



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

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## Committee on Enforced Disappearances

### Concluding observations in the absence of the report of Zambia due under article 29 (1) of the Convention\*

1. At its 423rd and 424th meetings, held on 20 and 21 March 2023, the Committee on Enforced Disappearances considered the replies submitted by Zambia to the list of issues in the absence of its report due under article 29 (1) of the Convention. At its 437th meeting, held on 29 March 2023, it adopted the present concluding observations.

#### A. Introduction

2. The Convention came into force for Zambia on 4 May 2011. Under article 29 (1) of the Convention, the State party was required to submit, by 4 May 2013, a report on the measures taken to give effect to its obligations under the Convention. In view of the State party's failure to submit a report, despite several reminders, the Committee decided to examine in public session the measures taken by the State party to implement its obligations under the Convention in the absence of a report, in accordance with rule 50 of its rules of procedure.<sup>1</sup> At its twentieth session (12 April–7 May 2021), the Committee adopted a list of issues in the absence of a report.<sup>2</sup> The Committee welcomes the State party's written replies to the list of issues,<sup>3</sup> which were supplemented by the oral statements made during the constructive dialogue held with its delegation.

#### B. Positive aspects

3. The Committee notes with appreciation some of the legislative measures adopted by the State party, in particular the Penal Code (Amendment) Bill (Bill No. 25 of 2022), abolishing the death penalty, the Anti-Gender-Based Violence Act (Act No. 1 of 2011) and the Anti-Human-Trafficking Act (Act No. 11 of 2008).

#### C. Principal matters of concern and recommendations

##### 1. General information

##### Compliance with the Convention

4. The Committee considers that, at the time of the drafting of the present concluding observations, the legislative and institutional frameworks and the practice of competent authorities in the State party to prevent, eradicate and adequately punish enforced disappearance were not in compliance with the Convention. The Committee welcomes the

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\* Adopted by the Committee at its twenty-fourth session (20–31 March 2023).

<sup>1</sup> CED/C/1.

<sup>2</sup> CED/C/ZMB/QAR/1.

<sup>3</sup> CED/C/ZMB/RQAR/1.



upcoming regulatory impact assessment process, under which the drafting of new legislation on enforced disappearance will be considered.

#### **Non-derogability of the prohibition of enforced disappearance**

5. The Committee is concerned that under article 25 of the Constitution, personal liberties can be curtailed in a situation of war or public emergency. Furthermore, the Committee regrets that the State party has not provided information on existing legislation and measures taken to ensure that no exceptional circumstances may be invoked to derogate from the right not to be subjected to enforced disappearance (art. 1).

**6. The Committee recommends that the State party expressly incorporate the absolute prohibition of enforced disappearance into domestic law, in accordance with article 1 (2) of the Convention.**

#### **National human rights institution**

7. The Committee notes the improvements made in terms of budgetary allocation and regular disbursement to the Human Rights Commission of Zambia. Nonetheless, the Committee is concerned about reports that the Commission still lacks financial autonomy and independent and effective functioning.

**8. The Committee recommends that the State party ensure the effective functioning of the Human Rights Commission of Zambia, providing it with the financial, technical and human resources necessary to adequately carry out its work throughout the national territory, including as it relates to enforced disappearance and secret detention, and clarifying the minimum terms of commissioners and the grounds and process for their dismissal. It further recommends that the Commission promote awareness about its mandate and competencies, and about disappearance, including enforced disappearance, among the general public, civil society organizations and national and local authorities.**

## **2. Definition and criminalization of enforced disappearance (arts. 1–7)**

#### **Statistical information and databases**

9. The Committee notes that the State party has a database of “missing persons”. However, it regrets that the State party did not provide any statistical information on disappeared persons, including those subjected to enforced disappearance within the meaning of article 2 of the Convention (arts. 1, 2, 3, 12 and 24).

**10. The State party should, without delay, generate accurate and up-to-date statistical information on disappeared persons, disaggregated by sex, sexual orientation, gender identity, age, nationality, place of origin and racial or ethnic origin. This information should include the date of disappearance, specifically identify the cases allegedly committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, within the meaning of article 2 of the Convention, and include the number of disappeared persons who have been located, whether alive or deceased.**

#### **Enforced disappearance as a separate crime and appropriate penalties**

11. The Committee notes the assertion by the State party that a regulatory impact assessment will be conducted to ascertain the need to enact a new law. However, the Committee reiterates that only the characterization of enforced disappearance as an autonomous offence enables States parties to the Convention to comply with the obligation arising from article 4 of the Convention. The Committee also notes that the State party has still not specifically characterized enforced disappearance as a crime against humanity, as set out in article 5 of the Convention (arts. 2, 4 and 5).

**12. The Committee recommends the State party to ensure, without delay, that:**

**(a) Enforced disappearance is incorporated into national legislation as an autonomous offence, in accordance with the definition contained in article 2 of the**

**Convention, and is characterized as a crime against humanity, in accordance with article 5 of the Convention;**

**(b) The offence of enforced disappearance carries appropriate penalties that take into account its extreme seriousness.**

#### **Criminal responsibility of superiors and due obedience**

13. The Committee notes with concern that the State party's criminal legislation does not provide for the responsibility of superiors under the conditions set out in article 6 (1) (b) of the Convention, and does not expressly provide that due obedience may not be invoked to justify enforced disappearance (arts. 6 and 23).

**14. The Committee recommends that, in accordance with article 6 (1) (a) of the Convention, the State party hold criminally responsible and duly punish any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an offence of enforced disappearance. The State party should also ensure that its domestic legislation specifically establishes the criminal responsibility of superiors and provides that orders or instructions from superiors may not be invoked to justify enforced disappearance, in accordance with article 6 (1) (b) and (2) of the Convention.**

### **3. Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8–15)**

#### **Allegations and investigation of enforced disappearance**

15. The Committee notes the information received by the State party regarding the disappearance of Rwandan former refugees. However, it regrets that the State party did not provide information concerning allegations of enforced disappearance attributable to law enforcement officers. The Committee is concerned that none of the investigations opened into these allegations have so far resulted in convictions, which has the effect of maintaining a climate of impunity (arts. 1, 11, 12 and 24).

**16. The Committee recommends that the State party ensure that all allegations of enforced disappearance are investigated immediately, thoroughly and impartially, even in the absence of a formal criminal complaint, and that the perpetrators are prosecuted and given a sentence commensurate with the seriousness of their acts.**

17. The Committee regrets the lack of clear information provided on the existing mechanisms to ensure that members of law enforcement personnel or the security forces or any other public officials suspected of involvement in the commission of an offence of enforced disappearance do not participate in the investigation thereof (art. 12).

**18. The Committee recommends that the State party adopt legal provisions that expressly establish the suspension from duties, from the outset and for the duration of the investigation, of any State agent, civilian or military, who is suspected of having been involved in the commission of an offence of enforced disappearance, without prejudice to the presumption of innocence.**

19. While noting the information provided by the State party regarding the allegations of enforced disappearance committed during the general elections in 2016, the Committee regrets not having received information on the results of the investigations carried out in this respect, including on the disappearance of the following persons: Humphrey Jupiter Nkonde, a journalist; Sikaile Sikaile, Sonely Mwenya, Chileshe Mulenga and Kayata Zhying, members of the United Party for National Development; and Cheelo Katambo, media team representative of the United Party for National Development. The Committee notes with concern that, to date, no one has been held responsible for these acts (art. 12).

**20. The Committee recommends that the State party intensify its efforts to ensure that all cases of enforced disappearance, without exception and irrespective of the date of their commission, are investigated impartially and without delay, and that the alleged perpetrators are prosecuted and, if found guilty, punished in accordance with the**

**serious nature of their acts, to ensure that no act of enforced disappearance remains unpunished.**

21. The Committee regrets that the State party did not provide information about the legislative and practical measures that have been taken to facilitate the submission of complaints by victims of disappearance, including alleged enforced disappearance, and the participation of the relatives of disappeared persons in the search and investigative process. It also regrets that no information was shared as to the mechanisms in place to ensure effective coordination and cooperation between all the authorities involved in the search for disappeared persons and in the investigation of their alleged disappearance, or as to existing agreements of mutual cooperation and legal assistance with other States parties (arts. 12, 14 and 15).

22. **The Committee requests that the State party:**

(a) **Take immediate measures to facilitate the submission of complaints of disappearance by any person with a legitimate interest and the participation of the relatives of disappeared persons in the search and investigation, and to ensure that relatives and other persons with a legitimate interest are kept informed about the progress and results of related processes;**

(b) **Ensure that the authorities involved in the search for disappeared persons and in the investigation of alleged cases of disappearance are provided with the necessary financial, technical and human resources to perform their duties expeditiously and effectively;**

(c) **Promote interaction and coordination between all national institutions involved in procedures concerning cases of disappearance, including by establishing intrainstitutional and inter-institutional communication mechanisms and channels that allow information to be exchanged in a systematic, instantaneous and flexible manner, depending on the requirements of the case, and by ensuring that information is made available and managed effectively;**

(d) **Ensure that the authorities involved in the investigation of enforced disappearance have effective and timely access to all documentation and other information relevant to the investigation that may be in the possession of State agencies, in particular documentation held by intelligence agencies and by the armed and security forces.**

#### **4. Measures to prevent enforced disappearance (arts. 16–23)**

##### **Non-refoulement**

23. The Committee notes the existing legislation in the areas of extradition and non-refoulement, specifically section 31 of the Extradition Act and section 23 of the Refugees Act (Act No. 1 of 2017). The Committee also notes the information provided by the State party regarding the signing of an extradition treaty with Rwanda that applies to persons allegedly involved in the genocide against the Tutsi. However, the Committee is concerned that according to the information available, the normative framework does not provide clear and specific criteria and procedures to assess and verify, before an expulsion, return, surrender or extradition takes place, the risk of the person concerned being subjected to enforced disappearance in the country of destination. The Committee also regrets the lack of information on whether it is possible to appeal a decision authorizing an expulsion, return, surrender or extradition and, if so, before which authority, under which procedure and whether the appeal has suspensive effect (art. 16).

24. **The Committee recommends that the State party ensure that the principle of non-refoulement enshrined in article 16 (1) of the Convention is strictly respected in all circumstances. To this end, the State party should:**

(a) **Ensure that there are clear and specific criteria and procedures for assessing and verifying, before an expulsion, return, surrender or extradition is carried out and by means of an exhaustive, individual examination conducted by an independent authority or body, the risk of the person concerned being subjected to**

**enforced disappearance in the country of destination, and that, where a risk exists, the person concerned is not expelled, returned, surrendered or extradited;**

**(b) Ensure that diplomatic assurances offered by the requesting State are evaluated with the utmost care and that they are not accepted when there are substantial grounds for believing that a person would face a real and immediate risk of being subjected to enforced disappearance;**

**(c) Ensure that appeals against a decision authorizing an expulsion, return, surrender or extradition have suspensive effect.**

#### **Secret detention and fundamental legal safeguards**

25. While noting the assertion by the State party that there are no secret detention facilities in its territory and the information on the requirements concerning detention outlined in the Zambia Correctional Service Act (Act No. 37 of 2021), the Committee remains concerned at the lack of an explicit ban of and effective safeguards against secret detention (art. 17).

**26. The Committee recommends that the State party guarantee, in law and in practice, that no one is held in secret detention, including by ensuring that all persons deprived of their liberty are afforded all the fundamental safeguards set out in article 17 of the Convention. In this respect, the State party must:**

**(a) Ensure that, at all stages of proceedings, persons deprived of their liberty are held in officially recognized and supervised places of deprivation of liberty only;**

**(b) Guarantee, from the outset of the deprivation of liberty, that all persons, regardless of the offence with which they are charged, have effective access to a lawyer and that their relatives, any other person of their choice and, in the case of foreign nationals, the consular authorities of their country of nationality are informed of their deprivation of liberty and their place of detention;**

**(c) Record all cases of deprivation of liberty, without exception, from the outset and irrespective of the nature of the place of deprivation of liberty (see paras. 27–28 below);**

**(d) Guarantee that any person deprived of liberty or – in the case of suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right – any person with a legitimate interest is entitled to take proceedings before a court, so that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person’s release if the deprivation of liberty is not lawful.**

#### **Registers of persons deprived of liberty**

27. The Committee notes the existence of an official register of detention. However, it regrets that no information was provided as to the type of data that is recorded and as to the existence of registers in all places where persons may be deprived of liberty, irrespective of their nature, including centres for minors in conflict with the law, police stations, migrant holding centres and mental health institutions. The Committee also notes with concern the fact that vetting by internal security is required before access to information is provided, and it regrets the lack of clear information on the vetting procedure and on the measures taken to prevent and impose sanctions for the conduct described in article 22 of the Convention (arts. 17 and 22).

**28. The Committee recommends that the State party ensure that:**

**(a) All cases of deprivation of liberty – without exception, from the outset and irrespective of the nature of the place of deprivation of liberty – are entered in official, standardized, up-to-date and interconnected registers that include, as a minimum, the information required under article 17 (3) of the Convention;**

**(b) Registers of persons deprived of liberty are filled out and updated promptly and accurately and are subject to regular checks;**

(c) **Officials who fail to record all cases of deprivations of liberty, register inaccurate or incorrect information, refuse to provide information, or provide inaccurate information are duly investigated and punished.**

#### **Training on the Convention**

29. The Committee notes the information provided by the State party regarding the lack of specific and regular training on the Convention and on the offence of enforced disappearance. The Committee also acknowledges the request by the State party to receive training opportunities on the Convention.

30. **The Committee recommends that the State party ensure that all law enforcement and security personnel, whether civil or military, and medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of their liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive specific and regular training on enforced disappearance and on the Convention, in accordance with article 23 (1).**

31. **The Committee recommends that the State party contact the Office of the United Nations High Commissioner for Human Rights in the region regarding specific training on the implementation of the Convention.**

#### **5. Measures to protect and guarantee the rights of victims of enforced disappearance (art. 24)**

##### **Definition of victim and right to receive reparation and prompt, fair and adequate compensation**

32. The Committee is concerned about the use of the definition of victims contained in the Anti-Human-Trafficking Act, which is not in accordance with the definition of victims provided under article 24 of the Convention and applies only if enforced disappearance is accompanied by trafficking in persons. The Committee is also concerned that domestic law does not provide for a comprehensive system of reparation that is fully in accordance with article 24 (4) and (5) of the Convention.

33. **The Committee recommends that the State party:**

(a) **Establish, in domestic law, a definition of victims that is consistent with article 24 (1) of the Convention, in order to ensure that any individual who has suffered harm as the direct result of enforced disappearance is able to exercise the rights set forth in the Convention;**

(b) **Establish a comprehensive system of reparation that takes into account the personal situation of the victims, including their sex, sexual orientation, gender identity, age, ethnic origin, social status, disability and any other characteristic that may be relevant in the national context, and that is fully in accordance with the provisions of article 24 (4) and (5) of the Convention, is under the responsibility of the State and is applicable even if no criminal proceedings have been initiated;**

(c) **Ensure the rights of all victims of enforced disappearance, irrespective of the date and circumstances of the offence, to know the truth and to have access to comprehensive reparation.**

##### **Legal situation of disappeared persons whose fate has not been clarified and that of their relatives**

34. The Committee is concerned that the relatives of disappeared persons may be requested to apply for “leave to swear to the death” of the person concerned,<sup>4</sup> or for a death certificate, before the High Court of Zambia, and that this procedure results in the cessation of the search. Furthermore, while noting that the Wills and Administration of Testate Estates Act and the Intestate Succession Act regulate the legal situation of persons declared dead, the

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<sup>4</sup> CED/C/ZMB/RQAR/1, para. 37.

Committee regrets that national legislation does not contain clear provisions as to the legal situation of the relatives of disappeared persons in fields such as social welfare, financial matters, family law and property rights (art. 24).

35. **The Committee recommends that the State party ensure that the legal situation of disappeared persons whose fate or whereabouts have not been clarified and that of their relatives is regularized in accordance with article 24 (6) of the Convention, in fields such as social welfare, family law and property rights, without the need to declare that the disappeared person is presumed dead. In this connection, the Committee recommends that the State party provide, by law, for the issuance of declarations of absence by reason of enforced disappearance.**

#### 6. Measures to protect children from disappearances (art. 25)

##### Legislation concerning the wrongful removal of children

36. The Committee notes the information provided by the State party on applicable procedures in cases of domestic adoption. It also notes that section 23 (1) of the Children's Code Act (Act No. 12 of 2022) protects children from unlawful arrest and deprivation of liberty, and notes the provisions of the Adoption Act. However, the Committee regrets the lack of information on measures taken by the State party to combat illegal intercountry adoption and on other forms of placement and guardianship of children. It is further concerned that the practices described in article 25 (1) of the Convention are not addressed in the Penal Code and that no legal procedures are in place in the State party to allow for the review and, where appropriate, annulment of any adoption, placement or guardianship of children that originated in enforced disappearance (art. 25).

37. **The Committee recommends that the State party:**

(a) **Review its criminal legislation with the aim of incorporating as specific offences the acts described in article 25 (1) of the Convention and establishing appropriate penalties that take into account their extreme seriousness;**

(b) **Establish specific procedures for returning children referred to in article 25 (1) (a) of the Convention to their families of origin;**

(c) **Establish specific procedures for reviewing and, where appropriate, annulling any adoption, placement or guardianship of children that originated in enforced disappearance and for re-establishing the true identity of the children concerned, taking into account the best interests of the child.**

#### D. Fulfilment of the rights and obligations under the Convention, dissemination and follow-up

38. The Committee wishes to recall the obligations undertaken by States when becoming parties to the Convention and, in this connection, urges the State party to ensure that all the measures that it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the Convention and other relevant international instruments.

39. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearance on women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations. In this context, the Committee places special emphasis on the need for the State party to ensure that gender issues and the specific needs of women and children are systematically taken into account in implementing the recommendations contained

in the present concluding observations and all the rights and obligations set out in the Convention.

40. The State party is encouraged to widely disseminate the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society in the process of implementing the recommendations contained in the present concluding observations.

41. Under article 29 (4) of the Convention, and with a view to strengthening its cooperation with the State party, the Committee requests the State party to submit, by 4 April 2026, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention since the adoption of the present concluding observations, in a document prepared in accordance with the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention.<sup>5</sup> The Committee encourages the State party to involve civil society, in particular organizations of victims, in the process of preparing this information, which it intends to consider in 2027.

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<sup>5</sup> [CED/C/2](#), para. 39.