

30 ARTICLES ON THE 30 ARTICLES

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AT 70: STILL WORKING TO ENSURE FREEDOM, EQUALITY AND DIGNITY FOR ALL

Article 10: Right to a Fair Trial

In the U.S. state of Maryland in 1984, an anonymous woman called police to identify a man shown in a police sketch of a suspect: Kirk Bloodsworth. The former Marine, then 22, was promptly arrested for the gruesome rape and murder of a nine-year-old girl. Despite thin and contradictory evidence presented at trial, he was convicted and sentenced to death.

Constantly protesting his innocence, Bloodsworth was to become, in 1993, the first person in the United States freed from death row on the basis of DNA evidence proving innocence. He was released after more than nine years in prison, but not fully exonerated until 2003. Another man pleaded guilty to the crime in 2004.

The right to a fair trial is at the heart of Article 10, one more section of the 1948 Universal Declaration of Human Rights (UDHR) that aims to prevent a repetition of the atrocities of Hitler's Germany, where compliant judges and courts served the aims of the Nazi regime, rather than the cause of justice in the interest of the people. Some guarantees of a fair trial, including the right to presumption of innocence, can also be found in Articles 6, 7, 8 and 11 of the Declaration.

The right to a fair trial has been accepted beyond dispute by every country (even if they do not always honour it). Fair trials not only protect suspects and defendants, they make societies safer and stronger by solidifying confidence in justice and the rule of law.

But what is a fair trial?

The hallmarks of a fair trial include: the right to be present in court; to have a speedy public trial before an independent and impartial court; and to have a lawyer of one's choice, or one provided at no cost. Also fundamental is the right to be presumed innocent until proven guilty, and the right not to be compelled to testify against yourself. These are spelled out in greater detail in the International Covenant on Civil and Political Rights, a legally binding elaboration of some of the core principles covered in the UDHR.

At one stage in Kirk Bloodsworth's long fight to prove his innocence, an appeals court overturned his conviction because he had not benefitted from another requirement for

a fair trial: the right to see evidence. In his case, evidence that pointed to another suspect. After his release, Bloodsworth helped win passage of a law that makes it easier for people in the U.S. to get DNA testing after a conviction – an example of a remedy designed to prevent the repetition of the violation (as described under Article 8 – the Right to Remedy).

As his case shows, standards for what constitutes a fair trial are always being raised, not only in criminal cases, but in civil ones as well. The right to a fair trial is also enshrined in a number of regional human rights documents, such as the African Charter on Human and Peoples' Rights, the European Convention on Human Rights and the American Convention on Human Rights. Developing issues include the quality of transcripts, and the quality of translation in court proceedings.

Issues surrounding the right to a fair trial occur in every country of the world to a greater or lesser degree. Many legal systems contain numerous safeguards to minimize miscarriages of justice – even if they do not always work perfectly – but in some countries such systems are not fully developed, are undermined by corruption or incompetence, or do not work in practice for a variety of other reasons.

The issue is linked not just to the quality of legal safeguards – and the definition of a given crime – but also to the independence of judges, prosecutors and lawyers. This is fundamental: if the key players in the judicial system are subject to political control, or are too afraid to defend or acquit someone whom they know to be innocent of any real crime; or if what is a minor misdemeanour (or the expression of a particular opinion or other fundamental right protected under international law such as freedom of assembly or association) is punishable by a draconian jail sentence or even the death penalty – then the idea of a fair trial becomes illusory.

There are sometimes attempts to politicize or control the judiciary in ways that could threaten suspects' rights to a fair trial, even in countries where the right is fairly well established. In 2018, the European Union's highest tribunal, the European Court of Justice, ordered Poland's government to suspend a law lowering Supreme Court retirement ages that would have obliged two-fifths of its judges to step down. It was widely interpreted as an effort by the government to fill the bench with its own people.

Most worryingly, in a number of countries, the authorities actively work to undermine existing fair trial procedures in order to quash dissent and remove political opponents, or independent-minded journalists and human rights defenders. Recent developments in a number of countries suggest this problem may be becoming more acute, as more authoritarian governments attempt to consolidate power by locking up dissenters.

In recent years, the UN Human Rights Office, and other UN human rights bodies and independent experts have expressed particular alarm about the situation linked to fair trials and independence of the judiciary in numerous countries including Bahrain, China, Egypt, Guatemala, Guinea-Bissau, Iraq, the Maldives, Myanmar, Saudi Arabia, Sudan, Turkey, Venezuela and Vietnam – to name just a few.

In Egypt and Iraq, the handing down of dozens of death sentences after a number of blatantly flawed trials has been strongly condemned by the UN High Commissioner for Human Rights.

In China, the lack of transparency surrounding trials and administration of justice, as well as the tendency to rely on “confessions” which may well have been coerced, have resulted in the jailing or disappearance of numerous human rights defenders and political activists, along with their defence lawyers, since a major crackdown on dissent began in July 2015. This apparent violation of the right to fair trial has been widely condemned, including by successive UN High Commissioners for Human Rights, and a wide range of UN independent experts.

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This is one in a series of articles published by the Office of the High Commissioner for Human Rights (OHCHR) to mark the 70th anniversary of adoption of the Universal Declaration of Human Rights on 10 December 1948. All rights enshrined in the UDHR are connected to each other, and all are equally important.