

# The Rights of Children in conflict with the law



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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 Rights of Children in Conflict with the Law 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 Rights of Children in Conflict with the Law**

## 1. Definition



**A child** is defined internationally as a human being **under the age of 18 years old**. In **criminal proceedings**, children accused of an offense are entitled to **all the same fair trial rights as adults**.<sup>2</sup> However, they also need **special protection**<sup>3</sup> and **care** which takes into account their age, maturity, and intellectual and emotional development.

This translates by the particular necessity for State authorities to:<sup>4</sup>

- *Protect the presumption of innocence of children in conflict with the law throughout the criminal proceedings by refraining from making assumptions of guilt based on their suspicious behavior.* This is important as children's behavior might seem suspicious due to their lack of understanding of the process, immaturity, fear, or other reasons.<sup>5</sup>



- *Inform accused children directly and as soon as possible of the charges and procedural steps against them, or where appropriate, through their parents or legal guardians.*<sup>6</sup> Providing a document to the child is not sufficient. Authorities must explain the charges, options, and processes to accused children orally to make sure they understand.<sup>7</sup> The relevant information must also be presented in a **language they can understand** and with **words that are adapted to their age and maturity**, i.e., use more simple words than formal legal jargon.

<sup>1</sup> Article 1 of the Convention on the Right of the Child ("CRC").

<sup>2</sup> UN Human Rights Committee ("UNHRC"), "General Comment No.32 - Article 14, right to equality before courts and tribunals and to a fair trial," (UN Doc CCPR/C/GC/32, 23 August 2007), para. 42, <https://www.refworld.org/docid/478b2b2f2.html>. (UNHRC, General Comment No. 32).

<sup>3</sup> Ibid., para.42.

<sup>4</sup> Article 40 of the CRC; UNHRC, General Comment No. 32, para.42.

<sup>5</sup> Committee on the Rights of the Child ("CRC Committee"), "General Comment No.24 (2019) on children's rights in the child justice system (replacing Comment No. 10 (2007)) CRC/C/GC/24, para. 43, <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>, (CRC Committee, General Comment No. 24).

<sup>6</sup> CRC Committee, General Comment No. 24, para. 47.

<sup>7</sup>Ibid., para. 48.

- Provide children in conflict with the law with **free and appropriate assistance in the presentation of their defense**. Children must also be **provided with adequate time and facilities to prepare a defense**, and confidentiality of communications with their assistants must be guaranteed to protect their privacy.<sup>8</sup>



- Bring children in conflict with the law before a competent, independent, and impartial authority or judicial body **“without delay.”** This means that the response of the criminal justice system to a criminal offense allegedly committed by a child must be as short as possible and much **faster than that provided for adults**, especially when the child is deprived of their liberty, while respecting their rights.<sup>9</sup> This is crucial to ensure that the response has a **positive, pedagogical impact** and **prevents the stigmatization** of children in conflict with the law. The **presence of the child’s parents or legal guardians** throughout the proceedings is recommended as they can provide **general psychological and emotional support** to the child and contribute to **effective outcomes**. However, judges or competent authorities can limit, restrict or exclude their presence in the proceeding at the request of the child or their legal or other appropriate assistant or because it is not considered to be in the child’s best interests. Other genuine caregivers who are not the child’s parents or legal guardians should also be allowed to assist children in criminal proceedings if their parents are not available.<sup>10</sup>



- Protect the right of children not to be compelled to give testimony or to confess their guilt. Like adults, children must be **protected against torture, cruel, inhuman, or degrading treatment** to obtain their admission or confession.<sup>11</sup> As it is easier to convince a child to confess through less violent ways, the term **“compelled”** must be **interpreted more broadly than for adults** and not be limited to physical force or other apparent violations of human rights. It is crucial that children be **assisted by a legal counsel or another appropriate representative when being questioned** and be allowed to request the **presence of their parents during questioning**.



<sup>8</sup> Ibid., paras.49 to 53.

<sup>9</sup> Ibid., paras 54 and 55.

<sup>10</sup> Ibid., paras 56 and 57.

<sup>11</sup> Article 37 (a) of the CRC.

- *Respect the principle of equality of arms by allowing child defendants to call and cross-examine witnesses.* States must conduct the proceedings in a manner that **allows children to understand and participate**, including modifying courtroom procedures and practices according to their age and maturity, if necessary.<sup>12</sup>



- *Ensure the privacy of accused children is respected at all stages of the proceedings to **avoid harm caused by undue publicity or labeling.*** Authorities must not release any information that can lead to the identification of children in conflict with the law to prevent their stigmatization, and the possible impact such published information can have on their ability to access education, work, and housing or on their safety. Hearings of children must be **held behind closed doors as a general rule** and be public as an exception, meaning only in particular and limited cases clearly defined by law. Judgments must be pronounced publicly but in a way that **does not reveal their identity.**<sup>13</sup>



- **Respect accused children's right to be heard<sup>14</sup> directly, and not only through a representative, at all stages of the proceedings<sup>15</sup>.** This implies providing adequate information to children about the charges, the child justice process, and possible measures imposed on them to enable them to effectively participate in the proceedings.



- **Prevent unlawful and arbitrary deprivation of liberty of children at all times** and use arrest, detention, or imprisonment of children in conformity with the law and only as a last resort and for the shortest appropriate time.<sup>16</sup> In detention, children must be **separated from adults, unless it is considered in their best interests not to do so**, in separated facilities for children deprived of their liberty, with **adequately trained personnel and** operating according to **child-friendly policies and practices.** This is critical to safeguard their well-being and their future ability to remain free of crime and to reintegrate.<sup>17</sup> Detained children must be able to **maintain contact with their family** through correspondence and visits, except in exceptional circumstances, and be detained in facilities as close as possible to their family's homes.<sup>18</sup>



<sup>12</sup> CRC Committee, General Comment No.24, para. 46.

<sup>13</sup> Ibid., paras 66 and 67.

<sup>14</sup> Article 12 of the CRC.

<sup>15</sup> CRC Committee, General Comment No.24, paras.44.

<sup>16</sup> Article 37 (c) of the CRC.

<sup>17</sup> CRC Committee, General Comment No.24, para. 92.

<sup>18</sup> Article 37 (3) of the CRC; CRC Committee, General Comment No.24, para 94.

- **Prohibit capital punishment and life imprisonment** without the possibility of release for children<sup>19</sup> as they are against the aims of promoting the reintegration of the child into society pursued by child justice.



States are also strongly encouraged to **establish a comprehensive child justice system**, with **laws, procedures, authorities, and institutions specifically applicable to children** to ensure that they are treated in a manner corresponding to their age.<sup>20</sup> Specialized units are required within the police, the judiciary, the court system, and the prosecutor's office, as well as specialized defenders and representatives who can provide adequate legal or other assistance to children in conflict with the law.<sup>21</sup> Child courts, either as separate units in their criminal justice system or as part of existing courts, should be established, or specialized judges for dealing with child justice cases should at least be appointed.<sup>22</sup>

States must also set a **minimum age of criminal responsibility** that takes into account the physical and mental immaturity of children<sup>23</sup> and under which they cannot be held criminally responsible by the criminal justice system. If there is any doubt as to the age of an accused individual, they should be granted the benefit of the doubt and benefit from the child justice system.<sup>24</sup>

Where possible and appropriate, States must **prioritize measures that do not require resorting to criminal proceedings against children** who committed a criminal offense (i.e., care, guidance, supervision orders, counseling, probation). These measures must be appropriate to the children's well-being and proportionate both to their circumstances and the offense committed.<sup>25</sup>

To ensure the **proper administration of child justice**, **all professionals working with children or involved in child justice** (e.g., police officers, prosecutors, judges, probation officers) must **undergo systematic and ongoing training** about the child and their physical, psychological, mental, and social development and about the special needs of children in the most vulnerable situations.<sup>26</sup>

## 2. Legal Framework

### 2.1. International Law

The International **Covenant on Civil and Political Rights ("ICCPR")** and the **Convention on the Rights of the Child ("CRC")** set out specific provisions for the treatment of children in criminal justice proceedings. These international instruments are directly applicable in Cambodian law through Article 31 of the Cambodian Constitution:

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<sup>19</sup> Article 37 (a) of the CRC.

<sup>20</sup> Article 40(3) of the CRC; UNHRC, General Comment No. 32, para.43.

<sup>21</sup> CRC Committee, General Comment No.24, para. 106.

<sup>22</sup> CRC Committee, General Comment No.24, para. 107; UNHRC, General Comment No. 32, para.92 to 95.

<sup>23</sup> Article 40 (a) of CRC; UNHRC, General Comment No. 32, para. 43.

<sup>24</sup> Amnesty International's Fair Trial Rights Manual, Second Edition, (2014), p. 192, <https://www.amnesty.org/en/documents/pol30/002/2014/en/>.

<sup>25</sup> Article 40 (b) of the CRC; UNHRC, General Comment No. 32, para. 44.

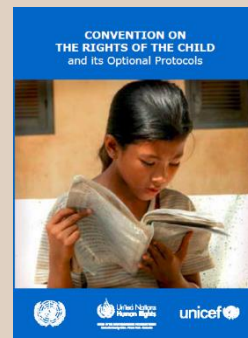
<sup>26</sup> CRC Committee, General Comment No.24, para. 112.



- **Article 14 (4) of the ICCPR:** *“In the cases of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.”*
- **Article 24 (1) of the ICCPR:** *“1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State [...].”*



- **Article 1 of the CRC:** *“[...], a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”*
- **Article 3 of the CRC:** *“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*



*2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. [...].”*

- **Article 12 (2) of the CRC:** *“[...] the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”*
- **Article 37 of the CRC:** *“States Parties shall ensure that:*
  - (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*
  - (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*
  - (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*

*(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”*

- **Article 40 of the CRC:** *“1. States parties will recognize the right of every child accused of a criminal offense to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and takes into account the child’s age and the desirability of promoting the child’s reintegration and the child assuming a constructive role in society.*

*2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:*

*(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;*

*(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:*

*(i) To be presumed innocent until proven guilty according to law;*

*(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;*

*(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;*

*(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;*

*(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;*

*(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;*

*(vii) To have his or her privacy fully respected at all stages of the proceedings.*

*3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:*

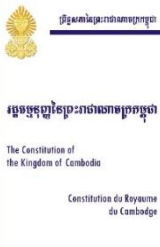
*(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;*

*(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.*

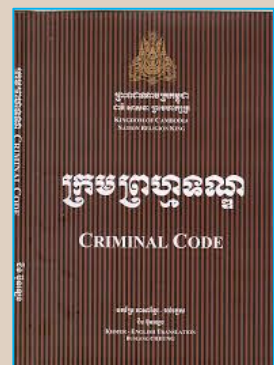
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”

## 2.2 Cambodian Law

The **Cambodian Constitution** expressly protects children’s rights. The **Criminal Code of Cambodia** and **Code of Criminal Procedure of Cambodia (“CCPC”)** contain several provisions related to children in conflict with the law. Finally, the **Law on Juvenile Justice** adopted in 2016 sets out specific rules for the treatment of children in conflict with the law.

	<ul style="list-style-type: none"> <li>• <b>Article 31 of the Constitution:</b> “The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and <b>children’s rights</b>. [...]”</li> <li>• <b>Article 48 of the Constitution:</b> “The State shall protect the rights of children as stipulated in the Convention on Children [...].”</li> </ul>
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- **Article 39 of the Criminal Code:** “Minors who committed offenses shall be subject to supervision, education, protection, and assistance. However, a court may impose a criminal penalty on a minor of fourteen years and over if warranted by the circumstances of the offense or the character of the minor.”
- **Article 40 of the Criminal Code:** “Supervisory, educational, protective and assistance measures shall include: returning the minor to his or her parents, guardian, custodian, or to another person who is trustworthy; committing the minor to a social service agency which cares for minors; committing the minor to a private organization that is qualified to receive minors; committing the minor to a specialized hospital or institution; placing the minor under judicial protection.”
- **Article 100 of the CCPC:** “When a detained person is a minor, the judicial police officer shall use all means to notify the parents, legal representatives or any person who is responsible for that minor.”
- **Articles 212 – 214 of the CCPC** – Specific rules regarding the detention of minors.
- **Law on Juvenile Justice** – Its provisions aim to safeguard the rights and best interests of minors who have committed criminal offenses.



### 3. Importance

Children are one of the most **vulnerable** segments of the population due to their age and development. Their **best interests and well-being** must be a primary consideration in **all actions**, including those taken by public or private government institutions and courts of law.<sup>27</sup>

It is even more essential to provide special protection to children confronted with the criminal justice system to **assist them throughout the traumatic experience** that legal proceedings can be, **protect their human rights, and avoid their stigmatization**. A child justice system with rules and measures **adequately treating children in conflict with the law**, taking into account their **age, development, and maturity** is therefore critical. This ensures that the lives of children ~~who committed offenses in~~ **conflict with the law** are not permanently impacted by acts committed at an age when they may have been too young to have understood or have been in control of their actions, or perhaps by acts they may not have committed at all. Child-friendly justice is critical to promoting their **sense of dignity and worth, reinforcing their respect for the human rights and freedoms of others, and ensuring their successful reintegration into society in which they can assume a constructive role in the future**.<sup>28</sup>

If children in conflict with the law do not benefit from special protections of their fair trial rights in adequation with their age and maturity, they can be stigmatized and suffer the consequences of criminal acts committed at a young age for the rest of their lives, thus preventing their successful reintegration in society.

### 4. Limitations

The child justice system **should apply to all children at or above the minimum age of criminal responsibility but under 18 years old at the time of the alleged offense**. International human rights standards call on States to not limit the applicability of their child justice legislation and procedures to children under the age of 16 years old or lower, and to not exceptionally allow the criminal justice system to treat 16 or 17-year-old children in conflict with the law as adults, in order to prevent discrimination against them. Moreover, the application of the child justice system to persons aged 18 and older is accepted as a general rule or exceptionally.<sup>29</sup>



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<sup>27</sup> Article 3 of the CRC.

<sup>28</sup> Article 40 of the CRC.

<sup>29</sup> CRC Committee, General Comment No.24, para.32.