



Department of Defense DIRECTIVE

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GC, DoD

SUBJECT: Status of Forces Policy and Information

- References: (a) DoD Directive 5525.1, subject as above, January 20, 1966 (hereby canceled)
- (b) *Section 1037 of title 10, United States Code*
 - (c) [DoD Directive 5122.5](#), "Assistant Secretary of Defense (Public Affairs)," July 10, 1961
 - (d) [DoD Directive 5400.7](#), "Availability to the Public of Department of Defense Information," February 14, 1975
 - (e) [DoD Directive 5400.11](#), "Personal Privacy and Rights of Individuals Regarding Their Personal Records," August 4, 1975

1. REISSUANCE AND PURPOSE

This Directive reissues reference (a); establishes DoD policy and procedures on trial by foreign courts and treatment in foreign prisons of United States military personnel, nationals of the United States serving with, employed by, or accompanying the Armed Forces of the United States, and the dependents of both (hereafter referred to as United States personnel) and provides uniform reporting on the exercise of foreign criminal jurisdiction.

2. APPLICABILITY

The provisions of this Directive apply to the Office of the Secretary of Defense, the Military Departments, and the *Combatant* Commands. As used herein, the term "Military Services" refers to the Army, the Navy, the Air Force, and the Marine Corps.

3. POLICY

It is the policy of the Department of Defense to protect, to the maximum extent possible, the rights of United States personnel who may be subject to criminal trial by foreign courts and imprisonment in foreign prisons.

4. PROCEDURES AND RESPONSIBILITIES

4.1. Application of Senate Resolution on Status of Forces. This Directive implements the Senate Resolution accompanying the Senate's consent to ratification of the North Atlantic Treaty (NATO) Status of Forces Agreement (enclosure 1). Although the Senate Resolution applies only to countries where the NATO Status of Forces Agreement is in effect, the same procedures for safeguarding the interests of United States personnel subject to foreign jurisdiction shall be applied in so far as practicable in overseas areas where U.S. Forces are regularly stationed.

4.2. Orientation of Personnel. The Military Services shall issue uniform regulations establishing an information and education policy on the laws and customs of the host country for personnel assigned to foreign areas.

4.3. Designated Commanding Officer. Formal invocation of the Senate Resolution procedure shall be the responsibility of a single military commander in each foreign country where U.S. Forces are stationed. Attache personnel and other military personnel serving under a chief of a diplomatic mission shall not be considered U.S. Forces in this Directive.

4.3.1. *In each geographical area assigned to a Unified Command*, the commander shall designate within each country the "Commanding Officer" referred to in the Senate Resolution (enclosure 1).

4.3.2. *In areas not assigned to a Unified Command*, a commanding officer in each country shall be nominated by the Military Departments. These recommendations shall be forwarded by the Judge Advocate General of the Army to the Secretary of Defense, for implementation through the Office of the Assistant Secretary of Defense (International Security Affairs). In designating the commanding officer to act for all the Military Departments, consideration must be given to the availability of legal officers and readiness of access to the seat of the foreign government. Such an officer may also be appointed by the Military Departments for countries where no U.S. Forces are regularly stationed.

4.4. Country Law Studies

4.4.1. For each foreign country where U.S. Forces are subject to the criminal jurisdiction of foreign authorities, the designated commanding officer for such country shall make and maintain a current study of the laws and legal procedures in effect. Studies of the laws of other countries shall be made when directed. This study shall be a general examination of the substantive and procedural criminal law of the foreign country, and shall contain a comparison thereof with the procedural safeguards of a fair trial in the State courts of the United States.

4.4.2. Copies of these studies shall be forwarded by the designated commanding officer to each of the Judge Advocates General of the Military Services. Principal emphasis is to be placed on those safeguards that are of such a fundamental nature as to be guaranteed by the Constitution of the United States in all criminal trials in State courts of the United States. See enclosure 2 for enumeration of safeguards considered important. These country law studies shall be subject to a continuing review. Whenever there is a significant change in any country's criminal law, the change shall be forwarded by the designated commanding officer to each of the Military Service's Judge Advocates General.

4.5. Waivers of Local Jurisdiction - Military Personnel

4.5.1. In cases where it appears probable that release of jurisdiction over U.S. military personnel will not be obtained and the accused may not obtain a fair trial, the commander exercising general court-martial jurisdiction over the accused shall communicate directly with the designated commanding officer, report the full facts of the case, and supply a recommendation.

4.5.2. The designated commanding officer shall determine, in the light of legal procedures in effect in that country, whether there is danger that the accused will not receive a fair trial. A trial shall not be considered unfair merely because it is not identical with trials held in the United States. Due regard, however, should be given to those U.S. trial rights listed in enclosure 2 that are relevant to the facts and circumstances of the trial in question.

4.5.3. If the designated commanding officer determines there is risk of an unfair trial, the commanding officer shall decide, after consultation with the chief of the diplomatic mission, whether to press a request for waiver of jurisdiction through diplomatic channels. If the commanding officer so decides, the recommendation shall be submitted through the Unified Commander, if any, and the Judge Advocate General of

the accused's Service, to the Office of the Secretary of Defense. The objective in each case is to see that U.S. military personnel obtain a fair trial in the receiving state under all circumstances.

4.6. Request to Foreign Authorities Not to Exercise Their Criminal Jurisdiction Over Civilians and Dependents. The following procedures shall be followed when it appears that foreign authorities may assume criminal jurisdiction over dependents of United States military personnel, civilian personnel, and their dependents:

4.6.1. When the designated commanding officer determines, after a careful consideration of all the circumstances, that suitable corrective action can be taken under existing administrative regulations, the commanding officer may request the local foreign authorities to refrain from exercising their criminal jurisdiction.

4.6.2. When it appears possible that release of jurisdiction will not be obtained and that the accused may not obtain a fair trial, the commander exercising general court-martial jurisdiction over the command in which such personnel are located shall communicate directly with the designated commanding officer, reporting the full facts of the case and supplying a recommendation.

4.6.3. The designated commanding officer shall then determine, in the light of legal procedures in effect in that country, whether there is danger that the accused will not receive a fair trial.

4.6.4. If it is determined that there is such danger, the designated commanding officer shall decide, after consultation with the chief of the diplomatic mission, whether a request should be submitted through diplomatic channels to foreign authorities seeking their assurances of a fair trial for the accused or, in appropriate circumstances, that they forego their right to exercise jurisdiction over the accused. If the designated commanding officer so decides, a recommendation shall be submitted through the Unified Commander, if any, and the Judge Advocate General of the Military Service concerned, to the Office of the Secretary of Defense.

4.7. Trial Observers and Trial Observer Report

4.7.1. The designated commanding officer shall submit to the chief of the diplomatic mission a list of persons qualified to serve as U.S. observers at trials before courts of the receiving state. Nominees shall be lawyers, and shall be selected for maturity of judgment. The list shall include, where possible, representatives of all Military Services whose personnel are stationed in that country to enable the chief of the diplomatic mission to appoint an observer from the same Military Service as the

accused. The requirement that nominees shall be lawyers may be waived in cases of minor offenses. Incidents that result in serious personal injury or that would normally result in sentences to confinement, whether or not suspended, shall not be considered minor offenses.

4.7.2. Trial observers shall attend and prepare formal reports in all cases of trials of United States personnel by foreign courts or tribunals, except for minor offenses. In cases of minor offenses, the observer shall attend the trial at the discretion of the designated commanding officer, but shall not be required to make a formal report. These reports need not be classified, but shall be treated as FOR OFFICIAL USE ONLY documents. They shall be forwarded intact to the designated commanding officer through such agencies as the designated commanding officer may prescribe for transmission to the Judge Advocate General of the accused's Service, with any comments of the appropriate Military Service commander. These reports shall be forwarded immediately upon the completion of the trial in the lower court, and shall not be delayed because of the possibility of a new trial, rehearing or appeal, reports of which shall be forwarded in the same manner. Copies shall also be forwarded to the *geographic Combatant Commander, if any, and to the Chief of the Diplomatic Mission.*

4.7.3. The trial observer report shall contain a factual description or summary of the trial proceedings. It should enable an informed judgment to be made regarding:

4.7.3.1. Whether there was any failure to comply with the procedural safeguards secured by a pertinent status of forces agreement; and

4.7.3.2. Whether the accused received a fair trial under all the circumstances. The report shall specify the conclusions of the trial observer with respect to 4.7.3.1., and shall state in detail the basis for the conclusions. Unless the designated commanding officer directs otherwise, the report shall not contain conclusions with respect to 4.7.3.2.

4.7.4. The designated commanding officer upon receipt of a trial observer report, shall be responsible for determining:

4.7.4.1. Whether there was any failure to comply with the procedural safeguards secured by the pertinent status of forces agreement; and

4.7.4.2. Whether the accused received a fair trial under all the circumstances. Due regard should be given to those fair trial rights listed in enclosure 2 that are relevant to the particular facts and circumstances of the trial. However, a

trial shall not be found unfair merely because it is not identical with trials held in the United States. If the designated commanding officer is of the opinion that the procedural safeguards specified in pertinent agreements were denied or that the trial was otherwise unjust, the commanding officer shall submit to the Office of the Secretary of Defense, *via the geographic Combatant Commander*, and the Judge Advocate General of the Military Service concerned, *and the Chairman of the Joint Chiefs of Staff*, a recommendation as to appropriate action to rectify the trial deficiencies and otherwise to protect the rights or interests of the accused. This shall include a statement of efforts taken or to be taken at the local level to protect the right of the accused. An information copy of the recommendation of the designated commanding officer shall be forwarded to the diplomatic or consular mission in the country concerned.

4.8. Counsel Fees and Related Assistance For Personnel Subject to the Uniform Code of Military Justice. 10 U.S.C. §1037 (reference (b)) provides as follows:

"(a) Under regulations to be prescribed by him, the Secretary concerned may employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation, before the judicial tribunals and administrative agencies of any foreign nation, of persons subject to the Uniform Code of Military Justice. So far as practicable, these regulations shall be uniform for all armed forces.

(b) The person on whose behalf a payment is made under this section is not liable to reimburse the United States for that payment, unless he is responsible for forfeiture of bail provided under subsection (a).

(c) Appropriations available to the military department concerned or the Department of Transportation, as the case may be, for the pay of persons under its jurisdiction may be used to carry out this section."

4.8.1. Criminal Cases. Requests for the provision of counsel fees and payment of expenses in criminal cases may be approved in pretrial, trial, appellate, and post-trial proceedings in any one of the following criminal cases:

4.8.1.1. Where the act complained of occurred in the performance of official duty; or

4.8.1.2. Where the sentence which is normally imposed includes confinement, whether or not such sentence is suspended; or

4.8.1.3. Where capital punishment might be imposed; or

4.8.1.4. Where an appeal is made from any proceeding in which there appears to have been a denial of the substantial rights of the accused; or

4.8.1.5. Where conviction of the offense alleged could later form the basis for administrative discharge proceedings for misconduct as a result of civil court disposition; or

4.8.1.6. Where the case, although not within the criteria established in subparagraphs 4.8.1.1., through 4.8.1.5., above, is considered to have significant impact upon the relations of U.S. Forces with the host country or is considered to involve any other particular U.S. interest.

4.8.2. Civil Cases. Requests for provision of counsel fees and payment of expenses in civil cases may be granted in trial and appellate proceedings in either of the following civil cases:

4.8.2.1. Where the act complained of occurred in, or was directed against eligible U.S. personnel engaged in, the performance of official duty; or

4.8.2.2. Where the case is considered to have a significant impact upon the relations of U.S. Forces with the host country; or in cases brought against eligible U.S. personnel (and in exceptional cases, by such personnel) if the case is considered to involve any other particular United States interest. No funds shall be provided under this Directive in cases where the United States of America is in legal effect the defendant, or where the U.S. Forces member is a plaintiff, without prior authorization of the Secretaries of the Military Departments or their designees. The provisions of this subparagraph are also applicable to proceedings with civil aspects that are brought by eligible personnel as criminal cases in accordance with local law. Funds for the posting of bail or bond to secure the release of personnel from confinement shall be used as provided by Service regulations.

4.8.2.3. No funds will be provided under subparagraph 4.8.2.2. to a plaintiff who, if successful, will receive an award in whole or in part, from the United States.

4.9. Counsel Fees and Related Assistance for Personnel not Subject to the Uniform Code of Military Justice. In cases involving U.S. personnel not subject to the Uniform Code of Military Justice of exceptional interest to the Service concerned, the Secretary of that Service may approve the provision of counsel fees and payment of expenses under the same conditions and circumstances outlined in paragraph 4.8., above. Payment of fees and expenses under this paragraph is not authorized under 10 U.S.C. §1037.

4.10. Treatment of United States Personnel Confined in Foreign Penal Institutions

4.10.1. Insofar as practicable and subject to the laws and regulations of the country concerned and the provisions of any agreement therewith, the Department of Defense seeks to ensure that U.S. military personnel:

4.10.1.1. When in the custody of foreign authorities are fairly treated at all times; and

4.10.1.2. When confined (pretrial and post-trial) in foreign penal institutions are accorded the treatment and are entitled to all the rights, privileges, and protections of personnel confined in U.S. military facilities. Such rights, privileges, and protections are enunciated in present Military Service directives and regulations, and include, but are not to limited to, legal assistance, visitation, medical attention, food, bedding, clothing, and other health and comfort supplies.

4.10.2. In consonance with this policy, United States military personnel confined in foreign penal institutions shall be visited at least every 30 days, at which time the conditions of confinement and other matters relating to their health and welfare shall be observed. The Military Services shall maintain, on a current basis, records of these visits as reports by their respective commands. Records of each visit should contain the following information:

4.10.2.1. Names of personnel conducting visit and date of visit.

4.10.2.2. Name of each prisoner visited, serial number, and sentence.

4.10.2.3. Name and location of prison.

4.10.2.4. Treatment of the individual prisoner by prison warden and other personnel (include a short description of the rehabilitation program, if any, as applied to the prisoner).

4.10.2.5. Conditions existing in the prison, such as light, heat, sanitation, food, recreation, and religious activities.

4.10.2.6. Change in status of prisoner, conditions of confinement or transfer to another institution.

4.10.2.7. Condition of prisoner, physical and mental.

4.10.2.8. Assistance given to prisoner, such as legal, medical, food, bedding, clothing, and health and comfort supplies.

4.10.2.9. Action taken to have any deficiencies corrected, either by the local commander or through diplomatic or consular mission.

4.10.2.10. Designation of command responsible for prisoner's welfare and reporting of visits.

4.10.2.11. Information as to discharge of a prisoner from the Military Service or termination of confinement.

4.10.3. When it is impracticable for the individual's commanding officer or representative to make visits, the designated commanding officer should be requested to arrange that another unit be responsible for such visits or to request that the appropriate diplomatic or consular mission assume responsibility therefor. When necessary, a medical officer should participate in the visits and record the results of medical examinations. If reasonable requests for permission to visit U.S. military personnel are arbitrarily denied, or it is ascertained that the individual is being mistreated or that the conditions of custody or confinement are substandard, the case should be referred to the diplomatic or consular mission concerned for appropriate action.

4.10.4. To the extent possible, military commanders should seek to conclude local arrangements whereby U.S. military authorities may be permitted to accord U.S. military personnel confined in foreign institutions the treatment, rights, privileges, and protection similar to those accorded such personnel confined in U.S. military facilities. The details of such arrangements should be submitted to the Judge Advocates General of the Military Services.

4.10.5. The military commanders shall make appropriate arrangements with foreign authorities whereby custody of individuals who are members of the Armed Forces of the United States shall, when they are released from confinement by foreign authorities, be turned over to U.S. military authorities. In appropriate cases, diplomatic

or consular officers should be requested to keep the military authorities advised as to the anticipated date of the release of such persons by the foreign authorities.

4.10.6. In cooperation with the appropriate diplomatic or consular mission, military commanders shall, insofar as possible, ensure that dependents of United States military personnel, nationals of the United States serving with, employed by or accompanying the Armed Forces, and dependents of such nationals when in the custody of foreign authorities, or when confined (pretrial and post-trial) in foreign penal institutions receive the same treatment, rights, and support as would be extended to U.S. military personnel in comparable situations pursuant to the provisions of paragraph 4.9.

4.11. Discharge. U.S. military personnel confined in foreign prisons shall not be discharged from Military Service until the completion of the term of imprisonment and the return of the accused to the United States, except that in unusual cases such discharges may be accomplished upon prior authorization of the Secretary of the Military Department concerned.

4.12. Information Policy. It is the basic policy of the Department of Defense that the general public and the Congress must be provided promptly with the maximum information concerning status of forces matters that are consistent with the national interest. Information shall be coordinated and furnished to the public and the Congress in accordance with established procedures, including DoD Directives 5122.5, 5400.7, and 5400.11 (references (c), (d), and (e)).

5. REPORTS ON THE EXERCISE OF FOREIGN CRIMINAL JURISDICTION

The following reporting system, which has been implemented by the Military Departments, shall be continued after revision in accordance with the provisions herein. The Department of the Army is designated as Executive Agent within the Department of Defense for maintaining and collating information received on the basis of the reports submitted.

5.1. Annual Reports. Annual reports, based on information furnished by the Military Departments covering the period December 1 through November 30 shall be prepared by the Department of the Army and submitted within such time as may be required, but not later than 120 days after the close of the reporting period. The reports shall be submitted in one reproducible copy to the Office of the General Counsel, DoD, in accordance with departmental implementation of this Directive. The reporting content of this requirement shall be as follows:

5.1.1. A statistical summary (DD Form 838, enclosure 3) by country and type of offense of all *criminal cases brought against U.S. personnel and punishable by incarceration.*

5.1.2. A report signed by the appropriate Military Service commander in each country for which DD Form 838 is prepared, concerning the commander's personal evaluation of the impact, if any, the local jurisdictional arrangements have had upon accomplishment of the mission and upon the discipline and morale of the forces, together with specific facts or other information, where appropriate, substantiating the commanders's opinion.

5.1.3. A report of the results of visits made and particular actions taken by appropriate military commanders under paragraph 4.9.

5.1.4. A report of the implementation of 10 U.S.C. §1037 (reference (b)) showing by country and Military Service:

5.1.4.1. The total number of cases in which funds were expended; and

5.1.4.2. Total expenditures in each of the following categories:

5.1.4.2.1. Payment of counsel fees;

5.1.4.2.2. Provision of bail;

5.1.4.2.3. Court costs and other expenses.

5.2. *Semi-annual* Reports

5.2.1. *Semi-annual* reports for the periods ending November *30* and *May 31*, consisting of lists of U.S. personnel imprisoned and released, shall be submitted, in accordance with departmental implementation of this Directive, to the Department of the Army and by the Department of the Army, as Executive Agent, to the Director, Washington Headquarters Services, in four copies on or before the 15th day following the *semi-annual reporting period* as follows:

5.2.1.1. An alphabetical list of U.S. personnel who were imprisoned during the reporting period under sentence of confinement imposed by a foreign country, indicating the individual's home address, grade and serial number (where applicable), offense of which found guilty, date and place of confinement, length of sentence to confinement imposed, and estimated date of release from confinement.

5.2.1.2. A similar list of the names of prisoners released during the reporting period.

5.2.2. An information copy of these lists shall be furnished by the appropriate Military Service commander to the diplomatic or consular mission in the country concerned.

5.3. Other Reports. *Important new cases or important developments in pending cases shall be reported informally and immediately to the Office of the General Counsel, DoD, and to Foreign Military Rights Affairs (OASD/ISA). Instances of denial of the procedural safeguards under the applicable status of forces agreement, deficiency in the treatment or conditions of confinement in foreign penal institutions, or arbitrary denial of permission to visit such personnel shall be considered important cases.*

5.4. Report Control Symbols. Report Control Symbols are assigned to the reporting requirements in this Directive as follows:

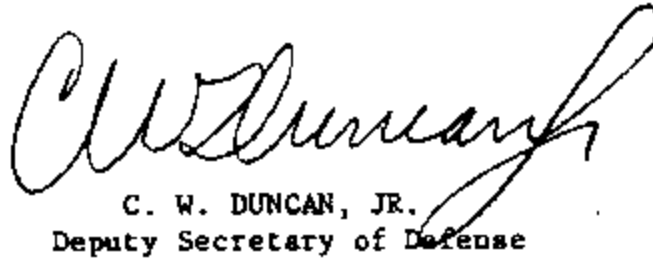
Paragrpn 5.1. DD-GC(A)705

Paragraph 5.2. DD-GC(Q)706

Paragraph 5.3. DDGC(M)707

6. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Existing departmental regulations implementing reference (a) shall be revised to reflect additional references (d) and (e) and the organizational change in the title of the Director, Washington Headquarters Services.



C. W. DUNCAN, JR.
Deputy Secretary of Defense

Enclosures - 3

- E1. Resolution of Ratification, with Reservations, as agreed to by the Senate on July 15, 1953
- E2. Fair Trial Guarantees
- E3. DD Form 838

E1. ENCLOSURE 1

RESOLUTION OF RATIFICATION, WITH RESERVATIONS, AS AGREED TO BY THE
SENATE ON JULY 15, 1953

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of Executive T, Eighty-second Congress, second session, an agreement between the parties to the North Atlantic Treaty Regarding the Status of their Forces, signed at London on June 19, 1951.

It is the understanding of the Senate, which understanding inheres in its advise and consent to the ratification of the Agreement, that nothing in the Agreement diminishes, abridges, or alters the right of the United States of America to safeguard its own security by excluding or removing persons whose presence in the United States is deemed prejudicial to its safety or security, and that no person whose presence in the United States is deemed prejudicial to its safety or security shall be permitted to enter or remain in the United States.

In giving its advise and consent to ratification, it is the sense of the Senate that:

1. The criminal jurisdiction provisions of Article VII do not constitute a precedent for future agreements;
2. Where a person subject to the military jurisdiction of the United States is to be tried by the authorities of a receiving state, under the treaty the Commanding Officer of the armed forces of the United States in such state shall examine the laws of such state with particular reference to the procedural safeguards contained in the Constitution of the United States;
3. If, in the opinion of such Commanding Officer, under all the circumstances of the case, there is danger that the accused will not be protected because of the absence or denial of constitutional rights the accused would enjoy in the United States, the Commanding Officer shall request the authorities of the receiving State to waive jurisdiction in accordance with the provisions of paragraph 3(c) of Article VII (which requires the receiving State to give "sympathetic consideration" to such request) and if such authorities refuse to waive jurisdiction, the commanding officer shall request the Department of State to press such request through diplomatic channels and notification shall be given by the Executive Branch to the Armed Services Committees of the Senate and House of Representatives;

4. A representative of the United States to be appointed by the Chief of Diplomatic Mission with the advice of the senior United States military representative in the receiving State will attend the trial of any such person by the authorities of a receiving State under the agreement, and any failure to comply with the provisions of paragraph 9 of Article VII of the Agreement shall be reported to the commanding officer of the Armed Forces of the United States in such State who shall then request the Department of State to take appropriate action to protect the rights of the accused, and notification shall be given by the Executive Branch to the Armed Services Committees of the Senate and House of Representatives.

E2. ENCLOSURE 2
FAIR TRIAL GUARANTEES

The following is a listing of "fair trial" safeguards or guarantees that are considered to be applicable to U.S. State court criminal proceedings, by virtue of the 14th Amendment as interpreted by the Supreme Court of the United States. The list is intended as a guide for the preparation of country law studies prescribed by paragraph 4.4. of this Directive, and for the determinations made by the designated commanding officer under paragraphs 4.5. through 4.7. of this Directive. Designated commanding officers should also consider other factors that could result in a violation of due process of law in State court proceedings in the United States.

1. Criminal statute alleged to be violated must set forth specific and definite standards of guilt.
2. Accused shall not be prosecuted under an ex post facto law.
3. Accused shall not be punished by bills of attainder.
4. Accused must be informed of the nature and cause of the accusation and have a reasonable time to prepare a defense.
5. Accused is entitled to have the assistance of defense counsel.
6. Accused is entitled to be present at the trial.
7. Accused is entitled to be confronted with hostile witnesses.
8. Accused is entitled to have compulsory process for obtaining favorable witnesses.
9. Use of evidence against the accused obtained through unreasonable search or seizure or other illegal means is prohibited.
10. Burden of proof is on the government in all criminal trials.
11. Accused is entitled to be tried by an impartial court.

12. Accused may not be compelled to be a witness against him or herself; and shall be protected from the use of a confession obtained by torture, threats, violence, or the exertion of any improper influence.

13. Accused shall not be subjected to cruel and unusual punishment.

14. Accused is entitled to be tried without unreasonable (prejudicial) delay.

15. Accused is entitled to a competent interpreter when the accused does not understand the language in which the trial is conducted and does not have counsel proficient in the language both of the court and of the accused.

16. Accused is entitled to a public trial.

17. Accused may not be subjected to consecutive trials for the same offense that are so vexatious as to indicate fundamental unfairness.

