



**CAT - Convention against Torture and Other Cruel Inhuman or
Degrading Treatment or Punishment
70 Session (09 Nov 2020 - 04 Dec 2020)
Adoption of lists of issues prior to reporting**

**Submission by the Italian Disability Forum - FID
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About the Authors

The **Italian Disability Forum (Forum Italiano sulla Disabilità - FID)** is an Italian not-for-profit organization of persons with disabilities (DPO), a full member of the European Disability Forum (EDF), representing the interests of persons with disabilities in Italy. It is composed exclusively of national organizations of persons with disabilities and their families. It aims to fight for the recognition, promotion, and protection of the human rights of persons with disabilities, as well as for non-discrimination and equal opportunities. Since its establishment, the Italian Disability Forum has participated in all initiatives and activities carried out by EDF.

EXECUTIVE SUMMARY

In Italy, since the beginning of the emergency COVID 19, **the situation of exclusion and abandonment daily faced by person with disabilities was further exacerbated, showing all its rawness and tragedy.**

Three are the main areas in which a serious violation of human rights took place:

- Persons with disabilities confined at home after the closure of Day Centers, Schools, the Community-based services, and Health services without alternative measures
- Persons with disabilities confined in Residential settings
- Persons with disabilities confined at home

The high number of deaths in residential settings, the confinement of persons with disabilities (children, adolescents, the young and the elderly) at home without considering their needs and requirements, the lack of data on the quantity and quality of provisions for the alternative measures (educational, care, health, and assistance) during the "lockdown", the abandonment of 3 million families with one or more persons with disabilities resulting in further neglect and abuse: these elements all contributed to human rights violations that could allegedly amount to "Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".

Moreover, the quarantine further exacerbated gender-based violence and domestic violence towards girls and women, especially those with disabilities, who could not report their situation.

Introduction

The National Guarantor for the rights of persons detained or deprived of liberty (hereinafter NG) has been appointed as **NPM** (National Preventive Mechanism) under **the UN - OPCAT (Optional Protocol to the Convention against Torture)**, ratified by Italy with Law no. 195 of 9 November 2012.

Among the tasks that the Italian State has assigned to the National Guarantor as NPM, there is the monitoring of facilities for the elderly and/or persons with disabilities, under the UN Convention on the Rights of Persons with Disabilities.

This submission with the proposed List of Issues prior to Reporting considers the condition of persons with disabilities during the SARS-COVID-19 pandemic and the compliance of the response actions taken by the government with the CAT. **Recalling Article 1 of the CAT which defines the term "torture", we indeed believe that some of the actions undertaken during the SARS-COVID-19 pandemic amount to "cruel, inhuman or degrading treatment or punishment" of persons with disabilities and older persons placed in Italian social residential settings and health care facilities.**

These actions also violate the obligations set out in the CRPD, ratified by Italy in 2009, in particular in its Articles 3 (General principles), 5 (Equality and non-discrimination), 11 (Risk situations and humanitarian emergencies), 12 (Equal recognition before the law), 15 (Right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment), 25 (Health) and 31 (Statistics and data collection).

The complaint of cruel, inhuman, and degrading treatment of persons with disabilities and the older person concerns various areas of public responsibility for intervention. We summarize them in three main areas: **1) lack of equal access to health care, 2) poor intervention capacity in emergencies and with protection systems, 3) inadequate care of people in long-term residence, and in monitoring the situation.**

1. Lack of equal access to health care

In Italy, the first case of SARS-COV-19 infection was reported on February 21, 2020, when the first victim of the coronavirus died in Lombardy. Since then, a series of government regulations have defined the safety rules to be respected: first of all, the lockdown in one's own home, the quarantine of infected people, the use of personal protective equipment (masks and gloves) and rules of preventive behavior (the physical distance of at least one meter, washing one's hands frequently, avoiding group meetings, etc.).

Hospital admissions, in particular to their intensive care units, were the first urgent response to the peak of contagion, but it was soon clear the shortages of beds and technical equipment for treatment. To tackle these deficiencies, SIAARTI guidelines¹ were issued indicating which patients should be treated first and which should be refused treatment during triage operations. **These Guidelines explicitly discriminate towards persons with disabilities (severe comorbidities, functional status, disability) and older persons (survival probability, life expectancy), excluding them from care interventions.** These Guidelines - although generally opposed by international organizations - have led to behavior that has affected older persons and persons with disabilities², who are often excluded from health treatment necessary to ensure their survival.

2. Poor ability to intervene in emergencies and with protection systems

Recalling the link between CAT art.2.2³ and CRPD Art 11 (Situation of risk and humanitarian emergency)⁴, CAT and CRPD obligations apply during emergencies and require the reformulation of policies and technical and professional interventions, including in the field of humanitarian aid, especially in the presence of a pandemic such as SARS-COVID-19. The United Nations has also issued several documents on humanitarian aid and emergency interventions: *Sendai framework for disaster risk reduction*⁵ (2015) and the *Charter of Istanbul for the inclusion of persons with disabilities in humanitarian action*⁶ (2016). According to the latter, in July 2019 a task team of IASC issued the *Guidelines for the inclusion of persons with disabilities in humanitarian actions*⁷. These documents went beyond the traditional approach to the emergency, based on loss limitation, stressing that the correct approach is to protect the human rights of all, including those of persons with disabilities, fighting negative stigma.

Italy prepared a national plan to combat influenza pandemics in 2010 but did not include any provisions on the protection of persons in long-term care. Being persons with disabilities highly represented in long term residential settings, this meant that they were not included in the protection mechanisms. As a dramatic consequence, up to 40% of persons in residential facilities were infected, and a very high number of deceased. The causes, documented for residences for older persons (mostly with high support needs), point to a lack of intervention (lack of IPD, staff shortages, lack of training for operators, lack of organizational protection arrangements), lack of accessible information for inmates;

¹ <http://www.siaarti.it/SiteAssets/News/COVID19%20-%20documenti%20SIAARTI/SIAARTI%20-%20Covid-19%20-%20Clinical%20Ethics%20Reccomendations.pdf>

² <https://www.superando.it/2020/03/30/le-persone-con-disabilita-e-la-scarsita-di-risorse-mediche/>

³ CAT art. 2.2: *No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability, or any other public emergency, may be invoked as a justification of torture.*

⁴ CRPD art 11: Situation of risk and humanitarian emergencies. *“States Parties shall take, under their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.”*

⁵ See <https://www.unisdr.org/we/coordinate/sendai-framework>.

⁶ See <http://humanitariandisabilitycharter.org/>.

⁷ See: IASC website: <https://interagencystandingcommittee.org/iasc-task-team-inclusion-persons-disabilities-humanitarian-action>.

in some cases, such as in the Lombardy region⁸, measures are taken created outbreaks of infection in the residences themselves, exposing people to violations of human rights and inhuman, cruel and degrading treatment.

3. Inadequate care of long-term residents and monitoring of the situation.

In 2007, one year after the adoption of the CRPD, in a seminar of experts held by the OHCHR on **Freedom from torture and persons with disabilities**⁹, it was considered that the condition of persons segregated in the residences could potentially constitute a breach of CAT Article 1. Again, the lack of controls and procedures to monitor the condition of these persons to ensure the protection of their human rights shows the "*acquiescence of public authorities*" for those cruel, inhuman and degrading treatments that could occur. In the Seminar conclusions: "*torture and cruel, inhuman and degrading treatment of persons with disabilities take place inside the institutions as well as outside the institutions, such as within the family or at the community level*".

The spread of the pandemic in Italy in March and April 2020 exacerbated this condition. The number of hospitalized infected people, the use of intensive therapies, the number of deaths all reached dramatic peaks, with a series of critical elements that highlighted the unpreparedness - later verified also in comparison to other European countries affected by the contagion so much so that WHO Europe declared about half of all coronavirus deaths in Europe had occurred in residences — of the health system and the difficulty of coping with the emergency. In the second half of March, an unimaginable phenomenon became evident: in the residences for older persons and persons with disabilities, first in Lombardy and then in other regions, the epidemic dramatically hit a very high number of patients.

The Istituto Superiore di Sanità (Higher Institute of Health), urged by the Guarantor for persons deprived of their liberty, launched a sample survey of assisted healthcare residences (RSAs) that showed an incredibly high rate of death of hospitalized patients.¹⁰ On 1 February 2020, there were 97521 people present but by 5 May 9154 had died. In a total of 9154 deceased subjects, 680 had tested positive for the swab and 3092 had flu-like symptoms. In summary, 7.4% of the total number of deaths affected residents with a confirmed SARS-CoV-2 infection and 33.8% affected residents with flu-like symptoms. The 33% of these deaths occurred in the short period from 16 to 31 March;

The concerns of the *National Guarantor of the rights of persons detained or deprived of their liberty*¹¹ pushed him to enact as early as 12 March 2020¹² several press releases on an *increased risk of conflicting behavior, mistreatment, or abuse of coercive measures*.

⁸ See consideration on CAT Art.11

⁹ <https://www.ohchr.org/EN/Issues/Disability/Pages/UNStudiesAndReports.aspx>

¹⁰ <https://www.epicentro.iss.it/coronavirus/pdf/sars-cov-2-survey-rsa-rapporto-finale.pdf>

¹¹

<http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/83c265b8b8fadd34332d545d7c915e8c.pdf>

¹² NPM 12th March 2020 Bulletin on COVID19: *Health care home for the elderly (RSA) - Given the limitations provided for in letter q) of the Council of Ministries' decree of 8 March 2020, which provides that "the access of relatives and visitors to home and long-term care facilities, assisted healthcare home (RSA), hospice, rehabilitation and residential structures for the elderly (both self-sufficient and non-self-sufficient), is limited to the cases indicated by the healthcare manager of the structure which is required to take the necessary measures and prevent possible transmissions of the infection", the National Guarantor, while considering the appropriate restrictions in order to prevent the spread of the illness expresses its concern regarding the backlashes that these limitations may have inside the structures for people with disabilities and the elderly, if not properly monitored and controlled. The situation exposes both guests and operators to high stress. This entails an increased risk of conflicting behavior, mistreatment, or abuse of coercive measures. The National Guarantor is studying collaborations and methods of supervising unacceptable behaviors of this type. However, the National Guarantor drew attention on those who work in the social-health and social-welfare sector, recommending to all the Directors of the facilities concerned and to the regional supervising Bodies*

The pandemic has also brought to light further problems that have severely affected persons with disabilities¹³ and their families, from the lack of attention to their rights in the field of rehabilitation and social services, abruptly interrupted by the quarantine, to work in public and private enterprises, where access to permits equivalent to hospital admissions for immune-depressed persons had various bureaucratic obstacles, to school where distance learning severely penalized 284,000 students with disabilities, denying them an education on an equal basis and without discrimination.

ARTICLE 1

For persons with disabilities, there are several links between this Article of CAT and national and international legislation:¹⁴

Italian Law N. 110, July 14th, 2017 *introduction of the crime of torture into its domestic legal framework*¹⁵. This legislation is very new and never applied or considered with persons with disabilities and those with high support needs.

- **Committee on the Rights of Persons with Disabilities, Concluding Observations to Italy**¹⁶
- **Committee on the Elimination of All Forms of Discrimination against Women** *Concluding Observations to Italy*¹⁷
2012 Report of the Special Rapporteur on violence against women on Italy, its causes and consequences, Rashida Manjoo¹⁸ *Mission to Italy. Findings n. 78*¹⁹
- **Council of Europe Convention on preventing and combating violence against women and domestic violence - (Istanbul Convention).** *Grevio Baseline Evaluation Report Italy*²⁰

Violations of Art 1

The government's regulatory measures that have defined the safety rules to be respected, first and foremost lockdown at home, quarantine of infected persons, the use of personal protective

to monitor the structures with utmost attention, given the drastic reduction of the informal control exercised by the external community following restrictions on access.

¹³ EU Equality Commissioner Helena Dalli said that "persons with disabilities have carried a disproportionate burden compared to other European citizens" see: https://ec.europa.eu/commission/commissioners/2019-2024/dalli/announcements/speech-commissioner-dalli-impact-coronavirus-outbreak-persons-disabilities_en.

¹⁴ Italian Constitution art. 32;

¹⁵ This Law introduced the articles 613-bis e 613-ter of the Criminal Code concerning the offenses and torture and incitement of public officials to torture.

"Anyone who, through violence or serious threats, or by acting cruelly, causes acute physical suffering or verifiable psychological trauma to a person deprived of his or her freedom or entrusted to his or her custody, power, supervision, control, care or assistance, or who is in a condition of impaired defense, shall be punished with imprisonment from four to ten years if the act is committed by more than one conduct or if it involves inhuman and degrading treatment for the dignity of the person."

¹⁶ CRPD/C/ITA/CO/1

¹⁷ CEDAW/C/ITA/CO/7

¹⁸ A/HRC/20/16/Add.2

¹⁹ Women with disabilities were, for a long time, seen as passive recipients of assistance. The State, society, and even family members perceived disabled women as invisible at best, a burden at worst. Girls and women with disabilities tend to be less educated due to the stereotypical opinion that considers them as dependent and in need of care. Educating them is therefore considered not only difficult but unnecessary. This perception has at times led to an inferior quality of education and, consequently, employment in subordinate roles despite existing legislative and policy frameworks for the integration of people with disabilities. In terms of health care, discussions with a CSO in Imola working with women with disabilities highlighted the absence of consultation with these women to enable them to make informed and appropriate health and family planning decisions.

²⁰ <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>

equipment (masks and gloves) and rules of preventive behavior (the physical distance of at least one meter, washing hands frequently, avoiding assembly, etc.) **have not taken into account the effects that these measures have had on persons with disabilities or their incapacity to cope with them.**

This has led, throughout the whole lockdown, to the confinement of persons with disabilities (children, adolescents, young and elderly) at home with no reasonable accommodation and deprived of support services (educational, care, health, and assistance), and for the 3 million families that have one or more persons with disabilities, the burden to handle alone the emergency an high risk of total abandonment, neglect, and abuse of persons with disabilities. A clear violation of human rights. A clear behavior to consider as "Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".

After the easing of restrictions and the slow come back to normality, persons with disabilities and older persons living in residential settings are still forced to maintain the lockdown rules. All this currently is resulting in:

- Continuation of isolation from the families, with consequences on mental health in some regions
- Prohibition of care by family members of hospitalized infected persons with disabilities or older persons with consequently forced fasting in some cases, also due to the lack of staff.
- The physical restraint for the so-called "uncooperative" persons, namely persons with intellectual and/or psychosocial disabilities, forced to bed and medication throughout hospitalization

Moreover, in residential settings, several elements cause the same inhuman and cruel treatments.

Slaughters and silent outbreaks

Istituto Basso Cremosini di Pontevico (Brescia) is a private religious institution hosting 320 women with psychosocial disabilities and mental health impairments. At the date of 2020/04/14, in full lockdown 22 residents have died, in only one week, in addition to 70 cases of contagion in the staff, that have reduced the support to guests by two thirds.

In addition to the overcrowding in institutions, the failure of the management and staff to manage the emergency has caused terrible situations of abandonment of residents to their fate.

Coronavirus, the army that "saved" the Troina Oasis.

The IRCCS Oasi Madonna Santissima di Troina in Sicily hosts 160 persons with disabilities. On March 27, 2020, the situation was dramatic with 70 people infected with Covid-19: 45 guests of the department and 25 operators. A huge health machine was set in action thanks to the collaboration of 19 army men, doctors, and military nurses sent on March 29, in the city of Enna, by the Minister of Defence after the appeal of the mayor Fabio Venezia. In the structure, which has become a real powder keg, the COVID cases, now 150 patients and health workers who did not need hospitalization, have been managed autonomously.²¹

²¹

https://palermo.repubblica.it/cronaca/2020/04/18/news/coronavirus_i_militari_che_hanno_salvato_l_oasi_di_troina_torneremo_a_ca_sa_arrichiti_nell_animo_-254368960/

For the issue of the reported “*Clinical Ethics Recommendations for the Allocation of Intensive Care Treatments in exceptional, resource-limited circumstances*” must be reaffirmed that the only approach in medical triage is the clinical one and any approach based on categories (older persons, people with disabilities) would constitute a violation of human rights, on whose respect bioethics is based.

ARTICLE 2

This article linked with CRPD art. 11²² and CRPD art 25.d) and art. 25. f)²³ is the baseline to consider what happened during the outbreak COVID-19 as the exceptional circumstance that may not be invoked as a justification of torture and CIDT. As cited in the introduction, access to health care and health care services concerns various areas of public responsibility for intervention. The reported lack of equal access to health care, poor capacity to intervene in emergencies and with protection systems, inadequate care of people in long-term residence, and in monitoring the situation must be associated with the cruel, inhuman, and degrading treatment of persons with disabilities and older persons.

Violations of Art 2

Despite the obligations arising from the above-mentioned Human Rights Treaties and the various International Agencies, the Italian Government has not taken all the necessary measures to ensure the protection and safety of people with disabilities and older persons in situations of risk such as those caused by the COVID-19 pandemic. On the contrary, philosophies, and strategies close to those of military corps or charitable organizations (Army, Red Cross, etc.) have prevailed, where the approach is based on loss limitation and has also justified the *Triage* approach in situations of natural and human disasters (i.e. the selection of which people should be assisted first) that penalizes people with disabilities.²⁴ Therefore, preventive and operational pandemic risk reduction practices have not been based on multi-risk and multi-sectoral approaches and were inclusive and accessible in terms of efficiency and effectiveness.

In conclusion, the solutions put in place did not take into account persons with disabilities and/or elderly people who were invisible victims of cruel and inhuman treatment or torture.

ARTICLE 5

An Independent National Human Rights Institute, in line with the Paris principles, is lacking in Italy, notwithstanding the reiterated recommendations to Italy by several UN Human Rights Committees (UPR²⁵, ICESCR²⁶, CRPD²⁷, ICCPR²⁸).

²²CRPD Article 11: Situations of risk and humanitarian emergencies. *States Parties shall take, under their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.*

²³ CRPD Article 25 Health: (d) *Require health professionals to provide care of the same quality to persons with disabilities as to others[...]* (f) *Prevent discriminatory denial of health care or health services or food and fluids based on disability.*

²⁴ *Triage* is a French term for "sorting, screening"; it is a system used to select individuals involved in injuries according to increasing urgency/emergency classes, based on the severity of the injuries reported and their clinical picture. Persons with disabilities involved in natural and human disasters are often not given priority assistance even if they have not been injured and are rescued after the others.

²⁵ UPR: A/HRC/28/4 October 2014

²⁶ E/C/12/ITA/CO/5, 28 October 2015

Violation of article 5

Italy is one of the two European States still lacking an independent NHRI, notwithstanding two voluntary pledges in connection with Italy's membership to the UN Human Rights Council and UPR cycles, and innumerable pertaining recommendations by each UN Treaty bodies, ICESCR, CRPD, ICCPR. This gap challenges the promotion and the protection of human rights of persons with disabilities. Also, and unfortunately, it should be pointed out that the latest Law Proposal the n. 1323/2018 contains critical elements that may endanger the autonomy and powers of the current (and only fully independent body) NPM (National Preventive Mechanism) under the UN - OPCAT (Optional Protocol to the Convention against Torture).

The existing bodies for detecting and combating discrimination, the National Office against Racial Discrimination (UNAR)²⁹, the Observatory for protection from discriminatory actions (OSCAD)³⁰, the Inter-Ministerial Committee for Human Rights (CIDU)³¹, as well as the Department for Equal Opportunities at the presidency of the Council of Ministers³², have a very limited scope of prevention of abuses and torture. Moreover, **they are Government's bodies**. As such, **they are not independent bodies**. Finally, **they do not have any specific mandate nor sanctioning power to combat discrimination, inter-sectorial discrimination abuses, and torture**.

The **National Observatory on the Condition of Persons with Disabilities**³³, whilst mentioning the discrimination, the multiple discriminations, the abuses and torture against persons with disabilities, **are not entitled to receive individual or collective complaints, to bring legal proceedings to protect the rights of persons (women or men) with disabilities or to sanction defaulting institutions or public administrations**. Moreover, there is a lack of information on the effectiveness and efficiency of the actions run by the aforementioned bodies in improving the condition of persons with disabilities.

Regarding the lack of equal opportunities assistance to elderly and persons with disabilities, many complaints have been made to the Judiciary by family members who have seen their relatives die from the coronavirus. The Judiciary is currently investigating the responsibilities of policy-makers, public or system-affiliated health care residences officers, and managers.

ARTICLE 10

In its last Concluding Observations to Italy (CAT/C/ITA/CO/5-6), the Committee made as many as 10 comments on the need for staff training as described in Article 10. In the document with *Information received from Italy on the follow-up to the concluding observations*

²⁷ CRPD/C/ITA/CO/1, August 2016

²⁸ CCPR/C/ITA/CO/6, March 2017

²⁹ UNAR-Ufficio Nazionale Anti-discriminazioni Razziali has been set up following the European Directive 2000/43/EC on race and ethnicity, which is described in the Report of the Italian Parliament as "equality body" (2013): <http://www.unar.it/unar/portal/wp-content/uploads/2014/01/Relazione-al-Parlamento-2013.pdf>

³⁰ OSCAD, 'Osservatorio per la Protezione dalle Azioni Discriminatorie

³¹ CIDU, il Comitato Interministeriale per I Diritti Umani

³² Dipartimento per le Pari Opportunità presso il Consiglio dei Ministri

³³ the "Osservatorio Nazionale sulla Condizione delle Persone con Disabilità" has been set-up at the Ministry of employment and social policies to support the Ministry in its function of Focal Point for the implementation of the CRPD. presso il Ministero del Lavoro e delle Politiche Sociali per coadiuvare il suo ruolo di Focal Point della CRPD.

(CAT/C/ITA/CO/5-6/Add.3), the State party answered with a list of programs and initiatives of training. **None of them is dedicated to training staff who are involved in the placement and the custody of disabled and/or elderly people in residential and daily settings.** These training must be aimed at developing ethical, deontological, and professional skills intercepting and avoiding inhuman and cruel behavior.

Violations of article 10

During the “Pandemic Lockdown”, the high number of residents (On average, 74.8 beds per structure have been reported, with a range from 8 to 667 beds)³⁴, the difficulties faced by residential institutions³⁵, the stricter lockdown conditions resulting in abuse, neglect, and violations of human rights by transforming these places into places of detention and confinement. Furthermore, the closure of health services has endangered and is still endangering the health of persons with disabilities who need such services.

In Italy, in a significant number of mental health departments, and in particular in the Psychiatric Diagnosis and Treatment Services, in accredited residences and nursing homes, forced **mechanical restraint³⁶ is a widespread practice**, as denounced also by the National Committee for Bioethics³⁷. The restraint is used also for the elderly in retirement or nursing homes and hospitals as well as for children and adolescents in institutions and residences for persons with disabilities.

If the recovery phase involved the general population for persons with disabilities hosted in the services dedicated to them, the limitations have not ended. The indications issued by the authorities in the case of the reopening of the services were very restrictive and tests to detect any positivity to the virus were administered using procedures that were disrespectful of the dignity of the persons involved.

Finally and recalling all the HR Treaties, in particular the Istanbul Convention, previously mentioned, and regarding the staff training on disability-gender-based violence, it should be noted that this training on the gender approach and the perspective of the protection of human rights towards women and girls with disabilities is still far from being perceived as the proper form of conduct. The cultural attitude of professional in the fields of justice, social services, health-care and public security, that constantly question the credibility of victims of gender-based violence, is even more biased towards complaints submitted by women with disabilities, thus exposing them to double discrimination. This highly impacts their rights to seek justice.

ARTICLE 11

The Judiciary investigates the link between the high number of deaths in the RSA and the regional regulations issued by the Lombardy Region during the COVID-19 emergency.

³⁴ https://www.iss.it/primo-piano/-/asset_publisher/o4oGR9qmyUz9/content/conclusa-l-indagine-sulle-rsa

³⁵ Ibidem : the 1259 residential institutions interviewed, the 77,2% reported a lack of Personal Protective Equipment, the 20,9% reported a lack of information received about procedures to be carried out to contain the infection. The 9,8% reported a lack of fo drugs, 33,8% reported the absence of health care personnel and the 12,5% difficulties in transferring residents affected by COVID-19 to hospital facilities. Finally, 26,2% reported difficulties in isolating residents affected by COVID-19, and 282 indicated the impossibility of having tampons performed.

³⁶ The mechanical restraint is the practice of tying the person under treatment in the health and socio-medical services, to prevent, totally or partially, his voluntary movements, through the use of mechanical means such as laces, ties, straps, cuffs, bodices, braces, servants' tables

³⁷ http://bioetica.governo.it/media/1808/p120_2015_la-contenzione-problemi-bioetici_it.pdf

The Resolutions of the Lombardy Council

The first resolution was D.G.R. XI/2906, March 8, 2020³⁸ - asked the Ats, the territorial health care authorities, to identify in the assisted healthcare residences dedicated to the elderly, autonomous structures to assist COVID 19 low-intensity patients.

The second resolution was the D.G.R. XI/3020³⁹ of 30 March, which guarantees the residence a daily fee of 150 euros, paid by the Region. And the Judiciary is investigating whether some entities may have concealed the absence of the requirements to collect rich funds.

*The third was D.G.R. XI/3018⁴⁰, by which the Council has ordered the prohibition of access to residences for the elderly to family members and given an indication not to transfer over 75 years old to emergency rooms. "In the case of advanced age (over 75 years) and the presence of a situation of previous fragility or more comorbidities - reads the document - it is appropriate that treatment is provided at the same facility, to avoid further risks of worsening due to transport and waiting in the emergency room". On days when hospitals are more saturated, the measure was intended to avoid further inflows of patients. **But many elderly people in nursing homes were left without care and assistance. And in the end, they died.***

Also, the reopening of residential services devoted to persons with disabilities has meant the continuation of segregation. These regional rules, in particular the ones of the Region Lombardy, have put in place measures as restrictive as the emergency itself. Prohibition of visits by family members, the prohibition of activities outside the facilities, prohibition of new access to these services.

In mid-July, the National Guarantor of the rights of persons detained or deprived of their liberty began a dialogue with all the Presidents of the Regions to ensure that any situation of confinement of persons with disabilities in residential facilities does not continue. A letter was sent by the Guarantor to the Presidents of the Regions themselves⁴¹, aimed precisely "to solicit a check, or where necessary a revision, on the correct application of the new rules defining the modalities of contact between the guests of the facilities of the residences for elderly or disabled people and their loved ones".

It is also necessary to give a clear description of the health care residences (in Italy hosts old persons and persons with disabilities) that have had so many deaths. In the aforementioned Survey of the Higher Institute of Health⁴², on February 1st, 2020 the residents were 97.521 with an average of 74,8 beds per structure with a range from 8 to 667 beds. Between February 1st and the date of completion of the questionnaire (26 March-5 May), a total of 3772 residents died because of Covid-

³⁸, <https://www.regione.lombardia.it/wps/wcm/connect/5e0deec4-caca-409c-825b-25f781d8756c/DGR+2906+8+marzo+2020.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-5e0deec4-caca-409c-825b-25f781d8756c-n7b410B>

³⁹ <https://www.ats-brianza.it/images/coronavirus/delibera%203020.pdf>

⁴⁰ https://www.sicp.it/wp-content/uploads/2020/04/DGR-3018-Lombardia_gestione-emergenza-covid-in-RSA-e-RSD_30-mar-20_cprd.pdf. This Resolution includes 21 pages of annexes:

Annex 1: Guidelines for the operational management of guests, individual protection for staff and clinical management of possible COVID-19 cases for RSAs and RSDs (from page 6)

Annex 2: Triage form for visitor acceptance (from page 9)

Annex 3: OLT prescription guidelines for saturating (from page 18)

Annex 4: Terminal sedation protocol/palliative sedation (ST/SP)

⁴¹ http://www.garantenazionaleprivatiliberta.it/gnpl/it/dettaglio_contenuto.page?contentId=CNG9172&modelId=10021

⁴² https://www.iss.it/primo-piano/-/asset_publisher/o4oGR9qmvUz9/content/conclusa-l-indagine-sulle-rsa

19. The highest percentage of deaths, out of the total number reported, was recorded in Lombardy (41.4%), Piedmont (18.1%) and Veneto (12.4%).

All this stated, during the “Pandemic Lockdown”, the high number of residents, the difficulties faced by residential institutions⁴³, the stricter lockdown conditions resulted in abuse, neglect, and violations of human rights by transforming these places into places of detention and confinement.

Another area of clear violation of human rights and risk of torture, cruel and inhuman treatment in the area related to school, community-based services, and home services for persons with disabilities.

The Coordinamento Nazionale Famiglie con disabilità (National Coordination of Families with disabilities) published an internal survey⁴⁴ at the beginning of July, stating that:

School -284.000 pupils and students with disabilities stayed at home without appropriate alternative educational mode. Alternative services to the closure of schools and day centers have not been activated. **45% of pupils and students with disabilities did not receive any remote school support (online distance learning), and 35% only one to three times a week.**

Persons with disabilities confined at home. Persons, boys and girls, young people, and adults with disabilities in a situation of high dependence on life-saving devices, including the need for technical assistance to keep the life-saving devices alive. Many of their assistants have not shown up at home or have disappeared, those who remain are imprisoned with their patients. The same Coordination **reported that 65% of the interviewed complains about the absence of services such as physiotherapy, speech therapy, nurses, educators.**

Persons at home after the Day Center closure. At the beginning of the lockdown, two weeks it took authorities to understand that the closure of the Day Care Centres was indispensable because in such services there is no social distance, no individual protection and the fact that these persons with disabilities, due to their characteristics, are not able to perform the measures indicated by the competent authorities. Closing the Day Centers and everyone at home, as if the house - when there is one - is a place of protection and not further damage. Everyone at home without any home support to those parents, usually the mother, who may be working, who may be elderly, who may be themselves sick with comings and goings of contagion lines. **The 64,2% of interviewed reported a total lack of contact with Day Center staff, 25,7 only one to two times a week.**

Women and girls with disabilities, but also mothers with disabilities, have been left behind by the government. As a consequence, women and girls with disabilities faced a rise in domestic violence with almost no way to report their situation.

⁴³ Ibidem : the 1259 residential institutions interviewed, the 77,2% reported a lack of Personal Protective Equipment, the 20,9% reported a lack of information received about procedures to be carried out to contain the infection. The 9,8% reported a lack of drugs, 33,8% reported the absence of health care personnel and the 12,5% difficulties in transferring residents affected by COVID-19 to hospital facilities. Finally, 26,2% reported difficulties in isolating residents affected by COVID-19, and 282 indicated the impossibility of having tampons performed.

⁴⁴ Corriere della Sera. Buone notizie. 7th July 2020

*The Court of Milan stated, at the end of May, **60% fewer** reports of violence than in the previous period.*

*The PINK PHONE - 1522 calls "**decreased by 55.1%** during coronavirus emergency.*

*ANTI-VIOLENCE CENTRES - Mangiagalli di Milano reported **50% less access** to the center than in the previous period. The data collected are not disaggregated by disability.*

*This also underlines the problem of assisting minors victims of violence and forced to live with their families due to lockdown. In fact, from 10 March to 31 May, the **Juvenile Court** in Milan **doubled** its protective measures for minors. There are no data on the disability of these victims.*

Proposal for List of Issues

- What measures have been taken to consult with persons with disabilities and their representative organizations on the measures needed to respond to the pandemic, and what measures are foreseen to consult them in the future?.
- Please provide information regarding the strategy, including a timeframe, to conclude the process of creation of a National Human Rights Institution, with a broad human rights mandate and under the Paris Principles?
- What measures have been taken to ensure that the COVID-related deaths in the assisted healthcare residences and residences for persons with disabilities will not occur again?
- Which are the measures in place to start the investigation of what happened in the residences for persons with disabilities?
- Provide an official and detailed report on what has happened in the assisted healthcare residences and the residences for persons with disabilities
- What compensation can be envisaged for persons who have died in residences due to a lack of protection?
- Which amendments to Law 110/2017 are envisaged to cover cruel, inhuman, and degrading treatment in residential settings for elderly and persons with disabilities?
- Please provide information on any steps taken to include operators of residences dedicated to disabled and elderly people. Doctors and nurses, educators and assistants as recipients of training programs on the rights of persons with disabilities and older persons