

**THE SPECIAL COURT FOR SIERRA LEONE****BEFORE:**

**Justice Pierre Boutet, Presiding**  
**Justice Bankole Thompson**  
**Justice Benjamin Itoe**

**Interim Registrar: Mr. Lovemore G. Munlo**

**Date filed: 26<sup>th</sup> October 2005**

**The Prosecutor**

-v-

**Issa Hassan Sesay**  
**Morris Kallon**  
**Augustin Gbao**

**Case No: SCSL – 2004 – 15 – T**

---

**APPLICATION FOR EXTENSION OF TIME TO RESPOND  
TO THE PROSECUTION NOTICE UNDER RULE 92 bis TO ADMIT THE  
TRANSCRIPTS OF TF1-023, TF1-104 AND TF1-169**

---

**Office of the Prosecutor**  
Luc Côté  
Peter Harrison  
Shyamala Alagendra

**Defence Counsel for Issa Sesay**  
Wayne Jordash  
Sareta Ashraph

Prosecutor v Sesay, SCSL-04-15-T

1

<b>SPECIAL COURT FOR SIERRA LEONE</b>	
<b>RECEIVED</b>	
<b>COURT MANAGEMENT</b>	
26 OCT 2005	
NAME	NEIL GIBSON
SIGN	<i>Neil Gibson</i>
TIME	15:01

## INTRODUCTION

1. On the 26<sup>th</sup> October 2005 the Prosecution served their confidential notice under Rule 92 bis to admit the transcripts of testimony of TF1-023, TF1 – 104 and TF1-169. The Defence objections, if any, must be submitted within five days pursuant to Rule 92 bis and therefore must be filed no later than the 31<sup>st</sup> October 2005.
2. The Defence seeks an extension of the time, pursuant to Rule 72 bis, in order to properly consider this application and respond appropriately.

## REASONS

3. There are a number of reasons for the present application. The Sesay team is comprised of two working counsel. As the OTP are well aware both Lead Counsel and Co – Counsel will be traveling to Freetown within the next five day period. Lead Counsel (Jordash) will travel on the 31<sup>st</sup> October and the Co- Counsel (Ashraph) on the 28<sup>th</sup> October 2005 respectively. The timing of the Notice prevents the Defence from availing themselves of the mandated minimum period for our response since for one of the days both Counsel will be airborne.
4. Moreover the first indication the Defence received of the Prosecution's motion was on the 26<sup>th</sup> October 2005. It would have helped to have some notice so that we could have prioritized the preparation of these witnesses and addressed ourselves to the evidence in advance and with these issues in mind. The Notice involves the consideration of over 500 pages of evidence, 7 authorities from the adhoc tribunals<sup>1</sup>, the Rules of Procedure and Evidence from the Special Court, the ICTR and the ICTY. It involves a complex area of law which is controversial and sensitive. The Notice involves a number of fundamental issues which relate to the Principle of Orality with which the Special Court has often been concerned and which the Prosecution have so often relied upon during the court proceedings. The admission of this evidence, without well thought out discussion, argument

---

<sup>1</sup> This is not including those which the Defence may seek to rely upon.

and comprehensive consideration by all parties is likely to lead to error and injustice.

5. The interests of justice dictate that the Prosecution notice be properly debated. Ordinarily the Defence would have been able to achieve this within the next five days but this can not be adequately achieved when the Defence Counsel are in the process of preparing to leave their respective homes and travel several thousand miles, with all the practical and professional obligations, deadlines, prior commitments and arrangements which this necessarily involves. The Prosecution Notice could not have been filed at a more inconvenient and impractical time nor could its timing be more likely to lead to an impoverishment of debate on this issue.

**Lack of Prejudice to the Prosecution.**

6. The Defence seeks an extension until Monday 7<sup>th</sup> November 2004. The extension sought is thus for only an additional seven days which will not create any difficulties for the Court or the Prosecution. In particular all the witness who are the subject of the Prosecution's notice (TF1-023, TF1 -104 and TF1-169) are to be called after the sixth witness and moreover after witnesses TF1- 045 and TF1 - 334. These two witnesses testified in the AFRC trial for a combined period of 12 days and incorporate over 2400 pages of evidence. In short there is a significant body of evidence to be called before the witnesses who are the subject of this notice will be heard.
7. In any event the Prosecution has served their Notice only one week before the next trial session. This has placed, not just an onerous burden on the Defence, but also an unnecessary burden on the Trial Chamber that, if it is to adhere to the timetable being dictated by the Prosecution Notice, will have to consider and deliberate on these complex issues with an unseemly degree of haste. It is submitted that this situation is less than ideal and may be inimical to good law.

**CONCLUSION**

8. The Defence respectfully seeks an extension of the time until the 7<sup>th</sup> November 2005 (or until the Trial Chamber considers appropriate) to respond To the Prosecution Notice.

Dated the 26<sup>th</sup> October 2005

A handwritten signature in black ink, appearing to read 'W. Jordash', with a long horizontal flourish underneath.

Wayne Jordash  
Sareta Ashraph  
Counsel for Issa Sesay

## BOOK OF AUTHORITIES

1. SCSL, Prosecutor v. Norman et al, *Decision on Disclosure of Witness Statements and Cross-Examination*, 16 July 2004
2. Prosecutor v. Norman et al. *Ruling on Disclosure of Witness Statements*, 1 October 2004
3. ICTR, Prosecutor v. Niyitegeka, *Judgment of the Appeals Chamber*, 9 July 2004
4. ICTR, Prosecutor v. Musema, *Judgment and Sentence*, 27 January 2000
5. ICTR, Prosecutor v. Akayesu, *Judgment*, 2 September 1998
6. ICTR, Prosecutor v. Rutaganda, *Judgment of the Appeals Chambers*, 26 May 2003
7. ICTR, Prosecutor v. Bagilishema, *Decision on the Defence Motions to Direct the Prosecutor to Investigate the False Testimony of Witness "R"*, 9 March 1998

## ANNEXES

- A: Prosecution's List of Core Witnesses indicating whose statements have not been signed or otherwise proved, dated 14<sup>th</sup> May 2005