



# THE RIGHT TO THE PRESUMPTION OF INNOCENCE AND THE RIGHT TO REMAIN SILENT

## Definition



The right to the presumption of innocence means that **every accused is presumed innocent until proven guilty by law and through a final ruling**. It applies at **all stages** of the proceedings, beginning with the initial arrest and continuing through the end of the final appeal. The right to the presumption of innocence provides that:

- Judges must be impartial and refrain from pre-judging a case.

- Authorities should prevent the media from influencing the outcome of a case by making judgements of an accused's guilt or innocence.

- No external indicators of guilt should be attributed to the accused (e.g., prison uniform).

- Public officials should not make statements concerning the guilt or innocence of an accused before a trial has been completed.

- 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 as to an accused's guilt, the accused must be found not guilty.

The **right to remain silent** is rooted in the right to the presumption of innocence. 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**.



The right to remain silent must be respected **throughout the legal proceedings**, and suspects must be informed of this right as soon as they are arrested.

## Legal Framework

### International Law

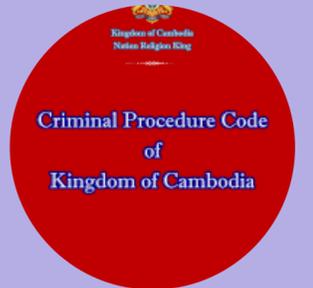
The right to the presumption of innocence is expressly protected by Article 11 of the Universal Declaration of Human Rights which states, "**Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to the law in a public trial [...].**"



It is also enshrined in Article 14 (2) of the International Covenant on Civil and Political Rights and Article 40 of the Convention on the Rights of the Child. The right to remain silent is not expressly guaranteed in international law but has been recognized as being implicitly enshrined in fair trial guarantees, including in the presumption of innocence.

## Cambodian Law

The right to the presumption of innocence and the right to remain silent are protected by Article 38 of the Cambodian Constitution which states, “The accused shall be considered innocent until the court has judged finally on the case” and Article 5 of Law on Juvenile Justice.



## Importance

The right to the presumption of innocence is an essential element of the rule of law. It ensures that no one is arbitrarily punished for an act that they have not committed. It notably imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt. If the prosecution does not prove the charges true or if reasonable doubt as to the accused’s guilt remains, the accused must benefit from this doubt and be acquitted.



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.

## 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 is absolute, which means that it applies at all times and in all circumstances and cannot be the subject of treaty reservation or lawful restrictions in times of war or other public emergency.



However, 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. The United Nations Human Rights Committee has expressed its concerns regarding drawing negative inferences from the accused’s silence and has advised States parties to the ICCPR to reconsider such practice.