



**SEIZED** of the Prosecution's oral application made on 10 September 2004 for the testimony of Witness TF2-082 to be given at trial during closed session and further that all of that part of the evidence of Witness TF2-032 that may disclose his identity, also to be given in closed session;

**NOTING** the Defence Response by the First and Second Accused opposing the Prosecution's application made on 10 September 2004;

**NOTING** that Article 17(2) of the Statute clearly provides that a public hearing is subject to certain limitations, that include the protection of victims and witnesses, and states that:

The accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Court for the protection of victims and witnesses;

**NOTING** that Rule 79 of the Rules of Procedure and Evidence of the Special Court ("Rules") provides that:

(A) The Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of:

- (i) national security; or
- (ii) protecting the privacy of persons, as in cases of sexual offences or cases involving minors; or
- (iii) protecting the interest of justice from prejudicial publicity.

(B) The Trial Chamber shall make public the reasons for its order.

(C) In the event that it is necessary to exclude the public, the Trial Chamber should if appropriate permit representatives of the press and/or monitoring agencies to remain;

**NOTING** that Rule 75 (A) and (B) of the Rules provides that:

(A) A Judge or a Chamber may, on its own motion, or at the request of either party, or of the victim or witness concerned, or of the Witnesses and Victims Section, order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused.

(B) A Judge or a Chamber may hold an *in camera* proceeding to determine whether to order:

(i) Measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with him by such means as:

(a) Expunging names and identifying information from the Special Court's public records;

(b) Non-disclosure to the public of any records identifying the victim or witness;

(c) Giving of testimony through image- or voice- altering devices or closed circuit television, video link or other similar technologies; and

(d) Assignment of a pseudonym;

(ii) Closed sessions, in accordance with Rule 79;

(iii) Appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television;

**CONSIDERING** that the Rules must be consistent with the purpose and object of the Statute and provide appropriate means to give effect to the Statute; and that a proper application of the Statute and Rules of the Special Court requires that purposive and contextual principles of interpretation be applied by the Trial Chamber;

**CONSIDERING** the rights of the Accused to a fair and public hearing must be balanced with the need to guarantee the utmost protection and respect for the rights of victims and witnesses;

**CONSIDERING** that provision is made in Rule 75 of the Rules for the Trial Chamber to order appropriate measures to safeguard the privacy and security of victims and witnesses and that when read together with Rule 79 and in conformity with Article 17(2) of the Statute of the

Special Court, Rule 79 reflects the affirmative obligation of the Court to afford protection to victims and witnesses where their privacy or security may be threatened;

**CONSIDERING** the special feature of the Special Court is that it is located in Sierra Leone where the crimes being tried are alleged to have been committed and that this fact has a substantial impact on the security considerations for victims and witnesses;

**CONSIDERING** that the Special Court has already established a precedent of permitting the testimony of witnesses to be elicited during closed session based upon the principle of protection of victims and witnesses where the interests of justice so dictate as was the case in the RUF trial;[\[1\]](#)

**CONSIDERING** that permissibility of closed session testimony is an extraordinary protective measure that will only be granted where it is shown that there is a very real risk to the witness and /or his or her family that their privacy or security will be threatened;

**CONSIDERING** that the Trial Chamber has already granted Witness TF2-082 the protective measures of testifying under a pseudonym and with voice distortion, and granted Witness TF2-032 the protective measures of testifying under a pseudonym;[\[2\]](#)

**CONSIDERING** that additional protective measures are required for Witness TF2-082 and Witness TF2-032 because of the positions that they held in their respective communities, and that if any of this evidence is heard publicly it would lead to the identification of these witnesses;

**CONSIDERING** that it is in the interests of justice that these two witnesses be allowed to testify with the protection of appropriate measures, where the full testimony of Witness TF2-082 and those above-mentioned portions of the testimony of Witness TF2-032 be given in closed session;

**FOR ALL THE ABOVE-STATED REASONS,**

