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

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Nation Religion King
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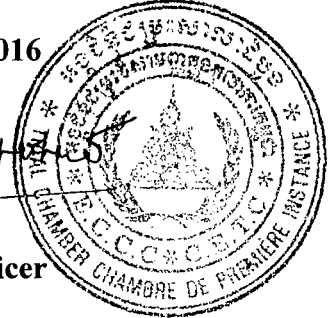
TRIAL CHAMBER

TO: All Parties, Case 002 **Date:** 2 May 2016

FROM: NIL Nonn, President of the Trial Chamber *[Signature]*

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

SUBJECT: Decision on 2-TCW-876 and 2-TCCP-234



1. The Trial Chamber selected 2-TCW-876 and 2-TCCP-234 to testify in Case 002/02 in relation to the trial topics of Trapeang Thma Dam and Treatment of the Vietnamese, respectively. As set out in more detail below, however, the Chamber was unable to secure their appearance before the ECCC and hereby notifies the Parties of its decision not to further summons these individuals.

2-TCW-876

2. On 20 July 2015, the Chamber informed the Parties that it would hear 2-TCW-876 during the Trapeang Thma Dam trial topic (see Email from Senior Legal Officer of 20 July 2015). On 10 August, the day before his scheduled appearance, 2-TCW-876 became suddenly unavailable (T., 10 August 2016, pp. 1-2). On 17 August 2016, the Chamber informed the Parties that due to the unavailability of this witness, he would not be heard during the Trapeang Thma Dam trial topic. The Parties were further informed that, should 2-TCW-876 become available at a later stage, the Chamber would consider whether to reschedule him (See email from Senior Legal Officer of 17 August 2015; see also email from Senior Legal Officer of 11 August 2015).

3. In April 2016, WESU filed a report with the Chamber setting out the reasons for the Witness's inability to testify on 11 August 2015. The Chamber notes that WESU staff collected 2-TCW-876 from his home on 8 August 2015 to transport him to the ECCC in order to testify on 11 August 2015. While travelling, 2-TCW-876 stated to show signs of distress and upon arrival at Pursat his condition deteriorated quickly. WESU staff therefore took the witness to the provincial hospital where he was examined by a medical doctor. Following the examination, the doctor informed WESU that 2-TCW-876 was a daily alcohol consumer who had ceased taking alcohol 3 days before travelling to the

Court, in order to prepare for his testimony. The doctor concluded that the Witness was suffering from serious withdrawal syndrome due to the sudden cessation of consumption of alcohol. The Witness was kept for overnight observation at the hospital and discharged the next morning with recommendation not to continue travelling to Phnom Penh, but to return home where he should seek medical treatment for a minimum of three weeks.

4. WESU complied with the doctor's recommendations and followed up on a number of occasions with the Witness to assess whether he was undertaking any medical treatment. However, WESU was informed that 2-TCW-876 is not pursuing medical treatment due to financial cost (E29/483, WESU report).

5. The Chamber considers that both the chronic alcoholism and the associated severe withdrawal symptoms suffered by the Witness affect the Witness's fitness to testify. Further noting the severe health risks linked to this condition, the fact that he is not seeking any treatment for his condition and that the Chamber cannot impose any treatment on him, the Chamber finds it appropriate to withdraw this Witness from its list of witness and Civil Parties for the Trapeang Thma Dam worksite.

2-TCCP-234

6. On 16 December 2015, the NUON Chea Defence raised questions concerning the credibility of 2-TCCP-300, who previously appeared before the Chamber in relation to the trial topic on the Treatment of the Vietnamese on 2 and 3 December 2015. According to the NUON Chea Defence, the statement of 2-TCCP-234 indicates that 2-TCCP-300 may have been forced to kill his Vietnamese wife, an event that 2-TCCP-300 denied in a previous statement (T., 16 December 2015, pp. 2-10; E3/4732; E3/4989). The Chamber decided on its own motion to summons 2-TCCP-234 in order to give the NUON Chea Defence an opportunity to clarify the questions it raised in concerning 2-TCCP-300 (see email of Senior Legal Officer, of 24 December 2015). WESU accordingly attempted to deliver the summons to the Civil Party but was unsuccessful.

7. On 7 April 2016, WESU submitted to the Chamber a report detailing the efforts made to date to secure the appearance of this Civil Party (E29/480). According to the report, WESU has been in periodic contact with 2-TCCP-234 either directly or via the Lead Co-Lawyers for about 5 months. Her Civil Party Lawyer, Ms. Lyma Nguyen, has not been able to reach 2-TCCP-234. During this period the Civil Party has been residing in Vietnam and has claimed her health to be too poor for her to travel back to Cambodia to testify before the Court. While she initially undertook to provide the Court with a medical certificate, the Civil Party has failed to do so, on grounds that it was "difficult to ask for the medical certificate". The Civil Party also stated that she is facing financial problems and that she does not want to testify before the ECCC. WESU has been unable to obtain a precise address for the Civil Party in Vietnam (E29/480, pp. 1-2).

8. WESU concludes that unless the Civil Party returns to Cambodia, it is unlikely to advance in obtaining her cooperation or medical documentation (E29/480, p. 2).

9. The Chamber considers that in the absence of any precise contact details in Vietnam, a request to locate and summons this Civil Party to the Vietnamese authorities is very unlikely to be successful within a reasonable time. The Chamber therefore finds that it is not possible to obtain the testimony of 2-TCCP-234 within a reasonable time and decides to withdraw the summons for this Civil Party.