

# មជ្ឈមណ្ឌលឯកសារកម្ពុជា

## Genocide Education in Cambodia

### The Teaching of “A History of Democratic Kampuchea (1975-1979)”

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## “Why Education matters in the Legal Process”

Andrew Cayley, International Co-Prosecutor of the Khmer Rouge Tribunal

The legal process can seem complex to non-lawyers. It is in fact a fundamental part of a well-functioning society because its purpose is to provide protection for the people who form society. The legal process is also fragile; it is dependent upon the people to make it work properly. Without the people's active engagement in it, the legal process cannot do its job effectively. This is why education matters in the legal process. People need to understand the legal process so they have the ability to engage with it and help strengthen it.

### How the legal process protects people

The legal process incorporates two important elements: 1. “rule of law” and 2. “due process”. What do these two legal terms mean:

1. “Rule of law” means simply that the law is supreme in society and rules everyone in their conduct in the same way. This means that the government, wealthy people, poor people, the good and the bad will all be treated equally in the legal process. There must be no special treatment for anyone before the law. Because the rule of law requires that everyone is treated equally by the law it means that there is certainty in the law. So people know what they can and cannot do and what the consequences will be if they break the law. People must also know what rights they have under the law. The law is there, after all, to bring order to social, commercial, and family relations and to protect the people. The government is subject to the law made in parliament and the manner in which law is created or changed in parliament is also subject to legal regulation. The way in which the law is applied or interpreted in the courts is also regulated by the law. Because of this those who apply the law must do so in accordance with the law. Judges cannot justifiably cancel or suspend the rules that govern their actions. The power that comes from upholding the law must only ever be used in ways allowed by the law. Corruption is hostile to rule of law. The rules about how the law is to be applied, the rules which govern legal process, are called “due process”.
2. “Due process” is the set of rules which govern the way in which law is applied in any case. How judges apply the law. Legal process must be applied in a fair way, and in accordance with the rule of law, in the same way to everyone.

Due process requires fair trials, and gives people the right to challenge the legality of a legal decision made against them, for example they can challenge their detention in a criminal prosecution.

The fundamentals of “due process” are:

- a. Right to an unbiased tribunal. Courts must be independent, especially from the government, and apply the law without outside interference;
- b. Right to a trial by jury (in certain countries that have trial by jury such as the United States, Canada and the United Kingdom);
- c. Right to have “notice”. That means, the right to be told of a proposed decisions and the reasons for why the decision is being made;
- d. Right to have the opportunity to present reasons why the proposed decision should not be made, that is the right to tell your side of the story. This includes the right to present evidence, including the right to call witnesses;
- e. Right to know opposing evidence, that is the evidence put against you;
- f. Right to cross-examine or question adverse witnesses, this means the right to challenge the truthfulness of those people who give evidence against you;
- g. Right to have a decision made by the tribunal or Court based only on the evidence presented to the tribunal or Court. Requirement that the tribunal or Court prepare a record of the evidence presented;
- h. Right to be represented by a lawyer;
- i. Requirement that the tribunal or Court prepare written findings of fact and reasons for its decision.

The legal process has a great capacity to affect people’s lives in significant ways. This is why due process must be adhered to in order to ensure that the legal process is being applied in a fair and consistent way.

It is easy to think to yourself, why should people who have done terrible things be given all these opportunities to defend themselves? Why should the legal process give them a chance to explain themselves? What they have done cannot be excused. But it is important to remember that everyone must be given the same due process for the law to be fair and applicable in equal measure to everyone. If after a fair trial a person is found guilty then the guilty person, the courts and the people can be reassured that the guilty verdict is legitimate and right.

If the legal process is fair it has legitimacy. People believe in it. If it is unfair the people will not have any faith in it. The people will not engage with the legal process and the legal process becomes weak. A weak legal process that is not used by the people does not protect the people.

### **How education strengthens the legal process**

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As stated on DC Cam's website, "We must share the lessons of the past in order to build a more promising future. Teaching the principles of law and human rights will allow us to work toward a world without genocide."

Education will help the people understand how the legal system works. They will then be able to understand the legal process and why rules in the legal process are the way that they are. Understanding the legal process will mean that it does not seem so complex or foreign and education will open the legal process to greater public scrutiny.

No one can seek the protection of the law or the protection of the legal process without knowing what those protections are.

It is important that people understand their rights and how the legal process is supposed to work in order for the people to hold the legal process accountable. If the people have been educated on what are the proper parts of the legal process they know how to demand rule of law and due process. If they know what those concepts mean in practical terms, then they will be able to recognize shortcomings in the legal process. When the people are able to recognize shortcomings in the legal process they are able to stand up and say, no that is not good enough for our society. They can demand more from the legal process. If the people are educated they will be in a position to hold the legal process accountable. If the people are not educated there is no accountability because they will not know what they should be expecting from the legal process.

A legal process which follows rule of law and due process is a legal process which can be supported by the people because it protects the people. The more support the legal process has the more it will be used by the people. The more the legal process is used by the people the stronger the legal process will become. A strong legal process protects its people and provides order and stability to society. It is fair. A legal process that is fair will have legitimacy and it will be respected by the people.

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