

THE TRIAL CHAMBER (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”) composed of Hon. Judge Benjamin Mutanga Itoe, Presiding Judge, Hon. Judge Bankole Thompson, and Hon. Judge Pierre Boutet;

SEIZED of the Prosecution’s Oral Motion made during the trial on the 27th of September, 2004 for the evidence of Witness TF2-151 to take place in a closed session;

NOTING the Oral Response of the Defence to the Prosecution’s Oral Motion, made on the 27th of September, 2004;

MINDFUL of the provisions of Article 17(2) of the Statute which provides that a public hearing is subject to certain limitations, that include measures ordered by the Special Court for the protection of victims and witnesses:

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;

MINDFUL of the provisions of 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;

CONSIDERING 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;

MINDFUL of the rights of the Accused to a fair and public hearing must be balanced with the need to also guarantee the 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 these provisions are read together with Rule 79 and 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 it is shown that their privacy or security may be threatened;

MINDFUL of the fact that the Special Court is located in Sierra Leone where the alleged crimes are said to have been committed and that this fact has a substantial impact on the security considerations for victims and witnesses;

MINDFUL of the decisions of this Chamber which include the *Order on an Application by the Prosecution to Hold a Closed Session Hearing of Witnesses TF2-082 and TF2-032*, rendered on the 13th of September, 2004, and the *Order on an Application by the Prosecution to Hold a Closed Session Hearing of Witness TF2-151*, rendered on the 23rd of September, 2004, which have already established precedents for permitting the testimony of witnesses to be elicited during closed session based on the principle of protection of victims and witnesses where the interests of justice so dictate;[\[1\]](#)

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 real risk to the witness and /or his or her family and that their privacy or security will be threatened;

CONSIDERING that the Trial Chamber has already granted Witness TF2-223 the protective measures of testifying under a pseudonym;[\[2\]](#)

CONSIDERING that additional protective measures are required for Witness TF2-223 because he is well-known on account of position as an insider in the CDF, and that if any part of this evidence is heard publicly it would lead to his identification and compromise his safety and security as well as that of his family;

