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CFJ - Call for contributions for a thematic study by the Working Group on Enforced or Involuntary Disappearances on "Elections and Enforced Disappearances"

To: hrc-wg-eid@un.org

Distinguished Members of the Working Group on Enforced Disappearances,

By submitting this report, Committee for Justice (CFJ) would like to humbly inform the Working Group's thematic study on the correlation between elections and enforced disappearances to be presented to the Human Rights Council in September 2024, with the aim of identifying tools that can be used to prevent and respond more effectively to enforced disappearances in the context of elections. To prepare this report, CFJ drew from its extensive experience in documenting human rights violations in the Middle East and North Africa region, but also from on a diverse range of public sources, including international and regional instruments, the practice of United Nations human rights mechanisms, and reports of partner regional and humanitarian organizations, civil society, scholars, and practitioners.

- **Introduction:**

This call for input aims at examining the interconnections between electoral violence and enforced disappearances. It could not have come at a more appropriate or relevant timing considering the recent Egyptian presidential "elections" which took place from 10 to 12 December 2023 and during which major Human Rights violations, including enforced disappearance, were committed by National Security Forces in all impunity and in fundamental breach of the rights conducive to political participation. In fact, the right of every citizen to participate in the electoral process and engage in the administration of their country's public affairs, either by voting or by nomination, is safeguarded under Article 21 of the UDHR and Article 25 of the ICCPR. Participation in the electoral process can only be effective if a broad set of fundamental rights and freedoms are guaranteed and respected. According to the Declaration of Principles for International Election Observation (2005), these include: the right to freedom of expression, the right to peaceful assembly, the right to form associations, the right to personal security, the right to access information, the right to equality and non-discrimination, the right not to be subjected to torture and inhumane treatment, the right to freedom of movement, and the right to freedom from fear.

Over the past two years, the Egyptian government has been attempting to whitewash its human rights record by portraying itself as open to political dialogue with the political opposition. This is exemplified by the launching of the National Initiative in 2022 and declaring 2022 to be the "Year of Civil Society". Nevertheless, such purely exhibitory initiatives fall short of addressing the

systemic repression of the past decade. In fact, the very purpose for which the presidential pardon committee was created (*i.e.*, reviewing cases of citizens detained for political reasons) is systematically undermined by the re-arrests of political opponents, thereby casting doubt upon the measures that the Egyptian authorities claim to be implementing to alleviate repression. Between April 2022 and July 2023, for every political prisoner that has been released, nearly three others have been imprisoned. The recent presidential elections during which political opposition was, in theory, allowed to participate was marred with reprisals, threats of reprisals, and enforced disappearances of opposition members and their supporters thereby, hollowing out the very essence of political participation.

- **What are the distinctive features of electoral violence when compared to other forms of political violence?**

Electoral violence is a specific subset of political violence that distinguishes itself by combination of timing and motive. It refers to violent acts or threats of violence (coercion or intimidation) that are specifically associated with electoral processes for the purpose of influencing election outcomes and, by extension, power distribution in favor of certain individuals or groups. In Egypt, the purpose of electoral violence is to consolidate the authoritarian grip of the Al-Sisi's military government. Electoral violence may occur at different stages of the electoral cycle, within the framework of electoral politics, often involving candidates, supporters, political parties, and electoral institutions. This distinguishes it from other forms of political violence that may target different groups or institutions. Electoral violence has the potential to escalate quickly and have broader implications for political stability and social cohesion. Disputes over election results or allegations of electoral fraud can exacerbate existing tensions and lead to further violence or unrest beyond the electoral period. In Egypt, electoral violence aimed erodes public trust in institutions, discourages political participation, and raises unique challenges and implications for genuine democratic transition and the flourishing of civil society and political freedoms.

- **Do enforced disappearances in the context of elections follow a pattern? If so, please describe.**

Enforced disappearances in the context of elections in Egypt have indeed followed identifiable patterns, particularly in the aftermath of the military takeover of Al-Sisi in 2013. While each case may have its unique circumstances, there are overarching trends that characterize enforced disappearances in the Egyptian electoral landscape:

- Enforced disappearances often target political opponents, human rights activists, journalists, and outspoken critics of the government. During the 2018 elections, all opponents were coerced into dropping out of the electoral race either due to arrest, house arrest, or enforced disappearances of friends and family members. Similarly, the late 2023 elections were marred with human rights violations including enforced disappearances,

leading the most prominent presidential hopeful, Ahmed Tantawi, to abandon his campaign.

- Enforced disappearances tend to escalate around election periods, especially when there are signs of increased political activism or opposition mobilization. The Egyptian Government uses enforced disappearances as a tool to intimidate dissenters and suppress opposition voices.
- Enforced disappearances in Egypt are frequently carried out by security forces, including the police, military intelligence, and the National Security Agency (NSA). These entities operate with impunity, often acting outside the bounds of the law and circumventing judicial oversight. EDs are accompanied by various forms of coercion and intimidation, including arbitrary arrests, torture, and extrajudicial killings. Detainees are often held incommunicado, without access to legal counsel or contact with their families, exacerbating their vulnerability to abuse.
- The Egyptian government routinely denies involvement in enforced disappearances. It obstructs efforts to investigate these cases, restricts access to information, and retaliates against anyone involved in exposing human rights violations.

In summary, enforced disappearances in Egypt's electoral context reflect a systematic pattern of human rights abuses perpetrated by state authorities to maintain power, suppress dissent, and maintain authoritarian rule. These violations underscore the urgent need for accountability, transparency, and respect for human rights in Egypt's political landscape.

- **Who are the victims of enforced disappearances in the context of elections? If possible, provide examples.**

The victims of enforced disappearances in the context of elections include political candidates, their supporters, friends, and/or family members who are targeted for their association with opposition movements or their involvement in electoral campaigns. An illustrative example is the case of Ahmed Tantawi, former leader of the Karama Party, member of the Civil Democratic Movement opposition alliance and presidential hopeful in Egypt.

Tantawi announced his bid for the presidential elections in April 2023, triggering a series of statesponsored actions aimed at suppressing his campaign. In a statement, Tantawi revealed that on 28 May 2023, nine of his friends and several of his supporters were forcibly disappeared as they were making their way to his downtown Cairo office which served as headquarters for his campaign. Enforced disappearances, where individuals are abducted by state agents or affiliated groups, serve as a tool of repression to instill fear and deter opposition. Additionally, dozens of Tantawi's supporters were detained for several days and then released with warnings to sever ties with the potential candidate. These actions were described as a scare tactic to deter Tantawi from pursuing his presidential bid. According to Mada Masr, Tantawi was advised by a Karama Party official who spoke on the condition of anonymity, not to reveal the number of disappearances and

arrests targeting those joining or attempting to join his campaign to avoid discouraging others and to create a "legal committee to provide support and legal assistance to all those arrested on the grounds of their closeness to his election campaign". The total number of arrests and disappearances remains unclear, highlighting the widespread nature of the repression targeting Tantawi's campaign.

The disappearance of Tantawi's companions, which occurred within the context of presidential elections, underscores the risks associated with participating in the electoral process in Egypt. It suggests a pattern of intimidation and violence aimed at silencing dissenting voices and undermining democratic competition. In a statement, Tantawi said that "punishing those who adhere to the right to political action and peaceful change will not benefit the authorities," and that it would not stop him from pursuing his campaign. Enforced disappearances also raise legitimate questions about the integrity of the electoral environment and potential candidates' ability to campaign freely and safely by undermining the credibility of the electoral process and creating a climate of fear and uncertainty that hampers political participation.

In sum, victims of enforced disappearances in the context of elections in Egypt include political candidates, their supporters, friends, and family members who are targeted for their association with opposition movements or their involvement in electoral campaigns, as exemplified by the case of Ahmed Tantawi and his supporters. The documented incidents involving Tantawi and his associates highlights the need for greater attention to human rights abuses and violations of due process in the context of electoral politics. Addressing the question enforced disappearances is essential to ensuring a free, fair, and inclusive electoral process that respects the rights of all citizens to participate in political life without fear of reprisal or persecution.

- **Is there any particular phase of the electoral cycle when enforced disappearances are more likely to occur? Do enforced disappearances committed prior, during or after the elections have different purposes?**

In Egypt, enforced disappearances can occur throughout various phases of the electoral cycle, each with its own set of circumstances and objectives but all contributing to the general climate of repression and manipulation surrounding elections. While the timing of enforced disappearances may vary, there are some patterns regarding when they are more likely to occur:

1. **Pre-Election Period:** EDs often occur in the pre-election period, particularly when opposition candidates or activists are mobilizing or campaigning against the ruling regime. The government may use disappearances as a preemptive measure to suppress dissent, intimidate potential challengers, and weaken opposition movements before they gain momentum.
2. **During Election Period:** EDs may also take place during the election period itself, including on polling days or during political rallies and demonstrations. This can disrupt

opposition activities, intimidate voters, and create a climate of fear and uncertainty that undermines the credibility and fairness of the electoral process.

3. **Post-Election Period:** EDs may continue or escalate post-elections, to punish opponents and their supporters and set a warning tone for future elections.

The 2018 elections, just as their 2023 successors, were marred with State-sponsored violations which drove opposition candidates who had not been arrested or placed under house arrest to terminate their campaigns due to concerns for their safety, that of their staff, and a disillusionment in the existence of equal opportunities for all candidates. In the pre-2018 election period, Egyptian authorities eliminated key challengers who had announced their intention to bid for office: retired Lieutenant General Sami Anan and Colonel Ahmed Konsowa were arrested, Ahmed Shafik[1] was placed under house arrest until his withdrawal from the race, Khaled Ali[2] and a Mohamed Anwar al-Sadat[3] backtracked on formally registering, citing the repressive environment, concerns over their safety and that of their supporters, and government manipulation.

In late 2023, President Abdel Fattah el-Sisi's unfulfilled promises of free and fair presidential elections became evident in the first phase of the election process (collecting endorsements to meet the nomination requirements for the presidential election), where significant violations and suppression were noted against opposition candidates Ahmed Al-Tantawi and Gamila Ismail. In fact, between 25th September to 16th October[4], CFJ documented some of the most significant violations in the Egyptian electoral arena against opposition candidates and their supporters. Such violations included enforced disappearances inside notary offices, threats of enforced disappearance, detention inside a police vehicle following physical assault, filming the opposition candidate's supporters without permission, photographing national ID cards for intimidation purposes, the gathering of security forces in official uniforms accompanied by thugs to forcibly prevent citizens from entering notary offices, seizing citizens' mobile phones and erasing evidence of violations, inspecting phones without permission or legal justification, threatening and harassing female citizens in the Mokattam notary office (physically and verbally), and verbally abusing supporters of the opposition candidate. These conditions led to Gamila Ismail's withdrawal and Al-Tantawi's inability to collect the necessary endorsements.

Enforced disappearances committed in the aftermaths of elections serve to intimidate and punish individuals who may have spoken out against the regime or challenged the legitimacy of the electoral process. Following the 2023 "elections", which were neither free nor fair, presidential hopeful Ahmed El-Tantawi and his campaign manager Ahmed Abu Al-Diyar, were each sentenced

[1] Former prime minister and air force commander.
[2] Human Rights Lawyer.
[3] Former parliament member.
[4] Collection of endorsement phase.

to one year in prison by the Matareya Misdemeanor Court (Case No. 16336/2017) under Law No. 45/2014 on the exercise of political rights, for "participating through incitement and agreement in printing and circulating forms of support for an electoral candidate, without permission from the competent authority". The Court imposed a bail of twenty thousand pounds, pending appeal. Additionally, 128 members of Tantawi's campaign were arrested, some accused under terrorismrelated charges, while Tantawi himself faces a five-year ban from participating in parliamentary elections.

Overall, enforced disappearances in Egypt whether before, during, or after elections directly violate Egypt's Constitution and represent a blatant disregard for its international responsibilities and agreements, including the fundamental rights to freedom of assembly, expression, and association safeguarded under the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR) and the 2002 African Union Declaration on the Principles Governing Democratic Elections in Africa.

- **Provide example of legislation that has facilitated the practice of enforced disappearance in the context of elections.**

The twenty-three new amendments introduced to the Egyptian Constitution in February 2019 constitute some of the most symbolic legislations adopted which may potentially facilitate the practice of enforced disappearance in the context of elections. Article 200 of these amendments is particularly significant, as it grants the armed forces unprecedented authority to "preserve the constitution and democracy, protect the basic principles of the state and its civil nature, and protect the people's rights and freedoms". This amendment effectively allows the military to supersede and trump all other government institutions and political actors, particularly during major political events such as elections. The vague wording of the amendment to Article 200 of the Constitution empowers the army to provide its own interpretation of notions such as "protecting the State" and "imposing the greater national interest", effectively bypassing the oversight of the Supreme Constitutional Court and granting the military the unchecked power to interfere in electoral processes, prevent civilians from assuming presidential office, and manipulate political outcomes by favoring certain factions over others. In essence, the amendments to the Egyptian Constitution, particularly Article 200, have created a legal framework that enables the military to wield significant influence over major political events including the electoral process, potentially leading to the practice of enforced disappearance as a means of suppressing opposition and dissenting voices deemed threatening to the military's interests.

- **What are the main obstacles for domestic and international accountability for enforced disappearances committed in the context of elections? Provide concrete examples of challenges encountered in the investigation and prosecution of such crimes.**

The Egyptian Government has systematically failed to acknowledge the occurrence of enforced disappearance at the hands of National Security Forces, particularly in the context of elections, thereby paving the way for the deliberate failure of authorities to create an adequate legal framework at the national level to protect against and prevent the occurrence of such crime and entrenching a culture of impunity. The open disregard by the Government for a crime that is so commonplace and widespread in Egypt has also contributed to the inability of authorities to keep an official record of the number of victims of ED and a general refusal by the Public Prosecution to investigate when such crime does occur. Victims of ED often decide not to report the crime to which they were subjected out of fear of reprisals. Such fear is further exacerbated by a wellestablished lack of independence of judicial authorities which systematically fail to safeguard due process procedures. As a result, victims of ED in Egypt find themselves confronted to a dangerous legal blackhole, with little to no prospect of securing redress.

Another possible obstacle for domestic and international accountability for enforced disappearances at the regional level lies in that ED has historically not featured prominently on the agenda of the African Commission on Human and Peoples' Rights, the continent's principal human rights body established in 1987. In fact, out of the 54 States constituting the African Continent, only 18 have ratified the International Convention on the Protection of all Persons from Enforced Disappearance (ICPPED). The absence of political will to ratify international legal treaties seeking to criminalize enforced disappearances signals a worrying failure to recognize the seriousness of the crime and encourages impunity by rendering African States unaccountable under the International Legal Justice system.

Finally, an insufficient awareness of the legal remedies available at the international level may also constitutes an obstacle for domestic and international accountability for ED and may explain the reasons for the low reporting of cases in Egypt. In its 2021 report, the WGEID noted that out of the 46,490 cases of enforced disappearances under consideration, only 4,765 relate to African countries (10% of the global total). CFJ has thus far documented over 510 cases of Enforced Disappearance in Egypt on its Justice Watch Archive.

- **What has been the role of the judiciary in safeguarding the rights of victims of enforced disappearances in the context of elections? Provide any examples of lack of judicial independence as well as attacks to judicial actors as a consequence of their work in this specific context.**

The role of the judiciary in safeguarding the rights of victims of enforced disappearances in the context of elections in Egypt has been severely compromised due to the erosion of judicial independence and the increasing control exerted by the executive branch, particularly under President Abdel Fattah el-Sisi's administration.

The National Election Authority (NEA) (ةئيهلا الوطنية تاباختنلال), established under Law 198 of 2017[5], is the responsible body for overseeing presidential, parliamentary and local elections as well as referendums in Egypt. However, concerns have been raised regarding the NEA's independence and impartiality, as the President holds significant authority in appointing its ten members who oversee all elections, including elections where he himself is running, casting doubt upon its ability to operate free from political influence. Beyond the dubious selection process for the NEA, the President's growing control over the judiciary has impeded the most basic principles of separation of powers and judicial autonomy, along with the integrity of any electoral process.

In 2006, Leandro Despouy[6], expressed concern over the erosion of judiciary independence under the Mubarak Presidency, time during which the judiciary still had a small margin of independence. Since the military coup d'état of 2013, however, numerous attacks on judicial independence have been recorded. Between 2013 and 2016, fifty-nine judges were forcibly retired by disciplinary committees for having called to the return of democracy, a "warning message to other judges to follow the government's line". Additionally, legislative changes, such as the adoption of Law No. 13 of 2017[7] despite strong opposition from the State Council and Judges Club, have granted the President the authority to select heads of top judicial bodies from a pool of senior judges, undermining the long-standing custom practice of appointing them based on seniority (number of years in service) and paving the way for unconstitutional control over the judiciary[8]. Amendments to the Egyptian Constitution in February 2019 further dealt another blow to the judiciary by granting the President the power to select heads of the Public Prosecution and the Supreme Constitutional Court[9] (Articles 189 and 193).

Overall, the lack of judicial independence and attacks on judicial actors in Egypt have hindered the judiciary's ability to safeguard the rights of victims of enforced disappearances, particularly in the context of elections where political interests often override principles of justice and accountability.

- **Conclusion**:

The occurrence of EDs during elections in Egypt has far-reaching consequences for Egyptians' perception of the electoral process and their willingness to participate in future elections in light of their undermining of the integrity and credibility of the electoral process in the eyes of the Egyptian

[5] Law 198 of 2017 is a regulatory alternative to Law 22 of 2014 under which the committee supervising the elections was composed of the head of the Constitutional Court, the head of the Cairo Court of Appeals, and the most senior deputies of the heads of the Constitutional and Cassation courts, and the Council of State.
[6] Former Special Rapporteur on the Independence of Judges and Lawyers.
[7] Amending the Judicial Authority Law (No. 46 of 1972).
[8] The appointment of Judge Magdy Mahmoud Taha Abu El-Ela as head of the Supreme Judicial Council on 29 June 2019, bypassing the most senior judge, Anas Amara, sparked outrage and raised serious concerns over the constitutionality of the President's newfound authority over judicial appointments.
[9] Previously, the SCC chose its own head and the Supreme Judicial Council, the governing body of the common court system, chose the public prosecutor; the president's role was limited to ratifying their choices.

people. Instances of violence, coercion, and human rights abuses perpetrated by state actors during elections completely erode trust in the very idea of elections as a means of transitioning towards democracy. Many citizens have become disillusioned with formal political channels and institutions, viewing them as ineffective or corrupt, and may opt for alternative means of political expression or disengage from the political process altogether. In fact, many Egyptians choose not to participate in elections, either out of fear for their safety, a lack of trust in the electoral process, or a belief that their vote will not make a difference in the face of entrenched authoritarianism. The prevalence of enforced disappearances in Egypt reflects a broader culture of impunity, where State authorities operate outside the bounds of the law with little fear of consequences. The lack of accountability emboldens security forces to continue committing such abuses with impunity, particularly in the context of elections. These actions undermine human rights and erode prospects for democratic transitioning.