

« *Lawyers for Lawyers* »

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TRAINING MANUAL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N° 18: FAIR TRIAL – OVERVIEW

There is no good justice without a fair trial.

➤ *What is the right to a fair trial ?*

This concerns the right of any person to have his or her case heard fairly before a competent, independent and impartial court, within a reasonable period of time, both with regard to civil disputes and criminal proceedings.

➤ *What guarantees does it include ?*

• **General guarantees**

- The right to a tribunal : effective access to a judge, obtaining of a reasoned decision which definitively decides upon the dispute.
- The right to an independent and impartial tribunal.
- The right to be heard fairly : equality of arms, respect for the adversarial nature of proceedings.
- The right to be heard publicly : public conduct of proceedings, decision made public.
- The right to be judged within a reasonable period of time.
- The right to have decisions enforced

• **Guarantees granted to the accused**

- The right to presumption of innocence
- The right to a defence :
 - The right to remain silent and not incriminate oneself
 - The right to information for any person and the right to take part in his or her trial
 - The right to defend oneself appropriately : to have the required time and facilities to prepare one's defence, to present one's own defence, or defend oneself with the assistance of a lawyer.
 - The right to call and question witnesses
 - The right to have an interpreter and translated documents
 - The right to appeal



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➤ **Which texts make reference to it ?**

- Art. 8, 10, 11 of the Universal Declaration of Human Rights (UDHR)
- Art. 14 of the International Covenant on Civil and Political Rights (ICCPR)
- Art. 6 of the European Convention on Human Rights (ECHR)
- Art. 18, 25, 26 of the American Declaration of the Rights and Duties of Man (ADRDM)
- Art. 8 of the American Convention on Human Rights (ACHR)
- Art.7 §1 and 7 §2 of the African Charter on Human and People's Rights (ACHPR)
- Directives and principles on the right to a fair trial and legal assistance in Africa.

➤ **Can these rights be derogated ?**

In exceptional circumstances, States may suspend, on a temporary, limited and controlled basis, the enjoyment or exercise of certain rights and freedoms guaranteed by international texts for the protection of human rights.

- **With regard to universal legal instruments**

- *ICCPR* : article 4 specifies that certain rights (including the right to a fair trial) may be suspended in the event of exceptional public danger which threatens the existence of the nation and is proclaimed by an official act, with the strict proviso that the situation so requires (subject to these measures not being incompatible with other obligations laid down by international law and that they do not involve discrimination based solely on race, colour, sex, language, religion or social origin).

- **With regard to regional legal instruments**

The principal regional legal instruments specify that certain aspects of the right to a fair trial cannot be derogated.

- *ECHR* : article 15 allows States to derogate the rights recognised in the Convention in the event of war or in the event of any other public danger which threatens the life of the nation, strictly insofar as the situation so requires and with the proviso that these measures do not contradict other obligations under international law.

- *ACHR* : article 27 authorises the suspension of rights in the event of war, public danger or any other situation of crisis which threatens the independence or security of the State, to the exclusion of legal guarantees for certain rights (rights to life, right to integrity of the person, etc.).

- *ACHPR* : this contains no provision to allow States to derogate their obligations in the event of an emergency, nor in the event of public danger.

- *Directives and principles on the right to a fair trial and legal assistance in Africa* : non-derogation clause (point R) according to which « no circumstances, whether concerning the threat of war, a state of international armed conflict, internal political instability or any other situation of public danger, may be invoked to justify derogations from the right to a fair trial ».

- **General legal regime for restrictions**

To be admissible, restrictions on rights must satisfy 3 conditions :

- *Legality* : be specified by law
- *Necessity* : strictly insofar as the situation requires

- *Proportionality* : balance of appropriateness between the means employed and the intended aim. For example, ECHR judges exercise control of proportionality over measures restricting freedoms which are taken by States if these measures constitute an intrusion upon a guaranteed right.

Sources:

- Frédéric SUDRE, *Droit européen et international des droits de l'homme*, Puf, 2008.
- Amnesty International Section française, *Protéger les droits humains. Outils et mécanismes juridiques internationaux*, Litec, 2003.
- Avocats Sans Frontières France. Recueil d'instruments juridiques internationaux relatifs au procès équitable.

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