**Maat for Peace’ submission on** **Enforced Disappearances in the Context of Migration**

**Executive Summary:**

International and non-international armed conflicts, systematic forms of persecution and violence, natural and environmental disasters, dire economic conditions, and high rates of crimes against humanity, among other factors that force civilians worldwide to evict their homes in search of a safe haven elsewhere, have all led to an alarming increase in the number of migrants all over the world. With nearly 300 million migrants worldwide, migration has reached unprecedented levels, according to the latest statistics.[[1]](#footnote-1)

As the factors leading to migration increase, the cases of enforced disappearances associated with migration exacerbate, either as a result of the kidnappings of migrants for political reasons, or as a result of the aggravation of smuggling, human trafficking, immigration detention procedures and the subsequent forced deportations of them. Strict immigration policies adopted by states including the policies that deny the entry of migrants and the policies that lead to violent returns, expulsions or detentions, have increased the risk of migrants becoming victims of enforced disappearance.

As a result of the serious and alarming developments raised by enforced disappearances in the context of migration, and given the ambiguity of some articles of the Convention for the Protection of All Persons from Enforced Disappearance in addressing the phenomenon of enforced disappearance in the context of international migration, the Committee on Enforced Disappearances has started a process of consultations on its project of General Comment on “enforced disappearances in the context of migration”, in order to provide authoritative guidance to states parties on their legal obligations to end all forms of enforced disappearance in the context of migration, and with a view to developing a set of measures that states parties should implement to ensure full compliance with their international obligations under the Convention for the Protection of All Persons from Enforced Disappearance.

Based on the Committee on Enforced Disappearances’ call of the Committee on Enforced Disappearances to States parties, victims, civil society organizations, national human rights institutions, UN Human Rights Mechanisms, Regional Human Rights Mechanisms, UN country Teams, academia and other stakeholders to submit written contributions on enforced disappearances in the context of migration, Maat makes its contributions as follows:

**Obligation to investigate: Paragraphs 15-17**

Maat believes that although Article 12 of the Convention for the Protection of All Persons from Enforced Disappearance imposes an obligation on states parties to conduct prompt and impartial investigations where there are objective reasons to believe that enforced disappearances have occurred, including in the absence of an official complaint. However, the Convention did not explicitly refer to the possibility for States parties to the Convention to report cases of enforced disappearance that occur in other countries. In addition, it did not explicitly refer to the possibility for persons residing in other countries to submit reports of enforced disappearances that occur against their relatives in countries other than those in which they reside.

Accordingly, Maat recommends that the general comment should include an explicit provision that gives persons residing in countries other than those in which the enforced disappearance occurred the right to report cases of enforced disappearance that allegedly occurred in other countries, and also recommends that the general comment obligates states parties to the Convention to enable its citizens to report cases of enforced disappearances that occur in other countries by establishing a mechanism to receive enforced disappearances-related reports and complaints and pass them to the countries where the alleged enforced disappearances occurred.

**Prohibition of Secret Detention of Migrants: Paragraphs 18-21**

Maat expresses its concern about the information it received that thousands of migrants in the Middle East are being arbitrarily detained in secret detention centers. In this context, Maat has monitored some armed militias in Libya detaining thousands of African immigrants in secret prisons in the Libyan capital, Tripoli, based on agreements with European Union countries to prevent African migrants from reaching Europe. Maat confirms that such practices are considered to be a form of forced disappearance and is forbidden under the provisions of the International Convention to protect all persons from enforced disappearance.[[2]](#footnote-2)

Although the International Convention for the Protection of All Persons from Enforced Disappearance has obligated states to provide a number of safeguards in their domestic legislation to prevent secret detention, including the obligation to keep up-to-date official records containing information on the names of individuals deprived of their liberty, the places in which they are held, and those to which they are transferred and the hours of their release, Maat has noted the inability of family members and other stakeholders to request this information about their relatives or proxies who have been forcibly disappeared in the context of migration due to their presence in another country or because of their undocumented status. Hence, Maat recommends that the General Comment on Enforced Disappearances in the Migration Context should explicitly and unequivocally refer to the right of families and other stakeholders to access information about their relatives, proxies, or representatives who have been forcibly disappeared in the context of migration in other countries. Besides, Maat recommends that detained foreigners should be guaranteed to communicate with their consular authorities, under the General Comment on Enforced Disappearances in the Context of Migration.

**Mutual Legal Assistance and Cooperation: Paragraphs 22-25**

Although the International Convention for the Protection of All Persons from Enforced Disappearance has obligated its parties, under Article No. 14, to provide **one** another the greatest measure of mutual legal assistance in respect of criminal proceedings of enforced disappearances including the obligation to supply all the evidence at their disposal, Maat has noted that the International Convention for the Protection of All Persons from Enforced Disappearance does not explicitly mention the obligation to cooperate with non-signatory or non-adherent states to the Convention, which constitutes an obstacle to seeking legal aid from states that are not party to the Convention.

Hence, Maat considers that given the transnational nature of migration, it is of paramount importance for the General Comment on Enforced Disappearance in the Migration Context to explicitly and unequivocally state that States Parties are obligated to seek legal assistance relevant to enforced disappearance in the context of migration from all countries including those that are not signatories to the Convention, regardless of ratification status. In this regard, Maat recommends that the General Comment oblige states parties to establish competent authorities that work on prompt, and secure exchange of information and documentation that may help in locating persons disappeared during migration.

**Non-refoulement and Pushbacks: Paragraphs 26-31**

Maat expresses its concern about the increasing reports indicating the aggravation of the procedures for forced return, expulsion and forced deportation of migrants in many countries of the Middle East region, especially in light of the existence of substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance and other grave human rights violations, whether by human trafficking gangs or by governments with a dark record of human rights violations. In this regard, Maat has monitored the Libyan authorities on several occasions expelling hundreds of African migrants to their countries of origin, despite the possibility that they would be at risk of enforced disappearance in the context of migration at the hands of human trafficking gangs. On December 6, 2021, for example, the Libyan authorities expelled a total of 18 Sudanese without due process of law after being transported across the Sahara to the border area between Libya and Sudan, where they were dumped despite the risks of being subjected to enforced disappearance at the hands of human trafficking gangs operating in this area.[[3]](#footnote-3)

Although the International Convention for the Protection of All Persons from Enforced Disappearance has obligated its parties under Article 16 not to extradite any person to any other country if there are reasonable grounds to believe that this person will be a victim of enforced disappearance, the Convention has not It explicitly stipulates the need for an individual assessment of each person to determine whether the individual at hand faces a real and personal risk of enforced disappearance in case of return or expulsion to other countries. Therefore, countries resort to using what are known as lists of “safe countries” as an alternative to an individual assessment, which put many arbitrarily deported migrants at risk of enforced disappearance in the countries to which they were forced to return. Hence, Maat for Peace, Development and Human Rights recommends that the General Comment on Enforced Disappearances in the Migration Context should include an explicit provision that states parties should make an individual assessment of the situation of each person subject to forced return, rather than using lists of safe countries.

1. تنقل أفضل للمهاجرين واللاجئين والمجتمعات: يرجى قراءة مذكرة المفاهيم بشأن المطبوعة الجديدة لتقرير عن التنمية في العالم 2023 وإبداء تعليقات عليها، مدونات البنك الدولي، 25 مايو 2022، الرابط: <https://bit.ly/3zJJ5dE> [↑](#footnote-ref-1)
2. السجون السرية التي تبقي المهاجرين خارج أوروبا، منصة اللاجئين في مصر، 28 يناير 2022، الرابط: <https://bit.ly/3ObPz9E> [↑](#footnote-ref-2)
3. المتحدث باسم المفوض السامي يبدي قلقه البالغ من الترحيل القسري والطرد لطالبي اللجوء والمهاجرين في ليبيا، Committee for Justice، 12 ديسمبر 2021، الرابط: <https://bit.ly/3y7Bjc4> [↑](#footnote-ref-3)