

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-14-T
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOINI NA FOFANA
ALLIEU KONDEWA

WEDNESDAY, 9 MARCH 2005
9.50 a.m.
TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For Chambers:

Ms Sharelle Aitchison

For the Registry:

Mr Geoff Walker

For the Prosecution:

Mr Kevin Tavener
Ms Sharan Parmar

For the Principal Defender:

Mr Ibrahim Yillah
Mr Kingsley Belle

For the Accused Sam Hinga Norman:

Dr Bu-Buakei Jabbi

For the Accused Moini na Fofana:

Mr Victor Koppe

For the Accused Allieu Kondewa:

Mr Charles Margai
Mr Yada Williams
Ms Susan Wright

OPEN SESSION

1 [HN090305 - AD]

2 Wednesday, 9 March 2005

3 [Accused Fofana present]

4 [Accused Kondewa present]

5 [Open session]

6 [Upon reconvening at 9.50 a.m.]

7 PRESIDING JUDGE: Learned counsel, good morning. We are
8 resuming the session. I think we are taking our only and last
9 witness for the day. Mr Tavener, I am sure I am right in this
10 remark.

11 MR TAVENER: That is correct, Your Honour.

12 JUDGE BOUTET: So you are ready to proceed.

13 MS PARMAR: Yes, Your Honours.

14 JUDGE BOUTET: Are we sure the screens are in such a
15 position that the identity of the witness is indeed protected?

16 MS PARMAR: Your Honours, both of these screens have been
17 turned off and these other screens have been faced away from the
18 public.

19 JUDGE BOUTET: What about on the Defence side? Mr Margai,
20 can you see anything on your screens?

21 MR MARGAI: Yes, My Lord, I am confident.

22 MS PARMAR: Actually, Your Honours, my understanding is
23 that on this side of the courtroom the curtains should be closed.

24 JUDGE BOUTET: Well, we can close them in part, at least,
25 on the first two windows and afford some protection without
26 depriving the members of the public from seeing.

27 MR WALKER: Your Honour, I have checked all the monitors
28 and they are fine.

29 JUDGE BOUTET: They are fine? Okay. Then let us proceed.

1 MS PARMAR: Your Honours --

2 PRESIDING JUDGE: Ms Sharan, this should be your 61st
3 witness.

4 MS PARMAR: That is correct.

5 PRESIDING JUDGE: And what is the pseudonym, please?

6 MS PARMAR: Prosecution calls witness TF2-080. This
7 witness is a Muslim and will be testifying in the Krio language.

8 MR YILLAH: I am sorry to intervene, My Lord. I just
9 wanted clarity from the Prosecution through Your Lordships
10 whether this witness may be classified as a Moyamba Crime Base
11 witness or not.

12 JUDGE BOUTET: It is?

13 MS PARMAR: Indeed, Your Honours, this witness is a Moyamba
14 Crime Base witness.

15 PRESIDING JUDGE: What is the alleged age of your witness,
16 or what is the known age?

17 MS PARMAR: It is not exactly known, the age of this
18 witness. This witness will give evidence that in 2002 he was
19 disarmed and gave an age of 12 years old.

20 JUDGE BOUTET: In 2002?

21 MS PARMAR: In 2002, which would make him approximately 15
22 today. Unfortunately, the witness has no documentary evidence or
23 is not sure of his age. However, he will provide evidence to his
24 disarmament and the age that was given at the time of
25 disarmament.

26 PRESIDING JUDGE: So at the time he was disarmed he
27 declared the age of 12 or so.

28 MS PARMAR: Yes, and he was processed as such.

29 JUDGE BOUTET: But that was his statement at the

1 disarmament time that he was then 12 years old.

2 MS PARMAR: Precisely, Your Honour, which is why at the
3 present moment we are unsure of his precise age and the only
4 determinant we have before us is this piece of information.

5 JUDGE BOUTET: All right.

6 PRESIDING JUDGE: You therefore agree that it is a child
7 witness.

8 MS PARMAR: That is correct, Your Honours; this witness has
9 been treated as a child witness consistently throughout his
10 interaction.

11 JUDGE THOMPSON: And this would be clearly consistent with
12 the United Nations Convention on the Rights of the Child.

13 MS PARMAR: That is correct.

14 JUDGE THOMPSON: And also the African Charter on the Rights
15 of the Child.

16 MS PARMAR: That is correct, which defines a child as
17 anyone under the age of 18.

18 JUDGE THOMPSON: Yes.

19 JUDGE BOUTET: So, before we proceed to swear the witness
20 we have to determine his capacity and his ability to do so.

21 MS PARMAR: Precisely, Your Honour.

22 JUDGE BOUTET: We will do that and see where we go from
23 there.

24 DR JABBI: Excuse me, My Lords. My Lords, maybe we should
25 also take into account, and perhaps the Prosecution should make
26 some reference to this, that in documents they have supplied to
27 the Defence information as to the age is at least different from
28 what we are hearing now. Maybe they would want to make reference
29 to that.

1 JUDGE THOMPSON: But before they do that, in the document
2 that they supplied to the Defence did they characterise this
3 witness as a child witness? That is important too, before they
4 respond.

5 DR JABBI: On the document itself, dated 8th of May --

6 JUDGE THOMPSON: Yes.

7 DR JABBI: -- there is a specific age supplied.

8 JUDGE THOMPSON: Yes.

9 DR JABBI: The information given together with the document
10 suggested intention to have a closed session.

11 JUDGE THOMPSON: Yes, but is it your characterisation that
12 this is a child witness?

13 DR JABBI: I did not get Your Lordship.

14 JUDGE THOMPSON: Is there characterisation somewhere in the
15 document that this is a child witness?

16 DR JABBI: That has not been indicated.

17 JUDGE THOMPSON: Yes, that is what I am trying to
18 investigate.

19 MS PARMAR: Your Honours, during the proofing exercises of
20 this witness, a detailed examination with the witness was
21 conducted as to his age and it was revealed that the age that had
22 been recorded by investigators when the statement was first taken
23 was in fact incorrect and that the witness had just supplied a
24 number simply because he had been asked. However, he has
25 established with the Prosecution that he is in fact unsure of his
26 age and that the only piece of information he is certain of was
27 the age of 12 years old that he had been given in 2002 during
28 disarmament.

29 JUDGE BOUTET: Was this information disclosed to the

1 Defence?

2 MS PARMAR: One moment, Your Honour, let me check my notes.
3 What has been disclosed to the Defence, Your Honours, is that the
4 witness states he was a small boy at the time that he fought with
5 the CDF, that he cannot recall the years and that by that time he
6 had been in class five and had recently wrote his exams and
7 passed into class six. This is the information that was
8 disclosed to the Defence.

9 JUDGE THOMPSON: So, what is the Prosecution's presumption
10 as to age here?

11 MS PARMAR: Your Honours, based on an assessment by the
12 Prosecution in conjunction and consultation with the psychosocial
13 counsellor for the Witness Support Unit, we have determined that
14 this witness is indeed a vulnerable witness and was a child
15 soldier during the time of his involvement with the CDF.
16 However, we have been unable to establish his precise age despite
17 consultation and questioning of the said witness.

18 JUDGE THOMPSON: So you are saying there is no theory you
19 are putting forward to the Court at this stage as to this
20 particular witness in terms of the category?

21 MS PARMAR: In fact, Your Honour, what is being proposed is
22 that based on the details of his story, which were disclosed to
23 the Defence, he was indeed a child soldier during the time of the
24 war.

25 JUDGE THOMPSON: But at this point in time?

26 MS PARMAR: At this point in time, based on his story, it
27 is unclear exactly what age he is. But what we are certain of is
28 that he appears to be a minor witness. However, we are unable to
29 provide the Court with exact certainty.

1 JUDGE THOMPSON: But you are saying below the age of 18.

2 MS PARMAR: Preci sel y.

3 PRESIDING JUDGE: You did suggest, Ms Parmar, that he may
4 today be around the age of 15.

5 MS PARMAR: Your Honour, that is simply based --

6 PRESIDING JUDGE: Si nce at di sarmament it was declared he
7 was 12, and this was in 2002.

8 MS PARMAR: That is correct, and the witness will testi fy
9 that he was processed as being aged 12 at that time by the
10 di sarmament workers.

11 JUDGE BOUTET: But what I would like to hear from you is a
12 clear posi ti on from the Prosecuti on as to the age of that wi tness
13 as we speak today. You must have a posi ti on on that presumably.
14 I will not call you to say he is 15 years, three months and 25
15 days. What is your posi ti on? What is the posi ti on of the
16 Prosecuti on as to what age this wi tness is today?

17 JUDGE THOMPSON: Strengthening my brother's posi ti on is
18 that we want to know your theory.

19 MS PARMAR: Certain ly, Your Honours. The posi ti on of the
20 Prosecuti on is that, first of all, this wi tness, based on his
21 experi ence, is i ndeed a vul nerable wi tness.

22 JUDGE BOUTET: That is not what I am aski ng. I am aski ng
23 you what is the Prosecuti on's posi ti on as to the age of this
24 wi tness today when this wi tness is gi vi ng evi dence.

25 MS PARMAR: Based upon his testi mony, the Prosecuti on is of
26 the posi ti on that the wi tness is i ndeed 15 years old based on the
27 evi dence that he will provide that he was 12 at 2002.

28 JUDGE THOMPSON: So you are putti ng this wi tness forward as
29 a chi ld wi tness.

1 MS PARMAR: That is correct, Your Honour.

2 JUDGE THOMPSON: That is what we want to know.

3 PRESIDING JUDGE: Yes.

4 MR KOPPE: Excuse me, Your Honours. Apparently this
5 witness has made a statement to the investigators and that
6 statement was given on the 8th of May 2003 where he indicated the
7 age of 19, which would make him almost 21 now. The difference
8 between 15 and 21 is so big it is beyond my comprehension. One
9 or two years, that may be understandable, but a difference of six
10 years is not prima facie understandable to me.

11 JUDGE THOMPSON: You are saying that what the Prosecution
12 has presented in that document is at variance with the theory
13 which now they are putting forward.

14 MR KOPPE: So it seems, yes.

15 MS WRIGHT: If I could add one thing. Picking up on --

16 PRESIDING JUDGE: May we have the name please?

17 MS WRIGHT: Susan Wright.

18 PRESIDING JUDGE: Susan --

19 MS WRIGHT: W-R-I-G-H-T.

20 PRESIDING JUDGE: Yes, Ms Wright.

21 MS WRIGHT: Following up on Your Lordships' inquiry as to
22 the legal position that the Prosecution is taking --

23 PRESIDING JUDGE: Ms Wright, you are on what Defence team,
24 please, just for the purposes of the records?

25 MS WRIGHT: Mr Kondewa.

26 MR MARGAI: I am sorry, My Lords. She had been here
27 before. I took it that Your Lordships were quite conversant with
28 her presence. I am sorry for not --

29 PRESIDING JUDGE: We are conversant with her presence but

1 not exactly with her identity.

2 [Multiple speakers - transcript incomplete]

3 MR MARGAI: I apologise for that.

4 PRESIDING JUDGE: Yes.

5 MS WRIGHT: Your Lordships inquired about the legal
6 characterisation of the age and how that was conveyed to the
7 Defence as a result of materials that were given over to us. I
8 would just underscore that, relative to age, the only indication
9 that we have as to the present age is the age of 19 that was
10 given in the 2003 interview. It is true that, as the Prosecution
11 has noted, the recount that went on as a result of the proofing
12 exercise gave some details about him being small at the time of
13 these events about which he will testify and give also the fact
14 that the years of the events was not known to him. But it is not
15 clear to me that this witness has been so characterised as is
16 indicated this morning.

17 JUDGE BOUTET: So what are we to conclude from your
18 observations; that we should not accept this witness as being a
19 child witness?

20 PRESIDING JUDGE: That is a question I was going to put to
21 the Defence. In making your observations are you saying that
22 there is a dispute about this witness's age? Or let me put it
23 more precisely. Is there a dispute as to whether the witness is
24 18 and above or 18 and under? The Defence counsel of the first
25 accused please. Age is material here.

26 DR JABBI: According to the information revealed to us it
27 is uncertain whether this witness is below the age of 18. Apart
28 from information that has already been given, we also have
29 reference in that statement that during 1999 his younger sister

1 was 11 years old, and that reinforces the reference to his being
2 aged 19 on the 8th May 2003. So certainly there is some
3 confusion at least as to the age of this witness.

4 JUDGE BOUTET: But the next step is what are you proposing?

5 DR JABBI: My Lord, we do not have direct knowledge of the
6 age of the child.

7 JUDGE BOUTET: But it appears, Mr Jabbi, that no one has
8 direct knowledge of the age.

9 DR JABBI: From the information we have we think he is well
10 above the child witness age.

11 JUDGE BOUTET: If you would allow me, Mr Jabbi, before we
12 go to the other counsel, I do have a question for the Prosecution
13 and that may assist you in this respect as well. There is
14 something I do not understand. I heard the Prosecution talk
15 about proofing. What information in this respect has been
16 disclosed to the Defence about proofing? If you have information
17 that was different than the information that had been disclosed,
18 have you disclosed it? If you have not disclosed it, why not?

19 MS PARMAR: Your Honours, before I respond to your query,
20 in response to my learned friend's observations, first, the
21 Defence was put on notice that this witness is a category B
22 witness. In fact, the Prosecution had filed a confidential
23 motion of sorts, for lack of a better term, indicating that this
24 witness ought to be listed as a category B witness and would
25 testify via closed circuit television. Second, with regard to
26 the mention of the year 1999 by the witness during the subsequent
27 proofing exercise, which was disclosed to the Defence, the
28 witness stated that he did not give the year of 1999 when he gave
29 his statement and that at that time he simply could not recall

1 the year. In response to Your Honour's query, following the
2 witness's preparation it was recently indicated to the
3 Prosecution that this witness had given the age of 12 years old
4 during the year 2002, which is why that particular piece of
5 information had not been disclosed to the Defence. Following
6 consultation, given that the age of the witness was uncertain but
7 that he was clearly a vulnerable witness, the Prosecution had
8 maintained their position of categorising this witness as a
9 category B witness. Following consultation with the psychosocial
10 counsellor of the Witness Support Unit it was clear that this
11 witness is a vulnerable witness and that this category should
12 indeed be maintained.

13 JUDGE THOMPSON: Isn't the concept of vulnerable being
14 confused here with the concept of age? Because there are other
15 witnesses who may be in fact adult witnesses who may also be
16 vulnerable witnesses. So wouldn't we avoid for the purposes of
17 determining the age of this witness, in other words whether this
18 witness should testify as a child -- that is, a person under the
19 age of 18 under the conventions -- or as an adult? Isn't it
20 necessary to avoid multiplying the issues so we will not be
21 carried away to the area of vulnerability whilst we are trying to
22 determine precisely the age thing? So I think the Prosecution
23 should abandon that kind of approach.

24 MS PARMAR: Your Honours, the Prosecution's position is at
25 this point in time perhaps it would be best for Your Honours to
26 examine himself as to his age.

27 PRESIDING JUDGE: We are not experts in this regard.
28 Examining and determining his age is not a duty of the Court, you
29 will appreciate. Let me have a round from the Defence teams. Dr

1 Jabbi we have had you for the first accused on the dispute about
2 this witness's age. May we hear Mr Koppe because this is the
3 issue; this is where the problem lies. What is your position on
4 the age that is advanced by the Prosecution of this witness?

5 MR KOPPE: Our position will still be that there is prima
6 facie evidence that this witness is almost 21 now, that maybe at
7 one point he gave wrong information to the investigators. But I
8 am not convinced that the information given was wrong as opposed
9 to the information given earlier. Still prima facie to us it
10 looks like he is 21.

11 PRESIDING JUDGE: Mr Wright, what is your position on this,
12 please?

13 MS WRIGHT: I can only add that no one is disputing whether
14 or not this witness is eligible for category B classification.
15 Notice was given to the Defence to that effect. The question is
16 whether or not there is a legal characterisation of this
17 individual as a minor. Although the Prosecution has indicated
18 that as a result of their proofing exercise they came to
19 understand that there was a dispute about the child's age -- the
20 individual's age -- that was not conveyed to the Defence. We did
21 get a copy of a witness interview statement that was, I assume, a
22 result of those proofing interviews. But there was nothing to
23 that extent about ages, about changing one's mind about an
24 earlier age given. It remains that the only age that we have
25 been given notice of is the age of 19 in 2003.

26 JUDGE BOUTET: The question is whether the Prosecution
27 should be allowed to backtrack on that.

28 MS WRIGHT: That is correct. As Your Lordship has noted,
29 this is a material issue.

1 JUDGE BOUTET: My concerns are twofold: One, if
2 information was in the possession of the Prosecution that has not
3 been disclosed to the Defence -- that appears to be so to an
4 extent, at least that is my understanding -- if only because the
5 Prosecution says in proofing they discovered that the witness was
6 of this age, and then you are telling me that that has not been
7 disclosed to any of the Defence. That is one issue. The other
8 one is, regardless of age, whether or not a witness may give
9 evidence on closed circuit with this kind of protection, my
10 understanding for the time being is that the category B is not
11 necessarily age related, it could be for other factors. I
12 understand the position of the Prosecution to be, subject to
13 comments, that regardless of the age of the witness but because
14 of the condition of the witness, still the witness should be a
15 class B witness giving evidence in the closed circuit system. Am
16 I right, Madam for the Prosecution?

17 MS PARMAR: That is correct, Your Honour.

18 JUDGE BOUTET: But that does not resolve my problem about
19 disclosure or non-disclosure. We have commented on many
20 occasions that any information in possession of the Prosecution
21 that has been obtained prior to a witness giving evidence shall
22 be disclosed to the Defence. If that is the case and the Defence
23 has not received that information, I ask the Defence if they have
24 any comments in this respect.

25 JUDGE THOMPSON: I would add too, that I don't think the
26 issue really here should turn on vulnerability; it should really
27 turn on the question of age.

28 PRESIDING JUDGE: The issue of age is contested by the
29 Defence and I think it is material for us to iron that out. I am

1 sure that if the Prosecution were asking for the category B
2 protection for this witness, it was on the presumption that this
3 is a child witness. It must have been very strongly on the
4 presumption that it was a child witness. I need to be clarified
5 on this. But even if it weren't, I think the age of this witness
6 is in dispute. It is disputed by the Defence and I think the
7 principles of fundamental fairness require that we sort that out
8 before we take on this witness.

9 MS PARMAR: Your Honours, in terms of the Prosecution
10 categorisation of this witness, since the age of the witness was
11 not precisely clear, but given his background and experiences and
12 the fact that he was a child soldier at the time of his
13 experiences, he was there categorised as a category B witness,
14 not to confuse the issue but more strongly on the vulnerability
15 dimension.

16 JUDGE THOMPSON: But the argument has shifted to his age
17 today, as at today.

18 MS PARMAR: Precisely, Your Honour. That was just in
19 response to the query by Your Honour. Unfortunately, it was in
20 fact during the course of preparing this witness for testimony,
21 specifically his courtroom briefing and being introduced to the
22 manner of testimony, that the new information as to his age came
23 about, which was in fact on Monday of this week. The Prosecution
24 recognises that this is indeed a very material piece of
25 information that ought to have been disclosed to the Defence and
26 at this moment appreciates that Your Honours are in a difficult
27 position as to how to proceed with this witness.

28 PRESIDING JUDGE: Ms Wright, I am sorry we did not see you.
29 Yes, please.

1 MS WRIGHT: While I am certainly loathe to make any unkind
2 observation, I think it is worth noting that there were proofing
3 exercises to which the Prosecution has made reference and there
4 is a statement that was given to Defence, presumably coming out
5 of those proofing exercises and they were in February 2005. It
6 seems to me that the Prosecution, unless I am misunderstanding
7 things, has now shifted to saying that the age issue was only
8 uncovered this week. With fairness, that is at odds with the
9 earlier representation and I do think it affects this body's
10 determination of this particular issue relative to disclosure and
11 fairness to the Defence.

12 MR YILLAH: To assist the tribunal, I recall, and I am sure
13 my learned friend would agree with me, I do not know the number
14 of the witness now, but there has been a witness -- the very
15 first witness that my learned friend took here -- who had passed
16 the age of 18 who testified to facts that related to him when he
17 was a minor not within closed circuit. There is precedent before
18 this Court and I am sure my learned friend --

19 JUDGE BOUTET: But what I would like to hear from counsel
20 for the Defence as well, given what we know now there is
21 information in the possession of Prosecution that has not been
22 disclosed. From what I hear, this information was obtained
23 Monday this week - two days ago - and it is information it
24 appears ought to have been disclosed to all of you. What is your
25 position in this respect? There are many issues now; it is more
26 than just age and vulnerability. There is the question of proper
27 disclosure in due course.

28 MR YILLAH: In response to Your Lordship's question I would
29 submit that the Prosecution has in fact not met the disclosure

1 obligation under the rules. My Lords, the issue of age is very
2 material to the determination of charges before this Court.
3 Consistent with Your Lordships' orders in the past and consistent
4 with the Rules 66 and 67 of the Rules of Procedure, the
5 Prosecution has certainly not disclosed information to the which
6 they say they have recently discovered to the Defence, and which
7 said information is material to the determination of a particular
8 count or charge before the Court. That is my position to the
9 Court.

10 PRESIDING JUDGE: Mr Koppe, on this same issue, please, not
11 on any other issue.

12 MR KOPPE: The practical question is whether we are able to
13 continue. Our position is that we can continue. Although this
14 information came quite late to us, I don't feel that --

15 PRESIDING JUDGE: On disclosure first of all, Mr Koppe.
16 What is your stand on the issue of disclosure?

17 MR KOPPE: That is exactly what I was going to say. It has
18 not been disclosed a long time enough before us, but I think we
19 are not prejudiced. So I think we are still able to continue
20 with this witness.

21 JUDGE THOMPSON: So, in other words, you are saying there
22 has been a breach on the part of the Prosecution of their
23 disclosure obligations, but that you are not prejudiced.

24 MR KOPPE: That is our position.

25 JUDGE THOMPSON: I wanted to ask Mr Yillah what legal
26 options are available to the Court when the Court finds that
27 there is a breach on the part of the Prosecution of their
28 disclosure obligations under Rule 66 and related rules. Whether
29 you want to guide the Court as to what the Court has to do in

1 those circumstances.

2 MR YILLAH: My natural response would be that it is in
3 contempt of Your Lordships' orders on disclosure.

4 JUDGE THOMPSON: But what would be the legal options
5 available to the bench? What do we do? Guide us on that. You
6 are familiar with our decisions on disclosure obligations.

7 MR YILLAH: Yes, My Lord. In fairness to the Prosecution,
8 they had disclosed this witness's statement regarding the factual
9 issues before now. So we had prepared to cross-examine this
10 witness. But I submit to Your Lordships that maybe Your
11 Lordships you might wish to reconsider the mode in which this
12 witness is giving testimony.

13 JUDGE BOUTET: That is a different issue. What we are
14 asking now is only disclosure or non-disclosure. What is your
15 position? Are you ready to proceed or do you want more time?
16 What is your position?

17 MR YILLAH: May I confer?

18 JUDGE THOMPSON: Mr Koppe, you are saying that your client
19 is not prejudiced. That is your own position.

20 MR KOPPE: We are ready to continue.

21 MR YILLAH: My Lord, my submission, subject to Your
22 Lordships' order at the end of the day, is that Your Lordships'
23 order should be upheld and we be given more time.

24 JUDGE BOUTET: You are asking for more time?

25 MR YILLAH: To investigate the age.

26 JUDGE BOUTET: To investigate the age?

27 MR YILLAH: Because it is very material.

28 JUDGE BOUTET: Counsel for the third accused, yes.

29 MS WRIGHT: Your Lordships, before we arrive at the

1 particular issue of whether or not to go forward today, I would
2 underscore that we still have not received the information to
3 which reference has been made today relative to the age given at
4 disarmament, for example, the age apparent to the witness
5 protection individuals. If that exists in a written form, I
6 think we should get it in written form. If it has not yet been
7 reduced to writing, I think it ought to be so that we can review
8 it. I have certainly taken notes this morning, as my colleagues
9 have, but I don't think that deals with the issue of discovery
10 obligation held by the Prosecution.

11 JUDGE BOUTET: Are you ready to proceed now? What are you
12 saying?

13 MS WRIGHT: As long as what has been said today is the
14 entirety of what the additional information would be and as long
15 as that is reduced to writing, I will look at that. It is my
16 belief that, yes, we are ready to go forward. But I cannot say
17 the extent to which discovery has been met because, frankly, as
18 an officer of the Court, I would assume it had been met and it
19 was only because these issues came to light this morning that I
20 --

21 PRESIDING JUDGE: We would like you to be very forthright
22 to the Court because we don't want a situation where you sit on
23 the fence. We want you to be very, very, very forthright with
24 the Court. There are two issues involved. There is the age of
25 this witness that is in dispute and you are not disputing the
26 fact that the age is in dispute. There is the issue of
27 non-disclosure, which is what you are complaining about now.
28 What is your stand on these two issues, Ms Wright?

29 MS WRIGHT: That relative to the disclosure issue, what has

1 been made reference to --

2 PRESIDING JUDGE: What should the Court do? What are you
3 inviting the Court to do in the light of these two situations
4 that are before us?

5 MS WRIGHT: I would submit that the proper way to proceed
6 would be for the Court to order the Prosecution to turn over
7 whatever additional evidence came as a result of the proofing
8 exercise and then the in-Court exercise earlier this week, and
9 give us an opportunity to review those documents. If we can go
10 forward today without any further delay to the Court then that is
11 a matter that we can see after reviewing exactly what has been
12 given to us.

13 JUDGE THOMPSON: In other words, you are insisting on your
14 right to full disclosure.

15 MS WRIGHT: Yes, sir.

16 JUDGE BOUTET: And once that has been complied with then
17 you will be in a position to say yes or no if you can proceed
18 with this witness today.

19 MS WRIGHT: I am representing our wish to go forward as
20 quickly as possible.

21 JUDGE BOUTET: Can we hear further from the Prosecution on
22 this matter before we retire?

23 MS PARMAR: Your Honours, in terms of any additional
24 disclosure that my learned friend is seeking it would simply be
25 one line that was given to the Prosecution by the witness early
26 this week.

27 PRESIDING JUDGE: Don't oversimplify issues.

28 MS PARMAR: Not at all, Your Honour, that is not my
29 intention at all.

1 PRESIDING JUDGE: Right, we are in a judicial process that
2 is quite delicate. We want to look at these issues within the
3 confines of the quality of arms between the Defence and the
4 Prosecution.

5 MS PARMAR: Absolutely, Your Honour.

6 PRESIDING JUDGE: Right. Well, the Court will rise and
7 we'll resume in the next 10 minutes, please.

8 [Break taken at 10.27 a.m.]

9 [HN090305B - EKD]

10 [Upon resuming at 10.50 a.m.]

11 PRESIDING JUDGE: Learned counsel, we are resuming the
12 session. In view of all the issues that have been raised on the
13 age of this witness and the cases that have been advanced by the
14 Prosecution and by the Defence teams, it is the considered
15 opinion of the Chamber that the evidence or the testimony of this
16 witness be adjourned to the next session of this trial. This
17 will enable the Chamber to rule and direct on the issues raised,
18 so that we know where we proceed from now. So the evidence, as I
19 said, of this witness the Chamber has decided will be adjourned
20 in order to address all these issues before we can be able to
21 take the witness during the next session of the trial.

22 This said, since this was the only programmed witness for
23 today, it is unfortunate things have come to an abrupt end and
24 rather prematurely. We don't sit in the afternoons on Wednesday
25 and, in any event, we have very important assignments this
26 particular Wednesday.

27 Mr Tavener, we would like to know how we proceed when we
28 resume tomorrow at 9.30.

29 MR TAVENER: The witness 014 will testify. He will be

1 testifying in the open without any protective measures.

2 PRESIDING JUDGE: You mean the Longish witness you talked
3 about?

4 MR TAVENER: That's correct.

5 PRESIDING JUDGE: You say his pseudonym is?

6 MR TAVENER: TF2-014.

7 PRESIDING JUDGE: So he will start testifying from tomorrow
8 at 9.30?

9 MR TAVENER: That's correct.

10 PRESIDING JUDGE: Good. Well, learned counsel, the day is
11 at an end, rather prematurely but these are some of the
12 contingencies we expect from trials. We cannot proceed, we
13 cannot proceed, because the interests of both parties have to be
14 properly addressed before we can proceed. So we would rise and
15 resume our session tomorrow at 9.30. Court rises, please.

16 [Whereupon the hearing adjourned at 10.54 a.m., to be
17 reconvened on Thursday, the 10th day of March 2005,
18 at 9.30 a.m.]

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