

Freedom of Opinion and Expression

Article 19 of the ICCPR provides that everyone has the (non-absolute) right to:

- hold an opinion
- freedom of expression
 - ‘include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice’ → therefore, freedom to:
 - communicate one’s own opinions and beliefs
 - access to information and the opinions of others
 - express the information in many forms including verbal, written, artistic and physical expression.

The fulfilment of this right is associated with other fundamental rights as noted in **General Comment No. 34** (e.g. the right to freedom of assembly and association, the right to privacy and the right to freedom of the press and media)

Article 19 asserts that the right to freedom of expression carries ‘special duties and responsibilities’ and the right can be limited as long as the restrictions:

- ‘are provided by law’ and
- are ‘necessary...[f]or respect of the rights or reputations of others [or] ... [f]or the protection of national security or of public order or of public health or morals.’
 - this ‘concern for national security’ can act as a ‘loophole’ for States as they can set their own definition of what is threatening to national security and use this as a reason to prohibit or limit freedom of expression → *seen in Venezuela*
 - cf: [Human Rights Committee](#) noted in their decision in *Coleman v Australia* that any reaction made by a State in response to an individual’s expression must be proportionate

Article 20 acts to further restrict the scope of the right to freedom of expression

- state parties are required to legally prohibit ‘[a]ny propaganda for war’ or ‘[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’
 - in line with the **International Convention on the Elimination of All Forms of Racial Discrimination** (ICERD)

Freedom from Arbitrary Arrest and Detention

Article 9 of the ICCPR sets out the non-absolute right to liberty and security of person and prohibits arbitrary arrest or detention.

Right to liberty and security of person (freedom from arbitrary arrest or detention)

- qualified right: liberty can be deprived ‘on such grounds and in accordance with such procedure as are established by law’
 - States must have lawful grounds and follow lawful procedures
 - **grounds for lawful detention** often determined by domestic law and include:
 - suspicion of an offence
 - conviction for an offence by a competent court
 - prior to extradition, expulsion or deportation
 - for medical reasons
 - e.g. highly contagious disease, mental health
 - **article 11 of the ICCPR** prohibits imprisonment on the ground of inability to fulfill a contractual obligation
 - the **Human Rights Committee** found in *Blancov v Nicaragua* that detaining someone for expressing political opinions contrary to that of the government is in violation of **Article 9 of the ICCPR**
 - **lawful procedures for detention:**
 - notified of the reason for the arrest at the time of arrest
 - notified promptly of any charges
 - brought promptly before a court for criminal charge and trial within a reasonable time or to be released
 - what constitutes a ‘reasonable time’ depends on the circumstances of each case
 - these rights apply to those arrested on criminal grounds, when a person’s liberty is deprived for administrative purposes (i.e. processing immigrants), those with a mental illness in a psychiatric hospital
 - habeas corpus: challenge the lawfulness of the detention
 - detention generally for a specified time
 - indeterminate detention must be subject to judicial review

General Comment No. 35 recognises that an arrest or detention may be authorised by domestic law and nonetheless still be arbitrary. The notion of ‘arbitrariness’ must be interpreted broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.

Article 10 of the ICCPR provides for the treatment of detained persons

- ‘All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person’
- separation of accused persons from convicted persons and juvenile persons from adults
 - Australia has submitted a reservation in regards to this requirement (cited geographical layout making it difficult)

While there is a deprivation of right to liberty, all other rights should still be protected (e.g. medical treatment, hygiene, exercise, work, discipline, sleeping arrangements, communication with the outside world) irrespective of the crime that has been committed – this condition is set out in the ‘**UN Standard Minimum Rules for the Treatment of Prisoners**’ and confirmed in the **European Court of Human Rights Case of Eskerkhanov and Others v Russia**, where it was found that inmates who had extremely limited personal space and other aspects of inappropriate physical conditions of detention (e.g. access to outdoor exercise, natural light and air, the adequacy of the cell’s temperature, the possibility to use the toilet in private, access to bedding and compliance with basic sanitary and hygienic requirements) had their right to freedom from torture violated.