

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN – SIERRA LEONE

Before: Justice Emmanuel Ayoola, Presiding
Justice Renate Winter
Justice George Gelaga King
Justice Raja Fernando
Justice Geoffrey Robertson

Registrar: Mr. Robin Vincent

Date filed: 4 June 2004

THE PROSECUTOR

Against

ISSA HASSAN SESAY

MORRIS KALLON

AUGUSTINE GBAO

Case No. SCSL – 2004 – 15 – PT

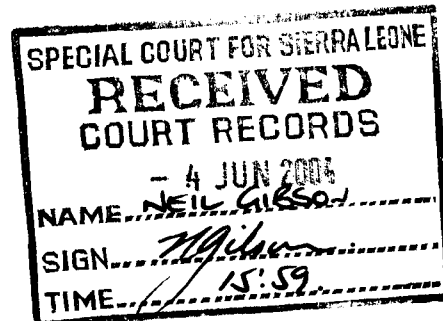
**PROSECUTION RESPONSE TO DEFENCE MOTION SEEKING THE
DISQUALIFICATION OF JUSTICE ROBERTSON FROM ALL JUDICIAL
FUNCTIONS INVOLVING THE RUF (INCLUDING THOSE EXERCISED PURSUANT
TO RULE 24 OF THE RULES OF PROCEDURE AND EVIDENCE)**

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The Prosecution files this reply to the motion submitted by the Defence for Accused Sesay, seeking the disqualification of Justice Robertson from all judicial functions involving the RUF (including those exercised under Rule 24 of the Rules of Procedure and Evidence).

I. BACKGROUND

1. On 27 February 2004, the Defence for Accused Sesay filed a motion seeking the disqualification of Justice Robertson from the Appeals Chamber on the basis of bias express by Justice Robertson against the RUF. (“Disqualification Motion”)
2. On 13 March 2004, the Appeals Chamber issued a decision on the Disqualification Motion (“Disqualification Decision”), holding that Justice Robertson be disqualified from adjudicating on “motions involving alleged members of the RUF for which decisions are pending, in this Chamber” and on “[c]ases involving the RUF if and when they come before the Appeals Chamber.”
3. On 20 April 2004 the Defence for Accused Sesay filed a motion seeking clarification of the Disqualification Decision (“Clarification Motion”).

4. On 25 May 2004 the Appeals Chamber issued a decision on the Clarification Motion, holding that “the Disqualification Decision was clear, explicit and unambiguous” and accordingly dismissed the Clarification Motion (“Clarification Decision”).
5. On 28 May 2004, the Defence for Accused Sesay filed a motion seeking the disqualification of Justice Robertson from all judicial functions involving the RUF (including those exercised under Rule 24 of the Rules of Procedure and Evidence) (“Motion for Further Disqualification”). The Prosecution files this response to the Defence Motion for Further Disqualification.

II. DEFENCE SUBMISSIONS

6. The Defence requests that the Appeals Chamber disqualify Justice Robertson from all judicial functions involving the RUF (including those exercised under Rule 24 of the Rules of Procedure and Evidence) based on the argument that the measure requested is “a logical corollary of the Disqualification decision”; that the “appearance of bias is indivisible as regards the numerous functions and decisions of Justice Robertson both as a judge and member of the Plenary Council of judges, insofar as they relate to and impact upon the cases of the RUF”, and that “Justice Robertson must take no part in any decision, (including decisions taken in the course of plenary sessions of the judges concerning the rules of the Special Court of Sierra Leone), insofar as any such decision relates to or concerns in any way the trials of defendants formerly members of the RUF.”

III. ARGUMENTS

7. The Prosecution notes that the instant motion is the third attempt by the Defence to re-litigate the same issue. This offends the principle of finality to litigation.
8. However, should the Chamber decide to consider the Defence Motion, the Prosecution makes the submissions contained in the subsequent paragraphs.
9. The Defence argues, in paragraph 7 of its Motion for Further Disqualification, the “appearance of bias is indivisible as regards the numerous functions and decisions of Justice Robertson both as a judge and member of the Plenary Council of judges, insofar as they relate to and impact upon the cases of the RUF”. The defence further argues,

paragraph 11 of its Motion for Further Disqualification, that “Justice Robertson must take no part in any decision, (including decisions taken in the course of plenary sessions of the judges concerning the rules of the Special Court of Sierra Leone), insofar as any such decision relates to or concerns in any way the trials of defendants formerly members of the RUF.” The Prosecution emphasizes that these exact same arguments were raised by the Defence in its Clarification Motion (see paragraphs 5 and 9 therein). The Prosecution also stresses that the Appeals Chamber, in deciding on the Clarification Motion, took into account these two Defence arguments (see lines 9-15 of the Clarification Decision). Nevertheless, the Prosecution further stresses that the Appeals Chamber, in its Clarification Decision, arrived at the same conclusion as it did in the Disqualification Decision, namely, that Justice Robertson is disqualified from “adjudicating on the following matter: 1. Those Motions involving alleged members of the RUF for which decisions are pending, in this Chamber; and 2. Cases involving the RUF if and when they come before the Appeals Chamber”. It is therefore the Prosecution’s submission, that since the Appeals Chamber, after having considered the above Defence arguments, refused to disqualify Justice Robertson from membership of the Plenary Council of judges, the present Motion for Further Disqualification should be dismissed.

10. The Defence argues, in paragraph 5 of its Motion for Further Disqualification, that it seeks the disqualification of Justice Robertson from any decision, including decisions taken in the course of plenary sessions insofar as they relate to the trials of former RUF members, “only as a logical corollary of the Disqualification decision”. The Prosecution submits, that had such disqualification indeed constituted a “logical corollary” of the Disqualification Decision, the Chamber would have arrived at this conclusion in its Clarification Decision. It is therefore submitted that the present Motion for Further Disqualification should be dismissed.
11. The Prosecution notes, that the present Motion for Further Disqualification contains the exact same arguments, and indeed the precise wording, used in the Defence previous Clarification Motion. In fact, the two motions are identical, with the exception of two paragraphs which were added to the present Motion for Further Disqualification (paragraphs 4 and 5), the first referring to and elaborating on the Chamber’s Clarification Decision of 25 May 2004, and the second containing the argument addressed in paragraph

8 herein above. Hence, the Prosecution asserts that the subject matter of the present Motion for Further Disqualification has already been adjudicated and decided upon.

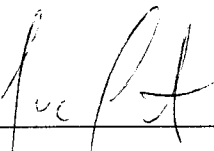
12. The Prosecution finally submits, that by requesting the disqualification of Justice Robertson from participation in Plenary Meetings, the Defence is asking that Justice Robertson be barred from performing a function which is inherent to Special Court judges and thereby is essentially requesting the disqualification of Justice Robertson from judgeship at the Special Court for Sierra Leone.

IV. CONCLUSION

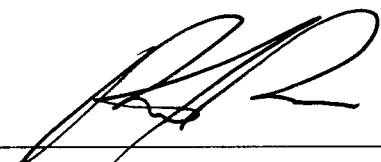
13. The Prosecutor submits that for the foregoing reasons, the Appeals Chamber should dismiss the Defence motion seeking the disqualification of Justice Robertson from all judicial functions involving the RUF (including those exercised under Rule 24 of the Rules of Procedure and Evidence).

Freetown, 4 June 2004

For the Prosecution,



Luc Cote



Robert Petit