

**Submission to the**

**The Committee on Enforced Disappearances and the United Nations Working Group on Enforced or Involuntary Disappearances**

**Response to the Committee and Working Group’s Call for inputs with a view to issuing a joint statement on the notion of short-term enforced disappearance**

**Submitted 15 August 2023**

**About the Submitting Organization**

DIGNITY is an independent human rights and development organization. Our vision is a world free of torture and other cruel, inhuman, or degrading treatment.

Founded in 1982, DIGNITY is one of the world’s first anti-torture NGOs and specialized treatment centres for torture survivors. For 40 years, DIGNITY has been a leading civil society force in the global fight against torture and today our programming spans the health, legal and political sectors.

DIGNITY is headquartered in Copenhagen, Denmark, has country offices in Jordan and Tunisia, and currently employs around 140 staff globally. We have active partnerships with more than 30 local and international NGOs and research institutions around the world.

DIGNITY operates in more than 20 countries in Africa, the Middle East, Asia, Eastern Europe, and Central America, where we work in close partnerships with human rights defenders, civil society organizations and, where possible, government authorities. DIGNITY is a member of the World Health Organization’s Violence Prevention Alliance and the UN Sub-Committee on Prevention of Torture.

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**Contribution to joint statement on the notion of short-term enforced disappearance: impunity as enabling legal framework, a brief case study of Egypt**

The following submission is intended to provide information regarding the context in Egypt where pervasive impunity, at all levels of government and law enforcement, facilitates and enables practices of short-term enforced disappearance.

Plainly, impunity is the prevailing framework supporting widespread practices of enforced disappearance in Egypt. Egyptian legislation, judicial corruption and overall institutional capture by authoritarians work in concert to ensure a decade-long practice of politically motivated arbitrary arrests, enforced disappearances, torture and imprisonment.

In 2022 alone, Egypt’s Ministry of Interior and Army were responsible for the enforced disappearance of no less than 3,155 persons.[[1]](#footnote-1) In the preceding nine years, there were at least 16,955 cumulative cases.[[2]](#footnote-2) In February 2023, the Human Rights Committee, expressed concern for the “reportedly widespread use of incommunicado detention under counter-terrorism laws, which presents a significant systemic risk of short-term enforced disappearance, and reports of the enforced disappearance of individuals despite court orders for their release.”[[3]](#footnote-3) In such cases, authorities arrest individuals without producing warrants and hold them in incommunicado detention in unspecified National Security Sector offices and police stations for days or weeks a time.[[4]](#footnote-4) Such persons are not included in official registers.

Enforced disappearances at this scale are only possible within a culture of systemic impunity that finds its root in Eygpt’s web of legal and regulatory provisions favoring ‘security’ considerations over legal, human rights-based and democratic ones.

Foremost of these provisions is Egypt’s amended Anti-Terrorism Law, which effectively codifies enforced disappearances by allowing individuals to be arrested and held incommunicado for up to 28 days. The law has routinely been criticized UN Special Procedure Mandate Holders for being vague, overbroad, and a cudgel the regime uses to silence legitimate criticism.[[5]](#footnote-5)

Supplanting this statutory permissibility enforced disappearance is an assemblage of other laws and judicial, prosecutorial, and law enforcement practices. For example, Egyptian prosecutors are empowered to visit prisons unannounced and conduct investigations; however, these powers are not effectively exercised.[[6]](#footnote-6) In fact, direct complaints from imprisoned persons to prosecutors about allegations of torture other ill-treatment largely go unheeded.[[7]](#footnote-7) Moreover, even if an investigation is made and a prosecutor pursues a case, court decisions are occasionally not implemented by the Ministry of Interior, specifically the police and prison administration.[[8]](#footnote-8)

From a judicial standpoint, judges overwhelmingly defer to the testimony and prerogatives of law enforcement. Courts heavily rely on the doctrine of *in flagrante delicto* (that the law enforcement officials acted in the heat of the crime) to provide leeway for procedural irregularities such as not ensuring the presence of a lawyer during interrogation. In the representative case (9115/2016), the Court explained that calling in a lawyer may “take time, and evidence may be lost due to the procedures” mandated by the law – which in this case served as an overriding justification to overlook the absence of a lawyer. In some cases, especially if the accused has a political background or related to issues of national security, judges arbitrarily convict the accused persons even when they reported that their confession were made under torture.[[9]](#footnote-9)

Indeed, it is customary for judges and prosecutors to ignore allegations of torture during periods of enforced disappearance, before trial, or during trial sessions, despite the defendants’ assertions and descriptions to them of the method of torture used, especially in cases involving torture by National Security agents.[[10]](#footnote-10) Judges and prosecutors do not explain to defendants or their lawyers why they do not take their torture claims seriously and take action.

At trial, there are countless instances where courts overlook overt prosecutorial irregularities, including enforced disappearance and also extending to: contradictions of witness statements; absence of evidence to prove the elements of the alleged crime; arresting officers’ lack of recognition of defendants; the invalidity of the arrest due to the absence of a case of flagrante delicto; the invalidity of the arrest report for dealing with the accused in a collective manner; the anonymity of sources and broadness of accusations in the seizure and investigation reports; the arbitrariness of the arrest; illegality of investigations and unknown sources of evidence received during trial; and proven torture violations.

Collectively, the above examples show how Egypt’s widespread and systematic practice of short-term enforced disappearances is enabled and facilitated by equally widespread and systematic complicity and impunity pervading the many different parts in Egypt’s criminal justice apparatus. Egypt’s police, security officers, prosecutors, prison staff, and judges each and all collaborate hand in glove with the al-Sisi regime to ensure impunity to support short-term enforced disappearances as a tool to persecute political opponents and human rights defenders.

1. United States State Department, Egypt 2022 Human Rights Report, p.5, <https://www.state.gov/wp-content/uploads/2023/03/415610_EGYPT-2022-HUMAN-RIGHTS-REPORT.pdf>. [↑](#footnote-ref-1)
2. United States State Department, Egypt 2022 Human Rights Report, p.5, <https://www.state.gov/wp-content/uploads/2023/03/415610_EGYPT-2022-HUMAN-RIGHTS-REPORT.pdf>. [↑](#footnote-ref-2)
3. United Nation Human Rights Committee, Concluding Observations of Egypt’s Fifth Periodic Review, U.N. Doc. CCPR/C/EGY/CO/5, para. 25, February 2023. *See also* United Nations Committee against Torture, List of Issues in advance of the fifth periodic revie of Egypt, U.N. Doc. CAT/C/EGY/Q/5/Add.1, para. 4, 7 June 2023: Please also describe the steps taken to: (a) explicitly criminalize enforced disappearance in domestic legislation; (b) investigate all allegations of enforced disappearance, ascertain the whereabouts of disappeared persons and, if they are dead, return their remains to families; (c) establish a central public registry of all places of detention; and (d) ensure that victims of enforced disappearances and their relatives have access to effective remedies. [↑](#footnote-ref-3)
4. *See* United States State Department, *Egypt 2021 Human Rights Report*, p.4, <https://www.state.gov/wp-content/uploads/2022/03/313615_EGYPT-2021-HUMAN-RIGHTS-REPORT.pdf>. [↑](#footnote-ref-4)
5. Press Release, Egypt uses terrorism trials to target human rights activists, say UN experts, UN Office of the High Commissioner for Human Rights, 8 October 2020, <https://www.ohchr.org/en/press-releases/2020/10/egypt-uses-terrorism-trials-target-human-rights-activists-say-un-experts>; Press Release, Egypt’s updated terrorism law opens the door to more rights abuses, says UN expert, UN Office of the High Commissioner for Human Rights, 9 April 2020, <https://www.ohchr.org/en/press-releases/2020/04/egypts-updated-terrorism-law-opens-door-more-rights-abuses-says-un-expert>; Letter from UN Special Procedures to Egyptian Authorities concerning amendments to counter-terrorism legislation, 28 February 2020, <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25072>. [↑](#footnote-ref-5)
6. Amnesty International, *‘What do I care if you die?’ Negligence and Denial of Health Care in Egyptian Prisons*, p. 59, 2021. [↑](#footnote-ref-6)
7. Amnesty International, *‘What do I care if you die?’ Negligence and Denial of Health Care in Egyptian Prisons*, p. 59, 2021. [↑](#footnote-ref-7)
8. Amnesty International, *‘What do I care if you die?’ Negligence and Denial of Health Care in Egyptian Prisons*, p. 58, 2021. [↑](#footnote-ref-8)
9. DIGNITY, Adalah, Cairo Institute for Human Rights Studies, Committee for Justice, El Nadeem, Egyptian Commission for Human Rights, Joint Submission for Egypt’s Third Cycle Universal Periodic Review, p. 7 (2019). [↑](#footnote-ref-9)
10. UN Committee against Torture, report under Art. 20, §§ 58-71, U.N. Doc. A/72/44, 2017. [↑](#footnote-ref-10)