



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 423rd meeting

Held at the Palais Wilson, Geneva, on Monday, 20 March 2023, at 3 p.m.

Chair: Ms. Villa Quintana

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The meeting was called to order at 3.05 p.m.

Consideration of reports of States parties to the Convention

Implementation of the Convention in Zambia in the absence of a report (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.
3. **Mr. Matembo** (Zambia) said that the deprivation of personal liberty was prohibited under the Constitution of Zambia and other domestic legislation, including the Penal Code and the Criminal Procedure Code. Although no cases of enforced disappearance had been recorded in Zambia, his Government was committed to the full implementation of the Convention and had embarked on extensive consultations with various stakeholders with a view to making the international instrument applicable at the national level. The Government had been working closely with the Human Rights Commission of Zambia and non-governmental organizations to implement policies on the protection of the right to personal liberty. Oversight institutions such as the Zambia Police Service and the Drug Enforcement Commission were mandated to receive and investigate cases of deprivation of liberty. He appealed to the Committee to continue supporting his Government in its efforts to prevent unlawful deprivation of personal liberty in all its forms and reaffirmed his Government's commitment to preventing and ending enforced disappearance.
4. **Ms. Lochbihler** (Country Rapporteur), noting that the provisions of the Convention could not be directly invoked before the courts or other relevant authorities, said that she would like to know how the State party planned to incorporate the Convention into national law. The references to personal liberty in the Constitution, Penal Code and Criminal Procedure Code were not sufficiently consistent with the requirements of the Convention. Recent, publicly available information on the work carried out by the Human Rights Commission of Zambia on enforced disappearance would also be appreciated. It would also be interesting to hear how the Government intended to strengthen the Commission's limited resources to enable it to fulfil its mandate independently and effectively in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The delegation might wish to provide more specific information on the progress on consultations on articles 31 and 32 of the Convention.
5. The State party had informed the Committee that it had received no reports of enforced disappearances in the period under review. It had also reported on the existence of databases for missing persons containing disaggregated data that could be obtained by State agencies and other oversight institutions. More information on those cases would therefore be welcome, including data on their sex, gender, age, ethnic origin and nationality. She would also appreciate further details of the claims of disappearances brought by refugees and former refugees that had not been substantiated by additional information. In that connection, she invited the delegation to explain how it defined and distinguished between the concepts of "missing", "disappearance" and "enforced disappearance" and whether information on those databases was cross-checked with information on other databases, such as registers of persons deprived of liberty.
6. The State party had indicated that, while the Bill of Rights did not explicitly provide for protection from enforced disappearance, the protection of the right to personal liberty was enshrined in article 13 of the Constitution. However, that provision did not guarantee that no derogation could be made from the provisions of the Convention on the right to protection from enforced disappearance, even under exceptional circumstances. She therefore wished to know whether the State party was planning to include protection from enforced disappearance in the law. She also wished to know how the State party would specifically address enforced disappearance in domestic legislation in line with article 2 of the Convention, since such deprivation of liberty was not adequately punished in the Penal Code. She would also be interested to hear about measures taken to criminalize enforced

disappearance as a crime against humanity in accordance with the standards provided for under article 5 of the Convention and to incorporate enforced disappearance as an autonomous offence in domestic criminal legislation. The State party had not provided a clear and precise response to the Committee's questions on criminal responsibility contained in paragraph 9 of the list of issues; more specific answers to those questions would therefore be appreciated.

7. **Ms. Kolaković-Bojović** (Country Rapporteur) said that she would welcome confirmation that the State party did not apply a statute of limitations to crimes involving cases of enforced disappearance. She would also appreciate a more precise explanation of how the State party was taking the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance as contemplated in article 9 (1) and (2) of the Convention. In its replies to the questions raised in paragraph 12 of the list of issues, the State party had explained that alleged offenders must first be charged with an offence before appearing before a court. It would therefore be useful to receive a step-by-step description of the procedures in place to ensure the presence of alleged offenders before the competent authorities in line with article 10 (1) of the Convention.

8. She would be grateful to learn more about the task force composed of personnel from the defence and security wings of the military that investigated allegations of offences such as enforced disappearances, including information on its legal status, composition, mandate and relationship with the public prosecutor's office and the courts. In its response to paragraph 13 of the list of issues, the State party had reported that there were no records of any such cases brought before the task force. In that regard, she would appreciate clarification as to whether the cases referred only to cases of enforced disappearance or other offences as well.

9. The State party had informed the Committee that, while it had not recorded any cases of trafficking in persons or the disappearance of persons with albinism involving enforced disappearance, cases of deprivation of liberty had been reported and investigated in the context of the 2016 general election, although no arrests had been made. The delegation might wish to expand on its response to paragraph 14 of the list of issues, in particular by providing disaggregated data on perpetrators and victims and details of the outcomes of procedures related to the cases of deprivation of liberty reported in the context of the election.

10. She would like to know which authorities had the power to receive complaints and investigate alleged cases of enforced disappearance and how the different responsibilities were shared between them. It would be useful to know who could lodge a formal complaint concerning enforced disappearance and what measures had been taken to ensure that all cases were promptly and impartially investigated. The Committee would appreciate further information on any remedies that were available to persons whose complaints had not been investigated by the competent authorities, and she also wondered whether any legal mechanisms had been put in place to support witnesses, victims and their relatives and defence counsels who had been subjected to ill-treatment or intimidation for having submitted a complaint. Furthermore, it would be helpful to know what steps had been taken, including any relevant legislative amendments, to guarantee that investigations into alleged cases of enforced disappearance were initiated *ex officio*, even if no formal complaint had been made. She would also like to hear more about the procedure by which the authorities' refusal to investigate could be reported to the Human Rights Commission, the Police Public Complaints Commission, public prosecutors and the courts. Further information on the possible outcomes of such procedures, including any sanctions that might apply, would be of particular interest.

11. She wished to know what steps were taken to ensure that persons suspected of having committed the offence of enforced disappearance were not in a position to influence the investigation. Furthermore, she wondered whether there were any mechanisms in place to exclude law enforcement officials, security forces personnel and other public officials, whether civilian or military, from such proceedings when they were suspected of having been involved in committing the acts under investigation. It would also be useful to hear about any specific measures that had been taken to ensure that the competent authorities had all the powers and resources that they needed to conduct an effective investigation. In particular, she wished to know whether those institutions were authorized to visit places of detention.

The meeting was suspended at 3.50 p.m. and resumed at 4.05 p.m.

12. **A representative of Zambia** said that, although his country's domestic legislation did not make provision for enforced disappearance as an autonomous offence, various provisions contained in the Constitution and the Criminal Code guaranteed protection from enforced disappearance. Therefore, there were no plans to make enforced disappearance an autonomous offence. He could not say at present whether the financial resources of the Human Rights Commission would be increased; the Commission depended on the contributions of its partners to maintain its financial autonomy.

13. **A representative of Zambia** said that a certain number of refugees and former refugees, mainly of Rwandan nationality, had been reported disappeared in Zambia. Several investigations had been carried out into the reports, but no evidence of enforced disappearance had been found.

14. **A representative of Zambia** said that a definition of enforced disappearance as an autonomous offence had not been incorporated into domestic legislation. However, the existing legislation on protection against unlawful deprivation of liberty contained the essence of the definition of enforced disappearance laid down by the Convention.

15. **Mr. Matembo (Zambia)** said that the Constitution of Zambia did not contain a definition of enforced disappearance. However, the constitutional right to personal liberty guaranteed protection against enforced disappearance. It was simply not feasible to amend the Constitution every time the country signed a new international convention or treaty, and there were already enough relevant provisions in domestic legislation to enable Zambia to fulfil its obligations under the Convention.

16. **Ms. Lochbihler** said that she would like to know whether the delegation had any statistics detailing the number of refugees to have been reported disappeared in the State party. It would also be useful to hear more about the information stored on the database on missing persons, including the number of cases that had been registered there.

17. **A representative of Zambia** said that his delegation would provide the statistical information requested in due course.

18. **Mr. Diop** said that, under the Convention, the State party was obliged to incorporate enforced disappearance as an autonomous offence into its domestic criminal legislation. To do so, there was no need to amend the Constitution. The Committee simply wished to know whether the State party would consider introducing a legislative provision establishing enforced disappearance as a separate criminal offence, alongside related acts such as kidnapping, abduction and torture. To his mind, such a provision would not risk contradicting the Constitution.

19. **Mr. Albán-Alencastro** said that he would welcome further information on the function performed by the Human Rights Commission, since the State party had indicated that it had neither received nor investigated cases of alleged enforced disappearance during the reporting period. In the State party's unofficial written replies to the Committee's list of issues, it was also stated that persons had been held in incommunicado detention in Zambia for a number of hours or days. He wished to know whether or not the State party considered that such incidents amounted to enforced disappearance. Furthermore, it would be helpful to know who was carrying out the consultations on whether the State party should recognize the Committee's competence to receive and consider individual and inter-State communications. An indication as to the possible outcome of those consultations would also be of interest. He would like to know who was responsible for initiating the investigation when persons were reported disappeared and who had the power to establish whether or not a disappearance had in fact taken place. Lastly, with respect to chapter 25 of the Criminal Code, it would be helpful to hear whether the State party considered that sanctions such as a fine or a short prison sentence were commensurate with the seriousness of the offence of enforced disappearance.

20. **A representative of Zambia** said that the responsibilities of the Human Rights Commission included investigating human rights violations and improper administration of justice, proposing effective measures to prevent human rights abuses, visiting prisons and other places of detention and making recommendations on detention conditions, and

establishing research, education, information and rehabilitation programmes for victims of human rights abuses.

21. **Ms. Lochbihler** said that the Committee would welcome a response as to whether it was possible to appeal a decision authorizing an expulsion, return, surrender or extradition and, if so, before which authority and under which procedure, and whether the appeal had suspensive effect.

22. **A representative of Zambia** said that all consultations on legislative reform in Zambia were led by the Ministry of Justice.

The meeting rose at 4.50 p.m.