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Enforced Disappearance in Egypt

Response to Call for Submissions Marking the 30th Anniversary of the Declaration on the Protection of All Persons from Enforced Disappearance

Date: February 1, 2022

Enforced Disappearance in the Law

Egypt is not a signatory to the Declaration on the Protection of All Persons from Enforced Disappearance (the Declaration), but it has been a party to the International Covenant on Civil and Political Rights since 1982, as well as the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. While Egypt's constitution does not explicitly protect against enforced disappearance, Article 54 of the 2014 constitution protects against detention without warrant, interrogation without the presence of a lawyer.¹ Article 55 of the constitution protects against torture, establishes the right to be detained in a legal detention facility, and nullifies any statements presented under coercion or threat of harm.²

Although the Egyptian penal code criminalizes unlawful detention in Article 280, stating that any type of detention without an order from a legally designated official is a crime punished by imprisonment or fine,³ Egypt does not define enforced disappearance in its legal codes, though Article 42 of the Penal Code outlines oversight of the prisons and establishes the necessity of an order from a competent authority for detention and Egypt's code of criminal procedure requires that an individual be presented before an investigating authority within 24 hours of arrest. Egypt's code of criminal procedure also outlines the responsibility of the Public Prosecutor to order a prisoner's release where information is brought forward indicating that the prisoner is being detained in an improper location or manner and sets a fine of up to 200 Egyptian pounds for those in violation.

There is no domestic legal framework in place for victims of enforced disappearances or their families to file an official complaint or seek remediation, and no criminal or civil statutes exist that would allow victims or their families to seek justice against perpetrators of enforced disappearances.

However, according to the Rome Statute establishing the International Criminal Court (ICC) on July 17, 1998, enforced disappearance is classified as a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the violation.⁴

¹ Egyptian Constitution of 2014, Art. 54.

² Ibid, Art. 55.

³ *Penal Code* [Egypt], No. 58 of 1937, August 1937, available at: <https://www.refworld.org/docid/3f827fc44.html>.

⁴ The ICC stated eleven such acts, including the enforced disappearance of persons. For more, see Office of the United Nations High Commissioner for Human Rights Working Group on Enforced or Involuntary Disappearance, "General comment: Enforced disappearances as a crime against humanity," available at: https://www.ohchr.org/Documents/Issues/Disappearances/GCas_crime_against_humanity.pdf.



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Enforced Disappearance in Practice

The Committee for Justice documented 1,917 cases of enforced disappearance in 2020 and 807 cases from January to June 2021.⁵ Periods of enforced disappearance in the country may range from just over a day to several years. In many cases, prisoners are apprehended by plainclothes police or national security forces without being provided any information as to the reasons for detention. Often, families of the detainee or their legal representative may not know where a detainee is being held or may be denied access to this information, either for the duration of the period of detention, or for a portion of it. In some cases, prisoners are enforcedly disappeared during a period of detention (in which their location was previously known but they are removed to an unknown location or held incommunicado).

While subject to enforced disappearance, detainees are held in a variety of locations, including National Security Agency facilities,⁶ airport detention centers, secret locations within official detention centers or prisons,⁷ military detention centers,⁸ or other undisclosed locations.

Individuals subjected to enforced disappearance are routinely interrogated without the presence of a lawyer and are more likely to be subjected to abuse or torture during this time. Prisoners have described being blindfolded for extended periods of time, subjected to electric shocks, denied access to food or clean water, denied medicine, denied necessary hygiene products, beaten by fists, kicks, or objects, and subjected to stress positions.⁹ Sexual abuses are also more common during periods of enforced

⁵ The Committee for Justice, Media Release: “Enforced Disappearance In Egypt Turned From A Phenomenon To A Systematic Policy, Says CFJ,” August 30, 2021, available at: <https://www.cfjustice.org/enforced-disappearance-in-egypt-turned-from-a-phenomenon-to-a-systematic-policy-says-cfj/>.

⁶ This was the case for businessman Seif Thabet, who voluntarily appeared for interrogation at the National Security Agency headquarters on February 2, 2021; Seif failed to emerge from interrogation, and it was not confirmed that he was brought before a prosecutor until four days later. His family did not receive confirmation of his whereabouts for weeks afterward. Human Rights Watch, “Egypt: Terrorism Laws Abused in Businessmen’s Arrests,” November 18, 2021, available at: <https://www.hrw.org/news/2021/11/18/egypt-terrorism-laws-abused-businessmens-arrests>.

⁷ Journalist Ahmed Gamal Ziada has written about his enforced disappearance, as he was held in the Cairo airport and then transferred to a secret facility in a prison. During his disappearance, he was held with 172 other enforcedly disappeared individuals, including prominent human rights lawyer Ezzat Ghoneim. He was blindfolded, subject to beatings, and describes being forced to watch torture of other prisoners, including electric shocks to their genitals. Ahmed Gamal Ziada, “Here, Your Name is ‘106’... Egypt’s Prison Life,” *Raseef22*, August 25, 2021, available at: <https://ahmedgamalziada.net/2021/09/22/here-your-name-is-106-egypts-prison-life/>.

⁸ U.S. citizen Khaled Hassan was apprehended from his home in Alexandria on January 8, 2018, and enforcedly disappeared for four months before he appeared before a military prosecutor. During his period of disappearance, he was subjected to torture, including sexual violence; although he reported the abuses to the prosecutor, they were not investigated. Human Rights Watch, “Egypt: An Account of Alleged Torture in Secret Detention,” October 11, 2018, available at: <https://www.hrw.org/news/2018/10/11/egypt-account-alleged-torture-secret-detention>.

⁹ This was the case for Oqaba Alaa Labib Hashad, a university student and the brother of a human rights lawyer. Hashad, whose lower leg was amputated as a child, was subjected to 75 days of enforced disappearance, during which time he was severely beaten, received electric shocks on his amputated leg and genitals, paraded around the facility on his hands and knees and referred to as a “dog,” hanged from the ceiling, and received verbal threats



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disappearance; in 558 cases of sexual violence in places of detention that the Freedom Initiative examined from 2015 to 2021, over 72% percent of these took place during a period of enforced disappearance.¹⁰

Enforced disappearance is present in a variety of cases and is not necessarily used as a tactic against any specific category of detainee. Cases of enforced disappearances of human rights defenders, journalists, lawyers, civil society activists, members of religious minorities, LGBTQ+ individuals, and political dissidents have all been documented. Cases of enforced disappearance have also extended to the enforced disappearance of minors, including children as young as two years of age.¹¹

In many cases, information gathered during periods of enforced disappearance (including by torture) is later used as permissible evidence in court proceedings; in several cases, defendants have been sentenced to death or executed based on evidence gathered during periods of enforced disappearance.¹²

Although Egypt is a signatory to the 1951 Refugee Convention and the 1967 Protocol, as well as to the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa,¹³ Egypt has also failed to protect those at risk of enforced disappearance by returning vulnerable individuals to their home countries. This was the case for at least fifteen Eritrean asylum-seekers who have been returned to Eritrea since October 31, 2021, despite a clear risk of enforced disappearance in their home country.¹⁴

to his family members. A communication from the Working Group on Enforced and Involuntary Disappearances and other special procedures to the Egyptian government went unanswered. UN Human Rights Council, *Communication from Special Procedures to Government of Egypt*, September 3, 2021, AL EGY 10/2021, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26613>.

¹⁰ These cases were documented based on review of interrogation documents collected by the Egyptian Commission for Rights and Freedoms and in interviews with victims. The findings of the research will be published in a forthcoming report by the Freedom Initiative.

¹¹ The Cairo Institute for Human Rights Studies, Joint Statement: "Egypt: Release Manar el-Naga from pretrial detention to be with her young child," March 2, 2021, available at: <https://cihrs.org/egypt-release-manar-el-naga-from-pretrial-detention-to-be-with-her-young-child/?lang=en>

¹² UN Human Rights Council, *Communication from Special Procedures to Government of Egypt*, July 16, 2021, AL EGY 7/2021, available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26535>

¹³ United Nations High Commissioner for Refugees, States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, available at: <https://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>.

¹⁴ From October 31 to December 24, Egypt returned at least 39 Eritreans, including 31 asylum seekers (with children among them), to Eritrea. Experts with the UN special procedures condemned the deportations, citing risk of enforced disappearance upon return. For more see Amnesty International, "Egypt: Further information: Stop deportation of five Eritreans from Egypt," December 16, 2021, available at:

<https://www.amnesty.org/en/documents/mde12/5111/2021/en/>; Human Rights Watch, "Egypt: Forced Returns of Eritrean Asylum Seekers," January 27, 2022, available at: <https://www.hrw.org/news/2022/01/27/egypt-forced-returns-eritrean-asylum-seekers>; and UN Human Rights Council, *Press release*, "UN experts deplore the expulsion by Egypt of Eritrean family seeking asylum in violation of the principle of non-refoulement," November 19, 2021, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27834&LangID=E>.



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Additionally, Egypt deported at least twelve Uighurs in 2017, among hundreds arrested, many of whom were held incommunicado and presented to Chinese officials for interrogation;¹⁵

Despite these instances and inquiries from the U.N. Special Rapporteur on Enforced or Involuntary Disappearance, Egypt has failed to acknowledge cases of enforced disappearance or respond to official inquiries.¹⁶

Access to Justice

Victims are routinely denied access to justice or compensation where they have been subject to periods of enforced disappearances, including for cases of violations that have occurred during periods of enforced disappearance.

A failure to hold the perpetrators of these violations to account is endemic throughout Egypt's judicial and security apparatus. Despite clear reports on enforced disappearances from international non-government organizations, domestic and international legal complaints, U.N. special procedures' inquiries, and Egypt's own National Human Rights Council, no Egyptian official has ever been prosecuted for facilitating, ordering, or operating with knowledge of enforced disappearance.

Egypt also utilized the use of enforced disappearances to further grant security authorities' impunity in other crimes, like torture; when torture occurs during enforced disappearance, the state has routinely acted as though it bears no responsibility to investigate or prosecute perpetrators. Authorities announced in late 2017 that they were investigating Human Rights Watch claims of police and National Security Authority forces' use of torture during enforced disappearance,¹⁷ but at time of writing, these investigations had not led to the prosecution of any alleged perpetrators. Prosecutors also continued to use detainee's confessions despite credible allegations they were coerced through torture during periods of enforced disappearances.

Finally, many of the non-governmental organizations, human rights activists, or lawyers who have worked to document cases of enforced disappearances or represent victims' rights have been prevented from conducting their work. The Al-Nadeem Center for the Rehabilitation of Victims of Torture, which conducted documentation, legal representation, and psychosocial support for torture victims, has faced

¹⁵ UN Human Rights Council, *Communication from Special Procedures to Government of Egypt*, July 19, 2017, UA EGY 10/2017, available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23221>.

¹⁶ UN Human Rights Council, *Communication from Special Procedures to Government of Egypt*, February 17, 2021, AL EGY 2/2021, available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26033>; *Ibid.*, August 11, 2021, AL EGY 9/2021, available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26600>; and *Ibid.*, November 5, 2021, AL EGY 12/2021, available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26743>.

¹⁷ <https://www.hrw.org/world-report/2019/country-chapters/egypt#>



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multiple attempts from authorities to close the organization, including raids on its office. Veterinarian and political activist Ahmed Amashah co-founded the “League for the Families of the Disappeared” to provide support to victims of enforced disappearances, only to be subjected to two periods of enforced disappearance (in 2017 and 2020), during which time he was tortured. Human rights defenders have further faced reprisal for their work with U.N. Special Procedures on instances of enforced disappearances. Ezzat Ghoniem, a human rights lawyer involved in documenting hundreds of cases of enforced disappearance has been in custody since March 2018; he was forcibly disappeared for three days after his arrest. While his release was ordered by court on September 4th, 2018, he has been in pretrial detention for almost three years now. Lawyer and founder of the “Association of the Families of the Disappeared in Egypt,” Ibrahim Metwally was arrested from the Cairo airport as he embarked on a flight to attend a meeting with the Working Group on Enforced or Involuntary Disappearance; he was subjected to a period of enforced disappearance, torture, and remains arbitrarily detained.¹⁸

Conclusion

Taking into consideration the above, the main impediments to protection against enforced disappearance, remediation thereafter, or accountability for violations are the following:

- Failure to sign and ratify the Declaration has limited the ability of human rights lawyers or advocates (both domestically and internationally) to refer to Egypt’s legal obligations to refrain from the practice of enforced disappearance.
- That there is no explicit definition or protection from enforced disappearance in Egypt’s constitution or domestic law has made the prohibition of enforced disappearance impossible. In effect, judicial authorities have become accomplices in crimes of enforced disappearance by turning a blind eye to investigating incidents. The failure to define enforced disappearance as crime has also obstructed access to justice for victims of enforced disappearance and their families.
- Periods of enforced disappearance are systematically used to carry out other human rights violations, seeing a preponderance of illegal interrogations, torture, or inhumane treatment.
- Egypt has failed to properly protect those seeking refuge from enforced disappearances within its border by facilitating deportation for asylum-seekers or residents who were later enforcedly disappeared in their home countries.
- Egypt’s restriction of civil society and detention of human rights defenders, lawyers, and activists presents a serious obstacle to ending the practice of enforced disappearance as it has furthered not only a climate of impunity, but a scarcity of information about the practice and its impact on victims and families.

¹⁸ UN Human Rights Council, *Communication from Special Procedures to Government of Egypt*, June 16, 2021, AL EGY 9/2021, available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26441>



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ABOUT THE FREEDOM INITIATIVE: The Freedom Initiative is a 501(c)(3) nonprofit organization based in Washington, DC. Founded in 2015, our mission is to advocate on behalf of the wrongfully detained in the Middle East and North Africa, through our advocacy, research, and campaigns work on behalf of victims of detention and rights abuse.

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ABOUT COMMITTEE FOR JUSTICE: CFJ is an independent association for the defense of human rights based in Geneva, Switzerland and established in 2015 by a diverse group of human rights advocates. It seeks to defend victims of and persons vulnerable to human rights violations with a focus on the Middle East and North Africa (MENA) region.

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