



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

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## Committee on Enforced Disappearances Twenty-fourth session

### Summary record of the 424th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 21 March 2023, at 10 a.m.

*Chair:* Ms. Villa Quintana

## Contents

Consideration of reports of States parties to the Convention (*continued*)

*Implementation of the Convention in Zambia in the absence of a report (continued)*

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*The meeting was called to order at 10.05 a.m.*

**Consideration of reports of States parties to the Convention** *(continued)*

*Implementation of the Convention in Zambia in the absence of a report (continued)*  
([CED/C/ZMB/QAR/1](#))

1. *At the invitation of the Chair, the delegation of Zambia joined the meeting.*
2. **The Chair**, welcoming the delegation of Zambia to the meeting, explained that additional members of the delegation would be participating via video link. She drew attention to the written replies of the Government of Zambia to the list of issues, which had been circulated as an informal document in English only, and invited the delegation to continue replying to the oral questions put by Committee members at the previous meeting.
3. **Mr. Matembo** (Zambia) said that the Zambia Law Development Commission had been requested to assess the cost and time implications of alternative methods of incorporating the Convention into the domestic legal order. That assessment would form the basis for a decision as to whether to enact new legislation on enforced disappearance or strengthen existing legislation in order to address the particular characteristics of enforced disappearance.
4. According to the latest report by the Human Rights Commission, no reports of cases of enforced disappearance had been received from any government authorities. The Commission's partners had been asked to increase the resources available to the Commission to enable it to fully discharge its mandate.
5. Consultations were continuing in respect of articles 31 and 32 of the Convention, on recognition of the Committee's competence to receive individual communications.
6. **A representative of Zambia** said that, in August 2022, 32 former Angolan refugees had been reported disappeared. However, investigations by the police, other security agencies, the Office of the Commissioner for Refugees in the Ministry of Home Affairs and the Office of the United Nations High Commissioner for Refugees (UNHCR) had revealed that the information was inaccurate. In fact, 11 of the persons in question had died of natural causes, while the remaining 21 were still alive. The details of all those concerned were available.
7. According to a report received in April 2022, a former Rwandan refugee had disappeared. As his wife had died the previous year, the children were now traumatized and living in fear. They could not be integrated locally and there seemed to be no durable solution to that case. Between 1996 and 2022, 10 Rwandan refugees had reportedly disappeared. However, investigations had revealed that only one, a woman aged around 40 or 50, had been abducted in 1997.
8. **Mr. Matembo** (Zambia) said that the Anti- Human Trafficking Act did not contain specific provisions on enforced disappearance. Consideration would be given to making enforced disappearance an autonomous offence in domestic law while providing for a definition of the terms "missing" and "enforced disappearance". A constitutional review could be conducted with a view to including protection from enforced disappearance in the Bill of Rights.
9. **Ms. Lochbihler** (Country Rapporteur) said that she would appreciate more specific answers to the Committee's questions in paragraph 19 of the list of issues ([CED/C/ZMB/QAR/1](#)), regarding the provisions of domestic law prohibiting secret and unofficial detention. She would also welcome clearer and more detailed answers to the questions put in paragraph 22 of the list of issues, concerning the right of access to information on the deprivation of liberty by persons with a legitimate interest in such information.
10. **Ms. Kolaković-Bojović** (Country Rapporteur) said that, given that the State party's domestic legislation contained no definition of "victim", she would be interested to know what criteria were used to determine whether a person had been affected by a crime. Were there any plans to incorporate the definition of a victim of enforced disappearance, in accordance with article 24 (1) of the Convention, into national law?

11. Referring to article 24 (5) of the Convention, she asked who was responsible for providing compensation and reparation to victims; whether compensation funds existed for victims; how long it took to obtain compensation; and what amount of compensation, on average, was awarded. She said that she would like to know whether compensation was available through criminal proceedings or if a victim needed to launch additional civil proceedings to obtain it. Was there a time limit for applying for compensation? She would also be interested to hear about any alternative forms of reparation that might be available, any victim support services that existed and who provided such services.

12. She would like to know what kind of information the State party's missing persons database contained and who was responsible for it. Did the State party intend to establish a national DNA database?

13. It would be useful to have an account of the procedure for issuing a declaration of absence in respect of disappeared persons whose fate had not been clarified, and the legal situation of family members in terms of social welfare, financial matters, family law and property rights.

14. She would appreciate more detailed information on the provisions of the law and the Constitution that guaranteed the right to form associations concerned with the fight against enforced disappearances. The Committee would be interested to hear about any specific examples of such associations and their activities.

15. She would like to know whether the State party intended to amend its criminal law to penalize the wrongful removal of children within the meaning of article 25 of the Convention. She would also appreciate receiving information on any measures being taken to improve birth registration procedures in order to help prevent such wrongful removal.

16. She enquired whether, in addition to the adoption system, other forms of placement and guardianship existed for children. Lastly, she would like to know whether any legal procedures were in place to review and, where appropriate, annul any adoption, placement or guardianship that had originated in enforced disappearance and what procedures were available to establish the identity of the child in question.

*The meeting was suspended at 10.30 a.m. and resumed at 10.45 a.m.*

17. **Mr. Matembo** (Zambia) said that no secret or unofficial detentions had occurred in the country and all detentions were in keeping with the law. Access to information regarding persons in detention was available, although that information was vetted in order to maintain domestic security. The Government had put forward a bill aimed at facilitating access to such information, which included a procedure to ensure that the information would not be used to disturb the peace.

18. **A representative of Zambia** said that the Constitution and Penal Code expressly prohibited secret detention and article 29 of the Zambia Correctional Service Act provided that persons could only be placed in a prison or detention facility under the authority of the Commissioner General of the Correctional Service and only if a competent authority had issued a remand warrant, order of detention, or warrant of conviction or committal. All persons in detention, regardless of the offence committed, had access to a lawyer and section 33 of the Act provided that all persons in detention should have access to legal aid, in accordance with the Legal Aid Act No. 1 of 2021, and that they should have the opportunity to be visited by and to consult with a legal adviser of their choice or a legal aid service provider.

19. The open-door policy of the Zambia Correctional Service allowed any persons with an interest in the fate of the person deprived of liberty, including relatives, lawyers and members of the public, to request any information they so wished on his or her whereabouts or well-being. Requests for sensitive information were sent to the Commissioner General before being passed on to a regional detention centre commander and then to the officer in charge of the facility where the person concerned was detained, who would arrange for the person requesting information to visit the facility and receive the required information. All information regarding the whereabouts of a person in detention was contained in an admissions register, in line with article 18 (1) of the Convention.

20. **A representative of Zambia** said that section 2 of the Anti-Human Trafficking Act defined a victim as a person who had suffered harm, including mental and physical injury, emotional suffering, economic loss or substantial impairment of the person's fundamental human rights through acts in violations of the Act. Any victims of enforced disappearance could bring action for unlawful imprisonment and seek damages. The damages granted were determined by the duration of incarceration, the sanctity of the person's liberty, the anxiety or indignity suffered, the manner and circumstances of detention and whether the grounds for detention were reasonable. Article 209 of the Constitution, as amended by Act No. 2 of 2016, provided for the creation of a compensation fund to settle claims against the State; a criminal conviction was not required for compensation to be granted from the fund. The limitation period for cases of enforced disappearance was four years.

21. **A representative of Zambia** said that members of the police force and community services provided support to victims of offences, including enforced disappearance, and their relatives and children. The police force provided counselling services for victims, through cooperation with specialized partners, as well as housing and other assistance for victims until the conclusion of investigations into the case. Victim support units ensured that relatives of disappeared persons were kept informed of police investigations.

22. **A representative of Zambia** said that there was currently no domestic legislation in force regarding declarations of death. However, under the procedure established by the courts, a disappeared person whose fate had not been clarified for a continuous period of at least seven years was presumed dead until evidence to the contrary came to light. The Intestate Succession Act was applied when settling the estate of person presumed to have died intestate, in order to ensure the welfare and family law rights of the family. Article 21 of the Constitution specifically provided for freedom of assembly and association.

23. **Mr. Matembo** (Zambia) said that a National Forensic Science and Biometrics Department had been established through the National Forensic Act of 2020 and was responsible for handling matters having to do with DNA. The process of establishing a national DNA database was under way but further legislation was required to allow for the collection of DNA samples.

24. **A representative of Zambia** said that section 283 of Act No. 12 of 2022, the Children's Code Act, prohibited the unlawful removal of children from the country. Under the Act, the removal of a child was considered unlawful if it violated the right to custody or the rights of the child. Section 125 of the Penal Code criminalized the presentation of false information to a public officer; the Code also criminalized forgery of documents, including in the context of enforced disappearance. Section 31 of the Anti-Human Trafficking Act provided that any child victim of enforced disappearance who was found in Zambia should be permitted to remain in the country for the duration of the court order. The Act also provided for the right of any child to apply for asylum and prohibited the deportation of victims of trafficking, including children.

25. **Ms. Kolaković-Bojović** said that she was curious to learn how the issuing of a declaration of death affected the rights of the relatives of the disappeared person and whether search processes for disappeared persons were automatically terminated when a declaration of death had been issued. She was also eager to hear details of any mechanism in place to annul illegal adoptions and ensure that illegally adopted children could find out their real identity. She invited the delegation to provide details of mechanisms in place for receiving compensation for harm deriving from any offence. She wished to know whether victims could receive compensation as part of criminal proceedings or whether a compensation claim needed to be submitted under a separate civil or administrative procedure. Lastly, she was interested to know whether the definition of victim contained in the Anti-Human Trafficking Act was applicable only to victims of trafficking in persons or if it could also be applied to victims of other offences.

26. **Mr. Diop** said that he wished to receive clarification on whether the State party still considered that the offence of enforced disappearance was already covered in the Constitution or whether it now planned to modify national legislation to establish enforced disappearance as an autonomous offence in its Penal Code.

27. **Mr. Albán-Alencastro** said that he wished to receive an explanation as to how information about persons in detention might disturb the peace and who was responsible for determining whether any given information was at risk of doing so. Given that the statute of limitations did not apply in criminal matters in the State party, he was interested to know how the statute of limitations worked and whether the lack of such a time limit was applicable to all offences. He invited the delegation to explain how the right to legal counsel was guaranteed, especially for victims of enforced disappearance who were foreign nationals in Zambia. Lastly, he wondered what mechanisms were in place to guarantee international cooperation between Zambia and other countries in cases of enforced disappearance.

28. **Mr. de Frouville** said that the Committee had been informed that persons of Croatian nationality had recently been arrested in the State party in connection with a case concerning illegal international adoptions. He wished to know whether the investigations had determined the conditions in which the children had been taken from their families or from an orphanage. It would also be useful to know what measures were being taken by the State party to ensure that adoptions, particularly at the international level, could not be based on enforced disappearances.

29. **Mr. Matembo** (Zambia) said that four Croatian couples had crossed the border from the Democratic Republic of the Congo with Congolese children. Officers at the Zambian border had examined their documents and the authorities had found, on contacting Congolese officials, that the adoption papers for the children in question had been fake. The case was currently being investigated and the children were being cared for by the Ministry of Community Development and Social Services in cooperation with the Congolese child welfare authorities. They would eventually be handed over to the Congolese Government so that they could be returned to their families.

30. **A representative of Zambia** said that rule 138 of the Prisons Rules provided that foreign inmates should have access to consular representatives. The Zambia Correctional Services Act mandated the officer in charge of a correctional centre to ensure that inmates were provided, on admission to the centre, with information regarding the inmates' complaints book and request book, which guaranteed their right to submit to the officer-in-charge any information that they wished to communicate or to request a meeting with any individual. The officer would then contact the person concerned in order to arrange for a visit. If the inmates were foreign nationals, their embassy would be contacted and arrangements would be made for a meeting with consular or other representatives.

31. **A representative of Zambia** said that permission for adoption was granted by the courts and could only be annulled pursuant to a legal decision. The definition of a victim in the Anti-Human Trafficking Act encompassed victims of all categories of criminal offences, including rape and enforced disappearance.

32. **A representative of Zambia** said that, when a court issued an order for a declaration of death, the search for a disappeared person was terminated. With regard to compensation in criminal proceedings, it was incumbent on the person who had suffered from a crime to bring a civil action for compensation for damages once the proceedings were terminated. Following consultations with diverse stakeholders, the Zambian authorities were considering, as part of the constitutional review process, the incorporation of an autonomous offence of enforced disappearance into the country's legislation. With regard to the statute of limitations, criminal offences were not for the most part time-barred, but a time limit for the commencement of criminal proceedings could be imposed in certain exceptional cases.

33. **Mr. Matembo** (Zambia) said that the Zambian Government would appreciate any advice offered by the Committee on issues concerning gaps in the implementation of the Convention.

*The meeting rose at 11.45 a.m.*