



Human Rights in the Administration of Justice

A Facilitator's Guide on Human Rights
for Judges, Prosecutors and Lawyers





UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

in cooperation
with the

International Bar Association



the global voice of
the legal profession

HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE

A Facilitator's Guide on Human Rights for Judges, Prosecutors and Lawyers

Professional Training Series No. 9/Add.1



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NOTE

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HR/P/PT/9/Add.1

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Purpose and use of the Facilitator's Guide

The training material on *Human Rights in the Administration of Justice* developed by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in cooperation with the International Bar Association consists of a *Manual* and the present *Facilitator's Guide*. Together, they support the organization of human rights courses for legal professionals to enable them to apply human rights principles and norms in the exercise of their daily professional activities. The ultimate goal of these educational resources and activities is to strengthen the protection of human rights in and through domestic legal procedures.

The *Manual* provides basic information on international human rights law and the jurisprudence of universal and regional bodies and national courts. Each chapter addresses a specific human rights area. A selection of the most appropriate areas and material will be necessary, depending on the duration and nature of the course and the type of participants.

This *Facilitator's Guide* aims to assist training managers and resource persons engaged in organizing workshops or courses based on the *Manual*. It is based on a training methodology which encourages participants to play an active role, contributing their professional expertise to the joint study of how to apply international human rights standards effectively.

As always, it is for the facilitators to use their experience and talents to guide the audience through the course and at all times assess and reassess the needs of the participants. Accordingly, the materials proposed should be used with a substantial degree of flexibility. Facilitators and training managers may need to make a selection of the most appropriate material. Presentations, examples, case studies and role plays may need to be tailored and customized to reflect relevant legal systems and address issues of particular interest.

The *Facilitator's Guide* closely follows the structure of the *Manual*. After a first module with guidance for the organization of the opening session of the course, the *Guide* proposes training aids such as questions for discussion, planning charts, exercises, case studies and role plays, as well as sample computer slide presentations, for each of the *Manual's* chapters. These tools should in no way limit the facilitator's freedom to introduce other useful and thought-provoking questions and exercises, provided that they are aimed at meeting the learning objectives of the various sessions.

The proposed **questions** are merely indicative of what can be asked. There may well be occasions when some facilitators will find it difficult to put too direct a question to the participants and when it might be preferable, in order to obtain the same results, to ask questions in a more indirect way.

In addition, the **planning charts** are only indicative of how the time available could be organized. The time spent on each session will depend on the length of the course itself. The charts are thus to be seen as examples of what can be done, and it will be for the organizers to design each course according to the time available and the needs of the audience.

With the exception of the initial simple exercises found in each chapter, the **case studies and role plays** presented in the *Guide* may in certain situations be too complex. This may be the case, for instance, in a country which has recently emerged from a war or conflict, obliging it to rebuild not only its political and social structures but also its judiciary and the legal professions in general. In such situations, it is the task of the facilitators to assess the needs of the participants and to adjust the material provided so that it is adequate and meaningful to them at that time.

This *Guide* is complemented by – and should be used in conjunction with – two methodological training tools published by OHCHR:

- *Human Rights Training: A Manual on Human Rights Training Methodology* (Professional Training Series No. 6), which highlights basic guiding principles concerning human rights training for professional audiences, as well as effective techniques and tips for trainers; and
- *Evaluating Human Rights Training Activities: A Handbook for Human Rights Educators* (Professional Training Series No. 18), jointly published with EQUITAS-International Centre for Human Rights Education. The Handbook highlights relevant research and practice in educational evaluation and contains step-by-step guidance, with examples of tools and techniques, to integrate evaluation throughout the human rights training process, including design, delivery and follow-up.

These two publications are available online from the OHCHR website: **www.ohchr.org**.

In addition, *Human Rights: A Compilation of International Instruments* (vol. I, Universal Instruments, and vol. II, Regional Instruments) can serve as reference material in workshops or courses for legal professionals. Updated information on evolving international human rights law is also available on the OHCHR website.

Opening the course

Introductory session

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I. GENERAL OBJECTIVES OF THE COURSE

The **overall objectives** of the course for judges, prosecutors and lawyers are that each participant should:

- Understand the international human rights standards relating to the legal professions and their responsibilities;
- Integrate this new knowledge into his or her legal thinking and recognize the relevance of human rights standards to his or her professional activities;
- Develop the skills necessary to transform that knowledge into practical action;
- See clearly his or her particular role and opportunities for protecting human rights;
- Contribute to the evaluation of the course and its improvement.



II. SPECIFIC OBJECTIVES OF THE INTRODUCTORY SESSION

The **specific objectives** of the introductory session are to:

- Make the participants feel welcome and build an atmosphere of working together;
- Inform participants of the course objectives;
- Introduce the presentation team to the participants;
- Introduce the participants;
- Outline the subject matter to be covered;
- Outline the methodology to be used;
- Emphasize the importance of participants' taking an active part in the course;
- Obtain initial feedback from and involvement of participants, for example, by asking them what they expect from the course.



III. MAIN POINTS TO BE MADE AND KEY ISSUES FOR DISCUSSION

In addition to the above-mentioned issues, the main points to be brought out in the introductory session are:

- The specific topics to be dealt with and the timing;
- The resource material available, such as the Manual and texts, and so on;
- Methodology: presentations, exercises, case studies, role playing, and so on, describing each method succinctly (on methodology, use as a reference *Human Rights Training: A Manual on Human Rights Training Methodology*, Professional Training Series No. 6);
- An evaluation component built throughout the course; explain the importance of participants' helping to direct the course towards their needs (on evaluation, use as a reference *Evaluating Human Rights Training Activities: A Handbook for Human Rights Educators*, Professional Training Series No. 18).



IV. SESSION PLANNING CHART FOR THE INTRODUCTORY SESSION

Key points/activities	Method	Media	Time
1. Welcome participants and introduce team of presenters	Presentation		15 minutes
2. Introduction of participants	Presentation: icebreakers, including participants' activities		15 minutes
3. Introductory session: a. objectives of the course; b. specific topics; c. methodology: participation, case studies, role play, etc.; d. review of materials and sessions; e. evaluation and feedback.	Presentation and discussion	Flip chart	20 minutes
4. Participants' expectations: a. what they expect to get from the course; b. what they can bring to the course; c. a recent human rights event/element in their work, etc.	<ul style="list-style-type: none"> ● Presentation and discussion; ● Presenter or participant writes on chart and at the end summarizes the main points; ● Time should be left for questions and answers 	Flip chart, stickers	20 minutes
			Total time: 1 h. 10 min.



V. TRAINING MATERIALS

A. Computer slides (see CD-ROM)



Learning objectives



Topics covered by the course on the administration of justice I–III



Methodology used during this course



Introductory questions

B. Handouts (to be prepared by the facilitator for each course)

1. List with names and short CVs of members of the training team
2. List with participants' names and addresses, for correction if necessary.

Chapter 1

INTERNATIONAL HUMAN RIGHTS LAW AND THE ROLE OF THE LEGAL PROFESSIONS: A GENERAL INTRODUCTION

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I. NOTE TO FACILITATORS

Chapter 1 of the Manual describes the structure of the international law of human rights, its basis in the Charter of the United Nations, its ethical foundations and sources, as well as the nature of State obligations. It examines how international human rights law affects national legal systems and briefly describes the role of the legal professions in protecting human rights.

Participants may be more or less familiar with the issues dealt with in Chapter 1, and the facilitators will have to assess how much time to spend presenting and discussing the chapter. However, it is important to ensure that participants are conversant with the issues in Chapter 1, since they provide the framework for the questions dealt with in following chapters.



II. OBJECTIVES OF THE CHAPTER/SESSION

The objectives of Chapter 1 are to ensure that each participant:

- Understands the origin, meaning and scope of the international law of human rights;
- Is familiar with the Charter of the United Nations and its human rights provisions;
- Understands the ethical dimensions of human rights;
- Understands the link between effective human rights protection, and domestic and international peace and security;
- Is familiar with the principal sources of international law;
- Recognizes the similarities and differences between international human rights law and humanitarian law;
- Understands the obligations of States under the international law of human rights;
- Understands how States may limit their responsibilities when ratifying or acceding to a treaty;
- Understands, generally, the purpose of limitations on the exercise of human rights and derogations from international legal human rights obligations;
- Understands the notion of a violation of human rights;
- Understands the various modes of incorporating international human rights law into domestic law and its implementation by domestic courts;
- Appreciates the important role the legal professions have to play in the protection of human rights and how international human rights law is relevant to her or his own national context.



III. MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED

The points to be made and key issues to be discussed will generally depend on the knowledge and experience of the audience for each course. However, some of the main points to be brought out and/or key issues to be discussed during the consideration of Chapter 1 will generally be:

- The concept of human rights, including its origin, meaning, scope and purpose;
- Why human rights are so important at the national and international levels;
- The legal sources of human rights relevant to the countries in which the participants carry out their professional activities;
- The ways of using international human rights law before the tribunals and other authorities in the countries where the participants carry out their work;
- The purpose of – and restrictions on – the resort to limitations on the exercise of human rights;
- The purpose of – and restrictions on – the resort to derogations from international human rights obligations;
- The differences between and similarities of international human rights law and international humanitarian law;
- How the participants can promote and protect human rights in the exercise of their professional responsibilities;
- The specific problems that may prevent them from invoking/applying international human rights norms before their domestic courts.























IV. SESSION PLANNING CHART FOR CHAPTER 1

Key points/activities	Method	Media	Time
1. Objectives of the chapter	Presentation	Flip chart	5 minutes
2. Based on Chapter 1 of the Manual and point III above, present the main points relating to: <ul style="list-style-type: none"> a. the origin, meaning and scope of the international law of human rights; b. international human rights at the domestic level; c. the role of the legal professions in the implementation of human rights. 	<ul style="list-style-type: none"> a. Presentation by members of the team; b. Presentation by participants (who would have received Chapters 1–3 prior to the course and have been alerted to the possibility of active presentation); c. Presentation team summarizes and clarifies/corrects substantive law. 	Computer slides, flip charts, stickers	40 minutes
3. Stretch break and group formation; ask the participants to form groups of 3/5 for the next exercise			5 minutes
4. Learning exercise. Ask the groups to prepare points for presentation to the whole group on: <ul style="list-style-type: none"> a. how international law is dealt with in their legal system; b. examples of instances in which international human rights law has been used by judges, lawyers and prosecutors in their country; c. the obstacles that need to be overcome to increase the use of international law. 	Group work: Discussion, preparation of points	Flip charts, stickers	30 minutes
5. Report back and discussion; question and answer opportunity	<ul style="list-style-type: none"> a. One participant from each group presents the results of the work, places notes on flip chart or writes; b. Group as a whole discusses; c. Presentation team summarizes and clarifies/corrects substance 	Stickers, pens, flip charts	20 minutes
6. Team reviews the main points as set out in point III above and, based on the work of the participants, highlights some issues for further reflection (to come back to later)	Presentation	Flip charts, stickers, handouts	15 minutes
			Total time: 1 h. 55 min.



V. TRAINING MATERIALS

A. Computer slides (see CD-ROM)

-  1. Learning objectives
-  2. Questions I
-  3. Questions II
-  4. The Charter of the United Nations I
-  5. The Charter of the United Nations II
-  6. The Charter of the United Nations III
-  7. The origin of the contemporary international concern to protect the rights of the human person
-  8. The concept of human rights: Its specificity I
-  9. The concept of human rights: Its specificity II
-  10. Human rights and national and international peace, security and development
-  11. The sources of law
-  12. International treaties I
-  13. International treaties II
-  14. International human rights law and international humanitarian law
-  15. Reservations to human rights treaties I
-  16. Reservations to human rights treaties II
-  17. Limitations on the exercise of human rights I
-  18. Limitations on the exercise of human rights II
-  19. Derogations from international human rights obligations I
-  20. Derogations from international human rights obligations II



21. State responsibility for human rights violations I



22. State responsibility for human rights violations II



23. Business corporations and human rights



24. Domestic law and international law

B. Exercises

Exercise No. 1

Domestic application of international human rights law

Time permitting, and depending on the needs and level of knowledge of the participants, they can be asked to undertake the following learning exercise. In groups of three to five members, they should be asked to prepare points for presentation to the plenary group on:

- How international law is dealt with in their legal system;
- Examples of instances in which international human rights law has been used by judges, prosecutors and lawyers in the countries where they exercise their professional responsibilities;
- The obstacles, if any, that need to be overcome to increase the use of international law at the domestic level.



Exercise No. 2

Example of the domestic use of international human rights norms¹

This exercise can be used for either group or individual work.

Facts: A mute person was giving evidence during civil proceedings in a compensation court in Australia. An objection was taken to certain evidence on legal grounds. The advocate for the mute person's employer suggested that it was unnecessary for the interpreter to translate the objection as it was purely legal and, in effect, concerned only an exchange of views between the judge and the lawyers. The judge agreed and directed that the interpreter did not need to interpret the legal argument. However, the interpreter continued to provide interpretation. The judge stopped the proceeding on the basis that the interpreter did not conform to his procedural direction given in the control of the running of the court.

The parties appealed. There was no constitutional provision or act of Parliament which specifically covered the point. The common law governing court procedure accords a high measure of respect to the discretion and directions of the trial judge, including on the use of interpreters. The appeal judges drew *by analogy* on the principle established for criminal trial in articles 14 (1) and 14 (3) (a) and (f) of the *International Covenant on Civil and Political Rights*, thereby upholding the right of the mute witness to have everything conducted in open court translated so that she could understand it.

Issues for discussion:

- a. Do you think that the appellate judge was correct in referring to international human rights law in order to resolve this particular problem in the course of the trial?
- b. Do you think a correct balance was struck between the efficient running of the civil proceedings and the right of the mute person concerned?
- c. Do you think that the decision would impose an undue burden on the courts in your country?

¹ This exercise is based on *Gradidge v. Grace Bros* (1988) 93 *Federal Law Reports* 414 (Australia).

Chapter 2

THE MAJOR UNIVERSAL HUMAN RIGHTS INSTRUMENTS AND THE MECHANISMS FOR THEIR IMPLEMENTATION

and

Chapter 3

THE MAJOR REGIONAL HUMAN RIGHTS INSTRUMENTS AND THE MECHANISMS FOR THEIR IMPLEMENTATION

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I. NOTE TO FACILITATORS

Chapter 2 covers the following major **universal** human rights treaties concluded within the framework of the United Nations:

- The International Covenant on Civil and Political Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The Convention on the Rights of the Child;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- The Convention on the Prevention and Punishment of the Crime of Genocide;
- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Convention on the Elimination of All Forms of Discrimination against Women;
- The Convention on the Rights of Persons with Disabilities;
- The International Convention for the Protection of All Persons from Enforced Disappearance.

In addition to explaining the material scope of application of these treaties, including the undertakings of the State parties, the chapter describes in general terms the enforcement mechanisms of each treaty.

Further, Chapter 2 contains brief descriptions of some important human rights instruments adopted by both the General Assembly and the United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

Finally, Chapter 2 deals with the United Nations extra-conventional mechanisms for human rights monitoring, such as the thematic and country mandates of the Human Rights Council.

Chapter 3 describes the following major **regional** human rights treaties:

- The African Charter on Human and Peoples' Rights;
- The African Charter on the Rights and Welfare of the Child;
- The American Convention on Human Rights;
- The Inter-American Convention to Prevent and Punish Torture;
- The Inter-American Convention on Forced Disappearance of Persons;
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women;
- The European Convention for the Protection of Human Rights and Fundamental Freedoms;
- The European Social Charter;
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- The Framework Convention for the Protection of National Minorities.

The chapter also generally explains the enforcement mechanisms of these treaties.

The treaties described in Chapters 2 and 3 should not all be dealt with in one course. **The facilitator will have to choose the universal and/or regional treaty or treaties to be dealt with in accordance with the needs of his or her audience.** For African participants, for example, it will be important to supplement the universal treaty commitments with the regional ones. The same holds for Latin American or European participants. In order to make an informed choice, the facilitators will need to know beforehand about the nationality of the participants and the countries where they exercise their professional activities and, of course, will have to find out by which international and/or regional human rights treaties the relevant States are bound.

Depending on the composition of the audience, it might also be useful for the facilitators to provide some basic information about the role of the lawyer in submitting complaints about human rights violations to universal and regional monitoring organs.



II. OBJECTIVES OF THE CHAPTERS/SESSION

The objectives of Chapters 2 and 3 are to:

- Familiarize the participants with the major universal and/or regional human rights treaties and their modes of implementation, and to highlight the contents of some other relevant legal instruments;
- Provide a basic understanding of how these legal resources can be used by legal practitioners at the domestic level and to some extent also at the international level.



III. MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED

In considering Chapters 2 and 3, facilitators will want to aim to bring out the points listed below and encourage discussion of the following key issues:

- Whether the participants, in the exercise of their professional activities as judges, prosecutors and/or lawyers, have ever been faced with an accused person, defendant, respondent or client alleging violations of his or her rights. If so, what was their response?
- Whether the participant or participants concerned was/were aware that the international law of human rights might provide guidance in resolving the relevant problem;
- Whether the participant/participants was/were aware that the alleged victim might ultimately bring his or her grievances to the attention of an international monitoring organ;
- If not, whether such knowledge would have changed his/her manner of responding to the alleged human rights violations;

- Whether any of the participants has ever brought a case against his/her country before an international monitoring organ, and, if so, the outcome of the case;
- Finally: what was the participant's experience in general of making such a complaint at the international or regional level?



IV. SESSION PLANNING CHART FOR CHAPTERS 2 AND 3



















Key points/activities	Method	Media	Time
1. General and specific objectives of the Chapters	Presentation	Computer slides, flip chart	10 minutes
2. Based on Chapter 2 of the Manual and point III above, present: <ol style="list-style-type: none"> the main United Nations treaties; their implementation; other United Nations documents; extra-conventional mechanisms. 	Presentations: <ul style="list-style-type: none"> ● use questions and answers to involve participants; ● possibly ask participants to present one aspect or another (arrange beforehand). 	Computer slides, flip chart, stickers, handouts (list of universal instruments and rights/status of ratification, etc.)	40 minutes
3. Stretch break			5 minutes
4. Questions and answers on Chapter 2	Active soliciting of questions by team	Flip chart, stickers if appropriate	10 minutes
			Total time: 1 h. 5 min.
5. Based on Chapter 3 of the Manual and point III above, present: <ol style="list-style-type: none"> an overview of the regional systems; if the participants come from a region with a functioning regional system then concentrate time on that system; make the point that regional systems can be good sources of jurisprudence even for jurisdictions outside the region. 	Presentation by team members: <ul style="list-style-type: none"> ● use questions and answers to involve participants; ● presentation by participants; possibly ask participants to present one aspect or another (arrange beforehand). 	Computer slides, flip chart, handouts (listing of regional instruments and rights/status of ratifications, etc.).	40 minutes
6. Coffee break, group formation			15 minutes















Key points/activities	Method	Media	Time
7. Group discussion and point preparation	In groups of 3/5 the participants prepare: a. a list of matters which are not clear; b. how the international system and the regional system are relevant to their professional activities; c. what could be done to increase the impact of the universal and regional systems on domestic law and practice; d. how international norms compare with national constitutions and laws.	Flip charts, stickers	20 minutes
8. Report back by groups on the questions. A discussion follows with the team answering, clarifying and correcting substance.	One person from each group writes or places stickers on a flip chart on the results of the discussion on the three questions.	Flip chart, stickers	20 minutes
9. Summing up: the team reviews the main points from Chapters 2 and 3 and through questions determines whether the objectives have been attained.	Presentation, and questions and answers	Computer slides, flip charts, stickers	10 minutes
10. Evaluation and preparation for next session.	Participants are asked to comment critically on the presentations and discussions. Team informs about the next session, assigns work in advance (if appropriate) and seeks volunteers.	Flip chart	10 minutes
			Total time: 1 h. 55 min.
			Total time for Chapters 2 and 3: 3 hours










V. TRAINING MATERIALS





















A. Computer slides, Chapter 2 (see CD-ROM)

-  1. Learning objectives
-  2. Questions I
-  3. Questions II
-  4. Major universal human rights treaties I
-  5. Major universal human rights treaties II
-  6. International treaty-based control mechanisms I
-  7. International treaty-based control mechanisms II
-  8. The need for positive action to ensure civil and political rights
-  9. Undertakings by State parties to human rights treaties
-  10. Permissible limitations on the exercise of rights under the International Covenant on Civil and Political Rights I
-  11. Permissible limitations on the exercise of rights under the International Covenant on Civil and Political Rights II
-  12. Permissible derogations from legal obligations under the International Covenant on Civil and Political Rights
-  13. Implementation mechanisms under the International Covenant on Civil and Political Rights
-  14. Permissible limitations on the enjoyment of rights guaranteed by the International Covenant on Economic, Social and Cultural Rights
-  15. The mechanism of implementation of the International Covenant on Economic, Social and Cultural Rights
-  16. State parties' obligations under the Convention on the Rights of the Child
-  17. Limitations on the exercise of rights under the Convention on the Rights of the Child
-  18. Limitations on the exercise of rights under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

-  19. Implementation mechanisms under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
-  20. Convention on the Prevention and Punishment of the Crime of Genocide
-  21. International Criminal Court
-  22. International Convention on the Elimination of All Forms of Racial Discrimination I
-  23. International Convention on the Elimination of All Forms of Racial Discrimination II
-  24. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment I
-  25. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment II
-  26. Convention on the Elimination of All Forms of Discrimination against Women
-  27. Major resolutions adopted by the General Assembly I
-  28. Major resolutions adopted by the General Assembly II
-  29. Major resolutions adopted by the General Assembly III
-  30. Instruments adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders
-  31. Extra-conventional mechanisms for human rights monitoring I
-  32. Extra-conventional mechanisms for human rights monitoring II

B. Computer slides, Chapter 3 (see CD-ROM)

-  33. Learning objectives
-  34. Questions I
-  35. Questions II
-  36. Major regional human rights treaties I
-  37. Major regional human rights treaties II
-  38. African Charter on Human and Peoples' Rights I: The specificity of the Charter
-  39. African Charter on Human and Peoples' Rights II: Limitations

-  40. African Charter on Human and Peoples' Rights III: The competence of the Commission
-  41. African Charter on the Rights and Welfare of the Child
-  42. American Convention on Human Rights I: The duty to ensure rights and freedoms
-  43. American Convention on Human Rights II: Permissible limitations on the exercise of rights
-  44. American Convention on Human Rights III: Permissible derogations from legal obligations
-  45. American Convention on Human Rights IV: The mechanism of implementation (1)
-  46. American Convention on Human Rights V: The mechanism of implementation (2)
-  47. Inter-American Convention to Prevent and Punish Torture
-  48. Inter-American Convention on Forced Disappearance of Persons
-  49. Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women I
-  50. Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women II
-  51. European Convention on Human Rights I: Permissible limitations on the exercise of rights
-  52. European Convention on Human Rights II: Permissible derogations from legal obligations
-  53. European Convention on Human Rights III: The mechanism of implementation (1)
-  54. European Convention on Human Rights IV: The mechanism of implementation (2)
-  55. European Social Charter, 1961 (I)
-  56. European Social Charter, 1961 (II)
-  57. European Social Charter, 1961 (III)
-  58. European Social Charter (revised), 1996
-  59. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment I



European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment II



Framework Convention for the Protection of Minorities

C. Exercise

Exercise No. 1

In the following group exercise the audience splits into groups of 3 to 5 participants in order to:

- Prepare a list of matters which are not clear;
- Discuss how the international system and the regional system are relevant to their professional activities;
- Discuss what could be done to increase the impact of the universal and regional systems on domestic law and practice; and
- Explain how international norms compare with national constitutions and laws.

The groups should have flip charts and/or stickers available for their work, which should only take about 20 minutes.

D. Handout (see CD-ROM)

1. Resource list

Chapter 4

INDEPENDENCE AND IMPARTIALITY OF JUDGES, PROSECUTORS AND LAWYERS

Contents

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I. NOTE TO FACILITATORS

Chapter 4 of the Manual describes the role of judges, prosecutors and lawyers in upholding the rule of law, including human rights standards, and briefly explains the current challenges to the independence and impartiality of these legal professions.

Chapter 4 examines in some detail, in the light of existing international law, the independence and impartiality of judges and prosecutors, as well as the independence of lawyers.

The **MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED**, which are enumerated in part **IV** below, as well as the proposed **SESSION PLANNING CHART** in part **V**, are, as in all the other chapters, suggestions that have been provided to help guide the facilitators, but which in no way imply a requirement for strict adherence thereto. It will be important to focus on any relevant issues that may be raised by the participants either in the pre-course questionnaire or during the course itself. How much time is spent on this chapter will depend on the time available for the entire course programme. However, given the importance of the subjects dealt with in Chapter 4, and the interest to which they often do give rise, organizers would be well advised to spend at least two hours on the issues covered in this chapter.

In a situation where a country is in a process of reconstruction after a devastating war, the organizational structure of the legal professions may be virtually non-existent and the number of judges, prosecutors and lawyers with solid professional experience may be very small. In such situations it will be particularly important for the facilitator to adjust the material contained in Chapter 4 in order to provide **basic** help and guidance to the legal professions, including ideas on how they might in the future organize themselves in professional associations and ensure further training.



II. PRINCIPAL LEGAL SOURCES

Chapter 4 is based mainly on the following legal texts:

A. Universal instruments

- International Covenant on Civil and Political Rights, 1966

- Basic Principles on the Independence of the Judiciary, 1985
- Guidelines on the Role of Prosecutors, 1990
- Basic Principles on the Role of Lawyers, 1990

B. Regional instruments

- African Charter on Human and Peoples' Rights, 1981
- American Convention on Human Rights, 1969
- European Convention on Human Rights, 1950

- Principles and guidelines on the right to a fair trial and legal assistance in Africa, 2003
- Recommendation N° R (94) 12 of the Committee of Ministers of the Council of Europe on the independence, efficiency and role of judges, adopted 13 October 1994
- Recommendation N° R (2000) 21 of the Committee of Ministers of the Council of Europe on the freedom of exercise of the profession of lawyer, adopted 25 October 2000
- Recommendation N° R (2000) 19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system, adopted 6 October 2000



III. OBJECTIVES OF THE CHAPTER/SESSION

The objectives of Chapter 4 are to:

- Consolidate the participants' knowledge and understanding of an independent and impartial Judiciary, independent and impartial prosecutors, and an independent legal profession in order to ensure the rule of law and effective protection of the fundamental rights and freedoms of the person;
- Familiarize the participants with the existing international and regional legal standards and principles applicable to judges, prosecutors and lawyers, including examples of relevant jurisprudence.



IV. MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED

The main points to be brought out and the key issues to be discussed in connection with Chapter 4 are:

- How the participants, in their capacity as judges, prosecutors or lawyers, perceive the role of the principle of the separation of powers;
- How this principle is ensured in the country in which they work;
- How the independence and impartiality of the judges and prosecutors as well as the independence of lawyers are guaranteed in the country where they exercise their professional duties;
- Whether the participants have experienced any difficulties in exercising their professional duties in an independent and impartial manner, and, if so, what these difficulties were and how they dealt with them;
- Whether the participants, in their capacity as judges, prosecutors or lawyers, have ever been confronted with attempts to corrupt them, and, if so, how they dealt with such a proposition;
- Whether female judges, prosecutors or lawyers have experienced any particular problems, difficulties or harassment in the course of their work that might be attributable to their gender, and, if so, how they confronted these problems, difficulties or harassment;
- Whether, in cases where participants have had to deal with any of the above situations, they were aware that there are international standards aimed at strengthening the role of the Judiciary and the legal professions in general which could have been conducive to strengthening their position vis-à-vis the Executive, Legislature or other groups or persons that act with or without the connivance of the State;
- Whether, in the country in which the participants work, there is, or should be, room for a judge to soften the effect of repressive laws by means of interpretation.





















V. SESSION PLANNING CHART FOR CHAPTER 4










Key points/activities	Method	Media	Time
1. Objectives of Chapter 4	Presentation	Computer slides, flip chart, stickers	10 minutes
2. Based on Chapter 4 in the Manual and part III above, the team presents the main issues relating to: <ol style="list-style-type: none"> challenges to the independence and impartiality of the legal professions; international legal aspects of the independence and impartiality of the Judiciary; international legal aspects of the independence of prosecutors; international legal aspects of the independence of lawyers; explanation of group work. 	Presentations; as to “challenges to the independence and impartiality of the legal professions”: presenters can request additional examples from the participants.	Computer slides, flip charts, handouts (list/text of norms)	40 minutes
3. Stretch break and group formation; possibly change composition of groups			10 minutes
4. Group work			40 minutes
5. Report back and discussion	One participant from each group presents results of work All participants discuss Team summarizes and clarifies/corrects substance	Flip charts, etc. as necessary	30 minutes
6. Coffee break			15 minutes
			Total working time: 2 h. 10 min.



VI. TRAINING MATERIALS

A. Computer slides (see CD-ROM)

-  1. Learning objectives I
-  2. Learning objectives II
-  3. Questions I
-  4. Questions II
-  5. Questions III
-  6. Questions IV
-  7. Questions V
-  8. Key legal texts I: International Covenant on Civil and Political Rights, article 14 (1)
-  9. Key legal texts II: African Charter on Human and Peoples' Rights, article 7 (1) (b) and (d)
-  10. Key legal texts III: African Charter on Human and Peoples' Rights, article 26
-  11. Key legal texts IV: American Convention on Human Rights, article 8 (1)
-  12. Key legal texts V: European Convention on Human Rights, article 6 (1)
-  13. Key legal texts VI: Selected United Nations principles and guidelines
-  14. Key legal texts VII: Basic Principles on the Independence of the Judiciary (1)
-  15. Key legal texts VIII: Basic Principles on the Independence of the Judiciary (2)
-  16. The notion of the independence of the Judiciary: What it means I
-  17. The notion of the independence of the Judiciary: What it means II
-  18. The notion of the independence of the Judiciary: What it means III
-  19. The notion of the independence of the Judiciary: What it means IV
-  20. The notion of the independence of the Judiciary: What it means V

-  21. The notion of the impartiality of the Judiciary
-  22. Special courts and tribunals
-  23. Military tribunals I
-  24. Military tribunals II
-  25. International law and the independence of prosecutors I
-  26. International law and the independence of prosecutors II
-  27. International law and the independence of lawyers I
-  28. International law and the independence of lawyers II
-  29. International law and the independence of lawyers III

B. Exercises

Exercise No. 1

The following learning exercise is primarily aimed at work in small groups of four or five persons. The groups should be asked to prepare points on the following issues, in particular:

- How the independence and impartiality of the legal professions is guaranteed in the national law of their countries;
- How national norms in the matter compare with international standards;
- How the independence and impartiality of the legal professions forms part of the overall political/legal system in their countries;
- Recent examples of dangers to the protection of that independence and impartiality;
- How, if necessary, the independence and impartiality of the legal profession could be strengthened in the country where the participants work.

Exercise No. 2

You are all members of the Exland Bar Association, which is an organization that is independent of the Executive in terms of both its administration and finances. Many of its members are known for their competent and courageous work.²

A new Bill has been filed in the Exland Parliament with the following proposals:

- In order to check the level of professional knowledge of candidates to the Bar, and in order to resolve questions related to alleged disciplinary offences, a **Qualifying Chamber** and a **Disciplinary Chamber** are to be created;
- The **Qualifying Chamber** shall consist of the following 11 members: four advocates, four judges, two representatives of the Ministry of Justice and one Member of Parliament; issuance of certificates to allow a person to practise as an advocate shall be agreed by a majority decision and by open ballot;
- The **Disciplinary Chamber** shall consist of nine members: five advocates, two judges representing the Ministry of Justice and two Members of Parliament; a disciplinary decision concerning an advocate shall be made by open ballot and by a two-thirds majority;
- Decisions by either **Chamber** can be appealed to the **Supreme Commission of the Bar**, which shall be attached to the Government of Exland; the Commission shall be exclusively financed by the State.

Discuss the proposed bill. How would it change the work or the situation of the Exland Bar Association? What arguments could you try to advance in order to convince the Parliament not to adopt it? Could you contact any other authorities, for instance at the international level, to get help?

Exercise No. 3 *The impartiality of judges*

You are a judge at the Court of Appeals for Eastern Exland. You have to decide whether to release, or keep detained pending appeal proceedings, a man convicted and sentenced in the court of first instance to 15 years' imprisonment for serious drug offences. The trial has taken a long time and the defendant has already spent three and a half years in prison and the appeal proceedings are not likely to take place for another few months. You decide to set him free, with the result that the man absconds, which might have been expected. This man was a hard-core criminal that the Exland Police had been working hard to stop, and now he is gone. There is an uproar in the country and you are suspended from your work pending disciplinary proceedings against you. You are suspected of having taken your decision following undue influence by a third party.

Discuss the case. Propose solutions.

² **Tip to the facilitator:** This exercise was inspired by a proposal filed in the Ukrainian Parliament in 2000.

C. Subject for discussion

Does the composition of the Judiciary influence its independence and impartiality?

or

Do we need a gender and minority perspective in order to ensure an independent and impartial administration of justice?

It may be interesting to have a brief discussion on either of these issues in particular in countries where few women and few representatives from minority groups work in the legal professions. The moderator should try to make sure that the widest possible range of views is heard, including, in particular, those of women and members of minorities who may be participating in the training course.

D. Case study/role play³

The local setting: Puritania has been devastated for several years by a long war of independence, during which it has tried to free itself from the domination of a foreign country. It is now in the position of having to rebuild the country entirely, including the judicial system. Most judges, prosecutors and lawyers belonged to the former colonial power and they have had to leave the country. A new generation of judges, prosecutors and lawyers is being trained to take over the administration of justice in this newly independent State. In addition to having rather limited training, the new members of the legal professions have to cope with the suspicion of the local population following years of repression by law enforcement agencies when little heed was paid to human rights norms. In addition, local cultural traditions are still strongly embedded in people's minds.

The crime: Igor and Ivan are good friends, both 20 years old, who, so the police believes, broke into the village grocery store one Saturday evening in order to steal some drinks and food so that they could organize a party with other friends. An old man from the village was certain that he had seen the two well-known young men run away from the store at dusk that evening. Igor and Ivan are being held in the local prison, but deny having anything to do with this crime.

The proceedings:

1. You are the **lawyer** hired to defend Igor and Ivan:
 - The men both deny having committed the break-in; you are a little annoyed because you do not yet have much experience in pleading in court and it would be easier for you to enter a guilty plea and get it over with;
 - What should you do?
2. You are the **prosecutor** to whom the police has handed over the case:
 - In the file you find the testimony of the man who says with conviction that he saw Igor and Ivan run away from the store at the time when the burglary is supposed to have taken place; the man is one of many villagers who are fed up with the increasing number of petty thefts that have recently been committed in the village; you know all of these villagers very well and they keep trying to influence you to push the case; yet,

³ **Tip to the facilitator:** This exercise can be used either as a case study or as a role play. The important element is that the participants try to apply the legal principles learned in Chapter 4. The exercise has been drafted in the light of information received from a judge holding a training course in a country corresponding to the situation of Puritania.

you are asking yourself whether you have enough evidence to have Igor and Ivan convicted; you actually even doubt that they are guilty;

- What should you do?
3. The case finally goes to Court, and you are the **judge** who has to decide the case:
 - The young men's fathers, who are important persons in the village, have contacted you in order to try to convince you to drop the case or decide it in their favour; you are uneasy about the case;
 - What should you do?

E. Handouts (see CD-ROM)

1. Key legal provisions
2. The Basic Principles on the Independence of the Judiciary, 1985
3. Guidelines on the Role of Prosecutors, 1990
4. Basic Principles on the Role of Lawyers, 1990
5. Human Rights Committee, general comment No. 32 (2007) on article 14: right to equality before courts and tribunals and to a fair trial (to be provided by the facilitator)

Chapter 5

HUMAN RIGHTS AND ARREST, PRETRIAL DETENTION AND ADMINISTRATIVE DETENTION

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I. NOTE TO FACILITATORS

Chapter 5 of the Manual is based on article 9 of the International Covenant on Civil and Political Rights, article 6 of the African Charter on Human and Peoples' Rights, article 7 of the American Convention on Human Rights and article 5 of the European Convention on Human Rights as interpreted by the international monitoring organs. It briefly describes, first, the persistent problems relating to arrests and detention without reasonable cause and, second, the universal legal responsibilities of States to respect everybody's right to liberty and security both in the context of the deprivation of liberty and beyond.

Chapter 5 provides a detailed description of:

- The meaning of the notions of lawfulness and arbitrariness;
- The problem of unacknowledged detentions, abductions and involuntary disappearances;
- The various grounds which may justify a deprivation of liberty;
- Administrative detention;
- The right to be promptly brought before a judge or other judicial officer;
- The right to trial within a reasonable time or to release pending trial;
- The right to have the lawfulness of the detention decided speedily or without delay by a court;
- The right of access to and the assistance of a lawyer;
- The right to compensation in the event of unlawful deprivation of liberty; and
- Incommunicado detention.

This chapter contains a selection of suggested questions, computer slides, case studies and other exercises that can be used during the training. However, the facilitator is welcome to complement or adjust this material so that it better suits the needs of the particular audience or the facilitator's own training methodology. To blend the presentation of standards with stories from the facilitator's own professional experience and questions to the audience may be a particularly successful way of stimulating the latter's interest and active participation.



II. PRINCIPAL LEGAL SOURCES

Chapter 5 is based mainly on the following legal sources:

A. Universal instruments

- The Universal Declaration of Human Rights, 1948
- The International Covenant on Civil and Political Rights, 1966

- The Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, 1988
- The Standard Minimum Rules for the Treatment of Prisoners, 1955
- Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, 1989
- The Declaration on the Protection of All Persons from Enforced Disappearance, 1992
- The International Convention for the Protection of All Persons from Enforced Disappearance, 2006
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

B. Regional instruments

- The African Charter on Human and Peoples' Rights, 1981 – articles 6 and 7
- The American Convention on Human Rights, 1969 – article 7
- The Inter-American Convention on Forced Disappearance of Persons, 1994
- The European Convention on Human Rights, 1950 – article 5

- Principles and guidelines on the right to a fair trial and legal assistance in Africa, 2003 – Principle M
- The Guidelines on human rights and the fight against terrorism, adopted by the Committee of Ministers of the Council of Europe, 2002



III. OBJECTIVES OF THE CHAPTER/SESSION

The objectives of Chapter 5 are to:

- Familiarize the participants with existing international legal standards regarding the right to liberty and security of the person and those which protect human rights both in connection with, as well as during, arrest, pretrial and administrative detention;
- Illustrate how the various legal guarantees are enforced in practice in order to protect the rights of the detained persons and their legal counsel;
- Explain what legal measures and/or actions judges, prosecutors and lawyers must take in order to safeguard the rights of the arrested or detained persons.



IV. MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED

The main points to be brought out and the key issues to be discussed in the light of the international legal standards dealt with in Chapter 5 are:

- On what basis persons can be arrested and detained on remand in the country where the participants carry out their work, and what alternatives to such detention exist pending trial;
- For how long people can be deprived of their liberty in the country concerned before they must be brought before a judge in order to have the legality of the deprivation of liberty determined;
- How the law in the country where the participants work protects individuals against unlawful or arbitrary arrest and detention;
- Whether illegal or arbitrary arrests occur in the country where the participants carry out their professional responsibilities;
- If faced with an arrest or detention that appears to be unlawful or arbitrary, what would the participants do about it, and what could they do about it, given the present status of the law in the country where they work?
- The legal remedies that exist in the country or countries where the participants work for persons who consider that they are or have been unlawfully or arbitrarily deprived of their liberty;
- If a person is found by a judge to have been unlawfully or otherwise arbitrarily deprived of his or her liberty, is there a right in the participants' country or countries for that person to be compensated for their unlawful or arbitrary imprisonment?
- Whether, and to what extent, it is possible to rely on international human rights law in domestic proceedings in order to challenge the lawfulness of a deprivation of liberty;
- On what grounds and under what conditions persons can be subjected to **administrative detention** and the legal remedies that exist to challenge the legality of such detention;
- As from which moment after their arrest or detention persons have the right of access to a lawyer;
- Whether, and if so for how long, persons can be held in **incommunicado** detention in the countries where the participants carry out their work; extend the discussion to the disadvantages and possible advantages of such detention.



V. SESSION PLANNING CHART FOR CHAPTER 5












Key points/Activities	Method	Media	Time
1. Objectives of Chapter 5	Presentation	Computer slides, flip charts	10 minutes
2. Course presentation: Based on Chapter 5 of the Manual and the main points set out in section III above, the team presents the issues relating to: a. the international standards relating to individual liberty, their binding character and the requirement of State action; b. the standards relating to arrest and detention; c. the right to be informed of reasons for arrest/detention and the right to be brought promptly before a judge.	Interactive presentations	Computer slides, flip charts, stickers, handouts with standards and principles	40 minutes
3. Stretch break			5 minutes
4. Presentations continue: d. the right to trial within a reasonable time or release pending trial; e. the right to have the lawfulness of a detention decided by a court; f. the right of access to a lawyer; g. the right to compensation for unlawful detention; h. the question of incommunicado detention.	Interactive presentations	Computer slides, etc. as above	30 minutes
5. Lunch			60 minutes
6. Group formation and explanation of case study or other exercise and report back procedure; distribution of case/exercise			10 minutes
7. Group work on case study		Flip charts, etc. as necessary	50 minutes
8. Stretch break			5 minutes


















Key points/Activities	Method	Media	Time
9. Report back	Groups report back on case study or exercise The presentation team makes sure that the main points are understood	Flip charts, stickers, etc.	40 minutes
10. Review of understanding of Chapter 5	Dialogue with groups and reminder of the main points, through questions and answers as much as possible		25 minutes
			Total working time on Chapter 5: 3 h. 35 min.

















V. TRAINING MATERIALS

A. Computer slides (see CD-ROM)

-  Learning objectives I
-  Learning objectives II
-  Questions I
-  Questions II
-  Questions III
-  Questions IV
-  Questions V
-  Questions VI
-  The notion of the liberty and security of the person I
-  The notion of the liberty and security of the person II
-  Lawful arrest and detention: Key legal texts I

-  12. Lawful arrest and detention: Key legal texts II
-  13. Lawful arrest and detention: Key legal texts III
-  14. Lawful arrest and detention: Key legal texts IV
-  15. Lawful arrest and detention: Key legal texts V
-  16. Lawful arrest and detention: Key legal texts VI
-  17. Lawful arrest and detention: Key legal texts VII
-  18. Lawful arrest and detention: Key legal texts VIII
-  19. Lawful arrest and detention: Key legal texts IX
-  20. Lawful arrest and detention: What it means
-  21. Arbitrary detention: What it means I
-  22. Arbitrary detention: What it means II
-  23. Unacknowledged detentions, abductions and enforced or involuntary disappearances I
-  24. Unacknowledged detentions, abductions and enforced or involuntary disappearances II
-  25. Lawful grounds of arrest and detention I
-  26. Lawful grounds of arrest and detention II
-  27. Administrative detention I
-  28. Administrative detention II
-  29. The right to be informed of reasons for arrest and detention and of any charges against oneself: Key legal provisions I
-  30. The right to be informed of reasons for arrest and detention and of any charges against oneself: Key legal provisions II
-  31. The right to be informed of reasons for arrest and detention and of any charges against oneself: Key legal provisions III
-  32. The right to be informed of reasons for arrest and detention and of any charges against oneself: What it means
-  33. The right to be promptly brought before a judge or other judicial officer: Key legal texts I

-  **34.** The right to be promptly brought before a judge or other judicial officer:
Key legal texts II
-  **35.** The right to be promptly brought before a judge or other judicial officer:
Key legal texts III
-  **36.** The right to be promptly brought before a judge or other judicial officer:
What it means
-  **37.** The right to trial within a reasonable time or to release pending trial:
What it means I
-  **38.** The right to trial within a reasonable time or to release pending trial:
What it means II
-  **39.** The right to have the lawfulness of the detention decided speedily or without delay by
a court: Key legal texts I
-  **40.** The right to have the lawfulness of the detention decided speedily or without delay by
a court: Key legal texts II
-  **41.** The right to have the lawfulness of the detention decided speedily or without delay by
a court: Key legal texts III
-  **42.** The right to have the lawfulness of the detention decided speedily or without delay by
a court: What it means I
-  **43.** The right to have the lawfulness of the detention decided speedily or without delay by
a court: What it means II
-  **44.** The right to have the lawfulness of the detention decided speedily or without delay by
a court: What it means III
-  **45.** The right to have the lawfulness of the detention decided speedily or without delay by
a court: What it means IV
-  **46.** The right to have the lawfulness of the detention decided speedily or without delay by
a court: What it means V
-  **47.** The right to have the lawfulness of the detention decided speedily or without delay by
a court: What it means VI
-  **48.** The right of access to and the assistance of a lawyer, and the right to compensation
in the event of unlawful deprivation of liberty
-  **49.** Incommunicado detention

B. Exercises

Exercise No. 1

General analysis of the legal situation in the participants' country or countries

Have the participants work either in small groups of four or five persons or, possibly, individually, in order to analyse, for approximately 30 minutes, the issues considered in Chapter 5. The issues should be analysed in the light of the legal and factual situation in the country where the participants work. **Let the participants select three to five of what in their view are the most important issues.** These issues should then be discussed in the groups, which should come up with proposals on how to improve the protection of the rights of arrested and detained persons at the domestic level. The groups should report back to the plenary, where the discussion will continue. Depending on the situation in the country where they work, the participants' analysis might comprise such issues as:

- The existing grounds for depriving people of their liberty;
- The right to be informed of the reasons for the arrest or detention and of any charge;
- The possibility in law and in fact of having the legality of the deprivation of liberty determined speedily by a court;
- The possibility in law and in fact of having the continued detention examined by a court of law;
- The right to trial within a reasonable time or to release pending trial;
- The availability of alternatives to detention on remand;
- The right of access to a lawyer;
- The right to compensation for an unlawful deprivation of liberty;
- The existence of incommunicado detention;
- The possibility of invoking international human rights standards before the domestic judicial authorities.

Exercise No. 2

The application of legal standards and international terrorism

Have the participants work in small groups of three to five persons for 30–40 minutes in order to analyse, in the light of the rules learned from Chapter 5, the problems arising in the following exercise.

Puritania is no doubt going through a very difficult time. In the aftermath of several terrorist acts that have left hundreds of people dead or injured, it has become clear that these criminal acts had wide international ramifications. Puritania has a population consisting of various minorities of foreign origin and it cannot be excluded that terrorist elements have managed to take a hold in some of these minority groups. The Government, backed by its shocked and bewildered population, is convinced that strong measures must be taken. It therefore intends to take drastic measures to investigate and prosecute the instigators, accomplices and perpetrators who survived the acts in question and prevent future acts of the same kind. To this end it has succeeded in having the Parliament pass the Terrorism Act, 2009, the salient features of which are that:

- It grants the Minister of Justice wide powers of detention of foreign nationals whenever he or she is satisfied that there are reasonable grounds to believe that a person has engaged in “terrorist acts” or “threats to national security”; there is no definition in the Act of either terrorist acts or threats to national security;
- The Act allows the Minister of Justice to authorize the detention of non-nationals who, in his view, are terrorist suspects for up to seven days without charging them or bringing them before a court of law;
- In circumstances of “exceptional threat”, the Act authorizes the Minister of Justice to refrain from bringing a suspected non-national before a court for a “reasonable period of time”;
- The continued detention of a non-national shall be reviewed by a court of law every six months;
- The Act does not stipulate any time limit beyond which a person who has not been charged with any crime must be released from detention;
- The Act does not specify the rights of the non-nationals in the proceedings falling under the Act. Evidence is beginning to emerge that suspects are sometimes denied access to lawyers for an extensive period of time and that they do not always have due access to the evidence on which the Ministry of Justice bases its case against them;
- The Act stipulates expressly that no court action for false imprisonment can be taken thereunder.

The Constitution of Puritania provides basic rights and freedoms, including due process guarantees, to citizens of the country. Puritania has ratified the International Covenant on Civil and Political Rights without reservations to its article 9.

Analyse critically the problems raised by the Puritanian Terrorism Act in the light of the International Covenant on Civil and Political Rights or any other relevant international treaty. Discuss whether terrorism can be dealt with effectively while respecting human rights. Propose solutions.

C. Case study/role play⁴

The story below is fictional, but is heavily inspired by facts drawn from cases decided by international monitoring organs. It has been drafted to enable participants to identify and apply some of the main principles covered by Chapter 5 of the Manual. When analysing this case, participants should do so on the basis of **both** the domestic law of the country where they carry out their professional activities **and** the International Covenant on Civil and Political Rights, which is presumed to have been ratified by Exland. The story in this exercise is the beginning of an evolving hypothetical situation which will continue in the following chapters.

PART I: THE FACTS

The arrest and detention

1. The context of this case is the city of Stadtown in Exland, where the level of crime has been steadily increasing in recent years. Violent crime and drug offences have added to the marked sense of insecurity among the population. The police force is understaffed and overworked and has considerable difficulties in responding to the population's expectations in terms of cracking down on crime.
2. On 1 February 2011, in the late evening, John had just left the apartment of his friend, Thomas, and was walking hurriedly down the Main Street, when he was surrounded by three police officers and taken to the Stadtown Police Headquarters on suspicion of participation in an armed robbery, which had taken place earlier that evening outside a block of flats in a rundown neighbourhood with barely any street lights. The victims of the robbery, an elderly couple, were unhurt but had to hand over a considerable amount of money and jewellery at gunpoint. While searching John, the police officers found no stolen jewels but a large sum of money in his jacket – a fact they found very suspicious given his relatively young age and modest appearance. John also corresponded to the description given by the elderly couple, in that he wore jeans, a leather jacket and was about 1.8 metres tall. He was not carrying a gun when apprehended. The police officers had no written warrant for John's arrest, but had responded to a message they had received over the radio in their police car.
3. John, who was a native of Ruritania, had only scant knowledge of the language spoken in Exland and could not, therefore, fully understand the explanations given to him by the police officers arresting him. At the police station he became increasingly restless and frustrated at not being able to understand the reason why he was there. John eventually made the police officers understand that he wanted an interpreter and a lawyer, requests the officers denied since they were afraid that access to a lawyer would interfere with their successful investigation into the robbery. They wanted to put an end to a series of similar robberies that had taken place in their town in the preceding months. As to the interpreter, they decided that it was too late in the evening for them to consult anyone. John was now quite angry and, since he became somewhat unruly, two of the police officers forced him to the ground to calm him down. He was locked up in a cell overnight without having been able to call either a lawyer or his parents. He also had chest pains as a consequence of having had the police officers sit on his back to immobilize him. He tried the best he could to make them understand he urgently needed to see a medical doctor, but the police officers locked the cell door and went home. They were very tired after a long day's work.

⁴ **Tip to the facilitator:** This case study can also be used as a basis for a role play concerning, for instance, a complaint brought before the Human Rights Committee or any other international monitoring organ. In either case, the material should be distributed to the participants well in advance to allow them enough time to prepare their work.

4. The next day, John's worried parents went to the police station (after having first asked at the local hospital) to report that their son had not returned home the night before. This was very unusual because John was always careful to keep his parents informed of his whereabouts. The police officer on duty informed them that John had been arrested but gave no further details and did not allow them to see their son. They were advised to return the following day. However, for the whole of the next week, their daily efforts to see their son were unsuccessful.
5. It was only after having been detained for seven days that John was finally granted access to a lawyer from Exland who spoke the Ruritanian language fluently. He was informed that he had been arrested on suspicion on having committed an armed robbery a week earlier. The following day, that is, on 8 February 2011, John was brought before a judge who confirmed the lawfulness of his deprivation of liberty.
6. John's detention was subsequently confirmed every three months by the Stadtown District Court, since there was, according to the Court, which accepted the arguments submitted by the Prosecutor, a danger of his relapsing into crime as well as of absconding to avoid justice by returning to his native Ruritania. In all, he spent 18 months in detention on remand. He unsuccessfully applied each time to be set free on bail, arguing that he had no criminal record and had good and stable work, to which he wanted to return as swiftly as possible, as well as an Exland girlfriend, whom he wanted to marry as soon as possible.

PART II: THE QUESTIONS

1. Were the provisions of your national law respected with regard to: (a) John's initial arrest; and (b) his continued detention?
2. Which provisions of: (a) your national law; and (b) the International Covenant on Civil and Political Rights are relevant with regard to: (a) John's initial arrest; and (b) his continued detention?
3. In particular, was the arrest lawful and not arbitrary under the provisions of the International Covenant on Civil and Political Rights?
4. Was the continued detention pending trial lawful and not arbitrary under the International Covenant on Civil and Political Rights? If not, in what way did this period of detention violate the provisions of the International Covenant on Civil and Political Rights?
5. Was the failure to inform John's family about his arrest contrary to: (a) your domestic law; and (b) the provisions of the International Covenant on Civil and Political Rights?
6. Did holding John without allowing him to be contacted by his family and lawyer amount to incommunicado detention? Was it justified?
7. Analyse the lawfulness of the refusal to let John's parents see their son during the week following his arrest under: (a) your national law; and (b) the International Covenant on Civil and Political Rights.
8. Were the provisions of your national law respected in connection with the refusal to allow John to have an interpreter and to consult a lawyer for a whole week following his arrest? How about the refusal to see a medical doctor?
9. Were these refusals consistent with the International Covenant on Civil and Political Rights?

10. If, in your view, the provisions of the national law and/or the International Covenant on Civil and Political Rights were not respected, what should have been done in the circumstances to respect the International Covenant on Civil and Political Rights?
11. Presume that John brings a complaint to the Human Rights Committee about his arrest, detention, trial and treatment in general during his detention. Outline the arguments that could be made concerning respect or non-respect for the provisions of the International Covenant on Civil and Political Rights by: (a) John's lawyer; and (b) the Government.
12. What policy reasons inherent in the provisions of the International Covenant on Civil and Political Rights are relevant to the present case?

D. Handout (see CD-ROM)

1. Key provisions of international and regional instruments

Chapter 6

THE RIGHT TO A FAIR TRIAL

PART I: FROM INVESTIGATION TO TRIAL

Contents

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I. NOTE TO FACILITATORS

Chapter 6 of the Manual begins by briefly describing the present global challenge to the effective protection of the right to a fair trial, and goes on to explain the importance of the principles of **the right to equality before the law and in the law** as well as **the right to presumption of innocence**.

Chapter 6 then deals with some of the major human rights that must be guaranteed as defined by international human rights law during criminal investigations, namely:

- The right to respect for one's private life, home and correspondence;
- The right to be treated with humanity and the right to freedom from torture;
- The right to be notified of the charges in a language one understands;
- The right to legal assistance;
- The right not to be forced to testify against oneself/the right to be silent;
- The duty to keep records of interrogation; and
- The right to adequate time and facilities to prepare one's defence.

Among the material contained in this *Facilitator's Guide*, the facilitator will find the continuation of the case study that began in Chapter 5, which is suitable for group work. Other case studies can of course be used instead as required by the needs of the participants in any particular training course. Numerous computer slides have also been prepared and a selection should be made on the basis of the needs of the participants.



II. PRINCIPAL LEGAL SOURCES

Chapter 6 is based mainly on the following legal sources:

A. Universal instruments

- The Universal Declaration of Human Rights, 1948
- The International Covenant on Civil and Political Rights, 1966
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
- The Statute of the International Criminal Court, 1998

- The Code of Conduct for Law Enforcement Officials, 1979
- The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988
- The Standard Minimum Rules for the Treatment of Prisoners, 1955
- The Guidelines on the Role of Prosecutors, 1990
- The Basic Principles on the Role of Lawyers, 1990
- The Rules of Procedure of the International Criminal Tribunals for the former Yugoslavia and Rwanda

B. Regional instruments

- The African Charter on Human and Peoples' Rights, 1981
- The American Convention on Human Rights, 1969
- The Inter-American Convention to Prevent and Punish Torture, 1987
- The Inter-American Convention on Forced Disappearance of Persons, 1994
- The European Convention on Human Rights, 1950

- Principles and guidelines on the right to a fair trial and legal assistance in Africa, 2003
- The Guidelines on human rights and the fight against terrorism, adopted by the Committee of Ministers of the Council of Europe, 2002.



III. OBJECTIVES OF THE CHAPTER/SESSION

The **general objectives** of Chapter 6 are to:

- Familiarize course participants with individual rights established in international legal standards that must be respected during criminal investigations and the application of these standards by the international monitoring organs;
- Make the participants aware of the importance of applying these legal standards in order to protect a wide range of human rights in a society based on the rule of law;
- Create awareness among the participating judges, prosecutors and lawyers of their essential role as pillars of the enforcement of the rule of law, including individual rights during criminal investigations;
- Create awareness of the fact that the enforcement of the fair trial rules is not only conducive to enhancing the protection of human rights *sensu lato* but also conducive to encouraging economic investment and promoting national and international peace and security.

The **specific objectives** of the study of Chapter 6 are to ensure that the participants assimilate some basic knowledge about the following fundamental rights during criminal investigations:

- The right to equality before the law, including the right of all persons to equal access to the courts;
- The right to be presumed innocent;
- The right to respect for one's private life, home and correspondence;
- The right to be treated with humanity and the right to freedom from torture;
- The right to be notified of the charges in a language one understands;
- The right to legal assistance;
- The right not to be forced to testify against oneself/the right to be silent;
- The duty to keep records of interrogation; and
- The right to adequate time and facilities to prepare one's defence.



IV. MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED

The main points to be brought out and the key issues to be discussed in the light of the international legal rules dealt with in Chapter 6 are:

- Whether the participants have any specific issues that they would like the facilitator to address during the session (this information should preferably already be known to the facilitator on the basis of the pre-course questionnaire). If this is the case, the facilitator might make a synthesis of these points at the beginning of the session and ask the participants whether they agree with the list of issues or whether they would like to add or to change something;
- Whether the participants are already conversant with the international legal standards and jurisprudence relating to criminal investigations;
- Whether these international legal standards form part of the national legal system within which the participants are working;
- If so, ask the participants about the legal status of these standards in the relevant domestic legal system and whether they have been able to apply them;
- To find out, if necessary by asking direct or indirect questions to the participants, whether, in their experience, they have any concerns – or have encountered specific problems – in ensuring a person's human rights at the pretrial stage;
- If so, try to have them explain what these concerns and problems are and how they address them, given the legal framework within which they are working;
- How the various rules of international human rights law, as explained in the Manual, might help the participants in promoting the protection of the rights of suspects at the pretrial stage.



V. SESSION PLANNING CHART FOR CHAPTER 6



















Key points/activities	Method	Media	Time
1. Objectives of Chapter 6 (and 7), including the importance of a fair criminal justice system to social stability and economic development	Presentation	Computer slides, flip chart	10 minutes
2. Based on Chapter 6, a. present the basic legal texts; b. present the cross-cutting principles of: (i) equality before the law and equal access to the courts; (ii) presumption of innocence; c. explain the protection of – and limits on – the right to enjoy private life during criminal investigations; wiretapping, searches and correspondence; d. treatment during detention.	Presentations: ● use questions and answers to involve participants in discussion of the cases described in the chapter; ● also possibly ask participants to present one aspect or another (arrange beforehand).	Computer slides, flip chart, stickers, handout (relevant texts of instruments)	40 minutes
3. Stretch break			5 minutes
4. Discussion of the first presentation		Computer slides and flip charts as well as stickers if appropriate, handout (relevant legal texts)	30 minutes
5. Distribution of exercises or case studies and assignment of overnight work	Presentation, response to questions	Exercise or case study, handout	10 minutes
6. Next day/next session			
7. Presentation of Chapter 6 continues: a. prompt information on charges in language understood; b. right to effective legal assistance/contact with lawyer; c. right to remain silent/non-self-incrimination; can silence be held against an accused? d. records of interrogations; e. adequate time/facilities to prepare defence.	Presentations: ● use questions and answers to involve participants in discussion of cases described in the chapter; ● also possibly ask participants to present one aspect or another (arrange beforehand).	Computer slides, flip charts and handout (relevant legal texts)	40 minutes






















Key points/activities	Method	Media	Time
8. Discussion of second presentation	Facilitators, through questions; if necessary, clarify main points and ensure they are understood; question how principles are translated into national law of participants and whether any particular difficulties encountered.	Flip chart, stickers	20 minutes
9. Stretch break			5 minutes
10. Group discussion of case study or exercise and point preparation	In groups of 3–5 participants, prepare analysis of case study or answers to exercise	Flip chart, stickers	35 minutes
11. Report back by groups on questions. A discussion follows with team answering, clarifying and correcting substance	One person from each group presents results of case study analysis or writes on chart or places stickers on the results of the exercise questions		30 minutes
12. Coffee break			15 minutes
13. Summing up. Team reviews the main points from Chapter 6 and through questions determines whether objectives have been attained			10 minutes
14. Evaluation and preparation for next session	Participants are asked to comment critically on the presentations and discussions; team informs about the next session, assigns advance work (if desirable) and seeks volunteers		10 minutes
			Total time on Chapter 6: Day/Session 1: 1 h. 35 min. Day/Session 2: 2 h. 45 min. Total time (breaks included): 4 h. 20 min.




VI. TRAINING MATERIALS

A. Computer slides (see CD-ROM)

-  1. Learning objectives I
-  2. Learning objectives II
-  3. Questions I
-  4. Questions II
-  5. The right to equality before the law and in the law: Key legal texts I
-  6. The right to equality before the law and in the law: Key legal texts II
-  7. The right to equality before the law and in the law: Key legal texts III
-  8. The right to equality before the law and in the law: Key legal texts IV
-  9. The right to equality before the law and in the law: What it means I
-  10. The right to equality before the law and in the law: What it means II
-  11. The right to be presumed innocent: The overall guarantee from suspicion to conviction or acquittal: Key legal texts I
-  12. The right to be presumed innocent: The overall guarantee from suspicion to conviction or acquittal: Key legal texts II
-  13. The right to be presumed innocent: The overall guarantee from suspicion to conviction or acquittal: Key legal texts III
-  14. The right to be presumed innocent: The overall guarantee from suspicion to conviction or acquittal: Key legal texts IV
-  15. The right to be presumed innocent: The overall guarantee from suspicion to conviction or acquittal: Key legal texts V
-  16. The right to be presumed innocent: The overall guarantee from suspicion to conviction or acquittal: What it means
-  17. The right to respect for one's privacy, home and correspondence: Key legal texts I
-  18. The right to respect for one's privacy, home and correspondence: Key legal texts II

-  19. The right to respect for one's privacy, home and correspondence: Key legal texts III
-  20. The right to respect for one's privacy, home and correspondence: Key legal texts IV
-  21. The right to respect for one's privacy, home and correspondence – as to the use of wiretapping, searches and control of correspondence
-  22. The right to respect for one's physical and psychological integrity: Key legal texts I
-  23. The right to respect for one's physical and psychological integrity: Key legal texts II
-  24. The right to respect for one's physical and psychological integrity: Key legal texts III
-  25. The right to respect for one's physical and psychological integrity: Key legal texts IV
-  26. The right to respect for one's physical and psychological integrity: Key legal texts V
-  27. The right to respect for one's physical and psychological integrity: What it means
-  28. The right to be notified about the charges in a language one understands: Key legal texts I
-  29. The right to be notified about the charges in a language one understands: Key legal texts II
-  30. The right to be notified about the charges in a language one understands: Key legal texts III
-  31. The right to be notified about the charges in a language one understands: Key legal texts IV
-  32. The right to be notified about the charges in a language one understands: What it means
-  33. The right to legal assistance: Key legal texts I
-  34. The right to legal assistance: Key legal texts II
-  35. The right to legal assistance: Key legal texts III
-  36. The right to legal assistance: Key legal texts IV
-  37. The right to legal assistance: Key legal texts V
-  38. The right to legal assistance: Key legal texts VI
-  39. The right to legal assistance: Key legal texts VII

-  40. The right to legal assistance: Key legal texts VIII
-  41. The right to legal assistance: What it means
-  42. The prohibition on self-incrimination and the right to remain silent: Key legal texts I
-  43. The prohibition on self-incrimination and the right to remain silent: Key legal texts II
-  44. The prohibition on self-incrimination and the right to remain silent: Key legal texts III
-  45. The prohibition on self-incrimination and the right to remain silent: Key legal texts IV
-  46. The prohibition on self-incrimination and the right to remain silent: What it means
-  47. The duty to keep records of interrogation I: Human Rights Committee, general comment No. 20
-  48. The duty to keep records of interrogation II: The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 23
-  49. The duty to keep records of interrogation III: What it means
-  50. The right to have adequate time and facilities to prepare one's defence: Key legal texts I
-  51. The right to have adequate time and facilities to prepare one's defence: Key legal texts II
-  52. The right to have adequate time and facilities to prepare one's defence: Key legal texts III
-  53. The right to have adequate time and facilities to prepare one's defence: Key legal texts IV
-  54. The right to have adequate time and facilities to prepare one's defence: What it means

B. Exercises

Exercise No. 1

International human rights norms and the domestic legal system⁵

Have the participants work either individually or divide them into groups of four to six persons in order to analyse, for approximately 30 minutes, the questions considered in this chapter in the light of their respective domestic legal systems. They should choose no more than three or four important issues and define what problems these issues may pose in their country or countries. They should end their work by trying to develop ideas as to how one might be able to improve the enforcement of the various rights in these countries during the pretrial stage.

Exercise No. 2

The right to silence

This exercise is a very short case study that can be discussed either in groups or in plenary. It can also be used as a role play. The participants can be divided into groups of fictitious lawyers for Tom and the prosecution, as well judges of the Constitutional Court. The presentation by each side should take no more than 10 minutes.

Exland is a State party to the International Covenant on Civil and Political Rights. By a recent modification of the Constitution of Exland, the Code of Criminal Procedure was also changed in so far as it granted prosecutors the discretion to recommend lower sentences for convicted persons who have waived their right to remain silent during their interrogation by criminal investigators. This change in the law was introduced to enable the authorities to handle more efficiently the serious increase in the crime rate.

In a complex case of espionage, concerning several years of suspected illegal activities, Erik and Tom were arrested, tried and convicted of treason. Largely because Erik had waived his right to remain silent, the prosecution was able to secure the conviction of both men. As Erik waived his right to remain silent, he received a considerably lower sentence than Tom. Much aggrieved by the outcome of the trial, Tom decided to challenge the new prosecutorial discretion before the Exland Constitutional Court.

- As **counsel for Tom**, what would you advise him? How would you argue his case before the Constitutional Court?
- As **counsel for the prosecution**, how would you reply to the arguments of Tom's lawyer?
- As a **judge of the Constitutional Court**, what would your ruling be on Tom's application?
- Ask participants to analyse these facts in the light of both their domestic law and the relevant provisions of international human rights law.

⁵ **Tip to the facilitator:** This kind of brief and simple exercise can be used during short courses, such as workshops, when time is scarce and not suitable for serious case studies. They may also be useful in situations, for instance, in which a country is emerging from a period of armed conflict and will have to rebuild its legal system, including its Judiciary. In such situations the case studies may be less helpful in view of their complexity. It will be for the facilitator to identify the actual needs of the participants and adjust the exercises and case studies accordingly.

C. Subject for discussion

The right not to have to testify against oneself and the right to remain silent during criminal investigations have recently been challenged in at least one European country by politicians as well as the police. The subject has also become particularly relevant in the light of efforts by many countries to deal with terrorism. The participants could discuss:

- **The right of a suspect to remain silent at all times: Should it be absolute?**
- **Advantages and disadvantages for the fair and objective administration of justice**

Before starting the discussion on this topic, the moderator should ensure that the participants have assimilated the information found in subsection 6.5 of Chapter 6. He or she should also try to engage all participants in the discussion and to have them analyse the dangers and possible advantages in applying the right to remain silent to allow room for the drawing of **reasonable inferences** from an accused person's silence. It may be useful to use a flip chart for this discussion.

D. Case study

The story in this case study is the continuation of the case study found in Chapter 5 regarding John's arrest and detention. As in that case, the audience should discuss this case in groups of no more than five people, and the participants should analyse the facts in the light of their domestic law, as well as on the basis of all relevant standards of international human rights law. The case might even be distributed the night before it is supposed to be discussed to provide the participants with sufficient time to reflect on the various issues raised by the case and prepare their points and answers for the subsequent discussions in the group and plenary. It is recalled that Exland has ratified the International Covenant on Civil and Political Rights.⁶

PART I: THE FACTS

The criminal investigation

1. John remained in detention, consistently claiming his innocence. He was on regular occasions submitted to harsh questioning by the police and prosecuting authorities during which he was intimidated because of his origin and lack of knowledge of the Exland language. He was at times even punched by the investigating officers, who were attempting to put an end to the investigation by having John confess to having committed the offence. An interpreter regularly assisted John and the investigative authorities during these interrogations, but his lawyer was not always present and some of the interrogations were not noted in the logbook.
2. John's lawyer tried to see his client at regular intervals and to communicate with him in private. Occasionally, he was refused access to John, and some of his correspondence was interfered with and not forwarded to his client. When visiting John during his time in detention on remand, the visits invariably took place in front of a guard who occasionally took notes of the conversations. One of John's letters to his lawyer was also intercepted. In this letter John asked for legal advice for the purpose of complaining to the competent authorities about in particular the treatment to which he had been subjected following his arrest. His chest pain had persisted for several weeks and he felt that he should have had access to prompt medical treatment.

⁶ **Tip to the facilitator:** If the country where the participants work has ratified one of the regional human rights treaties, it might be more useful for the participants to refer to that treaty instead of, or in addition to, the Covenant.

3. John wanted to be able to prove his innocence and asked to be confronted with the victims of the robbery, whom he knew only as Mr. and Mrs. X. His request was denied. Moreover, Mr. and Mrs. X had identified John as their attacker in an identification parade when he had not been able to see them. The couple pointed John out as their probable attacker, but in the back of their minds they were no longer totally convinced – some doubts lingered. After all, that evening the street had been very dark. However, they kept their doubts to themselves, believing that it was in everybody's best interest to do so. John's lawyer made a renewed request to the prosecuting authority to arrange a meeting between John and Mr. and Mrs. X in order to test the reliability of their testimony. The request was turned down with the argument that in these times of increased crime and consequential insecurity for people in the city, it was necessary to protect victims from the possibility of acts of revenge by preserving their anonymity.
4. As a result of these setbacks, John became increasingly despondent, and decided to remain silent in the face of the investigators.

PART II: THE QUESTIONS

1. Were the conditions in which John was interrogated consistent with: (i) your domestic law; and (ii) the Covenant? Please focus your analysis on the following aspects:
 - (a) The treatment to which John was subjected;
 - (b) The interrogations in the absence of a lawyer;
 - (c) The failure to note the interrogations in the logbook.
2. Were the conditions in which John could see and consult his attorney consistent with: (a) your domestic law; (b) the Covenant? If not, in what way did they violate these laws?
3. With regard to the refusal to allow John medical treatment and the subsequent interference with John's letter to his lawyer in which he sought legal advice for negligence: Was this refusal consistent with: (a) your domestic law; (b) the Covenant?
4. Neither John nor his lawyer was allowed to confront Mr. and Mrs. X. Would this refusal be consistent with: (a) your domestic law; (b) the Covenant?
5. In cases where it would be highly desirable to preserve the anonymity of the victim, how could this interest be safeguarded while preserving the right of the accused to a fair hearing, including the right to equality of arms?
6. What importance – and consequences in law – are attached to the silence or lack of cooperation of an accused under: (a) your domestic law; (b) the Covenant?

E. Role play

PART I: THE FACTS

Background information

Felix is the owner of a legal gambling operation. The police suspects, however, that he is using his business in order to cover up his trade in marijuana, although there is no proof. Bill has just been involved in a serious brawl with Felix at a popular bar – a brawl that was broken up by the police. Bill takes Police Inspector Pretto aside and tells him that Felix is expecting a considerable shipment of marijuana at his gambling operation in 10 days. The Inspector immediately arranges electronic surveillance of Felix's gambling operation and residence, including his

mobile telephone. On the appointed day, he arrives with 10 police officers and searches both the gambling place and Felix's residence. They fail to find any marijuana. Felix sues the police for both illegal surveillance and trespass on his private property and business.

PART II: QUESTIONS AND ARGUMENTS⁷

1. You are the **lawyer** for Felix. How would you argue the case? Develop as many arguments as you can, basing yourself on the relevant articles of the International Covenant on Civil and Political Rights. The arguments should cover such issues as:
 - (a) The lawfulness of the electronic surveillance and the search;
 - (b) The purpose of these measures;
 - (c) Their necessity in a democratic society;
 - (d) Any other issues that you find relevant.
2. As the **lawyer for the police**, how would you defend the police action? You should address the same issues as under 1 (a)–(d);
3. As the **judge**, how would you rule on the issues argued before you?
4. Try to have the participants analyse how this case would be dealt with under the law of the country where they work and also in the light of the relevant provisions of international human rights law.

F. Handout (see CD-ROM)

1. Key provisions of international and regional instruments

⁷ **Tip to the facilitator:** As in other exercises, the Covenant can, whenever relevant, be replaced by a regional human rights treaty. The role play can be changed so as to concern a complaint submitted to an international monitoring organ.

Chapter 7

THE RIGHT TO A FAIR TRIAL

PART II: FROM TRIAL TO FINAL JUDGEMENT

Contents

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II.	PRINCIPAL LEGAL SOURCES.....	58
	A. Universal instruments	58
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	D. Role play	70
	E. Handout.....	71



I. NOTE TO FACILITATORS

Chapter 7 of the Manual describes in some detail the major human rights that must be guaranteed to an accused person throughout his or her trial, such as the right to a fair hearing, the right to equality of arms in adversarial proceedings, the right to a public hearing, the right to free legal assistance, and so on.

Chapter 7 further deals with the limits on punishment, the right to appeal and, more briefly, with the right to a fair trial in special tribunals, as well as the right to a fair trial in public emergencies, a subject dealt with in more detail in Chapter 16.

The case study in this chapter is the third part of the hypothetical case that began in Chapter 5 and continued in Chapter 6. The exercises and case studies suggested are optional and should not all be used in the same course. They can be replaced by other interesting exercises and/or case studies, provided that the learning objectives as defined below are attained.

Numerous computer slides are found on the CD-ROM and a selection will have to be made of those slides that are most useful. Other computer slides can also be prepared that may better correspond to the needs of the facilitators.

Facilitators are encouraged to combine presentations based on Chapter 7 with information or stories from their own professional experience.



II. PRINCIPAL LEGAL SOURCES

Chapter 7 is based mainly on the following legal texts:

A. Universal instruments

- The International Covenant on Civil and Political Rights, 1966
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
- The Statute of the International Criminal Court, 1998

- Guidelines on the Role of Prosecutors, 1990
- Basic Principles on the Role of Lawyers, 1990
- Basic Principles on the Independence of the Judiciary, 1985

B. Regional instruments

- The African Charter on Human and Peoples' Rights, 1981
- The American Convention on Human Rights, 1969
- The European Convention on Human Rights, 1950

- Principles and guidelines on the right to a fair trial and legal assistance in Africa, 2003
- Guidelines on human rights and the fight against terrorism, adopted by the Committee of Ministers of the Council of Europe, 2002



III. OBJECTIVES OF THE CHAPTER/SESSION

The **general objectives** of Chapter 7 are to:

- Familiarize course participants with some of the international standards that exist concerning the rights of persons charged with criminal offences throughout the trial stage, and the application of these standards by international monitoring organs;
- Make the participants aware of the importance of applying these legal standards in order to protect a wide number of human rights in a society based on the rule of law;
- Create awareness among the participating judges, prosecutors and lawyers of their essential role as pillars of the enforcement of the rule of law including the right to a fair trial in all circumstances, including crisis situations.

The **specific objectives** of Chapter 7 are to ensure that the participants assimilate basic knowledge about the following human rights, which are essential to protecting the right to a fair trial of the accused person:

- The right to be tried by a competent, independent and impartial tribunal established by law (brief recapitulation of knowledge gained during the session on Chapter 4);
- The right to a fair hearing, including, in particular, the right of access to a court or tribunal, the right to equality of arms in adversarial proceedings. With regard to the right of access to the courts, the right to equality, such as on the basis of gender, should be emphasized;
- The right to a public hearing, including the right to a public judgement;
- The right to be tried "without undue delay" or "within a reasonable time";
- The right to defend oneself in person or through a lawyer of one's own choice, with particular emphasis on the right to effective legal assistance in death penalty cases, the right to free legal aid, and the right to privileged communications with one's lawyer;

- The right to be present at one's trial, and the right to due process guarantees during trials in absentia;
- The right not to be compelled to testify against oneself or to confess guilt and the prohibition on the use of evidence obtained through unlawful means/treatment;
- The right to call, examine and have examined witnesses;
- The right to the free assistance of an interpreter;
- The right to a reasoned judgement;
- The right to freedom from ex post facto laws/the principle of *nullum crimen sine lege*;
- The principle of *ne bis in idem*/the prohibition of double jeopardy;
- The various limits that exist on punishment;
- The right to appeal;
- The right to compensation in the event of a miscarriage of justice; and
- The right to a fair trial before special tribunals and in public emergencies.



IV. MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED

The main points to be brought out and the key issues to be discussed with the participants in the light of the international legal rules dealt with in Chapter 7 are:

- Whether the participants are already conversant with the international legal standards relating to a fair trial;
- Whether these standards already form part of the national legal system within which the participants are working and, if so, what is their legal status and whether they have ever been invoked or applied by the participants;
- Whether, in the light of their experience, the participants have any specific concerns, or whether they have encountered any particular problems, when trying to ensure an accused person's human rights at the pretrial or trial stage;
- If so, what were these concerns and problems and how were they addressed, given the legal framework within which the participants work;
- Which issues the participants would like to see specifically addressed by the facilitators during the course (these issues should preferably have been identified at an early stage on the basis of a pre-course questionnaire; their continued relevance can be discussed and agreed on during the course);
- Whether the participants would have any advice to give to other judges, prosecutors and lawyers exercising their professional responsibilities in difficult situations that might help their colleagues secure the application of fair trial rules; and
- How the various rules of international human rights law, as enumerated in section III above and explained in Chapter 7 of the Manual, might help the participants to promote the protection of the rights of accused persons during the trial.



V. SESSION PLANNING CHART FOR CHAPTER 7

Key points/activities	Method	Media	Time
1. Objectives of Chapter 7, including brief recapitulation of the main points from Chapters 4 and 6.	Presentation	Computer slides, flip chart	10 minutes
2. Based on Chapter 7 of the Manual and the issues in sections III and IV above, the team: <ol style="list-style-type: none"> a. presents the basic legal texts; b. presents the principles of: <ol style="list-style-type: none"> (i) the right to a fair and public hearing; (ii) the right to a hearing without delay; (iii) the right to defend oneself in person or through a lawyer of one's choice; legal assistance; (iv) the right to be present; (v) the right not to be compelled to confess; (vi) the right to call witnesses. 	Presentations: <ul style="list-style-type: none"> • use questions and answers to involve participants in discussion of the cases described in the chapter; maybe ask participants to present one aspect or another (arrange beforehand) 	Computer slides, flip chart, stickers, handouts (relevant texts of instruments)	40 minutes
3. Stretch break			5 minutes
4. Discussion of the first presentation		Computer slides and flip charts as well as stickers, if appropriate, handouts of the relevant texts of instruments	30 minutes
5. Lunch			60 minutes
6. Presentation on Chapter 7 continues: <ol style="list-style-type: none"> a. the right to the free assistance of interpreter; b. the right to a reasoned judgement; c. freedom from ex post facto laws and the principle of <i>ne bis in idem</i>; d. limits on punishment; e. the right of appeal; f. right to compensation in case of miscarriage of justice; g. the right to a fair trial before special tribunals and in emergency situations. 	Presentations: <ul style="list-style-type: none"> • use questions and answers to involve participants in discussion of the cases described in the chapter; • maybe ask participants to present one aspect or another (arrange beforehand). 	Computer slides, flip charts and handouts	40 minutes




















Key points/activities	Method	Media	Time
7. Discussion of second presentation	Facilitators, by means of questions, if necessary, clarify the main points and ensure they are understood; question how principles are translated into the national law of participants and about any particular difficulties encountered	Flip chart, stickers	30 minutes
8. Stretch break			10 minutes
9. Group discussion of case studies or exercises and point preparation	In groups of three to five participants prepare analysis of case studies or answers to exercise	Flip charts, stickers	40 minutes
10. Report back by groups on questions. A discussion follows with the team answering, clarifying and correcting substance	One person from each group presents results of case study analysis, writes on chart or uses stickers on the results of the exercise questions		30 minutes
11. Coffee break			15 minutes
12. Summing up. Team reviews the main points from Chapter 7 and by means of questions determines if objectives have been attained			20 minutes
13. Evaluation of Chapters 4–7 and preparation for next session.	Participants are asked to comment critically on the presentations and discussions; Team informs about the next session, assigns advance work (if desirable) and seeks volunteers.		30 minutes
			Total time on Chapter 7: Session 1: 1 h. 25 min. Session 2: 3 h. 35 min. (evaluation of Chapters 4-7 included)















Information to the facilitator: Please note that this session’s planning chart follows a five-day course programme. Hence the lunch break after only 1 h 25 min of work. The session can, of course, be planned as needed and must not necessarily follow the above chart.









VI. TRAINING MATERIALS

A. Computer slides (see CD-ROM)

-  1. Learning objectives I
-  2. Learning objectives II
-  3. Questions I
-  4. Questions II
-  5. Questions III
-  6. The right to a fair hearing: Key legal texts I
-  7. The right to a fair hearing: Key legal texts II
-  8. The right to a fair hearing: Key legal texts III
-  9. The right to a fair hearing: Key legal texts IV
-  10. The right to a fair hearing: Key legal texts V
-  11. The right to a fair hearing: What it means in general I
-  12. The right to a fair hearing: What it means in general II
-  13. The right of access to a court and the right to justice: What it means
-  14. The right to equality of arms in adversarial proceedings: What it means
-  15. Compelling the attendance of witnesses
-  16. Judge's instruction to the jury
-  17. The right to a public hearing and the right to a public judgement: Key legal texts I
-  18. The right to a public hearing and the right to a public judgement: Key legal texts II
-  19. The right to a public hearing and the right to a public judgement: Key legal texts III
-  20. The right to a public hearing and the right to a public judgement: Key legal texts IV

-  21. The right to a public hearing and the right to a public judgement: Key legal texts V
-  22. The right to a public hearing and the right to a public judgement: What it means
-  23. The right to be tried “without undue delay” or “within a reasonable time”:
Key legal texts
-  24. The right to be tried “without undue delay” or “within a reasonable time”:
What it means
-  25. The right to defend oneself in person or through a lawyer of one’s own choice, the
right to free legal aid, the right to privileged communications with one’s lawyer:
Key legal texts I
-  26. The right to defend oneself in person or through a lawyer of one’s own choice, the
right to free legal aid, the right to privileged communications with one’s lawyer:
Key legal texts II
-  27. The right to defend oneself in person or through a lawyer of one’s own choice, the
right to free legal aid, the right to privileged communications with one’s lawyer:
Key legal texts III
-  28. The right to defend oneself in person or through a lawyer of one’s own choice, the
right to free legal aid, the right to privileged communications with one’s lawyer:
Key legal texts IV
-  29. The right to defend oneself in person or through a lawyer of one’s own choice, the
right to free legal aid, the right to privileged communications with one’s lawyer:
Key legal texts V
-  30. The right to defend oneself in person or through a lawyer of one’s own choice, the
right to free legal aid, the right to privileged communications with one’s lawyer:
What it means I
-  31. The right to defend oneself in person or through a lawyer of one’s own choice, the
right to free legal aid, the right to privileged communications with one’s lawyer:
What it means II
-  32. The right to be present at one’s trial: Key legal texts
-  33. The right to be present at one’s trial: What it means
-  34. The prohibition on self-incrimination, the right to remain silent, the prohibition on the
use of evidence obtained through unlawful means: Key legal texts I
-  35. The prohibition on self-incrimination, the right to remain silent, the prohibition on the
use of evidence obtained through unlawful means: Key legal texts II

- 36.** The prohibition on self-incrimination, the right to remain silent, the prohibition on the use of evidence obtained through unlawful means: Key legal texts III
- 37.** The prohibition on self-incrimination, the right to remain silent, the prohibition on the use of evidence obtained through unlawful means: Key legal texts IV
- 38.** The prohibition on self-incrimination, the right to remain silent, the prohibition on the use of evidence obtained through unlawful means: What it means I
- 39.** The prohibition on self-incrimination, the right to remain silent, the prohibition on the use of evidence obtained through unlawful means: What it means II
- 40.** The right to call, examine or have examined witnesses: Key legal texts I
- 41.** The right to call, examine or have examined witnesses: Key legal texts II
- 42.** The right to call, examine or have examined witnesses: Key legal texts III
- 43.** The right to call, examine or have examined witnesses: Key legal texts IV
- 44.** The right to call, examine or have examined witnesses: What it means I
- 45.** The right to call, examine or have examined witnesses: What it means II
- 46.** The right to call, examine or have examined witnesses: The resort to anonymous witnesses – is it lawful?
- 47.** The right to the free assistance of an interpreter: Key legal texts I
- 48.** The right to the free assistance of an interpreter: Key legal texts II
- 49.** The right to the free assistance of an interpreter: Key legal texts III
- 50.** The right to the free assistance of an interpreter: Key legal texts IV
- 51.** The right to the free assistance of an interpreter: What it means
- 52.** The right to a reasoned judgement: What it means
- 53.** The freedom from ex post facto laws: What it means
- 54.** The principle of *ne bis in idem*: What it means
- 55.** Limits on punishment I
- 56.** Limits on punishment II
- 57.** The right of appeal: Key legal texts I

-  **58.** The right of appeal: Key legal texts II
-  **59.** The right of appeal: What it means I
-  **60.** The right of appeal: What it means II
-  **61.** The right to compensation in the event of a miscarriage of justice: What it means
-  **62.** The right to a fair trial and special tribunals
-  **63.** The right to a fair trial in public emergencies: What it means

B. Exercises

Exercise No. 1

Either ask the participants to work individually or divide them into groups of four to six persons in order to analyse, for 20–30 minutes, the questions considered in Chapter 7 in the light of their respective domestic legal system or systems. They should choose no more than three or four important issues and define the concerns and/or problems these issues may pose in their countries. The participants should end their work by trying to develop ideas on how they might be able to improve the enforcement of the various rights affected during the trial stage.

This kind of simple exercise may for instance be used during brief courses when time is scarce and there is not enough time to prepare a more detailed case study.

Exercise No. 2

The right to a fair trial, including inter alia the right of access to legal counsel, the right to presumption of innocence and the right to a trial within a reasonable time⁸

This exercise is a second short case study that can be discussed either in groups or in plenary. The presentation by each group should take no more than 10 minutes. This exercise is aimed at opening the discussion on the right to a fair trial to a wider spectrum of human rights.


Sonia was arrested late in the evening of 12 June 2008 by the National Police of Exland as she was heading home from her work as a lawyer in a Stadtown law firm. Sonia had for a long time been active in an important human rights organization and had received some threats in the weeks preceding her arrest, the threats being an attempt to dissuade her from continuing her human rights work. Sonia had been particularly active – although always peacefully – in trying to convince the Exland Government to take forceful action to put an end to the generalized use of torture in the prisons and other places of detention in Exland. She was particularly eager to persuade the Government to agree to increase the protection of children and women deprived of their liberty, since their situation during detention was particularly precarious.

Sonia was arrested on suspicion of “subversive activities threatening the security of the State” on the basis of Governmental Decree No. 008, issued the same day. Sonia was held incommunicado for 40 days from her arrest. In September 2011, Sonia was finally convicted of subversion and sentenced to three years in prison. During this time she had spent over three years in pretrial detention, when two years was the maximum in Exland for that particular offence. Sonia had tried in vain to have the Judiciary speed up the case, since the fact of having a criminal charge pending was particularly unpleasant for her in her work as a lawyer.

Some of the issues that could be discussed:

- How, if at all, did Sonia’s incommunicado detention interfere with her right to a fair trial?
- Could her three-year-long detention have impeded her right to enjoy a fair trial? If so, in what way?
- Was Sonia tried within a reasonable time/without delay?
- Was it consistent with international human rights law to convict Sonia on the basis of Governmental Decree No. 008? Please explain your views.
- How about Sonia’s work for the eradication of torture in Exland? How do you think that the criminal proceedings affected these activities? Can you identify any human rights other than due process rights that might have been violated in the criminal case instituted against Sonia?
- If you were a judge in this case, would you find the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms helpful? What provisions would you be guided by and for what reasons?

⁸ **Tip to the facilitator:** Depending on the needs of the facilitator/audience, this exercise/case study can easily be turned into a role play with fictitious defence lawyers, prosecutors and judges arguing the case. On the rights of human rights defenders, see General Assembly resolution 53/144.

 **Exercise No. 3**
*Ne bis in idem*⁹

Bill is a prosperous fisherman, living in a small coastal town in Exland. Part of his work consists of exporting and importing fish, which has become big business in view of the sharply increased price of fish in many parts of the world. In Bill's view, it is annoying to pay high taxes on all his income and wealth and he therefore hides some of it in a bank abroad and manages to cheat with his book keeping by falsifying documents. However, the authorities became suspicious and, after an investigation, criminal proceedings were instituted against Bill, who was subsequently convicted of having hidden taxable income amounting to 1.5 million dollars for the years 2002–2008 as well as 2.8 million dollars in taxable assets. For this he was sentenced on 5 January 2010 by the Stadtown District Court to 18 months' imprisonment, two-thirds of which he duly served according to the rules in Exland. This judgement became final on 19 January 2010, after Bill decided not to lodge an appeal.

However, while the penal proceedings were still pending, the Exland Tax Authority warned that Bill was in fact suspected of having hidden much more money than earlier suspected. On 2 December 2011, Bill was finally informed that his hidden income should have been 5.5 million dollars and his taxable assets 4.6 million dollars. According to Exland Tax Law, an additional tax of 60 per cent was therefore imposed on Bill. It is noteworthy that, according to this Tax Law, a person who has given wrong or incomplete information to the tax authorities can be punished under the Exland Penal Code and have additional taxes imposed.

Bill was furious. In his view this additional taxation was unfair because he had already served a severe penalty. He therefore consults you, a lawyer, for advice on to what to do. Discuss the issues involved and propose options. Base your arguments on the relevant provisions of (a) your domestic law; and (b) the International Covenant on Civil and Political Rights or any of the relevant regional human rights treaties.

⁹ **Tip to the facilitator:** This exercise is inspired by cases decided by the Norwegian Supreme Court on 3 May 2002. Basing itself on article 4 of Protocol No. 7 to the European Convention on Human Rights, the Supreme Court decided that penal proceedings should be dismissed if additional taxes had already been imposed, and vice versa. In these cases the acts on which the conviction and additional taxation were based were the same. Moreover, both the objective description of the act for purposes of the punishment as well as the subjective conditions for imposing punishment and increased taxes were identical.

C. Case study¹⁰

This is the third part of the case study that began in Chapter 5 and continued in Chapter 6. This part concerns the trial proceedings. As such, it mainly concerns Chapter 7 although an issue arises with respect to Chapter 4. It is suggested that the case be distributed the night before to enable the participants to read and analyse with some care the questions to which this hypothetical case study gives rise. Exland remains a State party to the International Covenant on Civil and Political Rights and has ratified its two Optional Protocols.

PART I: THE FACTS

1. John's trial began after he had spent 18 months in detention on remand. It was a trial by jury. He had by now run out of savings and could no longer afford a lawyer. He applied for legal aid, which was granted, and the Court appointed a lawyer for him shortly before the beginning of the trial. John and the new lawyer met for the first time the day before the opening of the trial. John insisted that he was innocent and asked the lawyer to demand that the court call Mr. and Mrs. X as witnesses. However, he was equally determined to remain silent throughout the proceedings since he felt that nobody listened to him anyway.
2. At the outset of the trial, John's lawyer made an official request to the Court to have Mr. and Mrs. X called to testify, emphasizing the need to having them cross-examined. The request was rejected on the basis that the written testimony given by Mr. and Mrs. X to the police – and which was to be read out in open Court – had, in the circumstances, provided sufficient details as to the robbery and, given the need to protect the witnesses' personal security, the request was denied. John was however allowed to call as a witness Thomas, the friend with whom he had spent the relevant evening, and who eventually testified that the two of them had been out for dinner that particular night before returning to his apartment for a late-night chat.
3. The trial ended quickly, the case being fairly simple. In his instructions to the jury, the presiding Judge explained the relevant law, pointed out the evidence that existed against John and made a point of emphasizing that the accused had remained silent throughout a considerable part of the criminal investigation as well as during the trial. John was found guilty of aggravated robbery and sentenced to four years' imprisonment. In a pause in the trial, the presiding Judge had been informed that a jury member had made strong derogatory remarks about foreigners in general and about people from Ruritania in particular. The trial resumed thereafter, with the presiding Judge generally noting in his instructions to the jury that everybody has the right to be treated equally before the law and in the law.
4. With the help of his lawyer, John lodged an appeal against both the conviction and the sentence, pointing out irregularities committed during the criminal investigation and the trial. He asked the Court of Appeals to reverse the judgement. After 11 months, the Court of Appeals dismissed the appeal after having made an examination of the law and facts based exclusively on the written submissions of both John and the Prosecution. While the Prosecution had had access to John's pleadings, the Prosecutor's opinion, as submitted to the Court of Appeals, was never sent to John or his lawyer for comments. In a brief public hearing, a summary of the judgement of the Court of Appeals was read out, although the reasons would be submitted in written form at a later stage. John received no written and reasoned judgement until eight months later, when his right to appeal to the Exland Constitutional Court had long expired.

¹⁰ **Tip to the facilitator:** The Covenant can be replaced by, or considered simultaneously with, a regional human rights treaty ratified by the country where the participants work.

PART II: THE QUESTIONS

1. Did John's newly appointed legal aid lawyer have sufficient time to prepare John's defence? What would the situation be under: (a) your domestic law; (b) the Covenant?
2. If time was not sufficient, what would you as John's lawyer have done to remedy the situation?
3. As to the refusal to hear Mr. and Mrs. X: How did this refusal influence the trial? Was the refusal consistent with: (a) your domestic law; (b) the Covenant? If not, explain why.
4. Analyse the Judge's instructions to the jury in the light of the notion of a fair trial: Were these instructions fully consistent with this notion? If not, explain why.
5. Is there any aspect of the trial that should be analysed in the light of the fundamental right to be tried by an independent and impartial court or tribunal? If so, explain which one and how the Judge should, in your view, have dealt with it.
6. Did John's silence and lack of cooperation influence the jury in this case? If so, was this lawful under: (a) your domestic law; (a) the Covenant?
7. How would you as judge/prosecutor/lawyer react to an accused who persistently refused to answer your questions and to cooperate in resolving a criminal case?
8. Can you identify some irregularities with: (a) the proceedings before the Court of Appeals; (b) the judgement of that Court?
9. Looking at the proceedings in their entirety, do you consider that John was guaranteed a fair trial before an independent and impartial court *within a reasonable time*?

D. Role play

PART I: THE FACTS

Background information

The right to a fair trial, the right to the presumption of innocence, the right to freedom of expression/freedom of the press

The New Exland Times is the most prominent newspaper published in Exland, and has a particularly wide circulation in the city of Stadtown, the venue of the trial against Mr. X, who has been charged with attempted murder after having fired on, and seriously wounded, one of his fellow private militia members during a training exercise in the woods outside Stadtown. *The New Exland Times* has just carried a story on its front page according to which the accused frequently abuses drugs and then goes out and fires his gun, scaring people in the neighbourhood where he lives, although nobody has so far dared to report him to the police. Public opinion surveys show that 80 per cent of the residents in the judicial district of Stadtown believe the story to be true because of the impeccable reputation of *The New Exland Times*. The Prosecutor holds a press conference during which he suggests that the defendant needs to clear up doubts about the story carried by *The New Exland Times*, since the newspaper has such a good reputation for its serious investigatory work. In view of the article and the Prosecutor's press conference, the defence counsel asks the court to declare a mistrial.

PART II: QUESTIONS AND ARGUMENTS

1. You are the **lawyer** for Mr. X: what arguments would you advance in favour of the motion for mistrial? Relate your arguments to: (a) your domestic law; and (b) international human rights law.
2. You are the **counsel for the Prosecution**: how would you reply to the motion advanced by the defence counsel? Relate your arguments to: (a) your domestic law; and (b) international human rights law.
3. As the **presiding Judge** in this case, how would you rule? Relate your arguments to: (a) your domestic law; and (b) international human rights law.
4. As the **journalist** who did serious research before writing the article on the strange and threatening behaviour of Mr. X, how do you see the various issues arising in this case?

E. Handout (see CD-ROM)

1. Key provisions of international and regional instruments

Chapter 8

INTERNATIONAL LEGAL STANDARDS FOR THE PROTECTION OF PERSONS DEPRIVED OF THEIR LIBERTY

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I. NOTE TO FACILITATORS

Without being exhaustive, Chapter 8 of the Manual describes some of the major human rights that must be guaranteed to **all** persons deprived of their liberty, whether they are simply arrested, in pretrial detention, imprisoned after conviction by a court or in administrative detention.

Chapter 8 thus deals in the first place with the right of all detained and imprisoned persons to respect for their physical and mental integrity, that is, their right to freedom from torture, and from cruel, inhuman and degrading treatment or punishment. This section describes briefly the legal responsibilities of States to prevent and punish acts of torture, as well as the definitions of the relevant legal notions and their application in practice by the international monitoring organs.

Chapter 8 provides in the next place a description of the legal requirements as to places for the detention and registration of detainees and prisoners, as well as some of the most important aspects of the conditions of detention and imprisonment, including detainees' and prisoners' contacts with the outside world.

Chapter 8 gives furthermore a succinct description of the duty of States to provide both independent inspection of places of detention and imprisonment, and effective complaints procedures for victims of human rights violations.

Finally, Chapter 8 emphasizes the essential role played by judges, prosecutors and lawyers in preventing and remedying unlawful treatment of persons deprived of their liberty.



II. PRINCIPAL LEGAL SOURCES

Chapter 8 is based on the following legal texts:

A. Universal instruments

- The International Covenant on Civil and Political Rights, 1966
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- The Convention on the Rights of the Child, 1989
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
- The 1949 Geneva Conventions and the two Additional Protocols of 1977
- The Statute of the International Criminal Court, 1998
- The Universal Declaration of Human Rights, 1948

- The Vienna Convention on Consular Relations, 1963
- Declaration on the Protection of All Persons from Enforced Disappearance, 1992
- The International Convention for the Protection of All Persons from Enforced Disappearance, 2006

- Standard Minimum Rules for the Treatment of Prisoners, 1955
- Basic Principles for the Treatment of Prisoners, 1990
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment, 1982
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, 1989
- Code of Conduct for Law Enforcement Officials, 1979
- Basic Principles on the Role of Lawyers, 1990
- Guidelines on the Role of Prosecutors, 1990

B. Regional instruments

- The African Charter on Human and Peoples' Rights
- The American Convention on Human Rights
- The Inter-American Convention to Prevent and Punish Torture
- The Inter-American Convention on Forced Disappearance of Persons
- The European Convention on Human Rights
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment



III. OBJECTIVES OF THE CHAPTER/SESSION

The objectives of Chapter 8 are to:

- Familiarize the participants with some of the most important international legal standards concerning the treatment of people deprived of their liberty, including the legal duty of States to prevent, punish and remedy violations of these standards;
- Illustrate how the multiple legal rules are enforced in practice in order to protect the rights of people deprived of their liberty;
- Explain what legal steps, measures and/or actions judges, prosecutors and lawyers must take in order to safeguard the rights of persons deprived of their liberty.



IV. MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED

The main points to be brought out and the key issues to be discussed with the participants in the light of the international legal rules dealt with in Chapter 8 are:

- When the participants deal with the case of a detained person, what are the legal provisions in national law that allow a detainee to challenge the legality of the detention or the conditions of the detention? What kind of obstacles – de jure or de facto – do they face, for example, access to legal representation, the nature of the judicial proceedings, limitations in times of a state of emergency?
- Whether the participants have ever encountered persons deprived of their liberty who have complained about ill-treatment?
- If so, when and how was the alleged ill-treatment carried out and for what purpose?
- What measures were taken to remedy the situation, and what effect did they have, if any?
- What are the rules in the country or countries where the participants work with regard to the recognition of places of detention and the registration of persons deprived of their liberty?
- What are the rules in their country/countries with regard to the resort to solitary confinement? For example, for what reasons, for how long and in what conditions can it be imposed?
- Whether **incommunicado** detention is permitted under the laws in the participants' country/countries and, if so, for how long? What legal remedies are at the disposal of the person subjected to such detention? How do the authorities ensure that no physical or mental abuses of the detainee or prisoner occur while they are held **incommunicado**?
- As lawyers, have the participants ever encountered problems in having free and confidential contacts with their detained clients? Have they had any problems visiting or corresponding with their clients? If so, what did they do about it?

- Whether there are any specific problems in the participants' country/countries with regard to the conditions of detention of **women** and **children**; if so, what are these problems and what measures, if any, have been taken to remedy the situation?
- What measures are taken in the participants' country/countries to prevent the occurrence of torture and other forms of ill-treatment in places of detention? Is there some system of visits by independent teams at regular intervals?
- How does their domestic law deal with confessions obtained under duress?
- What about prison conditions in general? Are there any particular problems related to accommodation, sanitation, recreation, education, training, and so on?
- What are the formal complaint procedures in the participants' country/countries for: (a) the alleged ill-treatment of detainees and prisoners; (b) prison conditions in general, including issues such as interference with correspondence and refusal to receive visits?
- How can the participants, in the exercise of their professional duties, contribute to preventing torture and other forms of ill-treatment and help victims to obtain adequate redress for human rights violations? What is their experience so far? How do they envisage the future?



V. SESSION PLANNING CHART FOR CHAPTER 8

















Key points/Activities	Method	Media	Time
1. Objectives of Chapter 8	Presentation	Computer slides, flip chart	5 minutes
2. Course presentation: Based on Chapter 8 in the Manual and the main points set out in section IV above, the team presents the main points relating to: a. the prohibition on arbitrary detention; b. judicial avenues for challenging the lawfulness of the deprivation of liberty; c. the prohibition on torture, and cruel, inhuman and degrading treatment and punishment, including States' duty to prevent, investigate, punish and remedy; d. legal requirements as to places of detention and registration of detainees and prisoners; e. conditions of detention and imprisonment.	Interactive presentations	Computer slides, flip charts, stickers, handouts with standards and principles	30 minutes
3. Stretch break			5 minutes























Key points/Activities	Method	Media	Time
4. Presentations continue: f. contacts with the outside world; g. inspection of places of detention and complaints procedures; h. the role of judges, prosecutors and lawyers in preventing and remedying unlawful treatment of persons deprived of their liberty.	Interactive presentations	Computer slides and handouts as above	30 minutes
5. Group formation and explanation of case study exercise and report back procedure; distribution of the case study.		Case study or exercise	10 minutes
6. Group work on case study, etc.	Small group work	Case study	40 minutes
7. Coffee break			20 minutes
8. Report back	Groups report back on case study; Presentation team ensures that main points are understood.	Flip charts, stickers, etc.	40 minutes
9. Review of the understanding of Chapter 8	Dialogue with groups and reminder of the main points, through questions and answers as much as possible		15 minutes
			Total time: 3 h. 15 min.



VI. TRAINING MATERIALS

A. Computer slides (see CD-ROM)

-  1. Learning objectives I
-  2. Learning objectives II
-  3. Questions I
-  4. Questions II
-  5. Questions III
-  6. Questions IV
-  7. The prohibition of torture, and cruel, inhuman and degrading treatment or punishment: Key legal texts I
-  8. The prohibition of torture, and cruel, inhuman and degrading treatment or punishment: Key legal texts II
-  9. The prohibition of torture, and cruel, inhuman and degrading treatment or punishment: Key legal texts III
-  10. The prohibition of torture, and cruel, inhuman and degrading treatment or punishment: Key legal texts IV
-  11. The prohibition of torture, and cruel, inhuman and degrading treatment or punishment: Key legal texts V
-  12. The prohibition of torture, and cruel, inhuman and degrading treatment or punishment: The legal responsibilities of States
-  13. The prohibition of torture, and cruel, inhuman and degrading treatment or punishment: What it means I
-  14. The prohibition of torture, and cruel, inhuman and degrading treatment or punishment: What it means II
-  15. The prohibition of torture, and cruel, inhuman and degrading treatment or punishment: What it means III
-  16. The prohibition of torture, and cruel, inhuman and degrading treatment or punishment: What it means IV

-  17. The prohibition of torture, and cruel, inhuman and degrading treatment or punishment: What it means V
-  18. Legal requirements as to places of detention and registration of detainees and prisoners I
-  19. Legal requirements as to places of detention and registration of detainees and prisoners II
-  20. Basic principles governing detention and imprisonment I
-  21. Basic principles governing detention and imprisonment II
-  22. Accommodation and separation of categories
-  23. Personal hygiene, food, health and medical services I
-  24. Personal hygiene, food, health and medical services II
-  25. Personal hygiene, food, health and medical services III
-  26. Religion
-  27. Recreational activities
-  28. Solitary confinement
-  29. Incommunicado detention
-  30. Contact with the outside world: Visits and correspondence with family and friends I
-  31. Contact with the outside world: Visits and correspondence with family and friends II
-  32. Contact with the outside world: Visits and correspondence with lawyers
-  33. Contact with the outside world: Correspondence for the purpose of bringing complaints
-  34. Inspection of places of detention
-  35. Complaints procedures and effective remedies
-  36. Effective complaints procedures = effective prevention
-  37. The role of judges, prosecutors and lawyers
-  38. Pregnant women and mothers caring for newborn children in detention

B. Exercises

Exercise No. 1

Have the participants work either individually or in groups of four to six persons in order to analyse, for approximately 25 minutes, the questions and issues considered in Chapter 8 in the light of their respective domestic penitentiary and legal systems. The participants should choose no more than three or four important issues and define what concerns and/or problems these issues pose in their countries. In so doing, they should be encouraged to define any gender-based problems that may exist with regard to persons deprived of their liberty. The participants should end their work by trying to develop ideas as to how they might be able to improve the enforcement of the rights of persons deprived of their liberty and, in particular, define what measures should be taken to prevent the occurrence of torture and other forms of ill-treatment during detention and imprisonment.

Exercise No. 2¹¹

The situation in the detention centres in Exland is difficult at best. Overcrowding is commonplace and the conditions of detention in general are very bad. Contrary to international rules, prisoners do not always have a cell of their own but live in large dormitories. In consultation with the Prison Administration, the Exland Government has decided to make an effort to appease international criticism of its prison system by ending the use of dormitories and providing prisoners with, if not always a cell of their own, at least a cell to be shared by a small group of two or three inmates.

Surprisingly, the prisoners do not welcome the new measure, which they consider constitutes a threat to their personal security. The Exland police, security forces and prison officials are known to frequently resort to torture and other forms of ill-treatment of both unconvicted detainees and convicted prisoners, who therefore quite understandably feel safer in large rather than small groups or left alone in a cell. Moreover, under the new prison regime, prisoners spend several days without being allowed to associate with fellow prisoners and they do not get proper exercise or sport. Dissatisfied, the prisoners decide to start a hunger strike in order to force the Prison Administration to change policy. The refusal is clear and irrevocable. The prisoners on their part are equally determined not to give in, and push their hunger strike to the ultimate limit.

- As **legal counsel for the striking prisoners**, what arguments would you advance in order to convince the Prison Administration and the Exland Government to change policy?
- As **legal counsel for the Exland Government and Prison Administration**, what arguments would you make in order to justify your position not to give in to the prisoners' demands?
- You are a member of an **independent team of experts** who, after lengthy and very difficult negotiations with the Exland Government, has finally been allowed to make an on-the-spot investigation in order to assess the situation in the disputed prisons. What would you do? What suggestions would you make to the Government and Prison Administration, and to the hunger strikers? How could the prisoners' safety best be protected?

¹¹ **Tip to the facilitator:** This exercise can also be used as a role play.

C. Case study¹²

This case study is based on the most relevant facts of a case that has been considered by one of the international monitoring organs. It deals with the special problems that may arise in connection with the detention and medical treatment of a person with a mental disorder. The names of the alleged victim, the hospital where he was detained, the State, and so on, are all fictitious.

PART I: THE FACTS

1. George was arrested and charged with fraud. He pleaded guilty to 18 charges of fraud and asked for 738 similar offences to be taken into consideration. These offences involved fraudulent claims by George that he had developed successful systems for winning football pools or horse-race betting. He had persuaded members of the public to pay for information about these systems. Most of the loss caused to the victims was recovered from George.
2. Prior to his court hearing, George was examined by two psychiatrists, who concluded that he suffered from paranoid schizophrenia. Psychiatrist A. made no specific recommendation as to treatment, while psychiatrist B. indicated that appropriate therapy could be provided on an out-patient basis and that the best solution psychiatrically would be to put him on probation on the condition that he receive treatment as an inpatient or outpatient for up to three years. While on remand in Stadtown Prison, George was examined by two further psychiatrists, who also diagnosed paranoid schizophrenia and who were of the opinion that this mental disorder was of a nature or degree that warranted George's detention in a mental hospital.
3. The Stadtown District Court decided that George should be detained in Narrowmore Hospital and that his release should be restricted under the Exland Mental Health Act without limit of time. George's appeals against this court order were of no avail. The Court did not order the detention as a punishment for an offence. Its main purpose was to provide George with treatment for his mental illness. The Court of Appeals indicated that it was satisfied that there was no reliable information about any history of violence, but still concluded that the order made was justified because George had shown a potential for violence.
4. George was consequently admitted to Narrowmore Hospital, which is a special hospital for persons that require treatment under conditions of special security on account of their dangerous, violent or criminal propensities. George was unhappy. He found nobody who understood him, and, after spending some time in Narrowmore, he decided to bring his case to the attention of an international monitoring organ. The following facts relate to George's allegations insofar as they concerned the conditions of detention and, most particularly, his medical treatment, which he considered violated his right not to be subjected to torture or to cruel, inhuman or degrading treatment.
5. George complained of overcrowding, which was deplorable in the dormitory accommodation where he slept for about 21 months. It was cramped and bleak. The dormitories were particularly bad for seven months of this period. George was unhappy about the lack of privacy and also feared attacks by fellow inmates. He was eventually allocated a single room.

¹² **Tip to the facilitator:** This case study should preferably be given to the participants well in advance to give them enough time to prepare their answers. The case study may also be prepared as a role play.

6. George believed that he was sane for most of the time that he was at Narrowmore, and he therefore constantly refused the treatment offered to him. He complained that he was never told why he needed the treatment, what treatment (in detail) he should be having and what the side effects of such treatment would have been. He argued that the offer of treatment was only an attempt by the psychiatrists to protect their own reputation by showing that he needed treatment.
7. George had a very unsatisfactory relationship with his responsible physician and there was a prolonged deadlock between George and his parents, on the one hand, and the responsible psychiatrist and staff at Narrowmore, on the other. George blamed the psychiatrist for his detention because he had given evidence that was adverse to him at his trial. As long as this deadlock persisted there was no possibility of administering any specific treatment on a voluntary basis, and no treatment was forced on George. The responsible psychiatrist spent very little time talking to George and at no time did the Narrowmore administration try to assign a new psychiatrist to George in order to encourage his cooperation.
8. In connection with the proceedings before the international monitoring organ, George was again examined by two psychiatrists. Dr. W. found that, considering George's behaviour in hospital and that he had not been on medication, it was unlikely that he suffered from paranoid schizophrenia; he was instead likely to have a personality disorder which could be adequately dealt with outside a special hospital. Dr. S., on the other hand, considered that George could best be treated in a conventional psychiatric hospital. After having spent almost four years in extremely unsatisfactory conditions at Narrowmore Hospital, George was transferred to Brown Hospital, where he came under the care of Dr. B., who had examined him a few years earlier. George was given extended leave from the hospital and returned home. Dr. B. found no evidence of mental illness and, according to his report, George remained well and seemed much more cheerful and pleasant after returning home.

PART II: THE QUESTIONS

9. You are **George's lawyers**: How would you have argued George's case before the international monitoring organs, in particular his allegation that the medical treatment amounted to a violation of his right under international law not to be subjected to torture or cruel, inhuman or degrading treatment or punishment?
10. In what respects, if any, could George's confinement to Narrowmore and his treatment – or lack of it – violate his human rights?
11. You are **representing the respondent Government**: What argument would you invoke in order to defend George's detention and the treatment to which he was subjected at Narrowmore?
12. You are the **domestic judge** in charge of the case: How would you rule? Explain.
13. Could the right not to be subjected to torture, or cruel, inhuman or degrading treatment or punishment be extended to cover not only physical violence but also other kinds of treatment, or lack of treatment, such as negligence or failure to resolve a problem?
14. Can a mental health patient be held responsible for lack of insight into his or her condition? What is the responsibility of the physician in charge when a patient stubbornly refuses the treatment he or she may need?

15. What about George's complaint about the cramped dormitories where he had to sleep for about 21 months and where he had no privacy and feared attacks by other patients? Do these conditions in your view constitute inhuman or degrading treatment or possibly a violation of George's right to respect for his private life?
16. As a member of the international monitoring organ dealing with George's case, what would your decision have been? Provide the arguments.

D. Handouts (see CD-ROM)

1. The Standard Minimum Rules for the Treatment of Prisoners, 1955 (to be provided by the facilitator)
2. The Basic Principles for the Treatment of Prisoners, 1990
3. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988
4. The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 1991

Chapter 9

THE USE OF NON-CUSTODIAL MEASURES IN THE ADMINISTRATION OF JUSTICE

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I. NOTE TO FACILITATORS

Chapter 9 of the Manual describes the use of non-custodial measures as alternatives to imprisonment as promoted primarily by the rules laid down in the United Nations Standard Minimum Rules for Non-custodial Measures, the so-called Tokyo Rules, which were adopted by the General Assembly in 1990. After a brief introduction that, *inter alia*, explains the purpose of non-custodial measures and the Tokyo Rules, the chapter clarifies the terminology used and the general principles relating to non-custodial measures, as well as the non-custodial options at the different stages of the judicial process and the implementation of non-custodial measures. It emphasizes the important role of judges, prosecutors and lawyers in finding adequate alternatives to imprisonment. It should be noted that the use of non-custodial measures as alternatives to imprisonment for children is addressed in Chapter 10, and that there are specific guidelines and rules applicable to children.

Although non-custodial measures in the pretrial stage are addressed in the Tokyo Rules, the Human Rights Committee has stated in addition that "... it shall not be the general rule that persons awaiting trial shall be detained in custody ... pretrial detention should be the exception and ... bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party. The mere fact that the accused is a foreigner does not of itself imply that he may be held in detention pending trial."¹³



II. PRINCIPAL LEGAL SOURCES

Chapter 9 is based on the following legal texts:

- The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), 1990
- The International Covenant on Civil and Political Rights, 1966
- The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985

¹³ Views of 2 April 1997, Communication No. 526/1993, *Michael and Brian Hill v. Spain*, para. 12.3.



III. OBJECTIVES OF THE CHAPTER/SESSION

The objectives of Chapter 9 are to:

- Familiarize the participants with the existing international standards that promote the use of non-custodial measures;
- Explain the aim of non-custodial measures and their use at the various stages of the administration of justice;
- Help the participants identify what kinds of non-custodial measures may be useful in the context of their professional responsibilities;
- Acquaint the participants with the legal protection linked to the use of non-custodial measures;
- Familiarize the participants with the consequences of non-compliance with the dispositions of non-custodial measures;
- Make the participants aware of their own important role in identifying the needs and problems of offenders and the most adequate way of sanctioning them.



IV. MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED

The main points to be brought out and the key issues to be discussed with the participants in the light of the international legal rules dealt with in Chapter 9 are:

- The alternatives to imprisonment that exist in the country in which the participants work, and in regard to what kinds of criminal offences;
- Whether the participants, in their role as judges, prosecutors or lawyers, have advised, or resorted to, the use of non-custodial measures;
- In what situations the participants think that it would be particularly useful to do so;
- Whether, in the view of the participants, there are some persons, or groups of persons, more likely than others to benefit from the use of non-custodial measures;
- If so, ask the participants to identify these persons or groups of persons and explain why they are more likely to benefit from alternatives to imprisonment;
- The legal safeguards that exist in the country where the participants work with regard to the use of non-custodial measures;
- The sanctions that exist in the country where the participants work for violations of the conditions attached to non-custodial measures;
- Have the participants reflect on how they can affect the use of non-custodial measures – and their further development – in the countries where they exercise their professions?
- The advantages and disadvantages of custodial and non-custodial sanctions for criminal offences.























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





Key points/activities	Method	Media	Time
1. Objectives of Chapter 9	Presentation	Computer slides, flip chart	5 minutes
2. Course presentation: Based on Chapter 9 of the Manual and the main points set out in sections III and IV above, the team presents the main points related to: <ul style="list-style-type: none"> a. the general principles relating to non-custodial measures; b. non-custodial measures at the different stages of the judicial process; c. implementation of non-custodial measures; d. the role of the legal professions in choosing alternatives to imprisonment; e. distribution of group work. 	Interactive presentations	Computer slides, flip charts, stickers, handouts with standards, principles	30 minutes
3. Group work on case study or exercise		Flip charts, stickers, etc.	25 minutes
4. Groups report back on case study or other exercise		Flip charts, etc. as necessary	25 minutes
			Total time: 1 h. 25 min.



VI. TRAINING MATERIALS

A. Computer slides (see CD-ROM)

-  1. Learning objectives I
-  2. Learning objectives II
-  3. Questions I
-  4. Questions II
-  5. Questions III
-  6. Relevant legal standards and rules
-  7. General principles I: The fundamental aims of non-custodial measures (1)
-  8. General principles II: The fundamental aims of non-custodial measures (2)
-  9. General principles III: The scope of non-custodial measures (1)
-  10. General principles IV: The scope of non-custodial measures (2)
-  11. General principles V: The scope of non-custodial measures (3)
-  12. General principles VI: Legal safeguards (1)
-  13. General principles VII: Legal safeguards (2)
-  14. General principles VIII: Legal safeguards (3)
-  15. The use of non-custodial measures
-  16. Non-custodial measures at the pretrial stage
-  17. Non-custodial measures at the trial and sentencing stages I
-  18. Non-custodial measures at the trial and sentencing stages II
-  19. Non-custodial measures at the trial and sentencing stages III
-  20. Non-custodial measures at the post-sentencing stage I

-  21. Non-custodial measures at the post-sentencing stage II
-  22. Implementation of non-custodial measures I: Supervision (1)
-  23. Implementation of non-custodial measures II: Supervision (2)
-  24. Implementation of non-custodial measures III: Duration
-  25. Implementation of non-custodial measures IV: Conditions (1)
-  26. Implementation of non-custodial measures V: Conditions (2)

B. Exercise

Exercise No. 1

Ask the participants to work either individually or divided into small groups of about five persons in order to discuss, for approximately 20–30 minutes, the subject of non-custodial alternatives to imprisonment dealt with in Chapter 9 and the existence and implementation of such alternatives in the legal system in which they work. The participants should in particular be encouraged to reflect on and discuss:

- The advantages and disadvantages of non-custodial measures in general;
- The advantages and disadvantages of such measures, if they exist, in the country where they carry out their professional responsibilities;
- How the use of non-custodial measures might be further developed in the country in which they work and/or how their use can be made more efficient, if at all;
- How to help particularly difficult offenders by resorting to non-custodial alternatives to imprisonment or a combination of the two.

C. Role play (which can also be used in connection with Chapter 10)¹⁴

Anthony is a 19-year-old, living with his mother and younger brother in a dilapidated apartment building in a poor area of Stadtown. It is not unusual to see dealers selling drugs on the stairs of his building. During the summer, Anthony was overcome by the temptation to steal a few CDs

¹⁴ **Tip to the facilitator:** This role play has been inspired by a case related by Eva Joly in her book *Notre affaire à tous* (Paris, Éditions les Arènes, 2000), p. 74. It can of course be modified in various ways. The participants could be encouraged to ponder the outcome of the case if: (1) Anthony already had a criminal record for theft and minor drug crimes; or (2) Anthony already had a serious criminal record.

and electronic games from the Stadtown supermarket. Anthony got away with it a few times, but finally he was caught as he tried to leave the supermarket without paying; after a lengthy and heated exchange with the director of the supermarket it was decided to hand Anthony over to the police. He had never before had any problems with the law.

Anthony's mother was extremely upset at the news. All her efforts to provide her son with a good start in life in spite of a difficult situation appeared to her to have been in vain.

The prosecutor decided to proceed with the case, based on the need to prevent crime and promote respect for the law. The day set for the hearing in the District Court finally arrived. Anthony appeared devastated. His mother cried.

1. You are Anthony's **lawyer**:
 - Make arguments on Anthony's behalf; refer to relevant applicable standards.
 - Make constructive proposals as to which non-custodial measure(s) might be relevant and useful with regard to Anthony, and explain how you think any supervision should be designed; assume that you have already discussed such alternatives with your client (and his mother).
2. You are the **prosecutor** investigating the case:
 - **Scenario 1:** you are generally determined to do your best to put an end to all levels of criminal activity and to dissuade people from getting into trouble with the law; argue the case from the point of view of a strict application of criminal law;
 - **Scenario 2:** you are generally determined to do your best to put an end to all levels of criminal activity and to dissuade people from getting into trouble with the law; after all, this is your duty! Yet, you see the impact that the situation has had on both Anthony and his mother and you realize that you may have made a mistake pushing the proceedings to trial; you still have a choice of action: imagine what you could do and refer, if possible, to relevant international standards;
3. You are the **presiding judge**:
 - Depending on the approach adopted by the **prosecutor** in this case and the pleadings of the **lawyer**, give your views/decision/judgement; give reasons and refer to international standards.

D. Handouts (see CD-ROM)

1. The United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), 1990
2. The International Covenant on Civil and Political Rights, 1966 (to be provided by the facilitator)
3. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985.

Chapter 10

THE RIGHTS OF THE CHILD IN THE ADMINISTRATION OF JUSTICE

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I. NOTE TO FACILITATORS

Chapter 10 of the Manual explains some of the basic international legal standards concerning the rights of the child in the administration of justice in a broad sense. It therefore covers not only juvenile (criminal) justice but also judicial proceedings concerning separation and adoption.

After a brief explanation of the persistent concerns relating to the child in the administration of justice, Chapter 10 defines the term “child” within the meaning of the Convention on the Rights of the Child, as well as the basic principles underlying the administration of justice in the wider sense. It also deals with the aims of juvenile justice and the duty to create a juvenile justice system.

Chapter 10 describes the rights of the accused child in the course of the administration of justice, the rights of the child deprived of liberty, the limitations on penal sanctions that can be imposed on juvenile offenders and the question of diversion.

It considers the situation of the child as victim or witness in judicial proceedings – an issue which has been given increased attention in recent years in view of the sensitivity and vulnerability of children.

Chapter 10 finally briefly considers the question of the separation of a child from his or her parents, and the rights of the child in adoption proceedings. It ends with a brief section on the role of judges, prosecutors and lawyers in guaranteeing the rights of the child in the course of the administration of justice.



II. PRINCIPAL LEGAL SOURCES

Chapter 10 is based on the following legal texts:

A. Universal instruments

- The International Covenant on Civil and Political Rights, 1966
- The Convention on the Rights of the Child, 1989
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000

- The Declaration of the Rights of the Child, 1959
- The Hague Convention on the Civil Aspects of International Child Abduction, 1980
- The Declaration on the Protection of All Persons from Enforced Disappearance, 1992
- The International Convention for the Protection of All Persons from Enforced Disappearance, 2006
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990
- United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), 1990
- The Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, 1986
- Guidelines for Action on Children in the Criminal Justice System, annex to Economic and Social Council resolution 1997/30 on the administration of juvenile justice (Vienna Guidelines)
- The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988

B. Regional instruments

- The African Charter on Human and Peoples' Rights, 1981
- The African Charter on the Rights and Welfare of the Child, 1990
- The American Convention on Human Rights, 1969
- The Inter-American Convention on Forced Disappearance of Persons, 1994
- The Inter-American Convention on the International Return of Children, 1989
- The European Convention on Human Rights, 1950
- Council of Europe Committee of Ministers Recommendation No. R (87) 20 to Member States on Social Reactions to Juvenile Delinquency



III. OBJECTIVES OF THE CHAPTER/SESSION

The objectives of Chapter 10 are to:

- Familiarize the participants with the international legal rules concerning the rights of the child in the administration of justice and their main purposes;
- Specify the procedural safeguards which should be accorded to juveniles in the administration of justice;
- Encourage the participants to develop ways to ensure that they routinely apply these rights and safeguards when confronted with children in the course of the administration of justice.



IV. MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED

The main points to be brought out and the key issues to be discussed with the participants in the light of the international legal rules dealt with in Chapter 10 are:

- What problems, if any, the participants may have encountered in their work with regard to children and juveniles in the course of the administration of justice, and how they tried to resolve these problems;
- Whether they invoked international legal rules such as the Convention on the Rights of the Child in order to resolve the problem or problems concerned;
- The legal status of the Convention on the Rights of the Child in the country where the participants work and the legal impact of the Convention;
- Whether the notion of the “best interests” of the child exists in the domestic legal system where the participants are working, and, if so, what it means and how it is applied;
- The extent to which the child is allowed to participate in decisions concerning him or her in the legal system where the participants are working; the situation should be examined from the point of view of criminal, separation and adoption proceedings;
- The age of criminal responsibility in the country where the participants are working;
- What kind of prison sentences, if any, can be imposed on children below 18 years of age in the country where the participants work; discuss the possibility of resorting to non-custodial measures in response to offences committed by children or juveniles;
- The possibility of diversion from criminal justice procedures to community services or even non-intervention in response to offences committed by juveniles;
- The efficiency of social re-education measures and psychological care in dealing with juvenile offenders; try to have the participants define existing root problems and potential solutions;
- The grounds on which a child can lawfully be separated from his or her parents in the country where the participants work;
- Whether adoptions – national and intercountry – are authorized in the country where the participants work; if so, discuss the child’s right to express his or her views on the desirability of the adoption as well as other existing procedural safeguards to protect against abuses;
- Measures that might have been taken in the country where the participants work in order to familiarize the legal professions with the legal principles contained in the Convention on the Rights of the Child and other relevant legal instruments.























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


















Key points/activities	Method	Media	Time
1. Objectives of Chapter 10	Presentation	Computer slides, flip chart	5 minutes
2. Course presentation: Based on Chapter 10 of the Manual and the issues set out in sections III and IV above, the team presents the main points relating to: a. the definition of a child; b. basic principles of the administration of justice; c. the aims of juvenile justice and the duty to create a juvenile justice system; d. the accused child and the administration of justice; e. the child and deprivation of liberty.	Interactive presentations	Computer slides, flip charts, stickers, handouts with standards and principles	40 minutes
3. Stretch break			5 minutes
4. Presentations continue: f. penal sanctions and diversionary measures; g. the child as victim and witness; h. the child and separation from parents; i. the rights of the child and adoption proceedings.	Interactive presentations	Computer slides and handouts, as above	35 minutes
5. Group formation; explanation of case study or other exercise and report back procedure, distribution of the case		Case study or other exercise	10 minutes
6. Lunch break			60 minutes
7. Group work on case study or other exercise		Flip charts, stickers as necessary	45 minutes
8. Stretch break			5 minutes
9. Report back	Groups report back on case study or other exercise Presentation team makes sure that main points have been understood	Flip charts, etc., as necessary	35 minutes
			Total working time: 3 hours



VI. TRAINING MATERIALS

A. Computer slides (see CD-ROM)

-  1. Learning objectives
-  2. Questions I
-  3. Questions II
-  4. Questions III
-  5. Questions IV
-  6. Relevant legal instruments I: Universal instruments (1)
-  7. Relevant legal instruments II: Universal instruments (2)
-  8. Relevant legal instruments III: Regional instruments
-  9. The definition of a child
-  10. The age of civil and criminal majority I
-  11. The age of civil and criminal majority II
-  12. Basic principle No. 1: Non-discrimination
-  13. Basic principle No. 2: The best interests of the child
-  14. Basic principle No. 3: The child's right to life, survival and development
-  15. Basic principle No. 4: The child's right to be heard
-  16. Basic principles: Summing up
-  17. The aims of juvenile justice
-  18. The duty to create a juvenile justice system
-  19. The accused child and the administration of justice I: The right to freedom from torture
-  20. The accused child and the administration of justice II: General treatment of the child

-  **21.** The accused child and the administration of justice III: Some fundamental procedural rights (1)
-  **22.** The accused child and the administration of justice IV: Some fundamental procedural rights (2)
-  **23.** The accused child and the administration of justice V: Some fundamental procedural rights (3)
-  **24.** The child and deprivation of liberty: What it means
-  **25.** The child and deprivation of liberty: Some fundamental principles I
-  **26.** The child and deprivation of liberty: Some fundamental principles II
-  **27.** The child and deprivation of liberty: Some fundamental principles III
-  **28.** The child and deprivation of liberty: Some fundamental principles IV
-  **29.** The rights of the child and penal sanctions
-  **30.** The accused child and the question of diversion: The obligations of States
-  **31.** Diversionary measures: Three basic rules
-  **32.** The child as victim and/or witness I
-  **33.** The child as victim and/or witness II
-  **34.** The child as victim and/or witness III
-  **35.** Child-parent separation: The basic rules I
-  **36.** Child-parent separation: The basic rules II
-  **37.** The rights of the child and adoption proceedings: The basic rules I
-  **38.** The rights of the child and adoption proceedings: The basic rules II
-  **39.** The rights of the child and intercountry adoptions

B. Exercise

Have the participants work individually or divide them into small groups of four to six persons in order to analyse, for approximately 20–30 minutes, the questions and issues considered in Chapter 10 in the light of the rights of the child and the administration of justice in their respective domestic legal systems. The participants should choose no more than three or four important issues and define what concerns and/or problems these issues pose in their countries. The participants should end their work by trying to develop ideas about how they might be able to improve the treatment of children and juveniles in the administration of justice in their respective countries. The participants can analyse the situation in their country or countries from the point of view of **criminal**, **separation** or **adoption** proceedings.

C. Subject for discussion¹⁵

Organize a round-table, general or small-group discussion on the following subject:

Psychological help, education and social re-education:

A panacea for juvenile offenders?

During the debate, consider the following questions, among others:

- Can all or even the majority of juvenile offenders be helped by receiving psychological help, education or vocational training?
- Can a criminal offence be understood in isolation, as only linked to the history of the particular offender?
- A judge has said that: “a society without crime would not be a society without misfortune, but a society without values”. Comment.
- Can the administration of (juvenile) justice “repair” what social misery, including widespread unemployment, has destroyed?
- Discuss the purpose of sanctions/punishments (reparation, prevention, retribution).
- Discuss the roles of the judge, prosecutor and lawyer in the juvenile justice system, taking into account limitations that might arise from their professional obligations.

D. Role play

Ann is a 14-year-old girl who was arrested at the site of an armed robbery of the Principal Pharmacy in Stadtown. Her two 18-year-old companions, George and John, were caught by the police still carrying their guns and in possession of a considerable amount of money. They were already known to the police as difficult juvenile offenders. Ann was taken to the Stadtown Police Headquarters, where she was detained with her friends for two days before her parents could be located. In fact, no serious efforts were made to locate them and for 48 hours Ann was refused access to the telephone to call home. George, John and Ann were then taken to the Stadtown Prison, where Ann was kept in a cell shared by three women convicted of offences involving drugs and violence against the person. On arrival in the cell, Ann panicked and wanted to see her parents, which she is only allowed to do for half an hour each week. She gets no help or counselling to deal with her fear of being detained with the three convicted women.

¹⁵ This exercise is strongly inspired by the experiences of the French investigating magistrate Eva Joly as described in her book *Notre affaire à tous* (Paris, Éditions les Arènes, 2000), pp. 71–81 in particular.

Ann has never before been in trouble with the law, although she is known to be going through a rebellious phase and has a recent record of truancy from school. The age of criminal responsibility in Exland is 14 years.

1. You are Ann's **lawyer**:

- Make an argument concerning Ann's right to get in touch with, and maintain contact with, her parents;
- Make an argument for Ann's rights given her detention in Stadtown Prison;
- Make an argument against the bringing of judicial proceedings against her in a juvenile court.

Refer to relevant applicable international standards.

2. You are the **prosecutor** investigating this case:

- You are determined to do your best to put an end to juvenile criminal activity which is flourishing in Stadtown and you want to dissuade young persons from getting into trouble with the law; argue your case and the proposal you want to submit to the presiding judge in this case. Refer to relevant international standards.

3. You are the **judge** hearing the case:

- Depending on the approach you adopt on the various issues raised in this case, give your views/decisions/judgement by referring to international standards.

The issues that, among others, should be addressed in this role play are:

- The notion of the best interests of the child;
- The gravity of the offence and Ann's involvement in the offence (if any);
- The role of parents;
- Avoidance of pretrial detention;
- Detention as the last possible resort;
- Conditions of detention and detention in separate facilities;
- Access to the outside world during arrest and detention;
- Diversion;
- The different objectives of any final disposition taken.

E. Case study¹⁶

This case study concerns the trial and sentencing of young children and it is based on selected facts from two cases that were considered by an international monitoring organ. The name of the country involved as well as the names of the applicants and authorities concerned are fictitious.

¹⁶ **Tip to the facilitator:** This case study should preferably be distributed among the participants well in advance in order to give them enough time to answer the questions. If the training is taking place in a country which has ratified one of the regional human rights treaties, the participants should analyse the case in the light of that instrument as well.

PART I: THE FACTS

1. Eric and Joe were both only 10 years old when they decided to play truant from school. In the course of the day, they abducted a two-year-old boy whom they subsequently battered to death.
2. The criminal age of responsibility was 10 years in Ruritania. Since Eric and Joe were charged with murder, which carries a sentence of 14 years' imprisonment or more in case of conviction, they were tried as adults before a judge and jury in a District Court and not before the specialist Youth Court. In spite of their young age, the trial was therefore conducted with the formality of an adult criminal trial and the judge and counsel wore wigs and gowns. The procedure was, however, modified to a certain extent in the light of the defendants' age. Eric and Joe were thus, for instance, seated next to social workers in a specially raised dock, and their parents and lawyers were seated nearby. The hearing was also shortened to reflect the school day with a ten-minute interval every hour. During the adjournments the defendants were allowed to spend time with their parents and social workers in a play area. The judge also made it clear that he would adjourn whenever the social workers or defence lawyers told him that one of the defendants showed signs of tiredness or stress, which occurred once.
3. The trial was preceded and accompanied by massive national and international publicity. Throughout the criminal proceedings, the arrival of the defendants was greeted by a hostile crowd and, on occasion, attempts were made to attack the vehicles that brought them to court. In the courtroom itself, the press benches and public gallery were full throughout the trial.
4. As required by the law, the judge sentenced the boys to imprisonment and recommended that a period of eight years be served by the boys to satisfy the requirements of retribution and deterrence. It was, however, for the Ruritanian Minister of Interior to fix the minimum time the boys were to spend in prison. The Minister fixed the term at 15 years following receipt of petitions supporting a life sentence without release sent, among others, by the family of the murdered child, and signed by numerous people, as well as a petition with over 20,000 signatures from *The Star News*, a well-known tabloid in the country championing tough sentencing.
5. Eric and Joe appealed against the sentence and the Supreme Court of Ruritania decided to declare unlawful the Minister's decision to fix the minimum time for imprisonment at 15 years. No new minimum time had been fixed when the international monitoring organs considered the case.
6. In the international proceedings **Eric** based himself, inter alia, on psychiatric and other evidence to prove that he was no more emotionally mature than an eight- or nine-year-old at the time of the trial, that he did not fully attend to or understand the proceedings, and that he was too traumatized and intimidated to give his own account of events – either to his lawyers and the psychiatrist who interviewed him, or to the court. **Joe**, for his part, invoked a medical opinion certifying that he suffered from a post-traumatic stress disorder which, combined with a lack of any therapeutic work since the offence, had limited his ability to instruct his lawyers and testify adequately in his own defence. They were both unhappy about the fact that their sentences had not been fixed – leaving them uncertain about the time they would have to spend in detention.

PART II: THE QUESTIONS

1. Was the age of criminal responsibility in Ruritania, which was fixed at 10 years, consistent with international law? Examine the situation in the light of the Convention on the Rights of the Child and other relevant legal texts.
2. Could, for instance, the attribution of criminal responsibility in respect of the acts committed by Eric and Joe when they were 10 years old, in itself, give rise to a violation of the right not to be subjected to a cruel, inhuman or degrading treatment or punishment contrary to international law?
3. Was it consistent with international legal rules to try Eric and Joe as adults before an ordinary court rather than a court specialized in the administration of juvenile justice? Examine the situation in the light of the Convention on the Rights of the Child and other relevant legal texts.
4. Throughout the trial Eric and Joe were in the midst of media attention and the subject of a public outcry. While understandable, could this public attention have influenced their right to a fair trial under international human rights law, such as article 14 (1) of the International Covenant on Civil and Political Rights? If so, what could have been done to ensure a fair trial in their case? Refer to the relevant international legal standards.
5. Having regard to the expert evidence submitted by Eric and Joe in support of their argument that they were unable to defend themselves adequately during the trial, could this in your view be considered to constitute a factor preventing them from having a fair trial? Should a child's level of maturity, and intellectual and emotional capacities be taken into account in the relevant procedures? Would it be sufficient for the purposes of guaranteeing a fair trial that the child concerned was represented by skilled and experienced lawyers? Explain your point of view and, if necessary, analyse the situation in the light of international legal standards.
6. As to the sentence, explain what the reasons for the Ruritania Supreme Court might have been in declaring unlawful the Minister's decision to fix a minimum term of imprisonment at 15 years.
7. Could the failure to fix a prison sentence amount to a violation of international legal standards? If so, which one(s)?
8. Could the fixing of the length of a prison sentence by the Minister of Interior violate international legal standards? If so, which ones?

F. Handouts (to be provided by the facilitator)

1. United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990. See General Assembly resolution 45/113.
2. United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), 1990. See General Assembly resolution 45/112.
3. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985. See General Assembly resolution 40/33.
4. The Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines), 1997. See Economic and Social Council resolution 1997/30.

Chapter 11

WOMEN'S RIGHTS IN THE ADMINISTRATION OF JUSTICE

Contents

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I. NOTE TO FACILITATORS

Chapter 11 of the Manual emphasizes, as a point of departure, that the international law of human rights in its entirety is fully applicable to women. It then provides an overview of the multiple problems encountered by women in the enjoyment of their human rights, which may be due to various causes such as a lack of de jure protection in different fields of law, or de facto factors, such as entrenched customs or traditions, poverty, and so on.

The chapter describes in general terms women's right to legal personality, and, second, women's right to equality before the law and equal protection of the law. Third, it deals with women's right to respect for their life and their physical and mental integrity, and then goes on to consider women's right to freedom from slavery, the slave trade, forced and compulsory labour, as well as trafficking. The chapter focuses on the right to equality as to marriage and civil matters, before dealing with the equality of rights in relation to participation in public affairs. After briefly considering various other fields of law where gender discrimination is commonplace, the chapter gives a concise description of women's right to an effective remedy, including their right of access to the courts. Finally, the role of the legal professions in promoting and protecting the rights of women is emphasized. The chapter ends with some concluding remarks.

With regard to the training material contained in this chapter, facilitators will need to adjust it to the specific country where the training is taking place and may consequently also have to devise new exercises or role plays that better reflect the needs of the participants given the specific problems they face in their daily work.



II. PRINCIPAL LEGAL SOURCES

Chapter 11 is principally based on the following legal texts:

A. Universal instruments

- The Charter of the United Nations, 1945
- The International Covenant on Civil and Political Rights, 1966
- The International Covenant on Economic, Social and Cultural Rights, 1966
- The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949
- The Convention on the Political Rights of Women, 1953
- The Convention on the Nationality of Married Women, 1957

- The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962
- The Convention on the Rights of the Child, 1989
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000
- The Convention on the Elimination of All Forms of Discrimination against Women, 1979
- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999
- The Convention against Discrimination in Education, 1960
- The Rome Statute of the International Criminal Court, 1998
- The United Nations Convention against Transnational Organized Crime, 2000
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000

- The Universal Declaration of Human Rights, 1948
- The Declaration on the Elimination of Violence against Women, 1993
- The Vienna Declaration and Programme of Action, 1993
- The Beijing Declaration and Platform for Action, 1995

B. Regional instruments

- The African Charter on Human and Peoples' Rights, 1981
- The African Charter on the Rights and Welfare of the Child, 1990
- The American Convention on Human Rights, 1969
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994
- The European Convention on Human Rights, 1950



III. OBJECTIVES OF THE CHAPTER/SESSION

The objectives of Chapter 11 are to:

- Make the participants aware of the specific human rights problems faced by women in different spheres of life;
- Familiarize the participants with the existing international legal rules for the protection of the rights of women;
- Increase the participants' awareness of their own potential as judges, prosecutors and lawyers to improve the protection of the rights of women.



IV. MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED

The main points to be brought out and the key issues to be discussed with the participants in the light of the international legal rules dealt with in Chapter 11 are:

- How the rights of women are protected by the legislation in the country where the participants work;
- Whether the participants consider that this legislation is efficiently enforced;
- The specific problems women face in the country where the participants work;
- Whether these problems are due to shortcomings in the de jure protection of women or to a failure in the enforcement of existing legal rules;
- Whether there are any other reasons that might explain the problems encountered by women in the country where the participants work;
- If so, the participants should try to explain what these problems are;
- Whether girls face any specific problems in the country where the participants are working;
- If so, what these problems are and what may be their root cause(s);
- How, and to what extent, the law deals with the specific problems of girls;
- What the participants as judges, prosecutors and lawyers can do in order to improve the protection of the rights of women in the country where they are working.



V. SESSION PLANNING CHART FOR CHAPTER 11




















Key points/activities	Method	Media	Time
1. Objectives of Chapter 11	Presentation	Computer slides, flip chart	10 minutes
2. Course presentation: Based on Chapter 11 of the Manual and the main points set out in sections III and IV above, the team presents: a. the relevant legal instruments; b. women's right to legal personality as well as their right to equality before the law and equal protection of the law; c. women's right to respect for their life as well as their physical and mental integrity; d. women's right to freedom from slavery, the slave trade, forced and compulsory labour, as well as trafficking.	Interactive presentations which should include a focus on the particular problems encountered by women in the countries where the participants work	Computer slides, flip charts, stickers, handouts with standards and principles	40 minutes
3. Stretch break			5 minutes
4. Presentations continue: e. the right to equality as to marriage; f. the equal right to legal capacity in civil matters; g. the equal right to participation in public affairs, including elections; h. women's right to equal enjoyment of other human rights; i. women's right to an effective remedy, including the right of access to the courts and due process of law; j. explanation of group work (exercise or role play); group formation.	Interactive presentations, which should include a focus on the particular problems encountered by women in the countries where the participants work	Computer slides, flip charts, stickers, handouts with standards and principles	45 minutes
5. Break			20 minutes
6. Group work on exercise or role play		Flip charts, etc. as necessary	55 minutes
7. Stretch break			5 minutes
8. Report back	Groups report back on case study, role play or other exercise	Flip charts, etc. as necessary	60 minutes
			Total time: 4 hours

Tip to the facilitator: This session planning chart is, of course, only a proposal and will have to be adjusted to the specific needs of each training session. The chapter covers a considerable body of material, and more time may be needed in order to cover it all. It is thus for the facilitator in each case to assess the needs and interests of the participants and adjust the course accordingly by basing himself or herself on the relevant material contained in Chapter 11.






























VI. TRAINING MATERIALS

A. Computer slides (see CD-ROM)

-  1. Learning objectives
-  2. Questions I
-  3. Questions II
-  4. Questions III
-  5. Relevant legal instruments I: Universal instruments (1)
-  6. Relevant legal instruments II: Universal instruments (2)
-  7. Relevant legal instruments III: Universal instruments (3)
-  8. Relevant legal instruments IV: Universal instruments (4)
-  9. Relevant legal instruments V: Regional instruments
-  10. Women's rights to legal personality: Key legal provisions
-  11. Women's right to legal personality: What it means
-  12. Women's right to equality before the law and equal protection of the law: Key legal provisions I – universal level (1)
-  13. Women's right to equality before the law and equal protection of the law: Key legal provisions II – universal level (2)
-  14. Women's right to equality before the law and equal protection of the law: Key legal provisions III – regional level
-  15. The meaning in general of equality and non-discrimination I
-  16. The meaning in general of equality and non-discrimination II
-  17. The 1993 Vienna Declaration and Programme of Action
-  18. The 1995 Beijing Declaration and Platform for Action
-  19. The meaning of equality between women and men I

- 20.** The meaning of equality between women and men II
- 21.** Women's right to respect for their life as well as their physical and mental integrity I: Key legal provisions (1)
- 22.** Women's right to respect for their life as well as their physical and mental integrity II: Key legal provisions (2)
- 23.** Women's right to respect for their life as well as their physical and mental integrity III: What it means (1)
- 24.** Women's right to respect for their life as well as their physical and mental integrity IV: What it means (2)
- 25.** Women's right to respect for their life as well as their physical and mental integrity V: What it means (3)
- 26.** Women's right to respect for their life as well as their physical and mental integrity VI: What it means (4)
- 27.** Women's right to respect for their life as well as their physical and mental integrity VII: What it means (5)
- 28.** Women's right to respect for their life as well as their physical and mental integrity VIII: What it means (6)
- 29.** Women's right to respect for their life as well as their physical and mental integrity IX: What it means (7)
- 30.** Women's right to respect for their life as well as their physical and mental integrity X: What it means (8)
- 31.** Women's right to freedom from slavery, slave trade, forced and compulsory labour, as well as trafficking I: Key legal provisions (1)
- 32.** Women's right to freedom from slavery, the slave trade, forced and compulsory labour, as well as trafficking II: Key legal provisions (2)
- 33.** Women's right to freedom from slavery, the slave trade, forced and compulsory labour, as well as trafficking III: Key legal provisions (3)
- 34.** Women's right to freedom from slavery, the slave trade, forced and compulsory labour, as well as trafficking IV: What it means (1)
- 35.** Women's right to freedom from slavery, the slave trade, forced and compulsory labour, as well as trafficking V: What it means (2)
- 36.** Women's right to freedom from slavery, the slave trade, forced and compulsory labour, as well as trafficking VI: What it means (3)

-  **37.** The right to equality as to marriage I: Key legal provisions
-  **38.** The right to equality as to marriage II: What it means (1)
-  **39.** The right to equality as to marriage III: What it means (2)
-  **40.** The right to equality as to marriage IV: What it means (3)
-  **41.** The right to equality as to marriage V: What it means (4)
-  **42.** The right to equality as to marriage VI: What it means (5)
-  **43.** Equality of rights in terms of nationality and in the choice of name
-  **44.** Equal rights and responsibilities of spouses I: Key legal provisions
-  **45.** Equal rights and responsibilities of spouses II: What it means (1)
-  **46.** Equal rights and responsibilities of spouses III: What it means (2)
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-  **55.** Women's right to equal enjoyment of other human rights I: The right to freedom of movement and residence
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-  **61.** Women's right to an effective remedy, including the right of access to the courts and due process of law I: Key legal provisions
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-  **63.** Women's right to an effective remedy, including the right of access to the courts and due process of law III: What it means (2)

B. Exercises

Exercise No. 1

Ask the participants to work either individually or in groups of four to six persons in order to analyse, for approximately 30 minutes, the questions considered in Chapter 11 in the light of their respective domestic legal systems. They should preferably choose no more than three or four important issues and define what concerns and/or problems these issues may pose in their countries with regard to the effective enjoyment of human rights for women and girls.

The participants should end their work by trying to develop ideas on how they might be able to improve the enforcement of human rights for women and girls in their country or countries.

Examples of issues or questions that might be dealt with in connection with this exercise are:

- The possible existence of State-sponsored, institutional, community or domestic violence against women – its origin and proposals for action;
- The rights and responsibilities of women as compared to men with regard to marriage and divorce; if differences exist, what are their origin and what can be done about them;
- The rights of women, as compared to men, in relation to other civil matters, such as the right to work, to conclude contracts, to open bank accounts or to set up businesses, the right of succession, and so on;
- The right of women compared to men to take an active part in their country's public life by voting or being candidates for election, holding public office, and so on;
- The rights of women, as compared to men, effectively to enjoy other freedoms such as the freedoms of thought, conscience, belief, religion, opinion, expression, association and assembly;
- The availability of legal remedies for women who need to vindicate their human rights and fundamental freedoms;
- The applicability of due process and judicial guarantees to women as compared to men;
- Any difficulty that may exist for women in gaining access, on a basis of equality with men, to adequate health care and adequate food, or any other economic, social or cultural rights.

Exercise No. 2¹⁷

Serena, Mariana and Anna were three sisters who had been tricked by their parents into travelling from their home in Exland to their parents' country of origin, Gotaland. The young women had been living in Exland their whole life and were Exland citizens. They were, however, also Gotaland citizens. As it turned out, on their arrival in Gotaland, it had been arranged that they would marry men they had neither met nor knew anything about. They were horrified at the fate designed for them and listened in disbelief to their parents as they informed them of the marriage plans. Although closely supervised during their visit, they managed to disguise themselves and fled to the Gotaland capital, where they sought refuge at the Exland Embassy. The sisters received death threats after their escape and did not dare to go to the police to report the threats for fear of being returned to their parents and an uncertain fate.

Discuss the legal problems arising from this kind of situation and the options that may be open to resolve it, respecting the human rights of Serena, Mariana and Anna. Try to analyse the problems from the point of view of the Exland Government and Judiciary as well as the Gotaland Government and Judiciary. Try also to envisage the situation from the point of view of the young women and their parents. Would your reasoning be different if Serena, Mariana and Anna were over or under 18 years of age?

C. Subject for discussion

The following subject can be used as a discussion theme, in particular in countries where the opportunity for women and girls to enjoy their human rights effectively is impeded by custom:

Human rights versus religious and cultural beliefs and customs: Is it possible to make women's rights a reality in times of traditionalism?

The moderator should try to keep the discussion focused on the situation at the specific national level in the light of international legal principles applicable to the country concerned. She/he should emphasize the **universality of values** that have been accepted by all countries. It may be important to point out that this universality does not mean uniformity. Moreover, States are free to choose the way in which they want to implement their international obligations. An important aspect to underline is the fact that every person, including the woman, has the **right freely to choose a spouse and to enter into marriage only with their free and full consent** and **the right to freedom of belief, opinion and expression**. Another important aspect to underline would be the fact that, according to article 23 of the International Covenant on Civil and Political Rights: "No marriage shall be entered into without the free and full consent of the intending spouses". Another focus of the discussion may be to explore the reasons why Governments may be reluctant to enact the appropriate legislative and other measures that are required to make human rights for women a true reality. Once the obstacles to the enjoyment of human rights for women have been defined in the course of the debate, try to have the participants focus on ideas that might help overcome them.

¹⁷ **Information to the facilitator:** This exercise has been inspired by a story related in *The Economist* of 10 November 2001 (p. 37). It can be changed into a role play.

D. Role play¹⁸

Roseanna was a young girl living in Exland and an Exlandish national. She was, however, originally from Eritania, where female genital mutilation (FGM) is widely practised. In Exland this practice was made a criminal offence following the passage of the Prohibition of Female Circumcision Act 2010, according to which anybody who “knowingly” mutilates a minor girl by having resort to the various forms of FGM shall be fined or imprisoned for a maximum of seven years. The Exland Ombudsman for Children has a duty to see that the various authorities in Exland act diligently to protect the rights of children below the age of 18. The Ombudsman is also competent to report FGM to the police.

Roseanna's parents knew that the law of Exland prohibited FGM, but they felt very strongly about having their daughter undergo this age-old practice. They decided to return to Eritania for a month, during the course of which Roseanna was mutilated. They returned to Exland, where Roseanna was not alone in her experience. Several of her acquaintances had been through the same ordeal. An anonymous source tipped off the Ombudsman about what had happened, but the Ombudsman decided to take no action since he did not consider that he had any evidence that the children concerned were suffering at the time of consideration of their situation. Consequently, neither the social authorities nor the police were informed about the fact that, contrary to the law of the land, several Exland girls had been forced to undergo FGM. Eventually, however, the matter was reported to the police.

Exland has ratified the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

1. You are the **new Ombudsman for Children**:
 - You are trying to familiarize yourself with your new role; you are therefore looking through your predecessor's files and discover the “no action” decision in the case of the Exland girls of Eritanian origin who have undergone FGM; you are disturbed by his conclusion. What do you do?
2. You are the **person in charge of investigating the case for the State**:
 - You are trying to investigate the case but have difficulties finding proof of what has happened. What do you do?
3. You are the **judge**:
 - The case is finally on your table and a date is set for the trial of Roseanna's parents. You are in a quandary: if guilt is proved beyond reasonable doubt you may have to send Roseanna's parents to prison, thereby making her a de facto orphan. Argue the case from Roseanna's point of view, the parents' situation, as well as from the point of view of the importance of the general prevention of an extremely harmful practice.

E. Handouts (see CD-ROM)

1. Selected international legal instruments for the protection of the economic, social and cultural rights of women and girls
2. Selected books, reports and websites on women's and girls' issues

¹⁸ **Information to the facilitator:** This role play has been inspired by the fate of some Swedish girls of Somali origin who were taken to Somalia by their parents in order to undergo FGM. It has been mixed with information from other countries.

Chapter 12

SOME OTHER KEY RIGHTS: FREEDOM OF THOUGHT, CONSCIENCE, RELIGION, OPINION, EXPRESSION, ASSOCIATION AND ASSEMBLY

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I. NOTE TO FACILITATORS

Chapter 12 of the Manual deals with the freedoms of thought, conscience, religion, opinion, expression, association and assembly, which are all of fundamental importance to both the human person and the functioning of a democratic society as a whole. The chapter differs from some of the earlier chapters in that it is focused not on the protection of the human person in the course of law enforcement procedures, but on the freedoms that must be enjoyed by every person in the multiple dimensions of his or her daily life.

The chapter deals, in the first place, with the right to freedom of thought, conscience and religion as guaranteed by the major international human rights instruments and, in the second place, with the freedoms of opinion and expression, and, finally, with the freedoms of association and assembly.

As always, facilitators will need to adjust the focus of the course as well as the training material to the particular needs of the participants in any given course. To facilitate the work of the facilitators in this respect, section V of this chapter contains three session planning charts, one for each group of freedoms. However, regardless of which set of freedoms is given priority, it is important to emphasize the intrinsic links between all these various freedoms, and the important role they play in building, preserving and/or strengthening a democratic society, that is to say, a society respectful of the totality of human rights and fundamental freedoms.



II. PRINCIPAL LEGAL SOURCES

Chapter 12 is based mainly on the following legal texts:

A. Universal instruments

- The International Covenant on Civil and Political Rights, 1966
- The International Covenant on Economic, Social, and Cultural Rights, 1966
- The International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- The Convention on the Elimination of All Forms of Discrimination against Women, 1979
- The Convention on the Rights of the Child, 1989
- The ILO Freedom of Association and Protection of the Right to Organize Convention, 1948
- The ILO Right to Organize and Collective Bargaining Convention, 1949

- The Universal Declaration of Human Rights, 1948
- The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1999
- The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981
- The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992

B. Regional instruments

- The African Charter on Human and Peoples' Rights, 1981
- The American Convention on Human Rights, 1969
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994
- The European Convention on Human Rights, 1950
- The European Social Charter, 1962, and the European Social Charter (revised), 1996



III. OBJECTIVES OF THE CHAPTER/SESSION

The objectives of Chapter 12 are to:

- Familiarize the participants with the freedoms of thought, conscience, religion, opinion, expression, association and assembly and their importance in a society respectful of human rights;
- Illustrate how these freedoms, as well as the limitations attached to the exercise of most of them, are interpreted in practice by the international monitoring organs;
- Explain the role of judges, prosecutors and lawyers in safeguarding the freedoms dealt with in this chapter.



IV. MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED

The main points to be brought out and the key issues to be discussed with the participants in the light of the international legal rules dealt with in Chapter 12 are:

- How the following freedoms are protected in the country where the participants work:
 - The freedoms of thought, conscience, and religion;
 - The freedoms of opinion and expression; and
 - The freedoms of association and assembly;
- Whether there are any particular concerns with regard to the effective implementation of these freedoms in the country where the participants work;
- Whether there are any groups in the country where the participants work that might be particularly vulnerable to violations of one or more of these freedoms;
- If so, the participants should explain who these groups are and how their freedoms may be violated;
- What judicial or administrative remedies exist in the country where the participants work for persons who consider themselves to be victims of violations of these freedoms;
- What role, in the view of the participants, is played by the following freedoms in building, preserving and/or strengthening democratic society and a society respectful of human rights:
 - The freedoms of thought, conscience and religion;
 - The freedoms of opinion and expression; and
 - The freedoms of association and assembly;
- With regard to any of these freedoms the exercise of which may be limited: what is the balance to be struck between an individual person's right to exercise these freedoms compared to the general interests of a society in protecting, for instance, national security, public order, safety, health, morals or the rights and freedoms of others;
- What the participants, in their capacity as judges, prosecutors or lawyers, can do in order to protect every person's right to the freedoms of thought, conscience, religion, opinion, expression, association and assembly.



V. SESSION PLANNING CHARTS FOR CHAPTER 12

A. Session planning chart for the freedoms of thought, conscience and religion

Key points/activities	Method	Media	Time
1. Objectives of Chapter 12	Presentation	Computer slides, flip chart	5 minutes
2. Course presentation: Based on Chapter 12 of the Manual and the main points set out in sections III and IV above, the team presents the relevant legal instruments and their substantive field of application, including: a. the right to have, adopt or change a religion of one's choice; b. the right to manifest one's religion or belief; c. limitations on the right to manifest one's religion or belief; d. prohibitions on the right to manifest one's religion or belief; e. freedom of religion and public school instruction; f. State religion and religious minorities; g. conscientious objection on religious grounds. Explanation of group work	Interactive presentations	Computer slides, flip charts, stickers, handouts with standards and principles	45 minutes
3. Stretch break and group formation			5 minutes
4. Group work on case study, role play or other exercise		Flip charts, etc., as necessary	30 minutes
5. Coffee break			20 minutes
6. Report back	Groups report back on case study, role play or other exercise	Flip charts, etc., as necessary	45 minutes
			Total time: 2 h. 30 min.

B. Session planning chart for the freedoms of opinion and expression

Key points/activities	Method	Media	Time
1. Objectives of Chapter 12	Presentation	Computer slides, flip chart	5 minutes
<p>2. Course presentation: Based on Chapter 12 of the Manual and the main points set out in sections III and IV above, the team presents a selection of the following issues:</p> <p>a. A general introduction to the relevant legal instruments and their substantive field of application;</p> <p>b. article 19 of the International Covenant on Civil and Political Rights: – defamation and dissemination of false information; – denials of crimes against humanity and advocacy of hatred; – threats to national security and public order; – freedom of the press; – human rights defenders.</p> <p>c. article 9 of the African Charter on Human and Peoples’ Rights</p> <p>d. article 13 of the American Convention on Human Rights: – individual and collective dimensions of freedom of expression, including the role of the mass media; – freedom of expression and the concept of public order in a democratic society; – meaning of the term “necessary to ensure”; – possible violations of article 13.</p> <p>e. article 10 of the European Convention on Human Rights: – basic interpretative approach; – freedom of the press; – freedom of expression of elected members of professional organizations and elected politicians; – freedom of artistic expression.</p> <p>Explanation of group work</p>	Interactive presentations	Computer slides, flip charts, stickers, handouts with standards and principles	45 minutes
3. Stretch break and group formation			5 minutes
4. Group work on case study, role play or other exercise		Flip charts, etc., as necessary	30 minutes
5. Coffee break			20 minutes
6. Report back	Groups report back on case study, role play or exercise	Flip charts, etc., as necessary	45 minutes
			Total time: 2 h. 30 min.

C. Session planning chart for the freedoms of association and assembly

Key points/activities	Method	Media	Time
1. Objectives of Chapter 12	Presentation	Computer slides, flip chart	5 minutes
2. Course presentation: Based on Chapter 12 of the Manual and the main points set out in sections III and IV above, the team presents the relevant legal provisions: a. articles 21 and 22 of the International Covenant on Civil and Political Rights – origin and meaning of the concept of “a democratic society”; – freedom of association; – freedom of assembly; b. articles 10–11 of the African Charter on Human and Peoples’ Rights; c. articles 15 and 16 of the American Convention on Human Rights; d. article 11 of the European Convention on Human Rights – freedom of association, trade unions and the closed shop system; – trade union and collective agreements; – freedom of association and political parties; – a lawyer’s right to freedom of assembly. Explanation of group work	Interactive presentation	Computer slides, flip charts, stickers, handouts with standards and principles	45 minutes
3. Stretch break and group formation			5 minutes
4. Group work on case study, role play or other exercise		Flip charts, etc., as necessary	30 minutes
5. Coffee break			20 minutes
6. Report back	Groups report back on case study, role play or other exercise	Flip charts, etc., as necessary	45 minutes
			Total time: 2 h. 30 min.




















Tips to facilitators






















- Although emphasis may be placed during the course on the provisions and case law of the International Covenant on Civil and Political Rights, or one of the regional instruments, it will be useful to inform the participants about some aspects of the case law developed under the other treaties referred to in Chapter 12;
- Facilitators do not, of course, have to follow the session planning charts suggested in this Guide but are encouraged to compose a session on relevant freedoms that suits the group of participants; a session may thus also be extended in time to allow an adequate focus on all the relevant freedoms, which are closely linked to each other.




















VI. TRAINING MATERIALS

A. Computer slides (see CD-ROM)

















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The freedoms of association and assembly under article 11 of the European Convention on Human Rights: What they mean XIV



The freedoms of association and assembly under article 11 of the European Convention on Human Rights: What they mean XV



The freedoms of association and assembly under article 11 of the European Convention on Human Rights: What they mean XVI

B. Exercises

Exercise No. 1

Have the participants work either in small groups of four or five persons or, possibly, individually in order to analyse, for approximately 30 minutes, the issues considered in Chapter 12 insofar as they relate to **the right to freedom of thought, conscience and religion**. These issues should be analysed in the light of the legal and actual situation in the country where the participants work. They should preferably choose no more than three or four issues in order to define the problems these issues may pose in their respective country with regard to the effective protection of the freedom of thought, conscience and religion. Depending on the situation in the country concerned, the analysis might encompass:

- The right in law and practice freely to have, adopt and change religion;
- The problem of coercion in the field of religion and belief;
- The right to manifest one's religion;
- Limitations on the right to manifest one's religion;
- Parents' religious and moral convictions versus compulsory curricula in public schools;
- The coexistence of various religions in the country and the question of possible discrimination against religious minorities;
- The existence of conscientious objectors;
- The role of freedom of religion in the relevant country.

Exercise No. 2

Have the participants work either in small groups of four or five persons or, possibly, individually in order to analyse, for approximately 30 minutes, the issues considered in Chapter 12 insofar as they relate to **the right to freedom of opinion and expression**. These issues should be analysed in the light of the legal and actual situation in the country where the participants work. They should preferably choose no more than three or four issues in order to define the problems these issues may pose in their respective countries with regard to the effective protection of the freedom of opinion and expression. Depending on the situation in the country concerned, the analysis might encompass:

- The right to express oneself freely on issues in the sphere of public life, such as political and cultural issues;
- The possibility of imposing restrictions on the exercise of freedom of expression and the reasons that may justify such restrictions, such as national security and public order, the prevention of terrorism, and so on;
- The freedom of the press; plurality of newspapers, radio stations and television news channels;
- The availability of effective remedies to challenge restrictions on the freedom of expression;
- The role played by freedom of expression in the country.

Exercise No. 3

Have the participants work either in small groups of four or five persons or, possibly, individually in order to analyse, for approximately 30 minutes, the issues considered in Chapter 12 insofar as they relate to **the right to freedom of association and assembly**. These issues should be analysed in the light of the legal and actual situation in the country where the participants work. They should preferably choose no more than three or four issues in order to define the problems these issues may pose in their respective countries with regard to the effective protection of the freedom of association and assembly. Depending on the situation in the country concerned, the analysis may encompass:

- Trade unions and their freedom to organize and bargain collectively and conclude agreements with the State;
- The existence of “closed shop” systems;
- The freedom of association for civil servants, the police, and so on;
- The creation of non-governmental organizations for the purpose, for instance, of promoting and defending human rights;
- The creation of political parties and the plurality – or lack of plurality – of political parties;
- The right to assemble freely and peacefully, for instance, in order to demonstrate against policy decisions taken by Governments or for any other reason.

C. Subject for discussion

The question of the interdependence between civil and political rights, on the one hand, and economic, social, and cultural rights, on the other, is dealt with in Chapter 14 of the Manual. Chapter 12 of the Manual brings out the close relationship between the freedoms of religion, opinion, expression, association and assembly and the fundamental role these freedoms play in a democratic society, and a society that is respectful of human rights and fundamental freedoms in general. It might therefore be interesting to widen the discussion to cover the economic and social dimensions of a State. The participants could, for instance, discuss the following subject:

Freedom of expression and development:

The role of a free press in promoting social and economic rights

The facilitator should try to have the participants focus on the impact that a free press may have on a State's economic and social order by, for instance:

- Having the State's decision makers account for their acts and omissions;
- Challenging decisions taken in the social and economic fields by Governments, by pointing out their positive and negative aspects;
- Serving as a public watchdog for purposes of mitigating, preventing or resolving problems such as droughts, hunger, environmental catastrophes through toxic waste, and so on;
- Serving as a public watchdog for the purposes of preventing or resolving problems of corruption and mismanagement, factors which hinder efficient economic development.

D. Case studies

I. Freedom of religion:¹⁹ George and Mark are friends and both officers in the Exland air force. They belong to a Christian Church which adheres to the view that it is the duty of all believers to engage in evangelism. Taking their religious convictions seriously, George and Mark begin speaking to some of their subordinates in their unit. They engage their fellow airmen in religious discussions, read from the Gospel and encourage them to accept the beliefs of their particular Church. George and Mark are very active in their Church during their free time and have, in particular, persuaded a woman called Seta to join their Church. Seta's husband also decides to join, an act that subsequently leads to a breakdown in their family life. Seta is very upset and develops psychological problems, which ultimately lead her to sever all links with George, Mark and their Church.

George and Mark are subsequently convicted of proselytism: the Exland Air Force Court finds that they have acted "with the aim of intruding on and changing the religious beliefs of" other airmen in their unit and that they have thus abused the trust placed in them by their hierarchically subordinate colleagues. They are also convicted of proselytism vis-à-vis Seta, whose inexperience and intellectual weakness they are said to have "skillfully taken advantage of". Both Mark and George are sentenced to five months in prison, a sentence that is converted to a suspended pecuniary penalty by the Exland Courts Martial Appeals Court. The penalties imposed will not be enforced unless George and Mark reoffend within three years. George and

¹⁹ **Tip to the facilitator:** This case study is inspired by *Eur. Court HR, Case of Larissis and Others v. Greece, Judgement of 24 February 1998, Reports 1998-I*; the religion chosen in the example can be changed to better reflect the religious make-up of the country in which the training takes place. The Court found a violation of article 9 of the European Convention on Human Rights insofar as the applicants had been convicted of proselytism of civilians. On the other hand, this provision had not been violated by the applicants' conviction of proselytism of their fellow airmen. The case studies should be distributed well in advance to allow the participants time to prepare adequately.

Mark are upset by their convictions, believing that they have simply exercised their right to freedom of religion as guaranteed by article 19 of the Exland Constitution.

Have the participants discuss this case from the point of view of their domestic law and the relevant international law applicable to the country in which they work. A distinction needs to be made between the conviction of George and Mark for their religious activity in the army and when off-duty.

II. Freedom of expression:²⁰ Donald Cruise, editor of *The New Exland Times*, has been prosecuted for publishing a long and detailed article revealing “State secrets” amid considerable political furore in the country over the disclosure of secret Government funds aimed at bribery and corruption. Prosecutors moved swiftly to order a search of the offices of *The New Exland Times* and the seizure of thousands of copies of the daily.

The prosecution brought against the country’s leading and highly popular newspaper has fuelled a heated debate over the proper balance between the Government’s interest in protecting Exland’s national security and the importance of press freedom in the country, which only recently adopted a democratic constitution. The Government accuses *The New Exland Times* of endangering the State’s security by disclosing details about the operation of the funds which, it argues, fund intelligence activities, unofficial diplomacy and confidential research. The Government in particular lambastes the newspaper for publishing photographs of documents marked “top secret”. Donald Cruise of *The New Exland Times* adamantly denies any wrongdoing, arguing that the article detailing the secret funds was aimed at illegal and unethical activities by the Government and that its publication was therefore clearly in the public interest.

Have the participants argue this case in the light of the principles set out in Chapter 12.

III. Freedom of expression:²¹ Jane Olsen is a lawyer and also a member of the Exland Parliament. She was elected on the candidate list of a political party which supports independence for the northern part of Exland – the Misk Country – which is primarily inhabited by one of Exland’s several minority groups. In an article entitled “Outrageous Impunity”, published in the weekly *Exland Magazine*, she denounced in strong terms the fact that the authorities had failed to identify the perpetrators of a considerable number of killings committed against people in the Misk Country. In the article she writes: “not one of the murders, of the interminable list of fascist murders carried out in the Misk Country, has shown the slightest sign of being cleared up by the authorities”; she also argues that “the right wing, who are in power, have all the means at their disposal to seek out and punish the perpetrators of so many crimes”, adding that “don’t worry, the right will not seek itself out”. In her view, however, the “fascist associations responsible for the killings do not exist outside the Government apparatus”, which is therefore “fully responsible for the killings”.

Criminal proceedings were instituted against Jane for insulting the Government contrary to article 120 of the Criminal Code. At the request of the Exland Supreme Court, which was competent to deal with her case, Parliament withdrew Jane’s parliamentary immunity. The Criminal Division of the Supreme Court sentenced Jane to one year in prison for “proffering insults against the Government” and, as an additional penalty, she was disqualified from holding any public office or carrying on a profession, and ordered to pay costs. All appeals were dismissed although the enforcement of the penalties was stayed for two years. It is noteworthy that the Supreme Court considered that parliamentary privilege must be interpreted strictly as otherwise it could become an instrument for infringing the rights of others. In its view, such privilege lapses when its holder acts as a citizen, even in his or her capacity as a politician. The Court refused to allow the defence to submit proof of the veracity of Jane’s statements.

²⁰ **Information to the facilitator:** This case study is based on an article entitled “Taiwan editor faces charges”, published in *The Financial Times* on 25 March 2002.

²¹ **Tip to the facilitator:** This case study is inspired by *Eur. Court HR, Case of Castells v. Spain, Judgement of 23 April 1992, Series A, No. 236*; the Court unanimously decided that article 10 had been violated in that case.

Jane argues that she had only intended her article to be a political denunciation and not an insult or threat to the Government or its members. She intends to complain to the Human Rights Committee (or a competent regional organ) alleging a violation of her right to freedom of expression.

Argue Jane's case in the light of the principles set out in Chapter 12. Answer all relevant questions, such as:

- Was there an interference with Jane's freedom of expression?
- If so, was the interference lawful?
- What legitimate aim or aims could justify the imposition of the restriction on Jane's freedom of expression?
- Could the interference be considered necessary for any legitimate aim? Explain the balance to be struck between the general interest in protecting certain purposes and the individual's interest in maximizing his or her freedom.
- Would it have made any difference if the statements had been made in Parliament rather than in a newspaper?
- Discuss the role of parliamentarians or other elected representatives in a democratic society, and any dangers or benefits inherent in their being able to enjoy a generously interpreted freedom of expression.
- Consider, finally, a person's or a newspaper's duties and responsibilities in exercising freedom of expression.

E. Role play

PART I: THE FACTS

Background information

The freedoms of association and assembly:²² The United Ruritanian Organization (URO) was founded on 10 February 1995. According to its statute and programme, its aim was to "unite all Ruritanians in Exland on a regional and cultural basis" and to achieve "the recognition of the Ruritanian minority in Exland". According to Section 10 of the statute, URO would not challenge or infringe the territorial integrity of Exland and it "would not use violent, brutal, inhuman or unlawful means" to achieve its purpose. The main activity of the association was the organization of celebrations to commemorate historical events of importance to Ruritanians in Exland.

²² **Tip to the facilitator:** This role play has been inspired by *Eur. Court HR, Case of Stankov and the United Macedonian Organization Ilinden v. Bulgaria, Judgement of 2 October 2001*; the Court found that the freedom of assembly as guaranteed by article 11 of the European Convention had been violated in this case. The role play, however, is drafted as if it had been brought before the Human Rights Committee. The exercise should be modified depending on where the training takes place; if the relevant State has not ratified the International Covenant on Civil and Political Rights, it might be bound by a regional human rights treaty. In such a case, this latter treaty should be used as the legal reference for the role play. It is noteworthy that, according to article 1 of the Optional Protocol to the Covenant, only "individuals" can submit communications to the Human Rights Committee. The participants should be given sufficient time to prepare this role play.

URO applied for registration, but its application was refused by the Stadtown District Court. The Court found that the aims of the association under its statute and programme were “directed against the unity of the nation”. The Court specified that the material submitted demonstrated that URO sought “to disseminate the ideas of Ruritanians among the Exland population, especially in a particular geographical area”. These ideas presupposed “the ‘denationalization’ of the Exland population and its conversion into a Ruritanian population”. It followed that the association was “directed against the unity of the nation” and that it was therefore “prohibited under article 54 of the Exland Constitution”.

URO managed to hold two meetings before its legal dissolution. These meetings were held in a small mountain village during the course of which the participants adopted declarations emphasizing their rights as a minority: (1) to protection of their human rights in accordance with international agreements; (2) to have introduced the study of the Ruritanian language in all schools in the Ruritanian part of Exland; (3) to radio and television broadcasts in Ruritanian; (4) to publish in Ruritanian; and (5) to obtain assurances that an end be put to the assimilation process and the destruction of the Ruritanian culture.

Three meetings to commemorate special occasions or the anniversaries of their national heroes were not authorized by the authorities since URO was not duly registered and was consequently not “a legitimate organization”. On two other occasions, members were allowed to visit the grave of a hero, but were prevented by the police from bringing placards, banners and musical instruments to the site. The police also refused permission for speeches at the grave. Permission for further commemorative meetings by URO was refused by the authorities since they would “endanger public order”.

URO appealed the decision of the Stadtown District Court, and the case is currently before the Exland Supreme Court.

PART II: QUESTIONS AND ARGUMENTS

1. You are the **lawyer** representing URO before the Exland Supreme Court. Develop as many arguments as you can relating to the issues listed below and basing yourself on the relevant articles of the International Covenant on Civil and Political Rights:
 - (a) The lawfulness under article 22 of the Covenant of the refusal by the Stadtown District Court to register ORU as an association; you must address the questions of:
 - (i) The lawfulness of the measure;
 - (ii) The purpose for which registration was denied; and
 - (iii) The need for the measure in a democratic society.
 - (b) The lawfulness under article 21 of the Covenant of the interference with your clients’ right to assemble peacefully; you must address the same questions as under (a) (i)–(iii); you must moreover adjust your arguments according to the alleged reasons for interfering with this right:
 - (i) ORU was not “a legitimate organization”;
 - (ii) Obstruction by the police;
 - (iii) For reasons of “public order”.
 - (c) Any other arguments or issues that you find relevant to raise before the Exland Supreme Court.

2. You are the **lawyer** representing the Government in the case before the Exland Supreme Court and defending the measures taken in order to deal with what the Government considers to be a potentially violent and disruptive separatist group. You should try to justify the measures taken by the Government and counter the arguments submitted by the **lawyer** for URO under point 1 (a)–(c).
3. You are a **Judge** of the Exland Supreme Court. How would you decide the legal issues arising from this case? Argue and decide them one by one, basing yourself on the relevant provisions of the International Covenant on Civil and Political Rights and applying the rules that you have learned during the course.

Chapter 13

THE RIGHT TO EQUALITY AND NON-DISCRIMINATION IN THE ADMINISTRATION OF JUSTICE

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I. NOTE TO FACILITATORS

Chapter 13 of the Manual gives a brief, general introduction to the multiple serious problems of discrimination the world faces at the beginning of the third millennium. It emphasizes the essential role played by the various legal professions in the enforcement of legal standards that protect individuals and groups of individuals against acts and practices of discrimination. The chapter also provides a brief account of the failure to have the principle of racial equality introduced into the Covenant of the League of Nations.

It thereafter describes the major universal and regional legal standards with regard to the right to equality and the prohibition of discrimination.

Based on existing international case law, the chapter describes the general meaning of the notions of equality and non-discrimination in order to provide a summary of several varied examples of existing international case law on the principles of equality and non-discrimination, including the rights of minorities. Some of these examples may to some seem of only relatively minor importance, given that many individuals and groups of individuals suffer infinitely greater discrimination than some of those who have had their cases considered by the international monitoring organs. Nonetheless, the case law clearly shows the way to go in other, possibly much more serious, situations since it lays down the universal legal criteria that can and must guide both lawmakers and the legal professions in the drafting and enforcement of the right to equality and the prohibition of discrimination.



II. PRINCIPAL LEGAL SOURCES

Chapter 13 is based on the following legal texts:²³

A. Universal instruments

- The Charter of the United Nations, 1945
- The Convention on the Prevention and Punishment of the Crime of Genocide, 1948
- The International Covenant on Civil and Political Rights, 1966
- The International Covenant on Economic, Social and Cultural Rights, 1966
- The International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- The Convention on the Elimination of All Forms of Discrimination against Women, 1979
- The Convention on the Rights of the Child, 1989
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

²³ For more international legal instruments relating to discrimination, see handout No. 13.1 (CD-ROM).

- The Convention on the Rights of Persons with Disabilities, 2006
- The Rome Statute of the International Criminal Court, 1998
- The Statute of the International Criminal Tribunal for the former Yugoslavia, 1993
- The Statute of the International Criminal Tribunal for Rwanda, 1994
- The Four Geneva Conventions of 12 August 1949
- The 1977 Protocols Additional to the Geneva Conventions of 12 August 1949

- The Universal Declaration of Human Rights, 1948
- The Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, 1981
- The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992

B. Regional instruments

- The African Charter on Human and Peoples' Rights, 1981
- The African Charter on the Rights and Welfare of the Child, 1990
- The American Convention on Human Rights, 1969
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994
- The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, 1999
- The European Convention on Human Rights, 1950
- The European Social Charter, 1961, and the European Social Charter (Revised), 1996
- The Framework Convention for the Protection of National Minorities, 1995



III. OBJECTIVES OF THE CHAPTER/SESSION

The objectives of Chapter 13 are to:

- Familiarize the participants with the notion of equality before the law and the principle of non-discrimination as understood by international human rights law;
- Illustrate how these principles are being applied in practice at the universal and regional levels;
- Identify some groups that may be particularly vulnerable to discriminatory treatment;
- Explain what legal steps, measures and/or actions, judges, prosecutors and lawyers must take in order to safeguard the notion of equality before the law and the principle of non-discrimination.



IV. MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED

The main points to be brought out and the key issues to be discussed with the participants in the light of the international legal rules dealt with in Chapter 13 are:

- How the participants would define “discrimination” and/or “inequality” of treatment;
- How the notion of equality before the law and the principle of non-discrimination are protected in the country where the participants work;
- Whether the participants have ever been faced with cases of discrimination in their professional life;
- Whether there are any particularly vulnerable groups in the country where the participants work;
- If so, who the victims are and how they are discriminated against;
- Whether, in the country where the participants work, there are any particular problems of discrimination on the basis of gender;
- If so, what they are;
- What measures the participants, as legal professionals, can take in order to protect everybody’s right to equality before the law and to ensure the right of every person and group of persons not to be subjected to discrimination.






















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












Key points/activities	Method	Media	Time
1. Objectives of Chapter 13	Presentation	Computer slides, flip chart	5 minutes
2. Course presentation: Based on Chapter 13 in the Manual and the main points set out in sections III and IV above, the team presents the main points relating to: <ul style="list-style-type: none"> a. the notion of equality before the law and the principle of non-discrimination in international human rights law; b. the application of these legal principles by international monitoring organs; c. identification of vulnerable groups; d. avenues of action for the legal professions. Explanation of group work (case study or other exercise)	Interactive presentations	Computer slides, flip charts, stickers, handouts with standards and principles	30 minutes
3. Stretch break and group formation			5 minutes
4. Group work on case study or other exercise		Flip charts, etc., as necessary	25 minutes
5. Stretch break			5 minutes
6. Report back	Groups report back on case study or other exercise	Flip charts, etc., as necessary	30 minutes
			Total time: 1 h. 40 min.



VI. TRAINING MATERIALS

A. Computer slides (see CD-ROM)

-  1. Learning objectives
-  2. Questions I
-  3. Questions II
-  4. Relevant legal instruments I: Universal instruments (1)
-  5. Relevant legal instruments II: Universal instruments (2)
-  6. Relevant legal instruments III: Universal instruments (3)
-  7. Relevant legal instruments IV: Regional instruments (1)
-  8. Relevant legal instruments V: Regional instruments (2)
-  9. Key legal texts I: The Charter of the United Nations (1)
-  10. Key legal texts II: The Charter of the United Nations (2)
-  11. Key legal texts III: The Universal Declaration of Human Rights
-  12. Key legal texts IV: The Convention on the Prevention and Punishment of the Crime of Genocide
-  13. Key legal texts V: The International Covenant on Civil and Political Rights (1)
-  14. Key legal texts VI: The International Covenant on Civil and Political Rights (2)
-  15. Key legal texts VII: The International Covenant on Economic, Social and Cultural Rights
-  16. Key legal texts VIII: The International Convention on the Elimination of All Forms of Racial Discrimination
-  17. Key legal texts IX: The Convention on the Rights of the Child (1)
-  18. Key legal texts X: The Convention on the Rights of the Child (2)
-  19. Key legal texts XI: The Convention on the Elimination of All Forms of Discrimination against Women

-  20. Key legal texts XII: The African Charter on Human and Peoples' Rights
-  21. Key legal texts XIII: The African Charter on the Rights and Welfare of the Child
-  22. Key legal texts XIV: The American Convention on Human Rights (1)
-  23. Key legal texts XV: The American Convention on Human Rights (2) – The Additional Protocol in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador"
-  24. Key legal texts XVI: The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, "Convention of Belém do Pará"
-  25. Key legal texts XVII: The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1)
-  26. Key legal texts XVIII: The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (2)
-  27. Key legal texts XIX: The European Convention on Human Rights (1)
-  28. Key legal texts XX: The European Convention on Human Rights (2)
-  29. Key legal texts XXI: The European Social Charter, 1961
-  30. Key legal texts XXII: The European Social Charter (Revised), 1996
-  31. Key legal texts XXIII: The Framework Convention for the Protection of National Minorities, 1995
-  32. The right to equality and the principle of non-discrimination: A pillar of international human rights law
-  33. The right to equality and the principle of non-discrimination in public emergencies
-  34. The meaning in general of equality and non-discrimination

B. Exercise

Exercise No. 1

Have the participants work in either small groups of four or five persons or, perhaps, individually, in order to analyse, for approximately 30 minutes, the questions and issues considered in Chapter 13 in the light of the situation in their respective countries. The participants should in particular try critically to:

- Identify the **existence** of inequality and discrimination in their own country;
- Describe **who** the victims of the inequality and discrimination are; the participants should in this respect try to identify, among other things, any existing **gender-based** discrimination;
- Explain **how** inequality and discrimination manifest themselves;
- Analyse the **grounds** on which the inequality and discrimination take place and explain **why** this is so;
- **Propose solutions** for eliminating inequality before the law and discrimination, not only **de jure** but also **de facto**.

C. Subject for discussion

Organize a round-table, general, or small-group discussion around the following subject:

Inequality and discrimination in the administration of justice: Ways and means for the legal professions to uphold the principles of equality and non-discrimination for all

During the debate the following questions, among others, could be considered:

- How to discover the existence – and possibly even patterns – of discrimination in the administration of justice;
- The identification of vulnerable groups as identified in the introduction to this chapter;
- How to respond most efficiently to such forms of discrimination;
- How to deal with racist or xenophobic groups that may resort to violence against persons of foreign origin or against persons who disagree with their views in general;
- The efficiency of national laws and regulations in putting an end to inequality and discrimination;
- The efficiency of international treaties and institutions in ensuring the effective protection of the principles of equality before the law and the prohibition of non-discrimination;
- The role of judges, prosecutors and lawyers in turning legal provisions guaranteeing the right to equality and non-discrimination into reality in concrete cases;
- The role of the public authorities and political parties, as well as the educational institutions, the press and non-governmental organizations, in promoting respect for the principle of the equal worth of all human beings.

D. Role play

Peter is a 19-year-old man charged with murdering a taxi driver in Stadtown in Exland in connection with a robbery that took place when he was only 17 years old. Peter is a member of a minority group in Exland with distinctive ethnic, cultural and linguistic characteristics – a minority that suffers discrimination in various ways. Peter insists that he did not commit this crime and that the prosecution is based on fabricated evidence. In case of conviction, the death penalty is mandatory. A legal aid lawyer has been appointed to defend Peter, but he and the lawyer do not get along. Peter feels that the lawyer, who comes from the majority group of Exland, does not really trust him or believe what he says. He is getting very concerned and insists on having a lawyer in whom he can have full confidence. The request is refused by the competent Court.

Peter is from a rather modest home and was quite immature for his age at the time of the alleged crime. He had just finished school and had no previous criminal record or any history of crime. The charges against him are primarily based on testimony given by a co-defendant who has described Peter in the most unfavourable terms to the police investigators in order to try to avoid being convicted himself. He has even confessed this to a co-detainee, who informed the prison authorities about what he had heard. However, nothing has been done to pass on this crucial information to the prosecuting authorities. As for Peter, he has matured through this ordeal and is becoming increasingly self-confident in his dealings with the prosecuting authorities and his lawyer. He has no choice: he needs to do everything he can in order to avoid conviction and a death sentence.

Peter's is an uphill struggle. He is found guilty by a jury after the prosecutor, in her final pleadings, called him an "animal" who was trying to avoid conviction through lies; said he was untrustworthy, had shown no remorse after the cruel murder, and was a potentially very dangerous person who deserved no leniency. The prosecutor was a good orator and the jury was convinced of Peter's guilt. The judge had no choice but to impose the mandatory death sentence on the accused.

Peter is devastated, but soon regains strength and decides to appeal his conviction and sentence. This is his last chance to save his life. He has finally found a lawyer of his own choice who is prepared to defend him, although the lawyer is aware that he may never be paid.

It is recalled that Exland has ratified the International Covenant on Civil and Political Rights, which is, in principle, part of the law of the land.

1. You are Peter's **lawyer**:
 - Draw up Peter's defence in the Court of Appeals; in particular, make arguments against the conviction in the trial court and against the imposition of the death penalty; point out flaws in the police investigation, the prosecutor's pleadings and the judge's behaviour;
 - Invoke the relevant provisions of the International Covenant on Civil and Political Rights.
2. You are the **prosecutor**:
 - You are determined to fight increasing youth crime by having the conviction and sentence confirmed; prepare your answer to Peter's grounds of appeal; argue your points by relying on the facts and the law, both national and international if necessary.
3. You are the **judge**:
 - Depending on how you evaluate the pleadings of Peter's lawyer and the prosecution, give your reasoned judgement.

E. Case study

This case study is primarily based on a complaint that has been considered by one of the international monitoring organs. The name of the country as well as the names of the complainants are fictitious.²⁴

PART I: THE FACTS

1. Anna was lawfully and permanently settled in Exland in accordance with the immigration rules in force at the time. Her husband, however, was refused permission to remain with her in Exland. She complained to the international control organ arguing that she had been a victim of violations of the following human rights: the right not to be subjected to degrading treatment; the right to respect for her family life and her right not to be discriminated against on the basis of her sex and race.
2. Anna was born in an African country but is of Asian origin; she is stateless and was granted indefinite leave to remain in Exland. Two years later she married a man who was also of foreign origin and who had been allowed into Exland for six months as a visitor. Anna's application for leave for her husband to remain permanently with her in Exland was rejected on the ground that she was not an Exland citizen, and that neither of her parents had been born in the country.
3. Anna's husband starts work in a restaurant and the couple has a child. The Exland authorities now want him to leave, and threaten to enforce his departure if he fails to leave the country of his own volition. He refuses, arguing that his wife could not live in his country because she is very close to her own family and does not speak his native language. The strain would simply be too great. The Exland Government is however adamant and sees no inconvenience in Anna going with her husband to live in his country of origin. Anna is very upset at the Exland law, which she considers to have been introduced in order to reduce the number of ethnic minority immigrants.
4. The Government of Exland is convinced it needs to have strict immigration laws in order to protect the domestic labour market during a period of high unemployment. In its view it is a particularly important statistical fact that men are more likely to seek work than women, with a result that male immigrants have a greater impact than female immigrants on the domestic labour market. The reduction in male immigration since the introduction of the new immigration regulations, moreover, proves the significance of this fact. According to the Government, there has been an annual reduction of 5700 in the number of husbands accepted for settlement. A second aim of the immigration rules as applied to Anna is to take into account public opinion.

²⁴ **Information to the facilitator:** Anna's complaints were part of a case considered both by the European Commission and the European Court of Human Rights, see *Eur. Court HR, Case of Abdulaziz, Cabales and Balkandali v. the United Kingdom, Judgement of 28 May 1985, Series A, No. 94*; Anna actually corresponds to Ms. Abdulaziz, but this information should not be divulged to the participants until they have ended their work and final discussion on the case.

PART II: THE QUESTIONS

1. Could Anna's situation be considered to constitute **"family life"** and thus be protected by international human rights law? After all, did she not take a risk by marrying a man with a precarious legal situation? You are pleading this case before the international monitoring organ. Please focus your argumentation from:
 - (a) **Anna's** point of view
 - (b) The **Government's** standpointInvoke specific and relevant international legal standards and, if possible, case law.
2. Does the treatment to which Anna was subjected in this case constitute **discrimination on the ground of sex**? You are also pleading this point before the international monitoring organ. Please focus your argumentation from:
 - (a) **Anna's** point of view
 - (b) The **Government's** positionInvoke relevant legal standards and support your argumentation, to the extent possible, with international case law.
3. Could the treatment to which Anna was subjected possibly constitute **discrimination on the ground of race**? Find arguments to justify:
 - (a) **Anna's** point of view
 - (b) The **Government's** standpoint
4. Were the conditions to which Anna was subjected so serious as to constitute **degrading treatment** as these terms are understood under international human rights law? Would it be possible to say that the Exland Government has shown contempt or lack of respect for Anna or, for instance, humiliated and debased her in order to obtain its aim of enforcing domestic legislation? Please invoke relevant legal provisions and, possibly, case law.

F. Handout (see CD-ROM)

1. Human rights and the prohibition of discrimination

Chapter 14

THE ROLE OF THE COURTS IN PROTECTING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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I. NOTE TO FACILITATORS

Chapter 14 of the Manual provides basic information about a few important aspects of the economic, social and cultural rights guaranteed by international law. It explains, first, the reasons why there are two international human rights covenants and, second, the notions of the interdependence and indivisibility of human rights. Third, the chapter provides an overview of the rights guaranteed by the principal international treaties in this field and analyses the legal obligations of States to protect economic, social and cultural rights.

After a brief discussion of the question of whether economic, social and cultural rights are justiciable, the chapter deals in some detail with two selected rights: **the right to adequate housing** and **the right to health**. In this connection special emphasis is given to the work of the Committee on Economic, Social and Cultural Rights, as well as to relevant domestic case law.

Finally, a brief summing-up is made with regard to the role of the legal professions in protecting economic, social and cultural rights and the chapter ends with some concluding remarks.



II. PRINCIPAL LEGAL SOURCES

Chapter 14 is based on the following legal texts:

A. Universal instruments

- The International Covenant on Economic, Social and Cultural Rights, 1966
- The Universal Declaration of Human Rights, 1948

B. Regional instruments

- The African Charter on Human and Peoples' Rights, 1981
- The American Convention on Human Rights, 1969
- The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988
- The European Social Charter, 1961, and the European Social Charter (Revised), 1996



III. OBJECTIVES OF THE CHAPTER/SESSION

The objectives of Chapter 14 are to:

- Familiarize the participants with the main international legal instruments protecting economic, social and cultural rights;
- Explain to the participants the intrinsic relationship between economic, social and cultural rights, on the one hand, and civil and political rights, on the other;
- Acquaint the participants with the nature of the legal obligations of State parties with regard to the enforcement of economic, social and cultural rights;
- Inform the participants of the content of some economic, social and cultural rights;
- Discuss with the participants the question of the justiciability of economic, social and cultural rights;
- Familiarize the participants with the important role of the domestic courts in protecting economic, social and cultural rights;
- Increase the participants' awareness of their own potential as judges, prosecutors and lawyers in contributing to the enforcement of economic, social and cultural rights at the domestic level.



IV. MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED

The main points to be brought out and the key issues to be discussed with the participants in the light of the international legal rules dealt with in Chapter 14 are:

- How economic, social and cultural rights are protected and enforced in the country where the participants work;
- What role the courts play in the enforcement of these rights;
- What mechanisms other than courts exist in the country where the participants work in order to promote and/or enforce economic, social and cultural rights;
- What aspects of economic, social and cultural rights are particularly relevant in the country where the participants work;
- Whether, in the country where the participants' work, there are any vulnerable groups that are in particular need of legal protection in the field of economic, social and cultural rights;
- If so, who they are, and in what sense they need special protection;
- How, if at all, this protection is provided and whether it is effective;
- How the participants envisage a remedy at the domestic level for effectively protecting a person's economic, social and cultural rights.




















V. SESSION PLANNING CHART FOR CHAPTER 14

Key points/activities	Method	Media	Time
1. Objectives of Chapter 14	Presentation	Computer slides, flip chart	5 minutes
2. Course presentation. Based on Chapter 14 in the Manual and the main points set out in sections III and IV above, the team presents the main points relating to: a. why there are two international human rights covenants; b. the interdependence and indivisibility of human rights; c. the rights guaranteed by the universal and regional human rights instruments.	Interactive presentations	Computer slides, flip charts, stickers, handouts with standards and principles	40 minutes
3. Stretch break			5 minutes
4. Presentation of Chapter 14 continues: d. the question of the justiciability of economic, social and cultural rights; e. the right to adequate housing; f. the right to health. Explanation of group work (exercise or role play) and group formation	Interactive presentations	Computer slides, flip charts, stickers, handouts with standards and principles	40 minutes
5. Break			20 minutes
6. Group work on exercise or role play		Flip charts, etc., as necessary	60 minutes
7. Stretch break			10 minutes
8. Report back	Groups report back on the exercise or role play	Flip charts, etc., as necessary	60 minutes
			Total time: 4 hours










VI. TRAINING MATERIALS

A. Computer slides (see CD-ROM)

-  1. Learning objectives I
-  2. Learning objectives II
-  3. Questions I
-  4. Questions II
-  5. Key legal instruments
-  6. Why there are two international covenants on human rights I
-  7. Why there are two international covenants on human rights II
-  8. The interdependence and indivisibility of human rights
-  9. The rights guaranteed I: The International Covenant on Economic, Social and Cultural Rights (1)
-  10. The rights guaranteed II: The International Covenant on Economic, Social and Cultural Rights (2)
-  11. The rights guaranteed III: The International Covenant on Economic, Social and Cultural Rights (3)
-  12. The rights guaranteed IV: The African Charter on Human and Peoples' Rights (1)
-  13. The rights guaranteed V: The African Charter on Human and Peoples' Rights (2)
-  14. The rights guaranteed VI: The American Convention on Human Rights
-  15. The rights guaranteed VII: The Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (1)
-  16. The rights guaranteed VIII: The Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (2)
-  17. The rights guaranteed IX: The Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (3)

-  **18.** The rights guaranteed X: The Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (4)
-  **19.** The rights guaranteed XI: The Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (5)
-  **20.** The rights guaranteed XII: The European Social Charter, 1961 (1)
-  **21.** The rights guaranteed XIII: The European Social Charter, 1961 (2)
-  **22.** The rights guaranteed XIV: The European Social Charter, 1961 (3)
-  **23.** The rights guaranteed XV: The European Social Charter, 1961 (4)
-  **24.** The rights guaranteed XVI: The European Social Charter (Revised), 1996 (1)
-  **25.** The rights guaranteed XVII: The European Social Charter (Revised), 1996 (2)
-  **26.** The rights guaranteed XVIII: Summing up
-  **27.** States' legal obligations under the International Covenant on Economic, Social and Cultural Rights I
-  **28.** States' legal obligations under the International Covenant on Economic, Social and Cultural Rights II
-  **29.** States' legal obligations under the International Covenant on Economic, Social and Cultural Rights III
-  **30.** States' legal obligations under the European Social Charters
-  **31.** The justiciability of economic, social and cultural rights I
-  **32.** The justiciability of economic, social and cultural rights II
-  **33.** The right to adequate housing I: What it means (1)
-  **34.** The right to adequate housing II: What it means (2)
-  **35.** The right to adequate housing III: The legal obligations (1)
-  **36.** The right to adequate housing IV: The legal obligations (2)
-  **37.** The right to adequate housing V: Forced evictions (1)
-  **38.** The right to adequate housing VI: Forced evictions (2)
-  **39.** The right to adequate housing VII: Lessons learned (1)

-  **40.** The right to adequate housing VIII: Lessons learned (2)
-  **41.** The right to adequate housing IX: Lessons learned (3)
-  **42.** The right to health I: What it means (1)
-  **43.** The right to health II: What it means (2)
-  **44.** The right to health III: The legal obligations (1)
-  **45.** The right to health IV: The legal obligations (2)
-  **46.** The right to health V: Lessons learned from national case law

B. Exercises

Exercise No. 1

Have the participants work either individually or in groups of four to six persons in order to analyse, for approximately 30 minutes, the questions considered in Chapter 14 in the light of their respective domestic legal systems. They should choose no more than three or four important issues and define the concerns and/or problems these issues may pose in their countries. The participants should end their work by trying to develop ideas about how they might be able to improve the enforcement of economic, social and cultural rights in their country or countries. Examples of the issues that might be dealt with in connection with this exercise are, for instance:

- The extent to which, if at all, economic, social and cultural rights enjoy legal protection in the country where the participants work;
- Whether ordinary or administrative courts can consider alleged violations of economic, social and cultural rights;
- Whether any other kinds of effective remedy exist for alleged violations of these rights;
- General problems of enforcement of economic, social and cultural rights, in particular with regard to vulnerable groups such as the sick, persons living with HIV/AIDS, especially pregnant women or mothers of young infants, the elderly, persons with disabilities, indigenous peoples, people belonging to different castes, children, women, asylum-seekers, foreign nationals, and so on.

Exercise No. 2

Similarities, differences and links between economic, social and cultural rights, on the one hand, and civil and political rights, on the other

This exercise is suitable for individual, group or plenary work. Have the participants draw up a list of **similarities**, **differences** and **links** between economic, social and cultural rights and civil and political rights. They should give examples to support their views.

In the course of the exercise, the participants should reflect on the fact that these differences have often been explained by their inherently distinct nature, which means that, while economic, social and cultural rights require forceful positive action by States for their fulfilment, civil and political rights require only non-interference by the State. Does this distinction still hold true? Did it ever correctly reflect the reality of the nature of these rights? The participants should give reasons for their answers and preferably refer to facts and/or case law to back up their views.

With regard to the links between rights, the participants should be encouraged to give examples showing the interdependence between the economic, social and cultural rights and the civil and political rights. Examples from their daily life and case law should be presented in support of their views.²⁵

The *Airey* case concerned an Irish woman who could not afford a lawyer to petition the High Court for a judicial separation from her husband, who had been convicted of assaulting her (*Eur. Court HR, Airey Case v. Ireland, Judgement of 9 October 1979, Series A, No. 32*). In addition, no legal aid was available to her. In this case the European Court of Human Rights found a violation of articles 6 (1) and 8 of the European Convention on Human Rights. With regard to the right of access to a court under article 6 (1), the Court held inter alia that:

The Court is aware that the further realization of social and economic rights is largely dependent on the situation – notably financial – reigning in the State in question. On the other hand, the Convention must be interpreted in the light of present-day conditions [...] and it is designed to safeguard the individual in a real and practical way as regards those areas with which it deals [...]. Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The Court therefore considers, ..., that the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no water-tight division separating that sphere from the field covered by the Convention (*ibid.*, pp. 14–15, para. 26).

Under article 8 of the Convention, which inter alia guarantees the right to respect for one's private and family life, the Court importantly held that:

The Court does not consider that Ireland can be said to have "interfered" with Mrs. Airey's private or family life: the substance of her complaint is not that the State has acted but that it has failed to act. However, although the object of article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life (*ibid.*, p. 17, para. 32).

²⁵ **Tip for the facilitator:** The *Airey* case is a good example to show that civil and political rights may also require positive State action for their fulfilment and that there is no clear distinction between the field of civil and political rights and that of economic and social rights.

Another example that shows the need for forceful State action in order to comply with civil rights, for instance, is **the prohibition of torture**. Legislation outlawing torture exists in numerous countries, yet torture is often systematic and widespread due to the failure of the Government to take positive action to eradicate it.



Exercise No. 3

The notion of core obligations with regard to economic, social and cultural rights

Have the participants work in groups of four to six persons in order to discuss the notion of a legal minimum or core obligations. Have the participants analyse the advantages and disadvantages with such a legal notion bearing in mind the following questions:

- Given that international human rights law per se constitutes minimum legal obligations that States must comply with in order to protect the human person, can the notion of minimum or core obligations be considered consistent with this law?
- How is it possible objectively to define the core obligations that would ensure satisfaction of the minimum essential level of the various economic, social and cultural rights? What difficulties would such an exercise present? Who should determine the normative content of the core obligations? Would it be appropriate for a court to determine in the first instance the minimum core content of a right? If not, why would it not be appropriate?
- The Committee on Economic, Social and Cultural Rights has held that the minimum core obligations under the International Covenant on Economic, Social and Cultural Rights constitute obligations non-compliance with which cannot be justified under any circumstances, since they are “non-derogable”. How can the use of the term “non-derogable” be explained or justified in this context? In contrast to the International Covenant on Civil and Political Rights (art. 4), the International Covenant on Economic, Social and Cultural Rights contains no article permitting **derogations** from the treaty obligations but only a general **limitation** provision (art. 4). Is it legally correct for the Committee to use the term “non-derogable” to explain the absolute legal nature of the core obligations? Is it useful?

C. Subject for discussion

The subject chosen for **exercise 2** above can also be used as a discussion theme:

Similarities, differences and links between economic, social and cultural rights and civil and political rights: Misconceptions and reality

The discussion should focus on the same aspects as those explained above.

D. Role play²⁶

This case concerns three persons – Pablo, Maria and Anna – who are living with AIDS. Anna is a widow who is bringing up her three children alone. They are represented in the lawsuit described below by the organization “Positive Living”, the members of which all live with HIV, as well as by the Clinic for Public Interest Actions of Stadtown University in Exland.

None of the petitioners can afford to buy the expensive medication that is required in order to reverse some of their symptoms and stem the advance of their potentially fatal disease. Moreover, the Exland health authorities have refused to reimburse the medical costs they have incurred as a consequence of AIDS. They are trapped. Unable to afford the necessary but expensive medical treatment, their health is steadily and inexorably deteriorating. However, there may be one hope: Pablo, Maria and Anna believe that the health authorities have wrongly denied them free medical treatment. By virtue of Supreme Decree No. 263 of 21 March 2010, the Exland Ministry of Health decided that the diagnosis and treatment of all sexually transmitted diseases should be free. According to the express wording of article 2 of the Decree, this rule also covers AIDS. In practice this rule is complied with in all cases *except* with regard to HIV and AIDS.

The Clinic and Positive Living brought other similar cases in 2009, which were declared inadmissible, and others again in 2010, which were declared admissible but rejected on their merits. In the meantime, almost one third of the petitioners have died while waiting for medical treatment that might have improved their quality of life and prolonged their lives.

The right to life is protected by the Exland Constitution. According to the lawyer for the Ministry of Health, the courts are not competent to rule on the question of free medication.

1. You are the **lawyer** for Pablo, Maria and Anna:
 - Draw up the arguments you want to make before the Court of Appeals; earlier cases have been lost, you must be convincing in order to have the Court change the jurisprudence; fine-tune in particular your arguments with regard to the right to life and the right to an effective remedy;
 - Invoke the relevant legal provisions of both domestic and international law, and invoke international case law and/or legal comments in support of your arguments.
2. You are the **lawyer** for the Exland Ministry of Health:
 - Draw up your arguments defending the Government’s position that it is justified in refusing free medical treatment for persons living with HIV or AIDS. Prepare your answer to the arguments of the petitioners’ lawyer concerning the right to life, the right to an effective remedy, and his/her reliance on international human rights law and jurisprudence.

²⁶ **Tip to the facilitator:** This role play is heavily inspired by a case decided by the Court of Appeals in Santiago (Chile) on 28 August 2001. The Ministry of Health was ordered to provide free medical treatment to people living with HIV. The administration of medication to women with HIV has been an issue dealt with by the South African courts. See, for instance, the Order of 4 April 2002 given by the Constitutional Court of South Africa in Case CCT 9/02, *Minister of Health and Others v. Treatment Action Campaign and Others*; the Order can be found at www.concourt.gov.za. Although this Order was temporary, pending the final outcome of the main proceedings in the case, it meant that the Government was obliged immediately to “make Nevirapine available in public health facilities where in the opinion of the attending medical practitioner in consultation with the medical superintendent of a clinic or hospital, it is medically indicated and the preconditions for its prescription already exist” (para. 8 of the Order of 4 April 2002). For follow-up see the above-mentioned website.

3. You are the presiding **judge** in this case. You will draft the final judgement on behalf of the Court of Appeals:
 - Evaluate the arguments of the petitioners and the respondent, and provide your reasoned judgement.

E. Handouts (see CD-ROM)

1. Selected conventions adopted by the International Labour Organization
2. General comments adopted by the Committee on Economic, Social and Cultural Rights on the interpretation of the International Covenant on Economic, Social and Cultural Rights
3. Selected international legal provisions guaranteeing the right to housing
4. Selected international legal provisions guaranteeing the right to health

Chapter 15

PROTECTION AND REDRESS FOR VICTIMS OF CRIME AND HUMAN RIGHTS VIOLATIONS

Contents

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I. NOTE TO FACILITATORS

Chapter 15 of the Manual gives a general description of the protection and redress available to victims of crime and a more detailed analysis of the specific legal obligations that States have to ensure protection and redress for victims of human rights violations.

Since there is no universally binding treaty that regulates protection and redress for victims of crime, the first part of the chapter is based on the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power from 1985 as well as the 1983 European Convention on the Compensation of Victims of Violent Crimes and the Committee of Ministers Recommendation No. R (85) 11 to the Member States of the Council of Europe on the Position of the Victim in the Framework of Criminal Law and Procedure. The main purpose of this part of the chapter is to increase awareness of the importance of paying due attention to the needs, problems and interests of the victims of ordinary crime throughout judicial proceedings.

The second part of the chapter provides an analysis of the duties of States to ensure effective protection of the human rights and fundamental freedoms for all persons within their jurisdiction. Based on existing universal and regional treaties, as well as the jurisprudence of the competent monitoring organs, the chapter details the duties of States to **prevent, investigate, prosecute, punish** and **redress** violations of human rights. The chapter also includes a brief section on the question of **impunity**, seen from a legal perspective as well as in the context of efforts to facilitate reconciliation.



II. PRINCIPAL LEGAL SOURCES

Chapter 15 is based on the following legal texts:

A. Universal instruments

- The International Covenant on Civil and Political Rights, 1966
- The International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- The Convention on the Elimination of All Forms of Discrimination against Women, 1979
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- The United Nations Convention against Transnational Organized Crime, 2000, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the Convention
- The Convention on the Rights of the Child, 1989
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000

- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000

- The Universal Declaration of Human Rights, 1948
- The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985
- The Vienna Declaration and Programme of Action, 1993
- The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005
- Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, 2005
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, 1989
- The Declaration on the Protection of All Persons from Enforced Disappearance, 1992
- The International Convention for the Protection of All Persons from Enforced Disappearance, 2006
- The Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2000

B. Regional instruments

- The African Charter on Human and Peoples' Rights, 1981
- The American Convention on Human Rights, 1969
- The Inter-American Convention on Forced Disappearance of Persons, 1994
- The Inter-American Convention to Prevent and Punish Torture, 1985
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994
- The European Convention on Human Rights, 1950
- The European Convention on the Compensation of Victims of Violent Crimes, 1983

- Council of Europe Committee of Ministers Recommendation No. R (85) 11 to the Member States on the Position of the Victim in the Framework of Criminal Law and Procedure, 1985



III. OBJECTIVES OF THE CHAPTER/SESSION

The objectives of Chapter 15 are to:

- Make the participants aware of the effects that crime and human rights violations may have on the victims;
- Familiarize the participants with the existing international legal rules for the protection and redress of victims of crime and human rights violations;
- Identify the steps that States must take in order to provide redress and protection for victims of crime and human rights violations;
- Increase the awareness of participants of their own potential as judges, prosecutors and lawyers in protecting victims of crime and human rights violations.



IV. MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED

The main points to be brought out and the key issues to be discussed with the participants in the light of the international legal rules dealt with in Chapter 15 are:

- How the participants view the needs, problems and interests of victims of ordinary crime;
- The types of legal protection and/or redress for **victims of ordinary crime** in the country where the participants work; participants should be encouraged to give examples, such as with regard to persons abused or maltreated by common criminals;
- Whether victims of crime face any special problems in the country where the participants carry out their professional responsibilities;
- If so, the participants should explain what these problems are and what is being done to remedy the situation;
- Whether there are any particularly vulnerable groups of victims in the country where the participants work, such as abused women or children;
- If so, the participants should explain, for instance, what is being done to protect them if they report the perpetrator of the abuse;
- Whether any measures are being taken in the country where the participants work in order to protect witnesses whose life might be in danger following their testimony;
- What types of legal protection and/or redress for **human rights violations** exist in the country where the participants work for the following categories of people, among others:
 - Detainees who consider that they are being arbitrarily detained;
 - Detainees who are subjected to ill-treatment, in particular women and children;
 - Persons detained incommunicado;

- Victims or their dependants in cases of abduction, enforced disappearance or torture, or extrajudicial killings;
- Offenders whose trials have not respected basic due process guarantees;
- Women and children who are subjected to State, community or domestic abuse, or the threat of such abuse;
- Persons subjected to gender, racial or other kinds of discrimination;
- Whether victims of human rights violations face any special problems in the country where the participants carry out their professional responsibilities;
- If so, the participants should explain what these problems are and what is being done to remedy the situation;
- Whether there are, from this point of view, any specifically vulnerable groups in the country where the participants work;
- If so, the participants should explain who they are, what their problems are, and what is being done to help them;
- How the participants perceive their role as judges, prosecutors and/or lawyers in ensuring effective protection and redress for victims of human rights violations;
- How the participants view amnesty or impunity laws, which imply that perpetrators of crime and human rights violations will not be prosecuted or punished for their unlawful acts;
- Under what circumstances, in the view of the participants, amnesties or pardons for serious human rights violations could be considered;
- How the participants would deal with the victim's right to justice in such cases.



V. SESSION PLANNING CHART FOR CHAPTER 15



















Key points/activities	Method	Media	Time
1. Objectives of Chapter 15	Presentation	Computer slides, flip chart	5 minutes
2. Course presentation I: Based on Chapter 15 of the Manual and the main points set out in sections III and IV above, the team presents the main points relating to protection and redress for victims of crime : a. the notion of a victim of crime; b. the treatment of victims in the course of the administration of justice: police, prosecutors, courts; c. the victims' rights to protection of their private life and safety; d. restitution, compensation and assistance to victims of crime. Explanation of group work (case study or other exercise)	Interactive presentations	Computer slides, flip charts, stickers, handouts with standards, principles	30 minutes
3. Stretch break and group formation			5 minutes
4. Group work on case study or other exercise		Flip charts, etc., as necessary	25 minutes
5. Stretch break			5 minutes
6. Report back	Groups report back on case study or other exercise	Flip charts, etc., as necessary	30 minutes
7. Coffee			20 minutes
			Total time for part I: 2 hours























Key points/activities	Method	Media	Time
<p>8. Course presentation II: Based on Chapter 15 of the Manual and the main points set out in section III above, the team presents the main points relating to protection and redress for victims of human rights violations:</p> <ul style="list-style-type: none"> a. the notion of a victim of a human rights violation; b. the general duty to ensure the effective protection of human rights; c. the duty of prevention; d. the duty to provide domestic remedies; e. the duty to investigate, prosecute and punish; f. the role of victims during investigations and court proceedings; g. the duty to provide redress for human rights violation; h. the problem of impunity for human rights violations. <p>Explanation of group work (case study or other exercise)</p>	Interactive presentations	Computer slides, flip charts, stickers, handouts with standards, principles	45 minutes
9. Stretch break and group formation			5 minutes
10. Group work on case study or other exercise		Flip charts, etc., as necessary	40 minutes
11. Stretch break			5 minutes
12. Group work on case study or other exercise		Flip charts, etc., as necessary	25 minutes
			Total time for part II: 2 hours
			Total time for Chapter 15: 4 hours





















VI. TRAINING MATERIALS

A. Computer slides (see CD-ROM)

-  1. Learning objectives
-  2. Questions I
-  3. Questions II
-  4. Questions III
-  5. Questions IV
-  6. Questions V
-  7. Relevant legal instruments I: Legal instruments relating to the protection of and redress for victims of crime
-  8. Relevant legal instruments II: Universal instruments relating to the protection of and redress for victims of crime and human rights violations (1)
-  9. Relevant legal instruments III: Universal instruments relating to the protection of and redress for victims of crime and human rights violations (2)
-  10. Relevant legal instruments IV: Universal instruments relating to the protection of and redress for victims of crime and human rights violations (3)
-  11. Relevant legal instruments V: Regional instruments relating to the protection of and redress for victims of crime and human rights violations
-  12. Key legal texts I: The notion of a victim of crime (1)
-  13. Key legal texts II: The notion of a victim of crime (2)
-  14. Key legal texts III: The notion of a victim of crime (3)
-  15. Victims of crime I: Treatment by the police (1)
-  16. Victims of crime II: Treatment by the police (2)
-  17. Victims of crime III: Treatment by the prosecution (1)
-  18. Victims of crime IV: Treatment by the prosecution (2)

-  **19.** Victims of crime V: Questioning during criminal procedures
-  **20.** Victims of crime VI: Victims of crime and criminal court proceedings
-  **21.** Victims of crime VII: The right to protection of their private life and safety
-  **22.** Redress for victims of crime I: Restitution
-  **23.** Redress for victims of crime II: Compensation (1)
-  **24.** Redress for victims of crime III: Compensation (2)
-  **25.** Redress for victims of crime IV: Assistance
-  **26.** Human rights violations I: The notion of a victim (1)
-  **27.** Human rights violations II: The notion of a victim (2)
-  **28.** The general duty of States to ensure the effective protection of human rights I: Key legal texts (1)
-  **29.** The general duty of States to ensure the effective protection of human rights II: Key legal texts (2)
-  **30.** The general duty of States to ensure the effective protection of human rights III: Key legal texts (3)
-  **31.** The general duty of States to ensure the effective protection of human rights IV: Key legal texts (4)
-  **32.** The general duty of States to ensure the effective protection of human rights V: What it means
-  **33.** The duty of States of prevent human rights violations: What it means
-  **34.** The duty of States to provide domestic remedies I: Key legal provisions (1)
-  **35.** The duty of States to provide domestic remedies II: Key legal provisions (2)
-  **36.** The duty of States to provide domestic remedies III: Key legal provisions (3)
-  **37.** The duty of States to provide domestic remedies IV: Key legal provisions (4)
-  **38.** The duty of States to provide domestic remedies V: Key legal provisions (5)
-  **39.** The duty of States to provide domestic remedies VI: Key legal provisions (6)
-  **40.** The duty of States to provide domestic remedies VII: Key legal provisions (7)

-  **41.** The duty of States to provide domestic remedies VIII: Key legal provisions (8)
-  **42.** The duty of States to provide domestic remedies IX: What it means (1)
-  **43.** The duty of States to provide domestic remedies X: What it means (2)
-  **44.** The duty of States to provide domestic remedies XI: What it means (3)
-  **45.** The duty of States to provide domestic remedies XII: What it means (4)
-  **46.** The duty of States to provide domestic remedies XIII: What it means (5)
-  **47.** The duty of States to provide domestic remedies XIV: The role of the legal professions
-  **48.** The duty of States to investigate, prosecute and punish I: What it means (1)
-  **49.** The duty of States to investigate, prosecute and punish II: What it means (2)
-  **50.** The duty of States to investigate, prosecute and punish III: What it means (3)
-  **51.** The duty of States to investigate, prosecute and punish IV: What it means (4)
-  **52.** The duty of States to investigate, prosecute and punish V: What it means (5)
-  **53.** The duty of States to investigate, prosecute and punish VI: The role of the victim
-  **54.** The duty of States to investigate, prosecute and punish VII: Special responsibilities of the legal professions
-  **55.** The duty of States to investigate, prosecute and punish VIII: Consequences of failure to investigate
-  **56.** The duty of States to provide redress for human rights violations
-  **57.** Impunity for human rights violations I: The legal perspective
-  **58.** Impunity for human rights violations II: Justice, impunity and reconciliation

B. Exercises



Exercise No. 1

Victims of crime

Have the participants work either in small groups of four or five or, possibly, individually in order to analyse for approximately 30 minutes the questions and issues considered in Chapter 15 regarding the protection of and redress for victims of crime in the country where they work. To the extent possible, they should focus on the legal situation and the treatment of victims of crime from the following perspectives:

- The police;
- The prosecution;
- The courts;
- The questioning of the victim by the police, prosecutors and judges;
- The enforcement stage;
- The availability of measures for special protection at the investigation and enforcement stages;
- The availability of compensation and other forms of reparation for redressing the effects of the crime committed;
- The possible existence of conflict resolution schemes;
- Proposals for improving the victim's situation in the administration of criminal justice as well the means available to heal the breach committed;
- Simple measures that can be adopted by members of the legal professions to improve the treatment of victims of crime.

The purpose of this exercise is to have the participants list three or four of what they consider to be the most pressing problems that exist in their country with regard to the treatment of victims of crime in the criminal justice process, as well as three or four measures that can, or should, be taken to improve the situation.



Exercise No. 2 *Victims of human rights violations*

Have the participants work either in small groups of four or five persons or, possibly, individually in order to analyse for approximately 30 minutes the questions and issues considered in Chapter 15 insofar as they concern victims of human rights violations. Depending on the situation in their country, they might focus their analysis on:

- The existence of effective domestic remedies for alleged violations of human rights, in particular the existence of judicial remedies;
- The efficiency – or lack of efficiency – in the way the police, prosecutors and the courts process alleged violations of human rights, such as extrajudicial killings, torture and other forms of ill-treatment, acts of racial or other forms of discrimination, and gender-based discrimination, including domestic violence, sexual harassment, and so on;
- The existence of independent and impartial complaints procedures for persons deprived of their liberty;
- The existence of means of redress for victims of human rights violations, such as restitution, compensation and rehabilitation as well as other forms of reparation and assistance;
- The existence of impunity;
- Proposals for improvement with regard to these issues, among others.

The aim of this exercise is to have the participants define no more than three or four problems that exist in their country linked to the effective protection of human rights, and suggest measures that can or should be taken to resolve these problems.

C. Subjects for discussion

*1. Victims of crime*²⁷

Organize a round-table, general, or small-group discussion around the following subject:

How to make good the harm done by crime:

Is mediation/conciliation and/or reparation between the offender and the victim a realistic way to deal with the effects of crime?

During the debate, the following issues may be considered, among others:

- The possible advantages and disadvantages of mediation and conciliation compared to traditional punitive sentencing;
- Whether mediation/conciliation or reparation should be taken into account in the final criminal justice decision; participants should try to explain their views;
- Whether, if the mediation/conciliation does influence the sentence imposed on the offender, this is fair to the victim, who often feels guilty about what happened and who may thus feel obliged to accept the offender's offer out of culpability;

²⁷ **Information for the facilitator:** The proposed theme for this discussion was inspired by: Martin WRIGHT, *Justice for Victims and Offenders: A Restorative Response to Crime*, 2 ed. (Winchester, Waterside Press, 1996).

- If mediation/conciliation or reparation cannot be taken into account, whether this could be a factor that dissuades offenders from repairing the breach;
- The effect of mediation/conciliation or reparation between the victim and the offender on the principle of the presumption of innocence.

2. Victims of human rights violations

Organize a round-table, general, or small-group discussion around the following subject:

The duty of States to prevent, investigate, prosecute, punish and provide redress for violations of human rights: The role of judges, prosecutors and lawyers

During the debate, the following issues may be considered, among others:

- Identification of specific problems that impede or make it difficult for the legal professions to fulfil their respective responsibilities to investigate, prosecute or represent the victim, and so on;
- Specific measures that could be taken by the legal professions immediately in order to fulfil their responsibilities without the need for specific legislation;
- Identification of measures that could be taken to improve the position of the victim of human rights violations in the course of the judicial process;
- Identification of measures that could be taken to protect the victim from intimidation, retaliation or violence and to assist the victim of human rights violations during the investigation;
- Identification of measures that could be taken to improve the position of the offender, who should at all times be allowed the benefit of due process guarantees, including the right to the presumption of innocence.

D. Case study/role play²⁸

PART I: THE FACTS

Background information

Exland is going through a difficult time with one of its minority groups, some members of which are engaged in an armed confrontation with the Government for the purpose of gaining increased respect for their people's specific language, traditions and culture. Members of this minority group are not allowed to form a political party, learn their own language in school or use it officially. Nor are they allowed to publish books in their own language. The Government adamantly resists demands for official recognition of their language and culture, since it is afraid that this would endanger the security of the country as a whole and thus national unity. It is determined to wipe out what it considers to be a terrorist movement, and it has enlisted the army and special security forces in the fight against this group, which has been declared unlawful. The conflict has left thousands of people dead or injured on both sides.

²⁸ **Tip to the facilitator:** This case is inspired by an application decided by the European Court of Human Rights: *Case of Aksoy v. Turkey, Judgement of 18 December 1996, Reports 1996-VI*, p. 2260. Depending on the country where the training takes place, the treaty argued in the second part of this exercise could be changed to the American or European Convention on Human Rights or the African Charter on Human and Peoples' Rights. This case study/role play can be used as an exercise in the use of domestic law or international human rights law, or both. The participants should use the knowledge they have gained from Chapter 15 when discussing the issues involved or arguing their roles as indicated below. The facilitator may want to let the participants work on this case study/role play overnight and allow them extra time to argue the case in the plenary group.

The facts relating to the case of Zeti

Zeti was taken into custody on 15 December 2009. Approximately 15 policemen came to his home, accompanied by a man called Hans, who had identified Zeti as a member of the outlawed movement. Zeti denied knowing Hans, whom he had never even seen. Two days later, Zeti was arrested on suspicion of aiding and abetting the terrorist movement by distributing tracts on its behalf.

Zeti was transferred to Stadtown Antiterrorist Headquarters, where he was interrogated, under the threat of torture about whether he knew Hans. It was widely known that torture was frequently carried out on suspects held at the Antiterrorist Headquarters. Zeti kept denying any knowledge of Hans and the investigators therefore stepped up the pressure on him to confess. For the next two days Zeti was tortured about every two hours. As a result of the torture he lost the movement of his arms and hands. He was initially refused permission to see a doctor. A few days later, however, he was seen by a doctor from the medical service of the Stadtown Prefecture. In his brief medical report the doctor stated that Zeti bore no traces of violence. He had asked Zeti how his arms had been injured, but was told by a police officer that Zeti had been the victim of an accident. The doctor commented, laughingly, that everyone seemed to have an accident in the detention centre.

Zeti was released on 3 January 2000 after two weeks in custody. Immediately before his release, he had been brought before the Stadtown Public Prosecutor, but he did not dare to complain for fear of retribution. His deplorable physical state was obvious. Zeti was admitted to hospital, where he was diagnosed as suffering from bilateral radial paralysis, that is, paralysis of both arms caused by nerve damage to the upper arms. The public prosecutor eventually dropped the case against Zeti on the ground that there was not enough evidence to bring criminal charges against him.

PART II: QUESTIONS

For the purpose of this exercise, it is presumed that torture is outlawed in Exland and that the country has ratified the International Covenant on Civil and Political Rights.

The domestic level

1. You are Zeti's **lawyer**: What steps would you take in the specific circumstances of this case in order to have the alleged crime elucidated, the offender prosecuted and punished and Zeti obtain redress? Argue the case from the point of view of both domestic and international law. Take Zeti's different interests into consideration in your argumentation.
2. You are the **prosecutor** who saw Zeti before deciding his release from detention: What steps would you take on seeing that Zeti could not move his arms and hands? Argue the case from the point of view of both domestic and international law, taking into account the pressure you are under to respond effectively to the serious threat posed to your country because of the insurgent movement.
3. You are the **police officer** receiving a complaint from Zeti's lawyer: What steps would you take in order to deal with this complaint? Argue your case from the point of view of both domestic and international law, taking into account the numerous allegations of torture you receive and the pressure you are under from the Chief Superintendent to deal efficiently with the threat of terrorism.
4. You are the **prosecutor** who receives the result of the police investigation and has to decide whether to go ahead with a prosecution of the security officers at the Stadtown Antiterrorist Headquarters. What will you do? The facts seem clear, but the situation is difficult, and you do not want to undermine the work of the State Security Forces. After all, they have made some progress recently in the struggle against terrorism. You are, however, annoyed that your prosecutor colleague who saw Zeti before his release did

not intervene at that particular time to take the necessary action. What could, and should, you do about his failure to act?

5. You are the **judge** who is finally asked to decide the case: What will you do? The law is clear and the facts of Zeti's case appear clear too, but the identified offenders refuse to talk or to cooperate in any way with the investigation. You have also received threats to your life if you pursue the case. Argue your decisions from the point of view of both domestic and international law.

The international level

For the purposes of this part of the exercise it is assumed that the investigations stalled at the domestic level and that, in spite of the fact that torture is clearly outlawed in Exland, the criminal judicial process failed. Zeti needs help for his injuries which make it impossible for him to work. He decides to let his lawyer bring a complaint to the Human Rights Committee. However, he receives death threats and, in the course of the procedure, Zeti is shot and killed. His father is devastated and decides to proceed with the case. He wants to have the torture issue clarified and the guilty punished, and he wants to know who killed his son.

1. You are the **lawyer** who argues the case on behalf of both the deceased victim and his father: Bring out as many arguments as you can as to:
 - (a) The inefficiency of domestic law in remedying the various grievances;
 - (b) The substantive provisions of international law (the right to life, the right to freedom from torture);
 - (c) The State's legal duties as analysed in Chapter 15;
 - (d) Compensation for Zeti's father for the alleged violation of his own rights.
2. You are the lawyer for the **Government** trying to defend the actions taken at the domestic level. Try to justify what happened by referring to relevant domestic and international law. You should argue the following points:
 - (a) The alleged treatment to which Zeti was subjected while in detention;
 - (b) The alleged failure of the domestic criminal judicial process to investigate the torture; link your arguments to the legal duties explained in Chapter 15;
 - (c) The alleged responsibility of your Government in the killing of Zeti;
 - (d) The issue of compensation for Zeti's father.

E. Handouts (see CD-ROM)

1. Selected books, reports and websites regarding victims of crime and human rights violations
2. The United Nations Convention against Transnational Organized Crime, 2000: Article 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
3. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 (see Chapter 9, handout 9.2, to be provided by the facilitator)
4. The European Convention on the Compensation of Victims of Violent Crimes and Council of Europe Recommendation No. R (85) 11 of the Committee of Ministers on the Position of the Victim in the Framework of Criminal Law and Procedure (to be provided by the facilitator)

Chapter 16

THE ADMINISTRATION OF JUSTICE DURING STATES OF EMERGENCY

Contents

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I. NOTE TO FACILITATORS

Chapter 16 of the Manual provides some basic information about the main legal principles in international law that condition the right of States to resort to measures derogating from their legal obligations in the field of human rights. The chapter describes the notion of public emergency in the international law of human rights, including a brief account of the dilemma that faced the drafters of the International Covenant on Civil and Political Rights and their final acceptance of the derogation provision in article 4 after several protections against the abusive use thereof had been inserted into the text. While the term “derogation” from human rights obligations is used in the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the American Convention on Human Rights, the American Convention also uses the term “suspension” and “suspension of guarantees”, as does the Inter-American Court of Human Rights. Hence, the terms are used interchangeably here to take into account the regional legal framework and terminology used in the regional human rights framework for the Americas.

Second, the chapter explains in some detail those rights and legal obligations which States are not in any circumstances allowed to derogate from, regardless of the severity of the emergency confronting them. Third, an analysis is made of the principle that measures derogating from human rights obligations must not go beyond what is “strictly required by the exigencies of the situation”. Fourth, the chapter deals briefly with the remaining conditions for the lawful derogation from human rights obligations: the condition of consistency with other international legal obligations, the prohibition of discrimination and the condition of international notification.

Finally, the chapter contains a brief section on the role of the legal professions in ensuring the effective protection of human rights in emergencies and ends with some concluding remarks.



II. PRINCIPAL LEGAL SOURCES

Chapter 16 is based on the following legal texts:

A. Universal instruments

- The International Covenant on Civil and Political Rights, 1966
- The International Covenant on Economic, Social, and Cultural Rights, 1966
- The International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- The Convention on the Elimination of All Forms of Discrimination against Women, 1979

- The Convention on the Rights of the Child, 1989
- The Declaration on the Protection of All Persons from Enforced Disappearances, 1992
- The International Convention for the Protection of All Persons from Enforced Disappearance, 2006

B. Regional instruments

- The African Charter on Human and Peoples' Rights, 1981
- The American Convention on Human Rights, 1969
- The Inter-American Convention to Prevent and Punish Torture, 1985
- The Inter-American Convention on Forced Disappearance of Persons, 1994
- The European Convention on Human Rights, 1950
- The European Social Charter, 1961, and the European Social Charter (Revised), 1996



III. OBJECTIVES OF THE CHAPTER/SESSION

The objectives of Chapter 16 are to:

- Familiarize course participants with the specific legal rules that condition the right of States to derogate from international human rights obligations;
- Provide details of the non-derogable rights and obligations;
- Familiarize the participants with the basic principles conditioning the derogability of human rights;
- Create awareness among the participating judges, prosecutors and lawyers of their essential role as pillars of the enforcement of the rule of law, including the protection of human rights, also in states of emergency;
- Stimulate discussion on, and awareness of, alternative conflict resolution measures.



IV. MAIN POINTS TO BE MADE AND KEY ISSUES TO BE DISCUSSED

The main points to be brought out and the key issues to be discussed with the participants in the light of the international legal rules relating to public emergencies as described in Chapter 16 are:

- Whether it is possible in the legal system within which the participants work to derogate from the full enjoyment of human rights and fundamental freedoms;
- If so, the participants should explain:
 - The circumstances in which this can be done;
 - Which organ decides;
 - Which rights can be affected by a decision to derogate from, or suspend, the full enjoyment thereof;
- Should a state of emergency be declared in the country where the participants work, what remedies are available to:
 - Challenge the decision to declare the state of emergency;
 - Challenge the decision to derogate from the full enjoyment of specific human rights;
 - Examine the full enjoyment of the non-derogable rights;
 - Challenge the need for an emergency measure as applied in a specific case (e.g., extrajudicial deprivation of liberty for a suspected terrorist);
- The purpose of a declaration of a state of emergency and the derogation from human rights obligations;
- What the term “public emergency” means. Whether it would cover a declaration of martial law, state of siege, state of exception, or state of alarm if the resulting action was also to impose derogations from human rights obligations;
- Why it could be necessary in order to deal with a public emergency to derogate from the full enjoyment of human rights and fundamental freedoms;
- Whether there could be any reason why it might be counterproductive for a Government to derogate from the full enjoyment of some human rights in order to deal with a severe crisis;
- Whether, in the participants’ view, there are any human rights that might be particularly vulnerable in a public emergency;
- Whether, in the participants’ view, there might be alternative means other than derogations from human rights obligations by which States could deal constructively with a public emergency that threatens the life of the nation.





















V. SESSION PLANNING CHART FOR CHAPTER 16






















Key points/activities	Method	Media	Time
1. Objectives of Chapter 16	Presentation	Computer slides, flip chart	5 minutes
2. Course presentation: Based on Chapter 16 in the Manual and the main points set out in sections III and IV above, the team presents the main points relating to: a. the notion of public emergency in international human rights law; b. the non-derogable rights and obligations in international human rights law.	Interactive presentations	Computer slides, flip charts, stickers	40 minutes
3. Stretch break			5 minutes
4. Presentation of Chapter 16 continues: c. the condition of strict necessity; d. the condition of consistency with other international legal obligations; e. the prohibition of discrimination; f. the condition of international notification.	Interactive presentations	Computer slides, flip charts, stickers	40 minutes
5. Break			20 minutes
6. Group work on exercise or role play		Flip charts, etc., as necessary	60 minutes
7. Stretch break			10 minutes
8. Report back	Groups report back on exercise or role play		60 minutes
			Total time: 4 hours






















VI. TRAINING MATERIALS

A. Computer slides (see CD-ROM)

-  1. Learning objectives I
-  2. Learning objectives II
-  3. Questions I
-  4. Questions II
-  5. Questions III
-  6. Questions IV
-  7. Key legal instruments I: Universal instruments
-  8. Key legal instruments II: Regional instruments
-  9. Key legal texts I: The notion of a public emergency/the notion of an exceptional threat (1)
-  10. Key legal texts II: The notion of a public emergency/the notion of an exceptional threat (2)
-  11. Key legal texts III: The notion of a public emergency/the notion of an exceptional threat (3)
-  12. Key legal texts IV: The notion of a public emergency/the notion of an exceptional threat (4)
-  13. Derogations from international human rights treaties: The *travaux préparatoires*, lessons learned I
-  14. Derogations from international human rights treaties: The *travaux préparatoires*, lessons learned II
-  15. The notion of a public emergency/the notion of an exceptional threat I
-  16. The notion of a public emergency/the notion of an exceptional threat II
-  17. The notion of a public emergency/the notion of an exceptional threat III
-  18. The notion of a public emergency/the notion of an exceptional threat IV

-  19. Non-derogable rights and obligations I: Key legal texts (1)
-  20. Non-derogable rights and obligations II: Key legal texts (2)
-  21. Non-derogable rights and obligations III: Key legal texts (3)
-  22. Non-derogable rights and obligations IV: The right to life
-  23. Non-derogable rights and obligations V: The prohibition of torture, or cruel, inhuman or degrading treatment or punishment (1)
-  24. Non-derogable rights and obligations VI: The prohibition of torture, or cruel, inhuman or degrading treatment or punishment (2)
-  25. Non-derogable rights and obligations VII: The right to humane treatment
-  26. Non-derogable rights and obligations VIII: The right to freedom from slavery and servitude
-  27. Non-derogable rights and obligations IX: The right to freedom from ex post facto laws (1)
-  28. Non-derogable rights and obligations X: The right to freedom from ex post facto laws (2)
-  29. Non-derogable rights and obligations XI: The principle of *ne bis in idem*
-  30. Non-derogable rights and obligations XII: The right to recognition as a legal person
-  31. Non-derogable rights and obligations XIII: The right to freedom of thought, conscience and religion
-  32. Non-derogable rights and obligations XIV: The right not to be imprisoned merely on the ground of inability to fulfil a contractual obligation
-  33. Non-derogable rights and obligations XV: The rights of the family
-  34. Non-derogable rights and obligations XVI: The right to a name
-  35. Non-derogable rights and obligations XVII: The rights of the child
-  36. Non-derogable rights and obligations XVIII: The right to a nationality
-  37. Non-derogable rights and obligations XIX: The right to participate in Government
-  38. Non-derogable rights and the right to effective procedural and judicial protection I
-  39. Non-derogable rights and the right to effective procedural and judicial protection II

-  40. Non-derogable rights and the right to effective procedural and judicial protection III
-  41. Non-derogable rights and the right to effective procedural and judicial protection IV
-  42. Derogations from human rights: the condition of strict necessity I: General interpretative approach (1)
-  43. Derogations from human rights: the condition of strict necessity II: General interpretative approach (2)
-  44. Derogations from human rights: the condition of strict necessity III: The right to effective remedies
-  45. The condition of strict necessity, the right to liberty and special powers of arrest and detention I
-  46. The condition of strict necessity, the right to liberty and special powers of arrest and detention II
-  47. The condition of strict necessity, the right to liberty and special powers of arrest and detention III
-  48. The condition of strict necessity, the right to liberty and special powers of arrest and detention IV
-  49. The condition of strict necessity, the right to liberty and special powers of arrest and detention V
-  50. The condition of strict necessity, the right to liberty and special powers of arrest and detention VI
-  51. The condition of strict necessity, the right to liberty and special powers of arrest and detention VII
-  52. The condition of strict necessity, the right to liberty and special powers of arrest and detention VIII
-  53. The condition of strict necessity, the right to a fair trial and special tribunals I
-  54. The condition of strict necessity, the right to a fair trial and special tribunals II
-  55. The condition of strict necessity, the right to a fair trial and special tribunals III
-  56. The condition of strict necessity, the right to a fair trial and special tribunals IV
-  57. The condition of strict necessity, the right to a fair trial and special tribunals V
-  58. The condition of consistency with other international obligations



The condition of non-discrimination I



The condition of non-discrimination II



The condition of international notification I



The condition of international notification II

B. Exercises²⁹

Exercise No. 1

Have the participants work either in small groups of four or five persons or, possibly, individually in order to analyse, for approximately 30 minutes, the issues considered in Chapter 16 in the light of the legal system in the country where they work. The participants should preferably choose no more than three or four important issues, and define the concerns and/or problems these issues may pose in their respective country with regard to the effective protection of human rights during states of emergency.

If, and to the extent that, the protection of human rights in their domestic law falls short of the applicable international standards described in Chapter 16, the participants should try to develop suggestions as to how these shortcomings might be remedied in law and in practice.

Examples of issues that might be dealt with in connection with this exercise are:

- Whether, and to what extent, the notion of public emergency (which may be expressed in terms such as state of exception, state of emergency, state of siege, state of alarm, martial law, etc.) conforms to the emergency notions contained in article 4 (1) of the International Covenant on Civil and Political Rights, article 27 (1) of the American Convention on Human Rights and/or article 15 (1) of the European Convention on Human Rights;
- Whether, and to what extent, the rights and obligations that are non-derogable under international human rights law have been made non-derogable under domestic law;
- Whether any problems might exist relating to the **practical** implementation of the non-derogable rights in domestic law;
- Whether the other conditions for derogating from human rights obligations under international law are reflected in the relevant domestic law – the condition of strict necessity; the condition of consistency with the State's other international obligations and the prohibition of discrimination;
- The existence of judicial or administrative remedies and safeguards to prevent the unlawful resort to, and application of, emergency measures.

²⁹ **Information to the facilitator:** The exercises and discussion themes as well as the case study in this chapter are in the **first** place aimed at having the participants apply the important information learned during the training session on Chapter 16. Their **second** purpose is to encourage the participants to think about the problems at the root of the emergency and to discuss how these problems can be resolved by means other than derogations from human rights obligations. The view has been expressed that, although “they may well be useful and indispensable in some situations”, it “is essential” that such derogations “are not perceived as some kind of panacea for the purpose of solving conflictual situations”; experience has shown that derogations from human rights obligations “may not in all circumstances be the best means of restoring peace and order, at least in the long term”, and extraordinary “limitations on the enjoyment of human rights should therefore merely be considered to be one of several conflict-solving tools, which may also include the taking of political, social, economic and cultural initiatives and measures at various levels of society” (Anna-Lena Svensson-McCarthy, *The International Law of Human Rights and States of Exception*, p. 723).

 **Exercise No. 2**

This exercise is aimed at participants working in a country facing an actual emergency or where there is a latent crisis simmering with the potential to develop into a fully fledged public emergency threatening the life of the nation. Have the participants work either in small groups of four or five persons or, possibly, individually in order to critically analyse, for approximately 30 minutes:

- Their own capacity as judges, prosecutors and/or lawyers to protect society in general against an unlawful or unwarranted declaration of a state of emergency, and, further, to protect individuals against the wrongful or abusive application of emergency measures; and
- Possible alternative methods, that is, methods other than interferences with the enjoyment of human rights, aimed at resolving the conflicts underlying the actual or potential emergency.

C. Subject for discussion

One of the following subjects can be used as a discussion theme in particular in countries where societal conflicts are likely to lead to the declaration of a state of emergency and the resort to derogations from selected human rights:

A State in crisis: Can the full protection of human rights be an impediment to the return to peace and security?

or

**Derogations from human rights obligations in times of crisis:
The benefits of and limitations on their use**

In either case, the moderator should ensure that the participants focus in a serious and constructive manner on the issues listed below. The moderator should have prepared the subject carefully ahead of time and be able to come up with cases, either real or fictitious, to illustrate particular emergencies from a legal point of view, in order to help guide the discussion. The choice of an example of an emergency with which the participants are familiar may be even more helpful in order to stimulate the debate. Issues that should be covered in the discussion are:

The origin of the emergency, or, in other words, the likely cause or causes of the emergency. The discussion should quickly move from dealing with fictitious emergencies which are created by the Government itself through its resort to the derogation of human rights for the purposes of perpetuating itself in power and silencing uncomfortable opposition. This kind of emergency cannot justify derogations from international human rights obligations. Try instead to have the participants focus on a crisis which constitutes a true public emergency threatening the life of the nation (International Covenant on Civil and Political Rights, European Convention on Human Rights) or the independence or security of the State (American Convention on Human Rights). By defining the origin of the emergency, the participants may be helped to find solutions.

The advantages or benefits that the State can draw from derogating from its human rights obligations in order to find a solution to an emergency. In this respect, have the participants define the **purpose** of the introduction of a declaration of a state of emergency and the resort to measures of derogation. The moderator must make clear that the ultimate purpose of derogations is the restoration of a constitutional order wherein human rights can again be fully protected.

Whether, and if so why, derogations from **specific rights** might be **beneficial** to the restoration of normality. Examples should be given if possible.

Whether, and if so why, derogations from **specific rights** might in fact create an **impediment** to the return to normality. Examples should be given if possible.

Alternative means of conflict resolution aimed at restoring a constitutional order wherein human rights can again be fully guaranteed. The discussion should cover possible measures within the legal, political, social, economic and cultural fields and at the national, regional and local levels of society as necessary.

D. Case study³⁰

Background information

Exland is going through a difficult time with one of its minority groups, some members of which are engaged in an armed confrontation with the Government for the purpose of gaining increased respect for their people's specific language, traditions and culture in general. Members of this minority group are not allowed to form a political party, learn their own language in school or to use it officially. Nor are they allowed to publish books in their own language. To help them fight for their cause, the armed group opposed to the policies of the Exland Government has encouraged people with the same ethnic origin from other countries to help in the fight.

The Government adamantly resists the demand for official recognition of the minority's language and culture since it is afraid that it is going to endanger the security of the country as a whole and thus also national unity. It is determined to wipe out what it considers to be a terrorist movement and has enlisted the army and special security forces in the fight against the group, which has been declared unlawful. The conflict has led to thousands of deaths on both sides.

To deal with the situation and put an end to the violence, which is becoming part of everyday life for most citizens in Exland, the Government has declared a state of emergency in the course of which extrajudicial measures of arrest, detention and internment were introduced under the Terrorist Act 2008. The right to freedom of expression, as well as the right to freedom of movement were also suspended. The Government is also considering the introduction of torture during interrogation of detainees to force them to speak.

Arrest and detention: the police and security forces can arrest people without warrant and keep them detained for 30 days without access to a judge. Once released after this period, many persons have been rearrested for another 30-day period. Detainees have no right to see a lawyer for the first seven days and then only once a week in the presence of a police guard. During the same seven-day period, the detainees cannot inform their family or a friend of their deprivation of liberty.

- **Internment:** the Terrorist Act 2008 allows for indefinite detention of persons suspected of activities jeopardizing the security and integrity of the nation, but with regard to whom the authorities do not have enough evidence to bring a criminal prosecution. A considerable number of suspects have already been interned for up to four years on the basis of this law. No appeal is available to the ordinary courts of law, but an administrative remedy has been introduced the decisions of which are only advisory and which, therefore, do not bind the Government.
- **Freedom of expression:** the media are forbidden from publishing any statement made by members of the outlawed terrorist group or any statement by its sympathizers. Similarly,

³⁰ **Tip to the facilitator:** The basic facts of this case study are the same as in the case study/role play in Chapter 15. New facts have been added due to the declaration of a state of emergency.

they are prohibited from revealing any information that may jeopardize the Government's actions to quell the terrorist activities. One television channel and three newspapers have already been closed down for failure to comply with this strict law.

- **The right to freedom of movement:** in order to try to circumscribe the violence, the Government has forbidden the population in the eastern province to move freely to other parts of the country. Special permits are available for those who need to work outside this province, but they will only be granted exceptionally and in the absence of suspicion of a terrorist past.
- **Torture:** the Government has informed law enforcement officers that they are authorized to resort to any means of interrogation necessary to deal efficiently with the terrorism.

Questions to discuss

The participants should discuss:

- The **lawfulness** of these various measures under the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights or the European Convention on Human Rights as the case may be;
- The **usefulness or potential efficiency** of these emergency measures in fighting the emergency facing Exland;

and, finally,

- Try to suggest other **conflict resolution methods or tools** that might help put an end to the conflict in Exland and return the country to normality.

E. Role play³¹

PART I: THE FACTS

Background information

Exland is going through a difficult time with one of its minority groups, some members of which are engaged in an armed confrontation with the Government for the purpose of gaining increased respect for their people's specific language, traditions and culture in general. Members of this minority group are not allowed to form a political party, learn their own language in school or permitted to use it officially. Nor are they allowed to publish books in their own language.

The Government adamantly resists the demand for official recognition of the minority's language and culture since it is afraid that this would endanger the security of the country as a whole and thus also national unity. It is determined to wipe out what it considers to be a terrorist movement and has enlisted the army and special security forces in the fight against this group, which has been declared unlawful. The conflict has left thousands dead or injured on both sides. There has also been extensive property damage.

³¹ **Tip to the facilitator:** The basic facts are the same as in the previous case study but developed so as to apply to individual cases brought before an international monitoring organ. The reference to the International Covenant on Civil and Political Rights can be changed to the African Charter on Human and Peoples' Rights, the American Convention on Human Rights or the European Convention on Human Rights depending on the region where the training is taking place and the treaty obligations of the country where the participants work. This role play needs preparation and, to ensure maximum benefit, it should therefore preferably be distributed to the participants the day before it is scheduled to take place.

To deal with the situation and put an end to the violence which is becoming part of everyday life for most citizens in Exland, the Government has declared a state of emergency in the course of which extrajudicial measures of arrest, detention and internment were introduced under the Terrorist Act 2008. The right to freedom of expression has also been suspended in relation to all subjects concerning terrorist activities.

The facts relating to the cases of Sherlock and Nelson

Sherlock and Nelson were arrested on 15 October 2008 when they tried to escape the scene of a bomb explosion outside the Exland Parliament. The explosion caused numerous deaths and injured many civilians and was another blow to the Government in its escalating fight against terrorism. In spite of drastic security measures, including numerous hidden cameras in public buildings and at various other public places, one or more persons managed to place the bomb in a car parked outside the Parliament. Sherlock and Nelson were swiftly spotted by a group of five policemen and arrested on the basis of the Terrorism Act 2008 without a warrant. The policemen thought they were behaving oddly. Sherlock and Nelson were not allowed to contact a lawyer for seven days after their arrest and, thereafter, could see their respective lawyers for only half an hour once a week in the presence of two security guards. They were allowed to inform their family members of their deprivation of liberty only after 48 hours.

Sherlock and Nelson filed writs of habeas corpus in order to challenge the lawfulness of their detention. However, the writs were dismissed by the judge for lack of competence, since the arrest and detention fell within the power of the Executive on the basis of the Terrorism Act.

On 28 October 2008, the Exland Minister of Interior ordered Sherlock and Nelson to be interned indefinitely since they were suspected of involvement in unlawful terrorist activities. It was decided not to proceed with a criminal prosecution against them since it was believed that the evidence would not be sufficiently persuasive for a guilty verdict, and the authorities did not want to take the risk of having the suspects acquitted. Sherlock and Nelson would have preferred a trial so that they could prove their innocence.

The internment has by now lasted for three years, and during this time there has been no opportunity to have the lawfulness of the internment decided by an ordinary court of law. The administrative organ created to deal with complaints from interned persons plays only an advisory role. Furthermore, the conditions of detention are harsh and Sherlock and Nelson have been held in isolation in small, dark cells since the outset, and are not even allowed to exercise with other inmates. During the first weeks of their detention and internment they were also regularly subjected to harsh interrogation and were hooded during the questioning. They were kicked and insulted in order to be forced to speak out. Complaints about the ill-treatment have not been considered by the authorities.

Sherlock managed to have an article smuggled out of prison. In the article he criticized the emergency measures as excessive and insisted on his own and Nelson's innocence. However, invoking the state of emergency, all newspapers approached except one refused to publish the article. The newspaper that finally decided to publish the article was confiscated and a heavy fine was imposed. Both Sherlock and the editor-in-chief of the newspaper, George, received a six-month prison sentence for violating the emergency rules.

PART II: QUESTIONS AND ARGUMENTS

Sherlock and Nelson finally decide to complain to the Human Rights Committee about the various aspects of the emergency measures, including, in particular, their arrest, internment and Sherlock's conviction. As could be expected, George, the editor-in-chief, is unhappy about his conviction and has decided to join Sherlock and Nelson's complaint:

1. You are the lawyer submitting the case on behalf of **Sherlock, Nelson and George** to the Human Rights Committee. Develop as many arguments as you can relating to the issues listed below and basing yourself on the relevant articles of the International Covenant on Civil and Political Rights, including article 4:
 - (a) The lawfulness of Sherlock and Nelson's arrest and internment, including the failure to have them tried by an independent and impartial court of law;
 - (b) Their conditions of detention and alleged ill-treatment;
 - (c) The lack of domestic remedies with regard to (a) and (b);
 - (d) Sherlock and George's conviction for having violated the emergency rules by virtue of the publication of Sherlock's article;
 - (e) Argue these issues in the light of the conditions for derogation contained in article 4 of the Covenant.
2. You are the lawyer for the **Government** defending the measures taken to deal with the terrorist activities: You should try to justify the measures taken by the Government and counter the arguments submitted on behalf of Sherlock, Nelson and George under 1 (a) to (e). Relate all your arguments to the relevant provisions of the Covenant.
3. You are members of the **Human Rights Committee**: How would you decide the legal issues arising with regard to points 1 (a) to (e). Argue the points as carefully as possible basing yourself on the relevant provisions of the International Covenant on Civil and Political Rights and citing as many human rights as possible learned during the training.

