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Date: 21 MAY, 2013	Case No: SCSL-12-02-A	Independent Counsel v. Prince Taylor
To:	**APPEALS CHAMBER**	
From	Court Management Section (CMS)	
CC:		
Subject	**Articles 12**	

Document: RE-FILING OF APPEAL ON BEHALF OF MR. PRINCE TAYLOR WITH APPLICATION FOR THE APPEAL TO BE FILED OUT OF TIME

Document Dated: 20 MAY, 2013

☐ **Reasons:** The Appellant relies on all of the reasons set out in paras 1-23 of the present filing, submitted with this form, for respectfully requesting that the filing is accepted despite being filed out of time. Each of the reasons set out in the filing are hereby incorporated into this section of the late filing form. In summary the reasons for the late filing are that (i) the Appellant only received notice of the finding of the Appeals Chamber that his Appeal was not properly before the Appeals Chamber by its decision of 14 May 2013 and hence this is the first opportunity that the Appellant has to re-file his Appeal; (ii) the Appellant had requested (with reasons) the Appeals Chamber to accept the filing of his Submissions based on the Grounds of Appeal, even though they were filed out of time, in the Submissions that were filed on 15 March 2013; (iii) it would be in the interests of justice and fairness to accept the Appeal now as properly filed so that the merits of the Appellant's appeal against his conviction and sentence are determined, or else he will be denied the only chance ever available to someone convicted before the SCSL to have his appeal considered on its merits by the Appeals Chamber; and (iv) no prejudice would be caused; indeed it would be wholly disproportionate to refuse the relief requested on the basis of a 'technicality'. The full reasons in support of the request for the filing to be accepted despite being out of time and all of the reasons relied on by the Appellant are as set in the filing itself.

Signed: Dated: 21 MAY, 2013

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SCSL-12-02-A
(271 – 333)

SPECIAL COURT FOR SIERRA LEONE

APPEALS CHAMBER

Before: Justice Emmanuel Ayoola, Presiding
Justice Renate Winter
Justice Jon Moadeh Kamanda

Registrar: Ms. Binta Mansaray

Case No: SCSL-12-02-A

Date filed: 20 May 2013

THE INDEPENDENT COUNSEL

V.

PRINCE TAYLOR

PUBLIC

RE-FILING OF APPEAL ON BEHALF OF MR. PRINCE TAYLOR WITH APPLICATION FOR THE APPEAL TO BE FILED OUT OF TIME

Independent Counsel:
William L. Gardner

Counsel for Prince Taylor:
Rodney Dixon

Principal Defender:
Ms. Claire Carlton-Hanciles

SPECIAL COURT FOR SIERRA LEONE
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INTRODUCTION

1. Mr. Prince Taylor ("the Appellant") hereby re-files his Notice of Appeal and the Submissions based on his Grounds of Appeal together with an Application to the Appeals Chamber to accept his Appeal out of time.

2. The Appellant makes this filing in light of the Appeals Chamber's finding on 14 May 2013 that Mr. Prince Taylor's Appeal was "*not properly before the Appeals Chamber*" because the Appellant had not filed the Submissions based on the Grounds of Appeal together with the Notice of Appeal by 22 February 2013.[1] The Appeals Chamber found that although the Notice of Appeal was filed timeously on 22 February 2013, the Submissions, which were filed on 15 March 2013, had been filed out of time.

3. The Appeals Chamber's decision that the Submissions were filed out of time was premised on its determination that the Practice Direction for Certain Appeals (2004) ("2004 Practice Direction") applied to the filing of this Appeal. The Submissions being filed 3 weeks out of time reflected the Appellant's Counsel's understanding that the Practice Direction on the Structure of Grounds of Appeal before the SCSL of 1 July 2011 (as amended in 2012) ("2011 Practice Direction") applied to the filings in this Appeal. Under the 2011 Practice Direction the Submissions were filed in time. The Appellant's Counsel also made application within the Submissions of 15 March 2013 for an extension of time as would be required for the Submissions to be considered by the Appeals Chamber if regulated by the 2004 Practice Direction. His only failing was not to ensure that the relevant Court Management Section ("CMS") late filing form was filed with Submissions on 15 March 2013 in accordance with Article 12 of the Practice Direction on Filing Documents Before the SCSL (2003, as amended) ("the 2003 Practice Direction").

4. In consequence the Appellant has been denied the only chance ever available to someone convicted before the SCSL to have his appeal considered on its merits by the Appeals Chamber. This denial can properly be said to be on the basis of a

[1] *Independent Counsel v. Prince Taylor*, Judgment in Contempt Proceedings, SCSL-12-02-A, 14 May 2013, p. 8.

failure to comply with a 'technical' requirement that has caused, and causes, no prejudice to the Court or to the Independent Counsel. It will be argued that to deny the Appellant consideration of the merits of his appeal on the basis of this technicality is wholly disproportionate and that the Appeals Chamber should grant him the relief sought by this present re-filing.

APPLICATION TO FILE APPEAL OUT OF TIME

Overview of Application

5. The Appellant requests the Appeals Chamber to accept his Appeal as now being properly before the Appeals Chamber. It is filed out of time as the deadline for filing the Notice of Appeal and Submissions based on the Grounds of Appeal has been held by the Appeals Chamber to be 22 February 2013. The only reason for the Appellant re-filing his Notice of Appeal and Submissions now on 20 May 2013 - 3 months late - is that the Appellant was notified at a hearing on 14 May 2013, and not before, that the Appeals Chamber has decided that the Appeal is not properly before the Appeals Chamber on account of the failure to ensure that the necessary CMS late filing form was filed with the Submissions on 15 March 2013. The Appellant would, of course, have re-filed the Appeal immediately following any earlier notification that the Appeals Chamber might have given that it could not exercise its discretion to accept the Submissions of 15 March 2013 out of time in the absence of a CMS late filing form.

6. In its Judgment of 14 May 2013 the Appeals Chamber accepted that it *could* exercise its discretion to accept the Submissions of 15 March 2013 out of time pursuant to Article VII.21 of the 2004 Practice Direction. However, the Appeals Chamber reasoned that it was barred from doing so solely because the Appellant had not filed "*the relevant Court Management Section Form*" indicating the reason for delay when filing the Submissions on 15 March 2013 in accordance with Article 12 of the 2003 Practice Direction.[2] The Appeals Chamber did not, therefore, consider the merits of Mr. Taylor's Appeal.

[2] *Independent Counsel v. Prince Taylor*, Judgment in Contempt Proceedings, SCSL-12-02-A, 14 May 2013, para. 27.

7. The Appellant hereby re-files his Notice of Appeal of 22 February 2013, together with his Submissions based on the Grounds of Appeal[3] and, in accordance with Article 12 of the 2003 Practice Direction, has notified the CMS in the relevant CMS form of the reasons for the delay in making this re-filing, as set out in full in the present Application. The Appellant has incorporated all of the reasons for the delay as set out in detail in this filing in the CMS late filing form. This notification to CMS will have enabled CMS to serve the necessary late filing form with the present document.[4]

8. It is most important to note that the Appellant *had* set out in the Submissions of 15 March 2013 the reasons why the Appeals Chamber should have accepted that the Submissions were filed properly before the Appeals Chamber if, contrary to the Appellant's Counsel's belief, it was the 2004 Practice Direction and not the 2011 Practice Direction that applied to this Appeal. The Appellant had requested the Appeals Chamber in his filing of 15 March 2013 to accept the filing out of time with reasons why the Appeals Chamber should do so. The only step that had not been taken was to ensure that the necessary late filing form was completed by CMS and served with the document. Filing such a form would not have added any reason for the delay that was not already before the Appeals Chamber in the Submission itself. The form would merely have repeated the reasons as set out in the Submissions of 15 March 2013.

9. In these circumstances, the Appeals Chamber is requested to exercise its discretion in accordance with Article VII.21 of the 2004 Practice Direction to accept the Appeal as now being properly before the Appeals Chamber, even though it is filed out of time.

10. The Appeals Chamber is thus respectfully requested to consider and adjudicate the merits of the Appellant's Appeal in the interests of justice and, in particular, in order to guarantee and give genuine effect to the Appellant's right to appeal as enshrined in Article 20 of the Statute. The Appellant submits that there is no

[3] The Appellant makes this filing pursuant to Article 20 of the Statute; Rules 77(J) and (K), 108(B), 116, and 117; the Practice Direction for Certain Appeals (2004); and the Practice Directions on Filing Documents before the SCSL (2003, as amended) and on Dealing with Documents in The Hague Sub-Office (2008, as amended).
[4] CMS has confirmed that the relevant form which the Appellant must complete is CMS7 (entitled "Notice of Deficient Filing Form"). The Appellant has been advised by CMS to complete only the section under the heading "Reasons", which the Appellant has duly done and has provided to CMS with the present document. CMS has confirmed that CMS will complete the rest of the form and serve it with the filing in accordance with Article 12 of the 2003 Practice Direction.

prejudice caused by the Appeals Chamber in its discretion accepting the Appeal as properly filed. Any delay that has been occasioned is substantially outweighed by the very serious prejudice to the Appellant if the merits of his appeal against his conviction were not determined at all. Mr. Taylor would otherwise be left without an effective appeal from the judgment in first instance merely on the basis of a purely 'technical' deficiency, namely the failure to ensure that a late filing form from CMS accompanied the filing of the Submissions on 15 March 2013 (repeating the reasons for the delay as already set out in the Submissions), for which Mr. Taylor could not be said to be responsible. This failure alone should not prejudice Mr. Taylor's basic right to have the alleged errors in his conviction considered by the Appeals Chamber. The Appellant submits that such an outcome would be wholly disproportionate and contrary to the interests of justice.

Reasons for filing out of time

11. The Appellant did file his Notice and Grounds of Appeal *in time* on 22 February 2013. The Notice set out the reasons in support of these Grounds in detail (16 pages in total), and could have itself been considered on its merits.

12. In any event, the Appellant *did* ask the Appeals Chamber at the time to accept the Submissions of 15 March 2013 and to regard them as properly filed. As noted above, the Submissions of 15 March 2013 were filed 21 days after the Notice of Appeal in accordance with the terms of the 2011 Practice Direction. The Submissions came with a specific request from the Appellant that the Appeals Chamber accept them as properly supported by an application for leave to file out of time were the Appeals Chamber to determine that the provisions of the 2004 Practice Direction applied.

13. The Appellant submitted in the Submissions of 15 March 2013 (footnotes included) that:

> The Appellant files these Submissions in support of the grounds of appeal set out in the Appellant's Notice of Appeal. The Appellant does so on the basis of Rules 108 and 111 and the most recent Practice Direction on Structure of Grounds of Appeal of 1 July 2011 which, as it states, applies to all "appeals from final judgments of a Trial Chamber". The latest Practice Direction on appeals does not state that appeals under Rule 77 are excluded from its application. The present appeal thus appears to fall within the scope of the

2011 Practice Direction which requires the Appellant to file his Submissions in support of his Notice of Appeal in accordance with the Rules, namely Rule 111 that permits the Appellant to file the Submissions within 21 days of the filing of the Notice of Appeal (para. 6).[5] The 2011 Practice Direction permits the Independent Counsel thereafter to respond to the Appellant's Submissions within 14 days (para. 12).

In the event that the earlier Practice Direction of 30 September 2004 applies to the present appeal, and takes precedence over the subsequent Practice Direction of 1 July 2011, the Appellant hereby applies to the Appeals Chamber, as provided for in Article VII of the 2004 Practice Direction, for the Appeals Chamber in its discretion to consider the present Submissions and to regard them as properly filed with the Notice of Appeal in the interests of justice.[6] The Appellant submits that there would be no prejudice for the Appeals Chamber to accept the present Submissions, and it would cause no delay in the proceedings. No Bench of the Appeals Chamber has as yet been appointed for the present appeal. The Independent Counsel has not filed any response to the appeal, and presumably has taken the view that the later Practice Direction and Rule 111 applies, which permits him to respond to the Appellant's appeal within 14 days of receiving the Appellant's Submissions (i.e. the present filing). The Appellant would of course have no objection to the Independent Counsel filing his response to the Notice of Appeal and these Submissions within 14 days, or such period as determined by the Appeals Chamber. The Appellant has set out his submissions in support of his appeal in the present filing. It is imperative that the Appeals Chamber consider these submissions in the interests of justice to be in a position to adjudicate fairly the Appellant's grounds of appeal. For these reasons the Appellant requests the Appeals Chamber to accept and consider these Submissions, together with the list of materials and authorities set out in the Annex hereto.[7]

14. The Appeals Chamber did not record in its Judgment of 14 May 2013 that the Appellant had made this application for filing out of time. The CMS late filing form would have added nothing of substance. Identical reasons set out in the Submissions of 15 March 2013 explaining delay would have been repeated in the CMS late filing form. The requirement to file the CMS form may be seen as purely 'technical'. It could not have assisted the Appeals Chamber (had it been

[5] Although Rule 117 provides that Rules 109 to 114 do not apply to appeals under Rule 77, it also states "unless otherwise ordered" and that the time limits and other procedural requirements shall be fixed by a practice direction issued by the Presiding Judge.
[6] A Bench of the Appeals Chamber has noted that the Practice Direction of 2004 is applicable to appeals under Rule 77 (while also referring to the 2011 Practice Direction), but the Bench held that procedural regularities arising from non-compliance with the Practice Direction could be waived in the interests of justice under the Practice Direction: see *Independent Prosecutor v. Bangura* et al., Order for Filing of Index of Documents and List of Authorities, SCSL-11-02-A-168-171, 14 December 2012.
[7] *Independent Counsel v. Prince Taylor*, Appellant's Submissions for Appeals Against Conviction and Sentence, SCSL-12-02-A, 15 March 2013, paras. 3, 4.

filed) in deciding whether to accept the filing out of time any more than the Submission itself which contained the reasons for the delay.

15. The Independent Counsel also proceeded on the basis of the 2011 Practice Direction. By reference to this Practice Direction he requested the Appeals Chamber to clarify when his Response had to be filed[8], and indeed filed his Response in accordance with the deadline prescribed in the 2011 Practice Direction on 2 April 2013 i.e. within 14 days of receiving the Appellant's Submissions based on the Grounds of Appeal.[9] He did not oppose the filing of Appellant's Submissions of 15 March 2013 as being out of time. Furthermore, he made no reference to either the 2004 Practice Direction or Article 12 of the 2003 Practice Direction in his Response. He made no application for his Response to be accepted out of time and no late filing form was submitted with his Response. The Appeals Chamber did not rule on his request for clarification about the deadline for filing his Response. Moreover, in its Judgment of 14 May 2013, the Appeals Chamber did not address the fact that the parties had proceeded on the basis of the 2011 Practice Direction, and, as noted above, did not record that the Appellant had specifically asked the Appeals Chamber to accept the Submissions of 15 March 2013 as being properly filed, even though out of time.

16. In the Appellant's submission, the Appellant took all necessary steps to safeguard his right to have the merits of the Appeal determined, save for ensuring that the CMS late filing form was filed. It is submitted that it would be unduly harsh on the Appellant if he were prevented from having his Appeal considered solely on the basis of this 'technical' deficiency for which he could not be held personally responsible. The interests of justice could not be served by denying Mr. Taylor the opportunity to have his conviction by a 'first instance' Chamber reviewed on appeal, as is his right under the Statute. The unfairness and prejudice to him - a convicted person serving a prison term - significantly outweigh any other considerations.

17. By this filing the Appellant has remedied the 'technical' deficiency by ensuring that the CMS form is filed and requesting the Appeals Chamber to exercise its

[8] *Independent Counsel v. Prince Taylor*, Independent Counsel's Urgent Motion for Clarification Regarding the Deadline for Filing Submissions in Response to Appellant's Submissions for Appeal against Conviction and Sentence, SCSL-12-02-A, 18 March 2013, paras. 1, 2.
[9] *Independent Counsel v. Prince Taylor*, Respondent Independent Counsel's Submission in Response to Appellant's Submissions for Appeal against Conviction and Sentence, SCSL-12-02-A, 29 March 2013.

discretion to regard his Appeal as properly filed, in the interests of justice and fairness. Mr. Taylor would be without any remedy were the Appeals Chamber to refuse now to accept his appeal as properly filed as a result of circumstances for which Mr. Taylor could not be said to be responsible. He should in the interests of justice be allowed the benefit of having his conviction subjected to the scrutiny of the proper appellate process.

18. As held in its Judgment of 14 May 2013, the Appeals Chamber may in its discretion accept a filing out of time under Article VII.21 of the 2004 Practice Direction. The only condition that must be met is that the Appellant must have filed together with the late filing the relevant CMS form, thereby enabling CMS to serve the document with a late filing form. The Appeals Chamber found that its discretion to accept a late filing can only be exercised on condition that the Appellant has filed his "late" submissions "*together with the relevant Court Management Form indicating the reason for the delay, thereby enabling the Court Management Section to serve the document with a late filing form*".[10] The Appeals Chamber concluded that "*[o]nly then can 'the Judge or Chamber before which such a document is filed ... decide whether to accept the document despite its late filing*".[11]

19. It is in light of this finding by the Appeals Chamber that the Appellant hereby re-files his Appeal together with the necessary CMS late filing form. The Appeals Chamber may in its discretion, and in accordance with its finding in its Judgment of 14 May 2013, accept the Appeal as being properly filed in accordance with the Rules and applicable Practice Directions. As submitted above, the only reason for re-filing the Notice of Appeal and Submissions now - out of time - is because the Appellant was notified for the first at a hearing on 14 May 2013 that the Appeals Chamber has decided that the Appeal is not properly before the Appeals Chamber on account of the failure to ensure that the necessary CMS late filing form was filed with the Submissions on 15 March 2013.

20. The Appellant submits that as the substance of his Appeal has not been considered, it would be unjust for the Appeals Chamber as presently constituted to

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[10] *Independent Counsel v. Prince Taylor,* Judgment in Contempt Proceedings, SCSL-12-02-A, 14 May 2013, para. 27.

[11] *Independent Counsel v. Prince Taylor,* Judgment in Contempt Proceedings, SCSL-12-02-A, 14 May 2013, para. 27.

refuse to exercise its discretion on the basis that the appeal had already been determined. Having found that the Appeal was not properly before it solely on account of not receiving a CMS form, the Appeals Chamber could now exercise its discretion under the 2004 Practice Direction to regard the Appeal as properly filed in order to consider the merits of the Appeal. The Appeals Chamber is urged to take into account that the Appellant will otherwise be without any remedy. There will be no prejudice caused by considering the merits of the Appeal. The Appellant has submitted exactly the same Grounds of Appeal and Submissions that have already been before, and considered by, the Appeals Chamber. The Independent Counsel would not be required to submit any further Response; his Response already filed could be accepted and considered (unless he chose to make any further submissions). As stated above, the Independent Counsel did not oppose the filing of the Submissions of 15 March 2013 as being out of time in his Response.

21. Furthermore, the case law of the SCSL and other international courts confirms that filings can be accepted out of time in the interests of justice, particularly when to refuse to do so would prejudice the rights of the accused.[12]

22. The Appeals Chamber also made reference to Rule 116 in its Judgment.[13] This rule permits the Appeals Chamber to extend the time limit for the submission of filings on a showing of good cause. It is not clear from the Judgment whether an application under this Rule could only be considered if the necessary CMS late filing form had been filed. If so, the form having now been filed, application is also made under Rule 116 for the Appeals Chamber to extend the time limit for the filing of the Appeal (for completeness and in order to ensure that no procedural step has not been undertaken). The Appellant relies on, and incorporates, all of the reasons above in support of this application and submits that based on these reasons good cause is shown for granting the extension requested.

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[12] *Prosecutor v. Charles Taylor*, Decision on Defence Notice of Appeal and Submissions Regarding the Decision on Late Filing of Defence Final trial Brief, SCSL-03-01-T, 3 March 2011, para. 66; *Prosecutor. v. Brima et al.*, Decision on Urgent Defence Request under Rule 54 with Respect to Filing of Motion for Acquittal, SCSL-04-16-T, 19 January 2006. See also, *Prosecutor v. Taylor*, Dissenting Opinion of the Hon Justice Julia Sebutinde, Decision on Late Filing of Defence Final Trial Brief, SCSL-03-1-T, 7 February 2011, para. 8, 10.

[13] *The Independent Counsel v. Prince Taylor*, Judgment in Contempt Proceedings, SCSL-12-02-A, 14 May 2013, para. 28.

Conclusion

23. For all of the above reasons the Appellant requests the Appeals Chamber to regard the Notice of Appeal and Submissions, as set out below, to be properly filed, despite being out of time, and to consider the merits of Mr. Taylor's appeal in the interests of justice.

NOTICE OF APPEAL

Introduction

1. The Defence for Mr. Prince Talyor files this Notice of Appeal pursuant to Article 20 of the Statute and Rules 77(J) and 108 against the Judgement in Contempt Proceedings, rendered on 25 January 2013 and filed on 11 February 2013 ("Judgement in Contempt Proceedings"[14]), and the Sentencing Judgment, rendered on 8 February 2013, filed on 14 February 2013 and transmitted to the parties on 15 February 2013 ("Sentencing Judgement"[15])

Background to proceedings

2. Mr. Prince Taylor was charged under Rule 77(A)(iv) with offering bribes and otherwise interfering with five Prosecution witnesses who had given evidence before the SCSL in the case against Mr. Charles Taylor. It was alleged he instructed Mr. Eric Senessie to contact these witnesses to offer them bribes to recant their testimonies in late January and early February 2011. He was also charged with instructing Mr. Senessie to provide false information to the Independent Counsel in the investigation of the present contempt case on or about 26 March to 6 April 2011.

3. Mr. Taylor was convicted by the Trial Chamber of five counts of "otherwise interfering" with witnesses through the instructions it was found he gave to Mr. Eric Senessie (namely, Counts 2, 4, 7, 8 and 9).

4. The Chamber found that Mr. Taylor "otherwise interfered" with (i) four Prosecution witnesses, Mohamed Kabba, TFI-274, TFI-585, and Aruna Gbonda (not TFI-516, for which he was only charged with bribery) by instructing Mr. Senessie to contact them to recant the testimonies (Counts 2, 4, 7, and 8), and (ii) Mr. Senessie by instructing him to give false information to the Independent Counsel on or about 26 March to 6 April 2011 in the investigation of the present contempt case (Count 9).

5. Mr. Taylor was acquitted of all counts of offering bribes to the same Prosecution witnesses who had given evidence before the SCSL in the case against Mr. Charles

[14] SCSL-12-02-T-480-535.
[15] SCSL-12-02-T-536-550.

Taylor through the instructions he had allegedly given to Mr. Senessie (namely, Counts 1, 3, 5, and 6).

6. At his trial, the Trial Chamber heard evidence from only one witness, Mr. Eric Senessie, called by the Independent Counsel. The evidence of the five Prosecution witnesses who had given evidence in Mr. Senessie's earlier trial was admitted by agreement and they were not recalled to testify in Mr. Taylor's trial.

7. Following earlier his trial, Mr. Senessie was convicted on 21 June 2012 by the same Trial Chamber for the same incidents as well as for offering bribes to the Prosecution witnesses.[16] Even though Mr. Senessie was convicted of offering bribes to the witnesses, Mr. Taylor was not convicted of doing so through instructions to Mr. Senessie. The Chamber found Mr. Senessie's evidence that he was instructed by Mr. Taylor to bribe the witnesses to be incredible.[17] The Chamber held that Mr. Taylor's instruction to Mr. Senessie only extended as far as directing him to contact the witnesses, but not to bribing them.

8. Mr. Senessie admitted at his sentencing hearing on 4 July 2012 that he had committed the offences of bribing and interfering with the witnesses, and for the first time he blamed Mr. Taylor for instructing him to do so.[18] As a result, the Independent Counsel sought to charge Mr. Taylor for all of the same offences, including bribery. Mr Taylor was indicted by the Trial Chamber on 4 October 2012.[19] Mr. Taylor would not have been charged in the absence of Mr. Senessie's statements at his sentencing hearing. The Chamber had previously found when it indicted Mr. Senessie on the basis of the evidence of the five Prosecution witnesses that there was *insufficient* evidence to charge Mr. Taylor.[20]

9. The Independent Counsel accepted that Mr. Senessie was his key witness and that his case stood or fell on Mr. Senessie's testimony.

10. All of the evidence relied on by the Defence for Mr. Taylor was agreed by the Independent Counsel and thus admitted in written form as uncontested evidence.

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[16] SCSL-11-01-T-27.
[17] Judgement in Contempt Proceedings, paras 211-212.
[18] SCSL-11-01-T-20.
[19] SCSL-12-02-012-023.
[20] Decision on the Report of the Independent Counsel, 24 May 2011, SCSL-03-01-T-37571-37576, page 3.

The evidence of Mr. Senessie's former lawyer, Lawyer X[21], was admitted as part of the Defence case in this way as agreed evidence. His evidence directly undermined the credibility of Mr. Senessie's evidence on crucial questions of fact, but was nevertheless admitted with the agreement of the Independent Counsel who elected not to cross-examine him.

11. The evidence of three international lawyers who gave character evidence about Mr. Taylor was also admitted by agreement between the parties and was not subjected to cross-examination.

12. The Trial Chamber sentenced Mr. Taylor to two years of imprisonment for each of the convictions on Counts 2, 4, 7, and 8 and to two and a half years of imprisonment for Count 9. The Chamber ordered that each term of imprisonment should be served concurrently.

Grounds of Appeal

13. The Defence relies on the following grounds of appeal against the Judgement in Contempt Proceedings:

    a. Ground 1: The Trial Chamber committed errors of law and fact in convicting Mr. Taylor of Counts 2, 4, 7, 8 and 9 by relying on portions of the testimony of Mr. Eric Senessie, a single witness, when (i) these portions of his evidence were uncorroborated by reliable and independent evidence, (ii) the Chamber had previously found Mr. Senessie to be a liar and had convicted him of bribing and interfering with the five Prosecution witnesses, (iii) even after Mr. Senessie claimed to be telling the whole truth in Mr. Taylor's trial, the Chamber nevertheless found that portions of his testimony on highly relevant and directly related questions of fact were *incredible* (including its finding that Mr. Senessie's evidence that he was instructed by Mr. Taylor to offer bribes to the witnesses was not credible[22]), and (iv) there were numerous reasons to find Mr. Senessie to be an incredible and unreliable witness on the evidence, who had an incentive to lie about Mr. Taylor's involvement in order to seek to reduce his prison sentence, which should have been taken into

[21] This is the pseudonym given to the witness on the order of the Trial Chamber.
[22] Judgement in Contempt Proceedings, paras 211-212 and also see for example paras. 169 and 177.

account by the Chamber in exercising special caution in its assessment of the evidence of a proven liar.

b. Ground 2: The Trial Chamber committed errors of law and fact in convicting Mr. Taylor on the basis that portions of Mr. Senessie's testimony were not rebutted by the Defence.

c. Ground 3: The Trial Chamber committed errors of law and fact in finding that Mr. Senessie's evidence should not be rejected on account of the conflicting evidence between Lawyer X and Mr. Senessie, and in making findings about the *agreed* evidence of Lawyer X without there being any foundation in the evidence for such findings.

d. Ground 4: The Trial Chamber committed an error of law and fact in placing no weight at all on the evidence of Mr. Taylor's character, admitted by agreement by the parties, in assessing whether on the evidence in the trial as a whole it was probative of Mr. Taylor's guilt or innocence.

14. The Defence relies on the following grounds of appeal against the Sentencing Judgement:

- Ground 5: The Trial Chamber's sentence of two and half years of imprisonment in respect of Count 9 was excessive and disproportionate in all of the circumstances of the case.

- Ground 6: The Trial Chamber's sentence of two years of imprisonment for each of Counts 2, 4, 7, and 8 was excessive and disproportionate in light of the circumstances of the case and the sentences imposed for contempt convictions in other cases.

Ground 1

15. The Defence submits that the Trial Chamber committed both errors of law and fact in convicting Mr. Taylor on the basis of Mr. Senessie's evidence.

16. The Trial Chamber erred in law in its interpretation and application of the relevant jurisprudence which makes it permissible for a chamber to reject a witness' testimony in part and yet accept other parts of the witness' testimony:

    a. *First*, the Chamber wrongly found that there was no rule that "a court may or shall disregard an entire testimony for reasons of credibility and/or reliability".[23] In criminal proceedings it is always open to the trier of fact to disregard the evidence of any witness as a whole on the grounds that the evidence is incredible and unreliable. This error invalidates Mr. Taylor's convictions as the Chamber should have disregarded Mr. Senessie's evidence in its entirety given that it was so riddled with lies and inconsistencies and was directly contradicted by the evidence of the five Prosecution witnesses and Lawyer X which had been admitted in writing by agreement.

    b. *Second*, the relevant jurisprudence places great emphasis on the need for independent corroboration and for the utmost caution to be exercised if any part of a witness' testimony is to be relied on to convict an accused when other parts of the witness' testimony have been rejected.[24] The Chamber misdirected itself as to the application of these legal principles when assessing the evidence. Having found Mr. Senessie to be an incredible witness in part, the Chamber failed to assess the rest of his evidence with the utmost caution and failed to rely on it only if genuinely corroborated by reliable and independent evidence. Mr. Taylor's convictions are all based on the Chamber's reliance on only part of Mr. Senessie's evidence in the absence of any reliable and independent corroborating evidence. Having found that Mr. Taylor should be acquitted of the bribery charges because Mr. Senessie's evidence was incredible and uncorroborated, the Chamber erred in finding that he could nevertheless be convicted of otherwise interfering with the witnesses on Mr. Senessie's evidence about the same instructions he allegedly received from Mr. Taylor which was similarly uncorroborated by independent evidence.

17. The Defence submits that the Chamber committed errors of fact in finding that the testimony of Mr. Senessie could be relied on to support a conviction beyond

[23] Judgement in Contempt Proceedings, para. 141.
[24] Judgement in Contempt Proceedings, paras. 141-144.

reasonable doubt when he had been found to be liar in his previous trial and again found to be an incredible witness in part in Mr. Taylor's trial, and particularly given that there was no reliable and independent corroboration for his testimony:

a. The evidence that the Chamber did identify as corroborating Mr. Senessie's account either itself originated from Mr. Senessie and was thus self-serving or did not directly support Mr. Senessie's allegations and was equally consistent with a finding of innocence. In respect of Count 9, for example, the Chamber found that Mr. Senessie's evidence that he had been instructed by Mr. Taylor to provide false information to the Independent Counsel was corroborated by the fact that Mr. Senessie did not attend a meeting with the Independent Counsel.[25] The fact that Mr. Senessie did not attend a meeting does not corroborate the allegation made by Mr. Senessie that he did not attend the meeting because he was told to do so by Mr. Taylor. The fundamental question of whether he was in fact instructed by Mr. Taylor still comes back to an assessment of Mr. Senessie's evidence only, without any independent evidence to corroborate what he actually claims happened. The same is true of each piece of evidence the Chamber sought to rely on as corroborating evidence for each of the Counts.[26] The evidence in relation to the payment of Le200,000 on 1 February 2011, similarly, all comes from Mr. Senessie; there is no independent corroboration of Mr. Senessie's claim that these monies were paid to him by Mr. Taylor for his transport to the locate the witnesses.[27] Moreover, Mr. Senessie had claimed in his evidence that Mr. Taylor had promised to pay him $500 to contact the witnesses and that the Le200,000 was given as an immediate payment for his transport to locate them. The Chamber found his evidence about the $500 to be incredible[28], yet the Chamber nevertheless held that he could be believed about the payment of Le200,000.

b. Further, the Chamber erred in relying on the evidence of the five Prosecution witnesses as being corroborative.[29] Their evidence did not independently corroborate Mr. Senessie's account. Their evidence about Mr. Taylor's

[25] Judgement in Contempt Proceedings, para. 195.
[26] The findings that are challenged are at paras 152-158, 164-166, 168-170, 182-183, 185-195, 201-203, and 205-208 of the Judgement in Contempt Proceedings. The Defence will address each of these findings in the Appellant's submissions.
[27] Judgement in Contempt Proceedings, paras 165-166.
[28] Judgement in Contempt Proceedings, paras. 211-212.
[29] Judgement in Contempt Proceedings, paras. 151-158, 187, and 201-208.

"involvement" had all come from Mr. Senessie telling them that it was Prince Taylor who wanted to speak and meet with them. Once again, whether this was true or not depends entirely on whether Mr. Senessie was to be believed. There was no evidence from these five witnesses that Mr. Taylor ever met with them, and the evidence about TFI-585 speaking on the telephone to a person she assumed was Prince Taylor is all based on her being told by Mr. Senessie that she was speaking to Mr. Taylor.[30] There was no evidence from her or any other evidence that the person was in fact Mr. Taylor. She never recognised or identified the voice as being Mr. Taylor's, she never spoke to the person who made the call again, and the person never identified himself to her. Again, it comes back to Mr. Senessie alone. The Chamber also failed to take into account the extent to which Mr. Senessie's evidence about his meetings and discussions with the five witnesses was directly contradicted by the very evidence of these witnesses.[31]

c. The Defence submits that the Chamber erred in placing any reliance for the truth of its contents on Exhibit P1, a filing made on behalf of Mr. Senessie by his Defence Counsel, Mr. Lansana, which purported to outline the evidence that Mr. Taylor would give if he was called as a Defence witness for Mr. Senessie.[32] The document was not signed or attested to in any way by Mr. Taylor and its contents were disputed by Mr. Taylor at his trial. Once again, the evidence about the contents of this document comes entirely from Mr. Senessie. It cannot serve as evidence to corroborate Mr. Senessie's evidence when it is itself evidence that emanates from him. All roads lead back to Mr. Senessie. There was no independent and reliable evidence to corroborate Mr. Senessie's account.

d. The Trial Chamber erred in not assessing Mr. Senessie's evidence with special caution in light of the findings adverse to his credibility, taking into account that he had an incentive to fabricate evidence in order to seek to reduce his

[30] See transcript of testimony of TFI-585 from Mr. Senessie's trial that as admitted in Mr. Taylor's case at pp. 51-53 (transcript of 11 June 2012).
[31] For example, see Judgement in Contempt Proceedings, paras 162-164 and closing submission of Defence, transcript of 18 January 2013 .
[32] Judgement in Contempt Proceedings, paras. 153, 164, and 201-208. See also transcript of 18 January 2013, pp. 433-435 when the P1 was admitted in evidence. The Defence stated clearly that it could not be relied on as a "statement" made by Mr. Taylor or used for the truth of its contents.

sentence, and given the numerous reasons to question his credibility and reliability on the evidence.[33]

e. A prime illustration (and there are many others) is that the Chamber did not take into account, and accord any weight to, the fact that Mr. Senessie had lied to the Chamber about the cheque for Le30,000 (Exhibit J6). He said that he had told the Independent Counsel about the cheque in his November 2012 interview but had asked the Independent Counsel not to record this fact in his interview notes as he did not have the cheque with him at the interview.[34] The Independent Counsel stated clearly for the record that if he had been told about the cheque by Mr. Senessie during the interview he would have recorded it in his interview notes, and that there was no record of the cheque having been mentioned in his notes.[35] It was also plainly evident from the emails that the Independent Counsel had sent to the Defence when he was given the cheque on 9 January 2013, just before the start of the trial that this was the first time (9 January) that he had been told about the cheque.[36] The only reasonable inference to be drawn was that Mr. Senessie had lied to the Chamber. However, the Chamber wrongly stated that Mr. Senessie had replied in cross-examination that "he did not have evidence, therefore, he did not inform the Independent Counsel of it [the cheque]".[37] The record of the evidence is precisely the opposite; that he did inform the Independent Counsel of the cheque at his November 2012 interview. The Chamber perpetuated this error in its finding that Mr. Senessie's "explanation for not telling Independent Counsel in his record of interview about the Le30,000 cheque" is "unconvincing".[38] His evidence was that he *did* tell Independent Counsel about the cheque when he was interviewed in November 2012. The Independent Counsel has stated for the record that if Mr. Senessie had told him about the cheque in this interview that it would have been recorded in his notes, and that it is not recorded in his notes. Although the Chamber did find Mr. Senessie's account "unconvincing", it failed to take into account that it had been deliberately misled by Mr. Senessie. Instead, the Chamber found on the basis of his evidence about the cheque that he was telling the truth that

[33] Judgement in Contempt Proceedings, para. 147.
[34] Transcript of 16 January 2013, pp. 378-390.
[35] Transcript of 17 January 2013, pp. 449-456. The notes of interview were admitted as Exhibit D3.
[36] The emails were admitted as Exhibit D4.
[37] Judgement in Contempt Proceedings, para. 159.
[38] Judgement in Contempt Proceedings, para. 169.

these payments were used by Mr. Taylor to control Mr. Senessie[39] (and the cheque was used as "corroboration" for the fact that Mr. Senessie visited Mr. Taylor on his way to his trial in June 2012, when the sole evidence about the cheque came from Mr. Senessie himself[40]).

18. The Defence submits that no reasonable trier of fact could have been certain to the criminal standard of beyond reasonable doubt to convict Mr. Taylor on the basis of Mr. Senessie's evidence. The errors committed by the Trial Chamber have therefore occasioned a miscarriage of justice, and the Appeals Chamber is requested to reverse the convictions against Mr. Taylor on all counts.

Ground 2

19. The Defence submits that the Trial Chamber erred in law in its interpretation and application of the fundamental principle that no adverse inference should be drawn from the fact that an accused elected not to testify in his defence. The Chamber repeatedly relied on the fact that no evidence had been presented by the Defence to rebut allegations made by Mr. Senessie as a factor in favour of finding that portions of Mr. Senessie's evidence were credible and reliable.[41] These findings were used by the Chamber to convict Mr. Taylor. This error should be found to have invalidated the convictions as the Chamber relied on Mr. Taylor's silence to bolster the credibility of Mr. Senessie's evidence.

20. The Defence further submits that the Trial Chamber committed an error of fact in finding that a failure to rebut Mr. Senessie's allegations meant that they were credible. No reasonable trier of fact could have made these findings in light of the very serious questions about Mr. Senessie's credibility and the findings to that effect. This error has thus occasioned a miscarriage of justice which should be rectified by the Appeals Chamber reversing the convictions against Mr. Taylor.

[39] Judgement in Contempt Proceedings, para. 170.
[40] Judgement in Contempt Proceedings, para. 186.
[41] Judgement in Contempt Proceedings, paras. 156, 158, 165, 166, 167, 168, 177, 187, 189, 193, and 202.

Ground 3

21. The Trial Chamber concluded that it did not "reject Senessie's evidence on the basis of the conflicting evidence between Lawyer X and Senessie".[42]

22. The Defence submits that Trial Chamber committed errors of law and fact in reaching this conclusion and in making findings about Lawyer X's evidence (i) which had no foundation in the evidence, and (ii) without at least affording Lawyer X the opportunity to provide his evidence in respect of the matters about which findings were to be made.

23. Lawyer X gave evidence, *inter alia*, about being appointed as Mr. Senessie's lawyer before the SCSL and meeting with him on 14 July 2011 at the SCSL, the day before his initial appearance for this case.[43] Before this meeting on 12 July 2011, Lawyer X had spoken with the Independent Counsel who had made an offer of a plea bargain if Mr. Senessie was prepared to testify against Mr. Taylor. Lawyer X informed Mr. Senessie of this offer at their meeting on 14 July. Following their discussions, an endorsement was signed by Mr. Senessie (Exhibit D5(c)). Lawyer X represented Mr. Senessie at his initial appearance, but withdrew from the case thereafter. Mr. Lansana was appointed as counsel for Mr. Senessie at Mr. Senessie's request.

24. As acknowledged by the Chamber[44], Lawyer X's evidence was central to Mr. Senessie's credibility. Mr. Senessie claimed, *inter alia*, in categorical terms that Lawyer X tried to force him to plead guilty and that they argued over this matter, that Lawyer X had not discussed at all with him Lawyer X's potential professional conflict, that Lawyer X had stated that he could not represent Mr. Senessie due to other work commitments, that Lawyer X had forced him under duress to sign the endorsement, but that Mr. Senessie had insisted on changing the last paragraph of the endorsement and had himself written down the words that should be inserted (which were to the effect that he may consider the Independent Counsel's offer). Each of these allegations was denied by Lawyer X in his statement, and many other allegations made by Mr. Senessie were directly disputed by Lawyer X.

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[42] Judgement in Contempt Proceedings, para. 181. The specific findings that are challenged are at paras. 172-181.
[43] His statement was admitted into evidence as Exhibit D5.
[44] Judgement in Contempt Proceedings, para. 180.

25. The Chamber's findings sought to diminish the clear contradictions between Lawyer X's evidence, which had not been contested by the Independent Counsel, and the allegations made by Mr. Senessie, many of which were very serious. By way of illustration,

    a. The Chamber emphasised that the discussions between Lawyer X and Mr. Senessie had been in English which is not Mr. Senessie's first or second language. Yet, Mr. Senessie never once said in his evidence that he did not understand in any way what Lawyer X was saying. Lawyer X never pointed to language being a problem in any way in his statement.

    b. The Chamber found that Mr. Senessie could have misunderstood Lawyer X informing him about the Independent Counsel's offer of a plea bargain as advice to plead guilty. Yet, Mr. Senessie strenuously asserted in his evidence that Lawyer X wanted him to plead guilty and forced him to sign the endorsement which was an acknowledgment of guilt. Lawyer X in his statement made it plain that they discussed the Independent Counsel's offer, as is recorded in his notes, and that he never at any stage sought to convince Mr. Senessie to plead guilty. On the contrary, Mr. Senessie's own evidence is that he included a final paragraph in the endorsement that he would enter a plea of not guilty but that he may wish to reflect further on the matter. There could be no doubt that he had signed an endorsement on his instructions which stated that he would *not* plead guilty.

    c. The Chamber stated that Lawyer X made it clear that he could not continue to act in the case unless Mr. Senessie signed the endorsement. Yet, Lawyer X did not say in his statement that he could not act if the endorsement was not signed. He stated clearly that the endorsement reflected their discussions and that Mr. Senessie signed it voluntarily. None of this evidence was challenged by the Independent Counsel.

26. The Chamber erred in making these findings which had no foundation in the evidence. Moreover, the Chamber failed to take into account the glaring contradictions between the evidence of Lawyer X and Mr. Senessie. Mr. Senessie repeatedly claimed in categorical terms that Lawyer X had sought to get him to plead guilty and that he had not discussed at all with him the potential professional conflict. These allegations were refuted in the clearest terms by Lawyer X. The Defence

submits that no reasonable trier of fact could ever have found that Mr. Senessie was a credible witness when his allegations were flatly denied by Lawyer X whose evidence had not been disputed by the Independent Counsel.

27. Furthermore, the Chamber erred in making its findings without hearing Lawyer X's evidence on the matters about which it sought to make these findings. For example, Lawyer X could have given evidence about whether language was in any way a barrier in their discussions during the meeting. He could have given evidence about whether there was any misunderstanding that could have led Mr. Senessie to believe that he was being advised by Lawyer X to plead guilty or in respect of the Chamber's erroneous finding about Lawyer X not continuing in the case if the endorsement was unsigned. The Chamber and parties should at least have questioned Lawyer X about these matters before any findings could be made in respect of them.

28. Lawyer X's evidence is critical not only to Mr. Senessie's credibility in general, and the extent of the lies he was prepared to tell before the Trial Chamber, but also to the specific allegation made by Mr. Senessie that he was instructed and controlled in every way by Mr. Taylor in this case, and that he had acted "like a sheep".[45] The Chamber relied on this evidence to convict Mr. Taylor of having instructed Mr. Senessie to interfere in the administration of justice. Furthermore, Lawyer X's evidence demonstrated in the submission of the Defence that Mr. Senessie was keeping his options open on whether falsely to put the blame on Mr. Taylor. On Lawyer X's evidence Mr. Senessie had specifically instructed him that he should remove the final paragraph of the endorsement which had stated that he did not wish to assist with any prosecution of Prince Taylor and that Mr. Taylor had done "nothing wrong".[46] Instead, Mr. Senessie included the paragraph which only stated that he would plead not guilty at his initial appearance but that he may wish to consider his position further thereafter.[47] The Defence submitted that this conduct was inconsistent with him being instructed by Mr. Taylor to protect him (Mr. Taylor) at all costs, as it left open the possibility of falsely placing all the blame on Mr. Taylor at a later stage, as Mr. Senessie did in Mr. Taylor's trial to seek to reduce his term of imprisonment.

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[45] See for example, Judgement in Contempt Proceedings, paras. 171, 185 and 192.
[46] See D5, para. 19.
[47] D5(c).

29. The errors in the Chamber's findings have thus occasioned a miscarriage of justice which should be rectified by the Appeals Chamber reversing Mr. Taylor's convictions, based as they are on the testimony of Mr. Senessie.

Ground 4

30. The Chamber admitted the evidence of three international lawyers for whom Mr. Taylor had worked before the SCSL. Their evidence addressed Mr. Taylor's character as a trustworthy, honest and reliable investigator (Exhibits D6, 7, and 8). This corroborated evidence was not challenged by the Independent Counsel.

31. The Chamber found that this evidence was not "probative of innocence or guilt of the Accused" and not "persuasive that, because the Accused has acted in an honest and upright manner in the past, I should assume he could not do anything wrong and, therefore preclude myself from fully considering and weighing the evidence adduced in this trial".[48]

32. The Defence submits that the Trial Chamber erred in reaching this conclusion. The Defence never requested that the Trial Chamber should be precluded from considering and weighing the evidence adduced at trial on account of the evidence from the international lawyers. The Defence had submitted that such evidence should be weighed together with all of the evidence in trial as part of the Chamber's determination about guilt or innocence. The Chamber's approach to the character evidence was wrong as a matter of law and fact, resulting in the Chamber attaching no weight at all to this evidence. The Appeals Chamber is requested to assess this evidence in conjunction with its assessment of the evidence in light of the other grounds of appeal, and to reverse the convictions against Mr. Taylor.

Grounds 5 and 6

33. The Appellant submits that the length of the terms of imprisonment imposed by the Trial Chamber were excessive and disproportionate in the circumstances of the case and in comparison with other contempt cases.

[48] Judgement in Contempt Proceedings, para. 147.

34. The Appellant will rely on various submissions in support of these grounds, including:

a. The Chamber erred in considering that there was no hierarchy in Rule 77 or on the facts of the case which could make certain forms of interference with witnesses more serious than other forms of interference.[49]

b. The Chamber failed to give sufficient weight to the fact that Mr. Taylor had been acquitted of all of the charges of offering bribes to witnesses, and had not instructed Mr. Senessie to bribe any witnesses.[50]

c. The Chamber was wrong to rely in sentencing Mr. Taylor on the finding that "money did … come into this case, as Senessie said, 'nothing is for nothing' and he showed an awareness that the scheme would need funding".[51] The Chamber had specifically found that this statement about "nothing is for nothing" did not come from Mr. Taylor and that Mr. Senessie's evidence about being instructed by Mr. Taylor to offer bribes was incredible and could not be relied on.[52]

d. The Chamber erred in finding that the fact that Mr. Taylor's trial proceeded in full before the Chamber must be regarded as an aggravating factor.[53]

e. The Chamber erred in finding as an aggravating factor that Mr. Taylor suggested that the Principal Defender might have connived with the Prosecution.[54] The trial record shows that no such allegation was ever made by Mr. Taylor in his defence. This was an allegation made entirely by Mr. Senessie, which was not corroborated by any evidence.

f. The Trial Chamber erred in not according any weight to the sentences imposed by other international courts for contempt which were substantially less than those imposed in Mr. Taylor's case.[55]

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[49] Sentencing Judgment, paras 41-42.
[50] Sentencing Judgment, paras. 41-46, 52, and 55.
[51] Sentencing Judgment, paras.44- 45.
[52] Judgement in Contempt Proceedings, para. 211-212.
[53] Sentencing Judgment, paras. 46-49 and 52.
[54] Sentencing Judgment, para. 50.
[55] Sentencing Judgment, para. 55.

Conclusion

35. The Defence respectfully requests the Appeals Chamber to reverse all of the convictions against Mr. Taylor on the basis of these grounds of appeal. The full arguments in support of each ground will be set out in the Appellant's submissions.

SUBMISSIONS BASED ON THE GROUNDS OF APPEAL

Overview of grounds of appeal

1. The Appellant submits that his grounds of appeal establish that no reasonable Trial Chamber could have convicted the Appellant of the charges of interfering with witnesses under Rule 77(A)(iv) on the basis of the evidence before the Trial Chamber. This is particularly so given that the Independent Counsel's case was based on the testimony of a single uncorroborated witness who is a proven liar and convicted offender, and whose testimony in the Appellant's trial was profoundly flawed and altogether incredible and unreliable.

2. Indeed, the Trial Chamber itself found his testimony to be incredible on allegations that were central to the Independent Counsel's case, and yet elected nevertheless to rely on his evidence to convict the Appellant.

3. The Appellant submits that in these circumstances the Trial Chamber erred in finding the Appellant guilty to the criminal standard of beyond reasonable doubt and respectfully requests that the convictions should be reversed by the Appeals Chamber.

Summary of the proceedings below

4. Mr. Prince Taylor, the Appellant, was charged under Rule 77(A)(iv) with offering bribes and otherwise interfering with five Prosecution witnesses who had given evidence before the SCSL in the case against Mr. Charles Taylor - Mohamed Kabba, TFI-274, TFI-585, TFI-516 and Aruna Gbonda ("the five Prosecution witnesses").

5. The Independent Counsel alleged that the Appellant instructed Mr. Eric Senessie to contact these witnesses to offer them bribes to recant their testimonies in late January and early February 2011. The Appellant was also charged with instructing Mr. Senessie to provide false information to the Independent Counsel in the investigation of the present contempt case on or about 26 March to 6 April 2011. It was common ground that the Appellant had no longer been in the employ of the

Defence team for Charles Taylor as a Defence investigator during this time from the beginning of January 2011 as his contract had ended with the conclusion of the defence case.

6. Following his trial, Mr. Taylor was convicted by the Trial Chamber of five counts of "otherwise interfering" with witnesses through the instructions it was found he gave to Mr. Eric Senessie (namely, Counts 2, 4, 7, 8 and 9).

7. The Chamber found that Mr. Taylor "otherwise interfered" with

   a. Four Prosecution witnesses, Mohamed Kabba, TFI-274, TFI-585, and Aruna Gbonda (not TFI-516, for which he was only charged with bribery) by instructing Mr. Senessie to contact them to recant the testimonies (Counts 2, 4, 7, and 8), and

   b. Mr. Senessie by instructing him to give false information to the Independent Counsel on or about 26 March to 6 April 2011 in the investigation of the present contempt case (Count 9).

8. Mr. Taylor was acquitted of all counts of offering bribes to the same Prosecution witnesses who had given evidence before the SCSL in the case against Mr. Charles Taylor through the instructions he had allegedly given to Mr. Senessie (namely, Counts 1, 3, 5, and 6).

9. At his trial, the Trial Chamber heard evidence from only one witness, Mr. Eric Senessie, called by the Independent Counsel. The evidence of the five Prosecution witnesses who had given evidence in Mr. Senessie's earlier trial was admitted by agreement and they were not recalled to testify in Mr. Taylor's trial.

10. Following earlier his trial, Mr. Senessie was convicted on 21 June 2012 by the same Trial Chamber for the same incidents *as well as* for offering bribes to the five Prosecution witnesses.[56] He sentenced to serve two years of imprisonment. The Trial Chamber found his defence to be incredible and that he had lied to and misled the Trial Chamber.

[56] SCSL-11-01-T-267-296 (Judgement in Contempt Proceedings).

11. Mr. Senessie admitted at his sentencing hearing on 4 July 2012 that he had committed the offences of bribing and interfering with the witnesses, and for the first time he blamed Mr. Taylor for instructing him to do so.[57] As a result, the Independent Counsel sought to charge Mr. Taylor for all of the same offences, including bribery. Mr Taylor was indicted by the Trial Chamber on 4 October 2012.[58] Mr. Taylor would not have been charged in the absence of Mr. Senessie's statements at his sentencing hearing.

12. The Chamber had previously found when it indicted Mr. Senessie on the basis of the evidence of the five Prosecution witnesses that there was *insufficient* evidence to charge Mr. Taylor.[59]

13. The Independent Counsel accepted that Mr. Senessie was his key witness and that his case against Mr. Taylor stood or fell on Mr. Senessie's testimony.

14. The Independent Counsel stated for the record that he had entered into a co-operation agreement with Mr. Senessie the terms of which were that the Independent Counsel would consider supporting any application that Mr. Senessie made for his sentence to be reduced if he co-operated with the Independent Counsel and testified against the Appellant.[60]

15. Following his trial, Mr. Senessie gave three separate statements about what he now claimed was the truth:

    a. His statement to the Trial Chamber at his sentencing hearing on 4 July 2012,

    b. An affidavit in support of his motion for review following his sentence of 10 August 2012, and,

    c. An interview which he conducted with the Independent Counsel on 30 October - 1 November 2012 in Freetown.

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[57] SCSL-11-01-T-186-195 (Sentencing Judgement). His statement to the Trial Chamber at his sentencing hearing was admitted as Exhibit D1 (transcript of 4 July 2012, pp. 3-7).
[58] SCSL-12-02-12-23.
[59] Decision on the Report of the Independent Counsel, 24 May 2011, SCSL-03-01-T-37571-37576, page 3.
[60] Trial transcript of 14 January 2013, pp. 80-81.

16. These statements were put to Mr. Senessie in cross-examination as they were contradictory on material aspects and they were introduced into evidence as Exhibits D1, D2, and D3 respectively. The Appeals Chamber is directed to the detailed cross-examination of Mr. Senessie which took place over 3 days from 14-16 January 2013.

17. For the present appeal it is highly significant that even though Mr. Senessie was convicted of offering bribes to the Prosecution witnesses at his trial, Mr. Taylor was not convicted of doing so through instructions to Mr. Senessie. The Chamber found Mr. Senessie's evidence at Mr. Taylor's trial that he was instructed by Mr. Taylor to bribe the witnesses, to be incredible.[61] The Chamber thus held that Mr. Taylor's instruction to Mr. Senessie *only* extended as far as directing him to contact the witnesses, but not to bribing them.

18. All of the evidence relied on by the Defence for Mr. Taylor was agreed by the Independent Counsel and thus admitted in written form as uncontested evidence. The evidence of Mr. Senessie's former lawyer, Lawyer X[62], was admitted as part of the Defence case in this way as agreed evidence.[63] The Independent Counsel had initially before the commencement of the trial sought to subpoena Lawyer X to testify as part of the Independent Counsel's case. The Independent Counsel stated in his motion of 3 December 2012 for the subpoena that Lawyer X's testimony "is necessary because [Lawyer X] is in a unique position to corroborate the central thesis of the Independent Counsel's case: that the Defendant contrived Eric Senessie's trial defence and manipulated Eric Senessie by pressuring – and, ultimately, persuading – him to lie to the Independent Counsel and the Court about his conduct with respect to the five Charles Taylor prosecution witnesses".[64] Lawyer X provided a statement to the Independent Counsel on 10 December 2012.[65] It was evident from this statement that Lawyer X's evidence directly contradicted Mr. Senessie's account. The Independent Counsel withdrew his motion for the subpoena.

19. Lawyer X's evidence for the trial directly undermined the credibility of Mr. Senessie's evidence on crucial questions of fact. It was nevertheless admitted with

[61] Judgement in Contempt Proceedings, paras 211-212.
[62] This is the pseudonym given to the witness on the order of the Trial Chamber.
[63] Exhibit D5 with annexes.
[64] SCSL-12-02-PT, para. 15.
[65] D5, para. 28.

the agreement of the Independent Counsel who elected not to cross-examine him. As submitted below, the Independent Counsel instead sought to diminish the unmistakable contradictions between the evidence of Lawyer X and that of Mr. Senessie in his closing speech without having properly and fairly out these matters to Lawyer X in cross-examination. The Chamber relied on many of these submissions to find that Mr. Senessie's testimony was not undermined by the agreed evidence of Lawyer X.

20. The evidence of three other international lawyers, Mr. Morris Anyah, Mr. Michiel Pestman and Mr. Andrew Ianuzzi, who has worked closely with Mt. Taylor and who evidence of his good character about was also admitted by agreement between the parties and was not subjected to cross-examination by the Independent Counsel.[66]

21. The Trial Chamber sentenced Mr. Taylor to two years of imprisonment for each of the convictions on Counts 2, 4, 7, and 8 and to two and a half years of imprisonment for Count 9. The Chamber ordered that each term of imprisonment should be served concurrently.

Grounds of Appeal

22. As submitted in the Appellant's Notice of Appeal, the Appellant relies on four grounds of appeal against the Judgement in Contempt Proceedings:

    a. Ground 1: The Trial Chamber committed errors of law and fact in convicting Mr. Taylor of Counts 2, 4, 7, 8 and 9 by relying on portions of the testimony of Mr. Eric Senessie, a single witness, when

        i. these portions of his evidence were uncorroborated by reliable and independent evidence,

        ii. the Chamber had previously found Mr. Senessie to be a liar and had convicted him of bribing and interfering with the five Prosecution witnesses,

[66] Exhibits D6, 7, and 8 respectively.

iii. even after Mr. Senessie claimed to be telling the whole truth in Mr. Taylor's trial, the Chamber nevertheless found that portions of his testimony on highly relevant and directly related questions of fact were *incredible* (most significantly, the Chamber's finding that Mr. Senessie's evidence was not credible when he claimed that he was instructed by Mr. Taylor to offer bribes to the witnesses[67]), and

iv. there were numerous compelling reasons to find Mr. Senessie to be an incredible and unreliable witness on the evidence as a whole who had a clear incentive to lie about Mr. Taylor's involvement to seek to reduce his prison sentence; all of which should have been taken into account by the Chamber in exercising special caution in its assessment of the evidence of a proven liar.

b. Ground 2: The Trial Chamber committed errors of law and fact in convicting Mr. Taylor on the basis that it found that portions of Mr. Senessie's testimony were not rebutted by the Defence.

c. Ground 3: The Trial Chamber committed errors of law and fact in finding that Mr. Senessie's evidence should not be rejected on account of the conflicting evidence between Lawyer X and Mr. Senessie, and in making findings about the *agreed* evidence of Lawyer X without there being any foundation in the evidence for such findings.

d. Ground 4: The Trial Chamber committed errors of law and fact in placing no weight at all on the evidence of Mr. Taylor's good character (which had been admitted by agreement by the parties) in assessing whether on the evidence in the trial as a whole it was probative of Mr. Taylor's guilt or innocence.

23. The Appellant advances two grounds of appeal against the Sentencing Judgement:

- Ground 5: The Trial Chamber's sentence of two and half years of imprisonment in respect of Count 9 was excessive and disproportionate in all of the circumstances of the case.

[67] Judgement in Contempt Proceedings, paras 211-212 and also see for example paras. 169 and 177.

- Ground 6: The Trial Chamber's sentence of two years of imprisonment for each of Counts 2, 4, 7, and 8 was excessive and disproportionate in light of the circumstances of the case and the sentences imposed for contempt convictions in other cases.

Ground 1

24. The Appellant submits that the Trial Chamber committed both errors of law and fact in convicting Mr. Taylor on the basis of Mr. Senessie's evidence. The Appellant's submission is that no reasonable Trial Chamber could have found the Appellant guilty beyond reasonable doubt in light of the discernible implausibility and inconsistencies of Mr. Senessie's evidence, which was uncorroborated and, instead, wholly irreconcilable with the rest of the evidence in the case. The Trial Chamber erred in both

    a. The legal approach it adopted to assessing the evidence of a single witness who the Chamber had found to be a liar in his own trial and who the Chamber still believed to be an incredible witness on key allegations in the Appellant's trial, and

    b. The factual findings it made on the basis of Mr. Senessie's testimony which was itself riddled with lies and inconsistences and directly contradicted by the evidence of the five Prosecution witnesses relied on by the Prosecution and by Lawyer X.

25. The Appellant sets out below the details of the errors of law and of fact covered by Ground 1, but submits that it is vital that these errors are considered together as cumulatively resulting in a miscarriage of justice. They have led to the Appellant being wrongly convicted when no reasonable Trial Chamber could have found him guilty in light of the glaring deficiencies in the evidence. The Appellant submits that the Appeals Chamber's overriding duty is to guarantee that persons charged by the Special Court are not convicted on the basis of evidence that is manifestly inadequate. The Appellant asks that the other grounds of appeal are also all taken into consideration as each of them supports this principal ground of appeal.

Errors of law

26. The Trial Chamber erred in law in its interpretation and application of the relevant jurisprudence and case law which makes it permissible for a chamber to reject a witness' testimony in part and yet accept other parts of the witness' testimony.

27. The Appellant submits that the Chamber wrongly found, as a starting point of its legal analysis, that there was no rule of law that "*a court may or shall disregard an entire testimony for reasons of credibility and/or reliability*".[68] This is an erroneous statement of the law. In any criminal proceedings a trier of fact may disregard the evidence of any witness as a whole on the grounds that the evidence is incredible and unreliable. This was the primary argument advanced by the Appellant; that Mr. Senessie's evidence was so riddled with lies and inconsistencies in and of itself and when compared with the other evidence in the case, that it could not be safely relied on to convict the Appellant. International courts have disregarded the evidence of witnesses as a whole in many cases.[69]

28. The court is, of course, not bound to reject a witness' testimony as a whole if it finds that parts of the testimony are credible and reliable. The Appellant submits, however, that the relevant jurisprudence and case law makes it clear that the court should in such circumstances (i) proceed with the *utmost caution* and (ii) ensure that this evidence from a witness (who is not credible in part) is *independently* corroborated by other evidence which is itself reliable and which genuinely supports the evidence in question so that the Chamber can be sure to the criminal standard of proof before reaching a guilty verdict.

29. The Chamber did identify relevant case law on this point.[70] However, the Chamber did not refer at all to the dicta from these cases which emphasises that independent corroboration is essential when considering whether any reliance can be placed on the evidence of a witness who has been found to be unreliable:

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[68] Judgement in Contempt Proceedings, para. 141.
[69] See, for example, *Prosecutor v Lubanga*, ICC-01/04-01/06-2842, Judgment, 14 March 2012, paras 404-406, 415, 429, 441, 473, 633 in which the Trial Chamber found that it could not safely rely on evidence as a whole of a number of witnesses; *Prosecutor v Haradinaj et al*, Judgment, 29 November 2012, paras 451-463 in which the Trial Chamber found that the evidence of two witnesses was unreliable in their entirety when the inconsistencies in the evidence were considered cumulatively.
[70] Judgement in Contempt Proceedings, paras. 141-144.

a. The Chamber cited to the Appeals Chamber's finding in *Kupreskic* that it is not unreasonable for a tribunal of fact to accept some, but reject others parts of a witness's testimony.[71] The Chamber omitted to refer to the fact that the Appeals Chamber stressed in making this finding about the evidence of a witness (Witness EE), who misidentified two of the six attackers, that the Appeals Chamber must look at "all of the evidence before the Trial Chamber" in determining whether the Trial Chamber erred in fact. The Appeals Chamber emphasised that the credibility of a witness must be assessed "in light of the trial record as a whole".[72] The present Chamber failed to state in its Judgment that the reason why the Appeals Chamber of the ICTY did not find that the Trial Chamber had erred in relying on the evidence of the witness even though she had misidentified two of the attackers is because there was other independent evidence which corroborated her account (namely, evidence from other witnesses who placed the accused in the same area as Witness EE). Indeed, the Appeals Chamber specifically distinguished its finding in respect of her evidence from its finding in respect of another witness (Witness H) in which it found that the Trial Chamber *had* erred because there was "*no other credible eyewitness*" to corroborate Witness H's evidence.[73] Witness EE was corroborated, but Witness H was not, which justified the Trial Chamber relying on Witness EE's evidence, but was the very reason for the Appeals Chamber finding that the conviction based on Witness H's testimony was unsafe as it was not corroborated. The Chamber in the present case did not refer at all to these crucial dicta to guide its assessment of the evidence.

b. The Chamber also referred to the Trial Chamber's finding in the *Limaj* case that the evidence of a discredited witness (Dragan Jasovic) was not discarded in toto.[74] The Trial Chamber in this case stressed however that the evidence of this witness had to be regarded with the "utmost caution". Moreover, the Chamber made it plain (when considering other evidence which it found to be incredible due to the witness not telling the truth about whether he was a collaborator for the Serbian forces) that: "**The Chamber has not been prepared to accept and act on the evidence of L96 alone**

[71] Judgement in Contempt Proceedings, para. 142.
[72] *Prosecutor v Kupreskic et al*, Appeal Judgement, 23 October 2001, paras 332-334.
[73] *Prosecutor v Kupreskic et al*, Appeal Judgement, 23 October 2001, para. 335.
[74] Judgement in Contempt Proceedings, para. 141.

regarding any material issue and has only given weight to those parts of his evidence which are confirmed in some material particular by other evidence which the Chamber accepts".[75] The *Limaj* Trial Chamber also noted that even where parts of a witness's testimony do not appear to be affected by unreliability, the Chamber has "out of caution ... tempered its reliance on this evidence accordingly".[76]

c. The Appeals Chamber in *Kupreskic* also referred to the Trial Chamber's decision in *Tadic* before the ICTY. In this case the Chamber noted the muddled recollection of a witness of events after he regained consciousness from his beating and due to his trauma from the murder of his sons, but found that his evidence before his beating could be relied on when combined with the evidence of another witness.[77] Corroboration was once again an essential ingredient.

d. The Chamber has also referred to case law from the SCSL.[78] The quote from the *Sesay* judgment that is cited by the Chamber goes on to emphasise that the Trial Chamber must approach evidence that is inconsistent with "great care" and must consider the evidence of all of the witnesses.[79] In the following paragraph the Trial Chamber in that case stressed that even if some aspects of a witness's testimony are not believed, "the Chamber may still accept other portions of the evidence presented provided they are credible in their context and particularly *where they are corroborated*" and that "doubts about a testimony can be removed *with the corroboration of other testimonies*".[80]

e. The Trial Chamber in the judgment in *Charles Talyor's* case did explicitly find that as a result of challenges to his credibility, the evidence of a defence

[75] *Prosecutor v Limaj et al*, Judgment, 30 November 2005, para. 26. The Defence referred to this dicta in its closing address, see transcript of 18 January 2013, pp. 579-580.
[76] *Prosecutor v Limaj et al*, Judgment, 30 November 2005, para. 29.
[77] *Prosecutor v Tadic*, Opinion and Judgement, 7 May 1997, para. 298-302.
[78] Judgement in Contempt Proceedings, para. 143.
[79] *Prosecutor v Sesay et al*, SCSL-04-15-T-1234, Judgement, 2 March 2008, para. 489.
[80] *Prosecutor v Sesay et al*, SCSL-04-15-T-1234, Judgement, 2 March 2008, para. 490 (emphasis added). The Trial Chamber in the present case also cited in footnote 136 of its Judgment to the Appeals Chamber's decision in *Brima*, para. 120. This paragraph referred to discrepancies between a witness's testimony and his prior statement, and not to when a witness has been found to be untruthful in part of his testimony. In any event, the following paragraph considered discrepancies between the testimonies of two witnesses and noted that the findings of the Trial Chamber took into account whether the evidence was corroborated by other witnesses (para. 121).

witness, Issa Sesay must be "considered with caution and cannot be relied upon without corroboration".[81]

30. Moreover, it is evident that the facts of these cases are not remotely comparable with the present case (mistaken identifications, unable to remember due to beating, allegations of being a collaborator, second hand information obtained through interviews) – a point not acknowledged by the Trial Chamber in its Judgment. In none of these cases was the trier of fact considering the evidence of a sole witness similar to Mr. Senessie

    a. who had been convicted by the Chamber because he was disbelieved,

    b. who had then confessed to his crimes at the last moment before being sentenced and undertaken for the first time to tell the truth,

    c. only to be found to be lying again by the Chamber in the Appellant's subsequent trial, even though he claimed that he was now being truthful and could be believed,

    d. whose evidence in the Appellant's trial was marked by repeated lies and conflicts, including, as noted by the Chamber, that he had been untruthful about what he claimed he had said to the Independent Counsel in his interview, as conceded by the Independent Counsel[82],

    e. when his testimony was the sole basis for the Appellant's trial in the first place and he was relied on as the key witness against the Appellant,

    f. when he had an incentive to lie and falsely implicate the Appellant to seek to reduce his sentence in pursuance of a co-operation agreement with the Independent Counsel, and

    g. when his testimony was so starkly contradicted by other witnesses who the Chamber found were credible witnesses, and whose evidence the Independent Prosecutor had agreed could be admitted without any challenge in cross-examination.

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[81] *Prosecutor v Charles Taylor*, Judgment, paras. 370-372.
[82] See paras 53-54 below.

31. In the Appellant's submissions the unique circumstances of the present case demanded that the Chamber approach his evidence with the utmost caution and scrutiny and, most importantly, rigorously assess whether there was any genuinely independent and reliable corroboration:

    a. The Chamber did not, however, state in its analysis of the law and the relevant jurisprudence that corroboration was essential to its fact-finding function in light of the peculiar circumstances of this case.

    b. The Chamber did refer to "the need for caution in assessing Senessie's evidence" in the context of considering him an "accomplice".[83] However, the Chamber did not find that it needed to approach his evidence with the utmost caution in light of him having been found to be an incredible witness, not just once in his trial, but again in the Appellant's trial.

    c. Rather, the Chamber found that it could "disregard" Mr. Senessie's evidence from the original trial on the basis that he had conceded that it was untruthful. The Chamber erred in not giving any weight to the fact that Mr. Senessie admitted that he had lied during his trial to the Trial Chamber.[84] This admission alone should have prompted the Chamber to regard his evidence with special caution. He was a witness whose credibility was substantially diminished before he even testified in the Appellant's case.

32. The Appellant submits that the Chamber misapplied the applicable legal rules on assessing the evidence of a witness like Mr. Senessie and thus erred in its assessment of the evidence and the conclusions it reached. Having found Mr. Senessie to be an incredible witness in part, the Chamber failed to assess the rest of his evidence with the utmost caution and failed to rely on it only if genuinely corroborated by reliable and independent evidence.

33. Mr. Taylor's convictions instead were all based on the Chamber's reliance on only part of Mr. Senessie's evidence in the absence of any reliable and independent corroborating evidence, and without taking into account the lies and contradictions in his evidence and that it conflicted with the evidence of the other witnesses in the

[83] Judgement in Contempt Proceedings, para. 147.
[84] Judgement in Contempt Proceedings, para. 150.

case. In particular, having determined that Mr. Taylor should be acquitted of the bribery charges because Mr. Senessie's evidence was incredible and uncorroborated, the Chamber erred in finding that he could nevertheless be convicted of otherwise interfering with the witnesses on basis of Mr. Senessie's evidence about the same instructions he allegedly received from Mr. Taylor which was similarly uncorroborated by independent evidence.

34. The Appellant has set out below the various instances in which the Chamber erred in assessing the evidence and reaching its conclusions.

Errors of fact

35. The Chamber did seek to identify evidence to corroborate Mr. Senessie's account. However, in each instance this evidence either originated from Mr. Senessie and was thus self-serving or did not directly support Mr. Senessie's allegations and was equally consistent with a finding of innocence. This is true of each piece of evidence the Chamber sought to rely on as corroborating evidence for each of the Counts.[85] Moreover, the Chamber failed to direct itself to material aspects of the trial record that directly contradicted or undermined Mr. Senessie's testimony.

Payment of Le200,000

36. The evidence in relation to the payment of Le200,000 on 1 February 2011 was critical to the Chamber's finding that the Appellant had approached Mr. Senessie to instruct him to contact the five Prosecution witnesses.[86] It is common ground that the Appellant admitted at the very first opportunity that he had made this payment, even before the Independent Counsel was able to prove that it was made by Mr. Senessie. The Appellant offered to provide a copy of the cash payment slip to the Court and Independent Counsel at the very outset of the proceedings.[87] The fact that the payment was made was thus never disputed. As put to Mr. Senessie, the Appellant had made this payment to cover Mr. Senessie's transport to bring to the Appellant the letters that Mr. Senessie claimed he had received from the witnesses stating that they wanted to meet with the Appellant.

[85] The findings that are challenged are at paras 152-158, 164-166, 168-170, 182-183, 185-195, 201-203, and 205-208 of the Judgement in Contempt Proceedings.
[86] Judgement in Contempt Proceedings, paras 165-166. This is where the Chamber first deals with this payment, but the Chamber reverts to this topic in various other places in the judgment included at paras. 187, 202, and 206-207.
[87] See transcript of Defence closing submissions, 18 January 2023, p. 566.

37. The mere *fact* that the payment was made does not corroborate Mr. Senessie's account that the payment was effected to cover his transport to contact the witnesses on the Appellant's behalf. Mr. Senessie's version of events stands alone, without any corroboration. The whole story that he was instructed by the Appellant to contact the witnesses all comes only from Mr. Senessie; there is no independent evidence to support Mr. Senessie's claim.

38. The Chamber also relies on the date of the payment of 1 February which precedes the dates of the letters (10 February 2011) as corroboration[88]. Once again, the fact that the payment was made on 1 February 2011, which was not disputed, does not itself corroborate Mr. Senessie's account. An equally plausible inference to be drawn is that Mr. Senessie told the Appellant that he had the letters after he had first met with Mohamed Kabba, TFI-585 and Aruna Gbonda at the end of January 2011 (which is established on their evidence) i.e. before the payment was made. The Chamber cannot convict beyond reasonable doubt when other reasonable explanations and inferences that are consistent with innocence have not been excluded.

39. The point is that the Chamber still had to rely on Mr. Senessie alone to find that he was instructed by the Appellant to contact the witnesses. There was nothing unlawful about the Appellant asking for letters from witnesses to be sent to him. It was only unlawful if he had told Mr. Senessie to approach the witnesses to request them to recant their testimonies – the proof of this allegation rested entirely on Mr. Senessie. Indeed, it would have been a perfectly permissible for the Trial Chamber to infer that the Appellant, as a former defence investigator, could have legitimately wanted to see what Prosecution witnesses had stated in the letters. The inference the Chamber elected to draw was that the Appellant wanted the documents to facilitate the meetings to get the witnesses to recant their testimonies. If the witnesses had genuinely wished to meet with Mr. Taylor, there would have been nothing unlawful about him agreeing to meet with them. The offence arises on account of Mr. Senessie's allegation that the Appellant wished to meet with them to get them to recant their testimonies. This was the clear basis on which the Appellant was convicted. The Chamber misdirected itself in finding that there was any evidence which corroborated this specific allegation.

[88] Judgement in Contempt Proceedings, paras 206-207.

40. The key consideration was therefore whether the Chamber could believe Mr. Senessie's story in light of all of the lies he had been found to have told. Most importantly, his claim about the reason for the payment was made along with another related claim that the Chamber did not believe. Mr. Senessie had claimed in his evidence that Mr. Taylor had promised to pay him $500 to contact the witnesses and that the Le200,000 was given as an immediate payment for his transport to locate them: "*He [Mr. Taylor] said, Mr. Senessie, this arrangement, you have some money, but this money if $500. He said, I'm sending you 200,00 leones now. Send me your bank account for me to send this money*".[89] Mr. Senessie also claimed that the Appellant had instructed him to offer to pay the Prosecution witnesses for recanting their testimonies. The Chamber found all of this evidence from Mr. Senessie to be incredible. It held:

> "$500 has been made an issue, and it has been stated by Senessie that that was promised to him [by the Appellant]. I find his evidence on this not to be corroborated and not to be credible. But in any event, I find that if there had been such a promise, it was a promise of a payment to Senessie personally and not to the witnesses ... There is no evidence that any payment was accompanied by an instruction to pay the witnesses.
>
> Senessie said that he told the complainant witnesses they would get something if they conformed to the request to return to The Hague. The term he used at least twice in his evidence is 'nothing is for nothing', but I can find no evidence that that promise to pay something came out of the words that Senessie attributed to the Accused. The witnesses mentioned relocation was discussed. Senessie stated in his evidence in chief that the Accused said they could be relocated. I cannot identify in the evidence before me that the Accused offered any relocation in clear terms or instructed Senessie to make an offer of relocation. Senessie's evidence in chief is not sufficiently reliable to cause me to find that the Accused gave such clear and unequivocal instructions. Accordingly, I do not consider there is sufficient evidence to base a finding of interference with the administration of justice by offering a bribe to any of the five witnesses who had given evidence in The Hague".[90]

41. Mr. Senessie had maintained very clearly in his evidence that the promises that the witnesses would be rewarded were "Prince Taylor's words" and that Mr. Taylor instructed him to offer rewards to the witnesses: "*That was his instruction, his*

[89] Trial transcript of 14 January 2013, p. 102.
[90] Judgement in Contempt Proceedings, paras. 211-212.

directive. That was what I was operating on"[91] Furthermore, as found by the Chamber in Mr. Senessie's trial, the witnesses had been offered money, payments and relocation (including living in another country) by Mr. Senessie.[92] The Chamber, however, found in the Appellant's trial that he had not instructed Mr. Senessie to offer any of these bribes in any of the forms as described by the five witnesses.

42. Yet, the Chamber nevertheless held that Mr. Senessie could be believed about the related payment of Le200,000 which Mr. Senessie had claimed was part of the same payment arrangement for him to act on Mr. Taylor's instruction to contact the witnesses which included the payment of $500.

43. The Appellant submits that it is irrational for the Chamber, on the one hand, to hold that Mr. Senessie could not be believed about the payment of $500 and the payments (bribes) to the witnesses but was, on the other hand, credible enough in respect of the related payment of Le200,000 which was part of the same alleged arrangement to interfere with the witnesses.

44. The payment of both amounts stem from the same allegation made by Mr. Senessie that he was instructed by the Appellant to contact the witnesses in return for him and for the witnesses receiving payments and rewards. The Appellant submits that it is inconsistent for the Chamber to have required corroboration in respect of the payment for $500 and not to have sought corroboration for the payment of Le200,000.

Evidence of other payments

45. The payment of the Le200,000 was only mentioned by Mr. Senessie for the first time in his affidavit in support of his Motion for Review of 10 August 2102 following his Sentencing Judgment.[93] He did not mention it at his sentencing hearing on 4 July 2012 when he addressed the court and blamed the Appellant for the first time for instructing him to commit the offences.[94] Mr. Senessie did not

[91] Trial transcript of 14 January 2013, p. 99. Also see reference in the transcript of the Judgment to this testimony, Transcript of hearing on 25 January 2013, p. 644.
[92] See paras. 19, 23, 43, 47, 66, 74, and 79 of Judgment in *Prosecutor v Senessie*, 16 August 2012, SCSL-11-01-T-267-296.
[93] D2.
[94] D1.

mention any other payments in his statement at his sentencing hearing or in his affidavit. In his interview with the Independent Counsel at the end of October 2012 (only just over two months before the trial), he mentioned no other payments, except the alleged promise by the Appellant to pay Mr. Senessie $500. This alleged payment had not been mentioned at any stage before this interview. The Trial Chamber found this evidence to be incredible. However, it regarded the evidence of six other payments which were mentioned by Mr. Senessie for the first time during his evidence at trial as credible.[95] None of these payments had been mentioned at any stage before in any of his three previous statements.

46. There is no corroboration for these payments in the evidence on record, and none was identified by the Chamber in its judgment. Moreover, the Chamber was prepared to accept Mr. Senessie's evidence despite finding that he was lying about the $500. The uncorroborated evidence of the payments was used by the Chamber to find that the Appellant controlled Mr. Senessie and instructed him to commit certain of the crimes alleged.[96]

47. Furthermore, the explanations given by Mr. Senessie for not telling anybody about these payments at the first opportunity are implausible:

    a. "that he only had a receipt for one payment [the Le200,000]"[97], and

    b. that he had been "brief" at his sentencing hearing and in his affidavit.[98]

48. Even assuming that these explanations could be regarded as plausible, they do not explain why Mr. Senessie did not mention the vast majority of the payments until the trial, nor does it provide an explanation for his lies about the payment of a cheque for Le.30,000 (see below).

49. The Chamber made all of these findings about payments despite a piece of evidence in respect of the payments that was undeniably adverse to Mr. Senessie's credibility. Mr. Senessie claimed that he had been given an unsigned cheque by the Appellant as a payment to cover his needs for his trial. The Appellant did not dispute that this cheque had been given to Mr. Senessie as a part payment for

[95] Judgement in Contempt Proceedings, para. 167.
[96] Judgement in Contempt Proceedings, para. 170.
[97] Judgement in Contempt Proceedings, para. 168.
[98] Judgement in Contempt Proceedings, para. 159.

carving work which he had commissioned from Mr. Senessie.[99] The Chamber accepted that Mr. Senessie was telling the truth. The Appellant submits that the Chamber did not take into account, and accord any weight to, the fact that Mr. Senessie had lied to the Chamber about the cheque for Le30,000:

a. Mr. Senessie said that he had told the Independent Counsel about the cheque in his interview on 30 October - 1 November 2012 but had asked the Independent Counsel not to record this fact in his interview notes as he did not have the cheque with him at the interview.[100]

b. The Independent Counsel stated in terms for the record that if he had been told about the cheque by Mr. Senessie during the interview he would have recorded it in his interview notes, and that there was no record of the cheque having been mentioned in his notes: "*There's no way I could have left out something like that, your Honour, it just wouldn't happen*", and "*that is exactly the kind of thing that I would have written down had I been told [that by Mr. Senessie]*".[101]

c. It was also plainly evident from the emails that the Independent Counsel had sent to the Defence when he was given the cheque on 9 January 2013, just before the start of the trial that this was the first time (9 January) that he had been told about the cheque.[102]

d. The only reasonable inference to be drawn was that Mr. Senessie had lied to the Chamber about what he told the Independent Counsel.

e. However, the Chamber wrongly stated that Mr. Senessie had replied in cross-examination that "he did not have evidence, therefore, he did not inform the Independent Counsel of it [the cheque]".[103] The record of the evidence is precisely the opposite; that he did inform the Independent Counsel of the cheque at his interview on 30 October - 1 November 2012.[104]

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[99] Admitted into evidence by agreement as J6.
[100] Transcript of 16 January 2013, pp. 378-390.
[101] Transcript of 17 January 2013, pp. 449-456, especially ay p. 453 and p. 456. The notes of interview were admitted as Exhibit D3.
[102] The emails were admitted as Exhibit D4.
[103] Judgement in Contempt Proceedings, para. 159.
[104] Transcript of 16 January 2013, pp. 378-390.

f. The Chamber perpetuated this error in its finding that Mr. Senessie's "explanation for not telling Independent Counsel in his record of interview about the Le30,000 cheque" is "unconvincing".[105] His evidence was that he *did* tell Independent Counsel about the cheque when he was interviewed on 30 October - 1 November 2012. As noted above, the Independent Counsel has stated for the record that if Mr. Senessie had told him about the cheque in this interview that it would have been recorded in his notes, and that it is not so recorded in his notes.

g. Although the Chamber did find Mr. Senessie's account "unconvincing", it failed to take into account that it had been deliberately misled by Mr. Senessie. Instead, the Chamber found on the basis of his evidence about the cheque that he was telling the truth that these payments were used by the Appellant to control Mr. Senessie and thus that the Appellant was guilty of interfering with the witnesses.[106] The existence of the cheque was also used as "corroboration" for the fact that Mr. Senessie visited the Appellant on his way to his trial in June 2012 to be instructed by the Appellant. Yet, the sole evidence about the cheque and the meeting came from Mr. Senessie himself.[107]

50. The Appellant submits that the Chamber failed to direct itself to all of these parts of the record which were material to Mr. Senessie's credibility. Not only is there no corroboration that this (and other) payments were made as claimed by Mr. Senessie, but there was cogent evidence that Mr. Senessie had lied to the Chamber in his evidence about telling the Independent Counsel about the payment of the cheque. The Appellant submitted that the Trial Chamber could not therefore rely on any of this evidence to convict the Appellant. The Defence case was that Mr. Senessie had lied in order to attempt to convince the Court that he had not only mentioned the cheque for the first time in his testimony when he had had numerous earlier opportunities to do so (if it were the truth) from the time of his sentencing hearing in July 2012. The Chamber erred in finding that this evidence could be regarded as credible and reliable when it was demonstrably false, taking into account all of the other findings of incredibility and the conflicts in Mr. Senessie's evidence itself as well as with the evidence of the other witnesses in the trial.

[105] Judgement in Contempt Proceedings, para. 169.
[106] Judgement in Contempt Proceedings, para. 170.
[107] Judgement in Contempt Proceedings, para. 186.

The "letters of invitation"

51. The Trial Chamber failed to take into account material portions of the evidence about the "letters of invitation" which Mr. Senessie claimed in his evidence at trial that the Appellant had instructed and assisted him to draft. These letters were introduced into evidence as J7, J8, and J9.

52. The Chamber found that Mr. Senessie's evidence about these letters was reliable and was corroborated by the evidence of TFI-274 and Exhibit P1.[108] The Appellant submits that no reasonable trier of fact could have come to this conclusion:

    a. The evidence of TFI-274 does not corroborate Mr. Senessie's account. TFI-274 stated in his evidence in terms that he rebuffed Mr. Senessie's approaches to get him to recant his testimony.[109] TFI-274's evidence in fact undermines Mr. Senessie's testimony. Nowhere in his testimony does he mention that he signed any letter of invitation. Indeed, these letters were not even introduced into evidence in Mr. Senessie's trial, and although the Chamber noted that Mr. Senessie had mentioned them in his evidence in chief at his trial, it stated that this matter was not put to TFI-274 in cross-examination.[110] The Chamber has not identified in its Judgement in the present case which parts of the testimony of TFI-274 are in fact corroboratory.

    b. Exhibit P1 does not corroborate Mr. Senessie's evidence because no weight can be attached to it. It is a document that was produced by Mr. Senessie and his lawyer Mr. Lansana, which is not signed or attested to in any way by the Appellant. The only evidence about this document comes from Mr. Senessie. As set out below, it would be grossly unfair to use the contents of this document against the Appellant as though it were statement signed by him, when he had disputed its contents and when it is plainly not a statement of the Appellant.

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[108] Judgement in Contempt Proceedings, paras 201-203.
[109] *Prosecutor v Senessie*, SCSL-11-01-T-267-296, Judgement in Contempt Proceedings, 16 August 2012, paras. 75-99.
[110] *Prosecutor v Senessie*, SCSL-11-01-T-267-296, Judgement in Contempt Proceedings, 16 August 2012, para. 94.

c. The evidence about the letters all comes back to Mr. Senessie and whether he can be relied on to make any findings against the Appellant.

d. Mr. Senessie stated at his sentencing hearing on 4 July 2012 that it was TFI-274's idea to prepare the letters of invitation and that "they" (the Prosecution witnesses) prepared the letters of invitation.[111] This evidence directly contradicts his testimony at the Appellant's trial when he claimed that it was all the Appellant's idea. He sought to explain the conflict by saying that TFI-274 had agreed with the letter and therefore it was his idea.[112] The Chamber erred in not rejected this explanation. On TFI-274's own evidence, he had never at any stage "agreed with letter". On the contrary his evidence, as accepted by the Trial Chamber in Mr. Senessie's trial, was that he had constantly rebuffed all of Mr. Senessie's efforts to get him to recant his testimony.[113]

e. As emphasised in the closing submissions on behalf of the Appellant, the Trial Chamber had found in its Sentencing Judgement for Mr. Senessie that he had stated that it was TFI-274 who prepared the document.[114]

f. The fact that the letters contain legal language is not a conclusive basis to find that the letters must therefore have been prepared with the Appellant's input, given the lack of any corroborating evidence and given the telling contradictions in Mr. Senessie's evidence.[115]

g. The evidence of Mohamed Kabbah cannot properly be relied as corroboration for Mr. Senessie's account. His evidence about the invitation letters was all based on what Mr. Senessie had told him. Mr. Kabbah gave absolutely no evidence about being in contact with the Appellant about this matter. His evidence was that he had been told by Mr. Senessie that Mr. Taylor wanted an invitation letter prepared.[116] This is merely Mr. Senessie claiming that he was instructed by Mr. Taylor. Mr. Kabbah gave no

[111] D1, pp. 4-5.
[112] Judgement in Contempt Proceedings, para. 164.
[113] *Prosecutor v Senessie*, SCSL-11-01-T-267-296, Judgement in Contempt Proceedings, 16 August 2012, paras. 75-99.
[114] Transcript of 18 January 2013, p. 556.

[115] Judgement in Contempt Proceedin gs, paras 201-202.
[116] Judgement in Contempt Proceedings, paras. 1576-158.

evidence to confirm whether this claim was true or not. The Chamber noted that Mr. Kabbah's evidence had "not been challenged".[117] There was no reason to challenge it because it emanated entirely from Mr. Senessie, whose testimony was challenged.

h. The Chamber placed no weight on the fact that the letters had been provided to the Independent Counsel by the Appellant when he was interviewed. The Appellant had received them from Mr. Senessie and had never sought to conceal them.

The evidence of the five Prosecution witnesses

53. The Trial Chamber erred in relying on any of the evidence of the five Prosecution witnesses as being corroborative of Mr. Senessie's account.[118] Their evidence simply does not corroborate Mr. Senessie's version of events. Their evidence about Mr. Taylor's "involvement" had all come from Mr. Senessie telling them that it was Prince Taylor who wanted to speak and meet with them. Once again, whether this was true or not depends entirely on whether Mr. Senessie was to be believed.

54. Moreover, there was no evidence from these five witnesses that Mr. Taylor ever met with them.

55. The Chamber referred to the evidence of TFI-585 speaking on the telephone to a person she assumed was Prince Taylor.[119] Her evidence is all based on her being told by Mr. Senessie that she was speaking to Mr. Taylor.[120] There was no evidence from her or any other evidence that the person was in fact Mr. Taylor. She never recognised or identified the voice as being Mr. Taylor's, she never spoke to the person who made the call again, and the person never identified himself to her. Again, it comes back to Mr. Senessie alone.

56. Further, as noted above, the Chamber had previously found when it indicted Mr. Senessie on the basis of the evidence of the five Prosecution witnesses that there

[117] Judgement in Contempt Proceedings, para. 158.
[118] Judgement in Contempt Proceedings, paras. 151-158, 187, and 201-208.
[119] Judgement in Contempt Proceedings, paras 152-156. See Defence closing submissions, transcript of 18 January 2013, pp. 572-577.
[120] See transcript of testimony of TFI-585 from Mr. Senessie's trial that as admitted in Mr. Taylor's case at pp. 51-53 (transcript of 11 June 2012).

was *insufficient* evidence to charge Mr. Taylor on the basis of the evidence of these witnesses.[121]

57. The Chamber failed to take into account the extent to which Mr. Senessie's evidence about his meetings and discussions with the five witnesses was directly contradicted by the very evidence of these witnesses.[122] This is an internal contradiction in the Independent Counsel's case which the Chamber did not acknowledge:

    a. Mr. Senessie continued to say even after he claimed to be telling the truth that the witnesses were all very excited and wanted to meet with Mr. Taylor.[123] None of them said this in their testimonies, and as found by the Chamber in Mr. Senessie's trial, they all refused Mr. Senessie's approaches and reported him to the SCSL.[124]

    b. Mr. Senessie claimed that the witnesses were all complaining that they had not been treated properly by the Prosecution, and two of them said that they were having problems with relocation. Yet, none of the five witnesses ever said these things in their testimonies.[125] The Chamber had found them to credible witnesses in Mr. Senessie's trial. Mr. Senessie was still telling lies about what these witnesses had said. It was not possible for the Independent Counsel to have it both ways – either the witnesses were not to be believed or Mr. Senessie was lying.

    c. As noted above, TFI-274 never testified that he had agreed with the preparation of any invitational letters, as claimed by Mr. Senessie.

    d. In his affidavit of 10 August 2012, Mr. Senessie claimed that Mr. Kabbah told him that he was willing to go back to The Hague to recant his testimony and that Mr. Kabba suggested inviting Mr. Taylor to demand money and

[121] Decision on the Report of the Independent Counsel, 24 May 2011, SCSL-03-01-T-37571-37576, page 3.
[122] For example, see Judgement in Contempt Proceedings, paras 162-164 and closing submissions of Defence, transcript of 18 January 2013, pp. 557-561. .
[123] D1, p. 4; and see for example, Senessie's evidence at trial, transcript of 14 January 2013, pp. 164-176.
[124] See Judgment in *Prosecutor v Senessie*, 16 August 2012, SCSL-11-01-T-267-296, paras 6-99; and transcript of 18 January 2013, pp, 557-561.
[125] See Judgment in *Prosecutor v Senessie*, 16 August 2012, SCSL-11-01-T-267-296, paras 6-99; and transcript of 14 January 2013, pp, 164-176.

relocation.[126] Yet in his testimony before the Chamber, Mr. Senessie stated in terms that none of the witnesses said that they were willing to recant their testimony, only that they were excited and willing to meet with the Appellant.[127]

Unsigned "statement" of Appellant

58. The Appellant submits that the Chamber erred in placing any reliance for the truth of its contents on Exhibit P1, a filing made on behalf of Mr. Senessie by his Defence Counsel, Mr. Lansana, which purported to outline the evidence that Mr. Taylor would give if he was called as a Defence witness for Mr. Senessie.[128]

59. The document was not signed or attested to in any way by Mr. Taylor and its contents were disputed by the Appellant at his trial. Once again, the evidence about the contents of this document came entirely from Mr. Senessie. Mr. Lansana, who signed the filing (P1) was not called to testify about its contents and preparation.

60. It cannot serve as evidence to corroborate Mr. Senessie's evidence when it is itself evidence that emanates from him. All roads lead back to Mr. Senessie. There was no independent and reliable evidence to corroborate Mr. Senessie's account about this document.

61. The Chamber erred in stating that P1 was unchallenged by the Appellant.[129] There was also no reason to put this document to TFI-585 as its contents were not accepted as true or attributable to the Appellant. In any event, TFI-585 never testified that she was able to identify that she ever spoke with the Appellant (see below).

Count 9

62. In respect of Count 9, the Chamber found that Mr. Senessie's evidence that he had been instructed by the Appellant to provide false information to the Independent

[126] D2, para. 10.
[127] Transcript of 18 January 2013, pp. 568-569.
[128] Judgement in Contempt Proceedings, paras. 153, 164, and 201-208. See also transcript of 18 January 2013, pp. 433-435 when the P1 was admitted in evidence. The Defence stated clearly that it could not be relied on as a "statement" made by Mr. Taylor or used for the truth of its contents.
[129] Judgement in Contempt Proceedings, para. 155. See transcript of 18 January 2013, pp. 433-435 when the P1 was admitted in evidence. See also Defence closing submissions.

Counsel was corroborated by the fact that Mr. Senessie did not attend a meeting with the Independent Counsel.[130]

63. The Appellant submits that the fact that Mr. Senessie did not attend a meeting does not corroborate the allegation made by Mr. Senessie that he did not attend the meeting because he was told to do so by Mr. Taylor. The fundamental question of whether he was in fact instructed by the Appellant still comes back to an assessment of Mr. Senessie's evidence only, without any independent evidence to corroborate what he actually claims happened.

64. Indeed, the allegations in Count 9 come exclusively from Mr. Senessie's account. In this regard, the Chamber accepted Mr. Senessie's evidence that he was "sheep-like" and was following the Appellant.[131] Counsel for the Appellant had put the suggestion to Mr. Senessie that he acted like a "sheep" as a rhetorical question to highlight that it could not be the truth when Mr. Senessie was "a leader in his community" – he was a political leader who had stood for parliament, he was also a priest of a congregation of 300-400 ersons and the chairman of the national secondary school in his area with has about 2500 students.[132] In any event, the Appellant submits that the Chamber identified no evidence to corroborate this finding. It is based entirely on Mr. Senessie's evidence.

65. Most importantly, there is fundamental conflict between this finding and the finding of the Chamber that Mr. Senessie was not instructed by the Appellant to bribe the witnesses. It follows that Mr. Senessie must have acted independently without being directed by the Appellant in seeking to get the witnesses to recant their testimony through offering them bribes. This conduct in wholly inconsistent with a man who is acting like a sheep under the control of the Appellant.

Conflicts with Lawyer X's testimony

66. As set out below in Ground 3, Mr. Senessie's evidence was contradicted on numerous material allegations by the agreed evidence of Lawyer X.

[130] Judgement in Contempt Proceedings, para. 195.
[131] Judgement in Contempt Proceedings, para. 192.
[132] Transcript of 14 January 2013, pp. 135-140.

Summary submission on Ground 1

67. The Appellant submits that no reasonable trier of fact could have been certain to the criminal standard of beyond reasonable doubt to convict Mr. Taylor on the basis of Mr. Senessie's evidence. The errors committed by the Trial Chamber when viewed cumulatively occasioned a miscarriage of justice, and the Appeals Chamber is requested to reverse the convictions against Appellant on all counts.

Ground 2

68. The Defence submits that the Trial Chamber erred in law and fact in its interpretation and application of the fundamental principle that no adverse inference should be drawn from the fact that an accused elected not to testify in his defence.

69. The Chamber correctly cited to the case law on this point.[133] The Appellant submits, however, that the Chamber proceeded to rely extensively on the lack of any rebuttal evidence from the Appellant to find that Mr. Senessie's evidence was credible. The Chamber repeatedly relied on the fact that no evidence had been presented by the Defence to rebut allegations made by Mr. Senessie as a factor in favour of finding that portions of Mr. Senessie's evidence were credible and reliable.[134] These findings were used by the Chamber to convict Mr. Taylor.

70. The Appellant submits that no reasonable trier of fact could have made these findings in light of the very serious questions about Mr. Senessie's credibility and the findings to that effect. This error has thus occasioned a miscarriage of justice which should be rectified by the Appeals Chamber reversing the convictions against Mr. Taylor.

Ground 3

71. The Trial Chamber concluded that it did not "reject Senessie's evidence on the basis of the conflicting evidence between Lawyer X and Senessie".[135]

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[133] Judgement in Contempt Proceedings, paras. 138-139.
[134] Judgement in Contempt Proceedings, paras. 156, 158, 165, 166, 167, 168, 177, 187, 189, 193, and 202.
[135] Judgement in Contempt Proceedings, para. 181. The specific findings that are challenged are at paras. 172-181.

72. The Appellant submits that Trial Chamber committed errors of law and fact in reaching this conclusion and in making findings about Lawyer X's evidence (i) which had no foundation in the evidence, and (ii) without at least affording Lawyer X the opportunity to provide his evidence in respect of the matters about which findings were to be made.

73. Lawyer X gave evidence, *inter alia*, about being appointed as Mr. Senessie's lawyer before the SCSL and meeting with him on 14 July 2011 at the SCSL, the day before his initial appearance for this case.[136] Before this meeting on 12 July 2011, Lawyer X had spoken with the Independent Counsel who had made an offer of a plea bargain if Mr. Senessie was prepared to testify against Mr. Taylor. Lawyer X informed Mr. Senessie of this offer at their meeting on 14 July. Following their discussions, an endorsement was signed by Mr. Senessie (Exhibit D5(c)). Lawyer X represented Mr. Senessie at his initial appearance, but withdrew from the case thereafter. Mr. Lansana was appointed as counsel for Mr. Senessie at Mr. Senessie's request.

74. As acknowledged by the Chamber[137], Lawyer X's evidence was central to Mr. Senessie's credibility. Mr. Senessie claimed, *inter alia*, in categorical terms that Lawyer X tried to force him to plead guilty and that they argued over this matter, that Lawyer X had not discussed at all with him Lawyer X's potential professional conflict, that Lawyer X had stated that he could not represent Mr. Senessie due to other work commitments, that Lawyer X had forced him under duress to sign the endorsement, but that Mr. Senessie had insisted on changing the last paragraph of the endorsement and had himself written down the words that should be inserted (which were to the effect that he may consider the Independent Counsel's offer). Each of these allegations was denied by Lawyer X in his statement, and many other allegations made by Mr. Senessie were directly disputed by Lawyer X.[138]

75. The Chamber's findings sought to diminish the clear contradictions between Lawyer X's evidence, which had not been contested by the Independent Counsel, and the allegations made by Mr. Senessie, many of which were very serious:

[136] His statement was admitted into evidence as Exhibit D5.
[137] Judgement in Contempt Proceedings, para. 180.
[138] For all the Defence submissions, see Closing submissions, Transcript of 18 January 2013, pp, 538-554.

a. The Chamber emphasised that the discussions between Lawyer X and Mr. Senessie had been in English which is not Mr. Senessie's first or second language. Yet, Mr. Senessie never once said in his evidence that he did not understand in any way what Lawyer X was saying. Lawyer X never pointed to language being a problem in any way in his statement.

b. The Chamber found that Mr. Senessie could have misunderstood Lawyer X informing him about the Independent Counsel's offer of a plea bargain as advice to plead guilty. Yet, Mr. Senessie strenuously asserted in his evidence that Lawyer X wanted him to plead guilty and forced him to sign the endorsement which was an acknowledgment of guilt. Lawyer X in his statement made it plain that they discussed the Independent Counsel's offer, as is recorded in his notes, and that he never at any stage sought to convince Mr. Senessie to plead guilty. On the contrary, Mr. Senessie's own evidence is that he included a final paragraph in the endorsement that he would enter a plea of not guilty but that he may wish to reflect further on the matter. There could be no doubt that he had signed an endorsement on his instructions which stated that he would *not* plead guilty.

c. The Chamber stated that Lawyer X made it clear that he could not continue to act in the case unless Mr. Senessie signed the endorsement. Yet, Lawyer X did not say in his statement that he could not act if the endorsement was not signed. He stated clearly that the endorsement reflected their discussions and that Mr. Senessie signed it voluntarily. None of this evidence was challenged by the Independent Counsel.

76. The Chamber erred in making these findings which had no foundation in the evidence. Moreover, the Chamber failed to take into account the glaring contradictions between the evidence of Lawyer X and Mr. Senessie. Mr. Senessie repeatedly claimed in categorical terms that Lawyer X had sought to get him to plead guilty and that he had not discussed at all with him the potential professional conflict. These allegations were refuted in the clearest terms by Lawyer X. The Defence submits that no reasonable trier of fact could ever have found that Mr. Senessie was a credible witness when his allegations were flatly denied by Lawyer X whose evidence had not been disputed by the Independent Counsel.

77. Furthermore, the Chamber erred in making its findings without hearing Lawyer X's evidence on the matters about which it sought to make these findings. Lawyer X could have given evidence about whether language was in any way a barrier in their discussions during the meeting. He could have given evidence about whether there was any misunderstanding that could have led Mr. Senessie to believe that he was being advised by Lawyer X to plead guilty or in respect of the Chamber's erroneous finding about Lawyer X not continuing in the case if the endorsement was unsigned. The Chamber and parties should at least have questioned Lawyer X about these matters before any findings could be made in respect of them.

78. The Appellant repeatedly stated that the Independent Counsel should put to Lawyer X any disagreements or questions he had, and was not fairly entitled to agree his evidence and then proceed to challenge him without providing him with the opportunity to be heard in response.[139]

79. Lawyer X's evidence is critical not only to Mr. Senessie's credibility in general, and the extent of the lies he was prepared to tell before the Trial Chamber, but also to the specific allegation made by Mr. Senessie that he was instructed and controlled in every way by the Appellant in this case, and that he had acted "like a sheep".[140] The Chamber relied on this evidence to convict Mr. Taylor of having instructed Mr. Senessie to interfere in the administration of justice. Furthermore, Lawyer X's evidence demonstrated in the submission of the Appellant, that Mr. Senessie was keeping his options open on whether falsely to put the blame on Mr. Taylor. On Lawyer X's evidence Mr. Senessie had specifically instructed him that he should remove the final paragraph of the endorsement which had stated that he did not wish to assist with any prosecution of Prince Taylor and that Mr. Taylor had done "nothing wrong".[141] Instead, Mr. Senessie included the paragraph which only stated that he would plead not guilty at his initial appearance but that he may wish to consider his position further thereafter.[142] The Appellant submitted that this conduct was inconsistent with him being instructed by Mr. Taylor to protect him (Mr. Taylor) at all costs, as it left open the possibility of falsely placing all the blame on Mr. Taylor at a later stage, as Mr. Senessie did in Mr. Taylor's trial to seek to reduce his term of imprisonment.

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[139] Transcript of 17 January 2013, pp. 460-462, 504-505, and 508-509.
[140] See for example, Judgement in Contempt Proceedings, paras. 171, 185 and 192.
[141] See D5, para. 19.
[142] D5(c).

80. The errors in the Chamber's findings have thus occasioned a miscarriage of justice which should be rectified by the Appeals Chamber reversing the Appellant's convictions, based as they are on the testimony of Mr. Senessie.

Ground 4

81. The Chamber admitted the evidence of three international lawyers for whom the Appellant had worked before the SCSL. Their evidence addressed Mr. Taylor's character as a trustworthy, honest and reliable investigator (Exhibits D6, 7, and 8). This corroborated evidence was not challenged by the Independent Counsel.

82. The Chamber found that this evidence was not "probative of innocence or guilt of the Accused" and not "persuasive that, because the Accused has acted in an honest and upright manner in the past, I should assume he could not do anything wrong and, therefore preclude myself from fully considering and weighing the evidence adduced in this trial".[143]

83. The Appellant submits that the Trial Chamber erred in reaching this conclusion. The Defence never requested that the Trial Chamber should be precluded from considering and weighing the evidence adduced at trial on account of the evidence from these international lawyers. The Appellant had submitted that such evidence should be weighed together with all of the evidence in trial as part of the Chamber's determination about guilt or innocence. The Chamber's approach to the character evidence was wrong as a matter of law and fact, resulting in the Chamber attaching no weight at all to this evidence.

84. The Appeals Chamber is requested to assess this evidence in conjunction with its assessment of the evidence in light of the other grounds of appeal, and to reverse the convictions against the Appellant.

Grounds 5 and 6: appeal against sentence

85. The Appellant submits that the length of the terms of imprisonment imposed by the Trial Chamber were excessive and disproportionate in the circumstances of the case and in comparison with other contempt cases.

[143] Judgement in Contempt Proceedings, para. 147.

Count 9

86. The Chamber imposed a sentence of two and a half years of imprisonment for Count 9 alone.

87. The Appellant submits that the Trial Chamber provided no justifiable reasons for the sentence for this count being higher than the sentence for the counts of interfering with the Prosecution witnesses.

88. The Chamber did rely on the fact that the matter had proceeded to trial due to the Appellant's actions, as found by the Chamber, in influencing Mr. Senessie to lie to the Independent Counsel.[144] However, the Chamber gave no weight to the fact that on its own findings Mr. Senessie was not instructed by the Appellant to bribe the witnesses. The Appellant was thus justified in part to contest the charges against him as he was acquitted of all of the bribery counts.

89. The Chamber was wrong to rely on the finding that "money did ... come into this case, as Senessie said, 'nothing is for nothing' and he showed an awareness that the scheme would need funding".[145] The Chamber had specifically found that this statement about "nothing is for nothing" did not come from Mr. Taylor and that Mr. Senessie's evidence about being instructed by the Appellant to offer bribes was incredible and could not be relied on.[146]

90. In the Appellant's submission, there is no proper basis to impose any sentence for Count 9 that is higher than the sentences passed for the other counts of interfering with the witnesses.

Other counts

91. For the other counts of interfering with four Prosecution witnesses, the Chamber imposed cumulative sentences of two years of imprisonment for each count. The Appellant submits that the in light of the errors set out below, taken together, the Appellant's sentence should be reduced by the Appeals Chamber.

[144] Sentencing Judgment, paras. 46-49 and 52.
[145] Sentencing Judgment, paras.44- 45.
[146] Judgement in Contempt Proceedings, para. 211-212.

92. In the Appellant's submission the Chamber erred in considering that there was no hierarchy in Rule 77(A)(iv) or on the facts of the case which could make certain forms of interference with witnesses more serious than other forms of interference.[147] The purpose of permitting sentences of imprisonment up to 7 years under Rule 77 is to afford the Chamber a broad discretion to impose sentences that are commensurate to the gravity of the offence.[148]

93. The Chamber failed to give sufficient weight to the fact that Mr. Taylor had been acquitted of all of the charges of offering bribes to witnesses, and had not instructed Mr. Senessie to bribe any witnesses.[149] The Chamber should have expressly rejected the Independent Counsel's submission "that the acquittal on bribery was only by a hair's breadth".[150] There are no degrees of acquittal. An acquittal can only be regarded as a finding of innocence on the part of Chamber and the Chamber should not sentence an accused on the basis that "he was nearly convicted". The Chamber stated in its reasoning that the "acquittal remains as an acquittal", but it did not address the consequences for the sentence imposed.[151]

94. The Chamber erred in finding as an aggravating factor that Mr. Taylor suggested that the Principal Defender might have connived with the Prosecution.[152] The trial record shows that no such allegation was ever made by the Appellant in his defence. This was an allegation made entirely by Mr. Senessie, which was not corroborated by any evidence.

95. The Trial Chamber erred in not according any weight to the sentences imposed by other international courts for contempt which were substantially less than those imposed in Mr. Taylor's case.[153] The sentences imposed by the ICTY for offences of interfering with witnesses, including bribery (of which the Appellant was not convicted), were for periods of 3, 4, and 5 months of imprisonment and up to 12

[147] Sentencing Judgment, paras 41-42.
[148] See transcript of sentencing hearing, 7 February 2013 and SCSL-12-02-T-50 (Defence sentencing submissions).
[149] Sentencing Judgment, paras. 41-46, 52, and 55.
[150] Sentencing Judgment, para. 44.
[151] Sentencing Judgment, para. 46.
[152] Sentencing Judgment, para. 50.
[153] Sentencing Judgment, para. 55.

months (with 8 months suspended), which are markedly lower than the Appellant's sentence. [154]

Request for an oral hearing before the Appeals Chamber

96. The Appellant being mindful that Rules 77(K) and 117 provide that appeals under Rule 77 may be determined entirely on the basis of written submissions, hereby applies for an oral hearing to be held for the present appeal.

97. The Appellant submits that the grounds of appeal raise important questions about the assessment of the evidence of a single, uncorroborated witness in determining the guilt or innocence of an Accused.

98. Moreover, the pleaded errors of law and fact concern the entire record of the proceedings and the proceedings in Mr. Senessie's trial. The Appeals Chamber could be assisted by oral submissions from the parties which identify, address and cross-reference the relevant parts of the record, which is voluminous and complex, especially given that it includes the entire proceedings from Mr. Senessie's trial as well. The questions and concerns of the Appeals Chamber can be directly addressed by the parties in oral submissions and in answers to questions.

99. The Appellant will also be filing an application under Rule 115 once a Bench of the Appeals Chamber has been appointed. If granted, an oral hearing will permit this evidence to heard and for the parties to make submissions on the basis of this evidence.

100. The Appellant requests an opportunity for his appeal to be pleaded before the Appeals Chamber in an oral hearing. The Appellant would be content for the oral hearing to take place in Freetown or in The Hague at the convenience of the Appeals Chamber. The hearing could be limited to the particular matters about which the Appeals Chamber would wish to hear from the parties.

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[154] *Prosecutor v. Beqaj*, Judgment of Contempt Allegations, IT-03-66-R77, 27 May 2005; *Prosecutor v. Haraqija & Morina*, Judgment on Contempt Allegations, IT-04-84-R77.4, 17 December 2008; *Prosecutor v. Rašić*, Written Reasons for Oral Sentencing Judgement, IT-98-32/1-R77.2, 6 March 2012; *Prosecutor v. Vujin*, Judgment on Allegations of Contempt Against Prior Counsel, Milan Vujin, IT-94-1-A-R77, 31 January 2000.

Conclusion

101. The Appellant respectfully requests the Appeals Chamber, to reverse all of the convictions against Mr. Taylor on the basis of these grounds of appeal.

Dated 20th May 2013

Rodney Dixon
Counsel for Mr. Prince Taylor

Index of Documents and List of Authorities

1. ***Prosecutor v. Eric Senessie:***

All Jurisprudence, including:

Prosecutor v. Eric Senessie, Judgement in Contempt Proceedings, SCSL-11-01-27, 16 August 2012, paras. 19, 23, 43, 47, 66, 75-99.

Prosecutor v. Eric Senessie, Sentencing Judgement, SCSL-11-01-T-186-195, 12 July 2012.

Prosecutor v. Eric Senessie, Decision on the Report of the Independent Counsel, SCSL-03-01-T-37571-37576, 24 May 2011, page 3.

All Transcripts and exhibits from this trial, including:

Prosecutor v. Eric Senessie, Trial Transcript, 4 July 2012, p. 3-7.

Prosecutor v. Eric Senessie, Trial Transcript, 11 June 2012, p. 51-53.

2. ***Independent Counsel v. Prince Taylor:***

All Jurisprudence, including:

Independent Counsel v. Prince Taylor, Judgment in Contempt Proceedings, SCSL-12-02-A, 14 May 2013, p. 8, paras. 27, 28.

Independent Counsel v. Prince Taylor, Respondent Independent Counsel's Submission in Response to Appellant's Submissions for Appeal against Conviction and Sentence, SCSL-12-02-A, 29 March 2013.

Independent Counsel v. Prince Taylor, Independent Counsel's Urgent Motion for Clarification Regarding the Deadline for Filing Submissions in Response to Appellant's Submissions for Appeal against Conviction and Sentence, SCSL-12-02-A, 18 March 2013, paras. 1, 2.

Independent Counsel v. Prince Taylor, Appellant's Submissions for Appeals Against Conviction and Sentence, SCSL-12-02-A, 15 March 2013, paras. 3, 4.

Independent Counsel v. Prince Taylor, Judgement in Contempt Proceedings, SCSL-12-02-T-480-535, 11 February 2013, paras. 138-139, 141-144, 147, 150-159, 162-171, 177, 180-183, 185-195, 201-208, 211-212.

Independent Counsel v. Prince Taylor, Sentencing Judgment, SCSL-12-02-T-536-550., 14 February 2013, paras. 41-50 52, and 55.

Independent Counsel v. Prince Taylor, Indictment, SCSL-12-02-12-23, 4 October 2012.

Independent Counsel v. Prince Taylor, Independent Counsel's Second Motion for Subpoenas Ad Testificandum, SCSL-12-02-PT, 4 December 2012, para. 15.

All Transcripts from the trial must be included and reviewed, including:

Independent Counsel v. Prince Taylor, Trial Transcript, 14 January 2013, pp. 73, 80-81, 99, 102.

Independent Counsel v. Prince Taylor, Trial Transcript,16 January 2013, pp. 378-390.

Independent Counsel v. Prince Taylor, Trial Transcript, 17 January 2013, pp. 449-456, 461-462, 468-476, 479-487, 500-511, 508-509.

Independent Counsel v. Prince Taylor, Trial Transcript, 18 January 2023, pp. 433-435, 520-523, 566.

Independent Counsel v. Prince Taylor, Trial Transcript, 25 January 2013, p. 644.

All Agreed Facts and Exhibits from the trial, including:

Independent Counsel v. Prince Taylor, Exhibit D1

Independent Counsel v. Prince Taylor, Exhibit D2.

Independent Counsel v. Prince Taylor, Exhibit D3.

Independent Counsel v. Prince Taylor, Exhibit D4.

Independent Counsel v. Prince Taylor, Exhibit D5 with annexes

Independent Counsel v. Prince Taylor, Exhibit D6.

Independent Counsel v. Prince Taylor, Exhibit D7.

Independent Counsel v. Prince Taylor, Exhibit D8.

Independent Counsel v. Prince Taylor, Exhibit J6.

Independent Counsel v. Prince Taylor, Exhibit J8.

3. ***Other SCSL Jurisprudence***

Prosecutor v. Charles Taylor, Decision on Defence Notice of Appeal and Submissions Regarding the Decision on Late Filing of Defence Final trial Brief, SCSL-03-01-T, 3 March 2011, para. 66;

Prosecutor. v. Brima et al., Decision on Urgent Defence Request under Rule 54 with Respect to Filing of Motion for Acquittal, SCSL-04-16-T, 19 January 2006.

Prosecutor v. Taylor, Dissenting Opinion of the Hon Justice Julia Sebutinde, Decision on Late Filing of Defence Final Trial Brief, SCSL-03-1-T, 7 February 2011, para. 8, 10.

Prosecutor v. Bangura et al., Order for Filing of Index of Documents and List of Authorities, SCSL-11-02-A-168-171, 14 December 2012.

Prosecutor v. Sesay et al, SCSL-04-15-T-1234, Judgement, 2 March 2008, para. 489, 490.

Prosecutor v. Brima et al., Appeal Judgement, SCSL-04-16-A-675, para. 120.

Prosecutor v. Charles Taylor, Judgment, SCSL-03-01-T, paras. 370-372.

4. ***SCSL Documents:***

SCSL Statute, Articles 20.

SCSL, Rules of Procedure and Evidence, Rules 77, 108, 109, 114, 116, 117.
SCSL, Practice Direction for Certain Appeals before the Special Court, 30 September 2004.

SCSL, Practice Direction on the Structure of Grounds of Appeal Before the Special Court, 1 July 2011.

SCSL, Practice Direction on Filing Document before the Special Court for Sierre Leone, 2003 as amended.

SCSL, Practice Direction on Dealing with Documents in The Hague Sub-Office, 2008, as amended.

5. ***ICTY Jurisprudence:***

Prosecutor v Haradinaj et al, Judgment, IT-04-84bis-T, 29 November 2012, paras 451-463
http://www.icty.org/x/cases/haradinaj/tjug/en/121129_judgement_en.pdf

Prosecutor v Kupreskic et al, Appeal Judgement, IT-95-16-A, 23 October 2001, paras 332-335.
http://www.icty.org/x/cases/kupreskic/acjug/en/kup-aj011023e.pdf

Prosecutor v Limaj et al, Judgment, 30 November 2005, IT-03-66-T, para. 26 para. 29.
http://www.icty.org/x/cases/limaj/tjug/en/lim-tj051130-e.pdf

Prosecutor v Tadic, Opinion and Judgement, 7 May 1997, IT-94-1-T, para. 298-302.
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Prosecutor v. Beqaj, Judgment of Contempt Allegations, IT-03-66-R77, 27 May 2005
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Prosecutor v. Haraqija & Morina, Judgment on Contempt Allegations, IT-04-84-R77.4, 17 December 2008

http://www.icty.org/x/cases/contempt_haraqija_morina/tjug/en/081217judg_en.pdf

Prosecutor v. Rašić, Written Reasons for Oral Sentencing Judgement, IT-98-32/1-R77.2, 6 March 2012
http://www.icty.org/x/cases/contempt_rasic/tjug/en/120306.pdf

Prosecutor v. Avramović & Simić, Public redacted version of Judgment on Allegations of Contempt, IT-95-9-R77, 13 June 2000
http://www.icty.org/x/cases/contempt_avramovic_simic/tjug/en/000630_1.pdf

Prosecutor v. Vujin, JUDGMENT ON ALLEGATIONS OF CONTEMPT AGAINST PRIOR COUNSEL, MILAN VUJIN, IT-94-1-A-R77, 31 January 2000
http://www.icty.org/x/cases/contempt_vujin/tjug/en/000131.pdf

6. ***Other Jurisprudence:***

Prosecutor v Lubanga, ICC-01/04-01/06-2842, Judgment, 14 March 2012, paras 404-406, 415, 429, 441, 473, 633.
http://www.icc-cpi.int/iccdocs/doc/doc1379838.pdf