



International Convention for the Protection of All Persons from Enforced Disappearance

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Consideration of reports of States parties to the Convention

Replies of Zambia to the list of issues in the absence of its report due under article 29 (1) of the Convention*

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* The present document is being issued without formal editing.



Executive Summary

1. This Report is based on the issues raised in the absence of a country report on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). This Report gives an account of the measures taken by Zambia to give effect to its obligations under the Convention.
2. Zambia being a State party to the ICPPED has not been able to submit a report to the Committee on Enforced Disappearances as prescribed Article 29(1) of the Convention.
3. In this report a list of issues raised by the Committee pursuant to Article 29(1) of the Convention will be addressed and provide outline of the measures which the country has put in place to ensure the fulfilment of its obligations and commitments under the ICPPED. The report also emphasises Zambia's continuous efforts and commitments towards strengthening the protection of all persons from enforced disappearance by prohibiting the deprivation of liberty.

I. Background

4. On the 27th September, 2010, Zambia became a signatory to the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) an International Human Rights Treaty adopted by the United Nations General Assembly on 20th December, 2006 which came into force on 23rd December, 2010. The country ratified the Convention on 4th April, 2011, however, since then Zambia has not provided any Report before the Committee thereby bringing about this review.
5. The responses to the issues raised by the Committee are as follows.

II. Reply to the list of issues (CED/C/ZMB/QAR/1)

Reply to paragraph 1 of the list of issues

6. The State party wishes to report that, it has not yet domesticated the ICPPED. In this regard, the provisions of the Convention cannot be directly invoked before and applied by the Courts or other relevant authorities. However, the issue of enforced disappearance raised by the Convention which relates to the right of personal liberty has been addressed by the Constitution of Zambia Chapter 1, the Penal Code Chapter 87 and the Criminal Procedure Code, Chapter 88 of the Laws of Zambia.

Reply to paragraph 2 of the list of issues

7. The State party wishes to report that, the Human Rights Commission of Zambia has not received nor has it investigated cases of alleged enforced disappearance during the period under review. Most reports received and or investigated, that may be closer to violations as provided in the Convention suggest that the victims were merely incommunicado for a few hours or days before their whereabouts could be established. However, persons suspected to be involved are dealt with legally, for example in the case of James Bwalya & Charles Sikaonga who were both charged with Abduction and sentenced to

8. Further, the Human Rights Commission of Zambia has received an improved budgetary allocation equally disbursements of funds by the State have improved and are now regular. Furthermore, the State Party has maintained the standing approval allowing the Human Rights Commission of Zambia to receive funding from third parties without regularly seeking approval from the Presidency.

9. However, the funding remains inadequate to enable the institution fully implement programmes that are within its mandate. For example, the staff complement of the Commission has remained static for years making it difficult to cope with increased demand for services in recent years including the ability to meet its Constitutional requirement to

decentralize to all the ten (10) Provinces and progressively to the Districts. While a few vehicles, furniture and equipment have been purchased in recent years, they remain fairly inadequate to enable effective and efficient implementation of the Commission's mandate. In an era where digitalization is the way to go for most institutions, the Commission has been unable to establish an ICT Unit due to inability to procure required equipment, recruit and retain competent staff. The Commission has old and inadequate offices in an environment not conducive for operations. Out of the ten (10) Provinces, only four (4) operate from offices wholly owned by the Commission, three (3) are rented, two (2) are rent-free, third party owned and shared with other institutions.

Reply to paragraph 3 of the list of issues

10. The State party wishes to report that, It is still consulting on Articles 31 and 32 of the ICPPED relating to the Committee's competence to receive and consider individual and Inter-State communications.

Reply to paragraph 4 of the list of issues

11. The State party wishes to report that, it has not recorded any reports of persons that have disappeared during the period under review; however, there have been claims from some refugees and former refugees of persons disappearing matters don't go far because but once requested for more information, no evidence of such disappearance is brought forth by the claimants.

Reply to paragraph 5 of the list of issues

12. The State party wishes to report that a database for missing persons is available and the type of information captured in cases reported include the following: Name, Sex, Age, Tribe, Village, Chief and District. The data captured can be accessed by State agencies and other oversight institutions.

Reply to paragraph 6 of the list of issues

13. The State party wishes to report that even though the Bill of Rights under Part III of the Constitution of Chapter 1 of the Laws of Zambia does not explicitly state protection from enforced disappearance, Article 13 on the (Protection of right to personal liberty) provides for protection from deprivation of personal liberty from any person which includes the State unless under circumstances provided under the Constitution. Therefore, Article 13 provides as follows:

“(1) No person shall be deprived of his personal liberty except as may be authorised by law in any of the following cases:

(a) in execution of a sentence or order of a Court, whether established for Zambia or some other country, in respect of a criminal offence or which he has been convicted;

(b) in execution of an order of a Court of record punishing him for contempt of that court or of a court inferior to it;

(c) in execution of an order of a Court made to secure the fulfilment of any obligation imposed on him by law;

(d) for the purpose of bringing him before a Court in execution of an order of a court;

(e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;

(f) under an order of a Court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;

(g) for the purpose of preventing the spread of an infectious or contagious disease;

(h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of this care or treatment or the protection of the community;

(i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Zambia or for the purpose of restricting that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted prisoner from one country to another; or

(j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained

(a) for the purpose of bringing him before a Court in execution of an order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia; and who is not released, shall be brought without undue delay before a Court; and if any person arrested or detained under paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person.”

14. In view of the above provisions, no one can be subjected to enforced disappearance and no law which is repugnant to the Constitution can be enacted as the Constitution is the supreme law of the Land and any law which is enacted inconsistent with it is null and void. It is worth to state that measures were taken during the Corona virus (COVID-19) pandemic whereby persons that were found to have contracted the virus or were suspected to have been in contact of COVID-19 were required to be quarantined with limited visits. Contact tracing was also being done to bring everyone to comply with health regulations that were put in place.

Reply to paragraph 7 of the list of issues

15. The State party wishes to report that national legislation such as the Constitution of Zambia, Chapter 1 of the Laws of Zambia and The Penal Code, Chapter 87 of the Laws of Zambia have some provisions that address issues raised in Article 2 of the ICPPED though not directly stating enforced disappearance but deprivation of liberty. Therefore, the Penal Code of Zambia has criminalised the deprivation of liberty under Chapter XXV and further provides punitive measures such as imprisonment or payment of a fine or both depending on the circumstances of the case. Chapter XXV of the Penal Code of Zambia provides as follows:

“251. Any person who conveys any person beyond the limits of Zambia without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from Zambia.

252. Any person who takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

253. Any person who by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

254. Any person who kidnaps any person from Zambia or from lawful guardianship, is guilty of a felony and is liable to imprisonment for seven years.

255. Any person who kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, is guilty of a felony and is liable to imprisonment for ten years.

256. Any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, is guilty of a felony and is liable to imprisonment for seven years.

257. Any person who kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous harm, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, is guilty of a felony and is liable to imprisonment for ten years.

258. Any person who, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, is guilty of a felony and shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose, as that with or for which he conceals or detains such person in confinement.

259. Any person who kidnaps or abducts any child under the age of fourteen years with the intention of taking dishonestly any movable property from the person of such child, is guilty of a felony and is liable to imprisonment for seven years.

260. Whoever wrongfully confines any person is guilty of a misdemeanour and is liable to imprisonment for one year or to a fine not exceeding six thousand penalty units.

261. Any person who imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, is guilty of a felony and is liable to imprisonment for seven years

262. Any person who habitually imports, exports, removes, buys, sells, traffics or deals in slaves is guilty of a felony and is liable to imprisonment for ten years.

263. Any person who unlawfully compels any person to labour against the will of that person is guilty of a misdemeanour.”

16. Further, although the Anti Human Trafficking Act No. 11 of 2008 as amended by Act No.16 of 2022 does not provide for a specific offence against enforced disappearance, Section 13 of the said Act criminalises trafficking in persons by institutions and their officers.

Reply to paragraph 8 of the list of issues

17. The State party wishes to report that the Penal Code, Chapter 87 of the Laws of Zambia espouses offences and penalties ranging from suspended sentence to ten (10) years imprisonment. In addition, the State party abolished the death penalty last year on 23rd December, 2022.

Reply to paragraph 9 of the list of issues

18. The State party wishes to report that there is legislation that explicitly addresses the prohibition to invoke an order or instruction from any public authority to justify an offence of enforced disappearance, neither a domestic legislation that guarantees that a person who refuses to obey orders or instructions that prescribe, authorize or encourage enforced disappearance will not be punished. However, the Penal Code, Chapter 87 of the Laws of Zambia governs the conduct stated in Article 6 of the ICPPED even though it does not explicitly state enforced disappearance but generally provide for offences against liberty by any person with no exclusion whether one is a civilian or agent of the state. Therefore, the Penal Code prescribes that parties to the offences shall be held criminally liable.

Reply to paragraph 10 of the list of issues

19. The State party wishes to report that Statute of limitations does not apply in criminal matters.

Reply to paragraph 11 of the list of issues

20. The State party wishes to report that Zambia has jurisdiction to try and punish offences committed within its jurisdiction, or partly within and partly beyond the jurisdiction.

Reply to paragraph 12 of the list of issues

21. The State party wishes to report that an offender firstly has to be charged and thereafter, appear before a Court of competent Jurisdiction.

Reply to paragraph 13 of the list of issues

22. The State party wishes to report that the military does not have jurisdiction to investigate or prosecute alleged cases of enforced disappearances. However, there is a Task Force which constitutes personnel from the Defence and security wings which investigates allegations of offences including enforced disappearances. Though there is no record of any such cases before the said Task Force and prosecution will always be before the Court of law.

Reply to paragraph 14 of the list of issues

23. The State party wishes to report that it has not recorded any case of State sponsored trafficking nor State sponsored disappearance of persons of albinism in terms of enforced disappearance at all. Meanwhile, with regard to the members of the opposition political party and activists in the context of general elections in 2016, cases of deprivation of liberty were reported, investigated, however no arrests were made.

Reply to paragraph 15 of the list of issues

24. The State party wishes to report that the Zambia Police Service is responsible for receiving complaints including allegation of enforced disappearance and investigating them. Warrants would be obtained from Court to access documentation and other information relevant to the investigation. The police have no limitations in accessing places of detention or any other place where there are reasonable grounds to believe that the disappeared person maybe present.

Reply to paragraph 16 of the list of issues

25. The State party wishes to report that the Zambia Police Service is the authority responsible for receiving and investigating complaints of alleged enforced disappearance. Anyone with information can report such matters by walking into any police station at any time. Any refusal to investigate can be reported to the Human Rights Commission, Police Public Complaints Commission and the Public Protector as well as the Courts for further action. The Public Interest Disclosure (Protection of Whistleblowers) Act No.4 of 2010 provides protection to complainants and witnesses in this regard.

Reply to paragraph 17 of the list of issues

26. The State party wishes to report that Section 31 of the Extradition Act Chapter 94 of the Laws of Zambia, makes reference to political offences as not extraditable offences and does not state which offences constitute political offences. However, under the First Schedule of the Extradition Act offences relating to personal liberty are extraditable. It is worth stating that from the time the ICPPED came into force in 2010, Zambia has entered into extradition agreements/treaties for example an extradition treaty with Rwanda in 2017 which applies to persons involved in the genocide. Further, section 11 of the Mutual Legal Assistance in Criminal Matters Act Chapter 98 of the Laws of Zambia does not define what constitutes a political offence.

Reply to paragraph 18 of the list of issues

27. The State party wishes to report that the issues raised in Article 16 of the ICPPED in relation to refugees and asylum seekers have been addressed by Section 23 of the Refugees Act No.1 of 2017 read together with the Anti Human Trafficking Act which prohibits the expulsion, return or extradition of any person unless if such a person is danger or threat to national security. The said Section 23 provides as follows:

“23. (1) Despite the provisions of any other law, a person shall not be refused entry into Zambia or be expelled, extradited or returned from Zambia to another country if that refusal, expulsion or return would compel that person to return to or remain in a country where –

(a) that person may be subjected to persecution on account of that person’s race, religion, nationality, membership of a particular social group or political opinion; or

(b) that person’s life, physical well-being or liberty is threatened by external aggression, occupation, foreign domination or event seriously disrupting public order in part or the whole of that country.

(2) The Minister shall take such steps as the Minister considers necessary to ensure that the provisions of subsection (1) are applied in respect of persons to whom that subsection applies.

(3) An asylum seeker or refugee shall not benefit from this provision where there are reasonable grounds to believe that the asylum seeker or refugee is a danger or threat to national security.”.

Reply to paragraph 19 of the list of issues

28. The State party wishes to report that there are legal provisions enshrined under part III (Bill of Rights) of the Constitution of Zambia and the Penal Code which guarantees personal liberty. Article 13 of the Constitution of Laws of Zambia provides as follows:

“(1) No person shall be deprived of his personal liberty except as may be authorised by law in any of the following cases:

- (a) in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence or which he has been convicted;
- (b) in execution of an order of a court of record punishing him for contempt of that court or of a court inferior to it;
- (c) in execution of an order of a court made to secure the fulfilment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of an order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;
- (f) under an order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of this care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Zambia or for the purpose of restricting that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted prisoner from one country to another; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained

- (a) for the purpose of bringing him before a court in execution of an order of a court; or
- (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia; and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained under paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person.”

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262. Any person who habitually imports, exports, removes, buys, sells, traffics or deals in slaves is guilty of a felony and is liable to imprisonment for ten years.

263. Any person who unlawfully compels any person to labour against the will of that person is guilty of a misdemeanour.”

30. The provisions of the law guarantee the liberty of a person and holds liable those who fail to comply. A person whose liberty has been violated can report to the Human Rights Commission, Police Public Complaints Commission and the Public Protector for recourse.

Reply to paragraph 20 of the list of issues

31. The State party wishes to report that all detention centers are public institutions and records are entered in a register. The Officer-in-Charge at the detention facility has the responsibility to ensure that the official detention register (Arrest, Prisoners Property Book) is inspected and regularly kept up to date. Further, the same books are taken to Court for inspection to ensure compliance with provisions of the law. In addition, Courts are also mandated to inspect detention facilities and have powers to sanction the release of persons unlawfully detained.

Reply to paragraph 21 of the list of issues

32. The State party wishes to report that there are oversight institutions as mentioned earlier such as the Human Rights Commission, Police Public Complaints Commission and the Public Protector that have been established to receive and investigate reports of mal administration relating to any person including asylum seekers. Further, asylum seekers who are vulnerable are able to be represented before the Courts of law by lawyers from the Legal Aid Board. Public Institutions including the Courts were operational during the COVID 19 pandemic with strict adherence to the health measures that were put in place.

Reply to paragraph 22 of the list of issues

33. The State party wishes to report that the Constitution provides for access to persons deprived of liberty. Additionally, the Zambia Correctional Services Act No. 37 of 2021 provides for: “the management and control of persons deprived of liberty in prisons and correctional centers”.

Reply to paragraph 23 of the list of issues

34. The State party wishes to report that, there has never been any specific training on the Convention and wishes to request trainings for 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 in the administration of justice.

Reply to paragraph 24 of the list of issues

35. The State party wishes to report that no domestic legislation provides for the definition of victim in accordance with Article 24 of the ICPPED. However, a person whose personal liberty has been violated is considered a victim thus in accordance with the Constitution, the Penal Code and the Criminal Procedure Code and, is entitled to compensation.

Reply to paragraph 25 of the list of issues

36. The State party wishes to report that despite not having record of enforced disappearance, there is a database for missing persons and this database is available to state agencies and other oversight institutions who conduct investigations for justice to prevail for the victims. The State party has no national database of DNA that can be used to identify missing persons.

Reply to paragraph 26 of the list of issues

37. The State party wishes to report that when a person has not been heard of for not less than seven years and a Judge after an enquiry has held that the circumstances point to his death, he may declare the said person dead. The victim’s relative(s) may bring application before the High Court of Zambia in accordance with Order 53 of the Non Contentious Probate Rules of 1987 which provides for an application for leave to swear to the death of a person. This application shall be supported by an affidavit setting out the grounds of the application together with such evidence as the Registrar may require. If a person is presumed dead, and found that there was no Will left, the Intestate Succession Act Chapter 59 of the Laws of Zambia shall be applied. Furthermore, a person who has disappeared will still enjoy his rights and his interests will be taken care over by a person duly authorised until he or she is declared dead. We have a case of Lieutenant Humphrey Kalenga 2020/HP/0247 who was presumed dead by the Court.

Reply to paragraph 27 of the list of issues

38. The State party wishes to report that under the Constitution, any person has been given the right to associate or assemble and by doing so people are able to use such association to establish circumstances of any suspicion of an enforced disappearance. The fate of disappeared persons and other victims has been addressed above in Paragraph 26.

Reply to paragraph 28 of the list of issues

39. The State party wishes to report that the Children's Code Act No.12 of 2022 does not explicitly prohibit enforced disappearance of children, it however under Section 23(1) provide for none subjection of a child to unlawful arrest or deprivation of liberty and perpetrators will be prosecuted in accordance with the Penal Code of Zambia. Further, when a child is born, birth records and Under Five Cards are provided in all health centers which later the parents may use to acquire Birth Certificates. Furthermore, an adoption system has been provided for by both the Adoption Act and the Children's Code Act No.12 of 2022. The two legislations provide the following steps in adoption:

40. The applicant has to contact the office of Commissioner for Juvenile Welfare:

- Choose a licensed adoption service provider and fill the required form provided by the authorities;
- Ensure that they have all the documents listed in the “Required Documents” section of this page;
- In addition, prospective adoptive parents must apply to the Zambian Ministry of Social Welfare, Mother and Child Health for permission to adopt;
- There is no official application form to write to the ministry, as it is for checking the intent of adoption;
- A home study will be conducted by the social workers working for the Welfare department;
- Upon meeting eligibility criteria and getting permission to adopt, the process of matching with a child will begin;
- Upon the finding of a suitable match for child and prospective parent(s), you will be notified with a letter of referral and an “Effective date of Notice”;
- The prospective parents will have to visit the orphanage or where the infant resides several times for the purpose of bonding;
- Upon being a compatible match, prospective parents have to foster the child for 3 months;
- After the three-month fostering period is completed, the Department of Social Welfare reviews the adoption application filed at the acceptance of the match;
- If approved, the Department of Social Welfare sends its recommendation to the magistrate's court in the district where the child resides;
- The court will summon the prospective parents and the child to be adopted with a caretaker (if applicable) and a confidential hearing will take place;
- If the court is satisfied that the prospective adoptive parents are suitable to adopt and that the adoption is clearly in the best interest of the child, the Court will order that the prospective parents adopt the child in question;
- Keep in constant contact with the authorities for smooth completion of procedure and to bring the adopted child home.

41. Therefore, the eligibility requirements for the applicant are as follows:

- The adopting adult may be national or non-national;
- The adopting adult may be single or married;
- There should be at least a 21 years of age gap between the infant to be adopted and the adopting parent;
- If a parent is a single male, he cannot adopt a single female infant (until unless there are special circumstances), and a female infant may be adopted by a female adult or married couple;
- The couple adopting an infant should not be a same-sex couple or a transgender person because the State party considers same-sex relationships as violating its values, morals and beliefs as enshrined in the Constitution. Therefore, the State party has no intention of repealing provisions on the laws that pertain to the criminalisation of consensual same-sex relationships;
- The adopting parent must foster the infant to be adopted for 3 months in Zambia;
- However, there has been no record of children who have been adopted due to enforced disappearance of their parents or guardians.

III. Conclusion

42. Zambia as a member State to the ICPPED, commits itself to protecting the rights of people from enforced disappearance or any offences related to deprivation of liberty. Therefore, any person who is proven to have violated this right will be held accountable and punished accordingly.
