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ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

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

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.