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## **Tribunal judges defer ruling on torture**

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JUDGES at the Khmer Rouge tribunal have ruled that the court's investigating judges are not required to disclose the extent to which they have relied on evidence obtained through torture at this point in the proceedings of the tribunal's second case, setting the stage for challenges from the defence when the case goes to trial.

In a ruling dated Monday, the tribunal's Pre-Trial Chamber (PTC) judges rejected as inadmissible an appeal from the defence team of former Khmer Rouge foreign minister Ieng Sary, which had called for the Office of the Co-Investigating Judges (CIJs) to "transparently reveal to what extent it has used or intends to use ... any material obtained by, or as a result of torture".

The PTC judges declined to order this disclosure, however, saying that upon the issuance of a closing order – a ruling on indictments or dismissals that is expected by September – the "rationale of the analysis of evidence will become apparent". The admissibility of evidence may also be challenged before the Trial Chamber, the PTC added.

Michael Karnavas, the international co-lawyer for Ieng Sary, said that given the voluminous nature of the case file, it would be difficult for defence teams to evaluate on their own all pieces of evidence to determine what connection they bear to torture.

"We had asked for the needle from the haystack," he said in an email. "The PTC now tells us that when we get the haystack, we can have it trying to locate the needle."

In December, the PTC also declared as inadmissible an appeal from the defence team for former Khmer Rouge social action minister Ieng Thirith.

Her team, invoking the UN Convention Against Torture, had called for the CIJs to throw out all evidence obtained by torture, such as confessions from Tuol Sleng prison.

The CIJs said last July, however, that it was "not possible at this stage to affirm that no element of truth can ever be found in the confessions". The reliability of the confessions, they added, "will be assessed on a case-by-case basis".

Although the PTC's rulings yesterday and in December did not challenge this point directly, the PTC judges noted in both instances that despite any statements otherwise from CIJs, "there is no room for a determination of the truth or for use otherwise of any statement obtained through torture".

This passage echoes language from an October decision of the Trial Chamber. In that decision, the Trial Chamber judges said that confessions obtained through torture could constitute evidence that torture occurred, but could not be "admitted for the truth of their contents".

Karnavas said that while he was frustrated by the PTC's decision not to compel the CIJs to disclose their use of evidence that stems from torture, he believed the issue would be properly dealt with before the Trial Chamber.

"Assuming the [prosecutors] take the high road, and I have no reason to think otherwise, then I am confident that any truly repugnant evidence will be cast aside as antithetical to the judicial process and the interest of justice," he said.

Anne Heindel, a legal adviser at the Documentation Centre of Cambodia, said she doubted that the court would be significantly impeded even if the evidence connected to torture were thrown out.

"I guess I don't see the torture evidence as being so pervasive to the case that it's going to overwhelm everything else," she said.