witness
18 have in mind is DIS-187, followed by, if we get to that point,

19 DIS-128. Both these witnesses --
13:12:21 20 PRESIDING JUDGE: DIS-187.
21 MR JORDASH: As the first one.
22 PRESIDING JUDGE: Yes.
23 MR JORDASH: 187.
24 PRESIDING JUDGE: And then the second.
13:12:31 25 MR JORDASH: DIS-128 and both witnesses speak Mende and
I'm
26 not sure what the Prosecution's position is in relation to
those
27 witnesses, but to be fair, I only informed them late yesterday
28 when I realised the error I'd made in terms of thinking that
the
29 first witness would be 176.

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your
1 PRESIDING JUDGE: I see. Mr Hardaway, what would be
2 position? Would you, in your very characteristic way, be
3 flexible in this situation?
4 MR HARDAWAY: The Prosecution would be flexible with
13:13:07 5 DIS-187, Your Honour, but the caveat the Prosecution has is
that,

was 6 presuming that DIS-187 would still be with the summary that
the 7 originally provided with their initial filings, with some of
the 8 prior witnesses we have received additional summaries before
9 witnesses have come to testify. If there are no additional
13:13:32 10 summaries, then we should be ready to proceed with DIS-187 on
11 Monday.

12 PRESIDING JUDGE: We would say, we would say this to
13 Mr Jordash, that is, that if there are any additional
summaries
14 which you want to introduce to what you already have on
record, I
13:13:51 15 think they should be served to the Prosecution today. Today.

16 MR JORDASH: That's definitely possible.

17 PRESIDING JUDGE: Right.

18 MR JORDASH: Definitely possible.

19 PRESIDING JUDGE: It should be done today so that at
least
13:13:59 20 they can prepare themselves.

21 MR JORDASH: Certainly. But I would point out this:
That

22 the additional summaries are designed in large part to provide
23 greater specificity to the summary so --

24 PRESIDING JUDGE: I don't know whether I will go that
far.

13:14:14 25 I don't think I will accept that entirely. Normally, it's
quite

26 a huge addition, you know, to what has been provided before.
So,

27 anyway, I think we should live with that and allow you to
serve

28 on the Prosecution today.

respect

29 JUDGE BOUTET: Mr Jordash, this change is only in

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1 of DIS-187. Yesterday you had already indicated DIS-128 to be
2 the second one.

3 MR JORDASH: That's right, Your Honour, yes.

4 JUDGE BOUTET: Should there be any difficulty with 187
13:14:56 5 because of new disclosure, can you proceed with 128 and follow
by 6 187?

7 MR JORDASH: Yes.

8 JUDGE BOUTET: I take it from your submission that 187
is 9 to be your next witness.

13:15:05 10 MR JORDASH: Yes. And if the Prosecution -- well, we
will 11 serve the supplementary or additional information today. I
hope 12 we can do it before the close of play, but if we can't, we
will 13 hand deliver a copy to the Prosecution. If there is objection
we 14 will go with 128 providing --

13:15:26 15 PRESIDING JUDGE: We would want that information to be
16 given to the Prosecution at least by 3.00. Let them really be

17 given a fair chance.

18 MR JORDASH: Your Honour, we are engaged in --

19 PRESIDING JUDGE: I know you're engaged in consulting --

13:15:41 20 well, you had quite a lot to do with seeing the witness -- the
21 witness who you have to call and things like that, but I
imagine
22 that there are two of you on the team --

23 MR JORDASH: The problem is that the witness --

24 PRESIDING JUDGE: Ms Ashraph is here. She can do what
you
13:16:03 25 cannot do.

26 MR JORDASH: But the witness was to be called in about
two
27 or three weeks. So we've only just been able to get to the
28 witness to start proofing the witness and that's occurring as
I'm
29 speaking. I then have to see the witness.

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1 PRESIDING JUDGE: So what time would be -- what time do
you
2 say you can make it available to the Prosecution?

3 MR JORDASH: 5.30.

4 PRESIDING JUDGE: 5.30. Mr Hardaway, would that be

13:16:27 5 acceptable to you?

6 MR HARDAWAY: Obviously, Your Honour, the sooner the
7 better. We've been fortunate to be able to work with the
8 additional summaries and incorporate them, so there is no
delay
9 on the Court. But also the same concern with 187 we would
have
13:16:44 10 with the following witness 128. We do not know if there would
be
11 any additional supplement to that. I understand that they are
12 beginning to proof.

13 PRESIDING JUDGE: The comment I'm making is -- goes --
14 holds good for 128.

13:16:58 15 MR HARDAWAY: Yes, Your Honour.

16 PRESIDING JUDGE: So I think if they have to move that
way,
17 you must have all this, you know, by -- do you accept 5.30? I
18 don't want to impose this -- this is Mr Jordash's suggestion.

19 MR HARDAWAY: As soon as we get it, Your Honour, we can
13:17:11 20 review it, and if there are any difficulties we would inform
all
21 the parties before we leave the premises today. I mean, based
22 on what we've received in the past, I don't foresee a problem.

23 PRESIDING JUDGE: Leaving which premises, not these
ones,
24 you know, because we are leaving these premises now.

13:17:42 25 MR HARDAWAY: Not the actual Chamber, Your Honour, but I
26 mean the premises of the Special Court compound.

27 PRESIDING JUDGE: Right; okay.

28 MR JORDASH: And we will get the information. I mean,
29 obviously if the Prosecution have a submission about needing
to

Your
prejudiced

1 adjourn the evidence, then that will have to be heard before
2 Honours and Your Honours can decide whether they are
3 or not.

4 PRESIDING JUDGE: We don't want to get to that.

13:17:55 5 MR JORDASH: No, I don't think we will.

and

6 PRESIDING JUDGE: That is what I want to avoid because I
7 don't want to come here on Monday to be arguing on prejudice
8 what have you.

9 JUDGE BOUTET: We need to avoid split decisions.

13:18:06 10 PRESIDING JUDGE: Split decisions, you see. You see,
these

11 two people here, these two Judges have to be very careful with
12 split decisions. That's why we have to keep our respective
ears

13 busy and open at all times because it is very delicate, as you
14 can see. Yes. So we will leave it at that. You will

13:18:28 15 communicate these -- I understand there is no formal objection
16 from Mr Hardaway -- at about 5.30. Mr Jordash, yes, if there

is
them

17 anything on DIS-187 and 128 as well, you know, please submit

18 to Mr Hardaway, you know, at 5pm.

19 MR JORDASH: 5 or 5.30, Your Honour?

13:18:55 20 PRESIDING JUDGE: 5pm.

21 MR JORDASH: I thought you said 5.30.

22 PRESIDING JUDGE: No. 5pm. 5pm. You must pay some
costs

23 -- you must pay some costs for this and the costs you are
paying

24 are for 30 minutes, you know, because the application is made
in

13:19:12 25 your favour. Those are the costs and they will be payable to

26 Mr Hardaway.

27 Right. Well, I think it has nothing to do with the
28 submissions we've heard today, we have been replaced. The
issue

29 of what happens after next week, you know, on our agenda, and
we

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1 have been discussing it since we last left, and since we have
sat

2 on we have -- we are considering, we are considering rendering

3 the decision on this motion, you know, before we go and break.

4 We find it very difficult to be sitting on Thursday and Friday

13:20:05 5 and the following week before we can render this decision and
we
6 thought that we should inform the parties well in advance, you
7 know, that Tuesday will be our last sitting day because we
have
8 to give ourselves time to be able to deliver our decision
before
9 we proceed on the Christmas vacation.

13:20:31 10 And we have decided to give you this notice well in
advance
11 in order to enable all of you, all the parties, to prepare
their
12 schedules, you know, both at home and abroad, otherwise the
13 temptation was for us to inform you on Tuesday, but we decided
to
14 inform you today, so that you know where we move from Tuesday.

13:20:56 15 So on Tuesday, Tuesday will be our last day after we
have
16 had our meeting or our session on the status conference. I
think
17 it is some time in the afternoon, at 3 p.m. Yes.

18 So we would not be sitting -- we would only have to
19 schedule the date. We cannot schedule the date for the
decision,

13:21:25 20 you know, but we shall issue an order to that effect when we
we
21 think we would have been ready to deliver it. So that is what
of
22 thought we should issue as a communique, you know, at the end
amongst
23 proceedings this morning, and in order to avoid a split
24 these two Judges, I see my colleague approaching me.

13:22:15 25 Yes, we also would want to inform the parties that there
is
26 an obligation for us to ask for comments from our colleague,
who

have 27 is the subject matter of these proceedings, and because we
today 28 been receiving submissions up to yesterday, we hope that by
29 he would have filed his comments, we're not very sure, but we

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even 1 think that at the latest on Monday, on Monday, he would have
2 filed, you know, his comments on this, and we would then be
3 better equipped to proceed with our two-judge deliberations on
4 this issue, and to be able to render the difficult decision in
13:23:31 5 this matter.

that 6 So, let us say that we will end up with this note and
7 we would be adjourning these proceedings until Monday at 9.30.
8 So the Chamber will rise, please.

p.m., 9 [Whereupon the hearing adjourned at 1.20
10 to be reconvened on Monday, the 26th day of
11 November 2007 at 9.30 a.m.]
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SCSL - TRIAL CHAMBER I

WITNESSES FOR THE DEFENCE:

WITNESS: DIS-124 2

CROSS-EXAMINED BY MR HARDAWAY 2

RE-EXAMINED BY MR JORDASH