

AMNESTY INTERNATIONAL

The International Criminal Court Fact sheet 9 Fair trial guarantees

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

Article 10 of the Universal Declaration of Human Rights

“Injustice anywhere is a threat to justice everywhere”

Dr. Martin Luther King Jr.

The Rome Statute of the International Criminal Court (Statute) incorporates fundamental guarantees of the right to fair trial recognized in international law and standards to ensure that in the determination of any charge, the person accused of genocide, crimes against humanity and war crimes shall be entitled to a public and fair hearing conducted impartially. In a number of important respects, the guarantees in the Statute provide greater protection than other international instruments. The Preparatory Commission for the International Criminal Court completed work on 30 June 2000 to draft Rules of Procedure and Evidence for adoption by the Assembly of States Parties which are designed to implement these statutory guarantees.

Are not all persons charged by the International Criminal Court likely to be guilty?

Each of the four *ad hoc* international criminal tribunals since the Second World War have acquitted some of the accused of all or some of the charges. Thus, it is not surprising that Article 66 (1) restates the fundamental fair trial principle that all accused persons shall be presumed innocent until proved guilty before the International Criminal Court (ICC). For the first time in an international instrument, Article 66 (3) expressly provides that in order to convict the ICC must be convinced beyond reasonable doubt

that the accused is guilty.

Article 66 (2) expressly provides that in accordance with this presumption, the prosecution bears the burden of proof throughout the trial and Article 67 (3) (i) states that the accused must not bear any reversal of the burden of proof or any onus of rebuttal. In accordance with the presumption of innocence, Article 67 (3) (g) makes clear that an accused has the right to remain silent at trial without silence being a consideration in the determination of guilt or innocence.

What are the rights of suspects and others during investigation?

Article 55 provides that no person during an investigation shall be compelled to incriminate himself or herself or to confess guilt; be subjected to any form of coercion, duress, threat, torture or ill-treatment; or be subjected to arbitrary arrest or detention. In addition, any person questioned during an investigation has the right to the free assistance of a competent interpreter, if needed, and any necessary translations. If, during an investigation, a person is suspected of a crime, national authorities and the Prosecutor must inform that person before being questioned that the person is suspected of a crime. Before any questioning they must inform the person of the following rights: to remain silent, without such silence being a consideration in the determination of guilt or innocence; to have a lawyer of his or her own choice, and, if the person does not have a lawyer, to have one assigned, free of charge if the person cannot afford one; and to be questioned in the presence of a lawyer.

Is the Prosecutor under any duty to disclose evidence which might suggest the accused was innocent?

Article 54 (1) (a) requires the Prosecutor, “[i]n order to establish the truth, [to] extend the

investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and in doing so, to investigate incriminating and exonerating circumstances equally.” In addition, Article 67 (2) requires the Prosecutor, as soon as possible, to disclose evidence in the Prosecutor’s control which shows or tends to show the innocence of the accused or mitigate the guilt of the accused or which may affect the credibility of the Prosecutor’s evidence.

What if the evidence has been obtained unlawfully?

Article 69 (7) provides that evidence which has been obtained in violation of the Statute or internationally recognized human rights is not admissible if the violation casts substantial doubt on its reliability or its admission would be contrary to and seriously damage the integrity of the proceedings.

What happens if a person pleads guilty?

The ICC is under a duty to disregard an admission of guilt or guilty plea if it is not satisfied that it was made voluntarily after sufficient consultation with defence counsel or that the accused understands the nature and consequences of the admission.

What are the rights an accused following arrest?

Article 67 (1) (a) guarantees the right of an accused to be informed promptly and in detail of the nature, cause and content of the charge. According to Article 59 (1), he or she must be brought promptly before the competent court in the state where the arrest occurred, which must determine whether the accused’s rights were respected. The accused may apply to the national court for release pending trial under Article 59 (4) or to the Pre-Trial Chamber under Article 60 (2). Article 60 (3) requires the Pre-Trial Chamber to review any order on release or detention periodically or at any time on request by the accused or the Prosecutor.

Does an accused have a right to a lawyer?

Article 67 (1) (b) provides that an accused has the right to adequate time and facilities to prepare for trial and be free to communicate with his counsel

and Article 67 (1) (d) guarantees the accused the right to conduct the defence in person or through a lawyer of the person’s own choice. To ensure that these rights are meaningful, Article 67 (1) (d) requires that the accused be informed of the right to a lawyer, to have a lawyer assigned in any case where the interests of justice so require and, if the accused cannot afford a lawyer, to have free legal assistance.

What if the accused cannot speak or understand one of the working languages of the ICC?

If the accused does not speak the language used by the ICC, he or she must be provided, free of any cost, the assistance of a competent interpreter and any necessary translations.

What are some of the other rights of an accused?

Among the other rights guaranteed by Article 67 are to be tried without undue delay, to have witnesses examined and to obtain witnesses on an equal footing with the Prosecutor and to make an unsworn statement in his or her defence.

Does an accused have a right to appeal?

Article 81 permits persons convicted by the ICC to appeal to the Appeals Chamber on the grounds that a procedural error, error of fact, error of law or any other ground that affects the fairness or reliability of the proceedings or decision has taken place during the trial. If the appeal is successful, the person will have the right to compensation if new or newly discovered facts show conclusively that there has been a miscarriage of justice - unless the non-disclosure was caused by accused.

What if new evidence is discovered after an appeal?

If new evidence is discovered after an appeal has concluded, the convicted person may apply under Article 84 to the Appeals Chamber to revise the judgment of conviction or sentence, provided that the evidence was not available at the time of trial, and this was not the fault of the accused, and it would have been likely to have led to a different verdict.

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