



Economic and Social Council

Distr.
GENERAL

E/CN.4/Sub.2/1988/NGO/23
24 August 1988

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fortieth session
Agenda item 9 (b)

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

Written statement submitted by Human Rights Advocates,
a non-governmental organization in consultative status
(category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV)

[19 August 1988]

Armed conflict, human rights, emergencies

1. The Secretary-General's report on the "Interrelationship between human rights and international peace" (E/CN.4/Sub.2/1988/2) is described in paragraph 17 of this session's annotated agenda (E/CN.4/Sub.2/1988/1/Add.1). Presumably it will be scrutinized at the Sub-Commission's 1989 session (E/CN.4/Sub.2/1988/1/Add.1, para. 4 (c)). None the less, as suggested in the annotated agenda (para. 32 (c) and para. 28, last sentence), the report is pertinent to several items now being considered.

2. Among such items are those relating to arbitrary detention and to racial, religious, and other discriminations (e.g., as to women, children, minorities, and the disabled). "Normal" human rights violations undeniably are exacerbated when armed conflicts are underway or threatened.

3. Item 9 (b) of the agenda concerns states of emergency. The first principle of the Draft Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, reads:

"Governments shall prohibit by law all [such] executions. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances, including but not limited to situations of internal armed conflicts ..." (E/CN.4/Sub.2/1988/CRP.1, chap. IV, para. 1).

4. The following paragraphs in Mr Despouy's commendable report on states of emergency (E/CN.4/Sub.2/1988/18) concerning undeclared emergencies, indeed are challenging:

"61. Situations of warfare, armed conflict, internal unrest, internal tension, perpetuated de facto situations and other situations create states of emergency which may prompt the authorities to suspend, limit or even abolish essential judicial guarantees. The safeguarding of human rights is thereby diminished and the risks of violation are greater. This de facto situation may even degenerate into serious, systematic violations of human rights and jeopardize the maintenance of peace.

"62. In order to be able to submit to the Sub-Commission relevant suggestions on feasible means in accordance with Commission resolution 1983/18 ... the Special Rapporteur intends to study such situations on the basis of an analytical approach to the relations between peace, human rights and states of emergency."

5. An analytical approach to problems regarding peace, human rights, and states of emergency exemplifies exactly what will be needed next year generally, regarding comprehensive studies of human rights and armed conflicts.

6. Human Rights Advocates suggests that the singly most significant sentence in Mr Despouy's report reads as follows:

"Respect for human rights during a period of emergency fosters the maintenance of peace or a return to peace, and hence the need to respect provisions relating to states of emergency, not only by virtue of legal obligations, but also in order to strengthen world peace". (Para. 27; emphasis added; see too paras. 44 and 49.)

7. Thus, Human Rights Advocates reiterates its suggestion last year that Mr. Despouy "identify ... each situation wherein armed conflict appears to have influenced a decision to pronounce a state of siege or emergency" (E/CN.4/1987/NGO/31).