

**DC-Cam LEGAL TRAINING
THE *DUCH* CASE AND INTERNATIONAL CRIMINAL LAW**

REPORT

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Edited by Megan A. Karsh



I. Introduction

From 15 to 20 October 2010, the Documentation Center of Cambodia (DC-Cam) conducted a training course for gifted future Cambodian lawyers. Using the recent trial of former chief of infamous prison S-21, Kaing Guek Eav (alias “Duch”), as a starting point, the course provided participants a solid understanding of the applicable international and domestic criminal law.

II. The Planning Process

After Duch was convicted of crimes against humanity and other grave offenses on 26 July 2010, we at DC-Cam saw an opportunity to use the case to inform the public about legal norms. As part of our outreach initiative to help all segments of Cambodian society understand the verdict and its implications, we decided to host a training in international and domestic law for aspiring lawyers.

The first step making the training a reality involved deciding how participants would be selected. We felt that participants would get the most of the training with a small class size, high ratio of trainer to trainee and the opportunity to discuss and ask questions. After deciding on fifteen participants as the optimal number, we publicized information about the training and solicited applications.

Over thirty applicants responded to the announcement, which necessitated a further screening process. We invited applicants to interview with various DC-Cam staff members and even held a second round of interviews to pick the best candidates from the well qualified crowd. Based on their talent, diversity, interests, and attitude, we finally identified fifteen exceptional law students.

Throughout the entire selection process, we were designing the course with the help of the DC-Cam's legal advisors. The advisors relied on their vast experience in international and domestic law to identify the key concepts and laws to emphasize. We settled on structuring the training as such:

- Day one would be for immersing the participants in the background to the case through film and discussion;
- Day two would provide an overview of core international law principles, both substantive and procedural;
- Days three and four would introduce participants to the work of the prosecution and defense; and
- Day five would be for discussing the appellate process.

Once we had a general curriculum in mind, we reached out to potential speakers and guest lecturers to invite them to participate. By the end of the collaborative course development process, we were confident that we had put together a comprehensive and useful training for our selected participants.

III. The Training and Expected Outcomes

Before delving into complex legal theory, we wanted the students to understand the context for the Duch trials and the Khmer Rouge tribunal. The participants' first activity was therefore to view the film, *Behind the Wall of S-21*. The film chronicles the experiences of two S-21 victims, Bou Meng and Chum Mei, and alleged perpetrator Him Huy, former S-21 guard.

Following the film, Him Huy was on hand to answer questions and transmit a message about humanity. The students barraged the former guard with questions, such as

- Did you feel sympathy to the prisoners you led to their deaths?
- At the time you went to arrest someone, were you told what the charges against the person were?
- Was there any investigation conducted before arresting someone?
- Were cadres eventually killed because they knew the secrets of the regime?
- With all of the charges that prisoners were secret CIA agents, did any of the S-21 guards or torturers even know what the CIA was?

Even though the training had yet to cover legal material, the participants were already thinking like lawyers. Many of their questions focused on why there was no requirement that the Khmer Rouge have evidence before arresting someone and the utter lack of due process.

Continuing with the immersion in the case through film, we next screened a video of the ECCC announcing the verdict against Duch. In the discussion afterwards, participants reacted to the Trial Chamber's announcement. Their comments included:

- "I think this verdict was issued based on law and demand of the victims as well as Buddhism ... Duch is not a senior leader. If the court sentenced for life the court may face difficulty to decide on sentence against senior leaders [currently at the provisional detention]".
- "...[M]y personal concerns deal with reparations. That there is no reparation measure for civil parties, I think that this may affect Case 002 because the civil party got

nothing at the end so that they will keep Case 002 proceedings useless and not participate in it."

- "...[E]ven though the court sentenced Duch for 35 years in prison and it looks not proportionate to ordinary crime of murder, I think the sentence is quite fair because the court applied due-process rules with participation both Khmer and international. One way to another, this judgment means historic to Cambodian people in a sense that no matter how long the criminal escapes but at the end he or she is brought to justice."
- "...[T]he victims would not be happy with the verdict but the former ordinary Khmer Rouge felt better as they understood that even though they followed the order from Angkar, they were not considered as criminal as Duch. The verdict is somehow contributing into Khmer solidarity which means that the verdict can produce reconciliation among Khmer people so that they can live together harmony."
- "...the court sentenced [Duch] for such a long imprisonment like giving a chance for him to rehabilitate. If the court sentences him for life he it means that law will not leave a chance to rehabilitate at all."

The two films and related discussions consumed the entire first day of training. In order to see what the participants got out of the day, we administered a 3-page feedback form containing fifteen questions.

Overall, participants reported that they were pleased with the structure, focus and organization of the training. For example, one participant wrote in English "In my opinion, I like legal training too much because it make me improve what I have learned about the Duch verdict. It also a good chance to find out the justice for victims in Khmer Rouge." Based on the evaluations, we made minor modifications to our plans for the second day and then waited for the following morning to start again.

On day two, the participants arrived ready to learn more about what they watched and heard on day one. We started our introduction to international law in earnest with guest speaker, Anees Ahmed, Senior Assistant to International Co-Prosecutor at the ECCC. Mr. Ahmed lectured to the participants about international legal norms and law, criminal responsibility in the international sphere, consequences for those that break international criminal law and enforcement of international criminal sentences. An engaging and practiced lecturer, Mr. Ahmed had the audience's full attention throughout.

Reconvening after a short break, Mr. Ahmed concluded his presentation by discussing the critical issues of international criminal procedure (i.e. the structure and process the court must follow) and the concept of due process (providing legal safeguards to accused to ensure that convictions and sentences are fair). These were extremely important topics to cover, because the first confounds many non-lawyers or aspiring lawyers following the proceedings and the second addresses a common public sentiment that the accused are getting more legal representation and creature comforts than they deserve. All participants liked these topics and learning about them from such an experienced practitioner. One stated on his end-of-the-day feedback form that Mr. Ahmed's presentation was incredibly thought-provoking and covered territory never before discussed in his law school classes.

The next two days were designed to introduce students to what it is like to work on the two sides of a case such as Duch's. On day three, participants learned about the work of the Office of the Co-Prosecutor (OCP) from Mr. Tan Senarong, former assistant to the Cambodian Co-Prosecutor and currently Prosecutor at the Cambodian Appeal Court.

Mr. Tan gave an overview of his experience at the OCP and working on other international and national criminal cases and then delved into discussing Duch's particular case. Acknowledging that it was a complex case due to the time lapsing between the crimes and conviction, the enormous body of evidence and other evidentiary matters, he said that the

OCP looked to other prosecutorial efforts at international tribunals for guidance. In particular, he stated that the OCP looked to work at the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL).

Mr. Tan discussed the ways in which the OCP followed or diverged from the prosecutors at the aforementioned institutions. Guided by students' expressed interest and questions, he ended up focusing his talk on the more technical aspects of prosecuting cases of mass crimes. Students were extremely interested in learning about the parameters of prosecutors' work, the process of sifting through and organizing evidence, and deciding who and what crimes to charge. At the conclusion of the day, one participant wrote, "Today, I am very interested in the topic because I can know [about] the procedures of the Extraordinary Chambers... because I have never studied this topic before, so this is a new knowledge for me."

The students returned on the fourth day to learn about the other side of lawyering in a tribunal. Acknowledging that his office had the less understood and definitely less popular job than the prosecution, Mr. Prezanti from the Defense Support Section (DSS) at ECCC spent a significant amount of time discussing the importance of good defense to ensure the due process of law.

Once he had established that the defense had an equally valuable and challenging role, he delved into the special considerations of representing Duch. He used video clips from Duch's to highlight challenges that arose during Duch's trial and then discussed how the DSS met those challenges. The students were very clearly taken with his presentation, remarking that they usually focused on the prosecution and not defense when thinking of how tribunals contribute to the rule of law. At the end of the day, one participant wrote, "Today is the most special one because of a strategy in defending the accused that I think it is so difficult was presented." Another trainee wrote: "I understood clearer and clearer about why a criminal needs a lawyer to present him."

The first half of the final day was dedicated to discussing the appellate process following conviction and sentencing. This was especially pertinent in Duch's case, given the public dissatisfaction with his sentence. Anne Heindel, Legal Advisor to DC-Cam, discussed the particulars of the prosecution's appellate brief already submitted to the ECCC seeking a life sentence for Duch and the announced defense challenges. The students had an opportunity to ask questions about the appellate process and criminal sentencing in international cases.

Before concluding the training, we wanted to bring the participants back together to reflect on all they had learned over the previous five days. We thought it critical for them to look at what they learned holistically, and to draw the necessary connections between the areas highlighted by the speakers.

We divided the participants into two teams and had them give presentations that included what they learned and their responses to it. They did very well overall and evidenced that they had paid close attention throughout the week.

In their final training evaluation, the students were uniformly positive about the experience. They praised the speakers and the overall structure, highlighted the areas that had been most engaging and informative, and expressed enthusiasm about communicating what they had learned to their classmates at their respective law schools. Particular comments included:

- "After going through the training I understood a lot in regard to international and national laws and Duch's case. So, I have now clear foundation in order to convey the message to others."

- "After going through the training I gained a lot of knowledge in regard to Duch's case. So, I am confident enough to convey message in question to ordinary people."
- "I am sure I can convey message in this regard to others."
- "Today my neighbor as well as my brother asked me a lot about Duch's case. I gave them documents I got from DC-Cam to read. They like the documents so much."

IV. Conclusion

Given DC-Cam's goals for the program- to provide top-notch legal training to future Cambodian lawyers and to provide them with information about the Duch case that they would take back to their communities- and the feedback we received from participants, we feel that the training was a resounding success. It will provide a model for any future legal trainings we do related to the work of the ECCC.

Appendix

DC-CAM LEGAL TRAINING THE *DUCH* CASE AND INTERNATIONAL CRIMINAL LAW 15-20 OCTOBER 2010

The Documentation Center of Cambodia (DC-Cam) will conduct a one-week legal training starting on Friday, 15 October 2010, and ending on Wednesday, 20 October. The workshop will focus on Extraordinary Chambers in the Courts of Cambodia (ECCC) Case 001 against Kaing Guek Eav *alias* Duch, the former chief of the S-21 prison center. Fifteen Cambodian law students were selected to participate from among 33 applicants.

Officials from Office of Co-Prosecutors and the Defense Support Section of UNAKRT/ECCC, as well as a prosecutor from the Cambodian Appeals Court, will explain principles of international criminal law relevant to the *Duch* case, such as the Joint Criminal Enterprise mode of liability and defense rights, as well as defense and prosecutorial strategies. Participants will use materials from the ECCC and DC-Cam, and information available on the Cambodia Tribunal Monitor website (<http://www.cambodiatribunal.org>).

The training is being conducted in response to the 26 July ECCC Trial Chamber judgment finding Duch guilty of crimes against humanity and war crimes. The court sentenced Duch to 35 years in prison, but reduced the sentence by five years as a remedy for Duch's illegal detention by the Cambodian military for several years before his trial began. Since Duch has already spent 11 years in detention, which counts toward his period of incarceration, he faces only 19 years more in prison.

The details of the *Duch* case are beyond the ability of many ordinary Cambodian people, including many victims of the Khmer Rouge regime, to understand. Hearing the judgment alone is inadequate; they need a clearer and more thorough explanation from people with sufficient legal education to grasp the nuances of the case. Law students can help fill this need. If victims better understand the process used to arrive at the *Duch* verdict, they will benefit more from the ECCC proceedings and may increase their trust in the court as it approaches case 002. The workshop will also promote the development of the rule of law in Cambodia, bridging the gap between the ECCC and the domestic legal system noted by many Cambodian people, civil society organizations, and donor countries.

The training is conducted in cooperation with ECCC and Cambodian Appeals Court with support from OSI and the Cambodia Tribunal Monitor, and core support from USAID and Sweden.

For more information, please contact Mr. Dara Vanthan at 012 846 526 or truthpdara@dccam.org.

Executive Program

Day 1: Friday, 15 October 2010: **Introduction**

Dara P. Vanthan, LL.M. from Notre Dame University Law School, U.S.A

- 8:00-8:15 a.m. Register
 - 8:15-8:30 a.m. Introduction
- Content of training sessions

Prospective audience and presentation styles

- 8:30-9:20 a.m. Film screening and Him Huy talk.
Introduce participants to the facts and context of Duch's case by screening the film "Behind the Walls of S-21". Following the film screening, former S-21 guard Him Huy will talk to participants about his experiences and view of Duch's verdict.
- 9:20-9:30 a.m. *Tea Break*
- 9:30-11:00 a.m. Duch's verdict film screening followed by a question and answer/discussion session
- 11:00-11:30 a.m. A DC-Cam staff member with significant experience in explaining legal concepts to ordinary Cambodians will present strategies for ensuring audience comprehension and retention of information about Duch's case.

Day 2: Saturday, 16 October 2010: **International Criminal Law**

Anees Ahmed, Assistant to International Co-Prosecutor

- 8:00-9:00 a.m. Fundamentals of International Criminal Law:
 - a. The Concept of International Criminal Law: What is ICL?
 - b. The Concept of International Crimes: Which crimes are international?
- 9:00-10:00 a.m. Fundamentals of International Criminal Responsibility:
 - a. The Principle of Individual Criminal Responsibility including modes of liability
 - b. The Principle of Legality of Crimes (*nullum crimen sine lege*)
 - c. The Principle of Legality of Penalties (*nulla poena sine lege*)
- 10:00-10:20 a.m. *Tea Break*
- 10:20-11:20 a.m. Fundamentals of International Criminal Procedure:
 - a. The Concept of Procedural Due Process: The importance of a fair trial
 - b. The Procedural Rights of Defendants: What constitutes a fair trial?

Day 3: Monday, 18 October 2010: **The Prosecution of Duch**

Tan Senarong, Former Assistant to Cambodian Co-Prosecutor of ECCC and Prosecutor at Cambodian Appellate Court

- 1:30-2:10 a.m. Prosecutorial strategy Duch's case
- 2:10-2:55 a.m. Conduct of Investigations by the Prosecutor
- 2:55-3:10 a.m. *Tea Break*
- 3:10-3:45 a.m. Stage of proceedings
- 3:45-4:30 a.m. The doctrine of Joint Criminal Enterprise and its application to Duch's case

Day 4: Tuesday, 19 October 2010: **Duch's Defense**

Richard Rogers, Head of the Defense Support Section of ECCC

- 8:00-9:00 a.m. Defense strategy in Duch's case
- 9:00-9:45 a.m. Violations of defendant's rights and appropriate remedies
- 9:45-10:00 a.m. *Tea Break*
- 10:00-11:20 a.m. Doctrines of International Criminal Law relevant to Duch's case
 - Superior orders and duress
 - Mistake of Fact
 - Mistake of Law

Day 5: Wednesday, 20 October 2010: **Wrap Up**
Dara P. Vanthan & Anne Heindel

- 8:00-9:00 a.m. The prospect of appeal in Duch's case
- 9:00-10:00 a.m. Presentations
Group 1: Summary of training through presentations by trainees
Group 2: Summary of Duch's case for explaining to ordinary people
- 10:00-10:15 a.m. Tea Break
- 10:15-10:45 a.m. Self-evaluation and feedback on presentations from course instructors, trainees and DC-Cam staff and Conclusion.

DC-Cam Legal Training: The Duch Case and International Criminal Law
Attendant List
15-20 October 2010

No.	Name	Sex	DOB	POB	Class	School	Contact	Signature
1	CHHUN Monyoudum	M	15 Mar. 90	Kandal	3 rd year	RULE	017-434939	
2	KIM Maryan	F	10 Dec. 88	P. Penh	4 th year	RULE	092-962505	
3	LIM Lyhong	M	5 Nov. 90	P. Penh	3 rd year	RULE	011-388072	
4	SREANG Sim	F	14 Jun. 90	Pursat	3 rd year	RULE	016-711632	
5	KEANG Sonadin	M	4 Apr. 91	Kandal	2 nd year	RULE	097-7759766	
6	EAN Chhorida	F	23 Dec. 91	P. Vihear	3 rd year	RULE	011-901344	
7	ING Leng	M	20 Apr. 90	Kampot	3 rd year	RULE	089-604684	
8	PHE Somealea	F	1 Jun. 91	Svay Rieng	2 nd year	RULE	077-903311	
9	LIM Cheytoath	M	31 Oct. 88	P. Penh	4 th year	RULE	092-292523	
10	CHHUN Malita	F	18 Jun. 92	P. Penh	2 nd year	RULE	017-560709	
11	MOR Socheat	M	12 Jun. 88	Takeo	3 rd year	RULE	092-596965	
12	KHAN Rothtanankvattey	F	27 Jan. 92	P. Penh	2 nd year	RULE	098-238808	
13	CHAN Bronh	M	8 Jan. 86	Takeo	4 th year	RULE	077-510410	
14	TOK Thavsothaly	M	28 Oct. 91	P. Penh	3 rd year	RULE	012-202918	
15	DY Socheata	F	10 Jan. 87	Prey Veng	3 rd year	RULE	077-774495	

Materials for Students for Legal Training

1. History textbook, *A History of Democratic Kampuchea (1975-1979)*
2. Genocide booklet, *GENOCIDE: WHO ARE THE SENIOR KHMER ROUGE LEADERS TO BE TRIED? The Importance of Case 002*
3. Duch booklet, *THE DUCH VERDICT: KHMER ROUGE TRIBUNAL CASE 001, Is Justice Being Served for the 14,000 Prisoners at S-21 (Toul Sleng prison)?*
4. Summary of Verdict booklet of ECCC
5. Searching for the Truth magazine

6. CTM guided booklet

COURSE EVALUATION ការវាយតម្លៃវគ្គហ្វឹកហ្វឺន

15-20 October 2010

I. In the course evaluation form, please answer the questions below based on the following rating: នៅក្នុងទម្រង់វាយតម្លៃវគ្គហ្វឹកហ្វឺន សូមឆ្លើយនឹងសំណួរដូចខាងក្រោមដោយផ្អែកលើកិត្យានុវត្តិ :
rating:

1. = I strongly disagree ខ្ញុំមិនយល់ស្របដាច់ខាត
2. = I disagree ខ្ញុំមិនយល់ស្រប
3. = I have no opinion about this ខ្ញុំមិនមានយោបល់អំពីបញ្ហានេះទេ
4. = I agree ខ្ញុំយល់ស្រប
5. = I strongly agree ខ្ញុំយល់ស្របទាំងស្រុង

Use the space provided after each question to make suggestions or to provide comments to your response. សូមប្រើបន្ទាត់ដែលទុកជូននេះសម្រាប់សំណួរនីមួយៗ ដើម្បីលើកសំណើ ឬផ្តល់យោបល់ចំពោះ

ចម្លើយរបស់លោកអ្នក ។

1. I like the topics, which were presented during the training course (introduction, fundamental of international criminal law, responsibility and procedure, the prosecution of Duch, Duch's defense and appeal.) ខ្ញុំចូលចិត្តប្រធានបទដែលបានបង្ហាញក្នុងអំឡុងពេលហ្វឹកហ្វឺន (សេចក្តីផ្តើម, មូលដ្ឋានគ្រឹះនៃច្បាប់ព្រហ្មទណ្ឌអន្តរជាតិ, ការទទួលខុសត្រូវ និងនីតិវិធី, ការជំនុំជម្រះក្តី ខូច, ការការពារក្តីខូច និងបណ្តឹងឧទ្ធរណ៍)

1 2 3 4 5

Comments យោបល់: _____

2. I like the way the course was organised. ខ្ញុំចូលចិត្តរបៀបនៃការរៀបចំវគ្គហ្វឹកហ្វឺន ។

1 2 3 4 5

Comments យោបល់: _____

3. I like the material, which was provided during the training course. ខ្ញុំចូលចិត្តឯកសារដែលបានថែកជូន ក្នុងអំឡុងពេលហ្វឹកហ្វឺន ។

1 2 3 4 5

Comments យោបល់: _____

4. I have now more knowledge and/or a better understanding of the topics, which were presented during the training course, than I did before the beginning of the training. ខ្ញុំមានចំណេះដឹងច្រើនជាងមុន ឬយល់ដឹងលើប្រធានទាំងនេះប្រសើរជាងមុន ដែលបង្ហាត់បង្ហាញក្នុងអំឡុងពេលហ្វឹកហ្វឺន បើប្រៀបធៀបនឹង ពេលមុនខ្ញុំចាប់ផ្តើមវគ្គហ្វឹកហ្វឺននេះ ។

1 2 3 4 5

Comments យោបល់: _____

5. I learnt a lot from the lectures, which were presented by the guest lecturers. ខ្ញុំរៀនសូត្របន្ថែមបាន ច្រើនពីការបង្ហាត់បង្ហាញដោយភ្នាក់ងារភ្នាក់ងារ ។

1 2 3 4 5

Comments យោបល់: _____

6. I think the guest lecturers and legal training team were well prepared each day for the course. ខ្ញុំគិត ថាភ្នាក់ងារភ្នាក់ងារ និងក្រុមការណ៍ហ្វឹកហ្វឺនបានរៀបចំល្អជារៀងរាល់ថ្ងៃ ។

1 2 3 4 5

Comments យោបល់: _____

7. I am prepared each day for the course. ខ្ញុំបានរៀបចំខ្លួនសម្រាប់វគ្គហ្វឹកហ្វឺនជារៀងរាល់ថ្ងៃ ។

1 2 3 4 5

Comments យោបល់: _____

8. I think the guest lecturers and legal training team were helpful and open to student suggestions. ខ្ញុំ
គិតថា វាគ្មានកិត្តិយស និងក្រុមការងារហ្វឹកហ្វឺនអាចជួយបានច្រើន និងបើកទូលាយចំពោះការស្នើរបស់និស្សិត ។

1 2 3 4 5

Comments យោបល់: _____

9. I am confident that I can convey the message about Duch's trial properly to other people. ខ្ញុំជឿជាក់
ថាខ្ញុំអាចពន្យល់ពីការកាត់ទោស ខុច យ៉ាងត្រឹមត្រូវជូនអ្នកដទៃទៀតបាន ។

1 2 3 4 5

Comments យោបល់: _____

II. Please use the space provided to answer the following questions. សូមប្រើចន្លោះដែលទុកឲ្យនេះ
ឆ្លើយនឹងសំណួរដូចខាងក្រោម ។

1. What did you like the most about this legal training? តើលោកអ្នកចូលចិត្តអ្វីជាងគេបំផុតក្នុងវគ្គហ្វឹកហ្វឺន
នេះ ?

2. What did you like the least about this legal training? តើលោកអ្នកចូលចិត្តអ្វីបន្ទាប់ទៀតក្នុងវគ្គហ្វឹកហ្វឺន
នេះ ?

3. What suggestions could you make to help improve the course? តើលោកអ្នកស្នើសុំដើម្បីធ្វើវគ្គហ្វឹកហ្វឺន កាន់តែល្អជាងនេះ?

4. If you have had difficulty understanding the lectures, workshops or the material because of the language difference, what could be done to help you to better follow the work? ប្រសិនបើលោកអ្នក ពិបាកយល់ការបង្ហាត់បង្ហាញ វគ្គហ្វឹកហ្វឺន ឬឯកសារផ្សេងៗ ដោយសារតែភាសា តើត្រូវធ្វើយ៉ាងដូចម្តេចដើម្បី ជួយលោកអ្នកឲ្យតាមដានកិច្ចការនេះកាន់តែប្រសើរឡើង?

5. Did this legal training improve your overall understanding of what is Duch's case and international criminal law? តើវគ្គហ្វឹកហ្វឺនច្បាប់នេះធ្វើឲ្យការយល់ដឹងជាទូទៅលើសំណុំរឿង ខុច និងច្បាប់ព្រហ្មទណ្ឌអន្តរជាតិ របស់លោកអ្នកមានលក្ខណៈរីកចំរើនដែរឬទេ?

6. Are there any other suggestions or comments you would like to make about the training course, the guest lecturers and legal training team or the DC-Cam? តើមានសំណូមពរ ឬយោបល់ដែលលោកអ្នកចង់ លើកឡើង ឬមានចំពោះវគ្គហ្វឹកហ្វឺន វាគ្មិនភិក្ខិយស និងក្រុមការងារហ្វឹកហ្វឺន ឬមជ្ឈមណ្ឌលឯកសារកម្ពុជាដែរ ឬទេ?
