



# International Convention for the Protection of All Persons from Enforced Disappearance

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## Committee on Enforced Disappearances

### List of issues in relation to the report submitted by Italy under article 29 (1) of the Convention\*

#### I. General information

1. With reference to paragraph 6 of the State party's report (CED/C/ITA/1), please provide additional information on the report preparation process, including consultations with members of civil society and other stakeholders which might have taken place.
2. In the light of paragraphs 23 and 27 of the State party's report, please provide information on the status of the Convention in national law and clarify whether the provisions of the Convention can be directly invoked before, and applied by, courts or other relevant authorities.
3. Please indicate whether the State party intends to establish a national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and if so, please provide information on the steps taken toward its establishment.
4. Please indicate whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications.

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

5. In the light of paragraphs 28 and 31 of the State party's report, please explain whether any legislation or practices concerning terrorism, national security or other grounds that the State party may have adopted include any possibility of derogating from any of the rights or procedural safeguards provided for in domestic legislation or international human rights instruments to which Italy is a party. In relation to paragraph 30, please explain what would constitute a "more serious" crime and therefore an exception to the punishment referred to in article 185 (b) of the military criminal code. Please clarify whether, other than for reasons related to war, military service personnel are prohibited from committing the acts listed in article 185 (b) (art. 1).
6. In the light of paragraph 32 of the State party's report, please indicate whether there are any plans to define enforced disappearance as an autonomous crime in domestic legislation. Please provide, in English, the text of article 605 of the Italian Criminal Code. Please indicate whether there is a specific provision in domestic legislation that criminalizes

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\* Adopted by the Committee at its fifteenth session (5–16 November 2018).



enforced disappearance as a crime against humanity, or any other domestic arrangement made in accordance with article 5 (arts. 2, 4 and 5).

7. In relation to paragraph 51 of the State party's report, please explain how the responsibility of superiors is ensured, in full accordance with article 6 of the Convention. Please provide, if available, examples of instances in which such provisions have been invoked or applied (art. 6).

8. With reference to paragraphs 52 and 55, please explain how article 51 of the Criminal Code and article 4 of Act No. 382/1978 ensure, in all instances, the prohibition of invoking superior orders, including orders from military authorities, as a justification for enforced disappearance. Additionally, please describe the legal recourse available to subordinates against any potential disciplinary measures resulting from their refusal to carry out a criminal act ordered by a superior (art. 6).

### **III. Judicial procedure and cooperation in criminal matters (arts. 8–15)**

9. With reference to paragraphs 58 and 59 of the State party's report, please clarify how a statute of limitations for criminal procedures and sanctions would be applied to a potential isolated case of enforced disappearance, considering the continuous nature of the crime (art. 8).

10. In the light of the domestic legislation guaranteeing fundamental legal safeguards, please indicate the measures taken to ensure, in practice, that persons deprived of their liberty are immediately afforded these fundamental safeguards, including the right to notify relatives of their detention and to have their detention recorded promptly (arts. 10 and 17).

11. Please indicate whether military authorities are competent under domestic law to investigate and prosecute persons accused of enforced disappearance, and if so, please provide information on the applicable legislation (art. 11).

12. Please provide information on measures taken to ensure, in practice, that a prompt and impartial investigation is conducted into allegations of enforced disappearance. In the light of paragraph 76 of the State party's report, please clarify whether a case of enforced disappearance as an isolated crime would also be investigated *ex officio* (art. 12).

13. Please indicate whether domestic law provides for immediate suspension from duties during an investigation into a reported enforced disappearance when the alleged offender is a State agent. Please also indicate whether there are any procedural mechanisms to exclude any civil or military law enforcement or security force from the investigation of an allegation of enforced disappearance in the event that one or more of its members are suspected of having committed the crime. If so, please include information on the implementation of the relevant provisions (art. 12).

14. Please indicate whether the nature of the facts in the crime of enforced disappearance would, in principle, lead to cooperation even in the absence of a bilateral agreement or of reciprocal cooperation. Please indicate whether any limitations or conditions set out in domestic laws could be applied in relation to requests for judicial assistance or cooperation in the terms set out in articles 14 and 15 of the Convention (arts. 14 and 15).

### **IV. Measures to prevent enforced disappearances (arts. 16–23)**

15. Please provide information on the mechanisms and criteria applied in the context of procedures of expulsion, *refoulement*, surrender or extradition to evaluate and verify the risk that a person may be subjected to enforced disappearance. Please specify whether any decision on expulsion, *refoulement*, surrender or extradition can be appealed, and if so, before which authorities it can be brought and what the applicable procedures are. Please clarify whether the decision from such an appeal is final or whether any other authority can refuse to implement the decision. Please describe any other measures in place to ensure strict compliance with the principle of non-*refoulement* under article 16 (1) of the Convention,

including with regard to the accelerated identification procedures under Act No. 46/2017, and in particular to prevent collective expulsion or refoulement (art. 16).

16. Please indicate whether there are any lists of States to which the State party considers it safe to initiate procedures of expulsion, refoulement, surrender or extradition of persons. If so, please indicate the criteria on the basis of which a State is considered to be safe, how often these criteria are reviewed, and whether, before proceeding to the expulsion, refoulement, surrender or extradition of a person to a State considered safe, a thorough individual assessment is made of whether the person concerned is in danger of being subjected to enforced disappearance. Furthermore, please indicate whether the State party requests and accepts diplomatic assurances when there is a reason to believe that there is a risk that the person may be subjected to enforced disappearance (art. 16).

17. With reference to paragraphs 95 and 105 of the State party's report, please provide additional information on the measures taken to ensure, in practice, that all persons deprived of their liberty, including foreign nationals, have prompt access to legal counsel or free legal aid if necessary, from the very outset of deprivation of liberty (art. 17).

18. Please indicate whether the National Authority for the Rights of Persons Detained or Deprived of Liberty and its regional counterparts possess sufficient financial, human and technical resources to effectively and independently carry out their functions as the national preventive mechanisms. Please provide information on existing guarantees to ensure that all of the above preventive mechanisms have immediate and unrestricted access to all places of deprivation of liberty (art. 17).

19. In the light of paragraphs 88 and 89 of the State party's report, please indicate the measures adopted to ensure, in practice, that the official register kept in all places of deprivation of liberty, regardless of their nature, contains all the information listed in article 17 (3) of the Convention. With regard to paragraph 140 of the report, please elaborate on the "specific right of information" afforded to all persons placed in police custody and on the "certain conditions" under which persons remanded in custody may receive visits (arts. 17, 18 and 20).

20. In the light of paragraphs 156 and 157, please provide updated information regarding specific training on the provisions of the Convention offered to 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 and prosecutors. In this regard, please clarify whether there is a protocol on training, explain the nature and frequency of the training provided, and indicate the authorities in charge of facilitating such training (art. 23).

## **V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24–25)**

21. With reference to paragraph 159 of the State party's report, please provide the definition of the term "victim" as used in domestic legislation and explain how this definition is in line with article 24 (1) of the Convention (art. 24).

22. In relation to paragraphs 160 and 161 of the State party's report, please indicate whether, besides compensation schemes, domestic law provides for other forms of reparation, such as guarantees of non-repetition, in accordance with article 24 (5) of the Convention. In the absence of a law specifically criminalizing enforced disappearance, please explain how a victim of an enforced disappearance that was committed as an autonomous crime, and thus would fall under several criminal offences, can be guaranteed the right to reparation and compensation. Please indicate whether there is a time limit for victims of enforced disappearance to access reparation (art. 24).

23. Please provide information on the measures in place with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights, in accordance with article 24 (6) of the Convention (art. 24).

24. With reference to paragraph 167 of the State party's report, please provide information on relevant criminal provisions that would apply if the acts listed in article 25 (1) of the Convention were committed. Please indicate whether any steps have been taken to bring national legislation into line with article 25 (1) of the Convention. Please describe the procedures currently in place to guarantee the right of disappeared children to have their true identity re-established. Please also indicate whether a disappeared child may access information concerning his or her origin without any restrictions (art. 25).

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