



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

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ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

TRIAL CHAMBER

Date: 19 June 2012

TO: All parties, Case 002

FROM: President NIL Nonn, Trial Chamber

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

SUBJECT: Trial Chamber response to Co-Prosecutors' Request for Leave to Provide Assurances with respect to Non-Prosecution for Witnesses (E200)

1. Reference is made to the above Request, where the Co-Prosecutors seek leave to provide assurances regarding non-prosecution to witnesses, in a proposed form attached as Annex A to their request. The Co-Prosecutors propose to provide this assurance on a discretionary basis to witnesses who may fear prosecution with respect to events which took place between 17 April 1975 and 6 January 1979, in order to encourage open and truthful testimony from witnesses who may otherwise be reluctant to give a full account of the relevant facts within their knowledge. Annex A prepared by the Co-Prosecutors propose to inform witnesses (1) that the ECCC Co-Prosecutors will not initiate any prosecutions against that witness and (2) that the witness cannot be prosecuted under current Cambodian law in any other Cambodian court. The Co-Prosecutors suggest that this assurance form be delivered to witnesses by the Witness and Expert Support Unit (WESU).

2. The Trial Chamber supports this initiative to the extent it provides assurances regarding non-prosecution before the ECCC that may be given by the Co-Prosecutors, as well as the proposed modality of its implementation through WESU. Similar initiatives have formed part of the practice of, for instance, the ICTY Office of the Prosecutor, which has provided assurances to ICTY witnesses where the Prosecutor does not intend to initiate prosecutions against these individuals before the ICTY. Consistent with its decision in relation to the IENG Sary Preliminary Objection on Amnesty and Pardon (E51/15) of 3 November 2011 and other related decisions of the Chamber (e.g. Decision on Defence Preliminary Objection Concerning the Statute of Limitations of Domestic Crimes, E187, 26 July 2010), however, the Chamber considers it inappropriate given the ECCC's role and legal framework to provide assurances of non-prosecution before other Cambodian courts. Attached to this memorandum are the amendments which the Trial Chamber propose in consequence to Annex A as submitted by the Co-Prosecutors.

3. Should the Defence object to Annex A (as amended by the Trial Chamber), they may indicate the basis for this no later than 29 June 2012.



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
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ANNEX A

Case 002/19-09-2007/ECCC

[Date]

TO: [Witness' Name, Address, and Date of Birth]

ASSURANCE REGARDING NON-PROSECUTION

You have been summoned to appear as a witness before the Extraordinary Chambers in the Courts of Cambodia (ECCC). The purpose of your testimony is to assist the judges of the ECCC find the truth about the events which took place in Cambodia during the period of 17 April 1975 to 6 January 1979.

The ECCC is currently the only court of law in Cambodia which ~~can~~ has prosecuted persons who are suspected of committing crimes during this period. —These individuals must be senior leaders of Democratic Kampuchea or those most responsible for the crimes committed during that period.

The purpose of this letter is to inform you that :

~~1. We~~ the ECCC Co-Prosecutors will not initiate any prosecutions against you for any event which took place in Cambodia during the period of 17 April 1975 to 6 January 1979.

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~~2. Under current Cambodian law, you cannot be prosecuted in any other Cambodian national court for any event which took place in Cambodia during the period of 17 April 1975 to 6 January 1979.~~

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As a witness, you have the legal duty to tell the Court the truth, the whole truth and only the truth. The purpose of this assurance is to enable you to speak openly and honestly before the Court, on the basis of accurate information regarding the consequences of your testimony before the ECCC, without any fear of prosecution.

A copy of this assurance will be placed on the Case File in this case, as a record that the assurance was given to you.

Chea Leang
National Co-Prosecutor

Andrew Cayley
International Co-Prosecutor

Date:

Date:

I confirm that I have received and understand this assurance.

Signature:

[Witness name]