

**THE TRIAL CHAMBER**

**Judge Bankole Thompson**  
**Judge Benjamin Mutanga**  
**Judge Pierre Boutet**

**THE PROSECUTOR**

**Against**

**ISSA HASSAN SESAY**

CASE NO. SCSL - 2004 - 15 - PT

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**DEFENCE REPLY TO PROSECUTION RESPONSE TO DEFENCE  
MOTION SEEKING CLARIFICATION OF THE DECISION ON DEFENCE  
MOTION SEEKING THE DISQUALIFICATION OF JUSTICE ROBERTSON  
FROM THE APPEALS CHAMBER**

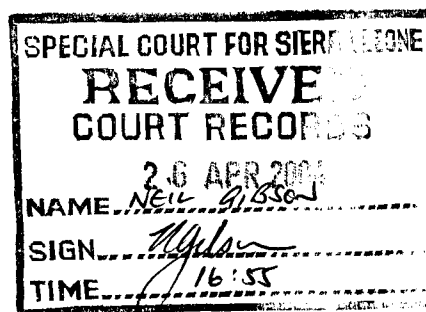
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**INTRODUCTION**

- 1 The Defence files this Reply to the Response of the Prosecution filed on the 22<sup>nd</sup> April 2004 to the Defence Motion filed itself filed on the 20<sup>th</sup> April 2004 seeking clarification of the Decision of the Appeals Chamber dated 13<sup>th</sup> March 2004 on the Defence Motion seeking the disqualification of Justice Robertson from the Appeals Chamber.

**ARGUMENTS**

- 2 The Prosecution Response that there is no lack of clarity in the unanimous decision of the Appeals Chamber referred to in paragraph 1 herein is, when examined, superficial and contradictory of the principled stance taken by the Prosecution in their Response filed to the original motion of the defence.

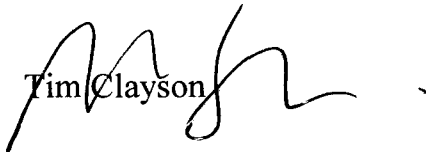


- 3 In its response to the instant motion the Prosecution has reiterated but entirely failed to address the issue of principle raised by the defence, namely that given the appearance of bias against the RUF, which the Appeals Chamber held was clearly demonstrated by the material quoted from Justice Robertson's book "*Crime Against Humanity – The Struggle For Global Justice, 2<sup>nd</sup> Edition 2002*", and which the Prosecution conceded, it is inescapable that Justice Robertson must not take part in any plenary session of the judges concerning the Rules of the Special Court of Sierra Leone; it is axiomatic that such rules concern and affect the cases of former members of the RUF indicted before this Court.
  
- 4 By this motion the Defence does not seek to "*modify*" the Judgment of the Appeals Chamber or "*expand*"<sup>1</sup> the limitations placed upon Justice Robertson. The judgment of the Appeals Chamber by necessary implication prohibits Justice Robertson from any exercise of judicial functions that might impact upon the case of the aforementioned indictees, and the defence desire to ensure that the integrity of this Court, the trial and any appeal process, are fully protected.
  
- 5 Given that the Prosecution has failed to address the substance of this motion but has chosen to respond merely by stating that the judgement of the Appeals Chamber is not lacking in clarity, the Defence must necessarily request the Appeals Chamber to consider, in the alternative to clarification of their existing judgment, to issue a further decision giving effect to the substance of the points set out in paragraph 9 of this Defence Motion.

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<sup>1</sup> Prosecution Response, paragraph 3.

6 Finally, inviting this Court to “*bring finality to this matter*”<sup>2</sup> is not a point of argument and should be discounted by this Court in its consideration of this matter.

 Tim Clayson

Wayne Jordash

Serry Kamal

Sareta Ashraph

23<sup>rd</sup> April 2004

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<sup>2</sup> Prosecution Response, paragraph 5.