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E385

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

សាធារណៈ / Public

**TRIAL CHAMBER**

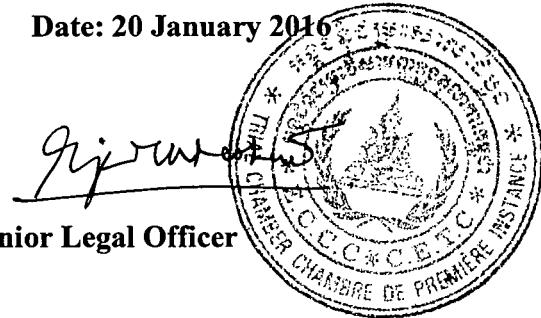
Date: 20 January 2016

**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 Video-Link for 2-TCCP-844**



1. On 14 January 2016 the Chamber informed the Parties by email that 2-TCCP-844 will be heard by video-link. The Chamber hereby provides the reasoning for its decision.

2. Following an initial report from WESU indicating that the Civil Party suffers from serious medical conditions, the Trial Chamber requested an independent medical assessment of the Witness (E29/474).

3. According to the independent medical report, dated 16 November 2015, 2-TCCP-844 suffers from high blood pressure (hypertension) with a recent history of hypertensive crises followed by hospitalizations for a few days each time. The report concluded that 2-TCCP-844 is not fit to testify. The report, however, recommended that should 2-TCCP-844 be treated for hypertension, there is a possibility that he could testify (E29/474/2). The Chamber subsequently requested WESU to inquire with the medical practitioner who prepared 2-TCCP-844's medical report whether he could be heard via video-link. According to the medical practitioner, while 2-TCCP-844 remains at high risk of hypertensive crises when under stress, he could testify by video-link under the following conditions: that there be a further medical assessment before the testimony to evaluate his health status at that stage; that the video-link be set in a location near to his home to avoid stress of travel; and that he emotionally prepares prior to the testimony.

4. Further to a request by the Chamber to provide an update of 2-TCCP-844's condition, the Lead Co-Lawyers indicated that 2-TCCP-844 initiated medical treatment and his health condition has improved significantly since the independent medical report and he has now confirmed his willingness to testify (T., 6 January 2016, p. 29-36).

5. The Trial Chamber recalls that according to Internal Rule 26, the testimony of a witness or expert during trial shall be given in person, whenever possible. However, the Chamber may allow testimony by means of audio or video technology, provided that such technology permits the witness to be interviewed by the Chamber and the parties at the same time the witness so testifies (Internal Rule 26 (1)).

6. The decision of whether to grant video-link testimony is a matter within the broad discretion of the Trial Chamber. It is for the Chamber to assess the needs of the individual if exceptional measures are proposed. The Trial Chamber has held that testimony by video-link may generally be granted where circumstances require (E166/1/4, p. 1) and has previously granted video-link testimony where medical issues rendered the witness unable to travel (E319/17/2; E334; E1/151; E236/1/4/3).

7. In light of 2-TCCP-844's health condition, the Chamber finds that having the Civil Party travel to the ECCC would be detrimental to his health. The Chamber, therefore, finds that it is appropriate to hear 2-TCCP-844 by video-link. The Chamber also finds that the use of video-link in these circumstances is not seriously prejudicial to or inconsistent with defence rights (see Internal Rule 26 (1)).

8. The Trial Chamber requests WESU to facilitate the holding of the video-link for the testimony of 2-TCCP-844 including, in particular, to arrange for a local physician to visit him prior to his testimony.