



人权理事会

第五十七届会议

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议程项目3

促进和保护所有人权——公民权利、政治权利、  
经济、社会及文化权利，包括发展权

对非洲联盟司法和人权机构及其他次区域机构的访问

强迫或非自愿失踪问题工作组的报告\*

概要

强迫或非自愿失踪问题工作组代表团 2023 年 10 月 21 日至 26 日访问了非洲联盟的司法和人权机构及其他次区域机构。本报告简要介绍了其结论和建议。

\* 本报告概要以所有正式语文分发。报告正文附于概要之后，仅以提交语文和阿拉伯文、法文和西班牙文分发。



## 附件

## 强迫或非自愿失踪问题工作组访问非洲联盟司法和人权机构及其他次区域机构的报告

**I. Introduction**

1. The Working Group on Enforced or Involuntary Disappearances conducted a six-day visit to the African Union's judicial and human rights organs and other subregional bodies from 21 to 26 October 2023. The visit took place in Arusha, United Republic of Tanzania, in the context of the seventy-seventh ordinary session of the African Commission on Human and Peoples' Rights. The Working Group's delegation was composed of its Chair, Aua Baldé, and a member, Ana Lorena Delgadillo Pérez.

2. The Working Group thanks the Government of the United Republic of Tanzania, as the host country for the seat of the African Court on Human and Peoples' Rights and the East African Court of Justice, as well as for hosting the seventy-seventh ordinary session of the African Commission on Human and Peoples' Rights. The Working Group took the opportunity to have a courtesy meeting with the Minister of Constitutional and Legal Affairs, Pindi Hazara Chana, and greatly appreciated the cooperation extended.

3. The Working Group also wishes to thank the United Nations Resident Coordinator Office and the United Nations Development Programme office in the United Republic of Tanzania for their support before and during its visit.

4. The Working Group is grateful to the African Commission on Human and Peoples' Rights and in particular to Commissioner Idrissa Sow, the Chairperson of the Working Group on the Death Penalty, Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa, for the invitation and fruitful meeting. The Working Group appreciates being able to participate in the joint panel on enforced disappearances and elections in Africa during the seventy-seventh ordinary session of the Commission. The Working Group thanks the Commission for its commitment to the implementation of the Addis Ababa Road Map, which guides the cooperation between the special procedures of the Human Rights Council and those of the African Commission on Human and Peoples' Rights. That road map formed the basis for facilitating the Working Group's visit.

5. During the visit, the Working Group met with representatives of various African Union organs, including the Chairperson and a number of Commissioners of the African Commission on Human and Peoples' Rights, the Registrar of the African Court on Human and Peoples' Rights, and the Executive Secretary of the African Union Board against Corruption. The Working Group also met with the President and the Deputy Registrar of the East African Court of Justice. The Working Group had the pleasure of visiting the premises of the two courts in Arusha – the African Court on Human and Peoples' Rights, and the East African Community headquarters, which houses the Community Court of Justice. In addition, the Working Group held meetings with some State representatives, including from Angola and the Democratic Republic of the Congo, during its visit.

6. Throughout the visit, the Working Group also held meetings with victims and relatives of disappeared persons from across the continent, as well as human rights defenders, lawyers, civil society representatives and national human rights institutions. The Working Group extends its thanks to all the stakeholders with whom it met, those who participated in the civil society organizations' town hall convened for 21 October 2023 by the Working Group, and those who contributed to its call for inputs.<sup>1</sup>

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<sup>1</sup> The call for inputs and contributions received (excluding those for which confidentiality was requested) are available at <https://www.ohchr.org/en/calls-for-input/2023/call-contributions-preparation-visit-working-group-enforced-or-involuntary-0>.

7. To complete the visit, the Working Group held an online meeting on 6 December 2023 with the Community Court of Justice of the Economic Community of West African States (ECOWAS) officials.

## II. Background

8. The African Union, and its organs and mechanisms established by its treaties, including the African Commission on Human and Peoples' Rights,<sup>2</sup> the African Court on Human and Peoples' Rights<sup>3</sup> and the African Committee of Experts on the Rights and Welfare of the Child<sup>4</sup> as well as the subregional judicial bodies such as the East African Court of Justice and the Economic Community of West African States (ECOWAS) Community Court of Justice, have been setting the human rights agenda of the continent. As such, the Working Group considered it important to conduct a visit to the African Union's judicial and human rights bodies and other subregional bodies for various purposes, as illustrated in the following paragraphs.

9. Firstly, enforced disappearances in the African continent remain invisible, although they are persistently practised in various contexts. Under the Working Group's humanitarian mandate, the documented cases from the region are relatively low compared to the reports received on the prevalence of the practice over the years, and it is also the region from which the Working Group receives the fewest reported cases. Over the years, the Working Group has documented the practice of enforced disappearance in 112 countries, including 35 African countries. Of the 47,774 cases under active consideration, 4,811 are from African countries. The Working Group is deeply concerned that the figures documented do not capture the reality and the magnitude of enforced disappearance in the African continent. The Working Group highlighted the underreporting phenomenon in its reports as early as 2005, and remains concerned that, 20 years later, the situation persists.<sup>5</sup>

10. Moreover, the Working Group continues to face a lack of cooperation from African States, particularly regarding its requests to carry out country visits, an essential tool in implementing the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly in its resolution 47/133 of 18 December 1992 (hereinafter referred to as the Declaration). The African States rarely issue invitations, and even when they do, that often does not lead to a country visit taking place. This does not allow the Working Group to carry out its mandate effectively. Despite its best efforts, the Working Group has only visited four African countries out of 41 country visits conducted globally, with the last visit to an African country having taken place in 2018.<sup>6</sup>

11. Secondly, approximately 60 per cent of the States in the African region have not acceded to or ratified the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter referred to as the Convention). The Working Group acknowledges with appreciation the 21 African States that have acceded to or ratified the Convention as of June 2024 and those that have recognized the competence of the Committee on Enforced Disappearances to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention. The Working Group calls on the 14 States that are signatories to take the necessary steps to ratify the Convention, and calls on the 19 other States that have not yet taken any action to consider acceding to or ratifying the treaty without delay and recognizing the competence of the Committee on Enforced Disappearances pursuant to articles 31 and 32 of the Convention.

12. Thirdly, the Working Group, in accordance with its methods of work, engages in cooperation with regional and subregional bodies in various ways, in particular by providing

<sup>2</sup> African Union, document Assembly/AU/Dec.200 (XI). See also <https://achpr.au.int>.

<sup>3</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, art. 1. See also [www.african-court.org](http://www.african-court.org).

<sup>4</sup> African Charter on the Rights and Welfare of the Child, art. 32. See also [www.acerwc.africa](http://www.acerwc.africa).

<sup>5</sup> E/CN.4/2006/56, paras. 5 and 593.

<sup>6</sup> The Gambia (A/HRC/48/57/Add.1), the Congo (A/HRC/19/58/Add.3), Morocco (A/HRC/13/31/Add.1) and the Democratic Republic of the Congo (A/58/127).

technical cooperation and advisory services, disseminating its work to regional human rights institutions, and consulting with regional and subregional organizations to ensure consistency of the respective observations and recommendations on the implementation of the Declaration and in referring cases of enforced disappearance to regional and subregional bodies when they amount to crimes against humanity.<sup>7</sup> Furthermore, there is an established working relationship between the African Union human rights organs, particularly the African Commission on Human and Peoples' Rights, and the special procedures mechanisms of the Human Rights Council, through the Addis Ababa Road Map<sup>8</sup> launched in 2012 with an explicit commitment to increase cooperation and joint work, which has demonstrated that collaboration between international and regional human rights mechanisms can make a difference. The Working Group encourages acceleration of the implementation of the Addis Ababa Road Map, in line with the next decade's vision, which the African Commission on Human and Peoples' Rights and the special procedures mechanisms agreed upon during the tenth anniversary celebrated in Banjul in 2022. The visit by the Working Group allowed it to strengthen communication channels, take stock of some of the challenges and emerging trends concerning enforced disappearances, and identify good practices in the implementation by States of international human rights standards set out in the Declaration.

13. At the end of its visit, the Working Group was encouraged by the great effort of victims, family members and civil society organizations to fight for justice and raise awareness about enforced disappearances. The Working Group was also left with the impression that there is indeed still an immense gap in addressing enforced disappearances across the region, mostly due to the lack of knowledge about these gross violations of multiple human rights and crimes under international law, the underreporting of cases and the criminalization of, and reprisals against, victims and human rights defenders.

### III. Regional legal framework relevant to enforced disappearance

14. At the regional level, the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) may be used by individuals who have suffered a violation of their right not to be forcibly disappeared to seek justice and redress before the regional and subregional human rights mechanisms, through the respective procedures, where applicable. Regional mechanisms are also mandated to apply international law and draw from jurisprudence internationally.<sup>9</sup>

15. The main human rights treaty, that is, the African Charter on Human and Peoples' Rights, does not explicitly refer to enforced disappearance. However, as provided for in article 1 (2) of the Declaration on the Protection of All Persons from Enforced Disappearance, any act of enforced disappearance places the person subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation, *inter alia*, of the right to recognition as a person before the law, the right to liberty and security of the person, and the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life. Furthermore, the Working Group has recognized, in its study on enforced disappearance and economic, social and cultural rights, that enforced disappearance, by its nature, violates the economic, social and cultural rights of the disappeared person, of his or her family and of others.<sup>10</sup> The African Charter on Human and Peoples' Rights enshrines the above-mentioned fundamental human rights and freedoms as follows: equal protection before the law (art. 3),

<sup>7</sup> A/HRC/WGEID/1, paras. 6, 53 and 59.

<sup>8</sup> On cooperation between the special procedures of the African Commission on Human and Peoples' Rights and of the Human Rights Council. See [https://www.ohchr.org/sites/default/files/documents/hrbodies/special-procedures/2022-10-17/10-years\\_Addis-Ababa-Roadmap-brochure.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/special-procedures/2022-10-17/10-years_Addis-Ababa-Roadmap-brochure.pdf).

<sup>9</sup> African Charter on Human and Peoples' Rights, art. 60.

<sup>10</sup> A/HRC/30/38/Add.5, para. 2.

respect for life and integrity of the person (art. 4), respect of inherent dignity (art. 5), right to liberty and security (art. 6), right to work (art. 15), right to enjoy the best attainable state of physical and mental health (art. 16), right to education (art. 17), right to family life (art. 18), equality and freedom from domination (art. 19), right to existence (art. 20), right to property, wealth and natural resources (art. 21) and right to economic, social and cultural development (art. 22).

16. Enforced disappearance as a crime against humanity is prohibited in article 28C of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol), adopted on 27 June 2014, although it is yet to come into force.

17. The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), which entered into force on 6 December 2012, is the first binding instrument to address the needs of internally displaced persons at the international level. The Kampala Convention establishes legal protection for the displaced and binds States to protect the rights of internally displaced persons from enforced disappearance (art. 9).

18. The African Charter on the Rights and Welfare of the Child protects against all forms of torture and inhuman or degrading treatment (art. 16). It is important to note that the African Charter on the Rights and Welfare of the Child makes explicit reference to and stresses the obligation for the protection of children in armed conflict (art. 22), refugee children (art. 23), adoption (art. 24), separation from parents (art. 25) and sale, trafficking and abduction (art. 29), which are all relevant provisions in the protection against enforced disappearances of children.

19. The Maputo Protocol notably protects women's rights to life, integrity and security (art. 4), including effective rehabilitation and reparation, full protection under international refugee law, access to justice and protection before the law (art. 8) and protection of women in armed conflict (art. 11).

20. The Working Group also notes that the African continent has a soft law instrument to guide States in relation to the prevention of enforced disappearances. In 2020, the African Commission on Human and Peoples' Rights adopted its resolution 448, tasking its Working Group on the Death Penalty, Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa with developing guidelines on the protection of all persons from enforced disappearances in Africa,<sup>11</sup> which were adopted at the seventy-first ordinary session of the African Commission in May 2022 and were launched in October 2022. The Working Group on Enforced or Involuntary Disappearances welcomes these guidelines, which represent the first holistic document developed at the regional level to provide guidance and support to African Union member States to eradicate enforced disappearances throughout the African continent, and it encourages African States to implement it.

#### **IV. Regional and subregional institutional mechanisms**

21. The Working Group, from its engagements with numerous victims and their families, as well as with civil society organizations, is fully cognizant of the challenges they face in the pursuit of justice in cases of enforced disappearance. This is not only due to a lack of trust in public institutions, criminalization, prevailing impunity, lack of redress, and fear of reprisals, but also because families often struggle with the need to support their livelihoods, which overshadows their efforts to seek justice. Moreover, accessing mechanisms outside the national systems also presents challenges, namely lack of awareness, and the physical distance between the country of residence of the victims and the seat of the judicial and human rights bodies, which act as obstacles. As such, the Working Group recognizes that regional and subregional prevention and protection mechanisms play an important role in providing victims with access to justice. The Working Group highlights the importance of judicial and human rights bodies having sufficient financial, political and technical resources

<sup>11</sup> See <https://achpr.au.int/index.php/en/documents/2022-10-25/guidelines-protection-persons-enforced-disappearances-africa>.

to carry out their mandate independently and effectively. Below, the Working Group refers to some of these regional and subregional mechanisms.

### **African Commission on Human and Peoples' Rights**

22. With regard to the procedures of the African Commission on Human and Peoples' Rights, the Working Group learned that, pursuant to its communications procedure, the Commission could receive and consider submissions from States that make a claim against another State party.<sup>12</sup> Individuals and organizations<sup>13</sup> can also make submissions alleging that a State party to the African Charter on Human and Peoples' Rights has violated one or more of the rights guaranteed therein. According to article 56 (5) of the African Charter, submissions should be "sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged". In addition to the communications procedures, the Commission may adopt urgent resolutions on specific and general human rights situations in African countries, pursuant to the initiatives of the Commissioners in charge of monitoring the human rights situation in a given State.

23. The African Commission on Human and Peoples' Rights also periodically examines State party reports concerning the human rights situation in the countries. The Working Group commends the Commission for maintaining the review procedure and for making recommendations and observations to States on enforced disappearances, including recommending accession to, or the ratification of, the Convention.<sup>14</sup>

### **African Court on Human and Peoples' Rights**

24. The African Court on Human and Peoples' Rights was established to complement and reinforce the functions of the African Commission on Human and Peoples' Rights,<sup>15</sup> and holds both contentious and advisory mandates. Its powers include the interpretation and implementation of the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on the establishment of the African Court, and other instruments concerning human rights.<sup>16</sup> Access to the Court is outlined in article 5 of the Protocol establishing the Court, which includes the African Commission on Human and Peoples' Rights, certain States parties, non-governmental organizations (NGOs) which are granted observer status with the African Commission on Human and Peoples' Rights, and individuals of States that have accepted their direct access to the Court (having ratified the Protocol and deposited the article 34 (6) declaration). If the State has not accepted such a right, individuals and NGOs could try to seize the Court via a petition filed with the African Commission. The Court issues final binding judgments on the parties,<sup>17</sup> and while no appeals are allowed, a party may request a review of a judgment in the event of the discovery of new facts or evidence<sup>18</sup> or may apply for interpretation of a judgment.<sup>19</sup>

### **East African Court of Justice**

25. The Working Group noted that the jurisdiction of the East African Court of Justice under article 27 of the Treaty for the Establishment of the East African Community was limited to the interpretation and application of that Treaty, while other jurisdictions, including human rights, were to be determined subsequent to its adoption.<sup>20</sup> Despite having no explicit

<sup>12</sup> African Charter on Human and Peoples' Rights, arts. 48 and 49.

<sup>13</sup> *Ibid.*, art. 55.

<sup>14</sup> See concluding observations and recommendations on Algeria, available at <https://achpr.au.int/sw/node/2241>; on Eritrea, available at <https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-initial-and-combined-periodic/>; and on Zimbabwe, available at <https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-zimbabwe-11th-12th-13th-14th>.

<sup>15</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, art. 2.

<sup>16</sup> African Court on Human and Peoples' Rights, Rules of Court (1 September 2020), rule 29.

<sup>17</sup> *Ibid.*, rule 72.

<sup>18</sup> *Ibid.*, rule 78.

<sup>19</sup> *Ibid.*, rule 77.

<sup>20</sup> Art. 27 (2).

mandate to deal with cases concerning alleged violations of human rights, the East African Court of Justice continues to treat these cases based on its interpretation of articles 6 (d) and 7 (2) of the Treaty, which allows the Court to deal with all matters relating to observance of the rule of law by the Partner States of the East African Community,<sup>21</sup> and has affirmed its position in jurisprudence.<sup>22</sup> As such, any person who is resident in a Partner State may file an application to the East African Court of Justice.<sup>23</sup> Furthermore, there is no requirement that, before the submission of an application, all domestic remedies be exhausted. However, according to article 30 (2) of the Treaty, an individual must initiate a case promptly within two months of the decision or actions being challenged.

### **ECOWAS Community Court of Justice**

26. The Community Court of Justice was created pursuant to articles 6 and 15 of the 1993 Revised Treaty of the Economic Community of West African States, as the principal legal organ of the Community. At the time of its creation, the Community Court of Justice was not entrusted with jurisdiction over allegations of human rights violations. In 2005, a Supplementary Protocol<sup>24</sup> amended certain provisions in the preamble and articles 1, 2, 8 and 30, which extended the jurisdiction of the Community Court of Justice to encompass alleged human rights violations and implemented the African Charter on Human and Peoples' Rights and international law. The Community Court of Justice issues decisions that are binding and are not subject to appeal. However, the Court may review applications relating to new facts in a case that it has decided on and issue a revision. Importantly, applicants to the Court do not have to exhaust national remedies before lodging their application.

## **V. General observations on enforced disappearance in Africa**

27. Based on the information gathered during its visit and the contributions received, the Working Group wishes to highlight the fact at the outset that enforced disappearances are a global phenomenon, which take place in the African continent, just as in other regions of the world. The information and accounts that the Working Group received demonstrated that enforced disappearances are used as a tool by Governments to suppress dissent and shrink civic space in the context of armed conflicts, counter-terrorism measures, migration and so on. The major finding of the Working Group is that enforced disappearance in the continent is less visible; victims and families of the disappeared may not be able to label it as such, but they can very accurately describe it. The Working Group highlights below, in a non-exhaustive manner, circumstances about which it received information on enforced disappearance, and also examines the rich body of jurisprudence of the African regional and subregional mechanisms that have documented enforced disappearance through their communications, State party reports, and contentious applications and advisory opinions.

### **Enforced disappearance and armed conflict**

28. The Working Group has previously elaborated on enforced disappearances during armed conflicts perpetrated by armed forces, militia groups, and State security forces against civilian populations across the globe, particularly in the African region.<sup>25</sup> The Working

<sup>21</sup> Treaty for the Establishment of the East African Community, art. 3. See also [www.eac.int/eac-partner-states](http://www.eac.int/eac-partner-states).

<sup>22</sup> See *James Katabazi and 21 Others v. Secretary General of the East African Community and Attorney General of the Republic of Uganda*, Reference No. 1 of 2007, Judgment, 1 November 2007; *Plaxeda Rugumba v. Secretary General of the East African Community and Attorney General of the Republic of Rwanda*, Reference No. 8 of 2010, Judgment, 1 December 2011; *Centre for Constitutional Governance and 3 Others v. Attorney General of the United Republic of Tanzania*, Reference No. 43 of 2020; and *Pan African Lawyers Union (PALU) v. Attorney General of the Republic of South Sudan*, Reference No. 26 of 2020.

<sup>23</sup> Treaty for the Establishment of the East African Community, art. 30.

<sup>24</sup> A.SP.1/01/05.

<sup>25</sup> [A/HRC/7/2](#), para. 422; [A/HRC/19/58/Add.3](#), paras. 25–27; [A/HRC/33/51/Add.2](#); [A/HRC/51/31](#), para. 41; and [A/HRC/54/22](#), para. 58. See also Working Group on Enforced or Involuntary



Group continued to receive information about enforced disappearance being used as a tool of suppression by military and security forces prior to armed conflict in a systematic manner, which continued into the armed conflict. It also received reports of enforced disappearances and acts tantamount to enforced disappearance perpetrated against women and children in the context of armed conflicts. The Working Group received reports of women and girls being abducted, kept in inhuman, slave-like conditions in secret detention centres also known as “ghost houses” in warehouses, abandoned houses and other private locations, and being subjected to repeated rape or other forms of sexual violence. The Working Group notes with concern that following armed conflicts, little progress is made in terms of searching for the disappeared, investigations, and access to remedies or redress.

29. The Working Group considers that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability, or any other public emergency, may be invoked to justify enforced disappearance.<sup>26</sup> The African Commission on Human and Peoples’ Rights has also established that even a situation of civil war cannot be cited as justification by the State or its authority, to violate the African Charter on Human and Peoples’ Rights.<sup>27</sup> Furthermore, the Commission, in its decision on the *Commission nationale des droits de l’homme et des libertés v. Chad* communication, reiterated the obligation of States to protect people under its jurisdiction during a civil war against attacks by unidentified militants, not proven to be government agents. Failure to do so was considered a violation of the rights protected in the African Charter.<sup>28</sup>

30. The African Committee of Experts on the Rights and Welfare of the Child also holds that the State has an obligation under article 22 (2) of the African Charter on the Rights and Welfare of the Child to protect children from recruitment and use in armed conflict.<sup>29</sup> The Working Group considered in its general comment on children and enforced disappearances (2012) that the forced recruitment of child soldiers also places them at potential risk of enforced disappearance and acts tantamount to enforced disappearance, especially when they are recruited by armed groups distinct from the regular armed forces of a State but operating with the support, consent or acquiescence of the State. This increases their risk of marginalization, abuse and exploitation, and thus, States should afford them special protection, specifically in addressing violence against children.<sup>30</sup>

31. The Working Group is also cognizant that national judicial mechanisms in African Union member States have taken steps to open investigations based on universal jurisdiction for crimes, including enforced disappearance.<sup>31</sup>

### **Enforced disappearance in the context of counter-terrorism and security operations**

32. The Working Group notes that enforced disappearances carried out in the context of counter-terrorism measures are prevalently used in the African continent, supported by legislation where the definition is very broad to include charges either for joining a terrorist organization or for receiving foreign funds in order to carry out the aim of a terrorist organization.<sup>32</sup> In many of these cases, human rights defenders, political dissidents and civil society organizations are often the target of these policies to curtail their freedom of expression and activism. The Working Group received information on enforced

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Disappearances, general allegations on Libya (116th session, September 2018), on Eritrea (111th session, February 2017) and on Cameroon (109th session, May 2016).

<sup>26</sup> Declaration on the Protection of All Persons from Enforced Disappearance, art. 7.

<sup>27</sup> *Malawi African Association and Others v. Mauritania*, communications No. 54/91, No. 61/91, No. 98/93, Nos. 164/97–196/97 and No. 210/98, Joint Decision, 11 May 2000.

<sup>28</sup> Communication No. 74/92, Decision, October 1995.

<sup>29</sup> *Michelo Hunsungule and Others (on behalf of children in Northern Uganda) v. Government of Uganda*, communication No. 1/2005, Decision, April 2013.

<sup>30</sup> A/HRC/WGEID/98/1, para. 3.

<sup>31</sup> Extraordinary African Chambers, *Office of the Public Prosecutor v. Hissène Habré*, Judgment, 30 May 2016.

<sup>32</sup> See communications EGY 1/2024, BFA 1/2024 and EGY 7/2023. All communications mentioned in the present report are available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>. See also Working Group on Enforced or Involuntary Disappearances, general allegation on Kenya (112th session, May 2017).



disappearances carried out against suspected terrorists in many countries. The Working Group was informed of instances where individuals, allegedly affiliated with terrorist groups, had been summarily executed, and the remains had not been returned to the families. The Working Group also received accounts of the adoption of legislation to facilitate the commission of enforced disappearances by allowing the incommunicado detention of individuals perceived as terrorists for up to 20 days without any contact with the outside world.

33. The Working Group learned that the African Commission on Human and Peoples' Rights had also documented cases in which the State had forcibly disappeared people in the context of counter-terrorism measures and had found violations of the African Charter on Human and Peoples' Rights. In particular, in one communication, political dissidents suspected of plotting against the State had been subjected to kidnapping and disappearance and had subsequently been summarily executed.<sup>33</sup> In filing the case *Kamilya Mohammedi Tuweni v. Kenya's Commissioner of Police et al.* before the High Court of Kenya, as well as the communication *Kamilya Mohammedi Tuweni and 4 Others (represented by REDRESS) v. Kenya* addressed to the African Commission on Human and Peoples' Rights, the applicants allege that they were forcibly disappeared following a sweeping operation for suspected terrorists by the Kenyan Counter-Terrorism Force.<sup>34</sup>

### **Transnational and extraterritorial enforced disappearances**

34. The Working Group received information on several enforced disappearances in the context of transnational abductions across and beyond the African continent and has transmitted, through the special procedures' communications, information to countries engaging in transnational repression of their nationals.<sup>35</sup> The Working Group has expressed its concern at Governments who have been targeting their nationals outside their territory, in some instances with the support or acquiescence of the local Government, in violation of international law, including the principle of non-refoulement. Victims have reportedly been flown on chartered commercial flights and private jets, often with the help of embassy personnel in the country of abduction.

35. In one case, the Working Group was informed of the practice of rendition, whereby the victim had been arrested in the country of destination, had been accused of illegally crossing the border and of being a rebel, had been forcibly transferred and handed over to the military intelligence of the country of origin and had subsequently been forcibly disappeared. In another case, the victim had been forcibly disappeared and illegally transferred from a country outside the African continent and had reappeared three days later in his country of birth to face prosecution on terrorism charges in a trial marred by violations of due process rights and client-lawyer privilege rules.

36. The Working Group also received information on countries engaging in transnational repression of their nationals to curb dissent beyond their borders. In that context, the Working Group learned and welcomed the information that the East African Court of Justice had received and was still considering an application relating to the alleged abduction of a registered asylum-seeker who had been forcibly disappeared in one country and reportedly transferred to a third State.<sup>36</sup>

<sup>33</sup> *Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso*, communication No. 204/97, Decision, May 2001.

<sup>34</sup> *Kamilya Mohammedi Tuweni v Kenya's Commissioner of Police et al.*, High Court of Kenya, 11 June 2009; and *Kamilya Mohammedi Tuweni and 4 Others (represented by REDRESS) v. Kenya*, African Commission on Human and Peoples' Rights, communication No. 778/22, May 2023.

<sup>35</sup> See communications COM 1/2021, COM 1/2020, KEN 2/2024, RWA 2/2024, RWA 2/2021, RWA 1/2020, SSD 1/2023 and SSD 1/2017. See also [A/HRC/48/57](#), paras. 38–59.

<sup>36</sup> *Hope for Humanity Africa (H4HA) and Pan Africa Lawyers Union (PALU) v. The Hon. Minister of Justice of the Republic of South Sudan and The Hon. Attorney General of the Republic of Kenya*, Reference No. 15 of 2019.

## Elections and enforced disappearances

37. The Working Group has recognized that the practice of enforced disappearance in the context of elections undermines the democratic process and has long-lasting negative effects on countries.<sup>37</sup> Serious allegations of human rights violations, including enforced disappearances, were reported to the Working Group before, during and after elections.

38. The prevalence of enforced disappearances in this context is evident, and can also be seen in the number of cases and communications before the regional and subregional mechanisms. The African Commission on Human and Peoples' Rights has also recorded emblematic communications to demonstrate systemic practices, for example where a complainant alleged that a group of 15 senior officials openly critical of the Government had been illegally arrested and disappeared solely for the peaceful expression of their political opinion.<sup>38</sup> In one case where the circumstances involved a large number of victims over a long period of time,<sup>39</sup> the Commission recommended that an independent inquiry be set up to clarify the fate of the persons considered disappeared, to identify and prosecute the perpetrators, and to ensure the payment of compensatory benefits to the widows and beneficiaries of the victims.

39. The East African Court of Justice also dealt with a collective application that alleged that security agents, including militia and other non-State actors, acting with the support and/or forbearance of the national security agencies, in the days preceding, during and immediately following the elections, had committed acts of killing and torture, enforced disappearances, abductions, acts of sexual violence including gang rape, rape and sexual assault, illegal arrests and detentions, the destruction and looting of property, forced displacement and system abuse of legal process.<sup>40</sup> Similarly, the East African Court of Justice received a case concerning the disappearance of a political dissident, who had allegedly been subjected to unlawful arrest, enforced disappearance, arbitrary detention and severe torture, and had been killed, possibly with indecent disposal of the mortal remains.<sup>41</sup>

40. Furthermore, the ECOWAS Community Court of Justice, considering the case of a political dissident who had been murdered following an enforced disappearance,<sup>42</sup> submitted to the Working Group's humanitarian mandate,<sup>43</sup> ruled in favour of the victim and awarded damages for violation of the right to life. In that case, the Working Group also wishes to reiterate that in its consideration of the admissibility of the application, the ECOWAS Community Court of Justice affirmed the definition of a victim of a human rights violation as a person who suffers directly or indirectly any harm or pain (physical or mental injury), emotional suffering (through the loss of a close family member or relative), economic loss (loss of property) or any impairment that can be categorized as a human rights violation.<sup>44</sup> The Working Group also considers both the disappeared person and those who have suffered harm as a result of the disappearance to be victims of the enforced disappearance, as they

<sup>37</sup> Working Group on Enforced or Involuntary Disappearances, general allegations on Uganda (127th session, May 2022) and Burundi (114th session, February 2018). See also communications UGA 6/2022 and ZWE 2/2023; and [A/HRC/57/54/Add.7](#).

<sup>38</sup> *Liesbeth Zegveld and Messie Ephrem v. Eritrea*, communication No. 250/02, Decision, November 2003.

<sup>39</sup> *Malawi African Association v. Mauritania*, communication No. 54/91; *Amnesty International v. Mauritania*, communication No. 61/91; *Sarr Diop, Union Interafricaine des Droits de l'Homme and RADDHO v. Mauritania*, communication No. 98/93; *Collectif des Veuves et Ayants-droit v. Mauritania*, communications No. 164/97–No. 196/97; and *Association Mauritanienne des Droits de l'Homme v. Mauritania*, communication No. 210/98, Joint Decision, 11 May 2000.

<sup>40</sup> *Centre for Constitutional Governance and 3 Others v. Attorney General of the United Republic of Tanzania*, Reference No. 43 of 2020.

<sup>41</sup> *Pan African Lawyers Union (PALU) v. Attorney General of the Republic of South Sudan*, Reference No. 26 of 2020.

<sup>42</sup> *Nana-Jo Ndow v. the Republic of the Gambia*, Application No. ECW/CCJ/APP/31/19, Judgment, 5 July 2023.

<sup>43</sup> [A/HRC/WGEID/100/1](#), para. 83.

<sup>44</sup> *Rev. Fr. Solomon MFA and 11 Others v. Federal Republic of Nigeria and 5 Others*, Application No. ECW/CCJ/APP/11/16, Judgment, 26 February 2019, p. 15; and *Tahirou Djibo and 3 Others v. the Republic of Niger*, Application No. ECW/CCJ/APP/51/18, Judgment, 8 July 2020, p. 26.

suffer violations of a range of rights, including economic, social and cultural rights.<sup>45</sup> Notably, the African Commission on Human and Peoples' Rights also applies a broad definition of victim, as established in *Zongo et al. v. Burkina Faso*, to include individuals or a collective who have suffered moral prejudice due to human rights violations.<sup>46</sup>

### **Enforced disappearances in the defence of land, natural resources and the environment**

41. The Working Group received reports of enforced disappearances targeting Indigenous Peoples and communities in Africa in the context of the defence of land and natural resources.<sup>47</sup> Development projects, often involving foreign investors, including the expansion of road projects, have led to forced evictions and the uprooting of traditional landowners from their ancestral land. The Working Group learned that in a particular instance, around a hundred individuals, among them an octogenarian, had allegedly been forcibly disappeared in the context of forced eviction and land demarcation. Additionally, Indigenous Peoples have frequently faced patterns of abuse, including torture, incommunicado detention, forced displacement, and challenges to their citizenship by the authorities due to their semi-nomadic pastoralist ways of life.

42. The Working Group notes that, from cases such as *Ololosokwan Village Council and Three Others v. Attorney General of the United Republic of Tanzania*<sup>48</sup> and *Zimbabwe Human Rights NGO Forum v. Zimbabwe*,<sup>49</sup> enforced disappearance is used as a tool to oppress environmental activists and community leaders.

### **Enforced disappearance and migration**

43. The Working Group has been particularly concerned about enforced disappearances in the context of migration and, in its report,<sup>50</sup> noted its concern for migrants on the move because of the increased militarization of borders and the criminalization of irregular entry, leading migrants to use unsafe routes or to rely on traffickers and smugglers (sometimes with the collusion, or the tolerance and acquiescence, of State agents), exposing them to serious human rights violations, including enforced disappearance. The Working Group has also reported on cases of disappearances of migrants on the Mediterranean route, and on the less visible – but most used by African migrants – eastern route from East Africa and the Horn of Africa towards the Arabian Peninsula, and southern route from East Africa and the Great Lakes towards Southern Africa.<sup>51</sup>

44. The Working Group learned about one legislative initiative to amend the immigration, refugee and citizenship legal and policy framework in a particular State, proposing withdrawal from the 1951 Convention relating to the Status of Refugees, which, if adopted and implemented, will increase the vulnerability of people seeking asylum and refugees in that country. The Working Group was also informed of a practice whereby refugee reception centres send notices to asylum-seekers, and upon arrival, those whose asylum claims have been rejected are handed a notice of rejection of their asylum application and are immediately deemed to be in the country irregularly. The asylum-seekers are then arrested and subjected to incommunicado detention, and are unable to contact their family and friends, placing them at heightened risk of enforced disappearance within the police system.

45. The Working Group and other special procedure mechanisms have expressed their concern about information received about agreements and laws in European countries to remove migrants arriving irregularly to third States in African countries where they would

<sup>45</sup> A/HRC/22/45, para. 51.

<sup>46</sup> Application No. 013/2011, Judgment on Reparations, 5 June 2015.

<sup>47</sup> See communication TZA 2/2023.

<sup>48</sup> Application No. 15 of 2017 (arising from Reference No. 10 of 2017), Judgment, 25 September 2018.

<sup>49</sup> Communication No. 245/02, Decision, May 2006.

<sup>50</sup> A/HRC/36/39/Add.2. See also communication EGY 4/2022.

<sup>51</sup> Working Group on Enforced or Involuntary Disappearances, general allegations on Libya (132nd session, January and February 2024) and on Algeria (121st session, May 2020). See also communication TZA 1/2021.

be at risk of being subjected to enforced disappearance, in contravention of international human rights protection principles.<sup>52</sup>

46. The Working Group also notes with concern the recent agreements between the European Union and several<sup>53</sup> African countries that enable these countries to retain migrants on behalf of the former and in violation of the principle of non-refoulement. The Working Group notes that migrants detained in such conditions have often been subject to enforced disappearance or are at heightened risk of being subjected to enforced disappearance.

47. The Working Group noted the concern of the African Commission on Human and Peoples' Rights at the number of migrants and refugees who use irregular migration routes and for multiple reasons go missing in Africa under various circumstances, including during armed conflicts, situations of violence, trafficking, forced labour, rape and other forms of sexual violence that put them at risk of enforced disappearance or disappearance in other circumstances. The Commission adopted a resolution on missing migrants and refugees in Africa and the impact on their families,<sup>54</sup> which it urges African Union member States to respect their obligations and commitments undertaken by subscribing to the African Union standards and policies on the protection of asylum-seekers, refugees and migrants in the continent, as well as to take all possible measures to prevent migrants and refugees transiting or residing on their territory or under their jurisdiction from going missing, including preventing the separation of families, and reuniting them where possible, as well as endeavouring to identify dead or missing persons, in accordance with applicable legal frameworks. In the resolution, the Commission recognizes the vulnerable situations of irregular migrants due to the circumstances of their journey and further calls upon States to regularly assess their migration laws and policies so that they do not lead to new or increased risks of disappearances of migrants and refugees. It also calls upon States to take measures to punish perpetrators of human rights violations against migrants and refugees, including by ensuring prompt, impartial and effective investigation of any potential deaths outside the law enforcement process or of enforced disappearances within their jurisdiction.

#### **Enforced disappearance and civic space in the context of peaceful assembly and association**

48. Demonstrations and peaceful protests in Africa have reportedly led to enforced disappearance as authorities resort to severe measures to deter activists, organizers and participants.<sup>55</sup> The African Commission on Human and Peoples' Rights is very clear in its pronouncement in *International PEN and others on behalf of Ken Saro-Wiwa v. Nigeria*,<sup>56</sup> in which it ruled that the right to freedom of expression and the right to association and assembly were closely intertwined; thus, a violation of the right to freedom of expression is often followed by an infringement of articles 10 and 11 of the African Charter on Human and Peoples' Rights.

49. The Working Group received information about protests staged for various reasons – economic or political – where, despite following the required legal protocols, the peaceful protests are met with excessive use of force by the local authorities, resulting in enforced disappearance. There were reports of police raiding – without warrants – the homes of protest organizers on the morning ahead of the protests. The Working Group also received information about a case involving three female opposition leaders who disappeared in 2020 after spearheading a protest against government measures.<sup>57</sup> Despite the victims reporting it, no investigation was initiated following their reappearance to elucidate the events. Instead, the Government laid charges against the three victims, accusing them of promoting violence

<sup>52</sup> See communications GBR 2/2024, GBR 9/2023, GBR 3/2022, GBR 12/2022, GBR 9/2022 and GBR 11/2021.

<sup>53</sup> See communication OTH 98/2023.

<sup>54</sup> Document ACHPR/Res. 486 (EXT.OS/XXXIII) 2021.

<sup>55</sup> Working Group on Enforced or Involuntary Disappearances, general allegations on the Sudan (128th session, September 2022) and Rwanda (127th session, May 2022).

<sup>56</sup> *International PEN, Constitutional Rights Project, Civil Liberties Organisation and Interights on behalf of Ken Saro-Wiwa Jr. v. Nigeria*, communication No. 137/94-139/94-154/96-161/97.

<sup>57</sup> See communication ZWE 1/2020.

and staging their disappearances. It was not until July 2023 that the three victims were ultimately acquitted. However, the day following their acquittal, their legal representative fell victim to a brutal attack perpetrated by four unidentified assailants.

### **Enforced disappearances and torture and ill-treatment**

50. The Working Group has documented cases in which victims of enforced disappearance report that they are being subjected to torture and other forms of ill-treatment, including physical and mental ill-treatment, forced labour, sexual exploitation and being injected with poisonous substances.<sup>58</sup> The Working Group also received information on a minor who was subjected to daily beatings with electric cables and rifle butts while being given only salty water to drink and being forced to take drugs, and being frequently threatened with death. The Working Group has heard from victims who were abducted and later released in remote areas, naked, traumatized and in need of urgent medical care.

51. The Working Group recognizes that families of disappeared persons are victims, who also face impacts on their physical and psychological health caused by the disappearance.<sup>59</sup> The Working Group was seriously concerned at the information it received that, in many countries, authorities compelled family members to undertake the grim task of searching for their disappeared loved ones. One family member of a victim of enforced disappearance shared the emotional toll, expressing that he had had to cease searching for his brother, unable to endure the anguish of regularly visiting mortuaries and inspecting unidentified bodies. The Working Group also received tragic information about two parents of disappeared victims who had succumbed to the stress and anxiety stemming from the uncertainty surrounding the whereabouts of their beloved children, as attested to by their grief-stricken families. The Working Group found that in addition to the profound personal losses, families of the disappeared also faced societal stigma within their communities.

52. The Working Group reiterates that enforced disappearances entail a violation of the right not to be subjected to torture and other forms of ill-treatment, both with regard to the disappeared and with regard to their family members, due to the anguish and uncertainty concerning the fate and whereabouts of their loved ones and the attitude of official indifference by authorities in the face of their quest.<sup>60</sup>

53. In its jurisprudence, the African Commission on Human and Peoples' Rights has also established a violation of freedom from torture in relation to the disappearance of persons.<sup>61</sup> The Commission has also stated, in its general comment on the right to life, that enforced disappearances constitute a threat to the right to life.<sup>62</sup> Furthermore, in *Mouvement burkinabé des droits de l'homme et des peuples v. Burkina Faso*, and in *Liesbeth Zegveld and Messie Ephrem v. Eritrea*, the Commission found prolonged incommunicado detention to be a form of ill-treatment.

## **VI. Observations from civil society**

54. During its visit, the Working Group met a large number of representatives of civil society and non-governmental organizations, and victims of enforced disappearance. The Working Group also received submissions for its call for inputs and thanks those who made

<sup>58</sup> See communications ZWE 2/2023 and ZWE 1/2020. See also Working Group on Enforced or Involuntary Disappearances, general allegation on Egypt (113th session, September 2017).

<sup>59</sup> E/CN.4/1983/14, para. 136.

<sup>60</sup> Human Rights Committee, *El-Megreisi v. Libya*, communication No. 440/1990, para. 5.4. See also Committee against Torture, conclusions and recommendations on the second periodic report of Algeria (A/52/44, para. 79), on the initial report of Namibia (A/52/44, para. 247) and on the initial report of Sri Lanka (A/53/44, paras. 249 and 251).

<sup>61</sup> *Liesbeth Zegveld and Messie Ephrem v. Eritrea*, para. 55; and *Institute for Human Rights and Development in Africa and Others v. Democratic Republic of the Congo*, communication No. 393/10, Decision, June 2016.

<sup>62</sup> General comment No. 3 on the African Charter on Human and Peoples' Rights: the right to life (article 4) (2015), para. 8.

written contributions. From this information, the Working Group makes the observations below.

### **Obstacles in reporting enforced disappearances**

55. The Working Group, in its interaction with civil society and in its consultations with the regional mechanisms, learned that enforced disappearance, its constitutive elements and the corresponding obligations of the State and rights of the victims, are not well known in general. The Working Group found that this was attributable to a number of reasons, including that in many African countries enforced disappearance is not codified as an autonomous crime. This, in turn, makes it impossible for victims to report cases of enforced disappearance under the legal framework, and makes it challenging for the authorities to prevent, investigate and sanction the crime of enforced disappearance when it occurs.

56. Victims of enforced disappearance, who are mainly human rights defenders, journalists, Indigenous people, pastoralists, migrants, asylum-seekers, political activists, women and children, and their families, are also reluctant to report enforced disappearance due to a lack of trust in public institutions, impunity, criminalization, lack of redress and remedies, and fear of reprisals, and out of a general lack of awareness of the legal remedies available at the national, regional and international levels. People also struggle with any pursuit of justice because their livelihood needs often overshadow their efforts. The prevalent climate of criminalization, persecution, reprisals, harassment, intimidation and aggression against victims of enforced disappearance and against the civil society organizations and lawyers assisting the victims creates mistrust as well as fear that they could also be forcibly disappeared, and makes victims reluctant to report cases of enforced disappearance to the same State authorities that are alleged perpetrators.

57. In many instances presented to the Working Group, when a case is reported to the authorities, that is, to the police, the judiciary and prosecution officers, stakeholders have reported that the authorities lack the necessary investigative and specialized technical skills to search for the disappeared, prosecute the perpetrators and provide reparations to the victims. Furthermore, while reporting cases to authorities, victims find that authorities also enquire into the families' personal and religious identity and activities, contributing to a heightened reluctance among families of disappeared persons, particularly those belonging to religious or belief minorities, to report their cases.

58. The Working Group learned of the administrative and bureaucratic hurdles faced by the relatives of the disappeared person when bringing cases before subregional courts. In one instance, a case before a subregional court was dismissed because the plaintiff was unable to establish their relationship with the deceased through documentary evidence such as a birth certificate. Such formalistic requirements, in a context where, in many circumstances, familial relations, including by marriage, are governed by customary law, pose additional and unnecessary hurdles for relatives seeking redress.

### **Criminalization of victims, advocates and human rights defenders**

59. The Working Group received information about multiple cases of criminalization of victims, civil society organizations, lawyers and advocates in their search for disappeared persons, becoming targets of the authorities, with their work discredited, and obstacles put in their way when they need to register or renew their licences to practise, as well as finding themselves subjected to arrest or threats of criminal prosecution on various trumped-up charges. The Working Group also received information about instances where lawyers and human rights defenders had been persecuted for cooperating with United Nations human rights mechanisms, including by attending sessions of the Human Rights Council. They are also reportedly subjected to enforced disappearance to hinder their human rights work.

60. In some countries, repeated persecution and criminalization of human rights defenders, journalists, political opponents and dissenting individuals have forced a large number of individuals to exile themselves and flee their country, consequently shrinking the civic space in that country. The Working Group received reports of the situation in one particular country, where more than 100 civil society organizations operated from third countries and over 100 journalists were in exile.

## Impunity

61. The culture of impunity for perpetrators of enforced disappearance is deeply engrained and is reported across the African continent. Despite the prevalence of enforced disappearance, the Working Group could not document one instance of an effective investigation and prosecution of enforced disappearance throughout its visit and in the testimonies heard. The lack of successful prosecutions highlights the magnitude and pervasiveness of impunity for enforced disappearance, which significantly erodes trust in the justice system and perpetuates an environment where the practice persists without any accountability.

62. The lack of independence of the prosecutorial and judicial authorities reported to the Working Group, coupled in many cases with a failure to safeguard due process guarantees, prevents many victims in the African continent from seeking redress domestically, thus reinforcing the cycle of impunity and leaving victims without remedies to seek justice.

63. The Working Group found that numerous African States were yet to acknowledge or address historical injustices. Instead, many African States had opted to adopt amnesty laws and policies of “forgive and forget”, and remained resolute about not disclosing the truth about past violations. For instance, some African countries had embraced such policies during the post-colonial period as a strategy for national reconciliation and transitional justice processes. The amnesty laws have circumvented the need for scrutiny, accountability, and redress for gross human rights violations, such as enforced disappearances. Moreover, the absence or inaccessibility of historical archives significantly affects the inalienable right to know the truth about past events. The dearth of documentation or the deliberate restriction of access to existing records has obscured the historical truth, hindered investigations of past abuses and rendered justice unattainable for victims. The preservation and accessibility of archives are fundamental to hold perpetrators accountable, to deliver justice to victims and to allow society to confront past atrocities. Failure to address past atrocities has played a role in the continued overlooking of the phenomenon of enforced disappearance in the African continent and has contributed to further entrenching the culture of impunity. Confronting and remedying past injustices remains paramount in building a future devoid of human rights violations, including enforced disappearances.

## VII. Conclusions

64. **The Working Group recognizes the work done by the African Union judicial and human rights organs and other subregional bodies to advance the protection and promotion of human rights in the continent. It encourages these organs to step up these efforts while focusing on the eradication of enforced disappearances in the region.**

65. **The Working Group acknowledges and celebrates the work of African human rights defenders and civil society organizations in assisting victims of human rights violations in the continent, often operating under harsh conditions and at great personal risk. Despite operating under difficult circumstances, exacerbated by a rise in human rights violations, including enforced disappearances, shrinking democratic freedoms under authoritarian regimes, conflicts, and lack of technical expertise on enforced disappearances, their commitment to assist victims remains steadfast.**

66. **The Working Group found that, in general, victims of enforced disappearance in Africa harboured deep mistrust of law enforcement entities, including the police, prosecutors, judges and military institutions. This scepticism is rooted in a widespread culture of impunity, and in reprisals, threats and harassment against the victims and those assisting them. Such an environment effectively deprives victims of enforced disappearance of the necessary protection, thereby leaving them without the resources to seek or obtain justice and redress through the established legal channels.**

67. **The present report does not cover all situations in which enforced disappearances may occur in the African context, but rather provides a general overview based on the information gathered during the visit and the submissions received.**



68. There is an urgent need to recognize and address the practice of enforced disappearance in the African continent. Preventing and eradicating enforced disappearances requires the commitment and joint efforts of multiple actors, starting with States, civil society organizations, lawyers and relatives, and encompassing regional and subregional judicial and human rights bodies, the United Nations and other international stakeholders.

69. The Working Group remains committed to continuing to cooperate with and assist the African Union judicial and human rights organs and other subregional bodies through joint initiatives such as learning exchanges, joint activities, and monitoring initiatives such as country visits.

## **VIII. Recommendations**

### **To the African Union judicial and human rights organs and other subregional bodies**

70. Ensure that judicial and human rights organs and subregional bodies have sufficient financial, political and technical resources to carry out their mandate independently and effectively.

71. Accelerate the implementation of the Addis Ababa Road Map in line with the vision for the next decade, which the African Commission on Human and Peoples' Rights and the special procedures of the Human Rights Council agreed upon during the tenth anniversary celebrated in Banjul in 2022.

72. Contribute to the dissemination of the Declaration and raise awareness about its content, including, where appropriate, by referring to its provisions in their respective jurisprudence.

73. Engage in peer-to-peer discussion with the Working Group to exchange views on issues related to the respective mandates.

74. Ensure that enforced disappearances are part of their agenda in the regular exchanges with the regional mechanisms in Europe and the Americas, including with other special procedures of the Human Rights Council and with United Nations treaty bodies.

75. Hold regular discussions with African civil society organizations to exchange information and gather information on enforced disappearance.

### **To African Union member States**

76. The Working Group would like to recall that, under the Declaration, all States have an obligation to prevent and eradicate enforced disappearance and to provide redress to all victims of enforced disappearance. It recommends that States:

(a) Codify enforced disappearance as an autonomous crime in their domestic legislation, punishable by appropriate penalties that take into consideration its extreme seriousness, with the exclusion of the death penalty;

(b) Engage and cooperate with the Working Group, including through the acceptance of country visits, and by regularly replying to the communications sent by the Working Group;

(c) Consider availing themselves of the advisory services, technical assistance and cooperation provided by the Working Group for the implementation of the Declaration;

(d) If they have not yet done so, be encouraged to accede to or ratify the International Convention for the Protection of All Persons from Enforced

Disappearance, and recognize the competence of the Committee on Enforced Disappearances to receive and examine individual and inter-State complaints;

(e) Take measures to implement and disseminate the Guiding Principles for the Search for Disappeared Persons;

(f) Disseminate – making them available in local languages, and duly implement – the African Commission on Human and Peoples' Rights guidelines on enforced disappearances in Africa;

(g) Adopt concrete and effective measures to prevent enforced disappearances in conjunction with political instability, coups, social revolutions, elections, demonstrations, internal conflicts, displacement, migration, national security issues, counter-terrorism operations, land disputes, and environmental and natural resources exploitation;

(h) Provide victims of enforced disappearance with prompt, fair and adequate reparation for the harm suffered, encompassing compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition; as well as with access to psychosocial support, giving due consideration to ensuring that the process is inclusive, gendered and participatory and is accommodating of the needs of vulnerable groups such as children, women and Indigenous communities;

(i) Adopt preventive and protective measures against threats, reprisals and harassment against victims of enforced disappearance and those supporting them, including civil society organizations and lawyers, and ensure prompt and effective investigation, prosecution and punishment of perpetrators;

(j) Ensure that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances – including national security considerations or combating terrorism;

(k) Comply with the international human rights obligations of States with regard to the rights of refugees and asylum-seekers, involuntary transfers of individuals, and the prohibition of refoulement, and ensure procedural safeguards prior to extradition, deportation, expulsion and return processes;

(l) Ensure that procedural safeguards and guarantees upon arrest and during the first hours of deprivation of liberty are fully implemented, to prevent enforced disappearance and other human rights violations; these safeguards should include immediate registration and judicial oversight of the detention, a determination of the state of health of the person deprived of his or her liberty, notification of family members as soon as an individual is deprived of his or her liberty, the availability of a defence lawyer of one's choice, and lawyer-client privilege;

(m) Maintain up-to-date official registers of persons deprived of liberty, to be made promptly available to their family members, their counsel or any other person having a legitimate interest in the information, as well as to any judicial or other competent authority or institution authorized for such purpose by the law;

(n) Prohibit amnesties, pardons and other measures that may be aimed at avoiding or indirectly hindering the obligation to investigate, prosecute and punish the perpetrators of enforced disappearance; where such measures are already in place, declare them null and void or, in any case, devoid of any legal effects;

(o) Allocate sufficient funding to, and ensure the delivery of, regular training programmes that include the necessary education and information on human rights issues, including enforced disappearances, directed at law enforcement personnel, civil or military, and at public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty;

(p) Ensure that formal and informal education systems integrate a human rights perspective, including on the phenomenon of enforced disappearance;

(q) In all public policies pertaining to enforced disappearance, underscore the necessity of adopting a comprehensive victim-centred approach to address this grave issue effectively, placing victims and their families at the forefront of all interventions, prioritizing their voices and active participation in decision-making processes, providing adequate psychological and legal support, facilitating access to education and establishing avenues for economic empowerment;

(r) Bolster national and international mechanisms dedicated to the protection of human rights defenders, recognizing their pivotal role in preventing enforced disappearances;

(s) Empower survivors, not only as a personal healing but also as a means to fortify the community's resilience and to foster hope in the face of adversity;

(t) Enhance civic space and undertake thorough investigations into enforced disappearances and extrajudicial killings, ensuring justice and redress;

(u) Ensure the implementation of their obligations to investigate, and to carry out search activities in relation to, acts tantamount to enforced disappearance perpetrated by non-State actors, including any involvement by private companies.

### **To the international community**

77. Support African States in the fight to eradicate enforced disappearances in the continent, through the provision of funds, technical assistance, capacity-building and training and any other measures deemed necessary.

78. Continue providing political and financial support to the African Union's judicial and human rights organs and other subregional bodies, including for the implementation of the Addis Ababa Road Map.

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