



# 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 Austria under article 29 (1) of the Convention\*

1. The Committee on Enforced Disappearances considered the report submitted by Austria under article 29 (1) of the Convention (CED/C/AUT/1) at its 241st and 242nd meetings (see CED/C/SR.241 and 242), held on 23 and 24 May 2018. At its 252nd meeting, held on 31 May 2018, it adopted the present concluding observations.

#### A. Introduction

2. The Committee welcomes the report submitted by Austria under article 29 (1) of the Convention, and the information therein. The Committee appreciates the constructive dialogue held with the delegation from the State party on the measures taken to implement the provisions of the Convention, which dispelled several of its concerns, and particularly welcomes the competence, rigour and openness with which the delegation responded to the questions raised. In addition, the Committee thanks the State party for its written replies (CED/C/AUT/Q/1/Add.1) to the list of issues (CED/C/AUT/Q/1), which were supplemented by the oral responses provided by the delegation during the dialogue and the additional information submitted in written form.

#### B. Positive aspects

3. The Committee welcomes the fact that the State party has recognized the competence of the Committee, under articles 31 and 32 of the Convention, in respect of individual and inter-State communications.

4. The Committee also welcomes the measures taken by the State party in areas related to the Convention, including:

(a) The amendment of the Criminal Code, on 1 January 2015, which saw the insertion of sections 312b and 321a (3) (5) criminalizing the offence of enforced disappearance;

(b) The amendment of the Code of Criminal Procedure, on 1 June 2016, which is aimed at expanding the rights of victims of crimes.

5. The Committee commends the State party for having ratified almost all the United Nations core human rights instruments and the Rome Statute of the International Criminal Court.

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\* Adopted by the Committee at its fourteenth session (22 May–1 June 2018).



6. The Committee also notes with appreciation that the State party has extended an open invitation to all special procedure mandate holders of the Human Rights Council to visit the country.

## **C. Principal subjects of concern and recommendations**

7. The Committee considers that, at the time of drafting of the present concluding observations, the legislative framework in force in the State party for preventing and punishing enforced disappearances was not in full compliance with the obligations incumbent on States that have ratified the Convention. The Committee recommends that the State party take account of its recommendations, which have been made in a constructive spirit of cooperation, with the aim of ensuring that the existing legal framework and the way in which it is implemented by the State authorities, at both the federal and the Land levels, are fully consistent with the rights and obligations set out in the Convention.

### **1. General information**

#### **National human rights institution**

8. The Committee notes that the Austrian Ombudsman Board is also the national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Nevertheless, the Committee is concerned that the Board has only been accredited with B status by the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions. In particular, the Committee is concerned at the limited mandate of the Board with regard to allegations of abuse by law enforcement officials, and at the nomination of the Board's members by the three strongest political parties. The Committee also notes with concern the reported lack of formal public consultation and of participation by civil society during the nomination and appointment process (art. 2).

9. **The Committee encourages the State party to take steps to expand the mandate of the Austrian Ombudsman Board, in particular with regard to allegations of abuse by law enforcement officials, and to review the procedure for the appointment of the Board's members, with a view to bringing the Board into 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**

10. The Committee notes with appreciation that the Constitution provides layers of procedural guarantees regarding the invoking of emergency measures, and that the State party has never resorted to such emergency measures. Nevertheless, the Committee is concerned that domestic law does not specifically provide for the non-derogability of the prohibition of enforced disappearance under any exceptional circumstances (art. 1).

11. **The Committee recommends that the State party consider taking legislative measures to specifically incorporate into domestic law the non-derogability of the prohibition of enforced disappearance, in line with article 1 (2) of the Convention.**

#### **Appropriate penalties**

12. The Committee takes into account the explanation provided by the State party concerning the appropriateness of the penalties prescribed for the offence of enforced disappearance compared to those for other criminal offences under the Criminal Code (see CED/C/AUT/Q/1/Add.1, paras. 19–20). Nevertheless, the Committee is concerned at the gap between the minimum and maximum penalties prescribed for an offence of enforced disappearance, which gives the courts a broad margin of discretion. The Committee also considers that the minimum penalties provided in articles 312b and 321a (3) (5) of the

Criminal Code do not constitute appropriate penalties that take into account the extreme seriousness of enforced disappearance (art. 7).

**13. The Committee encourages the State party to consider adopting legislative measures to reduce the gap between the minimum and maximum penalties for the offence of enforced disappearance, in particular by ensuring that the minimum sentence takes due account of the extreme seriousness of the offence, in line with article 7 of the Convention.**

**3. Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8–15)**

**Statute of limitations**

14. The Committee notes that enforced disappearance constituting a crime against humanity is not subject to any statute of limitation, and it takes into account the explanation provided by the delegation that the current statute of limitations for an offence of enforced disappearance that does not amount to a crime against humanity is comparable to that for other criminal offences under the Criminal Code (art. 8).

**15. The Committee recommends that the State party ensure that, in line with article 8 of the Convention, the statute of limitations stipulates a period of long duration that is proportionate to the extreme seriousness of the offence.**

**Investigations into cases of enforced disappearance**

16. While taking note of the legal provisions of the Code of Criminal Procedure that guarantee prompt investigation of alleged crimes, the Committee shares the concern raised by other human rights treaty bodies (see CAT/C/AUT/CO/6, para. 36, and CCPR/C/AUT/CO/5, para. 21) that, despite the high number of complaints of ill-treatment by public officials, the number of corresponding indictments remains low. The Committee notes with interest the information provided by the delegation that, in 2017, the State party investigated a case of alleged enforced disappearance (arts. 12 and 14–16).

**17. The State party should take the steps necessary to ensure that suspected perpetrators of enforced disappearances are duly tried and, if found guilty, punished in a manner that is commensurate with the gravity of their acts. The Committee encourages the State party to continue its efforts to investigate cases of enforced disappearance that allegedly occurred in foreign countries, including by requesting mutual assistance from the countries concerned.**

**Suspension from duties**

18. While noting the information given by the delegation that public officials are barred from participating in investigations in the event of a conflict of interest, the Committee regrets the absence of information on whether public officials under criminal or disciplinary investigation for allegedly having committed a crime of enforced disappearance are immediately suspended from their duties and remain so throughout the corresponding investigation (art. 12).

**19. In order to strengthen the existing legal framework, and ensure the adequate application of article 12 (4) of the Convention, the Committee recommends that the State party adopt legal provisions that expressly establish the suspension from duties, for the duration of an investigation, of any State agents, civilian or military, who are suspected of having committed an offence of enforced disappearance.**

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

**Non-refoulement**

20. The Committee notes the information provided by the State party on the legislative and other measures taken in the fields of extradition and asylum to ensure respect for the principle of non-refoulement. However, the Committee is concerned that there are no clear

and specific criteria and/or procedures for assessing the risk of the asylum-seeking person being subjected to enforced disappearance upon return. While taking note of the information provided by the State party in its replies to the list of issues (CED/C/AUT/Q/1/Add.1, paras. 48–50), the Committee is concerned that the Federal Government is authorized to adopt an emergency decree in the case of an influx of asylum seekers and that, as a result, special procedures, such as a fast-track asylum procedure at the borders, may be introduced in order to maintain public order. In this regard, the Committee is particularly concerned that the fast-track procedure at the borders may prevent individuals seeking international protection from accessing a fair and efficient asylum procedure. The Committee is also concerned that the Federal Office for Immigration and Asylum is authorized to deny suspensive effect of an appeal brought by persons from countries that are considered safe, and that the Federal Administrative Court has only one week to review such denial of suspensive effect (art. 16).

**21. The Committee recommends that the State party ensure that the principle of non-refoulement enshrined in article 16 (1) of the Convention is strictly observed in all circumstances. To that end, the State party should:**

(a) **Consider explicitly incorporating into its national legislation a prohibition on carrying out an expulsion, return, surrender or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance;**

(b) **Ensure that there are clear and specific criteria and/or procedures for assessing and verifying the risk of a person being subjected to enforced disappearance in the country of destination;**

(c) **Ensure the suspensive effect of appeals against a decision on expulsion, return, surrender or extradition.**

#### **Training on the Convention**

22. The Committee notes with appreciation the information provided by the State party regarding the comprehensive training provided to judges, members of the security forces and prison staff, including on international human rights law. Nevertheless, the Committee notes that no specific training on the relevant provisions of the Convention in terms of its article 23 is currently provided (art. 23).

**23. The Committee recommends that the State party ensure that all law enforcement personnel, whether civil or military, 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 court officials of all ranks, receive appropriate and regular training on the provisions of the Convention, as provided by article 23.**

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

24. The Committee takes note of the position of the State party that the current provisions of the Criminal Code, including sections 302 (misuse of official authority), 195 (child abduction), 223 (forgery of documents), 224 (forgery of documents that are afforded special protection) and 229 (suppression of documents), sufficiently cover the issue of the abduction of minors from the care of their parents. However, the Committee notes with concern that there are no provisions that specifically reflect the acts set out in article 25 (1) of the Convention, and recalls that States parties have an obligation to prevent and punish the acts described in that article (art. 25).

**25. The Committee recommends that the State party review its criminal legislation with a view to incorporating as specific offences the acts described in article 25 (1) of the Convention and provide appropriate penalties that take into account the extreme seriousness of the offences.**

## **D. Dissemination and follow-up**

26. 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 it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when becoming party to the Convention and other relevant international instruments. In this regard, and given its federal nature, the Committee calls on the State party to ensure that the Convention is applied in full at both the federal and the Land levels.

27. 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-based 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.

28. 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.

29. In accordance with the Committee's rules of procedure, the State party should provide, by 1 June 2019 at the latest, information on the implementation of the recommendations contained in paragraphs 15, 21 and 25.

30. Under article 29 (4) of the Convention, the Committee requests the State party to submit, by no later than 1 June 2024, 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 (see 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.

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