



NATIONAL
TRANSITIONAL JUSTICE
WORKING GROUP
ZIMBABWE



ZIMBABWE
PEACE
PROJECT

ENFORCED DISAPPEARANCES FACT SHEET | 30 AUGUST 2021

Introduction

Every year on 30 August, the National Transitional Justice Working Group (NTJWG) and the Zimbabwe Peace Project (ZPP) join the rest of the world in commemorating the International Day of Victims of Enforced Disappearances. The commemoration of this day serves to call upon governments across the world to have a firm commitment to combating impunity as regards enforced disappearances, to speak up against the practice and tolerance of enforced disappearances which undermine the respect for the rule of law, human rights and fundamental freedoms. Commemoration of this day also serves to draw attention to the fate of individuals who disappeared at the hands of the state and whose whereabouts are unknown to their families, legal representatives and the general public.

Definition of Enforced Disappearances

Enforced disappearances, are defined by the International Convention for the Protection of All Persons from Enforced Disappearance (the Convention) as, “The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

Human Rights Violated When Enforced Disappearances Occur

Enforced disappearances are a serious human rights violation which results in the deprivation of fundamental human rights which include:

- the right to liberty and security of a person;
- the right to life, if the victim is killed;
- the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment;
- the right to truth regarding the circumstances of the disappearance;
- The right to an identity.

International Law on Enforced Disappearances

The Convention prohibits enforced disappearances, which cannot be justified under any exceptional circumstances including state of war or a threat of war, internal political instability or any other public emergency. Under the Convention state parties are obliged to take appropriate measures to criminalise enforced disappearance, investigate occurrences and prosecute those responsible. Article 7 of the Rome Statute of the International Criminal Court considers enforced disappearance to be a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Regrettably, Zimbabwe is not a state party to both the Convention and the Rome Statute. However, Zimbabwe is party to the Charter on Human and Peoples' Rights which guarantees respect for the dignity inherent in the human person and the recognition of his legal status in article 5.

The Law on Enforced Disappearances in Zimbabwe

In Zimbabwe, there is no specific provision in the Constitution of Zimbabwe, 2013 (the Constitution) that speaks against enforced disappearances. However, section 49 of the Constitution provides for the right to liberty which includes the right not to be deprived of liberty arbitrarily or without a just cause and the right not to be detained without trial. This provision provides an opportunity for victims of the crime of enforced disappearance and their families to seek redress.

Enforced Disappearances in Zimbabwe

According to a statement made by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Working Group on Enforced or Involuntary Disappearances, UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the UN Special Rapporteur on Violence against Women on 10 June 2020, 49 cases of abductions were reported in Zimbabwe in 2019 alone. Activism and outspoken criticism of the government often leads retaliation through enforced disappearances in Zimbabwe. Political activists, human rights defenders, journalists and members of the opposition party are often targeted in an effort to silence opposition and criticism. The case of Itai Dzamara, a political activist and a critic of the former President of Zimbabwe Robert Mugabe, is an example of this. Itai was abducted on 9 March and whereabouts remain unknown until today. The Government of Zimbabwe (GoZ) has failed to actively and sincerely pursue the search for Itai Dzamara and to give updates on the search efforts despite the 2018 High Court order to provide updates on the investigation of his disappearance.

In 2020, the UN issued an urgent call for Zimbabwe to end a reported pattern of enforced disappearances and torture aimed at suppressing dissent. The call came after three female opposition activists Joanna Mamombe, Cecilia Chimberi and Netsai Marowa were abducted, tortured and sexually assaulted. They were dumped at a marketplace after almost 48hrs of torture. The GoZ dismissed the reports as fake and proceeded to prosecute the victims demanding they provide evidence of their ordeal. The trend of persecuting victims and dismissing reports of abductions only serves to retraumatise victims and ensure that perpetrators are not held accountable, this is detrimental to Zimbabwe's efforts to deal with its violent past and creates an environment that encourages recurrence.

Remedies Available to Victims of Enforced Disappearances and their Families

A Working Group was established by the United Nations Human Rights Council to address enforced or involuntary disappearances of persons. Resolution A/HRC/RES/27/1 made in September 2014 by the Human Rights Council mandated the Working Group with receiving reports of enforced disappearances from victim families or human rights organisations acting on their behalf, for examination and transmission to governments; assisting families of missing persons to determine their fate or whereabouts; liaising between families of missing persons and other stakeholders including governments concerned; and requesting subject governments to carry out investigations on the missing persons.

On a national level, the families of the victims can use the law to challenge the illegal detention of a disappeared person through the habeas corpus petition. A habeas corpus petition is legal action taken against arbitrary and unlawful detention and the principle is enshrined in section 50(7)(a) of the Constitution. The petition is brought against the person responsible for the detention and requires that they produce the detained person along with the reasons for the detention. The petition serves to provide the courts with an opportunity to determine if the person is being detained lawfully or unlawfully which determines if they should be released or not.

Enforced disappearance is not a specific crime under Zimbabwean law but the family of the victim may report to the police where the perpetrators are known and offences in the Criminal Code like murder and assault can be applied. The family of the victim may also lodge a complaint with the Zimbabwe Human Rights Commission (ZHRC) which to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate in line with section 243 of the Constitution.

The victims of enforced disappearances may also pursue civil remedies through bringing claims for torture, assault and other claims. The families of the victims may also claim lack of support caused by the forced disappearance of their loved one.

Recommendations

- The GoZ should ratify and domesticate the International Convention on Protection of All Persons from Enforced Disappearances.
- The ZHRC should carry out a transparent and effective investigation of the circumstances surrounding all reported cases of enforced disappearances such as that of Itai Dzamara.
- The GoZ should criminalise enforced disappearances with a high penalty for the perpetrators.
- The National Prosecuting Authority should ensure the prosecution of all cases of enforced disappearances.
- The National Peace and Reconciliation Commission (NPRC) should promote truth-telling initiatives focusing on disclosing the truth about the fate of victims of enforced disappearances to bring closure and healing to the families of the victims.

Conclusion

As the nation pursues national healing and reconciliation there must be accountability, truth-telling and justice for the families and relatives of the victims of enforced disappearances which are key to guaranteeing non-recurrence. The NTJWG and ZPP encourage victims of enforced disappearances and their families who have not received redress for the violations they have endured to get in touch with them for assistance on :

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