



**U.C. BERKELEY WAR CRIMES STUDIES CENTER**  
**SIERRA LEONE TRIAL MONITORING PROGRAM**  
**WEEKLY REPORT**

Special Court Monitoring Program Update #87a  
Trial Chamber I - RUF Trial  
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**Summary**

**Status Conference - Commencement of Defence Cases of 2<sup>nd</sup> and 3<sup>rd</sup> Accused  
Open Justice vs Privacy of the Accused**

**Summary**

The CDF trial has been subject to ongoing delays the past two weeks due to the ill health of the second accused, who is scheduled to commence his defence case as soon as possible. The detention facility doctor, Dr. Harding, addressed the Trial Chamber during Friday's Status Conference and indicated that Mr. Fofana, although still suffering from the chickenpox, was no longer infectious and would be ready to commence trial on 27 September 2006. Fofana's counsel can also now freely meet with him in order to discuss the preparation of his defence case.

There was some debate about the tension between ensuring an open process of justice and maintaining the privacy of accused persons, with respect to the revelation of details regarding Fofana's current health condition. While Counsel for the second accused adamantly argued that very limited information about the health of the accused should be revealed publicly, as occurred in the *Milosevic* case, the Trial Chamber insisted that chickenpox infections carried with it well-known physical manifestations and that there was as such no need to hide such self-evident information.

The Trial Chamber again adjourned proceedings and the CDF trial is set to resume on 27 September 2006.

**Status Conference – Commencement of Defence Cases of 2<sup>nd</sup> and 3<sup>rd</sup> Accused**

The CDF trial remained adjourned for most of the week, with the Fofana defence team unable to open its defence case given the continued illness of the second accused. After being informed on the 18<sup>th</sup> that Fofana would not be able to attend proceedings for another week, due to an ongoing case of the chickenpox, the Trial Chamber adjourned

proceedings until 26 September 2006. The Chamber requested that a detailed medical report to be submitted, which was done on the 20<sup>th</sup> of September.<sup>1</sup>

However, a Status Conference was subsequently called for the 22<sup>nd</sup> of September, with the Chamber noting that they wanted to ensure the fair and expeditious presentation of the case for the second and third accused. Justice Thompson, presiding, further stated the need to assess the possibility of the commencement of the defence case for the second accused and that if this was not possible then to commence discussions the logistics of beginning the presentation of the case for the third accused.

Prior to the close of proceedings, Counsel for the third accused indicated his team's desire to have an idea of when their defence case may start, especially given that the upcoming Ramadan period posed greater problems for them in terms of bringing their witnesses to Freetown.<sup>2</sup> While the bench was extremely reluctant to issue a specific date, after counsel for the second accused indicated that their witnesses would likely take a full week and that the testimony of their expert witness would take an additional few days, the bench stated that third accused should be prepared to commence on 5 October 2006.

### **Open Justice vs Privacy of the Accused**

During the Status Conference counsel for the second accused, Steven Powles, stated that the confidential medical report had been submitted to the Chamber, as requested.<sup>3</sup> He also argued that there was no need to reveal any of the personal details contained within it given that the thrust of it, that is that Fofana is suffering from chickenpox and is in quarantine, is on public record. Mr. Powles submitted that the public did not need to know the details of how it was manifesting itself and cited the *Milosevic* case, where the actual details of the illnesses he was suffering from were not placed on public record, thereby ensuring "open justice"<sup>4</sup> while respecting the privacy of the accused.

Justice Boutet indicated his concern that the whole of these proceedings would then have to be conducted in closed session but all parties eventually agreed to having the medical report exhibited confidentially. However, the privacy of the accused became an issue again when Dr. Harding was invited by the Chamber to speak on Fofana's health. Mr. Powles requested that Dr. Harding be heard in closed session so that he might speak as freely as possible without violating the privacy of his client. The Presiding Judge indicated that Dr. Harding should be guided in his submission by the overarching aims of advancing the interests of justice rather than the minutia of how chickenpox afflicts sufferers. As such, Justice Boutet stated that he did not feel the need to move proceedings into closed session. In open session, Dr. Harding stated to the court that Fofana was not longer infectious and that he was recovering well, estimating that he would likely be able to attend court on 27 September 2006. He indicated that due to the physical

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<sup>1</sup> 'Confidential Medical Report of Dr Deen regarding Moinina Fofana', SCSL-14-696, 20 September 2006.

<sup>2</sup> Counsel stated that many of their witnesses did not wish to be away from their homes and communities during the Ramadan period.

<sup>3</sup> 'Confidential Medical Report of Dr Deen regarding Moinina Fofana', SCSL-14-696, 20 September 2006.

<sup>4</sup> SCSL Transcript, 22 September 2006, page 6, line 28

manifestations of chickenpox, particularly the aesthetic aspect, the accused might no longer be infectious but still needed a few days to recover before appearing in court.

While Justice Boutet proposed the idea that, given the accused's improving health but remaining aesthetic concerns, proceedings might be able to commence earlier if Fofana could follow the trial via video link. Powles launched a protest to this proposed idea and indicated that he felt it just short of imperative that his client be present in the courtroom for what he described as this crucial and fundamental part of his case. The Chamber apparently conceded these points and, after a short deliberation, ordered for the CDF trial to resume on the 27<sup>th</sup> of September. Before proceedings ended however Counsel for the second accused asked that the statement given by Dr. Harding, alluding to the physical manifestations of chickenpox be redacted from the public record. The Presiding judge described the application as meretricious and stated that counsel was "viewing this thing from the perspective of the Anglo-Saxon kind of social-cultural milieu."<sup>5</sup> The application was rejected and Dr. Harding's comments remain on public record.

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<sup>5</sup> *Ibid.*, page 15, lines 20-22