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## **SUBMISSIONS TO THE WORKING GROUP – ENFORCED DISAPPEARANCES**

### **1.Context of Enforced Disappearances in Zimbabwe**

Enforced disappearances have remained a persistent feature in both settler and contemporary Zimbabwe as a strategy of political intimidation and coercion. According to a 1997 report by the Catholic Commission for Justice and Peace and the Legal Resources Foundation (*Breaking the silence-Building True Peace*) abductions or enforced disappearances were a commonly used strategy during the *Gukurahundi* operation whereby an estimated 20 000 people mainly from the South Western regions of the country were brutally massacred. The practice has remained prevalent in the country often with human rights defenders, activists and political opponents being routinely targeted. Vicente and Nudd (2021; 70) attest that:

*Enforced disappearances are further used in many African countries to suppress the regime's critics and any political opposition in the run up to or post-election period. In Zimbabwe, election cycles are often associated with a rise of enforced disappearances against opposition leaders. Most famously, in 2008, during the disputed election between Robert Mugabe and Morgan Tsvangirai, the Zimbabwe NGO Forum documented 137 disappearances, while in the 2013 elections, 30 people were reported forcibly disappeared (Zimbabwe Lawyers for Human Rights, 2016).*

### **2.Past/ongoing initiatives focusing on enforced disappearances in Zimbabwe.**

The Zimbabwe Human Rights NGO Forum (Forum) works actively to speak against the use of organised violence and torture aimed at silencing dissenting voices. In Zimbabwe there have been increased and repeated instances of torture and violence including enforced disappearances targeted at human rights defenders and dissenting voices. Most of the cases have remained unresolved and each year the Forum has updated its prepared dossiers of forcibly disappeared persons calling for attention and action on enforced disappearances in Zimbabwe. The Forum notes that the practice of enforced/involuntary disappearance has often been deployed as a strategy of political intimidation and coercion targeting political activists and human rights defenders. The practice has perverse political, legal, emotional and material effects for victims, families and communities alike.

Drawing from publicly available resources, the dossier details both historical and contemporary instances of involuntary disappearances in the country and the actions and measures taken by the state to address the practice. Of particular concern, there are numerous unresolved cases of enforced disappearances such as those of Captain Edwin Bhundani Nleya, Rashiwe Guzha, Paul Chizuze and Itai Dzamara and reports of enforced disappearances are sometimes denied and, in some instances, victims face reprisals and public rebuke. In almost all instances, perpetrators are not held accountable. Victims and families of enforced disappearances have no effective recourse or redress ,

*Observer status: African Commission on Human and Peoples' Rights*



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The Forum has been calling upon the government of Zimbabwe to strengthen cooperation in investigation and prosecution of perpetrators through guaranteeing the autonomy and independence of the authorities mandated with the criminal investigation and prosecution of perpetrators, and to this end to implore the President of Zimbabwe, Emmerson Dambudzo Mnangagwa to urgently sign the Zimbabwe Independent Complaints Commission (ZICC) Bill, that was passed in Parliament in June 2022, into law, and emphasise that all critical appointments and recruitment of personnel under this law, are done in a transparent and fair manner, and that all such individuals are people of integrity and with the necessary skills, expertise and demeanour to give credence to the complaints mechanism. The Forum has also requested the GoZ to carry out investigations and to inform the Working Group of the results, and build the necessary monitoring and evaluation trackers on a periodic basis especially in Itai Dzamara's case.

### **3.Reasons for low reporting on enforced disappearances**

While enforced disappearances have remained problematic in Zimbabwe, and in other parts of Africa, the extent to which this practice takes place is difficult to assess. The Government has continually refused to acknowledge the occurrence of enforced disappearance and does not keep official records of the crime. The State is also reluctant to investigate whenever an abduction occurs. Many victims and their families are reluctant to report the disappearance for fear of reprisals, and there is insufficient awareness of the legal remedies available to them at the national, regional and international levels. Victims are actually arrested or threatened with criminal prosecutions for "faking or alleging" abductions or short-term disappearances.

There is an urgent need for a comprehensive national policy that break the silence and contributes to improving information gathering from human as well as documentary sources. The development of a legal framework to address enforced disappearances remains undefinable, there is no open acknowledgement of enforced disappearance as a crime and or human rights violation. The fragmented pieces of legislation that may remotely criminalise enforced disappearances do not provide for specific mechanisms or strategies to combat and punish such acts. This has given the government and its agents the leverage to continually refuse to acknowledge various happenings of enforced disappearances and to put in place systematic mechanisms or strategies to combat enforced disappearances.

The current legislative framework does not explicitly place families of enforced disappeared persons in the picture, the family has no spelt right to know the fate of their relative. The State is thus absolved of the obligation to investigate acts of forced disappearances and bring those responsible to justice. Also, there is no framework to obligate the government to take such steps or to granting families of missing persons measures of reparation and assistance. The term 'missing persons' in the Act is used in a much broader way, encompassing all persons whose whereabouts remain unknown, not directly in connection with forced disappearance. Acts of enforced disappearance are heinous in nature and require specific focus and legislation. Consequently, it is important to note the difference in the definition of 'enforced disappearances and general illegal detention and or kidnapping currently covered at law. the definition, often does not correspond with that under the ICPPED .



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This categorization is important as it clearly indicates the obligations that apply in each case. Another huge gap in the law stems from the fact that there are no clear provisions on the practice of searching for missing persons. Thus, under the current laws, the state has no due diligence obligations to account for enforced disappearances. If the state authorities refuse to conduct a search, or do so in an ineffective manner, or deny the disappearance, there may be no recourse to the families of the victims.

In Zimbabwe enforced disappearances continue to occur as members of the security apparatus and non-State actors operate with total impunity. One of the main reasons for the prevailing impunity is the lack of political will to investigate the officials, as well as the policy and legal gaps that allow for acts of enforced disappearances to remain unprosecuted, leaving victims feeling frustrated. In Zimbabwe [Criminal Law \(Codification and Reform\) Act](#), criminalises the deprivation of freedom of bodily movement, intending to cause such deprivation, or realizing that there is a real risk or possibility that such deprivation may result provides for a sentence of life imprisonment with the option of a fine in some circumstances.<sup>12</sup> Section 93 sanctions kidnapping and or un lawful detention committed by any person, and this section does not specifically criminalise the practice of enforced disappearance.

The Missing Persons Act provides for the presumption of death of a person who is missing, and the necessary administrative procedures to declare such presumption of death.<sup>3</sup> The Act is very generalised and does not acknowledge the crime of enforced disappearances. The nature of the legislation is limited to persons who go missing in the context of other circumstances other than initiated by state actors. Under this Act, a person is considered a missing person but not forcibly disappeared. In this sense, the law is blind to the authorisation, support or acquiescence by the state in respect of the disappearance actions. While this law regulates the legal status of missing persons, the framework is not adequate to apply to the legal status of the forcibly disappeared persons which is crucial for the victim's family, in particular because of practical concerns such as welfare, inheritance, marriage and parental rights. The UN Committee on Enforced Disappearances raised this issue in its concluding observations to country reports in 2016 and expressed its concern about 'the absence of national laws on access to social benefits for relatives of disappeared persons'. In terms of the 1987 ICRC commentary on Additional Protocol 1 to the Geneva Conventions, 'families' include not only blood relatives and legal ties but also personal and emotional ties. Within the enforced disappearance framework 'any individual who has suffered harm as the direct result of an enforced disappearance' is a victim of that enforced disappearance This phrasing is potentially broader than the term 'close relative', used in the Act.

#### 4. Desired Best practices

There is need to create a solid legal framework that address the nature of enforced disappearance as a continuous crime that starts from the moment the person disappears until they are found or their whereabouts identified. The continuous nature of the crime is also closely tied with the right to truth for victims and families. This right encompasses obligations of the State to provide information on the

<sup>1</sup> Criminal law (Codification and Reform) Act [chapter 9:23] Act 23/2004 Retrieved from: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/72803/74195/F858899812/ZWE72803.pdf>  
Chapter 9:23, Act 23/2004, Section 93 (1)

<sup>2</sup> Ibid

<sup>3</sup> Chapter 5.14 Missing Persons Act Chapter 5.14 Retrieved from: <http://www.jsc.org.zw/jscbackend/upload/Acts/2001/0514updated.pdf>



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progress and result of investigations, the fate of the victims and the identity of the perpetrators. Finally, the legal framework should address the scope of the right to redress. There is also a need for all the protection and redress initiatives to be sensitive to the vulnerabilities of marginalized and discriminated groups who are victims of enforced disappearances, including women, children, ethnic minorities, and migrants.

The Special Rapporteur and the Working Group on Enforced /Involuntary Disappearances should consider a mission visit to Zimbabwe with a view to providing context specific recommendations in light of the persistence of the practice of enforced disappearances and lack of accountability with perpetrators doing so with impunity. In addition, the Working Group should also continue to play its important role in providing comprehensive guidance to the GoZ on its obligations to prevent and address enforced disappearances and in highlighting and following up on alleged cases.

Specifically, the Special Rapporteur should immediately:

- a) Call upon the GoZ to adequately investigate, search and publish the progress and findings of the unresolved cases of victims such as Itai Dzamara, Paul Chizuze.
- b) Call on the Government to recognise the recurrent practice of enforced disappearance in the country especially that took place within the context of 2023 general elections, and to acknowledge the suffering of families who have no information on the fate and whereabouts of disappeared relatives.
- c) Further, to call on the GoZ to adopt policies and specific mechanisms and avail resources that ensure comprehensive support to victims and their families. This will also guarantee victims' rights to truth, justice, reparations and non-recurrence.
- d) Call upon the GoZ immediately actively consider the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance and demonstrate political will to curb the practice and ensure non-recurrence.