

ITALY



*Ministero degli Affari Esteri
e della Cooperazione Internazionale*

*Inter-ministerial Committee for Human Rights
Comitato Interministeriale per i Diritti Umani*

**Address by Hon. Gennaro Migliore,
Under-Secretary of State for Justice Affairs,
On The Fifth and Sixth Periodic
Reports of Italy
Relating to the UN Convention against
Torture and Other Cruel, Inhuman or
Degrading Treatment or Punishment,
(UN CAT Committee)**

Geneva, November 14, 2017

*Mr. Chairperson,
Distinguished members of the Committee, Ladies and
Gentlemen,*

I am sincerely honoured to address today, on behalf of the Italian Government, the UN CAT Committee.

Over the last years - and most notably, from 2014 onwards -, the Italian Government has made a profound change in the policies and measures concerning the protection of the fundamental rights of persons detained and, more generally, in countering any possible inhuman or degrading situation or treatment - as can be inferred also from our last national report.

A concrete line of discontinuity with the past has been marked by the current Government, to the extent that we can state that many of the verdicts, condemning Italy by the Strasbourg Court and, more generally, at an international level, about cases that did not occur in the recent past, would not have been released if, at that time, laws and measures which have been adopted more recently, in particular over the last two years, had been already in force.

We highlight that the crime of torture has been introduced by Act No.110/2017, in the Italian Penal Code (Article 613-bis), jointly with the crime of incitement to torture by public officials (Article 613-ter). Despite the long and complex parliamentary process, we have been able to get the text passed by both Houses of the Parliament, and we are pleased that this Act has entered into force since it marks significant progress.

Mr. Chairperson,

We are aware that the Act just approved by the Parliament may be subject to criticism - and we are here today to thoroughly answer all questions that will be put forward to us. However, we are particularly pleased to have finally closed an unacceptable legal gap.

More importantly, we do acknowledge that there is room to improve the above Law by a period of monitoring and verification of its implementation, if necessary. The task is now in the hands of the jurisprudence.

We are, therefore, available to listen to any suggestions or criticism that will come from this august Committee, since we are aware that each system put in place by the State – be it of a normative

or an administrative nature – can be improved; and we certainly do not claim to be perfect.

Mr. Chairperson,

With regard to the establishment of a National Human Rights Institution in accordance with the Paris Principles, an important debate has taken place at all relevant levels; and a specific draft legislation is debated particularly within the Constitutional Affairs Commission of the Senate of Italy. Against this background, allow me to recall that the Italian National Preventive Mechanism (NPM) with a full-fledged independent mandate has been in place since January 2016.

Mr. Chairperson,

Indeed I would like to reiterate and highlight the profound change that has taken place in the Country's policies over the last three or four years. However, given the limited time at my disposal today, I will briefly touch upon some meaningful issues - since the submission of our 2015 national report:

At a legislative level, it is worthy of mention Act No. 103/2017, entitled "Changes to the Criminal Code, the Code of Criminal Procedure, and the Penitentiary Act (*Ordinamento Penitenziario*)", the novelties of which include, inter alia, as follows:

(a) Possibility to extinguish the offense by means of a redress-type conduct; (b) Modification of the procedural rules for certain offenses; c) Extension of the rights of the injured party; d) Clear timelines to conclude preliminary investigations by the Public Prosecutor; and amendment to the statute of limitation-related legislation, specifically by suspending the statute of the limitation period for eighteen months after the first instance decision and for eighteen more months after the second instance one (the amendment applies to offenses committed after the entry into force of the law under reference); a delayed statute of limitation regime applies for offenses committed against children, meaning that the statute of limitation starts from when the victim comes of age; e) Rise in the use of the financial penalty replacing the detention - with the possibility of reducing the fine, in light of the economic situation of the defendant; f) Reform of the Penitentiary Act, by delegation entrusted to the Government, to be implemented by decrees aimed at: simplifying procedures before the oversight magistrate; facilitating the use of alternative measures; eliminating foreclosures for the access to penitentiary-related benefits; promoting reparative justice further; increasing access to labour for detainees within and outside prison facilities; valuing volunteering; recognition of what we define “the right to

affectivity” (including easier access to spouses and children, family events, and so forth) and other constitutionally guaranteed rights ensuring the dignity of the person detained; f) Concrete implementation of the re-education purpose of the penalty.

As of September 2017, Italy’s prison population amounted to 57,551 units: a figure which is still higher than the regular prisons capacity, but far below the numbers recorded in 2013, when that population amounted to 65,070 units.

By the Ministry of Justice's Regulation that re-organized the Ministry itself (DPCM No.84/2015), the number of persons admitted to alternative measures has risen from 26,000 in 2011 to about 45,300, of whom approx. 10,000 on probation, as of late September 2017. A similar steady and uninterrupted trend must be stressed also within the juvenile system, under which: the success rate of probation nears 80% - and thus the detention penalty results in a residual measure; there are currently 462 underage detainees; and the juveniles conflicting with law fall within the juvenile system, up to the age of 24.

Mr. Chairperson,

By implementing various international agreements, the Ministry of Justice has increased the

number of detainees transferred abroad: from 590 in the year 2016 to 445 as of 11 September 2017, to whom to add 548 more detainees expelled following an alternative measure to detention.

As a strategic objective for the treatment of detainees, we have made the right to work of detainees effective. This opportunity has also emerged following the so-called "General States of the enforcement of the sentence (*Stati generali della esecuzione della pena*)" that, in a multidisciplinary and multi-stakeholder approach, elaborated proposals, presented before the President of the Republic and now available on the website of the Ministry of Justice.

As of June 30, 2017, 15,307 detainees have been admitted to work within the prison facilities, and 2,295 more are those detainees hired by other entities. The Ministry of Justice has been also adjusting the salary of detainees, for the first time, since 1993, with an average increase of over 80%.

Moreover, by recent Regulation (DPR No. 102/2017) we have profoundly reformed the structure and tasks of *Cassa delle Ammende* (Fines-related Fund), by which to finance *inter alia*: a) programs for the reintegration of prisoners; b) educational, cultural

and recreational activities, including for, among others, foreign detainees; c) projects to renovate detention facilities; (d) restorative justice programs for victims of crime.

At the outset of 2017, we have finally closed down all Judicial Psychiatric Hospitals (in Italian, OPG), which have been then replaced by REMS (standing for Facilities for the implementation of security measures) where each internee from the former OPG is now taken charge by regional Authorities through Local Health-care Departments (in Italian, *ASL*), with an individualised and therapeutic rehabilitation program. In parallel, the latter run specific Units, devoted to mental health-care within the prison circuit, to be eventually set up nationwide. We are also testing telemedicine, which envisages, inter alia, the adoption of a computerized clinical diary. Furthermore the Unified State-Region Conference approved the Plan to Prevent Suicide in Prisons in July 2017. The above Conference also approved, on 26 October 2017, the Plan To Prevent Self-harm and Suicide Prevention at Juvenile Detention Facilities.

Last, in the field of affectivity, a series of measures to support relationships and parenthood has been adopted, including, as a way of example, new

ICAMs - Attenuated Custody Institutes for Mothers Detained.

Mr. Chairperson,

With regard to large migratory flows, we do stress that migrations cannot be considered of a transitional or temporary nature and require a multilevel strategy. Italy has demonstrated its ability to deal with this emergency, which is mainly caused by conflicts, economic unbalances, climate change.

We reiterate the need to adopt a collective approach and to work both at the national and EU levels, with countries of origin and transit, to manage migration flows and to address their root-causes.

Mr. Chairperson,

The Government recently signed an agreement with Libya, to build up cooperation on economic and social development and tackling irregular migration, thus contributing to the stabilization and reconciliation process in Libya. The agreement, praised by the EU, envisages, inter alia, an Italian-Libyan Joint Committee and Italian training to Libyan personnel, to act against migration smuggling and trafficking in human beings (THB). Moreover the European Commission approved an Italian project for support to integrated border and migration

management in Libya, to be co-funded by the EU under the Emergency Trust Fund, which also foresees synergies and complementarity with IOM and UNHCR actions, on-going or planned in Libya.

Mr. Chairperson,

Allow me to recall that in 2016, Italy ranked third among OECD countries, with 123,000 asylum applications.

Against this background, I would like to recall the recent Law-Decree No. 13/2017 (converted by Act No. 46/2017), to speed up proceedings in the field of international protection. It aims at, inter alia: 1) Closing down Expulsion and Identification Centres; 2) Setting up small PRCs (Repatriation Centres), across the country; 3) Ensuring full access for the National Authority for the protection of persons deprived of liberty (NPM); 4) Reducing the duration of the asylum-related proceedings, including by recruiting 250 experts in the field of international protection, to be employed in the Territorial Commissions; 5) Closer links between these Commissions and judicial Authorities by establishing in each District tribunal, highly specialized judicial sections on asylum, immigration, and statelessness.

Mr. Chairperson,

The above Act also expressly envisages the establishment of the Hotspots (*Punti di crisi*), in line with the EU rules, and regulates all operations and activities to be carried out therein, thus overcoming the criticism about their legal uncertainty.

Mr. Chairperson,

Indeed Italy has been recording steady increase in migratory flows over last years. From 2015 onwards, the overall system has been re-designed by Legislative Decree No.142/2015, by which we have transposed the main provisions of the common European system on Asylum.

Within this framework, I would like to mention, inter alia, as follows: 1) The strengthening of the SPRAR system (standing for System of Protection of Asylum-Seekers and Refugees), namely the so-called second level of reception; 2) The establishment of the reception system for unaccompanied foreign minors (acronym UAMs), thanks to dedicated programs and an ad hoc structure at the Ministry of the Interior; 3) Awareness of the need for structural interventions to address specific vulnerabilities, particularly victims of THB, especially women and children; 4) Testing initiatives with the involvement of international protection applicants, in volunteering projects; 5) The adoption, between 2016-late September 2017, of a

National Widespread Reception Plan and of the first National Integration Plan, respectively.

Mr. Chairperson,

As for unaccompanied minors (UAMs), they are at the core of the current reception system given the steady increase in their arrivals after undertaking perilous journeys, besides often experiencing violence, threats, and even death. 12,360 UAMs landed in Italy in 2015, a figure being more than doubled in 2016, with 25,846 UAMs; and 13,867 more children as of 30 September 2017.

Mr. Chairperson,

In accordance with domestic legislation, including the very recent Act No. 47/2017 of April 2017 - which I am honoured to recall here today -, an unaccompanied minor is a foreigner under the age of 18 who is for whatsoever reason within the territory of the State, without any assistance or legal representation. The forced return of a foreigner under the age of eighteen is forbidden.

Moreover, to ensure specific protection to unaccompanied minors (UAMs), who are victims of trafficking, the above Act envisages, inter alia, an ad hoc aid program, which will ensure long-term solutions beyond the coming of age.

With regard to the identification and age assessment procedure for foreign unaccompanied minors, to harmonize the relevant procedural rules nationwide a draft protocol is currently being finalized.

Mr. Chairperson,

The first National Action Plan against Trafficking and Severe Exploitation of Human Beings (2016-2018) was adopted by the Council of Ministers on 26 February 2016, in line with Legislative Decree No 24/2014 (transposing Directive 2011/36/EU). The Plan aims at identifying multiannual intervention strategies for the prevention and fight against these phenomena, as well as measures aimed at increasing public awareness, social prevention, emergence, and social integration of victims.

Mr. Chairperson

Allow me to stress the specific commitment of Italian Authorities to ensuring adequate human rights training for all law enforcement agencies and the judiciary. The Ministry of Justice set up in 2015 a General Directorate of Training at the Penitentiary Administration Department. The latter envisages integrated training formulas for the whole staff of the penitentiary administration, as well as for the juvenile and community justice service.

Allow me also to stress that permanent lifelong training remains a key issue for all law enforcement agencies. In this regard *Carabinieri Corps* and *Guardia di Finanza* have been developing specific activities, including e-learning courses. Moreover, OSCAD¹ has trained as of October 30, 2017, about 10.000 units in the area of its mandate under which to mention modules on discriminatory racial profiling; LGBTI people's rights and Police activities; and human rights. The latter is carried out in cooperation with Amnesty International-Italy. Moreover OSCAD core teaching areas are included within the in-service training intended for the whole State Police staff.

Within this framework, the Superior School for the Judiciary has been dedicating specific refresher courses to human rights, including non-discrimination and gender-based violence, by specific focus on CEDAW Convention and the obligations thereto.

Mr. Chairperson,

According to our National Institute of Statistics² survey-2015, about 6.800,000 women have been victims of some forms of violence, either physical or sexual, during their lifetime. Foreign

¹ Observatory for Security against Acts of Discrimination.

² In Italian, ISTAT.

women are victims of sexual or physical violence on a scale similar to Italian women's.

On a positive note, compared to the previous survey-2006, sexual and physical violence cases against women have decreased. This is the result of increased awareness of existing protection tools, in addition to an overall social climate of condemnation and no mercy for such crimes.

Mr. Chairperson,

I wish to recall the adoption, last January, of the Decrees implementing the 2016 legislation on civil unions for same sex couples. Among relevant provisions, foreigners from countries where sexual orientation is a ground of discrimination and homosexuality falls within criminal conducts, the only requirement is a certificate of non-marital civil status.

Allow me also to recall that very recently, the first same sex union took place in the Rome's prison of Rebibbia: this reinforces and testifies our commitment to "the right to affectivity".

Mr. Chairperson,

In conclusion, since the presentation of our previous report, Changes – to paraphrase UN Secretary General reporting - have taken place, both

globally and domestically. New Challenges are irreversibly impacting on our daily life. Nevertheless, Italy stands firm and firmly believes that demand for greater security does not mean shrinking inner freedoms or personal liberty. Aware that much more work remains to be done, it is essential to guarantee fundamental rights for all, including welfare and protection against all forms of torture, violence, and multiple and intersecting discrimination.

I thank you for your attention.