



# THE RIGHT TO LIBERTY

## Definition

The right to liberty of person enshrines the essential human right of any individual to **be free from the confinement of their body**, meaning not to be physically deprived of their liberty to come and go as they wish.

Deprivation of liberty in the criminal context commonly includes **police custody, pre-trial detention, imprisonment after conviction, or house arrest** as well as **solitary confinement or the use of physical restraining devices** (e.g., handcuffs, chains) for already detained persons. Deprivation of liberty implies the **absence of consent**, which means that an individual suspected or charged with a criminal offense who is arrested and placed in custody or pre-detention is deprived of their liberty.



As a general rule, and in order to safeguard their right to liberty, individuals suspected or charged with a criminal offense should not be deprived of their liberty pending trial.

## Legal Framework

### International Law

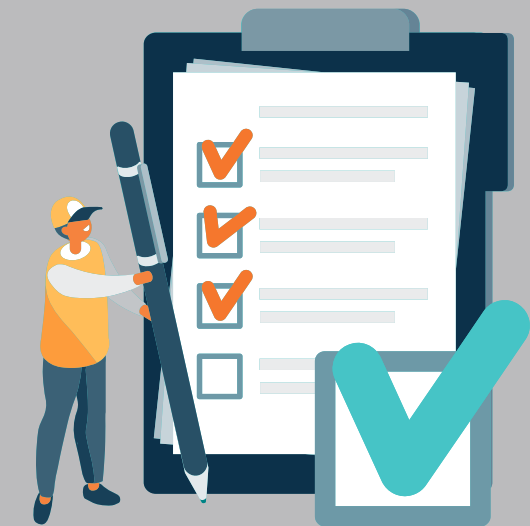
The right to liberty is expressly protected by Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) which states, "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention [...]." It is also enshrined in Article 3 of the Universal Declaration of Human Rights.



### Cambodian Law

Articles 32 of the Cambodian Constitution, which states "Everyone has the right to life, liberty and security of person [...]," as well as Article 38 protect the right to liberty. Several provisions of the Cambodian Code of Criminal Procedure also guarantee this right and set rules for the detention of individuals in the context of criminal proceedings.

# Importance



In general, the right to liberty is of significant importance both for individuals and society as a whole, as deprivation of liberty has historically been the principal means to undermine the enjoyment of other rights.

In the criminal context, the right to liberty is critical to protecting the presumption of innocence of charged individuals, a fundamental fair trial right requiring that they be treated as innocent of the charges held against them until proven guilty according to the law and finally convicted by a court and, therefore, that they continue to enjoy their liberty as any other individuals.



## Limitations

The right to liberty is not absolute. International human rights law permits the deprivation of an individual's liberty in the enforcement of criminal laws. However, the arrest or detention of individuals on criminal charges must not be arbitrary, i.e., it must not be inappropriate, unjust, unpredictable, unreasonable, unnecessary, or disproportional. Arrest or detention must also be lawful, i.e., it must be carried out in accordance with procedures established by law and with respect for the rule of law.



The deprivation of liberty that pre-trial detention constitutes must be the exception and not the rule and therefore be based on an individual determination that it is reasonable and necessary, taking into account factors clearly specified in the law (e.g., risks of flight, interference with evidence).



Anyone deprived of liberty by arrest or detention must be able to challenge the lawfulness of this deprivation before a court, and any victim of an unlawful or arbitrary arrest or detention must have the right to ask for compensation.

Finally, while the right to liberty guaranteed by Article 9 of the ICCPR is not in the list of non-derogable rights\* of Article 4(2) of the ICCPR, the guarantee against arbitrary detention enshrined in Article 9 cannot be derogated from during a state of emergency.

\* A non-derogable right is a right whose application cannot be suspended by a government in circumstances of "state of emergency" under Article 4 of the ICCPR.