

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

TUESDAY, 27 NOVEMBER 2007
4.16 P.M.
STATUS CONFERENCE

TRIAL CHAMBER I

Presiding

Before the Judges:	Benjamin Mutanga Itoe, Pierre Boutet
For Chambers:	Ms Sandra Brown Mr Felix Nkongho
For the Registry:	Mr Thomas George
For the Prosecution:	Mr Peter Harrison Mr Vincent Wagona
For the accused Issa Sesay:	Mr Wayne Jordash Ms Sareta Ashraph Mr Jared Kneitel
For the accused Morris Kallon:	Mr Kennedy Ogeto Mr Lansana Dumbuya
For the accused Augustine Gbao:	Mr John Cammegh Mr Scott Martin

1 [RUF27NOV07- JS]
2 Tuesday, 27 November 2007
3 [The accused present]
4 [Open session]
16:22:58 5 [Upon commencing at 4.16 p.m.]

are

6 PRESIDING JUDGE: Good afternoon, learned counsel. We
7 resuming our proceedings, but this time on a status conference
8 which we scheduled in order to have an exchange of views on
9 we move with the RUF trial, particularly in relation to
16:24:35 10 witnesses, like we said, like I indicated the other day,
because

we

11 we are concerned about the number of witnesses and that is why
12 thought we should have this status conference, particularly at
13 the end of -- scheduled at the end of the session for --
14 the Christmas break so as to know and understand ourselves as
to
16:25:10 15 how we proceed when we resume in January.

to

16 But, this said, I would like to say that there would be,
17 before the proceedings begin in January, after the Christmas
18 break, a status conference which will take place on 9 January,
19 Wednesday, 9 January. There is a status conference. I think

the

16:25:34 20 scheduling order which we've issued did make this indication.
So
21 that status conference on 9 January still stands because we
need
22 to, again, update our status in various capacities here before
we
23 proceed with the Defence case for the first accused in
January.

24 As an introduction, and as we all know, this trial of
the

16:26:21 25 RUF indictees commenced on 5 July 2004 and the Prosecution
closed
26 its case on 2 August 2006, after 182 days of trial. In total,
86
27 witnesses were heard during the case for the Prosecution, and
a
28 Rule 98 decision was issued by the Chamber on 25 October 2006.

29 Subsequently, the pre-defence conference was held on

1 20 March 2007. The Defence case was commenced on 3 May 2007,
2 some ten months after the close of the case for the
Prosecution,
3 and was adjourned on 28 June 2007 after 32 days of trial.

4 On 3 May 2007 the first accused, Issa Hassan Sesay,
16:27:25 5 commenced testifying as a witness on his own behalf, pursuant
to
6 Rule 85. His testimony was completed on 26 June 2007. The
7 Defence case was thereafter adjourned and it resumed on 4
October
8 2007.

9 In addition to the testimony of the first accused, 17
16:28:02 10 protected witnesses testified -- have testified at the trial
for
11 the defence for Sesay, and after this status conference held
12 today, pursuant to Rule 65bis, the Defence case will resume
some
13 time in January. I think to be more precise it will be
resuming
14 from our scheduling order, unless we change it, on 10 January
16:28:40 15 2008.

16 The Prosecution and each Defence team were informed of
the
17 new schedule for the commencement of the Defence case by means
of
18 a scheduling order issued on 22 November to begin with a
status
19 conference scheduled for Wednesday, 9 January 2008. On the

16:29:05 20 logistics, and on the case presentation and overall number of
21 Defence witnesses, the Defence case in this trial will resume
22 with the presentation of evidence on behalf of the accused
Sesay
23 and as we did -- as I did indicate, this would be sometime on
the
24 10th, I hope on 10 January 2008.

16:29:39 25 And, from a cursory review of the current updated
witness
26 list for each Defence team, the Chamber notes that the Defence
27 for Sesay intends to call a total of 135 core witnesses; the
28 Kallon Defence 83; and the Gbao Defence 20. In total, the
total
29 number of core witnesses now being proposed to be called by
the

1 Defence is 238.

2 Asked by the senior legal officer to provide time
estimates
3 for their case, the Sesay Defence estimated that its case
would
4 last until mid-March, which would result in a case of
16:30:29 5 approximately six-and-a-half months. The Kallon Defence
6 indicated that its case would last four months and the Gbao
7 Defence estimated that its case will last two weeks. I hope
that
8 I am right. If I am not, then we would need to have some
input
9 in the course of this conference.

16:30:52 10 The Chamber notes that the parties have, on several
11 occasions, been encouraged to reduce their witness lists. The
12 Chamber also notes that each Defence team has, on previous
13 occasions, indicated that it will continue to review the list
of
14 its witnesses so as to effect further reduction and that it
will
16:31:20 15 communicate any such reduction to the Chamber and the
Prosecution
16 as soon as possible.

17 The Chamber welcomes this undertaking by the Defence and
18 strongly encourages the Defence to continue to do so in the
19 interests of justice and for the efficient administration and
16:31:40 20 management of the trial proceedings.

21 A review of the currently proposed witness list for the
22 Sesay Defence and the Kallon Defence reveals a number of
23 witnesses -- reveals that a number of witnesses will be
24 repetitive of each other and of evidence already before this
16:32:07 25 Chamber.

26 According to the summaries provided by the Sesay Defence
27 DIS-001, DIS-011, DIS-017, DIS-024, DIS-026 will all give
28 testimony on life in Makeni from 1998 onwards, including
29 Issa Sesay's role in the community and the RUF. The Chamber

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1 notes large portions of the testimony. The Chamber notes that
2 large portions of the testimony of these witnesses will be
3 repetitive. The Chamber, accordingly, strongly encourages the
4 Sesay Defence to review and reduce its list of proposed
witnesses
16:33:02 5 in order to avoid such repetitive evidence.

6 A review of the Kallon Defence proposed witness
summaries
7 shows that witnesses DMK-018, DMK-031, DMK-095, DMK-037, DMK-
105
8 and DMK-124 will all give testimony on life in Bombali
resulting
9 in large portions of repetitive testimony. The Chamber
strongly

16:33:36 10 encourages the Kallon Defence to review and reduce its list of
11 proposed witnesses in order to avoid such repetitive evidence.

12 The Chamber reminds the parties of the provisions of
13 Rule 73ter(C) and (D) of the Rules of Procedure and Evidence
14 which provide as follows:

16:34:17 15 "(C). The Chamber or a judge designated from among its
16 members may order the Defence to shorten the estimated
17 length of the examination-in-chief of some witnesses:
18 (D). The Chamber or a judge designated from among its
19 members may order the Defence to reduce the number of
16:34:37 20 witnesses if it considers that an excessive number of
21 witnesses are being called to prove the same facts."

22 The Chamber also reminds the parties of the
23 provisions of Rule 90(F)(i) and 90(F)(ii) which provide as
24 follows:

16:35:09 25
order

 "The Chamber shall exercise control over the mode and
26 of interrogating witnesses and presenting evidence so as
27 to:

28
for

(i). Make the interrogation and presentation effective
29 the ascertainment of the truth and;

1 (ii). Avoid the wasting of time.

2 In this regard, should the Defence fail to voluntarily
3 reduce its witnesses the Chamber may" -- it's not a "shall" --
4 "the Chamber may," there is a discretion here and I want that

to

16:35:47 5 be clearly emphasised:

set

6 "(1). Order a reduction in the number of witnesses and

each

7 a specific number of witnesses that can be called by

8 Defence team.

9 (2). Order that the Defence finish its case within a

16:36:03 10 specific time frame or;

11 (3). Order the limitations for examination-in-chief for
12 each witness."

witnesses,

13 And, in this regard, we want to say here that should the
14 Defence teams not significantly reduce the number of

16:36:28 15 disclose

the Chamber may issue an order to the Defence teams to

evidence.

16 full witness statements to the Chamber in order to allow it to
17 better evaluate the repetitiveness of Defence witness

knowledge

18 This is what we thought we should bring to your

of

19 and what the position of the Chamber is on this, on the issue

16:37:12 20 witnesses and repetitiveness. We have here an analysis of
what
21 we refer to as evidence that is repetitive, and which we would
22 want -- we just want to guide the parties. It is not our
23 intention at this stage to be very draconian in our approach
to
24 this issue by drastically reducing the number of witnesses
16:38:04 25 because we want to come, first of all, to the understanding of
26 the Defence teams since, I mean, in this particular regard and
27 that repetitiveness does not take us very far in terms of
28 expeditiousness. And I know that all the Defence teams have
been
29 complaining about their clients having been held in detention
for

1 a very long time. That's part of the process. What can we do
2 about it? We all know what we are doing here.

3 And I remember that in our discussions, you know, on the
4 length of the trials in our Plenary, which is the
preoccupation,

16:38:46 5 you know, of the funding countries of this Court, I did say
that

6 we understand that there is a burden on taxpayers but justice
has

7 to go with some costs. But, again, we have to know how to
8 minimise those costs. And if we can all work together and
reduce

9 the number, you know, of witnesses and the length of the
16:39:14 10 testimony, this would go a long way to enhancing the process
and

11 to ensuring the principle of expeditiousness, you know, of the
12 trial, which is enshrined in our Rules and Regulations.

13 So I think Honourable Justice Boutet will give a reading
of

14 what we have, you know, as instances that we have been able to
16:39:44 15 assemble in terms of repetitiveness. And, in saying this, we
are

16 not losing sight of the fact that corroboration is an
essential

17 component of establishing your defence at any point in time.
But

18 how long and how much does it take to corroborate a fact in
issue

19 that is relevant? Honourable Justice Boutet, please.

16:40:14 20 JUDGE BOUTET: I'm not sure we see the same vision on

21 corroboration or not, but I am of the view that one single

22 witness may be sufficient to establish --

23 PRESIDING JUDGE: Honourable Justice Boutet, I share
that

24 view entirely; I share that interview entirely. I didn't want
to

16:40:34 25 go to the fundamentals. I mean, one witness, if he is
credible,

26 is enough to establish the case you are making, absolutely.

27 JUDGE BOUTET: Because I could see some look coming from
28 the Defence on corroboration when you mentioned that. So it
was

29 just to reassure all concerned that, as it has been said in
this

1 Court, that quality is more important than quantity. And I
will 2 not define "quality," you are capable to make that
determination. 3
4 But just to emphasise as well on what Justice Itoe has
just 5 mentioned, it is no secret that there is a lot of pressure by
the 6 Management Committee, as far as this Court is concerned, and
16:41:17 7 the Management Committee which is speaking on behalf of the donor
8 unlimited; 9 countries, as such. Finances for this Court are not
prognosis 10 the funds are not unlimited. And we had to make some
11 as to the timing, and this was based largely on the experience
16:41:40 12 that we were having, and where we were and on the suggestions
13 that you made at that time as to what you were expecting the
case 14 to be or not to be.

15 But I am still, certainly, highly concerned about what I
16 see as the picture because, if I look at it the way it is and
the 17 way we have been moving along, I can't see how we are going to
16:42:06 18 finishing in 2008, and that cannot be. It has to be finished
19 be 20
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2008.

trying 18 And this is what we are trying to figure out with you and
of 19 to find a modus operandi to work to so we can manoeuvre ahead
16:42:27 20 time because we will not be able to convince anybody that we
need 21 to go and should be going beyond -- I'm talking the trial per
se, 22 I'm not talking of appeals, whatever it may be a part, I am
having 23 talking about this trial at this particularly level. So,
as 24 said that, we are looking at 2008 and, looking at what we have
16:42:47 25 a picture, it's difficult to see how we can reconcile that at
conference 26 this particular moment. That's why we have the status
27 to see how we can move ahead.
28 And on this I can look at some of the -- and again, as
29 Justice Itoe has indicated, what we have is limited
information.

I'm
witnesses
16:43:19
- I
16:43:49
those
the
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the
16:44:44

1 We go on what you have produced at this particular moment.
2 looking at you, Mr Jordash. The assessment we made on
3 you are to call is based on the summary you have provided and
4 obviously you know that this information is very limited. We
5 don't have the full statements and therefore we cannot make --
6 our assessment is based on that. But even with that limited
7 information we can see, and I can just go on with looking at -
8 go by what you have described in these documents by some crime
9 base, looking at Makeni witnesses, about the civilians being
10 well-fed, you have DIS-003, DIS-015 -- these are 92bis --
11 DIS-018, DIS-0600, DIS-103, DIS-168, DIS-170, DIS-268, all
12 are one, two, three, there's five that are 92bis. 92bis does
13 save some time. By this I mean some Court time per se, but
14 fact that you file a 92bis means that it has gone away and we
15 still need to look at that, and this is evidence that we must
16 consider and therefore we have to weigh them and 92bis is not
17 saving grace to save time about everything. I mean it adds to
18 our own component of analysing the evidence. So, yes, it is a
19 means to try to move a bit faster.

I say this because I don't know, and you are in the best

21 position to make that determination. I am just talking about
22 that aspect of the evidence that you intend to lead about
Makeni
23 and all of these witnesses that I have described are witnesses
24 that have not been called nor 92bis filed, from what I can
see.

16:45:03 25 It is just what you intend to do.

26 And of the free schools provided in Makeni you have
27 DIS-005, 011, 027, and 030. Of those, there is 055 and 030
are
28 92bis. There is also testimonies, or planned testimony on
29 Issa Sesay's generosity. You have 24 witnesses that are
talking

1 about that. But some of them, I have to concede, are
repetitive.

2 In other words, DIS-011 is also called to talk about civilians
3 were being well-fed, but again, whether it's the same witness,
or
4 another witness, I would say it would appear from this, I can
16:46:01 5 give you the list that I have here, but you can see from that
6 that the same witness will please speak, as you do with many
of
7 witnesses we have had up 'til now, about the civilian
population
8 being provided with food, the schools were being provided,
9 Sesay's generosity in giving whatever it was at that time and
so
16:46:19 10 this is only for Makeni and this -- I'm using this in this
11 fashion, Mr Jordash, so you can see with us how it is.

12 As Justice Itoe, at this juncture we do not intend and
we
13 hope not having to have recourse to say, well, that's it, we
14 order that you reduce this by 50 per cent, 30 per cent,
whatever
16:46:42 15 it is, or impose a time limit.

16 You have indicated that you expect to be finished by
17 mid-March. If we look at what we have accomplished up to now,
18 and what you have projected, I have serious headache to see
how
19 we're going to fit that between now and mid-March. So these
are

16:47:01 20 some analysis, a very brief analysis as to the outlook, which
21 looks bleak to me at this particular -- when I say "bleak"
we're
22 talking here of time line.

23 MR JORDASH: Maybe I can assist in lifting some of the
24 clouds.

16:47:20 25 PRESIDING JUDGE: Mr Jordash, I think we will call on
you.

26 We are going to call on you certainly at the end of this
expose.

27 It's just that we share the job.

28 MR JORDASH: Yes.

29 PRESIDING JUDGE: I've presented what I had to. He's

presented. 1 presenting that as a complement to what I have already
make 2 After that, you know, you will be called upon, you know, to
3 comments and some interesting and acceptable promises which we
4 are looking up to, you know, on this bargaining table.

16:48:00 5 MR JORDASH: We can certainly indicate our estimate
which 6 would be much reduced from our present core list, but I will
7 wait.

8 PRESIDING JUDGE: You'll wait, yes, please.

DIS 9 JUDGE BOUTET: I can read for you, for the record, the

16:48:20 10 that I have that you are presenting at this moment before the
client's 11 reduced list. It's 001, 004 -- and this is about your
12 generosity in Makeni only -- 001, 004, 005, 009, 010, 011,
13 017, 018, 027, 030, 031, 034, 041, 046, 060, 103, 110, 139,
140, 14
153, 169, 205, 221 and 223. So this is -- all of these are

16:49:04 15 witnesses you intend to call for Makeni, as such. Some are
also 16 repetitive about -- they will be providing evidence about food
or 17 about schools and so on.

18 So we have done the same exercise for Kono. Kono, it's
not

is 19 as -- the outlook on paper doesn't look as bad, but still, it
16:49:25 20 repetitive to an extent. We have DIS-065 and DIS-270 that are
21 talking of civilians were well-fed, but again, the well-fed, I
22 take it from what you're presenting this is sort of a standard
based 23 practice in RUF-controlled territory as such. So at least
24 on the evidence that you have presented to this moment, so how
16:49:50 25 far you want to push it, and how many you need to call in
Makeni
26 and Kono and all of these areas, would appear to be, after a
27 while, to be repetitive. So, but --
28 PRESIDING JUDGE: My Lord, we've made a mistake. I
think
29 we've let the horse loose and we should have limited him to
just

1 one witness; one credible witness. I'm sure by now we would
be
2 very far gone. Anyway, that was just an aside.

3 JUDGE BOUTET: So, for the schools, you have eight
4 witnesses you intend to call. This is Kono again: 065, 068,
16:50:32 5 088. Of those it is only 068 and 088 that are 92bis. You
have
6 270, 274, 276, 282. Hospitals, free hospitals provided,
again,
7 eight witnesses. Most of them are the same as for the
schools,
8 except for one, and Sesay's generosity, again, three
witnesses,
9 063, 202, 219 -- this is for Kono.

16:51:03 10 We have been in Kailahun of this moment. Most of the
11 evidence you've called from these witnesses are Kailahun,
12 Kailahun-related as such. But still, based on what we have,
you
13 have 11 witnesses about food being provided to civilians in
14 Kailahun, and already three have testified to that. Of those,
16:51:30 15 two, that is 301 and 302, are 92bis.

16 Schools being free, you intend to call four witnesses.
17 Only one has testified to that yet; maybe two now -- today's
18 witness, yes. Hospitals, six witnesses of which two have
already
19 testified, and about Sesay's generosity, you have five
witnesses

16:52:01 20 that you intend to call, or two 92bis in this, and already two
21 have testified.

22 So it goes -- so I think you have a clear indication as
to
23 what it is we could provide you. As I say, this is an
assessment
24 based on the limited information that we have, and we can see
on
16:52:18 25 this that there would be repetitive issues. So this is what
we
26 want to highlight with you, and seek your assistance and
27 corroboration and co-operation to see how best we can move
this
28 ahead. And we are still concerned as well, as I say, we are
29 concerned about financial constraints that will come, but we
also

1 are highly concerned about the rights of any accused person in
2 this process. So it's with all this in mind that we're trying
to
3 see how best to move.

4 PRESIDING JUDGE: Right. Thank you, My Lord. As we've
16:52:58 5 highlighted the situation, we are concerned about the costs
that
6 a long and protracted trial would generate. I know we have
all
7 made an effort in this regard because a huge number of
witnesses,
8 I mean, was proposed by the Prosecution in the CDF case. I
think
9 they had about -- they had over 200 witnesses in the CDF case
and
16:53:27 10 they ended up calling just about 85 or so, 85 of them, and
they
11 closed their case.

12 This again, you know, was as a result of negotiations.
The
13 same happened, you know, with the Defence still in the CDF
case.
14 So it's a question of having a case map, you know, before you
--
16:53:53 15 I am sure all of you have your case maps, there is no doubt
about
16 that. But it's a question of looking at it very, very
critically
17 and making the decisions that you need to make in terms of the

when 18 effectiveness of the testimony that you are calling because,
19 the testimony ceases to be effective, it seems to produce a
16:54:17 20 result and this is what the results are when testimony has
become
21 repetitive and tends to waste a lot of time.

22 And, of course, we are all here to ensure that, you
know,
23 the accused persons don't remain in custody for an indefinite
24 length of time. They have been in custody for long. We all
16:54:43 25 understand this. We have been doing two cases simultaneously
and
26 this is what has been responsible for the delay. But now that
we
27 have just one case, and we are facing just one target, I think
we
28 can make faster progress, you know, in finishing the RUF case
29 because an expeditious trial is one of the rights that the

1 accused persons are entitled to, and we are sure that their
2 counsel would ensure that they take the fullest benefit of
that
3 statutory right and to ensure that we finish the case
promptly.

4 Now, this said, I would call on the -- I would call on
16:55:37 5 Mr Jordash for the -- and, of course, if I addressed myself,
you
6 know, Mr Jordash, please, please sit down, please, we are not
7 excluding the participation, the full participation of the
8 Prosecution in this process because, again, it depends on how
you
9 handle your cross-examination. We have to limit
16:56:03 10 cross-examination strictly to relevance, to the principle of
11 relevance.

12 It is true, you know, that in cross-examination you can
13 fish around a bit, but I think if we knew the limits to which
we
14 can go in that expedition, we would be assisting in enhancing
the
16:56:20 15 expeditiousness of the process.

16 So, just like we were appealing to the Defence at the
time
17 when the Prosecution was presenting their case, we are turning
18 now to you to ensure that in your cross-examination it should
be
19 based -- you should base your questions on relevance and you
go

16:56:41 20 to the point, so that you contribute in the process of
ensuring

21 that the trial is as expeditious as we ordinarily expect it to
22 be.

23 Yes, Mr Jordash, please. This said, of course, you will
24 have your turn when it comes to it, you know, to make your
16:57:01 25 contributions in this very, very important debate. Yes,
26 Mr Jordash, please.

27 MR JORDASH: As I've indicated, I can indicate a reduced
28 estimation. But I would, if I may, just say this: That we
could

29 have indicated this a long time ago, but for what we would see
as

1 the false economy which is propagated by both the Management
2 Committee and the Registry. The problem isn't that we cannot
3 reduce our witness list; the problem is time to assess so we
can
4 reduce the witness list. If we'd had time two years ago, and
16:57:48 5 resources to investigate in the field properly, and take
detailed
6 witness statements in the field, then we would have done so
and
7 we would have been in a better position at an earlier stage to
be
8 able to know exactly which witnesses we wished to call and
which
9 we don't.

16:58:08 10 But, without turning this into a long complaint, but for
11 the lack of resources, we could have been much more organised
12 much more quickly. So I'm afraid from our perspective the
13 Management Committee and the Registry propagate a false
economy,
14 providing insufficient resources to the Defence so that we are
16:58:29 15 chasing our tail constantly, and are unable to assist the
Trial
16 Chamber as much as we'd like in terms of being able to
indicate
17 at an early stage precisely which witnesses we are going to
call.

18 So all we can do is collect all the witnesses we can,
and

say 19 in the maelstrom of trying to present a case again, we would
16:58:51 20 with insufficient resources, try our best to find out which
21 witnesses we are going to call.
22 At the moment, we've been working calling witnesses into
witnesses 23 Freetown not having sufficient information about those
24 until they get into Freetown a number of days before they are
16:59:10 25 predicted to give testimony, and at that point carrying out
the 26 detailed interviews we would have liked to have conducted over
by 27 the last few years but for the insufficient resources provided
28 the Management Committee and the Registry.
number 29 So that being said, we have been able to look at a

1 of witnesses over the last few weeks and months, who have been
2 brought to Freetown, and our estimate at this stage is that we
3 would expect to call approximately 45 more witnesses live and
we
4 would hope to file a 92bis or 92ter application for
approximately

17:00:05 5 22, so making --

6 JUDGE BOUTET: This is bis and ter combined?

7 MR JORDASH: Bis and ter. We would estimate of the 22
on
8 paper, perhaps half 92bis, half 92ter.

9 PRESIDING JUDGE: You say on 92bis?

17:00:32 10 JUDGE BOUTET: And ter.

11 MR JORDASH: And ter.

12 PRESIDING JUDGE: And ter how many?

13 MR JORDASH: 22 altogether.

14 PRESIDING JUDGE: Okay.

17:00:43 15 MR JORDASH: Making a total of 65 witnesses. We would
hope
16 that of the 22 92bis witnesses, we would hope, although we
can't
17 predict, that the Prosecution would have limited or no
18 cross-examination for many of them but, again, that's our
hope.

19 I indicated I think at the status conference at the
17:01:13 20 beginning of this session that we'd hope to put as much of our

comments

21 case on paper, but I again refer Your Honours back to my

time

22 about the insufficiency of resources which has meant we've had

23 time to interview witnesses, take note, but sadly not enough

by

24 to put them into a format whereby we could reduce Court time

17:01:41

25 filing 92bis or 92ter applications.

witness

26 We would hope that we would be able to reduce that

best

27 list further and, as I've indicated before, we will do our

28 to reduce the witness list and I am sure we will be able to

29 reduce the number of live witnesses from the numbers I've just

1 given.

2 PRESIDING JUDGE: From the numbers you've just given?

3 MR JORDASH: Yes.

4 PRESIDING JUDGE: You may have to?

17:02:11 5 MR JORDASH: I think we will be able to.

6 PRESIDING JUDGE: Yes, okay.

7 MR JORDASH: And of the --

8 PRESIDING JUDGE: And the number you fix at
approximately

9 45 more witnesses?

17:02:17 10 MR JORDASH: Yes.

11 PRESIDING JUDGE: Before the close, yes, yes.

12 MR JORDASH: Yes. And of the 45, perhaps this is an
13 indication I can give, we estimate 18 would be insiders, but
only

14 approximately seven of them would be complicated, and none of
the

17:02:48 15 seven would be as big as --

16 PRESIDING JUDGE: You said there would be 18 insiders?

17 MR JORDASH: Eighteen insiders, and it's that list we
would

18 probably be able to reduce, and 25 civilians, and --

19 PRESIDING JUDGE: You've talked of complications.

17:02:59 20 MR JORDASH: Yes.

21 PRESIDING JUDGE: Which -- how many are likely to be

22 complicated?

23 MR JORDASH: Of the 18 we estimate around seven would be

24 relatively sizable. But we have, aside from the next two

17:03:18 25 insiders -- well, once we've completed the next two insiders

our 26 we'll have done essentially -- we'll have called essentially

akin 27 big insiders. Of the 11 small insiders they are much more

28 to civilian witnesses, and we would estimate that we can get

29 through the civilians relatively quickly and, perhaps, more

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1 quickly than we have some of the ones this session. Perhaps
more
2 of the last two days insiders, the last two days civilians.
3 JUDGE BOUTET: Because we also firmly intend to
interview
4 more -- intervene more. So if you lead evidence of school and
17:04:05 5 this kind of issue as such, we might tell you that we need not
to
6 hear that anymore. So we are just warning you.
7 MR JORDASH: Your Honour, we would welcome that because
the
8 more we understand where Your Honours are coming from the
better
9 we are able to call the evidence that you're interested in.
So
17:04:27 10 we would certainly welcome a wrap on the knuckles.
11 PRESIDING JUDGE: You know, Mr Jordash, we understand
why
12 this evidence is relevant to your case. What we are saying is
13 there are several crime bases. You have to make a
determination
14 as to the number of witnesses you want to testify to these
issues
17:04:52 15 of, what do you call it again, a welfare state, you know,
things
16 like that, because there are many crime bases here and there,
17 Bombali, Makeni and the rest of it. We are not saying that
18 having listened to evidence on the generosity and on schools
and

19 hospitals in Kailahun, Pendembu or other, yes, Kailahun,
17:05:27 20 Pendembu, Giema and the rest of it, that if it came to hearing
at
21 least a witness, you know, that in other areas, you know, we
22 would be -- it wouldn't be that objectionable because it shows
23 from what -- from your perspective how widespread, you know,
that
24 practice was with the organisation of the RUF.

17:05:48 25 MR JORDASH: We shall certainly not be attempting to
call
26 the same number of witnesses to -- within other crime bases as
we
27 have with Kailahun. Kailahun is --

28 JUDGE BOUTET: The base.

29 MR JORDASH: It is the base because we say that it isn't
a

1 crime base.

2 PRESIDING JUDGE: It's your headquarters.

3 MR JORDASH: Without crimes, we say, or with few. So we
4 will not be trying to demonstrate the same thing in other

places

17:06:15 5
conference,

where the things, as I indicated in the last status

our

6 things are a bit more complicated. So Kailahun wasn't, from

7 perspective, important because we wanted to demonstrate that

8 there was not a crime base there.

to

9 JUDGE BOUTET: Of the seven insiders that you are still

17:06:38 10

call, of the seven a little bit longer that you --

11 PRESIDING JUDGE: The insiders.

12 JUDGE BOUTET: Insiders, yes.

13 PRESIDING JUDGE: Yes.

intend

14 JUDGE BOUTET: That you intend to call what -- you

17:06:49 15
few

to start when we come back with an insider, presumably, or a

16 of them?

17 MR JORDASH: Yes.

18 JUDGE BOUTET: That would be your plan for now?

19 MR JORDASH: Yes. 214 and 269 are perhaps the biggest

17:07:00 20

insiders we have left.

21 JUDGE BOUTET: And what's your estimate of those --

22 MR JORDASH: Basically --

23 JUDGE BOUTET: -- based on past experience, would be,
what,

24 a week each or --

17:07:09 25 MR JORDASH: I beg your pardon, sorry, it is 214 and
163.

26 No, I would say less.

27 PRESIDING JUDGE: Is it 285 and 163?

28 MR JORDASH: 214 and 163, with 163 coming first and 214
29 coming second. And I would estimate 163 in direct would be

1 one-and-a-half days.

2 JUDGE BOUTET: In direct?

3 MR JORDASH: In direct.

4 JUDGE BOUTET: Yes.

17:07:40 5 MR JORDASH: And, similarly, 214.

6 PRESIDING JUDGE: So even if we programmed him one,

7 one-and-a-half days, if we said two, three days with

8 cross-examination and so on, it would not be -- are you
including

9 cross-examination in your estimate of one-and-a-half days?

17:08:00 10 MR JORDASH: No.

11 PRESIDING JUDGE: It's only in direct?

12 MR JORDASH: In direct.

13 PRESIDING JUDGE: Okay. All right. That's why I'm

14 saying --

17:08:05 15 JUDGE BOUTET: Based on what you're saying, is it still

16 your prediction that mid-March would be a reasonable target?

I

17 say mid-March, bearing in mind that the Easter recess comes

18 fairly early this year, I think Easter is something like

19 23 March.

17:08:22 20 MR JORDASH: Yes.

21 JUDGE BOUTET: So it cuts off on the time available

between

22 Christmas and Easter, so I say this again for planning
purposes.

23 MR JORDASH: With our expected reduction of the 43, and
24 with our expected reduction of each insider's testimony as we
go
17:08:44 25 on, if I can put it a different way, what we've discovered is
26 each insider we've had to deal -- we've been able to shorten
27 their testimony considerably and as we've gone on, so we
expect
28 after 214 and 163 the insiders will be shorter than that, and,
as
29 we go on, shorter and shorter, as we establish what we want to

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1 establish.

2 So we would be relatively confident we can finish in the
3 middle of March, and we certainly all are shaping our case to
4 make sure we do finish, because we don't want, and we do not

see

17:09:30
with

5 a value in going on past the middle of March, and I say that
6 absolute frankness and absolute determination that we fit our
7 case into that time period because we see the forensic value
8 doing that. So, as much as I can confidently assert, we are
9 doing everything we can to make sure that happens.

in

17:09:51

10 PRESIDING JUDGE: Subject to, as we always say,
11 imponderables and unforeseen --

12 MR JORDASH: Yes.

13 PRESIDING JUDGE: Well, you understand what unforeseen
14 events and occurrences.

17:10:06

15 MR JORDASH: Yes, but certainly one gets to a forensic
16 fatigue position and I think from our perspective this is
17 we would be after the middle of March, and I don't think that
18 would assist Mr Sesay.

where

19 PRESIDING JUDGE: Good. That's all? Thank you.

17:10:25

20 MR JORDASH: Can I make one more comment, if I may?

21 PRESIDING JUDGE: Yes, please.

possible, 22 MR JORDASH: It would help if we had, as soon as
overseas 23 a date for the Easter break. I say this because we have
a 24 witnesses coming towards the end of our case who need to have
17:10:42 25 more accurate date so that they can fly in, and they are
diaries. 26 significant characters, significant professionals with
27 Thank you, Your Honours.
we 28 PRESIDING JUDGE: Thank you. Well, on the Easter break,
29 can't give it to you now. We will have to go and look at our

a 1 calendars and I think before you leave I think we should be in
2 position of giving it to you before you do leave so that you
3 start making your arrangements.

4 MR JORDASH: Thank you.

17:11:16 5 PRESIDING JUDGE: Right. You will know when we go for
the 6 Easter break and when we resume. That will be an indication -
-

7 JUDGE BOUTET: As a tentative indication, Easter is on
8 23 March.

9 PRESIDING JUDGE: That's very early.

17:11:30 10 JUDGE BOUTET: It is, and a normal -- what we've done in
11 the past is the week leading to Easter was recess and the week
12 after. But this is sort of a preliminary indication. We'll
13 confirm that with Justice Itoe in a written order as such but
the 14 week before and the week after you can assume this is off, in
17:11:52 15 that sense.

16 MR JORDASH: Yes. Thank you.

17 PRESIDING JUDGE: Good. Thank you. Yes, Mr Ogeto?

18 MR OGETO: Thank you, My Lords. Although --

19 PRESIDING JUDGE: Mr Ogeto, we note that, like you had,
we 17:12:16 20 noted that you are calling -- you want to call 80 witnesses, I
21 think?

22 MR OGETO: Eighty-three.

23 PRESIDING JUDGE: Eighty-three witnesses. You are
asking
24 for four months. You're estimating that your case will last
for
17:12:34 25 four months, yes. Four months, of course, after the close of
the
26 case for Mr Sesay.

27 MR OGETO: Yes, that is -- that is the conservative
28 estimate.

29 PRESIDING JUDGE: Four months is a conservative
estimate?

1 MR OGETO: Yes. Having said that --

2 JUDGE BOUTET: I thought it was an expensive estimate
but
3 you call it a conservative. I was hoping you would say it's
an
4 expensive one, or extensive one.

17:13:06 5 MR OGETO: Maybe the submissions that I am about to make
6 will make it less expensive. I want to assure Your Lordships
7 that we will, as much as possible, avoid repetitive witnesses
and
8 we do not intend to call a witness who is not absolutely
9 necessary for our case.

17:13:42 10 In this regard, we are continually looking at our list.
In
11 fact, Mr Dumbuya has been busy doing this; that's why he has
not
12 been coming to Court. So far, I can inform the Court that a
13 decision has been made to reduce the core list by 20
witnesses.

14 We will be communicating the specific pseudonyms for those
17:14:14 15 witnesses in due course.

16 PRESIDING JUDGE: So you are reducing them from 83 to --
by
17 20?

18 MR OGETO: By 20, for now, and, as I said, we are
19 continually looking at the list and there could be further

17:14:37 20 reductions, but a decision hasn't been made. It will be made
in

21 due course, and the parties will be advised.

22 The other important point that I would like to bring to
the

23 attention of the Chamber is that most of the witnesses that we

24 intend to call will be pretty short. Most of them will
probably

17:15:14 25 take a day at most.

26 JUDGE BOUTET: In total?

27 MR OGETO: In total. There could be a few who will be
long

28 but there will be very few; probably not more than six. The
rest

29 will be fairly short. But that is assuming that the
Prosecution

1 will not be very long in their cross-examination, but I can
2 safely say that, for most of our witnesses, a day will be
3 sufficient for both direct and cross-examination from all the
4 parties.

17:16:04 5 We -- I don't know the issue of the expert witnesses, I
6 don't know whether I should address that at this point in
time.

7 PRESIDING JUDGE: We shall come there.

8 MR OGETO: We will come to that later.

9 PRESIDING JUDGE: We shall come there.

17:16:15 10 MR OGETO: So really, that is where we are. Our
bearings

11 on our case map may not be as clear as Mr Jordash's because,
12 obviously, we are still working on our lists and we also are
13 still consulting, but I hope the figure that I have given of

20

14 that we intend to reduce will be of assistance to the Chamber

and

17:16:44 15 to the parties. As soon as we get further information, in
view

the

16 of the consultations that we are still making, we will advise

next

17 Chamber, probably when we come back in January, during the

in

18 status conference, we will provide more additional information

19 this regard.

17:17:11 20
status

So I think that is all I have for now regarding the

21 of our witnesses.

22
of

JUDGE BOUTET: On, just Mr Ogeto, on the time, estimate

23 time, are we still talking or thinking in the realm of four

24 months or more of two months now?

17:17:31 25
to

MR OGETO: I think to be on the safe side three months,

26 be on the safe side.

27 JUDGE BOUTET: At this stage you are three?

28 MR OGETO: Three months.

29 JUDGE BOUTET: It may move down?

1 MR OGETO: It may move down.

2 JUDGE BOUTET: Hopefully not up?

3 MR OGETO: I don't think it will move up. I don't think
it
4 will move up. We are trying to bring it down as much as
17:17:49 5 possible.

6 JUDGE BOUTET: Thank you very much.

7 MR OGETO: Just one point that I --

8 PRESIDING JUDGE: Yes, please.

9 MR OGETO: -- I forgot to mention. I don't know what
the
17:18:13 10 preference of the Chamber will be, but we will be requesting
at

11 the end of the first accused's case for a short break, one or
two
12 weeks, so that we are able to sit down and concretise our case
13 and be prepared, be fully prepared, before we start, so that
we
14 will really not wish to start immediately after --

17:18:45 15 PRESIDING JUDGE: The close of their case.

16 MR OGETO: -- of their case. We would really be obliged
if
17 the Chamber will give us some reasonable period of time to be
18 able to prepare ourselves and so that when we start we'll just
19 start and finish.

17:19:05 20 JUDGE BOUTET: I have -- we have not consulted on that.

is
21 can say certainly two weeks to me is too long. So, but there
22 less than two weeks, so we can -- I hear and we'll give due
you 23 consideration to what your application will be. I can tell
24 two weeks is --

17:19:17 25
brother

PRESIDING JUDGE: I think what is certain, what my
26 is saying is, I mean, what is certain is that we shall give
you 27 some time because I am sure this is predicated on the fact
that 28 you will be in Court all along the conduct of the case for the
29 first accused and you need some time to retire and to organise

1 yourself with your witnesses.

2 MR OGETO: Yes, My Lords.

3 PRESIDING JUDGE: I suppose that is why you're making
that
4 request?

17:19:46 5 MR OGETO: That really is the reason and we want to be
sure
6 that we are ready.

7 PRESIDING JUDGE: We will look at it. I'm sure -- I'm
sure
8 we are agreed that we will give you some time, you know, to be
9 able to organise yourself before you start.

17:19:58 10 MR OGETO: And if the closure of their case coincides
with
11 the Easter break then --

12 JUDGE BOUTET: That's not an issue.

13 MR OGETO: -- then it will not be necessary for us to --

14 JUDGE BOUTET: Yes.

17:20:41 15 PRESIDING JUDGE: Yes, Mr Cammegh?

16 MR CAMMEGH: Having listened to the numbers of
respective
17 witnesses for the first two defendants, I can only say I'm
glad

18 this is not a beauty contest because, if it were, Issa Sesay

19 would be crowned Miss World and Augustine Gbao will be left

17:21:06 20 requiring corrective facial surgery.

21 JUDGE BOUTET: We trusted your imagination this morning.

22 PRESIDING JUDGE: I didn't call names, but I knew where
my

23 comments were going to.

24 MR CAMMEGH: Well, yes. Your Honours know that there
are

17:21:24 25 20 core witnesses for the Gbao case, and the estimate of two
26 weeks was given advisedly. I think Your Honours are aware
that

27 we have no intention of expanding our case.

28 Having said that, coincidentally this week, two
witnesses

29 who we'd been seeking high and low for more than 12 months
have

for
affect
But

1 finally been found, and I'm afraid we will be filing a motion
2 late service of those, but it's not going to drastically
3 the length of our case. We did say three weeks. I suppose --
4 two weeks. I suppose on the safe side I ought to say three.

17:22:10 5 Your Honours have the point, that the case for Augustine Gbao
6 will place its emphasis on brevity.

large
Honours,
course,

7 I am, as always, indebted to Mr Jordash because, to a
8 extent, and I am sure this is becoming apparent to Your
9 Augustine Gbao shares the Kailahun crime base and, in due

17:22:34 10 when it comes to final submissions it may well be that there
are
11 aspects of the testimony of the witnesses we are currently
12 hearing that I will want to endorse and will seek or see no
need
13 to repeat by calling separate witnesses of our own. So there
it
14 is.

17:22:55 15 I have to say, and sorry to disappoint Mr Ogeto, but we
16 would be implacably opposed to a delay of two weeks. Two days
17 might seem more appropriate, but hopefully that will be
obviated
18 by the Easter break anyway.

19 We remain determined to cooperate as closely as possible
to
17:23:17 20 bring about an early conclusion to this trial.
21 Unless I can assist Your Honours further, I think that's
22 all I need to say about our plans for our Defence case.
23 PRESIDING JUDGE: I thank you, Mr Cammegh. I don't
think I
24 have anything to add. We welcome your submissions and the
17:23:45 25 brevity, in terms of your estimation, as to the duration of
the
26 case for your client. I think we welcome that and we welcome
the
27 three weeks projected estimates on two to three weeks, which
28 you've suggested. But, I'm sure, you know, that as we get
along
29 you may well keep within the time frames of one, two weeks,
you

1 know.

2 MR CAMMEGH: Well, Your Honour --

3 PRESIDING JUDGE: Even if, when it comes to that, you know,

4 we would know, you know, what to do. But what we appreciate is

17:24:25 5 the brevity, you know, of the period that you are projecting for

6 the purposes of presenting your case.

7 MR CAMMEGH: I see no merit whatsoever in extending it
8 beyond that and I've always held that view. Unless anything
9 entirely unforeseeable takes place, I'm sure that I will remain

17:24:50 10 of that view.

11 PRESIDING JUDGE: Right. Thank you. Yes, may we have a
12 response from the Prosecution?

13 MR WAGONA: Yes. Thank you, Your Honour. Well, the
14 Prosecution welcomes all attempts to reduce on the lists of
17:25:25 15 witnesses, and, as we promised before, we had indicated in
16 earlier status conference that the Prosecution intended to limit

17 its cross-examination to significant issues. And I believe, My

18 Lords, we have tried our best to live within that, except where

19 there is a significant amount of information pre-indictment

17:26:10 20 testified to, where there is additional information coming at

at 21 short notice, or where there's additional information coming
the 22 the time of the witness testimony which was not included in
hope 23 additional information, or in the original summary, and we
address 24 that in the future the Defence will help us in trying to
17:26:46 25 our concerns in those areas.

26 And, My Lords, while we are still on this item of
27 witnesses, it's not very clear up to this moment whether the
28 second accused will be testifying in his own defence because,
29 from what we know, the Kallon Defence filed a notice that the

1 second accused would be testifying. But in the last status
2 conference the position became that there was a huge, a huge
3 possibility that he would testify. And, as for the third
4 accused, Mr Gbao, there is no clear indication whatsoever.

17:27:46 those

5 So we would be glad if there could be more clarity on
6 aspects of it. I think that is all for now.

information

7 PRESIDING JUDGE: Why do you want to have that
8 in advance, on possibilities of their testifying, you know?

in

9 MR WAGONA: My Lords, I'm not saying we want to have it
10 advance. I'm only stating the position as it is until as of
11 today.

17:28:17

12 PRESIDING JUDGE: I see.

13 MR WAGONA: Yes.

14 PRESIDING JUDGE: Okay.

17:28:24

15 MR WAGONA: Thank you.

intend

16 PRESIDING JUDGE: Well, expert witnesses, we do not

witnesses

17 to go into the history of filings of reports of expert

18 because it has been the subject matter of previous status

analysis

19 conferences. So we, I don't intend to make a historical

17:29:56

20 of where we have been on this issue, I would only call on the

to
update
21 Defence teams to let us know what the situation is in relation
22 their expert witnesses, and I think, Mr Jordash, just to
23 us on what has happened.

17:30:28 24 MR JORDASH: Yes. The update is this: That, sadly, we
25 lost all our military experts or proposed military experts. I
26 won't go into the reasons why again, but if I say Registry and
27 resources, perhaps I don't need to say any more. We think --

28 PRESIDING JUDGE: You lost all your military experts
29 because of funding?

I 1 MR JORDASH: Well, the difficulty has been, number one,
2 think I addressed this in the first status conference this
3 session that what was on offer was a funding of P3, which is
4 completely insufficient to brief and instruct a military
expert
17:31:18 5 dealing in counter-insurgency, guerrilla movements, such as
what
6 concerns the RUF trial. We then was given a P5 and, if truth
be
7 told, even that is insufficient when you're trying to find an
8 expert who can deal with --

9 PRESIDING JUDGE: The expert was on counter-insurgency?

17:31:49 10 MR JORDASH: Well, the proposed expert we had, who was
11 quite an amazing expert, actually, I have to say, presently
now
12 in Iraq on a big funded contract from the Americans, and
that's
13 the problem. It's such a specialised --

14 PRESIDING JUDGE: He needs to be well funded because
he's
17:32:15 15 in an unsafe zone.

16 MR JORDASH: Yes. Well, it's such a niched, specialised
17 subject and there are very few in the world.

18 PRESIDING JUDGE: People are going there now because
they
19 want to go there, but they are going there for the money.

17:32:26 20 MR JORDASH: Exactly.

21 PRESIDING JUDGE: Yes. I don't know if Mr Jordash would
22 want to volunteer to go and defend one of the accused who
would
23 be sitting maybe on Saddam Hussein's chair at the time he was
24 being tried. Maybe as a Defence counsel you are safer than a
17:32:45 25 Prosecuting counsel, so let's just end the debate there.

26 MR JORDASH: The difficulty is that it's an extremely
niche
27 subject, and if you say to an expert of 20 years' experience,
28 "Can you come to Sierra Leone for" --

29 PRESIDING JUDGE: For peanuts.

1 MR JORDASH: -- for peanuts, I'm afraid you don't get
2 anything other than, "No, thank you, I'll go to Iraq or
3 Afghanistan." Anyway, to cut a long story short, we think
we've
4 found somebody and we should be able to instruct that person
in
17:33:25 5 this week. We would hope that they could come to Sierra Leone
6 in January. We would hope to have a report soon thereafter.
We
7 would hope to be able to call that expert during the currency
of
8 our case. If not --

9 PRESIDING JUDGE: You say you hope to instruct him when?

17:33:44 10 MR JORDASH: Well, we have to finalise the issue this
week
11 with the proposed expert and we would instruct them, this
expert,
12 in the next ten days, we would hope. Obviously we rely upon
the
13 Defence office to sort out the bureaucracy, and we would hope
to
14 call that person towards the end of our case. But there may
17:34:17 15 be -- there may be an application to call that witness during
the
16 currency of the Kallon case. I can see that that is a
17 possibility.

18 There is also a possibility we will instruct another
expert

19 who will deal with the child soldiers issue, but we would
17:34:44 20 anticipate, again, that we would be able to call that expert
21 within the currency of our case.

22 I should indicate that we have managed to get access to
the
23 DDR documents which we were chasing for some time, so we have
24 assistants who are compiling that data as we speak and,
depending
17:35:08 25 upon the results of that data will depend upon how we put that
26 data before the Court, whether by expert testimony or simply
as a
27 92bis documentary evidence.

28 I should also add, it's not strictly to do with expert
29 witnesses, but there is a possibility we will be calling or we

1 would seek to call two additional witnesses to deal with two
2 discrete subjects. But if we do, we will ensure that it does
not
3 add to our overall number of witnesses and obviously we would
4 have to justify to Your Honours the application to add those
17:36:05 5 witnesses.

6 JUDGE BOUTET: But these are not expert --

7 MR JORDASH: These are not experts in the strict sense.

8 JUDGE BOUTET: But you still intend to call a diamond
9 mining expert?

17:36:15 10 MR JORDASH: No.

11 JUDGE BOUTET: Or this kind of expert?

12 MR JORDASH: No, we don't. The expert testimony would
be
13 limited to the military expert and to the --

14 JUDGE BOUTET: The child soldier?

17:36:26 15 MR JORDASH: Yes, based on the data we're collecting.

16 JUDGE BOUTET: And a child soldier expert, you say.
You'll

17 make the assessment, if you are to call him, based on the data
18 you have obtained at this particular moment?

19 MR JORDASH: Yes.

17:36:41 20 JUDGE BOUTET: You're doing an analysis of that there
too?

21 MR JORDASH: Yes. We're taking the data from the forms

end 22 now. Once we have it, and we estimate we'll have it by the
serve 23 of January, we'll be able to then decide whether to simply
24 it as 92bis or whether we want an expert to comment on it.
17:37:09 25 PRESIDING JUDGE: Right. I don't think I have -- well,
the 26 important thing is for the reports to be filed within the time
27 limits so that we move with them, you know, when we should.
28 MR JORDASH: Yes.
the 29 PRESIDING JUDGE: Yes. That's the only comments that

Defence 1 Tribunal will pass on to, not only to you, but to all the
2 teams --

3 MR JORDASH: Yes.

4 PRESIDING JUDGE: -- that will be calling expert
witnesses.

17:37:39 5 Yes, Mr Ogeto?

6 MR OGETO: Thank you, My Lords. Let me start by
7 apologising to the Chamber. During the last status
conference, I
8 think it was in September 2007, our team undertook to file our
9 first expert's report within one week. Now, that undertaking
was

17:38:15 10 given on the basis, on the erroneous basis that that report
was
11 ready. It wasn't ready. What we had was actually a draft,
and
12 the counsel who made that undertaking thought at that time
that

13 we had the final draft. As I speak now, that report is not
14 ready. We are still working on it, still consulting with the
17:38:48 15 expert witness, and in due course --

16 PRESIDING JUDGE: This expert again is on what?

17 MR OGETO: This is on child combatants/age verification,
so
18 we are still working on that report. We are consulting with
the
19 experts and as soon as it is ready we will file it with the

17:39:18 20 Chamber. I'm not in a position to give any time line at this
21 stage, but I can assure the Chamber and the parties --
22 PRESIDING JUDGE: Playing safe this time.
23 MR OGETO: I want to play it very safe.
24 PRESIDING JUDGE: You don't want to make a second
promise
17:39:34 25 that you will not keep this time.
26 MR OGETO: Yes, My Lords, yes.
27 PRESIDING JUDGE: I understand.
28 MR OGETO: Yes, My Lords, yes. So as soon as we have
this
29 report, as soon as we are satisfied that it will be of
assistance

1 to the Chamber and the parties, we will obviously file it.

2 The second expert report that we are expecting is from a
3 military expert. That also is not ready and consultations are
4 going on. Just like the first report, once it's ready we will

17:40:13 5 file it with the Chamber in compliance with --

6 PRESIDING JUDGE: The military expert, is it on a
7 particular field? Ballistics, counter-insurgency, whatever is
8 it, on a specific -- in a specific domain?

9 MR OGETO: Let me consult for a minute, My Lords,
17:40:40 10 because --

11 PRESIDING JUDGE: Yes. Yes, please.

12 MR OGETO: It's basically on command structures within
the
13 RUF; that's what my client tells me. I'm not very familiar
with
14 this.

17:41:08 15 PRESIDING JUDGE: Yes. I think I remember vaguely that
16 your client in a certain proceeding talked about -- maybe I
read
17 it somewhere -- that he is interested in -- he has indicated
that
18 he was going to call an expert on the command structure of the
19 RUF.

17:41:29 20 MR OGETO: Yes, that seems to be the situation.

21 JUDGE BOUTET: Sorry, would be on the RUF, not command

22 structure in a --

think, 23 MR OGETO: Guerrilla -- guerrilla organisations, I

expert 24 generally because, as I understand it, I don't think this

17:41:46 25 witness has specifically studied the RUF as such. I think
he'll

26 be talking about guerrilla organisations and their command

27 structures, as they may relate to the RUF. That is my

28 understanding. I may be mistaken, but that seems to be my

29 understanding of --

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1 PRESIDING JUDGE: Well, you will clarify that --

2 MR OGETO: I'll clarify that.

3 PRESIDING JUDGE: -- and you'll let us know, you know.

4 MR OGETO: Yes, My Lords.

17:42:12 5 PRESIDING JUDGE: -- in due course.

6 MR OGETO: So that really is our position regarding our
7 expert witnesses, the two expert witnesses that we intend to
8 call.

9 PRESIDING JUDGE: Thank you, Mr Ogeto. Yes, Mr Cammegh?

17:42:37 10 MR CAMMEGH: Having regard to the comparatively discrete
11 nature of the case against Augustine Gbao, I have never been
12 entirely persuaded of the need for an expert witness in our
case,
13 first of all, by virtue of the, as I say, discrete nature of
the
14 allegations, and secondly, because what is good for, for
example,
15 the Kallon team or the Sesay team may be equally good
16 cross-examination for the Gbao team.

17 Having said that, an expert, a military expert was
18 contacted some months ago within the Kenyan army. It appears
19 that things have gone a little stale with this officer. We're
17:43:03 20 certainly hoping to resume contact and determine as to whether
or
17:43:32 20 or

obviously 21 not there is anything useful he can add, and we would
22 keep the Chamber appraised or apprised of any developments.
my 23 But in keeping with the general spirit of brevity, and
24 personal preference to meet facts head on rather than venture
17:44:01 25 into theory, at this stage I think it's right for me to say
that
26 it's probably unlikely that we will be calling an expert. It
27 would have been on the notion of commander and control, but
28 certainly if a witness concerned with such evidence is going
to
29 be called elsewhere, then it would not be, in my view,

1 appropriate for the Gbao team to reiterate such evidence. If
2 anything changes I would, of course, inform the Chamber as and
3 when.

4 PRESIDING JUDGE: Thank you, Mr Cammegh. Yes, does the
17:44:59 5 Prosecution have any input as far as expert witnesses are
6 concerned?

7 MR WAGONA: Yes, My Lords.

8 PRESIDING JUDGE: I imagine you will.

9 MR WAGONA: My Lords, my only comments are these: With
17:45:13 10 regard to experts referred to by Mr Jordash, at the last
status
11 been
12 conference Mr Jordash had reported that funding problems had
13 sorted out and also that the experts had now agreed to do the
come
14 work, that the only problem was the timetabling for them to
to Freetown and do their work.

17:45:54 15 But now, as we understand, the situation seems to have
16 changed, except that we are wondering when -- when these
experts
17 were lost, in view of the earlier position that all what was
18 remaining was for them to come and start work.

19 And also I would seek a clarification from Mr Jordash as
to
17:46:31 20 whether DIS -- I think 250 -- who was originally listed as an

the

21 expert, is still listed as a witness? And then, concerning
22 experts for the second accused, Mr Kallon, at the last status
23 conference it had been reported that one of the expert reports
24 was ready and that that would be filed the following week.

17:47:16 25 PRESIDING JUDGE: But you have heard -- you have heard
26 Mr Ogeto's explanation to this.

27 MR WAGONA: Yes, I was going to say that we have also
28 received a correspondence from the Kallon Defence that that
29 particular report that was referred to was a draft, and so we

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1 will live with the current situation and only hope that the
2 reports will come in time to give the Prosecution enough time
to
3 consider them.

4 Those are my comments, My Lords.

17:47:55 5 PRESIDING JUDGE: Thank you. That is just what I was
6 indicating a couple of minutes ago, that they certainly need
to
7 file the reports within the time frames, in order to be able
to
8 meet up with the stipulations on when such experts can be
called
9 after the filing of the report. I think it is important that
we
17:48:24 10 all bear this in mind and ensure that we comply accordingly.
We

11 have -- yes, Mr Jordash --

12 MR JORDASH: Could I answer --

13 PRESIDING JUDGE: -- you wanted to make clarification?

14 MR JORDASH: Yes, please.

17:49:32 15 PRESIDING JUDGE: Go on.

16 MR JORDASH: Simply to answer the Prosecution. We lost
the
17 expert, it was several days after the status conference, and
we
18 are quite prepared to disclose to the Trial Chamber those e-
mails

And, 19 in which they indicated they'd found more lucrative jobs.
17:49:52 20 number two, the Prosecution know full well the difficulties
with 21 experts. And it would have helped if they'd indicated how
much 22 they'd paid their expert and we'd see why we're having
difficulty 23 and why they did not have difficulty, number two.
24 PRESIDING JUDGE: Equality of arms.
17:50:15 25 MR JORDASH: Yes, it's a lovely term. And in relation
to 26 DIS-250, it is unlikely we will call that expert, as we've
found 27 so far, that that witness -- sorry, as we found so far, the
28 factual witnesses appear to be giving us what we want.
29 PRESIDING JUDGE: Right. That's --

1 MR JORDASH: If the Prosecution want to tell us how much
2 they paid theirs, we'd be happy to know.

3 PRESIDING JUDGE: You can file a motion for disclosure
of
4 that, so that you can reinforce your arguments, which are
based

17:51:01 5 on equality of arms, between the Defence and the Prosecution.

6 Well, the only other thing that we have on the agenda is
a
7 list of outstanding motions. There is the Prosecution's leave
to
8 appeal on the Sesay Defence motion requesting the lifting of
9 protective measures in respect of protected witnesses filed by

17:51:43 10 the Prosecution at the trial 12 November 2007; the Defence
motion
11 seeking a stay of the indictment and dismissal of all

12 supplemental charges; Prosecution's abuse of process and/or
13 failure to investigate diligently filed by the Defence for

Sesay
14 on 24 April 2007; the Gbao request for leave to raise
objections

17:52:07 15 to the form of the indictment filed by the Defence for Gbao on
16 23 August 2007; the Defence application for disclosure

17 to Rule 89(B) and/or 66(A)(ii) filed by the Defence for Sesay
on

18 4 September 2007; the application for judicial review of the

19 Registry's refusal to provide additional funds for the
additional
17:52:35 20 counsel as part of the implementation of the arbitration
decision
21 of 26 April 2007; and the joint Sesay, Gbao and, of course,
now
22 Kallon motion on the withdrawal or disqualification of
Honourable
23 Justice Bankole Thompson from the RUF case filed by the
Defence
24 of Sesay and Gbao on 14 November 2007. We say here also that
the
17:53:11 25 Kallon Defence filed a statement in support of the motion on
26 20 November 2007.
27 We can also confirm that -- we can also confirm that we
28 have, in conformity with the provisions of Rule 15, received
the
29 comments of Honourable Justice Thompson, and that at least on

1 this issue, and on the submissions that were filed to seek his
2 voluntary withdrawal or his disqualification, we can now say
that
3 we have a complete picture, complete documentation, you know,
on
4 this. And we are intending to work very hard to see how we
move
17:54:40 5 this process forward and we shall inform the parties.

6 For us, even though we are ending the session today, I
mean
7 at least testimony, in terms of testimony today, it is not
really
8 the end of the session because we are doing everything to
ensure
9 that we come out with a decision, at least on this
17:55:08 10 disqualification motion, before we go on the Christmas recess.

11 We are doing everything we can to do that. I hope nothing
will
12 impair the process. If anything happens, well, we are going
to
13 inform you, but it is our determination that we would give a
14 considered decision on this before we depart for the Christmas
17:55:41 15 vacation.

16 And for the other motions we are also going to do
17 everything we can to ensure that we issue the decisions before
we
18 leave on, I think the last sitting day would be 6 December.
That

19 would be the last sitting day for this session, if not
17:56:12 20 5 December. We will inform the parties of the calendar as
things
21 unfold.
22 I don't know if -- let me, without going into the
details
23 of Honourable Justice Thompson's comment on this issue, inform
24 you straightaway that he has refused to voluntarily withdraw.
So
17:57:01 25 you can understand why I say that, you know, we have to come
up
26 with a decision on this because if he had we would have been
27 saved the trouble of going into any decision and, even if we
went
28 into any at all, it would be very short, and it will not
contain
29 all the details that this one, you know, that we are going to

1 issue is going to -- may likely contain. And that is why I'm
2 really keeping my fingers, you know, crossed as to whether we
3 shall be able, before the 5th or the 6th of December to issue
4 this decision because it is, as you would imagine, a very
serious
17:57:47 5 matter and it has to be taken very, very seriously. And, you
6 know that we are just two of us, you know, sitting on that
case
7 because we took the decision, notwithstanding advice which we
got
8 from other Chambers, that only two of us should sit on -- from
9 other international tribunals, because we are told that in
17:58:13 10 motions like this, notwithstanding the recusal, the recused
judge
11 continues to sit until the decision is available. We thought
12 that, you know, for the transparency of the process we were
not
13 going to go that way, that we should finish with the issue
before
14 we move ahead. So you can see that it was very, very
complicated
17:58:38 15 for us. And we thought that we should, at least, give a
16 semblance of -- and this is necessary -- of fairness and
respect
17 to the judicial process to give the meaning, you know, that
the
18 motion requires and to ensure that, at least, the issue is
19 litigated before any decision is taken one way or the other.

17:59:19 20 And, of course, before -- even if it comes to that, even
if

21 it comes to that, before the judge takes his normal place on
the

22 Bench, this is the way we looked at it. And we hope that you

23 understand. So we don't know if, with these comments, you

24 have -- the Prosecution, I don't know if you have any comments
to

17:59:54 25 what we have -- to what I have said.

26 MR WAGONA: None, My Lords.

27 PRESIDING JUDGE: Yes. What I'm saying is that we shall
do

28 everything we can to deliver this decision, you know, before
we

29 leave, but things may turn out to be otherwise, but we will
see

1 what we can do. In any event, the decision has to be
delivered 2 before we commence the proceedings, be it in January or
whatever. 3 Yes, Mr Jordash?
4 MR JORDASH: Could I just address one small point which
is 5 this: That I think that almost all Defence counsel are
18:00:39 leaving 6 on the 7th or to the 10th of December.
7 PRESIDING JUDGE: Yes.
8 MR JORDASH: Certainly lead counsel are leaving the
country 9 on those dates. We would ask that any decision not coincide
with 10 those dates. From the first accused's perspective, if the
18:01:02 11 decision is against us, undoubtedly we will appeal such an
12 important decision and, obviously, the time limits are against
us 13 if it was -- if the decision came out on the 6th and we're
flying 14 on the 7th.
18:01:19 15 PRESIDING JUDGE: And let us assure you, we agreed with
my 16 learned brother colleague, that if there is -- this is a very
17 important decision -- and if there is any, if there is any
18 aggrieved party in this decision, who wants to appeal against
it,

know, 19 we would grant the leave to appeal. And we have said, you
18:01:46 20 that the leave will even be granted electronically, in order
to 21 expedite the process.
22 MR JORDASH: I'm very grateful.
23 PRESIDING JUDGE: This is our agreement on this. And I
24 have no reservations in revealing it to you. There's no
secret 18:02:02 25 about it.
26 MR JORDASH: I'm very grateful for the indication.
27 PRESIDING JUDGE: Right.
28 JUDGE BOUTET: On a separate issue I -- to assist us as
29 well in the process of assessing witnesses to be called, I can

1 only ask you if you can provide whatever additional
information
2 you provide with your summaries when you summarise the
evidence.
3 So I'm not sure if you have provided all of them by now. I'm
4 looking at you, Mr Jordash, but it applies to others. I'm
18:02:38 5 looking at you because you're the one doing it now.
6 But as I mention, the information that we have at this
7 stage, I knew you do provide supplementals, but when we try to
8 make an assessment of what this witness or a witness is coming
to
9 say, you are trying to do that before the day of the trial,
but
18:03:20 10 if you provide a summary, a supplementary a few days before,
we
11 are in a very difficult position to make this kind of
assessment.
12 But I'm just asking for cooperation to try to provide as much
13 details as you can.
14 MR JORDASH: Yes.
18:03:20 15 JUDGE BOUTET: And as soon as possible.
16 MR JORDASH: Yes. Again, if I have my way, I would be
17 providing additional information much in advance. But the
18 difficulty is time, and I or the person leading the witness
sees
19 the witness, and we have been unable to do that except at the
18:03:37 20 very last minute with each and every witness.

21 We have literally been on the doorstep every day of
22 applying for an adjournment and have just managed to avoid it
for
23 the whole session. It's not ideal, but bringing the witness
into
24 Freetown to conduct the interviews at the last minute has
18:04:08 25 unfortunately been where we've been forced to be, due to
information 26 resources. And as soon as we've got the additional
27 in the interviewing or the final proofing session, we've
28 disclosed it.

29 If I can indicate that, for example, with 214 and 163, I

1 haven't yet seen either witness, not for want of trying but
2 because I just haven't had time, and I will see them in the
next
3 ten days so that they are ready for January. But that's the
case
4 we are constantly chasing, sadly.

18:04:46 5 JUDGE BOUTET: Any how, on just a request for assistance
6 for the moment.

7 MR JORDASH: Certainly.

8 JUDGE BOUTET: The other reminder is, if you are adding
to
9 the, or changing witnesses from the back-up list to the core

18:04:59 10 witness and so on, we have issued an order in this respect,
it's
11 under preparation, and I just want to remind you of our order
12 dated the 30 October 2006, as to any addition to the initial
13 witness list will apparently be only on showing good cause and
so
14 on. So I know you're familiar with that, but --

18:05:21 15 MR JORDASH: Yes.

16 JUDGE BOUTET: -- just a reminder that it may be some
time
17 ago but it's still applicable.

18 MR JORDASH: Yes, Your Honour. Could I raise one other
19 matter before my learned friends stand up, which is this:

That

18:05:33 20 one aspect of the Court proceedings which has not been touched

Every 21 upon in this status conference is the support situation.
22 day I bump into somebody who's providing support services --
23 stenographers are the principal service I have in mind -- who
24 complain to me about the lack of resources, and I suspect that
18:06:05 25 may be against us next year.

26 I know for certain there's a huge downsizing in the
27 audio/visual unit. There's engineers there who are, as I
28 understand it, not being replaced. When they're gone and
things
29 break down, we'll find ourselves sitting around waiting for
that

1 equipment to be repaired, if it can be repaired. Your Honours
2 know the problem with -- the problems with the stenographers,
and
3 I don't say this to make a cheap point, but every --

4 PRESIDING JUDGE: It is not a cheap point at all. It is
a
18:06:40 5 very vital point for these proceedings.

6 MR JORDASH: Yes. And it does appear to me that every
7 service and every organ of this Court but one has been
downsized
8 in the last few months and some dangerously so. "But one" is
the
9 Prosecution. I don't know what the logic of that is, but I'm
18:07:05 10 just a cynical defence lawyer.

11 PRESIDING JUDGE: Everybody is being downsized except
the
12 Prosecution, you say?

13 MR CAMMEGH: Your Honour, can I respectfully add my
weight
14 to what my learned friend has just said: That there's an
office
18:07:22 15 just around to the left of this room as we leave and it's been
16 occupied all the time I've been here since 2004 by -- I don't
17 know the job title, but let's call him the chief technician of
18 the audio/visual unit. He appears to be the chief of that
19 operation, and I received the news with astonishment earlier

18:07:51 20 today that his contract is up and that that position will not
be
21 readvertised, and it's disappointing to note that whilst
funding
22 doesn't appear to be available for such a critically important
23 position the Special Court --

24 PRESIDING JUDGE: Mr Cammegh, what's that position
again?

18:08:11 25 You say they call him what? He's the technician in charge of
--

26 MR CAMMEGH: I referred to him as the chief technician
of
27 the audio/visual unit. I'm sure that that would suffice in
28 identifying the position. But it is disappointing when one
sees
29 that the Special Fork, the canteen, is currently receiving
what

1 appears to be an extended veranda. I mean, one utters these
2 words with absolute disbelief, to be honest, but there we are,
3 and yet someone who is responsible for the maintenance of the
4 electronic upkeep of this courtroom is effectively losing his
job

18:08:53 5 and it's not going to be replaced.

6 That's all I want to say, but it's terribly depressing
to
7 report these things, and I'm sure Your Honours can see why we
are
8 amazed to receive this news today.

9 PRESIDING JUDGE: All right. I gave my spontaneous
reply

18:09:32 10 to Mr Jordash's suggestion that he was trying to make a cheap
11 point. I said, no, it wasn't a cheap point at all. These are
12 very, very important issues that concern the functioning of
our
13 Court and the functioning -- the efficient functioning of the
14 process.

18:09:56 15 You cannot talk of a speedy trial or an expeditious
trial,
16 you know, as we ordinarily refer to it, without having the
17 transcripts. You cannot have the transcripts when you don't
have
18 the technicians, the stenographers or when you overwork them
like
19 we are doing today, it is beyond six, I'm very conscious of
that

18:10:22 20 and they have my apologies for this, although we started at
four.

21 But this is a reality, and I think that these issues
have

22 to be addressed and I like the simile of Mr Cammegh, as far as
23 corridors are concerned, and the putting out of job of a
24 technician of a facility as important as this. Once we lose
the

18:10:54 25 audio/visual facilities then where do we move from there? Do
we

26 pack -- do we pack home or -- I think that, I am sure, we have
27 confidence in the Registrar, you know, that he would implement
28 his downsizing policy with a lot of consideration for certain
29 vital services in this Court and I would say this: There
would

1 be, there might be and, indeed, there are a number of other
2 offices, you know, occupied by people who need to be downsized
3 really, for us to have the resources to maintain the vital
4 services that make this Court to function.

18:11:47
don't

5 I cannot imagine how they expect us to function if we
6 have the stenographers; if we don't have the interpreters; if
7 don't have the technicians to take care of our installations.
8 mean, that would occasion a break down of the services and we
9 would not function. And if we cannot function, how can we be
10 talking of a completion strategy?

we
I

18:12:08
all

11 But I think all we need to do is to do all that it is,
12 that it is in our power, to ensure that we keep the process
13 and we can assure you that we will sensitise the Registrar on
14 these concerns, and that he is understanding and I think he is
15 going to listen to us.

going

18:12:30

16 Yes, Mr Cammegh.

I'm

17 MR CAMMEGH: Your Honours asked for the precise title.

have

18 reliably informed by Mr George, and it appears that, in fact,
19 there are two individuals who are affected by this cut. I

18:12:49 20 the AV integrated technician and the AV technician. Well,
there

21 are two --

22 PRESIDING JUDGE: AV integrated technician and?

23 MR CAMMEGH: The AV technician. I'm relying on Mr
George

24 and the implication is, this note appears to indicate that --

18:13:05 25 PRESIDING JUDGE: They come under the CITS?

26 MR CAMMEGH: Yes, they do.

27 PRESIDING JUDGE: Normally, the head of the CITS section
28 should express an opinion on this to the Registrar because he
is

29 the one to express the needs to the Registrar for them to be

1 maintained. It shouldn't really come from the Judges. But I
2 think we will draw the attention of the Registrar to that and

--

3 MR CAMMEGH: I think to be fair to whoever made this
4 decision, I think a reliance has been placed on the expertise
5 derived over the last few years by those who work in this box,

18:13:45
as

6 to their ability to continue without an AV integrated

technician

7 or an AV technician. But that decision is holding these
8 proceedings as a hostage to fortune, and it runs entirely
9 contrary to the determination that everybody has, to ensure

that

10 these proceedings come to an expedient conclusion, and I don't

18:14:12
in

11 want to say any more on the matter. Your Honour's assistance

12 this regard has been noted and we are very grateful for the
13 comments you've made.

18:14:28
three

14 PRESIDING JUDGE: Thank you. I think I had rather
15 maintained in place the jobs, you know, of two essential or

18:14:28
and

16 essential staff and get rid of one or two giant non-essential
17 staff at this stage of our proceedings. This is important,

18 I'm sure the Registrar will look into this.

19 MR OGETO: My Lords.

18:15:01
20

PRESIDING JUDGE: Yes, Mr Ogeto.

21 MR OGETO: Just for the --

22 PRESIDING JUDGE: For whoever gets up to speak to
address

23 us should seek -- should apologise to the stenographers
because

24 we are straining them now, you know, beyond acceptable limits.

18:15:20 25 Yes. I'm sure they're not yet complaining anyway.

26 MR OGETO: My Lords, just for the avoidance of doubt, I
27 support my colleagues in their submissions about stenographers
28 and the support staff. I think this is an important issue and
it

29 deserves attention by all concerned.

1 PRESIDING JUDGE: Let me assure you that I am going to
2 initiate a correspondence which I am sending to the Registrar
to
3 express your concerns on this matter. This correspondence
will
4 come from this Chamber that has lost a lot of staff, you know,
to
18:16:02 5 The Hague. I mean, this is where some of our problems are
coming
6 from, but we would see what -- we will sensitise the
Registrar.

7 He will listen to us. He listens to us. He will listen to us
8 and I think we will get somewhere. Yes. The Prosecution is
9 saying nothing about the maintenance of these technical staff?

18:16:33 10 MR WAGONA: My Lords, we were not invited to comment on
11 this.

12 PRESIDING JUDGE: I did not invite Mr Cammegh. I didn't
13 invite Mr Ogeto either.

14 MR WAGONA: But we do share the concerns of everybody.

18:16:45 15 PRESIDING JUDGE: Okay.
16 So, this said, we've come to the end of our status
17 conference and, this said, the only indication I have to give
is
18 that this Chamber is adjourned to resume, and to resume
sitting
19 on a date that will be announced later in a scheduling order.

18:17:50 20 We're not sure of it yet, but we will keep the parties
informed.

21 So, learned counsel, thank you very much for their
22 assistance during this session. I'm sure we would have time
to
23 talk about it before we leave, but have our thanks and our
24 appreciation for your contribution to fast-track the process,
you

18:18:13 25 know, up to now, and for what we have been able to achieve
during
26 this session.

27 I think everybody has been very professional and
28 cooperative and we want to thank all of you and to say that we
29 express our very strong hopes that we meet again before we go
for

only
the

p.m.

18:19:19

1 the Christmas vacation, and that it will not -- we will not
2 be talking to you on a scheduling order. So we thank you and
3 Chamber will rise, please.

4 [Whereupon the hearing adjourned at 6.15

5 sine die]

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