

DEFYING JUSTICE: EGYPT'S FAILURE TO IMPLEMENT THE AFRICAN COMMISSION'S DECISIONS ON ENDING TORTURE

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REDRESS

Ending torture, seeking justice for survivors

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LIST OF ACRONYMS

ACtHPR	African Court of Human and Peoples' Rights
ACHPR	African Charter on Human and Peoples' Rights
ACommHPR	African Commission on Human and Peoples' Rights
AU	African Union
CAT	Committee Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of Racial Discrimination
CSO	Civil Society Organization
ESSSC	Emergency Supreme State Security Courts
HRCt	Human Rights Committee
HRDs	Human Rights Defenders
ICCPR	International Covenant on Civil and Political Rights
LGBTQI+	Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, and others
NGO	Non-Governmental Organisation
NPM	National Preventive Mechanism
NSA	National Security Agency
OSJI	Open Society Justice Initiative
SCC	Supreme Constitutional Court
UNCHR	United Nations High Commissioner for Refugees
UNCAT	United Nations Convention Against Torture
WGC	African Commission Working Group on Communications

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Torture remains a pervasive and systematic practice in Egypt, impacting various groups including human rights defenders (HRDs), political activists, academics, journalists, LGBTQI+ persons, prisoners of conscience, migrants and refugees, and any other person dissenting with the current political regime. Despite international condemnation, Egyptian authorities continue these practices with impunity. The African Commission on Human and Peoples' Rights (ACommHPR) and the UN Committee Against Torture (CAT) have confirmed the systematic nature of torture in Egypt through multiple cases and observations.

Domestically, Egypt's legal system fails to provide adequate avenues for accountability, largely due to the lack of judicial independence and absence of political will. Internationally, mechanisms for accountability are limited by Egypt's non-ratification of necessary protocols for individual victims to file complaints against the State. Additionally, Egypt has not ratified the Rome Statute of the International Criminal Court with jurisdiction over individual criminal responsibility for international crimes. The regional and international treaties to which Egypt is a party, such as the African Charter on Human and Peoples' Rights (ACHPR), have yet to yield substantial domestic changes due to Egypt's non-compliance with such treaties and the lack of implementation of rulings from bodies like the ACommHPR.

The ACommHPR has issued recommendations in several communications finding Egypt in violation of Article 5 of the African Charter, concerning torture and inhuman treatment. Key cases include Communication 396/11 (El Sharkawi v. Egypt), Communication 334/06, Communication 323/06, and Communication 344/07. Common reparations issued by the ACommHPR include compensation to victims, independent investigations and prosecutions, and legislative and institutional reforms to avoid the repetition of violations, particularly within the judiciary and law enforcement. However, Egypt has not implemented these decisions, further entrenching a culture of impunity.

Factors impeding implementation include the absence of a national mechanism for implementing human rights decisions, legal gaps such as inadequate criminalization of torture, lack of judicial independence, and a general lack of political will. Additionally, the Egyptian government has pursued retaliatory policies against the ACommHPR and created legal provisions to justify the lack of implementation of international human rights decisions. Civil society in Egypt faces severe restrictions, limiting their capacity to advocate and monitor implementation of ACommHPR decisions.

Regionally, the ACommHPR's inconsistent application of follow-up mechanisms has hampered effective monitoring and enforcement. Thus, despite established rules of procedure, the low rate of compliance among States remains a significant challenge.

Recommendations

To the Egyptian Government:

- Comply with all reparations issued by the ACommHPR through individual communications related to torture including:
 - o Paying adequate compensation to the victims.
 - o Conducting prompt, impartial, and effective investigations by an independent body, such as a commission of inquiry, guided by the Istanbul Protocol. Due diligence must be exercised to prevent, investigate, and punish acts of torture, including sexual and gender-based violence against women, guided by regional and international standards.
 - o Ensure that all perpetrators of torture, including those in command positions, are held accountable. Investigations must lead to prosecutions where the crime of torture is established.
 - o Train security and law enforcement personnel on human rights and riot control including crowd management techniques, minimising the use of force, clear communication to protestors, de-escalation measures, and proper use of non-lethal weapons.
 - o Institute legal reforms to ensure that Emergency Law No. 162 of 1958, Articles 126 and 129 of the Egyptian Penal Code, the Egyptian Criminal Procedure Code, anti-terrorism legislation, and all other relevant laws and practices, are brought into conformity with UNCAT, the ACHPR, the Robben Island Guidelines, the ACommHPR Principles and Guidelines on the Right to Fair Trial, the Luanda Guidelines, and the ACommHPR General Comment No. 4 on the Right to Redress for Victims of Torture and other Ill-treatment in Africa.
 - o Issue a public apology to victims of torture as recommended by the ACommHPR and carry out necessary legislative reforms to prevent future instances of torture. This includes creating safeguards and mechanisms to protect individuals from such abuses.
 - o Ratify the Protocol to the African Charter on Human and People's Rights on the Rights to Women to protect women from systematic sexual violence related to political expression.

Additional recommendations to Egypt:

- In addition to the recommendations issued by the ACommHPR, the measures below are key to ending torture in Egypt, ensuring that victims obtain justice and reparations.
 - o Adhere to the ACHPR reporting obligations by timely responding to information requests by the ACommHPR during and after communications.
 - o Incorporate the principle of absolute prohibition of torture into legislation, ensuring it is strictly applied.
 - o Criminalize attempts to commit torture and complicity or participation in torture.
 - o Create a body specifically mandated to coordinate and monitor the implementation of ACommHPR decisions, ensuring coordination and follow-up, and providing a platform for litigants and survivors to engage with the government effectively.
 - o Amend existing NGO laws to create a legal and policy environment that allows civil society to operate without undue restrictions. A vibrant civil society is essential for promoting accountable governance and human rights protection.

To the African Commission:

- Follow up through *notes verbales* and formal letters to Egypt and relevant parties, urging the submission of information on the status of compliance of the reparations included in individual communications.
- Include specific questions regarding the implementation of communications in Egypt's Article 62 reports.
- Utilize the Working Group on Communications and the Rapporteur for communications involving Egypt to actively gather information on compliance.
- Consider the convening of implementation hearings and workshops upon request by the parties to address outstanding lack of implementation of decisions related to torture and other grave violations.
- As part of its promotion mandate, seek the invitation of Egypt to conduct monitoring missions to assess on-ground progress and gather detailed information on implementation of existing decisions. When appropriate, the ACommHPR can use such activities to provide training and technical assistance to the Egyptian authorities to facilitate the implementation of decisions.
- Establish and operate a fully functional Compliance Monitoring Unit to systematically track the implementation of decisions, including those related to Egypt.
- Create a publicly accessible and continuously updated database detailing the status of implementation of the Commission's decisions for greater transparency and accountability.
- Refer cases of non-compliance to the Executive Council as permitted by Rule 125, to escalate the issue and seek further enforcement measures.
- Ensure a standardized approach to follow-up and monitoring the implementation of decisions, using all tools available to the Commission.

To the African Union:

- Consider invoking its mandate under Article 23(2) of the AU Constitutive Act, and Rule 33(2) of the Assembly Rules of Procedure (Rules of the Assembly) and issue sanctions against Egypt for failing to meet its human rights obligations under the ACHPR.
- Enhance and support the ACommHPR's Compliance Monitoring Unit to ensure systematic and effective tracking of the implementation of its decisions, including those against Egypt.
- Use the annual dialogue between the AU Executive Council, the ACommHPR, to discuss progress and obstacles in implementing human rights obligations with Egyptian authorities.
- Specifically address progress in implementing the decisions of the ACommHPR during the Commission's presentation of its activity report to the AU Heads of State and Government.
- Publicly issue statements and reports on Egypt and other member States' non-compliance with ACommHPR decisions, to increase pressure and transparency.
- Provide technical assistance, training, and other support to Egypt to develop and strengthen national mechanisms for the protection of human rights, particularly aimed at eradicating torture.
- Foster partnerships with civil society organizations to monitor and report on Egypt's adherence to human rights commitments, providing a channel for continuous feedback and advocacy.

To the international community:

- Encourage diplomatic efforts to prompt Egypt to comply with its international human rights obligations, including through the implementation of ACommHPR decisions.
- Link financial aid and development assistance to tangible improvements in Egypt's human rights record, including through the implementation of ACommHPR decisions.
- Facilitate safe spaces for civil society to operate without fear of retaliation, including by offering asylum or temporary relocation programs for HRDs under threat.
- Encourage international human rights organizations to intensify their monitoring and reporting on Egypt's compliance with international and regional human rights treaties.
- Assist Egypt in building institutional capacity to investigate and prosecute cases of torture and other human rights violations through training programs, technical assistance, and other support.
- If impunity for torture continues, consider imposing targeted sanctions against individuals and entities responsible for torture and other gross human rights violations.
- Consider the use of universal jurisdiction in prosecuting crimes of torture and other serious human rights abuses that are not investigated and prosecuted in Egypt.

INTRODUCTION

Torture is a widespread and systematic practice in Egypt arguably amounting to a crime against humanity under customary international law and Article 7 of the Rome Statute.¹ It affects various groups including HRDs, political activists, academics, journalists, LGBTQI+ persons, prisoners of conscience, migrants and refugees, and any other person dissenting with the current government.² Many organizations, both national and international, have documented torture in Egypt for decades and called for the Egyptian government to hold perpetrators to account. Yet, the Egyptian authorities continue to torture with impunity.³

At the regional level, the African Commission on Human and Peoples' Rights, has confirmed in four cases that torture occurs in Egypt.⁴ At the international level, on two separate occasions, in 1996 and 2017, the Committee Against Torture, concluded that torture in Egypt is practiced systematically.⁵ Most recently in November 2023, the CAT highlighted in its concluding observations on Egypt the "numerous and consistent allegations of systematic use of torture and ill-treatment" by Egyptian authorities, emphasising the deeply concerning lack of accountability contributing to a climate of impunity.⁶ In March 2023, the UN Human Rights Committee (HRCt) in its concluding observations expressed concern over the systematic and widespread use of prolonged pre-trial detention as a measure to suppress dissent.⁷

Despite the widespread and systematic nature of torture in Egypt, avenues for accountability and redress for survivors are limited. Domestically, access to the Egyptian judicial system is barred by the lack of independence of the judicial system,⁸ and the unwillingness of prosecutors to pursue perpetrators for torture.⁹ Survivors of torture who report to the prosecutor face retaliation by officers or the judiciary, and those who speak publicly about torture more generally risk arrest themselves.¹⁰ At the international level, Egypt is not a State party to the Rome Statute of the International Criminal Court. Therefore, in principle, the Court does not have jurisdiction over allegations of torture as an international crime in Egypt.¹¹

Although universal jurisdiction is an avenue through which survivors could seek accountability and redress for torture, universal jurisdiction cases are difficult to pursue due to the legal requirements that exist in different jurisdictions, including that a survivor(s) and/or perpetrator(s) be in the territory where the case is to be filed;¹²

1 See REDRESS, Torture in Egypt: A Crime Against Humanity, 2 October 2023.

2 See REDRESS, Torture in Egypt: A Crime Against Humanity, 2 October 2023, pp. 5-6.

3 Ibid. Also See Cairo Institute for Human Rights Studies, "Egypt: Torture is Systematic and Those Who Perpetrate It Enjoy Complete Impunity", 21 October 2021; EIPR, "Egypt: On International Day in Support of Victims of Torture, First Step to Combating Torture is Accountability", 26 June 2021.

4 See Communication 396/11 Mohammed Abderrahim El Sharkawi (represented by EIPR and OSJI) v Arab Republic of Egypt (2021); Communication 334/06 Egyptian Initiative for Personal Rights and Interights v. Arab Republic of Egypt (2011); Communication 323/06 Egyptian Initiative for Personal Rights and Interights v. Arab Republic of Egypt (2011); Communication 344/07 George Iyanyori Kajikabi v Egypt (2020).

5 CAT, "Summary Account of the Results of the Proceedings Concerning the Inquiry on Egypt", UN Doc A/72/44, 2017.

6 CAT, Concluding observations on the fifth periodic report of Egypt, UN Doc CAT/C/EGY/CO/5, 2023.

7 HRC, "Concluding Observations on the Fifth Periodic Report of Egypt", UN Doc. CCPR/C/EGY/CO/5, 14 April 2023, para. 31.

8 REDRESS, Torture in Egypt: A Crime Against Humanity, 2 October 2023, p. 41.

9 See REDRESS, Torture in Egypt: A Crime Against Humanity, 2 October 2023, p. 28.

10 REDRESS, Torture in Egypt: A Crime Against Humanity, 2 October 2023, pp. 17-18.

11 Article 7(1)(f), 7(2)(e), and Article 12 of the Rome Statute.

12 The principle of universal jurisdiction is based on the notion that the fight against impunity is borderless. Under this principle, States have the obligation to prosecute perpetrators of international crimes who are on their territory, regardless of where the crimes may have been committed or of the nationality of the perpetrators and the victims. See Trial International, Universal Jurisdiction. Different States have different legal frameworks to prosecute crimes under the principle of universal jurisdiction. See Trial International, Universal Jurisdiction Law and Practice Briefing Papers.

the resources required for preparing and filing a case; and the application of immunity and other legal obstacles that prevent prosecution.¹³

Even though Egypt has ratified key international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR),¹⁴ the International Convention on the Elimination of Racial Discrimination (CERD),¹⁵ the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹⁶ and the Convention Against Torture (UNCAT),¹⁷ Egypt has not ratified the requisite optional protocols¹⁸ nor made the necessary declarations¹⁹ under the treaties to enable individuals to bring complaints before UN treaty bodies.

At the regional level, Egypt is a member of the regional organisation of Arab States in the Middle East and parts of Africa (Arab League), whose Arab Charter on Human Rights prohibits torture.²⁰ The Charter further imposes an obligation on Member States to hold perpetrators of torture to account and ensure redress to survivors. Unfortunately, the Arab League is yet to establish a human rights mechanism or complaints procedure for noncompliance or breach of the Charter provisions.

At the continental level, Egypt has ratified the African Charter on Human and People's Rights (ACHPR),²¹ which prohibits "all forms of degradation of man particularly [...] torture, cruel, inhuman or degrading punishment".²² Egypt has also ratified the Protocol on the Statute of the African Court of Justice and Human Rights (ACTHPR),²³ but not made a declaration accepting the competence of the Court to receive cases from individuals and civil society organisations with observer status before the Commission pursuant to Article 5(3) of the Protocol.²⁴ This leaves the communications procedure under the auspice of the ACommHPR, as one of the only avenues for recourse for survivors of torture in Egypt. Therefore, the importance of the ACommHPR to advancing accountability and redress for torture survivors in Egypt cannot be overstated.

Egypt has played a key role in the evolution of the African Union,²⁵ and has advocated for a progressive regional approach to responding to human rights concerns, particularly the right of the African Union to intervene in a Member State in respect of war crimes, crimes against humanity, and genocide.²⁶ Egypt has also continually affirmed its commitment to the African Union human rights framework by hosting human rights meetings²⁷ and sessions

13 This was demonstrated in the unsuccessful attempts, on the basis of diplomatic immunity, by a torture survivor to prosecute former acting Prime Minister Hazem al-Biblawi in the US; and the unsuccessful attempts, on the basis of special mission immunity, by activists to have General Mahmoud Hegazy arrested and investigated by the United Kingdom for torture allegations.

14 Egypt ratified the ICCPR on 14 January 1982.

15 Egypt ratified CERD on 01 May 1967.

16 Egypt ratified CEDAW on 18 September 1981.

17 Egypt ratified the UNCAT on 25 June 1986.

18 Egypt has not accepted the Optional Protocol to the ICCPR or the Optional Protocol to CEDAW.

19 Egypt has not accepted the Individual complaints procedure under the UNCAT or the Individual complaints procedure under CERD.

20 Article 8(1) Arab Charter on Human Rights, 2004.

21 Egypt ratified the ACHPR on 20 March 1984 with no reservations to Article 5 which prohibits torture.

22 Article 5 ACHPR.

23 Egypt ratified the Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights (1998). This Protocol is replaced by the Protocol on the Statute of the African Court of Justice and Human Rights as reiterated under Article 1 of the Protocol on the Statute of the ACJHR.

24 African Union, List of Countries Which Have Signed, Ratified/Accessed to the Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights.

25 For example: Egypt has contributed, approximately 15%, of the Union's annual budget; Egypt has hosted several African Union and African Commission sessions; and President El Sisi was the Chairperson of the African Union from February 2019-February 2020. African Union; Institute for Security Studies, PSC Report: Egypt's Key Achievements as AU Chair in 2019, PSC Insights (Dec. 2019).

26 As one of the founding members of the African Union, the Egyptian delegation during the negotiations for the Constitutive Act of the African Union proposed the language for Article 4(g) which states that one of the principles of operation of the Union is "the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity". Article 4 of the Constitutive Act of the African Union has since become the cornerstone for the principle of "non-indifference" to human rights issues, this principle guides the work of the African Union's Peace and Security Council.

27 Most recently Egypt hosted COP27 from 6th – 18th November 2022.

of the ACommHPR.²⁸ Despite Egypt's formal commitment to the ACHPR, this briefing will provide an overview of the ACommHPR communications arising from allegations of torture against Egypt and an analysis of the failure by the Egyptian State to implement the decisions of the Commission. Focusing on the ACommHPR recommendations in Communication 396/11,²⁹ the briefing explores the steps that the Egyptian government should take at the domestic level for the implementation of the reparations issued.

28 Human Rights Watch, [African Rights Session Amid Dire Abuses: Commission Should Loudly Sound the Alarm](#), 24 April 2019.

29 Communication 396/11 [Mohammed Abderrahim El Sharkawi v. Egypt](#).

A STATE THAT TORTURES: EGYPT BEFORE THE ACommHPR

Since 1997, the ACommHPR – as one of the few avenues for survivors of human rights violations in Egypt to get recourse – has received and made recommendations in 21 communications alleging violations by the Egyptian State. Based on publicly available information,³⁰ of the 21 communications only three³¹ did not involve Article 5 violations.³² Of the 18 cases that involved allegations of Article 5 violations, only four reached the merits stage, namely: Communication 334/06, *Egyptian Initiative for Personal Rights and INTERIGHTS v. Arab Republic of Egypt*; Communication 323/06, *Egyptian Initiative for Personal Rights and INTERIGHTS v. Egypt*; Communication 396/11, *Mohammed Abderrahim El Sharkawi (represented by EIPR and OSJI) v. Egypt*; and Communication 344/07, *George Ilyanyori Kajikabi v. Egypt*. The ACommHPR found Egypt in violation of Article 5 in all four communications. The Egyptian State has not implemented any of the ACommHPR’s final decisions to date.

Of the 14 communications that did not reach the merits stage, one was declared inadmissible due to failure to exhaust domestic remedies,³³ one was dismissed due to lack of standing,³⁴ three were withdrawn at the request of the complainants, and ten were struck out due to the failure of the complainant to submit evidence on admissibility.³⁵ The three withdrawals were requested for reasons ranging from: acquittal of the victim,³⁶ to the inability to gather evidence due to an arrested lawyer.³⁷ One of the withdrawals was made without a recorded reason.³⁸

Egypt in violation of Article 5 of the African Charter

The four ACommHPR communications finding Egypt in violation of Article 5 collectively contain key recommendations to the Egyptian State aimed at improving the human rights situation in the country and ensuring that the authorities fulfil their obligation to eradicate torture. The findings of the ACommHPR in the four decisions are summarised below.

30 The ACHPR, by virtue of Article 59 of the Charter can only publish its decisions after the Assembly of Heads of State and Government have authorised it. This means that all activities relating to Communications pre-authorization of the Assembly of Heads of State and Government, including the submissions received by the ACommHPR, are not public, resulting in the lack of information on the number of communications that remain pending before the ACommHPR against the Egyptian State alleging violation of Article 5.

31 These three communications related to religious freedom, property rights, and the harassment of academics. Where multiple articles were allegedly violated, the chart reflects the primary article related to the violation. See Communication 661/17 *Amir Fam & 141 Others v. Egypt* (2017), (rejected at seizure stage); Communication 355/07 *Hossam Ezzat & Rania Enayet (represented by Egyptian Initiative for Personal Rights and INTERIGHTS) v. Egypt* (2016), (decided on merits); Communication 544/15 *European Alliance for Human Rights (AED) and 3 Others v. Egypt* (2018), (struck out for lack of diligent prosecution).

32 Article 5 of the African Charter on Human and People’s Rights provides for the right to respect of dignity inherent in a human being and calls for the prohibition of all forms of exploitation and degradation of man including the prohibition of torture.

33 Communication 201/97 *Egyptian Organisation for Human Rights/Egypt* (2000), para. 15.

34 Communication 670/17 *Fadhil Al Mawla Husni Ahmed Ismail and 19 Others (represented by Freedom and Justice Party of Egypt) v. Egypt*, (2019).

35 Communication 612/16 *Ahmed Mohammed Aly Subaie v. Egypt*, (2017); Communication 640/16 *Mr Sharif Hassan Jalal Samak v. Egypt*, (2017); Communication 543/15 *European Alliance for Human Rights and 3 Others v. Egypt*, (2018); Communication 614/16 *Mr. Eid Mohammed Ismil Dahrooj and two others (represented by AED and 4 others) v. Egypt* (2018); Communication 592/15 *Hesham Hamid Elshenna (represented by Prof. Mostafa Metwaly) v. Egypt* (2018); Communication 625/16 *Basem Kamali Mohammad Odeh (represented by AED and 4 ors) v. Egypt* (2018); Communication 615/16 *Medhat Mohammed Bahieddin Ahmed (represented by the Organisation of European Alliance for Human Rights and Ors.) v. Egypt* (2018); Communication 656/17 *Anas Ahmed Khalifa v. Egypt* (2018); Communication 658/17 *Shereen Said Hamd Bakhet v. Egypt* (2018); 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*, (2019).

36 Communication 244/01 *Arab Organisation for Human Rights v. Egypt* (2003), where the complainant requested withdrawal on behalf of all victims after one victim was acquitted by the Court of Cassation in Egypt.

37 Communication 603/16 *Mrs. Ayatulla Alaa Hosny (represented by Dalia Lotfy) v. Egypt*, (2018), where the complainant requested withdrawal because the family of the victim did not wish to pursue the case further, the victim had been released on precautionary measures, and the lawyers of the family had been arrested, making it difficult to obtain documents.

38 261/02 *INTERIGHTS et al v. Egypt*, (2003), where the complainant made an explicit oral request to withdraw the communication at the 33rd Ordinary Session of the African Commission.

Communication 396/11, Mohammed Abderrahim El Sharkawi (represented by EIPR and OSJI) v Egypt³⁹

The case. The complainants filed the communication before the ACommHPR on behalf of Mohammed Abderrahim El Sharkawi. El Sharkawi was detained by Egyptian authorities without trial from 1995 to 2011. Throughout his detention, El Sharkawi was tortured by Egyptian authorities using electric shocks, suspending him from the ceiling, and denying him adequate medical care. The complainants alleged violation of Article 5 of the African Charter. In 2014, the ACommHPR found the communication admissible noting that the Morsi regime was not free from liability for the human rights violations of the Mubarak era,⁴⁰ and declaring that the existence of legal remedies in abstract was insufficient to prove the presence of “available, effective and sufficient remedies,” as required by the Charter.

The ACommHPR decision. In 2021, the ACommHPR concluded that Egypt violated Article 5 of the African Charter in their treatment of El Sharkawi and that the authorities failed to conduct an effective investigation into the allegations of torture. The ACommHPR also held that Egypt’s legislative framework did not adequately define torture or protect persons in custody. The Commission ordered the Egyptian government to pay compensation to the victim amounting one million Egyptian pounds; to issue a public apology to the victim; and to reform its legislation to safeguard against torture. The ACommHPR also urged Egypt to create an independent commission of inquiry to investigate Article 5 violations.

Implementation. On 20 October 2021, the complainants sent a letter to the Commission expressing “grave concern” over Egypt’s continued non-compliance with the decision.⁴¹ Since then, Egypt has not complied with any of the ACommHPR’s recommendations.

Communication 344/07, George Iyanyori Kajikabi v Egypt⁴²

The case. The complainants (the International Centre for the Legal Protection of Human Rights and Ashraf Ruxi) filed the communication before the ACommHPR on behalf of George Iyanyori Kajikabi and seven other persons (the victims). The victims together with approximately 2500 persons (including asylum seekers, card carrying refugees, and undocumented persons whose status in Egypt had yet to be determined) had participated in a sit-in-demonstration in support of demands from the United Nations High Commissioner for Refugees (UNHCR) within the Mustafa Mahmoud Park close to the UNHCR offices in Cairo. On 29 December 2005, plain clothes and Riot police surrounded the park, and security officials informed the protesters that if they refused to be taken voluntarily under police guard to camps, the police would use force to remove them. Over the next two days, the police fired water cannons and tear gas at the protestors, beat them with batons, separated families, and took them to military and penitentiary locations where they were denied

39 [Communication 396/11 Mohammed Abderrahim El Sharkawi \(represented by EIPR and OSJI\) v Egypt](#) (2021).

40 [Communication 396/11 Mohammed Abderrahim El Sharkawi v. Egypt](#) (2021) para. 70.

41 [Open Society Justice Initiative, Civil Society Groups Urge Egypt to Implement Decision from Africa’s Top Human Rights Body on Torture and Abusive Detention](#), 20 October 2021.

42 [Communication 344/07 George Iyanyori Kajikabi v Egypt](#) (2020).

medical treatment, food, and access to information regarding their relatives. Some protesters were held for over a month, and several were beaten to death. In total, twenty-seven protesters died.

The complainants alleged violation of inter alia Article 5 of the ACHPR. In 2014, the Commission declared the communication admissible noting that it was for the authorities, and not for the victims, to identify the perpetrators. The Commission concluded that domestic remedies were inaccessible and therefore exhausted as required by the ACHPR.

The ACommHPR decision. In 2020, the Commission held that the treatment of protesters at the park and the separation of families in detention centres amounted to inhuman treatment, both violations of Article 5. Additionally, the Commission held that Egypt's failure to investigate and prosecute the alleged perpetrators was itself a violation of Article 5.⁴³ The Commission ordered that Egypt: reopens the investigation into the violations and hold the commanding officers accountable; provide compensation to all the victims in accordance with national laws; revise laws relating to the police and the regulation of assemblies, particularly The Egyptian Police Act of 1971 to bring it in conformity with the ACHPR and Commission guidelines.

Implementation. According to publicly available records Egypt has not implemented the reparations decision issued by the ACommHPR in this communication.

Communication 334/06, Egyptian Initiative for Personal Rights and Interights v Egypt⁴⁴

The case. The complainants filed the communication before the ACommHPR on behalf of Mohamed Gayez Sabbah, Mohamed Abdalla Abu-Gareer and Ossama Mohamed Al-Nakhlawy (the victims) who were arrested, charged, prosecuted, and sentenced to death by hanging for the 7 October 2004 and 23 July 2005 Sinai Peninsula bombings ("the Taba bombings"). The victims were held incommunicado, and the agents of the State Security Intelligence subjected the victims to various forms of torture during their detention to force them to 'confess' to their involvement in the Taba bombings before the State Prosecutor. The victims were charged on the basis of their confessions and tried before the Supreme State Security Emergency Court. The Court's decision was substantively based on the confessions which were obtained after torture. The complaint alleged violation of inter alia Article 5 of the African Charter.

In 2006, the ACommHPR issued a provisional measure requesting Egypt to suspend execution of the death penalty – which was honoured by the State. The Commission also declared the communication admissible due to the exhaustion of domestic remedies because the decision of the Egyptian State Emergency Court was not subject to any judicial appeal.

The ACommHPR decision. The ACommHPR found in 2011 that the actions of the State of Egypt including denying access to legal counsel, denying medical care, and physical assaults on the victims constituted multiple violations of Article 5. The Commission ordered Egypt to suspend implementation of the death

43 Communication 344/07 [George Iyanyori Kajikabi v Egypt](#) para. 208-209.

44 Communication 334/06 [Egyptian Initiative for Personal Rights and Interights v. Egypt](#) (2011).

penalty; adequately compensate the victims in line with international standards; reform the composition of the Emergency Supreme State Security Courts (ESSSCs) and ensure their independence; take measures to ensure that the police respect the rights of detained suspects; and reform the State Security Emergency Laws.

Implementation. On 13 February 2012, a year after the Commission’s decision, the Egyptian government announced the repeal of the death sentence against the victims. In October 2021 Egypt lifted the state of emergency, yet the ESSSCs have continued to hear cases transferred to them prior to the lifting of the state of emergency. Additionally, Egypt has not repealed the Emergency laws and many of the legal provisions establishing exceptional measures under the state of emergency, such as the anti-terrorism laws, remain in effect.⁴⁵ Egypt has not implemented the four other ACommHPR recommendations contained in this communication.

Comm 323/06, Egyptian Initiative for Personal Rights and Interights v Egypt⁴⁶

The case. The complainants filed the communication before the ACommHPR on behalf of Nawal ‘Ali Mohamed Ahmed, ‘Abir Al-‘Askari, Shaimaa Abou Al-Kheir, and Iman Taha Kamel (the victims). The victims, all female journalists by profession, were arrested on 25 May 2005 by the Riot police while covering a demonstration in front of Saad Zaghloul Mausoleum with respect to the referendum aimed at amending Article 76 of the Egyptian Constitution, allowing multi-candidate presidential elections. Non-State actors, as well as Police and Security officers physically and sexually assaulted the women. When three of the four victims lodged their complaints, the investigators either ignored eyewitness statements or refused to take eyewitness statements. All four victims received anonymous threats after filing complaints about their assaults with the public prosecutor. Their complaints were classified as misdemeanours in violation of Article 242 of the Penal Code, and investigations concluded in December 2005 with a decision by the Cairo Public Prosecution Office to not prosecute due to a failure to identify the perpetrators. In 2006, the Appeals Chamber found that the assaults had taken place but dismissed the appeal on the grounds that the perpetrators could not be identified. The complainants alleged violation of *inter alia* Article 5 of the African Charter.

In November 2006, the ACommHPR declared the communication admissible considering the public prosecutor’s decision not to prosecute – upheld on appeal –, which meant the victims had exhausted all available remedies.

The ACommHPR decision. In 2011, the Commission found that the sexual assaults perpetrated against the victims constituted inhuman and degrading treatment and that the State had failed to conduct an effective investigation or hold anyone accountable. The ACommHPR found that there was a violation of Article 5, among others, of the African Charter. The Commission ordered Egypt to pay each victim 57,000 Egyptian pounds for the physical and emotional trauma suffered; amend the laws in Egypt to bring them in line with the ACHPR; investigate the violations and bring the perpetrators to justice; and ratify the Protocol on the Rights of Women in Africa.⁴⁷

Implementation. To date, there is no information indicating that Egypt has implemented any of the ACommHPR reparations in this communication.

45 ICJ, “Egypt: Further Measures Needed to Bring A Real End to the ‘State of Emergency’”, 28 October 2021.

46 Communication 323/06 Egyptian Initiative for Personal Rights and Interights v. Egypt (2011).

47 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003).

Types of reparations ordered by the African Commission

Across the four cases, the common reparations ordered by the ACommHPR include: compensation to the victims; the effective investigation into the violations for purposes of holding the perpetrators accountable; capacity strengthening and trainings to facilitate change in State practice and attitudes towards torture; and legislative and policy changes to ensure non-repetition by improving basic minimum anti-torture safeguards. Specifically, the ACommHPR recommended the following:

- i) **Compensation:** All complainants in the four communications requested the ACommHPR to urge Egypt to ensure that the victims are paid adequate compensation. Two of the complainants requested specific amounts of compensation;⁴⁸ one complainant requested compensation in line with international standards,⁴⁹ while one complainant requested compensation in accordance with national laws.⁵⁰ The ACommHPR in all four communications urged Egypt to pay the victims adequate compensation. The Commission only indicated the compensation amount in two cases, and in the others it did not provide the standards to calculate such compensation.⁵¹ This last approach follows the standard ACommHPR position on assessing the quantum of compensation, that “the Commission cannot take the place of national authorities when it comes to redressing injury suffered”.⁵² Yet, the lack of specificity and guidance to the State is often perceived to make implementation more difficult.⁵³
- ii) **Investigations and Prosecution:** In three of the cases,⁵⁴ the complainants asked the ACommHPR to request Egypt to conduct effective investigations of the violations through a competent mechanism and bring the perpetrators to justice. The ACommHPR in its decisions urged Egypt to conduct prompt, impartial and effective investigations by an independent body such as a commission of inquiry, guided by the Istanbul Protocol.⁵⁵ The ACommHPR further noted that it is the State’s obligation to combat impunity for torture by ensuring that perpetrators are subjected to legal processes, once investigations are concluded.

In one of the cases, where the act of ill treatment related to sexual violence, the ACommHPR requested Egypt to exercise due diligence to prevent, investigate, and punish acts of violence against women in accordance with national legislation, whether those acts are perpetrated by the State or private actors.⁵⁶

- iii) **Institutional Reform:**

- (1) **Judiciary:** In two of the cases,⁵⁷ the complainants asked the ACommHPR to urge Egypt to reform the competence and procedures of the ESSCs and ensure their independence. The Commission found that

48 Communication 323/06 Egyptian Initiative for Personal Rights and Interights v. Egypt and Communication 396/11 Mohammed Abderrahim El Sharkawi v. Egypt.

49 Communication 334/06 Egyptian Initiative for Personal Rights and Interights v. Egypt.

50 Communication 344/07 George Iyanyori Kajikabi v Egypt.

51 For other similar cases by the ACommHPR see Good v. Botswana at para. 244 (recommending that the State provides adequate compensation); Groupe de Travail sur les Dossiers Judiciaires Strategiques v. Democratic Republic of Congo at para. 88 (where the assessment of the quantum of compensation is at the discretion of the of the courts and national authorities of the respondent State).

52 See for example Communication 274/03 and 282/03: Interights, ASADHO and Madam O. Disu v. the Democratic Republic of Congo (2013) para 85.

53 R Murray, D Long, V Ayeni & A Some, “Monitoring Implementation of Decisions and Judgments of the African Commission and Court on Human and Peoples’ Rights” (2017) 1 African Human Rights Yearbook 150-166.

54 Communications 323/06 Egyptian Initiative for Personal Rights and Interights v. Egypt; 396/11; and 344/07 George Iyanyori Kajikabi v Egypt.

55 The Istanbul Protocol stresses that the broad purpose of investigation is to establish the facts relating to alleged incidents of torture in order to identify perpetrators, facilitate their prosecution and obtain redress for victims. See the Istanbul Protocol para. 77.

56 Communication 334/06 Egyptian Initiative for Personal Rights and Interights v. Egypt (2011) paras. 203-204.

57 Communication 334/06 Egyptian Initiative for Personal Rights and Interights v. Egypt (2011) and Communication 396/11 Mohammed Abderrahim El Sharkawi v. Egypt (2021).

the ESSCs fell short of being independent and impartial tribunals, noting that judicial bodies must be established by law to adjudicate matters within their jurisdiction based on the rule of law, and in accordance with appropriate procedures. The Commission further found that there should be no inappropriate interference with judicial processes, except through judicial review; judicial bodies must be independent from the Executive branch of government, and this independence must be respected by government. It also noted that the appointment to judicial bodies should be transparent, and judicial decisions should be made without restrictions, improper influence, or pressure from any source.⁵⁸

- (2) **Law enforcement:** In one of the cases the complainant asked the ACommHPR to urge Egypt to ensure that law enforcement officials respect the rights of detained suspects.⁵⁹ In its analysis, the ACommHPR observed that torture by the Egyptian State agents was made possible because the victims were kept in incommunicado detention “hidden away from the world for the 6 – 9 months of pre-trial detention”, coupled with the denial of access to a doctor, lawyer of the victim’s choosing, and the victim’s family. In its decision, the Commission urged Egypt to take measures to ensure that its law enforcement organs, particularly the police, respect the rights of detained suspects in line with Article 5 of the Charter.

In another case, the complaints asked the ACommHPR to urge Egypt to ensure that security and law enforcement personnel receive human rights training, including on how to handle riots and crowd control.⁶⁰ The ACommHPR, relying on the Guidelines for Policing of Assemblies by Law Enforcement Officials in Africa, outlined clear standards for police conduct during assemblies and riots focusing on minimising the use of force and ensuring the respect of human rights. According to the guidelines police officers should be trained to minimise conflict with protesters, including through negotiation and mediation skills, as well as on the proper use of non-lethal weapons, de-escalation measures, and on ensuring that all actions taken during crowd control are lawful, necessary, proportionate, free from discrimination and guided by regional and international human rights standards.

- iv) **Legislative reform:** In all four cases the complainants requested the ACommHPR to urge Egypt to implement legislative reform as a torture preventative measure. The laws specifically highlighted in the cases included Emergency Law 162 of 1958; the Egyptian Police Act 109 of 1971; Articles 126, 129, and 268 of the Egyptian Penal Code; and the Egyptian Criminal Procedure Code.

Additionally, in one of the cases the complainants requested the ACommHPR to urge Egypt to enact legislation aimed at effecting the State’s positive obligation to defend and protect human rights.⁶¹

In its decisions, the ACommHPR requested Egypt to:

- (1) Harmonise its legislations in line with the Guidelines and Principles of the Rights to a Fair Trial and Legal Assistance adopted by the African Commission.
- (2) Harmonise the State Security Emergency Laws to bring it in conformity with the Charter and other international treaties and regional norms and standards.
- (3) Revise the laws in relation to police and regulation of assemblies to bring it in line with the rights in the African Charter. In particular, it requested Egypt to review the Egyptian Police Act 109 of 1971 to ensure that during anti-riot and crowd control operations, law enforcement officials are obliged to minimise dam

58 Communication 334/06 Egyptian Initiative for Personal Rights and Interights v. Egypt (2011) para. 199 reiterated by the ACommHPR in Communication 396/11 Mohammed Abderrahim El Sharkawi v. Egypt (2021) paras. 300-301.

59 Communication 396/11 Mohammed Abderrahim El Sharkawi v. Egypt (2021).

60 Communication 344/07 George Iyanyori Kajikabi v Egypt.

61 Communication 323/06 Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt.

age and injury, respect and protect the right to life, and other principles of necessity and proportionality, in conformity with the Guidelines for Policing of Assemblies by Law Enforcement Officials in Africa of the Commission.

- (4) Harmonise the emergency law to conform to the ACHPR and other international and regional standards including by abolishing administrative detention and dissolving the State Security Emergency Courts.
 - (5) Revise Article 126 of the Egyptian Penal Code to align it at a minimum with the definition of torture under Article 1 of UNCAT.
 - (6) Revise Article 129 of the Egyptian Penal Code so that it does not treat acts of torture or cruel, inhuman, or degrading treatment as a low level offense.
 - (7) Amend the Code of Criminal Procedures to ensure that torture victims have the same rights regardless of whether the accused is an official or not.
 - (8) Ratify the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa,⁶² to protect women from systematic sexual violence as a means of punishing and silencing women from expressing their political opinion.⁶³
- v) **Cessation and acknowledgement:** in one communication⁶⁴ the ACommHPR requested that Egypt cease ongoing violations; and in another communication⁶⁵ the ACommHPR urged Egypt to acknowledge the violations, accept responsibility, and issue a public apology.

The reparations issued by the ACommHPR are typical for findings of violations of Article 5 of the Charter.⁶⁶ Unfortunately, to date there are no public records indicating that Egypt has implemented any of the reparations, thus fostering impunity for torture and denying redress to survivors.

Able but unwilling: domestic obstacles to the implementation of decisions by the ACommHPR

Under international human rights law, States have the duty to ensure the full enjoyment of human rights. Therefore, where rights violations occur, States are obligated to take measures to right the wrong by ensuring adequate reparations, which includes implementing reparations orders by human rights bodies such as the ACommHPR. As a signatory to the African Charter, Egypt has an obligation to ensure the rights included in the treaty, and to put in place domestic measures and legislation compatible with the Charter.⁶⁷ This also requires implementing the final decisions from the ACommHPR where it has been found in violation of the Charter. This is reiterated in Article 93 of the Egyptian Constitution,⁶⁸ and in the National Human Rights Strategy, which highlights Egypt's commitment to its human rights obligations and the State's interest in seeking to "enhance its cooperation with the mechanisms [such as the ACommHPR] mandated to follow-up on implementation of relevant instruments [such as the ACHPR]".⁶⁹ The National Human Rights Strategy further stresses that Egypt is "keen to implement

62 Communication 323/06 Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt at para 275(vi).

63 Communication 323/06 Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt at para 152.

64 Communication 323/06 Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt.

65 Communication 396/11 Mohammed Abderrahim El Sharkawi (represented by EIPR and OSJI) v Egypt.

66 Committee for the Prevention of Torture in Africa, Report on Article 5 of the African Charter's Jurisprudence (2023), pp. 6-18.

67 As a State with a monistic system, when Egypt ratifies a treaty, the treaty is automatically incorporated into domestic law. See Article 93 of the Egyptian Constitution.

68 Article 93 of the Egyptian Constitution inter alia states that, "The State is committed to the agreements, covenants, and international conventions of human rights that were ratified by Egypt."

69 Supreme Standing Committee for Human Rights, The Arab Republic of Egypt National Human Rights Strategy 2021 – 2026, p. 15.

recommendations received from human rights mechanisms [including the ACommHPR] in consistency with its international and national obligations.”⁷⁰

Despite its international obligations, Constitutional guarantees, and the aspirations reiterated in the National Human Rights Strategy, Egypt’s record for implementing human rights decisions is non-existent. This dismal record can be attributed to several factors at the national level, as explored below.

Egypt’s position in relation to foreign decisions

Implementation of the reparations issued by the ACommHPR will require changes to be affected in Egypt that have governance, legislative, policy, and institutional practice implications. However, the Egyptian government has clearly portrayed that it does not have the political will to effect the necessary changes that would facilitate implementation of ACommHPR decisions,⁷¹ as demonstrated below.

Amendments to Law 8 of 1979: In 2021 the Egyptian government introduced amendments to the Law governing the Supreme Constitutional Court (SCC).⁷² The amendments granted the SCC judicial oversight over the constitutionality of foreign decisions or verdicts involving Egypt. Therefore, while in the Human Rights Strategy Egypt purports to be committed to its international obligations and the implementation of decisions from human rights bodies, its legal framework empowers the Egyptian Prime Minister to file a request to the SCC to declare that the verdict, decision, or obligation stemming from the judgement, including decisions from the ACommHPR, not be implemented.

The Egyptian Government’s stance against the ACommHPR

Egypt has actively undermined the Commission as demonstrated by the following acts:

- *Failure to respond to complaints:* In many cases, Egypt has ignored complaints brought against it before the ACommHPR in contravention of Rule 110 of the African Commission’s Rules of Procedure which requires States to provide all information related to any communication brought against the State.
- *Undermining the independence of the ACommHPR:* The Egyptian government has used its membership to the Permanent Representative Council of the African Union to spearhead the weakening of the independence of the ACommHPR by pushing for the adoption of the AU Executive Council Decision 1015.⁷³ The Executive Council in its observations stressed that the ACommHPR’s independence is merely “functional in nature and not independence from the same organs that created it”.⁷⁴ The Council then proceeded to question the interpretative mandate of the ACommHPR claiming the possibility of conflicting jurisprudence with the ACtHPR which exercises a similar mandate.⁷⁵ Decision 1015, a brainchild of Egypt, severely undermines the mandate, authority and independence of the Commission.⁷⁶

70 Supreme Standing Committee for Human Rights, *The Arab Republic of Egypt National Human Rights Strategy 2021 – 2026*, p. 15.

71 According to Amnesty International, the Egyptian government has since 2015 orchestrated a vicious and sustained political attack against the ACommHPR aimed at weakening the mechanism. See Amnesty International, *Egyptian President’s Chairmanship must not undermine the African Union’s Commitment to Human Rights*, February 2019.

72 See Carnegie Endowment, *Egypt’s Constitutional Court Amendments: The International System On Its Own Terms*, 12 July 2021.

73 Decision on The Report on the Joint Retreat of the Permanent Representatives’ Committee (PRC) and the African Commission on Human and Peoples’ Rights (ACHPR) (Decision EX.CL/ Dec 1015(XXII)). See also, Human Rights Watch, *Egypt: Africa Rights Session Amid Dire Abuses*, April 2019.

74 Decision EX.CL/ Dec 1015(XXII), para. 5.

75 Decision EX.CL/ Dec 1015(XXII), para. 7(iii).

76 For a detailed analysis of the implications of Decision 1015 See J. Biegon, *The rise and Rise of Political Backlash: African Union Executive Council’s decision to review the mandate and working methods of the African Commission* (2018).

- *Failure to fulfil its reporting obligations to the ACommHPR:* Egypt is obliged to submit an annual report to the ACommHPR on measures taken to ensure that the rights enshrined in the ACHPR are being implemented.⁷⁷ However, the Egyptian government has mostly ignored this obligation, only fulfilling this duty on an ad hoc basis for reasons that can only be surmised as less than honourable. For example, after 16 years of not reporting, in 2017 the Egyptian government submitted its 17th Period Report (covering the period between 2001 – 2017) to meet the Charter conditions for hosting the 64th Ordinary Session of the Commission.⁷⁸ While the decision to host the session can be lauded as being supportive of the Commission, the 64th Session was marked by limited participation of civil society due to difficulties in obtaining visas, despite the guarantees contained in Rule 30(3) of the Commission’s Rules of Procedure.⁷⁹ The participation of those that attended was severely curtailed by intimidation, surveillance and restrictions from the Egyptian authorities.⁸⁰ This led Amnesty International to conclude that Egypt used the “opportunity to host a [Commission Session] as part of its broader efforts to direct attention away from its poor human rights record and create a false and misleading impression that [Egypt] is genuinely and fully cooperating with international human rights bodies”.⁸¹

The failure to fulfil its ACHPR Article 62 obligations has meant that the ACommHPR does not have information on Egypt’s efforts or lack thereof in implementing its decisions.⁸²

Lack of a national implementation mechanism

The Egyptian government has not set up a mechanism(s) mandated to coordinate and monitor implementation and follow-up of human rights bodies rulings, including the decisions of the ACommHPR. Although the Charter does not obligate State parties to create national implementation mechanisms,⁸³ their existence would not only ease State level coordination on implementation of decisions, but also ensure accessibility of relevant officials by claimants and litigants. The existence of an implementation mechanism would ensure clarity on the status of decisions by the ACommHPR by avoiding interpretation on their scope and binding nature. It would also improve coordination among the State entities involved in the implementation.⁸⁴ On the other hand, the absence of a national implementation mechanism in Egypt leads to obstacles, as captured by Murray and Mottershaw when noting that, “NGOs seeking to engage with various governments across the continent [including Egypt] about implementation of specific decisions...do not know who to talk to”.⁸⁵ They further observe that litigants are left with attendance of the ACommHPR sessions as the only viable option through which to seek out the relevant government representative and identify the responsible person for a specific case. However, for most NGOs on the continent, the shrinking civic space at the domestic level and reduced donor funding have negatively impacted their ability to participate in the sessions, further limiting NGOs engagement with governments such as Egypt without a national implementation mechanism.

77 Article 62 of the ACHPR.

78 According to the ACommHPR’s Rules of Procedure a State party wishing to host a session of the Commission shall commit itself to among others meet its reporting obligations under Article 62 of the ACHPR Rule 30(4) [ACommHPR Rules of Procedure](#) (2020).

79 According to Rule 30(3) of the Rules of Procedure a State agreeing to host a session shall guarantee the unfettered participation of all individuals attending the session. [Rules of Procedure of the African Commission of Human and Peoples’ Rights](#), 2020. See also the observations of the then Chairperson of the ACommHPR, Honourable Soyata Maiga, in her [opening statement](#).

80 Mada Masr, [Intimidation, surveillance, restrictions: African human rights officials describe mistreatment by Egyptian security in Sharm el-Sheikh](#), 4 June 2019.

81 Amnesty International, [The State of African Regional Human Rights Bodies and Mechanisms 2018 – 2019](#), AFR01/1155/2019 at p.39.

82 Under Article 62 of the African Charter “Each State Party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter.”

83 States that have established national implementation mechanisms include Cameroon, Burundi, and Lesotho See Rachel Murray and Elizabeth Mottershaw, [Mechanisms for Implementation of Decisions of the African Commission on Human and Peoples’ Rights](#), (2014) *Human Rights Quarterly* pp. 349-372.

84 The ACommHPR, [Declaration of the 1st Joint Forum of the Special Mechanisms of the African Commission on Human and Peoples’ Rights](#) (2024).

85 R. Murray and E. Mottershaw, [Mechanisms for Implementation of Decisions of the African Commission on Human and Peoples Rights](#), *Human Rights Quarterly* 36 (2014) 349-372 at p. 358.

Legal gaps defying ACommHPR decisions

The ACommHPR, in the El Sharkawi communication, gave a detailed opinion on the Egyptian national legal framework that has created fertile grounds for the commission of torture and the impunity for it. The continued validity of these laws is a failure on Egypt's part to implement the reparations ordered by the Commission.

Lack of anti-torture laws despite constitutional guarantees. The Constitution guarantees the right to freedom from torture, but there is no enabling law that criminalises it. The ACommHPR has observed that “the absence of enabling law that criminalises torture, obstructs victims’ capacity to access their right to redress.”⁸⁶

Penal Code. As noted by the ACommHPR, Article 126 in the Penal Code contains a definition of torture that is not in conformity with Article 1 of UNCAT.⁸⁷ Concretely, the Commission has found that Article 126 fails to mention severe mental or physical suffering; limits the purpose of torture to attainment of forced confession; and limits responsibility for torture to those who order or carry out the act.⁸⁸ Similarly, the CAT in its most recent Concluding Observations noted that the non-conformity of the definition of torture in Article 126 with Article 1 of the UNCAT creates actual or potential loopholes for impunity.⁸⁹

State of Emergency Laws. Before President El Sisi announced the lifting of the state of emergency in October 2021, states of emergency were frequently used as a smokescreen for the commission of human rights violations.⁹⁰ The ACommHPR has observed that the Emergency Law in Egypt is overbroad and unclear on what constitutes acts that endanger security and public order, thus lacking predictability and precision.⁹¹ The Commission further noted that “the Emergency Law sets aside the regulations [for arrest and pre-trial] stipulated in the Criminal Procedure Code, thus removing certain safeguards and, in effect allowing law enforcement officials to bypass some of the basic protections afforded to arrested and detained persons.” The Commission therefore concluded that Egypt’s emergency law does not conform to the African Charter and fails to fully respect the rights of arrested and detained persons.⁹² On its part, the CAT has observed with concern that although the state of emergency was lifted, the Emergency Act No. 162 of 1958 conferred on the Government far-reaching powers. It further noted that the April 2020 amendment to the Emergency Act⁹³ further restricted the enjoyment of rights under UNCAT by extending the jurisdiction of military courts over civilians and the expansion of the powers of security forces to detain suspects indefinitely without any judicial oversight.⁹⁴ Therefore, for the lifting of the state of emergency to have a positive impact on the legal framework in Egypt,⁹⁵ the CAT has recommended that Egypt considers amending the Emergency Act No. 162 of 1958 to ensure that the state of emergency restrictions are expressed in clear and precise terms to guarantee the respect of non-derogable rights, including the prohibition of torture.⁹⁶

86 Communication 396/11 Mohammed Abderrahim El Sharkawi (represented by EIPR and OSJI) v Arab Republic of Egypt para. 245.

87 Article 126, Law No. 58 of 1937 Promulgating the Penal Code.

88 The wording and spirit of Article 126 of the Penal Code is contrary to the Robben Island Guidelines which require States to ensure that all acts found in Art. 1 of UNCAT are offences in their legal systems; UN CAT General Comment 2 also requires criminalisation of torture in accordance with elements of torture in Art 1 of UNCAT.

89 Committee Against Torture, Concluding Observations on the fifth report of Egypt, CAT/C/EGY/CO/5 para 9.

90 CAT, Report, UN Doc A/49/44, 1994, para 85.

91 Communication 391/11 Mohammed Abderrahim El Sharkawi v. the Republic of Egypt, (2020).

92 CAT, Report, UN Doc A/49/44, 1994, paras. 276- 285.

93 Amendment of Emergency Law No. 162 of 1958 by Law No. 22 of 2020.

94 CAT, Concluding Observations on the fifth report of Egypt, CAT/C/EGY/CO/5 para 11.

95 For further information on how repealing the state of emergency have not had impact on the legal framework see ICJ, “Egypt: Further Measures Needed to Bring A Real End to the ‘State of Emergency’”, 28 October 2021; Mada Masr, “What will change as Egypt exists a 4-year state of emergency?” October 28, 2021.

96 CAT, Concluding Observations on the fifth report of Egypt, CAT/C/EGY/CO/5 para 12(e).

Counter terrorism laws. Egypt's Anti-terrorism Law⁹⁷ and Terrorists Entities Law⁹⁸ use vague and overly broad language in their definition of "terrorist group", "terrorist crime" and "terrorist act" what constitutes an "act of terrorism" or "terrorism financing."⁹⁹ Additionally the March 2020 amendments to the Anti-Terrorism and Terrorists Entities Laws expanded the definition of "terrorist entity", and the offense of "funding terrorism". The obscurity of these definitions has had the effect of granting Egyptian law enforcement and security forces unfettered leeway to commit human rights violations on a wide scale in the name of counter terrorism.

Further, the Terrorist Entities Law gives the State prosecution the authority to issue a "terrorist list" and a "terrorist entities list" without clear criteria for inclusion of an individual on the list.¹⁰⁰ As a result, this law has been used as a tool for the persecution, arbitrary arrests, torture, and other ill treatment of government critics, political and HRDs.¹⁰¹ The CAT has raised concerns over the counter terrorism laws being deployed by the Egyptian government to silence critics of the government and to detain persons accused of involvement in terrorist acts for 28 days or longer without charge. The CAT has further highlighted that Egypt uses the counter terrorism narrative to justify subjecting persons to arbitrary arrest, unlawful detention, torture, ill-treatment and enforced disappearances.¹⁰²

Therefore, even if the ACommHPR has not addressed this issue in individual communications, Egypt cannot safeguard against torture in compliance with the ACommHPR decisions unless the authorities stop arbitrarily using its criminal laws and counter terrorism laws as grounds to control and punish dissent.

Judicial independence

In the four Communications the ACommHPR urged the Egyptian government to investigate and prosecute the individuals responsible for torturing the victims. However, the process of holding perpetrators of torture accountable does not happen in a vacuum. It would require the State Prosecution to have the capacity to open an independent and effective investigation into all allegations of torture and fairly prosecute the accused; and for the judiciary to hear the case and issue an independent judgement based on the facts and evidence presented before it. In Egypt, judicial independence has been curtailed by the executive and further eroded through Constitutional amendments and legal reforms aimed at weakening the judiciary.¹⁰³ On their part, judicial officers and State prosecutors have become complicit in the torture narrative in Egypt by wilfully proceeding with prosecutions on the basis of torture tainted evidence and failing to effectively investigate and prosecute torture allegations.¹⁰⁴ In its latest Concluding observations, the HRcT noted the lack of judicial independence and politicisation of judicial and prosecutorial authorities, which result in "politically motivated cases, against actual or perceived critics and political opponents, characterised by prolonged pretrial detention and violations of fair trial guarantees".¹⁰⁵

97 Egypt 2015 Anti-terrorism Law (unofficial translation). This law was amended in March 2020 which raised major concern among international and national civil society, see OHCHR, [Egypt's updated terrorism law opens the door to more rights abuses, says UN expert](#), 09 April 2020.

98 OHCHR, [Comments on legislation and policy](#), the Special Rapporteur on counter-terrorism and human rights, Egypt, Amendments to the Terrorist Entities Law (Law 8 of 2015) and the Anti-Terrorism Law, (Law 94 of 2015), 8 April 2020.

99 TIMEP, ["TIMEP Brief: Counter-terrorism Law"](#), 15 August 2018.

100 TIMEP, ["TIMEP Brief: Terrorist Entities Law"](#), 4 April 2019.

101 OMCT, ["Egypt: Mohamed El-Baqer and Alaa Abdel Fattah's detention is ongoing"](#), 25 November 2021.

102 CAT, Concluding Observations on the fifth report of Egypt, CAT/C/EGY/CO/5, para 11.

103 For a detailed analysis on the lack of judicial independence in Egypt see International Commission of Jurists, [Egypt's Judiciary as a Tool for Repression: Lack of Effective Guarantees of Independence and Accountability](#), September 2016; ACommHPR, [Resolution on Human Rights Abuses in Egypt – ACHPR/Res.287\(EXT.OS/XVI\)201](#); Project on Middle East Democracy, [Between a Rock and a Hard Place: How Egypt's Constitutional Amendments Erode Judicial Independence](#), April 2019.

104 See REDRESS, [Torture in Egypt: A Crime Against Humanity](#), 2 October 2023, pp. 27-29.

105 HRC, ["Concluding Observations on the Fifth Periodic Report of Egypt"](#), UN Doc. CCPR/C/EGY/CO/5, 14 April 2023, para. 37.

Egypt cannot conduct effective and independent investigations into allegations of torture in compliance with the ACommHPR decisions unless there are significant reforms aimed at strengthening judicial independence in the country.

Shrinking civic space for civil society in Egypt

Monitoring and follow-up of implementation of ACommHPR decisions in Africa largely depends on the work of national civil society organisations and actors.¹⁰⁶ In Egypt, the civil space has shrunk so drastically that civil society organisations that ought to be monitoring and following implementation have either been forced to cease operations, or scale down their operations because of the arrest and intimidation of their staff, travel bans, freezing their organisational and personal bank accounts, intimidation of family members, criminalisation and an unending cycle of case recycling.¹⁰⁷ Additionally, Law 149 of 2019, the so called “NGO Law”, imposes registration requirements that have limited the space for civil society in Egypt. This has not only weakened collaboration among Egyptian CSOs but also affected their collective advocacy capacity. As a result, Egyptian CSOs have seen their capacity to advocate for implementation of decisions limited.¹⁰⁸ They also have limited space to engage the Egyptian government on implementation of ACommHPR decisions.

106 Felix Agbor Nkongho, “Reflections on the role of civil society organisations in implementing cases from the African Commission and Court,” in Open Society Justice Initiative, *Implementing Human Rights Decisions: Reflections, Successes and New Directions*, (July, 2021) pp. 24-35.

107 For an analysis of how Egyptian civil society and HRDs have been persecuted and silenced see REDRESS, *Torture in Egypt: A Crime Against Humanity* (October, 2023) pp. 20-24.

108 Active advocacy by civil society actors was highlighted as one of the main success factors in moving from decision to implementation in the Endorios case in Kenya. See Rachel Murray and Debra Long, *The Implementation of the Findings of the African Commission on Human and People’s Rights*, (Cambridge University Press, 2015) at p.108-110.

OBSTACLES TO IMPLEMENTATION AT THE REGIONAL LEVEL

The ACommHPR has developed and consolidated mechanisms for monitoring and following up of implementation of its decisions – set out under Rule 125 of the Rules of Procedure.¹⁰⁹ The Rule requires the State to submit a report to the ACommHPR within 180 days from the date when the decision was transmitted, on the actions it has taken to implement the decision.¹¹⁰ Within 90 days of receiving the State’s written response, the ACommHPR may invite the State to submit further information on measures taken to implement the decision.¹¹¹ If no response is received from the State, the ACommHPR may send a reminder to the State to submit information within 90 days from the date of the reminder.¹¹² The Rule also sets out the role for a Rapporteur for a communication to monitor and follow-up implementation.¹¹³ Additionally, the ACommHPR can bring any situation of non-compliance to the attention of the Sub-Committee of the Permanent Representatives Committee and the Executive Council on the Implementation of the Decisions of the African Union.¹¹⁴ Finally, the Rule highlights that the ACommHPR can include information on any follow-up activities in its activity report.¹¹⁵

Additionally, the ACommHPR, pursuant to Rule 97(2) of the Rules of Procedure, established the Working Group on Communications (WGC)¹¹⁶ with express authority to inform the ACommHPR on the status of implementation of its decisions on communications.¹¹⁷ The WGC presents a consolidated report on the status of implementation of the Commission’s decisions at each ordinary session. In its May 2024 report the WGC highlighted that one of the persistent challenges is the low rate of implementation of the ACommHPR decisions.¹¹⁸ This is reiterated by the Commission in its activity reports.

Beyond the formal follow-up established in Rule 125 of the Commission’s Rules, the ACommHPR can also request an interim report from the State on implementation, convene a workshop on the implementation of a decision, hold a hearing for the same purpose, and use its promotion mandate to follow up on implementation through the country review process and missions to States.¹¹⁹

From the foregoing it is evident that the challenge at the regional level is not due to a lack of structure and/or mechanisms for follow-up and monitoring of implementation of the Commission’s decisions. Yet, the ACommHPR has had an inconsistent and ad hoc approach to the application of the different mechanisms with regard to States it finds in violation.¹²⁰

109 Rules of Procedure of the African Commission on Human and Peoples’ Rights adopted by the ACommHPR at its 27th Extra-ordinary session (2020).

110 Rule 125(1) of the African Commission Rules of Procedure (2020).

111 Rule 125(1) of the African Commission Rules of Procedure (2020).

112 Rule 125(3) of the African Commission Rules of Procedure (2020).

113 Rule 125(5) of the African Commission Rules of Procedure (2020).

114 Rule 125(8) of the African Commission Rules of Procedure (2020).

115 Rule 125 (7) of the African Commission Rules of Procedure (2020).

116 African Commission, Resolution Establishing a Working Group on Communications and Appointment of its Members ACHPR/Res. 194(L) 11.

117 African Commission, Resolution on the mandate of the Working Group on Communications of the African Commission on Human and Peoples’ Rights ACHPR/Res.212 (EXT.OS/XI)2012 para. 4.

118 Working Group on Communications – 790S; 79th Ordinary Session of the African Commission on Human and Peoples’ Rights: Inter-Session Report of the Working Group on Communications (May 20204) para. 13.

119 R. Murray, D. Long, V. Ayeni & A. Somé, “Monitoring Implementation of Decisions and Judgements of the African Commission and Court on Human and People’s Rights”, 1 African Human Rights Yearbook (2017) pp. 105-166.

120 For a detailed analysis of the regional level mechanisms and the monitoring and follow-up on implementation challenges see R Murray and D Long, The Implementation of the Findings of the African Commission on Human and Peoples’ Rights, (2015) Cambridge University Press, pp. 119-188.

For example, the ACommHPR has only used its activity report once to follow-up with Egypt on the implementation of a decision.¹²¹

The lack of uniformity of approach in monitoring implementation, coupled with the reluctance of States to provide information on the steps they have taken to comply with the ACommHPR decisions have contributed to the implementation gap.

121 In its 35th Activity report the ACHPR makes reference to Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt, Communication 323/2006, to 'follow-up on implementation'. See 35th Activity Report of the African Commission on Human and Peoples' Rights adopted in October 2013, para. 24 (iv).

CONCLUSION

The pervasive and systematic practice of torture in Egypt, despite being well-documented and condemned at both national and international levels, persists with alarming impunity. The African Commission has issued numerous decisions holding Egypt accountable for torture, yet compliance remains elusive. Various systemic and structural challenges at the domestic level, including legislative obstacles, lack of judicial independence, lack of political will, and the absence of dedicated implementation mechanisms, impede progress. At the regional level, while the ACommHPR has established mechanisms for follow-up, to date it has not used them consistently to inquire on the implementation of its decisions in relation to Egypt.

Despite Egypt's "apparent" commitment to human rights, its actions reveal a stark contrast, characterized by retaliatory policies against victims, HRDs and civil society. For meaningful change, Egypt must demonstrate genuine political will by undertaking comprehensive legal reforms, ensuring the independence of the judiciary, and establishing national mechanisms to monitor and implement human rights decisions issued by regional and international bodies. Strengthening regional mechanisms and ensuring consistency in the follow-up of ACommHPR decisions are also crucial steps towards bridging the implementation gap and providing justice to survivors of torture. Only through concerted efforts on both national and regional fronts can impunity be curtailed, and human rights in Egypt be genuinely upheld.

Photo cover by Amr Dalsh/REUTERS
Despite international condemnation,
Egyptian authorities, including riot
police, continue to use systematic
torture with impunity to suppress dissent.

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