



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 278th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 9 April 2019, at 10 a.m.

Chair: Ms. Janina

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The meeting was called to order at 10.05 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Italy (continued) (CED/C/ITA/1; CED/C/ITA/Q/1 and CED/C/ITA/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of Italy took places at the Committee table.*
2. **Mr. Pastore** (Italy) said that the two-phase extradition procedure used in Italy, which involved action from both the judicial authorities and the Ministry of Justice, applied only in relation to countries outside the European Union. When the proceedings related to another European Union member State, a European arrest warrant was the instrument used. In such cases, the Ministry of Justice had no role to play except to support the judicial authorities, which cooperated with their counterparts in the other State, in line with the principle of mutual recognition of judicial decisions.
3. **Mr. Teraya** (Country Rapporteur) said that, although the State party had stated in its replies to the list of issues that collective refoulement was not permitted under Italian law in any circumstances, the Committee against Torture had expressed concern in its 2017 concluding observations (CAT/C/ITA/CO/5-6) about “forcible returns of irregular migrants in application of readmission agreements” such as an agreement signed with the Sudanese police authorities in 2016. He would welcome further information on the readmission agreements and their implementation. The State party had repeatedly stated in its replies that the risk of human rights violations was assessed on a case-by-case basis. He would be grateful if the delegation could elaborate on the criteria used for assessing risk and explain whether guidelines existed for identifying victims of enforced disappearance.
4. Given that article 698 of the Criminal Code of Procedure, which set out the circumstances in which extradition must not be granted, made no clear mention of the crime of enforced disappearance, he would welcome more information on how article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance was implemented. Moreover, it would be useful to know whether the State party kept a list of States to which it considered it safe to initiate procedures of expulsion, refoulement, surrender or extradition of persons.
5. Regarding prompt access to legal counsel, he would be interested to know whether sufficient provision was made for interpreters who worked from and into minority languages. The State party should provide further information on the qualification criteria for legal aid, especially the criteria applicable to non-citizens.
6. The Committee against Torture had previously drawn attention to instances in which the regional and local preventive mechanisms’ right of access to places of detention had been questioned by the authorities. The State party should provide more information on what was being done to enable the preventive mechanisms to gain unhindered access to all places of deprivation of liberty, especially immigration centres.
7. According to paragraphs 90, 94 and 98 of the replies to the list of issues, information on detainees’ state of health or cause of death was not recorded in official registers of persons deprived of their liberty. He would therefore appreciate confirmation that article 17 (3) of the Convention was being fully implemented. He would also welcome clarification, in respect of visits to minors deprived of their liberty, of the phrase “other persons to whom they are linked by significant relationships”, as included in paragraph 108 of the replies.
8. **Mr. Baati** (Country Rapporteur) said that the definition of victim provided in paragraph 129 of the replies was not in conformity with the definition set out in article 24 of the Convention. The State party should explain how it would address that shortcoming. He would also like to know how the right to truth, which was fundamental to guaranteeing non-repetition, was ensured.
9. It remained unclear how the right to reparation and compensation was guaranteed to victims of enforced disappearance under Italian law. He wondered whether the State party considered the compensation alluded to in paragraph 163 of its report to be in conformity

with articles 24 (4) and (5) of the Convention. He would also welcome more information on the operation of the Solidarity Fund referred to in paragraph 165 of the report, including the justification for tripling its resources.

10. As the State party had indicated, in paragraph 142 of its replies, that unaccompanied minors could be returned to their country of origin only if they posed a “risk to public order or State security”, he would welcome examples of circumstances that had justified such returns. It would be useful to know how many “extraordinary reception centres for minors” were still operational and what procedures were in place to ensure that minors were safely returned to their families of origin. Lastly, the State party should provide more information on its draft protocol to harmonize rules with regard to the identification of foreign unaccompanied minors.

11. **Mr. Decaux** said that it was essential that the definition of a victim under Italian legislation should be brought into line with the terms of the Convention. Specifically, the scope of the concept of victim as described in paragraphs 130 and 131 of the replies to the list of issues was much too narrow. The Convention provided that a victim was any individual who had suffered harm as the result of an enforced disappearance, and the European Court of Human Rights took a similarly broad view.

12. **Ms. Kolaković-Bojović** said that the State party’s definitions of “victim” and “damaged person” fell short of those in both the Convention and in 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. She would like to hear about the State party’s plans to introduce a significantly broader definition of a victim into its legal system.

13. **Mr. Huhle** said that he would be interested to know whether the State party’s policy for combating trafficking in human beings considered the possibility that victims of that crime might also be victims of enforced disappearance.

14. **The Chair** said that article 16 of the Convention was of critical importance in the current climate, which saw Italy exposed to substantial flows of mixed migration. She would like to know the legal basis for recent decisions to prevent ships such as the *Ubaldo Diciotti* from landing migrants in Italian ports. She also wondered whether there had been any reaction to those decisions from the Italian courts.

The meeting was suspended at 10.30 a.m. and resumed at 10.55 a.m.

15. **Mr. Pastore** (Italy) said that the principle of non-refoulement was enshrined in article 10 of the Constitution. Foreign citizens prevented from exercising their democratic freedoms were entitled to claim asylum under Italian legislation. In accordance with the Code of Criminal Procedure, a person could not be extradited if he or she faced a risk of persecution, discrimination, inhuman, cruel or degrading treatment or punishment, or other violations of their fundamental human rights in the country concerned. Courts denied extradition requests if the requirements for extradition were not met. The risk of enforced disappearance constituted mandatory grounds for the refusal of an extradition request, and could not be offset by other interests.

16. The Court of Appeal and the Court of Cassation assessed the risk of human rights violations on a case-by-case basis. In doing so, they took into account a broad range of sources, including United Nations reports, the decisions of supranational courts and reports by non-governmental organizations such as Amnesty International and Human Rights Watch. Italian jurisprudence recognized the existence of the risk of enforced disappearance, in accordance with article 16 (2) of the Convention. Diplomatic assurances were not taken into account when deciding not to comply with an extradition request owing to the risk of human rights violations. The protections in place for persons subject to an extradition request were further strengthened by the fact that the decision to extradite could be appealed to the Court of Cassation, which had the power to review the facts of the case.

17. Foreign nationals who entered the country illegally could request asylum or international protection on a number of grounds, including risk of enforced disappearance in their country of origin. Requests were submitted to the Territorial Commission for the

Recognition of International Protection, which had branches throughout Italy; its decisions could be challenged through the judicial authorities within 30 days of notification.

18. The main city of each appeal court jurisdiction had a special ad hoc authority, comprising experts in human rights violations, conflicts and other related issues, that dealt with immigration and asylum matters and the free circulation of European citizens. The specialized authorities had established very effective communication networks for sharing information locally, nationally and internationally. Their decisions, which were taken by a panel of three judges, could be appealed before the Court of Cassation within a period of 30 days. Decisions made by the Court of Cassation were final.

19. There was not currently any official safe list of countries for purposes of extradition; however, a ministerial decree on the drafting of such a list was pending approval. The provisions of a legislative decree adopted in 2008 set out the criteria according to which countries may be added to such a safe list, relating not only to human rights legislation but also the effective enforcement thereof. However, asylum seekers were entitled to argue that a country may not be safe in their particular case, even if it appeared on the list. In such circumstances, the principle of non-refoulement would apply.

20. **Ms. Rizzato** (Italy) said, on the issue of collective expulsions, that, in the case of *Khlaifia and others v. Italy*, the Grand Chamber of the European Court of Human Rights had established that the appellants had undergone two identification procedures. It had therefore ruled that no violation of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms had occurred.

21. Defendants had the right to interpretation and translation services at all stages of legal proceedings, free of charge and regardless of the outcome of their case, so that they could understand the charges against them, follow court hearings and communicate with their defence attorney. The judicial authorities established whether a defendant understood Italian and could order translations of documents to facilitate the right to defence and to ensure that defendants understood all texts pertaining to their case, including court verdicts and sentences. Interpreters were appointed even if court or other officials, including police officers, understood the language or dialect spoken by the defendant. There was currently no register of interpreters; relevant information was exchanged among judges to ensure that the most suitable interpreter could be appointed in each case.

22. **Mr. Albano** (Italy) said that the Office of the National Guarantor, the national authority for the rights of persons detained or deprived of liberty, was designated as the national preventive mechanism under the Optional Protocol to the Convention Against Torture; it was fully operational, and the Guarantor had unrestricted access to all places of deprivation of liberty throughout the national territory, including adult and juvenile detention centres and administrative detention facilities, as well as de facto places of detention such as vessels, hotspots and closed harbours. Following each visit, the National Guarantor submitted recommendations to the administrative authorities and, after a period of 30 days, published the findings, including any reply received from the relevant authorities by that deadline. Although the original plan had been to develop a network of local and national guarantors, only the National Guarantor was fully operational at present.

23. In 2018, under a legislative decree on irregular migration, the list of places of temporary detention for migrants awaiting deportation had been expanded to include, in cases where purpose-built repatriation centres were full, “other suitable facilities”. If necessary, and with the authorization of the judicial authorities, migrants awaiting expulsion could be held for up to four days in facilities managed by the law enforcement services and, in certain cases, for a further two days in facilities managed by the border police. A framework for such facilities was being developed by the public administration, based on a generic concept of suitability. Although the National Guarantor had no official information to allow it to map such premises for the purpose of organizing visits, it appeared that the law enforcement services had yet to enforce the new provisions, and a request had been made for an official opinion to be issued on the concept of “suitability”.

24. **Ms. Ciavarella** (Italy) said that Italian and foreign nationals and stateless persons resident in the country had access to free legal aid. Moreover, a recent ministerial decree had lowered the economic eligibility threshold for such aid. Foreign nationals who found it

difficult to obtain proof of their indigent status could draft a declaration to be submitted to the competent authority. The Italian prison service cooperated with associations that provided legal aid to prisoners and made available a list of lawyers who offered free legal services.

25. Prison records were digitized and the electronic platform could be accessed by other law enforcement services, local and regional authorities and the central Government, at any time for purposes of verification. Procedures on the content and handling of personal files were set out in the provisions of the prison regulations.

26. Restrictions on visits applied only in mafia-related cases, where relatives of up to the third degree of kinship could visit prisoners. Other prisoners could receive visits from more distant relatives, of up to the sixth degree of kinship. Given that the Constitution prohibited cruel, inhuman or degrading treatment or punishment and promoted the rehabilitation of prisoners, visits from and phone calls to family members were encouraged, with a view to helping prisoners' reintegration into society.

27. In 2016, a new training department had been established within the prison service to provide initial and in-service training for staff working in juvenile and adult detention facilities and the services dealing with probation and alternative measures. New agents followed a nine-month training course that covered subjects including the provisions of the Constitution, prison regulations and the recommendations of international bodies. Although the Convention was not currently part of the course, it would be introduced into training for new staff and as part of career development courses.

28. **Ms. De Paolis** (Italy) said that military personnel received specific training on human rights and humanitarian protection, including on the Convention. Training was provided at all levels, on an ongoing basis, to ensure compliance with international humanitarian law. The remit of the legal adviser to the military command also included dissemination of information on humanitarian law within the armed forces.

29. **Ms. Rizzato** (Italy) said that, under the provisions of the Code of Criminal Procedure, the definition of a victim covered both the person directly injured by the crime and persons who had suffered physical or mental harm as a consequence of the crime although, in many cases, the two notions could overlap. Both parties were classed as victims under article 24 of the Convention and were entitled to claim reparation. For example, in the case involving the abduction of Abu Omar, both the victim and his spouse had the right to sue for compensation – in the case of the spouse, for material and psychological harm. Thus, family members could also be considered victims, participate in proceedings and instigate civil proceedings to obtain reparation. Finally, in the event of the death of the victim as a consequence of the events, article 90 (3) of the Code of Criminal Procedure extended the status of victim to the person's immediate family.

30. The Code of Criminal Procedure defined aggravating circumstances as including offences against minors and vulnerable persons. Under the provisions of article 90 (quater), the victim's need for specific protection was established at the discretion of the judge not only on the basis of age and physical or psychological disability, but also based on the type of offence and the particular circumstances of the case. Criteria taken into consideration included whether the offence had involved violence or racial hatred, organized crime, terrorism or human trafficking, whether the crime had been committed for the purpose of discrimination, and whether the victim was emotionally or economically dependent on the perpetrator.

31. **Ms. Potito** (Italy) said that any person who had been negatively affected by an offence of enforced disappearance could sue for damages in criminal proceedings, within which the amount of compensation might be determined. If they did not wish to be involved in the criminal trial, such persons could alternatively bring civil proceedings. Any person or body, including a State institution, responsible for the enforced disappearance would be held accountable and be liable to provide compensation. If compensation was not awarded as part of criminal proceedings, Article 2043 of the Civil Code, which recognized the right to compensation for harm suffered and had a very wide scope of application, would apply.

32. In the case of sudden death, close relatives were entitled to compensation. The Court of Cassation had also awarded damages to others who were close to the deceased, such as

same-sex partners. There was no inheritance tax on damages awarded following sudden death. The statute of limitations for civil damages for unlawful actions was five years. However, if there were criminal implications, criminal regulations would be followed. Under a new law, which would enter into force in 2020, the statute of limitations would be suspended after the decision of the court of first instance.

33. The legislation on adoption had been revised and a declaration of adoptability could only be issued following a thorough legal procedure. All parents had the right to legal representation and, if they were unable to pay for such a service, they would be eligible for legal aid. Minors would be assigned a guardian to represent them in the courts if they had a conflict of interest with their parents or their parents were not authorized to exercise parental authority. In the case of the adoption of abandoned minors, whether Italian nationals or unaccompanied migrant children, a special procedure was followed to ensure the abandonment was genuine. A specialized court comprising four judges ruled on the status of abandoned children and their possible adoption.

34. There was no specific legal provision covering the abduction of minors, but various pieces of legislation could be used to address that situation. Act No. 184 of 1983 provided the legal framework for adoption and made it a crime to entrust a minor to a third party or to transfer a minor abroad in violation of adoption legislation. In the event that a minor was not recognized by his or her parents or the parents declined to be included on the birth certificate, a declaration of adoptability was immediately issued. However, mothers had the right to request the suspension of the declaration for up to two months in order to allow them to reconsider their decision. Children who had been adopted following their parents' refusal to recognize them at birth had the right to access information on their biological parents when they reached the age of majority.

35. In the *Ubaldo Diciotti* case, where the Minister of the Interior, Matteo Salvini, had refused the ship's passengers entry to Italy, the judicial authorities had taken immediate action. The courts had ruled that he should be tried for kidnapping and abuse of office. However, for a minister to be tried, the approval of the relevant chamber of parliament was needed. The approval of the Senate was therefore required before Mr. Salvini could be prosecuted.

36. **Ms. Viviano** (Italy) said that the enforced disappearance of a minor constituted an aggravated offence that carried a prison sentence of up to 15 years. The falsification, concealment or destruction of documents attesting to the true identity of a child would incur a prison sentence of up to 10 years. The alteration or concealment of civil status was an offence punishable by up to 10 years' imprisonment. The right of a child to re-establish his or her identity could be exercised by parents, guardians or the Office of the Public Prosecutor, with the aim of ascertaining the child's original civil status.

37. The Government had implemented measures on the basis of the Hague Convention on the Civil Aspects of International Child Abduction and that offence was punishable under the Criminal Code. Any institution or person involved in the international abduction of a child could be prosecuted by the authorities in the State of origin or the State addressed.

38. Unaccompanied minors who had committed an offence came under the jurisdiction of the Department for Juvenile Justice. They would be appointed a guardian by the judicial authorities. A circular had been published in 2013 on the protection of minors seeking asylum. New regulations governing conditions of detention for minors had been approved in 2018, establishing that minors in custody were entitled to eight visits per month, one of which could be on a non-working day, from close friends or relatives. Visits should be no shorter than 60 minutes and no longer than 90 minutes. The regulations also provided for longer visits during which the detainee could share a meal with his or her family.

39. **Mr. Teraya** said that he would like further information regarding whether the national preventive mechanism was effectively implemented in the State party. He was concerned that article 698 of the Code of Criminal Procedure, which was cited in paragraph 60 of the replies to the list of issues, did not cover the constitutional element of the crime of enforced disappearance and therefore may not be effective. He wished to know whether the Government found the concept of a list of "safe countries" to be too inflexible and he would welcome further information regarding the criteria used in that regard, including concrete

examples. Lastly, he would like to know whether there were any plans to strengthen the national preventive mechanism.

40. **Mr. Baati** said that, given the delegation's comments regarding the considerable freedom of judges to interpret the definition of a victim, he would like to emphasize the importance of all judges applying a wide-reaching definition of that word in the context of enforced disappearance. He would also be grateful for a response to his question about the right to truth.

41. With regard to compensation, it was important to draw a distinction between a civil party to proceedings related to the heinous crime of enforced disappearance and a civil party participating in proceedings concerning any other civil or criminal offence. In that connection, he would like the delegation to comment on whether the Abu Omar case was now considered to form part of the State party's case law.

42. **Mr. Huhle** said that he was puzzled by the seeming contradiction between reports in the media and the statements made by the delegation and in the State party's report in respect of refoulement. Some media reports even asserted that the Government was now implementing a policy of returning refugees without any consideration of individual cases, as had allegedly happened the previous year when a ship, the *Asso Ventotto*, which was carrying refugees, had been returned to Libya without any individual cases being assessed, despite the requirements of national legislation. He wished to know whether the judiciary had intervened and if any specific cases had been taken to the higher courts.

43. **Mr. Ayat** said that the definition of a victim given in Italian law did not correspond to the much more extensive and detailed definition provided in article 24 of the Convention; for instance, under the Convention, human rights activists who suffered harm because they were investigating a case of enforced disappearance would be considered as victims and qualify for reparations, even though they were not family members of the disappeared person. Likewise, the definition of reparation was also broader under the provisions of the Convention and included not only the concepts of restitution and rehabilitation but also notions such as the restoration of dignity and reputation and the guarantee of non-repetition. The Government should therefore revise those definitions.

44. **Mr. Pastore** (Italy) said that upholding the right to truth was one of the judiciary's main aims and establishing the facts during a court case contributed towards providing reparation to victims. Under article 91 of the Code of Criminal Procedure, civil society organizations, including organizations that defended persons in detention, could sue for damages in criminal proceedings on behalf of individuals directly affected by an enforced disappearance, not simply to obtain reparation – which might be purely symbolic – but to ensure that the truth was revealed. In that context, human rights activists could also be considered as victims.

45. **Ms. Rizzato** (Italy) said that the definition of a victim in Italian law was broad and therefore not at odds with article 24 of the Convention. Although the law did not differentiate between victims of enforced disappearance and victims of other serious crimes, it did provide for the damage caused by a deprivation of liberty to an individual and to his or her family members. In line with the European Directive on victims' rights, the concept of "family member" included anyone who lived with the person on a permanent basis. An individual harmed directly or indirectly by an enforced disappearance could bring a civil or a criminal case for material and moral damages; that was a fundamental principle of Italian law that was applied consistently by the courts and was not subject to changes in case law.

46. **Ms. Potito** (Italy) said that the courts applied case law on compensation consistently throughout the country, using strict criteria in their calculations. The case law had evolved significantly over the previous 40 years and, in deciding on compensation, judges now took account of moral as well as material harm, with a view to restoring a person's dignity. One aim of sentencing was to ensure that offenders understood the harm they had caused and so, where applicable, probation sentences could include some aspects of reparation.

47. **Mr. Albano** (Italy) said that the National Guarantor, the national preventive mechanism under the Optional Protocol to the Convention against Torture, had conducted meetings and joint training visits with local Guarantors with the aim of building up an

effective network. Parliament had also been requested to legislate to standardize local Guarantors' mandates.

48. The National Guarantor had been able to visit the migrants detained on board the *Ubaldo Diciotti* in August 2018; he had subsequently sent an urgent communication to the Public Prosecutor, noting that it was a situation of de facto deprivation of liberty, in violation of the European Convention on Human Rights and the Italian Constitution. He had also said that the material conditions on board amounted to inhuman and degrading treatment, which also violated the European Convention on Human Rights.

49. **Mr. Teraya** said that he welcomed the State party's move towards establishing a national human rights institution and the prospect of it making the declarations provided for in articles 31 and 32 of the Convention. He recognized that the State party had an array of laws that addressed the crime of enforced disappearance, but wished to remind the delegation that the gravity of the offence warranted its definition in law as an autonomous crime and, in the case of its widespread or systematic practice, as a crime against humanity. He noted that, although civil society and other stakeholders had not been involved in the preparatory stages of the reporting process for the initial report, the delegation had indicated that the system would be reviewed. He hoped, therefore, that civil society and other stakeholders would be included in discussions on the matters raised during the meeting.

50. **Mr. Baati** said that the dialogue, through the points of divergence as well as those on which the Committee and the delegation had agreed, was intended to identify areas in which the State party's implementation of the Convention could be improved. The right to truth went beyond the basic aim of bringing about justice; in making it possible to acknowledge what had happened, it was also an essential aspect of the reconciliation process. Under the Convention, it offered a way of providing redress to victims and recognizing that they had suffered unduly.

51. **Mr. Petri** (Italy), noting that Italy had recognized the competence of other treaty body committees to receive individual communications, said that the delegation would do its utmost to ensure that the option to do so under the Convention was addressed in the near future. There was as yet no independent human rights commission in Italy, but the Inter-ministerial Committee for Human Rights endeavoured to involve civil society in discussions on all areas of human rights, including that of enforced disappearances. It was one of the oldest national mechanisms for reporting and follow-up and had inspired other States to set up similar structures. The delegation appreciated the work of the Committee and the positive atmosphere in which the dialogue had taken place, and undertook to reply to any unanswered questions in writing.

52. **The Chair**, thanking the delegation for its openness and its readiness to address all the questions raised, said that the Convention served a preventive function; she would therefore urge Italy to promote it by becoming a Friend of the Convention, with a view to fighting enforced disappearance worldwide.

The meeting rose at 12.50 p.m.