

Ethiopia/Somalia, Prisoners of War of the Ogaden Conflict

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: *ICRC Annual Report*, 1988, pp. 25-26]

ETHIOPIA/SOMALIA

Activities in connection with the consequences of the Ogaden conflict

Almost 4,000 people, most of whom had been detained in Ethiopia and Somalia for almost 11 years, were released and repatriated in 1988. On 3 April Ethiopia and Somalia signed an agreement normalizing their relations and providing for the repatriation of all prisoners of war and civilian internees.

The ICRC had been trying for years to persuade the two governments to repatriate all prisoners of war, with priority being given to the seriously wounded and sick, in accordance with Articles 109, 110 and 118 of the Third Convention. In a *note verbale* dated 14 March 1988 and addressed to both governments the ICRC again requested them to do so. After hearing that an agreement had been signed on 3 April, the ICRC renewed its offer of services to organize the repatriation operation. The offer was accepted by both parties and the ICRC was authorized to visit the places of detention to interview each of the detainees, register them and check that they wanted to be repatriated. The actual repatriation took place in August.

Visit to Somali prisoners of war

Since the series of visits to 238 Somali prisoners of war carried out between 28 October and 4 November 1987 the ICRC had not been allowed to see these prisoners again in accordance with its customary criteria as defined in Article 126 of the Third Convention. On the other hand, it was able to continue providing them with food and material assistance. Between January and August 1988 ICRC delegates visited the three

places of detention on several occasions [...] to hand over a total of 66 tonnes of relief supplies.

On 18 August the Ethiopian authorities agreed to allow the ICRC to arrange for the repatriation of these prisoners of war and at the same time authorized the ICRC to interview them individually to check that they wanted to be repatriated. During the last visit, which was to Dire Dawa two days before the actual repatriation operation began, a further 16 prisoners of war who had never previously been visited were registered.

Visits to Ethiopian prisoners of war and civilian internees

Despite repeated representations since 1984, the ICRC was unable to visit Ethiopian prisoners of war in accordance with the criteria set out in the Geneva Conventions; it could only make visits every two months to provide aid. The delegates regularly went to three places of detention [...], bringing fresh fruit and vegetables, and at times recreational items and toiletries, for a total of 266 Ethiopian prisoners of war and one Cuban; they were however unable to interview the prisoners without witnesses. When the Somali/Ethiopian agreement of 3 April was announced, the Somali authorities accepted the ICRC's offer to arrange for the repatriation and allowed its delegates to go to all the places of detention. There they registered all the people being detained, both civilian and military, and interviewed them without witnesses to ensure that they wished to return to Ethiopia.

Once the arrangements had been finalized, an ICRC team went to Somalia at the end of June and visits to four places of detention took place throughout the month of July; more than 3,500 people were visited. In Laanta Bur, the delegates once again saw the Cuban prisoner of war, who had been known to the ICRC since 1982 [...]. In Hawa, at a camp with hitherto had never been visited, the ICRC delegates visited and registered 2,659 internees; for most of these people the visit was their first contact with the outside world for eleven years. The visits were supplemented by a medical and food aid programme: the ICRC doctor examined and began treating the sick, medicines were distributed and a food programme was set up. During July, 23 tonnes of food were distributed at the four places of detention, together with soap and other articles of hygiene.

Thanks to the registrations 300 families, whose members had been separated on capture and placed in different camps, were reunited in July.

These ICRC visits were also the subject of written reports and talks with the authorities, quite apart from the preparations for repatriation.

Repatriation of prisoners of war and civilian internees

Between August 23, and September 1, an aircraft chartered by the ICRC made 20 flights between Mogadishu and Dire Sawa, in Ethiopia, to transport a total of 3,543 Ethiopian prisoners of war and civilian internees (including 530 children and adolescents) and one Cuban prisoner of war from Somalia to Ethiopia and 246 Somali prisoners of war from Ethiopia to Somalia.

Because of the large number of people to be repatriated from Somalia to Ethiopia, a transit camp had to be set up near Merka, to the south of Mogadishu; groups of 150 to 180 people were taken there as the operation progressed. This camp was run in conjunction with the authorities and the Somali Red Crescent Society.

In Ethiopia, the repatriated people were received and given shelter by the Ethiopian Red Cross in hospitals and their premises in Harar until their return home.

In both countries, the National Societies helped to trace the families of repatriated people, just as they had helped to distribute family messages until the end of June [...].

In October, the Somali authorities decided to amnesty Ethiopian prisoners who had not benefited from prisoner-of-war status, and the ICRC arranged for their repatriation. After delegates had visited and registered them, an ICRC chartered aircraft took [...] 24 people back to Ethiopia.

Discussion

1.
 - a. What is the distinction between a POW and a civilian internee? How does the status alter the protection each receives under IHL? May a civilian internee be treated like a POW? (GC III, Art. 4; GC IV, Arts 43, 78 and 79)
 - b. When do POWs have to be repatriated according to IHL? When must civilian internees be released? (GC III, Art. 118; GC IV, Arts 43, 78 and 132-134; CIHL, Rule 128)
 - c. Was it lawful under IHL that some POWs and civil internees had been detained for up to eleven years? Did the POWs have to be repatriated only once Ethiopia and Somalia “normalized their relations”? Or only once they signed an agreement to repatriate POWs? (GC III, Art. 118; GC IV, Arts 43, 78 and 123-134; CIHL, Rule 128)
 - d. How could the Cuban national in Somalia be a POW? If he was a member of the Cuban armed forces? If he was a member of the Ethiopian armed forces? Where does he have to be repatriated to? (GC III, Arts 1, 4 and 118)
2. On which authority does the ICRC offer its services to assist the repatriation of POWs and civilian internees? (GC III, Arts 9, 118 and 126; GC IV, Arts 10, 132-134 and 143)
3. Does Art. 118 of Convention III oblige a Detaining Power to repatriate POWs who refuse to be repatriated? What arguments could a Detaining Power invoke to justify the non-repatriation of POWs who oppose their repatriation? Why do ICRC delegates check with each POW whether he/she wants to be repatriated?
4.
 - a. Does the ICRC have a right to visit POWs? Why are ICRC visits important? Are they even more important when the POWs are about to be repatriated? (GC III, Art. 126; CIHL, Rule 124)
 - b. Can you imagine why Ethiopia and Somalia at times impeded ICRC visits to POWs?
 - c. Why does the ICRC insist on visiting prisoners and interviewing them without witnesses? Does the ICRC have a right to insist on the latter condition? (GC III, Art. 126)
5.
 - a. By which means does IHL ensure that a family is informed about the capture and detention of a POW? May POWs renounce some or all of those means used to inform their families? What reasons could they have for doing so? (GC III, Arts 70, 122 and 123)

- b. Who must enable POWs to fill in capture cards? Can capture cards be filled in even when the ICRC is impeded from visiting prisoners of war? Does the ICRC have a right to register POWs? Why is the registration of prisoners of war important to the ICRC? (GC III, Arts 70, 122, 123 and 126; CIHL, Rule 123)
- 6. Why is the ICRC providing aid to the POWs? Is it not the State's responsibility to care for the POWs? (GC III, Arts 9, 73 and 125(3)) What if the State is really incapable of adequately caring for the POWs? Should the ICRC step in or must the State release and repatriate the POWs as it cannot detain them in conformity with Convention III? (P I, Art. 41(3))
- 7. The article mentions that the ICRC visits were the subject of written reports and talks with the authorities. What do you believe was mentioned in those reports? What was the purpose of those reports?