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**Submission to the**

**UN Committee on Enforced Disappearances**

**Responses to the CED’s call for input concerning concept of migration and enforced disappearances**

**Submitted 20 June 2022**

**About the Submitting Organization**

The Convention against Enforced Disappearances Initiative is a non-profit organization whose vision is a world free from enforced disappearances.

Founded in 2022, CEDI contributes to the fight against enforced disappearances globally by supporting and empowering the existing networks, promoting ratification and implementation of the Convention and increasing awareness on enforced disappearances.

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This report aims to provide the Committee on Enforced Disappearances with information concerning migration and enforced disappearances and its impact on the victims and families in the continent of Africa in particular. In this context, states that are parties to the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED) and those states that have yet to ratify the Convention have certain obligations under the international law to prevent, protect, investigate and provide reparations to the victims of human rights violations.

The African continent has some of the highest number of migrants worldwide both leaving the continent for Europe and other destinations as well as migrating to different countries across the continent. The push and pull factors that contribute to the migrants undertaking perilous journey include war and civil unrest, non-existent rule of law, climate change, economic prospects and opportunities for better lives. Migration has always been present on the continent as well as the practice of enforced disappearances. The use of enforced disappearances dates back to at least pre-colonial era. The colonial governments relied on enforced disappearances to silence the freedom fighters and keep the political elite in place. Following the freedom movement in 1960s when many African states gained independence, most of the newly installed governments continued the practice of enforced disappearances to silence the political opposition, human rights defenders and journalists as well as installing fear into the communities to ensure check on their power.

In the last decade, migration on the continent saw a massive increase of especially young population and women leaving their countries. [The African Union Migration Policy Framework for Africa and Plans for Actions (2018-2030)](https://au.int/en/documents/20181206/migration-policy-framework-africa-mpfa) notes that the number of international migrants reached 244 million in 2015, a 41% increase on 2000 figure, whilst that number of international migrants from Africa reached 34 million, with nearly half of them being women.[[1]](#footnote-1) With the increase of migrants crossing the borders across various countries and searching for better fortune in Africa and Europe, the securitization of the borders and negative rhetoric describing migrants as terrorists and violent people prone to crime has led to increased violations of migrants rights, including enforced disappearances, torture and other human rights violations.

The [International Office of Migration](https://missingmigrants.iom.int/region/africa) has been recording statistics of the missing persons in Africa, noting that it has recorded 11,540 migrants going missing since 2014.[[2]](#footnote-2) However, this number is likely a fraction of those who disappeared given that the [African Union](https://reliefweb.int/sites/reliefweb.int/files/resources/africa-migration-report.pdf) noted a massive increase of the migrants on the continent in a period of 10 years from 13,3 to 25,4 million people during 2008-2017.[[3]](#footnote-3)

Out of 54 African states, only 18 ratified the Convention while another 17 have signed the Convention.[[4]](#footnote-4) The states that have ratified the Convention have the obligations to address the crime of enforced disappearances. Article 1 specifically notes that no one shall be subjected to enforced disappearances and that no exceptional circumstances exist to justice enforced disappearances.[[5]](#footnote-5) Further, Article 3 of the Convention notes the obligations of states to investigate and prosecute perpetrators of crimes that are tantamount to enforced disappearances.

**Duty to Investigate: jus cogens norm**

Several of the articles of the Convention specifically address the state’s responsibility to investigate and prosecute perpetrators and the necessary collaboration between states regarding these responsibilities. Article 9 provides that states must establish the jurisdiction over the crime of enforced disappearance whether it is on a board of ship, or an aircraft registered to the particular state.[[6]](#footnote-6) Article 10 notes that state party shall immediately carry out a preliminary inquiry or investigations to establish the facts. Further, Article 12 expands on the duty to investigate noting in paragraph (a) that state authorities shall have the “necessary powers and resources to conduct the investigation effectively, including access to the documentation and other information relevant to their investigations.[[7]](#footnote-7)

These articles specifically discuss the obligation of state parties to investigate and prosecute crime of enforced disappearances. However, under the international law the obligation to investigate is recognized as a jus cogens obligation, a legal obligation applicable to all states. The various human rights regional and international bodies have through jurisprudence affirmed the obligation to investigate. In [*Gellman v. Uruguay*](https://www.corteidh.or.cr/docs/casos/articulos/seriec_221_ing.pdf)*,* the Inter-American Court of Human Rights noted that the obligations to investigate and punish the perpetrators of human rights violations is a peremptory norm that reached the level of just cogens, “this court has emphasized the importance of the State's duty to investigate and punish human rights violations, obligation to investigate and, where appropriate, prosecute and punish, is particularly important given the seriousness of the crimes committed and the nature of the infringed rights, particularly because the prohibition of enforced disappearance and its corresponding obligation to investigate and punish those responsible has reached jus cogens nature.” [[8]](#footnote-8)

The Council of Europe in its 2016 report titled [*Missing Persons and Victims of Enforced Disappearances*](https://rm.coe.int/missing-persons-and-victims-of-enforced-disappearance-in-europe-issue-/16806daa1c) affirmed the jus cogens norm of the duty to investigate citing Inter-American Court jurisprudence noted that “prohibition of enforced disappearances and the corresponding obligation to investigate and punish those responsible have attained the status of jus cogens[[9]](#footnote-9).

Therefore, the international law clearly established the obligation to investigate and prosecute perpetrators of human rights violations as a principle accepted by the international community applying to even states that are not party to the ICPPED.

**Duty to prevent: prohibition of secret detention of migrants and expulsions**

States’ due diligence obligations include prevention of human rights violations. Prevention of human rights includes adoption of legislations that prevent human rights abuses and punishing human rights abuses within the domestic criminal code and put in practice avenues that lead to eradication of human rights abuses. States that ratified the ICPPED have obligations to prevent enforced disappearances. However, in the last decade, many African states instead of ensuring that persons in their territories can enjoy human rights, have passed laws criminalizing illegal entry into the countries forcing many migrants to use fewer safe routes or rely on human traffickers and criminalized networks to reach the final destination. The criminalization of migration also put migrants at risk of being detained for weeks or months in detention facilities with no access to lawyers, no information provided to the loved ones, and many being subjected to horrific human right violations. Corruption along with the criminalization of the migration on the continent has created opportunities to exploit the migrants and violate their rights. Finally, the negative perceptions about migrants being violent, the lack of effective legal and administrative procedures in place often result in migrants being sent back to their countries without being provided an effective legal procedure to determine their status.

Parties to the Convention have obligations to prevent enforced disappearances and specific obligations when it comes to the use of secret detention facilities. Article 17 of ICPPED specifically prohibits secret detentions and outlines states’ obligation to ensure that prevention of liberty is not arbitrary and does not result in enforced disappearances, including states’ obligation to maintain up to date registries to and provide information on the detention of the persons deprived of their liberties. However, many African countries have weak rule of law, lack technical capacities to keep registers and high levels of corruption all contribute to many states lacking to fulfil their obligations under Article 17.

Article 16 of the Convention affirms the state’s obligation not to expel or return a person to other states where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearances.[[10]](#footnote-10) The principle of non-refoulement is enshrined in other international treaties. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT) and the 1951 Refugee Convention specifically prescribe the prohibition of return or non-refoulement if life or freedom of the individual can be threatened or subjected to torture.[[11]](#footnote-11) The principle of non-refoulment is therefore not only applicable to the parties of the Convention but given the universality of the CAT, most states have the obligation to not deport individuals who may be subjected to human rights violations upon being returned their countries.

However, the practice of push back is very common on the continent, even among the countries that are parties to the Convention and therefore have specific obligations to protect individuals from being subjected to enforced disappearances. These countries include Burkina Faso, Mali, Niger, Sudan and Tunisia. Niger, as one the countries in Africa that is a party to the Convention has adopted legal provisions that make it easier for the migrants to be detained and expose them to enforced disappearances. The [law No.2015-36 of 26 May 2015](https://www.refworld.org/docid/60a505e24.html) pushed the migrants to seek the clandestine routes to enter Libya, leading to less migrants crossing the border but making it easier for smugglers and government to violate the migrants’ human rights and expose the migrants to enforced disappearances.

Sudan, the newest African country to become a party to the Convention, is a known transient country for many migrants from East Africa seeking to travel to Libya and beyond. The southern border between Sudan and Libya is particularly volatile leaving many migrants exposed to dangers from the local militias and smuggling networks. The Rapid Service Forces, a force that has been implicated by the International Criminal Court for committing war crimes and crimes against humanity, has been put in charge of border security, exposing the migrants to a force known for committing torture and enforced disappearances.[[12]](#footnote-12) Foreign nationals entering the country are frequently treated as ‘illegal’ immigrants who are charged with unlawfully entering Sudan under the Passports and Immigration Act of 2015.[[13]](#footnote-13) In 2017 alone, Sudanese officials reportedly had routine recourse to detention, lashed 65 asylum seekers, and on several occasions deported asylum seekers, including minors without due process guarantees.[[14]](#footnote-14)

**Duty to provide reparations**

Article 24 of ICPPED prescribes the definition of victims and state’s responsibility to provide reparations to the victims of enforced disappearances. Under the international law, it is well established principle that states must provide redress to victims whose rights have been violated. In the context of migration, there may be several states that hold the responsibility for the violations as migrants cross many countries. The [report](https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F36%2F39%2FAdd.2&Language=E&DeviceType=Desktop&LangRequested=False) by the UN Working Group on Enforced or Involuntary Disappearances in in 2017 specifically discussed the difficulties migrants experience in accessing justice, reporting the violations and obtaining appropriate remedies. The report specifically noted that international law provides that migrants, including those in the undocumented situation, should have the right to equality with nationals of the State concerned before the Courts and Tribunals as well as the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their state of origin if their rights are violated.[[15]](#footnote-15)

Additionally, within the context of reparations for enforced disappearances, the right to be informed about the fate or the whereabouts of the loved one disappeared is relevant. Article 24 (2) provides that “every victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person.”

[The Truth, Reconciliation and Reparations Commission](https://www.justiceinfo.net/wp-content/uploads/Volume-12-The-Killing-of-West-African-Migrants-Enforced-Disappearances.pdf.) in the Gambia in its final report dedicated a chapter to the forced disappearances and extrajudicial killings of 67 West African migrants. The Commission recommended investigation and prosecution of those responsible for the crimes committed against the migrants as well as to assemble a forensic team of experts to identify the exact location of the bodies, exhume the remains. Further, the Commission urge the government of the Gambia to ensure full access to documents, testimonies and physical evidence related to the investigation and exhumation of the bodies.[[16]](#footnote-16)

1. The AU migration Policy Framework for Africa and Plans of Action (2018-2030). [↑](#footnote-ref-1)
2. See Migration within Africa ,https://missingmigrants.iom.int/region/africa. [↑](#footnote-ref-2)
3. The Africa Migration Report: Challenging the Narrative, 15 October 2020, <https://reliefweb.int/sites/reliefweb.int/files/resources/africa-migration-report.pdf> [↑](#footnote-ref-3)
4. Redress, *Forgotten Victims of Enforced Disappearances in Africa,* <https://redress.org/wp-content/uploads/2021/08/Report-The-Forgotten-Victims-Enforced-Disappearance-in-Africa.pdf>. [↑](#footnote-ref-4)
5. The International Convention for the Protection of All Persons from Enforced Disappearance, Article 1 [↑](#footnote-ref-5)
6. *Id.* Article 9. [↑](#footnote-ref-6)
7. *Id.* Article 12. [↑](#footnote-ref-7)
8. IACtHR, *Gellman v. Uruguay*, judgment of 24 February 2011, para. 183. <https://www.corteidh.or.cr/docs/casos/articulos/seriec_221_ing.pdf> [↑](#footnote-ref-8)
9. See <https://rm.coe.int/missing-persons-and-victims-of-enforced-disappearance-in-europe-issue-/16806daa1c>, p. 5 [↑](#footnote-ref-9)
10. ICPPED, Article 16 (1). [↑](#footnote-ref-10)
11. The 1951 Refugee Convention, Article 33 and CAT, Article 3. [↑](#footnote-ref-11)
12. Sudan Compliance with its obligations under ICCPR in the context of mixed migration from and to Sudan, 124th Session of the Human Rights Committee of Sudan’s State Party Report Sept. 2018, <https://www.soas.ac.uk/human-rights-law/reports-research-projects-and-submissions/file138868.pdf>. [↑](#footnote-ref-12)
13. Sudan Compliance with its obligations under ICCPR in the context of mixed migration from and to Sudan, 124th Session of the Human Rights Committee of Sudan’s State Party Report Sept. 2018, <https://www.soas.ac.uk/human-rights-law/reports-research-projects-and-submissions/file138868.pdf>. [↑](#footnote-ref-13)
14. Sudan Compliance with its obligations under ICCPR in the context of mixed migration from and to Sudan, 124th Session of the Human Rights Committee of Sudan’s State Party Report Sept. 2018, <https://www.soas.ac.uk/human-rights-law/reports-research-projects-and-submissions/file138868.pdf>. [↑](#footnote-ref-14)
15. The Report of the Working Group on Enforced or Involuntary Disappearances on Enforced Disappearances in the Context of Migration, A/HRC/36/39/Add.2, 28 July 2017, para. 75. [↑](#footnote-ref-15)
16. The Truth, Reconciliation and Reparations Commission, Chapter 16, Recommendations, <https://www.justiceinfo.net/wp-content/uploads/Volume-12-The-Killing-of-West-African-Migrants-Enforced-Disappearances.pdf>. [↑](#footnote-ref-16)