

SHORT-TERM ENFORCED DISAPPEARANCES

Submission to the UN Committee on Enforced Disappearances (CED) and the UN Working Group on Enforced and Involuntary Disappearances (WGEID)

1. REDRESS is a non-governmental organisation (NGO) focused on securing justice and effective reparations for survivors of torture. This submission addresses the three questions posed by the CED and WGEID regarding short-term disappearances (SED) from the perspective of the prohibition on torture. Using examples from SED cases in which REDRESS has been involved, this submission i) discusses the concept of SED and their manifestations in Sudan and Egypt, ii) evaluates the legal and practical circumstances that lead to SED, and iii) enumerates safeguards against SED including recommendations for States and for the CED and WGEID.

A. The notion of ‘short-term enforced disappearances’

2. The definition of enforced disappearances (ED) in the Convention for the Protection of all Persons from Enforced Disappearance (ICPPED) does not include a time requirement. The ICPPED definition hinges on three factors: (i) the deprivation of liberty (ii) the direct intervention of State agents or their acquiescence or authorisation of others and (iii) the refusal to acknowledge the detention and to reveal the fate or whereabouts of the person concerned.¹
3. The WGEID and the CED have held that “there is no time limit, no matter how short, for an enforced disappearance to occur.”² Similarly, the Inter-American Court of Human Rights (IACtHR) has found that an ED has occurred when the three elements above were met, regardless of its duration.³ In its recent Guidelines on ED, the African Commission on Human and Peoples’ Rights (ACommHPR) explicitly recognised the term SED noting that there is no minimum time limit for a disappearance to occur.⁴
4. That the victim of a SED is accounted for or returns home after a short period of time does not lessen the extent of the harm. SED should be distinguished from several apparently similar violations such as arbitrary deprivation of liberty, torture, incommunicado detention etc. While elements of those abuses are often present in SED and SED frequently lead to a cascade of violations including torture, the legal implications are different.
5. Facially similar violations like incommunicado detentions may constitute an element of SED but are a distinct crime. Whereas incommunicado detention involves depriving an

¹ ICPPED Art. 2. The ICPPED definition expands the agents to include “persons acting with the authorization, support or acquiescence of the State.” Similarly, in the Inter-American Court of Human Rights (“IACtHR”) jurisprudence. See IACtHR, Case of *Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 14 November 2014. Series C No. 287 (*Case of Rodríguez Vera et al. v Colombia*), para. 365.

² OHCHR, “[Every Minute Counts](#)” – UN Experts Raise Alarm over Short-Term Enforced Disappearances International Day of the Victims of Enforced Disappearances’ (26 August 2016); for the CED see *Yrusta v Argentina*, CED/C/10/D/1/2013 (*Yrusta v Argentina*), para 10.3.

³ *Case of Rodríguez Vera et al. v Colombia*, para. 195.

⁴ ACommHPR [Guidelines on the Protection of All Persons from Enforced Disappearances in Africa](#), October 2022, para. 1.4.6.

individual of the ability to communicate with the outside world, SED adds a refusal to acknowledge the whereabouts to a third party making an inquiry.⁵

6. Additionally, SED implicate a variety of rights that may not otherwise be at stake, including cruel and inhuman treatment of the direct victim caused by the deprivation of communication,⁶ and suffering that can rise to the level of ill-treatment or torture for the family of the victim.⁷
7. Finally, the difference between SED and longer-term EDs is a matter of scale, not substance. The WGEID has found that an ED starts with the deprivation of liberty.⁸ The subsequent concealment of the victim's fate or whereabouts places the victim outside the law even if the deprivation of liberty or concealment is brief.⁹
8. Based on REDRESS' recent experience, below we discuss two contexts that have enabled SED: Sudan and Egypt. We demonstrate the politico-legal landscape that fosters the widespread use of SED and show that SED occur in both countries in the context of crackdowns on political dissent through the implementation of states of emergency and the weaponization of anti-terror laws. While not covered in this submission, other contexts include migration,¹⁰ armed conflict,¹¹ and extraordinary renditions,¹² among others.¹³

SED in Sudan

9. SED occurred with relative frequency after the military coup of 25 October 2021.¹⁴ Under the authority of Emergency Order No. 3, which permits the arrest of any person who "participates in a crime related to [the state of emergency]", Sudan's security forces and military used ED to punish opponents of the coup and deter further protests.¹⁵ The use of ED was compounded by widespread torture and ill-treatment of detainees.¹⁶ Although the state of emergency was lifted on 29 May 2022, the UN

⁵ Secret detentions in the context of counter-terrorism can implicate two or more States in the practice of ED. Secret detentions and the related practice of extraordinary rendition amount to ED; both practices enable impunity for ED by obfuscating the State party responsible for the disappearance. See [UN HRC](#), Joint Study on Global Practices in Relation to Secret Detention (A/HRC/13/42), 20 May 2010 ps. 2-3.

⁶ IACtHR, [Anzaldo Castro v Peru](#), Preliminary Objection, Merits, Reparations and Costs, Judgment of 22 September 2009, Series C No. 202, para 85.

⁷ [WGEID Report](#), General Comment on the Right to Truth in Relation to Enforced Disappearance, A/HRC/16/48 of 26 January 2011, p. 4.

⁸ [WGEID Report](#), General Comment on the definition of enforced disappearances, A/HRC/7/2 of 10 January 2008, para 26(7).

⁹ [Yrusta v Argentina](#), para. 10.3.

¹⁰ REDRESS is representing Tariku Asefa, an Eritrean migrant who was disappeared for more than a year in Libya, in a communication submitted to the Human Rights Committee. [REDRESS](#), "Tariku Asefa v Libya" 16 June 2021; see also African Commission on Human and Peoples' Rights (ACHPR), '[Guidelines on the Protection of All Persons from Enforced Disappearances in Africa](#)' 25 October 2022, para 1.3.2 ([ACHPR Guidelines](#)).

¹¹ See [UN Security Council, Resolution 2474](#), UN Doc S/RES/2474 (2019) (discussing the issue of missing persons as a result of armed conflict).

¹² See, for example, the case of extraordinary rendition and disappearance of [Kamilya Mohammadi Tuweni](#) in the context of counter-terrorism; see also European Court of Human Rights (ECtHR), [El-Masri v. The Former Yugoslav Republic of Macedonia](#), Appl. No. 36930/09, 13 December 2012, para. 240; ECtHR, [Al Nashiri v. Romania](#), Appl. No. 33234/12, 31 May 2018, para. 690.

¹³ In relation to other contexts in which SED and ED take place in Africa, see REDRESS, '[The Forgotten Victims: Enforced Disappearance in Africa](#)', 2021.

¹⁴ [REDRESS et. al.](#), "[Taken from Khartoum's Streets](#)": Arbitrary arrests, incommunicado detentions, and enforced disappearances under Sudan's emergency laws, March 2022 ([Taken from Khartoum's Streets](#)).

¹⁵ [Emergency Order No. 3](#) (Arabic), 2021.

¹⁶ '[Taken from Khartoum's Streets](#).'

Secretary-General reported in September 2022 that measures adopted under the state of emergency remained in force, “facilitating further crackdowns on protesters and continued impunity.”¹⁷

10. As REDRESS reported in March 2022, some of the arrests conducted at protests could constitute SED.¹⁸ For example, a member of a Khartoum resistance committee was arrested by security forces and detained incommunicado for about a month before being released on the day of the UN independent expert’s visit to Sudan in February 2022. Although her family received information from informal sources that she was detained in Omdurman Women’s Prison, they never received official confirmation of her whereabouts. No criminal complaint was ever opened against her and she was not interrogated while detained.

SED in Egypt

11. Egypt’s use of ED against political dissidents has been recognised as widespread by many international organisations.¹⁹ The Center for Justice, an organisation that documents human rights violations in Egypt, has called the use of ED ‘a systematic and continuous policy used by authorities in Egypt to suppress its opponents from across the political spectrum.’²⁰ From 2015 to 2021, 3,029 individuals were subject to ED of varying lengths.²¹ The highest percentage of ED lasted from a period of two days to a week.²² For many victims, ED was the precursor to interrogation and torture as security forces sought to force confessions.²³
12. Typically, ED are perpetrated by members of the security sector who conduct arrests without warrants. Most individuals subject to SED first appear to their families in a proceeding before the Supreme State Security Prosecution. In these proceedings, they are typically charged with alleged crimes under the Penal Code, the Anti-Terror Law, or the Anti-Cybercrime Law. As emphasised by UN experts, human rights defenders are at particular risk of SED in Egypt.²⁴

B. Legal frameworks and practices that lead to SED

13. Below we discuss the legal frameworks in Sudan and Egypt that have enabled the practice of SED and suggest the type of reforms that would be required to curb the practice.

Sudanese law

14. The Criminal Procedure Act does not provide for a right to be informed of the reasons for arrest or charges, nor does it provide for a right to prompt access to counsel or to

¹⁷ [U.N. Secretary General](#), Situation in the Sudan and the activities of the United Nations Integrated Transition Assistance Mission in the Sudan, S/2022/667, 2 September 2022, para. 31.

¹⁸ [Taken from Khartoum’s Streets](#).

¹⁹ [Amnesty International](#), Egypt: ‘Officially, You Do not Exist’, 2016 (*Officially, You Do not Exist*); [International Commission of Jurists](#), ‘ICJ denounces Egypt’s large-scale use of enforced disappearances to silence any kind of opposition (UN Statement),’ 20 September 2022; Sherif Azer, “[Behind the Sun’: How Egypt Denies Forced Disappearances](#),” Tahrir Institute for Middle East Policy, 30 April 2018.

²⁰ [Committee for Justice](#), ‘Enforced disappearance in Egypt turned from a phenomenon to a systematic policy, says CFJ,’ 30 August 2021.

²¹ [Egyptian Commission for Rights and Freedoms](#), ‘The Crime of Enforced Disappearance Continues: Official Denial is Still Futile,’ 2021 (*The Crime of Enforced Disappearance*).

²² *Ibid.*

²³ [Officially, You Do not Exist](#), p. 4.

²⁴ [UNHCHR](#), ‘Egypt: Human rights defenders held incommunicado, face spurious charges, says UN expert,’ 15 July 2021.

be promptly brought before a judge.²⁵ In addition, an arrested person's right to inform a third party or family member of their arrest is subject to the approval of the Public Prosecution or a court, constituting another significant barrier to an important safeguard against SED.²⁶ Although Sudan ratified the ICCPED in August 2021, it has yet to amend the Criminal Code 1991 to make ED a standalone crime with appropriate penalties.

15. In addition to failing to criminalise ED, Sudanese law also establishes immunities for members of the security forces and police who commit human rights violations.²⁷ These immunities create an environment of impunity, contributing to the continuing occurrence of violations, including ED and SED.
16. The Sudanese legal framework also provides the police with broad powers to conduct warrantless arrests. Most offences in Sudan are categorised in a way that does not require a warrant. This means that police have broad authority to arrest individuals who are reported to have committed a wide range of offences, individuals in "suspicious circumstances," obstructing the police, escaping from legal custody, or even refusing to state their name or address to the police.²⁸ After arresting an individual without a warrant, the police may then detain individuals for up to 24 hours before informing the prosecutor.²⁹ The prosecutor may extend the detention of the individual for up to three more days, without the approval of a judge.³⁰ A magistrate may then extend the pre-charge detention up to two weeks, a superior magistrate may extend the detention to six months, and the Head of the Judicial Organ may extend the detention beyond six months.³¹ The length of detention allowed before a criminal suit is officially initiated creates an environment where SED can easily occur.
17. Prior to 2020, the National Security Act (NSA) also created a ripe environment for ED, as it provided the National Security and Intelligence Services (later renamed the General Intelligence Service) the power to arrest and detain individuals with little judicial review. Under the National Security Act, the security services could detain individuals for up to 30 days, while the Director of the security services could approve detention for 15 more days.³² Although the arrested had the right to communicate with their family or advocate, the right would only be recognised if it did not "prejudice the progress of interrogation, enquiry and investigation."³³ In 2020, the power of arrest and detention was removed from the security services; however, both before and after the military coup of October 2021, the security services continued carrying out arrests. After December 2021, these arrests were authorised by al-Burhan's Emergency Order No. 3, an emergency order that returned powers of arrest and detention to the security forces and effectively reversed the NSA amendments of 2020.³⁴ Even after the state of

²⁵ [Sudan Criminal Procedure Act 1991](#) (English translation) (*SCPA*).

²⁶ *SCPA*, Art. 83(5).

²⁷ [Armed Forces Act 2007](#) (English translation), Arts. 34 and 42; [Police Forces Act 2008](#) (English translation), Art. 45(1); [Rapid Support Forces Act 2017](#) (English translation), Art. 22.

²⁸ *Ibid.*, Art. 68.

²⁹ *Ibid.*, Arts. 68(2), 77, 79(1).

³⁰ *Ibid.*, Art. 79(2).

³¹ *Ibid.*, Art. 79.

³² [Sudan National Security Act 2010](#) (English translation), Art. 50.

³³ *Ibid.*, Art. 51.

³⁴ [Emergency Order No. 3](#) (Arabic), 2021.

emergency was lifted on 29 May 2022, measures adopted under it, such as expanding the powers of the security forces, remained in effect.³⁵

The Case of Amiera Osman

18. Amiera Osman, a well-known human rights defender and women's rights activist in Sudan, was arrested from her home in Khartoum on the night of 22 January 2022. Her arrest appeared to have been conducted by members of the security services but, in response to enquiries from Amiera's family, the authorities denied knowledge of her whereabouts.³⁶
19. Amiera was one of many activists arrested in the months after the 25 October 2021 military coup. When conducting arrests, security forces in Khartoum would often transport detainees to a facility that was once the National Intelligence and Security Services headquarters. General Intelligence Services agents also used Bashir-era hidden "ghost houses" to detain people. Many of these arrests were carried out under Sudan's emergency laws, which were promulgated by Abdel Fattah al-Burhan after he led the 25 October 2021 military coup.
20. The day after Amiera was arrested, her family filed a report with the Eastern Division Prosecutor within Sudan's Public Prosecution. On 26 January 2022, less than a week after Amiera's arrest, REDRESS submitted an urgent appeal to the Special Rapporteur on Torture, the WGEID, and the Working Group on Arbitrary Detention. A few days later, REDRESS submitted a request for urgent action to the CED.
21. On 4 February 2022, the special rapporteurs, including the WGEID, sent a Communication to the Sudanese government asking for information about Amiera's fate and whereabouts and urging the government to hold those responsible for her alleged detention and ED to account.³⁷ Three days later, after being arbitrarily arrested and disappeared for two weeks, Amiera was released.³⁸

Egyptian Law

22. As documented by Amnesty International, SED are often perpetrated under the guise of "national security."³⁹ Although the Code of Criminal Procedure usually requires that the prosecutor present a suspect before a judge within four days of arrest, when the case involves a "state security" crime, the Prosecution Director can hold suspects for up to 150 days before presenting them before a judge.⁴⁰ Referred to as 'codify[ing] enforce disappearances,' the Anti-terrorism Law even allows for individuals to be detained for

³⁵ [U.N. Secretary General](#), 'Situation in the Sudan and the activities of the United Nations Integrated Transition Assistance Mission in the Sudan,' S/2022/667, 2 September 2022, para. 31,

³⁶ The facts of the case were provided by Amiera's family in testimony that was used in the REDRESS submission to the WGEID. Many of the facts are quoted in '[Taken from Khartoum's Streets](#).'

³⁷ [Communication](#) to Sudan from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the situation of human rights defenders and the Working Group on discrimination against women and girls, UA SDN 2/2022, 4 February 2022.

³⁸ [BBC](#), 'Sudan's feared secret police make a comeback,' 5 February 2022.

³⁹ [Amnesty International](#), 'Egypt: Permanent State of Exception: Abuses by the Supreme State Security Prosecution,' 27 November 2019.

⁴⁰ [Code of Criminal Procedure](#), Art. 206 *bis*; 2015 [Counter-terrorism Law no. 94/2015](#), Art. 42.

up to seven days in incommunicado detention before being questioned by a prosecutor.⁴¹ Such legal framework allows for SED and ED to happen at high rates.

Recommendations for reform

23. To erect a legal bulwark against the practice of SED, States should: (i) enshrine the right to fair trial and other judicial guarantees including the right to appear before a judicial authority promptly after detention;⁴² (ii) establish the legal right to truth for missing individuals;⁴³ (iii) ensure arrests are only carried out by authorized officials pursuant to a valid warrant; (iv) authorise detained individuals to communicate with and be visited by persons with a legitimate interest; and, (v) compile a central official register keeping record of all detained individuals that is transparent to judicial authorities.⁴⁴

C. Legal and Practical Safeguards against SED

24. In addition to these recommendations, there are a number of safeguards for individuals deprived of their liberty, especially in the initial hours of detention, that contribute to the prevention of SED. Enshrined in international human rights treaties and soft law instruments,⁴⁵ these safeguards include: a) registration of detention and custody records; b) information about rights and notification of third parties upon arrest; c) access to a lawyer; d) access to an independent medical examination; and e) prompt appearance before a judge.
25. Recent research by REDRESS across 11 African States indicates that most of these countries have integrated these safeguards into their national laws, though adjustments are desirable to align fully with global and regional standards.⁴⁶
26. For instance, South Africa and Nigeria provide that the arrest must be recorded as soon as reasonably possible and no later than 48 hours after arrest.⁴⁷ Uganda, Nigeria, and Kenya require that arrested and detained people be kept in places of detention by law.⁴⁸ Additionally, in order to ensure that the safeguard of notification of third parties is respected, the law in Kenya commands that any communication pursuant to this right must be facilitated by authorities free of charge.⁴⁹ Nigeria and Zimbabwe similarly stipulate that notification of the relatives is to be done at no cost of the suspect.⁵⁰

⁴¹ [Communication](#) to Egypt from the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders, OL EGY 4/2020, 28 February 2020.

⁴² [ACHPR Guidelines](#), para 3.4.

⁴³ Art. 24(2) ICCPED; see also [WGEID](#), 'Report of the WGEID,' A/HRC/16/48, 26 January 2011, p. 12.

⁴⁴ [ACHPR Guidelines](#), para 4.1.2.v.

⁴⁵ See Art. 9 of ICCPR, which contains a number of safeguards as part of the right to liberty and security of the person; Art. 17 of ICCPED; [ACHPR](#), 'Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa' (the Luanda Guidelines), Mod. 3; [UNGA](#), Resolution 70/175 (Nelson Mandela Rules), 17 December 2015; and the [UNGA](#), 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,' 9 December 1988, UN Doc. A/RES/43/173.

⁴⁶ [REDRESS, the Convention against Torture Initiative \(CTI\)](#), Anti-Torture Standards in Common Law Africa: Good Practices and Way Forward (**Anti-Torture Standards**), 2022, p. 33-55. This research focused on The Gambia, Ghana, Kenya, Nigeria, South Africa, Sudan, Uganda and Zimbabwe.

⁴⁷ *Ibid*, p. 35.

⁴⁸ *Ibid*.

⁴⁹ *Ibid*.

⁵⁰ *Ibid*, p. 45.

27. Despite such provisions in law, the study highlights a disparity between the safeguards established in legal frameworks and the actual protection provided in practice. Therefore, it concludes that States must improve their efforts to adequately comply with those standards in practice, including by adequately and regularly training law enforcement personnel.⁵¹

Recommendations for the CED and WGEID

28. Both the timing and substance of the urgent communication sent by the WGEID and other institutions proved critical in the case of Amiera Osman. Other human rights organs, including regional courts, issue interim or precautionary measures to prevent irreparable harm to victims of SED and ED. The IACtHR, for example, has issued precautionary measures to support victims of ED or those threatened with ED.⁵² Interim or precautionary measures from human rights courts accomplish a similar goal as the urgent appeals sent by the WGEID: facilitating engagement with the State in question and, once made public, shining an international spotlight on an ongoing harm and imminent risk of further rights violations, including torture, SED and ED.
29. The fast-moving and perilous nature of SED make victims' consent for legal actions difficult to obtain by relatives or representatives who cannot establish the victim's whereabouts. Additionally, witnesses and relatives will have partial or no access to information regarding the context of the disappearance, making it imperative that human rights organs consider the socio-political landscape in which the victim was disappeared. Finally, the speed of the intervention is essential since SED frequently enables other severe human rights violations.
30. Therefore, when evaluating urgent appeals for SED, the CED and WGEID should take into account the precarious position in which victims and their relatives find themselves. In particular, we recommend that the CED and WGEID (i) maintain flexible requirements for obtaining consent, (ii) maintain a flexible evidentiary threshold in circumstances where relatives have scant access to evidence concerning the detention, and (iii) respond as quickly as possible to the appeal to prevent further violations such as torture, extrajudicial execution or an ED.

⁵¹ [REDRESS, the CTI, *Anti-Torture Standards*](#), p. 36, 39, 41, 44, 46, and 48.

⁵² IACtHR, [Precautionary Measures on behalf of members of the Colombian Legal Foundation](#) (2002); IACtHR, [Precautionary Measure for Alirio Uribe Muñoz](#) (2000).