



Case No. SCSL-2004-16-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTI GIE BORBOR KANU

FRIDAY, 14 OCTOBER 2005
9.16 A.M
TRIAL

TRIAL CHAMBER II

Before the Judges:

Teresa Doherty, Presiding
Julia Sebutinde
Richard Lussick

For Chambers:

Mr Simon Meisenberg

For the Registry:

Ms Maureen Edmonds

For the Prosecution:

Ms Wambui Ngunya
Ms Melissa Pack
Ms Maja Dimitrova (Case Manager)
Ms Suzanne Mattler (intern)

For the Principal Defender:

Mr Ibrahim Foday Mansaray

For the accused Alex Tamba
Brima:

Ms Glenna Thompson

For the accused Brima Bazy
Kamara:

Mr Mohamed Pa-Momo Fofanah

For the accused Santigie Borbor
Kanu:

Mr Geert-Jan Alexander Knoops

1 [AFRC15OCT05A - SGH]

2 Friday, 14 October 2005

3 [Open Session]

4 [The accused Kanu and Kamara present]

09:08:49 5 [The accused Brima not present]

6 [Upon commencing at 9.16 a.m.]

7 WITNESS: RICHARD MORTIMER IRON [Continued]

8 PRESIDING JUDGE: Good morning. If there are no other
9 matters I remind will the witness of his oath. We are short one
09:16:02 10 of the accused.

11 MS THOMPSON: Yes, Your Honour. We are told by one of the
12 detainees that Mr Brima is not feeling very well this morning. I
13 have not spoken to him this morning, but that is what I have been
14 told. That is why he is not in court this morning.

09:16:20 15 PRESIDING JUDGE: Thank you for that, Ms Thompson. I did
16 not see him yesterday. Well, let's hope he will be better soon.
17 If there is nothing else, Colonel, I remind you, as I did before,
18 that you are under oath. You have taken the oath to tell the
19 truth and that oath is still binding on you.

09:16:35 20 THE WITNESS: Yes, Your Honour.

21 PRESIDING JUDGE: Thank you. Mr Fofanah, you were in the
22 midst of your cross-examination. Let's proceed.

23 MR FOFANAH: Good morning, Your Honours.

24 CROSS-EXAMINED BY MR FOFANAH: [Continued]

09:16:41 25 Q. Good morning, Colonel.

26 A. Good morning.

27 Q. We broke off yesterday discussing the AFRC and the AFRC
28 faction. You have already said the AFRC operated a regular army
29 before events of 1998. To the best of your knowledge, did it

1 have a commander-in-chief for the AFRC?

2 A. I think I better make clear that I do not -- I am not aware
3 of what the constitutional legal position was of the AFRC during
4 the period of the junta up until the ECOMOG intervention. I am
09:17:42 5 aware that it operated in conjunction with the RUF and that at
6 some stage during the junta there was an attempt to bring these
7 together under the banner of the People's Army.

8 Q. I have to stop you there, Colonel. My question was whether
9 you were aware as to whether the AFRC had a commander-in-chief,
09:18:05 10 that's all.

11 A. Okay. I was just saying that I was not quite sure whether
12 you were referring to the AFRC forces alone or with the allied
13 forces of the RUF under the People's Army.

14 Q. Colonel, yesterday you categorically distinguished between
09:18:23 15 the AFRC and the AFRC faction, if you can vividly recall.

16 A. That's right.

17 Q. And I asked you about the difference, and you referred to
18 the AFRC as the regime that was in place from May '97 to
19 February '98. Did that regime, the AFRC regime, have a
09:18:39 20 commander-in-chief?

21 A. The political regime or the army? There is a slight
22 difference, because the AFRC was part of a political junta as a
23 de facto government of the country, and it also had an army. I
24 hadn't studied this period in detail, but I suspect many of the
09:19:10 25 people were the same. But it is best to be clear of what we are
26 referring.

27 Q. Are you aware that the political head during that period
28 was in fact the head of the army, the commander-in-chief of the
29 army?

1 A. I suspected that was the case. But I wasn't aware of the
2 particular constitutional position.

3 Q. Do you know the name of that person?

4 A. Yes.

09:19:34 5 Q. The commander-in-chief?

6 A. Yes.

7 Q. Who was he?

8 A. Koroma.

9 Q. What Koroma?

09:19:42 10 A. JP Koroma.

11 Q. By that you mean Johnny Paul Koroma?

12 A. Yes.

13 Q. During the course of your research, were you told that
14 Johnny Paul Koroma withdrew with the rest of his troops into the
09:20:01 15 provincial areas of Sierra Leone, including the jungle area?

16 A. Yes.

17 Q. Were you informed as to whether Johnny Paul Koroma, as
18 commander-in-chief of the forces that withdrew with him, ever
19 disbanded his troops?

09:20:23 20 A. I'm not aware of that.

21 Q. To the best of your knowledge and research, Colonel, did
22 the AFRC faction -- now I am using the word "faction". Did the
23 AFRC faction members consider themselves as soldiers of the SLA,
24 especially those that you interviewed in your research?

09:20:42 25 A. They did, yes.

26 Q. And by "SLA" I mean Sierra Leone Army.

27 A. Yes. They personally used the terms interchangeably, AFRC,
28 SLA. As I said before, I myself do not know the constitutional
29 position or the legal position between those two terms.

1 Q. With respect to you, Colonel, I have not used the word
2 "constitution".

3 A. No, no.

09:21:05 4 Q. I am still restricting myself to the military words. So if
5 I may be clear on that because you interchangeably use the words
6 AFRC and SLA. My question was whether they considered themselves
7 as members of the Sierra Leone Army.

8 PRESIDING JUDGE: The witness has answered the question,
9 Mr Fofanah.

09:21:27 10 MR FOFANAH: As Your Honour pleases. Thank you very much.

11 Q. In the course of you research, did you find out or did you
12 know what was the prime motive for the AFRC faction soldiers'
13 return to Freetown, what was their prime motive?

14 PRESIDING JUDGE: When?

09:21:51 15 MR FOFANAH:

16 Q. The faction. I mean in January 1999.

17 A. That is an area of debate. It is difficult to determine
18 the prime motive, but one of the motives -- certainly one of the
19 stated motives -- was to reinstate the SLA.

09:22:23 20 Q. To reinstate the SLA. Does that therefore suggest that the
21 SLA was -- in fact, if I can vividly recall what you told the
22 Court yesterday, you said the SLA was disbanded before 1999,
23 January?

24 A. What I said was I think was that I was aware that
09:22:49 25 President Kabbah had issued a statement disbanding the SLA. What
26 I am not aware of is the legal, constitutional position of that
27 statement.

28 Q. When was that? When did he issue the statement to the best
29 of your knowledge?

1 A. I don't know.

2 Q. Was the SLA in fact disbanded?

3 A. I don't know the answer to that, nor do I know whether
4 there was a replacement organisation put in its place. However,
09:23:25 5 what I am aware of, and this is from soldiers or fighters within
6 the AFRC faction, is that during their operations they met
7 enemies who they described as loyal SLAs -- they met these up in
8 the Northern Jungle -- who were opposing their move to Mange and
9 also in the operation against Benguema. I do not know who these
09:23:57 10 loyal SLAs were and whether they formed part of a constitutional
11 force or not. I am aware, however, that it is quite difficult to
12 sometimes decipher who your enemy is.

13 Q. I will take that for an answer, Colonel.

14 A. Okay.

09:24:19 15 Q. We are still on the period under review. During the period
16 of the withdrawal of the troops, I mean February 1998, did your
17 research show that there were Sierra Leone military forces
18 present in the provincial district of Sierra Leone?

19 A. There were many Sierra Leone military forces from different
09:24:49 20 factions all across Sierra Leone.

21 Q. The Sierra Leone Army, to the best of your knowledge, did
22 it have presence -- I mean brigades, the regular army that you
23 refer to -- in February 1998 did your research show that there
24 were brigades present in the provincial regions of Sierra Leone?

09:25:12 25 A. Yes, they were in a number of provincial regions. Some
26 areas, of course, were occupied and run by the CDF. But in other
27 areas, where the junta forces still controlled, there were indeed
28 both RUF and AFRC forces under a single command.

29 Q. So these soldiers that you referred to as "loyal soldiers",

1 to the best of your knowledge and research, they continued
2 throughout to serve the government as members of the Sierra Leone
3 forces; not so?

09:25:52 4 A. I didn't refer to them as loyal SLAs. My sources referred
5 to them as loyal SLAs. I don't know if they served throughout or
6 whether they were newly recruited soldiers who had been recruited
7 by the government. I simply don't know.

8 Q. Did your source, or did you sources tell you what they
9 meant by loyal SLAs?

09:26:15 10 A. No, we didn't explain it. My assumption was that they
11 were --

12 Q. Colonel, please.

13 A. Okay, the answer is no.

14 Q. I am not asking for an inference. If they did not tell
09:26:22 15 you, they did not. Did they tell you what they meant by loyal
16 SLAs?

17 A. They didn't explain what they meant by loyal SLAs.

18 Q. Thank you. Colonel, I am putting it to you that members of
19 the Sierra Leone Army remained as such, as members of the
09:26:50 20 Republic of Sierra Leone Army, throughout the period under
21 review, and I am talking about from May 1997 to date. They
22 remained as members of the Sierra Leone Army.

23 MS PACK: To what date?

24 PRESIDING JUDGE: To date means today, Mr Fofanah.

09:27:09 25 MR FOFANAH: Okay, to the year 2000. From May 1997 to the
26 year 2000 they remained as members of --

27 PRESIDING JUDGE: You mean every single member of the army?
28 You are saying some or all?

29 MR FOFANAH: Let me start with the general.

1 Q. I'm putting to it you, Colonel, that members of the Sierra
2 Leone Army remained as members of the Sierra Leone military
3 forces from May 1997 to the year 2000?

09:27:49

4 MS PACK: What military forces in Sierra Leone? That's a
5 different question to the one that was being put before, which
6 was that they remained members of the Sierra Leone Army. There
7 were a number of forces in Sierra Leone over this period.

09:28:15

8 MR FOFANAH: I have tried to veer away from this, but
9 except if my learned colleague is inferring that when we use the
10 words "Sierra Leone military forces" it includes the RUF as well.
11 I mean, that is not my understanding. My understanding of Sierra
12 Leone military forces, as it is found in the Act, refers to the
13 military.

09:28:29

14 PRESIDING JUDGE: Well, put precisely what you mean because
15 military force could, for all I know, include ECOMOG.

16 MR FOFANAH: As Your Honour pleases. Thank you.

17 Q. Okay. Colonel, in the course of your research did you
18 happen by the Sierra Leone Military Forces Act of 1961?

19 A. No, I did not.

09:28:49

20 Q. You did not read it?

21 A. No.

22 Q. Did you read any reference in the 1991 Constitution of
23 Sierra Leone to the Sierra Leone Army?

24 A. No.

09:29:02

25 Q. Did you use any national criteria, or criterion if it is
26 just one, in reaching your comparison of the AFRC faction and the
27 regular army?

28 A. My job was to determine the extent to which the AFRC
29 faction was a military organisation. It was not to determine the

1 legal or constitutional position of any such force.

2 Q. But, Colonel --

3 A. I'm not an expert in law.

4 Q. But, Colonel, you went further to compare -- in fact to

09:29:35 5 even divide the AFRC up into two. I mean, a group called the
6 AFRC and another group called the AFRC faction. And you said one
7 was regular and the other was not so regular. My question is:
8 In reaching that conclusion, did you make any attempt at drawing
9 inferences from the national situation?

09:29:59 10 MS PACK: Your Honour, that is a misstatement of the
11 evidence. The report was not a comparison between the AFRC and
12 an AFRC faction and conclusions as to which or which was not the
13 more regular of the two. That is a misstatement of what has been
14 the oral evidence and what is contained in the report.

09:30:17 15 MR FOFANAHAH: Can you kindly give us what is the true
16 statement? Probably I did not get that. Because that is my
17 understanding of it, and in cross-examination yesterday it came
18 out clearly that for the first time he used the word "AFRC
19 faction".

09:30:37 20 MS PACK: I don't know if that is a question addressed to
21 me, Your Honour. It is not appropriate for me to answer
22 questions.

23 PRESIDING JUDGE: It is not. I wish to be clear what
24 question you are seeking, or what answer you need from this
09:30:47 25 witness. You said that the witness divided the AFRC into two.

26 MR FOFANAHAH: Yes, Your Honour.

27 PRESIDING JUDGE: And you have named them as the AFRC and
28 the AFRC faction. Right. Following from that, what question are
29 you putting to the witness?

1 MR FOFANAHA: That in the course of his research whether he
2 has used national criteria or criterion in reaching -- in drawing
3 the comparison between the AFRC faction and --

4 PRESIDING JUDGE: What do you mean by "national criteria"?

09:31:21 5 MR FOFANAHA: Well, Your Honours, as an expert he has given
6 a number of characteristics of, I mean, a regular army, both from
7 the general point of view and from what obtained on the ground.

8 Now, I take it that as an expert, working on a particular
9 jurisdictional situation, it was but proper to have had knowledge
09:31:40 10 of what obtained within that jurisdiction. I mean, in reference
11 to the army. So that is what I am trying to ask him

12 PRESIDING JUDGE: So you are asking him did he compare the
13 previous Sierra Leone Army to the AFRC faction.

14 MR FOFANAHA: If the question may go like -- because the
09:32:06 15 problem here is he has said that the AFRC was a regular army. So
16 I take it by "regular army" he means both the AFRC and the army
17 before the AFRC. I mean, as I understood him, his only problem
18 was with the faction. I may be corrected.

19 JUDGE LUSSICK: I understand most of your question,
09:32:28 20 Mr Fofanah. The only thing I am not sure of is what do you mean
21 by "national criterion" or "criteria". What exactly does that
22 entail?

23 MR FOFANAHA: My reference is to the military structure of
24 the army, which is also contained in -- he said he was not aware
09:32:49 25 of a legal framework. But, in any case, the structure doesn't
26 exist in a vacuum; it exists from law. We'll not go into the
27 law, but I wanted to know if he was familiar with the legal --
28 well, with the structural situation of the army before he
29 undertook his research.

1 JUDGE LUSSICK: All right. Now that you have clarified a
2 few things, why don't you reframe your question and see whether
3 the witness can answer it or not. I am sure he will say if he
4 can't answer it.

09:33:24 5 MR FOFANA: As Your Honour pleases, thank you.

6 Q. Colonel, did you do any research into the structure of the
7 Sierra Leone Army as it existed before the AFRC period of
8 May 1997?

9 A. No, I did, no.

09:33:45 10 Q. You did not. But are you aware as to whether any such
11 structure existed, military structure?

12 A. There is a broad assumption that there must have been, but
13 I cannot offer an opinion for that because it is outside the
14 period I analysed.

09:34:24 15 Q. You might have answered this before, but correct me if I'm
16 repeating because I'm not particularly clear on this. What
17 criteria did you use in reaching the conclusion that the AFRC
18 army -- not the faction, the army -- was a regular army?

09:34:46 19 A. I didn't reach a conclusion. I simply answered a question
20 of yours. My analysis was not on the AFRC as an army, it was
21 not -- in fact, it specifically excluded the time at which it was
22 the regular army of Sierra Leone, which wasn't as long as the
23 AFRC junta forces -- junta was de facto government of Sierra
24 Leone. The period of my analysis starts from the day after that,
09:35:16 25 in which they were no longer the de facto government of Sierra
26 Leone and, therefore, the AFRC was no longer the -- could no
27 longer be considered to be part of the regular forces of Sierra
28 Leone.

29 Q. Did some of those you interviewed -- I mean the soldiers

1 like Mr George Johnson. Did he tell you whether he continued to
2 serve as a soldier in the Sierra Leone Army shortly after the
3 Lome Peace Agreement, which was in July 1997?

4 A. Yes.

09:35:55 5 Q. Did he tell you as to whether he was discharged from the
6 army?

7 A. I don't know. Sorry. No, he didn't.

8 Q. Colonel, are you aware as to whether non-commissioned
9 officers who withdrew into the jungle after events of
09:36:15 10 February 1998 recruited into the Sierra Leone Army again with
11 their non-commissioned ranks?

12 A. I am aware that the RSLAF has been reconstituted with
13 members from all factions in an attempt to form an armed force of
14 a national unity.

09:36:36 15 Q. So are you aware as to whether -- the faction that I am
16 referring to is the faction you have referred to as "the AFRC".
17 My reference was not to all the factions. Are you aware as to
18 whether members of the AFRC, especially non-commissioned
19 officers, as to whether they were recruited into the Sierra Leone
09:36:52 20 Army again using their non-commissioned ranks?

21 A. I have had that reported to me. Yes, I do not know the
22 details.

23 Q. Are you aware as to whether some of them were discharged
24 from the Sierra Leone Army with their non-commissioned ranks?

09:37:13 25 A. I am not aware, no.

26 Q. Colonel, you made reference to children being recruited by
27 the AFRC faction in your report.

28 A. In my report I did; I did not in my oral evidence.

29 Q. Do you know -- at the time of your research were you aware

1 of what the legal position was on the age of recruitment in
2 Sierra Leone?

3 A. No.

4 Q. Did you know the minimum age of recruitment into the army
09:37:58 5 at the time of your research?

6 A. No.

7 Q. Colonel, you have told us that you are 48 years old and
8 that you have served 31 years in the army. Do I take it that you
9 were recruited into the army at the age of 17?

09:38:10 10 A. That's correct.

11 Q. Do you consider that age as an acceptable --

12 PRESIDING JUDGE: Why are you asking opinion evidence of
13 the witness?

14 MR FOFANA: As Your Honour pleases. I will move away from
09:38:29 15 that.

16 Q. Colonel, you came here by virtue of an assignment from the
17 Ministry of Defence in the United Kingdom; correct?

18 A. That's correct.

19 Q. And correct me if I am wrong, your assignment was to assist
09:38:47 20 the Prosecution of the Special Court of Sierra Leone determine
21 the extent to which the AFRC and other military organisations
22 could be considered a military organisation?

23 A. That's correct, yes.

24 Q. In that context, would you view your research as limited in
09:39:05 25 that regard to only what the Prosecution made available to you?

26 A. The scope of the analysis was limited to the task that was
27 given to me, analysing the AFRC and other organisations as
28 military organisations. The scope of the information was mostly
29 that which was provided to me, yes.

1 Q. Colonel, you in fact you went ahead to draw the bulk of
2 your findings and conclusions from the views and comments of
3 Prosecution witnesses, Prosecution lawyers and Prosecution
4 investigators. In these circumstances, would you consider your
09:39:52 5 report to be impartial and independent?

6 A. Actually, my report was based not on the opinions and views
7 of Prosecution investigators and lawyers. It was based on the
8 facts which I gleaned and from my sources. As I mentioned
9 yesterday, my analytical method was to try and understand the
09:40:30 10 AFRC and other organisations from the bottom up. So I was
11 looking at the micro levels. The questions I was asking were
12 very low levels, relating to guard rosters, for example, the
13 procedures, processes for cleaning weapons and inspecting them,
14 and these sorts of things. And I don't see that this kind of
09:40:54 15 information gathering allows for partiality. And so I think that
16 I have been able to conduct an analysis which is impartial,
17 despite the fact that my primary sources happen to be witnesses
18 for the Prosecution.

19 Q. When you first arrived into Sierra Leone did you in fact
09:41:18 20 have any interview with lawyers of the Prosecution?

21 A. Yes.

22 Q. As to the scope of your mandate, the extent of your
23 mandate?

24 A. Yes.

09:41:29 25 Q. Did you receive briefings from them about the contents of
26 your work?

27 A. I received general briefings, introductory briefings on the
28 outline conduct, the facts as we know it of the Sierra Leone war,
29 of the backgrounds to the various factions who were party to that

1 war. But I don't think I had briefings saying this what we think
2 of, for example the AFRC, this what we think it was. That wasn't
3 the case.

09:42:13 4 Q. Did you also conduct interviews with investigators about
5 witnesses that were not necessarily brought to you?

09:42:39 6 A. I didn't conduct any interviews with investigators. Of
7 course, I had conversations with them. We spent a lot of time in
8 vehicles together with witnesses and you chat and talk about
9 them. And they did help me, actually, identify which of the
10 witnesses would be useful in finding out the things I wanted to
11 find out. So they did help me determine which witnesses would be
12 worth questioning.

13 Q. Did you defer to them for clarifications in the course of
14 your research, investigators?

09:42:59 15 A. No.

16 Q. Colonel, in the generality of things, will you consider
17 your report to be fair, impartial and independent, without having
18 the opportunity of hearing the story of the accused persons in
19 this case?

09:43:12 20 A. The answer is yes for the reasons I previously explained.
21 The analytical method was from bottom up. I was not asking them
22 to give me their opinion of the AFRC faction, I was not asking
23 them to explain to me how command worked. I asked the micro
24 questions, if you like, and from that induced a broader picture,
09:43:43 25 which is the picture which I have presented in my report.

26 Q. I am moving into another area now, which has to do a bit
27 with what you told the Court in reference to your report.
28 Correct me if I am wrong. Is it your testimony that the first
29 time the AFRC formed the battalions in the jungle was when

1 SAJ Musa joined them at Colonel Eddie Town?

2 A. No, it wasn't.

3 Q. When was it?

4 A. I cannot identify exactly the time when they formed from
09:44:15 5 companies to battalions. But I know that the initial structure
6 was in companies and I think it might have been at Rosos when
7 they converted those to battalions, but I cannot be certain.

8 Q. Do you know how many companies or battalions existed at
9 Colonel Eddie Town before the arrival of SAJ Musa?

09:44:42 10 A. Without my notes I cannot be absolutely certain, but I know
11 that after his arrival there were eight and the force that he
12 brought with him strengthened the force already at.

13 Q. Do you know how many companies or battalions existed at
14 Colonel Eddie Town before the arrival of SAJ Musa?

09:44:42 15 A. Without my notes I cannot be absolutely certain but I know
16 that after his arrival there were eight and the force that he
17 brought with him strengthened the force already at Eddie Town and
18 therefore additional battalions were created. So I cannot say
19 whether there were four, there might have been six. I am not
09:45:10 20 sure.

21 Q. So did the eight battalions that were formed after
22 SAJ Musa's arrival include the Red Lion and RDF battalions you
23 have mentioned?

24 A. That's what I understand, yes, And six numbered battalions.

09:45:39 25 Q. Now my learned colleague, Professor Knoops examined you
26 slightly on the house arrest of some high-ranking officials at
27 Colonel Eddie Town. So were you told by the soldiers or
28 witnesses that you interviewed that the high-ranking officers
29 were placed under house arrest, were in fact displaced from their

1 ranks and positions when SAJ Musa arrived?

2 A. I cannot recall the answer to that question, I'm afraid. I
3 mean, are you saying they were displaced; they'd lost their
4 ranks.

09:46:28 5 Q. Yes, as well as position when SAJ Musa came back?

6 A. No, I don't know.

7 Q. Was there a CIC before the arrival of SAJ Musa at Colonel
8 Eddie Town?

9 A. CIC is commander-in-chief?

09:46:32 10 Q. Commander-in-chief, yes.

11 A. Yes, I was.

12 Q. And was the CIC among those who were detained?

13 A. No, he wasn't.

14 Q. He was not detained?

09:46:55 15 A. No.

16 Q. And your information was got from your sources as well?

17 A. That's correct, yes.

18 Q. Did that CIC continue to be CIC after the arrival of
19 SAJ Musa?

09:47:23 20 A. No, he didn't.

21 Q. He didn't. Now these junior officers who planned and
22 conducted the house arrest, were you told as to whether they were
23 punished for the act subsequently?

24 A. I was not told.

09:47:43 25 Q. Were you informed that they were in fact promoted after
26 SAJ Musa arrived, those who planned and conducted the mutiny?

27 A. Many of the officers in the AFRC were promoted as the
28 organisation grew and so it would not surprise me at all if they
29 were amongst those who were promoted.

1 Q. After the arrival of SAJ Musa?

2 A. Absolutely.

3 Q. Now two last questions under the AFRC period, I mean, two
4 last questions. Those are my final questions. Now, under the
09:48:24 5 AFRC period you have referred to, May 1997 to February 1998.

6 A. Okay.

7 Q. Would it have been possible for a non-commissioned officer
8 to promote a private soldier to the same rank as himself?

9 A. The answer is I don't know, because I don't know what the
09:48:46 10 circumstances were at the time. I can say it would be unusual in
11 a regular army to do so, but I cannot say it would be impossible
12 in that period in that organisation.

13 Q. Now, could the AFRC, as a regular army, have trained,
14 registered a soldier and then have that soldier retrained and
09:49:07 15 given another registration number?

16 A. I don't know. All sorts of things happen in administrative
17 systems that go wrong. It's possible, I suppose.

18 Q. But in the general situation as an expert, when a soldier
19 who has been trained and given a registration number is stripped
09:49:38 20 of that number whilst he is still serving in the army and then
21 number given to another soldier?

22 A. If that happened then there would have been some
23 administrative error somewhere. It is possible, I suppose.

24 Q. In that case I have no further questions. Thank you very
09:49:53 25 much, Colonel.

26 A. Than you, Mr Fofanah.

27 PRESIDING JUDGE: Thank you, Mr Fofanah. Re-examination,
28 Ms Ngunya?

29 MS NGUNYA: Your Honour, there will be no re-examination

1 and at this time I would like to tender the report.

2 PRESIDING JUDGE: Counsel for Prosecution has sought to
3 tender the report which has been marked for identification. Your
4 reply?

09:50:22

5 MR KNOOPS: Thank you, Your Honour. Your Honour, my
6 submissions are on behalf of all three defence counsel. Your
7 Honours, I have a primary argument and alternative argument
8 which, in both situations, should not allow the report to be
9 tendered.

09:50:44

10 First of all, we submit that the report in its current form
11 should not be admitted in its entirety. I have four reasons for
12 this, Your Honours. First, Your Honours' ruling of yesterday
13 excluding the ultimate issue element of effective command and
14 control. Now this element forms an integral part and essential
15 form within the report. I refer again to the section B6 and
16 section E5. That is the pages B9-B11 and E6 to E8. Admission of
17 this report in its current form is therefore highly prejudicial
18 to the accused, and this prejudice certainly outweighs its
19 potential probative value and, in my submission, cannot assist
20 the Trial Chamber. In addition, sections B6 and E5 of the report
21 were also not subjected to examination in court.

09:51:14

09:51:52

22 The second reason for the non-admission of the report is
23 the fact that Your Honours have also not allowed the Prosecution
24 to examine the witness in regard to diagram D3 on page D3,
25 therefore, admission of the report would introduce evidence which
26 would be prejudicial to the accused.

09:52:17

27 Thirdly, the report in its current form invades the
28 ultimate issue rule as to another element, namely, that the
29 witness in the report gives judgments in regard to various crimes

1 and responsibilities for crimes by some of the accused. I gave
2 Your Honour seven examples thereof on Wednesday in court and I
3 think one very clear example, a reference to section C3.13, it is
4 on page C9, where the report refers to incarceration for which
09:53:23 5 Five-Five is responsible, which directly goes to paragraph 34 of
6 the indictment.

7 In the fourth place, Your Honours, the report trespasses
8 the scope of the assignment of the witness and also his
9 competence as an expert witness under contemporary principles of
09:53:43 10 international criminal law. I have two sub-arguments to
11 substantiate this fourth reason.

12 First, as Your Honours know, I expounded on Wednesday on
13 several examples of this violation of these principles. I think
14 what is quite self-evident is that the report also goes into the
09:54:09 15 position of potential defences under international criminal law.
16 I refer Your Honours again to paragraph D5.4 where the witness
17 goes into the issue of military justifications, and I refer
18 Your Honours to paragraph E4.4 where the report goes into any
19 justification of burnings in military terms. Well, that directly
09:54:39 20 goes to the defence of military necessity and other potential
21 defences in international criminal law for which the witness is
22 clearly not competent to give a judgment of.

23 Then my second sub-reason within the category of the fourth
24 argument for non-admission of the report, is that the report
09:55:02 25 usurps the role of the Trial Chamber and violates the fundamental
26 principle that it is for the Trial Chamber and the Trial Chamber
27 alone, and not for an expert to make factual findings and
28 inferences on the evidence. Also here, I already gave on
29 Wednesday several examples, but what I would like to stress this

1 morning, Your Honours, is that the report goes into motivations
2 of individuals and also goes into the assessment of the truth of
3 certain facts. For example, paragraph C2.7 where the witness
4 goes into, he calls it Musa's real motivation, which is, in his
09:55:57 5 view, difficult to detect, but in his opinion he alleges that the
6 motivation of Musa was a preference for more independent role.
7 The second example whereby the report invades the role of the
8 Trial Chamber in assessing the facts of the case and the evidence
9 is paragraph C4.4. I think this is an even more clear example
09:56:29 10 where the report says:

11 "It is difficult now to determine the exact motivations
12 behind the AFRC's decision to advance to and attack Freetown.
13 The decision was made by Musa, and he died in Benguema a few
14 weeks later, without revealing the inner thoughts. In my view,
09:56:47 15 there were probably three connected motivations in Musa's mind,"
16 and then we have the enumeration of the three alleged inner
17 motivations as described by the witness.

18 Then in the third place paragraph, D.5 where the witness
19 goes into the alleged policy and it's literally saying in
09:57:32 20 paragraph D5.2, "But I suspect that the truth is more simply," et
21 cetera, and here he refers to the issue of military
22 justifications.

23 Then the last example is paragraph E4.2 where the report
24 again goes into the inner motivations of individuals and the
09:57:57 25 alleged truth of certain facts by saying, "It is not clear when
26 this became clear in Gullit's mind," and therefore also here the
27 witness goes into an area on which he clearly is not competent
28 and which area is for the Trial Chamber to assess.

29 Your Honours, in conclusion, it is our submission that it

1 is not possible to accept this report while ignoring these
2 portions which I just described. In the alternative, when the
3 Honourable Trial Chamber would think otherwise, we believe that
4 the report of this witness could only be accepted when this post
09:58:53 5 of all these portions which go not only into the ultimate issue
6 in various aspects, but also goes into the issue of potential
7 criminal law defences and crimes. It could also be only accepted
8 when deleted from the elements which are clearly in violation of
9 the mentioned principles under international criminal law. So,
09:59:27 10 therefore, in the alternative, we believe that the report should
11 be rephrased and disposed of all the elements of which Your
12 Honours have already decided that these elements go to the
13 ultimate issue. In addition, also the elements I referred to in
14 my submissions this morning. Thank you.

09:59:51 15 PRESIDING JUDGE: Thank you. Your reply, Ms Ngunya?

16 MS NGUNYA: Thank you, Your Honours. My colleague,
17 Ms Pack, will be responding.

18 MS PACK: Thank you, Your Honour. Your Honour, my learned
19 friend, Mr Knoops, has objected to the admission of this report
10:00:11 20 on the grounds that it offends or parts of it offend the ultimate
21 issue rule, and he advances a further submission concerning
22 defences and that this witness mentions crimes or possible
23 defences in international law to crimes.

24 Your Honour, none of the arguments raised by my learned
10:00:39 25 friend are arguments against admitting either the whole of or
26 part of this report - none of them. In my submission, my learned
27 friend has misunderstood what the ultimate issue rule is all
28 about. The ultimate issue rule is about what is the ultimate
29 issue in this case. The ultimate issue in this case is whether

1 or not one or all of the three accused in this case are
2 individually criminally responsible for the crimes alleged in the
3 indictment. It is about individual criminal responsibility.

4 My learned friend appears to be suggesting that a military
10:01:13 5 expert cannot be -- a military expert's report cannot be used by
6 a prosecution in a case in these circumstances where, because the
7 report opines on the hierarchal structures, command structures
8 and military aspects of the case of the AFRC faction, which
9 doesn't touch upon the individual criminal responsibility of any

10:01:43 10 of the accused. An analogy may be drawn in national
11 jurisdictions -- I know this may seem trite, Your Honours, but I
12 will give the example of a situation where a forensic expert is
13 called by the prosecution in a national jurisdiction, reminding
14 ourselves, of course, that the ultimate issue rule is a common

10:02:07 15 law rule applied in jury trials in common law jurisdictions. I
16 does not follow that it should apply here, in fact, because Your
17 Honours have a totally different set of rules which govern how
18 you conduct your cases here. But, be that as it may, the
19 comparison with a national jurisdiction under a common law

10:02:30 20 jurisdiction, a forensic expert may be called to testify that a
21 victim of a gunshot wound was a victim of a homicide and not
22 suicide. Now, in doing so, he has opined as to one of the legal
23 elements of the crime of murder. And so he has spoken and so
24 provided an opinion on a legal element of the crime of murder

10:02:54 25 that homicide, not suicide, was the cause of death. In so doing,
26 he has provided an opinion on a matter which relates to the
27 ultimate issue in the case: the individual criminal
28 responsibility of the accused in that case for the murder, but he
29 has not said that it was the accused in terms that committed the

1 crime, but he has provided an opinion as to a legal element of
2 the crime, effectively, a matter which goes to the legal element
3 of the crime, related to the ultimate issue. Of course Your
4 Honours would never not admit a forensic expert opinion in the
10:03:36 5 national jurisdiction on that sort of issue, Of course not. It
6 would not even be suggested by the defence that that sort of
7 evidence would not be admissible. The question obviously would
8 be the defence would call their own expert evidence, the defence
9 would seek to persuade Your Honours at the end of the day when
10:03:52 10 determining all the evidence that the defence evidence was the
11 evidence that you should attach weight to, not prosecution
12 evidence, or whatever it might be, but it would be no grounds for
13 not admitting the evidence. It would all be a question of
14 weight.

10:04:05 15 By the same token, the same expert might say, for example,
16 the fingerprints on the gun that was the gun used that fired the
17 shot that killed the victim were the fingerprints of the accused.
18 All these matters go to relate to the ultimate issue, but there
19 would never be any situation under national jurisdiction where
10:04:25 20 Your Honours would exclude the evidence, and not just on the
21 grounds of offending the ultimate issue, it patently doesn't.
22 Just as this evidence patently does not offend the ultimate issue
23 rule - any of it.

10:04:45 24 Your Honours, the ultimate issue rule, in any event, is
25 rule of common law and geared towards jury trials. Your Honours
26 are judges who can attach what whatever weight you want to
27 whatever parts of the report that you consider appropriate. Your
28 Honours are aware of and have applied on numerous occasions the
29 provisions of this Court, Rule 89(C), which provides that any

1 relevant evidence may be admitted by Your Honours. It doesn't
2 mean, Your Honours, that if you admit this evidence that you are
3 saying anything about the weight that you attach to it, that you
4 are necessarily going to rely on any of it. What it means is you
10:05:21 5 are content to have it admitted at this stage. It is no value
6 judgment of its weight and Your Honours have, in various of your
7 decisions, adopted -- and the reasoning of the Fofana appeals
8 judgment on the bail decision in that case, if Your Honours
9 recall, Your Honours have referred to it on numerous of your own
10:05:47 10 decisions on the meaning of 89(C). And what that means, Your
11 Honours, is that you can admit any relevant evidence and in
12 admitting that evidence you are not exercising a value judgment
13 on the quality of that evidence.

14 Your Honours, no doubt the Defence will call their own
10:06:06 15 military expert evidence in the course of their defence. Your
16 Honours, the counsel for the defendants have vigorously
17 cross-examined Colonel Iron as to his report; have cross-examined
18 as to possible bias; have cross-examined as to the quality of his
19 sources, all those matters that are routinely asked in questions
10:06:25 20 of experts in challenging their report. No doubt they will
21 produce their own military expert evidence. That evidence might
22 try to deal with the same issues that Colonel Iron deals with.
23 It may come to opposing views, and Your Honours will have the
24 opportunity of considering all that evidence, but the time at
10:06:43 25 which Your Honours should determine whether or not what weight to
26 attach to any of that evidence is at the end of the case,
27 Your Honours, not now. It is not now for Your Honours to decide,
28 to make a value judgment of this evidence and to determine that,
29 for whatever reason, any or all of that part of the report -- the

1 matters contained in or all of the report are matters which you
2 don't want to take into account. Now is not the time,
3 Your Honours. The time for making that determination would be at
4 the end of the case. There is no basis for not admitting any of
10:07:13 5 the report, in my submission, at this stage.

6 As I say, issues of hierarchy, issues of command structure
7 and command in the AFRC faction are obviously highly relevant to
8 the issues in this case. Obviously that cannot be in doubt.
9 This witness does not trespass upon Your Honours' determinations,
10:07:44 10 Your Honours' judgments, and seeks to provide an expert opinion
11 that will assist your Your Honours, not in a vacuum, that will
12 assist Your Honours in your final determinations.

13 My learned friend has gone through, in some detail, the
14 various paragraphs which, as I understand it, it may be that an
10:08:02 15 alternative is being put, I am not sure, but there are various
16 aspects of the report that offend because they involved this
17 witness making inferences of fact or conclusions as to facts
18 which displace Your Honours' own role in forming judgments on the
19 facts.

10:08:32 20 Your Honours, again, it is trite, but Your Honours are well
21 aware, of course, as is my learned friend that there is no rule
22 of law that states an expert cannot give opinions on fact that
23 are either in evidence or from sources provided to him and, in so
24 doing, he is not displacing Your Honours' role. Your Honours
10:08:51 25 will be forming judgments on issues at the end of the trial. You
26 may or may not be assisted by opinions on concern issues. Your
27 Honours may form different views as to facts from this expert,
28 but that is for Your Honours to decide and Your Honours may, when
29 you come to determine the quality of this evidence at the end of

1 the trial, Your Honours may determine that you are not assisted
2 by certain aspects of the report, that you do not share -- that
3 in your judgment certain inferences of fact are incorrect. You
4 may come to that view, Your Honours, but that is no reason why
10:09:21 5 the report should be excluded at this stage.

6 Your Honours have heard from Colonel Iron himself how he
7 has dealt with facts. He has not sought to supplant Your
8 Honours' role. What he has been doing is forming expert opinions
9 on certain facts that are relevant specifically to the military
10:09:41 10 context, and Your Honours have heard how he has dealt with this,
11 really, in two ways. Firstly, he has dealt with the micro facts
12 which he has taken from his sources and from testimony in order
13 to build a bottom-up picture of the AFRC faction. This is the
14 methodology that he decided was the best methodology for
10:10:01 15 determining what was the AFRC faction as an organisation - how it
16 ticked, in his words.

17 The other way in which he has used facts - and, again,
18 completely different from what Your Honours will be determining
19 at end of trial - is to look at specifically military operations
10:10:22 20 and by that I don't mean criminal activities, matters alleged in
21 the indictment, crimes committed at various crime bases, but how
22 military operations worked in the AFRC faction, because he was
23 specifically looking, as you recall, Your Honours, at the issue
24 of cohesion as being one of the factors that he considered in the
10:10:45 25 four questions as to whether or not the AFRC faction constituted
26 a military organisation. One of the issues was cohesion between
27 strategy, operational level, tactical level, and he was
28 questioned on that by my learned friend, in fact, and on the
29 chart that he prepared in which he indicated a level of cohesion

1 between these three matters. He went into and provided a
2 narrative in his report on some of the operations conducted by
3 the AFRC faction. That narrative is geared towards the military
4 perspective, and you heard what he said about the attack on
10:11:27 5 Mange. He was not looking at crimes in any of these locations.
6 That wasn't what he was concerned with. It was to determine the
7 military effectiveness of the conduct of these operations so as
8 he could reach his final opinion as to whether or not, as an
9 organisation, the AFRC faction was a military organisation. So
10:11:52 10 that is how he has dealt with facts, and that is a different
11 approach to the approach Your Honours will take at the end of the
12 case. In any event, it is an approach that is well within his
13 expertise as a military expert, and one which the Prosecution
14 says will assist Your Honours.

10:12:18 15 I just simply cite, for the sake of completeness, from
16 paragraph 6.88 of the textbook on International Criminal Evidence
17 by the late Judge Richard May and Marieke Wierda. I quote from
18 the 2002 edition of that textbook, paragraph 6.88 at page 202.
19 "Another important issue," it is stated in this paragraph,
10:12:51 20 "concerning expert evidence relates to the differing roles of the
21 expert in the Trial Chamber, in particular in relation to the
22 evidence in the case. In this connection it should be borne in
23 mind that it is for the court to make the factual findings on the
24 evidence, whereas it is for the expert to express an opinion on
10:13:07 25 them. The two roles," it goes on, "may be difficult to
26 distinguish in practice. An expert may be called upon to draw
27 inferences or to formulate an opinion from particular facts based
28 on his professional knowledge and experience, or he may be called
29 on to give evidence on facts which are not obvious to the layman

1 but which his professional knowledge and experience enable him to
2 perceive. "

3 Your Honours, I just quote from that for completeness'
4 sake. I think it is stating the obvious, in my submission, but
10:13:36 5 there it is. It is trite law. This expert hasn't sought to
6 displace your role in making expert opinions on facts from his
7 sources or testimony, expert military judgments within the
8 parameters of the report that he has been asked to write.

9 Now, Your Honours, I should go through each one of the
10:14:02 10 specific references that my learned friend, Mr Knoops, has
11 referred to in his submissions. I will do that very briefly.
12 Starting off with the first section to which my learned friend
13 Mr Knoops referred, which is B9-11, and also E6-8. That was
14 pages B9-11 and pages E6-8. What these sections deal with is the
10:14:56 15 question that the expert Colonel Iron asked himself; one of four
16 questions in then forming the view as to whether or not the AFRC
17 was a military organisation. Breaks that down into four
18 questions and one of those questions was: Was command effective
19 in the AFRC faction. I emphasise again the faction is the focus,
10:15:18 20 not the individual. And not only that, in looking at this issue
21 of was command effective, not only is he not focusing on the
22 individual, on individual criminal responsibility, but also he is
23 looking at that for the purposes of answering the larger question
24 for him which was: Was this organisation a military
10:15:40 25 organisation? Nothing near the ultimate issue in this case,
26 Your Honour, were these three accused responsible under 6.1 or
27 6.3 for the crimes alleged in the indictment.

28 Your Honours made a decision two days ago on a question
29 that was put by my learned friend Ms Ngunya and that question was

1 a very specific one - and if I can just get the reference for
2 that. I should say that your decision was a very specific one.
3 And what it went to was that my learned friend asking the witness
4 whether or not there was effective command in the AFRC. I am
10:16:51 5 corrected, whether he came to any conclusion as to whether there
6 was effective command in the AFRC.

7 Now, Your Honours, in ruling that Ms Ngunya can ask that
8 question of the witness, Your Honours didn't thereby rule that
9 those parts of the report that dealt with the question, "was
10:17:15 10 command effective?," should not be admitted in evidence. That is
11 not the case and it is -- I think my learned friend submitted it
12 would be highly prejudicial to the accused if it goes in and that
13 prejudice would outweigh the probative value. It might be highly
14 relevant, Your Honours, but there is no reason why that evidence
10:17:34 15 should be excluded on the grounds of prejudice and no reason to
16 exclude the material in these paragraphs on the grounds that they
17 offend the ultimate issue. It clearly doesn't.

18 If you look at B6 and following, this deals with the
19 theory, the theory in that fourth question, in order to ascertain
10:17:53 20 whether or not a military organisation exists, the fourth
21 question, "was command effective," breaks down into three
22 sub-issues: Leadership, decision-making and control. In that
23 theory aspect from B6 to -- pages B9 to B11 clearly does not
24 comment on any aspect of this case, it is simply a question of
10:18:15 25 the theory of what makes command effective. And that, in Colonel
26 Irons' view, has to be looked at with the three issues of
27 leadership, decision-making and control in mind. So there is no
28 reason for Your Honours not to be assisted by that and no reason
29 for that evidence to be excluded.

1 Equally, at the end of the report, E6-8, which are the
2 other pages to which my learned friend refers, Colonel Iron asks
3 himself the question at E5: "Was command in the AFRC effective?"
4 He is not asking himself the question: "Did the accused, the
10:19:08 5 first accused, have effective command over subordinates, such as
6 to impose upon him criminal -- individual criminal responsibility
7 under Article 60 of the Statute?" That is not what he is asking
8 there. He is dealing with again, I say, a faction. It is a
9 matter that relates to the ultimate issue, it is not offensive to
10:19:27 10 the ultimate issue rule. He is looking at that faction and
11 asking the question: "Was command in the AFRC effective?"

12 But look at that, if one looks at the question, then the
13 body of what it is that Colonel Iron deals with, what he then
14 focuses under there is not focused on that language. What he
10:19:46 15 does is deal with those sub-issues: Decision-making, leadership
16 and control, and those were the sub-issues he identified as
17 making up the question, "was command effective?" And he deals
18 expressly with that in so far as the AFRC faction is concerned.
19 If you look in the language of E5.1, all the way to the
10:20:10 20 conclusion, he is dealing specifically with those elements. The
21 language of effectiveness of command does not come into those
22 paragraphs, in fact, Your Honours.

23 It is at 5.5 that Colonel Iron reaches his conclusion and
24 what is the language of that conclusion? It is that the AFRC had
10:20:30 25 a strong command capability which failed on 6th January and then
26 just goes on to elaborate on that.

27 Your Honours, that conclusion cannot possibly, in my
28 submission, be said to offend the ultimate issue rule - and I
29 rely again upon the analogy I drew in the national jurisdiction -

1 but also I take it further than this, Your Honours, and say this,
2 that Your Honours are judges. If Your Honours don't consider
3 that that conclusion assists you, then Your Honours may leave it
4 out of account when you come to determine the quality of this
10:21:02 5 evidence at the end of trial. But you will see, Your Honours,
6 that there is no judgment there by this witness as to the
7 individual criminal responsibility of these accused. And I go
8 further and say that what he does, in fact, in those paragraphs
9 is to deal with those sub-issues which are the important aspects
10:21:20 10 of what he considers to be effective command. The language of
11 effective command, vis-a-vis the AFRC faction, in fact, only
12 comes in at paragraph E6.2 in the very last sentence. "It can
13 therefore be concluded that the AFRC was a military organisation,
14 and effective command was being exercised, but on 6 January 1999
10:21:33 15 the senior commanders lost focus."

16 If Your Honours consider that you are not assisted by that
17 phrase "and effective command was being exercised" because of
18 your earlier ruling, then Your Honours may leave that out of the
19 count when you come to consider the evidence at the end of the
10:21:56 20 trial. But there is absolutely no reason to exclude any part of
21 this report, either because of your earlier ruling or because any
22 of it offends the ultimate issue rule.

23 There are further paragraphs to which my learned friend,
24 Mr Knoop, has referred and I just ought to deal very briefly
10:22:14 25 with those.

26 In so far as B6 and E5 was concerned, again my learned
27 friend raises the further argument that these sections were not
28 subjected to examination in court; that is wrong. My learned
29 friend, Ms Ngunya went into detail into the various aspects of

1 command, what constituted command, decision-making and so on.
2 She went into that in detail. The fact that each and every
3 sentence in the report is not gone through in chief is absolutely
4 no reason not to exclude the report from admission. The whole
10:22:55 5 point of having a report available is that you then don't have to
6 go through every single aspects, but just draw out those parts
7 where it will assist Your Honours to hear oral evidence.

8 The diagram at D3, page D3. Your Honours didn't exclude
9 the diagram from admissions, simply wanted Ms Ngunya to lay a
10:23:19 10 foundation for talking about it and asking questions about it in
11 court. It is not a reason to exclude the diagram from admission
12 as part of the report. It is part of the report. You will see
13 the foundation, Your Honours, in the report for how that
14 diagram -- what that diagram is and Your Honours will see from it
10:23:45 15 on its face what exactly it is all about. There is no reason to
16 have that diagram excluded from the report when, in particular,
17 Colonel Iron has also given detailed evidence as to hierarchy and
18 function in hierarchy of various positions held by those members
19 of the AFRC faction.

10:24:06 20 Your Honours, there are names in the chart and of course
21 you are aware of that, but Your Honours are judges. Your Honours
22 can identify whether or not -- Your Honours can leave out of the
23 count the names in the charts. Your Honours are not going to be
24 prejudiced in your deliberations by names in the charts. Your
10:24:22 25 Honours have heard now all the Prosecution, for the most part,
26 the Prosecution evidence on the various places held by various
27 individuals in the AFRC command structure. Your Honours have
28 heard the evidence. Your Honours can make whatever factual
29 findings on that evidence Your Honours consider appropriate. It

1 is absolutely not the case - and if it is suggested - that you
2 will be unduly influenced by what is contained in this chart and
3 what is put in this chart and any names in this chart by
4 Colonel Iron and Your Honours can perfectly easily in my
10:24:52 5 submission leave that out.

6 PRESIDING JUDGE: I think we dealt with that before.

7 MS PACK: I am grateful.

8 Finally, I will just go -- not finally, I am afraid, a few
9 more paragraphs to go thorough. Paragraph C3.13, which is at
10:25:23 10 page C9. This was, as I understand it, one of the two paragraphs
11 to which my learned friend referred where a name of one of the
12 accused was mentioned. C3.13 it was the objection raised because
13 there is a sentence there that "Discipline for the women was
14 dispensed by the 'Mammy Queen' who was responsible to '55'".

10:25:48 15 Well, that is absolutely no reason to refuse the admission of
16 this report because Colonel Iron has made a factual analysis in
17 the context of what he is doing, which is to look at the military
18 context, the context of military operations, and provide a
19 narrative for that. He looked specifically at those operations,
10:26:09 20 as he indicated, going down from Camp Rosos and Major Eddie Town
21 into Freetown. And in providing the facts upon which he relied
22 in forming his expert analysis of the quality of those
23 operations, he is simply allowing Your Honours to see what facts
24 it is that he had that he was relying upon. It is much more
10:26:34 25 preferable, in my submission, for Your Honours to have before you
26 the material upon which Colonel Iron was relying than not. Then
27 Your Honours can assess the quality of his expert opinions and he
28 has provided that broad factual background so Your Honours are
29 absolutely aware what the factual background is. I am afraid I

1 am going to have to --

2 PRESIDING JUDGE: Keep them to the point, Ms Pack.

3 MS PACK: Yes, Your Honour. I am afraid I will have to go
4 through all of them, but I will keep it very brief.

10:26:59 5 PRESIDING JUDGE: Well, just keep them to the point. There
6 is no need to elaborate.

7 MS PACK: D5.4 --

8 JUDGE LUSSICK: Just remember, we are capable of making our
9 own assessments without you having to explain to it us, Ms Pack.

10:27:12 10 MS PACK: Thank you, Your Honour. I will deal very briefly
11 with each of the paragraphs. D5.4, the other paragraph, again, I
12 say the same thing, it is part of the factual narrative. You
13 have heard my submissions on that, I will not push that any
14 further.

10:27:21 15 E4.4, the same thing applies. It is military judgments
16 being drawn. What the particular aspect of this - and I will
17 just deal with this in a little further detail. What my learned
18 friend was complaining about or observing here was that there
19 were judgments being made on legal issues. There were two
10:27:42 20 occasions upon which he said this was being done; at D5.4 and
21 E4.4, that what was being said by Colonel Iron went to military
22 justifications or the defence of military necessity. Colonel
23 Iron has said in terms in cross-examination that he is a lawyer
24 and his report was --

10:28:01 25 PRESIDING JUDGE: That he was not a lawyer.

26 MS PACK: I am sorry, I do apologise. He is not a lawyer
27 and that he was specifically not looking at legal issues in his
28 report. So, of course, this does not purport to deal with legal
29 issues, legal defences, it is a military analysis and I leave it

1 at that, Your Honours.

2 Again, C2.7 - and these next paragraphs my learned friend
3 suggested that these paragraphs were usurping your role as
4 judges. I would again submit that that is not the case and Your
10:28:31 5 Honours can form your own judgments on that. But C2.7, looking
6 at SAJ Musa's real motivation, again, same thing, the reason why
7 he is looking at the facts, I don't need to repeat that, there is
8 no usurpation of Your Honours' role in his setting out those
9 facts in that paragraph.

10:28:54 10 C4.4 is the same thing. Looking at motivations - and Your
11 Honours have heard what the Colonel's evidence was on looking at
12 what he called the moral issues, the aspects of motivations in
13 looking at the issues of cohesion in a military operation.

14 D5 -- sorry, C -- D5.2 is the next paragraph and again,
10:29:20 15 Your Honours, this is just part of the factual narrative, it is
16 all there. I make the same submissions. It is there for the
17 sake of transparency so that Your Honours know what this witness
18 is relying on.

19 E4.2, again finally, it is the same thing. "It is not
10:29:38 20 clear when this became clear in Gullit's mind", that is the other
21 reference to one of accused, which, my learned friend suggested,
22 was offensive. Again for the transparency, it is there and it is
23 dealing with the strategy, tactical, operational cohesiveness. I
24 leave it at that.

10:29:55 25 Your Honours, those are all the specific paragraphs that
26 are mentioned.

27 PRESIDING JUDGE: Thank you, Ms Pack. Mr Knoops, please
28 confine yourself to points of law.

29 MR KNOOPS: I am grateful, Your Honour. I will confine

1 myself to points of law.

2 JUDGE SEBUTINDE: Sorry, Mr Knoops, we were just observing
3 that you do not have a right of reply. This was a Prosecution
4 application to which you respond and they have just closed their
10:30:49 5 replies and that closes their submissions for us to consider.

6 MR KNOOPS: Yes, Your Honour. Are Your Honours willing to
7 grant leave for this rather exceptional and also fundamental
8 situation I think for this case just to give brief reply, because
9 I do believe that the Prosecution has wrongly set out the case
10:31:09 10 and --

11 JUDGE LUSSICK: Well, you are starting to make submissions
12 when Justice Sebutinde has just said that you should not. The
13 problem is, Mr Knoops, that arguments have to finish somewhere.
14 You will no doubt raise points, if we allow you to have another
10:31:28 15 bite of the cherry, that Ms Pack will then justifiably say "you
16 must let me reply to those". How long do we go on with this? I
17 am not calling for any reply, I am just pointing out why
18 Justice Sebutinde has closed the argument at this stage.

19 [AFRC14OCT05B - AD]

10:31:55 20 JUDGE SEBUTINDE: To set your hearts at ease, we think that
21 your submissions have been very clear on either side, and are
22 sufficient to help us reach a ruling on this issue.

23 PRESIDING JUDGE: We will take an early mid-morning break
24 in order to consider the submissions and to make a ruling on this
10:32:18 25 application.

26 The Bench has no questions of the witness. Therefore,
27 Colonel Iron, we thank you for your evidence. You are at liberty
28 to leave the Court. Your evidence is now finished and we are
29 grateful for your assistance.

1 THE WITNESS: Thank you very much indeed, Your Honour.

2 JUDGE LUSSICK: Colonel, if you wish to stay, you are quite
3 welcome to do that as well.

4 THE WITNESS: I might watch it on television, thank you.

10:33:12 5 PRESIDING JUDGE: Madam Court Attendant, please adjourn the
6 Court temporarily as we are deliberating and we do not want to
7 give a precise time.

8 [The witness withdrew]

9 [Break taken at 10.35 a.m.]

11:18:10 10 [Upon resuming at 11.14 a.m.]

11 PRESIDING JUDGE: The ruling in this matter read by my
12 learned colleague Justice Lussick.

13 [Ruling]

14 JUDGE LUSSICK: Rule 89(C) allows the Trial Chamber to
11:18:11 15 admit any relevant evidence. We consider the contents of the
16 report to be relevant and therefore admissible. However, having
17 said that, we shall disregard any material which in our judgment
18 goes to the ultimate issue or provides opinions on matters upon
19 which the Trial Chamber is going to have to rule, or draws any
11:18:11 20 conclusions or inferences which the Trial Chamber will have to
21 draw, or makes any judgments which the Trial Chamber will have to
22 make. With those qualifications, and taking into account that
23 the Defence has had ample opportunity to cross-examine the
24 witness, both on the report and on his sources, we consider that
11:18:12 25 the accused will not be prejudiced by the admission of the
26 report. Accordingly, the report is admitted into evidence
27 subject to what we have said. What weight ought to be attributed
28 to it will be assessed by the Trial Chamber at the end of the
29 trial and in the light of all of evidence adduced.

1 PRESIDING JUDGE: I think it is P36, Madam Court Attendant.

2 MS EDMONDS: Yes, it is P36.

3 [Exhibit No. P36 was admitted]

4 PRESIDING JUDGE: Thank you. That will no longer be MFI;
11:18:12 5 it will be P36.

6 MS PACK: The next witness is the last witness whom the
7 Prosecution will be calling, Witness TF1-217. He is not
8 available to testify until Monday. This is something about which
9 the Prosecution had informed my learned friends for the Defence.
11:18:12 10 He will be testifying in Krio and will testify with a screen and
11 pseudonym number to be lead by my learned friend, Mr Hodes. He
12 is not available this afternoon. I am afraid there obviously
13 isn't another witness available. He is last witness in the case.

14 [Trial Chamber conferred]

11:18:12 15 PRESIDING JUDGE: Counsel for the Defence have heard
16 Ms Pack. Is there anything counsel wish to say?

17 MS THOMPSON: No, Your Honour. As Ms Pack says, we were
18 aware of the situation a while ago.

19 PRESIDING JUDGE: Thank you. In the circumstances
11:18:13 20 therefore we appear to have no alternative but to adjourn the
21 case until Monday morning at 9.15.

22 Sorry, Mr Knoops, you are on your feet.

23 MR KNOOPS: Just a minor information. As I am leaving
24 Sunday evening for other obligations in The Hague, Mr Spain will
11:18:13 25 represent the accused Kanu on Monday with respect to the last
26 witness, 217.

27 PRESIDING JUDGE: I am grateful for that information,
28 Mr Knoops.

29 MR KNOOPS: Much obliged, thank you.

1 PRESIDING JUDGE: It is noted. Madam Court Attendant,
2 please adjourn Court until Monday morning at 9.15 a.m
3 [Whereupon the hearing adjourned at 11.17 a.m.,
4 to be reconvened on Monday, 17th the day of
5 October 2005, at 9.15 a.m.]

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EXHIBITS:

Exhibit No. P36

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WITNESSES FOR THE PROSECUTION:

WITNESS: RICHARD MORTIMER IRON

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CROSS-EXAMINED BY MR FOFANAH

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