**Submission to the**

**UN Working Group on Enforced or Involuntary Disappearances**

**Responses to the UNWEID’s call for input concerning UNWGEID’s engagement with the African Human Rights system and situation of enforced disappearances in Africa.**

Submissions by **Eva Nudd**, a human rights expert with over a decade of experience working with victims of enforced disappearances, torture and sexual violence on the continent of Africa.

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1. **Please provide information on past/ongoing initiatives focusing on enforced disappearance in Africa**.

In 2018, the African Commission extended a mandate of the Working Group on Death Penalty, Extrajudicial, summary or Arbitrary executions extended the mandate to include the crime of enforced disappearances. In the last five years, the Working Group under the leadership of Commissioners Kaytesi, Ndiame, Maya Fedal-Sahel and Sow have held several events to raise awareness on enforced disappearances in Africa. The Commission held two panels inside the main session. In 2019, the Commission held an event about enforced disappearances in Africa: the problem and solution. The following year, the Commission held another panel discussing the enforced disappearances in Africa and the protection of all persons from enforced disappearances. Further, since 2020-2023 the ACHPR working group drafted guidelines on the protection of all persons from enforced disappearances in Africa. The Working Group held several online and in person meetings with experts worldwide, including members of the UN Working Group on Enforced or Involuntary Disappearances, the Committee on Enforced Disappearances, victims and civil society organizations working with ED victims in Africa. The guidelines were adopted in May 2022 and officially launched in October 2022. The document is a first holistic document addressing enforced disappearances on the continent, including context in which ED occurs, who are the victims and state’s obligations to prevent and protect against ED, search and investigate, prosecute and provide reparations.

1. **Please elaborate on possible reasons for the low registration/reporting of cases of enforced disappearances in the region. Please provide information on whether families, human rights defenders, humanitarian workers, prosecution, judges and lawyers or persons in charge of investigations and search face reprisals, threats and harassment for their work and, if so, in which form (and how this could be prevented and mitigated).**

Enforced disappearances are an unknown phenomenon on the continent among the populations. As a result, enforced disappearances are not reported since it is not recognized as a violation or a crime. Further, ED is a crime that must include state involvement or acquiescence and as a result it is difficult for many victims to report such crime to official authorities. Many victims fear reprisal or becoming victims themselves. In many countries the police, judiciary and prosecution are completely unaware what enforced disappearance is and lack the necessary investigative skills to search for the disappeared, to prosecute the perpetrators and provide reparations to the victims.

Zimbabwe is well known for its reprisals against human rights activists. In 2020, Joana Mamombe, Cecilia Chimbiri, and Netsai Marova claimed that they were forcibly disappeared by suspected state security agents after participating in a protest and reportedly subjected to torture and sexual assault. They re-appeared several days later and were taken to a hospital for treatment. Instead of being treated like victims, the Zimbabwe government charged them with the breach of peace, violating lockdown regulations as well as lying about torture charging them with communicating or publishing a false statement prejudicial to the state and defeating or obstructing the course of justice.

On September 4, 2023, Doug Coltart and Tapiwa Muchineripi, two prominent human rights defenders were arrested when representing victims of enforced disappearances. They were charged with obstructing the course of justice. The arrest happened when Doug and Tapiwa advised the police that the two victims of enforced disappearance, Womberaiishe Nhende and Sonele Mukhuhlani, members of the opposition party, were in a hospital recovering from their horrific injuries and were under medical care. Two lawyers were initially denied bail, were later released but the charges against them are still pending.

1. **Could you please share experiences, good practices, lessons learned, emerging trends and specific features and potential solutions, in the context of the below themes and cross-cutting issues:**
   * **Acts tantamount to enforced disappearances perpetrated by non-State actors exercising de facto control over a territory or population;**

The Convention defines enforced disappearance as a crime that must be committed by a state or with acquiescence of the State. However, on the African continent, the lack of rule of law, fragmented states and civil wars have created an environment where the ED is committed by non-state actors. The article 3 of the Convention prescribes states’ obligations to take appropriate measures to investigate acts defined as ED committed by person or groups acting without the authorization, support or acquiescence of the State and to bring those responsible for justice. As such the state still bears the responsibility to bring perpetrators of human rights violations in justice.

In Nigeria, Boko Haram regularly forcibly disappears, attacks the local population, recruits them into their ranks, for suicide attacks or other ways to terrorize the Nigerians, and uses girls as wives for soldiers. As Nigeria is a party to the ICPED, it has obligations to investigate these crimes. However, so far there has been no prosecution of perpetrators of enforced disappearances committed by Boko Haram. Further, Nigeria is also a party to the Rome Statute of the International Criminal Court which defines enforced disappearances as a crime against humanity if committed as part of a widespread or systematic attack against the civilian population.[[1]](#footnote-1) The Prosecutor initiated the initial investigations into crimes committed both by the government and Boko Haram. In its analysis, the Prosecutor’s office found reasonable basis that government forces have committed enforced disappearances, as for the Boko Haram, the crimes allegedly committed were abductions and not enforced disappearances.

In Libya, since the fall of Khadafi, Libya has been fragmented by several militia factions fighting to govern the country. As a result, the Eastern Libya is controlled by Commander Haftar, the leader of the Libyan National Armed Forces while the international community recognizes the Government of National Accord, based in Tripoli. In addition to these two forces, many more militias operate in Libya fighting and associated with both sides. The Fact-Finding Mission to Libya has found that people are repeatedly forcibly disappeared as a tool of oppression or retaliation against the civilians they deem to support the opposition. While Libya is not a party to the Convention, it has a law that criminalizes enforced disappearances. The Article 1 of Law No. 10 of 2013, however, does not follow the definition of enforced disappearances as described in Article 2 of the Convention and does not give the necessary magnitude of the crime that enforced disappearance is. It rather equates enforced disappearance with kidnapping, than a serious human rights violations that impacts not only the person physically disappeared but also the families and person impacted by the disappearance. Further, Libya also set up the Ministry for the Families of the Missing and Martyrs with a mandate to search and identify the missing persons and the martyrs, carry out the collection of data and DNA. The role to prosecute the perpetrators is relegated to the Ministry of Justice and Interior that have yet to successfully investigate and prosecute the perpetrators.

1. Rome Statute, Article VI (1) (i) [↑](#footnote-ref-1)