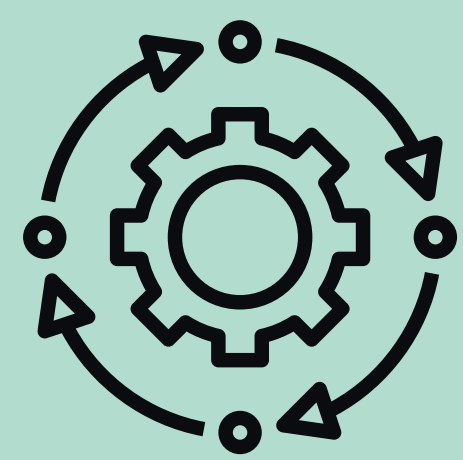




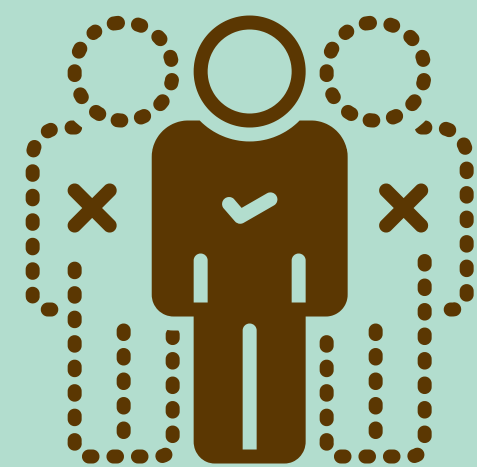
THE RIGHT TO BE PRESENT AT TRIAL

Definition



The right to be present at a trial means that **anyone charged with a criminal offense is entitled to be present during the entirety of their trial**. Presence at their own trial permits the accused to **hear the case against them, challenge the prosecution's arguments, and present a defense**. It also enables the defendant to make themselves heard, notably by **testifying at their trial** if they wish, without being compelled to do so.

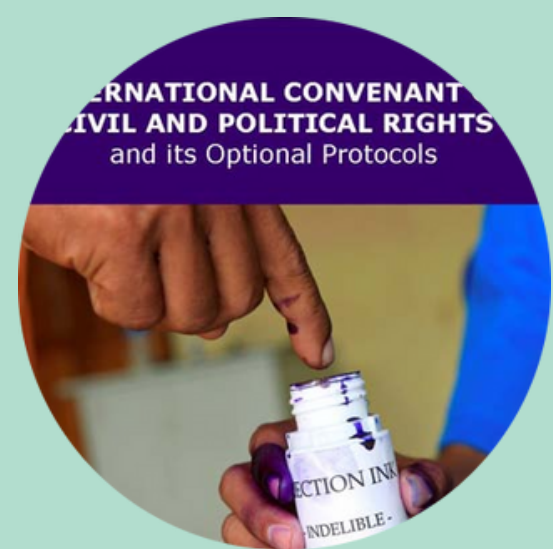
To ensure that the right to be present at trial is upheld, state authorities are responsible for informing the accused and their legal counsel by **notifying them of the time, date, and location of the hearing sufficiently in advance**. State authorities must also refrain from wrongfully preventing or excluding the accused from their attendance.



Legal Framework

International Law

The right to be present at trial is expressly protected by Article 14(3)(d) of the International Covenant on Civil and Political Rights which states, **"In the determination of any charge against him, everyone shall be entitled: to be tried in his presence, and to defend himself in person or through legal representation of his own choosing [...]."**



Cambodian Law

The right to be present at trial is expressly protected by Article 300 of the Cambodian Code of Criminal Procedure (CCPC) which states, **"The accused shall appear in person during the hearings at the court [...],"** and various other provisions of the CCPC. This right is also guaranteed in Article 51 of the Law on Juvenile Justice.



Importance

The right to be present at trial and in an oral hearing is a crucial component of the **right to defend oneself both in person or through legal counsel** and is therefore essential to **ensuring a fair trial**.



The presence of the accused allows them to **hear and challenge the evidence against them** and to **present their defense** by calling witnesses and by testifying themselves at their trial if they wish so. Therefore, holding a trial in the accused's absence undermines their fundamental right to defend themselves and renders the trial unlawful.

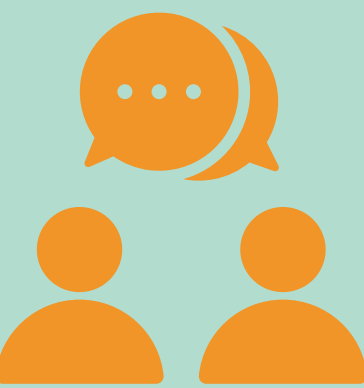
Limitations

The right to be present at trial is **not absolute**. Trials in the absence of the accused are permissible in some circumstances if the **interest of the proper administration of justice** demands it.

Only under the following circumstances can the right to presence at trial be derogated from or temporarily restricted:



If the accused **chooses to waive their right to be present**. The waiver must be done unequivocally, in writing, and with adequate safeguards;



If the accused is **so disruptive** to the court proceedings that it is considered unfeasible to continue in their presence. In this case, the court is allowed to temporarily remove the accused from the courtroom. However, all the necessary measures to ensure that **their right to a defense is preserved** must be taken, notably maintaining the presence of their counsel at the trial so that they can continue their client's defense; or



If the accused **cannot be located or refuses to attend their trial** despite receiving adequate and sufficient notice.

Under the circumstances that the accused waives their right or fails to attend despite adequate notice, the trial can occur **in absentia**, meaning in **the absence of the accused**.

The court must consider whether there are extenuating circumstances that excuse the absence of the accused and do so before the trial begins.

September 2022