

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

TUESDAY, 1 NOVEMBER 2005
10.12 A.M.
STATUS CONFERENCE

TRIAL CHAMBER I

Before the Judges:	Bankole Thompson
For Chambers:	Ms Candice Welsh Mr Matteo Crippa
For the Registry:	Mr Geoff Walker
For the Prosecution:	Mr Peter Harrison Mr Alain Werner Mr Mark Wallbridge(Case Manager)
For the Principal Defender:	Ms Haddijatou Kah-Jallow Mr Ibrahim Foday Mansaray
For the accused Issa Sesay:	Mr Wayne Jordash Ms Chantal Refahi
For the accused Morris Kallon:	Mr Melron Nicol-Wilson Ms Rachel Irura
For the accused Augustine Gbao:	Mr John Cammegh

1 [RUF01NOV05A - CR]
2 Tuesday, 1 November 2005
3 [Status Conference]
4 [Open session]
10:02:49 5 [Accused Sesay, Kallon and Gbao present]
6 [Upon commencing at 10.12 a.m.]
7 JUDGE THOMPSON: Good morning, counsel. This proceeding is
8 the status conference prior to the sixth trial session of the RUF
9 case scheduled to commence tomorrow, 2 November 2005. It is
10:11:03 10 being held pursuant to Rule 65 bis of the Rules of Procedure and
11 Evidence of the Special Court. The rule states that, and I
12 quote:
13 "A status conference may be convened by the Designated
14 Judge or by the Trial Chamber. The status conference
10:11:22 15 shall:
16 (i) organise exchanges between the parties so as to ensure
17 expeditious trial proceedings;
18 (ii) review the status of his case and allow the accused
19 the opportunity to raise issues in relation thereto."
10:11:45 20 Appearances for the parties. For the Prosecution?
21 MR HARRISON: My name is Harrison, initials PH. Also
22 appearing is Mr Werner, initial A and Mr Wallbridge, initial M.
23 JUDGE THOMPSON: Thank you. For the Defence, first
24 accused?
10:12:04 25 MR JORDASH: For the first accused, can I introduce firstly
26 a new legal assistant, Chantal Refahi and myself, Wayne Jordash.
27 JUDGE THOMPSON: Welcome. Second accused.
28 MR NICOL-WILSON: For the second accused,
29 Melron Nicol-Wilson and Rachel Irura.

1 JUDGE THOMPSON: Thank you. Third accused?

2 MR CAMMEGH: John Cammegh. Your Honour, can I just
3 indicate that contrary to the indication on the document we have
4 been working from today, I will be appearing this session alone
10:12:39 5 for Mr Gbao.

6 JUDGE THOMPSON: Thank you. It has been noted.

7 During this proceeding, we will cover these agenda items:
8 Issues relating to the health of the accused and their detention,
9 trial logistics, witness issues, outstanding motions and appeals
10:13:01 10 and any other issues the parties may wish to raise. Counsel for
11 the accused persons, do you have any issues which you wish to
12 raise or bring to the attention of the Chamber in respect of
13 their health?

14 MR JORDASH: Yes, I do. Mr Sesay has a bullet lodged in
10:13:36 15 his pelvic region. It has been X-rayed and observed. Dr Harding
16 has concluded that it ought to be removed. It is causing an
17 increasing amount of pain and discomfort to Mr Sesay, which makes
18 it difficult at times for him to work. Your Honour will recall
19 that during the last trial session, there were a couple of
10:14:18 20 afternoons when Mr Sesay couldn't attend Court because of it.

21 The legal assistant we've had working over the last three months
22 has also observed the same. I've spoken to one or two members of
23 the detention centre, not for some time, I have to say, but
24 certainly during the last trial session, and they confirmed
10:14:34 25 Mr Sesay was complaining about the same. I have raised the issue
26 with Dr Harding and with the former Registrar, Mr Vincent.
27 Dr Harding's conclusion is that he cannot organise for that
28 bullet to be removed without having Mr Sesay scanned by a CAT
29 scan, which as I'm sure Your Honour knows is a form of scan which

1 enables the bullet to be properly seen. The long and short of it
2 is that without that CAT scan the operation cannot be carried
3 out. A CAT scanner does not exist in Sierra Leone. Mr Vincent
4 informed me that the Court does not have an agreement with any
10:15:38 5 country which allows any of the detainees to leave, not even for
6 medical reasons. We are at somewhat of an impasse with Mr Sesay
7 increasingly suffering and I predict increasingly over the next
8 year that suffering will disturb his ability to attend Court with
9 no ability to have that bullet removed. The doctors in Sierra
10:16:07 10 Leone will not remove it without the assurance that a CAT scan
11 will give them. I have raised it also with Your Honour's Chamber
12 through your honourable legal officer.

13 There we are; that's it. We are stuck until the Court --
14 the management committee in New York -- perhaps arranges with a
10:16:36 15 country for Mr Sesay to be treated outside of Sierra Leone.
16 Mr Vincent informed me that one of his last tasks before the left
17 the Special Court would speak to be the management committee
18 about such an arrangement. I have heard nothing yet from him or
19 through any other avenue through the court administration. My
10:17:05 20 view is that this will be a problem. I raise it now to have it
21 on record. Of course, there will be times when Mr Sesay does not
22 need to attend Court, but I predict there will be times in the
23 future when that suffering will make it impossible for him not to
24 be here. So I raise that now.

10:17:21 25 JUDGE THOMPSON: Thank you. Is Mr Barry Wallace, the head
26 of detention unit here today?

27 MR WALLACE: I am, Your Honour.

28 JUDGE THOMPSON: Mr Wallace, do you have any contribution
29 to make to this report from Mr Jordash, anything that can shed

1 some light on it at this stage?

2 MR WALLACE: I think Mr Jordash has covered most of the
3 points. We did go so far as to have a consultant see Mr Sesay
4 and we were, we understood, ready to proceed with the operation
10:17:58 5 locally. But there were grave concerns that any complications
6 that arose as a consequence of what was a fairly straightforward
7 or appeared to be a straightforward operation could not be dealt
8 with here in the hospital; they did not have the facilities to
9 deal with it. That is why, as Mr Jordash has said, the only
10:18:21 10 facility that would have the necessary equipment and medical
11 support available would be somewhere outside of Sierra Leone.

12 JUDGE THOMPSON: At this stage, it would seem to me the
13 best way to proceed would be to have the issue placed on the
14 record and that the Interim Registrar of the Court be apprised of
10:18:48 15 the latest development, since Mr Vincent is no longer with the
16 Court and then report, perhaps at some point in time in the
17 immediate future. But it would seem as if, at this stage, I
18 don't think there is sufficient material here to justify the
19 intervention of the Chamber, the judges. Thank you.

10:19:25 20 MR JORDASH: Thank you.

21 JUDGE THOMPSON: Second accused, anything to report about
22 the health of your client?

23 MR NICOL-WILSON: No, Your Honour, the second accused is in
24 good health.

10:19:40 25 JUDGE THOMPSON: Mr Cammegh, what about the third accused?

26 MR CAMMEGH: I understand that Mr Gbao is fighting fit,
27 Your Honour.

28 JUDGE THOMPSON: Yes, in excellent health. Are there any
29 detention issues that need some attention at this stage from

1 counsel?

2 MR JORDASH: No, thank you.

3 PRESIDING JUDGE: Mr Nicol-Wilson?

4 MR NICOL-WILSON: The current one is being addressed by the
10:20:08 5 Chamber, the one of the installation of the surveillance cameras.

6 JUDGE THOMPSON: Mr Cammegh?

7 MR CAMMEGH: No, thank you.

8 JUDGE THOMPSON: Mr Wallace, anything you want us to know
9 about?

10:20:22 10 MR WALLACE: No, Your Honour. Thank you.

11 JUDGE THOMPSON: Mr Wallace, realising the fact that you
12 should be at your base, we certainly have no wish to retain you
13 here unnecessarily. So you can retire if you want to. Of
14 course, you are not precluded from staying, only if you think a
10:20:41 15 status conference is a very exciting process.

16 MR WALLACE: I understand, Your Honour, but I have another
17 meeting.

18 JUDGE THOMPSON: Thank you. You are released. We'll now
19 move on to the trial logistics. Under this item, let us deal
10:21:00 20 briefly with the trial schedule. The Trial Chamber issued an
21 order on 6 June 2005 detailing the judicial calendar.
22 Subsequently, on 11 October 2005, the commencement of this sixth
23 session of the trial against each of the accused persons was
24 postponed. After this proceeding, the trial will commence
10:21:34 25 tomorrow on 2 November 2005 at 9.30 a.m. and we will conclude on
26 8 December 2005. If there are any difficulties coming in the way
27 of any external influence on our schedule by reason of the
28 Ramadan season, we certainly will be able to inform counsel
29 promptly, but that's the position as far as I understand. The

1 hours of sitting will be the same as those adopted through the
2 fifth trial session. Monday, Tuesday, Thursday, Friday from 9.30
3 p.m. until 6.00 p.m. with a break for lunch from 1.00 p.m. to
4 2.30 p.m. On Wednesday, the hours of sitting will be from
10:22:37 5 9.30 a.m. to 1.00 p.m. I take it there are no comments on this.

6 Prosecution?

7 MR HARRISON: No.

8 MR JORDASH: I have a comment about trial scheduling but
9 not at this stage.

10:23:03 10 JUDGE THOMPSON: Perhaps I should state straightaway that
11 the Trial Chamber has not worked out anything definitive yet, but
12 you can take it from me that the next trial session of the RUF
13 case will probably be after Easter 2006, but there will be an
14 order to this effect.

10:23:39 15 The next sub-item on the trial logistics is the service of
16 documents by the Court Management section through the defence
17 office. The Court Management section informed the Chamber that
18 the defence office recently refused to receive the service of
19 certain documents on behalf of defence teams for Sesay and Gbao,

10:24:06 20 who do not have representatives residing in Sierra Leone on the
21 basis that it had not been granted authority from these teams to
22 accept service. The Court Management has expressed some concern
23 about the timely service of documents on the parties in

10:24:33 25 guidelines regarding the service of documents on defence teams
26 that do not have representatives available in Sierra Leone. I
27 would like to invite the defence -- perhaps I should invite -- I
28 recognise someone from the office of the defence. Perhaps before
29 Mr Jordash and the other counsel exercise their right of reply, I

1 invite the representative counsel from the defence office to
2 expound on this.

3 MS KAH-JALLOW: Thank you, Your Honour, for giving me the
4 opportunity. I first want to convey the Principal Defender's
10:25:24 5 profound apology for not being here in person, but he has another
6 engagement. We are of the opinion that the practice directional
7 finding states quite clearly that service should be undertaken by
8 the Court Management section. This has been the practice and we
9 are quite surprised that in this late stage of the process the
10:25:54 10 Court Management has requested that we now undertake that

11 responsibility. Providing service to counsel who do not reside
12 in this jurisdiction would involve huge sums. DHL packages would
13 have to come from the defence team's budget. As it is, many of
14 the teams are complaining it is not enough to conduct their
10:26:29 15 trials. We think that they should still continue to effect
16 service on parties that don't have representation in this
17 jurisdiction. However, the Defence Office would gladly take
18 charge of the documents to the accused persons. When we say
19 "accused persons", we are restricting it to the detainees. But
10:26:58 20 all other services should be undertaken by Court Management.

21 JUDGE THOMPSON: Let's hear from each defence counsel
22 before we ask Court Management to make their own position clear
23 on this issue.

24 MR JORDASH: I should say this is a completely new issue to
10:27:19 25 me. No-one has explained anything to me about that before.

26 JUDGE THOMPSON: I could see that from the expression on
27 your face.

28 MR JORDASH: I don't know what documents we're referring to
29 or whether we are referring to every document henceforth.

1 JUDGE THOMPSON: It is a rather global allegation. Quite
2 right.

3 MR JORDASH: I am somewhat handicapped in responding.
4 However, I would submit that if whatever is being proposed is
10:27:50 5 going to cost the defence teams money, I oppose it, because, as
6 my learned friend has just pointed out, we are complaining about
7 a lack of funds. There is a real issue of a lack of funds and
8 there will continue to be so. If it isn't broken, then we don't
9 need to fix it.

10:28:22 10 JUDGE THOMPSON: Let me hear from Mr Nicol-Wilson. You're
11 not involved in this.

12 MR NICOL-WILSON: No.

13 PRESIDING JUDGE: Mr Cammegh, you might have some creative
14 solution.

10:28:34 15 MR CAMMEGH: It is right to say that the financial
16 constraints bearing on the defence office are becoming very
17 difficult to work within. That's one issue. The second point is
18 this: whilst this is new to me also, my understanding is that
19 service can be effected as it has been over the last few months
10:28:56 20 electronically by email.

21 JUDGE THOMPSON: Yes.

22 MR CAMMEGH: That's the method by which I've received the
23 vast majority of the documents for this pending session.
24 Certainly, that is satisfactory as far as I am concerned. If the
10:29:18 25 defence office are content, as they say they are, to serve the
26 hard copies on the defendants themselves, then in my view we have
27 an entirely satisfactory situation that I'm certainly happy to
28 work with. I don't require physical documents to be sent all the
29 way to London. It is right to say it is inordinately

1 expensive and unnecessary in my case.

2 JUDGE THOMPSON: I am advised that this particular
3 situation must have been triggered of by the issue with regard to
4 the disclosure of a video, which was too big to send
10:29:56 5 electronically and all documents are normally served
6 electronically. Does this put a different complexion on the
7 issue, Ms Kah-Jallow?

8 MS KAH-JALLOW: It still relates to cost. There isn't a
9 budget specifically designated to cover courier services. Where
10:30:25 10 would the money come from? If we had accepted to serve that
11 particular cassette, I'm not sure whether that would be the one
12 and only cassette. We may be in a position to have to courier
13 materials throughout the course of this trial, which would
14 involve huge sums of money. My question: where would that money
10:30:47 15 come from?

16 JUDGE THOMPSON: This judge doesn't have an appetite for
17 fiscal issues. This is a little problematic for me, but I know
18 where to place the onus in terms of resolving it. But I hear you
19 that this is really a fiscal issue. Does Court Management have a
10:31:18 20 representative here who wants to shed some light on this problem?

21 MR WALKER: Your Honour, this is a problem where we had a
22 piece of equipment that we could not serve. Court Management are
23 quite happy to physically serve it via DHL. That isn't in itself
24 a huge problem. The problem would come if we were to try to
10:31:44 25 serve something which contained a CD, a disc of some sort which
26 then required time limits. We have no means of getting to any
27 representatives of one of the teams before those time limits
28 start to run. We can serve the document electronically as per
29 normal, but we still are left with a situation where we may have

1 some hard, physical piece of information which needs to be
2 transferred and we have no means of doing it at the moment.

3 JUDGE THOMPSON: Does the Prosecution have any --

4 MR HARRISON: I don't.

10:32:20 5 JUDGE THOMPSON: This is a matter in which the judges would
6 like to distance themselves from in the sense that it belongs
7 precisely in the administrative context, even though it imparts
8 on the judicial process. I would think this is a matter that
9 needs to be taken up by the defence office and Court Management
10:32:44 10 with the Registrar. He, I understand, is the person who is the
11 budget controller, so to speak. All we can say from the
12 Chambers' perspective is that the matter needs to be resolved
13 expeditiously and the Chamber be informed promptly. So that
14 would be the order of this Court: That both sides get together
10:33:17 15 and have a conference with the Registrar and see how this matter
16 can be resolved - Defence Office and Court Management.

17 We will move on to the other sub-item, which is case
18 presentation. Well, actually, this is an old refrain that the
19 Trial Chamber is still of the view that examinations-in-chief and
10:33:47 20 cross-examinations of Prosecution witnesses continue to be unduly
21 lengthy and sometimes repetitive. We know how complex this
22 particular case is and we know how difficult it is sometimes for
23 the Prosecution to present witnesses' testimonies with the kind
24 of precision that the judges insist on. Let's be sensitive to
10:34:29 25 the fact that we need to continue to do our best to reduce the
26 length of examinations-in-chief and cross-examinations. In other
27 words, I invite both sides to give effect to the commitment that
28 we need to have a fair and expeditious trial.

29 Witness issues is the next one, protective measures for

1 additional witnesses. The Trial Chamber in February this year
2 delivered a decision granting leave to the Prosecution to add
3 three additional witnesses to the witness list. These witnesses
4 are identified with the following pseudonyms: TF1-366, TF1-367
10:35:23 5 and TF1-368. When the Prosecution sought leave for the addition
6 of these new witnesses it reserved the right to apply at a
7 further stage for the inclusion of these witnesses in the witness
8 category C -- I think that's insider witness -- and also for an
9 extension to them of the existing relevant protective measures
10:35:50 10 regime. According to my information, despite repeated requests
11 by the Chamber, the Prosecution has not indicated whether it
12 intends to apply for such measures. Are there any comments by
13 the Prosecution to throw some light on this?

14 MR HARRISON: I can recall this being raised at the
10:36:16 15 beginning of the last session, and Ms Taylor embarked upon an
16 exchange with the Chambers' legal officers in drawing to the
17 attention of the legal officers certain documents which I thought
18 made it clear that protective measures had been granted.

19 JUDGE THOMPSON: I hope that will be noted by the legal
10:36:37 20 office and see whether we can have that clarified.

21 MR HARRISON: It is of some significance, because 366 is a
22 witness to testify in this session and will in fact be the second
23 witness.

24 JUDGE THOMPSON: We would ask the legal officers to
10:36:57 25 investigate this and provide some clarification. As far as the
26 witness list is concerned, pursuant to the Trial Chamber
27 consequential order to the decision and further renewed witness
28 list of 13 April this year, the Prosecution did file on 5 May
29 this year an updated core witness list comprising 101 core

1 witnesses. On 10 June this year, the Chamber granted the
2 Prosecution's request to add an additional witness to its list
3 appearing as expert witness. This additional witness brought the
4 total of the core witnesses to 102. Of these witnesses,
10:37:57 5 according to the records, 42 prosecution witnesses have already
6 been heard at the trial. In addition, a prosecution investigator
7 has been called pursuant to the request of Defence. Are there
8 any comments at this stage on that information?

9 MR HARRISON: That information is correct. I can provide
10:38:25 10 further information to the Chamber which has been distributed to
11 defence counsel. We have indicated already the numbers of five
12 witnesses who will not be called in the course of the trial.
13 They are: TF1-127, TF1-138, TF1-356, TF1-251 and TF1-143. If I
14 can also at this point indicate to the Chamber, what the
10:38:58 15 Prosecution was intending to was to review the existing list even
16 further with a mind to additional deletions and so long as it is
17 acceptable to the Chamber and defence counsel, to delay the
18 filing of a new witness list until perhaps February or March when
19 we anticipate further deletions will be made.

10:39:23 20 JUDGE THOMPSON: That's appreciated. You pre-empted me. I
21 was coming to that aspect, that there had in fact been this
22 indication that there might be a reduction in the witness list;
23 whether this was still under contemplation, how soon and so on.
24 So that helps us. I am sure you are perfectly happy with that
10:39:46 25 indication? I'm sure you were waiting for some indication.

26 MR JORDASH: I spoke to my learned friend just before the
27 hearing and he informed me of the deletions and observations.

28 JUDGE THOMPSON: Mr Cammegh, you're happy?

29 MR CAMMEGH: Very, yes; and grateful.

1 JUDGE THOMPSON: And you, Mr Nicol-Wilson?

2 MR NICOL-WILSON: Yes.

3 JUDGE THOMPSON: As to the witnesses for the upcoming trial
4 session we have on record that on 30 September this year, the
10:40:18 5 Prosecution filed its proposed order of appearance of witnesses
6 for the sixth trial session and the list identifies a total of 16
7 prosecution witnesses to appear during this trial session. The
8 Prosecution informed the Chamber on 12 September this year and
9 the Defence of this proposed order of appearance and also final
10:40:48 10 copies of witness statements. Subsequently, by means of a letter
11 to the Defence, copied to the Trial Chamber, there was in fact a
12 revision in the order of call for the witnesses scheduled to
13 appear during this trial session. If you have not already
14 covered this, Mr Harrison, you indicated TF1-296, TF1-150,
10:41:22 15 TF1-368 will not appear during this trial session.

16 MR HARRISON: That's correct. Those are not the witnesses
17 I referred to earlier as being completely eliminated from the
18 list. These are ones who will not testify in the current
19 session.

10:41:35 20 JUDGE THOMPSON: Right. So, in other words you are
21 confirming the order of appearance during this trial session?

22 MR HARRISON: Yes, as it has been amended. We apologise
23 for the amendment. We appreciate it is a considerable
24 inconvenience, and more than an inconvenience to defence counsel.
10:41:53 25 But there were certain factors where people had to leave because
26 of medical problems, others we were simply unable to locate and
27 other witnesses simply could not come here other than for the
28 first two weeks that had been planned for the first session.

29 JUDGE THOMPSON: Counsel, you understand that position, I

1 take it?

2 MR JORDASH: Certainly, yes.

3 JUDGE THOMPSON: On 10 October this year, the Prosecution
4 filed additional material concerning Witness TF1-184 as
10:42:31 5 disclosure of additional information pertaining to this witness.
6 And more recently on 31 October this year, the Prosecution also
7 filed additional material concerning witnesses TF1-029, TF1-093,
8 TF1-117, TF1-045, TF1-314, TF1-366, TF1-023, TF1-334, TF1-004 and
9 TF1-169. Have I reflected the position clearly?

10:43:15 10 MR HARRISON: I think that is all. I wasn't able to keep
11 an accurate account, but I think you have covered hem all.

12 JUDGE THOMPSON: Let me repeat. Defence, any additional
13 comments on disclosure?

14 MR JORDASH: None that we have not made before.

10:43:31 15 JUDGE THOMPSON: Mr Cammegh?

16 MR CAMMEGH: None.

17 JUDGE THOMPSON: And Mr Nicol-Wilson.

18 MR NICOL-WILSON: None.

19 JUDGE THOMPSON: Other witness issues. The Prosecution has
10:43:39 20 not yet indicated whether it intends to apply for closed session
21 hearings for part or all of the testimony of any of the witnesses
22 appearing in the sixth trial session. Several witnesses
23 contained in the Prosecution list for this session, according to
24 my information, have already appeared in other trial proceedings.
10:44:02 25 Of these, in particular, witnesses TF1-169 and TF1-104 were
26 granted permission to have their testimonies entirely in closed
27 session. Does the Prosecution wish to comment on this?

28 MR HARRISON: Yes, we will be inviting the Court to grant
29 closed sessions for a number of the witnesses to be called. The

1 two that you have indicated have previously testified in closed
2 session, as have some of the other witnesses, but they were only
3 partial closed sessions. So there is some attempt on the part of
4 the Prosecution to try to keep the closed sessions approximate to
10:44:47 5 what they were in the other trials.

6 In addition, if I could just indicate to the Court now,
7 it's the Prosecution's intention to ask for a closed session for
8 TF1-366; a partial one would again be TF1-045, that was a witness
9 who did testify in a partial closed session in the other Trial
10:45:12 10 Chamber; another one is TF1-334, who again testified in partial
11 closed session in the other Chamber; TF1-104 is one you
12 mentioned; TF1-169 is one you mentioned; TF1-093 is one that we
13 are doing our best to eliminate as much of the closed session as
14 possible, but that is a category C witness and we anticipate
10:45:43 15 there being at least a partial closed session or a request for a
16 partial closed session; TF1-184, I'm not sure if that was one you
17 did mention but, at any rate, that is a witness who testified
18 before the other trial where, again, a partial closed session was
19 granted. We would try again to keep to a minimum the amount of
10:46:07 20 closed session of that particular witness.

21 JUDGE THOMPSON: Thank you. You know nothing at this
22 stage, not yet. Expert witnesses. The Prosecution indicated at
23 some point that it intends to call a total of three expert
24 witnesses in the RUF trial. These are witnesses TF1-296, TF1-301
10:46:35 25 and one Zainab Bangura for which the Prosecution did not seek any
26 protective measures. The Prosecution has subsequently disclosed
27 the confidential expert reports of these expert witnesses and all
28 Defence counsel are on record as having indicated their intention
29 to cross-examine these witnesses on the basis of their reports.

1 Although it had initially included these witnesses in the list
2 for trial, this session the Prosecution has now indicated that
3 296 will not appear. So we just have to live with that.

4 MR HARRISON: Yes, that is one of the witnesses who may
10:47:38 5 have been here for a brief time at the beginning of the
6 anticipated session but is no longer available.

7 JUDGE THOMPSON: So that reduces your number to two expert
8 witnesses for the time being.

9 MR HARRISON: For this current session there are actually
10:47:47 10 not going to be any, because 150 is a witness where there is an
11 appeal pending with respect to certain of the information which
12 that witness may or may not be compelled to disclose during the
13 course of testimony. So, for that reason, because of the pending
14 appeal, that witness has been taken off the list for the current
10:48:07 15 session. I wanted to make clear that 296 is not being removed
16 from the trial, from the core list, it is just simply being
17 removed from the current trial session.

18 JUDGE THOMPSON: That is understood, right. I see here
19 that we have under outstanding motions, and this list is updated
10:48:28 20 as of yesterday, that in the Trial Chamber there is a
21 confidential prosecutor notice under Rule 92 bis to admit the
22 transcripts of testimony of TF1-023, TF1-104 and TF1-169, and the
23 confidential notice which has been filed was filed on
24 25th October this year. Objection by the Defence, if any, is
10:49:06 25 still pending. Counsel for Sesay filed an application for
26 extension of time to object to the confidential prosecution
27 motion, which was not opposed by the Prosecution. On
28 27th October this year the Trial Chamber granted the first
29 accused an extension of time until 3rd November this year to file

1 its objection, if any, to the confidential prosecution notice.
2 It should be noted that the notice has been filed confidentially
3 due to the annexure of the relevant transcripts of closed session
4 testimonies of the witnesses. Are there any comments forthcoming
10:49:58 5 on that at this stage?

6 MR JORDASH: No, thank you.

7 MR HARRISON: No.

8 JUDGE THOMPSON: No comments. The record indicates there
9 is nothing pending in the Appeals Chamber in the case. Are there
10:50:20 10 any other matters counsel on both sides wish to raise for the
11 purpose of expediting the sixth trial session?

12 MR HARRISON: I have nothing that I can assist the Court
13 with.

14 JUDGE THOMPSON: What about counsel for the first accused?

10:50:31 15 MR JORDASH: I have two issues I would like to raise. The
16 first relates to delay in the trial schedule and unpredictability
17 of the trial schedule. The second relates to the recent judgment
18 by Your Honours concerning the prosecution motion objecting to
19 defence submissions of witness statements with inconsistencies
10:51:10 20 marked.

21 In relation to the second, I'm slightly in Your Honour's
22 hands as to whether it would be better to raise that tomorrow
23 before the trial starts, because it relates to the procedure
24 which Your Honours want parties to follow when putting
10:51:31 25 inconsistencies to witnesses.

26 PRESIDING JUDGE: It would be advisable to raise it before
27 a full Bench.

28 MR JORDASH: I'm advised and I will just limit my
29 observations to the trial scheduling, if I can.

1 JUDGE THOMPSON: Yes.

2 MR JORDASH: It is, as Your Honour knows, three months
3 since we last sat. The Defence for Sesay has not ever had a
4 reason communicated to it as to why there has been this delay. I
10:52:05 5 put my observations in that way, because I have a client who
6 languishes in a detention centre who, understandably, wants to
7 know from me why it is he has to wait an extra three months and
8 why an extra three months of his life passes by as he faces,
9 staring at the wall.

10:52:37 10 He has been in custody now for two years and seven months.
11 I find it increasingly difficult, without any information as to
12 trial scheduling and delay and reasons for it, to be able to
13 explain to him why that is. I would wish to express on his
14 behalf a deep concern. Three months, one week, one day of a life
10:53:10 15 in prison is a time wasted.

16 That's the most important aspect I have to say about delay,
17 but there is a secondary but less important concern which is that
18 of my professional commitments and my team's professional
19 commitments. When I took this case on in July 2003, I was
10:53:37 20 reliably informed by the defence office at the time, by the
21 contract which I was expected to sign, that this would be an
22 eight month trial. Now of course, nobody can be criticised -- at
23 the time I said that was completely unrealistic, given the size
24 of the prosecution case and the breadth of the indictment. But
10:54:04 25 what couldn't be envisaged was how it has turned out, with Your
26 Honours' joinder decision and for reasons which are clear on the
27 record. But this case is stretching into the future which
28 relates not only to my client's detention, but to professional
29 commitments that I have made to other clients and also to

1 commitments made by my co-counsel and legal assistant. I raise
2 that as a concern as well because I do have a client who I need
3 to represent in a year's time and I would very much like to. If
4 there is a significant delay of the kind which there has been
10:54:55 5 this year, there is a real risk I won't be able to represent him.
6 But I need to live. I need to work and I need to live and I need
7 to earn money and I can't do that if there is a delay in this
8 trial which basically wipes out all my other professional
9 commitments. It isn't as important as Mr Sesay's liberty and I
10:55:16 10 don't even try to put it up there with that consideration, but I
11 have two houses I now rent, I have two lifestyles in two
12 different countries which are both expensive and delay impacts
13 upon my ability to be able to earn a living.

14 Secondly, and I will be brief, the unpredictability of the
10:55:40 15 trial scheduling which relates very much to both issues I just
16 outlined, five days before we were set to come to Freetown we
17 were told that there was to be a two-week delay. Now, again, no
18 one communicates reasons to me. I've tried my best to find out
19 why, but nobody's talking. I raise that because, again, that
10:56:08 20 relates to Mr Sesay's state of mind, fully ready to fight a trial
21 which is then adjourned for another two weeks. No explanation
22 can be offered by me. It also relates again to professional
23 commitments which I want to make, which I cannot make with a
24 trial schedule which is unpredictable.

10:56:31 25 Now, if the Registry would like to pay me to keep myself
26 free for the whole year, I would welcome that and I would be very
27 happy for an unpredictable trial schedule, putting, for a moment,
28 my client's concerns aside, because then I could get paid. But a
29 two-week delay in a trial only five days before, as a

1 self-employed professional, it makes it very difficult to plan
2 and the budget which is provided by the Registry is hugely
3 insufficient to be able to fund such unpredictability. I have
4 taken a long time to say it, but those are my concerns, mainly
10:57:18 5 for Mr Sesay, but also for myself and my team.

6 JUDGE THOMPSON: I can assure you that I certainly have no
7 intention of responding in any kind of constructive way to those
8 observations, but to say that you and I could write a
9 dissertation on that as to the constraints, the problematic
10:57:55 10 aspects of trials of an international criminal nature, even the
11 question of -- we can even sit down and write a book on whether
12 international criminal justice is achieving its objectives and
13 given all the constraints; fiscal, administrative and all kinds
14 of things. Perhaps the kind of thing that I would prefer if you
10:58:21 15 and I have a dialogue on this, we can talk about it in a purely
16 academic sense, but it's something that clearly has serious
17 ramifications for the entire process. There are all kinds of
18 imponderables and unpredictables that impact upon the judicial
19 process. I don't think even the judges would want to give you a
10:58:52 20 considered response because we, too, have raised issues about
21 expeditiousness, but these are all governed by, as I say, other
22 factors. Of course, in an ideal world, there would have been
23 probably be three Chambers to deal with three sets of cases.

24 I think that's all I can say, but I think what you've said
10:59:25 25 is reflected on the records and if, at some point in time, you
26 wish to revisit the issue for the deliberation of the entire
27 Chamber, I'm sure my other brothers perhaps would not be opposed
28 to that and to see what we can do on our side. For now, I think
29 that's the only response I can give. I am very much in sympathy

1 with you, speaking for myself, having to run two homes - I run
2 one here and I run one in Kentucky, myself. These are real
3 issues for all of us but, as you rightly say, the interests of
4 your client in a long detention without knowing the outcome is
11:00:23 5 paramount to us as a justice issue.

6 MR JORDASH: Thank you.

7 JUDGE THOMPSON: Mr Cammegh?

8 MR CAMMEGH: Your Honour, on the same subject, I feel bound
9 to say a few words myself, although I will try to keep it as
11:00:38 10 brief as I can. Can I just spend a little while to describe how
11 this impacts upon me? I am trying to juggle my commitments to
12 this court with running a practice at home. Unfortunately, I am
13 a victim of my own seniority at home now in so far as the level
14 of work that I am used to doing is simply not available to me.

11:01:09 15 Because if you are going to be doing a murder or a major drugs
16 trafficking case, you have to be there for months in advance to
17 prepare it and for all the tasks that go hand in hand with
18 holding such a responsibility. As such, I have only done two
19 short cases in England this year. Now, I say this to place
11:01:29 20 everything in a fiscal context. It's simply this: I am finding
21 it very difficult now to justify to my colleagues and my clerks
22 at home, my head of chambers my presence in this case. I am
23 finding it difficult to justify to my bank manager as well. It
24 is all very well for us to look on that with a sense of
11:01:56 25 frivolousness and, why not?

26 I know that Your Honour will take whatever I'm saying now
27 in the best heart and knowing that I have great respect for Your
28 Honour, but when I received a perfunctory email three days before
29 I was due to fly out in respect to a trial date that was set down

1 many months ago, and looking forward not only to the trial but
2 looking forward to getting out of England as well, but also to
3 earning some money, I was - I'll put it very neutrally - very
4 disappointed indeed. Three days' notice was simply unfortunate.
11:02:41 5 In pure fiscal terms it has cost me £2,500 in lost earnings which
6 I will not get back. If I had some lengthier notice, it may well
7 be that my clerks in chambers might have found me some work for
8 that period of time.
9 I won't dwell on the issue. I think it speaks for itself.
11:03:09 10 Your Honour knows, and has just expounded on the fact that those
11 of us who travel from abroad have great responsibilities, not
12 only financial at home, although, I must say, those are the most
13 weighty on my mind at the moment, but professional as well. Of
14 course, we not only sacrifice a lot of what we have at home, but
11:03:28 15 we also invest in this case a tremendous amount of goodwill. All
16 I ask is that, in future, if something like this is likely to
17 happen again, we are given rather more notice in order that we
18 can try to amend our lives at home, try to amend our professional
19 diaries and in order that somebody like me has a bit of stress
11:03:54 20 removed from his shoulders. Unfortunately, I think I am faced
21 with the financial reality and inevitability that I will not be
22 able to partake in this trial next year on the full-time basis
23 that I have done thus far. That's not to say I'm going to leave,
24 because I'm most certainly not. I will be here whenever and for
11:04:14 25 as long as I can, but I've reached the point now where,
26 unfortunately, financial reality is kicking in and at the risk of
27 repeating myself, I simply ask that the Chamber addresses its
28 mind to notice in future. I repeat, I make these comments with
29 all due respect. I know no discourtesy was ever intended, but it

1 it has been frustrating.

2 JUDGE THOMPSON: I can assure you I take all this in good
3 part. These are legitimate observations and they have to --
4 whether we -- we are not at this stage prepared to examine the
11:04:52 5 merits of those observations but, clearly, counsel has a right to
6 bring before the Chamber concerns about the pace of the trial and
7 some of the problems that we're encountering. I take it with a
8 great spirit of generosity somehow. Mr Melron?

9 MR NICOL-WILSON: Yes, Your Honour, I would like to lend my
11:05:18 10 voice to this cause. This is a concern my client is now raising
11 in Court based on the discussion so far. As early as Friday last
12 week, I had cause to explain to my client about the potential
13 duration of this case, because he wanted to know, and there was
14 this projection chart given to defence teams by the Principal
11:05:47 15 Defender based on the Prosecution's projection, which the
16 Prosecution projected they would complete their case in June
17 2006. Now my client is saying to me this trial started in July
18 2004 and this is November 2005; 16 months we have only dealt with
19 42 witnesses. He cannot see a situation in which we will be able
11:06:12 20 to deal with 60 more witnesses in just two trial sessions, based
21 on the indication you gave that the next trial session would most
22 likely be after the Easter vacation. We are urging the
23 Prosecution, just as an additional advice for the witness list to
24 be reviewed further because we see a situation wherein if the
11:06:34 25 witness list is not reduced, this trial may go on until maybe
26 2008.

27 JUDGE THOMPSON: I'm not sure whether that would be --
28 receive any kind of management committee. Yes, in any event, we
29 need this kind of discussion from time to time as a kind of

1 soul-searching exercise. Of course, we have in our own way tried
2 to contribute to expedition. We have observed that sometimes
3 examination-in-chiefs are very long and cross-examination, too,
4 goes on and on. There are so many factors that come into this
11:07:15 5 entire equation. We are very much sympathetic to the fact that
6 accused persons are entitled, as a right, to expeditious and fair
7 trial. But, of course, speaking philosophically, there are times
8 when expedition can undermine quality of the trial. If we go
9 helter-skelter we can end up with a botched up trial. So it's a
11:07:41 10 very delicate issue.

11 As I said to Mr Jordash, he and I can co-author a book on
12 that and, of course, I'm sure, Mr Cammegh will come in with his
13 own creative ideas to such a thing. We, in the Chamber, fight
14 all the fiscal constraints which are put upon this process. In a
11:08:02 15 way, Mr Melron, you are preaching to someone who understands the
16 complexities of the issues that you are raising.

17 MR NICOL-WILSON: We would like to have an indication from
18 the Prosecution an estimation as to when they think they will
19 close their case.

11:08:26 20 JUDGE THOMPSON: Do you want to add something?

21 Mr Harrison, are you in a position to give an indication?

22 MR HARRISON: I can ensure it will be within this decade.

23 JUDGE THOMPSON: Mr Cammegh, yes.

24 MR CAMMEGH: There are two matters, hopefully briefly, I
11:08:47 25 would like to raise. While we're on the subject of the
26 attendance of this Court, I, ironically, have something to say.
27 That is, following some surgery I had in September, thankfully
28 not terribly serious, I have to be back in England, in London on
29 Monday, 5 December.

1 Now, as Your Honour knows, I am alone this session. I
2 mentioned this to my learned friend Mr Harrison last week. I
3 have mentioned it to my other learned friends. I trust it will
4 pose the Chamber no problems at all, because Mr Harrison, that
11:09:23 5 week, is expecting to call an AFRC-type witness which will not
6 impinge upon Mr Gbao's case at all. I am more than happy,
7 provided the Chamber is content, to leave Mr Gbao's concerns in
8 the hands of either of my learned friends.

9 JUDGE THOMPSON: Very well.

11:09:44 10 MR CAMMEGH: The second matter I want to raise is this - it
11 is purely administrative: on 22 September, Thanki Novy Taube,
12 solicitors, from London issued a request to withdraw from this
13 case. Your Honour will note that I have occasionally been
14 accompanied by Mr Ben Holden, who is the legal assistant from
11:10:08 15 that firm. Moreover, one of the senior partners of that firm,
16 Mr Girish Thanki was lead counsel, as Your Honour probably knows,
17 and has acted in a management role ever since. Given we have got
18 so far during the case and given some financial concerns are
19 perhaps aided by their departure, he has asked me to convey his
11:10:36 20 application to withdraw. It is founded upon medical grounds more
21 than anything else. Mr Thanki, sadly, is unable to travel, due
22 to reasons that were served on the Registrar that I needn't go
23 into here. Since my arrival in Freetown just over a week ago, I
24 have taken the opportunity to speak to the Principal Defender
11:10:59 25 about this matter. He has asked me, whilst the application to
26 withdraw should not meet with any opposition, simply to mention
27 it as a matter of courtesy before the Chamber, which I so do. I
28 trust and hope that that will not find any difficulty with the
29 Chamber.

1 [RUF01NOV05B - SV]

2 JUDGE THOMPSON: Thank you, Mr Cammegh. I'm pretty sure
3 that my colleagues will understand the situation.

4 MR CAMMEGH: Your Honour, may I formally now contact
11:11:30 5 Mr Thanki to tell him that he may withdraw?

6 JUDGE THOMPSON: Go ahead. Quite right.

7 MR CAMMEGH: I'm obliged, thank you.

8 JUDGE THOMPSON: Usually the minutes of this particular
9 proceeding are communicated to the judges of the Chamber, so my
11:11:54 10 learned brothers would in fact be in a position to read what we
11 have in fact discussed here today. So as far as the issue of the
12 problem of delay is concerned, I'm sure that they will read it
13 and then we can apply our minds to the problem and see whether
14 there may be some solutions that we can come up with to allay
11:12:25 15 some of your concerns.

16 MR CAMMEGH: I'm sure I speak for both of my learned
17 friends, as well as myself, when I thank Your Honour for that and
18 say I appreciate that.

19 JUDGE THOMPSON: Thank you. Well, at this point I will
11:12:41 20 bring the proceeding to a close and say that this is the end of
21 the status conference.

22 [Whereupon the Status Conference adjourned at
23 11.15 a.m.]

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