



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
18 May 2021

Original: English
English, French and Spanish only

Committee on Enforced Disappearances

List of issues in the absence of the report of Zambia due under article 29 (1) of the Convention*

I. General information

1. Please clarify the status of the Convention in domestic law, including the Constitution, and indicate whether the provisions of the Convention can be directly invoked before and applied by courts or other relevant authorities, and include relevant examples.
2. Please report on the activities carried out by the Human Rights Commission of Zambia in relation to the Convention and on the measures taken to ensure that it has the financial, technical and human resources necessary for the proper discharge of its functions. Please indicate whether the Commission has received any complaints concerning enforced disappearances since the entry into force of the Convention and, if so, describe the actions taken and the results thereof.
3. Please indicate whether the State party envisages making the declarations provided for in articles 31 and 32 of the Convention relating to the Committee's competence to receive and consider individual and inter-State communications (arts. 31–32).

II. Definition and criminalization of enforced disappearance (arts. 1–7)

4. Please provide up-to-date statistical information, disaggregated by sex, gender, age, ethnic origin and nationality, on the number of persons reported as disappeared in the State party since the entry into force of the Convention, specifying the date and place of disappearance, how many of those persons have been located and the number of cases in which there may have been some form of State participation within the meaning of article 2 of the Convention (arts. 1 and 12).
5. Please indicate whether there exist databases on missing persons and, if so, describe the type of information entered in them for each case reported to the competent authorities. Please specify whether the information contained therein is cross-checked against the information in other databases, such as registers of persons deprived of liberty, and who can access such information (arts. 1–3, 12 and 24).
6. Please indicate whether the State party plans to include protection from enforced disappearance in the Bill of Rights, which forms part of the Constitution. Please describe the legal and/or administrative measures adopted to guarantee that no derogation to the right not to be subjected to enforced disappearance can be made under exceptional circumstances. In this regard, please provide information on the measures taken during the coronavirus disease (COVID-19) pandemic to ensure that the policies and actions of the State party are in

* Adopted by the Committee at its twentieth session (12 April–7 May 2021).



conformity with its obligations under the Convention, in particular in relation to articles 1, 12 and 24 (arts. 1, 12 and 24).

7. In the absence of an autonomous crime of enforced disappearance, please indicate the specific provisions invoked in national legislation to deal with cases of enforced disappearance and explain how these provisions address the arrest, detention, abduction or any other form of deprivation of liberty and how the refusal to acknowledge the deprivation of liberty or the concealment of the fate or whereabouts of the disappeared person would be punished under domestic legislation. Please report on the measures taken to incorporate enforced disappearance as an autonomous offence in domestic criminal legislation in accordance with the definition contained in article 2 of the Convention. Please also report on the measures taken to criminalize enforced disappearance as a crime against humanity in accordance with the standards provided for under article 5 of the Convention. (arts. 2 and 4–5).

8. Please describe the maximum and minimum penalties provided for in the Criminal Code for crimes that could be invoked to deal with cases of enforced disappearance, indicating whether any of them carry the death penalty. Please also provide information on the possible mitigating or aggravating circumstances, indicating the maximum and minimum penalties that would apply in such cases (art. 7).

9. Please describe the applicable legislation governing the conduct enumerated in article 6 (1) (a) and (b) of the Convention and how this legislation ensures that any person engaging in such conduct is held criminally responsible. Please also describe the legislation that addresses the prohibition to invoke an order or instruction from any public authority to justify an offence of enforced disappearance and indicate whether the notion of “due obedience” as a criminal law defence has any impact on the effective implementation of this prohibition. In this regard, and in light of article 10 of the Criminal Code, please explain how the State party ensures the criminal responsibility of any person mentioned in article 6 (1) (a) of the Convention when that person invokes a superior order to justify an enforced disappearance. Please also explain how domestic legislation guarantees that a person who refuses to obey orders or instructions that prescribe, authorise or encourage enforced disappearance will not be punished and provide information on any remedies available to subordinates against any potential disciplinary measures resulting from their refusal to carry out such orders (arts. 6 and 23).

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

10. Please indicate whether the State party applies a statute of limitations in respect of cases of enforced disappearance and, if so, please provide information on: (a) the term of limitations applicable to starting criminal proceedings; (b) the moment when that term of limitations commences; and (c) the measures taken to guarantee the rights of victims of enforced disappearance to an effective remedy during the term of limitations (art. 8).

11. Please explain how the State party establishes its competence to exercise jurisdiction over the offence of enforced disappearance in the cases contemplated in article 9 (1) and (2) of the Convention (art. 9).

12. Please describe the procedures in place to ensure the presence of alleged offenders before the competent authorities. Please report on the existing legal, administrative or judicial measures taken to carry out a preliminary inquiry or investigation to establish the facts should the State party take the measures referred to in article 10 (1) of the Convention (art. 10).

13. Please indicate whether military authorities are competent under domestic legislation to investigate and/or prosecute alleged cases of enforced disappearance and, if so, in which circumstances and under which legislation (art. 11).

14. Please indicate whether any complaints have been lodged regarding the acts defined in articles 2 and 3 of the Convention, including with regard to disappearances occurring in the context of trafficking and migration and the disappearances of persons with albinism. If any such complaints have been lodged, provide disaggregated data: on the perpetrator and

the victim, including by sex, age and nationality; on the investigations carried out and their results, including the proportion of proceedings launched that resulted in convictions; and on the sanctions imposed on the perpetrators. Please also specify the action taken with regard to allegations of enforced disappearances that would have been committed against members of the opposition party, activists and journalists in the context of the general elections in 2016 and provide information on the results of any investigations carried out in this respect, including on the disappearances of journalist Humphrey Jupiter Nkonde, United Party for National Development members Sikaile Sikaile, Sonely Mwenya, Chileshe Mulenga and Kayata Zhying and United Party for National Development media team representative Cheelo Katambo (arts. 2–3 and 12).

15. Please provide information on the authorities responsible for receiving complaints and investigating cases of alleged enforced disappearance and describe the measures in place to ensure a prompt, thorough and impartial investigation, including in the absence of an official complaint. In this connection, describe how the State party ensures that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation and indicate whether there are any mechanisms in place to exclude a law enforcement, security force or any other public official, whether civilian or military, from the outset and for the duration of an investigation into an enforced disappearance when they are suspected of having been involved in the commission of the offence. Please report on the measures taken to ensure that the competent authorities have: (a) the powers and resources necessary to effectively conduct investigations into allegations of enforced disappearance, including access to the documentation and other information relevant to their investigation; and (b) access to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present (arts. 12 and 24).

16. Please specify which authorities are responsible for receiving complaints and investigating cases of alleged enforced disappearance, who can report such cases to those authorities and the requirements for doing so. Please also describe the remedies available to complainants in case the competent authorities refuse to investigate their allegations. Please provide information on the mechanisms available in the domestic legal framework for the protection of complainants, witnesses, relatives of disappeared persons, defence counsel and persons participating in the investigation of an enforced disappearance against all ill-treatment or intimidation as a result of the complaint or any evidence given (art. 12).

17. In the absence of an autonomous crime of enforced disappearance, please indicate whether the provisions of the Criminal Code that may be invoked for the purposes of seeking an extradition in cases of enforced disappearance regard enforced disappearance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Provide information on any extradition agreements with other States parties that may have been concluded since the entry into force of the Convention and indicate whether enforced disappearance has been included in such agreements. Please also indicate whether: (a) any limitations or conditions could be applied in relation to requests for mutual legal assistance or cooperation under the terms established by articles 14, 15 and 25 (3) of the Convention; and (b) the State party has made or received any requests for international cooperation in respect of cases of enforced disappearance since the entry into force of the Convention and, if so, please report on the measures taken (arts. 13–15 and 25).

IV. Measures to prevent enforced disappearances (arts. 16–23)

18. Please indicate whether domestic legislation explicitly prohibits the carrying out of an expulsion, return, surrender or extradition where there are substantial grounds to believe that the person concerned may be in danger of being subjected to enforced disappearance. Please describe the legal framework and procedures applicable to the expulsion, return, surrender or extradition of persons and provide information on the mechanisms and criteria applied in such contexts to evaluate and verify the risk that a person may be subjected to enforced disappearance. Please also specify 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).

19. Please describe the domestic legal provisions that expressly prohibit secret or unofficial detention. Please explain how the Criminal Procedure Code Act and the Police Act guarantee that any deprivation of liberty carried out by the competent authorities without a warrant are in compliance with article 17 (2) (d) and (f) in order to prevent enforced disappearances. Please report on measures taken to guarantee, in law and in practice, that, from the outset of the deprivation of liberty, all persons deprived of liberty, regardless of the offence of which they are accused, have access to a lawyer, can contact their relatives or any other person of their choice and, in the case of foreign nationals, can communicate with their consular authorities, including during the COVID-19 pandemic. Please indicate whether any restrictions may be applied to the above rights and whether there have been complaints regarding failures to observe these rights. If so, provide information about the proceedings carried out and their outcome. Please provide information on the authorities, institutions and non-governmental organizations that are authorized, in law and in practice, to visit unannounced all places where persons are deprived of liberty (art. 17).

20. Please report on measures taken to ensure that all official registers and/or records of persons deprived of liberty, regardless of the place of deprivation of liberty, include all the elements listed in article 17 (3) of the Convention and are duly completed and kept up to date without delay. Please indicate whether there have been any complaints concerning the failure to record a deprivation of liberty or the recording of inaccurate information in registers concerning persons deprived of liberty. If so, report on the measures taken to ensure that such omissions are not repeated, including any disciplinary proceedings, sanctions and training involving the personnel concerned. Please also provide information on measures taken to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released and assuring their physical integrity and their ability to exercise fully their rights at the time of release (arts. 17 and 21–22).

21. Please report on measures taken to guarantee that any person deprived of liberty, including asylum seekers deprived of liberty, and, in the case of a suspected enforced disappearance, that any person with a legitimate interest can take proceedings before a court to challenge the lawfulness of the deprivation of liberty. Please also describe the measures in place to prevent delaying and obstructing the provision of this remedy and to impose sanctions for delays or obstructions, including in the context of the COVID-19 pandemic (arts. 17 and 22).

22. Please provide information on measures taken to guarantee that any person with a legitimate interest can access all the information listed in article 18 (1) of the Convention and explain the procedures to be followed to gain access to such information. Please explain the restrictions and conditions that may be imposed on such access, describe the means available for appealing against the refusal to disclose such information and indicate the measures in place to prevent delaying and obstructing such appeals and impose sanctions for delays or obstructions. Please also specify the measures taken in that regard in the context of the COVID-19 pandemic (arts. 18, 20 and 22).

23. Please report on any specific training on the Convention provided to civil or military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and other officials responsible for the administration of justice. Please indicate the content and frequency of the training provided (art. 23).

V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24–25)

24. Please provide the definition of victim in domestic legislation and indicate whether it encompasses all persons enumerated in article 24 (1) of the Convention. Please provide information on: (a) the forms of reparation and compensation provided for in the domestic legal system for victims of enforced disappearance and indicate whether they include all those enumerated in article 24 (5) of the Convention; (b) who is responsible for providing compensation and reparation; (c) whether access to compensation and reparation is

contingent on a criminal conviction; and (d) whether there is a time limit for victims of enforced disappearance to gain access to compensation and reparation (art. 24).

25. Please report on measures taken to guarantee that the search for an alleged victim of enforced disappearance is initiated *ex officio* and as soon as the competent authorities are notified of the disappearance, even if no formal complaint has been made, and to ensure that the search continues until the fate of the disappeared person has been clarified. Please also report on measures taken to systematically collect ante-mortem data related to disappeared persons and their relatives and to set up a national database of DNA to identify victims of enforced disappearance (art. 24).

26. Please provide information on the legal situation in national legislation of disappeared persons whose fate has not been clarified and that of their relatives, in matters such as social welfare, financial matters, family law and property rights. Furthermore, please:

(a) Describe the procedures in place, such as issuing a declaration of absence or of death of the disappeared person, and their impact on the State party's obligation to continue the search and investigation into an enforced disappearance until the fate of the disappeared person has been clarified;

(b) Explain the applicability of the Intestate Succession Act and customary law in these matters;

(c) In view of the conflict between article 23 of the Constitution, which is part of the Bill of Rights, and article 1 (1) of the Constitution, explain how the State party ensures the application of a gender perspective in relation to article 24 (6) of the Convention (art. 24).

27. Please describe the measures taken to guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of an enforced disappearance and the fate of disappeared persons and to assist the victims of enforced disappearance (art. 24).

28. Please describe the legislation applicable to prevent and punish the conduct described in article 25 (1) of the Convention and indicate whether any complaints have been received in that regard. If any such complaints have been received, please report on the measures taken to locate the children concerned and to prosecute and punish those responsible and on the outcome of those measures. Please provide information on measures taken to improve birth registration in order to prevent any risk of wrongful removal of children. Please describe the system of adoption or other form of placement of children in the State party and indicate whether domestic legislation establishes any legal procedures to review and, where appropriate, annul any adoption, placement or guardianship that has originated in an enforced disappearance (art. 25).
