



**African Commission on
Human and Peoples' Rights
Guidelines on the Protection
of All Persons from Enforced
Disappearances in Africa**



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FOREWORD

The Guidelines on the Protection of All Persons from Enforced Disappearances in Africa were adopted by the African Commission on Human and Peoples' Rights during its 71st Ordinary Session held virtually from 21 April to 13 May 2022. The Guidelines are developed pursuant to Article 45(1)(b) of the African Charter, which mandates the African Commission to formulate standards, principles and rules on which African governments can base their legislation.

The goal of these Guidelines is to provide guidance and support to Member States of the African Union on the effective implementation of their commitments and contributions to eradicate enforced disappearances throughout the African continent. The Guidelines are complementary, and do not aim to replace or limit in any way the standards and obligations contained in relevant international treaties and instruments, such as the Declaration on the Protection of All Persons from Enforced Disappearance, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Rome Statute of the International Criminal Court, which are the main international legal instruments that deal with enforced disappearance as a grave human rights violation and a violation of international humanitarian law respectively. The Guidelines intend to reinforce those international treaties and instruments and encourage African Union Member States to ratify them as a positive

measure to prevent enforced disappearances on the continent.

The Guidelines build upon existing legal obligations of African States pursuant to regional treaties and documents, including (among others) the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the "**Maputo Protocol**"), the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa and the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children of the International Conference of the Great Lakes. It also adds to the standards developed by the African Commission on Human and Peoples' Rights through its jurisprudence and commentary, including (among others) the Guidelines on Human and Peoples' Rights while Countering Terrorism, the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the "**Luanda Guidelines**"), General Comment No. 3 on the Right to Life and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (Fair Trial Principles).

On the African continent, the practice of enforced disappearances is widespread. However, the available data does not accurately reflect the magnitude of the problem as many cases are not reported or officially registered. The UN Working Group on Enforced or Involuntary Disappearances noted in its 2021 report that of 46,490 cases of enforced

disappearances under consideration, only 4,765 relate to African countries. The lack of awareness about the crime, rule of law challenges, lack of political will and reprisals against the victims and their relatives when reporting the crime all contribute to a lack of systematised official data on the prevalence of the crime.

Without being prescriptive, the Guidelines reflect the most prevalent contexts in which enforced disappearances take place in Africa, including in armed conflicts, civil unrest, situations of emergency, counter-terrorism, in the context of migration and as a tool to suppress dissent.

To eradicate enforced disappearances from the continent, it is necessary to strengthen collaboration and efforts at regional level. Yet, the primary responsibility lies with individual States. In recent years, some African States have taken important steps to combat enforced disappearances, including by ratifying the International Convention for the Protection of all Persons from Enforced Disappearance and the Rome Statute, adopting the Malabo Protocol, criminalising enforced disappearances and adopting other legal and policy reforms to prevent this crime. However, these efforts are insufficient, and there are still significant gaps in the framework for the protection against enforced disappearances on our continent.

Enforced disappearances have terrible and long-lasting impacts, both physical and psychological, for those who are disappeared as well as their relatives, friends, communities and peoples. Many victims live in anguish for years, not

knowing the fate and whereabouts of relatives who were disappeared, and lacking access to redress. These Guidelines acknowledge the full range of civil, political, economic, social and cultural rights that are often breached by an enforced disappearance and the resulting harms on victims. The Guidelines recognise the central role that victims play in the fight against this heinous crime in Africa.

I would like to thank everyone who has contributed to the development of the Guidelines. I am grateful to the numerous experts who contributed to this process, including distinguished members of the UN Committee on Enforced Disappearances, and the Working Group on Enforced or Involuntary Disappearance, with whom the African Commission wishes to continue collaborating. I would like to thank civil society organisations, particularly the REDRESS Trust, academics, practitioners and others for their collaboration in the development of this tool.

I am also grateful to the following eminent African dignitaries who have long fought against enforced disappearances in Africa, and who have made great contributions to drafting these Guidelines: Aua Balde, member of the UN Working Group on Enforced or Involuntary Disappearance; the late Christof Heyns, former member of the UN Human Rights Committee; Houria El-Slami, former member of the UN Working Group on Enforced or Involuntary Disappearance; and Matar Diop, member of the UN Committee on Enforced Disappearances.

Last but not least, I would like to acknowledge the contribution of the late Hon. Ndiame Gaye, my predecessor as Chair of the African Commission Working Group on Death Penalty, Extra-Judicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa, for having the vision and wisdom to initiate the process of drafting these Guidelines.

The African Commission on Human and Peoples' Rights calls on all stakeholders to promote and use these Guidelines to inform their work in strengthening the protection against enforced disappearances, including African Union Member States, domestic human rights institutions, lawyers, magistrates and jurists, civil society organisations and victims' groups, and the media, among others. The African Commission remains committed to combating enforced disappearances through the exercise of its mandate to promote and protect human and peoples' rights on the continent.

A handwritten signature in black ink, appearing to be 'IS', with a long horizontal stroke extending to the right.

Honourable Commissioner Idrissa Sow

**Chairperson of the Working Group on Death Penalty,
Extra-Judicial, Summary or Arbitrary Killings and
Enforced Disappearances in Africa**

PREAMBLE

The African Commission on Human and Peoples' Rights (the "**African Commission**", or "**ACHPR**"), meeting during its 71st Ordinary Session held virtually from 21 April to 13 May 2022:

Recalling its mandate to "*promote and protect human and peoples' rights*" in Africa under the African Charter on Human and Peoples' Rights (the "**African Charter**");

Recalling its mandate under Article 45(1)(b) of the African Charter "*to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations*";

Recalling its Resolution 408 (ACHPR/Res. 408 (LXIII) 2018) adopted at its 63rd Ordinary Session held from 24 October to 13 November 2018 in Banjul, The Republic of The Gambia (Resolution 408), by which the African Commission expanded the mandate and composition of the Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa to expressly include enforced disappearances in Africa (the "**Working Group**");

Recalling its Resolution 448 (ACHPR/Res. 448 (LXVI) 2020) (the "**Resolution**") adopted at its 66th Ordinary Session held virtually from 13 July to 7 August 2020, by which the Commission tasked the Working Group with developing Guidelines for the Protection of All Persons from Enforced Disappearances in Africa (the "**Guidelines**");

Noting that, while the African Charter does not explicitly use the term “*enforced disappearance*” in any of its Articles, enforced disappearance is a unique and integrated series of acts that represent a continuous violation of several fundamental rights recognised in the African Charter (as well as other core international human rights treaties), including, among others, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 5), the right to the recognition of legal status (Article 5) and the right to liberty and security of the person (Article 6), and may also violate the right to life (Article 4);

Bearing in mind that the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the “**Luanda Guidelines**”) and the Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the “**Robben Island Guidelines**”) each set out standards for those deprived of their liberty;

Recalling the specific obligation of African States to refrain from and prevent the enforced disappearance of internally displaced persons pursuant to the Convention for the Protection of Internally Displaced Persons in Africa adopted in Kampala on 23 October 2009 (the “**Kampala Convention**”);

Recalling the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, adopted by resolution 47/133 of the United Nations General Assembly on 18 December 1992, and the International Convention for the Protection of all Persons from Enforced Disappearance (“**ICPPED**”), adopted by resolution 61/177 of the United Nations General Assembly on 20 December 2006;

Bearing in mind the General Comments of the United Nations Working Group on Enforced or Involuntary Disappearances (“**WGEID**”) and the declarations, decisions and guidelines of the Committee on Enforced Disappearances (“**CED**”);

Noting that the prohibition of enforced disappearance and the corresponding obligation to investigate and punish those responsible is a norm of *jus cogens*;

Recognising that when committed as part of a systematic or widespread attack against a civilian population and with knowledge of the attack, an enforced disappearance constitutes a crime against humanity pursuant to the Rome Statute of the International Criminal Court (the “**Rome Statute**”) adopted on 17 July 1998;

Determined to ensure the promotion, realisation and protection of human rights with a view to safeguarding full and free enjoyment of human rights on the African continent;

Underscoring the obligation of every African State to ensure the protection of all persons living under their jurisdiction;

Concerned that enforced disappearance is still taking place on the continent, and that this practice has been widely under-reported;

Concerned by the absence of effective domestic frameworks that enable States to prevent and punish enforced disappearance and address its consequences;

Recognising the urgent need to address the issue of enforced disappearance and its consequences in Africa, taking into account the needs of victims to ensure that they have access to an effective remedy and reparations;

Recalling the lack of and need for an African instrument that addresses specifically the prevention of and protection against enforced disappearance on the continent in a way that complements the existing international framework;

Convinced that regional guidelines on enforced disappearances will help to improve the situation of victims and will contribute to eradicating this crime on the continent;

Noting that these Guidelines complement existing standards and obligations contained in regional and international treaties and in the Declaration on the Protection of All Persons against Enforced Disappearance, and reiterating the importance of ratifying the ICPPED in

order to effectively prevent and protect against enforced disappearance on the continent;

Conscious of the need to provide guidance to States on measures necessary to protect all persons from enforced disappearance in Africa,

The African Commission **DECIDES TO ADOPT** the Guidelines and **STRONGLY URGES** the Member States of the African Union to take all necessary measures to incorporate the provisions of these Guidelines into their domestic legislation, to ensure that they are promoted and disseminated as widely as possible and to ensure their effective and rapid implementation.

PART 1: CONTEXT OF ENFORCED DISAPPEARANCES IN AFRICA

- 1.1** The African Commission has, through the existing complaints mechanism under the African Charter, issued recommendations in respect of States Parties found to be in violation of the African Charter by failing to disclose the whereabouts or fate of victims of enforced disappearance and failing to hold perpetrators accountable. Furthermore, in light of its concern that enforced disappearance is a recurrent issue in the region,¹ the African Commission has (i) widened the mandate of the Working Group to include enforced disappearance, including by allowing the Working Group to collect data to monitor the situation on the continent;² and (ii) committed to adopting these Guidelines.³
- 1.2** States Parties to the African Charter should have due regard to the following non-exhaustive list of examples of the context in which the crime occurs on the continent, which may evolve over time.
- 1.3** **Specific populations affected**

¹ Resolution 408.

² Resolution 408. The collection of data is of particular importance given the generally accepted phenomenon of under-reporting of the crime at a global level. The WGEID has noted that factors contributing to under-reporting include a fear of reprisals, weak administration of justice, ineffectual reporting channels, institutionalised systems of impunity, poverty, illiteracy, language barriers, a practice of silence and restrictions on the work of civil society, WGEID, A/HRC,30/38, dated 10 August 2015, page 20.

³ Resolution 448.

1.3.1 Human rights defenders, political activists and opponents and journalists

Enforced disappearance is often used as a tool to intimidate or eliminate, among other groups, human rights defenders, those who campaign for political change and journalists in the region.⁴ As outlined in Part 3, targeting these groups can also violate individual rights such as the right to free association,⁵ the right to receive information⁶ and the right to express and disseminate one's opinion.⁷ Specific regional instruments and mechanisms⁸ have been adopted in response to the targeting of these groups in order to secure their protection.

⁴ Examples include: Special Rapporteur on Human Rights Defenders press release on the use of enforced disappearance against human rights defenders in the Democratic Republic of Congo, 12 July 2007; Joint statement of the African Commission and others condemning the enforced disappearance of a human rights lawyer in Kenya, 6 July 2016; the Working Group's first case referral following the expansion of its mandate to include enforced disappearance concerned the disappearance of a journalist: *Inter Session Activity Report for the period November 2019 to June 2020*, presented at the 66th Ordinary Session of the ACHPR by the Commissioner and Chairperson of the Working Group on Death Penalty, Extra-Judicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa, para. 28.

⁵ Article 10(1) of the African Charter.

⁶ Article 9(1) of the African Charter.

⁷ Article 9(2) of the African Charter.

⁸ Such as the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa, the Special Rapporteur on Freedom of Expression and the Declaration of Principles on Freedom of Expression in Africa.

1.3.2 Migrants

Migrants (including, but not limited to, asylum seekers, refugees and internally displaced persons) are particularly vulnerable to enforced disappearance in light of their increased risk of discrimination, socio-economic hardship and the fact that they are often fleeing from persecution or armed or political conflict.⁹ These pre-existing factors, combined with national policies which seek to limit migration or exclude migrants from participating in society,¹⁰ have left migrants in the region particularly vulnerable to enforced disappearance and other human rights abuses. Given the absence of safe, legal migratory routes throughout the continent and globally, and the corresponding increase in smuggling and trafficking along irregular routes, as well as the continued use of immigration detention to control borders, the risk of being forcibly disappeared is inherent in the full breadth of the migratory journey. Despite the existence of international and regional frameworks offering protection, such as the African Union Convention Governing

⁹ Bernard Duhaime and Andreeanne Thibault, "Protection of migrants from enforced disappearance: A human rights perspective", *International Review of the Red Cross* (2017) 99 (2) 568, page 575; see also the Report of the WGEID on enforced disappearances in the context of migration, A/HRC/36/39/Add.2 of 28 July 2017.

¹⁰ Ibid.

Specific Aspects of Refugee Problems and the Kampala Convention,¹¹ there have been several instances of enforced disappearances of both internally displaced persons and migrants crossing borders within the region,¹² often followed by the return of the migrants to their countries of origin, which can constitute a violation of the principle of non-refoulement. As identified in Parts 3 and 4, States have specific obligations to protect refugees and displaced persons from such abuse.¹³

1.3.3 **Women and girls**

Women and girls are often directly impacted through targeted campaigns which deploy enforced disappearance as a means of intimidation or exerting control over them or a specific group of them, such as women human rights defenders, activists or members of a

¹¹ The Global Compact for Safe, Orderly and Regular Migration, UN General Assembly Resolution 73/195 (2018); the African Union's Migration Policy Framework and Plan of Action (2018 – 2030); Commission Resolution 486 on missing migrants and refugees in Africa and the impact on their families (2021).

¹² See, for example, the press release of the African Commission on the human rights situation in Cameroon, 29 January 2018.

¹³ The Global Compact for Safe, Orderly and Regular Migration, UNGA A/RES/73/195 (2018) recognises the primary obligation to respect, protect and fulfil the human rights of all migrants and includes a specific objective on missing migrants. The African Union's Migration Policy Framework and Plan of Action (2018 - 2030) provides African States and Regional Economic Communities with guidelines and principles to protect migrants and guarantee their rights, in accordance with regional and international law. These obligations are recalled by the ACHPR 486 Resolution on missing migrants and refugees in Africa and the impact on their families - ACHPR/Res. 486 (EXT.OS/XXXIII) 2021.

minority group,¹⁴ and there are many cases of disappeared women and girls on the continent.¹⁵ Women and girls who are disappeared also face a heightened risk of sexual violence and gendered forms of abuse,¹⁶ and the crime is less likely to be adequately investigated.¹⁷ Where women and girls who have been forcibly disappeared return to their communities, they also face a heightened risk of stigmatisation and/or rejection by their families and communities. As described in further detail in Part 2, States Parties to the Maputo Protocol shall protect women and girls in Africa from all forms of gender-based violence.

Furthermore, while men are the primary target of enforced disappearance, women and girls, as spouses, mothers, sisters and daughters,

¹⁴ As evidenced by the statement of the Special Rapporteur on Human Rights Defenders in Africa in respect of the abduction of women human rights defenders in the Democratic Republic of Congo, 11 August 2014; recognised more generally by the WGEID, General Comment on women affected by enforced disappearances, A/HRC/WGEID/98/2 (14 February 2013), paras. 6 and 36.

¹⁵ ACHPR Report of the Study on the Situation of Women Human Rights Defenders in Africa, para. 111; International Center for Transitional Justice Report on The Disappeared and Invisible Revealing the Enduring Impact of Enforced Disappearance on Women, March 2015; in the context of NSAs, the African Commission adopted a resolution on the human rights situation of the abducted Chibok girls and other abducted victims in Nigeria, ACHPR/Res.341(LVIII), 2016.

¹⁶ International Center for Transitional Justice Report on The Disappeared and Invisible Revealing the Enduring Impact of Enforced Disappearance on Women, March 2015, page 5.

¹⁷ This issue was noted by the Inter-American Court of Human Rights (IACtHR) in *González et al. ("Cotton Field") v. Mexico*, 16 November 2009.

play a specific role in society and, making up the majority of the victims who are left behind, are at heightened risk of experiencing hardship as a result of the disappearance. This heightened victimisation can manifest itself in mental distress caused by the lack of information on the fate and whereabouts of the missing family members, economic hardship, social exclusion and intimidation or other forms of reprisals, particularly when searching for the truth,¹⁸ and a limited or non-existing applicable legal framework to protect them and obtain justice.

1.3.4 Children

Children have been the target of enforced disappearance in the region (often intersecting with the recruitment of child soldiers¹⁹ and gender-based violence against girls²⁰) and they can suffer particular harm to their physical, emotional, cognitive and social

¹⁸ International Center for Transitional Justice Report on The Disappeared and Invisible Revealing the Enduring Impact of Enforced Disappearance on Women, March 2015, page 8; see also the Report of the WGEID on enforced disappearances and economic, social and cultural rights, A/HRC/30/38/Add.5 dated 9 July 2015, paras. 20-23.

¹⁹ United Nations, *Annual Report of the Secretary-General on Children and armed conflict* (A/75/873–S/2021/437, 2021) page 2; Commission press release on the International Day against the Use of Child Soldiers dated 13 February 2019.

²⁰ Commission resolution on the human rights situation of the abducted Chibok girls and other abducted victims in Nigeria, (note 8); Commission resolution on the situation of human rights in the Darfur region of Sudan, ACHPR/Res.93(XXXVIII)05, 2005, para. 3a, concerning the abduction of children.

development, whether it is them or their parent who is disappeared.²¹ As outlined in Part 3, the African Charter on the Rights and Welfare of the Child guarantees the rights of the child, including the right for their best interests to be taken into account in policymaking and the right not to be unlawfully separated from their parents, both of which are put at particular risk in the context of an enforced disappearance of a child or their parent.

²¹ WGEID, General Comment on children and enforced disappearances, A/HRC/WGEID/98/1 (14 February 2013), paras. 30 and 31.

1.4 Specific contexts

1.4.1 Law enforcement

As recognised by the Luanda Guidelines adopted by the African Commission, individuals are particularly vulnerable to enforced disappearance in police custody or detention. Often, law enforcement officials systematically disappear persons at the behest of the Government in periods of political violence or civil unrest or facilitate or fail to prevent the forcible disappearance of those in their custody by non-State actors.²² As explained in Part 3, as part of the obligation to prevent enforced disappearances, States shall ensure adequate training and vetting of law enforcement officials.

1.4.2 Non-State actors

In some situations, acts that are tantamount to enforced disappearances are committed by non-State actors acting without the authorisation, support or acquiescence of the State. As stated in Part 4, and without prejudice to the existence or future existence of additional obligations applicable to States or non-State actors in this context, each State

²² See, for example, the Report of the International Commission on Darfur to the United Nations Secretary-General, 25 January 2005; see also the UNWGEID Report, A/HRC/33/52, 28 July 2016.

shall investigate, punish and redress harm caused by any such acts carried out by non-State actors.

1.4.3 Armed conflict and post-conflict transition

Enforced disappearance is frequently used in countries where there is an ongoing conflict. There are many examples of enforced disappearances being carried out in conflict and post-conflict countries, in contravention of the African Union's Transitional Justice Policy.²³ In addition to constituting a grave violation of individual rights, the use of enforced disappearance can jeopardise peace and security in countries still weakened by, or recently emerged from, conflict.²⁴

Accountability and reparations for enforced disappearance constitute a crucial element in any situation of armed conflict or any peacebuilding operation, post-conflict resolution or democratic transition, including by continuing to search for the disappeared, informing the families and prosecuting the

²³ African Union Transitional Justice Policy, adopted in February 2019, section 1, para. 2; the continued existence of conflicts and use of enforced disappearances in such contexts was also observed in the Welcoming Statement of Dr Solomon Dersso, Chairperson of the ACHPR for the African Human Rights Day Celebration, 21 October 2020. See also the Report of the Commission, Addressing Human Rights Issues in Conflict Situations, 2019.

²⁴ Resolution of the ACHPR on summary execution and enforced disappearance in Mali, ACHPR/RES.258(LIV)2013.

perpetrators of such acts for crimes, including for crimes against humanity where appropriate.²⁵

1.4.4 Civil unrest and situations of emergency

Serious restrictions imposed by States to fundamental rights and freedoms during civil unrest and situations of emergency often lead to arbitrary arrests, torture, ill-treatment, executions and enforced disappearances, among other violations.²⁶

Enforced disappearance shall be prohibited in all circumstances, including in contexts of internal political instability and any other public emergency.

1.4.5 Counter-terrorism

Terrorism continues to be a significant problem in the region. However, many domestic counter-terrorism operations violate basic human rights, including through the use of secret detention and enforced

²⁵ As currently under consideration by the Commission on Human Rights in South Sudan, A/HRC/45/CRP.4.

²⁶ Resolution of the ACHPR on the right to peaceful demonstrations, ACHPR/Res.281(LV)2014; Resolution of the ACHPR on upholding human rights during situations of emergency and in other exceptional circumstances, ACHPR/Res. 447(LXVI)2020; Resolution of the ACHPR on Human and People's Rights as central pillar of successful response to COVID-19 and recovery from its socio-political impacts, ACHPR/Res. 449 (LXVI) 2020.

disappearance.²⁷ This is despite States' obligation to carry out such operations in compliance with the human rights standards of the African Charter and other relevant regional and international human rights law obligations. The Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa specifically state that enforced disappearance is prohibited in absolute terms and no exceptional circumstances whatsoever may be invoked as a justification for violating this prohibition.²⁸ States shall ensure that foreign States do not carry out internationally wrongful acts on their territory or under their jurisdiction, including enforced disappearances and other grave violations.²⁹

1.4.6 Short-term disappearances

There have been several instances of enforced disappearances taking place over only a limited period of time in the region (i.e.

²⁷ For example, resolution of the ACHPR on terrorist acts in the Republic of Kenya, ACHPR/Res.302(LVI)2015.

²⁸ Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism adopted by the ACHPR during its 56th Ordinary Session from 21 April to 7 May 2015, Part 3, D(ii). See also the WGEID Report, A/HRC/48/57, 4 August 2021, Section IV, Enforced disappearances in the context of transnational transfers.

²⁹ Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism adopted by the ACHPR during its 56th Ordinary Session from 21 April to 7 May 2015, Part 7(B).

several hours or a short number of days³⁰). There is no minimum time limit for a disappearance to qualify as an enforced disappearance. As such, “short-term disappearances” can result from the unacknowledged deprivation of liberty, which puts the individual concerned outside the protection of the law even for only a limited amount of time.

³⁰ The 2016 report of the WGEID observed a “*recent pattern of short-term disappearances*” in Egypt, UN Doc. A/HRC/30/38, para. 67; see also *Aboufaied v. Libya*, Communication No 1782/2008 to the Human Rights Committee, 19 June 2012.

PART 2: GENERAL PRINCIPLES AND DEFINITIONS

2.1 Enforced disappearance

Enforced disappearance is the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by the refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, thereby placing them outside the protection of the law.³¹

In international law, the disappeared are distinct from “missing persons”. While the term “missing person” is not formally defined under international law, it is generally referred to by humanitarian organisations to mean a person whose whereabouts are unknown to their relatives and/or who, on the basis of reliable information, has been reported missing in accordance with the national legislation in connection with an international or non-international armed conflict, a situation of internal violence or disturbances, natural catastrophes or any other situation that may require the intervention of a competent State authority.³² In the context of armed

³¹ ICPPED, Article 2; Rome Statute, Article 7, Inter-American Convention on Forced Disappearance of Persons, Article II.

³² International Committee of the Red Cross (ICRC), Guiding Principles, Model Law on the Missing, (2009), Introduction and Article 2.1; Council of Europe, Commissioner for Human Rights, Missing Persons and Victims of Enforced Disappearance in Europe,

conflict, international humanitarian law (“IHL”) sets out specific obligations in respect of missing persons, including victims of enforced disappearance.³³ Under IHL, States are obliged to prevent persons from going missing, clarify the fate and whereabouts of those who go missing and provide families with any information they have in relation to a missing person. Furthermore, IHL contains obligations on investigating and prosecuting war crimes. More specifically, enforced disappearance is a violation of IHL in international and non-international armed conflicts.³⁴

The distinction between a missing person in the context of a conflict and a person subject to enforced disappearance is not always clear in practice, especially where disappearances and armed conflict occur simultaneously. In some situations, a missing

Issue Paper (2016), page 5; Council of Europe, Committee of Ministers on principles concerning missing persons and the presumption of death, Recommendation CM/Rec(2009)12, 9 December 2009.

³³ Geneva Conventions of 12 August 1949; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977; J.M. Henckaerts and L. Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. I: *Rules* and Vol. II: *Practice*, ICRC, Geneva/Cambridge University Press, Cambridge, 2005, reprinted 2009: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home> (hereinafter *ICRC Study on Customary International Humanitarian Law*, notably Rules 98 and 117).

³⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977; [Customary IHL, ICRC Rule 117](#). Although these instruments do not contain specific obligations on the missing or on enforced disappearance, they do contain obligations that are relevant to preventing people from going missing and being forcibly disappeared.

person may in fact be a victim of enforced disappearance. While the term “missing person” does not always imply the commission of a crime, enforced disappearance is always a crime under international law and necessarily results in a violation of several fundamental rights protected by the African Charter,³⁵ and may violate other international obligations.

In these Guidelines, the term “enforced disappearance(s)” is used accordingly.

2.2 Absolute prohibition

Enforced disappearance is an international crime, prohibited under any circumstances, including during international armed conflicts, non-international armed conflicts and other situations of violence, internal political instability, sanitary crises or any other public emergency.³⁶ No order or instruction of any public authority, civilian, military or other may be invoked to justify an enforced disappearance.³⁷ Any person receiving such an order or instruction shall have the right and duty not to obey it.³⁸ States shall ensure

³⁵ Council of Europe, Commissioner for Human Rights, Missing Persons and Victims of Enforced Disappearance in Europe, Issue Paper (2016), pages 17-18.

³⁶ ICPPED, Article 1; United Nations Declaration on the Protection of All Persons from Enforced Disappearance, Article 7; WGEID and CED – Key guidelines on COVID-19 and enforced disappearances (18 September 2020).

³⁷ ICPPED, Article 6; United Nations Declaration on the Protection of All Persons from Enforced Disappearance, Article 6.

³⁸ United Nations Declaration on the Protection of All Persons from Enforced Disappearance, Article 6.

that orders or instructions directing, authorising or encouraging any enforced disappearance are prohibited, and shall train law enforcement officials in that respect.³⁹ States shall take the necessary measures to ensure that their domestic laws reflect the absolute prohibition against enforced disappearance.

Moreover, when committed as part of a systematic or widespread attack against a civilian population, an enforced disappearance constitutes a crime against humanity as defined in applicable international law.⁴⁰ Finally, in situations of armed conflict enforced disappearance consists of a number of war crimes; it amounts in practice to depriving a person of a fair trial and often also to murder.⁴¹

2.3 Victims

For the purpose of these Guidelines, “victims” means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

The term “victim” includes the relatives or dependants of the person who has disappeared and persons who have suffered harm in intervening to

³⁹ Ibid; ICPPED Article 23.

⁴⁰ Kampala Convention, Article 9; ICPPED, Article 5; Rome Statute, Article 7.

⁴¹ [Customary IHL, ICRC Rule 156.](#)

assist victims in distress or to prevent victimisation.⁴² Women, girls and children, in particular, can be directly and indirectly affected by enforced disappearance.⁴³ Additionally, enforced disappearance negatively impacts friendship groups, communities, peoples and/or groups to which the disappeared persons belong, and has devastating effects on the societies in which the act of enforced disappearance is practised.⁴⁴

2.4 Continuing nature of enforced disappearance

Enforced disappearance is a continuous violation of human rights and a permanent crime, which commences upon the arrest, detention, abduction or any other form of deprivation of liberty by, or with the authorisation, support or acquiescence of, a State (where such deprivation of liberty is followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate and whereabouts of the disappeared person) and extends until the victim's fate and whereabouts are established (including until the State acknowledges the detention or releases information pertaining to the fate and whereabouts of

⁴² Report of the WGEID, A/HRC/22/45 (28 January 2013), paras. 51 and 52; WGEID, A/HRC/22/45 of January 28, 2013, paras. 51 and 52; Annual Report of the Inter-American Commission on Human Rights – 1978, OEA/Ser.L/II.47, doc. 13 rev. 1, 29 June 1979, page 23.

⁴³ See Part 1 of these Guidelines.

⁴⁴ WGEID, UN Doc E/CN.4/1985/15, para. 291; 24th International Conference of the Red Cross and the Red Crescent, Manila (1981), Resolution II, "Forced or involuntary disappearances".

the individual).⁴⁵ It follows that as long as there is concealment of the fate and whereabouts of the disappeared person against their will, an enforced disappearance continues to be committed.

As detailed in paragraph 4.1.4 (*Obligation to search and investigate*), States have a continuous obligation to search for disappeared persons and this obligation should continue until the fate and whereabouts of the person are known. States also have an ongoing obligation to investigate an enforced disappearance until the fate and whereabouts of the victim has been determined, and any failure to investigate constitutes a continuous violation of the victims' rights. Furthermore, as detailed in paragraph 4.1.5 (*Obligation to prosecute*), the obligation to identify and prosecute the perpetrators and to provide adequate redress to victims remains even after the investigation is over.

2.5 Extraterritoriality

The use of enforced disappearance of individuals by a foreign State, with or without the consent, knowledge or acquiescence of the host State, is prohibited, whether it is committed in the context of counter-terrorism operations abroad, armed conflict

⁴⁵ WGEID, General Comment on Enforced Disappearance as a Continuous Crime, para. 1, para. 2, para. 6; United Nations Declaration on the Protection of All Persons from Enforced Disappearance, Article 17 (1); Inter-American Convention on Forced Disappearance of Persons, Article III; ICPPED, Article 8; United Nations, The Minnesota Protocol on the Investigation of Potentially Unlawful Death, para. 12.

or in any other circumstances.⁴⁶ States must take appropriate measures to protect individuals against enforced disappearances committed by foreign States operating within the host State and in other places subject to their jurisdiction.⁴⁷

2.6 Prohibition of discrimination

States must take the necessary measures to ensure that the rights of all victims of enforced disappearance are upheld on a non-discriminatory basis, irrespective of their race, national origin, citizenship, ethnicity, profession, opinions, health, disability, age, religion, culture, marital status, socio-economic status, refugee or migrant status, sexual orientation and identity, gender expression or any other factor that could lead to discrimination against them.⁴⁸ In particular, States Parties to the Maputo Protocol have specific obligations to protect women and girls in Africa from all forms of gender-based violence, including by integrating a gender perspective into their policy decisions and

⁴⁶ ACHPR, Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, Part 1(L); Kampala Convention, Article 4.4(c); United Nations Declaration on the Protection of All Persons from Enforced Disappearance, Article 6, Article 7.

⁴⁷ Human Rights Committee, General Comment No. 36, para. 22.

⁴⁸ African Charter, Articles 2 and 3; Maputo Protocol, Articles 3(4), 4 (a-d,f) and Article 8; ACHPR Resolution 275 on Protection of Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity (2014); Kampala Convention, Article 1(d), Article 4.4(a), Article 9.1(a); Convention Governing the Specific Aspects of Refugee Problems in Africa, Article 4.

legislation,⁴⁹ as well as ensuring the protection of poor women and female heads of families, taking into account their special physical, economic and social needs.⁵⁰

⁴⁹ Protocol to the ACHPR on the Rights of Women in Africa, adopted at the 2nd Ordinary Session of the Assembly of the Union at Maputo on 11 July 2003 (the "Maputo Protocol"), Article 2(1)(c).

⁵⁰ Maputo Protocol, Article 24(a).

PART 3: RIGHTS COMMONLY INFRINGED UPON BY AN ENFORCED DISAPPEARANCE

Enforced disappearance is a unique and integrated series of acts that represent a continuous violation of several fundamental rights enshrined in the African Charter, many of which are absolute and non-derogable. The list of rights breached, or potentially breached, by an enforced disappearance is not an exhaustive one.⁵¹ Even though the conduct breaches multiple rights, an enforced disappearance shall be considered a consolidated act and not a combination of acts.⁵² *Inter alia*, this crime violates or may violate:

- The following civil and political rights:
 - the right to life;
 - the right not to be subjected to torture or other cruel, inhuman and degrading treatment or punishment;
 - the right to liberty and security of the person;
 - the right to a fair trial and corresponding judicial guarantees;

⁵¹ In addition to human rights, enforced disappearance violates, or threatens to violate, a range of customary and treaty rules of IHL, most notably the prohibition of arbitrary deprivation of liberty, the prohibition of torture and other cruel or inhuman treatment and the prohibition of murder. ICRC Study on Customary International Humanitarian Law, rules 89, 90, 99.

⁵² WGEID, General Comment on Enforced Disappearance as a Continuous Crime, A/HRC/16/48 (26 January 2011), para. 39.

- the rights to information, opinion and expression, association and assembly;
 - the right to freedom of movement and the right to asylum;
 - the right to the truth;
 - the right to dignity and to the recognition of the legal status of a person before the law; and
 - the right to an effective remedy, including reparation and compensation; and
- Economic, social and cultural rights, including the right to health, the right to family life, and the right to education, among others.

3.1 The right to life⁵³

The right to life is guaranteed under Article 4 of the African Charter. The right to life is absolute and non-derogable and applies to all persons at all times.⁵⁴ Every human being shall be entitled to respect for their life and the integrity of their person. No one may be arbitrarily deprived of this right.⁵⁵ The crime of enforced disappearance constitutes a serious threat

⁵³ ICRC Study on Customary International Humanitarian Law, rule 89.

⁵⁴ ACHPR, General Comment No. 3 on the African Charter: The Right to Life (Article 4), para. 5.

⁵⁵ African Charter, Article 4; Constitutive Act of the African Union, Article 4(o), ACHPR; ACHPR Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, Part 2(A).

to the right to life.⁵⁶ States must take all steps to protect and vindicate the right to life in cases of enforced disappearance, in accordance with regional and international human rights law.

The right to life engages both a negative State obligation to refrain from arbitrary killings and a positive State obligation to protect life. It encompasses both substantive and procedural obligations. Deprivation of liberty, followed by a refusal to acknowledge that fact or by concealment of the fate and whereabouts of the disappeared persons, removes such persons from the protection of the law and places their lives at serious and constant risk, for which the State is accountable. As described in further detail at paragraph 4.1.4 (*Obligation to search and investigate*), as part of their procedural obligations under Article 4, States must investigate cases of enforced disappearance, hold those responsible to account and provide an effective remedy and reparations to the victims, and any failure to do so may constitute a violation of the right to life.

3.2 The prohibition of torture and ill-treatment⁵⁷

The prohibition of torture and ill-treatment, which is widely recognised and accepted as a peremptory

⁵⁶ ACHPR, General Comment No. 3 on the African Charter: The Right to Life, Article 4, para. 8; HRC, CCPR General Comment No. 36: Article 6 (Right to Life), 3 September 2019, para. 58.

⁵⁷ ICRC Study on Customary International Humanitarian Law, rule 90.

norm (*jus cogens*)⁵⁸, is guaranteed under Article 5 of the African Charter and Articles 3 and 4 of the Constitutive Act of the African Union.⁵⁹ No exceptional circumstances whatsoever may be invoked as a justification for violating this prohibition.⁶⁰

The crime of enforced disappearance constitutes a form of torture or cruel and inhuman treatment, both in respect of the direct victims and all those who suffer harm as a direct result of the enforced disappearance. It is in itself severe enough to constitute ill-treatment even if the person is, or was not, ill-treated in any other way. As such, it can be assumed that all those who are subjected to enforced disappearance experience “*intense suffering, anguish, terror and feelings of powerlessness and insecurity*”.⁶¹

Enforced disappearance places the victim outside the protection of the law and inflicts severe suffering on that individual and their relatives, who are placed

⁵⁸ *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (Judgment, ICJ Reports 2012) page 422, page 457, para. 99; *Prosecutor v. Anto Furundzija* (case no. IT-95-17/1-T10, Trial Chamber, Judgment, 10 December 1998), para. 153.

⁵⁹ See also Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, and the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁶⁰ ACHPR Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, Part 3(D)(i).

⁶¹ IACtHR, *Goiburú et al. v. Paraguay*, Judgment, 22 September 2006, para. 157.

in a situation of uncertainty and anguish.⁶² In cases where the victim was placed in solitary confinement, this can be held to be a form of cruel, inhuman or degrading punishment and treatment.

In cases where the victim was last seen in State custody or if they have not been seen for many years, the harm inflicted on the victim and next of kin can be presumed.

3.3 The right to liberty and security of the person⁶³

The right to liberty and security of the person is guaranteed under Article 6 of the African Charter and ensures that no person should be deprived of their freedom, or arbitrarily arrested or detained. Enforced disappearance constitutes, by nature, a violation of the right to liberty and security of the person. The crime often starts with the arrest, detention or abduction of the person concerned and even an initially legitimate arrest or detention may result in an enforced disappearance.⁶⁴

States shall take steps to prohibit incommunicado detention.⁶⁵ Secret or incommunicado detention can amount to an enforced disappearance when the individual's relatives or other persons with a

⁶² DPAED, Article 1(2).

⁶³ ICRC Study on Customary International Humanitarian Law, rule 99.

⁶⁴ WGEID, General Comment on the definition of Enforced Disappearances, A/HRC/7/2, 10 January 2007, para. 7.

⁶⁵ HRC, CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para. 11.

legitimate interest have no access to information as to the location of the person or are not allowed to verify the information provided.⁶⁶ Given that an enforced disappearance need not be prolonged to constitute an offence, this crime can result from the unacknowledged deprivation of liberty, which puts the individual concerned outside the protection of the law even for only a limited amount of time. Accurate information on the detention of any person deprived of liberty, including their place of detention, shall be made available promptly to family members and all those with a legitimate interest.⁶⁷ Additionally, victims must enjoy freedom from intimidation or reprisals from the State when investigating said offence or campaigning against the crime.⁶⁸ Victims shall have the right to challenge promptly the lawfulness of their arrest before a competent judicial authority. Any person with a legitimate interest, such as relatives or counsel, shall be allowed to take proceedings before a judicial or administrative body, if the person disappeared or deprived of liberty is not able to exercise those rights, in order to challenge the deprivation of liberty of that person.

⁶⁶ ACHPR, Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, Part 3(D)(iii); HRC, Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism, A/HRC/13/42, 19 February 2010, page 22.

⁶⁷ ICCPED, Article 18(1).

⁶⁸ ICCPED, Article 18(2).

3.4 The right to a fair trial and judicial guarantees

The right to a fair trial is guaranteed under Article 7 of the African Charter. Any individual arrested or detained shall be granted the right to a fair trial in accordance with relevant international human rights standards, in particular the African Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa. While enforced disappearance does not automatically breach the right to a fair trial, it does violate the right to judicial remedies and procedural guarantees. The following safeguards shall be afforded to all persons under arrest:⁶⁹

- (i) the right to be free from enforced disappearance, torture and other cruel, inhuman and degrading treatment and punishment;
- (ii) the right to be informed of the reasons for their arrest and any charges against them;
- (iii) the right to silence and freedom from self-incrimination;
- (iv) the right of access, without delay, to a lawyer of his or her choice, or if the person

⁶⁹ ACHPR, Guidelines on the use and conditions of police custody and pre-trial detention in Africa (the Luanda Guidelines) (2014), Part 1(2); ACHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003); ACHPR, Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines).

cannot afford a lawyer, to a lawyer or other legal service provider, provided by State or non-State institutions;

- (v) the right to communicate with and be visited by his or her family, counsel or any other persons of his or her choice, subject only to the conditions established by the law, or, in case of foreigners, to communicate with his or her consular authorities;
- (vi) the right to humane and hygienic conditions during the arrest period, including adequate water, food, sanitation, accommodation and rest, as appropriate considering the time spent in police custody;
- (vii) the right to urgent medical assistance, to request and receive a medical examination and to obtain access to existing medical facilities;
- (viii) the right to information in accessible formats, and the right to an interpreter;
- (ix) the right to apply for release on bail or bond pending investigation or questioning by an investigating authority and/or appearance in Court;

- (x) the right to challenge promptly the lawfulness of their arrest before a competent judicial authority. Any person with a legitimate interest, such as relatives or counsel, shall be allowed to take proceedings before a Court, if the person disappeared or deprived of liberty is not able to exercise those rights, in order to challenge the deprivation of liberty of that person;
- (xi) the right to freely access complaints and oversight mechanisms; and
- (xii) the right to reasonable accommodation which ensures equal access to substantive and procedural rights for persons with disabilities.⁷⁰

Enforced disappearance contravenes the rights and guarantees of victims. These rights also extend to those disappeared while in transit between places of detention, where their whereabouts are withheld from relatives and all those with a legitimate interest despite their repeated requests for such information. As such, an enforced disappearance may be initiated by an illegal detention or by an initially legal arrest or detention.

⁷⁰ ACHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Part M(2)(3) and (4).

3.5 The right to information, opinion and expression, association and assembly

The rights to receive information, to participate in government and to freedom of opinion and expression, association and assembly are guaranteed under Articles 9, 10, 11 and 13 of the African Charter, respectively. The respect, protection and fulfilment of these rights is crucial and indispensable for the free development of the person, the creation and nurturing of democratic societies and for enabling the exercise of other rights.⁷¹ These rights include the right to freely form and participate in organisations and associations concerned with establishing the circumstances of enforced disappearance and the fate of disappeared persons, as well as to assist all victims of enforced disappearance.⁷²

Enforced disappearance is often used to repress and intimidate journalists, human rights defenders and political activists exercising their rights to information, participation in government, freedom of assembly and/or association. States Parties to the African Charter therefore have specific obligations to protect these groups from threats or reprisals of any kind,

⁷¹ ACHPR, Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 1; 166 Resolution on the Deteriorating Situation of Freedom of Expression and Access to Information in Africa, 166 (XLVII) 10; ACHPR, Guidelines on Freedom of Association and Assembly in Africa, fundamental principle (iii).

⁷² ICPPED, Article 24(7).

including enforced disappearance, pursuant to the Declaration of Principles on Freedom of Expression and Access to Information in Africa⁷³ and Guidelines on Freedom of Association and Assembly in Africa.⁷⁴ When an individual is subjected to enforced disappearance as a result of exercising or promoting rights to information, freedom of opinion or expression, or freedom of association or assembly, the enjoyment of those rights is also breached.⁷⁵

3.6 The right to freedom of movement and the right to asylum

Article 12(1) of the African Charter provides the right to move freely and decide one's residence within a State, subject to compliance with the law of that territory. General Comment No.5 pertaining to Article 12(1) notes that this right is vital in advancing other core human rights, such as the rights to freedom of association, family, education and work.⁷⁶ Moreover, any restriction on the right to freedom of movement amounts to deprivation of the right to liberty under Article 6 of the African Charter and its legality should be considered in light of the jurisprudence and

⁷³ ACHPR, Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 20.

⁷⁴ ACHPR, Guidelines on Freedom of Association and Assembly in Africa, paras. 29 and 30.

⁷⁵ WGEID, UNWGEID, Study on enforced or involuntary disappearances and economic, social and cultural rights, A/HRC/30/38/Add.5, 9 July 2015, para. 36.

⁷⁶ General Comment No.5 on the African Charter: The Right to Freedom of Movement and Residence (Article 12(1)).

interpretative guidance on Article 6 and other international human rights law instruments.⁷⁷

Additionally, Article 12(3) of the African Charter stipulates that every person shall have the right, when persecuted, to seek and obtain asylum in countries in accordance with laws of those countries and international conventions. States shall protect the rights of migrants and internally displaced persons by refraining from, and preventing, enforced disappearance and other violations of human rights and IHL.⁷⁸ In particular, States shall adopt effective legislative, administrative, judicial and other measures, including migration-related policies, to prevent and terminate enforced disappearances of migrants in their territory.⁷⁹

States shall refrain from the expulsion, return or extradition of a migrant to another State where there are substantial grounds to believe that the person will be put in danger of enforced disappearance.⁸⁰

Further, States shall not deprive migrants of their liberty on account of said migrants entering a country without proper or valid documents.⁸¹ Adult migrants

⁷⁷ Ibid.

⁷⁸ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, Article IX(1)(c).

⁷⁹ WGEID, Report of the WGEID on Enforced Disappearance in the Context of Migration, A/HRC/36/39/Add.2, 28 July 2017, para. 58.

⁸⁰ Ibid, para. 59. Art. 16 ICPPED.

⁸¹ UNHRC, The International Convention on Migrant Workers and its Committee Part IV, page 13: While this case concerned labour issues rather than freedom of movement,

should only be detained as a measure of last resort, with children being detained in only the most exceptional cases and where all other measures have been exhausted. If detained for violations of provisions relating to migration, migrants shall be held separately from convicted persons and those in pre-trial detention, and only in officially State-recognised places of detention.

Detained migrants have a right to be informed of the grounds of their detention, and to challenge and appeal the legality of such detention. They must be allowed to communicate with their relatives, lawyers and consular authorities of their country of origin. Migrants deprived of their liberty must be released in a manner permitting reliable verification that they have been released, and under conditions that ensure their physical integrity and human rights.⁸²

The State under which territory a person has disappeared shall, regardless of their status, make the necessary efforts to search for that person immediately.

3.7 The right to the truth

Each victim of enforced disappearance has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of

the Court clarified that "*the migratory status of a person cannot constitute a justification to deprive him of the enjoyment and exercise of human rights...*".

⁸² Ibid, paras. 62-64.

an investigation, the fate and the whereabouts of the disappeared persons and the identity of the perpetrators, and each State Party shall take appropriate measures in this regard.⁸³ Article 9 of the African Charter, the right to receive information, has been linked to the right to the truth as States have a duty to not withhold key information regarding human rights violations.⁸⁴ Victims and all other persons with a legitimate interest have a right to obtain information on a person who has been deprived of their liberty; this constitutes a key safeguard for preventing enforced disappearance.⁸⁵

The right of victims to know the truth of the fate and whereabouts of the disappeared person is an absolute right, not subject to any limitation or

⁸³ The following African sources incorporate the right to the truth: African Charter, Article 9; ACHPR, Guidelines on Combating Sexual Violence and its Consequences in Africa, para. 52; Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, Part 12. Additionally, the scope of the right to the truth in the context of enforced disappearances is developed in the following documents: WGEID, General Comment on the Right to the Truth, A/HRC/16/48, page 14, para. 4; Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, E/CN.4/2005/102/Add.1, principle 2. See also WGEID, General Comment on the Right to the Truth, A/HRC/16/48, page 14, para. 1; ICPPED, Article 24(2). In situations of armed conflict, IHL also contains obligations related to the right of families of persons reported missing as a result of the conflict to know the fate and whereabouts of their missing relatives, see: Additional Protocol I, art. 32; ICRC, Customary International Humanitarian Law Study, Rule 117 applicable in international and non-international armed conflicts whereby each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.

⁸⁴ ACHPR, Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, 2015, page 37.

⁸⁵ WGEID, General Comment on the Right to the Truth in Relation to Enforced Disappearance, para. 2.

derogation.⁸⁶ No legitimate aim, or exceptional circumstances, may be invoked by the State to restrict this right.⁸⁷ The unjustified refusal to provide information or to communicate with the relatives of the disappeared (or any person with a legitimate interest) can amount to a violation of the right to the truth.⁸⁸

The right to the truth is both a collective and an individual right: each victim has the right to know the truth about violations that have affected him or her, but the general public also have the right to know what happened. The truth should be told at the level of society to ensure against the recurrence of such violations.⁸⁹

In guaranteeing victims' right to the truth, States shall ensure that the disappeared person's remains are protected and properly traceable so they can be located prior to any proposed exhumation. The remains shall be exhumed with due care and skill, as outlined in Part 4.

⁸⁶ WGEID General Comment on the Right to the Truth, A/HRC/16/48, page 15, para. 4.

⁸⁷ Ibid.

⁸⁸ WGEID, General Comment on the Right to the Truth in Relation to Enforced Disappearance, para. 5; ICCPED, Article 24(2).

⁸⁹ WGEID Report on Enforced or Involuntary Disappearances, para. 571; WGEID General Comment on the Right to the Truth, A/HRC/16/48, page 13; Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, E/CN.4/2005/102/Add.1, Principle 2.

3.8 The right to dignity and to the recognition of the legal status of a person before the law

Article 5 of the African Charter stipulates that every person shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. Moreover, all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

The right to recognition as a person before the law is a widely recognised human right at both universal and regional levels.⁹⁰ This right is seen as vital to the concept of human rights because it expresses the liberty and capacity of each person to be the holder of legal rights and protections – “the right to have rights”.⁹¹

One of the elements of the definition of enforced disappearance, placing the disappeared outside the protection of the law, is a direct contravention of this right of recognition as a person before the law. Moreover, by denying the disappeared person legal existence, they are prohibited from enjoying other

⁹⁰ Article 6 of the Universal Declaration of Human Rights and Article 16 of the International Covenant on Civil and Political Rights (see also, at the regional level, Article XVII of the American Declaration on the Rights and Duties of Man and Article 3 of the American Convention on Human Rights).

⁹¹ WGEID, General Comment on the right to recognition as a person before the law in the context of enforced disappearances.

human rights and liberties. The relatives of the disappeared person may also be prejudiced by a lack of recognition or uncertainty surrounding the legal status of the disappeared. National legislation may make it difficult or impossible for relatives to draw a pension or access benefits, wages or social assistance to which the disappeared person is entitled, without a death certificate or certificate of absence.⁹² Relatives may also be barred from inheriting or disposing of the disappeared person's domicile and properties without a death certificate.⁹³ Relatives of disappeared people may also struggle for years to overcome societal pressure as well as complicated procedural hurdles to remarry.⁹⁴ The absence of a disappeared father can make the task of obtaining birth certificates and identification for children much more burdensome, especially where the relatives live in a jurisdiction where the father is seen as their official guardian by the courts.⁹⁵

Any form of stigmatisation of victims of enforced disappearance, including through reprisals or

⁹² Report of the WGEID, A/HRC/30/38.Add.5, 9 July 2015, paras. 24-25. See also ICRC, Guiding Principles, Model Law on the Missing, (2009), Article 8-10.

⁹³ Report of the WGEID, A/HRC/30/38.Add.5, 9 July 2015, paras. 26-27; Truth and Reconciliation Commission of South Africa Report, Vol. 5, (1998), para. 118 – the problem of economic disenfranchisement is seen to be exacerbated where the law precludes anyone but the male head of household from entering into certain transactions, for example, purchasing a home.

⁹⁴ Amnesty International, *Between Prison and the Grave, Enforced Disappearances in Syria*, November 2015, page 25.

⁹⁵ International Center for Transitional Justice, *The Disappeared and Invisible, Revealing the Enduring Impact of Enforced Disappearance on Women*, March 2015, page 10.

misinformation, constitutes a violation of the right to dignity.

3.9 The right to an effective remedy

The right to a remedy for gross human rights violations is a well-established norm of international law and applies in the case of enforced disappearance.⁹⁶

Reparations for victims of enforced disappearance shall include individual and collective measures, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Under Article 24(c) of the ICPPED, “[e]ach State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.” This right covers material and moral damages and, where appropriate, other forms of reparation such as: “*satisfaction, including restoration of dignity and reputation*”.⁹⁷ Similarly, States Parties to the African Charter must “*ensure that victims of torture and other ill-treatment are able in law and in practice to claim redress by providing victims with access to effective remedies*.”⁹⁸

⁹⁶ ACHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa; Report of the WGEID, A/HRC/22/45, 28 January 2013, paras. 46-68.

⁹⁷ Article 24 (5)(c) of the ICPPED.

⁹⁸ ACHPR, General Comment No. 4 on the African Charter: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), para. 9.

These rights can be read as conferring the right to reputation and dignity upon individuals and thus prohibit the dissemination of misinformation by States to discredit the disappeared person, to misinform the public about the person's whereabouts and/or to otherwise undermine the search campaign. Such misinformation violates both the right to dignity and the right to an effective remedy.

3.10 Economic, social and cultural rights

Enforced disappearance places the victim outside the protection of the law, often impacting the enjoyment of several rights, including economic, social and cultural rights, by the affected person and their family, such as the rights to health, education and family.⁹⁹

3.10.1 Right to health

Victims' right to health may also be affected by enforced disappearance. States have an obligation to protect this right under the African Charter and the African Charter on the Rights and Welfare of the Child.¹⁰⁰ Where the disappeared are subjected to assaults on their physical and psychological integrity, their right to the enjoyment of the highest attainable standard of physical and mental health is violated.

⁹⁹ WGEID, Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights, A/HRC/30/38/Add.5, 9 July 2015, paras. 17, 22 and 23; Report of the WGEID, 9 July 2015, para. 74.

¹⁰⁰ The African Charter, Article 16; The African Charter on the Rights and Welfare of the Child, Article 14.

Even for those who regain their liberty, the adverse effect on their right to health tends to be long-lasting.¹⁰¹ When women who are or become pregnant are detained in facilities that do not provide the pregnancy care that they require, their right to health is violated; States have an obligation to ensure special protection for pregnant women who are detained.¹⁰² Further, the disappearance often has effects on the physical and psychological health of victims left behind by the disappeared person, which can continue “indefinitely”.

Enforced disappearances can cause relatively severe emotional trauma resulting in psychological and physical effects.¹⁰³ Symptoms can include nightmares, anxiety, depression, guilt, anger, numbing of emotions, avoidance, constant alertness and disturbed sleep.¹⁰⁴ Physical symptoms may also develop such as high blood pressure, chronic tiredness and pain, and, in some cases, even heart disease, and mental impairment, among others. These symptoms are thought to be linked to the

¹⁰¹ WGEID, Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights, A/HRC/30/38/Add.5, 9 July 2015, para. 19.

¹⁰² WGEID, Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights, A/HRC/30/38/Add.5, 9 July 2015, para. 21; WGEID, General Comment on women affected by enforced disappearances, A/HRC/WGEID/98/2 (14 February 2013), para. 9.

¹⁰³ WGEID, Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights, A/HRC/30/38/Add.5, 9 July 2015, para. 31.

¹⁰⁴ International Center for Transitional Justice, *The Disappeared and Invisible, Revealing the Enduring Impact of Enforced Disappearance on Women*, March 2015, pages 10 – 11.

ongoing uncertainty surrounding the fate and whereabouts of the disappeared people, and the inability to properly mourn missing loved ones.¹⁰⁵ Family members can therefore often present multifaceted needs that should be addressed while waiting for the clarification of the fate and whereabouts of the person who has gone missing.¹⁰⁶

3.10.2 Right to education

When individuals are subjected to enforced disappearance as a result of exercising or promoting economic, social and cultural rights, the enjoyment of those rights is also breached. As such, the disappearance of students, teachers and other individuals who promote or exercise the right to education might interfere with the right to education or cultural rights.¹⁰⁷

3.10.3 Right to family life

Enforced disappearance may be carried out with the objective of punishing both the disappeared person and the political or social collective to which they belong, including their family, in contravention of Article 18 of the African Charter. The crime has a particularly strong impact when the disappeared

¹⁰⁵ Ibid.

¹⁰⁶ ICRC, *Accompanying the Families of Missing Persons: A Practical Handbook*, June 2020.

¹⁰⁷ WGEID, *Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights*, A/HRC/30/38/Add.5, 9 July 2015, para. 36.

person is the breadwinner. Spouses whose partners have been disappeared, as well as their children, suffer an aggravated impact due to constant uncertainty about the fate and whereabouts of the disappeared person, persecution, stigmatisation, displacement, social, legal and material deprivation and the fragmentation of their familial nucleus.¹⁰⁸

3.10.4 Impact on children

Children's economic, social and cultural rights can be affected when they are subjected to enforced disappearance, are born during the captivity of a mother who is forcibly disappeared, or are left behind following the enforced disappearance of a parent or legal guardian.¹⁰⁹ The African Charter guarantees the right of every child to the enjoyment of parental care, and prohibits – except as determined by a judicial authority in accordance with appropriate law – the separation of a child from their parents,¹¹⁰ and this right is violated when a child or their parent is forcibly disappeared.

Children often suffer an impact on their rights to education, in addition to other adverse effects that the enforced disappearance may have on their

¹⁰⁸ Report of the WGEID, A/HRC/30/38/Add.5, 9 July 2015, para. 23.

¹⁰⁹ WGEID, General Comment on children and enforced disappearances, A/HRC/WGEID/98/1 (14 February 2013), para. 2.

¹¹⁰ The African Charter on the Rights and Welfare of the Child, adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU in July 1990, which established the African Committee on the Rights and Welfare of the Child, Article 19(1).

mental and physical health and prospects for the future.¹¹¹ The ongoing development of children's physical and mental maturity, as well as their reliance on adults within their family, makes them particularly vulnerable to enforced disappearance.¹¹² Jurisprudence in other human rights systems has established that, where a child is born to persons forcibly disappeared, is subsequently wrongfully removed from their parents and grows up without knowing the truth, the child's right to know their identity has been violated.¹¹³ The African Charter specifically guarantees the right of every child to their birth name and to acquire a nationality; these rights are put at risk where a child or their parent is disappeared.¹¹⁴

3.10.5 Impact on women and girls

As outlined in Part 1, a gender perspective shall be incorporated by States when dealing with enforced disappearance, with the objective of reducing the impact of the crime on women's rights. States must acknowledge and recognise the particular types of

¹¹¹ The African Charter on the Rights and Welfare of the Child, Articles 11(1) and 14(1).

¹¹² General Comment on children and enforced disappearances adopted by the WGEID at its 98th session (31 October – 9 November 2012).

¹¹³ IACtHR, *Gelman v. Uruguay*, 24 February 2011, para. 312: "*The State is responsible for the suppression and substitution of the identity of [the child of the victim], which took place since her birth, until her true identity was determined and expressed as a form of enforced disappearance, to which, in said period, her right to juridical personality, to life, to humane treatment [personal integrity], to personal liberty, to family, to a name, and to the rights of the child, and to nationality*"; ICPPED, Article 25.

¹¹⁴ The African Charter on the Rights and Welfare of the Child (note 126), Article 6.

harm that disappeared women and girls suffer based on their gender, including instances of sexual violence and forced impregnation and the resulting psychological damage and social stigma, as well as the disruption of family structures.¹¹⁵ Women and girls are most impacted by enforced disappearance as wives, mothers, sisters or daughters of the disappeared person.¹¹⁶

¹¹⁵ WGEID, General Comment on women affected by enforced disappearances, A/HRC/WGEID/98/2 (14 February 2013).

¹¹⁶ Report of the WGEID, A/HRC/30/38.Add.5, 9 July 2015, para. 23.

PART 4: LEGAL OBLIGATIONS

4.1 State obligations

Pursuant to Article 1 of the African Charter, States “*shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them*”. In relation to enforced disappearance, the following obligations form part of a State’s Charter obligations.

4.1.1 **Obligation to refrain from enforced disappearances**

States shall refrain from practising, permitting or tolerating the enforced disappearance of persons in any circumstances, including during states of emergency or suspension of individual guarantees.¹¹⁷

4.1.2 **Obligation to prevent enforced disappearances**

States shall take necessary measures to prevent acts of enforced disappearance, including by adopting legislation, policies and practices that promote the protection of human

¹¹⁷ See para. 3.2 above on discussion of Article 5 (*Prohibition of torture and ill-treatment*) of the African Charter; and Inter-American Convention on Forced Disappearance of Persons, Article I which provides guidance as to how this obligation may operate.

rights.¹¹⁸ For the purpose of fulfilling this obligation, this shall include, *inter alia*:

- (i) the implementation of a suitably detailed and comprehensive legal framework which expressly recognises and addresses enforced disappearance, combined with the adoption of appropriate procedures for individuals to seek redress and protection from the effects of the crime and, where appropriate, reparations;
- (ii) putting a framework in place that ensures that the deprivation of liberty is carried out in accordance with human rights standards and obligations, and is limited to only officially recognised centres, and procedural safeguards in respect of detention are implemented;
- (iii) providing the relevant authorities with regular specialised training; and¹¹⁹
- (iv) ensuring that enforced disappearance constitutes an offence under domestic

¹¹⁸ See paras. 3.2 and 3.3 above on discussion of Article 5 (*Prohibition of torture and ill-treatment*) and Article 6 (*the right to liberty and security of the person*) of the African Charter. Moreover, Articles 4, 6 and 7 of the ICPPED, *inter alia*, prescribe steps for States to take to prevent enforced disappearances.

¹¹⁹ ACHPR, Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, Part 1(b); ICPPED, Article 23.

criminal law,¹²⁰ punishable by appropriate penalties which shall take into account the gravity of the crime.

The offence of enforced disappearance shall be deemed continuous as long as the fate and whereabouts of the victim have not been determined (including until the State acknowledges the detention and releases information pertaining to the fate and whereabouts of the individual).¹²¹

Given that the deprivation of liberty involves an element of control over the detainee, States have a positive obligation to ensure that the detention does not result in an enforced disappearance. States shall protect victims from enforced disappearance practised through the deprivation of liberty by adhering to the following procedural safeguards:¹²²

¹²⁰ By reference to the definition provided in the ICPPED and in these Guidelines i.e. United Nations Declaration for the Protection of All Persons from Enforced Disappearance, Article 4; ICPPED, Articles 2 and 4; Inter-American Convention on Forced Disappearance of Persons, Article III; UNWGEID, Best practices on enforced disappearances in domestic criminal legislation (2010).

¹²¹ Inter-American Convention on Forced Disappearance of Persons, Article III; WGEID, General Comment on Enforced Disappearance as a Continuous Crime, para. 1, para. 2, para. 6; pages 23 – 25; United Nations Declaration on the Protection of All Persons from Enforced Disappearance, Article 17 (1); ICPPED, Article 8.

¹²² ACHPR, Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa; Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines); Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

- (i) Arrests shall only be carried out by police or by other competent officials authorised by the State for this purpose and shall only be executed pursuant to a valid warrant, and/or if the person is suspected, on reasonable grounds, to have committed or is about to commit an arrestable offence.¹²³ States shall not hold individuals in secret detention. Any person deprived of liberty shall be held solely in official, State-recognised and supervised, places of detention for a period not exceeding the legally prescribed period of time for the crime that the person has, or is suspected on reasonable grounds to have, committed.¹²⁴
- (ii) The person deprived of their liberty shall, in conformity with national law, be brought before a judicial authority promptly after detention.¹²⁵
- (iii) Any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their

¹²³ ACHPR, Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (the Luanda Guidelines) 2014, Part 1(2).

¹²⁴ ICCPED, Article 17(2), United Nations Declaration on the Protection of All Persons from Enforced Disappearance, Article 10(1).

¹²⁵ United Nations Declaration on the Protection of All Persons from Enforced Disappearance, Article 10(1).

legal counsel, shall, in all circumstances, be entitled to take initial legal proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.¹²⁶ Access by the competent and legally authorised authorities and institutions to the places where persons are deprived of liberty shall be granted, if necessary with prior authorisation from a judicial authority.¹²⁷ All deprivation of liberty shall be subject to judicial oversight and the right to habeas corpus.

- (iv) Any person deprived of liberty shall be authorised to communicate with and be visited by any persons with a legitimate interest (as described above) or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or

¹²⁶ ICPPED, Article 17(2).

¹²⁷ Ibid.

her consular authorities, in accordance with applicable international law.¹²⁸

- (v) States shall ensure the compilation and maintenance of a central official register containing accurate and contemporaneous records of persons deprived of liberty. The information contained in this register shall be made promptly available, upon request, to any judicial or other competent authority or institution authorised for that purpose by the law of the State concerned or any relevant international legal instrument to which the State concerned is a party.¹²⁹ The information contained therein shall include, as a minimum:¹³⁰
- (a) the identity of the person deprived of liberty;
 - (b) the date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;

¹²⁸ ICCPED, Article 17(2).

¹²⁹ ACHPR, General Comment No. 3 on the African Charter: The Right to Life (Article 4), para. 36; ICCPED, Article 17(3).

¹³⁰ ICCPED, Article 17(3).

- (c) the authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;
 - (d) the authority responsible for supervising the deprivation of liberty;
 - (e) the place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
 - (f) elements relating to the state of health of the person deprived of liberty;
 - (g) in the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains; and
 - (h) the date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.
- (vi) States shall guarantee to any person with a legitimate interest in the

information described above access to at least the following information¹³¹:

- (a) the authority that ordered the deprivation of liberty;
- (b) the date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty;
- (c) the authority responsible for supervising the deprivation of liberty;
- (d) the whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer;
- (e) the date, time and place of release;
- (f) elements relating to the state of health of the person deprived of liberty; and
- (g) in the event of death during the deprivation of liberty, the circumstances and cause of

¹³¹ ICPPED, Article 18.

death and the destination of the remains.

- (vii) Personal information, including medical and genetic data, which is collected and/or transmitted within the framework of the search for a disappeared person, shall not be used or made available for purposes other than the search for the disappeared person.¹³² This is without prejudice to the use of such information in criminal proceedings relating to an offence of enforced disappearance or the exercise of the right to obtain reparation.¹³³

It is ultimately for each State individually to determine the most effective way by which it wishes to comply with its obligation to prevent enforced disappearances. That said, States are strongly encouraged to ratify the ICPPED followed by the implementation of national level instruments that address the specifics of the crime of enforced disappearances.

Furthermore, and in the interest of accountability, States are encouraged to allow victims to bring complaints to regional and international bodies, from or on behalf of

¹³² ICPPED, Article 19.

¹³³ *Ibid.*

individuals subject to its jurisdiction claiming to be victims of enforced disappearance.

4.1.3 Obligation to protect all persons from enforced disappearance

States shall, in accordance with their obligations under international human rights and humanitarian law, protect those in their territory or under their jurisdiction against unlawful acts, including enforced disappearance.¹³⁴ States shall similarly protect victims and those assisting them from harassment or any other form of intimidation.¹³⁵ The obligation to protect is wide-ranging and includes such rights as the right to life, the prohibition against torture and ill-treatment, the right to liberty and security of the person, the right to a fair trial and the right to liberty.

Moreover, pursuant to the obligation of non-refoulement under international human rights law and refugee and humanitarian law,¹³⁶ States shall not expel, return (“*refouler*”),

¹³⁴ This obligation links to the obligation under Article 6 of the African Charter, see para. 3.3 above.

¹³⁵ See discussion of Articles 5 (*Prohibition of torture and ill-treatment*) and 6 (*the right to liberty and security of the person*) of the African Charter in paras. 3.2 and 3.3 above; and ACHPR, Principles and Guidelines on Human and Peoples’ Rights while Countering Terrorism in Africa, Part 1(b).

¹³⁶ African Charter, Article 12; Convention on the Specific Aspects of African Refugees, Articles 2(3) and 5, and ICPPED, Article 16.

surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.¹³⁷ To make that determination, States shall consider all relevant information, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of IHL in the State concerned.¹³⁸

4.1.4 **Obligation to search and investigate**

(i) **Obligation to search**

States shall take all appropriate measures to search for, locate and release disappeared persons without delay and, in the event of death, to locate, exhume, identify, respect and return their remains to the relatives.¹³⁹ The search should be independent and impartial and should not be carried out by individuals who may have been involved in the

¹³⁷ See United Nations Declaration on the Protection of All Persons from Enforced Disappearance, Article 8 and discussion on Article 12 of the African Charter which guarantees the right to freedom of movement and the right to asylum in para. 3.6 above.

¹³⁸ ACHPR, General Comment No. 3 on the African Charter: The Right to Life (Article 4), para. 40; ICPPED, Article 16, and United Nations Declaration on the Protection of All Persons from Enforced Disappearance, Article 8.

¹³⁹ See discussion surrounding Article 18 (*right to family life*) in para. **Error! Reference source not found.** above; ICPPED, Article 24(3); and Committee on Enforced Disappearances, Guiding Principles for the Search for Disappeared Persons, CED/C/7 (8 May 2019), Principle 6.

commission of the disappearance. States shall ensure that the rights of the victims to know the fate and whereabouts of those disappeared are upheld.¹⁴⁰ The victims and their legal representatives should have access to information about the search and its progress and be allowed to participate in all stages of the search except if their participation is not possible due to exceptional circumstances (e.g. because participation is not possible without exposing persons to danger of harm).

When searching for the disappeared, States shall presume that the person is still alive. The suspicion that the disappeared is deceased shall not absolve the State from its obligation to search.¹⁴¹ The search shall be governed by State public policy and shall respect human dignity at every stage. It should follow a differentiated approach that takes into account the individual circumstances and the vulnerability of the victims. The search should be organised efficiently, in an independent and impartial manner, it shall begin without delay

¹⁴⁰ Study on the Right to the Truth, Report of the Office of the High Commissioner for Human Rights of the United Nations, E/CN.4/2006/91 (9 January 2006), para. 59; WGEID, General Comment on the Right to the Truth in Relation to Enforced Disappearances, para. 5 (adopted in 2020; see A/HRC/16/48 (26 January 2011), para. 39).

¹⁴¹ Ibid, Principle 7 paras. 4 and 5.

and continue until the whereabouts or the fate of the disappeared are established. The search must ensure the participation of victims, their legal representatives, counsel or any person authorised by them, and/or any person, association or organisation with a legitimate interest, and this right should be protected and guaranteed at all stages of the search process, without prejudice to the measures taken to preserve the integrity and effectiveness of the search itself.¹⁴²

The result of the search shall be communicated to the affected families in a timely and culturally appropriate manner.

In the event that a disappeared person is confirmed dead, expert recovery of the remains must be commissioned to ascertain the circumstances of death, and to ensure the collection and preservation of evidence in relation to the death. Where a State lacks the domestic expertise to meet the standard required for search and exhumation and identification, international experts should be commissioned, and each relevant State shall co-operate. States have a responsibility to safeguard the dead from deliberate and/or

¹⁴² Committee on Enforced Disappearances, Guiding Principles for the Search for Disappeared Persons, CED/C/7 (8 May 2019).

inexpert destruction of remains or evidence. Expert exhumation and identification are an essential element of an effective investigation, and of reparation, allowing victims to rebury the deceased in appropriate places in accordance with their beliefs and practices. States shall establish DNA databanks as well as official communication channels with other States to enable and facilitate the exchange of expertise. Moreover, States shall ensure that they have staff that are sufficiently trained and equipped to carry out forensic medical examinations to meet all required standards for search, exhumation and identification, as described above.

In all circumstances, a high degree of evidence will be required before suspending the search for an individual.¹⁴³ Moreover, even if there is evidence of the individual's death, any decision to discontinue the search and the identification process should be considered against the possibility that continuing the search may identify more remains, and the needs expressed by the family members of the victim.¹⁴⁴ The objective of these obligations is to ensure that the same effort shall be put into

¹⁴³ Committee on Enforced Disappearances, Guiding Principles for the Search for Disappeared Persons, CED/C/7 (8 May 2019) Principle 7 paras. 4 and 5.

¹⁴⁴ *Ibid*, para. 3.

searching for a deceased disappeared as if the person was presumed to be alive.¹⁴⁵ The search for the victim, the identification process and the criminal investigation into the crime of enforced disappearance should at all times aim to be mutually beneficial, and not mutually compromising.¹⁴⁶

For the avoidance of doubt, under international law the obligation to search applies even where the disappearance was perpetrated by a non-State actor.¹⁴⁷

(ii) **Obligation to investigate**

States shall carry out prompt, impartial and independent investigations into all cases of enforced disappearances.¹⁴⁸ Investigations must be transparent, and be open to the scrutiny of the general public and victims.¹⁴⁹ A State's obligation to investigate and prosecute cannot be replaced by transitional justice mechanisms.

¹⁴⁵ Ibid.

¹⁴⁶ See the Swisspeace report on "Coordinating the Search and Criminal Investigations concerning Disappeared Persons" (June 2020), specifically page 8 para. 3.2 which outlines the Swisspeace's recommendations to ensure effective coordination that have guided this document's directions.

¹⁴⁷ See also ICPPED, Article 3.

¹⁴⁸ See discussion of Articles 7 (*right to a fair trial*) and 9 (*right to information*) of the African Charter in paras. 3.4 and 3.5 above.

¹⁴⁹ The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Office of the United Nations High Commissioner for Human Rights, New York/Geneva, 2017, para. 32.

The obligation of a State to investigate an enforced disappearance continues until the fate and whereabouts of the person are established,¹⁵⁰ and any failure to investigate the crime of enforced disappearance in good faith will constitute a continuous violation.

The obligation to investigate is an essential part of upholding the State's positive duty to safeguard the right to life and a failure to investigate, *inter alia*, enforced disappearance and/or suspicious deaths, constitutes a breach of the right to life. Where an investigation reveals evidence that a death was caused unlawfully, the State must ensure that identified perpetrators are prosecuted and, where appropriate, punished through a judicial process. Investigations and prosecutions are essential to deter future violations and to promote accountability, justice, the rights to remedy and to the truth, and the rule of law.¹⁵¹

Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities of the State shall undertake an investigation even if

¹⁵⁰ WGEID, General Comment on Enforced Disappearance as a Continuous Crime, para. 1; WGEID General Comment on the Right to the Truth, A/HRC/16/48, para. 5.

¹⁵¹ The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Office of the United Nations High Commissioner for Human Rights, para.8

there has been no formal complaint.¹⁵² This duty extends to conducting *ex officio* investigations where there are reasonable grounds to believe that an enforced disappearance has occurred.

States shall respond promptly, impartially, independently, effectively, and thoroughly to an enforced disappearance, using all available legal means to conduct the investigation, which must be aimed at discovering the truth, and at the pursuit, capture, prosecution and eventual punishment of all parties involved in the perpetration of the crime.

Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, victims and their legal counsel, as well as persons participating in the investigation, are protected against all forms of ill-treatment, harassment, reprisals or intimidation as a consequence of the complaint or any evidence given.¹⁵³ States shall make available the findings of any investigation into an enforced disappearance upon the request of any person with a

¹⁵² ICPPED, Article 12.2; Declaration on the Protection of All Persons from Enforced Disappearance, Article 13(1); Body of Principles for the Protection of All Persons under Any Form of Detention, Principle 34; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 57.

¹⁵³ ICPPED, Article 12.1.

legitimate interest in the matter, unless doing so can justifiably be expected to jeopardise an ongoing investigation.¹⁵⁴

States shall ensure that the relevant authorities have the necessary powers and resources to conduct the investigations effectively, including by having access to the documentation and other information relevant to their investigation. Additionally, the authorities must have access, through prompt judicial authorisation if needed, to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.¹⁵⁵

For the avoidance of doubt, under international law the obligation to investigate applies even where the disappearance was perpetrated by a non-State actor.¹⁵⁶

(iii) **Obligations specific to the circumstances of the disappearance**

Where a disappeared person is last seen in State custody, there is a presumption that the State is responsible for the whereabouts and treatment of the disappeared person and the

¹⁵⁴ United Nations Declaration on the Protection of All Persons from Enforced Disappearance, Article 13(4).

¹⁵⁵ ICPPED, Article 12.3.

¹⁵⁶ See also ICPPED, Article 3.

burden of proof rests upon the State to prove otherwise through a prompt, impartial, thorough and transparent investigation.¹⁵⁷

All cases of enforced disappearance shall remain expressly outside military jurisdiction and be investigated and prosecuted solely by, or under control of, civil authorities and tried only by competent ordinary courts. Investigations into enforced disappearances which are attributed to members of the armed forces or to the police similarly shall not be investigated by military courts or military police and must be investigated by civilian bodies linked to the ordinary courts of justice.

States shall punish those who hinder investigations.¹⁵⁸ Furthermore, guarantees must be provided that the persons suspected of having committed an offence of enforced disappearance are not in a position to influence an investigation by means of pressure or acts of intimidation or reprisal. States are responsible for implementing processes that ensure the impartiality of law enforcement and the Court system.¹⁵⁹

¹⁵⁷ ACHPR, General Comment No. 3 on the African Charter: The Right to Life (Article 4), para. 37.

¹⁵⁸ ICPPED, Articles 12(4), 22 and 25(1)(b); IACHR, *Case of Radilla-Pacheco v. Mexico* (23 November 2009) para. 332.

¹⁵⁹ ICPPED, Article 12(3).

Locating a disappeared person does not absolve the State from its obligation to investigate the circumstances of the crime of enforced disappearance and prosecute the perpetrators. Similarly, an enforced disappearance must be investigated in all circumstances, even if the disappeared person is found or reappears (for example, because they are released by the perpetrators of the crime, escape, or for other reasons).¹⁶⁰ Even when it can be inferred that the disappeared person was subjected to an arbitrary execution, as long as the whereabouts of that person are not determined, or his or her remains are not located and identified, the violation of rights and the crime of enforced disappearance continues, as does the State's obligation to investigate.¹⁶¹

4.1.5 Obligation to prosecute

The obligation to prosecute and bring all perpetrators of the crime to justice shall continue even after the victim's whereabouts have been identified.

¹⁶⁰ The Swisspeace report on "Coordinating the Search and Criminal Investigations concerning Disappeared Persons" (June 2020) make many of the recommendations in this paragraph. This specific direction is made in the context of recommendations to ensure effective coordination between the criminal investigation into the enforced disappearance and the search of the victim, see page 8 para. 3.2 of the report.

¹⁶¹ WGEID General Comment on the Right to the Truth, A/HRC/16/48, para. 5.

Amnesties and similar measures¹⁶² that prevent the perpetrators of enforced disappearance from being investigated, prosecuted and punished by the courts are incompatible with the African Charter.¹⁶³ This is incompatible with the United Nations Declaration on the Protection of All Persons from Enforced Disappearance that prohibits those who have committed, or who have been alleged to commit, the offence to “*benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction*”.¹⁶⁴

¹⁶² Report of the WGEID on Standards and Public Policies for an Effective Investigation of Enforced Disappearances, A/HRC/45/13/Add.3, 7 August 2020, para. 28. These measures include: “(a) *Ceasing an investigation owing to the impossibility of identifying the perpetrators, in contravention of Article 13(6) of the Declaration; (b) Imposing conditions to the right to the truth and reparations; (c) Withdrawing charges or granting pardons to the alleged perpetrators; (d) Imposing statutes of limitations that are meagre or applicable while the disappearance is still ongoing and prosecuting the perpetrators with the intent of absolving them or punishing them with insignificant sanctions.*”

¹⁶³ ACHPR, General Comment No. 4 on the Right to Redress for Victims of Torture and other Cruel, Inhuman or Degrading Punishment or Treatment, para. 28; ACHPR. See also Declaration on the Protection of All Persons from Enforced Disappearance, Article 18; Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, Principle 24; UN Security Council, Resolution No. 1120 (1997); Resolution 1315 (2000) Sierra Leone (14 August 2000); Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts, Article 6(5). ICRC, Customary International Humanitarian Law Study, Rule 159.

¹⁶⁴ Similar provisions are found in the Inter-American Convention on Forced Disappearance of Persons, Article IX: “Privileges, immunities, or special dispensations shall not be admitted in such trials, without prejudice to the provisions set forth in the Vienna Convention on Diplomatic Relations.”

There shall be no immunity from prosecution for people who work for or are associated with the Government, or who hold a role or office that affords them Governmental supervisory power, or who are otherwise in a position to exercise Government power.

No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance.¹⁶⁵

Enforced disappearances shall not be subject to a statute of limitation, and the passage of time shall not be a valid defence or ground for a State to refuse the investigation of an enforced disappearance, and/or to deny a victim redress in respect of such enforced disappearance.

This approach is consistent with the continuing violation doctrine, and victims should not be time-barred from obtaining justice. Any statute or rule of procedure that may reduce a victim's ability to obtain redress shall be construed as

¹⁶⁵ ICPPED, Article 6(2), Declaration on the Protection of All Persons from Enforced Disappearance, Articles 6(1) and 7. The WGEID highlights the importance of this in its report on standards and public policies for effective investigations of enforced disappearances. They highlight that obedience should not amount to an exemption. Linked to this concept, they highlight the need for criminalisation of senior individuals of a State who provide support to groups carrying out enforced disappearance in the form of acquiescence (or any other means).

narrowly as possible so that a remedy is provided in all circumstances.

If, contrary to this guideline, a State applies a statute of limitations in respect of enforced disappearance, it shall ensure that the term of limitation for criminal proceedings: (i) is of a long duration and is proportionate to the extreme seriousness of this offence; and (ii) commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature. Each State shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation.

A person tried for an offence of enforced disappearance shall benefit from a fair trial before a competent, independent and impartial court established by law.¹⁶⁶

States shall take the necessary measures to hold accountable a superior who: knew, or consciously disregarded information which indicated that his subordinates were committing or about to commit an enforced disappearance; exercised effective responsibility and control over activities concerning enforced disappearance; and failed to take all necessary and reasonable

¹⁶⁶ ICPPED, Art. 11.3.

measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the situation to the competent authorities for investigation and prosecution. Any trial of perpetrators of enforced disappearance shall expressly recognise and be without prejudice to the higher standards of responsibility applicable and attributable under relevant international law to any military commander or to a person effectively acting as a military commander.¹⁶⁷

4.1.6 **Obligation to punish**

States shall impose sanctions that are proportionate to the extreme gravity of enforced disappearance. States may apply mitigating circumstances to those who have participated in acts amounting to enforced disappearance when they help to find the victim alive, participate in the search, provide information that clarifies the enforced disappearance of a person, or identify the perpetrators.¹⁶⁸ Similarly, without prejudice to other criminal procedures, States may apply aggravating circumstances, in particular in the event of the death of the disappeared person or the commission of an enforced

¹⁶⁷ ICPPED, Art. 6.1(c).

¹⁶⁸ ICPPED, Article 7; Inter-American Convention on Forced Disappearance of Persons, Article III.

disappearance in respect of pregnant women, minors, persons with disabilities or other persons in vulnerable situations.¹⁶⁹

At all times, States must remain aware that where custodial sentences are handed down in punishment of any crime, States must ensure to safeguard the rights of the persons in their custody.

In order to facilitate co-operation between States to prosecute the crime of enforced disappearances, and in line with the progressive abolition of the death penalty across Africa, capital punishment shall not be an appropriate punishment under any circumstance. For the avoidance of doubt, the obligations on States to prosecute and punish apply even where the disappearance was committed by a non-State actor.

4.1.7 Universal jurisdiction and extradition

States shall establish their competence to exercise jurisdiction over the offence of enforced disappearance when the offence is committed in their territory,¹⁷⁰ when the offender and/or the victim is one of their nationals, or when the alleged offender is

¹⁶⁹ ICPPED, Article 7.

¹⁷⁰ ICPPED, Article 13.

present in their jurisdiction, unless the State concerned extradites or surrenders him or her to another State or an international criminal tribunal for prosecution in accordance with its international obligations.¹⁷¹

The crime of enforced disappearance shall not be considered a political offence for purposes of extradition. It shall be included among the extraditable offences in every extradition treaty entered between States.¹⁷²

4.1.8 **Obligation to co-operate among States**

States shall provide each other with mutual assistance for the purpose of investigating enforced disappearance, assisting victims of enforced disappearance in searching for, locating and releasing the victims and, in the event of death, in exhuming and identifying their remains.¹⁷³ States shall also provide each other with mutual assistance in the search for, identification of and return of minors who have been removed to another State or detained as a consequence of the enforced disappearance of their parents or guardians. The exchange of information between States, and the mutual

¹⁷¹ See discussion surrounding Article 7 (right to a fair trial) of the African Charter in para. 3.4 above; and ICPPED, Article 9; Inter-American Convention on Forced Disappearance of Persons, Article IV.

¹⁷² Inter-American Convention on Forced Disappearance of Persons, Article V.

¹⁷³ African Charter, Article 1; ICPPED, Articles 14 and 15.

provision of services and expertise (including in relation to DNA and forensic analysis) will be of particular importance to achieving these goals.¹⁷⁴ To achieve these ends, States shall establish a competent authority and enter into appropriate co-operation agreements to facilitate effective co-operation across borders. In addition, States shall establish co-operation channels with existing international bodies and utilise available international resources where available and appropriate.¹⁷⁵

4.1.9 Obligation to provide redress to victims

States shall adopt legislative measures and any other measures required to guarantee effective, sufficient and timely remedies, including reparations, to the victims of enforced disappearance.¹⁷⁶ Remedies must be affordable and accessible without unjustified delays. Reparations must include individual and collective measures, including restitution, compensation, rehabilitation, satisfaction, and

¹⁷⁴ ICPPED, Article 25(3); Inter-American Convention on Forced Disappearance of Persons, Article XII.

¹⁷⁵ Committee on Enforced Disappearances, Guiding Principles for the Search for Disappeared Persons, CED/C/7 (8 May 2019), Principle 9 para. 3.

¹⁷⁶ These remedies shall include actions against the State where the State has violated international human rights law through act or omission – see United Nations General Assembly, Resolution on “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (21 March 2006) para. 15.

guarantees of non-repetition.¹⁷⁷ An effective remedy entails the right to be heard publicly and with due guarantees by a competent, independent and impartial court established by law for the determination of their rights.¹⁷⁸

The overall objective behind providing remedies and reparations is to support the victim, right the wrong suffered, and compensate the victim to the extent possible.

Remedies encompass providing victims with appropriate administrative support to manage their and the disappeared person's affairs in the form of authoritative documentation that confirms the victim's status and relationship to the disappeared. The purpose of such administrative support is to enable victims to gain access to benefits that they would otherwise have access to but for the disappearance.

¹⁷⁷ See discussion surrounding 7(1)(a) (right to a fair trial) above in para. 3.4; General Comment No. 4 on the African Charter: the Right to Redress for Victims of Torture and Other Cruel, Inhuman and Degrading Punishment or Treatment (Article 5); Maputo Protocol, Article 25(a)(b); Principles and Guidelines on Human and Peoples' Rights While Countering Terrorism in Africa, Part 1(E); Guidelines on Combating Sexual Violence and its Consequences in Africa, Part 1(b)(10). See also ICPPED, Articles 24(4) and (5); WGEID, Reparations and Enforced Disappearances, A/HRC/22/45 (28 January 2013).

¹⁷⁸ African Charter, Article 1; Universal Declaration of Human Rights, Article 10; International Covenant on Civil and Political Rights, Article 14(1); American Convention on Human Rights, Article 8(1).

Reparations must be proportional to the severity of the harm suffered by the victim.¹⁷⁹

The State shall ensure that a national programme for reparation is in place which supports the victim in a situation where reparation is not otherwise available (e.g. from the perpetrators or other persons involved in the commission of the offence).¹⁸⁰ States shall also have a domestic legal system that allows for the effective enforcement of reparation judgments against individuals and entities who are responsible for the harm suffered.¹⁸¹

States shall determine the forms and modalities of reparations taking into account cultural considerations, as well as the circumstances of the victim and type of harm caused, and always in compliance with the obligations set out in these guidelines.¹⁸² As outlined in paragraph 4.1.5 (*Obligation to search and investigate*) above, the rights of victims to effective remedy and reparations for

¹⁷⁹ United Nations General Assembly, Resolution on “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (21 March 2006) para. 15.

¹⁸⁰ *Ibid*, para. 16.

¹⁸¹ This would also include valid foreign legal judgments of reparation – see *ibid*, para. 17.

¹⁸² WGEID, Reparations and Enforced Disappearances, A/HRC/22/45 (28 January 2013), para. 67.

the crime of enforced disappearance shall not be subject to a statute of limitations.¹⁸³

For the avoidance of doubt, States shall ensure that victims of crimes analogous to enforced disappearances which have been carried out by non-State actors shall have access to effective remedies.

4.2 Obligations of individuals

Individuals have duties towards each other and to their community.¹⁸⁴ The rights of each individual should be exercised with regard to the rights of others, and with regard to enforced disappearance being appropriately prevented, investigated and punished.¹⁸⁵

¹⁸³ The UN Committee against Torture made this clear in a recent decision. In that instance, the continuous harmful effects of torture were presented as the reason behind removing any statutes of limitations. Additionally, the imposition of a statute of limitation may result in a victim that has no ability to enforce its right to redress, which would be highly undesirable considering the severity of the harm suffered. These considerations suggest that no statute of limitation should be imposed in a case of enforced disappearance either. See United Nations Committee Against Torture, Decision adopted by the Committee under Article 22 of the Convention, concerning communication No. 854/2017 against Bosnia and Herzegovina (11 September 2019).

¹⁸⁴ African Charter, Articles 27, 28 and 29.

¹⁸⁵ Ibid.

PART 5: IMPLEMENTATION

5.1 Implementation of the Guidelines

In accordance with Article 1 of the African Charter, States must adopt legislative, administrative, judicial and all other necessary measures to implement these Guidelines and to ensure that the rights and obligations set forth herein are guaranteed in fact and in law, including during armed conflicts, crisis situations and states of emergency. This will include examining existing legislative, administrative, regulatory and other provisions, policies and practices to ensure that they are compliant with the Guidelines. States are encouraged to collaborate with non-State actors in order to ensure the implementation of these Guidelines.

5.2 Reporting

States Parties to the African Charter shall provide detailed information, including statistical information, on the progress achieved in the implementation of the present Guidelines (including the implementation of relevant legislation, policies and court decisions) when submitting their periodic reports to the African Commission and in accordance with their other reporting responsibilities pursuant to relevant regional and international bodies. This is in line with the mandate of the African Commission Working Group on Death Penalty, Extra-Judicial, Summary or

Arbitrary Killings and Enforced Disappearances in Africa to monitor, collect and keep a database of reported instances of situations concerning enforced disappearance in Africa.¹⁸⁶

5.3 Dissemination

States shall ensure that these Guidelines, as well as other relevant instruments such as the ICPPED and the Rome Statute, are broadly disseminated among and by relevant stakeholders, including at the offices of relevant ministries, local authorities, congressional representatives, national human rights institutions, national preventative mechanisms and other oversight bodies, defence and security personnel and personnel in the legal, educational, medical, social fields, and academic institutions, as well as throughout civil society. Disseminating the Guidelines among relevant State authorities, including law enforcement agencies, security and intelligence services, prosecution services, judges, immigration officials, and detention and prison staff, should be a priority.

5.4 Training

States shall ensure that all relevant officials who are involved in law enforcement, security and intelligence, migration, and counter-terrorism

¹⁸⁶ ACHPR, Resolution 408 on the Expansion of the Mandate and Composition of the Working Group on Death Penalty, Extra-Judicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa (LXIII), 2018.

measures, as well as those charged with providing support to victims of enforced disappearance receive effective, appropriate training on the contents and implementation of these Guidelines. To that end, the provisions of these Guidelines should make up an integral part of training programmes for all relevant officials.

