



Case No. SCSL-2004-14-T  
THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
SAM HINGA NORMAN  
MOINI NA FOFANA  
ALLI EU KONDEWA

WEDNESDAY, 27 SEPTEMBER 2006  
9.35 A.M.  
TRIAL

TRIAL CHAMBER I

Before the Judges:

Bankole Thompson, President  
Pierre Boutet  
Benjamin Mutanga Itoe

For Chambers:

Ms Roza Salibekova  
Ms Anna Matas

For the Registry:

Mr Thomas George

For the Prosecution:

Mr Joseph Kamara  
Mr Mohamed Bangura  
Ms Miatta Samba  
Ms Lynn Hintz (Case manager)

For the accused Sam Hinga Norman:

Dr Bu-Buakei Jabbi  
Mr Alusine Sesay  
Ms Claire da Silva (legal assistant)  
Mr Kingsley Belle (legal assistant)

For the accused Moini na Fofana:

Mr Arrow Bockarie  
Mr Andrew Ianuzzi  
Mr Steven Powlis

For the accused Allieu Kondewa:

Mr Charles Margai  
Mr Yada Williams  
Mr Ansu Lansana

1 [CDF27SEP06A - CR]  
2 Wednesday, 27 September 2006  
3 [The accused present]  
4 [The witness entered Court]  
09:34:08 5 [Open session]  
6 [Upon commencing at 9.35 a.m.]

7 PRESIDING JUDGE: Good morning, counsel. We will resume  
8 the proceeding. Mr Powles.

9 MR POWLES: Good morning, Your Honours.

09:40:05 10 PRESIDING JUDGE: Now, I take it your client is fully or  
11 substantially recovered from his illness?

12 MR POWLES: Your Honour, yes. He has recovered and, as you  
13 can see, is present in Court. He has asked me to thank all those  
14 who have wished him well over the last couple of weeks and wished  
09:40:24 15 him a speedy recovery. He has also asked me to thank  
16 Your Honours for very graciously giving us the short adjournment  
17 to allow him to fully recover. Just to assure Your Honours, of  
18 course, although we haven't been in Court for every day of the  
19 last two weeks or so, to assure you the time has been used most  
09:40:47 20 productively working on other aspects of the case.

21 While Mr Fofana is of course well and able to attend Court  
22 today, we would ask the Court's indulgence in advance, if and  
23 should the need arise, for a short break during the course of the  
24 proceedings. It is not anticipated that such a break will be  
09:41:10 25 requested but, in the event that Mr Fofana is not 100 per cent,  
26 may we ask in advance for the Court's indulgence for perhaps a  
27 short break at that point.

28 PRESIDING JUDGE: You are not familiar, but we usually take  
29 a break at 11.30. So perhaps it may well be out of a desire to

1 conserve time, at that juncture, if he can attend to whatever  
2 needs he may need to attend to.

3 MR POWLES: Your Honour, yes, I'm grateful for that  
4 indication.

09:41:42 5 PRESIDING JUDGE: Well, based on that answer, I assume we  
6 can begin the presentation of your -- of the case for the second  
7 accused. From your filing of yesterday, I note that Morries  
8 Ngobeh is your first witness?

9 MR POWLES: Your Honour, yes. And he sits in Court.

09:41:59 10 PRESIDING JUDGE: Yes, quite. And he is testifying in what  
11 language?

12 MR POWLES: In Mende. In Krio, Your Honour.

13 PRESIDING JUDGE: Right. Because I also note straightaway  
14 that he's not using any of your Rule 84 options, so we will  
09:42:10 15 proceed with the first witness. Let the witness be sworn.

16 MR POWLES: Your Honour, just before that, may I indicate  
17 that my learned friend Mr Arrow Bockarie will be taking the first  
18 witness.

19 PRESIDING JUDGE: Noted.

09:42:46 20 WITNESS: MORRIES NGOBEH [Sworn]

21 [The witness answered through interpreter]

22 PRESIDING JUDGE: Your witness, counsel.

23 MR BOCKARIE: Thank you, Your Honours.

24 EXAMINED BY MR BOCKARIE:

09:43:06 25 Q. Good morning, Mr Ngobeh.

26 A. Good morning.

27 Q. Mr Ngobeh, before I start, you are expected to speak slowly  
28 and clearly; your answer is being interpreted, so please take  
29 note of that. What is your name?

1 THE INTERPRETER: Your Honour, the witness doesn't seem to  
2 be getting the Krio version.

3 PRESIDING JUDGE: Right. Would someone inquire whether the  
4 technology is functioning at all? Apparently it is not. Court  
09:43:52 5 Management, please. Is he on the correct range?

6 MR GEORGE: I will make inquiries, Your Honour.

7 PRESIDING JUDGE: Right. Is it now remedied? Right.  
8 Let's proceed then. Right. Thanks. Let's go on.

9 MR BOCKARIE:

09:45:02 10 Q. Mr Ngobeh, you are expected to speak very slowly and  
11 clearly.

12 A. Okay.

13 Q. Your answers are being interpreted, so please take note.

14 A. I have taken note already.

09:45:26 15 Q. Can you please tell us your name?

16 A. Yes; my name is Morries Maada Ngobeh.

17 JUDGE ITOE: Gobeh or Ngobeh?

18 MR BOCKARIE: Ngobeh.

19 THE WITNESS: N-G-O-B-E-H.

09:46:03 20 JUDGE ITOE: I didn't hear the N in the pronunciation.

21 MR BOCKARIE:

22 Q. Where do you live?

23 A. Number 8 Maria Street, Sewa Bo Road .

24 Q. What is your occupation?

09:46:27 25 A. I'm mobile telephone technician.

26 Q. Are you married?

27 A. No, I'm not married.

28 Q. Mr Ngobeh, do you recall the military coup of May 1997?

29 A. Yes, I remember. I can.

1 Q. The night the coup was announced, did something happen in  
2 Bo?

3 A. Yes, something happened in Bo.

4 Q. Can you please tell us what happened?

09:47:46 5 A. Yes. That night the -- those that overthrew, that took  
6 over the government, the AFRC soldiers, they looted all the main  
7 shops in the main lorry park, which is located around Fenton Road  
8 in Bo Town.

9 Q. Now, you mentioned on that night of the coup, the soldiers  
09:48:36 10 looted the main shops in Bo. Did the civilians in any way react  
11 to that act of the soldiers?

12 A. Yes. The following morning, when the people of Bo,  
13 particularly the youths, when they heard that that was what had  
14 happened the previous night, they came into the street and  
09:49:01 15 demonstrated, saying that we -- that they didn't approve of what  
16 had happened. And, during that demonstration, they had to --  
17 they had to -- they got all the properties looted and they kept  
18 them in the Ministry of Works compound. Most of the properties  
19 were kept there.

09:49:36 20 Q. Mr Ngobeh, after this demonstration, according to you, by  
21 the civilians, did the soldiers do anything afterwards?

22 A. Yes. After that, the soldiers had -- had to go house to  
23 house, searching for people who were active in the demonstration.  
24 If they could get you, they would take you to their place and  
09:50:08 25 they would beat you severely and, at times, they were even  
26 detaining people.

27 Q. Now, after this, can you tell us briefly what was the  
28 relationship like between the civilians and the soldiers?

29 A. Yes. After that had happened, the soldiers then saw that

1 the civilians, particularly the youths in Bo, were a strong --  
2 were strong supporters of the SLPP at that time and that,  
3 therefore, they were against the revolution, and straightaway  
4 they turned the civilians into their enemies. And the  
09:51:17 5 relationship was bad.

6 Q. Mr Ngobeh, do you recall some time in February 1998, in Bo?

7 A. Yes, I remember that time, February 1998.

8 Q. Did anything happen in Bo which is of significance to you?

9 A. Yes, at that time, there was trouble in Bo. We were in Bo  
09:52:14 10 when we heard that ECOMOG had come and captured Freetown. At  
11 that time, the junta forces were in Bo; they were all over the  
12 town. But fear had gripped the town because, when they were in  
13 Freetown here -- because they were dislodged from Freetown, they  
14 pretended as if they had left the town, that is, Bo Town. But  
09:52:46 15 people who were in the neighbouring areas, that is reservation,  
16 which was their headquarters, people who were in the  
17 neighbourhood raised the alarm, saying that these guys had left.  
18 But people still didn't believe. But if you could go through the  
19 rest of the town, we all believed then that they had gone,  
09:53:05 20 indeed. At that time, the people, including youths, came down to  
21 the streets and started tracing those who were collaborating with  
22 the juntas. Whosoever they saw, they would kill and they would  
23 burn that person's house. In fact, they were even burning  
24 people.

09:53:27 25 Q. Yes. Can you give instances of junta collaborators whose  
26 houses were burnt by the youths?

27 A. Yes. I know people who were junta collaborators, whose  
28 houses were burnt. One of them was Alie Fataba, whose house was  
29 located along Jerry Road, but World Vision was using that house

1 as an office. But when that thing happened, since the youths  
2 were in control of the town at that time, right to that time,  
3 they went to the place and looted all of World Vision's property,  
4 took it out of the office and set the house on fire. After that,  
09:54:28 5 Victor Foh --

6 Q. Sorry, who was Victor Foh?

7 A. Victor Foh, everybody who was listening to the news -- his  
8 name was over the news. He was a very senior man in the AFRC, so  
9 everybody in Bo had that in mind. So when that happened, that  
09:54:54 10 was the reason that the civilians revenged. And, again, MB  
11 Sesay, his house also was burnt. The house was situated along  
12 Fenton Road and he had another along Kawusu Street.

13 Q. Go slowly, Mr Witness, please. Yes, you mentioned  
14 MB Sesay. Continue.

09:55:36 15 A. MB Sesay, they burnt his house. They burnt Joe Amara  
16 Bangali's house, who was the finance --

17 Q. Who was Joe Amara Bangali?

18 A. Joe Amara Bangali was the finance minister for the AFRC.  
19 Everybody knew that.

09:56:06 20 Q. Yes, who else do you recall had his house burnt?

21 A. Victor Foh's house was burnt.

22 Q. Okay.

23 JUDGE ITOE: He has mentioned Victor Foh.

24 MR BOCKARIE: He has mentioned, yes, My Lord.

09:56:29 25 Q. You said you stayed at Maria Street. How close is Maria  
26 Street to Southern Motel?

27 A. Maria Street is not too far from Southern Motel. It's a  
28 walking distance. You walk from my house to the motel.

29 Q. Yes. And Southern Motel was owned by who?

1 A. He was a businessman, Dr MB Sesay, who was a collaborator.  
2 Everybody knew that in Bo.

3 Q. Do you also know of another motel called Eastern Motel?

4 A. Yes, I know Eastern Motel, and Eastern Motel, again, was  
09:57:34 5 owned by the same man, Dr MB Sesay.

6 Q. Did anything happen to Eastern Motel?

7 A. Yes. Something happened to Eastern Motel.

8 Q. Please tell us what happened.

9 A. Eastern Motel --

09:58:03 10 JUDGE ITOE: Is it eastern or Easter?

11 THE WITNESS: Eastern.

12 JUDGE ITOE: Easter?

13 THE WITNESS: Eastern, eastern. South and eastern.

14 JUDGE ITOE: Right, thank you.

09:58:12 15 THE WITNESS: Eastern Motel was not complete at that time.

16 Eastern Motel was an uncompleted building at that time. People  
17 had not started using it. But it had corrugated iron sheets at  
18 that time. It had windows at that time. So what you decided was  
19 to take off all the corrugated iron sheets and the windows, but  
09:58:46 20 it was not burnt.

21 MR BOCKARIE:

22 Q. Mr Ngobeh, can you tell us when this burning started by the  
23 youths? When did it start, by the youths, according to you?

24 A. Yes. I can remember. That Friday morning --

09:59:16 25 Q. Can you recall the day?

26 A. Yes.

27 Q. So you say it started on a Friday?

28 A. It started on a Friday, when the people knew that the junta  
29 had gone out of the brigade headquarters.

1 Q. Now, tell this Court, at the time this burning was going  
2 on, were there any other forces in Bo?

3 A. No. The town was in the hands of the civilians, everybody  
4 knew about that. The junta forces had pulled out of the town.  
10:00:01 5 They pulled out tactically. Kamajors were not in the town. The  
6 youths were in the town. The youths. There were different sets  
7 of youths. One set would be doing its own here and the other set  
8 would be doing some other thing elsewhere. That was how the  
9 burning was going on.

10:00:37 10 Q. Did the Kamajors eventually enter Bo Town?

11 A. Yes. The Kamajors had to come to the town. For the rest  
12 of the day, on Friday, the town was in the hands of the youths.  
13 Saturday, it continued like that. Sunday, in the morning, the  
14 Kamajors came to Bo. When they came, the burning stopped.

10:01:19 15 Everybody received them joyously. The people were dancing for  
16 the rest of that day. The dancing went on for the rest of the  
17 day and it continued on Monday. Everybody was happy, dancing.  
18 And, on Tuesday morning, the junta forces regrouped. We just  
19 heard bombardment from the New London area, and we saw crowds of  
10:02:04 20 people coming; everybody was running.

21 Q. Yes, Mr Witness. Sorry. Do you know Southern Motel?

22 A. Yes, I know Southern Motel. I live near that place. It's  
23 the same section where the motel is, the same section that I  
24 live.

10:02:38 25 Q. Did anything happen to this motel whilst the youths were in  
26 control of the town?

27 JUDGE BOUTET: Hasn't he just testified about that?

28 MR BOCKARIE: Well, he mentioned Eastern Motel, My Lord.

29 JUDGE BOUTET: No, Southern Motel.

1 MR BOCKARIE: As well, My Lord.

2 JUDGE BOUTET: Well, at least I have that in my notes. He  
3 said that MB Sesay was the owner of the Southern Motel, they set  
4 it on fire before. I mean, that's his evidence, unless you want  
10:03:04 5 to lead some other evidence, I don't know.

6 MR BOCKARIE: Sorry. Okay, My Lord. I thought I skipped  
7 it.

8 JUDGE BOUTET: At least I have that in my note and I heard  
9 that before. Mr Bockarie, I have in my note that it was owned by  
10:03:24 10 the same MB Sesay, Dr MB Sesay, who was also the owner of the  
11 Eastern Motel.

12 MR BOCKARIE: Yes.

13 Q. Now, can you tell us if anything happened to Southern Motel  
14 while the youths were in control of the town?

10:03:41 15 A. Yes, something happened to Southern Motel, yes.

16 Q. Tell this Court what happened.

17 A. When the youths were in control of the town, since Dr MB  
18 Sesay was known by everybody as a collaborator, and rumours were  
19 moving around town that he even was giving Kamajor wearings junta  
10:04:13 20 forces, to be using it, to be behaving as if they were Kamajors.

21 So after that had happened, a particular group went there and  
22 they looted all the property that were in the motel. After they  
23 had taken out all the property, the motel was set ablaze. But  
24 the fifth apartment was not burnt. They took out all the  
10:04:44 25 windows, the steel doors, but it was not burned. The one that  
26 was in front was burned.

27 Q. Thank you very much, Mr Witness. Thank you very much.

28 MR BOCKARIE: Thank you very much, Your Honours. That will  
29 be all for this witness.

1 PRESIDING JUDGE: Thank you. Learned counsel for the first  
2 accused, any cross-examination?

3 MR SESAY: No questions, Your Honour.

4 PRESIDING JUDGE: Counsel for the third accused?

10:05:14 5 MR MARGAI: No questions, My Lord.

6 PRESIDING JUDGE: Learned counsel for the Prosecution?

7 MR KAMARA: Yes, My Lord.

8 PRESIDING JUDGE: Your turn.

9 CROSS-EXAMINED BY MR KAMARA:

10:05:26 10 MR KAMARA:

11 Q. Good morning, Mr Witness.

12 A. Good morning.

13 Q. I shall be asking you a few questions and I want you to be  
14 very brief and direct in your answers; okay?

10:05:45 15 A. Yes, sir.

16 Q. All right. This morning in your evidence you said you were  
17 in Bo Town in 1997, after the coup.

18 A. Yes, I was there.

19 Q. I take it, at that time, you were about 26 years old; am I  
10:06:12 20 correct?

21 JUDGE BOUTET: Did you say 26 years old?

22 MR KAMARA: Twenty-six, yes, My Lord.

23 Q. I'm asking you.

24 A. I was born in 1972.

10:06:38 25 Q. Yes.

26 A. So --

27 Q. You must be about 26 years by 1997.

28 A. Yes, it is about that age.

29 Q. Thank you. And, at that point in time, you considered

1 yourself as a youth; am I right?

2 A. Yes. I was a youth at that time.

3 Q. And, according to your evidence this morning, you said when  
4 the soldiers retreated tactically, if I recall, the youths gained  
10:07:36 5 control of Bo Town; is that not so?

6 A. That is what happened, sir.

7 Q. And you were one of them?

8 A. I was not one of them although, at that time, I was a  
9 youth.

10:08:00 10 Q. But you were there when these happenings occurred, as you  
11 reported; correct?

12 A. I was in Bo when all these things happened, but not -- but  
13 I did not go everywhere. Those that were close to where I was, I  
14 would go there and see.

10:08:40 15 Q. Mr Witness, where was Eastern Motel in Bo?

16 A. Eastern Motel is along the junction, Kawusu Street and  
17 Diava Street junction.

18 Q. And how far is that from your home?

19 A. It is not too far. It's just about a walking distance,  
10:09:14 20 because I live at Maria Street. If there were no houses in  
21 between, I would be at my house and see Eastern Motel.

22 Q. And how far is your home from Fenton Road?

23 A. Fenton -- from Fenton Road to my house is a little bit far.

24 Q. So you'll agree with me that you were moving around the Bo  
10:09:49 25 township when these incidents occurred?

26 A. I was moving around Bo Town when things happened, but it  
27 was not the same day. If it happened today, the ones -- those  
28 that were far off we'd go there the next day. It was not a  
29 hidden thing, because people would say, "Here, this place, it

1 belongs to a collaborator." Because he was a collaborator, so it  
2 was burnt. So, at that time, everybody was concerned and they  
3 were saying the truth.

4 Q. Mr Witness, in your evidence a few minutes ago, you were  
10:10:24 5 telling this Court about incidents on the Friday. Are you now  
6 saying - correct me if I am wrong - that the different occasions  
7 you mentioned never occurred on that Friday?

8 A. Things happened on Friday, and it continued on Saturday.  
9 That is what I said some time ago. It happened on Friday, and it  
10:10:56 10 continued on Saturday. On the Sunday, on the Sunday morning, the  
11 Kamajors came.

12 Q. All right. Let me help you and we'll take it step by step.  
13 The burning of Alie Fataba's house occurred on the Friday; am I  
14 right?

10:11:14 15 A. It's correct. It happened on Friday, and others happened  
16 because it was not a single set of youths.

17 Q. Mr Witness, my question is specific to Alie Fataba's house.  
18 Let's take it at that point, okay. And the burning of  
19 Victor Foh's house occurred on that Friday as well; correct?

10:11:45 20 A. At that time we're talking about, and now, is a very long  
21 time. Those two areas were burned within Friday, Saturday. But  
22 to say -- it was a crisis time. I recall that this Friday, it  
23 happened the Friday, on the Saturday. But it was within the two  
24 days that those incidents occurred.

10:12:18 25 Q. All right. So, are you conceding to the fact that you are  
26 not sure about your memory relating to these incidents?

27 A. I'm sure of it, because Bo Town is a town wherein if any --  
28 if they were doing anything, they would not hide about it. They  
29 will say it out. They will go about the streets and saying it.

1 So I'm sure of what I'm saying.

2 Q. Yes, but you are not sure as to whether it was burnt on a  
3 Friday or Saturday; you cannot now recall?

4 A. I can't recall.

10:13:02 5 Q. Thank you. And you also cannot recall, as you sit there,  
6 the day that Joe Amara Bangali's house was burnt?

7 A. Joe Amara Bangali's house, that was on Friday. Friday. As  
8 the group -- as this set of group of youths were operating in  
9 this section, Jegbeyama would be operating their own section.

10:13:34 10 That is how it happened. Southern Motel and Joe Amara Bangali's  
11 house happened the same day; I can recall that.

12 Q. And where in Bo was Joe Amara Bangali's house?

13 A. Joe Amara Bangali's -- he had so many houses in Bo, so I  
14 don't know which house you are talking about.

10:14:06 15 Q. Mr Witness, earlier this morning you spoke about a house of  
16 Joe Amara Bangali being burnt, and I am now asking you about that  
17 house. Do not take us anywhere else, okay. Let us speak about  
18 the evidence that you have given before this Court; all right?  
19 Was one of Joe Amara Bangali's houses burnt on that day; yes or  
10:14:27 20 no?

21 A. Yes. Joe Amara Bangali's house was burnt on that day.

22 Q. Where was that house?

23 A. The house was along Sillah Street. I don't know the number  
24 in Jagbwema.

10:14:46 25 Q. And Sillah Street is not close to your home; you'll agree  
26 with me?

27 A. The distance is far.

28 Q. Now, Mr Witness, I suggest to you that you were part of  
29 that group that was moving around Bo Town on that day?

1 A. That very day?

2 Q. Friday, the Friday.

3 A. That very Friday. That very Friday, I was the man who was  
4 not moving about the town on that day. I did not go that far. I  
10:15:36 5 said, that those that were close to my house, I would go there to  
6 see.

7 Q. Thank you. And you were telling this Court this morning  
8 that you observed that, on that day, there were no other forces  
9 in Bo Town, when you never left your home?

10:15:58 10 A. Yes. The only force that was in Bo at that time was the  
11 AFRC forces. If they had pulled out of the town, there was no  
12 other force there, because Kamajors had not come then. So, there  
13 were no forces in the town. If --

14 Q. Let me help you.

10:16:21 15 A. Yes.

16 Q. If you were at your home, you wouldn't know if there were  
17 other forces in other parts of Bo; am I right?

18 A. I did not get you clear.

19 Q. You gave evidence this morning that you were at your home  
10:16:41 20 on Friday. And I'm putting it to you that, if that is correct,  
21 you cannot know if other forces were operational in other parts  
22 of Bo; is that not true?

23 A. If other forces were there, they -- they would have been  
24 the talk all over the township.

10:17:05 25 Q. I'm not talking about talk all over the township, I'm  
26 restricting it to your personal knowledge. Would you know that  
27 other forces were operating elsewhere?

28 A. That is what I have said. At that time, anything that  
29 happened would spread all over the town. Other forces were not

1 in town, sir.

2 Q. And, Mr Witness, you also testified this morning that  
3 you're not sure as to whether certain incidents occurred on the  
4 Friday or on the Saturday; that is correct, right? I am stating  
10:17:56 5 your evidence correctly.

6 JUDGE ITOE: But I haven't got any reply to --

7 MR KAMARA: Sorry.

8 JUDGE ITOE: -- the finality of the question put to him.

9 MR KAMARA: Yes. Thank you, My Lord.

10:18:05 10 Q. Mr Witness --

11 JUDGE ITOE: Where are we?

12 MR KAMARA: Yes.

13 Q. Mr Witness, I posed a question to you a few seconds ago  
14 that, according to your evidence, you were at home on Friday.

10:18:19 15 And the question I pose is: If that is correct, you're not in a  
16 position to know whether other forces were operational in other  
17 parts of Bo Town. Is that not a correct position?

18 A. That is why I said it was only the junta forces were in  
19 town. After they had pulled out, there was no other force,  
10:18:51 20 because Kamajors had not come yet. So, there was no other force  
21 there. Even when I was in my house, I was not right locked up in  
22 my house. I was outside, to stand outside. I had the chance to  
23 come out and look, and come back to my house.

24 Q. Are you suggesting to this Court that, while you were at  
10:19:19 25 Maria Street, you knew what was happening at Blama Road?

26 MR BOCKARIE: My Lord, just for clarity, Blama Road where,  
27 My Lord?

28 MR KAMARA: Blama Road towards Kenema.

29 MR BOCKARIE: Sorry, My Lord.

1 MR KAMARA:

2 Q. Are you suggesting to this Court that, while you were at  
3 Maria Street, you knew what was happening at Blama Road, wherever  
4 that is in Bo, or New London, to be more specific, New London in  
10:20:07 5 Bo?

6 A. New London -- in fact, I was in my house when I knew that  
7 it was around that part the juntas regrouped to come back. The  
8 communication within the township was so powerful that, at that  
9 time, people were concerned. So when something happened, it will  
10:20:32 10 go right around the town.

11 Q. Mr Witness, let me stop you. You are not answering the  
12 question. It is a very simple question. While you were at Maria  
13 Street in Bo, are you in a position to know what was happening in  
14 New London? That was the question; yes or no.

10:20:52 15 PRESIDING JUDGE: I think his mind-set is that rumours  
16 were, in fact, one method of knowing. It would seem as if that  
17 is what he's emphasizing.

18 MR KAMARA: Your Honour, I'm restricting him to his  
19 knowledge, his personal knowledge.

10:21:05 20 PRESIDING JUDGE: He seems to come with a mind-set.

21 MR KAMARA: Exactly, My Lord. I'm restricting him to his  
22 knowledge.

23 PRESIDING JUDGE: Go ahead.

24 MR KAMARA:

10:21:11 25 Q. So, Mr Witness, I'm asking you this question about  
26 yourself; what do you know? While you were at Maria Street, are  
27 you in a position to know what was happening in New London?

28 A. Yes, because just like what -- when it happened on Friday,  
29 on Saturday, I would come out, because I have seen that if you

1 were not a collaborator, and you had no link with the AFRC, they  
2 would not do anything to you, so you would go there and see.  
3 When you got there, you will get information and we believed in  
4 information.

10:21:54 5 Q. So, Mr Witness, you are someone who is heavily reliant on  
6 rumours; am I correct? You believed in the information; right?

7 A. Not at all times.

8 Q. And in such times as what you have given in evidence before  
9 this Court, they are such times of rumours; am I correct?

10:22:23 10 A. Yes.

11 Q. Thank you.

12 A. I believed in Bo Town rumours.

13 Q. Thank you. Thank you very much. And, Mr Witness, it is  
14 through rumours that you heard about these burnings, such as the  
10:22:40 15 one of Joe Amara Bangali's house; yes or no?

16 A. Your question, I don't understand it.

17 Q. Oh, now you are not understanding me. All right, I'll pose  
18 it again. Is it through rumours that you got to know about the  
19 burning of Joe Amara Bangali's house?

10:23:10 20 A. I went there. I told you that the next day we'd go down  
21 and walk about the streets, and I saw it. I was not there when  
22 it got burnt, but I saw it burnt. And people will tell you that,  
23 yesterday, these were the people that did this action, these were  
24 the people that did this thing.

10:23:26 25 Q. Yes. So people told you that someone burnt Joe Amara  
26 Bangali's house; you were not there when it was burnt?

27 A. I was not there at all.

28 Q. Thank you. And you also heard that Joe Amara Bangali's  
29 house had been burnt, and that is why you went there; correct?

1 A. Yes.

2 Q. So you yourself never actually knew who burnt those houses?

3 A. I know those who burnt it, because I have told you that  
4 anything that happened at that time, people were concerned. They  
10:24:17 5 will say it openly.

6 Q. All right, Mr Witness. Did you yourself see any burning?

7 A. Yes.

8 Q. Which one?

9 A. I saw Southern Motel with my own very eyes when it was  
10:24:40 10 burning.

11 Q. Yes. Did you see Joe Amara Bangali's house being burnt?

12 A. No. I have told you that I did not see when it was burnt.

13 Q. Did you see Victor Foh's house being burnt?

14 A. No. It was the next day that I went there.

10:25:03 15 Q. Then you'll agree with me that you do not know who did  
16 those acts yourself; you were only informed?

17 A. Bo Town --

18 Q. Mr Witness, let us have a yes or no to this question, okay.  
19 You were not there when these houses were burnt.

10:25:32 20 MR BOCKARIE: I'm sorry, My Lord. Will the witness be  
21 allowed to answer the question.

22 PRESIDING JUDGE: Right. Counsel, give the witness a  
23 chance, but you can restate it for the sake of clarity.

24 MR KAMARA: Yes, My Lord.

10:25:46 25 Q. You have given evidence that you were not there when Joe  
26 Amara Bangali's house was burnt. You also gave evidence that you  
27 were not there when Victor Foh's house was burnt. My question to  
28 you is this: You do not know who did these acts at all.

29 MR BOCKARIE: Yes, My Lord, I would like to object.

1 PRESIDING JUDGE: What is the objection?

2 MR BOCKARIE: There is finality to questions asked in  
3 cross-examination. The witness has said in very clear and  
4 unequivocal terms that he did not see when Joe Amara Bangali's  
10:26:22 5 house was burnt, but the following morning he went there and  
6 ascertained it.

7 PRESIDING JUDGE: Yes. But, counsel, I don't think there  
8 is anything wrong if counsel probes further to find out whether  
9 he did know or whether he did not know what --

10:26:34 10 MR BOCKARIE: As My Lord --

11 PRESIDING JUDGE: So I will not sustain the objection.

12 MR BOCKARIE: As My Lord pleases.

13 PRESIDING JUDGE: Continue counsel.

14 MR KAMARA: I appreciate, My Lord.

10:26:43 15 Q. You can answer the question, Mr Witness.

16 PRESIDING JUDGE: Put it again to him. I mean, it is quite  
17 clear, really. He can answer it.

18 MR KAMARA: Yes, My Lord. I will still put the premises.

19 Q. You gave evidence before this Court you were not there when  
10:27:07 20 Victor Foh's house was burnt. You also gave evidence you were  
21 not there when Joe Amara Bangali's house was burnt. The question  
22 is: You do not know who did these acts.

23 PRESIDING JUDGE: Do you agree or do you not agree?

24 THE WITNESS: I know -- I knew who did -- those who did it.

10:27:32 25 MR KAMARA:

26 Q. You were told or did you know by yourself?

27 A. They said it, and I believed the source of information.  
28 Everybody believed in the source.

29 Q. Thank you, Mr Witness. You leave the rest for this Court.

1 MR KAMARA: No further questions for this witness, My Lord.

2 PRESIDING JUDGE: Thank you, learned counsel. Any  
3 re-examination, Mr Bockarie?

4 MR BOCKARIE: None, My Lord. Thank you very much, My Lord.

10:28:03 5 PRESIDING JUDGE: You're welcome. Mr Witness, thank you  
6 for your testimony. You are now released.

7 THE WITNESS: Thank you, My Lord.

8 PRESIDING JUDGE: Can the Victims and Witnesses Unit please  
9 escort the witness out of Court? Is your second witness

10:28:26 10 available?

11 MR POWLES: Your Honour, yes. The second witness is  
12 Mohammed Fallon.

13 PRESIDING JUDGE: Right.

14 [The witness withdrew]

10:29:18 15 PRESIDING JUDGE: Counsel, did you, in your application,  
16 indicate that you'd call another witness out of sequence? The  
17 next witness, would it be out of sequence?

18 MR POWLES: Yesterday, Your Honour, no.

19 PRESIDING JUDGE: No. So, in fact, this is sequential?

10:29:41 20 MR POWLES: Your Honour, yes.

21 PRESIDING JUDGE: Right. And does the Prosecution concur  
22 on that position?

23 MR KAMARA: Yes, My Lord, we have given our word.

10:29:56 24 PRESIDING JUDGE: Right, we'll continue then. Will Victims  
25 and Witnesses Unit secure the presence of the other witness,  
26 please? I'm informed about some difficulty in securing this  
27 witness's presence at this point in time. I do not intend to  
28 provide details of this, but Court Management is requesting a  
29 short stand down, and I'll grant it.

1 [Break taken at 10.28 a.m.]

2 [The witness entered Court]

3 [Upon resuming at 10.37 a.m.]

4 PRESIDING JUDGE: Counsel, your witness.

10:40:21 5 MR POWLES: Thank you very much for the time, Your Honours.

6 Your Honours, the next witness is Mohammed Fallon. I wonder if

7 he may be sworn.

8 PRESIDING JUDGE: Will the witness be sworn, please? And

9 the language is Mende, is it?

10:40:39 10 MR POWLES: Your Honour, yes.

11 WITNESS: Mohammed Fallon [Sworn]

12 [The witness answered through interpreter]

13 EXAMINED BY MR POWLES:

14 Q. Mr Fallon --

10:41:23 15 A. Yes, sir.

16 Q. -- could you give the Court your full name, please?

17 A. I am Mohammed Fallon.

18 Q. And what is your date of birth?

19 A. I take it to be that I am 47.

10:41:50 20 Q. What year were you born?

21 A. I can't say that now to you. I take it to be that,  
22 roughly.

23 Q. Where were you born, Mr Fallon?

24 A. Kati.

10:42:15 25 Q. And where is that?

26 A. Nongoba Bullom, Bonthe District.

27 Q. And where do you live at the moment?

28 A. I live at Jembeh.

29 Q. What is your current occupation?

1 A. I'm a farmer.

2 Q. And have you always been a farmer?

3 A. I also mine for diamonds.

4 Q. And apart from mining and farming, have you ever done  
10:43:00 5 anything else?

6 A. I've not done anything else besides that.

7 Q. What were you doing during the war in Sierra Leone?

8 A. During the war, I was still a farmer. Whilst I was doing  
9 that, I also joined the war.

10:43:32 10 Q. And on which side did you join the war?

11 A. Tassor, Fullah Bagbo.

12 Q. Which fighting force were you with?

13 A. The Kamajors.

14 Q. And when did you become a Kamajor?

10:44:11 15 A. '96.

16 Q. And do you remember at what time of the year it was? Was  
17 it at the beginning of 1996 or the end?

18 A. At the beginning.

19 Q. And why, Mr Fallon, did you join the Kamajors?

10:44:43 20 A. When our people were suffering, we were also suffering for  
21 us -- for us to have peace and our people to have peace. That  
22 was the reason I joined the Kamajors.

23 Q. When you joined the Kamajors, did you have any weapon?

24 A. Yes.

10:45:02 25 Q. What did you have?

26 A. A machete.

27 Q. Now, Mr Fallon, do you have any brothers and sisters?

28 A. My own child? I'm asking a question. Are you talking  
29 about my child?

1 Q. No, Mr Fallon, I'm asking whether you have any brothers and  
2 sisters.

3 A. I have brothers and sisters, too.

4 Q. Did any of your brothers, like you, join the Kamajors?

10:46:00 5 A. Yes.

6 Q. How many of your brothers joined the Kamajors?

7 JUDGE ITOE: Mr Powles, could you wait for the reply,  
8 please?

9 THE WITNESS: There were two, and I was the third.

10:46:13 10 MR POWLES:

11 Q. Who were the other two who joined the Kamajors?

12 A. The first one was Mustapha Fallon, and the other is Alia  
13 Fallon.

14 Q. And when did Mustapha Fallon --

10:46:46 15 JUDGE ITOE: Mr Powles, may we record the answers, please?

16 MR POWLES: Your Honour, yes.

17 JUDGE ITOE: Mustapha Fallon and who? What's the name of  
18 the second one?

19 THE WITNESS: Alia Fallon.

10:47:20 20 MR POWLES:

21 Q. Mr Fallon, when did Mustapha Fallon, your brother, join the  
22 Kamajors?

23 A. '95.

24 Q. And do you know where Mustapha Fallon was based, when he  
10:47:35 25 was a Kamajor?

26 A. Yes.

27 Q. Where was he deployed?

28 A. At first, they were in Kalleh, Voijnama. When he left  
29 there, he came to Tassor. When he left Tassor, he came to

1 Sengehun. In 1997, he then came to Sumbuya. That was where he  
2 stopped.

3 Q. And did you visit him in any of those locations?

4 A. Yes.

10:48:49 5 Q. Which ones?

6 A. When he was in Tassor, I used to visit him. When he was in  
7 Sengehun, I used to go there. When he was in Sumbuya, I used to  
8 go there as well.

9 Q. Now, Mr Fallon, have you heard of a place called Kori bundu?

10:49:06 10 A. Yes.

11 Q. Did there come a time when you heard that the Kamajors  
12 intended to attack Kori bundu?

13 A. Yes.

14 Q. When was that, Mr Fallon?

10:49:36 15 A. The time the AFRC attacked Gondama, the Nigerian soldiers  
16 were in Gondama. That was the same month.

17 Q. How did you hear about the proposed attack on Kori bundu?

18 A. At first, a message came from Borbor Tucker, who was also  
19 called Death Squad. He came and looked for Kamajors in order for  
10:50:17 20 them to come to Kori bundu.

21 Q. Did you know anyone who was enlisted by Borbor Tucker to  
22 take part in the operation?

23 A. Yes.

24 Q. Who?

10:50:33 25 A. Mustapha Fallon.

26 Q. Your brother?

27 A. Yes.

28 Q. Where were you based at that time, Mr Fallon?

29 A. Gbaama.

1 Q. And who was your commander, at that time?

2 A. When we came, we were with Vanje.

3 Q. And did Vanje receive any instructions?

4 A. The time -- the time Borbor Jegbeyama --

10:51:37 5 THE INTERPRETER: Your Honours, may the witness go over the  
6 last bit?

7 MR POWLES:

8 Q. Witness, can I ask --

9 PRESIDING JUDGE: Witness -- let him repeat the last part.

10:51:45 10 MR POWLES:

11 Q. Mr Witness, can I ask you to repeat your answer, because  
12 the interpreters didn't hear everything that you said.

13 A. Okay. Yes. At the time Borbor Jegbeyama was about to come  
14 to Kori bundu, he sent a message to Vanje, and he said that they  
10:52:14 15 were about to enter Kori bundu. Not only that, the road leading  
16 from Kori bundu to Gbaama, that we should make sure that that  
17 particular road is blocked.

18 Q. And which road was that?

19 A. The road leading from Kori bundu to Gbaama.

10:52:39 20 Q. And what was the purpose of blocking that road?

21 A. So that the people in Kori bundu -- those in Kori bundu would  
22 not come and harass our people.

23 Q. When you say "those people," which people do you mean?

24 A. Civilians.

10:53:13 25 Q. Did you follow those instructions that were given to  
26 Vanjawai?

27 A. Yes.

28 Q. And how many people were involved in blocking the road?

29 A. We were 25 in number.

1 Q. And who was leading that group of 25?

2 A. Ensa Kallon.

3 Q. And how long did you block that road for?

4 A. It was just for a night.

10:54:08 5 Q. Now, while you were there -- how far is that position from  
6 Kori bundu?

7 A. It's far a bit, but I can't give you the exact mileage,  
8 because I don't know.

9 Q. Could you hear anything, any sounds, coming from Kori bundu?

10:54:37 10 A. Yes.

11 Q. What did you hear?

12 A. In the morning, we heard gunshots coming from Kori bundu.

13 Q. In your position on the road, did you meet any people  
14 coming from Kori bundu?

10:55:04 15 A. After the gun -- the sound of gun had gone for a very long  
16 time, we saw a young man coming with a -- with a palm leaf tied  
17 around his head. He came with a message to us.

18 Q. And what was the message that that young man brought to  
19 you?

10:55:28 20 A. He told us that Kamajors were now in Kori bundu, that the  
21 AFRC were no longer there. That was the first piece of message  
22 that he delivered to us.

23 Q. Did you receive any other messages?

24 A. Yes.

10:55:47 25 Q. Who from?

26 A. We got it from a woman. That woman came and had blood on  
27 her, and we called her, and we asked her. She said she had come  
28 from Kori bundu. We said, "We have got a message that our  
29 brothers are in Kori bundu; is that correct?" And she said, "No.

1 And, in fact, that person that came with that message to you is a  
2 soldier." And, even myself, I had left -- most of your colleague  
3 Kamajors have been captured and some of them are dead, even.  
4 That was her own brand of message that she delivered to us.

10:56:36 5 Q. Just going back, what did she tell you about the first man  
6 you'd seen? You said he was a soldier. Which force did you  
7 understand him to be with?

8 A. The person that came was a civilian. He was not -- she was  
9 not a member of any group, that woman. But, that man, she said  
10:57:04 10 he was a soldier.

11 Q. Yes, and which force was he with, according to this woman?

12 A. In those times, whenever I see soldiers, we didn't know to  
13 what group they would belong. We only knew they all belonged to  
14 one group.

10:57:42 15 Q. Did you believe him to be a Kamajor?

16 A. That man?

17 Q. Yes.

18 A. No.

19 Q. Then which force was he with?

10:58:05 20 A. He was part of the AFRC group.

21 JUDGE ITOE: Which man? The man who had preceded the  
22 woman?

23 MR POWLES: Your Honour, yes.

24 Q. And why do you believe he told you that Kori bundu was in  
10:58:25 25 the hands of the Kamajors?

26 MR KAMARA: My Lord, I would object to that question.

27 Counsel is cross-examining his own witness.

28 PRESIDING JUDGE: Sustained.

29 MR POWLES:

1 Q. Now --

2 PRESIDING JUDGE: Could it be reformulated?

3 MR POWLES: Certainly, yes.

4 Q. Now, Mr Fallon, you said that the first man that you  
10:58:46 5 believed to be a member of the AFRC, did the woman tell you  
6 anything about that?

7 A. That is what I told you. Listen carefully. That woman  
8 that came, she said, that the person who had brought that message  
9 for us, that man, was a soldier, so she didn't go anywhere.

10:59:17 10 Q. Thank you, witness. Now, you've told us already that your  
11 brother was a part of the Kamajor forces who were to take  
12 Kori bundu. When you heard this message from the woman, what did  
13 you decide to do?

14 A. At the time I got the message, our commander Ensa Kallon, I  
11:00:03 15 told him. I said, my brother had gone there. They had taken him  
16 -- they had taken him to that place. I wanted to go to Kori bundu  
17 myself, to know if that is correct, if soldiers are there or  
18 Kamajors are there. And he granted me permission. So I went on  
19 that recky mission. I took off my Kamajor clothing and I gave it  
11:00:25 20 to him and put on a waistcoat, a black waistcoat and put on a  
21 jeans trousers. Initially, they used to give us a card, the  
22 Kamajor card, and I put it in my underpants, and I went.

23 Q. Why did you do that, Mr Fallon?

24 A. For me to know if that thing that that man had come to tell  
11:01:01 25 us, that those people in Kori bundu were colleagues. And that  
26 woman had also had told us that those who were not our brothers.  
27 And my brother was there, so I -- and when that woman told us  
28 that men who had been killed, so I wanted to know. So I  
29 sacrificed my life, and I went.

1 Q. Did anyone go with you to Kori bundu, Mr Fallon?

2 A. I went alone.

3 Q. And how did you go to Kori bundu?

4 A. I was using bypass routes, and there was a town very close  
11:01:42 5 to Kori bundu called Bendu, and that was where I went and then I  
6 entered Kori bundu.

7 Q. What did you see when you got to Kori bundu?

8 A. When I got to Kori bundu, where you have that storey  
9 building at the roundabout, there were several people there,  
11:02:13 10 civilians, and I went closer to them. But they were dancing, and  
11 I also joined the dance. I saw six corpses on the ground. I saw  
12 four Kamajor clothes hanging on a stick, and I saw someone  
13 sitting. He was hopeless, having blood all over him. And he  
14 took up his head and I saw that it was my brother, indeed,  
11:02:39 15 Mustapha Fallon, and he shook his head, and I went backward.

16 Q. Why did your brother shake his head?

17 A. I can't say why he shook his head, because he was hopeless.

18 Q. After your brother shook his head, did you see anything  
19 happen?

11:03:18 20 A. Yes.

21 Q. What did you see, Mr Fallon?

22 A. I saw a man having military uniform on, having a knife on  
23 his side, and he took out that knife and put it into his stomach,  
24 and he slit it open. And he took out his entrails, his  
11:03:41 25 intestine; that was what I saw. And he said he was going to make  
26 it into a checkpoint.

27 Q. Take your time, witness. How did you feel when you saw  
28 that?

29 A. At that time, my life was with God now, because if I'd done

1 anything, I'd also be a dead man and, at that time, the two of us  
2 would be dead, so what I did, I took one of the --

3 THE INTERPRETER: Your Honours, may the witness lessen his  
4 pace?

11:04:21 5 MR POWLES: Witness --

6 PRESIDING JUDGE: Witness, please slow down.

7 MR POWLES:

8 Q. Pause, Mr Witness. Before we move on to what you did, were  
9 you able to identify the man who killed your brother?

11:04:49 10 A. I saw him but he was not alone. Four of them were beating  
11 him.

12 Q. And do you know which forces those four men and that man  
13 were with?

14 A. Yes.

11:05:12 15 Q. Which forces were they with?

16 A. The AFRC.

17 Q. So, after you saw these men from the AFRC kill your  
18 brother, what did you do, Mr Fallon?

19 A. Except when I took the Kamajor clothes, and I went and I  
11:05:43 20 explained to our commander that my brother had been killed in the  
21 war and, at that time, I -- I still had the bullets in me. I  
22 couldn't go into the village.

23 Q. Did you tell anyone, other than your commander, about what  
24 you'd seen happen to your brother?

11:06:07 25 JUDGE ITOE: What bullets is he referring to, Mr Powles?  
26 He's referring to bullets; what bullets is he referring to?

27 MR POWLES: Yes.

28 Q. Well, witness, you've heard His Honour's question. What  
29 bullets are you referring to?

1 A. I was shot during the war so I had bullets in my flesh.

2 Q. When were you shot, Mr Fallon?

3 A. '97.

4 Q. Going back, did you tell anyone what you'd seen happen to  
11:06:40 5 your brother?

6 A. Yes.

7 Q. Who did you tell?

8 A. At first I told our commander, Ensa Kallon, and then the  
9 other commander Baoma Chiefdom, Hassan Deco I also explained to  
11:07:03 10 him.

11 Q. Now, Mr Fallon, you have told the Honourable Judges how  
12 your brother died. Do you know of any other version or  
13 explanation of how he died?

14 A. The only thing that I know regarding my brother's death is  
11:07:45 15 whether I know that he died in Koribundu; that is what I know.

16 Q. Have you heard any other explanation as to who killed your  
17 brother?

18 A. I heard it once, several times.

19 Q. What did you hear?

11:08:14 20 A. I heard that Nallo had said that Kondewa, Hinga Norman,  
21 Moinina Fofana said that they were the people that killed that of  
22 my brother, in Talia initiation bush. I heard that.

23 Q. And was that true?

24 A. There's no truth in that.

11:08:52 25 MR POWLES: Your Honour, I have no further questions for  
26 Mr Fallon at this time.

27 PRESIDING JUDGE: Thank you very much. Counsel for the  
28 first accused?

29 MR SESAY: No questions, Your Honour.

1 PRESIDING JUDGE: Counsel for the third accused?

2 MR MARGAI: None, My Lords.

3 PRESIDING JUDGE: Prosecution, your witness.

4 CROSS-EXAMINED BY MR KAMARA:

11:09:16 5 Q. Good morning, witness.

6 A. Good morning.

7 Q. I wish to remind you that you are still under oath, and I  
8 will be asking you a few questions, and please try to be precise  
9 in your answers, okay? Mr Witness, your father is Kamoh Brima

11:10:12 10 Fallon; am I correct?

11 A. Yes.

12 Q. And he was a respected teacher of the Koran; is that not  
13 so? Is that not so?

14 JUDGE ITOE: Learned counsel, are you talking in the past?

11:10:49 15 THE WITNESS: That is so.

16 MR KAMARA: Yes, My Lord, in the past.

17 JUDGE ITOE: He is no more.

18 MR KAMARA: I don't want to assume that. It's safer to put  
19 it -- thank you, My Lord.

11:11:01 20 Q. Is your father still alive?

21 A. He's deceased.

22 Q. Thank you. And your father had a lot of students studying  
23 the Koran under him?

24 A. Yes.

11:11:23 25 Q. Parents would bring their children around to be taught by  
26 Kamoh Brima, your father; is that not so?

27 A. It is so.

28 Q. And in your evidence, you said you were born in Kati,  
29 Nongoba Bullom Chiefdom; am I correct?

1 A. Yes.

2 Q. And I take it that you also know that your brother,  
3 Mustapha, was born in Sembehun, at the Babowa Chiefdom in the  
4 Moyamba District?

11:12:18 5 A. Yes.

6 THE INTERPRETER: Correction, My Lord. It's no.

7 PRESIDING JUDGE: Thank you.

8 MR KAMARA: Let me put the question again for  
9 clarification, My Lord.

11:12:34 10 Q. I said to you that you also know that your brother,  
11 Mustapha, was born in Sembehun, Babowa Chiefdom in the Moyamba  
12 District.

13 A. I said it is not so.

14 Q. And it is true that Mustapha was brought to your household  
11:13:15 15 to understudy your father in the Koran; is that correct?

16 A. It is not true.

17 Q. You gave evidence that you are a Kamajor; right?

18 A. Yes.

19 Q. And you are older than Mustapha, the late Mustapha;  
11:13:49 20 correct?

21 A. Yes.

22 Q. And what is the difference in age?

23 A. Two years.

24 Q. Two years. You were asked about your age and you gave a  
11:14:18 25 reply that you believe you are 47 years old; am I correct? 27 or  
26 47? Which one is it?

27 A. I said I don't know the year I was born, but I believe that  
28 I am 27 years of age.

29 Q. 27 years of age. Thank you.

1 A. Yes. Okay.

2 Q. And you said in your testimony that Mustapha was initiated  
3 in 1995; am I right?

4 A. He joined the Kamajor in '95.

11:15:07 5 Q. Yes. And after joining the Kamajors he was deployed to  
6 Kaliwanjama, and you mentioned other places.

7 A. Yes.

8 Q. And you'll agree with me that Mustapha must have been 15  
9 years old when he was initiated in 1995, if you are two years

11:15:42 10 older than him; correct?

11 MR POWLES: Your Honour, if I may just object. The witness  
12 said he believes he's 27 years old.

13 PRESIDING JUDGE: Say that again.

14 MR POWLES: Your Honour, if I may just object. It's  
11:16:04 15 difficult for the witness to answer exactly how old his brother  
16 was when he's said that he's not sure of his age, only that he  
17 believes he was 27 years old.

18 PRESIDING JUDGE: Well, he can express a belief too, in  
19 respect of his brother's age.

11:16:18 20 MR POWLES: I'm grateful, Your Honour.

21 PRESIDING JUDGE: Continue, counsel.

22 MR KAMARA: Thank you, My Lord.

23 Q. Mr Witness --

24 A. Yes.

11:16:27 25 Q. -- you told this Court a few seconds ago that you are two  
26 years older than Mustapha; am I right?

27 A. Yes.

28 Q. And it's both common sense and logical that in 1995  
29 Mustapha was 15 years old, if we go by your date; is that not so?

1 A. I said I don't know my date of birth, but I believe that I  
2 was -- I'm 27 years old, and I'm two years older than Mustapha.

3 JUDGE ITOE: Learned counsel --

4 MR KAMARA: Yes, My Lord.

11:17:09 5 JUDGE ITOE: -- if you say it is logical, then why put it  
6 to him?

7 MR KAMARA: My Lord, for confirmation, but I will leave it  
8 at that and I will take his answers.

9 JUDGE ITOE: These are matters for submissions or maybe  
11:17:15 10 elsewhere --

11 MR KAMARA: Yes. I will make the appropriate submissions.  
12 Thank you, My Lord.

13 Q. And you will agree with me that after his initiation, you  
14 said he was deployed to Kaliwanjama and those other places;  
11:17:33 15 right?

16 A. Yes.

17 Q. Thank you. In the summary that is given to us, Mr Witness,  
18 you mentioned that, in October of 1997, you went to Koribundu; is  
19 that correct?

11:17:55 20 A. Yes.

21 Q. And that is when you saw the incident of the killing of  
22 your brother; is that correct?

23 A. Yes.

24 Q. Are you sure about that date?

11:18:14 25 A. If you take it to be by the time when ECOMOG were attacking  
26 Gondama, because that's the time I know. Because, at that time,  
27 the AFRC attacked the soldiers at Gondama, and that was the  
28 month.

29 Q. And, Mr Witness, did you tell the Defence that date? Did

1 you give them that date?

2 A. That is the time I -- I showed the time and then they  
3 guessed the date.

4 Q. You're getting me confused. Did you give them the date  
11:18:57 5 of October 1997 as being the date that was -- your brother was  
6 killed? Did you give them that date?

7 A. I said the month when the juntas attacked the Nigerian  
8 soldiers at Gondama, that is the month.

9 Q. Are you suggesting that the Defence provided this date?

11:19:32 10 PRESIDING JUDGE: But is he not clarifying now what he's  
11 given in evidence? I mean, that was in his summary, was it?

12 MR KAMARA: Yes, My Lord, it is in the summary and the  
13 evidence is not clear at all. It's not mentioned.

14 PRESIDING JUDGE: Well, did he sign the summary?

11:19:41 15 MR KAMARA: No, he didn't, but that is why --

16 PRESIDING JUDGE: That was more or less counsel's own  
17 product, wasn't it?

18 MR KAMARA: Yes, My Lord.

19 PRESIDING JUDGE: But here, the witness, under oath, is  
11:19:51 20 giving you his own viva voce estimation of what is the date in  
21 question.

22 MR KAMARA: Without any date --

23 PRESIDING JUDGE: Yes.

24 MR KAMARA: -- and that is crucial.

11:20:06 25 PRESIDING JUDGE: Well, of course, I understand. I mean, I  
26 know the ground that you're treading on.

27 MR KAMARA: We understand --

28 PRESIDING JUDGE: All right, go ahead.

29 MR KAMARA: My Lord.

1 Q. Mr Witness, you'll agree with me that Kori bundu was  
2 attacked several times by the Kamajors?

3 A. Yes.

4 Q. Now, the time of the attack for which you received

11:20:58 5 instructions from Jegbeyama, was that the last attack, do you  
6 know?

7 A. No.

8 Q. It wasn't?

9 A. No.

11:21:27 10 Q. And you told this Court that Jegbeyama instructed for the  
11 road to Gbaama to be blocked; is that not so?

12 A. No. I said Vanje. That was the commander.

13 Q. Vanje got his instructions from Jegbeyama; correct?

14 A. Yes.

11:22:06 15 Q. Mr Witness --

16 A. Sir.

17 Q. -- that attack for which those instructions were given, we  
18 have evidence before this Court that it was the last attack on  
19 Kori bundu.

11:22:37 20 PRESIDING JUDGE: Counsel?

21 MR KAMARA: Yes.

22 MR POWLES: I'm not sure what the question was.

23 PRESIDING JUDGE: Whether there was a question? I was  
24 waiting.

11:22:44 25 MR KAMARA: Yes, My Lord. Whether you will agree -- we  
26 have evidence before this Court from Jegbeyama himself.

27 PRESIDING JUDGE: That was a statement.

28 MR KAMARA: Yes, My Lord.

29 PRESIDING JUDGE: So why not, please, ask a question.

1 MR KAMARA: Yes.

2 Q. We have evidence before this Court from Jegbeyama himself  
3 that that was the final attack on Kori bundu; would you agree with  
4 me?

11:23:00 5 JUDGE BOUTET: When you say that was "the final attack,"  
6 what do you mean by that? You make reference to what? It's very  
7 confusing, your questions. It's not only because counsel stood  
8 up. I'm having difficulty following the tenor of your questions.

9 MR KAMARA: I'll rephrase it, My Lord.

11:23:16 10 Q. Mr Witness --

11 A. Yes, sir.

12 Q. -- we have evidence before this Court from Jegbeyama  
13 himself, and the circumstances you've narrated, Jegbeyama, in his  
14 evidence, referred to as being occurring, the last attack, when  
11:23:35 15 Kori bundu was captured; do you agree with that?

16 A. No, I will not agree to that.

17 PRESIDING JUDGE: [Indiscernible] are you asking him to.  
18 Let's have his answer. Continue, witness. You will not agree.

19 MR KAMARA: To that.

11:24:00 20 PRESIDING JUDGE: To that; that is to say, what you put to  
21 him?

22 MR KAMARA: Yes, My Lord.

23 PRESIDING JUDGE: From the evidence of --

24 MR KAMARA: Jegbeyama.

11:24:16 25 PRESIDING JUDGE: -- Jegbeyama, right.

26 MR KAMARA: Right.

27 THE WITNESS: No.

28 MR KAMARA:

29 Q. Do you know Joe Tami dey?

1 A. Yes.

2 Q. Who was Joe Tami dey, or who is Joe Tami dey?

3 A. Joe Tami dey, he was one of the leaders in the Kamajors.

4 Q. Do you know that he was a commander, the battalion

11:24:46 5 commander for the Koribundu attack, the last one?

6 A. Yes.

7 Q. Now, Mr Witness, when was the last time you saw your  
8 brother alive?

9 A. 1997.

11:25:33 10 Q. Do you know when in 1997?

11 A. I can't recall the month.

12 MR KAMARA: My Lord, at this point, the Prosecution will  
13 seek to ask for the statement of this witness to be made  
14 available to the Prosecution, as we deem the date very crucial to  
11:26:07 15 our case, and the fact that, in the summary provided, there is a  
16 specific indication as to the date of the occurrence of the  
17 charge in the indictment. And, My Lord, we would want to  
18 reconcile this information with what we have now from the viva  
19 voce evidence of this witness.

11:26:31 20 PRESIDING JUDGE: Counsel for the Defence?

21 MR POWLES: Well, Your Honour, can I ask on what basis the  
22 Prosecution seek a copy of the statement? I don't have an  
23 objection, in principle, but I would ask the basis on which it's  
24 asked for.

11:26:46 25 PRESIDING JUDGE: I think he's saying that it's very  
26 critical to their position, or material, that they have -- they  
27 perceive some discrepancy here between his testimony and what may  
28 well have been in the summary, and that they would like to  
29 explore this further.

1 MR POWLES: Your Honour, I have no objection to giving the  
2 Prosecution a copy of the witness's signed statement.

3 PRESIDING JUDGE: Right. So do we have the original here?

4 MR POWLES: I'm not sure if we have the original, but we  
11:27:23 5 certainly have a copy of it.

6 PRESIDING JUDGE: Is the original available?

7 MR POWLES: Your Honour, yes.

8 PRESIDING JUDGE: But not in Court?

9 MR POWLES: Not in Court at the moment.

11:27:32 10 PRESIDING JUDGE: Counsel? Would you guide us?

11 MR KAMARA: My Lord, we are almost to the lunch-time, and  
12 we can take a break while the Defence --

13 JUDGE BOUTET: Not the lunch-time, the break.

14 MR KAMARA: The break, My Lord, whilst the Defence will get  
11:27:50 15 us the original.

16 PRESIDING JUDGE: Yes, is that possible?

17 MR POWLES: Your Honour, yes.

18 PRESIDING JUDGE: Well, I think it's a convenient point at  
19 which we can take the usual morning break and come back and,  
11:28:06 20 hopefully, you would have retrieved the original. The Court will  
21 recess for the morning break.

22 [Break taken at 11.25 a.m. ]

23 [Upon resuming at 12.00 p.m. ]

24 PRESIDING JUDGE: Mr Prosecutor, do you now have the copy  
12:03:04 25 of -- the original of the document?

26 MR KAMARA: Yes, My Lord.

27 PRESIDING JUDGE: And continue then.

28 MR KAMARA: Thank you, My Lord. My Lords, I have a few  
29 comments to make on the statement, which may not relate to the

1 evidence of the witness, but I will wait till after the  
2 cross-examination, My Lord.

3 PRESIDING JUDGE: In a postscript?

4 MR KAMARA: Sort of, My Lord, in a position of a --

12:03:38 5 PRESIDING JUDGE: Right.

6 MR KAMARA: -- yes, a note from the Prosecution.

7 PRESIDING JUDGE: Right. That's fine, okay. Let's  
8 proceed.

9 MR KAMARA: I appreciate that.

12:03:52 10 Q. Mr Fallon --

11 A. Sir.

12 Q. -- you said in your evidence that you went to Kori bundu  
13 after you received a message from a woman; am I right?

14 A. Please say it again.

12:04:36 15 Q. You gave evidence before the break that you received  
16 information from a particular woman that the soldiers were still  
17 in Kori bundu. As a result of that you went to Kori bundu on a  
18 recky mission, to be precise; is that not so?

19 A. Yes.

12:05:04 20 Q. You also say that, when you arrived, there was a crowd of  
21 people at the roundabout?

22 A. Yes.

23 Q. Which roundabout in Kori bundu are you referring to?

24 A. Where the storey building is, the road going to Sumbuya,  
12:05:40 25 another going to Pujehun. And that little thing made in the  
26 centre is that I'm talking about.

27 Q. How large was this crowd; will you tell the Court?

28 A. I don't know the number.

29 Q. You'll agree with me it was a huge crowd; correct?

1 A. Yes.

2 Q. I'll suggest to you it was over 500 people; could that be  
3 true?

4 A. I cannot agree to that.

12:06:35 5 Q. Would you place an estimate, if you can?

6 A. No.

7 Q. Now, how far were you from the scene where the captives  
8 were?

9 A. Ask again.

12:07:17 10 Q. How far were you from the scene where you believed you saw  
11 your brother?

12 A. It was not a far distance.

13 Q. Are you able to make a fair estimate?

14 A. What do you mean?

12:08:02 15 Q. The distance between where you were, to where your brother  
16 was, could it be the distance between where you're sitting to the  
17 Bench, or is it further than that?

18 A. It is further than that a little.

12:08:31 19 Q. Could it be from where you're sitting to the main gate, if  
20 you remember your way in?

21 A. It is not up to that.

22 MR KAMARA: My Lords, for the record --

23 PRESIDING JUDGE: Go ahead, yes. I'm sorry.

12:08:59 24 MR KAMARA: At least he has accepted that it is beyond the  
25 Bench --

26 PRESIDING JUDGE: And you want to draw an estimate in terms  
27 of --

28 MR KAMARA: Beyond 20 feet, My Lord.

29 PRESIDING JUDGE: Twenty feet; is that acceptable to the

1 Defence, in terms of estimate?

2 MR POWLES: Well, Your Honour --

3 PRESIDING JUDGE: From here -- from him there, to the  
4 Bench, is 20 feet?

12:09:11 5 JUDGE ITOE: And beyond.

6 PRESIDING JUDGE: And beyond?

7 MR POWLES: Well, I must confess, I'm a metric man.

8 PRESIDING JUDGE: Yes, I don't know whether there's any  
9 expert on that among the Defence counsel.

12:09:21 10 MR POWLES: I suspect in metres it's what, about?

11 JUDGE BOUTET: Three feet is a metre.

12 MR POWLES: Yes --

13 PRESIDING JUDGE: In other words, we'll say 20 feet?

14 MR POWLES: Your Honour, yes.

12:09:36 15 PRESIDING JUDGE: Right. Counsel?

16 MR KAMARA: Yes, My Lord, 20 feet and beyond.

17 PRESIDING JUDGE: Yes.

18 MR KAMARA: Thank you, My Lord.

19 Q. And, Mr Fallon, am I correct to say that there was this

12:09:51 20 crowd of people between you and your brother?

21 A. Ask that question again. I didn't get you clearly.

22 Q. I will do that. Am I correct to state that there was this

23 crowd of people between you and your brother?

24 A. No. No.

12:10:36 25 Q. Are you saying that there was no one between you and your  
26 brother?

27 A. At the time I went there to see him, yes, there was no

28 crowd between us.

29 Q. Are you sure of that information?

1 A. Indeed.

2 Q. Was the crowd behind you?

3 A. That question, go over it again.

4 Q. Was the crowd behind you?

12:11:34 5 A. If we say "crowd," some people would be at the back and  
6 others would be in front. That's what a crowd is. It doesn't  
7 mean that all of them would be at the same place and I'll go in  
8 front.

9 Q. Mr Witness, about two seconds ago you said no one was  
12:11:53 10 between you and your brother, so now I'm asking you: You say  
11 there's a crowd, that crowd must be behind you then; is that not  
12 correct?

13 A. Except if you are saying so.

14 Q. And was there any crowd before you at any point in time?

12:12:36 15 A. Did you get me clearly, what I -- what I said?

16 Q. No, I did not. My question to you, Mr Witness, and you're  
17 here to answer questions: At any point during that incident was  
18 there a crowd before you?

19 A. Yes, there came that time.

12:13:07 20 Q. And at that time what did you do?

21 A. I was then about to return.

22 Q. So before you returned there was no crowd before you,  
23 between you and your brother?

24 A. When I went to actually make sure that he was my brother, I  
12:13:51 25 made sure that the crowd was behind me.

26 Q. And you had to force your way through this crowd for you to  
27 see if it was your brother; correct?

28 A. Yes, exactly so.

29 Q. And while you were forcing your way through, did you notice

1 any other Kamajors?

2 A. There was no Kamajor there.

3 Q. Were there Kamajors in civilian clothing, like yourself; do  
4 you know?

12:14:48 5 A. No.

6 Q. And there were many AFRC soldiers in that group; correct?

7 A. Yes.

8 Q. So you yourself must have been afraid; am I correct?

9 A. Yes, in my heart.

12:15:27 10 Q. You were afraid but you still went forward; correct?

11 A. Yes.

12 Q. And you saw someone covered in blood; is that not so?

13 A. Yes.

14 Q. And that someone resembled your brother?

12:16:08 15 A. Yes.

16 JUDGE ITOE: Did you say "resembled?"

17 MR KAMARA: I'm suggesting it to him, My Lord. I used the  
18 word "resembled," it's for him to agree. I am suggesting that he  
19 saw someone in the crowd, seated, covered in blood and that that  
12:16:29 20 person resembled his brother. So -- and he's just answered  
21 "yes".

22 THE WITNESS: Ask that question again.

23 MR KAMARA:

24 Q. I have got my answer, and I'm moving. Mr Witness --

12:16:52 25 A. Sir.

26 Q. -- you gave evidence this morning that after you saw this  
27 incident of where you believe your brother was killed --

28 JUDGE ITOE: He does not believe; he says.

29 MR KAMARA: Yes, My Lord, yes.

1 JUDGE ITOE: It is you who is saying he believed.

2 MR KAMARA: Yes, My Lord.

3 JUDGE ITOE: He says.

4 MR KAMARA: I'll rephrase it then.

12:17:26 5 Q. Mr Witness --

6 A. Sir.

7 Q. I am suggesting to you that that individual that you saw  
8 covered in blood, it was difficult for you to identify?

9 A. I knew.

12:17:53 10 Q. Yes. And from the distance where you were, could you tell  
11 this Court how he was covered in blood?

12 A. He had blood on his face, on his body, on -- even on the  
13 clothes that he had on.

14 Q. And in evidence this morning you said you reported to your  
15 commanders.

16 A. Is that the question?

17 Q. Yes. Did you report to your commanders, as you said?

18 A. Yes.

19 Q. Did you report to your parents?

12:19:39 20 A. Yes.

21 Q. And when did you do so?

22 A. 1998.

23 Q. So now you know the dates? You know the dates that you  
24 reported the incident to your parents, but you don't know the  
12:19:54 25 date your brother died; is that so?

26 A. Yes.

27 Q. Thank you. And, Mr Witness, do you know one Sheku  
28 Massaquoi, born from Kati? He's also known as Brima Massaquoi?

29 A. I know a Brima Massaquoi in Kati, but I don't know that

1 Sheku Massaquoi person.

2 Q. Yes, Bri ma Massaquoi. He was a friend of your brother's,  
3 Mustapha.

4 A. Yes.

12:21:00 5 Q. And do you also know one Momoh Rogers, a friend of your  
6 brother?

7 A. No.

8 Q. Do you know him by the name of Mubi no Rogers? He, too, is  
9 from Kati?

12:21:29 10 A. Yes.

11 Q. He's a friend of your brother.

12 JUDGE ITOE: Known as what?

13 MR KAMARA: Mubi no. M-U-B-I-N-O, My Lord. Mubi no Rogers.

14 Q. You also know him to be a friend of your brother?

12:21:54 15 A. Yes.

16 Q. Thank you. Now, Mr Witness, when was the first time you  
17 heard of Nallo's version, concerning the death of your brother?

18 A. It's a long time now.

19 Q. Mr Witness --

12:22:39 20 A. Sir.

21 Q. -- in Nallo's evidence before this Court, he mentioned that  
22 these two friends were present when your brother was killed at  
23 the Poro Bush.

24 PRESIDING JUDGE: The question?

12:22:59 25 MR KAMARA: Yes, My Lord, I'm just --

26 PRESIDING JUDGE: Right. Quite.

27 MR KAMARA:

28 Q. There is evidence before this Court, Mr Witness, from  
29 Nallo, that these two friends of Mustapha were present at the

1 Poro Bush when he was killed; do you agree with that?

2 JUDGE BOUTET: With what? That Nallo said that?

3 MR KAMARA: Nallo's evidence, what Nallo has said, My Lord.

4 Q. Do you agree with Nallo's evidence?

12:23:38 5 A. I don't agree.

6 Q. Did you hear about the presence of those two people when  
7 you heard of Nallo's version?

8 A. I'm just hearing that from you, that Nallo said so.

9 Q. And the evidence of Nallo further charged that these two  
12:24:24 10 friends pleaded with the first accused and third accused for the  
11 life of your brother to be spared; would you agree to that?

12 A. I don't agree.

13 MR KAMARA: My Lords, I'm looking at transcript of 10th  
14 March 2005.

12:25:01 15 Q. There is evidence also before this Court, Mr Fallon, that  
16 these two friends received, from Chief Norman, the sum of 300,000  
17 leones to remain silent.

18 MR KAMARA: My Lords, this is at page 57 to 59 of the 10th  
19 March transcript.

12:25:28 20 Q. Did you hear about that information?

21 A. That's what I'm getting from you now.

22 Q. Are you also aware that the purpose of that money was for  
23 them to tell the public that your brother was killed in the  
24 Kori bundu attack; are you aware of that? Don't look at the  
12:26:05 25 Defence, look at His Lordships.

26 A. Ask your question again.

27 Q. All right, I'll do it. Are you aware, Mr Fallon, that  
28 these two friends received the sum of 300,000 leones, from Chief  
29 Norman, to remain silent and to inform the public that your

1 brother was killed in the Koribundu attack?

2 A. They couldn't have done that.

3 Q. The question is: Are you aware of that information?

4 A. No.

12:27:27 5 Q. Mr Witness, at this point, and I'm sure you'd also like to  
6 know, you mustn't be slightly confused now by this evidence that  
7 I've just now narrated to you, with what you believed you saw,  
8 all right?

9 A. What I know about it, I will not get confused.

12:28:06 10 Q. Yes. And I am sure you would like to know what one of  
11 these two friends said about that incident as well, would you  
12 not?

13 PRESIDING JUDGE: Why so? Why that? Why not put the  
14 question to him? I mean, he may disagree with you if you say you  
12:28:30 15 are sure that he would like to know. It might get a little  
16 argumentative. I'm not sure. Why not just -- I think if you're  
17 trying to elicit facts, just get straightforward to the question  
18 of facts, but if you think that approach is tidy, that's fine. I  
19 would allow the latitude.

12:28:59 20 MR KAMARA: I'm grateful, My Lord.

21 MR POWLES: Your Honour, if I may, I would just ask my  
22 learned friend what the basis of the question is as well.

23 PRESIDING JUDGE: Well, I'm sure you would like to know why  
24 is it so. Even if he were to answer that in the negative or in  
12:29:14 25 the affirmative, of what value is that, in terms of evaluating  
26 the facts? Well, counsel, perhaps, concedes my own intervention  
27 here.

28 MR KAMARA: My Lord, I do appreciate the intervention.

29 PRESIDING JUDGE: Yeah, but if there is method in your

1 madness, so to speak --

2 MR KAMARA: Certainly, My Lord.

3 PRESIDING JUDGE: -- I would yield.

4 MR KAMARA: It might not be that clear, but that is --

12:29:44 5 PRESIDING JUDGE: Quite. That's okay.

6 MR KAMARA: Thank you, My Lord. Thank you. My Lord, it is  
7 such that if certain persons are being called --

8 PRESIDING JUDGE: Go ahead. Go ahead, counsel. You have  
9 the liberty to do that.

12:29:54 10 MR KAMARA: Much obliged, My Lord. Now, what was the  
11 question again? I was asking you --

12 PRESIDING JUDGE: I am sure you would like to know.

13 JUDGE ITOE: It is my turn to be confused, not the  
14 witness's turn.

12:30:21 15 PRESIDING JUDGE: The question registered so well: I am  
16 sure you would like to know.

17 MR KAMARA: Yes.

18 PRESIDING JUDGE: Yes.

19 MR KAMARA: You would like to know what one of the  
12:30:26 20 witnesses said about the incident. Thank you, My Lord.

21 MR POWLES: Well, Your Honour, I am not aware which witness  
22 my learned friend is talking about.

23 JUDGE ITOE: I think he's on his feet. We always insist  
24 that he should -- that he would normally, you know, take us back  
12:30:37 25 to the transcript --

26 PRESIDING JUDGE: Quite right.

27 JUDGE ITOE: -- because the pseudonym of this witness --

28 PRESIDING JUDGE: Anyway, we don't want you to -- I mean, I  
29 remember when you were examining in chief, there was hardly any

1 objection, but we've given him the leave to do that. He will  
2 cover the ground. I'm sure he'll get there. So let's allow  
3 counsel to continue.

4 MR POWLES: Thank you, Your Honour.

12:30:59 5 MR KAMARA: Yes, My Lord. I concede, too, I may have used  
6 the word "witness." I was referring to these --

7 PRESIDING JUDGE: Yes.

8 MR KAMARA: -- two friends. I take your point. I concede  
9 to your objection.

12:31:09 10 PRESIDING JUDGE: Very well.

11 MR KAMARA: I am referring to these two friends, My Lord,  
12 that he must want to know what one of these guys -- one of his  
13 friends said. I'm sorry. That is, I'm referring to Massaquoi  
14 and Mubino Rogers.

12:31:21 15 JUDGE BOUTET: But said where? I mean, where does that  
16 lead us?

17 MR KAMARA: That's what I'm coming to. These two people  
18 have been mentioned in Nallo's evidence.

19 JUDGE BOUTET: Yes.

12:31:31 20 MR KAMARA: Have been present.

21 JUDGE BOUTET: Yes.

22 MR KAMARA: So I'm asking him, he would surely want to know  
23 what they say, what they had to say about this incident. That's  
24 the question.

12:31:40 25 JUDGE BOUTET: Yeah, but have these two individuals, if  
26 that's what you're talking about, been called as witnesses here?

27 MR KAMARA: No, My Lord.

28 PRESIDING JUDGE: And so we are hearing a kind of  
29 second-hand --

1 JUDGE ITOE: Then that becomes problematic.

2 PRESIDING JUDGE: Yes.

3 JUDGE ITOE: My stand was that if I couldn't remember, you  
4 know, that I couldn't recollect that there is this type of  
12:32:01 5 evidence, but since --

6 MR KAMARA: Yes, My Lord.

7 JUDGE ITOE: -- the evidence is so massive, I thought that  
8 you had a pseudonym somewhere --

9 MR KAMARA: My Lord, you're correct.

12:32:09 10 JUDGE ITOE: -- on the records.

11 MR KAMARA: It is not a witness as of Court, it is a  
12 statement that came from one of these people.

13 JUDGE BOUTET: Yes, but Nallo. You put that to the witness  
14 already.

12:32:19 15 MR KAMARA: Yes, My Lord, and that is where I'm going to  
16 now. If only, My Lord, you would bear with me --

17 PRESIDING JUDGE: Yeah. Well, let us hear the objection  
18 first. What's the objection, counsel, and grounds for it?

19 MR POWLES: It's not really an objection, it's an inquiry.

12:32:31 20 PRESIDING JUDGE: Right. Okay.

21 MR POWLES: And my learned friend has alluded to potential  
22 evidence which, as far as I'm aware, has not been disclosed to  
23 the Defence by the Prosecution. Though I am, of course, aware  
24 that my learned friend is fully apprised of all his obligations  
12:32:49 25 under the Rules as a Prosecutor vis-a-vis disclosure. And, as  
26 far as I am aware, no such evidence has been disclosed to the  
27 Defence. And if, and I say if, my learned friend is in  
28 possession of any such information, it seems to me that it would  
29 only be right and proper for such information to be disclosed to

1 the Defence when the Prosecution became aware of it and,  
2 certainly now, if the Prosecution seek to rely on it in any sort  
3 of way, shape or form.

4 PRESIDING JUDGE: Well, if I understand counsel correctly,  
12:33:25 5 your approach is -- what you want to put to the witness relates  
6 to what Nallo said that these two alleged friends said about the  
7 incident.

8 MR KAMARA: Not quite, My Lord. What I intend to --

9 PRESIDING JUDGE: What's the source then of this  
12:33:48 10 information, otherwise counsel's position would be valid. Guide  
11 us, guide the Court.

12 MR KAMARA: Let me respond to his --

13 PRESIDING JUDGE: Yes, do that.

14 MR KAMARA: My Lord, the Prosecution is quite aware of its  
12:34:02 15 obligations under the Rules, and we have complied. And, in  
16 cross-examination, there is a latitude for the Prosecution to use  
17 information it has to probe the credibility of the witness. And  
18 further, the obligations that we have under Rule 68 as to  
19 exculpatory material we have disclosed, and if it is material  
12:34:20 20 that aids the Prosecution, My Lord, we read it as not under those  
21 obligations.

22 PRESIDING JUDGE: But would you also agree that, as a  
23 matter of law, if there is information in your possession, which  
24 you intend to use in cross-examination for tactical advantage,  
12:34:41 25 the law frowns upon this approach if it's not disclosed to the  
26 other side.

27 MR KAMARA: My Lord, it's not as disclosure but, rather, as  
28 -- if I intend to put it and tender it in evidence, I'll  
29 obviously have to disclose it to present it to the other side,

1 observation of whatever their comments and objections, but if I'm  
2 putting -- using the information to put question to Lynch or  
3 contradict the evidence --

4 PRESIDING JUDGE: Yes, the distinction is  
12:35:03 5 clearly pertinent, I concede that.

6 MR POWLES: Your Honour, in those circumstances, perhaps my  
7 learned friends could put propositions of fact to the witness --

8 PRESIDING JUDGE: Yes. Well, I mean, that's what, I think,  
9 he's trying --

12:35:11 10 MR POWLES: -- and allow him to comment on it, rather than  
11 say, this is evidence, or this is what so and so said. Perhaps  
12 he could put issues of fact to the witness and allow the witness  
13 to comment, accordingly.

14 PRESIDING JUDGE: Yes, that's the kind of difficulty we're  
12:35:24 15 in. I'm sure you will be able to --

16 MR KAMARA: Yes, My Lord.

17 PRESIDING JUDGE: -- to navigate this difficult terrain.

18 MR KAMARA: Yes, My Lord.

19 PRESIDING JUDGE: Very well. Go ahead.

12:35:38 20 JUDGE ITOE: I mean you have the hearsay option.

21 MR KAMARA: Yes, My Lord, that's what I want to do.

22 JUDGE ITOE: Yes, but why don't you go directly to that?

23 PRESIDING JUDGE: I think -- thought that's what you wanted  
24 to do.

12:35:48 25 MR KAMARA: Yes, My Lord.

26 Q. Mr Fallon --

27 A. Sir.

28 Q. -- there is information, and I'm suggesting this to you,  
29 that Mubino Rogers, the friend of Mustapha Fallon, agreed with

1 Nallo's version of the evidence, and now my question to you is:  
2 What is your response to that?

3 A. In the first instance, what is the name that Nallo gave to  
4 you?

12:36:36 5 Q. You don't ask me questions, Mr Witness. I am here --

6 MR SESAY: My Lord, may I object. My Lord, I will object  
7 to that line of cross-examination, because certainly, My Lord,  
8 there is no evidence before this Court that, in fact, those two  
9 men agreed with what Nallo said about what he's now asking this  
10 witness.

12:36:58

11 PRESIDING JUDGE: This is the difficult-- the  
12 problematical aspect, as I see it. It seems as if the  
13 methodology here needs to be refined. I mean, it's not, per se,  
14 inadmissible or impermissible line of cross-examination, but it's  
15 a question of how you you're going about it. I think you must  
16 have another go at it and see if you can fine-tune your approach  
17 to it.

12:37:16

18 JUDGE ITOE: Learned counsel, where did Mubino Rogers agree  
19 with Nallo's version? Where? Where?

12:37:40

20 MR KAMARA: Yes, My Lord.

21 JUDGE ITOE: Where did he agree with Nallo's version of  
22 this?

23 MR KAMARA: From the investigative reports that we have,  
24 and, My Lord, that is why I'm trying to build up that information  
25 and get this witness --

12:37:52

26 JUDGE ITOE: It might be credible, it might not be  
27 credible.

28 MR KAMARA: Yes, My Lord.

29 JUDGE ITOE: This is the problem.

1           PRESIDING JUDGE: Yes. This is where we say that the line  
2 comes very close. If you have material in your possession now  
3 that is forming a crucial part of your cross-examination, the  
4 question is, at this stage, what are you seeking to do? Wouldn't  
12:38:15 5 it appear as if you're trying to secure some tactical advantage  
6 and, if that is the case, ought the other side, having regard to  
7 the doctrine of fundamental fairness, in order to be able to --

8           MR KAMARA: My Lord, what we seek to do here --

9           PRESIDING JUDGE: -- know about this.

12:38:35 10          MR KAMARA: -- is to help search for the truth.

11          PRESIDING JUDGE: Conceded.

12          MR KAMARA: Yes. My Lord, in cross-examination, the  
13 Prosecution is trying to contradict evidence of this witness by  
14 information that we have in our possession.

12:38:47 15          JUDGE BOUTET: Yes, but how will you achieve that? That's  
16 my question, too. Suppose you have that information, suppose you  
17 have a statement, suppose.

18          MR KAMARA: Yes, My Lord.

19          JUDGE BOUTET: So where will that lead you to? To produce  
12:38:59 20 this statement in Court, how would you do that?

21          MR KAMARA: My Lord, what I intend to do is not produce the  
22 statement as of now. I intend to ask this question --

23          JUDGE BOUTET: Well, if it is not as of now, when would you  
24 and how would you produce that statement? That's my question.

12:39:09 25          MR KAMARA: My Lord --

26          JUDGE BOUTET: How relevant is that statement for our  
27 procedures? I mean, yes, you're entitled to cross-examine this  
28 witness, but there is also some finality in this.

29          MR KAMARA: Yes, My Lord.

1 JUDGE BOUTET: The finality would mean that you will not be  
2 able to call this particular individual who may have given you  
3 this information, to then try to contradict this witness.

4 MR KAMARA: Yes, My Lord. The point, again, is we are not  
12:39:32 5 prohibited from putting questions in contradiction.

6 JUDGE BOUTET: Agreed.

7 MR KAMARA: And that is what we're doing. My Lord, I crave  
8 the indulgence of the Bench, if only you can see where we're  
9 leading. And, as to the admission of the statement, My Lord, if  
12:39:43 10 we intend to tender it, there's another issue. I haven't reached  
11 that threshold as yet.

12 JUDGE ITOE: Learned counsel, is Mr Mubino Rogers alive?

13 MR KAMARA: Yes, My Lord, and he was a witness for the  
14 Defence. He was dropped, I think, on the second of -- at the  
12:40:00 15 beginning of their droppings. We were hoping to see him and he's  
16 not here today. So now I'm using that statement, My Lord, to use  
17 as a fact to contradict the evidence of this witness, as I stated  
18 there.

19 JUDGE ITOE: Could he possibly, at any one stage of the  
12:40:16 20 case for the Prosecution, have been called as a witness, given  
21 the circumstances in which we find ourselves? Could he have, at  
22 any stage, in your stage of the proceedings, have been called as  
23 a witness?

24 MR KAMARA: My Lord, I can see where --

12:40:35 25 JUDGE ITOE: If you say, you know, that he agreed with  
26 Nallo, Nallo was there, he testified extensively, that's my  
27 question.

28 MR KAMARA: Yes, My Lord. It's the view of the Prosecution  
29 that --

1 JUDGE ITOE: Could he not have been corroborative of  
2 Nallo's evidence --

3 MR KAMARA: He could have --

4 JUDGE ITOE: [Overlapping speakers] of this Court.

12:40:52 5 MR KAMARA: -- but the principles of international law,  
6 that there is no need for collaboration.

7 JUDGE ITOE: Oh, well, I'm not saying -- I don't accept --  
8 I don't think I'm prepared to go that far, that there is no need  
9 for corroboration, no.

12:41:04 10 MR KAMARA: Yes, My Lord.

11 JUDGE ITOE: I contest that.

12 MR KAMARA: My Lord --

13 PRESIDING JUDGE: I think it is a very, very --

14 MR KAMARA: My Lord --

12:41:11 15 PRESIDING JUDGE: -- contentious proposition.

16 JUDGE ITOE: It is a very contentious, legal proposal.

17 MR KAMARA: I know it is contentious. I know that is the  
18 position. But, My Lord, I'm still convinced from my readings of  
19 that that it did not need corroborated -- evidence need not be  
12:41:22 20 corroborated.

21 PRESIDING JUDGE: As a general rule, counsel.

22 JUDGE ITOE: As a general rule.

23 PRESIDING JUDGE: As a general rule, counsel.

24 JUDGE ITOE: This is it. I concede.

12:41:28 25 PRESIDING JUDGE: That is elementary [overlapping  
26 speakers].

27 JUDGE ITOE: [Overlapping speakers] it is trite law.

28 MR KAMARA: Moving from there, My Lord, and you did ask the  
29 question whether this person could have been called as a

1 witness --

2 JUDGE ITOE: Yes.

3 MR KAMARA: By the Prosecution.

4 JUDGE ITOE: I did.

12:41:38 5 MR KAMARA: My Lord, I can see where you're going. I don't  
6 want to tie myself down, because we are looking at an issue, and  
7 you and I know what we are talking about now.

8 JUDGE ITOE: Right.

9 MR KAMARA: Thank you, My Lord. And --

12:41:48 10 JUDGE BOUTET: But I should tell you that the issue you are  
11 talking about, if it is to call a witness to contradict a  
12 witness, under no circumstances that would be permissible.

13 PRESIDING JUDGE: Yes. I think it is a very --

14 MR KAMARA: My Lord --

12:42:00 15 PRESIDING JUDGE: -- difficult and complicated --

16 MR KAMARA: My Lord pre-empted me, but I haven't made any  
17 indications of that.

18 JUDGE BOUTET: Just in case. Just in case.

19 PRESIDING JUDGE: And if you transcend beyond the  
12:42:17 20 permissible limits, it may well be that the Bench will have to  
21 listen to an objection, properly formulated, so that we give the  
22 definitive ruling on this issue. I have very serious  
23 reservations about this line of cross-examination on, purely, the  
24 principle of fundamental fairness. I'm not suggesting that there  
12:42:35 25 is a kind of cloak-and-dagger methodology, but I think we need to  
26 require some kind of --

27 MR KAMARA: Yes, My Lord, I do -- we do --

28 PRESIDING JUDGE: -- equality of arms.

29 MR KAMARA: We do appreciate the reservations of the Bench,

1 but, My Lord, this is a witness that was listed by the Defence  
2 and there is no [overlapping speakers] --

3 JUDGE ITOE: But, learned counsel, learned counsel, the  
4 Defence did not interfere with the witnesses -- the number of  
12:43:05 5 witnesses you had to call. It was your case. Now it is a case  
6 for the Defence. If they listed 50 witnesses, and they now  
7 decide, for strategic reasons, and in the interest of their  
8 Defence, to call just a handful of those witnesses, I do not  
9 think that you have any legal standing to complain that they did  
12:43:28 10 not finally call that witness, because they are not bound to call  
11 all the witnesses who they have listed.

12 MR KAMARA: That's true, My Lord.

13 JUDGE ITOE: This is their case.

14 MR KAMARA: Yes, I concede that.

12:43:41 15 PRESIDING JUDGE: And you had the liberty, too; you  
16 abandoned some of your witnesses.

17 MR KAMARA: It's in relation to the tactical advantage the  
18 Presiding Judge --

19 PRESIDING JUDGE: Yes. Well, I mean, that's my own -- I  
12:43:49 20 may be wrong in my perception.

21 MR KAMARA: [Indiscernible]. Certainly, My Lord. I will  
22 still go ahead with the questions, My Lord.

23 PRESIDING JUDGE: Continue.

24 MR KAMARA: I appreciate the apprehensions of the Bench and  
12:43:58 25 I have no intentions of tendering the document, but I will  
26 contradict this witness with evidence, to our knowledge. My  
27 Lord, was there a ruling as to the objection?

28 PRESIDING JUDGE: We didn't have an objection properly  
29 formulated on grounds. We can go on, for the time being, without

1 prejudice to --

2 MR KAMARA: I'm obliged.

3 PRESIDING JUDGE: -- the right of counsel for the Defence  
4 to object again.

12:44:33 5 MR KAMARA: I'm obliged.

6 Q. Yes. Mr Witness, I was suggesting to you that there is  
7 information that Mubino Rogers confirmed the evidence of Nallo;  
8 what is your response to that?

9 MR POWLES: Your Honour, I would object to that, it's --

12:44:56 10 PRESIDING JUDGE: Right.

11 MR POWLES: How can this witness possibly answer a question  
12 like that? If my learned friend could put a question to the  
13 witness, then maybe the witness would be able to answer it. But  
14 it's impossible for the witness to speculate what may or may not  
15 have been said by another witness to the Prosecution at some  
16 point in time, which we never seem to know, and then asked to  
17 comment on that. If my learned friend has a specific fact to put  
18 to the witness, then the witness can comment on it. But he  
19 cannot possibly be asked to say was this person right or wrong in  
20 relation to what he may or may not have said to the Prosecution,  
21 when it seems that none of us are aware what that person may or  
22 may not have said to the Prosecution.

23 PRESIDING JUDGE: Because the question really is whether  
24 confirmation here is not even in the context of the law, whether  
25 you are using confirmation in its ordinary sense, or confirmation  
26 in a technical legal sense, which could be controversial.  
27 Whether evidence confirms another evidence can be question for  
28 debate. If the term confirmation is being used in its technical  
29 legal sense, as a synonym of corroboration --

1 MR KAMARA: My Lord, I will use agreed; that Mubino Rogers  
2 agreed with Nallo's version.

3 PRESIDING JUDGE: Would that take the sting off the  
4 objection?

12:46:19 5 MR POWLES: How can the witness answer that? How does the  
6 witness know that? How does the witness know whether Mubino  
7 Rogers agreed with Nallo's evidence? How is that something  
8 with in --

9 JUDGE ITOE: His knowledge.

12:46:27 10 MR POWLES: -- this witness's knowledge.

11 PRESIDING JUDGE: Counsel --

12 JUDGE ITOE: It is not within the knowledge of this  
13 witness.

14 PRESIDING JUDGE: Yes. Counsel, would you then move  
12:46:34 15 towards the area of specificity? Perhaps the idea of dancing  
16 around generalities is what is causing the problem. There may be  
17 an element of vagueness here. Why not be specific?

18 MR KAMARA: I will do that.

19 PRESIDING JUDGE: -- as to -- and see, once more.  
12:46:52 20 Otherwise, we might, as I say, have to overrule you at some  
21 point, this line of cross-examination. But, go ahead. Have  
22 another bite at the cherry.

23 MR KAMARA: I will, My Lord.

24 Q. Mr Witness, there is information that this friend of  
12:47:16 25 Fallon, your brother, agreed with Nallo's evidence that your  
26 brother was killed in the Poro Bush in Koriundu in Base Zero,  
27 Talia, and not in Koriundu.

28 PRESIDING JUDGE: The question being: Having told him  
29 that --

1 MR KAMARA:

2 Q. What is your response to that?

3 PRESIDING JUDGE: Right. Okay.

4 THE WITNESS: Ask your question again.

12:47:41 5 MR POWLES: I do sympathise with Mr Fallon, to some extent.

6 It seems to me, and I tentatively try to assist here, that what  
7 my learned friend is seeking from the witness is: Does he agree  
8 with the proposition that his brother was killed in the bush, and  
9 not in Koriundu. And if that's the question [overlapping

12:47:58 10 speakers] --

11 PRESIDING JUDGE: Yes, that's what he's trying to do.

12 MR POWLES: [Overlapping speakers] then the witness can  
13 answer.

14 PRESIDING JUDGE: But in this way that he's put it.

12:48:02 15 MR POWLES: The way it is being put, he is confusing the  
16 witness.

17 PRESIDING JUDGE: Do you accept that modification?

18 JUDGE ITOE: [Microphone not activated] and answer this  
19 one.

12:48:09 20 PRESIDING JUDGE: Yes, he can.

21 MR KAMARA: He can answer the question.

22 PRESIDING JUDGE: He can answer [overlapping speakers] --

23 MR KAMARA: And there is no confusion.

24 PRESIDING JUDGE: Because it is more or less a -- a slight  
12:48:15 25 variation of your own proposal.

26 MR KAMARA: My Lord, the variation here is that that  
27 question is vague.

28 PRESIDING JUDGE: That's okay. Let's not debate it  
29 further. Let the witness -- give the witness give the question

1 again. I think we are at the end of the road.

2 MR KAMARA: You're right, My Lord. I'm a patient man. I  
3 will ask again.

4 Q. Mr Witness, there is information that Mubino Rogers agreed  
12:48:46 5 with Nallo's version that your brother was killed at the Poro  
6 Bush in Base Zero, and not Kori bundu; what is your response to  
7 that?

8 A. I would say it's a lie.

9 Q. Thank you, Mr Witness. Having heard the evidence, as I  
12:49:43 10 narrated to you from Nallo himself, do you still stand - I  
11 suggest to you - do you still stand by the misinformation that  
12 your brother was killed in Kori bundu?

13 JUDGE ITOE: It is not a misinformation. It is his  
14 evidence.

12:49:43 15 MR KAMARA: My Lord, I'm suggesting to him that this is a  
16 misinformation, and I think I can.

17 JUDGE ITOE: But it is not a misinformation. It is his  
18 evidence.

19 JUDGE BOUTET: Then suggest to him that this is  
12:49:54 20 misinformation.

21 PRESIDING JUDGE: Yes, it should be -- it should -- it was,  
22 in fact, a conjunctive question. It could have been split up.

23 MR KAMARA: Yes, My Lord, I will.

24 Q. Mr Witness, I am suggesting to you that the Kori bundu  
12:50:11 25 episode of your evidence is a misinformation, directed by the  
26 first accused in regards to the evidence about the killing of  
27 your brother; what is your response to that?

28 A. Go over that again.

29 PRESIDING JUDGE: And don't complicate it, counsel, because

1 you started well, but you seem to have injected some complication  
2 into it.

3 MR KAMARA: Yes, My Lord.

4 Q. Mr Fallon, your evidence about your brother being killed in  
12:51:01 5 Kori bundu is a misinformation and cannot be true, I'm putting it  
6 to you.

7 JUDGE ITOE: May we have the response?

8 PRESIDING JUDGE: Do you agree?

9 MR KAMARA:

12:51:22 10 Q. Do you agree to that or not?

11 A. I don't agree. I said the truth.

12 Q. I'm also suggesting to you, Mr Witness, that the person you  
13 saw, you believed to be your brother, was not actually your  
14 brother; would you agree with that?

12:51:50 15 A. I don't agree with that as well. It was my brother,  
16 indeed. Nobody explained to me; I saw it myself.

17 Q. Mr Witness, you said you had -- this person you saw had  
18 blood covered all over his face; am I correct?

19 A. Yes.

12:52:27 20 Q. And in your statement to the Defence, you stated that he  
21 was -- he resembled your brother; did you say that to the  
22 Defence?

23 MR POWLES: Your Honour, if my learned friend seeks to put  
24 parts of the statement, which we very openly - and are under no  
12:52:57 25 obligation to do so - gave to the Prosecution, if he is going to  
26 rely on that piece of information, it seems only right and proper  
27 that he reads the whole of the sentence and put it in its proper  
28 context, rather than being selective.

29 PRESIDING JUDGE: What would be problematic for the witness

1 to say -- because I think what counsel is trying to emphasise  
2 here, the use of the word "resembled." What would be problematic  
3 for the witness to answer that question?

12:53:33 4 MR POWLES: If my learned friend wants to put part of the  
5 statement, which we've given to the Prosecution --

6 PRESIDING JUDGE: Yes.

7 MR POWLES: -- then it seems to me it's only right and  
8 proper that he puts that next sentence as well, because that next  
9 sentence puts the sentence that my learned friend seeks to put to  
12:53:45 10 this witness in context and explains it.

11 PRESIDING JUDGE: Counsel, do you -- how do you take that  
12 offer? What is your response to that offer?

13 MR KAMARA: My Lord --

14 JUDGE ITOE: And what do you intend to do with the  
12:53:54 15 statement, anyway?

16 PRESIDING JUDGE: Yes.

17 MR KAMARA: My Lord, I'm trying to ask him questions. If  
18 he contradicts his statement, then I intend to put the statement  
19 in. And, if he doesn't, then the statement is not -- there is no  
12:54:03 20 worth in putting it in.

21 JUDGE BOUTET: But for our own guidance, we would like to  
22 know if it is for the purpose of trying to contradict the witness  
23 or to refresh his memory. Because, as you know, there is a  
24 different mode of establishing this, depending on the way you go.

12:54:19 25 MR KAMARA: Your Honour, the first mode here is to refresh  
26 his memory, as to the state of affairs.

27 JUDGE BOUTET: If that is the case, then make sure that you  
28 refresh his memory, and, therefore, he should be given access to  
29 the statement. That's why I'm asking you what it is -- what is

1 it you want to do?

2 MR KAMARA: My Lord, before giving him the statement, I'm  
3 asking him questions. If he confirms it, [overlapping  
4 speakers] --

12:54:33 5 JUDGE BOUTET: No, no. That's why I'm asking you the  
6 question: What is it that you're intending to do? If it is to  
7 refresh his memory, the witness is fully entitled to look at the  
8 statement before you put the question to him.

9 MR KAMARA: My Lord, the witness cannot read. That's why  
12:54:46 10 I'm suggesting what is in his statement --

11 JUDGE BOUTET: That's your problem.

12 MR KAMARA: And my learned friend -- if only you let me  
13 finish. I'm on my legs, Mr Powles.

14 PRESIDING JUDGE: Counsel, please allow your colleague to  
12:54:59 15 complete his position. Go ahead, counsel.

16 MR KAMARA: Thank you. My Lord, as I was saying, the  
17 witness cannot read, and I was only trying to refresh his  
18 statement by making references to it. That is why I didn't read  
19 directly from the statement, even. And if he disagrees, then we  
12:55:14 20 move to the next stage. I would more or less have a means of  
21 putting it to him. But now that he's confirmed what is in the  
22 statement, I'm moving on. I'm sorry, My Lord, I see you disagree  
23 with me, but I intend not to even put a statement --

24 JUDGE BOUTET: It's not a question that I disagree. To me,  
12:55:29 25 it is a question of fairness to the witness. That's why I'm  
26 asking you the question. If this is to refresh a witness memory,  
27 there is a procedure to follow. Maybe the witness cannot read,  
28 but maybe there is somebody who can read this, translate that in  
29 the proper language to the witness to refresh his memory. This

1 is a question of fairness. That's why I asked you the question:  
2 What is it you're intending to do? If that is the case and, in  
3 fairness to the witness and to this Court, give him the  
4 statement, ask him to read that, with the assistance of whoever  
12:55:55 5 may provide assistance for him, to understand what he has,  
6 allegedly, written or was written for him, and then ask the  
7 question.

8 PRESIDING JUDGE: Counsel, in addition to that, it's our  
9 standard procedure that we make this clear distinction between  
12:56:12 10 the legal option to refresh a witness's memory, and how we  
11 proceed, in terms of legal propriety, and also the question of  
12 prior inconsistency, we have a separate procedure. You've  
13 contributed to it. You've insisted on it --

14 MR KAMARA: Yes, My Lord.

12:56:30 15 PRESIDING JUDGE: -- whenever Defence counsel have tended  
16 to deviate from that. You yourself have done that. So we don't  
17 see why this should be a difficulty for you at this stage.

18 MR KAMARA: My Lord, I will take the option from  
19 Justice Boutet --

12:56:42 20 PRESIDING JUDGE: Yes.

21 MR KAMARA: If that's what he --

22 PRESIDING JUDGE: That's the practice.

23 JUDGE BOUTET: It's not my option. This is the procedure  
24 that we follow.

12:56:49 25 PRESIDING JUDGE: It's the practice.

26 MR KAMARA: My Lord, I will take that. I just see it  
27 differently, My Lord, but I will take the procedure.

28 PRESIDING JUDGE: But we have ruled and, I'm sure, you are  
29 -- considering your seniority at the Bar, you must accept what

1 this Bench has ruled as standard practice.

2 MR KAMARA: Yes, My Lord.

3 PRESIDING JUDGE: Even if you disagree, which, of course,  
4 you're entitled to do.

12:57:15 5 MR KAMARA: I do. I take the point, My Lord.

6 Q. Mr Witness --

7 MR KAMARA: My Lord, I will abandon that statement, because  
8 it means we have to get an interpreter come to Court and read it  
9 for him, and --

12:57:33 10 MR POWLES: Your Honour, the only thing -- I do press  
11 this -- my learned friend put a section of the statement to the  
12 witness, and left it hanging. It's my submission that what  
13 follows is of equal importance to the part that my learned friend  
14 read out and put to the witness. Now, if my friend seeks to  
12:57:53 15 leave the Court hanging, as it were, and not give the Court the  
16 complete picture, then of course, that's a matter for him.

17 PRESIDING JUDGE: And don't you have a mechanism by which  
18 you can cure that, if you think this is an approach which has  
19 virtually left the Court in a state of uncertainty? Don't you  
12:58:14 20 have -- don't we have a mechanism --

21 MR POWLES: Your Honour, yes. For tidiness, it may be that  
22 my learned friend would like to tidy things up now, rather than  
23 leave it to --

24 PRESIDING JUDGE: Why not you, if you have a right to  
12:58:27 25 re-examine?

26 MR POWLES: Your Honour, yes. Well, I do intend to put  
27 what remains in the statement to the witness, but my learned  
28 friend may want to do it now.

29 PRESIDING JUDGE: Let's proceed.

1 MR KAMARA: My Lord, I take it that the objection is  
2 overruled?

3 PRESIDING JUDGE: Yes, go ahead. Counsel can take care of  
4 that at a later stage.

12:58:52 5 MR KAMARA: As My Lord pleases.

6 Q. Mr Fallon, I suggest to you that the day you said you went  
7 to Koribundu and saw your brother, you yourself were never in  
8 Koribundu that day; is that correct?

9 A. It is not correct.

12:59:19 10 Q. I will suggest to you further that the corpses you saw were  
11 those of ordinary civilians in Koribundu; is that correct?

12 A. That is what you are saying, because they hadn't any  
13 uniform on, so we could take them to be civilians.

14 Q. Now, the day you entered Koribundu, was it on a Friday,  
13:00:09 15 Monday, Tuesday, or what day was it?

16 A. I've forgotten the day.

17 Q. Mr Witness, I would suggest to you that the five people you  
18 saw killed, you saw their corpses, these were -- I will tell you  
19 their names -- Sara Binkolo, and another, Sara Lamina, and these  
13:00:58 20 were people that were killed by Kamajors, and not the soldiers.

21 What is your response to that?

22 JUDGE ITOE: This is Sara Binkolo and who else?

23 MR KAMARA: Sara Binkolo and Sara Lamina. My Lord, I'm  
24 looking at the evidence of --

13:01:39 25 JUDGE ITOE: Yes, I know.

26 THE WITNESS: Ask the question.

27 MR KAMARA:

28 Q. The corpses you saw at that intersection, two of those are  
29 Sara Lamina and Sara Binkolo. These are people killed by

1 Kamajors and not the soldiers; do you agree to that?

2 A. I don't agree.

3 Q. And, Mr Witness, the time of your visit to Kori bundu, we  
4 have other evidence before this Court that suggests it was  
13:02:51 5 around February 1998; would you agree to that time?

6 MR POWLES: Your Honour --

7 PRESIDING JUDGE: Yes, counsel.

8 MR POWLES: If my learned friend could indicate where the  
9 evidence is that suggests that this witness to Kori bundu  
13:03:06 10 in February 1998.

11 MR KAMARA: My learned friend has missed the point. I'm  
12 suggesting to him that his visit could have been in February  
13 1998. That is the date I want him to agree with. Because, in  
14 his evidence, he was not sure when he did a visit. I'm trying to  
13:03:25 15 place a date, for the assistance of the Court.

16 PRESIDING JUDGE: In other words, somebody else said that  
17 he did visit in February 1998; is that what you're saying?

18 MR KAMARA: My Lord, it is the circumstances of his  
19 narrative, that Jegbeyama gave instructions to block the road.

13:03:37 20 PRESIDING JUDGE: Yes.

21 MR KAMARA: And we have evidence before this Court that  
22 Jegbeyama --

23 PRESIDING JUDGE: That --

24 MR KAMARA: That that incident of blocking the road, giving  
13:03:45 25 instructions, was in February 1998.

26 PRESIDING JUDGE: That's what you're putting to him.

27 MR KAMARA: Yes.

28 MR POWLES: I'm grateful.

29 JUDGE ITOE: Put it as clearly as that. You know, that's

1 why Mr Powles was in difficulty.

2 MR KAMARA: Yes, My Lord, I can understand his difficulty.

3 JUDGE ITOE: It was rather vaguely put, I learned counsel.

4 MR KAMARA: Yes, My Lord. I apologise for that. My Lord,

13:04:04 5 I do not have the transcript in my hands, but I do recall the  
6 evidence.

7 PRESIDING JUDGE: We take your word for it.

8 MR KAMARA: Thank you, My Lord.

9 Q. Mr Witness, my question again is: Jegbeyama gave evidence

13:04:45 10 before this Court that he, and his group, blocked -- I believe he  
11 said -- I cannot remember which of the roads -- his instructions  
12 were to block one of the roads to prevent ambushes. Are you with  
13 me?

14 A. Yes.

13:04:48 15 Q. I say that incident occurred in February of 1998. My  
16 question to is that the same incident you're narrating to us  
17 today, about blocking of the road?

18 MR POWLES: Your Honour, I take the same objection. This  
19 witness doesn't know what Jegbeyama said in evidence.

13:05:16 20 PRESIDING JUDGE: But he's been told. Hasn't he been told,  
21 that somebody had come and testified about a particular incident,  
22 and they've given it a time frame of February -- in other words,  
23 is he talking about the same thing, in his own evidence here?

24 MR POWLES: Well, Your Honour --

13:05:34 25 PRESIDING JUDGE: What's problematic about that?

26 MR POWLES: This witness doesn't know what Jegbeyama said  
27 and doesn't know the context in which Jegbeyama said it. A  
28 proposition can be put to this witness, i.e: Would you accept  
29 that this incident occurred in February 1998. [Overlapping

1 speakers] --

2 PRESIDING JUDGE: It's the practice that, even though this  
3 in origin was not permissible, telling witnesses about what  
4 others came and said, I'm sure in the history of the common law,  
13:06:05 5 it was prohibited but, down the years, in most jurisdictions,  
6 it's permissible to do that, as long as the basic rules of  
7 examination-in-chief and cross-examination are adhered to. So, I  
8 think it's a strict -- it's not complicated.

9 MR POWLES: I don't press the point.

13:06:27 10 PRESIDING JUDGE: Yes. Counsel, see if you can wind it up.

11 MR JABBI: My Lord, my own difficulty --

12 PRESIDING JUDGE: With that is --

13 MR JABBI: -- is with the question. The witness, in his  
14 evidence, named the road that was blocked [overlapping  
13:06:37 15 speakers] --

16 PRESIDING JUDGE: Okay.

17 MR JABBI: -- in his evidence.

18 PRESIDING JUDGE: Quite.

19 MR JABBI: But the Prosecutor, in his question, is not  
13:06:53 20 specifying the road, referred to by Jegbeyama, which was blocked,  
21 and the evidence is that there are various roads meeting at a  
22 certain point. So it may well be that a different road was  
23 attested to by Jegbeyama to what the witness is now attesting to,  
24 and that the difference in time frame may be attributable to  
13:07:22 25 that.

26 PRESIDING JUDGE: Yes. Counsel, you may want to respond to  
27 that.

28 MR MARGAI: I'm so sorry, My Lord. If I might add to that,  
29 the Prosecutor clearly stated that he himself wasn't sure of the

1 road.

2 PRESIDING JUDGE: Quite. Yes, in the light of this  
3 objection and your addition, I'd like counsel to respond to that.  
4 Is this a valid position that the incidents, even though they may  
13:07:44 5 have some similarities, might still have some material  
6 differences, in terms of --

7 MR KAMARA: Yes. My Lord, the issue I'm picking here is  
8 that instructions, given by Jegbeyama to the Commander Vanjawai,  
9 about blocking the road, the different roads leading to  
13:08:06 10 Kori bundu. And we have evidence coming from Jegbeyama, that when  
11 they were to attack on that fourth attack, the final attack, his  
12 task was to block the road. I'm trying to associate that piece  
13 of evidence with his information. If it is the same, then we  
14 will have a time frame that we're dealing with here. If not, My  
13:08:24 15 Lord, then I can leave it.

16 It's up to him to agree that Jegbeyama gave us these  
17 instructions of blocking the road, at a point in time, and I want  
18 to put that to him. He said, in his evidence, that Vanjawai was  
19 instructed by Jegbeyama, that they were to attack Kori bundu and  
13:08:47 20 that Gbaama Road should be blocked.

21 PRESIDING JUDGE: Is that the same thing that this other  
22 witness testified to?

23 MR KAMARA: Jegbeyama. My Lord, that is what cannot  
24 [overlapping speakers] --

13:08:52 25 JUDGE ITOE: This is what you don't have. This is it.

26 MR KAMARA: Rather than jeopardise the situation, My Lord,  
27 I will rephrase the question, to avoid any further --

28 PRESIDING JUDGE: Proceed.

29 JUDGE ITOE: In any event, we can always visit the records.

1 MR KAMARA: Yes, My Lord.

2 JUDGE ITOE: We would visit the records, when it comes to  
3 time, to know what instructions were given, and if there was only  
4 one instruction given by Jegbeyama, in the course of these  
13:09:17 5 transactions, to block the road and, if he did, what road did he  
6 say should be blocked?

7 MR KAMARA: Yes, My Lord.

8 JUDGE ITOE: So that we know it is either Gbaama Road, or  
9 whichever, you know, was blocked. We don't have the details.

13:09:34 10 MR KAMARA: The details as I do, My Lord, I do remember,  
11 but, My Lord, without any prejudice, I will rephrase that line.  
12 Q. Mr Witness, I'm suggesting to you that that blockade of the  
13 Gbaama Road took place in February 1998. Would you agree with  
14 that?

13:10:04 15 A. I said 1997.

16 Q. Thank you. Mr Witness, now you said you're a farmer; am I  
17 correct?

18 A. Yes.

19 Q. Do you do mining now, or it was before?

13:10:35 20 A. I mine for diamonds, and I still do my farming.

21 Q. When was the first time you came to Freetown to testify?

22 A. This is my first time of coming here.

23 Q. When? When?

24 A. I came on 31st August.

13:11:13 25 Q. You seem to know dates when it relates to non-issues.

26 PRESIDING JUDGE: What does that mean to him, non-issues?

27 Take that back, counsel.

28 MR KAMARA: Yes, My Lord.

29 Q. You seem to remember the dates when it relates not to the

1 issue of your brother, but when it comes to questions posed to  
2 you about that, you do not recall the dates; am I correct?

13:11:52 3 JUDGE BOUTET: Isn't it getting a bit argumentative? This  
4 is the kind of argument you can put forward in the future, as  
5 such. I have difficulties to see how this witness can answer  
6 that.

7 MR KAMARA: My Lord, it is a straightforward question, and  
8 I'll rephrase it still.

9 PRESIDING JUDGE: What is the object of it?

13:12:15 10 MR KAMARA: The object is to show that he has a selective  
11 memory [overlapping speakers] --

12 PRESIDING JUDGE: Credibility?

13 MR KAMARA: -- his credibility. He chooses what to  
14 remember and what not to remember.

13:12:21 15 PRESIDING JUDGE: That could be a subject for address in  
16 these sort of things.

17 MR KAMARA: I have to lay the foundation for it now.

18 PRESIDING JUDGE: Well, I think [overlapping speakers] --

19 JUDGE BOUTET: You have laid the foundation.

13:12:28 20 PRESIDING JUDGE: Quite right.

21 JUDGE BOUTET: He just told you he came on 31 August, and  
22 the other dates he doesn't recall. If you want to argue with  
23 this, fine. Why this question? I say to you, this is  
24 argumentative, as such, and it serves no purpose.

13:12:51 25 MR KAMARA: My Lord, I'll take the decision of Learned  
26 Justice Boutet on that. I will still move on. My Lord, no  
27 further questions with this witness.

28 PRESIDING JUDGE: Thank you. Counsel for the second  
29 accused, any re-examination?

1 MR POWLES: Your Honour, there is. I'm conscious of the  
2 time. I don't want to trespass on Your Honours' lunch.

3 PRESIDING JUDGE: Well, considering the narrow compass of  
4 re-examination, I don't see why you shouldn't, really, just wrap  
13:13:33 5 it up.

6 MR POWLES: I'd be grateful if I can do that. I'm  
7 grateful, Your Honour.

8 RE-EXAMINED BY MR POWLES:

9 Q. Mr Fallon, just a few questions in re-examination. First  
13:13:46 10 of all, Mr Kamara, for the Prosecution, read to you a portion of  
11 your statement. He said the following to you, from your  
12 statement, "I then saw somebody covered with blood sitting on the  
13 ground, who resembled my brother."

14 MR KAMARA: Objection, My Lord. No statement was read to  
13:14:12 15 this witness by the Prosecution. No statement was read --

16 JUDGE ITOE: But facts which correspond with that statement  
17 were put to this witness.

18 MR KAMARA: Yes, My Lord, but then let it be stated  
19 correctly that questions were posed, not read from the statement.

13:14:24 20 MR POWLES: I take the point.

21 Q. Witness, do you recall words to that effect in your  
22 statement, which you provided to the Defence?

23 A. No.

24 Q. Witness, you gave a statement to the Defence and, in that  
13:14:52 25 statement, you said the following: "I forced my way through the  
26 crowd and, as soon as I got close to him, I knew that it was my  
27 brother." Is it correct that your statement goes on and says:  
28 "I forced my way through the crowd and, as soon as I got close to  
29 him, I knew that it was my brother. Our eyes met and my brother

1 shook his head and then bowed it down." Do you remember saying  
2 that to the Defence?

3 A. Yes.

4 Q. Now, moving on, witness. When you first saw your brother,  
13:15:34 5 how far away from him were you?

6 MR KAMARA: Objection, My Lord. That question was asked  
7 and answered, and there is no ambiguity or difficulty in that to  
8 clarify in re-examination.

9 PRESIDING JUDGE: What's your response? What is the  
13:15:50 10 discrepancy?

11 MR POWLES: Your Honours will note, from the portion of the  
12 witness's statement: "I saw somebody covered with blood sitting  
13 on the ground, who resembled my brother." He then said, "I  
14 forced my way through the crowd and, as soon as I got close to  
13:16:04 15 him, I knew that it was my brother." I want to ascertain from  
16 the witness that the estimate as to distance that he gave, i.e.,  
17 from the chair that he's sitting, to the Bench, was that the  
18 distance --

19 PRESIDING JUDGE: Was consistent with what --

13:16:20 20 MR POWLES: -- when he first saw his brother or when he  
21 drew closer to his brother. That's what I'm trying to ascertain.

22 PRESIDING JUDGE: Is that a discrepancy? Is there any --  
23 was that an issue, really?

24 MR KAMARA: My Lord, it wasn't, and it's clear -- and the  
13:16:33 25 statement is not in evidence.

26 PRESIDING JUDGE: Yes.

27 JUDGE BOUTET: This is one of the difficulties, I would  
28 like -- and I subscribe to what the Prosecution is saying. With  
29 all the arguments we put to him, he abandoned that line of

1 question and, therefore, yes, the answer -- the question that he  
2 put to the witness, we never got an answer. But this is really  
3 of no value whatsoever; it is a question without any answer.  
4 Furthermore, that statement, whatever it is, is not in evidence  
13:16:57 5 in any way, shape or form. So now you're quoting from a  
6 statement that is not even in evidence. How are we to deal with  
7 that? I mean, we don't know what you -- it may be what's written  
8 there. I trust that you're being accurate in doing this. But  
9 what is this statement all about?

13:17:14 10 MR POWLES: Well, the witness --

11 PRESIDING JUDGE: Added to that -- well, what's the  
12 inconsistency here? Because if there is an inconsistency, from  
13 your perspective, then you are caught by the rule of  
14 re-examination, in which the same rules governing  
13:17:30 15 examination-in-chief apply: That you cannot put to your own  
16 witness, in the witness stand, any issue to establish consistency  
17 between what he said here and what he made in a statement out of  
18 Court. You'd be violating that rule.

19 MR POWLES: There are two separate issues here. There's  
13:18:00 20 the issue of the statement; my learned friend for the Prosecution  
21 put a discreet part of the statement to the witness, which the  
22 witness adopted and said that that was correct. Now, in relation  
23 to that issue, it seems to me, and I invited my learned friend to  
24 do it, that if he wanted to quote a portion of the statement, it  
13:18:11 25 is only fair and proper, to assist the Court in its search for  
26 the truth, which my learned friend says he seeks to direct the  
27 Court to, that he puts that quote in the full context of the  
28 statement which he put to the witness. Now, that's the first  
29 issue, and I dealt with that with the witness. I put the

1 remainder of his statement to the witness, and the witness said,  
2 yes, that is what I told the Defence.

3 PRESIDING JUDGE: But as far as my recollection goes, the  
4 second issue was never made an issue in the cross-examination;  
13:18:39 5 not so?

6 MR POWLES: Well --

7 MR KAMARA: Yes, My Lord.

8 PRESIDING JUDGE: And, therefore, if it was not, then how  
9 are you entitled to re-examination on that?

13:18:50 10 MR POWLES: The second issue was my learned friend elicited  
11 from the witness an estimation as to distance between himself and  
12 his brother.

13 PRESIDING JUDGE: That's all.

14 MR POWLES: Now, obviously, the witness was not at a  
13:19:03 15 constant distance from his brother. He was, at one point, away  
16 from his brother and, according to his evidence, then moved  
17 towards him. Now, if that's correct, I want to ascertain from  
18 the witness, to assist Your Honours, whether the estimate as to  
19 distance that he gave, at which point was he referring to? Was  
13:19:20 20 it when he was furthest from his brother, or was it when he was  
21 at his closest to his brother.

22 PRESIDING JUDGE: But the definitive answer that he gave  
23 was in respect of a definitive question that was put to him. Why  
24 is it for the Bench to be able to move beyond that specific  
13:19:45 25 question that was put to him in which he answered specifically to  
26 this rather broader universal discuss, which you seek --

27 MR POWLES: In fairness, I mean no disrespect to my learned  
28 friend, the question was perhaps not as clear as it might have  
29 been. For those reasons, I seek to elicit from the witness, in

1 the clearest form possible, to assist the Court, with a proper  
2 estimate as to where exactly he was and how far away --

3 PRESIDING JUDGE: What prejudice does it do to your case?  
4 Remember, even in re-examination, why is it necessary? Because,  
13:20:15 5 after all, a re-examination is to be able to reconcile  
6 discrepancies.

7 MR POWLES: Your Honour --

8 PRESIDING JUDGE: In your --

9 MR POWLES: -- re-examination is also to clarify issues

13:20:27 10 that may be left unclear as a result of cross-examination, and it  
11 seems to me --

12 JUDGE ITOE: It wouldn't mean a further  
13 examination-in-chief, would it?

14 MR POWLES: Well, if Your Honours are happy with an unclear  
13:20:39 15 answer, perhaps on the evidence, then I'm happy, but I'm seeking  
16 to clarify the situation with the witness to have as much clarity  
17 before the Bench as possible. [Overlapping speakers] what the  
18 distance was at the closest point --

19 PRESIDING JUDGE: It may be clarity on a collateral aspect  
13:20:54 20 of it because, on the main aspect, he has already given a  
21 definitive answer. And unless you persuade the Bench, why is  
22 this so-called clarification so important for us to ascertain the  
23 entire set of facts?

24 MR POWLES: Your Honour, it seems to me that -- I don't  
13:21:14 25 know, but it may be that Your Honours would want to know the  
26 distance between the witness and his brother. It may be that  
27 he'll say that 20 feet was the closest that I got to my brother,  
28 but it may be that he'll say that was the distance between myself  
29 and my brother when the crowd was in between us, however, I then

1 went through the crowd and got closer to my brother. That's  
2 actually the evidence of the witness. What I want to ascertain  
3 from him is that the estimate of the distance he gave, was it the  
4 closer distance or the further distance?

13:21:42 5 [The Trial Chamber conferred]

6 PRESIDING JUDGE: Counsel, it's the ruling of the Bench,  
7 that this is an impermissible line of re-examination. Go ahead.

8 MR POWLES:

9 Q. Witness, it was put to you in cross-examination that the  
13:22:16 10 evidence that you've given to this Court is misinformation, that  
11 it cannot be true. Witness, how does that make you feel?

12 MR KAMARA: Objection, My Lord.

13 PRESIDING JUDGE: Why?

14 MR KAMARA: The question is irrelevant and it does not  
13:22:33 15 affect the substance of the question arising from  
16 cross-examination. My Lord, re-examination is not a repair  
17 workshop. That question does not arrive from cross-examination.

18 PRESIDING JUDGE: Counsel, how do you respond to that  
19 reply?

13:22:47 20 JUDGE ITOE: Mr Powles, I think your witness has been clear  
21 on this issue. You've re-stated him. What else do you want him  
22 to say? Do you want him to say he feels proud or he feels angry,  
23 or annoyed?

24 MR POWLES: I don't want him to say anything.

13:23:04 25 JUDGE ITOE: How does that -- what impact does that have on  
26 the Court?

27 MR POWLES: Your Honour, this witness has --

28 JUDGE ITOE: Honestly, I don't consider that question is  
29 necessary.

1 MR POWLES: Well, Your Honours, if that's [overlapping  
2 speakers] --

3 PRESIDING JUDGE: Quite. We overrule that. Actually, you  
4 don't want to evoke any feelings. This Bench is supposed to look  
13:23:23 5 at these matters objectively. His feelings would not assist us.

6 MR POWLES: Then I don't press it further. That completes  
7 the re-examination of this witness.

8 PRESIDING JUDGE: Thank you very much. Does the  
9 Prosecution have any matter that they want to bring to the  
13:23:44 10 attention of the Court?

11 MR KAMARA: Yes, My Lord, as I indicated earlier  
12 [overlapping speakers] --

13 PRESIDING JUDGE: Yes. I remember you said there was some  
14 kind of post-script.

13:23:56 15 MR KAMARA: Yes, My Lord.

16 PRESIDING JUDGE: What is it?

17 MR KAMARA: It's relating to the statement of this witness.  
18 My Lord, the summary that we have --

19 JUDGE BOUTET: Do we need the witness in the witness chair  
13:24:05 20 for this?

21 MR KAMARA: No, My Lord.

22 PRESIDING JUDGE: If not --

23 MR KAMARA: It doesn't affect his evidence.

24 PRESIDING JUDGE: Right. Mr Witness, thank you for your  
13:24:12 25 testimony. You're now released. Victims and Witnesses Unit,  
26 please escort the witness out of Court.

27 [The witness withdrew]

28 PRESIDING JUDGE: Mr Kamara.

29 MR KAMARA: Yes, My Lord. I'm sorry to take up your time

1 up, My Lords. It is relating to the summary that we have  
2 regarding this witness. It clearly indicated a time frame  
3 of October 1997, regarding the incident of the killing of his  
4 brother. In the entire statement, there is no time frame, in the  
13:25:11 5 entire statement.

6 My Lord, I'm bringing this up, because it could be crucial.  
7 When we send out our investigators, these are based on the  
8 summaries that are being provided. If we are being misled by  
9 something in the summary, then time investigation is in a state  
13:25:27 10 of chaos. My Lord, I would more or less suggest we be very  
11 careful in summarising statements and not try to insert something  
12 that is not in the statement. This could be dangerous, and it  
13 has affected our position, even with this witness.

14 PRESIDING JUDGE: Is this an appeal to the Defence?

13:25:44 15 MR KAMARA: Yes, My Lord, it's a sort of appeal.

16 PRESIDING JUDGE: Well, responses? How do you take that?

17 MR POWLES: I don't know if my learned friend is seriously  
18 suggesting that the Prosecution have been misled in any way. Of  
19 course, the witness --

13:26:00 20 PRESIDING JUDGE: Yes, there is an allegation like that,  
21 yes.

22 MR POWLES: Frankly speaking, that's -- well, if my learned  
23 friend stands by that, then, of course, there may be  
24 implications. May I say this: The witness summaries that were  
13:26:17 25 provided to the Prosecution and the Court of course don't form  
26 evidence. They are not evidence before the Court. As I  
27 understand it, the principle of orality is the guiding principle  
28 of this Court. The summaries do not form the evidence. They're  
29 there, to the extent that they can, at that point in time, give

1 an indication to the parties as to the sort of evidence and  
2 issues that the witness may be dealing with.

3 JUDGE ITOE: But do you concede, Mr Powles, that this  
4 should at least be reflective -- the summaries should be  
13:26:59 5 reflective of the statements, of the vital aspects and portions  
6 of the statement?

7 MR POWLES: Of course.

8 JUDGE ITOE: I think that's the point which has been made.

9 MR POWLES: Yes, and it's my respectful submission that  
13:27:11 10 there's no --

11 [Telephone rang]

12 PRESIDING JUDGE: Where is that interfering noise coming  
13 from?

14 MR POWLES: Certainly not from me.

13:27:21 15 PRESIDING JUDGE: It sounds very much like an alarm.

16 MR POWLES: Your Honours, the point is this: The witness  
17 summaries were filed pursuant to an order of the Court, to give  
18 an indication as to the types of areas that the witness would be  
19 dealing with and that's, of course, what the Defence have done.

13:28:05 20 JUDGE BOUTET: Yes, this is true, Mr Powles, with a big  
21 caveat, and this is in line with what my brother Justice Itoe has  
22 said. That was done because, when there were applications by the  
23 Prosecution, for the Defence to disclose statements of all of  
24 their witnesses, we refused that motion, and we said to the  
13:28:24 25 Defence, you have to provide a summary and the summary must be as  
26 accurate and as descriptive as possible. We came back on a few  
27 occasions on that. Therefore, the summary must be reflective of  
28 what the statements are. If, in the summary, you have  
29 information that is not even in the statement, the Prosecution is

1 so entitled, for their own work, to rely on the information you  
2 provide.

3 They're saying now you have information in the summary  
4 that's not in the statement. So what is it they are supposed to  
13:28:59 5 be using? The summary? The statements, they don't have. They  
6 have this one this morning because you kindly provided that  
7 statement to them at that moment. But they have to rely on the  
8 information that you provide through summary of what the  
9 witnesses are likely to say.

13:29:13 10 MR POWLES: Your Honours, yes.

11 JUDGE BOUTET: It doesn't affect orality. The principle of  
12 orality is a different issue. Here, it's really -- what the  
13 statement is saying is -- it's not consistent with what the  
14 statement is saying.

13:29:25 15 MR POWLES: Your Honours, it's my respectful submission,  
16 that there is no material difference between what was contained  
17 in the summary, the evidence this witness gave, and what is  
18 contained in his statement. It may be that, in the summary, a  
19 specific date was given, but that doesn't mean that that date  
13:29:39 20 doesn't coincide with the description as to the timing of the  
21 incident that the witness gave --

22 PRESIDING JUDGE: Even if that particular -- the date is a  
23 highly contentious issue?

24 MR POWLES: Well [overlapping speakers] --

13:29:52 25 PRESIDING JUDGE: Or would the same considerations apply?

26 MR POWLES: The date may be contentious, it may not. The  
27 issue is whether there is any inconsistency between the date  
28 given in the witness summary and the evidence given by the  
29 witness, and the evidence contained within his statement.

1           PRESIDING JUDGE: But you would agree that a summary really  
2 is not just a rather cavalier reproduction --

3           MR POWLES: Of course not, no.

4           PRESIDING JUDGE: It must be something that actually, in an  
13:30:21 5 encapsulated form, gives the gist of the --

6           MR POWLES: Of course. Yes.

7           PRESIDING JUDGE: -- what the witness is going to testify  
8 about and, therefore, contains all the essential ingredients.

9           MR POWLES: Your Honours, yes.

13:30:33 10           PRESIDING JUDGE: When we use to do precise at school, a  
11 precise would be, really, that kind of thing. I mean, you don't  
12 just leave out the essentials, and counsel is complaining that  
13 where essentials, in terms of key elements of the evidence are  
14 left out, they're disadvantaged.

13:30:56 15           MR POWLES: Your Honour, I don't think my learned friend is  
16 and even can suggest that essential elements have been left out.  
17 If anything [overlapping speakers] --

18           JUDGE ITOE: Mr Powles, look at one element, the issue of  
19 his saying that the person he saw resembled the brother, before  
13:31:09 20 he goes further to say that it was his brother. I mean, that is  
21 not in the summary, is it?

22           MR POWLES: Well, in the summary he says it was his  
23 brother.

24           JUDGE ITOE: He said it was his brother, but he didn't  
13:31:18 25 mention anything about a resemblance. He started from the  
26 premise of the person resembling his brother. Before he comes  
27 around to now say that it was really his brother.

28           MR POWLES: Your Honour, makes a good point.

29           JUDGE ITOE: You see these are the things --

1 MR POWLES: Let's take it in stages because that is a very  
2 good point, Your Honour. Of course, yes, in the summary he said  
3 he recognises his brother. Now, for the first time, there is a  
4 reference to resembling. Now the reference to resembling, as  
13:31:45 5 Your Honours will recall from the evidence, when the witness  
6 first saw his brother, he was at a distance and he saw someone  
7 who resembled his brother. He, therefore, drew closer and nearer  
8 to the [overlapping speakers] --

9 JUDGE ITOE: He didn't say that in his evidence.

13:31:57 10 MR POWLES: Your Honour, I would respectfully --

11 JUDGE ITOE: You know, he didn't say he was far. There was  
12 a debate between himself and the answering of the questions as to  
13 the distance, which he was, before we came to his imagining or  
14 giving us an idea, you know, is it 20 feet and beyond, or so. It  
13:32:19 15 was not very precise. Was there a crowd when he saw him, and so  
16 on. I don't want to get into all this, you know.

17 MR POWLES: Neither do I, Your Honour, but it's been  
18 raised, and there is a complaint made, it seems now, that the  
19 witness summary was not accurate enough because there was no  
13:32:32 20 reference to resemble him. Now, the point -- and the only  
21 reference was made to the witness recognising his brother, and  
22 that's the crucial aspect of this witness's testimony: Did he or  
23 did he not recognise his brother. Now, before --

24 PRESIDING JUDGE: Before --

13:32:49 25 MR POWLES: -- before -- if I may finish, Your Honour.

26 PRESIDING JUDGE: We're protracting this particular issue.  
27 I'm sure that your observation, counsel for the Prosecution, was  
28 made in the context of requiring some future guidance on this,  
29 rather than trying to hold what one might call an exhaustive

1 post-mortem on this particular issue.

2 Is it a matter of fundamental fairness, and, also, good  
3 practice, that we should have summaries, clearly quite concise,  
4 containing the essential aspects of the evidence which is going  
13:33:33 5 to be based on that statement, and without leaving out any  
6 matters that may well be contentious.

7 MR POWLES: Your Honour, I couldn't agree more with that  
8 proposition.

9 PRESIDING JUDGE: Yes.

13:33:48 10 MR POWLES: I go back to what my learned friend said at the  
11 beginning. There has been no attempt to mislead the Prosecution  
12 or the Court. The Defence have been entirely open and have, in  
13 my respectful submission, included all the relevant and important  
14 information within the witness summary that was provided to the  
13:34:04 15 Prosecution and the Court. If my learned friend can point to  
16 something to say this crucial and important piece of information  
17 was left out from the witness summary, then I'd like to hear  
18 about that. If he's going to say it was deliberately left out,  
19 I'd like to hear about that even more. I don't think that's what  
13:34:45 20 he's saying. Perhaps he wants to reflect on that overnight and  
21 come back tomorrow morning and say exactly what his position is.  
22 Of course, the Defence are under no obligation to provide witness  
23 statements to the Prosecution. Notwithstanding that, we gave the  
24 Prosecution a copy.

13:34:45 25 PRESIDING JUDGE: But where the Court has made an order --

26 JUDGE ITOE: The Court can rule, that we need it. In fact,  
27 it was because there is really no obligation under the Rules for  
28 you to provide these Defence statements. But where the Court, as  
29 we have done in certain cases, so directs, I don't think you have

1 an option [overlapping speakers] --

2 MR POWLES: Your Honour, it wasn't something that I --

3 JUDGE ITOE: We've done this before, because we've heard  
4 that the summaries fell short of being very reflective of the  
13:35:09 5 real statement that was made by the Defence -- by the witness to  
6 the Defence team.

7 MR POWLES: Your Honour, yes. And I didn't seek to argue  
8 against the provision of the statement by the Defence to the  
9 Prosecution. I was happy to provide it to the Prosecution.

13:35:22 10 Again, I would say that there's no material difference, on a  
11 fundamental issue of importance, between a witness summary that  
12 was provided to the Prosecution, the testimony of this witness in  
13 Court, or his statement provided to the Defence.

14 PRESIDING JUDGE: At least I think the position would be  
13:35:39 15 that we -- the Defence would be quite vigilant in this kind of  
16 matter, in reflecting summaries from their statements, to be as  
17 meticulous as possible, so that nothing is done that may be  
18 interpreted or misinterpreted in any manner giving rise to  
19 possible allegations of misleading or bad faith, and that kind of  
13:36:11 20 thing. That would be the position of the Bench.

21 MR POWLES: Your Honours are, of course, I hope assured  
22 that that is what the team on behalf Mr Fofana have done, and  
23 continue to try and do, in assisting the Court to come to the  
24 right conclusion of this case.

13:36:27 25 PRESIDING JUDGE: Right. Does that dispose of the issue  
26 from your perspective?

27 MR KAMARA: My Lord, we'll take it, but there was no  
28 concession as to the errors in this summary. I was hoping my  
29 I learned friend could just concede [overlapping speakers] --

1           PRESIDING JUDGE: Well, the whole thing became  
2 argumentative. I thought we were saying that it's good practice  
3 that, in future, we have fairly comprehensive statements that  
4 contain all the essential ingredients and elements that have been  
13:36:53 5 given in the statement.

6           MR POWLES: Your Honour, of course, all the witness  
7 summaries have already been provided to the Prosecution. I don't  
8 believe there will be any further witness summaries being  
9 provided to the Prosecution. The witness summaries were already  
13:37:06 10 provided some months ago to all the parties.

11          PRESIDING JUDGE: Yes.

12          MR POWLES: Of course, those summaries were based upon  
13 interviews conducted in the field by investigators and, of  
14 course, when the witnesses come to Freetown, they are able to  
13:37:20 15 meet with counsel and have a more lengthy and detailed session  
16 with them.

17          PRESIDING JUDGE: Right.

18          MR POWLES: It is inevitable that there may be additional  
19 information that's going to be provided. But the kernel and the  
13:37:32 20 essential elements of the witnesses' testimony, I can confidently  
21 say, is contained within each and every single witness summary --

22          JUDGE BOUTET: But this is not the issue that has been  
23 raised. The issue is that you have made, in that summary, a  
24 statement there about this has happened in October 1997.

13:37:50 25          MR POWLES: Yes.

26          JUDGE BOUTET: Nowhere, according to the Prosecution, can  
27 this information be found in the statement, as such. Nowhere.  
28 Therefore, there is information in the summary that does not come  
29 from statements anywhere. And they say, based on that

1 information, that your team provided to them, they conducted  
2 their investigation, assuming this is information that was, in  
3 this case, in the statement, and the information was inaccurate,  
4 in the sense that it is not contained in the statement. I'm not  
13:38:20 5 talking of the evidence of the witness here today. It's the  
6 comparison between the summary and the statement. That's all  
7 we're talking about here. I accept what you're saying, and the  
8 other information is there. That's not what it is. It may be  
9 that, at that time, when the information was provided, maybe  
13:38:37 10 that's what you had, I don't know. So the complaint has to do  
11 with the fact that they say they may have been misled and,  
12 therefore, their investigation was made in that direction because  
13 of this inaccurate information -- not inaccurate information,  
14 information that is in the summary that is nowhere contained in  
13:38:58 15 any of the statements.

16 JUDGE ITOE: Mr Powles, I think I understand that the  
17 Prosecution is not alleging any bad faith at all. I don't think  
18 so. And I don't think that the Chamber perceives it, as such. I  
19 don't think we do. We're only saying that, you know, things can  
13:39:14 20 be done better. Like the learned Presiding Judge has said, these  
21 statements must -- the summaries must come in a proper form that  
22 will leave no one in any doubt as far as, you know, certain vital  
23 issues are concerned. I think that's all.

24 PRESIDING JUDGE: Is there anything else? Counsel do sit  
13:39:41 25 down.

26 MR MARGAI: My Lord, I think the issue of insufficient  
27 information was laid to rest when the Prosecutor, in response to  
28 a question posed by Justice Boutet, as to the reason why he was  
29 calling in the statement, clearly stated that his intention was

1 to get the witness to refresh his memory, and not to contradict  
2 him. So to complain now about insufficiency is *ipso facto*, as  
3 far as I'm concerned.

13:40:18 4 PRESIDING JUDGE: But he did leave open the possibility  
5 that he might explore prior inconsistency.

6 MR MARGAI: Your Honour, we'll take note of what he has  
7 said and try do the best we can.

8 PRESIDING JUDGE: Yes.

9 MR MARGAI: It was unfortunate that he used the word --

13:40:28 10 PRESIDING JUDGE: Misled.

11 MR MARGAI: Misled. I think that was inappropriate.

12 PRESIDING JUDGE: At this point, we need to adjourn the  
13 proceeding until tomorrow, 9.30 a.m.

14 [Whereupon the hearing adjourned at 1.38 p.m., to be  
13:41:35 15 reconvened on Thursday, the 28th day of September  
16 2006, at 9.30 a.m.]

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**WITNESSES FOR THE DEFENCE:**

WITNESS: MORRIES NGOBEH	3
EXAMINED BY MR BOCKARIE	3
CROSS-EXAMINED BY MR KAMARA	11
WITNESS: MOHAMMED FALLON	22
EXAMINED BY MR POWLES	22
CROSS-EXAMINED BY MR KAMARA	33
RE-EXAMINED BY MR POWLES	78