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SCSL-12-02-A
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346

SPECIAL COURT FOR SIERRA LEONE

APPEALS CHAMBER

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

Registrar: Ms. Binta Mansaray

Date filed: 07 June 2013

INDEPENDENT COUNSEL **v.** **Prince TAYLOR**

Case No. SCSL-2012-02-A

RESPONDENT INDEPENDENT COUNSEL'S SUBMISSION IN RESPONSE TO APPELLANT'S NOTICE OF APPEAL AND SUBMISSIONS BASED ON THE GROUNDS OF APPEAL

Office of Independent Counsel:
Mr. William L. Gardner
Mr. Benjamin Klein

Defence Counsel for Prince Taylor:
Mr. Rodney Dixon

Office of the Principal Defender:
Ms. Claire Carlton-Hanciles

Respondent Independent Counsel's Submission in Response to
Appellant's Notice of Appeal and Submissions Based on the Grounds of Appeal

1. On 04 June 2013, the Appeals Chamber issued its Order on Re-Filing of Appeal on Behalf of Prince Taylor with Application for the Appeal to Be Filed Out of Time (hereinafter, "Order").[1] The Order "deem[ed] the Appeal to have been properly filed within the extended time granted" and "order[ed] that the time limits for filing of any response to the appeal or any further filings run from the date of this Order."[2]

2. Pursuant to Rules 77, 112, and 117 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone, Article I.3 of the Practice Direction for Certain Appeals Before the Special Court (2004), and the Order, Respondent Independent Counsel files his Submission in Response to Appellant's Notice of Appeal and Submissions Based on the Grounds of Appeal (hereinafter, "Submission"). The Submission is appended to this filing as Annex 1.

Respectfully Submitted,

WL Gardner

William L. Gardner
Independent Counsel

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1 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Order on Re-Filing of Appeal on Behalf of Prince Taylor with Application for the Appeal to Be Filed Out of Time (04 June 2013).

2 *Id.* at p. 3.

INDEX OF AUTHORITIES

Special Court for Sierra Leone Decisions and Filings

***Independent Counsel v. Taylor*, Case No. SCSL-12-02-A**

Independent Counsel v. Taylor, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Order on Re-Filing of Appeal on Behalf of Prince Taylor with Application for the Appeal to Be Filed Out of Time (04 June 2013)

Special Court for Sierra Leone Rules and Practice Directions

Special Court of Sierra Leone Rules of Procedure and Evidence (amended 31 May 2012)

Practice Direction for Certain Appeals Before the Special Court (2004)

Annex 1

SPECIAL COURT FOR SIERRA LEONE

APPEALS CHAMBER

Before:	Justice Emmanuel Ayoola, Presiding Justice Renate Winter Justice Jon Kamanda
Registrar:	Ms. Binta Mansaray
Date filed:	07 June 2013

INDEPENDENT COUNSEL **v.** **Prince TAYLOR**

Case No. SCSL-2012-02-A

PUBLIC

RESPONDENT INDEPENDENT COUNSEL'S SUBMISSION IN RESPONSE TO APPELLANT'S NOTICE OF APPEAL AND SUBMISSIONS BASED ON THE GROUNDS OF APPEAL

Office of Independent Counsel:
Mr. William L. Gardner
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TABLE OF CONTENTS

TABLE OF CONTENTS
(CONTINUED)

Respondent Independent Counsel's Submission in Response to Appellant's Notice of Appeal and Submissions Based on the Grounds of Appeal

I. INTRODUCTION

1. Respondent Independent Counsel (hereinafter, "Respondent") files this Submission in response to Appellant Prince Taylor's (hereinafter, "Appellant") Submissions Based on the Grounds of Appeal[1] (hereinafter, "Appellant's Submissions") pursuant to Rules 77, 112, and 117 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (hereinafter, "SCSL Rules"), Article I.3 of the Practice Direction for Certain Appeals Before the Special Court (2004), and the Appeals Chamber's Order on Re-Filing of Appeal on Behalf of Prince Taylor with Application for the Appeal to Be Filed Out of Time.[2]

2. Appellant has failed to establish any basis for disturbing the Trial Chamber's Judgement in Contempt Proceedings[3] (hereinafter, "Judgement") or Sentencing Judgement[4] (hereinafter, "Sentence") in the contempt case of *Independent Counsel v. Prince Taylor*. The findings in the Trial Chamber's Judgement and Sentence are thorough, well-reasoned, and supported by the record. They comport with the jurisprudence of the Special Court for Sierra Leone as well as that of its sister tribunals. Appellant's arguments on appeal are both unwarranted and manifestly deficient. His misguided attempts to "substitute [his] own evaluation of the evidence

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1 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Re-Filing of Appeal on Behalf of Mr. Prince Taylor with Application for the Appeal to Be Filed Out of Time (21 May 2013) (containing Appellant's Submissions Based on the Grounds of Appeal).

2 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Order on Re-Filing of Appeal on Behalf of Prince Taylor with Application for the Appeal to Be Filed Out of Time (04 June 2013).

3 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Judgement in Contempt Proceedings (11 Feb. 2013) (hereinafter, "Judgement").

4 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Sentencing Judgement (14 Feb. 2013) (hereinafter, "Sentence").

for that of the Trial Chamber" should be "dismissed without detailed reasoning," as has been the practice of this Appeals Chamber in similar matters.[5]

3. For the reasons more fully set forth below, Respondent respectfully requests that the Appeals Chamber: (1) dismiss all grounds of Appellant's appeal; (2) affirm the Judgement and Sentence; and (3) order that the Judgement be enforced immediately pursuant to Rule 102 of the SCSL Rules.

II. BACKGROUND AND PROCEDURAL HISTORY

4. Following a motion filed by the Office of the Prosecutor in the matter of *Prosecutor v. Charles Ghankay Taylor* (hereinafter, "Charles Taylor Trial"),[6] the Trial Chamber issued a direction to the Registrar for the Special Court for Sierra Leone to appoint an independent counsel to investigate the complaints of five prosecution witnesses who had given evidence in the Charles Taylor Trial.[7] As a result of that investigation, the Trial Chamber issued its Order in Lieu of Indictment against Eric Koi Senessie (hereinafter, "Senessie"), charging him with four counts of knowingly and wilfully interfering with the Special Court for Sierra Leone's administration of justice by offering a bribe to four prosecution witnesses who had given evidence in the Charles Taylor Trial, and five counts of knowingly and wilfully interfering with the Special Court for Sierra Leone's administration of justice by attempting to otherwise interfere

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5 *Independent Counsel v. Bangura*, Case No. SCSL-11-02-A, SCSL Appeals Chamber, Judgement in Contempt Proceedings at para. 31 (21 Mar. 2013) (citation omitted) (hereinafter, "*Bangura* Appeal Judgment"); *see also Prosecutor v. Sesay*, Case No. SCSL-04-15-A-1321, SCSL Appeals Chamber, Judgement at para. 31 (26 Oct. 2009) (hereinafter, "*Sesay* Appeal Judgment").

6 *Prosecutor v. Taylor*, Case No. SCSL-03-1-T, SCSL Trial Chamber, Public with Confidential Annexes A and B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone (24 Feb. 2011).

7 *Prosecutor v. Taylor*, Case No. SCSL-03-1-T, SCSL Trial Chamber, Decision on Public with Confidential Annexes A and B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone and on Prosecution Supplementary Requests, at para. 15 (17 Mar. 2011).

with five prosecution witnesses who had given evidence in the Charles Taylor Trial.[8] At that time, no order in lieu of indictment was requested against Appellant.

A. *Senessie* Contempt Proceedings

5. On 14 June 2011, Senessie entered a plea of not guilty to all nine counts.[9] Senessie's weeklong trial commenced on 11 June 2012. On 21 June 2011, the Trial Chamber convicted Senessie of eight counts of contempt of court. More specifically, Senessie was convicted of: (1) four counts of offering bribes to persons who had given evidence before the Special Court for Sierra Leone; and (2) four counts of knowingly and wilfully interfering with the Special Court for Sierra Leone's administration of justice by attempting to otherwise interfere with persons who had given evidence before the Special Court.[10]

6. At a sentencing hearing on 4 July 2012, Senessie stated, *inter alia*, that the scheme to interfere with the five prosecution witnesses from the Charles Taylor Trial was instigated by Appellant, who gave instructions and directions to Senessie.[11] In a decision rendered from the bench on 5 July 2012, the Trial Chamber sentenced Senessie to two years' imprisonment per count with the sentences to run concurrently.[12] That ruling was memorialized in an order dated 12 July 2012.[13]

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8 *Prosecutor v. Senessie*, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Order in Lieu of Indictment (24 May 2011).

9 *See Prosecutor v. Senessie*, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Pretrial Transcript (14 June 2011).

10 *Prosecutor v. Senessie*, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Judgement in Contempt Proceedings (16 Aug. 2012).

11 *Prosecutor v. Senessie*, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Sentencing Hearing Transcript (4 July 2012).

12 *Prosecutor v. Senessie*, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Sentencing Judgement (12 July 2012).

13 *Prosecutor v. Senessie*, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Sentencing Judgement (12 July 2012).

7. On 10 August 2012, Senessie filed with the Appeals Chamber his Defence Motion for Review.[14] Appended to the Defence Motion for Review was a signed, sworn affidavit by Senessie describing, *inter alia*, Appellant's role in the scheme to interfere with the five prosecution witnesses from the Charles Taylor Trial as well as Appellant's instructions and directions to Senessie regarding that scheme.[15] In a decision dated 4 September 2012, the Appeals Chamber dismissed Senessie's Defence Motion for Review in its entirety.[16]

B. *Taylor* Contempt Proceedings

8. On or about 1 August 2012, Respondent, in his capacity as Independent Counsel, filed a supplemental confidential report.[17] That report recommended, *inter alia*, that Appellant be indicted for certain crimes related to: (1) the approach of the five prosecution witnesses from the Charles Taylor Trial; and (2) Appellant's interference with Senessie.[18]

9. On 4 October 2012, the Trial Chamber issued its Order in Lieu of Indictment charging Appellant with nine counts of violating Rule 77(A)(iv) of the SCSL Rules by: (1) attempting to bribe and/or influence five prosecution witnesses from the Charles Taylor Trial; and (2) attempting to influence the defendant (Senessie) in the *Senessie* trial.[19] Together, the nine counts—which are more specifically set forth in the Order in Lieu of Indictment—involved six different witnesses: Mohamed

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[14] *Prosecutor v. Senessie*, Case No. SCSL-2011-01-REV, SCSL Appeals Chamber, Defence Motion for Review (10 Aug. 2012).

[15] *Prosecutor v. Senessie*, Case No. SCSL-2011-01-REV, SCSL Appeals Chamber, Defence Motion for Review, Confidential Annex A (10 Aug. 2012).

[16] *Prosecutor v. Senessie*, Case No. SCSL-2011-01-REV, SCSL Appeals Chamber, Decision on Defence Motion for Review (4 Sept. 2012).

[17] *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, SCSL Trial Chamber, Submission of Supplemental Confidential Report of Independent Counsel (1 Aug. 2012).

[18] *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, SCSL Trial Chamber, Submission of Supplemental Confidential Report of Independent Counsel (1 Aug. 2012).

[19] *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Order in Lieu of Indictment (4 Oct. 2012).

Kabbah, Aruna Gbonda, TFI-274, TFI-585, TFI-516, and Senessie. On 6 October 2012, Appellant entered pleas of not guilty for all nine counts.[20]

10. A pretrial conference was convened on 12 January 2013. During that pretrial conference, the parties stipulated, *inter alia*, to "the admission into evidence of all of the trial testimony from *Prosecutor v. Senessie* including, but not limited to, the trial testimony of witnesses Aruna Gbonda, Mohamed Kabbah, TFI-274, TFI-516 and TFI-585."[21] The parties further stipulated to "the admission into evidence of all the information and the Court's deliberations and disposition sections of its judgment in *Prosecutor v. Senessie*."[22] The parties requested, moreover, "that said information be treated as final adjudicated facts."[23]

11. In addition, the parties entered into joint stipulations regarding:

(A) Documents produced by First International Bank (SL), Ltd. in response to the *Subpoenas Duces Tecum* issued on 14 November 2012 and 28 November 2012 including a letter from First International Bank (SL), Ltd. Company Secretary Chika Chikezie to Special Court for Sierra Leone Registrar Binta Mansaray and a First International Bank (SL), Ltd. deposit slip dated 1 February 2011 for a deposit made by Appellant to accountholder Jessica Senessie in the amount of 200,000 leones; and

(B) A Sierra Leone Commercial Bank Limited bank cheque in the amount of 30,000 leones that was signed by

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[20] *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Hearing Transcript at pp. 8-12 (6 Oct. 2012).

[21] *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Pretrial Hearing Transcript at p. 34:7-11 (12 Jan. 2013).

[22] *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Pretrial Hearing Transcript at p. 34:12-14 (12 Jan. 2013).

[23] *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Pretrial Hearing Transcript at p. 34:14-16 (12 Jan. 2013).

Appellant and given by Appellant to Senessie on or about 6 June 2012.[24]

12. A weeklong trial commenced on 14 January 2013. Because it was jointly agreed by the parties that the evidence adduced in the *Senessie* trial would be admitted and treated as adjudicated facts together with the trial transcripts and the deliberation and disposition sections of the Judgement in Contempt Proceedings from that trial, the five prosecution witnesses from the Charles Taylor Trial—Mohamed Kabbah, Aruna Gbonda, TFI-274, TFI-585, and TFI-516—were not called to testify.[25] Senessie testified on behalf of Respondent from 14 January 2013 through 16 January 2013.

13. Appellant did not call any witnesses at trial. Instead, Appellant moved for the admission into evidence of written statements by four lawyers not directly involved in this case: (1) Lawyer X;[26] (2) Morris Anyah;[27] (3) Michiel Pestman;[28] and (4) Andrew Ianuzzi.[29] As noted in the trial transcript, these written statements were admitted as evidence but, contrary to Appellant's suggestion, never recognized by Respondent—or, more importantly, the Trial Chamber—as containing "uncontested" facts.[30] In the words of counsel for Appellant, the written statements of lawyers

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[24] *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Pretrial Hearing Transcript at pp. 28-38 (12 Jan. 2013).

[25] *Prosecutor v. Senessie*, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Judgement in Contempt Proceedings (16 Aug. 2012).

[26] *See* Exhibit D5 from the instant trial. Note that "Lawyer X" was the pseudonym assigned by the Trial Chamber to Senessie's first lawyer in *Prosecutor v. Senessie*, Case No. SCSL-2011-01-T. *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Hearing Transcript (Confidential Version) at p. 77:17-24 (14 Jan. 2013).

[27] *See* Exhibit D6 from the instant trial.

[28] *See* Exhibit D7 from the instant trial.

[29] *See* Exhibit D8 from the instant trial.

[30] Appellant insinuates that the content of these written statements constituted "uncontested evidence." *See* Appellant's Submissions at para. 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."). That suggestion is erroneous. *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Hearing Transcript at p. 474:2-7 (17 Jan. 2013) (Respondent states his intention to comment on Lawyer X's written statement); *id.* at pp. 483-84 (Trial Chamber acknowledges that the content of the witness statements was not "agreed" to as suggested by counsel for Appellant and could be commented on by the parties in their closing submissions); *id.* at pp. 500:5–511:1 (Respondent's comments on Lawyer X's written statement); *see generally id.* at pp. 468-86.

Anyah, Pestman, and Ianuzzi "are all character statements . . . [that] don't go to the facts of the case."[31]

14. In a decision rendered from the bench on 25 January 2013, the Trial Chamber convicted Appellant of five counts of contempt of court under Rule 77 of the SCSL Rules.[32] Those counts are as follows:

> **Count 2:** knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv);
>
> **Count 4:** knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv);
>
> **Count 7:** knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv);
>
> **Count 8:** knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv); and
>
> **Count 9:** knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who is about to give evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv).[33]

That ruling was memorialized in an order dated 11 February 2013 and is the subject of this appeal.[34]

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31 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at p. 478:19-21 (16 Jan. 2013).

32 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript (25 Jan. 2013).

33 Judgement at para. 213.

34 *See generally* Judgement.

15. In a decision rendered from the bench on 8 February 2013, the Trial Chamber sentenced Appellant to two years' imprisonment for Counts 2, 4, 7, and 8, and two and a half years' imprisonment for Count 9 with the terms to be served concurrently.[35] That ruling was memorialized in an order dated 14 February 2013 and is also the subject of this appeal.[36]

16. The protracted procedural history of this case on appeal is detailed in the Appeals Chamber's Judgment in Contempt Proceedings and Order on Re-Filing of Appeal on Behalf of Prince Taylor with Application for the Appeal to Be Filed Out of Time.[37] Suffice it to say that the Appeals Chamber "deem[ed] the Appeal to have been properly filed" on 04 June 2013.[38]

III. STANDARDS OF REVIEW ON APPEAL

17. Under Article 20 of the Statute of the Special Court and Rule 106 of the SCSL Rules, an appeal may be allowed on the basis of an error on a question of law invalidating the decision, an error of fact which has occasioned a miscarriage of justice, and/or a procedural error.[39] The standard of review on appeal is different for each of these types of error. This Appeals Chamber has adopted the position that the "settled standard of review for appeals against judgements also applies to appeals against convictions for contempt."[40]

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35 Sentence at paras. 56, 57.

36 *See generally* Sentence.

37 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Judgment in Contempt Proceedings at paras. 10-15 (14 May 2013); *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Order on Re-Filing of Appeal on Behalf of Prince Taylor with Application for the Appeal to Be Filed Out of Time at p. 2 (04 June 2013).

38 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Order on Re-Filing of Appeal on Behalf of Prince Taylor with Application for the Appeal to Be Filed Out of Time at p. 3 (04 June 2013).

39 Respondent notes that Appellant has only alleged errors of law and fact.

40 *Bangura* Appeal Judgment at para. 24.

A. Errors of Law

18. An error of law must invalidate the decision.[41] An appellant must state what error of law has been made and how that error invalidates the decision.[42] The Appeals Chamber reviews the Trial Chamber's findings of law to determine whether they are correct.[43] Where the Appeals Chamber finds an error of law in a Trial Chamber decision arising from the application of the wrong legal standard, the Appeals Chamber will articulate the correct legal standard and review the relevant factual findings of the Trial Chamber accordingly.[44] In so doing, the Appeals Chamber not only corrects the legal error, but applies the correct legal standard to the evidence contained in the trial record, where necessary, and determines whether it is itself convinced beyond a reasonable doubt as to the factual finding challenged by an appellant before that finding may be confirmed on appeal.[45]

B. Errors of Fact

19. An error of fact must occasion a "miscarriage of justice," which has been defined by this Appeals Chamber as "a grossly unfair outcome in judicial proceedings, as when a defendant is convicted despite a lack of evidence on an essential element of the crime."[46] An appellant alleging an error of fact "must provide details of the alleged error and state with precision how the error of fact occasioned a miscarriage of

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41 *Sesay* Appeals Judgment at para. 31; *Prosecutor v. Fofana*, Case No. SCSL-04-14-A-829, SCSL Appeals Chamber, Judgment at para. 32 (28 May 2008) (hereinafter, "*Fofana* Appeal Judgment").

42 *Sesay* Appeal Judgment at para. 31; *see also Prosecutor v. Munyakazi*, Case No. ICTR-97-36-A-A, ICTR Appeals Chamber, Judgement at para. 6 (28 Sept. 2011) (hereinafter, "*Munyakazi* Appeal Judgement").

43 *Prosecutor v. Mrksic*, Case No. IT-95-13/1-A, ICTY Appeals Chamber, Judgement at para. 12 (5 May 2009) (hereinafter, "*Mrksic* Appeal Judgement").

44 *Munyakazi* Appeal Judgement at para. 7; *see also Prosecutor v. Martic*, Case No. IT-95-11-A, ICTY Appeals Chamber, Judgement at para. 10 (8 Oct. 2008).

45 *Mrksic* Appeal Judgement at para. 12.

46 *Bangura* Appeal Judgment at para. 27 (citations omitted); *see also Sesay* Appeal Judgment at para. 32; *Fofana* Appeal Judgment at para. 33.

justice."[47] For an error to rise to the level of a miscarriage of justice, "it must have been critical to the verdict reached."[48]

20. The Appeals Chamber must give deference to the Trial Chamber that received the evidence at trial,[49] "as the Trial Chamber is best-placed to assess the evidence, including the demeanour of witnesses."[50] As recently explained by this Appeals Chamber in *Bangura*:

> [T]he task of hearing, assessing, and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber. Only where the evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or where the evaluation of evidence is "wholly erroneous" may the Appeals Chamber substitute its own finding for that of the Trial Chamber.[51]

The Appeals Chamber should only substitute its own finding for that of the Trial Chamber when no reasonable trier of fact could have reached the original decision or where the finding is wholly erroneous.[52] Finally, the Appeals Chamber should apply the same reasonableness standard to alleged errors of fact regardless of whether the finding of fact was based on direct or circumstantial evidence.[53]

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47 *Bangura* Appeal Judgment at para. 27 (citing *Sesay* Appeal Judgment at para. 32).
48 *Bangura* Appeal Judgment at para. 27 (citing *Sesay* Appeal Judgment at para. 32).
49 *Munyakazi* Appeal Judgement at para. 8; *see also Karera v. Prosecutor*, Case No. ICTR-01-74-A, ICTR Appeals Chamber, Judgement at para. 10 (2 Feb. 2009).
50 *Sesay* Appeal Judgment at para. 32; *Fofana* Appeal Judgment at para. 33.
51 *Bangura* Appeal Judgment at para. 26 (citations omitted); *see also Sesay* Appeal Judgment at para. 32; *Prosecutor v. Niyitegeka*, Case No. ICTR-96-14-A, ICTR Appeal Chamber, Judgment at para. 8 (9 July 2004) (hereinafter, "*Niyitegeka* Appeal Judgement"); *Prosecutor v. Kunarac*, Case Nos. IT-96-23 & IT-96-23/1-A, ICTY Appeals Chamber, Judgement at para. 39 (12 June 2002).
52 *Bangura* Appeal Judgment at para. 27 (citations omitted); *see also Sesay* Appeal Judgment at para. 32; *Fofana* Appeal Judgment at para. 33.
53 *Sesay* Appeal Judgment at para. 32; *Fofana* Appeal Judgment at para. 33.

C. Defective Submissions

21. The Appeals Chamber has the inherit authority to summarily dismiss unclear, undeveloped, unfounded, and/or unsupported arguments without a reasoned opinion in writing.[54] As recently explained by this Appeals Chamber in *Bangura*:

> For the Appeals Chamber to be able to assess a Party's arguments, the Party should set out his/her Grounds of Appeal clearly, logically and exhaustively. Accordingly, submissions that are obscure, contradictory, vague or that suffer from other formal and manifest insufficiencies may, on that basis, be summarily dismissed without detailed reasoning.[55]

As further explained by this Appeals Chamber:

> As a general rule, where an appellant's references to the Trial Judgment or the evidence are missing, vague or incorrect, the Appeals Chamber may summarily dismiss the ground of appeal or reject submissions advanced in support thereof. The Appeals Chamber will, as a general rule, summarily dismiss undeveloped arguments and alleged errors, as well as submissions where the appellant fails to articulate the precise error committed by the Trial Chamber.
>
> Where the Appeals Chamber finds that an appellant merely asserts that the Trial Chamber failed to consider relevant evidence, without showing that no reasonable trier of fact, based on the totality of the evidence, could have reached the same conclusion as the Trial Chamber did, or without showing that the Trial Chamber completely disregarded the evidence, it will, as a general rule, summarily dismiss that alleged error or argument.
>
> As a general rule, mere assertions that the Trial Chamber erred in its evaluation of the evidence, such as submissions that the Trial Chamber failed to give sufficient weight to certain evidence, or should have interpreted evidence in a particular manner, are liable to be summarily dismissed. Similarly, **where an appellant merely seeks to substitute**

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54 *Bangura* Appeal Judgment at para. 28 (citation omitted).
55 *Bangura* Appeal Judgment at para. 28 (citations omitted).

> **his/her own evaluation of the evidence for that of the Trial Chamber, such submissions may be dismissed without detailed reasoning.** An appellant must address the evidence the Trial Chamber relied on and explain why no reasonable trier of fact, based on the evidence, could have evaluated the evidence as the Trial Chamber did.
>
> Where the Appeals Chamber considers that an appellant fails to explain how the alleged factual error had an effect on the conclusions in the Trial Judgment, it will summarily dismiss the ground alleging error or reject any argument in support thereof.[56]

22. This Appeals Chamber has also found that, "as a general rule," it will "summarily dismiss submissions that merely repeat arguments that did not succeed at trial, unless it is shown that their rejection by the Trial Chamber constituted an error warranting the intervention of the Appeals Chamber."[57]

VI. ARGUMENT

A. The Trial Chamber Did Not Commit Any Errors of Law in Its Judgement

23. Appellant makes four arguments that the Trial Chamber committed errors of law in its Judgement. Each of these arguments should be dismissed for the reasons set forth below.

1. *Corroboration Is Not a Legal Requirement*

24. Contrary to the position advanced by Appellant,[58] "[c]orroboration of evidence is not a legal requirement" and a Trial Chamber need not base its findings on corroborated evidence where the testimony of a single witness supports such findings.[59] As

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[56] *Bangura* Appeal Judgment at paras. 29-32 (emphasis added) (citations and footnotes omitted)
[57] *Bangura* Appeal Judgment at para. 27 (citations omitted).
[58] *See* Appellant's Submissions at paras. 24-67 (Ground 1); *see also id.* at para. 22 (describing Ground 1).
[59] *Fofana* Appeal Judgement at para. 199 (citation omitted); *see also Prosecutor v. Gotovina*, Case No. IT-06-90-T, ICTY Trial Chamber, Judgement at para. 34 (15 April 2011) ("The [ICTY] Appeals Chamber has held that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration." (citing

explained by the Appeals Chamber for the International Criminal Tribunal for the Former Yugoslavia (hereinafter, "ICTY"), it is the long-standing "practice of [the ICTY] and of the International Criminal Tribunal for Rwanda ('ICTR') to accept as evidence the testimony of a single witness on a material fact without need for corroboration."[60] In such instances, a Trial Chamber need only examine the evidence carefully before relying on it as the basis for a conviction.[61] As explained by the ICTY Trial Chamber in *Prosecutor v. Orić*:

> In some cases, only one witness has given evidence regarding a particular incident. The Appeals Chamber has held that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration. When such situation occurred, the Trial Chamber examined the evidence of the Prosecution witness with great care before accepting it as a sufficient basis for finding guilt.[62]

The ICTY Trial Chamber made a similar observation in *Prosecutor v. Haradinaj*:

> On several occasions, only one witness gave evidence of an incident with which the Accused were charged. The Appeals Chamber has held that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration. On these occasions, the Trial Chamber exercised particular caution, considering all circumstances relevant to the testimony of the witness, including any possible underlying motive for the witness's testimony and other factors mentioned.[63]

Prosecutor v. Tadić, Case No. IT-94-1-A, ICTY Appeals Chamber, Judgement at para. 65 (15 July 1999)); *Prosecutor v. Krnojelac*, Case No. IT-97-25, ICTY Trial Chamber, Judgement at para. 71 (15 Mar. 2002) ("The Appeals Chamber has held that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration." (citation omitted)).

60 *Prosecutor v. Tadić*, Case No. IT-94-1-A, ICTY Appeals Chamber, Judgement at para. 65 (15 July 1999) (footnote and citation omitted).

61 *See Prosecutor v. Orić*, Case No. IT-03-68-T, ICTY Trial Chamber, Judgement at para. 18 (30 June 2006).

62 *Prosecutor v. Orić*, Case No. IT-03-68-T, ICTY Trial Chamber, Judgement at para. 18 (30 June 2006) (footnote and citations omitted).

63 *Prosecutor v. Haradinaj*, Case No. IT-04-84-T, ICTY Trial Chamber, Judgement at para. 14 (3 Apr. 2008) (citations and footnote omitted).

25. As explained by the SCSL Appeals Chamber in *Fofana*: "Any appeal based on the absence of corroboration must be against the weight which a Trial Chamber attaches to the evidence in question."[64] In other words, a "lack of corroboration" argument should be treated as an error-of-fact—rather than an error-of-law—claim.

26. Appellant contends in Ground 1 of his appeal that

> relevant jurisprudence and case law makes it clear that the court should . . . 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 [as] to the criminal standard of proof before reaching a guilty verdict.[65]

He claims that the Trial Chamber committed "errors of law" in convicting him on the basis of uncorroborated evidence.[66] This argument is a non-starter. As explained above, corroboration of evidence is not a legal requirement and any claim based on the absence of corroboration concerns an error of fact.[67] Accordingly, Ground 1 of Appellant's Submissions alleging "errors of law" due to a lack of corroboration fails.

2. *Evidentiary Inconsistencies May Be Resolved by Accepting Some or All of the Allegedly Inconsistent Evidence*

27. The Trial Chamber is charged with resolving any inconsistencies in the evidence and, in doing so, may accept some or all of the evidence deemed inconsistent. As explained by the Appeals Chambers for both the ICTR and ICTY:

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64 *Fofana* Appeal Judgement at para. 199 (citation omitted); *see also Prosecutor v. Kordić*, Case No. IT-95-14/2-A, ICTY Appeals Chamber, Judgement at para. 274 (17 Dec. 2004).

65 Appellant's Submissions at para. 28 (emphasis in original).

66 Appellant's Submissions at para. 22.

67 Respondent notes at this juncture that Appellant's oft-repeated argument that Senessie's testimony was "incredible" and "unreliable," and thus a deficient basis for his conviction, is an issue of fact rather than an issue of law. This argument is addressed in Section IV(B), *infra*.

> As the primary trier of fact, it is the Trial Chamber that has the main responsibility to resolve any inconsistencies that may arise within and/or amongst witnesses' testimonies. It is certainly within the discretion of the Trial Chamber to evaluate any inconsistencies, to consider whether the evidence taken as a whole is reliable and credible and to accept or reject the "fundamental features" of the evidence. The presence of inconsistencies does not, *per se*, require a reasonable Trial Chamber to reject it as being unreasonable.[68]

The SCSL Trial Chamber made a similar finding in *Prosecutor v. Sesay*:

> The Chamber may accept or reject the evidence of a witness in whole or in part, and may find a witness to be credible and reliable about certain aspects of their testimony and not credible or reliable with respect to others . . . . The Chamber is of the view that the mere existence of inconsistencies in the testimony of a witness does not undermine the witness's credibility.[69]

28. To commit an error of law when presented with inconsistent evidence, the Trial Chamber need only *consider* the inconsistencies and, if offered, any explanations for those inconsistencies, when weighing the evidence. As explained by the ICTR Appeals Chamber, where a Trial Chamber "take[s] into account inconsistencies and any explanations offered in respect of [that evidence] when weighing the probative value of the evidence," it has not "committed any error."[70]

29. Appellant has acknowledged that the Trial Chamber has discretionary authority when resolving inconsistencies: "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."[71] He appears to argue, however, that the number of inconsistencies in this case rendered the Trial Chamber incapable of reaching such a finding: "Senessie's evidence was so riddled with lies and inconsistencies in and of itself and when

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68 *Niyitegeka* Appeal Judgement at para. 95 (citing *Kupreškić* Appeal Judgement at para. 31).
69 *Prosecutor v. Sesay*, Case No. SCSL-04-15-T-1234, SCSL Trial Chamber, Judgement at paras. 488-89 (2 Mar. 2009) (citations omitted).
70 *Niyitegeka* Appeal Judgement at para. 96 (citations omitted).
71 Appellant's Submissions at para. 28.

compared with the other evidence in the case, that it could not be safely relied on to convict the Appellant."[72] He also argues that the Trial Chamber convicted Appellant "without taking into account the lies and contradictions in his evidence and that it conflicted with the evidence of the other witnesses in the case."[73]

30. Appellant's first argument—that Senessie's testimony "could not be safely relied on to convict the Appellant"—suggests that the Trial Chamber committed an *error of fact* rather than an error of law.[74] That argument should be dismissed for the reasons set forth in Section IV(B), *infra*.

31. Appellant's second argument—that the Trial Chamber failed to consider the inconsistencies in Senessie's evidence as well as its conflicts with that of other witnesses—is deficient on its face. As explained by this Appeals Chamber in *Bangura*, "[t]he Appeals Chamber will, as a general rule, summarily dismiss undeveloped arguments and alleged errors, as well as submissions where the appellant fails to articulate the precise error committed by the Trial Chamber."[75] This Appeals Chamber further explained that where

> an appellant merely asserts that the Trial Chamber failed to consider relevant evidence, without showing that no reasonable trier of fact, based on the totality of the evidence, could have reached the same conclusion as the Trial Chamber did, *or without showing that the Trial Chamber completely disregarded the evidence*, it will, as a general rule, summarily dismiss that alleged error or argument.[76]

32. Appellant failed in the "errors of law" section of Ground 1 of his appeal to identify any inconsistencies (or explanations for inconsistencies) that the Trial Chamber

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[72] Appellant's Submissions at para. 27.
[73] Appellant's Submissions at para. 33.
[74] Appellant's Submissions at para. 27.
[75] *Bangura* Appeal Judgment at para. 29 (citation omitted).
[76] *Bangura* Appeal Judgment at para. 29 (emphasis added) (citation omitted).

disregarded in its Judgement.[77] Appellant also failed to demonstrate that these unidentified inconsistencies invalidate the Judgement. Accordingly, Ground 1 of Appellant's Submissions alleging "errors of law" due to a failure to consider inconsistencies should be dismissed.

33. For all of the reasons stated above in Sections IV(A)(1) and IV(A)(2), *supra*, Appellant has failed to identify an error of law that invalidates the Judgement. Ground 1 of Appellant's Submissions alleging "errors of law" should be categorically dismissed.[78] Ground 1 of Appellant's Submissions regarding "errors of fact" should similarly be dismissed for the reasons set for in Section IV(B), *infra*.[79]

3. *Appellant Was Accorded the Presumption of Innocence*

34. The Statute of the Special Court for Sierra Leone enshrines certain "[r]ights of the accused," including the right to the presumption of innocence until proved guilty.[80] Article 17 of the Statute of the Special Court for Sierra Leone provides, in relevant part: "The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute." The Trial Chamber recognized this "fundamental right" and accorded it Appellant.[81]

35. Appellant contends in Ground 2 of his appeal 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

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77 *See* Appellant's Submissions at paras. 26-34. "Ground 3" of Appellant's Submissions states that "the Chamber failed to take into account the glaring contradictions between the evidence of Lawyer X and Mr. Senessie." *Id.* at para. 76. That statement is not supported by the record. *See* Judgement at paras. 130-35, 172-83, 191; *see also id.* at paras. 22-24, 35-37, 67-68, 71-73, 104-05, 107-09, 111-15, 126. Accordingly, even if the Appeals Chamber were to incorporate that "Ground 3" allegation to Appellant's "Ground 1" arguments, it does not survive the test articulated by the ICTR Appeals Chamber in *Niyitegeka*. *See Niyitegeka* Appeal Judgement at para. 96 (citations omitted).

78 *See* Appellant's Submissions at paras. 26-34.

79 *See* Appellant's Submissions at paras. 35-67.

80 Statute of the Special Court for Sierra Leone, art. 17.

81 Judgement at paras. 138-39 (citations omitted).

in his defence."[82] He insisted that the Trial Chamber relied on: (1) "the lack of any rebuttal evidence from the Appellant to find that Mr. Senessie's evidence was credible"; and (2) "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."[83]

36. Appellant's Ground 2 "error of law" argument should be summarily dismissed because it is unclear, undeveloped, unfounded, and unsupported.[84] Appellant presents no evidence in support of his claim that the Trial Chamber violated his presumption of innocence aside from the allegations quoted above. Appellant offers no jurisprudence in support of his claim. And, Appellant fails to explain why his claim invalidates the Judgement. As recently explained by this Appeals Chamber in *Bangura*: "The Appeals Chamber will, as a general rule, summarily dismiss undeveloped arguments and alleged errors, as well as submissions where the appellant fails to articulate the precise error committed by the Trial Chamber."[85] This claim is no exception to that general rule; it should be summarily dismissed.

37. Respondent notes that a Trial Chamber's reliance on a lack of evidence by an accused is not tantamount to a violation of his or her presumption of innocence. An accused is entitled to present evidence *other than his or her own testimony* to rebut prosecution evidence. Although the Trial Chamber cannot infer a negative inference from the excused's decision to exercise her or her right to remain silent, the Trial Chamber is obligated to consider the evidence—or lack thereof—before it. Appellant's undeveloped argument insinuates that the Trial Chamber violated his presumption of innocence. In this respect, Appellant's claim is not only manifestly deficient—it grossly mischaracterizes the Judgement.

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82 Appellant's Submissions at para. 68.
83 Appellant's Submissions at para. 69 (citation omitted).
84 *See Bangura* Appeal Judgment at para. 28 (citation omitted).
85 *Bangura* Appeal Judgment at paras. 29.

38. In summary, Appellant has failed to demonstrate any "error of law" involving the presumption of innocence. Appellant has also failed to demonstrate that any such error invalidated the Judgement. Accordingly, the Appeals Chamber should dismiss Appellant's Ground 2 error-of-law claim.

4. *Appellant's Right to Present and Examine Witnesses at Trial Was Neither Limited Nor Impeded*

39. The Statute of the Special Court for Sierra Leone guarantees the right of an accused to present and examine witnesses at trial.[86] Article 17 of the Statute of the Special Court for Sierra Leone provides, in relevant part:

> In the determination of any charge against the accused pursuant to the present Statute, he or she shall be entitled to the following minimum guarantees, in full equality . . . [t]o examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.

40. Appellant contends in Ground 3 of his appeal that the Trial Chamber committed errors of law and fact "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."[87] Although it is not clear from Appellant's Submissions,[88] the first issue—making findings without a foundation in evidence—presumably concerns an "error of fact,"[89] while the second issue—not affording Lawyer X the opportunity to

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86 Statute of the Special Court for Sierra Leone, art. 17.

87 Appellant's Submissions at para. 72.

88 As noted in Section III(B), *supra*, an appellant has a duty to present his or her arguments "clearly, logically, and exhaustively," and "submissions that are obscure, contradictory, vague or that suffer from other formal and manifest insufficiencies may, on that basis, be summarily dismissed without detailed reasoning." *See Bangura* Appeal Judgment at para. 28 (citations omitted). Respondent considers Appellant's Ground 3 "error of law" argument to have failed this test. Respondent will nonetheless respond to Appellant's argument that the Trial Chamber did not afford Lawyer X the opportunity to provide certain unspecified evidence.

89 *See Bangura* Appeal Judgment at para. 27 (citations omitted); *see also Sesay* Appeal Judgment at para. 32; *Fofana* Appeal Judgment at para. 33.

provide certain evidence—presumably concerns an "error of law."[90] The former issue is addressed in Section IV(B), *infra*; the latter issue is addressed in the paragraphs immediately below.

41. At this juncture, some context about Lawyer X is warranted. Lawyer X was Senessie's initial defence lawyer for his contempt proceedings.[91] He represented Senessie at his initial appearance.[92] At that time, Lawyer X appeared in the same public courtroom that was subsequently used by the Trial Chamber for the trials of Appellant and Senessie. Lawyer X used his actual name during that hearing. Lawyer X's representation of Senessie ended in July 2011.[93]

42. By Lawyer X's own admission, Lawyer X and Appellant have been long-time friends. They were friends during Lawyer X's representation of Senessie. And, by Lawyer X's own admission, they remained friends during Appellant's trial.[94]

43. When Appellant's case went to trial, Lawyer X decided that he wanted to give evidence *against* Senessie—his former client. In doing so, Lawyer X had the effrontery to ask counsel for Appellant to request that Lawyer X's real name not be used, and that he be referred to instead by a pseudonym.[95] On the first day of trial, counsel for Appellant made this request pursuant to Rule 75 of the SCSL Rules for "privacy" purposes.[96] The Trial Chamber granted this request.[97]

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90 *See* Statute of the Special Court for Sierra Leone, art. 17.
91 Judgement at paras. 67-68.
92 Judgement at paras. 72-73.
93 Judgement at paras. 72-73.
94 *See* Exhibit D5.
95 *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Hearing Transcript (Confidential Version) at pp. 74-75 (14 Jan. 2013).
96 *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Hearing Transcript (Confidential Version) at p. 74:18-22 (14 Jan. 2013).
97 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Hearing Transcript (Confidential Version) at p. 77:17-24 (14 Jan. 2013). While Respondent did not object to Appellant's request, he remarked that he was "absolutely astounded" by the request. *Id.* at pp. 75:24-25—75:1.

44. During the 12 January 2013 pretrial hearing, counsel for Appellant stated his intention to call Lawyer X as a witness in this case.[98] At the request of counsel for Appellant, the Trial Chamber began making accommodations for Lawyer X to testify remotely from The Hague.[99] Despite the Trial Chamber's efforts to accommodate this request,[100] Appellant ultimately elected to close his case on 17 January 2013 without presenting any witness testimony.[101]

45. Prior to moving for the admission into evidence of Lawyer X's written statement, Respondent placed Appellant on notice that he did not agree with all of the content contained therein. Appellant, in turn, placed the Trial Chamber on notice that Respondent did not agree with all of the assertions contained in Lawyer X's written statement.[102]

46. While Respondent did not object to Appellant's motion to admit Lawyer X's written statement into evidence, Respondent never acknowledged that he agreed with the content contained therein.[103] The record unequivocally demonstrates that Appellant was aware that Respondent disagreed with certain allegations in Lawyer X's written statement prior to moving for its admission. The record also reveals that the Trial Chamber was aware that there was "argument" over the content of Lawyer X's witness statement.[104] Appellant never moved at trial to strike any of Respondent's

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98 *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Pretrial Hearing Transcript at pp. 43-44 (12 Jan. 2013).

99 *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Pretrial Hearing Transcript at pp. 43-45 (12 Jan. 2013).

100 *See, e.g., Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 194-95 (14 Jan. 2013).

101 *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at p. 441:9-19 (16 Jan. 2013); *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 460-61 (17 Jan. 2013).

102 *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 461-62, 465-66 (17 Jan. 2013).

103 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 474-75 (17 Jan. 2013).

104 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 483-84 (17 Jan. 2013) (Trial Chamber acknowledges that the content of the witness statements was not "agreed" to as suggested by counsel for Appellant and could be commented on by the parties in their closing submissions).

comments about Lawyer X's written statement and the Trial Chamber did not reject any of those comments.[105]

47. Appellant naively assumed that just because a written witness statement is admitted into evidence, that statement cannot be challenged. Appellant did not provide any evidence in support of this incredible claim at trial or on appeal.

48. To be clear, Respondent did comment on Lawyer X's written statement at length in his closing submission.[106] During those comments, he drew the Trial Chamber's attention to the written statement's most incredible allegations, including Lawyer X's flimsy assertion that he was not aware that he had a conflict in representing Senessie before he even boarded a plane to Sierra Leone for Senessie's initial appearance.[107] Not surprisingly, the Trial Chamber made the same observation in its Judgment:

> **Having reread and considered the cross-examination and evidence again in depth, I come to the view submitted by Independent Counsel to ask why, when it was so obvious to Lawyer X that he had a potential professional conflict, did he come to the Special Court for the purpose of defending what could well be a potential conflict situation?**[108]

It is also not surprising that, in light of this issue and other questionable statements made by Lawyer X, the Trial Chamber chose to believe much of Senessie's testimony over that of Lawyer X.[109] As stated by the Trial Chamber: "I do not reject Senessie's evidence on the basis of the conflicting evidence between Lawyer X and Senessie."[110]

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[105] *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Hearing Transcript at pp. 500:5 – 511:1 (17 Jan. 2013) (Respondent's comments on Lawyer X's written statement).

[106] *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 500-11 (17 Jan. 2013).

[107] *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 501-04, 507-08 (17 Jan. 2013).

[108] Judgement at para. 173 (emphasis added).

[109] *See* Judgement at para. 35(iv) ("Senessie said the endorsement[, Exhibit D5c,] was signed under duress, whilst Lawyer X said it was explained and voluntarily signed"); *id.* at paras. 178-79 (accepting Senessie's testimony that Lawyer X pressured him to sign an endorsement (Exhibit D5c) despite Lawyer X's statements to the contrary); *id.* at para. 176 (declining to accept Lawyer X's statement that he did not advise Senessie to plead guilty in light of Senessie's statements to the contrary); *id.* at 180-81 (declining to accept Lawyer X's statement

49. In summary, the Trial Chamber did not deny Appellant the opportunity to present or examine Lawyer X. Appellant elected to move into evidence a written statement from Lawyer X in lieu of oral testimony despite knowing that Respondent disagreed with certain statements contained therein. The Trial Chamber carefully considered Lawyer X's written statement, as well as the comments of both Respondent and counsel for Appellant regarding that statement, in its Judgement. Had Appellant wished to provide additional evidence "in respect of the matters about which findings were to be made," he should have done so at trial.[111]

50. In summary, Appellant has failed to demonstrate any "error of law" regarding the evidence of Lawyer X. Appellant has also failed to demonstrate that any such error invalidated the Judgement. Accordingly, the Appeals Chamber should dismiss Appellant's Ground 3 error-of-law claim.

5. *The Trial Chamber Acted Within Its Authority in Finding That Certain Character Evidence Was Not Probative of Appellant's Guilt or Innocence*

51. Rule 89 of the SCSL Rules vests the Trial Chamber with broad discretion to "admit any relevant evidence." The admission of evidence into the record, however, "is not indicative of a finding as to its probative value."[112]

52. Character evidence is generally reserved (if proffered) for the sentencing—rather than trial—phase of criminal proceedings. As explained by the ICTR Trial Chamber in *Prosecutor v. Ntakirutimana*, "[w]hile evidence of prior good character is commonly taken into account at the sentencing stage, its acknowledgment at earlier stages of

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that he did not characterize lawyer David Bentley as a "Queen's Counsel" or "QC" in light of Senessie's statements to the contrary); *see also* Exhibit D5.

110 *See* Judgement at para. 181.

111 Appellant's Submissions at para. 72.

112 *Prosecutor v. Brima*, Case No. SCSL-04-16-PT, SCSL Trial Chamber, Decision on Joint Defence Motion to Exclude All Evidence from Witness TFI-277 Pursuant to Rule 89(C) and/or Rule 95 at para. 15 (24 May 2005); *see also Prosecutor v. Akayesu*, Case No. ICTR-96-4-A, ICTR Appeals Chamber, Judgement at para. 292 (1 June 2001) (observing that the admission of certain evidence does not automatically imply that it is reliable and/or probative).

judicial reasoning is rare."[113] This is because, "as a general principle of criminal law, evidence as to the character of an accused is generally inadmissible to show the accused's propensity to act in conformity therewith."[114] Thus, while the Trial Chamber is permitted to admit character evidence under Rule 89 of the SCSL Rules, it is not required to do so.[115]

53. Appellant contends in Ground 4 of his appeal that the Trial Chamber "was wrong as a matter of law and fact"[116] in finding that the written statements of Anyah,[117] Pestman,[118] and Ianuzzi[119] were not "'probative of [the] innocence or guilt of the Accused.'"[120] Appellant similarly argues that the Trial Chamber erred in finding that those written statements are 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.'"[121] As noted in Paragraph 13, *supra*, Appellant conceded at trial that the written statements at issue "are all character statements . . . [that] don't go to the facts of the case."[122]

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113 *Prosecutor v. Ntakirutimana*, Case Nos. ICTR-96-10 & ICTR-96-17-T, ICTR Trial Chamber, Judgement and Sentence at para. 729 (21 Feb. 2003); *see also Prosecutor v. Niyitegeka*, Case No. ICTR-96-14-T, ICTR Trial Chamber, Judgment and Sentence (16 May 2003) ("The Chamber notes that jurisprudence has established that character evidence is rarely of probative value in showing the Accused's propensity to act in conformity therewith."); *Prosecutor v. Seromba*, Case No. ICTR-2001-66-I, ICTR Appeals Chamber, Judgement at para. 26 (13 Dec. 2006) ("Chamber notes that evidence of the good character of the accused prior to the events for which he is indicted is, generally, of limited probative value in international criminal law. Rather, evidence of prior good character is taken into consideration at the time of sentencing." (footnote and citation omitted)).

114 *Prosecutor v. Kupreskic*, Case No. IT-95-16-T, ICTY Appeals Chamber, Decision on Evidence of the Good Character of the Accused and the Defence of *Tu Quoque* at p. 2 (17 Feb. 1999).

115 Character evidence may in certain circumstances also be admitted under other rules of the SCSL Rules, but no such application was made in this case. *See* Judgement at para. 145.

116 Appellant's Submissions at para. 83.

117 *See* Exhibit D6.

118 *See* Exhibit D7.

119 *See* Exhibit D8.

120 Appellant's Submissions at para. 82 (quoting Judgement at para. 146).

121 Appellant's Submissions at paras. 82 (quoting Judgement at para. 147).

122 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at p. 478:19-21 (16 Jan. 2013). Of course, it did not help Appellant that two of his character witnesses had been sanctioned by the Extraordinary Chambers in the Courts of Cambodia. *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 462:28-29, 469:1-2 (17 Jan. 2013).

54. Appellant's Ground 4 "error of law" argument should be summarily dismissed because it is unclear, undeveloped, unfounded, and unsupported.[123] Appellant fails to identify why the Trial Chamber's findings (quoted above) constitute an error of law. Appellant offers no jurisprudence in support of his claim. And, Appellant fails to explain why his claim invalidates the Judgement. As recently explained by this Appeals Chamber in *Bangura*: "The Appeals Chamber will, as a general rule, summarily dismiss undeveloped arguments and alleged errors, as well as submissions where the appellant fails to articulate the precise error committed by the Trial Chamber."[124] This claim is no exception to that general rule; it should be summarily dismissed.

55. As a point of clarification, it is not in dispute that the Trial Chamber admitted and reviewed the written statements of Anyah, Pestman, and Ianuzzi.[125] Rather, Appellant merely appears to disagree with the Trial Chamber's finding that such statements are not probative. This is an "error of fact" argument—and a weak one at that—masquerading in "error of law" clothing. As explained more fully in Section IV(B)(9), *infra*, Appellant's "character evidence" argument amounts to nothing more than an attempt by Appellant "to substitute [his] own evaluation of the evidence for that of the Trial Chamber."[126] It should be summarily dismissed.

56. In summary, Appellant has failed to demonstrate any "error of law" resulting from the Trial Chamber's treatment of the written statements of Anyah, Pestman, and Ianuzzi. Appellant has also failed to demonstrate that any such error invalidated the Judgement. Accordingly, the Appeals Chamber should dismiss Appellant's Ground 4 error-of-law claim.

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[123] *See Bangura* Appeal Judgment at para. 28 (citation omitted).
[124] *Bangura* Appeal Judgment at para. 29 (citation omitted).
[125] *See* Appellant's Submissions at paras. 81-82; Judgement at paras. 145-46.
[126] *Bangura* Appeal Judgment at para. 31.

B. The Trial Chamber Did Not Commit Any Errors of Fact in Its Judgement

57. Appellant's error-of-fact arguments should be summarily dismissed as unclear, undeveloped, unfounded, and unsupported, and/or as "repeat arguments that did not succeed at trial."[127] At best, they constitute a last-ditch effort to "substitute [Appellant's] own evaluation of the evidence for that of the Trial Chamber."[128]

58. Appellant's primary and oft-repeated error-of-fact argument is that Senessie's testimony "was profoundly flawed and altogether incredible and unreliable," and that *any* findings premised on his testimony were necessarily erroneous.[129] Counsel for Appellant sang a similar refrain at trial.[130] The Trial Chamber recognized this argument and acknowledged that its findings would depend on its assessment of Senessie's credibility.[131]

59. The Trial Chamber rejected Appellant's "fails as a whole" argument, concluding that it was neither "just [n]or appropriate to reject Senessie's evidence in its entirety."[132] Instead, the Trial Chamber elected to "assess issues of credibility and weigh inconsistencies in detail,"[133] "bear[ing] in mind the need for caution in assessing Senessie's evidence."[134] Accordingly, "questions of weight and credibility on [Senessie's] evidence [were] addressed in relation to individual items, including the fact that certain matters were adduced after the *allocutus* and the sentencing."[135]

60. Respondent submits that the Trial Chamber was careful, reasoned, and—most importantly—correct in its assessment and use of Senessie's testimony. The Trial

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127 *Bangura* Appeal Judgment at para. 27 (citations omitted).
128 *Bangura* Appeal Judgment at para. 31 (citation omitted).
129 *See* Appellant's Submissions at paras. 1-3.
130 *See, e.g.*, *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at p. 525:18-29 (18 Jan. 2013).
131 *See* Judgement at para. 140 (citation omitted).
132 Judgement at para. 144.
133 Judgement at para. 144.
134 Judgement at para. 147.
135 Judgement at para. 160.

Chamber devotes significant real estate in its Judgement to evaluating the particulars of Senessie's testimony, reviewing his statements in the context of the evidence presented at trial as well as that admitted by consent from the *Senessie* trial.[136] And, as a result of this assessment, the Trial Chamber made detailed findings regarding the conduct of the accused.[137]

61. Respondent acknowledges that the Trial Chamber did not accept all of Senessie's testimony. For instance, the Trial Chamber found that Senessie's testimony that Appellant had promised him 500 USD for approaching the prosecution witnesses from the Charles Taylor Trial was not credible.[138] The Trial Chamber also found that Senessie's evidence was not "sufficiently reliable" to cause it to find that Appellant gave Senessie "clear and unequivocal instructions" to bribe the witnesses.[139] As a result of these findings, the Trial Chamber concluded that there was insufficient 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."[140]

62. Additionally, the Trial Chamber chose only to accept in part Senessie's testimony regarding a 30,000-leone cheque. In its assessment of that testimony, the Trial Chamber concluded that Senessie's "explanation for not telling Independent Counsel in his record of interview about the Le30,000 cheque [was] unconvincing."[141] The Trial Chamber nonetheless accepted Senessie's other testimony about the 30,000-leone cheque.[142]

63. While Respondent respectfully disagrees with the Trial Chamber's decision to reject Senessie's testimony on these issues, he submits that such findings are evidence of

[136] *See* Judgement at paras. 145-212.
[137] *See* Judgement at paras. 191-212.
[138] Judgement at para. 211.
[139] Judgement at para. 212.
[140] Judgement at para. 212.
[141] Judgement at para. 169.
[142] *See* Judgement at para. 169.

the Trial Chamber's careful and calibrated effort to "assess issues of credibility . . . in detail."[143]

64. Before addressing the particulars of Appellant's error-of-fact allegations, Respondent reminds the Appeals Chamber that it must give deference to the Trial Chamber that received the evidence at trial,[144] "as the Trial Chamber is best-placed to assess the evidence, including the demeanour of witnesses."[145] This is particularly true in the instant case, where the main error-of-fact issue concerns the credibility of a witness. Respondent submits that Justice Teresa Doherty, the single judge who presided at Appellant's trial, was the best-positioned judge to assess Senessie's credibility due to: (1) her comprehensive knowledge of the underlying facts in this case; and (2) her previous experience assessing the credibility of Senessie as the presiding judge in the *Senessie* trial.

65. For these reasons, as well as those presented more fully below, the Appeals Chamber should dismiss all of Appellant's error-of-fact claims regarding the Judgement.

1. *The Trial Chamber Did Not Err in Its Findings Regarding the 200,000-Leone Payment*

66. Certain facts in this case were admitted by the consent of the parties.[146] One such fact was that, "[i]n February 2011, the Accused deposited the sum of Le200,000 into the account of Jessica Senessie at the First International Bank (SL) Limited in Kailahun."[147] Appellant does not dispute that the 200,000 leones, while deposited in Jessica Senessie's account, was intended for Eric Senessie.[148] The controversy at trial regarding the 200,000 leones was the *reason* for this payment.

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[143] Judgement at para. 144.
[144] *Munyakazi* Appeal Judgement at para. 8; *see also Karera v. Prosecutor*, Case No. ICTR-01-74-A, ICTR Appeals Chamber, Judgement at para. 10 (2 Feb. 2009).
[145] *See Sesay* Appeal Judgment at para. 32; *Munyakazi* Appeal Judgement, para. 8.
[146] *See* Judgement at para. 10.
[147] Judgement at para. 10.
[148] *See* Appellant's Submissions at para. 36.

67. Senessie testified about the 200,000-leone payment during his direct examination. He stated that, after he met with certain prosecution witnesses from the Charles Taylor Trial, he received a phone call from Appellant. He testified that during that call, Appellant described an "arrangement" whereby Appellant would immediately pay Senessie 200,000 leones. Senessie testified that he provided Appellant with a bank account number, per Appellant's request, and that the 200,000 leones was wired to his daughter's bank account the following day.[149]

68. Senessie was "strenuously" questioned about the 200,000-leone payment during his cross-examination.[150] As explained in the Judgement:

> In cross-examination it was put to Senessie that the Le200,000 paid by Taylor to Senessie through his daughter's bank account was demanded from Taylor to allow Senessie to travel to Bo with the documents. Senessie denied this on each occasion and said the money was for transport, by which I understand is to locate the witnesses in Kailahun.[151]

Counsel for Appellant suggested during trial that the genuine reason for Appellant's 200,000- leone payment to Senessie was "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."[152]

69. The Trial Chamber considered and rejected this explanation for the 200,000-leone payment. As explained by the Trial Chamber, during "the course of the cross-examination of Eric Senessie, propositions, which will be referred within the assessment of evidence, were put to him in relation to aspects of his evidence, e.g.,

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[149] *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 101-02 (14 Jan. 2013); *see also* Judgement at paras. 14, 59.

[150] Judgement at para. 164.

[151] Judgement at para. 164.

[152] Appellant's Submissions at para. 36; *see also Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at p. 408:5-8 (16 Jan. 2013)

the intended use for the payment of Le200,000."[153] The Trial Chamber describes Appellant's "proposition" about the 200,000 leones, and Senessie's response to that proposition, as follows:

> In answer to questions regarding the invitation documents from the five complainants inviting Taylor to come to Kailahun, Senessie agreed that on Taylor's instruction he had them delivered to Taylor in Bo and then Taylor handed them over to the Independent Counsel. Senessie knew this because Taylor told him that and he trusted him. He wanted to protect Taylor. Taylor also told Senessie not to use them in trial because it would implicate Taylor. Senessie first sent him these documents on his instruction not to get his attention or to get money from the Defence team. Taylor told him the Defence team would relocate his brothers and give them money. Taylor promised him payment of $500 and Le200,000 for transport money. Senessie denied several time [sic] that he demanded Le200,000 to bring the documents so Taylor could see them and reiterated it was for transport to meet witnesses, Taylor suggested sending the Le200,000.[154]
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> * * *
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> In cross-examination it was put to Senessie that the Le200,000 paid by Taylor to Senessie through his daughter's bank account was demanded from Taylor to allow Senessie to travel to Bo with the documents. Senessie denied this on each occasion and said the money was for transport, by which I understand is to locate the witnesses in Kailahun.[155]

The Trial Chamber found Senessie's account of the 200,000-leone payment to be credible because Senessie's testimony regarding the payment was not rebutted and Appellant's proposition about payment had not been adduced. As explained by the Trial Chamber:

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[153] Judgement at para. 140.

[154] *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 402-09 (16 Jan. 2013).

[155] Judgement at paras. 125, 164.

> The proposition that the Le200,000 was to arrange transport for Senessie to bring the documents has not been adduced, and therefore Senessie's evidence is not rebutted. However, it does show that the documents were conveyed to Taylor by Senessie, and clearly indicates to me that Taylor had some interest in them. They were subsequently given to Independent Counsel by Taylor. From the cross-examination and the answers thereto, I find that Senessie did not anticipate or intend that Taylor give this document to the Independent Counsel.
>
> The date of payment of Le200,000 was 1 February 2011, the invitation documents are dated 10 February 2011. Since the proposition that the Le200,000 was to arrange transport for documents has not been adduced, and the evidence has not been rebutted, I find that the Le200,000 were to arrange transport for Senessie to locate witnesses.[156]

70. Appellant argues on appeal that the Trial Chamber's finding regarding the 200,000-leone payment was in error because it was premised on the testimony of Senessie, an "incredible" witness.[157] As stated by Appellant: "The key consideration [is] therefore whether the Chamber could believe Mr. Senessie's story in light of all of the lies he had been found to have told."[158]

71. As explained in the opening paragraphs of Section IV(B), *supra*, Appellant's suggestion that Senessie's testimony was incredible and therefore untrustworthy is not novel. The refrain was sung throughout the trial. The Trial Chamber acknowledged Appellant's concerns and assessed the evidence "bear[ing] in mind the need for caution in assessing Senessie's evidence."[159]

72. Respondent submits that Appellant's error-of-fact argument regarding the 200,000-leone payment is manifestly deficient and should be summarily dismissed. For the reasons stated above, the argument: (1) fails to "show[] that the Trial Chamber

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[156] Judgement at paras. 165-66.
[157] Appellant's Submissions at para. 1.
[158] Appellant's Submissions at para. 40.
[159] Judgement at 147.

completely disregarded the evidence"; (2) "repeat[s] arguments that did not succeed at trial"; and (3) "substitute[s] [Appellant's] own evaluation of the evidence for that of the Trial Chamber."[160] The argument also failed to establish—let alone assert[161]—that the alleged error resulting from the Trial Chamber's assessment of Senessie's credibility on this issue occasioned a "miscarriage of justice." Any one of these deficiencies, standing alone, would justify the dismissal of Appellant's error-of-fact argument regarding the 200,000-leone payment.

73. Appellant's argument regarding the 200,000-leone payment is also deficient because it fails to explain how the Trial Chamber's alleged error affected the Judgement. As noted in Section III(B), *supra*, an appellant must "state with precision how the [alleged] error of fact occasioned a miscarriage of justice"[162] and why it was "critical to the verdict reached."[163] Appellant makes no such effort in his appeal.

74. For all of the reasons stated above, Appellant has failed to identify an error of fact in the Judgement regarding the 200,000-leone payment. Accordingly, the error-of-fact arguments in Ground 1 of Appellant's Submissions regarding the 200,000-leone payment should be dismissed.

2. *The Trial Chamber Did Not Err in Its Findings Regarding Appellant's "Other Payments" to Senessie*

75. As noted in Section II(B), *supra*, certain facts in this case were admitted by the consent of the parties. One such fact was that, on or about 6 June 2012, Appellant gave Senessie a signed Sierra Leone Commercial Bank Limited bank cheque in the

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[160] *Bangura* Appeal Judgment at paras. 27, 29-31 (citations and footnotes omitted).
[161] Appellant only claims that all of the alleged errors in Ground 1 of the appeal, "when viewed *cumulatively*," occasion a miscarriage of justice. Appellant's Submissions at para. 67 (emphasis added).
[162] *Bangura* Appeal Judgment at para. 27 (citation omitted).
[163] *Bangura* Appeal Judgment at para. 27 (citation omitted).

amount of 30,000 leones.[164] Similar to the 200,000-leone payment discussed above, the controversy at trial regarding the 30,000-leone cheque was the *reason* for the payment.

76. As a preliminary matter, Respondent notes that Appellant has failed to identify the "six other payments" that he references on appeal. While it can be inferred from the context of his argument that one of those payments is the 30,000-leone cheque, both Respondent and the Appeals Chamber are left guessing about the "other payments."[165] Respondent submits that the Appeals Chamber should summarily dismiss Appellant's arguments about such payments as vague, unclear, undeveloped, unfounded, and unsupported.[166]

77. Respondent acknowledges at the beginning of Section IV(B), *supra*, that the Trial Chamber accepted only part of Senessie's testimony regarding a 30,000-leone cheque. Thus, while the Trial Chamber concluded that Senessie's "explanation for not telling Independent Counsel in his record of interview about the Le30,000 cheque [was] unconvincing," it accepted Senessie's testimony that he did not immediately realize that the 30,000-leone cheque "was not signed at the front and the implications of that non-signing."[167] The Trial Chamber also accepted Senessie's testimony that the 30,000-leone cheque "was not enough to be a payment or part payment for carvings."[168] The point here is that the Trial Chamber carefully weighed Senessie's testimony with respect to the 30,000-leone cheque and only relied on the portions of that testimony that it deemed credible.

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164 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Pretrial Hearing Transcript at pp. 28-38 (12 Jan. 2013). The parties agreed that the 30,000-leone cheque was signed by Appellant on the back but not endorsed on the front. *See id.* at pp. 36-37.

165 Appellant refers to "six other payments" in his appeal but fails to identify them. *See* Appellant's Submissions at para. 45 (citing Judgement at para. 167). Paragraph 167 of the Judgement lists only four payments: (1) a 30,000-leone payment by Appellant to Senessie for the latter's travel to Bo, Sierra Leone; (2) a 50,000-leone payment by Appellant to a friend of Senessie per Senessie's instruction; (3) a 10,000-leone payment by Appellant to Senessie "before Senessie came to Freetown to see Independent Counsel"; and (4) the 30,000-leone cheque described above.

166 *Bangura* Appeal Judgment at paras. 28-29 (citations omitted).

167 *See* Judgement at para. 169.

168 *See* Judgement at para. 169.

78. Appellant contends on appeal that the Trial Chamber "erred in finding that [Senessie's testimony about the 30,000-leone cheque] 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."[169] In other words, Appellant contends that Senessie's testimony regarding the 30,000-leone cheque was not credible, and the Trial Chamber erred in relying on that testimony. Appellant's credibility argument is not novel. It was suggested during cross-examination, argued in closing, and considered—and embraced in part—by the Trial Chamber in its Judgement.[170] Thus, Appellant's argument regarding the 30,000-leone cheque was carefully scrutinized by the Trial Chamber and need not be revisited on appeal.

79. Respondent submits that Appellant's error-of-fact argument regarding the 30,000-leone cheque—as well as his argument about the "other payments"—is manifestly deficient and should be summarily dismissed. For the reasons stated above, the argument: (1) fails to "show[] that the Trial Chamber completely disregarded the evidence"; (2) "repeat[s] arguments that did not succeed at trial"; and (3) "substitute[s] [Appellant's] own evaluation of the evidence for that of the Trial Chamber."[171] The argument also failed to establish—let alone assert[172]—that the alleged error resulting from the Trial Chamber's assessment of Senessie's credibility on this issue occasioned a "miscarriage of justice." Any one of these deficiencies, standing alone, would justify the dismissal of Appellant's error-of-fact argument regarding the 30,000-leone cheque.

80. Appellant's argument regarding the 30,000-leone cheque—as well as his argument about the "other payments"—is also deficient because it fails to explain how the Trial

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169 Appellant's Submissions at para. 50.
170 *See, e.g.*, Judgement at paras. 32-33, 119, 159.
171 *Bangura* Appeal Judgment at paras. 27, 29-31 (citations and footnotes omitted).
172 Appellant only claims that all of the alleged errors in Ground 1 of the appeal, "when viewed *cumulatively*," occasion a miscarriage of justice. Appellant's Submissions at para. 67 (emphasis added).

Chamber's alleged error affected the Judgement. As noted in Section III(B), *supra*, an appellant must "state with precision how the [alleged] error of fact occasioned a miscarriage of justice"[173] and why it was "critical to the verdict reached."[174] Appellant makes no such effort in his appeal.

81. For all of the reasons stated above, Appellant has failed to identify an error of fact in the Judgement regarding the 30,000-leone cheque or any of the "other payments." Accordingly, the error-of-fact arguments in Ground 1 of Appellant's Submissions regarding the 30,000-leone cheque and other payments should be dismissed.

3. *The Trial Chamber Did Not Err in Its Findings Regarding the "Letters of Invitation"*

82. At the 12 January 2013 pretrial hearing, the parties jointly agreed to admit into evidence certain exhibits including three confidential "letters of invitation"—Exhibits J7, J8, and J9—addressed to Appellant from three separate witnesses from the Charles Taylor Trial.[175] As explained by the Trial Chamber: "In Agreed Fact 4, three [invitation] letters were admitted as exhibits J7, J8, and J9. Two are signed and one is unsigned. I note that each letter is addressed to Prince Taylor."[176]

83. Following a thorough examination of the evidence, including evidence admitted by consent from the *Senessie* trial, the Trial Chamber concluded that Appellant "instigated the drafting" of the invitation letters.[177] As explained by the Trial Chamber:

> I now turn to the documents that were signed. Senessie testified that the Accused wanted an invitation to Kailahun. Mohamed Kabbah also stated that Senessie told him the

[173] *Bangura* Appeal Judgment at para. 27 (citation omitted).
[174] *Bangura* Appeal Judgment at para. 27 (citation omitted).
[175] *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Pretrial Hearing Transcript at pp. 41-42 (12 Jan. 2013) (describing Exhibits J7, J8, and J9).
[176] Judgement at para. 201.
[177] Judgement at para. 203.

> Accused wanted "a kind of invitation letter". Kabbah signed it. It was addressed to Taylor. It reads as follows: "Dear Mr Prince Taylor, I want to take this opportunity to inform you that you are warmly welcome to meet in Kailahun for a privilege discussion about a certain issue which I thought wisely to call your attention for the development of this nation, though you may not know me in person." It then says, "my name is Mohamed Kabbah, Sierra Leonean resident in Kailahun. With much reliance cooperation I hope you may not have any doubt of meeting me." In Agreed Fact 4, three such letters were admitted as exhibits J7, J8, and J9. Two are signed and one is unsigned. I note that each letter is addressed to Prince Taylor. In the evidence of Eric Senessie and in Exhibit P1, the Accused's statement, it is shown that these were sent to the Accused. In fact, as I have noted, the Accused put to Senessie in cross-examination that the Le200,000 was for Senessie's transport to come and bring the documents to Bo.
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> I find that the Accused received those documents and intended to receive those documents. I look at the wording of the documents. They use words such as "privilege", a possible legal term, "reliance" and "cooperation", and I ask, rhetorically, if these are terms that come readily to a person of Senessie's education and background. I find that although Senessie was a drafter, he was not the sole author. He says he consulted with the Accused. That has been strongly challenged, but not rebutted.
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> I find that he did consult with Prince Taylor on this invitation. I find that Prince Taylor instigated the drafting of this invitation. I find that Prince Taylor received the documents and that he wanted to receive the documents. I find that Senessie's version of that sending of the document and the drafting is corroborated by the evidence of TFI-274 and of Exhibit P1.[178]

84. Appellant argues that "no reasonable trier of fact" could have "found that Mr. Senessie's evidence about these letters was reliable and was corroborated by the evidence of TFI-274 and Exhibit P1."[179] He bases this argument on the proposition

[178] Judgement at paras. 201-03.
[179] Appellant's Submissions at para. 52.

that Senessie's testimony about the invitation letters is irreconcilable.[180] Appellant then returns to his oft-repeated refrain: "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."[181]

85. This argument was carefully scrutinized by the Trial Chamber. As noted in the Judgement:

> Regarding Senessie's statement at his Sentencing Hearing that it was TFI-274's idea to prepare a document to invite Taylor to Kailahun, Senessie stated that Taylor said that Senessie should prepare the document. He agreed this was not correct. When asked why he never told the Judge on 4 July that it was Prince Taylor's idea, but instead that it was all TFI-274's idea, Senessie explained that since TFI-274 supported it, then it was his idea also but not that it was planned by TFI-274. What he said that day was only a brief statement, like his affidavit.
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> * * *
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> In answer to the questions regarding the affidavit filed in the Appeals Chamber whether TFI-274 or Taylor should prepare the document wanting Taylor to come to Kailahun, Senessie explained that he worked on the directive of Taylor, who said he should prepare the document, and TFI-274 accepted it. Senessie previously said it was TFI-274's idea to prepare the document, but Senessie answered that what he meant was that it was Taylor's idea, but TFI-274 accepted it. He (Senessie) was the "first to bring up that document business with TFI-274", but Taylor told him to prepare it.
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> * * *
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> Senessie was cross-examined strenuously on his prior testimony that the witnesses first approached him for Taylor's phone number. He was also examined at length on his original version that the document was drafted by TFI-274. He

[180] *See* Appellant's Submissions at para. 52.
[181] Appellant's Submissions at para. 52.

> basically gave the same answer to several variations of that question. This was to the effect that TFI-274 agreed with the letter, and therefore it was his idea; that he did contact Taylor, and that Taylor agreed with the letter, and therefore they "adopted it". There is no doubt that a document was drafted inviting Taylor to come to Kailahun. It has been put in evidence as an exhibit. Two copies of it have been signed. In Exhibit P1, the Accused stated he inquired if TFI-274 had given Senessie any documents.[182]

As reflected above, the Trial Chamber was able to reconcile Senessie's different statements about the invitation letters. Appellant's suggestion that the Trial Chamber should have found differently is merely an effort to "substitute [Appellant's] own evaluation of the evidence for that of the Trial Chamber."[183] This "repeat argument," which did not withstand the Trial Chamber's scrutiny at trial, should be summarily dismissed.[184]

86. Respondent submits that the Trial Chamber's findings regarding the invitation letters are supported—and justified—by Senessie's testimony standing alone. Respondent further submits that the corroborating evidence identified by the Trial Chamber—namely Appellant's unsigned statement (Exhibit P1) and TFI-274's testimony—merely reinforces these findings.

87. With respect to Exhibit P1, Appellant argues for the first time on appeal that said exhibit is not his statement and thus should not have been relied upon by the Trial Chamber. Appellant made no such denial at trial. Rather, Appellant argued that Exhibit P1 could not be relied upon because it was not signed and contained portions in dispute. As explained by the Trial Chamber:

> When shown a document, Exhibit P1, Senessie recognized it as Taylor's statement to Lansana. I note Defence Counsel stated matters in it are in dispute. Senessie discussed

[182] Judgement at paras. 90, 103, 164 (citations and footnotes omitted).
[183] *Bangura* Appeal Judgment at para. 31 (citation omitted).
[184] *Bangura* Appeal Judgment at para. 27 (citations omitted).

> this statement with Taylor who asked him to take out certain portions that "would most likely implicate him". Taylor thus asked Senessie to talk to Lansana to take out these portions before it was filed with the Court. Senessie testified that he left Kailahun on the 6th and stopped in Bo, when he talked to Taylor about this. Senessie had a Status Conference on the 8th.
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> Senessie recognized a portion of Exhibit P1 (page 8, paragraph 8), referring to contact between TFI-274 and Taylor, that Taylor wanted taken out.
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> Senessie stated that Taylor also wanted page 10, paragraph 4 taken out. It commences "a moment later, I heard the voice of a lady from the other end of the line. This is Prince Taylor speaking. She again identified herself as TFI-585 and I told him outright that I was not supposed to be in contact with her. She persisted and I dropped the line."
>
> Lansana did not make these changes because he had already filed documents when Senessie asked him to do so.[185]

88. In relying on Exhibit P1 in the Judgement, the Trial Chamber observed: "As noted in the outline of evidence, the Accused objected to part of the contents of Exhibit P1. No note has been taken or reliance placed upon the disputed portions."[186] Respondent submits that the Trial Chamber's reliance on Exhibit P1 was thus justified and appropriate.

89. With respect to TFI-274, Respondent submits that his testimony from the *Senessie* trial directly supports the Trial Chamber's finding that "Senessie did not take the [invitation letters] to Bo."[187] TFI-274 testified at the *Senessie* trial that Senessie sent—rather than personally delivered—the invitation letters to Appellant: "Eric [Senessie] told me that he had sent to Prince Taylor for him to come and meet me in Kailahun. He said he had sent him a letter for him to come and meet me in

[185] Judgement at paras. 76-79 (citations omitted)
[186] Judgement at p. 52, n.147.
[187] Judgement at para. 187.

Kailahun."[188] As a result, Appellant's suggestion that "[t]he evidence of TFI-274 does not corroborate Mr. Senessie's account" should be rejected.

90. As a final matter, Respondent notes that Appellant's argument regarding the invitation letters suffers from other critical defects. As noted in Section III(B), *supra*, an appellant must "state with precision how the [alleged] error of fact occasioned a miscarriage of justice"[189] and why it was "critical to the verdict reached."[190] Appellant makes no such effort here. Respondent submits that for these reasons alone Appellant's arguments regarding the invitation letters should be summarily dismissed.

91. For all of the reasons stated above, Appellant has failed to identify an error of fact in the Judgement regarding the invitation letters. Accordingly, the error-of-fact arguments in Ground 1 of Appellant's Submissions regarding the invitation letters should be dismissed.

4. *The Trial Chamber Did Not Err in Its Findings Regarding the Evidence of Mohamed Kabbah, Aruna Gbonda, TFI-274, TFI-585, and TFI-516*

92. Appellant's argument that the Trial Chamber erred in relying on the evidence of the prosecution witnesses from the Charles Taylor Trial—namely, Mohamed Kabbah, Aruna Gbonda, TFI-274, TFI-585, and TFI-516—fails for multiple reasons.

93. As a preliminary matter, Respondent reminds the Appeals Chamber that the parties stipulated to "the admission into evidence of all the information and the Court's deliberations and disposition sections of its judgment in *Prosecutor v. Senessie*" and requested "that said information be treated as final adjudicated facts."[191] As noted by the Trial Chamber, that request included the Trial Chamber's finding in *Senessie* that

[188] *Prosecutor v. Senessie*, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Trial Transcript at p. 179:4-6 (12 June 2012).
[189] *Bangura* Appeal Judgment at para. 27 (citation omitted).
[190] *Bangura* Appeal Judgment at para. 27 (citation omitted).
[191] *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Pretrial Hearing Transcript at p. 34:12-16 (12 Jan. 2013).

Appellant told TFI-585 that he sent Senessie and that their actions were "out of the law."[192] As stated in the Judgement: **"That evidence, as an adjudicated fact, has not been rebutted, and I find that TFI-585 did speak to Taylor and that he did say that he had sent Eric Senessie, and he did say that what they were doing was out of the law."**[193] The Trial Chamber based this finding "on the evidence of three witnesses," including Senessie.[194]

94. Second, Respondent notes that none of the findings disputed by Appellant were exclusively based on the evidence of one or more of the five prosecution witnesses from the Charles Taylor Trial. Rather, such findings were based on the testimony of Senessie, which was in certain instances corroborated by the evidence of one or more of the five prosecution witnesses from the Charles Taylor Trial.[195] Corroboration, as explained in Section IV(A)(1), *supra*, is not a legal requirement and a Trial Chamber need not base its findings on corroborated evidence where the testimony of a single witness supports such findings.[196]

95. Third, Respondent notes that Appellant's argument suffers from a critical deficiency: Appellant fails to state with precision why the Trial Chamber's reliance on certain evidence of the prosecution witnesses from the Charles Taylor Trial was "critical to the verdict reached."[197] This problem is compounded by the fact that the Trial Chamber did not rely exclusively on the evidence of the five prosecution witnesses from the Charles Taylor Trial when making its findings. As a result of this deficiency, the Appeals Chamber should summarily dismiss Appellant's argument regarding these witnesses.

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[192] Judgement at para. 155 (citation omitted).
[193] Judgement at para. 156.
[194] Judgement at para. 155.
[195] *See, e.g.*, Judgement at paras. 203, 205.
[196] *Fofana* Appeals Judgement at para. 199 (28 May 2008) (citation omitted).
[197] *Bangura* Appeal Judgment at para. 27 (citation omitted).

96. Even if the Appeals Chamber were to consider Appellant's error-of-fact argument regarding the prosecution witnesses from the Charles Taylor Trial on the merits, it still fails. Appellant claims that the prosecution witnesses' evidence regarding Appellant cannot be corroborative of Senessie's evidence because it all derives from the same source: Senessie. Appellant cites no authority in support of this proposition. Perhaps this is because international courts have found that "same source" evidence *can* qualify as corroborating evidence. As explained by the ICTY Trial Chamber in the contempt-of-court case *Prosecutor v. Haraqija*, "corroborating evidence may include pieces of evidence that, although originating from the same source, arose under different circumstances, at different times and for different purposes."[198] For the purposes of this analysis, the ICTY Trial Chamber drew a distinction between "statements given consciously by [a defendant] in the context of a criminal investigation on the one hand, and conduct, statements and documents that [a defendant] undertook, made or produced in a live, authentic or spontaneous way, without knowing that he was subject to criminal investigation on the other hand."[199]

97. Respondent submits that the Trial Chamber did not err in finding that certain evidence from the prosecution witnesses from the Charles Taylor Trial was "corroborative" of Senessie's testimony. Such evidence was probative of Appellant's misconduct.[200] To the extent that such corroborating evidence originated solely from statements by Senessie, those statements were "produced in a live, authentic [and] spontaneous way" prior to Senessie having knowledge of—let alone proof of the

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[198] *Prosecutor v. Haraqija*, Case No. IT-04-84-R77.4, ICTY Trial Chamber, Judgement on Allegations of Contempt at para. 41 (17 Dec. 2008). Respondent notes that while the Judgement on Allegations of Contempt was reversed in part on appeal, the ICTY Appeals Chamber did not disturb the ICTY Trial Chamber's findings with respect to the "same source" corroboration finding. *See Prosecutor v. Haraqija*, Case No. IT-04-84-R77.4-A, ICTY Appeals Chamber, Judgement at para. 62 (23 July 2009) ("[T]he Appeals Chamber declines to impose any specific legal requirement as to the source of the corroboration. Therefore, the Appeals Chamber can identify no error of law in the above quoted legal principles adopted by the Trial Chamber for assessing untested evidence.").

[199] *Prosecutor v. Haraqija*, Case No. IT-04-84-R77.4, ICTY Trial Chamber, Judgement on Allegations of Contempt at para. 88 (17 Dec. 2008).

[200] *See* Judgement at paras. 203, 205.

existence of—the criminal investigation. Such statements arose under different circumstances, at different times, and for different purposes. As a result, the Trial Chamber did not err in placing any reliance on that evidence.

98. For all of the reasons stated above, Appellant has failed to identify an error of fact in the Judgement regarding the evidence of Mohamed Kabba, Aruna Gbonda, TFI-274, TFI-585, and TFI-516. Accordingly, the error-of-fact arguments in Ground 1 of Appellant's Submissions regarding that evidence should be dismissed.

5. *The Trial Chamber Did Not Err in Its Findings Regarding Appellant's "Unsigned Statement"*

99. Appellant's argument that the Trial Chamber erred in relying on Appellant's statement (Exhibit P1) is baseless. As explained in Section IV(B)(3), *supra*, Appellant argues for the first time on appeal that Exhibit P1 is not his statement and thus should not have been relied upon by the Trial Chamber. Appellant made no such argument at trial. Rather, Appellant argued that Exhibit P1 could not be relied upon because it was not signed and contained portions in dispute. The Trial Chamber carefully considered Appellant's argument and decided that it could rely on portions of the statement. It cautioned, however, that no "reliance [was] placed upon the disputed portions."[201]

100. Respondent submits that Appellant's error-of-fact argument regarding Exhibit P1, in addition to failing for the reason stated above, is manifestly deficient and should be summarily dismissed. The argument: (1) fails to "show[] that the Trial Chamber completely disregarded the [pertinent] evidence"; (2) "repeat[s] arguments that did not succeed at trial"; and (3) "substitute[s] [Appellant's] own evaluation of the evidence for that of the Trial Chamber."[202] The argument also failed to establish—let

[201] Judgement at p. 52 n.147.
[202] *Bangura* Appeal Judgment at paras. 27, 29-32 (citations omitted).

alone assert[203]—that the alleged error resulting from the Trial Chamber's assessment of Senessie's credibility on this issue occasioned a "miscarriage of justice." Any one of these deficiencies, standing alone, justifies the dismissal of Appellant's error-of-fact argument regarding Exhibit P1.

101. Appellant's argument regarding Exhibit P1 is also deficient because it fails to explain how the Trial Chamber's alleged error affected the Judgement. As noted in Section III(B), *supra*, an appellant must "state with precision how the [alleged] error of fact occasioned a miscarriage of justice"[204] and why it was "critical to the verdict reached."[205] Appellant makes no such effort here.

102. For all of the reasons stated above, Appellant has failed to identify an error of fact in the Judgement regarding Exhibit P1. Accordingly, the error-of-fact arguments in Ground 1 of Appellant's Submissions regarding Exhibit P1 should be dismissed.

6. *The Trial Chamber Did Not Err in Its Findings Regarding Count 9*

103. Appellant's arguments with respect to Count 9 are vague, unclear, undeveloped, unfounded, and unsupported. For these reasons alone, they should be dismissed. Respondent nonetheless endeavors to identify and respond to Appellant's Count 9 arguments in the paragraphs that follow.

104. First, Appellant appears to argue on appeal—as he did at trial—that the Trial Chamber should not have deemed credible Senessie's testimony regarding Count 9.[206] This "repeat argument," which did not withstand the Trial Chamber's scrutiny at trial, should be summarily dismissed.[207]

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[203] Appellant only claims that all of the alleged errors in Ground 1 of the appeal, "when viewed *cumulatively*," occasion a miscarriage of justice. Appellant's Submissions at para. 67 (emphasis added).
[204] *Bangura* Appeal Judgment at para. 27 (citation omitted).
[205] *Bangura* Appeal Judgment at para. 27 (citation omitted).
[206] *See* Appellant's Submissions at paras. 88-89
[207] *Bangura* Appeal Judgment at para. 27 (citations omitted).

105. The Trial Chamber's findings regarding Count 9 were based on a careful assessment of Senessie's direct- and cross-examination testimony. As noted in the Judgement:

> It is undisputed that Senessie did refuse to talk to the Independent Counsel when he came to Kailahun. His evidence, adduced in cross-examination, was that the Accused warned him against taking advice from the Principal Defender's lawyer because she would "connive". That has not been challenged or rebutted.
>
> I find the Accused did influence Senessie to refuse to see the Independent Counsel and that the Accused told him not to implicate them both. Senessie gave information to the Independent Counsel that has been found, by way of evidence in his own trial and in his statements at sentencing, to have been false. The question is: did the Accused influence, instruct, or otherwise persuade him to do this?
>
> I find the Accused did persuade Eric Senessie to give false information. I find this on the evidence of Senessie, which, whilst strongly challenged, was clear and unequivocal and has been borne out and corroborated by his nonattendance at a meeting with the Independent Counsel.[208]

In other words, the Trial Chamber deemed credible Senessie's testimony that Appellant influenced and instructed Senessie to give false testimony to Respondent. Appellant's attempt to "substitute [his] own evaluation of the [Count 9] evidence for that of the Trial Chamber" should be summarily rejected.[209]

106. Second, Appellant appears to argue that the Trial Chamber should not have found that Senessie's nonattendance at a meeting with Respondent corroborated Senessie's testimony regarding Appellant's Count 9 misconduct.[210] Respondent finds no reason why Senessie's nonattendance at such a meeting could not be found to corroborate Senessie's testimony. The Trial Chamber was not required to discount Senessie's explanation for his nonattendance simply because it emanated from his mouth. The

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[208] Judgement at paras. 193-95.
[209] *Bangura* Appeal Judgment at para. 31 (citation omitted).
[210] Appellant's Submissions at para. 63.

Trial Chamber did not err in noting that Senessie's action—or, in this case, inaction—corroborated his testimony.

107. Even if the Appeals Chamber were to find corroboration wanting on this point, the absence of such corroboration does not compromise the Trial Chamber's ultimate finding with respect to Count 9. The Trial Chamber has deemed Senessie's testimony regarding Appellant's Count 9 misconduct as credible and, as noted in Section IV(A)(1), *supra*, "[c]orroboration of evidence is not a legal requirement" and a Trial Chamber need not base its findings on corroborated evidence where, as here, the testimony of a single witness supports such findings.[211]

108. Appellant's Count 9 arguments fail to establish—let alone assert[212]—that the alleged errors resulting from the Trial Chamber's assessment of Senessie's credibility on this issue occasioned a "miscarriage of justice." The arguments also fail to explain how the Trial Chamber's alleged errors affected the Judgement. As noted in Section III(B), *supra*, an appellant must "state with precision how the [alleged] error of fact occasioned a miscarriage of justice"[213] and why it was "critical to the verdict reached."[214] Appellant makes no such effort in his appeal. Any one of these deficiencies—or those cited in Paragraph 103, *supra*—justifies the dismissal of Appellant's error-of-fact arguments regarding Appellant's Count 9 conduct.

109. For all of the reasons stated above, Appellant has failed to identify an error of fact in the Judgement regarding the Trial Chamber's Count 9 findings. Accordingly, the error-of-fact arguments in Ground 1 of Appellant's Submissions regarding the Trial Chamber's Count 9 findings should be dismissed.

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211 *See Fofana* Appeal Judgement at para. 199 (citation omitted); *see also* the discussion in Section IV(A)(1), *supra*.

212 Appellant only claims that all of the alleged errors in Ground 1 of the appeal, "when viewed *cumulatively*," occasion a miscarriage of justice. Appellant's Submissions at para. 67 (emphasis added).

213 *Bangura* Appeal Judgment at para. 27 (citation omitted).

214 *Bangura* Appeal Judgment at para. 27 (citation omitted).

7. *The Trial Chamber Did Not Err in Its Findings Regarding Lawyer X's Written Statement*

110. Appellant makes two unavailing error-of-fact arguments involving Lawyer X: (1) the Trial Chamber erred by "not reject[ing] Senessie's evidence on the basis of the conflicting evidence between Lawyer X and Senessie"; and (2) the Trial Chamber erred by "making findings about Lawyer X's evidence . . . which had no foundation in the evidence."[215] In making such arguments, Appellant makes the unwarranted—and, more importantly, erroneous—assumption that Lawyer X's written statement is a paragon of credibility. Appellant fails to recognize that, in many critical respects, the Trial Chamber found Senessie's testimony to be more credible than that of Lawyer X. For these reasons, as well as those explained more fully below, Appellant's error-of-fact arguments regarding the Lawyer X evidence should be squarely rejected.

111. As explained in Paragraph 13, *supra*, although Appellant originally expressed his intention to call Lawyer X as a witness at his trial, Appellant ultimately elected not to present any witnesses.[216] Appellant did, however, move for the admission into evidence of Lawyer X's written statement, which was entered into evidence as Exhibit D5. Although Respondent did not object to Appellant's motion, Respondent placed Appellant on notice that he did not agree with all of the statements contained therein. Appellant, in turn, placed the Trial Chamber on notice that Respondent did not agree with the content of Lawyer X's written statement.

112. Both Respondent and Appellant commented on Lawyer X's written statement in their closing submissions.[217] Respondent's comments focused on the written statement's most incredible allegations, including Lawyer X's flimsy assertion that he was not aware that he had a conflict in representing Senessie before he boarded the plane to

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[215] Appellant's Submissions at paras. 71; *see also id.* at 72.

[216] *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at p. 441:9-19 (16 Jan. 2013); *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 460-61 (17 Jan. 2013).

[217] *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 500-11 (17 Jan. 2013) (containing Respondent's comments).

Sierra Leone for Senessie's initial appearance.[218] Not surprisingly, the Trial Chamber made the same observation in its Judgment:

> **Having reread and considered the cross-examination and evidence again in depth, I come to the view submitted by Independent Counsel to ask why, when it was so obvious to Lawyer X that he had a potential professional conflict, did he come to the Special Court for the purpose of defending what could well be a potential conflict situation?**[219]

It is also unsurprising that, in light of this issue and other questionable statements made by Lawyer X, the Trial Chamber chose to believe much of Senessie's testimony over that of Lawyer X.[220] As stated by the Trial Chamber: "I do not reject Senessie's evidence on the basis of the conflicting evidence between Lawyer X and Senessie."[221]

113. Respondent acknowledges that the Trial Chamber did not accept all of Senessie's statements over those of Lawyer X. Respondent notes, however, that while the Trial Chamber concluded that Lawyer X did not force Senessie to sign an endorsement (Exhibit D5c) "under duress," the Trial Chamber found that Lawyer X left Senessie with "little choice if he was to be represented the next day" at his initial appearance.[222]

114. As noted in the beginning of Section IV(B), *supra*, the Trial Chamber rejected Appellant's "fails as a whole" argument, concluding that it was neither "just [n]or

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218 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 501-04, 507-08 (17 Jan. 2013).

219 Judgement at para. 173 (emphasis added).

220 *See* Judgement at para. 35(iv) ("Senessie said the endorsement[, Exhibit D5c,] was signed under duress, whilst Lawyer X said it was explained and voluntarily signed"); *id.* at paras. 178-79 (accepting Senessie's testimony that Lawyer X pressured him to sign an endorsement (Exhibit D5c) despite Lawyer X's statements to the contrary); *id.* at para. 176 (declining to accept Lawyer X's statement that he did not advise Senessie to plead guilty in light of Senessie's statements to the contrary); *id.* at 180-81 (declining to accept Lawyer X's statement that he did not characterize lawyer David Bentley as a "Queen's Counsel" or "QC" in light of Senessie's statements to the contrary); *see also* Exhibit D5.

221 *See* Judgement at para. 181.

222 *See* Judgement at para. 178.

appropriate to reject Senessie's evidence in its entirety."[223] Instead, the Trial Chamber chose to "assess issues of credibility and weigh inconsistencies in detail,"[224] "bear[ing] in mind the need for caution in assessing Senessie's evidence."[225] Respondent submits that the Trial Chamber's findings with respect to the conflicting evidence of Senessie and Lawyer X reflect a careful and calibrated effort to "assess issues of credibility and weigh inconsistencies in detail."[226]

115. Appellant argues unpersuasively that "[t]he 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."[227] As has been explained repeatedly in this Submission, Appellant's suggestion that Respondent did not "contest" Lawyer X's evidence is clearly erroneous. The trial record unequivocally demonstrates that Appellant was aware that Respondent disagreed with allegations in Lawyer X's written statement prior to moving for its admission. The record also reveals that the Trial Chamber was aware of this disagreement.[228] Most, if not all, of the contradictions cited by Appellant flow from incorrect and/or questionable statements by Lawyer X. Respondent identified many of those suspect statements in his closing submission,[229] and the Trial Chamber properly *resolved*, rather than "diminish[ed]," any important contradictions in its Judgement.

116. Respondent submits that the Trial Chamber's findings with respect to the contradictions identified by Appellant were both reasonable and justified in light of: (1) the limited information contained in Lawyer X's written statement; and (2)

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223 Judgement at para. 144.
224 Judgement at para. 144.
225 Judgement at para. 147.
226 Judgement at para. 144.
227 Judgement at para. 144.
228 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 483-84 (17 Jan. 2013) (Trial Chamber acknowledges that the content of the witness statements was not "agreed" to as suggested by counsel for Appellant and could be commented on by the parties in their closing submissions). *See* discussion in Section IV(A)(4), *supra*.
229 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Hearing Transcript at pp. 500:5 – 511:1 (17 Jan. 2013) (Respondent's comments on Lawyer X's written statement).

Lawyer X's tarnished credibility.[230] Appellant has not demonstrated that its findings about Lawyer X's written statement are not supported by the evidence.

117. For all of the reasons stated above, Appellant has failed to identify an error of fact in the Judgement involving Lawyer X's written statement. Accordingly, the error-of-fact arguments in Grounds 1 and 3 of Appellant's Submissions regarding Lawyer X's written submission should be dismissed.

8. *The Trial Chamber's Treatment of Appellant's Presumption of Innocence Did Not Result in an Error of Fact*

118. Appellant's error-of-fact argument regarding the presumption of innocence is manifestly vague, unclear, undeveloped, unfounded, and unsupported.[231] For these reasons alone, it should be summarily dismissed. Respondent nonetheless endeavors to identify and respond to Appellant's presumption-of-innocence argument in the paragraphs that follow.

119. Appellant argues, in no clear terms, 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."[232] It is unclear what Appellant refers to when he states "these findings." Respondent's best guess is that Appellant is referring to the Trial Chamber's "finding that portions of Mr. Senessie's evidence were credible and reliable."[233] Appellant appears to be referring to Senessie's credibility in general terms.

120. As explained at the beginning of Section IV(B), *supra*, the Trial Chamber's assessment of Senessie's testimony was careful and calibrated. It considered his testimony in light of all of the evidence presented at trial as well as that admitted by

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230 *See* Appellant's Submissions at para. 75.
231 Appellant's Submissions at paras. 68-70. Not surprisingly, as noted in Section IV(A)(3), Appellant's error-of-law argument regarding the presumption of innocence suffered from similar deficiencies.
232 Appellant's Submissions at para. 70.
233 Appellant's Submissions at para. 69.

consent from the *Senessie* trial. Appellant has not presented any reason for disturbing its findings regarding Senessie's testimony.

121. Appellant's presumption of innocence argument nakedly asserts, but fails to establish, that the Trial Chamber's alleged error of fact occasioned a "miscarriage of justice."[234] The argument also fails to explain how the Trial Chamber's alleged errors affected the Judgement. As noted in Section III(B), *supra*, an appellant must "state with precision how the [alleged] error of fact occasioned a miscarriage of justice"[235] and why it was "critical to the verdict reached."[236] Appellant makes no such effort in his appeal. Any one of these deficiencies—or those mentioned in Paragraph 118, *supra*—justifies the dismissal of Appellant's error-of-fact argument regarding the presumption of innocence.

122. For all of the reasons stated above, Appellant has failed to identify an error of fact in the Judgement regarding his presumption of innocence. Accordingly, the error-of-fact argument in Ground 2 of Appellant's Submissions regarding the presumption of innocence should be dismissed.

9. *The Trial Chamber's Treatment of the Written Statements of Lawyers Anyah, Pestman, and Ianuzzi Did Not Result in an Error of Fact*

123. Appellant's error-of-fact argument regarding the written statements of lawyers Anyah, Pestman, and Ianuzzi is unclear, undeveloped, unfounded, and unsupported. For these reasons alone, it should be summarily dismissed.[237] Respondent nonetheless endeavors to identify and respond to Appellant's argument regarding those written statements in the paragraphs that follow.

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[234] Appellant's Submissions at para. 70.
[235] *Bangura* Appeal Judgment at para. 27 (citation omitted).
[236] *Bangura* Appeal Judgment at para. 27 (citation omitted).
[237] *See Bangura* Appeal Judgment at para. 28 (citation omitted).

124. Appellant appears to argue that the Trial Chamber committed an error of fact by finding that the written statements of lawyers Anyah, Pestman, and Ianuzzi were 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.'"[238] At the same time, Appellant concedes that the written statements at issue "are all character statements . . . [that] don't go to the facts of the case."[239] Moreover, Appellant does not dispute that the Trial Chamber admitted and reviewed the written statements of Anyah, Pestman, and Ianuzzi.[240]

125. As explained in Section IV(A)(5), *supra*, character evidence is generally reserved for the sentencing—rather than trial—phase of criminal proceedings. "While evidence of prior good character is commonly taken into account at the sentencing stage, its acknowledgment at earlier stages of judicial reasoning is rare."[241] This is because, "as a general principle of criminal law, evidence as to the character of an accused is generally inadmissible to show the accused's propensity to act in conformity therewith."[242]

126. Appellant has not demonstrated that the Trial Chamber's findings with respect to the written statements of Anyah, Pestman, and Ianuzzi resulted in an error of fact. The Trial Chamber was under no obligation to treat them as probative, especially in light of Appellant's admission that they "are all character statements . . . [that] don't go to

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238 Appellant's Submissions at para. 82 (quoting Judgement at para. 147).

239 *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at p. 478:19-21 (16 Jan. 2013).

240 *See* Appellant's Submissions at paras. 81-82; Judgement at paras. 145-46.

241 *Prosecutor v. Ntakirutimana*, Case Nos. ICTR-96-10 & ICTR-96-17-T, ICTR Trial Chamber, Judgement and Sentence at para. 729 (21 Feb. 2003).

242 *Prosecutor v. Kupreskic*, Case No. IT-95-16-T, ICTY Appeals Chamber, Decision on Evidence of the Good Character of the Accused and the Defence of *Tu Quoque* at para. (17 Feb. 1999).

the facts of the case."[243] Respondent submits that Appellant's disagreement over the Trial Chamber's decision not to attach any weight to these written statements constitutes nothing more than an effort to "substitute [Appellant's] own evaluation of the evidence for that of the Trial Chamber."[244]

127. Appellant's argument with respect to the written statements of Anyah, Pestman, and Ianuzzi suffers from additional deficiencies. For instance, Appellant's argument regarding these statements fails to establish—let alone assert—that the alleged error resulting from the Trial Chamber's treatment of those statements occasioned a "miscarriage of justice." The argument also fails to explain how the Trial Chamber's alleged error affected the Judgement. As noted in Section III(B), *supra*, an appellant must "state with precision how the [alleged] error of fact occasioned a miscarriage of justice"[245] and why it was "critical to the verdict reached."[246] Appellant makes no such effort in his appeal. Any one of these deficiencies—or those mentioned in Paragraph 123, *supra*—justifies the dismissal of Appellant's error-of-fact argument regarding the written statements of Anyah, Pestman, and Ianuzzi.

128. For all of the reasons stated above, Appellant has failed to identify an error of fact in the Judgement regarding the written statements of Anyah, Pestman, and Ianuzzi. Accordingly, the error-of-fact argument in Ground 4 of Appellant's Submissions regarding these written statements should be dismissed.

C. The Trial Chamber Did Not Commit Any Errors of Fact in Its Sentence

129. As a preliminary matter, Appellant's arguments regarding the Trial Chamber's sentences for Counts 2, 4, 7, 8, and 9 suffer from critical deficiencies. For instance, Appellant fails to establish—let alone assert—that the alleged error involving these

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[243] *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at p. 478:19-21 (16 Jan. 2013).
[244] *Bangura* Appeal Judgment at para. 31 (citation omitted).
[245] *Bangura* Appeal Judgment at para. 27 (citation omitted).
[246] *Bangura* Appeal Judgment at para. 27 (citation omitted).

counts occasioned a "miscarriage of justice." The arguments also fail to explain with particularity how the Trial Chamber's alleged error involving these counts affected the Sentence. As noted in Section III(B), *supra*, an appellant must "state with precision how the [alleged] error of fact occasioned a miscarriage of justice."[247] Appellant makes no such effort here. Respondent submits that any one of these deficiencies justifies the dismissal of Appellant's error-of-fact arguments regarding the sentences for Counts 2, 4, 7, 8, and 9.

130. For these reasons, as well as those set out more fully in the paragraphs that follow, this Appeals Chamber should dismiss all of Appellant's error-of-fact claims regarding the Sentence.

1. *Appellant's Two-Year Sentences for Counts 2, 4, 7, and 8 Are Not Excessive*

A. Appellant's Sentences Comport with SCSL Precedent

131. This Appeals Chamber has affirmed two-year sentences for comparable Rule 77 convictions—including a Rule 77 witness tampering conviction that did not involve bribery. In *Independent Counsel v. Bangura*, the SCSL Trial Chamber sentenced Defendants Santigie Borbor Kanu (hereinafter, "Kanu") and Brima Bazzy Kamara (hereinafter, "Kamara") to two years' imprisonment for knowingly and wilfully interfering with the Special Court's for Sierra Leone administration of justice under Rule 77 of the SCSL Rules. More specifically, the Trial Chamber sentenced Kanu to two years' imprisonment for: (1) one count of knowingly and wilfully interfering with the Special Court for Sierra Leone's administration of justice by offering to bribe a witness who had given testimony before the Trial Chamber; and (2) one count of knowingly and wilfully interfering with the Special Court for Sierra Leone's administration of justice by otherwise interfering with a witness who had given

[247] *Bangura* Appeal Judgment at para. 27 (citation omitted).

testimony before the Trial Chamber.[248] Kamara was sentenced to two years' imprisonment for knowingly and wilfully interfering with the Special Court for Sierra Leone's administration of justice by otherwise interfering with a witness who had given testimony before the Trial Chamber.[249] He was acquitted of the bribery offense. On appeal, Kanu and Kamara claimed, *inter alia*, that their sentences were harsh and excessive.[250] The Appeals Chamber rejected this argument and affirmed their sentences.[251]

132. Perhaps even more instructive is the SCSL Trial Chamber's sentencing decision in *Prosecutor v. Senessie*, where Senessie was sentenced to two years' imprisonment for crimes involving facts identical to the ones at issue in the instant case. In *Senessie*, the defendant was convicted of eight counts of knowingly and wilfully interfering with the Special Court for Sierra Leone's administration of justice under Rule 77 of the SCSL Rules: (1) four counts of offering a bribe to persons who had given evidence before the Special Court for Sierra Leone; and (2) four counts of attempting to otherwise interfere with persons who had given evidence before the Special Court for Sierra Leone.[252] Although Senessie, unlike Appellant, confessed to having committed each of these crimes prior to being sentenced, the Trial Chamber nonetheless sentenced Senessie to two years' imprisonment per count with the sentences to run concurrently.[253] Senessie's sentence was not appealed.

133. In light of this jurisprudence, Appellant's suggestion that the Trial Chamber failed to give sufficient weight to the fact that Appellant was acquitted of the bribery charges falls flat.[254] As noted above, the Appeals Chamber has affirmed a two-year sentence

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248 *Bangura* Appeals Judgement at paras. 7-8, 11 (citations omitted).
249 *Bangura* Appeals Judgement at paras. 7-8, 11 (citations omitted).
250 *See Bangura* Appeal Judgement at paras. 19, 50, 73 (citations omitted).
251 *Bangura* Appeal Judgement at para. 74.
252 *Prosecutor v. Senessie*, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Judgement in Contempt Proceedings at pp. 28-30 (16 Aug. 2012).
253 *Prosecutor v. Senessie*, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Sentencing Judgement at pp. 9-10 (12 July 2012).
254 *See* Appellant's Submissions at para. 93.

for Kamara, who was convicted of otherwise interfering with a witness who had given testimony before the Special Court for Sierra Leone but acquitted of related bribery charges. In short, this Appeals Chamber has found that for the purpose of sentencing, an "otherwise interfering" conviction is no less serious than a bribery count.[255]

B. The Trial Chamber Was Not Required to Accord Weight to the Sentences Imposed by Other International Courts

134. Appellant's argument that the Trial Chamber committed an error of fact by "not according any weight to the sentences imposed by other international courts for contempt" crimes should be summarily dismissed.[256] The Trial Chamber was not required to "accord[ ] . . . weight" to the sentences of other tribunals, and Appellant cites no authority to support that claim. As noted above, the Trial Chamber could—and did—turn to its own contempt-of-court sentencing decisions for guidance.[257] Ironically, Appellant's sentencing submission specifically implored the Trial Chamber to rely on its own sentencing jurisprudence when fashioning a sentence for Appellant.[258]

C. The Trial Chamber Did Not Err in Its Aggravating Factor Analysis

135. Appellant's argument that the Trial Chamber committed an error of fact by "finding as an aggravating factor that Mr. Taylor suggested that the Principal Defender might

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[255] Appellant's suggestion that the Trial 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" fails for the same reason. *See* Appellant's Submissions at para. 92.

[256] Appellant's Submissions at para. 95.

[257] It should be noted that Appellant does not dispute that the Trial Chamber *considered* the sentencing jurisprudence of other international courts—the same jurisprudence now advanced by Appellant. *See* Appellant's Submissions at para. 95 (disagreeing with the Trial Chamber's decision not to "accord[] any weight to the sentences imposed by other international courts"); Sentence at para. 55 ("I also bear in mind the comparators that have been put before me by Defence Counsel from other tribunals.").

[258] *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Defence Submissions for Sentencing Hearing at para. 17 (6 Feb. 2013) ("The Chamber is asked to have in mind the sentence imposed on Mr. Senessie.").

have connived with the Prosecution" mischaracterizes the Sentence and should be summarily dismissed. The paragraph of the Sentence cited by Appellant makes no such finding. Rather, it reads:

> Counsel has put that the Defendant did not make any serious allegations about the witnesses, in contrast to Senessie. He did, however, suggest that the Principal Defender might have connived with the Prosecution. He also, as has been stated in the Judgement, abused his knowledge to influence Senessie and perpetrate the crimes. Whilst he is not any more superior as a person, he has used his knowledge and experience and I consider this an aggravating factor.[259]

136. The aggravating factor in this paragraph is not Appellant's suggestion of connivance; it is Appellant's abuse of his knowledge of and experience with the Special Court for Sierra Leone to unduly influence Senessie.[260] Appellant does not dispute that such abuse is an aggravating factor on appeal.

137. For all of the reasons set forth in Section IV(C)(1), Appellant has failed to identify an error of fact in the Sentence regarding the sentences for Counts 2, 4, 7, and 8. Accordingly, the error-of-fact arguments in Grounds 5 and 6 of Appellant's Submissions regarding these counts should be dismissed.

2. *Appellant's 2.5-Year Sentence for Count 9 Is Not Excessive*

A. The Heightened Sentence for Count 9 Is Supported by SCSL Precedent and Warranted by the Nature of the Misconduct

138. Appellant's argument that the Trial Chamber failed to justify its higher sentence for Count 9 is unfounded.[261] The Trial Chamber distinguished Count 9 from Counts 2,

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[259] Sentence at para. 50.

[260] *See* Sentence at para. 50; *see also id.* at para. 46 ("The Defendant had knowledge of the Court and its systems, something Senessie continuously repeated in evidence, and which I was satisfied influenced Senessie. That misuse of his knowledge and training started the scheme to interfere with the five complainant witnesses and was instrumental in carrying it on until complaints were laid by them to the Office of the Prosecutor.").

[261] Appellant's Submissions at para. 87.

4, 7, and 8, explaining that Count 9 involved "separate facts" and broader consequences.[262] As explained by the Trial Chamber in the Sentence:

> The effect of [Appellant's] influence and persuasion led to Senessie not telling the truth to the investigator, thus, the truth was suppressed and two trials, both involving overseas counsel and lengthy evidence, ensued.
>
> * * *
>
> It is, however, abundantly clear now that these trials were totally unnecessary and a great deal of expense and time were unnecessarily spent. The fact remains that there was a trial - a hard fought trial - and that is usually an aggravating factor that warrants a heavier sentence.[263]

As a result, the Trial Chamber concluded that "Count 9," in contrast to the other counts, "warrants a deterrent sentence."[264]

139. In light of these findings, the Trial Chamber sentenced Appellant to 2.5 years' imprisonment for his Count 9 misconduct—a half year more than Appellant's sentences for Counts 2, 4, 7 and 8. Respondent submits that this "deterrent sentence" is reasonable in light of the Special Court for Sierra Leone's sentencing jurisprudence for other contempt-of-court convictions.[265]

140. As explained by the Trial Chamber in *Prosecutor v. Brima*, deterrence is considered one of the main sentencing purposes in international criminal justice.[266] It follows that the sentences imposed by a Trial Chamber, including sentences for contempt-of-court cases, must be sufficient in order to deter others from committing similar

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[262] *See* Sentence at para. 40 (noting the "the separate facts of influencing Senessie not to tell the truth to the investigator").
[263] Sentence at paras. 47-48.
[264] Sentence at para. 54.
[265] *See* discussion in Section IV(C)(1)(A), *supra.*
[266] *See Prosecutor v. Brima*, Case No. SCSL-04-16-T, SCSL Trial Chamber, Sentencing Judgement at para. 16 (19 July 2007) (citations omitted).

crimes.[267] Respondent submits that the additional half year of imprisonment for Count 9 conveys the message—both to Appellant and the general public—that contempt violations that cause considerable hardship and expense will be punished more severely. Appellant should recognize that the Trial Chamber would have been well within its discretion if it had sentenced him to a substantially higher sentence than the 2.5-year term of imprisonment.[268]

141. For all of the reasons set forth in Section IV(C)(2), Appellant has failed to identify an error of fact in the Sentence regarding the sentence for Count 9. Accordingly, the error-of-fact arguments in Grounds 5 and 6 of Appellant's Submissions regarding Count 9 should be dismissed.

V. ORAL HEARING

142. Respondent submits that, pursuant to Rule 117(a) of the SCSL Rules, this case can and should be decided without an oral hearing.

VI. FINAL REMARKS

143. The Judgement and Sentence are best understood in the context of the combined contempt proceedings for the *Senessie* and *Taylor* cases since it was that context that provided the basis for the Trial Chamber's findings in this case.

144. The Trial Chamber's involvement in this case began in late 2010 when the defence team in the Charles Taylor Trial case filed a motion seeking to re-open the case, recall certain prosecution witnesses, and call Saleem Vahidy, the Chief of the Witness and

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[267] *See Prosecutor v. Brima*, Case No. SCSL-04-16-T, SCSL Trial Chamber, Sentencing Judgement at para. 16 (19 July 2007) (citations omitted); *see also Independent Counsel v. Bangura*, Case No. SCSL-20 11-02-T, SCSL Trial Chamber, Sentencing Judgement at paras. 73, 79, 83, 88, 89 (16 Oct. 2012) (recognizing deterrence as a relevant sentencing consideration for contempt-of-court convictions).

[268] *See* Rule 77(G) of the SCSL Rules; *see generally Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Sentencing Recommendation (30 Jan. 2013).

Victims Section for the Special Court for Sierra Leone.[269] That motion was based on the declaration of Appellant who, as a then-investigator for the Charles Taylor defence team, purportedly discovered witnesses who would testify, *inter alia*, to unfulfilled promises by the Office of the Prosecutor (hereinafter, "OTP") for the Special Court for Sierra Leone. The Trial Chamber summarily denied that motion in January 2011.[270]

145. The presiding judge for both the *Senessie* and *Taylor* contempt cases, Justice Doherty, was on the panel that considered OTP's motions for investigations of Appellant and Senessie for witness tampering. As a result of those motions, the Trial Chamber appointed Respondent to conduct an investigation.[271] In April 2011, Respondent filed a confidential report with the Trial Chamber.[272] As a result of that report, the Trial Chamber issued its Order in Lieu of Indictment charging Senessie with nine counts of contempt of court.[273] As the Appeals Chamber is aware, the trial resulted in Senessie's conviction on eight of counts nine. These proceedings are all a matter of record to which the Appeals Chamber can take judicial notice under Rule 94 of the SCSL Rules.

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269 *Prosecutor v. Taylor*, Case No. SCSL-2003-01-T, SCSL Trial Chamber, Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses (17 Dec. 2010).

270 *Prosecutor v. Taylor*, Case No. SCSL-2003-01-T, SCSL Trial Chamber, Decision on Public with Annexes A-H and Confidential Annexes I-J Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses (24 Jan. 2011).

271 *See Prosecutor v. Taylor*, Case No. SCSL-03-01-T, SCSL Trial Chamber, Decision on Public with Confidential Annexes A to E & Public Annex F; Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone and Public with Confidential Annexes A & B; Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone (25 Feb. 2011); *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, SCSL Trial Chamber, Decision on Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone and on Prosecution Supplementary Requests (17 Mar. 2011).

272 *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, SCSL Trial Chamber, Submission of Confidential Report of Independent Counsel (12 Apr. 2011).

273 *Prosecutor v. Senessie*, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Order in Lieu of Indictment (24 Mar. 2011)

146. The record in the *Senessie* case, which was admitted into evidence by consent in the instant trial, established that the five prosecution witnesses from the Charles Taylor Trial who were contacted by Senessie all reported those contacts to OTP investigators within a few days of each other. All of those witnesses testified in the Senessie case and were found credible. They all stated that Senessie approached them on behalf of Appellant.

147. As the presiding judge for these two trials, Justice Doherty had to determine how these events came to pass. There were three possibilities. *One*, asserted by Senessie at his trial and found totally incredible, was that all five witnesses woke up one morning years after they testified at The Hague and, independently of one another, strolled over to Senessie's house and asked him to put them in touch with Appellant and the Charles Taylor defence team. The Trial Chamber rejected this argument in the *Senessie* case. *Two*, Senessie on his own and out of the blue decided years after the five witnesses testified at The Hague that he would approach the witnesses and put them in touch with Appellant and the Charles Taylor defence team. Appellant baldly suggested this on cross without a shred of evidence to support it. The Trial Chamber found no reason to believe this happened and so held. *Three*, Appellant contacted the witnesses via Senessie. That is what happened and that is what the Trial Chamber found in the instant case.

148. A further explanation of how and why this situation developed can be found in Respondent's cross-examination of Joe Ben Taylor, Appellant's father, at the sentencing hearing. It was put to the witness that his son (Appellant) lost his employment with the Special Court for Sierra Leone on 31 December 2010, that he was looking for a job because he did not have enough income to support his family, and that he contacted the prosecution witnesses from the Charles Taylor Trial in an effort to provide the Charles Taylor defence team with a lead to re-open their case

and, in turn, create an employment opportunity for Appellant.[274] A fair reading of the entire record of both trials makes it abundantly clear that this is exactly what happened. That is what the Trial Chamber saw and that is why its Judgment in this case is so carefully considered and fully supported.

VII. CONCLUSION

149. For all of the reasons stated herein, Respondent respectfully requests that this Appeals Chamber:

A. Dismiss all grounds of Appellant's appeal;

B. Affirm the Judgement and Sentence; and

C. Order that the Judgement be enforced immediately pursuant to Rule 102 of the SCSL Rules.

Respectfully Submitted,

WL Gardner

William L. Gardner
Independent Counsel

[274] *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Sentencing Hearing Transcript at pp. 715-18 (7 Feb. 2013).

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Independent Counsel v. Bangura, Case No. SCSL-11-02-A, SCSL Appeals Chamber, Judgement in Contempt Proceedings (21 Mar. 2013)

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Independent Counsel v. Taylor, Case No. SCSL-2012-02-A, SCSL Appeals Chamber, Order Assigning Judges to a Case Before the Appeals Chamber (18 Mar. 2013)

Independent Counsel v. Taylor, Case No. SCSL-2012-02-A, SCSL Appeals Chamber, Appellant's Submissions for Appeals Against Conviction and Sentence (15 Mar. 2013)

Independent Counsel v. Taylor, Case No. SCSL-2012-02-A, SCSL Appeals Chamber, Notice of Appeal (22 Feb. 2013)

***Independent Counsel v. Taylor*, Case No. SCSL-12-02-T**

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Sentencing Judgement (14 Feb. 2013)

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Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Sentencing Hearing Transcript (7 Feb. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Defence Submissions for Sentencing (6 Feb. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Sentencing Recommendation (30 Jan. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript (25 Jan. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript (17 Jan. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript (16 Jan. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript (15 Jan. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript (14 Jan. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Pretrial Hearing Transcript (12 Jan. 2013)

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Prosecutor v. Senessie, Case No. SCSL-2011-01-REV, SCSL Appeals Chamber, Defence Motion for Review (10 Aug. 2012)

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Prosecutor v. Senessie, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Judgement in Contempt Proceedings (16 Aug. 2012)

Prosecutor v. Senessie, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Sentencing Judgement (12 July 2012)

Prosecutor v. Senessie, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Sentencing Hearing Transcript (4 July 2012)

Prosecutor v. Senessie, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Trial Transcript (12 June 2012)

Prosecutor v. Senessie, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Pretrial Transcript (14 June 2011)

Prosecutor v. Senessie, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Order in Lieu of Indictment (24 May 2011)

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Prosecutor v. Taylor, Case No. SCSL-03-01-T, SCSL Trial Chamber, Decision on Public with Confidential Annexes A to E & Public Annex F; Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone and Public with Confidential Annexes A & B; Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone (25 Feb. 2011)

Prosecutor v. Taylor, Case No. SCSL-03-01-T, SCSL Trial Chamber, Decision on Public with Confidential Annexes A and B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone (24 Feb. 2011)

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***Independent Counsel v. Taylor*, Case No. SCSL-12-02-T**

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Exhibit D5

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Exhibit D6

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Exhibit D7

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Exhibit D8

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Exhibit J7

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Exhibit J8

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Exhibit J9

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