E346/2/2

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

Kingdom of Cambodia
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TRIAL CHAMBER

TO: **All Parties, Case 002** **Date: 26 January 2016**

FROM: **NIL Nonn, President of the Trial Chamber**

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

SUBJECT: **Decision on NUON Chea Defence Request to Withdraw a Witness from the Case 002/02 Trial Witness List (E346/2/1)**

1. The Chamber is seised of a request filed on 15 January 2016 by the NUON Chea Defence to remove witness 2-TCW-989 from the list of testifying witnesses in Case 002/02 (E346/2/1). In April 2015, in response to a request from the NUON Chea Defence, the Chamber issued a decision with reasons to follow to hear 2-TCW-989 (E346/2). The Defence now submits that during its examination of 2-TCW-989 in the appeal hearing in Case 002/01, before the Supreme Court Chamber, it was able to wholly address the relevant issues for which it sought to hear the witness, namely the treatment of former Khmer Republic soldiers and officials. It further submits that all of the parties had an opportunity to put questions to the witness in the appeal hearing and that it would therefore be repetitive and inefficient to hear 2-TCW-989 before the Trial Chamber in Case 002/02 (E346/2/1, para. 9). Oral responses were heard on 18 January 2016.

2. The Co-Prosecutors submit that 2-TCW-989 is a Trial Chamber witness and therefore not NUON Chea's witness to withdraw. It further submits that there are a large number of documents now available in Case 002/02 which were not available to put to the witness during the appeal hearing, including the witness's DC-Cam statement. They indicate that the witness was not credible and that there is significant evidence that conflicts with the witness's account. However, the Co-Prosecutors leave the decision as to whether to hear the witness to the Chamber (T. 18 January 2016, pp. 1-3 (Public)).

3. The Lead Co-Lawyers also submit that 2-TCW-989 is a Trial Chamber witness rather than a witness to be withdrawn from NUON Chea's witness list. They submit that it is for the Chamber to decide whether it is conducive to ascertaining the truth to hear the witness (T. 18 January 2016, p. 4 (Public French)).

4. The KHIEU Samphan Defence notes that the Co-Prosecutors and the Lead Co-Lawyers did not consider it important to hear 2-TCW-989 on appeal. It submits that it is premature to make submissions on the credibility of the witness as the Co-Prosecutors have done. While deferring to the decision of the Chamber, it notes that it seems to be a waste of time to hear this witness and it would be more useful to hear witnesses who clearly fall within Case 002/02 (T. 18 January 2016, pp. 5-6 (Public French)).

5. The NUON Chea Defence replies that it would be a waste of time to hear 2-TCW-989. It submits that the witness was very credible. It concedes however that 2-TCW-989 is the Trial Chamber's witness. It further submits that the Chamber has relied upon hundreds of Written Records of Interview without hearing witnesses and that it is therefore capable of relying upon the appeal hearing transcript of 2-TCW-989 in lieu of hearing him in person (T. 18 January 2016, p. 5-8 (Public)).

6. The Chamber first notes that the NUON Chea Defence request is not timely. The Supreme Court Chamber heard 2-TCW-989 in July 2015. Therefore, the request comes six months after the witness was heard on appeal. Further, the Trial Chamber admitted the transcripts in Case 002/02 in September 2015 (E356/2) after which the NUON Chea Defence failed to alert the Chamber to its concerns about hearing the witness until January 2016. This creates significant inconvenience to the parties and Chamber as the witness is to be heard within a few weeks, a summons has already issued, and scheduling arrangements with the Witness and Expert Support Unit have been made.

7. The Chamber further notes that the witness is scheduled to testify on the treatment of former Khmer Republic officials which clearly forms part of Case 002/02 in relation to the Tram Kak cooperatives, 1st January Dam Worksite, S-21 Security Centre and Kraing Ta Chan Security Centre (E315, para. 14). In addition, during the appeal hearing, the Supreme Court Chamber did not permit the Co-Prosecutors to question the witness on his statement taken by DC-Cam (E305/13.23.405 and E3/9118) because the Co-Prosecutors did not provide specific page number references (F26/12, disposition para. 3). Therefore, 2-TCW-989's testimony before the Trial Chamber may cover subjects that were not explored in the appeal hearing. Moreover, although the parties have had an opportunity to examine the witness in the context of the Case 002/01 appeal, the Trial Chamber has not had such an opportunity. Under these circumstances, the Chamber considers that hearing 2-TCW-989 is conducive to ascertaining the truth in Case 002/02 and the NUON Chea Request is therefore rejected.

8. This is the Chamber's official response to E346/2/1.