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الاتحاد الأفريقي <i>African Commission on Human & Peoples' Rights</i>		UNIÃO AFRICANA <i>Commission Africaine des Droits de l'Homme & des Peuples</i>
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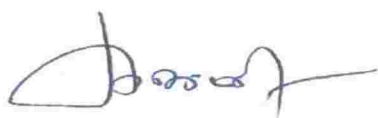
Communication 637/16 and 639/16

**Mr. Mohammed Abdel Hay Faramawy and 2 Ors
(Represented by Dr. Abdel Hay Faramawy and 4
Ors)**

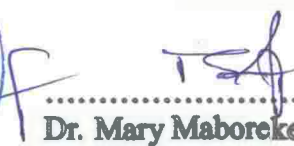
v

Egypt

*Adopted by the
African Commission on Human and Peoples' Rights
during the 26th Extra-Ordinary Session, from 16th to 30th July 2019
Banjul, The Gambia*



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

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

Decision of the African Commission on Human and Peoples' Rights on Strike out

Communication 637/16 and 639/16- Mr. Mohammed Abdel Hay Faramawy and 2 Ors (Represented by Dr. Abdel Hay Faramawy and 4 Ors) v The Arab Republic of Egypt

Summary of the Complaint:

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received two Complaints on 26 September 2016 and 10 October 2016 from Dr. Abdel Hay Faramawy; Mr. Farooq Kamel Mohammed; the European Alliance for Human Rights (AED); AMAN Organisation, and Prof. Mostafa Metwaly (the Complainants) on behalf of Mr. Mohammed Abdel Hay Faramawy (First Victim), Mr. Mostafa Abdel Hay Faramawy (Second Victim) and Mr Amed farooq Kamel Mohammed (Third Victim).
2. The Complaints are submitted against the Arab Republic of Egypt (the Respondent State) a State Party to the African Charter on Human and Peoples' Rights (the African Charter), having ratified the same on 20 March 1984.
3. The Complainants allege that on 7 March 2013, a military coup took place in Egypt which violated all human rights and still continues to eliminate a sector of the Egyptian people who oppose the coup; that the Coup leaders have discriminated against and eliminated a sector of the indigenous people; and have committed crimes of enforced disappearances, torture of prisoners and detainees as well as the arrest, detention and persecution of lawyers defending the victims.
4. The Complainants further allege that the truth was twisted through the use of politicized judges, and the victims of these alleged acts were denied their right to defence due to the arrest and falsification of allegations against lawyers who represent the victims in order to pressurize them to discontinue their relevant legal services.
5. The Complainants claim that the authorities violated the rights of women, children and minors who are in detention, the right of thinking, especially of university lecturers and have turned the Arab Republic of Egypt into a massive prison in an attempt to terrify the Egyptian people.



6. The Complainants state that the First Victim is a 31 years old Egyptian national, a teacher by profession and is married with one child; the Second Victim is a 25 years old Egyptian national, a student and single; while the Third Victim is Egyptian, 30 years old, single and a lawyer.
7. The Complainants submit that sometime after midnight on 15 July 2013 (i.e during the month of Ramadan when muslims fast throughout the day and only eat at night and late before dawn), the Victims went out to dinner at a restaurant in Nasr City, Cairo. The Complainants state that before the Victims arrived the restaurant, they found a group of people gathered together. In the commotion, the Victims left their car and went to inquire about the gathering, where they found a suspected thief caught by the group and who was being beaten with sticks.
8. The Complainants allege that the Victims rescued the suspected thief from the mob, took him into their car and drove off in order to take him to the nearest hospitals as he was bleeding from the wounds inflicted on him by the mob. The Complainants also allege that on their way to the hospital, the Victim had a tyre puncture just close to a police check point.
9. The Complainants aver that at the police check point, a Police Officer asked them whether they are in support of the military coup or against it, and they replied that they are against the coup. Upon hearing that they are against the Coup, the police arrested them together with the wounded suspected thief and detained them in solitary confinement at the police station. The Complainants allege that the police prevented the Victims from communicating with their families or with their lawyers.
10. The Complainants allege that while in detention, the Police Officer blind folded the Victims and the suspected thief, administered electric shocks on them and severely beat them up. That in the process of torturing the suspected thief, the police amputated his finger. The Complainants add that the Victims were tortured because they had said they are against the coup.
11. The Complainants also allege that the Police later fabricated a charge and charged the Victims with torturing the thief and amputating his finger. They add that the police invited the public prosecutor that same night to the police department, who personally conducted an investigation on the charge and referred the case to the Court. The Complainants add that the case was referred



to the Court after the allegations that those who oppose the coup are torturing people and cutting off their fingers had been publicized in the pro-coup media.

12. The Complainants submits that during the trial, the suspected thief testified that while in detention and being tortured, the police forced him to lie and accuse the Victims of being the ones who tortured him and cut off his finger. The Complainants add that the suspected thief testified that the Victims had in fact saved him from the mob and were *en route* to the hospital to have him treated of his wounds when they were arrested and that his finger was cut off by the police.
13. The Complainants submit that notwithstanding the testimony of the thief, the Court went ahead and sentenced the Victims each to three years imprisonment.
14. The Complainants state that the Victims were then transferred to Wadi Natrun prison, where they were allegedly subjected to more torture and unimaginable humiliation. They allege that at Wadi Natrun Prison:
 - (i) The Victims were stripped off their clothing and then ordered to lie on the ground with their stomach while the prison Guards walked on them with their shoes;
 - (ii) The Victims had to kneel before talking to the Guards;
 - (iii) The prison cells were very narrow and overcrowded, some prisoners slept while standing on their feet and others took turns in sleeping on the floor;
 - (iv) The cells were also infested with insects and full of water during that very cold period of the year.
 - (v) The Victims were refused access to writing and reading materials and were not allowed to watch television;
 - (vi) The Victims were refused visits from their family for a whole month, and when visits were granted, the Victims were subjected to verbal abuses from the prison administrators;
 - (vii) After visits, the Victims were forced to defecate in front of prison officers to make sure that they had not hidden anything through their anus.
15. The Complainants allege further that the Victims were again summoned without their Lawyers being present and interrogated about a case called the Raba'a Resolution case (a situation that occurred when the Victims were in prison), and the Victims were made defendants in the case. The outcome of the investigations was never made known to the Victims.



16. The Complainants disclose that there is no independent judicial system at the moment in Egypt.
17. The Complainants finally allege that the violations committed by the coup leaders against the Victims include the following: (i) Violation of the Victims' rights to the administration of justice; (ii) Harsh sentences; (iii) Torture; and (iv) Violation of the rights of the Victims as detainees.

Articles alleged to have been violated

18. The Complainants allege that the Respondent State has violated Articles 1, 2, 3, 4, 5, 6, 7, 8 and 19 of the African Charter.

Procedure

19. The Secretariat received the first Complaint on 26 September 2016 and acknowledged receipt on 4 October 2016, informing the Complainants that the Complaint will be tabled before the Commission for consideration at its next Session. The first Complaint was registered as Communication 637/16. The Commission received the second Complaint on 10 October 2016 and registered it as Communication 639/16.
20. The Commission considered the Complaints at its 59th Ordinary Session and decided to join the Complaints based on their similar facts, be seized of it and granted provisional measures. The decision was transmitted to the Parties on 20 December 2016. The Complainants were requested to submit on the admissibility of the Communication within two (2) months.
21. On 31 October 2017 a Note Verbale was received from the Respondent State, which indicated that it did not have any record of correspondence on this Communication.
22. On 05 February 2018 the Secretariat re-transmitted the initial Complaints as well as the decision on seizure and provisional measures to the Respondent State.
23. On 23 July 2018 the Parties were informed that the Complainants had been granted an extension of thirty (30) days within which to submit on the admissibility of the Communication, failing which the Communication would be struck out for lack of diligent prosecution.



24. On 29 March 2019 a Note Verbale was received from the Respondent State indicating that the extension of 30 days had expired and requested the Commission to dismiss the Communication due to its failure of compliance with the Rules of Procedure and the lack of diligent prosecution on the side of the Complainants.

Analysis of the Commission on strike out

25. 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 Complainants to present arguments on Admissibility within two (2) months.

26. 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.

27. In this case, the Complainants were 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 period had expired on 20 February 2017. However, the Complainants did not present any evidence and arguments within the stipulated time.

28. Given that more than a year had passed without correspondence from the Commission, on 23 July 2018 the Complainants were granted 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.

29. One year has lapsed since the expiry of the last extended period and no evidence and arguments have been submitted by the Complainants.

30. In light of the above, the Commission therefore finds that the Complainants have shown no interest in prosecuting this Communication.

31. 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 412/12: 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 on strike out

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

Done in Banjul, The Republic of The Gambia at the 26th Extra-Ordinary Session of the Commission held from 16 to 30 July 2019



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