Opinion No. 18/2008 (Egypt)

Communication addressed to the Government on 19 October 2007

Concerning Mr. Djema'a al Seyed Suleymane Ramadhan

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 17/2008.)

2. The Working Group acknowledges the cooperation received from the Government which submitted information on the allegations presented by the source.

3. (Same text as paragraph 3 of Opinion No. 17/2008.)

4. The case summarized below was reported to the Working Group as follows: Mr. Ramadhan, born on 5 November 1960, was arrested in the evening of 11 May 1994 at his home in Helouane by State Security Services agents who did not show any arrest warrant nor did give any reason for his arrest. He was transferred to numerous detention centres. During the first year, he was kept in incommunicado detention. It was alleged that Mr. Ramadhan was tortured.

5. Some months after Mr. Ramadhan's arrest, his detention was legalized by an administrative decision from the Minister of the Interior issued according to article 3 of Law No. 162 of 1958 on the state of emergency.

6. In September 1997, according to the 1966 Code of Military Justice, and in spite of the fact that he was a civilian, Mr. Ramadhan was brought before the Supreme Military Tribunal of Heikstep, Cairo; which sentenced him to life imprisonment. The Court is composed of military officials in function and answer to the military hierarchy; and according to the source, they would lack the necessary legal training. Egyptian law does not contemplate judicial appeal to a higher court, neither civilian nor military.

7. The source concludes that Egyptian military tribunals cannot assure that civilians charged with criminal offenses have the right to a fair trial, as stipulated in article 14 of the International Covenant on Civil and Political Rights, to which the Arab Republic of Egypt is a State party. Their judgments are final and cannot be appealed to a higher court, thus

denying defendants due-process rights. The source claims that Mr. Ramadhan was not given access to a lawyer with sufficient time to prepare his defence. According to the source, Mr. Ramadhan's health condition is seriously deteriorating and he is now hospitalized in Qasr Al Aïn Hospital.

8. In its reply, the Government reported that Mr. Ramadhan is a prominent member of a proscribed terrorist organization that uses armed violence as a means of wreaking havoc and sowing terror among the population, with the aim of disrupting domestic law and public order. In particular, in the Military Offences case 56/1997, the military court charged him with being responsible for setting off explosions in banks. The Government does not give precise dates, circumstances, victims or other relevant elements and does not give further details as to which proscribed terrorist organization Mr. Ramadhan was allegedly linked to, or what incidents of armed violence he had been involved in. The Government further reported that the military court sentenced Mr. Ramadhan on 15 September 1997 to life imprisonment and he is still serving his sentence.

9. The Government maintains that the criterion for determining whether a trial is fair does not have to do with the nature of the court, but rather with the extent to which guarantees are provided in its proceedings. The Government further adds that the Egyptian military courts comply with the provisions of the International Covenant on Civil and Political Rights on exceptional measures when a state of emergency has been declared; apply the ordinary criminal law and afford defendants appearing before them the same procedural guarantees as those available in the ordinary courts under the Criminal Procedure Code.

10. The Working Group transmitted the response by the Government to the source, which did not provide its comments.

11. The Working Group notes that, in a case very similar to the present one, the Group, in its Opinion No. 3/2007 (A/HRC/7/4/Add.1, p. 59), declared the detention of Mr. Ahmed Ali Mohamed Moutawala and 44 other persons to be arbitrary. The Working Group wishes to reiterate the foundations of that Opinion.

12. Further to the arguments contained in the mentioned Opinion No. 3/2007, the Working Group wishes to add the information that follows below.

13. Contrary to what the Government maintains, the nature of a court or tribunal is a fundamental element for considering guarantees of impartiality and independence which are referred to in article 10 of the Universal Declaration of the Human Rights and article 14 of the International Covenant on Civil and Political Rights. The universal experience is that the so-called military courts are composed by, first of all, military judges. If the essential quality for a judge to exercise his/her functions is one of independence, in a military person the main value is by definition one of dependence, even of obedience. In the case of Egypt, the military jurisdiction is dependent on the Ministry of Defence. Military judges are military officers appointed by the Ministry of Defence for a two-year term, which can be renewed for an additional two-year term at the discretion of the Ministry. In addition, the referral of cases to courts by the executive branch of the Government creates a strong link between military courts and the executive.

14. The Government notes that the Military Judgements Act has been recently amended to ensure the impartiality and independence of their members by granting them judicial immunity and strengthening the guarantees for persons tried by those courts. The Working Group feels that the Government thereby confirms that, before this amendment, there were even less guarantees than now, and Mr. Ramadhan was indeed tried within the old norms. The amendment also provides for the establishment of a military appeals court, corresponding to a Court of Cassation. Mr. Ramadhan did not have the opportunity to lodge an appeal before a higher court.

15. The Working Group further notes that in Egypt military courts are composed of three military officers (and five in certain cases) plus a representative of the military public prosecution. Part of the Organic Law No. 25 of 1966, concerning military jurisdiction, requires military officers exercising the function of judge to have a knowledge of law. However, this requirement only applies to the Director of this jurisdiction and the Military Attorney General. The legal experience of some judges and prosecutors is generally limited, and confined to infractions committed by the military against military law and codes, but not to the assessment of crimes and own responsibilities of civilians.

16. The integration of a representative of the Public Prosecution as a magistrate in the military court aggravates the dependency —or lack of independence— of that court, because the public prosecution or Office is, by its own function, one of the parts —the accusatory— in the judicial proceedings.

17. In 2002, the Human Rights Committee, while analysing the fulfilment on the part of the Arab Republic of Egypt of its obligations under the International Covenant on Civil and Political Rights, noted "with alarm that military courts and State security courts have jurisdiction to try civilians accused of terrorism although there are no guarantees of those courts' independence and their decisions are not subject to appeal before a higher court (article 14 of the Covenant)" (CCPR/CO/76/EGY, para. 16). The Committee also considered that the Egyptian laws that penalize terrorism —that seemed to have applied to Mr. Ramadhan— contain a "very broad and general definition" of this scourge, which causes serious legal consequences.

18. Furthermore, the Committee against Torture, in its Final Observations, expressed "particular concern at the widespread evidence of torture and ill-treatment in administrative premises under the control of the State Security Investigation Department, the infliction of which is reported to be facilitated by the lack of any mandatory inspection by an independent body of such premises" (CAT/C/CR/29/4, para. 5). Mr. Ramadhan was precisely held in these premises.

19. In addition, the declaration of a state of emergency by the Government does not comply with the requirement of the International Covenant on Civil and Political Rights for that declaration to be legitimate. The Covenant prescribes that an exceptional situation of "public emergency" must exist which "threatens the life of the nation". In such cases, there can be such measures derogating from some but not all obligations of the Covenant, provided that such measures are not inconsistent with other obligations of the State under international law and do not involve discrimination. All suspension of the conventional obligations must be limited "to the extent strictly requested by the exigencies of the situation".

20. The declaration of the state of emergency was made by Decree No. 560 of the provisional President (the President of the People's Assembly) on 6 October 1981, the same day of the assassination of the President of the Republic, Anwar Sadat. Since that day, it has been renewed periodically, without a single day not governed by the state of emergency. The latest prorogation, for another two-year period, was made on 26 May 2008.

21. Although it was certainly possible to consider on 6 October 1981 that Egypt was affected by a situation of public emergency which could threaten the life of the nation, this argument seems to be less valid today. The state of emergency is clearly affecting the rights of persons whom objectively did not have links to that crime. The long duration of the state of emergency has also been condemned by the Committee against Torture ("The fact that a state of emergency has been in force since 1981, hindering the full consolidation of the rule of law in Egypt"); as well as by the Committee on Economic, Social and Cultural Rights ("the state of emergency that has been in place in Egypt since 1981 limits the scope of

implementation of constitutional guarantees for economic, social and cultural rights" (E/C.12/1/Add.44, para. 10)).

22. The Working Group further considers that Mr. Ramadhan had the right to have his case discussed fairly and justly before a neutral and independent court. He had also the right, according to article 14, paragraph 5, of the International Covenant on Civil and Political Rights, to have his conviction and sentence revised by a higher tribunal. This was not the case.

23. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mr. Djema'a Al Seyed Suleymane Ramadhan since 11 May 1994 is arbitrary, being in contravention of articles 5, 8, 9, 10 and 11 of the Universal Declaration on Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls under Category III of the categories applicable to the consideration of cases submitted to the Working Group.

24. Consequent upon the Opinion rendered, the Working Group requests the Government to remedy the situation of Mr. Ramadhan and to provide him with the medical care and assistance he requests, and to bring his situation into conformity with the provisions of the International Covenant on Civil and Political Rights. The Working Group believes that in view of the prolonged period of time already spent deprived of liberty, the adequate remedy would be his immediate release.

Adopted on 9 September 2008