

Jeanette Radcliffe
Committee Secretary
PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

Dear Ms Radcliffe

Thanks for your query of 13 January 2013.

Minister Bowen in his letter of 15 November 2012 to the Chair of the Committee states that Article 14 of ICCPR “is not engaged as it relates to the right to a fair hearing in respect of criminal charges only”. While the Article is concerned in its detail almost exclusively with criminal charges, a closer reading indicates that it has a broader reach in one particular – in relation to procedures for determining rights and obligations in suits of law. This broader reach could be rendered impossibly wide, and yes, one could argue that it applies to any legal procedure for determining rights.

The Office of the UN High Commissioner for Human Rights published on 13 April 1984 *General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14)*. Paragraph 2 of that Comment states:

In general, the reports of States parties fail to recognize that article 14 applies not only to procedures for the determination of criminal charges against individuals but also to procedures to determine their rights and obligations in a suit at law. Laws and practices dealing with these matters vary widely from State to State. This diversity makes it all the more necessary for States parties to provide all relevant information and to explain in greater detail how the concepts of "criminal charge" and "rights and obligations in a suit at law" are interpreted in relation to their respective legal systems.

I would not classify all RSD procedures as suits of law for determining rights and obligations. On balance, I would continue to favour the view that Article 14 is not engaged when considering the processing of asylum seekers offshore.

Yours sincerely

Frank Brennan SJ