



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

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

TRIAL CHAMBER

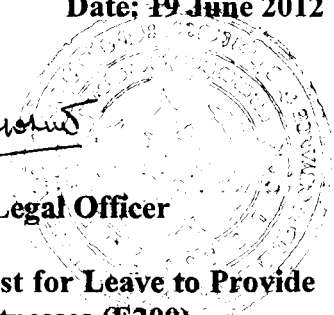
Date: 19 June 2012

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.