



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Italy under article 29 (1) of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by Italy under article 29 (1) of the Convention (CED/C/ITA/1) at its 277th and 278th meetings (SR.277 and SR.278), held on 8 and 9 April 2019. At its 290th meeting, held on 17 April 2019, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Italy under article 29 (1) of the Convention and the information contained in the report. The Committee also appreciates the constructive dialogue with the delegation of the State party on the measures taken to implement the provisions of the Convention, which has dispelled many of its concerns, and particularly welcomes the openness with which the delegation responded to the questions raised by the Committee. In addition, the Committee thanks the State party for its written replies (CED/C/ITA/Q/1/Add.1) to the list of issues (CED/C/ITA/Q/1), as supplemented by statements by the delegation, and the additional information submitted in written form.

B. Positive aspects

3. The Committee commends the State party for having ratified almost all of the United Nations core human rights instruments and their optional protocols, as well as the Rome Statute of the International Criminal Court.

4. The Committee further commends the State party for having established a national mechanism for reporting and follow-up, the Interministerial Committee for Human Rights, (at the Ministry of Foreign Affairs and International Cooperation), which is internationally recognized as best practice.

C. Principal subjects of concern and recommendations

1. General information

5. The Committee considers that, at the time of the drafting of the present concluding observations, the legislative framework in force in the State party for preventing and punishing enforced disappearance was not in full compliance with the obligations incumbent on States that have ratified the Convention. The Committee therefore recommends that the State party give due consideration to the present concluding

* Adopted by the Committee at its sixteenth session (8–18 April 2019).



observations, adopted in a constructive and cooperative spirit with the view to ensuring the full implementation of the Convention.

6. The Committee notes that civil society organizations were not involved in the preparation of the State party's initial report. The Committee also notes the statement by the State party that activities will be organized by the Interministerial Committee for Human Rights with civil society organizations to follow up on the present concluding observations.

7. The Committee recommends that the State party ensure the participation of civil society organizations in the whole cycle of reporting, from the preparation of its reports to the implementation of the concluding observations.

Individual and inter-State communications

8. The Committee notes that the State party has not yet recognized the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention (arts. 31 and 32).

9. The Committee encourages the State party to recognize as soon as possible the Committee's competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention respectively, with a view to strengthening the framework for protection from enforced disappearance provided for in the Convention.

National human rights institution

10. The Committee notes the measures taken with a view to establishing a national human rights institution, in particular the draft law that has been under consideration by the Senate Constitutional Affairs Committee since November 2018, following a specialized workshop on the matter organized by the Ministry of Foreign Affairs and the University of Trento.

11. The Committee recommends that the State party expedite the adoption of the law establishing a national human rights institution in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

2. Definition and criminalization of enforced disappearance (arts. 1–7)

Non-derogability of the prohibition of enforced disappearance

12. The Committee notes with concern that there is no specific legal provision in domestic law that explicitly states that no exceptional circumstances may be invoked to justify enforced disappearance in accordance with article 1 (2) of the Convention (art. 1).

13. The Committee recommends that the State party adopt a legal provision explicitly affirming that no exceptional circumstances whatsoever may be invoked as a justification for enforced disappearance, in accordance with article 1 of the Convention.

Offence of enforced disappearance

14. The Committee notes that the State party considers that enforced disappearance is covered by the crime of kidnapping, referred to in article 605 of the Criminal Code, and, according to the circumstances, by a number of other criminal offences, such as unlawful arrest, undue limitation of personal liberty and abuse of authority against a person put under arrest or a detainee. The Committee, however, is concerned that existing domestic legislation, in particular the provisions of the Criminal Code, does not reflect the gravity and specific nature of the offence of enforced disappearance. The Committee also notes that the domestic legal framework does not recognize the offence of enforced disappearance as a crime against humanity (arts. 2, 4, 5, 6, 7 and 8).

15. The Committee recommends that the State party take the necessary legislative measures to make enforced disappearance an autonomous offence in line with the

definition contained in article 2 of the Convention. The Committee also recommends that the State party explicitly recognize enforced disappearance as a crime against humanity, in line with article 5 of the Convention.

Criminal responsibility of superiors

16. The Committee notes the State party's assertion that a superior who failed to prevent or repress offences of enforced disappearance could be charged with the crime of aggravated kidnapping. However, the provisions of domestic law do not reflect the full scope of articles 6 and 7 of the Convention. Furthermore, the Committee notes with concern that the Criminal Code, in its article 605, provides for six months' to eight years' imprisonment for the offence of kidnapping (art. 6 and 7).

17. **The Committee recommends that the State party take the legislative measures necessary to ensure that domestic legislation: (a) specifically provides for the criminal responsibility of superiors in public, civilian and military institutions, in accordance with article 6 (1) (b) of the Convention; and (b) explicitly states that it is prohibited to invoke orders or instructions from superiors to justify an offence of enforced disappearance, in accordance with article 6 (2) of the Convention. The Committee further invites the State party to consider taking the necessary measures to ensure a minimum penalty for the crime of enforced disappearance that takes due account of the extreme seriousness of the offence, in accordance with article 7 of the Convention.**

3. Criminal responsibility and judicial cooperation with regard to enforced disappearance (arts. 8–15)

Statute of limitations

18. The Committee notes that domestic legislation provides that the statute of limitations commences from the moment when the enforced disappearance ceases. The Committee notes the adoption of Act No. 3/2019, which will enter into force on 1 January 2020 and according to which the statute of limitations following the first-instance trial will remain suspended for the entire duration of the proceedings (art. 8).

19. **The Committee invites the State party, when criminalizing enforced disappearance as an autonomous offence and as a crime against humanity, to consider providing that the offence is not subject to a statute of limitations.**

Military jurisdiction

20. The Committee notes with concern that the military authorities are required to report to both the ordinary and the military judicial authorities any facts that could constitute a crime that could be prosecuted ex officio, including enforced disappearance. The Committee is also concerned by the lack of explicit provisions for suspension of civil law enforcement officials suspected of enforced disappearance (art. 9).

21. **The Committee recommends that the State party take all the measures necessary to guarantee that law enforcement or security officials who are suspected of having committed the offence of enforced disappearance are suspended and do not take part in the related investigations.**

Duty to investigate and search for disappeared persons

22. The Committee notes that the crime of kidnapping is prosecuted ex officio and that there are relevant established practices in the judicial offices of the territorial public prosecutors' offices. Furthermore, the Committee notes the central role of the High Commissioner for Missing Persons in the national search framework in the State party. However, the Committee is concerned about reports of missing children from migrant reception centres, in particular the so-called "hotspots" (arts. 10, 11 and 12).

23. **The Committee recommends that the State party take the measures necessary to prevent the disappearance of migrants, in particular children, and to find the whereabouts of those already missing. The Committee recommends that the State**

party take the legislative and administrative measures necessary to establish investigation practices in domestic law, in accordance with articles 10, 11 and 12 of the Convention.

Mutual assistance and extradition

24. The Committee notes the State party's framework to ensure judicial cooperation and mutual assistance with respect to cases of enforced disappearance, based on bilateral agreements and the principle of international courtesy. The Committee also notes that, in the absence of such an international legal basis, the provision of judicial assistance to another State depends on whether the requirement of dual criminality has been met, which is the case for the crime of enforced disappearance. However, the Committee is concerned that the Minister of Justice makes the final decision on requests for judicial assistance and extradition. (arts. 13, 14 and 15).

25. The Committee recommends that the State party ensure that it provides, in all cases, the necessary judicial assistance, including providing all evidence at its disposal, to the authorities of other States parties that may request it in connection with investigations into possible cases of enforced disappearance. The Committee also recommends that the State party actively contribute to strengthening mutual assistance between judicial authorities with a view to facilitating the sharing of information and evidence and searching for and identifying disappeared and missing persons, in particular missing migrants. Furthermore, the Committee recommends that the State party extend to all States parties to the Convention the practice of extradition and non-refoulement on the basis of a judicial decision with respect to States members of the European Union.

4. Measures to prevent enforced disappearance (arts. 16–23)

Non-refoulement

26. The Committee notes that the State party considers that the principle of non-refoulement is protected by other international human rights instruments ratified by the State party, such as the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). The Committee takes note of revised Legislative Decree 286/98 (Unified Text on Immigration), which prohibits the refoulement of unaccompanied minors. The State party has adopted a set of criteria to assess whether the return of migrants to their country of origin would be safe, as well as specific procedures to assess asylum requests. However, the Committee is concerned that the principle of non-refoulement is not upheld in practice. The Committee is further concerned about information regarding a lack of international cooperation by the State party with other States on missing persons among migrants in the context of large-scale arrivals by sea, including regarding assistance for foreign victims of enforced disappearance.

27. The Committee recommends that the State party ensure that the principle of non-refoulement enshrined in article 16 (1) of the Convention is strictly respected in all circumstances by taking the necessary measures, notably:

- (a) Ensure that in practice no one may be expelled, returned or extradited to another State where there is a risk of becoming a victim of enforced disappearance;**
- (b) Refrain from collectively expelling migrants, including in the context of vessels of migrants arriving by sea;**
- (c) Ensure the individual assessment of each migrant situation;**
- (d) Ensure an effective judicial remedy in law and in practice against expulsion decisions;**
- (e) Take into account each individual's special protection needs.**

Safeguards in relation to the detention of migrants

28. The Committee notes that the Office of the National Guarantor, the national authority for the rights of persons detained or deprived of liberty, provides effective oversight of the situation of persons deprived of liberty. The Committee also notes that the National Guarantor serves as the national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Noting that the National Guarantor enjoys unrestricted access to all de jure or de facto detention sites, the Committee is, however, concerned about the fact that the expansion of the list of immigration detention centres, pursuant to the adoption of the Law Decree No. 113/2018, has not been made public, preventing the National Guarantor from visiting them. The Committee is also concerned that the detention conditions in centres for migrants might not be in accordance with article 17 of the Convention (art. 17).

29. The Committee recommends that the State party immediately release information about the list of immigration detention centres, ensure all the necessary conditions for access by the National Guarantor and take all the measures necessary to comply with the full scope of article 17 of the Convention. The Committee recommends that the State party take all the measures necessary to ensure prompt and immediate registration of the identity of all persons entering all migrant centres.

Training

30. The Committee notes the broad extent of training in international human rights law and international humanitarian law for civilian and military officials organized in the State party. The Committee also notes that there are no specific courses on enforced disappearance, beyond specific education programmes on the Convention for personnel of the Carabinieri Corps.

31. The Committee encourages the State party to further ensure that all law enforcement and security personnel – whether civil or military – medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of their liberty and migrants, including judges, prosecutors and other officials responsible for the administration of justice, receive specific and regular training on the provisions of the Convention, in accordance with article 23 (1).

5. Measures to provide reparation and to protect children from enforced disappearance (arts. 24–25)

Definition and rights of victims and right to receive reparation and prompt, fair and adequate compensation

32. The Committee is concerned that the definition of victims in domestic law – including the legislation transposing Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA – is not in line with the definition of victims provided under article 24 of the Convention. The Committee notes that the State party considers the provisions on reparations in the Criminal Code to cover the list of measures listed in article 24 of the Convention. In this regard, the Committee takes note of the set of compulsory criteria and levels of reparations adopted by domestic courts to be applied by all judges in the State party. The Committee is, however, concerned by the limited scope of the existing system of compensation in the State party. With regard to the right to truth, the Committee notes with concern that the State party refers exclusively to the judicial truth (art. 24).

33. The Committee recommends that the State party review its domestic legislation to effectively incorporate the full scope of the definition of victims and to ensure the implementation of the right to receive reparation and the right to know the truth in line with article 24 of the Convention.

Unaccompanied minors

34. The Committee welcomes the adoption by the State party of a specific law, Act No. 2017/47, on protection measures for unaccompanied foreign minors, including special safeguards such as non-refoulement, prohibition of forced return and specific protection against trafficking. The Committee further notes the existence of a draft protocol to harmonize the relevant procedural rules nationwide regarding the identification and age-assessment procedure. However, the Committee is concerned by the fact that unaccompanied minors may be at risk of going missing from migrant reception centres (art. 25).

35. **The Committee recommends that the State party take the necessary measures to:**

(a) **Ensure that unaccompanied minors are promptly referred to child protection authorities as soon as possible after their arrival at an immigration detention centre;**

(b) **Ensure the effective application of the new harmonized multidisciplinary age-assessment procedures across all immigration detention centres, and ensure that anyone claiming to be a child is treated as such until a comprehensive and child-friendly age-assessment is undertaken;**

(c) **Improve the data system for unaccompanied or separated minors, and ensure the collection of statistics on unaccompanied minors and children going missing from reception centres;**

(d) **Prevent the disappearance of children from reception centres and find the whereabouts of those already missing.**

D. Dissemination and follow-up

36. The Committee wishes to recall the obligations undertaken by States when becoming parties to the Convention and, in this connection, urges the State party to ensure that all the measures that it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations that it assumed when becoming party to the Convention and other relevant international instruments.

37. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearance on the human rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need for the State party to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.

38. The State party is encouraged to disseminate widely the Convention, its report submitted under article 29 (1) of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society in the actions taken in line with the present concluding observations.

39. In accordance with the Committee's rules of procedure, the State party should provide, by 18 April 2020 at the latest, information on the implementation of the recommendations contained in paragraphs 15 (offence of enforced disappearance), 33

(definition and rights of victims and right to receive reparation and prompt, fair and adequate compensation) and 35 (unaccompanied minors).

40. Under article 29 (4) of the Convention, the Committee requests the State party to submit, by no later than 18 April 2025, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance with the guidelines on the form and content of reports to be submitted by States parties under article 29 of the Convention (CED/C/2, para. 39). The Committee encourages the State party to promote and facilitate the participation of civil society in the preparation of this information.
