`AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي *African Commission on Human & Peoples' Rights*		UNIÃO AFRICANA *Commission Africaine des Droits de l'Homme & des Peuples*

31 Bijilo Annex Layout, Kombo North District, Western Region, P. O. Box 673, Banjul, TheGambia
Tel: (220) 4410505 / 4410506; Fax: (220) 4410504
E-mail: au-banjul@africa-union.org; Web www.achpr.org

Communication 614/16

Mr. Eid Mohammed Ismil Dahrooj and two others (represented by AED and 4 others)

v

Arab Republic of Egypt

Adopted by the
African Commission on Human and Peoples' Rights
during the 23rd Extra-Ordinary Session, from 13th to 22nd February 2018
Banjul, The Gambia

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Commissioner Soyata Maiga
Chairperson of the African Commission on Human and Peoples' Rights

.....
Dr. Mary Maboreke
Secretary to the African Commission on Human and Peoples' Rights

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Communication 614/16 – Mr. Eid Mohammed Ismil Dahrooj and two others (represented by AED and 4 others) v Arab Republic of Egypt

Summary of the Complaint

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received a Complaint on **31 March 2016** from AED and ors (the Complainants) on behalf of the First Victim, Mr. Eid Mohammed Ismil Dahrooj, the Second Victim, Mr. Abdul Rahman Eid Mohammed Ismail Dahrooj and the Third Victim, Mr. Salah Eid Mohammed Ismail Dahrooj against the Arab Republic of Egypt (the Respondent State).[1]

2. The Complainants aver that the Second and Third Victims are the children of the First Victim.

3. The Complainants submit that they have been authorized by the Victims to represent them in this case.

4. The Complainants aver that on 03 July 2013, a discriminatory military coup took place in the Respondent State which violated all human rights, and sought to eliminate a specific sector of the Egyptian society, being the sector that opposed the coup against the government that was fairly and freely elected by the peoples of Egypt. They allege that the coup leaders (hereafter, the Authorities) who subsequently assumed leadership of the Respondent State committed discriminatory segregation of a sector of Egyptians through killing, enforced disappearances, and torture of prisoners and inmates, including violating the rights of women, children and minors in detention. They aver that the lawyers who represented victims were falsely accused and arrested in order to force them to discontinue their much needed legal services, which infringes the Victims' right to defence.

5. The Complainants also claim that the Authorities violated freedom of thinking, especially that of university lecturers, and generally turned Egypt into a large prison to terrify the Egyptian people, through lawlessness and in blatant breach of international human rights law.

6. More specifically, the Complainants allege that the family of the Victims is one of several families that suffered at the hands of the Authorities after the coup. They aver that the First Victim, who is an Egyptian national, was born in 1949 in Alexandria City, Egypt, and worked as General Manager of financial and

[1] The Arab Republic of Egypt ratified the African Charter on Human and Peoples' Rights on 20 March 1984.

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administrative management of taxes before his retirement. He was allegedly arrested on 14 May 2014, and the Authorities falsified charges against him - accusing him of spying for Hamas in Palestine, a crime the Complainants claim he knows nothing about.

7. The Complainants further aver that the First Victim's trial before a 'special circle' was devoid of natural justice and that he was sentenced on 16 May 2016 for life, and kept in Scorpio Prison, which is a high security prison.

8. The Complainants allege that while in detention at the Scorpio prison, the First Victim was tortured and subjected to inhumane treatment, including: being put in a tiny, poorly ventilated cell with no bed; denial of visitation rights; denial of access to medication and clean water; denial of access to newspapers and writing materials; prevention from carrying money; and denial of medical care even though he was injured after he was arrested. The Complainants allege that the First Victim suffered from serious infections in his limbs and nerves, as well as inflammation of his stomach and vertebrae of his neck and back.

9. The Complainants aver that the Prison Service denied the First Victim visitation rights for several months and when it was finally allowed, the visitation only lasted for fifteen minutes through a sound proof glass panel with the Prison Service recording the conversation between him and his family. The Complainants aver that this policy termed 'slow murder' made the First Victim declare a hunger strike and he was thereafter threatened with 'liquidation' by the Head of the Prison Services if he refuses to discontinue the hunger strike. It is alleged that the Prison Service also threatened his wife and children, indicating that they will falsify charges against them.

10. The Complainants aver that the Second Victim who is also an Egyptian national, born on 18 March 1988, is a Dentist and Faculty member at the Faculty of Dentistry at the University of Pharos. He lives in Alexandria, Egypt, and was allegedly arrested and detained on 14 May 2015, the same day his father was arrested. He was thereafter allegedly confined in Borg El Arab Prison after the Security Forces had allegedly accused him of being a member of a banned group.

11. The Complainants allege that he was later tried in a trial devoid of natural justice and sentenced to an imprisonment term of two years. In prison, he was allegedly subjected to all kinds of torture including beatings, stripped, burning of scientific references in his personal library and research for his Masters programme.

12. The Complainants submit that the Third Victim, who is an Egyptian national, was born on 11 November 1996, and a student at the Faculty of Arts in Egypt,

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was arrested by Security Forces on the street on 24 July 2014. The Complainants contend that the Third Victim is a minor, less than 18 years old and his arrest took place without the permission of the Public Prosecutor. The Complainants allege that following his arrest, he was detained in Wade Natrun Prison after Security Forces allegedly fabricated charges against him and accused him of joining a banned group, disturbing public peace, rioting and disturbing public security.

13. The Complainants additionally submit that the Third Victim was sentenced without due process to five years' imprisonment on 29 April 2014.

14. Regarding the need to exhaust domestic remedies, the Complainants submit that the exhaustion of domestic remedies after the coup is totally impossible, because following the coup which upstaged the democratically elected government of the people,[2] all those who opposed the coup were arrested, detained and punished for exercising their rights, and harsh sentences including mass death penalties were passed on dissidents. They however note that former President Mubarak was released and cleared of any charges.

15. In view of the foregoing, they submit that under the current regime, exhaustion of domestic remedies is impossible, as the military is ruling the country, and that any judge who shows any independence from the military would be punished by being sacked or removed. Lawyers and attorneys are also not left out of such punishments as the judiciary in Egypt has collapsed by subduing itself to the military rules and 'court sentences have become politicized'.

16. The Complainants claim that the Complaint has been filed within a reasonable time in accordance with Article 56(6) of the Charter, after awaiting the outcome/judgments of the Egyptian courts, and finally that the Complaint has not been presented before any other international dispute settlement forum for settlement or adjudication.

17. In view of the foregoing, they allege that the crimes committed by the Authorities against the Victim and his family include the following: (i) discriminatory segregation; (ii) elimination of indigenous people; (iii) crime of torturing of detainees; (iv) violation of detainees' right in the course of trial resulting in denial of justice; (v) denial of prisoners' rights; (vi) crimes of enforced disappearances; and (vii) crimes of issuance of harsh sentences without fairness and justice.

[2] It is alleged that a new president and parliament were democratically elected following the peoples' revolution of 25 January 2011.

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Articles alleged to have been violated

18. The Complainant alleges that the Respondent State has violated Articles 1, 2, 3, 4, 5, 6, 7, 8, 14, 15, 17, 19, 60 and 61 of the African Charter on Human and Peoples' Rights.

Procedure

19. The Secretariat received the Complaint on 31 March 2016 and acknowledged receipt on 12 April 2016.

20. The African Commission on Human and Peoples' Rights (the Commission) was seized of the Communication during the 58th Ordinary Session of the Commission, held from 06 to 20 April 2016.

21. By letter and note verbale dated 04 May 2016 the Complainant and the Respondent State were informed of the decision to be seized and the Complainant was requested to present evidence and arguments on admissibility within two (2) months.

22. By letter and note verbale dated 25 July 2016 the Complainant and the Respondent State were informed that the Communication was deferred during the 20th Extra-Ordinary Session, pending receipt of the Complainant's submissions on admissibility.

23. By letter and note verbale dated 23 November 2016 the Complainant and the Respondent State were informed that the Communication was deferred during the 59th Ordinary Session, pending receipt of the Complainant's submissions on admissibility. By the same communication, the Complainant was reminded to submit submissions on admissibility within one month, failing which it would be struck out for lack of diligent prosecution.

24. By letter and note verbale dated 11 July 2017 the Secretariat informed the Parties that the Communication was deferred during the 60th Ordinary Session.

25. By note verbale dated 02 August 2017 and received at the Secretariat on 14 August 2017, the Respondent State indicated that the Complainant had not made their submissions on admissibility within the required time frame and requested that the Communication be struck out.

26. By letter and note verbale dated 20 September 2017 the Secretariat informed the Parties that the Complainant had been granted an additional thirty (30) days

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within which to submit on admissibility, failing which the Communication would be struck out for lack of diligent prosecution.

27. In a note verbale dated 27 October 2017 received at the Secretariat on 24 November 2017, the Respondent State indicated that the additional time had expired and thus requested the Commission to strike out the Communication.

Analysis of the Commission to strike out

28. Rule 105(1) of the Commission's Rules of Procedure establishes that when the Commission has decided to be seized of a Communication, it shall request the Complainant to present arguments on Admissibility within two (2) months.

29. Rule 113 provides that when a deadline is fixed for a particular submission, either party may apply to the Commission for extension of the period stipulated. The Commission may grant an extension of time for a period not longer than one (1) month.

30. In this case, the Complainant was requested to present evidence and arguments on the admissibility of the Communication within two (2) months from the date of notification of the seizure decision, which had expired on 04 July 2016. However, the Complainant did not present any evidence and arguments within the stipulated time. The said period was extended by the Commission for a period of 30 calendar days and same had expired on the 23 December 2016.

31. During its 22nd Extraordinary Session which took place from 29 July to 07 August 2017, in Dakar, Republic of Senegal, the Commission decided, because it was not satisfied that the Complainant has received the earlier correspondences based on the evidence on record, to granted the Complainant a further period of 30 calendar days from the date of notification to submit evidence and arguments on the admissibility of the above mentioned Communication.

32. More than three (3) months have lapsed since the expiry of the last extended period and no evidence and arguments have been submitted by the Complainant on the admissibility of the Communication. There is also evidence on record that the Complainant has received the letter granting further extension of time to submit on admissibility.

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33. In light of the above, the Commission therefore finds that the Complainant has shown no interest in prosecuting this Communication.

34. The Commission takes note of its jurisprudence, including **Communication 594/15: Mohammed Ramadan Mahmoud Fayad Allah v. the Arab Republic of Egypt, Communication 612/16: Ahmed Mohammed Ali Subaie v. the Arab Republic of Egypt, Communication 412/12L Journal Echos du Nord v. Gabon** and **Communication 387/10: Kofi Yamagnane v. The Republic of Togo**, which were similarly struck out for want of diligent prosecution.

Decision of the Commission

35. In view of the above, the Commission decides to strike out the Communication for lack of diligent prosecution.

Done at the 23rd Extra-Ordinary Session of the Commission held in Banjul, The Gambia from 13 to 22 February 2018

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