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EXAMINING THE EXTENT OF THE APPLICATION OF THE UNITED NATIONS CONVENTION ON THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE IN NIGERIA

Joy Ngozi Ezeilo,* Festus Okechukwu Ukwueze**
and
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Abstract

The right of persons to be protected from enforced disappearance is an offshoot of the fundamental right to personal liberty. The United Nations International Convention on the Protection of all Persons from Enforced Disappearance (ICPAPED) came into force on 23 December 2010. Nigeria proclaims her commitment to its spirit and has ratified the Convention but is yet to domesticate the same. This article examines the extent of the application of the Convention in Nigeria. It argues that state practices are far from complying with the letters and spirit of the Convention as various acts of enforced disappearance of persons occur in the country. In this context, while pointing out concrete instances of state complicity in enforced disappearances, the paper highlights some of the recorded incidents of forced disappearances in the country committed by both state agents and non-state actors. It identifies the challenges militating against the effective implementation of the Convention and concludes by offering suggestions on how its application can be made more effective in Nigeria.

Keywords: Enforced disappearance, International Convention on the Protection of All Person from Enforced Disappearance, human rights, personal liberty, human dignity, Nigeria

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1. Introduction

The right to be protected from enforced disappearance as an offshoot of the right to personal liberty is an essential aspect of human rights.[1] Historically, this right can be traced to the promulgation of the Magna Carta in England in 1215, further strengthened with the passing of the Habeas Corpus Act in 1679 to protect persons from arbitrary arrests and detentions.[2] In international human rights law, a forced (or an enforced) disappearance occurs when a person is secretly abducted or imprisoned by a state or political organisation, or by a third party with the authorisation, support, or acquiescence of a state or political organisation, followed by a refusal to acknowledge the person's fate and whereabouts, with the intent of placing the victim outside the protection of the law.[3]

Until the dictatorships and civil wars in Latin America in the 1970s and 1980s, in which governments used enforced disappearances in a systematic – and often coordinated – way, the issue of the disappearance of persons generated neither international concern nor proper national or international judicial response.[4] Indeed, the term *desaparecido* (disappeared) often used to describe victims, is a Latin American invention.[5] As one author bluntly asserts, the systematic practice of enforced disappearances (as we know it today) is the ultimate contribution to the history of human cruelty made by Latin America.[6]

According to the Rome Statute of the International Criminal Court, which came into force on 1 July 2002, when committed as part of a widespread or systematic attack directed at any civilian population, a 'forced disappearance' qualifies as a crime against humanity and, thus, is not subject to a statute of limitations. On 20 December 2006, the United

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[1] Article 1(1) Declaration on the Protection of All Persons from Enforced Disappearance, GA Res 47/133, UN Doc A/RES/47/133 (18 December 1992); see also International Commission of Jurists, *Enforced Disappearance and Extrajudicial Execution: The Right of Family Members – A Practitioners Guide* (2016) 10-12.

[2] DK Stevenson, *American Life and Institutions* (1987) 34

[3] See article 2 ICPAPED, see also H Jean-Marie and L Doswald-Bec, *International Committee of the Red Cross Customary International Humanitarian Law: Rules* (2005) 342.

[4] J Zalaquett 'The Emergence of "Disappearances" as a Normative Issue', in CB Walling and S Waltz (eds) *Human Rights: From practice to policy: Proceedings of a Research Workshop* (2010) at 11.

[5] AE Dulitzky 'The Latin-American Flavour of Enforced Disappearances' (2019) 19(2) *Chicago Journal of International Law* at 423–489.

[6] Ibid.

Nations General Assembly (UNGA) adopted the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED).[7] The Convention, which affirms respect for the right of all persons not to be subjected to enforced disappearance, can be said to be an offshoot of the fundamental right to personal liberty. It opened for signature in Paris, France on 6 February 2007 and entered into force on 23 December 2010, in accordance with its article 39(1) which states that it shall enter into force on the thirtieth day after the date of deposit with the Secretary General of UN of the twentieth instrument of ratification or accession. Nigeria is a state party to the convention having acceded to same on 27 July 2009.[8] The core provisions of the convention include that:

(a) no one should be subjected to enforced disappearance,[9] or held in secret detention;[10]
(b) widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law;[11] and
(c) each state party is to take necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law as well as to ensure easy means of reporting and investigating alleged acts of enforced disappearance.[12]

It makes provisions for access to information for people interested in a disappeared person, such as relatives of the person deprived of liberty, their representatives or counsel[13] and for the training of law enforcement personnel and those involved in the custody or treatment of those deprived of liberty to prevent them from engaging in enforced disappearances.[14] It also mandates state parties to include the offence of

[7]Res A/RES/61/177.
[8]United Nations, 'Chapter IV – Human rights: International Convention for the Protection of All Persons From Enforced Disappearance' 20 December 2006, *United Nations Treaty Collection* <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4> accessed 10 June 2020).
[9] ICPAPED, art 1.
[10] Ibid, art 17.
[11] Ibid art 5.
[12] Ibid arts 5 and 12.
[13] Ibid arts 18 – 20.
[14] Ibid art 23.

enforced disappearance as an extraditable offence[15] and provides for mutual legal assistance and co-operation among states in dealing with the issue of enforced disappearances.[16]

This paper sets out to examine the extent to which Nigeria has protected persons from enforced disappearance. It argues that as a result of peculiar considerations, Nigeria promotes adherence to the tenets of ICPAPED only in theory, while going against its spirit and intendment in practice. It begins with a review of general African literature dealing with the politics of enforced disappearances in the continent; before going on to engage with the specifics of enforced disappearances in Nigeria, particularly under on the *Boko Haram* Insurgency and the counter-insurgency programme of the federal government. The paper then looks at the challenges militating against the proper implementation of ICPAPED in Nigeria and concludes by offering suggestions which, if adopted, will aid in the effective implementation of the convention in the country.

2. The Politics of Enforced Disappearances in Africa

Over the years, a number of African states have relied on enforced disappearances to silence political opposition, activists and human rights defenders.[17] Under apartheid in South Africa and in many of the conflicts in Africa, from the Algerian civil war in the 1990s, Libya under Muammar Gaddafi, Sudan during the civil war, and Zimbabwe under Robert Mugabe, opponents of the government or people just in the wrong place at the wrong time, have disappeared.[18] More recently, dozens of protesters, human rights defenders and professionals in Zimbabwe and Sudan demanding political changes have been subjected to enforced disappearances.[19] While the context and scale of enforced disappearances vary in African countries, nevertheless, all enforced disappearances share common elements which make them a distinct crime and one of the gravest human rights violations.

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[15] Ibid art 13.
[16] Ibid arts 14 and 15.
[17] E Nudd, 'African States Cannot Deny Enforced Disappearances Any Longer', 19 November 2019, *Open Democracy*, <https://www.opendemocracy.net/en/african-states-cannot-deny-enforced-disappearances-any-longer/> accessed 8 April 2020.
[18] Redress, 'African Commission Session Discusses Enforced Disappearances in Africa' (22 October 2019) <https://redress.org/news/african-commission-session-discusses-enforced-disappearances-in-africa/> accessed 8 April 2020.
[19] Ibid.

In Libya during the Gaddafi regime, the state and its agencies systematically used enforced disappearances, torture and other ill-treatment to target political opponents, students, journalists, human rights defenders and anyone critical of or perceived as posing a threat to the regime, whether inside or outside Libya.[20] Thousands of victims were arrested and disappeared for years, with their whereabouts unknown and the government refusing to disclose information about their fate or location.[21] After the fall of Gaddafi in 2011, the situation in Libya deteriorated and the pattern of enforced disappearance continued to be a widespread practice. Militias linked to the two governments in the east and west are accused of being responsible for torture and other ill-treatment and enforced disappearances across the country.[22] Since 2019, there has been a sharp increase in incidences of enforced disappearance in Libya. On 17 July 2019, Siham Sergiwa, a prominent women's rights defender and a sitting member of the House of Representatives (HoR), was abducted and forcibly disappeared. Sergiwa had before then criticized the Libyan National Army offensive on Tripoli and called for the formation of a civilian state. As at the time of writing, her whereabouts remain unknown.[23]

Almost three decades after the Algerian civil war ended, people are still searching for their relatives that disappeared during the war. At least 150,000 people were killed in the violence and 7,200 were disappeared. While some of the abductions have been ascribed to the Islamists, the majority can be attributed to the Algerian state. This assertion is corroborated by of relatives of disappeared persons who testify that their relatives were taken away by the police or military men.[24] After the conflict, the Algerian government passed the Charter for Peace and National Reconciliation in 2005 to provide amnesties to state security forces for past violations and grant some compensation to the

[20] Lawyers for Justice in Libya, 'Enforced disappearances: Combating enforced disappearances in Libya' <https://www.libyanjustice.org/enforced-disappearances> accessed 8 April 2020.
[21] Ibid.
[22] Ibid.
[23] Ibid.
[24] J Howell, 'Investigating the Enforced Disappearances of Algeria's "Dark Decade": Omar D's and Kamel Khélif's Commemorative Art Projects' (2016) 12(2) *The Journal of North African Studies* at 213 – 234.

families of the disappeared. But the government refused to reveal the truth about what had happened to those missing.[25]

In South Africa, it is believed that as many as 2,000 people might have been disappeared during the apartheid years.[26] The Khulumani Apartheid Reparations Database contains the records of the disappearance of 1,200 people.[27] While 477 of these cases were officially recognised by the Truth and Reconciliation Committee (TRC), those working in the field have estimated that there are another 1,500 cases that are not officially recorded.[28] A good example of a disappeared person in South Africa is that of Nokuthula Aurelia Simelane, a lady of 23 years who disappeared in 1983. She was last seen some five weeks after being abducted, in the boot of a policeman's motor vehicle in Johannesburg. The security branch of the South African Security Police and the police from Soweto were alleged to be responsible for her disappearance.[29]

During Idi Amin's eight-year military dictatorship, agents of the state abducted and 'disappeared' countless Ugandan citizens, as well as foreign nationals.[30] Although most of the disappeared were men, disappearance was not simply a masculine phenomenon. This disturbing pattern of violence also had a profound impact on women and their children.[31] In Zimbabwe, during the reign of Mugabe, a major human rights crisis developed as the authoritarian government used whatever methods it considered necessary (including enforced disappearances) to

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[25] Ibid.

[26] J Sakin, 'Dealing with Enforced Disappearance in South Africa (With a Focus on the Nokutula Simelani Case) and Around the World: The Need to Ensure Progress on the Rights to Truth, Justice and Reparations in Practice', (2015) *Speculum Juris* at 21 – 48.

[27] Ibid.

[28]JD Aronson, 'The Strengths and Limitations of South Africa's Search for Apartheid-Era Missing Persons' (2011) 5(2) *International Journal of Transitional Justice* at 262 – 281.

[29] UN Working Group on Enforced or Involuntary Disappearances Post-sessional document 103rd session (7–16 May 2014) A/HRC/WGEID/103/1 25 July 2014 17.

[30]AC Decker '"Sometime You May Leave Your Husband in Karuma Falls or in the Forest There": A Gendered History of Disappearance in Idi Amin's Uganda, 1971–79' (2013) 7(1) *Journal of Eastern African Studies* 125 – 142.

[31]*Heba Naguib, '"Only truth could heal this pain": Algerian women speak of their search for the disappeared', 3 August 2016, International Centre for Transitional Justice (ICTJ),* <https://www.ictj.org/news/algeria-women-disappeared-truth > accessed 23 March 2020.

ensure its continued survival.[32] This method of governance appears to have continued even after the fall of Mugabe. Accordingly, in September 2019, a major fall-out of the industrial action by medical doctors demanding better pay and working conditions was the disappearance from home of the president of the Hospital Doctors Association, *Dr* Peter Magombeyi, who was tortured by government forces for three days before being found, in a serious condition, several kilometres outside Harare.[33]

In Sudan, almost a dozen protesters disappeared in June 2019 following a violent crackdown by security forces or paramilitaries.[34] Following the outbreak of nation-wide anti-government protests that led to the ousting of Al-Bashir in April 2019, Sudanese national security forces and government-backed paramilitaries used the practice of enforced disappearances to 'preserve national security'. The victims of these enforced disappearances are often tortured and taken away, and their families left with no information on their whereabouts.[35]

In Africa, people who have disappeared are beyond the protection of the law and at the mercy of their captors. Many of their rights are denied: rights to security and dignity of the person, not to be arbitrarily deprived of liberty, to humane conditions of detention, to legal representation and to a fair trial. In some cases, other rights are also infringed: the right to family life, the rights of the child, freedom of thought, expression, religion and association and the right not to be discriminated against. The scale of the problem is not adequately captured in the African continent, due to gaps in understanding, absence of the necessary legal framework, and lack of accurate statistics. Despite the widespread and systematic pattern of enforced disappearances in

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[32] Lorna Davidson and Raj Purohit, 'The Zimbabwean human rights crisis: A collaborative approach to international advocacy' (2004) 7 *Yale Human Rights. & Development Law Journal* 108 – 131.

[33] Nudd (n 17).

[34] Ibid.

[35] Eva Sanchis and Linda Patumi, 'International Day of Victims of Enforced Disappearances: Time for African States to End This Practice' (30 August 2019), *African Centre for Justice and Peace Studies*, <https://www.acjps.org/international-day-of-victims-of-enforced-disappearances-time-for-african-states-to-end-this-practice/ > accessed 25 March 2020.

Africa, only 16 of the 54 African States are parties to the ICPAPED.[36] Furthermore, there is no regional instrument in Africa that can enhance understanding of the concept and provide practical measures to ensure its prohibition and prevention. In this context, many African states lack the necessary framework to investigate, prosecute and provide reparations to victims of enforced disappearances.[37]

3. Protection of all persons from enforced disappearance in Nigeria

International human rights law is essential for the Nigerian system as a means of explaining and interpreting the scope and content of the rights and liberties enshrined in the Nigerian Constitution. Nigeria is a member of many international organisations and has ratified several international and regional instruments that preserve and protect human rights. In this context, the country has ratified all core international human rights treaties, and has equally ratified many regional instruments within the African Union (AU) and the Economic Community of West African States (ECOWAS). By acceding to ICPAPED, Nigeria undertook the obligation of implementing same through national legislation and to take measures to prevent and punish enforced disappearances. However, Nigeria adopts the dualist approach in the execution of international treaties to which she is a party.[38] As a result, treaties validly concluded between Nigeria and other subjects of international law do not automatically transform into Nigerian laws without their being domesticated, that is, being specifically enacted into law by the National Assembly in accordance with section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Unfortunately, the National Assembly is yet to enact a legislation that will domesticate the ICPAPED in the country. However, the crime of enforced disappearance, to a large extent, can be enforced under certain extant laws in Nigeria.

In Nigeria, acts of enforced disappearance of persons may be viewed as a violation of fundamental rights as well as a crime. Although there is no specific legislation creating an offence of 'enforced disappearance', the core provisions of ICPAPED have their equivalents

[36] These are Burkina Faso, Central African Republic, Gabon, Gambia, Lesotho, Malawi, Mali, Mauritania, Morocco, Niger, Nigeria, Senegal, Seychelles, Togo, Tunisia and Zambia. See Sarkin (n 26).

[37] Redress (n 18).

[38] CE Okeke and MI Anushiem, 'Implementation of Treaties in Nigeria: Issues, Challenges and The Way Forward', *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 9, 2 (2018) 216 – 229.

under the Nigerian Constitution,[39] relevant international legal instruments to which Nigeria is a party as well as various national statutes, which prohibit and penalise acts of enforced disappearance. In addition to the constitutional guarantees of rights to dignity of the human person and personal liberty, there are national and state laws that prohibit acts of enforced disappearance of persons.

An act of enforced disappearance is illegal in Nigeria and would amount to a breach of fundamental rights not only under international legal instruments directly applicable under the laws of Nigeria (notably the rights to liberty and security of person under article 9 of the International Covenant on Civil and Political Rights and articles 4, 5 and 6 of the African Charter on Human and Peoples' Rights), but also under the 1999 Constitution (as amended). Essentially, Chapter IV of the Nigerian constitution contains provisions dealing with fundamental rights. These provisions protect the right of all persons not to be arbitrarily deprived of their liberty and, in case of detention, sets out a series of basic safeguards which must be complied with.

Bearing in mind that the right to personal liberty is one of the most central human rights connected to the essentialist rudiments of an individual's physical freedom, acts of enforced disappearance in Nigeria may also constitute offences under federal and state laws that prohibit abduction, kidnapping and trafficking in persons, such as the Criminal Code (applicable in the Southern states),[40] the Penal Code (applicable in the Northern states),[41] Trafficking in Persons (Prohibition) Enforcement and Administration Act (TPPEAA);[42] the Violence Against Persons (Prohibition) Act (VAPPA);[43] the Administration of Criminal Justice Act (ACJA),[44] (and its adaptations under state laws); the anti-kidnapping laws as well as criminal procedure laws of various states in the country.

Regarding domestic criminal law, the Criminal Code in section 364 prohibits unlawful imprisonment of persons, the essential ingredients of which include imprisoning a person and taking him out of Nigeria

[39]Especially, section 35 of the 1999 Constitution, which states in (1) that, 'Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law'.
[40]Cap C38 Laws of the Federation of Nigeria (LFN) 2004.
[41]Cap 53, LFN 1990, applicable in the Northern States.
[42] Act No 4 of 2015.
[43] The VAPPA Act 2015.
[44] ACJA 2015.

without his/her consent and imprisoning any within Nigeria in such a manner as to prevent him from applying to a court for his release or from discovering to any other person the place where he is imprisoned, or in such a manner as to prevent any person entitled to have access to him from discovering the place where he is imprisoned. Under section 365 of the Criminal Code, it is a crime for any person to unlawfully confine or detain another in any place against his will, or otherwise unlawfully deprive another of his personal liberty.

Similarly, section 255 of the Penal Code makes it an offence for a person to restrain or confine another person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits. Under section 259 of the Penal Code, whoever wrongfully confines a person in such manner as to indicate an intention that the confinement of that person may not be known to a person interested in the person so confined or to a public officer or that the place of the confinement may not be known to or discovered by any such person or public officer, is guilty of a crime. According to section 258 of the Penal Code, whoever keeps a person in wrongful confinement knowing that a warrant or order or writ for the production or liberation of that person has been duly issued, shall be punished with imprisonment for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of chapter XVIII of the code.

Again, section 1(1) of the Anti-Torture Act[45] requires the government to ensure that the rights of all persons, including suspects, detainees and prisoners are respected at all times and that no person placed under investigation or held in custody of any person in authority shall be subjected to physical harm, force, violence, threat or intimidation or any act that impairs his free will. Under the Child Rights Act,[46] sections 21−52 contain provisions which protect every child from child labour, child trafficking, ritual killing, sexual, physical, emotional abuses and neglect.

In the area of administrative institutions, Nigerian government established the National Human Rights Commission (NHRC), which has been awarded 'A' status by the International Coordinating Committee of National Human Rights Institutions and has benefited from technical

[45] Anti-Torture Act 2017.
[46] Act No 26 of 2003

assistance and capacity building initiatives of the UN and donors to enhance its monitoring, reporting and investigation activities. The commission has actively engaged the Nigerian Army and security agencies regarding on-going counter-insurgency operations, especially in Borno state and other parts of the north-east of the country, through organizing human rights dialogues between the army and civil society organisations to enhance co-operation. It has held public hearings on evictions and violations by security forces and co-ordinated independent monitoring by non-governmental organisations (NGOs) of the mass trial of some suspected *Boko Haram*[47] detainees. The commission has also undertaken prison audits and monitored human rights aspects of elections. In 2015, the military authorities granted NHRC access to monitor court-martials of military officers in cases of human rights abuses and violations.

4. Enforced Disappearances in Nigeria Committed by State Actors

While the Nigerian government proclaims its commitment to combating the practice of enforced disappearance in the country, it has been accused of resorting to the same practice in their counter-terrorism strategies. For example, the Nigerian security forces have been accused of using various counter-terrorism methods that fall within the definition of enforced disappearance. In 2018, the UN Office of the High Commissioner for Human Rights (OHCHR) reported violations of human rights and international humanitarian law, including extra-judicial killings, enforced disappearances, arbitrary arrests and detention, allegedly committed by Nigerian security forces during counter-insurgency operations.[48] According to the UN report, young men suspected of being members of *Boko Haram* were being arbitrarily arrested and detained by the army, police and civilian vigilante groups and after such arrests, relatives of those arrested were unable to locate them in detention and in many cases such persons were never seen again.[49]

[47] *Boko Haram* is a popular name for the Islamic sect, *Jama'atu Ahlis Sunna Lidda'awati wal-Jihad* – which in Arabic means 'People Committed to the Propagation of the Prophet's Teachings and Jihad'. *Boko Haram* loosely translated from Hausa language means 'Western education is forbidden'.

[48] OHCHR, 'Report of the Office of the United Nations High Commissioner for Human Rights', UNGA/A/HRC/WG.6/31/NGA/2 (27 August 2018) para 22.

[49] OHCHR, 'Violations and Abuses Committed by Boko Haram and the Impact on Human Rights in the Countries Affected' UNGA/A/HRC/30/67 (9 December 2015) para 63.

The office of the Prosecutor of the International Criminal Court included two cases against the Nigerian security forces in its preliminary examination of the situation in Nigeria.[50] Similarly, Amnesty International (AI) published a list of names and pictures of more than 1,200 people arrested in Borno state between 2011 and 2014 whose whereabouts, according to several sources and some relatives of the victims, remain unknown.[51] While the list is by no means a comprehensive compilation of all missing people, it is one measure of the massive impact the operations of the military and police have had in Borno state.

Some of the names on the list include Ahmed Bello, Modu Abubakar and Ibrahim (not their real names). Ahmed Bello was arrested by soldiers in July 2012 during a cordon-and-search operation following a bombing in Maiduguri. His mother and brother told AI that on that day, Ahmed went to school to pay his exam fees, but never returned home.[52] In June 2013, after a joint team of Department of State Services (DSS) and army came to arrest Modu Abubakar, a 23-year-old student, at his house in Yola but he was not at tome, his father later accompanied him to the DSS station in Yola, where the DSS accused Modu of 'offering suspicious people a place to stay' and detained him. A month later, Modu's father was told his son was transferred to another station. He searched the nearby stations and prisons but could not find him and all security agencies denied knowing anything about his case.[53] According to information obtained by Amnesty International, as of August 2013, Modu was alive and in military detention. A photo showing Modu holding a placard with his name (which a senior military officer gave to AI) was among 81 photos of detainees in 23 Armoured Brigade Military

[50] *Bojana Djokanovic,* 'Human Rights in Nigeria – Chibok Abductions and Disappearances' *International Commission on Missing Persons*, <https://www.icmp.int/news/human-rights-in-nigeria-chibok-abductions-and-disappearances/ > accessed 4 June 2020.

[51] The list compiled by a human rights defender who asked relatives of people arrested by the military to come and register their names on file with Amnesty International. See Amnesty International, 'Stars on their shoulders, blood on their hands: War crimes committed by the Nigerian military', (2015) *Amnesty International Limited*, <https://www.amnesty.org/download/Documents/AFR4416572015ENGLISH.PDF> accessed 7 June 2020.

[52] Ibid.

[53] Ibid

Detention Camp.[54] According to the metadata on the photo, it was taken on 7 August 2013. As at June 2015, however, Modu was not released and the family did not receive any further information regarding his fate or whereabouts.[55]

In September 2013, Ibrahim, aged 25 years, who just started his own carpet trading business, was travelling by bus from Maiduguri to Dikwa market when he was abducted by the military. Fellow passengers old his father that at a military checkpoint in New Marte (92 kilometres from Maiduguri), the military stopped the bus and took him away, hands tied behind his back, accusing him of being a *Boko Haram* member. Ibrahim's father told AI that the military in New Marte told him that his son had been taken to Giwa barracks. A local civilian Joint Task Force (JTF) member checked at the barracks and confirmed that Ibrahim was being held there. After the attack on Giwa barracks by *Boko Haram,* another member of the civilian JTF told Ibrahim's family that they had seen him as he fled the barracks during the attack.[56]As at the time of this writing, Ibrahim's whereabouts remain unknown.

Apart from Amnesty International, the Legal Defence and Assistance Project (LEDAP) has documented over 28 cases of enforced disappearances in the North East of Nigeria since 2017. Large numbers of relatives have laid complaints about the disappearance of their brothers, husbands, sons and fathers after they were arrested by the military. Some of the victims have remained in detention without being allowed access to medical and legal assistance; while the victims have lamented about their inability to access their relative. One of such cases of enforced disappearance is that of two brothers, Usman and Amiru Mohammed Gambo, who were arrested as they were on patriotic call to join a youth volunteer group known as the Borno State Youth Orientation and Empowerment Scheme (BOYES) established by the office of the Governor of Borno state. According to their brother, Ali Mohammed, the two brothers and some other men who also wanted to join the volunteer group were classified as terrorists, arrested and taken into detention where they have been held till date and all efforts to reach the victims by

[54] All photos are on file with Amnesty International.
[55]Amnesty International (n 51).
[56] Amnesty International interview, July 2014 cited in Amnesty International (n 51).

the family members and legal officers have yielded no result and there is fear that the brothers might have been killed or had died in detention.[57]

In a statement issued to mark the International Day of the Victims of Enforced Disappearances in 2018, AI called on the Nigerian government to release those who have been subjected to enforced disappearance in the country, accusing the government of holding several persons in secret detention facilities across the country without charge or trial.. According to the organisation:

> So many families are still searching for loved ones who have not been seen for many years. In some cases, families live with the pain of not knowing whether their loved ones are alive or dead. It's time the government did the right thing – and either release these detainees or charge them with a recognizable criminal offence in a fair trial without recourse to death penalty.[58]

AI lamented the continued use of enforced disappearance by the Nigerian government as a governance mechanism, accusing the government of using it as a tactic to 'silence critics and instil fear' in civilian populations who were facing the double threat of armed groups and military operations. While insisting that some detainees have been held incommunicado for about nine years without access to their families or lawyers, the group added that others have received court judgments ordering their release from custody, but security agencies have continued to defy the orders. It cited the case of a journalist, Abiri Jones, who was detained for more than two years without trial and who was only released following pressures from civil society organisations.[59]

AI also reports that from figures provided by the Islamic Movement of Nigeria (IMN, also popularly called Shiites), the fate of at least 600 of their members has been unknown since the Shiites clashed with the military in December 2015 in Zaria. Crucially, several people suspected of being associated with *Boko Haram*, Niger Delta agitators,

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[57]Chino Obiagwu, *Report on the Human Rights Situations in Nigeria submitted to the Office of the Human Rights Council in Geneva during the 31st Session of the UPR Working Group* (LEDAP, 2018) 5.

[58] Channels Television, 'Nigeria Must Account for Victims of "Enforced Disappearance", says Amnesty International', 3 August 2018, *Channels Television*, <https://www.channelstv.com/2018/08/30/nigeria-must-account-for-victims-of-enforced-disappearance-says-amnesty-international > accessed 5 June 2020.

[59] Ibid.

and pro-Biafra activists in the country were arbitrarily arrested and detained by the DSS in recent years.[60]

5. Enforced disappearances by committed non-state actors in Nigeria

While this paper engages primarily with enforced disappearances in which the state is complicit, it is equally necessary to note that enforced disappearances are also carried out by non-state actors in Nigeria; notably *Boko Haram*, civilian vigilantes, militant groups in the Niger Delta and herdsmen. The acts of enforced disappearances perpetrated by these groups are discussed in the following paragraphs.

5.1 Boko Haram

In recent years, one of the most glaring examples of enforced disappearance conducted by non-state actors is that perpetrated by *Boko Haram*.[61]*Boko Haram* (which pledged its allegiance to the Islamic State in 2015) has waged a ten-year insurgency to establish an independent Islamic caliphate in the northeast of Africa's biggest economy.[62] Founded earlier in 2002 in Maiduguri, Borno state by Mohammed Yusuf (late), the sect had by 2015 rapidly grown into a ravaging army occupying a sizeable part of the northeast of the country.[63] In prosecuting its activities, members of the sect engage in acts of enforced disappearances such as kidnapping for ransom, abducting of young boys and girls, women and children.[64] Kidnapping of school girls has been a *Boko Haram* horror mark. A good example is the abduction on 14 April 2014, of 276 female students from the Government Secondary School in Chibok, Borno state by members of the group. 57 of the girls managed to escape from their captors; 107 of them have so far been released following protracted

[60] Ibid.

[61] Victor C Iwuoha, 'United States' Security Governance in Nigeria: Implications on Counterterrorism Strategies against Boko Haram', (2019) 54(8) *Journal of Asian and African* Studies1175 – 1194.

[62]*Bojana Djokanovic,* 'Human rights in Nigeria – Chibok abductions and disappearances'.

[63]J T Omenma, I E Onyishi and AA Okolie, 'A Decade of Boko Haram Activities: The Attacks, Responses and Challenges Ahead', (2020) *Securities Journal*. DOI: https://doi.org/10.1057/s41284-020-00243-5.

[64]Claire Felter, 'Nigeria's battle with Boko Haram', 8 August 2018 *Council on Foreign Relations*, <https://www.cfr.org/backgrounder/nigerias-battle-boko-haram > accessed 24 March 2020.

negotiation between the Federal Government and the group, while 112 are still missing.[65]

On 19 February 2018, 110 school girls aged 11–19 years were kidnapped by *Boko Haram* members from the Government Girls' Science and Technical College (GGSTC), Dapchi, Yobe State. After a month, on 21 March 2018, 106 kidnapped children, including 104 of the Dapchi School girls and two others were released by their abductors.[66] Five of the school girls were reported (by their released school mates) to have died, while one named Leah Sharibu is still being held by the insurgents because she refused to convert from Christianity to Islam as the insurgents demanded.[67] Apart from the school girls, many people, especially young men (forcefully recruited as fighters) girls, women and children are being forcibly held by *Boko Haram* insurgents.

5.2 Civilian Vigilantes

The inability of Nigerian security forces to protect civilians from *Boko Haram* attacks and the general deterioration of the security situation in the north-east of the country, led to the emergence of local self-help/defence groups, known as Civilian Joint Task Force (JTF or *Kato da Gora* meaning "man with a stick" in the local language). These groups operate with the tacit approval of the security forces, and it appears that the authorities benefited from their activities against *Boko Haram*. According UN reports, the civilian JTF has assisted Nigerian security forces in identifying and arresting *Boko Haram* suspects, controlling security checkpoints, providing information and monitoring the movement of people, and has also used firearms against *Boko Haram* in self-defence and to safeguard communities. However, there have been allegations of beatings, detention of suspects, killings and the recruitment of children by JTF. The civilian vigilantes had allegedly killed some falsely-identified *Boko Haram* suspects, including, in at least one case, a person with a disability.[68] Thus, although JTF appears to have brought security and order to communities, some members of the communities,

[65]Ibid.

[66]James Okolie-Osemene and Rosemary I Okolie-Osemene, 'Nigerian women and the trends of kidnapping in the era of Boko Haram insurgency: Patterns and evolution' (2019) 30 (6-7) Small Wars & Insurgencies 1151 – 1168.

[67] Jacob **Zenn**, 'Kidnapping girls in Nigeria: Cases from Chibok and Dapchi', (2018)11(3) *Combating Terrorism Centre Sentinel* 1 – 8.

[68] OHCHR, 'Violations and abuses committed by Boko Haram and the impact on human rights in the countries affected', paras. 64 - 68.

especially young unmarried men and boys had been under pressure from peers to join JTF out of fear of being suspected to be members of *Boko Haram* and also because the army could kill one who refused to co-operate with JTF.[69]

5.3 Niger Delta militants

Under agitation for resource control by indigenous people of the Niger Delta region (the oil producing area of Nigeria), several armed groups sprang up in the area.[70] The groups engaged in acts of terror and violence such as abduction and kidnap for ransom of expatriate and Nigerian oil workers. This led to violent confrontations between the armed groups and government security forces, until June 2009, when the Federal Government of Nigeria under President Umaru Yar'Adua (late) declared amnesty to the militants. The amnesty programme has helped significantly in resolving the protracted security challenges in the region and averting an imminent collapse of the Nigerian oil industry.

5.4 Herdsmen Activities in Parts of the Country

Clashes between pastoralists (cattle herders) and crop farmers have been on the increase in recent years in Nigeria. These conflicts usually involve disputes over land between herders and farmers. The most impacted states are those in the Middle Belt region of the country like, Benue, Taraba, Plateau Kaduna and Nasarawa,[71] although there have been incidents of clashes in states in the south such as Enugu, Ebonyi, Anambra, Delta, Edo and Oyo.[72] Whenever and wherever such clashes occur, human lives are lost and properties, including homes, farms and cattle are destroyed. There have been reported cases of missing persons who were never seen after such incidents. For example, on 3 September 2018, Major General Idris Alkali (rtd), who was travelling from Abuja to

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[69] Ibid paras. 69 – 71.

[70] Oludotun Adetunberu and Akeem O. Bello 'Agitations in the Niger Delta Region, Oil Politics and the Clamours for Restructuring in Nigeria', *International Journal of Peace and Conflict Studies* 5, 1 (2018) 115 – 125.

[71] Mathew T Page 'The Intersection of China's Commercial Interests and Nigeria's Conflict Landscape' (2018) *United States Institute of Peace*, <https://www.usip.org/sites/default/files/2018-09/sr428-the-intersection-of-chinas-commercial-interests-and-nigerias-conflict-landscape.pdf > accessed 10 June 2020.

[72] Chukwuechefulam K Imo 'The Demographic Implication of Nomadic Fulani Herdsmen and Farmers Clashes in Nigeria', *International Journal of Development and Management Review* 12, 1 (2017) 45 – 58.

Bauchi through Plateau State, disappeared.[73] Following an intensive search by a military task force set up by the Chief of Army Staff, the dead body of General Alkali was recovered from an abandoned well in Guchwet, Jos South Local Government Area of Plateau State on 30 October 2018. Some persons suspected to be the perpetrators were arrested and have been standing trial.[74]

Other instances of enforced disappearances by suspected herdsmen include; the abduction of Mrs Margaret Emefiele, the wife of Nigeria's Central Bank Governor, Godwin Emefiele along the Benin-Agbor Road on Thursday, 29 September 2016; abduction of Oba Oniba of Ibaland, Oba Yushau Oseni from his palace by armed gunmen on 16 July 2016; a priest, Reverend Father John Adeyi was kidnapped on 24 April 2016 and was eventually found dead after his abductors had collected two million Naira ransom from his family members.

Having ratified ICPAPED, the Nigerian state has certain international obligations to combat the practice of enforced disappearance. Under international law, states are obliged to investigate cases of human rights violation within their territories, end impunity and bring perpetrators to justice.[75] Nigeria faces multiple challenges in fulfilling its obligations to victims and their families. The effectiveness of state action is limited by corruption, a generally limited understanding of the rights of citizens, and by a contrastingly focused and ruthless strategy being implemented by insurgent groups such as *Boko Haram*.[76]

6. Challenges to the effective implementation of the ICPAPED in Nigeria

As was pointed out earlier, under the Nigerian Constitution, a treaty is not justiciable in the domestic courts unless it has been domesticated by

[73]Seriki Adinoyi 'Tension in Jos as Army Discovers Grave of Missing General', 27 October 2018, *This Day Newspaper*, <https://www.thisdaylive.com/index.php/2018/10/27/tension-in-jos-as-army-discovers-grave-of-missing-general/> accessed10 June 2019.

[74]Pulse, 'Suspected Killers of Gen Alkali Remanded in Prison' 6 November 2018, *Pulse.ng,* <https://www.pulse.ng/news/local/suspected-killers-of-gen-alkali-remanded-in-prison/vbs0qlt > accessed 8 April 2020.

[75]Ewelina U Ochab 'The International Day of the Victims of Enforced Disappearance', 29 August2018, *Forbes*, <https://www.forbes.com/sites/ewelinaochab/#24c17cf27e76> accessed 7 November 2020.

[76]Ibid.

an Act of the National Assembly.[77] On the authority of the case of *African Reinsurance Corporation v. Abate Fantaye*[78] supported by a long line of English cases of the common law tradition, it would appear that a person may not be able to invoke the jurisdiction of a municipal court to directly enforce the provisions of ICPAPED in Nigeria.[79] This makes it impossible for Nigerian courts to entertain matters bordering on the provisions of the convention. Without doubt, this is a set back to the proper implementation of the convention.

Essentially, Nigeria's domestic laws do not consistently promote accountability for human rights violations and some stand in direct conflict with international standards concerning the right to remedy. Although there are constitutional provisions safeguarding human rights, provisions like sections 174 and 211 of the Constitution (which relate to the power of the attorneys-general of the federation and of a state to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria) creates a system of 'legal impunity' because an attorney-general, as an appointee of the government, will find it difficult prosecuting security personnel who are also working for the same government. The implication of this is that victims of enforced disappearances become more or less convinced that the state stands with the alleged perpetrators of these violations and are indifferent to the violation of their rights.

While the convention protects the individual's right to a competent judicial authority, nevertheless, government contradicts Nigeria's treaty obligations by failing to provide access to justice to victims of enforced disappearances. Although NHRC functions in part to investigate and report on human rights violations, including the widespread system of impunity for such violations, its mandate prevents it from addressing cases that implicate state agencies. In this context, the commission may not expressly investigate members of the armed forces,

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[77] Dele Peters, 'The Domestication of International Human Rights Instruments and Constitutional Litigation in Nigeria' (2000) 18 *Netherlands Quarterly of Human Rights*1 357-378. DOI: https://10.1177/092405190001800304.

[78] [1986] 3 NWLR (Pt 31) 811.

[79] MT Ladan, 'An Overview of the Rome Statute of the International Criminal Court: Jurisdiction and Complementarity Principle and Issues in Domestic Implementation in Nigeria' (2013) *Afe Babalola University Journal of Sustainable Development Law and Policy* 37 – 56.

which restricts its ability to address human rights violations committed by the military.

Exacerbating the existing weaknesses in the legal framework, government officials do not adequately enforce laws in the statute books that are intended to protect human rights and guarantee the victims' right to remedy. Thus, individuals are not sufficiently protected by domestic laws and do not have legal recourse when violations occur. Further, the general lack of co-operation from Nigeria's security forces prevents victims from ascertaining the truth, achieving justice, and, ultimately, accessing adequate remedies. Courts rarely make inquiries into human rights abuses, especially when it involves state agents, even though they possess inherent powers to do so. What is obtainable in Nigeria is a system in which access to justice is conditioned on the government's acquiescence to the investigation and prosecution of its own agents. Under this 'impunity unless sanctioned' regime, as was seen in the requests by AI above, many requests for authorisation to prosecute are usually ignored by the Nigerian government.

There is also the phenomenon of under-reporting of disappearance cases. Reasons for which include poverty; illiteracy; feelings of powerlessness; fear of reprisal; weak administration of justice and ineffectual reporting channels; institutionalized systems of impunity; a practice of silence and; in some cases, restrictions on the work of civil society organisations on this sensitive issue.

7. Strengthening the Application of ICPAPED in Nigeria

The first recommendation on strengthening the application of ICPAPED in Nigeria is that the state should, without further delay, domesticate the convention which it had ratified more than 10 years ago. The National (and state) Assemblies should establish a special procedure, with statutory backing that will localise the convention and criminalise enforced disappearance as an autonomous offence, as was done with the UN Convention on the Rights of the Child (UNCRC).[80] The proposed domestication statute(s) should impose sanctions that are commensurate with the extreme gravity of the acts of enforced disappearances. The legislation will also explicitly rule out the possibility that persons who have or are alleged to have committed enforced disappearances will

[80] UNGA Res 44/25 (20 November 1989) *UNTS*, Vol. 1577, <https://www.refworld.org/docid/3ae6b38f0.html> (10 November 2019).

benefit from amnesty or similar measures that may exempt them from criminal responsibility and sanctions. It will also recognise the right to know, and ensure that the systematic violation by authorities of the right of the families of missing persons and victims of enforced disappearances to an effective investigation and to know the truth is punished as a crime.

The Nigerian executive, judicial, and legislative departments need to muster a strong political will to investigate, prosecute, and punish the perpetrators of enforced disappearances that often result in extrajudicial executions. They should acknowledge the use of enforced disappearances on their territories and give clear instructions that enforced disappearances will not be tolerated and those who commit it will be brought to justice and held to account. There is a legal and moral obligation on the Nigerian state to conduct exhaustive and impartial investigations into allegations of violations of the right, to identify, bring to justice and punish the perpetrators. The state should provide adequate and effective remedies – including prompt, fair and adequate compensation, restitution and rehabilitation – to victims of enforced disappearances and their kin.[81] It should also take effective measures to avoid the recurrence of such violations.[82] As was rightly observed by Special Rapporteur, Bacre Waly Ndiaye:

> It is the obligation of Governments to carry out exhaustive and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish the perpetrators, to grant compensation to the victims or their families and to take effective measures to avoid future recurrence of such violations. The Special Rapporteur has noted that impunity continues to be the principal cause of the perpetuation and encouragement of violations of human

[81]Perfecto Caparas 'The Challenge of Combating Impunity in Extrajudicial Executions and Enforced Disappearances through Judicial Interpretation and Application of International Human Rights Law', *Social Science Research Network*, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2561778> accessed 10 June 2019.

[82]Council of Europe Commissioner for Human Rights *Missing Persons and Victims of Enforced Disappearance in Europe* (Strasbourg, Council of Europe, 2016) <https://rm.coe.int/missing-persons-and-victims-of-enforced-disappearance-in-europe-issue-/16806daa1c > accessed 10 June 2020.

> rights, and particularly extrajudicial, summary or arbitrary executions.[83]

To do this effectively, government must place the families of missing persons and victims of enforced disappearances and their right to know the truth at the centre of all actions concerning these issues, especially by promoting a multidisciplinary assessment of their needs. The Nigerian state should support organisations and associations, in particular non-governmental organisations (NGOs) and associations of relatives concerned with establishing the fate of missing and disappeared persons.

Nigeria must ensure that perpetrators of enforced disappearance, including accomplices, those who order, solicit, induce the commission of, attempt to commit, or participate in an enforced disappearance are prosecuted and sanctioned. The continuous nature of the crime of enforced disappearance must be duly taken into account, and no statutory limitation shall apply to crimes against humanity, irrespective of the date of their commission. The state should adopt adequate measures to protect the ill-treatment, reprisals and intimidation of all persons participating in the investigation of complaints, witnesses and relatives of missing persons, victims of enforced disappearance as well as their counsel.

It is further recommended that Nigerian law of evidence be amended to institutionalise the doctrine of command responsibility and to allow the prosecution and trial of persons based on the doctrine of command responsibility, adopting the provision of ICPAPED(articles 6 and 7) and Rome Statute provisions (articles 28 and 33), along with international law precedents (as established in the cases of *Re Yamashita*[84] and *Tadic*[85]). Through the principle of conspiracy, as embedded in current international criminal law jurisprudence on the doctrines of command responsibility and common purpose, the liability of the members of the chain of command, whether as principal, accomplice, or accessory, can be determined according to the circumstances of the case. While extant domestic legislation may have

[83]UN General Assembly '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 Laws' (2016) A/RES/60/147, 21 March 2006, para 4 at 5.
[84]327 US 1, 66 S Ct 340, 90 L Ed 499.
[85]*Prosecutor v Dusko Tadic*, IT-94-1-A and IT-94-1-Abis.

touched on this position, amending the Evidence Act[86] to insert an express provision of this nature will lead to better clarity in the law and a more effective application of the Convention.

The laws establishing the Nigerian armed forces[87] and the Police[88] should be amended to mandate officers or members of these forces to report any other officer(s) or member(s) of the forces who promote, facilitate, condone, tolerate, encourage, or abet the perpetration of enforced disappearances and extrajudicial executions in any way. Finally, the Federal Government of Nigeria should formulate a training programme for members of the security forces and personnel on enforced disappearances and summary executions according to the international human rights and humanitarian law framework. They should also raise community awareness through media campaigns about the evils of extrajudicial executions and enforced disappearances and the need for citizens to report cases without undue delay.

8. Conclusion

Enforced disappearance is a crime under international law and a violation of multiple human rights, including the right to personal liberty and security, the right to recognition as a person before the law, the right not to be subjected to torture or other cruel, inhumane or degrading treatment or punishment, the right to a fair trial, and the right to life. Enforced disappearance also violates the economic, social and cultural rights of the disappeared person and his or her family. While the Nigerian state pontificates on her adherence to preventing the enforced disappearance of people within her jurisdiction, the reality is that enforced disappearance by state security forces are still rife in the country. This article has examined the application of ICPAPED in Nigeria, which the country ratified more than ten years ago but is yet to domesticate. In this context, the application of the Convention in domestic courts has not been given the force of law. In this context, the application of the Convention in domestic courts has not been given the force of law. By not domesticating the Convention, the Nigerian government's claim to adherence to the tenets and spirit of the Convention appears to be mere window dressing. While enjoining the Nigerian state to quickly domesticate the Convention, the paper has proffered suggestions which

[86]No 18 of 2011.
[87]The Nigerian Armed Forces Act, Cap A20 LFN 2004.
[88]The Police Act, Cap P19 LFN 2004.

will help strengthen the effective application of the Convention, not only in the country but in the continent of Africa in general.