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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
Royaume du Cambodge
Nation Religion Roi

សាធារណៈ / Public

TRIAL CHAMBER

Date: 10 May 2012

TO: All parties, Case 002; Witness/Expert Support Unit (WESU)

FROM: Judge NIL Nonn, Trial Chamber President

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



SUBJECT: Directions pursuant to Internal Rule 28 (right against self-incrimination)

Following in-court discussion on 18 April 2012 of various alleged issues of self-incrimination, the Trial Chamber provides the following information and further directions pursuant to Internal Rule 28 for the benefit of the parties and public.

The Trial Chamber has a process in place for dealing with witnesses who may be at risk of self-incrimination.

The Witness/Expert Support Section informs all individuals giving evidence before the Chamber of their rights, including those regarding self-incrimination, in advance of their testimony.

The Chamber also reviews all witness statements on the case file made by a particular witness before he or she gives evidence in order to identify any need for independent legal advice.

WESU makes available legal counsel for those witnesses who, pursuant to the protection against self-incrimination, may have requested (or who are thought to require) legal advice. These counsel consult the witness and give advice prior to their giving of evidence.

These practices are ongoing and will be continued by the Chamber throughout Case 002.

As the parties are also aware, the President also reminds all witnesses of their right to protection from self-incrimination and their right to decline to answer questions before they begin their testimony.

Where a party believes that additional self-incrimination concerns need be raised before

the Chamber, this shall not be done in-court and in the presence of the witness. That party shall instead notify the Chamber through its Senior Legal Officer well in advance of the witness taking the stand, and shall also provide a brief description of the grounds for the application. The Trial Chamber is concerned that parties are making last-minute applications, based on material which has been known to all parties for months, and in some cases, years.

Where, instead, the testimony of a witness leads a party to believe that the witness should be further reminded of the protection against self-incrimination, that party shall request an *in camera* hearing before the Chamber pursuant to Internal Rule 28(8). No additional commentary in support of this request should be made which could lead the Chamber to infer either a lack of preparation by that party or a deliberate attempt to intimidate the witness. Given the comprehensiveness of the above procedures already in place before the Trial Chamber, the Chamber expects that only rarely will applications pursuant to this sub-rule need to be sought.