



STUDY GUIDE

PRESIDENT - NAMRATA CHANDORKAR
VICE PRESIDENT - DANIEL MANNHEM



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AGENDA: DISCUSSING THE HUMAN RIGHTS VIOLATIONS IN THE ADMINISTRATION OF JUSTICE, INCLUDING JUVENILE JUSTICE

Introduction

The administration of justice is a broad term that includes the norms, institutions, and frameworks by which states seek to achieve fairness and efficiency in dispensing justice: criminal, administrative, and civil. The rules applicable to the administration of justice are extensive and refer to, inter alia, fair trial, presumption of innocence, independence and impartiality of the tribunal, and the right to a remedy. The integrity with which the state conducts criminal investigation, arrest, pre-trial detention, trial proceedings, and sentencing all fall within the domain of administration of justice. Consequently, various actors, such as judges, lawyers, court clerks, police, penitentiary officials, and policy makers play various roles in achieving fairness in the administration of justice.

Recognising that hundreds of years of national constitutional drafting, standard setting jurisprudence, and traditions have been built into the administration of justice, resulting in a wide diversity of terminology, international and regional supervisory mechanisms have evolved their own approaches to interpret elements relating to the concept. Notably, the European Commission of Human Rights (European Commission) and the European Court of Human Rights (ECHR) have emphasised that various due processes guarantee fairness, and have autonomous meaning before international and regional supervisory mechanisms.

The impact of the administration of justice within a state has practical significance on the affairs of ordinary individuals and groups. First, the fair administration of justice is important for the rule of law, in that it ensures that state practice and policies protect against the 'infringement of the fundamental human rights to life, liberty, personal security and physical integrity of the person.' Second, as the main vehicle for the protection of human rights at the national level, a system for administration of justice is necessary for the peace and stability of a state. The preamble to the Universal Declaration of Human Rights (UDHR) acknowledges this as follows: 'it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected.' Third, an equitable and effective system for the administration of justice is essential for protecting minority rights, which is important to ensure the flourishing of an inclusive democracy.

Right to a Fair Trial

The right to a fair trial has been elaborated and guaranteed by no less than twenty global and regional human rights treaties and other instruments. Among the most important are the UDHR, the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of

All Forms of Racial Discrimination (ICERD), and the Convention on the Rights of the Child (CRC). International humanitarian law, codified in the four Geneva Conventions and two Additional Protocols, ensures that the right to a fair trial and related criminal justice standards are upheld during periods of non-international and international armed conflicts. Regional treaties such as the African Charter on Human and Peoples' Rights (African Charter), the American Convention on Human Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), contain fair trial guarantees and other provisions relevant to criminal justice.

The most visible and recent elaboration of the right to a fair trial has been in the context of the ad hoc international tribunals for the former Yugoslavia, Rwanda, and other mixed national and international tribunals, as well as the Rome Statute for the International Criminal Court.

The right to a fair trial does not focus on a single issue, but rather consists of a complex set of rules and practices. It has been observed that the right to a fair trial has both a structural meaning (the legal environment within a state) and a technical meaning (the specific procedural safeguards). On the one hand, the structural dimensions of the right to fair trial impose a financial burden on the state, to put in place the necessary infrastructure to effectuate the realisation of the right to fair trial for both citizens and non-citizen residents within the state. On the other hand, the technical aspects of the right require constitutional, legal, and policy safeguards to facilitate the attainment of a fair trial.

Global Standards on the Right to a Fair Trial

The following instruments lay down the right to a fair trial. Delegates are expected to research on the relevant provisions and interpret them to outline what all comes under the umbrella right to a fair trial.

1. Universal Declaration of Human Rights
2. International Covenant on Civil and Political Rights
3. International Convention on the Elimination of All Forms of Racial Discrimination
4. Convention on the Rights of the Child
5. Regional Standards
 - European Convention on Human Rights
 - African Charter on Human and Peoples' Rights
 - American Convention on Human Rights
6. Other Global Standards

In addition to the major treaties discussed above, a number of other binding human rights instruments contain provisions touching on the administration of justice. For instance, the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) had been ratified by 185 states as of 24 January 2009. By incorporating gender-based violence into the definition of discrimination in Article 1, the CEDAW provides a remedy to a complex set of crimes affecting women within both public and private spheres. The Second

Optional Protocol to the ICCPR, aimed at the abolition of the death penalty, has been ratified by 70 nations as of 24 January 2009. Furthermore, the Convention Relating to the Status of Refugees (as more broadly implemented by the Protocol) contains a few provisions in Article 16 as to the rights of refugees in the context of the administration of justice, such as access to the courts (including legal assistance). The International Convention for the Protection of All Persons from Enforced Disappearance was adopted by the United Nations General Assembly on 20 December 2006, but is yet to enter into force. When it comes into effect, this Convention will criminalise enforced disappearances and provide remedies for its victims, including restitution, satisfaction, and rehabilitation, while setting out a broad range of guarantees for persons deprived of liberty by the state.

There are several other global non-treaty standards which relate to criminal justice, for example: Basic Principles on the Independence of the Judiciary; Basic Principles on the Role of Lawyers; Basic Principles for the Treatment of Prisoners; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Code of Conduct for Law Enforcement Officials; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Declaration on the Protection of All Persons from Enforced Disappearances; Guidelines on the Role of Prosecutors; Standard Minimum Rules for the Treatment of Prisoners; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty; United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines); United Nations Rules for the Protection of Juveniles Deprived of their Liberty; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules); and the 2004 United Nations Economic and Social Council (ECOSOC) Resolution on the 'Rule of Law and Development: Strengthening the Rule of Law and the Reform of Criminal Justice Institutions.'

Most of these standards have been drafted by the UN Committee on Crime Prevention and Control, one of the UN Congresses on the Prevention of Crime and Treatment of Offenders which have been held every five years since 1955, the UN Commission on Human Rights, and the UN Sub-Commission on the Promotion and Protection of Human Rights.

These soft law instruments have a significant bearing on the administration of justice. In particular, these instruments provide coherent language, which contribute to a better understanding of the rights relevant to the administration of justice. In addition, they supply concrete, measurable, and comprehensive indicators and programs of action for the tracking of progress and the attainment of key targets relevant to a given justice sector at the national level.

near universal consensus on the content of the right to a fair trial even though a few differences can be discerned, particularly at the level of regional treaties and national practices. In most cases, however, it is uncontested that the core minimum of the right includes, inter alia, the right to receive notice of charges, the presumption of innocence, right of the accused to counsel, right to a prompt and public trial before an impartial tribunal, right against self-incrimination, equality before the law, and right not to be tried on the basis of a retroactive law. So fundamental has the right to a fair trial become in the proper administration of justice at both national and international levels, that some international law scholars consider it part of customary international law.

United Nations and Human Rights in the Administration of Justice

For a number of years, the United Nations organs have dealt with various aspects of human rights in the administration of justice. Having incorporated the principle of equality in the administration of justice in the Universal Declaration of Human Rights and many other international instruments, these organs studied and formulated the norms to be applied with a view to eliminating all forms of discriminations, and also developed strategies for the practical implementation of those norms, and in recent years, has even focused on the issues of the independence and impartiality of the judiciary.

Provisions of United Nations Instruments

Following are a list of Articles that deal with rights related to administration of justice.

- Article 3, 5, 9, 10 and 11 of the Universal Declaration of Human Rights
- Article 6, 14, and 15 of the International Covenant on Civil and political Rights
- Article 7 of the Declaration on the Elimination of All Forms of Racial Discrimination
- Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination
- Article 16 of the Convention relating to the Status of Refugees
- Article 16 of the Convention relating to the Status of Stateless Persons
- Article 11 of the Convention on the Provision and Punishment of the Crime of Genocide
- Article 2 of the International Convention on the Suppression and Punishment of the Crime and of Apartheid

Measures taken by United Nations Bodies

1. **Capital punishment:** The question of capital punishment, with which Article 6 of the International Covenant on Civil and Political Rights is largely concerned and has been considered in United Nations bodies since 1959. Although some slight movement towards the eventual world-wide abolition of the death penalty has been recorded from time to time, it is not at all certain that there is a uniform progression in this direction. **[Read GA Resolution number 2393 (XXIII)]**

2. **Summary or arbitrary executions:** The General assembly in its resolution 36/22 of 9 November 1981, strongly deplored “the increasing number of summary executions as well as the continued incidence of arbitrary executions in different parts of the world.” The Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders adopted a resolution condemning extra-legal executions, and thereby convinced the Commission on Human Rights and the Economic and Social Council about the need to deal with that question urgently. **[Read the safeguards against such executions and establishing an implementation mechanism by the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders.]**
3. **Hostage-taking:** In the International Convention against the Taking of Hostage, the General Assembly adopted **resolution (34/146, 1979)**, establishing the taking of hostage as “an offence of grave concern to the international community” and provided that “a person committing an act of hostage-taking shall be either prosecuted or extradited.” For this it established the need for international cooperation between states.
4. **International Terrorism:** In the 27th session of the General Assembly, a 35-member Ad Hoc committee on International Terrorism was established in 1979. It also adopted a number of recommendations relating to practical measures of co- operation for the speedy elimination of the problem of international terrorism. The Assembly, unequivocally, condemned all acts of international terrorism which endanger or take human lives or jeopardize fundamental freedoms, and condemned the continuation of repressive and terrorist acts by colonial, racist and alien regimes in denying peoples their legitimate right to self-determination and independence and other human rights and fundamental freedoms. The Assembly has since reviewed the situation periodically on the basis of reports by the Secretary General on the implementation of the recommendations of the Ad Hoc Committee.
5. **Protection against torture and other forms of cruel, inhuman or degrading treatment or punishment:** Over the years, the United Nations organs and agencies have endeavoured to ensure adequate protection against torture and other forms of cruel, inhuman or degrading treatment or punishment for all global citizens. They have formulated universal standards applicable to everyone, and codes applicable to those in certain occupations, and have prepared an international declaration and an international convention on the subject, all designed to make a reality of the prohibition which exists in national and international law, of any form of treatment or punishment which violates the human rights or fundamental freedoms of its victims.
6. **Code of Conduct for Law Enforcement Officials:** In **resolution 34/169** of 17 December 1979, the General Assembly adopted a Code of Conduct for Law Enforcement Officials and transmitted it to Governments with the recommendation that favourable consideration should be given to its

use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials.

7. **Principles of Medical Ethics:** In **resolution 31/85** of 13 December 1976, the General Assembly invited the World Health Organisation to prepare a draft code on medical ethics relevant to the protection of persons subjected to any form detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment. The Twenty Ninth World Medical Assembly held in Tokyo in 1975 made a declaration in this regard.
8. **Inhuman or Degrading Treatment or Punishment, and the Standard Minimum Rules for the Treatment of Prisoners:** Concerned about alarming number of reported cases of torture and other cruel, inhuman or degrading treatment or punishment taking place in various parts of the world, the Commission on Human Rights in **resolution 1985/33 of 1985** decided to appoint for one year a special rapporteur to examine questions relevant to torture. The first report of this special rapporteur was presented in the 42nd session of the Commission in 1986 and the second report was presented in 1987. Among the suggestions and recommendations put forward were:
 - The imposition by governments and medical associations of strict measures against all persons belonging to the medical profession who have in that capacity had a function in the practice of torture;
 - The establishment at the national level of independent authorities empowered to receive and deal with complaints made by individuals;
 - The strict limitation of incommunicado detention under national law;
 - The establishment of international and regional systems, based on periodic visits by the committee of experts, to places of detention or imprisonment, to monitor the occurrence of torture and other cruel, inhuman or degrading treatment or punishment.

In **resolution 33/174** of 20 December 1978, the General Assembly established the United Nations Trust Fund to receive contributions and distribute, through established channels of assistance, humanitarian, legal and financial aid to persons, whose human rights had been violated by detention or imprisonment in Chile, to those forced to leave the country and to relatives of persons in the above mentioned categories; and requested that annual reports should be submitted to the Assembly. As appropriate, to the Commission on Human Rights, later on, the sphere of this fund was broadened. Since it began operations, in 1983, the Fund has received contributions from 19 governments as well as from non- governmental organisations, and several individuals. On 26 November 1987, representatives of the States parties in the Convention against torture and other cruel, inhuman or degrading treatment or punishment held their first meeting at Geneva and elected ten members

of the Committee against Torture. The state parties are to submit their reports on the measure they have taken to give effect to their undertaking under the convention to the committee.

9. **Provisions regarding Protection against arbitrary arrest and detention:** Article 9 of the International Declaration of Human Rights provides that: No one shall be subjected to arbitrary arrest, detention or exile.

Article 9 of the International Covenant on Civil and Political Rights reads as follows:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and should an occasion arise, for execution of the judgment.
 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
10. **Protection of the human rights of certain categories of detainees or prisoners:** On several occasions, the General Assembly has adopted special measures for the protection of certain categories of detainees or prisoners, including
- Persons detained or imprisoned as a result of their struggle against violations of human rights;
 - Persons arrested or detained on account of trade union activities; and
 - Persons detained in mental institutions on account of their political beliefs or on other grounds.

The assembly has recommended that all Governments guarantee to persons within their jurisdiction, the full enjoyment of the right of amparo i.e. enforcement of Constitutional rights, habeas corpus or such other legal remedies to the same effect as may be applicable in their legal systems.

In **resolution 32/121 of 1977**, General Assembly requested Member States:

- a) To take effective measures to safeguard the human rights and fundamental freedoms of the above- mentioned persons;
- b) To ensure, in particular, that such persons are not subjected to torture or other cruel, inhuman or degrading treatment or punishment;
- c) Also, to ensure that such persons, in the determination of any criminal charge against them, receive a fair hearing by a competent, independent and impartial tribunal established by law.

The Assembly also expressed its concern about the detained trade union activists. In **resolution 33/169 of 1978** the Assembly reaffirmed the importance of protecting the right to freedom of association as an essential pre-requisite for the conduct of any trade union activities, and recommended that special attention should be paid to violations of the right to freedom of association such as the arrest, detention or exile of persons who had engaged in trade union activities, consistent with the principles of freedom of association. The Commission of Human Rights in its **resolution 10A (XXXIII) of 1977** expressed its concern about the Protection of persons detained on grounds of mental ill-health or suffering from mental disorder.

Conclusion

On the basis of the above review, it is safe to conclude that the UN and regional organisations have codified a substantial framework of international criminal justice standards, which have been accepted (if not always followed) by most nations and have begun to be used in the context of international criminal tribunals. In addition to the codified standards, several human rights institutions (particularly the HRC and the ECtHR) have interpreted and applied criminal justice norms to particular cases, and have thus generated an impressive corpus of jurisprudence which lawyers and judges worldwide should and do often consult.

The administration of justice standards relates to civil rights and obligations as well as criminal charges. The standards deal with the right to be informed promptly of charges, trial within a reasonable time, the right to counsel, adequate facilities for the defense, the right to an interpreter, the independence and impartiality of the decision maker, the right to hear witnesses, the right not to incriminate oneself, the presumption of innocence, the public and fair hearing, and public pronouncement of the judgment. The international, regional, and national jurisprudence of the administration of justice is remarkably consistent and has gradually created a unified worldwide definition of procedural fairness.