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ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):
..... 19 / 07 / 2012

ពេលវេលា (Time/Heure):..... 14 : 20

មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé
du dossier: SANN RADA

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

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

TRIAL CHAMBER

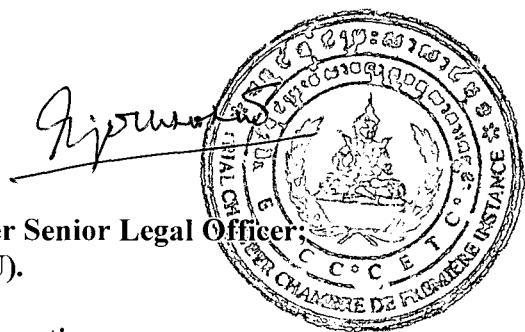
សាធារណៈ / Public
Date: 19 July 2012

TO: All parties, Case 002

FROM: NIL Nonn, President, Trial Chamber

**CC: All Trial Chamber Judges, Trial Chamber Senior Legal Officer,
Witness and Expert Support Unit (WESU).**

SUBJECT: Permitted form of assurances of non-prosecution



1. On 19 June 2012, the Trial Chamber indicated its initial position on the Co-Prosecutors' Request for Leave to Provide Assurances with Respect to Non-Prosecution for Witnesses (E200) ("Request") and circulated a draft copy of its proposed amendments to the standard-form assurance of non-prosecution suggested by the Co-Prosecutors (E200/3 and E200/3.1, respectively). The Chamber invited the Defence teams to indicate their objections to E200/3.1 (if any) by 29 June 2012. Two requests for extension of time filed by the IENG Sary and KHIEU Samphan Defence (E200/1 and E200/2, respectively) were not granted by the Chamber, on grounds that the Chamber considers this matter to fall within its overall discretion to manage proceedings and to not require protracted adversarial discussion. The IENG Sary Defence nonetheless filed a Response to the Co-Prosecutor's Request on 21 June 2012 (E200/1/1), which was accepted by the Chamber ("Response").
2. The main thrust of the Response is that the assurance of non-prosecution as proposed by the Co-Prosecutors is overly broad and potentially misleading insofar as it suggests that witnesses will not be prosecuted in courts other than the ECCC. The Trial Chamber has already stated that it "considers it inappropriate given the ECCC's role and legal framework to provide assurances of non-prosecution before other Cambodian courts" (E200/3). Having reviewed the Response, the Chamber considers that the principal objection of the IENG Sary Defence has been anticipated by and is reflected in the Chamber's revised draft E200/3.1.
3. The IENG Sary Defence raises two further points in its Response. First, it suggests that the giving of assurances of non-prosecution to witnesses is unnecessary in light of existing mechanisms, such as the oath taken by witnesses prior to giving testimony and the procedures set out in Internal Rules 28 and 36. Following consultation with the Witness and Expert Support Unit, the Chamber considers that the giving of assurances of non-prosecution, where appropriate, will complement

existing procedures and aid the Chamber in its duty to ascertain the truth. Second, the IENG Sary Defence contends that it is improper for the Co-Prosecutors to communicate with witnesses. The Chamber recalls that it has previously permitted parties to contact witnesses for narrow and clearly delimited purposes (*see e.g.* Trial Chamber Memorandum entitled Hearing of TCE-38 and TCE-44 (E166)) but in any case, assurances of non-prosecution in relation to ECCC trial proceedings shall be provided in written form to witnesses and Civil Parties through the Witness and Expert Support Unit.

4. The Witness and Expert Support Section may henceforth begin to supply witnesses and Civil Parties with assurances of non-prosecution in the form attached as Annex 1 to this Memorandum, in accordance with the procedures set out above.



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 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 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.

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.

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]

