



SUBMISSION OF *AMICUS CURIAE*

**BY THE WORLD ORGANISATION AGAINST TORTURE TO THE
COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST
AFRICAN STATES IN CONNECTION WITH THE APPLICATION:**

Isaac MENSAH et al. v. Government of Ghana

30th August 2023

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I. Introduction

1. Preliminary remarks

1. These written observations are respectfully submitted to the Court of Justice of the Community of West African States (hereinafter ECOWAS) in order to provide information and analysis on several issues, in particular concerning enforced disappearance as an act of torture. These issues are part of the experience and expertise of the World Organisation Against Torture (OMCT), the main coalition of international non-governmental organisations fighting against torture, summary executions, enforced disappearances, arbitrary detention and all other cruel, inhuman or degrading treatment. Through this intervention, OMCT seeks to present to the Court, international legal principles, comparative examples of other tribunals and bodies, as well as elements of doctrine.

2. These observations are not intended to take a position on the factual issues currently before the Chamber.

2. Identity and interest of the intervener

3. The World Organisation Against Torture, established in 1986 in Geneva, is the world's largest network of non-governmental organisations (NGOs) fighting against torture, summary executions, enforced disappearances and any other cruel, inhuman or degrading treatment or punishment. It manages the SOS-Torture network, composed of more than 200 affiliated organizations, and maintains working relationships with a large number of local and regional NGOs. It ensures the daily dissemination of urgent interventions around the world to prevent serious human rights violations, protect individuals and fight impunity, and provides victims of torture with medical, social and/or legal assistance. In particular, OMCT provides legal support to individuals arbitrarily detained or subjected to torture or ill-treatment.

4. As a result, OMCT has been documenting and combating cases of enforced disappearance for several years. In a report produced in April 2023, OMCT denounces the

execution and enforced disappearance of many protesters in Chad¹. In August 2022 OMCT produced a note on enforced disappearances in Turkey, concluding with a series of recommendations for the Turkish Government. In addition, OMCT in partnership with the International Federation for Human Rights (FIDH) has requested urgent interventions from States to clarify the situation of victims of enforced disappearances such as Mr. Osman Yonis Bogoreh,² journalist working in Djibouti but also Mr. Franklin Mowha,³ national president of the Frontline *Fighter for Citizens Interests association*, who disappeared in Cameroon in 2018.

5. OMCT frequently represents victims of torture and ill-treatment seeking redress before national and international courts and has filed numerous *amicus curiae* briefs before these international and national courts.

6. In addition, OMCT has a solid knowledge of the case-law on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the case law of the European Court of Human Rights and other courts on enforced disappearance, human rights reports and any other element of analysis in connection with the above-mentioned application. Since 2014, OMCT has been the official coordinator of the participation of civil society organizations in the sessions of the United Nations Committee against Torture (hereinafter CAT). Therefore, OMCT has an in-depth knowledge of its functioning, standards, procedures and working methods.

2. Purpose of *amicus curiae*

7. These observations will address the issue of enforced disappearance, in particular as constituting an act of torture. They will focus more specifically on the capacity of relatives to act as collateral victims. To this end, the link between enforced disappearance and physical and mental torture will first be explained; secondly, the vulnerability of migrants to enforced disappearance; and the obligation of States to ensure transparency of information and the

¹Investigation report on the bloody repression of the demonstrations of 20 October 2022 in Chad, OMCT.

²OMCT, Arbitrary arrest and enforced disappearance of members of the Djiboutian League for Human Rights Mr. Osman Yonis Bogoreh and Mr. Said Abdilahi Yassin, 25.10.19, <https://www.omct.org/fr/ressources/appels-urgents/arrestation-arbitraire-et-disparition-forcee-des-membres-de-la-ligue-djiboutienne-des-droits-humains-mm-osman-yonis-bogoreh-et-said-abdilahi-yassin>

³OMCT, Enforced disappearance of Mr. Franklin Mowha, National President of Frontline *Fighters for Citizens Interests*, 25.09.10, <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/cameroun-disparition-forcee-de-m-franklin-mowha-president-de-ffci>.

effective conduct of investigations. Finally, the issue of relatives as collateral victims will be addressed.

II. Facts

8. Mr Peter Mensah is one of 44 Ghanaians, out of at least 67 West African migrants, who were forcibly disappeared in The Gambia in July 2005 while migrating to Europe by sea. Accused of being mercenaries who had come to attack The Gambia, they were then summarily executed by members of the death squad commonly known as "*Junglers*" and operating directly under the authority of Mr. Yahya Jammeh, the former President of The Gambia. Only one of the migrants survived, Mr. Martin Kyere.

9. To this day, the fate of Mr Peter Mensah remains unknown, and his family members still do not know what happened to him, although they have continued trying to locate him. Their search with the Ghanaian authorities to find out the truth was unsuccessful. The Government of Ghana has not responded to their request for documents relating to his enforced disappearance, nor has it provided any information on his fate or on Ghana's efforts to uncover the truth. The Government of Ghana has also failed to conduct effective investigations. It lacked the diligence to locate Mr. Peter Mensah and prosecute, or prosecute, those responsible for his enforced disappearance, despite the confessions of two former "*Junglers*" before the Gambian Truth, *Reconciliation and Reparations Commission* (TRRC) in July 2019 and the findings of the TRRC.

10. This case was therefore brought by Mr Isaac Mensah, the eldest child of Mr Peter Mensah, on his behalf and on behalf of 23 members of his family and by the NGO *African Network against Extrajudicial Killings and Enforced Disappearances* (ANEKED). Mr. Isaac Mensah calls for justice and hopes that the Government of Ghana will make every effort to ensure a serious and effective investigation into the circumstances of his father's disappearance and his fate, including his presumed death, be carried out in particular in the light of new evidence. He wants those responsible to be held accountable. He also wishes to know the truth about his father's fate and, if he is indeed deceased, that his remains be identified and returned to his family for burial in accordance with traditional rites in Ghana.

III. Discussion and Analysis

1. The characterization of enforced disappearance as torture

a. The link between enforced disappearances and physical torture

11. Under the 2010 Declaration on the Protection of All Persons from Enforced Disappearance, they are characterized when "*persons are arrested, detained or abducted against their will or otherwise deprived of their liberty*" (Preamble). The arrest or detention must be "*by officials of different branches or levels of government, or organized groups or individuals acting on behalf of or with the direct or indirect support, consent or acquiescence of the government.*" (Preamble). Such disappearance must be "*followed by a refusal to disclose the fate or whereabouts of the person concerned, or a refusal to acknowledge that he or she is deprived of liberty, thereby removing him or her from the protection of the law*". (Preamble).

12. The Committee against Torture has already considered enforced disappearance as an act of torture and a violation of human rights, as in the case of Mr. Francisco Larez who disappeared from a Venezuelan prison. The CAT then declared that "*enforced disappearance constitutes an act of torture within the meaning of article 1*" of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁴.

13. The Declaration on the Protection of All Persons from Enforced Disappearance also considers enforced disappearance as an act of torture and a violation of multiple rights. Article 1, paragraph 2, states that any enforced disappearance constitutes a violation of the "*right to recognition before the law, the right to liberty and security of person and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. It also violates or poses a serious threat to the right to life.*"

14. In addition, courts have often found enforced disappearances to constitute torture or cruel, inhuman or degrading treatment. The Inter-American Court of Human Rights (IACHR) has ruled that cases of enforced disappearance may constitute torture⁵. In the case of *Terrones Silva et al. v. Peru*, Silva was accused of having committed terrorist acts prior to his

⁴ Francisco Larez v. Venezuela, CAT, 456/2011

⁵ IACHR: *Velasquez Rodriguez v. Honduras*, 1988; *Gelman v. Uruguay*, 2011; *Chichupac Village and Community Members of Rabinal v. Guatemala*, 2016; *Terrones Silva et al. v. Peru*, 2021; *Chitay Nech et al. v. Guatemala*, 2010.

disappearance. A former member of Grupo Colina⁶ said in an interview that suspected terrorists were tortured and killed. Silva's disappearance was therefore considered by the Court as an act of torture. In the 2010 case of *Chitay Nech v. Guatemala*, the IACHR held that "*enforced disappearance constitutes cruel and inhuman treatment even if it is not possible to prove that a person has been tortured or murdered.*" *As Mr Chitay Nech had been missing for twenty-nine years, the Court found that there were "substantial grounds for believing that he had been subjected to enforced disappearance"*.

15. Both the African Commission on Human and Peoples' Rights (ACHPR) and the European Court of Human Rights (ECHR) have found that the impact of enforced disappearances on disappeared persons constitutes at least cruel, inhuman or degrading treatment.⁷

16. The ECHR held that enforced disappearances "*involve the violation of various human rights*".⁸ This includes cruel and inhuman treatment when the disappeared person is "*detained indefinitely without contact with the outside world*".⁹ In addition, "*when a person is detained by unidentified military personnel without his or her subsequent acknowledgement, this may be considered a threat to his or her life.*"¹⁰

17. Thus, enforced disappearance constitutes torture or cruel and inhuman treatment.

18. Consequently, enforced disappearance violates the African Charter on Human and Peoples' Rights, which entered into force in 1986, in its article 5 which prohibits "*torture and cruel, inhuman or degrading treatment or punishment*", in its article 4 which guarantees to all persons "*respect for his life and the integrity of his person*" and in its article 6 which guarantees "*the right to liberty and security of the person*". of his person" and "*the right to life*". It also violates article 7 of the International Covenant on Civil and Political Rights, which prohibits

⁶ Grupo Colina was a right-wing anti-communist military death squad created in Peru and active from 1990 to 1994, during the administration of President Alberto Fujimori.

⁷ ACHPR, *Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso*, 2001, §44 ECHR: *Aslakhanova v. Russia*, 2012; *Varnava and Others v. Turkey*, 2009; *Tahsin Acar v. Turkey*, 2004; *Umayevy v. Russia*, 2012; *Palić v. Bosnia and Herzegovina*, 2011.

⁸ ECHR, *Varnava and Others v. Turkey*, 2009, paragraphs 4 and 94.

⁹ ECHR, *Varnava and Others v. Turkey*, 2009, paragraphs 4 and 99.

¹⁰ ECHR, *Umayevy v. Russia*, 2012

torture and cruel, inhuman or degrading treatment or punishment, article 9, which enshrines the right to liberty and security of person, and article 16, which recognizes the right to recognition before the law.

b. The link between enforced disappearance and mental torture

19. *"The level of anguish and suffering inflicted on family members has repeatedly been considered by the medical, psychological and legal community to be serious enough to meet the threshold of the definition of torture."*¹¹ This torture is so integral to enforced disappearances that it has been expressly stated as one of their objectives. Field Marshal Wilhelm Keitel, who was in charge of implementing the "Night and Fog Decree" ordered by Hitler, explained that the "¹²Führer" *believed that*: "Effective and lasting intimidation can only be achieved by capital punishment or by measures by which the relatives of the criminal and the population do not know the fate of the criminal".¹³

20. Under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *"for members of the family of a disappeared person, enforced disappearance may constitute a violation of the Convention"*.¹⁴ In addition, the right to reparation includes support for *"any person who has suffered harm as a direct result of an enforced disappearance"*. It is therefore not new to recognize the impact of enforced disappearances on relatives as a violation of the Convention.

21. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which Ghana has signed and ratified, provides in article 24 that families are the direct victims of enforced disappearance. Furthermore, the IACHR considers that enforced disappearances violate the right to integrity of relatives. It acknowledged that in the particular case of enforced disappearances, due to "the violation of the right to mental and moral integrity of the victims' relatives", the victims' relatives are

¹¹ OMCT, *Enforced disappearance: the families' permanent suffering is torture*, https://www.omct.org/site-resources/files/Relatives-of-disappeared-persons_Briefing-note_December-2022.pdf, 06.12.2022.

¹² The decree signed on December 7, 1941 was intended to eliminate by deportation all opposition to the Reich in the subject territories. These people were taken far from their place of life and had to disappear without a trace.

¹³ Finucane, Brian, *Enforced Disappearance as a Crime Under International Law: A Neglected Origin in the Laws of War* (June 28, 2009). Yale Journal of International Law, Vol. 35, p. 171, 2010, disponible sur SSRN: <https://ssrn.com/abstract=1427062>

¹⁴ CAT/C/THA/CO/1, supra note 128, §§ 14, 15(c).

themselves victims¹⁵. Their suffering "*cannot be dissociated from the situation resulting from the enforced disappearance*".¹⁶ The state may be held responsible for a violation of the family's right to humane treatment because of the suffering associated with the disappearance, ignorance of the truth about what happened, the effect on social and family relations, or the alienation of their culture¹⁷.

22. The ECHR has held that the impact of enforced disappearances on relatives constitutes at least cruel, inhuman or degrading treatment.¹⁸ According to the ECHR, "*the close relatives of disappeared men must be considered victims of a violation of Article 3 of the Convention*", which guarantees the right not to be subjected to torture or inhuman or degrading treatment¹⁹.

23. The United Nations Human Rights Committee has found that enforced disappearances of a parent violate the protection of the child under the International Covenant on Civil and Political Rights because of the anguish and distress they cause to children.²⁰ The same goes for mothers²¹.

24. Therefore, enforced disappearance constitutes torture or cruel and inhuman treatment.

2. The vulnerability of migrants to enforced disappearance

25. Migrants are particularly vulnerable to enforced disappearance and therefore enjoy specific protection. Therefore, a violation of the protections afforded to migrants is particularly serious.

26. Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment imposes a general obligation on States to take effective measures to

¹⁵ IACHR, *Anzualdo Castro v. Peru*, 2009, paragraph 105.

¹⁶ IACHR, *Trujillo-Oroza v. Bolivia*, 2002, paragraph 88.

¹⁷ See supra Note 10; IACHR, *Chitay Nech v. Guatemala*, 2010.

¹⁸ ECHR: *Aslakhanova v. Russia*, 2012; *Varnava and Others v. Turkey*, 2009; *Tahsin Acar v. Turkey*, 2004; *Umayevy v. Russia*, 2012; *Palić v. Bosnia and Herzegovina*, 2011.

¹⁹ ECHR, *Aslakhanova v. Russia*, 2012, paragraph 133.

²⁰ *Al-Maqrif and Matar v. Libya*, 1990; *Basilio Laureano Atachahua v. Peru*, CCPR/C/56/D/540/1993, United Nations Human Rights Committee, 16 April 1996.

²¹ *Maria del Carmen Almedia de Quinteros c. Uruguay*, *Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights*, Communication No. 107/1981.

prevent torture. This obligation may, according to article 12, take the form of "a prompt and impartial investigation whenever there are reasonable grounds to believe that an act of torture has been committed [...] under its jurisdiction".

27. As migrants are particularly vulnerable, this obligation applies to them more forcefully.

28. Migrants are particularly vulnerable to enforced disappearance. The Working Group on Involuntary or Enforced Disappearances (WGEID) has identified "a direct link between migration and enforced disappearances" and recommended that States "prevent and combat persistent discrimination, in particular against migrants, asylum-seekers and refugees".²²

29. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment expressly states that the protection of "marginalized persons or populations particularly at risk of torture is part of the obligation to prevent torture or ill-treatment". This includes fully prosecuting and punishing acts of abuse and violence committed against them²³.

30. Migrants also enjoy special protection from many other bodies. The UN Special Rapporteur on Torture, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and the UN Special Rapporteur on the human rights of migrants have all condemned measures that "increase the risk of abuse and harm and impede the full and effective enjoyment of the rights of people on the move who have arrived at their borders, including the right to be free from torture and other ill-treatment."²⁴ The principles and guidelines of the Office of the High Commissioner for Human Rights, supported by practical guidance, on the protection of the human rights of migrants in vulnerable situations, states in principle 5 that "States should ensure that all border management measures protect human rights". The Human Rights Committee has interpreted Article 10 of the International Covenant on Civil and Political Rights to mean that migrants must be treated with respect for their inherent dignity. The International Covenant on Economic, Social and Cultural Rights prohibits discrimination on the basis of nationality, regardless of the legal status of the individual in the host country.

²² WGEID, Report of the Working Group on Enforced or Involuntary Disappearances in the Context of Migration, UN doc A/HRC/36/39/Add.2, 28 July 2017, Note by the Secretariat; E/C.12/MEX/CO/5-6, supra fn. 104, §19(b)-(c).

²³ CAT/C/GC/2/CRP.1/Rev.4, General Comment No. 2, Section V, paragraph 21.

²⁴ <https://www.omct.org/site-resources/files/The-Torture-Roads.pdf>

31. Thus, whether torture has occurred or not, discrimination against migrants is not permitted.

32. In addition to the specific protection of migrants, the UN Special Rapporteur on torture has stated that, in general, "the threshold of prohibited ill-treatment will be reached earlier in relation to migrants in an irregular situation or with other vulnerabilities". Migrants are regularly "detained on suspicion of having been members of a rebellion".²⁵ Torture and cruel, degrading and humiliating treatment were particularly committed against "persons in detention, migrant workers and persons suspected of being mercenaries".²⁶ Thus, the irregular status of a person suspected of being a mercenary should make it possible to reach the threshold of prohibited treatment more quickly.

33. Given that migrants enjoy special protection, especially if they are in an irregular situation or present other vulnerabilities, the failure of a State to take protective measures against them is particularly serious.

3. The link between failure to provide information on the victim of enforced disappearance and torture

34. By not providing information to relatives, States contribute to aggravating the torture inflicted on them. States have been found responsible for enforced disappearances because they played a role in the enforced disappearance, even if they were not the original abductors or if the abductions took place outside their national territory.

35. In the case between *Sergio Rubén López Burgos and Uruguay*²⁷, the Human Rights Committee applied extraterritorial responsibility for enforced disappearances by holding Uruguay responsible for violating the International Covenant on Civil and Political Rights for an abduction that had taken place in Argentina by Uruguayan agents. Therefore, a State is not

²⁵ See supra note 29

²⁶ Human Rights Council, 17th session: Report of the International Commission of Inquiry established to examine all allegations of violations of international human rights law in the Libyan Arab Jamahiriya.

²⁷ Communication No. R.12/52, U.N. Doc. Supp. No. 40 (A/36/40), paragraph 176, 1981.

absolved of responsibility simply because the disappearance took place outside its national territory.

36. The Human Rights Committee has also found that States have committed violations for enforced disappearance by foreign State actors while the victims were abroad. In the case of *Al-Maqrif and Matar v. Libya*, Libya was found responsible for violating the International Covenant on Civil and Political Rights when Libyan nationals were detained and interrogated by the Egyptian authorities and then handed over to the Libyan authorities, and no information was provided to relatives of disappeared persons.²⁸ According to the Declaration on the Protection of All Persons from Enforced Disappearance, by contributing to the "refusal to disclose the fate or whereabouts of the persons concerned, or the refusal to acknowledge [that they are deprived of their liberty, thereby removing them from the protection of the law"], Libya is responsible, *inter alia*, for violations of article 7 of the covenant.²⁹

37. State contributions to enforced disappearances violate the rights protected by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee against Torture considers the right to know the truth to be a component of an effective remedy and reparation for enforced disappearances under article 14 of the Convention³⁰. Indeed, States parties must "ensure that any person who has suffered harm as a direct result of an enforced disappearance has access to information on the fate of the disappeared person".³¹ This may include access to "all civilian and military records ... that could be useful in determining the fate and whereabouts of missing persons"³² and a "search for the whereabouts of missing persons" by States parties³³. In the case of *Francisco Larez v. Venezuela*, the Committee against Torture considered that investigations must be independent,

²⁸ *Al-Maqrif and Matar v. Libya*, 2016

²⁹ Preamble Declaration on the Protection of All Persons from Enforced Disappearance, 47/133 of 18 December 1992

³⁰ Committee against Torture, Concluding Observations on Peru (2006); El Salvador (2009); Colombia (2010); Bosnia and Herzegovina (2010); Peru (2012); Japan (2013); United Kingdom (2013); Cyprus (2014); Holy See (2014); Guinea (2014); and Thailand (2014).

³¹ CAT/C/THA/CO/1, §§ 14, 15(c); CAT/C/MEX/CO/7, §§28, 29 (a).

³² Committee against Torture, Concluding Observations - Plurinational State of Bolivia, UN doc CAT/C/BOL/CO/2, 14 June 2013, §§13, 14 (c).

³³ Committee against Torture, General Comment No. 3 (2012) - Implementation of Article 14 by States Parties, UN doc CAT/C/GC/3, 13 December 2012, §16.

effective and prompt; they must be subject to public scrutiny, including accessible to the families of the victims; and they must establish the facts and circumstances that will identify and punish those responsible³⁴.

39. It is therefore established that, under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, States parties must investigate and make every effort to establish the facts relating to enforced disappearances while allowing relatives of disappeared persons access to information, so that the family's right to the truth is respected.

4. Relatives as collateral victims of enforced disappearance

40. The ECHR has held that States violate the rights of relatives of disappeared persons when they do not conduct proper investigations. *"It is especially with regard to [the reactions and attitude of the authorities to the situation] that a relative can claim to be a direct victim of the authorities' behaviour."*³⁵ State authorities must *"show compassion and respect ... help relatives get information and discover relevant facts."*³⁶ This was not the case in *Aslakhanova v. Russia*, due to poor cooperation within the government and ineffective investigations when the state was supposed to be investigating. In the case of *Umayeyy v. Russia*, relatives of the disappeared spent more than five years without receiving any information, despite seeking information from official bodies. Most of the time, these bodies only told them that the state denied responsibility. The Court therefore found a violation of Article 3 of the European Convention on Human Rights, which guarantees the right not to be subjected to torture or inhuman or degrading treatment. In the case of *Varnava and Others v. Turkey*, the Court held that there may be a violation of Article 3 when the authorities *"fail to respond to the search for information by relatives or to the obstacles placed in their way"*.³⁷

41. Other bodies have also considered that States should investigate enforced disappearances and provide information to relatives in this regard. The Human Rights Committee has found that lack of information is an aspect of distress and distress that constitutes a violation of articles 7 and 2 of the International Covenant on Civil and Political

³⁴The Committee against Torture's Position on Enforced Disappearance, 30.08.2016, OMCT.

³⁵ ECHR, *Tahsin Acar v. Turkey*, 2004, paragraph 238.

³⁶ ECHR, *Aslakhanova v. Russia*, 2012, paragraph 215

³⁷ ECHR, *Varnava and Others v. Turkey*, 2009, paragraph 200

Rights³⁸. The Court found that by failing to investigate, the State violates the victims' right to judicial guarantees and protection and the right to equality before the law. In *Cristiane Leite De Souza and Others v. Brazil*,³⁹ where nearly ten years had passed since the enforced disappearance, the IACHR found a violation of the guarantee of reasonable time for investigation and criminal proceedings.

42. The IACHR also found that the State's tolerance or acquiescence of torture constituted a violation of its duty to protect the rights to personal integrity and life. In the 2019 case of *Omeara Carrascal and Others v. Colombia*, the Court ruled that the lack of state protection, thus allowing other groups to commit enforced disappearances, constitutes a form of acquiescence.

5. The right to truth and reparations for relatives of victims of enforced disappearances

46. OMCT wishes to recall that the State is obliged to tell the truth and offer reparations to the relatives of victims of enforced disappearances under Articles 9 (1), 12 (1) (2), 14, 20 (2), © 24 (3) to (6) of the International Convention for the Protection of All Persons Victims of Enforced Disappearance; paragraphs 4, 5, 9 and 10 of Article 9(1)(c). 4, 5, 9, 10 of the WGEID General Comment on the right to the truth; paragraphs 76, 77 and 78 of the WGEID General Comment in the context of migration⁴⁰. Furthermore, the WGEID's General Comment on Article 19 of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance⁴¹ states: "*Victims*" of acts of enforced disappearance and their families shall be entitled to redress and adequate compensation, including the means necessary for the fullest possible rehabilitation. In the event of the death of victims as a result of an act of enforced disappearance, their dependants are also entitled to compensation."

³⁸ *Al-Maqrif and Matar v. Libya*, 2016

³⁹ Inter-American Commission on Human Rights, *Cristiane Leite De Souza and Others v. Brazil*, May 2022, <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/098.asp>

⁴⁰ A/HRC/36/39/Add.2.

⁴¹ UN Doc. E/CN.4/1998/43.

47. In a recent decision in the case of *Nana-Jo Ndow v. The Gambia*, the ECOWAS Court of Justice held the Gambian State responsible for violating the right to life, under Article 4 of the African Charter on Human and Peoples' Rights, for the enforced disappearance and alleged summary execution of the applicant's father by alleged members of the "Junglers" death squad operating under the authority of former Gambian President Yahya Jammeh⁴². The Court also found the Gambian State responsible for the violation of Article 7 of the Charter for failing to prosecute those responsible for the enforced disappearance and alleged execution of its father and to award compensation to the complainant within a reasonable time⁴³. In awarding damages to the complainant for the violation of these rights and ordering reimbursement of the costs she incurred in seeking the truth, the Court emphasized that the complainant had had to live with the effects of these violations⁴⁴.

48. Thus, the failure of a State to seek the truth, including within a reasonable time, constitutes a violation of human rights, particularly in the context of enforced disappearances. Similarly, the lack of truth and reparation is a violation of article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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⁴² ECOWAS Court of Justice, *Nana-Jo Ndow v. Gambia*, 5 July 2023, paragraph 57.

⁴³ ECOWAS Court of Justice, *Nana-Jo Ndow v. Gambia*, 5 July 2023, paragraphs 70 and 71.

⁴⁴ ECOWAS Court of Justice, *Nana-Jo Ndow v. Gambia*, 5 July 2023, paragraphs 71-74.

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WE I . Conventions

- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

VII I . OMCT : articles and reports

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- *Arbitrary arrest and enforced disappearance of members of the Djiboutian League for Human Rights Mr. Osman Yonis Bogoreh and Mr. Said Abdilahi Yassin, 25.10.19, OMCT*
- *Enforced disappearance of Mr Franklin Mowha, National President of Frontline Fighters for Citizens Interests, 25.09.10, OMCT*
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