

1126)

SCSL-03-01-T  
(31035-31050)

31035



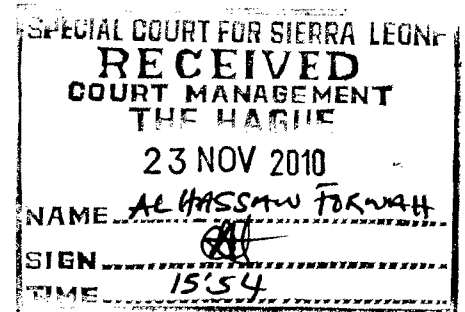
**SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR**

**TRIAL CHAMBER II**

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

Registrar: Ms. Binta Mansaray

Date filed: 23 November 2010



**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-T

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**PUBLIC WITH CONFIDENTIAL ANNEXES 2 & 3  
PROSECUTION RESPONSE TO PUBLIC DEFENCE MOTION SEEKING LEAVE TO APPEAL THE  
DECISION ON THE DEFENCE MOTION REQUESTING AN INVESTIGATION INTO CONTEMPT OF  
COURT BY THE OFFICE OF THE PROSECUTION AND ITS INVESTIGATORS**

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Office of the Prosecutor:  
Ms. Brenda J. Hollis  
Mr. Nicholas Koumjian  
Ms. Leigh Lawrie

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 “Public Defence Motion Seeking Leave to Appeal the Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators”<sup>1</sup> should be dismissed as it fails to satisfy the well established conjunctive test of “exceptional circumstances” and “irreparable prejudice” required for leave to appeal.

## II. ARGUMENTS

2. The Defence erroneously focuses the major part of its pleading on the merits of the potential arguments at the appeal stage,<sup>2</sup> failing to make submissions on the required conjunctive test until page 8 of the Application. The extensive Defence submissions regarding the merits of a potential appeal are of no assistance in determining whether the impugned Decision<sup>3</sup> gives rise to “exceptional circumstances” and “irreparable prejudice” as required by Rule 73(B).<sup>4</sup> As noted by the Defence in previous filings,<sup>5</sup> this Court has condemned the practice of re-litigating the decision at issue at the certification stage of proceedings.

### Failure to establish “Exceptional Circumstances”

3. The perfunctory arguments made by the Defence that the impugned Decision gives rise to “exceptional circumstances” should be dismissed as they fail to satisfy the high threshold established by the jurisprudence of this Court.<sup>6</sup>
4. Contrary to the assertions at paragraph 11 of the Application, the mere fact that the Defence has identified *purported* errors of law and/or fact in the context of a decision concerning contempt does not *of itself* give rise to “exceptional circumstances”. The accepted jurisprudence of the Special Court is clear that even an *erroneous* ruling does not *of itself*

<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1121, Public Defence Motion Seeking Leave to Appeal the Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 15 November 2010 (“**Application**”).

<sup>2</sup> Application, paras. 7(a)-(d), 8(a)-(b), 9(a)-(d) & 10(a)-(c).

<sup>3</sup> “Decision” is defined at Application, p. 2, fn 2.

<sup>4</sup> Some of the purported errors of law and/or fact identified in the Application are also raised in a separate Defence motion seeking reconsideration of the Decision. The Prosecution, therefore, responds to the merits of these arguments in the Prosecution’s separate response to the request for reconsideration.

<sup>5</sup> See *Prosecutor v. Taylor*, SCSL-03-01-T-548, Confidential Defence Response to ‘Prosecution Application for Leave to Appeal Decision to Vary the Protective Measures of TF1-168, 30 June 2008, para. 12, referring to *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T-357, Decision on Defence Applications for Leave to Appeal Ruling of the 3<sup>rd</sup> February 2005 on the Exclusion of Statements of Witness TF1-141, 28 April 2005, para. 15.

<sup>6</sup> Application, paras. 11-14.

- constitute exceptional circumstances.<sup>7</sup> The context in which the ruling is given, whether contempt or otherwise, does not alter this principle.
5. Further, the “ripple effect” argument which the Defence attempts to employ in paragraph 12 of the Application does not establish “exceptional circumstances”. The fact that broad, imprecise allegations made by the Defence against various members of the Office of the Prosecutor, past and present, are held to fall outside the ambit of Rule 77 and to be unfounded does not mean that “the integrity and lawfulness of the entire judicial process against the Accused” is at issue;<sup>8</sup> rather, it simply means the Defence failed to fashion a sufficiently precise pleading. The Defence argument on this point is unsupported by authority and borders on the hysterical. It also effectively seeks to establish that a decision concerning the conduct of the Prosecution automatically satisfies the first limb of the Rule 73(B) test. If such an argument were to succeed, it would be tantamount to inserting an alternative ground into this first stage of the Rule 73(B) test, i.e. a party would be required to establish either “exceptional circumstances” or simply that a decision concerned the conduct of the Prosecution. Such an approach is clearly untenable.
  6. The Defence argument at paragraph 13 of the Application regarding novel and fundamental questions of law is disingenuous, having no basis in a plain reading of the Defence’s original Motion.<sup>9</sup> The original Motion clearly made sweeping allegations against individuals only.<sup>10</sup> No request for an investigation into the conduct of the “Office of the Prosecutor” was ever made. The Defence’s argument in the Application seeking to establish “exceptional circumstances” on this revisionist basis must, therefore, be dismissed. Moreover, the fact that the impugned Decision concerns allegations against individual members of the Prosecution does not elevate the matter to one which raises novel and fundamental questions of law. The applicable legal principles for allegations of contempt are well established,<sup>11</sup> including that precision is required when making such

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<sup>7</sup> *Prosecutor v. Norman et al.*, SCSL-04-14-T-643, Decision on Motions by the First and Second Accused for Leave to Appeal the Chamber’s Decision on their Motions for the Issuance of a Subpoena to the President of the Republic of Sierra Leone, 28 June 2006, para. 11.

<sup>8</sup> Application, para. 12.

<sup>9</sup> “Motion” is defined at Application, p. 2, fn 2.

<sup>10</sup> Motion, paras. 11 & 30. The original Motion made allegations against former and current Prosecutors and their subordinates and/or agents, and requested an independent investigation into the conduct of all the Prosecution’s employees or agents since the inception of the Court.

<sup>11</sup> See for example the following cases from the Special Court’s jurisprudence on the issue of contempt: *Prosecutor v. Brima et al.*, SCSL-04-16-AR77-315, Decision on Defence Appeal Motion Pursuant to Rule 77(J) on both the

serious allegations.<sup>12</sup> These principles do not, indeed should not, differentiate based on whether the individuals against whom an investigation is sought are members of the Prosecution, the Defence, or, for that matter, Chambers or Registry. In any event, consideration of an issue for the first time does not necessarily mean considering the issue for the first time at this particular court where there is otherwise an established body of law addressing the issue. Therefore, in relation to the arguments raised in paragraph 13 of the Application, the impugned Decision is merely an application by the Trial Chamber of settled law and no novel and fundamental legal issues arise.<sup>13</sup>

7. Indeed, the application of *settled* law is what is ordinarily expected of a Trial Chamber no matter the issue at hand and does not give rise to an interlocutory appeal. The Defence argument at paragraph 14 of the Application mischaracterises the Chamber’s approach in the Decision as being an “adherence to procedural technicalities”. However, the Decision is clearly based on settled law comprising established jurisprudence, the plain language of the Rules and general principles of law. It is frivolous to argue that a decision so based is somehow improper and, further, “raises a question of fundamental legal importance” that “makes further decision conducive to the interests of justice”.<sup>14</sup>

*Failure to establish “Irreparable Prejudice”*

8. The Defence arguments in support of the claim that the impugned Decision will give rise to “irreparable prejudice” do not withstand scrutiny.<sup>15</sup>
9. The crux of the Defence’s argument is that it is irreparably prejudiced by being deprived of the means to obtain evidence which it could then use to attack the Prosecution’s case against the Accused as a whole.<sup>16</sup> This demonstrates the Defence’s lack of candour regarding its underlying motive in bringing the original Motion. The argument itself is also

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Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii), 23 June 2005; *Prosecutor v. Taylor*, SCSL-03-01-T-600, Confidential Decision on Prosecution Motion 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; and *Prosecutor v. Taylor*, SCSL-03-01-T-690, Confidential Decision on Prosecution Motion for an Investigation by Independent Counsel into Contempt of the Special Court for Sierra Leone and for Urgent Interim Measures, 8 December 2008.

<sup>12</sup> *Prosecutor v. Nyiramasuhuko et al.*, ICTR-97-21-T, Decision on the Prosecution’s Allegations of Contempt, the Harmonisation of the Witness Protection Measures and Warning to the Prosecutor’s Counsel, 10 July 2001, paras. 6 & 8.

<sup>13</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-953, Decision on Urgent Prosecution Application for Leave to Appeal Decision of 16 April 2010, 5 May 2010, p. 6.

<sup>14</sup> Application, para. 14.

<sup>15</sup> Application, paras. 15-17.

<sup>16</sup> *Ibid.*

fundamentally flawed.

10. In its Reply the Defence assured the Court that the Motion was “not a dilatory strategy” designed to delay the trial, although the Defence did reserve the right to review its options depending on the outcome of any investigation ordered.<sup>17</sup> However, the Defence’s current claim, that without an investigation the “full impact and implications of the Prosecution’s contemptuous conduct cannot be considered adequately ‘at the stage of final deliberations’”,<sup>18</sup> belies its original assurances and reveals the true nature of the original request for a contempt investigation. It makes clear that the real objective is to try to bring before the Trial Chamber information provided in the context of an investigation extraneous to these proceedings and which does not have the safeguards of cross-examination or judicial questions. The Defence is, in effect, attempting to subvert the contempt investigation by using it as a means of providing information to the Trial Chamber after making the strategic decision not to present these witnesses in the trial where their false claims of Prosecution misconduct could have been fully tested.
11. The argument is also flawed because it presumes that an investigation will find the latest version of the stories given by the individuals included in the original Motion credible as opposed to the prior versions given to the Prosecution. The Prosecution recalls that many of these individuals are liars by their own admission. Crucially, the argument also requires the Chamber to make the quantum leap that the allegations of misconduct involving individuals the Prosecution never called as witnesses would be relevant to or have *any* bearing on assessing the evidence of those individuals whom the Prosecution did call to testify, under oath, with full disclosure and subject to cross-examination and judicial questions.
12. The Defence’s argument that it has suffered “irreparable prejudice” because it has been “deprived ... of untainted witnesses” should be dismissed as disingenuous.<sup>19</sup> First, contrary to Defence claims, the potential Defence witnesses compromised themselves by giving various versions of their stories.<sup>20</sup> Second, as is apparent from the example of DCT-102, the Defence could have called *all* the individuals included in the original Motion at any

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<sup>17</sup> Reply, para. 14. “Reply” is defined in the Application at p. 2, fn. 2.

<sup>18</sup> Application, para. 17.

<sup>19</sup> Application, para. 16.

<sup>20</sup> Ibid.

time as witnesses to testify under oath and subject to cross-examination and judicial questions. More than adequate time was available for this purpose since the Defence presented no witnesses between 8 September and 1 November 2010. The Prosecution notes that DCT-032, DCT-192, DCT-097 and DCT-133 have all been scheduled to testify at various times, with at least DCT-192 and DCT-133 actually brought to The Hague.<sup>21</sup> DCT-133 was scheduled to testify during the week commencing 22 March 2010<sup>22</sup> and was lodged in a hotel in The Hague on full DSA.<sup>23</sup>

13. Ultimately, only Sam F. Kolley testified as a Defence witness and his testimony is arguably instructive as to why the Defence decided not to have any of the other individuals' credibility tested in the courtroom.<sup>24</sup> Kolley was identified as a Defence witness in the summaries filed in May 2009<sup>25</sup> and was first scheduled to testify in April 2010.<sup>26</sup> In his testimony he denied he was known by the name used in the Defence affidavit, "Sam Kolley",<sup>27</sup> admitted to lying under oath before the Sierra Leone TRC,<sup>28</sup> and was unable to explain why even the fifth summary of his evidence filed with the Court in May 2010<sup>29</sup> made no mention of his accusations of being threatened directly by the former Prosecutor and being offered a \$90,000 bribe.<sup>30</sup>

<sup>21</sup> DCT-032 was identified as a reserve witness for the weeks 17-21 May 2010 and 7-11 June 2010 (see *Prosecutor v. Taylor*, SCSL-03-01-T-951, Public with Annex A Defence Witness Order for the Week 17-21 May 2010, 3 May 2010 and *Prosecutor v. Taylor*, SCSL-03-01-T-966, Public with Annex A and Confidential Annex B Defence Witness Order for the Week 7 June - 11 June 2010, 25 May 2010). DCT 192 was identified as a reserve witness for the week 30 August – 3 September 2010 (see *Prosecutor v. Taylor*, SCSL-03-01-T-1056, Public with Annex A and B Defence Witness Order and List of Exhibits for the Week 30 August – 3 September 2010, 19 August 2010). DCT-192 was then scheduled to testify as a witness during the week 6-10 September 2010 (see *Prosecutor v. Taylor*, SCSL-03-01-T-1059, Public with Annex A and B Defence Witness Order and List of Exhibits for the Week 6 September – 10 September 2010, 24 August 2010). DCT-192's presence in The Hague is referred to in the Motion at Confidential Annex B, para. 1. DCT-097 was identified as the next witness scheduled to testify after DCT-192 in an email from the Defence dated 26 August 2010 (see **Confidential Annex 3** hereto). Annex 3 is provided confidentially as it contains the personal email addresses of various individuals.

<sup>22</sup> See letter from the Defence to the Prosecution dated 8 March 2010 and included in **Confidential Annex 2** hereto. Annex 2 is provided confidentially as it contains the names of individuals subject to protective measures.

<sup>23</sup> See **Annex 1** hereto which evidences DCT-133's presence in the Hague in April 2010.

<sup>24</sup> DCT-102 testified on 1, 3, 4, 5, 8 & 9 November 2010.

<sup>25</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-784, Public with Annexes A,B,C & Confidential Ex Parte Annex D Defence Rule 73ter Filing of Witness Summaries with A Summary of the Anticipated Testimony of the Accused, Charles Ghankay Taylor, 29 May 2009, pp. 25302-03.

<sup>26</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-933, Public with Annex A and B Defence Witness Order for the Week 12-16 April 2010 and 19-23 April 2010, 29 March 2010.

<sup>27</sup> Trial Transcript, 9 November 2010, pp. 48996-98.

<sup>28</sup> Trial Transcript, 3 November 2010, pp. 48267-28.

<sup>29</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-957, Public with Annex A, C and Confidential Annex B Defence Rule 73ter Filing of Witness Summaries - Version Five, 12 May 2010.

<sup>30</sup> Trial Transcript, 9 November 2010, pp. 48982-83.

14. Having chosen to forego its right to call any or all of the individuals included in the original Motion to present evidence, except DCT-102, the Defence cannot now claim it is prejudiced by the fact that the evidence of these individuals is not before the Court.<sup>31</sup>
15. Finally, nowhere in the Application does the Defence address why the Decision is not remediable on final appeal, a requisite showing in an application for leave to appeal.
16. On the basis of the foregoing, it is clear that the impugned Decision does not result in “irreparable prejudice” being suffered by the Defence and that the Defence’s concerns are unfounded and speculative.

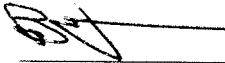
### III. CONCLUSION

17. As the Defence has failed to satisfy the threshold required by Rule 73(B) in order for leave to appeal to be granted, the Prosecution respectfully requests that the Trial Chamber dismiss the Application.

Filed in The Hague,

23 November 2010

For the Prosecution,



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Brenda J. Hollis  
The Prosecutor

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<sup>31</sup> Applying comparable reasoning, in the decision *Prosecutor v. Taylor*, SCSL-03-01-T-953, Decision on Urgent Prosecution Application for Leave to Appeal Decision of 16 April 2010, 5 May 2010 at pp. 5-6, the Chamber observed that the Prosecution’s decision to cross-examine forthwith rather than take an adjournment was inconsistent with the argument that the Prosecution had suffered irreparable prejudice.

## LIST OF AUTHORITIES

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

*Prosecutor v. Taylor*, SCSL-03-01-T-548, Confidential Defence Response to ‘Prosecution Application for Leave to Appeal Decision to Vary the Protective Measures of TF1-168, 30 June 2008

*Prosecutor v. Taylor*, SCSL-03-01-T-600, Confidential Decision on Prosecution Motion 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-690, Confidential Decision on Prosecution Motion for an Investigation by Independent Counsel into Contempt of the Special Court for Sierra Leone and for Urgent Interim Measures, 8 December 2008

*Prosecutor v. Taylor*, SCSL-03-01-T-784, Public with Annexes A,B,C & Confidential Ex Parte Annex D Defence Rule 73ter Filing of Witness Summaries with A Summary of the Anticipated Testimony of the Accused, Charles Ghankay Taylor, 29 May 2009

*Prosecutor v. Taylor*, SCSL-03-01-T-933, Public with Annex A and B Defence Witness Order for the Week 12-16 April 2010 and 19-23 April 2010, 29 March 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-951, Public with Annex A Defence Witness Order for the Week 17-21 May 2010, 3 May 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-953, Decision on Urgent Prosecution Application for Leave to Appeal Decision of 16 April 2010, 5 May 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-957, Public with Annex A, C and Confidential Annex B Defence Rule 73ter Filing of Witness Summaries - Version Five, 12 May 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-966, Public with Annex A and Confidential Annex B Defence Witness Order for the Week 7 June - 11 June 2010, 25 May 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-1056, Public with Annex A and B Defence Witness Order and List of Exhibits for the Week 30 August – 3 September 2010, 19 August 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-1059, Public with Annex A and B Defence Witness Order and List of Exhibits for the Week 6 September – 10 September 2010, 24 August 2010

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 3 November 2010

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 9 November 2010



*Prosecutor v. Taylor*, SCSL-03-01-T-1121, Public Defence Motion Seeking Leave to Appeal the Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 15 November 2010

***Prosecutor v. Norman et al.*, SCSL-04-14**

*Prosecutor v. Norman et al.*, SCSL-04-14-T-643, Decision on Motions by the First and Second Accused for Leave to Appeal the Chamber's Decision on their Motions for the Issuance of a Subpoena to the President of the Republic of Sierra Leone, 28 June 2006

***Prosecutor v. Sesay et al.*, SCSL-04-15**

*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T-357, Decision on Defence Applications for Leave to Appeal Ruling of the 3<sup>rd</sup> February 2005 on the Exclusion of Statements of Witness TF1-141, 28 April 2005

***Prosecutor v. Brima et al.*, SCSL-04-16**

*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

**ICTR Case**

*Prosecutor v. Nyiramasuhuko et al.*, ICTR-97-21-T, Decision on the Prosecution's Allegations of Contempt, the Harmonisation of the Witness Protection Measures and Warning to the Prosecutor's Counsel, 10 July 2001  
<http://www.unictt.org/Portals/0/Case/English/Nyira/decisions/100701b.pdf>

31044

**ANNEX 1**

**EXPENSES INCURRED ON DCT-133**



31045

**SPECIAL COURT FOR SIERRA LEONE  
THE HAGUE SUB-OFFICE**

P O BOX NO. 19536 • 2500 CM DEN HAAG • THE NETHERLANDS  
BINCKHORSTLAAN 400 • 2516 BL DEN HAAG • THE NETHERLANDS  
PHONE: +31 70 515 9750 or +31 70 515 (+Ext); FAX: +31 70 322 2711

**INTEROFFICE MEMORANDUM**

**To: Ms. Brenda Hollis  
Prosecutor**

**From: Saleem Vahidy  
Chief of WVS**

**Date: 28 April 2010**

**Subject: Expenses incurred on DCT - 133**

Kindly be advised that the expenses incurred on DCT – 133 are as follows:

<b>Attendance Allowance:</b>	<b>\$ 147.00</b>
<b>Medical:</b>	<b>\$ 200.00</b>
<b>Transportation:</b>	<b>\$ 70.15</b>
<b>Miscellaneous:</b>	<b>\$ 114.00</b>
<b>Total:</b>	<b>\$531.15</b>

It is further added that at the request of the Defence, DCT - 133 will be staying at a hotel and will be receiving DSA at the normal rate, of course he will be responsible for his boarding, lodging and miscellaneous expenses

If any further information is required we would be very happy to provide the same.

Best regards

Head Office: SPECIAL COURT FOR SIERRA LEONE  
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE  
PHONE: +39 0831 257000 or +232 22 297000 or +39 083125 (+Ext)  
UN Intermission 178 7000 or 178 (+Ext)  
FAX: +232 22 297001 or UN Intermission: 178 7001



**SPECIAL COURT FOR SIERRA LEONE**

DOKTER VAN DER STAMSTRAAT 1 • 2265 BC LEIDSCHENDAM • THE NETHERLANDS

PHONE: +31 70 515 9701 or +31 70 515 (+Ext 9725)

Court Management Section – Court Records

**CONFIDENTIAL DOCUMENT CERTIFICATE**

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

Case Name: **The Prosecutor – v- Charles Ghankay Taylor**

Case Number: **SCSL-03-01-T**

Document Index Number: **1126**

Document Date: **23 November 2010**

Filing Date: **23 November 2010**

Document Type: - **Confidential Annexes 2 and 3**

Number of Pages: **5** Number from: **31046 - 31050**

Application

Order

Indictment

Other

**Response**

Correspondence

Document Title:

**Public with confidential Annexes 2 and 3 Prosecution response to public Defence motion seeking leave to appeal the decision on the Defence motion requesting an investigation into contempt of court by office of the prosecution and its investigators**

Name of Officer:

Alhassan Fornah

Signed: