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SCSL-04-16-ES
(2048-2069)

2048



**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: 31 January 2011

SPECIAL COURT FOR SIERRA LEONE
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THE PROSECUTOR

Against

**Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu**

Case No. SCSL-04-16-ES

PUBLIC WITH CONFIDENTIAL ANNEXES

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

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. James C. Johnson
Ms. Leigh Lawrie
Mr. Nathan Quick

Office of the Principal Defender:

Ms. Claire Carlton-Hanciles

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 investigate possible contempt of the Special Court for Sierra Leone (“**the Court**”) in relation to *inter alia* the following conduct:
 - (a) disclosure of information, including the identity and other information concerning a protected witness;
 - (b) intimidation, bribery, or other interference with a witness who has given evidence in proceedings before a Chamber of the Court; and
 - (c) violation of protective measures orders issued by a Chamber of the Court.

II. APPLICABLE LAW

2. 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.”¹
3. In accordance with the foregoing, Rule 77 provides this Court with the power to deal with conduct that interferes with its administration of justice. Sub-rule (A) provides a non-exhaustive list of the various forms of contempt that may be punishable under this Rule, including 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.”² Sub-rule (B) further provides that any incitement or attempt to commit any such acts is also punishable as contempt.
4. Where a Chamber *has reason to believe* that a person may be in contempt of Court, Rule 77(C)(iii) provides that the Chamber may direct the Registrar to appoint experienced independent counsel to investigate the matter and to report on whether there are sufficient grounds for instigating contempt proceedings.
5. According to Rule 54, the Chamber “may issue such orders, summonses, subpoenas,

¹ *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**”), at para. 2.

² See Rule 77(A)(iv).

warrants and transfer orders as may be necessary for the purposes of an investigation or for the presentation or conduct of the trial.” Orders for an investigation into contempt of Court are, therefore, also covered under this general Rule.

III. BACKGROUND

6. The Prosecution witnesses referred to in this motion are protected and subject to the various protective measures set out in **Confidential Annex A**.
7. The Prosecution received information that a Samuel Kargbo, aka Sammy Ragga,³ contacted at least one Prosecution witness, and is attempting to contact other Prosecution witnesses, to bribe, intimidate or interfere with these witnesses or attempt to bribe, intimidate or interfere with these witnesses in order to make said witnesses lie and recant their testimony before the Court in the hope that such action will result in the release of the AFRC convicted prisoners from prison in Rwanda (“**AFRC Convicts**”). Ragga, a former member of the AFRC convicted in the domestic courts of Sierra Leone in the West Side Boys case, was released from Pademba Road Prison in 2009.
8. Hassan Papa Bangura, aka Bomblast, a former member of the AFRC and commander second to Ibrahim Bazy Kamara during the Freetown invasion, also contacted at least one Prosecution witness. He is apparently working with Ragga to contact and bribe, intimidate or interfere with, or attempt to contact and bribe, intimidate or interfere with former Prosecution witnesses.
9. According to Ragga, the AFRC Convicts will pay money to Prosecution witnesses to lie and change their testimony. Further, a lawyer from Ghana will travel to Freetown on behalf of one or more of the AFRC Convicts to talk to Prosecution witnesses in order to intimidate, bribe or otherwise interfere with these witnesses to change their sworn testimony. Contacts with a least one Prosecution witness persisted even after the witness refused the offer of money in exchange for recantation.
10. AFRC Convict, Brima Bazy Kamara, according to information received by the Prosecution, also attempted to talk to at least one Prosecution witness. Moreover, AFRC Convict, Santigie Borbor Kanu, did indeed talk to at least one Prosecution witness. The information received by the Prosecution further indicates that they may also be attempting to, or already have, contacted other Prosecution witnesses. In one telephone conversation,

³ Samuel Kargbo, aka Sammy Ragga, has not been a witness before any proceedings at the Special Court.

Convict Kanu told a Prosecution witness that the AFRC Convicts were counting on the witness's assistance. The Prosecution witness took this to mean that Convict Kanu wanted the witness to lie and change his testimony. The Prosecution witness was told by Ragga that the witness would financially benefit, that the Convicts had sufficient funds for this project, and that Ragga also expected to benefit from the deal.

11. Ragga also stated that these contacts were being made on the advice of counsel representing the AFRC Convicts, apparently on a *pro bono* basis, or on the basis of undisclosed funding for these supposedly indigent prisoners. The counsel allegedly told the AFRC Convicts that if they could get key witnesses to recant their testimony, the Convicts could be released from prison or have their terms reduced.
12. Full details of the communication with the witness are provided in **Confidential Annex B**.

IV. PROCEDURAL HISTORY

13. The contact described above occurred in late November and early December 2010. It caused the Prosecution to file an urgent motion on 17 December 2010 requesting the President to direct the Registrar to appoint independent counsel to investigate an allegation of contempt.⁴ The Motion was filed with the President of the Court based on the heavy work load of Trial Chamber II and the Prosecution's reading of Rule 77. The President issued his decision on 10 January 2011 and found that he does not have jurisdiction to determine the Motion.⁵
14. On and after 10 January 2011, the Prosecution has been obligated by various filing schedules,⁶ including the filing of its final trial brief on 14 January 2011⁷ and preparation

⁴ *Prosecutor v. Brima et al.*, SCSL-04-16-ES-682, Public with Confidential Annexes Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 17 December 2010.

⁵ *Prosecutor v. Brima et al.*, SCSL-04-16-ES-683, Decision on Public with Confidential Annexes Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 10 January 2011, paras. 7 & 12.

⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-1172, Public Prosecution Response to 'Public with Annex A Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues,' 27 January 2011; SCSL-03-01-T-1164, Public Prosecution Response to Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry based on Leaked USG Cables, 20 January 2011; SCSL-03-01-T1163, Public Prosecution Response to Defence Motion to Re-Open its Case to Seek Admission of Documents Relating to the Relationship between the United States Government and the Prosecution of Charles Taylor, 20 January 2011; SCSL-03-01-T1151, Confidential Prosecution Response to Public Defence Notice of Appeal and Submissions Regarding the Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 10 January 2011; SCSL-03-01-T-1147, Public with Confidential Annex A – Prosecution Response to Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses, 10 January 2011.

for final submissions beginning on 8 February 2011.

V. APPLICATION

15. Burdened with responding to various late Defence motions, filing of its final trial brief and preparation for closing arguments, the Prosecution has been unable to take further action as guided by the Decision until this time. The Prosecution now files this request with Trial Chamber II in accordance with Rule 77(C)(iii).
16. The Prosecution requests that the Trial Chamber direct the Registrar to appoint an experienced independent counsel to investigate alleged contemptuous conduct prohibited by:
 - a) Rule 77(A)(ii): disclosure of information, including the identity and other information concerning protected witness(es);
 - b) Rule 77(A)(iv): threatens, intimidates, offers a bribe to or otherwise interferes with witness(es) who had given evidence in proceedings before a Chamber; and
 - c) Rule 77(B): any incitement or attempt to commit any of the acts punishable under Sub-Rule (A).
17. Accordingly, the Prosecution requests that the investigation consider the conduct of:
 - a) Samuel Kargbo, aka Sammy Ragga;
 - b) Hassan Papa Bangura, aka Bomblast;
 - c) AFRC Convict Santigie Borbor Kanu, aka 55;
 - d) AFRC Convict Ibrahim Bazzy Kamara, aka Bazzy; and
 - e) Any other individuals identified by the investigation as engaging in conduct prohibited under Rule 77(A).

VI. ARGUMENT

ORDER FOR INVESTIGATION FOR CONTEMPT OF COURT

18. As stated in Rule 77, this Court possesses an inherent power to ensure that the exercise of its jurisdiction is not frustrated and that its basic judicial functions are safeguarded. The

⁷ *Prosecutor v. Taylor*, SCSL-03-01-T-1156, Confidential Prosecution Final Trial Brief, 14 January 2011.

possession of such inherent power is also established by the jurisprudence of this Court⁸ and the International Tribunals.⁹ Indeed, as the Appeals Chamber states:

“witnesses must never be put under any pressure in their choice to give evidence for one party or another or as to what evidence they should give, and must be rigorously protected thereafter from any reprisals.”¹⁰

19. Contempt of court is an act or omission intended to interfere with the due administration of justice. 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.” This standard was confirmed by the Appeals Chamber which noted that:

“the standard is not that of a *prima facie* case, which is the standard for committal for trial. It is the different and lower standard of “reason to believe” that an offence may have been committed, which is the pre-condition for ordering an independent investigation.”¹¹

20. The Appeals Chamber further determined that an allegation must be credible¹² and a party has a duty to bring alleged misconduct to the attention of the Trial Chamber without undue delay.¹³

21. It is important to highlight that the standard required for a request for an investigation into possible contempt of court is reason to believe that a person may have engaged in such conduct. There is no requirement that there be a showing that the person has engaged in the

⁸ See the AFRC Appeals Decision cited at foot note 1 above; *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.

⁹ *Prosecutor v. Marijacic and Rebic*, IT-95-14-R77.2, Judgement, 10 March 2006, para. 13:

“[...] it is firmly established that the Tribunal possesses an inherent jurisdiction, deriving from its judicial function, to ensure that its exercise of the jurisdiction expressly given to it by the Statute is not frustrated and that its basic judicial functions are safeguarded. As an international criminal court, the Tribunal possesses this inherent power to deal with conduct interfering with its administration of justice. Such interference may be by way of conduct which obstructs, prejudices or abuses the Tribunal’s administration of justice. Those who knowingly and wilfully interfere with the Tribunal’s administration of justice in such a way may, therefore, be held in contempt of this Tribunal.”

with reference 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.

¹⁰ AFRC Appeals Decision, para. 2.

¹¹ AFRC Appeals Decision, para. 17 (emphasis added). This standard was acknowledged by the Chamber in its decision 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 Contempt Decision**”), para. 7.

¹² AFRC Appeals Decision, para. 2.

¹³ September Contempt Decision, para. 16 citing AFRC Appeals Decision.

alleged act, in knowing or willing violation of Rule 77. This applies equally to the proof requirements for knowing violations of an order of the Court, intimidation or other interference with witnesses. 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.

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

22. The information set out 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 two Prosecution witnesses, to third party persons including those listed in paragraph 17(a)-(b) above, in knowing violation of the protective measures orders governing the testimony of these witnesses, and possibly other witnesses regarding their testimony in the AFRC Trial.

INTIMIDATION OF A WITNESS AND OFFERS TO BRIBE A WITNESS (RULE 77(A)(IV))

23. Conduct that amounts to intimidation consists of acts or culpable omissions that are likely to constitute direct, indirect or potential threats to a witness or a potential witness. It must be of a sufficient gravity to be likely to intimidate a witness and is to be evaluated in the context of the circumstances of each particular case. It is not required that the witness was actually intimidated. As found by the ICTY:

“Intimidation of a witness as contempt of court is a crime of conduct, which does not require proof of a result. Whether the witness was actually intimidated is immaterial; the Prosecution need only prove that the conduct in question was intended to interfere with the Tribunal’s due administration of justice.”¹⁴

24. There is reason to believe, on the basis of the information set out in **Confidential Annex B**, that Samuel Kargbo, aka Sammy Ragga; Hassan Papa Bangura, aka Bomblast; Santigie Borbor Kanu, aka 55; Ibrahim Bazy Kamara, aka Bazy; and other persons not yet identified, including any counsel advising all or any of the AFRC Convicts, may have engaged in conduct that amounts to intimidating or offering bribes to witnesses and falls

¹⁴ *Prosecutor v Brdjanin*, IT-99-36-R77, Decision on Motion for Acquittal pursuant to Rule 98bis concerning allegations against Milka Maglov, 19 March 2004, para. 23.

within the ambit of Rule 77(A)(iv).

OTHERWISE INTERFERING WITH A WITNESS (RULE 77(A)(IV))

25. There are various forms of conduct that may give rise to the offence of “otherwise interfering with the witness” including conduct that is of a similar gravity to intimidation that equally 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.”¹⁵ Although the Brdjanin decision refers to the outcome in a pending case, the Prosecution submits that it is equally applicable where the conduct seeks to reopen a case and thereby influence the outcome of the reopened case.
26. There is reason to believe, on the basis of the information set out in **Confidential Annex B**, that Samuel Kargbo, aka Sammy Ragga; Hassan Papa Bangura, aka Bomblast; Santigie Borbor Kanu, aka 55; Ibrahim Bazy Kamara, aka Bazy; and other persons not yet identified, including any counsel advising all or any of the AFRC Convicts, may have engaged in conduct that amounts to interfering with witnesses who have given evidence in proceedings before this Court and falls within the ambit of Rule 77(A)(iv).

BREACH OF PROTECTIVE MEASURES ORDERS IN VIOLATION OF RULE 77(A)

27. As considered in the *Samura* Judgement, relying on the findings in *Milosević*, “it is an obvious consequence of refusing to comply with an order of the Chamber that the administration of justice is interfered with.”¹⁶ Rule 77(A) is a non-exhaustive list of conduct that interferes with the administration of justice. Other conduct that interferes with the administration of justice such as breaches of court orders, is clearly also captured by this Rule.
28. The investigation may establish that protective measures orders applicable to the witnesses identified in **Confidential Annex A**, and potentially other witnesses, were breached by directly or indirectly contacting the witnesses without leave of the Court. Such conduct is conduct which interferes with the administration of justice and so constitutes contempt for the purposes of Rule 77(A).

¹⁵ *Ibid*, para. 28.

¹⁶ *Independent Counsel v. Samura*, SCSL-05-01-18, Judgement in Contempt Proceedings, 26 October 2005, para. 14.

ADDITIONAL INFORMATION

29. In order to provide additional and potentially relevant information to the Trial Chamber, the Prosecution also includes the attached Memorandum at **Confidential Annex C** which reports an alleged contact by one of the RUF convicts. To the knowledge of the Prosecution, the Registrar did not investigate the incidents reported in the memorandum and apparently determined that there was not an immediate threat to Prosecution witnesses. The Prosecution notes that these contacts involving the RUF convict began shortly after the convict Issa Sesay returned from The Hague after completing his testimony in the Taylor trial on 23 August 2010. The Prosecution submits that this information is relevant to the current request for an investigation as it also involves questionable and suspicious contacts from the RUF convict.

URGENT INTERIM MEASURES

30. The Prosecution requests that, pending an investigation into the alleged conduct, the phone privileges of the AFRC Convicts be suspended, or in the alternative, restricted and closely monitored to prevent the types of contact detailed above. This action is necessary to prevent the possibility of improper conduct in anticipation of and during any investigation ordered.

VII. CONCLUSION

31. On the basis of the above and the information provided in the attached Annexes, there is reason to believe that the following persons, at a minimum, may have been involved in contemptuous conduct in contravention of Rule 77(A):

- a) Samuel Kargbo, aka Sammy Ragga;
- b) Hassan Papa Bangura, aka Bomblast;
- c) AFRC Convict Santigie Borbor Kanu, aka 55;
- d) AFRC Convict Ibrahim Bazy Kamara, aka Bazy; and
- e) Any other individuals identified by the investigation as engaging in conduct prohibited under Rule 77(A).

32. Accordingly, the Prosecution respectfully requests that the Trial Chamber direct the Registrar to appoint an experienced independent counsel to investigate the possible contempt of Court by individuals, including those identified above and others whose identify may be revealed during the investigation, in relation to, *inter alia*, the following conduct:

- (a) disclosure of information, including the identity and other information concerning protected witnesses;
- (b) intimidation, bribery, or other interference with a witness who has given evidence in proceedings before a Chamber of the Court; and
- (c) violation of protective measures orders issued by a Chamber of the Court.

Filed in The Hague,

31 January 2011

For the Prosecution,



Brenda J. Hollis
The Prosecutor

LIST OF AUTHORITIES

SCSL Cases

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

Prosecutor v. Taylor, SCSL-03-01-T-1172, Public Prosecution Response to ‘Public with Annex A Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues,’ 27 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1164, Public Prosecution Response to Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry based on Leaked USG Cables, 20 January 2011

Prosecutor v. Taylor, SCSL-03-01-T1163, Public Prosecution Response to Defence Motion to Re-Open its Case to Seek Admission of Documents Relating to the Relationship between the United States Government and the Prosecution of Charles Taylor, 20 January 2011

Prosecutor v. Taylor, SCSL-03-01-T1151, Confidential Prosecution Response to Public Defence Notice of Appeal and Submissions Regarding the Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 10 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1147, Public with Confidential Annex A – Prosecution Response to Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses, 10 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1156, Confidential Prosecution Final Trial Brief, 14 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-432, “Confidential Decision on Prosecution Motion for a Subpoena Ad Testificandum”, 3 March 2008

Prosecutor v. Taylor, SCSL-03-01-T-6000, 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

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Prosecutor v. Brima et al., SCSL-04-16-ES-683, “Decision on Public with Confidential Annexes Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone”, 10 January 2011, paras. 7 & 12.

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

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

Prosecutor v. Brima, et al., SCSL-04-16-PT-122, List of Protective Measures Received from Trial Chamber I and other Information Filed Pursuant to Scheduling Order of 28 January 2005, 1 February 2005

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

Prosecutor v. Sesay, et al., SCSL-04-15-T-180, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004

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

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

Other Cases

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

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Prosecutor v. Brdjanin, 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>

Prosecutor v. Marijacic and Rebic, IT-95-14-R77.2, “Judgement”, 10 March 2006 http://www.un.org/icty/blaskic/rebic_contempt/reb-tcj060310e.pdf

Prosecutor v. Tadić, IT-94-1-A-R77, “Judgment on Allegations of Contempt against Prior Counsel, Milan Vujin”, 31 January 2000 <http://www.un.org/icty/tadic/appeal/vujin-e/vuj-aj000131e.pdf>



SPECIAL COURT FOR SIERRA LEONE

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CONFIDENTIAL DOCUMENT CERTIFICATE

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

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Document Index Number: **684**

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Public with confidential Annexes Prosecution motion for an investigation into contempt of the Special Court for Sierra Leone

Name of Officer:

Alhassan Fornah

Signed: