

**Human
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Human rights Issues Enforced Disappearance

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Human rights Issues: Enforced Disappearance – Egypt

Alaa Abdelmonsef

Introduction

Over the past few years, the term "enforced disappearance" has emerged on the surface of volatile and accelerating political events. The Egyptians were not familiar with such violation which deprives a person from law protection, because forcibly disappearance was rarely adopted, even during Egypt's most formidable periods of successive political repression.

Enforced disappearance is now widely spread among Egyptians, both supporters and opponents of the regime. This human rights violation has spread horribly over the past years and more specifically, since March 4, 2015, when Gen. Magdi Abdel Ghaffar was appointed as Interior Minister. Since then, Abdel Ghaffar has innovated the policy enforced disappearance, and the Interior Ministry started to practice it repeatedly and systematically against political the regime opponents. Egypt has occupied top rankings (internationally) with respect to this crime which did not escalate as such even during the rule of former Egyptian President Hosni Mubarak.

First: The concept of enforced disappearance

Enforced disappearance has been defined by many international organizations, and its most prominent definition is: "Enforced disappearance is the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."

As stated in Article 1 of the United Nations Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992:

1- Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

2- Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia , the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

Article 1 of the International Convention on the Protection of All Persons from Enforced Disappearance, issued by the United Nations No. 61/177 of December 2006, states that: “No one shall be subjected to enforced disappearance”, and that “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance”.

Amid a deteriorating human rights situation in Egypt, a rapid increase in cases of enforced disappearance has been monitored over the past years. According to latest statistics, there were approximately 3,200 disappearances, as it has become a weapon in the hands of the regime against its opponents without any accountability.

Second: Enforced disappearance and international law

The enforced disappearance of persons is classified according to Rome Statute of the International Criminal Court, 17 July 1998, as a crime against humanity, and defines crimes against humanity as any act of any of the following acts ... when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. (The ICC Rome Statute stated eleven of such acts, including the enforced disappearance of persons)

The International Criminal Court also defined enforced disappearance of persons as: “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”

The Rome Statute of the International Criminal Court (ICC) of 1998 stated that the involvement of police forces in the arrest of individuals and deliberately denying this and hiding the truth of what happened to the detainees when asked by their relatives, removing them from the protection of the law, is one of the most serious violations of human rights that are considered among the crimes against humanity.

In the Inter-American Convention on Forced Disappearance of Persons, which entered into force on 28 March 1996, the signatory States considered that the crime of enforced disappearance of persons is “an affront to the conscience of the Hemisphere and a grave and abominable offense against the inherent dignity of the human being, and one that contradicts the principles and purposes enshrined in the Charter of the Organization of American States”.

Although Egypt is not a state party to these two conventions, it is a party to other conventions that state rights to protect individuals from enforced disappearance, most prominently the International Covenant on Civil and Political Rights (ICCPR) – of 1966, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – of 1984. The ICCPR establishes safeguards against arbitrary arrest and incommunicado detention which lead to enforced disappearance. The Convention against Torture obliges the State to take effective legislative, administrative or judicial measures to prevent acts of torture.

Article 9 of the International Covenant on Civil and Political Rights states that:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

The crime of enforced disappearance violates several rights, most importantly:

- 1) The right to life, the right not to be deprived of life, and legal protection.
- 2) The right to be free from torture and the right to human and undegrading treatment.
- 3) The person's right to liberty and security: Everyone has the right to life, liberty and security.
- 4) The right to family life, as well as economic, cultural and social rights.

Article 9 of the Universal Declaration of Human Rights states that: "No one shall be subjected to arbitrary arrest, detention or exile".

The International Convention for the Protection of All Persons from Enforced Disappearance, which entered into force in 2010, aims to prevent enforced disappearances, to reveal the details of what happened, and to ensure that survivors and families of victims receive justice. This Convention is also one of the most powerful human rights treaties adopted by the United Nations. In fact, the Egyptian authorities is not interested in this convention and say they are not committed to this treaty or any other human rights treaties, as Egypt has not signed or ratified them. Despite the Egyptian regime signed other treaties, the practices of authorities on the crime of enforced disappearance confirm that the Egyptian regime ignores all the aforementioned international treaties and conventions regarding enforced disappearances.

Third: Enforced Disappearance in the Egyptian Constitution and Laws

The term "enforced disappearance" was not mentioned in Egyptian legislation as a term that means the arrests of persons and the authority's failure to disclose their whereabouts. Although the phenomenon of enforced disappearance has become the regime's tool to eliminate its political opponents, the Egyptian legislator did not pay attention to it. So, the enforced disappearance is an international term that came in

the Declaration on the Protection of all Persons from Enforced Disappearance, that was adopted by the United Nations General Assembly in its resolution 47/133 of 18 December 1992, and later the issuance of the International Convention for the Protection of All Persons from Enforced Disappearance in December 2006, which the Egyptian regime has not signed or ratified so far.

Article 1 of the International Convention for the Protection of All Persons from Enforced Disappearance states that:

- 1- No one shall be subjected to enforced disappearance.
- 2- No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

I- Enforced Disappearance in the Egyptian Constitution

The Egyptian legislator did not specifically define the term of “enforced disappearance” in Egypt's amended Constitution of 2014, but only stated exceptions to the violation of personal freedom, turning provisions of the right to personal liberty to mere legal organization of arrest and imprisonment, which hardly sets the minimum protection from the enforced disappearance.

Article 54 of the Constitution provides that:

“- Personal freedom is a natural right that shall be protected and may not be infringed. Except in cases of flagrante delicto, it is not permissible to arrest, search, detain or in any way restrict the freedom of anyone without an order substantiated by the needs of the investigation.

- Every person whose freedom is restricted shall be immediately notified of the reasons therefor; shall be informed in writing of his or her rights; shall be immediately enabled to contact his or her relatives and lawyer; and shall be brought before the investigating authority within 24 hours from the time of restriction of his or her freedom.

- His or her questioning shall not begin until his or her lawyer is present. A lawyer shall be assigned for persons who do not have one. The requisite assistance shall be rendered to persons with disabilities in accordance with the legally prescribed procedures.

- Everyone whose freedom is restricted, as well as other persons, shall have the right to file a complaint before the court against that measure. A decision on such complaint shall be taken within one week from the date of the said measure; otherwise, the person shall be released immediately.

- The rules, duration and justifications of remand in custody, as well as the circumstances in which damages are payable by the State in respect of remand in custody or enforcement of a penalty that was subsequently annulled pursuant to a final judgement setting aside the judgement under which the penalty was imposed, shall be regulated by law.

- It is not permissible, under any circumstances, to try an accused person for offences punishable by imprisonment unless a lawyer, appointed by the accused or assigned by the court, is present.”

Also article 55 of the Egyptian Constitution of 2014 states that:

“All those who are apprehended, detained or have their freedom restricted shall be treated in a way that preserves their dignity. They may not be tortured, terrorized, or coerced. They may not be physically or mentally harmed, or arrested and confined in designated locations that are appropriate according to humanitarian and health standards. The state shall provide means of access for those with disabilities. Any violation of the above is a crime and the perpetrator shall be punished under the law. The accused possesses the right to remain silent. Any statement that is proven to have been given by the detainee under pressure of any of that which is stated above, or the threat of such, shall be considered null and void.”

Although article 54 created some form of protection from enforced disappearance by stipulating the right to personal liberty, however, the same article stated two exceptions to this right: the case of flagrante delicto, and the need to issue a judicial order in cases other than the flagrante delicto.

Article 55 also created a form of protection from enforced disappearance by stipulating the right to detention in a recognized place of detention by requiring that detention should be in designated places with certain criteria that may impede those involved in enforced disappearance.

As the Egyptian Constitution does not explicitly define or criminalize enforced disappearance, it is clear that it has not stated compensation for enforced disappearances, and therefore the disappeared person is forcibly deprived of his/her right to compensation for the period of disappearance, in case he/she was later brought to courts because it falls and does not fall within the period of pre-trial detention in cases mentioned in article 54 of the Constitution, which states that “The rules, duration and justifications of remand in custody, as well as the circumstances in which damages are payable by the State in respect of remand in custody or enforcement of a penalty that was subsequently annulled pursuant to a final judgement setting aside the judgement under which the penalty was imposed, shall be regulated by law.”

However, the establishment of the principle of compensation for pre-trial detention or the implementation of a sentence that has been rendered null and void in the Egyptian Constitution reinforces and strengthens the principle of compensation for enforced disappearance in the first case.

II- Enforced Disappearance in Egyptian Law

Although the Egyptian law did not expressly refer to the term of “enforced disappearance”, it indirectly addressed the limitation of this crime in the Penal Code.

Article 40 of the Egyptian Penal Code states that: “No one shall be arrested or detained except by order of the legally competent authorities. Any person who is arrested or detained shall be treated in a manner conducive to the preservation of his human dignity and shall not be subjected to physical or mental harm.”

Article 42 states that: "No one shall be imprisoned except in the prisons designated for that purpose. The director of any prison may not admit any person except by virtue of an order issued by the competent authority, and shall not keep him after the period specified in this order."

Under the terms of article 42 of Egypt’s Code of Criminal Procedure: “Members of the Department of Public Prosecutions and presidents and vice-presidents of courts of first instance shall be empowered to inspect the public and central prisons situated within their areas of jurisdiction in order to ascertain that no one is being detained unlawfully. They shall have the right to examine prison records and arrest and detention orders, take copies thereof, contact any detainee and hear any complaint that he might wish to submit to them. The prison governors and staff shall provide them with any assistance needed to obtain the information that they request.”

Despite the fact that the enforced disappearance is apparently criminalized by these legal articles, the government does not pay attention to those legal articles which have been enacted for many years. Moreover, articles of the Egyptian Constitution and laws are violated by those who are supposed to protect and enforce them. Also, members of the Public Prosecution, who are entitled by the law to inspect and supervise prisons and places of detention to ensure that no one is detained illegally, are in fact involved in such violations.

Article 43 of the same Code states that: “...Anyone who comes to know that a person is being detained unlawfully or in a place not designated for such purpose shall notify a member of the office of the public prosecutor who, on receipt of such notification,

shall go immediately to the place in which the person is being held where he shall investigate the matter, order the release of the person if he is being detained unlawfully, and draw up a report thereon.”

Article 280 of the Egyptian Penal Code states that: “Those who arrest, imprison or detain persons without an order from one of the competent authorities and in cases where the laws and regulations authorize the arrest of suspicious persons, shall be punishable by imprisonment or a fine not exceeding two hundred pounds.”

When we track the legal articles, and the international conventions and treaties ratified by Egypt concerning the preservation of the dignity of the citizen and the criminalization of his/her detention without legal basis, we find that among the items that are not taken into consideration by the law enforcement officers while arresting someone, include:

Article 9 of the International Covenant on Civil and Political Rights, which was ratified by Egypt in January 1982:

[1- Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2- Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3- Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4- Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5- Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.]

It is clear that enforced disappearance does not only affect the freedom and security of victims, but it also affects the freedom and security of their families, relatives and peers, while attempting to trace any data about their disappeared children and the charges against them, or even whether they are alive or dead.

Fourth: Current Status of Enforced Disappearance in Egypt

Dozens of complaints arrive every day to local and international human rights organizations, indicating that Egyptian citizens have been subjected to enforced disappearance by security forces, with their families confirming their failure to find their places of detention. This phenomenon has become frequent and even on a daily basis. As we earlier said, since Major General Magdi Abdel Ghaffar was appointed as Interior Minister on March 5, 2015, the enforced disappearances in Egypt reached approximately 3,200 cases, carried out by the Egyptian security services during the previous period.

Many citizens were forcibly disappeared. They were held in secret without officially registering them in prisons and places of detention; and they were also denied access to their lawyers and families, detained as alleged leaders of demonstrations - and accused of terrorism-related offenses - for up to 90 days without judicial supervision. They were subjected to ill-treatment and torture by military intelligence officers, police officers, and the National Security Service to extract “confessions” for acts they did not commit through coercion.

Notably, all reports of local, regional, and international human rights organizations, as well as reports issued by the United Nations, the European Union and the European Parliament, and even the reports issued by Western governments that support the current regime, such as the US State Department and the UK Foreign Office – all these reports do not only prove the existence of the enforced disappearance crime in Egypt at a frightening level, but they always confirm that the crimes relating to human rights in general, and to enforced disappearances and torture in particular, are the result of a “deliberate, widespread, and politically-based state policy, involving all the three legislative, executive, and judicial powers. This indicates that there is an escalating approach to this crime, which has become a phenomenon due to the repressive security practices. The Egyptian regime continues to ignore the Constitution, as well as the international conventions and treaties on human rights. In fact, the regime has been using the enforced disappearance as a means and tool for suppressing and disposing of its opponents.

It is worth mentioning that some of the forcibly disappeared do not return to their homes after their appearance. Instead, they are brought to the prosecution which refuses to hear or register any details about their abduction, forcibly disappearance for months, and subjection to torture. This torture may have led some of them to suffer from chronic diseases: Some cases have been paralyzed, and others have become unable to perform physical functions such as pronunciation and movement because of the torture they were subjected to during their abduction.

Cases of enforced disappearance

There are many cases of those who were forcibly disappeared; some of whom were returned to enforced disappearance again after they appeared before courts and received acquittals:

1) An example of this is Anas El-Beltagy, a young man who was persecuted to spite his father, Prof. Dr. Mohamed El-Beltagy - one of the most prominent Egyptian dissidents who had a great role and influence, in the January 2011 revolution. The current regime practiced political retaliation against opponents in the absence of all principles of human rights.

When he was forcibly disappeared, Anas was subjected to severe torture, suspension, electrocution, kicking and punching. He was also subjected to psychological torture where he was detained blindfolded in rooms where other detainees were tortured. Upon appearance after a period of enforced disappearance, Anas was facing four trumped up criminal cases. Even after appearance, he was detained and tortured for another 20 days inside the detention centre in Nasr City. He was then transferred to Abu Zaabel prison where he was held in solitary confinement without justification. He was denied visits most of the time, and refused entry of any food or water. Anas remained in Abu Zaabel prison for several months during which he was subjected to severe forms of torture and frequent abuse, just for being the son of Mohamed El-Beltagy. Anas has been deprived of completing his studies and all applications that were submitted for him to enter examinations were rejected. Anas is a student of the Faculty of Specific Education at Ain Shams University, Cairo. The prison administrations of the prisons that he was transferred between did not allow the entrance of his textbooks or any other books into his cell. As well as this right, he and his father were also denied the right of being detained together in accordance with the law of reunification.

However, all fabricated charges against Anas ended with acquittal in all cases. However, the regime did not release him and he was again exposed to enforced disappearance after the last acquittal, and all means of communication with him have been cut since 12 April, 2018 so far.

According to the Arab Organisation for Human Rights in the UK (AOHR UK), the Egyptian authorities have been applying a comprehensive punishment against the El-Beltagy family. Authorities had arrested Anas's younger brother Khaled El-Beltagy on September 22, 2015, despite being a minor, for more than two months without justification, and subjected him to the same types of torture as Anas. The family also lost their daughter Asma El-Beltagy, who was shot dead by Egyptian security forces and the army on August 14, 2013, during the violent massacre of the sit-in in Rabaa square. The whole world witnessed the last moments in Asma's life as she breathed her final breaths in front of the cameras. Sana Abd El-Gawad, Mohammed El-Beltagy's wife, was sentenced to six months in prison on March 29, 2015, and on October 11, 2015, the Maadi appellate court cancelled her imprisonment sentence and instead fined her 200 Egyptian pounds. Dr. Mohammed El-Beltagy, who is considered one of the most prominent Egyptian dissidents, was arrested on August 29, 2013, and charged with dozens of charges; he has received three death sentences and sentenced to more than 170 years imprisonment. El-Beltagy has been subjected to various forms of physical and psychological torture since his arrest, particularly after his insistence on accusing the leaders of the Egyptian regime of killing his daughter Asma in the massacre of Rabaa al-Adawiya on 14 August, 2013.

This case is a "mini-model" of dozens of cases who were exposed to enforced disappearance, intransigence, and revenge by the regime.

2) Forced disappearances by Egypt's security forces aren't a new tactic in Egypt, but they're on the rise, human rights groups and activists say. There are other cases where those abducted face "death" under torture. Some 200 cases of deaths have been documented for persons who had been exposed to torture by security services in unknown detention centers. Other victims were implicated in fabricated charges after being killed under torture so that they cannot deny them. A cross section of activists,

human rights defenders and journalists are targeted by security services. The most extreme example for this happened in May 2015. A student named Islam Attito was taking a humanities exam at his university. A man in civilian clothes came into the room with a university employee; they told Attito they needed to see him after the exam. Activists say that the next day he showed up dead in the desert with bullet wounds and broken bones. In a video posted online, his mother cries. His body is broken; his arm is broken. A statement from the Ministry of Interior claimed that Attito was killed after he fired on police from a desert hideout. They accused him of murdering a police officer. Marwan Selim, a fellow student who was investigating the case, asked how he could be in a desert hideout when everyone saw him taking his exam. He says he and other students spoke to witnesses who saw Attito leaving the classroom with the unknown man and later saw him being chased by men with walkie-talkies. The students have sent their findings to Human Rights Watch and Amnesty International.

3) There were dozens of persons who were abducted and killed under torture. Later, security services claimed they were killed in clashes with police or died in bombings – as the police used to put bombs or guns next to their dead bodies.

The crime of enforced disappearance is now a weapon in the hands of the Egyptian authorities used without any reluctance against dissidents. On a daily basis, there are cases of disappearance for Egyptians; some of whom who are lucky appear after a period of time, while others face death or an unknown fate.