

Handout 7.1

Key provisions of international and regional instruments

A. *The right to a fair hearing*

The International Covenant on Civil and Political Rights: article 14 (1)

... 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.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: article 18 (1)

In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The Statute of the International Criminal Court: article 67 (1)

In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially ...

The African Charter on Human and Peoples' Rights: article 7 (1) (d)

Every individual shall have the right to have his cause heard. This comprises:

(d) The right to be tried within a reasonable time by an impartial court or tribunal.

The American Convention on Human Rights: article 8 (1)

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

The European Convention on Human Rights: article 6 (1)

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

B. *The right to a public hearing and the right to a public judgement*

The International Covenant on Civil and Political Rights: article 14 (1)

... 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. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: article 18 (1)

... In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The Statute of the International Criminal Court

Article 67 (1):

In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially ...

Article 68 (2):

As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

Article 74 (5):

The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. ... The decision or a summary thereof shall be delivered in open court.

The American Convention on Human Rights: article 8 (5)

Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

The European Convention on Human Rights: article 6 (1)

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

C. *The right to be tried "without undue delay" or "within a reasonable time"*

The right to be tried "without undue delay" is provided for in:

- Article 14 (1) of the International Covenant on Civil and Political Rights
- Article 18 (3) (c) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Article 67 (1) (c) of the Statute of the International Criminal Court

The right to be tried "within a reasonable time" is guaranteed by:

- Article 7 (1) (d) of the African Charter on Human and Peoples' Rights
- Article 8 (1) of the American Convention on Human Rights
- Article 6 (1) of the European Convention on Human Rights

D. The right to defend oneself in person or through a lawyer of one's own choice, the right to free legal aid and the right to privileged communications with one's lawyer

The International Covenant on Civil and Political Rights: article 14 (3) (d)

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: article 18 (3) (d)

In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:

- (d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay.

The Statute of the International Criminal Court: article 67 (1) (d)

In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

- (d) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it.

The African Charter on Human and Peoples' Rights: article 7 (1) (c)

Every individual shall have the right to have his cause heard. This comprises:

- (c) the right to defence, including the right to be defended by counsel of his choice.

The American Convention on Human Rights: article 8 (2) (d)-(e)

... During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- (d) The right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
- (e) The inalienable right to be assisted by counsel provided by the State, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law.

The European Convention on Human Rights: article 6 (3) (c)

Everyone charged with a criminal offence has the following minimum rights:

- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

E. The right to be present at one's trial

The right to be tried in one's presence is expressly guaranteed by:

- Article 14 (3) (d) of the International Covenant on Civil and Political Rights
- Article 18 (3) (d) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Article 67 (1) (d) of the Statute of the International Criminal Court

The right to be tried in one's presence is guaranteed by article 6 (1) of the European Convention on Human Rights through interpretation, this right being consistent with the "object and purpose" of the article.

F. The prohibition on self-incrimination, the right to remain silent and the prohibition on the use of evidence obtained through unlawful means

The International Covenant on Civil and Political Rights: article 14 (3) (g)

In the determination of any criminal 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.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: article 18 (3) (g)

In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:

- (g) Not to be compelled to testify against themselves or to confess guilt.

Article 67 (1) (g) of the Statute of the International Criminal Court provides that an accused shall have the right not "to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence.

The American Convention on Human Rights: article 8 (2) (g) and (3)

2. ... During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

(g) The right not to be compelled to be a witness against himself or to plead guilty.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

Guidelines on the Role of Prosecutors: Guideline 16

When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

G. *The right to call, examine or have examined witnesses*

The International Covenant on Civil and Political Rights: article 14 (3) (e)

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (e) 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.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: article 18 (3) (e)

In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:

- (e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them.

The Statute of the International Criminal Court: article 67 (1) (e)

In the determination of any charge, the accused shall be entitled ... to the following minimum guarantees, in full equality:

- (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute.

The American Convention on Human Rights: article 8 (2) (f)

... During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- (f) The right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts.

The European Convention on Human Rights: article 6 (3) (e)

Everyone charged with a criminal offence has the following minimum rights:

- (e) To examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

H. *The right to free assistance of an interpreter*

The International Covenant on Civil and Political Rights: article 14 (3) (f)

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: article 18 (3) (f)

In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:

- (f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court.

The Statute of the International Criminal Court: article 67 (1) (f)

In the determination of any charge, the accused shall be entitled ... to the following minimum guarantees, in full equality:

- (f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks.

The American Convention on Human Rights: article 8 (3) (a)

... During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- (a) The right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court.

The European Convention on Human Rights: article 6 (3) (e)

Everyone charged with a criminal offence has the following minimum rights:

- (e) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

I. The right to a reasoned judgement

For the key legal texts see section B above.

J. The right of appeal

According to **article 14 (5) of the International Covenant on Civil and Political Rights**, everyone

“convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: article 18 (5)

Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.

Article 8 (2) (h) of the American Convention on Human Rights provides for

“the right to appeal the judgement to a higher court.”

Article 2 (1) of Protocol No. 7 to the European Convention on Human Rights stipulates that everyone

“convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal”, and, further that, the “exercise of this right, including the grounds on which it may be exercised, shall be governed by law.”

This right may “be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in first instance by the highest tribunal or was convicted following an appeal against acquittal” (art. 2 (2)).