

WHAT ARE FAIR TRIAL RIGHTS



September 2022



មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា
Cambodian Center for Human Rights



Sweden
Sverige

People
Change
the World

Diakonia

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 introductory Module on the Right to a Fair Trial or Fair Trial Rights (“FTR”) 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

CCHR would like to express its sincere gratitude to Diakonia and Swedish donors for their generous contribution, which has made this module possible. The contents are the sole responsibility of CCHR and do not necessarily reflect the views of Diakonia and Swedish donors.

Queries and Feedback

Should you have any questions or require any further information about this module, please contact CCHR at:

Address: #798, Street 99, Boeung Trabek, Khan Chamkarmon, Phnom Penh, Cambodia

Tel: +855 (0) 23 72 69 01

Web: www.cchrcambodia.org



Contents

1.	Definition.....	1
2.	A Brief History of the Right To a Fair Trial	1
3.	Legal framework.....	2
	3.1. International Law	2
	3.2. Cambodian Law	3
4.	Importance	4
5.	Limitations.....	5

The Right to a Fair Trial (or Fair Trial Rights)

1. Definition

The right to a fair trial is a human right that is a central pillar of any justice system. It applies to both civil and criminal legal proceedings. With respect to criminal proceedings, the right to a fair trial entitles each and every person charged with a criminal offense to be treated fairly and equally while the state determines their guilt or innocence.

The right to a fair trial is comprised of a number of different individual rights, commonly referred to as “fair trial rights” (“FTR”) which encompass the entire legal process, from the initial arrest of the suspect, through to the completion of the final appeal.

Fair trial rights are enshrined in international law, notably the Universal Declaration of Human Rights (“UDHR”) and the International Covenant on Civil and Political Rights (“ICCPR”), which guarantee the **right to a fair and public hearing by an independent and impartial tribunal**. The ICCPR further details the various components of a fair trial, which includes, but is not limited to, the following rights:

- The right to a public hearing;
- The right to the presumption of innocence;
- The right to be tried without undue delay;
- The right to understand the nature and cause of the charges;
- The right to adequate time and facilities to prepare a defense;
- The right to legal representation;
- The right to be present at trial;
- The right to be tried by a competent, independent, and impartial tribunal;
- The right not to be compelled to confess guilt or to testify against oneself;
- The rights to a public and reasoned judgment;
- The right to appeal to a higher court on the grounds of fact and law.



2. A Brief History of the Right To a Fair Trial

At the international level, the right to a fair trial was officially affirmed and recognized as a fundamental human right with the adoption of UDHR by the United Nations (“UN”) General Assembly in 1948, a milestone document in the history of human rights. The UN was founded by the international community in 1945 in response to the atrocities perpetrated during the Second World War. The UDHR was the first treaty adopted by the UN setting out fundamental rights to be universally protected.¹ All the States wishing to become members of the UN must adhere to the UDHR.

In 1966, the right to a fair trial was reaffirmed, along with other fundamental civil and political rights, in another instrument adopted by the UN: the ICCPR, which further elaborates on the various rights composing the right to a fair trial.

¹ United Nations, “Universal Declaration of Human Rights”, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>; United Nations, “History of the Declaration”, <https://www.un.org/en/about-us/udhr/history-of-the-declaration>.

Today, the UN is composed of 193 member States, all legally bound by the UDHR and under the international obligation to uphold the fundamental rights that it enshrines, including the right to a fair trial. In addition, 173 members, including Cambodia, have ratified the ICCPR and are legally bound by its provisions and obligated to uphold all the fair trial rights recognized by this treaty.



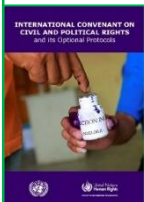
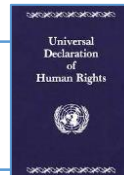
Since then, the right to a fair trial has been recognized in similar terms as the ICCPR in other UN treaties as well as other international and regional human rights instruments. These include, but are not limited to, the European Convention on Human Rights in 1950, the American Convention on Human Rights in 1969, the African Charter on Human and Peoples Rights in 1981, the International Convention on the Rights of the Child (“CHC”) in 1989, or the European Charter of Fundamental Rights of the European Union in 2000.

3. Legal framework

3.1. International Law

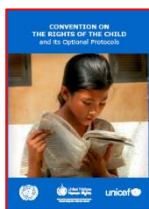
The right to a fair trial is internationally recognized and enshrined in several international instruments, including the **UDHR**, the **ICCPR**, and the **CRC**. These three international human rights instruments are directly applicable in Cambodian law through Article 31 of the Constitution of the Kingdom of Cambodia (“the Cambodian Constitution”).

- **Article 10 of the UDHR:** *“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”*



- **Article 14 (1) of the ICCPR:** *“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...]”.*

- **Article 40 (2)(b)(iii) of the CRC:** *“[...] To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that: [...] (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees: [...]*



- (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; [...]*

3.2. Cambodian Law

The right to a fair trial is also guaranteed in Cambodia through general and specific provisions set out in several legal instruments such as the Cambodian Constitution and the Criminal Code of the Kingdom of Cambodia (“Criminal Code”), the Code of Criminal Procedure of the Kingdom of Cambodia (“CCPC”). It is also protected under the Law on Juvenile Justice, which sets out the norms and procedures in dealing with minors who commit criminal offenses.

- **Article 38 of the Constitution:** *“The law guarantees there shall be no physical abuse against any individual.*

The law shall protect the life, honor, and dignity of the citizens.

The prosecution, arrest, or detention of any person shall not be done except in accordance with the law.

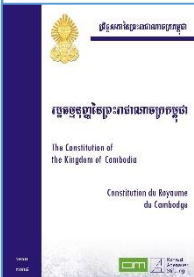
Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. Persons who commit, participate or conspire in such acts shall be punished according to the law.

Confessions obtained by physical or mental force shall be admissible as evidence of guilt.

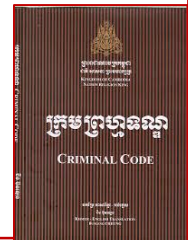
Any case of doubt, it shall be resolved in favor of the accused.

The accused shall be considered innocent until the court has judged finally on the case.

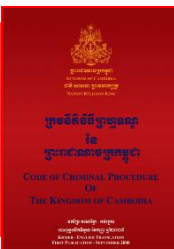
Every citizen shall enjoy the right to defense through judicial recourse”.



- The **Criminal Code** sets out classes of offenses, principles of criminal responsibility, principles of sentencing, the territorial jurisdiction of the courts and an extensive array of criminal offenses. It guarantees a number of fair trial rights and principles, including the principle of legality (Article 3), the protection against double jeopardy (Article 23), or the protection of juvenile defendants (Articles 39 and 40).



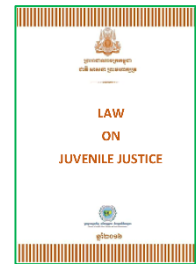
- The **CCPC** establishes in detail how suspects should be treated. It notably sets out the roles and responsibilities of judges, prosecutors and defense counsel from the initiation of an investigation to the time of arrest and throughout the entire criminal responsibility and principles of sentencing.



- **Article 6 of the Law on Juvenile Justice – Procedural rights of minor:** *“Every minor suspected or accused of having committed an offence shall has the following basic procedural rights:*

- *the right to refuse to answer questions with or without the presence of a lawyer*

- *the right not to be forced to give testimony against him/herself - the right to privacy*
- *the right to have medical care and treatment*
- *the right to be informed of the charge*
- *the right to be informed of the arrest to designated representative*
- *the right to be assisted by a lawyer and to be assigned a pro bono lawyer in accordance with the condition stipulated in Law on the Status of Lawyers from the earliest possible time of procedure*
- *the right to have designated representative participate in the case, unless it is contrary to the best interest of the minor*
- *the right to be assisted by pro bono interpreter, if necessary*
- *the right to present evidence - the right to request to call and pose questions to witnesses*
- *the right to request bail*
- *the right to ask for a revision of the court supervision*
- *the right to contact his/her embassy or consulate if a minor is a foreigner*
- *Other rights which stipulated in other legal instruments that are currently in force.”*



4. Importance



A fair trial is essential for protecting the rights of the accused and victims and for ensuring the **proper administration of justice**. The right to a fair trial is key to protecting **human rights and safeguarding the rule of law**.²

According to the rule of law, no one may be punished unless a competent and impartial court has decided that a law has been contravened. The rule of law also requires the courts to ensure that laws have been applied in an equal and non-discriminatory manner – this includes ensuring that fair trial rights are

observed in all cases.³

Fairness underpins the entire judicial process, ensuring that justice prevails. Only the guilty are convicted and incarcerated and the innocent are able to freely participate in society without prejudice.⁴ The non-respect for fair trial rights can therefore lead to miscarriages of justice, especially to wrongful convictions.

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. 2, <https://www.refworld.org/docid/478b2b2f2.html> (UNHRC, General Comment No.32).

³ CCHR, "Fair trial rights and trial monitoring handbook", (February 2012), page 10, <https://sithi.org/medias/files/projects/tmp/publication/cchr-fts-and-trial-monitoring-handbook-feb-eng2012-02-13.pdf>.

⁴ Ibid.

5. Limitations

The right to a fair trial knows no exceptions. Everyone accused of committing a criminal offense is entitled to a fair trial at all times, including during a state of emergency and an armed conflict.⁵

According to the **United Nations Human Rights Committee ('UNRHC')**, which oversees the proper implementation of the ICCPR, while Article 14 is not in the list of non-derogable rights⁶ set out in Article 4 of the ICCPR (Derogations during a state of emergency), a general reservation to the right to a fair trial is incompatible with the object and purpose of the ICCPR. Any deviation from fundamental principles of fair trial rights is therefore prohibited at all times.⁷



However, reservations to particular clauses of Article 14 can be acceptable.⁸ Indeed, some of the rights composing the right to a fair trial are not absolute and can be subjected to limitations in certain circumstances. The following modules cover the main rights composing the right to a fair trial and provide further detail on the limitations that can be imposed on some fair trial rights.

⁵ Amnesty International, "Fair Trial Rights Manual", Second Edition, (2014), page xvi, <https://www.amnesty.org/en/documents/pol30/002/2014/en/>.

⁶ A non-derogable right: A right whose application cannot be suspended by government in circumstances of "state of emergency under Article 4 ICCPR.

⁷ UNHRC, General Comment No. 32, para. 5 and 6; UNHRC, "General Comment No. 29 – Article 4: Derogations during a state of emergency", (CCPR/C/21/Rev.1/Add.11, 31 August 2021), para.11, <https://www.refworld.org/docid/453883fd1f.html>.

⁸ Ibid. para 5.