

FAIR TRIAL RIGHTS MONITORING NEWSLETTER

The right to a public hearing

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The Cambodian Center for Human Rights (“CCHR”) has conducted trial monitoring since 2009 to monitor criminal trials in Cambodian courts and to assess their adherence to international and Cambodian fair trial standards. Since March 2013 the project has been monitoring hearings in the Phnom Penh Appeal Court. Trial monitors systematically attend criminal appeals hearings and use a specifically designed checklist to monitor whether courts are respecting fair trial rights. In October 2016 this project was renamed, and is now referred to as CCHR’s Fair Trial Rights Project. This is the first in a series of quarterly newsletters that will analyse the findings of CCHR’s monitoring. This issue focuses on implementation of the right to a public hearing.

Article 316 of the Cambodian Criminal Procedure Code:

“Trial hearings shall be conducted in public. However, the court may order a complete or partial in-camera hearing, if it considers that a public hearing will cause a significant danger to the public order or morality. . .”

an important right in itself, but it also ensures other fair trial rights are respected, as the public can see whether the law is being applied fairly and correctly, and if the proper procedures are being followed. This right is guaranteed under international law by Article

14(1) of the International Covenant on Civil and Political Rights (“ICCPR”) to which Cambodia is a party, Article 10 of Universal Declaration of Human Rights (“UDHR”), as well as under domestic law by the Cambodian Criminal Procedure Code (“CCPC”) and Law on the Organization of the Courts. The right to a public hearing involves a number of elements: trials should generally be open to the public; information on the venue and date of the trial should be made available to the public; and there should be adequate facilities for public attendance.

The right to a public hearing



Notice board in the compound of the Appeal Court by: CCHR

The findings of the first quarter of monitoring

CCHR monitors adherence to the right to the public hearing by monitoring whether notice of the hearing has been posted on a public notice board outside the courtroom and whether members of the public were obstructed from entering or were dismissed from the courtroom. The chart below, “Notice of Hearings”, indicates the data gathered at the Phnom Penh Appeal Court from 1 March 2013 to 30 June 2014, when CCHR had monitored 272 cases. In 72% of them the right to a public hearing was respected. From 1 July 2014 to 30 June 2015, CCHR had monitored 128 cases. In 97% of cases the right to a public hearing was respected as public notices were posted giving details of the time and location of hearings. CCHR welcomes these positive practices regarding the right to a public hearing. However, from November 2016 to January 2017, none of

Everyone has the right to have their guilt or innocence determined in a public trial; this right can only be limited in certain exceptional circumstances. A public hearing is

the 133 trials monitored by CCHR had notices posted outside the courtroom. These results appear to show that respect for the right to a public hearing has declined.

Notice of Hearings

No	Cases	Duration	% of Notice
1	272	1 March 2013 to 30 June 2014	72%
2	128	1 July 2014 to 30 June 2015	97%
3	0	1 July 2015 to 31 Oct 2016	CCHR didn't monitor due to resource
4	133	1 Nov 2016 to 31 Jan 2017*	0%

* The latest notice was in March 2016.

However, trial monitors recorded no instances of obstruction of individuals from entering the courtroom or dismissal from courtroom proceedings in the 133 cases monitored from November 2016 to January 2017. Nor was there any evidence of the permissible restrictions on the right to a public hearing (morals, public order, or national security in a democratic society; the interest of the private lives of the parties so requires, or where publicity would prejudice the interests of justice) being inappropriately invoked to justify the expulsion of the public or press at trials in the Appeal Court.

Protection of Privacy of Accused Juveniles

While criminal trials involving adults should generally be held in public in order to provide for the right to a public hearing, when a trial involves a juvenile the ICCPR recognizes that it is legitimate to restrict those who attend the trial in order to protect the privacy of the juvenile and avoid stigmatization. Article 40 (2) (vii) of the United Nations Convention on the Rights of the Child (the "CRC"), to which Cambodia is a party, provides that every child accused of a crime has the right "to have his or her privacy fully respected at all stages of the proceedings."

The data collected in relation to trials involving juvenile accused indicates that of the 9 trials monitored, CCHR did not observe restricted entry to any of these trials, nor were alternatives, such as use of video conferencing

facilities, employed. This raises the question as to whether the judges of the trials considered the rights and best interests of the juvenile defendant involved.

In trials involving both adult and juvenile accused there is a legitimate interest in ensuring that the alleged adult co-offender(s) have their right to a public hearing provided for. In such instances, the privacy of the alleged juvenile offender may be provided for by using a screen to protect the privacy of the juvenile during questioning and testimony. Additionally, Article 316 of the CCPC states that trial hearings shall be conducted in public. The court may order a complete or partial in-camera hearing if it considers that a public hearing will cause significant damage to public order or morality. In cases involving juveniles, the use of *in camera* hearings may be necessary to protect the privacy of the accused.

Conclusion and Recommendations

Everyone has the right to have their guilt or innocence determined in a public trial, except in certain exceptional circumstances. Where, exceptionally, it is not in the best interest of the accused to have a public hearing, as in the case of juveniles, certain measures should be taken in order to protect the privacy of the juvenile accused, whether that requires the erection of screens to enclose the accused or the use of *in camera* hearings, which exclude the public. For these reasons, CCHR recommends that:

1. The Appeal Court should ensure that daily schedules of all hearings are posted on notice boards outside the courts and continue to guarantee public access to courtrooms in all but exceptional cases.
2. The Prosecution Office should call for trial judges to protect the privacy of juvenile accused persons and judges should consider it at high level.
3. When the Law on Juvenile Justice enters into force, judges should apply its provisions in order to protect the best interests of the accused juvenile. In particular, Article 47 states that the trial process and the judgment shall be closed hearings.

