
Brief on CILD Submission to the Human Rights Committee on Italy

National Human Rights Institution (NHRI)

Italy still does not have an independent National Human Rights Institution (NHRI), which thus prevents it from having a more comprehensive and coherent national strategy to promote and protect human rights.

Make every effort to establish an NHRI that can be given Status A within the UN Human Rights Council.

Same-sex families

Italy still lags behind other European countries when it comes to LGBTQ equality and parental rights for gay couples. A much-awaited civil unions bill for same-sex couples was finally adopted in 2016, but its restrictive adoption provisions for same-sex couples still deny children the legal protection and security they deserve.

Revise Italy's adoption legislation to allow "stepchild adoption" in order to ensure that the best interests of children are the primary consideration in all adoption proceedings.

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— Discrimination, hate speech & the actions of UNAR

The current framework of anti-discrimination law in Italy does not provide for effective means to address and discourage hate speech – a deep-rooted and widespread phenomenon that especially targets Roma, non-citizens and the LGBTQ community. A new law aimed at fighting homophobic discrimination and hate-speech has been stuck in Parliament for more than three years. Furthermore, the work of the National Office Against Racial Discrimination (UNAR) – which de facto extends its mandate to all forms of discrimination – has been considerably limited due to its lack of powers to impose sanctions and its lack of independence.

Adopt the necessary measures to ensure that domestic anti-discrimination legislation prohibits all forms of discrimination, starting by adopting the law on homophobia (DDL C. 245).

Take the necessary measures to guarantee the functioning and independence of the UNAR so that it may implement its activities efficiently and adequately.

— Roma, Sinti and Caminanti rights

The implementation of the National Roma Integration Strategy (NRIS) remains problematic with the segregation and forced evictions of Roma still common practice.

Take immediate and adequate action to cease the systematic practice of forcibly evicting Roma in compliance with the measures required by international human rights law to provide adequate, inclusive and social housing alternatives consistent with the commitments on housing for Roma undertaken by the NRIS.

Take the necessary measures to fully integrate Roma and Sinti communities into society and terminate the practice of segregating camps.

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— Excessive use of force

The use of excessive force by law enforcement officials remains a critical issue. Accountability is a vital element of policing and is still not yet fully ensured in Italy, as not enough measures (i.e., a specific code of conduct and identification tags on the uniforms of law enforcement officers) have been taken to put an end to impunity for police and law enforcement officials involved in the excessive use of force, torture and ill-treatment.

Adopt the Code of Conduct for Law Enforcement Officials and introduce identification tags on the uniforms of law enforcement officers.

— The criminalization of torture

Torture is still not a crime under Italian law despite the fact that the duty to criminally sanction torture is unequivocally stated in various international treaties which Italy has signed and ratified (most notably the 1984 UN Convention against Torture and the 1953 European Convention on Human Rights). This state of affairs has been condemned repeatedly by international human rights bodies and courts, most recently in 2015 by the ECtHR (*Cestaro v. Italy*). After the judgement, the Italian government pledged to finally fill the vacuum as a matter of priority but the draft law has been stuck before the Senate ever since. Presumably in view of the 119th session of the Human Rights Committee, the bill has been scheduled for discussion yet it is quite clear that it will not be voted upon. Thus, the current legislature as well will end without Italy having complied with the CAT.

Incorporate without further delay the crime of torture into the Italian Criminal Code, in line with Art. 1 of the UN Convention against Torture.

— Access to citizenship

Access to citizenship poses a challenge for children born in Italy of third-country

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nationals or who arrived in the country at a young age. A draft reform which would allow for citizenship on the principle of (tempered) jus soli or jus culturae has been stuck for years.

Adopt the draft reform of citizenship law (DDL S. 2092).

— Collective expulsions, principle of non-refoulement and human rights compliance of migration agreements

Italy appears to be continuing with its collective expulsion of migrants to their countries of origin or transit in violation of the principle of non-refoulement. The case of the 48 Sudanese nationals deported from the border town of Ventimiglia to Khartoum in August 2016 has recently been brought to the attention of the European Court of Human Rights and highlights the deep consequences of the externalization of migration policies in terms of human rights violations. Furthermore, there are grave concerns over systematic human rights violations in the context of the “hotspot approach”.

Take all the necessary steps to ensure that bilateral and multilateral agreements on migration guarantee the full respect of human rights as well as strict compliance with the principle of non-refoulement and immediately suspend any bilateral agreement lacking adequate human rights protection.

Establish rigorous monitoring mechanisms, including independent monitoring by international organisations, NGOs, and independent bodies to ensure that the hotspot approach is compatible with legal standards and the rule of law.

— Unaccompanied minors

The number of unaccompanied minors (UAMs) arriving in Italy has risen sharply over the last year and the adoption of proper methods for age assessment is therefore more crucial than ever. In January 2017 the government issued a

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regulation on age assessment for UAMs (D.p.c.m. n. 234/16) but these norms only apply to minors who have been victims of trafficking.

Apply by analogy the age assessment regulation to all UAMs rather than only to those who have been victims of trafficking and review the procedures of age assessment to ensure that the best interests of the child are effectively protected.

— “Illegal immigration” and administrative detention in identification and expulsion centers (CIEs)

Irregular entry into or stays within Italian territory remain criminal offences. Furthermore, the government has recently approved a new emergency decree on immigration¹, now to be converted into law by the Parliament, which extends the system of administrative detention by quadrupling its capacity. The Italian government wants to make CIEs a core element of its immigration management strategy notwithstanding the fact that over the years a plethora of reports – both by institutional bodies and NGOs – have denounced CIEs as inhumane, useless and incredibly expensive.

Abolish the criminal offence of irregular entry into or stay within Italian territory.

Refrain from expanding the system of administrative detention of third-country nationals in CIEs and work instead towards its progressive dismantlement, employing the detention of third-country nationals only in extrema ratio.

¹ On February 10, 2017, the Italian government approved two important law decrees on immigration and security which require specific attention. Among other things, the first one provides for: the transformation of identification and expulsion centres (CIEs) into centres for permanence before repatriation (CPRs) while envisioning a consistent increase in the numbers of immigrant detentions (from the current number of 400 up to 1600); and further strengthening of the obligation of identification with the possibility of detention for those who refuse to be fingerprinted. In addition, the immigration decree eliminates the right of appeal against the refusal of asylum in the first grade. In conclusion, on the one hand the decree puts in place a more repressive regime for irregular immigrants and, on the other, diminishes fundamental guarantees for asylum seekers. The second decree gives mayors new powers for urban security, enabling them to improperly restrict citizens' freedom of movement without proper guarantees. These measures will negatively impact the quality of life of the poor as well as mendicants together with people who have drug problems. The new law thus basically appears to criminalize begging and poverty.

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Put into place rigorous monitoring mechanisms, including independent monitoring by international organisations, NGOs, and independent bodies while guaranteeing the press and NGOs the right to access CIEs in order to ensure transparency.

— Treatment of persons deprived of liberty

While saluting the functioning of the new National Ombudsman on the Rights of the Detainees and Prisoners² – which in its first year of activity has greatly contributed to preventing potential human rights abuses in prisons – criticalities remain with regard to the treatment of persons deprived of their liberty. Italian penitentiary law dates back to 1975 when the prison population was very different (one need only consider that almost no foreigners were detained at that time) and desperately needs to be reformed – but the bill mandating that the Government draft a new penitentiary law is still pending at the Senate. The issue of the rights of foreign detainees and of religious minorities is particularly critical. In addition, pre-trial detention remains widespread (35% of the prison population) and solitary confinement is still in wide use.

Reform penitentiary law. In particular, consider:

- *Guaranteeing specific rules and rights for foreigners*
- *Limiting the use of solitary confinement for adults and banning it altogether for juveniles*

Take further measures in order to reduce the use of pre-trial detention.

² The office of the Ombudsman, which also serves as a National Preventive Mechanism (NPM), was established in 2013 and began to function in 2016. Without any previous notification he or she can visit prisons, immigration centres, psychiatric hospitals and hospices in order to prevent any risk of torture or inhumane or degrading treatment. The Ombudsman is also responsible for monitoring repatriation flights in accordance with a 2008 EU directive. Already within its first months of operation the Ombudsman worked closely with NGOs to identify and solve system criticalities and so far has already greatly contributed to the prevention of potential human rights abuses in prisons. It must additionally be noted that there are no actual concerns over its independence with regard to budget and personnel as the body receives European funds for its competencies in monitoring repatriation flights and its personnel comes not only from the Ministry of Justice but from other public administrations as well.