

LEGAL RIGHTS - CRIMINAL - Protection Against Undue Delay

II. GENERAL COMMENTS AND RECOMMENDATIONS

- CERD General recommendation XXXI (Sixty-seventh session, 2005): The Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, A/60/18 (2005) 98 at para. 23.

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23. States parties should...guarantee to all arrested persons, whatever the racial, national or ethnic group to which they belong, enjoyment of the fundamental rights of the defence enshrined in the relevant international human rights instruments (especially the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights), in particular the right not to be arbitrarily arrested or detained, the right to be informed of the reasons for their arrest, the right to the assistance of an interpreter, the right to the assistance of counsel, the right to be brought promptly before a judge or an authority empowered by the law to perform judicial functions, the right to consular protection guaranteed by article 36 of the Vienna Convention on Consular Relations and, in the case of refugees, the right to contact the Office of the United Nations High Commissioner for Refugees.

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- ICCPR General Comment 29 (Seventy-second session, 2001): Derogations from provisions of the Covenant during a state of emergency, A/56/40 vol. I (2001) 202 at para. 16.

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16. Safeguards related to derogation, as embodied in article 4 of the Covenant, are based on the principles of legality and the rule of law inherent in the Covenant as a whole. As certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations. The Committee is of the opinion that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant.^{9/}

Notes

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^{9/} See the Committee's Concluding Observations on Israel, 1998, para, 21: "... The Committee considers the present application of administrative detention to be incompatible

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with articles 7 and 16 of the Covenant, neither of which allows for derogation in times of public emergency. The Committee stresses, however, that a State party may not depart from the requirement of effective judicial review of detention.” See, also United Nations document A/49/40, Supplement No. 40, vol. I, annex XI, the response by the Committee to the Submission on Prevention of Discrimination and Protection of Minorities, concerning a draft third optional protocol to the Covenant: “The Committee is satisfied that States parties generally understand that the right to habeas corpus and amparo should not be limited in situations of emergency, Furthermore, the Committee is of the view that the remedies provided in article 9, paragraphs 3 and 4, read in conjunction with article 2 are inherent to the Covenant as a whole.”

- ICCPR General Comment 8 (Sixteenth session, 1982): Article 9: Right to Liberty and Security of Persons, A/37/40 (1982) 95 at paras. 2 and 3. For text of General Comment, see **LIBERTY AND SECURITY OF THE PERSON**.
- ICCPR General Comment 13 (Twenty-first session, 1984): Article 14: Equality Before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, A/39/40 (1984) 143 at paras. 8 and 10. For text of General Comment, see **LEGAL RIGHTS - CRIMINAL - Right to a Fair and Public Hearing**.