

EVIDENTIARY RIGHTS

THE RIGHT TO CALL AND EXAMINE WITNESSES

Definition



All the decisions made by the court must be based **exclusively on evidence presented during the trial**. It is therefore essential that each party is given the opportunity to present evidence and call witnesses in support of their case and to cross-examine witnesses called by other parties to challenge evidence that they do not accept.

Evidentiary rights, including the right to call and examine witnesses, give the defense **the same legal powers** to present evidence and examine, and cross-examine witnesses as the prosecution:



Calling of witnesses: The defendant can compel witnesses and experts to testify in their favor.



Examination of witnesses: Each party, including the defendant, can question their own witnesses to support their case.

Cross-examination of witnesses: Each party, including the defendant, can question the witnesses presented by the other parties to challenge their testimonies.

Legal Framework

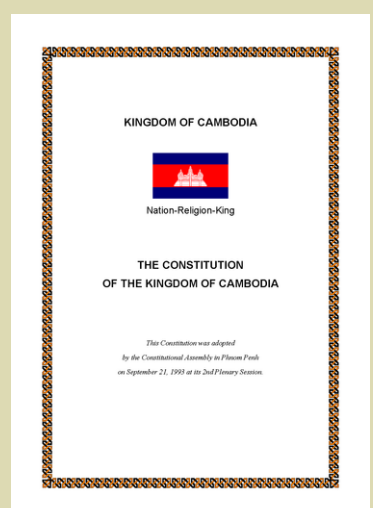
International Law

Evidentiary rights are guaranteed in Article 14(3)(e) of the International Covenant on Civil and Political Rights, which states that **"In the determination of any criminal charge against him, everyone shall be entitled to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."**



Cambodian Law

Evidentiary rights are implicitly protected by Article 38 of the Cambodian Constitution, which states, **"Every citizen shall enjoy the right to defense through judicial recourse,"** by several provisions of the Cambodian Code of Criminal Procedure, and by Article 6 of the Law on Juvenile Justice.

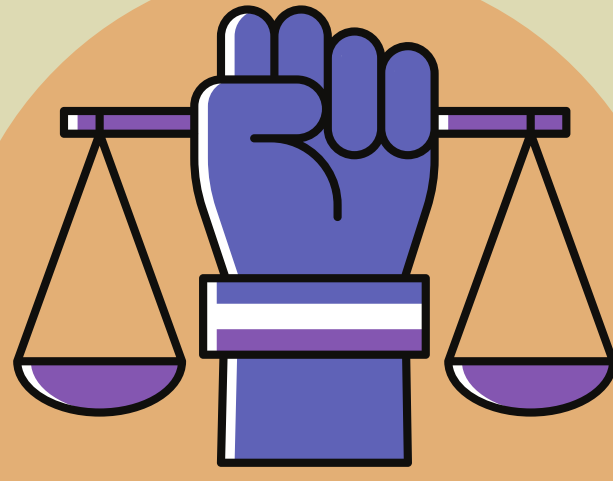


Importance

The right to call and examine witnesses:



Assists the court in its **assessment of the various arguments** presented and in **making its decision** based on relevant evidence.

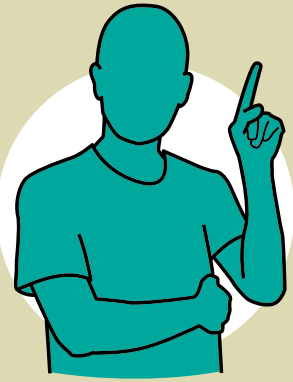


Ensures the accused an **effective defense**.



Ensures respect for the **principle of equality of arms**, which requires all parties to be treated equally at all stages of the trial.

Limitations



The right to call and examine witnesses is **not unlimited**, meaning that the accused cannot obtain the attendance of any witnesses, at any time, or in any manner. This right gives the accused a right to call witnesses whose testimonies are **relevant for their defense** and to be given a proper opportunity to question and challenge witnesses against them.

This means that if a defendant wants a certain witness to be called on their behalf, they have to **explain to the court why they consider the testimony of a particular witness important** for the case.



However, a violation of this right would occur if the court allowed the prosecution to invite an important witness, but refused to invite an equally important and relevant witness the defendant proposed.