

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
MOININA 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 Moinina Fofana:

Mr Victor Koppe

For the Accused Allieu Kondewa:

Mr Charles Margai
Mr Yada Williams
Ms Susan Wright

1 [HN090305 - AD]
2 wednesday, 9 March 2005
3 [Accused Fofana present]
4 [Accused Kondewa present]
09:19:18 5 [Open session]
6 [Upon reconvening at 9.50 a.m.]
7 PRESIDING JUDGE: Learned counsel, good morning. We are resuming the
8 session. I think we are taking our only and last witness for the day. Mr
9 Tavener, I am sure I am right in this remark.
09:51:52 10 MR TAVENER: That is correct, Your Honour.
11 JUDGE BOUTET: So you are ready to proceed.
12 MS PARMAR: Yes, Your Honours.
13 JUDGE BOUTET: Are we sure the screens are in such a position that
14 the identity of the witness is indeed protected?
09:52:11 15 MS PARMAR: Your Honours, both of these screens have been turned off
16 and these other screens have been faced away from the public.
17 JUDGE BOUTET: What about on the Defence side? Mr Margai, can you
18 see anything on your screens?
19 MR MARGAI: Yes, My Lord, I am confident.
09:52:28 20 MS PARMAR: Actually, Your Honours, my understanding is that on this
21 side of the courtroom the curtains should be closed.
22 JUDGE BOUTET: Well, we can close them in part, at least, on the
23 first two windows and afford some protection without depriving the members
24 of the public from seeing.
09:52:43 25 MR WALKER: Your Honour, I have checked all the monitors and they are
26 fine.
27 JUDGE BOUTET: They are fine? Okay. Then let us proceed.
28 MS PARMAR: Your Honours --
29 PRESIDING JUDGE: Ms Sharan, this should be your 61st witness.

1 MS PARMAR: That is correct.

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

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

09:53:19 5 MR YILLAH: I am sorry to intervene, My Lord. I just wanted clarity
6 from the Prosecution through Your Lordships whether this witness may be
7 classified as a Moyamba Crime Base witness or not.

8 JUDGE BOUTET: It is?

9 MS PARMAR: Indeed, Your Honours, this witness is a Moyamba Crime
09:53:49 10 Base witness.

11 PRESIDING JUDGE: what is the alleged age of your witness, or what is
12 the known age?

13 MS PARMAR: It is not exactly known, the age of this witness. This
14 witness will give evidence that in 2002 he was disarmed and gave an age of
09:54:08 15 12 years old.

16 JUDGE BOUTET: In 2002?

17 MS PARMAR: In 2002, which would make him approximately 15 today.
18 Unfortunately, the witness has no documentary evidence or is not sure of
19 his age. However, he will provide evidence to his disarmament and the age
09:54:36 20 that was given at the time of disarmament.

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

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

24 JUDGE BOUTET: But that was his statement at the disarmament time
09:54:53 25 that he was then 12 years old.

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

29 JUDGE BOUTET: All right.

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

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

4 JUDGE THOMPSON: And this would be clearly consistent with the United
09:55:33 5 Nations Convention on the Rights of the Child.

6 MS PARMAR: That is correct.

7 JUDGE THOMPSON: And also the African Charter on the Rights of the
8 Child.

9 MS PARMAR: That is correct, which defines a child as anyone under
09:55:38 10 the age of 18.

11 JUDGE THOMPSON: Yes.

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

14 MS PARMAR: Precisely, Your Honour.

09:56:19 15 JUDGE BOUTET: We will do that and see where we go from there.

16 DR JABBI: Excuse me, My Lords. My Lords, maybe we should also take
17 into account, and perhaps the Prosecution should make some reference to
18 this, that in documents they have supplied to the Defence information as to
19 the age is at least different from what we are hearing now. Maybe they
09:56:47 20 would want to make reference to that.

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

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

09:57:07 25 JUDGE THOMPSON: Yes.

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

27 JUDGE THOMPSON: Yes.

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

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

3 DR JABBI: I did not get Your Lordship.

4 JUDGE THOMPSON: Is there characterisation somewhere in the document
09:57:31 5 that this is a child witness?

6 DR JABBI: That has not been indicated.

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

8 MS PARMAR: Your Honours, during the proofing exercises of this
9 witness, a detailed examination with the witness was conducted as to his
09:58:07 10 age and it was revealed that the age that had been recorded by
11 investigators when the statement was first taken was in fact incorrect and
12 that the witness had just supplied a number simply because he had been
13 asked. However, he has established with the Prosecution that he is in fact
14 unsure of his age and that the only piece of information he is certain of
09:58:29 15 was the age of 12 years old that he had been given in 2002 during
16 disarmament.

17 JUDGE BOUTET: Was this information disclosed to the Defence?

18 MS PARMAR: One moment, Your Honour, let me check my notes. What has
19 been disclosed to the Defence, Your Honours, is that the witness states he
09:59:09 20 was a small boy at the time that he fought with the CDF, that he cannot
21 recall the years and that by that time he had been in class five and had
22 recently wrote his exams and passed into class six. This is the
23 information that was disclosed to the Defence.

24 JUDGE THOMPSON: So, what is the Prosecution's presumption as to age
09:59:37 25 here?

26 MS PARMAR: Your Honours, based on an assessment by the Prosecution
27 in conjunction and consultation with the psychosocial counsellor for the
28 witness Support Unit, we have determined that this witness is indeed a
29 vulnerable witness and was a child soldier during the time of his

1 involvement with the CDF. However, we have been unable to establish his
2 precise age despite consultation and questioning of the said witness.

3 JUDGE THOMPSON: So you are saying there is no theory you are putting
4 forward to the Court at this stage as to this particular witness in terms
10:00:14 5 of the category?

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

9 JUDGE THOMPSON: But at this point in time?

10:00:38 10 MS PARMAR: At this point in time, based on his story, it is unclear
11 exactly what age he is. But what we are certain of is that he appears to
12 be a minor witness. However, we are unable to provide the Court with exact
13 certainty.

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

10:00:56 15 MS PARMAR: Precisely.

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

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

19 PRESIDING JUDGE: Since at disarmament it was declared he was 12, and
10:01:20 20 this was in 2002.

21 MS PARMAR: That is correct, and the witness will testify that he was
22 processed as being aged 12 at that time by the disarmament workers.

23 JUDGE BOUTET: But what I would like to hear from you is a clear
24 position from the Prosecution as to the age of that witness as we speak
10:01:42 25 today. You must have a position on that presumably. I will not call you
26 to say he is 15 years, three months and 25 days. What is your position?
27 what is the position of the Prosecution as to what age this witness is
28 today?

29 JUDGE THOMPSON: Strengthening my brother's position is that we want

1 to know your theory.

2 MS PARMAR: Certainly, Your Honours. The position of the Prosecution
3 is that, first of all, this witness, based on his experience, is indeed a
4 vulnerable witness.

10:02:27 5 JUDGE BOUTET: That is not what I am asking. I am asking you what is
6 the Prosecution's position as to the age of this witness today when this
7 witness is giving evidence.

8 MS PARMAR: Based upon his testimony, the Prosecution is of the
9 position that the witness is indeed 15 years old based on the evidence that
10:02:35 10 he will provide that he was 12 at 2002.

11 JUDGE THOMPSON: So you are putting this witness forward as a child
12 witness.

13 MS PARMAR: That is correct, Your Honour.

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

10:02:46 15 PRESIDING JUDGE: Yes.

16 MR KOPPE: Excuse me, Your Honours. Apparently this witness has made
17 a statement to the investigators and that statement was given on the 8th of
18 May 2003 where he indicated the age of 19, which would make him almost 21
19 now. The difference between 15 and 21 is so big it is beyond my
10:03:18 20 comprehension. One or two years, that may be understandable, but a
21 difference of six years is not prima facie understandable to me.

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

10:03:32 25 MR KOPPE: So it seems, yes.

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

27 PRESIDING JUDGE: May we have the name please?

28 MS WRIGHT: Susan Wright.

29 PRESIDING JUDGE: Susan --

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

2 PRESIDING JUDGE: Yes, Ms Wright.

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

10:03:58 5 PRESIDING JUDGE: Ms Wright, you are on what Defence team, please,
6 just for the purposes of the records?

7 MS WRIGHT: Mr Kondewa.

8 MR MARGAI: I am sorry, My Lords. She had been here before. I took
9 it that Your Lordships were quite conversant with her presence. I am sorry
10:04:18 10 for not --

11 PRESIDING JUDGE: We are conversant with her presence but not exactly
12 with her identity.

13 [Multiple speakers - transcript incomplete]

14 MR MARGAI: I apologise for that.

10:04:30 15 PRESIDING JUDGE: Yes.

16 MS WRIGHT: Your Lordships inquired about the legal characterisation
17 of the age and how that was conveyed to the Defence as a result of
18 materials that were given over to us. I would just underscore that,
19 relative to age, the only indication that we have as to the present age is
10:04:49 20 the age of 19 that was given in the 2003 interview. It is true that, as
21 the Prosecution has noted, the recount that went on as a result of the
22 proofing exercise gave some details about him being small at the time of
23 these events about which he will testify and give also the fact that the
24 years of the events was not known to him. But it is not clear to me that
10:05:15 25 this witness has been so characterised as is indicated this morning.

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

28 PRESIDING JUDGE: That is a question I was going to put to the
29 Defence. In making your observations are you saying that there is a

1 dispute about this witness's age? Or let me put it more precisely. Is
2 there a dispute as to whether the witness is 18 and above or 18 and under?
3 The Defence counsel of the first accused please. Age is material here.

4 DR JABBI: According to the information revealed to us it is
10:06:10 5 uncertain whether this witness is below the age of 18. Apart from
6 information that has already been given, we also have reference in that
7 statement that during 1999 his younger sister was 11 years old, and that
8 reinforces the reference to his being aged 19 on the 8th May 2003. So
9 certainly there is some confusion at least as to the age of this witness.

10:06:47 10 JUDGE BOUTET: But the next step is what are you proposing?

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

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

10:07:04 15 DR JABBI: From the information we have we think he is well above the
16 child witness age.

17 JUDGE BOUTET: If you would allow me, Mr Jabbi, before we go to the
18 other counsel, I do have a question for the Prosecution and that may assist
19 you in this respect as well. There is something I do not understand. I
10:07:23 20 heard the Prosecution talk about proofing. What information in this
21 respect has been disclosed to the Defence about proofing? If you have
22 information that was different than the information that had been
23 disclosed, have you disclosed it? If you have not disclosed it, why not?

24 MS PARMAR: Your Honours, before I respond to your query, in response
10:07:51 25 to my learned friend's observations, first, the Defence was put on notice
26 that this witness is a category B witness. In fact, the Prosecution had
27 filed a confidential motion of sorts, for lack of a better term, indicating
28 that this witness ought to be listed as a category B witness and would
29 testify via closed circuit television. Second, with regard to the mention

1 of the year 1999 by the witness during the subsequent proofing exercise,
2 which was disclosed to the Defence, the witness stated that he did not give
3 the year of 1999 when he gave his statement and that at that time he simply
4 could not recall the year. In response to Your Honour's query, following
10:08:53 5 the witness's preparation it was recently indicated to the Prosecution that
6 this witness had given the age of 12 years old during the year 2002, which
7 is why that particular piece of information had not been disclosed to the
8 Defence. Following consultation, given that the age of the witness was
9 uncertain but that he was clearly a vulnerable witness, the Prosecution had
10:09:29 10 maintained their position of categorising this witness as a category B
11 witness. Following consultation with the psychosocial counsellor of the
12 witness Support Unit it was clear that this witness is a vulnerable witness
13 and that this category should indeed be maintained.

14 JUDGE THOMPSON: Isn't the concept of vulnerable being confused here
10:09:57 15 with the concept of age? Because there are other witnesses who may be in
16 fact adult witnesses who may also be vulnerable witnesses. So wouldn't we
17 avoid for the purposes of determining the age of this witness, in other
18 words whether this witness should testify as a child -- that is, a person
19 under the age of 18 under the conventions -- or as an adult? Isn't it
10:10:25 20 necessary to avoid multiplying the issues so we will not be carried away to
21 the area of vulnerability whilst we are trying to determine precisely the
22 age thing? So I think the Prosecution should abandon that kind of
23 approach.

24 MS PARMAR: Your Honours, the Prosecution's position is at this point
10:10:51 25 in time perhaps it would be best for Your Honours to examine himself as to
26 his age.

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

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

10:11:34 5 MR KOPPE: Our position will still be that there is prima facie
6 evidence that this witness is almost 21 now, that maybe at one point he
7 gave wrong information to the investigators. But I am not convinced that
8 the information given was wrong as opposed to the information given
9 earlier. Still prima facie to us it looks like he is 21.

10:12:03 10 PRESIDING JUDGE: Mr Wright, what is your position on this, please?

11 MS WRIGHT: I can only add that no one is disputing whether or not
12 this witness is eligible for category B classification. Notice was given
13 to the Defence to that effect. The question is whether or not there is a
14 legal characterisation of this individual as a minor. Although the
10:12:21 15 Prosecution has indicated that as a result of their proofing exercise they
16 came to understand that there was a dispute about the child's age -- the
17 individual's age -- that was not conveyed to the Defence. We did get a
18 copy of a witness interview statement that was, I assume, a result of those
19 proofing interviews. But there was nothing to that extent about ages,
10:12:45 20 about changing one's mind about an earlier age given. It remains that the
21 only age that we have been given notice of is the age of 19 in 2003.

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

24 MS WRIGHT: That is correct. As Your Lordship has noted, this is a
10:13:10 25 material issue.

26 JUDGE BOUTET: My concerns are twofold: One, if information was in
27 the possession of the Prosecution that has not been disclosed to the
28 Defence -- that appears to be so to an extent, at least that is my
29 understanding -- if only because the Prosecution says in proofing they

1 discovered that the witness was of this age, and then you are telling me
2 that that has not been disclosed to any of the Defence. That is one issue.
3 The other one is, regardless of age, whether or not a witness may give
4 evidence on closed circuit with this kind of protection, my understanding
10:13:53 5 for the time being is that the category B is not necessarily age related,
6 it could be for other factors. I understand the position of the
7 Prosecution to be, subject to comments, that regardless of the age of the
8 witness but because of the condition of the witness, still the witness
9 should be a class B witness giving evidence in the closed circuit system.

10:14:24 10 Am I right, Madam for the Prosecution?

11 MS PARMAR: That is correct, Your Honour.

12 JUDGE BOUTET: But that does not resolve my problem about disclosure
13 or non-disclosure. We have commented on many occasions that any
14 information in possession of the Prosecution that has been obtained prior
10:14:42 15 to a witness giving evidence shall be disclosed to the Defence. If that is
16 the case and the Defence has not received that information, I ask the
17 Defence if they have any comments in this respect.

18 JUDGE THOMPSON: I would add too, that I don't think the issue really
19 here should turn on vulnerability; it should really turn on the question of
10:15:08 20 age.

21 PRESIDING JUDGE: The issue of age is contested by the Defence and I
22 think it is material for us to iron that out. I am sure that if the
23 Prosecution were asking for the category B protection for this witness, it
24 was on the presumption that this is a child witness. It must have been
10:15:38 25 very strongly on the presumption that it was a child witness. I need to be
26 clarified on this. But even if it weren't, I think the age of this witness
27 is in dispute. It is disputed by the Defence and I think the principles of
28 fundamental fairness require that we sort that out before we take on this
29 witness.

1 MS PARMAR: Your Honours, in terms of the Prosecution categorisation
2 of this witness, since the age of the witness was not precisely clear, but
3 given his background and experiences and the fact that he was a child
4 soldier at the time of his experiences, he was there categorised as a
10:16:33 5 category B witness, not to confuse the issue but more strongly on the
6 vulnerability dimension.

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

9 MS PARMAR: Precisely, Your Honour. That was just in response to the
10:16:49 10 query by Your Honour. Unfortunately, it was in fact during the course of
11 preparing this witness for testimony, specifically his courtroom briefing
12 and being introduced to the manner of testimony, that the new information
13 as to his age came about, which was in fact on Monday of this week. The
14 Prosecution recognises that this is indeed a very material piece of
10:17:19 15 information that ought to have been disclosed to the Defence and at this
16 moment appreciates that Your Honours are in a difficult position as to how
17 to proceed with this witness.

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

10:17:46 20 MS WRIGHT: While I am certainly loathe to make any unkind
21 observation, I think it is worth noting that there were proofing exercises
22 to which the Prosecution has made reference and there is a statement that
23 was given to Defence, presumably coming out of those proofing exercises and
24 they were in February 2005. It seems to me that the Prosecution, unless I
10:18:12 25 am misunderstanding things, has now shifted to saying that the age issue
26 was only uncovered this week. With fairness, that is at odds with the
27 earlier representation and I do think it affects this body's determination
28 of this particular issue relative to disclosure and fairness to the
29 Defence.

1 MR YILLAH: To assist the tribunal, I recall, and I am sure my
2 learned friend would agree with me, I do not know the number of the witness
3 now, but there has been a witness -- the very first witness that my learned
4 friend took here -- who had passed the age of 18 who testified to facts
10:18:58 5 that related to him when he was a minor not within closed circuit. There
6 is precedent before this Court and I am sure my learned friend --

7 JUDGE BOUTET: But what I would like to hear from counsel for the
8 Defence as well, given what we know now there is information in the
9 possession of Prosecution that has not been disclosed. From what I hear,
10:19:22 10 this information was obtained Monday this week - two days ago - and it is
11 information it appears ought to have been disclosed to all of you. What is
12 your position in this respect? There are many issues now; it is more than
13 just age and vulnerability. There is the question of proper disclosure in
14 due course.

10:19:43 15 MR YILLAH: In response to Your Lordship's question I would submit
16 that the Prosecution has in fact not met the disclosure obligation under
17 the rules. My Lords, the issue of age is very material to the
18 determination of charges before this Court. Consistent with Your
19 Lordships' orders in the past and consistent with the Rules 66 and 67 of
10:20:09 20 the Rules of Procedure, the Prosecution has certainly not disclosed
21 information to the which they say they have recently discovered to the
22 Defence, and which said information is material to the determination of a
23 particular count or charge before the Court. That is my position to the
24 Court.

10:20:31 25 PRESIDING JUDGE: Mr Koppe, on this same issue, please, not on any
26 other issue.

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

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

3 MR KOPPE: That is exactly what I was going to say. It has not been
4 disclosed a long time enough before us, but I think we are not prejudiced.
10:21:00 5 So I think we are still able to continue with this witness.

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

9 MR KOPPE: That is our position.

10:21:19 10 JUDGE THOMPSON: I wanted to ask Mr Yillah what legal options are
11 available to the Court when the Court finds that there is a breach on the
12 part of the Prosecution of their disclosure obligations under Rule 66 and
13 related rules. Whether you want to guide the Court as to what the Court
14 has to do in those circumstances.

10:21:39 15 MR YILLAH: My natural response would be that it is in contempt of
16 Your Lordships' orders on disclosure.

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

10:22:02 20 MR YILLAH: Yes, My Lord. In fairness to the Prosecution, they had
21 disclosed this witness's statement regarding the factual issues before now.
22 So we had prepared to cross-examine this witness. But I submit to Your
23 Lordships that maybe Your Lordships you might wish to reconsider the mode
24 in which this witness is giving testimony.

10:22:28 25 JUDGE BOUTET: That is a different issue. What we are asking now is
26 only disclosure or non-disclosure. What is your position? Are you ready
27 to proceed or do you want more time? What is your position?

28 MR YILLAH: May I confer?

29 JUDGE THOMPSON: Mr Koppe, you are saying that your client is not

1 prejudiced. That is your own position.

2 MR KOPPE: We are ready to continue.

3 MR YILLAH: My Lord, my submission, subject to Your Lordships' order
4 at the end of the day, is that Your Lordships' order should be upheld and
10:23:05 5 we be given more time.

6 JUDGE BOUTET: You are asking for more time?

7 MR YILLAH: To investigate the age.

8 JUDGE BOUTET: To investigate the age?

9 MR YILLAH: Because it is very material.

10:23:19 10 JUDGE BOUTET: Counsel for the third accused, yes.

11 MS WRIGHT: Your Lordships, before we arrive at the particular issue
12 of whether or not to go forward today, I would underscore that we still
13 have not received the information to which reference has been made today
14 relative to the age given at disarmament, for example, the age apparent to
10:23:38 15 the witness protection individuals. If that exists in a written form, I
16 think we should get it in written form. If it has not yet been reduced to
17 writing, I think it ought to be so that we can review it. I have certainly
18 taken notes this morning, as my colleagues have, but I don't think that
19 deals with the issue of discovery obligation held by the Prosecution.

10:23:54 20 JUDGE BOUTET: Are you ready to proceed now? What are you saying?

21 MS WRIGHT: As long as what has been said today is the entirety of
22 what the additional information would be and as long as that is reduced to
23 writing, I will look at that. It is my belief that, yes, we are ready to
24 go forward. But I cannot say the extent to which discovery has been met
10:24:19 25 because, frankly, as an officer of the Court, I would assume it had been
26 met and it was only because these issues came to light this morning that I
27 --

28 PRESIDING JUDGE: We would like you to be very forthright to the
29 Court because we don't want a situation where you sit on the fence. We

1 want you to be very, very, very forthright with the Court. There are two
2 issues involved. There is the age of this witness that is in dispute and
3 you are not disputing the fact that the age is in dispute. There is the
4 issue of non-disclosure, which is what you are complaining about now. What
10:24:54 5 is your stand on these two issues, Ms Wright?

6 MS WRIGHT: That relative to the disclosure issue, what has been made
7 reference to --

8 PRESIDING JUDGE: what should the Court do? what are you inviting
9 the Court to do in the light of these two situations that are before us?

10:25:11 10 MS WRIGHT: I would submit that the proper way to proceed would be
11 for the Court to order the Prosecution to turn over whatever additional
12 evidence came as a result of the proofing exercise and then the in-Court
13 exercise earlier this week, and give us an opportunity to review those
14 documents. If we can go forward today without any further delay to the
10:25:32 15 Court then that is a matter that we can see after reviewing exactly what
16 has been given to us.

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

19 MS WRIGHT: Yes, sir.

10:25:44 20 JUDGE BOUTET: And once that has been complied with then you will be
21 in a position to say yes or no if you can proceed with this witness today.

22 MS WRIGHT: I am representing our wish to go forward as quickly as
23 possible.

24 JUDGE BOUTET: Can we hear further from the Prosecution on this
10:26:00 25 matter before we retire?

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

29 PRESIDING JUDGE: Don't oversimplify issues.

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

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

10:26:45 5 MS PARMAR: Absolutely, Your Honour.

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

8 [Break taken at 10.27 a.m.]

9 [HN090305B - EKD]

10:41:05 10 [Upon resuming at 10.50 a.m.]

11 PRESIDING JUDGE: Learned counsel, we are resuming the session. In
12 view of all the issues that have been raised on the age of this witness and
13 the cases that have been advanced by the Prosecution and by the Defence
14 teams, it is the considered opinion of the Chamber that the evidence or the
10:53:08 15 testimony of this witness be adjourned to the next session of this trial.

16 This will enable the Chamber to rule and direct on the issues raised, so
17 that we know where we proceed from now. So the evidence, as I said, of
18 this witness the Chamber has decided will be adjourned in order to address
19 all these issues before we can be able to take the witness during the next
10:53:47 20 session of the trial.

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

10:54:20 25 Mr Tavener, we would like to know how we proceed when we resume
26 tomorrow at 9.30.

27 MR TAVENER: The witness 014 will testify. He will be testifying in
28 the open without any protective measures.

29 PRESIDING JUDGE: You mean the longish witness you talked about?

1 MR TAVENER: That's correct.

2 PRESIDING JUDGE: You say his pseudonym is?

3 MR TAVENER: TF2-014.

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

10:55:00 5 MR TAVENER: That's correct.

6 PRESIDING JUDGE: Good. Well, learned counsel, the day is at an end,
7 rather prematurely but these are some of the contingencies we expect from
8 trials. We cannot proceed, we cannot proceed, because the interests of
9 both parties have to be properly addressed before we can proceed. So we
10:55:26 10 would rise and resume our session tomorrow at 9.30. Court rises, please.

11 [whereupon the hearing adjourned at 10.54 a.m., to be reconvened on
12 Thursday, the 10th day of March 2005, at 9.30 a.m.]

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