

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

Definition

All individuals accused of a crime have 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 and is two fold:

The accused cannot be compelled or forced to provide evidence against themselves. In practice, this means that when a defendant makes a confession, it must be done in the absence of any coercion, whether direct or indirect, physical or psychological.

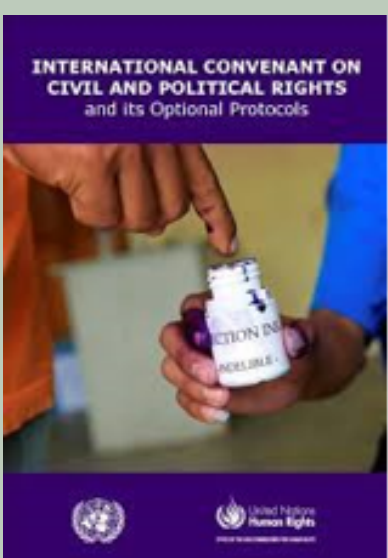
The accused cannot be compelled to self-incriminate by testifying against themselves. The right against self-incrimination is an essential element of judiciary proceedings, as it is difficult to imagine a fair trial in which an accused is forced to give self-incriminating evidence.

The right is, therefore, closely linked to the internationally recognized prohibition of torture and of cruel, inhuman, or degrading treatment or punishment. Any confession or statement obtained through coercion, torture, or other forms of ill-treatment must be excluded from evidence presented the trial.

Legal Framework

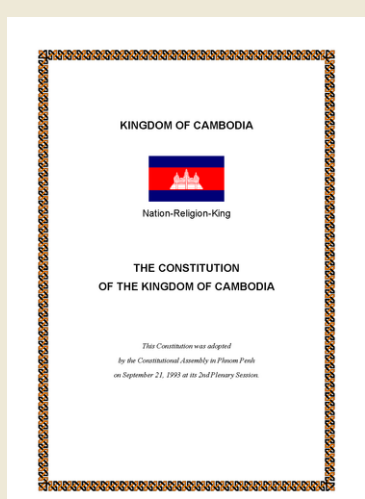
International law

The right not to be compelled to confess guilt or to testify against oneself is expressly enshrined in Article 14(3)(g) of the International Covenant on Civil and Political Rights (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." It is also guaranteed in Article 40(2)(iv) of the Convention on the Rights of the Child. Finally, Article 5 of the Universal Declaration of Human Rights, and the Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment prohibit torture and other ill-treatment.



Cambodian law

The right not to be compelled to confess guilt or to testify against oneself and the prohibition of torture and other ill-treatment are protected by Article 38 of the Cambodian 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 [...]." They are also guaranteed in Articles 145 and 321 of the Cambodian Code of Criminal Procedure and Articles 6 of the Law on Juvenile Justice.



Importance



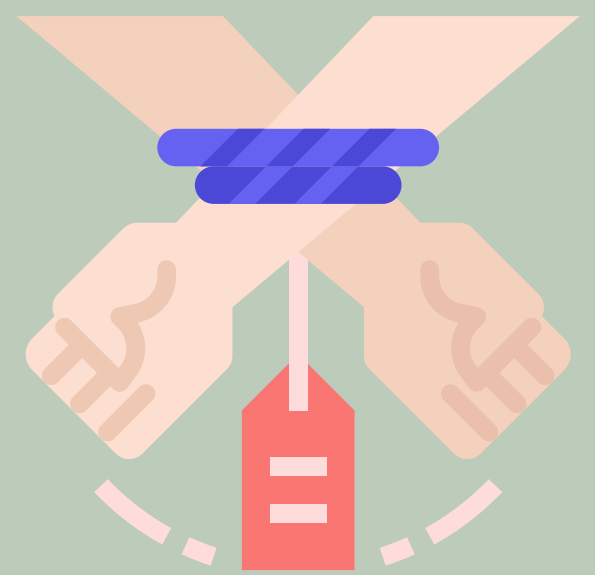
The right not to be compelled to confess guilt or to testify against oneself is a fundamental component of the principle of the [presumption of innocence](#), which places the burden of the proof on the prosecution. The presumption of innocence is one of the most fundamental and well-established fair trial rights as well as an essential element of [the rule of law](#).

This right also contributes to [avoiding miscarriages of justice](#) 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.



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 in its entirety](#). No circumstances or reasons can justify the use of torture or other ill-treatment to obtain someone's statement or confession.



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. Suspects/accused, therefore, enjoy the unfettered right not to provide evidence that could be used against them.

However, the right not to be compelled to confess guilt or to 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.



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.

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