

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-14-T
Trial Chamber I

THE PROSECUTOR
OF THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA

MONDAY, 29 NOVEMBER 2004
10.42 a.m.
TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For Chambers:

Ms Sharelle Aitchison
Ms Chiarra Galletti

For the Registry:

Ms Maureen Edmonds
Mr Geoff Walker

For the Prosecution:

Mr James C Johnson
Mr Raimund Sauter
Mr Kevin Tavener
Ms Adwoa Wiafe
Mr Mohamed Stevens
Ms Sharan Parmar

For the Principal Defender:

Mr Ibrahim Yillah
Mr Kingsley Belle

For the Accused Sam Hinga Norman:

Dr Bu-Buakei Jabbi.
Ms Claire da Silva

For the Accused Moinina Fofana:

Mr Arrow Bockarie
Mr Andrew Ianuzzi

For the Accused Allieu Kondewa:

Mr Charles Margai
Mr Ansu Lansana

1 Monday, 29 November 2004

2 [The accused present]

3 [Open session]

4 [Upon commencing at 10.42 a.m.]

5 PRESIDING JUDGE: Good morning, learned counsel. I hope you
6 all had an enjoyable weekend and that you relaxed
7 properly for the long and yet another week of trials. We
8 think -- I wish all of us the health that we require to
9 get through this process. Thank you.

10 We did announce on Friday that we were going to
11 deliver a judgment on the motion filed by the first
12 accused in this trial and we shall start by delivering
13 the majority opinion -- the majority judgment which will
14 be presented by learned Judge Boutet.

15 JUDGE BOUTET: Thank you, Mr Presiding Judge.

16 This is the decision of the Trial Chamber on the
17 first accused's motion for service and arraignment on the
18 consolidated indictment. I will not read the totality of
19 my decision. I will read the salient portion of the
20 decision that is to be filed right after my delivering of
21 it in open court this morning.

22 I will read firstly the background to this
23 application.

24 On the 15th, 17th, and 21st of March 2003, the first
25 accused was arraigned before the Trial Chamber and
26 pleaded not guilty to eight counts listed in the
27 indictment against him.

28 On the 9th of October 2003, the Prosecution sought a
29 motion for joinder of the first accused with the accused

1 Moinina Fofana (second accused) and Allieu Kondewa (third
2 accused). The Prosecution requested that the indictments
3 against the three accused be consolidated into a single
4 indictment and their case joined. Written responses to
5 this motion were received from the third accused on the
6 20th of October, 2003, and from the second accused on the
7 12th of November 2003. An oral response to the motion
8 was given by the first accused at the joinder hearing
9 held on the 4th of December 2003. The Prosecution filed
10 a reply to the Defence response on the 24th of October
11 2003. A decision on the motion for joinder was delivered
12 on the 27th of January 2004, which ordered that a single
13 consolidated indictment be prepared as the indictment on
14 which the joint trial would proceed and that the said
15 indictment be served on each accused in accordance with
16 Rule 52 of the Rules. The consolidated indictment was
17 filed on the 5th of October 2003.

18 By written motion of the 20th of September 2004, the
19 first accused submits that he had not been personally
20 served with a consolidated indictment, nor lawfully
21 arraigned on this indictment, for which he is currently
22 being tried before the Special Court. He seeks service
23 and arraignment on this indictment. He claims that the
24 consolidated indictment extends the period of time
25 covered by the indictment to an additional 20 months and
26 adds several geographic locations that are further
27 described in the decision.

28 The first accused also seeks a formal quashing of
29 the previous indictment on which he was arraigned on the

1 7th of March 2003. He submits that two indictments are
2 currently "lying against him", contrary to the rule of
3 law against double jeopardy under Article (91) of the
4 Statute. He submits that former indictment is included
5 within the superseding indictment, so that trial on the
6 superseding indictment should prevent retrial on the
7 former indictment. He has concerns based upon
8 "experiences before domestic Sierra Leone tribunals",
9 that is, a complete acquittal on the consolidated
10 indictment could make him vulnerable to further
11 prosecution on the initial indictment.

12 There was a Prosecution response to this application
13 and an accused reply which I will not read in court
14 today, and I will move to the merits of the application.

15 Service of the Consolidated Indictment.

16 The first issue to be determined by the Trial
17 Chamber is whether the first accused was properly served
18 with the consolidated indictment, and if not, whether
19 this situation would unfairly prejudice the accused's
20 right to a fair trial.

21 The Chief of Court Management has informed the Trial
22 Chamber that the accused was not personally served with a
23 consolidated indictment. According to this report, the
24 said indictment was only served on counsel for the
25 accused, as the Prosecution had not asked for personal
26 service on the accused.

27 In accordance with Rule 52 of the Rules, the Trial
28 Chamber had ordered in its decision on joinder for the
29 consolidated indictment to be served on each accused

1 person. This order was as follows:

2 1. That a single consolidated indictment be
3 prepared as the indictment on which the trial shall
4 proceed; and

5 3. That the said indictment be served on each
6 accused in accordance with Rule 52 of the Rules.

7 Based upon the foregoing, the Trial Chamber finds
8 that the service of the indictment on counsel for the
9 accused does not comply with Rule 52 of the Rules, or the
10 order of the Trial Chamber. While such a failure to
11 serve the consolidated indictment personally on the
12 accused constitutes a procedural error, this alone would
13 not, however, in and of itself, unfairly prejudice the
14 accused's right to a fair trial.

15 Having so found, the Trial Chamber must now
16 determine whether any unfair prejudice has or will result
17 to the accused as a result of this non-compliance. In so
18 doing the Trial Chamber has reviewed the entire pre-trial
19 and trial process and has noted the following. The
20 accused was served on the 10th of March 2003, with a copy
21 of the initial indictment which was approved on the 7th
22 of March 2003, which outlines the charges against him.
23 His assigned counsel, who represented him at that time,
24 were formally served with a copy of the consolidated
25 indictment on the 5th of February, 2004, and their
26 obligation consisted of representing their client, which
27 included to familiarise him with the charges against him.
28 The accused did not raise the issue of non-service during
29 the pre-trial conference or at any of the status

1 conferences. Furthermore, the accused responded to the
2 charges against him in his pre-trial brief filed on 31st
3 of May 2004, and has defended the charges against him in
4 first and second session of the CDF trial.

5 Before making any conclusive finding on this issue
6 of unfair prejudice, however, the Trial Chamber considers
7 it necessary to assess whether or not the charges
8 outlined in the consolidated indictment are materially
9 different from the charges listed in the initial
10 indictment which was served on the accused and would
11 therefore constitute new charges as contemplated by Rule
12 50 of the Rules.

13 Difference between the initial indictment and the
14 consolidated indictment.

15 The Trial Chamber is aware that it is not its
16 function to ascertain for itself whether the form of an
17 indictment complies with the pleading principles as
18 outlined in the Rules, as this is normally a function for
19 the parties, although a court is entitled proprio motu to
20 raise issues as to the form of an indictment,
21 particularly when such matters will affect the fairness
22 of the process. With the principle of a fair trial, and
23 the obligation to consider any unfair prejudice that may
24 ensue from non-service and arraignment on the
25 consolidated indictment, the Trial Chamber will consider
26 whether there are any new charges to consolidated
27 indictment by comparison to the initial indictment.

28 The Prosecution assert that the consolidated
29 indictment contains no additional charges against the

1 first accused. It should be observed that when the
2 Prosecution applied for joinder of the trial of three
3 accused persons, it did not exhibit the proposed
4 consolidated indictment. The Prosecution submitted that
5 the consolidated indictment would not amend the initial
6 indictment, but that it was confined a to "mere putting
7 together" of the three initial indictments. The
8 Prosecution submitted that there was no need for further
9 approval of the consolidated indictment "given it will
10 not involve any change in the substance of the original
11 indictments".

12 Based upon these submissions by the Prosecution and
13 without the benefit of an appended indictment to the
14 motion for joinder, the Trial Chamber held in its joinder
15 decision that a comparison of the indictments of the
16 three accused "reveals that the specific crimes charged
17 in those several counts are exactly the same, except for
18 the allegations in respect of additional time and
19 locations as regards accused Moinina Fofana and Allieu
20 Kondewa, which is an issue of no materiality for the
21 instant purpose".

22 Upon receiving this motion from the first accused,
23 and consequently proceeding to specifically review the
24 differences between the initial indictment against the
25 first accused with the consolidated indictment, the Trial
26 Chamber notes that the following changes have been made:

27 (A) Paragraph 23 of the consolidated indictment -
28 this paragraph refers to the armed conflict occurring in
29 various parts of Sierra Leone. In the initial

1 indictment, the qualifier "but not limited to" is given.
2 The consolidated indictment adds the "towns of Tongo
3 Field", instead of just Tongo Field "and surrounding
4 areas and the districts of Moyamba and Bonthe" for parts
5 of Sierra Leone where the armed conflict allegedly
6 occurred.

7 (B) Paragraph 24 - this paragraph adds to the
8 actions committed by the CDF, largely Kamajors "personal
9 injury and the extorting of money from civilians".
10 Subparagraph (C) adds that the Kamajors not only
11 attacked, but "took control of" various towns and instead
12 of allegations that Kamajors destroyed and looted, they
13 consolidated indictment alleges that Kamajors
14 "unlawfully" destroyed and looted. Subparagraphs (D) and
15 (E) are entirely new and state that:

16 (D) Between October 1997 and December 1999, Kamajors
17 attacked and conducted armed operations in the Moyamba
18 District, to include the towns of Sebehun and
19 Gbangbatoke. As a result of actions Kamajors continued
20 to identify suspected "collaborators" and others
21 suspected to be not supportive of the Kamajors and their
22 activities. Kamajors unlawfully killed an unknown number
23 of civilians. They unlawfully destroyed and looted
24 civilian owned property.

25 And subparagraph (E) between about October 1997 and
26 December 1999, Kamajors attacked or conducted armed
27 operations in the Bonthe District, generally in and
28 around the towns and settlements of Talia, Tihun, Maboya,
29 Bolloh, Bemebay, and the island town of Bonthe. As a

1 result of these actions Kamajors identified suspected
2 "collaborators" and others suspected to be not supportive
3 of the Kamajors and their activities. They unlawfully
4 killed an unknown number of civilians. They destroyed
5 and looted civilian owned property.

6 Additions to paragraph F are that the CDF blocked
7 all major highways and roads leading "to and from", which
8 previous referred to "leading to" only.

9 (C) Paragraph 25 of the consolidated indictment,
10 subparagraph (A) extends the time frame for alleged
11 commission of unlawful killings to 30 April 1998, instead
12 of 1 February 1998 as in the initial indictment.
13 Additional places are mentioned where the killings
14 allegedly took place, including "at or near the towns of
15 Lalehun, Kamboma, Konia, Talama, Panguma and Sembehun".
16 The initial indictment used general language "but were
17 not limited to" and referred to "at or near Tongo Field".
18 Subparagraph (B) included "District Headquarters town of
19 Kenema", whereas the initial indictment just referred to
20 "Kenema" and added "at the nearby locations of Blama".
21 Subparagraph (C) adds "Kamajors unlawfully killed", and
22 subparagraph (D) adds "including the District
23 Headquarters town" and "Kebbi Town, Kpeyama, Fengehun and
24 Mongere" and that "Kamajors unlawfully killed".
25 Subparagraph (E) and (F) are new and were not in the
26 initial indictment. These subparagraphs state:

27 (E) Between about October 1997 and December 1999 in
28 locations in Moyamba District, including Sembehun, Tiama,
29 Bylago, Ribbi and Gbangbatoke, Kamajors unlawfully killed

1 an unknown number of civilians.

2 (F) Between about October 1997 and December 1999
3 locations in Bonthe District including Talia (Base Zero)
4 Mobayeh, Makose and Bonthe Town, Kamajors unlawfully
5 killed an unknown number of civilians.

6 Additions to subparagraph (G) include "unlawfully
7 killed" and capture of enemy combatants "in road ambushes
8 at Gumahun, Gerihun Jembah and the Bo-Matotoka Highway".

9 (D) Paragraph 26 of the consolidated indictment,
10 subparagraph (A) extends the time frame for alleged
11 commission of acts of physical violence and infliction of
12 mental harm or suffering to October 1998, which
13 previously was 1 April 1998. Blama and Kamboma are also
14 listed as areas where the acts were committed. Kenema is
15 also qualified as "Kenema Town". Subparagraph (B) of the
16 initial indictment referred to commission of acts from 1
17 November 1997 to 1 April 1998 and the consolidated
18 indictment refers to November 1997 to December 1999 and
19 adds "in the towns of" for Tongo Field and "the Districts
20 of Moyamba and Bonthe". The subparagraph further adds
21 the offences of illegal arrest and unlawful imprisonment.
22 The initial indictment used general language of "but not
23 limited to."

24 (E) Paragraph 27 - this paragraph alleging looting
25 and burning adds the locations of "Kenema District, the
26 towns of Kenema, Tongo Field and surrounding areas",
27 "District" to Bo, "the towns Bo", "Bonthe District, the
28 towns of Talia (Base Zero), Bonthe Town, Mobayeh, and
29 surrounding areas." This paragraphs also refers to the

1 unlawful taking and destruction by burning of "civilian
2 owned" property, instead of "private property."

3 (F) Paragraph 29 of the consolidated indictment adds
4 that the CDF "conscript" instead of "initiate" children
5 under the age of 15 years into armed forces or groups
6 "throughout" Republic of Sierra Leone.

7 Other changes to the consolidated indictment
8 include, for example, reference to "CDF, largely
9 Kamajors", instead of "Kamajors" as in the initial
10 indictment.

11 Upon a detailed comparative analysis of the
12 differences between the initial indictment for the first
13 accused and the consolidated indictment, the Trial
14 Chamber comes to the conclusion that the factual
15 allegations adduced in support of existing confirmed
16 counts in the initial indictment have been extended and
17 elaborated upon in the consolidated indictment, and that,
18 furthermore, some substantive elements of the charges
19 have been added.

20 The Chamber turns now to consider proprio motu
21 whether these additions and changes to the consolidated
22 indictment are material to the indictment, in which case
23 an unfair prejudice might enure to the accused on account
24 of him facing these charges, having not been personally
25 served and arraigned on the consolidated indictment, or
26 alternatively, whether the additions simply provide
27 greater specificity to general allegations that are not
28 material.

29 Pleading Principles for an Indictment.

1 An indictment as the primary accusatory instrument
2 against an accused person, must plead the essential
3 aspect of the Prosecution case with sufficient detail.
4 In accordance with 47(C) of the Rules:

5 The indictment shall contain, and be sufficient if
6 it contains the name and particulars of the suspect, a
7 statement of each specific offence of which the named
8 suspect is charged and a short description of the
9 particulars of the offence. It shall be accompanied by a
10 Prosecutor's case summary briefly setting out the
11 allegations he proposes to prove in making his case.

12 If the Prosecution fails to plead the essential
13 aspect of the Prosecution case in the indictment, it will
14 suffer from a material defect. As stated by the Appeals
15 Chamber of the International Criminal Tribunal for the
16 former Yugoslavia ICTY in the Kupreski case:

17 It is not acceptable for the Prosecution to omit the
18 material aspects of its main allegations in the
19 indictment with the aim of moulding the case against the
20 accused in the course of the trial depending on how the
21 evidence unfolds.

22 Pursuant to Article 17(4) of the Statute, the
23 accused must be informed of the "nature and the cause of
24 the charge against him". There is a distinction between
25 the material facts upon which the Prosecution relies, and
26 which must be pleaded in the indictment, and the evidence
27 by which those material facts will be proved, which do
28 not need to be pleaded. The materiality of the facts to
29 be pleaded depend on the nature of the Prosecution case

1 and the alleged proximity of the accused to those events.
2 As stated by the Trial Chamber of the International
3 Criminal Tribunal for the former Yugoslavia in a Brdjanin
4 case, in a trial based upon, for example, superior
5 responsibility:

6 What is most material is the relationship between
7 the accused and the others who did the acts for which he
8 is alleged to be responsible, and the conduct of the
9 accused by which he may be found to have known or had
10 reason to know that the acts were about to be done, or
11 had been done, by those others, and to have failed to
12 take the necessary and reasonable measures to prevent
13 such acts or to punish the persons who did them.
14 However, so far as those acts of the other person are
15 concerned, although the Prosecution remains under an
16 obligation to give all the particulars which it is able
17 to give, the relevant facts will usually be stated with
18 less precision, and that is because the detail of those
19 acts (by whom and against whom they are done) is often
20 unknown and because the acts themselves often cannot be
21 greatly in issue.

22 The Trial Chamber in the Brdjanin case further
23 considered that in a case based upon individual
24 responsibility where the accused is alleged to have
25 personally committed the acts pleaded in the indictment:

26 "The material facts must be pleaded with precision -
27 the information pleaded as material facts must, so far as
28 it is possible to do so, include the identity of the
29 victim, the places and the approximate date of those acts

1 and the means by which the offence was committed. Where
2 the Prosecution is unable to specify any of these
3 matters, it cannot be obliged to perform the impossible.
4 Where the precise date cannot be specified, a reasonable
5 range of dates may be sufficient. Where precise
6 identification of a victim or victims cannot be
7 specified, a reference to their category or position as a
8 group may be sufficient. Where the Prosecution is unable
9 to specify matters such as these, it must make it that
10 clear in the indictment that it is unable to do so and
11 that it has provided the best information it can."

12 An indictment may be amended, however, at trial,
13 where the evidence turns out differently than expected.
14 The Trial Chamber may grant an adjournment for this
15 purpose, or certain evidence may be excluded as not being
16 within the scope of the indictment. In cases where the
17 indictment provides insufficient details as to the
18 essential elements of the Prosecution case, the
19 jurisprudence of the Tribunal accepts that a defendant
20 may not be unfairly prejudiced where the Defence is put
21 on reasonable notice of the Prosecution case before
22 trial, for example, in the Prosecution pre-trial brief,
23 or in the latest, in the Prosecution opening statement.

24 In the Kupreskic case, the Appeals Chamber of the
25 ICTY held that "the question whether an indictment is
26 pleaded with sufficient particularity is dependent upon
27 whether it sets out the material facts of the Prosecution
28 case with enough detail to inform a defendant clearly of
29 the charges against him so that he may prepare his

1 defence." The Trial Chambers of the ICTY have held:

2 "All legal prerequisites to the application of the
3 offences charged constituted material facts, and must be
4 pleaded in the indictment. The materiality of the facts
5 (facts not directly going to legal prerequisites), which
6 also have to be plead in the indictment, cannot be
7 determine in the abstract. Each of the material facts
8 must usually be pleaded expressly, although it may be
9 sufficient in some circumstances if it is expressed by
10 necessary implication. This fundamental rule of
11 pleading, however, is not complied with if the pleading
12 merely assumes the existence of prerequisite."

13 This Trial Chamber, in its decision in the case of
14 Sesay, held that when framing an indictment, the degree
15 of specificity required:

16 "Must necessarily depend on such variables as (i)
17 the nature the allegations; (ii) the nature of the
18 specific crimes charged; (iii) the scale or magnitude on
19 which the acts or events allegedly took place; (iv) the
20 circumstances under which the crimes were allegedly
21 committed; (v) the duration of time over which the said
22 acts or events constituting the crimes occurred; (vi) the
23 time span between the occurrence of the events and the
24 filing of the indictments; (vii) the totality of the
25 circumstances surrounding the commission of the alleged
26 crimes."

27 Applying the foregoing principle to the instant
28 situation, the Trial Chamber considers that given the
29 alleged nature and scale of the offences charged, and the

1 alleged mode of participation of the accused in a
2 position of command responsibility, and as part of a
3 joint criminal enterprise with a common plan to commit
4 such offences, it would not be realistic to expect for
5 these offences to be pled with "pinpoint particularity".
6 At the same time, however, greater specificity will be
7 required for other modes of participation in offences
8 pursuant to Article 6(1) of the Statute, and the alleged
9 offences and material facts must be pleaded with enough
10 precision to inform the accused clearly of the charges
11 against him so that he may prepare his defence.

12 Upon close analysis of the consolidated indictment,
13 there are clearly new factual allegations adduced in
14 support of existing confirmed counts, as well as new
15 substantive elements of the charges that were not in the
16 initial indictment of the first accused. In the opinion
17 of the Trial Chamber, these changes do not appear to be
18 simply "semantic", as alleged by the Prosecution in their
19 motion for joinder, but are rather material to the
20 indictment. While some of the differences between the
21 two indictments simply provide greater specificity, and
22 provide backgrounds fact, many of the changes, however,
23 are material to the indictment. Such as the addition of
24 graphical locations in paragraph 23 to 27 of the
25 consolidated indictment, that introduced new districts,
26 such as Bonthe and Moyamba; and the extension of temporal
27 jurisdiction for some counts from April 28, as outlined
28 in the initial indictment, to December 1999 in the
29 consolidated indictment, constitute material changes to

1 the indictment. In addition, there are new substantive
2 elements of charges in the paragraphs 24 to 27 and 29 of
3 the consolidated indictment that are material and include
4 the charges of unlawful arrest and detention,
5 "conscription" of children, personal injury and extorting
6 of money from civilians. We consider that all of these
7 additions to the consolidated indictment, without any
8 amendment to the counts against the accused and personal
9 service on the accused, in accordance with the prescribed
10 procedure, could prejudice the accused's right to a fair
11 trial if the trial proceeds on this basis.

12 In joint trials each accused shall be accorded the
13 same rights as if he or she were being tried separately.
14 The rights of the accused as enshrined in Articles of 9
15 and 14 of the ICCPR and Article 7 of the ACHPR, and as
16 outlined in Rule 26(bis) of the Rules, including the
17 right to a fair and expeditious trial, and in Article 17
18 of the Statue, which include the right "to be informed
19 promptly and in detail in a language which he and or she
20 understands of the nature and cause of the charge against
21 him or her," and to have adequate time and facilities to
22 prepare for his or her defence, apply equally to an
23 accused person tried separately on a single indictment as
24 to an accused person tried jointly on a consolidated
25 indictment. In either instance, where new changes are
26 sought to be added to an indictment against an accused
27 person, whether in a separate or joint trial, the
28 Prosecution is obligated pursuant to Rule 50 of the
29 Rules, to seek leave of the Trial Chamber to amend the

1 indictment.

2 Arraignment on Indictment.

3 Which respect to arraignment on the indictment, it
4 is clear in the Rules and the practice of the
5 international tribunals, that a consolidated or amended
6 indictment need not be confirmed by a Trial Chamber or
7 judge if the initial indictments that were subject to
8 joinder were already confirmed, and the charges in the
9 amended indictment are essentially the same or similar to
10 the original ones. This position is also clear in
11 national systems. In the United Kingdom case of
12 R v Fyffe it was recognised that a general Rule that the
13 general rule that re-arraignment is unnecessary where the
14 amended indictments merely reproduces the original
15 allegations in a different form, albeit including a
16 number of new counts.

17 In the case at hand, the accused entered a plea to
18 the charges against him at his initial appearance in
19 March 2003. These charges remain in force against him,
20 however, as we have found, there were material changes
21 made to the consolidated indictment. The Trial Chamber
22 finds that the accused has not been afforded the
23 opportunity to make a plea to these material changes to
24 the indictment, and that unfair prejudice may result if
25 the indictment is not amended and the accused served with
26 the indictment and arraigned on the material changes to
27 the indictment.

28 Ne bis in idem.

29 The common law prohibit of double jeopardy prevents

1 an accused person from being subject to a further trial
2 in which he or she has been charged with an offence and
3 either acquitted or convicted on these charges. The
4 prohibition prevents an accused from being convicted
5 twice for the same offence. The civil principle of ne
6 bis in idem also entitles the accused not to be tried
7 twice for the same offence. Unlike double jeopardy,
8 however, the principle of ne bis in idem prevents
9 repeated prosecutions for the same conduct in the same or
10 different legal systems, whereas the notion of double
11 jeopardy "is a double exposure to sentencing which is
12 applicable to all the different stages of the criminal
13 justice process in the same legal system: prosecution,
14 conviction, and punishment."

15 The principle that an accused may not be subject to
16 subsequent proceedings in respect of the same offence for
17 which he or she has already been convicted or acquitted
18 is expressed in the context of international human rights
19 law, which is respected by the Trial Chamber of the
20 Special Court. Article 14(7) of the International
21 Covenant on Civil and Political Rights provides that:

22 No one shall be liable to be tried or punished again
23 for an offence for which he has already been finally
24 convicted or acquitted in accordance with the law and
25 penal principle of each country.

26 Article 9(1) of the Statute enshrines the principle
27 of non bis in idem, and provides that:

28 No person shall be tried before a national court of
29 Sierra Leone for acts for which he or she has already

1 been tried by the Special Court.

2 The consolidated indictment which covers the same
3 charges against an accused as the initial indictments
4 does not constitute an new indictment. The initial
5 indictments are essentially subsumed in the consolidated
6 indictment. Official withdrawal of the initial
7 indictment is not necessary. In the United States, for
8 example, indictments that are consolidated become, in
9 legal effect, separate counts of one indictment. Under
10 English law, where an 'amended' indictment adds no new
11 allegations or offences such that it represents a change
12 in form but not in substance, it is not a fresh
13 indictment. There is only one indictment.

14 There is clearly one indictment in existence against
15 the accused person as reflected in the joinder decision
16 and consolidated indictment. No official withdrawal of
17 the initial indictment is necessary.

18 Conclusions.

19 The Trial Chamber finds that the accused has not
20 been personally served with the consolidated indictment.
21 Furthermore, the Trial Chamber finds that the
22 consolidated indictment contains new factual allegations
23 adduced in support of existing confirmed counts, and
24 substantive elements of charges, that are material to the
25 case against the accused. In accordance with the
26 accused's right to a fair trial and in the interests of
27 justice, the Trial Chamber will stay the following
28 portions of counts of the consolidated indictment, that
29 constitute material changes to the indictment against the

1 first accused. The remainder of the indictment,
2 excluding stayed portions, constitute a valid indictment
3 against the accused. The stayed portions of the
4 indictment are outlined in brackets in the text below.

5 (A) Paragraph 23 "and surrounding areas of the
6 Districts of Moyamba and Bonthe".

7 (B) Paragraph 24 "personal injury and the extorting
8 of money from civilians"; and "took control of"; and
9 "unlawfully" destroyed and looted; and subparagraphs (D)
10 and (E) which include:

11 "(D) Between October 1997 and December 1999,
12 Kamajors attacked or conducted armed operations in the
13 Moyamba District, to including the towns of Sembehun and
14 Gbangbatoke. As a result of the actions Kamajors
15 continued to identify suspected 'collaborators' and
16 others suspected to be not supportive of the Kamajors and
17 their activities. Kamajors unlawfully killed an unknown
18 number of civilians. They unlawfully destroyed and
19 looted civilian property."

20 All of this being subparagraph (D) of paragraph 24.
21 And subparagraph (E) which reads:

22 "Between October 1997 and December 1999, Kamajors
23 attacked or conducted armed operations in the Bonthe
24 District, generally in and around the towns and
25 settlements of Talia, Tihun, Maboya, Bolloh, Bemebay, and
26 the island town of Bonthe. As a result of these actions
27 Kamajors identified suspected 'collaborators' and others
28 suspected to be not supportive of the Kamajors and their
29 activities. They unlawfully killed an unknown number of

1 civilians. They destroyed and looted civilian owned
2 property."

3 That is the end of subparagraph (E).

4 (C) Paragraph 25 of the consolidated indictment -
5 the time frame for alleged commission of unlawful
6 killings, namely "30 April 1998"; "at or near the towns
7 of Lalehun, Kamboma, Konia, Talama, Panguma and
8 Sembehun"; "at the nearby locations of Blama"; "Kamajors
9 unlawfully killed" - all of these are in quotations -
10 "including the Distinct Headquarters town, Kebbi Town,
11 Kpeyama, Fengehun and Mongere"; and subparagraphs (E) and
12 (F) which state:

13 That is (E) and (F) of paragraph 25.

14 "(E) between about October 1997 and December 1999 in
15 locations in Moyamba District, including Sembehun, Tiama,
16 Bylago, Ribbi and Gbangbatoke, Kamajors unlawfully killed
17 an unknown number of civilians;

18 (F) about October 1997 and December 1999 in
19 locations in Bonthe District, including Talia (Base
20 Zero), Mobayeh, Makose and Bonthe Town, Kamajors
21 unlawfully killed an unknown number of civilians."

22 That is the end of quotations of subparagraph (F).

23 Additions to subparagraph (G) including "unlawfully
24 killed" and capture of enemy combatants at "in road
25 ambushes at Gumahun, Gerihun, Jembah and the Bo-Matotoka
26 Highway".

27 (D) Paragraph 26 - subparagraph (A) extends the time
28 frame for alleged commission of acts of physical violence
29 and infliction of mental harm or suffering to "30 April

1 1998"; "Blama and Kamboma" are also listed as areas where
2 the acts were committed; subparagraph (B) "November 1997
3 to December 1999"; and "the Districts of Moyamba and
4 Bonthe"; "illegal arrest and unlawful imprisonment".

5 (E) Paragraph 27 - "Kenema District, the towns of
6 Kenema, Tongo Field and surrounding areas"; "Bonthe
7 District, the towns of Talia, (Base Zero), Bonthe Town,
8 Mobayeh and surrounding areas"; and the unlawful taking
9 and destruction by burning of "civilian owned" property.

10 (F) Paragraph 29 of the consolidated indictment -
11 "conscript" instead of "initiate" children under the age
12 of 15 years into armed forces or groups "throughout" the
13 Republic of Sierra Leone.

14 (G) General references to "CDF, largely Kamajors",
15 instead of Kamajors.

16 For the above reasons, the Trial Chamber orders as
17 follows for the first accused:

18 1. The identified portions of the consolidated
19 indictment that are material and embody new factual
20 allegations and substantive elements of the charges be
21 stayed, and that the Prosecution is hereby put to its
22 election either to expunge completely from the
23 consolidated indictment such identified portions or seek
24 an amendment of the said indictment in respect of those
25 identified portions, and that either option is to be
26 exercised with leave of the Trial Chamber.

27 2. Honourable Judge Bankole Thompson appends a
28 separate concurring opinion to this decision adopting his
29 own reasoning and putting forward his reasons in support

1 thereof.

2 3. Honourable Judge Benjamin Mutanga Itoe,
3 Presiding Judge, appends his dissenting opinion to this
4 decision.

5 Done in Freetown, Sierra Leone, this 29th day of
6 November, 2004.

7 That concludes the Trial Chamber's decision,
8 majority decision. Thank you.

9 Mr Presiding Judge.

10 PRESIDING JUDGE: Thank you, my learned brother.

11 As Honourable Judge Boutet has announced, the
12 majority decision of this Court is supported by the
13 concurring -- the separate but concurring opinion of
14 Honourable Bankole Thompson. The conclusions are the
15 same, to be more precise, but the reasoning to arriving
16 at those conclusions is slightly different. And
17 Honourable Judge Bankole Thompson for personal reasons
18 and for the economy of time has preferred not to read his
19 concurring opinion, but it will be filed in the records
20 for the parties to be able to read it and know what they
21 can do about it.

22 This said, and as my colleague has stated, I have
23 appended, like I did on the 27th of January 2004, a
24 dissenting judgment, in fact, a dissenting opinion on the
25 majority opinion and this is my dissenting judgment on
26 this issue.

27 I will not read the mindfuls, but I say that I,
28 Honourable Judge Benjamin Mutanga Itoe, Judge of the
29 Trial Chamber for the Special Court for Sierra Leone, and

1 Presiding Judge of the said Chamber, do issue the
2 following dissenting opinion on the Chamber majority
3 decision supported by Honourable Judge Bankole Thompson's
4 separate but concurring opinion, relating to the motion
5 filed by the first accused, Samuel Hinga Norman for
6 service and arraignment on the second indictment.

7 I would like to say here straightaway, that the
8 decision of the Court is not my decision. It is not my
9 decision. The decision of the Court that applies is the
10 decision of my colleagues. This is merely a dissenting
11 opinion, which I thought professionally, I mean, in the
12 exercise of my independence I should append to this
13 decision.

14 The historical background on this case is that first
15 accused, Samuel Hinga Norman, the Applicant in this
16 motion, was arrested on the 10th of March, 2003. He made
17 his initial appearance before me in Bonthe on the 15th,
18 17th, and 21st of March, 2003, in accordance with the
19 provisions of Rule 61 of the Rules.

20 On the 17th of March, 2003, he was, in accordance
21 with the provisions of Rule 61(ii) and 61(iii) of the
22 Rules, arraigned before me on an eight count indictment,
23 dated the 7th of March, 2003. This indictment was
24 approved by His Lordship Honourable Judge Bankole
25 Thompson under the provisions of Rule 47 of the Rules.
26 The number of this indictment is SCSL-2003-08. He
27 pleaded not guilty to all the counts.

28 For purposes of this dissenting opinion, I am
29 adopting it in its entirety, the contents of my separate

1 opinion, dated the 27th of January, 2004, appended to the
2 Chamber joinder decision also dated the 27th of January
3 2004, and I am integrating and appending it to this
4 opinion. It would, in this regard, become necessary for
5 me at certain stages of this opinion to also highlight
6 the status of the applicant's co-accused persons, namely,
7 Moinina Fofana the second accused, and Allieu Kondewa the
8 third accused, in the consolidated indictment dated the
9 5th of February, 2004.

10 The second accused, Moinina Fofana, I would like to
11 recall, was arrested on the 29th of May, 2003, also on an
12 eight count individual indictment, dated the 26th of
13 June, 2003, approved His Lordship Honourable Pierre
14 Boutet, charging him with virtually the same offences as
15 those in the first accused's indictment. He made his
16 initial appearance before Honourable Judge Boutet in
17 accordance with the provisions of Rule 61(ii) and 61(iii)
18 of the Rules. He pleaded not guilty to all the counts.
19 The number of this indictment, I would like to mention,
20 is SCSL-2003-11.

21 The third accused, Allieu Kondewa, was, like the
22 second accused, arrested on the 29th of May 2003, also on
23 an eight count indictment, dated the 26th of June, 2003,
24 again approved by His Lordship Honourable Judge Pierre
25 Boutet, with virtually the same offences as those in the
26 indictments of both the first and the second accused.
27 Like the second accused, he also made his initial
28 appearance before Honourable Judge Boutet in accordance
29 with the provisions of Rule of 61(ii) and 61(iii) of the

1 Rules. He pleaded guilty to all counts on the
2 indictment. The number of this indictment is
3 SCSL-2003-12.

4 As can easily be gleaned from this analysis, the
5 three indictments were individual indictments with their
6 numbers different from each other.

7 This was the status of these three accused persons
8 before the Prosecution filed a motion for joinder on the
9 9th of October 2003. In that motion, the Prosecution,
10 pursuant to Rule 73 and 48(B) of the Rules, moved the
11 Chamber to order that Samuel Hinga Norman, the applicant
12 in this motion, Moinina Fofana, and Allieu Kondewa, be
13 charged and tried jointly and that should this motion for
14 joinder be granted, the Trial Chamber should further
15 order that a consolidated indictment be prepared as an
16 indictment on which the joint trial will proceed.

17 In objecting to the granting of this motion, the
18 Defence for Allieu Kondewa conceded that the exercise by
19 the Trial Chamber of its prerogatives under Rule 48(B) of
20 the Rules is discretionary. It argued, however, that
21 such a consolidation should not be granted if it would
22 prejudice the rights of the accused. It further argued
23 that in advising its client on the Prosecution's
24 application for joinder, adequate time was needed for
25 consultation with the proposed co-accused counsel so as
26 to determine their client's position vis-a-vis the
27 proposed co-accused.

28 The Kondewa defence further contended that "prior to
29 today only one of the proposed co-accused has received

1 the Prosecution's disclosure material pursuant to
2 66(A)(i) of the Rules." It submitted that for the
3 Article 17 rights of the accused to be fully respected
4 for purposes of ensuring a proper hearing of the motion,
5 materials subject to disclosure must be made available to
6 them for a review with a view to making "responsible
7 submissions on the issue of 'material prejudice' likely
8 to be suffered by the accused in being tried jointly."

9 As a Chamber, we unanimously, and as should have
10 been expected, having regard to the similarity in the
11 content in the wording of the three indictments, coupled
12 with the provisions of Rule 48(B) of the Rules, we
13 rightly, in my judgment, granted the joinder motion and
14 made the following consequential orders:

15 1. That a consolidated indictment be prepared as an
16 indictment on which the joint trial shall proceed and
17 that the Registry assigned a new case number to the
18 consolidated indictment.

19 2. That the said consolidated indictment be filed
20 with the Registry within ten days of the date of delivery
21 of this decision.

22 3. That the said indictment be served on each
23 accused in accordance with Rule 52 of the Rules.

24 I would like to recall, however, that the
25 consolidated indictment which the Prosecution said would
26 be filed as soon as the joinder motion was granted was
27 not, as should ordinarily, in my opinion, have been the
28 case, annexed to the Prosecution's motion for joinder so
29 as to enable us as a court, to determine the nature and

1 extent of the consolidated indictment vis-a-vis the three
2 initial indictments of the three accused persons, and how
3 this single indictment may have impacted on each of the
4 three indictments.

5 In granting the motion, the Chamber credulously
6 believed that the Prosecution when it gave its assurance
7 during hearing of that motion in court, that the
8 consolidated indictment remained textually the same as
9 the initial individual indictment, excepting for a few
10 changes which were insignificant. The said consolidated
11 indictment was subsequently filed following the joinder
12 decision and was given a new case number SCSL-03-14-1.

13 However, in view of the fact that the consolidated
14 indictment which was to replace and has in fact replaced
15 the three individual indictments on which the joint trial
16 was to proceed and is indeed proceeding today, was not
17 annexed to the motion or even produced in court by the
18 Prosecution for examination and verification, I took a
19 personal view that it was a new indictment.

20 Having taken this view, I further expressed the
21 opinion that the consolidated indictment in its new form,
22 that is, three indictments merged in one should be
23 subjected to the approval procedures stipulated in Rule
24 47 of the Rules and further, that the three accused
25 persons, now poised to be tried jointly on an indictment
26 which I consider new, to all intents and purposes, should
27 be called upon by the Chamber, to plead afresh to the new
28 consolidated indictment. These views, I suggested,
29 should be included as point 4 of the consequential orders

1 in the joinder decision.

2 My honourable and learned brothers, however, did not
3 share my viewpoint. It is because of this disagreement
4 that on the inclusion of this fourth point which
5 constituted my preoccupation, concern and suggestion,
6 that persisted even after lengthy deliberations on the
7 issue, that I decided to put on record a separate opinion
8 dated the 26th of January, 2004, which is appended to
9 our Chamber joinder decision that I signed in principle
10 and in approval of the three consequential orders
11 contained therein.

12 The motion for service and arraignment on the second
13 indictment filed by the first accused, certainly results
14 from the concerns that have arisen after counsel for the
15 accused persons later took real cognizance of the
16 contents of this new consulted indictment.

17 In this motion dated the 20th of September, 2004,
18 the first accuses:

19 1. That he has not been personally served with a
20 consolidated indictment;

21 2. That he has not pleaded to the consolidated
22 indictment on which he is currently being tried;

23 3. That the contents of the consolidated indictment
24 are not the same as those of the individual indictment as
25 the former extends the temporal jurisdiction of the
26 indictment to an additional 20 months in addition to
27 including several new geographic locations, as well as
28 changing the charge from looting of "private property";
29 to "civilian property".

1 4. That the initial indictment against him be
2 withdrawn or quashed as its continued existence in the
3 records violates the rule against double jeopardy.

4 The Prosecution's response consist in admitting that
5 the consolidated indictment was not served on the accused
6 personally as provided for under Rule 52 of the Rules,
7 but the Prosecution submits that is a "procedural anomaly
8 that has not caused any identifiable prejudice to the
9 accused."

10 The Prosecution further states that the consolidated
11 indictment contains no new charges and that the accused
12 has, in any event, been conducting his defence on the
13 charges in the consolidated indictment during the first
14 and second sessions of the trial.

15 Furthermore, that no arraignment on the consolidated
16 indictment is necessary since there are no new charges to
17 those which are in the initial indictments.

18 Furthermore, that the Special Court for Sierra
19 Leone, as an international tribunal, applies
20 internationally recognised principles and that a "trial
21 on the superseding (consolidated) indictment should
22 prevent a retrial on the former indictment."

23 The applicable law on this issue is diversely
24 contained in the Statute of this Court, the Rules of
25 Procedure and Evidence of this Court, the provisions of
26 the International Covenant on Civil and Political Rights,
27 respectively. They are in the decision, but I do not
28 intend to dwell on those, because those are familiar
29 grounds for learned lawyers who are here in this

1 sanctuary.

2 On the violation of the Rule against double jeopardy
3 and for purposes of this opinion, I will first consider
4 the applicant's appeal and submission, that the initial
5 indictment against him be withdrawn in the light of the
6 consolidated indictment on which the trial is proceeding.
7 He argues that the continued existence of the initial
8 indictment violates the rule against double jeopardy.

9 In this regard, it is necessary to examine the
10 provisions of Article 91 of the Statute the Special Court
11 entitled non bis in idem which provides:

12 "No person shall be tried before a national court of
13 Sierra Leone for acts which he or she has already been
14 tried by the Special Court", and those of Article 14(7)
15 of the International Covenant for the Protection of the
16 Civil and Political Rights which provides that:

17 "No one shall be liable to be tried or punished
18 again for an offence for which he has already been
19 finally convicted or acquitted in accordance with the law
20 and penal procedure of each country."

21 The issue to be addressed here is whether, with the
22 continued existence of the initial individual indictment,
23 there is a looming threat or a general apprehension or a
24 possibility, even if it were not yet real, that the
25 applicant, if acquitted on the consolidated indictment on
26 which the proceedings are now based, could still be
27 prosecuted on the individual initial indictment, thereby
28 exposing him to the effects of the rule against double
29 jeopardy.

1 [HN291104B 11.45 a.m.]

2 The Prosecution in this regard submits and argues
3 that this Court, being an international tribunal, applies
4 internationally recognised principles and that, to quote
5 the Prosecution again, a trial on the superseding
6 indictment should prevent a trial on the former
7 indictment and will not leave him vulnerable to a further
8 prosecution on the old indictment in the event of a
9 complete acquittal on the consolidated indictment.

10 I find this argument unconvincing and speculative,
11 because it neither offers nor does it represent a
12 concrete, certain and unequivocal legal assurance that an
13 acquittal per se of the accused on the consolidated
14 indictment automatically confers on him an immunity from
15 a possible harassment of a re-arrest and a prosecution on
16 the initial indictment.

17 The reality is that if the accused were ever
18 re-arrested or detained on the initial indictment after
19 an acquittal, the said arrest or detention would, in any
20 event, have already taken place and it is only after
21 appearing in court that arguments of autrefois acquit may
22 be raised, properly examined and probably upheld.

23 Even if it is conceded that the verdict of the Court
24 on the preliminary objection based on the plea of
25 autrefois acquit will, in these circumstances, be
26 favourable to the accused, he all the same would have
27 been put through a situation where the rule against
28 double jeopardy would have been violated to his
29 detriment; certainly, not the jeopardy of a conviction,

1 but of a deprivation of his liberty which, however
2 briefly it lasts, accompanies arrests and detentions.

3 As a tribunal, albeit as international as the
4 Special Court is, these proceedings should be conducted
5 with a semblance of transparency that contributes to
6 ensuring and preserving the integrity of the proceedings.
7 This, I observe, cannot be attained in a case such as
8 this, where the anomalous situation of four
9 contemporaneous and still legally valid indictments
10 continue to hang over the heads of three indictees.

11 It is my finding that this situation impacts
12 negatively on the neatness and transparency of the
13 judicial process, and that there is an imperative
14 necessity for the initial individual indictments to be
15 withdrawn in order to avoid not only a procedural
16 confusion that is now apparent, but also and to put to
17 rest an understandably justified and continued
18 apprehension, even if it were not founded, of a possible
19 violation in future by whoever of the rule against double
20 jeopardy.

21 This cause of action is even more imperative in the
22 overall interests of justice and the integrity of the
23 judicial process, because the Prosecution in this case is
24 seeking to circumvent the imperative necessity of an
25 arraignment on the new consolidated indictment on the
26 argument and understanding that the three accused persons
27 had, after all, been earlier arraigned and pleaded to the
28 initial indictments whose contents, the Prosecution
29 claimed, are the same as those in this consolidated

1 indictment.

2 The analysis which follows will show that this
3 affirmation by the Prosecution has turned out to be
4 unreliable and misleading, and that the interests of
5 justice in these circumstances would not be served.
6 Indeed, would be defeated if these three initial
7 indictments were not withdrawn, because keeping them in
8 place, in the sole interests of this prosecutorial
9 strategy, violates the principle of fundamental fairness
10 as well as it contravenes the provisions of Articles 9
11 and 17(2) of the Statute as read with those of Rule 26
12 (bis) of the Rules.

13 On arguments related to the service of the
14 consolidated indictment, it is contended that the
15 provisions of Rule 52 of the Rules have been violated, in
16 that he has not been personally served with a
17 consolidated indictment as ordered by the Chamber in its
18 joinder decision of the 27th of January 2004. The
19 Chamber in this regard, it would be recalled, ordered
20 that "the said indictment be served on each of the
21 accused in accordance with the provisions of Rule 52 of
22 the Rules." It is on record that service of the said
23 indictment was, contrary to that order, effected instead
24 on the applicant's counsel.

25 Rule 52 clearly states: "Service of the indictment
26 shall be effected personally on the accused at the time
27 the accused is taken into custody."

28 Rule 52(A) states: "Personal service of an
29 indictment on the accused is effected by giving the

1 accused a copy of the indictment approved in accordance
2 with Rule 47."

3 The question to be answered at this stage is whether
4 the provisions of Rule 52 of the Rules and the order of
5 the Court to this effect were or have been complied with.

6 The Prosecution in answer to this clearly admits
7 that service on the counsel instead of on the accused
8 personally was an administrative anomaly, which,
9 according to them, has caused no identifiable prejudice
10 to him, because, again according to the Prosecution, the
11 first accused has demonstrated knowledge of the charges
12 contained in the indictment as he has defended himself
13 against these charges in the first trial session and at
14 the beginning of the second trial session.

15 These arguments, to my mind, are neither convincing,
16 acceptable, nor are they sustainable, particularly in
17 this case, and upholding them would have the effect of
18 empowering one party to the proceedings - in this case
19 the Prosecution - to flout the law to the detriment of
20 the interest of the other party, the accused, and his
21 statutory right to a fair and public trial, as well as to
22 be promptly informed of the charges against him as
23 guaranteed by the provisions of Article 17(2) and
24 17(4)(b) of the Statute, by Rule 26(bis) of the Rules, by
25 Article 9(2) of the International Covenant for Civil and
26 Political Rights, and, more importantly still, by the
27 necessary intendment, interpretation and the combined
28 effect of the application of Rules 52(A) and 52(B) of the
29 Rules.

1 In resolving issues of this nature, it is my opinion
2 that a fidelity not only to strictly interpreting, but,
3 also, strictly applying the provisions of the Statute or
4 of the Rule that is alleged to have been violated is of
5 primary importance. Both arms of Rule 52 of the Rules
6 are not only clear, but mandatory. They should,
7 therefore, be interpreted and applied as mandatorily as
8 they have been enacted.

9 It is my considered opinion that what law and
10 justice is all about for us judges is, indeed, to uphold
11 and to prevent a breach of the law, and to provide a
12 remedy for such a breach, if any, and, in so doing, to
13 boldly take right what is right and, when it comes to it,
14 to equally and boldly take wrong what is really wrong,
15 and, in the process, to disabuse ourselves of any
16 influence that could misdirect us to take right what is
17 ostensibly wrong or wrong what is ostensibly right; for
18 it would indeed be unfortunate for justice and the due
19 process if by whatever enticing or justifying rhetoric,
20 or by any means whatsoever, however ostensibly credible
21 or possible it may seem, will reverse this age-long legal
22 trend and philosophy, because this would amount to
23 rocking the very foundation on which our law and our
24 justice stand and have, indeed, held on and stood the
25 test of times.

26 The questions to be asked and to be answered
27 directly without any justifying rhetoric are twofold:
28 Firstly, whether the said consolidated indictment was set
29 in accordance with the provisions of Rule 52 and secondly

1 whether in execution of the order of the Court the said
2 indictment was served in accordance with the
3 prescriptions of the said order. The answer to one,
4 which holds good for the other, is in the negative.

5 It must in this regard be conceded that an
6 administrative anomaly, as the Prosecution has rightly
7 described the failure to effect personal service on the
8 accused/applicant in accordance with the provisions of
9 Rule 52(A) and 52(B) of the Rules, was an administrative
10 muddle which should be put right, since it is, in itself,
11 a violation of the law for which there must be no other
12 remedy than declaring it illegal, annulling it
13 accordingly, and ordering that service of the
14 consolidated indictment be effected in accordance with
15 the provisions of Rule 50(A) and 50(B) of the Rules,
16 rather than resorting to advancing interpretations or
17 arguments of convenience which were clearly deplored in
18 the ICTY Delalic case, all in order to justify a manifest
19 violation of the mandatory provisions of laws or Rules
20 that leave no room for the exercise of the judicial
21 discretion, and which, in their context, are clear and as
22 unambiguous as these two twin Rules in question.

23 Our Chamber has always taken these principles and
24 factors into consideration, and has opted for the literal
25 role in the sphere of statutory interpretation in
26 interpreting text by giving them their ordinary and
27 everyday meaning and applying them exactly the way they
28 are written.

29 For instance, in the case we commonly refer to as

1 Brima Principle Defender case, we refused to accept
2 importing extraneous interpretations to statutory
3 provisions or regulations which are as clear, I will say,
4 as those of Rule 52 of the Rules, and took the view that
5 "Holding otherwise would be attributing to a very clear
6 regulatory instrument a strange and extraneous
7 interpretation and meaning which was never envisaged."
8 The Chamber, in so holding, relied on the dictum of Lord
9 Herschel in the case of the Bank of England v Vagliano
10 Brothers [1981] AC 107, and this was in page 144, where
11 His Lordship, Lord Herschel, had this to say: "I think
12 the proper course is, in the first instance, to examine
13 the language of the Statute and to ask what its natural
14 meaning is."

15 If it is held that serving a judicial process on an
16 accused counsel, when it statutorily and mandatorily
17 should be served on the accused personally, it would
18 certainly amount to attributing to the very clear
19 regulatory instrument a strange and extraneous
20 interpretation, meaning and application which was never
21 intended by the legislator, the regulatory body or the
22 authority that enacted it.

23 In our decision, the decision of this Chamber, in
24 the Kondewa motion to compel the production of
25 exculpatory statements, witness summaries and materials
26 which was rendered soon after the Brima Principal
27 Defender decision, this Chamber had this to say on an
28 issue that involved the interpretation to be given to the
29 provisions of Rule 68 of the Rules: "In addressing this

1 aspect, the Chamber wishes to observe, by way of first
2 principles, that no rule, however formulated, should be
3 applied in a way that contradicts its purpose." A
4 kindred notion here is that a Statute or rule must not be
5 interpreted so as to produce an absurdity. In effect, it
6 is rudimentary that a Statute or rule must be interpreted
7 in the light of its purpose. Another basic canon of
8 statutory interpretation is that a Statute is to be
9 interpreted in accordance with its legislative intent.
10 Restating the law on the statutory interpretation, the
11 Trial Chamber of the ICTY, in the case of the Prosecutor
12 v Delalic, had this to say: "The rationale is that the
13 law maker should be taken to mean what is plainly
14 expressed. The underlying principle, which is also
15 consistent with common sense, is that the meaning and
16 intention of a statutory provision shall be discerned
17 from the plain and unambiguous expression used therein,
18 rather than from any notions which may be entertained as
19 just and expedient."

20 The absurdity in issue in this case, and what may be
21 entertained as just and expedient as stated in the above
22 dicta, will be to hold that service on counsel should
23 substitute personal service on the accused himself as
24 mandated by Rule 52.

25 Certainly, seeking like the Prosecution is, to
26 justify a flagrant violation of a mandatory provision by
27 submitting that the breach has caused no "identifiable
28 prejudice" to the applicant, is a cover-up argument of
29 convenience which, in the context of the dictum in the

1 Delalic case, the Prosecution is proffering to be
2 accepted just for purposes of convenient expediency and
3 not because it is, nor are they in any way convinced,
4 that it is in conformity with the law.

5 The issue at stake here, to my mind, is not only one
6 of interpretation, but equally and also one of the
7 application of the provisions of the regulatory
8 instrument. In this regard, I am of the opinion that to
9 give effect to the necessary intendment of the regulatory
10 body that enacted the provisions of Rule 52 as they
11 appear in the regulatory instrument, they must not only
12 be strictly interpreted, but also and equally strictly
13 applied.

14 In this regard, Lord Denning had this to say in the
15 case of the Royal College of Nursing v the Department of
16 Health and Social Security [1980] AC 800: "Emotions run
17 so high on both sides that I feel we, as judges, must go
18 by the very words of the Statute without stretching in
19 one way or the other and writing nothing which is not
20 there."

21 Lord Esher, in the case of R v the Judge of the City
22 of London Court [1892] 1 QB 273 stated: "If the words of
23 the Act are clear, you must follow them even though they
24 lead to a manifest absurdity."

25 In the case of Duport Steel v Sirs [1980] 1 AER 529
26 Lord Diplock had this to say: "Where the meaning of the
27 statutory words is plain and unambiguous, it is not for
28 the judges to invent fancy ambiguities as an excuse for
29 failing to give effect to its plain meaning because they

1 themselves consider that the consequences of doing so
2 would be inexpedient or even unjust or immoral." And
3 Jervis CJ, in the case of *Abley v Dale*, had this to say:
4 "If the precise words used are plain and unambiguous, in
5 our judgment we are bound to construe them in their
6 ordinary sense, even though it does lead to an absurdity
7 or manifest injustice."

8 Still on this trend of legal reasoning, Blaney J, in
9 the case of *Byrne v Ireland*, said this -- they reproduced
10 the treatise of Maxwell on statutory interpretation,
11 which is in the 12th edition 1969 on page 29: "Where the
12 use of clear and unequivocal language, capable of only
13 one meaning, anything is enacted by the legislature, it
14 must be enforced however harsh or absurd or contrary to
15 common sense the result may be. The interpretation of a
16 Statute is not to be collected from any notions which may
17 be entertained by the Court as what is just or expedient.
18 Words are not to be construed contrary to their meaning
19 as embracing or excluding cases merely because no good
20 reason appears why they should not be embraced or
21 excluded. The duty of the Court is to expound the law as
22 it is." I would say here that our duty as judges of
23 this Chamber is to expound the law and, in addition, to
24 apply it as it is or as it is written.

25 In the light of the above, it is my considered
26 opinion that Rule 52 of the Rules, which mandatorily
27 provides for personal service on the accused as soon as
28 the accused is taken into the custody of the Special
29 Court reiterates and gives effect to the statutory

1 provisions of Article 17(4)(a) and 17(4)(b), which
2 require respectively that the accused "be informed
3 promptly and in detail in a language he understands of
4 the nature and cause of the charge against him or her,"
5 and, further, "to have adequate time and facilities for
6 the preparation of his or her defence and to communicate
7 with counsel of his or her own choosing."

8 It would appear apparent, therefore, as it is clear,
9 that the plenary of judges of the Special Court of
10 Sierra Leone, the regulatory authority of this Court, in
11 conceiving, drafting, adopting and promulgating the two
12 arms of Rule 52 as they are worded, was conscious of and
13 wanted to give effect to the preponderance of the
14 personal involvement of the accused in the process, as
15 well as of the statutorily recognised predominance of his
16 implication and that of his choices in that process and
17 in the conduct of his defence as provided for in Article
18 17 of the Statute.

19 It can, therefore, be deduced that what the plenary
20 meant and intended in achieving by giving the provisions
21 of Rule 52(A) and 52(B) the insistent and mandatory
22 coloration of a personal service of the indictment on the
23 accused, which should in fact be the case, is a service
24 of the consolidated indictment, which is a subject matter
25 of this contention, personally on the accused himself and
26 not service on any other person, albeit on his counsel,
27 and that proceeding otherwise, as was done in this case,
28 violates this clearly written rule.

29 Besides and in addition, the directive that the

1 service be effected personally on the applicant was an
2 order of the Court. Its execution, therefore, in the
3 manner that was contrary to what the Court had directed
4 in that order, is in itself a breach of the law, which
5 the Prosecution has implicitly acknowledged, but is, at
6 the same time, seeking to circumvent through
7 interpretational, procedural and administrative
8 mechanisms and arguments, which, to my mind, neither
9 justify nor do they redeem this fundamental breach of the
10 law.

11 On the differences between the three initial
12 indictments and the consolidated indictment, the issue
13 that has given rise to the controversy here relates to
14 the differences in the content of the three individual
15 indictments and the consolidated indictment, and whether
16 or not, depending on the nature of the differences or
17 changes reflected or appearing in the consolidated
18 indictment, re-arraignment on this new indictment against
19 the three accused is an imperative.

20 I would like to observe here preliminarily that even
21 though the Rules in their Rule 50 contain provisions for
22 amending an indictment, there is no rule that institutes
23 or regulates the phenomenon of what we are now referring
24 to as a consolidated indictment. The Rules provide for
25 an indictment under Rule 47, which should be served
26 personally on the accused in accordance with the
27 provisions of Rule 52 of the Rules.

28 If the Prosecution for any legal reason such as
29 provided for in Rule 48 and after the initial appearance

1 of the accused seeks to modify the already approved
2 indictment, it is my opinion that it has the option of
3 either applying to the Trial Chamber under the provisions
4 of Rule 50(A) of the Rules or filing a new indictment
5 which should necessarily involve going through the
6 Rule 47 procedures, particularly if it turns out that the
7 amendments sought by the Prosecution are substantial and
8 in fact contain new particulars and new charges. Should
9 the Prosecution opt to apply for an amendment which
10 contains new charges, the provisions of Rule 50(B)(i) of
11 the Rules should ordinarily apply without a further
12 recourse to Rule 47 procedures.

13 It is necessary to recall here again that when the
14 Prosecution presented its joinder motion under
15 Rule 48(B), it did not annex the consolidated indictment
16 to it so as to enable the Trial Chamber to appreciate the
17 nature and the extent of its contents. Notwithstanding
18 this flaw, which I highlighted as significant and
19 substantial in my separate opinion dated the 27th of
20 January 2004, the Chamber, without the benefit of having
21 seen or verified the proposed consolidated indictment
22 before ruling on this motion, granted it and ordered that
23 the consolidated indictment be filed merely on the
24 assurances furnished by the Prosecution which they did
25 not live up to. In these circumstances, I was and am
26 still of the opinion that this consolidated indictment
27 should have been subjected to the Rule 47 procedures,
28 since I consider it to be a new indictment.

29 The majority decision overruled my viewpoint on this

1 particular issue, and the Prosecution thereafter
2 proceeded to file in the Registry the consolidated
3 indictment after the order granting the joinder motion.
4 It is on this consolidated indictment that the trial of
5 the applicant, the first accused Samuel Hinga Norman,
6 Moinina Fofana, the second accused, and Allieu Kondewa,
7 the third accused, is now proceeding.

8 In the course of examining the instant motion for
9 service and arraignment on the second indictment filed by
10 the first accused, the Trial Chamber, after putting the
11 three indictments and the consolidated indictment under
12 scrutiny, has come to realise that the indictment has
13 made the following significant amendments and additions
14 to the individual indictment of the first accused, Samuel
15 Hinga Norman. I would not read the details. They are in
16 the judgment.

17 I will move on to say that an analysis of the
18 contents of the consolidated indictment and those of the
19 initial indictment of the applicant, the first accused,
20 reveals that particulars of offences and time frames have
21 been expanded, and that new offences have been added.
22 Again, this has details which will be seen in the
23 judgment.

24 Furthermore, a comparison between the consolidated
25 indictment and the two individual indictments of
26 Moinina Fofana and Allieu Kondewa respectively reveal
27 that here there are also new locations and substantial
28 changes which have been added.

29 In my separate opinion dated the 27th of January

1 2004, in expressing my concern for our failure to subject
2 the consolidated indictment to the Rule 47 judicial
3 scrutiny procedures, I had this to say: "During our
4 examination of and deliberation on the final drafts on
5 the 23rd of January 2004, I raised certain issues with
6 the learned and honourable brothers and colleagues which
7 I thought should be set out as the fourth in addition to
8 the three orders we made at the tail-end of our unanimous
9 judgment just after the mention 'Further Consequential
10 Orders'. It was to read as follows: 'That the said
11 indictment be submitted to a designated judge for
12 verification and approval in accordance with the
13 provisions of Rule 47 of the Rules within 10 days of the
14 delivery of this decision.'

15 I further added that the accused persons be called
16 upon to plead afresh to the consolidated indictment.
17 What ran through my reasoning in making this proposal was
18 that the consolidated indictment we are ordering the
19 Prosecution to prepare was in fact, to all intents and
20 purposes, a new indictment which needed to be subjected
21 to the procedures outlined in Rule 47 and 61 of the Rules
22 of the Special Court and this, notwithstanding the fact
23 that all the accused persons had earlier made their
24 initial appearances and had already been arraigned
25 individually on the individual indictments, which might
26 not necessarily contain, as I said, the same particulars
27 as those in the consolidated indictment that are yet to
28 be served on the accused persons for subsequent
29 procedures and proceedings before the Trial Chamber.

1 I had this to say in my opinion: "The other issue
2 which I consider important in the present context is a
3 submission by the Defence for Mr Samuel Hinga Norman,
4 Mr Jenkins, who argued that the anticipated consolidated
5 indictment should have been exhibited as part of the
6 motion, and that the failure by the Prosecution to do
7 this in order to ensure judicial scrutiny amounted to
8 noncompliance with a condition precedent for the granting
9 or even the examining of the application for joinder.
10 Defence counsel for Mr Moinina Fofana, Mr Bockarie,
11 agreed to this submission by his colleague."

12 On this submission, the Prosecution replied that the
13 Rules do not provide for this procedure and that the
14 Defence contention must not be considered as a condition
15 precedent for the filing or granting of the application
16 for joinder. Our finding on this argument in these
17 circumstances is: "The Chamber is of the opinion that
18 due to the need for expeditiousness and flexibility in
19 its processes and proceedings, recourse to procedural
20 technicalities of this nature will unquestionably impede
21 the Special Court in the expeditious dispatch of its
22 judicial business. The Chamber, therefore, does not
23 think it is necessary for the Prosecution to exhibit an
24 anticipated consolidated indictment as a basis to grant
25 the joinder motion."

26 I share these views expressed in our judgment, but
27 even though we unanimously upheld the argument of the
28 Prosecution in this regard, and although we know that the
29 consolidated indictment is still undisclosed, I think we

1 should remain resolved in our determination and quest to
2 steadily build up some jurisprudence from certain
3 shortcomings or lacunae in our Rules which case law will
4 enhance, advance and not necessarily prejudice a proper
5 and acquitable application or interpretation of our
6 Rules. This will in fact encourage the application of
7 the best practices rule which is neither contrary to nor
8 inconsistent with the general principles of international
9 criminal law and procedure."

10 I took this stand largely because I felt that the
11 consolidated indictment that was to be filed, considered
12 only on the basis that it was a merger of three
13 indictments involving three individual accused persons
14 who in fact had already been arraigned individually, was
15 new, particularly in the context of the apprehensions of
16 uncertainty as to the expected content of the
17 consolidated indictment, which the Chamber neither had
18 the privilege nor given the opportunity to examine before
19 it was filed by the Prosecution.

20 It is my considered opinion, even put putting aside
21 the extensive and significant changes that the
22 Prosecution has introduced in the consolidated
23 indictment, that this indictment, a product of a merger
24 of three indictments, coupled with its altered form, is
25 new and this even if those additional particulars or
26 changes did not feature in it. This position is
27 supported by the various dictionary meanings on the word
28 "new" as contained in paragraph 23 of my separate opinion
29 already referred to.

1 If we as a Chamber in our joinder decision dated the
2 27th of January 2004 ordered that the consolidated
3 indictment be assigned a new number, and that the said
4 indictment be filed in the Registry within 10 days of the
5 delivery of our decision, coupled with a further order
6 for a fresh service of the said indictment under the
7 provisions of Rule 52 of the Rules, it is my opinion and,
8 in a sense, a recognition of the novelty of this
9 indictment which merges and replaces three individual
10 indictments that had earlier been filed and given three
11 different case numbers.

12 In a situation such as this, the provisions of
13 Article 17(2), 17(4)(a) and 17(4)(b) of the Statute,
14 including those of Rule 26(bis) of the Rules, which
15 guarantee an accused the right to a fair, public and
16 expeditious trial, as well as the right to be promptly
17 informed of the nature and cause of the charge against
18 him or her, would in my opinion be violated if this trial
19 proceeds without a regular personal service of the
20 consolidated indictment not only on the applicant, but
21 also on his co-accused persons, Moinina Fofana and Allieu
22 Kondewa, the second and the third accused respectively.

23 In addition, the re-arraignment of the three accused
24 on the entirety of that extensively amended indictment is
25 necessary, because it has now unveiled itself and
26 confirmed its real designation and characterisation of a
27 new indictment as I did in my separate opinion of the
28 27th of January 2004, a fact which stands on firmer
29 grounds today that we are witnessing the bare reality of

1 the extensive and fundamental amendments which the
2 Prosecution had introduced into it to the extent of even
3 including new charges.

4 Why therefore is re-arraignment in this case
5 necessary? On the 15th of June 2004, in the exercise of
6 his right to make an opening statement under the
7 provisions of Rule 84 of the Rules, the first accused,
8 the applicant, made the following submission: "There is
9 or are no charge legally placed before this Chamber
10 against me. If there is or are any charges against me
11 before this Chamber, I submit that by law I have not
12 taken any plea before this Chamber or any indictment
13 against me before Your Honours. I will state the reasons
14 when I hear the response from Your Lordships."

15 In reply to this submission, I as Presiding Judge
16 had this to say in response as requested by the first
17 accused: "We have taken note of your observations in the
18 exercise of your rights under the Rules to make an
19 opening statement and I am sure that the records have
20 reflected what you have said, and it is our decision
21 that, having noted what you have said, we will proceed
22 with the trial without any further comment on that."

23 It is necessary and I think it is important and
24 proper for me to recall here for the records and for
25 posterity that the very first session of this trial was
26 on the 3rd of June 2004. It, however, never took off
27 until the 15th of June because of preliminary procedural
28 issues arising from the application of the first accused
29 for self representation.

1 After all this was sorted out, the proceedings were
2 billed to start on the 15th of June 2004. Whilst waiting
3 in chambers and before proceeding to the Courtroom to
4 take the first witness, TF2-198, I again passionately
5 reminded and sensitised my colleagues, this time as the
6 Presiding Judge, on the necessity for us, before taking
7 evidence from the first witness, to re-arraign the three
8 accused persons now jointly and soon to be tried jointly
9 on the consolidated indictments. I was put in the
10 minority. We did not fulfil this formality.

11 When we then entered the Courtroom and started
12 sitting soon thereafter to hear the first witness, our
13 first challenge came from the first accused who, in his
14 opening statement made under Rule 84 of the Rules and in
15 the exercise of his right to self representation, rose
16 and surprisingly raised the issue we had just discussed
17 in chambers of there being no charge or charges against
18 him and that, if there were any, he had not taken any
19 plea before this Chamber or any indictment before us.

20 I felt uncomfortable and uneasy about this remark
21 for understandable reasons, but had, in reply, to
22 reluctantly give him the response which I know and must
23 admit here I did not believe in because it was, to me,
24 unconvincing. I, however, was obliged to reply in the
25 way I did, in order to reflect the majority opinion of my
26 colleagues that re-arraignment was not necessary.

27 This said, however, I would like to state here again
28 for posterity and would want to be understood in these
29 circumstances, that I neither subscribe to nor do I

1 approve of this majority opinion on the grounds of the
2 reasoning and the legal analysis that will follow.

3 This part of the opening statement by the first
4 accused made under Rule 84 of the Rules, and in the
5 exercise of his newly acquired right to self
6 representation, was a legitimately taken legal objection
7 challenging the opening of the trial without an
8 indictment having been served on him and without having
9 taken his plea on that indictment on which the trial was
10 about to proceed in a couple of minutes.

11 This legal objection should, in my considered
12 opinion, have been addressed soon after it was raised,
13 because in the case of R v Johal and Ram [1972] CAR 348
14 the Court of Appeal in England observed that the longer
15 the interval there is between arraignment and then
16 amendment, the more likely it is that injustice will be
17 caused, and in every case in which an amendment is sought
18 it is essential to consider with great care whether the
19 accused will be prejudiced thereby.

20 In this regard, I had this to say in my ruling on
21 the motion for a stay of proceedings in the Foday Sankoh
22 case, and I quote: "In taking this stand I was and still
23 am guided by the reverence to the importance a plea
24 occupies in a criminal trial, because it marks, after the
25 filing of the indictment, the actual commencement of the
26 criminal proceedings, which, in any event, cannot get
27 underway without a plea having been entered."

28 In fact, in Blackstones Criminal Practice 2003
29 Edition page 1303 at paragraph D11.1, it is directed

1 that: "If there is a joint indictment against several
2 accused, the normal practice is to arraign them together.
3 Separate pleas must be taken from each of those named in
4 any joint count."

5 This long-standing and respected practice directive
6 should, in my opinion, be applied to this situation where
7 the Trial Chamber did, under Rule 48(A) of the Rules,
8 rightfully grant the joinder of the three accused persons
9 who initially were individually indicted, but are today
10 being jointly charged and tried. The necessity for
11 re-arraignment here is dictated by the fact that even
12 though they are charged jointly, they have to be tried as
13 if they were, as provided for under Rule 42 of the Rules,
14 being tried separately, so as to preempt a violation of
15 their individual statutory rights as spelt out in Article
16 17 of the Statute and particularly their rights to a fair
17 trial.

18 It is my opinion that re-arraignment, as the first
19 accused is soliciting in this case, is necessary since
20 the consolidated indictment, which I hold is new, is
21 vastly amended and is different in its contents from the
22 initial individual indictments. Furthermore, since
23 arraignment, which involves reading the charges to the
24 accused and explaining to him or her should need arise so
25 as to promptly acquaint him of the charge or charges
26 against him or her before obtaining a plea, is an
27 important and vital starter element in any criminal
28 proceeding. It is necessary and I so do hold that a plea
29 is an important component of the provisions of Article

1 17(4)(a) of the Statute in considering whether the
2 provisions of this article have been respected or
3 violated.

4 It was stated in the Canadian case of the Ontario
5 Court of Appeal in the case of Her Majesty the Queen v
6 Jeffrey Mitchell that arraignment is intended to ensure
7 that an accused person is aware of the exact charges when
8 he or she elects and pleads, and, further, that all
9 parties to the proceedings have a common understanding of
10 the charges which are to be the subject matter of the
11 proceedings which follow.

12 As a follow-up, and to give effect to this statutory
13 provision, Rule 47(C) of the Rules provides as follows:
14 "The indictment shall contain and is sufficient if it
15 contains the name and particulars of the suspect, a
16 statement of each specific offence of which the named
17 suspect is charged and a short description of the
18 particulars of the offence."

19 Furthermore, Rule 61 of the Rules provides: "Upon
20 his transfer to the Special Court, the accused shall be
21 brought before the designated judge as soon as
22 practicable and shall be formally charged. The
23 designated judge shall read or have the indictment read
24 to the accused in a language which he speaks and
25 understands and satisfy himself that the accused
26 understands the indictment; call upon the accused to
27 enter a plea of guilty or not guilty on each count;
28 should the accused fail to do so, enter a plea of not
29 guilty on his behalf."

1 In Black's Law Dictionary, the 7th Edition, page 81,
2 an amendment of the indictment is defined as "the
3 alternative changing terms of an indictment, either
4 literally or in effect after the grand jury has made a
5 decision on it. The indictment usually cannot legally be
6 amended at a trial in a way that would prejudice the
7 defendant by having a trial on matters that were not
8 contained in the indictment."

9 In fact, to give effect to the provisions of Article
10 17(4)(a) of the Statute and Rule 47 of the Rules, greater
11 specificity, as in this expanded consolidated indictment
12 is in issue, is required for proof of participation in
13 the commission of the alleged offences and must, as has
14 been extensively done in this consolidated indictment, be
15 pleaded with enough clarity, detail and precision so as
16 to inform the accused of the charge or charges against
17 him and to enable him thereby to prepare his defence.

18 In the Kupreskic case, the Appeals Chamber of the
19 ICTY held as follows: "The question whether an
20 indictment is pleaded with sufficient particularity is
21 dependant upon whether it sets out the material facts of
22 the Prosecution's case with enough detail to inform the
23 defendant clearly of the charges against him so that he
24 may prepare his defence."

25 In the case in hand the Prosecution has provided,
26 expanded and added more material facts in the
27 particulars, including new offences in the consolidated
28 indictment than those contained in the initial
29 indictment; a fact which, of necessity, dictates that

1 they must be arraigned on the consolidated indictment
2 which, to me, and under the law and the Rules that I have
3 cited and the analysis that I have made, is new. I would
4 add here that if this trial proceeds without a
5 re-arraignment and individual pleas taken on each count
6 of the consolidated indictment and the accused persons
7 are convicted, this trial could - I am speculating here -
8 on appeal be declared a nullity by our appellate
9 jurisdiction, which could, depending on the
10 circumstances, quash the conviction and enter either a
11 verdict of acquittal, of discharge or of a retrial.

12 The majority decision in this motion rightfully
13 concludes that the consolidated indictment on which the
14 trial is proceeding is extensively expanded in its
15 details, particulars and time frames. In fact, it is not
16 and has turned out not to be what the Prosecution made us
17 to believe in their written submissions and at the oral
18 hearing of the joinder motion; that is, that it is a
19 replica of the initial individual indictments to which
20 the accused persons have already pleaded in separate
21 initial appearances before two different judges,
22 Honourable Judge Itoe and Honourable Judge Boutet.

23 In these circumstances, I have no hesitation in
24 concluding that the Prosecution in introducing a
25 consolidated indictment has indeed filed, with the leave
26 of the Trial Chamber, a new indictment. Under these
27 circumstances, it should have been subjected to the
28 scrutiny of the designated judge under the provisions of
29 Rule 47. In the alternative, the Prosecution has, in

1 accordance with the provisions of Rule 50 of the Rules,
2 and with the tacit leave of the Trial Chamber, amended
3 the three individual indictments of the three accused
4 persons and has merged them into one consolidated
5 indictment which contains substantial amendments.

6 In either case, a combined reading of the provisions
7 of Article 17(2) and 17(4)(a) of the Statute and Rules
8 47(C), 48(A), 50(A), 50(B)(i), 52(A), 52(B), 61(ii),
9 61(iii) and 82(A) of the Rules clearly demonstrates and
10 confirms the necessity for a re-arraignment of the three
11 accused persons on the consolidated indictment, which,
12 notwithstanding views to the contrary expressed in the
13 majority decision, is and indeed has all the
14 characteristics of a new indictment.

15 I would like to add that in law a plea on an old
16 indictment is not and should no longer be valid, nor does
17 it hold good any longer in respect of a new indictment,
18 particularly where the new indictment contains new
19 elements. It is, therefore, my opinion that the pleas
20 recorded during the initial appearances of the three
21 accused persons are not transferrable for them to
22 constitute a basis for proceeding on the new indictment
23 without going through the obligatory stage and formality
24 of arraigning these same persons on the new indictment or
25 on which they are now being not only jointly indicted,
26 but also jointly tried.

27 The International Criminal Tribunal for Former
28 Yugoslavia has held the view that where an indictment is
29 amended or where a consolidated indictment is prepared,

1 and either the amended or consolidated indictment
2 contains new charges, it will, as decided by the Trial
3 Chamber in the case of Blagojevic, where a consolidated
4 indictment was a document in issue, be termed a new
5 indictment. The Chamber noted as follows: "The amended
6 indictment included charges and the accused has already
7 appeared before the Trial Chamber. A further appearance
8 shall be held as soon as practicable to enable the
9 accused to enter a plea on the new charges."

10 In yet another case of Martić of the ICTY, the
11 accused was arraigned on an amended indictment which the
12 Court declared should be a new indictment. In that case
13 His Lordship Judge Liu had this to say: "I will ask
14 Madam Registrar to read out the new charges brought
15 against you. Then I will ask you whether you plead
16 guilty or not guilty to the specific charge. Since the
17 initial indictment has been replaced by the amended
18 indictment, I will ask you to enter pleas with regard to
19 all charges contained in the new indictment."

20 It has been argued that the consolidated indictment
21 is not a new indictment and that, accordingly, there
22 should be no re-arraignment since the accused persons had
23 already been arraigned under initial indictments. In
24 effect, the Prosecution takes the view that the initial
25 individual indictments are still valid, notwithstanding
26 the existence of the consolidated indictment dated the
27 4th of February 2004 on which the trial is now
28 proceeding. I, of course, do not subscribe to this view
29 at all, because if the Prosecution contends that the

1 three individual indictments are the same in content as
2 the consolidated indictment, one wonders why it felt
3 obliged to go through the procedures of applying to
4 replace them with a single consolidated indictment into
5 which the three individual indictments are now merged.
6 In any event, the question should be put as to why the
7 Prosecution is seeking to hang on four indictments in one
8 proceeding involving three accused persons who are today
9 jointly indicted and are being jointly tried.

10 In my opinion, the consolidated indictment
11 introduced after the joinder decision as an indictment,
12 which has superseded the three initial indictments
13 against the accused persons, is a new indictment.
14 Indeed, in my separate opinion on the joinder motion, I
15 expressed the view that the trimming down of three
16 indictments to form one consolidated indictment
17 constituted a fundamental amendment to the three initial
18 indictments, and that would require compliance with the
19 provisions of Rule 47, followed by a re-arraignment of
20 the accused persons on the new consolidated indictment
21 under the provisions of the Rules.

22 I have taken cognizance of the dictum in Fyffe's
23 case, where their Lordships Russel, Douglas, Brown and
24 Wright recognised that the general rule is that
25 re-arraignment is unnecessary where the amended
26 indictment merely reproduces the original allegations in
27 a different form, albeit including new charges.

28 But a closer and analytical examination of this case
29 reveals, however, that the fact and the *raison d'être* in

1 Fyffe's decision are different from those in the present
2 one. I mean that they are distinguishable from those in
3 the present one. In the Fyffe's case, which was decided
4 in the Criminal Division of the Court of Appeal, the five
5 accused persons faced an 11 count indictment for drug
6 offences. This indictment was substituted by a 27 count
7 indictment alleging basically the same facts as the 11
8 count indictment did against the same accused persons who
9 had been arraigned together and jointly tried all along.
10 Learned counsel, Mr Wright, submitted that there should
11 have been a re-arraignment on the substituted 27 count
12 indictment and that failure by His Lordship, the learned
13 trial judge, to call a re-arraignment rendered the
14 proceedings null and void. This submission was overruled
15 and the learned justices of the Court of Appeal had this
16 to say: "In the circumstances that we have described, we
17 are satisfied that no more than one indictment was ever
18 before this Court" - this is the Fyffe decision - "in
19 this case and that what happened was an amendment of the
20 indictment as originally granted, and, in addition, that
21 this was done for the convenience of defending counsel."

22 Comparing this decision with our case in hand and
23 very much unlike the situation in Fyffe's case, with only
24 one indictment in issue, the Norman case has four
25 indictments - three individual indictments and one
26 consolidated indictment - in which they are all jointly
27 charged and are now being tried.

28 Let me, however, observe here that in Fyffe's case
29 their Lordships found that with only two exceptions that

1 the Law Lords considered immaterial that the 27 counts
2 later preferred reproduced what had appeared in the
3 initial 11 count indictment. The Hinga Norman situation
4 is clearly distinguishable from Fyffe's. In the latter
5 case it was one 11 count indictment charging five
6 appellants with drug offences that was replaced by the 27
7 count indictment charging the same five indictees with
8 the same offences.

9 In the Norman case, the three indictees originally
10 indicted on three separate indictments are now standing
11 charged and tried on a consolidated indictment that has
12 replaced, stayed, and, in my opinion, extinguished the
13 three initial individual indictments. In addition, the
14 records now clearly show that the consolidated
15 indictment, unlike Fyffe's, has introduced new locations
16 and expanded time frames, and also charged new offences
17 that did not feature in the three initial indictments
18 against the three accused persons. In my judgment, and
19 as the facts have indeed established, unlike in Fyffe's
20 case, the amendments are substantial.

21 Their Lordships in Fyffe's case further had this to
22 say: "With two material exceptions, the 27 counts
23 reproduced what had appeared in the 11 counts. They
24 added no new allegations and charged no new offences. In
25 our judgment, there were no amendments of substance;
26 there were amendments of form. We are satisfied that
27 this being the proper interpretation of what the judge
28 gave leave to amend, it is unnecessary for us to
29 re-arraign the defendants. They had pleaded to precisely

1 the same charges as were laid in the 27 counts, albeit
2 when they were encapsulated in the 11 counts. There was
3 no indictment to be stayed and no indictment to be
4 preferred. In our view, the judge was right to reject
5 the motion to arrest judgment."

6 The judges continued: We are fortified in the views
7 we have formed by some observations of Lord Widgery CJ in
8 the case of R v Radley 58 CAR 394 where His Lordship
9 said: "It is perfectly permissible if an amendment is
10 made of a substantial character after the trial has begun
11 and after arraignment, for the arraignment to be
12 repeated, and we think that it is a highly desirable
13 practice that should be done wherever amendments of any
14 real significance are made. It may be that cases like
15 Harden (Supra), where amendments are very slight and
16 cannot really be regarded as in any way introducing a new
17 element into the trial, a second arraignment is not
18 required, but judges in doubt on this point will be
19 advised to direct a second arraignment."

20 It is pertinent to observe here that in Fyffe's case
21 drug offences were the core issue. Certainly these are
22 less significant and indeed minor offences compared to
23 the grave charges of murders, killings for which
24 Mr Norman and his co-accused persons are indicted, and
25 for which the due process dictates the exercise of even
26 more caution than the ordinary and the reinforced
27 scrupulousness and scrutiny in the conduct of the
28 proceedings.

29 On this issue and having regard to nature and

1 gravity of the offences for which the three accused stand
2 indicted, the necessity to strictly respect and apply the
3 procedural Rules, and in the exercise of this judicial
4 caution to order a re-arraignment given it is more
5 imperative in these circumstances as is provided for by
6 the Statute and the Rules.

7 The effects of the lack of an arraignment on the
8 validity of proceedings were considered in the case of
9 R v Williams [1978] QB 373. It was held that a failure
10 by the Court to have the accused arraigned does not
11 necessarily render invalid subsequent proceedings on the
12 indictment where the Defence, as in the Williams case,
13 waives the right of the accused to be arraigned either
14 expressly or impliedly by simply remaining silent while
15 the trial proceeded without arraignment. Williams's
16 conviction was upheld despite the lack of arraignment,
17 because he, being the only person in court who knew he
18 had not been arraigned, raised no objection at any time.
19 Had he objected, His Lordship observed, and the Court
20 nonetheless refused to arraign him, it is submitted that
21 any conviction would have been quashed.

22 In the People v Walker the California Court of
23 Appeal held that where an indictment is amended, regular
24 and orderly procedure requires that the defendants be
25 re-arraigned and be required to plead thereon before
26 trial, but if the defendant makes no demand or objection
27 and is convicted on trial without having entered a plea,
28 an objection that there was no plea is waived and is
29 unavailable to him.

1 In Hanley v Zenoff the Court in Nevada held that
2 when an amended indictment is filed which changes
3 materially the information to which the defendant has
4 entered the plea, he must be arraigned on such an
5 indictment. While in McGill v the State it was held that
6 if re-arraignment is necessary to avoid the possibility
7 of prejudice, the defendant should be arraigned. I
8 consider and I have already indicated that there is a
9 possibility of prejudice and unfair trial to the three
10 accused persons if they are not served with and
11 re-arraigned on the consolidated indictment as early as
12 possible so as to avoid aggravation of the said
13 prejudice.

14 In all, and having regard to the foregoing, the
15 Norman situation is very much unlike Williams's. He,
16 unlike Williams, on the first day of the trial raised an
17 objection against being tried without either having been
18 arraigned or served with an indictment. Our Chamber was
19 silent and indifferent to the merits of this objection,
20 which I consider validly raised and at the right time.
21 As a follow-up, he has brought this written motion which
22 again challenges the propriety of the trial without his
23 plea having been taken, in addition to the absence of the
24 personal service of the consolidated indictment on him.

25 From the facts now available, it is no longer in
26 dispute that the charges and particulars of the offences
27 against the applicant, Samuel Hinga Norman, have been
28 vastly expanded. In addition, he now is no longer being
29 charged individually, but collectively in one indictment

1 with two other accused persons. This, in my opinion,
2 subjects him to either a new indictment, which indeed it
3 is, or to an amended indictment which contains new
4 offences and particulars that did not exist in the
5 initial individual indictment dated the 7th of March 2003
6 to which he had already pleaded not guilty to all the
7 counts.

8 It is suggested, in order to sideline the
9 controversy that surrounds the consolidated indictment,
10 to expunge some paragraphs so as to bring it in line with
11 the content of the initial individual indictment. I
12 observe, with the reinforced sentiment of dejection, that
13 this option would further have the effect of casting a
14 doubt on the integrity of the proceedings as it would be
15 interpreted as an admission of the fundamental legal flaw
16 which could only be cured by the Prosecution applying to
17 amend the indictment under Rule 50 of the Rules and to
18 subsequently have the three accused persons re-arraigned
19 under the provisions of Rule 61(2) and Rule 61(3) or, in
20 the alternative, to subject the said indictment to the
21 Rule 47 procedures.

22 In any event, should the option to expunge some
23 portions of the consolidated indictment be confirmed and
24 adopted by the Prosecution, it does not in my opinion
25 derogate from my finding that this indictment, as a
26 merger of three individual indictments, is and indeed
27 remains a new indictment which calls for the application
28 of either the provisions of Rule 47 or of Rule 50 and 61
29 of the Rules.

1 In the light of the foregoing and considering the
2 predominantly consistent pattern of the law and the
3 jurisprudence relating to the issues raised, I do find as
4 follows: Having regard to this analysis and the
5 provisions of Rule 26(bis), I find that the following
6 points contravene not only the provisions of Article 9,
7 17(2), 17(4)(a) and 17(4)(b) of the Statute, as well as
8 Articles 9(2), 14(3) and 14(7) of the International
9 Covenant on Civil and Political Rights, but also those of
10 Rules 26(bis), 50, 52 and 61 of the Rules.

11 On the issue of four indictments in one joint
12 criminal trial, the continued existence in the records,
13 on the one hand, of three individual indictments against
14 the applicants and his two co-accused persons to which
15 they had all pleaded, and a consolidated indictment on
16 the other two which they have not pleaded but which has
17 replaced the three indictments on which their trial is
18 now proceeding, is manifestly a legal and procedural
19 anomaly and irregularity.

20 It is my opinion that to comply and to be seen to
21 have complied with the provisions of Article 17(4)(a) of
22 the Statute, it is not just enough for the Prosecution to
23 inform the accused of the nature and cause of the charge
24 against him or her, but also and more importantly, to do
25 so clearly and without any ambiguity or uncertainty.

26 This basic requirement cannot be attained in this
27 case because it is negated by the existence of a new set
28 of facts in the consolidated indictment which are
29 different from those in the initial indictment, and which

1 the Prosecution still wants to be considered as valid in
2 the records so as to serve its purposes of justifying why
3 re-arraignment of the three accused persons is
4 unnecessary.

5 In addition, it is again contrary to the norms and
6 principles of the integrity of the proceedings for the
7 Prosecution to be allowed to conduct its case with two
8 sets of indictments in the same proceedings and against
9 the same people, because this creates a doubt not only as
10 to which indictment it is really relying on, but also as
11 to the real nature and cause of the charge against the
12 accused persons as required by Article 17(4)(a) of the
13 Statute. This uncertainty, I say, can only be resolved
14 by a withdrawal under Rule 51 of the Rules of the three
15 initial indictments so as to close the records and ensure
16 that the statutory rights of the accused persons to a
17 fair trial guaranteed under Article 17(2) of the Statute
18 of the Special Court is not violated.

19 On the service of the indictment, having granted the
20 joinder motion and ordered service of the consolidated
21 indictment which bears a new number in accordance with
22 Rule 52 of the Rules, the Trial Chamber should give
23 effect to its own order consistent with the provisions of
24 the Rules and those of Rule 26(bis), as it would again to
25 my mind violate statutory rights of the accused if
26 service of the consolidated indictment were effected in a
27 manner other than that provided for under Rule 52 on
28 which the order of the Chamber was based and made.

29 I say here that any action taken in violation of a

1 mandatory provision of the law should, of necessity, be
2 declared null and void even if that provision, as could
3 possibly be argued to justify a toleration of its
4 violation, fails to prescribe a remedy. This is even the
5 more so in criminal matters where the liberty of the
6 individual which is universally considered sacred is at
7 stake, and where, as I have said, the necessary
8 intendment of the enacting body of these provisions of
9 the Statute and of the Rules in relation thereto is to
10 effect personal service on the accused person and on no
11 other person in his stead. I accordingly, therefore,
12 declare the service of the consolidated indictment on the
13 accused's counsel null and void.

14 The foregoing analysis demonstrates the fact that
15 there are clear differences between the initial
16 indictment to which the three accused persons had pleaded
17 and the consolidated indictment on which they now stand
18 indicted and on which the proceedings are now based.

19 In justifying further its stand on the indictment,
20 the Prosecution argues that since a consolidated
21 indictment contains no new charge, no further
22 re-arraignment is required, and, further, that as held by
23 the joinder decision and referred to in the Norman
24 motion, the indictment against the three accused contain
25 exactly the same charges.

26 This argument to me is curious as it is misleading,
27 because we indeed could not, as a Trial Chamber, at the
28 time we were rendering the joinder decision, arrive at
29 such a finding and conclusion when it is clear from the

1 records that we did not have the opportunity of seeing
2 the consolidated indictment which, to my mind, ought to
3 have been exhibited to the motion so as to enable their
4 Lordships to ascertain the real content of the yet to be
5 disclosed consolidated indictment.

6 In fact, we could not have arrived at such a finding
7 because we overruled the submission to have it annexed to
8 the joinder motion on the grounds that it will impede the
9 Special Court in the expeditious dispatch of its judicial
10 business.

11 It would, to my mind, occasion a breach not only of
12 the provisions of Article 17(4)(a) of the Statute of the
13 Rules, of Articles 9(2) and 14(3) of the International
14 Convention on Civil and Political Rights, but also those
15 of Rules 26(bis), 47, 50, 61, 82 of the Rules, if the
16 accused persons were not individually re-arraigned and a
17 plea entered by each of them on the counts in the
18 consolidated indictment, particularly within the context
19 of and the necessary intendment of the promulgators of
20 the provisions of Rule 82(A) of the Rules.

21 It is my opinion that service of the indictment on
22 the accused, as well as his arraignment on that
23 indictment, are very important components in the
24 mechanism that is and should in fact always be used to
25 convey to the accused a clear picture of and message
26 regarding the nature and cause of the charge against him
27 as required by Article 17(4)(a) of the Statute. This, to
28 my mind, is cardinal to the issues in this case.

29 Consistent with this legal position that I am

1 taking, it cannot be said, as far as this matter is
2 concerned, that these mandatory provisions have been
3 complied with, having regard to the uncertainty created
4 in the minds of the accused persons as to the status of
5 and the facts in the initial individual indictments
6 vis-a-vis the status of and facts contained in the
7 ongoing collective consolidated indictment.

8 In the absence, therefore, of a message to this
9 effect, which is clear, certain and unambiguous on the
10 nature and content of the consolidated indictment, as
11 well as of its effective service on the accused as
12 stipulated in Rule 52(A) and Rule 52(B) of the Rules by
13 our court order, it is my considered opinion that the
14 provisions of Section 17(4)(a) would not have been
15 complied with. I would add and say that they would
16 indeed have been violated.

17 Having regard to the above, I rule in favour of
18 granting the applicant, the first accused in this motion,
19 on all grounds as he has conversed in his arguments, and
20 do hold that the consolidated indictment filed with the
21 unanimous leave of the Trial Chamber and on which the
22 trial is now proceeding, is not only valid, but is also
23 and above all a new indictment.

24 We indeed, to my mind, could have arrived at a
25 unanimous decision that the consolidated indictment is
26 new and that a re-arraignment is necessary if we took the
27 view that because the indictment, contrary to the
28 assurances proffered by the Prosecution, contained
29 expanded materials and particulars and more importantly

1 new charges, and that this discovery has just been rather
2 belatedly made to us and therefore could not be made
3 available to us in this matter for us to take a proper
4 position.

5 To my mind, it is not too late at this stage of the
6 proceedings, given the facts and the circumstances of
7 this case, for the Prosecution to either apply for an
8 amendment of the consolidated indictment so as to have
9 the new particulars and charges featuring therein to be
10 integrated into it, or for the Court to direct same and
11 thereafter for the accused to be re arraigned on the
12 amended indictment.

13 In the case of Johal and Ram it was decided that the
14 Court has the power to order an amendment which involves
15 a substitution of a different offence for that originally
16 charged in the indictment or even the inclusion of an
17 additional count for an offence not previously charged.

18 This, I would say, is an inherent power exercised by
19 the Court either on its own motion or at the request of
20 the Prosecution, as an amendment of any kind, including
21 the addition or subtraction of a count, may be made at
22 any stage of the trial provided that, having regard to
23 the circumstances of the case and the power of the Court
24 to postpone the trial, and if, as we held in our majority
25 decision dated the 2nd of August 2004 on the
26 Prosecution's request to file to amend the indictment
27 against Samuel Hinga Norman, Moinina Fofana and Allieu
28 Kondewa, the amendment can be made without injustice.

29 In the decision of the Prosecutor v Kajelijeli, on

1 the Prosecutor's motion to correct the indictment dated
2 the 22nd of December 2000 and the Prosecutor's motion for
3 leave to file an amended indictment, the Chamber warned
4 that once leave to correct or amend is given, the
5 correction or amendment may not go beyond what is
6 permitted or directed by the Chamber. The parties have
7 an opportunity to be heard when the amendment is sought
8 as it could affect the accused's case and the preparation
9 of his defence. Archbold International Criminal Courts
10 Practice, Procedure and Evidence. It's on page 131
11 paragraph 6-71 and 6-72.

12 In the motion before us and contrary to the
13 assurances given to us by the Prosecution that there was
14 nothing new in the consolidated indictment as compared to
15 the initial indictment, and that this disputed indictment
16 actually contains new particulars and new offences, we
17 have now discovered that the Prosecution has obviously
18 gone beyond the implied expectations of the Chamber in
19 ordering the filing of the said indictment without having
20 verified it. This being the case, it is clear and I so
21 hold that the possible principle outlined in the
22 Kajelijeli case has been violated and should be remedied.

23 Accordingly, I do make the following orders: That
24 the Prosecution immediately and forthwith and by a
25 written motion applies to amend the said indictment under
26 the provisions of Rule 50 of the Rules, so as to have
27 lawfully incorporated in the said indictment the
28 particulars, facts and offences featuring in the
29 consolidated indictment which are new; or, in the

1 alternative, that the Prosecution submits the said
2 indictment to the verification process provided for under
3 Rule 47 of the Rules, with a view to new initial
4 appearances of the accused persons for purposes of their
5 arraignment on the approved and confirmed consolidated
6 indictment under the provisions of Rule 61 of the Rules.

7 That the three accused persons should, after the
8 amendment is granted, be re-arraigned on the amended
9 consolidated indictment before the trial proceeds, and
10 this only after some procedural formalities required or
11 permitted by the law, including but not limited to those
12 provided for under Rules 66 and 72 of the Rules as well
13 as those related to recalling certain witnesses who have
14 so far already testified if the Defence desires and makes
15 an application to this effect by way of a written motion.

16 That the Prosecution immediately and forthwith
17 proceeds under the provisions of Rule 51 of the Rules to
18 file a motion applying to the Chamber for a withdrawal of
19 the three initial indictments against the three accused
20 persons.

21 That a personal service of the consolidated
22 indictment dated the 5th of February 2004 be immediately
23 effected on each of the accused persons.

24 That these orders be carried out.

25 Done in Freetown this 29th day of November 2004.

26 We are at 1.00 o'clock already, so I think that we
27 would take the usual lunch break and resume our
28 proceedings at 2.30, unless there are some quick issues
29 which anybody wants sorted out. This decision -- the

1 contents of these three decisions would be made available
2 as soon as possible. As I was reading through I saw some
3 small errors which have to be put right. So we think
4 that it should be available, at the latest, tomorrow.

5 MR MARGAI: It's just a clarification, My Lords, I wish to
6 seek in the light of the ruling. I should have been
7 continuing with my cross-examination, so I don't know
8 what the position will be.

9 PRESIDING JUDGE: The proceedings continue. It doesn't stay
10 the proceedings at all.

11 MR MARGAI: As My Lords please.

12 JUDGE THOMPSON: It also doesn't prevent an interlocutorial
13 appeal.

14 PRESIDING JUDGE: We will continue with you in the afternoon.

15 JUDGE BOUTET: The Prosecution was to make an application.

16 Are you making that this afternoon -- about the child
17 witness, if I'm not mistaken? Do we finish first with
18 the witness who's there and then you are going to make
19 your application?

20 MR TAVENER: I'll make the application immediately after
21 lunch. It will be very short. The witness falls under a
22 certain category. Then we'll continue with the
23 cross-examination with Mr Margai, thank you.

24 JUDGE BOUTET: Thank you.

25 PRESIDING JUDGE: It has been a long morning, but it is over
26 and we shall go back to normal business and leave the
27 issues to be sorted out the way they have to be sorted
28 out. We shall rise and resume at 2.30.

29 [Luncheon recess taken at 1.08 p.m.]

1 [Upon resuming at 2.45 p.m.]
2 PRESIDING JUDGE: Good afternoon, learned counsel. We'll be
3 resuming the session. I think we stopped on Friday at a
4 certain point in learned counsel Mr Margai's
5 cross-examination of this witness. I think we may
6 continue. Mr Witness.
7 THE WITNESS: Yes.
8 PRESIDING JUDGE: Learned counsel Mr Margai did not finish his
9 cross-examination of you for the third accused person
10 Mr Allieu Kondewa. So he will now continue. And
11 probably conclude. You may proceed, Mr Margai.
12 MR MARGAI: Thank you, my Lords.
13 WITNESS: TF2-088 [Continued]
14 [Witness answered through interpretation]
15 CROSS-EXAMINED BY MR MARGAI: [Continued]
16 Q. Mr Witness, your last answer, as I may recall, was you
17 were neither a doctor, nor a druggist, nor a nurse.
18 JUDGE THOMPSON: I think he'd broadened it, never been in the
19 medical field.
20 MR MARGAI: Yes, my Lords.
21 Q. Is that correct?
22 A. That is what I said.
23 JUDGE BOUTET: Druggist?
24 JUDGE THOMPSON: Never been in the medical field.
25 MR MARGAI: Never been in the medical field.
26 PRESIDING JUDGE: However, there is a controversy as to who is
27 a druggist and who is a pharmacist. Anyway, that's all
28 right. They quarrel among themselves. That's okay.
29 We are understanding to mean anyway that he was not

1 a pharmacist either.

2 JUDGE BOUTET: That was the question asked by Mr Margai. You
3 were neither a doctor, nor a druggist, nor a nurse. That
4 was your question.

5 MR MARGAI: That was my question.

6 JUDGE BOUTET: And his answer was no, I have never been in the
7 medical field.

8 MR MARGAI: Yes.

9 Q. Now, Mr Witness, did you receive complaints from
10 inhabitants from Valunia Chiefdom that your eldest son
11 was the head of a gang?

12 A. It never happened.

13 PRESIDING JUDGE: Mr Margai, Valunia kingdom?

14 MR MARGAI: Valunia, V-A-L-U-N-Y-A, Chiefdom.

15 PRESIDING JUDGE: Was the head of a gang?

16 MR MARGAI: A gang.

17 PRESIDING JUDGE: A gang.

18 MR MARGAI:

19 Q. Was it also brought to your attention that this son was
20 also moving around the chiefdom, meaning Valunia
21 Chiefdom, robbing people of their property?

22 A. It is only today that I have heard that from you.

23 Q. Now, Mr Witness --

24 PRESIDING JUDGE: Mr Margai, please.

25 MR MARGAI: Sorry, my Lord.

26 Q. Now, Mr Witness, do you know one Francis Gaima?

27 A. Not at all.

28 Q. Gaima is spelled G-A-I-M-A.

29 PRESIDING JUDGE: Mr Margai, you say it's spelled?

- 1 MR MARGAI: G-A-I-M-A.
- 2 Q. Now, Mr Witness, did you hear that a Mr Francis Gaima was
3 ambushed by your eldest son at Nyandehun village?
- 4 A. That is complete lies.
- 5 JUDGE THOMPSON: Where did you say, Mr Margai?
- 6 MR MARGAI: Nyandehun, N-Y-A-N-D-E-H-U-N, Nyandehun village.
- 7 PRESIDING JUDGE: That he assaulted?
- 8 MR MARGAI: That Francis Gaima was ambushed by the eldest son
9 of the witness.
- 10 JUDGE THOMPSON: He says that's a complete lie?
- 11 MR MARGAI: That's what he's saying.
- 12 Q. Mr Witness, I'm putting it to you that you know for a
13 fact that Mr Francis Gaima was ambushed along Nyandehun
14 village by your eldest son.
- 15 A. That name is unknown to me. There is no Francis Gaima in
16 our village, in fact.
- 17 Q. Mr Witness, I'm putting it to you that Mr Francis Gaima
18 was shot and wounded in his right arm in that attack by
19 your elder son, and you know it.
- 20 A. Why was it not reported? It is a lie.
- 21 PRESIDING JUDGE: Mr Margai, shot and wounded on the?
- 22 MR MARGAI: Right arm.
- 23 PRESIDING JUDGE: Right arm.
- 24 MR MARGAI:
- 25 Q. Now, Mr Witness, do you know of an incident where the
26 town chief of Nyandehun was arrested by police personnel
27 from Bo Town?
- 28 A. That has never happened. He is my brother.
- 29 PRESIDING JUDGE: At the police in Bo, you say?

- 1 MR MARGAI: Yes, my Lord.
- 2 JUDGE THOMPSON: Is he saying that the town chief is his
3 brother?
- 4 MR MARGAI: Yes, my Lord.
- 5 THE WITNESS: If anything happened to him, I'll be aware.
- 6 MR MARGAI:
- 7 Q. Mr Witness, do you know whether your brother, the town
8 chief of Nyandehun, was at any time invited to the Bo
9 Police Station in connection with a shooting incident?
- 10 A. Never. It's never happened, never.
- 11 PRESIDING JUDGE: Are you saying it never happened, or that
12 you do not know?
- 13 THE WITNESS: Yes, never. It did not happen at all. The man
14 is my brother. If anything happened, I know. I'm here
15 to defend him.
- 16 MR MARGAI:
- 17 Q. Mr Witness, I'm putting it to you that the town chief of
18 Nyandehun was invited to Bo Police Station in connection
19 with the shooting of Francis Gaima, and you know it.
- 20 A. It is not true.
- 21 Q. Now, Mr Witness, did Alhaji Hassan Sherrif not inform you
22 of the numerous complaints he had received from the
23 people of Valunia Chiefdom about their properties being
24 looted by your elder son?
- 25 A. Repeatedly lies.
- 26 Q. And I'm putting it to you, Mr Witness, that you were so
27 informed by Alhaji Hassan Sherrif.
- 28 A. These are all lies.
- 29 Q. And I further put it to you that Alhaji Hassan Sherrif

1 told you that the inhabitants of Valunia Chiefdom feared
2 for their lives because your elder son was going around
3 threatening them with a gun.

4 A. That is your job. You are just telling lies.

5 MR MARGAI: My Lords, may I ask for your protection, please.

6 PRESIDING JUDGE: Yes, you are entitled to it. Mr Witness,
7 please. Mr Witness, listen to me. You answer the
8 questions put to you by counsel. You have no right,
9 absolutely no right, to tell learned counsel that he is
10 lying. He can tell you that you are lying, and it is for
11 you to say yes or no as to whether you are lying. But
12 you cannot tell him that he is lying. Have you
13 understood me, Mr Witness? You have to be very
14 respectful to learned counsel. Okay?

15 MR MARGAI: Thank you, my Lords.

16 THE WITNESS: Yes, sir.

17 PRESIDING JUDGE: Let us get the reply. He says -- he said
18 these are lies and he denies the suggestion --

19 MR MARGAI: He denies the suggestion.

20 PRESIDING JUDGE: -- that the report was made to him by --

21 MR MARGAI: By Alhaji Hassan Sherrif.

22 THE WITNESS: Never, never. No report was made to me.

23 MR MARGAI:

24 Q. And I'm putting it to you, Mr Witness, that you
25 authorised Alhaji Hassan Sherrif to go in pursuit of this
26 elder child of yours because of the repeated complaint.

27 A. Untrue. Untrue.

28 Q. And I put it to you further that whilst the Kamajors were
29 pursuing him, he boarded a boat and opened fire at the

- 1 Kamajors.
- 2 A. I told you earlier that no civilian was in possession of
3 a gun. These are all lies. It is not true, sir.
- 4 Q. And I further put it to you that it was when the Kamajors
5 returned fire that he was fatally wounded and died
6 consequently.
- 7 A. Two of my nephews and my sons were killed in the incident
8 you are talking about. It is not true.
- 9 Q. Mr Witness, your younger son, was he not a drug pusher in
10 Valunia Chiefdom?
- 11 A. Never.
- 12 Q. Now, Mr Witness, is it not a fact that your younger son
13 opted to join the Kamajor society but was rejected
14 because they considered him an outlaw?
- 15 PRESIDING JUDGE: Mr Margai, you have left the elder son.
16 You're now on the younger son.
- 17 MR MARGAI: I'm on the younger son, yes.
- 18 THE WITNESS: They had wanted to force him. I rejected the
19 idea.
- 20 MR MARGAI:
- 21 Q. My question is, is it not a fact --
- 22 A. No.
- 23 Q. -- that your son opted to join the Kamajor society but
24 was rejected because he was regarded as an outcast?
- 25 JUDGE THOMPSON: Which is it; outlaw or outcast?
- 26 MR MARGAI: Outlaw, my Lord.
- 27 Q. As an outlaw.
- 28 A. He never attempted because he was under my control.
- 29 Q. And Mr Witness, like his elder brother, he, too, was

1 going around the chiefdom stealing people's property;
2 isn't that correct?

3 A. It's false.

4 Q. Now, Mr Witness, did Alhaji Hassan Sherrif not bring to
5 your attention the despicable conduct of this younger son
6 of yours within the chiefdom?

7 A. This never happened.

8 Q. Now, Mr Witness, did Alhaji Hassan Sherrif suggest to you
9 that this younger son of yours should go and stay with
10 him in the hope that he might change his behaviour?

11 A. Never did he --

12 JUDGE THOMPSON: [Previous translation continues]...

13 MR MARGAI: Sorry.

14 JUDGE THOMPSON: That is a loaded question put to the witness.
15 And what kind of response, if one insists on the question
16 being put as it is, do we get?

17 MR MARGAI: Well, he has responded in the negative, that no
18 such suggestion was made to him by Alhaji Hassan Sherrif.
19 That's my understanding.

20 JUDGE THOMPSON: I see. I see. If that's what you construe
21 it to be, then I'll be satisfied with it.

22 MR MARGAI: That's my understanding of it.

23 JUDGE THOMPSON: I thought it was loaded.

24 MR MARGAI: The question was, did Alhaji Hassan Sherrif not
25 suggest to you that this younger son of yours should go
26 and stay with him. Stop.

27 JUDGE THOMPSON: And then it was for the purpose of being
28 reformed.

29 MR MARGAI: Yes, based on the suggestions put to you.

1 JUDGE THOMPSON: I'm just saying that -- that's my problem.

2 Because he could have suggested that he go and stay with
3 him, but not for that purpose.

4 MR MARGAI: I see the point. As my Lord pleases. I shall
5 rephrase the question.

6 JUDGE THOMPSON: Yes.

7 MR MARGAI:

8 Q. Now, Mr Witness, did Alhaji Hassan Sherrif suggest to you
9 that this younger son of yours should go and stay with
10 him at any time?

11 A. Not at all.

12 JUDGE THOMPSON: [Previous translation continues]...The second
13 point doesn't arise unless you've put it to him.

14 THE WITNESS: There was no discussion between Alhaji and
15 myself, never.

16 JUDGE THOMPSON: Thank you, Mr Margai.

17 MR MARGAI: Thank you, my Lord.

18 Q. Mr Witness, I'm putting it to you that Alhaji Hassan
19 Sherrif did suggest to you that your younger son should
20 go and stay with him.

21 A. Even if millions were given to me by Hassan Sherrif, I
22 will never have done that. I have never had any
23 discussion with him.

24 Q. And I further put it to you, Mr Witness, that the purpose
25 was to reform your younger son.

26 A. My son didn't -- he was with me. Nobody came to me at
27 that time, he should stay with them. Nobody came to me.

28 Q. Mr Witness, did your younger son take refuge at Bandajuma
29 village at any time?

- 1 MR MARGAI: Spelled B-a-n-d-a-j-u-m-a.
- 2 Q. Did he take refuge at Bandajuma village at any time?
- 3 A. There is no more Bandajuma. The place is known as
4 Kpetewoma. That is where I'm residing. That is the name
5 of the village. The name of the village is Kpetewoma.
6 No more Bandajuma where I reside.
- 7 Q. When did Bandajuma ceased to exist, if I might ask? Can
8 you answer that?
- 9 A. Ten years back. Ten years back.
- 10 PRESIDING JUDGE: He says the name of the village now is what?
- 11 THE WITNESS: Kpetewoma. I call it Kpetewoma/Bandajuma.
- 12 MR MARGAI:
- 13 Q. Although it ceased to exist ten years ago, you still call
14 it Kpetewoma/Bandajuma?
- 15 JUDGE THOMPSON: Mr Margai, is that a little lesson in
16 sociology?
- 17 MR MARGAI: So it would seem, my Lord.
- 18 THE WITNESS: For us to remember a minute, so I call it that
19 way.
- 20 MR MARGAI:
- 21 Q. For the sake of remembrance, did your younger son take
22 refuge at Kpetewoma/Bandajuma village at any time?
- 23 A. Not to hide. We were there. That was the place we
24 resided. We have people there.
- 25 PRESIDING JUDGE: [Previous translation continues]...
- 26 THE WITNESS: It is our village. That was where we resided.
- 27 JUDGE THOMPSON: So it's your place of residence, not a place
28 of refuge.
- 29 THE WITNESS: Of course, yes, sir. Yeah, there are people

1 there now. I have five houses there.

2 MR MARGAI:

3 Q. Mr Witness, I'm merely putting my instructions to you.

4 PRESIDING JUDGE: I'm sure he understands.

5 MR MARGAI:

6 Q. Mr Witness, I'm putting it to you that your youngest son
7 went to Bandajuma after stealing a gun with cartridges.

8 A. That never happened.

9 PRESIDING JUDGE: Mr Margai, for the record, this is still the
10 junior son. Correct?

11 MR MARGAI: The junior son.

12 PRESIDING JUDGE: We should always refer to him as the junior
13 son.

14 MR MARGAI: Junior son.

15 PRESIDING JUDGE: Stealing a gun and cartridges.

16 MR MARGAI: Stealing a gun and cartridges.

17 Q. And I put it to you, Mr Witness, that this incident was
18 brought to your attention by Mr Alhaji Hassan Sherrif;
19 the stealing of the gun and the cartridges.

20 A. Alhaji Hassan Sherrif never told me this, and it never
21 happened.

22 Q. And I further put it to you that Alhaji Hassan Sherrif
23 reported to you that this younger son of yours sexually
24 assaulted an old woman of over 70 years old in that
25 village.

26 JUDGE THOMPSON: You said the youngest son?

27 MR MARGAI: [Previous translation continues]...

28 PRESIDING JUDGE: [Previous translation continues]... answer
29 the question, please. It is not all offences that are

1 committed and reported.

2 THE WITNESS: It is not true. The boy never did that. He
3 never did it. My son never did it.

4 JUDGE BOUTET: Mr Margai, I'm getting concerned with these
5 kind of questions. I understand you may have
6 instructions, but I think you're borderline on harassment
7 of the witness as such. You can ask questions, but I
8 feel that you are overdoing it at this particular moment.
9 You are trying to confront the witness on some issues, I
10 take it, and I do understand you have instructions, but I
11 am getting concerned with these type of questions as if,
12 because you have instructions, you can throw anything to
13 the witness. I'm concerned about it.

14 MR MARGAI: My Lord, I appreciate Your Lordship's concern, but
15 I have a job to do. The Prosecution in leading the
16 witness said lots of things here which, as per our
17 instructions, are not true. But because the Prosecution
18 had to present its case as had been reported to them, we
19 accepted the situation. And at the end of the day,
20 Your Lordship's will have an opportunity to evaluate the
21 evidence as to who is speaking the truth. But these are
22 my instructions, and I believe I would be remiss in my
23 duty if I don't put my instructions across to him, albeit
24 I'm sure the response is going to be negative.

25 JUDGE BOUTET: Carry on, but I'm concerned about it, too,
26 because I'm concerned that there's a limit to put
27 questions of that nature to a witness when it is of a
28 very, very personal nature of trying to -- if you have
29 some more evidence, then just say "I put it to you." I

1 do have concerns about that. Yes, Mr Prosecutor.

2 MR TAVENER: The Prosecution's concerns relate to relevance.

3 We've obviously listened to a number of questions about
4 the two sons, the older son and the younger son. At this
5 stage, obviously I'll allow the questions to go a bit
6 further, but there appears to be no relevance to these
7 questions.

8 JUDGE BOUTET: I think the relevance has to do with
9 credibility, so on that issue I overruled you.

10 MR MARGAI: No, it's not credibility, Your Honour. When I
11 started in relation to the elder son, I concluded by
12 giving you the circumstances under which he met his
13 death, contrary to what had been said by the witness in
14 evidence-in-chief. And this is where I'm leading to in
15 respect of the second --

16 JUDGE THOMPSON: In other words, learned counsel, this is all
17 part of evidence in rebuttal.

18 MR MARGAI: Precisely, my Lord.

19 JUDGE THOMPSON: I, myself, I do understand where my learned
20 brother, Honourable Justice Boutet, is coming from. But
21 I certainly would not myself say that you have exceeded
22 the limits because clearly if this is meant to be
23 evidence in purported rebuttal of serious allegations
24 from the Prosecution, again, appealing to the principle
25 of equality of arms, I think you're entitled to do that
26 as long as you do that politely and without meaning to
27 embarrass or humiliate the witness.

28 MR MARGAI: Far from it, my Lord. In fact, I think in
29 fairness to the witness, if these questions are not put

1 to him as per my instructions --

2 JUDGE THOMPSON: Yes.

3 MR MARGAI: -- when it comes to the turn of the Defence --

4 JUDGE THOMPSON: In other words, we would be left with

5 uncontradicted evidence.

6 MR MARGAI: Precisely. You would ask me, "But why did you not

7 put these questions to the witness when you had the

8 opportunity?"

9 JUDGE THOMPSON: I'm satisfied, as long as you do not in the

10 process, attempt to humiliate, harass, embarrass this

11 witness.

12 MR MARGAI: I give you that assurance, My Lords. I give you

13 that assurance.

14 JUDGE BOUTET: Mr Margai, what I've said to you is I had

15 concerns and my concerns are in line with what my brother

16 --

17 MR MARGAI: Your concerns are legitimate; no doubt about it,

18 My Lord, but then I'm only following my instructions.

19 JUDGE BOUTET: But even if it is instruction, if it becomes

20 harassment on the witness, it is not acceptable either.

21 But I have said what I had to say, and I accept your

22 explanation on this, and I'll go along with that.

23 MR MARGAI: Thank you, my Lords.

24 JUDGE BOUTET: Please carry on.

25 MR MARGAI:

26 Q. Now, Mr Witness, is it not a fact that you disowned this

27 second witness --

28 JUDGE THOMPSON: Second son.

29 MR MARGAI:

- 1 Q. -- second son because of the persistent complaint about
2 his conduct?
- 3 A. I never did.
- 4 Q. Thank you. Now, Mr Witness, do you know one Sheku Mammy?
- 5 A. [Inaudible] Yes.
- 6 PRESIDING JUDGE: Sheku?
- 7 MR MARGAI: Mammy, M-A-M-M-Y.
- 8 JUDGE THOMPSON: Is that spelling consistent with your
9 instruction?
- 10 MR MARGAI: Yes, it should be M-A-M-M-Y.
- 11 PRESIDING JUDGE: Sheku.
- 12 MR MARGAI: S-H-E-K-U. K-U.
- 13 PRESIDING JUDGE: Okay.
- 14 MR MARGAI:
- 15 Q. Now, was this younger son of yours brought to you by
16 Sheku Mammy in the company of Alhaji Hassan Sherrif?
- 17 A. It's never happened at all.
- 18 Q. Now, Mr Witness, did the rebels attack Valunia Chiefdom
19 at all?
- 20 A. Yes.
- 21 Q. When?
- 22 A. I did not record that.
- 23 Q. Which year?
- 24 A. 1994, May.
- 25 Q. And where was your younger son at that time when the
26 attack was launched?
- 27 A. Inside Mongere Town. I was the head teacher there. My
28 children were there with me.
- 29 Q. When the attack was launched at Valunia.

- 1 A. At Valunia. And the first attack, they came and attacked
2 us in May.
- 3 PRESIDING JUDGE: [Previous translation continues]....
- 4 THE WITNESS: We were in Mongere Town.
- 5 MR MARGAI: Mongare, M-O-N-G-A-R-E, Mongere Town.
- 6 Q. Did the rebels get to Mongere Town, Mr Witness?
- 7 PRESIDING JUDGE: And you say you were head teacher there?
- 8 MR MARGAI: He was head teacher, yes.
- 9 Q. Did the rebels get to Mongere Town?
- 10 A. They came there later. But at that time we left there,
11 we were in the hiding. We were in the bush. They came
12 there later, after Valunia attack.
- 13 Q. Now, was -- did Bandajuma come under rebel attack,
14 Mr Witness?
- 15 A. Yes.
- 16 Q. What year?
- 17 A. 1995. It was the time they came and took away all my
18 goat. 1995.
- 19 Q. What month? What month?
- 20 A. I cannot tell now.
- 21 Q. Where was your younger son?
- 22 A. Manoyoigbo.
- 23 Q. [Previous translation continues] village?
- 24 A. When they attacked there, when the attack was there, I
25 sent him there. It is the home of his mother.
- 26 Q. You did not go with him?
- 27 A. Not at all.
- 28 PRESIDING JUDGE: What is the name of the town where the son
29 went?

1 THE WITNESS: Manoyoigbo. That is Bagbo Chiefdom.

2 M-A-N-O-Y-O-I-G-B-O.

3 MR MARGAI:

4 Q. And there was an exchange of fire between the rebels and
5 the Kamajors, wasn't there, Mr Witness?

6 A. This time, no Kamajor was at Mongere in 1995. There was
7 no Kamajor. Kamajors went there in 1997.

8 Q. Mr Witness, I'm putting it to you that there were
9 Kamajors at Mongere in 1995.

10 A. That was not. There were two people. They were not
11 Kamajors. They were just taking care of the town. And
12 there were two -- only two guns there that were with us
13 at that time, my gun and other gun. They borrow my gun.
14 They said that it should be with them. In the evening,
15 the men go round the town. But they were not Kamajors.
16 The Kamajors went there in 1997 after Chief Hinga Norman
17 has come to Bo.

18 Q. Now, were these people referred to as vigilantes?

19 A. Well, that name was not mentioned to me. But only
20 that --

21 Q. [Previous translation continues]...

22 A. -- they were -- well, it may be termed so, but I don't
23 know how to --

24 Q. [Previous translation continues]...

25 A. -- I don't know how specific names are given to them.

26 Q. All right. I accept that. Now, in 1997, did the rebels
27 attack Valunia Chiefdom?

28 A. They were now coming towards the north. They have left
29 Masingbi coming towards --

1 PRESIDING JUDGE: [Previous translation continues]... answer
2 the question. Did the rebels in 1997 attack the Valunia
3 Chiefdom?

4 THE WITNESS: They had now left our area. They were coming
5 towards Yele, Bonkolenken Chiefdom.

6 PRESIDING JUDGE: It's a kingdom.

7 MR MARGAI:

8 Q. Mr Witness, Mongere shares a common boundary with Yele,
9 not so?

10 A. It is true.

11 Q. [Previous translation continues]

12 A. Yes.

13 Q. Did the rebels attack Mongere in 1997?

14 A. Not to my knowledge again. It was only in 1994 and part
15 of 1995. And they left our area coming towards the
16 north.

17 JUDGE THOMPSON: So your answer is that you do not know
18 whether the rebels attacked Mongere in 1997?

19 THE WITNESS: It was only in 1994.

20 JUDGE THOMPSON: [Previous translation continues]

21 THE WITNESS: They did not come there.

22 JUDGE THOMPSON: [Previous translation continues]

23 THE WITNESS: No, no, no.

24 JUDGE THOMPSON: [Previous translation continues]

25 THE WITNESS: They did not.

26 JUDGE THOMPSON: [Previous translation continues]

27 THE WITNESS: Indeed. In 1997, no attack.

28 JUDGE THOMPSON: What's the answer, Mr Margai?

29 MR MARGAI: He says he doesn't know. Or they did not.

1 JUDGE THOMPSON: That's different from "I do not know whether
2 they did." It must be obvious. Yes, he knows as a fact
3 that they did not.

4 MR MARGAI: That they did not.

5 Q. Now, did Mongere in 1997 have a large concentration of
6 Kamajors?

7 A. Surely. Many, many, many.

8 Q. Over 1,000?

9 A. I did not count them. But Kamajors were coming from all
10 over the chiefdoms of Bo District. They were coming
11 there.

12 Q. I'm putting it to you, Mr Witness, that the rebels
13 attacked Valunia Chiefdom in 1997.

14 A. That is not to my knowledge.

15 Q. And I further put it to you --

16 A. And as I have said, the attack was made in 1994 and part
17 of 1995. But if you say they came there in 1997, it is
18 not to my knowledge because that is my place.

19 Q. And I'm further putting it to you that it was in that
20 attack that your second son lost his life.

21 PRESIDING JUDGE: [Previous translation continues]

22 MR MARGAI: Yes, my Lord, in 1997.

23 Q. Now, do you bear any relation --

24 A. I have not answered that question.

25 PRESIDING JUDGE: He protested, you know, that he has not
26 given an answer, and I agree.

27 THE WITNESS: I'm still insisting that the rebels attacked
28 from part of 1996. They police my place. Up to 1997,
29 there was no attack. It never happened. It never

1 happened. There was no rebel attack in 1997.

2 MR MARGAI:

3 Q. [Previous translation continues]

4 A. You made that statement, but there was no more rebel
5 attack --

6 MR MARGAI: [Previous translation continues]

7 PRESIDING JUDGE: [Microphone not activated]

8 THE WITNESS: All right, sir. It has never happened.

9 JUDGE THOMPSON: [Previous translation continues] he was
10 denying. Is he denying that there was an attack in
11 Valunia Chiefdom in 1997?

12 MR MARGAI: He's denying it.

13 JUDGE THOMPSON: I understood him before to say that it was
14 not to his knowledge.

15 MR MARGAI: Yes, he said not to his knowledge, but now he's
16 denying it, my Lord.

17 JUDGE THOMPSON: And then you put to him the question that his
18 second son lost his life in that attack.

19 MR MARGAI: In that attack.

20 JUDGE THOMPSON: And what is his answer?

21 MR MARGAI: That was the response, that there was no such
22 attack.

23 Q. Now, Mr Witness, do you bear a relationship to Sam Hinga
24 Norman?

25 A. True, true, true.

26 Q. Blood relationship, I mean?

27 A. Well, let me clarify it because his mother --

28 MR TAVENER: Sorry, excuse me, Mr Witness. Can this be done
29 another way, rather than identify the witness? Is there

1 another way to ask this question rather than having him
2 identify the nature of the relationship --

3 JUDGE BOUTET: It has to do with the protection of witnesses,
4 presumably.

5 MR TAVENER: Yes.

6 MR MARGAI: Don't you worry. The protection will be secure.

7 MR TAVENER: [Microphone not activated]

8 JUDGE BOUTET: Sorry. What was the question?

9 MR MARGAI:

10 Q. Do you bear any blood relationship, yes or no? It's this
11 question of volunteering that sometimes threatens to
12 reveal identities. Do you bear any blood relationship,
13 yes or no?

14 A. Extended relationship.

15 Q. Extended family relationship. Accepted.

16 JUDGE THOMPSON: Yeah.

17 MR MARGAI:

18 Q. Now, because of this extended family relationship, did
19 Sam Hinga Norman lend financial assistance towards the
20 education of your children?

21 A. Yes, that happened. He has never given me a cent towards
22 the existence of my family, and I have never made any
23 request to him. I am able to maintain my children and my
24 family.

25 Q. Did one of your sons study at private college? Don't
26 name him.

27 A. There are people right now who are sitting here who know
28 that I am here. God will protect me from here. True.

29 Q. Will you now answer the question. Thank you.

1 PRESIDING JUDGE: If he feels that the question will reveal
2 his identity, Mr Margai, I'm concerned here now,
3 concerned. I don't know how we are proceeding. This is
4 my concern.

5 MR MARGAI: My Lord, I'm sure --

6 PRESIDING JUDGE: I don't know how we can circumvent this --

7 MR MARGAI: I'm sure there are many --

8 PRESIDING JUDGE: -- because we appear to be coming close to
9 the red line.

10 MR MARGAI: My Lord, there are miles away from the red line.
11 I'm sure there are many parents --

12 PRESIDING JUDGE: I see you very close, Mr Margai. I see you
13 very close to the red line.

14 MR MARGAI: It depends on which direction Your Lordship is
15 viewing me. I assure Your Lordship that I am very
16 conscious not to disclose the identity of this witness.
17 But I'm sure there are many families who have had
18 children at private college --

19 PRESIDING JUDGE: It depends on the area you come from.

20 MR MARGAI: I'm talking of Valunia Chiefdom.

21 PRESIDING JUDGE: The Valunia Chiefdom.

22 MR MARGAI: Oh, yes, I know the place very well. I was in Bo
23 for 27 years.

24 JUDGE BOUTET: But when you combine all the factors together,
25 I don't think you have dozens and dozens of family.

26 MR MARGAI: Well, it was he who said he was head teacher.

27 JUDGE BOUTET: I agree with you.

28 MR MARGAI: It's all right, my Lords. We will leave it for
29 our witnesses when they came.

1 PRESIDING JUDGE: Yes, I was going to suggest that you
2 graciously slip out of that question. Allow him -- spare
3 him the trouble of answering that question.

4 MR MARGAI:

5 Q. Mr Witness, I'm putting it to you that your version of
6 the death of your eldest son in this court is far from
7 being the truth.

8 PRESIDING JUDGE: Answer the question.

9 MR MARGAI:

10 Q. Yes, Mr Witness.

11 A. I do not understand.

12 Q. My question is --

13 PRESIDING JUDGE: Is your version of the death of your eldest
14 son truthful or it is false?

15 THE WITNESS: Well, my son was killed by these people
16 willfully. He was not killed in the right way.

17 MR MARGAI:

18 Q. What is the answer?

19 JUDGE THOMPSON: Witness, counsel wants to know whether what
20 you told us about how he was killed is the truth.

21 THE WITNESS: I said it is not true. My son was killed
22 wrongly. It was not true. The way he was killed was not
23 right. He did not do any wrong.

24 MR MARGAI:

25 Q. Please understand the question.

26 JUDGE THOMPSON: Counsel wants to know whether what you told
27 this Court about how he was killed is the truth.

28 THE WITNESS: The way explained is the truth. What I said,
29 the way he was killed, how I saw -- what I explained

1 here. So if there is any other version, the one that I
2 explained to you is the true version. Exactly.

3 JUDGE THOMPSON: [Previous translation continues] thank you.

4 JUDGE BOUTET: Mr Margai, that concludes your
5 cross-examination?

6 MR MARGAI: No, my Lord. The Prosecution took a day and a
7 half.

8 JUDGE BOUTET: That's okay. No, no --

9 MR MARGAI: I don't intend to follow suit unless it is
10 absolutely necessary, which I don't think it is in this
11 case. I'm winding up, My Lords.

12 Q. Mr Witness, I'm further putting it to you that your
13 version of the death of your second son is also not true.

14 A. I know that what I said is the truth.

15 Q. Mr Witness, was it you who volunteered to make a
16 statement to the investigators?

17 A. I planned it long ago. It took me a long time --

18 PRESIDING JUDGE: Was it you who volunteered -- Mr Witness,
19 wait. Mr Witness, wait. Learned counsel is asking you,
20 were you the one who volunteered the statement to the
21 Prosecutors in this case? Were you the one who
22 volunteered the statement?

23 THE WITNESS: Yes. My wife and I decided that I should do it.
24 I volunteered it myself.

25 MR MARGAI:

26 Q. Thank you. And did you tell the investigators of all of
27 these killings you narrated here in this court?

28 A. I did not talk of all the killings. There were very many
29 killings, but I only talk of my own here. Most people

1 were indoctrinated that they should not come. But I
2 volunteered to do so.

3 Q. Thank you very much. Will you now answer the question:
4 Did you tell the investigators about the killings you
5 testified to in this Court?

6 A. Yes.

7 Q. Did you, Mr Witness, identify the remains of any of these
8 people who were killed, according to your testimony, to
9 the investigators?

10 PRESIDING JUDGE: Mr Margai, the question again, please.

11 MR MARGAI:

12 Q. Did you identify the remains of any of these people whom
13 you testified were killed to the investigators? I don't
14 want to use the terminology --

15 A. I only explained to them exactly what happened to my
16 children because it was a long period, and I cannot keep
17 their remains.

18 Q. So you never identified any of the remains?

19 A. I did not have the access to the dead bodies.

20 Q. Did you identify or did you not? Whether you had access,
21 that is immaterial. Did you identify or did you not?

22 A. I only identified my relation to them.

23 Q. [Previous translation continues]. You have talked about
24 people being killed in your presence, et cetera,
25 et cetera. You volunteered a statement to the
26 investigators. My question now is, having told them
27 about these killings, did you identify the remains of any
28 of these people who were killed?

29 A. Only two were buried. The others were away, so no.

- 1 Q. So you did not? Thank you. Mr Witness, I'm putting it
2 to you that there was no identification of these bodies
3 by you because no such deaths occurred, apart from the
4 two sons. Yes, Mr Witness?
- 5 A. That one is now left with the Court. I said that the
6 others were sent into the river. Their bones were taken
7 by them. The other two were buried. So you say if --
8 they will show you the place where they are buried. That
9 one -- what happened to me is what I've explained. I did
10 not have the access to the others. Their bodies were
11 thrown. And the others, their bones were taken away.
12 What can identify that is only my explanation.
- 13 Q. Thank you. Now, Mr Witness, you told this Court that you
14 were a supporter of Honourable Matilda Conteh, as she was
15 then, hundred per cent?
- 16 A. That has passed 20 years back. Yes.
- 17 Q. And she was a member of parliament representing the All
18 People's Congress party, APC for short?
- 19 A. That was one-party state, yes.
- 20 Q. Mr Witness, do you identify the Kamajors with any
21 political party?
- 22 A. That one, I don't know.
- 23 MR MARGAI: Thank you, My Lords. That will be all for the
24 witness. Thank you very much, Mr Witness.
- 25 JUDGE BOUTET: Thank you, Mr Margai. Any re-examination?
- 26 MS WIAFE: No, Your Honours.
- 27 JUDGE BOUTET: Thank you.
- 28 [The Trial Chamber confers]
- 29 JUDGE BOUTET: Mr Prosecutor, are you ready to proceed with

1 your next witness? I think your next witness will be
2 TF2-057 if my list is accurate.

3 MR TAVENER: Yes, it is.

4 JUDGE BOUTET: But I also raised with you on Friday the issue
5 about the application about another witness to come. I
6 think the one after the next one.

7 MR TAVENER: That's correct.

8 JUDGE BOUTET: What we'll do is -- we'll break shortly to
9 allow this witness to go away, and when we come back, I
10 suggest we hear the application for the child witness.
11 Subsequent to that, we'll start with the next witness.

12 MR TAVENER: Thank you.

13 JUDGE BOUTET: Because you told us that your application will
14 be short.

15 MR TAVENER: Very short.

16 JUDGE BOUTET: Okay.

17 PRESIDING JUDGE: If it becomes too long, Mr Tavener, we shall
18 send you back to put it on paper.

19 MR TAVENER: Thank you, Your Honour.

20 PRESIDING JUDGE: I'm very sensitive to longish oral
21 applications. Anyway, we don't expect it would.

22 This said, Mr Witness, we have finished with you.
23 And I think you can go home now. We want to thank you
24 for coming to testify before this Court. We are not
25 saying that we are releasing you entirely. Necessity may
26 arise - you never know - for us to call you back here for
27 further testimony. I'm not saying it is the case now,
28 but I say it may arise. So if it does, we'll get in
29 touch with you through the right channels. This said, we

1 wish you a safe journey back home and successful pursuit
2 of your professional and private life back wherever you
3 are. The Tribunal --

4 THE WITNESS: Thank you.

5 PRESIDING JUDGE: -- will rise to allow this witness to retire
6 and for us to come back in the next couple of minutes.

7 We'll rise, please.

8 [The witness withdrew]

9 [Break taken at 3.58 p.m.]

10 [on resuming at 4.22 p.m.]

11 [HN291104D]

12 JUDGE BOUTET: Mr Prosecutor, we are listening to you.

13 MR TAVENER: Thank you, Your Honour. In respect of -- this is
14 an application or more an advisement to the Court in
15 respect of TF2-067. In making the application or
16 advising the Court, the Prosecution --

17 PRESIDING JUDGE: Witness number?

18 MR TAVENER: TF2-067. The Prosecution relies on the decision
19 on Prosecution motion for modification of protective
20 measures for witnesses, dated the 8th of June 2004, a
21 decision of this Trial Chamber.

22 In that particular decision there was a number of
23 categories of witnesses and the protection to be accorded
24 to each category. This particular witness, 067, is a
25 child and therefore falls under Category B. He's a
26 vulnerable witness and the Prosecution seeks the
27 protections that are outlined in that particular order --
28 or particular decision of the Court.

29 The child was born on the 17th of March 1987 and I

1 understand his age was told to him by his parents. At
2 the time of giving evidence he will be under the age of
3 18.

4 PRESIDING JUDGE: He was born on what date?

5 MR TAVENER: The 17th of March 1987. Consequently he's a
6 child by definition and attracts the protections outlined
7 in the order -- in the decision of the Court I've
8 referred to.

9 JUDGE BOUTET: But this is, if I'm not mistaken, a witness
10 that had not been so described in the application up to
11 now. Am I right? In the list that you have provided the
12 Court with --

13 MR TAVENER: The Prosecution motion for modification of
14 protective measures for witnesses I have him as being
15 listed at 6122, if I'm reading it correctly. He was one
16 of the witnesses nominated as a Category B witness, and
17 that was filed with the Court on the 4th of May 2004. It
18 is a document containing a number of annexures
19 identifying Category A witnesses, Category B and Category
20 C and 067 was nominated as a Category B witness.

21 Relying upon that decision and the --

22 JUDGE THOMPSON: What is the date of the decision?

23 MR TAVENER: 8th of June 2004. If I could read from paragraph
24 13, it's page 7332: "Witnesses in sub-Category B above,
25 namely child witnesses, should be allowed to testify on
26 closed circuit television to avoid, as far as possible,
27 serious emotional distress by facing the accused while
28 the image appearing on the public's monitor is to be
29 distorted." That was requested.

1 And paragraph 48, page 7342: "Based upon this
2 information and the evidence submitted the Chamber finds
3 that such risk as described would exist and, therefore,
4 deems its necessary in the interests of justice for
5 children to be allowed to testify in the way the
6 Prosecution asks for in accordance with Rule
7 75(B)(i)(a)." This child -- this witness, being a child,
8 attracts those protections.

9 JUDGE THOMPSON: In other words, this is an application which
10 we -- based on the decision that you've cited, we grant
11 as a matter of course?

12 MR TAVENER: That is in effect --

13 JUDGE BOUTET: But why are we facing with this application,
14 because he had not been properly described in the list
15 provided; that was my question.

16 MR TAVENER: I think it was raised that there be an
17 application and that's why when I started it we don't see
18 it quite as an application, but simply advising the Court
19 that that's the way in which this witness will testify.
20 It is more information than an application.

21 JUDGE BOUTET: Based on that decision, it appears to be quite
22 clear that if the witness is a child, he comes under
23 Category B and Category B means this.

24 MR TAVENER: On this occasion we're not arguing, Your Honours.

25 JUDGE BOUTET: I will ask the Defence if they have any
26 argument, but I don't --

27 JUDGE THOMPSON: In other words, you're invoking a principle
28 of automaticity here, just having regard to a decision
29 that just automatically applies.

1 MR TAVENER: More for information for the Court as to how we
2 will proceed.

3 MR YILLAH: My Lord, I'm appearing for the first accused and I
4 have instructions from Dr Jabbi to do so. In light of
5 what -- we don't have a problem with what he has said,
6 but in light of the order that he has just read, do those
7 protective measures apply when the accused persons are in
8 court or not? It is not too clear from what he has read
9 in court, My Lord, it's not too clear. You may want
10 to -- Your Lordships may want to direct him re-read what
11 he has just read in court, because I hear a reference
12 being made to when the accused persons are in court. So
13 when they are not in court, I don't know whether
14 different measures that apply. That is based on what he
15 has just read, My Lord.

16 JUDGE BOUTET: Well, I have the decision. The reference was
17 to paragraph 13, if I'm not mistaken. 13 was the
18 application made by the Prosecution asking for additional
19 protective measures for certain groups of witnesses.
20 "Witnesses in sub-Category B above, namely child
21 witnesses, should be allowed to testify on closed circuit
22 television to avoid, as far as possible, serious
23 emotional distress by facing the accused while the image
24 appearing on the public's monitor is to be distorted."
25 That is the argument that was put forward.

26 MR YILLAH: So if that is the argument, My Lord, I don't think
27 in the circumstances --

28 JUDGE BOUTET: Because there is no --

29 MR YILLAH: Absolutely, it would definitely will not apply.

1 JUDGE BOUTET: You may be right. May we hear from the second
2 accused. Yes, the purpose of that, you're quite right,
3 was to give that protection to a child witness so he
4 would not be more emotionally distressed than is required
5 by facing an accused in those circumstances, but the
6 facts are as we speak -- and I think you will agree with
7 me that if the accused comes up tomorrow morning, we're
8 going in a different scenario. But, as we speak, there
9 is no accused in court, so that will have little
10 application at this particular time.

11 MR YILLAH: I take the cue, My Lord. My Lord, may we treat
12 this situation --

13 PRESIDING JUDGE: Mr Yillah, are you suggesting that this care
14 of this witness would only be generated by accused
15 persons and no other circumstances around this Courtroom?
16 Is that what you're suggesting?

17 MR YILLAH: My Lord, I'm taking the Prosecution on the
18 authority that they have presented to this Court.

19 PRESIDING JUDGE: Are you saying that this Court, this
20 Tribunal, is tied up with that decision and cannot --

21 MR YILLAH: Based on the jurisprudence that they have cited,
22 My Lord. If we go by that, the authority that he is
23 relying on, that cannot be tenable. That would not
24 support his application. Maybe he would find some other
25 means to rely --

26 PRESIDING JUDGE: Or maybe the Tribunal may find some other
27 means, if it comes to that.

28 MR YILLAH: As My Lord pleases.

29 JUDGE BOUTET: But you still agree, however, that there would

1 have to be basic protection.

2 MR YILLAH: We don't have a problem with that. We only have a
3 problem with the supportive material that he has
4 furnished to the Court. That would not support his
5 application.

6 JUDGE BOUTET: Thank you very much.

7 JUDGE THOMPSON: Suppose he were to come under some omnibus
8 concept of the overall interest of justice, would that
9 defeat his application? Of course, the point that you
10 make is perfectly valid from my perspective too, as my
11 learned brothers have said, but suppose you were to rely
12 on some omnibus perspective of the overall interests of
13 justice would dictate that this particular witness be
14 afforded the protective measures, notwithstanding the
15 absence of the accused. Would that be an attractive
16 position to take legally?

17 THE WITNESS: My Lord, Your Honours, as constituted as a
18 Bench, proprio motu can apply an omnibus rule in the
19 interests of justice, even without it being --

20 JUDGE THOMPSON: Consistent with a discretionary authority?

21 MR YILLAH: We don't have a problem with that, My Lord

22 PRESIDING JUDGE: Being that we are not taken prisoner or
23 hostage by our own decisions, they are rendered in
24 particular situations and they could be -- we could come
25 around them depending on the facts and circumstances that
26 we're examining at any material time. Anyways, okay, in
27 principle you don't have any particular objection. Okay,
28 thank you.

29 MR YILLAH: Yes, Your Honour.

1 MR BOCKARIE: Yes, Your Honour. Just in line with what
2 Mr Yillah said, generally we are not opposed to the
3 application, but just when the portion of that ruling was
4 read, we too entertained the same apprehension.

5 JUDGE BOUTET: I don't want to mislead you. The portion that
6 was read was, so this is very clearly understood, that
7 was the Prosecution's application. Paragraph 13 that was
8 quoted by the Prosecution was a repeat of their
9 application to this Court. The decision per se does not
10 say so. The decision -- I can quote to you on the
11 decision. It says: "Special protective measures for
12 sub-Categories A, B, C voice distortion and closed
13 circuit television." "The closed circuit television for
14 child witnesses in sub-Category B while the image
15 appearing on the public's monitor is distorted", that is
16 all it is. So it does not make that preference in that
17 decision per se.

18 MR BOCKARIE: Well, we are not opposed to the application,
19 Your Honour.

20 JUDGE BOUTET: Thank you. Mr Margai?

21 MR MARGAI: We're indifferent, My Lord.

22 MR TAVENER: Perhaps just for completeness in response to the
23 counsel for the first accused, at paragraph 47, the
24 second, third sentence -- sorry, the fourth sentence:
25 "As stated by psychologist Anne Michel, especially
26 children are vulnerable witnesses, the risk of
27 re-traumatisation and the possibility of stigmatisation and
28 rejection is real and high." So there is a number of
29 bases for treating children in a different way, not just

1 confronting the accused. And that appears to be the
2 basis of the Court's decision as well. Thank you.
3 JUDGE BOUTET: The Court's decision, if I can quote to that
4 portion, Mr Yillah: "That witnesses in sub-Category B,
5 that is child witnesses, testify with the use of a closed
6 circuit television the image appearing on the public
7 monitor is being distorted." That is all the decision
8 reads about. So there is no reference in the decision
9 per se to the accused being present or not in the order
10 of the Court. Thank you.

11 MR YILLAH: As My Lord pleases.

12 JUDGE BOUTET: The application made by the Prosecution is
13 granted and we'll provide some additional details after,
14 but for your information at this time the application
15 will be granted and we'll provide some reasoned details.

16 PRESIDING JUDGE: We mean a written decision will be provided
17 on this, but for now, to enable the proceedings to
18 continue without interruptions, we will work on granting
19 it orally.

20 JUDGE BOUTET: So are we ready, Mr Prosecutor, to call the
21 next witness who is not the child witness?

22 MR SAUTER: Right. Your Honours, the Prosecution calls
23 witness TF2-057. To my knowledge he is witness number
24 34.

25 JUDGE BOUTET: This witness will testify in Krio?

26 MR SAUTER: He will testify in Krio.

27 JUDGE BOUTET: Thank you. Please call the witness in.

28 PRESIDING JUDGE: Mr Sauter, it is the 34th witness?

29 MR SAUTER: Yes, 34th witness.

1 [The witness entered court]
2 WITNESS: TF2-057 sworn
3 [The witness answered through interpretation]
4 JUDGE BOUTET: Mr Prosecutor, you may proceed, please.
5 EXAMINED BY MR SAUTER:
6 Q. Good afternoon, Mr Witness?
7 A. Yes, sir.
8 Q. I'm going to put to you some questions. Please answer
9 the questions directly, make short answers and speak
10 slowly. I will begin with some questions concerning your
11 personal data. How old are you, Mr Witness?
12 A. I am 45 years old.
13 Q. And in which chiefdom are you born?
14 A. Tonkolilli District, Kholifa Chiefdom.
15 JUDGE BOUTET: Spell that out, please.
16 THE WITNESS: Kholifa is K-H-O-L-I-F-A. Kholifa Chiefdom.
17 Tonkolilli is T-O-N-K-O-L-I-L-L-I District. Tonkolilli
18 District.
19 MR SAUTER:
20 Q. Where are you residing, Mr Witness?
21 A. I live in Bo Town now.
22 Q. Are you married?
23 A. Yes, sir.
24 Q. And do you have children?
25 A. Yes, sir.
26 Q. How many children do you have?
27 A. I have five.
28 Q. Did you attend school, Mr Witness?
29 A. Yes, sir.

- 1 Q. For how many years?
- 2 A. Ten years. Ten years I spent at school.
- 3 Q. Which languages are you speaking?
- 4 A. I speak three languages.
- 5 Q. Which ones, please?
- 6 A. I speak Temne, Krio and Susu.
- 7 Q. And what is your profession?
- 8 A. Diamond miner.
- 9 Q. That is all concerning your personal data, Mr Witness.
- 10 A. Yes, sir.
- 11 Q. Mr Witness, are you familiar with the term Kamajors?
- 12 A. Yes, sir.
- 13 Q. Could you please explain to the Court what you understand
14 under the term Kamajors?
- 15 A. Kamajors, these are people Sam Hinga Norman brought in
16 our own society and told us that they are coming to fight
17 for us during the time when the rebels were in our
18 country.
- 19 Q. So you say they were fighters?
- 20 A. Yes, sir.
- 21 Q. How do you recognise a person as being a Kamajor?
- 22 A. Well, they came with special uniform which they wore and
23 they tied different things there which identified them as
24 Kamajors.
- 25 Q. Could you please describe what kind of uniform they wore?
- 26 A. Yes, sir, ronko, ronko uniform. They had ronko uniform.
- 27 Q. Could you please describe what a ronko uniform is like?
- 28 A. Yes, sir. The ronko uniform which they wore was shaped
29 in a small waiste and they tied some different things

- 1 there and that was what they used to wear.
- 2 Q. When you say they tied different things there, which kind
3 of things?
- 4 A. It is a ronko and they tied something like talisman
5 there.
- 6 Q. Okay. We'll leave it like this. Mr Witness, where did
7 you live during the years 1996, 1997, 1998?
- 8 A. I was around Bo Town.
- 9 Q. During this period from 1996 to 1998 had there been
10 Kamajors in Bo Town?
- 11 A. Yes, sir.
- 12 Q. Can you remember when the Kamajors first came to Bo?
- 13 A. Yes, sir.
- 14 Q. So when was it?
- 15 A. 1996 they were in Bo.
- 16 Q. At this time 1996, you say, were there any other fighters
17 or military forces in Bo?
- 18 A. Yes, sir. Yes, sir.
- 19 Q. Who else was in Bo?
- 20 A. It was the Sierra Leone Army.
- 21 Q. And how was the relationship between the soldiers of the
22 army and the Kamajors at this time?
- 23 A. Well, they worked together during that period.
- 24 Q. Did this cooperation come to an end at any time?
- 25 A. Yes, sir.
- 26 Q. When was this, Mr Witness?
- 27 A. Well, it was the time when the AFRC overthrew; that was
28 the time when the relationship ceased.
- 29 Q. Could you recall when this happened?

1 A. It was 1997 when Johnny Paul Koroma took power. That was
2 the time when the relationship between the Kamajors and
3 the army ceased.

4 Q. And did the Kamajors stay at Bo after this point of time?

5 A. No. When AFRC had power, the Kamajors had left Bo and
6 they were in the bush during this time.

7 Q. Did the Kamajors at any time return to Bo Town?

8 A. Yes, sir.

9 Q. When did this happen?

10 A. In 1998. That was the time the Kamajor came back in Bo.

11 Q. Could you give us a month?

12 A. Yes, sir. It was around March, sir.

13 Q. When the Kamajors returned to Bo, were the soldiers still
14 there?

15 A. The soldiers were not there again.

16 Q. Could you tell the Court how long, approximately, before
17 the Kamajors came the soldiers left Bo?

18 A. Well, Kamajors left Bo in 1997. That was the time the
19 Kamajors left Bo and they came back in 1998. They came
20 back in 1998 in Bo town.

21 JUDGE THOMPSON: Learned counsel, what was your question?

22 MR SAUTER: I was just about to repeat my question.

23 JUDGE THOMPSON: Yes, it was difficult to follow.

24 MR SAUTER:

25 Q. This was not my question, Mr Witness. My question was
26 whether you can remember how many day before the Kamajors
27 returned to Bo in, as you say, March of 1998, the
28 soldiers had left Bo? Do you understand my question?

29 A. I did not get it clearly.

1 Q. You said the Kamajors returned in March 1998 to Bo and
2 you said at this point of time the soldiers were not any
3 more in Bo. What I want to know from you is how many
4 days, or how many weeks or months, whatever, before the
5 Kamajors returned that the soldiers had left Bo?

6 JUDGE THOMPSON: Perhaps if you say before after the soldiers
7 left Bo before the Kamajors came. Perhaps that may well
8 help.

9 MR SAUTER: Okay.

10 Q. Mr Witness, could you answer my question otherwise I'll
11 put it the other way round?

12 A. Well, I know in 1997 the Kamajors had left Bo. In 1998,
13 they came back. That was during March period.

14 Q. And when did the soldiers leave Bo? Could you remember
15 this?

16 A. The soldiers, when the Kamajors have entered, when they
17 came in 1998, it was -- the soldiers had left. They
18 left.

19 Q. How many days after or weeks or months after the soldiers
20 had left Bo the Kamajors came into Bo? Can you remember
21 this?

22 A. Well, almost it was about eight months, because it was
23 from 1997 when they left and they came back in 1998, so I
24 cannot give the exact time. All I know is that it was
25 between 1998 -- 1997 when they left and the Kamajor
26 returned again.

27 JUDGE BOUTET: I don't think he understood your question.
28 Certainly his answer does not indicate that.

29 MR SAUTER: I think there is no need to follow this question

- 1 further.
- 2 Q. But you said when the Kamajors returned there were not
3 any soldiers in Bo; is that right?
- 4 A. They were not there. They were not there.
- 5 Q. Okay. Did you have any personal encounter with the
6 Kamajors after they returned to Bo, as you say, in March
7 1998?
- 8 A. Yes, sir. Yes, sir.
- 9 Q. Could you please describe what happened?
- 10 A. Yes, sir.
- 11 Q. Please, go ahead.
- 12 A. I was in my house when I saw a group of Kamajors.
- 13 Q. Did these Kamajors come to your house?
- 14 A. Yes, sir.
- 15 Q. For what purpose did they come to your house?
- 16 A. They said they will come and search for arms and
17 ammunitions.
- 18 Q. So did they search your house?
- 19 A. They entered, yes.
- 20 Q. And did they conduct a search?
- 21 A. They entered -- they allowed me to enter. I opened all
22 the doors; they entered.
- 23 Q. When being in your house did the Kamajors find anything,
24 like ammunition and weapons?
- 25 A. No, sir.
- 26 Q. What did they do after the search was concluded?
- 27 A. During the search when -- when they searched, they were
28 looking out for ammunition. Whatever valuable they found
29 in my house, they picked there. So whatever they said

1 they will carry, they took it and carried it away.

2 Q. Could you please tell the Court what they were carrying
3 away from your belongings?

4 A. A lot. And during the time of the war we used to pack
5 for any problem. If we had to run away we put our
6 bundles on standby. So we have some boys that carried
7 them, took them, to go away.

8 Q. And did they take away some bundles you had prepared?

9 A. They took them away.

10 Q. And after that they left?

11 PRESIDING JUDGE: No, after that what happened?

12 MR SAUTER:

13 Q. Mr Witness, what happened after they had taken the
14 bundles away?

15 A. Well, when they came I had my brother who was 25 years
16 old. I told him to report the matter to ECOMOG. He went
17 and reported.

18 Q. Do you know what was the outcome of this report to
19 ECOMOG?

20 A. Yes, sir.

21 Q. Please tell the Court.

22 A. The soldier whom my brother met, my 25 years old brother,
23 he went to this ECOMOG soldier and told him -- they came
24 over to my house and they met these Kamajors and they
25 stopped them.

26 JUDGE THOMPSON: Learned counsel, they stopped them from doing
27 what?

28 MR SAUTER: I'm about to ask.

29 Q. You said the soldiers came and stopped them. Stopped

1 them from what?

2 PRESIDING JUDGE: Which soldiers? ECOMOG soldiers?

3 MR SAUTER: Yes.

4 THE WITNESS: Yes, sir.

5 MR SAUTER:

6 Q. So, Mr Witness, the ECOMOG soldiers stopped the Kamajors
7 from doing what?

8 A. They stopped them first when they come -- when they came
9 they asked them, "What are you looking for here?" They
10 said, "We came here to search for arms and ammunition."
11 Then the ECOMOG soldier told them, "Then why are you
12 taking the people's property now? Is this ammunition?"

13 Q. And what was the reaction of the Kamajors?

14 A. Well, the Kamajors, other things which the ECOMOG
15 soldiers met in their hands, they dropped them. So the
16 ECOMOG soliders had to force them out from there.

17 Q. So am I right that only part of your property was looted
18 and the Kamajors were stopped by the ECOMOG soldiers to
19 loot everything; is this right?

20 A. Yes, sir.

21 Q. After this, did the Kamajors stay at your house, or went
22 away?

23 A. No, sir.

24 Q. What do you mean when you say "No, Sir"?

25 A. They did not stay. They were forced out there. All of
26 them went away.

27 Q. Did you have any other encounter with the Kamajors?

28 A. Yes, sir.

29 Q. Please tell the Court when this was?

1 A. When they were forced out by the ECOMOG soldiers and they
2 went away, about two or three hours later another group
3 of Kamajors came back and told me that I was invited to
4 their headquarters.

5 Q. Did you follow these Kamajors to their headquarters?

6 A. Yes, sir.

7 Q. Which headquarter are you speaking of?

8 A. 88 Mahei Boima Road in Bo.

9 JUDGE BOUTET: What is the name of the road?

10 MR SAUTER: Mahei Boima. M-A-I B-O-I-M-A. Mahei Boima.

11 MR MARGAI: It's M-A-H-E-I. Mahei Boima. B-O-I-M-A

12 JUDGE BOUTET: Thank you.

13 MR SAUTER: I'm sorry.

14 PRESIDING JUDGE: Mr Sauter, it is not your fault.

15 MR SAUTER: No, I was very keen on getting the right writing
16 but unfortunately I was unsuccessful. I will know that
17 next time I will ask Mr Margai. [Overlapping speakers].

18 [HN291104E 5.10 p.m.]

19 MR SAUTER:

20 Q. Did you go by yourself to the headquarters?

21 A. Yes, they threatened me and took me there.

22 Q. What happened when you reached the headquarters?

23 A. When we arrived there, my small brother, who is 25 years
24 old, and I, as we arrive at the headquarters at 88 Mahei
25 Boima Road.

26 Q. Mr Witness, let's go a step back. If I've got you right
27 you've just told us that you were accompanied by a
28 brother of yours?

29 A. Yes, sir, my brother and I, both of us went there.

1 MR YILLAH: May it please you, My Lords, I don't follow this
2 line of evidence. I don't see a nexus between the first
3 piece and the second one, because he said another group
4 of Kamajors came and invited him to headquarters, he
5 followed them. I don't see any foundation of the boy
6 coming in at that stage. I don't know at what stage.
7 JUDGE BOUTET: I understood his evidence to say that he went
8 there with his brother. In other words, he is at 88 --
9 MR YILLAH: The point I'm making, My Lords, is that another
10 group of Kamajors came and invited him.
11 JUDGE BOUTET: Yes.
12 MR YILLAH: Him.
13 JUDGE BOUTET: Him, but he did go with his brother.
14 MR YILLAH: At that point no mention was made of his brother.
15 JUDGE THOMPSON: But let's get the thing in context,
16 Mr Yillah. He virtually said that "they threatened me
17 and took me there." He just didn't go there voluntarily.
18 And, "On arrival my younger brother, who is aged 25" --
19 then I lost that.
20 PRESIDING JUDGE: [Microphone not activated].
21 JUDGE THOMPSON: I see. I got that "they threatened me and
22 took me there." Let's get that clear, because I remember
23 when you put it to him, he virtually did not say he
24 followed them; he emphasised that they threatened him and
25 they took him there. I don't know whether they took him
26 with his brother.
27 MR SAUTER: It was in fact confusing and I'll try to clarify
28 this point.
29 Q. Mr Witness, you said you were accompanied by your

1 20-year-old brother?

2 JUDGE THOMPSON: 25, he's being very careful about that age.

3 MR SAUTER: Yes, 25.

4 THE WITNESS: Okay, let me make it clear. When the other
5 group came and invited me, my younger brother and I, who
6 is 25 years, was there and they asked me if I am the only
7 one that was there. I said no, I'm there with my
8 brother. They said that I was invited at Mahei Boima
9 Road. They said I should walk and go there, so they push
10 me and took me to the place.

11 MR SAUTER:

12 Q. What about your brother, was he also invited to come to
13 Mahei Boima Road?

14 A. That was what I have said. I said my younger brother and
15 I. Both of us, they took us together. He is 25 years
16 old.

17 PRESIDING JUDGE: We know, we know he's 25 years old. But
18 they took -- pushed you and took you there. You're not
19 mentioning -- how does your brother come in? That's what
20 Mr Yillah is complaining about.

21 THE WITNESS: The place where they met us, that is at the
22 house, they ask me whom I with in this house. I said, "I
23 am with my brother here, he is 25 years of age." He
24 said, "We're going to take both of you." So they push me
25 and took me to the place. So they told us to walk on
26 foot and they threaten us.

27 JUDGE THOMPSON: I think it's clear now. It's both of them
28 who were threatened and taken away, and also the
29 emphasise on the 25-year-old younger brother.

- 1 PRESIDING JUDGE: They were put on marching orders to move.
- 2 Yes, we are now clear. Mr Yillah, is the point taken?
- 3 MR YILLAH: Very well, My Lord.
- 4 PRESIDING JUDGE: Right, okay.
- 5 MR SAUTER:
- 6 Q. So, Mr Witness, what happened when you and your brother
- 7 had reached Mahei Boima Road, the headquarters?
- 8 A. When we arrive at the office, they told us to sit on the
- 9 ground, so we sat on the ground.
- 10 Q. And after that?
- 11 A. So I saw Moinina Fofana. He stood by us.
- 12 Q. Are you saying that you and Moinina Fofana were in the
- 13 same room?
- 14 A. The same room? I do not get you, sir.
- 15 Q. You said you were sitting on the ground?
- 16 A. They made us sit on the ground -- my younger brother and
- 17 I. And I saw Moinina Fofana. He came from the verandah
- 18 and he stood by us. And one of the Kamajors met him and
- 19 told him that we'll come with them.
- 20 Q. How did you know that the person you called
- 21 Moinina Fofana was, in fact, Moinina Fofana? Did you
- 22 know him?
- 23 A. Well, I knew him for a long time.
- 24 Q. Where did you meet him before?
- 25 A. Well, I knew Moinina Fofana during the time they were
- 26 calling -- convening meetings with Hinga Norman at
- 27 Coronation Field in Bo.
- 28 Q. In which year did this happen?
- 29 A. I knew him from 1993, 1994, 1994. I was in Bo when they

1 were calling -- convening several meetings and I attended
2 those meetings.

3 Q. Please repeat how you called these meetings?

4 A. Well, Sam Hinga Norman was convening meetings and told us
5 how he brought fighters to fight the war.

6 Q. And had Moinina Fofana been present at those meetings?

7 A. Yes, he was present. They introduced him -- Hinga Norman
8 introduced him. He said that he was the Director of War
9 and we applauded him.

10 Q. So when you met Moinina Fofana in the Kamajor
11 headquarters in Bo, what did he say if he said anything?

12 A. Well, when he arrived, when he came out, one of his
13 junior Kamajor informed him that Pa, we'll come with him,
14 and he asked, "What type of people are this?"

15 Q. Did the junior Kamajor answer this question, "what type
16 of people are this?"

17 A. He answered the question. He said they were Temne
18 people.

19 JUDGE THOMPSON: Learned counsel, was this in reference to
20 them?

21 MR SAUTER: Yes.

22 JUDGE THOMPSON: They were Temne people. Was this in
23 reference to --

24 MR SAUTER: This is what I understood.

25 JUDGE THOMPSON: Him and his brother --

26 MR SAUTER: Moinina Fofana asked the junior Kamajor what kind
27 of people are these, or who are these people? And the
28 junior Kamajor answered, "These are Temne people."

29 JUDGE THOMPSON: That is to say, in reference to the witness

- 1 and his brother?
- 2 MR SAUTER: Yes.
- 3 JUDGE THOMPSON: All right.
- 4 MR SAUTER: This is what I understood.
- 5 JUDGE THOMPSON: Yes, I'm just trying to clear it up.
- 6 MR SAUTER:
- 7 Q. Did Moinina Fofana say or doing anything after he was
- 8 informed that you were -- or after he was told that you
- 9 were Temne people?
- 10 A. When the junior man told him that, he said now, he did
- 11 not have any business with the Temne people, because --
- 12 Q. Because what, please?
- 13 A. He said because they're brother, Foday Sankoh, brought a
- 14 war in this country, so he did not have any business with
- 15 a Temne man.
- 16 Q. Do you know who he was referring to when he said Foday
- 17 Sankoh was a Temne man? In other words, do you know who
- 18 Foday Sankoh was?
- 19 A. Foday Sankoh was the former RUF leader.
- 20 Q. What happened to your brother and you?
- 21 PRESIDING JUDGE: Sorry, Foday Sankoh is from what area? Was,
- 22 rather, from what area?
- 23 THE WITNESS: Foday Sankoh came from Tonkolili District.
- 24 Foday Sankoh is a Temne, sir.
- 25 MR SAUTER:
- 26 Q. By the way, are you belonging to the Temne tribe?
- 27 A. Yes, sir.
- 28 Q. So what happened to your brother and you after that?
- 29 A. When he has said this, he went into his office, so the

1 Kamajor took us and place us in one of the places where
2 they call a cell. It was there that they locked us up.
3 Q. Did you meet anyone else in this cell?
4 A. We met four people in that cell.
5 Q. Did you know these people?
6 A. I don't know them.
7 PRESIDING JUDGE: Mr Sauter, we are in the cell where he met
8 four people who he does not know. Do you intend to wrap
9 up that chapter in five minutes or you are entering new
10 grounds which may keep us here beyond 5.30?
11 MR SAUTER: I will not be able to finish this chapter within
12 five minutes. It will take at least 15 minutes.
13 PRESIDING JUDGE: Let us remain in the cell where they are.
14 MR SAUTER: All this chapter deals with is his stay in the
15 cell.
16 PRESIDING JUDGE: That is all right, we shall remain in the
17 cell where he is. After that, we'll see whether he is
18 released from the cell tomorrow or not.
19 MR SAUTER: I can tell you right now he is.
20 PRESIDING JUDGE: My brothers, they will revisit the cell
21 tomorrow to find out if he's released or not. This said,
22 Mr Sauter, we'll continue with your examination-in-chief
23 tomorrow morning at 9.30.
24 MR SAUTER: Thank you.
25 PRESIDING JUDGE: Learned counsel, the Court will rise and
26 will resume tomorrow at 9.30.
27 [Whereupon the hearing adjourned at 5.27 p.m., to be
28 reconvened on Tuesday, the 30th day of November 2004, at
29 9.30 a.m.]

WITNESSES FOR THE PROSECUTION:

WITNESS: TF2-088	75
CROSS-EXAMINED BY MR MARGAI: [Continued]	75
WITNESS: TF2-057	109
EXAMINED BY MR SAUTER	109

C E R T I F I C A T E

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

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

Roni Kerekes

Ella K Drury

Joanne Mankow