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JOINT PUBLIC STATEMENT

CAMBODIA TRIBUNAL MUST NOT USE TORTURE “CONFESSIONS” AS A LEGITIMATE SOURCE OF INFORMATION

What prisoners say or “confess” to under torture should never be admissible in any court proceedings, said Amnesty International, The International Commission of Jurists and the Redress Trust, after submitting a brief to the Pre-Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC).

The brief was submitted on 25 September 2009, as part of an application to intervene as “friends of the court” (*amicus curiae*) in the case of Ieng Thirith, where a dispute has arisen in respect of the potential admissibility of certain statements. In it, the organizations explain that the prohibition on the use of the content of statements obtained by torture by courts is absolute. It both reflects and supports the absolute prohibition on torture and is essential for preserving the integrity of the judicial process and the right to a fair trial. It is also impelled by the moral repugnance at the prospect of using the torturer’s creation – the “confession” – to seek justice.

Admitting the content of a torture “confession” as evidence, bearing in mind that it was extracted out of a helpless detainee through the intentional infliction of pain and suffering, would irreparably taint any court proceedings.

Article 15 of the UN Convention against Torture, which binds the ECCC, excludes all statements obtained by torture from any court proceedings, with one exception only: torture statements may be used against the suspected torturers themselves, but then only “as evidence that the statement was made.” In other words, such statements may be used as part of the proof that the act of torture took place, and not in any way for the truth of its contents or any other purpose. This limitation is clear from the language of the article, which uses the word “only” to prevent any misinterpretations. It is also clear from the history of its drafting in the UN, which the brief describes. During the drafting, proposals to allow the wider use of statements obtained by torture were considered but rejected.

The brief also explains that under international law, the use of statements obtained by torture to prove that they were made, is not limited to proceedings against the actual torturer, but also against commanders and political superiors accused of bearing responsibility for the torture.

The prohibition on the use of “confessions” does not extend automatically to all related material. For instance, other documents in the same file, including registration forms, need not be excluded automatically. However, the admissibility of any such material can nevertheless be challenged, on grounds that it did form part of the statement obtained by torture, that it was obtained by torture independently of the statement, or on other grounds set out in international and Cambodian law.

The organizations urge the ECCC to ensure that its proceedings adhere to international law and standards, which would contribute to the Court’s credibility and ability to leave behind a positive and long-lasting legacy. A failure to do so would run counter to the international

community's fundamental rejection of torture and refusal to provide it any legitimacy, and potentially undermine the integrity of the ECCC itself.

Regrettably, procedures in the Pre-Trial Chamber involving this brief have been rendered confidential.

The text of the brief is available here:

<http://www.amnesty.org/en/library/info/ASA23/020/2009/en>

Ends

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