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Cambodian Center for Human Rights

## A SERIES ON FAIR TRIAL RIGHTS AND RULE OF LAW

The right to a public hearing  
[www.cchrcambodia.org](http://www.cchrcambodia.org)

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Everyone has the right to have their guilt or innocence determined in a public trial, except in certain exceptional circumstances. This right is guaranteed under international law by Article 14(1) of the International Covenant on Civil and Political Rights (“ICCPR”), as well as under domestic law by the Cambodian Criminal Procedure Code (“CCPC”). 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.

### Cambodian Center for Human Rights’ (CCHR) Findings

CCHR monitors adherence to the right to a 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.



Photo of notice board outside Phnom Penh Court by: CCHR

### Article 316 of the Criminal Procedure Code:

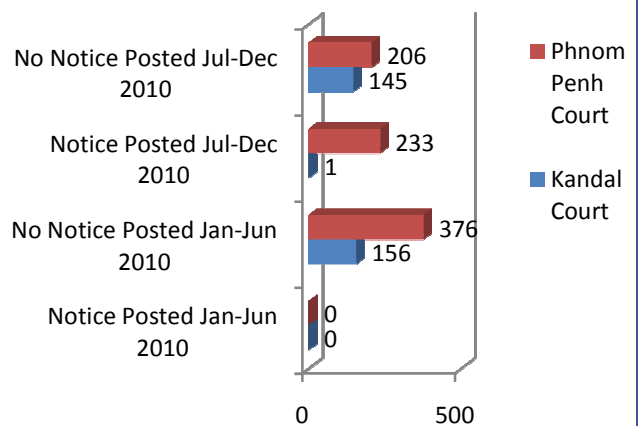
“Trial hearings shall be conducted in public.

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. . .”

The Chart, “Notice of Hearings”, indicates the instances in 2010 when the Phnom Penh Capital City Court and the Kandal Provincial Court of First Instance posted public notices giving details of the time and location of hearings.

At the beginning of 2010, none of the trials monitored by CCHR had notices posted outside the courtroom. However, in a positive trend, of the 585 trials monitored in the Third Reporting Period, taking place between July 1 – December 31, 2010, 234 trials had notices posted. Of these 233 took place at the Phnom Penh Capital Court of First Instance and 1 at the Kandal Provincial Court of First Instance.

### Notice of Hearings



During 2010, trial monitors recorded no instances of obstruction of individuals from entering the courtroom or dismissal from courtroom proceedings. There was no evidence of limitation to the right to a public hearing being inappropriately used to justify the expulsion of the public or press at trials in Phnom Penh Capital Court of First Instance or Kandal Provincial 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 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”) provides that every child accused has the guarantee “to have his or her privacy fully respected at all stages of the proceedings.” The ICCPR similarly includes a presumption in favor of closed hearings when juvenile accused are involved.

The data collected in relation to trials involving juvenile accused indicates that of the 48 trials monitored, CCHR did not observe restricted entry to any of these trials. 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, but a written explanation of such a decision must be included alongside the judgment on the merits of the case. 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. Although improvements

have been made in respect to the notification of public hearings, it is not always in the best interest of the accused to have a public hearing, as in the case of juveniles. Certain measures must be taken in order to protect the privacy of 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. While the Phnom Penh Capital Court of First Instance has made respectable progress with regard to posting trial notices, it should continue to work to ensure that daily schedules of all hearings are posted on notice boards outside the courts. The Kandal Provincial Court should look to the system the Phnom Penh Capital City Court has implemented as a model and continue to work to ensure that daily schedules of all hearings are posted on notice boards outside the courtroom.
2. The Prosecutor should ask for, and the trial judges should order, closed hearings in all trials involving juvenile defendants in order to protect the privacy of juvenile accused, unless there are other circumstances that would make such a decision inappropriate.
3. The Royal Government of Cambodia should consider amending the CCPC to include a provision creating a presumption in favor of closed hearings and the use of screens in cases involving juveniles or ensure that such a provision is included in the draft Juvenile Justice Law.

## CONTACT

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CCHR is a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights throughout the Kingdom of Cambodia.