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SCSL-03-01-T  
(33955-33970)

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**SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR**

**TRIAL CHAMBER II**

Before: Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice El Hadji Malick Sow, Alternate Judge

Registrar: Ms. Binta Mansaray

Date filed: 7 February 2011

SPECIAL COURT FOR SIERRA LEONE	
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**THE PROSECUTOR**

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

**PUBLIC WITH CONFIDENTIAL ANNEXES A & B**

**URGENT PROSECUTION MOTION FOR AN INVESTIGATION INTO CONTEMPT OF THE  
SPECIAL COURT FOR SIERRA LEONE**

Office of the Prosecutor:

Ms. Brenda J. Hollis  
Mr. Nicholas Koumjian  
Ms. Leigh Lawrie  
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Counsel for the Accused:

Mr. Courtenay Griffiths, Q.C.  
Mr. Terry Munyard  
Mr. Morris Anyah  
Mr. Silas Chekera  
Mr. James Supuwood

## I. INTRODUCTION

1. The Prosecution files this motion pursuant to Rules 54, 73 and 77 of the Rules of Procedure and Evidence (“**Rules**”) to request that the Trial Chamber direct the Registrar to appoint experienced independent counsel to urgently investigate possible contempt of the Special Court for Sierra Leone (“**the Court**”) in relation to, at minimum, two Prosecution witnesses: Dauda Aruna Fornie (TF1-274),<sup>1</sup> and protected witness TF1-585.<sup>2</sup> The allegations of contemptuous conduct<sup>3</sup> include:
  - (a) disclosure of information in violation of protective measures issued by this Court, including the identity and other information concerning at least one protected witness;
  - (b) attempted bribery, or other interference with at least one Prosecution witness; and
  - (c) interference with the administration of justice through the violation of court orders.
2. The Prosecution adopts by reference all allegations and submissions in the 3 February Contempt Motion.<sup>4</sup> The allegations of contemptuous contact and conduct described herein are similar to those and so generally corroborate the allegations made in the 3 February Contempt Motion.<sup>5</sup> Moreover, the contact and conduct described in this motion, further demonstrate the existence of a concerted course of action against Prosecution witnesses by alleged Defence “contacts” and/or team members. Indeed, allegations of contemptuous conduct concerning five Prosecution witnesses all linked to Eric Koi Senesie (or Senessie) and person(s) identified as “Defence team” member(s) have now been reported to the Prosecution to date.<sup>6</sup>
3. The Prosecution has endeavoured to bring these serious allegations to the Trial Chamber’s prompt attention. The Prosecution was first notified of the allegations by DAF on 4

<sup>1</sup> Hereinafter referred to as “**DAF**”, his initials and nickname. *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 1 December 2008, pp. 21292-3.

<sup>2</sup> TF1-585’s identity and relevant applicable protective measures ordered by this Court are more fully set out in **Confidential Annex A**.

<sup>3</sup> Full details of this conduct are provided in **Confidential Annex B**.

<sup>4</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1185, Public with Confidential Annexes A to E & Public Annex F – Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 3 February 2011 (“**3 February Contempt Motion**”).

<sup>5</sup> See 3 February Contempt Motion, Confidential Annexes B, C, D, and E.

<sup>6</sup> Allegations of contemptuous contact and/or conduct in relation to four witnesses were the subject of the 3 February Contempt Motion (i.e. Kabba, Aruna Gbonda, TF1-585 and TF1-516). Conduct relating to TF1-585 is again the subject of the current motion. The current motion also covers conduct relating to the witness known as DAF.

February 2011.<sup>7</sup> That same day, the Prosecution investigator who received DAF's report on the alleged contact, wrote the declaration at **Confidential Annex B**. Having received this declaration in The Hague on Friday, 4 February and considering the relation between the allegations set out at **Confidential Annex B** with those set out at Confidential Annexes B-E of the 3 February Contempt Motion, this motion is now being filed at the earliest opportunity. Due to the serious nature of the allegations and the fact that they provide further evidence of a concerted course of action being taken against Prosecution witnesses, this motion is filed on an urgent basis. Accordingly, the Prosecution requests an expedited filing schedule.

4. The Prosecution again underlines that notwithstanding the serious nature of the allegations, as contempt is an ancillary and collateral matter, any resulting filings and/or investigation should not result in any delay to the current proceedings.

## II. APPLICABLE LAW

5. This Court:

“must possess the powers necessary to enable [it] to administer and deliver justice fairly and efficiently. ... The power to investigate and punish what is generically ... described as “contempt of court” can only be used against those whose actions are calculated to obstruct the court's task of getting at the truth.”<sup>8</sup>

6. In accordance with the foregoing, Rule 77 provides this Court with the power to deal with conduct that interferes with its administration of justice. The possession of such inherent power is also established by the jurisprudence of this Court<sup>9</sup> and the International Tribunals.<sup>10</sup>
7. Rule 77(A) provides a non-exhaustive list of the forms of contempt that may be punishable under Rule 77, including disclosure of “information relating to proceedings in knowing

<sup>7</sup> See **Confidential Annex B**.

<sup>8</sup> *Prosecutor v. Brima et al.*, SCSL-04-16-AR77-315, Decision on Defence Appeal Motion Pursuant to Rule 77(J) on both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii), 23 June 2005 (“**AFRC Appeal Decision**”), para. 2.

<sup>9</sup> See the AFRC Appeals Decision, para. 2; *Prosecutor v Brima et al*, SCSL-2004-16-T, “Decision on the Report of the Independent Counsel pursuant to Rules 77 (C) iii and 77 (D) of the Rules of Procedure and Evidence”, 29 April 2005, page 2; and *Prosecutor v Norman et al*, SCSL-04-14-T-450, Confidential – Decision on Motion for the Immediate Cessation of Violations of the Orders on Protective Measures for Witnesses and for Contempt, 25 July 2005, paras. 13-14.

<sup>10</sup> See for example *Prosecutor v. Marijacic and Rebic*, IT-95-14-R77.2, Judgement, 10 March 2006, para. 13, referring to *Prosecutor v. Tadić*, Case No. IT-94-1-A-R77, Judgment on Allegations of Contempt against Prior Counsel, Milan Vujin, 31 January 2000, para. 13; *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile against Finding of Contempt, 30 May 2001, para. 36.

violation of an order of a Chamber”<sup>11</sup> and conduct that “threatens, intimidates, causes injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness.”<sup>12</sup> Rule 77(B) further provides that any incitement or attempt to commit any such acts is also punishable as contempt.

8. The threshold required to initiate investigations into contempt under Rule 77(C) is that the Chamber “has *reason to believe* that a person may be in contempt.”<sup>13</sup> This standard is reason to believe that a person *may* have engaged in such conduct. There is no required showing that the person *has* engaged in the alleged act, in knowing or willing violation of Rule 77. The elements of each specific act enumerated under Rule 77(A) and Rule 77(B), including *mens rea* and *actus reus*, are issues to be developed during the investigation in order to determine whether to proceed against a person or persons for contempt of court. Further, an allegation must be credible and a party has a duty to bring alleged misconduct to the attention of the Trial Chamber without undue delay.<sup>14</sup>
9. Finally, when the standard for an investigation has been met, the Chamber may issue, under the general powers granted in Rule 54, “such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the presentation or conduct of the trial.”

### III. BACKGROUND

10. The facts recounted below are a summary of the alleged contemptuous conduct engaged in by Eric Koi Senesie and an individual identified by Senesie as a Defence Team member in relation to two Prosecution witnesses. Full details of the instant allegations in relation to DAF, and TF1-585 are set out in the Prosecution investigator’s declaration at **Confidential Annex B**. Additionally, the Prosecution emphasizes that **Confidential Annex B** corroborates the contemptuous contact of Prosecution witnesses Kabba and TF1-585 as set out in the 3 February Contempt Motion and the accompanying Confidential Annexes B-E.

<sup>11</sup> See Rule 77(A)(ii).

<sup>12</sup> See Rule 77(A)(iv).

<sup>13</sup> AFRC Appeals Decision, para. 17 (emphasis added). The Appeals Chamber stated that this standard is a different and lower standard than that of a *prima facie* case. See also *Prosecutor v. Taylor*, SCSL-03-01-T-600, Confidential Decision on Prosecution Motions for Investigations into Contempt of the Special Court for Sierra Leone (SCSL-03-01-451; SCSL-03-01-452; SCSL-03-01-457; SCSL-03-01-513), 19 September 2008 (“**September 2008 Contempt Decision**”), para. 7.

<sup>14</sup> AFRC Appeals Decision, para. 2; September Contempt Decision, para. 16.

11. Senesie, an RUF district chairman, first approached DAF on 2 February 2011, questioning him about his testimony in The Hague. The next day, Senesie again approached DAF, this time identifying himself as a “contact person for the Charles Taylor Defence Team.”<sup>15</sup> Senesie said he was tasked with convincing certain Prosecution witnesses to, first, recant their previous sworn testimony, and second, testify before this Chamber that their previous sworn testimony was given based on the promise of “some [pre-testimony] token” and relocation overseas. Senesie told DAF that the Defence would pay and relocate him in exchange for his recantation.
12. Next, Senesie called an individual who Senesie identified as a Defence Team member so that this individual could speak with DAF. The individual did not identify himself. The person spoke briefly to DAF in Krio, saying he had insufficient phone credit. By way of Senesie’s phone, the alleged Defence Team member said he would instead call DAF the next day, 4 February. DAF reported the alleged contact to the Prosecution on 4 February before any further communication or contact with either the unidentified caller or Senesie.
13. Finally, Senesie also told DAF that he had already spoken to other witnesses including protected witness TF1-585 and Mohamed Kabba.<sup>16</sup> Senesie falsely claimed that these others had agreed to cooperate with the Defence.

#### IV. ARGUMENT

14. There is “reason to believe” that Eric Senesie, a Defence Team member, and other persons not yet identified have engaged in contemptuous conduct in violation of Rules 77(A) and/or 77(B).<sup>17</sup> In addition to the detailed allegations set out in the annexes hereto, the Prosecution also highlights the following matters.
15. First, as set out above, both DAF and the Prosecution have reported the allegations of contemptuous conduct in a timely manner. Indeed, DAF contacted the Prosecution the day

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<sup>15</sup> According to the Prosecution’s current information, Senesie is not a Defence Team member.

<sup>16</sup> The protective measures applicable to DAF and TF1-585 are set out in **Confidential Annex A**.

<sup>17</sup> This Chamber previously considered the following factors relevant in determining, in its discretion, whether the “low evidentiary threshold” required by the “reason to believe” standard under Rule 77(A) was satisfied: September 2008 Contempt Decision, paras. 15-18, 25 (the length of time elapsed between the conduct and the witness report to the Prosecution and in turn, the length of time between the witness report and the filing of the motion requesting an investigation); para. 24 (whether a link is tenuous or direct; whether based on hearsay; consistencies between statements regarding the same or similar conduct); paras. 30, 34 (whether protective measures were in place at the time of the alleged conduct); para. 31 (whether intimidation amounts to more than mere advice or discussion); and para. 35 (conduct must arise out of the witness’s testimony in the proceedings).

- after the allegedly contemptuous conduct occurred.<sup>18</sup>
16. Moreover, the signed declaration contained at **Confidential Annex B** in large part corroborates the statements and declaration at Confidential Annexes B-E of the 3 February Contempt Motion, particularly in relation to the tactics employed, the bribes suggested, the information disclosed and the motivations underlying Senesie's conduct.
  17. Consequently, the evidentiary threshold for the "reason to believe" standard has been met. The allegedly contemptuous conduct engaged in by Eric Senesie, an individual Senesie identified as a Defence Team member, and others not yet identified is set out below.

DISCLOSURE OF INFORMATION IN KNOWING VIOLATION OF AN ORDER (RULE 77(A)(II))

18. The information set out above and in **Confidential Annex B** provides reason to believe that the investigation, if directed, would reveal that there has been disclosure of the identity of at least one protected Prosecution witnesses (TF1-585) to third parties including Eric Senesie in knowing violation of the applicable protective measures orders.<sup>19</sup> Senesie also disclosed the identity of this protected witness to another witness (DAF) in knowing violation of the applicable protective measures orders. Finally, DAF's contact information and address may also have been disclosed in knowing violation of his remaining applicable protective measures.<sup>20</sup> Therefore, the allegations give reason to believe that the identity of TF1-585 and/or the contact and address information of DAF have been disclosed in violation of the protective measures ordered. This conduct falls within the ambit of Rule 77(A)(ii).

OFFERS TO BRIBE AN/OR OTHER INTERFERENCE WITH A WITNESS (RULE 77(A)(IV) & RULE 77(B))

19. There is reason to believe, on the basis of the information set out above and in **Confidential Annex B**, that Eric Senesie and other persons not yet identified attempted to bribe at least one Prosecution witness; and/or otherwise interfered, or attempted to interfere, with at least one witness. This conduct falls within the ambit of Rule 77(A)(iv) and/or Rule 77(B).

<sup>18</sup> **Confidential Annex B**. Although DAF was first approached by Senesie on 2 February 2011, he was not reasonably on notice of Senesie's alleged intentions or connection with the Defence, until 3 February 2011. DAF contacted the Prosecution the day after the 3 February phone and in-person contacts with alleged Defence team members.

<sup>19</sup> The protective measures applicable to TF1-585 and TF1-274 are set out in **Confidential Annex A**.

<sup>20</sup> *Ibid.*

20. In addition to bribery, Rule 77(A)(iv) also encompasses various forms of conduct which might be categorized as “otherwise interfering with a witness.” Such conduct, including that of a similar gravity to intimidation, seeks “to influence the outcome of a pending case by interfering with a witness or potential witness. [...] It is not necessary for the Prosecution to prove that the witness was actually deterred or influenced.”<sup>21</sup>
21. In exchange for the recantation of sworn testimony and/or further testimony, Senesie told DAF he would be rewarded monetarily and with overseas relocation. Additionally, Senesie contacted DAF twice. DAF was also contacted by telephone by an individual identified by Senesie as a Defence Team member. Another meeting with Senesie and a follow-up telephone conversation with the alleged Defence Team member were expected on 4 February, the day DAF reported Senesie’s contacts to the Prosecution. Moreover, Senesie lied when he told DAF that Kabba and TF1-585 had agreed to cooperate with the Defence.
22. Any of these factors, alone or together, indicate that there is reason to believe that attempts were made to bribe the witness known as DAF, and/or otherwise interfere with this witness in violation of Rule 77(A)(iv) and/or Rule 77(B).

VIOLATION OF COURT ORDERS (RULE 77(A))

23. There is reason to believe, based on the information contained in **Confidential Annex B**, that Eric Senesie and others not yet identified violated court ordered protective measures forbidding direct contact by the Defence team with certain protected witnesses. Therefore, Senesie and others not yet identified interfered with the administration of justice contrary to Rule 77(A).
24. The *Samura* Judgement confirmed that “it is an obvious consequence of refusing to comply with an order of the Chamber that the administration of justice is interfered with.”<sup>22</sup> Therefore, breaches of certain types of protective measures orders not necessarily encompassed under Rule 77(A)(ii)<sup>23</sup> are nevertheless encompassed by Rule 77(A).<sup>24</sup>

<sup>21</sup> *Prosecutor v. Brđanin*, IT-99-36-R77, “Decision on Motion for Acquittal pursuant to Rule 98bis concerning allegations against Milka Maglov”, 19 March 2004, para. 28.

<sup>22</sup> *Independent Counsel v. Samura*, SCSL-05-01-18, Judgement in Contempt Proceedings, 26 October 2005 (“**Samura Judgement**”), para. 26 referring to *Prosecutor v. Milosević*, IT-02-54-R77.4, Contempt Proceedings against Kosta Bulatovic, Decision on Contempt of the Tribunal, 13 May 2005, para. 17.

<sup>23</sup> Rule 77(A)(ii) only encompasses the disclosure of information in knowing violation of an order of the Chamber.

<sup>24</sup> As noted in the *Samura* Judgement, Rule 77(A) is descriptive but not exhaustive of the acts which might be considered contempt (para. 16). The Prosecution acknowledges that disclosure of witness information in violation of court orders falls specifically under Rule 77(A)(ii), however, other violations of court orders, particularly other

25. DAF was allegedly contacted twice in person by Eric Senesie, an alleged Defence team “contact person,” and at least once on the telephone by an anonymous, alleged Defence team member. The day this contact was reported, the alleged Defence Team member indicated he wished to telephone DAF the following day. DAF was neither notified of, nor gave consent to, contact by the Defence. Indeed, such contact, absent permission of the Court and the witness via the Prosecution, violates the protective measures applicable to DAF.<sup>25</sup> To the extent the Prosecution ever considered it adequate for the Defence to seek to contact witnesses through WVS rather than the Prosecution, the Prosecution is no longer of that view. Where the applicable protective measure in place requires contact to be made through the Prosecution or by Court order that is the procedure which should be followed. In any event, there is no indication that WVS was used as a conduit to obtain consent from these witnesses.
26. Therefore, the alleged direct contact by Senesie, and others not yet identified including an alleged Defence Team member with at least the Prosecution witness known as DAF, in violation of court ordered protective measures, falls within the ambit of Rule 77(A).

URGENT INTERIM MEASURE

27. Pending an investigation into the alleged contemptuous conduct, the Prosecution reiterates its request that this Trial Chamber order the Defence Team not to discuss with Eric Senesie and/or Prince Taylor anything associated with this request or resulting investigation. Senesie and Taylor are those thus far specifically implicated in the allegedly contemptuous conduct set out in this motion and the 3 February Contempt Motion. **Confidential Annex B** indicates that Senesie may be the Defence Team “contact person” acting upon instructions from, and on behalf of, the Charles Taylor Defence Team. Further, DAF was contacted by an anonymous individual allegedly a member of the Defence Team over the telephone. Prince Taylor, a Defence Team member, allegedly contacted TF1-585 in a fashion and under circumstances similar to those recounted at **Confidential Annex B**.<sup>26</sup> Therefore, considering this further implicates both Senesie and Taylor and the fact that communication and contact between Senesie and Prince Taylor and the Defence Team is

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court-ordered protective measures relating to the formal procedures by which contact can be made with a Prosecution witness by the Defence may fall under Rule 77(A) generally.

<sup>25</sup> See **Confidential Annex A**.

<sup>26</sup> See 3 February Contempt Motion, Confidential Annex D, p. 3.



possible, if not probable, an interim order forbidding discussion is necessary to prevent the possibility of improper conduct in anticipation of, and during, any investigation ordered.

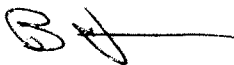
**V. CONCLUSION**

28. On the basis of the above and the information provided in the attached confidential annexes, there is reason to believe that Eric Senesie, an anonymous alleged Defence Team member, and others not yet identified may have been involved in contemptuous conduct in contravention of Rules 77(A) and 77(B) including:
- (a) disclosure of information in violation of protective measures issued by this Court, including the identity and other information concerning at least one protected witness;
  - (b) attempted bribery or other interference with at least one Prosecution witness; and
  - (c) interference with the administration of justice through the violation of court orders.
29. Accordingly, pursuant to Rule 77(C)(iii) the Prosecution requests that the Trial Chamber direct the Registrar to appoint an experienced independent counsel to urgently investigate the above described possible contempt of this Court.

Filed in The Hague,

7 February 2011

For the Prosecution,



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Brenda J. Hollis  
The Prosecutor

## INDEX OF AUTHORITIES

### SCSL Cases

SCSL Rules of Evidence and Procedure

#### *Prosecutor v. Taylor, Case No. SCSL-03-01-T*

*Prosecutor v. Taylor*, SCSL-03-01-T-1185, Public with Confidential Annexes A to E & Public Annex F – Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 3 February 2011

*Prosecutor v. Taylor*, SCSL-03-01-T-600, Confidential Decision on Prosecution Motions for Investigations into Contempt of the Special Court for Sierra Leone (SCSL-03-01-451; SCSL-03-01-452; SCSL-03-01-457; SCSL-03-01-513), 19 September 2008

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 1 December 2008

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*Prosecutor v. Taylor*, SCSL-03-01-T-383, Decision on Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure, 10 January 2008

*Prosecutor v. Taylor*, SCSL-03-01-T-99, Decision on Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures and on Confidential Prosecution Motion for Leave to Substitute a Corrected and Supplemented List as Annex A of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures, 5 May 2006

*Prosecutor v. Taylor*, SCSL-03-01-T-498, Public Decision on Confidential and Urgent Prosecution Motion for Additional Protective Measures for Witnesses TF1-375, TF1-401, TF1-521, TF1-542, TF1-555, TF1-567, TF1-585 and TF1-590 and on Public and Confidential Prosecution Motion for Leave to Substitute Confidential Urgent Prosecution Motion SCSL-03-01-T-435 with Amended Motion, 7 May 2008

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**Other Cases**

*Independent Counsel v. Samura*, SCSL-05-01-18, Judgement in Contempt Proceedings, 26 October 2005

**ICTY Cases**

*Prosecutor v. Marijačić and Rebić*, IT-95-14-R77.2, Judgement, 10 March 2006  
[http://www.un.org/icty/blaskic/rebic\\_contempt/reb-tcj060310e.pdf](http://www.un.org/icty/blaskic/rebic_contempt/reb-tcj060310e.pdf)

*Prosecutor v. Tadić*, Case No. IT-94-1-A-R77, Judgement on Allegations of Contempt against Prior Counsel, Milan Vujin, 31 January 2000  
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*Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR77, Judgement on Appeal by Anto Nobile against Finding of Contempt, 30 May 2001  
<http://www.un.org/icty/aleksovski/appeal/judgement/nob-aj010530e.pdf>

*Prosecutor v. Milosević*, IT-02-54-R77.4, Contempt Proceedings against Kosta Bulatović, Decision on Contempt of the Tribunal, 13 May 2005  
[http://www.icty.org/x/cases/contempt\\_bulatovic/tdec/en/050513.pdf](http://www.icty.org/x/cases/contempt_bulatovic/tdec/en/050513.pdf)

*Prosecutor v. Brđanin*, IT-99-36-R77, Decision on Motion for Acquittal pursuant to Rule 98bis concerning allegations against Milka Maglov, 19 March 2004  
<http://www.un.org/icty/brdjanin/trialc/decision-e/040319.htm>



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Court Management Section – Court Records

**CONFIDENTIAL DOCUMENT CERTIFICATE**

This certificate replaces the following confidential document which has been filed in the Confidential Case File.

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- Application
- Order
- Indictment
- Motion**
- Response
- Correspondence

Document Title:

**Public with confidential Annexes A and B urgent Prosecution motion for an investigation into contempt of the Special Court for Sierra Leone**

Name of Officer:

Alhassan Fornah

Signed: