

TORTURE-RELATED EVIDENCE November 2009

On November 5, 2009, Andrew Diamond, Legal Associate at the Documentation Center of Cambodia (DC-Cam), in his personal capacity, filed an application with the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) to submit an Amicus Curiae brief regarding the admissibility of statements or other information potentially produced as a result of torture. This issue was first raised in a request by the Defence for Ieng Thirith to exclude this evidence. The Co-Investigating Judges ruled in July 2009 that most of this potential evidence was admissible. The Defence for Ieng Thirith has appealed this decision.

The ECCC will be the first internationalized criminal tribunal to rule on this issue. This decision will no doubt be looked upon by other internationalized tribunals, as well as by Cambodia’s own domestic courts. Therefore, it behooves the ECCC to proceed with the utmost caution when addressing this issue of first impression, one that also implicates issues of morality and evidentiary reliability. In so doing, the ECCC should carefully examine and appropriately classify each category of potential evidence before applying the appropriate international law. This step-by-step analysis is the best way of ensuring a just decision, one that not only adheres to the overall object and purpose of the Convention Against Torture (“CAT”), but also takes into active consideration the factual realities of the potential available documentation.

This brief seeks to facilitate a full evaluation of the potential evidence at issue, a task that is essential to “the proper adjudication of the case.” After examining the factual background of each category of potential evidence challenged by Ieng Thirith, it is clear that some categories may be admissible because they fall outside the scope of CAT Article 15’s exclusionary rule. Likewise, other categories should be deemed inadmissible, as the information contained therein can most likely be established as having been made as a result of torture. Nevertheless, even if the evidence at issue were found to be inadmissible, it may still be used either as “lead evidence” or as forming the basis of expert opinion testimony.

The full Amicus brief can be found online at DC-Cam's website at:
http://www.dccam.org/Tribunal/Analysis/pdf/Torture_Evidence_Amicus.pdf.