

Case No. SCSL-2004-15-T  
THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
ISSA SESAY  
MORRIS KALLON  
AUGUSTINE GBAO

MONDAY, 27 FEBRUARY 2006  
10.18 A.M.  
STATUS CONFERENCE

TRIAL CHAMBER I

Before the Judges:	Bankole Thompson
For Chambers:	Mr Matteo Crippa Ms Samantha Davies
For the Registry:	Ms Krystal Thompson Mr Geoff Walker
For the Prosecution:	Mr Peter Harrison Mr Mark Wallbridge (Case Manager) Ms Amira Hudroge (intern)
For the Principal Defender:	Mr Vincent Nmehielle Ms Haddijatou Kah-Jallow
For the accused Issa Sesay:	Mr Wayne Jordash Ms Sareta Ashraph
For the accused Morris Kallon:	Mr Melron Nicol-Wilson Ms Rachel Irura
For the accused Augustine Gbao:	Mr Andreas O'Shea

1 [RUF27FEB06A-SGH]  
2 Monday, 27 February 2006  
3 [Status conference]  
4 [Open Session]  
10:10:23 5 [The Accused present]  
6 [Upon commencing at 10.18 a.m.]  
7 JUDGE THOMPSON: Good morning, learned counsel. This  
8 proceeding is the status conference preceding the seventh trial  
9 session of the RUF case. It is now called to order. The  
10:18:26 10 proceedings convened pursuant to Rule 65 bis of the Rules of  
11 Procedure and Evidence of the Special Court which provides as  
12 follows and I quote:  
13 "A status conference may be convened by the designated  
14 Judge or by the Trial Chamber. The Status Conference  
10:18:47 15 shall:  
16 (i) organise exchanges between the parties so to  
17 ensure expeditious trial proceedings;.  
18 (ii) review the status of his case and to allow the  
19 accused the opportunity to raise issues in relation  
10:19:06 20 thereto."  
21 May now I have representation, please. For the  
22 Prosecution.  
23 MR HARRISON: My name is Harrison, H-A-R-R-I-S-O-N,  
24 initials PH. Also appearing this morning is Mr Wallbridge.  
10:19:20 25 W-A-L-L-B-R-I-G-E, initial M.  
26 JUDGE THOMPSON: Thank you. Who appear for the first  
27 accused?  
28 MR JORDASH: For the first accused myself, Jordash and  
29 accompanied by Sareta Ashraph.



1 JUDGE THOMPSON: Thank you. And who appear for the second

2 accused?

3 MR NICOL-WILSON: For the second accused

4 Melron Nicol-Wilson and Rachel Irura.

10:19:48 5 JUDGE THOMPSON: Thank you. Who appears for the third

6 accused?

7 MR O'SHEA: Your Honour, I am Andreas O'Shea and I am aware

8 and the Court is aware that there is an issue over my

9 representation.

10:20:04 10 JUDGE THOMPSON: Thank you. I would recognise appearance

11 for the Principal Defender's office.

12 MR NMEHIELLE: Thank you, Your Honour, Vincent Nmehielle.

13 JUDGE THOMPSON: And I would also recognise legal

14 representation on behalf of the Court Management section.

10:20:15 15 MS THOMPSON: Thank you, Your Honour.

16 JUDGE THOMPSON: Right. During the proceedings our

17 workload will focus on these agenda items: Enquiries about the

18 health of the accused, any matters touching and concerning their

19 detention and any issues relating to legal representation. Next,

10:20:59 20 trial logistics under which we will address a variety of relevant

21 issues. Third is witness issues again, under which item we will

22 discuss a variety of relevant issues. Outstanding matters under

23 which we will deal with motions pending before the Trial Chamber

24 and those, if any, pending before the Appeal Chamber. And any

10:21:26 25 other business.

26 Let us proceed with the health of the accused. May I now

27 request any issues that Mr Jordash and his team would like to

28 raise in respect of the health of the accused, first accused.

29 MR JORDASH: Simply to raise the issue again of the



1 operation which is outstanding for Mr Sesay concerning the  
2 unremoved bullet in his pelvic region. There has been some  
3 progress, it seems, both with the Registry making arrangements to  
4 have Mr Sesay taken to another country but also in relation to  
10:22:40 5 the possible carrying out of the operation in Sierra Leone.

6 There does appear, from conversations I have had with Mr Wallace  
7 and email contact that I have had with Mr Munlo, that there might  
8 be a real possibility that an operation could be carried out in  
9 Freetown. I need to speak again with Mr Munlo. I will arrange  
10:23:10 10 to meet him this week and will be able to inform the Court

11 thereafter as to which possibility is going to be the realistic  
12 one. But - I am sorry to interrupt Your Honour - just to say  
13 that Mr Sesay's condition continues to give him difficulty and  
14 the operation, from listening to Mr Sesay and his complaints,  
10:23:40 15 would seem to be urgent rather than something which is going to  
16 not cause problems over the next few months.

17 JUDGE THOMPSON: Does the Prosecution have any response?

18 MR HARRISON: There is nothing I can add to assist any way.

19 JUDGE THOMPSON: Thank you. Well, I could say speaking for  
10:24:00 20 the Bench it is refreshing that some progress is being made on  
21 this matter and that you are overcoming any bureaucratic  
22 constraints.

23 Any issues relating to detention, Mr Jordash? You have now  
24 raised the issue of health, any on detention or issues of a  
10:24:26 25 miscellaneous nature which may not fit into the rigid categories  
26 that we are familiar with. We will call them related issues.

27 MR JORDASH: There are issues relating to detention, but I  
28 am not sure that they are, in fact, issues which I need to bring  
29 to the Trial Chamber.



1 JUDGE THOMPSON: Well, thanks, that's quite right.

2 Certainly some of those issues are better dealt administratively  
3 and, of course, the only issues that you bring here will be the  
4 ones that call for some judicial intervention.

10:24:58 5 MR JORDASH: Yes, if they do need, then I will raise them  
6 at the appropriate time.

7 JUDGE THOMPSON: Thanks, appreciated. Learned counsel for  
8 the second accused.

9 MR NICOL-WILSON: Your Honour, the second is in good  
10:25:08 10 health. Nothing adverse to report about.

11 JUDGE THOMPSON: Thank you very much. That's very  
12 refreshing. Learned counsel, you don't have any related issues,  
13 detention issues, that you think the Court needs to --

14 MR NICOL-WILSON: None, Your Honour.

10:25:16 15 JUDGE THOMPSON: -- take some initiative on. All right,  
16 thanks. Professor O'Shea.

17 MR O'SHEA: Yes, Your Honour, thank you. First of all, I  
18 note that Mr Gbao is in court today and I have not been able to  
19 fully discuss the issues of health with him, but I understand  
10:25:40 20 from the Defence Office that it is the understanding of the  
21 Defence Office that he is in good health. I mean he has not  
22 indicated to me to the contrary.

23 JUDGE THOMPSON: Well, thank you very much. And there are  
24 no related issues that you think call for judicial guidance or  
10:25:58 25 intervention? Not at this moment.

26 MR O'SHEA: Well, I'm not in a position to answer properly  
27 at this stage.

28 JUDGE THOMPSON: Right, I do understand. Learned counsel  
29 from the Principal Defender's office.





1 MR NMEHIELLE: Well, generally speaking, like counsel have  
2 reported, the accused persons are quite generally in good health  
3 and whatever detention issues there are, my office has been quite  
4 in a position to deal with the chief of detention and his staff  
10:26:28 5 to ensure that there is some smoothness in the welfare of the  
6 accused persons and it is an ongoing engagement from time to time  
7 whenever we notice anything that may impact upon their detention  
8 welfare. So generally speaking, all is said to be well even  
9 though it cannot be well for somebody who has been in detention  
10:26:47 10 for years.

11 JUDGE THOMPSON: Well, I don't intend to get into legal  
12 submissions at this stage. Thank you for that. The question  
13 of -- anything you want to say, Principal Defender, on the  
14 question of representation.

10:27:06 15 MR NMEHIELLE: Yes, Your Honour.

16 JUDGE THOMPSON: Legal representation of the third accused.

17 MR NMEHIELLE: Thank you, Your Honour. Yes, I do. Just  
18 to -- as Your Honour is very much aware about I got a letter  
19 on the 17th February from the third accused seeking to withdraw  
10:27:30 20 his counsel, generally his defence team and, of course, I had  
21 meeting with the Presiding Judge wherein we discussed a number of  
22 issues and I clearly told the accused that it is not within my  
23 power to withdraw his counsel, but that at most what I could  
24 recommend is in addition of a Sierra Leonean counsel in his team.  
10:27:58 25 And the accused person has promised to be in court today and here  
26 he is. So I would -- my recommendation, based on the decision of  
27 this Chamber, is that I do not have -- I am not in a position,  
28 neither me or the Chamber, as clearly indicated, is in a position  
29 to withdraw his defence team, but I could recommend and I do



1 recommend that an additional counsel, local counsel, senior local  
2 counsel be added to his team. And that is the only compromise  
3 that I think can be brought into this situation because of the  
4 local dimensions or domestic dimensions of his case and that is  
10:28:41 5 the position I have communicated in my letter to the  
6 Presiding Judge when he asked my opinion.

7 JUDGE THOMPSON: Well, thank you very much. All I could  
8 add to that is the Bench is currently deliberating on this very  
9 important issue of the legal representation of the third accused  
10:29:04 10 and we certainly are, in fact, taking your representation into  
11 good part and I can assure you that from present indications we  
12 would not be oblivious of the fact that some of these matters  
13 need to be addressed in a way that is conducive to the interests  
14 of all the parties and I understand that a decision on that will  
10:29:36 15 issue very soon and probably even before the commencement of this  
16 trial. You have our assurance that the matter is receiving the  
17 most serious judicial attention of the Bench.

18 MR NMEHIELLE: Thank you, Your Honour. I would really want  
19 possibly for Mr O'Shea to maybe say something in this regard,  
10:30:09 20 because he seems to be a bit concerned about the situation.

21 JUDGE THOMPSON: Whatever Mr O'Shea would say at this  
22 point, you want us to factor that into our deliberations?  
23 Because we feel that you are the appropriate functionary to  
24 provide the necessary recommendation for us, and perhaps your  
10:30:41 25 recommendation also would be an outgrowth of whatever discussions  
26 you might have had with Mr O'Shea. Unless Mr O'Shea feels that  
27 anything that he might tell me now, sitting as a status  
28 conference judge and not as the full bench in its deliberative  
29 session, might influence whatever would be the outcome of our



1 deliberations, although I am prepared to act as a channel to  
2 other judges.

3 MR NMEHIELLE: I am sure Mr O'Shea is a grown man and can  
4 speak for himself. But I am not sure he intends to say anything  
10:31:21 5 that is adverse to my recommendation.

6 JUDGE THOMPSON: Well, then I certainly will yield.  
7 Professor O'Shea, you have the floor.

8 MR O'SHEA: Actually, Your Honours, I have read the  
9 correspondence, some of it, this morning. There is nothing  
10:31:41 10 really that I need to add because I am ad idem with the thinking  
11 of the Trial Chamber and the Principal Defender. Of course, as  
12 counsel for Mr Gbao, my duty is to act in his best interests,  
13 whatever they are. I agree with the Trial Chamber's thinking on  
14 the matter; anything which would facilitate Mr Gbao giving  
10:32:11 15 instructions in his case is something that I am very open-minded  
16 to.

17 JUDGE THOMPSON: Quite right.

18 MR O'SHEA: Subject of course to the necessary budgetary  
19 constraints and subject to ensuring that the team is run  
10:32:20 20 properly, which I feel falls within my domain.

21 JUDGE THOMPSON: Quite right. I can assure you that the  
22 Bench is eminently aware of the need to have justice done and  
23 done in a fair and expeditious manner, and that whatever the  
24 fiscal constraints, they should in fact take what I consider to  
10:32:45 25 be a subsidiary position in respect of matters of this nature.  
26 Thanks.

27 We can move on to the next item. Let's move on to trial  
28 logistics. Here we should proceed this way, and that would be  
29 my own methodology, that the first sub-item under this agenda is



1 trial schedule. Perhaps all I need to do here is recapitulate  
2 some rather boring details about the trial calendar. And  
3 virtually to say that the Trial Chamber issued an order  
4 on 25th November 2005, namely "Order Detailing Judicial  
10:33:51 5 Calendar", which set out the timetable for the seventh session of  
6 the trial against the accused persons. After this status  
7 conference today the trial will commence on 2nd March 2006 at  
8 9.30 a.m. and will continue until 6th April 2006. The hours of  
9 court operation will be those adopted during the sixth trial  
10:34:21 10 session. That is to say, Monday, Tuesday, Thursday and Friday we  
11 shall sit from 9.30 a.m. to 5.30 p.m., with a break for lunch  
12 from 1 p.m. to 2.30 p.m. On Wednesday the hours of court  
13 operation will be from 9.30 a.m. to 1 p.m., leaving the Chamber  
14 free to address matters that require very important judicial  
10:34:46 15 deliberations.

16 Further, the Trial Chamber also issued an order  
17 on 8th February 2006, namely "Order Detailing Judicial Calendar",  
18 which set out the timetable for the eighth trial session against  
19 the accused persons. The eighth trial session in this case will  
10:35:19 20 run from Tuesday, 28th June 2006 to Friday, 4th August 2006  
21 inclusive. And the next status conference - that is the one for  
22 the eighth trial session - will be held on Monday 19th June 2006  
23 at 10 a.m. in the courtroom.

24 Are there any comments on those rather boring details?

10:36:00 25 MR HARRISON: I have no comment.

26 JUDGE THOMPSON: Did we make some mistakes about dates?  
27 Sometime we say Monday is the 19th when it turns out to be that  
28 Monday is not the 19th or 18th. Are we on the same radar screen,  
29 Mr Jordash?





1 MR JORDASH: I think completely.

2 JUDGE THOMPSON: Right, thanks. The next sub-item here is  
3 the service of documents by Court Management section. All I will  
4 do here is to just to make a preliminary comment and then invite  
10:36:35 5 the head of the Court Management section to give us some brief  
6 presentation as to the practice direction on filing documents. I  
7 think all we can say from the Bench here is that we urge parties  
8 to adhere to the provisions of governing the filing of documents.  
9 But I now invite Miss Thompson to make a brief presentation.

10:37:09 10 MS THOMPSON: Thank you, Your Honour. Good morning,  
11 counsel. Let me introduce myself. My name is Krystal Thompson,  
12 I am the new chief of Court Management. I just wanted to bring  
13 to your attention just a few matters regarding the practice  
14 direction. As Judge Thompson has mentioned, I encourage you all  
10:37:35 15 to please adhere to the practice direction strictly. This has  
16 been ordered by the Registrar. So I wanted to set out some  
17 clarification regarding a few issues.

18 First of all, please ensure that you allow enough time to  
19 have your documents processed. Sometimes there may be errors and  
10:38:02 20 we need to give it back to you or whatever. So I would encourage  
21 you all to give yourselves enough time when you come to our  
22 office; we can look at the document, if there is anything we can  
23 give it back and then you can give it to us on the same day so  
24 that it can be filed. If you want to it be filed -- if you want  
10:38:22 25 your documents to be filed on the same day you should ensure that  
26 it reaches our office before 4 o'clock. I mean 4 o'clock is the  
27 cut-off date. If we get the document, we are able to process it,  
28 it is okay, we can guarantee service on that same day. So I just  
29 wanted to point that out.



1           In particular Articles 4(A) and A(5), which discuss whether  
2 a document is public, confidential or ex parte. Please ensure  
3 that that is put on the cover sheet of the filing. I know it  
4 also goes on the CMS form, but ensure that it is also on the  
10:39:16 5 document. And Article 5(4), if you are making references to  
6 other filings from the Court, please include the numbers which is  
7 found on the top left corner. That is all I have to say with  
8 regards to the practice direction.

9           If you have any questions you can contact me. My extension  
10:39:34 10 is 7035. You can also contact Neil Gibson; he is the deputy  
11 chief of Court Management. We will be sending you a copy of  
12 practice, again just so you have it and there are no issues. We  
13 will send that to you today via email.

14           One other matter with regard to interpretation and  
10:40:01 15 stenography, I would kindly request that you pause between  
16 speaking, counsel, before you begin conversation. Again, because  
17 it is very difficult to keep an accurate record when counsel  
18 don't pause. Also, when there is overlapping it is also  
19 difficult for the stenography unit and the interpreters to handle  
10:40:30 20 the transcript. So I just ask you to work with us and any  
21 questions again, please don't hesitate to contact me. Thank you.

22           Thank you, Your Honour.

23           JUDGE THOMPSON: Thank you, Ms Thompson. At this stage I  
24 will invite any brief responses from the parties. Prosecution?

10:40:50 25           MR HARRISON: There is nothing I can say to assist.

26           JUDGE THOMPSON: Thank you. Counsel for the first?

27           MR JORDASH: No, thank you.

28           JUDGE THOMPSON: Counsel for the second?

29           MR NICOL-WILSON: None, Your Honour.



1 JUDGE THOMPSON: Counsel for the third?

2 MR O'SHEA: We welcome Miss Thompson and are grateful for  
3 her indication.

4 JUDGE THOMPSON: Thank you. The next sub-item here is case  
10:41:12 5 presentation. I think we are here more or less back to our usual  
6 observation that the Trial Chamber is of the view that  
7 examinations-in-chief and cross-examinations of Prosecution  
8 witnesses have on occasion been unduly lengthy and sometimes  
9 repetitive. Sometimes, of course, this is a controversial issue  
10:41:54 10 not relevant, because when it comes to cross-examination the  
11 issue of whether questioning is relevant or not is itself  
12 extremely disputatious, and so we say that with some judicial  
13 diffidence. But we again continue to urge learned counsel on  
14 both sides to co-operate with the Bench in ensuring that we give  
10:42:19 15 the accused persons a fair and expeditious trial, and the nature,  
16 length and quality of the examinations-in-chief and the  
17 cross-examinations and re-examination are the necessary  
18 ingredients in determining whether a trial is fair and  
19 expeditious. That is all I need to say.

10:42:52 20 The next item is witness issues. I did indicate earlier on  
21 that here we would be discussing a variety of relevant matters.  
22 The first one is witness list. Let me introduce the particular  
23 subject with a brief narrative.

24 Pursuant to the Trial Chamber consequential order to the  
10:43:13 25 decision on further renewed witness list of 13th April 2005, the  
26 Prosecution filed on 5th May 2005 an updated core witness list  
27 comprising of 101 core witnesses. On 10th June 2005 the Chamber  
28 granted the Prosecution's request to add an additional witness to  
29 its list appearing as expert witness. Am I reflecting that



1 correctly in terms of the history so far?

2 MR HARRISON: I believe that's correct.

3 JUDGE THOMPSON: Thank you. Then on the 13th of  
4 January 2006 the Prosecution confirmed that as stated at the  
10:44:12 5 status conference on 1 November 2005, witnesses TF1-127, TF1-356,  
6 TF1-251 and TF1-143 have been removed from the core list and  
7 transferred to another list designated the back-up list. On the  
8 same date the Prosecution also notified the Court and the Defence  
9 that it is transferring witnesses TF1-210, TF1-363, TF1-005 and  
10:45:06 10 TF1-152 from the core list to the back-up list. And contextually  
11 transferring witnesses TF1-337, TF1-168, TF1-330 and TF1-288 from  
12 the back-up list to the core list. So it is a kind of lateral  
13 transfer; a sort of two-way kind of thing.

14 So that's the situation in terms of the core list of  
10:45:47 15 witnesses and the back-up list. Then the Prosecution filed a  
16 further notice on 20 February 2006 informing the Trial Chamber  
17 that there was a typographical error in the core list filed on  
18 10 February 2005. The Prosecution advised the Trial Chamber that  
19 core list numbers 44 and 48 both refer to TF1-212. Entry  
10:46:32 20 number 48 should have referred to TF1-213 instead, as opposed to  
21 TF1-212. TF1-213 appeared on the core list filed on 23 November  
22 2004 as number 49 and the subsequent list filed on 5 May 2005 as  
23 number 48. So the typographical error is limited or relates to  
24 the list filed on 10 February 2005. The Prosecution also  
10:47:25 25 notified the Court in that notice of its intention to transfer  
26 TF1-232 and TF1-290 from the core list to the back-up list. In  
27 addition, the Prosecution has filed an updated witness list now  
28 consisting of 95 core witnesses - 57 of whom have already  
29 testified - and 170 back-up witnesses. These amended lists





1 reflect the above changes to the Prosecution witness list. In  
2 addition a Prosecution investigator has been called pursuant to a  
3 request by the Defence. I will now invite comments first from  
4 the Prosecution to confirm or to modify or to revise or to  
10:48:36 5 clarify this history of the filings.

6 MR HARRISON: From for the Prosecution's point of view it  
7 is accurate. The only thing I can add that may be of assistance  
8 is that the Prosecution is hoping to reduce the list further.

9 JUDGE THOMPSON: Thank you very much. I am sure that  
10:48:54 10 information must be received with some sense of relief from the  
11 other side. I would now invite Mr Jordash to make any comments  
12 in respect of the narrative as to the procedural status of the  
13 filings.

14 MR JORDASH: No comments as to the procedural aspect except  
10:49:22 15 that any relief felt in the intended reduction is somewhat  
16 tempered by the difficulties which are visited upon the Defence  
17 when core witnesses are changed with back-up witnesses and so on  
18 and so forth. It changes the factual nature of the case.

19 JUDGE THOMPSON: Yes, but of course I can assure you that  
10:49:46 20 the Bench is ready to meet any contingencies that would in fact  
21 alleviate the adverse effect or impact this might have on the  
22 Defence since this Bench is so receptive to defence motions even  
23 if they come to the Bench like an avalanche.

24 MR JORDASH: Well, they come no faster than the  
10:50:11 25 supplementary statements, I am afraid.

26 JUDGE THOMPSON: I did not mean to engage you in a dialogue  
27 on that and I probably veer away from that and ask if are you all  
28 right. Are you okay? I will ask counsel for the second accused  
29 if he has any comments to make on that.



1 MR NICOL-WILSON: Your Honour, no comment on the narrative.  
2 I will rather say we welcome any move by the Prosecution to  
3 reduce the list further.

4 JUDGE THOMPSON: Right, thanks. And Professor O'Shea.

10:50:39 5 MR O'SHEA: Nothing further to add. Thank you,  
6 Your Honour.

7 JUDGE THOMPSON: Quite. And of course this is not an area  
8 where the Principal Defender has any particular stakes.

9 Well, we will move on to the other sub-items which is  
10:50:54 10 another relevant issue: Witnesses for the upcoming trial  
11 session, that is, the trial session commencing on the second. I  
12 here will just briefly say that on 10 February 2006 the  
13 Prosecution filed its proposed order of appearance of witnesses  
14 for the seventh trial session. This particular list identifies a  
10:51:24 15 total of 24 witnesses to appear during this trial session. The  
16 Prosecution inform the Defence on 16 January - according to the  
17 record - 2006 of this proposed order of appearance. And  
18 according to the Prosecution the statements of the said witnesses  
19 were disclosed to the defence counsel for each of the accused 42  
10:51:49 20 days or more before the anticipated testimony.

21 Is that reflection accurate, Mr Harrison?

22 MR HARRISON: I believe it is.

23 JUDGE THOMPSON: Thanks. And counsel for the first  
24 accused, any short response?

10:52:03 25 MR JORDASH: No, thank you.

26 JUDGE THOMPSON: Mr Melron Wilson.

27 MR NICOL-WILSON: No, Your Honour.

28 JUDGE THOMPSON: Mr O'Shea.

29 MR O'SHEA: No, Your Honour.



1 JUDGE THOMPSON: We will now move on to another relevant  
2 issue.

3 MR NMEHIELLE: Your Honour, before you move on, may I seek  
4 the permission of this Honourable Court to take my leave to go  
10:52:29 5 and do some other very pressing duties?

6 JUDGE THOMPSON: Leave is granted, counsel.

7 MR NMEHIELLE: Thank you.

8 JUDGE THOMPSON: The next item is other witness issues and  
9 here we will address the issue of protective measures. Several  
10:52:50 10 witnesses set out in the prosecution list for this session have  
11 already appeared in other trial proceedings. The Prosecution  
12 intends to rely on the protective measures granted to these  
13 witnesses in those other proceedings. Witnesses TF1-113,  
14 TF1-156, TF1-334 were granted a partial closed session by  
10:53:28 15 Trial Chamber II in the trial of Brima and others. In addition  
16 Witness TF1-081 was granted a closed session testimony by  
17 Trial Chamber I permitting him to testify in closed session in  
18 the trial of Brima et al and Witness TF1-296 was granted  
19 protective measures by Trial Chamber I and permitted to testify  
10:54:14 20 entirely in closed session in the CDF proceedings. The  
21 Prosecution has further indicated that it intends to make  
22 applications for closed session hearings in respect of the  
23 following witnesses: TF1-168, group one, category C, an  
24 application will be made for closed testimony here; TF1-041,  
10:54:45 25 group one, application to be made for category C insider and  
26 closed session testimony.

27 Does the Prosecution intent at this stage to confirm its  
28 intention to apply for a closed session of these witnesses and  
29 any others that they may have in the pipeline?



1 MR HARRISON: Yes, we can confirm it for those that the  
2 Court has already mentioned. But unfortunately the Prosecution  
3 is in the position that we have to advise the Court of concerns  
4 with respect to certain other witnesses.

10:55:27 5 JUDGE THOMPSON: Yes.

6 MR HARRISON: They are TF1-108, TF1-330, and then TF1-174  
7 and TF1-186. And if I can just explain to the Court very briefly  
8 what the Prosecution is trying to do is trying to forego closed  
9 session by using the technique of questions and answers being  
10:55:59 10 reduced to paper and then the paper become an exhibit. The

11 problem we are confronting with two of those witnesses is that  
12 they are not literate. It is a very brief and discrete area that  
13 would be canvassed with them and we are trying to imagine some  
14 other way of proceeding, but the Prosecution is advising the  
10:56:23 15 Court now that for those four witnesses there will be an

16 application at least for a partial closed session for each of  
17 them. The only other information that the Prosecution would like  
18 to bring to the court's attention at this point in time that the  
19 witness which is 24 on the witness list, which is TF1-043, that  
10:56:46 20 witness cannot attend Sierra Leone during this session. The

21 Prosecution hopes that that witness will attend for the eighth  
22 session.

23 JUDGE THOMPSON: Right, thank you. Counsel for the first  
24 accused.

10:57:05 25 MR JORDASH: Nothing to say at this stage.

26 JUDGE THOMPSON: Counsel for the second.

27 MR NICOL-WILSON: Nothing to say at this stage,  
28 Your Honour.

29 JUDGE THOMPSON: And counsel for the third.





1 MR O'SHEA: No, thank you, Your Honour.

2 JUDGE THOMPSON: The other item that we need to address is  
3 language requirements. The Prosecution has indicated that  
4 Witness TF1-156 will testify in the Madingo language. In  
10:57:37 5 addition, the languages of various other witnesses in the  
6 Prosecution list for the upcoming session have not yet been  
7 determined. All we need to know is for the efficiency of the  
8 proceedings, the language section needs to ensure that their  
9 translation facilities are in place for the testimony of these  
10:58:04 10 witnesses. Any contribution from the Prosecution on this?

11 MR HARRISON: I think the two witnesses where there is a  
12 question outstanding is TF1-028 and TF1-323 and the Prosecution  
13 has been and continues to try to make contact with those witness  
14 to finally confirm what would be their language of testimony.

10:58:27 15 JUDGE THOMPSON: Very well.

16 MR HARRISON: As of today's date, I can't give you the  
17 answer.

18 JUDGE THOMPSON: Well, as long as the matter is receiving  
19 your attention. Thanks.

10:58:38 20 Let's move onto another important sub-item: Expert  
21 witnesses. Expert witness TF1-296 is scheduled to testify during  
22 this trial session. All defence teams according to the record  
23 have indicated with notice pursuant to Rule 94(B) their intention  
24 to cross-examine this expert witness on her report on the  
10:59:14 25 situation in Sierra Leone in relation to children with the  
26 fighting forces. As stated previously, protective measures have  
27 been granted to this witness following a decision of this Chamber  
28 in the case of Prosecutor v Norman, Fofana and Kondewa.

29 So are there any comments from the Prosecution or the



1 Defence on this? Nothing useful.

2 MR HARRISON: I have nothing to say.

3 JUDGE THOMPSON: Anything?

4 MR JORDASH: No, thank you.

5 JUDGE THOMPSON: Anything useful, counsel?

6 MR NICOL-WILSON: No, Your Honour.

7 JUDGE THOMPSON: Anything useful?

8 MR O'SHEA: No, thank you.

9 JUDGE THOMPSON: Yes.

10:59:55 10 Now we move on to the next item, these are outstanding  
11 motions pending in the Trial Chamber, that is Trial Chamber I and  
12 in the Appeals Chamber.

13 The first one is the written reasoned ruling on objection  
14 by the Prosecution to questioning by the Defence on  
11:00:17 15 pre-testimony -- sorry, go ahead, sorry.

16 MR HARRISON: I just wanted to draw to the Court's  
17 attention one final matter to do with the witnesses issue.

18 JUDGE THOMPSON: Quite. Go ahead.

19 MR HARRISON: What the Prosecution wanted to advise the  
11:00:29 20 Court of is that there are two witnesses who will be coming to  
21 Sierra Leone from outside the jurisdiction and they are TF1-174  
22 and TF1-186, and it is the Prosecution's hope that TF1-174 could  
23 begin his testimony on or about 20th March and that TF1-186 could  
24 begin that person's testimony on or about 27th March. They have  
11:01:11 25 been staggered one week with the hope that neither would take  
26 more than one week and in fact hoping that they are two or three  
27 days and other witnesses could be used to fill in between them.  
28 But there is some difficulty the Prosecution is having in  
29 organising their travel and those were the dates which could be



1 co-ordinated with those two witnesses.

2 [RUF27FEB06B - SV]

3 JUDGE THOMPSON: Right, and of course it's [indiscernible]  
4 the Defence would have adequate notice to see whether they have  
11:01:35 5 any strong reservations or whether this is something that they  
6 can factor into their own preparation process.

7 MR JORDASH: Certainly that gives us, I would have thought,  
8 adequate notice.

9 JUDGE THOMPSON: Yes, quite right. So we have outstanding  
11:02:00 10 a reasoned ruling -- a written reasoned ruling on objection --

11 MR JORDASH: Sorry, Your Honour, could I just -- perhaps  
12 this is something we can discuss with Mr Harrison later, but  
13 given the outstanding motions on various exclusion points in  
14 relation to, I think, the first -- certainly witness 2 to 6 on  
11:02:27 15 the Prosecution's list, I wonder what the Prosecution's intention  
16 is in relation to which witnesses are now going to be called in  
17 the first week or so of this trial session.

18 JUDGE THOMPSON: I think that's a very important point.  
19 Let Mr Harrison respond to that.

11:02:49 20 MR HARRISON: Can I correct myself. I mis-spoke. I said  
21 witnesses 174 and 186. I should have said that it's TF1-288 that  
22 is anticipated to start their testimony on 20th March and that  
23 it's TF1-165 that the Prosecution would prefer to start on or  
24 about 27th March.

11:03:15 25 JUDGE THOMPSON: The records will reflect the correction.  
26 Counsel's position is that there are pending motions relating to  
27 exclusion of supplemental statements and rules, and that this is  
28 something that you need to factor into your order of appearance  
29 of witnesses for the session. So let me just hear your response.



1 MR HARRISON: Yes. It's no doubt a very serious problem  
2 for the Prosecution. The frank comment that the Prosecution can  
3 make is that there was an expectation that 20 witnesses would be  
4 completed this session and that the eighth session would be the  
11:04:06 5 final session for the Prosecution case and that the Prosecution  
6 would close its case in the eighth session. Because there are  
7 motions pending for so many witnesses, the original expectation  
8 of the Prosecution may have been unwise to take.

9 JUDGE THOMPSON: Yes, I understand that.

11:04:26 10 MR HARRISON: And what the Prosecution is asking at this  
11 point in time is if the Court is prepared to give any guidance  
12 today on whether or not the Prosecution would be allowed to call  
13 the witnesses in the order that they are and the Court would  
14 then, the Court being comprised of professional judges, be  
11:04:50 15 permitted to exclude any of the evidence it may deem to be  
16 inadmissible subsequent to the actual testimony. That was a  
17 procedure that was adopted in the past.

18 If the Court is not able to provide any assistance today,  
19 what the Prosecution can do is provide the first witness on the  
11:05:17 20 witness list, and I think what would be required is a step down  
21 to the seventh witness. And, again, that's a Rule 92 bis witness  
22 and I don't know if any of the defence counsel wish to  
23 cross-examine that witness and it may well be that there is no  
24 time consumed at all with that witness. Then, as I understand  
11:05:43 25 it, the eighth and ninth witness are also opposed to so we would  
26 be down to what would be the tenth witness on the list.

27 The difficulty we're having is that the Prosecution have  
28 brought the first eight witnesses into Freetown. I should say  
29 the first seven. The other witnesses are not in Freetown and





1 steps would have to commence forthwith to find those people and  
2 bring them in. There may be a few stop-gap witnesses that we  
3 could bring in but if it remains uncertain as to what will happen  
4 or the order in which the second, third, fourth, fifth, sixth,  
11:06:38 5 eighth, ninth and sixteenth witnesses are called, then it is  
6 going to be somewhat problematic for the Defence. They will be  
7 getting rather short notice. There may be occasions when they'll  
8 be seeking adjournments.

9 JUDGE THOMPSON: I don't think the problem that has been  
11:06:57 10 highlighted here is insurmountable. The suggestion you put  
11 forward may well, in the context of some hybrid methodology which  
12 the Bench might adopt, might tend to attenuate the situation. So  
13 I would say that the Bench would be most willing to find a very  
14 effective solution to avoid, in a way, disrupting in a very  
11:07:32 15 significant way the Prosecution's order of calling its witness,  
16 whilst at the same time not prejudicing in any way the Defence.  
17 So much as the problem is worth highlighting, I think there will  
18 be possibly some judicial palliative that might come down to sort  
19 of attenuate the acuteness of the problem. That's all I'm  
11:08:04 20 permitted to say at this point. I wish I could be more specific,  
21 but I purely want to remain that philosophical.

22 MR JORDASH: Could I say I would have no objection to  
23 Mr Harrison's intended course. The substance of the first  
24 accused's complaints is certainly not globally that he hasn't had  
11:08:31 25 the opportunity to investigate. The real issue with the  
26 supplementals, as we see it, is an issue of notice of the  
27 Prosecution case and the way in which it can be moulded by the  
28 Prosecution given that lack of notice. So it may be with a  
29 particular witness we might say we need more time to investigate.



1 But generally speaking our motions are concerning something  
2 different to time to investigate. So on that basis I --

3 JUDGE THOMPSON: Your motion has a philosophical of  
4 conceptual dimension as well as a practical dimension. Well, the  
11:09:15 5 conceptual one clearly we know that you think that here we have  
6 some mechanism which in some sense is more or less having an  
7 impact to the extent that any time this mechanism is adopted,  
8 which of course the rules allow the Prosecution to use, there is  
9 a possibility of enhancing the incriminating quality of the  
11:09:38 10 evidence against the accused persons.

11 MR JORDASH: That is indisputable.

12 JUDGE THOMPSON: The point I'm saying is that whether in a  
13 sense this weapon that's in the hands of the Prosecution, if they  
14 want to do that, in a way affects some of the fundamental tenets  
11:10:02 15 of the system which should guarantee fair trial. That's the  
16 philosophical thrust of it and we're not in any way losing sight  
17 of that. But there's also the practical aspect of it where even  
18 if we say to you that the Court is not at this point in time  
19 prepared to legislate away from that, then what are the practical  
11:10:26 20 inconveniences in terms of the prejudice to the Defence and how  
21 can these be alleviated? So you confront us with those two  
22 challenges and I am pretty sure that this Bench is doing the best  
23 it can to try to resolve the matter in a way that would in fact  
24 ensure us to hold the scales of justice evenly.

11:10:53 25 MR JORDASH: The point I make, Your Honour, is simply that  
26 I don't object to the Prosecution calling the witnesses. We say  
27 that the evidence which relates to the supplementary statements  
28 in relation to the motions we have done, ought to be excluded,  
29 could be excluded --



1 JUDGE THOMPSON: Later on.

2 MR JORDASH: Yes.

3 JUDGE THOMPSON: He's provided some methodology which in  
4 his own view might be a better methodology, but I'm saying the  
11:11:22 5 Bench is not unaware of the need for some compromise between what  
6 he might be proposing and what perhaps the motions might be  
7 requesting.

8 MR JORDASH: I certainly would not want this trial to be  
9 adjourned. Mr Sesay has been in custody for three years and  
11:11:41 10 it's --

11 JUDGE THOMPSON: Quite. I can assure you that we are on  
12 the same radar screen as far as that is concerned.

13 MR JORDASH: We would obviously prefer the certainty of  
14 knowing that the list is going to be followed rather than our  
11:11:58 15 motions having the effect of giving us less certainty.

16 JUDGE THOMPSON: Quite. Anything further to add?

17 MR HARRISON: I don't think there's anything further I need  
18 to say.

19 JUDGE THOMPSON: Right. All I can say is that that  
11:12:09 20 particular -- reverting to our written reasoned ruling on the  
21 objection by the Prosecution to Defence questioning witnesses on  
22 pre-testimony meetings between witness and Prosecution, we did in  
23 fact, I remember, if my recollection is accurate on this, dismiss  
24 the Prosecution objection. But a reasoned ruling is ready for  
11:12:38 25 publication. The notice of motion by Morris Kallon pursuant to  
26 Rule 54 --

27 MR O'SHEA: Your Honour, if I may, just on the last point  
28 which was raised by the Prosecution --

29 JUDGE THOMPSON: Yes.



1 MR O'SHEA: -- with regard to outstanding motions on  
2 evidence, I'm sympathetic to the logistical problems of the  
3 Prosecution and I know that the Defence also face similar  
4 problems. So for our part we wouldn't object to the witnesses  
11:13:08 5 being called.

6 However, I do have a slight reservation with regard to  
7 evidence of a controversial nature being heard and then the  
8 admissibility or otherwise of that evidence being determined  
9 later. It would be our submission that in principle wherever  
11:13:25 10 possible the controversy should be resolved before the evidence  
11 is heard for this simple reason, that we are concerned about  
12 delay in the trial. My suggestion would be that if there are  
13 controversial aspects of evidence, those controversial aspects  
14 simply be deferred, because once the witnesses are here they can  
11:13:49 15 stay here.

16 JUDGE THOMPSON: These are all matters which I'm sure the  
17 Bench will take on advisement when it finally resolves the issue.  
18 Notice of motion by Morris Kallon pursuant to Rule 54 and  
19 Rule 66(2) of the Rules of Procedure and Evidence of the Special  
11:14:05 20 Court for an order directing the Prosecutor to effect reasonably  
21 consistent disclosures, this was a motion filed on 12th December  
22 2004 and a response came in on 15th December 2005, but there was  
23 no reply to the response from the Defence, because, as far as I'm  
24 aware, a decision on this motion is currently being prepared.

11:14:42 25 Then there is the motion of Defence motion requesting the  
26 exclusion of paragraphs 1, 2, 3, 11 and 14 of the additional  
27 information provided by witness TF1-117 dated 25th, 26th, 27th  
28 and 28th October. This motion was filed on 12th January 2006. A  
29 response came in on 23rd January 2006 and the reply was





1 subsequently filed on 26th January 2006. As far as I am aware, a  
2 decision on this motion is ready for publication.

3 Defence motion to direct the Prosecutor to investigate the  
4 matter of false testimony by witness TF1-366. The motion was  
11:15:42 5 filed on 12th January 2006. A response was filed on 23rd January  
6 2006 and a reply was subsequently filed on 26th January 2006. Of  
7 course this motion, I think, was filed confidentially, presumably  
8 because the submissions there incorporated excerpts from a closed  
9 session testimony of a protected witness. Again from the  
11:16:27 10 records, as far as I'm aware, a decision is currently being  
11 prepared on that one.

12 Principal Defender's motion for a review of the Registrar's  
13 decision to install surveillance cameras in the detention  
14 facility of the Special Court for Sierra Leone. This is a  
11:16:45 15 challenge of the decision of the Registrar to install  
16 surveillance cameras in the detention facility. The motion was  
17 filed on 31st January 2006. The response of the interim  
18 Registrar was filed on 8th February 2006. A reply was filed by  
19 the Principal Defender on 14th February 2006. Again, according  
11:17:19 20 to my knowledge, a decision on this motion is ready for  
21 publication.

22 Defence motion requesting the exclusion of evidence as  
23 indicated in annex A arising from the additional information  
24 provided by witnesses TF1-113, TF1-108, TF1-330, TF1-041 and  
11:17:57 25 TF1-288. This motion was filed on 10th February 2006. A  
26 response was filed on 17th February 2006 and a reply was filed on  
27 22nd February 2006. Again, based on my knowledge, a decision on  
28 this motion is ready for publication.

29 Prosecution request for leave to call additional witness



1 and notice to admit witness's solemn declaration pursuant to  
2 Rule 73 bis (E) and 92 bis. This motion was filed on 13th  
3 February 2006. The Chamber notes that no response has been filed  
4 by the Defence. Is there any information from that side?

11:19:02 5 This was a motion or a request for leave by the Prosecution  
6 to call additional witness and also to admit witness's solemn  
7 declaration pursuant to Rule 73 bis (E) and 92 bis. The motion  
8 was filed on 13th February but there has not been any response by  
9 the Defence.

11:19:22 10 MR JORDASH: We have no objection.

11 JUDGE THOMPSON: You don't. Quite. All right. So that  
12 will be reflected on the records.

13 Then there's a prosecution application for leave to amend  
14 the indictment. The motion seeks extension of time period for  
11:19:42 15 Kono crimes in paragraphs 42, 68 and 80 and a typographical  
16 change to paragraph 31 of the amended indictment. The motion was  
17 filed on 20th February 2006. There have been no responses from  
18 the Defence. Mr Jordash?

19 MR JORDASH: It's coming.

11:20:08 20 JUDGE THOMPSON: Right. Mr Nicol-Wilson?

21 MR NICOL-WILSON: Your Honour, we are vehemently opposed to  
22 that motion and the response is coming.

23 JUDGE THOMPSON: And we're going to receive your gunshots,  
24 no doubt. Mr O'Shea?

11:20:23 25 MR O'SHEA: Yes, it's under consideration, Your Honour.

26 JUDGE THOMPSON: Thanks. So when that comes in I'm pretty  
27 sure that the Chamber will take that under advisement.

28 Then there's a defence motion requesting the exclusion of  
29 evidence as indicated in annex A arising from the additional



1 information provided by witness TF1-168 on 14th, 21st January and  
2 4th February 2006, TF1-165 on 6th, 7th February 2006 and TF1-041  
3 on 9th, 10th, 13th February 2006. This motion has been filed on  
4 23rd February 2006, expedited filings for the Prosecution  
11:21:27 5 response and the Defence reply were ordered on the same date.  
6 I'm hoping that the response and the reply may well have been  
7 filed at this time I'm speaking.

8 In addition, the Chamber is also seized of a confidential  
9 motion for additional protective measures for certain Prosecution  
11:21:56 10 witnesses. Any comment? That's correct?

11 MR HARRISON: That's correct.

12 JUDGE THOMPSON: According to the records, there are no  
13 motions outstanding in this case in the Appeals Chamber unless I  
14 am advised otherwise.

11:22:25 15 MR JORDASH: Sorry, Your Honour, I saw you looking at me.

16 JUDGE THOMPSON: Yes, I thought there was something that  
17 you wanted to raise. Otherwise I was just moving the proceeding  
18 on to any other business.

19 MR JORDASH: Sorry, Your Honour. Did I hear Your Honour  
11:22:39 20 say that in relation to the exclusion motion for TF1-168 there's  
21 been an order for expedited filing?

22 JUDGE THOMPSON: Quite. That's according to the record.

23 MR JORDASH: Thank you.

24 JUDGE THOMPSON: Well, I'll now move on to any other  
11:22:52 25 matters the parties may wish to raise. Prosecution, any matters  
26 that you wish to raise?

27 MR HARRISON: No, thank you.

28 JUDGE THOMPSON: Mr Jordash?

29 MR JORDASH: No, thank you.



1 JUDGE THOMPSON: Mr Nicol-Wilson?

2 MR NICOL-WILSON: None, Your Honour.

3 JUDGE THOMPSON: And Mr O'Shea?

4 MR O'SHEA: Your Honour, no.

11:23:14 5 MR JORDASH: Sorry, one just did occur to me. In relation  
6 to the discussion we had about order of witnesses, I'm just  
7 wondering when the Honourable Chamber might be able to indicate  
8 its preferred course of action because I'm sure --

9 JUDGE THOMPSON: Well, I'm pretty sure before -- I think  
11:23:38 10 that some indication will come before we start the trial.

11 MR JORDASH: Your Honour, in the next two days I'd hoped to  
12 prepare for the witnesses who come on Thursday.

13 JUDGE THOMPSON: Quite.

14 MR JORDASH: So unless I --

11:23:53 15 JUDGE THOMPSON: Today is what? Today is Monday?

16 MR JORDASH: Monday.

17 JUDGE THOMPSON: I think there must be some indication by  
18 tomorrow.

19 MR JORDASH: I'm grateful for that, Your Honour.

11:23:59 20 JUDGE THOMPSON: I'm sure the legal office will jog our  
21 memories on that when we go back. Is there anything else that  
22 anyone wishes to raise for the good of the Special Court, or  
23 anything specifically in relation to this matter? If not, I will  
24 now bring this proceeding to a close and I want to thank all of  
11:24:24 25 you for your attention.

26 [Whereupon the Status Conference adjourned at  
27 11.25 a.m.]

28

29



