



CIAC
Coalition for the Independence
of the African Commission

Undermining the African Commission A FOCUS ON EGYPT

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1 Introduction

Decision 1015³ was adopted during the 33rd Ordinary Session of the Executive Council held in Nouakchott, Mauritania, from 28 – 29 June 2018. Decision 1015 made some concerning recommendations.⁴ An analysis of the Decision conducted by the Coalition for the Independence of the African Commission (CIAC)⁵ found these recommendations particularly concerning as, if implemented, could potentially undermine and

weaken the independence of the African Commission on Human and Peoples' Rights (African Commission). Three of these recommendations are of particular concern.⁶ First, the recommendation that the African Commission reexamines its interpretative and protective mandate as outlined in article 31(1) of the African Charter on Human and Peoples' Rights (African Charter). Second, the recommendation that the African Commission develops a code of conduct for its members as opposed to its Rules of Procedures. Third, the recommendation that the African Commission revises its criteria for granting observer status.

A further analysis undertaken by CIAC found that Decision 1015 contravenes the provisions of the African Charter. It also threatens the existence and independence of the regional human rights system, which has been established to oversee compliance of human and peoples' rights.⁷ It also found that the Decision 1015 was based on unfounded and false assumptions and a deliberate distortion of international law to delegitimise the very nature,

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- ³ Decision On The Report On The Joint Retreat Of The Permanent Representatives' Committee (PRC) And African Commission On Human And Peoples' Rights (ACHPR) EX.CL/Dec.1015(XXXIII): DOC.EX.CL/1089(XXXIII) -available at https://au.int/sites/default/files/decisions/34655-ex_cl_dec_1008_-1030_xxxiii_e.pdf
- ⁴ Summary Analysis Of Decision 1015 available at <https://achprdependence.org/wp-content/uploads/2020/07/Decision-1015-Analysis-Summary.pdf> (Date accessed 11 April 2021)
- ⁵ About the Coalition for the Independence of the African Commission (CIAC) available at <https://achprdependence.org/> (Date accessed 11 April 2021)

⁶ Amnesty International 'The State of African Regional Human Rights Bodies and Mechanisms 2018-2019' (2019) available at <https://www.amnesty.org/en/documents/afr01/1155/2019/en/> Date accessed 11 April 2021)

⁷ 2018: Summary Analysis of Decision 1015 (CIAC) <https://achprdependence.org/wp-content/uploads/2020/07/Decision-1015-Analysis-Summary.pdf> (Date accessed 11 April 2021)

existence, independence and functioning of the African Commission.⁸

As a result, representatives from civil society organisations and national human rights institutions convened a strategic consultative meeting on the margins of the 63rd Ordinary Session of the African Commission held in Banjul, The Gambia, in October 2018 to devise a strategy on how to respond to the threats on the African Commission's autonomy as a result of Decision 1015. During the October 2018 strategic consultative meeting organised by thirteen non-governmental organisations (NGOs) and attended by over 100 participants to collectively respond to the threat on the African Commission's independence, it emerged that there had been an identifiable pattern. This trend suggests that some African Union (AU) member states have been undermining regional accountability mechanisms. Specifically, Egypt was identified to have played a key role and taken the lead in the events that culminated in the adoption of Decision 1015. The meeting agreed that it was imperative to expose Egypt's role in the threat and gradual weakening of the regional human rights mechanism.⁹

Attacks against accountability mechanisms to weaken the international systems of human rights protection has come from both State and non-State actors. When the anti-rights work is pursued by State actors who attack mechanisms under the guise of strengthening them, it is crucial to show the distortion that will enable other States and civil society actors to mount a push-back and maintain vigilance. It is also essential to provide evidence of the attacks and the various strategies to undermine the system. It is against this background that this study is initiated.

This study focuses on Egypt's behaviour in order to highlight how some AU member states undermine the African Commission. Specifically, the study investigates the Egyptian government's responsiveness to human rights issues domestically and how it has used its hegemonic position

and shrewd diplomacy to elude being held accountable.

In advancing this discussion, this study consists of six parts. Part 1 introduces the study. Part 2 provides a contextual background outlining Egypt's domestic, regional and international human rights record. Part 3 examines Egypt's engagement with the African Commission. This examination would involve a discussion of the measures taken by the African Commission to improve the human rights situation in Egypt. This analysis lays a good foundation for Part 4's exploration of Egypt's interventions to weaken the African human rights mechanisms, specifically the African Commission. Part 5 would conclude the study. Finally, in Part 6, recommendations are proffered to relevant critical stakeholders to strengthen and protect the African human rights mechanisms, particularly the African Commission.

2 Contextual background

The Arab Republic of Egypt (Egypt) is an Arabic speaking country in North Africa that gained independence from the United Kingdom in 1922. Egypt is one of the 54 founding countries of the African Union (AU), formerly known as the Organisation of African Unity (OAU), established on 25 May 1963.¹⁰ The AU is a union of African countries that promotes integration and development across the continent. The AU Constitutive Act was adopted in 2000.¹¹ Article 3 of the AU Constitutive Act sets out the "promotion and protection of human and peoples' rights in line with the African Charter and other relevant human rights instruments" as one of the African Union's objectives.¹²

Over the past few decades, Egypt had experienced a significant human rights crisis linked to contested political transitions due to the Arab Spring triggered by President Hosni Mubarak's unconstitutional removal in 2011 and Moham-

⁸ As above.

⁹ 2018: Independence Strategy (Strategy 4-Hostile States).

¹⁰ Adopted by African Heads of State in 2000, entry into force in 2001.

¹¹ As above.

¹² Art 3 AU Constitutive Act.

med Morsi's in 2013.¹³ This political unrest and turmoil ignited a depreciation of the citizenry's human rights, with the government authorities focusing less on human rights protection and more on national security issues.¹⁴

2.1 Egypt's human rights record within its domestic jurisdiction

Part III of the 2014 Constitution of Egypt, under several provisions, provides for the public rights, freedoms and duties for all citizens consistent with the Universal Declaration of Human Rights (Universal Declaration).¹⁵ According to the Constitution's Preamble, the Constitution is anchored on democracy, freedom, human dignity, social justice, and citizens' human rights.¹⁶ Article 53 of the 2014 Constitution also provides that:¹⁷ All citizens are equal before the law. They are equal in rights, freedoms and general duties, without discrimination based on religion, belief, sex, origin, race, colour, language, disability, social class, political or geographic affiliation or any other reason.

This provision is progressive as it confers on all citizens equality before the law. In addition, it forbids discrimination on several listed grounds. Despite these human rights provisions, the deteriorating situation of human rights in Egypt is undeniable, culminating in widespread human rights infringements. These violations include alleged mass arrests and trials, crackdown on civil society activists, the excessive use of brutal force by government security forces, extra-judicial killings, arbitrary detention and torture of political dissidents, journalists and human rights activists has been widely documented.¹⁸ Amnesty

International and Human Rights Watch, in their 2020 and 2021 reports respectively, cited several human rights infringements committed against individuals, particularly human rights activists/defenders and journalists in the country.¹⁹ For example, the rights to freedom of expression,²⁰ peaceful assembly²¹ and association²² continue to be violated.²³ According to these reports,²⁴ thousands of human rights activists have been unlawfully detained and tortured,²⁵ and Egyptian courts continued to impose the death penalty for a wide range of crimes, including cases of alleged political violence and terrorism.²⁶ Most recently, the unlawful and arbitrary arrest and imprisonment of three human rights activists from the Egyptian Initiative for Personal Rights (EIPR) over politically motivated and trumped up terrorism related charges have garnered significant attention.²⁷ Death penalty and summary executions are prevalent, with reports showing that the number of death sentences increased exponentially in 2020 to at least 110 people.²⁸

Nonetheless, despite establishing a National Council for Human Rights (NCHR) tasked with monitoring human rights' realisation in the country, implementation is difficult. This diffi-

13 See MG Nyarko 'Towards effective implementation of the African Charter on the Rights and Welfare of the Child in Egypt' (2018) 11(2-3) *African Journal of Legal Studies* 141-177.

14 As above 22.

15 2014 Constitution of the Arab Republic of Egypt.

16 Preamble to the 2014 Constitution of the Arab Republic of Egypt.

17 Art. 53 2014 Constitution of the Arab Republic of Egypt.

18 Amnesty International (2020) 'Egypt' available at: <https://www.amnesty.org/en/countries/middle-east-and-north-africa/egypt/report-egypt/> (Date accessed 11 April 2021).

19 Amnesty International (n 16 above) Human Rights Watch (2021) 'Egypt: Events of 2020' available at: <https://www.hrw.org/world-report/2021/country-chapters/egypt> (Date accessed 11 April 2021).

20 Human Rights Watch (2021) 'Egypt: Events of 2021' <https://www.hrw.org/world-report/2021/country-chapters/egypt> (Date accessed 11 April 2021).

21 Amnesty International (n 16 above); Human Rights Watch (2021) 'Egypt: Events of 2020' <https://www.hrw.org/world-report/2021/country-chapters/egypt> (Date accessed 11 April 2021).

22 Human Rights Watch (n 18 above).

23 Amnesty International (n 16 above) Human Rights Watch (2021) 'Egypt: Events of 2020' available at: <https://www.hrw.org/world-report/2021/country-chapters/egypt> (Date accessed 11 April 2021).

24 As above.

25 Human Rights Watch (n 18 above).

26 As above.

27 European Parliament resolution of 18 December 2020 on the deteriorating situation of human rights in Egypt, in particular the case of the activists of the Egyptian Initiative for Personal Rights (EIPR) (2020/2912(RSP)), available at https://www.europarl.europa.eu/doceo/document/TA-9-2020-0384_EN.pdf (Date accessed 11 April 2021).

28 Human Rights Watch (n 18 above).

culty stems from its weakened independence because it is grossly underfunded and lacks transparency. This weakness could explain its silence amidst ongoing human rights violations committed by the Egyptian authorities.

2.2 Egypt's human rights record at the United Nations level

Egypt has ratified various global human rights instruments at the United Nations (UN) level. For example, Egypt has ratified the Convention Against Torture and other Cruel, inhumane Degrading Treatment (CAT), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention on the Rights with Disabilities (CRPD) to mention a few.²⁹ Ordinarily, these ratifications of human rights instruments can be described as an expression of commitment to ensure that human rights are promoted and protected for its citizenry.

However, while Egypt's treaty ratifications are significant, scholarship has hinted at Egypt's hypocrisy towards its human rights obligations for multiple reasons.³⁰ First, Egypt's failure to subscribe to any of the complaints' mechanisms established under most UN treaties is disturbing. This concern stems from the fact that by objecting to the UN's complaints mechanisms, Egypt makes accountability for human rights violations committed against its citizenry before any treaty body difficult. Second, although Egypt's treaty ratifications are ostensibly impressive, reservations made to these treaties make a mockery and most times are incompatible with the object and purpose of the treaties. For example, Egypt is one of the few Arab countries that ratified the CEDAW in 1981 albeit with reservations.³¹ The Committee on the Elimination of all

Forms of Discrimination Against Women (CEDAW Committee) in its 2010 concluding observations to Egypt expressed its concerns to the reservations on Articles 2 on (non)discrimination and article 16 on marriage and family relations mentioning that these reservations were incompatible with CEDAW's object and purpose.³²

Asides from ratifications, Egypt exerts influence at the UN level that no other state has exerted through various influential positions that its citizens occupy at the UN level.³³ For example, Egypt is a current member of the UN Human Rights Council, with one of its citizens involved in two core human rights treaty bodies, i.e. the UN's Human Rights Committee and the Committee on Economic, Social and Cultural Rights.³⁴ At different times, Egyptian citizens also served in influential positions on the UN Committee on the Rights of the Child and on the CEDAW Committee.³⁵ Egyptians, according to a report, have served in different offices in these human rights bodies, with only very brief intervals.³⁶

Again, while scholarship has hinted at the idea that while Egypt's ratifications, including its influential positions, present the impression of being concerned about and engaged with human rights globally, its poor human rights record domestically paint a different picture. Given its deteriorating domestic human rights record, speculations abound about the possible reasons for Egypt's closeness to the UN's human rights mechanisms. One reason, according to a report, is that Egypt is possibly more concerned about its self-preservation with little or no genuine interest in the realisation of human rights for its citizens.³⁷ The point is that this closeness to UN structures would allow Egypt the opportunity to control the narrative.

29 For a list of Egypt's treaty ratification at the UN level available at <https://www.ohchr.org/EN/Countries/MENARegion/Pages/EGIndex.aspx> (Date accessed 11 April 2021)

30 Budoo- Scholtz and Viljoen 'Egypt's term as AU chair mustn't distract from its human rights failings' *The Conversation* 20 February 2021, available at <https://theconversation.com/egypts-term-as-au-chair-mustnt-distract-from-its-human-rights-failings-111754> (Date accessed 11 April 2021).

31 Egypt made reservations to CEDAW under Article 2 on non-discrimination and Article 16 on family relations. Egypt withdrew the reservations made under Article 9 para. 2 .

32 CEDAW Committee *Concluding Observations in relation to the sixth and seventh report of Egypt* adopted at its forty fifth session (February 2010).

33 Budoo- Scholtz and Viljoen (n 28 above).

34 As above.

35 As above.

36 As above.

37 Budoo- Scholtz and Viljoen (n 26 above) (Date accessed 11 April 2021)

2.3 Egypt's human rights record at the regional level

Similar to the UN, Egypt has ratified various global human rights instruments at the regional level. For example, Egypt had ratified the African Charter on 20 March 1984, long before it entered into force on 21 October 1986, albeit with reservations.³⁸ Egypt operates a monist system of implementing treaties which means that upon ratification, these treaties automatically become incorporated into its local law. This system means that because the African Charter has earned domestic applicability, its citizens can present communications to the African Commission.

However, this domestic applicability can be questioned considering that Egypt is one of only two countries entering a reservation on the African Charter. Egypt entered into reservations on Article 8 on religious freedom³⁹ 9(1) on information⁴⁰ and 18(3) on discrimination against women.⁴¹ Egypt's argument on the reservation made under Article 8 and 18(3) is that these rights cannot be implemented unless it is consistent with Islamic law.⁴² Concern was also raised on the provision of the first paragraph of Article 9.⁴³ It was expressed that such information should be confined as could be obtained within the Egyptian laws and regulations' limits.⁴⁴ The Institute for Human Rights and Development in Africa (IHRDA)⁴⁵ and the Cairo Institute for Human

Rights Studies (CIHRS), in a joint statement⁴⁶ during the 45th Ordinary Session of the African Commission, raised concerns over the three reservations to the African Charter. The statement highlighted the rights violations that persistently occur as a result of the reservations.

Specifically, on the reservation to Article 9(1), the statement underscored the infringements on the right to free expression and reception of information. These include violations on the operations of newspapers and work of journalists, imprisonment of bloggers, attacks against protestors, and activists' abduction. The internet and all telephone communication were shut down during the revolution. This exacerbated the humanitarian and security situation causing deaths, escalated crime, mass violations against journalists and other persons seeking to communicate about the revolution. These infringements continue to be witnessed even after the revolution. Similarly, the statement raises concern for the reservations to Articles 8 and 18(3). The statement called for Egypt to withdraw its reservations to the African Charter as a sign of commitment to the peoples' will to live in an open and democratic society that respects their human rights.

Interestingly, Egypt ratified the ACRWC in 2001. On the one hand, it has commendably incorporated the ACRWC into its domestic law through the enactment of the Child Law.⁴⁷ The Child Law for example, mirrors several progressive provisions of the ACRWC and the CRC.⁴⁸ Yet, on the other hand, it made several significant reservations under article 21(2) on child marriage;⁴⁹ article 24 on adoption; article 30(a-e) on the

38 Egypt has made reservations under article 8, 9(1) and 18(3) of the African Charter African Charter, Article 18(3): The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

39 Art.8 African Charter

40 Art 9(1) African Charter

41 Art. 18(3) African Charter

42 M Hansungule 'African Charter on Human and Peoples Rights: Critical review' (2000) 8 *The African Yearbook of International Law* 282.

43 Art. 9(1) African Charter provides that: "Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law".

44 Reservations and Declarations to the African Charter: 'Egypt' available at <https://africanlii.org/content/african-charter-human-and-peoples-rights> (Date accessed 9 April 2021).

45 About IHRDA - <https://www.ihrda.org/>

46 IHRDA, CIHRS Statement on the Reservations made by Egypt to the African Charter on Human and Peoples' Rights, available at <https://www.ihrda.org/2011/04/3033/>.

47 2014 Constitution of Egypt. Art. 93 and 151, see also: Nyarko (n 11 above) 145.

48 Child Law, Law No. 12 of 1996 as amended by Law No 126 of 2008, Art. 1. See also Nyarko (n 11 above) 11. For example, the Child Law sets the definition of the child as any individual who is not yet 18 years old in line with international standards.

49 Egypt has reportedly withdrawn the reservation made under Art.21(2) on child marriage in 2015. Nyarko (n 11 above) 143.

special treatment of imprisoned mothers; article 44 on the competence of the African Children's Committee to receive communications; and article 45(1) on the competence of the African Children's Committee to undertake investigative missions and accept communications.⁵⁰ These reservations are worsened by the fact that Egypt is yet to withdraw reservations made on the African Charter, especially those on the equality to women, and ratify the Protocol establishing the African Court and the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (African Women's Protocol).

Again, Egypt's failure to allow investigative missions or prevent communications, just like its failure to ratify the CRC's Optional Protocol on complaints mechanism, signifies its unwillingness to allow its citizens access to accountability mechanisms. As scholarship has argued, monitoring compliance with children's rights by UN and African regional human rights treaty bodies is complex.

3 Egypt and its engagement with the African Commission

The African Commission is part of the African Regional Human Rights System. The African Charter established the African Commission, a quasi-judicial body charged with monitoring human rights implementation.⁵¹ Article 30 of the African Charter states that the African Commission will be set up within OAU, now known as the AU.⁵² It also states the African Commission's mandate is to promote and protect human and peoples' rights in Africa.⁵³

Similar to the UN level, despite its dismal human rights record domestically, Egypt has maintained

proximity with the African Human Rights mechanisms, including the African Commission, by securing influential positions. For example, to date, Egypt has had two appointments as members of the African Commission. Ibrahim Ali Badawi El-Sheikh and Mohamed Fayek have served as members of the African Commission.⁵⁴ As members of the African Commission, the two appointees during their tenures were expected to serve in their personal capacity and not as state representatives of Egypt in line with article 31(1) of the African Charter.⁵⁵

Ibrahim Ali Badawi El-Sheikh served as vice-chairperson and chairperson of the African Commission from 2003-2011. He contributed to ensuring an optimal relationship between the African Court and the African Commission following the adoption of the Protocol on the African Court.⁵⁶ Another Egypt appointee was Mohamed Fayek who served as Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrant in Africa from 2009 – 2011.⁵⁷ The appointment of the two African Commission members appeared to have not influenced or improved Egypt's dismal human rights record. Speculations are rife that Egypt is no longer fronting candidates for membership to the African Commission as this would put a spotlight on the government directly or indirectly to improve on its human rights record. To safeguard and leverage its self-interests, Egypt would not want this kind of spotlight.

However, interestingly in 2019, the Egyptian President was sworn in as the Chairman of the AU's Assembly of Heads of States and Government.⁵⁸ This appointment to this powerful position was accepted, although the President had infringed

50 Nyarko (n 11 above) 143.

51 Article 30 and 31 of the African Charter sets up the African Commission. The African Charter is also known as the Banjul Charter adopted on 27 June 1981 and entered into force on 21 October 1986. All AU members except Morocco are state parties – https://www.achpr.org/public/Document/file/English/banjul_charter.pdf

52 Art. 30.

53 As above The African Commission is an autonomous treaty body working within the framework of the African Union to promote human and peoples' rights and ensure their protection in Africa.

54 Website of the African Commission available at <https://www.achpr.org/formercommissioners> (Date accessed 11 April 2021).

55 Art 31(1) African Charter.

56 IA Badawi Elsheikh 'The future relationship between the African Court and the African Commission' (2002) 2 *African Human Rights Law Journal* 252.

57 Website of the African Commission available at <https://www.achpr.org/formercommissioners> (Date accessed 11 April 2021)

58 Budoo- Scholtz and Viljoen (n 28 above).

at least two AU rules.⁵⁹ First, he acquired the presidency through unconstitutional means that earned Egypt's suspension from the AU. Second, he violated a critical rule in the AU that disallows coup plotters from contesting elections. Following these twofold issues, it is disturbing that rather than meting out adequate sanctions for these blatant violations of its rules, the AU appeared to reward the country not just through reinstatement of its AU membership but also through its rise to the chairmanship.⁶⁰

Again, speculations abound as possible reasons for Egypt's proximity to these mechanisms. The same reason which was given for its proximity to the UN structures applies even more so to the AU structures. The proximity to the AU, according to a report, is tied to the need to use its influential positions to control the narrative to suit its agenda.⁶¹ This control is particularly evident because it has offered Egypt the opportunity to openly question some of the African Commission's workings and findings.⁶²

3.1 Measures taken by the African Commission against Egypt

In efforts to improve the dismal human rights situation in Egypt, the African Commission, in collaboration with various actors, continue to take measures that direct attention to the deteriorating human rights protection in the country. Also, different human rights actors working domestically, regionally, and globally continue to employ multi-dimensional and multi-level approaches to improve Egypt's human rights protection space.

The African Commission has taken certain measures against Egypt in response to the human rights violations committed against its citizenry, some of which are discussed below.

3.1.1 Communications

Individuals and the NGOs may bring complaints

59 As above

60 As above.

61 As above

62 Amnesty International (n 4 above) 39.

of human rights infringements of states parties to the African Commission's attention in the form of communications. Several communications have been brought against Egypt to the African Commission. One example is the case of *Egyptian Initiative for Personal Rights (EIPR) & Interights v Egypt*.⁶³ The case involved four women who were physically, verbally and sexually assaulted by alleged perpetrators including state agents. The case was brought before the African Commission which found Egypt in violation of Articles 2, 3 and 18(3) of the African Charter. The African Commission asked Egypt to compensate each victim with EP 57,000 in damages, to investigate the violation urging it to ratify the Maputo Protocol.

3.1.2 Resolutions

The African Commission adopted Resolutions 287⁶⁴ and 288⁶⁵ in July 2014 during its 16th Extra-Ordinary Session held in Kigali, Rwanda. In both resolutions, the African Commission urged Egypt to ratify various treaties and take steps to end human rights violations.⁶⁶ Both resolutions condemned the persistent human rights violations occurring in Egypt. Critically, the two Resolutions are a manifestation of the hostility that the citizens endure as a result of reservations made to Articles 9(1) and 18(3) of the African Charter and the complete disregard of the African Charter and its monitoring body, the African Commission by Egypt.⁶⁷ Resolution 287 raised grave concerns on the rapid deterioration of the human rights situation in Egypt since the 2011 uprising.⁶⁸ This uprising reinforced pre-

63 Resolution 288 'Condemning the Perpetrators of Sexual Assault and Violence in the Arab Republic of Egypt' ACHPR/Res.288(EXT.OS/XVI)201. Available at <https://www.achpr.org/sessions/resolutions?id=137>.

64 Resolution 287 'Human Rights Abuses in Egypt' ACHPR/Res.287(EXT.OS/XVI)201 available at <https://www.achpr.org/sessions/resolutions?id=136> (Date accessed 11 April 2021)

65 Resolution 288 'Condemning the Perpetrators of Sexual Assault and Violence in the Arab Republic of Egypt' ACHPR/Res.288(EXT.OS/XVI)201. Available at <https://www.achpr.org/sessions/resolutions?id=137>.

66 At least 4 resolutions have been adopted by the African Commission on the human rights situation in Egypt – <https://www.achpr.org/states/detail?id=16>.

67 Resolution 287 (n 62 above) and Resolution 288 (n 63 above).

68 Resolution 287 (n 62 above) (Date accessed 11 April 2021)

valent human rights violations such as arbitrary detention, acts of torture and ill-treatment in detention centers, violations of rights of human rights defenders, sexual violence against women, violations of the right to freedom of expression, association and assembly and death sentences.⁶⁹ Resolution 287 therefore urged the authorities in Egypt to observe an immediate moratorium on the death sentence.⁷⁰

Resolution 288 condemned the ongoing acts of sexual violence and other forms of gender-based violence committed against hundreds of women while exercising their rights.⁷¹ It also raised specific concerns on the persistent and widespread sexual violence and other forms of gender-based violence committed since the 2011 uprising against women generally and, particularly, women exercising their right to demonstrate.⁷² Resolution 288 also requested the Egyptian government to expedite the process of ratification and domestication of the Maputo Protocol.⁷³

Nonetheless, even with the adoption of Resolution 287, Egypt has continued with mass executions. For instance, in October 2020, 53 persons were executed in what was termed the worst ever situation amidst increasing concerns over the overuse of capital punishment.⁷⁴ The Egyptian Initiative for Personal Rights (EIPR)⁷⁵ has proactively advocated for abolishing the death penalty. Despite this, the situation continues to deteriorate.⁷⁶ In 2011, the African Commission, in *EIPR*

and *INTERIGHTS v. Egypt*,⁷⁷ decided in favour of the complainants and held Egypt in violation of Articles 4 on the right to life), 5 on the right to dignity, 7 on the right to a fair trial and 26 on the independence of the judiciary of the African Charter.

3.1.3 Urgent Appeals and Provisional Measures

Urgent appeals, according to the African Commission, seeks to prevent harm to the victim by seeking the state's intervention to prevent or end the human rights infringements.⁷⁸ A dismal human rights environment and myriad of cases brought against Egypt has necessitated the African Commission to issue ten urgent appeals.⁷⁹ This is one of the highest urgent appeals issued to a country surpassed only by the Democratic Republic of Congo with eleven urgent appeals.⁸⁰

3.1.4 State reporting and concluding observations

Under article 62 of the African Charter, states parties are required to submit a state report every two years.⁸¹ In line with this provision, Egypt must outline the steps undertaken to implement the African Charter provisions in a report submitted to the African Commission.⁸² Before the 64th Ordinary Session, Egypt had a dismal record of state reporting in non-compliance to its reporting obligations.⁸³ However, during this Session, Egypt's combined periodic 9th to 17th Periodic Reports covering 2001 to 2017 was one of the reports considered by the African Commission.⁸⁴ Since then, no further periodic reports have been submitted, with two periodic reports

69 Open letter to the African Commission's Chairperson and Commissioners by FIDH on the deterioration of human rights in Egypt available at <https://www.fidh.org/en/region/north-africa-middle-east/egypt/15781-the-achpr-must-urgently-deploy-a-protection-mission-to-egypt> Date accessed 11 April 2021)

70 Resolution 287 (n 62 above).

71 Resolution 288 (n 63 above).

72 As above.

73 As above .

74 EIPR: "53 persons executed in October 2020: The number of executions carried out in October exceeds the annual total of executions carried out for year of the past three years" available at <https://eipr.org/en/press/2020/11/53-persons-executed-october-2020-number-executions-carried-out-october-exceeds-annual> (Date accessed 11 April 2021)

75 About Egyptian Initiative for Personal Rights (EIPR) – <https://eipr.org/en/who-we-are>

76 EIPR Press Statement – <https://eipr.org/en/press/2020/11/53-persons-executed-october-2020-number-executions-carried-out-october-exceeds-annual>

77 Communication 334/06: Egyptian Initiative for Personal Rights & INTERIGHTS v. Egypt – <http://caselaw.ihrda.org/doc/334.06/>

78 Website of the African Commission: 'Urgent Appeals' available at <https://www.achpr.org/legalinstruments/detail?id=68> (Date accessed 11 April 2021)

79 Amnesty International (n 4 above) 30

80 As above 30.

81 Art. 62. African Charter

82 As above

83 Website of the African Commission <https://www.achpr.org/statistics> (Date accessed 11 April 2021).

84 Website of the African Commission Arab Republic of Egypt: Periodic Report, 2001 – 2017, available at <https://www.achpr.org/states/statereport?id=119.>

currently outstanding.⁸⁵ Reasons for the late or non-submission is uncertain. Nonetheless, it is reasonable to speculate that the non-submission of subsequent periodic reports may be attributable to the challenging political environment since 2011. Some also attribute nonreporting to the general lack of capacity within the government and the National Council for Childhood and Motherhood (NCCM).⁸⁶

In addition, Egypt has an equally poor record of diligently implementing recommendations by the African Commission.⁸⁷ The concluding observations and recommendations from its 7th and 8th Periodic Reports 2001-2004 adopted, during the 37th Ordinary Session from 27 April to 11 May 2005 indicate this.⁸⁸ Some of the critical areas of concerns addressed by this set of concluding recommendations include the following: The African Commission urged Egypt to meet international requirements to end all forms of torture and inhuman treatment.⁸⁹ Further, it requested Egypt to take steps to implement the recommendations of the NCHR. At NCHR's inception, it came under sharp criticism as lacking independence to execute its mandate as it affiliates with the regime. Despite its accreditation to Status A,⁹⁰ the NCHR appears to have had little influence in improving the deteriorating human rights situation especially going by the worsening situation in Egypt. Former Commissioner Fayek, is currently the President of the NCHR and as of November 2019, was elected as the as the Chairperson of the Network of African National Human Rights Institutions (NANHRI).⁹¹

85 As above.

86 Nyarko (n 11 above) 156.

87 African Commission's *Concluding Observations* in relation to the seventh and eighth periodic report of Egypt adopted at its 37th Session (April 2005), available at <https://www.achpr.org/sessions/concludingobservation?id=75>.

88 As above 1-8.

89 As above 7.

90 Chart Of The Status Of National Institutions Accredited By The Global Alliance Of National Human Rights Institutions Accreditation status as of 20 January 2021 -<https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/Status%20Accreditation%20Chart%20as%20of%2020%2001%202021.pdf> (Date accessed 11 April 2021)

91 Network of African National Human Rights Institutions (NANHRI), <http://www.nanhri.org/about-nanhri-2/steering-committee/>.

Egypt has taken advantage of the non-binding nature of the African Commission's recommendations to haphazardly take actions on the necessary legal, administrative, judicial and other measures to improve its human rights track record domestically.⁹²

4 Egypt's interventions to undermine the African Commission

Multi-level approaches, both overt and covert, by various state and non-actors, have been employed to foster an environment conducive to advancing human rights in Egypt to align with regional (and international) norms. The process and outcomes of these efforts have resulted in an arguably small change in Egypt's landscape of human rights. The Egyptian government uses its hegemonic regional influence to stifle any efforts towards holding it accountable to abiding by human rights norms within the region.

Therefore, in this section, Egypt's interventions to weaken the human rights mechanisms, specifically the African Commission, is explored.

4.1 Failure to respond to complaints brought against it

One of the ways Egypt's has weakened the African Commission is through its failure to comply with the mechanism's decisions. This observation is confirmed by states parties' low compliance to the African Commission's decisions.⁹³ The same point is raised in the African Commission's Activity Report. It admits that its efficiency as a human rights organ depends mainly on the support and cooperation it gets from African states to implement its decisions and recommendations.⁹⁴

Egypt has also made a habit of not complying with recommendations that emanate from the

92 M Ssenyonjo 'Responding to human rights violations in Africa: Assessing the role of the African Commission and Court on Human and Peoples' Rights (1987-2018) (2018) *International Human Rights Law Review* 30.

93 As above 20.

94 42nd Activity Report of the African Commission on Human and Peoples' Rights available at http://www.achpr.org/files/activity-reports/42/42nd_activity_report_eng.pdf para 45. (Date accessed 11 April 2021)

communications brought against it before the African Commission.⁹⁵ The African Commission, for instance, expects concerned states that have communications brought against them to submit all relevant information related to the communication pursuant to Rule 110 of the African Commission's Rules of Procedure.⁹⁶ Rule 110(2)-(4) provides specific timelines for submission of the relevant information.⁹⁷ Nevertheless, the timelines are generally ignored by states, perhaps encouraged by the African Commission's failure to enforce the timelines strictly.⁹⁸ For example, many of the complaints (communications) filed against Egypt are either withdrawn by complainants or stricken out by the African Commission. Complainants usually withdraw cases due to difficulty obtaining requested evidence for various reasons, including frustrations from the state agencies.

To compound the situation, the Egyptian government has taken advantage of this part of the complaints procedure to request the African Commission to strike out the complaints because evidence has not been presented within the stipulated time.⁹⁹ These frustrations arising from the complaints mechanism necessitated the members of the African Commission to deliberate on how best to optimise the communications procedure to augment its protective mandate. Egypt's lackadaisical attitude and response to communications manifest in reports that describe how, although the African Commission found Egypt in violation in several communications, none of the decisions has been imple-

mented.¹⁰⁰ Evidence suggests that responses to complaints filed against Egypt can be pending for over two years with the African Commission. This delayed response is linked to the non-binding nature of the African Commission's decisions which undercuts the extent to which the Egyptian government can be held responsible for lack of implementation.

4.2 Use of delay tactics

Another way Egypt weakens the African Commission is by employing delay tactics, particularly in response to complaints brought against the government. A typical example is Egypt's frequent demand for language translation, usually insisting on Arabic translations before responding. This demand is particularly manipulative and a delay tactic to reaching appropriate remedies for victims of human rights abuses in Egypt.¹⁰¹ Reports claim that as a government, Egypt can translate its documents if it wishes to. However, the Egyptian authorities take advantage of the understaffed and under-resourced African Commission to make demands that would potentially delay delivery of justice and eventually render the government unaccountable.

4.3 Article 58

Article 58 of the African Charter provides that:¹⁰²

When it appears after deliberations of the Commission that one or more Communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases. 2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases

95 Communication 355/07 – *Hossam Ezzat & Rania Enayet (represented by Egyptian Initiative for Personal Rights & INTERIGHTS) v The Arab Republic of Egypt* available at <https://www.achpr.org/sessions/descions?id=260> (Date accessed 11 April 2021)

96 2020 Rules of Procedures (ROP) Rule 110 available at <https://www.achpr.org/legalinstruments/detail?id=72> (Date accessed 11 April 2021).

97 Rule 110 (2-4).

98 Ssenyonjo (n 90 above) 20

99 For examples of decisions on Communications, see the Website of the African Commission 'Communications' – <https://www.achpr.org/states/detail?id=16> At least 20 complaints(communications) have been filed against Egypt.

100 Communication 355/07 (n 93 above); *Communication 323/06: Egyptian Initiative for Personal Rights & INTERIGHTS v Egypt* – <http://caselaw.ihrrda.org/doc/323.06/>

101 On several occasions the African Commission has been criticized for not being sensitive to respect the multi-lingual reality of the States Parties to the African Charter.

102 Art 58. African Charter

and make a factual report, accompanied by its finding and recommendations. 3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

In line with the foregoing provision, the African Commission held the 22nd Extra-Ordinary Session in Dakar, Senegal, from 29 July to 7 August 2017. This closed-door session was convened to consider communications and other urgent outstanding matters from the previous sessions. One of the outcomes from the 22nd Extra-Ordinary Session was considering and adopting a paper on Article 58 of the African Charter.¹⁰³ This paper was regarded as an internal procedural document to guide the African Commission members on the interpretation and application of Article 58 of the African Charter.

The African Commission had brought to the attention of the Assembly of Heads of State and AU Governments the massive human rights violations occurring in Egypt in line with Article 58(1)¹⁰⁴ of the African Charter.¹⁰⁵ In retaliation to this move, Egypt, supported by its allies within the Permanent Representative Committee (PRC) and Executive Council, used their hegemony to trigger events that invariably led to the adoption of Decision 1015. Decision 1015, amongst other recommendations to the African Commission, has the worrisome Paragraph 5 that seeks to un-

dermine the African Commission's powers and make a mockery of its complaint's procedure.¹⁰⁶

Again, it is felt by some human rights activists that action taken by the African Commission's members is as a result of operationalising the Paper on Article 58 may have led to events that culminated in the adoption of Decision 1015.¹⁰⁷

4.4 Attacks on the independence of the African Commission

The independence and autonomy of the African Commission came under serious threats after a number of key activities.

4.4.1 Decision 1015

Following the 22nd Extra-Ordinary Session of the African Commission, the Executive Council held its 32nd Ordinary Session in Addis Ababa, Ethiopia, on January 26th and 27th, 2018. Two significant outcomes that pertain to Decision 1015 came out of the 32nd Ordinary Session of the Executive Council. Firstly, the Executive Council asked the African Commission to comply with a June 2015 Decision to withdraw the observer status of the Coalition of African Lesbians (CAL).¹⁰⁸ CAL was granted observer status following the adoption of Resolution 275¹⁰⁹ during the 56th Ordinary Session of the African Commission in 2015.¹¹⁰ Secondly, the African

103 Final Communiqué of the 22nd Extra-Ordinary Session of the African Commission on Human and Peoples' Rights – <https://www.achpr.org/sessions/info?id=235>

104 African Charter, Article 58(1): When it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.

105 2010 RoPs, Rule 84(1): When the Commission considers that one or more Communications relate to a series of serious or massive human rights violations, it shall bring the matter to the attention of the Assembly of Heads of State and Government of the African Union and the Peace and Security Council of the African Union.

106 Decision 1015, Paragraph 5: UNDERLINES that the independence enjoyed by ACHPR is of a functional nature and not independence from the same organs that created the body, while expressing caution on the tendency of the ACHPR acting as an appellate body, thereby undermining national legal systems;

107 EX.CL/Dec.1015(XXXIII) Decision On The Report On The Joint Retreat Of The Permanent Representatives' Committee (PRC) And African Commission On Human And Peoples' Rights (ACHPR) DOC.EX.CL/1089(XXXIII) – https://au.int/sites/default/files/decisions/34655-ex_cl_dec_1008_-1030_xxxiii_e.pdf

108 EX.CL/Dec.887(XXVII): Decision on the Thirty-Eighth Activity Report of the African Commission on Human and Peoples' Rights Doc.EX.CL/921(XXVII) – https://au.int/sites/default/files/decisions/31762-ex_cl_dec_873_-898_xxvii_e.pdf

109 ACHPR/Res.275(LV)2014: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity – <https://www.achpr.org/sessions/resolutions?id=322>

110 Final Communiqué of the 56th Ordinary Session of the African Commission on Human and Peoples' Rights – <https://www.achpr.org/sessions/info?id=218>

Commission was instructed to urgently convene a joint retreat with the PRC to resolve various concerns expressed about the relationship between the African Commission and the Policy Organs and the AU Member States. The African Commission was urged to find modalities for enhanced coordination and collaboration with Policy Organs and Member States; to improve their dialogue and resolve outstanding issues.¹¹¹

Following the urgent request to the African Commission by the Executive Council for the convening of a joint Retreat with the PRC, the retreat took place from 4 to 5 June 2018 in Nairobi, Kenya. During this seemingly tense closed-door meeting, it is believed that bullying of the African Commission members continued. Conceivably, because of holding their ground and rightly so, it was ensured that the African Commission's bullying was sustained within the Executive Council.

Human rights activists, particularly the activists advocating for sexual and gender minorities' rights, believe that the defiance to withdraw the observer status of CAL was a convenient scapegoat that Egypt utilised to mobilise allies to undercut the powers of the African Commission. Egypt is notorious for using the anti-LGBT (lesbian, gay, bisexual and transgender) rights stance to exert its influence in the regional (and international) political arena to advance its self-interests as it continues to overtly violate the rights enshrined in its own Constitution and the African Charter. Egyptian authorities took several steps that ignited polarising debates on cultural relativism. They then utilised the opportunity together with its allies to capitalise on and influence the language that the Executive Council adopted for the June 2015 Decision 1015 to divert attention from it.

The PRC, as an advisory body that is also responsible for drafting decisions for the Executive Council, is believed, led by Egypt and its allies,

took this opportunity to retaliate by influencing some of the malevolent languages in Decision 1015. This Decision, labelled as 'the infamous Decision 1015' by some human rights activists, was adopted by the Executive Council in Nouakchott, Mauritania, during the 33rd Ordinary Session 28-29 June 2018.¹¹²

On the Decision, the Executive Council;

Requests the African Commission to take into account the fundamental African values, identity and good traditions, and to withdraw the observer status granted to NGOs who may attempt to impose values contrary to the African values; in this regard, requests the African Commission to review its criteria for granting Observer Status to NGOs and to withdraw the observer status granted to the Organization called CAL, in line with those African values.¹¹³

As aforementioned, Paragraph 5 of Decision 1015 is termed as the manifestation of how Egypt and its allies, while using the pressure to have CAL's observer status withdrawn, deceitfully undermined the powers granted to the African Commission by the African Charter.

Being cornered, the African Commission, during its 24th Extra Ordinary, held from 30 July to 8 August 2018 adopted a decision to withdraw the observer status granted to CAL.¹¹⁴ It also took other measures to realise some of the Executive Council's recommendations in Decision 1015. Consequently, CAL was served with a letter of notification on withdrawal of its observer status.

4.5 Hosting of the 64th African Commission's Session

The 63rd Ordinary Session of the African Commission, held in the Gambia from 24 October to 13 November 2018, was overshadowed with multiple voices raising concern over the interference

The Commission: From Silence to Resistance – <https://www.youtube.com/watch?v=q97-g6PbqjY>

111 EX.CL/Dec.995(XXXII): Decision On The African Commission On Human And Peoples' Rights Doc. EX.CL/1058(XXXII) – https://au.int/sites/default/files/decisions/33909-ex_cl_decisions_986-1007_e.pdf

112 As above.

113 As above.

114 Final Communiqué of the 24th Extraordinary Session of the African Commission on Human and Peoples' Rights – <https://www.achpr.org/sessions/info?id=237>

of the African Commission's independence. Particularly, speaking on behalf of the AU Member States, His Excellency Ambassador Wael Attiya, Director of the Human Rights Department in the Ministry of Foreign Affairs of the Arab Republic of Egypt, announced it would host the 64th Ordinary Session of the Commission. Relatively disempowered and limited by the Rule 30 of its Rules of Procedures, the African Commission decided to hold the 64th Ordinary Session in Egypt.¹¹⁵ The Rule requires the African Commission to ensure that a state party inviting it to hold a session is not generally seen as, or obviously, a violator of human rights within its territory in accordance with its obligations under the AU Constitutive Act, the African Charter and any other human rights instruments it is a party to.¹¹⁶

Nonetheless, one of the conditions that a host of an Ordinary Session ought to meet is the reporting obligations under Article 62 of the Charter.¹¹⁷ Before the 64th Ordinary Session, Egypt had a dismal record of state reporting. However, during this Session, one of the reports considered by the African Commission was from Egypt. This was a combined periodic report of the 9th to the 17th Periodic Reports covering 2001 to 2017.¹¹⁸ By taking this timeous action, Egypt ensured that they had all their ducks in a row to escape criticism, that it does not meet the requirements to host an Ordinary Session as stipulated by the Rules of Procedure.¹¹⁹

4.5.1 *The 64th African Commission's Session*

The 64th Ordinary Session was hosted in Sharm

el-Sheikh, Egypt, from 24 April to 14 May 2019 with a big elephant in the room, the threat to the African Commission's independence.¹²⁰ The opening session proceedings followed the usual array of speeches and remarks that speak to the theme and human rights context of the day. On one hand, the then Chairperson of the African Commission, Commissioner Soyata Maïga, in her remarks, welcomed the decriminalisation of homosexuality and the prohibition of any discrimination based on sexual orientation in Angola.¹²¹

On the other hand, Mr Omar Marawan, in his statement, reminded the audience that Egypt is the Chair of the African Union and the host of the 64th Ordinary Session. A gesture that signifies that Egypt belongs to the African Continent. He continued to say, "the African Continent which needs to position itself, in all dignity and pride, in all areas without accepting any external values inimical to its genuine development under the guise of universalism."¹²²

To the unaware, this specific statement by Mr Omar Marawan could easily have been interpreted as the typical rhetoric utilised by some Pan Africanists who are calling for an Africa free on foreign influence in all aspects of its existence. Although, given the context of the day and the occurrences that led to Egypt hosting the 64th Ordinary Session, it can also be interpreted that Mr Omar Marawan as a representative of the Arab Republic of Egypt, was flexing muscles to show the extent to which they will use their influence as the Chair of African Union.¹²³ He said that they would continue to push the anti-LGBT rights stance to invariably curtail the powers of the African Commission through the AU's organs.

115 Final Communiqué of the 63rd Ordinary Session of the African Commission on Human and Peoples' Rights – <https://www.achpr.org/sessions/info?id=298>

116 S Nabaneh 'Maintaining the independence of the African Commission on Human and Peoples' Rights: A commentary on the Rules of Procedure, 2020' (2020), available at https://achprindependence.org/wp-content/uploads/2020/08/CIAC_RoP_Nabaneh_Rules-of-Procedure.pdf

117 African Charter, Article 62: 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.

118 Arab Republic of Egypt: Periodic Report, 2001 – 2017 – <https://www.achpr.org/states/statereport?id=119>

119 Final Communiqué of the 25th Extra-Ordinary Session of the African Commission on Human and Peoples' Rights – <https://www.achpr.org/sessions/info?id=247>

120 Nabaneh (n 114).

121 Angola Decriminalizes Same-Sex Conduct – <https://www.hrw.org/news/2019/01/23/angola-decriminalizes-same-sex-conduct>

122 Final Communiqué of the 64th Ordinary Session of the African Commission on Human and Peoples' Rights – <https://www.achpr.org/sessions/info?id=291>

123 President Abdel Fattah el-Sisi of Egypt was the Chair of the Assembly of the African Union from February 2019 to February 2020 – <https://au.int/en/cpau>

4.5.2 Civil Society Organisations' Participation

Rule 28(3) of the 2010 Rules of Procedures note that a State Party offering to host a session of the Commission shall not be under any suspension of the African Union as well as adhere to the provisions of Article 62 of the African Charter on state reporting obligation.

Even though this Rule may have failed to insist that a state party inviting the African Commission to hold a session within its territory must not be a grave violator of human rights within its territory, it serves as a future deterrent for a recurrence of the inhospitality and disruptions witnessed during the 64th Ordinary Session. The 64th Ordinary Session registered a relatively low civil society organisations participation due to the boycott by some NGOs and visa-related issues. In protest, some civil society organisations, led by the CIAC, opted to boycott the 64th Ordinary Session as an act of showing discontent. The Chairperson expressed the African Commission's regret to all civil society stakeholders who, due to difficulties in obtaining visas in their respective countries, were unable to travel to Sharm El-Sheikh, despite guarantees from the host country before the Session. This concern was conveniently not addressed by the Minister of Parliamentary Affairs of Egypt.

Additionally, a protest petition addressed to the Chairperson from CSOs who were in attendance highlighted how Egypt had in different ways frustrated their participation. There were direct threats to human rights defenders resulting in the physical assault of a female human rights defender by the Republic of Egypt's registration officials. The conference centre and hotels within the Conference Centre's vicinity in Sharm el Sheik denied CSOs and delegates to the NGO Forum meeting space. There was an alarm that Egyptian officials rather than the secretariat of the African Commission were issuing identification badges for the NGO participants. A near absence of Egyptian NGOs and CSOs also raised concerns.¹²⁴

¹²⁴ ACHPR64: Protest petition against the treatment accorded to CSOs during the NGO forum – <https://africandefenders.org/achpr64-protest-petition-against-the-treatment-accorded->

This blatant exhibition of inhospitality from Egypt and disruptions to the agenda of the CSOs is what, makes Rule 30(3) of the newly adopted 2020 Rules of Procedure fundamental.¹²⁵

4.6 Absence of Egypt's Concluding Observations

The 2010 Rules of Procedure provide that the African Commission shall formulate Concluding Observations after consideration of a state party's report. Naturally, it would follow that during the Extra-ordinary Session, after the 64th Ordinary Session, members of the African Commission would have adopted the concluding observations.¹²⁶ Instead, during the 26th Extra-Ordinary Session held in The Gambia from 16 to 30 July 2019, the Commission examined a request for recusal, a decision on Egypt's contestation.¹²⁷

As indicative of the final communique from all the 65th and 66th Ordinary Sessions, the concluding observation and recommendations for implementation from Egypt's combined report considered in the 64th Ordinary Session are still yet to be adopted. This non-adoption could explain why disturbingly, the concluding observations and the recommendations for implementation by Egypt are notably absent from the African Commission's website at the time of writing this paper.¹²⁸

It is believed that the request for recusal examined by the African Commission during the

[to-csos-during-the-ngo-forum/](#). Also read: Egypt: African Rights Session Amid Dire Abuses – <https://www.hrw.org/news/2019/04/24/egypt-african-rights-session-amid-dire-abuses>

¹²⁵ Rule 30(3) is particularly important as the State party agreeing to host a session shall guarantee the unfettered participation of all individuals attending the session. See Nabaneh (n 112 above) 3.

¹²⁶ By July 2019 the Commission was still yet to adopt the 2020 RoPs. The 2020 Rules of Procedure were adopted by the African Commission during its 27th Extra-Ordinary Session held in Banjul, The Gambia from 19 February to 04 March, 2020.

¹²⁷ Final Communiqué of the 26th Extra-Ordinary Session of the African Commission on Human and Peoples' Rights – <https://www.achpr.org/sessions/info?id=308>

¹²⁸ State Reports and Concluding Observations(Egypt) – <https://www.achpr.org/statereportsandconcludingobservations> Accessed February 27,2021

26th Extra-Ordinary Session was targeted towards Commissioner Solomon Dersso. He is the current Chairperson of the African Commission, by then, a member of the African Commission. Rule 94 of the 2020 RoPs maintaining the provision of Rule 101 in the 2010 RoPs, requires a member of the African Commission not to take part in consideration of a Communication if they have expressed public opinions that are objectively capable of adversely affecting his or her impartiality to the Communication. As an academic, legal scholar and analyst of African affairs in 2013¹²⁹ and 2014,¹³⁰ Dr Solomon Dersso had written opinion pieces on Egypt for the Al-Jazeera.

Superficially, it appears that Egypt played by the book. However, this was another act of pure malice and a demonstration of how tactical Egyptian government officials are in manipulating regional (and international) accountability mechanisms. Dr Solomon Dersso was first appointed as a member of the African Commission in 2015.¹³¹ Egypt had the earliest opportunity to request for recusal at his initial appointment or even out rightly contest his appointment. Even so, they waited until 2019 because of the likelihood that he would take over as Chairperson from Commissioner Soyata Maïga from 2020. This damming move has the potential to impede any exercise of authority that the current Chairperson can have over Egypt.

Dr Solomon Dersso was perceived less of a threat as a member than Chairperson of the Commission. Hence, he had to be put in a position of less influence on human rights affairs concerning Egypt before he took office. Perhaps this also contributes to why there has been a delay in adopting the concluding observations of the latest state report by Egypt. It is expected that

as the Chairperson, he would naturally want to ensure that the African Commission conforms to its own Rules of Procedures.

Eventually, during the virtual 31st Extra-Ordinary Session,¹³² held from February 19 – 25, 2021, the African Commission adopted the concluding observations on the cumulative periodic report of Egypt on the Implementation of the African Charter (2001 – 2017). It will be interesting to observe the relationship between the African Commission and Egypt during his tenure as Chairperson.¹³³

5 Conclusion

This study focused on Egypt's behaviour to highlight how some AU member states undermine the autonomy and independence of the African Commission. In advancing this discussion, this study examined Egypt's engagement with the African Commission as well as the interventions Egypt has taken to weaken the African Commission.

Deducing from the foregoing discussions, it comes as no surprise that Egypt is yet to ratify the Protocol that establishes the African Court on Human and Peoples' Rights (African Court). The African Court complements and reinforces the African Commission.¹³⁴ The lack of ratification of the African Court's Protocol denies victims of human rights violations in Egypt another avenue to seek justice. Unlike the African Commission, the decisions of the African Court are binding. Most likely, it is an accountability mechanism that the Egyptian government will never willingly subject itself to.

Conclusively, it is premised that Egypt has the knack to overtly use its hegemony and astute diplomats to undermine the African hu-

129 The African Union versus Egypt – <https://www.aljazeera.com/opinions/2013/8/9/the-african-union-versus-egypt>

130 Egypt vs African Union: A mutually unhappy ending? – <https://www.aljazeera.com/opinions/2014/7/14/egypt-vs-african-union-a-mutually-unhappy-ending>

131 Current Commissioners – <https://www.achpr.org/currentcommissioners>.

132 Final Communiqué of the 31th Extra-Ordinary Session of the African Commission on Human and Peoples' Rights – <https://www.achpr.org/sessions/info?id=359>

133 As of June 2021, no concluding observations had been published on the African Commission's website.

134 About the African Court – <https://www.african-court.org/wpafc/basic-information/>

man rights system in the ways discussed here and more. The symbiotic relationship that the African Commission, the African Court and the African Children's Committee have is critical in the protection and promotion of human rights for all in Africa. When one institution is threatened, the others feel the ripple effects,

and it invariably is a threat to the entire regional human rights system. The need to safeguard self-interests will have the states parties utilise any means necessary to undermine accountability mechanisms. This calls for augmented vigilance and closer collaboration from all actors involved in holding states accountable.