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

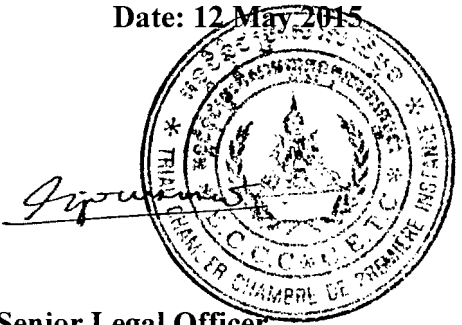
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TRIAL CHAMBER

Date: 12 May 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 2-TCW-909's Video-Link

1. On 7 April 2015 the Chamber informed the Parties by email that it would hear 2-TCW-909 by video-link. The Chamber hereby provides the reasoning for its decision.
2. Following an initial report from WESU indicating that the Witness suffered from serious medical conditions that would prevent them from traveling to Phnom Penh to testify, the Trial Chamber requested an independent medical assessment of the Witness (E340).
3. According to the independent medical report, 2-TCW-909 suffers from a chronic medical condition for which he is undergoing a medical treatment. The treatment requires the Witness to be administered sub-cutaneous injections on Saturdays, which causes him numerous side effects (E340/1, pp 2, 4). The medical report finds that while the Witness is able to travel, requiring him to remain in Phnom Penh for several days would disturb his medical treatment. It suggests that the Witness be heard by video link instead, preferably on a Friday when the side effects of the treatment have the least impact on him.
4. 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)).

5. 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).

6. The Chamber notes that the Witness must travel for 2 (two) days to reach the ECCC and that therefore, he would have to be absent from his residence for at least 6 (six) days if he were to travel to the ECCC to provide testimony. In light of the 2-TCW-909's health condition and on-going medical treatment, the Chamber finds that having the Witness travel to Phnom Penh for this period of time would adversely impact his medical treatment and, consequently be detrimental to his health. The Chamber therefore finds that it is appropriate to hear this Witness by video-link. The Trial 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)).