

# The Right Not to Be Compelled to Confess Guilt or to Testify Against Oneself



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## About Cambodian Center for Human Rights

The Cambodian Center for Human Rights (“CCHR”). 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.

The Cambodian Human Rights Portal <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.

## About the Fair Trial Rights Project

The Module on the Right Not to Be Compelled to Confess Guilt or to Testify Against Oneself 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

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## Queries and Feedback

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**The Right Not to Be  
Compelled to Confess Guilt or  
to Testify Against Oneself**

## 1. Definition



Every individual accused of a crime has the **right not to be compelled to confess guilt or to testify against themselves** (or the right not to self-incriminate). This right applies at the pre-trial and trial stage<sup>1</sup> and is twofold:

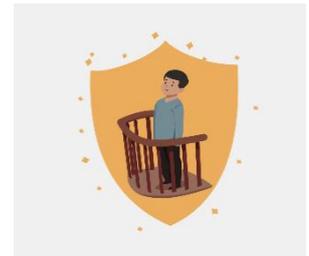
- The accused **cannot be compelled or forced to provide evidence against themselves**.

In practice, this means that when an accused person makes a confession, it must be done in the absence of any coercion, whether direct or indirect, physical or psychological.

- The accused **cannot be compelled to self-incriminate by testifying against themselves**. The **right against self-incrimination** is an essential element of judiciary proceedings, as it is difficult to imagine a fair trial in which an accused is forced to **give self-incriminating evidence**.

This right is, therefore, closely linked to the internationally recognized **prohibition of torture and cruel, inhuman, or degrading treatment or punishment**, enshrined in Article 7 of the International Covenant on Civil and Political Rights (“ICCPR”). Should any **confession or statement** be obtained through **coercion, torture, or other forms of ill-treatment**, it must be excluded from the evidence, except if it is used as evidence that such treatment occurred.<sup>2</sup>

It is important to distinguish this right from an accused’s decision to offer a **voluntary confession**. The main distinguishing factor is the element of choice – whether a party chooses to impart incriminating statements or a confession or whether they are forced by an external entity to make an incriminating comment.<sup>3</sup> Judges must verify whether a voluntary confession, such as a **guilty plea**, was accepted by the accused **without any pressure** and that the accused understands the nature of the charges and the consequences of such a voluntary confession.<sup>4</sup>



Overall, to ensure that **the right not to be compelled to confess guilt or to testify against oneself** is respected and that the accused is protected from coercion by the investigating authorities, it is crucial

<sup>1</sup> Amnesty International, “Fair trial manual”, Second Edition, (2014), page 129, <https://sithi.org/tmp/publication/view/2014-04-10-fair-trial-manual-published-by-amnesty-international> (Amnesty International’s Fair Trial Manual).

<sup>2</sup> CCHR, “Fair trial Rights Newsletter: The right not to be compelled to confess guilt or to testify against oneself”, no 11, (2020), [https://cchrcambodia.org/admin/media/newsletter/newsletter/english/CCHR%20Fair%20Trial%20Rights%20Newsletter%20on%20the%20right%20not%20to%20be%20compelled%20to%20confess%20guilt%20or%20to%20testify%20against%20oneself\\_ENG.pdf](https://cchrcambodia.org/admin/media/newsletter/newsletter/english/CCHR%20Fair%20Trial%20Rights%20Newsletter%20on%20the%20right%20not%20to%20be%20compelled%20to%20confess%20guilt%20or%20to%20testify%20against%20oneself_ENG.pdf) (CCHR’s newsletter No.11, 2020).

<sup>3</sup> CCHR, “Fair trial rights and trial monitoring handbook,” (February 2012), page 24, <https://sithi.org/tmp/publication/view/2012-02-13-fair-trial-rights-and-trial-monitoring-handbook> (CCHR’s FTR Handbook).

<sup>4</sup> Amnesty International’s Fair trial Manual, page 130.

that defendants have access to a lawyer<sup>5</sup> who will be present during any and all interrogations. A lawyer's presence can deter the judicial police from disregarding the fair trial rights of the defendant.<sup>6</sup>

## 2. Legal framework



### 2.1. International Law

The right not to be compelled to confess guilt or to testify against oneself is expressly enshrined in the **International Covenant on Civil and Political Rights ("ICCPR")** and the **Convention on the Rights of the Child ("CRC")**. In addition, the **Universal Declaration on Human Rights ("UDHR")** and the **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT")** prohibit torture and any other cruel, inhuman, and degrading treatment, which are essential to protecting this right. Article 31 of the Cambodian Constitution makes these treaties directly applicable in Cambodian law.

**Article 14, (3) (g) of the ICCPR:** *"In the determination of any charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [...]"*

- (g) *Not to be compelled to testify against himself or to confess guilt."*

**Article 7 of the ICCPR:** *"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."*

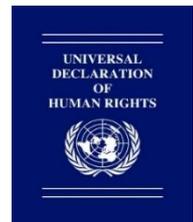
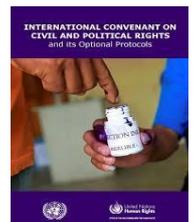
**Article 40 (2)(iv) of the CRC:** *"[...] To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that: [...]"*

- (iv) *Not to be compelled to give testimony or to confess guilt; [...]"*

**Article 5 of the UDHR:** *"No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment."*

**Article 1 of the CAT:** *"For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession [...]"*

**Article 4 of the CAT:** *"Each State Party shall ensure that all acts of torture are offences under its criminal law [...]. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature."*



### 2.2. Cambodian Law

The right not to be compelled to confess guilt or to testify against oneself and the prohibition of torture and other forms of ill-treatment are also guaranteed in domestic law, including in the

<sup>5</sup> 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>.

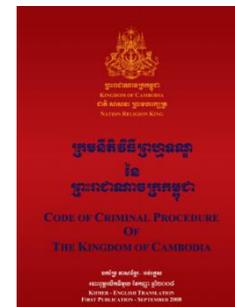
<sup>6</sup> CCHR's newsletter No.11, 2020.

Constitution of the Kingdom of Cambodia (“The Constitution”), the Cambodian Criminal Procedure Code (“CCPC”), and the Law on Juvenile Justice.

**Article 38 of the Constitution:** “The law prohibits all physical abuse of any individual [...]. Confessions obtained by physical or mental force shall not be admissible as evidence of guilt. Any case of doubt, it shall be resolved in favor of the accused [...].”

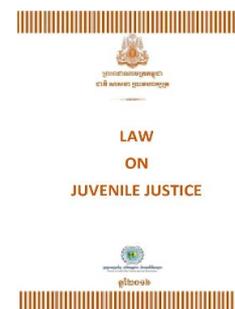


**Article 145 of the CCPC:** “[...] A charged person can be interrogated only in the presence of his lawyer. However, if the lawyer was properly summoned but does not show up on the specified date and time, the investigating judge can question the charged person without the presence of his lawyer. The absence of the lawyer shall be noted in the written record of the charged person’s interrogation [...].”



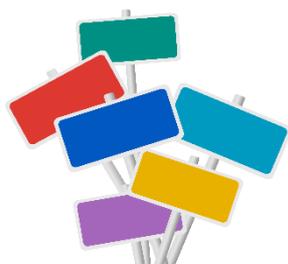
**Article 321 of the CCPC:** “[...] A confession shall be considered by the court in the same manner as other evidence. Declaration given under physical or mental duress shall have no evidentiary value [...].”

**Article 5 of the Law on Juvenile Justice:** “All persons performing any function concerning minors shall ensure the observance of the following principles: [...] Shall prohibit torture, corporal punishment, or other physical or mental treatments which is cruel, inhumane, or degrading to minors [...].”



**Article 6 of the Law on Juvenile Justice:** “Every minor or accused of having committed an offense shall have the following basic procedural rights: ‘The right not to be forced to give testimony against him/herself [...].”

### 3. Importance



The right not to be compelled to confess guilt or to testify against oneself is a **fundamental component of the principle of presumption of innocence**, which places the burden of the proof on the prosecution.<sup>7</sup> The presumption of innocence is one of the most fundamental and **well-established fair trial rights**<sup>8</sup> as well as an **essential element of the rule of law**.<sup>9</sup>

This right also contributes to **avoiding miscarriages of justice**<sup>10</sup> by protecting the accused from being forced to confess their guilt or testify against **themselves regardless of their guilt or innocence through the use of coercion or torture**.

Consequently, not respecting the accused's right not to be compelled to confess guilt or testify against oneself undermines their presumption of innocence and can lead to **wrongful convictions based on confessions obtained through coercion or torture**.

### 4. Limitations

The prohibition of torture that is encompassed in the right not to be compelled to confess guilt or to testify against oneself is absolute. Article 7 of the ICCPR, which **prohibits torture and other forms of ill-treatment, is non-derogable**<sup>11</sup> in its entirety. **No circumstances or reasons** can justify the use of torture or other ill-treatment to obtain someone's confession.



Consequently, no statements or confessions or, in principle, other evidence obtained in violation of this provision may be invoked as evidence in any proceedings covered by Article 14 of the ICCPR, including during a state of emergency.<sup>12</sup> Any self-incriminatory statement or confession involuntarily obtained has, therefore, **no evidential value**. The only exception lies in statements or confessions obtained in violation of Article 7 if they are used as evidence that torture or other

treatment prohibited by this provision occurred.<sup>13</sup> Suspects/accused, therefore, enjoy the unfettered right not to provide evidence that could be used against them.<sup>14</sup>

<sup>7</sup> Amnesty International's Fair Trial Manual, page 129.

<sup>8</sup> CCHR's FTR Handbook.

<sup>9</sup> Amnesty International's Fair Trial Manual, page 125.

<sup>10</sup> OSCE, "Legal digest of international fair trial rights", (2012), page 99, <https://www.osce.org/odihr/94214> (OSCE's Legal Digest of International FTR).

<sup>11</sup> A non-derogable right: A right whose application cannot be suspended by government in circumstances of "state of emergency under Article 4 ICCPR.

<sup>12</sup> UN Human Rights Committee ("UNHRC"), "General Comment No. 32 -Article 14, Right to equality before courts and tribunals and to fair trial" (UN Doc CCPR/C/GC/32, 23 August 2007), para. 6, <https://www.refworld.org/docid/478b2b2f2.html> (UNHRC, General Comment No. 32).

<sup>13</sup> Ibid.

<sup>14</sup> CCHR, "Fair Trial right monitoring at appeal court annual report (1 November 2018-31 October 2020)," October 2020, page

However, the right not to be compelled to confess guilt or testify against oneself is enabled by, and therefore closely linked to the **right to remain silent**, which absolute character is subject to divergent views as some countries allow for adverse inferences to be drawn from the accused's silence during questioning. The United Nations 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 a practice to ensure that they comply with Article 14 of the ICCPR.<sup>15</sup> 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.<sup>16</sup> Such conclusions must however be taken with particular caution.<sup>17</sup>

In addition, the right of the accused not to self-incriminate is restricted to the right to remain silent, which protects the accused from making self-incriminating statements and does not prevent the prosecution from producing material evidence at trial, such as documents, blood, or other bodily samples belonging to the accused and that can incriminate them.<sup>18</sup>

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<sup>15</sup> 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>.

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

<sup>17</sup> Amnesty International's Fair Trial Manual, page 131.

<sup>18</sup> OSCE's, Legal Digest of International FTR, page 99.