

# International Human Right Standards Arrest and Detention

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*Abstract: The aim of this paper is to provide participants with a clear understanding of human rights standards for the arrest and detention of persons. The module will also familiarize participants with actions to be taken to prevent and respond to human rights violations in regards to arrest and detention. The paper contains a variety of suggested learning activities to keep adult learners engaged. The facilitation team should use as many of the learning activities as time allows and keep them tailored to the target audience. The aim is for the learning experience to be as interactive as possible. Participants invariably bring to the course some experiences, which must be actively drawn upon to enhance the overall learning experience involved in the learning process through practical exercises, brainstorming sessions, discussion of case studies, working in small groups on specific tasks, etc.*

*Keywords: Arrest, Detention, Human Rights, Right standards, Ethics, Guidelines, Social issues.*

## INTRODUCTION

Participants should be made aware of the content, structure and timing by the teacher. Knowing what to expect, respondents can boost their ability to stay on the issue and benefit from the session.

- Description of essential words
- Civil rights in arrest cases impacted
- Protocols for post arrest
- Terms of incarceration
- Special conditions for imprisoned women and children
- Under international law, policing forces
- Exercises and description
- Outcome evaluation of learning
- Optional Practice for Learning

Both human beings are entitled to enjoy protection for their rights and protection. It is axiomatic that the defense of all individual rights is becoming highly fragile and sometimes illusory without an efficient guarantee of the dignity and security of the human being. However, as demonstrated by the work of foreign oversight agencies, seizures and detentions remain routine without fair justification and without adequate judicial redress being made available to the victims concerned. In the midst of such unconstitutional and illegal denial of rights, inmates are often refused access to counsel and their own relatives, as well as being subjected to torture or other types of ill-treatment. It is also important that national judges and attorneys comply with the legal rules that exist in international law to address and avoid these forms of violations of human rights, and that lawyers be aware of their content in order to allow them to work adequately on behalf of their clients.

## INTERNATIONAL HUMAN RIGHT STANDARDS

It is important to point out that, while being related to the idea of 'liberty' in the legal texts alluded to above, there is a broader framework for the notion of the security of an individual as well. Accordingly, the Human Rights Committee decided that Article 9(1) of the Covenant 'protects the right to protection of individuals even beyond the sense of formal deprivation of liberty' and that an understanding of Article 9 'enabling a State party to ignore threats to the personal security of persons not detained under its control would make the

protections of personal security of persons subject to its jurisdiction totally ineffective' In the Committee's opinion, 'it is not possible for States to neglect, as a matter of law, recognized risks to the lives of people under their control merely on the basis that they are not imprisoned or otherwise detained'; on the contrary, 'States Parties are obliged to take fair and effective steps to protect them'

The four key human rights treaties referred to above also include, albeit in quite different words, the deprivation of liberty must be carried out in all cases in accordance with the law (the theory of legality) and, in the case of Article 5 of the European Convention, for the exclusive purposes set out therein. Furthermore, the deprivation of liberty must not be arbitrary, a broader term which, as can be seen below, makes it possible for foreign oversight bodies to take account of factors which, under the circumstances, render domestic law or its implementation irrational. As regards the principle of legitimacy, the Human Rights Committee has ruled that "it is infringed if an individual is arrested or detained on grounds not clearly laid down in domestic law"; that is to say, the grounds for arrest and detention must be "established by law". In the situation where an individual was arrested without a warrant given more than three days later, according to the law, the person was arrested without a warrant.

The Committee explained, with regard to the interpretation of the words 'arbitrary arrest' in Article 9(1) that "arbitrariness" is not to be equated with 'against the rules' but must be understood more generally to include elements of inappropriateness, unfairness, lack of predictability and due process of law. This suggests that, under the circumstances, remand in detention subsequent to lawful arrest must not only be lawful but fair. In all cases, for example, to avoid flight, interfering with facts or the recurrence of crime, remand in detention would still be mandatory. In other words, for the above-mentioned reasons, remand in detention under lawful arrest must not only be "lawful" but also "reasonable" and "necessary" in all circumstances. It is for the State Party involved to explain that these considerations are present in the case in question. Clearly, where a person is arrested without a warrant or summons and then merely imprisoned without a court order, the right to freedom from arbitrary arrest and detention provided for in Article 9 is also breached. In some cases discussed by the Commission, people were arrested without a judicial warrant, according to Article 9(1) of the Covenant, purely on the basis of their political views.

Of definition, the restriction of unfair punishment therefore suggests that the denial of liberty must not be guided by bigotry. In a case where a victim had been detained in jail for nearly 16 months in order to compel him to report his brother's whereabouts, the Commission found that, according to Article 9, he had been exposed to 'arbitrary arrest and imprisonment,' and no further criminal charges were brought against him. Consequently, the African Commission on Human and Peoples' Rights found that arrests and detentions carried out by the Rwandan Government "on grounds of ethnic origin alone constitute arbitrary deprivation of an individual's liberty"; such acts are thus "clear evidence of a violation of" Article 6 of the African Charter on Human and Peoples' Rights. In another case, the African Commission found that 'indefinite imprisonment of people can be viewed as unconstitutional because the detainee is ignorant of the nature of the punishment';

Article 6 of the African Charter was infringed in the present case because, despite complaining against torture, the victims involved were indefinitely detained. Furthermore, it constitutes an unconstitutional deprivation of liberty, within the context of Article 6 of the African Charter, for the imprisonment of individuals without charge and without the possibility of bail; in this particular situation, the plaintiffs were held in certain circumstances for more than three years after the election against Nigeria.

"The concepts of "speedily" and "without hesitation" The Human Rights Committee stressed that "the adjudication of a case by any court of law should, as a matter of principle, take place as expeditiously as practicable" although this does not mean "that it is possible to set strict time limits for the transmission of decisions which, if not followed, would inevitably support the inference that a decision was made. However, if the Committee did not realize the reasons for the three-month delay in presenting the judgment in question, it agreed not to make a finding under Article 9(4) of the Covenant. In the same situation, the Committee was

pleased that the investigation by the Helsinki City Court of the imprisonment of the same author under the Extradition Act at two-week intervals followed the conditions of the Extradition Act [1].

## **THE RIGHT TO COMPENSATION IN THE EVENT OF UNLAWFUL DEPRIVATION OF LIBERTY**

Article 9(5) of the Universal Covenant on Civil and Political Rights states that 'any person who has been the target of illegal arrest or detention shall have the enforceable right to compensation' and that this clause extends to all arrests and detentions that are unconstitutional or arbitrary.<sup>229</sup> Article 5(5) of the European Convention provides that 'any person who has been the victim of arrest or detention shall have the enforceable right to compensation.' In the case of *Monja Jaona*, where the author was subjected to unlawful arrest and imprisonment according to Article 9(1) of the Covenant, the Committee emphasized *expressis verbis* that it was 'under the duty of the State party to take appropriate action to redress the infringements suffered by *Monja Jaona*, to award him compensation under Article 9(5) for his arbitrary violation' Finally, in the so-called '*Street Children*' case involving the kidnap and murder of many youths committed by State officials, Article 7 was infringed, according to the requirements laid down by domestic law. The Inter-American Court stressed its case-law on the arrests and the substantive and formal dimensions of the protections to be met, concluding that neither feature had been followed. It also applied to the European Court of Human Rights' jurisprudence, according to which 'the promptness of judicial scrutiny of arrests is of specific significance for the avoidance of arbitrary arrests'[2].

Among other aspects, the essential issue of predictability was considered in relation to the principle of a violation of peace under the law of the United Kingdom, where the European Court ruled that 'the applicable laws offered appropriate instructions and were formulated with the degree of specificity needed by the Convention.' This was so because it was "sufficiently established that a violation of peace is perpetrated only when a person causes harm, or appears likely to cause harm, to persons or property or acts in a way that would have the natural consequences of causing violence to others" It was also "clear that an individual may be arrested for causing a breach of peace or where it is reasonably deemed that he or she is likely to cause a breach of peace." It found, however, that where claimants had been detained for nearly seven hours before being released on parole, and where national courts had not decided on whether searches and detentions were in compliance with English law, Article 5(1) of the Convention had been infringed. The Human Rights Committee found that the incarceration violated Article 9 of the Covenant as citizens were kidnapped, unlawfully imprisoned under domestic law, and eventually killed or forced to vanish. Another example of "arbitrary arrest and detention" is the capture and detention by members of one State Party of individuals in another region [3].

## **CONCLUSION**

Principle 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance, and Principle 6 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions also contain similar requirements with regard, *inter alia*, to the holding of detained people in officially recognized places of detention and the registration of all relevant information concerning the person deprived of his liberty [4].

In connection with arrests and detention under criminal legislation enacted to deal with acts of terrorism connected with the affairs of Northern Ireland, the European Court has explained that "in view of the difficulties inherent in the investigation and prosecution of terrorist-type offences, the 'reasonableness' of the suspicion justifying such arrests cannot always be judged according to the same standards as are applied in dealing with conventional crime. Nevertheless, the exigencies of dealing with terrorist crime cannot justify stretching the notion of 'reasonableness' to the point where the essence of the safeguard secured by Article 5 (1) (c) is impaired [5].

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However, what is evident from the jurisprudence is that it is not appropriate for incommunicado imprisonment to conflict with the successful compliance of the lawful rights of individuals stripped of their rights. In a situation in which the authors were held incommunicado for the first 44 days of incarceration, the Commission found that both Sections 9(3) and 10(1) of the Covenant had been infringed on the basis that they had not been taken before a judge immediately and that they had been imprisoned incommunicado. At the general level, in a democratic society ruled by the rule of law, obedience to these laws is sine qua non and, at the person level, conformity with them is an imperative requirement for maintaining respect for the rights and liberties of the individual human being, including, in particular, respect for his or her physical and mental dignity. States would thus foster their own internal stability, under which civil rights will not be completely enjoyed, by essentially ensuring the right of all to personal protection and security at all times.

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- [2] Communication No. 176/1984, L. Peñarrieta et al. v. Bolivia (Views adopted on 2 November 1987), in UN doc. GAOR, A/43/40.
- [3] Communication No. 132/1982, Monja Jaona v. Madagascar (Views adopted on 1 April 1985), in UN doc. GAOR, A/40/40.
- [4] Communication No. 142/1985, Monja Jaona v. Madagascar (Views adopted on 15 June 1985), in UN doc. GAOR, AB/132/88.
- [5] See, for example, Communication No. 705/1996, D. Taylor v. Jamaica (Views adopted on 2 April 1998), in UN doc. GAOR, A/53/40 (vol. II), p. 179, para. 7.1; the Committee found a violation both of article 9(3) and of article 14(3)(c) since there had been a lapse of 27 months between arrest and trial.
- [6] United Nations Compilation of General Comments.

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