

360  
SCSL-2004-15-T

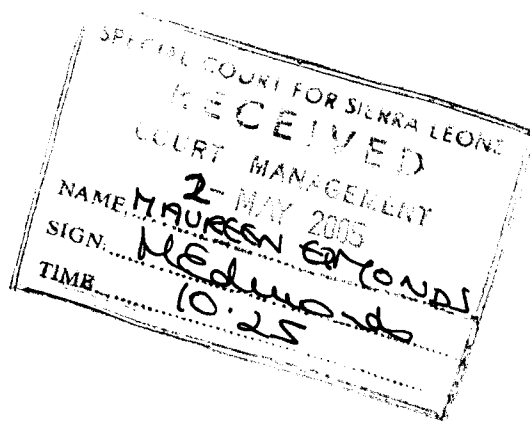
(11298 - 11300)

**THE SPECIAL COURT FOR SIERRA LEONE**

BEFORE:

Judge Benjamin Itoe, Presiding Judge  
Judge Bankole Thompson  
Judge Pierre Boutet

Registrar: Mr. Robin Vincent

Date filed: 2<sup>nd</sup> May 2005**The Prosecutor**

-v-

**Issa Hassan Sesay****Case No: SCSL - 2005 - 15 - T**

**Defence Response to the Prosecution**  
**Application for an Extension of Time for Compliance**  
**with the order for compliance of Prosecution with Rule**  
**94 bis dated 9<sup>th</sup> March 2005**  
 (and notice that the Defence require the attendance of TF1 - 150 to give live  
 testimony)

**Office of the Prosecutor**  
 Luc Côté  
 Lesley Taylor

**Defence**  
 Wayne Jordash  
 Sareta Ashraph  
 Eleanor Hutchison

1. On the 29<sup>th</sup> April 2005 the Prosecution filed an urgent application for an extension of time for compliance with the order for compliance of the Prosecution with Rule 94 *bis* dated 9<sup>th</sup> March 2005. The Defence herewith files its response.
2. The Defence can hardly object to what is effectively a *fait accompli*. An objection would not be productive or conceivably affect the delivery of the report by the UPS Worldwide Express service. However the Defence note and re –iterate its concerns about the belated service of the expert reports in this case. Whilst it appreciates the difficulties, which are inherent in obtaining experts and their reports, nonetheless the present difficulties (arising as they appear to do from belated arrangements) prejudice the Defence and are antithetical to the timely identification of the issues in the case against the accused.
3. The Prosecution have a duty pursuant to Rule 94 *bis* to serve expert evidence “as early as possible”. In the event it appears that the Prosecution will serve their reports at the very latest time possible – the 5<sup>th</sup> May 2005 – a date imposed upon them by the Trial Chamber. The Defence have had to cross examine 31 witnesses without the benefit of knowing the totality of the case against them and importantly without knowing what the Prosecution’s experts will testify in relation to the factual case against the accused. The Defence have had to challenge the Prosecution case on the facts without knowing an essential part of the case it must face.
4. This delay is not in the interests of justice. This delay is not simply inconvenient. For example in the report of TF1 – 150<sup>1</sup> (the first and only report thus far disclosed – on the 25<sup>th</sup> April 2005) the Prosecution expert claims<sup>2</sup> that, “a marked deterioration in civil stability” in Makeni “was closely linked to the feud between Brigadier Issa and Dennis Mingo”. The Trial Chamber will be aware that a number of witnesses have testified to the feud between the two men. The

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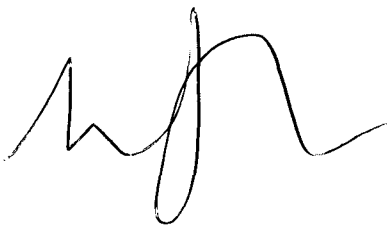
<sup>1</sup> Notice is hereby given of the requirement that this witness attend to give oral evidence.

<sup>2</sup> See paragraph 68.

Defence have not cross examined any witness on the issue of whether this dispute *in fact* led to such a deterioration of stability (above and beyond the allegations that Mingo's troops looted after the attempt to kill Sesay) because we were unaware that this allegation would be asserted at any stage during the Prosecution case. This lost opportunity to get closer to the truth (and no doubt many more will be identifiable when the remaining expert reports are disclosed) is regrettable to say the least.

5. The Defence also note that the Prosecution seek an extension for one report TF1 – 301) and state that they “will comply with the Order in respect of all other expert reports”. The Defence submit that if the Prosecution have the other reports they ought not to be disclosed on the last possible day but ought to be served forthwith pursuant to Rule 94 *bis*.

Dated the 2nd day of May 2005



Wayne Jordash

Sareta Ashraph

Eleanor Hutchison