

المفوضية الإفريقية تفرض وقف إعدام 20 مصريًا

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علمت "عربي21"، الأربعاء، أن المفوضية الإفريقية لحقوق الإنسان وحقوق الشعوب، فرضت على مصر وقف إعدام 20 شخصا، وذلك وفق بيان بعثت به إلى السلطات المصرية. وحصلت "عربي21" على بيان سيصدره مكتب المحاماة المعني بالقضية، كما حصلت على نسخة من رسالة المفوضية إلى عبد الفتاح السيسي، ورسالة أخرى للمفوضية الإفريقية إلى مكتب المحاماة.

وأكد البيان الصحفي الذي يصدر عن "آي تي إن للمحاماة"، أن المفوضية الإفريقية لحقوق الإنسان وحقوق الشعوب بادرت بفرض إجراءات مؤقتة على الحكومة المصرية، مطالبة إياها بالوقف الفوري لأحكام الإعدام الصادرة بحق عشرين شخصا.

وتأتي الإجراءات المؤقتة على إثر شكوى تقدم بها إلى المفوضية حزب الحرية والعدالة نيابة عن المساجين الذين تأكدت الأحكام الصادرة ضدهم ولا يملكون الحق في مزيد من الاستئناف، وتم إشعار السيسي في رسالة خطية بعثت بها إليه المفوضية الإفريقية في التاسع والعشرين من تشرين الثاني/ نوفمبر 2017.

وبحسب البيان الذي حصلت "عربي21" على نسخة منه، فقد أخبرت المفوضية الرئيس المصري في الرسالة بأنها قبلت الشكوى التي تقدم بها حزب الحرية والعدالة ودونتها ضمن مراسلاتها الرسمية.

وأكدت الرسالة عزم المفوضية المضي قدماً في إجراء تحقيق كامل في المزاعم التي وردت في الشكوى، وتطالب الحكومة المصرية بتقديم تقريرها حول تنفيذ قرار توقيف الأحكام خلال خمسة عشر يوماً من تاريخ الرسالة.

وتتعلق الشكوى التي أرسلت إلى المفوضية في تشرين الثاني / نوفمبر بأحكام الإعدام الصادرة بحق عشرين شخصاً في خمس قضايا منفصلة، وهي الأحكام التي صادقت عليها المحاكم المصرية، بما يعني أن المحكومين لا يملكون حق مزيد من الطعن في أحكام الإعدام تلك، وأنهم باتوا يواجهون الموت الوشيك.

وتوضح الشكوى أن الأحكام صدرت بعد إجراءات قانونية تفتقد إلى الحد الأدنى من المعايير المطلوبة سواء في القانون الدولي أو القانون المصري، وتشتمل الشكوى على تفاصيل الأدلة التي تثبت الأخطاء الإجرائية الجسيمة التي ارتكبت بما في ذلك الحصول على الاعترافات تحت التعذيب وحرمان المتهمين من حق التواصل مع محاميهم.

وقالت أيضاً إضافة إلى ذلك، إن شهادات شهود العيان التي يفترض أن تثبت بأن المتهمين كانوا يتواجدون في مكان آخر لم تؤخذ بالاعتبار، بما في ذلك الدليل الذي يثبت أن أحد المتهمين بعينه كان في واقع الأمر قيد الاعتقال في وقت الهجوم بالقنابل الذي ادعي عليه بأنه قام بتنفيذه.

وطالب حزب الحرية والعدالة المفوضية الأفريقية بالتدخل من أجل الوقف الفوري لأحكام الإعدام، مصرحاً بأن "السلطات المصرية تجاهلت تماماً الأمر الصادر عن المفوضية بوقف العمل بعقوبة الإعدام، وأخفقت في أن توفر للمتهمين الحق في محاكمة عادلة بموجب الضمانات المنصوص عليها في الميثاق الأفريقي وفي المعاهدات الدولية".

رسالة المفوضية إلى مكتب المحاماة

ووجهت سكرتيرة المفوضية الأفريقية لحقوق الإنسان وحقوق الشعوب، الدكتورة ماري مابوريكي رسالة إلى مكتب المحاماة "آي تي إن"، جاء نصها:

المراسلة 670/17 - فضل المولى حسني أحمد إسماعيل وتسعة عشر آخرين (ممثلين بحزب الحرية والعدالة في مصر) ادعاءً على جمهورية مصر العربية.

أكتب لأبلغكم بأنه أثناء فترة ما بين الدورات بعد الدورة العادية الحادية والستين للمفوضية الأفريقية لحقوق الإنسان وحقوق الشعوب (المفوضية) والتي انعقدت في بانجول، غامبيا، من الأول حتى الخامس عشر من نوفمبر / تشرين الثاني 2017، فقد نظرت المفوضية في موضوع المراسلة المشار إليها أعلاه وقررت القبول بها. تجدون مرفقاً بهذه الرسالة نص قرار القبول.

أرجو أن تلاحظوا بأن المسألة قد تم تدوينها وإعطائها رقماً مرجعياً كما هو مشار إليه في العنوان أعلاه. ولذلك ينبغي في كل المراسلات اللاحقة الإشارة إلى هذا الرقم المرجعي.

بالإضافة إلى ذلك، تم النظر في طلبكم اتخاذ إجراءات احتياطية، واتخذ قرار بمنحكم ذلك، حيث أن طلبكم ينسجم مع المعايير التي يتطلبها اتخاذ إجراءات احتياطية كما هو منصوص عليه في المادة 98(1) من أحكام إجراءات المفوضية. وتجدون مرفقاً طي هذا الكتاب الخطاب الذي تم توجيهه إلى الدولة المعنية حول الإجراءات الاحتياطية.

وبموجب المادة 98(4) من أحكام إجراءات المفوضية، فقد طُلب من الدولة المعنية الرد كتابياً عما ينوون اتخاذه من خطوات لتنفيذ الإجراءات الاحتياطية خلال خمسة عشر يوماً من استلامهم للطلب.

كما أود إبلاغكم بأنه بموجب المادة 105(1) من أحكام إجراءات المفوضية، فإنه مطلوب منكم تقديم الأدلة والحجج المتعلقة بالمراسلة المعنية خلال فترة لا تتجاوز ستين يوماً من تاريخ هذا الإشعار، وتقبلوا فائق الاحترام

رسالة إلى السيسي

وأرسلت المفوضية الأفريقية عبد الفتاح السيسي رسالة أخرى حصلت "عربي21" على نسخة منها وترجمتها، جاء نصها على لسان المفوض سوياتا مايغا، رئيس المفوضية الأفريقية لحقوق الإنسان وحقوق الشعوب:

الموضوع: طلب إجراءات احتياطية بموجب المادة 98 من أحكام إجراءات المفوضية الأفريقية لحقوق الإنسان وحقوق الشعوب، بوصفي رئيس المفوضية الأفريقية لحقوق الإنسان وحقوق الشعوب، أتشرف بلفت انتباه سيادتكم إلى شكوى رفعت ضد جمهورية مصر العربية (الدولة المعنية) بموجب المادة 55 من الميثاق الأفريقي لحقوق الإنسان (الميثاق الأفريقي).

تقدم بالشكوى حزب الحرية والعدالة في مصر (المشتكون) نيابة عن السيد فضل المولى حسني أحمد إسماعيل وتسعة عشر آخرين (الضحايا). وتم قبول الشكوى من قبل المفوضية ودونت مراسلة تحت رقم 670/17 - فضل المولى حسني أحمد إسماعيل وتسعة عشر آخرين (ممثلين من قبل حزب الحرية والعدالة في مصر) ضد جمهورية مصر العربية.

صاحب السيادة

تقول الشكوى إن الضحايا العشرين قد حكم عليهم بالإعدام في خمس قضايا مختلفة نُظرت أمام المحاكم المصرية.

تتعلق القضية الأولى بإقرار محكمة الاستئناف في السابع من يونيو / حزيران 2017 لأحكام الإعدام الصادرة بحق ست من الضحايا الذين اتهموا بقتل الرقيب عبد الله متولي.

وتتعلق القضية الثانية بإقرار المحكمة العسكرية العليا في التاسع عشر من يونيو / حزيران 2017 لأحكام الإعدام الصادرة بحق سبع من الضحايا (ثلاثة منهم صدرت بحقهم أحكام غيابية) اتهموا بتفجير ملعب كفر الشيخ الذي وقع في إبريل / نيسان 2015، حيث انفجرت غرفة مجاورة للملعب مما أسفر عن مقتل سبعة وجرح ثلاثة.

وأما القضية الثالثة فتتعلق بإقرار محكمة الاستئناف في الثالث من يوليو / تموز 2017 لأحكام الإعدام الصادرة بحق ثلاث من الضحايا الذي شاركوا في اعتصام رابعة العدوية. وتتعلق القضية الرابعة بإقرار محكمة الاستئناف في الرابع والعشرين من إبريل / نيسان 2017 لأحكام الإعدام الصادرة بحق واحد من الضحايا زعم أنهم قتل رجلاً قبطياً أثناء احتجاج جرى في الإسكندرية في الخامس عشر من أغسطس / آب 2013.

وأما القضية الخامسة والأخيرة فتتعلق بإقرار محكمة الاستئناف في السادس عشر من سبتمبر / أيلول لأحكام الإعدام الصادرة ضد ثلاث من الضحايا الذين زعم أنهم اتهموا بالتخابر غير المشروع مع دولة أجنبية بنية تخريب الوضع العسكري والسياسي والدبلوماسي للبلاد وتقويض المصلحة الوطنية مقابل الحصول على المال من دولة قطر.

يزعم المشتكون بأن الضحايا تعرضوا للاختفاء القسري ولم يسمح لهم بالتواصل مع عائلاتهم ولا مع محاميهم، وأنهم تعرضوا للتعذيب حتى يدلوا باعترافات انتزعت منهم رغماً عنهم. ويزعم المشتكون أيضاً بأن أخطاء شابت الأسلوب الذي جرت فيه المحاكمات، والتي أسفرت عن تلك الأحكام، ومن الأخطاء أن شهادات وأدلة مهمة تم إغفالها تماماً بينما استدل من أجل الوصول إلى الخلاصات بينات متناقضة وغير ذات علاقة بالقضية. ويصر المشتكون أن ذلك أدى إلى إصدار أحكام بالإعدام على الضحايا، وهي الأحكام التي نجمت عن انتهاكات جسيمة لحقوقهم الأساسية في أن ينالوا محاكمات عادلة ونزيهة.

صاحب السيادة

حسبما يقوله المشتكون فإن الضحايا لا يتمتعون بحق الطعن في الأحكام، ويواجه ستة عشر منهم الإعدام الوشيك، بينما الأربعة الآخرون هاربون وإنما حكم عليهم بالإعدام غيابياً، ولو أنهم حضروا لواجهوا نفس خطر الإعدام الوشيك.

صاحب السيادة

لقد طلب المشتكون من المفوضية إنفاذ المادة 98 من أحكام إجراءات المفوضية وإصدار إجراءات احتياطية للحيلولة دون الإضرار بالضحايا بشكل لا قبل لأحد بإصلاحه من بعد.

أود أن ألفت نظر سيادتكم إلى أنه في الدورتين الاعتياديتين السادسة والعشرين والرابعة والأربعين، تبنت المفوضية قرارها رقم 99 (ACHPR/Res. 42(XXVI)) وهو القرار الذي يحض الدول على توقيف العمل بعقوبة الإعدام، وقرار رقم 08 (ACHPR/Res. 136(XXXXIII)) وهو القرار الذي يحض الدول على الالتزام بوقف العمل بعقوبة الإعدام، وحض الدول التي احتفظت بالعمل بعقوبة الإعدام بأن تنظر في أمر وقف العمل بعقوبة الإعدام والنظر في أمر إلغائها تماماً.

وأود أن ألفت نظر سيادتكم إلى المبادئ والإرشادات الخاصة بحق المحاكمة العادلة والمساعدة القانونية في أفريقيا (مبادئ وإرشادات المحاكمة العادلة)، التي تبنتها المفوضية في عام 2003 لتنفيذ المواد خمسة وستة وسبعة وستة وعشرين من الميثاق الأفريقي.

وفي جلستها الاعتيادية رقم سبعة وخمسين، تبنت المفوضية التعليق العام رقم ثلاثة على الميثاق الأفريقي لحقوق الإنسان وحقوق الشعوب: حق الحياة (المادة الرابعة) التي تنص على أنه "إذا لم يكن نظام القضاء الجنائي في دولة ما، لأي سبب من الأسباب، في وقت المحاكمة أو الإدانة مطابقاً للمعايير المنصوص عليها في المادة السابعة من الميثاق الأفريقي، أو إذا كانت الإجراءات المعينة التي فرضت بموجبها العقوبة لم تطابق بشكل حازم أعلى معايير العدالة، فإن إنفاذ عقوبة الإعدام في هذه الحالة يعتبر انتهاكاً لحق الإنسان في الحياة".

صاحب السيادة

إذا كانت المزاعم الواردة في الشكوى صحيحة، فإن ذلك يشكل مصدر قلق عميق، حيث أنه ينم عن انتهاك صارخ لمواد الميثاق الأفريقي، وبشكل خاص المواد أربعة وستة وسبعة، بالإضافة إلى الوثائق والمعاهدات الإقليمية وقوانين ومعايير حقوق الإنسان الدولية.

وبالنظر إلى ما سبق، فإن المفوضية تطالب سيادتكم مع كل الاحترام والتقدير التدخل في الموضوع لضمان أن تقوم حكومة جمهورية مصر العربية بما يلي:

- التعليق الفوري لأحكام الإعدام مادامت هذه القضية موضع نظر من قبل المفوضية.

- إجراء تحقيق كامل في المزاعم المشار إليها أعلاه للتأكد من صحتها وضمان انتهاج الإجراءات القانونية السليمة حسب الأصول انسجماً مع الميثاق الأفريقي وغير ذلك من المعاهدات الإقليمية والدولية الخاصة بحقوق الإنسان.

- اتخاذ كافة الإجراءات الضرورية لتطبيق قرارات المفوضية بشأن توقيف العمل بأحكام الإعدام وكذلك بشأن التعليق العام رقم ثلاثة على الميثاق الأفريقي حول حقوق الإنسان وحقوق الشعوب: حق الحياة (المادة الرابعة).

- اتخاذ كافة الإجراءات الضرورية لضمان اتباع الإجراءات القانونية السليمة حسب الأصول وذلك انسجماً مع المبادئ والإرشادات الخاصة بالمحاكمة العادلة، بما في ذلك إمكانية إعادة المحاكمات.

- الالتزام بشكل تام بالحقوق المنصوص عليها في دستورها وفي الميثاق الأفريقي، وكذلك بالقانون الدولي لحقوق الإنسان، بما في ذلك منح الضحايا الحق في التماس العفو أو تخفيض العقوبات من خلال عملية شفافة وعبر الإجراءات القانونية السلمية حسب الأصول.

صاحب السيادة

أود أن أشير إلى أن منح الإجراءات الاحتياطية لا يؤثر بأي شكل من الأشكال على قرار المفوضية بشأن الشكوى.

وبالنظر إلى التزام جمهورية مصر العربية بقضية حقوق الإنسان، بما في ذلك تصديقها على الميثاق الأفريقي، فإنني لا يساورني شك بأن الطلب الحالي الخاص بالإجراءات الاحتياطية سيتم التعامل

تطلب المفوضية بكل احترام من الدولة المعنية إفادتها بتقرير حول الخطوات التي سيتم تطبيقها في سياق الإجراءات الاحتياطية الممنوحة، وذلك خلال خمسة يوماً من تلقي هذه الرسالة، بموجب المادة 98 (4) من أحكام الإجراءات.

وأود إخبار سيادتكم أنه بموجب المسؤوليات المناطة بي، فإنه مطلوب مني تقديم تقرير لكل دورة اعتيادية من دورات المفوضية حول الأعمال التي أقوم بها بوصفي رئيس وعضو المفوضية. ولهذا الغرض فإن هذا الخطاب وكل رد سنتلقاه من طرف سيادتكم سوف يكون مشمولاً في التقرير الذي سأقدمه إلى الدورة الاعتيادية القادمة، وكذلك في تقرير نشاط المفوضية الذي سيقدم إلى الدوائر التابعة للاتحاد الأفريقي.

أرجو أن تتقبلوا سيادتكم كامل التقدير والاحترام

أحكام الإعدام

وكانت أحكام الإعدام قد فرضت في محاكمات جرت بعد الانقلاب العسكري الذي وقع في عام 2013 وأطيح فيه بأول رئيس منتخب ديمقراطياً في مصر، ومنذ ذلك الحين، والعسكر في مصر يتعرضون لانتقاد على نطاق واسع بسبب انتهاكاتهم لحقوق الإنسان وتجاوزاتهم لنصوص القانون الدولي، وذلك سعياً لإحكام قبضتهم على الحكم في مصر.

وما يزال الرئيس المصري السابق محمد مرسي رهن الاعتقال ومعه المئات من الأشخاص الآخرين الذين احتجوا على الانقلاب، وفي عام 2014، أصدرت محكمة مصرية أحكاماً بالإعدام على 529 شخصاً بعد "محاكمة" جماعية استمرت لأقل من يومين، وشابتها مخالفات إجرائية مشابهة وعلى نطاق واسع.

في ذلك الوقت، طلب حزب الحرية والعدالة من المفوضية الأفريقية التدخل، ونجم عن ذلك إصدار المفوضية توجيهها إلى السلطات المصرية بتعليق تطبيق تلك الأحكام، وتقديم بالشكوى نيابة عن حزب الحرية والعدالة مكتب "آي تي إن" للمحامية المختص في قضايا حقوق الإنسان والمحامي المختص في القانون الدولي رودني ديكسون.

ولقد صرح المحامي طيب علي، الشريك في مكتب آي تي إن للمحامية بما يلي:

"يسرنا أن المفوضية الأفريقية أصدرت إجراءات مؤقتة في هذه القضية، وأنها سوف تعكف الآن على التحقيق في الأمور التي أثارها الشكوى المقدمة من قبل حزب الحرية والعدالة. كل المصريين لهم حق في الحماية القانونية التي يضمنها لهم الميثاق الأفريقي. وهذا المبدأ يصبح غاية في الأهمية حينما يتعلق الأمر بحق الحياة".

يشار إلى أن مكتب "آي تي إن" للمحامية، مؤسسة قانونية بريطانية مقرها لندن مختصة بحقوق

النص الأصلي لتصريح المحامين للمفوضية الأفريقية:



Press Statement

African Commission Issues Interim Measures and Requests Egypt Immediately Suspend Death Penalties

Release Date: 5 December 2017

The African Commission of Human & Peoples Rights has imposed interim measures on the Egyptian Government requesting that it immediately suspend death sentences in 20 cases.

The interim measures follow a Complaint sent to the Commission by the Egyptian Freedom & Justice Party (FJP) on behalf of prisoners who have had their death sentences confirmed and are without further rights of appeal.

President Abdel Fattah el-Sisi was notified of the measures in a letter sent to him on 29 November 2017 by the African Commission. The Commission informed the Egyptian President that it had seized the FJP Complaint and had registered it as a formal Communication. The letter sets out the Commission's intention to fully investigate the allegations made in the Complaint and asks the Egyptian government to provide its report on implementation of the suspension within 15 days of the letter.

The Complaint, which was sent to the Commission in November, relates to death sentences imposed on 20 people in five separate cases, which have now been confirmed by the Egyptian Courts meaning there is no further right to appeal. Sixteen of those sentenced to death face imminent execution.

The Complaint alleges that the sentences have been imposed following a legal process falling far below the standard expected in international and Egyptian law. It details serious evidential and procedural flaws including the obtaining of confessions through torture and the denial of rights of access to lawyers. In addition, it alleges that eyewitness testimony providing evidence that the suspects were elsewhere was not taken into consideration. This included evidence showing that one particular defendant was in fact in custody at the time of a bomb attack he was alleged to have carried out.

The FJP called on the African Commission to intervene and order an immediate suspension to the death penalties, stating, "the Egyptian authorities have entirely ignored the Commission's moratorium on the death penalty by failing to observe the defendants' rights to a fair trial as per the guarantees included in the African Charter and other international treaties".

The death sentences have been imposed in trials following the military coup in 2013 which saw the removal and detention of Egypt's first democratically elected President. Since then the Egyptian military has been widely criticised for suppressing human rights and violating international law to consolidate its hold on the Egyptian government. Former President Morsi remains in detention along with hundreds of others who protested against the coup. In 2014, an Egyptian Court sentenced 529 individuals to death following a mass "trial" that lasted less than two days and was characterised by similar widespread procedural irregularities. At that time, the FJP's request to the Commission to intervene resulted in the Commission directing the Egyptian authorities to suspend those sentences.

The complaint was submitted on behalf of the FJP by leading human rights law firm ITN Solicitors and international law specialist Rodney Dixon, Q.C.

Tayab Ali, Partner at ITN Solicitors said:

"We are very pleased that the African Commission has issued interim measures in this case and that it will now investigate the matters raised in the FJP's Complaint. All Egyptians are entitled to the legal protections guaranteed in the African Charter. This principle is all the more important where the right to life is at stake".

End

Notes

The African Commission on Human and Peoples' Rights is a principle section of the African Union


The Freedom and Justice Party is a political party in Egypt. It is the party of the first democratically elected President, Mohammed Morsi.

ITN solicitors are a leading Human Rights law firm based in London.

Tayab Ali is solicitor advocate and partner at ITN Solicitors www.itnsolicitors.com

Rodney Dixon QC is a barrister at Temple Garden Chambers www.tgchambers.com

النص الأصلي لرسالة المفوضية الأفريقية إلى مكتب المحامين:

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
African Commission on Human & Peoples' Rights		Commission Africaine des Droits de l'Homme & des Peuples
31 Bijilo Annex Layout, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia; Tel: (220) 4410505 / 4410506; Fax: (220) 4410504; E-mail: au-banjul@africa-union.org; Web www.achpr.org		

Ref: ACHPR/COMM/670/17/EGY/14.96/17
Date: 29 November 2017

Rodney Dixon
ITN Solicitors
No. 5, Stratford Office Village
4 Romford Road
Stratford, London, E15 4EA
Tel: +44 20 8522 7707
Email: tali@itnsolicitors.com

Dear Mr Rodney Dixon,

Subject: Communication 670/17 - Fadhl Al Mawla Husni Ahmed Ismail and 19 Ors (represented by Freedom and Justice Party of Egypt) v. Arab Republic of Egypt

I write to inform you that during the inter-session period following the 61st Ordinary Session of the African Commission on Human and Peoples' Rights (the Commission) held in Banjul, The Gambia, from 01 to 15 November 2017, the Commission considered the above-referenced Communication, and decided to be seized of it. The decision on seizure is herewith attached.

Please note that the matter has been registered and referenced as reflected in the subject caption above. All future correspondences pertaining to this matter should carry this reference.

Further, the Commission considered your request for Provisional Measures, and decided to grant it, as it meets the criteria for the grant of Provisional Measures set out in Rule 98(1) of the Rules of Procedure of the Commission. The Commission's letter to the Respondent State on Provisional Measures is also attached.

In accordance with Rule 98(4) of the Rules of Procedure of the Commission, the Respondent State has been requested to report back on the implementation of the Provisional Measures within **fifteen (15) days** of receipt of the request.

Kindly be informed that in accordance with Rule 105(1) of the Rules of Procedure of the Commission, you are required to present evidence and arguments on the admissibility of this Communication within **sixty (60) days** of this notification.

Please accept my best regards.

Sincerely,



Dr. Mary Maboreke
Secretary to the African Commission

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African Commission on Human & Peoples' Rights		Commission Africaine des Droits de l'Homme & des Peuples
No. 31 Bijilo Annex Lay-out, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (220) 441 05 05 / 441 05 06, Fax: (220) 441 05 04 E-mail: au-banjul@africa-union.org Web www.achpr.org		

Ref: ACHPR/PROVM/EGY/14.12/17
Date: 29 November 2017

H.E. Mr. Abdel Fattah el-Sisi,
President of the Arab Republic of Egypt
Office of the President, State House
The Arab Republic of Egypt

Your Excellency,

**SUBJECT: REQUEST FOR PROVISIONAL MEASURES UNDER RULE 98 OF
THE RULES OF PROCEDURE OF THE AFRICAN COMMISSION
ON HUMAN AND PEOPLES' RIGHTS**

In my capacity as the Chairperson of the African Commission on Human and Peoples' Rights (the Commission), I have the honour to present to Your Excellency's kind attention a Complaint brought against the Arab Republic of Egypt (the Respondent State), in accordance with Article 55 of the African Charter on Human and Peoples' Rights (the African Charter).

The Complaint was lodged by the Freedom and Justice Party of Egypt (the Complainants) on behalf of Mr. Fadhl Al Mawla Husni Ahmed Ismail and nineteen others (the Victims). The Complaint has been seized by the Commission and registered as Communication 670/17 - Fadhl Al Mawla Husni Ahmed Ismail and 19 Ors (represented by Freedom and Justice Party of Egypt) v. Arab Republic of Egypt.

Your Excellency, the Complainant submits that the twenty Victims were sentenced to death in five different cases before the Egyptian Courts. The first case relates to the upholding on 07 June 2017 by the Court of Cassation of the death sentence verdict of six of the Victims who were accused of murdering Sergeant Abdullah Metwally. The second case relates to the upholding on 19 June 2017 by the Supreme Military Court of Appeals of the death sentence verdict of seven Victims (of which three were sentenced in absentia) implicated in the Kafr Al Sheikh stadium bombing which took place in April 2015 in which a room next to the stadium exploded, leaving seven dead and three injured. The third case relates to the upholding on 03 July 2017 by the Court of Cassation of the death sentence verdict of three of the Victims who took part in a sit-in at Rabaa Al Adawiya. The fourth case relates to the

upholding on 24 April 2017 by the Court of Cassation of the death sentence verdict of one of the Victims for allegedly killing a Coptic man during a protest in Alexandria on 15 August 2013. The fifth and final case relates to the upholding on 16 September 2017 by the Court of Cassation of the death sentence verdict of three of the Victims who had allegedly been charged with unlawfully communicating with a foreign country with the intention of damaging the country's military, political and diplomatic status and its national interest in exchange for receiving money from the State of Qatar.

The Complainant alleges that the Victims were disappeared and not allowed to access their families or lawyers, and were subjected to torture in order to extract confessions. The Complainant further alleges that there were flaws in the manner in which the trials were conducted which led to these verdicts, including where important testimonies and evidence was ignored and contradictory or unsupported evidence was used in coming to the findings. The Complainant avers that this has resulted in the Victims being sentenced to death as a result of patent and gross violations of their due process and fair trial rights.

Your Excellency, according to the Complainant, the Victims have no right of appeal and sixteen of the persons face imminent execution, while the other four are fugitives, but were sentenced in absentia and if they were produced, would face the same imminent execution.

Your Excellency, the Complainants have requested the Commission to invoke Rule 98 of its Rules of Procedure and issue Provisional Measures to prevent irreparable harm being done to the Victims.

I would like to bring to Your Excellency's kind attention that at its 26th and 44th Ordinary Session, the Commission adopted Resolution ACHPR/Res. 42(XXVI) 99: **Resolution Urging States to Envisage a Moratorium on the Death Penalty** and Resolution ACHPR/Res. 136(XXXIII)08: **Resolution Urging States to observe a Moratorium on the Death Penalty** respectively, urging State Parties that retained the death penalty to consider adopting a moratorium on the death penalty and to reflect on the possibility of abolishing the death penalty.

I would like to draw Your Excellency's kind attention to the **Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (the Principles and Guidelines on Fair Trial)**, adopted by the Commission in 2003 to supplement Articles 5, 6, 7 and 26 of the African Charter.

At its 57th Ordinary Session, the Commission adopted **General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)**, which provides that "if for any reason, the criminal justice system of a State does not, at the time of trial or conviction, meet the criteria of Article 7 of the African Charter

or if the particular proceedings in which the penalty is imposed have not stringently met the highest standards of fairness, then the subsequent application of the death penalty will be considered a violation of the right to life."

Your Excellency, if the allegations in the Complaint are correct, it would be a great cause for concern, as it would constitute gross violation of the provisions of the African Charter, particularly Articles 4, 6 and 7, as well as the above-stated instruments and other regional and international human rights laws and standards.

In view of the above, the Commission respectfully requests Your Excellency to intervene in the matter and ensure that the Government of the Arab Republic of Egypt:

- Immediately suspends the death sentences while the matter is being considered by the Commission;
- Fully investigates the above-stated allegations to establish their veracity and ensure that due process of law is followed in compliance with the African Charter and other regional and international human rights instruments;
- Takes all necessary measures to implement the Commission's Resolutions on a Moratorium and **General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)**;
- Takes all necessary measures to ensure that due process of law is followed in accordance with the **Principles and Guidelines on Fair Trial**, including possibly holding retrials; and
- Fully commits itself to upholding the rights in its own Constitution, the African Charter and its obligations under international human rights law, including giving the Victims the right to seek clemency, pardon or commutation through a transparent process with due process of law.

Your Excellency, I would like to indicate that the grant of Provisional Measures does not in any way affect the decision of the Commission on the Complaint.

Considering the commitment of the Arab Republic of Egypt to the cause of human rights, including through the ratification of the African Charter, I have no doubt that the present request for Provisional Measures will be followed by a positive response.

The Commission kindly requests the Respondent State to report back on the implementation steps of the Provisional Measures granted, within fifteen (15) days of receipt of this letter, in accordance with Rule 98 (4) of its Rules of Procedure.

I would like to inform Your Excellency that, as part of my responsibilities, I am required to report to each Ordinary Session of the Commission on the actions that I have taken in my capacity as the Chairperson and as Member of the Commission. In that regard, the contents of this letter as well as any response received from Your

Excellency will be included in my report to the next Ordinary Session, as well as in the next Activity Report of the Commission to the African Union policy organs.

Please accept, Your Excellency, my assurances of my highest consideration.



Commissioner SOYATA MAIGA

Chairperson of the African Commission on Human and Peoples' Rights

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Communication 670/17

**Fadhil Al Mawla Husni Ahmed Ismail and 19 Ors (represented by
Freedom and Justice Party of Egypt)**

v

Arab Republic of Egypt

*Adopted by the
African Commission on Human and Peoples' Rights
Done 29th November 2017
Banjul, The Gambia*



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

Decision of the African Commission on Human and Peoples' Rights on Seizure

Communication 670/17 – Fadhl Al Mawla Husni Ahmed Ismail and 19 Ors
(represented by Freedom and Justice Party of Egypt) 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 21 November 2017 from the Freedom and Justice Party of Egypt (the Complainant), on behalf of Fadhl Al Mawla Husni Ahmed Ismail and nineteen Others (the Victims).
2. The Complaint is submitted against the Arab Republic of Egypt (Respondent State), a State Party to the African Charter on Human and Peoples' Rights (the African Charter).¹
3. The Complainant submits that the twenty Victims were sentenced to death in five different cases before the Egyptian Courts. The Complainant alleges that the Victims have no further right of appeal and that four of these Victims were tried in absentia. According to the Complainant the sixteen Victims who are in custody face imminent execution, and that the lives and well-being of the Victims, their families and their lawyers are at imminent risk due to the proceedings in Egypt.
4. The first case relates to the upholding on 07 June 2017 by the Court of Cassation, the highest appeal court in Egypt, of the death sentence verdict of six of the Victims who were accused of murdering Sergeant Abdullah Metwally, a house guard of one of the judges on the panel of former President Mohamed Morsi's trial. The death sentence was originally imposed on the six Victims by the Criminal Court on 07 September 2015 for establishing and joining a terrorist group, providing the group with weapons and money and murdering Sergeant Metwally.
5. The Complainant alleges that the six Victims were disappeared for periods ranging from three days to three months, were denied legal representation, access to their families and were tortured during interrogations in order to obtain confessions. The Complainant further alleges that the torture included anal rape with a wooden stick, electric shocks, burning with cigarette butts, suspension in stress positions for days and threats that their mothers and sisters would be raped. The Complainant states that the six Victims later retracted their confessions on the basis that it was obtained under torture, and that because of this they were tortured again by the National Security Agency (NSA).

¹ Egypt ratified the African Charter on Human and Peoples' Rights on 20 March 1984.



6. The Complainant avers that there were also flaws in the manner in which the trial was conducted, including the validity of the evidence produced in Court and the testimony of alleged eyewitnesses. In this regard, the case rested primarily on the Victims' recanted confessions, the Court ignored forensic evidence related to the alleged torture, the rifle produced by the prosecution as the murder weapon did not match the bullets found in the victim, there were a number of discrepancies between the evidence produced and the witness' testimonies, and the main defendant provided evidence that at the time he had undergone surgery which rendered him completely unable to hold a gun.
7. The Complaint further avers that the Court applied recent legal amendments to the appeal system which gives it the discretion not to hear any defence witnesses and which abolishes a previous two-stage appeal process, through which the Court of Cassation could refer cases back to the Criminal Court for retrial. This abolishment means that all judgements of the Court of Cassation are final and binding, and the Complainant alleges that this makes it easier for the Court to impose death sentences without effective challenge. Given these amendments, the Complainant avers that it is unlikely that the appeal submitted by the six Victims on 15 June 2017 on the basis of procedural flaws in the trial will be granted. The Victims are allegedly still detained at various locations, held in appalling conditions and denied medical care and family visits.
8. The second case relates to the upholding on 19 June 2017 by the Supreme Military Court of Appeals, the highest military court of appeal, of the death sentence verdict of seven Victims (of which three were sentenced in absentia) implicated in the Kafr Al Sheikh stadium bombing which took place in April 2015 in which a room next to the stadium exploded, leaving seven dead and three injured. The Complainant states that this case falls under the jurisdiction of the military courts since the passing of a new law which expands the jurisdiction of military courts to all electricity networks, road and bridge networks as well as other buildings, utilities and public property, amongst others.
9. The Complainant avers that all seven Victims were forcibly disappeared for periods ranging from 70 to 90 days, were tortured throughout the period of their detention and denied access to lawyers. The torture allegedly included assault, suspension by the wrists, electric shocks and threats of rape to their female relatives. The Complainant avers that the records of the National Security Reports for the arrest of two of the Victims who were arrested on 19 and 20 April 2015 respectively, were post-dated by two months in order to cover up the prolonged periods of secret detention. The Complainant states that complaints filed by families of the Victims with the Public Prosecutor's Office following their forced disappearances and torture were not acted upon and the investigations closed.



10. The Complainant alleges that the sentence in this case was based solely on the statements obtained under torture and the testimonies of state security officers. The Complainant alleges that the Court failed to consider an expert report on the manner of detonation of the explosives and also ignored eyewitness testimonies which confirmed that the Victims were not present at the scene when the crime took place, as well as the admission by the military investigators that the CCTV footage could not accurately identify the culprits.
11. The third case relates to the upholding on 03 July 2017 by the Court of Cassation of the death sentence verdict of three of the Victims who took part in a sit-in at Rabaa Al Adawiya, which was violently dispersed by the Egyptian security forces. The Complainant alleges that the Victims were arrested and forcibly disappeared, and while in detention, were subjected to severe beatings and electrocution. The Complainant further alleges that the trial was rife with irregularities, including reliance by the Court on information in case papers which had been lost by the prosecutors and failure by the Court to allow the Victims to present their defence witnesses.
12. The fourth case relates to the upholding on 24 April 2017 by the Court of Cassation of the death sentence verdict of one of the Victims for allegedly killing a Coptic man during a protest in Alexandria on 15 August 2013. The Complainant avers that a key eyewitness gave five different accounts of the same incident, and these contradictions were not addressed in the judgement, the Court disregarded stark differences between the account of the arrest told by the defence and the criminal investigation agent and the Court also disregarded an official statement from his employer that the Victim was in fact at work when the crime was committed. The Complainant further avers that the Victim was tortured by the NSA in a failed attempt to get him to confess and that the Court relied solely on the testimony of one witness who was pressured into testifying by an NSA officer.
13. The fifth and final case relates to the upholding on 16 September 2017 by the Court of Cassation of the death sentence verdict of three of the Victims who had allegedly been charged with unlawfully communicating with a foreign country with the intention of damaging the country's military, political and diplomatic status and its national interest in exchange for receiving money from the State of Qatar. The accusations also allegedly included the possession of reports and documents relevant to issues of national security and membership of an unlawful group.
14. The Complainant avers that the evidence relied on by the Court was mainly secret investigations by national security, eyewitness testimony which lacked any supporting evidence, and the confessions of some of the Victims, which they later withdrew on the basis that they were obtained under torture. The Complainant alleges that this torture included submersion for long periods in freezing cold



water, electric shocks, being chained to a metal bedframe upside down and chained in restrictive positions for long periods and whipping. The Complainant alleges that as a result of the torture some of the Victims had fractured ribs and damaged nerves. The Complainant further avers that the Victims' lawyers were not given a chance to present their defence, and that the Court added new charges which had not been investigated by the prosecutors and on which the Victims were never interrogated.

15. The Complainant submits that there is no further right of appeal from the Court of Cassation or the Supreme Military Court of Appeals.

Articles alleged to have been violated

16. The Complainant alleges violation of Articles 4, 6 and 7 of the African Charter.

Prayers

17. The Complainant requests the African Commission on Human and Peoples' Rights (the African Commission) to:
 - (a) Issue provisional measures to direct the Egyptian authorities to suspend the death sentences while the proceedings before the Commission are being held, also that such directions should be extended to the four who have been sentenced in absentia, on the basis that they may be produced;
 - (b) Make a finding that Egypt has violated Articles 4, 6, and 7 of the African Charter in its conduct of the trials and the imposition of the death penalty against the 20 defendants;
 - (c) Make a decision for the Respondent State to set aside the death sentences and comply in full with the rights and guarantees of the African Charter in the present proceedings in Egypt and any future proceedings.

Procedure

18. The Secretariat received the Complaint on 21 November 2017 and acknowledged receipt of the same on 23 November 2017.

Analysis of the African Commission

19. The African Commission is of the view that the Complaint contains all the information required under Rule 93(2) of its Rules of Procedure.
20. The African Commission finds that the Complaint reveals *prima facie* violation of the African Charter.
21. The Commission is also of the view that the request for Provisional Measures meets the criteria provided under Rule 98 (1) of its Rules of Procedure with regards to the suspension of the death sentences while the matter is pending before the African Commission.



Decision of the Commission

22. Based on its analysis, the African Commission decides to:

- (i) Be seized of this Communication; and
 - (ii) Grant the request for provisional measures with regards to the suspension of the death sentences while the matter is pending before the African Commission.
23. The African Commission requests the Respondent State to report back on the implementation of the Provisional Measures requested within fifteen (15) days of receipt of this decision in accordance with Rule 98(4) of its Rules of Procedure.
24. The African Commission requests the Complainant to present evidence and arguments on admissibility within two (2) months in accordance with Rule 105 (1) of its Rules of Procedure.

Done in Banjul, The Gambia, on 29 November 2017



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