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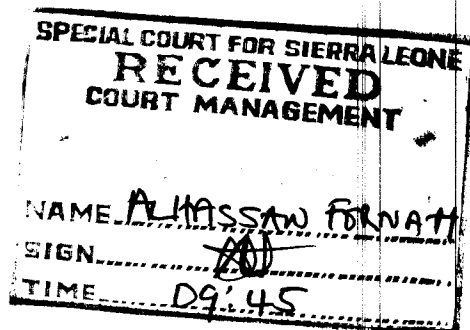
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**SPECIAL COURT FOR SIERRA LEONE****IN THE APPEALS CHAMBER**

**Before:** Hon. Justice Renate Winter, President,  
Hon. Justice Jon Kamanda,  
Hon. Justice George Gelaga King  
Hon. Justice Emmanuel Ayoola, and  
Hon. Justice Shireen Avis Fisher

**Registrar:** Mr. Herman Von Hebel

**Date filed:** 7<sup>th</sup> May 2009

**THE PROSECUTOR****V.****ISSA HASSAN SESAY****Case No. SCSL-04-15-A**

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**PUBLIC**

**Motion Requesting the Appeals Chamber to  
Order the Prosecution to Disclose Rule 68 Material**

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**Office of the Prosecutor**

Mr. Vincent Wagana  
Mr. Reginald Fynn

**Defence Counsel for Issa Sesay**

Mr. Wayne Jordash  
Ms. Sareta Ashraph  
Mr. Jared Kneitel

**Defence Counsel for Morris Kallon**

Mr. Charles Taku  
Mr. Orgetto Kennedy

**Court-Appointed****Counsel for Augustine Gbao**

Mr. John Cammegh  
Mr. Scott Martin

### **Introduction**

1. The Sesay Defence requests that the Appeals Chamber order the Prosecution to disclose Rule 68 material in its possession to the Defence. The Prosecution has failed to comply with its ongoing obligation to disclose exculpatory evidence and appears unwilling to interpret the parameters of Rule 68 fairly or reasonably.

### **Rule 68 Violations**

2. The Prosecution's obligations under Rule 68 are clear. The Prosecution is under a continuing obligation to disclose evidence that in any way:
  - i) tends to suggest the innocence of an accused;
  - ii) tends to mitigate the guilt of an accused; or
  - iii) may affect the credibility of prosecution evidence.

This continuing obligation does not end at the conclusion of the trial phase against an accused but continues to the post trial phase, including appeals.<sup>1</sup>

### ***The Prosecution's misconception and ongoing breach of Rule 68***

3. Of core concern is that the Prosecution purports to not understand what constitutes Rule 68 material. Through the course of the Prosecution's case in *Prosecutor v. Taylor*,<sup>2</sup> there was an abundance of documents disclosed to the Taylor Defence. A number of these documents were disclosed to the Sesay Defence pursuant to Rule 68. However, other documents - that clearly were Rule 68 material - were not disclosed to the Sesay Defence.

### ***Exhibit D-63***

4. One such document is Exhibit D-63.<sup>3</sup> Exhibit D-63 was not disclosed to the Defence pursuant to Rule 68 and was not disclosed until requested by the Defence.<sup>4</sup> In response to that request, the Prosecution stated that Exhibit D-63 does not constitute Rule 68 material: "there are no outstanding Rule 68 materials at the moment. Exhibit D-63 that you refer to is none the less hereby forwarded."<sup>5</sup>
5. Sesay was convicted of unlawful killings in the Tongo Fields area (including Cyborg Pit; Counts 3-5)<sup>6</sup> and the enslavement (Counts 1 and 13)<sup>7</sup> of an unknown number of civilians in

<sup>1</sup> *Prosecutor v. Brdjanin*, IT-9936-A, AC, "Decision on Appellant's Motion for Disclosure Pursuant to Rule 68 and Motion for an Order to the Registrar to Disclose Certain Materials," 7 December 2004, p. 3.

<sup>2</sup> *Prosecutor v. Taylor*, SCSL-03-01-T.

<sup>3</sup> Appended hereto as Annex A. This document was disclosed to the Taylor Defence by the Prosecution. See, Taylor Transcript/TF1-060, 30 September 2008, pp. 17568.

<sup>4</sup> The disclosure of this document was first requested in an email from the Defence to the Prosecution dated 15 April 2009. The Defence repeated its request in emails dated 23 and 24 April 2009. See Annex B.

<sup>5</sup> See, Annex B; email from the Prosecution to the Defence dated 28 April 2009.

<sup>6</sup> E.g., Judgment, Paras. 1106-1108.

connection with diamond mining at Cyborg Pit. The Trial Chamber also found that over a hundred child soldiers (Count 12) in groups of 15 guarded Cyborg Pit<sup>8</sup> and killed miners at Cyborg Pit.<sup>9</sup> These crimes were found to have occurred between August and December 1997.

6. Exhibit D-63, a series of six *typed* reports spanning August through November 1997 concerning the activities of the RUF and AFRC in the Tongo Fields area,<sup>10</sup> nowhere states that any civilian was intentionally killed in connection with mining at Cyborg Pit,<sup>11</sup> that any civilian was subjected to forced mining (as part of a system or otherwise), or that child soldiers guarded Cyborg Pit and killed miners there.<sup>12</sup> In none of the instances to which mining is referred in Exhibit D-63 is there any indication that force was used. To the contrary, Bockarie is seeking the approval of the Paramount Chief to remain in the Tongo Fields area to make use of civilian labour for mining<sup>13</sup> – undermining significantly the Prosecution's theory, as accepted by the Trial Chamber, of the brutal capture and enslavement of hundreds of civilians at the mining pits.<sup>14</sup>
7. In other words, this document falls squarely within the Prosecution's Rule 68 obligations as
  - i) suggesting Mr. Sesay's innocence; ii) tending to mitigate the Trial Chamber's findings of his guilt; or iii) affecting the credibility of *inter alia* TF1-035, TF1-041, TF1-045, TF1-060 himself, TF1-122, TF1-367, and TF1-371 in that they testified in varying degrees to forced diamond mining in the Tongo Fields area during the junta period.

<sup>7</sup> E.g., Judgment, Paras. 1119-21 and 1129-30.

<sup>8</sup> Judgment, Para. 1664.

<sup>9</sup> Judgment, Paras. 1665-66.

<sup>10</sup> The Defence notes that there are non-contemporaneous handwritten notes that comprise the Exhibit subsequent to the six typed reports. These non-contemporaneous notes contradict the official typed reports. TF1-060 was not examined on when these handwritten notes were made and who made them. The Defence requests that the Appeals Chamber order the Prosecution to disclose the origin of the exhibit and allow the Defence to inspect the original document so that authenticity may be ascertained and, if possible, to determine when the handwritten notes were made in comparison to the typed reports.

<sup>11</sup> There are a total of eight killings in connection with mining, none of which were at Cyborg Pit. They are: three people killed by being fired upon at Wuima (00101403) (not referred to in the typed reports); child combatants killed three people while they were mining by the Roman Catholic Church at Pandebu (00101403) (note, this contradicts the typed report at 00101402 where no child soldiers are present and no one is killed); and child combatants killed two miners at Sandeyeima village (00101405) (not referred to in the typed reports). This is in stark contrast to the Trial Chamber's findings at Paras. 1082-1087 and 2050 that 63 people were killed at or around Cyborg Pit.

<sup>12</sup> Exhibit D-63 purports that child soldiers killed miners digging by the Roman Catholic Church at Pandebu (00101403); child combatants killed two miners at Sandeyeima village (00101405); and "child combatant did most of the killings at Tongo" (00101407). The Defence notes that, on p. 00101404, Exhibit D-63 states "NB. ... 5. Child combatants always playing damages and killings."

<sup>13</sup> Exhibit D-63, p. 00101409.

<sup>14</sup> E.g., Judgment, Paras. 1119-21.

8. The fact that this Exhibit was not disclosed to the Defence is a worrying example of the Prosecution's failure to interpret its obligations fairly or reasonably and will undoubtedly have increased the risk of unsafe convictions. Further, as indicated by Ground Four of the Sesay Notice of Appeal, Rule 68 Violations,<sup>15</sup> this prosecutorial misconception has tainted the trial process from the outset. In light of these manifest errors, it is undoubtedly the case that the Prosecution have in their possession a multitude of documents emanating from the Prosecution's investigations in *Sesay et al.* and *Taylor* that constitute Rule 68 material which could assist Sesay with his appeal as proof of his innocence, as mitigation against the findings of his guilt, or otherwise as affecting the credibility of Prosecution evidence.

*Interviews of Witnesses that Testified for the Prosecution in Taylor*

9. The Defence affirmatively indicates that the Prosecution has, in compliance with its Rule 68 obligations, provided the Defence with closed session transcripts from *Prosecutor v. Taylor* to which it would otherwise not have access. However, despite repeated requests,<sup>16</sup> the Prosecution has not provided the Defence with copies of recordings (e.g., witness statements) of interviews of Prosecution witnesses prior to their testimony in *Taylor*.<sup>17</sup>
10. Indeed, the Prosecution has failed to confirm that such witnesses were in fact interviewed.<sup>18</sup> Without specifically referring to the existence of such interviews, the Prosecution indicated that it has nonetheless complied with its Rule 68 obligations.<sup>19</sup>
11. This cannot be true. In *Taylor*, TF1-060<sup>20</sup> testified that the only people that died at Cyborg Pit were miners that were present at the pit when sands collapsed on them.<sup>21</sup> This is in direct

<sup>15</sup> *Prosecutor v. Sesay*, SCSL-04-15-A-1255, "Notice of Appeal," 28 April 2009, p. 6.

<sup>16</sup> See Annex B; emails from the Defence to the Prosecution dated 23, 24, 29 April and 5 May 2009.

<sup>17</sup> See Annex B; emails from the Prosecution to the Defence dated 23 and 28 April and 2 May 2009. The witnesses referred to are Prosecution witnesses that testified in both *Prosecutor v. Taylor* and *Prosecutor v. Sesay et al.*, and witnesses that testified in *Prosecutor v. Taylor* only.

<sup>18</sup> See Annex B; email from the Defence to the Prosecution dated 5 May 2009. The Defence notes that, as of the morning of 7 May 2009, the Defence has not yet received a response to this email from the Prosecution.

<sup>19</sup> See Annex B; email from the Defence to the Prosecution dated 23 and 28 April and 2 May 2009.

<sup>20</sup> TF1-060 also testified in *Sesay et al.*

<sup>21</sup> Taylor Transcript/TF1-060, 29 September 2008, pp. 17538-40.

Q. Thank you. Was this mining ever dangerous for the miners aside from the killings [of three civilians at Pendembu, two civilians at Sandeyeima, and three people at Wuima] you've just spoken of? When the workers were working for the AFRC, was it ever dangerous?

A. Yes, sir. It was dangerous as time went on. This is the trailings, I mean sand, at Cyborg. Sand. So when they came they did not open the pit widely. So while at times they were digging, then the sand have to collapse and then kill people.

\*\*\*continued\*\*\*

Q. You mentioned this cave-in. Did this happen once, or more than once?

A. More than once.

Q. And how do you know about it?

A. Reports were brought to us. Even they themselves, they died there.

contradiction to the evidence in *Sesay et al.* – and the evidence upon which the Trial Chamber’s convictions are supported – that miners were killed at Cyborg Pit by being fired upon.<sup>22</sup> As TF1-060 was led on this evidence during his direct-examination in *Taylor*, the Prosecution must have interviewed TF1-060 subsequent to his testimony in *Sesay et al.* and prior to his testimony in *Taylor*, and that interview must contain exculpatory material.

12. On re-examination in *Taylor*, TF1-077<sup>23</sup> testified that he was first captured on 16 December 1999 and then subsequently brought to Tombodu to engage in forced mining.<sup>24</sup> This is in direct contravention to the Trial Chamber’s finding that TF1-077 was captured on 16 December 1998 thus leading to Sesay’s conviction for planning enslavement in Tombodu for portions of 1999. Should a recording of an interview of TF1-077 exist to the effect that he was captured in December 1999 instead of December 1998 it is clearly exculpatory and should have been disclosed pursuant to the Prosecution’s Rule 68 obligations.
13. TF1-568,<sup>25</sup> a senior RUF radio operator, was cross-examined on a recording of an interview he had with the Prosecution. In that interview, TF1-568 testified that the only time for certain that he knew there was force in Kono District in connection with mining was in 1998. TF1-568 was uncertain whether there was force in 1999 and was certain that there was no force in 2000.<sup>26</sup> A recording of an interview to this effect is clearly exculpatory for at least the reason that it directly contravenes the Trial Chamber’s findings and shows that there was no force used in diamond mining after Sesay took over the mining operations in 2000. It also casts doubt on the Trial Chamber’s finding that force was used in mining in 1999.

### **Remedy Sought**

14. The Defence requests an immediate independent review of the material in the Prosecution’s possession. The Prosecution appears incapable or unwilling to act reasonably and fairly as concerns its Rule 68 obligations. It is manifestly obvious that any information that contradicts

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Q. Who?

A. The rebels.

Q. I don't want you to guess, but do you have any idea how many people? If you don't, say so. How many civilians died in those cave-ins?

A. I don't know, sir. Many.

<sup>22</sup> Judgment, Para. 2050.

<sup>23</sup> TF1-077 also testified in *Sesay et al.*

<sup>24</sup> Taylor Transcript/TF1-077, 14 October 2008, pp. 18257-58. TF1-077 was captured after the Lomé Accord. TF1-077’s re-examination was directed at determining whether he was captured in December 1998 or December 1999. TF1-077’s evidence, that he was captured after the Lomé Accord, is dispositive that he was captured in December 1999.

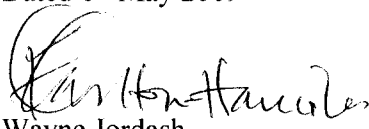
<sup>25</sup> TF1-568 testified in *Taylor* but not *Sesay et al.*

<sup>26</sup> Taylor Transcript/TF1-568, 16 September 2008, pp. 16408.

evidence provided by a Prosecution witness is exculpatory within the meaning of Rule 68.<sup>27</sup> It is trite law that this is applicable when the contradicting information emanates from previous statements provided by the witness in question.<sup>28</sup> In short, the Prosecution is acting in bad faith and/or has misdirected itself to such a degree that its overall approach to its Rule 68 obligations is brought into question.

15. Additionally the Defence requests that the Prosecution be ordered to disclose all material falling within the categories outlined in this motion, including all witness statements provided by Prosecution witnesses that testified in *Sesay et al.*, whether as part of the investigations into *Sesay et al.*, *Taylor*, or otherwise.
16. The Defence, having been materially prejudiced, also requests the Appeals Chamber to sanction the Prosecution for their non-compliance with their Rule 68 obligations.

Dated 6<sup>th</sup> May 2009

  
Wayne Jordash  
Sareta Ashraph  
Jared Kneitel

<sup>27</sup> *Prosecutor v. Karemera et al.*, ICTR-98-44-T, TC, "Decision on Defence Motions for Disclosure of Information Obtained from Juvénal Uwilingiyimana," 27 April 2006, para. 9.

<sup>28</sup> *Prosecutor v. Akayesu*, ICTR-96-4, AC, "Judgment," 1 June 2001, para. 142.

**ANNEX A**  
**Exhibit D-63**

Tongo Field  
Lower Bambara Chiefdom  
24th August 1997

The Paramount Chief  
Lower Bambara Chiefdom  
c/o No. 57 Blama Road  
Kenema

00101408

Dear Sir,

A SITUATION REPORT OF LOWER BAMBARA CHIEFDOM AFTER <sup>the</sup> BASEMENT OF THE  
MILITARY - JUNTA

On Monday the 11th August 1997, the military-Junta whose coming into Lower Bambara Chiefdom was finally announced by two heavy RPc firings at about 3.00p.m., from both Wuima and Largo directions (ie North and West Directions of the Chiefdom), arrived at Tongo at about 6.30p.m., under heavy rains. The continued heavy firings though into the air, with which the Military-Junta entered the chiefdom, sent away almost everybody into the bush from all villages in the chiefdom; the environs of both Tongo and Panguma in particular. This created heavy panic in the chiefdom, thereby causing harms to many people, ie, nursing mothers, pregnant women and the aged in particular.

While we were staying in the bush, I managed to come out on the second day to observe the condition of our village-Lalehun. With the wide openings of all doors and windows of every houses, it was discovered that heavy lootings have taken place in all houses. After this observation, I returned into the bush-ie Sorkoihun, our family hiding place.

Moving a step further, getting an information that business was on a full swing at Tongo, on the 5th day, I managed to visit the township of Tongo, where the same heavy lootings in almost all houses was also discovered. While all villages in the chiefdom were abandoned by their indigenes, these heavy lootings continued for complete one week.

However, upon all these lootings, to our greatest surprise, <sup>no only few</sup> killings ~~or~~ burning of houses was done by the Junta as ~~was formerly~~ expected, basing upon the information gathered prior to their entry the chiefdom. Nonetheless, certain incidents that took place were as follow:

1. That at Sandeyeima village, a house was burnt
  2. That at Tokpombu II, Mr. M.A. Foday's house was burnt
  3. That at Tokpombu I, Mr. M.J. Quees's house was set on fire but only the furniture in it burnt down.
  4. That at Tokpombu I, one man was killed by a stray bullet.
  5. <sup>That by a church at Tokpombu I, a woman was killed by a stray bullet.</sup>
- Finally, apart from the heavy lootings and off-loading of people, raping by some Junta members have started in the chiefdom. All these actions have caused some people on deciding to stay permanently in the bush - i.e. Sorkoihun, eventhough Col. Sam Bockarie (mosquito) is trying to put this under control by firing a foot of anyone now reported of any of the above crimes in the chiefdom.

A report prepared and faithfully submitted by:

Abdul O. Conton

CC: <sup>Advisory</sup> All section Chiefs  
The Chairman - L/B Chiefdom Committee



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Lower Bambara Care-taking Committee  
Tongo Field  
Lower Bambara Chiefdom  
10th September 1997

The Paramount Chief  
Lower Bambara Chiefdom  
c/o No. 57 Blama Road  
Kenema

00101406

Dear Sir,

A CONFIDENTIAL REPORT AGAINST THE MILITARY-JUNTA AT TONGO FIELD (1)

On the 8th of September this year, Col. Sam Bockarie (mosquito) went to the O.C. Secretariat at Tongo and told him that he has heard an information that there are kamajors in Dodo chiefdom, and that, he should therefore carry his combatants there to squash them off. Col. Sam Bockarie remarked that his own policy as a warrior is that, he never permits his enemy to stay near his own territory at all. But before this, the O.C. at Tongo several times requested us, ie, the Care Taking Committee to talk to our Kamajor brothers to come out of the bush and surrender their guns to them. To this request, our ready-made answer has always been, I quote: "We have no kamajors in Lower Bambara Chiefdom, and do not know anywhere they are either."

From the above order given to the O.C. by Col. mosquito, according to information gathered, without wasting any time, he organised a trip to Dodo Chiefdom <sup>taking</sup> with him about 300 combatants.

But very unfortunately for them, when they went, they received a heavy casualty figure which made the very few fortunate ones run to Tongo for their lives as fast as they could. But as a habit, they came singing as if they gained a mighty victory. However, very unfortunately, while returning, they came across one Mr. John Dakowa, a retired policeman, and killed him near Panguma, claiming that he was a kamajor. Also, many people who were working in their farms around Panguma area left their farms and ran for their lives into the bush.

Added to this, reports of raping, off-loading and looting are still very rampant in the entire chiefdom even though the above committee has made many reports to the O.C. Secretariat at Tongo.

A report prepared and faithfully submitted by: ✓

Abdul O. Jenseh  
Secretary General

cc: All Section Chiefs - Lower Bambara Chiefdom  
The Chairman, Lower Bambara Advisory Committee

PTO

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Lower Bambara Care-Taking Committee  
Tongo Field  
Lower Bambara Chiefdom  
17th September 1997

The Paramount Chief  
Lower Bambara Chiefdom  
c/o No 57 Blama Road  
Kenema

00101413

Dear Sir,

A CONFIDENTIAL REPORT AGAINST THE MILITARY- JUNTA AT TONGO (2)

On the 16th September 1997, a re-inforcement made by the O.C. Secretariat Tongo, with the hope of finally squashing the kamajors in the entire Dodo Chiefdom, according to information, was about 800 combatants. This time, according to a thorough research, this is the worst battle the military-Junta have had ever since they took over power in this country. For instance, out of the 800 that went to Dodo Chiefdom, about 400 were killed, 70 captured alive and 50 injured beyond cure. In short, not up to 100 returned to Tongo without any injury.

However, as it is always the case, whenever the Lion and the Elephant fight, it is the grasses that suffer, likewise, civilians are also always the target of any two warring factions. Hence, in this battle, the few fortunate Junta combatants, while escaping, ran into Pa Vandei Sei, the Town Chief of Panguma and killed him.

In addition to this, from a keen research made <sup>PH</sup> 15 people were killed at Bumpen village, a village of my own maternal land. Amongst these, was one Saffa Balie, a prominent youth leader of all the villages around that area.

In connection with the above incident, a report was made by the committee to the O.C. Secretariat - Tongo, but regrettably remarked that, all those killed at Bumpen were either Kamajors or Kamajor collaborators. In fact, when even we asked permission as relatives to go and bury the said corpses, we were never allowed to do so. Instead, he laid emphasis on his men's frequent visiting of the said area and that whenever was found there would be termed as either a kamajor or a kamajor collaborator and therefore be killed instantly. In brief, all those who were killed at Bumpen village were never buried at all.

A report prepared and faithfully submitted by:

Abdul O. Conteh  
Secretary General

cc: All Section Chiefs - Lower Bambara Chiefdom  
The Chairman - Lower Bambara Advisory Committee

Lower Bambara Care-Taking Committee  
Tongo Field  
Lower Bambara Chiefdom  
20th September 1997

The Paramount Chief  
Lower Bambara Chiefdom  
c/o No. 57 Blama Road  
Kenema

00101412

Dear Sir,

A REPORT AGAINST THE O.C. SECRETARIAT - TONGO FIELD (3)

On Wednesday the 24th September, 1997, at about 12.00 noon, the O.C. Secretariat invited all the 13 man Care-Taking Committee members in his office. On that day, only nine of us were present. In his office, other people we found present were as follow:

1. Lieutenant Dennis (Peoples Army) - the Public Relation Officer,
- 2 Mr. Ishmael Timbo - The Secretary General
- 3 Mr. Ibrahim Kamara - the 2 I.C.
- 4 Staff Sgt. Bakarr - The C.S.O. and many armed combatants. While we were in this office, the above O.C. ordered his securities to close both the office door and main gate of the entrance. There were even no enough chairs for all the committee members to sit down, but none of the secretariat officers cared about this. Some members remained standing.

At this juncture, without even praying, the O.C. went on addressing us; "I quote: 'Before you members of this 13 Man Committee came here, you were given an assignment by the SOS East; ie, that of the removal of your Kamajor brothers from the bush to come and surrender their guns to us. But ever since you people came, no single Kamajor has come to surrender his gun to us. This means that, you people have not made any effort at all. Therefore, at this moment, I want you to tell me that you have got tired so that I can send my men to search for them in all the villages and the bushes in the chiefdom. I want no statement from anyone of you other than a Yes reply to this request '".

At this point, I asked a five minutes permission from him in order to go out and have heads together with the other members to come and give him the reply; and this, he did. But as we went out of the office into the parlour of the same building, I did not allow anyone of them to talk for fear of implication. Instead, I only asked permission from them, Mr. Morison Farma - the Committee Chairman, in particular, to give me the chance as Secretary General to give a ready-made reply to the O.C. and his staff members, and this, they did. So when we returned into the office of the O.C., I told him categorically that we were never in a position to give them the go ahead in searching the villages and the bushes in the chiefdom for Kamajors for the simple fact that, they have already set an example at Bumpah village by killing many civilians and termed as Kamajors and Kamajor collaborators. Likewise, if we allow them to go ahead, they must continue killing innocent civilians and the Committee should be blamed for this in future. I added that it was both the SOS- East and the Paramount Chief who sent us here to come and take care of our civilian relatives; and that we should therefore be given time to go and give our reply to them at Kenema. So we were given but only three days to come and do this. And before coming to Kenema, we tried to get representatives of all the seven sections of the Chiefdom to join us in this trip. This is the pending problem now in the chiefdom; this is the reason we are present before you here today in this large number sir.

A report prepared and faithfully submitted by:

Abdul O. Conteh (Secretary General)

Copy: ① All Section Chiefs.

② The Chasman - L/Bambara Admissions

Lower Bambara Care-Taking Committee  
Tongo Field  
Lower Bambara Chiefdom  
18th October 1997

The Paramount Chief  
Lower Bambara Chiefdom  
c/o 57 Blama Road  
Kenema

00101410

Dear Sir,

A CONFIDENTIAL REPORT AGAINST SOME OF THE MILITARY-JUNTA IN THE CHIEFDOM

Reports made this week ie, Monday, the 13th October - Saturday the 18th October at the above office against the Military-Junta in the Chiefdom were as follow:

1. That on Thursday the 9th of this month, some members of the military Junta went to Swaraylaa, a village near Panguma and abducted four newly discharged initiated Londo-girls and from that time up to date 18/10/97, all efforts have been exploited by the parents in recovering them but to no avail.
2. That farmers around Bumpen village are greatly harrassed by the Junta in their farms now ever since that incident took place at Bumpen. Infact, this has caused them abandoned their farms almost two weeks now.
3. That reports of rampant raping, looting and off-loading of people in the chiefdom that reached this office this week are very great and serious.
4. Finally, that all these complaints have been officially reported to the O.C. Secretariat - Tongo, for immediate security actions but to no avail. Therefore, it is high Chiefdom authorities looked for solutions to these problems before becoming worse in the Chiefdom and completely going out of control.

A report prepared and faithfully submitted by:

Abdul O. Conteh  
Secretary General

cc: All Sections/Chiefs, Lower Bambara Chiefdom  
The Chairman, Lower Bambara Chiefdom, Advisory Committee

*abducted  
period of aduction - 9/10/97 - 18/10/97*

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Lower Bambara Care-Taking Committee  
Tongo Field  
Lower Bambara Chiefdom  
5th November 1997

The Paramount Chief  
Lower Bambara Chiefdom  
c/o No. 57 Blama Road  
Kenema

00101402

Dear Sir,

A CONFIDENTIAL REPORT AGAINST THE MILITARY - JUNTA OF TONGO FIELD  
LOWER BAMBARA CHIEFDOM - (8).

From keen studies carried out of the past and the present, it appears as if Lower Bambara Chiefdom, Tongo Field in particular, is always chosen as one of the places to be destroyed by any military government that gains power in this country. For instance, when NPRC government gained power in this country, the NDMC Electric power machine, which was capable of supplying the entire chiefdom with light, was completely destroyed by its soldiers who were staying at Tongo Field through illicit mining and other things else. In addition to this, all the valuable building materials on the houses at the Bungalow were completely looted by them. More important still, the Electric Water Supply pipes at both Bungalow and Labour Camp were removed by these soldiers for the constructions of their own private houses in their homes.

Moving furthermore to the Military-Junta and see how worse they are, their attitudes are as follows:

1. That the Tongo Aeroplanes field is no more a plane field but a mining site and that if no solution is found to stop the said mining, within two weeks time, it would be completely cut-off. *It is now called side-D. B. K.*
2. That the Kono-highway has been completely cut-off by the Military Junta apposite the former Tongo hospital.
3. That most houses at the Labour Camp, security-Headquarters and the former hospital camp are falling down through the bad diggings carried out by the Junta members at Tongo.
4. That cemetery sites at the security-Headquarters, Tongolaa, Bormie, Sandeyeima etc. have all been destroyed through bad diggings.
5. That the Bumpah village poro bush and the Tongolaa bondo-bush have been completely destroyed through digging and that they are no longer good for any secret-society purposes.
6. That the motor roads leading from Tongolaa town to the security - Headquarters, Peyama village - Tongo, Lowoma, and Wuima village have all been cut-off by the Military-Junta in the Chiefdom.
7. That the Jehova witness and the Roman Catholic Churches at Pandebu have fallen down through the destructive diggings by the Junta at Tongo.
8. That Bumpah and Maadahung Villages have been burnt down by the Military-Junta at Tongo.
9. That eight houses were recently i.e. 2/11/97, burnt down at Giehun, the headquarter town of Ser section, by the Military Junta, but falsely putting the crime against the Kamajors.

*Bungalow*

- 10 That the military-Junta at Tongo have started attacking lorries plying Largo-Tongo highway at night, and off-loading them, but falsely accusing the kamajors of the crime.
- 11 That raping, off-loading, looting and molestations to civilians have now gone beyond control in the entire chiefdom.
- 12 Finally, that except someone is a professional sociologist who can perfectly use the method of "participant observation" studies of a certain society, i.e., the Military-Junta, in order to give correct information about their behaviours; no-one, particularly those who wish to maintain good name and character of their families would be able to live with them.

A report prepared and faithfully submitted by:

Abdul O. Conteh  
Secretary General

00101404

cc: All Section Chiefs - Lower Bambara Chiefdom.

The Chairman - Advisory Committee, Lower Bambara Chiefdom.

- ⑨ Attacking lorries at night and off-loading them.
- ⑩ Not only molesting civilians, but <sup>also</sup> beating them.

- NB ① MR Kemoh's foot <sup>was</sup> short by one  
pockarice elbao (SH or Junta) at Guakoma Village.
- ② Four men's hands burnt in hot palm oil and  
advised by Mosquito to wash their hands in  
SLPP's office. ③ <sup>mighty</sup> Captain Eagle always leads  
his troop to Dodo to fight the Kamajors.
- ④ Lieutenants Marah and Akin in charge of Tongo.
- ⑤ Child Combatants always playing damages and  
killings.
- ⑥ Finally, one day they tried to carry me to ~~Suturna~~  
Seimbeima to go and fight against the Kamajors. They  
only wanted to ~~safe~~ kill me; but I was saved  
by one Captain Abdul Raziz from them.

P.T.O

Please note ~~that~~ following points: 00101407

- (1) that upon all the reports made to Mosquito / Sam Beale and he acted only twice; in fact, in the case he shot the three (3) men on the spot for looting one woman at Tekpombe Buima (ie Tekpombe) and secondly, when the first initiate girls from Bundo Society. Since they entered Lower Bundo School, Tonga-Field in particular, this was the only reports on which he reacted.
- (2) Note also that four houses were burnt on that day ie 11th August 1997 when the Finta entered Tonga-Field, not as much as we expected.

- (3) When I went into the bush on the 11th August, after the Finta ~~had~~ entered Tonga, I ~~and~~ came to town the next day of their stay, ie on the 12th August. I went to look out for Salt at Lalchen and 2 days later
- (4) Over 15 people were killed at Tekpombe at one time, terming them as Kamajors and Kamajors collaborators.

- (5) Child combatants did most of the killings at Tonga. Furthermore, most of the combatants, ie the Finta did most of the destructions without the orders from Mosquito. This was simply because they lost control completely from their base (ie their commanders).

(1103\*) I came to Lalchen town the next day (ie on the 12th), and to Tekpombe on the 14th to look out for Salt. On the 16th again, I went to Tekpombe for the same Salt. It was this time Moron Farma Saw me and talked with me.

00101409

Sam Bockarie (Mosquito) wanted the approval of our paramount chief for their stay in the chiefdom for two main reasons; they are as follows:

- (1) In order to have the civilian populace in the chiefdom, males in particular to be used as labourers for their diamond mining.
- (2) Secondly, in case of any attack by the Kamanjors or ECOMOG soldiers, they can use the civilians as human shields so that their enemies will not have any good time for better firing at them as many civilians would be killed.

(3) Civilians are also needed for certain domestic work, i.e. getting wood for cooking and selling in the markets.

W/B Final meeting for the Care Taker Committee took place on the 24th August. The Committee finally returned to Tongo on the 30th and started operating on 1st September.

(2) On the 8th of September, Mosquito sent his troop to Dodo C/dom to fight against the Kamanjors. Those who survived, while returning to Tongo, killed MR John Dakowa near Panguma, a retired police officer.

(3) The second venture to Dodo took place on the 16th Sept. Many <sup>soldiers</sup> Tanta were killed. Again the few that survived, ran into Pa Vandi Sei, the town Chief of Panguma and killed him.





Saturday the

On 30th August, at Lenea, Retired Colonel Issa Sesay ordered his body-guards to beat the O.C. Secretariat, Captain Kamleh. This came up on behalf of two drums of Petrol ~~confiscated~~ <sup>which he</sup> retired Colonel Issa took from one business man. The main body guard for Colonel Issa Sesay was called Red-Lion. He had the complexion of that of Jews, and he was very wicked.

00101463

at about 12 noon;

On Wednesday, the 24th Sept. 1997, the O.C. Secretariat invited all the 13 man Committee to his office. Nine of the Committee members were present.

Note the following:

by the Junta

- (1) A man and his wife were killed at Maslahum Village at about 7.30 pm just after coming from their farms.
- (2) Three people were killed at bluma Mining Site by the junta by opening fire at them. They were five in number. It was the balance two people that brought the report to the caretaker - Committee at Tongo.
- (3) Three people were also killed by the child-combatants at Pandebu. People were digging by the Church (i.e. Roman Catholic Church) while the child combatants opened fire at them and three of them dropped down dead. 1 was the balance 2 of the miners that the

People that were present in 24th August meeting were:

- (1) The Paramount Chief, D.S.D. Sidique Turay,
- (2) One (1) representative of Sam Bockarie (Alias Mosquito)
- (3) One (1) " " D.C. Secretariat, Capt. Kanneh,
- (4) MK K.B. Sibo, R. Swaray Koko, ~~and~~ data chief
- (5) Sheku Fariah and some other stakeholders in the

Chiefdom. In this meeting, the 13-man Committee was formed. The positions were as follows:

- |                          |                   |
|--------------------------|-------------------|
| (1) Morison Fariah       | Chairman          |
| (2) H.K. Seppah          | Vice-Chairman     |
| (3) H.O. Conteh          | Secretary General |
| (4) Mohamed Kutuba       | Member            |
| (5) Paul Dauda           | "                 |
| (6) Michael Gomez        | "                 |
| (7) Sidique Koroma       | "                 |
| (8) Alhaji Swaray        | "                 |
| (9) HR Boma Gaffa        | "                 |
| (10) Chief Musa Bockarie | "                 |

00101411

Note: The list of the members of the said Committee was drafted on the 24<sup>th</sup>, typed on the 25<sup>th</sup> and endorsed by the S.O.S. - East ~~on~~ on the 26<sup>th</sup>. Each member was given a copy. We were given each a copy in order to be used as a protection against the RUF/AF/KC in Tongo and also on the Tongo-Kenema Rd, whenever coming to travelling. From the 26<sup>th</sup> - 30 August, we were still in Kenema as there was no escort to Tongo to take care of the convey vehicles to Tongo. We left Kenema for Tongo on the 31<sup>st</sup>.

It was two (2) of the miners that brought the report to the caretaker committee at Tongo.

④ Child combatants also killed two (2) civilians at Waterside of Sandeyima ~~village~~ village. They found people washing their pile of gravel and then opened fire at them and then killed two of them. Reason: They Funta said, they were not allowed to mine for themselves at all. Funtayona Tongo was to mine for the Funta govt. (ie H.F.C.).

Note the following

00101405

① Six of those <sup>who</sup> left Tongo for Kenema were as follows:  
 (1) Merison Fama (2) Paul Denda (3) Ibrahim  
 (4) Mahamed Kutuba (5) MR Sidique Koroma  
 and (6) myself (H.C. Catch)

② We left the 20th August. On the 21st, we went to our Paramount chief ~~place~~ and had a closed door meeting in connection with our said trip. ③ From 21st to 23rd, we tried to get good number of the natives of L/Pan area chiefs in order to have a meeting in connection with the purpose of trip.

④ On the 24th, we met at the Care-taker Committee <sup>club</sup> was formed. The list of the 13 men Committee was drafted. In that meeting, S.D.C. Sidique Turay was present together with 1 rept for Mosquito and 1 rept for ~~sec~~ sec. 13th.

**ANNEX B**  
**Emails Between the Prosecution and the Defence**  
**re: Disclosure of Rule 68 Materials**

Email dated 5 May 2009, from the Defence to the Prosecution;  
Email dated 2 May 2009, from the Prosecution to the Defence;  
Email dated 29 April 2009, from the Defence to the Prosecution;  
Email dated 28 April 2009, from the Prosecution to the Defence;  
Email dated 24 April 2009, from the Defence to the Prosecution;  
Email dated 23 April 2009, from the Prosecution to the Defence;  
Email dated 23 April 2009, from the Defence to the Prosecution;  
Email dated 16 April 2009, from the Prosecution to the Defence; and  
Email dated 15 April 2009, from the Defence to the Prosecution.

RE: Sesay Defence - Rule 68 materials  
From: **Jared Kneitel** (jkneitel@hotmail.com)  
Sent: Tue 5/05/09 8:28 AM  
To: wagona@un.org  
Cc: hudroge@un.org; fynnr@un.org; gachoud@un.org

Vincent,

Thank you for providing us with TF1-077's transcript.

Unfortunately, we feel that the Prosecution has unsatisfactorily answered our questions. If the Prosecution would be so kind as to answer the questions raised in our previous emails it would be appreciated.

Could the Prosecution please confirm why the remainder of the exhibits referred to in the "Documents Seized from RUF Kono Office, Kono District" do not constitute Rule 66 and/or Rule 68 material.

Could the Prosecution please confirm why Exhibit D-63 does not constitute Rule 66 and/or Rule 68 material.

For avoidance of doubt based upon interpretation, could you please answer the following:

For witnesses that testified for the Prosecution in both the RUF and Taylor trials, did the Prosecution interview those witnesses subsequent to their testimony in the RUF trial and prior to their testimony in the Taylor trial? Yes or No?

For witnesses that testified for the Prosecution in the RUF trial but did not testify in the Taylor trial, did the Prosecution interview those witnesses subsequent to their testimony in the RUF trial? Yes or No?

Please provide answers to these questions by the close of business tomorrow, Wednesday.

Jared

To: jkneitel@hotmail.com  
CC: johnson30@un.org; hudroge@un.org; fynnr@un.org; gachoud@un.org  
Subject: Fw: Sesay Defence - Rule 68 materials  
From: wagona@un.org  
Date: Sat, 2 May 2009 11:45:11 +0000  
Attachments: 14 October 2008 - CONFIDENTIAL.pdf (228.0 KB)

Jared,

On 23 April 2009, we wrote that: **"The Prosecution has been undertaking an on-going review of all materials arising from the Taylor trial including witness statements, transcripts, witness payments, documents and exhibits and the Prosecution has been complying with its Rule 68 obligations in this regard. Many of the documents would have been reviewed even before they became exhibits in the Taylor trial."**

The on-going review for compliance with our Rule 68 obligations referred to above, included the materials referred to in your questions A, B, C and D contained in your email of 29 April 2009 below.

As indicated, many of the documents tendered as exhibits in Taylor, would have been reviewed for compliance with our Rule 68 obligations, even before they were tendered in Court as exhibits in the Taylor trial. Exhibit P.375 referred to in our previous email, (one of the documents in the 'Decision on Prosecution Motion for Admission of Documents Seized from RUF Kono Office, Kono District' dated 27 February 2009 (Trial Chamber II), disclosed to the Sesay Defence on 20 September 2007) is an example of a document disclosed long before it was tendered in Court as an exhibit in the Taylor trial.

Per your request, the transcript of TF1-077 is hereby forwarded.

Regards.

Vincent

Jared Kneitel <jkneitel@hotmail.com>  
29/04/2009 13:57

To <wagana@un.org>  
<hudroge@un.org>, <fynnr@un.org>,  
cc <gachoud@un.org>  
Subject RE: Sesay Defence - Rule 68 materials

Vincent,

Thank you for providing us with a copy of Exhibit D-63.

As we indicated earlier, we do not have access to the transcript of TF1-077 from the Taylor trial (14.10.08). Could you please provide us with a copy of that transcript by the close of business today.

In addition to the above, could the Prosecution please provide answers to the following:

- A) Why does Exhibit D-63 not constitute Rule 66 and/or Rule 68 material?
- B) Why do the exhibits referred to in the "Documents Seized from RUF Kono Office, Kono District" not constitute Rule 66 and/or Rule 68 material?
- C) For witnesses that testified for the Prosecution in both the RUF and Taylor trials, did the Prosecution interview those witnesses subsequent to their testimony in the RUF trial and prior to their testimony in the Taylor trial?
  - ☐ C)i) If so, why do these interviews (i.e., the recordings thereof) not constitute Rule 66 and/or Rule 68 material?
- D) For witnesses that testified for the Prosecution in the RUF trial but did not testify in the Taylor trial, did the Prosecution interview those witnesses subsequent to their testimony in the RUF trial?
  - ☐ D)i) If so, why do these interviews (i.e., the recordings thereof) not constitute Rule 66 and/or Rule 68 material?

It would be greatly appreciated if the Prosecution could provide answers to the above questions by the close of business tomorrow.

Thanks,  
Jared



To: jkneitel@hotmail.com  
CC: johnson30@un.org; hudroge@un.org; fynnr@un.org; gachoud@un.org  
Subject: RE: Sesay Defence - Rule 68 materials  
From: wagona@un.org  
Date: Tue, 28 Apr 2009 16:08:24 +0000  
1 attachment: D-63 SCSL...pdf (512.9 KB)

Jared,

In response to your emails below, there are no outstanding Rule 68 materials at the moment. Exhibit D-63 that you refer to is none the less hereby forwarded.

As I said before, the Prosecution has been complying with its Rule 68 obligations on an on-going basis. For example, our records show that Exhibit P.375, one of the documents in the 'Decision on Prosecution Motion for Admission of Documents Seized from RUF Kono Office, Kono District' dated 27 February 2009 (Trial Chamber II), was disclosed to the Sesay Defence on 20 September 2007.

Regards.

Vincent

265

Jared Kneitel  
<jkneitel@hotmail.com>  
04/24/2009 12:51 PM

To<wagona@un.org>  
<fynnr@un.org>, <gachoud@un.org>,  
cc <hudroge@un.org>  
SubjectRE: Sesay Defence - Rule 68 materials

Thank you Vincent,

We appreciate the Prosecution's ongoing efforts to comply with Rule 68. We are eagerly anticipating a response concerning the outstanding documents referred to in our 15 April email. Could you please respond as soon as possible and no later than the close of business on Monday.

With regards to TF1-077, the transcript for this witness cannot be accessed through the SCSL website (there is no link to the transcript of 14.10.08). Could you please send us the transcript?

Jared

To: jkneitel@hotmail.com  
CC: fynnr@un.org; gachoud@un.org; hudroge@un.org; wagona@un.org;  
johnson30@un.org  
Subject: Re: Sesay Defence - Rule 68 materials  
From: wagona@un.org  
Date: Thu, 23 Apr 2009 15:48:41 +0000

Jared,

In response to your mail of 15 April 2009 and the one below, the Prosecution has been undertaking an on-going review of all materials arising from the Taylor trial including witness statements, transcripts, witness payments, documents and exhibits and the Prosecution has been complying with its Rule 68 obligations in this regard. Many of the documents would have been reviewed even before they became exhibits in the Taylor trial. The Prosecution is presently checking its records to satisfy itself whether any of the materials referred to in your two emails have not yet already been reviewed for this purpose. Any materials found not to have already been reviewed will be reviewed.

Our records show that the following RUF witnesses were also witnesses in Taylor: TF1-074, 064, 077, 217, 331, 305, 197, 355, 304, 015, 195, 192, 218, 263, 362, 114, 060, 125, 122, 360, 215, 314, 045, 023, 029, 101, 104, 097, 330, 028, 174, 168, 367, 334, 371.

The Sesay Defence was not served with the transcript of TF-077, who however testified in open court on 14.10.08.

Regards.

Vincent

267

Jared Kneitel  
<jkneitel@hotmail.com>  
04/23/2009 01:47 PM

To <wagana@un.org>, <fynnr@un.org>, <gachoud@un.org>,  
<hudroge@un.org>

cc

Subject: Sesay Defence - Rule 68 materials

Vincent,

Thank you for your 16 April email confirming our receipt of electronic copies of the transcripts to which I referred in my 15 April email.

In furtherance of our Rule 68 discussions, could you please confirm that the following witnesses are the only witnesses that were called in both the Taylor and RUF cases for the Prosecution: TF1-015, -023, -028, -029, -045, -064, -077, -097, -101, -104, -114, -122, -125, -168, -174, -192, -195, -197, -217, -263, -304, -314, -330, -334, -355, -360, -362, -367, and -371.

We appreciate that a number of these witnesses testified in open session and therefore the transcripts of their testimony were not provided to the Sesay Defence under Rule 68. However, we inquire whether the Prosecution interviewed the above witnesses subsequent to their testimony in the RUF trial and prior to their testimony in the Taylor trial. If so, did the Prosecution record those interviews, does the Prosecution believe that those recordings constitute Rule 68 material, and does the Prosecution believe that those recordings should be disclosed to the Sesay Defence? If the Prosecution believes that those recordings should be disclosed to the Sesay Defence, when does the Prosecution intend to make such a disclosure?

Our records do not indicate that we were served with the transcripts of TF1-077 from the Taylor trial. Could you please ensure that these are delivered to us (electronically) by close of business Monday. If there are other outstanding transcripts, please ensure that they are also delivered by close of business Monday.

In addition, if there are other witnesses that testified in the RUF trial, were interviewed by the Prosecution subsequent to their testimony in the RUF trial, and for some reason were not called to testify in the Taylor trial, did the Prosecution record those interviews, does the Prosecution believe that those recordings constitute Rule 68 material, and does the Prosecution believe that those recordings should be disclosed to the Sesay Defence? If the Prosecution believes that those recordings should be disclosed to the Sesay Defence, when does the Prosecution intend to make such a disclosure?

For the instant purpose, we intend the broadest definition of 'interview' and 'recordings'.

We also haven't received a response to our 15 April email in connection with whether there were exhibits (e.g., D-63; presented 30.09.08) presented during the course of the Taylor trial to which we may be entitled under Rule 68 or whether there is other documentary evidence (e.g., the documents referred to in the 'Decision on Prosecution Motion for Admission of Documents Seized from RUF Kono Office, Kono District' dated 27 February 2009 (Trial Chamber II)) to which we may be entitled.

Please provide us with answers to the above by close of business Monday.

Sincerely,

Jared  
Sesay Defence

**Vincent  
Wagona**  
04/16/2009  
01:56 PM

To: SCSL Defence-Sesay/SCSL@SCSL  
cc: Amira Hudroge/SCSL@SCSL, Reginald Fynn/SCSL@SCSL,  
Regine Gachoud/SCSL@SCSL, w.jordash@doughtystreet.co.uk; sareetaa  
Subject: Re: Electronic Copies of Rule 68 Material  
5 attachments: Abdul Oto...pdf (35.7 KB), TF1-263.pdf (38.0 KB),  
TF1-122.pdf (32.8 KB), TF1-367.pdf (42.5 KB), TF1-568.pdf (37.8 KB)

Jared,

Our records (here attached) show that the following transcripts from the Taylor trial were already electronically sent to the Sesay Defence:

TF1-367: 20.08.08 and an unredacted copy of 28.08.08;

TF1-568 [REDACTED]: 12, 15, 16, 17.08.08;

TF1-122: 18, 19.09.08;

Abdul Otonjo Conteh [TF1-060]: 29, 30.09.08; and

[REDACTED] [TF1-263]: 6, 7.10.08.

We will in due course respond to the rest of your email.

Regards.

Vincent

**SCSL Defence-  
Sesay/SCSL**

04/15/2009  
04:50 PM

To Vincent Wagona/SCSL@SCSL  
Reginald Fynn/SCSL@SCSL, Regine Gachoud/SCSL@SCSL,  
cc Amira Hudroge/SCSL@SCSL, w.jordash@doughtystreet.co.uk;  
saretaa@gclaw.co.uk; jkneitel@hotmail.com  
Subject: Electronic Copies of Rule 68 Material

Vincent,

The Prosecution has supplied the Sesay Defence with hard copies of transcripts from the Taylor trial pursuant to the Prosecution's obligations under Rule 68. However, as we are looking to work remotely from Freetown, could you -- going forward -- kindly provide us with electronic copies of the Rule 68 disclosures. If you could provide us with the disclosures to this account and our email addresses above that would be appreciated.

Additionally, we are interested in receiving electronic copies of the following transcripts from the Taylor trial:

TF1-367: 20.08.08 and an unredacted copy of 28.08.08;

[REDACTED] [TF1-568]: 12, 15, 16, 17.08.08;

TF1-122: 18, 19.09.08;

Abdul Otonjo Conteh [TF1-060]: 29, 30.09.08; and

[REDACTED] [TF1-263]: 6, 7.10.08.

If there are exhibits (e.g., D-63; presented 30.09.08) that were presented during the course of the Taylor trial that we are entitled to please ensure that they are delivered. Additionally, if there are any other exhibits or evidence that falls under Rule 68 please ensure that they are delivered. To that end, kindly review the documents referred to in the 'Decision on Prosecution Motion for Admission of Documents Seized from RUF Kono Office, Kono District' dated 27 February 2009 (Trial Chamber II) for Rule 68 material and provide us with the same.

It would be appreciated if you could provide electronic copies of the above transcripts, exhibits, and (should they fall under Rule 68) documents referred to in the above-cited decision by the end of this week.

Best,

Jared