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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, paragraph 1, of the Convention (CED/C/ITA/1) at its 277th and 278st meetings (SR.277 and SR.278), held on 8th and 9th April 2019. At its 290th meeting, held on 17 April 2019, it adopted the following concluding observations.

**A. Introduction**

2. The Committee welcomes the report submitted by Italy under article 29, paragraph 1, of the Convention and the information contained in the report. The Committee also appreciates the constructive dialogue with the delegation from 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/R.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 (NMRF), the Inter-ministerial Committee for Human Rights (CIDU – Italian Ministry of Foreign Affairs and International Cooperation), which is internationally recognized as a best practice.

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

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 disappearances was not in full compliance with the obligations incumbent on States that have ratified the Convention. The Committee, therefore, recommends the State party to give due consideration to its concluding observations adopted with a constructive and cooperative spirit with the view to ensure the adequate and full implementation of the Convention.

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\* Adopted by the Committee at its 16<sup>th</sup> session (8-18 April 2019).

### Civil society

6. The Committee takes note that civil society organizations were not involved in the preparation of the initial report of the State party. The Committee also notes the statement by the State party that activities will be organized by the Inter-Ministerial Committee for Human Rights with civil society organizations to provide follow up to 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 (art. 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 the protection against enforced disappearances provided for in the Convention.**

### National Human Rights Institution

10. The Committee also takes note of the measures adopted towards the establishment of a national human rights institution, in particular the draft law under consideration by the Constitutional Affairs Commission of the Senate, since November 2018, following a specialized workshop on the matter organized by the Foreign Affairs Ministry 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).**

### 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 prohibits any derogatory circumstances in the context of enforced disappearance, in line with article 1, paragraph 2) of the Convention (art. 1).

**13. The Committee recommends that the State party adopt a legal provision explicitly affirming that no exceptional circumstances described in article 1 of the Convention may be invoked to justify the offence of enforced disappearance.**

#### Offence of enforced disappearance

14. The Committee notes that the State party considers that enforced disappearance is equally codified by the "crime of kidnapping", referred to in Art. 605 of the Penal Code and, according to the circumstances, and by a number of other criminal offences, such as unlawful arrest, undue limitation of personal liberty, abuse of authority against person put under arrest or detainee. The Committee, however, is concerned that existing domestic legislation, in particular the provisions of the Penal Code, does not reflect the gravity and specificity 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 adopt 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.**

#### **Superior responsibility and adequate penalties**

16. The Committee notes that the State party invokes the application of crime of aggravated kidnapping to the criminal responsibility of a superior in the case of failure to prevent or repress offences of enforced disappearances. However, the provisions of domestic law do not reflect the full scope of the articles 6 and 7 of the Convention. Furthermore, the Committee takes note with concern that the Penal code, in its article 605, provides a span of the duration of conviction from 6 months to 8 years 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 specifically provides for: (a) the criminal responsibility of superiors in public, civilian and military institutions in accordance with article 6 (1) (b) of the Convention; and (b) the prohibition of invoking superior orders or instructions or justify an offence of enforced disappearance in accordance with article 6 (2) of the Convention. The Committee further invites the State party to consider the adoption of necessary measures to ensure a minimum penalty for the crime of enforced disappearance that take due account of the extreme seriousness of the offence, in accordance with article 7 of the Convention.**

#### **Criminal responsibility and judicial cooperation with regard to enforced disappearance (arts. 8-15)**

##### **Statute of limitations**

18. The Committee notes that the domestic legislation foresees that the statute of limitation commences from the moment when the enforced disappearance ceases. The Committee notes the adoption of the Act No.3/2019 that will enter into force on 1 January 2020 and according to which, the statute of limitation 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 such offence is not subject to any statute of limitations.**

##### **Jurisdiction**

20. The Committee notes with concern that the military authorities have to report to both ordinary and military judicial authorities any facts constituting an ex officio prosecutable crime, 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 forces, whose members are suspected of having committed an offence of enforced disappearance be suspended and do not take part in the related investigations.**

##### **Duty to investigate and search for disappeared persons**

22. The Committee takes note that the crime of kidnapping is prosecutable on an ex officio basis and that there are relevant practices established in the judicial offices of the Territorial Public Prosecutors' offices. Furthermore, the Committee takes note of the central role of the High Commissioner for Missing Persons ("Commissario Straordinario per le Persone Scomparse") in the national search framework in the State party. However, the Committee is concerned about reported missing children from reception centres of migrants, 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 practices of investigation in domestic law, in line with articles 10, 11 and 12 of the Convention.**

#### **Mutual assistance and extradition**

24. The Committee takes note of the framework of the State party to ensure judicial cooperation and mutual assistance applicable to cases of enforced disappearances, based on the bilateral agreements and the principle of international courtesy. The Committee also takes note that, in the absence of an international legal basis, the judicial assistance with another State depends on the requirement of dual criminality, which is the case for the crime of enforced disappearance. However, the Committee is concerned about the fact that the Minister of Justice makes the final decision on requests for judicial assistance and extradition. (art. 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 disappearances. The Committee also recommends that the State party actively contribute in strengthening mutual assistance between judicial authorities with a view to facilitating the sharing of information and evidence, searching for and identifying disappeared and missing persons in particular regarding missing migrants. Furthermore, the Committee recommends that the State party to extend the practice of extradition and non-refoulement regarding States members of the European Union, which is to abide to the decisions of judicial authorities, to all States party to the Convention.**

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

#### **Non-refoulement**

26. The Committee takes note 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 European Convention on Human Rights. The Committee also takes note of the revised Legislative Decree 286/98 (Unified Text on Immigration) that prohibits the refoulement of unaccompanied minors. In practice, 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 the lack of international cooperation regarding the missing persons among the migrants in the context of large-scale arrivals by Sea, including regarding the 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 taken the necessary measures, notably to:**

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

## Detention

28. The Committee notes that the National Guarantor for the Rights of Persons Deprived of Liberty (*Garante Nazionale dei diritti delle persone detenute o private della libertà personale*) provides effective oversight on 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. Taking note that the 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 temporary stay of migrants, pursuant to the adoption of the Law Decree 113 in 2018, has not been made public and prevent the Guarantor to visit them. The Committee is also concerned that the detention conditions in centres for migrants might not be in line with article 17 of the Convention (art. 17).

**29. The Committee recommends that the State party immediately release the information about the list of immigration detention centres, provide all the necessary conditions for access of 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 in all centres for migrants.**

## Training

30. The Committee notes the broad extend of trainings in international human rights law and international humanitarian law for civilian and military officials organized in the State party. The Committee notes that there is no specific courses on enforced disappearances, beyond specific education programs on the Convention for personal 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 personal, 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).**

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

### The Definition and the Rights of Victims

32. The Committee is concerned that the definition of a victim in domestic law, including considering the EU Directive on Victims of Crime, is not in line with the definition of victims provided under article 24 of the Convention. The Committee takes note that the State party considers the provisions on reparations provided by the Penal 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 incorporating the full scope of the definition of victim and to ensure the implementation of the right to reparations and the right to truth in line with article 24 of the Convention.**

### Unaccompanied minors (UAMs)

34. The Committee welcomes the adoption by the State party of a specific law, N° 2017/47 on protection measures for unaccompanied foreign minors, including special safeguards, such as the non-refoulement, the 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 under the risk of going missing from reception centres of migrants (art.25).

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

**(a) Ensure that unaccompanied minors are promptly referred to children 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 unless a comprehensive and child-friendly age assessment is undertaken;**

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

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

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

36. The Committee wishes to recall the obligations undertaken by States when ratifying 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 ratifying the Convention and other relevant international instruments.

37. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearances 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 reprisals 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, paragraph 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, by 18 April 2020 at the latest, the State party should provide relevant information on its implementation of the Committee's recommendations, as contained in paragraphs 15 (Offence of enforced disappearance), 33 (Rights of victims) and 35 (Unaccompanied Minors).

40. Under article 29, paragraph 4, of the Convention, the Committee requests the State party to submit, 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 paragraph 39 of the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2). 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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