

RIGHT TO THE PRESUMPTION OF INNOCENCE AND RIGHT TO REMAINED SILENT



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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 the Presumption of Innocence and the Right to Remain Silent 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.

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Queries and Feedback

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**The Right to the Presumption
of Innocence
and
The Right to Remain Silent**

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1. Definition



1.1. The right to the presumption of innocence

The right to the presumption of innocence means that every accused is presumed innocent until proven guilty by law and through a final ruling.

The presumption of innocence applies at all stages of the proceedings, from the initial arrest, throughout the period of criminal investigation and trial proceedings, up to and including the end of the final appeal.¹

The right to the presumption of innocence provides that:

- Judges must be impartial and must refrain from pre-judging a case;
- Public officials (including police and prosecutors) should not make statements concerning the guilt or innocence of an accused before a trial has been completed;
- Authorities should prevent the media from influencing the outcome of a case by making judgements of an accused's guilt or innocence;
- The purpose of the criminal action is to examine the existence of an offense and prove the guilt of an offender. If there is any doubt about an accused's guilt, the accused must be found not guilty;
- No external indicators of guilt should be attributed to the accused.



The prohibition of external indicators of guilt, therefore, includes the accused's right to wear civilian clothes throughout a trial and not to be shackled or handcuffed during the trial. Every accused is entitled to be brought before a court **with the appearance and dignity of a free and innocent person.**

When an accused is forced to attend a hearing in prison attire or wearing handcuffs or shackles, it has the potential to create an impression that the accused is a guilty or dangerous criminal and risks affecting, consciously or unconsciously, the judgment of the trial judge, the manner in which the proceedings are conducted, and the outcome of the case.

Other factors that should not be taken as an indication of guilt are the length and degree of pre-trial detention. When excessive, pre-trial detention violates the presumption of



¹ Office of the High Commissioner for Human Rights ('OHCHR'), "The Right to a Fair Trial (Part I), Chapter 6," p. 219, <https://www.ohchr.org/Documents/Publications/training9chapter6en.pdf>; Amnesty International, "Fair Trial Manual" (2014) page 125, <https://www.amnesty.org/download/Documents/8000/pol300022014en.pdf> (Amnesty International's Fair Trial Manual).

innocence.² In the same way, the denial of bail or findings of liability in civil proceedings should also not be taken as an indication of guilt.³

1.2. The right to remain silent



The right to remain silent is rooted in the right to presumption of innocence.⁴ This right guarantees any individual the right to **refuse to answer questions** from law enforcement officers or court officials.

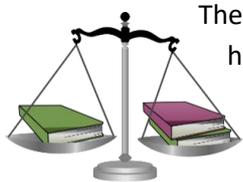
This right **safeguards against making self-incriminating statements**. It also includes the condition that unfavorable comments or inferences should not be made by the court because the defendant refused to answer questions before or during a court trial.

Even if the accused says nothing and presents no evidence, they must be acquitted if the prosecution fails to present evidence reaching the requisite burden of proof for a conviction. In other words, it is not for the accused to present evidence to prove that they are innocent.

The right to remain silent must be respected **throughout the legal proceedings**, including at the investigation stage, when the defendant is interrogated by judicial police, prosecutor or investigating judge, and at the trial stage, when the defendant is questioned by the judge or prosecutor.⁵ Suspects must be informed of their right to remain silent throughout the legal proceedings from the moment they are placed under arrest.

2. Legal Framework

2.1 International Law



The right to the presumption of innocence is expressly protected by international human rights instruments, including the **Universal Declaration of Human Rights (“UDHR”)**, the **International Covenant on Civil and Political Rights (“ICCPR”)**, and the **Convention on the Rights of the Child (“CRC”)**. These instruments are directly applicable in Cambodian law through Article 31 of the Cambodian Constitution.

While the right to remain silent is not expressly guaranteed in these international instruments, it has

² UN Human Rights Committee (“UNHRC”), “General Comment No. 32 – Article 14: Right to equality before courts and tribunal and to a fair trial”, (CCPR/C/GC/32, 23 August 2007) , para.30, <https://www.refworld.org/docid/478b2b2f2.html>, (UNHRC, General Comment No.32).

³ UNHRC, General Comment No. 32, para.30.

⁴ CCHR, “Fair Trial Rights and Trial Monitoring Handbook” (February 2012), p. 23, <https://sithi.org/tmp/publication/view/2012-02-13-fair-trial-rights-and-trial-monitoring-handbook>, (CCHR’s Fair Trial Rights Handbook).

⁵ The Center for Social Development (CSD), “Annual Report on the court watch project,” (February 2007).

been recognized as being implicitly enshrined in fair trial guarantees, especially in the right to be presumed innocent and the right not to self-incriminate.⁶



Article 11 of the UDHR: *“Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.”*



Article 14 (2) of the ICCPR: *“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”*

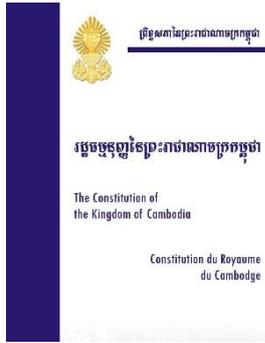


Article 40 of the CRC: *“To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that: [...] (i) To be presumed innocent until proven guilty according to law.”*

2.2. Cambodian Law

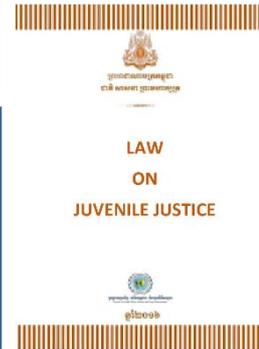
The right to the presumption of innocence and the right to remain silent are protected under Article 38 of the Constitution of the Kingdom of Cambodia (“Constitution”), and Article 5 of Law on Juvenile Justice.

⁶ See UNHRC, “Concluding Observations: France,” (UN Doc. CCPR/C/FRA/CO/4, 31 July 2008), para. 14, <https://undocs.org/en/CCPR/C/FRA/CO/4>.



Article 38 of the Constitution: “The accused shall be considered innocent until the court has judged finally on the case.”

Article 5 of the Law on Juvenile Justice: “All persons performing any function concerning minor shall ensure the observance of the following principles: [...] presumed innocent until proven guilty by the court.”



3. Importance

The **right to the presumption of innocence** is one of the most fundamental and well-established fair trial rights⁷ and an essential element of the rule of law.⁸

It ensures that no one is **arbitrarily punished** for an act that they have not committed by requiring that any alleged act of wrongdoing must be proven in a court of law before punishment can be imposed on an offender.⁹

The right to the presumption of innocence notably imposes on the prosecution the burden of proving the charge¹⁰ and guarantees that no guilt can be presumed until the charge has been proved **beyond a reasonable doubt**. If the prosecution does **not prove the charges true or if reasonable doubt as to the accused’s guilt remains**,¹¹ the accused must benefit from this doubt and **be acquitted**.



The right to the presumption of innocence is also the source of **other rights**, notably the right not to be compelled to confess guilt or to testify against oneself, the right to remain silent and the presumption in favor of bail and release from pre-trial detention.¹² The exceptional character of pre-trial detention lies in the presumption of innocence, which demands that the deprivation of liberty only occurs under narrow circumstances and when strictly necessary.

The **right to remain silent** is essential to the protection of the presumption of innocence as it safeguards the accused’s right not to be compelled to confess guilt or to testify against oneself (or right not to self-incriminate), a right that is also linked to the presumption of innocence and that is designed to prevent accused from being forced to testify against themselves and/or confess their guilt.

⁷ CCHR’s Fair Trial Rights Handbook, page 12.

⁸ Amnesty International’s Fair Trial Manual, page 125.

⁹ CCHR’s Fair Trial Rights Handbook, page 12.

¹⁰ UNHRC, General Comment No.32, para. 30.

¹¹ UNHRC General Comment 32, para. 30; European Court, “Barberà, Messegué and Jabardo v Spain” (10590/83), (1988) §77, Telfner v Austria (33501/96), (2001) para. 15; See Ricardo Canese v Paraguay, Inter-American Court (2004) para. 153-154

¹² CCHR’s Fair Trial Rights and Trial Monitoring Handbook, page 12.

Consequently, the non-respect of the right to presumption of innocence and of the right of the accused to remain silent creates the risk for the accused to be seen as guilty or dangerous and can affect, consciously or unconsciously the manner in which the proceedings are conducted, the judgment of the trial, and the outcome of the case. It can notably lead to wrongful convictions. Ensuring that these rights are respected is therefore fundamental to ensuring the accused a fair trial.

4. Limitations

There are **no limitations** to the right to the presumption of innocence. The presumption of innocence is a norm of customary international law that applies **at all times and in all circumstances**.¹³ It cannot be the subject of treaty reservation or **lawful restrictions** in times of war or other public emergency.¹⁴

The presumption of innocence must therefore be respected in all criminal cases, throughout the implementation of all criminal procedures and in the treatment of the accused throughout the entire legal proceedings, with no exception permissible.

While the presumption of innocence is unanimously considered an absolute right on which no limitations can be imposed, there are **divergent views on the absolute character of the right to remain silent**.

Some countries allow for adverse inferences to be drawn from the accused's silence during questioning, such as the United Kingdom. The UN Human Rights Committee ("UNHRC") has expressed its concerns regarding drawing negative inferences from the accused's silence and has advised States that are parties to the ICCPR to reconsider such practice to ensure that they comply with Article 14 of the ICCPR.¹⁵ The European Court of Human Rights ("ECHR") however considers that the right to remain silent is not absolute and that adverse inferences can be drawn from the accused's silence in certain circumstances.¹⁶ Such conclusions must however be taken with particular caution.¹⁷

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¹³ Amnesty International's Fair Trial Manual, page 125.

¹⁴ UNHRC, General Comment No. 24, (CCPR/C/21/Rev.1/Add.6), para 8, <https://www.refworld.org/docid/453883fc11.html>; UNHRC, "General Comment No. 29 – Derogations during a State of Emergency," (CCPR/C/21/Rev.1/add.11), para.11 -,16, <https://www.refworld.org/docid/453883fd1f.html>; UNHRC, General Comment 32, para.6.

¹⁵ UNHRC, "Concluding Observations on United Kingdom and UK Overseas Territories", (UN Doc CCPR/CO/73/UK CCPR/CO/73/UKOT, 6 December 2001), para 17, <https://www.refworld.org/docid/3cbbec3d2.html>.

¹⁶ ECHR, "O'Halloran and Francis v. United Kingdom," (29 June 2007).

¹⁷ Amnesty International's Fair Trial Manual, page 131.