

The International Covenant
on Civil and Political Rights (ICCPR)
Article 14:

**Right to Equality before Courts
and Tribunals and to a Fair Trial**

Factsheets for legal practitioners
and civil society actors



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The Centre for Civil and Political Rights (the Centre), established in 2008 in Geneva, Switzerland, envisions the full and universal realisation of the rights proclaimed in the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols.

The Centre aims to fulfil this vision by enhancing the application of the ICCPR and promoting the implementation of the recommendations issued to State parties by the UN Human Rights Committee, the monitoring body of the ICCPR.

For this purpose, the Centre constructively works with the Human Rights Committee and national stakeholders such as local and national civil society, State authorities, Parliamentarians and the National Human Rights Institutions (NHRIs).

The Centre has its headquarters in Geneva, Switzerland and three regional coordinators, in Togo for Africa, in Thailand for Asia-Pacific region, and in Costa Rica for Caribbean and Latin America.

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ARTICLE 14 of the International Covenant on Civil and Political Rights (ICCPR)

1. *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. 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.*
2. *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*
3. *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*
 - (a) *To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;*
 - (b) *To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*
 - (c) *To be tried without undue delay;*
 - (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;*
 - (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;*
 - (f) *To have the free assistance of an interpreter if he cannot understand or speak the language used in court;*
 - (g) *Not to be compelled to testify against himself or to confess guilt.*
4. *In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.*
5. *Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*
6. *When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.*
7. *No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.*

Article 14 protects the right of everyone in the proceedings of criminal cases.

Article 14 §1 sets out a **general guarantee of equality before courts and tribunals** and entities individuals to a **fair and public hearing** by a competent, independent, and impartial tribunal established by law, if they face criminal charges or if their rights and obligations are determined in a suit at law, also specifying the **cases where media and public may be excluded** from such hearings.¹

Article 14 §§ 2 – 5 lay down **procedural guarantees** to be made available to the persons charged with a criminal offence; §6 secures a substantive **right to compensation** in case of miscarriage of justice in criminal cases; and §7 **prohibits double jeopardy**, i.e., guarantees the right to remain free from being tried or punished again for an offence for which the person concerned has already been finally convicted or acquitted.²

Article 14 requires **independence and effective functioning of the judiciary**, in particular in criminal cases. State Parties are also encouraged to provide **free legal aid** for individuals who do not have sufficient means to pay for it.³ Similar cases should be dealt with in similar proceedings.⁴

As fundamental safeguards for the rule of law, the Human Rights Committee emphasises that the **guarantees** set out in the article 14 must be respected **regardless of legal tradition or domestic law**.⁵ Any derogation from the article 14 must be strictly limited to the extent it is absolutely necessary.⁶

Provisions of the article 14 apply to all courts and tribunals including **military and specialised courts**, whereby trials of civilians by military or special courts should be exceptional and State parties are required to show that trials of civilians by these courts are necessary and justified by objective and serious reasons.⁷

With regard to **customary and religious courts**, State parties must ensure that those courts do NOT hand down binding judgements, unless:

- Proceedings are limited to minor civil and criminal matters,
- Proceedings meet the basic requirements of fair trial and other relevant guarantees of the ICCPR, and
- Judgements are validated by State courts in light of the guarantees set out in the ICCPR and can be challenged by the parties concerned in a procedure meeting the requirements of article 14 of the ICCPR.⁸

In practice – findings of the Human Rights Committee:

- **Trials of civilians by military or special courts: Egypt**⁹

The Committee expressed its concern over the increased prosecution and trial of individuals, especially critics and opponents, by emergency and military courts under overly broad counter-terrorism legislation. While recalling that trials of civilians by military or special courts should be exceptional, the Committee recommended that the State party reviews the respective jurisdiction of the emergency and military courts to ensure that all trials in those courts are indeed exceptional and that these courts are not used to prosecute individuals exercising their rights and fundamental freedoms.

¹ Human Rights Committee, General Comment No.32, (CCPR/C/GC/32), §3

² Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §3

³ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §10

⁴ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §14

⁵ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §4

⁶ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §6

⁷ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §22

⁸ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §24

⁹ CCPR/C/EGY/CO/5, §39-40 (April 2023)

General guarantee of equality before courts and tribunals (article 14 §1)

The right to equality before courts and tribunals applies not only to citizens but to **all individuals** who are **in the territory or subject to the jurisdiction of the State party** and ensures **equal access** to courts and tribunals and **equal treatment** before them without discrimination.¹

It also ensures **equality of arms**, meaning that all the parties have the same procedural rights and any distinctions must be based on law, have objective and reasonable justification and not result in disadvantage or unfairness to the defendant.² In order to ensure the equality of arms, free **interpretation** needs to be provided in cases where an indigent party cannot participate in the proceedings, including examination of witnesses, on equal terms.³

Furthermore, it requires that courts and tribunals deal with **similar proceedings in similar cases** unless the difference in treatment is justified by objective and reasonable grounds.⁴

Ensuring equal access and treatment of individuals before courts and tribunals requires State parties to ensure that other rights are guaranteed, including availability of legal assistance, whenever needed.⁵

In practice – findings of the Human Rights Committee:

- **Access to justice in remote areas: Colombia⁶**

The Committee expressed its concern over the difficulty in accessing justice in certain areas of the country due to the lack of establishment of the justice system in those regions. It recommended that the State party guarantees access to justice to people living in remote areas by establishing or strengthening the administration of justice in these areas through the creation of judicial bodies with adequate staff and resources.

- **Racial discrimination in justice system: Brazil⁷**

The Committee was concerned over the decline of trust in the judicial system, especially by communities of African descent, due to unequal treatment, racial and ethnic discrimination. It recommended, among others, that the State party increases the number of persons of African descent and from other minority groups and women at all levels of the judiciary and that it ensures access to justice for all, including by providing free legal aid for those in need.

- **Limited access to free legal aid: Uganda⁸**

The Committee expressed its concern that access to legal aid was restricted to capital offences and over the low quality of State-funded legal assistance. It recommended that the State party should ensure access to justice for all on equal footing, including by providing free legal aid to all persons who are without sufficient means.

- **Lack of equal access to justice due to language: Sri Lanka⁹**

The Committee expressed its concern regarding Tamil-speaking individuals who do not have equal access to justice owing to the limited use of the Tamil language in judicial proceedings and the lack of interpretation and translation services, and recommended provision of free interpretation and translation services for all defendants who do not understand the language used in court.

¹ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §8, §9

² Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §8, §13, which also clarifies that Equality between parties also applies to civil proceedings where each side should have equal opportunity to contest arguments and evidence presented by the other party.

³ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §13

⁴ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §14

⁵ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §10

⁶ CCPR/C/COL/CO/8, §28-29 (September 2023)

⁷ CCPR/C/BRA/CO/3, §47-48 (September 2023)

⁸ CCPR/C/UGA/CO/2, §34-35 (September 2023)

⁹ CCPR/C/LKA/CO/6, §32-33 (April 2023)

Fair and public hearing by competent, independent and impartial tribunals (article 14 §1)

Every person accused of a criminal offence has the right to a fair and public hearing by a competent, independent, and impartial tribunal.

Proceedings of a fair hearing must not entail **any direct or indirect influence, pressure, intimidation or intrusion** from whatever side, including the public and the jury, and for whatever reason.¹

In principle, hearings must be conducted **orally and publicly** to ensure the **transparency** of the proceedings and to **safeguard the interests of the accused individuals** and the **society** at large.² All or part of the public, including the media, can only be excluded in exceptional circumstances as specified in the article 14 §1, i.e.:

- For the protection of morals, public order, or national security in a democratic society;
- When required by the interest of the private lives of the parties involved; or
- When publicity would be prejudicial to the interests of justice.³

Furthermore, even if the public is excluded from the trial, **judgements** including **essential findings, evidence**, and their **legal reasoning must be made public**, except where:

- Required by the interests of juvenile persons, or
- The proceedings are dealing with matrimonial disputes or the guardianship of children.

A **tribunal** is a body, regardless of its name, which is **established by law** and **independent of the executive and legislative** branches of government or given judicial independence to handle judicial matters in specific cases (e.g., ordinary or specialised courts, civil or military, religious courts or recognized customary law courts), and therefore, any criminal conviction by a body, which cannot be regarded as a tribunal in this sense, is incompatible with the ICCPR article 14.⁴

To fulfil the requirement of the ICCPR article 14 §1 to ensure **competence, independence and impartiality of tribunals** without any exception, States must take specific measures to:

- Guarantee the independence of the judiciary from political interference by the executive or legislative branch of the government;
- Ensure that functions and competencies of the judiciary are clearly distinguishable from those of the executive;
- Ensure that the executive is not able to control or direct the judiciary; and
- Safeguard the independence of judges, especially
 - Protect judges from any form of political influence in their decision-making; and
 - Protect judges against conflicts of interest and intimidation.⁵

For this purpose, States are required to establish **clear and fair procedures** and **objective criteria** for the **appointment, remuneration, tenure, promotion, suspension and dismissal** of the members of the judiciary and **disciplinary sanctions** taken against them through the **constitution or adoption of laws**.⁶

Furthermore, for tribunals to be **impartial**, judges composing the tribunal **must not let their personal biases, prejudices, or preconceptions influence their decision or show any favouritism** towards

¹ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §25

² Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §28

³ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §29

⁴ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §18

⁵ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §19

⁶ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §19-20

one party to the detriment of the other, while the tribunal must appear to be **impartial in the eye of a “reasonable observer.”**⁷

Tribunals may NOT be independent and/or impartial, if there is:

- Exclusion of the accused or their representatives from the proceedings;
- Restrictions of the right to a lawyer of their own choice;
- Severe restrictions or denial of the right to communicate with their lawyers, particularly when held incommunicado;
- Threats to the lawyers;
- Inadequate time for the defence to prepare the case; or
- Severe restrictions or denial of the right to summon and examine or have examined witnesses, including prohibitions on cross-examining certain categories of witnesses, e.g. police officers responsible for the arrest and interrogation of the defendant.⁸

In practice – findings of the Human Rights Committee:

- **Lacking judicial independence and trials behind closed doors: Turkmenistan**⁹

The Committee expressed concerns that the President had the sole power to appoint judges; that politically motivated criminal trials were held behind closed doors; and that information of court decisions was not publicly available. It recommended the State party to ensure that procedures for the selection, appointment, promotion and removal of judges and restrictions on fair trial guarantees including the use of closed trials are consistent with the ICCPR.

- **Public pressure in the courtroom: Russian Federation**¹⁰

In its jurisprudence, the Committee found that the failure of the trial court to control the hostile atmosphere and pressure created by the public in the courtroom, which made it impossible for the defence counsel to properly cross-examine the witnesses and present his defence, violated the defendant’s right to a fair trial guaranteed by the ICCPR article 14 §1.

- **Absence of independent judiciary: Burundi**¹¹

The Committee expressed its concern about the lack of an independent judiciary, especially due to the fact that the country’s President was the head of the Superior Council of the Judiciary, where the Minister of Justice also sat, and that the Council had the power to monitor the quality of judgements, rulings and related enforcement measures; and other deficiencies and shortcomings in the judicial system. The Committee recommended the reform of the judicial system to ensure full independence, impartiality and the security of judges and prosecutors; protect judges and prosecutors from any form of pressure or undue interference; address corruption in the judiciary; address excessive delays in processing judicial cases; and provide sufficient human and financial resource to the judiciary.

- **Intimidation, violence and killings of judges and lawyers: Philippines**¹²

The Committee expressed concern over threats, intimidation, violent attacks and killings targeting members of the judiciary, and called on the State party to take all measures to ensure that the judiciary and public prosecution can operate without any type of undue pressure or interference from the executive and legislative branches and to protect judges, prosecutors, and lawyers from public threats, intimidation, harassment, violence and killin.

⁷ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §21

⁸ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §23

⁹ CCPR/C/TKM/CO/3, §36-37 (April 2023)

¹⁰ Human Rights Committee, Communication No. 770/1997, *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997)

¹¹ CCPR/C/BDI/CO/3, §35-36, (August 2023)

¹² CCPR/C/PHL/CO/5, §37-38 (November 2022)

Presumption of innocence (article 14 §2)

Anyone charged with a criminal offence has the right to be presumed innocent until their guilt is proven **according to law** and **beyond reasonable doubt**. The **burden of proving the charge** is on the **prosecution**, while the **accused** has the **benefit of the doubt**.¹

According to the ICCPR article 14 §2:

- **Defendants** should in principle NOT be presented to the court in a manner indicating that they are “*dangerous criminals*” e.g. being shackled or kept in cages during trials;
- **All public authorities** have the duty to NOT prejudge the outcome of a trial including e.g. making public statements affirming the guilt of the accused;
- The **media** should avoid news coverage that might undermine the presumption of innocence;
- The **length of pretrial detentions** should NOT be taken as an indication of guilt or its degree; and furthermore,
- **Denial of bail** or being found **liable in civil proceedings** does NOT affect the presumption of innocence.²

In practice – findings of the Human Rights Committee:

- **Denial of bail for those charged with capital offence: Uganda³**
The Committee expressed its concern about legislation that denied the right to bail for individuals charged with capital offences, as it undermined the right to presumption of innocence, and recommended to amend or repeal the legislation concerned.
- **Public accusation by the authority and media before establishment of guilt by court: Belarus⁴**
In its jurisprudence, the Committee found that the authorities and State-controlled media violated the right of the accused to be presumed of innocence by publicly accusing them of attempting to overthrow the President and of having committed crimes before their guilt had been duly established by the court; and the fact that the defendant was handcuffed and placed in a cage in the courtroom throughout the hearings relating to his case also constituted a violation of the ICCPR article 14 §2.

¹ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §30

² Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §30

³ CCPR/C/UGA/CO/2, §34-35 (September 2023)

⁴ Human Rights Committee, Communication No. 2619/2015, [Adamovich v. Belarus](#) (CCPR/C/133/D/2619/2015)

Rights of persons charged with a criminal offence (article 14 §3)

Article 14 §3 lists up following **minimum guaranties in criminal proceedings** to be entitled to everyone charged with an offence in full equality:

- (a) **Right to be informed promptly and in detail of the nature and cause of the charge** against the defendant in a language they understand;
- (b) **Right to have adequate time and facilities** for the preparation of the defence and to **communicate with counsel** of their own choosing;
- (c) **Right to be tried without undue delay**;
- (d) **Right 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 for it;
- (e) **Right 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;
- (f) **Right to have the free assistance of an interpreter** if they cannot understand or speak the language used in court;
- (g) **Right not to be compelled to testify against oneself or to confess guilt.**

(a) Right to be informed of the nature and cause of the charge(s)

All persons charged with a criminal offence, including those who are not in detention, must be informed of the nature and cause of the criminal charge(s) brought against them in detail:

- **promptly** i.e., as soon as the person concerned is formally charged with a criminal offence under domestic law, or the person concerned is publicly named as such;
- **orally** (to be confirmed in writing later) **or in writing**;
- in a **language** which the person concerned understands;
- about both the **law** and the alleged **general facts** on which the charge is based.¹

In the case of trials *in absentia*, all due steps should be taken to inform the accused persons of the charges and to notify them of the proceedings.²

In practice – findings of the Human Rights Committee:

- **Delayed information on the charges: Russian Federation**³
In its jurisprudence, the Committee found that the right of the plaintiff to be informed of the nature and cause of the charge(s) was violated, as he was informed of some of the charges against him 25 days after his arrests and the rest at the end of the pre-trial investigation.

¹ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §31

² Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §31

³ Human Rights Committee, Communication No. 1304/2004, *Khoroshenko v. Russian Federation* (CCPR/C/101/D/1304/2004)

- **State failure to inform the accused: Kyrgyzstan⁴**

In its jurisprudence, the Committee found that the State party violated the plaintiff's right to be informed of the nature and cause of the charges by not informing him of the criminal proceedings against him, leading the accused to being tried in absentia. The Committee stated that the State did not provide any information demonstrating that it had taken all the steps necessary to locate and inform the accused of the charges and proceedings against him.

(b) Right to have adequate time and facilities for defence and to communicate with counsel

Accused persons must be given **adequate time and facilities for the preparation of defence** and to **communicate with counsel of their own choice**, which is also an important element in guaranteeing fair trials and the equality of arms. In certain cases, provision of free interpreters during pre-trial and trial phases is necessary to assure the communication between the defendant and the counsel.⁵

While what counts as “**adequate time**” to prepare a defence **depends on the circumstances of each case** (e.g., complexity or seriousness of the case), it is the responsibility of the counsel to request adjournment of the trial, and trials should be adjourned when the request is reasonable (e.g., in cases of serious criminal offence) and additional time is needed for the preparation of the defence.⁶

“**Adequate facilities**” for the preparation of defence include access to **documents** and other **evidence** as well as all **materials that the prosecution plans to use** in the court and **exculpatory materials**, which are not only **materials establishing innocence** but also other **evidence that can assist the defence**, such as evidence of forced confession.⁷

Accused individuals have the right to have **prompt access to counsel of their choice, meet counsel in private**, whereby the **confidentiality of their communication** should be fully respected.⁸ Lawyers should be able to advise and represent the accused without any restriction, influence, pressure, or undue interference from anyone.⁹

In practice – findings of the Human Rights Committee:

- *Denial of lawyers' access to clients: Egypt¹⁰*

The Committee expressed concern that lawyers were unduly denied access to their clients in detention and to documents necessary for their clients' defence, that lawyer-client confidentiality was not respected, and that lawyers involved in politically sensitive cases were subjected to harassment, intimidation, and, in some cases, to arbitrary detention, prolonged pretrial detention, torture and other ill-treatment, and enforced disappearance. It called on the State party to ensure that sufficient safeguards are in place to guarantee the independence and safety of lawyers, to enable them to carry out their duties without any harassment, undue interference or fear of arbitrary criminal prosecution and conviction or of other retaliatory measures.

⁴ Human Rights Committee, Communication No. 2500/2014, *Eliseev v. Kyrgyzstan* (CCPR/C/130/D/2500/2014)

⁵ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §32

⁶ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §32

⁷ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §33

⁸ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §34

⁹ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §34

¹⁰ CCPR/C/EGY/CO/5, §41-42 (April 2023)

- *Court's refusal to allow the defence present facts: Democratic Republic of Congo*¹¹

In this case, the defendant suffered a choking fit at the hearing, at which the trial was closed, and was physically unable to address the court to challenge the prosecution's submissions. However, the judge refused to allow him a short suspension to call his lawyers back into the courtroom, and the proceedings were closed without the defence being able to present relevant facts. The Committee found that the restrictions imposed by the court in this regard violated the ICCPR article 14 §3 (b).

(C) Right to be tried without undue delay

The ICCPR article 14 §3 (c) ensures that:

- Persons are not kept too long in a state of uncertainty about their fate;
- Detention during the period of trial does not last longer than necessary;
- In case the accused is denied bail by the court, the trial starts as expeditiously as possible; and
- The entire process, from the formal charging of the accused to the final judgement on the appeal, goes without "undue delay".¹²

Whether a delay in the administration of justice is considered "undue" or "justified" **depends on the circumstances of each case**, taking into account:

- Complexity of the case;
- Conduct of the accused; and
- How the matter is dealt with by administrative and judicial authorities.¹³

In practice – findings of the Human Rights Committee:

- **Backlog of cases: Sri Lanka**¹⁴

The Committee was concerned by the excessive delays in trials and backlog of cases, including cases of serious crimes against children. It recommended that the State party increases financial resources for the judiciary and the availability of trained judges, prosecutors, and public defenders.

- **8 years between arrest and final judgement: Cameroon**¹⁵

In this case, it took 8 years since the arrest of the accused in 1999 and the delivery of a final judgement in 2006, while a number of appeal proceedings had been in progress since 2000. The State party justified the delay by citing the complexity of the cases and, in particular, the numerous appeals filed by the accused. Pointing out that the right of appeal is guaranteed in ICCPR article 14 §5 and that exercise of this right cannot be used as justification for unreasonable delays in the proceedings, the Committee found that there was a violation of the ICCPR article 14 §3 (c).

¹¹ Human Rights Committee, Communication No. 2465/2014, Eugène Diomi Ndongala Nzo Mambu v. Democratic Republic of the Congo, (CCPR/C/118/D/2465/2014)

¹² Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §35

¹³ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §35

¹⁴ CCPR/C/LKA/CO/6, §32-33 (April 2023)

¹⁵ Human Rights Committee, Communication No. 1397/2005, *Engo v. Cameroon* (CCPR/C/96/D/1397/2005)

- **Undue delay in appeal hearing of a death penalty case: Zambia¹⁶**

In this case, the appeal of the person sentenced to death penalty was not heard for over eight years (at the time of examination of the case) since the conviction. The only justification for the delay given by the State party was technical reasons i.e. the failure to have the record of proceedings typed. The Committee found a violation of ICCPR article 14 §3 (c) and 14 §5.

(d) Right to be present at trial, to defend oneself, to be informed of this right and to have legal assistance

Accused persons are entitled to be **present during their trials**. **Trials in absentia are permissible** only when accused persons decline to be present provided that they were **informed of the proceedings sufficiently in advance**.¹⁷ In order to protect this right, State parties must take necessary steps to summon accused persons, to inform them beforehand about the date and place of the trial, and to request their attendance.¹⁸

Accused persons also have the right to **defend themselves**, either **in person** or **through the legal counsel of their own choice**, and they should be **informed** of this right. It is possible for the accused person to reject any assistance from legal counsel and **defend themselves without a lawyer**, while assignment of a lawyer against the wishes of the accused is allowed, if it is necessary for the interest of justice and has objective and sufficiently serious purposes, for example:

- The accused person is substantially and persistently obstructing the proper conduct of trial;
- The accused person is facing a grave charge but is unable to act in their own interest; or
- In order to protect vulnerable witnesses from further distress or intimidation if they were to be questioned by the accused.¹⁹

At the same time, whenever required by the interests of justice, accused persons also have the right to have legal assistance assigned to them by relevant authorities, which should be free of charge if the accused is not able to pay for it. Counsel provided by the authorities, in this regard, must also be able to represent the accused effectively, and it will be a violation of the ICCPR article 14 §3 (d), if:

- It is manifest to the judge that the lawyer's behaviour, including blatant misbehaviour or incompetence, is incompatible with the interests of justice; or
- The court or other relevant authorities hinder appointed lawyers from fulfilling their task effectively.²⁰

In practice – findings of the Human Rights Committee:

- **Trial in absentia without informing the accused: Kyrgyzstan²¹**

In this case, the accused was tried in absentia, but no information was provided by the State party about the steps it had taken to inform the accused of the charges against him, or to request his presence during the multiple trials that had been conducted. The Committee found a violation of the ICCPR article 14 §1, §3 (a) and §3 (d).

¹⁶ Human Rights Committee, Communication No. 1520/2006, [Mwamba v. Zambia](#) (CCPR/C/98/D/1520/2006)

¹⁷ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §36

¹⁸ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §36

¹⁹ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §37

²⁰ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §38

²¹ Human Rights Committee, Communication No. 2500/2014, [Eliseev v. Kyrgyzstan](#) (CCPR/C/130/D/2500/2014)

- **Rejection of a request of the accused to be present at the trial: Belarus²²**

In this case, the accused requested to be present in the court at his cassation appeal hearing, but the court rejected his written request following domestic law. In the appeal proceedings, the court examined the case concerning the facts and the law and made a new assessment of guilt or innocence, whereby the accused had the right to be present. As no adequate explanations were given by the State party about the reasons for the rejection of the accused's request to be present at the cassation hearing, the Committee found a violation of the ICCPR article 14 §3 (d).

- **Restrictions on the legal aid of own choice: Hong-Kong, China²³**

The Committee was concerned that persons seeking legal aid, particularly those charged under the National Security Law, were hindered from choosing their own criminal lawyers, and that the number of judicial review cases that solicitors and barristers were allowed to take on annually was limited. It recommended the State party to establish an independent legal aid authority to guarantee the rights to timely and competent legal aid and to counsel of choice.

- **Limited legal aid: Ethiopia²⁴**

The Committee regretted that the provision of free legal aid was mandatory only for persons accused of serious crimes, and the State party was recommended to ensure that all persons without means have access to legal aid and that the public, including persons living in remote areas and from vulnerable and minority groups, were aware of the existence of such legal services and they can make use of them in practice.

(e) Right to examine witnesses

Accused persons have the right 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. It **guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses available to the prosecution.**²⁵

However, it is **NOT an unlimited right** to obtain any witnesses, but only a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.²⁶

In practice – findings of the Human Rights Committee:

- **Refusal of the request of the accused to call own witnesses: Kazakhstan²⁷**

In this case, the judge refused to allow witnesses requested by the accused to testify, while allowing their written testimonies, taken earlier by the police, to be included in the court records of the hearing. The State party alleged that the accused was afforded all rights and legal means for a fair trial since written testimonies of three witnesses were read into the court records upon the request of the accused. The Committee found a violation of the ICCPR article 14 §3 (e) since the State party cannot discharge its obligation under the article merely by stating that witness statements were read into a hearing protocol.

²² Human Rights Committee, Communication No. 2703/2015, [Likhovid v. Belarus](#) (CCPR/C/135/D/2703/2015)

²³ CCPR/C/CHN-HKG/CO/4, §33-34 (November 2022)

²⁴ CCPR/C/ETH/CO/2, §37-38 (December 2022)

²⁵ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §39

²⁶ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §39

²⁷ Human Rights Committee, Communication No. 2676/2015, [Tsukanov v. Kazakhstan](#) (CCPR/C/131/D/2676/2015)

- **Denial of the cross-examination of experts by the defence: Russian Federation²⁸**

In this case, conclusions of the two forensic examinations were of crucial importance and the trial court based a large part of its decision on those findings, whereby the accused was formally charged under the Criminal Code only after the conclusions of the two forensic examinations were made available to the pretrial investigation authorities. However, the court did not allow the defence to call and cross-examine the experts who had carried out the forensic examinations. The Committee found a violation of the ICCPR article 14 §3 (e).

(f) Right to free interpretation

If the accused, whether aliens or the nationals of the State party, cannot understand or speak the language used in court, free assistance of an interpreter should be provided at all stages of the oral proceedings.²⁹ However, if accused persons know the official court language sufficiently to defend themselves efficiently, they are in principle not entitled to the free assistance of an interpreter.³⁰

In practice – findings of the Human Rights Committee:

- **Lack of equal access to justice due to language: Sri Lanka³¹**

The Committee expressed its concern that Tamil-speaking individuals do not have equal access to justice owing to the limited use of the Tamil language in judicial proceedings and the lack of interpretation and translation services, and recommended provision of free interpretation and translation services for all defendants who do not understand the language used in court.

(g) Right not to be compelled to testify against oneself or to confess guilt

In order to protect this right, the investigating **authorities must NOT put any direct or indirect physical or undue psychological pressure on the accused to obtain a confession of guilt.**³²

Moreover, as the ICCPR article 7 prohibits torture and ill-treatment of anyone, including accused persons, any statements or confessions obtained under torture or ill-treatment in violation of the article 7 cannot be used as evidence, unless they are used to prove a violation of the ICCPR articles 7 and 14 §3 (g). In such cases, the burden of proof that the confession of the accused was made with their own free will, i.e. not through torture, ill-treatment or coercion, is on the State, i.e. prosecution.³³

In practice – findings of the Human Rights Committee:

- **Confessions obtained under torture and ill-treatment: Sri Lanka³⁴**

The Committee was concerned about the widespread practice of torture and ill-treatment by the police and security forces in places of detention and that confessions obtained under torture have been admitted as evidence in courts. It called on the State party to eradicate torture and

²⁸ Human Rights Committee, Communication No. 2916/2016, *Pirogov v. Russian Federation* (CCPR/C/133/D/2916/2016)

²⁹ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §40

³⁰ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §40

³¹ CCPR/C/LKA/CO/6, §32-33 (April 2023)

³² Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §41

³³ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §41

³⁴ CCPR/C/LKA/CO/6, §26-27 (April 2023)

ill-treatment, including to ensure that confessions obtained under torture and ill-treatment are not accepted in court in any circumstances and that the burden to prove that the confession was made voluntary falls on the prosecution.

- **Confession obtained under duress: Uzbekistan³⁵**

In this case, the confession of the accused, which was claimed to be obtained under duress in the presence of the State-appointed counsel, was accepted as evidence by the trial court. The State party stated that the evidence considered by the court was obtained in a lawful way and accepted by the court as admissible, and that the torture allegations raised in the appeal by the accused were reviewed and rejected by the appeals court, although it was also contended that the decision of the appeals court was kept secret. Noting that the State party did not provide any documentary evidence to support its statement, that there was nothing on file to suggest that either the trial or the appeals court considered the claim of the accused that he was kept incommunicado when he made his confession under duress, and that he retracted the confession once he talked to his chosen counsel, the Committee found a violation of the ICCPR article 14 §3 (g).

³⁵ Human Rights Committee, Communication No. 2577/2015, [Ozoda Yakubova v. Uzbekistan](#) (CCPR/C/122/D/2577/2015)

In cases of juvenile persons, **AT LEAST the same guarantees** and protection should be given to juveniles as are accorded to adults under the ICCPR article 14. Procedures should also take account of their **age and the desirability of promoting their rehabilitation. Special protection** to be given to juvenile persons in criminal proceedings include, among others:

- To be directly informed of the charges against them;
- To be provided with appropriate assistance in the preparation and presentation of their defence, if appropriate, through their parents or legal guardians;
- To be tried as soon as possible in a fair hearing in the presence of legal counsel, other appropriate assistance, and their parents or legal guardians, unless it is considered not to be in the best interest of the child, in particular taking into account their age or situation; and that
- Detention before and during the trial should be avoided to the extent possible.¹

In order to ensure that juveniles are treated in a manner commensurate with their age, State parties should establish an appropriate **juvenile criminal justice system**, especially establish a **minimum age** below which children and juveniles shall not be put on trial for criminal offences, taking into account their **physical and mental maturity**.² The Committee on the Rights of the Child recommends that the minimum age in this regard should be set as at least 14 years old.³

Whenever appropriate, **alternative measures** other than criminal proceedings should be considered, such as mediation between the perpetrator and the victim, conferences with the family of the perpetrator, counselling, community service or educational programmes.⁴

In addition, **the Convention on the Rights of the Child (CRC)** also sets out rights of children to be protected in criminal proceedings, including the protection of their privacy at all stages of the proceedings.⁵ The CRC also prohibits the imposition of capital punishment or life imprisonment without possibility of release on juveniles.⁶

In practice – findings of the Human Rights Committee:

- **Pretrial detention of juveniles: Cyprus⁷**

The Committee expressed concern that juvenile pretrial detainees were reportedly not completely separated from convicted juveniles and recommended that pretrial detention of minors was only to be used strictly in exceptional cases and as a last resort, and that juveniles held in pretrial detention are always held separately from convicted juvenile detainees.

- **Failure to provide special protection to arrested juveniles: Russian Federation⁸**

In this case of a juvenile (under 18 years of age), his parents were orally informed at the time of arrest, but his mother was only appointed as his legal representative almost two months after the arrest. The Committee found a violation of ICCPR article 14 §4 in conjunction with the ICCPR article 24 §1, as the State party failed to take any special measures to protect the arrested juvenile.

¹ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §42

² Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §43

³ Committee on the Rights of the Child (CRC), General Comment No.24 (CRC/C/GC/24), §33

⁴ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §44

⁵ Ref. CRC article 40 and General Comment No.24 (CRC/C/GC/24)

⁶ Article 37 (a)

⁷ CCPR/C/CYP/CO/5, §33-34 (September 2023)

⁸ Human Rights Committee, Communication No. 2107/2011, [Berezhnoy v. Russian Federation](#) (CCPR/C/118/D/2107/2011)

Right to the review of one's conviction and sentence by a higher tribunal (article 14 §5)

Anyone convicted of a crime has the right to have **their conviction and sentence reviewed by a higher tribunal**, i.e. the right to **appeal**, whereby the modalities and which court is responsible for such review should be determined by the law.¹

There is a violation of ICCPR article 14 §5, if:

- The decision by the court of first instance is final;
- A conviction imposed by an appeal court or a court of final instance, following acquittal by a lower court, according to domestic law, cannot be reviewed by a higher court; or
- The highest court of a country acts as the first and only instance (unless a reservation is made by the State party in this effect).²

In addition, while it does not have to be a full retrial or hearing, State parties should ensure that the appeal court reviews the facts of the case, not only the formal or legal aspects of the conviction, and that the convicted person has access to a duly reasoned and written judgement of the trial court and other documents necessary to exercise the right to appeal effectively.³ **Undue delay of the review** by the higher instance court is both a **violation** of the ICCPR articles 14 §5 and 14 §3 (c).⁴

Moreover, in **death penalty cases**, denial of **legal aid for an appeal** of an indigent convicted person is a violation of the ICCPR article 14 §5 and 14 §3 (d), as it effectively precludes an **effective review of the conviction** and sentence by the higher instance court.⁵ Similarly, the ICCPR article 14 §5 is violated if the defence counsel does not intend to put any arguments in the appeal process but the defendant is not informed of such intention, as it deprives the defendant of the opportunity to seek alternative representation.⁶

In practice – findings of the Human Rights Committee:

- **Lack of effective appeal process: Egypt**⁷

The Committee expressed concerns that sentences issued by the Emergency State Security Courts could be appealed and that sentences issued by military courts may be appealed only to the Supreme Military Court of Appeals presided over by a military judge appointed directly by the Minister of Defence and subject to the military chain of command and disciplinary procedures. It recommended the State party to ensure the protection of the right of defendants to have their convictions and sentences reviewed by higher courts.

- **Conviction by the Supreme Court: Spain**⁸

In this case, the accused was convicted by the Supreme Court, which was the only court competent to hear the case against him under the domestic legal system of the country due to the nature of the position held by the accused, and therefore did not have any opportunity for appeal. Noting that such a system is incompatible with the Covenant, unless the State party concerned has made a reservation to this effect, the Committee found a violation of ICCPR article 14 §5.

¹ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §45

² Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §47

³ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §48-49

⁴ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §49

⁵ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §51

⁶ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §51

⁷ CCPR/C/EGY/CO/5, §39-40 (April 2023)

⁸ Human Rights Committee, Communication No. 2844/2016, *Garzón v. Spain* (CCPR/C/132/D/2844/2016)

- **Appeal trial in the absence of the accused: Ukraine⁹**

In this case, the Supreme Court of the State party examined the appeal in the absence of the accused despite his specific request to be present, and the accused was not represented by counsel either. Noting that the participation of the accused at the appeal hearing is decided upon by the court itself according to the Criminal Procedure Code of the State party, but the State party failed to explain the reasons why it did not allow the participation of the accused and his lawyers at the proceedings before the Supreme Court, the Committee found a violation of the ICCPR article 14 §5.

- **Lack of effective legal aid to appeal: Trinidad and Tobago¹⁰**

In one death sentence case, the defendant was denied legal aid for an appeal in forma pauperis. The Committee found a violation of the ICCPR articles 14 §3 (d) and 14 §5 as it effectively precluded the review of conviction and sentence by higher courts.

⁹ Human Rights Committee, Communication No. 2368/2014, [Viktor Taran v. Ukraine](#) (CCPR/C/128/D/2368/2014)

¹⁰ Human Rights Committee, Communication No. 554/1993, [LaYende v. Trinidad and Tobago](#) (CCPR/C/61/D/554/1993)

Compensation for miscarriage of justice (article 14 §6)

In cases of **miscarriage of justice**, i.e. **wrongful conviction and punishment**, **compensations** should be paid according to law to the persons concerned, if it is conclusively established that:

- The person has been **convicted** of a criminal offence by a **final decision**;
- The person has **suffered punishment** as a consequence of that conviction; but
- The conviction has been **reversed**, or the person has been **pardoned**, on the **basis of a new or newly discovered fact**.

State parties have the **obligation to enact legislation** to ensure that such **compensation** is actually paid **within a reasonable period of time**.¹

However, it is not a miscarriage of justice and therefore no compensation is due, in cases where:

- It is proved that the non-disclosure of the relevant fact, which led to the reversal of conviction or pardon of the accused, in good time is wholly or partially attributed to the accused;
- The conviction is set aside on appeal, i.e. the judgement is not final;
- The pardon given is humanitarian or discretionary, or based on the consideration of equity.²

In practice – findings of the Human Rights Committee:

- **Lack of reversal of conviction or pardon: New Zealand**³

In this case, the author of the communication argued that the Court of Appeal of the country rejected his appeal and failed to provide him with an appropriate remedy in violation of the ICCPR article 14 §6. The Committee considered that the ICCPR article 14 §6 did not apply to his case, since his conviction had never been set aside by any later judicial decision, or he had never been pardoned.

- **Acquittance by final decision: Australia**⁴

In this case, the author of the communication was arrested in 1989 and convicted by the Supreme Court of New South Wales on three charges of murder and sentenced to an unspecified term of imprisonment in 1990. While the Court of Criminal Appeal, in 1991, quashed his conviction and he was released from jail, the author claimed that he did not have access to compensation 'according to law' in violation of the ICCPR article 14 §6. The Committee found that the ICCPR article 14 §6 did not apply to this case, since the final decision was the decision of the Court of Criminal Appeal which acquitted the author.

- **Acquittance by pardon motivated by consideration of equity: Finland**⁵

In this case, the author of the communication was sentenced by an ordinary court of first instance to 11 months' imprisonment in 1978, which was confirmed by the Eastern Finland Higher Court in 1979, and started his sentence in 1980. The author was pardoned and released from prison in 1981. The Committee found that the ICCPR article 14 §6 did not apply to this case, since his conviction had never been set aside by any later judicial decision and his presidential pardon was motivated by consideration of equity.

¹ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §52

² Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §53

³ Human Rights Committee, Communication No. 1909/2009, *Taito Fa'afete v. New Zealand* (CCPR/C/114/D/1909/2009, 7 Sep. 2015)

⁴ Human Rights Committee, Communication No. 1367/2005, *Anderson v. Australia* (CCPR/C/88/D/1367/2005)

⁵ Human Rights Committee, Communication No. 089/1981, *Muhonen v. Finland* (CCPR/C/24/D/89/1981)

Prohibition of double prosecution and double punishment (article 14 §7)

The ICCPR §7 prohibits **trial or punishment of anyone for an offence for which they have already been finally convicted or acquitted** in accordance with the law and penal procedure of each country. Under this principle, so called “*ne bis in idem*” (not twice in / for the same), no one shall be brought either before the same court again or before another tribunal again for the same offence, for example:

- Someone acquitted by a civilian court cannot be tried again for the same offence by a military or special tribunal;¹ and
- Conscientious objectors shall not be repeatedly punished for not having obeyed a renewed order to serve in the military, if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience.²

However, this prohibition does not apply to cases of, for example:

- Retrial requested by a person who was convicted in absentia;
- Retrial ordered by a higher court which quashed a conviction;
- Resumption of a criminal trial justified by exceptional circumstances, such as the discovery of evidence which was not available or known at the time of the acquittal;
- Disciplinary measures that do not amount to a sanction for a criminal offence; or
- National jurisdictions of two or more States.³

In practice – findings of the Human Rights Committee:

- **Ne bis in idem in case of conscientious objection to military service: Turkmenistan⁴**
In this case, the author of the communication was tried and convicted twice under the same provision of the Turkmen Criminal Code for his conscientious objection and refusal to perform his compulsory military service, and the Committee found a violation of the ICCPR §7.
- **Administrative measure and criminal conviction: New Zealand⁵**
In this case, the author of the communication argued that his right under the ICCPR article §7 was violated since he was facing deportation based on this drug offence after he had already served his sentence for the same offence and the deportation order was issued against him after he was finally convicted and sentenced for his drug offences. The Committee found that, in this case, the deportation was a measure of administrative nature and could not be seen as an additional punishment for the criminal offences the author had committed, and thus no violation of the ICCPR article §7 was found.

¹ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §54

² Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §55

³ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §54, §56-57

⁴ Human Rights Committee, Communication No. 2225/2012, [Akmurad Nurjanov v. Turkmenistan](#) (CCPR/C/117/D/2225/2012)

⁵ Human Rights Committee, Communication No. 2631/2015, [J.G. v. New Zealand](#) (CCPR/C/115/D/2631/2015)



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