



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

TUESDAY, 24 OCTOBER 2006
9.15 a.m.
TRIAL

TRIAL CHAMBER II

Before the Judges:

Richard Lussick, Presiding
Teresa Doherty
Julia Sebutinde

For Chambers:

Mr Simon Meisenberg
Ms Sophia Cason

For the Registry:

Ms Advera Kamuzora

For the Prosecution:

Mr Karim Agha
Mr Charles Hardaway
Ms Shyamala Alagendra
Ms Maja Dimitrova (Case Manager)

For the accused Alex Tamba
Brima:

Mr Koj o Graham

For the accused Brima Bazy
Kamara:

Mr Andrew William Kodwo Daniels

For the accused Santigie Borbor
Kanu:

Mr Geert-Jan Alexander Knoops
Mr Ajibola E Manly-Spain

1 [AFRC24OCT06A - MD]
2 Tuesday, 24 October 2006
3 [Open session]
4 [The accused present]
5 [The witness entered court]
6 [Upon commencing at 9.15 a.m.]
7 WITNESS: WILLEM A J PRINS [Continued]

8 PRESIDING JUDGE: Well, general, we remind you you are
9 still on your original oath to tell the truth.

09:18:18 10 THE WITNESS: Yes, Your Honour.

11 PRESIDING JUDGE: Yes, Mr Agha.

12 CROSS-EXAMINED BY MR AGHA: [Continued]

13 Q. Good morning, general. I apologise for keeping you here
14 over such a long weekend, but hopefully I will round up today. I
09:18:32 15 want to take you back to last Friday's proceedings and
16 particularly the end of those Court proceedings. Now, learned
17 defense counsel said that he had dinner with you at the hotel
18 whilst you were still giving evidence; do you recall that?

19 A. Yes, I do.

09:18:49 20 Q. Now, as you are aware, I think you were surprised about the
21 content of TRC-01's evidence before this Court; is that right?

22 A. I don't understand your question, really.

23 Q. Well, you were surprised about what TRC-01 had said before
24 this Court.

09:19:08 25 A. Yes, indeed.

26 Q. Now, over dinner with learned Defence counsel, did any
27 aspect of TRC-01 arise?

28 A. No, sir. I learned TRC-01's statement because I was
29 listening.

1 Q. But you didn't discuss anything like that?

2 A. No, sir. I was trained to obey orders, and that's what I'm
3 doing. When I'm told to do some something which is so important,
4 that's the way I do it.

09:19:37 5 Q. So why did you have dinner with learned Defence counsel?

6 A. Well, sir, as I understood, one should not discuss any of
7 your statement or proceedings, and I was not aware that, you
8 know, being in the same place, that you could not have dinner. I
9 was not aware of that, and I'm sorry about that. But I was very
10 well aware of the fact that you don't discuss matters, and that's
11 what I didn't do.

09:20:12

12 Q. Thank you, general. I would now like to turn -- to clear
13 up another point with you, if I can, and that's with respect to
14 Colonel Iron's report. And it was whether Colonel Iron was

09:20:35 15 opining whether the AFRC faction was a traditional army. Now, do
16 you have Colonel Iron's report with you?

17 A. Yes, I do.

18 Q. And may I refer you to that. I believe the Court also has
19 the part. Now, initially, general, I would like to take you to
20 part A. This is just the first page after the front page and,
21 for the Court, it is page 14413, wherein it reads --

09:20:56

22 JUDGE DOHERTY: Excuse me, Mr Agha. I should have told you
23 before but I, at least, don't have those page numbers on my copy.
24 So if you would please just give me Colonel Iron's paging system,
25 please.

09:21:24

26 MR AGHA: The slight difficulty there, Your Honour, is on
27 these first couple of pages, he doesn't have a page number.

28 JUDGE DOHERTY: I noticed.

29 MR AGHA: He just has a front sheet and then another two

1 pages and then his rather unusual numbers starts at
2 "Methodology," so I apologise.

3 JUDGE SEBUTINDE: But there are paragraph numbers. So
4 maybe --

09:21:45 5 MR AGHA: Indeed. Where we have part A introduction, A1.

6 Q. Now, do you have that, general?

7 A. I have E, like in echo 1. Are we at part E, "Analysis."

8 Q. No, we are going right back to the beginning of Colonel
9 Iron's report.

09:22:05 10 A. Oh, all right.

11 Q. We have the front sheet and then we have the next page
12 after that, which says, "Part A. Introduction."

13 A. Yes.

14 Q. So you have this?

09:22:13 15 A. Yes.

16 Q. Now, I would like to read you A1, and just a part of it, at
17 least. And what it says is, "I was first approached by the UK's
18 Ministry of Defence to be a military expert witness in June 2003
19 to assist in the determination of the extent to which the AFRC
20 and other organisations involved in the Sierra Leone war were
21 military organisations with a military command and control."

22 Now, on the same page at A3, he has his approach, and I
23 read, just briefly, from that, too. "A3. Approach. In order to
24 establish whether the AFRC was a military organisation," and
09:23:10 25 then, on the same page, he gives the four tests he devised, and
26 you will see the final test is at D, A3D at the bottom of the
27 page. It reads, "Analysis. This part takes the methodology
28 explained in part B and applies it to the evidence, analysis and
29 judgements made in part C and D. It reaches conclusions against

1 each test and then synthesizes the conclusions to reach a general
2 opinion as to whether the AFRC was a military organisation".

3 So, would you not agree with me that Colonel Iron was
4 attempting to determine whether the AFRC was a military
09:23:57 5 organisation?

6 A. I think Colonel Iron, all along, wanted to establish the
7 fact that it was a traditional military organisation, as such.

8 Q. I would suggest to you that Colonel Iron is not trying to
9 determine whether the AFRC was a traditional army; he is simply
09:24:20 10 comparing it against some of the characteristics which are
11 required?

12 A. Well, he does and then, in his reasoning and argumentation,
13 that is what his conclusion comes to, and that, you know,
14 fundamentally, all along, has been the big difference between the
09:24:46 15 two of us because, you know, in his reasoning, he tries to find
16 evidence or argumentation why it is a military organisation in a
17 traditional sense, and that what we, no doubt, will discuss also
18 today, with every item he discusses, he first discusses the
19 military organisation as he and I know it, and then tries to find
09:25:18 20 support. Well, it's a little bit of this and a little bit of
21 that, and then comes to the conclusion it's a traditional
22 military organisation and that, you know, with all these things
23 we are going to discuss today, it's the same difference of
24 opinion.

09:25:39 25 Q. Now if we can go to "Mythology," which is again in Iron's
26 report. It's at B1 and, for the Court's benefit, it's on page
27 14415. Now, this is the method which Colonel Iron used in
28 determining whether the AFRC faction was a military organisation.
29 And I will just read you, again briefly, parts of his

1 methodology, and in the introduction, "The methodology" -- this
2 is at B1.1 -- "is to determine whether an armed group is a
3 military organisation in the traditional sense and whether
4 command responsibility exists," and then he suggests we need to
09:26:30 5 examine four questions.

6 So Colonel Iron is trying to determine whether a military
7 organisation exists in a traditional sense, isn't he?

8 A. Yes.

9 Q. Again, if we look then just underneath at the four
09:26:46 10 questions he likes to examine, the second one is: "Did it
11 exhibit the characteristics of a traditional military
12 organisation?" So he is not opining whether the AFRC was a
13 traditional military organisation, is he?

14 A. Well, you know, there I think we have a different opinion.
09:27:09 15 I think when -- he states the question and then in his
16 argumentation, and also in his conclusion, he comes to the
17 conclusion that it has the characteristics. Now, again, that's
18 wording. How you name it, you name it. But, you know, the
19 question is whether it's a traditional military organisation and
09:27:31 20 he tries to answer that, in my mind. If he doesn't, well, then
21 there is no traditional military organisation.

22 Q. Well, my suggestion to you is that Colonel Iron was trying
23 to see whether the AFRC faction was a military organisation as
24 opposed to a traditional one.

09:27:49 25 A. Well, he uses traditional very often and then again, you
26 know, whether it's military or traditional, I think when Colonel
27 Iron and I talk about military organisation he talks -- and,
28 again, that's his description, you know. If you see when he
29 describes the certain characteristics, he describes a military

1 organisation, as he and I know it.

2 Q. Now, if we come to just the next paragraph down. That is
3 B1.2 after his four criteria, do you have that, his final three
4 lines? I read, "So the question is not is this a perfect
09:28:33 5 military organisation. Instead, it is: Does this demonstrate
6 sufficient characteristics of a military organisation to qualify
7 as such. Thus judgement is required to determine answers to the
8 questions above. "

9 So, again, I suggest to you Colonel Iron is simply seeing
09:28:51 10 whether the AFRC had sufficient characteristics of a traditional
11 military organisation to qualify as such. He is not determining
12 the AFRC faction as a traditional army?

13 A. Well, really, I can't see the difference between the two.
14 I am sorry about that.

09:29:10 15 Q. And, again, finally -- well, not finally, if we were to
16 look at another part of Colonel Iron's report, and this is at B4
17 and, for the benefit of the Court, it's at page 14418, you will
18 see the heading is: "Did the group exhibit the characteristics
19 of a traditional military organisation?" So, he is not saying
09:29:40 20 the AFRC itself was a traditional military organisation, is he?

21 A. Well, again, I can't see the difference. If you ask me is
22 a military organisation a -- does it have the characteristics,
23 and I read the characteristics as described by Colonel Iron, I
24 see what he writes is as I understand a military organisation, in
09:30:10 25 the western -- in my and his organisation. Now, he describes
26 this in about three and half pages and goes in detail through all
27 the characteristics, and then you try to find them and you can't
28 find them. Now, in my mind, you know, you can go into wording of
29 exhibit, but a characteristic is a characteristic, whether you

1 have it or you don't have it. Now, if you don't have it, and if
2 you have just a little bit of it, and you have about 5 per cent
3 of this and 10 per cent of that, then you, in my mind, you cannot
4 come up to the characteristics of a military organisation.

09:30:45 5 Q. Now, if we turn to P8, which is page 14467, which is
6 actually the conclusion on the final pages of his report, the
7 final two lines, his conclusion is: "It can therefore be
8 conducted that the -- it can therefore be concluded that the AFRC
9 was a military organisation." So, I would suggest to you that
09:31:21 10 the whole focus of Iron's report was to assess whether the AFRC
11 faction was a military organisation as opposed to a traditional
12 army?

13 A. Well, not, sir, if you read what he writes in his report
14 previously, then you have to come up with other criteria. If you
09:31:47 15 write the characteristics of a traditional military organisation,
16 you can't come up to that conclusion, then there is no
17 traditional army in my -- so that's where we differ all the time.

18 Q. Okay. So, anyway, let us turn to these 13 characteristics
19 and these, I believe, are found on page 49 of your own report
09:32:10 20 now. So let us run through each of these characteristics in
21 turn. Now, the first is the intelligence process, and that is on
22 paragraph 95 at page 50 and again, for this, you rely on DSK-082,
23 don't you, in large part?

24 A. I also relied on -- rely on 334. I rely on Colonel Iron.

09:33:08 25 Q. Now, as I mentioned, DSK-082, he wasn't there so he can't
26 give observation personally, can he?

27 A. Not personally.

28 Q. Now, a Defence witness, who you are not aware of, has
29 recently given evidence and I will just read a very small portion

1 of what he said regarding the intelligence process. And this is
2 DBK-037. It's date is 5th of October 2006, and it's page 11 and
3 12. And on page 11, it's lines 20 to 29, and on page 12 it's
4 lines 1 to 9. So this is what this witness, who was with the
09:34:07 5 AFRC faction, said about intelligence, and it's line 20 or 19:

6 "Q. Let me just back track a little bit from
7 one of your previous answers, Mr Witness. You
8 said that you would gather information for the
9 troops; is that correct?

09:34:24 10 "A. I was gathering information for the troop.

11 "Q. And this information you would use for the
12 troop to make sure they could have a successful
13 march to Freetown; correct?

14 "A. Yes.

09:34:37 15 "Q. You had mentioned a term 'MIB'; what is
16 MIB?

17 "A. Intelligence military officer.

18 "Q. Now, Mr Witness, one -- you had mentioned
19 of -- let me strike that. Did you -- did other
09:34:53 20 people work with you as you were gathering
21 intelligence, gathering information?

22 "A. Only the military men.

23 "Q. How many military men worked with you to
24 gather intelligence, sir?

09:35:05 25 "A. I had the overall boss who was -- who was
26 dead, may his soul rest in peace.

27 "Q. So you had a person in charge of the
28 military intelligence unit; correct?

29 "A. Correct, sir."

1 So, on that basis, would you agree with me that the AFRC
2 faction had a more than limited intelligence capability for its
3 needs.

4 A. No, I would not agree with that. First of all, it shows
09:35:35 5 that the witness does not have one clue difference between
6 intelligence and information. Now, information is gathered by,
7 in several ways. You can gather information by patrols and other
8 ways, but that's the raw sort of information, I can't give
9 another word, but it's the raw information you get. Now, what
09:36:00 10 Colonel Iron clearly states, and what I support is, from that raw
11 information you need to have analyst intelligence branch to come
12 up to process that information into intelligence. And then there
13 was no intelligence branch. Moreover, the intelligence officer,
14 I don't know, I think it was 334, you know, he was assigned
09:36:28 15 intelligence officer just, there you are, you are the Intel. So
16 he didn't have any schooling, any background. So, you know, that
17 you get information, that is one, but even based on this, you
18 can't, I cannot be convinced neither -- the same was stated by
19 Colonel Iron -- is that you don't have an intelligence collection
09:36:53 20 centre. You don't have an intelligence branch. You don't have
21 procedures how to make the information into intelligence, so, you
22 know, it doesn't tell me much.

23 Q. So you would stick with your conclusion that it was
24 limited?

09:37:07 25 A. Yes, sir.

26 Q. Now, if we go, then, to the second characteristic which is
27 the communication system, and this is on page 51 of your report,
28 at paragraph 98. Now, you didn't interview anyone who was a part
29 of the AFRC faction regarding radio communications, did you?

1 A. No, I did not.

2 Q. And nor did the TRC, did it?

3 A. The TRC report, I don't know. However, saying that, you
4 are aware of the fact that senior officers made comments in the
09:37:54 5 TRC about the non-availability of communication equipment.

6 Q. No, but I'm talking about the period when the AFRC faction
7 was in the jungle under SAJ Musa, not the early days.

8 A. All right, yeah.

9 Q. So you are aware that they don't mention radio
09:38:12 10 communications either?

11 A. I don't recall.

12 Q. Okay. Now, during your extensive research into conflict,
13 did you read any of the transcripts of the military witnesses in
14 the RUF trial who accompanied the AFRC faction?

09:38:29 15 A. No, I did not.

16 Q. I mean, were you aware that in the RUF trial there were two
17 trained radio operators from the RUF who accompanied the AFRC
18 faction?

19 A. No, I was not aware of that.

09:38:45 20 Q. So, if you found that they indeed were trained radio
21 operators accompanying the AFRC faction, that may have had a
22 bearing on your ultimate conclusions?

23 A. Depends on the information but I think the information I
24 got, the sources I got, and also the witnesses and the report
09:39:12 25 from Colonel Iron, made it clear to me that I came to the
26 conclusion as I have stated it.

27 Q. Now, in this paragraph 98 you again rely on DSK-082 who had
28 no direct knowledge of the AFRC's radio communications, does it?

29 A. Well, one should not forget, of course, that DSK-082 was a

1 trained communication officer, who was trained in the UK several
2 times in communications. And of course, as I have stated several
3 times, from his position with ECOMDG, he had knowledge on
4 communications within the AFRC.

09:40:02 5 Q. Now, still on communications, if we turn to page 53, which
6 is part of paragraph 101 of your report, and this is about the
7 seventh line down, and I'll just read you a part of what DSK-082
8 has to say on radios.

9 "As witness DSK-082 observes the use of these radios was
09:40:32 10 very limited due to lack of spare parts, batteries and
11 generators. The batteries got exhausted within a short space of
12 time. There was no possibility to recharge the batteries because
13 of the non-availability of fuel and no vehicles to carry the
14 generators. Furthermore, the use of noisy generators was
09:40:51 15 dangerous because the AFRC positions may be exposed to ECOMDG."

16 Now, you say that DSK-082 was an intelligence officer
17 amongst ECOMDG and therefore his information can be relied upon?

18 A. Well he was, I didn't say he was an intelligence officer.
19 I said that he was working with the intelligence branch of
09:41:19 20 ECOMDG.

21 Q. But on that basis you felt that you could rely on the
22 information he gave?

23 A. Well, for me, reading so much as I have done, you know, and
24 knowing, I'm not a communication officer, but knowing that, you
09:41:40 25 know, that it takes more than a couple of radios to establish
26 communication. You need, indeed, trained personnel. You need
27 the batteries charging, generators, et cetera and if you don't --
28 and then, from then on, you need the procedures. You just -- I
29 just cannot go around here and hand out radio equipment and say:

1 Okay, let's have communication. So it needs a lot more and then,
2 again, based on the criteria established by Colonel Iron, when he
3 describes the essentials of communication, it needs a lot more
4 than I have found.

09:42:24 5 Q. But DSK-082 through his intelligence was in that small
6 paragraph relying on generators and fuel, wasn't he?

7 A. No. He mentioned, rightly so in my mind, that if you have
8 to continue the use of radios it's not just grabbing a couple of
9 radios. You need to maintain them. You need to have spare
09:42:51 10 parts, you know, and you need to have generators to recharge the
11 batteries and therefore you need to have a generator and you need
12 to have fuel et cetera.

13 Q. Again, another witness has come before this Court who, if
14 she is believed, and I will just read you a brief paragraph about
09:43:08 15 what she had to say concerning radio communications or how to
16 power them. And it's DBK-126, and it's on 11 October 2006 and I
17 will just read for you lines 20 to 29 and this is what she said.

18 JUDGE SEBUTINDE: Sorry, what page is that?

19 MR AGHA: It's page 66. I apologise.

09:43:42 20 "Q. What happened", and this is at Camp Rosos
21 by the way. So --

22 "Q. What happened?

23 "A. The most terrible thing that happened in
24 Rosos was the day after the shelling, in fact,
09:43:53 25 I was counting. I counted up to 1,115 bombs
26 that were shelled at Rosos but the most
27 gruesome was, that made us leave Rosos, the man
28 who was sitting on the communication set,
29 immediately the jet came, I think the jet had

1 seen the solar. He followed the route of the
2 solar and left the bomb. It was back of the
3 set. I was there with the chief. In fact,
4 that was where I was cooking. "

09:44:25 5 So, from a person who was actually there, there is an
6 indication that the AFRC faction were using solar power, isn't
7 there?

8 A. Well, according to this source, it is.

9 Q. So you would agree with me that if DSK-082 didn't even know
09:44:49 10 that the AFRC faction were harnessing solar power, a trick they
11 had learned from the RUF, he can hardly have reliable
12 intelligence, can he?

13 A. DSK-082 indicated that he thought it was impossible to use
14 solar power by the AFRC.

09:45:06 15 Q. But this statement, should it be believed, will clearly
16 say, indicate he is wrong, especially as he wasn't even there?

17 A. Well, you know, I can't comment on that. He said it was
18 not possible to do that.

19 Q. But he wasn't there but a person who was there said it was
09:45:22 20 happening?

21 A. Well, apparently so.

22 Q. Now again at paragraph 102, you rely on DSK's assertion
23 there was air surveillance and I'll just read you a small part of
24 this. This is paragraph 102, and it's page 53 of your report,
09:45:51 25 and if we go to paragraph 182, again, this is witness DSK-082's
26 view, so it's opinion of his, and if we go to the third line:
27 "Alpha Jets were bombing suspected enemy locations and the air
28 surveillance planes were also equipped with electronic devices to
29 monitor military movement, deployment and any form of radio

1 communication." Now, do you know we have had no evidence in this
2 trial of Alpha Jets monitoring radio communication?

3 A. No, I'm not aware of that.

4 Q. And if the Alpha Jets had been monitoring radio

09:46:36

5 communications, can you explain why they wouldn't have blown up
6 Sam Bockarie's radio communications headquarters at Buedu which
7 was operating throughout the war?

8 A. Well, I can't, you know, I can't go into that specific
9 event. What I'm saying is that it is quite easy to monitor

09:47:00

10 frequencies in an aircraft and then, via direction finding, to
11 come into a target.

12 Q. Yes, but in this situation, Sam Bockarie's headquarters at
13 Buedu was working its radio communications throughout the war.

14 Now, based on the communication abilities, or tracking facilities
15 you say these planes have, can you give an opinion or explain why

09:47:21

16 it wouldn't have been taken out, as they say, in the military?

17 A. No, I cannot. I am not -- I didn't go into studying the
18 methods of use of radio communication by the RUF.

19 Q. I would suggest to you, again, that DSK-082's information
20 concerning the use of air surveillance to track radio
21 transmissions is, again, unreliable?

09:47:42

22 A. Well, it's your opinion, sir.

23 Q. But coming to what we've discussed about radio

24 communications and what we've heard the new evidence that is

09:48:02

25 arrived at, would you agree with me that the radio communications
26 was available to the AFRC faction in the bush?

27 A. Well, you know, again, if you read my report, the
28 conclusion is limited. You know, I can go over it one more time,
29 but, according to Iron, most of the time, runners were used.

1 Q. But --

2 A. And then, essentially, in a very brief time, apparently
3 some communication was used after Lunsar, and people come up with
4 explanations on, yes, we had radios. Now, the so-called
09:48:47 5 battalion commander doesn't even know the difference between one
6 type of radio and the other one. Now, in my conclusion, I have
7 not denied the total lack of communication, as you've read, but I
8 stick to my conclusion that it was limited.

9 Q. And that is notwithstanding all the additional information
09:49:04 10 that has come to light. You wouldn't put it above limited?

11 A. The limited information doesn't give me much and we have
12 been, you know, again, discussing this for quite some time, in a
13 sense that just making a remark here and there, you know, does --
14 and, again, we should not forget the focus. The focus of my
09:49:28 15 comments here, also on communication, was look at what Colonel
16 Iron writes about communication, in a traditional military
17 organisation, as he and I understand it. Now, you look at this
18 and I can't come up to a conclusion more than limited, I'm sorry
19 about that.

09:49:45 20 Q. Now, we come to the third characteristic, which is planning
21 and orders process, which is on paragraph 106, and at page 54 on
22 your report. You agree that this process existed, at least at
23 the outset?

24 A. I agreed with the outset, yes, within the context of what
09:50:18 25 I've written.

26 Q. Okay. Again, a number of Defence witnesses have given
27 evidence that SAJ Musa briefed the troops at muster parades; did
28 you know that?

29 A. Yes.

1 Q. And did you know that the first accused, in his own
2 evidence, described how SAJ Musa calls battalion commanders and
3 briefs them at the headquarters brigade en route to Freetown?

4 A. Yes.

09:50:46 5 Q. Now, if we have this broader span of command, as we
6 discussed the other day, and the AFRC also had sufficient radio
7 sets amongst themselves, would you agree with me that the orders
8 process could readily be passed down the chain of command, for
9 example, from Colonel Eddie Town to Freetown?

09:51:22 10 A. Well, you see, the problem I have with the planning and
11 orders process is, again, I have not denied that it was at the
12 start and that there were briefings at muster parades. We have
13 to realise, however, that a briefing given to quite an audience,
14 not so much information will stick with the individual, that's
09:51:49 15 one. And I believe also that there was some order group
16 established with battalion commanders. Now, as Colonel Iron
17 states, the planning and order process has to go through the
18 chain of command, and he describes it rightly: "All levels
19 should brief." Now, clearly, it was stated by 167 that no orders

09:52:20 20 were given, for one. And, clearly, it was stated by 167 in his
21 own testimony. He said, "Well, you know, whenever I had to do
22 something," and I can't recall his exact wording, he said, "Well,
23 I just grabbed a couple of fighters and some ammunition and we
24 got on with it." Now, he didn't state I assigned the mission to
09:52:47 25 second platoon or first company, second platoon, platoon
26 commander so-and-so. He said, "Well, I just grabbed a couple of
27 fighters." So, what I was saying is that, at times, and mainly
28 at the start of an operation, there may have been, however often
29 described, very unrealistically. You know, if you address an

1 audience of 3,000 I cannot recall in my entire career, addressing
2 an audience of 3,000 and then getting one word across. I've
3 addressed about 1,000, then you don't come across. And then
4 again, what I've stated is that, as soon as you give an order, we
09:53:35 5 should not forget, the moment you give the order, the moment you
6 move, things change, and then you need to have a system. Now, as
7 you have described, you can halt and then try to assemble
8 everybody, but it's not a planning and orders process, again, as
9 described by Colonel Iron in his characteristics.

09:54:00 10 Q. So if we come back to figures again, now, I believe the
11 figures that Colonel Iron was looking at in his report was
12 between 9 and 1200 soldiers, and if we look at this in
13 perspective, the context of the Sierra Leone conflict, not with
14 western armies, companies' sizes and battalions, and so on and so
09:54:24 15 forth, in AFRC faction, you have about six battalions or
16 companies, however you want to call them, with about 80 to 100
17 men in each; about right?

18 A. I would -- I don't know whether it was six or eight or
19 four. But they had -- I think I can agree with you on the figure
09:54:46 20 between 6 and 800.

21 Q. Okay. Now, as a brigade and battalion commander, you would
22 have, as you've just said, addressed more than 6 or 800 men?

23 A. Yes. But then you have to realise that you address 6 to
24 800 men on a parade ground and you don't give -- you don't give
09:55:06 25 an order process. You tell the troops how they have done; you've
26 performed well, and the next couple of weeks' we are to do that.
27 But you have to realise, if you give a broad description on the
28 things you are doing, you don't come across with half of the men;
29 they lose you easily. So the information you give, you know,

1 3,000 was very unrealistic figure, but it came out of the
2 transcripts of one of the witnesses. You know, even take a
3 regular battalion of 700, and you address them, you know, keep it
4 short and simple, but don't start giving the orders process to
09:55:50 5 them because you lose them in a heartbeat.

6 Q. So let us look at this orders process, particularly towards
7 the end from Colonel Eddie Town to Freetown. Now, according to
8 the evidence of the first accused and some other Defence
9 witnesses, SAJ Musa gave quite detailed orders and information as
09:56:11 10 to how they were to advance and attack Colonel Eddie Town. Now,
11 even if it's accepted that this was a large group, who couldn't
12 retain all this information, he also had his company commanders,
13 which he would call together and brief them, either at his
14 headquarters base or he moved along, and they each would only be
09:56:34 15 briefing about 80 men, wouldn't they?

16 A. Well, the company commander was formally called the
17 battalion commander, of course.

18 Q. Okay. Battalion commander.

19 A. But, even then, sir, you know, we have to be realistic
09:56:52 20 about that. Even that, you cannot brief that amount of men and
21 you cannot brief them on operation. You cannot --

22 Q. Are you saying a commander can't brief four men?

23 A. No. What I'm saying was that you can brief four, but you
24 cannot brief 80 to 120.

09:57:18 25 Q. But we've moved. We are going down slowly the breakdown of
26 the structure. We've talked about the large group at the muster
27 parade. We are now talking about the four, let us say, battalion
28 commanders. Now, it's possible to brief the four battalion
29 commanders, isn't it?

1 A. The brigade commander can brief four battalion commanders.

2 Q. And then each of these battalion commanders has between 80
3 to 150 men in his battalion?

4 A. Yes.

09:57:44 5 Q. And then, if he also has that subdivided into platoons, and
6 he has three platoon commanders each in command of, let us say,
7 35 men, that would be possible, wouldn't it?

8 A. But that's the normal way it should be.

9 Q. And if it was operating in this instance, if it were,
09:58:04 10 hypothetically, operating in this instance, then the orders and
11 planning process would be a present, wouldn't it?

12 A. Yes, but of course, we have gone through that and then, you
13 know, if you read the statement, I honestly don't believe that
14 that was in place, but if you then read the way the so-called
09:58:28 15 orders process is described by 167, who was an alleged, in my
16 mind, battalion commander, then he didn't go through the process.
17 He himself stated, "Hey, I grabbed some men and that was it."

18 Q. But you are really limiting your, let's say, assessment,
19 based on this one battalion commander, 167. Before, as when I
09:58:53 20 had been giving the various examples, you probably had, perhaps,
21 three battalion commanders, and we probably had other people who
22 were regarded as officers in the bush, all suggesting that,
23 actually, there was this process. So, if we were to look at all
24 of them in their entirety --

09:59:12 25 A. Yes, but even higher up, you see, we have been going
26 through the task force commander. And the task force commander
27 didn't state that he was giving orders, so I can't be convinced
28 that that was in place and, of course --

29 Q. But, hypothetically, if it was in place, that would be --

1 A. Well, hypothetically -- sorry, I'm interrupting you.

2 Q. It's okay. I'm just saying, hypothetically, if it was in
3 place?

09:59:46

4 A. Then, hypothetically, then you go back to what Colonel Iron
5 describes and what he and I know. If you have a breakdown
6 through the entire organisation, then it is possible to brief the
7 men, but it boils down to the point that you have to brief a
8 small number of men.

10:00:05

9 Q. But would it change your view if the commanders also had
10 the ability to know what their men were doing during operations?
11 For example, I read to you a small transcript, again, and this is
12 DAB-033. It's on 2 October 2006, and it's page 104. He was,
13 again, with the troop from Colonel Eddie Town to Freetown. I
14 will read line 25 on page 104 to line 6 on page 105. The

10:00:45

15 question is:

16 "Q. If you saw SLA soldiers killing innocent
17 civilians, you would report that to another
18 commander, wouldn't you?

10:00:57

19 "A. Yes. Because anything that they would do
20 at the front line area, for any platoon or
21 company, we had a chaplain that would monitor.
22 So if anything went on where I wasn't, they
23 would inform me. So where I was, if anything
24 happened there, I would take action.

10:01:15

25 "Q. So through this chain of command from your
26 unit, all the commanders were informed about
27 how their troops were behaving; is that right?

28 "A. Yes."

29 Again, that also talks about the span of command; you'll

1 see the mention of platoon. Now, were that witness be
2 believed -- I mean, you even have your information coming back
3 from platoon going back to company of the behaviour of the
4 troops. Would that at all change your view that there was an
10:01:51 5 orders and planning system in place?

6 A. Well, the orders and planning system have to do with the
7 information you sort of have gone through all the entire system
8 so that everybody knows what they are doing. And then to
9 indicate that you know what every soldier is doing, that is
10:02:24 10 another issue, if you are dealing with what the soldiers are
11 doing individually. I'm looking at the planning and orders
12 process if everything goes according to the operations you set
13 out to do so --

14 Q. But if it's going wrong, you still have the ability to have
10:02:40 15 information from the front line coming back, don't you?

16 A. But then you need to have a system how that properly works
17 and then the commanding officer -- as I have stated in my report,
18 then the commanding officer needs to have the ability to quickly
19 adjust to the change of situation, and I have not come across
10:02:58 20 that.

21 Q. But if he has radios and his battalions at front have
22 radios, isn't that possible to adapt to the situation?

23 A. Well, then, you know, we get back to the radios and then I
24 say, you know, that the radios were available for a limited
10:03:16 25 amount of time.

26 Q. I'm talking -- because we've earlier discussed the initial
27 period. I am talking about the period of the advance from
28 Colonel Eddie Town to Freetown.

29 A. That only works if you have a good system. Like, we know

1 in the traditional armies, that immediately when the situation
2 comes up, that you have a good system of back briefing and a
3 system of orders adding and adjusting, and, if that is not the
4 case, you get sort of fragmentation information.

10:03:50 5 Q. I would like to turn to paragraph 109 on page 56 of your
6 report. Six lines down, if I could read you your opinion. It
7 says, "In my view, it was therefore within the AFRC faction
8 impossible for the overall commander to draw out the battle or
9 the moves of the force simply because he lacked the communication
10:04:17 10 systems and the established trained procedures that required
11 proper use of the system "

12 Now, bearing in mind that there are radios available, there
13 are runners available and there are standing operating procedures
14 available, whereby a troop advances, clears the area, calls the
10:04:40 15 headquarters brigade, the headquarters brigade move on; how do
16 you come to the conclusion that it was impossible?

17 A. Well, my conclusion was that for the overall commander to
18 adjust to changing situations quickly, again, in a way, that a
19 traditional army goes, that form, in my view, was not possible
10:05:05 20 for him to do.

21 Q. If it was impossible, how can you explain the success that
22 the AFRC faction had in moving from Colonel Eddie Town to
23 Freetown in this ordered advance headquarters rear movement, and
24 fighting battles with ECOMOG en route?

10:05:21 25 A. Well, because, you know, again, I repeat what I've stated
26 before, is that, in my mind, it didn't go that way, and it was
27 not -- for one, battles were not fought; positions were left open
28 by ECOMOG. So I don't think that's the way it was.

29 Q. But if, hypothetically, that was the way it was, would you

1 agree with me that this planning and orders process was limited,
2 at least?

3 A. Then, I still, well, I said that the planning and orders
4 process was available at the start. Now, you can define the
10:06:03 5 start as the start when you brief at a muster parade, or you sort
6 of say, "Okay, chaps let's take a pause." Everybody stops and
7 comes back again, and I brief you again. But, again, within the
8 notion of the way it's described by Colonel Iron in a traditional
9 military organisation, then it's not the case. Now, if you

10:06:26 10 adjust to that with other ways, that's another issue.

11 Q. But if you did work on these other ways, they were
12 existing.

13 A. Yes, but it was not the way, sir, the planning and orders
14 process, in a traditional military army, goes.

10:06:44 15 Q. So you don't believe anything that we've discussed about
16 the advance from Colonel Eddie Town to Freetown would fit in in
17 any way with how the planning and orders process of a traditional
18 army would be, to any agree?

19 A. Well, I stated -- I know I'm correct -- that the planning
10:07:07 20 and orders process was possible at the start.

21 Q. But, in no way in between?

22 A. Well, again, if you didn't say -- well, you stop again, and
23 hold and pause and then you say, "Okay, we have a day rest," what
24 have you, and then you get everybody together. What I'm saying
10:07:26 25 is you don't have the possibilities to adjust, procedure-wise,
26 like a traditional army would.

27 Q. But you don't think then it's sufficient, let us say, they
28 move out from Colonel Eddie Town, the advance party takes an
29 area, it communicates to the headquarters party that the land is

1 cleared, headquarters party go forward, and then, at one part,
2 the company commanders are called to the headquarters brigade to
3 be given instructions, wouldn't you describe that as a continuous
4 process of orders?

10:08:04 5 A. Not in the way, not in the way a traditional army would.

6 Q. Not even to a limited degree?

7 A. Well, I've stated that it was at the start of the process.

8 Q. Okay. Now let us turn to number 4, the fourth
9 characteristic which is lessons learnt which is at 112. Now, the
10:08:27 10 AFRC faction in the jungle learned guerrilla warfare, didn't
11 they?

12 A. Well, it was a guerrilla force.

13 Q. But they adapted to guerrilla warfare as well, didn't they?

14 A. Yes.

10:08:39 15 Q. And they learned how to hide in the jungle and avoid the
16 Alpha Jets, didn't they?

17 A. Yes.

18 Q. And they learned how to use civilians to carry their
19 equipment, didn't they?

10:08:48 20 A. Yes.

21 Q. And they learned how to train civilians to increase their
22 fighting force, didn't they?

23 A. Well, we come to the recruiting a little later so --

24 Q. They learnt how to forage for food?

10:09:02 25 A. Well, they send out food-finding missions.

26 Q. And they learnt how to capture ammunition from ECOMOG,
27 didn't they?

28 A. Yes.

29 Q. And they learnt how to harness solar powers for their

1 radios, didn't they?

2 A. Well, that's -- I was not convinced of that one.

3 Q. But if that were the case?

4 A. Well --

10:09:26 5 Q. So I would suggest to you that within the AFRC faction, as
6 it evolved, there was a readily available lessons learnt system?

7 A. Sir, again, we go into the discussion. If you read what
8 Colonel Iron says about lesson learnt and the procedures you
9 would go into in a traditional army, you go on a mission, you go
10:09:51 10 on an exercise and you have 100, 150 lessons learned and they all
11 go into a database and from then on you adjust your training
12 methods and adjust the way you operate. That's the way it is
13 described by Colonel Iron, which I can support. Now, that was,
14 in my mind not at all the case. That was not the case as Colonel

10:10:16 15 Iron indicated it and what was done, and I don't deny that, that
16 the AFRC learnt on the job. Now, they learned on the job and
17 again, they operated like a guerrilla force, and they learned
18 that on the job but then, to come to the conclusion that there
19 was a lesson learned system, as indicated by Colonel Iron, to
10:10:44 20 establish a traditional military organisation or to establish the
21 characteristics, then, you know, I can't agree with that. So
22 they learned on the job and they probably learned well, but that
23 is not what is meant here.

24 Q. But amongst themselves there was a lesson learned system,
10:11:06 25 wasn't there, as can be seen by the way they operated?

26 A. Well, I don't agree with you on that.

27 Q. You don't agree?

28 A. Then you -- not in a sense, and that is what we -- you
29 know, we will go over that for the last criteria, continuously in

1 the same way, in the sense that Colonel Iron describes what is a
2 lessons learned development, evaluation system, in a traditional
3 army, and then we say, yeah, but they learned on the job. Hey,
4 okay, characteristic one accomplished. I don't agree with that.

10:11:39 5 Q. But Colonel Iron is looking at characteristics, isn't he,
6 so you would agree that different armies would have different
7 systems of lessons learnt, wouldn't they?

8 A. But then the question is: Is it a traditional military
9 organisation? And then the answer in my mind is no, it's not.

10:11:57 10 Q. So only if you have this database system as you are
11 mentioning can it be a traditional military organisation in terms
12 of lessons learned; is that what you are saying?

13 A. What I'm saying is, if you read the explanation by Colonel
14 Iron, what is required, and then you put it towards the AFRC,
10:12:16 15 then it was not in place.

16 Q. But at any rate, at paragraph 113, I believe that you at
17 least say it was available to a limited extent?

18 A. Well, what I'm saying is, is that if you learn on the job,
19 it's not -- it cannot be characterised as one of the requirements
10:12:36 20 for a traditional force. If you learn on the job it's another
21 thing.

22 Q. Yes, but in your report at paragraph 113, it says learning
23 was done on the job and therefore the lessons learnt system was
24 available to a limited extent?

10:12:49 25 A. Well, you know, I've stated --

26 Q. Well, do you agree with that statement or are you changing
27 your mind?

28 A. No. What I did is I stated it several times, I didn't want
29 to be too harsh on my verdict, I stated to Mr Knoop, you know,

1 it is, it was not a lesson learnt and doctrine development system
2 as we use in traditional military organisations.

3 Q. Let me put it this way: Do you stick to what you say in
4 your report?

10:13:19 5 A. Yes, I do.

6 Q. Yes, you do. Now, let us move to the next, which is number
7 5, which is a disciplinary system, which you have at page 57 and
8 it's at paragraph 114. And, here, with your concept of
9 discipline you set out three criteria. Now, I would suggest to
10 you these criteria are more applicable to a western army than a
11 military organisation operating in the context of the Sierra
12 Leone war?

13 A. Well, it was based on the way I, but not only I, but it's
14 defined in a different way than Colonel Iron states, the way a
15 disciplinary system should work, should be in place and then the
16 finding is, as I did, it was not.

17 Q. But did you know that numerous former members of the SLAs
18 have given evidence that they knew that they would be subject to
19 discipline if they disobeyed orders?

10:14:31 20 A. Well, if members of the SLA state that then, you know, I
21 refer back to what I've written about the previous let's say time
22 before the coup in 1997.

23 Q. But then I would refer you to what TRC-01 said about the
24 time before the coup and here, even despite the provocations the
25 SLAs kept their discipline. So according to that witness, who in
26 fact was a very senior officer at the time, there was a
27 disciplinary system in place at the time of the coup, wasn't
28 there, according to him?

29 A. Well, according to him. He also stated quite clearly, if I

1 recall, which I recalled from listening in to his statement on
2 television, that there was no disciplinary system within the AFRC
3 in the bush. That is what he stated. Of course, then you will
4 say, well, he wasn't there.

10:15:36 5 Q. Exactly. It's his opinion. He wasn't there so --

6 A. Yes. Fine.

7 Q. Now, on paragraph, let us say 150 -- sorry, I think if we
8 now look at paragraph 116 on page 58. Now, if we look at about
9 halfway down, we have officers and non-commissioned officers who
10 are primarily responsible for enforcing discipline never set the
11 correct example. It's inaccurate to say that they never set the
12 correct example, isn't it?

10:16:08

13 A. Well, I certainly haven't come across a structured way of
14 setting the example.

10:16:32

15 Q. You are talking of officers and non-commissioned officers.
16 I mean, SAJ Musa set the correct example, didn't he?

17 A. Well, you know, it's repeated over and over by people who
18 said well, he placed orders. He said, you know, there should be
19 no killing, raping or whatever, burning, and then you can -- but

10:16:51

20 then of course the question remains: How much effect does a
21 statement like that have, again, you will say well, there were
22 more, but if 167 states there were no orders placed, there was no
23 formal orders given at place so-and-so, and you don't have a
24 system where you can go through your organisation to make sure
25 that whatever you say is carried out.

10:17:18

26 Q. But let's take the SAJ Musa example. I mean, it would be
27 inaccurate to say that officers and non-commissioned officers who
28 were primarily responsible for enforcing discipline never set the
29 correct example; they did on occasion, didn't they?

1 A. Well, I have not come across. I have only come across SAJ
2 Musa as a commanding officer.

3 Q. Now, if there was no disciplinary system in place whilst
4 the AFRC faction were in the jungle, how can you explain the
10:17:54 5 alleged arrest of the accused at Colonel Eddie Town?

6 A. I cannot because I looked at the issue of discipline within
7 the organisation in the sense that I understand it.

8 Q. Okay. Well, if there was no disciplinary system, how can
9 you explain a Defence witness was sent by SAJ Musa to investigate
10:18:22 10 why the accused had been locked up. And I will just read you the
11 small extract. This is DAB-033 and he was one of the SLAs with
12 the AFRC faction and this was on 2 October 2006. And at page 86,
13 and I read from line 14 to 27. And it says:

14 "Q. So can you please explain to me why SAJ
10:19:07 15 Musa sent you to interview the detainees as
16 chairman of the chaplain council?

17 "A. Well, I was in charge of that. One, like
18 the commanders who were the ones that would
19 tell them the truth, the dos and the do nots,

10:19:21 20 so even if somebody were to commit, if any
21 action were to be taken, we would go, meet the
22 person first, and we knew what the individual
23 did. Then, if they were to make any inquiry,
24 we would make sure that we were on the board.

10:19:33 25 See, we saw the policies, that would make them
26 to find that man guilty, before any action was
27 taken.

28 "Q. So you had a proper disciplinary system;
29 you wouldn't just execute someone, You would

1 investigate the crimes" --

2 THE INTERPRETER: Your Honours, the counsel is speaking too
3 fast for the interpreter's comfort.

4 MR AGHA: I apologise. I will go a little slower.

10:19:53 5 "Q. So you had a proper disciplinary system;
6 you wouldn't just execute someone, you would
7 investigate the crime and find out the truth
8 about it?

9 "A. Exactly so."

10:20:05 10 Now another witness, which is DBK-037, and that is 4
11 October, page 73 to 75, and it's line 20 through to 29 on page
12 73, and line 1 through to line 17 on page 74. And I read again
13 what this Defence witness said who was with the SLA faction.

14 "Q. Thank you, Mr Witness. I want to move on
10:20:53 15 now. You had testified that there was an
16 incident involving Junior Li on shooting
17 someone; do you remember that?

18 "A. Yes, sir.

19 "Q. And that you have stated that you had
10:21:04 20 killed a soldier named Kordulay; is that also
21 correct?

22 "A. Yes, sir.

23 "Q. You conducted the investigation about that
24 incident, didn't you, sir?

10:21:18 25 "A. I went to the area to get the facts, sir.

26 "Q. Now, who told you to go to the area and
27 get the facts?

28 "A. It was FAT.

29 "Q. Now, you would agree with me that you

1 conducted -- that you went to get the facts and
2 conducted this investigation because there was
3 a violation of the rules, wasn't there?

4 "A. That is what they sent me for, sir.

10:21:43 5 "Q. SAJ Musa laid out all the rules for all of
6 the troops to follow, didn't he, when he set up
7 the military structure?

8 "A. The military has order.

9 "Q. And part of that order are rules and
10:21:56 10 regulations for all the troops to follow, isn't
11 it?

12 "A. Yes.

13 "Q. And this investigation took place in
14 Eddie Town; is that correct?

10:22:06 15 "A. Correct, sir.

16 "Q. Now, during this time, during your
17 investigation, what was your rank?"

18 So that's an example of carrying out an investigation and
19 finally, on page 75 at lines 8 to 10, and this is the same
10:22:27 20 witness, so it's 4 October, the question is:

21 "Q. Now, as a result of your investigation,
22 Junior Lion was locked up for a period of time,
23 wasn't he?

24 "A. He was under close arrest."

10:22:43 25 Now, if you are having a system where there is an
26 investigation, and even senior officers like battalion commander
27 can be arrested and detained after that investigation, and if
28 this was the case then you would agree with me there was a
29 disciplinary procedure in place, wouldn't you?

1 A. Not in the way the requirements are set by Colonel Iron in
2 his report because then you talk about a total different
3 disciplinary system, in order to establish the traditional army
4 because if you say, well, they weren't just executed, were they,
10:23:29 5 and then you have to realise to do an investigation in the facts,
6 and we all know how difficult that is, and you don't have
7 trained, trained personnel, as we all know from the transcripts
8 that someone with absolutely no, absolutely no training
9 whatsoever, only as a soldier, very limited, was promoted to
10:23:48 10 captain and then he can provost marshal and then we read again
11 Colonel Iron's report where he sets the requirements for a
12 provost marshal and the system, but you have to come up with
13 more than only saying: We sent out someone and he was
14 investigating the facts and that was it. In that sense and, you
10:24:15 15 know, we continued differing -- having differences over these
16 topics because again, within a traditional army, it doesn't work
17 that way. So, he didn't well, yes, but then there was a
18 disciplinary system not in a sense as was described by Colonel
19 Iron and the way he and I know it.

10:24:35 20 Q. But in a traditional army, don't you have complaints,
21 investigation, arrest and then punishment?

22 A. Yes, of course, sir, but it is on a total different scale.
23 It depends whether you are accused of a crime, for example. Now
24 the system Colonel Iron describes is different than our system
10:24:58 25 but that basically is not so relevant but within a traditional
26 military organisation, whether it's the provost marshal in the
27 UK system or, in my system, where you have the military police
28 working directly only under the Prosecutor. And so they do all
29 the investigations and the Prosecutor decides whether or not he

1 is going to start a court case with him, so -- and then you have
2 the right, of course, for counsel and all the things in a
3 traditional army are established, not by just someone having to
4 say: Okay, I looked into the facts and he was locked up. So,
10:25:41 5 again, in my firm belief, that was not the case. So we tried to
6 match desperately, with all these aspects, we tried to match or
7 tried to compare the organisations as Colonel Iron described
8 them.

9 Q. But in certain armies, let's say like the British Army in
10:26:06 10 World War I, weren't soldiers, who were found now to have had
11 shell-shock, weren't they executed without being given proper
12 trial, as you've just described?

13 A. Well, you know, in my army, you have the courts established
14 in the field.

10:26:23 15 Q. You are talking --

16 A. And you have a proper system.

17 Q. I am talking about this example in World War I?

18 A. Then, I didn't look into that.

19 Q. If that were the case it wouldn't make the British Army any
10:26:38 20 less than a traditional army, would it?

21 A. No, but again, I go to the requirements set by Colonel
22 Iron, and if you don't fulfil that, and you can't sort of reason
23 towards the traditional military organisation, traditional army,
24 because that is unrealistic.

10:26:53 25 Q. And you talk about training, would it change your view at
26 all if you know there were MPs within the AFRC faction whilst
27 they were in the jungle who carried out these tasks?

28 A. Well, sir, I read a transcript that someone was promoted to
29 captain and he became the provost marshal without any schooling,

1 without any training, not even an officer while he was promoted
2 to captain but that we all know was just a handing out a
3 promotion.

10:27:27 4 Q. And would it change your view at all if, hypothetically,
5 some of those of the AFRC faction in the jungle had actually
6 received training as MPs whilst they were in the SLA so they
7 already had this training at hand?

8 A. The majority of let's say these tasks are only carried out
9 by officers and the AFRC hardly had any officers available.

10:27:50 10 Q. Well, they had their own officers which they promoted in
11 the field, didn't they?

12 A. But then, again, I am afraid we come to that later on, that
13 the promotion, you know, as Colonel Iron rightly says, promotion
14 is done on experience. You gain experience in organisation and
10:28:13 15 you qualify for staff colleges and so on and as you gain
16 experience and education you come to a level. If you perform
17 very well, you come to a level that all of a sudden someone says:
18 Okay, you are going to be promoted to captain major, or finally,
19 what have you, but that's another thing.

10:28:35 20 PRESIDING JUDGE: But general, battlefield commissions in
21 time of war are a common thing, aren't they?

22 THE WITNESS: Yes, Your Honour, but then the battlefield
23 promotions have to be based on quite experience.

24 PRESIDING JUDGE: Yes, but no formal training is required
10:28:54 25 in staff college. It's just experience of battle, isn't that the
26 case?

27 THE WITNESS: Yes, Your Honour, but then still it's because
28 of, in these very, in some instances, if that is the case, it's
29 first of all not a regular promotion but it's a promotion based

1 because you have a lot of experience and the way you have
2 conducted yourself.

3 PRESIDING JUDGE: Yes, but a lot of experience in battle,
4 isn't it?

10:29:25 5 THE WITNESS: Yes.

6 PRESIDING JUDGE: Not experience in staff college doing
7 formal courses.

8 THE WITNESS: No, Your Honour. I was just describing the
9 way, as Colonel Iron established, the promotion system as he
10:29:37 10 describes it in his report.

11 MR AGHA:

12 Q. Now, during your research into this conflict, are you aware
13 of a position known as a Mammy Queen?

14 A. I came across but I have not gone into that.

10:29:56 15 Q. So you wouldn't know what her role was?

16 A. It would be speculation. I've come across but no more than
17 that.

18 Q. But would it again change your view on these disciplinary
19 procedures to know that the AFRC faction had a Mammy Queen with
10:30:14 20 them who decided upon women's affairs whilst they were in the
21 jungle?

22 A. You know, honestly, that would be speculating. I can't
23 comment on that.

24 Q. Discipline is not defined in any of the allied joint
10:30:28 25 publications, is it?

26 A. That, I don't know.

27 Q. Generally speaking, if it's not defined, it's the Oxford
28 university dictionary which is referred to. Did you know that?

29 A. No. You know, there are so many articles and books written

1 on discipline in the force.

2 Q. No, I am looking at the publications, the allied joint
3 AJP's?

4 A. Well, then, I really have to go into that, and which I
10:31:03 5 didn't do. I thought there was enough documentation in my study
6 already and I didn't look into that.

7 Q. Okay. Well, if we actually look at the definition of
8 "discipline" which is -- it isn't defined in the AJP's so it's a
9 general rule of thumb to go to the Oxford dictionary as required
10:31:44 10 in your own glossary then we can perhaps see what that term is.

11 And I have copies for the Court as well if they would like to
12 see. My case manager has it, and just for your own benefit or
13 the record, the AAP6, 2006, at paragraph 4 states the concise
14 Oxford dictionary, 11th edition is a reference for English in
10:32:56 15 AAP. So where a definition isn't to be found, then one should
16 look to the Oxford university dictionary. Now, if we look at
17 "discipline," do you have that?

18 A. Yes, I do.

19 Q. We have "The practice of training people to obey rules or a
10:33:18 20 code of behaviour, controlled behaviour, resulting from such
21 training." Now, the SLAs had rules like not stealing another
22 man's wife, shooting another soldier trying to surrender, et
23 cetera, didn't they?

24 A. I don't know that.

10:33:42 25 Q. I will just read you out some of their rules. And this
26 first one is from the transcript actually of TF-167?

27 PRESIDING JUDGE: Look, this is going to be a laborious
28 process, Mr Agha. Can't you simply put a hypothetical situation
29 where rules, if they existed, would represent discipline?

1 MR AGHA: I can put the hypothetical.

2 Q. If there would have been evidence before this Court that
3 rules were in existence, and the people who broke those rules
4 were punished, would you agree with me that there was a
10:34:28 5 disciplinary system within the meaning of "discipline," as
6 defined in the AJPP publications?

7 A. Well, again, you know, I really have to study very hard on
8 this wording. But again, you know, if it's so hypothetical, but
9 if you have a system as described by Colonel Iron, a formal
10:35:02 10 system, then I would agree on that. But then you need to have a
11 proper, formal system, with a lot of insurances also for the
12 wrongdoers and a good procedural system how that is set up.

13 Q. But according to this discipline, basically all that is
14 required are rules, and people who need to be obeyed aware of
10:35:26 15 them, and that they are punished if they are in breach of them,
16 isn't it?

17 A. But within a traditional military organisation you need
18 more than that. You need to have the assurance of a good, very
19 good system that works, that gives the insurances of people be
10:35:41 20 treated well, one way or the other, and you have to have a very
21 solid system of investigation; proper people with the
22 qualification to investigate the wrongdoers. So by merely saying
23 well, they were told and trained, that is it, that is not good
24 enough.

10:35:59 25 Q. But if, hypothetically, you had the investigation system,
26 you had the people arrested and you had the people punished,
27 there would be at least a limited form of discipline, wouldn't
28 there?

29 A. Well, yeah, but then, again, you come to some hypothetical

1 situation and then still you don't meet the requirements set for
2 a traditional military organisation.

3 Q. But you have a limited form of discipline at least, don't
4 you?

10:36:31 5 A. Well, yes, but not good enough.

6 Q. I'm not asking if it's good or bad. I am saying you had a
7 limited form of it at least?

8 A. Yes, but, you know, I -- but not a system that we require
9 in a traditional military organisation.

10:36:44 10 Q. You see, my question to you is it's not whether it is a
11 good system, a bad system. It's just: Was there a limited form
12 of a disciplinary systems?

13 A. Well, if you put that question to me for the AFRC the
14 answer is no.

10:36:58 15 Q. No. Based on -- but what you've heard the definition of
16 "discipline" from modern armies --

17 A. Yes.

18 Q. You would still --

19 A. Yes.

10:37:05 20 MR AGHA: This would, I think, be a good time to break, as
21 I am moving into a different area. I can continue, if you like.

22 PRESIDING JUDGE: Yes, go on up to quarter to, Mr Agha.

23 MR AGHA: Thank you.

24 Q. Now, we look to the next characteristic which is

10:37:21 25 recruitment and training, and this is the sixth characteristic.

26 And I believe it's in paragraph 120 of your report. And it's on
27 page 59. Now --

28 A. Yes, I have got it, yes.

29 Q. Now you will recall that nearly all the former SLAs who

1 appeared before this Court, who were in the jungle, and that's
2 about ten of them, but received at least three and in some cases
3 six months of training; do you remember that?

10:38:05 4 A. I remember that they stated apparently that they got
5 training while in the SLA.

6 Q. Yes. And you will recall that most of them who had that
7 period of training had actually been able to put that into
8 practice in the war with the RUF, hadn't they?

9 A. Well, I guess some of them had.

10:38:22 10 Q. Okay. Now, how many months training did the average RUF
11 combatant receive?

12 A. I didn't study the RUF.

13 Q. How many months training did the average CDF combatant
14 receive?

10:38:37 15 A. I didn't study the CDF.

16 Q. How many months training did the average ECOMOG soldier
17 receive?

18 A. I didn't study that.

19 Q. Now, would you agree with me that the training which the
10:38:52 20 SLAs received before the coup was sufficient to enable them to
21 defeat their enemies in the bush after the coup?

22 A. Well, again, I don't know if, you know, that's another
23 question, but I don't know if they, they relied on their training
24 or the circumstances that arose. The question here was a
10:39:14 25 different one.

26 Q. No, but I am asking you another one?

27 A. Okay. So, in my mind, still very doubtful that it had to
28 do with their training and in the military way we've dealt with
29 the guerrilla force tactics and how they got used to that.

1 Q. Sorry, to interrupt. So they had their basic training in
2 the SLA, they put that training into practice during the war
3 against the RUF. They adopted successfully guerrilla tactics in
4 the jungle. Now you would agree with me that that would be
10:40:01 5 adequate training for them to conduct their fighting against
6 their opponents, wouldn't you?

7 A. I wouldn't say fighting against opponents. The guerrilla
8 tactics, the way they were trained to survive in the bush was
9 enough to carry out through the months. Still, I don't believe
10:40:22 10 that there were many battles fought if at all.

11 Q. But presuming there were battles fought and, for example,
12 from Colonel Eddie to Freetown, you would agree with me that
13 because they were successful in these battles, hypothetically,
14 their training was adequate for them during the war, wasn't it?

10:40:43 15 A. I don't know that.

16 Q. But can you give, if it was not adequate, an explanation as
17 to how they were able to defeat the ECOMOG who were trained
18 soldiers?

19 A. Well, I think you've asked that question several times.

10:40:56 20 Q. I am still looking for an explanation.

21 A. But, you know, I don't believe that there were, as I have
22 stated the way before, I think the way things went, were
23 differently than you described them so.

24 MR AGHA: Okay. This would be an appropriate moment if you
10:41:20 25 like, Your Honour, but I can keep going until 11, if you like, I
26 was just thinking of --

27 PRESIDING JUDGE: No, I said keep going until quarter to
28 11.

29 MR AGHA: Okay.

1 Q. So we now come to the seventh characteristic?

2 A. But if I may?

3 Q. Sure.

4 A. Now, what I'm saying now here is because now we lose the
10:41:38 5 point, in my mind. The question really was: Whether there was a
6 recruiting and training system within the AFRC. That really was
7 the question. And Colonel Iron stated that there were, I think,
8 70 people trained in the entire period in that, so we go into the
9 training, we have been covering that at length, but we are now
10:42:00 10 dealing with another issue, I want to emphasise, and that is that
11 among the 77, including women and children, so my conclusion,
12 based on that was not the direction you went into but the
13 conclusion was there that even if you want to be very, not too
14 harsh in your verdict, and there was a very limited training
10:42:21 15 within the AFRC faction, which also Colonel Iron supports. That
16 is what I only wanted to say.

17 Q. Fine. Thank you. So the next characteristic was system
18 for promotions and appointments. And if we look at your
19 conclusion, this is paragraph 125 of your report, which is on
10:42:44 20 page 61, and in your conclusions you say that promotions were
21 handed out at random, don't you?

22 A. Yes.

23 Q. That is not accurate, is it?

24 A. At random and, again, sorry about the lack of my knowledge,
10:43:10 25 my English or so, but what I mean at random was not based on
26 training, experience, even if it's experience, you know, the way
27 Colonel Iron describes it, the way you get experience in a
28 military organisation, was means -- at random, with random I
29 don't mean that they were handed out to everybody. At random, I

1 mean that they were unmerited. They were, you know, without a
2 good system for promotions.

3 Q. Now, if hypothetically I would say to you that witnesses
4 have said that they were promoted for good performance in the
10:43:50 5 field and demoted, let's say, for poor performance in the field
6 and that they could be promoted in rank or demoted in rank or
7 promoted in position to let's say battalion commander, now, that
8 promotion system is based on performance, isn't it?

9 A. Yes, but, you know, it is because in that organisation
10:44:19 10 there were no officers available so they needed to establish
11 people in these positions.

12 Q. But promotions and demotions, sorry to cut in, if the
13 evidence is to be believed, they were based on performance. If
14 somebody did well, he got promoted in an operation. If somebody
10:44:38 15 performed badly in an operation he got demoted. So it was
16 performance related, wasn't it?

17 A. But, then again, there was not a formal, it was not a
18 formal system as described by Colonel Iron and the way we know it
19 in a traditional military organisation. It is not based -- it's
10:44:59 20 because you were, you know, a good guy or a bad guy, I don't
21 know, but you --

22 Q. But the evidence would tend to suggest it was based on the
23 performance in particular operations, not whether they were a
24 good guy or a bad guy?

10:45:15 25 A. Well, I haven't come across that.

26 Q. Okay. As the learned Judge said, I'm not going to go into
27 the various transcripts on that but also as the learned Court has
28 mentioned to you, in many situations, let's say like in the First
29 World War, a prime example, battlefield promotions were quite

1 common based on performance in the field, weren't they?

2 A. Yes.

3 Q. So I think it's fair to say that there was a system of
4 promotions based on performance in the field as with even
10:45:42 5 traditional armies, if you want to say that?

6 A. Well, not in a traditional way but, well, maybe it went
7 that way. I don't know that.

8 Q. But if it did go that way --

9 PRESIDING JUDGE: All right. We will take a break now,

10:45:58 10 Mr Agha. We will resume at 11.00 and, general, my usual caution,
11 don't discuss the evidence.

12 [Break taken at 10.45 a.m.]

13 [Upon resuming at 11.04 a.m.]

14 MR AGHA:

11:07:22 15 Q. General, before we broke off, we were discussing promotions
16 being handed out at random and I was suggesting to you that, at
17 least to a very limited degree within the AFRC faction,
18 promotions were handed out on a performance level basis. Now, if
19 the evidence were to suggest that promotions were based on
11:07:22 20 performance, would you agree with me that, to a limited extent,
21 there was accession of promotion?

22 A. Then we have to take into consideration the very
23 unrealistic way that was handled because, then again, you say,
24 well, promotions were handed out, so there was a promotion system
11:07:23 25 but --

26 Q. Based on performance?

27 A. You know, without any schooling, what have you, and, of
28 course, promotions have been handed out in the real world, but to
29 promote someone from the level of a soldier with no schooling to

1 a colonel, brigadier is unrealistic. But if you then describe
2 that as, to a limited extent available, I think it's very
3 unrealistic and unreliable.

11:07:24 4 Q. But it was, nevertheless, like battlefield promotions in
5 the World War I, to a limited extent, available, and they also
6 didn't have schooling.

7 A. Yeah, but then again, you know, if you promote someone from
8 the rank of, let's say, sergeant major to second lieutenant, it's
9 not a ball game, maybe, but go without -- in the system, to go to
11:07:24 10 colonel, brigadier, is very unrealistic.

11 Q. But you don't need schooling for battlefield promotions, do
12 you?

13 A. Well, sir, you may promote someone in the battlefield
14 within the scope of his job he is carrying out.

11:07:25 15 Q. But you don't need training for that, do you?

16 A. But, in essence, without any training to become the
17 promotions that were handed out, within the AFRC, I find it very
18 unrealistic.

11:07:25 19 Q. Nevertheless, even if they were unrealistic, there was a
20 limited system of promotions, wasn't there?

21 A. Well, if you call that a promotion system, which I don't
22 agree on, that may be so. But I don't agree on that.

23 Q. Now, if we turn to the eighth characteristic, which is
24 logistics, supply and arms procurement, and at paragraph 128,
11:07:25 25 which is on page 62, you come to the conclusion that logistic
26 supply was unavailable, don't you?

27 A. Yes.

28 Q. Now, again, I see that heavy reliance is based on DSK-082,
29 isn't it?

1 A. Yeah, but also on Colonel Iron, who states, basically, it
2 was not available, and then he states if you need someone, you
3 just steal it.

11:07:28 4 Q. Now, did you know that the advance from Colonel Eddie Town
5 to Freetown, that the AFRC faction kept an ammunitions supply and
6 headquarters unit?

7 A. No, I'm not aware of that. They may have had ammunition
8 available to them at a certain amount of time, or they may have
9 been able to steal it.

11:07:51 10 Q. And they were also, as you say, stealing or, through raids,
11 gathering ammunition from the ECOMOG as they advanced as well?

12 A. Yes.

13 Q. Now, and on some of these raids, like at Benguema and
14 Lunsar, they actually captured very large supplies of ammunition,
11:08:15 15 were you aware of that?

16 A. Yes.

17 Q. Now, the AFRC faction had sufficient ammunition for its
18 needs to advance from Colonel Eddie Town, engage in battles and
19 capture Freetown, didn't they?

11:08:26 20 A. Only if you -- yeah, but then -- you know, only if battles
21 occur, and I have not been convinced of that.

22 Q. But if they did occur, let's assume that, hypothetically,
23 then they had sufficient ammunition, didn't they?

24 A. Only if you needed them in battle.

11:08:49 25 Q. If they were fighting battles, it was needed, wasn't it?

26 A. Yes, but then it depends how the battle goes.

27 Q. In any battle you need ammunition, don't you?

28 A. Yes, but depends, also, highly on the position of your
29 enemy.

1 Q. Now, I would suggest to you that the AFRC faction, as it
2 moved from Colonel Eddie Town to Freetown, due to its ammunition
3 store in the headquarters brigade and ability to steal
4 ammunition, had a very limited supply of ammunition, certainly
11:09:25 5 enough for its purposes.

6 A. But they didn't have a logistics supply system as indicated
7 by Colonel Iron.

8 Q. But nevertheless, the ammunition that was required got to
9 the advance party, didn't it?

11:09:38 10 A. Well, that may be so.

11 Q. So, there must have been some system for that, mustn't
12 there?

13 A. No, not in the way it is described as the requirement set
14 by Colonel Iron.

11:09:53 15 Q. So you would still say that there was no logistic supply
16 available?

17 A. Not in the way it is used in traditional armies, but a
18 system for supply, getting supply from, you know, your lines of
19 supply from your own, let's say, logistic support unit who supply
11:10:17 20 you with logistics.

21 Q. But what about for this military organisation, the AFRC
22 faction? It was available for them, wasn't it?

23 A. Well, they stole it. If you call that a system, then I
24 don't agree with it. But you call it a system, apparently. And
11:10:35 25 the other thing is that it was done on a very limited scale,
26 stealing, and, in the first part, not at all.

27 Q. Okay. So you stick to your conclusion that it was not
28 available whatsoever?

29 A. Sir, again, going back to the theory, as stated, and a

1 traditional army, and we continuously go over that, I'm afraid,
2 that remains to be a fundamental difference in opinion.

3 Q. Yes, indeed. Now, the next criteria which you looked at
4 was repair and maintenance of equipment. Now, this is covered in
11:11:21 5 page 62, paragraph 1 to 9 of your report. Reliance here is
6 placed on DSK-082, and the idea of stealing spare parts in the
7 jungle was a complete misconception by Colonel Iron, and he talks
8 about spare part shops. Now, I don't think that's what Colonel
9 Iron was meaning in his report, that they were going around

11:11:47 10 stealing spare parts for equipment, was he?

11 A. I think he states it quite clearly.

12 Q. My understanding was that Colonel Iron was essentially
13 saying that something broke. Like, for example, a rifle, they
14 just stole another one.

11:12:08 15 A. Well, basically he's saying the same thing, I guess.

16 Q. But they're not looking around for repairing equipment, are
17 they? If something breaks, they just steal another one; they
18 replace it.

19 A. Well, I haven't gone in that detail, but repair was a
11:12:22 20 non-option, in my mind; stealing was another one.

21 Q. Essentially, in the circumstances, they didn't need to
22 repair it, did they, because how they were operating, they just
23 stole it, didn't they?

24 A. Well, it depends, of course, if you have enough spares to
11:12:37 25 replace it.

26 Q. If we were to look at the type of equipment, the AFRC
27 faction didn't have any heavy equipment, did it?

28 A. No, they had a rifle and bullets.

29 Q. They didn't have any sophisticated equipment. As you say,

1 it was just rifle and bullets, wasn't it, really? So if they
2 stole what they needed from their enemy, and they were able to
3 achieve that, the actual characteristics of repair and
4 maintenance actually is not applicable to the AFRC faction, is
11:13:10 5 it?

6 A. That's what Colonel Iron states, and that's what I state.

7 Q. Right. So it's not really an applicable characteristic at
8 all.

9 A. Well, I think it was not -- you know, how do you word that?

11:13:20 10 But I stated in my report that it was not available.

11 Q. My suggestion to you is, well, it's not applicable; it
12 wasn't a characteristic which was needed at all, in this
13 particular conflict the AFRC was involved in, in their
14 circumstances.

11:13:43 15 A. I may have used - then I could have also used not
16 applicable.

17 Q. So you would agree that would probably be a fair
18 assessment, it just wasn't applicable to --

19 A. Well, what I meant to say it was in non-existence. The way
11:13:56 20 we understand it, I do, Colonel Iron does; not available, not
21 applicable.

22 Q. Thank you. Now, after that, I think the next requirement
23 we looked at, or characteristic, rather, was a medical system,
24 and that's covered at paragraph 131 of your report, and this is
11:14:23 25 characteristic number 10, which is on page 63. I will read you
26 your conclusion -- not your conclusion, pardon me, but the part
27 at paragraph 131, which is based on DSK-082, in the footnotes.

28 It reads:

29 "The AFRC faction was not able to establish a medical

1 system because of the absence of trained personnel, medical
2 equipment and facilities. It was therefore imperative for them
3 to avoid casualties as much as possible by moving at night and
4 restricting contact with enemy forces. In the event that a
11:14:56 5 member of the faction got wounded, treatment was limited to basic
6 first aid. "

7 Now, that is a comment from someone who wasn't there at
8 all, and I essentially -- I will just read you a small part of
9 what someone who was there, marching with them, had to say about
11:15:17 10 their medical treatment. This is defence witness DBK-037 and the
11 date is 5th October 2006, and it's page 21, lines 25 to 29, and
12 page 22, lines 1 to 11. This witness was actually with the troop
13 as they advanced from Colonel Eddie Town to Freetown. I'll read
14 you what he said:

11:16:00 15 "Q. Mr Witness, you also told this Court under
16 cross-examination that you had medical teams
17 who looked after those who were injured in
18 ECOMOG attacks. Did you have qualified medical
19 doctors as part of your medical team?

11:16:15 20 "A. We had doctors that were trained doctors
21 from the army, with whom we withdrew.

22 "Q. Were you able to carry out or were they
23 able to carry out surgical operations?

24 "A. Well, they were able to do some operations
11:16:29 25 that they, were very necessary.

26 "Q. And what kind of equipment did you have?

27 "A. We had -- we had injections. They had
28 syringes. They had gauze. They had a lot,
29 anyway. See, there are so many medicines.

1 There was no need to talk about them "

2 So this is a person who was actually there. So DSK-082
3 would be wrong in his assessment that they only had basic first
4 aid, wouldn't he, if that witness were to be believed?

11:16:58 5 A. Well, apparently. However, you know, if that was proved to
6 be wrong, it's the first time that I heard this.

7 Q. But if it were correct --

8 A. Now, Colonel Iron stated very clearly, but, of course, he
9 may not have this wonderful information.

11:17:23 10 Q. He had it neither.

11 A. Medical system was rudimentary, if I pronounce it
12 correctly, and Colonel Iron rightly states that the provision of
13 adequate medical supplies is essential. Now, with all the
14 sources I read and studied, I have not come across that first aid
11:17:55 15 meaning, really, the first aid, as we understand it, but, very,
16 very limited, because there was no medical supplies. And that
17 was the conclusion also Colonel Iron came. That's why my
18 conclusion was very limited. Now, if all of a sudden it is
19 stated otherwise, that surgical teams were in the bush and you
11:18:19 20 had a sort of a field hospital established, it's a different
21 issue. But Colonel Iron and I agreed that it was very limited.

22 Q. You're quite right. That piece of information wasn't
23 available to Colonel Iron either. So, I mean, he may also --

24 MR DANIELS: If I could object, Your Honours. I think
11:18:38 25 that, in all fairness to the witness, counsel should put across
26 the full extent of the testimony, because I recall that that
27 particular witness did go on to say that they didn't have
28 hospitals and they didn't have ambulances. If Colonel Iron is,
29 in responding to this question, is talking about hospitals or

1 being able to conduct some kind of hospital activity, I think
2 that, in all fairness, the full testimony of the witness must be
3 put to the witness for him to comment. This is all.

4 PRESIDING JUDGE: Do you wish to reply?

11:19:18 5 MR AGHA: The only other thing that the witness mentioned
6 is that they didn't have ambulances because they were a guerilla
7 force and they didn't have a need for them. But, apart from
8 that, what he speaks about, the medicines and the ability to
9 carry out surgery and other things, is all there was.

11:19:33 10 PRESIDING JUDGE: Well, I would put it to the witness:
11 Would that affect his recent comments if he knew that they didn't
12 have ambulances or hospitals.

13 MR AGHA: Well, I don't know about hospitals.

14 Q. Would it affect your opinion if you knew they had no
11:19:49 15 ambulances?

16 A. Well, ambulances is not your first priority, is it?

17 Q. Well, the witness actually suggested that we didn't need
18 them, when he was asked. So would it change your --

19 A. What would change is if you get the medical system in
11:20:09 20 general, as we all understand it, in a traditional military
21 organisation. Now, if you have the right kit, the right
22 equipment, the right trained personnel, the right time, within a
23 very limited time available, then it's a different issue. This
24 is the first time I've heard it and, of course, I've not heard
11:20:32 25 this before.

26 Q. But if that were the case, you would agree with me that the
27 medical system was available, if not limited?

28 A. Well, if it was described the way you do within, you know,
29 the real context of a good medical system, then it's another

1 thing.

2 JUDGE SEBUTINDE: General, you keep giving the answer it's
3 another thing, it's a different issue. Whereas, really, what
4 would assist the Bench is your opinion, as to whether you would
11:21:04 5 change your opinion in the report by the new facts set before
6 you, or you would still maintain your opinion. What doesn't help
7 us is when you say it's a different issue, or it's another thing.
8 You're falling short of answering the question.

9 THE WITNESS: I'm sorry, Your Honour. What I really want
11:21:25 10 to say is that, based on general remarks, that there was surgical
11 capacity and medicine and all that, that is so limited
12 information, because it requires so much to get to a medical
13 system. So I tried to give an answer on short sentences and what
14 I tried to do is if, everything would be in place, like a good
11:22:02 15 triage, good doctors, nurses, equipment, medical facilities, then
16 it would, indeed, change my opinion.

17 MR AGHA:

18 Q. Would it change your opinion to be less available or more
19 available?

11:23:41 20 A. Well, if that all is in place, then you come to a system we
21 know in a traditional military army. Then of course it would
22 increase my belief in the medical system.

23 Q. Now, general, we'll come to the next characteristic, which
24 is 11, and that's fundraising and finance, and that is dealt with
11:23:41 25 at paragraph 133, it's on page 63, and, again, reliance is
26 essentially placed on DSK-082 in your footnotes, I believe, and
27 some elements of what Colonel Iron was saying; is that right?

28 A. Well, basically, 082 supports the vision like also Colonel
29 Iron explained, basically, that it is, in your words, not

1 applicable.

2 Q. So you would agree with me it was not really an applicable
3 characteristic?

4 A. Yes.

11:23:42 5 Q. If we move to characteristic 12, which is pay and reward,
6 and this is at paragraph 135 on page 64, again, we have reliance
7 on DSK-082 who of course wasn't with them -- we've already
8 established that. Now, as a military expert, are you aware, for
9 example, let us say, during the Napoleonic wars where long and
11:24:02 10 bloody sieges were laid to fortresses, the Duke of Wellington,
11 for example, used to allow his men, for three days, to
12 essentially go and loot and plunder as a reward for their
13 sacrifice in laying a siege?

14 A. It's well-known.

11:24:22 15 Q. It's well-known. So, would you agree with me there can be
16 different types of reward as opposed to monetary reward?

17 A. Yes, I'm aware of that.

18 Q. Now, in the AFRC, hypothetically, as we've discussed, if
19 promotion in rank were used to reward soldiers who performed
11:24:47 20 well, that would be a kind of reward, wouldn't it?

21 A. Well, in that system, it would.

22 Q. And, being authorised to be placed in a high position of
23 command for good work in the field would be regarded as a reward
24 as well?

11:25:10 25 A. In their system it would.

26 Q. And authorising, let us say, looting, like Operation Pay
27 Yourself, would also be regarded as a system of reward, wouldn't
28 it?

29 A. Well, that's what I've described in my report.

1 Q. Yes, indeed. So you would agree with me that, on that
2 basis, there was a limited system of reward available, albeit
3 non-monetary?

4 A. Well, basically, I had the same here, that the system I
11:25:35 5 indicated was not applicable. Now, when that came into the AFRC
6 and other systems, so to speak, I still maintained of the
7 conclusion that it is not the system that was described in the
8 first place by Colonel Iron and he's supported by me. So if you
9 then say well, there's a total different system, and that's what
11:26:04 10 they were used to, is that a system? Not in the way I described
11 it, and Colonel Iron described and, therefore, I said it was not
12 applicable.

13 Q. But if we are looking into this context, as we are saying,
14 a reward system based on a non-monetary basis, would you say that
11:26:23 15 it was there to a limited extent?

16 A. Yes, but not in the sense to establish a traditional
17 military organisation.

18 Q. Okay. Now, the final one of the 13 characteristics we
19 looked at was religious welfare system. And this is dealt with
11:26:44 20 on, I believe, paragraph 137, and it's page 64. And your
21 conclusion is a religious welfare system did not exist. Now, a
22 piece of evidence has come before this Court, which Colonel Iron
23 was also not aware of, and I want to just read you that small
24 piece of information about religious welfare and ask you whether
11:27:08 25 it would change your mind as to whether, if that evidence were to
26 be believed, it would, at least exist to a limited extent. Now,
27 once again it comes from a soldier who was with the AFRC faction,
28 and he is DAB-033, and he gave his evidence on 2nd October 2006.
29 On page 86, it's line 2 to 10, I will read. And this is what he

1 says:

2 "Q. No, no, I'm asking you: What was your job
3 as chairman of the chaplain council, I believe
4 you called it; Council of Chaplains. Did you
11:28:04 5 preach to the troops?

6 "A. Yes. For any platoon, I would send one
7 imam, chaplain or Christian pastor.

8 "Q. So you were making sure the troops'
9 religious welfare was looked after; is that
11:28:19 10 right?

11 "A. Exactly say so, so we should pray every
12 morning and every evening. "

13 Now, you also see here again we have reference to the span
14 of command in any platoon. But, that aside, if you were to take
11:28:31 15 that, as what this gentleman said, and you were to believe it,
16 would you say that there was a limited welfare system --
17 religious system in place?

18 A. Not in the system Colonel Iron and I addressed the issue,
19 because we have not denied that there were prayers in the
11:28:50 20 morning, Sundays there were prayers, certain days there were
21 prayers, but in the teaching, you know, lecturing the personnel
22 in morale and ethics, and that's basically what we mean, not in
23 the sense that it's, you know, basically what Colonel Iron said,
24 they do not appear however to have played any personal welfare
11:29:14 25 role, because that's the way we look at it. It's not leading in
26 the prayers.

27 Q. But wouldn't you say that if there was a chairman of the
28 chaplain council, and he had imams and Christian preachers with
29 him and he sent them out to various platoons to give them

1 religious guidance or welfare, if that was the case, wouldn't you
2 say there was a religious welfare system at all in place, albeit
3 a limited one.

4 A. If you go further than just prayers. Colonel Iron and I
11:29:43 5 limited it to just to prayers and within a welfare system, you
6 need much more than that. Now, and we go again --

7 Q. Hypothetically, if they went beyond the prayers --

8 A. If there were lectures, based on lessons given to the
9 troops and individual guidance and support and all that, then it
11:30:05 10 would be different.

11 Q. So when you say it would be different, your opinion would
12 be different, it would be limited?

13 A. Then you go more into the area, as we understand, religious
14 welfare.

11:30:21 15 Q. Would that change your opinion to, say, in that case, they
16 had a limited system, albeit very limited system?

17 A. Yes, it would.

18 Q. If we were then to look at your conclusion of these 13
19 characteristics, which I believe is on page 65, and they are set
11:30:42 20 out there one by one, and we'll only address those where, I
21 think, they were not available, now, intelligence process we had
22 as limited?

23 A. Yes.

24 Q. Communication system, limited.

11:30:59 25 A. Yes.

26 Q. Planning and orders process, have I convinced you that this
27 was at least available to a very limited extent, or you still
28 stick to --

29 A. No, I stick to this one. I've not been convinced, sir.

1 Q. That's half, maybe. Lessons learned system is limited.

2 Now, would you agree with me that the disciplinary system, as we
3 discussed, pursuant to the Oxford university dictionary, and if
4 actually what did happen in terms of discipline, it would be at
11:31:28 5 least limited, if not available.

6 A. Not in my mind, sir.

7 Q. Not even very limited?

8 A. No, sir.

9 Q. Okay. Recruiting and training would be very limited. Now,
11:31:43 10 system for promotions and appointments. Now, you say this is not
11 available. Would you not agree with me that on the basis of
12 promotions, as we discussed, were handed out on a performance
13 basis, then they would be available?

14 A. Yes, but --

11:32:00 15 Q. There was a system in place?

16 A. But not the system to support a traditional military
17 organisation.

18 Q. But in terms of a traditional military organisation, it
19 still had that characteristic, a system of promotion and
11:32:15 20 appointment?

21 A. Yes, but an unrealistic system of promotion, that's why.

22 Q. But realistic or unrealistic, it existed to a limited
23 extent, didn't it?

24 A. Well, that's a matter of wording, sir, I'm afraid.

11:32:31 25 Q. Would you agree that it existed, even unrealistically, to a
26 limited extent?

27 A. Not in the way we described it in the first place, how a
28 promotion works.

29 Q. So far as you're concerned then, not at all?

1 A. No.

2 Q. Okay. Logistics supply, would you say that was very
3 limited, at least for the needs of the AFRC faction?

4 A. No, it was not available.

11:32:54 5 Q. Not available. Repair and maintenance, I think we both
6 agreed is not applicable. We can take that out of the equation.
7 The medical system, we agreed, is limited or very limited, as you
8 say?

9 A. Yes.

11:33:09 10 Q. I think fundraising and finance, we took that out of the
11 equation, because it was not applicable in this situation. Now,
12 pay and reward system, did you agree with me that it was limited,
13 albeit in a non-monetary sense, in terms of promotions and
14 appointments?

11:33:29 15 A. Well, it was in a non-monetary sense, but it was not in the
16 way we started out from. The system, the pay and reward system
17 we know, and then we deviated from that and went into describing
18 another system. Now, if you call that a system, but I don't call
19 that a system, sir.

11:33:49 20 Q. But if you were, hypothetically, to call it a system, it
21 would be limited?

22 A. If you call it a system, but I don't call it a system.

23 Q. But hypothetically, we have --

24 A. Then, indeed.

11:34:02 25 Q. Then, religious welfare system, based hypothetically on the
26 information we discussed, again, if that were true, that system
27 would be limited or very limited, wouldn't it?

28 A. That's correct.

29 Q. If we actually look at the 13 characteristics, I think we

1 can take two out, because they're just not applicable to this
2 particular organisation. So, of the 11, we have one -- two and a
3 half, three and a half, four and a half, five and a half, six and
4 a half, seven and a half, which, to however limited degree, are
11:34:49 5 available.

6 A. Yes, but, again, looking from the perspective I used, you
7 may, then, come to that conclusion. But from the perspective I
8 used, it doesn't support a traditional military organisation.
9 That's what I wanted to say.

11:35:14 10 Q. Notwithstanding that, you'd agree with me that a majority
11 of these characteristics now have been met, albeit not in the way
12 you may understand it?

13 A. Well, certainly, it's not the way I understand it, sir.

14 Q. Okay. Now, the next part we'll look at is: Was there
11:35:34 15 coherent linkage between strategic, operational and tactical
16 levels, page 65. I believe these are rather doctrinal issues.

17 A. Is that a question, sir?

18 Q. Yes, starting at the background, I think, at paragraph 141,
19 "Doctrinal Background," we'll start with.

11:36:05 20 A. Well, of course, as I indicated earlier, I had to start
21 with doctrine to get some sort of understanding. Now, Colonel
22 Iron used doctrine in his addressing the issue. So, how limited
23 it was, because you can write books about this, it started with a
24 doctrinal explanation.

11:36:30 25 Q. Obviously this is an area of doctrine where military
26 expertise is actually required. Would you agree with me that
27 background to doctrine framework is strategic, operational and
28 tactical levels; there are three levels.

29 A. Well, I addressed three other ones.

1 Q. Okay. But, generally speaking, would you say those three
2 are the main ones?

3 A. No, I can't agree with that, because the first one,
4 military strategic level, is encompassed into the grand strategy,
11:37:06 5 as I explained.

6 Q. Okay. If we, at least, let's say -- I'll accept that and
7 we'll come to discuss that point later, in your view, strategic
8 and grand strategy together. Were you aware that, in the
9 Napoleonic era, there was just strategy and tactics?

11:37:26 10 A. I read about Colonel Iron, in his report, and the analysis
11 of -- I think it came in the World War II there was a more
12 defined description of the different levels. I think the
13 Russians started it first, and then it was generally adopted also
14 in the western armies.

11:37:45 15 Q. That was operational as operational --

16 A. No, no, no. It was the differentiation between the grand
17 strategy, military, strategic, operational, tactical level and
18 technical level --

19 Q. Yes, that's right. But going back to that, obviously you
11:38:03 20 are aware of Carl von Clausewitz treaty on war. Now, he defined
21 military strategy, and you would agree with me he's one of the
22 leading authorities on area of doctrine and strategy, going right
23 back, would you?

24 A. You know, we can go back to von Clausewitz, but I base
11:38:29 25 myself on the world of today.

26 Q. Okay. But I'm going back to see how these doctrines and
27 strategies have developed over the course of time. But you would
28 agree with me he's quite a renowned source in this area as a
29 starting point?

1 A. Well, I don't know that, because then you have to -- then
2 you really have to study that area.

3 Q. But have you heard of him?

4 A. Oh, yeah, sure.

11:38:52 5 Q. So, certainly, he deals with doctrinal issues; you're aware
6 of that?

7 A. [No audible response].

8 Q. Can we --

9 A. Yes.

11:39:07 10 Q. Sorry, just for the benefit of the record. Now, he defined
11 military strategy as employment of battles to gain the end of
12 war; are you aware of that? That was his definition of strategy.

13 A. Well, could very well be.

14 Q. He defined tactics as confined to the battlefield relating
11:39:25 15 to the art and science of planning and winning battles; did you
16 know that?

17 A. Could be.

18 Q. So, you're aware that Clausewitz describes strategy as a
19 planning of a whole campaign and tactics as a planning of a
11:39:41 20 single battle?

21 A. Well, I'm not aware of that, but I believe what you quote
22 is correct.

23 Q. So we have the two levels.

24 A. Again, you know, I'm -- I don't see -- you know, going into
11:40:03 25 Clausewitz, the basis was basically the doctrine I used, and the
26 way Colonel Iron understands the issue.

27 Q. We'll come to that. This is just the starting point, if
28 you like, of seeing one's knowledge in this area. As you
29 mentioned earlier, you were aware the ideas of operational level

1 first came from the Soviet Union in the 1920s and 30s.

2 A. Well, I've read it in the Iron report.

3 Q. Did you know that independently from studies yourself, or
4 just only from Colonel Iron --

11:40:40 5 A. Not that. I knew it was accepted in the western world by
6 the Americans, but I didn't know it was dating back from the
7 Soviet.

8 Q. Okay. Now, this operational level in military doctrine was
9 actually confined to the Soviets until the 20th century; were you
11:40:52 10 aware of that?

11 A. No, I was not.

12 Q. And, actually, throughout most of the 20th century, most
13 armies continued to use just the two levels, strategy and
14 tactics; you're aware of that?

11:41:07 15 A. No, I was not.

16 Q. I think you've just mentioned it, you're aware the first
17 time the operational level appeared in western military doctrine
18 was in 1982?

19 A. Yes.

11:41:17 20 Q. And that was, of course, in the US Army's field manual
21 100/5?

22 A. Yes.

23 Q. Okay. So you're aware that other western nations and NATO
24 introduced the idea of an operational level into the military
11:41:36 25 doctrine after 1982 and into the 1990s?

26 A. Yes.

27 Q. Okay. I think, for example, the British first articulated
28 it in about 1989?

29 A. Yes.

1 Q. I think, also, as you've just mentioned, you're aware the
2 first time the idea of separation of military and grand strategy
3 was in World War II.

4 A. Yes.

11:42:03 5 Q. This was basically because the British felt they needed to
6 distinguish between their overall conduct of the war, which was
7 global, as opposed to specific areas of the war, such as the war
8 in Europe and the Pacific.

9 A. Yes.

11:42:18 10 Q. Now, in your report, you use the term grand strategy. This
11 is, if we turn to your report, paragraph 141. This is at roman
12 numeral (a), grand strategy level, on page 66. The footnote you
13 use is 253. This is the Netherlands defence doctrine, as your
14 source for grand strategy; is that right?

11:42:52 15 A. Yes.

16 Q. Now, are you aware this term grand strategy is not the used
17 in NATO doctrine?

18 A. No, I'm not aware of that.

19 Q. NATO actually uses a term strategic level and military
11:43:06 20 strategic level; did you --

21 A. No.

22 Q. You didn't know that --

23 A. No.

24 Q. Or no, it didn't?

11:43:17 25 A. I didn't go into what the NATO doctrine was concerned. I
26 went into the three levels. So I didn't address that one,
27 because it was clearly defined in the Dutch doctrine.

28 Q. I only ask you, because it has to be clear for the record
29 whether the answer is no, or you do not know

1 A. Yeah.

2 Q. Now, are you aware that, in the British doctrine, the term
3 grand strategy, as it originated, has now been replaced by
4 political strategy?

11:43:47 5 A. I would be very surprised if it was, but it could be.

6 Q. Could be. And are you aware that other nations, such as
7 Russia and China, have slightly different definitions of
8 strategy, operational art and tactics, although they all agree
9 they are basic principles.

11:44:03 10 A. That could be, yeah.

11 Q. And these different countries and alliances have different
12 definitions of these terms, because a written doctrine reflects
13 the needs of those for whom it is written.

14 A. Yes.

11:44:22 15 Q. So, as an example, NATO, as an alliance of western nations,
16 has different requirements than, say, Russia; you would agree
17 with that?

18 A. Yes.

19 Q. And you would agree with me that the NATO doctrine, as
11:44:36 20 currently written, reflects the needs and alliance of western
21 nations, wouldn't you?

22 A. NATO members?

23 Q. Yes. And you would agree with me that, if NATO consisted
24 of different entities, faced with different strategic problems
11:44:51 25 with different cultures and historical backgrounds, then its
26 doctrine may look different.

27 A. It could be.

28 Q. And I believe, in your own evidence, you mentioned that
29 non-NATO countries wrote their only military doctrine to suit

1 their own needs.

2 A. Yes.

3 Q. If we can now come to this term strategy, would you regard
4 the Oxford English dictionary definition of strategy as a fair
11:45:23 5 one?

6 A. Well, I can't comment on that.

7 Q. Well --

8 A. I think, you know, the NATO doctrine is a fair one, and the
9 Oxford dictionary, you know, I don't know if -- I can't give an
11:45:41 10 opinion on that.

11 Q. Do you know if strategy is defined in the NATO doctrine?

12 A. Well, the strategy, the military strategic level is defined
13 in the NATO doctrine.

14 Q. But strategy itself isn't, is it?

11:45:56 15 A. No, but the military strategic level, the way it's operated
16 is expressed.

17 Q. And as we've seen, if something is not defined in the NATO
18 doctrine, we look to the Oxford English dictionary, don't we?

19 PRESIDING JUDGE: Well, this witness is an expert, and he's
11:46:13 20 given a definition of grand strategy in his report. Where is
21 this going, Mr Agha? Are you going to say his opinion is
22 subservient to the Oxford dictionary?

23 MR AGHA: No, I'm looking at the actual definition of
24 strategy, not grand strategy.

11:46:31 25 PRESIDING JUDGE: And where is this going to take us?

26 MR AGHA: Well, the Prosecution would put forward the case
27 that a strategy doesn't necessarily need to be linked to a
28 government structure, and a strategy can be linked to any
29 organisation.

1 PRESIDING JUDGE: All right. Go ahead, Mr Agha.

2 MR AGHA:

3 Q. If we were to look at the Oxford English -- and can I pass
4 a copy around so it may be helpful?

11:46:57 5 PRESIDING JUDGE: You can do that, or you can just ask him
6 if he agrees with the opinion in the Oxford English dictionary.

7 MR AGHA:

8 Q. If the Oxford English dictionary was to say that strategy
9 was a plan designed to achieve a particular long-term aim, and,
11:47:13 10 secondly, the art of planning and directing military activity in
11 a war or battle.

12 A. Well, it's a lot of words, you know. I don't have a reason
13 not to agree, but I have not studied it in my report and in my
14 analysis.

11:47:36 15 Q. But with this definition of strategy, it's concerned with
16 achieving a particular long-term aim, isn't it?

17 A. Well, it may be.

18 Q. And more, specifically, the long-term aim is the art of
19 planning a military activity.

11:47:58 20 A. Well, you see, it's getting very complicated for me. With
21 all this wording, because, in my mind, I'm drifting away from the
22 issue, which is also addressed by Colonel Iron, and which I
23 assessed.

24 Q. In essence, would you agree with me that strategy captures
11:48:22 25 a top level of planning and conduct of military activity based on
26 that definition I gave you?

27 A. Strategy is the ultimate aim which you want to accomplish,
28 and that's also, I believe, the words Colonel Iron used. It's
29 the ultimate aim of a military organisation to get his goals,

1 based on the higher strategy. And, of course, Colonel Iron
2 doesn't mention the grand strategy, but he clearly indicates the
3 political oversight.

11:49:03 4 Q. Now, using this definition of strategy, as you've just
5 mentioned it yourself, would you agree that it's fair to say
6 that, for example, Mao Tse-Tung had a strategy for the conduct of
7 the Chinese civil war?

8 A. It may have been.

11:49:17 9 Q. Would you agree that ZIPRA, Zimbabwe Peoples Revolutionary
10 Army, and ZANLA, Zimbabwe African National Liberation Army, in
11 their ten-year long struggle against the white minority
12 government of Rhodesia had a strategy?

13 A. Well, then I have to go into all these -- you put it to
14 me --

11:49:35 15 PRESIDING JUDGE: I don't know where you are going with
16 this, Mr Agha. Can you bring yourself back to the case before
17 this Court, please.

18 MR AGHA:

11:49:46 19 Q. Now, I'm suggesting to you that these organisations had a
20 strategy.

21 A. Well, then, of course, I have to go into the history and
22 learn about it before I can give a yes or no answer, and I didn't
23 look into that.

11:50:06 24 Q. But assuming that they did have a strategy, none of them
25 had the oversight of a national government, did they?

26 A. Well, I can't answer that, but the question is, and that
27 is, you know, that I've come across also in the report by, or the
28 transcripts from Colonel Iron, that, within the case at hand,
29 there was no political oversight.

1 Q. But my suggestion to you is that, in terms of just pure
2 strategy, you don't need a political oversight. An organisation
3 can have a strategy without having to have a political oversight.

4 A. But then you are not a traditional military organisation.
11:50:48 5 A military organisation is established on the fact of political
6 oversight.

7 Q. Now, it is not our suggestion that we are, or the AFRC
8 faction was a traditional military organisation. We're talking
9 about a military organisation. Now, those organisations, which
11:51:06 10 we've just referred to, didn't need a political oversight, did
11 they?

12 PRESIDING JUDGE: I understood the witness to say he would
13 actually have to study those topics before he could give you an
14 answer; is that right, general?

11:51:25 15 THE WITNESS: Yes, Your Honour, it is. We go into these
16 historical events, and I was looking at the case at hand, and
17 established the fact there was no political oversight and, for
18 that matter, you can't have a military strategy. That's what I
19 was saying. So, indeed, going into all these historical events
11:51:41 20 and different campaigns, you know, then I really have to study
21 them and I have to go into how it was orchestrated.

22 MR AGHA:

23 Q. Well, let us say, from a hypothetical perspective, if you
24 had a military organisation, let's say, as we've discussed in
11:52:00 25 some of these examples, that could have a strategy without having
26 a national government, hypothetically, couldn't it?

27 A. Yes, but it's the same what Colonel Iron says, and that's
28 unrealistic in the reasoning. That's what the question is about,
29 whether it has coherence, and in order to establish the

1 coherence, and I agree with him, Colonel Iron states you need to
2 have a political mandate. Period. Now, if you don't have that
3 political mandate, you are a non-regular army. So, that's all to
4 it. So, if you then say, "Well, there was no political mandate,"
11:52:53 5 and they had a strategy, but then you can't come to coherence.
6 You can't have both ways.

7 Q. So, in that case, they'd be an irregular army?

8 A. Well, first of all, Colonel Iron stated that it was an
9 irregular army in the first place.

11:53:06 10 Q. Right. So we're in agreement on that?

11 A. Well, it was an irregular force, that's what I said.

12 Q. Yes. Okay. Now, is there any doctrinal reason why an
13 irregular force cannot have a strategy?

14 A. Not a doctrinal reason, as such. But you are not -- you
11:53:32 15 are an irregular force or a non-traditional military organisation
16 if you don't have the political oversight. You are an irregular,
17 operating without the scope of the political guidance.

18 Q. So an irregular army can have a strategy?

19 A. Well, in my mind, the strategy always has to be based on
11:53:55 20 the political oversight. You create your own strategy.

21 Q. But you're talking in the situation of irregular army, I'm
22 talking --

23 A. Yes, but that was the question at hand, whether it was a
24 traditional military organisation, wasn't it?

11:54:10 25 JUDGE SEBUTINDE: But, general, the question now has
26 shifted from these strict terms of reference to an irregular army
27 and I think it's an interesting question, from which we would
28 benefit from your opinion.

29 MR AGHA:

1 Q. So an irregular army can have a strategy, can't it?

2 A. Not in the context I see it.

3 Q. Would you say -- are you saying the Tamil Tigers can't have
4 a strategy?

11:54:39 5 A. I find it hard to, within the context I reason, to come up
6 with a well-defined strategy.

7 Q. But is there any doctrinal issue why an irregular force
8 cannot have a strategy?

9 A. No, I don't think so.

11:54:58 10 Q. Okay. If that's the case, then the question becomes: What
11 was that strategy?

12 A. Yes.

13 Q. Okay. Now, Colonel Iron, in his report, states that he
14 inferred certain strategic aims, drawn from all the evidence he
11:55:14 15 analysed and interviews he conducted.

16 A. Yes.

17 Q. And, according to Colonel Iron, these aims changed over
18 time.

19 A. Yes.

11:55:22 20 Q. And it may be helpful to look at Colonel Iron's matrix of
21 what these aims were, and that's in Colonel Iron's report at E. 5,
22 which is page 14464. He has the matrix here. I don't know if
23 the Bench has it, and we have the date February to April '98, the
24 strategic aim was survival of the AFRC; May to October '98, the
11:56:08 25 strategic aim was to establish AFRC as an independent force; and
26 then, in the next period, November '98 to January '99, the
27 capture of Freetown before the arrival of RUF; and, finally, on
28 the next page, January to February 1999, capture Freetown and
29 restore RUF/AFRC junta, and this -- he has the operational

1 objective and an example of a tactical activity, as to how
2 they're all linked together. Do you have that?

3 A. Yes, I have that.

4 Q. Now, have you found any evidence in your interviews and
11:56:44 5 other research to say that these strategic aims, as inferred by
6 Colonel Iron, were actually incorrect?

7 A. In general, no.

8 Q. Now, there is evidence before this Court, certainly one of
9 the strategic aims of SAJ Musa was to come to Freetown and
11:57:20 10 reinstate the army; are you aware of that?

11 A. Yes, it's in my report.

12 Q. Now in your report, on paragraph 151 -- it's at the
13 conclusion, paragraph 151, and it is page 71, and I believe it
14 says, the first line -- do you have this?

11:58:07 15 A. It's in my report, yes.

16 Q. "Within the AFRC faction the alleged strategic aims were
17 never articulated and therefore more than likely not known to the
18 subordinate commanders especially since the alleged aims changed
19 and evolved. Therefore there was no coherence between these
11:58:23 20 levels."

21 A. Yes.

22 Q. Now, if I were to tell you that evidence has been presented
23 before this Court that SAJ Musa addressed his whole troop at
24 Colonel Eddie Town, and he made it absolutely clear that his aims
11:58:52 25 were to come to Freetown to reinstate the army, then you'd agree
26 with me that he had actually articulated his aims to not only all
27 his subordinate commanders, but actually to his whole force.

28 A. Then he had articulated his operational goals, indeed.

29 Q. Wouldn't you agree with me that -- as in Iron's report,

1 that was also his strategic aim, to reach Freetown and reinstate
2 the national army?

3 A. But I don't agree that it was a strategical aim

4 Q. Okay. So what do you think was SAJ Musa's strategical aim?

11:59:34 5 A. Well, as I indicated in my report, one can only question
6 what his aim was, and we will never know, because it has varied
7 over time.

8 Q. But, essentially, I would suggest to you, based on the
9 evidence before this Court, so many witnesses have said that his
11:59:51 10 aim was to come to Freetown to reinstate the army.

11 A. Yes.

12 Q. If that were the case, that would be clear, as his
13 strategic aim, wouldn't it?

14 A. It would be an operational aim, in my mind.

12:00:09 15 Q. Okay. Now, on that basis, you would have coherence between
16 strategic level and operational level, wouldn't you?

17 A. No. You would have coherence between operational and
18 tactical level.

19 Q. Okay. But if we were, hypothetically, to assume that the
12:00:31 20 strategic level, the strategic goal was to attack Freetown and
21 reinstate the army, then you would have a coherence, wouldn't
22 you?

23 A. Well, in the view of Colonel Iron, it is the case, because
24 he assessed that there was a strategic aim, but he was fighting
12:00:45 25 with the problem, and he had to make inferences of what exactly
26 the strategic aim was. Again, if you name it that way but you
27 don't have the political oversight, then you cannot come -- for
28 the reasoning, for the sake of the argument, you cannot come to
29 the conclusion, ultimately, that it was a traditional military

1 organisation. That is what I'm saying. So Colonel Iron made up
2 his strategic aim himself.

3 Q. If we work on the basis that it was an irregular force, not
4 a regular military army, it didn't need any political oversight,
12:01:29 5 did it?

6 A. No, but the question which you put before me, and also it
7 was addressed by Colonel Iron that it was a traditional military
8 organisation, and irregular force. So now, if the conclusion
9 then is, well, it's an irregular force, you don't need all that,
12:01:42 10 it's a different issue

11 Q. My understanding is that Colonel Iron was actually basing
12 the organisation against characteristics of a traditional army to
13 see if it had sufficient characteristics to be regarded as a
14 military organisation.

12:01:59 15 A. Not only that, sir. In his transcript, he mentioned it
16 himself. He said, you know, in order to be coherent, you need to
17 have a political mandate to become a regular or traditional
18 military organisation.

19 Q. Okay, so --

12:02:11 20 A. We all know that there was no political mandate.

21 Q. Right.

22 A. So --

23 Q. But if his force is irregular, he wouldn't need a political
24 mandate, would he?

12:02:22 25 A. Yeah, but then it's not a traditional military
26 organisation.

27 Q. Okay. See, it's not our argument of the Prosecution it was
28 a traditional military organisation, so if you --

29 A. But that was the question I looked at.

1 Q. Well, be that as it may. Essentially, if we take the point
2 of view that it's irregular, okay, I'll you this now as an
3 expert, it didn't need any political oversight, did it?

12:02:52

4 A. I think by definition, irregular or guerilla, they don't
5 have political oversight.

6 Q. But those groups like, let's say, Tamil Tigers, et cetera,
7 can still have a strategy, can't they?

8 A. But not in the sense that I mean that.

12:03:06

9 Q. Let's say we're talking about irregular forces now. They
10 can still have a strategy amongst themselves.

11 A. But then they make it up.

12 Q. Yes, whatever it may be. If that strategy s articulated to
13 their soldiers and the commanders, then there is a coherence
14 within the irregular force, isn't there?

12:03:20

15 A. If all these prerequisites are met, all these -- then in
16 the irregular force, that may be the case.

17 Q. I now would finally like to address your conclusions, which
18 are at part E of your report. I believe these can be found at
19 paragraph 172, which is page 82. Just so we can be clear on
12:04:26 20 where we are, on paragraph 172, would you agree with me now that
21 all forms of discipline and regimentation of the RSLAF, from what
22 you've heard on the additional material, according to TRC-01, had
23 not been brought to zero by May 1997.

24 A. No, I don't agree with that.

12:04:55

25 Q. So, according to you, they'd be [overlapping speakers] --

26 A. Yes, sir.

27 Q. -- zero.

28 A. Yes, sir.

29 Q. You wouldn't agree, even if there was a slight degree of

1 regimentation or discipline?

2 A. No, I think it totally broke down.

3 Q. Okay. Now, what about the SLA in the junta period, which
4 is the period from May 1997 to February 1998.

12:05:11 5 A. Yes.

6 Q. I would suggest to you that there was also a measure of
7 organisation and discipline in regimentation during that period?

8 A. No, I don't believe that.

9 Q. Not to any degree?

12:05:24 10 A. No, sir.

11 Q. Now, if we then look at -- let us say we carry on after the
12 junta are removed from power by ECOMOG, so it's the AFRC faction
13 in the jungle, would you agree with me that, by the time SAJ Musa
14 had regrouped in the jungle in Koinadugu area, before moving to

12:05:50 15 Colonel Eddie Town, the AFRC faction, to some degree, was an
16 organised force?

17 A. I would agree with that, but not in the sense that I
18 studied it.

12:06:08 19 Q. So you would agree in the sense of, say, an irregular
20 force, an organised force?

21 A. As I stated, it's an irregular force, whether you have
22 within the irregular force some form of organisation, that maybe
23 the case.

24 Q. Okay. You would agree with me that the AFRC faction that
12:06:22 25 captured Freetown on 6 January, which moved from Colonel Eddie
26 Town to Freetown, was to some degree, an organised force?

27 A. It was an irregular force.

28 Q. Yes, but, to some degree, at least it was organised?

29 A. In the irregular way they operated, there was some

1 organisation.

2 Q. Yes. Now, 174, we agree that the AFRC can be qualified as
3 a regular force.

4 A. I'm quite happy about that.

12:06:50 5 Q. When we turn now to the question of, let us say, span and
6 chain of command, would you agree with me that if the evidence,
7 both of span of command, ie, that you've heard of battalion, down
8 to brigade or company and platoon, was indeed present, there
9 would be sufficient span of command for the AFRC faction whilst
12:07:24 10 in the jungle?

11 A. Of course. As I stated earlier, you named all the
12 requirements and, if everything was true, then it was the case.
13 But I have not come to that conclusion, based on my findings. I
14 didn't -- I didn't see any proof of a proper span of command and
12:07:49 15 chain of command as the way Colonel Iron and I indicated it.

16 Q. Now, would you agree with me, after we've looked at the 13
17 characteristics, that a majority of them, at least, in the sense
18 we discussed them, were present, as opposed to in a traditional
19 military army?

12:08:11 20 A. As opposed to a traditional military army.

21 Q. Yes.

22 A. Which was the question I addressed, then I agree with you.
23 But it didn't -- to make it clear, it didn't have the
24 characteristics of a traditional military army.

12:08:27 25 Q. Okay, but about seven and a half of them were common in the
26 irregular force that it was?

27 A. They were made up, in a sense, to make it look like a
28 traditional military army.

29 Q. Okay. Would you agree with me that, being an irregular

1 force, in the way it operated, for them, without political
2 oversight, there was cohesion, linkage between strategy,
3 operation and tactics?

12:09:06 4 A. No. Honestly, I believe they had an operational tactical
5 level.

6 Q. And would you agree with me that the AFRC faction and RUF
7 faction had the ability to work together under two separate
8 chains of command?

9 A. No, sir.

12:09:21 10 Q. You wouldn't?

11 A. No, sir.

12 Q. On that basis, if we can now finally turn to the
13 non-existence of the joint military operational structure, and
14 that, I believe, is around paragraph 151, which is around page

12:09:53 15 70. Yes. It's page 71, and this is where you address the
16 non-existence of a joint military operational structure between
17 RUF and AFRC.

18 A. Yes.

19 Q. Now, in your evidence, you have experience of putting
12:10:17 20 together a joint military operational structure, don't you?

21 A. Yes.

22 Q. And your examples dealt with two services within the same
23 services of a state, didn't they?

24 A. Yes.

12:10:28 25 Q. So your example was different from two factions
26 integrating, who are not services and are not of the same armed
27 forces of a state, aren't they?

28 A. Yes.

29 Q. Now, I understand that your example, in the Netherlands,

1 the two joint services kept their own separate chains of command;
2 is that right?

3 A. No. What I described was basically two services coming
4 under the same command.

12:10:59 5 Q. Okay. So, if you like -- and the problem which was faced
6 there was more the fact you had 400 staff officers who had to be
7 integrated; is that right?

8 A. Yes.

9 Q. Okay. Now, if you have a situation where you have two
12:11:15 10 factions, they can both have their separate independent chains of
11 command, can't they?

12 A. If they operate independently from each other, they could.

13 Q. They could. Two factions could. Now, those two factions
14 could also, through their top most leadership, go on joint
12:11:39 15 operations together, or achieve joint objectives, couldn't they?

16 A. That is extremely unlikely.

17 Q. But you could have the two separate chains of command
18 working under the individual commanders, and those commanders
19 would consult and then give you orders down the separate chains
12:12:06 20 of command, couldn't you?

21 A. Yes, but that, from a military point of view, is very
22 unsensible and very unlikely.

23 Q. For example, during World War II the Russians and the
24 allies worked together to fight the German army whilst keeping
12:12:25 25 their separate chains of command, didn't they?

26 A. Yes.

27 Q. The Russians and allies were also working together towards
28 the same strategic objective in World War II, weren't they?

29 A. Yes.

1 Q. So you would agree with me then, on that basis, the AFRC
2 and RUF could have worked together, in the example I've given, to
3 achieve the same strategic objective, couldn't they?

12:12:54 4 A. They could, if you operate totally independent from each
5 other with the same goal. What I meant to describe was if you
6 have a joint operation, meaning joint in the sense that you
7 actually operate together.

8 Q. I'm not looking at joint operations in general, I'm looking
9 more at the World War II situation where you have different
12:13:13 10 forces working together.

11 A. Yes.

12 Q. And if that was the case for the RUF and AFRC, that would
13 be quite possible, wouldn't it?

14 A. If you operate totally independent from each other.

12:13:23 15 Q. Yes.

16 A. Not in the same theatre, so to speak.

17 Q. Yes.

18 A. That could be the case.

19 Q. And keep sufficient communications between you, as the
12:13:30 20 allies did amongst themselves during the war with Germany, to
21 make sure you actually co-ordinate things?

22 A. Yes.

23 Q. Finally, I would just like to ask you some very general
24 questions, as a military expert. Now, would you agree with me
12:13:51 25 the ultimate purpose of any military organisation in the field,
26 in time of war, is to defeat the enemy?

27 A. Not entirely. It's likely that you come up if you are in a
28 confrontation battle.

29 Q. But it would certainly be one of the objectives if two

1 fights -- let's say the World War II, the objective was for one
2 side to defeat the other, wasn't it?

3 A. At the same time, you can come up to the conclusion that
4 the force is used to cover flanks and not being in a battle at
12:14:24 5 all.

6 Q. But, at the time of war, the overall objective of war is
7 for one side to defeat the other in conflict, isn't it?

8 A. Yes.

9 Q. In reality, if a military organisation, to be categorised
12:14:38 10 as effective, it simply needs to be better than its opponents,
11 doesn't it?

12 A. Yes.

13 Q. So, in the context of the Sierra Leone war, whereby the
14 AFRC faction was able to advance successfully from Colonel Eddie
12:14:52 15 Town and capture Freetown, defeating its enemies on the way, it
16 was an effective military organisation, wasn't it?

17 A. I have not denied the effectiveness. I have not denied the
18 effectiveness as a survival organisation, and I have not denied
19 the effectiveness as a guerilla, because that was not the
12:15:16 20 question at hand.

21 Q. So, essentially, you would agree with me that it was an
22 effective irregular force?

23 A. I would agree to that, at certain times, they certainly
24 were effective, yes.

12:15:30 25 Q. And one of those times would be from Colonel Eddie Town to
26 Freetown?

27 A. Again, then you have to go into the details, but we don't
28 go over that again. But you're successful in that.

29 Q. Yes.

1 A. Yes.

2 Q. Thank you, general. I'm sorry to use so much of your time.
3 That completes my cross-examination, Your Honours.

4 PRESIDING JUDGE: Any re-examination, Mr Knoops?

12:15:58

5 RE-EXAMINED BY MR KNOOPS:

6 Q. Good afternoon, general. I have a few questions for you,
7 sir. The operations you prepared for the UN missions, Iraq,
8 Cambodia and Haiti, how would you describe them, shortly?

12:16:56

9 MR AGHA: Objection, Your Honour. I don't think this
10 arises out of cross-examination.

11 PRESIDING JUDGE: What part of cross-examination does this
12 refer to?

13 MR KNOOPS: The Prosecution was inferring that the witness
14 was more involved in maritime operations than that of land
15 operations.

12:17:10

16 PRESIDING JUDGE: Yes. Do you want to answer that? I
17 think that was in cross-examination.

18 MR AGHA: Yes. I did actually suggest that in
19 cross-examination, Your Honour, and he agreed, I believe.

12:17:23

20 PRESIDING JUDGE: Yes, all right. Well, you're going to
21 explain his experience vis-a-vis land operations and sea
22 operations?

23 MR KNOOPS: Yes, Your Honour.

24 PRESIDING JUDGE: Right. Go ahead.

12:17:34

25 MR KNOOPS:

26 Q. General, are you in a position to tell the Court what the
27 nature of these operations were?

28 A. They were all peacekeeping land operations.

29 Q. Thank you, general. The Prosecution was suggesting, in

1 cross-examination, that, with respect to one of your sources,
2 082, that he was never in a position to experience or see any of
3 the AFRC movements. Now, general, are you aware that there was a
4 battle at Masiaka?

12:18:27 5 A. Yes, I was.

6 Q. General, you have the report --

7 MR AGHA: Your Honour, can we perhaps have a time frame. I
8 think there were a number of skirmishes or battles at Masiaka.

9 MR KNOOPS: Yes. It was after August 1998 while the AFRC
12:18:40 10 was on the advance to Freetown.

11 PRESIDING JUDGE: Was that the battle the general is
12 thinking of? You haven't put the time frame to him.

13 MR KNOOPS: Yes.

14 Q. General, can you recall the time frame of the battle you
12:18:59 15 have in mind?

16 A. Not precisely, but it had to be basically in the time frame
17 after the advance towards Freetown.

18 Q. Do you know whether your source, 082, had any direct
19 knowledge on this battle?

12:19:23 20 A. I don't know that. What I know is that he had frequent --
21 that he was frequently in the position with the forward units of
22 ECOMOG. Now, whether he had specifically knowledge in this
23 battle, I can't tell you.

24 Q. The Prosecution did suggest that the intelligence position
12:19:45 25 of ECOMOG might have been unreliable or faulty. Did you come
26 across any information which made you believe that the
27 intelligence of ECOMOG, in your view, was reliable?

28 A. In general, I believe that they were reliable.

29 Q. And how did you come to that conclusion?

1 A. Because of the information I got from 082, ECOMOG was well
2 aware what's going on.

3 Q. Do you know whether Colonel Iron describes the position of
4 ECOMOG and their ability to view the movement of the AFRC in this
12:20:44 5 report?

6 A. Not that I can recall.

7 Q. May I briefly point you to page D6, that's paragraph D2. 10,
8 the last sentence from below in that specific paragraph. This
9 relates to the time frame of the battle of Freetown, so shortly
12:21:29 10 up to January 1999. The report of Colonel Iron says, "While
11 moving in the open in daylight, they were seen by ECOMOG
12 observers."

13 My question here, general: Do you know whether your
14 source, DSK-082, was one of the ECOMOG observers?

12:21:47 15 A. I don't know that.

16 Q. General, you also mentioned to the Court that you were able
17 to rely on a source, which you referred to as number 2. Were you
18 aware about evidence led before this Court that this person was,
19 in June, November 1998, in the Northern Jungle in Koinadugu
12:22:22 20 District before SAJ Musa left to join Major FAT Sesay?

21 MR AGHA: I object to that, Your Honour. I think in his
22 evidence-in-chief he said that particular, if I'm right, witness
23 was there.

24 PRESIDING JUDGE: What's your reply to that, Mr Knoops?

12:22:41 25 MR KNOOPS: No, no. I'm saying that, indeed, the witness
26 testified about the position of his source number 3 as being one
27 of the leaders of one of the AFRC groups. Now, the Prosecution
28 contested that number 3 was ever in contact with the group of
29 Musa. So I'm asking the expert whether he was aware about that

1 piece of evidence which was given by DBK-012 in chief, that was
2 last -- I think Monday a week ago, which clearly indicates that
3 this number 3 --

4 PRESIDING JUDGE: Well, put it to the witness. He may or
12:23:22 5 may not be aware of it.

6 MR KNOOPS: Yes, I was asking that, but I believe the
7 Prosecution was objecting to the question.

8 Q. General, were you aware that a witness testified before
9 this Court that number 3, your source number 3, was with SAJ Musa
12:23:39 10 in the jungle between June, November 1998 and the Northern Jungle
11 in the Koinadugu District before Musa left to join Major FAT
12 Sesay in Colonel Eddie Town; were you aware about that
13 information?

14 A. I was not.

12:23:59 15 Q. Thank you. General, the Prosecution has suggested that the
16 SLA was a well-trained army and well able to defeat easily the
17 RUF. Now, I'm reading you the short portion of the transcript of
18 TRC-01, that's page 114, starting from line 8. The question
19 starts:

12:24:47 20 "Q. So the SLAs were better trained than the
21 RUF?

22 "A. They were not comparable. Those were two
23 different groups altogether. This was a
24 military force against a group. I wouldn't
12:24:59 25 call them rebels, because they had no
26 ideologies. Maybe a group of people who were
27 power thirsty and had a lust for diamonds,
28 probably bandits.

29 "Q. So it was essentially a well-trained

1 military organisation against a bunch of rebel
2 forces who were coming to steal diamonds?

3 "A. Well, I would call them bandits. "

4 Then in line 27, question of the Prosecution:

12:25:33 5 "Q. And RUF were some ratbag bunch of bandits,
6 essentially?

7 "A. Yes, Your Honour, with not very good
8 leadership structure in place. "

9 General, my question to you, does this say anything to you
12:25:49 10 about the level of training of the SLA?

11 A. No, it doesn't.

12 Q. Thank you. The Prosecution, general, has put before you
13 that the sequence of the movement of the AFRC, when they left
14 Colonel Eddie Town and had reorganised the battalions to

12:26:10 15 Freetown, that a sequence indicated that the group was
16 well-organised. Could you please look at the same transcripts on
17 page 117, starting, sorry, 116, line 29. I would say 25, sorry.

18 "It was merely survival that they were working on, because
19 they had to survive by all means. So there was nothing like
20 seeing the values the territorial integrity of the sovereignty of
21 Sierra Leone are to be protected and defended at all costs or
22 that we will have to stay here and make sure we are protected.

23 It was running from point A to B, you know, to stay alive. So I
24 don't think there was anything strategic about the movement from
12:27:10 25 Freetown of the AFRC. "

26 That is the answer of TRC-01 to one of the questions. My
27 question to you, general, is: Do you think that the reference of
28 this witness to the wording "running from point A to B to stay
29 alive" has something to do with either what you described, the

1 modus operandi, or has to do with anything organisational?

2 A. Well, as I stated before, it was running for their life for
3 survival, stay away, stay in hiding.

4 MR AGHA: Your Honour, can we clarify, is this when they
12:27:59 5 leave Freetown after the intervention, or when they leave
6 Freetown after they are driven off by ECOMOG in January 1999?
7 I'm not quite sure which that passage refers to.

8 MR KNOOPS: Your Honour, this passage refers to, according
9 to the context of this transcript -- you can find it on page 116,
12:28:38 10 line 10. The question was:

11 "Q. Were you able to discover,
12 Mr Witness, in this regard, in your
13 research when the AFRC, when they
14 fled from Freetown" --

12:28:49 15 THE INTERPRETER: Your Honours, counsel is reading too
16 fast.

17 MR KNOOPS: Sorry. It refers to line 10, speaking about
18 when they fled from Freetown, presuming February 1998. But it's
19 not clear in the transcript what exactly the witness was
12:29:08 20 referring to, but he's referring to fleeing from Freetown.

21 PRESIDING JUDGE: What was the point in cross-examination
22 you are seeking to explain here, Mr Knoops?

23 MR KNOOPS: The Prosecution was saying that -- putting to
24 the expert that the sequence of the battalions after they left
12:29:33 25 Colonel Eddie Town, that a sequence indicated some form of
26 organisational level. I'm putting it to the expert that the
27 statement of TRC-01 was saying it was basically running from A to
28 B to stay alive, whether that has something to do with that
29 organisational level the Prosecution has in mind.

1 MR AGHA: I think, Your Honour, one thing is different from
2 the other. We're talking about different points in time.

3 PRESIDING JUDGE: Yes. I can't see the connection there.
4 You're talking about different stages of the campaign.

12:30:10 5 MR KNOOPS: All right. I'll move on.

6 Q. General, were you aware about the fact that, during the
7 war, before 1996, the SLAs were supported by any other forces?

8 A. Yes, I was aware of that.

9 MR AGHA: Objection, Your Honour. This didn't arise out of
10 cross-examination.

11 PRESIDING JUDGE: Mr Knoops, if you can preface your
12 question as to the part of cross-examination you're seeking to
13 explain, it might save these objections.

14 MR KNOOPS: I will, Your Honour. Thank you.

12:30:49 15 Q. The Prosecution put it to the expert that the SLAs --

16 PRESIDING JUDGE: Put it to the witness: You were asked in
17 cross-examination, et cetera, et cetera.

18 MR KNOOPS:

19 Q. General, the Prosecution put it to you that the SLAs were
12:31:01 20 able to conquer the RUF during the war --

21 A. Yes.

22 Q. -- in the period 1991 to 1996, and it was suggesting that
23 indicates it was a well-organised, well-trained, well-disciplined
24 army.

12:31:18 25 A. Yes.

26 Q. Were you aware that, during this period, the SLAs were
27 supported by any other forces?

28 MR AGHA: Objection, Your Honour. I don't see that
29 question is arising out of cross-examination. That could have

1 been something which was addressed in his evidence-in-chief as he
2 extensively went through the history of the SLAs in the conflict.

3 PRESIDING JUDGE: What's your reply to that, Mr Knoops?

4 MR KNOOPS: In my humble submission, this specifically

12:31:38 5 arose out of the cross-examination. The Prosecution was

6 suggesting to the expert that, by reference to the fact that the
7 SLAs were able to conquer the RUF, that that was an indication
8 that they were well trained, and this was --

9 PRESIDING JUDGE: You're suggesting -- your question goes

12:31:59 10 to suggesting they had help; is that right?

11 MR KNOOPS: Yes.

12 PRESIDING JUDGE: I will overrule the objection. You ask
13 the question.

14 MR KNOOPS:

12:32:07 15 Q. General, do you know whether the SLAs, in that period, were
16 supported by other forces?

17 A. Yes.

18 Q. Can you recall, from your research, which forces this
19 entailed?

12:32:27 20 A. Of course it was not the main focus of my research, but I
21 read, among others, about the South Africans, I believe, the
22 Executive Outcomes operating, and that, from a military
23 perspective, was of interest to me, pure of interest, 300 men
24 with a couple of gunships establishing command and control over
12:32:52 25 the greater part of Sierra Leone. That's about what I read about
26 it.

27 Q. General, the Prosecution has suggested that the TRC report
28 on which you relied are just opinions and there are not
29 statements of fact in that report, and, therefore, you didn't

1 rely on any statements of fact and mere opinions. They also
2 referred, in their cross-examination, to the statement of Kellie
3 Conteh before the TRC. General, did you know that Mr Kellie
4 Conteh was a force commander in the army in 1994 to May of 1995?

12:33:45 5 MR AGHA: I object to that question, Your Honour.

6 PRESIDING JUDGE: What's the basis?

7 MR AGHA: The basis of the objection is that we have
8 referred to various footnotes and people who came across it. We
9 were not looking to positions of people, or anything of that
10 sort.

12:33:58

11 PRESIDING JUDGE: What exactly are you trying to explain in
12 the evidence that emerged in cross-examination, Mr Knoops?

13 MR KNOOPS: I'm asking the witness whether he has any
14 examples of concrete statements of fact, other than opinion
15 evidence, given before the TRC. Since the Prosecution brought up
16 the state of Kellie Conteh in cross-examination, referring to the
17 report of the general on page 17, I'm asking whether the general
18 knows what the position was of Kellie Conteh in order to come to
19 any statement before the TRC.

12:34:17

20 MR AGHA: Again, isn't that a question whether it's a
21 statement of fact or opinion?

22 PRESIDING JUDGE: We've heard from you, Mr Agha. I'll
23 overrule the objection. Ask the question, Mr Knoops.

24 MR KNOOPS:

12:34:54 25 Q. General, you did rely, amongst others, on the statement of
26 Kellie Conteh. Did you know, at the time you read the statement
27 and you implemented it in your report, or referred to it, what
28 his position was during the war before 1996?

29 A. Not specifically. I knew he had a senior position, but I

1 can't recall what exact position he had.

2 Q. Did you read his statement which was given before the TRC?

3 A. I think I did, because most of the ones I quoted, I went
4 through their statements, and I think he was among those ones,
12:35:37 5 together with Tom Carew and some others, I believe.

6 Q. If I were to refer you to a few lines from his statement,
7 this presentation before the TRC, and ask you, after that,
8 whether you think he was in a position to speak about that, were
9 you able to do so?

12:36:04 10 A. I would have to hear it, I'm afraid.

11 MR KNOOPS: Your Honours, I'm quoting from the presentation
12 of Kellie Conteh before the TRC, which is in the Court document
13 18213 and in Court document 18216. It's a very short citation,
14 Your Honour. In June 2003, Kellie Conteh gave the following
12:36:41 15 statement before the TRC, and that was referring to the period of
16 the starting of the war.

17 PRESIDING JUDGE: Do I take it you're going to read
18 something to him and ask this witness whether it's true or not?

19 MR KNOOPS: No, I'm just asking whether he thinks this
12:37:00 20 person, who gave the statement, was in a position to say what he
21 told the TRC.

22 PRESIDING JUDGE: I think there's a very fine line there
23 between asking the witness to say whether somebody has said
24 something to TRC and, in this witness's opinion, it's true. All
12:37:22 25 he can say, isn't it, Mr Knoops, the witness may or may not have
26 been able to say that it was correct.

27 MR KNOOPS: But I would add to that, according to the same
28 information in this presentation, which is referred to in the
29 report of the general, that this statement-giver was a force

1 commander in the army in 1994 until May 1995, and when the war
2 started in 1992, he was, according to that document, a general
3 staff officer working in the operations department G branch,
4 responsible --

12:38:03 5 PRESIDING JUDGE: That's in the expert's report, is it?

6 MR KNOOPS: Yes. It's also disclosed to the Court. It's
7 the statement of the presentation of Kellie Conteh.

8 PRESIDING JUDGE: I can't understand what extra you want to
9 get from this witness, then.

12:38:19 10 MR KNOOPS: If I'm able to allow to read this short
11 portion.

12 PRESIDING JUDGE: Well, read it. Go ahead.

13 MR KNOOPS: Thank you.

14 Q. General, on page 17 of your report, you refer to the

12:38:30 15 statement of Mr Kellie Conteh before the TRC. In paragraph 12 of
16 his presentation, based on his position, he writes:

17 "The war had begun. The army was facing its first real
18 threat largely unprepared, grossly under strength, under equipped
19 and largely untrained as a fighting force."

12:38:54 20 In paragraph 20, it's the statement full of these
21 observations. He says:

22 "At several instances, I advised that it was a great
23 disservice to the people of this country if the regime could keep
24 me as a force commander and yet not trusting me and frequently
12:39:11 25 undermining my authority, thereby leaving the army with no clear
26 cut command chain."

27 These are just two quotations from his presentation before
28 the TRC.

29 MR AGHA: I would object at this stage, Your Honour. The

1 reason why I would object, firstly, these are opinions of Kellie
2 Conteh, which the witness is being asked to comment upon.

3 PRESIDING JUDGE: We haven't heard the question yet. I'm
4 wondering what the question is going to be, and that might be an
12:39:45 5 appropriate time to object, Mr Agha.

6 MR KNOOPS:

7 Q. General, my only question is, based on what you heard about
8 his position within the army, at that time, do you, from your
9 professional opinion, think that he was in a position to make
12:40:02 10 these comments? I'm not saying whether these are true or not,
11 but purely factually or military operational scene. Do you think
12 that somebody who was a force commander of the army in the period
13 1994/1995, and when the war started he was a general staff
14 officer working in the operations department, responsible for
12:40:25 15 training and operations, is such a person, in your professional
16 view, able to make these comments? I'm not speaking about
17 whether they are true or not.

18 PRESIDING JUDGE: Well, they're opinions, aren't they?

19 MR KNOOPS: Well, that's not my question.

12:40:41 20 PRESIDING JUDGE: Well, it ought to be, because the
21 opinions of somebody else who is not giving evidence here and
22 hasn't been qualified as an expert are not very relevant, are
23 they?

24 MR KNOOPS: Your Honour, the Prosecution has put the
12:40:58 25 statement of Alfred Sankoh from the TRC report before the expert,
26 asking comments about that statement. What I'm doing is trying
27 to indicate that, contrary to the suggestion of the Prosecution,
28 that the expert did not only rely on statements of individuals
29 who had no direct knowledge of the conflict, but that his report

1 relies on statements of people who are on the ground. The
2 Prosecution is suggesting that, for instance, Tom Carew, as a
3 CDS, was not on the ground, just gave opinions. What I'm trying
4 to establish in re-examination, is that the report of the general
12:41:46 5 contains statements of officers who were on the ground during the
6 war.

7 I think I'm entitled, now that the Prosecution has put
8 before the expert his statement of Alfred Sankoh, in asking the
9 opinion of the general about that statement, to ask him just a
12:42:07 10 simple question whether a statement like Kellie Conteh, just
11 summarised in this short way, was a statement given by somebody
12 whom the general thinks was in a position to give.

13 PRESIDING JUDGE: Do you want to reply to that, Mr Agha?

14 MR AGHA: Yes, Your Honour. The portions being read out
12:42:36 15 are the opinions of Kellie Conteh. So what his opinions are are
16 not permissible in this Court, and what the feelings of the
17 expert are to those opinions, the humble submission of the
18 Prosecution is that it's not of much assistance to the Court.
19 Also, Kellie Conteh was a TRC witness who was listed to come and
12:42:59 20 appear before this tribunal and he was dropped. Had he have
21 come, he could have faced cross-examination on the facts which he
22 had to give, and he would have been disbarred from making opinion
23 if he wasn't an expert. So, in this way, by quoting his opinion,
24 he's, in a way, being able to give evidence, opinion evidence,
12:43:20 25 which he would not have been entitled to give, had he come before
26 this Court.

27 PRESIDING JUDGE: What about Mr Knoops' comment about you
28 questioning the witness on Abu Sankoh?

29 MR AGHA: Firstly, Abu Sankoh's statement was a statement

1 of fact, it wasn't comment, if one can look at that, and I
2 believe my question was, and I may be wrong, when I read it to
3 him, would he regard that as being reliable, and he said he had
4 no reason to doubt it.

12:43:50 5 PRESIDING JUDGE: All right. Do you agree that that was
6 the answer that your witness gave?

7 MR KNOOPS: Your Honour, I'm happy to rephrase the question
8 and put to the general one question.

9 PRESIDING JUDGE: No, I'm asking you, Mr Knoops, do you
12:44:00 10 agree that's what the witness said when asked about Abu Sankoh,
11 that the witness said words to the effect that he had no reason
12 to doubt it?

13 MR KNOOPS: But again, I have a problem with the
14 qualification of the Prosecution, that it was a statement of
12:44:19 15 fact.

16 PRESIDING JUDGE: If the witness had no reason to doubt it,
17 then you have got no reason to question this witness further.

18 MR KNOOPS: No, no. I mean, I'm now referring to the
19 statement of Alfred Sankoh. The Prosecution says that was a
12:44:34 20 statement of fact and that's why we put it to the expert. And
21 I'm saying this is, of course, the question whether this is a
22 statement of fact.

23 PRESIDING JUDGE: I see. All right. Well, I overrule your
24 question. I uphold the objection and disallow your question,
12:44:48 25 Mr Knoops.

26 MR KNOOPS:

27 Q. General, the Prosecution has asserted that you did not
28 speak with any senior officers who were part of the AFRC, and
29 other ranks who were part of the AFRC; is that correct? You will

1 recall that was put to you?

2 MR AGHA: I think one has to clarify the period, Your
3 Honour, I've been talking about, whether it was in relation to
4 the junta or the hierarchy.

12:45:29 5 MR KNOOPS: I'm still talking about the sources. The
6 Prosecution questioned why the general did not make use of any
7 statements of other ranks.

8 Q. My question: Did you see, general, any statements in the
9 evidence of a person referred to as FAT Sesay, Major FAT Sesay?

12:45:51 10 A. In the transcripts, you mean?

11 Q. Yes.

12 A. He is mentioned in the transcripts.

13 Q. But did you see a specific statement from him?

14 A. No. From him?

12:46:10 15 Q. Yes.

16 A. From him?

17 MR AGHA: Your Honour, I'm not sure how this arises out of
18 cross-examination.

19 PRESIDING JUDGE: He said no, anyway.

12:46:19 20 MR KNOOPS:

21 Q. General, shortly going to the span of command and the chain
22 of command, the Prosecution has indicated that there may have
23 been more than one level of span of command. Now, if you please
24 look at page -- it's 7C -- C7, sorry, of the report of Colonel
12:46:52 25 Iron. C7.

26 A. Yes.

27 Q. Reference is made on that page to, and that's paragraph
28 C3.5, and we're speaking about the period June, December 1998,
29 Camp Rosos and Major Eddie Town, reference is made by Colonel

1 Iron, together with other forces directly under the brigade
2 control, the total armed strength of the AFRC faction was about
3 700 to 800 at this time; do you see it?

4 A. Yes, I see it.

12:47:26 5 Q. In your view, how much levels you would need to direct such
6 a force?

7 MR AGHA: Objection, Your Honour. I don't think this
8 arises out of cross-examination.

9 PRESIDING JUDGE: No, I don't either, Mr Knoops. How does
12:47:38 10 that arise out of cross-examination?

11 MR KNOOPS: I believe the Prosecution questioned the
12 element of the one level of span of command.

13 PRESIDING JUDGE: But not in relation to those facts you've
14 just read out.

12:48:00 15 MR KNOOPS: There is one more question left, Your Honour.
16 It relates to the argument of the Prosecution that -- perhaps the
17 Prosecution remembers that -- while the force was on the advance
18 to Freetown, leaving Colonel Eddie Town, Prosecution said, well,
19 general, the AFRC faction was quite successful in defeating the
12:48:28 20 ECOMOG forces, so, you see, it was an effective fighting force
21 and it was a well-disciplined and a well-organised group of
22 people. Now, in all fairness, Your Honour, I would ask the
23 witness to comment on one thing, and that's page C13 of the --

24 PRESIDING JUDGE: Didn't the witness answer to that that he
12:48:57 25 didn't agree? Didn't the witness answer in cross-examination he
26 did not agree?

27 MR KNOOPS: Yes, he did.

28 PRESIDING JUDGE: So what grounds do you have to get him to
29 explain an answer like that?

1 MR KNOOPS: Well, Your Honours, if I may just put the
2 question -- put the paragraph to the witness. I have a few
3 questions arising from that diagram

12:49:26 4 PRESIDING JUDGE: Well, I can't see this connection to
5 anything asked in cross-examination, Mr Knoops. The one question
6 you cited as coming from cross-examination, the witness has said
7 he did not agree. So what is -- what are you seeking to explain
8 now?

12:49:48 9 MR KNOOPS: I'm asking the witness whether he has knowledge
10 on three elements which arise from that diagram. The Prosecution
11 has asserted that the AFRC faction was able to defeat the ECOMOG
12 forces. When you look at the diagram, it was six battles
13 described on this diagram, whereby two -- with regard to two
14 battles the force -- the AFRC was able to bypass ECOMOG and, in
12:50:19 15 one instance, there was a withdrawal from Waterloo without
16 fighting. And my question is: Whether the general has knowledge
17 on the reasons why ECOMOG was bypassed with respect to the attack
18 at Lunsar and the attack on the positions at Hastings and Jui?

12:50:54 19 PRESIDING JUDGE: Well, was the witness asked in
20 cross-examination why ECOMOG was bypassed at Lunsar and Jui?

21 MR KNOOPS: No, he was not asked, but in my submission,
22 this relates to the assertion of the Prosecution that the AFRC
23 faction was able to conquer and to defeat ECOMOG forces. So I'm
24 asking the general whether he's able to tell the Court why, in
12:51:20 25 two of the six battles described by Colonel Iron, ECOMOG was
26 bypassed.

27 PRESIDING JUDGE: What's your reaction?

28 MR AGHA: I don't think that arises out of
29 cross-examination, and I think in the majority of cases the

1 general said he wasn't aware of battles. Sp I don't really see
2 how the question is sustainable.

3 PRESIDING JUDGE: Mr Knoops, I'll allow you to ask that
4 question, because it could be relevant to something asked in
12:51:54 5 cross-examination.

6 MR KNOOPS: Thank you, Your Honour.

7 THE PRESIDING JUDGE: Put it to him

8 MR KNOOPS:

9 Q. General, do you have any knowledge why the AFRC faction,
12:52:04 10 assuming that this diagram is correct, bypassed ECOMOG in two of
11 the six battles described on this diagram?

12 A. One was because they had perfect knowledge of the terrain.
13 Secondly, they wanted to avoid enemy contact.

14 Q. Do you know why they intended to avoid enemy contact?

12:52:33 15 MR AGHA: Objection, Your Honour.

16 PRESIDING JUDGE: Yes.

17 MR AGHA: I don't think this line of questioning
18 necessarily follows from that. He asked the one question he was
19 given to answer on this topic and he gave an answer to that. I
12:52:44 20 don't think it should reopen a new line of questioning.

21 PRESIDING JUDGE: What's your reply to that?

22 MR KNOOPS: I'm not reopening a whole new line of
23 questioning. I'm just asking a fundamental question which
24 relates to this question: Does the general have knowledge on why

12:52:57 25 --

26 PRESIDING JUDGE: All right. I'll allow the question.

27 MR KNOOPS:

28 Q. General, do you know why the AFRC faction bypassed ECOMOG
29 in two of the six battles described on this diagram?

1 A. I gave the reason before, and that's what I think what
2 happened.

3 JUDGE SEBUTINDE: General, is that your opinion, or is this
4 knowledge of fact?

12:53:15 5 THE WITNESS: It was based on the fact that, in my view, in
6 my opinion, the AFRC tried to avoid any contact with ECOMOG and
7 tried to avoid getting any losses and tried to avoid direct
8 confrontation with ECOMOG.

9 MR KNOOPS:

12:53:33 10 Q. But the Honourable Justice is asking you, general, what is
11 the foundation for this observation by you?

12 A. The sources I have read.

13 MR KNOOPS: No further questions, Your Honour, thank you.

14 PRESIDING JUDGE: All right. Is there anything else
12:53:51 15 arising in re-examination?

16 MR GRAHAM No, Your Honours.

17 JUDGE DOHERTY:

18 Q. General, in the course of your research, did you come
19 across the rank of five-star general in the Sierra Leone Army?

12:54:12 20 A. No, Your Honour, I have not read about a five-star general.

21 Q. And likewise, in the course of your research, did you find
22 that any member of the AFRC had that rank or title?

23 A. I think I heard the story that someone visited the UK and
24 apparently picked that up, but I'm not sure about that.

12:54:36 25 JUDGE DOHERTY: Thank you. Those were my questions.

26 THE WITNESS: Yes, Your Honour.

27 PRESIDING JUDGE: General, we'd like to thank you for
28 coming to Court and giving evidence. We're going to adjourn now
29 and perhaps if you'll just sit there until we adjourn and you'll

1 be able to get away yourself.

2 MR KNOOPS: Your Honour, you would like me to address the
3 issue of tendering of the report after the lunch break?

4 PRESIDING JUDGE: Yes, I think -- you won't need the
5 general there for that.

12:55:08

6 MR KNOOPS: No, Your Honour.

7 PRESIDING JUDGE: Yes, we'll do that after the lunch break.
8 All right. Well, thank you. We'll adjourn now and come back at
9 25 past 2.

12:55:46

10 [Luncheon recess taken at 12.55 p.m.]

11 [AFRC24OCT06D - MD]

12 [Upon resuming at 2.30 p.m.]

13 PRESIDING JUDGE: Yes, Mr Knoops.

14 MR GRAHAM Your Honours, good afternoon. Before we

14:30:16

15 proceed, Your Honours, I need to respectfully inform the Court
16 that the first accused, Mr Brima, is not in Court this afternoon
17 because he has been taken ill, and he has waived his rights to be
18 here this afternoon according to the Rules. So, Your Honours,
19 I'm informing the Court accordingly. I'm grateful for the time.

14:30:35

20 PRESIDING JUDGE: Thank you, Mr Graham. Well, just before
21 we proceed then, the first accused, Mr Brima is not present in
22 Court. We hear from his counsel that he has been taken ill but
23 he waives his rights to be present and the proceedings will
24 continue in his absence pursuant to Rule 60.

14:30:55

25 Yes, Mr Knoops.

26 MR KNOOPS: Thank you, Your Honour. Your Honour, at this
27 stage the Defence would like to tender the report of the military
28 expert in the Defence case, as a document before the Court.

29 PRESIDING JUDGE: Yes. Any objection, Mr Agha?

1 MR AGHA: Yes, Your Honours. The Prosecution would object
2 to the exhibiting of the expert report of General Prins and would
3 submit that it should be submitted only in parts.

4 The Prosecution submits that many quotations in the report
14:31:38 5 have been taken from persons and footnoted as being from the TRC,
6 and with regard to these excerpts and footnotes from the TRC, it
7 is the position of the Prosecution that these should be excluded
8 or indeed deleted from the report.

9 The reason for this is that most of the TRC statements are
14:32:02 10 based on opinions, which are inadmissible before this Court, as
11 persons who are not qualified as experts.

12 Furthermore, statements made before the TRC were not under
13 oath, subject to cross-examination and were focusing, in many
14 respects, on different aspects; certainly the AFRC faction was
14:32:25 15 not the main aspect.

16 The Prosecution also submits that through cross-examination
17 it has cast doubt on the accuracy of many of the statements in
18 the TRC report.

19 The Prosecution would also seek the exclusion of all
14:32:44 20 quotations/excerpts from DSK-082 referred to in the report, most
21 of which are his opinions. He is not an expert in this case.
22 Secondly, he was not in a position to personally observe for
23 himself any of the events which he describes and are his views
24 and, in addition to that, the Prosecution considers that it has
14:33:12 25 shown, through cross-examination, that the statements of DSK-082
26 are both inaccurate and unreliable in many cases.

27 Thirdly, the Prosecution would seek the exclusion of all
28 footnotes and excerpts in the report from David Keen's Conflict
29 and Collusion in Sierra Leone. Again, many of these excerpts

1 were opinions from unsubstantiated sources and during
2 cross-examination the Prosecution believes it has shown many of
3 these excerpts to be both inaccurate and unreliable.

4 The Prosecution, in asking for these parts from the report
14:33:56 5 to be deleted, relies on the decision of the Appeals Chamber of
6 the ICTY in Delalic et al of 20 February 2001, at paragraph 594,
7 where it was held that "an expert opinion is relevant only if the
8 facts on which it is based are true." I will just read a small
9 excerpt from that where the Chamber said that "An expert opinion
14:34:31 10 is relevant only if the facts upon which it is based are true.

11 It is for the Trial Chamber and not for the expert to determine."

12 THE INTERPRETER: Your Honours, could the counsel go a
13 little bit slowly because we are interpreting everything he is --

14 MR AGHA: I apologise to the interpreters. I will go a
14:34:50 15 little slower. "It is for the Trial Chamber and not for the
16 expert to determine whether the factual basis for an expert
17 report is truthful. That determination is made in the light of
18 all the evidence given notwithstanding their experience experts
19 do not have the advantage of that evidence." The Prosecution
14:35:13 20 position is that firstly, the report is primarily based on
21 opinions of others and not even facts. Secondly, the Prosecution
22 believes it has shown during cross-examination that the facts
23 which the expert relied upon may be either inaccurate or indeed
24 untrue and cannot be safely relied upon.

14:35:32 25 So the Prosecution would seek the exclusion of parts of the
26 expert's report.

27 PRESIDING JUDGE: All right. Did you want to reply to
28 that, Mr Knoops?

29 MR KNOOPS: Thank you, Your Honour. I've prepared some

1 submissions. Your Honour, my submissions are based on three main
2 arguments which are composed of several subarguments.

3 My first main argument is that the principle of fair trial,
4 and its derivative, the principle of equality of arms, enshrined
14:36:22 5 by the international human rights conventions, allow the
6 tendering of this report. Let me explain why: The Defence
7 should have an equal opportunity to comment on the same materials
8 and questions, i. e., the three questions of Colonel Iron as the
9 Prosecution witness relied upon. This is basically what the
14:36:47 10 military expert for the Defence did. He formed a thorough,
11 well-balanced opinion and conclusions on, first, exactly the same
12 questions as Colonel Iron elaborated on. Secondly, exactly the
13 same materials as the expert of the Prosecution relied upon,
14 i. e., transcripts of the Prosecution witnesses, issued in the
14:37:17 15 period March, October 2005.

16 The principle of equality of arms as part of the jus cogens
17 principle, apply on the basis of the European Court of Human
18 Rights case law and denotes for the admittance of Defence
19 evidence commenting on the same materials as the OTP puts to the
14:37:44 20 Court.

21 Moreover, in the context of Article 14, section 3 of the
22 ICCPR and Article 6, section 3 of the European Convention on
23 Human Rights, the rights to invoke a so-called contra-expertise,
24 or a second opinion, from a Defence expert, becomes a mandatory
14:38:06 25 right of a defendant when the Prosecution has put forward an
26 expert which testifies about the subject matter which falls
27 outside the specific knowledge of a Court. And when it intends
28 to assist the Chamber in arriving at a certain conclusion. I
29 refer to the European Court of Human Rights decisions in the case

1 of *Bonischv v Austria*, 6 May 1985 and the landmark case
2 *Brandstetter v Austria* of 28 August 1991. These two precedents
3 clearly set out the framework for these arguments.

14:38:54 4 In conclusion, as to my first argument, the report should
5 be admissible on the basis of these fundamental human rights
6 notions.

7 Secondly, when it comes to admissibility, I'm saying,
8 therefore, that the human rights argument supersedes the whole
9 issue of admissibility and weight. I arrive now to those issues
14:39:16 10 in my second argument. When it comes down, Your Honours, to
11 admissibility, the case law of the ICTY clearly rejects the view
12 of the Prosecution, showing that the Prosecution proposition that
13 the report of the military expert for the Defence relies, to a
14 large extent, on opinions proves to be a fundamental
14:39:46 15 misunderstanding of not only this case law but also the role of
16 the military expert before your Court.

17 The following arguments arise to elaborate and sustain this
18 conclusion. Your Honours, first, your Court has accepted, in
19 October 2005, the report of Colonel Iron as being admissible,
14:40:11 20 without expressing its views on its weight. The Defence, as Your
21 Honours may remember, challenged the admissibility of the report
22 of Colonel Iron saying that it was based on five Prosecution
23 witnesses, among which 167 and 334 and a statement, among others,
24 of Gibril Massaquoi -- I come to this person later.

14:40:38 25 By the way, without Colonel Iron being aware of
26 Mr Massaquoi's testimony in open Court, and the cross-examination
27 in October of this person, which was damaging to the Prosecution
28 case. I will come to that later.

29 PRESIDING JUDGE: Whatever you mean, Mr Knoops, we've

1 admitted Colonel Iron's report so don't go arguing that again.
2 It's completely useless.

3 MR KNOOPS: No, Your Honour, I'm not going to argue the
4 admissibility of the report, Your Honours. And, to the contrary,
14:41:10 5 I am using that argument saying that this should also result in
6 the admissibility of the report of the military expert for the
7 Defence. Because Colonel Iron has in *effecto* not used any other
8 sources except for some doctrine. In addition, he didn't speak
9 to any senior officers, retired or acting, and the Prosecution
14:41:39 10 had made no attempt to interview, for instance, Major FAT Sesay,
11 one of the three trained officers who was with Musa, despite
12 their knowledge that this person is still available for
13 interviewing.

14 By contrast, the military report of the Defence relies
14:42:03 15 upon, first of all, the same evidence, namely, the OTP witnesses
16 as mentioned, and General Prins did not use any Defence evidence,
17 but the OTP evidence, so to speak, in order to arrive at his
18 conclusions.

19 Secondly, he used the interviews with three senior officers
14:42:31 20 retired. The Prosecution is saying that these cannot be the
21 basis of his report because there was no direct knowledge on part
22 of either of these three individuals.

23 Now, it's clearly established from the evidence of the
24 witnesses before the Court that number 3 was with the AFRC and
14:42:56 25 Musa in the period June, November 1998, in Koinadugu District.
26 With respect to number 1, 082, he was, according to the testimony
27 among others at the blocking positions of ECOMOG at Masiaka, and
28 the evidence provided by Colonel Iron, page C16, provides proof
29 that in that period a battle at Masiaka was fought with the AFRC

1 and the Guineans. Furthermore, the report of Colonel Iron shows
2 the presence of further battles at Masiaka.

3 Now coming to the TRC report. The military expert did not
4 simply adopt findings or opinions, whatever you call it, and I
14:43:48 5 think this is again a fundamental miscomprehension of his task as
6 expert and the nature of his research. First of all, he
7 researched the TRC report within the context of his three main
8 questions.

9 PRESIDING JUDGE: Well, look, I don't like to interrupt,
14:44:06 10 Mr Knoops, but don't address me on the weight of the report;
11 don't address us on the weight. That is a matter that, as you
12 are very well aware, is not assessed at this stage.

13 MR KNOOPS: I agree.

14 PRESIDING JUDGE: Just address us on the admissibility or
14:44:21 15 otherwise of the report.

16 MR KNOOPS: Your Honour, I am fully aware about the fact
17 that it's not about weight. What I'm saying is that the military
18 expert formed his own independent opinion on the findings of the
19 TRC.

14:44:37 20 JUDGE SEBUTINDE: But that goes precisely to weight, Mr
21 Knoops. You are denying on the one hand that you are not going
22 into weight issues.

23 MR KNOOPS: Okay.

24 JUDGE SEBUTINDE: But that is exactly what you are doing.

14:44:47 25 MR KNOOPS: All right, then. Let me then inform the Court
26 about the Trial Chamber decision of the ICTY in the Kovacevic
27 case, transcript 6 July 1998 at 71. In that case the Office of
28 the Prosecution tendered a report of a commission of inquiry
29 about events in Prijedor region of Bosnia-Herzegovina based on

1 400 statements and media reports. Defence counsel objected to
2 the admissibility of this report on the basis that it was
3 hearsay, and that those statements were not subjected to
4 cross-examination and merely summarised the evidence. The Trial
14:45:29 5 Chamber admitted the report nonetheless, reasoning that there is
6 no distinction -- there is a distinction with the case I
7 mentioned before the Kordiz and Corkez case, namely, that this
8 was a report which didn't go to the ultimate issue. This report
9 was compiled not for the purposes of litigation. In effect, you
14:45:58 10 can compare I think this case law with the position with respect
11 to the TRC report. So I rely on the Kovacevic case in this
12 regard on the basis of which the Court found admissible the
13 report of the commission of inquiry, despite the arguments which
14 are exactly now put before the Court by the Prosecution.

14:46:29 15 Now the Prosecution in this context relies on the Delalic
16 case saying that the expert should base himself or herself on
17 facts which are true, but isn't that ultimately also a matter of
18 the Court whether the facts are true or not? The same count for
19 the statements on which Mr Colonel Iron relies, the Prosecution
14:46:51 20 witnesses. It's also ultimately to the Court to decide whether
21 these are true.

22 One thing, I think is established and admitted by the
23 Prosecution, that the conclusion of General Prins that we were
24 dealing with an irregular force was admitted by the Prosecution
14:47:06 25 so, after all, I think we can argue about whether the facts on
26 which he relied upon were true, but some of the conclusions to
27 which he arrived are now shared by the learned friends of the
28 opposite Bench.

29 Finally, Your Honours, I just go through my notes. Yes,

1 another thing, I think this is fundamental, the Prosecution in
2 this regard says: Well, the statements or the information on
3 which the military expert relied were not subjected to
4 cross-examination. Well, this is exactly the same situation with
14:47:53 5 Colonel Iron. Colonel Iron's report was disclosed in, I believe,
6 on 5 August 2005. He was examined and cross-examined in Court in
7 October after his main sources, namely, 334 and 167 were examined
8 in Court.

9 The Defence was, therefore, not able to cross-examine these
14:48:29 10 individuals in relation to the report of Colonel Iron because, as
11 your Court may remember, only in October we found out, and I
12 asked Colonel Iron to subscribe these names on a piece of paper,
13 we only found out what exactly the sources were on which Colonel
14 Iron relied; those five Prosecution witnesses. This was not
14:48:54 15 disclosed in his report. So, the same argument which is now
16 being put on the table here, namely, that some of the materials
17 of the report of General Prins were not subjected to
18 cross-examination, it's exactly applicable to the Prosecution
19 case in relation to the sources of Colonel Iron. If we would
14:49:15 20 have known beforehand what the sources were of Colonel Iron's
21 report we could have cross-examined 167 and 334 about their
22 context and their journey with Colonel Iron across the country
23 because one thing is clear: The whole reconstruction by Colonel
24 Iron in his report is not covered by all these statements.

14:49:42 25 PRESIDING JUDGE: You are arguing Colonel Iron's report
26 again and it's been admitted. We are capable of drawing
27 comparisons between Colonel Iron's report and General Prins'
28 report but there is no need to argue Colonel Iron's report again.
29 It's already in evidence.

1 MR KNOOPS: I know, Your Honour. What I'm trying to say is
2 the argument of not being able to cross-examine the sources, the
3 Prosecution is now putting against the report, I am saying that
4 that argument also counts in hindsight for that report. I am not
14:50:17 5 saying that the report is not admissible. I am just saying if
6 the Prosecution would have a point with that issue of
7 cross-examination, in hindsight, it also counts for that
8 situation.

9 Now, finally, I agree totally with Your Honours that the
14:50:34 10 matter of weight is not a matter which we should discuss today.
11 I believe it's also your decision on 5 August 2005, in the
12 admissibility of Mrs Bangura's report, that your Honours
13 expressed that view. If I just briefly may refer to the fact
14 that she relied also on several personal interviews and other
14:51:04 15 interviews which were not disclosed or subjected to
16 cross-examination whatsoever. And with respect to her
17 references, she only relied on a book of 1983 on Family Law of
18 Professor Joko-Smart and five human rights reports.

19 Now, speaking about opinions of facts, I will put it before
14:51:30 20 the Court that when you accept the report of Mrs Bangura, with
21 this background, I think we should also accept the report of
22 General Prins and it's ultimately up to the Court to make a
23 decision on the weight. Thank you.

24 PRESIDING JUDGE: Yes, thank you Mr Knoops. Just pardon us
14:51:52 25 one moment.

26 [The Trial Chamber conferred]

27 PRESIDING JUDGE: Well, we've considered the submissions of
28 the parties in relation to the admissibility or otherwise of the
29 report of the Defence expert, General Prins. Now, in our view,

1 Rule 89 (C) allows the Trial Chamber to admit any relevant
2 evidence. We consider the contents of General Prins' report, in
3 general, to be relevant and, therefore, admissible.

4 However, admission of the report does not mean that the
14:55:37 5 Trial Chamber will accept all of its findings. In particular, we
6 shall disregard any material which in our judgement goes to the
7 ultimate issue, or provides opinions on matters upon which the
8 Trial Chamber is going to have to rule, or draws any conclusions
9 or inferences which the Trial Chamber will have to draw or makes
14:56:06 10 any judgements which the Trial Chamber will have to make. We
11 shall also disregard any opinions expressed by General Prins
12 which do not fall within his field of expertise. We will also
13 disregard any opinions quoted in the report which are not the
14 opinions of persons qualified as experts.

14:56:34 15 With those qualifications, and taking into account that the
16 Defence has had ample opportunity to cross-examine the witness,
17 both on the report and on his sources, we consider that the
18 Prosecution will not be prejudiced by the admission of the
19 report.

14:56:58 20 Accordingly, the report will be admitted into evidence
21 subject to what we have said.

22 Whatever weight ought to be attributed to it will be
23 assessed by the Trial Chamber at the end of the trial and in the
24 light of all the evidence adduced.

14:57:18 25 Now, if I can just backtrack to correct one error, I will
26 go back to the sentence beginning "With those qualifications" and
27 taking into account that the Prosecution has had ample
28 opportunity. So delete what I said before, I said the Defence
29 has had ample opportunity to cross-examine the witness. I meant

1 to say the Prosecution has had ample opportunity to cross-examine
2 the witness.

3 That report, then, will be admitted D36.

4 [Exhibit No. D36 was admitted]

14:57:55 5 PRESIDING JUDGE: That is admitted into evidence as D36.
6 Yes, Mr Knoops?

7 MR KNOOPS: I have for the Court clean copies for the
8 admission.

9 PRESIDING JUDGE: All right. You have another witness,
14:58:29 10 Mr Knoops?

11 MR KNOOPS: Yes, Your Honour, we have. Your Honour, before
12 I would suggest we call the next expert, may we just briefly, in
13 light of the schedule, draw the attention to the Chamber that
14 with respect to the other Defence expert, Mr Gbla, on child
14:58:52 15 soldiers, is a notification of the Prosecution that it accepts
16 its contents and does not wish to cross-examine. Now, in light
17 of the fact that the particular expert has to leave the country
18 for a convention, we would like to apply to the Chamber,
19 application of rule 94bis under C, of the Rules of Procedure and
14:59:19 20 Evidence giving the Court the authorisation to admit the
21 statement or the report into evidence without calling the witness
22 to testify in person.

23 PRESIDING JUDGE: Do you wish to be heard on that, Mr Agha?

24 MR AGHA: No, Your Honour only the Prosecution would submit
14:59:43 25 that it would be a sensible and expeditious way to go subject to
26 how the Bench feels about the matter.

27 PRESIDING JUDGE: I see. Thank you. All right. That's --
28 the report you've just tendered is the report of the expert on
29 child soldiers Mr -- I am not sure of the pronunciation, it is

1 Mr Gbla, Mr G-B-L-A?

2 MR KNOOPS: Yes, Your Honour, it's Mr Osmond Gbla.

3 PRESIDING JUDGE: All right. Well, we note that the
4 Prosecution has filed a notice indicating that it does not wish
15:00:57 5 to cross-examine the expert witness and there is no opposition to
6 the tender of the report. So pursuant to Rule 94bis (C) the
7 Trial Chamber will admit the report into evidence as Exhibit D37.

8 [Exhibit No. D37 was admitted]

9 MR KNOOPS: Your Honours, I have five clean copies for the
15:01:25 10 report.

11 PRESIDING JUDGE: All right. Thank you, Mr Knoops. Well,
12 perhaps there are copies there of those last two reports for the
13 Registry and one each for the Judges, I would imagine.

14 MR KNOOPS: That's correct, Your Honour.

15:02:11 15 PRESIDING JUDGE: That was the same as Exhibit D36. Is
16 that correct, Madam Court Attendant? That there are copies there
17 for the Judges or not?

18 MS KAMUZORA: There are only three copies for the Judges.

19 PRESIDING JUDGE: All right. You hold those for now.

15:02:54 20 Madam Court Attendant, just take these for now, will you. You
21 will have to have something to file in the Registry. Yes. All
22 right. Your next witness, then, Mr Knoops?

23 MR KNOOPS: Yes, Your Honour. The next Defence expert will
24 be Dr Thorsen, from Sweden. She will testify about the issue of
15:03:16 25 forced marriage. She arrived yesterday quite late. At this
26 moment she is reading her report in the library. Initially it
27 was her preference to request the Court to have her examined
28 tomorrow morning, but we are ready to proceed. And if you in
29 that event could give me just ten minutes to ask the witness unit

1 to bring her here. I could, before 4.00, go through her personal
2 background and personal data of the expert and the main research
3 questions, but I suspect that I have to continue tomorrow morning
4 with respect to the substance of the report. In other words, we
15:04:07 5 are happy to proceed but if the Court deems it more efficient to
6 start tomorrow at 9.15 that would be more in line with her own
7 request. But again, we don't have a problem with proceeding, and
8 we could take her until 4.00 into her personal and professional
9 background and the outline of her research.

15:04:32 10 PRESIDING JUDGE: No, I think we will continue on today.
11 Past experience has shown us that these expert testimonies are
12 quite lengthy matters so we won't drop the rest of the afternoon.

13 MR KNOOPS: Okay.

14 PRESIDING JUDGE: You want ten minutes, Mr Knoops?

15:04:49 15 MR KNOOPS: If the Court allows me just ten minutes to ask
16 witness unit to pick her up from the library. She is now reading
17 her report.

18 PRESIDING JUDGE: All right. We will come back at 3.15
19 p. m.

15:05:03 20 [Break taken at 3.05 p. m.]

21 [Upon resuming at 3.15 p. m.]

22 [Witness entered Court]

23 WITNESS: DORTE THORSEN [Sworn]

24 EXAMINED BY MR KNOOPS:

15:12:35 25 PRESIDING JUDGE: Yes, go ahead, Mr Knoops.

26 MR KNOOPS: Thank you, Your Honour. Your Honour, this is
27 the Defence expert, Dr Dorte Thorsen from Sweden. Her report is
28 to be found on the pages 18858 onwards.

29 PRESIDING JUDGE: Are you sure it's not 18856 onwards?

1 MR KNOOPS: Yes, including her bio, that's correct, Your
2 Honour. That's correct.

3 Q. Thank you, good afternoon.

4 A. Good afternoon.

15:13:57 5 Q. Could you please state your full name for the Court?

6 A. My full name is Dorte Thorsen.

7 Q. Thank you. Doctor, you were born on 20 September 1966 in
8 Denmark?

9 A. Yes. That's correct.

15:14:17 10 Q. You have done your PhD in African studies in 2005 at the
11 University of Sussex, United Kingdom?

12 A. That is correct.

13 Q. And you are currently working as a research fellow as of
14 2005 at the Nordic Africa Institute?

15:14:37 15 A. Yes. That's true and in 2004/2005, while I was waiting for
16 my viva I was working also as research fellow but at the
17 University of Sussex.

18 Q. Thank you. Doctor, are you able to tell the Court what the
19 aim and the goal of the Nordic Africa Institution is?

15:14:59 20 A. The Nordic Africa Institute is an institution that has as
21 its mandate to further African studies within the Nordic
22 countries but also to further the contact with African
23 researchers and African studies at the African continent and they
24 are working a lot with different universities and research
15:15:21 25 institutions throughout Africa.

26 Q. Could you please specify what you mean with throughout
27 Africa; any specific countries you have in mind?

28 A. No. There are several programs at the institute and they
29 are working in different regions. There is one on post-conflict

1 working amongst others in Nigeria, Sierra Leone and I think they
2 have bits and pieces tied to Ghana and to the West African region
3 altogether. Then there is another project working in southern
4 Africa on democratisation and there is another one working on the
15:15:59 5 entire continent on urban regions and age and gender relations.

6 Q. Thank you, doctor. Doctor, could you please tell the Court
7 what your main research area is?

8 A. I have worked a lot in rural areas in Burkina Faso. I have
9 worked a lot with women. Nowadays I work a lot with youth
15:16:21 10 migrants but that doesn't take my focus away from the women whom
11 I've worked with since '97. I should perhaps add that I have
12 worked in the same community in Burkina Faso as when I started in
13 '97. I was there for six months. I worked in two villages at
14 that time. Two years later I came back to do my doctorate
15:16:42 15 research and worked for one year in one village and I lived there
16 as well and then in 2005 I came back for four months and started
17 working with children from this village who migrated and also
18 traced a lot of other migrants from this region, a very tiny
19 region, and moving backwards and forwards between the urban areas
15:17:02 20 and the rural villages.

21 Q. Thank you, doctor. Could you please tell the Court what
22 type or kind of field work research you conducted in Burkina
23 Faso?

24 A. I worked within anthropology. I've worked within geography
15:17:16 25 as well but these days I do mainly live histories work, meaning
26 that I do ethnographic work and I stay long-term. I follow the
27 same people for a long time and build up their histories over
28 time as their lives change but also as I gain better contact with
29 them and they are willing to tell me many more stories.

1 Q. At the time of your research in Burkina Faso, were you also
2 researching any type of relationships there within that
3 community?

4 A. What kind of relationships do you mean?

15:17:53 5 Q. For instance, relationships between men and women or
6 children and mothers, fathers and children?

7 A. I was focusing a lot on marriage because it's the first and
8 foremost important relationship in the rural areas. So starting
9 off with marriage, it's also a way of starting off finding out
10 how women were able to create agency, or wealth. Through the
11 agency we were able to create more room for manoeuvre for their
12 own ideas.

13 Q. Could you come perhaps back to this topic later, doctor.

14 A. Yes.

15:18:33 15 Q. Could you perhaps explain to the Court what the subject of
16 your doctorate was?

17 A. I certainly can. It was an empiric critique of
18 intra-household or economic models of intra-household behaviour.
19 So it was a critique of that all decisions are made as a
15:18:54 20 two-person gain, linking with gain theory of economy, and it was
21 a criticism of that decision-making is always seen as something
22 that is spoken. I think a lot of times women, and also young
23 people, cannot say things directly but they may still not consent
24 to everything that is being said to them that they should do, so
15:19:18 25 they act around without opposing directly, they act around what
26 they are told to do.

27 Q. Doctor, apart from the project in Burkina Faso were you
28 involved in any other research projects?

29 A. No. Except that with the child migration I have been

1 working on since 2004, we are working across Ghana, Burkina,
2 India and Bangladesh.

3 Q. Are you able to tell the Court whether you published any
4 academic papers on the subject of forced marriage?

15:19:55 5 A. No, I did not do that, but I did present a paper on divorce
6 and actually an arranged marriage and where the woman had gone
7 off and the husband was going through pains to get her back and
8 all the way she was coming around not going back. Amongst others
9 also when the husband took her to the Court in Burkina Faso that
15:20:18 10 she was able to play the Court up against him and say, by drawing
11 on customs about who ownerships of children or where children
12 belonged, because she had fallen pregnant with her new husband.

13 Q. Doctor, in your report on page 5 and 6, and I am not sure
14 whether the expert is allowed to have a glance at her report in
15:20:43 15 case she needs it, I am not sure whether the Prosecution objects
16 to this?

17 MR HARDAWAY: No objection, Your Honour.

18 MR KNOOPS: It's for the Court 18866 and 18867.

19 Q. You have described this project in Burkina Faso, based on a
15:21:05 20 research of 12 months field work in a small village with around
21 1,000 inhabitants and you find there description of the exact
22 research and your experience. Are you able to tell the Court
23 shortly what your findings were, based on this field work in
24 Burkina Faso?

15:21:29 25 A. Well, in very short I found that women were able to act
26 around a lot of constraints to actually go where they wanted to
27 go and to get the economic possibilities that they wanted but
28 this is a very poor community. It doesn't mean that they could
29 just do freely what they wanted to do but they were able to put

1 their children through education often, and they were able to
2 move around a bit more. They were not staying at home,
3 basically. They were going to markets, they were going to
4 families, and this is a community where there is lots of
15:22:04 5 migration and even young women are able to gain a lot of mobility
6 and freedom to move around and go to the markets and gain their
7 economic incomes through that. And part of the reason why they
8 were able to do that is that many husbands are living in Cote
9 d'Ivoire most of the time, and the elders know that if the
15:22:21 10 husband doesn't come back once in a while, or if he doesn't bring
11 the woman to Cote d'Ivoire as well, she will simply remarry.

12 Q. You just told the Court that you researched into the
13 marriage in Burkina Faso. Can you please tell the Court what
14 exactly did you find there about the marriage?

15:22:46 15 A. Well, I started off by going in talking about marriage
16 practices because you can't go in and say: Oh, why do women do
17 this and why do they do that, and can they do this? So I started
18 off trying to talk about marriage with both men and women and, as
19 it's a patriarchal system you go in and you talk to the male
15:23:06 20 household heads, and once you've come through your conversation
21 with him you might be allowed to talk with some of the women and
22 the younger ones and over time a lot of the households you didn't
23 even have to speak to the husband. When I came in I often did
24 but because I was there a long time, and they ought to pass by my
15:23:22 25 house, I lived in the village, it was much more fluent but in the
26 beginning there are certain things you have to keep up with of
27 talking to the men which was also interesting because I actually
28 wanted not just to get the women's perspective of marriage, I did
29 want to get both men and women's perspective, and to get elders

1 and juniors' perspectives of marriage. So that meant that I
2 spoke a lot with senior males, also those who were linked with
3 the church and those who were linked with the mosque, and they
4 were talking about the religious ceremonies and others were
15:23:56 5 talking about the customary practices. But when I started
6 talking with women about how had they married and also with the
7 men about how their wives had run off and come back and what they
8 had done it turned out that all these practices of how it ideally
9 should be there are so many variations to that.

15:24:18 10 Q. Thank you, doctor. I think that suffices for now for this
11 moment. We will probably come back on your project in Burkina
12 Faso at a later stage of the examination. Now, could you please
13 tell the Court what your main research question was in the
14 instant case, in this report which lies before the Court? In
15:24:48 15 other words, what was the focus of your report, just by way of
16 outline for the Court?

17 A. Yeah. Well, as it was requested, it was to outline the
18 history and the practice of forced marriage throughout the West
19 African region and possibly I wanted to talk about how this
15:25:05 20 practice was imbedded in local culture. And the report I wrote
21 was -- actually I declined to do this piece of work because I
22 found it a bit problematic in the Sierra Leonean context to make
23 this link between cultural practices and, well, as I see it,
24 international views on what forced marriage is and then on this
15:25:25 25 idea about the bush wives. So the report itself is -- actually I
26 declined to do this piece of work.

27 Q. Although we will come to that later, doctor. Now, could
28 you just, in short, explain to the Court how you approached this
29 question? In other words, how your report was set up?

1 A. Well, I firstly talked about why you are talking about
2 forced marriage. It's not really used within anthropology any
3 more. Well, it is within fringe anthropology and that also
4 brings into the diversities is that that shows that well, it's
15:26:01 5 not just a uniform concept, it's something that is influenced by
6 the language, both spoken language but also the language within
7 different disciplines. So I spoke about what is anthropology
8 saying about forced marriage. It came from colonial -- out of
9 the colonial report which were often done by missionaries and by
15:26:25 10 anthropologists of the time. Then I went into what were people
11 looking at in the 30s and 40s. And then I went into well, what
12 are the feminist researchers, what have they been pulling out
13 this whole span of time about forced marriages, but that has come
14 a bit later, from the 70s onwards. They have been bringing in
15:26:47 15 all these things that never came out of the colonial report that
16 women were acting and then, finally, I think I linked it with my
17 own study to raise a set of questions.

18 Q. Doctor, before we go into the conclusions of the various
19 sections of your report, could you please first indicate whether
15:27:07 20 you used any primary and/or secondary sources for your research?

21 A. Well, the primary sources are only on Burkina Faso and that
22 is even just a summary because it's not really interesting to
23 this case, but I used that primary research to raise these
24 questions I wanted to ask. And then I used secondary material
15:27:29 25 for the Sierra Leonean case which is not where I am speaking with
26 a lot of authority, since I haven't been to Sierra Leone before.
27 I don't think that was the point of my report. The point of my
28 report was to raise these questions that I find are extremely
29 important to ask when talking about marriage arrangements.

1 Q. Doctor, to be clear, you didn't conduct any interviews here
2 in Sierra Leone --

3 A. No.

4 Q. -- with any women. Do you consider this, for yourself, a
15:27:57 5 weakness of your report?

6 A. I see it as a weakness if you thought you would get
7 something on Sierra Leone. I don't think it's a weakness in the
8 terms of raising questions and I would see, if I had gone out and
9 asked these questions, I would have seen it as a clear weakness
10 in terms of I only had two months. Going into new country, going
11 out to whatever regions or just one region to establish that kind
12 of relationships that you need to get more than just a scratch on
13 the surface, you need much longer time. You can't go and ask, as
14 a first question, a very sensitive question. It's impossible.

15:28:14 10
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15:28:38 15 It's impolite.

16 Q. Doctor, speaking about secondary sources for your research,
17 could you name some of them you used in your report?

18 A. On Sierra Leone?

19 Q. Yes.

15:28:49 20 A. I've used Bledsoe, Caroline Bledsoe, who is working in
21 Liberia and Sierra Leone. I have used Mats Utas who was working
22 at the university here in Freetown for two years. He's only
23 returned to Sweden quite recently. Then I was using a few people
24 who had been here, one called Susan McKay, I must say I don't
15:29:15 25 know her myself but she is in a peer reviewed paper and gender
26 and development, it's actually an Oxfam paper, so it's sort of a
27 paper bridging research and activism and it's very well-renowned
28 throughout academia and development work.

29 Q. Thank you, doctor. Apart from the primary and secondary

1 sources or the secondary sources you mentioned, were there any
2 specific documents you relied upon or were able to digest in this
3 case before writing your report?

15:29:58 4 A. Well, I was reading the documents that I've been citing and
5 I was using -- I have been teaching from Mariane Ferme's book on
6 Sierra Leone when I was teaching at Sussex.

7 Q. Were you familiar with the report of the expert,
8 Mrs Bangura?

9 A. I read it before I wrote this report.

15:30:14 10 Q. And were you able to read the transcripts of her testimony
11 in October or [overlapping speakers]?

12 A. Those I only had after I had written and submitted the
13 report.

14 Q. Okay. Thank you. Now, doctor, let us go into the first
15:30:32 15 section of your report itself. It's to be found on the pages 2
16 till 4, and it's titled "The origins of the notion of forced
17 marriage." Could you first describe what -- at what conclusion
18 did you arrive, if any, and after that could you please elaborate
19 on the foundation of that conclusion, if any?

15:30:56 20 A. I came to the conclusion that it's very difficult to talk
21 about forced marriage, and I actually think we should not talk
22 about forced marriage. When we talk about traditional practises,
23 we should talk about arranged marriages.

24 Q. At this point, are you able to explain here the difference
15:31:35 25 between them, in your view, or do you prefer to do that at the
26 other section?

27 A. No, it's fine to do it here. I think forced marriage is
28 very much a legacy of colonialism, that it was one of the ways
29 that the colonial administrators and missionaries spoke about

1 African marriages, and their representations of African and
2 African women, especially, were saying, well, women are
3 subordinate to the patriarchal structures and they are vulnerable
4 to be married off at a very early age, being forced to marry.

15:32:10 5 But they also represented men as either slavekeepers, almost, or
6 as a bit promiscuous, by way of having more wives. Two of the
7 issues they really went into was bride wealth payment with a sort
8 of -- reduced to just a payment and economic transaction and not
9 all the other things that are going in with the bride wealth
15:32:35 10 payment of a two-way relationship that is supposed to be much
11 more long-term than just handing out -- over some cash or some
12 resources in kind. They also had a real go at polygamy, very
13 Christian way of seeing that polygamy was a terrible thing. They
14 saw that very much as being promiscuous.

15:33:01 15 Q. Doctor, could you please explain to us what, in your
16 opinion, is the fundamental, in your view, difference between the
17 term forced marriage and arranged marriage?

18 A. Well, I have a difficulty of seeing how we should talk
19 about force. We cannot know to what degree force was used. It's
15:33:21 20 very difficult to determine, that's why I prefer to talk about
21 arranged marriages and, also, forced, it sounds like the family
22 of the girls have absolutely no idea about, or no concern for
23 their well being in longer term, and I think that's wrong. Also,
24 talking by force, it's as if the father, or the elders of the
15:33:43 25 girl's family, or the family, as it's often just talked about, as
26 the family, without sort of describing in more detail what is the
27 family. But it's like they are just making all the decisions and
28 the girls are victimised and sitting back not doing anything.
29 From my case material, from my empirical material in Burkina

1 Faso, the girls are acting around, they are running off, they
2 seeking advice of different kin to have support in pursuing their
3 preferences.

15:34:23 4 Q. What made you compare or apply your experience in Burkina
5 Faso unto the Sierra Leonean situation?

6 A. Well, I don't, really. I don't apply it to the Sierra
7 Leonean situation. What I say is that some of the cultural
8 practises are similar throughout the West African region. But
9 the specificities are different. And I'm not making claims to
10 saying anything about Sierra Leone, but I say that we have to ask
11 some questions. We have to raise questions that we need to
12 address in every particular context.

13 Q. Thank you, doctor. Now, on page 5, you turn to the next
14 section of your research titled, "Complex Social Practises of
15 Marriage." Are you able to tell the Court to what conclusions
16 did you arrive as to the social practises of what you call
17 arranged marriages, if you arrived at any conclusions at all, of
18 course.

19 A. My conclusion is that it is impossible to judge the degree
15:35:31 20 of force, and that even if women have constrained choice, it may
21 be not because they lack agency, it's not because they are just
22 victims sitting back doing nothing, it's because they reflect on
23 the different options that they have. They might say, well, if
24 my family is threatening me of abandoning me if I marry the
15:35:52 25 partner of my choice, I have nobody to rely on later on, so it
26 might be better to marry who they say I should marry and, if that
27 doesn't work out, at least I know that my family will be backing
28 me.

29 Q. Thank you, doctor. Now, you just explained to Court you

1 were not able to apply or, in your view, it's not possible for
2 you to say anything about the situation in Sierra Leone. I do
3 recall that, on page 8 of your report, you, in this second
4 section, refer to the social practises of marriage in Sierra
15:36:32 5 Leone, a brief overview. Would you please explain to the Court
6 shortly what the conclusion is of this section.

7 A. I would rather say the object of this section was to try to
8 use some of the secondary resources to address some of the
9 questions that I raised. Namely, who was involved in arranged
15:36:56 10 marriages, what are their concerns, how does inequality in power
11 relationships between juniors and seniors shape these
12 negotiations and shape what can actually be negotiated. What I'm
13 doing is, I'm trying to indicate that these sources from Sierra
14 Leone actually show that it's for doing any kind of research you
15:37:16 15 need to ask these questions, because they show diversity.

16 Q. Thank you. Now, on page 10 of your report, you go into the
17 issue of being a wife in composite rural households. What was
18 the objective of this specific section on page 10?

19 A. Well, being a wife is not only in relationship with your
15:37:48 20 husband. It's really -- in large complex households, it's also
21 in relation to your mother-in-law, to your father-in-law, to your
22 husband's brothers, to their wives. You're a wife in many
23 different contexts and you position yourself in those contexts.

24 What I saw in my empirical case in Burkina Faso was that
15:38:09 25 sometimes if the relationship with the husband doesn't work out
26 that well, actually, the mother-in-law might step in and pay some
27 of the things he would usually have paid, and they will be --
28 they're relating to many more people than just the husband.

29 Q. Apart from your empirical experience in Burkina Faso, did

1 you use any other sources to arrive at this conclusion with
2 respect to this subsection of your report?

3 A. Well, I have used a lot of feminist literature that talks
4 about economic division of households in West Africa, and that's
15:38:51 5 probably a point I haven't shown in this report or talked about
6 in this report, but what is common throughout West Africa is that
7 a family's economy is divided. So, husbands and wives have their
8 separate economies, and they have no right to know everything
9 about each other's economies, so they even sell things to one
15:39:12 10 another. So, when you talk about women have no other choice than
11 sitting down and do what the husband does or tells them to do,
12 it's not quite right.

13 Q. Doctor, on page 13, you address, specifically, the position
14 of young wives in light of change in Sierra Leone. Could you
15:39:33 15 explain to the Court whether you were able to make any
16 conclusions as to this position?

17 A. Well, the conclusion would be that it's very difficult to
18 say anything about -- well, the position is that they have been
19 in big families, and they have positioned themselves to different
15:39:53 20 people within these families, and, even in a nuclear household,
21 they will position themselves vis-a-vis the husband, vis-a-vis
22 second and third wives, or first and second, if they are in a
23 polygamous union, but they will also position themselves
24 socially, vis-a-vis other people around them, because even in a
15:40:13 25 nuclear family, there are so many other links with other families
26 who are constituting the community.

27 Q. Thank you. Doctor, your ensuing section is to be found on
28 page 16, titled "Coercion of women into being bush wives." Could
29 you explain, first, to the Court what you understand to be a bush

1 wife, based upon your research?

2 A. Well, what I understand from a bush wife was what I learned
3 from Mrs Bangura's report, firstly, then I started reading into
4 other literature about it. And it seems like the bush wife is a
15:40:59 5 position of acting, doing all the duties of a wife towards a man,
6 and that is what I have learned from that. It's not based on a
7 settled arrangement, but it's based -- the application of the
8 term wife is based on the duties a woman carries out.

9 Q. In your professional opinion, does the term bush wife
15:41:28 10 automatically involve coercion by itself, because your title is
11 "Coercion of women into being bush wives."

12 A. It's very difficult to say. Well, women were, by the look
13 of it, at least some of the women, I can't say all of them -- I
14 don't think all of them -- some women were abducted and then
15:41:52 15 being told they were being wives. So, of course, they were
16 coerced, but others -- we don't hear much about them. Some of
17 these reports that I am talking about, I'm actually talking about
18 young women's active participation in the civil war and some of
19 them chose these relationships, either -- for whatever reasons.

15:42:11 20 It could be -- I know I cite Mats Utas, who was doing a long case
21 study on a women from Liberia in the same situation, and she
22 moved across the border, so she was in Liberia, and then she was
23 in Sierra Leone. But this woman started off being the girlfriend
24 of a soldier, because she wanted another lifestyle than the one
15:42:32 25 she had and she wanted to escape an arranged marriage. She then
26 later became -- she then later -- the husband died and she was
27 taken up by others and she was captured. So she had a very
28 diverse history of not just being with one man and also not being
29 in the same situation. She was a bush wife at some time, but she

1 was also one of those being raped at another time, so her
2 position during the war changed a lot, depending on -- actually,
3 on random locks and unlocks.

4 Q. Doctor, apart from coercion and what you refer to as
15:43:14 5 another lifestyle, did you come across, in your research, any
6 other reasons, if any, why women sometimes become bush wives?

7 A. I did come across some examples of women where the
8 husband -- they were already married and the husband was a
9 combatant and asked them to join. I came over other examples
15:43:36 10 where the paramount chief asked every family to supply somebody,
11 and then they were supplied to the rebels. So there's a
12 diversity of ways of entering into the scene of being combatant
13 or bush wife or whatever people were.

14 Q. How, in your professional opinion, does the element of free
15:44:01 15 will interrelate to a bush wife?

16 A. Well, we can't say, because we don't know. We don't have
17 enough thick description. Thick description is an
18 anthropological term of having a lot of information with lots of
19 detail. We just don't have that kind of information at hand
15:44:21 20 right now, so we can't say anything about that, basically.

21 Q. Thank you, doctor. On page 1 of your report, I ask you to
22 look back into your report, page 1. I believe that you
23 differentiate between the concept of a bush wife and that of
24 arranged marriage.

15:44:53 25 A. Yes, I do.

26 Q. Can you please tell the Court why you make that
27 differentiation?

28 A. Well, an arranged marriage is with the parents' involvement
29 and the forced marriage is not, or, well, at least to the

1 knowledge we have. That means -- I should add a bit -- in the
2 arranged marriage where the parents have consented, there is a
3 certain amount of security, as well, because, I mean, young women
4 might be constrained as to how they choose their marriage
15:45:27 5 partner, but they are also enabled, at the same time, because of
6 the security there is in the family. And in the forced marriage,
7 there are no securities, really.

8 Q. How does the element of free will interrelate to these two
9 concepts? You have just explained about the bush wives, but what
15:45:55 10 about the arranged marriage?

11 A. I would say it's the same thing. The young women choose,
12 on a continuum of free choice, they like the guy, or they feel,
13 oh, I have to go, otherwise my family will abandon me. It's a
14 question of how much is spoken about this and how much is in the
15:46:14 15 girl's mind that, oh, if I don't do as I say, they will abandon
16 me. We can't really say that, unless we have a whole description
17 of many cases of what lay behind their choices.

18 Q. Are you able to give us an example from your empirical
19 study with respect to what you call an arranged marriage?

15:46:41 20 A. Oh, I have a lot, because there were a lot of arranged
21 marriages in that area. Yes, there was one example where one
22 woman --

23 MR HARDAWAY: Excuse me, Your Honour, can we have a
24 clarification. When the witness says "that area," which area
15:46:58 25 specifically we're referring to?

26 MR KNOOPS: Yes.

27 Q. Could you, doctor, please indicate what area you're
28 referring to?

29 A. It's the Bisa area. It's in south-eastern Burkina Faso,

1 and it's a very small region, a very small ethnic group. One
2 woman had gone off, married a partner of her own. It should be
3 noted that when young women go to a man, we don't actually know
4 if there is a marriage, but in popular discourse, people will say
15:47:25 5 marriage. They might just have gone to visit or they might have
6 gone as a boyfriend, but they are married in local language. She
7 had gone and married this man, was taken back by her father and
8 her brothers and sent to her father's sister's household, because
9 the father had promised his sister she that could be the
15:47:47 10 bride-giver. This woman was then married to a young man of her
11 own age in the father's sister's household. They migrated to
12 Cote d'Ivoire. After some argument, she was sent back to Burkina
13 Faso and stayed in the village for quite some time without
14 hearing anything from the husband. At one point she had a lover
15:48:05 15 and got pregnant and had a child outside the marriage. The
16 husband came back and was really annoyed about it and tried to
17 chase her away. At this point, her trade-off, when she married
18 at first paid off, because her father's sister stood up for her
19 and said, "You can't chuck her out. You can't chase her away.
15:48:24 20 She came into this household because of me." So this is a bit
21 about this trade-off between your own free will and going along
22 with your family's wishes. It actually carries some security for
23 you.

24 Q. Did you, yourself, in your research, encounter any example
15:48:46 25 of the situation which you would qualify as a bush wife?

26 A. No. Bush wife is a concept unique to Sierra Leone and
27 perhaps Liberia, but it is certainly not something seen in
28 peaceful countries like Burkina Faso.

29 Q. On page 1 of your report, you state that -- it's the second

1 paragraph, starting in the middle with, "Most importantly." Do
2 you see that, doctor?

3 A. Yes.

15:49:31 4 Q. Are you able to read that portion yourself, until the end
5 of section 2?

6 A. Yes. "Most importantly, I am worried that the requested
7 research with its focus on 'forced marriage' in West Africa
8 endorses a general view on rural populations as backwards and on
9 their diverse social practises as the primary source of
10 malevolence, sexual abuse, and war atrocities. Having done
11 long-term field research focusing on rural households, and in
12 particular on women's exercise of agency throughout their life
13 cycle and in different spheres, this is not a view that I would
14 want to support."

15:50:09 15 Q. Doctor, you have any major conclusion you arrived at,
16 particularly with the question whether or not, from your
17 professional perspective, a relationship exists between the
18 concept of bush wife and forced marriage?

19 A. I don't think there is a relationship.

15:50:28 20 Q. Thank you.

21 MR KNOOPS: That concludes my examination. If we can have
22 a minute, Your Honour. No further questions. Thank you.

23 PRESIDING JUDGE: Mr Knoops, as with the last expert
24 witness, I presume this witness is a common witness; is that
15:50:51 25 correct?

26 MR KNOOPS: That's correct, Your Honour.

27 PRESIDING JUDGE: Is there anything in chief from any of
28 the other defence counsel?

29 MR GRAHAM No, Your Honours, certainly not from the

1 counsel for the first accused, Mr Brima. We have no questions
2 for this witness.

3 PRESIDING JUDGE: All right. Yes, Mr Hardaway.

4 MR HARDAWAY: If I may have just one moment, Your Honour.

15:51:25 5 CROSS-EXAMINED BY MR HARDAWAY:

6 Q. Good afternoon, doctor.

7 A. Good afternoon.

8 Q. Just to start off, this is your first time appearing in
9 Court as an expert; is that correct?

15:51:42 10 A. Yes.

11 Q. And is this the first time you've been called upon to
12 provide expertise on the issue of customary marriages?

13 A. Yes, it is.

14 Q. And is this also the first time you have ever researched or
15:51:58 15 been called upon to provide expertise on the issue of sexual
16 violence?

17 A. Yes, it is.

18 Q. This is also the first time you're called upon to provide
19 research or expertise on the issue of sexual violence during a
15:52:21 20 war; is that also correct?

21 A. Yes.

22 Q. And is this also the first time that you're doing any work
23 or research into the customary marriage practises of Sierra
24 Leone?

15:52:32 25 A. It is.

26 Q. This is also the first time you've been called upon to
27 conduct any research with any research to do with the conflict in
28 Sierra Leone; is that also correct?

29 A. That is also correct, but I want to make an amendment to

1 the question before. I did actually use literature from Sierra
2 Leone for my thesis in Burkina Faso.

3 Q. All right. Thank you, doctor. Is it through this research
4 that you prepared for the report today that you first became
15:53:07 5 enlightened as to the conflict in Sierra Leone, or was it based
6 upon what you had just stated in your addendum?

7 A. No, no, I have been quite aware of the conflict.

8 Q. Very well. Now, my learned friend on the other side asked
9 you about your primary resources and secondary resources. What
15:53:29 10 was the methodology you used as it related to those resources to
11 come up with your report?

12 A. Well, thorough reading for the secondary sources and the
13 primary, of course, was my field research, which was
14 anthropological research, ethnographic, and -- well, for building
15:53:49 15 up an argument, you need to read quite thoroughly. A lot of the
16 literature was not new to me.

17 Q. Okay. Other than what you had testified to earlier from my
18 learned friend from the other side, were you provided any other
19 materials, other than Ms Bangura's report and the transcripts?

15:54:15 20 A. No. And I only read the transcripts from Mrs Bangura's
21 appearance after I had written the report.

22 Q. Now, based upon your research, are you aware of the
23 different mechanisms under which a woman can marry in Sierra
24 Leone?

15:54:38 25 A. I believe I am, to a certain extent, from the literature
26 I've read, amongst others, by these three ethnographies by Ferme,
27 Bledsoe and Harding.

28 Q. What would those different mechanisms be, ma'am?

29 A. They would be the traditional marriages, which were the

1 arrangements where the kin were heavily involved. According to
2 Harding, kin is still involved to a large degree, but the
3 youngsters are more able to choose these days. According to
4 Bledsoe, while she was working in Liberia, but in a more rural
15:55:19 5 town, with a bit more of an economy than in the villages, she was
6 working in two places; one village and one rural town. In the
7 villages, she said it is still very much arranged marriages of
8 the traditional type, whatever that is, and, the rural towns,
9 there was a lot more freedom in choice, and there was a lot of
10:55:40 10 trial marriages, as she talked about where youngsters tried to
11 live together with their parents' and kin's consent, but all the
12 arrangement hadn't been settled, and then there were "night
13 marriages" where they had lovers.

14 Q. In any of your readings of the ethnographies, did religion
15:56:03 15 play any role as it related to the mechanisms of marriage in
16 Sierra Leone?

17 A. Religion has often been in the background, but it might not
18 be in the foreground of, well, we are marrying like this because
19 of this religion. It might be the customary concerns that are
15:56:18 20 more forefront, but the religion is behind it in the way that a
21 lot of Muslim families are not very happy about their daughters
22 marrying non-Muslims. I see the same thing happening in Burkina
23 Faso.

24 Q. Okay. So, in your ethnographies, does religion play a
15:56:40 25 major role, did you find, or just as a background role?

26 A. Just as a background.

27 Q. Now, do you know how many tribes there are in Sierra Leone?

28 A. I don't know the exact number, but a good many, I would
29 say.

1 Q. Okay. Are you aware of the traditions or procedures of
2 customary marriages within these various tribes?

3 A. As I've understood from the literature, they're very
4 similar. As I note in my report, it is that even within an
15:57:16 5 ethnic group, there might be differences in, well, they might
6 share the larger ideals about what is going into an arranged
7 marriage, but, actually, there might be differences from one
8 locality to another, from one village to a town. There might be
9 differences between how men and women see it. There are a lot of
15:57:36 10 interpretations, because these things are not set out by writing
11 and though it's norms and values, and that is always interpreted.

12 MR HARDAWAY: Your Honours, I'm noting the time and I am
13 getting ready to go into a new area. I don't know if this would
14 be an appropriate time to stop for the day.

15:58:09 15 PRESIDING JUDGE: This is a convenient time. Thank you,
16 Mr Hardaway. This may be a difficult question for you to answer
17 at this stage, but how long do you think you will be with this
18 witness? The only reason I ask is that if we run out tomorrow,
19 it might be possible to bring forward one or other of the two
15:58:28 20 Defence witnesses yet to be cross-examined.

21 MR HARDAWAY: Your Honour, I don't know, at this point. To
22 be fair, I have a list of approximately 82 questions. So it may
23 turn out that in response to some of my other questions some may
24 be needed to be withdrawn, I may need to add some. I don't want
15:58:54 25 to give a time and not be able to stick with it.

26 PRESIDING JUDGE: I understand. Thank you, Mr Hardaway.
27 Madam Witness, I have to caution you that while you're in the
28 process of giving evidence, you're not permitted to discuss your
29 evidence or the case with any other person.

1 THE WITNESS: I've understood that.

2 PRESIDING JUDGE: We'll adjourn then until 9.15 tomorrow
3 morning.

15:59:53

4 [Whereupon the hearing adjourned at 4.00 p.m.,
5 to be reconvened on Wednesday, the 25th day
6 of October 2006, at 9.15 a.m.]

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EXHIBITS:

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