



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

Distr.: General
20 May 2021

Original: English
English, French and Spanish only

Committee on Enforced Disappearances

**Report submitted by Nigeria under article 29 (1)
of the Convention, due in 2012***

[Date received: 26 March 2021]

* The present document is being issued without formal editing.



Contents

	<i>Page</i>
I. Introduction	4
II. General legal framework under which enforced disappearances are prohibited	4
A. Constitutional, criminal and administrative provisions regarding the prohibition of enforced disappearance	4
B. International treaties dealing with enforced disappearance to which Nigeria is a party	6
C. Status of the Convention in the domestic legal order, i.e. with respect to the Constitution and the ordinary legislation	8
D. How the domestic laws ensure the non-derogability of the prohibition of enforced disappearance.....	9
E. How the provisions of the Convention can be invoked before and are directly enforced by the courts or administrative authorities	9
F. How the provisions of the Convention apply to all parts of federal States	9
G. Judicial, administrative or other competent authorities with jurisdiction/mandate over matters dealt with in the Convention	9
H. Examples of concrete case law where the provisions of the Convention has been enforced and case law where, on the contrary, violations of the Convention were identified, the reasons for such violations and the measures taken to remedy the situation.....	10
I. Examples of concrete administrative measures giving effect to the provisions of the Convention and administrative measures which, on the contrary, violated the Convention, the reasons for such violations and the measures taken to remedy the situation.....	11
J. Statistical data on cases of enforced disappearances	12
III. Information in relation to each substantive article of the Convention.....	14
Article 1.....	14
Article 2.....	16
Article 3.....	17
Article 4.....	17
Article 5.....	18
Article 6.....	18
Article 7.....	20
Article 8.....	20
Article 9.....	22
Article 10.....	22
Article 11.....	23
Article 12.....	24
Article 13.....	29
Article 14.....	32
Article 15.....	33
Article 16.....	33
Article 17.....	34

Article 18.....	38
Article 19.....	39
Article 20.....	40
Article 21.....	41
Article 22.....	42
Article 23.....	43
Article 24.....	44
Article 25.....	46

I. Introduction

1. 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).
2. The right to be protected from enforced disappearance, as a corollary to the right to personal liberty, is an essential aspect of human rights. The existence of 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. The International Convention on the Protection of All Persons from Enforced Disappearance, which affirms respect for the right of all persons not to be subjected to enforced disappearance, can be said to be an offshoot of this fundamental right. The Convention, adopted by resolution A/RES/61/177 on 20 December 2006 during the sixty-first session of the General Assembly of the United Nations (UN), opened for signature in Paris, France on 6 February 2007 and entered into force on 23 December 2010, in accordance with 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. Nigerian acceded to the treaty on 27 July 2009.
3. By ratifying the Convention, Nigeria undertook the obligation of implementing same through its national legislation and to take measures to prevent and punish enforced disappearances. At the time of deposit of instruments of ratification, Nigeria also recognised the competences of the Committee on Enforced Disappearances granted by provisions of Art. 31 and 32 of the Convention to receive and consider communications from or on behalf of individuals under its jurisdiction, the competence of the Committee to receive and consider communications in which a State party claims that another State party to the Convention is not fulfilling its obligations.
4. Under article 29 (1) of the Convention, States parties are required to report on the measures they have taken to give effect to their obligations under the Convention. This report is therefore, submitted in accordance with the above provisions of the Convention to the Committee on Enforced Disappearances, established under article 26 of the Convention.
5. This report has been prepared in accordance with the guidelines on the form and content, contained in the Reporting Guidelines issued by the Committee on Enforced Disappearances, at its session held from 26 to 30 March 2012, bearing in mind the need for an inclusive and participatory approach at the national level.
6. The Committee may after considering the content of this report, issue comments and observations in accordance with the provisions of article 29, paragraph 3, and may request additional information under article 29, paragraph 4.

II. General legal framework under which enforced disappearances are prohibited

A. Constitutional, criminal and administrative provisions regarding the prohibition of enforced disappearance

7. 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 the Convention have their equivalents under the Constitution of the Federal Republic of Nigeria 1999 (as amended), relevant international legal instruments to which Nigeria is a party as well as various national legislative provisions, which prohibit and penalize 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.

8. 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 Constitution.

9. 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. These constitutional guarantees, especially sections 35 and 36 of the 1999 Constitution, are further discussed under article 17 below.

10. 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 in certain circumstances, be treated as a crime against humanity, a crime prohibited under international criminal law applicable in Nigeria (notably the Rome Statute of the International Criminal Court).

11. Such acts will 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), the Penal Code (applicable in the Northern states), Trafficking in Persons (Prohibition), Enforcement and Administration Act, 2015; the Violence Against Persons (Prohibition) Act, 2015; the Administration of Criminal Justice Act, 2015 (and its adaptations under state laws); the anti-kidnapping laws as well as criminal procedure laws of various states in the country.

12. Regarding domestic criminal law, the Criminal Code (Cap 77, LFN 1990, applicable in the southern states) in section 364 provides that any person who; (1) unlawfully imprisons any person, and takes him out of Nigeria, without his consent; or (2) unlawfully imprisons any person 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; would have committed a crime.

13. 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.

14. Similarly, sections 255 of the Penal Code (Cap 53, LFN 1990, applicable in northern states) make 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.

15. 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 as hereinbefore mentioned, is guilty of a crime.

16. 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 this chapter.

17. Again, section 1 (1) of the Anti-Torture Act, 2017 states that government shall 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.

18. Regulation 250 (d) (ii) made pursuant to the Police Act imposes a duty on police station to keep and maintain records of detainees, which shall contain the particulars of persons arrested and reasons for the arrest. Regulation 254 (b) further provides for the

Register of arrest as one of the Criminal Records which every police action is obligated to maintain.

19. By Sections 33 and 34 of the Administration of Criminal Justice Act, 2015- Monthly report of arrest to Magistrates and statutory visit of police stations must be carried out. The Act mandates every officer in charge of a Police Station to file a monthly report of arrests without warrant indicating details of the suspects, including their bail. It also empowers the Chief Magistrates to visit every police station within its jurisdiction at least once monthly to among other things: interview those in custody and also inspect the records of arrest and bail. In fact, noncompliance with the provisions amount to a serious misconduct also provided by S. 34 (5) of the Act.

20. Under the Child Rights Act (2003), sections 21–52 contain provisions which protect every child from child labour, child trafficking, ritual killing, sexual, physical, emotional abuses and neglect.

21. In the area of administrative institutions, government has established the National Human Rights Commission (NHRC), which has been awarded ‘A’ status by the Global Alliance of National Human Rights Institutions and has benefited from technical assistance and capacity building initiatives of the UN and donors to enhance its monitoring, reporting and investigation activities. The Commission has actively engaged the Army and security agencies regarding ongoing counter-insurgency operations through organizing human rights dialogues between the Army and civil society organizations to enhance cooperation. It has held public hearings on evictions and violations by law enforcement and also coordinated independent monitoring by NGOs of the mass trial of some Boko Haram detainees. The Commission has also undertaken prison audits and monitored human rights aspects of elections. In 2015, the military authorities granted the Commission access to monitor court-martials of military officers in cases of human rights abuses and violations.

B. International treaties dealing with enforced disappearance to which Nigeria is a party

22. 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. In order to fully appreciate this interpretative function, such international law must be integrated into the Nigerian legal system through ratification. Nigeria is a party to several international treaties that deal with enforced disappearance. Below are the treaties and the dates Nigeria signed, ratified or acceded to them.

United Nations instruments

(i) Convention for the Protection of All Persons from Enforced Disappearance acceded to on 27 Jul 2009;

(ii) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed on 28 July 1988 and ratified on 28 June 2001;

(iii) International Convention against the taking of Hostages 1979 acceded to on 24 September 2013;

(iv) International Convention on Elimination of all Forms of Racial Discrimination 1969 acceded on 16 October 1967;

(v) Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity 1970 acceded 1 December 1970;

(vi) Convention on the Elimination of All Forms of Discrimination against Women, signed on 23 April 1984 and ratified on 13 June 1985;

(vii) Convention on the Prevention and Punishment of the Crime of Genocide, acceded to on 27 Jul 2009;

(viii) Convention on the Rights of the Child, signed on 26 January 1990 and ratified on 19 April 1991;

- (ix) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, acceded to on 27 July 2009;
- (x) International Convention on the Suppression and Punishment of the Crime of Apartheid, signed on 26 June 1974 and ratified on 31 March 1977;
- (xi) International Covenant on Civil and Political Rights, acceded to on 29 Jul 1993;
- (xii) International Covenant on Economic, Social and Cultural Rights, acceded to on 29 July 1993;
- (xiii) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, accented to on 27 July 2009;
- (xiv) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, signed on 8 September 2000 and ratified on 25 September 2012;
- (xv) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, signed on 8 September 2000 and ratified on 27 September 2010;
- (xvi) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, signed on 8 September 2000 and ratified on 25 September 2012;
- (xvii) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, signed on 13 December 2000 and ratified on 28 June 2001;
- (xviii) Rome Statute of establishing the International Criminal Court, signed on 1 June 2000 and ratified on 27 September 2001; and
- (xix) United Nations Convention against Transnational Organized Crimes, signed on 13 December 2000 and ratified on 28 June 2001.

African Union instruments

- (i) Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, signed on 10 September 1969 and ratified on 23 May 1986;
- (ii) African Charter on Human and Peoples' Rights, signed on 31 August 1982 and ratified on 22 June 1983;
- (iii) Protocol relating to the Establishment of the Peace and Security Council of the African Union, signed on 9 July 2002 and ratified on 23 December 2003;
- (iv) Organization of African Unity Convention on the Prevention and Combating of Terrorism, signed on 26 April 2002 and ratified on 28 April 2002;
- (v) African Charter on the Rights and Welfare of the Child, signed on 13 July 1999 and ratified on 23 July 2001; and
- (vi) The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, signed on 23 October 2009 and ratified on 14 April 2012;
- (vii) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, signed on 16 December 2003 and ratified on 16 December 2004;
- (viii) Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, signed and ratified in 2004.

ECOWAS instrument

- (i) Revised Treaty of the Economic Community of West African States of 1993
- (ii) Supplementary Act Adopting the ECOWAS Strategy for combating Terrorism, and its Implementation Plan, signed on 28 February 2013

(iii) Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, 2001 (amended).

C. Status of the Convention in the domestic legal order, i.e. with respect to the Constitution and the ordinary legislation

23. Nigeria adopts the dualist approach in the execution of international treaties to which she is a party. As a result, treaties validly concluded between Nigeria and other subjects of international law do not automatically transform into Nigerian laws without legislative intervention. Thus, they must be specifically enacted into law by the National Assembly in accordance with section 12 of the 1999 Constitution before they can have the force of law.

24. It is very clear from the language of section 12 (1) of the 1999 Constitution that undomesticated treaties have no force of law in Nigeria, though they may still play crucial roles in the entronement of a viable domestic legal system in Nigeria. Nevertheless, once a treaty is domesticated, it becomes an integral part of the country's legal framework and its provisions have constitutional status. In the case of *Abacha v. Fawehinmi*,¹ the Nigerian supreme court approved the principle enunciated in the Privy Council's decision in *Higgs & Another v. Minister of National Security & Others*,² where it was held that before its enactment into law by the National Assembly, a treaty would not have the force of law as to make its provisions 'justiciable' in Nigerian courts. However, in the same case, the Supreme Court equally stated that in the event of a conflict between the provisions of a statute with "international flavour" – that is a statute which ratifies an international treaty – and those of another statute, the provisions of the statute with an international flavour will prevail over that of the other statute. This is hinged on the presumption that the legislature does not intend to breach an international obligation, which on its own is predicated on the fundamental norm of international law as encapsulated in the doctrine of *pacta sunt servanda* (agreements are to be kept). This principle is enunciated in Article 26 of the Vienna Convention on the Law of Treaties, which states that 'every treaty in force is binding upon the parties to it and must be performed by them in good faith'. Article 27 of the same Vienna Convention provides that a 'party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.'

25. The implications of the above provisions appear to be that "even where a treaty has been executed but not brought into force in Nigeria, a party to such treaty (or a beneficiary of its provisions) may still be allowed to bring an action in relation to a breach of its provisions.

26. Although there is no specific legislation which domesticates the Convention, the Constitution of the Federal Republic of Nigeria and other legislative mechanisms ensure compliance with the substance of the Convention.

27. Chapter II of the Nigerian Constitution affirms that the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice and accordingly declares that the security and welfare of the people shall be the primary purpose of government (section 14). In section 17 (1) the Constitution states that the State social order is founded on ideals of Freedom, Equality and Justice in furtherance of which the sanctity of the human person all be recognised and human dignity shall be maintained and enhanced.

28. Chapter IV of the Constitution sets out the fundamental rights of citizens which include right to life (s. 33); respect for the dignity of his person including right not to be subjected to torture or inhuman or degrading treatment (s. 34); right to personal liberty except in certain clearly defined circumstance and in accordance with a procedure permitted by law (s. 35).

29. Quite a number of laws prohibit and punish offences against the liberty of individuals such as abduction, hostage taking, kidnapping, unlawful imprisonment; unlawful

¹ [2000] 6 NWLR, 228–359.

² [2000] 2 W.L.R 1368; [2000] 2 AC 228.

confinement/detention of persons against their will. The relevant statutory provisions include sections 264 and 265 of the Criminal Code; sections 270–274 of the Penal Code; section 15 of the Terrorism Prevention (Amendment) Act 2013³ and the anti-kidnapping laws of the various states in the country.

D. How the domestic laws ensure the non-derogability of the prohibition of enforced disappearance

30. The non-derogability of the prohibition of enforced disappearance is addressed under article 1 below.

E. How the provisions of the Convention can be invoked before and are directly enforced by the courts or administrative authorities

31. The provisions of the Convention may be invoked in court because it is part of the internal legal order, as the country's judges are required to ensure compatibility with treaties; that is, they must consider national legislation in the light of the treaties to which Nigeria is a party, including the Convention.

32. Relevant provisions of the Constitution which would be violated by an act of enforced disappearance are enforceable by civil action by or on behalf of the victim in the High Court of a state or Federal High Court in matters involving the Federal Government or its agencies. Such an application can be brought not only for redress for actual contravention of the Constitution but also to restrain its contravention. Legal and institutional mechanism exist for legal aid assistance to any indigent citizen where his/her right under the Constitution has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his/her claim (section 46 of the Constitution; section 8 Legal Aid Act 2011).

33. All other relevant national laws on the matter are penal in nature and violation of any of their provisions would involve criminal prosecution against the violator by state agencies, which upon conviction attracts penal sanctions, although the court can award compensation in favour of the victims (section 319 of the Administration of Criminal Justice Act and similar state laws).

F. How the provisions of the Convention apply to all parts of federal States

34. Nigeria is a federation consisting of thirty-six states and the Federal Capital Territory, Abuja. The Constitution is supreme and its provisions have binding force on all authorities and persons throughout the federation (section 1 of the Constitution). The relevant provisions of the Constitution apply throughout the federation. Similarly, the National Assembly has powers to make laws for the whole country and relevant laws enacted by it apply throughout the federation. Relevant state laws apply only to the states. By virtue of state laws, the Criminal Code applies to all the states in the south of the country while the Penal Code applies to all the states in the north as well as in the Federal Capital Territory, Abuja.

35. As a sovereign State in international law, international legal instruments to which Nigeria is a party or directly applicable have force throughout the country.

G. Judicial, administrative or other competent authorities with jurisdiction/mandate over matters dealt with in the Convention

36. Where the act of enforced disappearance constitutes an offence under a law enacted by the National Assembly, the prosecution for the offence is undertaken by the Office of the

³ No. 3 of 2013.

Attorney-General of the Federation in the Federal High Court; whereas the Attorney-General of a state will have prosecutorial powers over offences at the state level.

37. It should be noted that the Nigerian Police has powers under the law to prevent, detect, investigate and prosecute offenders (section 4, 23–30 of the Police Act⁴). Subject to the provisions of sections 174 and 211 of the Constitution of the Federal Republic of Nigeria 1999 (which relate to the power of the Attorney-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), the police may conduct all prosecutions before any court in Nigeria.

38. Where an act of enforced disappearance is approached from the point of breach of fundamental rights provisions of the Constitution, both the Federal and State High Courts have jurisdiction to hear and determine the matter and award appropriate remedy.

39. The National Human Rights Commission of Nigeria (NHRC) established by the NHRC Act 1995⁵ in line with Resolution 48/134 of the United Nations General Assembly which enjoins all member states to establish independent national institutions for the promotion, protection and enforcement of human rights. The Commission serves as an extra-judicial mechanism for the respect and enjoyment of human rights. It also provides avenues for public enlightenment, research, and dialogue in order to raise awareness on human rights issues. The commission has established a robust and effective complaint treatment mechanism both at its headquarters and zonal offices for handling all complaints of human rights violations free of charge, including cases of enforced disappearances. The Commission has powers to enforce its decisions and the decisions of the Commission's Governing Council are registrable as decisions of the High Court. It can institute civil action on any matter it deems fit in relation to the exercise of its functions refer any matter of human rights violation requiring prosecution to the Attorney General of the Federation or of a State, as the case may be. There has been a high level of compliance with the decisions of the commission by alleged violators of human rights.

40. In respect of cases of enforced disappearance involving human trafficking, the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) created by the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2003,⁶ in fulfilment of the country's international obligation under the Trafficking in Persons Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Transnational Organized Crime Convention (UNTOC), has powers of investigation and prosecution of cases of trafficking in persons forced labour, child labour, forced prostitution, exploitative labour and other forms of exploitation, slavery and slavery – like activities, bonded labour, removal of organs, illegal smuggling of migrants, sale and purchase of persons.

H. Examples of concrete case law where the provisions of the Convention has been enforced and case law where, on the contrary, violations of the Convention were identified, the reasons for such violations and the measures taken to remedy the situation

41. Though no court decision relating directly to the Convention on enforced disappearance has been reported, there have been analogous cases decided on similar provisions in national law.

⁴ Police Act, Cap P19, Laws of the Federation of Nigeria (LFN) 2004.

⁵ Cap. N46, LFN 2004 as amended by the Human Rights Commission (Amendment) Act 2010.

⁶ As amended by the Trafficking in Persons (Prohibition) Enforcement and Administration Act, No. 4 of 2015.

I. Examples of concrete administrative measures giving effect to the provisions of the Convention and administrative measures which, on the contrary, violated the Convention, the reasons for such violations and the measures taken to remedy the situation

42. Since the ratification of the Convention, Nigeria has enacted a number of legislation and executed policy guidelines which are intended to give effect to its provisions. These include:

- The Anti-Torture Act (2017);
- The Compulsory Treatment and Care for Victims of Gunshot Wounds Act (2017);
- Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (2015) which established the National Agency for the Prohibition of Trafficking in Persons (NAPTIP);
- Administration of Criminal Justice Act, 2015 (ACJA);
- Violence against Persons (Prohibition) Act (2015);
- Terrorism Prevention Act (2013);
- The Legal Aid Act (2011), which amended and expanded the scope of the former Legal Aid Act, Cap L9 Laws of the Federation of Nigeria 2004;
- A National Policy on Justice (2017);
- National Counter-Terrorism Strategy (2015); and
- Presidential Amnesty Programme (PAP) granting of amnesty and complete rehabilitation of former Niger Delta militants.

43. The National Human Rights Commission (NHRC) has been strengthened for a more effective oversight of human rights infringements, as already discussed in paragraph G above. The National Emergency Management Agency (NEMA) established under the NEMA Act, No. 12, 1999 with the mission to coordinate resources towards efficient and effective disaster prevention, preparedness, mitigation and response in Nigeria interfaces with other government agencies in the search and rescue of victims of enforced disappearance.

44. Following public outcry on allegations of gross violations of human rights by officers and men of the Special Anti-Robbery Squad (SARS) and other Special Units of the Nigeria Police Force, the Federal Government in August 2018 set up a Special Investigation Panel to among other things investigate these allegations, make recommendations on steps to be taken to reform SARS and measures to be taken in respect of SARS personnel found to have violated human rights. The Committee was made up of representatives of relevant government departments, the Nigeria Bar Association and the Civil Society. Some of the findings of the Panel include:

- Prolonged detention and arbitrary arrest,
- Apart from collaborating with the Nigerian military, the police and other law enforcement agencies in training their personnel on human rights standards and mainstreaming human rights in their operations, the National Human Rights Commission has as its key priorities training of the military, police and personnel of other law enforcement agencies as well as civil society groups, civil servants, judicial personnel on human rights standards. Between 2015 to date, the Commission had trained over five thousand personnel of the military, the police and other law enforcement agencies on human rights standards. This includes soldiers deployed to the Northeast of Nigeria to fight against terrorism and insurgency as well as those deployed to other parts of the country in internal security operations. The numbers of CSO, public servant and judicial officers trained as part of the implementation of the national Action plan for the promotion and protection of human rights cannot be quantified.

- Enforced disappearances of suspects and
- Death in custody.

45. The recent re-organisation of the Special Anti-Robbery Squad (SARS) nation-wide and instant investigation of the allegations, complaints and infractions levelled against the personnel of the Squad, with the aim of prosecuting cases of human right abuses. This followed the 2017 outcry by Nigerians that personnel of the unit were breaching the rights of citizens.

46. A number of investigations have been undertaken by government, including the clashes between Islamic Movement in Nigeria (IMN) and soldiers in Zaria (December 2015); the Military Board of Inquiry into allegations of human rights abuses by military personnel as ordered by the President (June 2017); and the Presidential Panel on military compliance with human rights and rules of engagement in local conflicts and insurgencies (established August 2017).

47. Over the years, NHRC, the Nigerian Bar Association, UNHCR, UNODC, OHCHR and UNCTITF Working Group have been working on promoting and protecting human rights and the rule of law in the country while counter-terrorism and human rights workshops and trainings have been organised for officers and men of the Nigerian Armed Forces as well as personnel of the Nigerian Police.

48. UNODC in collaboration with the Nigerian Institute of Advanced Legal Studies has developed a series of human rights training modules specifically tailored to the Nigerian legal framework, which are now being used to conduct training workshops for Nigerian criminal justice officials. Training has been provided to the criminal justice practitioners. However, training needs to be systematized and integrated in training curricula of the various agencies.

49. The Presidency has established an inter-ministerial committee to undertake an audit of those held in relation to counter-terrorism operations and a Complex Case Work Group created in the Office of the Federal Director of Public Prosecutions.

50. In addition to government agencies, the Nigeria government greatly encourages international, regional and national Non-governmental Organisations (NGOs) working in the area of human rights. Government perceives such organisations as partners in protecting and promoting human rights.

J. Statistical data on cases of enforced disappearances

51. Acts of enforced disappearances have been on the increase in Nigeria recently. The major events that have led to increase in acts of enforced disappearances in the country are:

(i) Militancy in the Niger Delta region: Under agitation for resource control by indigenous people of the Niger Delta region (the oil producing area of the country), several armed groups sprang up in the area. The groups under the guise of agitation for resource control engaged in acts of violence such as abduction and kidnapping of expatriate and Nigerian oil workers and other individuals for ransom, and carried out attacks on critical oil installations. 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 gone a long way to resolve the protracted security challenges in the region and avert an imminent collapse of the Nigerian oil industry.

(ii) Boko Haram insurgency in the northeast: By 2009, the Islamic sect, Jama'atu Ahlis Sunna Lidda'awatiwal-Jihad – which in Arabic means “People Committed to the Propagation of the Prophet’s Teachings and Jihad” or simply as Boko Haram which loosely translated from Hausa means “Western education is forbidden” – commenced military operations in the north-eastern part of the country to create an Islamic caliphate. 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. Thousands of civilians were killed in attacks by members of the sect while over one million displaced from their homes. In prosecuting its activities, members of the sect engage in acts

of enforced disappearance such as kidnapping for ransom, abducting of young boys and girls, women and children. Kidnapping of school girls has been a Boko Haram horror mark. A good example is the abduction on 14 April 2014, of two hundred and seventy-six (276) female students from the Government Secondary School in Chibok, Borno State by members of the group. Fifty-seven (57) of them managed to escape from their captors; one hundred and seven (107) of the girls have so been released following protracted negotiation between the Federal Government and the group, while one hundred and twelve (112) are still missing. On 19 February 2018, one hundred and ten (110) school girls aged 11–19 years old were kidnapped by Boko Haram members from their school, Government Girls' Science and Technical College (GGSTC), Dapchi, Yobe State. After a month, on 21 March 2018, one hundred and six (106) kidnapped children, including one hundred and four (104) of the Dapchi school girls and two others were released by their abductors. Five of the schools 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. Apart from the school girls many people, especially young men (forcefully recruited as fighters) girls, women and children are being held by Boko Haram insurgents.

(iii) Herdsmen and crop farms clashes: Clashes between pastoralist (cattle herders) and crop farmers have been on the increased. Herders-farmers conflicts in Nigeria 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, although there have been incidents of clashes in states in the south such as Enugu, Ebonyi, Anambra, Delta, Edo and Oyo. 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 are never seen after such incidents.

(iv) Communal conflicts: This is another source of disappearance of persons. Such communal conflicts usually involve disputes over land between indigenes and settlers. Residents of Jos, Plateau state, live in constant danger due to repeated incidents of communal violence, including bombings, gun and machete attacks. Hundreds of homes have been razed and thousands of people killed since 2001. Sometimes innocent citizens who are not in any way involved in the conflict are killed on suspicion that they from the opposing community. For example, on 3 September 2018, Major General Idris Alkali (rtd.), who was travelling from Abuja to Bauchi through Plateau State, disappeared. Following an intensive search by a military task force set up by the Chief of Army Staff on 30 October 2018, the dead body of General Alkali was recovered from an abandoned well in Guchwet, Jos South Local Government Area of Plateau State. Investigation is still ongoing and nineteen suspects have been arrested by the Nigerian Army in connection with the abduction and murder of the retired army generally.

52. Kidnapping and abduction of innocent citizens for ransom have become a major problem in the country. Recent cases of high profile kidnapping include; (1) Abduction of Mrs Margaret Emefiele, the wife of Nigeria's Central Bank Governor, Godwin Emefiele along the Benin-Agbor Road on Thursday, September 29th, 2016; (2) Abduction of Oba Oniba of Ibaland, Oba Yushau Oseni from his palace by armed gunmen on 16 July 2016; (3) A priest, Reverend Father John Adeyi was kidnapped on 24 April 2016 who was killed by his abductors after they had collected two million Naira ransom from his family members; (4) Chief Olu, a former Minister of Finance was kidnapped by six Fulani herdsmen at his Ilado home in Akure, Ondo state on 21 September, 2015. He was released after an undisclosed amount of ransom was paid by his family; (5) A former Senator, Mr. Patrick Ani, was kidnapped on 8 July 2016 and regained his freedom after thirteen days; (6) Professor James Adiche, the father of a popular Nigerian author, Chimamanda Adiche, was abducted on 2 May, 2015. An undisclosed amount of money was paid to the kidnapers before he was freed.

53. For a thematic breakdown of reported incidents of acts of enforced disappearances, see comments on Article 12.

III. Information in relation to each substantive article of the Convention

Article 1

1. Legal and administrative measures to guarantee the non-derogability of the right not to be subjected to enforced disappearance

54. Section 45 of the Nigerian Constitution provides as follows:

1. Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society:

(a) In the interest of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedom of other persons.

2. An act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 33 or 35 of this Constitution; but no such measures shall be taken in pursuance of any such act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency:

Provided that nothing in this section shall authorise any derogation from the provisions of section 33 of this Constitution, except in respect of death resulting from acts of war or authorise any derogation from the provisions of section 36(8) of this Constitution.

3. In this section, a “period of emergency” means any period during which there is in force a Proclamation of a state of emergency declared by the President in exercise of the powers conferred on him under section 305 of this Constitution.

55. The derogation by “any law that is reasonably justifiable in a democratic society” in sub-section (1) of section 45 of the Constitution does not relate to the right to life (s.33); right to the dignity of the human person (s.34) and the right to liberty (s. 35). Under sub-section (2) of s.45, measures that derogate from the provisions of s.33 or s.35 during periods of emergency must be measures that are reasonably justifiable for the purpose of dealing with the situation that exists during the period of emergency.

56. Under s. 305 (1) of the Constitution, the President may by instrument published in the Official-Gazette of the Government of the Federation, issue a Proclamation of a state of emergency in the Federation or any part thereof. But the power of the President to issue proclamation of emergency can only be exercised during any of the situations listed in s. 305(3) (a)–(g) which include when the country is at war; imminent danger of invasion or involvement in a state of war, or when there is actual breakdown of public order and safety to such extent that requires extra-ordinary measures to restore peace and security and occurrence or imminent danger of the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the federation. Where the President issues a proclamation, he shall immediately after the publication, transmit copies of the Gazette containing the proclamation including the details of the emergency to the President of the Senate and the Speaker of the House of Representatives, each of whom shall forthwith convene or arrange for a meeting of the House of which he is President or Speaker, as the case may be, to consider the situation and decide whether or not to pass a resolution approving the Proclamation (s.305 (2)). A proclamation issued by the President shall cease to have effect if it is not approved by a resolution supported by two-thirds majority of all the members of each House of the National Assembly. Even when approved by the National Assembly, the proclamation, if not revoked by the President shall cease to have effect after a period of six months unless it is extended by resolution of the National Assembly. The National Assembly can also at any time revoke the proclamation by a simple majority of all the members of each House (s. 305 (6)).

57. International provisions concerning acts of enforced disappearance that are directly applicable under Nigerian laws cannot be made subject to derogation (see paragraph 14 above).

58. Under the Anti-Torture Act 2017 no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture, secret detention places, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried on are prohibited.

2. Legislation and practices concerning terrorism, emergency situations, national security or other grounds that have had an impact on the effective implementation of the prohibition of enforced disappearance

59. No legislation or specific practice jeopardizes the effective application of the prohibition on enforced disappearance.

60. Certain acts that aggregate to terrorism are prohibited as separate offences under the Criminal Code and the Penal Code. For instance, the Criminal Code contains provisions, inter alia, on murder (s. 316), manslaughter (s. 317), kidnapping unlawful deprivation of liberty and (ss.364 and 365), offences against the safety of maritime navigation (s. 349), unlawful attempts to injure by use of explosive substances (s. 336), and unlawful societies (ss. 62–68). The Penal Code also provides for the offences of culpable homicide punishable with death (s. 221), culpable homicide not punishable with death (s. 224), voluntarily causing hurt (s. 242), wrongful confinement (s. 225), kidnapping (s. 271), mischief to vessel (s. 338) and unlawful society (s. 97A).

61. Nigeria has enacted a law which deals specifically with terrorism. The Terrorism (Prevention) Act, No. 11 of 2011(as amended)⁷ prohibits acts of terrorism which is defined very broadly to include an act which is deliberately done with malice, aforethought and which may seriously harm or damage a country or an international organization or intended or can reasonably be regarded as having been intended to (i) unduly compel a government or international organization to perform or abstain from performing any act; (ii) seriously intimidate a population; (iii) seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization; or (iv) otherwise influence such government or international organization by intimidation or coercion; such an act involves or causes an attack upon a person's life which may cause serious bodily harm or death; kidnapping of a person; destruction to a government or public facility; the seizure of an aircraft, ship or other means of public or goods transport and diversion of such means of transportation; the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of biological and chemical weapons without lawful authority; the release of dangerous substance or causing of fire, explosions or floods, the effect of which is to endanger human life (s. 1).

62. The Act also creates a number of other offences, including:

- (a) Murder, kidnaps or other attacks on the person or liberty of an internationally protected person (s. 3);
- (b) Terrorist meetings (s. 4) (c);
- (c) Soliciting and giving support to terrorist groups for the commission of a terrorist act (s. 5);
- (d) Harboursing terrorists or hindering the arrest of a terrorist (s. 6);
- (e) Provision of training and instruction to terrorist groups or terrorists (s. 7);
- (f) Concealment of information about acts of terrorism (s. 8);
- (g) Provision of devices to a terrorist (s. 9);

⁷ Terrorism (Prevention) (Amendment) Act, No. 3 of 2013.

- (h) Recruitment of persons to be members of terrorist groups or to participate in terrorist acts (s. 10);
- (i) Incitement, promotion or solicitation of property for the Commission of terrorist acts (s. 11);
- (j) Provision of facilities in support of terrorist acts (s. 12);
- (k) Financing of terrorism (s. 13);
- (l) Dealing in terrorist property (s. 14);
- (m) Hostage taking (s. 15);
- (n) Membership of a terrorist group or proscribed organisation (s. 16);
- (o) Conspiracy to commit terrorist acts (s. 17);
- (p) Aiding and abetting terrorist acts (s. 18);
- (q) Escape or aiding and abetting escape (s. 19);
- (r) Attempt to commit an offence under the Act (s. 20);
- (s) Preparation to commit terrorist acts (s. 21); and
- (t) Unlawful assumption of character of officer of any law enforcement or security (s. 22);
- (u) Tampering with evidence and witness (s. 23);
- (v) Obstruction of any officer of a law enforcement or security agency (s. 24) amongst others.

63. Nigeria is to a number of international and regional treaties on terrorism such as the International Convention against the taking of Hostages 1979 acceded to on 24 September 2013; the Organization of African Unity Convention on the Prevention and Combating of Terrorism, signed on 26 April 2002 and ratified on 28 April 2002; the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, signed on 23 October 2009 and ratified on 14 April 2012; the Supplementary Act Adopting the ECOWAS Strategy for combating Terrorism, and its Implementation Plan, signed on 28 February 2013; and the ECOWAS Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, 2001 (amended).

Article 2

1. Information on the definition of enforced disappearance in domestic law, including indications as to whether such a definition is in full conformity with the Convention

64. There is no domestic law that defines enforced disappearance, rather various acts that amount to enforced disappearance are defined and prohibited in a number of legislative instruments.

2. Criminal or legislative provisions which are invoked to deal with cases of enforced disappearances in the absence of a definition of enforced disappearances in domestic law which is in full conformity with the Convention

65. Enforced disappearance is treated as a separate offence when it constitutes a crime against humanity. Reference is made in this connection to the comments made in respect of article 5 of the Convention below.

66. A review of the two major penal statutes in the country, the Criminal Code and the Penal Code, as well as other extant laws shows clearly that even without the formal classification of enforced disappearance as a crime, there are provisions in the statutes that can be invoked to punish the perpetrators of component acts. Such provisions include the prohibition of kidnapping and unlawful deprivation of liberty (ss. 364 and 365 Criminal

Code); kidnapping and wrongful confinement (ss. 255 and 271, Penal Code); murder, kidnaps or attacks on the person or liberty of an internationally protected person (s. 3, Terrorism (Prevention) Act, as amended); prohibition of acts of trafficking in persons (ss. 13–25, Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015); deprivation of liberty, forced isolation or separation from family and friends and violence against persons committed by state actors (ss. 10, 13 and 24, Violence Against Persons Act 2015); and anti-kidnapping laws of the various states of the federation.

67. Under the Anti-Torture Act 2017, government has the duty to ensure that the rights of all persons, including suspects, detainees and prisoners are respected at all or 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; and to fully adhere to the principles and standards on the absolute condemnation and prohibition of torture set by the Constitution of the Federal Republic of Nigeria and various international instruments to which Nigeria is a State party (s.1). The Act prohibits various acts of torture including confinement of persons in solitary cells against their will or without prejudice to their security (s. 2).

68. The criminal provisions are reinforced by the provisions relating to arrest, bail and preventive justice under sections 3–34 of the Administration of Criminal Justice Act 2015 which protects and safeguards the rights of suspects during arrest and detention and ensures humane treatment of persons suspected to have committed offence.

Article 3

How the State prohibits and prosecutes the conduct defined in article 2 of the Convention when it is committed by non-State entities

69. The acts defined in article 2 of the Convention, if committed by persons or groups acting without the authorization, support or acquiescence of the State, may, depending on the case, constitute acts of torture, inhuman treatment, kidnapping, abduction and trafficking in person. They may then be prosecuted under the relevant statutes which prohibit such acts as described above.

70. Such acts may also amount to violations of individual right to the dignity and liberty that are classified as breach of fundamental rights under the Constitution of the Federal Republic of Nigeria, as described above.

Article 4

1. Steps undertaken to enact domestic legislation criminalizing enforced disappearance as an autonomous offence in terms that are consistent with the definition in article 2

71. See comments made in respect of articles 2 and 3 of the Convention. These are build-ups to the enactment of specific offence of enforced disappearance as defined in article 2.

2. How enforced disappearance is separately defined as a crime qualitatively distinguishable from similar or related offences that already exist in the domestic criminal law.

72. There is no distinct definition of the offence of enforced disappearance under domestic criminal law. Acts of enforced disappearance are provided for as composite offences under various penal statutes.

Article 5

1. Definition of enforced disappearance as a crime against humanity in conformity with applicable international law

73. Crime against humanity stems from customary international law, and its definition was codified in article 7 of the Rome Statute of the International Criminal Court, which Nigeria signed on 1 June 2000 and ratified on 27 September 2001.

74. Article 7 of the Statute describes crimes against humanity as acts which; “when committed forms part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” These crimes include murder, extermination, enslavement, deportation or forcible transfer of a population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law.

75. Even though Nigeria is yet to domesticate the Rome Statute by any specific domestic enactment, the acts constituting crime against humanity are prohibited under domestic criminal law as described under Article 2 of the Convention above.

76. A “bill for an Act to provide for enforcement and punishment of crimes against humanity, war crimes, genocide and for other related offences”⁸ is currently pending before the National Assembly. The House of Representatives’ Committee on Treaties, Protocols, and Agreement began a public hearing on the bill in July 2018.

2. Consequences provided for under domestic law in the light of applicable international law with cross-references to the implementation in particular of articles 7 and 8 of the Convention

77. In line with article 5 of the Convention, when enforced disappearances constitute crimes against humanity, the legal consequences provided for in international law should be applied.

78. One outstanding challenge for Nigeria is the need to bring national criminal law into line with the international crimes described in the Rome Statute of the International Criminal Court and other instruments of international humanitarian law to which Nigeria is a party, including the crime of enforced disappearance under article 5 of the Convention. This because of the constitutional provisions that: in section 12 (1) of the Constitution of the Federal Republic of Nigeria that: (1) “No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly” (s.12 (1)) and “a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law” (s. 36 (12)).

79. Limitation of action as provided under Article 8 and competence of national courts over crimes of enforced disappearance under Article 9 are described below.

Article 6

1. Principles of criminal responsibility

80. Nigeria’s domestic criminal law adequately provides for criminal responsibility. Under s. 7 of the Criminal Code, when an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it: (a) every person who actually does the act or makes the omission which constitutes the offence; (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence; (c) every person who aids another person in committing the offence; (d) any person who counsels or

⁸ A Bill for an Act to Provide for the Enforcement and Punishment of Crimes Against Humanity, War Crimes, Genocide and for Related Offence and to Give Effect to Certain Provisions of the Rome Statute of the International Criminal Court in Nigeria.

procures any other person to commit the offence. Similarly, the domestic laws relating to or prohibiting acts of enforced described in this report, attribute criminal responsibility to persons who does or omits to do the act amounting to the offence as well those who conspire with, procure, counsel, aid or abet other persons to commit the offence.

2. Legislation and jurisprudence exist with regard to the prohibition of invoking superior orders

81. Legislative provisions exist in domestic criminal law prohibiting invoking superior orders. The provisions, however, permit invoking of superior orders as a defence in restricted manner as described below.

3. Due obedience, superior orders as a ground for justification and illegal orders

82. For example under s. 32 of the Criminal Code the protection provided that a person may not be criminally responsible for an act or omission if he does or omits to do the act in obedience to the order of a competent authority which is bound by law to obey, does not apply where the order in question is manifestly unlawful and does not extend to an act or omission which constitutes an offence punishable with death, or an offence of which grievous to the person of another, or an intention to cause such harm, is an element, nor to a person who has by entering into an unlawful association or conspiracy rendered himself liable to have such threats made to him. Whether an order is or is not manifestly unlawful is a question of law.

83. Specific provision is made for the protection of members of the armed forces and the police who acted in obedience to lawful commands of superior officers only in relation to suppression of riot. Even then, the command obeyed must not be manifestly unlawful (s. 280, Criminal Code). Section 15 of the Criminal Code provides for that while members of the armed forces and of the police forces of Nigeria are subject to the special laws relating to the forces to which they respectively belong, are not exempt from the provisions of the code.

4. Sanctioning of a superior

84. Some of the specific criminal legislation prohibiting acts of enforced disappearance under Nigerian domestic laws make special provision for the responsibility of members of the military, police, law enforcement officer as well as senior government officials who issue orders to lower ranking personnel to commit the prohibited act. For example, s. 7 of the Anti-Torture Act 2017 provides as follows:

1. A person who actually participates in the infliction of torture or who is present during the commission of the act is liable as the principal;

2. A superior military police or law enforcement officer or senior government official who issues an order to a lower ranking personnel torture a victim for whatever purpose is equally liable as the principal;

3. An order from a superior officer or from a superior in the office or public authority shall not be invoked as a justification for torture;

4. The immediate commanding officer of the unit concerned of the security or law enforcement agencies is held liable as an accessory to the crime for any act or omission or negligence on his part that may have led to the commission of torture by his subordinates.

85. The position of public authorities with respect to the notion of “due obedience” as a criminal law defence has little or no impact on the effective implementation of the prohibition under the Convention because acts of enforced disappearance, such as abduction, kidnapping, torture, incarceration are manifestly unlawful. Under the Nigeria Police Regulation⁹ the liability of members of the police force to prosecution before any court of justice for any crime is not affected or diminished by the regulation (reg. 374). The provision of the Regulation relating to discipline only makes a member of the police force liable for disobedience to orders, if he or she “disobeys or without good and sufficient cause omits or

⁹ Made pursuant to the Police Act, Cap. P19, LFN 2004.

neglects to carry out any lawful order written or . Police officers are not immune from prosecution in the regular courts for any crime and are not expected to carry out any unlawful orders from their superiors.

Article 7

1. Criminal Sanctions in the national criminal law for acts of enforced disappearance

86. The sanctions for acts that constitute enforced disappearance under Nigeria’s criminal law depend on the severity of the act in question and generally involve imprisonment. For example unlawful imprisonment in a manner to prevent the victim from applying to a court for his or her release or from his being discovered by others under s. 364 of the Criminal Code is punishable by imprisonment for ten years, while unlawful detention of a person against his/her will under s. 365 of the Criminal Code is punishable with imprisonment for just two years.

87. Under the Penal Code, whoever kidnaps or abducts a person shall be punished with imprisonment for up to ten years and shall also be liable to fine. Where the kidnap or abduction is for the victim to be killed or put in danger of being killed, the punishment is imprisonment for up to 14 years and fine (ss. 273 and 274, Penal Code).

88. Under both the Criminal Code and the Penal Code where death results of the unlawful act of abduction or kidnapping the perpetrator shall be liable for the death and will be punished accordingly. Where in such circumstances death results beating or other acts intended to cause bodily harm, the punishment in such a situation may be death (ss. 306–319 of the Criminal Code and ss. 220–226 of the Penal Code).

89. Other relevant laws provide penalties including imprisonment and payment of find. The Anti-Torture Act provides to maximum penalty of 25 years. The Trafficking in Person Prohibition Act provides for imprisonment ranging from two to seven years and penalties ranging from one million to ten million naira.

90. The anti-kidnapping of the state provide very severe penalties for kidnapping which in most cases range from life imprisonment to death, especially where the kidnapper is armed.

2. Maximum sanction

91. The maximum sanction for acts that could amount to enforced disappearance is death.

3. Aggravating or mitigating circumstances

92. The penalties provided under the relevant law may aggravated or mitigated by the circumstances of the act such as the degree of force employed in the commission of the offence, whether the offender was armed as well as the nature and condition of the victim of the offence. For example, where the victims are children and women or other members of vulnerable groups, the punishment may be more severe under the Trafficking in Person Prohibition Act. On the other hand where the offender is a minor or did not employ any form of violence, the punishment may be mitigated.

Article 8

1. Application of a statute of limitations to criminal proceedings and sanctions

93. Under Nigerian criminal law, except where time is limited by statute, there is no time limit for commencing prosecution for a crime. The Supreme Court of Nigeria in the case of *Paul Yabugbe vs. Commissioner of Police*,¹⁰ held that even the statutory limitation of three months for actions against public officers under the Public Officers Protection Act do not apply to criminal prosecution of public officers for crimes. There is no time limitation both

¹⁰ (1992) LPELR-SC.162/90; (1992) NWLR (Pt. 234) 152; 2 (1992) 4 SCNJ 116.

for criminal proceedings and sanctions in the relevant criminal statutes in Nigeria relating to the acts of enforced disappearance.

2. Non-applicability of statutory limitation to crimes against humanity

94. Although, no domestic legislation establishes the specific offence of crimes against humanity, statutory limitation does not apply to the kindred offences that prohibit acts of enforced disappearance.

3. How the State guarantees that no statute of limitations applies for criminal, civil or administrative actions brought by victims seeking the right to an effective remedy

95. Where the victim of an offence seeks the right to personal remedy under private law for an act that constitutes an offence, time limitation applies, which in the case of loss or injury, both material and physical or mental, under the relevant state laws varies between five and six years from the date the cause of action accrued or from the date the continuing wrong ended.¹¹ For actions against public officers, the limitation laws provide for a shorter period of time.

96. To avoid a situation where a victim's civil claim for remedy may be statute barred because of pending criminal prosecution, the victim can bring a private action for redress during the pendency of the criminal prosecution against the alleged perpetrators. To this end the Administration of Criminal Justice Act provides in s.320 (2) that the pendency of criminal proceedings shall not be a bar to a civil action in respect of the same subject matter.

97. The Administration of Criminal Justice Act also makes provision to assist victims who lack the economic resources to bring a separate civil action to recover compensation in the criminal proceedings. Section 319 of the Act provides as follows:

1. A court may, within the proceedings or while passing judgment, order the defendant or convict to pay a sum of money:

(a) As compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant or convict, where substantial compensation is in the opinion of the court recoverable by civil suit;

(b) In compensating a bona fide purchaser for value without notice of the defect of the title in any property in respect of which the offence was committed and has been compelled to give it up; and

(c) In defraying expenses incurred on medical treatment of a victim injured by the convict in connection with the offence ...

2. Order for cost or compensation may be made under this section irrespective of the fact that no fine has been imposed on the defendant in the judgment.

98. The victim's right to an effective remedy is thus also guaranteed for the purpose of seeking reparation for the injury sustained.

4. Effective remedies sought in relation to the statute of limitations

99. During the period of limitation, the victims of acts of enforced disappearance may apply to the competent judicial authorities.

100. It is also always possible for a complainant to seek redress from the Court of Justice of the Economic Community of West African States, subject to the admissibility criteria governing complaints. It should be noted in this regard that the Court does not require the exhaustion of domestic remedies.

¹¹ Actions Law, Enugu State, s. 20 (1) – six years; Limitation Law, Bayelsa State, s. 16 – five years.

Article 9

1. Measures taken to establish jurisdiction in the cases contemplated under paragraphs 1 and 2

101. Article 9, paragraphs 1 and 2 are already covered under Nigerian laws. Section 12 (1) of the Nigerian Criminal Code applies territorially to every person who is in Nigeria. It provides that where, by the provisions of any federal law the doing of any act or the making of any omission is constituted an offence, those provisions shall apply to every person who is in Nigeria at the time of his doing the act or making the omission.

102. The second paragraph of s. 12 of the Code provides for the application of the Code to offences wholly or partially committed in Nigeria thus:

With regard to such offences which are of such a nature that they comprise several elements, if any acts or omissions or events actually occur, which, if they all occurred in Nigeria, would constitute an offence, and any of such acts or omissions or events occur in Nigeria, although all or some of the other acts or omissions or events which, if they occurred in Nigeria, would be elements of the offence occur elsewhere than in Nigeria; then –

1. If the act or omission, which in the case of an offence wholly committed in Nigeria would be the initial element of the offence, occurs in Nigeria, the person who does that act or makes that omission is guilty of an offence of the same kind and is liable to the same punishment, as if all the subsequent elements of the offence had occurred in Nigeria; and

2. If that act or omission occurs elsewhere than in Nigeria, and the person who does that act or makes that omission afterwards comes into Nigeria, he is by such coming into Nigeria guilty of an offence of the same kind, and is liable to the same punishment, as if that act or omission had occurred in Nigeria and he had been in Nigeria when it occurred.

103. The Code also provides that any person who, while outside Nigeria procured or counselled another to do or omit to do in Nigeria an act which if he had himself done the act or made the omission in Nigeria, he would have been guilty of an offence, afterwards comes into the country, is by such coming into the country guilty of an offence of the same kind, and is liable to the same punishment, as if he himself had done the act or made the omission and had been in the country when the offence was committed (s. 13). Furthermore, section 14 of the Code punishes for offences procured in Nigeria to be committed out of Nigeria, as if the offence had been committed in Nigeria.

2. Legal provisions, including any treaties, concerning mutual legal assistance that apply to ensure jurisdiction for acts of enforced disappearances

104. See the comments under this article in section A and under article 14 of the Convention.

3. Cases involving the offence of enforced disappearance in which mutual legal assistance was requested by or from the reporting State party

105. There are no examples of extraditions granted or denied.

Article 10

1. Domestic legal provisions concerning custody of person alleged to have committed an enforced disappearance or other precautionary measures to ensure his or her presence; his or her right to consular assistance

106. Nigeria's current laws on criminal procedure, the Administration of Criminal Justice Act 2015 and its adaptations in state laws, make elaborate provisions on arrest, pre-trial detention and bail of persons caught in the act of committing a crime or suspected to have committed a crime.

107. Concerning the rights of foreign detainees to contact their consular authorities, Nigeria is a signatory to the Vienna Conventions on Diplomatic and Consular Relations, which obliges host countries to inform foreign nationals' consulates in the event of a prosecution or conviction. Nigeria has domesticated the conventions by the Diplomatic Immunities and Privileges Act 1962 (as amended)¹² which applies throughout the country.

2. Procedure in place to guarantee that a person investigated for having allegedly committed enforced disappearances can access consular assistance

108. Nigerian law does not lay down any procedure for this, law enforcement agencies as well as prison authorities, at the request of a detainee, will inform the relevant consulate. It would be advisable to include in domestic law a provision that would establish an obligation of disclosure and the right of all foreign nationals to consular assistance in the event of conviction or prosecution.

Article 11

1. Legal framework enabling national courts to exercise universal jurisdiction over the offence of enforced disappearance

109. Section 6 of the Constitution of the Federal Republic of Nigeria vests judicial powers of the federation and states on the courts. The powers so vested extend to all inherent powers and sanctions of a court of law, including criminal sanctions.

110. The Constitution and the specific legislation that establish the courts confer jurisdictions on the courts. For example, the Magistrate/Area Courts of the states and the Federal Capital Territory, Abuja (FCT) have original jurisdictions in minor cases of acts of enforced disappearance. The Federal High Court and the High Courts of the states and the FCT have unlimited original jurisdictions to trial cases of acts of enforced disappearance while the High Courts of the States and the FCT have appellate jurisdiction in appeals from the Magistrate/Area Courts. Appeals from the Federal High Court and High Courts of the states and FCT go to the Court of Appeal and thereafter to the Supreme Court.

2. Competent authorities for the implementation of the various aspects of article 11

111. The relevant authorities include the Police, the Attorneys-Generals of the Federation and states as well as law enforcement agencies established under the relevant laws and empowered to institute criminal proceedings against persons in violation of the relevant statutes. The Police have powers under the Police Act to prosecute for all offences while the Attorneys-Generals under the Constitution, have powers to initiate, take over or discontinue any prosecution (ss. 174 and 211 of the Constitution). The National Agency for the Prohibition of Trafficking in Persons established under the Trafficking in Persons (Prohibition), Enforcement and Administration Act, has prosecutorial powers in relation to human trafficking.

3. Standards of evidence for prosecution and conviction

112. The Nigerian Evidence Act¹³ which applies to all judicial proceedings in or before all courts in Nigeria, provides the standard of evidence. The standard of evidence in criminal proceedings in all courts in Nigeria is "proof beyond reasonable doubt" and the burden of proving that any person has been guilty of a crime is on the prosecution. (s. 135, Evidence Act).

4. Measures to ensure the fair trial of the alleged offender

113. Fair trial is a fundamental right guaranteed in the Constitution of the Federal Republic of Nigeria. Section 36 (4) of the Constitution provides that whenever any person is charged

¹² Diplomatic Immunities and Privileges Act, Cap. D9, LFN 2004.

¹³ No. 18 of 2011.

with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal.

114. Every person who is charged with a criminal offence shall be entitled to (a) be informed promptly in the language that he understands and in detail of the nature of the offence; (b) be given adequate time and facilities for the preparation of his defence; (c) defend himself in person or by legal practitioners of his own choice; (d) examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and (e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence (s. 36 (6)).

115. These constitutional provisions are reinforced by the provisions of the Administration of Criminal Justice Act.

5. Measures to ensure that the standards of evidence required for prosecution and conviction apply equally

116. The Evidence Act applies equally throughout the country and to all persons involved in the proceedings in the court. It does not distinguish between nationals and foreigners.

6. Competent authorities to investigate and prosecute those accused of enforced disappearance

117. Authorities that have powers to investigate and prosecute for acts of enforced disappearance include the Police, the Attorneys-General offices, and specialised agencies established under relevant laws.

Article 12

1. Process followed and mechanisms used by the relevant authorities to clarify and establish the facts relating to enforced disappearances

118. The procedures under the Administration of Criminal Justice Act and other relevant statutes relating to inquiries, search and investigations are used to clarify and establish the facts constituting acts of enforced disappearance such as kidnapping, abduction, confinement arbitrary detention, violence, etc.

2. Mechanisms available to individuals who allege that a person has been subjected to enforced disappearance

119. Nigerian law provides for the right and duty to report an offence and lodge a complaint. Reporting an offence is a right as well as a civic duty.

3. Access of complainant to independent and impartial authorities

120. In the performance of their duties, the police and judicial authorities are required to abide by the principle of equality and non-discrimination guaranteed by the Constitution (s. 42) as well as by other instruments of international law such as the International Convention on the Elimination of All Forms of Racial Discrimination. Moreover, this is one of the fundamental values of the African Union. Accordingly, compliance with this principle may be monitored not only by domestic authorities but also by such international courts as the Court of Justice of the Economic Community of West African States.

121. By s.42(1) of the Constitution, a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject; or (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such

executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions. The principles of independence, impartiality and integrity of courts of law and easy accessibility thereto are established and maintained by s.17(2)(b) of the Constitution. These are essential components of the fundamental right to fair hearing enshrined in s. 36 (1) of , and the right to fair hearing is enshrined in s. 36 (1) of the Constitution as well as in article 14 of the International Covenant on Civil and Political Rights and article 7 of the African Charter on Human and Peoples' Rights. A person alleging a violation of the principles of impartiality, equality and non-discrimination in the treatment of his or her complaint may bring an application for the enforcement of his or her fundamental rights under s. 46 of the Constitution. The Human Rights Commission and various human rights organization also receive complaints and provide legal advice to victims. These victims to overcome the consequences of the offence and can provide them with psychosocial or practical support and necessary information.

4. Remedies available to the complainant in case the competent authorities refuse to investigate his or her case

122. Where a competent authority refused to investigate a complaint by a victim of a crime, where the complaint is unfounded from the outset, such a complainant can bring an application before the court for an order of *mandamus* to compel the authority to perform its duty.¹⁴ The complainant may, where a right of civil action inures to his or her favour institute action to recover damages from the perpetrator.

5. Mechanisms for the protection of the complainants, their representatives, witnesses and other persons participating in the investigation, prosecution and trial from any kind of intimidation or ill-treatment

123. In general, intimidation, assault and battery, threats and ill-treatment of all kinds are criminal offences. In accordance with criminal law, the victims of such offences may therefore report them.

124. Under s. 232 of the Administration of Criminal Justice Act 2015, trial for certain offences may not be held in open court and the identity of the victims and witnesses shall not be disclosed in the record of the proceedings. To protect the identity of the victims and witnesses the court may (a) receive evidence by video link; (b) permit the witness to be screened or masked; (c) receive written deposition of expert evidence; and (d) any other measure that the court considers appropriate in the circumstance. The offences include offences under the Terrorism (Prevention) (Amendment) Act; Trafficking in Persons and related offences; and (e) any other offence in respect of which an Act of the National Assembly permits the use of such protective measures or as the Judge may consider appropriate in the circumstances

125. A bill is currently pending before the National Assembly for the enactment of an Act to establish of witness protection programme. Among other things, the proposed legislation seeks to promote law enforcement by facilitating the protection of persons who are involved directly or indirectly in providing assistance in law enforcement matters in relation to activities conducted by the force; or activities conducted by any law enforcement agency or international criminal court or tribunal. It is to enable certain persons receive protection in relation to certain information, evidence or other assistance rendered to law enforcement agencies during enquiries, investigation or prosecution. The inclusion of whistle-blowers in the protection programme has become imperative due to instances of victimization of whistle-blowers in public and private organizations.

¹⁴ *Chief Gani Fawehinmi v. Col. Halilu Akilu* (1987) 4 N.W.L.R. (Pt.67) 797; *Akilu v. Fawehinmi* (No.2) (1989) NWLR (Pt.102) 122.

6. Statistical data on the number of complaints of enforced disappearance submitted to the domestic authorities

126. There is no record of any complaint of enforced disappearance as defined in article 2 of the Convention from the Police and other authorities. However, the National Bureau of Statistics' record of reported crimes for 2017 show that a total of 1,586 crimes involving acts of enforced disappearance were reported. Of this number the thematic breakdown of the reported incidents show that child stealing amounted to 345; slave dealing, 107 and kidnapping accounted for 1,134 (see Table 1 below).

**Table 1
Reported Offences by Type and State 2017**

<i>State</i>	<i>Child stealing</i>	<i>Slave dealing</i>	<i>Kidnapping</i>	<i>Total</i>
FCT-Abuja	3	-	49	52
Akwa-Ibom	52	6	11	69
Anambra	-	-	-	-
Abia	68	-	104	172
Adamawa	-	-	9	9
Bauchi	-	-	44	44
Benue	45	-	67	112
Borno	-	-	2	2
Bayelsa	4	-	53	57
Cross River	6	-	31	37
Delta	9	-	49	58
Ebonyi	6	-	98	104
Edo	8	16	2	26
Enugu	4	-	25	29
Gombe	-	-	10	10
Ekiti	-	-	3	3
Imo	-	-	33	33
Jigawa	-	-	5	5
Kaduna	-	-	64	64
Kano	-	-	43	43
Katsina	15	10	30	55
Kebbi	-	-	8	8
Kogi	-	-	46	46
Kwara	3	8	10	21
Lagos	65	41	98	114
Niger	1	-	30	31
Nasarawa	-	-	10	10
Ogun	4	-	15	19
Ondo	12	-	22	34
Oyo	8	2	2	12
Osun	1	1	15	17
Plateau	-	-	10	10
Rivers	31	23	82	136
Sokoto	-	-	27	27
Taraba	-	-	14	14
Yobe	-	-	3	3

<i>State</i>	<i>Child stealing</i>	<i>Slave dealing</i>	<i>Kidnapping</i>	<i>Total</i>
Zamfara	-	-	9	9
Railway	-	-	1	1
Total	345	107	1 134	1 586

Data source: National Bureau of Statistics, “Crime Statistics: Reported Offences by Type and State (2017)” [https://nigerianstat.gov.ng/elibrary?queries\[search\]=crime](https://nigerianstat.gov.ng/elibrary?queries[search]=crime) (accessed 17 Jan. 2019).

127. In the same year 2017, the National Human Rights Commission reported that it received a total of twenty three thousand seven hundred and fifty three (23753) complaints of enforced disappearance and related offences. Of this number one thousand two hundred and thirty one is for enforced disappearance; women trafficking and child trafficking accounted for 2154 and 20368 respectively (see Table 2 below).

Table 2
Complaints Disaggregation based on Thematic Areas

<i>Location/State</i>	<i>Enforced Disappearance</i>	<i>Women Trafficking</i>	<i>Child Trafficking</i>	<i>Total</i>
Headquarters	45	2	173	220
Lagos	76	5	1 896	1 977
Enugu	55	6	158	219
Rivers	3	2	344	349
Borno	84	8	1 799	1 891
Plateau	82	5	873	960
Kano	42	8	897	947
Abuja Metropolitan Office	3	88	68	159
Nasarawa	0	4	378	382
Benue	0	8	2 113	2 121
Anambra	9	321	1 239	1 569
Gombe	54	2	496	552
Edo	3	211	4 667	4 881
Kaduna	82	653	566	1 301
Niger	9	4	344	357
Katsina	7	4	366	377
Kwara	3	8	442	453
Cross River	0	211	779	990
Adamawa	0	4	21	25
Ekiti	455	8	1 002	1 465
Akwa Ibom	3	371	86	460
Sokoto	54	211	462	727
Imo	84	8	756	848
Osun	78	2	443	523
Total	1 231	2 154	20 368	23 753

Data source: National Human Rights Commission, Annual Report 2017, pp. 178–179, <https://www.nigeriarights.gov.ng/downloads/NHRC%202017%20Annual%20Report.pdf> (accessed 17 Jan. 2019).

7. Information on any units in police forces, prosecutorial or other relevant offices with personnel specifically trained to start investigations on cases of enforced disappearance

128. In Nigeria, within the Police there are specialized units with personnel specifically trained to conduct investigations on cases relating to enforced disappearance. For example, the Counter-Terrorism Unit (CTU) deals with cases of terrorism; the Anti-Human Trafficking Unit handles cases of human trafficking while the Anti-Kidnapping Unit deals with cases of kidnapping and abductions.

129. In addition to the police units aforesaid, the NAPTIP deals with cases of human trafficking created under the Trafficking in Persons (Prohibition), Enforcement and Administration Act.

8. Access of the competent authorities to places of detention

130. The Administration of Criminal Justice Act and other relevant statutes ensure that the authorities responsible for preliminary inquiries and investigation have the means to carry out their work, including, as required by the Convention, unrestricted access to official places of detention, as well as access to private places(ss. 32, 33, 34 Administration of Criminal Justice Act).The National Human Rights Commission is empowered by section 6(d) of its enabling law to visit prisons, police cells and other places of detention in order to ascertain the conditions thereof and make recommendations to appropriate authorities. The Commission carries out routine audits of prisons and other detention facilities. The Chief Judges of FCT and other states also carryout routine visits to prison. These prevent arbitrary prolonged detention as well as incidents of enforced disappearances.

9. Measures provided by law to remove suspects from any posts where they would be in a position to influence the investigations or threaten persons involved in the investigations

131. Apart from collaborating with the Nigerian military, the police and other law enforcement agencies in training their personnel on human rights standards and mainstreaming human rights in their operations, the National Human Rights Commission has as its key priorities training of the military, police and personnel of other law enforcement agencies as well as civil society groups, civil servants, judicial personnel on human rights standards. Between 2015 to date, the Commission had trained over five thousand personnel of the military, the police and other law enforcement agencies on human rights standards. This includes soldiers deployed to the Northeast of Nigeria to fight against terrorism and insurgency as well as those deployed to other parts of the country in internal security operations. The numbers of CSO, public servant and judicial officers trained as part of the implementation of the national Action plan for the promotion and protection of human rights cannot be quantified.

132. Impartiality is a well-established general principle of law and its non-observance may be sanctioned by national bodies, through disciplinary measures. It requires that an investigation cannot be directed or carried out by a member of the police force, or a member other prosecuting authority neither will a trial be conducted by a judge who is him or herself suspected of the offence in question. To safeguard not only impartiality but also the appearance of impartiality, Police personnel, public prosecutors and judicial officers (judges and magistrates) are required to recuse themselves from involvement in cases in which they have a personal interest. Non-recusal in such a circumstance would amount to the breach of the constitutional guarantee of impartial and will not only nullify the process but may render such a person liable to sanction.

Article 13

Extradition of persons suspected, accused or convicted of enforced disappearance

1. National legislation that makes enforced disappearance an extraditable offence

133. Although Nigeria has not signed any specific procedural treaty in relation to the crime of enforced disappearance and has not received any request for extradition in relation to acts of enforced disappearance, the below described existing framework provides for all necessary measures and international legal pathways to ensure effective and fair implementation and practical realisation of the provisions of the Convention, not only in Nigeria, but within the international community of states prepared to prevent and eliminate the crime of enforced disappearance.

134. For the purposes of extradition proceedings, a person is only deemed to be wanted for trial where a court of law has issued a warrant requiring that the person be brought to answer criminal allegations in court. This is quite different from where a person is wanted for questioning, for example, as a witness.

135. The major laws that regulate extradition in Nigeria include:

- The Constitution of the Federal Republic of Nigeria, 1999 (as amended): the Constitution being the *grundnorm* in Nigeria vests jurisdiction over extradition matters on the Federal High Court.
- While the Constitution provides the general foundational legal framework for extradition law and practice, the Extradition Act¹⁵ is the primary legislation for specific matters. As the primary statute regulating extradition in Nigeria, it recognises two separate categories of States. States in the first category are those that have an extradition agreement with Nigeria and in respect of which an agreement order has been made and published in the Federal Gazette. The second category consists of Commonwealth States. This is the principal legislation for extradition matters.
- The Immigration Act¹⁶ makes provision for the procedure for the transfer of the fugitive criminal to the requesting country.
- The Administration of Criminal Justice Act (ACJA) 2015, regulates criminal procedure in federal courts including the Federal High Court. In relation to extradition, the ACJA is most relevant to procedural steps that relate to pre-proceedings and post-proceedings steps which are not provided for in either the Extradition Act or the Federal High Court (Extradition Proceedings) Rules. The provisions of sections 469 and 470 of the Act relate to persons in detention pending extradition who will be included in the monitoring activities of the Administration of Justice Monitoring Committee.
- The Evidence Act¹⁷ also makes provision for the mode of documentation and tendering of evidence regarding extradition. The Act applies to all criminal proceedings with the exception of a field general court martial. Under the Evidence Act, the existence of foreign law, which a fugitive is accused of violating, is a matter of fact. However, in proving the existence of foreign law, the Evidence Act is read in conjunction with the Extradition Act. By this exercise, the relevant foreign law is deemed to exist if mentioned in the warrant issued by the foreign court.
- The Federal High Court (Extradition Proceedings) Rules, 2015. Although the Extradition Act has certain procedural provisions, they are inadequate and do not cover many areas of proceedings. The Federal High Court (Extradition Proceedings) Rules were made to ensure clarity in extradition proceedings and to promote efficient and expeditious hearing of extradition applications. Details of steps for extradition

¹⁵ (Cap E 25) Laws of the Federation, 2010.

¹⁶ (Cap I 11) Laws of the Federation, 2010.

¹⁷ (Cap E 14) Laws of the Federation, 2010.

proceedings which are not provided in the Extradition Act are provided in the Federal High Court (Extradition Proceedings) Rules.

136. Some of the most relevant penal laws applicable to extradition in Nigeria include:

- Advance Fee Fraud and Other Fraud Related Offences Act 2006;
- Armed Robbery and Fire Arms (Special Provisions) Act Nos. 5 and 28 of 1986;
- Banks and Other Financial Institutions Act 1991;
- Code of Conduct Bureau and Tribunal Act 1989;
- Corrupt Practices Act and Other Related Offences Act 2000;
- Cyber Crimes (Prohibition, Prevention, Etc.) Act 2015;
- Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act 1994;
- Fiscal Responsibility Act 200;
- Miscellaneous Offences Act 1984;
- Money Laundering Act 2011;
- Penal Code (Northern State) Federal Provisions Act No. 25 of 1960;
- Public Procurement Act, 2007;
- Terrorism (Prevention) (Amendment) Act No. 25 of 2013;
- Terrorism Prevention Act 2011;
- Criminal Code Act 1916;
- Criminal Code Laws of various Southern States;
- Economic and Financial Crimes Commission (Establishment) Act 2004;
- Independent Corrupt Practices and Other Related Offences Act 2000; and
- Penal Code Laws of various Northern States.

2. Extradition treaties between Nigeria and other States parties to the Convention

137. Under section 1 (1) and 2 (1) of the Extradition Act, the legislation applies only in respect of countries that have a treaty or “extradition agreement” with Nigeria and also to other Commonwealth countries. Nigeria has extradition treaties with several countries, including the United States of America, South Africa, Liberia, and Britain. Nigeria has also signed an extradition treaty with the United Arab Emirates (UAE). The sixteen ECOWAS nations concluded the Economic Community of West African States Convention on Extradition in Abuja Nigeria on the 6th August 1994.

138. About ten years earlier, on 10 December 1984, Nigeria was party to the Extradition Treaty between the Peoples’ Republic of Benin, the Republic of Ghana, and the Republic of Togo which was the first multilateral treaty on extradition in the continent of Africa. Prior to the conclusion of that treaty in 1984, Nigeria had extradition arrangement with the Republic of Liberia, United States of America, the British Commonwealth nations and the British dependent territories.

3. Information on possible obstacles in the implementation of those treaties

139. According to section 6 of the Extradition Act, authority for extradition matters rests on the Office of the Attorney General. This is in line with section 174(1) (a) of the Constitution of the Federal Republic of Nigeria, 1999, which authorizes the Attorney General to “institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly”.

140. Notwithstanding the provisions of sections 6, 7, 8 and 9 of the Extradition Act, section 251(1) (i) of the 1999 Constitution provides that it is the Federal High Court that has

exclusive jurisdiction over extradition matters. Thus, all extradition applications or any challenge to the validity or legality of pre-extradition steps are matters to be dealt with by the Federal High Court. However appellate proceedings may be instituted at the Court of Appeal and subsequently at the Supreme Court, both of which are federal courts. Essentially, the Constitution provides the general foundational legal framework for extradition law and practice in Nigeria.

4. Whether domestic legislation qualifies enforced disappearance as a political offence

141. Nigerian domestic legislation does not in any way qualify acts of enforced disappearance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives.

5. Any treaty between Nigeria and other countries explicitly stating the enforced disappearance is a basis for extradition

142. There is no specific treaty between Nigeria and other countries explicitly stating that enforced disappearance is a basis for extradition.

6. Authority that determines the extradition of a person the basis or criteria

143. According to section 6 (1) and (2) of the Extradition Act, a request for surrender of a Nigerian fugitive criminal of any country should be made in writing to the Attorney-General by a diplomatic representative or consular officer of that country and shall be accompanied by a duly authenticated warrant of arrest or certificate of conviction issued in that country.

144. Where such a request is made to him, the Attorney-General may by an order under his hand signify to a court that such a request has been made and require the court to deal with the case in accordance with the provisions of the Act; but the Attorney General shall not make such an order if he decides on the basis of information then available to him that the surrender of the fugitive criminal is precluded by any of the provisions of subsections (1)–(7) of section 3 of the Act. Those bars are discussed further in article 16 below.

145. The documents that would accompany the request shall include: the affidavit deposed to by the designated officer of the requesting State; a copy of the indictment or Charge Sheet; duly authenticated Warrant of Arrest and/ or a copy of the judgment and sentence passed on the fugitive criminal; and a copy of the extract of law in which the request is based from the requesting State.

146. Where request for the surrender of the fugitive criminal is made by more than one country, whether for the same offence or different offences, the Attorney General shall determine which request to be accorded priority. In doing so, the Attorney General must put the following into consideration: a) The relative seriousness of the offences, if different; b) The relative dates on which the requests were made; and c) The nationality of the fugitive and the place where he is ordinarily resident.

147. Upon receipt of the order from the Attorney General, the Judge shall issue a warrant for the arrest of the fugitive if in his opinion there is enough evidence to justify such a warrant of arrest, and the offence was committed in Nigeria or the fugitive had been convicted of the said offence in Nigeria. Once arrested, the fugitive criminal shall be brought before a competent court as soon as practicable.

148. According to section 20(1) of the Extradition Act, a fugitive may only be returned for a returnable offence. A returnable offence is defined by the Act as an offence which is punishable by imprisonment for two years or a greater penalty both in Nigeria as well as the country seeking his surrender.

149. By section 11(2), a prisoner serving a sentence under section 10 of the Act may, at the discretion of the President of Nigeria, be temporarily returned to another country within the Commonwealth in which he is accused of a returnable offence to enable proceedings to be brought against the prisoner in relation to that offence, on such conditions as may be agreed between the President and the country requesting the surrender of the prisoner.

Article 14

1. Treaty or provision of mutual legal assistance among States parties applicable to enforced disappearance

150. Although Nigeria has not enacted a comprehensive legislation on mutual legal assistance and has not yet received any request for assistance relating to an enforced disappearance, under the country's legal framework, legal assistance may be provided when it is based on official bilateral or multilateral treaties signed on the basis of domestic legal provisions and the principle of reciprocity.

2. Examples of the mutual co-operation

151. In this context, Nigeria has signed many agreements on legal cooperation at the regional level (with the member countries of the Economic Community of West African States and the African Union) and at the international level (South Africa, Liberia, and Britain, the United States of America and the United Arab Emirate). These agreements include:

- Extradition Treaty between The Peoples' Republic of Benin, The Republic of Ghana, The Federal Republic of Nigeria, and The Republic of Togo, signed on 10 December, 1984;
- Treaty between the Federal Republic of Nigeria and the United States of America on Mutual Legal Assistance in Criminal Matters signed in Washington on 2 November, 1987;
- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federal Republic of Nigeria Concerning the Investigation and Prosecution of Crime and the Confiscation of the Proceeds of Crime Signed at London on 18th September, 1989;
- Extradition Treaty between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act, 2005;
- Treaty on Mutual Legal Assistance in Criminal Matters between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act, 2005;
- Bilateral Extradition Treaty between United States of America and the United Kingdom of December 22, 1931 made applicable to Nigeria in June 24, 1935;
- Extradition (United States of America) Order 1967, Legal Notice 33 of 1967.

3. Co-operation with other States which are not party to the Convention

152. Nigeria is also a member of the International Criminal Police Organization (INTERPOL) and has been very active in inter-State police cooperation. Interpol as an international crime prevention police force has played a major role in the apprehension of international wanted fugitives.

153. Since extradition involves the apprehension of persons who might not be easily identified by domestic police of the state in which their arrest is sought, there is the need for collaboration with Interpol. Indeed, one of the principal roles of Interpol is to ensure and promote the widest possible mutual assistance between all national police authorities within the limit of the law existing in the different countries.

154. In any event, Nigeria may agree to cooperate in a criminal case, including in a case of enforced disappearance.

155. This reasoning is further supported by the provisions of section 73 of the Trafficking in Persons (Prohibition and Enforcement) Act 2015, which states that offences contained in the Act are considered to be extraditable crimes for which extradition may be granted. Again, under section 74 (1) of the Act, the National Agency for the Prohibition of Trafficking in Persons with the approval of the Minister may disclose information relating to human

trafficking in its possession to an appropriate foreign authority where a request for such disclosure is made.

Article 15

International cooperation

156. The Nigerian State has neither signed nor amended any agreements to provide assistance to victims of enforced disappearance or facilitate the search for victims other than those mentioned in the section of this report concerning article 14.

157. Notwithstanding this state of affairs, the existing framework for international cooperation, made up of (i) the country being a signatory to the Convention; (ii) extant bilateral and multilateral treaties on international legal assistance and cooperation and; (iii) domestic provisions, for instance under the Extradition Act, are adequate in taking the required steps and measures to fulfil the obligations set forth in this particular article of the Convention.

Article 16

Non-refoulement

158. A fugitive criminal may not be surrendered for extradition by Nigeria if it is established that he may be subjected to a denial of his human rights, including enforced disappearance, by the requesting State.

159. Nigeria is a state party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention expressly prohibits state parties from expelling, returning “refouler”, or extraditing any person to a state where there are substantial grounds for believing that he would be in danger of being subjected to torture. The country domesticated the Convention in the Anti-Torture Act passed in 2017.

160. Under the country’s national law, section 3 of the Extradition Act provides that:

1. A fugitive criminal shall not be surrendered if the Attorney-General or a court dealing with the case is satisfied that the offence in respect of which his surrender is sought is an offence of a political character;

2. A fugitive criminal shall not be surrendered if it appears to the Attorney-General or a court dealing with the case – (a) that the request for his surrender, although purporting to be made in respect of an extradition crime, was in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions or was otherwise not made in good faith or in the interest of justice; or (b) that, if surrendered, he is likely to be prejudiced at his trial, or to be punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions;

3. A fugitive criminal shall not be surrendered if the Attorney-General or a court dealing with the case is satisfied that, by reason of – (a) the trivial nature of the offence for which his surrender is sought; or (b) the passage of time since the commission of the offence, it would, having regard to all the circumstances in which the offence was committed, be unjust or oppressive, or be too severe a punishment, to surrender the offender;

4. A fugitive criminal shall not be surrendered if the Attorney-General or a court dealing with the case is satisfied that, whether in Nigeria or elsewhere, he (a) has been convicted of the offence for which his surrender is sought; or (b) has been acquitted thereof, and that, in a case falling within paragraph (a) of this subsection, he is not unlawfully at large;

5. A fugitive criminal shall not be surrendered if criminal proceedings are pending against him in Nigeria for the offence for which his surrender is sought;

6. A fugitive criminal (a) who has been charged with an offence under the law of Nigeria or any part thereof, not being the offence for which his surrender is sought; or (b) who is serving a sentence imposed in respect of any such offence by a court in Nigeria, shall

not be surrendered until such time as he has been discharged whether by acquittal or on the expiration of his sentence, or otherwise;

7. A fugitive criminal shall not be surrendered to any country unless the Attorney-General is satisfied that provision is made by the law of that country, or that special arrangements have been made, such that, so long as the fugitive has not had a reasonable opportunity of returning to Nigeria, he will not be detained or tried in that country for any offence committed before his surrender other than any extradition offence which may be proved by the facts on which his surrender is granted;

8. A fugitive criminal shall not be surrendered until the expiration of the period of fifteen days beginning with the day on which he is committed to prison to await his surrender.

161. Apart from collaborating with the Nigerian military, the police and other law enforcement agencies in training their personnel on human rights standards and mainstreaming human rights in their operations, the National Human Rights Commission has as its key priorities training of the military, police and personnel of other law enforcement agencies as well as civil society groups, civil servants, judicial personnel on human rights standards. Between 2015 to date, the Commission had trained over five thousand personnel of the military, the police and other law enforcement agencies on human rights standards. This includes soldiers deployed to the Northeast of Nigeria to fight against terrorism and insurgency as well as those deployed to other parts of the country in internal security operations. The numbers of CSO, public servant and judicial officers trained as part of the implementation of the national Action plan for the promotion and protection of human rights cannot be quantified.

162. Again, according to the provisions of section 73 (2) of the Trafficking in Persons (Prohibition and Enforcement) Act 2015, no person shall be extradited under the Act, where the Government has substantial grounds for believing that a request for extradition for an offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 17

Prohibition of secret detention

1. Prohibition in the national law of secret detention and conditions under which deprivation of liberty order may be given and measures requiring prompt notification of rights

163. Under Nigerian law, it is guaranteed that deprivation of liberty is only lawful if it has been ordered by a court or – in exceptional cases – subsequently authorized by a court. Accordingly, in all cases, Nigerian law guards against secret detention and confinement (whether by the police or any other agency) by requiring that all persons deprived of liberty be held in officially recognized, regulated and supervised places.

164. Accordingly, section 35 of the 1999 Constitution contains provisions that protect persons from secret detention. Accordingly, section 35 states that:

1. 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 – (a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty; (b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law; (c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence; (d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare; (e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or (f) for the purpose of preventing the

unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto: Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence;

2. Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice;

3. Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention;

4. Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of – (a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date;

5. In subsection (4) of this section, the expression “a reasonable time” means – (a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and (b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable;

6. Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, “the appropriate authority or person” means an authority or person specified by law.

165. The provisions of section 36 (1), (4) and (6) of the 1999 dealing with the right to fair hearing in both civil and criminal matters) are also very relevant in this regard.

166. Section 10(1) of the Violence Against Persons (Prohibition) Act, 2015 provides that a person who deprives another of his or her liberty, except pursuant to a court order commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or a fine not exceeding N500,000.00 or both. Again, section 13(1) of the Act states that a person who forcefully isolates or separates another from family and friends commits an offence and is liable on conviction to a term of imprisonment not exceeding six months or to a fine not ₦100,000.00 or both.

167. Similarly, section 8 (1) of the Administration of Criminal Justice Act (ACJA) 2015 provides that a suspect shall be accorded humane treatment, having regard to his right to the dignity of his person. Under section 8 (3), a suspect shall be brought before the court as prescribed by law or otherwise released conditionally or unconditionally.

168. Section 14 (1) of the ACJA insists that a person who is arrested, whether with or without warrant shall be taken immediately to a police station, or other place for the reception of suspects, and shall be promptly informed of the allegation against him in the language he understands. Such a person shall also be given reasonable facilities for obtaining legal advice, access to communication for taking steps to furnish bail and otherwise making arrangements for his defence or release.

169. Section 15 of the Act provides that where a person is arrested, whether with or without a warrant, and taken to a police station or any other agency effecting the arrest, the arresting officer in charge shall cause to be taken immediately, in the prescribed form, the following record of the person arrested:

- (a) The alleged offence;
- (b) The date and circumstance of the arrest;

- (c) His full name, occupation and residential address;
- (d) And for the purpose of identification:
 - (i) His height;
 - (ii) His photograph;
 - (iii) His full fingerprint impressions, or,
 - (iv) Such other means of identification.

170. Section 16 establishes in the Nigerian Police Force a Central Criminal Records Registry, where all arrested suspects and the facts of their arrests will be recorded.

171. One of the core functions of a police station as provided by Regulation 250 (d) (ii) made pursuant to the Police Act is the maintenance of the Records which shall contain the particulars of persons arrested with reasons for arrest.

172. Under section 87 of the ACJA, a court has the authority to compel the attendance before it of any person who is within jurisdiction and is charged with an offence committed in the country, or which according to law may be dealt with as if the offence had been committed within the jurisdiction of the court and to deal with the person according to law.

173. In an effort to meet the country's international commitments (in particular those contained in the Optional Protocol to the Convention against Torture to which Nigeria has ratified; and the African Charter (article 5); and article 16 of the African Charter on the Rights and Welfare of the Child), the National Assembly has passed the Anti-Torture Act, signed into law by the President on 29 December 2017. The Act was drafted in close collaboration with civil society to fulfil the obligation of the Nigerian state to set up national torture prevention mechanisms.

174. Establishment of Human Rights Desks (HRD): In 2014, HRD were created for all the Formations of the NPF that has to do with criminal investigation. These Desks are headed by senior officers with mandates, including the monitoring and reporting on the observance of the rights of the detainees as provided in both domestic and international legal instruments to which Nigeria is a State Party. Workshops are regularly held to build the capacities of these Desk Officers as Police investigators through assistance of Development Partners, including USAID, DFID, UK, Lawyers without Borders (Avocats sans frontieres), and UNODC etc.

175. Establishment of Nigeria Police Duty Solicitor Scheme: The aim of this scheme which was launched in the year 2017 as a product of partnership between the NPF, Legal Aid Council of Nigeria, Open Society Initiative and Right Enforcement and Public Law Centre is the provision of free legal service to persons in custody, but the role of the NPF in the arrangement is to provide unrestricted access to lawyers and members of the NGOs who may visit the places of detention pursuant to the scheme. The scheme has been incorporated into the Force Order which its violation by any officer amounts to a serious misconduct.

2. Guarantees for any independent bodies or mechanisms established to inspect prisons and other places of detention and the existence of administrative mechanisms to inspect prisons

176. Regarding the supervision and inspection of prisons and other places of detention, the Chief Justice of Nigeria on 28 June, 2018, asked Attorney Generals across the country to direct magistrates in their states to inspect detention facilities and ensure that inmates do not face brutality. The directive is to forestall Police brutality in prisons across the country.

177. This is in line with "Section 34 (1) of the ACJA which States that:

The Chief Magistrate, or where there is no Chief Magistrate within the police division, any Magistrate designated by the Chief Judge for that purpose, shall, at least every month, conduct an inspection of police stations or other place of detention within his territorial jurisdiction other than prison.

178. Again, Section 34 (2) further states that:

During the visit, Magistrate may: (a) call for, and inspect, the record of arrest; (b) direct the arraignment of the suspect; (c). where bail has been refused, grant bail to any suspect where appropriate if the offence for which the suspect is held, is within the jurisdiction of the Magistrate.

179. Apart from collaborating with the Nigerian military, the police and other law enforcement agencies in training their personnel on human rights standards and mainstreaming human rights in their operations, the National Human Rights Commission has as its key priorities training of the military, police and personnel of other law enforcement agencies as well as civil society groups, civil servants, judicial personnel on human rights standards. Between 2015 to date, the Commission had trained over five thousand personnel of the military, the police and other law enforcement agencies on human rights standards. This includes soldiers deployed to the Northeast of Nigeria to fight against terrorism and insurgency as well as those deployed to other parts of the country in internal security operations. The numbers of CSO, public servant and judicial officers trained as part of the implementation of the national Action plan for the promotion and protection of human rights cannot be quantified.

180. Furthermore, on the regular monitoring of detention centres by independent organisations, as a State Party to the Optional Protocol on Torture, in 2009, Nigeria put in place a National Preventive Mechanism known as the National Committee against Torture (the National Committee). The mandate of the National Committee goes beyond visiting and monitoring places of detention and includes the examination and investigation of allegations of torture, receipt of communications of torture from individuals and civil society organisations. It is also empowered to systematically review interrogation rules, methods and practices and arrangement for custody and develop an anti-torture policy for the country. As stated earlier, the National Human Rights Commission carries out routine inspection of prisons, police stations and other detention centres in accordance with its mandate and issues periodic reports on these inspections which include appropriate recommendations to competent authorities as well as ensuring the full guarantee of the rights of persons detained.

3. Existence, or steps undertaken for the creation, of one or more official and updated registers of detention

181. Apart from collaborating with the Nigerian military, the police and other law enforcement agencies in training their personnel on human rights standards and mainstreaming human rights in their operations, the National Human Rights Commission has as its key priorities training of the military, police and personnel of other law enforcement agencies as well as civil society groups, civil servants, judicial personnel on human rights standards. Between 2015 to date, the Commission had trained over five thousand personnel of the military, the police and other law enforcement agencies on human rights standards. This includes soldiers deployed to the Northeast of Nigeria to fight against terrorism and insurgency as well as those deployed to other parts of the country in internal security operations. The numbers of CSO, public servant and judicial officers trained as part of the implementation of the national Action plan for the promotion and protection of human rights cannot be quantified.

182. The Prison Service keeps information on all prisoners in Nigeria. This information is contained in the Prison Register, a comprehensive personal identification mechanism for inmates, which includes fingerprints and photographs. This mechanism can also be used for transfers or release of prisoners. The personal documentation is generated for every inmate upon arrival, containing all relevant information and events in chronological order, from arrival, through his or her stay in the facility.

183. Section 1 of the Nigerian Prisons Standing Order of 2001 provides that new prisoners received into prison either from the courts, or upon transfer from another prison, must be seen by the Superintendent in charge and the medical officers within 24 hours of reception. The Superintendent, on the recommendation of the medical officer, may decline to admit a prisoner with grievous bodily injuries. Where the medical officer believes imprisonment will endanger the life of the prisoner, or that the prisoner should be released on medical grounds,

he or she should report this to the Superintendent who is then obliged to forward the report to the Controller of Prisons in the relevant State.

Article 18

1. Existing legislation which guarantees the rights of any person with a legitimate interest to access the information

184. Under Nigerian law, all persons with a legitimate interest in cases of human rights abuses, including those of enforced disappearance, are entitled to obtain information which they consider necessary for the case. Therefore, in Nigeria, the protection of the interests of the person concerned or for safeguarding the criminal proceedings are permissible pursuant to Article 20 para. 1 of the Convention.

185. In this context, the provisions of section 35 (2) of the 1999 Constitution and section 14 of the ACJA, regarding the right of an arrested (or detained) person to be given reasonable facilities for obtaining legal advice and access to communication (discussed in article 17) are apposite.

186. Furthermore, according to section 10 (1) of the ACJA 2011, a police officer who arrests a person shall record information about the arrested person and an inventory of all items or property recovered from the person. Under section 10 (3), the arrested person or his legal practitioner or such other person as the arrested person may direct, shall be given a copy of the inventory.

187. Under section 6 (1) of the ACJA, except where a suspect is in the actual commission of a crime or is pursued immediately after the commission of the crime or has escaped from lawful custody, the arresting officer shall inform the suspect immediately of the reason for his arrest. By the provisions of section 6 (2), such a suspect shall be informed of his rights to; remain silent; consult a legal practitioner of his choice; and free legal representation by the Legal Aid Council of Nigeria where applicable. Under the proviso to the sub-section, the authority in custody of the detained person shall have the responsibility of notifying the next of kin or relative of the suspect of the arrest at no cost to the suspect.

188. Essentially, section 1 of the Freedom of Information Act (2011)¹⁸ provides that:

Notwithstanding anything contained in any other Act, law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is established. (2) An applicant under this Act needs not demonstrate any specific interest in the information being applied for. (3) Any person entitled to the right to information under this Act, shall have the right to institute proceedings in the Court to compel any public institution to comply with the provisions of this Act.

189. Section 2 (1) insists that a public institution shall ensure that it records and keeps information about all its activities, operations and businesses. Section 2 (4) enjoins every public institution to ensure that information referred to in this section is widely disseminated and made readily available to members of the public through various means, including print, electronic and online sources, and at the offices of such public institutions.

190. It is clear that information required to be kept under section 2 of the FOI Act will include such information as the one contained in the Central Criminal Records Registry, required to be kept by the Nigerian Police under section 16 of the ACJA 2015.

191. Under section 4 of the Act, where information is applied for, the public institution to which the application is made shall (subject to sections 6, 7, and 8 of this Act) within 7 days after the application is received – (a) make the information available to the applicant (b) where the public institution considers that the application should be denied, the institution shall give written notice to the applicant that access to all or part of the information will not

¹⁸ Act No. 4, Laws of the Federation of Nigeria, 2011.

be granted, stating reasons for the denial, and the section of this Act under which the denial is made.

2. Any existing restriction on exercising the rights of any person with a legitimate interest to access the information

192. Nevertheless, under section 11 (1), a public institution may deny an application for any information the disclosure of which may be injurious to the conduct of international Affairs and the defence of the Federal Republic of Nigeria (2) Notwithstanding subsection (1), an application for information shall not be denied where the public interest in disclosing the information outweighs whatever injury that disclosure would cause.

193. Furthermore, there are other situations under which a public body may refuse to give access to information which is in their domain. These circumstances are provided for in sections 12, 14, 15 16, 17, 18 and 19 of the FOI Act.

194. By the provisions of section 368 of the Criminal Code (applicable in Southern Nigeria), any person who – being required by law to keep any record touching any matter relating to any person in confinement, refuses or neglects to keep such record, or makes in such record an entry which, in any material particular, is, to his knowledge, false; or being required by law to give any information to any person touching any person in confinement, or to show to any person, any person in confinement, or any place in which a person is confined – (a) refuses or neglects to give such information or to show such person or place to any person to whom he is so required to give the information or show the person or place; or (b) gives to any person to whom he is so required to give it, information touching any such matter which, in any material particular, is, to his knowledge, false; is guilty of a felony, and is liable to imprisonment for three years.

195. Regarding penalties for failure to release a detained person, the Nigerian Court of Appeal held per Uwaifo, JCA in the case of *Peter Nemi v Attorney General of Lagos State and Ors*¹⁹ that prisoners still have their rights intact, except those deprived by law. Where, therefore, it is proved that a person having a legitimate interest is denied access to information, apart from an order compelling obedience, the court is also empowered to award compensation on liberal terms to that person against the party who committed the breach and everybody who takes part in it – *Jim-Jaja v Commissioner of Police Rivers State and Ors*.²⁰

**Article 19
Obligation to keep Record**

1. The procedures used to obtain genetic data or medical information

196. Currently, identification through genetic analysis in criminal proceedings is not yet regulated by law in Nigeria. Nevertheless, the Protection of personal information, including medical and genetic information collected or transmitted for the purpose of search for a disappeared person or by extension, to exercise the right to obtain reparation, shall not be used otherwise with a view to prevent any infringement of human rights and dignity of the concerned individual. In this context, the law protects individuals' privacy with regards to the collection, processing (whether automatic or manual), transmission, storage and use of personal information.

2. Provisions for the protection, and eventual storage of data

197. Nigeria's data protection and privacy regime generally takes its earliest definition from the country's constitution – the 1999 Constitution of the Federal Republic of Nigeria. Accordingly, section 37 of the Constitution states that the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected. Apart from this section, other constitutional provisions which

¹⁹ (1996) 6 NWLR (Pt. 452), 42.

²⁰ (2013) 6 NWLR (Pt. 1350) 225.

mandate that an arrested person must be informed properly of the circumstances surrounding such arrest and or detention were highlighted in articles 17 and 18.

198. Furthermore, the National Health Act,²¹ in section 25 states that any person in charge of a health establishment shall ensure that a health record containing such information as may be prescribed is created and available at that health establishment for every user of health services.

199. Under section 27, a health worker or any health care provider that has access to the health records of a user may disclose such personal information to any other person, health care provider or health establishment as is necessary for any legitimate purpose within the ordinary course and scope of his or her duties where such access or disclosure is in the interest of the user.

200. As yet, the most relevant, single legislative instrument on data protection is the Guidelines on Data Protection (version 4.0) (“NITDA Guidelines” or “the Guidelines”) issued by the National Information Technology Development Agency (“NITDA”). Under the guideline, every precaution is taken to ensure that unauthorized persons do not gain access to personal information. Such information may be transmitted to another State only if that State guarantees that individuals’ privacy and fundamental rights and freedoms will be adequately protected with respect to the way their information is handled or may be handled.

3. Information on the existence of databases of genetic data

201. Currently, there is no genetic databank in existence in Nigeria. Nevertheless, because Nigeria recognizes that the establishment of the database to assist in the search for disappeared persons and the existence of a genetic database is very important, government is assiduously working towards their realization.

Article 20

Restriction of access to information for detained persons under Court Supervision

202. In Nigeria, all persons deprived of their liberty have a legitimate interest in access to any information they may request on the proceedings against them. As a result, access to information on persons deprived of their liberty is not restricted, except when it falls within any of the exceptions as authorized by law, which may include issues of national security or during times of national emergency.

203. However, as was pointed out in article 18 above, the provisions of sections 11, 12, 14, 15 16, 17, 18 and 19 of the Freedom of Information (FOI) Act 2011 contain restrictions on the right to access information by persons deprived of their liberty as part of Nigeria’s domestic legislation. Nevertheless, these sections equally contain provisions which insist that an application for information shall not be denied where the public interest in disclosing the information outweighs whatever injury that disclosure would cause. In this situation, if it is in the interest of the public that such information be released, the possessor of the information must do so, even though it may cause injury to the state.

204. Under section 74 (2) of the trafficking in Persons (Prohibition and Enforcement) Act 2015, where the agency considers that there are no means or conditions under which the information, documents or evidence requested could be provided, disclosed or given without prejudice to the national security of Nigeria, the Agency may refuse the request for the production of such document or the disclosure of such evidence or refuse the authorization of the production of such document or the disclosure of such information and shall notify the requesting Authority of the reasons for doing so, unless the specification of those reasons would in itself be, in the opinion of the Agency, prejudicial to the national security of Nigeria.

²¹ Laws of the Federation of Nigeria 2014.

Article 21

1. Information on existing national legislation and practice to ensure the release of persons deprived of their liberty

205. Section 35 (4) of the 1999 Constitution stipulates that anybody accused of an offence shall be arraigned in court within a reasonable time and the court that could make an order remanding such person in prison or ordering his release from custody – either conditionally or unconditionally.

206. Section 8(3) of the ACJA declares that a suspect shall be brought before the court as prescribed by the Act or any other written law or otherwise released conditionally or unconditionally.

207. By the provisions of section 158 of the ACJA, when a person who is suspected to have committed an offence or is accused of an offence is arrested or detained, or appears or is brought before a court, such a person shall be entitled to bail. Under section 159, the court has the power to issue an order mandating the detaining authority to produce the person detained in court at a specified time and date.

208. Similarly, section 46 of the Child Rights Act stipulates that where it appears to a court making an emergency protection order that adequate information as to the whereabouts of a child is not available to the applicant for the emergency protection order; or is available to another person who is not the applicant, the Court may include, in the order, a provision requiring that other person to disclose, if asked to do so by the applicant, any information that he may have as to the whereabouts of the child.

209. In the case of persons of unsound mind, where a person is found to be of unsound mind and incapable of making a defence, if the offence charged is bailable by the court, it may in its discretion, release such person on sufficient security being given: (a) that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person; and (b) for his appearance when required before the court of (such officer as the court appoints in that behalf.

210. Under section 281 (1) of the ACJA, where a relative or friend of a defendant confined under section 281 or 286 of the Act desires that the defendant be delivered over to his care and custody, the court may, on the application of the relative or friend and on his giving security to the satisfaction of the court the at the defendant delivered shall be: (a) properly taken care of; and (b) prevented from doing injury to himself or to any other person; in its discretion, order the defendant to be delivered to the relative or friend on condition that the defendant shall be produced for the inspection of such officer and at such times as the court may direct.

2. Information on the competent authorities in charge of supervision of the release

211. Furthermore, by virtue of the provisions of section 11 of the Prisons Act,²² the Chief Justice of Nigeria and the Chief Judges of the federating states, while conducting prison visits are empowered by the Criminal Justice (Release from Custody) (Special Provisions) to order the release of any person if satisfied that the detention of that person is manifestly unlawful; or that the person detained has been in custody, whether on remand or otherwise, for a period longer than the maximum period of imprisonment which the person detained could have served had he been convicted of the offence in respect of which he was detained.

²² Cap P29, Laws of the Federation of Nigeria, 2004.

Article 22**Right to take proceedings to determine the lawfulness of the deprivation of liberty**

212. In recognition and acknowledgment of her obligations under international law, Nigeria has erected institutional infrastructure and provided a range of remedies to redress violation of personal liberty occurring in its territory.

213. Jurisdiction to hear and determine allegations of human rights violation (including those of enforced disappearance) is conferred on the High Court by Section 46 (1) of the 1999 Constitution. The procedure for the commencement and determination of such cases is contained in the Fundamental Rights (Enforcement Procedure) Rules, 2009 made by the Chief Justice of Nigeria pursuant to the authority conferred on him by section 46(3) of the 1999 Constitution.

214. The Rules not only contain substantial improvement over the one based on the 1979 Constitution, but are designed to ensure easy access to court by victims of human rights violations as well as expeditious determination of cases.

215. By Order II, any person who alleges infringement of any of the fundamental right (including deprivation of liberty) is required to file an application for the enforcement of the rights, by using any mode of originating process accepted by the court. The application must be supported by a statement setting out the name and description of the applicant, the reliefs sought, the grounds upon which the reliefs are sought, and an affidavit setting out the facts upon which the application is made.

216. To facilitate expeditious hearing and determination, every application is required to be accompanied by a succinct written address in its support. It is further provided that where the respondent intends to oppose the application; he shall file his written address within 5 days of the service on him of such application and may accompany it with a counter affidavit. By Order II Rule 1, an application must be fixed for hearing within 7 days of being filed. At its hearing, Order XI reiterates the power of the court under section 46 of the Constitution to make such as it may consider appropriate or enforcing and securing fundamental human rights.

217. It should be noted that the Fundamental Rights (Enforcement Procedure) Rules do not constitute an exclusive procedure for the enforcement of the rights protected by the Constitution. Rather, other legally recognized civil procedural modes of commencement of action may be employed.

218. In this context, the writ of habeas corpus is considered apposite, especially in cases of enforced disappearance. Accordingly, where the personal liberty of an individual as guaranteed by section 35 of the 1999 Constitution is interfered with through confinement, such a person may make an application to court for the writ of habeas corpus to issue for the purpose of securing the restoration of his liberty. Habeas corpus application is certainly the most effective, beneficial and expeditious remedy in every case of detention.

219. The application for the writ is started at the High Court by filing a motion supported by an affidavit by or on behalf of the person detained, setting out the nature of his confinement. Upon disclosure of sufficient cause, the judge before whom the application is brought may order that the writ should issue forthwith to produce the applicant. Where a judge declines to make such an order, the applicant is at liberty to bring the application before any other judge with or without fresh evidence and the later judge would be bound to hear and determine the application on its merits, notwithstanding the fact that some other judge had earlier refused a similar application.

220. In making application for the release of a person from unlawful custody under the present dispensation, the applicant merely files application for the enforcement of his fundamental right without specifically heading it a writ of habeas corpus.

Article 23

Training of military or civilian personnel

221. In fulfilling their constitutional duties, law enforcement agencies, both civil and military (including the Armed Forces, the Police Force, the Nigerian Prisons, medical personnel and public officials) continue to be subservient to Nigerian and international legal norms, including the human rights provisions incorporated therein. The professional tutoring and coaching of these law enforcement personnel is an important obligation for the Nigerian state. Actions being taken by government include initiatives to rehabilitate the judicial system and place it on a sound moral footing.

222. The Nigerian Human Rights Education and Promotion Department, as a department of the National Human Rights Commission, was established primarily to create awareness on human rights issues throughout the country. This level of awareness will empower victims of human rights violation to seek redress when their rights are violated, promote creation of support groups and engender partnership towards the promotion of human rights. The department also has responsibility for building knowledge, skills and right attitudes and behaviours that will promote a culture of respect for human rights by individuals, groups, governments and corporate entities in Nigeria.

223. In May 2018, the Nigerian Army confirmed the partnership between it and the National Human Rights Commission to improve the main streaming of human rights and civilian protection in the country. As a result of this collaboration, troops in Maiduguri, Borno state, have received training on the protection of human rights as they carry out their counter-insurgency operations in the North East.

224. Prior to this collaboration, on 25 February, 2015, the Nigerian Army established Human Rights Desks at all service and formation headquarters to meet the dictates of global best practices. The Chief of Army Staff, while promising that the Army under his watch will investigate all cases of human rights complaints, including the enforced disappearance of persons, listed the functions of the desk to include receiving documents, investigate complaints from individuals, organisations and institution on rights violation involving Nigerian Army personnel.

225. Similarly, the Nigerian Police usually embark on initial, in-service, advanced and specialized training courses. Initial and further training is regarded as a right and an obligation for police officers. In December 2015, no fewer than 14, 000 policemen and 200 public servants undertook a training course in human rights awareness, organized by the Crime Victims Foundation in collaboration with the Human Rights Education Awareness Centre.

226. The NPF has made human rights education an essential part of its training programme for different cadres of officers and men, both at entry position as well as in service trainings like promotion courses in all the training institutions. These trainings cover both local and international human rights instruments. Experts/technical support in this regard are sourced from human rights agencies both local and international such as the National Human Rights Commission, Red Cross and NGOs to augment and build the capacity of the NPF training staff. The Human Rights Desk Officers also receive training of trainers' courses, which equip them to carry out the human rights education in their respective commands and formations utilizing the NPF Human Rights Training which was developed when the desks were established in the year 2014.

227. On 24 September, 2018, a group of police, prisons and judicial officers were trained on the observance of human rights standards during interrogation, detention and trial, while highlighting the major innovations contained in the criminal justice administration in Nigeria, especially as it relates to the preservation of human rights. The objective of the training was to bring together the police, the lower courts, particularly Magistrates' Courts and the prisons where human rights violations were likely to occur. This will enable participants to share experiences and knowledge of human rights issues and devise strategies of improving criminal justice delivery devoid of human rights violations.

228. On 12 November, 2018, the Nigerian Police Force organized a two days human rights protection training programme for members of the Force in Umuahia, Abia State. In the training, it was emphasized that the fundamental duties of a police officer includes duty to ensure that the rights of all to liberty, equality and justice is respected. In order to achieve this, the Nigerian Police Force has now developed an enhanced human rights teaching to address gaps in the existing police teaching curriculum in police training institutions, particularly in the area dealing with human rights principles. Similarly, the Nigerian Police has also developed a Human Rights manual as a major resource for the teaching of Human Rights principles in Police training.

229. The training exercises will equip the Police with the necessary skills, knowledge and attitude to effectively discharge their duties in accordance with the rule of law and in accordance with human rights' best practices. The training was an outcome of a dialogue between the Swiss government and the Ministry of Foreign Affairs, Police Service Commission and the Police. Equally involved in the dialogue were the National Human Rights Commission, UN agencies and specialized NGOs for the exchange of skills in the field of education and training to promote and protect human rights.

230. Regarding prison officers, authorities have developed the Human Rights training manual and Guide in 2015 for officials of Nigerian Prisons Service (NPS). In 2016, the service started training prison officials on human rights using the manuals, the training exercises were conducted in the cities of Lagos, Enugu, Owerri, and, and also the Prison Academy in Ijebu-Igbo. In 2017, the same training was conducted at zonal commands of the Nigerian Prisons in Oyo, Rivers and Kaduna states, among others. At the last count, more than 1,000 officials of the Nigerian prisons have benefited directly or indirectly from the training on human rights protection.

Article 24

1. How the definition of “victim”, includes both the disappeared person and any individual who has suffered harm

231. The definition of a victim of crime under Nigerian law is quite broad and includes persons who suffer physical, mental, emotional and economic injuries, as well as those whose fundamental rights have been breached in violation of extant laws, including crimes of enforced disappearance. Under section 46 of the VAPP 2015, a victim is defined as; any person or persons, who, individually or collectively have suffered harm, including physical or mental injury; emotional suffering; economic loss, or substantial impairment of the fundamental rights, through acts or omissions that are in violation of the Act or the criminal laws of the country. It also includes the immediate family or dependants of the direct victim and any other person who has suffered harm in intervening to assist victims in distress.

232. Nigerian law does not provide mechanisms for the systematic collection of ante-mortem data related to disappeared persons and their relatives. However, as was stated in article 19 above, work is in progress to establish a genetic databank in Nigeria, which could include provision for such mechanisms.

233. Regarding the rights of victims, Nigeria does not have a comprehensive national victim's data base, but it does have a national crime victimisation survey, which provides some measure of information in the area of victims' rights. The most recent survey, conducted in 2012 survey included adult Nigerian males and females aged 18 years and older. Data collection consisted of face-to-face personal interviews utilising a stratified multi-stage representative sample random selection process designed to generate a nationally representative sample.

234. Nevertheless, national legislation contains provisions which protect the rights of victims, including those of enforced disappearance. Accordingly, under section 38 (1) of the VAPP 2015, in addition to the rights guaranteed under Chapter IV of the 1999 Constitution, or any other international human rights instrument to which Nigeria is a party, every victim of violence is entitled to receive necessary materials for his or her development and be informed of the availability of legal, health and social services. Such a victim is also entitled

to rehabilitation and re-integration programme of the state to enable him or her to acquire, where applicable and necessary, pre-requisite skills in any vocation of the victim's choice.

235. Any rules and or regulations made by any institution or organization prohibiting or restraining the reporting of offences or complaint under the Act is deemed null and void and no complainant of any offence under the Act shall be expelled, disengaged, suspended or punished in any form whatsoever by virtue of action of compliance with the provision of the Act.

236. According to section 24 (5) of the VAPP, 2015, the State is liable for the offence committed by its agents and the Court shall award appropriate compensation commensurate with the extent and amount of damages.

2. Procedure for obtaining compensation and reparation for victims, kind of reparation provided

237. By the provisions of section 314 (1) of the ACJA, notwithstanding the limit of its jurisdiction, a court has power in delivering its judgement to award to a victim commensurate compensation by the defendant any other person or the state. The court in considering the award of compensation to the victim may call additional evidence to enable it determine the quantum of compensation to.

238. Under section 319, a court may within the proceedings or while passing judgment order the defendant to pay a sum of money; as compensation to any person injured by the offence, irrespective of any other fine or punishment that may be imposed or that is imposed on the defendant. Order for cost or compensation may be made under this section, irrespective of the fact that no fine has been imposed on the defendant in the judgement. Similar provision may also be found in sections 321 and 323 of the ACJA. The National Human Rights Commission, in addition to the powers of the Court, also has the statutory mandate to make awards with respect to damages and compensation to victims of human rights violations including enforced disappearances. This is provided in section 6 (e) of its enabling law as follows: The Commission shall have power to make determination as to the damages or compensation payable in relation to any violation of human rights where it deems this necessary in the circumstances of the cases.

239. The Commission, in 2014 awarded various sums of money totalling N135m to the families of persons killed by the military unlawfully in its fight against terrorism and the compensation was paid accordingly by the Federal Government in 2018.

3. Existence of, or steps undertaken to establish, mechanisms to locate victims and, in the case of death, locate, respect and return their mortal remains to relatives

240. It should be noted that the Nigerian government has demonstrated significant efforts towards establishing mechanisms to conduct investigations, locate victims and, in the case of death, locate, respect and return their mortal remains to relatives. This it has done for instance by disbursing more funding to the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) and supporting the signing and implementation of a UN action plan to end and prevent the recruitment and use of children by the Civilian Joint Task Force (CJTF).

241. In 2018, NAPTIP received 662 cases for investigation, completed 116 investigations, prosecuted at least 43 suspects in 43 cases, and convicted 26 traffickers, compared with 654 cases for investigation, 24 prosecutions, and 23 convictions in 2017.

242. Apart from collaborating with the Nigerian military, the police and other law enforcement agencies in training their personnel on human rights standards and mainstreaming human rights in their operations, the National Human Rights Commission has as its key priorities training of the military, police and personnel of other law enforcement agencies as well as civil society groups, civil servants, judicial personnel on human rights standards. Between 2015 to date, the Commission had trained over five thousand personnel of the military, the police and other law enforcement agencies on human rights standards. This includes soldiers deployed to the Northeast of Nigeria to fight against terrorism and insurgency as well as those deployed to other parts of the country in internal security operations. The numbers of CSO, public servant and judicial officers trained as part of the

implementation of the national Action plan for the promotion and protection of human rights cannot be quantified.

243. Apart from collaborating with the Nigerian military, the police and other law enforcement agencies in training their personnel on human rights standards and mainstreaming human rights in their operations, the National Human Rights Commission has as its key priorities training of the military, police and personnel of other law enforcement agencies as well as civil society groups, civil servants, judicial personnel on human rights standards. Between 2015 to date, the Commission had trained over five thousand personnel of the military, the police and other law enforcement agencies on human rights standards. This includes soldiers deployed to the Northeast of Nigeria to fight against terrorism and insurgency as well as those deployed to other parts of the country in internal security operations. The numbers of CSO, public servant and judicial officers trained as part of the implementation of the national Action plan for the promotion and protection of human rights cannot be quantified.

244. Moreover, a comprehensive support for victims includes legal, psychological, social and medical assistance as well as monitoring of victims' reintegration into society.

Article 25

Wrongful removal of children

245. The wrongful removal of children in the context of the crime of enforced disappearance represents the most serious violation of human rights in Nigeria. As a result, Nigeria is a signatory to many international instruments which are for the benefit of children. Some of these international and regional instruments have already been highlighted in the section on legal framework under enforced disappearance is prohibited, in the subs section of international instruments to which Nigeria is a party.

246. Nigeria has ratified the Convention on the Rights of the Child in 1990 (with the Protocol on Involvement of Children in Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, ratified in 2002). In order to fulfil its obligations under the Convention, the Convention was domesticated in the country in 2003 as the Child's Right Act. Although this law was passed at the federal level, its contents are in the concurrent legislative list, this making it imperative that state Assemblies will need to also pass it into law for it to become effective in these states. Since its enactment, it has been fully implemented in 24 states of the federation, leaving 12 who are yet to domesticate same in their states.

247. The Child's Right Act 2003 (CRA) was created to serve as a legal instrument for the protection of the rights and responsibilities of children in Nigeria. It also acts as a legislation against human trafficking since it prohibits children from being separated from parents against their will, except where it is in the best interests of the child.

248. According to section 1 of the Act, in every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration.

249. Under article 8, every child is entitled to his or her privacy, family life, home, correspondence, telephone conversation and telegraphic communications, except as provided in subsection (3) of the same section. Section 9 states that every child is entitled to freedom of movement subject to parental control which is not harmful to the child. From the provisions of section 11, every child is entitled to respect for the dignity of his person.

250. According to section 27, no person shall remove or take a child out of the custody or protection of his father or mother, guardian or such other person having lawful care or charge of the child against the will of the father, mother, guardian or other person. A person who contravenes these provisions commits an offence and is liable on conviction to either fifteen years or twenty years, depending on whether he or she intended to return the child to Nigeria eventually or not.

251. Section 47 of the Act provides against the abduction of a child by stating that a person who knowingly and without lawful authority or reasonable excuse takes or keeps a child away from the person responsible for the child; or induces, assists or incites a child to run away or stay away from the person responsible for the child, commits an offence under this section and shall be liable on conviction to a fine not exceeding seventy thousand naira or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

252. Under section 160 (1) of the ACJA, where a child is arrested with or without warrant and cannot be brought before a court, the police officer in immediate charge for the time being of the police station which the child is brought shall inquire into the case and shall except the charge is one of homicide or the offence charged is punishable with imprisonment for a term exceeding three years or it is necessary in the interest of the child to remove him from association with any reputed criminal or prostitute, release the child on a recognizance entered into by his parent or guardian, with or without sureties.

253. The provisions of section 166 of the ACJA states that where in any case the defendant in respect of whom the court makes an order requiring that a recognizance be entered into is a child, the child shall not execute the recognizance but the court shall require a parent, legal guardian or other fit person, with or without sureties, to enter into a recognizance that the child shall do what is required under the court's order. The protection of a child can equally be found in the provisions of section 371 and 362 of the Criminal Code.

254. In general, under Nigerian Law, in any procedure affecting a minor capable of forming his or her own views, the minor in question may be heard. The ACJA lays down the procedures to be followed in that connection.

255. Available statistical data on cases of enforced disappearances are discussed under the comments to Article 12 above.
