

RIGHT TO A PUBLIC JUDGEMENT AND REASONED JUDGEMENT



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.

About the Fair Trial Rights Project

The Module on the Right to a Public Judgment and the Right to a Reasoned Judgment 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



Contents

1. Definitions	1
1.1. The right to a public judgment	1
1.2. The right to a reasoned judgment	1
2. Legal framework	2
2.1. International Law	2
2.2. Cambodian Law	2
3. Importance	3
4. Limitations	4

**The Right to a Public Judgment
&
The Right to Reasoned
Judgment**

1. Definitions

1.1. The right to a public judgment

The right to a public judgment means that judgments rendered in civil and criminal proceedings must be made public. This right is linked to the accused's right to a public hearing, which both aim to ensure public and open administration of justice.¹



This right is also applicable when trials are held in closed hearings. Even when the public is excluded from a trial, **the courts have an obligation to make their judgment public**, including the essential findings, evidence, and legal reasoning.²



A judgment is considered public when it is pronounced orally by the court in a public session **or provided in writing to the parties and made available to the public**, including through court registries or other avenues such as websites.³



If the accused does not speak the language used by the court, the court must ensure that the judgment is communicated to them **in a language they understand and ideally translated into such a language**, in compliance with the accused's right to an interpreter and to translation.⁴



1.2. The right to a reasoned judgment

The right to a reasoned judgment is inherent to the right to a **fair trial right**, and is included in the **right to a public judgment**.⁵

This right means that a criminal judgment rendered against an individual must **explain why and how the verdict has been reached and why the person was found guilty or innocent**.

This right aims to ensure that those found guilty are done so **in accordance with legislated principles**. **A reasoned judgment also provides an avenue of appeal** should the reasoning contained in the judgement be inconsistent with the law.

Respecting the right to a reasoned judgment requires the court to examine each of the charges and arguments presented during the trial and to respond to **the written arguments submitted by any party**.

¹ Amnesty International, "Fair Trial Manual" (Second edition, 2012), page 172, <https://www.amnesty.org/download/Documents/8000/pol300022014en.pdf> ("Amnesty International's Fair Trial Manual").

² UN Human Rights Committee, "General Comment No.32: Article 14, right to equality before courts and tribunals and to a fair trial", (UN Doc CCPR/C/GC/32, 23 August 2007), para. 29, <https://www.refworld.org/docid/478b2b2f2.html> ("UNHRC, General Comment No. 32").

³ Amnesty International's Fair Trial Manual, page 172, section 24.1; OSCE, "Legal Digest of International Fair Trial Rights," (26 Sep 2012), Chapter IV, page 208, <https://www.osce.org/odihr/94214#:~:text=The%20Legal%20Digest%20of%20International,of%20OSCE%20trial%20monitoring%20operations> ("OSCE's Legal Digest of International FTR").

⁴ Amnesty International Fair Trial Manual, page 172.

⁵ OHCHR, "Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers", Chapter 7, (2003) page 293, <https://www.ohchr.org/Documents/Publications/training9chapter7en.pdf>. ("OHCHR Manual").

In their judgments, judges must explain both the facts and the law on which they based their decision:⁶

- **The Facts:** the judgment must set out the facts for which the person is convicted as clearly as possible, including the date, the location, and the actual event(s). In doing so, the judges must ideally refer to the piece(s) of evidence on which they relied in order to reach the finding, for instance, a confession or a specific witness' testimony, and explain why they relied on it.
- **The Law:** the judgment must also include the legal basis on which the ruling is based, both in terms of substantive law (the crime) and of criminal liability (the mode of liability: direct perpetrator, accomplice, etc.).

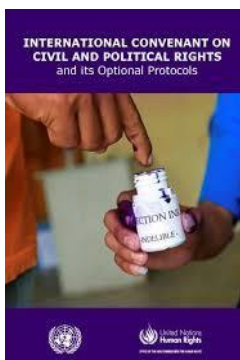


2. Legal framework

2.1. International Law

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

The **right to a reasoned judgment** is not explicitly enshrined in the ICCPR but is inherent to the right to a fair trial (Article 14), including the right to a public judgment (Article 14(1)) and the right to appeal (Article 14 (5)).⁷



Article 14(1) of the ICCPR: "[...] But any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceeding concern matrimonial disputes or the guardianship of children."

Article 14(5) of the ICCPR: "Everyone convicted of crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

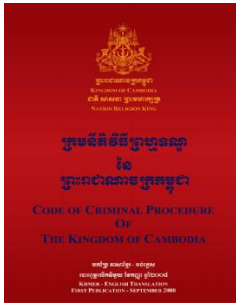
2.2. Cambodian Law

The **rights to public and a reasoned judgment** are also explicitly protected under Cambodian law.

The **right to a public judgment** is guaranteed in the Code of **Criminal Procedure of the Kingdom of Cambodia** ("CCPC") and the **Law on the Organization of the Court** ("LOC"), as outlined below:

⁶ CCHR, "Fair trial rights newsletter: the right to a Reasoned Judgment,"(2018), derived from: https://cchrcambodia.org/admin/media/newsletter/newsletter/english/CCHR%20Fair%20Trial%20Rights%20Newsletter%20on%20Right%20to%20Reasoned%20Judgement_Eng.pdf ("CCHR's FTR newsletter on the right to a reasoned judgment 2018").

⁷ OHCHR Manual, Chapter 7, (2003) page 293.



Article 317 of the CCPC: “In all cases, the court shall announce the judgment during a public session.”

Article 7 of the LOC “[...] In all cases, a judgment shall be announced publicly [...].”

- The **right to a reasoned judgment** is also guaranteed in the **CCPC**:

Article 357 of the CCPC: “Every judgment shall have two parts:

- The ground means the arguments of facts and laws which lead the court to make decision;
- The enacting term means decision of the court.

The fact shall be clear and beyond a reasonable doubt. The court shall examine all charges and arguments raised during the hearing.

In the ground judgment, the court shall note the offense committed by an accused person which is not permissible by any applicable legal texts and any civil remedy.”

Article 403 of the CCPC: “The rules governing the form and signature of the judgment of the court of the first instance shall apply to the judgment of the Court of Appeal.”

3. Importance

The right to a public judgment and the right to a reasoned judgment are both essential to guarantee an **open, transparent, and accountable justice system** that people can trust, which is fundamental to the **rule of law**. A public and reasoned judgment allows for **public scrutiny of the administration of justice and for the accountability of the judiciary for the decisions** they make.⁸



People must be able to see justice being delivered and how it is delivered to ensure that justice is administered properly. The necessity to render reasoned judgments and make **them public compels the judge to explain their decision** and ensures that the accused know why and what they are being convicted for, which protects them **against arbitrariness and abuses of the judiciary**.

⁸ Amnesty International’s Fair Trial Manual, page 173.

Furthermore, the right to a reasoned judgment is necessary for the enjoyment of another key fair trial right: the **right to appeal**.

According to international standards, in order to enjoy the effective exercise of the **right to have convictions and sentences reviewed by a higher tribunal**, a convicted person is entitled to have, within a reasonable time, access to a written judgment duly reasoned for all instances of appeal.⁹ Reasoned judgments indeed allow the parties to see how the judges evaluated the evidence, how they reached their factual and legal conclusions, and therefore, allow them to identify points that they wish to challenge before the higher court.¹⁰ They also allow the upper courts to properly review and analyze the decisions of lower courts. The judges must be able, on the basis of the judgment, to see which evidence has been relied upon for the conviction and why. Access to other necessary documents, such as trial transcripts, should also be made available to the parties in a timely manner for them to meaningfully exercise their right to appeal.¹¹ If one does not have access to a written and reasoned judgment, explaining the various grounds for the conviction or sentence, then the right to appeal is rendered meaningless, which violates fair trial rights.¹²



Finally, public and reasoned judgments enable the **public to access legal information and to understand what type of behavior** is or is not prohibited under the law.¹³ They are also important for the development of **jurisprudence** and for legal certainty about the interpretation and application of the law.

4. Limitations

The right to a public judgment is not absolute and can be restricted under certain circumstances. Article 14 (1) of the ICCPR provides an exhaustive list of the permissible restrictions on this right. The right to a public judgment can be restricted where the interest of juvenile persons requires it or in proceedings that concern matrimonial disputes or the guardianship of children.

The right to a reasoned judgment must be respected at all times and in all cases. However, judges are not required to answer each of the arguments made by the accused.¹⁴

For the United Nations Human Rights Committee (“UNHRC”), the court must publicly pronounce the essential findings, evidence and legal reasoning of its decisions.

For the European Court of Human Rights (“ECHR”), the extent to which the court’s duty to provide the reasons for its decision varies according to the nature of the decision and must be determined in light of the circumstances of the case. The judge must, therefore, at least address the arguments that are crucial to the outcome of the case.¹⁵

⁹ UNHRC, General Comment No. 32, para. 49; UNHRC, “V. Francis v. Jamaica,” Communication No. 320/1988, (1993), para. 12.2, <http://hrlibrary.umn.edu/undocs/html/320-1988.html>.

¹⁰CCHR’s FTR newsletter on the right to a reasoned judgment 2018; ECCC, Appeal Judgment in Case 002/01, paras 205, 207; Amnesty International Fair Trial Right Manual, page 173, Section 24.2

¹¹ CCHR’s FTR newsletter on the right to a reasoned judgment 2018; UNHRC, General Comment No. 32, para.49.

¹² CCHR’s FTR newsletter on the right to a reasoned judgment 2018; UNHRC, General Comment No. 32, para. 8.4.

¹³ CCHR, “ Fair Trial Rights Monitoring at Appeal Court Annual Report (1 November 2018-31 October 2019),” CCHR, October 2020, page 14, [https://www.cchrcambodia.org/admin/media/report/report/english/FTR%20Annual%20Report_ENG%20\(2018-2019\).pdf](https://www.cchrcambodia.org/admin/media/report/report/english/FTR%20Annual%20Report_ENG%20(2018-2019).pdf).

¹⁴ OHCHR Manual, Chapter 7, pages 293-295.

¹⁵ OHCHR Manual, Chapter 7, page 293-295; OSCE Legal Digest of International Fair Trial Rights, page 210.