



International Covenant on Civil and Political Rights

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Human Rights Committee

Issues for consideration during the half-day general discussion in preparation for a general comment on article 9 (liberty and security of person) of the International Covenant on Civil and Political Rights, adopted by the Committee at its 105th session (9–27 July 2012)

1. The Human Rights Committee decided at its 104th session (12–30 March 2012) to begin the drafting of a general comment on article 9 of the International Covenant on Civil and Political Rights, expanding on its early general comment No. 8, from 1982, in the light of experience obtained in the review of State reports and communications and in the adoption of general comments on related issues.

2. The Committee plans to hold a half-day general discussion at its 106th session (15 October–2 November 2012), giving national human rights institutions, civil society and academia the opportunity to provide relevant information before the Committee undertakes the drafting process.

3. At present, the Committee's rapporteur for the general comment, Gerald Neuman, contemplates that the questions arising under article 9 to be addressed in the general comment may include the issues listed below. Issues organized by paragraph of article 9 are presented first, followed by general issues.

A. Issues by subparagraph

Article 9, paragraph 1

4. With regard to article 9, paragraph 1: "Everyone has the right to liberty and security of person", issues may include:

- (a) Meaning of "liberty of person":
 - (i) Relationship to other articles of the Covenant, e.g., 11, 12, 13, 14;
- (b) Meaning of "security of person":
 - (i) Relationship to other articles of the Covenant, e.g. 7, 10;
- (c) Horizontal effects of personal liberty and personal security.

5. With regard to article 9, paragraph 1: "No one shall be subjected to arbitrary arrest or detention", issues may include:

- (a) Meaning of "arrest";

- (b) Meaning of “detention”, in particular with regard to children;
- (c) Meaning of “arbitrary” as applied to arrest and detention:
 - (i) Relationship to following sentence;
 - (ii) Relevance of warrants for arrest;
 - (iii) Substantive requirement of non-arbitrariness;
 - (iv) Relevance of other provisions of the Covenant;
 - (v) Relevance of other rules of international law;
 - (vi) Relevance of conditions of detention;
 - (vii) Legitimate and non-legitimate reasons for detention;
 - (viii) Evidentiary basis for arrest or detention;
 - (ix) Criteria for non-arbitrariness in particular fields.

6. With regard to article 9, paragraph 1: “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”, issues may include:

- (a) Meaning of “deprivation of liberty”, and whether it includes anything other than arrest and detention;
- (b) Requirement that deprivation be “on such grounds ... as are established by law”;
- (c) Requirement that deprivation be “in accordance with ... procedure ... established by law”;
- (d) Meaning of “established by law”.

Article 9, paragraph 2

7. With regard to article 9, paragraph 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”, issues may include:

- (a) Right to be informed of reasons for arrest:
 - (i) Scope of application (“arrested”);
 - (ii) Timing of information;
 - (iii) Details and manner of information:
 - a. Relevance of obstacles to communication (e.g. language);
- (b) Right to be informed of any charges:
 - (i) Scope of application (“charges”);
 - (ii) Timing of information (“promptly”);
 - (iii) Details and manner of information:
 - a. Relevance of obstacles to communication (e.g. language);
- (c) Relationship to article 14, paragraph 3 (a).

Article 9, paragraph 3

8. With regard to article 9, paragraph 3: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized 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 occasion arise, for execution of the judgement”, issues may include:

- (a) Scope of application:
 - (i) “arrested or detained on a criminal charge”;
 - (ii) “persons awaiting trial”;
- (b) Relationship between first and second sentences;
- (c) Meaning of “promptly”;
- (d) Meaning of “shall be brought ... before”;
- (e) Meaning of “judge or other officer authorized by law to exercise judicial power”;
- (f) Responsibilities of judge;
- (g) Criteria for “reasonable time”:
 - (i) Starting point and ending point for measuring “reasonable time”;
 - (ii) Relationship to article 14, paragraph 3 (c);
- (h) Meaning of alternative entitlement “or to release”;
- (i) Justifications for pretrial detention;
- (j) Permissible guarantees for appearance;
- (k) Other reasons for denying release.

Article 9, paragraph 4

9. With regard to article 9, paragraph 4: “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”, issues may include:

- (a) Scope of application:
 - (i) Range of deprivations of liberty subject to article 9, paragraph 4;
 - (ii) Application to detentions previously ordered by a court;
 - (iii) Application to detentions previously reviewed by a court;
- (b) Meaning of “a court”;
- (c) Nature of proceedings:
 - (i) Entitlement of detainee;
 - (ii) Ancillary procedural rights;
- (d) Criteria for “without delay”;
- (e) Meaning of “lawful”;
- (f) Power of court to decide on lawfulness;

- (g) Power of court to order release;
- (h) Effect of court's order.

Article 9, paragraph 5

10. With regard to article 9, paragraph 5: "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation", issues may include:

- (a) Relationship to articles 2, paragraph 3, and 14, paragraph 6;
- (b) Scope of application: standard of unlawfulness entitling victim to compensation:
 - (i) Violation of domestic law, international law, article 9;
 - (ii) Standard of fault;
 - (iii) Effect of acquittal or reversal of prior decision;
 - (iv) Availability of other defences;
- (c) Compensation by whom;
- (d) Procedure for enforcing right to compensation;
- (e) Amount of compensation.

B. General issues

11. General issues may include:

- (a) Relationship to other articles;
- (b) Absolute or non-absolute character of clauses;
- (c) Derogability;
- (d) Application in international armed conflict and non-international armed conflict;
- (e) Application to non-State detention;
- (f) Application to enforced disappearance;
- (g) Extraterritoriality;
- (h) Relevance of warrant;
- (i) Other procedural requirements and/or best practices:
 - (i) Access to counsel;
 - (ii) Contact with family;
 - (iii) External monitoring;
 - (iv) Independent complaint bodies;
 - (v) Registration of arrests, detentions, releases;
- (j) Other remedies, such as duty to investigate and punish;
- (k) Indicators.