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Opinion No. 30/2017 concerning Mohamed Serria (Egypt)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 15 February 2017 the Working Group transmitted to the Government of Egypt a communication concerning Mohamed Serria. The Government replied to the communication on 10 April 2017. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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Submissions

Communication from the source

4. Mohamed Serria is an Egyptian national, born in 1964. He was a professor at the Faculty of Medicine at Mansoura University from 1997. In November 2006, in the wake of an infection with hepatitis B virus, Mr. Serria underwent a full liver transplant in France. Following the transplant, he reportedly requires special medication and treatment that are available in France. He thus permanently resides in France for medical reasons. At the time of his arrest, he was visiting his mother in Egypt, where he arrived on 24 October 2014.

5. According to the information received, Mr. Serria was arrested on 28 October 2014 on the University campus, in front of the Faculty of Medicine, when he was filming four young individuals. They were reportedly holding thick sticks, which made Mr. Serria think that they were engaging in some sort of misbehaviour. Mr. Serria was arrested by four men in civilian outfits, who handed him over to the campus security personnel, who subsequently transferred him to Al-Mansoura First Police Station. The source indicated that the President of the University, shortly after his arrival at the station from which Mr. Serria was about to be released, referred to Mr. Serria as "a dangerous terrorist" in comments that were broadcast on Egyptian television, allegedly due to the discovery of photographs on Mr. Serria's telephone in which he and members of his family appeared in Rabaa Square. The source alleges that the discovery of the pictures apparently changed the entire situation and the treatment Mr. Serria received from the State authorities.

6. According to the source, following his arrest, Mr. Serria spent 36 hours without any investigation, charge or trial, contrary to articles 36 and 131 of the Egyptian Code of Criminal Procedure. On 30 October 2014, he was first interrogated by the police at the station, and the next day by a prosecutor. On 5 November 2014, Mr. Serria was presented for the first time before a judge who, allegedly without justification, decided to impose 15 days of temporary preventive detention. During a subsequent hearing, on 24 November 2014, the temporary detention was extended for an additional 15 days. The source claims that the extension continued illegally beyond that date, until 13 December 2014. Subsequently, the Court held weekly hearings on the case until 8 January 2015, when the case was transferred to a military court in Ismailia.

7. The source indicated that during the investigative phase and while in detention, Mr. Serria was transferred on several occasions, spending time in the following detention centres: Al-Mansoura First Police Station, Mansoura Prison, Gamasa Prison, Mit Salsil Prison in Dakahlia, Wadi Natrun Prison and Liman Tora Prison. The source alleges that the constant transfers created serious difficulties for Mr. Serria, particularly with regard to access to legal representation during the investigative phase. Furthermore, the impediments with regard to access to legal counsel, his family and medical care have been ongoing and continued throughout his detention.

8. According to the source, Mr. Serria's lawyer presented before the criminal court a number of official police documents relating to his client's initial detention, which demonstrate inconsistency and contradictions in the dates and times, therefore allegedly revealing the invalidity of the State actions under national law. Moreover, according to the source, the arrest was not carried out by security officials but rather by civilians on the university campus, for no apparent reason, given that Mr. Serria was filming, and without any evidence that would justify the temporary detention. Nevertheless, those claims were reportedly ignored by the courts.

9. After the case was transferred to the military court, the hearings resumed on 10 January 2015 and were held once a week. The source indicates that the change of jurisdiction was due to the enactment of legislation that considered all university premises as military institutions. During one of the trial hearings, the military judge asked the prosecution about the results of the investigation as the basis for Mr. Serria's detention and the charges he faced. Specifically, the military judge asked about the time that Mr. Serria had spent in Egypt following his arrival from France and prior to his detention, as the period of time did not seem sufficient for him to have committed the alleged crimes,

considering that he had not lived in Egypt for 19 years. After the hearing, the judge was reportedly dismissed and replaced by another.

10. According to the source, Mr. Serria was charged and tried for the following crimes: (a) participating with other unknown people on a criminal plot to intentionally destroy public buildings and belongings; (b) terrorizing people and disseminating horrifying notions to cause chaos within society; (c) gathering with more than five people and intending to attack people and sabotage public buildings using violence and possessing rudimentary weapons that are deadly when used; (d) sabotaging public property using flammable materials and fireworks; (e) participating in an unauthorized demonstration; (f) using life threatening explosives; (g) possessing explosives, flammable materials and substances during the demonstration; (h) promoting the suspension of the Constitution and the rule of law; (i) causing injuries to victims; and (j) being a leading member of the Muslim Brotherhood.

11. The source alleges that, given his medical condition, Mr. Serria would never be able to commit the crimes for which he is being charged. Moreover, the source states that at the time of the arrest, there was no demonstration taking place on the University campus, contrary to what the prosecutor affirmed and the Court recorded. Additionally, Mr. Serria was charged alongside with four other individuals, with whom the prosecutor stated he was in association. Nevertheless, according to the information received, the five individuals accused were detained in different places and at different times on that day, contradicting the idea of their participation in a public gathering for the purpose of a demonstration.

12. The source reports that, on 3 September 2015, the Sixth District Criminal Martial Court, after dismissing all the arguments from the defence, sentenced Mr. Serria to seven years of imprisonment with hard labour. Mr. Serria's defence appealed the decision. On 30 January 2017, the appeal was rejected by the Court in the second instance, rendering the verdict against Mr. Serria final.

13. According to the source, Mr. Serria's lawyer has presented appeals for release on health grounds, given the importance for his client of specific attention and medicine for his health condition, without which his life would be at great risk, especially considering the unavailability of the required treatment in Egypt. Furthermore, Mr. Serria's lawyer has consistently stated before the courts that the conditions of detention are not suitable for his client, given his medical situation, resulting in a violation of his human rights. Nevertheless, the requests for release on health grounds have been denied by the judges handling the case.

14. In view of the allegations listed above, the source submits that the continued detention of Mr. Serria is arbitrary given that it has been carried out without any evidence in support of the accusations, making it impossible to frame it under the legal basis used to justify it (category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it). Additionally, the source alleges that the international norms relating to the right to a fair trial have been violated as reported above, including the lack of compliance with the national procedural legislation and the fact that Mr. Serria is a civilian who is being tried by a military court (category III of the arbitrary detention categories referred to by the Working Group).

15. On 15 March 2017, the Working Group was informed that Mr. Serria had been released on 14 March 2017. The Working Group notes that, in accordance with paragraph 17 (a) of its methods of work, it "reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned". In the present case, the Working Group concludes that the allegations made by the source are extremely serious and that it will therefore proceed to deliver the opinion.

Response from the Government

16. On 15 February 2017, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide, by 17 April 2017, detailed information about the situation of Mr. Serria, and any comment it might have on the source's allegations. The

Working Group also requested the Government to clarify the factual and legal grounds invoked by the authorities to justify Mr. Serria's detention, and to provide details regarding the conformity of his deprivation of liberty and judicial proceedings with domestic legislation and international human rights norms, including the legal obligations of the Government under the human rights treaties that it has ratified. The Government replied to the regular communication on 10 April 2017.

17. Firstly, the Government's reply addresses the jurisdiction of military courts. Article 204 of the Egyptian Constitution vests military courts with the power to independently consider all crimes relating to the armed forces, their officers and members, and crimes committed by members of the general intelligence personnel during and in the course of their service. In addition, it states that civilians shall be tried before the military courts only for crimes that constitute a direct assault on military installations, camps of the armed forces, military zones or their border areas, military equipment, vehicles, weapons, ammunition, documents, military secrets, public funds, crimes relating to recruitment or conscription, or direct attacks on military officers who are carrying out their duty. Members of the military judiciary are autonomous and cannot be dismissed. They share the same security, rights and duties stipulated for members of other judiciaries.

18. Law No. 25 of 1966 establishes that the military judiciary is an independent judicial body composed of military courts, military prosecutors and other branches of the judiciary, in accordance with the laws and regulations of the armed forces. The military judiciary is administered by a committee that works under the auspices of the Ministry of Defence.

19. The jurisdiction of military courts follows objective criteria relating not to the persons who commit crimes, but to the crimes committed. In addition, ordinary, civil courts are unable to conduct trial proceedings for certain types of crime, either because of the nature of the victim or due to the circumstances surrounding the commission of the crime or the trial proceedings.

20. Second, the Government submits that the rights guaranteed by the legislator for military trials are the same as those granted for civil procedures, under article 204 of the Constitution. Furthermore, the framework of the Military Judiciary Act enshrines the guarantees of equal access to trial documents; the right to be informed at least 24 hours in advance of the duty to appear before a court as an accused or a witness; the possibility of penalties for witnesses who fail to appear before court; the possibility for courts to postpone hearings; the public nature of trials; the duty to keep a detailed record of every trial hearing; and the right to a court-appointed lawyer.

21. In addition, Law No. 16 of 2007 established the Supreme Military Court of Appeal, which deals with appeals filed by the military prosecutor or by persons convicted in a final judgment issued by military courts. Furthermore, Law No. 12 of 2014 amended the Military Judiciary Law on the establishment of a military court of appeal that is competent to hear appeals filed by the military prosecution or the individual sentenced in final judgments issued by the military court of misdemeanours.

22. The military court cannot impose the death sentence unless all of its members unanimously agree. Before issuing a ruling on capital punishment, the court must seek the opinion of the Mufti of the Republic.

23. Third, concerning the trial and prosecution of civilians before military courts, the Government recalls that, under article 204 of the Constitution, the military judiciary is an independent body with a mandate to consider the adjudication of certain crimes. The rights, privileges and immunities of its members are similar to the civil judicial authorities.

24. The Government provides detailed information about the content of certain articles of Law No. 25 of 1966, which establishes that the military judiciary is part of an independent judiciary, consisting of military judges and prosecutors and teams of other judges. The military judiciary is administered by a committee working under the auspices of the Ministry of Defence. Military judges are independent and are not subjected to any authority other than the authority of the law. Judiciary officers, except for the military prosecutor with the rank of lieutenant, are not subject to dismissal or recusal, except through disciplinary procedure.

25. In addition, under the same law, the military prosecution exercises the functions and powers granted to the public prosecution, investigation judges and referral judges of public law. Moreover, the military courts are the Supreme Military Court of Appeal, the Supreme Military Court, the Supreme Central Military Court and the Central Military Court.

26. The above-mentioned provisions ensure that the military judiciary enjoys the same guarantees and immunities as the civil judiciary, and the Ministry of Defence has no authority or power except in administrative matters. The requirements for the appointment of military judges are similar to those for the appointment of civil judges. Moreover, military judges enjoy the same guarantees and immunities as civil judges. In addition, military judges are subject to the same rules of dismissal and recusal as their counterparts in the civil judiciary. All verdicts are subject to appeal before the Supreme Military Courts.

27. Fourth, the Government highlights the fact that the legal system of military courts is consistent with international human rights law. With reference to the provisions contained in article 14 of the Covenant, the Government states that such norms do not consider case referrals to military courts. The Government submits that article 14 enshrines the right of the defendant or accused to a regular trial by a regular judge, which is defined as every judge and court established as a permanent entity in accordance with a law that indicates its mandate and is established prior to commitment of action by the defendant. Moreover, the court shall be composed of judges who are specialized in law, who meet the requirements and legal guarantees, and who are independent and not subject to dismissal or recusal.

28. Military courts are part of a judicial authority composed of judges who have the same requirements as ordinary judges in terms of independence and legal experience. Moreover, the military courts were established by a law prior to the start of the trial. In addition, all rights and guarantees are protected similar to the normal, civil judiciary and courts, and in accordance with the relevant international conventions.

29. Fifth, the Government indicates that the Egyptian Constitution guarantees the protection of persons deprived of their liberty, in accordance with article 9 of the Covenant, by ensuring that they appear before an independent judiciary, including under any law relating to the fight against terrorism or emergency situations. In that regard, article 54 of the Constitution states that personal freedom is a natural right that is safeguarded and cannot be infringed. Except in cases of in flagrante delicto, citizens may only be apprehended, searched, arrested or have their freedom restricted in accordance with a judicial warrant. All those whose freedom has been restricted will be immediately informed of the reasons for the restriction, notified of their rights in writing, allowed to contact their family and lawyer immediately, and brought before the investigating authority within 24 hours of their freedom having been restricted. The questioning of the person may only begin once his or her lawyer is present. If the person has no lawyer, one will be appointed. Those who have their freedom restricted have the right of recourse before the judiciary and a judgment must be rendered within a week of such recourse, otherwise the petitioner must be released immediately.

30. Article 55 of the Constitution states that all those who are apprehended, detained or have their freedom restricted must be treated in a way that preserves their dignity. They may not be tortured, terrorized or coerced. They may not be physically or mentally harmed. Individuals may be arrested and confined only in designated locations that are appropriate, in accordance with humanitarian and health standards. Any statement that is proven to have been given by the detainee under pressure, or the threat of pressure, will be considered null and void.

31. In addition, according to article 56 of the Constitution, the prison system should be for reform and rehabilitation. Prisons and detention centres must be subject to judicial oversight. Anything that violates the dignity of the person and or endangers his or her health is forbidden. The law regulates the provisions to reform and rehabilitate those who have been convicted, and to facilitate a decent life once they are released.

32. National legislation respects all the guarantees provided for under international conventions and the Egyptian Constitution with regard to persons deprived of liberty. The public prosecution, which is part of the national judiciary, is mandated to implement the legal framework and court decisions, and to carry out inspections of prisons. The public

prosecution is aware of the human rights framework and the international obligations of Egypt, whether through the ratified human rights conventions or unratified conventions and guideline principles adopted by the United Nations.

33. Article 40 of the Code of Criminal Procedure states that no one shall be arrested or detained except by order of the legally competent authorities. Any person who is arrested or detained must be treated in a manner conducive to the preservation of his or her human dignity and must not be subjected to physical or mental harm.

34. In addition, article 41 of the Code stipulates that no person may be incarcerated except in prisons and no warden of any prison may accept any person therein except by virtue of a warrant signed by the competent authority. Incarcerated persons must not be deprived of liberty for any period of time exceeding that specified in the warrant. Furthermore, article 42 of the Code stipulates that members of the public prosecution and the presidents and vice-presidents of courts of first instance are empowered to inspect the public and central prisons within their areas of jurisdiction in order to ascertain that no one is being detained unlawfully. They will examine prison records and arrest and detention orders, take copies thereof, contact any detainee and hear any complaint that detainees might wish to submit to them. The prison governors and staff must provide them with any assistance needed to obtain the information that they request.

35. Articles 85 and 86 of Law No. 396 of 1956 concerning the organization of prisons provide that prosecutors and judges have the authority to access all locations of deprivation of liberty at any time in order to ascertain that no person is illegally imprisoned by examining records, warrants and verdicts. They may receive complaints from prisoners and scrutinize registers and juridical papers. Prison directors or superintendents must provide them with all the data they request. Based on those powers, the Government submits that no one can claim that people deprived of their liberty are suffering from poor health and insanitary detention conditions.

36. Articles 5 and 6 of the same law state that no person will be admitted to prison without a written order lawfully signed by the competent authorities to that effect, and no person will remain in prison beyond the period specified in such an order. The prison director, superintendent or the person designated for that purpose must, before admitting any person to the prison, receive a copy of the commitment order.

37. Article 39 of the same law allows prisoners to meet with their lawyers alone, once they have obtained the permission of the competent judicial authorities. Under that law, prisoners have the right to education. The law also promotes prisoners' cultural activities by allowing the establishment in every prison of a library, containing books on religious, scientific and moral issues, from which prisoners may borrow books, newspapers and magazines. The prison administration must facilitate studies, encourage prisoners to read and allow them to take examinations.

38. National legislation enshrines the right of prisoners to send letters and receive visits from their families, including exceptional visits during holidays, to make telephone calls and to visit their families outside prison.

39. With regard to the health rights of prisoners, the same law establishes that every prison must have at least one physician or more, to provide medical care for prisoners. If the prison hospital is not adequate, and if in the opinion of the prison's physician a person must be treated in an external hospital, before the prisoner is moved his or her case must be referred to the assistant therapeutic director of health affairs. However, in cases of emergency, the physician will take the decision in order to ensure the prisoner's safety.

40. Six, the Government addresses the case against Mr. Serria. According to the Government, Mr. Serria and others were accused of agreeing to intentionally inflict criminal damage on buildings and public property, and to carry out acts of terrorism with the aim of inciting horror and chaos among citizens. The Government states that Mr. Serria had a role in preparing those acts.

41. Mr. Serria was also accused of participating in a gathering, the aim of which was to prepare to attack individuals and damage public and private property using violence and

aggression, while in the possession of rudimentary weapons and other tools that could cause death.

42. Furthermore, Mr. Serria and his co-defendants intentionally damaged public property used by governmental institutions, namely administration buildings at Mansoura University. They allegedly did that by dropping incendiary materials and fireworks that set the buildings on fire. They had in their possession firecrackers and inflammable materials like locally manufactured gas bombs, hand bombs, hand grenades and fireworks and used them to endanger people's lives, besides causing damage to buildings and government institutions that provide services to the public.

43. Mr. Serria and others participated in demonstrations without informing the competent authorities in advance, which caused a breach of security and public order, risked lives and public and private property, and prevented citizens from doing their jobs, affecting the flow of public utilities.

44. Mr. Serria and his co-defendants intentionally injured four individuals. All the injuries were described in a medical report. The attack reportedly violated rights protected by the Constitution and the law, while harming national unity and social harmony.

45. The accused was tried in public sessions at which his lawyer was present, according to procedures laid down in Egyptian legislation, which in is compliance with international agreements. On 3 September 2015, he was sentenced to seven years of high security imprisonment.

46. In relation to the allegations of torture, the Government indicates that the Constitution and legal framework place particular emphasis on punishing torture and other cruel, inhuman or degrading treatment. Egypt was one of the first States to combat torture by signing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through the Presidential Decree of 1986. The Convention has become one of the main pieces of internal legislation that should be implemented and the Government is committed to all of its provisions.

47. Articles 51, 52, 55 and 60 of the Constitution state that human dignity is a basic right that may not be infringed. All forms of torture are crimes with no statute of limitation and all those who are apprehended, detained or have their freedom restricted shall be treated in a way that preserves their dignity. They may not be physically or mentally harmed and, when arrested, must be held only in designated locations that are appropriate according to humanitarian and health standards. The human body is inviolable, and any assault, defilement or mutilation is a crime.

48. The Code of Criminal Procedure protects against assaults on personal freedoms and provides for the safety of the body. Criminal law punishes all acts of torture that may be inflicted by public or civil servants, prohibits the use of torture to force detainees to confess, and punishes with a severe penalty any public official who commits that crime.

49. The public prosecution investigates all complaints of torture. All procedures of criminal investigation must be carried out as soon as a complaint is submitted, by considering its merit, examining the body of the person who was tortured, the tools used and the crime scene. All witnesses and perpetrators must be questioned, including the official in charge of the place where the torture happened.

50. Based on all of the above, the Government submits that the source's claims have no basis and there is no evidence for them. Egypt adopts a strict legal framework that is based on firm procedures to combat and punish the perpetrators of torture. State authorities, including the public prosecution, are mandated to investigate in order to identify the perpetrator of torture and file charges to ensure the effective punishment of the crime of torture. Therefore, it is not appropriate to attribute torture to the Egyptian authorities. Crimes of torture, if committed, are individual cases and, in such cases, State institutions ensure that the incidents are handled in accordance with the law and that perpetrators are punished. From 2011 to 2015, legal and procedural steps were taken against law enforcement officials in incidents relating to torture, which resulted in the prosecution by criminal courts of at least 29 members of the security forces.

51. The Government concludes that the complaint is not based on evidence of a violation of the right to defence, torture or poor prison conditions. Furthermore, according to the Government, the complainant was accompanied by his lawyer from the very start of the investigation until the trial stage and no proof was provided of any physical injuries to him, which demonstrates the invalidity of the claims with regard to the circumstances of capture, arrest, detention and investigation.

Additional comments from the source

52. The reply from the Government of Egypt was transmitted to the source on 11 April 2017. The source responded on 19 April 2017, reiterating that the detention of Mr. Serria was arbitrary under categories I and III. The source urges the Working Group to consider the case of Mr. Serria, noting that although he has been released, the charges against him remain on his criminal record, which has had adverse implications for him. In particular, the source argues that due to Mr. Serria's serious medical condition, he needed to return to France for treatment but was denied a visa by the French consulate, allegedly on the basis of his conviction by the Egypt military court. The source also submits that the Government still needs to provide compensation to Mr. Serria for the mental and economic damage caused during his imprisonment.

53. Mr. Serria was arrested on a university campus, which is a civil, not a military institution. The military trial was therefore unlawful. In addition, such courts are not independent, as they receive orders through the military chain of command. Furthermore, the change of the first judge during the trial was not in line with national legislation. There was no evidence or medical report showing any injuries allegedly caused by Mr. Serria to other individuals. Moreover, Mr. Serria did not receive the medication and medical care he requires, he was confined in an overcrowded prison, with an area available per inmate of 37 cm by 42 cm, and the meals provided in the prison were not suitable for human consumption.

54. The Working Group notes that, in accordance with paragraph 17 (a) of its methods of work, it reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. The Working Group therefore proceeds to the consideration of Mr. Serria's case.

Discussion

55. The Working Group thanks the source and the Government for their submissions and replies, and welcomes their engagement with the Working Group.

56. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source submits a prima facie case of a breach of the international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68).

57. The source has alleged that the arrest and subsequent detention of Mr. Serria are arbitrary and fall under category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it, given that they were carried out without any evidence in support of the accusations, making it impossible to frame them under the legal basis used to justify them. The Government has not challenged those allegations.

58. The Working Group notes that Mr. Serria was held in the police station for 36 hours without any information regarding the reasons for his arrest or the charges against him. The Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested is not only promptly informed of the reasons for arrest but also promptly informed of any charges against them. As explained by the Human Rights Committee in its general comment No. 35 (2014) on liberty and security of person, the obligation encapsulated in article 9 (2) has two elements: information about the reasons for arrest must be provided immediately upon arrest (para. 27), and there must be prompt information about the charges provided thereafter.

59. The Working Group notes that the requirement of prompt information is not to be equated with the requirement to provide information at the time of the arrest (see general comment No. 35, para. 30). However, in the present case, the Working Group notes that Mr. Serria was arrested on 28 October 2014, which was not a public holiday. The Government has presented no reasons that would explain the delay of 36 hours to inform Mr. Serria not only of the reasons for his arrest, which should have been immediately provided, but also of any charges against him. The right to be promptly informed of charges concerns notice of criminal charges and as the Human Rights Committee also noted, that right applies in connection with both ordinary criminal prosecutions and military prosecutions or other special regimes directed at criminal punishment (general comment No. 35, para. 29).

60. Moreover, the Working Group notes that Mr. Serria was presented before the judge on 5 November 2014 and that on that day, the judge ordered his detention for 15 days. At the next hearing, which took place on 24 November 2014, a further detention of 15 days was ordered. Thereafter, the subsequent hearing, reviewing his continued detention, took place only on 13 December 2014. The Government has not challenged those submissions.

61. The Working Group notes that the detention of 15 days that was ordered on 5 November 2014 should have been reviewed on 20 November 2014, but the review did not take place until four days later. Thereafter, the detention of 15 days that was ordered on 24 November 2014 was not extended until 13 December 2014. While the Working Group has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of domestic law by judiciary,[1] in the present case, without going into the substance of the national legislation, the Working Group finds significant gaps in the review of the legality of Mr. Serria's continued detention.

62. Continued detention of an individual must be subject to periodic review to guard against arbitrariness (see general comment No. 35, para. 12); to detain a person beyond the period that has been authorized by the judicial authority is both unlawful and arbitrary (para. 11). Mr. Serria was held well beyond the 15-day period authorized by the court not just once, but twice. That, coupled with the authorities' failure to inform Mr. Serria of the reasons for his arrest and the failure to inform him promptly of any charges against him render his detention arbitrary under category I.

63. The source has argued that during his pretrial detention, Mr. Serria was transferred a number of times to various different detention facilities, which made his legal representation difficult. However, the source has not specified the nature of the difficulties or precisely how the various transfers adversely affected Mr. Serria's right to legal representation. The Working Group is therefore unable to make any assessments on that matter.

64. The source has also alleged that Mr. Serria's detention falls under category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it, due to both the lack of compliance with the national procedural legislation and the fact that Mr. Serria is a civilian who was tried by a military court. The source specifically points out that, initially, the proceedings against Mr. Serria took place in the civilian court and later, without any explanation, they were transferred to the jurisdiction of the military court. The source argues that the trial of civilians by a military court is not permissible under international law. The Government has challenged those submissions by arguing that the operation of the military court in Egypt is in full conformity with international law, that it is an independent judiciary and that the court observes full due process guarantees.

65. The Working Group observes that it is within its mandate to assess the overall proceedings of the court and the law itself to determine whether they meet international standards.[2] In relation to the jurisdiction of the military court, the Working Group in its

[1] See opinions No. 40/2005 and No. 15/2017.

[2] See opinions No. 33/2015, para. 80, and No. 15/2017.

practice has consistently argued that the trial of civilians by military courts is in violation of the Covenant and customary international law and that under international law, military tribunals can only be competent to try military personnel for military offences.[3]

66. Moreover, in the present case the Government had the possibility to explain the transfer of Mr. Serria's case to the jurisdiction of the military court, but has failed to do so. In its submission, the Government has argued that military courts have jurisdiction over civilians only when they are charged with crimes that represent a direct assault against military facilities, military barracks, military equipment and military personnel. However, the Government has failed to explain which actions taken by Mr. Serria fell under any of those categories.

67. The Working Group notes that the Government has not contested the source's submission that Mr. Serria was arrested on the premises of Mansoura University, which in the view of the Working Group cannot be reasonably described as a military facility.

68. The source argues that Mr. Serria was merely filming other people, while the Government argues that he, together with more than five other people, attacked four other individuals. That allegation is contested by the source, who notes that no evidence of such an attack has been presented. The Working Group notes that the Government has merely stated that Mr. Serria was involved in the attack, but it has not provided details of the attack, has not named the other individuals who allegedly participated in the attack, and has not submitted any documents supporting the fact that the attack took place or indeed any information about the cases of the other attackers. Moreover, even if such an attack did take place, the Government has still not explained how such an attack in Mr. Serria's case qualifies for the application of the military court jurisdiction.

69. The Working Group is also concerned about the fact that the President of Mansoura University appeared on Egyptian television referring to Mr. Serria as a "dangerous terrorist". The Working Group concurs with the view expressed by the Human Rights Committee in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, that it is a duty of all public authorities to refrain from prejudging the outcome of a trial, for example by abstaining from making public statements affirming the guilt of the accused (para. 30). The Working Group considers that the statement broadcast on Egyptian television had an adverse impact on Mr. Serria's right to a fair trial under article 14 of the Covenant.

70. The Working Group therefore concludes that the fact that Mr. Serria was tried by a military court means that he did not receive a fair trial as stipulated in article 14 of the Covenant. The Working Group finds that the non-observance of the international norms relating to the right to a fair trial is of such gravity as to give Mr. Serria's deprivation of liberty an arbitrary character (category III).

71. Lastly, the source has argued that Mr. Serria's serious health condition means that he should not have been imprisoned, as his health needs cannot and have not been met during his imprisonment. While its mandate does not cover conditions of detention or the treatment of prisoners per se, the Working Group must consider to what extent detention conditions can negatively affect the ability of detainees to prepare their defence as well as their chances of a fair trial.[4] The source has not explained how the detention conditions negatively affected Mr. Serria's ability to prepare his defence and his chances of a fair trial. Moreover, the Working Group notes that Mr. Serria has now been released and therefore considers it unnecessary to examine the issue further. However, the Working Group feels obliged to remind the Government of Egypt that, in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person.

Disposition

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

[3] See A/HRC/27/48, paras. 67-68, and opinion No. 44/2016.

[4] See E/CN.4/2004/3/Add.3, para. 33, and opinions No. 1/2017 and No. 15/2017.

The deprivation of liberty of Mohamed Serria, being in contravention of articles 3 and 9 of the Universal Declaration of Human Rights and of articles 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

73. The Working Group requests the Government to take the steps necessary to remedy the situation of Mr. Serria without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the Covenant.

74. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Mr. Serria an enforceable right to compensation and other reparations, in accordance with international law. The Working Group also requests guarantees of non-repetition.

Follow-up procedure

75. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether compensation or other reparations have been made to Mr. Serria;

(b) Whether an investigation has been conducted into the violation of Mr. Serria's rights and, if so, the outcome of the investigation;

(c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Egypt with its international obligations in line with the present opinion;

(d) Whether any other action has been taken to implement the present opinion.

76. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

77. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

78. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[5]

[*Adopted on 26 April 2017*]

[5] See Human Rights Council resolution 33/30, paras. 3 and 7.