



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

THURSDAY, 19 OCTOBER 2006  
9.18 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

**Richard Lussick, Presiding**  
**Teresa Doherty**  
**Julia Sebutinde**

For Chambers:

**Mr Simon Meisenberg**

For the Registry:

**Ms Advera Kamuzora**

For the Prosecution:

**Mr Karim Agha**  
**Ms Maja Dimitrova (Case Manager)**

For the accused Alex Tamba  
Brima:

**Mr Koj o Graham**

For the accused Brima Bazy  
Kamara:

**Mr Mohamed Pa-Momo Fofanah**

For the accused Santigie Borbor  
Kanu:

**Mr Geert-Jan Alexander Knoops**

1 [AFRC190CTA - MD]

2 Thursday, 19 October 2006

3 [Open session]

4 [The accused present]

09:15:11 5 [The witness entered court]

6 [Upon commencing at 9.18 a.m.]

7 WITNESS: WILLEM PRINS [Continued]

8 EXAMINED BY MR KNOOPS:

09:19:29 9 PRESIDING JUDGE: Yes, general, I will remind you you are  
10 still on your former oath.

11 THE WITNESS: Your Honour.

12 PRESIDING JUDGE: Yes, Mr Knoops.

13 MR KNOOPS: Thank you, Your Honour. Good morning.

14 Q. Good morning, general.

09:19:41 15 A. Good morning.

16 Q. General, I would like to continue with the third question  
17 you researched, addressed by also Colonel Iron. The question:  
18 Was there a coherent linkage between strategic, operational and  
19 technical level, or levels. First of all, general, could you  
09:20:07 20 explain to the Court how you approached this third question in  
21 your research?

22 A. I can. What I've done in my report is to go into, very  
23 briefly, into doctrine because the things also described by  
24 Colonel Iron, the strategic, operational and technical levels are  
09:20:36 25 basically described in every doctrine. Maybe some other wording  
26 but, in essence, it's all the same. So I addressed doctrine  
27 first.

28 Q. Could you tell the Court what type of doctrines you  
29 specifically used?

1 A. Basically, I used the NATO doctrine, but also the Dutch  
2 doctrine. But if you look at British doctrine, it's basically  
3 the same.

4 Q. Could you explain to the Court whether you know what this  
09:21:19 5 doctrine learned you about this specific question?

6 A. Are you asking the result of my study or what the doctrine  
7 entails?

8 Q. Not a conclusion about this question but what, indeed, the  
9 doctrine entails? What the doctrine learned you?

09:21:41 10 A. What I did briefly with the doctrine is going into four  
11 aspects. Now, Colonel Iron addresses strategic, operational and  
12 technical, and I added one which is even higher than military  
13 strategic level, the grand strategy. Now, to make things not too  
14 difficult, I have written down basically what these different  
09:22:14 15 levels mean.

16 Q. General, first of all, why did you add one level on top of  
17 the three levels Colonel Iron described?

18 A. Well, basically, I wanted to make clear that you have to  
19 start with a grand strategy. It is something I lectured  
09:22:41 20 extensively last year in Uganda, in a leadership course, because  
21 the grand strategy is basically the co-ordinated development and  
22 use of military means, political means, economic means,  
23 diplomatic means, psychological means, a country have, has, to  
24 pursue its interests. So the grand strategy basically gives  
09:23:17 25 guidance and co-ordination whenever a country enforces power.

26 And since military, as I mentioned military, is part of that  
27 grand strategy, I thought it was more clear, I do recall, to add  
28 also the grand strategy because the military strategy is not  
29 standing on its own. That's the point I wanted to make.

1 Q. General, before we move on to assess the four levels, can  
2 you tell the Court whether you found any support in doctrine for  
3 this fourth level, namely, grand strategy level?

09:24:05

4 A. Absolutely every doctrine you look into you see the grand  
5 strategy as the overall starting point.

6 Q. General, before we go into the four levels, one subquestion  
7 to you. You mentioned just a minute ago to the Court that you  
8 were involved in a leadership course last year in Uganda?

9 A. That's correct.

09:24:28

10 Q. Are you able to tell the Court what this course entailed?

11 A. It was a course we -- it was a combination of the  
12 University of Uganda, together with the Centre of Strategic  
13 Studies in The Hague. And it was a course for mid-level to top-  
14 level officials from Uganda. The interesting thing was it was  
09:24:57 15 not only military but there were people from foreign affairs,  
16 economic affairs, police, and the point -- one of the points we  
17 wanted to stress in that it was -- was that as a military you are  
18 only part of the big process. As a military man, for the  
19 military people there, it was a little surprising but, you know,  
09:25:21 20 it's a combination of that. So that is what we did. But it was  
21 only a part but I emphasise it because that's the topic I  
22 lectured.

23 Q. Were you approached to participate in this course?

24 A. I was, by the Centre of Strategic Studies in The Hague.

09:25:38

25 Q. Thank you, general. Now, going back to these four levels,  
26 you just explained the grand strategy level. Are you in a  
27 position to just very briefly inform the Court what these three  
28 other levels specifically are, and perhaps you can indicate per  
29 level what your description is of that particular level?

1 A. I certainly can. So I started with this grand strategy and  
2 indicated that the military strategic level is an integrated part  
3 of the grand strategy so then when you go level -- one level  
4 down, that is the level where Colonel Iron started, the military  
09:26:25 5 strategic level is the level where the aim is the highest aims  
6 and the highest goals of the military are formulated. And  
7 according to doctrine, if you look in my report, you see the NATO  
8 explanation of military strategy. The important thing is that  
9 the military strategy is developed and comes under an overriding  
09:26:58 10 political framework. So that's the very highest level, but it's  
11 important to emphasise the political framework therein, the  
12 political oversight. And then if you go one step lower, after  
13 saying that of course the military strategic level has to support  
14 the grand strategy, you go to the operational level, which is  
09:27:31 15 basically running a military campaign. So you go more into the  
16 operations. But the operational level has to support the higher  
17 military strategic level. Then you come down to the very lowest  
18 point, the technical level, which covers basically the battles,  
19 the individual battles coming under the campaign, but the  
09:28:00 20 individual battles should always support the operational goals  
21 and the military strategic goals. So that, in short, you see, is  
22 sort of a hierarchy in these levels, the same as Colonel Iron  
23 stated.

24 Q. Thank you, general. Now, in order to speak about a  
09:28:25 25 coherent linkage between those four levels, what is necessary for  
26 that qualification, in your view?

27 A. Well, of utmost importance is that every military  
28 organisation operates under a political guidance, comes under a  
29 political mandate. We call it day-to-day political oversight.

1 You can't just act on your own. So, in order to be coherent you  
2 need this political guidance in order to call yourself a  
3 traditional military organisation so that, in my mind, not in my  
4 mind in the doctrinal sense, it's absolutely essential in order  
09:29:21 5 to call that coherence. Now, if you look at what Colonel Iron  
6 wrote, or I think he stated it in transcript, he said in order to  
7 be coherent between these levels, in operations, you need -- and  
8 he used the word political mandate -- that's the word he used --  
9 and he said that's the way we teach and train people in a regular  
09:29:52 10 army. In effect, then, you can say this was not a regular army  
11 but he stated for the coherence, and he is right, you need to  
12 have a political framework.

13 Q. Do you -- could you tell the Court what the implications  
14 are if either one of those four levels would not exist for an  
09:30:26 15 army?

16 A. Well, basically, in a regular army, you have all four  
17 levels within a country, and under official government you have  
18 all four levels. They are required. But you can't reason the  
19 other way around, you see. And what I mean with that, you can't  
09:30:51 20 have both. If, on the one hand, like Colonel Iron rightly said,  
21 you need to have political oversight in order to have coherence,  
22 in order to have a regular army, you cannot then fore reason the  
23 other way around and state well, I artificially come up with a  
24 strategic, operational and technical aim, and therefore, I found  
09:31:18 25 proof for a regular or traditional organisation. You can't have  
26 both, two.

27 Q. Thank you. Now general, were you able to research the  
28 existence of these levels specifically when it concerns the AFRC  
29 faction from May 1997 onwards?

1 A. Yes. The conclusion, based on sources, is that of course  
2 there was no political oversight. The AFRC was a renegade group  
3 when the President Kabbah was reinstated. You know, they were  
4 out in the bush, but they didn't have any formal status any more.  
09:32:13 5 They didn't come under any grand strategy or other strategy, so  
6 it was a renegade group, without political oversight, and that's  
7 what I found of course, also what Colonel Iron says, but what you  
8 find in all my sources.

9 Q. Speaking about those sources, general, are you able to tell  
09:32:39 10 the Court specifically which sources you have in mind when you  
11 conclude that a grand strategy level was not present within the  
12 AFRC faction?

13 A. Well, of course, if you come to the conclusion that the  
14 AFRC was a renegade sort of illegal group, without a political  
09:33:05 15 framework, then there is no grand strategy.

16 Q. But I'm asking you specifically about the foundation for  
17 your conclusion that there was no political oversight?

18 A. Well, I found foundation, of course, in the TRC report and  
19 I found foundation in the book of Dr Keen.

09:33:29 20 Q. Were you able to find any foundation in other sources,  
21 apart from those mentioned by you?

22 A. Well, of course, you know, it was stated in my primary  
23 sources and, well, it is basically common knowledge.

24 Q. Did you encounter anything about political oversight in the  
09:33:55 25 transcripts you were able to read?

26 A. Well, of course. You know, it's what Colonel Iron states.  
27 There was no political oversight. There was no political mandate  
28 within the AFRC. And, you know, I remember saying -- I remember  
29 Colonel Iron expressing the position of, I think he refers to

1 Musa -- and he states, you know, Musa had a great responsibility  
2 because without having a political oversight or backing he had to  
3 come up with his own sort of military strategy. So also for him,  
4 Colonel Iron, it was, in fact, the case that there was no  
09:34:51 5 political guidance essential for a military organisation.

6 Q. Well, general, you yesterday, I think, sorry, the day  
7 before yesterday, explained to us about the span of command and  
8 the chain of command. Are you able to tell the Court at which  
9 level the aspect of grand strategy should and could be

09:35:17 10 implemented within a military organisation, in order to run a  
11 military organisation at all?

12 A. Well, in fact, you must realise that if you talk about  
13 grand strategy, it's not something for the individual soldier,  
14 not even let's say the greatest aims of the strategic level, but  
09:35:45 15 it's for the commanding officer. He should know all that because  
16 he has to plan subsequently all his operations within that  
17 framework.

18 Q. And when you speak about *in concreto*, the level from  
19 brigade commander, battalion commander, company commander,  
09:36:07 20 platoon commander, just to visualise this for the Court, what is  
21 your opinion as to what level a grand strategy should be  
22 transferred to?

23 A. In my mind the grand strategy is known at the highest level  
24 in an operational formation, so you talk about brigade commander  
09:36:27 25 in a traditional way. Brigade commander and battalion  
26 commanders, and that's about it.

27 Q. Thank you, general. General, did you find in your research  
28 any indication that a grand strategy aim was articulated?

29 A. Again, I'm sorry, I may not have been clear, but there was



1 no grand strategy within the AFRC, with the starting point,  
2 because the only one who could have a grand strategy was the  
3 State of Sierra Leone and the AFRC was a renegade force. As I  
4 stated, what Colonel Iron did, was he, knowing that there was no  
09:37:24 5 political oversight, he started describing for -- he had to make  
6 some inferences on what on earth were the strategic aims of the  
7 AFRC. And he came up with some aims and, again, I stated before,  
8 you can't have it all, you can't reason both ways but, anyways,  
9 he stated or came up with some strategic aims. But he  
09:37:59 10 specifically also stated, although coming up with these aims,  
11 military strategic level, they were never articulated, he  
12 specifically said, and certainly not on paper. Now, that's a  
13 problem

14 Q. Yes. Well general, with respect to the advance to  
09:38:19 15 Freetown, at the end of 1998, Musa restructured, according to the  
16 evidence delivered before this Court, the battalions and went on  
17 the advance to Freetown. Are you able to tell the Court how you  
18 qualify that action within either four of the levels you  
19 indicated?

09:38:51 20 MR AGHA: Objection, Your Honour. It's a leading question  
21 in the sense that it should be for the witness to comment upon  
22 how SAJ Musa structured or otherwise his battalions, rather than  
23 being told.

24 MR KNOOPS: Your Honours, I'm not telling the expert how  
09:39:09 25 the restructure actually was administered; I'm just putting it to  
26 the expert that, according to the evidence of the Prosecution  
27 delivered before this Court, there was apparently restructuring  
28 of the group at Colonel Eddie Town. I am asking the general  
29 specifically how he qualifies the advance to Freetown in terms of

1 either of the four levels.

2 PRESIDING JUDGE: All right. Yes, I will allow that  
3 question.

4 MR KNOOPS: Thank you, Your Honour.

09:39:37 5 Q. General, are you in a position to inform the Court how you  
6 qualify the advance to Freetown in terms of either of the four  
7 levels?

8 A. Yes. In my opinion, based on what I've said before,  
9 knowing that there was no grand strategy and no military  
09:40:00 10 strategic level, the advance to Freetown, or the decision to  
11 Freetown, or to approach Freetown, was at most made at the  
12 operational level. And then if you approach or advance to  
13 Freetown you may have units who carry out, you know, small  
14 encounters and that's at an operational level. So I came -- I  
09:40:35 15 may come to that conclusion of that paragraph. I think that at  
16 most you can talk about military, strategic, excuse me,  
17 operational and technical level.

18 Q. And these are the third and the fourth level in your list?

19 A. These are the lowest levels in my list. I mentioned in my  
09:40:57 20 report a technical level but it has to do with individual weapons  
21 systems and that I thought was not relevant for the case at hand.

22 Q. Are you able to tell the Court what the reasons are for  
23 your conclusion that the advance to Freetown, at the utmost, was  
24 to be qualified an operational level or technical level?

09:41:25 25 A. Then I have, again, to summarise what I said previously.  
26 One, AFRC was a renegade group, not an official entity of the  
27 government of Sierra Leone. There was no grand strategy. There  
28 was no political oversight, and so there was no strategic  
29 military level as part of the grand strategy and then, then you

1 only can come to the conclusion that there was operational and  
2 technical levels. Furthermore, the so-called strategic aims  
3 Colonel Iron mentions, in my mind, were inferences because he  
4 struggled tremendously with this problem and, of course, he had  
09:42:19 5 to come up with a strategic aim. They were never articulated.  
6 They were never properly addressed. They were not written on  
7 paper. And knowing what I said yesterday about the hierarchy and  
8 structure, that even if you have military strategic aim,  
9 operational aim and technical, you must tell the troops, within  
09:42:49 10 of course their knowledge, but you have to make sure. Now, I  
11 can't see any reason how that was done.

12 Q. General, in your opinion, does the level of training of the  
13 officers have any relationship with the dissemination of either  
14 of the four levels?

09:43:09 15 A. Well, absolutely. You know, the higher you get, when you  
16 start in a military organisation, and when you are a young  
17 officer, you don't worry about grand strategy and, you know, the  
18 highest levels of the organisation but, of course, as you go  
19 higher in the organisation, and as you increase in rank, then you  
09:43:39 20 get to know all that. For example, if you operate like I did in  
21 the Caribbean, you should -- you better know what the aim or what  
22 the aim -- I call it aim because we were never in a position that  
23 we enforced powers with the Kingdom of The Netherlands, but you  
24 better know what the strategic -- what the grand strategy and the  
09:44:08 25 military strategic aim is.

26 Q. Thank you, general. Now, arriving at the conclusions of  
27 your research into this third question, are you able to tell the  
28 Court what your main conclusions are as to the third question,  
29 whether there was any coherent linkage between strategic,

1 operational and technical levels within the AFRC faction from May  
2 1997 up to the advance to Freetown?

3 A. Again, as stated before, there was no coherent linkage  
4 between the military strategic, operational and technical level.

09:44:54 5 At most, you can say that there was a sort of a coherence, at  
6 times, between the operational and the technical level and, of  
7 course, the main -- my main argument goes back again to no  
8 political oversight. And if you then do away with the political  
9 oversight which you, in fact, cannot do, there remains the  
09:45:26 10 question how you are going to communicate that which, in my mind,  
11 was not done.

12 Q. Thank you, general. General, I move on now to the fourth  
13 question of your research. The question as to the existence or  
14 non-existence of a joint military operational structure between  
09:45:40 15 RUF and the AFRC. Now first of all, general, were you able to  
16 detect whether this question was researched before, in this case?

17 A. I don't think it was researched. The only thing I know is  
18 from reading the report by Colonel Iron is that he mentions -- he  
19 makes a remark about the joint military structure or joint  
09:46:16 20 operational military structure between RUF and AFRC.

21 Q. And were you able to see whether he went into that matter  
22 in specific?

23 A. I didn't see any argumentation or any arguments why he came  
24 so quickly to the conclusion, and I have to recall, but he stated  
09:46:45 25 that after the AFRC and the RUF fled from Freetown, in February  
26 1998, they apparently, and I don't know if it was Makeni or  
27 Masiaka, they apparently came into a well-structured military  
28 organisation that -- and I remember that apparently worked well.  
29 I didn't see any support, neither in transcripts nor in his

1 study, for that analysis.

2 Q. We will come to that back later, general. First of all,  
3 before we go into the specificities of the AFRC case, I would  
4 like to draw your attention to the following question. Are you  
09:47:37 5 able to tell the Court what, in your opinion, the term "joint"  
6 means in the context of the joint military operations or  
7 structure, in general, without going into the case at hand?

8 A. Yes. Joint, basically, based also on doctrine but joint,  
9 basically, will say two formation, two organisations of the same  
09:48:07 10 country working together.

11 Q. Do you know whether --

12 A. Sorry, for example, "joint" means, for instance, the  
13 British Army operating together with the royal navy. That is  
14 what we consider joint.

09:48:34 15 Q. Are you able to tell the Court what is required for such a  
16 joint operation in a military sense?

17 A. Based on doctrine, you know, it's a very hard thing to  
18 organise. Based on doctrine, jointness requires a lot. In other  
19 words, it takes a lot of effort before you can call an

09:49:10 20 organisation, joint. For one, and again it's based on doctrine  
21 which is doctrine NATO, doctrine Netherlands but it's generally  
22 accepted all over the world, for one, you need trust and

23 confidence. So two parties, two services, need trust and  
24 confidence. They need to have the willingness to come up to a  
09:49:40 25 joint organisation. And then another thing is you need

26 co-operation and mutual understanding. Now that is, of course, a  
27 very important one. Another one is interoperability.

28 Interoperability means that if you bring two organisations  
29 together you just cannot say: Okay, chaps, let's go on and go on

1 operation. You have to make sure that, for example, weapon  
2 systems are interoperable. Let me give you an example that may  
3 work. When we integrated The Netherlands marines and the royal  
4 marines the royal marines had different guns. The range of the  
09:50:40 5 guns of the royal marines were 12 kilometres while our guns were  
6 seven. Now, I don't want to go into military specifics but you  
7 have to make sure that within that organisation these weapon  
8 systems are made interoperable. Very important is another  
9 factor, standard procedures. Another example that may work, when  
09:51:13 10 we operated in Iraq, in 2003, we came under British command, and  
11 we brought in a battalion under a British two-star. But you just  
12 cannot come into theatre and say: Hello general, I am here.  
13 Let's get on with it. You need to establish procedures. How is  
14 the reporting done? How does he want certain missions to be  
09:51:44 15 accomplished? And then, finally, you have to come up with a  
16 joint headquarters. You just can't say: Okay, we are here  
17 together and we have a nice day. You have to come up with a  
18 joint headquarters. So, basically, these are -- you know, you  
19 can go at length and in far more detail what you would need. I  
09:52:12 20 mean, I simplify it tremendously but that is what you would, you  
21 know, in broad terms need.

22 Q. General, could you please explain to the Court what you  
23 mean with joint headquarters?

24 A. Well, if you bring headquarters -- two organisations  
09:52:33 25 together, you need to make one joint headquarters. I gave the  
26 example, I believe the day before yesterday, about the  
27 integration of The Netherlands marines into the fleet and you  
28 come up with a joint headquarters. And it's just a military term  
29 but, in that joint headquarters, and J, you get different staff

1 branches and they are in a joint headquarters called J because  
2 it's joined. You also have G headquarters because then it's then  
3 general staff but it's a matter of wording but what you need is  
4 have one headquarters where the staffs are integrated, combined.

09:53:26 5 Q. Can you mention a few examples of these Js you refer to?

6 A. I mentioned a couple the day before yesterday but in a  
7 different sense, like Colonel Iron then explained G, as in  
8 general staff, but for example J1 will be personnel. J2 will be  
9 intelligence branch. J3 will be the operational branch. Four

09:53:56 10 will be logistics and then you move further down the line into  
11 finance and planning and control and, for example, G9 may be  
12 civil military co-operation. What I've written in my report, and  
13 as stated in NATO doctrine, this is just an example. I mean, you  
14 can come up with different numbers but, basically, a joint staff

09:54:24 15 should have similar organisation. So whether you have a G9 or  
16 you come to G12, that is further irrelevant. That depends on the  
17 joint -- the integration of the two forces.

18 Q. Thank you, general. General, I've counted five items you  
19 mentioned; trust and confidence, co-operation, interoperability,  
09:54:55 20 procedures and joint headquarters; is that correct? Five?

21 A. That's correct.

22 Q. Is it your view, general, that these five items, or  
23 elements, should exist in order to have a joint military  
24 structure or can you say you can delete one of them or two of  
09:55:27 25 them and you can still have a joint structure in a military  
26 sense?

27 A. I would say in essence this is what you need. This is  
28 doctrine generally accepted. This is what you need. Now, there  
29 may be one or two of less important all of a sudden that you say

1 -- that still, you know, you may say well, the procedures may  
2 vary but, in essence, this is what you need, no doubt.

3 Q. In case you would have to make a list of preference, from  
4 your professional perspective, what would be at the top of those  
09:56:08 5 five?

6 A. On top of my list would be basically the trust and  
7 confidence. I also can say the willingness, the willingness you  
8 want to integrate because if you don't have, and let's say the  
9 trust and confidence in each other, it will never work. You can  
09:56:31 10 make orders, and say this is the way it's going to be but if  
11 among the participants there is no trust and confidence, and a  
12 really wish to make it work, it will never work.

13 Q. Now, general, let us go into the application of this  
14 overview you just gave us to the instant case. First of all,  
09:57:04 15 were you able to apply this view, this enumeration of criteria,  
16 to the instant case?

17 A. I think I did, or I was able to.

18 Q. Are you able to tell the Court how you came to an  
19 application of this more general outline to the instant case?

09:57:29 20 A. Do I understand you correctly that you want me to go into,  
21 for example, trust and confidence and then explain why I thought  
22 that was not the case?

23 Q. Not yet. First, in general. You just indicated, I can, if  
24 the Court allows me, just assist the expert where I am trying to  
09:57:52 25 draw his attention to, I believe you said that when it concerns  
26 integration, you referred to integration of two organisations.  
27 Now, the question here is: How were you able to apply those  
28 criteria to specifically the RUF and the AFRC? How did you do  
29 that?



1 A. Yes. What I did, and that of course was for my report and  
2 the argument, was, as I stated before, joint is a combination of  
3 two or more services, and I explained before what services are.  
4 So, for the report and the argument, I reasoned the AFRC, and the  
09:58:44 5 RUF, as services as such, to make the comparison.

6 Q. Okay. Thank you. Now, were you, from that starting point,  
7 able to apply those five criteria you just mentioned onto the  
8 instant case?

9 A. One more than the other.

09:59:11 10 Q. Can we briefly start first with the first element you  
11 mentioned, trust and confidence. Were you able to apply that  
12 element on the instant case?

13 A. I was.

14 Q. What was your conclusion as to this first element?

09:59:27 15 A. My conclusion, based on primary and secondary sources, is  
16 basically a picture that while the AFRC or the previous -- or the  
17 governments before the AFRC had been fighting the RUF, then all  
18 of a sudden the RUF came in, after May 1997, and, based on my  
19 sources, there was no doubt that I came to the conclusion that  
10:00:06 20 although apparently the leaders of both AFRC and RUF indicated,  
21 okay, let's work together, my sources indicate that maybe not  
22 from day one, but after a very short time, you talk about  
23 mid-1997, there was suspicion, there was mistrust, and other  
24 reasons why, you know, the trust and confidence you need for it  
10:00:43 25 to work together was not established at all.

26 Q. General, in this regard, you referred to primary and  
27 secondary sources. Are you able to tell the Court, first, what  
28 the primary sources were and after that the secondary?

29 A. Yes. The primary source was, of course, DSK-082 and, as I

1 may indicate the others, like 2 and 3. And then, again, in the  
2 secondary sources, the TRC and Keen but even more, and I don't  
3 know if I should indicate that as a secondary source, but if you  
4 look at the statements, for example, by Mr Massaquoi, I think by  
10:01:39 5 that time he was spokesman for the RUF, if I am correct,  
6 indicating exactly that. So basically, those were my sources.

7 Q. General, when you refer to statements of Mr Massaquoi could  
8 you please indicate to what statements you refer to?

9 A. Again, I have to, you know, sort of remember what is in the  
10:02:04 10 report, but I know that Mr Massaquoi, for one, I think he was  
11 arrested in that period. I think there was an arrest planned for  
12 Issa Sesay, and I don't know if that definitely occurred, I don't  
13 think it was, but -- and then I think there were others that made  
14 that statement, but I can't recall the numbers, apart from

10:02:35 15 Mr Massaquoi. There were, and again I don't know if it was  
16 Mr Massaquoi or some other witness, who described that an  
17 official from the RUF stole weapons and ammo, while in Freetown,  
18 and took it to RUF territory.

19 Q. Just to make clear, general, when you speak about  
10:03:02 20 statements, do you refer to the transcripts or do you refer to  
21 other statements?

22 A. I am sorry, I refer to the transcripts.

23 Q. Okay. In this regard, speaking about the element of trust  
24 and confidence, you relied on 082. Was there any specific reason  
10:03:22 25 to use him as a source, in this regard?

26 A. You mean a source --

27 Q. A primary source?

28 A. Yes, a primary source, but do you mean then in the trust  
29 and confidence or in general?

1 Q. In general, with respect to all these items, but we can  
2 start with trust and confidence.

3 A. Well, he had, DSK-02 of course had a very good knowledge  
4 because of the positions he held, and I can go in more detail  
10:04:02 5 about that, if you want, but he was in a position to view how the  
6 things run in the time frame 1990 and -- May 1997 until February  
7 1998 so he saw what's happening. He also had, let's say, the  
8 position to judge that.

9 Q. Do you know exactly his position after August 1998?

10:04:38 10 A. Not by heart, I am afraid, but DSK-082 held six battalion  
11 commanders' positions in the Sierra Leone Army and between that  
12 he was commanding officer of the barracks. But if you ask me  
13 specifically then I have to look at the bio. I can't by heart  
14 now say exactly that year what position he had.

10:05:09 15 Q. But, I mean, do you know where his geographical position  
16 was after August 1998?

17 A. Okay, I am sorry, if I misunderstood. I was still in the  
18 process of 1997 until February 1998. But I can answer your  
19 question, where he was after February 1998 because, after  
10:05:39 20 February 1998, DSK-082 fled Freetown and stayed in Masiaka, I  
21 believe, for a while. He anyhow stated to me he was in the area,  
22 Masiaka, Makeni, for four months until May 1998. Subsequently,  
23 he fled to Guinea, and he was arrested somewhere in the time  
24 frame of July, brought back to Freetown. He was freed by ECOMOG  
10:06:30 25 and, from February, sorry, excuse me, to, from August 1998 until  
26 the beginning of 1999, DSK-082 worked together with the  
27 intelligence branch of ECOMOG and, in that position, frequently  
28 went to the forward lines of ECOMOG, I think Makeni and other  
29 places.

1 Q. Thank you.

2 A. So basically -- but that is 1998, and in my answer, I  
3 was --

4 Q. Correct.

10:07:10 5 A. -- basically still in 1997.

6 Q. Okay. Thank you, sir. Now, the second element, the issue  
7 of co-operation; were you able to apply that element to the  
8 instant case?

9 A. Well, co-operation, not so much. I didn't -- I didn't find  
10:07:33 10 evidence that there was any, any co-operation, so I didn't find  
11 specific arguments why that was in place. So, therefore, in my  
12 mind, it was not in place. But like in trust and confidence I  
13 really found hard, in my opinion, hard motivation for the fact  
14 that it was absent. Now, co-operation might have existed a bit,  
10:08:03 15 but I have not come across.

16 Q. When you speak about co-operation, are you able to tell the  
17 Court what the doctrine in specific says about the element of  
18 co-operation?

19 A. Well, you have to come up with joint exercises. You have  
10:08:25 20 to train and prepare yourself for a joint organisation. So if  
21 you don't do that, unless you train frequently, you will never  
22 establish a joint organisation.

23 Q. Now you mentioned thirdly the interoperability. Were you  
24 able to apply that to the instant case, based on your primary  
10:08:52 25 and/or secondary sources?

26 A. Well, basically, my primary source, DSK-082, indicated that  
27 it was from the background, two total different organisations.  
28 AFRC was, you know, had a background of SLA. The RUF had a  
29 background of guerrilla. AFRC was more -- sort of soldiers. The

1 RUF were not soldiers as such. Weaponry was not the same so, you  
2 know, that also was stated by Mr Massaquoi in his statement.

3 Q. Thank you, general. As a fourth element you mentioned  
4 joint procedures. Were you able to apply that element to the  
10:09:56 5 instant case and, if so, how did you do that?

6 A. I basically was not able to establish that. I tried to  
7 describe for the Court the -- what joint procedures are. And I  
8 gave the example of bringing a Dutch battalion into British  
9 force. Then you come up with the same procedures. Now, I have  
10:10:24 10 found no, in all my sources, I couldn't come across an indication  
11 that there even were procedures, let alone that there were  
12 procedures established, similar procedures established between  
13 the AFRC and the RUF.

14 Q. Yes. Now, general, the last element, joint headquarters.  
10:10:48 15 Were you able to apply that element to the instant case and, if  
16 so, what was your conclusion?

17 A. Well, certainly formally a joint headquarters was never  
18 established. I mean, I have not come across an organisation like  
19 I stated from G1 to G9 but, also, the AFRC, as such, and in my  
10:11:20 20 opinion also before that, only for the AFRC or the SLA, there was  
21 not a headquarters that can -- could control one force, you know.  
22 In my source, I have -- it was stated to me specifically by  
23 TRC-01, but also in my secondary sources, it shows a picture that  
24 the AFRC or SLA at that stage were not able to control their own  
10:12:00 25 organisation. So, I cannot be convinced that if you don't just  
26 go to the RUF and say, come on, and join us, that all of a sudden  
27 if you don't have an organisation for yourself, that you ask the  
28 RUF come in, and then all of a sudden, within a time frame, you  
29 have a joint structure. Remember that the example I gave, bring

1 in Netherlands Marine Corps into the fleet, it takes a year. And  
2 remember that the Netherlands Marine Corps has been part of the  
3 navy and fleet for almost 300 years.

10:12:45 4 Q. So what is your overall conclusion as to the existence of  
5 these five elements on this instant case?

6 A. I don't think they were applicable.

7 Q. General, in one of the statements it's mentioned, of the  
8 Prosecution evidence, that the relationship between the RUF and  
9 the AFRC was cordial. Do you think that that element is relevant  
10:13:10 10 within either one of the five criteria you mentioned?

11 A. I also have read the statement but just being cordial is  
12 not a prerequisite for a joint structure. You can at times, and  
13 I have read in the transcripts, certainly right after May 1997,  
14 they may have been cordial towards each other but that was for a  
10:13:43 15 very short time. But even if you be cordial, with being cordial,  
16 you just cannot establish a joint command structure.

17 Q. General, you have also encountered in the transcripts --

18 JUDGE DOHERTY: Just pause, Mr Knoops. Mr Brima what are  
19 you throwing around? I beg your pardon?

10:14:06 20 ACCUSED BRIMA: I'm throwing a mint paper.

21 JUDGE DOHERTY: Can you put down your -- well, don't do  
22 that [indiscernible]. Sorry, Mr Knoops, I didn't intend to  
23 interrupt.

24 MR KNOOPS: Not a problem, Your Honour. Thank you.

10:14:39 25 Q. General, you have also -- did you encounter in the  
26 transcripts you've read the term "G5"?

27 A. Yes, I certainly did.

28 Q. And can you please tell the Court whether the terminology,  
29 G5, has any bearing, in your professional opinion, as to the five

1 criteria you mentioned?

2 A. Only the criteria that G5, or J5, it's a matter of wording,  
3 is a function that is established in a staff. Now G5 or J5 is  
4 established in a joint headquarters but when I was commandant of  
10:15:33 5 the marine corps I had a J5 because I had a general staff but  
6 again, that is wording, so yes, indeed, if you then look at the  
7 criteria I described, and you ask me point blank the question:  
8 Did you see J5 somewhere in the transcripts, or in the study by  
9 Colonel Iron? The answer is yes.

10:16:05 10 Q. Suppose that you have a G5 in an organisation irrespective  
11 whether it's regular or irregular, leave apart that discussion,  
12 you have a G5, is that, in your opinion, sufficient to speak  
13 about staff structure or joint staff structure?

14 A. Absolutely not. Of course, for -- if -- for a staff  
10:16:28 15 structure, or a joint staff structure, you need more than a G5.  
16 You need a G1, a 2, a 3, a 4, a 5 and after that, as I indicated  
17 relating to NATO, you know, you have -- you may have a G8 and not  
18 a G7. For example, you may not have a G9 which relates to civil  
19 military co-operation. If you operate in Iraq and you want to  
10:17:01 20 rebuild the country you need a G9 who does civil military  
21 co-operation with the local population, but if that is not one of  
22 your missions you may not have a G9, so back to your question.  
23 If you just say there is a G5 it doesn't tell me much.

24 Q. General, the conclusions you've just put before the Court,  
10:17:29 25 do they change, in your view, when we speak about the situation  
26 when the AFRC was on the advance to Freetown?

27 A. It should not have a relation with your operations, as  
28 such. You are still relating to staff structure. You do have a  
29 staff structure or you don't. Now, whether you are on the

1 defence, the offence, or in the barracks, it doesn't make any  
2 difference. You do have a staff or you don't.

3 Q. Thank you, general. Now, final question about the section.  
4 What is your overall conclusion as to the question whether a  
10:18:18 5 joint military operational structure existed between the RUF and  
6 the AFRC, within the period May 1997 up to the advance, and  
7 including the advance to Freetown?

8 A. My conclusion is that there was never a joint operational  
9 military structure established between the AFRC and the RUF in  
10:18:44 10 that period, in the way I have described it.

11 Q. Thank, you general. General, my final part, I would like  
12 to put to you and discuss with you, is your part E in your  
13 report, your final conclusions. Are you able, just briefly first  
14 of all, to tell the Court what your, in your view, most important  
10:19:17 15 conclusions are of your research and, again, shortly the  
16 foundation thereof?

17 A. As you can see, in part E, there are quite a number of  
18 conclusions. The most important conclusion is, in my mind, the  
19 first most important conclusion is the fact that, in my mind, the  
10:19:49 20 AFRC was an irregular force. And I have based that on, excuse  
21 me, primary sources, DSK-082 and 3. I have also based it on the  
22 conversation I had with TRC-01. But, even more importantly so,  
23 is that that conclusion is shared by Colonel Iron, as I think  
24 that is a secondary source, if you call it that way, because  
10:20:40 25 Colonel Iron and I have mentioned it before, stated that the AFRC  
26 was a guerrilla force, was not a conventional army, was a  
27 non-regular army, so, concerning my most important conclusion,  
28 number one, an irregular force, Colonel Iron shared that view.  
29 So that is my first important conclusions. Excuse me,



1 conclusion.

2 Q. Is there any other conclusion which you specifically would  
3 like to emphasise when it concerns your final part?

4 A. Well, as you have noted, I have described in detail the  
10:21:23 5 three questions addressed by Colonel Iron, and we have been  
6 through that, at length. And, of course, I didn't think that  
7 was -- I didn't agree with him. But we have also addressed  
8 hierarchy and structure. Now, I have given numerous reasons why  
9 I didn't think there was a hierarchy and structure. But I was,  
10:21:57 10 so to speak, happily surprised when I read the transcript from  
11 Mr Petrie, who stated specifically, and I think it was October  
12 6th 2005, as I recall, on page 19 and page 59, that the AFRC was  
13 not a professional military force or military organisation, or a  
14 conventional military organisation. And, of course, that was  
10:22:33 15 another indication for me that in my analysis, I think I was  
16 right, also concerning the hierarchy and structure. And my last  
17 conclusion, among all the conclusions is, based on everything  
18 I've said and everything I've investigated and written down, I  
19 have come to the conclusion that the AFRC was not a traditional  
10:23:08 20 military organisation.

21 Q. General, one final question which go to the sources of your  
22 report and your overall conclusions. Can you tell the Court how  
23 many footnotes your report entail?

24 A. 312.

10:23:37 25 Q. Are you able to tell the Court the division within these  
26 footnotes over the respective sources? In other words, can you  
27 recall how many footnotes were dedicated to transcripts, to the  
28 TRC report, to primary sources, et cetera?

29 A. I cannot answer that question fully because I did a little

1 calculating. Out of the 312, I used 41 footnotes, or the text  
2 which goes with it. Out of the transcripts we mentioned, between  
3 May and October 2005, transcripts from witnesses from the  
4 Prosecutions, Prosecution, 41 supported directly or indirectly my  
10:24:44 5 vision. Now, I used -- and so to specify, I only then look at  
6 the quotation which really support my vision, not the quotation  
7 by a witness saying that he was at one place at one time. I used  
8 14 quotations from DSK-082. I used 25 quotations from Keen but,  
9 again, in support of my vision of the question I addressed in the  
10:25:31 10 report. And, of course, I used numerous statements of the TRC,  
11 but that was just as a -- to paint a picture of the situation --  
12 but I used seven statements out of the TRC specifically made by  
13 very senior officials, military, chief of defence staff, but also  
14 President Kabbah, and, as I recall, out of the seven I used two  
10:26:12 15 statements coming directly from two soldiers explaining for the  
16 TRC their own situation. So it boils down to 41 out of the  
17 transcripts from the Prosecution, 25 Keen. 14, DSK-082 and seven  
18 specifically concerning statements made before the TRC.

19 Q. You just mentioned the reliance on the statement, amongst  
10:26:47 20 others, speaking about those seven TRC statements of President  
21 Kabbah. Can you recall what his statement was before the TRC and  
22 to which extent you used it in your report?

23 A. As we have discussed at length, in the historical part, I  
24 wanted to describe the entire period leading up to 1997, also  
10:27:23 25 because how was the situation with the soldiers and their  
26 experience and all that. So President Kabbah addresses the  
27 period prior to 1991, and he stated that because of neglect, I  
28 have to recall, but because of neglect and bad management, by  
29 1991, the Sierra Leone -- but specifically the Sierra Leone Army

1 -- was very badly prepared for the operations to be carried out  
2 with the RUF. So I used President Kabbah for that period, but  
3 that was his statement.

4 Q. Was there any other period covered by that statement, can  
10:28:11 5 you recall?

6 A. I can't recall by heart. I think it was specifically up to  
7 that period but, again, and I've stated that before, I have  
8 quoted chief of defence staffs, from Sierra Leone, and I, of  
9 course, can't go into the discussion whether that is a fact or an  
10:28:37 10 opinion, that is not my trade, but these senior officials stated  
11 the situation as it was developing within the Sierra Leone Army,  
12 and that's what I did. So, apart from Kabbah, I stated a couple  
13 of senior officials, chief of defence staffs.

14 Q. Which time period did these statements cover?

10:29:10 15 A. Basically, depending who you then asked, we have mentioned  
16 Tarawallie before. That was earlier. That was, I think, right  
17 at the start of 1991. Now, Maxwell Khobe was a force commander  
18 for ECOMOG, and became chief of defence staff after President  
19 Kabbah was reinstated, and he was covering more the period of the  
10:29:40 20 end of the NPRC towards the, you know, and then the AFRC. I  
21 think Tom Carew, but again by heart, Tom Carew, in his statement,  
22 covered a broader time frame sort of in half a page indicating  
23 the downfall from '85 until 1997.

24 Q. So these statements were mainly used by you in your  
10:30:16 25 historical part?

26 A. They were, again, you know, whether -- it's not my trade  
27 whether it's fact or opinion -- but I thought that if you would  
28 ask me, as commandant of the marine corps, how were the  
29 operations by your forces in Cambodia carried out, I can make a

1 statement about that because I have knowledge about that period.  
2 I, in my view, someone in a position of chief of defence staff,  
3 in any country, as the highest military man, is in a position to  
4 explain what his thoughts are on a period or on an event; at  
10:30:57 5 least he should.

6 Q. General, one final question as to the sources of your  
7 research. Were you able to interview or speak with any  
8 politicians in the course of your research here in Sierra Leone?

9 MR AGHA: Leading question, Your Honour. Objection.

10:31:18 10 PRESIDING JUDGE: Do you wish to reply to that?

11 MR KNOOPS: I can rephrase it, but I don't believe it's  
12 leading. I think it is just drawing the attention of the general  
13 to a specific category. We have spoken about military officials,  
14 about other sources. I think the term "politicians" is so broad,  
10:31:47 15 I'm not asking him if he spoke with Mr A, Mr B. I'm just asking  
16 him to a specific category of potential sources which may not  
17 have used or have been used in his report.

18 PRESIDING JUDGE: Well, you said you could rephrase it, so  
19 please do.

10:32:06 20 MR KNOOPS: I can rephrase it, Your Honour.

21 Q. General, were you able to speak to any other individuals in  
22 Sierra Leone during the course of your research, apart from those  
23 you mentioned in your report?

24 A. Well, that's a hard question because I spoke to others but  
10:32:37 25 they are mentioned in my report, obviously.

26 Q. General, were you able to speak to other military  
27 officials, except for those mentioned in your report?

28 A. That's going to be hard. Other military officials --

29 Q. Apart from those individuals mentioned in your report, did

1 you make any attempt to speak to other individuals?

2 A. Well, I made an attempt, but I was highly unsuccessful.

3 Because when I was here in October, I went to the ministry of  
4 defence and had an interview with Mr Joe Blell, who is the deputy

10:33:44 5 defence minister. And I asked his support to speak -- I was

6 telling him what I was doing and I asked his support and he was

7 very friendly. But I specifically asked him the question, over

8 the course of our conversation, I said "Mr Blell, do you think,"

9 I said, "if I am a brigade commander now in the Sierra Leone

10:34:11 10 Army, and if I would have been participating in the AFRC in the

11 bush, do you think I would testify in Court?" And he said, "I

12 don't think you would." And I said, "Why not?" And then he

13 explained me something which he explained, expressed as you will

14 be suffering from witch hunt and of course coming from The

10:34:41 15 Netherlands, I didn't know what a witch hunt was, which he

16 explained that eventually that would have repercussions for me

17 personally or for my family or so. And although the conversation

18 stayed very nicely I asked him "But then aren't you there, sir,

19 to protect me politically?" Well, anyways, I again had a

10:35:11 20 conversation with Mr Blell and I was further with my report and I

21 asked him "Can you please help me, sir, because I want to talk to

22 people now serving in the SLA who were part of the AFRC faction."

23 And again, he was very helpful and he said, "Okay, I bring you in

24 contact with the chief of defence staff Mr Sam Mboma." And I was

10:35:42 25 happy so I had a meeting with Mr Sam Mboma and I said, "General,

26 you, as a chief of defence staff, can you bring me in contact

27 with officers, or senior officers, now serving in your

28 organisation who have been part of the AFRC in the bush?" And he

29 said, "I cannot because there are none." And of course I've been

1 in situations before that I got "no" for an answer but I wasn't  
2 eager to take that one on. But anyways, we talked about it for  
3 half-an-hour, and he said, "There are no officers in the SLA now  
4 who have been part of the AFRC." And much to my regret I could  
10:36:42 5 not do anything about it. But I got the feeling, the bad  
6 feeling, because if you state that, what are you going to do with  
7 your historical part of your armed forces? Or with that period  
8 in your history? And if you are not able to speak freely then I  
9 think it's a bad starting point for the army as such now. But it  
10:37:15 10 gave me, his remark and his opinion gave me an understanding why  
11 DSK-082, and number 2 and 3, in the other order around, if I am  
12 correct, bailed out and didn't want to testify or only wanted to  
13 testify or named under cover. And I was very sorry that I had to  
14 make that observation.

10:37:55 15 MR KNOOPS: Thank you, general. Your Honours, that  
16 concludes my examination-in-chief.

17 PRESIDING JUDGE: All right. Thank you. This witness is a  
18 common witness. Is there anything in chief from any other  
19 Defence counsel?

10:38:06 20 MR GRAHAM: Your Honour, no, from the -- from counsel for  
21 the first accused, Mr Brima. None.

22 PRESIDING JUDGE: Thank you.

23 MR FOFANAH: Just one question for the general.

24 EXAMINED BY MR FOFANAH:

10:38:18 25 Q. General, good morning.

26 A. Good morning.

27 Q. Yes, sir, just on the last bit of your testimony based on  
28 your discovery, when you said that the chief of defence staff  
29 indicated to you that there were no members of the AFRC in the

1 current army, my question is: Did you find out subsequently if,  
2 in fact, there were members of the AFRC in the current army?

3 A. Not only I think it's common knowledge but I found out,  
4 because of one of the investigators and former military police  
10:39:07 5 members of the Sierra Leone Army, indicated specifically several  
6 people who have been part of the AFRC in the bush, in fact, and I  
7 didn't do that of course. I could point out an individual  
8 working closely to the political top of ministry of defence, in  
9 fact, having been with the AFRC in the bush.

10:39:41 10 Q. Since you do not want to name that person, will you want to  
11 write the name of that person down for the records?

12 A. I can write down the name, of course.

13 Q. And apart from that person, do you know the name of any  
14 other person who served in the AFRC, who is currently in the  
10:40:03 15 army?

16 A. No, sir. And I didn't try to investigate that. It was not  
17 part of my assignment and I didn't think there was a reason to  
18 investigate who was with the AFRC. I only wanted to make the  
19 statement towards the chief of defence staff that I was aware  
10:40:26 20 that it was the case but, of course, you know, you can't just  
21 tell someone upfront.

22 Q. Now general, this person's name whom you are about to write  
23 down, do you know his current rank in the army?

24 A. I do.

10:40:45 25 MR FOFANA: At this stage, Your Honours, may I  
26 respectfully request that a blank sheet of paper be given to the  
27 general so that he can write down the name of the person to whom  
28 he is making reference?

29 THE WITNESS: Now, Your Honour, I don't know if I spell it

1 correctly, but I give it a shot.

2 MR AGHA: Your Honour, I rise at this stage to wonder the  
3 relevance of this, bearing in mind if someone didn't choose to  
4 give evidence before this tribunal, then the Defence could have  
10:41:35 5 subpoenaed that person had they so chosen.

6 PRESIDING JUDGE: Well, the evidence thus far is on the  
7 record. Mr Fofanah, so far, has not attempted to tender that  
8 piece of paper. Perhaps let's wait and see.

9 MR AGHA: Yes.

10:41:51 10 PRESIDING JUDGE: You can make your objections at the  
11 proper time. Yes, Mr Fofanah?

12 MR FOFANAH: Your Honours, respectfully, my intention was  
13 to apply that that document be tendered but then, on a second  
14 thought, I thought it would have been better to make the  
10:44:53 15 application after the report has been tendered, since the  
16 inference is that the general relied on interviews conducted  
17 during his research. And the name on the sheet of paper, I  
18 believe, was one of those persons who was interviewed, or at  
19 least from whom information was obtained.

10:45:20 20 PRESIDING JUDGE: Is that correct, general?

21 THE WITNESS: No, Your Honour. I never spoke with the  
22 individual I wrote down on the paper. At least I greeted him but  
23 I never had a discussion with him.

24 MR FOFANAH: I'm extremely sorry. That's my  
10:45:40 25 misinformation. At this stage, because my learned colleague has  
26 just indicated that he intends tendering the report but then, as  
27 an afterthought, I thought I was going to make an application  
28 after that has been done.

29 PRESIDING JUDGE: All right. Well, look, at this stage I



1 will return this piece of paper to you.

2 MR FOFANAHA: Yes, Your Honours. May I respectfully at this  
3 stage make an application that the document be identified, merely  
4 for identification.

10:46:09 5 PRESIDING JUDGE: All right. It can be marked for  
6 identification. I don't have an MFI number.

7 MR AGHA: Your Honour, I am wondering what the purpose of  
8 marking it for identification is if this gentleman wasn't spoken  
9 to?

10:46:36 10 PRESIDING JUDGE: Well, look, it's simply marked as the  
11 piece of paper that we will be referring to later in an  
12 application to tender it. That's my understanding. If we don't  
13 mark it for identification we won't know what piece of paper  
14 somewhere down along the line Mr Fofanah is referring to. That's  
10:46:53 15 the only reason to mark it.

16 MR AGHA: But is he still proposing to tender it?

17 PRESIDING JUDGE: Well, I'm not a mind reader, Mr Agha. He  
18 said he may tender it after the report gets tendered itself.

19 MR AGHA: Thank you, Your Honour.

10:47:10 20 MR FOFANAHA: Your Honours, I mean, I will just leave it at  
21 that. My application will just be for identification only.

22 PRESIDING JUDGE: If you are not going to tender it I'm not  
23 going to waste time marking it. If you are not going to attempt  
24 to tender it then it's not the subject of any application before  
10:47:26 25 this Court and there is no point marking it for identification.

26 MR FOFANAHA: May I seek your indulgence for a moment, Your  
27 Honours?

28 [Counsel conferred]

29 MR FOFANAHA: I thank you very much for your indulgence. At

1 this stage, Your Honours, I am withdrawing the application for  
2 identification.

3 PRESIDING JUDGE: All right. Do you want this paper  
4 returned to you, Mr Fofanah?

10:48:25 5 MR FOFANAH: Yes, Your Honours, thank you.

6 PRESIDING JUDGE: Yes. Well, that concludes the  
7 evidence-in-chief?

8 MR KNOOPS: Yes, Your Honour. May I address the attention  
9 to the Court to the application I filed earlier orally with  
10:48:47 10 respect to the tendering of the report. Before I submit --

11 PRESIDING JUDGE: Well, I have to interrupt you here. If  
12 you noticed our practice in the past, Mr Knoops, is to allow  
13 cross-examination before the report is tendered.

14 MR KNOOPS: Yes. Thank you. Your Honours, before the  
10:49:07 15 Prosecution starts cross-examination, I just have a brief remark  
16 about the document. Just briefly. I think --

17 PRESIDING JUDGE: Which document? The report or that piece  
18 of paper?

19 MR KNOOPS: No, the piece of paper that was just returned.

10:49:22 20 MR AGHA: Your Honour, may the Prosecution also have a  
21 right to reply, if my learned friend is making comments on the  
22 document?

23 PRESIDING JUDGE: You can. You are now talking about a  
24 piece of paper that is not before the Court at all.

10:49:35 25 MR KNOOPS: Okay. Thank you. I have no remarks.

26 PRESIDING JUDGE: All right. We will have a break. We  
27 will be back at 5 past 11. You can commence your  
28 cross-examination then, Mr Agha. And general, I will remind you  
29 again, please don't discuss the evidence with any other person.

1 THE WITNESS: Your Honour.

2 [Break taken at 10.50 a.m.]

3 [Upon resuming at 11.08 a.m.]

4 PRESIDING JUDGE: Go ahead, Mr Agha.

11:08:40 5 CROSS-EXAMINED BY MR AGHA:

6 Q. Good morning, general.

7 A. Good morning.

8 Q. I'm going to ask you a few questions from the side of the  
9 Prosecution.

11:08:48 10 A. Yes, sir.

11 Q. Most of them can be answered with a "yes" or a "no," or an  
12 "I don't know" answer, and that will be the preferred route. If  
13 I require an explanation, then I'll ask you further for that.

14 A. Does that imply, also, that I can't -- if I feel the need  
11:09:07 15 to answer, I can't do that? Is that what you state, sir?

16 Q. Well, if I ask you to give a "yes" or "no," I can invite  
17 you to explain why, if you see what I mean.

18 A. Yes, sir.

19 Q. And your counsel, in re-examination, can ask you, again,  
11:09:24 20 questions to clarify. Now, how many papers have you written on  
21 military doctrine?

22 A. I have written numerous papers on doctrine, not related so  
23 much to military but, as I explained, doctrine in relation to  
24 military and coast guard operations in the Caribbean.

11:09:58 25 Q. Have you made any publications on military doctrine or  
26 issues?

27 A. No, sir. I have not.

28 Q. Have you authored any books on any military doctrine or  
29 issues?

1 A. No, sir. I have been, in my entire career, in the  
2 operational field and was never involved in long term of  
3 lecturing. I'm an operational man.

4 Q. Essentially, while in the Caribbean, it was the coast guard  
11:10:34 5 doctrine you were establishing?

6 A. It was the coast guard doctrine, and the doctrine on the  
7 defence of The Netherlands, Antilles and Aruba.

8 Q. Since your retirement, for about the last 18 months, I  
9 believe you've been working at the Centre For Strategic Studies  
11:10:56 10 in The Hague; is that right?

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

12 Q. You would agree with me, one of your main projects was work  
13 on the Dutch intelligence aspect in respect of the 9/11 attack?

14 A. That's right.

11:11:12 15 Q. That project remains unpublished because, essentially, it  
16 is more Dutch specific; is that right?

17 A. No, that's not right. The reason why it was not published,  
18 or not so to say published, but why it was not further discussed  
19 in the political world, or in the political scene had to do with  
11:11:42 20 the fact that my proposals, my conclusions, my proposals on how  
21 to make things better may not go well in the political world in  
22 The Hague, as of this time.

23 Q. So is, essentially, your point of view of the intelligence  
24 apparatus?

11:12:13 25 A. It was not so much the view on the intelligence  
26 organisations, it more had to do based on how things have  
27 developed after 9/11 in the US, but, also, the way the UK has  
28 established procedures in order to better have an intelligence  
29 flow in the post-terrorism world, or 9/11 world in fighting the

1 terrorism Now, I believe, or I still believe that the US and UK  
2 were fairly right in the way ahead.

3 Q. General, if I may cut in. It was more then, really, about  
4 the flow of intelligence between different countries.

11:13:06 5 A. It really only had to do with the flow of intelligence  
6 between organisations within The Netherlands, and I took examples  
7 in the US and the UK.

8 Q. Would you agree with me, throughout your career, you have  
9 been more of a hands-on soldier as opposed to an academic one?

11:13:33 10 A. I have always been in the operations, that's correct.

11 Q. How many operational missions have you personally  
12 participated in outside The Netherlands where you were commanding  
13 troops in the field?

14 A. It depends how you define missions. Within The  
11:13:56 15 Netherlands, in my younger years, was involved in  
16 counter-terrorism in the age of the Maloccan [phon] terrorism.

17 Q. Was this outside of The Netherlands?

18 A. This was inside The Netherlands.

19 Q. I'm talking about outside.

11:14:12 20 A. Outside The Netherlands, basically, you can consider my  
21 presence in the Caribbean, during four and a half years, a  
22 constant being in operations, 24/7.

23 Q. Apart from that operational tour in the Caribbean, which  
24 other operational tours did you go on, outside The Netherlands,  
11:14:30 25 in your career?

26 A. That's it.

27 Q. Now, when you were in the Caribbean, if I can refer to it  
28 as that, you say you were involved in coast guard law  
29 enforcement; is that right?

1 A. That's right.

2 Q. And was this mainly in relation to smuggling of narcotics  
3 and drugs on the high seas?

4 A. No, because, basically, coast guard is limited to the  
11:15:03 5 territorial waters, unless it is, and I don't know how to put it  
6 in a judicial way, or legal way, unless it is trying to import or  
7 export drugs out of your own territory. Then you can go on the  
8 high seas. It was not only smuggling, it was also fishery  
9 inspection, it was also Custom law enforcement.

11:15:24 10 Q. And that was within the territorial waters of your area of  
11 responsibility?

12 A. Like I said, unless you have someone who is trying to sail  
13 through your areas and proceed, but, of course, in the other hat,  
14 as I explained, I covered the high seas.

11:15:39 15 Q. Now, for 18 months you say you were an Appeals Court judge  
16 in the Caribbean; is that right?

17 A. That's correct.

18 Q. And was this your full-time job, or did you also have other  
19 assignments at that time?

11:15:52 20 A. During that time, I was Chief of Staff of my boss, who had,  
21 as I explained before, three hats, so I was Chief of Staff of  
22 someone who had three hats. But, in that job, I was in the  
23 Court, but that was on a part-time basis, because it only was the  
24 case when there were cases that had an appeal, criminal law, for  
11:16:27 25 military personnel.

26 Q. So how often would these appeals have been that you sat on?

27 A. In that 18 months, I had two serious cases. What I  
28 consider, as a military man, serious; rape by military men. And  
29 then I had about two or three minor ones. So, a total of five

1 cases, but, again, it was on a part-time base.

2 Q. So you wouldn't regard this as a particularly significant  
3 or one of the larger parts of your military career, this role you  
4 played?

11:17:10 5 A. Oh, you're correct in that assessment, sir.

6 Q. Now, you also said that you were involved in some outward  
7 bounds training; is that right?

8 A. What I tried to explain, sir, I don't know if the term  
9 outward bounds means something to you, but what I tried to  
11:17:38 10 explain is the outward bounds school trained youngsters in  
11 challenging in hardship. And, within the training of militia,  
12 local population, Curacao and Aruba, I trained them more in  
13 hardship in adventure than in military skills and drills. That's  
14 what I meant to say.

11:18:05 15 Q. So you're really training them, let's say, in practical  
16 skills to enable them to get jobs in the outside world; would  
17 that be a fair assessment?

18 A. That's correct.

19 Q. And it didn't really involve many aspects of military  
11:18:20 20 training then?

21 A. When I joined, for the militia, again, the local population  
22 of Curacao and Aruba, it was more based on military, and within  
23 the prospect of their future. I emphasised later more on skills  
24 for their future in civil life, because it was conscripts.

11:18:50 25 Q. Right. Apparently you also mentioned you were involved for  
26 about six weeks in some form of guerilla training; is that right?

27 A. No, sir. What I did, on request of The Netherlands, was  
28 setting up semi-permanent jungle training in Suriname. As I  
29 explained, we later had to move to Belize and I personally

1 observed the jungle training in Belize for about ten days.

2 Q. Okay. So that was your experience of the observations of  
3 the jungle training, that ten-day period in Belize?

4 A. [No audible response].

11:19:37 5 Q. Now, you would agree with me that the British and Dutch  
6 armies are some of the best-trained armies in the world.

7 A. Yes, sir.

8 Q. You would also agree with me that they are amongst some of  
9 the most professional armies in the world.

11:19:57 10 A. I can agree with that.

11 Q. Would you also agree with me it would be unfair to judge  
12 African armies with western armies in terms of their training and  
13 professionalism in terms of the budget they receive?

14 A. In general, I cannot say that, because I have not made a  
11:20:17 15 thorough analysis on the way the African armies operate.

16 Q. So you wouldn't know, really?

17 A. Well, if you say western armies --

18 Q. Let us take the British and Dutch, which I think you have  
19 some familiarity with.

11:20:33 20 A. Yes.

21 Q. If you were to compare them with, let's say, the armies  
22 operating in Africa, as a whole, would you say that the degree of  
23 professionalism and training is higher in the Dutch and British  
24 army than in most African armies, or are you unable to comment?

11:20:52 25 A. It would be a feeling, but not more than a feeling.

26 Q. And what would your feeling be?

27 A. But it's not based on -- as I said, I never made analysis  
28 on West African armies, as such, in a broad way. I didn't go  
29 through Africa and say, "How's your army"? In general, if you



1 say Dutch marines and royal marines are about the best in the  
2 world, and you compare that to other ones, including armies in  
3 Africa, I think we come up first.

11:21:33 4 Q. Now, you started your career flying helicopters and  
5 frigates; is that right?

6 A. No, sir. I started my career flying fixed-wing aircraft in  
7 The Netherlands, Antilles and, subsequently, I started flying  
8 helicopters. And, at one point of time, I was requested to fly  
9 on board of helicopters with a WASP, familiar in the royal navy.  
11:22:00 10 Because it was so difficult, one needed second-tour flyers, so I  
11 did that for about two years.

12 Q. So you're quite an experienced naval aviator, if you like?

13 A. I was, sir.

14 Q. You then worked with integrating British and Dutch marines  
11:22:23 15 into a landing force; is that right?

16 A. That's correct.

17 Q. And the British marines are part of the British Navy,  
18 aren't they?

19 A. That's correct.

11:22:30 20 Q. In 1987, you became the adjutant for the supreme allied  
21 commander in NATO until 1989; is that about right?

22 A. That's correct.

23 Q. In this role, you were responsible for the entire sea area  
24 of NATO as a commander's aide-de-camp; is that right?

11:22:49 25 A. I have to rephrase that, sir. My boss, having then -- I  
26 then was a major, later to be promoted to lieutenant-colonel --  
27 and my boss was a four-star admiral, so he was responsible for  
28 the sea area, while I was making sure that his work was -- the  
29 preparation for his work was done well, but I was his

1 ai de- de- camp.

2 Q. But it was largely involved in the sea area in which your  
3 boss was dealing?

4 A. Yes, that's correct.

11:23:30 5 Q. You carried out large-scale exercises off the coast of  
6 Spain and, later, the Mediterranean; is that right?

7 A. If you're referring to my time as colonel, as deputy  
8 brigade commander, I had that job for about three and a half  
9 years, and I spent literally a month with the royal marines in

11:23:51 10 Norway. I did numerous exercises in the Mediterranean, as such.

11 Q. Were these, in essence, amphibious landing exercises from  
12 sea to land?

13 A. Well, initially. Of course, the role of the royal marines  
14 is amphibious, but, of course, that's only the beginning, and we  
11:24:14 15 carried out land operations for weeks with the royal marines.

16 Q. Now, as a Dutch and royal marine, would you agree with me  
17 they largely are amphibious in nature?

18 A. Well, you see their background is amphibious, but, to give  
19 you an example, one and a half years in Cambodia with the  
11:24:44 20 Netherlands Marine Corps has nothing to do with amphibious.

21 Iraq, two successive periods under command of an army two-star,  
22 didn't have anything to do with amphibious; it had to do with  
23 land operations. But, in essence, the royal marines, if you see  
24 the attack on Iraq, were involved in an amphibious operations,  
11:25:10 25 but then were on land for the rest of their campaign.

26 Q. But, essentially, the historical background of marines,  
27 let's say Dutch or British, is amphibious?

28 A. Well, the historical background goes when we fought each  
29 other in the second English war, and we were both on ships and

1 fired at each other.

2 Q. I'm coming now to Iraq. I'm just running briefly through  
3 some of the points of your career, and I am trying to keep it in  
4 chronological order. I'm sorry if I step ahead. I will step  
11:25:47 5 back. Now, in Iraq, battalions you prepared was more for a  
6 peacekeeping role; is that right?

7 A. It was a peacekeeping mission, that is correct.

8 Q. And the Dutch Marine Corps is a part of the Dutch Navy; is  
9 that right?

11:26:01 10 A. It is.

11 Q. So you would agree with me that many of your assignments  
12 had been naval related, wouldn't you?

13 A. Only in a sense that it was organisation-wise that I had a  
14 boss who was a three-star admiral. But, predominantly in my  
11:26:20 15 career, while it was company commander, while it was deputy  
16 brigade commander, or commanding officer of all the marine units  
17 in The Netherlands, it was land-based. And one should not forget  
18 that I also was responsible for the counter-terrorist units  
19 established after Munich, which only was a land base.

11:26:45 20 Q. Was it a naval chain of command, essentially?

21 A. I have served in the naval chain of command, yes.

22 Q. Right. I now want to come to a period after you retired.  
23 After retirement, you also acted as an expert in a case of a  
24 soldier who suffered post-traumatic stress syndrome as a result  
11:27:13 25 of Srebrenica; is that right?

26 A. That's correct.

27 Q. Correct me if I am wrong, as you have been as we've been  
28 going along, basically, you were asked to look at the  
29 decision-making process of the Dutch government regarding

1 Srebrenica; is that about right?

2 A. Sir, that really was only the starting point of my  
3 analysis. My analysis had to deal with the decision-making, had  
4 to deal with the equipment, the tasking, the organisation, the  
11:27:47 5 weapons systems, the air support, the way they operated the  
6 blocking positions in relation to the Serb threat, and the  
7 problems relating to logistical support while they were  
8 surrounded by the Serbs. My analysis, which is some hundred  
9 pages, covers, indeed the decision-making, but further on, it  
11:28:15 10 goes right into the heart of the mission, including the way the  
11 men were treated after they got back from the mission in  
12 Srebrenica.

13 Q. Now, when you were preparing this report about Srebrenica,  
14 were you able to speak to those directly involved?

11:28:32 15 A. I was.

16 Q. So, generally speaking, when you were able to write your  
17 report, if you wanted to speak to a person involved in, let's  
18 say, the equipment aspect, as you mentioned, or the treatment of  
19 the soldiers when they came home aspect, as you mentioned, you  
11:28:49 20 were able to directly speak to those involved?

21 A. Yes, but that was, basically, very limited. Of course I  
22 had the report written -- read by the guy for whom I wrote the  
23 report, but you have to be aware, about Srebrenica, there was a  
24 six-year study done by a national institute. I think it covers  
11:29:17 25 3,000 pages. Then, afterwards, there was a parliamentary  
26 inquiry, and that's what I studied mainly for my analysis.

27 Q. Did you speak to any of the people directly involved?

28 A. I spoke to the man whom it concerned.

29 Q. Did you have access to any documents regarding these

1 matters?

2 A. That's what I tried to explain, sir. Over the years, this  
3 inquiry after Srebrenica is immense. I think a team of 200 men  
4 worked about six years, covering volumes like that, and then the  
11:30:00 5 parliamentary inquiry followed. And, based on that, I had to go  
6 right to the heart of that problem

7 Q. Did you have access to, let's say, operational orders and  
8 radio communications and things of this sort?

9 A. I did.

11:30:19 10 Q. Would you agree with me that the large part of your  
11 Srebrenica report was based on first-hand information?

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

13 Q. It wasn't particularly involved with people who were  
14 involved in the task you were looking into?

11:30:43 15 A. That has been done over the last ten years.

16 Q. It was more a situation of reviewing the extensive  
17 materials which had already been in place?

18 A. That's correct.

19 Q. Thank you. Now, I actually want to look at your own  
11:31:05 20 research methods now for conducting your expert report into this  
21 particular case. Now, you would agree with me, wouldn't you, in  
22 order to write your report, you did have to carry out extensive  
23 research?

24 A. Yes, sir.

11:31:18 25 Q. And, indeed, you carried out that research?

26 A. Yes, sir.

27 Q. That extensive research included reviewing the TRC report  
28 and reading Keen's book on Conflict and Collusion in Sierra  
29 Leone, didn't it?

1 A. Amongst others, yes.

2 Q. Apart from these two sources, you also looked at many other  
3 books, papers, documents and other information which could help  
4 you with your report?

11:31:46 5 A. Absolutely, sir.

6 Q. Presumably, that extensive research would have involved  
7 reviewing statements of those affected?

8 A. I don't know if I understand correctly statements, as such.  
9 Statements as in transcripts?

11:32:03 10 Q. Well, one source would be the transcripts, that is to say,  
11 of some of the witnesses who gave evidence in this trial, but,  
12 let's just say, going around, as you did, gathering your own  
13 statement of witnesses?

14 A. Yes.

11:32:17 15 Q. Okay. You'd agree with me, this research would have  
16 focused, amongst other things, on the AFRC and SLAs who were  
17 forced to the jungle following intervention, wouldn't you?

18 A. It covered, apart from, of course, the historical part, it  
19 covered mainly what happened or how it evolved after May 1997  
11:32:47 20 until, basically, the period Iron covered, ending February 1999.

21 Q. You would have come across, in your extensive research,  
22 information about the advancement from Colonel Eddie Town to  
23 Freetown?

24 A. Yes, sir.

11:33:03 25 Q. And you would also come across, in your extensive research,  
26 information about the actual attack and withdrawal from Freetown  
27 by the AFRC faction in January '99, wouldn't you?

28 A. Yes.

29 Q. Now, I notice in your report, and even in your oral

1 evidence, that you emphasise importance of understanding history;  
2 is that right?

3 A. That's correct.

4 Q. So you also studied the political and military history of  
11:33:30 5 the Sierra Leone Army, didn't you?

6 A. Yes, sir.

7 Q. And this would also encompass the NPRC period?

8 A. In broad terms.

9 Q. I now want to look at some of the basic information which  
11:33:50 10 you ought to have come across during the course of your research,  
11 to see the extensive nature of it. Now, through your research,  
12 did you learn who carried out the coup, which removed the SLPP  
13 government in May 1997?

14 A. I may have come across, but you have to be aware that I  
11:34:24 15 focused on history, only for one purpose, and the purpose was:  
16 What was the starting point -- again, referring to my task I was  
17 given by the Principal Defender -- the starting point of the men,  
18 military-speaking-wise, 1997 and onwards. So I may have come  
19 across that, but I focused on, in contrary to Colonel Iron, who  
11:34:56 20 wanted to start on a blank sheet of paper, I wanted to emphasise  
21 what is your background, as a unit, as your professionals, as  
22 your men, you leave for the bush. That's what I did. I may have  
23 come across coup and names, but it was not the focus of my  
24 attention.

11:35:19 25 Q. Are you aware, and did you come across Alex Tamba Brima,  
26 the first accused in this case, as one of the persons who carried  
27 out the coup?

28 MR KNOOPS: Your Honour, I object. This is a matter which  
29 goes to the ultimate issue of the case; namely, the indictment.

1 The indictment, Your Honours, says in paragraph 12 onwards to 15,  
2 goes into the factual issue of the Supreme Council and its  
3 alleged members, whilst in the paragraphs 23 onwards, the  
4 Prosecution tends to relate the alleged members of the council to  
11:36:09 5 the three accused.

6 Now, I've indicated in my examination-in-chief that it is  
7 my view that the expert witness has no competence, whatsoever, to  
8 go into any ultimate issue. That was established, also, during  
9 the interview explanation of Colonel Iron. It is my submission  
11:36:34 10 that not only this falls outside the scope of the investigation  
11 research of the expert, he clearly looked only at the historical  
12 part as far as the army as an overall institution concerns.  
13 Secondly, by asking the witness now about names and about  
14 organisations and issues which directly go to the proof of the  
11:36:59 15 indictment, this clearly violates the ultimate issue.

16 So I strongly object and I don't think that the Prosecution  
17 is allowed to ask any questions about either the three individual  
18 accused or any other issue outside the questions which were put  
19 to the expert. I may recall, the Honourable Chamber, that the  
11:37:25 20 Defence objected to the report of Colonel Iron, not only on the  
21 basis that his fourth question went into the ultimate issue;  
22 namely, whether there was effective command and control, but  
23 moreover, there was enumeration given by the Defence of all the  
24 issues in his report which went into crimes.

11:37:45 25 Now, it's established by the ICTY case law in the *Kordic*  
26 and *Cerkez* case, which are already mentioned in the  
27 cross-examination, or the examination-in-chief of Mr Colonel  
28 Iron, that the ICTY Trial Chamber has prevented an examination of  
29 an expert witness, and also the admissibility of a report when it



1 goes into specific crimes and positions of the accused at hand;  
2 ie, responsibilities, whatsoever.

3 I think the Prosecution, at this time of the  
4 cross-examination, should not be allowed to continue with this  
11:38:32 5 line of questioning. This is not a witness of fact, this is an  
6 expert witness. We have clearly limited our examination-in-chief  
7 to the question. I know that, in cross-examination, the  
8 Prosecution is allowed to go outside the scope of the  
9 examination-in-chief, but that is prevented when it comes down to  
11:39:01 10 the indictment and the ultimate issue. Thank you.

11 PRESIDING JUDGE: What's your reply, Mr Agha?

12 MR AGHA: Yes, Your Honour. The expert witness, in giving  
13 his expert evidence, would have had to conduct research into this  
14 area to be in a position to compile his report. In one of the  
11:39:18 15 ways of asking these questions, I am testing his knowledge in  
16 respect of his research, bearing in mind that he extensively, in  
17 his report, covers the importance of history and the political  
18 background, and has researched them.

19 As regards the question of the ultimate issue, the  
11:39:36 20 Prosecution does not believe that it's the ultimate issue who  
21 carried out the coup. The accused are not charged on the  
22 indictment with carrying out the coup. This is an historical  
23 fact which any witness of fact is capable of answering, as many  
24 witnesses have in fact done just by listening through the radio.  
11:40:00 25 It is more going to the truthfulness, let us say, of certain  
26 witness who have given evidence before this Court. But if one is  
27 to study the indictment, there is no charge that any of the three  
28 accused carried out the coup and are therefore punishable under  
29 international of law, and I believe this Court doesn't have the

1 jurisdiction to punish anyone for carrying out the coup.

2 MR KNOOPS: Your Honours, if I may, we are strongly  
3 objecting to these observations, because paragraph 3 of the  
4 indictment clearly set out Alex Tamba Brima was a member of the  
11:40:37 5 group who staged the coup and ousted of government of President  
6 Kabbah; the same counts for the other two.

7 Based on that paragraph, which is framed under the heading,  
8 "Individual Criminal Responsibility" in the indictment, the whole  
9 issue of superior responsibility is based, as a starting point of  
11:40:54 10 the individual responsibility. It is clearly the case the  
11 Prosecution is building its case upon the alleged involvement of  
12 the three accused in the coup, and based on that alleged  
13 involvement, they are trying to establish superior  
14 responsibility.

11:41:10 15 I take note of the fact the Prosecution now says that is  
16 not in the indictment and that is not the intention. But the  
17 indictment is clear. I think that is the guiding document for  
18 the Court. It's clearly not correct what the Prosecution is  
19 stating and I think it is in violation of every rule which  
11:41:27 20 pertains to the admissibility of expert evidence before this  
21 Court.

22 PRESIDING JUDGE: That's your second reply, Mr Knoops. We  
23 only usually allow one right of reply. You've had two and that  
24 will be your last. Do you want to reply to that?

11:41:43 25 MR AGHA: Just in short, Your Honour. In regarding the  
26 indictment, looking at the actual charges within the indictment,  
27 and there are no charges of overthrowing the government in the  
28 indictment; it is part of the factual basis. If my learned  
29 friend's argument were to prevail, then it would follow that the

1 Prosecution would be precluded from asking any witness these  
2 questions, so we could not get to our case at all.

3 If we can ask these questions of fact to a factual witness,  
4 we ought to be able to ask them to an expert witness who indeed  
11:42:21 5 ought to have studied many facts and materials to reach his  
6 conclusions.

7 [The Trial Chamber conferred]

8 JUDGE SEBUTINDE: This is the oral ruling of the Chamber on  
9 the Defence objection to the question raised by Mr Agha, the  
11:46:36 10 Prosecutor. The objection was to the question as to whether the  
11 witness ever established that the first accused, Alex Tamba  
12 Brima, participated in the coup, was one of those who  
13 participated in the coup.

14 Now, we are of the view, on the Bench, and it's a unanimous  
11:46:58 15 view that, firstly, the expert on the stand now wrote a report  
16 regarding the AFRC period, May 1997, basically up to  
17 around February 1999. But, in this report, the expert also  
18 emphasises the importance of an historical background or history  
19 to this period, and we're of the view that the events surrounding  
11:47:34 20 the coup in Sierra Leone, of May 1997, are an integral part of  
21 that history.

22 Now, the question asked by Mr Agha, in our view, does not  
23 go to the ultimate issue, the ultimate issue being, as Mr Knoops  
24 rightly observed, being the individual criminal responsibility of  
11:48:01 25 the three accused persons, or each of the three accused persons.  
26 The question asked goes to whether the witness knows whether one  
27 of the accused participated in the coup. Now, participation in  
28 the coup, per se, is not one of the offences charged in the  
29 indictment and, in this regard, we agree with the submissions of

1 Mr Agha. Therefore, we do not think that that question goes to  
2 the ultimate issue in the indictment.

3 Additionally, we also believe, and it is our view, that an  
4 expert witness may, indeed, be asked questions and may attest to  
11:48:44 5 factual situations, not necessarily just opinions, but factual  
6 situations that are within his knowledge. Ultimately, this  
7 question is asked with a view to eliciting, in our opinion, or  
8 testing the knowledge and research capability, or span of  
9 research of this particular expert. So we will overrule the  
11:49:08 10 objection and ask Mr Agha to repeat his question. Ask the  
11 witness to answer.

12 MR AGHA: Your Honour, could I perhaps be reminded of the  
13 actual question.

14 JUDGE SEBUTINDE: The question was whether, in his  
11:49:25 15 research, in the course of the witness's research, he came across  
16 the fact that Alex Tamba Brima, the first accused, participated  
17 in the coup.

18 MR AGHA:

19 Q. And if you could answer that with either a yes or no,  
11:49:41 20 witness, that would be helpful.

21 A. Yes.

22 Q. Did you also learn, through the course of your research,  
23 that the first accused, Alex Tamba Brima, was referred to as  
24 Gullit?

11:49:57 25 A. Yes.

26 Q. Through the course of your research, did you learn that  
27 Ibrahim Bazy Kamara, the second accused in this case, was one of  
28 the persons who carried out the coup?

29 A. No.

1 Q. Did you learn, through your research, that the third  
2 accused in this case, Santigie Kanu, aka Five-Five, was one of  
3 the persons who carried out the coup?

4 A. No.

11:50:26 5 Q. Now, who else did you learn carried out the coup of May  
6 1997, from your research?

7 A. Well, you know --

8 Q. If you could just name those you can remember. If you  
9 can't remember any, fine.

11:50:45 10 A. No, because it was not the focus of my study.

11 Q. Okay. That's fine.

12 A. So I read some of them, many, many names. I can't recall,  
13 at all.

14 Q. So you delved greatly into your report into the historical  
11:51:03 15 background of the Sierra Leone Army, but you didn't particularly  
16 look into who, in the Sierra Leone Army, carried out the coup in  
17 May 1997; is that right?

18 JUDGE DOHERTY: Mr Agha, the witness said, "I read many,  
19 many names, but I don't recall." I'm not sure that's a very fair  
11:51:23 20 question arising.

21 MR AGHA: I can rephrase that.

22 Q. Did you read of the name Zagalo as being involved in the  
23 coup?

24 A. No. I might have come across, but, as I stated, I read a  
11:51:40 25 lot of names and a lot of issues, but it was not the focus of my  
26 historical analysis. That was not -- you know, I explained, I'm  
27 a pragmatic man. The question was raised by the Principal  
28 Defender, and I read the history with the glasses on of the  
29 military man who wants to get an answer on the military level,

1 experience, morale, training before they went into the bush. I  
2 got a lot of side information, but I deleted it because it was  
3 not part of my analysis question research.

11:52:26 4 Q. So it's more of an overview of the history that you got  
5 from your research?

6 A. Again, sir, if you read my history, it is the leading --  
7 how do you say, the leading line -- the focus is only, only, on  
8 what sort of soldiers', officers' organisation was there at the  
9 moment, the period described; what is their background. The only  
11:52:55 10 thing I'm saying is you can only understand the royal marines  
11 because of their fantastic history and background. So, I read  
12 through history from '61 with that in mind and sort of deleted  
13 the things I came across.

14 Q. That's fair enough, witness. I'll continue. Now, in your  
11:53:24 15 evidence-in-chief, correct me if I am wrong, you also, I believe,  
16 opined that there was no chain of command or hierarchy in the  
17 AFRC period in government; is that right?

18 A. That is right.

19 Q. You would have had to study that area in order to come to  
11:53:45 20 that conclusion, wouldn't you?

21 A. Specifically the area of was there a good line of command,  
22 or established headquarters that could carry out missions, yes.

23 Q. And with regard to the grand strategy, whether there was  
24 any political organisation in power, presumably, as well?

11:54:02 25 A. Of course, I did not address the grand strategy then,  
26 because the question came up when I analysed the Iron report  
27 relating operations.

28 Q. Is it fair to say you cannot comment on whether a grand  
29 strategy existed or not, within the AFRC government period?

1 A. No. Again, that was not the focus of my attention. The  
2 focus of my attention was whether there was coherence in carrying  
3 out operations while the AFRC was in the bush.

4 Q. So, in essence, you are not in a position to say whether  
11:54:52 5 there was a grand strategy during the AFRC junta period; yes or  
6 no?

7 A. No.

8 Q. Thank you. Now, you did say that you discussed the  
9 hierarchy in your evidence-in-chief. Now, did you come across a  
11:55:06 10 term "honourable" when you were carrying out your research?

11 A. Yes.

12 Q. And did you learn that honourables were those members who  
13 allegedly carried out the May 1997 coup?

14 A. Yes.

11:55:24 15 Q. And did you learn that Alex Tamba Brima was referred to as  
16 an honourable?

17 A. No, I can't recall that.

18 Q. And can you recall whether Ibrahim Bazy Kamara was  
19 referred to as an honourable?

11:55:37 20 A. No.

21 Q. Can you recall whether Santigie Kanu, aka Five-Five, was  
22 referred to as an honourable?

23 A. No, no.

24 Q. Through your research, did you find out whether these  
11:55:52 25 honourables were a part of the AFRC government?

26 A. I don't know that, because, again, how that operated, I  
27 didn't pay attention to it.

28 Q. Okay. Did you pay attention to the fact that the AFRC  
29 government was a combination between the RUF and SLA?

1 A. I was aware of that.

2 Q. And did you learn that Johnny Paul Koroma headed the AFRC  
3 government?

4 A. Yes.

11:56:29 5 Q. Are you aware that, within the AFRC government, there was a  
6 Supreme Council?

7 A. Maybe. I can't recall that.

8 Q. What about your reading of the NPRC period? Do you  
9 remember there was a Supreme Council in the NPRC period?

11:56:47 10 A. I don't know. I know the name of the chairman, but that's  
11 it.

12 Q. Who was the chairman of the NPRC period?

13 A. Strasser was.

14 Q. Can you tell us how the NPRC government was set up and how  
11:57:05 15 its chain of command worked during that time, in terms of the  
16 military?

17 A. Again, no, because it was not the focus of my analysis and  
18 question.

19 Q. Did you ever learn or hear that Alex Tamba Brima was a  
11:57:21 20 member of the Supreme Council of the AFRC government?

21 A. I don't know that.

22 Q. And did you ever come across, during your research, that  
23 Ibrahim Bazy Kamara was a member of the Supreme Council of the  
24 AFRC government?

11:57:38 25 A. Again, sir, I did not look into the structure of the  
26 supreme bodies, so then I had to analyse, then the question would  
27 have been different and I would have had to ask: How was the  
28 Supreme Council set up.

29 Q. That's fine. I'm not critical of you in your report, you



1 answered your mandate. I'm asking you about your knowledge.

2 A. I tried to bring across the line I took in the historical  
3 part.

4 Q. Now, did you find out that the Supreme Council existed  
11:58:16 5 within the AFRC junta?

6 A. I may have read it.

7 Q. Are you aware of any role which it plays, vis-a-vis the  
8 military high command?

9 A. No, I did not.

11:58:32 10 Q. Did you learn that there were PLOs in the AFRC junta  
11 period?

12 MR FOFANAH: Respectfully, Your Honours, I rise to object.  
13 The witness has categorically told the Court he did not apply the  
14 last bit of his methodology which, I rightly recall, was the  
11:58:54 15 grand strategy. That strategy more or less dealt with the  
16 political and other issues within his analysis. Now it seems my  
17 learned colleague is going to town with the AFRC government,  
18 which is merely a political structure, and the witness has  
19 categorically stated that he did not apply that bit of his  
11:59:15 20 methodology to --

21 PRESIDING JUDGE: What's your reply to that, Mr Agha?

22 MR AGHA: Your Honour, the witness has come as an expert  
23 witness, and to be an expert witness in this area, to apply his  
24 expertise, he would have needed to have done extensive research.  
11:59:33 25 Indeed, his report categorically spends a lot of time discussing  
26 the history, and the politics, and the military of the SLA and  
27 Sierra Leone throughout this period.

28 Now, I am testing the witness's knowledge of the extent and  
29 depth of that research and s, therefore, the reliability on which

1 his conclusions can be based.

12:00:07 2 PRESIDING JUDGE: The witness is doing all right by  
3 himself. He's quite capable of answering the question I don't  
4 know, or no, or yes. I overrule that objection. I will allow  
5 that question, Mr Agha.

6 MR AGHA: Sorry, this is more legalese.

7 Q. Did you hear whether any PLOs existed in the AFRC  
8 government?

9 A. I've heard the abbreviation, but that's it.

12:00:21 10 Q. Did you know what the abbreviation stood for?

11 A. It has something to do with liaison officer, or something  
12 like that.

13 Q. Do you know what the role of the PLO was in the AFRC?

14 A. Didn't look into that, sir.

12:00:38 15 Q. Talking about the NPRC government, you mentioned that  
16 Strasser was the chairman. Did you also, through your research,  
17 find out that SAJ Musa was a member of the NPRC government?

18 A. I can't recall.

12:00:58 19 Q. If you looked at the NPRC government, which is covered in  
20 your report, through a Supreme Council and PLOs, would it also be  
21 similar to your research regarding AFRC government structure and  
22 Supreme Council, PLOs, or are you not able to comment?

23 A. Again, I think that if I would have had to give an answer  
24 on all those, then I needed to have a different asking, and then  
12:01:23 25 the question would have been write a report historically also on  
26 the political implications of the structures, and I didn't do  
27 that. So I can't tell you, sir.

28 Q. As an overview, you are aware that, within the NPRC  
29 government, there was a Supreme Council and there were PLOs.

1 A. More importantly --

2 Q. Answer the question, please. If you could confine yourself  
3 to the question, witness.

4 A. Yes, but I didn't look into the area, sir.

12:01:51 5 Q. Okay. Likewise with the AFRC government, you didn't look  
6 into that area either; is that right?

7 A. Only military-wise.

8 Q. Okay. So you wouldn't know whether the AFRC government had  
9 anything at all to do with the working of the military?

12:02:09 10 A. I think Johnny Paul Koroma had to do with the military as  
11 the big man, but, again, that relation was not part of my  
12 research.

13 Q. And Johnny Paul Koroma was chairman of the AFRC government;  
14 did you learn that?

12:02:29 15 A. That's what I learned, yes.

16 Q. Okay. Now, through your research, after the intervention,  
17 did you learn that the AFRC government fled Freetown?

18 A. I didn't learn the AFRC government. I learned that the  
19 majority of the AFRC or People's Army, how you call it, fled.

12:02:59 20 Q. So that would be the SLAs and RUFs who were --

21 A. A combination of the whole lot.

22 Q. And did you learn through your research that, after they  
23 had fled and went into the jungle - I believe the AFRC faction,  
24 as you call them - that SAJ Musa was a senior commander?

12:03:17 25 A. I came across that. Yes, of course.

26 Q. And did you learn that the first accused, Alex Tamba Brima,  
27 was also a commander, during the AFRC faction, whilst they were  
28 in the jungle?

29 A. I don't know that. I've read the transcript where it was

1 stated, but I don't have an opinion on that.

2 Q. Otherwise you didn't come across it in any of your other  
3 independent research by talking to TRC-01, for example, or  
4 others?

12:03:47 5 A. Certainly not TRC-01, no. One, two and three, if I can  
6 name them, so 02 and 03, no.

7 Q. So you never came across that as apart of your research at  
8 all?

9 A. Of course, I came across it. When you read -- you know, I  
12:04:09 10 went through thousands of transcripts. Of course, then you come  
11 across, numerous things. But again, then I can read it and read  
12 it again, but, again, whether that is right or wrong, it's not up  
13 to me, and I was, again, back to the military question.

14 Q. Some of those would have been in the Prosecution's  
12:04:34 15 transcripts, references to Alex Tamba Brima being a commander,  
16 wouldn't they?

17 A. I read it.

18 Q. But those same transcripts, you also relied upon in your  
19 report, haven't you?

12:04:44 20 A. Of course, I have relied on those transcripts. But the  
21 question for me is not who is in what position, when and how.  
22 The question was whether it was a traditional military  
23 organisation, and I didn't deal with people or events. So I'm --

24 Q. But you're not questioning -- if you're referring to the  
12:05:10 25 transcripts, and quoting from them in your report, making use of  
26 lines from the transcripts, you're not suggesting that those  
27 transcripts are incorrect, are you?

28 A. Whether they are --

29 MR KNOOPS: Your Honour, I object. I think now the

1 Prosecution is trying to cross the thin line of asking the expert  
2 to give an opinion on the evidence. The expert gave a view, from  
3 a specific military question -- actually, three questions of  
4 Colonel Iron -- and transformed that on to the transcripts of the  
12:05:50 5 Prosecution evidence, from that perspective. He has no knowledge  
6 or competence to test the reliability of the transcripts. He  
7 just merely took them as they were. I think the Prosecution is  
8 trying to get this expert's, and that was what I predicted,  
9 gradually into the area of the ultimate issue.

12:06:14 10 I again repeat my objection that, if you look into  
11 paragraph 31 of the indictment, it clearly said, "In their  
12 respective positions" et cetera, et cetera.

13 PRESIDING JUDGE: What are you addressing us on now; the  
14 question at issue, or you're going into something deeper?

12:06:36 15 MR KNOOPS: No --

16 PRESIDING JUDGE: He was simply being asked about the  
17 transcripts, and you're going back to the indictment.

18 MR KNOOPS: I think, Your Honour, the Prosecution has no  
19 question to be put to the expert about the trustworthiness,  
12:06:53 20 veracity, or whatever, trustworthiness, reliability about the  
21 contents of the transcript, as such. That's, I think, for the  
22 Court to decide. It's not for a military expert to give an  
23 opinion about the reliability of the transcript. Then we can  
24 also ask the general to give his opinion about a military  
12:07:14 25 judgment he gave, or he encountered in the previous years before.

26 PRESIDING JUDGE: What's your reply to that objection,  
27 Mr Agha?

28 MR AGHA: My reply to the objection, Your Honour, I'm  
29 referring to a later part of the cross-examination, although

1 we've arrived at a little earlier, I'm looking at the sources  
2 which the general has quoted in his report, and he re-quotes from  
3 those transcripts of Prosecution witnesses. Now, if he's using  
4 citations and quotations in his report, then my question to him  
12:07:44 5 is: Did he regard them as reliable, because if he didn't, what  
6 are they doing in his report. I think that's quite a reasonable  
7 question.

8 PRESIDING JUDGE: I don't think that was the exact question  
9 you asked. I think you asked a question to the effect that the  
12:08:00 10 witness had no reason to think that those transcripts were wrong.

11 MR AGHA: That's essentially it.

12 PRESIDING JUDGE: I agree with Mr Knoops. Whether the  
13 transcripts are to be believed or not is a question for the  
14 Court. You can ask that question in a different way. I won't  
12:08:18 15 allow it in the present form.

16 MR AGHA: Thank you, Your Honour.

17 Q. Now, some of these transcripts of the Prosecution, you  
18 relied upon in your reports, didn't you?

19 A. I did.

12:08:30 20 Q. And you relied on some of those transcripts in helping you  
21 to reach some of your conclusions, didn't you?

22 A. Some were supportive in my military view on the questions I  
23 was asked.

24 Q. Now, coming back to your research, did you learn that  
12:08:49 25 Ibrahim Bazy Kamara was a commander of the AFRC faction after  
26 the intervention?

27 A. Again, I read it in the transcripts.

28 Q. Bar the transcripts, you didn't hear?

29 A. I may have, but, again, reading so many transcripts and so

1 many witness statements, I think there I came across.

2 Q. And did you learn, through your research, that Santigie  
3 Kanu, aka Five-Five, was a commander of an SLA faction, whilst in  
4 the jungle?

12:09:37 5 A. No.

6 Q. Did you hear that he held any command position in the AFRC  
7 faction after the intervention?

8 A. I read about it.

9 Q. Now, through your learning and your research, did you learn  
12:09:51 10 that Alex Tamba Brima was ever referred to as a colonel or a  
11 brigadier after the intervention?

12 A. I think Colonel Iron states him in one of his --

13 Q. Bar Iron's report and the transcripts you've read, from the  
14 people you interviewed and the notes you took and your extensive  
12:10:21 15 reading and research, did you ever come across --

16 A. Then the answer is no.

17 Q. What about Ibrahim Bazzy Kamara?

18 A. Same thing, no.

19 Q. You didn't hear about him being referred to as a brigadier,  
12:10:29 20 after the intervention, or colonel?

21 A. Colonel or brigadier, no. I can't answer that, no.

22 Q. You don't remember reading about it?

23 A. Well, you specifically state not in the transcripts. Well,  
24 certainly not in the TRC, certainly not in Keen, and certainly  
12:10:56 25 not in my primary sources one to three and the active duty  
26 officers.

27 Q. But did you learn, from your research, that it was the AFRC  
28 faction which attacked Freetown in January 1999?

29 A. Yes.

1 Q. And did you learn, through your research, that Alex Tamba  
2 Brima was a part of the AFRC faction which attacked Freetown  
3 in January 1999?

4 A. My answer will be the same, sir, but I should bar Iron.  
12:11:31 5 That's why I read it. Again, the transcripts, which I also  
6 should bar. In the other numerous documents, that specific  
7 question or fact, I have not come across.

8 Q. Okay. Did you learn that Ibrahim Bazzy Kamara was a part  
9 of the Freetown invasion in January 1999.

12:11:53 10 A. If it's in line with your previous question, the answer is  
11 no, sir.

12 Q. And what about Santigie Kanu, aka Five-Five?

13 A. The same thing.

14 Q. Who did you learn was a commander of the attack on Freetown  
12:12:05 15 in February 1999?

16 A. I can only state that, if you mention February 1999 --

17 Q. I beg your pardon. I meant January 1999, the attack.

18 A. Yes, sorry. If you state January 1999, several names, I  
19 came across. And I also came across statements that people said  
12:12:38 20 it was chaos and it wasn't clear.

21 Q. But which names did you come across as leading the attack  
22 on Freetown?

23 A. The most -- but, again, it was not an issue for me, but the  
24 question I came across, after Musa died, and referring to -- Tom  
12:12:56 25 Carew said it was chaos and there was no leadership at all, any  
26 more, and that was stated also by DSK-0 --

27 Q. Witness, the question is: Did you learn? You don't have  
28 to name the individual. That's all I need to know.

29 MR FOFANAH: Objection, Your Honours. It appears my



1 learned colleague is now changing his question. The question, as  
2 it was initially phrased, assumed that the colonel knew that  
3 there were names of commanders who came to Freetown. Now he's  
4 changing it by posing another question, whether he learned that  
12:13:25 5 people came. So we would like to know which question he's  
6 putting to the witness. Initially he said, "What were the names  
7 of the commanders who came to Freetown?" Now he's saying, "Did  
8 you learn?"

9 PRESIDING JUDGE: Do you want to reply to that, Mr Agha?

12:13:58 10 MR AGHA: I thought I asked him in the specific sense  
11 whether he heard the three accused came to Freetown. He said he  
12 didn't hear of that. Then I thought I asked him, well, who did  
13 he hear was the person who commanded the attack on Freetown.

14 PRESIDING JUDGE: All right. We overrule the objection.  
12:14:12 15 Could you answer that question?

16 THE WITNESS: I'm sorry, Your Honour, I'm a little long in  
17 my answer. The name that came across was FAT Sesay, who  
18 succeeded. Then, again, I immediately deleted that and,  
19 referring to your previous remark, I only want to state that --  
12:14:33 20 did you come across those names, you specifically stated leave  
21 out the transcripts and leave out Colonel Iron, and then my  
22 answer was no.

23 MR AGHA:

24 Q. Okay, bar the transcripts and Iron, you didn't come across  
12:14:48 25 anyone?

26 A. Your question was three times about bar Iron, bar the  
27 transcripts, and then I look at TRC, I look at Keen, and I look  
28 at my primary sources. And then, you know, that was not a  
29 discussion, and it never came across to me. So that was my

1 answer.

2 Q. So you don't know?

3 A. No, the first question you asked in a role, the answer was  
4 no, with the limitation of transcripts and Iron. And the name  
12:15:19 5 you asked is a name that came up, I think, in DSK-082, who  
6 mentioned FAT Sesay.

7 Q. And he mentioned he was in Freetown?

8 A. Excuse me, he mentioned that, after Musa's death, he,  
9 apparently, took command, but, again --

12:15:43 10 Q. Well, we'll come to DSK-082 later. But that is his  
11 opinion, essentially?

12 A. Apparently, yes.

13 Q. Thank you. Now, did you learn, through your research, that  
14 after the SLAs were forced to retreat from Freetown by ECOMOG,  
12:16:01 15 in January 1999, innocent civilians were killed?

16 A. Basically, I don't, because I -- my analysis really stopped  
17 there where Iron stopped.

18 Q. Okay. So where actually does your analysis end; when they  
19 get into Freetown?

12:16:21 20 A. When there is a total, apparently, collapse and then the  
21 questions Iron posed, those answers were really -- those  
22 questions were really answered by me, and then I didn't carry on.

23 Q. Essentially, anything else which Iron says in his report  
24 about the withdrawal, you haven't commented upon?

12:16:47 25 A. No. Because the questions were answered.

26 Q. Okay. But did you read anything about the withdrawal?

27 A. I read a report by Iron and a bit in the transcripts.

28 Q. What about Keen? He covers it extensively; chapter 13, I  
29 believe.

1 A. That's true, but Keen covered so many more areas than only  
2 the military paragraph. He goes into diamond and illegal trade  
3 and, you know, it's quite extensive.

4 Q. Yes, but bearing in mind the focus of your research, I  
12:17:21 5 would have thought his chapter dealing with the attack on  
6 Freetown would have been of far more interest to you than, say,  
7 diamond mining or the political history, wouldn't it?

8 A. I covered Keen; thereby he covered the period  
9 until February 1999. Then the questions were answered, and I was  
12:17:44 10 done.

11 Q. But Keen also covers the attack on Freetown.

12 A. That's what I mean. But the attack ends, I think,  
13 6 January 1999, so until then, my observation comes.

14 Q. But didn't you read in Keen about the crimes that were  
12:18:02 15 carried out in Freetown during the attack and occupation?

16 A. I did.

17 Q. What kind of crimes did you read were carried out?

18 A. Keen gives a broad description of the effects of the attack  
19 on Freetown, and that covers a lot of things.

12:18:26 20 Q. Does it cover burning of buildings?

21 A. It does.

22 Q. Does it cover rape of civilians?

23 A. I don't know if Keen is specific on that.

24 Q. Does it cover abduction of civilians?

12:18:39 25 A. I don't know if Keen states that.

26 Q. Does it cover killing of civilians?

27 A. I have to speculate, then I have to go back to Keen to see  
28 exactly what Keen describes about the things you ask, because --

29 Q. Does it spring to mind -- this is obviously one of your

1 main sources.

2 A. Yes, he's a main source, but he's not a main source in the  
3 things you're asking. He's a main source for me whether and to  
4 what extent it was a traditional military organisation, and not a  
12:19:22 5 source in how did the things evolve in Freetown, during and after  
6 the attack.

7 Q. We'll come to Keen later, general. I will carry on from  
8 here. I now actually want to look in more detail at the  
9 particular research which you did carry out in order to reach  
12:19:42 10 your conclusions. How many trips did you make to Sierra Leone in  
11 order to assist you in writing your report? Could you just  
12 remind me of that?

13 A. Three, including this one.

14 Q. The first trip, how many days was that?

12:20:05 15 A. Fourteen, approximately.

16 Q. And the second trip?

17 A. Sixteen days.

18 Q. This third one, were you able to carry out -- well, your  
19 report had presumably been written, so you didn't --

12:20:15 20 A. It was, yes.

21 Q. In relation to these two quite extensive periods of time, I  
22 think 14 and 16, it's about four weeks; is that right?

23 A. Yeah.

24 Q. In total. What scenes in relation to the content of  
12:20:30 25 Colonel Iron's report did you visit?

26 A. In the countryside, you mean?

27 Q. For example, did you visit Koidu Town?

28 A. No. As I explained before the Court, I didn't do that  
29 because I didn't see a need to do that.

1 Q. Did you go to Masingbi Road in Koidu Town, for example?

2 A. No. Again, I stated that I didn't go --

3 Q. That's fine, you can --

4 A. -- out of Freetown.

12:21:03 5 Q. Just yes or no. Oh, so you didn't go to Kailahun Town?

6 A. No.

7 MR FOFANAH: Objection. The question has been answered.

8 PRESIDING JUDGE: It's also been answered again,

9 Mr Fofanah. You can move on. He answered that question.

12:21:16 10 MR AGHA:

11 Q. Essentially, you did not go outside of Freetown, for the  
12 purposes of writing your report; is that right?

13 A. That's right. There was no need for.

14 Q. Let me clarify this. You never went to Camp Rosos?

12:21:32 15 A. No.

16 Q. You never went to Colonel Eddie Town?

17 A. No.

18 Q. So you wouldn't know the distances where the various  
19 defensive positions were based?

12:21:41 20 A. I know that defence position from ECOMOG was about 47 miles  
21 from here when the advance --

22 Q. No, what I'm talking about is, let us say, for example, you  
23 have to, in your report, address structures, command, control,  
24 hierarchy. So if he were to take, let's say, Colonel Eddie Town,

12:22:00 25 you would have the headquarters and then you would have various  
26 units based in defensive positions. So you wouldn't know how far  
27 away those headquarters were from those various defensive  
28 positions, would you?

29 A. I would. Out of the transcripts, I would.

1 Q. Out of the transcripts. What distances do they give?

2 A. From the headquarters to subordinate units, it varied from  
3 two to five kilometres.

4 Q. According to all the information about distances you need  
12:22:26 5 is covered in the transcripts?

6 A. No. You specifically asked me the question how was the  
7 distance between the headquarters and the subunits. Now, in a  
8 normal battalion structure, that would be the distance --

9 Q. No, I'm not talking about normal. I'm talking about in  
12:22:44 10 this situation.

11 A. Yes, and, in this situation, it was stated by -- in the  
12 transcript that it was covering that amount of kilometres.

13 Q. Okay. So, essentially, all units were within about a  
14 five-kilometre range in Colonel Eddie Town, and would that be the  
12:23:00 15 same in Camp Rosos?

16 A. I can't tell.

17 Q. Did you go to any of the scenes where the battles were  
18 actually fought?

19 A. I did not.

12:23:09 20 Q. Did you walk the invasion route from -- coming into  
21 Freetown?

22 A. No, I did not.

23 Q. What about the retreat? Did you cover the route taken  
24 during the retreat?

12:23:22 25 A. I didn't physically travel that route.

26 Q. You would agree with me that you carried out hardly any  
27 research in the field about the battles or the places which  
28 Colonel Iron refers to in his report?

29 A. Yes, because I thought there is, and was, no need in

1 answering the questions that were posed to me.

2 Q. That's fine. You don't have to explain. Thank you. Now,  
3 if we could look at the particular sources which you address, and  
4 which form the basis of your report. Firstly, I want to look at  
12:24:06 5 your primary sources. Would you agree with me that the primary  
6 sources for your report are DSK-082?

7 A. Yes.

8 Q. The interview with number two and three on Exhibit D34?

9 A. Numerous interviews.

12:24:29 10 Q. Yes, and TRC-01?

11 A. Yes.

12 Q. And General Sam, correct me if I am wrong, Mboma.

13 A. That's correct.

14 Q. Now, before we come to those, I want to ask you about  
12:24:46 15 statements. Now, how many statements did you personally take of  
16 those involved in the conflict?

17 A. Can you rephrase who were involved in the conflict? Are  
18 you referring to one, two and three?

19 Q. No, let us say from your sources. From any of your  
12:25:06 20 sources, how many statements did you take? For example, you meet  
21 with, let's say, TRC-01 and you take a note of what he's saying,  
22 and then you meet, maybe, with Mr X.

23 A. Oh, yes. I understand. Well, I took numerous notes on the  
24 several occasions in October and in March, April time frame with  
12:25:33 25 one and two, extensively, and three, a couple of times.

26 Q. But roughly how many?

27 A. You know, DSK-082, it is more than ten that I, in the  
28 period, met him, talked to him and took notes.

29 Q. Just pause there a minute. So would you say, of these

1 primary sources, DSK-082 is probably the one you used the most?

12:26:36 2 A. It was a combination, you see. DSK-082 and number two and,  
3 also -- after my discussions with these two, they went to three  
4 and talked to three. And I personally talked to three  
5 extensively, as I recall, twice.

6 Q. Now, of those, in your footnotes to your report, you only  
7 actually rely on DSK-082, don't you?

8 A. I do.

12:27:00 9 Q. Right. Now, of these statements, which you were taking as  
10 you were doing your own research, how many of these were from  
11 AFRC faction who were serving in the jungle with SAJ Musa after  
12 the intervention?

13 A. They were not with SAJ Musa, but covered the  
14 period February/May in the bush.

12:27:35 15 Q. But did you take a single statement from a member of the  
16 SLA who formed a part of the AFRC faction with SAJ Musa in the  
17 bush?

18 A. No.

12:28:01 19 Q. Okay. Following the intervention, DSK-082 did not retreat  
20 further to Masiaka; is that right?

21 A. He stayed, indeed, in Masiaka.

22 Q. And he remained there for a few weeks, didn't he?

23 A. No, he stayed there for, as I recall correctly, four  
24 months. I stated May, I think, he was leaving for Guinea.

12:28:10 25 Q. I suggest to you that he stayed there only for about a  
26 couple of weeks; how would you reply to that?

27 A. We're still talking about 082?

28 Q. 082.

29 A. Yeah. No, 082 stayed in Masiaka area and an area a little



1 bit north, but basically stayed there from February till May  
2 1998.

3 Q. You see, most of the AFRC faction who had left Freetown had  
4 already left that area, so what was he doing there?

12:28:43 5 A. He didn't elaborate on that, to me.

6 Q. So presumably he was hiding, perhaps?

7 A. [No audible response].

8 Q. Okay. Essentially DSK-082 would not have any knowledge  
9 about the AFRC faction in the jungle personally; would you agree  
10 with that?

12:29:05

11 A. I don't -- personally, it depends how you describe  
12 personally.

13 Q. What I'm saying to you: Was he with them, the AFRC faction  
14 in the jungle?

12:29:20

15 A. No, he was not. No, he was not.

16 Q. So he could not personally observe how they were operating,  
17 could he?

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

19 Q. Well, if he wasn't there, how could he observe that?

12:29:30

20 A. Well, I explained earlier that DSK-082 moved to Guinea,  
21 subsequently came back to Sierra Leone, and operated within the  
22 Intel branch of ECOMOG. Now, I tell you that, if you do that,  
23 military-wise, you do have information, or you must have  
24 information about how the enemy, in that case the AFRC faction,  
25 or other factions operate. If you operate in the intelligence  
26 branch in Afghanistan, you better know how the Taliban is  
27 operating. So, in my mind, no question about -- especially if  
28 you can travel to the line where the forces are, sort of, coming  
29 together, and you work in an Intel branch, you should know that.

12:30:08

1 Q. What happens if the intelligence is wrong?

2 A. Well, if the intelligence is wrong, then you may be wrong.

3 What I'm saying is --

4 Q. What I'm essentially saying to you, he wasn't personally in  
12:30:46 5 a position to observe and see how the AFRC faction were operating  
6 in the jungle; yes or no?

7 A. No. But you don't need that in order to establish your  
8 view on how they operate.

9 Q. That's fine. Now, the notes of DSK-082, which you relied  
12:31:08 10 on, can you remember some of those? I believe some of those we  
11 -- tried to be admitted into the Court on the questions. Do you  
12 realise that they were nearly all based on his opinions?

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

14 Q. So if you reviewed those notes, you think he has factual  
12:31:36 15 matters which he saw and observed with the AFRC faction?

16 A. I'm absolutely sure about that.

17 Q. I suggest to you that those notes were largely opinions  
18 because he wasn't there at the time.

19 A. Then again, sir, going back to his position he held in the  
12:32:00 20 intelligence branch, now, if you state that the AFRC faction was  
21 not using radios, because of the fear of being discovered by  
22 ECOMOG, DSK-082, in my mind, is in a perfectly good position to  
23 know that.

24 Q. How would he know that? Was he asking them? Was he  
12:32:24 25 communicating with them? Was he with the troops and say, "Guys,  
26 let's not use the radio, because we could be found out." He  
27 couldn't know that, could he?

28 A. He absolutely could.

29 Q. How? He wasn't there.

1 A. If you're working for ECOMOG and you listen in on  
2 frequencies and radio transmissions, and there are none, because  
3 out of fear of detection, you would come to the conclusion, in a  
4 military sense, that they don't use the radios out of fear of  
12:32:49 5 detection. That's what I want to say, and that's why he had the  
6 knowledge.

7 Q. Okay. We'll come to the radio equipment later. Do you  
8 regard DSK-082 as a reliable source?

9 A. I do.

12:33:06 10 Q. Do you realise he was investigated, pursuant to accusations  
11 that he helped Johnny Paul Koroma escape from this country?

12 A. I don't know that.

13 Q. I suggest to you that DSK-082 is not a very reliable source  
14 of information; how would you respond?

12:33:26 15 A. It's not my opinion, sir.

16 Q. Now, with regard to your source, number 2, and these are  
17 your primary sources -- I'm not going to name his name, he's on  
18 the exhibit, number 2 -- are you aware he was not with the AFRC  
19 faction in the jungle after the intervention?

12:33:47 20 A. I was.

21 Q. Again, I would suggest to you that he has no personal  
22 knowledge of how the AFRC faction operated, because he wasn't  
23 with them?

24 A. I have a different opinion on that.

12:33:58 25 Q. How would he know what they were doing, how they operated,  
26 if he wasn't with them?

27 A. Well, if you all go to the jungle, and you all stay there  
28 at separate locations, you're all under the same conditions, and  
29 you're all -- realise -- and you all come across the problems you

1 have to face in operating there. So I think you must have a  
2 fairly good idea of what's going on.

3 Q. Yes, but it might not necessarily be an accurate idea,  
4 might it?

12:34:34 5 A. No, but I think accurate enough, if you're all under the  
6 same boat.

7 Q. Now, you mentioned number three, witness number three. He  
8 was the other primary source. He had his own faction in the AFRC  
9 group in the jungle after the intervention.

12:34:52 10 A. He did.

11 Q. Do you recall that? Now, do you know that number three's  
12 group was not with SAJ Musa's group?

13 A. Yes, he had his own group.

14 Q. So he would not have any knowledge about how SAJ Musa's  
12:35:13 15 group operated, would he?

16 A. My answer, sir, would be the same as number two.

17 Q. Now, another primary source is TRC-01, isn't it?

18 A. He is.

19 Q. Are you aware that a few days ago he gave sworn evidence  
12:35:31 20 before this Court which contradicts almost wholly your  
21 conclusions regarding the state of the SLA up until mid-1996?

22 A. I was. But I'd like to comment on that.

23 Q. I'm sure you will be given plenty of opportunity to comment  
24 on that. I will actually deal with that witness later. Now, are  
12:35:58 25 you aware that TRC-01 was never in the jungle with the AFRC  
26 faction after the intervention?

27 A. I was.

28 Q. He, because he was not personally with them, could not tell  
29 you how they operated in the jungle, could he?

1 A. I don't agree with that. Based on my previous remarks that  
2 a man, and I'd like to make, if I am allowed, to make a later  
3 comment on your previous statement, but --

12:36:36 4 Q. All these things you want to clear up or elaborate, my  
5 learned friend will with you. You'll get your chance, don't  
6 worry. So, anyway --

7 A. No, what I'm saying is, sir, that, honestly, in my military  
8 belief, you know, in the legal sense, you may not have factual --  
9 you may not be aware of the real effect, but a man as TRC-01, in  
12:37:02 10 his position, his background, and the way, over the years, that  
11 they have been talking to the men he is now serving with, it is,  
12 in my mind, no doubt, no doubt, that he must have a good -- but  
13 probably it's an opinion, but that's a legal issue, he has  
14 knowledge of what's going on, of what went on.

12:37:29 15 Q. Even of a group which he's not with?

16 A. I gave the example in my own situation. Certainly people  
17 at certain levels, and the information they have when they talk,  
18 over the years, to their subordinates and colleagues, how was it,  
19 how was it, how was the situation then, how do you describe it,  
12:37:46 20 and, again, it may not be a fact in your court, but it is  
21 knowledge a military man has. That's what I'm saying.

22 Q. Yes. So it's his opinion on what others have told him?  
23 Others have told him things --

24 A. Yes, it's the difference between opinion and fact, you're  
12:38:06 25 right. I hope I make myself clear.

26 Q. I understand in the military context. Thank you. Your  
27 other primary source is General Sam Mboma. I have difficulty  
28 with that name. You realise he was also not with the AFRC  
29 faction after the intervention?

1 A. I do, sir.

2 Q. So, again, I'd suggest to you that he couldn't have any  
3 personal knowledge about how the AFRC faction actually operated  
4 in the jungle.

12:38:36 5 A. No, we have to do the discussion of my last over again.

6 Q. It's sufficient if you say the same answer.

7 A. Yes, same answer.

8 Q. And that would certainly apply to the general who you  
9 provided your report to.

12:38:50 10 A. I don't understand that one, sir.

11 Q. I believe, when you finished your report, you passed it to  
12 a Dutch general, just for him to have a look at; do you recall  
13 that?

14 A. Yes, Frank Van Kappen, yes.

12:39:01 15 Q. He wouldn't have the personal knowledge?

16 A. No, not the personal knowledge.

17 Q. So you'd agree with me then that all, or none, of your  
18 primary sources were actually with the AFRC faction in the  
19 jungle, wouldn't you?

12:39:20 20 A. I agree with that.

21 Q. Okay. So you'd agree with me that none of them actually  
22 had firsthand knowledge of what the AFRC faction was actually  
23 doing in the jungle?

24 A. No, sir, I don't agree with that, and I can elaborate again  
12:39:42 25 about DSK-082. But I hope I have made clear that, in my true  
26 belief, he has been in a position to know -- to have known what  
27 was going on.

28 Q. Even when he was in Guinea?

29 A. No, I'm referring to the period -- remember, the

1 period August 1997 onwards until the attack on Freetown, he was  
2 operating on the ECOMOG side in the intelligence branch. From  
3 that on, he must have information, whether you call it firsthand  
4 information, but he was in a position to make comments on the  
12:40:27 5 AFRC faction, no doubt.

6 Q. But would you regard the ECOMOG intelligence as being quite  
7 good during this conflict?

8 A. At least the information I got, they were good enough, that  
9 the AFRC faction tried desperately to stay out of their reach.

12:40:55 10 Q. So if their intelligence was that good, how was it, with  
11 their superior forces, they were unable to estop the SLAs from  
12 advancing from Colonel Eddie Town, which started in the end  
13 of November, believe, all the way into Freetown, January 6, where  
14 the SLAs were carrying out hit-and-run operations?

12:41:20 15 A. Now, the intelligence may be good, but that doesn't say  
16 that the troops carrying out the orders on ECOMOG side are  
17 handling the situation well.

18 Q. Or it may be, on the other hand, that the intelligence was  
19 bad, mightn't it?

12:41:36 20 A. I can't comment on that.

21 Q. But it may be the case.

22 A. I don't know that. Maybe, yes.

23 Q. So you don't really know whether it was good or bad, do  
24 you?

12:41:48 25 A. No, but what I'm saying is that if the information 082 is  
26 supportive to what other primary sources say, who have been in  
27 the same situation, and then you operate on the intelligence  
28 side, the only thing I'm saying is that you know very well what's  
29 going on.

1 Q. But if they knew so very well what was going on and they  
2 had intelligence, how can you explain they were unable to stop  
3 the SLA advance into Freetown, from Colonel Eddie Town? They had  
4 jets, they had surveillance.

12:42:32 5 A. There may have been other reasons. I don't know.

6 Q. I suggest to you that the ECOMOG intelligence was not very  
7 accurate and was not very reliable.

8 A. I don't agree with that.

9 Q. Now, you said during your evidence that you preferred to  
10 speak to senior officers because lower ranks tend to exaggerate;  
11 is that right?

12 A. No, sir, that's not what I said.

13 Q. But you had a preference for speaking to senior officers.  
14 I thought you said they tended to take incidents out of context,  
15 like when the media spoke to a marine in Iraq, you talk about  
16 missions. Didn't you say that?

17 A. What I said is that the soldiers are often asked by media  
18 to answer questions which are not within their scope, not within  
19 their training, their background, and then often have the  
12:43:30 20 tendency to speculate. That's what I said. I said that you need  
21 to ask officers at the certain level about their -- well, how do  
22 you say, certain difficult questions, you have to -- you  
23 shouldn't ask a soldier, but you should ask the competent  
24 officers.

12:43:53 25 Q. I believe you actually said you wanted the view of a  
26 commander on the scene.

27 A. No, I used the command role scene in the court case we had  
28 with one of my non-commissioned officers.

29 Q. So why did you choose to speak to senior officers in this



1 case?

2 A. Because if you talk about the fact whether some forces,  
3 regular or irregular, with all the characteristics, whether you  
4 talk about the questions Colonel Iron addressed, you should not  
12:44:35 5 ask that, you should not ask hierarchy and structure to a lower  
6 rank be. You should ask a battalion commander or a brigade  
7 commander about that.

8 Q. But what use is that to you in describing the AFRC faction,  
9 if none of these senior officers were actually a part of the AFRC  
12:44:54 10 faction?

11 A. Can you rephrase that, please?

12 Q. None of the officers you spoke to were actually a part of  
13 the AFRC faction in the jungle; is that right?

14 A. That's right.

12:45:07 15 Q. So what use would their views be on the structure and  
16 hierarchy of the AFRC in the jungle if they weren't there?

17 A. Well, because I think two of them -- the last one, number  
18 three, was in the same position.

19 Q. But he was never with SAJ Musa, was he?

12:45:33 20 A. That may be so, but he was in the same sort of position  
21 SAJ Musa was in.

22 Q. But he had a different set-up than SAJ Musa, didn't you  
23 know that?

24 PRESIDING JUDGE: Just let him finish, Mr Agha.

12:45:48 25 MR AGHA: I apologise.

26 THE WITNESS: Well, he may have had a different set-up, but  
27 he can argue whether, and to what extent an organisation is  
28 possible. Now, number one can clearly state from his knowledge,  
29 in my mind, that it is unrealistic to set up certain

1 organisations while you're in a defensive position or while  
2 you're in a guerilla.

3 Q. That's his assumptions and speculations and opinions, isn't  
4 it?

12:46:28 5 A. Indeed.

6 PRESIDING JUDGE: All right, Mr Agha.

7 MR AGHA: Just one more question, before I can perhaps  
8 move --

9 PRESIDING JUDGE: Is this on the same topic or something  
10 different, otherwise we'll have lunch now.

12:46:37 11 MR AGHA: It is a final question on this topic, then we can  
12 move on.

13 PRESIDING JUDGE: Go ahead.

14 MR AGHA:

12:46:46 15 Q. I have really just one more question you can give a yes or  
16 no to. I suggest to you, therefore, your report, and the  
17 conclusions in it are largely based on the assumptions and  
18 opinions of others, who, with regard to the AFRC faction in the  
19 jungle, were not personally with them at the time; would you  
12:47:02 20 agree with that?

21 A. Not personally, but they had the position --

22 Q. It was based on their assumptions and opinions, wasn't it?

23 A. Yeah, but they had -- they were in a position to know,  
24 and --

12:47:15 25 Q. But they were their assumptions and opinions; yes or no?

26 A. Well, their opinions.

27 Q. Thank you.

28 A. Except, and I keep rephrasing that, except for 082, because  
29 I can go over it and over it.

1 Q. Certainly. We'll come to 082 after lunch.

2 A. Okay.

3 MR AGHA: Sorry, Your Honour.

4 PRESIDING JUDGE: We'll adjourn to 2.15. Once again,  
12:47:37 5 general, you're not permitted to discuss the evidence with  
6 anybody.

7 THE WITNESS: Yes, Your Honour.

8 [Luncheon recess taken at 12.47 p.m.]

9 [AFRC19OCT06C - MD]

14:11:35 10 [Upon resuming at 2.15 p.m.]

11 PRESIDING JUDGE: Yes, go ahead, Mr Agha.

12 MR KNOOPS: Your Honours.

13 PRESIDING JUDGE: Yes, Mr Knoops.

14 MR KNOOPS: I am sorry, before we continue, I would like to  
14:18:25 15 make two objections as to the line of questioning by my learned  
16 colleague on the basis of, first, that the last two questions,  
17 and it may be proper to raise it at this moment were, in our  
18 humble submission, for the expert and also in all fairness to  
19 him, misleading and vague and one of the last questions was not,  
14:19:01 20 I think, put in all fairness correctly to the expert because it  
21 assumes non-facts which are actually in evidence.

22 Let me briefly explain this, Your Honour.

23 PRESIDING JUDGE: Well, just you go on, the questions have  
24 been asked and answered. It's a little bit late to object to  
14:19:21 25 them now.

26 MR KNOOPS: Your Honours, I'm trying to object but I can  
27 also wait until the proper moment arises, if the Prosecution  
28 continues, but, with respect to the last question, the  
29 Prosecution have asked the expert whether or not his report was

1 based on assumptions or opinions. And I think in all fairness  
2 the question should be rephrased and should be specified over the  
3 primary and secondary sources, because I think it's not fair to  
4 say that doctrines and transcripts, as such, can be qualified as  
14:20:08 5 merely assumptions and conclusions.

6 JUDGE DOHERTY: Mr Knoops, I just want to make sure I  
7 understand what you are saying. My note of that last question  
8 was, based on an opinion, et cetera, not personally at the jungle  
9 at the time. It was limited to that one aspect.

14:20:30 10 MR KNOOPS: Yes, that is exactly, Your Honour, what I mean,  
11 because this is not what the evidence reflects.

12 JUDGE SEBUTINDE: Yes, but surely, Mr Knoops, the last five  
13 questions involved certain individuals who were primary sources.

14 MR KNOOPS: Correct.

14:20:48 15 JUDGE SEBUTINDE: And this last question must be taken in  
16 the context in which it was given. Meaning it referred, it  
17 related to the last -- to the primary sources, those individuals  
18 that had all the pseudonyms, remember? Those individuals, that  
19 question related to those individuals. And, in any event, it was  
14:21:09 20 asked and I think the witness understood it in that context and  
21 answered it in that context.

22 MR KNOOPS: Your Honour, if I briefly may remark that the  
23 Prosecution put it to the expert that number 3 was never with SAJ  
24 Musa's group. And that is not a fair way to put it to the expert  
14:21:30 25 because there is evidence before this Court which reflects  
26 otherwise. That is what I'm trying to say. And you may say that  
27 we should have objected at the proper moment, but I merely want  
28 to draw the attention of the Court to the fact that some of the  
29 questions were not put in an accurate form to the expert. And

1 the expert I think should be properly informed when it concerns  
2 the factual background which is put to him Thank you.

3 JUDGE SEBUTINDE: In any event, these were questions asked  
4 and answered.

14:22:10 5 MR KNOOPS: That's correct, Your Honour.

6 JUDGE SEBUTINDE: There is nothing we can really do that  
7 now to change.

8 JUDGE DOHERTY: And, Mr Knoops, you have a right to  
9 re-examine.

14:22:21 10 MR KNOOPS: Thank you, Your Honour. I apologise for the  
11 interruption.

12 PRESIDING JUDGE: Go ahead, Mr Agha.

13 MR AGHA:

14 Q. General, just before we broke for lunch we were looking at  
14:22:33 15 the primary sources of your report so I would now like to look at  
16 each of your secondary sources in turn. Now, I will firstly deal  
17 with transcripts. Now, you say that you've read a large number  
18 of transcripts of Prosecution witnesses; is that right?

19 A. That's correct.

14:22:50 20 Q. Roughly how many transcripts was this?

21 A. This is a rough estimate but I think I read close to 20 or  
22 more transcripts over the period May till October 2005.

23 Q. And in your report you refer to four transcripts as  
24 footnoted. I don't know if you can recall but we have TF-334 --

14:23:34 25 A. Yes.

26 Q. -- 184; 167; and 033. Now, would you agree with me that  
27 out of all the other transcripts these were the only ones which  
28 dealt with the AFRC faction whilst it was in the jungle?

29 A. I honestly don't know. The amount was immense, so I really

1 can't answer that one for sure.

2 Q. Well, I would suggest to you that those were the only four  
3 transcripts which had people actually operating within the AFRC  
4 faction during the jungle period; what would you respond to that?

14:24:15 5 A. It could be true, yes.

6 Q. Now, which other Prosecution witnesses did you read? Well,  
7 essentially, those were the only ones you read who were in the  
8 jungle at the time. Okay. Thank you. Now, are you aware that  
9 since the Defence aspect of this trial has started that perhaps  
10 around 12 other, either serving or former serving members of the  
11 SLA, who were with the AFRC faction in the jungle, have given  
12 evidence at this trial?

14:24:38

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

14 Q. And you haven't been provided with any of those  
15 transcripts?

14:24:54

16 A. Well, you see, I had to file the report, or I had to submit  
17 my report at a certain date, and then I didn't look into any  
18 other transcripts any more.

19 Q. But the first accused, who was a serving member of the SLA  
20 and is, in fact, accused of being one of the leaders in this  
21 faction gave evidence in June of this year before your report was  
22 submitted.

14:25:12

23 A. I didn't read it.

24 Q. And would you agree with me that it would have been helpful  
25 for you to had the opportunity to read those transcripts of the  
26 Defence witness before you compiled your report?

14:25:27

27 A. I really can't say, you see, because I was absolutely  
28 assured with the information I had that I had enough to base my  
29 report on.

1 Q. But, if, let us say, some of the evidence under oath of  
2 these 10 to 12 former SLAs, who were with the AFRC faction, had  
3 given evidence against some of your conclusions, you would agree  
4 with me that it would have been helpful to have been privy to  
14:26:10 5 that information?

6 MR FOFANAH: Objection. Counsel is requiring the witness  
7 to conjecture. He prefaced the question with "if."

8 PRESIDING JUDGE: What is your reply to that?

9 MR AGHA: I'm just suggesting if he had had the other  
14:26:27 10 relevant information available, in all fairness to the expert,  
11 I'm suggesting his opinions might have differed.

12 PRESIDING JUDGE: Yes. And my recollection is that a party  
13 is allowed to ask an expert a hypothetical question. I overrule  
14 the objection. You go ahead.

14:26:47 15 MR AGHA:

16 Q. So I accept that your report was based on the information  
17 which you had available at that time when you wrote it; okay?

18 A. The information that was available to me until the time,  
19 roughly, I submitted it.

14:27:08 20 Q. And would you agree with me that if you had been provided  
21 with other information, which also would have dealt with the  
22 areas which were covered in your report, that may have led you to  
23 change or modify some of your conclusions?

24 A. Well, never say never, but I was also convinced because  
14:27:29 25 Colonel Iron supported my vision in many ways. So it may have,  
26 but I doubt it.

27 Q. Okay. Now, of these witnesses, former SLAs who gave  
28 evidence in this trial, who were with the AFRC faction in the  
29 jungle, were you ever invited to meet with them and take their

1 views, regarding the faction, by the Defence?

2 A. No.

3 Q. So, they were not made available to you?

4 A. Well, again, I thought that I had enough information on  
14:28:16 5 these transcripts, whereby I must say that it was not only the  
6 AFRC, but also the RUF, sort of, otherwise we're limited to only  
7 the four and, as I recall, there were a couple more, but I found  
8 that, after such lengthy statements, I thought I had a good  
9 picture, and it was enough for me.

14:28:39 10 Q. Okay. But didn't you consider it important to speak to  
11 members of the AFRC faction in the jungle with SAJ Musa yourself  
12 to get your own independent view of events?

13 A. Well, it didn't occur to me since they and the people you  
14 referred to already had given their complete statement in Court.

14:29:02 15 Q. But, you see, these were Prosecution witnesses, so that  
16 statement may have been slanted in a particular way. Did you not  
17 consider it important that you should go and speak some of the  
18 other people personally involved in the faction to see what their  
19 perspective would be?

14:29:19 20 A. I really didn't know that that was a possibility for me.

21 Q. Because, in an adversarial proceedings, witnesses who come  
22 from the other side may very well have different information  
23 regarding witnesses who come from the Prosecution side; did you  
24 know that?

14:29:35 25 A. Yes, but I was not aware about the possibility, for me, to  
26 sort of call, by myself, all the witnesses from the Prosecution  
27 and do my own investigation. I didn't know that.

28 Q. But the person who instructed you to compile your report,  
29 he didn't suggest to you that there are these members of the SLA



1 you may be interested in speaking to to assist you in coming to  
2 your conclusions in your report?

3 A. It didn't -- it didn't -- it wasn't an issue.

4 Q. And it didn't --

14:30:07 5 A. It didn't occur.

6 Q. But it didn't cross your mind to ask, either?

7 A. Again, I thought -- you know, not being aware of all the  
8 procedures in the Court, I thought, well, these are witnesses for  
9 the Prosecution, and don't touch them

14:30:23 10 Q. Okay. Now, I believe you said that it is important to  
11 speak to people who were actually in -- or did you consider it  
12 important to speak to people who were actually in the AFRC  
13 faction so that you could form an opinion of their modus operandi  
14 on the ground?

14:30:45 15 A. Well, absolutely. And that was the reason why I went to  
16 Joe Blow.

17 Q. But he wasn't a part of the AFRC faction?

18 A. No, he wasn't, but then I was further referred to Major  
19 General Sam Mboma, and I asked him specifically, and I'm in the  
20 opinion that it would not have taken him long to line up

14:31:08 21 lieutenant-colonels, colonels who would have been in the AFRC,  
22 even stronger, who would have been with SAJ Musa. And, as I  
23 stated before, to my great disappointment but also amazement, he  
24 said there's none available in the current SLA.

14:31:35 25 Q. But the people who instructed you to write your report  
26 could have made ten to 12 people, couldn't they?

27 A. I beg your pardon, sir?

28 Q. The lawyers who instructed you to prepare your report, if  
29 they had wanted to, could have made ten or 12 former members of

1 the SLA faction available to you, couldn't they?

2 A. Well, I can't answer that. What I was looking for, really,  
3 was to talk to some people who now have positions in the SLA who  
4 could tell me, "I was there," and tell you from firsthand how it  
14:32:10 5 was. Now, I could have talked to ranks, probably, but I was  
6 looking for the --

7 Q. I am sorry to interrupt you here, general, but the people  
8 you spoke to weren't there as part of the AFRC faction, were  
9 they?

14:32:28 10 A. Well, the primary sources we have been dealing with, I  
11 think.

12 Q. Yes. So, then, as they weren't there, would you not have  
13 thought it instructive to at least get the opinion or statement  
14 of fact from those people who were with the AFRC faction to find  
14:32:47 15 out from them how the modus operandi worked firsthand?

16 A. But then, again, it would have given me not the answers I  
17 was looking for in the things I described in my report. You  
18 know, I would have gone down to maybe little nitty-gritty soldier  
19 information I was not looking for.

14:33:10 20 Q. And I may be wrong, but I believe that the study of  
21 organisations, this is what you say, modus operandi and the way  
22 it performs on the ground, is one of the best ways to evaluate  
23 it, isn't it?

24 A. Yes, but that doesn't relate to the people I wanted to talk  
14:33:29 25 to. I had enough information, in my mind.

26 Q. But don't you think it would have been more important, as  
27 you say, to study the modus operandi to speak to those people  
28 involved in that modus operandi?

29 A. Well, you know, I may have come across someone in the

1 office here and there, but, again, we have to realise that,  
2 concerning the modus operandi, Colonel Iron and I agreed. And I  
3 got information, so, you know, for me, that case was closed.

14:34:06 4 Q. So, according to you, just by -- well, actually by not  
5 speaking personally to anybody who was a part of the AFRC faction  
6 in the jungle, you were able to build up an accurate picture of  
7 their modus operandi?

8 MR KNOOPS: Objection, Your Honour. The general has stated  
9 that number 3 was part of the AFRC faction is a misleading  
14:34:27 10 question.

11 PRESIDING JUDGE: What do you say to that, Mr Agha?

12 MR AGHA: I can very easily rephrase it.

13 Q. So if you spoke to no one with SAJ Musa's group as part of  
14 the AFRC faction, would you agree with me it would be very  
14:34:43 15 difficult for you to build up an accurate picture of how the AFRC  
16 faction under SAJ Musa operated by way of modus operandi?

17 A. No, not in the least.

18 Q. And that is quite possible to do without speaking to anyone  
19 who is part of that group?

14:35:01 20 A. Absolutely.

21 Q. And what about if those people who are giving you their  
22 information about the group were incorrect, because they weren't  
23 there?

24 A. But then again, I was supported by the view of  
14:35:16 25 Colonel Iron.

26 Q. I am asking you personally, because it's your report.

27 A. Yes.

28 Q. And obviously these are your opinions which you are  
29 adhering to.

1 A. Yes.

2 Q. Based on the facts which you found out.

3 A. Yes.

4 Q. So how would it be possible for you to build up, yourself,  
14:35:33 5 an accurate picture of how a group operated if you didn't  
6 actually speak to any of the members of that group yourself,  
7 during the operations?

8 A. Well, one of the ways to do it was reading through the TRC  
9 for example.

14:35:50 10 Q. But if the TRC was, and we will come to that later, based  
11 on opinions, then if those opinions were wrong, then any finding  
12 would be inaccurate, wouldn't it?

13 A. I can't say that, but that's what I based it on, among  
14 others.

14:36:09 15 Q. Right. Now, we'll come to the TRC report, which is your  
16 next secondary source; is that right? It is at least one of  
17 them?

18 A. Okay.

19 Q. Now, your report relies quite extensively on the TRC  
14:36:29 20 report, doesn't it?

21 A. In parts, it does. In parts, it does not at all.

22 Q. But you would say, roughly, 200 footnotes out of 300 is  
23 quite a large part?

24 A. Yes, but not if you take into consideration the question I  
14:36:50 25 asked relating to questions in the report.

26 Q. Okay.

27 A. It is a lot of background information, not necessarily  
28 relating to the questions I posed.

29 Q. Okay. Now, at page 5 in your report, paragraph 6, I quote

1 that, because perhaps it might jog your memory, you even state  
2 that the TRC report merits special attention, don't you?

3 A. Yes.

4 Q. And according to you, the TRC report draws on 7,706  
14:37:24 5 statements, doesn't it?

6 A. Yes.

7 Q. Now out of these 7,706 statements, the number given by  
8 members of the AFRC faction of the SLA remained low, didn't it?

9 A. I quoted a lot of senior military officers.

14:37:48 10 Q. But my question to you is out of this 7,706 statements  
11 given by members of the AFRC faction, in the jungle, remained  
12 low?

13 A. No, I cannot say that because there are numerous, numerous  
14 statements made in the TRC, which I can't directly relate to AFRC  
14:38:16 15 one faction or another faction.

16 Q. So you wouldn't even be able to tell whether a particular  
17 statement related to RUF, AFRC or any particular faction at all?

18 A. Well, sometimes it's -- when it's about the general way  
19 things happened in the bush, then it may be broad, yes.

14:38:37 20 Q. You see, because your report is concentrating on the  
21 activities, by and large, of the AFRC faction in the jungle after  
22 the intervention, structures and hierarchies, et cetera. Now,  
23 I'm suggesting to you that hardly anybody gave testimony in the  
24 TRC Commission who was a part of that faction?

14:38:59 25 A. I don't know that.

26 Q. I would suggest to you the number was absolutely minute.  
27 Would you have any comment on that, or you just --

28 A. No, I don't know.

29 Q. Those statements, which were given before the TRC, how were

1 they conducted and what were the proceedings?

2 A. Well, I can't recall. I don't have any recollection how  
3 the TRC operated, other than a lot of the statements I have seen  
4 and quoted were statements directly given in special sessions  
14:39:44 5 before the TRC. Now, how that worked, I don't know.

6 Q. So you don't know whether it was just a question and then  
7 an answer, a question and then an answer?

8 A. There were testimonies I have seen in question and answer,  
9 but there were also many testimonies, especially the more senior  
14:40:06 10 people, who gave testimony as a statement. They gave their  
11 statement. I think they were given the opportunity to give a  
12 statement and then there may have been questions and answer  
13 afterwards.

14 Q. But usually they would have been specific questions. For  
14:40:26 15 example, Brigadier Kelly Conteh spoke about the 1972, I believe,  
16 trials and executions; is that right?

17 A. Well, he may have. But I quote Kelly Conteh more in the  
18 later periods in the 1991, 1997 time frame, but I can't look.

19 Q. But, essentially, he was writing a paper, wasn't he, or  
14:40:50 20 presenting a paper?

21 A. Well, the way I have seen it in the TRC is that, initially,  
22 the people like, for example, Tom Carew was invited to give a  
23 presentation for the TRC and then subsequently people were able  
24 to ask, or the commission was able to ask him questions.

14:41:12 25 Q. So the information actually obtained from a person who  
26 appeared before the TRC will be based on the questions he was  
27 asked; would you agree?

28 A. I can't -- I can't answer that.

29 Q. Well, let's put it hypothetically. If those who were asked

1 to speak before the TRC were hardly asked any questions about the  
2 activities of the AFRC faction in the jungle, after the  
3 intervention, the TRC report wouldn't cover this area, would it?

4 A. Well, they covered --

14:41:48 5 Q. It's more a simple -- it either would or wouldn't, if these  
6 people were not asked those questions?

7 A. Well, if they weren't asked the questions they obviously  
8 didn't answer it.

9 Q. So the TRC report then couldn't make any comment on that?

14:42:08 10 A. Well, I don't know. That may be a conclusion. I don't  
11 know.

12 Q. If that was the case, I'm saying.

13 A. Yeah.

14 Q. Now, these statements given before the TRC were not given  
14:42:20 15 under oath, like you are giving evidence today, were they?

16 A. I don't think they were.

17 Q. And they weren't tested by cross-examination, like I'm  
18 asking you questions today, were they?

19 A. They may have been asked, but not in a setting like today.

14:42:35 20 Q. Now, a number of those statements contained the opinions of  
21 those who made them, didn't they?

22 A. Yes, but also, a number made statements about the actual  
23 way of the way they have experienced things.

24 Q. But you would agree with me that some of those who gave  
14:43:02 25 statements may have been given inaccurate statements in order to,  
26 perhaps, blame others for their own shortcomings?

27 A. Not likely in the issues I was looking for. That may be  
28 the case in individual things the TRC discussed, but I was not  
29 looking for that. I was looking at the modus operandi, so I

1 don't see a relation in my blaming other ones.

2 Q. But you can't, let us say, put it this way, necessarily say  
3 that those statements were accurate, can you?

4 A. You know, I have reason to believe that the statements made  
14:43:40 5 by the very senior people, or the people who actually stated what  
6 they have experienced themselves were right. I can't.

7 Q. I will just, by way of example, read one of these, which is  
8 incorporated in your report. If I may just read it, and it's  
9 on page 47 of your report, or number 18930. It's paragraph 86.

14:44:16 10 We are talking about tactics deployed. This is one of the  
11 quotations, and I have a citation from here from the TRC report.  
12 I will read it for you, slowly:

13 "Tactics deployed by the AFRC troops, which  
14 included the removal of the ballastic controls  
14:44:37 15 on their personal weapons to amplify the "bang"  
16 upon firing a bullet, played a major part in  
17 instilling a sense of fear into their  
18 adversaries and in convincing any group they  
19 encountered, whether civilian or military, that  
14:44:51 20 their fighting forces were more formidable and  
21 of greater combat prowess than actually was the  
22 case. Moreover, their numerical strengths was  
23 bolstered by the addition of thousands of  
24 abductees to their ranks as they advanced to  
14:45:07 25 Freetown. The eventual size of the entourage  
26 that descended upon the city from the  
27 surrounding hills has been estimated at up to  
28 10,000 persons - among them were captive senior  
29 citizens, women, children and newborn babies,



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1 who in normal circumstances could not  
2 conceivably pose any threat to a professional  
3 peacekeeping force like the Nigerian ECOMOG  
4 deployment, but who in the prevailing confusion  
14:45:37 5 and panic of the moment constituted a deluge of  
6 hostile bodies onto the city they were supposed  
7 to be protecting. Several accounts from both  
8 combatants and non-combatant civilian captives  
9 attest that key strategic positions on the path  
14:45:53 10 into Freetown were left exposed or abandoned by  
11 ECOMOG soldiers. The most poignant example  
12 seems to have been the desertion of the long,  
13 narrow bridge at Waterloo, which as a river  
14 crossing with very little prospect of cover  
14:46:09 15 from attack had been foreseen by many members  
16 of the entourage as a probable point of ambush  
17 to thwart the advance into the city in its  
18 final stretch. However, as testimony before  
19 the Commission indicates, there was apparently  
14:46:22 20 no resistance whatsoever to the attackers'  
21 march over the bridge, which suggests either a  
22 failure to acquaint with the topographical  
23 features of the route into the city, or an  
24 ill-fated miscalculation on the part of ECOMOG.  
14:46:35 25 ECOMOG reports indicate that a pull back became  
26 imperative following the massive numbers of  
27 civilians accompany the attacking forces.  
28 There would have been too many civilian  
29 casualties had ECOMOG attempted to forcefully

1                   halt the invaders."

2                   Now, that is at footnote 185, which is a citation from the  
3 TRC report. I also now read you a number of extracts of Defence  
4 witnesses given under oath in this trial, relating to the above  
14:47:14 5 statement. In particular, regarding this massive deluge of  
6 bodies that were descending on Freetown. This was given by  
7 witness code named DBK-037, pages 33 to 34. It starts at line 9  
8 on page 33, and it proceeds to line 11 on page 34. The date is  
9 4 October 2006. He is being questioned about the advance to  
14:48:02 10 Freetown. This is what he says.

11                   "Q. Thank you. Can you tell whether these  
12 people, these aunts, sisters, brothers,  
13 mothers, whether there were few or many?

14                   "A. There were many, there were many.

14:48:19 15                   "Q. Yes. When you were moving to Freetown,  
16 where were these people, civilians?

17                   "A. The civilians were at the back, rear, at  
18 the headquarter. The headquarter took care of  
19 them

14:48:31 20                   "Q. Mr Witness, was there any time when you  
21 put the civilians in front of you when you were  
22 going on any attack?

23                   "A. No, sir.

24                   "Q. I want to ask you specifically after Jui  
14:48:45 25 Junction. Did your troops put the civilians  
26 ahead of the -- let me go back again. You said  
27 that the troops that were attacking were led by  
28 who?"

29                   Then it carries on a little bit I pick up at line 28.

1 "Q. Thank you. When you were coming in that  
2 way, where were the civilians?

3 This is on page 34.

4 "A. The civilians -- each time we moved, the  
14:49:07 5 civilians were at the rear; about three or four  
6 miles away from us.

7 "Q. Specifically, when you were coming into  
8 Freetown, did you put the civilians ahead of  
9 you from Hastings coming into Freetown? Did  
14:49:20 10 you put them ahead of you when you were going  
11 to attack ECOMOG?

12 "A. It never happened.

13 "Q. Did you mix the civilians amongst the  
14 troops when you were going to attack?

14:49:30 15 "A. We never mixed civilians with armed  
16 soldiers because it was a purely military  
17 operation. "

18 Now that is one member of the AFRC faction who was  
19 describing before this Court the attack on Freetown and there are  
14:49:51 20 numerous examples and obviously these are witnesses you haven't  
21 had the opportunity to read the testimony of. And I will now  
22 read you one more. And this is witness DBK- 012, page 79 and 80  
23 and it's 6 October 2006. And I will read from line 8 on page 79.  
24 Through to line 13 on page 80. And this witness was again one of  
14:50:31 25 the AFRC faction advancing to Freetown.

26 "Q. At that time, the time when you said you  
27 divided yourselves into two groups, one went by  
28 the Old Road and one went by the New Road,  
29 where were the civilians that were with the

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1 headquarters group?

2 "A. Well, when we were coming into the city we  
3 left the civilians up on the Lion Mountain. We  
4 were trying to secure them because we knew we  
14:50:59 5 were advancing into an area, the city area,  
6 that was built up. We didn't want any  
7 civilians to die through these arms, because as  
8 soldiers, we have signed for lives, civilian  
9 lives and properties and our intention, that we  
14:51:12 10 were coming with, was to reinstate the national  
11 army. So we left the civilians, the ones that  
12 were with us, behind in the Lion Mountain and  
13 we came into the city and we launch an  
14 offensive attack.

14:51:24 15 "Q. All right. Thank you, Mr Witness.  
16 Mr Witness, is it true that after the area you  
17 refer to as SLPMB, you put the civilians in  
18 front of you to march into Freetown?

19 "A. No, sir, it wasn't like that, sir. The  
14:51:38 20 civilians were at the back. The fighting  
21 forces were in front.

22 "Q. Do you know what is referred to as a human  
23 shield?

24 "A. Well, I've a little understanding over it.  
14:51:49 25 I do not have a very deep understanding in  
26 that.

27 "Q. What do you understand? Tell the Court.  
28 Let me not put it to you.

29 "A. Well, I what I understand is that we were

1 using the civilians in the front and we are  
2 behind and we pushed them to the enemies.  
3 That's the idea that I have and that doesn't  
4 mean that we did that.

14:52:08 5 "Q. Thank you. You say you did not do that?

6 "PRESIDING JUDGE: I didn't hear your question,  
7 what was your question?

8 "MR MANLY- SPAIN: My question now: Are you  
9 saying that you did not do that?

14:52:19 10 "PRESIDING JUDGE: His answer was 'not at all.'

11 "THE WITNESS: No. "

12 Now, these are just two examples that witnesses have given  
13 since you've actually given your report, and they have been given  
14 in this Court under oath. Now, would you agree with me that, if  
15 those witnesses were to be believed, this version of 10,000 or so  
16 civilians descending on Freetown, as quoted by the TRC, may well  
17 be inaccurate?

18 A. It may have been. However, it would not have changed my  
19 position on command and control and difficulties I was addressing  
14:53:02 20 in the study.

21 Q. No, that really wasn't my question.

22 A. No.

23 Q. What I'm suggesting to you is it may very well be an  
24 inaccurate statement, mightn't it? Yes?

14:53:18 25 A. Well, when there are two versions, and they differ, then I  
26 cannot say.

27 Q. One version, I suggest to you, is by people who were a part  
28 of the group and, the other version, I believe, was by -- I have  
29 to look up what the source for that is -- but I would actually

1 say to you that it was from an SLPP government apologist or a  
2 member of ECOMOG for their failure to defend the city.

3 MR KNOOPS: Your Honour, I object to the question. The  
4 Prosecution again is trying to elicit an answer from this expert  
14:53:54 5 on the credibility of either witnesses presented before this  
6 Court, or evidence presented before the TRC.

7 PRESIDING JUDGE: Do you want to reply?

8 MR FOFANAH: Respectfully, Your Honours, just before he  
9 replies, in addition to that, I also object on behalf of the  
14:54:18 10 second accused on the grounds that there is nothing to suggest  
11 that the 10,000 or so reference made in the TRC report, the  
12 person who made that statement, or the group of people who made  
13 the statement were not, in fact, members of the AFRC faction.  
14 That has not come clear. We don't know who the statement-makers  
14:54:36 15 were. My learned colleague is merely inferring that whoever made  
16 that statement may not have been an AFRC faction, but he has not  
17 laid any foundation for that.

18 PRESIDING JUDGE: Do you want to reply, Mr Agha?

19 MR AGHA: I am not sure that I have to lay any foundation,  
14:54:56 20 necessarily.

21 PRESIDING JUDGE: No. The comment I would make is the  
22 examples you have given are already sworn evidence. They are  
23 there for the Court to either reject or accept. If the Court,  
24 for instance, accepts them, then it must logically follow that  
14:55:11 25 the TRC evidence can't be accurate. On the other hand, if the  
26 Court rejects them, then the possibility remains that the TRC  
27 evidence is accurate. But I really can't see how questioning  
28 this witness as to those available options takes the position any  
29 further.

1 MR AGHA: It's just a suggestion, Your Honour, that the  
2 actual document he is relying on, which forms a large part of his  
3 report, may not be entirely accurate.

4 PRESIDING JUDGE: That's just what I said.

14:55:44 5 MR KNOOPS: Isn't that a matter of speculation which the  
6 Prosecution is asking for and from this expert? And this expert  
7 is not here to speculate on the accuracy of either the TRC report  
8 or the credibility of Defence witnesses. It is for this witness  
9 the starting point of his report and he has no judgement call  
14:56:08 10 about the question whether this is the ultimate truth. So in my  
11 humble submission the Prosecution should be prevented from asking  
12 this witness any further comments on examples given by witnesses  
13 before this Court vis-a-vis statement before the TRC.

14 PRESIDING JUDGE: Well, seeing Mr Knoops has had two bites  
14:56:33 15 of the cherry, you may as well have another reply yourself but  
16 this will be the last one.

17 MR AGHA: Okay, Your Honour. With regard to the expert  
18 witness, he studied a number of Prosecution statements, and that  
19 was all that was available to him. Now, part of the purpose of  
14:56:51 20 the cross-examination is to show that what he has relied on may  
21 not be entirely accurate, which vis-a-vis his sources, but  
22 another purpose is also by reading the new evidence which the  
23 witness did not have a chance to digest, to suggest to him that  
24 had he been aware of such new evidence would it have changed his  
14:57:11 25 opinion?

26 PRESIDING JUDGE: I think that is a perfectly valid  
27 question. If that is the question you are putting to him then I  
28 will overrule the objection.

29 MR AGHA:

1 Q. So, Mr Witness, if you would have heard or had the  
2 advantage of reading those couple of transcripts would that have  
3 changed your opinion at all about the manner in which Freetown  
4 was attacked?

14:57:38 5 A. It would not have changed my position on the hierarchy and  
6 structure issue, and that's what it relates to. I can't look at  
7 it but it has to relate, but how do you control a force? No  
8 matter whether the men, elderly women and children are at the  
9 back, at the front, I am happy to hear that they were not at the  
14:58:07 10 front, but the only thing I want to say is that if you do that,  
11 if you accompany civilians with you, it's in my military view  
12 impossible to command the force, and that is the point I was  
13 going to make. So I can't again say who is right or wrong but if  
14 you take civilians and youngsters and elderly along, no, that  
14:58:37 15 wouldn't change the question I tried to answer, sir.

16 Q. But wouldn't it suggest that there was at least some attack  
17 at structuring the movement so that the fighting forces went  
18 ahead and civilians remained behind so they would be protected?

19 A. Yes, but even then said, that is not going to make your  
14:59:01 20 handling of a force easier when you have to continuously take  
21 care or keep in your mind all the people who are accompanying the  
22 force, even if they are at the back, so --

23 Q. No, no, this comes back to span of command and chain of  
24 command --

14:59:17 25 A. Yes.

26 Q. -- which we will address later.

27 A. Yes.

28 Q. But this is just one example. I am going to go through  
29 your report to you, to say that had you had the hindsight of some



1 of the evidence which has come out, whether or not one chooses to  
2 believe it, you may have reached a different conclusion. I mean,  
3 this is just one aspect and, as we go along, other aspects will  
4 come out and then we will see at the end whether if may not  
14:59:40 5 change your conclusion, perhaps modified those conclusions?

6 A. Yes, sir.

7 Q. Okay. Now you refer to various excerpts of statements  
8 quoted in the TRC report as well, don't you?

9 A. Excerpts, in the --

14:59:53 10 Q. Excerpts, not the full statement but --

11 A. Yes, I did.

12 Q. Now, did you read the entirety of all the statements whose  
13 excerpts you quote?

14 A. Yes. I, when I came to a certain topic I read through it  
15:00:10 15 all.

16 Q. But, you see, there is a footnote which would say it was  
17 from this source, this statement.

18 A. Yes.

19 Q. Did you then go and find that statement and read it in its  
15:00:19 20 entirety?

21 A. At times I did, but not all the statements were available  
22 in the electronic version. Now you can go, I think to, I don't  
23 know the archives, but apparently that is a mission impossible.

24 Q. So would you agree with me that in statements where you  
15:00:38 25 took excerpts, but where you were unable to read the whole  
26 statement, later on in the statement it may have actually  
27 contradicted the excerpts which you relied upon?

28 A. I doubt it.

29 Q. But you wouldn't know, would you?

1 A. No.

2 Q. Now I want to turn now to another source, I am not sure of  
3 the order, but it's David Keen and it's Conflict and Collusion in  
4 Sierra Leone. And this was another secondary source; right?

15:01:10 5 A. Yes, sir, it was.

6 Q. Now you also rely on extracts from David Keen's book  
7 Conflicts in Sierra Leone. Now, have you read the book entirety?

8 A. I think I had to read it three times.

9 Q. Okay. But David Keen is not a military expert, is he?

15:01:31 10 A. No, not a military expert.

11 Q. And David Keen's writings are more concerned with human  
12 rights violations during conflict, aren't they?

13 A. And economical affairs, I guess.

14 Q. Yes. So would you agree with me that David Keen's book is  
15:01:45 15 primarily a study of violence and economical affairs during the  
16 conflict?

17 A. In general, that's a correct statement, I guess.

18 Q. And did you have occasion to speak to David Keen to discuss  
19 his book before you prepared the report?

15:02:02 20 A. No, sir.

21 Q. And on page 6 of Keen's book he refers to the sources on  
22 which he based his book. I will read a few of these sources for  
23 you. These are found at page 6, number 2. Okay, these are the  
24 sources on which Keen relied upon in order to write his book.

15:02:43 25 "Part of the purpose of this book is to  
26 contribute to the process of documenting and  
27 understanding human rights abuses in this war.  
28 The study is based on grey literature, local  
29 newspapers, published books and journals and

1 extensive interviews with diplomats, donors,  
2 aid workers, civil defence representatives,  
3 soldiers, RUF fighters and abductees, civil  
4 servants, students, businessmen, human rights  
15:03:10 5 activists and Sierra Leoneans from many other  
6 walks of life. Many were interviewed after  
7 they were forcibly displaced. "

8 Now, did you have a chance yourself to review any of these  
9 sources which David Keen relied upon?

15:03:28 10 A. You mean the sources that were provided to David Keen?

11 Q. Yes.

12 A. No, sir.

13 Q. Okay. Now you'd agree with me, then, that you were not  
14 able to check the accuracy of Keen's sources?

15:03:52 15 A. No. Formally, no.

16 Q. And I believe Keen even himself admits that not everyone he  
17 spoke to was telling the truth or even remembered events  
18 accurately; is that right?

19 A. Well, I can imagine that statement because it's sort of in  
15:04:11 20 line of the statement I made in my report, why not assessing the  
21 campaign, because you cannot reconstruct after so many years all  
22 the events that took place. So I can imagine that Keen makes a  
23 remark, you cannot, even if you talk to so many people, you  
24 cannot always come back to how it really happened.

15:04:37 25 Q. What he actually says is that, and this is in his book at  
26 page 6, I believe, it is:

27 "Interviewees described their own experiences  
28 of the war and offered their perceptions of its  
29 dynamics. Clearly not everyone was telling the

1 truth, or even remembering events accurately,  
2 but my intention has been to listen carefully  
3 to them to try to understand events from their  
4 point of view. To contextualise what people  
15:05:08 5 have said and to give as accurate a picture as  
6 I can through the accumulation of stories and  
7 detail. All this certainly does not add up to  
8 a complete explanation of the war. A different  
9 set of people would yield a different story. I  
15:05:22 10 have tried to use common sense in the  
11 presentation and interpretation of accounts,  
12 corroboration through accumulation of accounts  
13 and cross-checking, but in what Paul Richards  
14 has called the Fog of War, a book like this is  
15:05:34 15 a record of perceptions, interpretations and  
16 obfuscations as much as it is about facts."

17 So, looking at that, would you agree with me that many of  
18 the actual findings, in Keen's book, may not be entirely  
19 accurate, depending on the truth or not of his sources?

15:06:00 20 A. I think in general that's fair to state. He cannot be 100  
21 per cent correct in all the things he is saying.

22 Q. And if you are relying on Keen's book, and some of his  
23 sources, this would, in turn, make your report less reliable if  
24 Keen's sources were not entirely accurate, wouldn't it?

15:06:21 25 A. I wouldn't say that because, you know, there again I have  
26 to see exactly where I quote Keen. Now, if I quote Keen for the  
27 historical part, that is one thing. If I quote Keen for the way  
28 the campaign was running, it's another thing. But the question  
29 is only answerable if I look into directly the footnote, or the

1 text from Keen, into the question at hand. And, otherwise, I may  
2 have used some of his information which is correct or not correct  
3 but then I have to see whether it relates to the question at  
4 hand.

15:07:01 5 Q. Right. And according to Keen the SLAs and RUF had been  
6 collaborating much before the coup in May 1997, hadn't they?

7 A. That's what I've read.

8 Q. So according to Keen, the AFRC government was continuation  
9 of the collaboration between the RUF and the SLAs which had been  
10 going on before the coup, wasn't it?

15:07:20 11 A. If he states it then it's his opinion.

12 Q. Right.

13 A. And I recall that I read it.

14 Q. Right. Now, with regard to your report, as I've mentioned,  
15 I just -- I know and appreciate you only worked on the material  
16 you had available to you, so when we look at the report, I will  
17 be trying to put before you evidence which wasn't available to  
18 you at that time, and to see whether or not that would have any  
19 bearing on your report.

15:07:37 20 A. Yes, sir.

21 Q. So the first part of your report I want to look at is the  
22 history and developments. This is a period prior to the May 1997  
23 coup. Now, firstly, I turn to paragraph 19 on page 9, or 18892,  
24 where you quote from Major General Tom Carew, who states that  
25 over a period of time, the Sierra Leone military lost all  
26 semblance of command and control; do you recall that?

15:08:41 27 A. Yes, sir, I do.

28 Q. Now this is only Major General Tom Carew's personal  
29 opinion, isn't it?

1 A. Yes.

2 Q. And do you know that Tom Carew is not an expert before this  
3 Court so his opinion is not admissible?

4 A. You are asking me a legal sort of question but --

15:09:13 5 MR KNOOPS: Your Honour, I object. I think the Prosecution  
6 cannot decide before the Court whether or not an opinion of Tom  
7 Carew provided to the expert in his report is admissible or not.

8 PRESIDING JUDGE: Well also, I think it's an inappropriate  
9 question to put to this witness, Mr Agha.

15:09:32 10 MR AGHA:

11 Q. But you would agree with me that others may hold different  
12 opinions to Tom Carew?

13 A. In life, there always will be different opinions. Why the  
14 statement of Tom Carew made an impression on me, or why I took it  
15:09:52 15 seriously is because I know what a chief of defence staff -- the  
16 job he has, and responsibility, and I validate highly the  
17 opinions by chief of defence staff. And I think if you look at  
18 the countries all around the world, and you talk to the chief of  
19 defence staff, that's a person, I don't know whether again it's  
15:10:17 20 fact or opinion, but it is based on his great knowledge of what  
21 has happened.

22 Q. But he is suggesting that the Sierra Leone military had  
23 lost all semblances of command and control. I would suggest to  
24 you that was not the case when the war with RUF broke out in  
15:10:38 25 1991?

26 A. It is my full belief that he is right.

27 Q. Well, again, you haven't had the benefit of hearing some of  
28 the former SLAs who came before this Court and I thought I would  
29 just read you a couple of their transcripts to see whether or not

1 this may change your perception.

2 MR KNOOPS: If the Prosecution, in all fairness, wishes to  
3 emphasise the ranks when putting this to the general.

4 PRESIDING JUDGE: Yes, Mr Agha?

15:11:16 5 MR AGHA: These will be by and large from all other ranked  
6 soldiers.

7 MR KNOOPS: Sorry, is the second accused able to use the  
8 bathroom?

9 PRESIDING JUDGE: Yes, Mr Kamara can leave the Court.

15:11:30 10 Perhaps, you've got a few examples there, Mr Agha, but it may or  
11 may not be sufficient simply to put one to the general and with  
12 the understanding that you have other examples that are very  
13 similar and then put your question to him

14 MR AGHA: Yes. I think that might be a better way to go  
15:11:51 15 about it. Perhaps I will put one or two examples and say there  
16 are many -- well, there are other examples.

17 PRESIDING JUDGE: Well, I was thinking more like one  
18 example and saying that there are others.

19 MR AGHA: It then will be a question of picking the best  
15:12:05 20 examples.

21 PRESIDING JUDGE: Well, if the general is left in any doubt  
22 after reading that one example as to what you are asking then of  
23 course you will need to come in with some more examples.

24 MR AGHA: Okay.

15:12:17 25 Q. I will just start with the first example from the passage I  
26 have. It's from the first accused himself. And it's dated 28  
27 June 2006, page 19. And it's really from let's just say line 16  
28 to 21, and this is during the training period. He is asked a  
29 question. This is a question:

1 "Q. But you learnt that if a corporal gave an  
2 order to a private, the private had to follow  
3 that order, didn't he?

4 "A. Yes.

15:12:51 5 "Q. And you were taught that junior ranks had  
6 to follow the orders of more senior ranks,  
7 weren't you?

8 "A. Yes. "

9 Now, there are numerous examples of these other ranks  
15:13:06 10 coming before this Court saying that during their training they  
11 were taught about command and control. And now, that is what  
12 they were taught, and they said they knew that. Then of course  
13 another question is did they do it? And I will just read an  
14 example of another witness. This is DAB-018 on 7 September 2006,  
15:13:35 15 at page 51, and he is actually asked this while he is in active  
16 combat against the RUF. And the question is:

17 "Q. No. In 1992, to 1995, you were fighting  
18 with the SLA against the RUF; right?

19 "A. Yes, sir.

15:13:52 20 "Q. Now, while you were fighting with the SLA  
21 against the RUF, did you follow the orders of  
22 your commanders?

23 "A. Yes, sir.

24 "Q. And did the other SLA troops amongst you  
15:14:05 25 follow the orders of their commanders as well?

26 "A. Yes, sir. "

27 So we have numerous witnesses who, in training, are taught  
28 about following orders and during combat have also said they  
29 followed those orders. And I think there's one other witness who



1 I think, in all fairness, I should also read to you because this  
2 is one of your primary sources. It's TRC-01 and it is dated 16  
3 October 2006. It's at page 110, and it's at line 12 and it goes  
4 to line 24. Now, this soldier, as you know, was a commander. At  
15:14:54 5 the time he said he was a battlefield commander and this is  
6 during the war with the RUF between 1992 and 1996. And this is  
7 the question:

8 "Q. Now, you say that you also went to the  
9 front from time to time between 1992 and 1996?

15:15:12 10 "A. Yes, Your Honour.

11 "Q. Now, there was ammunition for the troops  
12 during that period, wasn't there?

13 "A. Yes, Your Honour.

14 "Q. And there was also medical treatment  
15:15:22 15 available for the troops during that period,  
16 wasn't there?

17 "A. Yes, Your Honour.

18 "Q. And adequate command and control existed  
19 for the troops during that period, didn't it?

15:15:34 20 "A. To a very large extent, yes."

21 So, essentially, this is evidence which you've been unaware  
22 of, and I would suggest to you that on the basis of that evidence  
23 there was at least a semblance of command and control in place in  
24 the Sierra Leone Army?

15:15:59 25 MR KNOOPS: I am sorry to object but I think, with all due  
26 respect, the Prosecution uses two examples which relates to  
27 following of orders, on the one hand, and the third example  
28 relates to command and control. And on the basis of these three  
29 examples, he cannot put simply to the expert one general question

1 because the two first examples, they relate to whether orders  
2 were followed. They don't say anything about command and  
3 control. Only the third example. So it's my suggestion that, in  
4 all fairness to the expert, these questions should be split  
15:16:34 5 because following orders is something different than the  
6 existence of command and control.

7 PRESIDING JUDGE: What is your reply to that, Mr Agha?

8 MR AGHA: Well, I can do that if that is of assistance, but  
9 I would have thought the general would be able to have made the  
15:16:52 10 differentiation of the comment for himself.

11 PRESIDING JUDGE: Look, if the general has any difficulty  
12 answering that question, then we might consider changing the  
13 shape of the question but I will overrule the objection. Go  
14 ahead, Mr Agha.

15:17:04 15 MR AGHA:

16 Q. So, having heard, and these are just isolated statements,  
17 there are many others -- when I say many I mean maybe up to ten  
18 because, in fact, it's most of the former SLA factions who have  
19 come before the Court who have asked these question -- they've  
15:17:22 20 said that they were taught to follow orders when they were  
21 trained. They said that when they were at the front they did  
22 follow orders during combat, and they were the other ranks, and a  
23 senior officer, who was one of your primary sources, has also  
24 confirmed that there was adequate command and control at the  
15:17:41 25 front during the war with the RUF. So if that information was  
26 available to you, and like the Prosecution transcripts were  
27 believable, would you agree that there was at least a semblance  
28 of command and control?

29 MR FOFANA: Objection, Your Honours. I mean, my objection

1 relates to the last bit regarding the testimony of the senior  
2 Sierra Leone Army officer. Given that this witness wasn't  
3 present when that army witness testified, I would implore my  
4 learned colleague to give at least a complete picture because the  
15:18:22 5 same army officer indicated that the AFRC period and, for that  
6 matter, the faction under cross-examination, was one of a ragtag  
7 army. And then to suggest that a ragtag army had a semblance of  
8 command and control would be, in my humble opinion, untruthful of  
9 what the witness told the Court.

15:18:44 10 PRESIDING JUDGE: My understanding is that the question  
11 Mr Agha is asking only goes up to 1996; is that correct?

12 MR AGHA: That's correct, Your Honour.

13 MR FOFANA: Respectfully, Your Honours, I mean, the same  
14 witness, because the general was not present when that witness  
15:18:59 15 testified before this Court. He did not confine himself under  
16 cross-examination to 1996, and the question which my learned  
17 colleague is now putting to the witness is about the AFRC faction  
18 which runs beyond 1996, and that witness gave general opinion  
19 about the AFRC faction, especially in times of regarding that  
15:19:22 20 faction as a ragtag army.

21 PRESIDING JUDGE: Do you want to reply to that, Mr Agha?

22 MR AGHA: I think I will take it step-by-step so I hope I  
23 don't get ahead of myself here. The witness TR, the one we are  
24 talking about in case, in cross-examination, spoke about a period  
15:19:44 25 after 1997. The questions which I am addressing the general  
26 relate up to mid-1996, before the SLA faction was formed, because  
27 the person he is quoting, Tom Carew, is talking about the state  
28 of the army up to that period. So I am seeking to find out  
29 whether the witness's opinion would have changed of the Sierra

1 Leone Army before the coup of 1997. I am not talking about the  
2 AFRC faction. And I thought that was clear.

3 MR FOFANAH: If that is the case then I withdraw my  
4 objection. I thought he persistently mentioned the words AFRC  
15:20:25 5 faction to the witness. If he is clarifying that then I withdraw  
6 the objection.

7 PRESIDING JUDGE: All right. Thank you. Yes, go ahead,  
8 Mr Agha.

9 MR AGHA:

15:20:35 10 Q. So, I am not sure if you can -- hopefully you can remember  
11 some of those readings, but had you have had the benefit of some  
12 of those -- let's say testimonies and equally like the  
13 Prosecution testimonies you relied upon them -- would you agree  
14 with me that there was at least a semblance of command and  
15:20:55 15 control within the Sierra Leone Army before May 1996?

16 A. I hope --

17 PRESIDING JUDGE: You mean May 1997 or May 1996?

18 MR AGHA: May 1997, I apologise.

19 THE WITNESS: I hope I can leave TRC-01 out in my initial  
15:21:20 20 response, or I can give it immediately, because I have a slightly  
21 different view about him. But you have to realise that Tom  
22 Carew, if you asked a question of Tom Carew, about command and  
23 control, or you asked a question to an individual soldier about  
24 following orders, they reason from a different perspective.

15:21:52 25 MR AGHA:

26 Q. But they were following the orders?

27 A. But, if I may, to continue, like Colonel Iron says, command  
28 has, in itself, leadership, decision and control. Now, you can  
29 control and say, okay, give an order and the order is executed.

1 That is nice. But Tom Carew, if he talks about command and  
2 control, he talks about the broader picture of whether  
3 subordinate commanders at the higher levels, battalion  
4 commanders, region commanders follow orders. I am not in the  
15:22:33 5 least surprised that in an initial training people are taught how  
6 to follow orders and I'm not surprised that if you are in a  
7 combat zone, and if you are in an isolated team or in a company,  
8 that you may sort of follow orders. But Tom Carew is talking  
9 about general, the command and control as such in the SLA, so I  
15:22:54 10 think it's comparing different levels.

11 Q. But what about TRC-01? He was at the front line with these  
12 troops.

13 A. But it gives me an opportunity to go into TRC-01, who read  
14 my report who -- with whom and, I know after his testimony this  
15:23:17 15 is now irrelevant -- who read my report, with whom I discussed my  
16 report, who said "I agree with you 95 per cent about the report"  
17 and I am not in the least surprised that TRC-01, I don't know if  
18 you are aware of that, is on the fast track in the Sierra Leone  
19 Army. He is coming up, in my information, to become the chief of  
15:23:47 20 defence staff, Sierra Leone Army, it's not too harsh on his  
21 verdict, when giving the testimony, and I don't want to be  
22 impolite or rude, but I just say it the way it is. And when I  
23 talked to TRC-01 at length and I said give me upfront your view  
24 then I was, to say the least, highly surprised. But, after all,  
15:24:12 25 and that's another aspect, and I am happy to see that, that  
26 notwithstanding the disasters that happened in the Sierra Leone  
27 Army, there is that little bit sense of pride, that you don't,  
28 and certainly not that you don't degrade too much, like in the  
29 case of TRC-01, get hard on your colleagues, especially not if

1 you are coming up to the chief of defence staff. So, in essence,  
2 only based on these three --

3 Q. I would look for you, -TRC-01 gave his evidence under oath?

15:25:03

4 A. I know, sir. That's why I said I can't change things in  
5 life. I only say that, you know, in my view it's either this or  
6 that, and I'm afraid that I had a different, let's say,  
7 discussion with him but I can't do anything about that.

8 Q. But what I'm saying to you is based on what he has said in  
9 this Court under oath, you would agree with me that there was a  
10 semblance of command and control?

15:25:23

11 A. I would agree that at the level he observed, you say  
12 battlefield commander, he could never be a battlefield commander.  
13 He would have been -- I think he was a major, by that time he  
14 would be company commander so, within a normal company, he would  
15 have 120. Now, maybe within a battalion there may have been that  
16 people followed orders, that is the good news but that is a  
17 different perspective than Tom Carew, and not only Tom Carew but  
18 also --

15:25:44

19 Q. Sorry to cut in, general, but Tom Carew hasn't given  
20 evidence here.

15:26:02

21 A. No.

22 Q. He hasn't been subject to cross-examination and you are  
23 relying on an opinion also of maybe an officer who may have  
24 various axes to grind and we haven't put that to him in  
25 cross-examination.

15:26:15

26 A. Yes, sir.

27 Q. I am afraid we can only go on the evidence which we have  
28 and which you also had to rely on at the time.

29 A. Yes, sir.

1 Q. And also with TRC-01, he and his evidence, and I will come  
2 to that part, actually sets out the structure and it was a  
3 slightly higher level and span of command from which you just  
4 perhaps thought was the case but at any rate, we will come to  
15:26:43 5 that. But bearing in mind what he has said here under oath would  
6 you agree that that indicates that there was a semblance of  
7 command and control by May 1997 in the SLA?

8 A. Based on what he said at the lower level, yes.

9 Q. Now, I'm going to carry on by now -- we have this situation  
15:27:12 10 where at least you said the lower level there is some command and  
11 control, and this is up to the May 1997 coup. Now, a Defence  
12 witness has also given evidence that when he and 3,000 other  
13 surrendered SLAs, that is, those who didn't go into the jungle  
14 with SAJ Musa, were held at Lungi garrison in around November,  
15:27:41 15 December 1998, and that those 3,000 would follow the orders of  
16 their senior officers, those surrendered troops. So would that  
17 not suggest to you that the training was such that even up to  
18 December 1998 there was command and control within let's say the  
19 former SLA?

15:28:12 20 A. You know, I really can't comment on that. And I, you know,  
21 you have to look into the specific situation therein.

22 Q. But it's possible?

23 A. Well, yes, everything is possible, but, you know, based on  
24 these statements, you know, I can't -- I can't immediately come  
15:28:32 25 to that conclusion.

26 Q. Now, if we are to look at paragraph 19, and that is page 10  
27 of your report?

28 PRESIDING JUDGE: General, would it be of assistance to you  
29 if you had your report in front of you to refer to the same

1 paragraph that counsel is referring to?

2 THE WITNESS: Yes, Your Honours.

3 MR AGHA: Yes, that would be a good idea, Your Honour.

4 PRESIDING JUDGE: Yes, Mr Knoops? You have the report  
15:29:04 5 there, do you? You have the report before you?

6 THE WITNESS: Well, I had it sealed and closed, Your  
7 Honour, all the time but I have it here, sir.

8 PRESIDING JUDGE: I see. Yes, all right. I am sorry,  
9 Mr Knoops, I didn't realise the general had the report in front  
15:29:19 10 of him. Yes, well, please feel free to refer to it.

11 MR AGHA:

12 Q. I am at page 10, this is page 10, and it's paragraph 19,  
13 and it is the final three lines and I will read -- and perhaps  
14 you can follow with me -- it says: "The TRC then concludes it is  
15:29:59 15 therefore in the manipulation of the army by politicians that the  
16 routes of the terrible violations committed by the army during  
17 the conflict could be found." Now, you'd agree with me that's a  
18 conclusion of the TRC, isn't it?

19 A. Yes, sir.

15:30:15 20 Q. Okay. So it's not your conclusion, is it?

21 A. No, I was not here, sir.

22 Q. Okay. Now, we look at now paragraph 20 on page 10. That  
23 is just one down and you will see, I think about ten lines down,  
24 four from the bottom. This is again a quote from the TRC  
15:30:45 25 statement, I believe. It's -- and I will read it. "They became  
26 merchant generals more interested in material acquisitions from  
27 the politicians than in a professional armed service. Therefore,  
28 when the war came, there was no officer corps to handle it."  
29 Now, this is a statement from Major Abu Noah?



1 A. Yes.

2 Q. Now, that is just his opinion, isn't it?

3 A. It is.

4 Q. Yes. Now, you would agree with me that others might also  
15:31:24 5 have a different opinion to Major Noah on that matter?

6 A. But, on the other hand, I find so much support for the  
7 vision that he may be right in his opinion.

8 Q. But most of your support is coming from the TRC report and  
9 Keen and untested sources, isn't it?

10 A. Well, yes, but, based on that, I find support in the thing  
11 that Major Noah says.

12 Q. Now, his opinion that the Sierra Leone military and officer  
13 corps couldn't handle the war. Now at the time when the war came  
14 Johnny Paul Koroma was an officer. Strasser, who later became  
15:32:15 15 chairman of the NPRC, was an officer. TRC-01 was an officer.  
16 Brigadier Kelly Conteh was an officer. I believe Tom Carew was  
17 an officer. In fact, there were many officers. So, I -- would  
18 you agree with me that there was an officer corps?

19 A. I don't think I ever stated there was not an officer corps  
15:32:48 20 as such in the Sierra Leone Army. If you relate to that  
21 sentence, again, I know now what an opinion means but it, in  
22 fact, states that there were a lot of high officials, senior  
23 officers on the take. And taking positions up in turn for  
24 favours, et cetera.

15:33:12 25 Q. But there was an officer corps?

26 A. Yes, I think there was an officer corps in the SLA.

27 Q. Now, if we turn to paragraph 23 of your report, which is on  
28 page 12, and this is -- I read three-and-a-half lines down -- and  
29 this is again a quote from the TRC report and it says: "The

1 Commission heard numerous testimonies regarding deficiencies in  
2 the conventional state security at the outbreak of the war. In  
3 their totality these accounts paint a picture of grave  
4 abandonment of the basics needs of the RSLMF under the APC. To  
15:34:02 5 the extent that the country was devoid of an operational army  
6 when it needed one most in 1991." Now, again, that's just the  
7 view of the TRC, isn't it?

8 A. Sorry, I missed you a bit but it ends at 22 at the bottom,  
9 right? At page 12 on top?

15:34:25 10 Q. It's page 12, paragraph 23, and it just starts at  
11 three-and-a-half lines down "The Commission heard"?

12 A. Now I see it. Yes, that's correct.

13 Q. Okay. So again, that's just an opinion of the Commission,  
14 isn't it?

15:34:45 15 A. It is.

16 Q. Now, if we go back at, sorry to have skipped ahead,  
17 paragraph 21 on page 11, again there is a quotation from the TRC  
18 report, and I read a part of it. You see at 21: "Further  
19 marginalisation of the army continued in the 70s and 80s as noted  
15:35:13 20 in the TRC report. By commencement of the conflict the army did  
21 not have movable vehicles, communication facilities were  
22 non-existent and most of the soldiers were not combat ready."  
23 Now, again, this is something from the TRC report, isn't it?

24 A. It is.

15:35:31 25 Q. And this is at the start of the conflict. Now, according  
26 to the evidence of TRC-01, movable vehicles were available during  
27 the conflict, so it may be that this statement by the TRC again  
28 is not entirely accurate?

29 A. Well, I think that they are referring to different

1 timeframes, to start with.

2 Q. So at least we can say then, even well past this timeframe  
3 they had movable vehicles?

4 A. I have not been aware of that but I know it was stated by  
15:36:16 5 TRC-01.

6 Q. Okay. Now, the report also mentions that by the time the  
7 war came, the army was not combat ready. This is 21, page 11.  
8 Again, I apologise for not -- "and most of the soldiers were not  
9 combat ready." Do you see that in the first three lines?

15:37:21 10 A. Yes, I see it, yes.

11 Q. Now, are you aware that in 1989 that major military  
12 exercises were carried out in preparation for conflict?

13 A. No. In fact, the research I've done, that I've come across  
14 was, in fact, by that timeframe the SLA was more a ceremonial  
15:37:46 15 army, where people have not been to the combat ranges for months  
16 or even years.

17 Q. Right. I would actually suggest that is 1961 because  
18 according to retired Brigadier Kelly H Conteh in 1989 he  
19 organised two exercises involving the army in preparation for the  
15:38:09 20 guerrilla war against the RUF. Now, if that is to be believed  
21 that would be an indication that the army was to a degree combat  
22 ready, wouldn't it?

23 A. I -- I couldn't possibly take on that conclusion because  
24 you can state or say that you carry out exercise but that doesn't  
15:38:32 25 make you combat ready. Moreover, the chief of defence staff in  
26 1991, and again that is a person I think is the one who should  
27 know, states that he was caught so to speak with his pants down  
28 when the war started, so I have no reason to believe that.

29 Q. But then he is only answering specific questions put to him

1 and what does he mean by caught with his pants down? That  
2 doesn't many he is not combat ready, does it?

3 A. Well, sir, if anyone in my entire career would have said to  
4 me, now, you are caught with your pants down because you are --  
15:39:08 5 then I know exactly what they mean. They mean that you, in all  
6 aspects for the war, you are not, or for any operation, you are  
7 not prepared. That is my understanding.

8 Q. Now, paragraph 24 on page 13, we have this finding, I think  
9 we have already dealt with this, that the TRC, to the extent the  
15:39:43 10 country was devoid of an operational army, when it needed one  
11 most in 1991. Do you see that? I think it's three lines down.  
12 I think we may have looked at this?

13 A. Yes.

14 Q. Now again, that is just the view of the TRC, isn't it?

15:39:59 15 A. Well, this specific quote, it is.

16 Q. And if we go on further, I think it says, in terms of  
17 communications, I think we have paragraph 24, and this is at the  
18 final part, is that most of the units deployed along the first  
19 line of defence without any form of modern communication  
15:40:36 20 equipment?

21 A. Yes, sir, I see it.

22 Q. If we turn over the TRC report, it says, "With vision when  
23 it is stated by the commencement of conflict, communication  
24 facilities were non-existent?"

15:40:53 25 A. I see that, sir, yes.

26 Q. Now, if you had runners available, that would be a form of  
27 communication, wouldn't it?

28 A. Well, if you may recall, the reason why I quoted one of the  
29 characteristics of Colonel Iron concerning --

1 Q. We will come to that.

2 A. I want you to explain that. We addressed that and I said,  
3 if you only use runners, then, you know, if you are very  
4 friendly, then you may come to the conclusion there is some form  
15:41:26 5 of communication. How reliable, how unreliable that may be.

6 Q. But each battalion had communication equipment, didn't it?

7 A. Not according to what I have read.

8 Q. Okay. And each militia garrison at Daru, Makeni had  
9 communication equipment?

15:41:49 10 A. Again, I went by this statement and then tried to link it  
11 to my further questions later on in the conflict.

12 Q. But clearly this statement "communication facilities were  
13 not existent" isn't right, is it? It's not entirely accurate,  
14 let's put it that way.

15:42:13 15 A. Well, if you say communication was available because we  
16 used runners, runners is not a communication equipment. You use  
17 radios, batteries.

18 Q. And the radio communication equipment was with each  
19 battalion and with each garrison?

15:42:28 20 A. Again, I have stated, it's somewhere in my report, that a  
21 senior officer, brigadier level, states how, in the front units  
22 in the RUF, the units had to rely on runners only, and that was a  
23 great danger, because there was no communication equipment  
24 available.

15:42:53 25 Q. We are not talking about the RUF general.

26 A. No, I am sorry. I may have said it wrongly. I was saying  
27 that, and I don't know where it is but it's somewhere in my  
28 report, that a very senior officer talks about the fact that the  
29 frontline units fighting the RUF, were deprived of communication

1 equipment and therefore had to use runners, and that's what I  
2 relied on.

3 Q. But had you been aware of other sources of information that  
4 had indicated that communication equipment was available, you may  
15:43:32 5 have changed your view?

6 MR FOFANAH: Objection, objection. Your Honours, counsel  
7 has, in fact, read out two pieces of statements from the TRC  
8 report. One of them clearly indicated there may have been a form  
9 of communication equipment, albeit that they were not modern.

15:43:54 10 Now I see he is moving away from that and kind of restricting the  
11 witness only to the latter part of what he read. He read both  
12 statements out to the witness, starting from paragraph 24, the  
13 last sentence, on to page 13. And now he is merely confining him  
14 to page 13, the first two lines at the top.

15:44:30 15 MR KNOOPS: Furthermore, my objection would be that the  
16 Prosecution is putting the expert -- the statement of Kelly  
17 Conteh before the TRC in order to establish that things were, in  
18 view of the Prosecution, different. So the Prosecution uses that  
19 report in order to sustain a certain Prosecution position while,  
15:44:57 20 in this question, in all fairness to the Prosecution, the same  
21 individual, the same brigadier has testified about communication  
22 in a different manner than the Prosecution mentions and put it to  
23 the expert. That is on page 46, footnote 180. So, in all  
24 fairness to the expert, the Prosecution is foreign shopping  
15:45:30 25 between the statements given before the TRC once it's in their  
26 advantage and, when they come to another question, they not quote  
27 the same statement before the TRC in order to put something  
28 different to the expert.

29 So my objection is that if the Prosecution is going to put

1 a statement, for instance, of Kelly Conteh to the expert, it  
2 should be in the correct context, and it cannot be just a portion  
3 from that statement in their advantage while, on the other hand,  
4 when it comes to communication, this individual has never said,  
15:46:15 5 before the TRC, that the communication system was in place. And  
6 now putting to the expert that there was no communication system,  
7 according to the TRC, I think this is misleading the expert.

8 PRESIDING JUDGE: All right. We have just had two  
9 objections in a row. Can you remember the first one, Mr Agha?

15:46:37 10 MR AGHA: Not really, Your Honour.

11 PRESIDING JUDGE: You see, we should deal with objections  
12 one at a time. It's not fair to Mr Agha to be hit by two  
13 objections at once and expect him to be able to answer *seriatum*  
14 each one.

15:46:56 15 MR KNOOPS: I would apologise.

16 MR AGHA: I would comment in respect generally, Your  
17 Honour. This is in cross-examination and we are putting various  
18 parts of the TRC report and part of the cross-examination is to  
19 show that the TRC report, in the view of the Prosecution, is not  
15:47:12 20 to be relied upon, and is not a sufficiently accurate source to  
21 be used as a large part of the report. So, of course, indeed, as  
22 my learned friend Mr Knoops has said, there are parts which  
23 support the case, there are parts which don't support the case,  
24 there are parts which are entirely inaccurate, entirely untrue.

15:47:31 25 But this is a document which was relied upon, and we are looking  
26 at other pieces of evidence that have come to light, say, since,  
27 I think, maybe the TRC was concluded four, five years ago, I am  
28 not sure, to see whether these conclusions are entirely fair and  
29 balanced, as reached by the TRC, and should be relied upon, as

1 such.

2 PRESIDING JUDGE: Well, in relation to the two objections,  
3 I must confess I have forgotten the first one myself. I would  
4 point this out, and I think this is what Mr Fofanah was saying,  
15:48:04 5 that the general is not aligning with the TRC opinion. The  
6 general has never said that communication facilities were  
7 non-existent. The general, in fact, has said that the SLA hardly  
8 had any modern communications equipment, but he does not use the  
9 word "non-existent." Is that what you were saying, Mr Fofanah?  
15:48:34 10 And you were saying that the question possibly confused the  
11 sources of either statement.

12 MR FOFANAH: Yes, Your Honour. Given that it was counsel  
13 himself who read both statements out to the witness. But then,  
14 when he was asking his question, he merely confined him to the  
15:48:52 15 latter bit of the statement and then made the categorical  
16 inference that, in fact, there was no communication equipment.

17 PRESIDING JUDGE: All right. Well, what is your answer to  
18 that, Mr Agha?

19 MR AGHA: Well, actually, the first part that I read it  
15:49:07 20 says, "The first line of defence was without any form of modern  
21 communication equipment." The second part, which I also read, is  
22 communication facilities were non-existent, so they both amount  
23 to the same thing, I think.

24 PRESIDING JUDGE: No, I don't think they do. Non-existent  
15:49:25 25 is not the same as hardly had any. Hardly had any acknowledges  
26 the existence of something.

27 MR AGHA: The first line is "were without any form of  
28 modern communication equipment." That is the first line "without  
29 any form," so there is none. The second one --



1           PRESIDING JUDGE: No, no. Sorry, I think there is some  
2 confusion here. I think what Mr Fofanah is referring to, to the  
3 general statement.

4           MR AGHA: Right.

15:49:54 5           PRESIDING JUDGE: You just quoted from the TRC.

6           MR AGHA: Both of them

7           PRESIDING JUDGE: If you go back a sentence, the general  
8 says, "The SLA hardly had any modern communication," and then the  
9 general goes on to quote Brigadier Kelly Conteh.

15:50:11 10          MR AGHA: Right.

11          PRESIDING JUDGE: Who goes further than what the general  
12 said. Brigadier Conteh goes further by saying that communication  
13 equipment was, in fact, non-existent.

14          MR AGHA: Okay.

15:50:25 15          PRESIDING JUDGE: I think Mr Fofanah is saying that you are  
16 attributing that statement to the general's opinion.

17          MR AGHA: Right. That wasn't meant to be by my intention.

18          PRESIDING JUDGE: Is that correct, Mr Fofanah?

19          MR FOFANAHA: Respectfully, Your Honours, if I may clarify,  
15:50:43 20 I was saying my learned colleague read out what I considered to  
21 be the two statements. The first one was by Brigadier Kelly  
22 Conteh, which stopped at modern communication equipment. In  
23 other words, he was saying that most of the units deployed along  
24 the first line of defence, in 1991, were without any form of  
15:51:03 25 modern communication equipment. That is the first statement.

26 Then he went further and quoted from the TRC that communication  
27 facilities were non-existent. Then, when putting questions to  
28 the witness, he merely confined him to the TRC inference and then  
29 categorically stated that there were, in fact, no form of

1 communication equipment. I was saying that the two statements,  
2 as I understood them, were, in fact, contradictory, because Kelly  
3 Conteh was not saying that there was no form of communication  
4 equipment. He was just saying there was no modern form of  
15:51:43 5 communication equipment. So, in all fairness to the witness, my  
6 learned colleague should not confine him to the categorical  
7 inference that there was no form of communication equipment when  
8 he had, in fact, put to him the earlier statement of Kelly  
9 Conteh.

15:52:04 10 PRESIDING JUDGE: Well, I must say --

11 MR AGHA: They are both TRC statements, I would say.

12 PRESIDING JUDGE: But Kelly Conteh's statement is, in fact,  
13 supported by the general.

14 MR FOFANAH: Yes.

15:52:20 15 PRESIDING JUDGE: The general says that Kelly Conteh's  
16 statement is in fact supported by the TRC, when the TRC mentions  
17 communications facilities were non-existent. That's what the  
18 general says himself.

19 MR FOFANAH: But, respectfully, Your Honours, it's not one  
15:52:39 20 and the same as saying they were without any form of modern  
21 communication equipment. I am saying that to merely say that  
22 there was no form of communication equipment, reading from that  
23 statement, without any form of modern -- probably this should be  
24 my emphasis, on the word "modern." It suggests there may have  
15:53:05 25 been communication equipment, but then albeit that they were not  
26 modern.

27 JUDGE SEBUTINDE: Could I say something here, as I sit here  
28 listening to this debate across the aisle. We are discussing a  
29 document, the author of which is seated in front of us as the

1 expert on the subject. Major Prins is sitting here. He now has  
2 the advantage of -- sorry, General Prins is sitting here in front  
3 of us. He has the advantage of actually reading and referring to  
4 his report. Now, I have followed the questions by Mr Agha and  
15:53:39 5 every time he quotes an excerpt from that report, he follows it  
6 with a question as to whether this is a quotation from the TRC  
7 report or it's a quotation from a statement of a TRC witness, or  
8 whether this is the opinion of General Prins himself, and this  
9 distinction has consistently been made.

15:53:58 10 Now, whenever the Defence rises up to object on the grounds  
11 that the witness may be confused by the question, or the witness  
12 has been referred to only part of the report and not the other  
13 paragraph in the report, I'm just wondering if it's not -- if you  
14 are not being unduly concerned, because this is the author of the  
15:54:22 15 document. It is General Prins' own document, and he is aware  
16 that in paragraph 19 he said one thing, and probably in paragraph  
17 46 he said something completely different. He is able to speak  
18 for himself on this and I think there is no need every now and  
19 then to object, in cross-examination, to the manner in which  
15:54:45 20 counsel is reading out of this report or not reading other  
21 things. General Prins is not an ordinary witness. He is an  
22 expert, and he is the expert on this subject, probably more than  
23 any of us know, on this subject. And I am sure if he doesn't  
24 understand the question, he is able to answer or to even say he  
15:55:06 25 doesn't understand the question and ask for clarification. That  
26 is the way I see it. I see absolutely nothing wrong in the  
27 manner, in the way, in which Mr Agha is proceeding to ask these  
28 questions.

29 MR FOFANAHA: Respectfully, Your Honours, I am totally in

1 harmony with what you have just said, suffice to say that the  
2 transcripts and the record will show that when Mr Agha was  
3 putting questions to the witness, at one point, he, I will humbly  
4 say, was trying to mislead him from the inference that he drew  
15:55:44 5 from the quotations he made from the report.

6 In that context, since he was merely asking for a direct  
7 answer from the witness, to say, "yes" or "no," it will have been  
8 difficult for him to draw that inference without the aid of  
9 counsel. Because what I understood Mr Agha to have done, was to  
15:56:04 10 have quoted the two statements and then just make an inference,  
11 and the two statements are not one and the same. I mean, I was  
12 trying to ensure that he doesn't mislead the witness by putting  
13 things that are not correct. That is all I was trying to do and  
14 I think the transcripts will reflect that. But if that is the  
15:56:26 15 direction of the Bench, then I will rest my case.

16 PRESIDING JUDGE: We will allow the questions to be put to  
17 General Prins and, if he doesn't understand what is being put to  
18 him, then both Mr Knoop and Mr Fofanah can renew their  
19 objections at that stage. But let's hear what the general has to  
15:56:49 20 say first. Go ahead, Mr Agha.

21 MR AGHA: I must say I am not trying to mislead the  
22 general.

23 PRESIDING JUDGE: No, I don't think that either, but renew  
24 your question.

15:57:00 25 MR AGHA:

26 Q. So what I'm suggesting to you, general, is there was some  
27 communication ability available at the time of the start of the  
28 war with the RUF in 1991; would you agree with that?

29 A. Now, I hope I still understand it all, but based on my

1 findings, the answer would be no. And, of course, then the  
2 statement will be made by TRC-01, and I understand that. But by  
3 merely saying we had communications, you know, it's such a  
4 difficult topic. Are you talking about radio equipment? Are you  
15:57:39 5 talking about trained personnel? Are you talking about spare  
6 parts; about communication plans, and all that? It's a very  
7 difficult issue. So, by only stating, which I have to respect,  
8 of course, someone's says, "Well, we had communication," you know  
9 that, from a military point of view, doesn't convince me. If I  
15:58:02 10 get now statements about diagrams and frequency charts and, you  
11 know, all that and it works, and there are spare parts and good  
12 equipment that works in the bush and, et cetera, then you might  
13 come to the conclusion. I am afraid just -- if you put it to me  
14 like that, then it wouldn't convince me at this stage.

15:58:23 15 Q. But if you had more information before you, that there was  
16 radio equipment with battalions at the front and at the various  
17 garrisons, would that convince you that there was communication  
18 facilities?

19 A. It would, if I then would make a study of looking at a  
15:58:41 20 battalion, go in detail on how the battalion was organised in the  
21 RUF, fighting the RUF; what equipment did they have; how were the  
22 communication plans; what sort of radio equipment did they have,  
23 et cetera; how was the training level. But then you have to go  
24 in that in detail. It's a difficult type of sport. And only  
15:59:06 25 saying, "Yeah, we had good equipment," or "good communication,"  
26 as such, from a military perspective, doesn't convince me at this  
27 point.

28 Q. But all the detail you've just referred to, let's say the  
29 charts and the communication systems, and how it was working,

1 none of that information has been made available to you, has it?

2 A. No. What has been made available, and that was of course  
3 the discussion, the fact that senior officers expressed their  
4 view of the hardly existence or non-existence, or what have you,  
15:59:44 5 of communication equipment.

6 Q. So that was really their opinion of the situation?

7 A. Yes.

8 Q. Now, I'd like to go away from radio communication for a  
9 moment.

15:59:58 10 PRESIDING JUDGE: Well, that might be an appropriate time  
11 to adjourn for the day, Mr Agha. General, we are going to  
12 adjourn until 9.15 tomorrow morning, and I will renew my caution  
13 to you about not speaking about the evidence with anyone.

14 THE WITNESS: Your Honour.

16:00:19 15 PRESIDING JUDGE: I don't know if there are any persons who  
16 don't already know this, but there was an announcement today from  
17 the Registrar, confirming that next Monday, 23 October, is a  
18 Special Court holiday. So obviously the Court will not be  
19 sitting on Monday. Right. We will adjourn.

20 [Whereupon the hearing adjourned at 4.00 p.m. to be  
21 reconvened on Friday, the 20th day of October 2006  
22 at 9.15 p.m.]

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**WITNESSES FOR THE DEFENCE:**

<b>WITNESS: WILLEM PRINS</b>	<b>2</b>
<b>EXAMINED BY MR KNOOPS</b>	<b>2</b>
<b>EXAMINED BY MR FOFANAH</b>	<b>30</b>
<b>CROSS- EXAMINED BY MR AGHA</b>	<b>35</b>