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ព្រះរាជាណាចក្រកម្ពុជា
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អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia
Nation Religion King
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Nation Religion Roi

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TRIAL CHAMBER

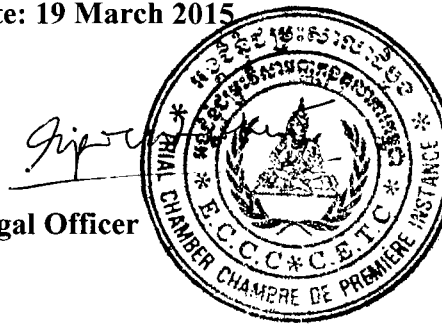
Date: 19 March 2015

TO: All Parties, Case 002

FROM: NIL Nonn, President of the Trial Chamber

CC: All Trial Chamber Judges; Trial Chamber Senior Legal Officer

SUBJECT: Decision on Protective Measures for 2-TCCP-304



1. On 27 October 2014, the Trial Chamber was seized of a request by the Lead Co-Lawyers for the Civil Parties to permit 2-TCCP-304 to testify in closed session as a form of protective measure (E316/2). On 9 March 2015, upon request of the Chamber, the International Lead Co-Lawyer for the Civil Parties confirmed that 2-TCCP-304 maintained this request and noted that, in the alternative, 2-TCCP-304 agrees to be heard with voice and image distortion (E316/2/1). No responses were filed by the other Parties.

2. WESU submitted its final Risk Assessment Report for 2-TCCP-304 on 11 March 2015 (which was filed on 13 March 2015: E29/467/2).¹ The Report notes that 2-TCCP-304 fears potential reprisals from his previous supervisors at the Kraing Ta Chan Security Centre or their families and from victims of Kraing Ta Chan or their families if he testifies in a public hearing (E29/467/2, para. 2). Local police officials consider that hostile reactions are unlikely but, should they occur, they have the capacity and will to respond rapidly (E29/467/2, para. 3). WESU considers that 2-TCCP-304's primary fear is actually negative social consequences (E29/467/2, paras 5-6).

3. Taking into consideration the fear and reluctance displayed by 2-TCCP-304 in preparation for his testimony, as well as the "impossibility" of accurately determining the likelihood of whether the categories of individual identified by 2-TCCP-304 would react in a hostile fashion to in-court disclosures, WESU recommends that the Chamber grant protective measures to 2-TCCP-304 (E29/467/2, para. 8). However, as the relevant police

¹ The Chamber notes that WESU submitted two previous Risk Assessment Reports in relation to 2-TCCP-304 (E29/467 and E29/467/1). These have been updated following further consultations between WESU and 2-TCCP-304.

authorities have assured their continuing attention, 2-TCCP-304's Khmer Rouge involvement is already well known in the community and a similarly placed witness from the same community has had no adverse reactions to his testimony, WESU does not consider that closed session or continuing use of a pseudonym are warranted (E29/467/2, paras 9-10). Rather, WESU recommends protective measures which minimise the public exposure of 2-TCCP-304, "such as non-disclosure of his image to the public, voice distortion, and non-disclosure to the public of personal details such as his residential address, parents names and occupations, name and occupation of spouse, number of children etc" (E29/467/2, para. 11).

4. The Chamber recalls that pursuant to Internal Rule 29(3), the Trial Chamber may, on its own motion or on request, and following consultation with WESU, order appropriate measures to protect victims and witnesses whose appearance before the Chamber is "liable to place their life or health or that of their family members or close relatives in serious danger." Protective measures are granted on a case-by-case basis when accompanied by information to substantiate the risk or threat of harm to the applicant or their relatives. A genuine fear on the part of the applicant or their relatives is required, as well as the existence of an objective justification for this fear (see *Case 001*, E71, 2 June 2009, para. 7; *Case 001*, E135, 7 August 2009, para. 3; *See also* E29/465/1, para. 5).

5. When assessing the type and degree of protection to be granted, the Chamber must balance the seriousness of the risk confronting the applicant, the measures most appropriate to address it and any infringement of the rights of the Accused (see *Prosecutor v. Tadić*, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses, Case No. IT-94-1-T, 10 August 1995; Articles 33-35 new, Law on the ECCC; Internal Rules 29(4), 79(6)).

6. The Chamber notes that local and international media, including newspapers and TV stations, show significant interest in the proceedings in Case 002/02. Local media regularly reports on the trial and images of witnesses often appear in newspapers and/or are broadcast nationwide. It further notes that 2-TCCP-304's primary fear is of "social responses such as scorn, contempt or ostracization of himself and his family" and that WESU considers that such negative social consequences could be "devastating" to 2-TCCP-304 (E29/467/2, para. 5).

7. Based on the WESU Risk Assessment Report, and having considered the submissions of the Lead Co-Lawyers for the Civil Parties, the Chamber is satisfied that 2-TCCP-304's fear and anxiety are genuine and under the circumstances described above amount to a serious threat to his physical and mental health.

8. The Chamber finds that the protective measures recommended by WESU are adequate to address the concerns raised by 2-TCCP-304. The Chamber agrees with WESU's recommendation to not continue using a pseudonym for this individual during his appearance before the Chamber because his Khmer Rouge history is already known in his community. The Chamber notes that the prohibition on making images available to the public and non-disclosure of personal details are minor forms of protective measures, which will not significantly affect the public nature of the trial, nor impact upon the rights of the Accused.

9. The Chamber accordingly orders that the image and voice of the witness not be made available to the public. To give effect to this order face and voice distortion technologies will be used in the broadcast of proceedings during the testimony of 2-TCCP-304 and the media is ordered not to publish any photographs or images of 2-TCCP-304, regardless of when they were taken (including archival footage), or personal details (such as his residential address and names of family members).

10. This constitutes the Chamber's official response to E316/2.