



Case No. SCSL-2004-14-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA

THURSDAY, 30 NOVEMBER 2006
9.39 A.M.
TRIAL

TRIAL CHAMBER I

Before the Judges:

Bankole Thompson, Presiding
Pierre Boutet
Benjamin Mutanga Itoe

For Chambers:

Ms Roza Salibekova
Ms Anna Matas

For the Registry:

Mr Thomas George

For the Prosecution:

Mr Christopher Staker
Mr Joseph Kamara
Mr Mohamed Bangura
Ms Lynn Hintz (Case manager)

For the accused Sam Hinga
Norman:

Dr Bu-Buakei Jabbi
Mr Alusine Sesay
Mr Kingsley Belle (legal assistant)

For the accused Moinina Fofana:

Mr Arrow Bockarie
Mr Michiel Pestman
Mr Andrew Ianuzzi
Mr Steven Powles

For the accused Allieu Kondewa:

Mr Yada Williams

1 [CDF30NOV06A - MD]

2 Thursday, 30 November 2006

3 [Open session]

4 [The accused present]

09:23:33 5 [Closing arguments]

6 [Upon commencing at 9.39 a.m.]

7 PRESIDING JUDGE: Good morning, learned counsel. Let me

8 first of all say that our plan is to complete the closing

9 arguments today. We do not intend to go beyond that and

09:38:48 10 otherwise it would disrupt a lot of other matters that the

11 Chamber has to address over the next 24 hours and we do not have

12 the luxury of postponing those important and urgent matters that

13 need to be dealt with.

14 So, Mr Powles, based on the three-hour time limits that you

09:39:14 15 requested, by my reckoning, when we adjourned yesterday, you had

16 used up 100 minutes. The balance of your allotted time is 80

17 minutes. To satisfy you, the analysis is as follows: You

18 commenced your address at 10.45 a.m. yesterday. We took a break

19 at 11.30 a.m. and resumed the proceeding at 11.55 a.m., and then

09:39:41 20 we adjourned at 1:00 p.m.. So let's proceed.

21 JUDGE ITOE: Mr Powles, may well not consume the time that

22 is allotted to him. I am sure he will beat the clock on this.

23 MR POWLES: That's absolutely right. I anticipate I will

24 be approximately 45 minutes more, if that.

09:40:05 25 PRESIDING JUDGE: Thank you. That is very helpful.

26 MR POWLES: Your Honours, a matter that arose towards the

27 end of yesterday was Your Honour's question in relation to how

28 the Prosecution pleaded count 8, child soldiers, in the

29 indictment. And, of course, the answer is enlistment and use of

1 child soldiers. The Prosecution raised some concerns in relation
2 to our statement that recruitment could be the basis of
3 liability, as put by the Prosecution. Although that word, it's
4 fair to say of course, does not appear in the indictment, it
09:40:43 5 appeared in a number of other statements given by the Prosecution
6 in advance of this trial. It's appeared in the OTP supplementary
7 pretrial brief. It was mentioned by both Mr Crane and Mr Kamara
8 during the OTP opening statement before this Tribunal, and we
9 would submit that, in any event, there is not a huge difference
09:41:03 10 between the term enlistment and recruitment.

11 Your Honours, yesterday I got to the point of completing
12 the count-by-count analysis of the various crimes within the
13 jurisdiction of this Court. What I propose to do for the
14 remainder of our address is deal with two modes of liability;
09:41:26 15 namely, joint criminal enterprise and command responsibility.
16 Thereafter, I will deal with a very brief section on the
17 Prosecution's analysis in their final brief of the Defence case
18 and then, if I may, make a few closing remarks.

19 Joint criminal enterprise. The elements of a joint
09:41:48 20 criminal enterprise that must be proved beyond reasonable doubt
21 are these: Firstly, the plurality of persons. We would submit
22 that, pursuant to the *Brdjanin* trial decision, the physical
23 perpetrator of the crime has to be shown to have been a part of
24 that plurality. Secondly, it must be shown that there is an
09:42:10 25 existence of a common plan, purpose or design, which amounts to
26 the commission of a crime as provided for in the Statute.
27 Thirdly, it must be shown that the accused participated in such
28 common plan. Fourthly, it must be shown that there is a shared
29 intention to commit a crime in furtherance of the common plan, or

1 personal knowledge of a system of ill-treatment and intent to
2 further the criminal purpose or system. Fifthly, and this
3 relates to the third category of joint criminal enterprise, where
4 the crime was charged as a natural and foreseeable consequence of
09:42:51 5 the execution of the enterprise, and the accused participated in
6 the enterprise with the awareness that such a crime was a
7 possible consequence of its execution, and willingly took the
8 risk.

9 Those are the five elements that we say the Prosecution
09:43:06 10 must satisfy you of beyond reasonable doubt in order to make a
11 finding of joint criminal enterprise. Of course, it's the first
12 four for category one of JCE and the additional fifth element for
13 the third category of JCE.

14 Turning then to the first, plurality of persons. The
09:43:25 15 Prosecution assert the plurality in this case, by referring to
16 the evidence of witnesses who say that Norman, Fofana and Kondewa
17 had executive power in the CDF, that they were some sort of Holy
18 Trinity. Leaving aside the credibility or otherwise and
19 reliability of witnesses who made those claims, we would submit
09:43:46 20 that it is of crucial importance to look at the actual ties
21 between those three persons, the actual connections between those
22 three; the extent to which they worked and operated together,
23 rather than simply being present together at any given time.

24 We would submit what is of even more importance is the
09:44:11 25 Prosecution demonstrating and proving beyond reasonable doubt
26 that the physical perpetrators of the crimes were part of any
27 plurality of persons that the Prosecution claim the accused to be
28 a part of.

29 JUDGE BOUTET: Sorry, Mr Powles. Don't go too fast. I

1 need to properly understand what you are trying to argue at this
2 moment. I would ask you if you could just repeat this last
3 portion of your pleadings, at least.

09:44:48 4 MR POWLES: The last portion is that we would submit the
5 Prosecution must be able to prove beyond reasonable doubt that
6 the physical perpetrators of the crimes were part of any
7 plurality of persons that the Prosecution claim that the accused
8 was a part of.

09:45:03 9 We base that submission on the Trial Chamber decision in
10 *Tadić*. We passed up one page of the judgment yesterday. It's at
11 paragraph 333, and the Trial Chamber -- sorry, I meant to say
12 *Brdjanić*. The date of the judgement is 1st of September 2004.
13 The Trial Chamber in *Brdjanić* said this: "In order to hold the
14 accused criminally responsible for the crimes charged in the
09:45:35 15 indictment pursuant to the first category of JCE, the Prosecution
16 must inter alia establish that, between the person physically
17 committing a crime and the accused, there was an understanding or
18 an agreement to commit that particular crime."

09:46:02 19 And that's at paragraph 344 of the *Brdjanić* Trial Chamber
20 judgement, Radoslav Brdjanić. In that regard, we would submit
21 that the concession of the Prosecution at paragraph 14 of their
22 final brief --

23 JUDGE ITOE: Is this paragraph 14 of the *Brdjanić* decision
24 which you distributed?

09:46:19 25 MR POWLES: Your Honour, yes.

26 JUDGE ITOE: What is this paragraph?

27 MR POWLES: It's paragraph 344.

28 JUDGE ITOE: 344?

29 MR POWLES: Your Honour, yes.

1 JUDGE ITOE: Thank you.

2 JUDGE BOUTET: Mr Powles, you did refer to the first
3 category of JCE.

4 MR POWLES: Your Honour, yes.

09:46:34 5 JUDGE BOUTET: But this particular paragraph makes
6 reference to a third category of JCE. Are you saying that these
7 elements that must be proven are the same, whether it's a first
8 category or third category?

9 MR POWLES: Your Honour, no. The paragraph refers to the
09:46:49 10 first category of JCE.

11 JUDGE BOUTET: If I read in the middle, "In order to hold
12 him responsible pursuant to the third category of JCE. "

13 MR POWLES: Yes, Your Honour. That's not the part of the
14 paragraph that I read out. The crucial part is the first part.

09:47:09 15 JUDGE BOUTET: Okay.

16 MR POWLES: Yes, for the third category of JCE.

17 JUDGE BOUTET: Fine. Thank you.

18 MR POWLES: And, in any event, in relation to the third
19 category of JCE, as Your Honour will see, if Your Honours read
09:47:20 20 on, "In order to hold him responsible pursuant to the third
21 category of JCE, the Prosecution must prove that the accused
22 entered into an agreement with a person to commit a particular
23 crime." So, again, there needs to be that nexus between the
24 accused and a person who is about to commit a particular crime.

09:47:44 25 It's for that reason that we would submit the concession of
26 the Prosecution, at paragraph 14 of their final brief, is
27 important. They say that the Prosecution does not suggest that
28 the CDF was itself a joint criminal enterprise. They do not say
29 that every member of the CDF was a participant in any joint

1 criminal enterprise. They do not say that every member of the
2 CDF committed crimes. This makes who the Prosecution allege were
3 in the JCE a little hard to decipher. Was it just the three
4 accused? Was it anyone in addition, if not all in the CDF?
09:48:29 5 Which parts of the CDF, and how can you identify them beyond
6 reasonable doubt?

7 We would submit that the Prosecution must prove, with
8 credible and reliable evidence, a specific and actual nexus
9 between the accused and the perpetrators of specific crimes.
09:48:44 10 This, we submit, in relation to Mr Fofana, they have singly
11 failed to do.

12 In relation to each attack, it must be shown that the
13 perpetrators of the crime were linked in some way to Mr Fofana;
14 not by virtue of their membership of the CDF, not by virtue of
09:49:06 15 them being Kamajors, but by some direct link. We would submit,
16 on the evidence of this case, that's very difficult, if not
17 impossible, for the Prosecution to prove because, of course, the
18 Kamajors would often decide an act unilaterally. Decisions were
19 not only taken at Base Zero. There were other sources of
09:49:25 20 Kamajors for various attacks on various targets. It was not only
21 the Kamajors at Base Zero. There was Base One and Kamajors in
22 the field, in the chiefdom, communities who also took decisions
23 to carry out various attacks.

24 We would say that the Tongo attack is a good example,
09:49:42 25 planning taking place at Panguma, various sources of Kamajors
26 arriving at Tongo to carry out the attack. Three attacks,
27 according to one Prosecution witness, occurring on three separate
28 occasions, only successful on the last. We would say you need to
29 be sure that the persons who committed alleged crimes in Tongo

1 were in some way specifically connected to Moinina Fofana, not
2 simply by virtue of their membership of the CDF.

3 The Prosecution say that you they don't need to show a
4 connection between the accused and the physical perpetrator.

09:50:21 5 They used two examples yesterday, one of Milosevic and the other
6 top Nazi leaders, vis-a-vis the need for there to be a connection
7 between persons at the top of any joint criminal enterprise and
8 the actual persons committing the crimes.

9 We would say two things in response to that. First of all
09:50:41 10 *Brdjani n*, which of course I have already set out to Your Honours.
11 And, secondly, we would say it's hardly fair, right or proper to
12 compare Mr Fofana to Milosevic, the former head of state of
13 Yugoslavia, the commander of the fourth largest army in Europe.
14 It is hardly fair, right or proper to compare Mr Fofana to the
09:51:08 15 top Nazi leaders who were responsible of the extermination of six
16 million Jews in Europe.

17 Turning then to the second requirement, common plan, design
18 or purpose. At paragraph 235 of the Prosecution final brief, the
19 Prosecution say that the common plan was explicitly expressed by
09:51:30 20 Norman at War Council meetings at Base Zero. At most, it's
21 alleged that Fofana was present at such meetings. The plan was
22 that if the CDF were to take over Freetown, Bo and Kono, that
23 they would control Sierra Leone for three years before inviting
24 Kabbah to come back and take power. Now, again, we've studied
09:51:56 25 the Statute of this Court in detail and we've not come up with
26 that as a crime within the jurisdiction of this Court which, of
27 course, the common plan, design or purpose must be.

28 Again, we would refer Your Honours to paragraph 14 of the
29 Prosecution final brief. They do not dispute that the CDF was

1 fighting for the return of the constitutionally elected
2 government. That is not, and cannot, be a crime.

3 The Prosecution put forward a separate or different
4 possible common plan at paragraph 246 of their final brief when
09:52:36 5 they say there was a policy of targeting people who were in
6 anyway connected to the enemy. Again, we would respectively draw
7 the Trial Chamber's attention to the evidence of Dr Hoffman. The
8 primary and core aim of the CDF was the protection of the
9 civilian population. We would submit that it's incompatible and,
09:53:01 10 to an extent, difficult to comprehend how there could be a
11 policy, on the one hand, to target civilians, when at the same
12 time the CDF's main driving incentive was the protection of the
13 civilian population. Stress, we would, it must be shown by the
14 Prosecution that the plan is unlawful. That the plan was a crime
09:53:27 15 or involve the commission ultimately of a crime.

16 Yesterday the Prosecution gave the classic example in
17 relation to JCE of the bank robbery. We would submit that that
18 is not necessarily analogous here because, of course, the robbing
19 of a bank is, and would always be, a crime. For that analogy to
09:53:53 20 be sound, we would suggest that it would need to be shown that
21 everything the CDF did as part of their conduct was criminal but,
22 as the Prosecution accept, the CDF itself is not an illegal
23 organisation. It is not part of any JCE. Some part of the CDF
24 were fighting for the cause of good, with good motives,
09:54:17 25 legitimately to liberate the country and protect communities.
26 Therefore we would submit, that it's necessary to look at what an
27 individual within the CDF was actually doing and whether they
28 were a party to the commission or the agreement to commit any
29 crimes and in relation to Fofana, we say that that simply cannot

1 be done.

2 Thirdly, the participation in the execution of the common
3 plan. In the pre-trial brief the Prosecution correctly stated
4 that participation of the accused in the common plan must be
09:54:53 5 shown. They state the degree of participation required, and this
6 is the test they set down, referring to two cases, *Kvočka* and
7 *Simić* - two separate cases - the degree of participation required
8 and there are two words or three, it must be significant so as to
9 render the enterprise efficient or effective. So the accused's
09:55:16 10 participation must be significant so as to render the enterprise
11 efficient or effective and that is based on authorities that the
12 Prosecution themselves rely upon.

13 The Prosecution allege that each accused participated in
14 the plan. Firstly, by giving orders. Now, in relation to
09:55:35 15 Mr Fofana we would submit there are very limited examples of him
16 giving any orders or directions, and such that he did give, we
17 would submit, they were all legitimate.

18 Secondly, the Prosecution say the distribution of supplies
19 demonstrates Fofana's participation. Well again, we would say
09:55:54 20 that the evidence suggests that supplies were only provided by
21 him on orders from Norman.

22 Thirdly, recruiting and training. No evidence of that in
23 relation to Mr Fofana.

24 Fourthly, use of radio equipment. Again, we would say no
09:56:10 25 evidence of that in relation to Mr Fofana.

26 Fifthly, co-ordinating or directing troop movements. Well,
27 according to Prosecution witness Colonel Iron, that was more
28 Albert Nallo's responsibility than Moinina Fofana's.

29 Sixthly, co-ordinating and directing weapons and supply

1 distribution. Again, that was not Fofana's role. If anyone, it
2 was two persons, Mr Norman's and Mr Lumeh's.

3 Seventh, organising financial and resource support. Again,
4 in relation to Mr Fofana, no evidence of that.

09:56:50 5 And eighth, last but not least, organising and
6 participating in the initiating process.

7 Those are the eight things the Prosecution point to to say
8 that the accused participated. Again in relation to the eighth,
9 no evidence that Mr Fofana participated to any great degree in
09:57:09 10 the initiation process.

11 All those matters are systematically dealt with and
12 considered in our Defence final brief and, accordingly, I don't
13 rehearse all of those arguments now.

14 But we would submit, that there is no evidence of Fofana's
09:57:25 15 significant participation in any common plan to commit crimes or
16 otherwise. Even in relation to Mr Fofana's presence at and
17 things said by him at meetings and the alleged distribution of
18 arms by him, we would submit that the Prosecution must show and
19 have failed to show, beyond reasonable doubt, that by virtue of
09:57:48 20 things said by him, specific crimes were committed.

21 We would submit that by virtue of distributing weapons by
22 him, it has not been shown that specific crimes were committed by
23 those persons to whom he gave weapons to.

24 Again, the Prosecution concede that the CDF itself was not
09:58:12 25 a joint criminal enterprise. We say most members in it had
26 honourable and legitimate aims. It follows, therefore, that not
27 every contribution to its part of the contribution was a part of
28 an unlawful enterprise. We say that the Prosecution must prove
29 that Fofana's contribution to the CDF was not part of that cause

1 for good. Mr Fofana is proud of his contribution, modest or
2 otherwise, to the restoration of the democratically elected
3 government of this country, and the end to human rights abuse
4 here in Sierra Leone.

09:58:56 5 Shared intention. As support for Fofana's shared intention
6 to commit crimes, at paragraph 250 of their final brief, the
7 Prosecution made reference to reports made to him about what was
8 happening in battles. It is submitted that there is insufficient
9 credible evidence, if any, that Fofana was in receipt of reports
09:59:22 10 of specific crimes committed by the CDF in Sierra Leone.

11 The Prosecution in paragraph 250 makes specific reference
12 to a report that Tongo had fallen after four days. That report,
13 ostensibly given to Mr Fofana. However, we would say that the
14 thrust of the reports was simply that Tongo had fallen, rather
09:59:48 15 than demonstrating the commission of any crimes therein.

16 In any event, and this is crucial, such reports would have
17 been made after the event and we say, therefore, cannot
18 demonstrate the intention of Fofana before any operation was
19 carried out.

10:00:11 20 So by way of conclusion, with regard to Fofana's
21 involvement in any JCE, certainly not the greatest
22 responsibility. No, we would say, no responsibility. So our
23 conclusion in relation to articles --

24 JUDGE ITOE: What do you say? You say not, certainly not
10:00:33 25 the greatest responsibility.

26 MR POWLES: Certainly.

27 JUDGE ITOE: Firstly, yes, you are not going as far as
28 saying no responsibility.

29 MR POWLES: We go as far.

1 JUDGE ITOE: You go as far as saying that there is no
2 responsibility.

3 MR POWLES: No responsibility for any joint criminal
4 enterprise.

10:00:52 5 JUDGE ITOE: Thank you.

6 MR POWLES: Our conclusion, therefore, in relation to
7 Article 6(1) of the allegations in the indictment, we put it in
8 the round like this. We say it very simply. There is either no
9 nor sufficiently credible and reliable evidence upon which this
10:01:06 10 Trial Chamber could begin to be satisfied so that it was sure
11 that Fofana was involved in any crimes pursuant to Article 6(1)
12 of the Statute.

13 Article 6(3), therefore, command responsibility. To find
14 Mr Fofana guilty of any crimes pursuant to Article 6(3) of the
10:01:31 15 Statute, the Prosecution must prove beyond reasonable doubt,
16 firstly, the existence of a superior subordinate relationship
17 between him and the perpetrators of the crimes; secondly, they
18 must prove his knowledge of those crimes; and thirdly, they must
19 prove and demonstrate his power to prevent or punish the
10:01:52 20 perpetrators thereof and his failure to do so.

21 Just a few legal principles before considering the
22 evidence.

23 Firstly, the Appeals Chamber in *Blaskic* stated that great
24 care must be taken in relation to command responsibility. Great
10:02:13 25 care must be taken lest an injustice is done in holding
26 individuals responsible for the acts of others in situations
27 where the link of control is absent or too remote. Linked to
28 that principle is the Appeals Chamber decision in *Celibici* when
29 it was said that in determining questions of responsibility, it

1 is necessary to look at effective exercise of power and control
2 and not to formal titles.

3 Secondly, in *Blaskic* it was held that the law does not know
4 a universal superior without a corresponding subordinate.

10:02:58 5 Therefore, it must be shown that the accused had subordinates for
6 whom he was responsible and the crimes were committed by them and
7 that connection must be clear and identifiable.

8 Thirdly, Article 6(3) liability only applies to crimes
9 committed at the time that the accused was the perpetrator's
10:03:22 10 superior and that principle we get from *Hadzi hasanovic* and
11 *Kunarac*.

12 Fourthly and finally, a degree of influence or mere
13 personal influence is not enough, is not enough, to establish the
14 power to prevent or punish crimes. And the sources for that are
10:03:44 15 cases of *Halilovic* and *Limaj*, two recent Trial Chamber decisions
16 of the ICTY. All those principles are comprehensively set out in
17 our final brief and that is why I don't take Your Honours through
18 the letter and spirit of every one of those decisions.

19 The superior subordinate relationship. Title alone, we
10:04:08 20 would submit, is not enough and the question of command and
21 titles in the CDF is interesting, as many titles do not
22 necessarily correspond to positions in regular armed forces. It
23 was for that reason that Colonel Iron stated the issue of command
24 is interesting because it is not a case of titular command. It
10:04:29 25 is effective command. He went on to give the example of
26 General Khobe who was placed in a position of command over the
27 CDF and Colonel Iron said it was whether he was able to exercise
28 command over the CDF that was the crucial issue.

29 Colonel Iron also acknowledged that the title, director of

1 war, Mr Fofana's title, is not a regular military position and
2 does not correspond to a position in regular armed forces. There
3 was, according to Colonel Iron, no established rank system in the
4 CDF. So the CDF was not like a regular army where everyone knows
10:05:17 5 their rank and how they fit into the hierarchy. For example, in
6 a regular army everyone knows that a brigadier is more senior and
7 carry more authority than, let's say, a colonel. Titles in the
8 CDF were unintelligible. Director of war. What were his duties?
9 Was he more senior or less senior than the director of logistics?
10:05:44 10 Was he more senior or less senior than General Joe Nunie? And
11 what of Fofana's subsequent title, director of peace? What does
12 that mean? What were his responsibilities. Who were his
13 subordinates? Director of peace. If only every armed force had
14 one, the world would perhaps be a much nicer place.

10:06:09 15 Regular armies have no high priest. They have no national
16 director. Moreover, Dr Hoffman stressed that titles in the CDF
17 were some times used with a sense of irony and ridicule. In
18 addition, many in the CDF did not even speak English or
19 necessarily understand the true meaning of titles.

10:06:35 20 Therefore, it's important to look at the actual role and
21 duties of Moinina Fofana rather than his simple title.

22 From the evidence we would submit that it is clear that
23 Fofana's role and responsibilities and identifiable subordinates
24 are not entirely clear. It is a very blurred picture when one
10:07:00 25 compares the Defence evidence and indeed the Prosecution evidence
26 to try and decipher exactly what his role or responsibilities
27 were and who his subordinates were. There is no clear picture
28 whatsoever.

29 Even on the Prosecution's evidence, we would submit it's

1 not entirely clear. It's interesting to note that, in the
2 supplementary pre-trial brief of the Prosecution, they asserted
3 that Fofana had a superior position - and this is in the
4 supplementary pre-trial brief - they say he had a superior
10:07:43 5 position by virtue of the fact that he was on the War Council.
6 They now seem to have dropped that and say he was in a position
7 of authority because he was not on the War Council and indeed had
8 more authority than them. Incidentally, we would submit --

9 PRESIDING JUDGE: Where does the latter appear? In the
10:08:03 10 final trial brief?

11 MR POWLES: In the supplementary pre-trial brief.

12 PRESIDING JUDGE: They asserted one theory about it.

13 MR POWLES: In relation to the various crime bases --

14 PRESIDING JUDGE: Yes.

10:08:15 15 MR POWLES: -- they set out various -- usually a list of up
16 to seven or eight factors that could be taken into account to
17 identify Fofana's position of authority. It's usually the second
18 one in every one of those lists that says he had such authority
19 by virtue of his membership of the War Council.

10:08:33 20 PRESIDING JUDGE: Where, in your submission, did they
21 assert the contrary?

22 MR POWLES: Well, yesterday the Prosecution asserted that
23 there were two competing -- we would submit the Prosecution
24 presented a false dichotomy and they suggested that either the
10:08:49 25 War Council was in charge, or the three accused were in charge.
26 That was a submitted in oral submissions yesterday, but we would
27 submit -- sorry, on Tuesday -- that is too simplistic.

28 PRESIDING JUDGE: That is in the oral submissions?

29 MR POWLES: That was in the oral submissions.

1 PRESIDING JUDGE: Not in the final trial brief.

2 MR POWLES: Your Honour, not that I can recall or discern.

3 PRESIDING JUDGE: Right.

4 MR POWLES: But certainly in oral submissions, that was a
10:09:19 5 point made on Tuesday. We would submit, again, that's a false
6 dichotomy. It's too simplistic because of course there were
7 other potential candidates of individuals who could, or
8 organisations who could have exercised control and authority
9 within the CDF: Eddie Massallay at Base One, ECOMOG and, of
10:09:39 10 course, the various local chiefdom leaders in the way the CDF
11 operated at the local chiefdom level.

12 The Prosecution also asserted before this trial started, in
13 their opening address and I believe in their supplementary
14 pre-trial brief as well, that Fofana was a commander of a CDF
10:10:00 15 battalion. That has not been made or sustained on the evidence
16 before Your Honours. There has not been a single witness who has
17 come to this Court and substantiated that Prosecution claim that
18 Moinina Fofana was the leader of a battalion. We would submit
19 the Prosecution has clearly not made out its case on command that
10:10:22 20 it thought it once would.

21 However, instead of perhaps taking a sensible commonsense
22 approach and thinking about dropping that allegation altogether,
23 the Prosecution press on with it and seek to substantiate it with
24 weak and inconclusive evidence. Instead of going through each
10:10:46 25 crime base by crime base in order to establish the three factors
26 required for command responsibility, the Prosecution simply, we
27 would submit, in their final brief, throw everything together.
28 Again, a bit of a mish-mash; paragraphs 459 to 494. They don't
29 even assist Your Honours by putting in a single subheading to

1 show which piece of evidence relates to which of the three
2 requirements for Article 6(3). From their section on command
3 responsibility, the Prosecution seem to expect the parties to go
4 through it and attempt to decipher exactly how it puts its case.

10:11:30 5 We submit that the Prosecution have chosen to do it that
6 way because they know that if they go through it crime base by
7 crime base, as we have done in our Defence final brief, the
8 inevitable conclusion in relation to each crime base is that
9 there is no basis whatsoever for giving criminal responsibility
10:11:53 10 and liability, pursuant to Article 6(3) of the Statute to Moinina
11 Fofana. On the evidence that the Prosecution points to in their
12 final brief, we would submit even that doesn't paint a picture or
13 a very realistic picture of Fofana's superior position over
14 perpetrators of crimes with knowledge of crimes and his failure
10:12:20 15 to be prevent or punish them.

16 At paragraph 462, they refer to Billoh Conteh, a Defence
17 witness. They refer to him in their speech as well. They said
18 because he did not go and speak to Fofana when he was at Base
19 Zero, that that is somehow significant. That because he thought
10:12:38 20 that Fofana was too important that he couldn't even approach him
21 that, by virtue of that, they satisfy the three elements of
22 command responsibility. We submit that that is fanciful.

23 At paragraph 464, reference is made to Fofana having the
24 keys to the arms store. The witness TF2-201 was of course in
10:13:03 25 charge of it. Fofana wasn't even the storekeeper. According to
26 that witness, he is some sort of key master. On what basis can
27 Article 6(3), liability, derive from that?

28 At paragraph 465, the Prosecution point to the fact that
29 Fofana allegedly sent witness TF2-017 to Yele. Again, so what?

1 There is no evidence of crimes being committed there, or that
2 Fofana was in any way aware of them

3 At paragraph 466, they point to SS Camp. Again, there is
4 no evidence before you of his running of that camp or that he was
10:13:46 5 even aware as to what was going on within it. The Prosecution --

6 MR KAMARA: My Lord, I'm sorry.

7 MR POWLES: Well, I'm going to stop. It's quite improper
8 for my learned friend to interrupt a closing argument.

9 PRESIDING JUDGE: Counsel, what's the difficulty?

10:14:01 10 MR KAMARA: My Lord, it's the misstatement of the evidence
11 again.

12 PRESIDING JUDGE: Well --

13 JUDGE ITOE: You have the right to reply.

14 PRESIDING JUDGE: We indicated that you should adopt a
10:14:07 15 methodology of making note of any alleged misrepresentation --

16 MR KAMARA: Yes, My Lord.

17 PRESIDING JUDGE: -- or perceived inconsistency or an
18 attempt to oversimplify the evidence.

19 MR KAMARA: I will wait.

10:14:19 20 PRESIDING JUDGE: Do that and give your colleague an
21 uninterrupted run, as he did when you were addressing.

22 MR KAMARA: I will wait.

23 PRESIDING JUDGE: Right.

24 MR POWLES: Of course we'll leave aside whether the
10:14:37 25 Prosecution do in fact have any sort of right to reply, to later.
26 We submit, of course, they do not.

27 In relation to SS Camp, then, paragraph 466 of the
28 Prosecution's final brief --

29 PRESIDING JUDGE: Yes, continue please.

1 MR POWLES: -- we would submit that there is no evidence
2 that Fofana was involved in running that camp, or was in any way
3 aware of crimes being committed therein. Reference, of course,
4 was made to a log book and his viewing of that log book. Again
10:15:04 5 we made the point: Unless that log book was in pictorial form
6 there is no way that Fofana could have known what was contained
7 within it. Fofana was not in charge of the planning and
8 execution of operations. According to Colonel Iron's expert
9 report, that mantle fell to Albert Nallo. Fofana was more in
10:15:28 10 charge, according to Colonel Iron, of logistics. As we have
11 already demonstrated, we would submit that is not definitive of a
12 command position.

13 I could go on, going through the Prosecution's final brief
14 and their submissions in relation to Fofana's alleged command
10:15:46 15 responsibility but we would say that all of the points that the
16 Prosecution make are comprehensively and robustly dealt with in
17 the Defence closing brief, and the section on command
18 responsibility. We would say what they have failed to do is go
19 through the evidence crime base by crime base. They have tried
10:16:06 20 to present it to Your Honours in general form and hope to
21 extrapolate little bits of evidence from here, from there and
22 present it all to you and say, "Well, look, here are the three
23 elements of command responsibility. And for that reason, you can
24 hold Fofana responsible for specific crimes." But, no, we say
10:16:25 25 you must look at the crime bases, you must look at the specific
26 crimes alleged and see whether the three requirements of command
27 responsibility are present and obvious and satisfy you beyond
28 reasonable doubt for each and every single crime and crime base.

29 The case against Fofana, as a superior, we would submit,

1 simply doesn't add up and that was made crystal clear on Tuesday,
2 when the Prosecution did an apparent about turn on the
3 significance of the ritual killings --

10:17:06 4 JUDGE ITOE: I think your have addressed us sufficiently on
5 this, on the superior responsibilities, command responsibility,
6 Mr Powles.

7 MR POWLES: Your Honours, I have addressed you at length on
8 this issue, but there is one final point --

10:17:23 9 JUDGE ITOE: I think the point is made and that the record
10 has taken care of what you've said on this issue.

11 MR POWLES: Your Honours, yes, I'm grateful. There is one
12 point I would seek to make, and that's the Prosecution's apparent
13 shifting of the ground in relation to the way they put their case
14 on command responsibility.

10:17:36 15 The Prosecution attempted to say that there is some
16 evidentiary significance of the ritual killings and murders of
17 Fallon and Kanu because, by virtue of being present at those
18 ritual killings, the accused's authority could somehow be
19 deciphered. We would say even if those incidents occurred, and
10:18:02 20 on the evidence we would say that is disputed, in particular in
21 the light of the Defence evidence called, but even if those
22 incidents occurred, we would submit it does not come close to
23 showing Fofana was in a position of authority. Fofana was just
24 present at those incidents. And presence, of course, alone,
10:18:23 25 cannot denote authority. Indeed, the source of those allegations
26 came from Albert Nallo. He was of course also present. Others
27 were also present. Did those persons also have authority? Did
28 they also have command responsibility by virtue of their
29 presence? We would say of course not. It's nonsense.

1 The Prosecution case is weak and they are clutching at
2 straws. Fofana did not possess anything like the authority and
3 control within the CDF that they claim he had. There were no
4 identifiable subordinates who committed crimes. No clear
10:19:10 5 knowledge of crimes being committed by them and no power
6 attributable to him to prevent or punish those crimes. We would
7 submit that the Prosecution have singly failed to prove his
8 command responsibility pursuant to Article 6(3). Again, this is
9 clearly not a case of the greatest responsibility; it's a case of
10:19:32 10 no responsibility.

11 Turning then to the Prosecution's purported analysis of the
12 Defence case in their final brief. I had proposed to go through
13 it section by section. But I would submit there's no need. The
14 Prosecution --

10:19:54 15 PRESIDING JUDGE: And time is a constraining influence.

16 MR POWLES: Your Honours, yes. To put it simply and
17 briefly, the Prosecution's analysis does not even mention Joseph
18 Lansana, the man with his ears. It does not even mention once
19 Dr Hoffman. It simply seeks to predict how the Defence may argue
10:20:13 20 its case before you.

21 For the record, Fofana was proud of the aims of the CDF and
22 his modest contribution to it, but may I say this, and one last
23 thing about the Defence case: Of course Fofana has chosen not to
24 give evidence. That is and remains his right. He is --

10:20:40 25 JUDGE ITOE: We know that. We know that.

26 MR POWLES: Your Honours, yes.

27 JUDGE ITOE: It's not a matter of any comment, the fact
28 that an accused does not give evidence --

29 MR POWLES: Your Honours, yes.

1 JUDGE ITOE: -- could not be the subject matter of any
2 comment by any Court. It's his right. He has exercised it.
3 That is it.

4 MR POWLES: Your Honour, yes.

10:20:59 5 JUDGE ITOE: That is it.

6 MR POWLES: Your Honour, yes. I would seek to make a few
7 short points in relation to that. It's his right through us to
8 sit there and stay silent and ask the Prosecution to prove its
9 case against him. Of course, as Your Honour notes, no adverse
10:21:14 10 inference can or will be drawn against him. The Chamber, of
11 course, will not speculate as to why he gave no evidence or how
12 he may have performed in the witness box.

13 So moving on then Your Honours to our concluding remarks,
14 and this will only take one or two moments.

10:21:33 15 JUDGE ITOE: I thought you were going to say one or two
16 minutes. Moments are very elastic. You may proceed.

17 MR POWLES: Hopefully they will be enjoyable ones, Your
18 Honour.

19 When Mr Crane and Mr Kamara concluded their respective
10:21:52 20 opening speeches to you on 3rd of June 2004 they both said this:
21 "Let justice be done." Well, of course, the Prosecution have no
22 monopoly on justice of what is right, of what is true. The
23 justice of this case is ultimately for you, Your Honours, the
24 justices, and for you alone.

10:22:26 25 Your Honours, it's been a pleasure for me to be a member of
26 this Defence team. This truly international team of lawyers that
27 covers three continents; Africa, Europe and North America.
28 International justice in its most international form. Messrs
29 Pestman and Koppe from Amsterdam, Mr Bockarie from Bo and our

1 investigators, Mr Taylor and Koroma from Sierra Leone. And
2 finally, and certainly by no means least, our learned legal
3 assistant, Mr Andrew Ianuzzi from New York. If there is anyone
4 in the Fofana camp who bears the greatest responsibility for
10:23:05 5 anything it is he, a lawyer of the utmost integrity and industry
6 who, all on our team are united in acknowledging, has selflessly
7 driven this case from start to end and made it possible for us to
8 present it to you as smoothly and efficiently as we have tried.
9 Collectively, it's been our privilege to represent Mr Fofana
10:23:41 10 before Your Honours, whose patience has sustained us all.

11 Our the gratitude must of course also extend to all the
12 staff of the Court from the Registry, to Chambers, to the Defence
13 Office, to the interpreters, to the prison and security staff,
14 all of whom have made our lives and tasks in this process that
10:23:53 15 much easier. To them all our sincere thanks.

16 We have, we submit, climbed that mountain that we set
17 ourselves yesterday morning. We've reached the top. We can look
18 down and confidently say that the case against Moinina Fofana has
19 not been proved beyond reasonable doubt. Your Honours, you have
10:24:23 20 heard evidence over 156 days stretching back over nearly 30
21 months, with transcripts I estimate totalling approximately
22 20,000 pages.

23 So after all these weeks, after all these months, after all
24 these documents, after all these words, we, he and they will wait
10:24:50 25 patiently for two words from Your Honours: Not guilty. Thank
26 you.

27 PRESIDING JUDGE: Thank you, Mr Powles. We will now
28 proceed to hear the closing argument on behalf of the third
29 accused.

1 JUDGE BOUTET: Mr Presiding Judge, before we do, I do have
2 two questions to ask Mr Powles.

3 PRESIDING JUDGE: Mr Powles.

4 JUDGE BOUTET: You have quoted the case of *Brdjanin* in
10:25:33 5 relation to joint criminal enterprise.

6 MR POWLES: Yes.

7 JUDGE BOUTET: I would like you to confirm that this case
8 is now under appeal and that that particular part is the matter
9 -- that is a matter that is being actually considered on appeal,
10:25:42 10 that appeal decision not being rendered at this particular
11 moment.

12 MR POWLES: Your Honour is absolutely right, yes.

13 JUDGE BOUTET: Am I also right to say that this issue is
14 also a contentious issue in that there has been no other trial
10:25:56 15 judgment that have rendered decisions that were not necessarily
16 in agreement with that decision?

17 MR POWLES: Your Honour, yes, and the Prosecution have
18 rightly and properly drawn your attention to those decisions.

19 JUDGE BOUTET: Thank you.

10:26:12 20 PRESIDING JUDGE: Learned counsel for the third accused,
21 you will proceed with your closing argument.

22 MR KAMARA: Excuse me, My Lord.

23 PRESIDING JUDGE: Yes.

24 MR KAMARA: I have a few comments to make with respect to
10:26:22 25 the issues of misstatement of the evidence and it's not a right
26 of reply.

27 PRESIDING JUDGE: In other words, you want -- you think
28 this is a convenient time for you to address those issues?

29 MR KAMARA: I will give one main example because while he

1 made his speech, My Lord --

2 PRESIDING JUDGE: Just a minute. Mr Kamara.

3 MR KAMARA: Yes, My Lord.

4 PRESIDING JUDGE: You are going to hear another closing
10:26:59 5 address. It would seem perhaps more expedient for us, and
6 probably a much more tidy approach, if we allow Mr Williams to
7 present the closing arguments on behalf of the third accused.
8 You may, in the process, find some problems which perhaps you may
9 want to comment about. It would seem that it will be appropriate
10:27:27 10 to take all of these in one stride rather than split the closing
11 addresses. I think all we are doing here now is to ask you to
12 exercise patience, and patience of course of the Biblical
13 character Jobe until Mr Williams finishes.

14 MR KAMARA: I will wait, My Lord.

10:27:56 15 PRESIDING JUDGE: Very well.

16 MR KAMARA: As My Lord pleases.

17 PRESIDING JUDGE: Yes. Mr Williams, it's your turn.

18 MR WILLIAMS: Thank you very much, My Lord.

19 JUDGE ITOE: Just for the record, Mr Williams, I think we
10:28:08 20 take you to be starting at 10.30.

21 PRESIDING JUDGE: And your allotted time is 180 minutes.

22 And we expect some kind of quid pro quo. You don't need to
23 exhaust the entire time period, but do the best you can.

24 MR WILLIAMS: I shall not give Your Lordships the cause to
10:28:33 25 use the guillotine, My Lord.

26 PRESIDING JUDGE: Yes. We don't want to use it.

27 MR WILLIAMS: My Lords, when the Prosecutor opened his case
28 in this Court almost two years ago, with its graphic allegations
29 of mass murder, looting and pillage, terrorising of civilians,

1 enlisting of child soldiers, I saw the looks of horror on the
2 faces of all present at the time. These are despicable crimes.
3 What could be more terrible than mass murder of innocent
4 civilians, of pillage, of violation of international humanitarian
10:29:22 5 law?

6 Well, after hearing over 125 witnesses over a trial period
7 spanning 156 days, I just want you all to know quite simply that
8 our client, Mr Kondewa, sitting over there looking rather relaxed
9 in his usual smiling face, did not commit any of the crimes
10:29:50 10 alleged in the indictment. Allieu Kondewa is not guilty either
11 individually or in a criminal joint enterprise. He does not bear
12 the greatest responsibility. In fact, he bears no responsibility
13 at all. And then, My Lords, that My Lords being source to what
14 this Trial Chamber has given me clear-wise to talk about; getting
10:30:24 15 blamed for something you didn't do.

16 Yesterday, my learned friend Mr Powles, during his eloquent
17 and brilliant submissions, quoted Rupert H Jackson. I too have a
18 quote from this eminent jurist and trial attorney. Writing in
19 advocacy before the Supreme Court 1951, Jackson said: "I used to
10:30:54 20 say that as solicitor-general I made three arguments of every
21 case. First, came the one that I planned as I thought, logical,
22 coherent, complete. Second was the one actually presented,
23 interrupted, incoherent, disjointed, disappointing. The third
24 was the utterly devastating argument that I thought of after
10:31:20 25 going to bed that night. "

26 Applying these three arguments to the Prosecution's case,
27 one can assume that when they decided to issue the indictment
28 they thought they had a logical, coherent and complete case.

29 However, and I say this with the utmost respect for counsel

1 on the other side, a lawyer is only as good as his case. The
2 case that was actually presented to this Court by the Prosecution
3 was interrupted, incoherent, disjointed and rather disappointing.
4 Thirdly, there most certainly has not been a devastating argument
10:32:07 5 before this Court by the Prosecution on how the accused persons
6 are guilty.

7 My Lords, one of the advantages of going last is that you
8 get to hear the submissions of counsel for the other accused
9 persons and to get to steal, legally of course, portions of their
10:32:34 10 argument and, in my case, I have been privileged to come after
11 the constitutional expert and a coauthor of a book International
12 Criminal Practice.

13 Having heard the submissions I would like -- I would, with
14 their leave, and with the leave of this Trial Chamber,
10:32:58 15 wholeheartedly adopt the arguments of my learned friend Mr
16 Powles, in particular in respect to counts 1 and 3 of the
17 indictment and, furthermore, in the analysis of the element of
18 the offences. I cannot effectively add anything more to what my
19 learned friend Mr Powles has said, except at the risk of
10:33:24 20 repeating him.

21 I shall concentrate this -- my submissions on evidential
22 matters based on the evidence adduced before Your Lordships and
23 deductions arrived by the Prosecution in their final trial brief.

24 We shall also put forward the Defence theory that we wish
10:33:56 25 Your Lordships will apply when you retire to consider your
26 verdict.

27 The Prosecution, in their final trial brief, have painted a
28 picture of Norman standing at the top with Fofana and Kondewa
29 standing to his side as his deputies. They would want this Court

1 to believe that Kondewa played such a vital role in the
2 prosecution of the war and is one of those who bears the greatest
3 responsibility for the alleged atrocities committed in Sierra
4 Leone.

10:34:44 5 We would submit that what the Prosecution have presented is
6 a fanciful and imaginary picture of what they would like the
7 situation to be. It is a make-believe, a work of fiction. They
8 have left the reality at Talia Yawbeko and have brought fiction
9 to Freetown, the seat of the Special Court.

10:35:22 10 The evidence presented before this Court does not in any
11 way prove the allegations against Kondewa. The evidence to the
12 contrary shows Kondewa's powers to be limited to the initiation
13 or society bush. Outside of this society bush he was a herbalist
14 and a masked devil dancer, to cure the sick and entertain the
10:35:53 15 masses. He was not a combatant and he was not a commander. He
16 did not issue orders, nor did he direct battles.

17 The Prosecution have made a big commotion out of his
18 blessings to the Kamajors. Yes, he blessed them to fight a war
19 against an armed faction. There is no evidence that he blessed
10:36:18 20 them to go and kill civilians, or to go and loot or to commit
21 atrocities.

22 The giving of blessing to fight a war against an armed
23 faction is not a crime. It's not instigating, planning or
24 ordering. His role was insignificant in the furtherance of the
10:36:41 25 war effort.

26 The evidence presented to Your Lordships, it is my
27 submission, cannot support a conviction of Mr Kondewa and if any
28 such conviction is found it would be unsafe and unjust in the
29 circumstances of this case.

1 I wish to submit that the final trial brief of the
2 Prosecution consists of mere allegations and a confused mixture
3 of evidence. The Prosecutor is asking the Trial Chamber to look
4 at the allegations, look at the mixed bag of evidence, and
10:37:27 5 without showing the Chamber how the allegations have been proved
6 to then come to some sort of finding.

7 The Prosecution have woefully failed to show this Chamber
8 how they have proved their allegations. They have failed to show
9 how the evidence provides, sorry, how the evidence proves the
10:37:47 10 allegations. That is an obligation on the part of the
11 Prosecution which they have failed to discharge. By failing to
12 do so they have impliedly admitted that they have no case against
13 the third accused and are relying on the intervention of Your
14 Lordships to assist them.

10:38:11 15 Contrary to the Prosecution's assertions, witnesses for
16 Kondewa were in the main civilians and not Kamajors, and
17 testified in the open without fear or favour. They spoke the
18 truth and their evidence was not contradicted under
19 cross-examination.

10:38:42 20 These were elderly and respected members of their
21 communities whose only reason for testifying was to tell the
22 truth. These witnesses should not be presumed to be credible as
23 the Prosecution would like in respect of the witnesses. These
24 witnesses must be taken as credible because they were neither
10:39:00 25 discredited, not found to be inconsistent, not found to be full
26 of wild imagination.

27 In his opening statement at the start of this trial, the
28 Prosecution sought to familiarise the panel with the Kamajors and
29 I quote -- they had this to say in quote: "The Kamajors, it must

1 be noted, were merely a group of ordinary local hunters before
2 the emergence of Allieu Kondewa. Simple folks of the countryside
3 used to hunting deer, rodents and other bush animals for domestic
4 consumption. There were no special initiation rights; no
10:39:49 5 military objectives. Hinga Norman, Moinina Fofana and Allieu
6 Kondewa schemed to take a traditional spiritual belief system and
7 manipulated it to their own ends. Vulnerable young men desperate
8 for survival in a devilish war fall easy prey to these men."

9 My Lords, the Prosecutor has represented to this panel that
10:40:20 10 membership of Kamajor society is one and the same membership of
11 the CDF fighting forces. There is evidence from both Prosecution
12 and Defence witnesses to prove that the initiation carried out by
13 the third accused was not in any way equivalent to conscription
14 or enlistment into a military unit.

10:40:48 15 These witnesses have adduced evidence to show that the
16 initiation ceremonies performed by the third accused were
17 defensive or protective in nature. Their purpose was not to
18 teach violence or advocate criminal conduct. Quite the opposite.
19 The process of initiation, counsel and admonish against the
10:41:15 20 killing of innocent civilians and known combatants, rape and
21 looting of property. Further, the initiation process was geared
22 towards the protection of prospective members in a manner that
23 was closer to tribal custom than to formal or even informal
24 indoctrination.

10:41:40 25 Prospective members of the Kamajor society underwent a
26 ceremony referred to as initiation and it was the paramount
27 chiefs of various chiefdoms that selected the subject of their
28 villages for initiation. There is evidence before this Court
29 that the only function performed by the third accused during the

1 years he served with the CDF was initiating people into the
2 Kamajor traditional society.

3 The Prosecution have not been able to make the distinction
4 between initiation into traditional hunter societies and
10:42:21 5 recruitment to fight. This distinction is vitally important
6 since initiation is not the same as military indoctrination or
7 training. The purpose of the initiation ceremony was strictly
8 protective. Initiates were painstakingly told by the third
9 accused and other initiators that the ceremony, combined with the
10:42:49 10 strict adherence to initiation rules, would render them
11 impervious to arms; most notably gunfire from enemies.

12 During the initiation period, which lasted no longer than a
13 day or two, the third accused controlled the activities of
14 initiates in a shrine. My Lords, the Prosecution have considered
10:43:18 15 that the third accused is illiterate. He was never a combatant.
16 He had never been instructed in the laws of war but yet
17 Mr Kondewa had the good sense to warn every Kamajor that went
18 through his hands about the laws of war and the way civilians
19 should be treated.

10:35:59 20 [CDF_30NOV06B_MC]

21 MR WILLIAMS: There is abundant evidence from both
22 Prosecution and Defence witnesses that the third accused did not
23 have control or command over initiates when once they had left
24 the initiation shrine.

10:44:00 25 I will invite Your Lordships to pay particular attention to
26 the following bits of evidence: Firstly, the evidence of
27 TF2-2001, 4 November 2004, pages 113 to 114. Kondewa would say,
28 "I am going to give you my blessings. I am going to give you the
29 medicines which would make you to be fearless if you did not

1 spoil the law. I will give it to you."

2 My Lord, it came out during the case for the Prosecution,
3 and during the case for the Defence, that the laws given to
4 Kamajors at the initiation were, inter alia, one: That they
10:44:58 5 should respect elders. Two: That they should not touch civilian
6 property. Three: That they should not kill innocent persons
7 and, four: That they should not harass civilian, civilians whom
8 they were meant to defend.

9 I also wish to refer Your Lordships to the evidence of
10:45:30 10 TF2-082, testified on 17 September 2004. My Lord, he had this to
11 say: It says, "Mr Kondewa began initiating even before the war."
12 This shows that initiation into the Kamajors society was not
13 contingent on war. But the evidence of Joe Nunie of 11 May 2006
14 on page 53. This witness said that Mr Kondewa didn't take part
10:46:08 15 in combat. No initiators took part in planning, fighting war.
16 Kondewa was not involved with the distribution of arms and
17 ammunition.

18 Another Prosecution witness, TF2-011, said initiators did
19 not go into combat and Mr Kondewa did not have troops under his
10:46:37 20 command, only aids or bodyguards. TF2-011 testified on 8 June
21 2005 at pages 54 and 55 of his -- of the trial transcript as
22 referred to, My Lords.

23 I also wish to refer Your Lordships to the evidence of
24 TF2-190, testified on 10 February 2005, page 86, lines 11 to 21.

10:47:17 25 It says My Lord: The sole task of Kondewa and his
26 co-initiators was to prepare you people, the fighters, for the
27 battlefield to immunise you, the fighters, against bullet; that
28 it was very definitive, the sole task of Kondewa and his
29 co-initiators.

1 My Lord, initiates were given -- the evidence revealed that
2 initiates were given laws during the initiation, the laws that I
3 have just narrated to Your Lordships. These rules were seen by
4 Kamajors as a code of conduct and everyone was told not to breach
10:48:14 5 them and the consequences that will befall a Kamajor if they were
6 breached. I wish to refer Your Lordship to the evidence of
7 TF2-190 on 10 February 2005, page 91.

8 The question was posed:

9 "Q. And you would also agree with me that the Kamajors did
10:48:46 10 not fight that war to enrich themselves?

11 "A. That was not the plan.

12 "Q. That was not the plan, thank you. And even though it
13 was a very serious and fierce war, you the Kamajors, had
14 rules of engagement. In other words, you had a code of
10:49:05 15 conduct to go by.

16 "A. Yes, there were laws.

17 "Q. Yes, thank you. And please listen to me very
18 carefully. If you don't understand, say so. One of the
19 rules was that you must avoid harming civilians; you would
10:49:26 20 agree."

21 And the witness said, "Yes, the law said that."

22 My Lord, I will take a little time to bring out the
23 distinction between initiation and immunisation on the one hand
24 and enlistment and recruitment on the other, as was brought out
10:49:49 25 by the evidence.

26 The third accused does not again say that the Prosecution's
27 theory that children were initiated into the Kamajor hunting
28 society. Yes, indeed, children as young as two and men as old as
29 65 were initiated. The purpose which they initiate -- the

1 purpose for which they were initiated is something the
2 Prosecution have failed to appreciate. There is an important
3 distinction to be made between initiation and immunisation. So
4 initiation and immunisation on the one hand and enlistment and
10:50:37 5 recruitment, especially within the context of children and the
6 elderly. But this was the subject of the following evidence
7 before the Trial Chamber. TF2-068 testified on 17 November 2004,
8 page 79, lines 1 to 18. And he said, the witness, the witness
9 said that he joined the Kamajors to become bulletproof and saw no
10:51:09 10 link between initiation and military training.

11 TF2-012, 21 June 2004, pages 59 and 62, lines 21 to 29.
12 The witness was initiated but did not fight, was not told during
13 the initiation to protect civilians.

14 My Lord, that witness, My Lord, now TF2-011 explains there
10:51:52 15 is a difference between initiation and recruitment into the
16 Kamajors society, not every initiate becomes a combatant. The
17 witness himself was initiated but was never a combatant. My
18 Lord, the theory presented by the Defence is abundantly concurred
19 to by the Prosecution.

10:52:23 20 My Lord, there is evidence of TF2-EW2, that is the expert
21 on children, My Lord. That witness gave evidence that according
22 to a table which formed a part of a report tendered as Exhibit 1
23 and read: "51.2" -- "5.2 per cent of the CDF were child
24 soldiers." That is approximately 8000 -- that there was
10:52:56 25 approximately 8500 soldiers that were demobilised. The witness
26 said that it was a belief that initiation was a stepping-stone to
27 recruitment as a soldier; it was not synonymous, My Lords.

28 The Prosecution conceded in bits of their final trial brief
29 that the two were not synonymous, but I refer Your Lordships to

1 paragraph 25, 26 and 93 of the final brief filed by the
2 Prosecution.

3 Now paragraph 25, I'll just with your leave, My Lords, read
4 just three lines of that paragraph. It says, My Lord, "Although
10:54:01 5 most of the initiates were young men, there was no age
6 restriction. Not all initiates became combatants such as the
7 elderly. One of the benefits, if not the principle benefit of
8 being initiated, was that the person acquired the belief that
9 they were immune from bullet."

10:54:25 10 Although it is perhaps understandably difficult to believe
11 the claims of immunisation and bulletproofing, the Prosecution
12 and Defence witnesses have universally expressed their beliefs
13 and shared their personal experiences. Skepticism about the
14 motivations of initiation, the motivations of initiators who were
10:54:54 15 receiving payments is, likewise, understandable. But it is worth
16 noting that no witness expressed the belief that having paid for
17 or having one's chieftom paid for initiation undermined its
18 effect in any way. Even if an initiator were in part motivated
19 by the desire to earn money, it is not contradictory to say that
10:55:18 20 an initiator could take advantage of this opportunity for some
21 kind of personal enrichment and, simultaneously, the performing
22 is a very important function for the CDF.

23 Relative to the immunisation itself there is nothing
24 criminal or nefarious about providing Kamajors with reassurances
10:55:41 25 as they go off to battle. There are numerous examples the world
26 over of exactly the same or similar phenomenon. Some use bullet
27 proofs, advanced technology which ensures against detection by
28 the enemy. Staff deployed during dangerous fights and the
29 distribution of incomplete and misleading information to

1 soldiers, all of which are routine legitimate tactical practices
2 during times of war. The Kamajors should not be patronised or
3 judged more harshly for using means that seem less advanced or
4 more -- or more unbelievable to others.

10:56:36 5 My Lord, I would refer Your Lordships to the evidence of
6 TF2-190, what that witness said, "All these powers that Kondewa
7 [indiscernible] has been transferred to us so that nothing would
8 be wrong with us. No cutlass would strike us. He is now
9 satisfied. So all of us will go to the war front and come back
10:57:01 10 with happiness and let no one be afraid."

11 A clear understanding and acceptance was vital to the
12 initiation and each initiate understood the consequences of not
13 following them. My Lords, the Prosecutor would want the Court to
14 believe that Kamajors were hoodwinked into believing that the
10:57:33 15 initiation rights, conducted by the third accused, may have been
16 impervious to bullets. I shall not quarrel with the theory,
17 what, however, is significant, if Your Lordships hold, that the
18 third accused misled young men into believing that the
19 [Indiscernible] is that these young men also believed that if the
10:58:01 20 laws passed on to the initiates were breached, for example, by
21 killing civilians, they will die in the battlefield. What more
22 deterrent against atrocities on civilians can anybody ask for?
23 I wish to refer Your Lordship to the following pieces of evidence
24 adduced by the Prosecution and the Defence.

10:58:28 25 TF2-004 testified on 9 November 2004. He says in the
26 session rules given, "not following means you will die."

27 Evidence of Ismail Senesie Koroma, 22 February 2006, on
28 page 37, lines 17 to 24. "If one violated these rules, one would
29 be pierced or killed by bullets."

1 TF2-082, 17 September 2004, page 8. "Kondewa told the
2 witnesses the laws and the consequences of breaching laws was
3 that you would die if shot at." Evidence of TF2-140, page -- 14
4 September 2004, page 172. "If you did not obey Kamajor laws you
10:59:51 5 would die in battle. This was your punishment. Kamajors
6 themselves did not need to punish you."

7 My Lord, there is evidence that Kondewa initiated and
8 immunised the Kamajors and then -- and then handed them over to
9 their chiefs. Thereafter he had no control over them, not even
11:00:17 10 to give them orders to go to the war front. The issue of going
11 to the war front with his blessing has been mischaracterised by
12 the Prosecution. There is a huge difference between going to war
13 with somebody's blessing and going to war after being blessed by
14 someone. In the first instance, going to war with someone's
11:00:43 15 blessing amounts to approval. In the second instance, bestowing
16 a blessing on someone going to war does not amount to approval;
17 it can be compared to wishing someone a safe journey. It does
18 not mean that person travels with your approval or that he even
19 needs your approval to travel. We would submit that what Kondewa
11:01:10 20 did was to bestow a blessing on them, just as a pastor or a vicar
21 would on a British or American soldier going to war. During the
22 comparison the learned Prosecutor, with his world war examples,
23 would the pastor, who blessed or prayed for American soldiers,
24 who went to war in Iraq, and who then committed atrocities, be
11:01:41 25 held for war crimes? The answer is a big no, My Lords. Kondewa
26 blessed them to wish them safe journey. There is no evidence he
27 blessed them to commit war crimes.

28 My Lord, I would wish to deal briefly with the issue of
29 superior responsibility, pursuant to Article 6.3 of the Statute.

1 It is argued by the Prosecutor, as a consequence of holding a
2 position of superior responsibility and exercising command and
3 control over his subordinates, Allieu Kondewa is individually
4 criminally responsible -- individually criminally responsible for
11:02:23 5 the crimes referred to in Articles 2, 3 and 4 of the Statute. He
6 is alleged to have been responsible for the criminal acts of the
7 subordinates in that he knew, or had reason to know, that the
8 subordinates were about to commit such acts or had done so and he
9 failed to take the necessary and reasonable measures to prevent
11:02:47 10 such acts or to punish the perpetrators thereof.

11 The Defence submit that Mr Kondewa does not bear superior
12 responsibility for any of the allegations in the indictment
13 because no superior/subordinate relationship existed between him
14 and the alleged perpetrators.

11:03:19 15 As the Prosecution notes, to establish superior
16 responsibility under Article 6.3 of the Statute, the following
17 must be proved: One, the existence of a superior/subordinate
18 relationship between perpetrator and accused; two, that the
19 superior knew or had reason to know that a crime was committed,
11:03:49 20 or about to be committed, by the subordinate; and three, that the
21 superior failed to take the necessary and reasonable measures to
22 prevent the crime or to punish the perpetrator thereof.

23 The superior's responsibility amounts to responsibility for
24 the superiors own acts or omissions in failing to prevent or
11:04:19 25 punish the crimes of the subordinate whom he knew, or had reason
26 to know, were about to commit serious crimes or had already done
27 so.

28 The post of initiator gives Mr Kondewa power and
29 responsibility, relative to the initiation and immunisation

1 ceremonies conducted, but it does not establish a hierarchy and
2 certainly it does not place him at the head of it.

3 Evidence demonstrated that Kondewa did not select the
4 candidates, nor did he have any control over them once the
11:04:58 5 initiation or immunisation ceremony was complete.

6 Although the Prosecution allege that Mr Kondewa was top
7 leader within the Kamajors, the evidence amounted to only vague
8 references to this conclusion without evidence or examples to
9 support it.

11:05:23 10 My Lord, one Prosecution witness testified that Mr Kondewa
11 was the leader of the Death Squad. My Lord, I wish to refer Your
12 Lordship to the evidence of TF2-190, 10 February 2005. Now, that
13 witness unequivocally told this Court who was the leader and
14 commander of the Death Squad. Two additional witnesses confirmed
11:06:07 15 what TF2-190 had said.

16 Firstly, Sampha Carpenter, a Defence witness and Aruna
17 Collier, who was deputy commander of the Death Squad. Sorry, My
18 Lord. Both Prosecution and Defence witnesses testified that the
19 CDF lacked central command or structure, a factor that was
11:06:50 20 noticed by the Kamajors themselves. I wish to refer Your
21 Lordships to the evidence of at least five key Prosecution
22 witnesses, but firstly the evidence of TF2-011, 8 June 2005, page
23 41.

24 My Lord, that witness said he went to Base Zero to assist
11:07:24 25 and add that there was no command structure there. He did not
26 succeed in establishing command structure.

27 Evidence of TF2-222, 17 February 2005. "I saw that the
28 whole organisation had an ineffective command and control."

29 TF2-080, 6 June, page 31, lines 5 to 14. The witness

1 testified that he had no commander and simply went where he
2 wished.

3 TF2-168, 3 March 2005, page 46. "Kamajors came in March
4 1998 in different groups, all mixed up as they came."

11:08:45 5 TF2-088, 25 November 2004. It says: "Kamajors were a
6 faction that was created by Hinga Norman with the aim of saving
7 us but these Kamajors were disorganised. They are not under
8 control."

9 Not even Albert Nallo, the witness so ably described by my
11:09:16 10 learned friend, Powles, had this to say about Kondewa in relation
11 to command. My Lord, that witness testified and was
12 cross-examined by myself on 15 March 2005, pages 42 and 43 of the
13 transcript. My Lord, I asked him the following question:

14 "Q. Kondewa was not a fighter; is that correct?

11:10:01 15 "A. Yes, My Lord.

16 "Q. He had bodyguards that he went around with; is that
17 correct?

18 "A. Yes, My Lord.

19 "Q. He did not command any troops; is that correct?

11:10:14 20 "A. Yes, My Lord."

21 My Lord, we cannot rely on any -- rely on anybody or any
22 piece of evidence in relation to the issue of command than
23 Mr Nallo.

24 When they were in the bush, the three accused were in
11:10:36 25 control. Sorry, My Lord. This is another bit of Mr Kondewa's --
26 Mr Nallo's evidence that I want to refer Your Lordships to. He
27 said: "When they were in the bush, the three accused were in
28 control. They were making all major decisions. Nallo agreed
29 that Fofana was a member of the war directorate office. He was

1 head whilst Nallo was a member. The office was formed in 1999.
2 Nallo agreed that Kondewa was not a fighter. He did not command
3 troops. He had bodyguards. "

4 Not even Colonel Iron, the military expert, testified about
11:11:26 5 command of the CDF. My Lord, he said in his testimony, which is
6 contained in the trial transcripts of 14 June 2005, page 15. My
7 Lord, he said: "In order to exercise effective command one needs
8 to have the responsibility to make decisions, be able to exercise
9 leadership and be able to exercise control. "

11:12:02 10 My Lord, he named the person who he said exercised all
11 those three and that person was definitely not Mr Kondewa. My
12 Lord, for a charge -- this is my submission, My Lords, that for a
13 charge under Article 6.3 of the Statute to succeed, it must be
14 established that the accused was in a position with authority to
11:12:26 15 punish or to prevent such acts. I submit that Mr Kondewa did not
16 have the power, authority and nor was he in a position to
17 discipline troops.

18 Witness TF2-063 on 17th of November 2005, at page 95 of the
19 transcript, said that Dr Gibao, an individual called Dr Gibao,
11:12:58 20 was a person that was responsible for the discipline of Kamajors
21 whilst they were at Talia. Contrary to the evidence of Colonel
22 Iron and Albert Nallo and all the evidence mentioned, the
23 Prosecutor still wants this Court to believe that Mr Kondewa was
24 in a position, a command position, and so he has responsibility
11:13:33 25 for the atrocities Prosecution witnesses testified to. I refer
26 Your Lordships to paragraphs 18 and 19 of the Prosecution's final
27 trial brief.

28 Irrespective of the evidence adduced the Prosecution is
29 still saying that there were no other persons within the CDF to

1 whom the commandant -- the combatant owed a greater loyalty or on
2 whose orders they follow with such diligence than Mr Kondewa and
3 two other persons named therein.

4 My Lord, it is my submission that based on the evidence so
11:14:33 5 far presented, that this Court can hold that Kondewa did not have
6 command over any fighting troops.

7 My Lord, the Prosecution, in page 22 of the final trial
8 brief, said that the three accused also gave to the combatants
9 under the command and control a very broad definition of rebel,
11:15:14 10 but there was no evidence before this Court that Kondewa ever
11 defined or instructed Kamajors about who was a rebel.

12 My Lord, I wish to further submit that, contrary to what is
13 contained in paragraph 95 of the final trial brief of the
14 Prosecution, that there is no evidence before Your Lordship to
11:15:57 15 conduct -- to connect Mr Kondewa to the planning of the war.

16 My Lord, it is my submission that the Prosecution have
17 failed, woefully, to establish -- that the Prosecution have
18 failed woefully to prove or to establish that the third accused
19 held any position of authority within the CDF.

11:16:51 20 My Lord, it is my submission that crimes are sometimes
21 committed by a multiple of persons who all participate in the
22 furtherance of a large scale criminal scheme or a joint criminal
23 enterprise. Under international law a member of such criminal
24 enterprise is regarded as having committed the crimes resulting
11:17:20 25 from it, as long as he contributed to the perpetration and
26 intended either that they be committed or that criminal
27 enterprise be furthered while foreseeing that these crimes were
28 likely to be committed.

29 It is submitted that the Prosecution has failed to prove

1 the existence of a common plan, design or purpose which involves
2 the commission of a crime provided for in the Statute.

3 No such plan existed, apart from protecting the civilian
4 lives and property. There has been no evidence which establishes
11:18:14 5 such a plan, apart from the comments and threats of individuals
6 over whom the accused had no control and with whom the accused
7 had no joint undertakings. There is no evidence that any such
8 plan, if it existed, was common to Mr Kondewa.

9 The Prosecution argues that Kondewa's actions in immunising
11:18:46 10 and initiating individuals rendered the Kamajor enterprise
11 efficient or effective. To the extent that the plan was to
12 protect the lives and property of civilians, it may be conceded
13 that his actions did so but they rendered no assistance to any
14 criminal enterprise, not to the criminal acts committed by
11:19:13 15 individuals. Quite the contrary: The immunisation and
16 initiation had no effect on those who failed to follow the rules
17 given by the accused.

18 My Lord, I wish to further submit that the bulk of the
19 evidence adduced by the Prosecution lacked specificity which
11:19:48 20 prevented it to be challenged or rebutted. But very few of the
21 witnesses called by the Prosecution gave names of the
22 perpetrators whose acts they described, and even fewer gave
23 details about dates and locations. Whilst understandable, given
24 the time which has passed and the nature of the events being
11:20:10 25 recounted, it seriously limits the ability of the accused to
26 identify and interview potential witnesses to the events
27 described, in order to test the credibility of the account given.

28 Where Kamajor perpetrators names were provided by
29 Prosecution witnesses, and they could be located, many came to

1 give evidence before the Court and of them, nearly all
2 contradicted accounts of their behaviour. The testimonies of a
3 number of Prosecution witnesses who were contradicted, either by
4 other Prosecution witnesses or by Defence witnesses. The
11:21:03 5 position of the law, I submit, is that any doubt found in the
6 evidence should be resolved in favour of the accused.

7 It is my submission that the pattern of Prosecution
8 witnesses contradicting each other should have caused a lot of
9 doubt in Your Lordships' minds. Those doubts were heightened
11:21:31 10 further when the Defence witnesses testified. Some of these
11 contradictions are enumerated below.

12 I shall, with leave, I shall deal with evidence in relation
13 to counts 1 and 2, some of the evidence in relation to counts 1
14 and 2, and I would refer Your Lordships to the evidence of Joseph
11:21:56 15 Lansana, testified on 28 September 2006. My Lord, that witness
16 contradicted the evidence of TF2-014.

17 My Lord, Joseph Lansana --

18 PRESIDING JUDGE: Counsel, just a reminder that, just to
19 remind you that some of these witnesses did testify in closed
11:22:30 20 session, just to make sure that you don't reveal names of
21 witnesses who testified in closed session.

22 MR WILLIAMS: I'm grateful, My Lord.

23 PRESIDING JUDGE: That's okay but go ahead; as long as you
24 are certain.

11:22:48 25 MR WILLIAMS: Joseph Lansana, a farmer from Sorgia, saw his
26 village attacked twice. The second time was by Kamajors who
27 included one named Conteh who, threw the -- who threw the
28 witness's mother in the fire. The witness was not, however,
29 tortured or even bothered. Now, this was contrary to the

1 evidence presented by TF2- 014.

2 I also wish to refer Your Lordship to the evidence of
3 Mohamed Fallon, 27 September 2006, pages 29 to 31. Mohamed
4 Fallon was the brother of Mustapha Fallon and he testified that
11:23:42 5 Mustapha took part in an attack on Koribundu and as part of that
6 attack he saw his brother killed in Koribundu, long before the
7 time mentioned by Fallon. Now that witness contradicted the
8 evidence of Nallo in relation to the death of Mustapha Fallon.

9 My Lord, I also wish to refer Your Lordships to the
11:24:16 10 evidence of Aruna Collier, testified on 15 May 2006. My Lord, he
11 said, about the same incident - that is the death of Mustapha
12 Fallon - that, he denied there was anyone named Mustapha Fallon
13 at Talia. He was born in Talia, grew up there, knew everyone
14 there and knew no Mustapha Fallon. He said, "If it happened I
11:25:01 15 would know. We own that place, our parents are chiefs. "

16 My Lord, I would wish to refer Your Lordship again to the
17 evidence of Keikula Amara Kamabotie. He testified on 17th of May
18 2006, contradicting the evidence of TF2-027. That witness
19 testified that he never ordered Kamajors in Konia to bury 30
11:25:47 20 corpses under a coffee tree and, likewise, testified that he
21 never controlled Konia region.

22 May I refer Your Lordship, Your Lordships to the evidence
23 of Moses Bangura. That witness was a Kapra and denied and
24 contradicted that Alpha Dauda Kanu died in the circumstances
11:26:35 25 narrated before this Court by Mr Nallo.

26 My Lord, there is evidence from Alhaji Joe Summer Lewis,
27 who testified on 10th of October 2006, contradicting the evidence
28 of TF2-187. My Lord, TF2-187 testified before this Court about
29 the killing of three pregnant women at the court barri in the

1 Gambia. My Lord, that, those killings were linked to the third
2 accused. That witness was a regent chief of Gambia during the
3 coup. He stayed there all throughout the coup. He resided less
4 than 100 feet away from the court barri and told this Court, My
11:27:47 5 Lord, that no such killings occurred in The Gambia.

6 My Lord, he says as chiefdom speaker any killing, of the
7 nature complained by the Prosecution, would have been reported to
8 him but he received no such reports. Your Honours, there is
9 evidence of Yeama Lewis on the same subject matter, My Lord. The
11:28:22 10 witness is a midwife dealing with pregnant women and delivering
11 babies in The Gambia. My Lord, she said before this Court that
12 if pregnant women had been killed she would have known. She
13 denied any such deaths, My Lords.

14 PRESIDING JUDGE: Is this a convenient point at which we'll
11:28:49 15 take the morning break?

16 MR WILLIAMS: As Your Honour pleases.

17 PRESIDING JUDGE: Right. We'll --

18 MR WILLIAMS: Your Honour, I should be through.

19 PRESIDING JUDGE: That's okay.

11:28:57 20 MR WILLIAMS: I should be through in about 30, 45 minutes.

21 PRESIDING JUDGE: That's very good to hear. And then we'll
22 take the morning break at this time, 11.30.

23 [Break taken at 11.30 a.m.]

24 [CDF30NOV06C - cr]

12:01:20 25 [Upon resuming at 12.02 p.m.]

26 PRESIDING JUDGE: Mr Williams, please continue.

27 MR WILLIAMS: My Lord, I wish to submit that there are
28 several Prosecution witnesses whose evidence were impeached. It
29 is my submission that it would be unsafe to base any conviction

1 on these pieces of evidence. Doubts were created which, I must
2 submit, were not fanciful doubts, and they must be resolved in
3 the favour of the third accused. As the Trial Chamber now
4 considers, what, if any, weight to give their testimony, it is
12:01:49 5 respectfully submitted that reference should be made to the
6 following examples. TF2-107 testified on 22 November 2004 on
7 page 44 of the transcript. The question was this:

8 "Q. Let me rephrase the question to you then. In your
9 mind, is okay to make up facts if you are hesitant about
12:02:20 10 the fact; is that correct?"

11 "A. Yes, you are correct. "

12 But there is evidence of TF2-057, testified on 30 November
13 2004, page 62. This witness denied his own son, My Lord. It is
14 my submission, that that witness can be not believed on any
12:03:11 15 issue.

16 Evidence of TF2-005. My Lord, this witness was the witness
17 I referred to earlier who stated that Mr Kondewa -- the Death
18 Squad, was answerable to Mr Kondewa and others, My Lord.

19 PRESIDING JUDGE: Can we have the date of testimony? Do
12:03:39 20 you have it?

21 MR WILLIAMS: 15 February 2005.

22 PRESIDING JUDGE: Yes.

23 MR WILLIAMS: My Lord, two other witnesses testified about
24 who was the commander of the Death Squad and the name of the
12:03:56 25 person that they were answerable to. That person was not -- was
26 neither the first, second or third accused person.

27 My Lord, evidence was also led to show that most of the
28 atrocities attributed to the CDF by the Prosecutor were largely
29 committed by the RUF and AFRC disguised in Kamajor outfit. The

1 rationale behind this practice was two-fold: One, to surprise
2 CDF forces; and two, to give the CDF a bad name. Evidence of
3 rebels disguised as Kamajors is relevant to the question of
4 whether there are other inferences to be drawn from the evidence
12:05:17 5 adduced before Your Lordships and whether those inferences amount
6 to reasonable doubt of Mr Kondewa's guilt.

7 As the Trial Chamber now considers that issue, it is
8 respectfully submitted that reference should be made to the
9 following examples, many of which came from Prosecution
12:05:42 10 witnesses. I refer your Lordships to the evidence of TF2-001 who
11 testified on 15 February 2005. He stated that during the fight
12 for Bo, junta forces disguised themselves in Kamajor outfit.

13 JUDGE ITOE: Who is that witness again?

14 MR WILLIAMS: TF2-001, 15 February 2005, page 5. [As read]
12:06:33 15 during the fight for Bo, junta forces disguised themselves as
16 Kamajors and committed several atrocities.

17 Your Honour, I also refer Your Lordships to the evidence of
18 TF2-014. A question was put by Justice Boutet. TF2-014 --
19 sorry, My Lord, TF2-222, 18 February 2005, page 24, in answer to
12:07:21 20 a question put by Justice Boutet. The question was this, My
21 Lords:

22 "JUDGE BOUTET: Again, Mr Witness, the question is
23 relatively simple. You have described the dress, some of
24 the dress of rebels to be of native clothing.

12:07:42 25 "THE WITNESS: Yes, similar to the Kamajors.

26 "JUDGE BOUTET: Was this similar to the dress of the
27 Kamajors?

28 "THE WITNESS: Yes, My Lord."

29 Well, I would also refer Your Lordships to the evidence of

1 TF2-014 of 14 February 2005. It says: "Mr Witness, isn't it
2 true that, in that takeover, the juntas disguised themselves as
3 Kamajors wearing the Kamajor ronko?" Witness said: "You are
4 right."

12:08:29 5 Your Honour, finally on this point, I wish to refer you to
6 the evidence of Albert Joe Demby, 13 February 2006, page 27. I
7 quote, My Lords: "This is just an example, My Lord. I'm saying
8 that the rebels wore military -- sorry, Kamajor dress, disguised
9 themselves and attacked villages."

12:09:24 10 I will now spend the rest of my address on issues raised
11 by the Prosecution in the final trial brief. My Lord, we submit
12 that the Prosecution, throughout the final trial brief made
13 assertions which are not supported by evidence and have, on
14 numerous occasions, mischaracterised the evidence. They've
12:10:03 15 totally ignored evidence which clearly contradicts Prosecution
16 evidence or which throws doubt on the allegations. We shall
17 refer to specific paragraphs to highlight some of these issues.
18 My Lord, paragraphs 1 to 32.

19 PRESIDING JUDGE: You mean in the Prosecution's final trial
12:10:31 20 brief?

21 MR WILLIAMS: Yes, My Lord. We refer Your Lordships to
22 paragraph 1 to 32 of the Prosecution's final trial brief, and we
23 would submit that those paragraphs should be disregarded by the
24 Trial Chamber in their entirety, as they amount to nothing but
12:10:57 25 fanciful and imaginary scenarios of what they would like the
26 situation to be.

27 JUDGE ITOE: Let's have those paragraphs again, please.

28 MR WILLIAMS: 1 through 32, My Lord.

29 PRESIDING JUDGE: For what reason do you submit they should

1 be discarded or disregarded?

2 MR WILLIAMS: Yes. I will give the reason now, My Lord.

3 PRESIDING JUDGE: Very well.

4 MR WILLIAMS: Those paragraphs are not supported by any
12:11:37 5 evidence whatsoever. No evidence is referred to in support of
6 the propositions. My Lord, for example, paragraph 27,
7 Your Honours, there is no evidence before this Tribunal that
8 bulletproofing was the motivator and, by which means control was
9 exercised over believers. My Lords, the evidence before this
12:13:14 10 Tribunal is emphatic. After initiation ceremony, Kondewa had no
11 control over the Kamajors and that such control was -- I mean,
12 that control was transferred to the chiefs and battalion
13 commanders.

14 JUDGE ITOE: Mr Williams, are you saying that there is no
12:13:40 15 evidence that bulletproofing was a motivation?

16 MR WILLIAMS: No, My Lord, by means of controlling the --
17 what they're saying, My Lord, is that by going through the
18 process, the initiate came under the spell of the third accused;
19 I mean, he could manipulate them to do anything -- I mean,
12:14:06 20 whatever he wanted to do with them. We're saying that there is
21 no such evidence --

22 JUDGE ITOE: But it was not a motivation for them to come
23 under the control of the third accused. That's what you are
24 saying; not so.

12:14:17 25 MR WILLIAMS: They are saying that they came under the
26 control of the third accused by being initiated. We are saying
27 that no such evidence existed before this Court, My Lord.

28 JUDGE ITOE: I understand.

29 PRESIDING JUDGE: Is that in recitation of the last four

1 lines of paragraph 27?

2 MR WILLIAMS: Yes, My Lord.

3 PRESIDING JUDGE: So you're submission is that there's
4 nothing, by way of evidence, to substantiate that assertion in
12:14:43 5 the last four lines of paragraph 27?

6 MR WILLIAMS: Yes, My Lord. My Lord, it is my submission
7 that evidence adduced by the Prosecution points to a theory
8 different from that which the Prosecution would want this Court
9 to believe. I also would submit, My Lord, that the foundation of
12:15:37 10 criminal responsibility is a principle of personal culpability,
11 and a finding of guilt may be reached only when a majority of a
12 Trial Chamber is satisfied that it has been proved beyond all
13 reasonable doubt.

14 I would refer Your Lordships to paragraph 95 of the
12:16:19 15 Prosecution trial brief. That paragraph, My Lord, says that the
16 key staff branches of the military outfit of the CDF were
17 logistics, headed by the director of war; equipment and
18 initiation, headed by Allieu Kondewa; and the planning and
19 execution of operations, conducted by the director of operations,
12:17:10 20 Sir Albert Nallo.

21 The evidence before the Court is clear: That Mr Kondewa
22 did not recruit Kamajors, did not enlist, nor did he include
23 Kamajors, and that this amounts to deliberate manipulation of the
24 evidence by the Prosecution.

12:18:04 25 I wish to refer Your Lordships to paragraph 515. That
26 paragraph, My Lord, reads: "Kondewa fulfilled an important role
27 in the Kamajors. He was able, by means of secret rites and the
28 promises such rites made, to shift the loyalty of the Kamajors
29 from the chiefs to the triumvirate, namely, Norman, Fofana and

1 Kondewa. Kondewa was an intrinsic part of the executive group
2 which controlled the Kamajors; he achieved that status and power
3 through the implementation of the initiation ceremonies. "

12:19:21 4 My Lords, several key Prosecution witnesses, and several
5 more Defence witnesses, testified that after initiation initiates
6 were handed over back to the paramount chiefs, My Lords. There
7 is no evidence of the third accused clinging on or exercising
8 control over them.

12:20:21 9 My Lord, the Prosecution acknowledges that some evidence is
10 contradictory, but suggests that in a case of this magnitude one
11 would expect inconsistencies which needs to be looked in the
12 light of the whole of the evidence. Your Honour, we would
13 suggest that inconsistencies which are not on the periphery of
14 allegations, but which go to the pith and substance of the
12:20:52 15 allegations, must be viewed with great caution and must be
16 disregarded by this Court.

17 The Court must attach no weight to this form of evidence
18 and conviction on inconsistent evidence which goes to the heart
19 of the allegations will be unjust and unsafe. My Lords,
12:21:24 20 inconsistencies in the case of the Prosecution are narrated or
21 enumerated in paragraph 6 to 13 of our trial brief. It is our
22 submission that they go to the root and substance of the
23 allegations and must be disregarded.

12:22:06 24 I refer Your Lordships to paragraphs 514 and 515 of the
25 trial brief filed by the Prosecution. My Lords, paragraph 514
26 reads: "Kondewa was nominated High Priest of the Kamajors,
27 meaning he was the chief and head of all Kamajor initiators. As
28 leaders of all initiators, he had command over all Kamajor
29 initiates. No Kamajor would go to war without his blessings. "

1 My Lords, it is my submission that there is no evidence
2 before this Court to substantiate what is contained in paragraph
3 514. There is evidence before Your Lordships that Kamajors were
4 scattered all over Sierra Leone and, My Lords, north, south, east
12:23:35 5 and even the Western Area. And yet still the Prosecution is
6 saying that no Kamajor would go to war without his blessings.

7 My Lords, paragraphs 516 and 517 speak of the third accused
8 as one of those who planned the war that was fought by the CDF.
9 But it is my submission that presence at a meeting without more
12:24:55 10 cannot amount to criminal responsibility.

11 My Lords, bulletproofing of Kamajors is not an offence but
12 even War Council members, who say they were rendered redundant at
13 Base Zero, were present at some of these meetings that it is
14 alleged Mr Kondewa attended.

12:25:47 15 I refer Your Lordships to paragraph 529. The Prosecution
16 is alleging that Norman, Fofana and Kondewa planned, ordered or
17 otherwise aided and abetted the killing of civilians at Tongo,
18 Koribondo, Bo, Kenema, Moyamba and Bonthe.

12:27:01 19 My Lords, the evidence to support such sweeping allegation
20 is contained in paragraphs 530, 531, 532, and 533. My Lords,
21 there is indeed evidence before this Court that Mr Kondewa
22 attended the meetings in which the Tongo and Bo attacks were
23 planned, and that he spoke to the commander of the Kamajor forces
24 before he left for that mission.

12:28:17 25 I refer Your Lordships to the evidence of TF2-201. My
26 Lords, page 113 of the transcript of 4th of November 2004. It
27 was at that meeting that it was alleged that instructions were
28 given to Kamajors to kill, loot and burn when Tongo was taken.
29 My Lords, TF2-201 said that Mr Kondewa said in that meeting, "I'm

1 going to give you my blessings. I'm going to give you the
2 medicines which would make you to be fearless if you did not
3 spoil the law. I will give it to you. I will prepare you."

12:30:42 4 But despite the evidence of the witness that they were
5 under instructions to kill, burn and loot when they go to Tongo,
6 Mr Kondewa, at the very meeting, if what is said by that witness
7 is believed, My Lords, informed that witness and all present that
8 his herbs would only work if the fighters did not "spoil the
9 law."

12:31:18 10 There was only one set of laws that was spoken about all
11 throughout these proceedings in relation to Mr Kondewa. Those
12 laws were that you should not kill; you should not loot; you
13 should not burn. So at a meeting, planning for an attack on
14 Tongo, Mr Kondewa was giving admonition to Kamajors that they
12:31:48 15 should not do what -- anything that would affect civilians. That
16 is the man facing charges for war crimes and crimes against
17 humanity, telling people at a meeting here to plan a very serious
18 battle, that they should not do harm to civilians.

12:33:38 19 But I would refer Your Lordships to paragraph 530 where the
20 Prosecutor is alleging that because Mr Kondewa prepared herbs to
21 make Kamajors bulletproof for that, the attack of Tongo,
22 Mr Kondewa is guilty of war crimes and crimes against humanity.
23 Well then, it is my submission, My Lord, that the conclusion is
24 erroneous.

12:34:34 25 I would also refer Your Lordships to what is contained in
26 paragraph 533 that I had referred to. So It reads, My Lord:
27 "Norman called the meeting, and present at the meeting were
28 Norman, Fofana and Kondewa, the chairman of the War Council and
29 other members of the Council. Kondewa's presence in that meeting

1 was not a coincidence." This was a meeting, it is alleged, that
2 was called to plan the attack on Bo and Kenema.

3 Again, War Council members were present and key Prosecution
4 witnesses testify as to the role or, rather, lack of role that
12:35:59 5 the War Council played whilst at Talia.

6 My Lord, the Prosecution, by paragraph 529, are alleging
7 that Norman, Kondewa -- sorry, My Lords, I've gone through that.
8 I'm sorry.

9 It is my submission that the presence of Mr Kondewa, at
12:36:51 10 those meetings, without more does not make him criminally liable.
11 We are not saying that Kondewa's presence at those meetings was
12 coincidental. The Prosecution wants this Court to believe and
13 convict the third accused for planning, ordering and otherwise
14 aiding and abetting the killing of civilians at Koribondo, Bo,
12:37:47 15 Kenema, Moyamba and Bonthe for attending a meeting, whether
16 deliberately or not, when there's virtually no evidence about
17 what he did or said at the said meeting.

18 My Lord, the witnesses said Kondewa gave them gallons of
19 liquid solution made out of Koranic writings. I wish to submit
12:38:22 20 that the Prosecution failed to prove any of the ingredients of
21 the crimes charged against Mr Kondewa in relation to the attacks
22 that took place at Tongo, Koribondo, Kenema, Moyamba and Bonthe.

23 My Lord, the Prosecution argue that evidence of Kondewa's
24 direct role in the attack on Bo was presented through the
12:38:51 25 testimony of witness TF2-008. I refer to, Your Lordships, to
26 paragraph 576 of the trial brief of the Prosecution. But that
27 witness, TF2-008, gave evidence that the War Council recommended
28 to Norman that the Kamajors should concentrate on taking Bo and
29 ignore Freetown. The planning and implementation was left in the

1 hands of Norman, Fofana and Kondewa. There is no evidence before
2 this Court what, if at all, the accused did in pursuance of that
3 order or directive. What the Prosecution wants the Trial Chamber
4 to rely on to base a verdict on is that orders were given in the
12:40:24 5 presence of Mr Kondewa to loot and kill.

6 My Lord, there is clear evidence that for the Tongo attack,
7 when there were orders to kill, loot and destroy, Kondewa told
8 commanders at the meeting that the laws of the initiation were
9 not to kill, rape, loot or harass civilians should be adhered to.

12:41:02 10 I wish to submit that there is no nexus between Mr Kondewa
11 and the killings that took place in Tongo, Koribondo, Bo, Kenema,
12 Moyamba and Bonthe.

13 I would also refer Your Lordships to paragraph 528 of the
14 Prosecution's trial brief.

12:41:50 15 JUDGE BOUTET: Haven't you been through that already? 528,
16 529 and 530 and so on?

17 MR WILLIAMS: No, My Lord, I haven't, My Lord.

18 JUDGE BOUTET: No?

19 MR WILLIAMS: No. This refers to a killing that took place
12:42:01 20 at Talia of two people at the compound of JD Murana, the chiefdom
21 speaker of Talia Yawbeko. That witness, TF2-096 said the corpses
22 were buried in the compound, near the well, a well that was in
23 the compound of the chiefdom speaker, JD Murana.

24 JD Murana was called as a witness for the third accused.

12:43:05 25 My Lord, that witness denied the or contradicted the evidence of
26 TF2-096 as far as the killing of those two people were concerned.
27 He says, "No corpses were ever buried around, in my compound or
28 around my well. We would have known and seen the graves if it
29 had occurred."

1 My Lord, I would also refer Your Lordships to the evidence
2 of TF2-073 and TF2-068. The Prosecution is alleging that
3 Mr Kondewa was directly involved in the looting of a Mercedes
4 Benz. While these two witnesses, that is TF2-073, testified that
12:44:36 5 a couple of days prior to Kamajors going to Sembehun, Mr Kondewa
6 had gone there and warned them against looting or any form of
7 harassment to civilians. But it is our submission that there is
8 no nexus between the looting and Mr Kondewa. The Prosecution did
9 not adduce evidence to show how Mr Kondewa came by that Mercedes
12:45:35 10 Benz. It was a burden that was on them. My Lords, they failed
11 to discharge it.

12 The Prosecution have highlighted at pages 180 to 195 the
13 evidence of key witnesses which they are relying on to prove the
14 case against the third accused.

12:46:15 15 My Lord, we would submit that the most important piece of
16 evidence is found in paragraph 640 at page 187. A conclusion,
17 based on the evidence of Albert Nallo, who said that Mr Kondewa
18 did not command troops, and was not a fighter, should be believed
19 by this Court. My Lord, it was contradicted in several respects,
12:47:07 20 My Lord, the incident of soldier and several other things, My
21 Lord, but we are saying we are inviting Your Lordships to
22 believing on that.

23 Indeed, My Lords, Kondewa was an ordinary Sierra Leonean
24 who wished for nothing more than to live in a peaceful Sierra
12:47:28 25 Leone. In concluding we'd invite, or implore, Your Lordships to
26 acquit him on all the charges in the indictment. We ask that
27 Mr Kondewa be set free so that he could once more assist his
28 people by the practice of his herbal medicine and joy to the
29 lives by entertaining the masses with his masked devil dancing.

1 My Lord, that might not be in time for Christmas, but we hope
2 Mr Kondewa will be home well in time for Easter.

3 I wish to take this opportunity, the entire Kondewa Defence
4 team, comprising of Mr Charles Margai, Ansu Lansana who are not
12:48:32 5 present in Court today, Martin Michael, and I, and the two
6 investigators Foray and Bobo, on our behalf and on behalf of our
7 client, to thank Your Lordships for your patience exercised
8 throughout these proceedings and for the just and fair manner
9 Your Lordships conducted the proceedings.

12:48:55 10 We also wish to thank the Prosecution for the candour it
11 has shown even in difficult and heated moments. The Defence
12 office, and our co-defence teams for sharing the knowledge and
13 the time with us, and for being there for us in times of need,
14 and to the Chamber's legal counsel and to the Court Management
12:49:20 15 for all their assistance throughout the proceedings.

16 Thank you very much, My Lords.

17 PRESIDING JUDGE: Thank you, Mr Williams. Mr Kamara, the
18 Prosecution is granted leave of the Bench --

19 JUDGE ITOE: Just a minute. I just had one --

12:49:41 20 PRESIDING JUDGE: Thank you. Well, just a minute,
21 Mr Kamara. Carry on, Justice Itoe.

22 JUDGE ITOE: Mr Williams, see, I'm caught up in some slight
23 confusion as to -- we've heard evidence in this Court that you
24 had Donsos, Kapras and Gbethis and what have you, the CDF
12:50:08 25 Kamajors and so on and so forth. Who were these Gbethis, Kapras,
26 Donsos, and so on and so forth? Where do they fit within the
27 Kamajor or the CDF movement? Can you situate me on this, please?

28 MR WILLIAMS: My Lord, it is my --

29 JUDGE ITOE: And I would also be asking the Prosecution to

1 also locate, to situate me on this, as well. I would like to
2 know who was a Kamajor, who was a Gbethi, who was a Donso, who
3 was a Tamaboro and the rest of it.

12:50:57 4 MR WILLIAMS: My Lord, the Kamajors, the society, My Lord,
5 was a predominantly Mende group, My Lord, based in the south and
6 the east. In the north, they had the Kapras and in the east --

7 JUDGE ITOE: "They had." When you say "they had," who had?
8 Who were the Kapras?

12:51:16 9 MR WILLIAMS: The Kapras, My Lord, they were people
10 fighting, pro-government forces, My Lord, fighting for the
11 restoration of democracy and to route the RUF/AFRC forces. My
12 Lord, it is my understanding that at some point in time they all
13 came under the CDF but, for most of the time, they were acting as
14 separate units.

12:51:51 15 But, My Lord, the common thing that runs through them, My
16 Lord, is that they were all traditional hunting societies, My
17 Lord; even in the Western Area a group was created and we could
18 call them people belonging to particular secret society, the
19 hunting society, My Lord, in Freetown.

12:52:28 20 JUDGE ITOE: Well, are you saying that these were
21 independent fighting groups? Would I be wrong, for instance, if
22 I may put it directly, would I be wrong to say that there were
23 Kapras, for instance, or the Tamaboros, were part of the -- were
24 Kamajors in some other names?

12:52:51 25 MR WILLIAMS: Exactly so, My Lord.

26 JUDGE ITOE: Well, then, tell me. I mean, it's for you.
27 You were the people, you know, who -- you are deep in this
28 movement. You know, you have been instructed by your clients and
29 we would like to know.

1 MR WILLIAMS: My Lord, may I have the question once again?
2 I am sorry.

3 JUDGE ITOE: Who were the Kapras? Who were the Tamaboros?
4 Who were the Gbethis and the rest of them? Are they Kamajors?

12:53:17 5 MR WILLIAMS: They are not Kamajors, My Lord. At some
6 point in time all of them came under the CDF umbrella but, I
7 mean, the evidence, My Lord -- there is evidence before this
8 Court that even one of the trainers, one of the key persons at
9 Base Zero, a colonel, a retired colonel, or police officer, SSD
12:53:43 10 boss, My Lord, who was not a Kamajor; he was a Kapra, My Lord, he
11 was from the north.

12 Your Lordship, the evidence in relation to Dauda Kanu,
13 these were all Kapras coming from different areas to Base Zero.
14 As I said, they were all acting separately at some point in time
12:54:03 15 and came under unified command much later, My Lord. I believe
16 after the restoration of democracy they all came under one
17 unified command.

18 PRESIDING JUDGE: Mr Kamara, you have the leave of the
19 Bench to highlight alleged inconsistencies, inaccuracies or
12:54:37 20 mischaracterisations in the closing addresses of the Defence
21 teams, but the leave is not in respect of a right of reply, nor
22 is it in respect of a rebutting closing address. All we want is
23 some enumeration of the so-called misrepresentations or
24 mischaracterisations and very, very brief comments as to why you
12:55:17 25 perceive them as misrepresentations. You have precisely seven
26 minutes to do this.

27 MR KAMARA: I'm most grateful, My Lord. If I may be of
28 assistance to the Court, by reason of the question asked by
29 Justice Itoe, the indictment, My Lord, paragraph 6 of the

1 indictment, it describes the CDF as an organisation and Gbethis
2 and Kapras both comprising mainly of Temnes from the north,
3 Tamaboro's comprising mainly of Korankos from the north and
4 Donsos comprising mainly of Konos from the east.

12:55:57 5 If I may preface my comments by saying that it is hoped
6 that it is not viewed I am attempting to undo the good work of my
7 learned friend on the other side, and currently I do commend him
8 for a very good presentation. Nonetheless, My Lords, I take
9 issue with certain aspects of his presentation.

12:56:26 10 PRESIDING JUDGE: Who are you referring to now?

11 MR KAMARA: My learned friend Mr Powles.

12 PRESIDING JUDGE: Mr Powles?

13 MR KAMARA: Yes, My Lord.

14 PRESIDING JUDGE: Very well, then.

15 JUDGE BOUTET: When you say you take issue, I presume you
16 are talking only of facts.

17 MR KAMARA: Of facts. Yes, My Lord.

18 JUDGE BOUTET: Outlined by Mr Powles.

19 MR KAMARA: Yes, My Lord.

20 JUDGE BOUTET: Not the law.

21 MR KAMARA: Not the law.

22 JUDGE BOUTET: Not his understanding of the law, but facts.

23 MR KAMARA: Facts, My Lord.

24 JUDGE BOUTET: Thank you.

12:56:34 25 MR KAMARA: Thank you, My Lord.

26 My Lord, I'll start off with -- to make a statement that
27 there were a plethora of misstatements of the evidence wrapped up
28 beautifully in a rose-flowered speech. And the starting point,
29 My Lord, is when my learned friend, Mr Powles, made reference to

1 the fact of -- that there is no absolute reference, and he was
2 referring to paragraph 434 of the final brief of the
3 Prosecution -- and he said that TF2-017 makes absolutely no
4 reference to Fofana. He goes on further to say no reference at
12:57:35 5 all to Fofana. My Lord, this is in relation to the issue of
6 orders for burning. My Lord, that cannot be further away from
7 the truth.

8 My Lord, I'll invite Their Lordships to look at transcript
9 of the 19th of November 2004 and, My Lord, it reads: And the
12:58:03 10 whole issue emanates from a meeting, that is where orders were
11 given, and the question was posed to that witness: "Who were
12 present in that meeting?" The answer is: "We also had
13 commanders, War Council members. Dr Allieu Kondewa was also
14 present. Moïna Fofana was also present."

12:58:22 15 My Lord, how can it be said by my learned friend that there
16 was no reference to Fofana with issues as relates to the command
17 to burn houses?

18 PRESIDING JUDGE: So there was a reference, according to
19 you?

12:58:33 20 MR KAMARA: Yes, My Lord, there is a clear reference.

21 PRESIDING JUDGE: You're referring us to transcript --

22 MR KAMARA: 19th of November 2004, My Lord.

23 PRESIDING JUDGE: Right. So that's your first observation.

24 MR KAMARA: That's my first comment.

12:58:42 25 PRESIDING JUDGE: Observation.

26 MR KAMARA: Yes, My Lord.

27 PRESIDING JUDGE: Second?

28 MR KAMARA: The issue had is about the sweeping comments
29 and conclusions as to no evidence whatsoever with regards to

1 killings at SS Camp. My Lords, I'll refer the Bench --

2 PRESIDING JUDGE: To?

3 MR POWLES: Can my learned friend help --

4 PRESIDING JUDGE: Yes, counsel.

12:59:11 5 MR POWLES: -- by actually setting out exactly what the
6 point I made was, because it's perhaps slightly more nuanced than
7 the way my learned friend is putting it now. He may have
8 misunderstood the point that I was making, so perhaps he could
9 refer me and us to the point where any points that he's seeking
10 to make were made; that would be much appreciated.

11 PRESIDING JUDGE: Yes. Can you be a little more precise;
12 what is your second complaint?

13 MR KAMARA: Killings at SS Camp.

14 PRESIDING JUDGE: What is the misrepresentation or the
12:59:43 15 mischaracterisation?

16 MR KAMARA: The surplusage of language in the sense that
17 there was no evidence of killings at SS Camp related to --

18 PRESIDING JUDGE: So counsel said that?

19 MR KAMARA: Yes, My Lord.

12:59:53 20 PRESIDING JUDGE: What is your response to that?

21 JUDGE BOUTET: It is not my recollection -- wait a moment,
22 Mr Powles. The argument presented was there was no evidence to
23 support that Fofana was aware of that, and he did make reference
24 to the log book, if I'm not mistaken, and the mere fact that he
13:00:12 25 was, according to some evidence, given the log book when he is
26 illiterate doesn't make any evidence -- does not support evidence
27 that he was aware and knew of any killings. There was no
28 argument about killings, or no killings. It was knowledge by
29 their client of any killings.

1 MR KAMARA: That's a different issue, My Lord. I agree
2 with you entirely on that. That is different. When he was
3 addressing the issue of killings in Kenema and orders given by
4 Mr Fofana, and the point there, if we understand him clearly, was
13:00:42 5 that there is no direct link between orders given by Fofana to
6 killings at SS Camp. There is no evidence, absolutely no
7 evidence, that is what he said.

8 PRESIDING JUDGE: Right. So what is your response?

9 MR KAMARA: My Lord, there is evidence.

13:00:56 10 PRESIDING JUDGE: Right.

11 MR KAMARA: My Lord, I refer Their Lordships to the
12 transcript of 28 November 2004.

13 MR POWLES: Can we have a page number, please?

14 MR KAMARA: Yes, page 101.

13:01:08 15 PRESIDING JUDGE: 101?

16 MR KAMARA: Yes, My Lord.

17 PRESIDING JUDGE: Your next complaint.

18 MR POWLES: And first --

19 JUDGE ITOE: Let's have the date again, please.

13:01:16 20 PRESIDING JUDGE: You said --

21 MR KAMARA: 28 September --

22 PRESIDING JUDGE: November.

23 MR KAMARA: Sorry, My Lord, 28 September 2004 at page 101.

24 MR POWLES: My learned friend failed to give a page number
13:01:28 25 for the transcript reference on 19 November 2004, the previous
26 point, as well.

27 PRESIDING JUDGE: Right.

28 MR KAMARA: That one is on page 93 to 94. It starts on
29 page 93 to 94, My Lord.

1 PRESIDING JUDGE: Okay. The third complaint?

2 MR KAMARA: My Lord, I have the one about the issue of an
3 order to attack, that, at no point in time, if I understand him
4 rightly, that Fofana gave an order to attack.

13:01:54 5 PRESIDING JUDGE: You say he said that?

6 MR KAMARA: If I understand him rightly, My Lord.

7 PRESIDING JUDGE: Yes.

8 MR KAMARA: The problem I have now is that I do not have a
9 transcript before me, so I do not want to mischaracterise his
13:02:06 10 statement, because I'm taking issue of evidence being
11 mischaracterised.

12 PRESIDING JUDGE: Well abandon it, if you cannot respond.

13 MR KAMARA: Yes, My Lord.

14 PRESIDING JUDGE: Next point.

13:02:11 15 MR KAMARA: I will leave those two for Your Lordship and
16 just put the Court on notice as you go through the transcript.

17 PRESIDING JUDGE: Yes. Number 4.

18 MR KAMARA: I will leave those two, My Lord, because I do
19 not have the transcript.

13:02:21 20 PRESIDING JUDGE: Anything else?

21 MR KAMARA: That is about it all on these issues of
22 mischaracterisation of the evidence.

23 PRESIDING JUDGE: Right. I did say -- in fact, I gave you
24 the liberty, also to -- there is nothing in respect of the third
13:02:31 25 accused?

26 MR KAMARA: Nothing, My Lord.

27 PRESIDING JUDGE: Nothing in respect of the first, the
28 address?

29 MR KAMARA: My Lord, I had a few, but I will leave those.

1 PRESIDING JUDGE: Right. Okay.

2 JUDGE ITOE: When will this exchange end?

3 PRESIDING JUDGE: Mr Powles, what is your request?

4 JUDGE ITOE: [Overlapping speakers] -- you will also get up
13:02:49 5 the next moment and --

6 PRESIDING JUDGE: No, we wouldn't let that happen.

7 Mr Powles.

8 MR POWLES: In fairness, there is no right of reply for the
9 Prosecution at the end of a closing speech at this Court. There
13:03:00 10 is, of course, at the ICTR, but it was deleted for the purposes
11 of --

12 PRESIDING JUDGE: Mr Powles, you are overruled. Please sit
13 down. I indicated that when we gave him leave, we gave him
14 leave, not by reason of a right of reply, not in the sense of
13:03:16 15 putting forward a rebuttal of closing address. We confined him
16 to an enumeration of alleged mischaracterisations. The Bench is
17 in full control and in possession. We will go to the records and
18 examine them.

19 MR POWLES: I'm grateful.

13:03:35 20 PRESIDING JUDGE: We do not want any argument further.

21 MR POWLES: That was all I was going to urge Your Honours
22 to do.

23 PRESIDING JUDGE: Right.

24 JUDGE ITOE: We are not bound by procedures and practices.
13:03:44 25 We would not follow hook, line and sinker procedures and
26 practised which have been installed or recognised elsewhere. We
27 are an independent tribunal and we will proceed the way we think
28 we should and, in our understanding, as independent judges of an
29 independent court.

1 PRESIDING JUDGE: Clearly, you must appreciate this is a
2 court of records. The records speak abundantly to what
3 transpires here, and we will certainly go through them with a
4 fine tooth comb.

13:04:12 5 MR POWLES: That was all I was seeking to ask --

6 PRESIDING JUDGE: That's why we use words like "alleged
7 inconsistencies," "alleged mischaracterisation," "perceived."
8 They may turn out not to be anything.

9 MR POWLES: Your Honours, I'm grateful for the
13:04:28 10 [indiscernible]. Sorry to trouble you.

11 PRESIDING JUDGE: We have now come to the conclusion of the
12 closing arguments. We want to thank you all, counsel, for the
13 time you've spent in preparing your briefs and also for the able
14 and professional presentation of your arguments. We also want to
13:04:51 15 thank all the other court officials for their industry, diligence
16 and patience, and the sacrifices that they have made in ensuring
17 that we get to this point.

18 All that remains to be done now, at this stage, is to
19 adjourn this trial for judgment, and to indicate that notices
13:05:19 20 will be sent, specifying the precise date for the delivery of
21 judgment. Court is adjourned.

22 [Whereupon the closing arguments adjourned
23 at 1.12 p.m.]

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