

IV. TYPES OF VIOLATIONS OF THE HUMAN RIGHTS OF INTERNATIONAL CIVIL SERVANTS

A. Arbitrary arrest and detention

27. Most of the cases reported to the Secretary-General concern violations of human rights caused by the arrest and detention of staff members (A/C.5/43/18 and A/C.5/43/27 and Corr.1).

1. Legal aspects

28. When a staff member of the United Nations - whether internationally or locally recruited - is arrested or detained by government authorities, the Secretary-General has the right and the duty to find out the reasons for the arrest. Under the terms of the Charter of the United Nations (Art. 105), and the Convention on the Privileges and Immunities of the United Nations (arts. V and VI), all staff members are immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. As the Administrative Committee on Co-ordination pointed out in its report on international co-operation and co-ordination in the United Nations system (E/1980/34, annex I, para. 2), "international organizations, which are the instrument of international co-operation, cannot fully discharge their duties unless they can count on a completely independent international civil service".

29. It follows that the United Nations is entitled to functional protection of its staff members employed under the Staff Regulations and Rules of the United Nations, regardless of their nationality, place of recruitment, category or grade. It is for the Secretary-General alone, and not for Member States, to determine whether or not an act by a staff member has been performed in his official capacity. To that end, he needs to learn the facts. He must be in a position to visit the staff member under arrest, to converse with him, to be apprised of the grounds for the arrest and the formal charges. He is entitled to assist the staff member in arranging legal counsel for his or her defence and to appear in legal proceedings to defend any United Nations interest affected by the arrest or detention. All these provisions are contained in a memorandum on the United Nations legal rights when a staff member or other agent of the United Nations, or a member of their family, is arrested or detained (ST/AI/299, annex).

30. If it is established that the arrest or detention of a staff member is connected with his official duties, his right to immunity is invoked. If, on the other hand, it is found that the case is not connected with the person's official duties, the Secretary-General can and should waive immunity so that justice may take its course. In that case, the Secretary-General, none the less, ensures that the staff member under arrest and in detention is equitably treated and that due and proper procedures are followed.

2. Number of detained staff

31. In his report to the General Assembly, the Secretary-General stated that he had not been able fully to exercise his right of protection in approximately 65 cases of arrest and detention (A/C.5/43/18, para. 10). In that regard, the staff representatives of the United Nations Secretariat included 119 staff members in its list of staff members whose basic rights had not been observed by the respective Member States; a large number were listed as imprisoned, detained or disappeared (A/C.5/43/27, appendix).

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