

# THE RIGHT OF A PUBLIC HEARING



September 2022

### **About Cambodian Center for Human Rights**

The Cambodian Center for Human Rights (“CCHR”) is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – in particular civil and political rights – in the Kingdom of Cambodia (“Cambodia”).

CCHR’s vision is of a peaceful Cambodia in which all people can enjoy the fundamental human rights to which they are entitled, all are subject to the rule of law without impunity, all are treated equally without discrimination, all are empowered to participate fully in the democratic process, and all can share in the benefits of Cambodia’s sustainable economic development. CCHR’s logo shows a white bird flying out of a circle of blue sky – this symbolizes Cambodia’s bid for freedom.

CCHR’s Cambodian Human Rights Portal, accessible at <http://www.sithi.org>, is the 2011 winner of the Information Society Innovation Fund Award in the category of Rights and Freedoms and the 2013 winner of the Communication for Social Change Award awarded by the Centre for Communication and Social Change at the University of Queensland in Brisbane, Australia.

For more information about CCHR, please visit [www.cchrcambodia.org](http://www.cchrcambodia.org).

### **About the Fair Trial Rights Project**

The Module on the Right of a Public Hearing is part of a series of modules on fair trial rights produced by CCHR’s Fair Trial Rights Project (“the FTR Project”). The FTR Project is the first – and only one – of its kind in Cambodia, uniquely and innovatively working to promote and protect fair trial rights in practice. It overall aims to increase the impartiality and independence of Cambodia’s judiciary by supporting the right to a fair trial in Cambodia’s courts. In pursuit of this goal, the FTR project has two specific objectives: to socialize the concept of fair trial rights among the public by raising its awareness of fair trial rights and to increase compliance with fair trial standards within the judiciary through trial monitoring.

### **Acknowledgments**

CCHR would like to express its sincere gratitude to Diakonia and Swedish donors for their generous contribution, which has made this module possible. The contents are the sole responsibility of CCHR and do not necessarily reflect the views of Diakonia and Swedish donors.

### **Queries and Feedback**

Should you have any questions or require any further information about this module, please contact CCHR at:

Address: #798, Street 99, Boeung Trabek, Khan Chamkarmon, Phnom Penh, Cambodia

Tel: +855 (0) 23 72 69 01

Web: [www.cchrcambodia.org](http://www.cchrcambodia.org)



## Contents

1. Definition.....	1
2. Legal Framework.....	1
2.1 <i>International Law</i> .....	1
2.2 <i>Cambodian Law</i> .....	2
3. Importance .....	2
4. Limitations.....	3

# **The Right of a Public Hearing**

## 1. Definition



Everyone has the right to have their guilt or innocence determined in a **public hearing**, except in certain exceptional circumstances. This means that trials must in principle be conducted publicly and orally to ensure the transparency of the proceedings.<sup>1</sup>

The right to a public hearing applies to **all trials in criminal matters** or related to a lawsuit. However, it does not necessarily apply to all appeal proceedings or to pre-trial decisions made by prosecutors and other public authorities.<sup>2</sup>

For the **right to a public hearing to be upheld**, trials should be open to the public - including the members of the media - and conducted orally. The public must also be informed of the venue and date of the trial and should be provided with adequate facilities to ensure their attendance within reasonable limits.<sup>3</sup>



In the exceptional circumstances in which the public is excluded from a trial, the judgement - including essential findings, evidence and legal reasoning - must be made public,<sup>4</sup> except in specific cases (See Limitations section) to preserve the accused's **right to a public judgment** (See module on the right to a public judgment for more details).

## 2. Legal Framework



### 2.1 International Law

The **right to a public hearing** is expressly protected by the **International Covenant on Civil and Political Rights ("ICCPR")**, which is directly applicable in Cambodian law through Article 31 of the Cambodian Constitution.



- **Article 14(1) of the ICCPR:** *"Everyone is entitled to a "fair and public hearing" [...]. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. [...]."*

<sup>1</sup> UN Human Rights Committee ("UNHRC"), General Comment No.32 - - Article 14: Right to equality before courts and tribunals and to a fair trial", (CPR/C/GC/32, 23 August 2007), para. 28, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F32&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F32&Lang=en) (UNHRC, General Comment No.32).

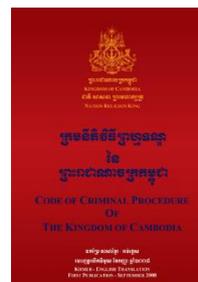
<sup>2</sup> Ibid., para.28.

<sup>3</sup> Ibid., para.28.

<sup>4</sup> Ibid., para.29.

## 2.2 Cambodian Law

The **Code of Criminal Procedure of the Kingdom of Cambodia** (“CCPC”) and the **Law on the Organization of the Court** (“LOC”) also guarantee the right to a public hearing.



- **Article 316 of the CCPC:** “*Trial hearings shall be conducted in public.*”
- **Article 7 of the LOC:** “*In all cases, the court shall announce the judgment during a public session.*”

## 3. Importance



The right to a public hearing is fundamental to ensuring the **transparency** of proceedings and the **accountability** of those delivering justice. It is an essential **safeguard for the interests** of both the **individual and** society as a whole.<sup>5</sup>



For the parties involved in a trial, including the accused, public scrutiny provides a **check** against arbitrary decision-making, abuses of power, procedural violations (including inequality in the treatment of parties), and the interference of and influence from external parties.<sup>6</sup>

For the public, including the media, public hearings give them the ability to **monitor** and **understand** how justice is both delivered and how decisions are reached within the judicial system.<sup>7</sup> The publicity of hearing also engenders **confidence** in the ability of the State to deliver justice when they can see that the legal system is operating in accordance with laws and ethical principles.<sup>8</sup>



Preventing the public from being able to monitor justice is a threat to the principle of the rule of law. Denying the right to a public hearing allows the space for corruption and impunity to prevail, and undermines the accused’s right to a fair trial as it exposes them to wrongful conviction and unfair sentencing.

<sup>5</sup> Ibid., para.28.

<sup>6</sup> CCHR, FTR and trial monitoring handbook, (February 2012) page 22, <https://sithi.org/tmp/publication/view/2012-02-13-fair-trial-rights-and-trial-monitoring-handbook> (CCHR’s FTR Handbook).

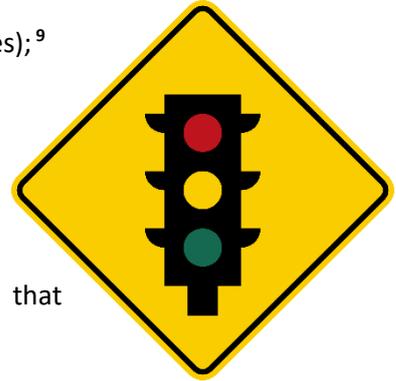
<sup>7</sup> Amnesty International, ‘Fair Trial Manual, Second Edition’ (April 2014), page 121, <https://www.amnesty.org/en/documents/pol30/002/2014/en/> (Amnesty International’s Fair Trial Manual).

<sup>8</sup> CCHR’s FTR Handbook, page 22.

#### 4. Limitations

The law permits restrictions on the right to a public hearing in a number of specific and narrowly defined circumstances. According to Article 14 (1) of the ICCPR, the right to a public hearing can be restricted if the following are threatened:

- Morals (for example, if the case involves sexual offences);<sup>9</sup>
- Public order;
- National security in a democratic society;
- When the interest of the private lives of the parties so requires (for example protecting the identity of victims of sexual violence);<sup>10</sup> or
- In special circumstances, when the court believes that publicity would jeopardize the interest of justice.



---

<sup>9</sup> Amnesty International's Fair Trial Manual, page 123.

<sup>10</sup> Ibid.