



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 19 SEPTEMBER 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding
Justice Richard Lussick
Justice Julia Sebutinde
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg

For the Registry:

Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis
Mr Mohamed A Bangura
Mr Alain Werner
Ms Maja Dimitrova

For the accused Charles Ghankay
Taylor:

Mr Courtenay Griffiths QC
Mr Morris Anyah

1 Friday, 19 September 2008

2 [Open session]

3 [The accused present]

4 [Upon commencing at 9.30 a.m.]

09:29:15 5 PRESIDING JUDGE: Good morning. I note some changes of
6 appearance, Mr Werner?

7 MR WERNER: Good morning, your Honours. Good morning,
8 counsel opposite. For the Prosecution this morning are Brenda J
9 Hollis, Mohamed A Bangura, Maja Dimitrova and myself, Alain
09:29:42 10 Werner.

11 PRESIDING JUDGE: Mr Anyah?

12 MR ANYAH: Yes, good morning, Madam President. Good
13 morning, your Honours. Good morning, counsel opposite. For the
14 Defence we have Mr Courtenay Griffiths QC and myself, Morris
09:30:05 15 Anyah. Thank you.

16 PRESIDING JUDGE: Thank you. If there are no other matters
17 I will remind the witness of his oath? No.

18 Mr Witness, good morning.

19 THE WITNESS: Good morning, my Lord.

09:30:16 20 PRESIDING JUDGE: I remind you this morning that you have
21 already taken the oath to tell the truth, the oath continues to
22 be binding upon you and you should answer questions truthfully.

23 THE WITNESS: Yes, my Lord.

24 PRESIDING JUDGE: Very well. Please proceed, Mr Anyah.

09:30:25 25 WITNESS: TF1-122 [On former oath]

26 CROSS-EXAMINATION BY MR ANYAH: [Cont.]

27 Q. Good morning, Mr Witness.

28 A. Good morning.

29 Q. When we left off yesterday we were considering information

1 given by another witness concerning the death of Mohamed Fityia.

2 Do you recall that, Mr Witness?

3 A. Yes, my Lord.

4 Q. And you recall confirming the information you gave to the
09:30:59 5 Office of the Prosecutor about the version of events leading up
6 to Mohamed Fityia's death, yes?

7 A. Yes, my Lord.

8 Q. You recalled the name Shekuna as being the person that was
9 killed - actually as being the person that was robbed at
09:31:18 10 gunpoint, yes?

11 A. Yes, my Lord.

12 Q. Now, I was reading to you from the evidence of Mr Karmoh
13 Kanneh who was before this Chamber on 9 May 2008 and I want to
14 continue from where I left off. Mr Kanneh told this Court about
09:31:42 15 Fityia's death and the relevant page is page 9409. I will start
16 at line 12:

17 "Q. Who was that man?

18 A. He was called Mohamed Fityia.

19 Q. Who was Mohamed Fityia?

09:32:07 20 A. He was a businessman.

21 Q. And why was he killed, if you know?

22 A. Well that day, that particular day we were in Kenema,
23 Kamajors attacked us and when we were attacked we pushed
24 them out and so people started looting. They started
09:32:29 25 breaking into people's shops and houses. After that
26 soldiers went and commandeered his vehicle, because when I
27 went there later I investigated and they wanted to use that
28 vehicle to go and loot a Mandingo man's place. So because
29 he never wanted to lose his vehicle he asked them so that

1 he himself will drive his vehicle to go with them. So when
2 they went with this man he loaded them into his vehicle,
3 they drove him and they went, but when the Pa brought the
4 complaint to Sam Bockarie he actually did not know the
09:33:12 5 particular people who did the act. He was the only person
6 he saw, so he reported him that they were the ones who went
7 and looted his place."

8 And then the evidence continues and the Presiding Judge
9 rightly interjects a question to Ms Julia Baly, who was the
09:33:34 10 Prosecutor then, asking that a lot of "him"s and "he"s were used
11 during the last sequence and asking for clarification. The
12 Prosecution then asks Mr Kanneh this at page 9410, line 14:

13 "Q. In your answer just a moment ago, the long answer that
14 you gave, you said that you were in Kenema Town and that
09:33:57 15 Kamajors attacked and you pushed them out and some people
16 started looting. You then said they starting breaking into
17 people's shops and houses and that soldiers went and
18 commandeered his vehicle. Whose vehicle was commandeered?

19 A. Mohamed Fityia.

09:34:15 20 Q. Then you said you went there later and you
21 investigated. You wanted to see the vehicle to go and loot
22 a Mandingo's man place and you said 'because he never
23 wanted to lose his vehicle.' Again, whose vehicle are you
24 referring to there?

09:34:32 25 A. Mohamed Fityia."

26 And then Mr Kanneh goes on to tell the Court that the items
27 that they looted were the items that they had loaded into Mohamed
28 Fityia's vehicle:

29 "Q. Who loaded the items?

1 A. The soldiers."

2 I'm now at page 9411, transcript of 9 May 2008. Then
3 there's a question:

09:35:04

4 "Q. And then you said 'The Pa brought the complaint to Sam
5 Bockarie.' Who is the Pa that you are referring to?

6 A. The Mandingo man who they went and looted his place."

7 He later on goes on to say:

8 "The Mandingo man came and reported that Mohamed Fityia
9 took soldiers with him and they went and looted his place."

09:35:22

10 Later on on the same page Karmoh Kanneh tells this Court,
11 starting at line 21, he says:

12 "Well, after we went and investigated and we got the whole
13 story, when we came I tried to explain things to him for
14 him not to kill the man.

09:35:42

15 Q. To whom?

16 A. To Sam Bockarie. He did not listen at all. He said it
17 was a lie."

18 This version of accounts by Mr Kanneh, point one, you will
19 agree that Mr Kanneh claims to have undertaken some kind of
20 investigation regarding the death of Mohamed Fityia, yes,
21 Mr Witness?

09:35:56

22 A. If I will agree to that?

23 Q. I'm not asking you if. I am asking you do you agree that
24 what this man told this Court means that this man is telling the

09:36:14

25 Court he, Mr Kanneh, undertook an investigation of sorts into the
26 death of Mohamed Fityia? Do you agree with that proposition,

27 Mr Witness?

28 A. How would I agree with that? How would I? I don't know.

29 Q. Well, you heard what I read?

1 A. Of course.

2 Q. There are two issues here, Mr Witness?

3 A. Yes, I know.

09:36:38 4 Q. One is the fact of what happened, and you weren't there
5 with Mr Kanneh and so I'm not asking you about that. Do you
6 understand that? Do you understand what I've just said?

7 A. I understand, but I'm not going to agree with that.

8 Q. Well, I'm not asking you if you were there with Mr --

9 JUDGE SEBUTINDE: Mr Witness, what would assist is if you
09:36:49 10 address the Bench. I understand that it's counsel asking you the
11 questions, but actually your answers are for the Bench. You can
12 keep your ear to counsel, but your eyes to the Bench.

13 THE WITNESS: To the Bench, okay, my Lord.

14 JUDGE SEBUTINDE: That helps to eliminate any kind of
09:37:07 15 artificial confrontation between the two of you, I think.

16 THE WITNESS: Okay.

17 MR ANYAH:

18 Q. Mr Witness, there are two issues here. I'm not asking you
19 if you were in Kenema Town with Karmoh Kanneh. Do you understand
09:37:19 20 that, Mr Witness?

21 A. Yes, I understand.

22 Q. I'm asking you if on the basis of what I've read you agree
23 that the man who testified before this Court was claiming that he
24 undertook an investigation into the death of Mohamed Fityia. Do
09:37:35 25 you agree with that proposition?

26 A. I do not agree with that at all, my Lord.

27 Q. So you don't agree with this sentence that I've just read?

28 A. Because I --

29 Q. May I finish my question?

1 A. I don't know so I don't agree with that.

2 Q. You don't know about what? About Karmoh Kanneh's
3 testimony, or about the death of Mohamed Fityia? Which of them
4 do you not know about?

09:37:58 5 A. About Karmoh Kanneh's testimony, so I do not agree with
6 that because I don't know.

7 Q. Well, I am reading it to you. I am reading it to you now
8 and counsel opposite will correct me if I'm taking anything out
9 of context. Karmoh Kanneh told this Court, 9 May 2008, he said,
09:38:13 10 "Well, after we went and investigated and we got the whole
11 story." This man is claiming he investigated the death of
12 Mohamed Fityia. Do you agree that he claimed that before this
13 Court?

14 A. That is what he proposed. I don't know.

09:38:23 15 Q. You don't know, but that is what he proposed. You agree
16 that much, yes?

17 A. I am not going to pre-empt to this Court. I don't know so
18 I do not agree.

19 Q. Karmoh Kanneh told this Court that Mohamed Fityia was a
09:38:38 20 simple man who was afraid to lose his vehicle and he decided
21 instead to drive the soldiers who wanted to loot. Did you hear
22 me read that, Mr Witness?

23 A. Yes, I heard you.

24 Q. Karmoh Kanneh told this Court that after they investigated
09:38:57 25 they found out that the story was a lie, meaning Fityia played no
26 role in the looting of the vehicles - in the looting of the
27 businessman's place other than driving his vehicle there. Do you
28 agree with that?

29 A. I don't know.

1 Q. Do you agree that Karmoh Kanneh told the Court that?

2 A. Well, that is what you've read.

3 Q. Okay. Your version of the events you claim that the victim
4 was Shekuna, a diamond dealer, yes?

09:39:39 5 A. Of course, yes.

6 Q. Karmoh Kanneh never spoke of a diamond dealer. Did you
7 hear any mention of a diamond dealer when I read Karmoh Kanneh's
8 account?

9 A. No.

09:39:49 10 Q. Did you hear any mention of a man named Shekuna being held
11 at gunpoint when I just read Karmoh Kanneh's account, yes or no?
12 Did you hear me read anything about that, Mr Witness?

13 A. No.

14 Q. Did you hear anything or did you hear me read anything
09:40:11 15 about a large sum of money being taken from someone named
16 Shekuna?

17 A. Not at all.

18 Q. And in your account as well, Mr Witness, it is the case, is
19 it not, that Sam Bockarie thought that Mohamed Fityia had
09:40:33 20 committed an offence, yes?

21 A. That was what it was alleged, yes.

22 Q. And he killed him because he felt Mohamed Fityia had looted
23 someone's property, yes?

24 A. That was what I was told, yes.

09:40:56 25 Q. And he killed him because he felt Mohamed Fityia was
26 responsible for hiring two SLAs and two RUF rebels to go and
27 harass who you say was a diamond dealer named Shekuna, yes?

28 A. Yes, you are correct as alleged.

29 Q. Similarly when Karmoh Kanneh testified, Karmoh Kanneh on

1 the basis of what I've just read said that Fityia was killed
2 because the businessman reported to Sam Bockarie that Fityia
3 facilitated the looting of his place. Do you agree with that,
4 Mr Witness?

09:41:36 5 A. Yes, of course.

6 Q. So in both accounts, although they are different - and you
7 agree they are different? Let's establish that. You agree that
8 your account of this incident differs from Karmoh Kanneh's
9 account, yes?

09:41:48 10 A. Of course.

11 Q. In both accounts, though, there is a similarity?

12 A. Yes.

13 Q. And that similarity is that Sam Bockarie thought this man
14 Fityia was guilty of something, yes?

09:41:59 15 A. Of course.

16 Q. This was not the killing of a civilian arbitrarily on the
17 streets of Kenema, was it? Do you understand my question?

18 A. Yes, I understand the question.

19 Q. And what is the answer? This was not a man they just
20 plucked out on the street and shot, was it?

09:42:16

21 A. Of course, yes.

22 Q. Yes means what, Mr Witness?

23 A. He was shot for something else.

24 Q. He was shot because they suspected him of a crime, yes?

09:42:28 25 A. Of course.

26 Q. He was not just a civilian that was executed arbitrarily,
27 correct?

28 A. Yes.

29 Q. Bonnie Wailer was also suspected of an offence when he was

1 killed, correct?

2 A. Yes, you are correct.

3 Q. And you investigated that offence, did you not?

4 A. My office investigated that offence, but --

09:42:54 5 Q. Did you investigate the offence involving Mohamed Fityia?

6 A. No.

7 Q. You never were assigned to investigate Fityia's death?

8 A. At all.

9 Q. But what did you tell us yesterday? Didn't you tell us
09:43:09 10 that you went to the scene on Sombo Street and you found the man
11 lying on the street dead?

12 A. Of course I did.

13 Q. Did you go there in your capacity as a police officer, or
14 as a civilian?

09:43:19 15 A. I went there in the capacity of a police officer to confirm
16 the death.

17 Q. You went to confirm the death, but are you saying you
18 didn't go to investigate the death?

19 A. Not at all. There was no chance to investigate because the
09:43:31 20 place was tense. I was at home very late in the evening when I
21 heard that information, so I only went there to confirm and I
22 went there and confirmed.

23 Q. When you confirmed the death, did you file any kind of
24 report?

09:43:44 25 A. There was no chance, no way. The place was tense.

26 Q. The place was tense?

27 A. Of course.

28 Q. But you provided an exhibit - a diary - that you claim are
29 the records of the Kenema police department during this period of

1 time, yes? Yes?

2 A. Of course that is quite a different time.

3 Q. Quite a different time. It was during the junta period,
4 right?

09:44:08 5 A. Yes.

6 Q. The diary pertains to the junta period, right?

7 A. Yes.

8 Q. It pertains from 25 May 1997 through February 1998, yes?

9 A. No, no, no, no, no.

09:44:17 10 Q. Well it pertains to January and February of 1998, yes?

11 A. You are correct.

12 Q. And it records the death of several people, yes?

13 A. Of course.

14 Q. And you went to investigate Fityia's death, but you say you
09:44:32 15 wrote nothing down. Is that your evidence?

16 A. I didn't went there to investigate, just to confirm whether
17 it is true or not.

18 Q. You went to confirm whether it's true or not?

19 A. Yes.

09:44:41 20 Q. And then you heard this story, yes? The story of how he
21 died, yes?

22 A. Of course.

23 Q. And you are a policeman, yes?

24 A. Of course I'm a policeman.

09:44:51 25 Q. And you ran with that story? You took that story as the
26 truth, did you not?

27 A. It is the facts. The story is truth, yes.

28 Q. But a different story than what Karmoh Kanneh told this
29 Court. You agree with that?

1 A. It's different. He knows where he got his information.

2 It's different. Quite different.

09:45:23

3 Q. Bonnie Wailer. Bonnie Wailer, one day you showed up at the
4 CID, yes, Criminal Investigations Department, and someone in the
5 lock up named Bonnie Wailer was there, yes?

6 A. You are correct, yes.

7 Q. You knew Bonnie Wailer before that day, did you not?

8 A. Very well.

09:45:33

9 Q. When you saw him he was wearing camouflage pants - military
10 pants - yes?

11 A. Indeed he was.

12 Q. Why was he there?

13 A. He was there for an alleged offence.

09:45:49

14 Q. Bonnie Wailer went to steal, got caught up in the ceilings
15 of a house and they caught him, yes?

16 A. You are correct.

17 Q. The people who caught Bonnie Wailer were civilians, yes?

18 A. They were civilian, yes.

19 Q. They arrested Bonnie Wailer and they tortured him, yes?

09:46:05

20 A. I cannot attest to that, whether they tortured him or not.

21 Q. Your evidence before the RUF Trial Chamber will attest to
22 that for us, Mr Witness. RUF transcript, 24 June 2005, page 20.

23 This is what you told - rather I take that back. AFRC

24 transcript, before these same Justices, 24 June 2005, regarding

09:46:51

25 Bonnie Wailer. Page 20, you said at line 18:

26 "Q. What happened?

27 A. I clearly saw Bonnie Wailer with some bruises, swollen
28 face and he told me he was tortured by those civilians who
29 arrested him."

1 That's what you told this Chamber three years ago, correct?

2 A. Yes, of course.

3 Q. So, Bonnie Wailer told you he was tortured by civilians.

4 We agree on that, do we not?

09:47:20 5 A. That was what he said.

6 Q. So you have this man, Bonnie Wailer, in your lock up at the
7 CID, having been arrested by civilians, having been beaten up and
8 tortured by civilians, and Sam Bockarie came along at some point
9 in time, yes?

09:47:39 10 A. Of course.

11 Q. When you first spoke with the Prosecution, giving the
12 account of Bonnie Wailer's death, you said that it was the AFRC
13 with one RUF person that you recognised that came to the lock up
14 to get Bonnie Wailer. Counsel, this is at - well, I don't know

09:48:19 15 if you have it, but we gave you his prior out of court
16 statements. It's our tab 1 and it's the statement of 30 January
17 2008 at the end of page 1 into page 2.

18 MR WERNER: 2003?

19 MR ANYAH: 2003, yes, at the end of page 1 into page 2:

09:48:58 20 Q. Now, we'll come to your statement. Let's lay some
21 foundation, or some context. The context of this is this man who
22 was in the lock up, Bonnie Wailer, at some point Sam Bockarie and
23 his men came and they wanted to know who were Bonnie Wailer's
24 accomplice in this attempted burglary, yes?

09:49:25 25 A. Of course, yes.

26 Q. So they took Bonnie Wailer from your custody - that's the
27 police's custody - and later on they returned with Bonnie Wailer,
28 yes?

29 A. Yes, you are correct.

1 Q. They returned with him and some others. How many others
2 did they come back with him?

3 A. Two others.

09:49:49

4 JUDGE SEBUTINDE: Mr Anyah, who is "they"? "They" took
5 Bonnie Wailer out of the witness's custody?

6 MR ANYAH: Yes, I will --

7 JUDGE SEBUTINDE: Who is "they"?

8 MR ANYAH: Yes, Justice Sebutinde, I will clarify:

09:50:01

9 Q. Mr Witness, who came and took Bonnie Wailer from the
10 Criminal Investigations Department at the Kenema police station?

11 A. Sam Bockarie and some AFRC soldiers.

12 Q. I see. And who brought him back with these two others?

13 A. Sam Bockarie and some AFRC soldiers.

09:50:27

14 Q. And the two others were said to be the accomplice of Bonnie
15 Wailer, yes?

16 A. Yes.

17 Q. One of them was a notorious criminal. You knew him before,
18 yes?

19 A. Yes, very well.

09:50:32

20 Q. You agree with the first proposition he was a notorious
21 criminal, yes?

22 A. Yes.

23 Q. Do you recall the name of the second person?

24 A. I cannot.

09:50:48

25 Q. When you met with the Prosecution the first time, on 30
26 January 2003, this is what you said about who took Bonnie Wailer
27 from your department. At the end of page 1 there you discuss -
28 I'll wait for Madam Court Officer. End of page 1 you discuss
29 Bonnie Wailer and you say:

1 "In reply from my question whether he stole from them,
2 Bonnie Wailer said he attempted but he was caught in the ceiling.
3 Whilst on this conversation soldiers came from the AFRC
4 secretariat and demanded that he, the suspect" - Madam Court

09:51:56 5 Officer, I'm now on page 2:

6 "Soldiers came from the AFRC secretariat and demanded that
7 he, the suspect, be handed over to them. I only recognised an
8 RUF man among them called Junior."

9 And you go on to say later on:

09:52:28 10 "They returned shortly with three others and shot four of
11 them at the police compound in Kenema."

12 Now, the focus of my question. You did not mention that
13 Sam Bockarie came and took Bonnie Wailer from the police station
14 when you spoke with the Prosecution on 30 January 2003, did you?

09:52:57 15 A. Well perhaps that was out of mistake, but I mean Sam
16 Bockarie came in together with the AFRC juntas.

17 Q. Do you see where it says, "I only recognised an RUF man
18 among them called Junior"? That suggests there was only one RUF
19 man and the rest were AFRC. Do you agree with that?

09:53:21 20 A. No, they had their own vehicle. Two vehicle came in the
21 police station; one occupied by AFRC and one by the RUF rebels
22 headed by Sam Mosquito.

23 Q. Well, Mr Witness, you see here is the problem. What you
24 have just said now is what you told this Court on 24 June 2005.

09:53:44 25 That's when you started adding the name Sam Bockarie and that's
26 when you started saying there were two vehicles. Counsel, its on
27 page 19, 24 June 2005. Here is what you told the Court. I'll
28 read it to you, line 15:

29 "Q. What happened after that?

1 A. After some time I saw two vehicles enter our police
2 compound.

3 Q. Carry on.

09:54:12

4 A. One of the vehicles was occupied by Mosquito and his
5 men and the other was occupied by one AFRC lieutenant and
6 his men.

7 Q. Do you know his name?

8 A. No, I don't know his name."

09:54:26

9 You see, Mr Witness, in 2003 you were telling the
10 Prosecution not about vehicles coming, but about soldiers from
11 the AFRC secretariat and that you recognised only one RUF man
12 among them. Those were whom you told came to take Bonnie Wailer.

13 When you came before the Court two years later in June of 2005
14 you said there were two vehicles: Sam Bockarie and his men in

09:54:47

15 one vehicle and an AFRC lieutenant and his man in another
16 vehicle. Do you see there is a difference between the two,
17 Mr Witness?

18 A. It might be a mistake, but two vehicles came in the
19 station; one occupied by AFRC and one occupied by RUF rebels.

09:55:10

20 Q. You did not mention that to the Prosecution when you first
21 spoke to them?

22 A. That could be a mistake, but two vehicles came in.

23 Q. I see. Is it possible that your story is changing as you
24 go along because you wish to include the two groups in every act
09:55:27 25 that you speak about?

26 A. No, that was what happened exactly.

27 Q. When you first spoke with the Prosecution, did you tell
28 them Bonnie Wailer was brought back with three men instead of two
29 men that you've told us in court now?

1 A. With two men. That is why I always emphasise on the
2 figures and dates. Sometimes I make mistakes there.

3 Q. Well, you see the page still on display?

4 A. They returned with two men.

09:55:57 5 Q. Well on the page still displayed, your statement, first
6 interview, 30 January 2003, I'll read along. Indeed, I read the
7 statement already. It says, "They returned shortly with three
8 others and shot four of them at the police compound in Kenema."
9 Four people you said were killed when you first spoke with the

09:56:21 10 Prosecution; Bonnie Wailer and three others. In court you said
11 there were three people. Is it three or is it four, Mr Witness?

12 A. Three people. The figure there was a mistake. Three
13 people were killed right in the police station.

14 Q. Another mistake in the Prosecution's notes, yes? Is that
09:56:40 15 what you're suggesting?

16 A. It could be a mistake, yes.

17 Q. It could be?

18 A. In the figure, yes.

19 Q. Is it, or is it not?

09:56:47 20 A. It is, but three people were killed right in the police
21 station.

22 Q. BS Massaquoi, who is that?

23 A. He was the chairman of Kenema Town Council.

24 Q. Brima Kpaka, who is that?

09:57:09 25 A. He is a prominent businessman in Kenema.

26 Q. Is Kpaka spelt K-P-A-K-A?

27 A. You are correct.

28 Q. Who is Andrew Quee?

29 A. Quee, Q-U-E-E?

1 Q. Yes, who is that?

2 A. He was a civil servant.

3 Q. BS Massaquoi, chairman of the Kenema Town Council, was
4 killed during the junta period, yes?

09:57:43 5 A. Yes, of course.

6 Q. Did you investigate the circumstances surrounding his
7 death?

8 A. I did, yes.

9 Q. Did you do so in your official capacity as a police
10 officer?

11 A. I did, yes.

12 Q. Did you prepare a report in respect of his death?

13 A. Yes, I did.

14 Q. Where is that report, Mr Witness? Mr Witness, where is
15 your official report regarding the death of BS Massaquoi?

16 A. It's supposed to be with our own authorities.

17 Q. Did you ever show it to the Prosecution sitting across from
18 us here?

19 A. No.

09:58:32 20 Q. Did you ever mention to them that there was such a report
21 in existence?

22 A. No, the report was prepared and handed over to our
23 authorities.

24 Q. By your authorities you mean what, the Sierra Leone police?

09:58:43 25 A. Yes, of course.

26 Q. Your commissioner of police at the time was a Mr Kenneh,
27 was it?

28 A. Yes.

29 Q. Commissioner of police for the eastern region?

1 A. Yes.

2 Q. Kono, Kailahun, Kenema Districts, yes?

3 A. Kenema District. That report was prepared by a senior
4 police officer. It was handed over to them.

09:59:09 5 Q. Your CPO was Mr Issa, yes?

6 A. Yes.

7 Q. The report was handed over to who, Issa or Kenneh?

8 A. To our OCCID for onward submission to the LUC, that is
9 Issa, and to the commissioner Mr Kenneh.

09:59:34 10 Q. How was BS Massaquoi killed?

11 A. I was not at present when he was killed and so I cannot
12 tell you exactly how he was killed.

13 Q. Which month and in which year was he killed?

14 A. I cannot remember the month and the year.

10:00:04 15 Q. Was he killed in February 1998?

16 A. You may be correct.

17 Q. Was he killed on 7 February 1998?

18 A. You may be correct.

19 Q. Did you hear about his death on 7 February 1998?

10:00:22 20 A. Clearly, yes.

21 Q. So we know you were not there when he was killed, but you
22 said you undertook an investigation into the circumstances
23 surrounding his death. Tell us how it came to be that he died?

24 A. One morning - I mean one night I had an information that BS
10:00:52 25 Massaquoi, Brima Kpaka, Andrew Quee and several others have been
26 arrested for an alleged subversive movement supporting the
27 Kamajors, so it was very late in the night and so early morning I
28 was on my way to my office. I passed through the secretariat
29 building along 14 Hangha Road, Kenema. I found a large crowd of

1 people gathered around the secretariat building. I penetrated
2 through and I managed to go and see BS Massaquoi, Brima Kpaka,
3 Andrew Quee and others in tiny cells. They were tied at the
4 back. They were tied at the back, bruises all over their bodies
10:01:46 5 and Mosquito was right there brandishing his pistol in the air
6 boasting that he must go all out and kill all the Kamajor
7 supporters because he has got an information that BS Massaquoi,
8 Brima Kpaka, Andrew Quee and others are supporting the Kamajors.

9 So after two or three days the military police concluded
10:02:13 10 the investigation and they transferred the suspects and the case
11 and inquiry file to us at the CID for further investigation, so
12 they were with us in our police custody and so we mounted our own
13 investigation. At the conclusion we found no evidence against
14 them and so we wrote our report recommending their immediate and
10:02:42 15 unconditional release as there was no evidence against them. So
16 the CPO took the matter up with the brigade commander and it was
17 approved, so the following morning the authorities were around --

18 PRESIDING JUDGE: Sorry, just before you proceed, Mr Anyah,
19 I want to record that the witness made a demonstration of how
10:03:03 20 they were tied by putting his hands --

21 THE WITNESS: Hands at the back.

22 PRESIDING JUDGE: Yes, with his --

23 THE WITNESS: All of them.

24 PRESIDING JUDGE: Excuse me, elbows bent and his hands to
10:03:12 25 the back for purposes of record. Please proceed.

26 MR ANYAH: Thank you, Madam President:

27 Q. Mr Witness, let me stop you there for a moment. Let's
28 digest what you've told us. You were going by Hangha Road, 14
29 Hangha Road, Kenema Town, having heard that BS Massaquoi and

1 others were in detention, yes?

2 A. Yes.

3 Q. You went into the premises - the building - and you indeed
4 saw Massaquoi, Andrew Quee, Brima Kpaka and others?

10:03:45 5 A. Clearly.

6 Q. How many others were with these three men?

7 A. About four. Four of them.

8 Q. About four?

9 A. Yes.

10:03:53 10 Q. That would bring the number to about seven persons you saw
11 detained at the secretariat, yes?

12 A. Yes, but there were other people detained at the
13 secretariat apart from BS Massaquoi's group.

14 Q. That's fair enough, but let's focus on BS Massaquoi's
10:04:11 15 group.

16 A. Fine.

17 Q. They add up to about seven persons, yes?

18 A. Yes.

19 Q. You said an investigation was undertaken, yes?

10:04:21 20 A. Yes.

21 Q. The allegation was that Massaquoi and others were
22 supporters of the Kamajors, true?

23 A. You are correct.

24 Q. And the results of the investigation was what?

10:04:35 25 A. Our own investigation?

26 Q. Yes, let's be clear about that. The investigation to which
27 we are referring is an investigation by the Kenema police, yes?

28 A. At the Kenema police there was no evidence against them, so
29 we recommended their immediate release and they should be

1 released unconditionally to their various sureties.

2 Q. Fair enough. And a report was prepared by the Kenema
3 police, yes?

4 A. Yes, that report was prepared by ourselves. I spearheaded
10:05:02 5 - I supervised that investigation.

6 Q. I appreciate that.

7 A. Yes.

8 Q. Is it the same report you referred to when I asked if you
9 prepared a report and you said yes?

10:05:13 10 A. No, that is quite separate.

11 Q. That is your personal report. The first report we spoke
12 about that you said was handed over to the CPO and others, that
13 was your personal report, is it?

14 A. No, that matter was investigated by a very senior police
10:05:26 15 officer, but by our office this was investigated by us,
16 supervised by my very self.

17 Q. So there are two reports regarding this man's death?

18 A. Two, yes.

19 Q. And neither of those reports you say you handed to the
10:05:42 20 Office of the Prosecutor?

21 A. This one was handed over to the Prosecutor.

22 Q. What do you mean, this one?

23 A. The one I dealt with. The one we are delving into right
24 now.

10:05:53 25 Q. Is it a report, or is it a diary?

26 A. A diary.

27 Q. Mr Witness, no, there is a difference and you know the
28 difference. We are speaking of two reports. You said one was
29 handed to the Office of the Prosecutor. Which report was handed

1 to the Office of the Prosecutor? Was it your report, or the
2 report prepared by the senior police officer?

3 A. The report prepared by the senior police officer was handed
4 over to our authorities. This other one we're dealing with right
10:06:26 5 now was investigated by myself and the diary is before this
6 honourable Court right now.

7 Q. A diary is not a report. A diary is a chronological
8 catalogue of events that happened, yes?

9 A. Then let us take it to be so.

10:06:41 10 Q. Are you saying the diary that we have as an exhibit,
11 exhibit P-24 from the AFRC trial, is your report concerning the
12 death of BS Massaquoi and others?

13 A. No, his arrest.

14 Q. You are aware that that diary contains a lot of other
10:06:56 15 information not relevant to BS Massaquoi, yes?

16 A. Of course.

17 Q. So where is your report concerning the death of BS
18 Massaquoi?

19 A. The relevant information is in this diary, not report per
10:07:10 20 se, but the relevant information is contained in this diary.

21 Q. As a police officer, when you investigate the death of the
22 chairman of the Kenema City Council you are saying the diary is
23 all you have on paper concerning your investigation?

24 A. Oh, you are --

10:07:25 25 PRESIDING JUDGE: That is not the way I am hearing it,
26 Mr Anyah. I'm hearing that there was a report by a senior
27 officer into the death and that this witness investigated the
28 allegations. That's the way I'm hearing it.

29 THE WITNESS: The allegation --

1 MR ANYAH: I can clarify, your Honour:

2 Q. Mr Witness, it's not complicated. You were a police
3 officer charged with spearheading the investigation into the
4 death of the chairman of the Kenema City Council. Following your
10:08:07 5 investigation did you, Mr Bao, prepare a report concerning your
6 actions?

7 A. You are still complicating this issue. I did not
8 personally investigate the death of BS Massaquoi. I investigated
9 the allegation made against him and others that they are Kamajor
10:08:27 10 collaborators.

11 Q. Fair enough. Here's my question again.

12 A. Let us get it clear.

13 Q. Here is my question again.

14 A. Go ahead. Go ahead.

10:08:37 15 Q. Yes. You investigated the allegations indicating that the
16 chairman of the Kenema city council was a Kamajor. Did you
17 prepare a report to document what your findings were?

18 A. Yes, to the authorities. Yes.

19 Q. To the authorities?

10:08:54 20 A. Yes.

21 Q. You never gave it to the Prosecution?

22 A. I gave them information, but the report was given to the
23 authorities recommending their immediate release as they were
24 just telling lie.

10:09:05 25 Q. Well, you could have saved us a lot of time by saying the
26 report was prepared and was given to others, not the Prosecution.
27 Why didn't you say that, Mr Witness?

28 A. By then this Court has not even been established when that
29 report was prepared and given to the authorities, so that is why

1 I gave the Court the information.

2 Q. Mr Witness - well, let's move on.

3 A. Let's move.

10:09:34

4 Q. You have told us there were about seven persons detained at
5 14 Hangha Road, AFRC secretariat, Kenema Town with BS Massaquoi,
6 yes?

7 A. There were more than seven people. There were other people
8 detained at that secretariat besides the case of BS Massaquoi and
9 others.

10:09:50

10 Q. The case of BS Massaquoi and others --

11 A. I want you to get it clear. There were other people in
12 that cells apart from BS Massaquoi and others.

13 Q. That's fair enough.

14 A. Okay.

10:10:01

15 Q. But amongst the group that you associate with BS Massaquoi,
16 including himself, they totalled about seven in number?

17 A. Seven. They handed over seven suspects to us, including BS
18 Massaquoi.

10:10:16

19 Q. And you took the suspects, or they handed them over to you
20 and at some point and they were taken from the AFRC secretariat
21 at 14 Hangha Road to your CID department?

22 A. You are correct, yes.

23 Q. What is the address of your CID department?

24 A. That is number 1 Hangha Road, Kenema.

10:10:29

25 Q. So you are at number 1 Hangha Road, the AFRC secretariat is
26 at number 14, Issa Sesay and your CPO, or your supervisor, were
27 at number 31, yes?

28 A. My CPO and other supervisors were at number 31?

29 Q. Yes?

1 A. How can my CPO be at number 31?

2 Q. Well, Issa Sesay was at number 31, yes?

3 A. Kenema police station is at number 1 Hangha Road.

4 Q. Where was Issa Sesay? He was at number 31?

10:10:57 5 A. 31.

6 Q. Yes, yes, and at some point before --

7 JUDGE SEBUTINDE: Mr Witness, could I remind you what I
8 said a little earlier, please. If you address the Bench, you
9 would not be pointing fingers at anybody.

10:11:10 10 THE WITNESS: Okay.

11 MR ANYAH:

12 Q. Mr Witness, this is a small point, but you have told the
13 Prosecution before that Issa Sesay resided on Hangha Road in the
14 same building as your own boss?

10:11:25 15 MR WERNER: Can we have a reference because that's not my
16 recollection.

17 MR ANYAH: Yes. Madam Court Officer, it's what's at tab 5,
18 proofing notes of 26 May 2005, paragraph 3, first sentence. A
19 small digression, but let's get it right:

10:12:05 20 Q. Mr Witness, these are notes from your interview with the
21 Office of the Prosecutor on 26 May 2005. At paragraph 3 it
22 reads, "Issa Sesay was residing at Hangha Road with his men. He
23 was residing in the same building as my own boss."

24 A. Well, the boss I'm referring to is presently here in The
10:12:35 25 Hague. He is coming to testify to this honourable Court. That
26 is not my CPO. He was the SOCID. The SOCID. He was also
27 staying in that building. Issa Sesay and others met him there.

28 Q. Mr witness --

29 PRESIDING JUDGE: Mr Witness, please don't mention any

1 names because we do not know the status of any person. Please
2 avoid naming.

3 THE WITNESS: Okay.

4 MR ANYAH:

10:12:58 5 Q. Mr Witness, this person in The Hague with you was your boss
6 at the time, yes?

7 A. He was the SOCID, yes, he was my immediate boss, but not
8 the CPO Issa Sesay at all as you have rightly mentioned there.

9 Q. Well, this person flew to The Hague with you. Is that fair
10:13:20 10 to say, Mr Witness?

11 A. Of course.

12 Q. Same plane, yes?

13 A. Yes.

14 Q. And you live in the same place now, yes?

10:13:27 15 A. Yes.

16 JUDGE SEBUTINDE: I'm afraid, Mr Anyah, I'm not very good
17 at these acronyms, CPO and SO I don't know what.

18 MR ANYAH: I am hesitant, Justice Sebutinde, to do that in
19 open session, because that particular title the SOCID might
10:13:50 20 easily - I'm not aware of the --

21 THE WITNESS: I will help.

22 MR ANYAH: Please, Mr Witness, no, we do not need your help
23 in this context.

24 JUDGE SEBUTINDE: For the protection of witnesses, I think
10:13:59 25 we'll leave it at that.

26 MR ANYAH: Yes:

27 Q. In any event, Mr Witness, this person and you are here to
28 give evidence in this same case, yes?

29 A. You are correct.

1 Q. Besides you and him were there others, as in former police
2 officers, that flew with you to The Hague, as in travelled with
3 you to The Hague?

4 A. No.

10:14:22 5 Q. Just the two of you?

6 A. Yes.

7 Q. Do you respect this person, Mr Witness?

8 A. Highly. He's my boss. He's my immediate boss.

9 Q. When the two of you were on your way from Sierra Leone to
10:14:36 10 Holland, he was aware that you were also going to be a witness in
11 this case, yes?

12 A. Of course.

13 Q. Both of you were coming to testify in the Charles Taylor
14 trial, yes?

10:14:49 15 A. Yes.

16 Q. And both of you were coming to testify about events
17 occurring during the junta period in Kenema Town, yes?

18 A. You are correct.

19 Q. And you knew what his purpose in coming here was, yes?

10:15:04 20 A. Of course.

21 Q. And he in turn knew what your purpose in coming here was?

22 A. Yes, you are correct. You are correct.

23 Q. May I finish my questions before you answer, please. How
24 long have the two of you been housed together in The Hague,

10:15:18 25 Mr Witness?

26 A. Since we arrived.

27 Q. Did you arrive both on 13 September, Saturday?

28 A. Yes.

29 Q. Do the two of you eat together from time to time?

1 A. Yes, we eat from the same table.

2 Q. When you got home yesterday, did you tell him how your day
3 went, Mr Witness?

4 A. No.

10:15:43 5 Q. Did he at all ask you, "How did it go today?", Mr Witness?

6 A. Never. He never.

7 Q. Did you eat with him yesterday?

8 A. Of course.

9 Q. What did you talk about --

10:15:52 10 A. Nothing.

11 Q. -- when you ate with him?

12 A. Nothing.

13 Q. How long did it take for you to complete your meal?

14 A. About 30 minutes.

10:16:00 15 Q. In 30 minutes not once did you say a word to this person,
16 is that your evidence?

17 A. No, we were saying quite a different thing, not anything
18 pertaining to the Special Court here in The Hague.

19 Q. Did he ask you when you might be finished testifying?

10:16:16 20 A. He did not. We did not say anything pertaining to this
21 Court.

22 Q. Did he ask you what questions you were asked yesterday?

23 A. Both of us - both of us are highly experienced.

24 MR WERNER: Your Honour, he answered the question. He has
10:16:28 25 answered the question three times. I object.

26 THE WITNESS: Both of us are highly experienced. We cannot
27 discuss anything pertaining to this Court. We know the procedure
28 very well.

29 MR ANYAH: That's fair enough:

1 Q. Mr Witness, going back to the digression, I had asked you
2 if your own boss resided at 31 Hangha Street. Do you wish to
3 agree with me now that one of your bosses at least resided with
4 Issa Sesay?

10:16:52 5 A. You are correct. You are correct.

6 Q. Very good. Now, the police station is at number 1 Hangha
7 Street?

8 A. Hangha Road.

9 Q. Hangha Road?

10:17:03 10 A. Yes.

11 Q. The secretariat is at 14 Hangha Road?

12 A. Yes.

13 Q. Issa Sesay and your then boss were living in the same or
14 residing in the same building at 31 Hangha Road, yes?

10:17:13 15 A. Of course.

16 Q. Where was the body of BS Massaquoi discovered?

17 A. At the government reservation by Guinea base closer to
18 Lambaya.

19 Q. What road is this place or stream - it is a stream this
10:17:43 20 placed called Lambaya, yes?

21 A. It's a stream, yes.

22 Q. Now, what road is it located at?

23 A. The government reservation is a very wide area. You do not
24 have a specific road like this is Hangha Road, this is Sesay
10:18:05 25 Street. You just have big roads with no names, you know? It's a
26 government reserve area, so --

27 Q. Well, Lambaya also has a place in its vicinity called
28 Dorwala, D-O-R-W-A-L-A, yes?

29 A. Yes. Dorwala, yes.

1 Q. And that's the more accurate place where this body was
2 found, yes?

3 A. Yes.

4 Q. Is Hangha Road in the vicinity of Dorwala?

10:18:36 5 A. Far off.

6 Q. Far off?

7 A. Far off.

8 Q. Not even close?

9 A. Not even close. Far off.

10:18:43 10 Q. I see.

11 PRESIDING JUDGE: Mr Anyah, have you got a spelling for
12 Lambaya, please?

13 MR ANYAH: Yes, the spelling given in the AFRC trial is
14 L-A-M-B-A-Y-A:

10:18:57 15 Q. Mr Witness, is that correct?

16 A. You are correct.

17 Q. Thank you. So Massaquoi and others are handed to the
18 custody of the Kenema police department and investigations are
19 undertaken into the allegations on the one hand, yes?

10:19:22 20 A. Yes.

21 Q. And they are found to be baseless, yes?

22 A. Baseless.

23 Q. A recommendation was made for Massaquoi and others to be
24 released, yes?

10:19:31 25 A. Immediately.

26 Q. Massaquoi and was it Brima Kpaka were released to sureties
27 or bail bondsmen, yes?

28 A. Yes.

29 Q. Was it those two, witness?

1 A. Yes.

2 Q. And then something happened shortly after they were
3 released. What happened, tell us?

4 A. The other suspects were unable to produce their sureties
10:20:00 5 and so they remained in our custody. After two or three days Sam
6 Bockarie, alias Mosquito, returned to Kenema Town from trek. On
7 his return he enquired from the CPO about the suspects. He was
8 told BS Massaquoi and Brima Kpaka has been released to their
9 respective surety to be reporting at the Kenema police station
10:20:28 10 daily, so he became furious and went to the brigade headquarters
11 and so after some times he returned with the brigade commander.

12 Q. Who was the brigade commander at the time?

13 A. I cannot remember his name, actually.

14 Q. When you say brigade headquarters, is it the same brigade
10:20:51 15 headquarters at the reservation where the AFRC was based?

16 A. Correct. You are correct. So they returned and they went
17 into the office of the commissioner and the CPO, so - but we
18 never entered the office. After some time they came out and the
19 CPO ordered that he has received an instruction that BS Massaquoi
10:21:14 20 and Brima Kpaka should be re-arrested and so a team was formed
21 headed by detective sergeant --

22 Q. Fofana?

23 A. Fofana.

24 Q. Yes.

10:21:28 25 A. And they went in search of BS Massaquoi and Brima Kpaka.
26 BS Massaquoi was re-arrested and brought to the police station.
27 Brima Kpaka we made to understand was sick and admitted at the
28 government hospital, Kenema. So they were with us for about one
29 or two days. It was on a Friday, I can still remember the day,

1 one lieutenant AB Touray came to the police station with full
2 force and told our boss that he has been given the mandate by his
3 senior authorities to come and collect BS Massaquoi and others
4 and to take them to the brigade headquarters for further
10:22:18 5 investigation. So, they were brought and they placed them in our
6 military Land Rover. They tortured them right in my presence.
7 They beat BS Massaquoi, stab him on his back. They threw them
8 into their vehicle and drove away.

9 Q. So, Mr Witness, what you're telling us is after having made
10:22:49 10 bail Sam Bockarie became upset when he returned from --

11 A. Trek.

12 Q. Yes, he was away you claim for a few days?

13 A. Yes.

14 Q. And Detective Sergeant Fofana led a team that went and
10:23:10 15 re-arrested Massaquoi?

16 A. Yes.

17 Q. Let's pause there. When Massaquoi and Brima Kpaka made
18 bail, how many others remained in the group in detention that you
19 said could not make bail?

10:23:20 20 A. I think about five of them.

21 Q. Was Andrew Quee among them?

22 A. Andrew Quee? Andrew Quee was among them.

23 Q. So Quee was still in custody with four others, totalling
24 five?

10:23:37 25 A. Yes.

26 Q. Massaquoi and Kpaka were released on bail to their
27 sureties?

28 A. Yes.

29 PRESIDING JUDGE: Mr Witness, you have again turned and are

1 having a conversation with counsel. Please try and do as the
2 I learned Justice has told you to.

3 THE WITNESS: Okay.

4 PRESIDING JUDGE: Please proceed.

10:24:12 5 MR ANYAH: Yes, Madam President:

6 Q. Mr Witness, when Detective Fofana went to rearrest them, it
7 came out that Brima Kpaka was taken to the government hospital at
8 Kenema and so they arrested only Bs Massaquoi, yes?

9 A. Yes.

10:24:27 10 Q. And they brought him back to the CID?

11 A. Yes.

12 Q. Then comes Lieutenant AB Touray, yes?

13 A. Yes, after two or three days. Yes.

14 Q. And you said BS Massaquoi was stabbed?

10:24:42 15 A. Yes.

16 Q. Stabbed where, Mr Witness?

17 A. At his back. I know the soldier who stabbed him. He's
18 there masquerading the city of Freetown. I see him on a daily
19 basis. He is there. I know him very well.

10:25:01 20 Q. Stabbed on his back?

21 A. Yes, I also know the Lieutenant who came for them. He's
22 there, masquerading the city of Freetown. I see him on daily
23 basis.

24 Q. You told the Prosecution the stabbing took place on 6
10:25:13 25 February, the same day Lieutenant AB Touray came to obtain
26 Massaquoi and others from your CID department, yes?

27 A. The dates and the figures, it may be correct, but I will
28 not be precise with that anyway because it has taken a long time.
29 But you might be correct.

1 Q. But let's establish this. It was the same day that you saw
2 AB Touray taking custody of Massaquoi and others that you saw
3 Massaquoi being stabbed?

4 A. Yes.

10:25:49 5 JUDGE SEBUTINDE: Mr Anyah, could I interject --

6 MR ANYAH: Yes, your Honour.

7 JUDGE SEBUTINDE: -- to enquire. The witness has just said
8 a soldier stabbed him. Perhaps could I enquire what group this
9 soldier belonged to?

10:26:00 10 THE WITNESS: AFRC.

11 MR ANYAH: Yes, Justice Sebutinde.

12 THE WITNESS: AFRC soldier.

13 MR ANYAH:

14 Q. Mr Witness, you said an AFRC soldier stabbed BS Massaquoi
10:26:11 15 on his back?

16 A. Yes.

17 Q. And that was the same day that Lieutenant AB Touray of the
18 AFRC came to obtain Massaquoi from the CID department?

19 A. You are correct. That is the same day, yes.

10:26:22 20 Q. What did he stab him with, a knife?

21 A. Bayonet.

22 Q. A bayonet?

23 A. Yes.

24 Q. This is the knife attached to a gun?

10:26:41 25 A. The knife was right in his pocket. He removed that from
26 his pocket and stabbed the man at his back.

27 Q. I see.

28 A. Right in my presence.

29 Q. Did you see blood when you saw the stabbing?

1 A. He bled profusely in my presence. I saw blood running
2 down like water.

3 Q. I see. 6 February, would you agree that's what you told
4 the Prosecution before?

10:26:57 5 A. You are correct, yes.

6 Q. What did you hear next about BS Massaquoi?

7 A. So Friday - Saturday - Sunday morning the Kamajors came in
8 from two flanks apparently to, you know, rescue BS Massaquoi and
9 others, but they never knew they've already withdrawn them from
10:27:23 10 the police and they did not coordinate with us, so they attacked
11 the police station.

12 Q. They burnt the police station?

13 A. They did not burn down the police station, but they burnt
14 down our documents, so - but they were beaten back by the junta
10:27:41 15 and the rebels. So on Sunday evening it was a widespread rumour
16 in the entire Kenema Township that BS Massaquoi and others have
17 been killed.

18 Q. So BS Massaquoi, who was alleged to be a supporter of the
19 Kamajors, was taken away and after he had been taken away the
10:28:11 20 same Kamajors mounted a two flanked attack to rescue him; is that
21 your evidence?

22 A. That is correct.

23 Q. The two flanks you're referring to, you said the Kamajors
24 entered, and this is what you told the Court previously, I'm not
10:28:37 25 saying you said this today - counsel, it's at page 45 of the AFRC
26 transcript. The question was posed to you:

27 "Q. Okay, and what happened after that?

28 A. After two days, that was on Sunday, the Kamajors
29 entered Kenema Township from two flanks. They first

1 came through Dama Road. The second came through
2 Combema Road."

3 A. Combema Road. C-O-M-B-E-M-A.

10:29:08

4 Q. Thank you, Mr Witness. So the same Kamajors launched an
5 offensive to rescue BS Massaquoi, yes?

6 A. And others, yes.

7 Q. You just included "and others"?

8 A. Yes.

10:29:20

9 Q. I see. The same Kamajors went to government hospital and
10 they rescued Brima Kpaka; true?

11 A. Yes, that was what I was told.

12 Q. And that is what you told this Court two years ago, yes?

13 A. Yes.

10:29:32

14 Q. Brima Kpaka was also alleged to be a Kamajor sympathiser,
15 yes?

16 A. Of course. All of them.

17 Q. The same Kamajors were so upset when they could not find BS
18 Massaquoi at your police department that they started burning
19 your record books?

10:29:49

20 A. Yes.

21 Q. They set them on fire?

22 A. Yes.

23 Q. And you claim that despite this fire you retrieved that
24 diary that you brought to court?

10:29:56

25 A. Yes, I did.

26 Q. That was the one thing the fire did not destroy. Is that
27 your evidence?

28 A. Yes.

29 Q. All other documents were destroyed by this fire?

1 A. Yes, but some were retrieved but those are not important or
2 even relevant to this Court, but that particular diary was very,
3 very much important for this Court. That was why I retrieve it
4 and kept it safely.

10:30:24 5 Q. You know what you told this Court the last time you were
6 before it. Page 45, counsel, line 23:

7 "Q. What happened?"

8 A. So the Kamajors entered the police compound and
9 searched briefly, but they couldn't find BS

10:30:51 10 Massaquoi. So what they did, they took all our
11 documents outside.

12 Q. Who are 'they', Mr Witness? Who are 'they'?

13 A. The Kamajors took all documents outside and set fire
14 on it.

10:31:07 15 Q. And what happened after that?"

16 Over to page 46:

17 "A. So that morning when I came to the office I met those
18 documents on fire. I went there and saw our diary, the
19 current diary, which I collected and kept safely."

10:31:23 20 So of all the things burning, of all your documents that
21 the Kamajors set on fire, this diary went saved, if you will.

22 A. Yes.

23 Q. And you recovered it?

24 A. Of course.

10:31:37 25 Q. Mr Witness, when you heard a rumour that BS Massaquoi had
26 been killed what did you do?

27 A. I went to the brigade headquarter to know whether it was
28 true or false. I couldn't find them there. I went to Guinea
29 base, I couldn't find them there. I decided to go through by

1 Dorwala. On my way I saw the body of BS Massaquoi lying with a
2 cement block on his head. When I turned around I saw Andrew Quee
3 by his side. I again saw another four bodies off from BS
4 Massaquoi and Andrew Quee. I recognised them to be those of our
10:32:44 5 suspects who were in our custody.

6 Q. What was the cause of BS Massaquoi's death, if you know?

7 A. I was not there when he was killed, so I cannot tell the
8 cause of his death. And in fact I am not the appropriate
9 authority to tell the cause of his death, except the pathologist
10:33:16 10 and not me at all.

11 Q. Well, you were asked a question on 24 June before this
12 Bench whether Massaquoi and the others were dead or alive.

13 Learned counsel, it's on page 48. And you said they were all
14 dead with gunshot wounds all over their bodies. Do you recall
10:33:39 15 saying that, Mr Witness?

16 A. They had gunshot wound, but I am not the appropriate
17 authority to tell whether they were killed by gunshot wound
18 except the pathologist. When we are investigating cases even if
19 we see gunshot wound that is not our responsibility to tell the
10:34:03 20 cause of death, except the pathologist.

21 Q. I appreciate that. We appreciate that, but let's focus on
22 the facts. Forget your procedure for a second. The fact is you
23 said they were all dead with gunshot wounds all over their
24 bodies.

10:34:17 25 A. Yes.

26 Q. May I finish, Mr Witness? This means you saw gunshot
27 wounds all over their bodies, yes?

28 A. They had gunshot wound. They had gunshot wound.

29 Q. All over their bodies?

1 A. They had gunshot wounds. I cannot tell you whether the
2 gunshot killed them or not. They had gunshot wound.

3 Q. I'm not asking you whether it killed them or not. I am
4 asking you what you saw. You told this Court on 24 June 2005 the
10:34:44 5 gunshot wound you saw was all over their bodies, yes?

6 A. Because they sprayed them sporadically. They sprayed them.
7 Sprayed them - gun.

8 Q. And that's what you saw?

9 A. Exactly. That's what I saw.

10:34:56 10 Q. And this was on 7 February 1998, yes?

11 A. That date could be correct, yes.

12 Q. This was a full 24 hours after you saw Lieutenant AB Touray
13 taking them from the CID, correct?

14 A. Lieutenant Touray took them on a Friday.

10:35:11 15 Q. And you saw the bodies when?

16 A. Saturday. Then Sunday evening they were - I heard that
17 they have been killed, so I went there and saw the bodies.

18 Q. So it was more than a day that passed between when Touray
19 took them and when you saw the bodies, yes?

10:35:26 20 A. Yes, he collected them on Friday morning, early morning.

21 Q. Do you propose that the same BS Massaquoi that was stabbed
22 and bleeding profusely on Friday was shot and killed two days
23 later? Does that make sense?

24 MR WERNER: No, no, the witness never said he was killed
10:35:46 25 two days later. He said what he saw two days later.

26 JUDGE LUSSICK: That's when he found him, two days later.

27 MR ANYAH: I know. I understand the distinction and I will
28 be fair to the witness. I don't mean to suggest that.

29 THE WITNESS: You just have to be fair because you are not

1 going to get me confused.

2 MR ANYAH:

3 Q. Mr Witness, please. Direct your focus to the justices,
4 please.

10:36:06 5 A. Let's go. Let's go.

6 Q. Let's establish the facts. On a Friday BS Massaquoi was
7 stabbed and bleeding profusely, yes?

8 A. Of course.

9 Q. On a Sunday you find his body among others sprayed with
10:36:17 10 bullets all over, yes?

11 A. Yes.

12 Q. You don't know which one killed him, the stabbing or the
13 bullets, do you?

14 A. I don't know.

10:36:28 15 Q. Do you know if he died after being stabbed and then was
16 shot after being dead?

17 MR WERNER: Your Honours, the witness said he doesn't know.
18 He's just answered the question.

19 JUDGE LUSSICK: And also there's a third element. There's
10:36:41 20 a cement block on the body as well.

21 THE WITNESS: On the head.

22 JUDGE LUSSICK: On the head.

23 THE WITNESS: Yeah.

24 JUDGE LUSSICK: So there's three different things that may
10:36:50 25 or may not have caused his death.

26 MR ANYAH: Yes:

27 Q. Mr Witness, the point though is: You do not know which of
28 these three possibilities, the stabbing, the gunshot wounds, or
29 the cement blocks killed BS Massaquoi, do you?

1 A. I don't know.

2 Q. Now when you spoke with the Prosecution on 15 March 2005,
3 did you tell them BS Massaquoi was arrested with 12 others?

10:37:43

4 A. You see, there were other people in that secretariat cells,
5 so when I went there I counted all of them, but at the end of the
6 day they just handed over seven of those people to us, so that
7 complicated the issue. If you see the figure 12 and seven, that
8 is the complication.

10:38:02

9 MR ANYAH: Madam Court Officer, may I have the document in
10 tab 4, paragraph 5:

11 Q. Mr Witness, this is what you said you saw at the AFRC
12 secretariat, and this is the number of persons you say were
13 handed over to your department. These are notes taken by the
14 Prosecutor from their meeting with you on 15 March 2005.

10:38:41

15 Paragraph 5:

10:39:04

16 "I have talked in my previous statements about the arrest
17 of BS Massaquoi. BS Massaquoi was arrested with M Quee, Brima
18 Kpaka and nine others and all of them were detained in the AFRC
19 secretariat. When I saw them in the AFRC secretariat I could
20 observe that they were had been tortured. The 12 of them were
21 later handed over to the police in the circumstances described in
22 my previous statements and three of them, BS Massaquoi, M Quee
23 and Brima Kpaka, being thereafter released on bail. The other
24 nine remained in the police station."

10:39:30

25 Do you recall telling the Prosecution that on 15 March
26 2005?

27 A. Yes, yes. Those figures are not actually accurate.

28 Q. They have it wrong, is it?

29 A. That's what I keep on telling you all the time. Those

1 figures are not accurate. But those that were killed were seven
2 - I mean, six. One was able to escape. That is Brima Kpaka.
3 Six were killed.

10:40:03 4 Q. So let's see all the errors in this paragraph I've just
5 read to you. When it says that they were 12 in number you're
6 saying that's a mistake, yes?

7 A. Yes, it could be a mistake.

8 Q. When you say "could", is it or is it not a mistake?

9 A. It's a mistake.

10:40:13 10 Q. When you say - at least you said to us before that only
11 Massaquoi and Kpaka were released on bail to sureties, Andrew
12 Quee remained in custody, and the statement says three of them,
13 Massaquoi, Quee and Kpaka were released on bail, this statement
14 is in error, yes? Yes? Did you understand my question,
10:40:42 15 Mr Witness?

16 A. Yeah, I understand.

17 Q. Well, let me be fair to you. This paragraph says in
18 respect of Andrew Quee that the name was M Quee. Are we speaking
19 of one and the same person, Andrew Quee?

10:40:57 20 A. The man is called Andrew Quee.

21 Q. And you told us a few minutes ago in open court here that
22 Quee did not make bail. You recall saying that?

23 A. You see, my Lord --

24 Q. Mr Witness, do you recall telling us a few minutes ago that
10:41:13 25 only Kpaka and Massaquoi made bail?

26 A. Yes. Yes.

27 Q. So this statement is in error when it says you told the
28 Prosecution that Quee also made bail?

29 A. It's - yes, it's an error. It's an error.

1 Q. Do you remember me asking you how many remained at the
2 police station after Massaquoi and Kpaka made bail and you said
3 there were five of them, yes?

4 A. There were five of them.

10:41:47 5 Q. And when this statement says the other nine remained in the
6 police station, this statement is in error as well, yes?

7 A. It's in error. It's in error. The most important thing
8 six of them were killed.

9 Q. Mr Witness, other witnesses have come before this Chamber
10:42:09 10 and they have told us about the circumstances surrounding BS
11 Massaquoi's death, and I want to share some of that information
12 with you.

13 A. Okay.

14 MR ANYAH: For everyone's benefit, I shall be reading from
10:42:32 15 - first of all it would be Karmoh Kanneh's evidence, open
16 session, 9 May 2008, starting at pages 9403 through 9408,
17 selective portions. Karmoh Kanneh, same person we spoke about
18 previously, was before this Chamber and here is his version about
19 the death of BS Massaquoi. The question was posed at line 6 and
10:43:26 20 at the end of that question, the last sentence reads:

21 "Q. What other things were you referring to when you gave
22 that answer?

23 A. Well, whilst we were in Kenema there was a time that
24 Mr Sam Bockarie arrested three politicians. He arrested
10:43:46 25 them and he accused them of collaborating with the enemies,
26 that is the Kamajors, so they brought them to the
27 secretariat and they were tortured.

28 Q. Who were these three politicians?

29 A. Well, one was Dr Momoh, two was Mr Ibrahim Gbacka" -

1 spel t G-B-A-C-K-A - "and the third was BS Massaquoi .

2 Q. Dr Momoh?

3 A. Yes.

4 Q. Had you met Dr Momoh?

10:44:22 5 A. Yes.

6 Q. What was his position?

7 A. Well, I knew Dr Momoh personally to be a medical
8 doctor.

9 Q. Do you know why Sam Bockarie arrested him?

10:44:34 10 A. Well, he accused them of supporting the Kamajors.

11 They did not want to support the AFRC and so that was the
12 reason why he arrested them."

13 Over to page 9404, he speaks of Massaquoi in particular and
14 a question was posed:

10:44:55 15 "Q. Who was the person who said that this man had
16 connived?

17 A. Mosquito.

18 Q. And the person BS Massaquoi, what was his position?

19 A. Well, at that time he was the city council chairman.

10:45:11 20 Q. Why was he arrested?

21 A. Well, he was also arrested for the same crime. When he
22 said they were not supporting the ruling government that
23 was in charge, he said they were supporting the CDF, that
24 is the Kamajors."

10:45:23 25 Over to the next page, 9405:

26 "Q. What happened to these three men?

27 A. Well, the two amongst them, Mr Gbacka and doctor, the
28 way they beat them up was very serious and so we spoke to
29 Mr Bockarie for them to be allowed to be taken to the

1 hospital."

2 Over to the next page, 9406, 9 May 2008 transcript:

3 "Q. Were they taken out of the hospital?

4 A. Yes, they hid overnight.

10:46:01 5 Q. And what happened to them after that, on the next day?

6 A. Well, when they escaped the information reached him,
7 people brought the information to him and so he had to
8 place the other man under tight custody and that is BS
9 Massaquoi."

10:46:27 10 And then at line 16, page 9406:

11 "Q. What happened to BS Massaquoi?

12 A. Well, at a point in time he was loaded into a vehicle
13 and he said he was going to kill him, he was going to
14 execute him. So he moved with him to reservation and so

10:46:46 15 all of us followed him."

16 Then at the end of the page:

17 "Q. Where did you end up?

18 A. Well, we went as far as midway the road and then he
19 took him out of the vehicle and then shot him."

10:47:03 20 Next page, line 6, page 9407:

21 "Q. What happened to him after he was shot?

22 A. Well, he struggled a lot and later died."

23 Down to line 23:

24 "Q. Are you able to say when this killing of BS Massaquoi
10:47:25 25 took place?

26 A. That was the day that the AFRC finally pulled out of
27 the city. That was when the intervention entered the city.

28 Q. On the same day?

29 A. That same day."

1 Mr Witness, Karmoh Kanneh says BS Massaquoi was shot. Did
2 you hear me say that, Mr Witness?

3 A. Yes.

4 Q. Karmoh Kanneh says BS Massaquoi was arrested with a
10:47:59 5 Dr Momoh. Did you ever mention Dr Momoh in any of your pre-trial
6 statements to the Prosecution?

7 A. No, I did not. Maybe that's a separate incident.

8 Q. You don't recall a Dr Momoh being arrested with BS
9 Massaquoi?

10:48:12 10 A. I recall when Dr Momoh was arrested. That is a separate
11 incident.

12 Q. So when Karmoh Kanneh says Momoh was arrested with
13 Massaquoi and Ibrahim Gbacka, G-B-A-C-K-A, the same Momoh should
14 not be included in that same incident?

10:48:38 15 A. Well, our own incident, Dr Momoh was not involved at all;
16 it's quite a separate incident. You are talking there on two
17 incidents.

18 Q. This Ibrahim Gbacka, is that the same person as Brima
19 Kpaka, K-P-A-K-A?

10:48:57 20 A. Well, I cannot tell. My own Kpaka is K-P-A-K-A. Brima
21 Kpaka. Not Ibrahim Gbacka. Brima Kpaka.

22 Q. And there is a difference between Ibrahim Gbacka,
23 G-B-A-C-K-A, and Brima Kpaka, K-P-A-K-A?

24 A. Yeah, even the spelling is quite a different name.

10:49:18 25 Q. So two of the three people that Karmoh Kanneh says were
26 arrested with BS Massaquoi, the names don't sound familiar to you
27 at all in the context of BS Massaquoi's arrest?

28 A. I know the arrest of Dr Momoh. That is a separate
29 incident. In fact he was released at the secretariat. BS

1 Massaquoi and others were handed over to the police for further
2 investigation. Dr Momoh was not handed over to the police at
3 all.

10:49:52 4 Q. But Karmoh Kanneh is speaking of the same incident that he
5 says he saw Massaquoi executed in the reservation. And you said
6 Massaquoi was executed - well, you found him at the reservation,
7 yes?

8 A. Well, that is his own information. I cannot dispute it.
9 Mine is quite different than his.

10:50:04 10 Q. But don't the two stories sound alike to you, Mr Witness?

11 A. Very similar.

12 Q. But the persons that they speak about are not the same
13 except for BS Massaquoi. Do you agree with that?

14 A. Yes, because Dr Momoh was not handed over to us. Only BS
10:50:21 15 Massaquoi, Brima Kpaka, Andrew Quee and four others.

16 Q. No Ibrahim Gbacka was handed over to you?

17 A. Only Brima Kpaka was handed over to us. Brima Kpaka,
18 B-R-I-M-A K-P-A-K-A, and not Ibrahim.

19 Q. And none of them were Ibrahim?

10:50:37 20 A. No.

21 Q. None of them were Gbacka, G-B-A-C-K-A?

22 A. No, I don't know whether the person is misspelling that
23 name, but Brima Kpaka, B-R-I-M-A K-P-A-K-A, was handed over to
24 us. Brima Kpaka. Not Ibrahim Gbacka.

10:50:51 25 Q. And the short form for Ibrahim of course is not Brima.
26 They are two separate names, right? Did you understand my
27 question?

28 A. I understand.

29 Q. Can you give us an answer?

1 A. Yes.

2 Q. Have you heard someone whose full name is Ibrahim being
3 referred to in the short form with the name Brima?

4 A. Yes.

10:51:14 5 Q. So you think it might be the same person that Brima Kpaka
6 is the same as Ibrahim Gbacka?

7 A. Yeah, only that the person is trying to misspell the name
8 there, but it could be the same person.

9 Q. But certainly you are sure that Momoh was not included?

10:51:29 10 A. At all. Dr Momoh was not handed over to us. He was
11 released at the secretariat. Only BS Massaquoi, Brima Kpaka,
12 Andrew Quee and four others were handed over to the police for
13 further investigation.

14 Q. You noticed that Karmoh Kanneh says that both Dr Momoh and
10:51:52 15 Gbacka were sent to the hospital. You told us only Brima Kpaka,
16 K-P-A-K-A, was sent to the hospital, yes?

17 A. Yes. I cannot tell you the story of Dr Momoh. Dr Momoh
18 was not handed over to us for investigation.

19 Q. Do you know somebody by the name of Manowai?

10:52:18 20 A. Manaway?

21 Q. Yes.

22 A. Yes, I know him very well.

23 Q. And who was he?

24 A. He was one of the RUF commandos.

10:52:33 25 Q. Was he based at the secretariat at the time?

26 A. I used to see him there at times, but he has a private
27 residence somewhere around Simbech area.

28 MR WERNER: Your Honours, sorry to interrupt but I just
29 notice on the LiveNote it still says Manowai when the witness

1 very clearly said Manaway. I agree it is Manaway.

2 MR ANYAH: I will spell it, if it will help. It's
3 M-A-N-O-W-A-I.

10:53:13

4 Q. Mr Witness, this person that you said was an RUF member,
5 was this person in the vicinity of Kenema at the time BS
6 Massaquoi was taken into custody?

7 A. The Manaway I am talking about is M-A-N-A-W-A-Y, Manaway.
8 But the spelling you have there is quite different. I don't know
9 which Manaway we are talking about.

10:53:36

10 MR ANYAH: Madam President, I think we would rather go with
11 the witness's spelling of this name, because I am going from --

12 PRESIDING JUDGE: Yes, indeed. He is giving the evidence.

13 JUDGE SEBUTINDE: Please spell that word again.

10:53:57

14 THE WITNESS: M-A-N-A-W-A-Y. I know him very well. He was
15 one of the RUF commandos.

16 MR ANYAH:

17 Q. Now I go back to my question. Forget the spelling of the
18 name. We're focused on the Manaway you know.

19 A. Okay.

10:54:07

20 Q. This Manaway, this RUF commando, was he in the vicinity of
21 Kenema Town in the months of January and February 1998?

22 A. I cannot tell actually because at that point in time I
23 never saw him.

24 Q. You never saw him at that point in time?

10:54:27

25 A. Yes, whether he was in Kenema vicinity or not I never saw
26 him at that particular point in time.

27 Q. Well, Karmoh Kanneh spoke of a Manowai and this is from
28 page 9404 on 9 May and he was speaking about the torture of BS
29 Massaquoi and a question was posed?

1 "Q. You said they were tortured. How do you know they
2 were tortured?

3 A. Well, at a point in time after torturing them we came
4 to the secretariat and they were jailed. I came myself and
10:55:04 5 my colleague Manowai" - spelt M-A-N-O-W-A-I - "we came
6 to greet them. We realised that they had been seriously
7 beaten up and they had the marks all over their body and we
8 went to visit them because they were our relations."

9 So Karmoh Kanneh spoke of a Manowai. You never heard or
10:55:29 10 saw somebody named - you never heard of or saw somebody named
11 Manowai in the vicinity of the secretariat when BS Massaquoi was
12 there.

13 A. At all. I only saw Sam Bockarie, alias Mosquito, and
14 others. I never saw Manaway in that vicinity at that particular
10:55:47 15 point in time.

16 Q. Let me tell you what another witness said about the death
17 of BS Massaquoi. The page number is 12021 and this is consistent
18 with our approach in respect of certain witnesses of not giving
19 any additional information, your Honours. The page number again
10:56:16 20 I will repeat is 12021. It was in open session.

21 Mr Witness, another person came before this Court and they
22 said this about Massaquoi's death - Madam President, I was just
23 reminded by Mr Taylor that the rule about pronouncing only page
24 numbers does not apply to open session testimony. I believe he
10:56:55 25 is correct. We were allowed the liberty of providing the TF1
26 numbers.

27 PRESIDING JUDGE: Yes, I recollect that when it was open -
28 although the person was not named --

29 MR ANYAH: Exactly.

1 PRESIDING JUDGE: -- if he has a pseudonym, but the date
2 and a reference could be given.

3 MR ANYAH: And so I will put that on the record. TF1-539.
4 The date in question, 17 June 2008, page 12021.

10:57:31 5 Q. That witness, TF1-539, told this Court this about the death
6 of BS Massaquoi. Question at line 2:

7 "Q. Thank you. You also mentioned the death of a
8 prominent person in Kenema Town. Do you recall that?

9 A. Yes, sir, that's correct.

10:57:58 10 Q. And the name was BS Massaquoi, do you recall that?

11 A. Yes, sir, that's correct.

12 Q. And you said this person was killed during the period
13 that the RUF was in control of Kenema. Is that correct?

14 A. Yes, sir, that's correct.

10:58:20 15 Q. Do you know how this person was killed?

16 A. He was killed by Mosquito, sir, Mosquito and his men in
17 Kenema. Everybody knew about that. He was brutally
18 murdered.

19 Q. When you say everybody knew about that what do you
10:58:35 20 mean?

21 A. People in Kenema heard about that. They arrested him
22 and later they executed him.

23 Q. Who did they arrest?

24 A. BS Massaquoi was arrested by Mosquito.

10:58:51 25 Q. And then you said later --

26 A. Mosquito and his men killed him.

27 Q. Did you yourself see his corpse?

28 A. His body was lying at Hangha Road, sir.

29 JUDGE LUSSICK: The question was did you see the corpse?

1 THE WITNESS: No, sir, I did not see the corpse, but he was
2 there. There was a dead body. People were saying about
3 it."

4 Mr Witness, this witness who testified before this Court
10:59:25 5 was saying the story he heard about Massaquoi's death was that
6 the body was lying down on Hangha Road. Is that accurate in your
7 recollection?

8 A. He's lying. Complete lie. I live at Hangha Road. I went
9 and saw the body at government reservation, Kenema, just closer
10:59:44 10 to Dorwala, opposite Dorwala and Guinea base. But it was there.
11 I went and saw it for myself. I live at Hangha Road.

12 Q. The body was never at Hangha Road; is that what you're
13 saying?

14 A. Far off from Hangha Road. Deep down into the government
11:00:01 15 reservation by the stream.

16 Q. So the account of this other witness is completely
17 unreliable?

18 A. Completely.

19 Q. Thank you. Mr Witness, as brutal as the death of BS
11:00:23 20 Massaquoi was, the reason given for his killing was that he was a
21 Kamajor sympathiser, yes?

22 A. That's complete baseless and unfounded. Just complete lie.
23 He was no Kamajor supporter.

24 Q. But the Kamajors attempted to rescue him, yes?

11:00:48 25 A. Of course.

26 Q. Kamajors rescued Brima Kpaka from the hospital, yes?

27 A. Of course.

28 Q. Same Kamajors were upset when they couldn't find Massaquoi
29 at the police department to the degree that they burnt your

1 official building - your official documents, yes?

2 A. Documents, yes.

3 Q. So let's set aside whether or not he was a Kamajor

4 supporter. Let's focus on the allegation. The allegation by

11:01:16 5 Mosquito and others was that he was a Kamajor sympathiser, yes?

6 Yes, Mr Witness?

7 A. He was not.

8 Q. I'm not asking you if he was or was not. I'm asking you

9 what the nature of the allegation was. The allegation was that

11:01:27 10 he was a Kamajor sympathiser, true?

11 A. That was what they alleged, yes.

12 Q. And that's what you've told this Court before as being the
13 allegation, yes?

14 A. Yeah.

11:01:35 15 Q. So this again was not the arbitrary killing of a civilian.

16 This was the killing of a civilian on the basis that Mosquito

17 felt he was a Kamajor supporter, yes?

18 A. That was what he said.

19 Q. Even Brima Kpaka, Andrew Quee and others - the reason Quee

11:01:59 20 and the rest were also killed was that they were alleged to be

21 Kamajor supporters, yes?

22 A. That was the reason they advanced, but they were lying.

23 Those guys were no Kamajor supporters.

24 Q. And you will agree with me that the other men that were

11:02:15 25 executed were not just arbitrarily killed. There was an

26 allegation before the execution, yes?

27 A. That was what they advanced, but all was just lie. Just
28 flimsy excuses to kill people indiscriminately in that country.

29 Q. You do not like Mosquito, yes?

1 A. I have nothing against Mosquito, I like him, he's my
2 brother, but I did not like what he was doing to my people and my
3 country.

4 Q. You called Mosquito your brother?

11:02:47 5 A. Yes, he's my brother Sierra Leonean. I have nothing
6 against him. I didn't just like what he was doing to my people
7 and my country.

8 Q. You remember what you said yesterday at the end of the day.
9 Yesterday's transcript, page 16671.

11:03:04 10 A. You can remind me.

11 Q. Yes, I will.

12 A. Go ahead.

13 Q. I was asking you a question about rumours and allegations
14 and you said - well, the question that you responded to was at

11:03:25 15 line 12:

16 "Q. So you report what is possible, not what you know for
17 certain?

18 A. It's fact. That guy was a vicious killer. It's fact.

19 Q. We know he's dead, Mr Witness.

11:03:42 20 PRESIDING JUDGE: Which guy are we talking about that was a
21 vicious killer?

22 MR ANYAH:

23 Q. Mr Witness, who was a vicious killer? You mean Sam
24 Bockarie, don't you?

11:03:57 25 A. Sam Bockarie.

26 Q. Yes.

27 A. Mosquito."

28 Sam Bockarie, you described him yesterday as a vicious
29 killer. Do you stand by that?

1 A. Yes, indeed. He is. He was.

2 Q. In your estimation he was not a pleasant fellow, yes?

3 A. He was not. I said the guy was a vicious killer. How can
4 he be a pleasant fellow?

11:04:25 5 Q. The same Sam Bockarie and some of the junta forces arrested
6 you during the junta period, yes?

7 A. Come up once again with your question.

8 Q. You were arrested by the junta forces that were in Kenema
9 at a particular point in time, yes?

11:04:44 10 A. Yes, you are correct.

11 Q. There was a lady going to a market that was being harassed,
12 yes?

13 A. You are correct, yes.

14 Q. And you, a station sergeant, intervened to push the rebels
11:04:58 15 away from her, yes? Well, you intervened to stop them from
16 harassing this woman?

17 A. Okay, you are correct.

18 Q. And they ended up arresting you, yes?

19 A. Yes.

11:05:12 20 Q. And you were in detention for two hours, yes?

21 A. Yes. They beat me up, they inflicted injury at my back,
22 they detained me in their dirty cells for about two hours. Yes,
23 you are correct.

24 Q. And you found that whole business to be humiliating, yes?

11:05:31 25 A. Very, very humiliating of course.

26 Q. It is something that pained you very much?

27 A. Very, very much.

28 Q. And not only did they arrest you and beat you up, they
29 looted your personal home, yes?

1 A. Yeah, that was on a separate incident, yes.

2 Q. Yes, but during the junta period they looted your personal
3 home?

4 A. Yes.

11:05:51 5 Q. At a particular point in time you, your wife and your
6 family left your home because you had no choice, yes?

7 A. Yeah.

8 Q. And when you returned your house had been completely
9 looted, yes?

11:06:01 10 A. Yes, yes.

11 Q. And you gave the Prosecution an approximate amount of money
12 that was the equivalent of the damage caused by the looting. Did
13 you say it was 10 million leones?

14 A. 10 million leones worth of property, household property,
11:06:20 15 not physical money.

16 Q. Yes.

17 A. Yes.

18 Q. That's the approximate amount of the damage the looting
19 caused, yes?

11:06:25 20 A. Yes.

21 Q. So here you are, you've been arrested, your property has
22 been looted and, even worse, in Tongo Field, also in Kenema, your
23 father's house was burnt, yes?

24 A. In Tongo Field. Not in Kenema.

11:06:39 25 Q. It's in Kenema District?

26 A. Yes, Kenema District, you are correct.

27 Q. Yes, Tongo Field is in Kenema District?

28 A. Yes, you are correct.

29 Q. And your father had a house there?

1 A. Yes.

2 Q. And that compound was burned?

3 A. Yes.

4 Q. By the juntas, yes?

11:06:50 5 A. Yes.

6 Q. So they affected your home, they affected your father's
7 home, they also came to your police compound, yes?

8 A. Yes.

9 Q. They looted the police compound, yes?

11:07:07 10 A. Yes.

11 Q. About 60 police vehicles were taken?

12 A. Not police vehicles. We had some NGO vehicles like
13 Médecins Sans Frontières, ICRC, other NGOs, all those NGOs
14 vehicles were parked right in our police compound. About 60 of
11:07:29 15 that were looted.

16 Q. Well, we agree on the number, about 60 vehicles within your
17 police compound were looted?

18 A. Yes.

19 Q. These are people you do not like whatsoever?

11:07:38 20 A. Who?

21 Q. The junta forces.

22 A. I have told you over and again I like them, they are my
23 brother, I didn't just like what they were doing to my people and
24 my country. I have nothing against them. Now we have relative
11:07:51 25 peace, we all in Sierra Leone, we are moving up and down. They
26 are my brothers and sisters. I have nothing against them.

27 Q. Are you saying you have forgiven them for what they did?

28 A. Completely. Completely.

29 Q. You expect us to believe that, Mr Witness?

1 A. Completely.

2 Q. Did you ever have them reimburse you for the 10 million
3 Leones worth of damage they did to your home?

4 A. No way.

11:08:12 5 Q. Did they ever rebuild your father's home?

6 A. No way. But God is taking care. I even used to do good to
7 some of them. These are our brothers and sisters. We just have
8 to forgive them.

9 JUDGE SEBUTINDE: Mr Anyah, before you proceed there is
11:08:27 10 something you said on the record and my Legal Officer draws my
11 attention. You mentioned a TF1-539, but apparently the record
12 shows that this was TF1-590. I don't know if that is correct.

13 MR ANYAH: May I have just a minute?

14 MR WERNER: Your Honour, that is correct according to our
11:09:04 15 record.

16 MR ANYAH: I see. I believe the error is ours. You have
17 590, is it? Yes. TF1-539 did not start on 17 June. What I have
18 on the 17th was starting out with TF1-584 and then it went to
19 TF1-590. So the error is ours.

11:09:52 20 I will continue to check on this. The date is correct, the
21 date of the transcript is correct and the page numbers are
22 correct. We just are not sure of - we can easily locate it and
23 advise accordingly. Thank you, your Honours:

24 Q. Mr Witness, I was asking you about the junta forces and
11:10:19 25 some of the atrocities they committed against you personally, but
26 is it fair to say that the junta forces were not the only ones
27 committing crimes in Kenema during the junta period?

28 A. They committed crime in collaboration with the RUF rebels.

29 Q. Did the Kamajors commit any crimes in Kenema during this

1 junta period between 25 May 1997 and February 1998?

2 MR WERNER: Sorry, is it Kenema Town or Kenema District?

3 Could you be precise, please.

4 MR ANYAH: Yes, I can be more precise:

11:11:07 5 Q. Mr Witness, in Kenema Town during the junta period did the
6 Kamajors commit any atrocities?

7 A. From the period you have stated they did not because they
8 have no chance, but after the AFRC junta and the RUF rebels had
9 fled town, yes, they did commit atrocities, a lot of atrocities,
11:11:31 10 according to eyewitness accounts.

11 Q. So you do not consider the burning of the police documents
12 at your police compound an atrocity by the Kamajors?

13 A. It is indeed.

14 Q. And that was during the junta period, yes?

11:11:49 15 A. Tail end, yes.

16 Q. So that is one atrocity at least we agree on --

17 A. Yeah.

18 Q. -- that the Kamajors committed, yes?

19 A. Yes.

11:11:59 20 Q. Did ECOMOG commit any atrocities in Kenema during the junta
21 period?

22 A. Yes, caused by the AFRC and the RUF rebels, yes.

23 Q. I'm not asking you what the cause was. Let's focus on the
24 first part of the question. Did ECOMOG commit any atrocities in
11:12:17 25 Kenema during the junta period?

26 A. Yes, they did.

27 Q. Are you aware that ECOMOG used child soldiers in Kenema
28 during the junta period?

29 A. I never saw them using child soldiers. Never. They were

1 all adults.

2 Q. But they did commit atrocities, we agree on that?

3 A. They did, yes. It's a war.

4 Q. That's the point. It is a war.

11:12:45 5 A. Yeah.

6 Q. And law and order was in short supply, do you agree,

7 Mr Witness?

8 A. There was no law and order.

9 Q. Issa Sesay - you told the Court during your RUF evidence

11:13:04 10 and during your AFRC evidence both in 2007 - you said Issa Sesay

11 you saw frequently.

12 MR WERNER: Your Honour, it should be 2005.

13 MR ANYAH: Yes, what did I say?

14 PRESIDING JUDGE: 2007.

11:13:21 15 MR ANYAH: I apologise:

16 Q. In both of your prior evidence and both occurring in 2005,

17 the first one in June and the second one in July, you told the

18 Court that you saw Issa Sesay several times, yes?

19 A. Yes.

11:13:37 20 Q. In Kenema Town?

21 A. Yes.

22 Q. And in part of your evidence in both trials you said you

23 saw him in the company of child soldiers, yes?

24 A. Yes.

11:13:49 25 Q. But when you first spoke with the Prosecution or one of

26 your pre-trial interviews you told them you saw Issa Sesay in

27 Kenema Town just twice. Do you recall saying that?

28 A. Just twice?

29 Q. Mr Witness, is that inaccurate to suggest that you saw Issa

1 Sesay in Kenema Town only twice?

2 A. No, it's inaccurate.

3 Q. Then why does the Prosecution have you saying that?

4 A. Well, that's why I'm saying the figures there are

11:14:28 5 inaccurate.

6 MR WERNER: Your Honour, could we have just a date of a
7 statement?

8 MR ANYAH: Yes, I will give it to you. It's 25 November
9 2004. May we have it, Madam Court Officer, please. Yes, it's in
10 tab number 3, Madam Court Officer, and it's the first page:

11:15:04

11 Q. Mr Witness, paragraph 2 of your statement of 25 November
12 2004. It starts out saying, "I saw Issa Sesay in Kenema on only
13 two occasions". Did you tell them that?

14 A. Yes, initially I told them that.

11:15:46

15 Q. And you see in paragraph 3 you specify the first time you
16 saw him. It reads, "The first time I saw Sesay and Mosquito they
17 were holding a meeting at the forestry canteen in Kenema".

18 A. Yes, that is the first occasion.

19 Q. Paragraph 4 then says: "The second time I saw Issa Sesay
20 was also at the brigade headquarters in Kenema. He was not with
21 Mosquito at this time." Yes?

11:16:04

22 A. That is the second occasion.

23 Q. So in a whole interview on 24 November you claim to have
24 seen Issa Sesay just twice in Kenema Town, yes?

11:16:22

25 A. On one or two occasion, yes, but I used to see him around.

26 Q. Let's see what you told the Court during the RUF trial,
27 Issa Sesay's trial, regarding how many occasions you saw him in
28 Kenema Town. Counsel, it's at page 57 of the 7 July 2005
29 transcript and the questioning starts at line 11, the relevant

1 parts:

2 "Q. Now you talked about Issa Sesay. Did you see Sesay at
3 that time in Kenema Town?

4 A. Yes. Issa Sesay was RUF.

11:17:18 5 Q. When did you see him?

6 A. After the coup.

7 Q. How many times?

8 A. Several times.

9 JUDGE ITOE: He saw Issa Sesay?

11:17:35 10 MR WERNER: Yes, several times at Kenema Town."

11 Mr Witness, why this change from two occasions in your
12 pre-trial statement of 25 November 2004 to several times when you
13 testified against Issa Sesay in open court? Why this change,
14 Mr Witness?

11:18:05 15 A. Well, we really met on two major occasions. The rest we
16 only used to see in the street, you know. It was two major
17 occasions. One at the brigade, one at the forestry. The rest we
18 only see in the street and just pass away.

19 Q. Why didn't you tell that to the Prosecution when you first
11:18:23 20 spoke?

21 A. Well, it's a mistake.

22 Q. Another mistake in the Prosecution's statements, yes? Yes,
23 Mr Witness?

24 A. Yes, it's a mistake. Two major occasions, but we used to
11:18:33 25 see frequently at least.

26 MR ANYAH: Your Honours, if it please the Chamber I've
27 referred on several occasions to the witness's statement at tab 3
28 and I would respectfully request that that statement be given an
29 MFI number.

1 PRESIDING JUDGE: Do you have a copy, please? Counsel for
2 Prosecution has this document? It's headed date of interview 25
3 November 2004, it gives a name and a sub-heading of interview
4 notes.

11:19:34 5 MR ANYAH: Madam President, it should be five pages in
6 total. I don't know if you have five pages in total.

7 PRESIDING JUDGE: I have one sheet which covers two pages.

8 MR ANYAH: We do have an extra binder that --

9 PRESIDING JUDGE: This is a five page statement headed
11:20:21 10 "Special Court for Sierra Leone, Office of the Prosecutor". It
11 is notes of an interview conducted with the witness on 25
12 November 2005 and becomes MFI-5.

13 MR ANYAH: Thank you, Madam President:

14 Q. Mr Witness, you told the Prosecution pre-trial you saw Issa
11:20:46 15 Sesay twice in Kenema Town. When you testified against Mr Sesay
16 in Freetown you told the Court you saw him several times. Are
17 you willing to change your position depending on the
18 circumstances, Mr Witness?

19 A. I'm willing to say on two major occasions we met in Kenema,
11:21:10 20 one at brigade, one at forestry. Then the rest is no major
21 incident. We just see and say hello, hello in the street, just
22 like that. That is what exactly I mean. Two major occasions.
23 The rest is not actually any occasion. We only see casually and
24 say hi, hi to ourselves and then go away.

11:21:31 25 Q. So you are prepared to say one thing on one occasion and
26 prepared to say another thing before the Court on another
27 occasion. Would you agree with that?

28 A. I really want you to understand what I'm trying to say. On
29 two major occasion we see, we met. The rest is just casual in

1 the streets. When we met we just say hi, hi and then we go away.

2 Q. Why didn't you make that distinction?

3 A. It's a mistake. I've told you this. It's a mistake.

4 Q. Another mistake, yes? Mr Witness, one last question. This
11:22:14 5 fellow BS Massaquoi, to your knowledge was he beheaded, that is
6 was his head cut off?

7 A. I saw a block lying on his head. Whether he was beheaded
8 or not, I cannot attest to that.

9 Q. Was the head attached to the body when you saw this block
11:22:38 10 on top of it?

11 A. Yes, of course.

12 MR ANYAH: May I have a moment, Madam President:

13 Q. Mr Witness, why do you suppose the Kamajors attempted this
14 rescue of BS Massaquoi and the others if those people were not
11:23:34 15 sympathetic to the Kamajors?

16 A. The whole civil populace were in deep sympathy with the
17 Kamajor and the Kamajor has right to protect and rescue the
18 entire civil populace in our country Sierra Leone, not only BS
19 Massaquoi and others.

11:24:03 20 Q. But you would agree with me that this man BS Massaquoi must
21 have been important to the Kamajors for them to mount a two
22 flanked attack or offensive to rescue him, yes?

23 A. In fact --

24 Q. Do you agree with that proposition, he was important to
11:24:21 25 them?

26 A. In fact according to BS Massaquoi --

27 Q. Mr Witness, my question is this --

28 PRESIDING JUDGE: Please allow the witness to answer,
29 Mr Anyah.

1 MR ANYAH: Yes, Madam President.

2 THE WITNESS: According to BS Massaquoi, even when we
3 released him I advised him to escape and go away out of Kenema.
4 He told me this, "Look, my son, I am not going nowhere. These
11:24:43 5 guys", that is the juntas and the rebels, "I used to give them
6 money. Every day they come to my office, I give them money. I
7 am not supporting Kamajors, but instead I'm supporting them. So
8 if they say they are going to kill me, I am ready to die, I'm not
9 going to give resistance."

11:25:00 10 MR ANYAH:

11 Q. But the fact is Kamajors attempted to rescue him and
12 Kamajors burnt down your police station. So I ask you this --

13 PRESIDING JUDGE: No, I understood the witness's evidence
14 was that it was documents.

11:25:09 15 MR ANYAH: Yes, Madam President.

16 Q. Mr Witness, the fact is the Kamajors were so upset that
17 they burnt the police documents. So I ask you this: Massaquoi
18 must have been important to them in order for them to do that, do
19 you agree?

11:25:22 20 A. He was in important to all of us in Kenema, yes. Very,
21 very important personality. All of us in Kenema.

22 Q. Massaquoi and the others, Brima Kpaka in particular, must
23 have been important for the Kamajors to go to government hospital
24 in Kenema and rescue them, yes?

11:25:38 25 A. All of us are important to the Kamajor. All the civil
26 populace were very, very much important to the Kamajors. All of
27 us, not only BS Massaquoi and Brima Kpaka. All of us.

28 Q. My question is not about all of you. You've said that
29 several times. My question is Brima Kpaka and BS Massaquoi were

1 important to the Kamajors, yes? Yes?

2 A. They are important to the Kamajor too as well as all of us.

3 MR ANYAH: Okay, fair enough. Thank you, Madam President.

4 I have no further questions for the witness.

11:26:09 5 PRESIDING JUDGE: Thank you, Mr Anyah. We have only a few
6 minutes left, Mr Werner, so --

7 MR WERNER: I have between I would say five to eight
8 minutes, so I'm in your hands.

9 PRESIDING JUDGE: Can I just note that Mr Munyard had
11:26:24 10 indicated that some documents would be tendered today. He's not
11 in court and I do not want to lose sight of that. However, we
12 will come to it in due course. I am merely reminding. Perhaps
13 in the circumstances, Mr Werner, since we are now up to time we
14 will take the mid-morning adjournment.

11:26:43 15 MR WERNER: Yes, your Honour.

16 PRESIDING JUDGE: Mr Witness, counsel for the Prosecution
17 has some questions for you. However, we're now at our usual time
18 for the mid-morning break. We will adjourn court, resume at 12
19 and he will be able to put the questions to you.

11:27:00 20 THE WITNESS: Okay, my Lord.

21 PRESIDING JUDGE: Please adjourn court.

22 [Break taken at 11.30 a.m.]

23 [Upon resuming at 12.00 p.m.]

24 PRESIDING JUDGE: Mr Werner, you indicated that you had
11:58:49 25 some re-examination of the witness.

26 MR WERNER: Yes, your Honour. Thank you, your Honour.

27 RE-EXAMINATION BY MR WERNER:

28 Q. Good morning, Mr Witness.

29 A. Good morning.

1 Q. I have a few questions for you. The Defence lawyer
2 yesterday asked you about the money that you received from the
3 OTP and he made reference to a document. Could I ask for this
4 document to be placed in front of the witness and I have a copy
11:59:24 5 here. For my learned friend's reference, the transcript of
6 yesterday, page 16642 to 16643 line 11.

7 So, Mr Witness, yesterday Defence counsel made reference to
8 entry number 1 and then he made passing references to the other
9 entries. And again I am giving you - because it was not
12:00:18 10 completely accurate, I am giving you the reference again. Page
11 16642 line 22 to 16643, line 11. So, Mr Witness, if we look at
12 the second entry, can you see it?

13 A. Yes.

14 Q. And the amount is 40,000 leones and the reason is, "Payment
12:00:43 15 to witness for transportation, meals and communication". Do you
16 remember that?

17 A. Yes, my Lord.

18 Q. Now if we look at entry number 3, the amount is 40,000
19 leones and the reason is, "Transport from Special Court back home
12:01:04 20 after meeting with OTP". Do you remember that?

21 A. Yes, my Lord.

22 Q. And if we look at entry number 4, the amount is 40,000
23 leones and the reason is, "Payment to witness for transportation,
24 meals, communication to SCSL Freetown for prepping". Do you
12:01:29 25 remember that?

26 A. Yes, my Lord.

27 Q. And if we look at the next page, entry number 5, the amount
28 is 10,000 leones and the reason is, "Payment for days lost wages
29 to meet with OTP on 17 January 2007". Do you remember that,

1 Mr Witness?

2 A. Yes. Yes, my Lord.

3 Q. And the last one, number 6, the amount is 20,000 leones and
4 the reason is, "Payment for days lost wages to meet with OTP on
12:02:05 5 25 May 2007". Do you remember that?

6 A. Yes, my Lord.

7 Q. Thank you. Now, Mr Witness, Defence lawyer yesterday asked
8 you questions about the time after the AFRC coup when you left
9 Freetown to come to Kenema and you said --

12:02:34 10 MR ANYAH: Madam President, I am sorry to interrupt, I
11 think counsel made reference in respect of the disbursement
12 records that I misstated something yesterday. I am not sure if
13 that was the reference, but I am trying to find out what the --

14 MR WERNER: What I said is that the first one was put with
12:02:55 15 the details and the amount about the reasons and then he just in
16 passing talked about other ones without detailing it. For sake
17 of completeness I wanted to put the other entries.

18 MR ANYAH: Okay, thank you, counsel. I understand.

19 MR WERNER:

12:03:16 20 Q. So let me start again. Defence lawyer yesterday asked you
21 questions about the time after the AFRC coup when you left
22 Freetown and you came to Kenema. And the reference for my
23 learned friend is page 16648, line 25. What you said on that
24 line is that it took you about a week in Freetown before you left
12:03:47 25 for Kenema. And then the Defence lawyer read you a portion of
26 the AFRC trial and again the transcript of yesterday is page
27 16648, line 28, to 16649, line 3, and I would like, Mr Witness,
28 to read you another portion of the RUF trial on the same page and
29 the CMS number is 15118 and I am going to read you the question.

1 It was on 7 July 2005 in the RUF trial and the question was page
2 55, CMS number 15118, and the question was:

3 "Q. What did you do after that?

4 A. I later visited some of my family members and I advised
12:04:47 5 them to stay indoors, then return to where I lodged.

6 Q. What did you do after that?

7 A. I was trapped down in Freetown for about a week. After
8 that I returned to Kenema, that is my station."

9 Is that what you said in the RUF trial, Mr Witness?

10 A. Yes, my Lord.

11 Q. Now, going to the AFRC trial and the CMS number is 14989,
12 24 June 2005, and I am going to read - sorry, there are two
13 pages. The first page is the page before 14988 and then I am
14 going to read to 14989. On 14988, line 27, the question:

12:05:46 15 "Q. What did you do after that, Mr Witness?

16 A. Well, I later returned home .

17 Q. Where?

18 A. I was trapped down in Freetown here for about a week.

19 Q. And where did you return?

12:06:03 20 A. After that I returned to Kenema."

21 Mr Witness, is that what you said in front of the AFRC
22 trial?

23 A. Yes, my Lord.

24 Q. Now, Mr Witness, yesterday - and I will be referring to
12:06:21 25 yesterday's transcript, page 16663, line 14 to 16. You were
26 asked a question about someone called Fityia and then what you
27 said on page 16662, line 20, to 16664, line 23, you said, "Fityia
28 is just a nickname". Mr Witness, does "Fityia" mean anything in
29 Krio?

1 A. Yes.

2 Q. What does that mean?

3 A. Somebody who is high fitting.

4 Q. What do you mean by that, Mr Witness?

12:07:02 5 PRESIDING JUDGE: I didn't hear exactly what you said,
6 Mr Witness.

7 THE WITNESS: Somebody who is high fitting, who does not
8 regard his elders, a stubborn person, who has no respect for
9 others, you know.

12:07:15 10 MR WERNER:

11 Q. Thank you, Mr Witness. Now, yesterday Defence counsel gave
12 you a name and I am referring to page 16665, lines 25 to 29. He
13 gave you a name and you recognised this name and later, page
14 16666, line 18, you said that this name means initiators and then
12:07:43 15 you agreed with Justice Sebutinde, page 16667, line 10 to 11,
16 that this name is a title. What was the name again, Mr Witness?

17 A. Kamoh.

18 Q. How would you spell it? Could you spell for us Kamoh?

19 A. K-A-M-O-H.

12:08:04 20 Q. Thank you, Mr Witness. Now, today - could I ask again for
21 a document which is the proofing notes of this witness dated 15
22 March and there was an omission on this document, there is no
23 date but I think we will agree it is 2005, so the proofing before
24 the trial. I have a fresh copy here.

12:08:33 25 MR ANYAH: Yes, your Honours, the Defence would agree to
26 that date.

27 PRESIDING JUDGE: Thank you, Mr Anyah.

28 MR WERNER:

29 Q. Mr Witness, before you look at these documents, this

1 morning Defence counsel asked you questions about the death of
2 Bonnie Wailer. Do you remember?

3 A. Yes, my Lord.

4 Q. And then - and for my learned friend's reference it is

12:09:01 5 LiveNote page 16, lines 17 to 18, and I am on font 16. Defence
6 counsel told you that you started adding the name Sam Bockarie
7 for the first time on AFRC trial on 24 June 2005. Now, if we
8 look at that document, this document, it's a note of a --

9 MR ANYAH: If it please your Honours, I am trying to find
12:09:34 10 the relevant reference and it might assist us if counsel could
11 paraphrase or quote directly the question I put to the witness.

12 MR WERNER: Well, I took it straight from the LiveNote.

13 MR ANYAH: I have found the reference and I have found the
14 question, thank you.

12:10:00 15 PRESIDING JUDGE: Are you satisfied with the question as
16 put?

17 MR ANYAH: Yes, Madam President.

18 MR WERNER:

19 Q. Now, Mr Witness, if you look at this page it's a recording
12:10:09 20 proofing on 15 March. Do you remember meeting Prosecution on
21 that day?

22 A. Yes, my Lord.

23 Q. And if we look at the third point, and I am going to read
24 it to you:

12:10:22 25 "I have talked in my previous statements about the death of
26 Bonnie Wailer. Mosquito gave himself the order to kill Wailer
27 and the others. I was present when Mosquito gave this order and
28 then left before the killing occurred."

29 Did you say that to the Prosecution on 15 March?

1 A. Yes, my Lord.

2 Q. Thank you. Now, can I finally ask for another document to
3 be placed in front of the witness. Again, this morning the
4 Defence counsel asked you about Issa Sesay in Kenema Town and
12:11:06 5 again I am going to refer to the transcript - to the LiveNote of
6 this morning, page 71, line 14. He asked you, talking about the
7 fact that your mention or not mention of Issa Sesay, or how many
8 times you mentioned Issa Sesay in Kenema Town. He said, "Why
9 this change from two occasions in your pre-trial statement on 25
12:11:35 10 November 2005 to several times when you testified against Issa
11 Sesay in open court?" Now, Mr Witness, can you look at the
12 document in front of you. Do you remember meeting with the
13 Prosecution on 26 May 2005?

14 A. Yes, my Lord.

12:11:57 15 Q. And if you look at the third point - and I am going to read
16 the entire paragraph:

17 "Issa Sesay was residing at Hangha Road with his men. He
18 was residing in the same building as my own boss. I saw Issa
19 Sesay regularly. Sesay was there with his men and was organising
12:12:16 20 military offensive from there. Sesay was living with small boys
21 in the compound. Those boys were armed and very dangerous. Many
22 times I saw the small boys of Issa Sesay as well as the small
23 boys living in the secretariat attacking civilians, robbing them.
24 They would claim that the civilians were breaking the law" --

12:12:34 25 JUDGE SEBUTINDE: Mr Werner, could you give time to the
26 transcribers. What they are writing is not what you are saying.

27 MR WERNER: I apologise. I apologise:

28 Q. I am going to read it again and so the third paragraph:

29 "Issa Sesay was residing at Hangha Road with his men. He

1 was residing in the same building as my own boss. I saw Issa
2 Sesay regularly. Sesay was there with his men and was organising
3 military offensives from there. Sesay was living with many small
4 boys in the compound and those boys were armed and very
12:13:17 5 dangerous. Many times I saw the small boys of Issa Sesay as well
6 as the small boys living in the secretariat attacking civilians
7 and robbing them. They would claim that the civilians were
8 breaking the law. That happened frequently during the period
9 Kenema was occupied by the junta forces".

12:13:36 10 Mr Witness, did you say that to the Prosecution on 26 May
11 2005?

12 A. Yes, my Lord.

13 MR WERNER: Thank you. I do not have further questions in
14 re-examination, your Honour.

12:13:48 15 PRESIDING JUDGE: Thank you, Mr Werner. We do not have any
16 questions of the witness, Mr Werner.

17 MR WERNER: Yes, your Honour. Yes, your Honour. So, we
18 have four documents that have been marked for identification
19 MFI-1 to 4. The first one is the pages of transcript totalling
12:14:50 20 128 pages and numbered for the record 14985 to 15113. Now, your
21 Honours, formally by your decision on 15 July 2008, this
22 transcript was already admitted so we are asking for this
23 transcript to be accepted formally and given an exhibit number.

12:15:24 24 PRESIDING JUDGE: I am not sure that - I don't recall an
25 order that it was admitted on 15 July.

26 MR WERNER: If you give me just half a second, I will read
27 it to you.

28 JUDGE SEBUTINDE: Perhaps you could give us exhibit numbers
29 if we did admit them?

1 MR WERNER: Yes, your Honours. Well, let me read you the
2 ruling. So, it is - as I said, it is 15 July 2008, decision on
3 Prosecution notice under Rule 92 bis for the admission of
4 evidence relating to inter alia Kenema District, and on page CMS
12:15:59 5 18303 it was ordered that:

6 "The prior trial transcript and related exhibits relating
7 to the testimony of witnesses TF1-036, TF1-060, TF1-062, TF1-122
8 and TF1-125 shall be admitted into evidence pursuant to Rule 92
9 bis provided that the Prosecution shall make the witness
12:16:28 10 available for cross-examination by the Defence."

11 PRESIDING JUDGE: That was a conditional order. Arguably
12 you have fulfilled the condition, but perhaps for elimination of
13 any doubt at all I will take the tender now.

14 MR WERNER: Yes, your Honour. So, we are asking for MFI-1
12:16:54 15 to become the next exhibit in the trial.

16 PRESIDING JUDGE: Mr Anyah?

17 MR ANYAH: Yes, Madam President. Just to expedite matters,
18 the Prosecution is seeking to have admitted four exhibits, MFIs 1
19 through 4. We do not quarrel with MFIs 1 and 2, the prior
12:17:18 20 transcripts, and neither do we quarrel with the map of Kenema,
21 MFI-4. I think your Honours are correct in saying that the
22 language used in Rule 92 bis paragraph A that, "The Chamber may,
23 in lieu of oral testimony, admit as evidence prior transcripts",
24 and for example statements as well, does not necessarily mean at
12:17:41 25 the time the order was pronounced these were admitted. They have
26 to be formally tendered and that is the process we are engaged in
27 now.

28 So we only quarrel in essence with MFI-3, which is the
29 certified or what is purported to be a certified copy of the

1 diary. I do not have in front of me the 92 bis notice that was
2 filed in respect of this diary to ascertain whether or not the
3 copy appended to that submission was indeed a certified copy of
4 the original. I do recall yesterday when we undertook this
12:18:16 5 discussion that counsel for the Prosecution made reference to a
6 certified copy of the diary. I also overheard or could see some
7 indication on the opposite side of the aisle from the case
8 manager saying the document in question was not certified. I
9 stand to be corrected.

12:18:34 10 In any case, whether it is certified or not is important to
11 this extent. In the AFRC case when this diary was produced the
12 Defence requested the original, and it is on the transcript from
13 the AFRC trial and Mr Werner was counsel for the Prosecutor and
14 this is the transcript of 24 June 2005. The relevant pages are
12:19:02 15 it starts at page 51 of that transcript - and I am not referring
16 to the CMS pages. I am referring to the original pagination by
17 the stenographers at the AFRC trial.

18 Ms Thompson, one of the Defence counsels in that case,
19 indicated that they had not seen the original. Mr Werner then
12:19:23 20 said the original is with someone named Mr Walker, who I assume
21 is a CMS or registry staff. In any event Mr Werner on the next
22 page, page 52, goes on to explain that:

23 "I can answer on one point. The difficulty with that is
24 this document had been tendered to the other Trial Chamber with
12:19:43 25 another witness. I believe it was a month or two months ago. So
26 we filed a motion for this document and we have correspondence
27 for this document to be transferred. If my learned friend wants
28 time to inspect I will have no objections."

29 To cut a long story short, that original was produced for

1 the Defence to examine during the AFRC trial. It is unclear to
2 me which prior proceeding Mr Werner was referring to it being
3 admitted in when the first testimony of the witness we have on
4 record is on 24 June 2005 and so I don't understand which prior
12:20:23 5 trial he was referring to, but he purported to suggest that they
6 got an order from a previous Chamber allowing the original to be
7 withdrawn, if you will, from evidence and displayed to Defence
8 counsels.

9 We would like to see the original of this diary. There has
12:20:43 10 been evidence by the witness that has been elicited this morning
11 to suggest that this diary was recovered shortly after a fire
12 ensued and it is not necessarily a document that was preserved
13 with others - well, let me put it this way. The document was
14 recovered under circumstances where other documents that it may
12:21:07 15 have been kept with were destroyed by a fire and we would like to
16 see the original if we are not to register an objection to this
17 copy.

18 MR WERNER: Your Honours, let me just respond on three
19 points. First, again, the position of the Prosecution is if we
12:21:32 20 read that order it was admitted provided there was a condition
21 and the Prosecution fulfilled this condition by having the
22 witness available.

23 Now, the Defence - about the original of the diary, the
24 Defence did not raise that issue when they responded to our
12:21:56 25 notice and I believe that our notice was filed on 25 February
26 2008. The objection was on relevance. Nothing was said about
27 that. Now, I would finally note that this diary was admitted
28 with TF1-125 in the RUF trial and this exhibit was shown to this
29 witness, both in RUF and AFRC trial.

1 JUDGE SEBUTINDE: Mr Werner, was a copy of the exhibit
2 shown to this witness or was the original diary shown to this
3 witness in the AFRC trial?

4 MR WERNER: Your Honours, I was the counsel. My
12:22:41 5 recollection was that it was a copy, but I will have to check.

6 JUDGE SEBUTINDE: The other important thing though,
7 Mr Werner, you will probably accept that in the 92 bis bundle
8 that you filed - the Prosecution filed - this particular annexure
9 was not a certified copy of the original.

10 MR WERNER: I agree.
12:23:04

11 JUDGE SEBUTINDE: That you will concede.

12 MR WERNER: I will.

13 JUDGE SEBUTINDE: So what are you now tendering before the
14 Court for admission exactly? A certified copy, a photocopy, or
12:23:18 15 what?

16 MR WERNER: Your Honour, exactly what we filed with the 92
17 bis notice.

18 JUDGE SEBUTINDE: A non-certified copy?

19 MR WERNER: Yes, your Honour.

12:23:26 20 JUDGE SEBUTINDE: And you want to do that --

21 MR WERNER: Yes.

22 JUDGE SEBUTINDE: -- without the original being produced
23 before the Court?

24 MR WERNER: Just one second, your Honour. Your Honours,
12:25:54 25 maybe I could - because I have a clear view on what happened and
26 maybe that can assist. So in the RUF trial the original was
27 produced and was exhibited. Now --

28 MR ANYAH: No, I am sorry, it was exhibited in the AFRC
29 trial P-24, not the RUF trial, no? The AFRC transcript at page

1 56 - well, I will let Ms Hollis finish.

2 MS HOLLIS: Your Honours, if I may assist - I perhaps have
3 a broader view of this. In the RUF trial this exhibit was
4 admitted through another witness, not through this witness, and
12:26:32 5 the original --

6 JUDGE SEBUTINDE: As exhibit number what?

7 MS HOLLIS: It was exhibit number 28.

8 JUDGE SEBUTINDE: Because that is important.

9 MS HOLLIS: Exhibit 28 in the RUF trial, 28, and it was the
12:26:44 10 original. It was shown to the witness. In the AFRC trial the
11 exhibit was used through the witness and it was a copy of the RUF
12 exhibit which again was the original document. It was a copy of
13 that document that was then produced through this witness in the
14 AFRC trial. Now that is the document that is before you. It is
12:27:13 15 a copy of the document that was admitted before your Honours in
16 the AFRC trial, but the copies are based on the original that was
17 the document that was used in the RUF trial.

18 Now our position on this is that the Defence for the first
19 time has raised this issue. When they noted their objections
12:27:36 20 they did not raise any issue about whether this was an original
21 or not. Their concern was the relevance. They never asked to
22 inspect. We do not believe we are required to produce originals
23 here for 92 bis purposes. If your Honours determine that we need
24 to provide certified copies of all of the exhibits we will
12:27:57 25 certainly do that. We do not believe that is an inherent part of
26 the 92 bis.

27 Now we again received nothing from the Defence to indicate
28 there was an issue in this regard. However, should your Honours
29 require it we do have a certified copy of the original that was

1 produced in the RUF trial. So we do have that, but we have never
2 been given a request to inspect it, we certainly would have
3 complied with that request, and it is only fortuitous that we
4 have it and we don't believe that originals are required or
12:28:37 5 certified copies. But certainly if your Honours make that a
6 requirement we will comply with that. Thank you.

7 MR ANYAH: If your Honour please, may I respond to this?

8 PRESIDING JUDGE: Yes.

9 MR ANYAH: Yes, I would make some observations. I think
12:28:53 10 the central issue in dispute here is what Rule 92 bis means and
11 what your order saying something has been admitted under that
12 rule means. Your order, we propose, does not mean that at the
13 time you decide to admit, as that phrase is used in subparagraph
14 (A) of the rule, proposed transcripts that it goes into evidence
12:29:17 15 at that point. There is still the formal process of tendering
16 the document, having it exhibited, giving it an exhibit number
17 and surely the Defence at that point when it is tendered retains
18 the right to object.

19 There is no waiver in operation here such that at the time
12:29:34 20 we are responding to a 92 bis notice we must state that we object
21 to a document above and beyond the threshold requirements of
22 Rule 92 bis. There is no waiver principle in operation. That's
23 what the argument amounts to; that we waived our right to
24 challenge this document on the basis of a failure to register an
12:30:00 25 objection during our response to the notice. I reject that
26 proposition.

27 The language of 92 bis (A) means that you receive the
28 document, that the document may be received by the Chamber and it
29 speaks in the permissible. "The Chamber may in lieu of oral

1 testimony admit evidence in whole or in part". So you have
2 exercised that discretion to give us an indication that you may
3 receive this. They are now going through the formal process of
4 tendering it. We are having it exhibited, marked for
12:30:30 5 identification and, depending on how your Honours rule, to have
6 it receive an exhibit number and surely we retain the right to
7 object at this point.

8 Going to the issue of the authenticity of the document,
9 original versus a copy, what is clear from the AFRC trial, the
12:30:50 10 transcripts, is that the Defence there objected, the original was
11 produced and I have cited the pages. His Honour Justice Lussick
12 on page 53 says, "I think before we do anything shouldn't the
13 witness identify the original and then say that's the document
14 that he's talking about?" They then gave this witness the
12:31:11 15 original which they sought leave of the RUF Trial Chamber to
16 obtain, the witness identified the original in open court that
17 this is the same document he was talking about. Then a certified
18 copy of that original is what was received by your Honours in the
19 AFRC trial.

12:31:26 20 All we ask for is the same treatment. One, produce the
21 original, have the witness identify that this is the same
22 document he was talking about or that pertains to their 92 bis
23 notice and then produce a certified copy to be received into
24 evidence. We haven't seen the original. We cannot as counsel
12:31:47 25 for Mr Taylor sit here and not object to a document going in when
26 the circumstances in which it was preserved derive from having
27 survived a fire where other documents were consumed and we just
28 sit and say we have no objection to it when counsel in the RUF
29 trial requested and rightfully got the right to inspect the

1 original.

2 JUDGE LUSSICK: Just, Mr Anyah, I would like to also hear
3 you on this aspect that I am about to raise. This is one of
4 those cases where we have made the admission under Rule 92 bis
12:32:30 5 subject to the witness himself being called to be cross-examined
6 and that is because of the nature of the evidence sought to be
7 tendered.

8 However, if we did not make that order that the witness had
9 to be called for cross-examination, the Rule 92 bis application
12:32:56 10 would have been considered on its merits and either the documents
11 would have been admitted if the application was granted or they
12 would not have been admitted. The fact of the matter is that
13 what indication would the Prosecution have had that you had an
14 objection to the copy of the diary that was part of the Rule 92
12:33:20 15 bis application?

16 Now, if you look at Rule 92 bis (C) it says:

17 "A party wishing to submit information under Rule 92 bis
18 shall give ten days notice to the opposing party. Objections,
19 if any, must be submitted within five days."

12:33:40 20 It does not say you can wait until the trial comes along
21 and this witness is cross-examined before you make your
22 objections and I think that is what Ms Hollis is now making
23 reference to.

24 Just to get back, in case I haven't made myself clear, if
12:33:59 25 we had not made that order to call this witness for
26 cross-examination you would not be on record as ever having
27 objected to the copy of the diary that was part of the Rule 92
28 bis application and that's where I see your difficulty is by now
29 maintaining that you don't have to lodge your objections within

1 five days.

2 MR ANYAH: Your Honour, I recall you inviting a response
3 from me and I assume I have the authority to do so - I have the
4 permission to do so. It really all turns on the wording of your
12:34:36 5 Honours' order in the sense that let's take the hypothetical case
6 where they did not call a witness or prove - the hypothetical
7 case where your order does not require that the witness be
8 produced for cross-examination. Let's say that is the situation
9 we are confronted with. The Prosecution would still, I propose
12:34:59 10 to your Honours, given the wording of your order, have to take a
11 step - another step to have those documents converted from
12 something being tendered to something that has been received in
13 evidence. There must be another step whereby they would propose
14 that those documents be given exhibit numbers to properly record
12:35:28 15 what is being received in evidence. I would propose to your
16 Honours that at that point we would still be able to raise
17 objections on procedural grounds.

18 I think it really all turns on the language of your
19 Honours' orders. It cannot be the case that the notice is filed,
12:35:45 20 no witness is called and automatically documents filed pursuant
21 to the notice are exhibited either by CMS outside a conference
22 with the parties. I don't see that that is the procedure
23 suggested by your Honours' order in the absence of a witness.

24 MS HOLLIS: Your Honours, may I speak to that? First of
12:36:12 25 all, 92 bis, should your Honours have granted that, would have
26 granted the admission of those documents into evidence and there
27 would be no need for any other procedure by which the parties
28 would have to get together and formally do that, because your
29 Honours by admitting the documents would do as you do in court

1 and you would order CMS to give them the next numbers in line.

2 In terms of consultation with the parties, that is what the
3 notice, the objection and any reply are for you in the case of 92
4 bis. Those are the consultations, those are the opportunities
12:36:47 5 for the parties to ask for a certain action, to oppose the action
6 and then for your Honours to consider it.

7 So this third step that the Defence is talking about we do
8 not believe is certainly in the plain language of the rule, nor
9 required by the rule. And if we go back to the very simple
12:37:05 10 language here, and your Honours had the benefit of our
11 submissions including the attachments, of our application, of the
12 Defence opposition, and your Honours ordered that, "Subject to
13 making these people available for cross-examination these
14 transcripts and exhibits shall be" - the rule may say "may", but
12:37:28 15 by your order you said "shall be admitted". So I think the
16 Defence is arguing a few steps behind where we are in the
17 process.

18 MR ANYAH: Your Honours --

19 PRESIDING JUDGE: Sorry, Mr Anyah, we have heard enough.

12:37:40 20 MR ANYAH: Thank you.

21 [Trial Chamber conferred]

22 JUDGE SEBUTINDE: Mr Anyah, I think Ms Hollis has said that
23 this copy that they want to tender in evidence although
24 uncertified is an exact photocopy of exhibit P-24 in the AFRC
12:46:06 25 trial and also exhibit 28 in the RUF trial. Now, you are free to
26 - or the Defence is free to inspect either of these two exhibits.

27 Now with that in mind, which of course kept - they are
28 public records. Now with that in mind would you still object to
29 us admitting this document that has been submitted to us today

1 with the right for you to compare and contrast, or would you
2 still insist on seeing an original?

12:46:54 3 MR ANYAH: Thank you, your Honour Justice Sebutinde. I am
4 trying to review your comments just made to ascertain whether you
5 intimated that either P-24 of the AFRC trial or exhibit 28 in the
6 RUF trial were the original. Is it the case that --

7 JUSTICE SEBUTINDE: No, I didn't say they were the
8 originals. I said they are available for inspection, because
9 they are public records.

12:47:12 10 MR ANYAH: Yes, your Honour, but they are not --

11 JUDGE SEBUTINDE: In order for you to confirm that the
12 contents thereof are accurate or are the same with the copy that
13 is now being sought to be tendered to us.

14 MR ANYAH: To the extent those prior submissions or
12:47:28 15 exhibits are copies and not the original, that would not
16 ameliorate or alleviate our concerns for a number of reasons. If
17 this were a domestic case and a witness testifies a document was
18 recovered in the context of a fire, I as counsel under certain
19 circumstances would request to have the document examined
12:47:50 20 forensically for certain chemical compositions that might be
21 consistent with the burning of flames. I cannot make that
22 determination having not seen the original. It is not only
23 whether the contents are identical.

24 So there are many other regards in which we are curious to
12:48:09 25 see the original and those concerns will not easily be alleviated
26 if we were only to be given certified copies.

27 [Trial Chamber conferred]

28 PRESIDING JUDGE: We note that there is three documents to
29 be admitted by consent and one that has been objected to. I will

1 go through them one by one and rule on them individually and deal
2 then with the objection as it arises. The first document is a
3 bundle of pages - a transcript from the case of the Prosecutor v
4 Brima et al dated Friday 24 June, page numbers 14985 to 15113.

12:50:06 5 It is admitted as Prosecution exhibit I think 173.

6 [Exhibit P-173 admitted]

7 The second documents marked for identification are
8 transcripts of a prior trial of the Prosecutor v Sesay et al
9 dated Thursday 7 and Friday 8 July 2005, pages 15114, 15303. It
10 becomes Prosecution exhibit P-174.

12:50:42

11 [Exhibit P-174 admitted]

12 The next document is objected to. The Bench has considered
13 the objections and by a majority decision, Justice Sebutinde
14 dissenting, we consider that, the Prosecution having produced the
15 witness for cross-examination, the document is admitted pursuant
16 to Rule 92 bis. That is a certified - a copy of a diary produced
17 as an exhibit in the AFRC trial. It becomes Prosecution exhibit
18 P-175.

12:51:02

19 [Exhibit P-175 admitted]

12:51:22 20 The next document is admitted by consent. It is the map of
21 the Kenema District as marked and indicated by the witness before
22 us and it becomes Prosecution exhibit P-176.

23 [Exhibit P-176 admitted]

24 Those I think are the four?

12:51:45

25 MR WERNER: Yes, your Honour.

26 PRESIDING JUDGE: Yes, it has been pointed out to me quite
27 correctly that the last document which has become P-176 was
28 originally admitted in the RUF trial as exhibit 31. Now this
29 brings us to MFI-5, Mr Anyah, which is your document.

1 MR ANYAH: Yes, Madam President, may it please your
2 Honours. If I may, we appreciate that your Honours have ruled,
3 but there is something that appears in the transcript that is of
4 concern and it suggests that in respect of Prosecution exhibit
12:52:22 5 175 the diary to which we objected, the transcript still has that
6 is a certified and we need we wish to record to clarify whether
7 or not the document is certified or not?

8 PRESIDING JUDGE: I started - I will concede that I started
9 saying certified because I was reading from this document
12:52:43 10 prepared for our consideration by CMS. However, in the course of
11 my statement I recall that it was not certified and I therefore
12 tried to correct myself and it is a copy of a diary.

13 Ms Hollis, I understand it is a copy of a diary and I
14 correct and record that it is a copy. It is not a certified
12:53:04 15 copy.

16 MS HOLLIS: That is correct, Madam President.

17 PRESIDING JUDGE: So I did try and correct myself, but it
18 doesn't look so clear on the - and that is the reason I made that
19 - I read that erroneously, Mr Anyah.

12:53:16 20 MR ANYAH: Thank you, Madam President. We are grateful for
21 the clarification. We respectfully move to have the document
22 marked as MFI-5 to be admitted into evidence as an exhibit. It
23 is the interview notes from 25 November 2004 that was put to the
24 witness in several respects both today and yesterday.

12:53:37 25 MR WERNER: Your Honours, we object to that. It has not
26 been the procedure so far in this trial to admit as exhibit prior
27 statements used by Defence counsel in cross-examination. The
28 matter is on record as being put by Defence counsel in
29 cross-examination and there was no dispute about it, I did not

1 raise in re-examination the issue so we object about that.

2 JUDGE SEBUTINDE: Mr Werner, on what grounds are you
3 objecting? Just because you didn't object? Is that the ground?

4 MR WERNER: No, the ground is that so far so many times
12:54:17 5 Defence counsel have - as we did in re-examination - put
6 statements to the witness and it has never been the practice.

7 The only time something - it was yesterday, but it was
8 completely different circumstances. So that has never been done
9 so far and, as I said, the matter is on record. It is on record
12:54:38 10 today, it has been put to the witness, there was no dispute about
11 that, I didn't raise anything in re-examination. So that is the
12 ground of our objection.

13 PRESIDING JUDGE: I do not consider that as a valid reason
14 to object and I admit the document. This will be a five page
12:54:59 15 document of a record of interview between representatives of the
16 Office of the Prosecutor and the witness and it becomes Defence
17 exhibit D-60.

18 [Exhibit D-60 admitted]

19 PRESIDING JUDGE: Thank you. If there are no other matters
12:56:31 20 I will discharge Mr Bao.

21 Mr Witness, that is the end of your evidence and we are
22 grateful for you coming to give your evidence here in Court. We
23 thank you for it and we wish you a safe journey back. You are at
24 liberty to leave the Court and I will ask that you be assisted.

12:56:51 25 THE WITNESS: Thank you.

26 PRESIDING JUDGE: Mr Griffiths?

27 MR GRIFFITHS: Your Honour, I currently have carriage of
28 the next witness, but before the witness service go to the
29 trouble of bringing that witness up from below, I wonder if I

1 could alert your Honours to a personal difficulty I have in
2 relation to this witness. Would it be helpful to do that now?

3 PRESIDING JUDGE: It would. There is one other matter that
4 we need to deal with. As you may recall I reminded just before
12:57:31 5 the break about the exhibit --

6 MR GRIFFITHS: The exhibits for Mr Munyard's witness.

7 PRESIDING JUDGE: Yes. I just don't want to lose sight of
8 them, but we will deal with your matter first or the exhibits
9 first?

12:57:46 10 MR GRIFFITHS: I have no difficulty with the exhibits being
11 dealt with first, your Honour.

12 PRESIDING JUDGE: So can we deal with those, please?
13 Mr Anyah, you are dealing with those?

14 MR ANYAH: Yes, Madam President. Your Honours recall the
12:57:57 15 discussion yesterday in respect of transcripts from interviews
16 undertaken with the prior witness, TF1-189, and Mr Munyard
17 undertook to have selected pages that he referred to during his
18 examination of the witness exhibited. I believe we have tendered
19 copies of the respective pages to the CMS courtroom officer and
12:58:26 20 --

21 PRESIDING JUDGE: [Microphone not activated].

22 MR ANYAH: Yes, we have shown them to the Prosecution, I
23 believe. May I continue, Madam President?

24 PRESIDING JUDGE: Allow us to have a quick look at them,
12:59:03 25 please, Mr Anyah.

26 MR ANYAH: Yes.

27 PRESIDING JUDGE: [Microphone not activated].

28 MR ANYAH: Yes, Madam President.

29 PRESIDING JUDGE: Yes, we have had an opportunity to glance

1 at them very quickly. Mr Anyah, please proceed with your
2 application.

3 MR ANYAH: Yes, thank you, Madam President. In respect of
4 these selected pages appended to which is an adoption of
13:01:11 5 statement by witness, which is the last page, we respectfully
6 move that all of these pages be admitted as a Defence exhibit
7 consistent with the evidence given by TF1-189.

8 PRESIDING JUDGE: Mr Werner, are you going to be able to
9 reply to that application?

13:01:34 10 MR WERNER: I am not in charge of this, your Honour.

11 PRESIDING JUDGE: I appreciate that. Ms Hollis.

12 MS HOLLIS: Madam President, your Honours, it appears from
13 the ruling on the last objection that we had that your Honours
14 have changed the procedure that has been applied in these courts
13:01:49 15 in that prior to the last two witnesses, when a party put part of
16 a statement to the witness, it was put on record but it did not
17 become part of the record. Now, yesterday a different issue
18 arose in that there was a dispute about the overall meaning and
19 content of pages that, or topics that were referred to and
13:02:17 20 because of that dispute the Prosecution agreed that certain
21 portions of the statement of 18 February of 2003 should be
22 admitted because it provided the context so that your Honours
23 could resolve the dispute that had arisen.

24 Now, based on what we understood the procedure in the Court
13:02:36 25 to be, the Prosecution would have had no objection to pages 9,
26 11, 12, 22, 37, 54, 55 and 57. Those were issues that were dealt
27 with - two of those issues were dealt with on re-direct
28 examination. The other dealt directly with a matter that was
29 very important to the case. We would have objected to the others

1 because we did not raise them on re-direct. The witness in fact
2 agreed that the statement was different so we would have objected
3 to those.

4 If indeed the procedure has been changed, then as of today
13:03:21 5 we would have no basis for objection to those additional pages
6 and we would not be acting in good faith to object to them.

7 JUDGE LUSSICK: Just one thing to clarify things,
8 Ms Hollis. You are saying a change of procedure. I am a little
9 puzzled as to whether we have ever laid down any procedure
13:03:44 10 because I don't ever remember any counsel trying to tender
11 transcripts on which, or other documents on which he has
12 cross-examined and I don't ever remember having to consider the
13 matter, let alone set down an official procedure on it. Perhaps
14 you could refer me to some of those cases?

13:04:05 15 MS HOLLIS: And, your Honour, the procedure I am talking
16 about is the procedure whereby if a particular piece of
17 information is to be elicited, only that piece of information is
18 elicited, and that was a procedure that was laid down by your
19 Honours as early as our motion on admission of documents under
13:04:27 20 89(C) and 92 bis wherein you indicated that only relevant
21 portions of documents should be brought to your notice and sought
22 admission of and that has basically been what has happened in
23 this courtroom when where prior statements were referred to the
24 relevant portions of those prior statements in fact were put to
13:04:47 25 the witness on the record and not the entire statement was ever
26 then offered into evidence. That is the guidance that I am
27 referring to when I talk about the procedure and in fact that is
28 what we have done.

29 JUDGE LUSSICK: But is that a procedure, or is that just

1 the law that only relevant evidence will be admitted?

2 MS HOLLIS: Well, your Honours, in terms of the relevant
3 evidence your Honour spoke specifically in terms of not giving us
4 an entire document but only relevant portions. Now in the
13:05:16 5 context of the documents that were provided to you relating to
6 witness 189 the relevant portions of the pages of those documents
7 were given to you on the record.

8 Now all of those pages were mentioned when Defence counsel
9 cross-examined 189, or in re-direct, so in that regard certainly
13:05:40 10 the pages were mentioned although only portions of the pages were
11 mentioned and those portions were put to the witness and are part
12 of the record.

13 In terms of course of the prior statement that you have
14 admitted, only a very few portions of that entire statement were
13:05:54 15 put and were on the record. So again if we are now able to put
16 in entire statements or entire pages that have been referred to
17 we simply take that into account in our future practice, but it
18 has been our understanding of the practice that we have put only
19 the relevant portions of the documents and then have not put the
13:06:23 20 documents.

21 PRESIDING JUDGE: First I agree with my learned colleague.
22 It was a point I was going to raise that he has so succinctly
23 raised, but I seek to clarify. When you say we have made a
24 practice of highlighting, my recollection is that was written
13:06:38 25 evidence by way of, for example, of NGO reports and similar
26 reports that were tendered not through a witness but under 92
27 bis, not through a witness as this is happening, and that was
28 related to those written reports, et cetera, that were being
29 tendered. To my mind this is - we are now tendering documents

1 relating to a witness that has been before us and I perceive a
2 difference.

13:07:17 3 JUDGE LUSSICK: Just before Mr Anyah says anything, I don't
4 know whether you are going to refer to the law in common law
5 courts, Mr Anyah, but my recollection when I used to sit in
6 common law courts is that any document cross-examined upon must
7 be tendered.

8 MR ANYAH: If --

13:07:32 9 JUDGE SEBUTINDE: Could I also pitch in here. I don't
10 think I will be repeating anything my colleagues have said, but
11 the purpose of this exercise was to show a prior inconsistency
12 between what the witness has said in Court and what he might have
13 said in a prior statement. Now this can be done in two ways. In
14 the past there have been two practices in the Court that we have
13:07:54 15 looked at and for me they are both acceptable.

16 Either counsel who is pursuing the point will read the
17 extract that he thinks is inconsistent with the witness's
18 testimony, and read into the record that extract as well as
19 properly describe it coming out of transcript of such and such a
13:08:13 20 date of an interview, and then that in and of itself can suffice.
21 But if there is a question at all, because I think in this case
22 the Bench did not have the privilege of having these pages with
23 us as normally the bundle is prepared, then I think in that case
24 it is quite okay for the other side to actually tender that page
13:08:39 25 as an exhibit - their exhibit - only to prove the point of a
26 prior inconsistency. It is not proof of anything else. And for
27 me I don't see that - both serve exactly the same purpose, as far
28 as I am concerned.

29 MR ANYAH: If it please the Court, I think we are

1 conflating issues here. The basic issue at its core is the mode
2 of admissibility of documents. What is the mode of
3 admissibility? We are talking about evidential issues. Your
4 Honours have great latitude - extremely large latitude - when it
13:09:18 5 comes to how you wish to receive relevant evidence. To the
6 extent you have determined that evidence is relevant, the manner
7 in which you receive it is essentially up to you, your Honours.
8 There is very little circumscription by the appellate courts of
9 the manner in which you wish to receive evidence. Whether you
13:09:38 10 wish to receive a statement in its entirety is left to your
11 Honours. Whether you wish to receive it orally through counsel
12 laying foundation and grounds of impeachment is entirely left to
13 you.

14 To mix and conflate the manner or mode in which evidence is
13:09:54 15 received when submitted in writing, pursuant to 89(C) and 92 bis
16 with orally when circumstances develop in court in a fluid
17 situation like described by Justice Sebutinde, where your Honours
18 do not have the benefit of the prior witness's interview record,
19 and Mr Munyard on this occasion provided only one set of copies
13:10:17 20 for the overhead projector, your Honours have the discretion
21 under those circumstances to say, "Counsel, do you have any
22 objection to us receiving the entire transcript or portions of
23 it?"

24 Indeed, we may object and you may still wish to proceed and
13:10:32 25 receive it and in this case there was some degree of consent by
26 the Prosecution, indeed a great degree of consent yesterday, to
27 selected pages that were put to the witness being provided to
28 your Honours, and that is what the Defence has done. And I don't
29 see any legal proscription that prevents your Honours from

1 receiving statements in their entirety, or portions of
2 statements, so long as you have concluded that the statements or
3 portions thereof are relevant to the issues you wish to consider.

4 [Trial Chamber conferred]

13:14:31 5 PRESIDING JUDGE: We have considered the objection and the
6 submissions in this application. The Trial Chamber has a
7 flexibility of considering every evidential issue according to
8 its particular circumstances. In the instant case we overrule
9 the objections and admit the documents which are extracts not
10 seriatim of record of interview conducted on 18 February 2003 and
11 together with a document headed and entitled "Adoption of
12 statement by witness" which is dated 18 February 2008. It will
13 become Defence exhibit D-61 I think.

14 [Exhibit D-61 admitted]

13:15:31 15 Mr Anyah, would it be appropriate to sub-number these pages
16 and the adoption of statement of witness as 61A and 61B, or just
17 one bundle?

18 MR ANYAH: I think one bundle is appropriate, Madam
19 President.

13:15:50 20 PRESIDING JUDGE: Yes, thank you. Just for elimination of
21 doubt I think it is 15 pages and they are pages 9, 11, 12, 22,
22 37, 49, 52, 54, 55, 57, 58, 59, 60, 61, 62, 64, 47, which seems
23 to be out of sequence, and the adoption of statement which I have
24 referred to. Mr Griffiths, we come to your matter now.

13:17:12 25 MR GRIFFITHS: Well, I don't know whether my request has
26 now become superfluous, Madam President, but can I outline the
27 difficulty. The next witness was to be taken by Mr Munyard and
28 we anticipated that the witness would have been called yesterday,
29 given that the prior witness was tendered for cross-examination

1 only. Unfortunately because of a prior engagement he is unable
2 to be here today. I therefore took over the witness.

3 Now Mr Anyah anticipated that we would have completed this
4 witness by the coffee break this morning and I was confident that
13:17:55 5 I could have completed my cross-examination of the forthcoming
6 witness within an hour and a half or so, because unfortunately I
7 cannot be here on Monday because I have a sentencing hearing at
8 the Central Criminal Court and I was also hopeful of meeting with
9 the judicial secretariat at the Central Criminal Court, because I
13:18:19 10 sit as a recorder and we are required to sit for three weeks a
11 year and because of these proceedings I have been unable to
12 comply with that and they have required an explanation from me.
13 So I was hoping to do that on Monday.

14 Now I am quite happy to commence the witness - because
13:18:38 15 Mr Munyard has prepared the witness for cross-examination - and
16 have Mr Munyard take over the remainder of the cross-examination
17 on Monday, but given the hour I just wonder whether we should
18 just rise now and start the witness afresh on Monday morning.

19 PRESIDING JUDGE: Ms Hollis?

13:19:18 20 MS HOLLIS: We think that is a practical suggestion given
21 the time.

22 PRESIDING JUDGE: Thank you, Ms Hollis. That is most
23 cooperative. Seeing as it is Friday we will now adjourn until
24 Monday morning. Please adjourn court until Monday at 9.30.

13:19:42 25 [Whereupon the hearing adjourned at 1.20 p.m.
26 to be reconvened on Monday, 22 September 2008
27 at 9.30 a.m.]
28
29

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-122	16674
CROSS-EXAMINATION BY MR ANYAH	16674
RE-EXAMINATION BY MR WERNER	16739

EXHIBITS:

Exhibit P-173 admitted	16758
Exhibit P-174 admitted	16758
Exhibit P-175 admitted	16758
Exhibit P-176 admitted	16758
Exhibit D-60 admitted	16760
Exhibit D-61 admitted	16767