

ACHPR/Res. 486 (EXT.OS/XXXIII) 2021: Resolution on missing migrants and refugees in Africa and the impact on their families

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 33rd Extraordinary Session held virtually from 12 to 19 July 2021

Recalling its mandate to promote and protect human and peoples' rights in Africa under Article 45 of the African Charter on Human and Peoples' Rights (the African Charter);

Recalling the relevant provisions of the African Charter relating, inter alia, to respect for human dignity, protection of the right to life, liberty and security of the person, and protection of the family;

Recalling other obligations under international law relating to the issue of missing migrants and refugees and their families, in particular international human rights law, including the United Nations International Convention for the Protection of All Persons from Enforced Disappearance of 20 December 2006 and other core human rights treaties;

Recalling further the main regional and international instruments relating to refugees, in particular the Geneva Convention relating to the Status of Refugees and the African Union Convention governing the specific aspects of refugee problems in Africa;

Recalling the relevant resolutions of the African Commission on the situation of migrants, including resolutions ACHPR/Res.114 (XXXXII) 07, ACHPR/Res.131(XXXXIII) 08 and ACHPR/Res.333 (EXT.OS/CIC) 2016, as well as other relevant resolutions, including resolution ACHPR/Res.375 (LX) 2017 on the right to life in Africa and ACHPR Resolution 408 (LXII) 2018 expanding the mandate and membership of the working group on the death penalty and extrajudicial, summary or arbitrary killings in Africa related to enforced disappearances;

Considering the African Union's Migration Policy Framework and Plan of Action (2018 - 2030), which 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;

Further considering the Global Compact for Safe, Orderly and Regular Migration, which recognizes the primary obligation to respect, protect and fulfil the human rights of all migrants and includes a specific objective on missing migrants, as well as the Global Compact on Refugees, building on the New York Declaration;

Expressing concern at the number of migrants and refugees who go missing in Africa under various circumstances, including during armed conflicts, situations of violence, trafficking, forced labour, rape and other forms of sexual violence that put them at risk of enforced disappearance or disappearance in other circumstances, detention in transit or destination countries, or even in their country of origin when they are deported, including detention of a person in a secret/unofficial place, which has consequences for the missing persons and their families, in particular women and children, and communities in the short and long term;

Aware that special measures must be adopted to prevent migrants and refugees from going missing in the first place and to facilitate their search and identification, as well as to support their families so that they can know the fate of their missing relative and can exercise their rights and access existing services;

Bearing in mind that under Article 1 of the African Charter, States Parties undertake to adopt legislative or other measures to enforce the rights, duties and freedoms set forth in the Charter;

The Commission:

1. Condemns all violations of the rights of migrants and refugees that may lead to their disappearance, including violations of the right to life, the right to liberty and security of the person, the prohibition of torture, cruel, inhuman or degrading treatment or punishment, mass expulsion and enforced disappearance;
2. Urges States Parties to respect their obligations and commitments undertaken by subscribing to the African Union standards and policies on the protection of asylum seekers, refugees and migrants in the continent, as well as their relevant international obligations and commitments;
3. Calls on the African Union (AU) to engage the European Union (EU) within the framework of the AU-EU Partnership for the EU to review its migration policies and practices to avoid their adverse consequences for African migrants, including enforced disappearances and death on the Mediterranean;
4. Calls on States Parties to take all possible measures to prevent migrants and refugees transiting or residing on their territory or under their jurisdiction from going missing, including preventing the separation of families, reuniting them where possible, as well as endeavoring to identify dead or missing persons, in accordance with applicable legal frameworks;
5. Urges States Parties to respect the principle of non-refoulement for all individuals, regardless of their migration status, and to refrain from returning them to a country where they face a real and foreseeable risk of loss of life, torture or other cruel, inhuman or degrading treatment or punishment, enforced disappearance or other irreparable harm, in accordance with relevant obligations under international and regional law;
6. Encourages States Parties to give priority to non-custodial solutions, using administrative detention only as a last resort, and to ensure that administrative detention in the context of international

migration follows due process, is not arbitrary, and is based on the law, in accordance with the principles of necessity and proportionality, and based on the findings of individual assessments, and that migrants and refugees are not held in a secret detention facility in a country of transit or destination, with full respect for international law and due process, including the right to communicate with their consular or diplomatic missions, legal representatives and family ;

7. Recommends to States Parties to take measures to punish perpetrators of human rights violations against migrants and refugees, including ensuring prompt, impartial and effective investigation of any potential deaths outside the law enforcement process or enforced disappearances within their jurisdiction, and to ensure that migrants and refugees have access to justice and remedies, including the right to the truth, for violations of their rights;
8. Calls upon States Parties to cooperate in saving lives and preventing the risk of death and injury of migrants and refugees, and further calls upon the authorities of transit and destination countries to establish, enable and support search and rescue operations;
9. Calls upon the authorities of countries of origin, transit and destination, in collaboration with other States and concerned stakeholders, to standardize the collection and exchange of relevant information, to establish effective coordination mechanisms for the search for and identification of missing and deceased migrants and refugees, between authorities and concerned entities within and between countries, and to facilitate interaction with their families, in accordance with internationally accepted standards of data protection and privacy and further calls on States Parties to strengthen their forensic system capacity and standards and centralize data on missing persons and unidentified bodies at the national level, in accordance with international norms and standards of forensic practice and data protection;
10. Calls upon States Parties to recognize and respond to the needs of migrants and refugees who may find themselves in vulnerable situations due to the circumstances of their journey or the situations they encounter in countries of origin, transit or destination, including when these countries are in situations of armed conflict or other crisis situations, by assisting them and protecting their human rights, in particular vulnerable groups (the women, old persons , disabled and children, unaccompanied or separated from their families), victims of violence and trafficking in

human beings, in accordance with obligations under international and regional law;

11. Further calls on States Parties to fulfil the right of the families of migrants and refugees to know the truth and to find answers in order to mourn and to end the climate of total impunity for human rights violations;
12. Recommends that States Parties regularly assess the consequences and impact of their migration laws and policies to ensure that they do not lead to new or increased risks of disappearance of migrants and refugees or the aggravation of the phenomenon;
13. Encourages States Parties to take advantage of existing regional and global expertise and to participate in the sharing of experiences, best practices and technical recommendations with a view to improving laws, policies and measures to prevent and respond to cases of missing migrants and refugees, as well as to work with relevant national, regional and international organizations in this regard.
14. Calls on UN agencies such as UNHCR and IOM, humanitarian organisations, as well as civil society, to support measures and policies adopted by States to address these issues.

Done virtually on 19 July 2021