

The right to a fair trial

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The right to a fair trial

Amnesty International is a worldwide movement of people working to promote internationally recognized human rights. Its mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination. In this context:

- It seeks the release of all prisoners of conscience. These are people detained for their political, religious or other conscientiously held beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status – who have not used or advocated violence.
- It works for fair and prompt trials for all political prisoners.
- It campaigns for an end to the death penalty, torture, political killings and “disappearances”.

It calls on armed political groups to respect human rights and to end abuses such as the detention of prisoners of conscience, hostage-taking, torture and unlawful killings.

It also seeks to support the protection of human rights by other activities, including its work with the United Nations (UN) and regional intergovernmental organizations, and its work for refugees, on international military, security and police relations, and on economic and cultural relations.

Amnesty International’s work for fair trials

Amnesty International’s fair trial work focuses on trials of prisoners of conscience, of political prisoners or where a death penalty may be imposed. Amnesty International also reports on legislation and procedures which affect the right to fair trial. It has sent trial observers to many countries, has mobilized its membership to seek prompt and fair trials for political prisoners, and has campaigned for the highest possible fair trial standards for the new International Criminal Court, which will try cases of genocide, other crimes against humanity and war crimes when national courts are unwilling or unable to do so.

[photo caption]

Cover photographs all show people who were convicted after an unfair trial. From top to bottom:

Four alleged Muslim Brothers © Cairo Times

Mumia Abu-Jamal, USA © Private

Dr Munawar Anees, Malaysia © Friends of Dr Anees

Martin Puye, Equatorial Guinea © Gervasio Sanchez

Leyla Zana and other Kurdish members of parliament, Turkey © Private

[end caption]

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Fair trial - an essential human right

When individuals face a criminal trial, they are confronted by the machinery of the state. They come into contact with the police, the court system, the prison system, the judiciary. How they are treated when accused of a crime is a test of the state's commitment to respect for human rights. The test is even more severe when the accused is a political prisoner – when the authorities suspect the person of being a threat to those in power.

Justice

Every government has the duty to bring to justice those responsible for crimes. However, when people are subjected to unfair trials, justice is not served. When people are tortured or ill-treated by law enforcement officials, when innocent individuals are convicted, or when trials are manifestly unfair, the justice system itself loses credibility. Unless human rights are upheld in the police station, the detention centre, the court and the prison cell, the government has failed in its duties and responsibilities.

Risk of abuse

The risk of human rights abuse starts at the first moment that official suspicion is raised against a person, through the arrest, in pre-trial detention, during the trial, during all appeals, right through to the imposition of any punishment. The international community has developed fair trial standards which are designed to define and protect people's rights through all these stages.

The right to a fair trial is a basic human right. It is one of the universally applicable principles recognized in the Universal Declaration of Human Rights adopted by the world's governments in 1948 and still the cornerstone of the international human rights system. The right to fair trial has been reaffirmed and elaborated since 1948 in legally binding treaties such as the International Covenant on Civil and Political Rights, and in numerous other international and regional treaties and non-treaty standards, adopted by the UN and by regional intergovernmental bodies.

International standards

These human rights standards were drafted to apply to all legal systems in the world and take into account the rich diversity of legal procedures they set out the minimum guarantees that all systems should provide. The Geneva Conventions, which provide minimum standards of conduct during armed conflict, also contain important fair trial safeguards.

These international human rights standards represent a collective agreement by states on how governments should treat people suspected of crimes.

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Rights before the trial starts

A criminal trial is fair only if the rights of the accused have been respected throughout the process. These are the rights to which everyone is entitled before the trial starts.

The right to liberty

Everyone has the right to personal liberty. An arrest or detention is permissible only if carried out in accordance with the law. It must not be arbitrary. An arrest or detention can only be carried out by personnel authorized by law to do so. People charged with a criminal offence should not normally be held in detention pending trial.

The rights of people in custody to information

Anyone arrested or detained must be notified at once of the reasons for their arrest or detention and of their rights, including their right to a lawyer. They must be informed promptly of any charges against them. This information is essential to allow the person to challenge the lawfulness of their arrest or detention and, if they are charged, to start the preparation of their defence.

The right to the assistance of a lawyer before trial

Everyone in detention or facing a possible criminal charge has the right to the assistance of a lawyer of their choice to protect their rights and to assist in their defence. If the person does not have a lawyer or cannot afford to hire one, a qualified lawyer should be assigned to them free of charge whenever the interests of justice so require. The person must be given adequate time and facilities to communicate confidentially with their lawyer. Access to a lawyer should be immediate.

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Death penalty cases

Amnesty International opposes the death penalty in all cases, on grounds that it is the ultimate cruel, inhuman or degrading punishment and violates the right to life. Under international human rights standards, people charged with crimes punishable by death are entitled to the strictest observance of all fair trial guarantees and to certain additional safeguards, such as the right to seek pardon or commutation of their sentence. These additional safeguards are not, however, a justification for retention of the death penalty.

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The right of detainees to have access to the outside world

People held in custody are entitled to prompt access to families, doctors, a judicial official and, if the detainee is a foreign national, to consular staff or competent international organization. Access to the outside world is an essential safeguard against human rights abuses such as “disappearances”, torture or ill-treatment, and is vital to the process of obtaining a fair trial.

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The right to be brought promptly before a judge or other judicial officer

Anyone deprived of their liberty should be brought promptly before a judge or other judicial officer, so that their rights can be protected.

The right to challenge the lawfulness of detention

Everyone deprived of their liberty has the right to challenge the lawfulness of their detention before a court, and to have the detention reviewed on a regular basis.

The right to trial within a reasonable time or to release from detention

If a person in detention is not brought to trial within a reasonable time, they have the right to be released from detention pending their trial.

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Children on trial

Children are entitled to all the fair trial guarantees and rights which apply to adults, and to some additional special protection.

The best interests of the child must be of primary consideration in all actions concerning children, including those undertaken by courts of law, administrative or legislative bodies. In order to protect the child from stigmatization, the privacy of every child accused of breaking the law must be protected. The state has a duty to ensure that measures affecting children are proportional to the gravity of the offence and take into consideration the personal circumstances of the child. Deprivation of liberty should be a measure of last resort, and for the shortest appropriate time. Juvenile justice systems should promote the physical and mental well-being of juveniles and take into account the desirability of rehabilitating the young person.

The death penalty may not be imposed on anyone who was under 18 at the time the crime was committed, nor life imprisonment without the possibility of release.

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The right to adequate time and facilities to prepare a defence

In order to ensure that the right to defence is meaningful, anyone accused of a criminal offence and their lawyer, if any, must have adequate time and facilities to prepare the defence.

Rights during interrogation

Rights which safeguard people during investigation include the presumption of innocence, the prohibition against torture and ill-treatment, the prohibition against compelling people to testify against themselves, the right to remain silent and the right of access to a lawyer. There are additional safeguards during interrogation, in particular the right to have a lawyer present.

The right to humane conditions of detention and freedom from torture

The right to a fair trial cannot be realized if detention conditions interfere with the ability of the accused to prepare for trial, or if the accused is tortured or ill-treated.

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Rights at trial

These are the rights to which everyone is entitled during the trial proceedings.

The right to equality before the law and courts

The right to equality in the context of the trial process includes a prohibition on discriminatory laws, the right to equal access to the courts and the right to equal treatment by the courts.

The right to trial by a competent, independent and impartial tribunal established by law

The tribunal charged with the responsibility of making decisions in a case must be established by law, and must be competent, independent and impartial.

The right to a fair hearing

The right to a fair hearing lies at the heart of the concept of a fair trial. The right to a fair hearing is specified by a number of concrete rights, such as the right to be presumed innocent, the right to defend

oneself and the right to call and examine witnesses. However, the right to a fair hearing is broader than the sum of the individual guarantees, and depends on the entire conduct of the trial.

The right to a public hearing

The right to a public hearing safeguards the fairness and independence of the judicial process, and helps to maintain public confidence in the justice system. Except in narrowly defined circumstances, court hearings and judgments must be public.

The presumption of innocence

Every person charged with a criminal offence has the right to be presumed innocent until and unless proved guilty according to law after a fair trial.

The right not to be compelled to testify or confess guilt

No one charged with a criminal offence may be compelled to testify against themselves or to confess guilt, in accordance with the presumption of innocence.

Exclusion of evidence elicited as a result of torture or compulsion

Evidence elicited as a result of torture or other coercion, including confessions by the accused, must be excluded by the court.

Retroactive laws and double jeopardy are prohibited

No one may be prosecuted for an act or omission which was not a criminal offence at the time that it was committed. No one may be prosecuted more than once in the same jurisdiction for the same offence.

The right to be tried without undue delay

Everyone charged with a criminal offence has the right to be tried without undue delay. The length of time judged reasonable will depend on the circumstances of the case.

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The right to defend oneself

Everyone charged with a criminal offence has the right to defend themselves, in person or through a lawyer. They have the right to be assisted by a lawyer of their choice, or to have a lawyer assigned to assist them in the interests of justice, free of charge if they cannot afford to pay. They have the right to confidential communications with their lawyer.

The right to be present at trial

Everyone charged with a criminal offence has the right to be tried in their presence, in order to hear the prosecution case and present a defence.

The right to call and examine witnesses

All people charged with a criminal offence have the right to call witnesses on their behalf, and to examine, or have examined, witnesses against them.

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Fair trials during states of emergency and armed conflicts

Some human rights are absolute and may never, in any circumstances, be suspended. However, some treaties permit states to suspend certain fair trial rights in emergencies. Any suspension of fair trial rights by a state must be strictly required by the situation, and reasonable in light of what is necessary to address an emergency threatening the life of the nation.

During armed conflicts, international humanitarian law is applicable. The safeguards set out in the four Geneva Conventions of 1949 and their Additional Protocols include guarantees of a fair trial for people charged with criminal offences. If the armed conflict is international in character, prisoners of war and civilians are protected under the Third Geneva Convention, the Fourth Geneva Convention and Additional Protocol I. In non-international armed conflicts, including civil wars, the safeguards in Article 3 common to the four Geneva Conventions and in Additional Protocol II apply.

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The right to an interpreter and to translation

Everyone charged with a criminal offence has the right to the assistance of a competent interpreter, free of charge, if they do not understand or speak the language used in court. They also have the right to have documents translated.

The right to a public, reasoned judgment within a reasonable time

Judgments must be made public, with limited exceptions, and everyone tried by a court of law has the right to be given reasons for the judgment and to be judged only by decision-makers who have attended the proceedings.

The right not to be subjected to unlawful punishments

Punishments may only be inflicted on people who have been convicted after a fair trial. Punishments must be proportionate and may not violate international standards.

The right to appeal

Everyone convicted of a criminal offence has the right to have the conviction and sentence reviewed by a higher tribunal.

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What you can do

1. Join Amnesty International and become part of a worldwide movement campaigning for an end to human rights abuses. Help us to make a difference.
2. Ask your Amnesty International section if you can support any campaign actions on unfair trials to help protect human rights.
3. Find out more about international standards of fair trial by ordering a copy of Amnesty International's Fair Trials Manual.
4. Make a donation to support Amnesty International's work.

5. Tell your friends, family, neighbours and co-workers about your commitment to human rights.

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