



Interactive Workshop: “Defence Strategies & Civil Party Representation”

Part of the 2013 Legal Dialogues Series

Organised by the Bar Association of the Kingdom of Cambodia in cooperation with the Office of the United Nations High Commissioner for Human Rights in Cambodia

**Tuesday, 12 November 2013 and Wednesday, 13 November 2013
at the InterContinental Phnom Penh, 296 Mao Tse Tung Boulevard, Phnom Penh**

Workshop Materials

Agenda	1
Morning Session: Civil Party Representation – Overview of Interactive Activity	3
Afternoon Session: Defence Strategies – Overview of Interactive Activity	6



Interactive Workshops: “Defence Strategies & Civil Party Representation”
Part of the 2013 Legal Dialogues Series

Organised by the Bar Association of the Kingdom of Cambodia in cooperation with
the Office of the United Nations High Commissioner for Human Rights in Cambodia

Tuesday, 12 November 2013 and Wednesday, 13 November 2013
at the InterContinental Phnom Penh, 296 Mao Tse Tung Boulevard, Phnom Penh

Agenda

8.15 – 8.45am **Participants Register**

Morning Session: Civil Party Representation

Experts: Mr. Pich Ang, National Civil Party Lead Co-Lawyer, ECCC and
Ms. Elisabeth Simonneau-Fort, International Civil Party Lead Co-Lawyer, ECCC

9.00 – 9.30am **Opening Remarks and Activity Overview**

9.30 – 10.45am **Interactive Activity**

10.45 – 11.00am **Coffee**

11.00 – 11.45am **Feedback from Groups and Expert Feedback**

11.45 – 12.00pm **Open Question and Answer Session**

12.00 – 1.30pm **Lunch**

Afternoon Session: Defence Strategies

Expert: Mr. Victor Koppe, International Co-Counsel for Nuon Chea, ECCC

1.30 – 2.00pm **Opening Remarks and Activity Overview**

2.00 – 3.15pm **Interactive Activity**

3.15 – 3.30pm	Coffee
3.30 – 3.50pm	Feedback from Expert on Interactive Activity
3.50 – 4.30pm	Open Question and Answer Session
4.30pm	Evaluation
4.45pm	Certificate Presentation Certificates presented by Mr. Koy Neam, Bar Council Member and Acting Bar President, Bar Association of the Kingdom of Cambodia
5.00pm	END

Note: Certificates will be distributed at the conclusion of this event. Participants are required to attend the full morning and afternoon sessions of this workshop in order to receive their certificate.

Morning Session: Civil Party Representation – Overview of Interactive Activity

Developed by the ECCC Civil Party Lead Co-Lawyers

Working With Civil Party Clients

The case study is a simulation of the first consultation that a lawyer will have with their client, a civil party. The questions on which the participants to the workshop will work on are focus firstly on the ethics and the conduct of lawyers, and secondly on procedural and substantive questions of criminal law, which should be discussed with the client.

Case Study

A woman has scheduled an appointment for her and her 16 year old daughter to meet with you. The daughter indicates that she was gang raped 3 weeks earlier in a Phnom Penh hotel.

The daughter reports that a group of seven young men beat her, raped her and stole her phone and \$100 from her. She knows the identity of 3 of the perpetrators, but she is only willing to divulge the names of 2 of the perpetrators. Some of the perpetrators are over 18 years old, while others are under the age of 18 years old.

The daughter did not see a doctor immediately following the rapes, but she still has bruises on her body from the beating. She also believes that there may be witnesses who saw these young men go inside the hotel with her.

Questions

A. Client Counseling and Professional Ethics

A mother and a daughter come to see you together.

1. Do you think that you should talk with the daughter separately? Why?
2. Is there an issue of confidentiality?
3. If the mother asks you to tell her afterwards what her daughter said to you, are you bound by professional secrecy? If yes why? If no, why?
4. If the girl asks you not to tell certain things to her mother, are you sworn to secrecy? Why or why not?
5. How would you protect the confidentiality of the daughter, considering that her mother has brought her in for the consultation?
6. How would you get the daughter to tell you her story?

In the initial interview with your client, she told you that she was raped at knifepoint. However, in a later interview, she tells you that there was no knife, but she was threatened by the young men.

7. How does this change your view of the case?
8. Would you do anything differently?
9. Why might she have changed her story?
10. What do you make of this contradiction?
11. Why do you think she said it (will make it more the case more serious?)
12. Do you confront her with this incoherence?
13. What conclusions do you draw?

The daughter seems very emotionally distraught during your interview. She describes a number of problems that have arisen in her relationships and among her family and community since the rape.

14. What advice or resources could you give her to help her deal with these problems?
15. Do you have to keep your distance?
16. What is your role?

The girl asks you not to reveal the name of one of the attackers she knows.

17. How do you handle this request? Do you have an obligation to keep the secret? Or is it the opposite?
18. Would you divulge the identity of this perpetrator to the court? Why or why not?

Preparation of the Case

19. How do you plan to prepare the case with the victim? Appointments, documents, etc.?
20. If you seem to have difficulties with the case, do you approach the victim and her mother?
21. What difficulties might you have, for example?
22. How would you explain the legal process and procedures to her?

B. Procedure and Substantive Legal Issues

Procedure

23. How do you explain the conduct of the proceedings: complaint, judge, the role of the prosecutor...
24. What is the role of the lawyer of the victim during the investigation? (Robbery, violence, rape)
25. What requests for investigative action would you make to the investigating judge?
26. If minors and majors are put under investigation, what procedure will be followed?

Evidence

27. What evidence do you have to prove that crime(s) took place?
28. What evidence can you put forward in support of a charge of rape?
29. What do you do to give evidence: witness names, names of authors, requests for certificates: medical, survey the scene.
30. What problems do you see with respect to evidence: no immediate findings of rape, no eyewitnesses.

Legal Characterisation

31. What legal qualifications would you propose based on the evidence available?
32. What qualifications might be dismissed based on a lack of evidence?
33. What consequences the absence of evidence may have on the characterization?

Reparations, Pleading

34. The issue of reparations/damages, how do you envisage this?
35. How do you plan to plead?
36. What issues do you want addressed in your pleading? What seems to you essential?

Afternoon Session: Defence Strategies – Overview of Interactive Activity

A Case for a Criminal Defence Lawyer

Developed by Victor Koppe, International Co-Counsel for Nuon Chea, ECCC

Case Study

A week ago you had a meeting with a woman in your office. She told you that her 17 year old son Visal was arrested by the police in Phnom Penh 3 months earlier. Visal is accused of having raped in Phnom Penh a 16 year old girl together with 6 other persons. He is also accused of having stolen her phone and USD 100.

The mother of Visal gave you a copy of the case file which she had received from the previous lawyer. In the file you read that the investigating judge has issued a closing order and that the trial will start in two weeks.

In the case file you also see a confession of Visal that he raped the girl and stole her phone and money.

In the case file there is a statement of another co-accused, Arun, who denies having raped the girl. Arun, who has also been arrested, has stated to the police that he hasn't done anything, but that he has heard on the schoolyard that his nephew, who is a student and the son of an important government official, might have been involved in this rape. This nephew, Phalla, is presently not in Cambodia.

In her witness statement, the girl testifies that she was raped by Visal whom she knows from school and six others including Arun who took her phone and money. The rape took place on a Friday night after a party in a club in Phnom Penh.

There is no medical report in the case file and there are no witnesses to the rape.

At the end of the meeting in your office the mother told you that the police has severely beaten up Visal during the interrogation. His jaw was broken and he couldn't walk for several weeks. Because of this maltreatment Visal has confessed to the police. But Visal has told his mother during her visits in prison that he is innocent and that he had nothing to do with the rape of the girl. He only knows her from school and has told his mother that he had a crush on her. The mother also told you that she thinks the girl might be scared to accuse a student called Phalla who seems to have an important father.

The mother doesn't have much money, but she pays you USD 1000 to do the case.

This morning you visited Visal in prison and he confirms the story of his mother. Visal confirms that he was beaten by the police before his confession and that he really is innocent.

Afterwards you drive back to your office and think in your car about what you should do in this case. You have been thinking about a strategy for the trial already all week. In the car you make a few decisions as to what you will do during the trial.

But before reaching the office you decide to have a coffee at Brown cafe on street 214. While you drink your coffee and continue thinking about the case, an old school friend walks up to you and says hello. You are very happy to see him again. He is now an important government official in Phnom Penh. He asks you if he can buy you another coffee, because he needs your advice. He starts telling you the following:

His son Phalla, who is currently in Vietnam, is in trouble. The police had tried to arrest him 2 months ago, but he wasn't home. The police has found in his house 150 gram of heroin and a gun. After Phalla heard about the search in his house, he escaped to Vietnam.

In addition, your friend the government official tells you that he has also heard a rumour from a friend in the police department that his son Phalla might have been involved in a rape of some girl and that this was actually the reason why the police tried to arrest him in the first place.

His son has important exams next week at the Royal University of Law and Economics and needs to be back in Phnom Penh. He asks you if you can help his son and he offers you USD 10,000, to do his case.

Questions

1. Before having a coffee in Brown you have decided on a strategy to defend Visal. What strategy have you decided to pursue in respect of challenging the evidence during the trial? Specifically address matters of the forced confession of your client, the reliability of the girl, the statement of Arun, the absence of medical evidence etc. Also decide whether your client should answer questions from the judge and prosecutor during the trial.
2. What do you tell your old friend in Brown café after he told you his story about his son Phalla?