3. Protection of Detainees

A. INTRODUCTION

This chapter deals with the protection of various categories of detainees, for example prisoners of war, civilians who have been interned, people deprived of their liberty for reasons related to a non-international armed conflict and those arrested in the course of a public order operation. Of the four cases summarized here one was considered by the Human Rights Committee, one by the European Court of Human Rights, and two were considered by the Working Group on Arbitrary Detention. The cases considered by the first two bodies arose out of a non-international armed conflict. The two cases considered by the Working Group concern civilians interned by an Occupying Power.

In the case *Yasoda Sharma v. Nepal*, the Human Rights Committee considered a case arising out of a disappearance in the civil war between Government forces and Maoist rebels in Nepal. The Committee recalled the definition of enforced disappearance in article 7, paragraph 2 (i), of the Rome Statute of the International Criminal Court and observed that any act leading to such disappearance constitutes a violation of many of the rights enshrined in the International Covenant on Civil and Political Rights.

The Committee was of the view that the facts before it revealed violations by the State party of a number of Covenant articles, including those prohibiting torture and ill-treatment and arbitrary arrest and detention in respect of the disappeared person and the article prohibiting torture and ill-treatment in respect of his wife.

People protected by the Geneva Convention relative to the Treatment of Civilian Persons in Time of War of 12 August 1949 (Geneva Convention IV) are, under article 4, those who find themselves in case of an international armed conflict or occupation in the hands of a party to the conflict or Occupying Power of which they are not nationals. Parties to a conflict are prohibited from interning protected persons except in accordance with a number of articles in the Convention, including article 78.

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1 See part II, chap. 3, sect. B (a).
This article falls within section III of the Convention which embodies provisions on protected persons in occupied territory. Protected persons who commit an offence which is solely intended to harm the Occupying Power, but which does not constitute an attempt on life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, are liable to internment or simple imprisonment provided the duration of the internment or imprisonment is proportionate to the offence committed. Furthermore, if the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or internment.

This provision was cited by the Working Group on Arbitrary Detention in a case summarized in this chapter, opinion No. 44/2005 (Iraq and United States of America), in which the editor of a newspaper in Baghdad was arrested by a large group of American soldiers and held incommunicado, allegedly because of his articles opposing the United States-led military occupation of Iraq. The Working Group considered that the detainee’s prolonged detention in an undisclosed place without access to the International Committee of the Red Cross, family members, lawyers or other persons of the outside world violated the provisions of Geneva Convention IV and article 9 of the International Covenant on Civil and Political Rights.

Article 78 of Geneva Convention IV was also considered by the Working Group in another case summarized here, opinion No. 26/2007 (Israel). It arose out of an administrative detention order imposed on a man on the ground that he posed a danger to the security of the territory and the public. Noting the Government’s claim that prolonged administrative detention was in full conformity with article 78 of the Convention, the Working Group recalled that the Convention makes it explicitly clear that internment and assigned residence are the most severe measures of control that a detaining authority or Occupying Power may take with respect to protected persons against whom no criminal proceedings have been initiated. In both cases, it is stipulated that recourse to these measures may be had only if the security of the Occupying Power renders it “absolutely necessary”, under article 42, or for “imperative reasons of security”, under article 78. The Working Group noted, however, that according to documented information, administrative detention against Palestinians of the Occupied Territories was not used as an exceptional measure by Israel.

In addition, the Working Group observed that, although the Government based the administrative detention in this case on a provision of the Geneva Conventions, the detainee continued to benefit from protection afforded by international human rights norms, namely those of the International Covenant on Human Rights.

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2 See part II, chap. 3, sect. B (b).
3 See part II, chap. 3, sect. B (c).