



Comitato per la promozione e protezione dei diritti umani

SUBMISSION OF INFORMATION

To the UNITED NATIONS

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

80th Session

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IN CONNECTION WITH THE CONSIDERATION OF

THE SIXTEENTH -EIGHTEENTH CONSOLIDATED PERIODIC REPORTS OF

ITALY

Rome, February 2012

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PRESENTATION

of the

Comitato per la promozione e protezione dei diritti umani

Committee for the Promotion and Protection of Human Rights

Established in 2002, the Comitato per la Promozione e Protezione dei Diritti Umani, is a network of 86 Italian nongovernmental organizations working in the field of human rights promotion and protection, with the aim of establishing in Italy an national independent human rights institution (NHRI) in compliance with Paris Principles and international standards.

In 2008 the *Comitato* participated in the 72nd CERD Session in connection with the consideration of the 14th and 15th Periodic Reports of Italy, in Geneva, in joint elaboration with the Gruppo di Lavoro for the CRC with three Submissions of Information.

During 2010 the *Comitato* participated in the Human Rights Council UPR-Universal Periodic Review of Italy, in Geneva.

Member organizations: A.Ge., Agedo, Agenzia della Pace, Agesci. Anfaa , Anolf, Antigone, Archivio Disarmo , Archivio Immigrazione , Arci, Arcigay, Articolo 21, Asgi-Associazione Studi Giuridici sull'immigrazione, Associazione Campanari d'Arrone, Associazione Eleonora Pimentel, Associazione Astro Nascente, Assopace, Associazione Senza Confini, Atd-Quarto Mondo, Auci, Auser , Banca Etica, Be Free, Casa dei Diritti Sociali, Cgil, Chiamalafrika, Ciai, Cipax, Cipsi - Coordinamento di Iniziative Popolari di Solidarietà Internazionale , Cir-Consiglio Italiano Rifugiati, Cisl Dipartimento Politiche Migratorie, Cismai , Cisp-Comitato Internazionale Sviluppo dei Popoli, Cittadinanzattiva, Cnd – Consiglio Nazionale sulla Disabilità, Comitato per i Diritti Umani , Comitato Singh Mohinder, Donne in Nero, Ema, Federazione Chiese Evangeliche, Fondazione Centro Astalli, Fondazione Internazionale Don Luigi Di Liegro, Fondazione Basso-Sezione Internazionale, Fondazione Labos, Fvgs, Giovani per un Mondo Unito, Gruppo Martin Buber, Ics-Consorzio Italiano di Solidarietà , Iismas-Istituto Internazionale Scienze Mediche Antropologiche e Sociali, Ims –International Medicine Society, Intersos, Intervita, Irma, Istituto Cooperazione Economica Internazionale, Istituto di Medicina del Soccorso, Laboratorio Diritti Umani, La Gabbianella, Law-Legal Aid Worldwide, Legambiente, Lega Internazionale per i Diritti e la Liberazione dei Popoli, Libera, Med.Ea, Medici contro la Tortura, Medici per i Diritti Umani, Movimondo, Oltre Babele, Paxchristi, Ponte Della Memoria , Pro.Do.C.S., Progetto Continenti, Rete Educare ai Diritti Umani, Save the Children, Terre Des Hommes, Ubi Minor , Udi-Unione Donne In Italia, Uil, Unicef Italia, Unione Forense per la Tutela dei Diritti Dell'uomo, Units, Vides Internazionale, Vis-Volontariato Internazionale per lo Sviluppo, Wilpf-Women's International League for Peace and Freedom, *and with the collaboration* of Amnesty International, Focsiv, Mani Tese, Medici Senza Frontiere

SUBMISSION OF INFORMATION

ICERD, art. 2

With reference to the Concluding Observations of the Committee on the Elimination of Racial Discrimination, ITALY, in connection with the consideration of the fourteenth and fifteenth periodic reports of Italy (CERD/C/ITA/CO/15, 16th May 2008, C. Concerns and recommendations no. 13: “...recommends that the State party undertake, in consultation with a broad base of civil society representatives and with the support of the Office of the United Nations High Commissioner for Human Rights, the necessary steps to proceed with the establishment of an independent national human rights institution in accordance with the Paris Principles 1991.”

and in consideration of the extreme importance that the NHRI would cover for the promotion and protection of all human rights recognized by the ICERD,

We would like to submit the following information on the

ESTABLISHMENT OF AN INDEPENDENT NATIONAL HUMAN RIGHTS INSTITUTION

Italy is still one of the few States (www.nhri.net), lacking an independent national human rights institution for, not fulfilling Paris Principles and Resolution 48/134 endorsed by the UN General Assembly on December 20, 1993, in addition to the Resolution of the Council of Europe (97)11 of September 30, 1997 and all specific pertaining recommendations made by each UN treaty body that have examined the Italian context in the last decade (CRC/C/15/Add198 of March 18, 2003; CESCR/ ITA/ 04 of November 26, 2004; CCPR/C/ITA/CO/05 of November 2, 2005; CEDAW, 2005 A/60/38(SUPP); CAT/C/ITA/CO/4 of May 18, 2007, CERD/C/ITA/CO/15 of May 16, 2008) and made by the UPR A/HRC/14/4/Add.1 of May 2010.

The Italian delay has no justification. The Italian Government, on May 8, 2007, while filing for its first membership to the new UN Human Rights Council for the following three years (Italy was elected for the term 2007-2010) formally committed itself in front of the UN General Assembly to “...create the National Independent Commission for the Promotion and Protection of Human Rights and Fundamental Freedom...s”.

However, disregarded this official engagement, the Italian Government, in 2011, reapplied for a second term to the Human Rights Council and, in its Voluntary Pledge, in front of the UN General Assembly, renewed the commitment to “create the National Independent Commission for the Promotion and Protection of Human Rights in accordance with Paris Principles...” during its second mandate to the new UN Human Rights Council: 2011-2014 (elected on May 20, 2011, formally took over on June 19).

We would like to recall some reasons for which Italy has an urgent need for a NHRI, independent and effective:

- risk for proliferation and fragmentation of sectorial and local mechanisms;
- lack for a coherent, integrated and effective strategy also with regard to a permanent preventive approach;
- added value and advantage deriving from the experience and best practices of many other countries.

The road map towards a NHRI in Italy has been long and suffered.

- Only during XIV Legislature, in 2004 - after a Draft Bill prepared in 2002 by the experts of our *Comitato* in 2002, launched and proposed to various parliamentarians - **Draft Bill no. 3300**, "Istituzione della Commissione italiana per la promozione e la tutela dei diritti umani in attuazione alla Risoluzione n. 48/134 dell'Assemblea Generale delle Nazioni Unite del 20 dicembre 1993" (*Creation of the Italian Commission for the promotion and protection of human rights as per Resolution n. 48/134 UN General Assembly of December 20, 1993*), was presented to the Senate, but never started its legislative *iter* for discussion. Notwithstanding specific UN Recommendations (2.11.2005; 26.11.2004; 18.3.2003) and pressure of the civil society, the Bill was not even assigned to the competent Parliament Commissions.
- In June 2006, at the XV legislature, the **Draft Bill no. 247** was again presented to the Senate, and assigned to the Constitutional Affairs Commission and Justice Commission. The Draft Bill was also presented to the Chamber of Deputies, first undersigner Hon. Tana de Zulueta.
At the same time our *Comitato*, in collaboration with the National Institutions Unit of the Office of the High Commissioner for Human Rights of the United Nations, co-organized in Rome an International Workshop with a high institutional profile and the participation of a delegation from the United Nations, institutional representatives, parliamentarians, academic experts, media and representatives of the civil society.
- Finally in 2007, also under the impact of this workshop, the Draft Bill was reformulated and approved with no. **1463**: "Commissione Nazionale per la promozione e la protezione dei diritti umani e la tutela dei diritti delle persone detenute o private della libertà personale" (*National Commission for the Promotion and Protection of Human Rights and the Safeguard of the Rights of Detainees and Person Deprived of Their Personal Liberty*), resulting from the unification of the Draft Bills presented by the 9 parliamentarians. Nevertheless, once again **Draft Bill no. 1463** after arriving to the second Chamber, the Senate, and, assigned to the Joint Commissions for Constitutional Affairs and Justice, remained block and never succeeded in being scheduled in the agenda for discussion until the end of the Legislature.
- For a second time, in 2011, Italy, applying for a new mandate in the United Nations Human Rights Council, formally committed itself to establish a national human rights independent institution. In the same year, a new consolidated **Draft Law no. 4534**: "Istituzione della Commissione Nazionale per la promozione e protezione dei diritti umani" (*Establishment of the National Commission for human rights promotion and protection*) prepared by the Government with no involvement of the civil society, presented by 27 parliamentarians, has been approved in the Senate in July and presented in late 2011 to the second Chamber, Camera dei Deputati for discussion where it is still standing.

With regard to the *iter* for the Parliamentary discussion it can be noted that apart from the awareness of some of the parliamentarians, in these years, from 2004 to 2012 there has been no consultative procedure, inclusive, transparent and participatory taking into account and involving civil society in all the various steps leading to the establishment of a independent national human rights institution in line with Paris Principles and international standards.

And this also in contrast with the Recommendations of the United Nations formally expressed by the Office of the United Nations High Commissioner for Human Rights, National Institutions Unit.

Paris Principles expressly recommend the creation of a NHRI to be carried out through a transparent, participatory and inclusive process of all social forces of the civil society broadly considered (art. 1 of Section Composition and Guarantees of Independence and Pluralism) with its involvement and

active participation at least in three phases of NHRI life: creation, composition/appointment of Commission Members and mechanisms and methods of cooperation between the NHRI and Civil Society.

Comparing the compliance of **Draft Bill no. 4534** with Paris Principles and international standards, the following aspects can be evidenced:

- the President and two components of the Commission cannot be appointed or selected among public officers of other administrations (article 2, par. 2);
- gender balance in appointing the President and the two components should be taken into consideration (article 2 par.3);
- human rights should be included in school educational programs (article 3 par. 1 letter b);
- the Commission should be responsible for monitoring human rights throughout the country (art. 3 par. 1 letter a);
- the Commission should cooperate with United Nations, international and regional organizations and institutions dealing with human rights promotion and protection (article 3 par. 1 letter f);
- the Commission, in order to perform its functions, will avail itself of its own office, headed by a Director appointed by the Commission and in charge for the period corresponding to the mandate of the Commission. (article 5, par. 1);
- the Commission, in order to perform its functions, will avail itself of a Human Rights and Fundamental Freedoms Council composed of not more than forty members, eighteen of which selected among individuals designated by the major nongovernmental organizations active at national and international level in the promotion and protection of human rights and humanitarian law (article 6, par. 1, letter a).

Several weaknesses of Draft Bill no. 4534 under the compliance with the Paris Principles should be taken into consideration.

In order for the Commission to have an effective autonomy and independence, it is fundamental that the President and the two components are selected through a public contest and not by the Senate and the Camera dei Deputati through a 2/3 majority as foreseen in article 2 par. 4 of the Draft Bill.

In addition the staff appointed to perform the activities and functions of the Office should be selected among individuals with expertise in human rights.

Article 9 of Draft Bill 4534 referring to professional secrecy is also quite disturbing. As it is important to recall Paris Principles where the full capacity of Human Rights Commission to communicate directly with the public opinion or through the media in order to publicize advices or recommendations, is clearly indicated.

With regard to article 10, par. 2, Annual Report of the Commission, it would be most appropriate to specify that such report should be published the same day it is transmitted to the Parliament and other institutions. Its dissemination can be made via hard copy, or electronic version or both.

However, we would like to express here our concern about the low coverage given by National media to the topic of the creation of a National Independent Human Rights Commission.

Furthermore, the fact that media did not stress adequately the seriousness of some statements made by some politicians during the debate is concerning (e.g. the National human rights institution is an issue concerning “third world countries” and does not concern “...countries with a high level juridical civilization, with a cult and tradition for order and the “right”, as Italy...”, “...it is useless, plethoric and expensive...” “...it is a useless “carrozzone” (a caravan)“... a new money eater agency...” “...created to establish a new caste...”).

Finally we would like to highlight the existence today in Italy at national level of two equality bodies:

1) the Ombudsperson for the Rights of the Child, recently established in late 2011 and in the process of being structured and become operative, selected and appointed among the experts of the civil society; and

2) UNAR, Ufficio Nazionale Antidiscriminazioni Razziali, a governmental antidiscrimination agency which, notwithstanding its specific role covered in these years with regard to multiple discrimination, remains a governmental body incardinated within the Department for Equal Opportunities and the Council of Ministers, as officially repeatedly defined also by the past Minister of Equal Opportunities, and therefore, not independent, with its offices physically established within a governmental building, staffed with public personnel.

The activities implemented through UNAR in the field of antidiscrimination have been intense and successful because of its governmental nature but cannot comply nor Paris Principles nor can for its nature and structure substitute or be transformed into the functions and characteristics of a NHRI fulfilling such Principles and Resolution 48/134 endorsed by the UN General Assembly on December 20, 1993, in addition to the Resolution of the Council of Europe (97)11 of September 30, 1997.

The Comitato per la promozione e la protezione dei diritti umani wishes CERD will adopt in its Concluding Observations the following recommendations:

To remind the **Government** of the pledge of “creating a National Independent Commission for the Promotion and Protection of Human Rights and Fundamental Freedoms” undertaken on May 8, 2007 with the UN General Assembly in filing for the first time Italy’s membership to the Human Rights Council, pledge again repeated in filing for the second mandate 2011- 2014.

To recall that from June 19, 2011, for the second time and for the next three years, Italy is Member of the new UN Human Rights Council and as such it is her duty to operate towards strengthening the promotion and protection and the respect of international standards for human rights, all around the world including Italy, in order to re-establish at international level our Country’s credibility and the credibility of our democratic system following the unfulfilled commitments made during the first mandate.

It will be right and duty of Italian NGO to highlight Italy’s defaults of such International obligations, among which the immediate establishment of a human rights National institution, effective and independent, and in line with Paris Principles.

To remind the **Government** and the **Parliament** that only a National institution coherent with Paris Principles can be accredited within the new UN Human Rights Council, highlighting the fact that the existence of an equality body such UNAR, which, notwithstanding its specific role covered in these years with regard to discrimination, remains a governmental body incardinated within the

Department for Equal Opportunities and the Council of Ministers and therefore, not independent, is physically in a governmental building, staffed with public personnel.

To recommend the **Government** to complete the procedures for the establishment as soon as possible of the NHRI in compliance with Paris Principles amending the present Draft Law no. 4534 accordingly and concluding as soon as possible the legislative *iter* still presently standing in the Camera dei Deputati.

To recommend, recalling formal recommendations of CRC, CESCER, CEDAW, CCPR and CAT, CERD together with those of the National Institutions Unit of the Office of the UN High Commissioner for the Human Rights and of the UPR, in order to establish a constructive, participatory and transparent dialogue and hearing of the civil society in the NHRI establishment procedure.

To recommend the **Parliament** to avail itself of the Technical Advice of the National Institutions Unit of the Office of the UN High Commissioner for Human Rights in order to take advantage of its expertise with regard to the application of the standards indicated in Paris Principles and the best practices of many countries that have already complied with the requirements contained in the UN Resolution 48134 of December 20, 1993 creating National Commissions for the promotion and protection of human rights independent and effective.

Also with reference to the general measures of implementation of ICERD and strictly correlated to the lack in Italy of an independent national human rights institution according to the Paris Principles

We would like to submit the following information on the

NATIONAL INTEGRATED PLAN OF ACTION

The shortcoming highlighted by CESCER (CESCR/ ITA/ 04 on November 26, 2004, no. 33) and CERD (CERD/C/ITA/CO/15 n.24) with regard to the lack in Italy of a National Integrated Plan of Action for human rights in line with the obligations undertaken by the Italian Government in 1993 at the Vienna World Conference (par. 71 Vienna Declaration and related Plano f Action) is tightly connected with the lack in Italy of a National Independent Human Rights Institution and also with a political-institutional attitude characterizing also many other countries that define themselves as highly advanced democracies.

Too often the so-called consolidated democracy countries – Italy included- assume to already guarantee human rights and fundamental freedoms and, therefore, to be in a position for which it is possible to abstain from further strengthening promotion and protection, or even, respecting new or also old obligations undertaken at International level.

It is, instead, the development of the human rights promotion and protection system at national level – to which International UN and regional systems are only complementary – that has to be considered absolutely primary, also on behalf of the United Nations, for a full realization of rights and fundamental freedoms.

Therefore, just as any other country, Italy is responsible for upgrading and strengthening of promotion and protection of universal rights both of its citizens and non citizens on the Italian territory. Italy, as any other State, can be at risk of violating fundamental rights and of being incapable of preventing violations.

Moreover, it can be very presumptuous to think that human rights issues concern only other countries and the need for a strategic Action Plan for human rights promotion and protection at National level is not a priority for Italy and therefore can be further delayed.

Italy has a broad number of governmental mechanisms that at various levels deal with sectorial issues, but no independent National mechanism is capable of setting and monitoring a defined and long-term integrated strategy, which at the same time is transparent and participatory. A strategy which is capable of promoting and protecting, in a systematic and coherent way, all human rights in their indivisibility and interdependence involving all different sectors.

The risk for fragmentation and proliferation of sectorial and local mechanisms is presently high in Italy.

A national strategic plan for Italy, as recommended by CESCR in 2004, and, as foreseen in Vienna since 1993, is vital in particular with the aim of:

- 1) identifying specific objectives, expected outputs and monitoring indicators;
- 2) increasing coordination of present sectorial initiatives;
- 3) upgrading uniformity on the whole national territory, today, instead characterized by serious discrepancies at regional and/or local level;
- 4) implementing a stronger effectiveness in the use of available resources and in the allocation of the new ones;
- 5) implementing a more intensive action *ex ante* in disseminating a widespread background human rights culture capable of permanently preventing violations and in promoting an active and responsible citizenship (see par. human rights education);
- 6) developing an approach to social policies and international cooperation based on human rights international standards which exceeds the old and opposite approach based on needs and emergencies, especially if media oriented;
- 7) Continuous monitoring of expected outputs and defined specific objectives, on the basis of specific indicators.

The Comitato per la promozione e la protezione dei diritti umani wishes CERD will adopt in its Concluding Observations the following recommendations:

To recommend the **Government** and the **Parliament** the approval of the law for establishing the national independent institution for promotion and protection of human rights in Italy in line with Paris Principles and international standards, which cannot be further delayed. Since, it is to such mechanisms, the duty to mainly preparing an integrated action plan for human rights at national level,

In the respite of the creation of said Commission, the *Comitato* recommends **CIDU** (Comitato Interministeriale per i Diritti Umani) to consult civil society in order to identify a participatory approach for the identification of priorities to be included in the future National Action Plan for the protection and promotion of human rights.

Also with reference to the general measures of implementation of ICERD

We would like to submit the following information on the

PUBLICATION AND DISSEMINATION OF THE CONCLUDING OBSERVATIONS

The obligation of publishing and disseminating Concluding Observations adopted by the Treaty-bodies, for the States that have ratified them, descends directly from the Conventions. Besides the obligation of realizing the legal rights recognized, the Member State has the obligation of providing periodical reports on the advancement of the concrete implementation of the provisions envisaged.

The Government is responsible for providing information on the implementation of such specific recommendations in the periodical report following the observations received and has the responsibility of publishing and disseminating them not only to its judiciary, legislative and administrative officers, but also to the public in general.

It is worth highlighting that also CCPR (CCPR/C/ITA/CO/05 of November 2, 2005) and CERD too (CERD/C/ITA/CO/15 n.26 of May 16, 2008) who utilized in all the other Recommendations the conditional tense, in Recommendation 23, concerning the publication and dissemination of Concluding Observations, utilizes the imperative, specifically when dealing with an obligation that descends directly from the Covenant to the Member State.

Many States execute such obligation publishing the Concluding Observations on hard copy and on Web sites.

The Italian Government, in particular CIDU (Comitato Interministeriale per i diritti umani) as competent body, does not publish, and therefore, does not disseminate the Concluding Observations of CDESCR, CCPR, CAT, CERD, UPR.

Differently from the Concluding Observations on the implementation of the two Optional Protocols to the Convention on the Rights of the Child, addressed to Italy by the UN Committee on the rights of the Child in June 2006, which have been jointly published by CIDU and UNICEF-Italia.

Our *Comitato* has repeatedly urged CIDU (Comitato Interministeriale per i diritti umani) to translate, publish, and disseminate CDESCR and CCPR Concluding Observations and has, however, translated as voluntary contribution and published the unofficial Italian translation made of CDESCR, CCPR and CAT Concluding Observations, and UPR Recommendations on the web site of the *Comitato* www.comitatodirittiumani.net.

The Italian translation is clearly an obligation of means, and not of results, instrumental to implement the legal duty of publication and dissemination.

The *Comitato*, therefore, does not consider sufficient to guarantee an appropriate follow-up the present procedure adopted, and repeatedly affirmed by CIDU, of internal draft copies (“working copies”) of the Italian translation of the Concluding Observations of UN Committees provided, for various purposes, to all administrative and institutional bodies of the Government.

The Comitato per la promozione e la protezione dei diritti umani wishes CERD will adopt in its Concluding Observations the following recommendations:

- To recommend **CIDU** to translate and publish without delay the Concluding Observations both in hard copy and through telematics on the web sites of the Government and Ministries, in order to disseminate information to the public;
- To recommend the **Government** to provide CIDU with the needed resources in order to fulfill such task.



SUBMISSION OF INFORMATION

To the UNITED NATIONS

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Eightieth session
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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

“RACIAL DISCRIMINATION IN THE ITALIAN CRIMINAL AND PENITENTIAL SYSTEM”

Special report by Associazione Antigone Onlus,
Association for the rights and guarantees in the criminal judicial system

The Associazione Antigone, is an independent association dealing with the promotion and protection of the rights and guarantees in the criminal judicial system.

Considering all Concluding Observations of the Committee of the Elimination of Racial Discrimination to Italy in 2008;

Given that the Italian Government submitted its report, under article 9 of the Convention XVI to XVIII Periodic Reports of States Parties, in 2009;

Considering the last Recommendations to Italy contained in the Universal Periodic Review of the UN Human Rights Council in 2010;

Considering that the Committee of the Elimination of Racial Discrimination will review Italy in the next 80th Session, and precisely the 5th March 2012,

Antigone would like to submit to the Committee of the Elimination of Racial Discrimination (CERD) the following special report with regard to racial discrimination in Italian prison system. As illustrated in our last annual report on the condition of prisons and detainees published in October 2011¹, we dedicated a special focus on racial discriminations in Italian prisons.

Presently, our State penitentiaries are suffering the effects of a dramatic overcrowding² which implies that prison conditions do not meet the required standards and often lead to inhuman and degrading treatments. Events like deaths, suicides and self-mutilations are also increasing³. In this context, migrants and foreign nationals are paying the higher price in terms of segregation, limited access to justice and to a fair trial, *de facto* discrimination.

¹ Available on our web site www.assocazioneantigone.it

² At national level, the average rate of overcrowding is approximately 150 percent capacity (about 68.000 inmates in 45.000 regular beds).

³ In 2011 we can count 186 deaths in the Italian prisons, 66 of which due to suicide, 23 cases for reason yet unknown or judges are still inquiring into, 96 for natural causes, 1 as a consequence of murder.

DISCRIMINATION NUMBERS

According to the SPACE I's data⁴, on the 1st of September 2009 the foreign nationals in French prisons were 18,1% of the total, in Germany 26,4%, in Spain 34,6%, 12,6% in UK while in Italy they were 37%. Today, with 23.916 foreign detainees as per July 31st 2011, the rate of foreign detainees in our country is 35,7%. **Italy has set a record in Europe**, but not connected with a significant presence of migrants in our country.

21, of the 66 suicides occurred in our prisons in 2011, were committed by non-Italians.

In line with the past years, on May 31st 2011 the foreign presence in our prisons in North-Central regions (Lazio and Umbria excluded) was of 49.9% and while it was of 25.1% in prisons of Central-South Italy and islands. These numbers show the **huge differences in the geographic organization of our penitential system** and, consequently, help to evaluate the higher concentration of foreign attendance in a smaller number of prisons where the ethnic coexistence has become much more difficult.

The Associazione Antigone wishes CERD would take the following recommendations in its concluding observations:

- To the **Department of Justice**: to establish the regulation capacity of each of our 206 prisons according to the European Committee for the prevention of torture's standards, with a regard to the minimum living space per detainee.
- To the **Penitential Administration**, within the **Department of Justice**: to prevent the high concentration of foreign attendance in a small number of prisons and to promote activities that can assure real rehabilitation programs for foreign inmates.

DISCRIMINATION IN JUDGMENT, CONTROL AND LEGISLATION

Furthermore, data on flows from freedom to prison are even more unbalanced.

In 2010 the 44% was covered by foreign nationals⁵. These numbers indicate how **the turnover of foreign detainees (also known as "short shock prison system") is higher than the one of natives**. This occurs in spite of the lighter sentences (the lowered average is strongly connected with the violation of immigration law) and, more often, because of the stronger control exercised by the police force focusing on foreign territories and suburbs.

Although Italy has been changing from country of e-migration to country of in-migration for the last decades, immigration flows have not been so consistent to explain the high foreign presence in State prisons. We believe that if foreign inmates represent one third of the total of the detained population, it depends on the **Italian criminal law's selectivity in disadvantage of non-EU citizens**. This opinion is demonstrated also by the statistics of foreign citizens on preventive detention or held back because of drug legislation violations.

This marked attendance of migrants in Italian prisons seems to be determined by elements of discrimination referred to legislative and judicial authorities assessment. The data of foreign imprisoned after a definitive sentence show high evidence: in 2011 only the 50,5 % of non-Italian detainees went to prison after a definitive sentence versus the 58,3% of Italians. That means that **the precautionary custody in prison is more frequent for foreign nationals accused than for natives**, despite the kind of offences are usually less severe.

⁴ We're referring to the Council of Europe annual penal statistics of the March 22nd 2011 that offers comparative data on the prison population of all the Council of Europe's member States.

⁵ In 2009 it was 45%; in 2007 48.5%; 45,2% in 2005; 37.1% in 2002; 33.4% in 1999; 26.8 in 1995 and 16.8% in 1992.

Considering the stiffness of crimes, it may be noted that in average foreign nationals commit less serious offences (thefts, muggings, drug dealing ...) than Italians, but those crimes are punished more severely. In fact, the emergency of national security has been conquering a lot of space on the Italian public agenda in recent years and has become parallel to the target of political control of the territory and law enforcement. Furthermore, as most of the street crimes, the identification of the author of this type of crime usually involves the accused in an arrest *in flagrante delicto*.

Actually, the discrimination starts from the beginning and it is incidental to the criminal law as well to the political choices for security. Looking at the typology of the crimes, data show that the majority of the detained migrants meet the prison **in consequence of a violation of the drug law⁶ or of the immigration law⁷ or, finally, because of crimes related to prostitution.**

The Associazione Antigone wishes CERD would take the following recommendations in its Concluding Observations:

- To the **Parliament**: to remove the main regulations of law which are responsible of the high rate of foreign attendance in our prisons. To change, in particular, the drug legislation (DPR No. 309 of October 9th 1990 as it has been modified by L. No. 49 of February 21st 2006) and the immigration law (D. Lgs. No. 286 of July 25th 1998 as it has been modified by L. No. 189 of July 30th 2002). But also, to redress the L. No. 251 of December 5th 2005 in the part which prevents the repeated offenders from accessing to alternative to detention measures.
- To the **Department of Justice**: to provide for alternative forms of house detention which could be available by foreign nationals. Migrants often miss permission to stay and, in most of the cases, they don't have a private place to spend their punishment. We strongly suggest that custody in social communities or similar places could represent the right alternative to migrants' imprisonment.
- To the **Government and Police Authorities**: to limit the abuse of precautionary custody. Half of foreign detainees meets the prison before a first instance sentence or immediately with a summary judgment.

DISCRIMINATION DURING DETENTION

Once in contact with the Italian penal system, it is easy to see how foreign detainees suffer more situations of *de facto discrimination* for several reasons:

- 1) First the rights to a defence and to a fair trial are not protected for a number of well known elements (economic, lack of knowledge of procedures and rights, language barrier and, last but not least, irregular immigration status);
- 2) Second, the national judges generally show a lower level of attention for foreign nationals than they guarantee to anyone having valid instruments of protection thanks to his own status, wealth and social position.

Even if Antigone's Observatory has recently acknowledged an improvement in the decisions of the judges, discriminations are more evident in the phase of punishment execution. In fact, **migrants'**

⁶ According to the Justice Department's data, in 2010 the 33,9 percent of the total foreign detainees was accused of drug crimes. One third of all the prison population, Italian and non, comes down with drug addiction but only foreigners have much more troubles in accessing health care. In opposition with the conclusions of the annual report on drugs presented to the Italian Parliament in 2011, Antigone's field researches show that foreign inmates, even representing 40 percent of the detainees with drug addiction problems, are less than 6 percent of the ones taken in external therapeutic programs.

⁷ Researchers who have been studying the criminalization processes of migrants' behaviour had to take into account the principle of "clandestinità" (Trans. The illegal entry and stay in the national territory). Without official statistics on this matter, it is estimated that over 70 percent of detained migrants come from an irregular condition. For many foreigners prison becomes the first occasion to leave an invisible condition. But it is also useful to remember that over 80 percent of migrants with visa or residence permit had got through an illegal period in our country.

access to measures on probation⁸ is denied by several obstacles like the lack of a regular domicile to serve their own punishment or the exclusion from the social fabric. Therefore, foreign nationals spend in guardhouses much more time than Italians: they have less chance to start a rehabilitation program or to enjoy social integration.

During the period of detention, migrants suffer also daily discrimination based on language barriers, on cultural and religious differences. It should be considered that these reasons often cause conflicts between groups of inmates against which the prison administration has sometimes reacted creating “ethnic” sessions. In opposition to the segregation policy, a peaceful coexistence is instead encouraged by grouping together people of the same nationality into the same guardhouse as it happens in the majority of our prisons.

Differences between Italians and non Italian inmates are also manifest in the enjoyment of other fundamental human rights. **Phone calls, visits, contacts with the external world are highly limited** and only very few foreign detainees manage to keep familiar relationships. This circumstance is at the origin of the higher rate of suicide and self mutilation acts which hits migrants more than Italians.

Despite the recent detailed Regulation (issued in 2000) copes with the problems connected with foreign nationalities⁹, this is very far to be respected. Italian prisons miss interpreters, cultural facilitators and seasoned professionals who should improve the migrant's first contact with the penal system and facilitate the path to recovery.

In conclusion, we strongly believe that the state of weakness and the conditions of confinement migrants are suffering in Italian prisons come to consist in **a double punishment** which is in contrast not only with the national legal order but also with international fundamental principles.

The Associazione Antigone wishes CERD would take the following recommendations in its concluding observations:

- To the **Department of Justice** and to the **Supervisory Bench**: to guarantee equal rights between Italian and non Italians in accessing measures *on probation*, of which quality and quantity need to be improved.
- To the **Penitential Administration**, within the **Department of Justice**: to assure and to control the right application of the Regulation of execution (D.P.R. No. 230 of June 30th 2000) in the part it safeguards foreign nationals. In particular, it is necessary to increase visits, phone calls and all the occasions of contact with the family of foreign detainees. Increasing the number of interpreters and educators should be a priority too. We recommend also that the cultural facilitator will become a permanent and leading figure in the penitential staff.

Due to all these reasons and with the aim to encourage the respect of equity and equality, we would like to thank in advance all CERD members for the attention they will give to the particular condition of migrants in the Italian penal and penitential system.

⁸ We're referring to all those alternatives to detention or prison measures provided by law (for example, period of probation, house detention, foster placement to social services, etc.). It's nonetheless true that such measures are in the judge's assessment and they are very difficult to be obtained also by Italians. At September 30th 2011 only 18.391 inmates were included in alternative programs.

⁹ In particular, article 35 of the Regulation is dedicated to foreigners' conditions of detention imposing on the penitential authorities the respect of differences and specific needs and begging the intervention of cultural or learning facilitator.



SUBMISSION OF INFORMATION

To the UNITED NATIONS

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Eightieth session
13 February- 9 March 2012

IN CONNECTION WITH THE CONSIDERATION OF
THE SIXTEENTH -EIGHTEENTH CONSOLIDATED PERIODIC REPORTS OF

ITALY

Rome, March 2012

Submission of information

By *Articolo 21 on the situation of the media in Italy in the light of national obligations under the UN Convention against all forms of Discrimination.**

*[*Articolo 21* is an organisation supporting press freedoms.]

Comments to the Committee on the Elimination of Racial Discrimination's document CERD/C/ITA/16-18 (Italy):

a) The Context

Articolo 21 believes the concluding observations of the Committee cited in its Report (CERD/C/ITA/CO/15) of May 2008, were designed to draw attention to a situation of genuine concern regarding the spread of racism and xenophobia in Italy. These concerns should not be minimized. Together with other civil society actors, *Articolo 21* has drawn attention to the risks to civil coexistence in an increasingly diverse and multi-cultural environment like ours, when politicians resort to racist or xenophobic statements for propaganda purposes, and these statements are then disseminated by the media. At the same time, sensationalist and biased reports in the media criminalizing foreign nationals as well as the country's Roma and Sinti communities feed back into the political discourse, with dire potential consequences. Racially-motivated acts of aggression and episodes of discrimination are on the rise in Italy. Two particularly odious attacks in December 2011, the torching of a Roma camp-site in Turin, and the shooting of two Senegalese tradesmen in Florence, sounded the alarm, in Italy and beyond.

We believe that the Committee's May 2008 Report should have been a timely wake-up call for Italian politicians and media operators. Ample public debate of these issues at a political level is still lacking, however, particularly of the potentially incendiary link between political hate speech and the amplifying role of the media.

With regard to the media and existing regulation, the government cites, inter-alia, its UPR Italy National Report. In this report, however, as in the more recent observations presented at the conclusion of Italy's Universal Periodic Review on occasion of the Plenary Session of the UN Human Rights Council in June 2011, the government reiterated its claim as to the adequacy of Italy's broadcasting law in guaranteeing a pluralistic and non-discriminatory public broadcasting service.¹⁰ In relation to the concerns raised by the Committee under articles 4 and 7 of the Convention, we point to the political control, including editorial control, over the public service broadcaster, currently sanctioned by law. If, as is the case in Italy today, it is Parliament which holds ultimate control over public service media appointments, while also exercising overall oversight, there will be little, if any, effective action against political hate speech or discriminatory statements by politicians.¹¹

In relation to the Committee's recommendation (22) that "the State party encourage the media to play an active role in combating prejudices and negative stereotypes, which lead to racial discrimination", we take note that in 2009 the government appointed a new director for UNAR, Italy's anti-discrimination watchdog, a position which had long stood vacant, together with a commitment to

¹⁰ The session concluded with five recommendations to amend Italy's media law. We recall that the broadcasting law has been the object of a number of negative international assessments, including a strong recommendation on the part of the UN *Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, that the government revisit its media legislation.

¹¹ The problem of political influence over the media is compounded by the massive broadcasting, advertising and publishing interests of former prime minister Silvio Berlusconi, who heads the largest political faction in Parliament.

strengthening the office's budget. UNAR has a central role in the journalists' code of conduct known as the *Carta di Roma*, which was adopted in 2008. It monitors Italian media and notifies media outlets of cases of violation of the code's principles of correct and non-discriminatory reporting. In the event of serious violations, possibly requiring disciplinary action, the regional branches of the journalists' union are informed. If UNAR deems legal action to be necessary it can, and occasionally has, notified prosecutor's offices of observed violations of the legal prohibition against incitement to racial hatred. These, as the Committee had recommended, are State-sponsored positive actions which deserve to be recognised. As an institution, however, UNAR remains statutorily dependent on the Prime Minister's office, of which it is part.

The *Carta di Roma* remains a voluntary code, and disciplinary measures are still rarely applied. In some cases editors, and, on one occasion, even a regional chairman of the journalists' union, have dismissed requests of corrective action from UNAR. The legal mandate of AGCOM, the electronic media authority, to sanction discriminatory content is weaker still.¹²

B) Concerns

1) In spite of a growing awareness among media operators of the complexity and sensitivity of migration issues, examples of well-publicized hate speech by politicians against migrants and Roma or Sinti people have continued to crowd the pages of the press and the air-waves¹³, while racial stereotypes are still frequent. This is particularly true of TV and radio programmes, particularly local stations, many of which are only occasionally covered -- if at all -- by UNAR's monitoring activities.

2) Securing convictions for "incitement to racial hatred", in the media or elsewhere, is extremely problematic, owing to the changes in the "Mancino law" (N.205/1993), introduced in March 2006.¹⁴

RECOMMENDATIONS

1) Press for reform of Italy's media law, including public service broadcasting, in order to guarantee the service's independence, in line with the Recommendations of the Council of Europe Ad Hoc Advisory Group on Public Service Media Governance.

2) Strengthen and render systematic UNAR's ongoing media monitoring both for information on episodes of race-based discrimination or abuse, and for media content which targets, stigmatizes, stereotypes or profiles people on the basis of race, colour or descent. Ensure this activity is published on the UNAR website, and, successively, fully documented, including outcomes, in UNAR's annual report to Parliament.

3) Propose a revision of the "Mancino law", on the basis of the legal advice of both UNAR and the Supreme Council of the Judiciary, in order to restore its efficacy.

4) Request the immediate official translation and publication on government websites of the Committee's periodic reports.

¹² In a recent correspondence with AGCOM, the electronic media authority, UNAR received confirmation that the media watchdog has no powers to sanction violations of statutory obligations, as defined by the broadcasting act, to avoid racist or discriminatory content. [AGCOM, *Direzione Contenuti Audiovisivi e Multimediali*, letter dated 12/9/2011.]

¹³ For a list of recent examples of racist political statements see "Cronache di ordinario razzismo. Secondo libro bianco sul razzismo in Italia", Edizioni dell'Asino, Rome, 2011.

¹⁴ Legge 24 febbraio 2006, n. 85 "Modifiche al codice penale in materia di reati di opinione".



Associazione per gli Studi Giuridici sull'Immigrazione

Committee on the Elimination of Racial Discrimination: Periodic Review of Italy

The Associazione Studi Giuridici sull'Immigrazione ("ASGI") tender this submission to the Committee on the Elimination of Racial Discrimination highlighting the increasing levels of discrimination against migrants on respect at violations of Article 5 and 6 of the Convention on the Elimination of Racial Discrimination ("CERD").

The Association for Juridical Studies on Immigration (ASGI) is an association founded in 1990, which unites lawyers, university professors, paralegals and jurists focused on discrimination issues. Its aims are to promote information, research, analysis, dissemination of information, advocacy and training on juridical problems relating to discrimination on ground of race, ethnicity and national origin, immigration and asylum, statelessness and citizenship at the domestic, European and international level.

ARTICLE 5Racial discrimination in access to Civil, Political, Economical and Social Rights

I. ARTICLE 5. a)

Right to equal treatment in the Courts

The Committee, recalling its general recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, reminds the State party that the small number of complaints, prosecutions and convictions relating to acts of racial discrimination should not be viewed as being necessarily positive. The State party should inquire whether this situation is the result of inadequate information provided to victims concerning their rights or the insufficient level of awareness by the authorities of offences involving racism. The State party should take, in particular on the basis of such a review, all necessary measures to ensure that victims of racial discrimination have access to effective remedies.

Legal aid

Legal aid was established for all Italians and foreigners, citizens of EU and non-EU countries, but also for minors or stateless persons residing in Italy.¹⁵

Legal aid, particularly in civil proceedings and those of voluntary jurisdiction, is affected by the local dimension, linked to the practices of the Bar Association Council¹⁶.

The Italian system of access to legal aid lacks national co-ordination between the various Bar Councils, given that the denial of access to legal aid in the first instance by the Bar Council can then

¹⁵ Legal aid in Italian is governed among everyone by Presidential Decree 30 May 2002 No 115 - Consolidated text of the Acts and regulations relating to legal costs (Text A) - (OJ No 139 of June 15, 2002 - Ordinary Suppl. No 126 and subsequent amendments. At the heart of Art. 74 and 75 of Presidential Decree No. 115, 2002: "Legal aid is assured in criminal trials for the defense of less well-off citizens, who are investigated, charged, convicted of a crime, victims, injured parties intending to file a civil action, holding civil liability, or an obligation for civil monetary penalty. Legal aid is also assured in civil, administrative, accounting, tax and business voluntary proceedings, for the defense of the less well-off citizens when his case are clearly unfounded."

¹⁶ In fact in civil proceedings the application should be presented to the registered Bar Council where one plans to entrust the defense. Article 79 stipulates that the person who wishes to take advantage of access to legal aid must have an income below a certain limit (about 13,000 euros per annum) and therefore must show a certificate attesting to his/her earning capacity and permanent address. A foreigner is required to produce a statement signed by a consular officer attesting to his/her earning power abroad. Art. 94 of Decree No 115 of 2002 clarifies that "in case of inability to produce the documents required by Article 79, paragraph 3, this is replaced, under penalty of inadmissibility, by a self-certification by the individual. In case of inability to produce the documentation required under Article 79, paragraph 2, the citizen of non-European Union replaces it, under penalty of inadmissibility, with a statement in lieu of certification."

be overturned by the judge, but with a lack of non-retroactivity of costs already incurred.¹⁷ Every Bar Council accepts, fully independent of any administrative body, decisions that can be offset by other Bar Councils, with consequent differences in treatment from place to place around the country, for lack of any compliance indications by the National Bar Council.

This happens in particular with respect to the exclusion of the requirement to show a consular document for certain categories of people such as foreign women from certain countries who are often denied the issuance of a consular statement certifying their earning capacity in the country of origin, sometimes because foreign women do not see themselves as having direct access to civil action in the absence of consular certification.

Some of the Bar Councils have denied access to legal aid to asylum-seekers not merely on the applicant's income requirement but also on the merits of the appeal, thus denying access to protection for asylum-seekers.

The denial of access to legal aid for asylum-seekers is itself a violation of Article 36 of Directive 2005/85/EC in that it risks damaging the principle whereby effective remedy is automatically provided following the Bar Council's denial and the judge's verdict unless there is a possibility of an ex parte decision, saving time but at the expense of full protection of the right of defense. It must be considered that the Italian Legislative Decree 140/2005 implementing Directive 2003/9/EC does not provide for the release of a sum of money to asylum-seekers who may not possess the economic resources needed to pay the costs of an attorney. The call contained in the Legislative Decree 25 of 2008 and Presidential Decree No 115 of 2002 should not result in conferring on the Bar Councils the power to assess prejudicially the validity of the basis for the petition for international protection, otherwise voiding the effectiveness the new procedures introduced to counter the distortions arising from the previously hasty and manifestly unfounded assessments by the police and creating doubts about compatibility with Article 36 of Directive 2005/85/CE and ECHR Article 13.

Some cases of denial of access to legal aid were also been verified against stateless persons who have in fact initiated legal action to establish statelessness and were denied admission to legal aid either for the alleged groundlessness of the action, or for the obligation to produce the consular document, which cannot be performed by those who, unable to declare and demonstrate citizenship, initiate a legal action in order to be declared stateless and have access to a civil status.¹⁸

Certainly the Act, which confers a discretionary power, requires observance of the principle of equal treatment and the duty to give reasons, which can take into account only the particularities of a specific case, and therefore the subjective position of the individual applicant.

Verdict No. 254 of 2007, of the Constitutional Court emphasizes that a foreign citizen, who is accused in a criminal proceeding and eligible for legal aid, who does not speak Italian, will be appointed their own interpreter.¹⁹ The Court's verdict confirms that the legislature, even taking into account the principle of equality stated by Art. 3 of the Constitution, may variously regulate the

¹⁷ Art. 126.3 of the Consolidated Act on Legal Costs stipulates that: "If the Bar Council rejects, or declares inadmissible the application, this may be brought to the magistrate responsible for the opinion, who decides by decree. The Consolidated Act on Legal Costs makes it clear that legal costs assessments of the Bar Council are "provisional" and can be edited and revised by the national court; in fact, the judge may withdraw an admission already granted (Art. 136 TU SP Giust), as well as approve an application for admission which has already been rejected. However, the revocation by the court of an earlier admission order has a retroactive effect (Article 136 TU SG); the same is not specified for an acceptance by the court of an admission unfairly dismissed by the Bar Council itself.

This means that (unless the retroactivity is obtained by interpretation) the assessment in the second round of the court does not entirely guarantee that the benefits unjustly denied by the Bar Council at the beginning of the process, in part because some of the expenses of the activities of the defendant in the meantime will not be covered by the revenue, and some of the costs incurred will not be refunded, nor should there be retroactive exemption for expenses accrued but not paid.

¹⁸ Paragraph 16 of Legislative Decree 25 of 28 January 2008, implementing the European Directive 2005/85 on asylum procedures, and the subsequent delegation of the Act, stipulates that:

1. A foreign citizen may be assisted, at his/her own expense, by a lawyer.
2. In the case of an appeal of the verdict in court, the foreign national is assisted by a lawyer and is admitted to legal aid under the conditions provided for by Presidential Decree of 30 May 2002, no 115. In each case for the statement of income earned abroad, Article 94 of the Decree applies. The New York Convention of 28 September 1954 on the Status of Stateless Persons has been ratified and enforced in Italy by the Act of February 1, 1962, No 306. However, in Italian regulations there is no specific provision governing the judicial determination of statelessness, it being understood that this is an verification of status, which is considered under Article 2697 Civil Code according to which "whoever wishes to assert this right in court must prove the facts which constitute its foundation."

¹⁹ The Court noted that "the recognition the right of the accused person who does not know Italian to appoint their own interpreter cannot, under the principles set out above, suffer from any limitation. Indeed, the institution of legal aid is also intended to assure for the poor the implementation of the constitutional principle in the third paragraph of art. 24 of the Constitution, which requires that these people receive the means for action and defense in each jurisdiction as laid out in the first paragraph of that provision, according to which everyone can take legal action to protect their legitimate rights and interests."

subjective conditions of access to the institution of legal aid, but always within the bounds of reasonableness and non-discrimination, and with respect for fundamental principles like Art. 10 and 24 established by the Constitution. However, the differences from forum to forum and the absence of explicit rules for direct access for vulnerable populations are often seen in access to the institution of legal aid often in violation of the right to self-defense for those persons for whom the procedure, in the light of international obligations, should ensure an automatic right to an effective remedy.²⁰

Recommendations:

- **Ensure uniformity in the application of criteria for the admission to legal aid throughout the national territory.**
- **Ensure the admission to legal aid to all the asylum-seeker, without invading the sphere of technical decisions on the asylum-seekers which is the sole responsibility, under the Act, of the Territorial Commission.²¹**
- **Ensure access to legal aid to all stateless persons who have in fact initiated legal action to establish statelessness.**

II. ARTICLE 5.B)

Right to security of person and protection by the State against violence or bodily harm, whether inflicted by Government officials or by any individual group or institution

The State party is encouraged to improve the conditions of stay and assistance centres and reception and identification centres to ensure that adequate health care and better living conditions are provided. It also recalls the obligation of the State party to take measures to ensure that conditions in centres for refugees and asylum-seekers conform to international standards. Furthermore, the Committee recommends that the State party take measures to ensure that non-citizens are not returned or removed to a country or territory where they may be subject to serious human rights violations, including torture and cruel, inhuman or degrading treatment or punishment.

The plight of asylum-seekers within the CIE/CARA

State party in violation of **recommendation n. 18/2008** did not to take adequate measures to ensure that conditions in centres for refugees and asylum-seekers conform to international standards. There are no available data on the number of asylum-seekers held in CIE.²² or on the outcome of applications submitted.²³

In the detention structures asylum-seekers live with deportees and there is usually no provision for the care of people coming out of particularly vulnerable situations or in the cases of victims of torture or extreme trauma.

The CIE. system remains completely separate from any relationship with the local services network, making it highly unlikely that local organisations will take on the burden of applicants for international protection if they even recognize this form of international protection. Until the regulatory changes that occurred with the Legislative Degree No 89, 23 June 2011, converted into Act of 2 August 2011, No 129, presentation of an application for international protection by already detained asylum-seekers allowed, in general, an extension of the detention of up to 210 days, pursuant to Art. 21, para. 2, Legislative Decree no. 25/2008.

The majority of protection organisations consider it impossible or at least very difficult to provide adequate information or guidelines to detained asylum-seekers regarding the asylum procedure in

²⁰ On access to effective remedy in the procedure for asylum in Europe de jure and de facto, see: M. Reneman, *Access to Effective Remedy in European Asylum Procedures*, Amsterdam Act Forum, Vrije Universiteit Amsterdam, Vol 1 No 1, 2008, 65-98.

²¹ F. Vassallo Paleologo, *Right to defense of asylum-seekers and State legal aid*, from the website, October 28, 2010 <http://www.meltingpot.org/articolo13286.html> .

²² Italian legislation allows asylum-seekers to be detained in CIEs (Centri di identificazione ed espulsione - C.I.E) in cases where they are already the subject of measures to expel them from Italian territory, or if they have been convicted of certain types of crime, or if they are subject to the conditions of Article. 1, paragraph F, of the Geneva Convention of 1951 (Art. 21 of Legislative Decree no. 25/2008, as amended).

²³ ASGI, "The right to protection. International protection in Italy -- what is the future? Study on the status of the asylum system in Italy and proposals for its development," European Refugee Fund - 2009 Annual Programme - Action 2.1.A, August 2011.

order to adequately assist them throughout the asylum procedure.²⁴ The Reception Centres for Asylum-seekers (Centri di Accoglienza per i Richiedenti Asilo--CARA) are usually located in places that were originally intended for different use (e.g. abandoned military airfields), and that are completely unrelated to the local context and management of local services.

CARA operators are not adequately trained to assist people in vulnerable situations.

In addition, there is no nationally uniform mode of social, medical and psychological relations, despite, as required by law: "The reception is performed in consideration of the needs of asylum-seekers and their families, particularly vulnerable people [...]," Art. 8 of Legislative Decree no. 140/2005.

There is a notable lack of adequately trained staff, highlighted by a lack of residency among the asylum-seekers received by CARA and their frequent failure to enroll in the National Health Service.

Limited accessibility to the facilities, especially the more recent ones ("Solidarity Village" by Mineo, established by order 3924 of 18 February 2011), by the protection authorities is still a significant problem.

There is no verification of length of stay in certain CARA structures. Contrary to the contentions of the Government, the residence times in the CARA-CDA would likely be for a period of no less than eight to ten months, with peak stays of over one year in the case of asylum-seekers whose request remains pending the establishment of jurisdiction for its examination. For the duration of the process, although far superior to that provided by Act, asylum-seekers accommodated in CARA are unlikely to receive a release for temporary residence, or even for performing any work.²⁵

Asylum-seekers who are unaccompanied minors cannot be accepted within CARA,²⁶ however, there are recorded cases of children remaining at reception centres in the collective structures for the lack of places in the host communities for children. And this is particularly worrying as in Italy there are no uniform and standardized procedures for assessing the age of foreign children and, therefore, the framework of procedures used is highly fragmented resulting in great uncertainty in the application of existing rules.

The Italian regulatory system presents certain deficiencies, which therefore need to be addressed, with regard to the quality of the decision-making process of the Territorial Commissions for the recognition of international protection, the execution of the personal interview, mandatory and permanent training of members of the Territorial Commissions on the availability of expert advice and assistance, and special safeguards for the protection of people in vulnerable situations.

Recommendations:

- **Make conditions in centres for refugees and asylum-seekers conform to international standards;**
- **Promptly collect and make available data on the number of asylum-seekers held in CIE²⁷ or on the outcome of applications submitted;**
- **Adopt and ensure the application of specific provisions for the physical and psychological care of asylum-seekers detained in CIE and CARA who are part of vulnerable group or victims of torture or who are escaping from extreme situations;**
- **Ensure that NGOs can provide adequate information or guidelines regarding the asylum procedure to asylum-seekers detained in CIE/CARA, and ensure that NGOs can adequately assist them throughout the asylum procedure;**
- **Ensure the verification of length of stay in CARA structures.**

²⁴ MSF, "Beyond the Wall, travel to the centre for migrants in Italy" (2010), F. Angeli, Milan: "very limited presence of external protection authorities in C.I.E." and "limited presence of services for orientation, support and information in the legal field." The same "access to these centres by the UNHCR has been difficult," UNHCR-Service Development and Evaluation of Policies (PDES), *Protection of Refugees and International Migrants -- an Assessment of the Role of UNHCR in Southern Italy*, Geneva, September 2009.

²⁵ Six months after the submission of the application, the applicant is entitled to a residence permit for a six-month period with the ability to perform work.

²⁶ Art. 8, Legislative decree n. 140/2005.

²⁷ Italian legislation allows asylum-seekers to be detained in Identification and Expulsion Centres (Centri di identificazione ed espulsione - C.I.E) in cases where they are already the subject of measures to expel them from Italian territory, or if they have been convicted of certain types of crime, or if they are subject to the conditions of Article. 1, paragraph F, of the Geneva Convention of 1951 (Art. 21 of Legislative Decree no. 25/2008, as amended).

The LAMPEDUSA case: from emergency to state of exception

In February of 2011 facing the new "emergency" created by the arrival of several thousand Tunisian migrants and refugee on the island of Lampedusa, the Italian Government's first reaction was to prevent the reopening of the Contrada Imbriacola Reception and Assistance Centre, in an attempt, which failed immediately, to implement mass repatriation to Tunisia. After only a week, when the island was at its breaking point, with the number of migrants in free circulation (remember the "hill of shame" near the port, for the hygienic conditions to which not only the strip of land but the whole island was reduced) close to the number of its inhabitants, Rome's decision came to reopen the CPSA Contrada Imbriacola. A late decision, it came after a wild week of media coverage of the immigration emergency, which had already affected the tourist season and created a pocket of illegal immigrants who were difficult to manage with a reception system that was totally unprepared. Meanwhile, the proportion of Italians who opposed all migration in general, including forced migration, had grown.

The order of 5 April 2011 which acknowledged only a part of the immigrants who had arrived from North Africa, mainly from Tunisia, providing them an opportunity to obtain a specific temporary residence permit for humanitarian reasons, under T.U. Article 20 on immigration, and the sudden processing of all the immigrants who came from the same region the next day contributed to the confusion of the relationship between hosts and new arrivals and created more than a few operational problems for the organisations involved in various ways in the Praesidium project, with particular reference to the legal status of unaccompanied minors from Tunisia, many of whom are now nearing the age of 18 and are therefore destined to go underground, if not be expelled, in the absence of timely care from protective authorities.

According to the operating rules of the *Praesidium*, as observed in 2008, migrants who arrived in Lampedusa, rather than being held for weeks in informal places of detention, once they arrived on the dock, after receiving initial treatment and health care, should be transferred as soon as possible to dedicated hosting facilities. The transfer was granted promptly "in such a way as to minimise the time spent on the pier or in other temporary structures." The transfer of migrants, organised in close collaboration with the responsible territorial Prefecture, should take place as soon as possible on the authority of the police or the management of the facilities that actually "house" the migrants. According to the rules of the Praesidium, the reception center to which the newly arrived migrants are brought generally falls into one of the following categories: First Aid and Home Centres (CPSA) -- structures located near the landing sites for the reception of immigrants for the time needed to transfer them to other centers (approximately 24/48 hours), or Reception Centres (CDA) -- facilities for the reception of migrants for whatever period necessary for the definition of administrative measures relating to their position on the national territory.

In line with existing legislation, it is essential that voluntary immigrants who have been temporarily admitted to the territory out of necessity receive public assistance (pursuant to Art. 10 Section 4 of T.U. 286, 1998) even if a decision is issued to turn them back or expel them. It is also important that the migrant be given a copy of any order issued against him with a list of possible actions for redress. It does not appear that in Lampedusa, or any other landing for immigrants in Italy, that these practices have been followed and in many cases informal detention lasted for weeks, sometimes more than a month. And regarding this point, in June, there was a major decision from the justice of the peace of Agrigento which, breaking from consolidated case Act to merely ratify decisions taken under Article 10 paragraph 2 of T.U. on immigration to defer refusals, canceled a deferred refusal of entry issued by the Police of Agrigento against an immigrant detained for weeks without any provision in the Contrada Imbriacola CPSA in Lampedusa. Other justices of the peace corroborated most of the deferred refusal measures adopted by the Police of Agrigento, without any effective remedy for the migrants who were recipients. Other migrants, illegally detained under the same conditions in Lampedusa were instead transferred to the airport of Palermo, even without adoption and notification of a formal deferred refusal, and then, once acknowledged by the consul of Tunisia, and after (late) notification of the refusal of entry, were returned to Tunisia without distinction. Yet the operating rules of the Praesidium project, supported by the Ministry of the Interior, provide that "in cases in which voluntary migrants are subject to rejection or expulsion measures it is important that their transfer to a dedicated Centre (CIE) be prepared soon as possible so they can access without delay the defence guarantees provided for by Act and, where applicable, the legal expenses of the State."

Instead the following have been verified:

- the transfer to Mineo of asylum-seekers from other parts of Italy, even migrants who arrived on the island of Lampedusa, including many vulnerable individuals who had complained about torture or ill-treatment, already receiving medical treatment or waiting to have clinical tests performed, which then were not allowed to take place, and especially without the asylum procedures could not have a speedy conclusion.
- the total lack of response from institutions to requests from organisations and from ASGI, which in Catania applied unsuccessfully for months to convene a council on the situation of the territorial centre of Mineo and its children.
- The proliferation of informal administrative detention facilities, such as the First Aid and Reception Center of Pozzallo (RG), in which hundreds of migrants were detained without any guarantee of defence pending deportation

- the use of transit facilities, such as an industrial warehouse in Porto Empedocle (Agrigento), until 7 July 2011, to hold unaccompanied children for weeks who by Act should have been accommodated in shelters and for whom procedures should have been opened for the appointment of a guardian.

Everywhere, but especially Lampedusa, experienced a general lack of knowledge which increasingly heightened tension, in particular, about detailed operational rules established to provide legal information to unaccompanied minors. The information sessions aimed at immigrants, and children in particular, need to take into account the provisions of the Act as well as practices currently in use, because of the consideration that the migrant will attach to such information and the risk of confusion, deception or disappointment. In particular it is essential that the information touch on the following points: definition of a minor, rights of foreign children recognized by the Act, phases of the path for children in Italy, a description of the host community and the role of guardian, waiting periods for protection and the importance of a residence permit and of not straying from the community (clarify that it is important not to leave the community in order to not interrupt the path to legalization in Italy), the concept and types of residence permits, how to access education, training, regular work and procedures for reuniting with any family members in Italy. Despite such precise requirements, hundreds of children were held for weeks on Lampedusa without receiving any news in this regard. These circumstances are inarguable because they are proven by direct evidence and dozens of videos documenting the level of misinformation in which these migrants and unaccompanied minors were held, especially those of Tunisian nationality

III. ARTICLE 5, LETT. E) N.1

The Committee, recalling its general recommendation 30 on non-citizens, urges the State party to take measures to eliminate discrimination against non-citizens in working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects. Furthermore, it recommends that the State party take effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, including debt bondage, passport retention, illegal confinement and physical assault.

Right to just and favorable conditions of work and remuneration of undocumented migrants

Discrimination against non-citizens in working conditions and work requirements is still persisting in Italy.

With reference to the guarantee of fair and satisfactory working conditions Italy does not seem to have fulfilled this obligation in relation to the employment status of irregular migrants (who, according to the most reliable measurements, amounted to no less than 500,000 individuals throughout the country).²⁸ The work of these migrants almost always takes place in conditions of serious insecurity and exploitation.

Italian legislation has a provision (Art. 2126 c.c.) under which invalidity of the contract has no effect for the period in which the contract has taken place. From this the majority of jurisprudence derives the right of the employee to remuneration for services rendered in violation of the rules on entry and stay.

Italy has not yet acknowledged the EC Directive 2009/52 (for which the deadline for recognition expired on 20.7.2011); partly as a result of this default, protection of undocumented migrant workers is still largely insufficient. In particular:

a) the cited Art. 2126 c.c. is general in nature and not explicitly referred to the employment contract and, according to some judges, does not apply to the irregular employment of foreigners.²⁹ In addition, the Article does not guarantee full payment of wages through collective bargaining in the sector;

b) the above standard does not clearly guarantee the right of the worker neither to insurance contributions (although some judges recognize it) nor to forms of assistance related to job performance. In particular, there is no protection from accidents at work, so that in some cases the judges had to intervene to force the National Institute for Occupational Accidents to indemnify the unauthorized employee;³⁰

c) no form of relief is included for the submission of complaints (e.g., possibility of a complaint from abroad) and no issuance of temporary residence permits is allowed to enable litigation without

²⁸ cf. Caritas report.

²⁹ See Trib.Como 18.02.2008 in Riv. Critica dir lav., 2008, 718, affirming that the irregular non-EU worker does not have the right to access the national justice to exercise the rights deriving from the employment contract.

³⁰ See Trib. Monza 9.4.2009 in Riv. Critica dir.lav., 2009, 531.

fear, not even in cases of severe exploitation. Rather, the introduction in 2009 of the crime of illegal immigration (Article 10 TU immigration) together with the requirement to report by the public officers (including judges) who becomes aware of the irregular status of the subject while exercising their powers (a requirement grounded in Art. 361 c.p.),³¹ in fact make legal protection for the irregular workers impractical, with the result that the working conditions of such workers are often in contrast with what is stated in Art.5 E-I of the Convention.

Recommendations:

The State has to undertake all the necessary measures to ensure that a) also the non-EU irregular workers enjoy, for their work, a fair retribution, in line with the collective contracts applied in the sector; b) the employers of those workers are obliged to pay contributions; c) the non-EU irregular workers have the right to enjoy the welfare benefits related to their job, especially in case of accidents at work; d) the non-EU irregular workers enjoy facilitations to submit complaints, even through the issuance of special permits of residence for the most severe cases of exploitation; e) the non-EU irregular workers enjoy the right of submitting complaints without incurring in a report from the public officers for illegal immigration crime.

IV. ARTICLE 5. e) N. IV

Right to health

In the report, the Government does not directly address the issues of health and medical care.³²

In the Act 94/2009 (the so-called security package), it is nevertheless stressed that "as it concerns possible limitations to enjoying the right of access to health-care service [...], the Government fully observes the relevant Constitutional principles. No limitation to the right to health [...] has been introduced so far," as if to say, on the one hand, no problems concerning the right to health would be highlighted, and, secondly, that Italy would not introduce limitations of that right to the detriment of immigrants. Quite the contrary.

Although the national health legislation (theoretically) guarantees equal treatment for Italian citizens and legally resident foreigners³³ with regard to vulnerable groups, or in relation to asylum-seekers and holders of humanitarian protection (RARU) and the Roma, the situation, already difficult, has worsened following the intervention of the legislature.

With Act 94/2009 (the so-called security package), Article. 1 of Act 1228/1954 on vital registration has, in fact, been amended so that "registration and registry modification requests can lead to verification by the appropriate municipal offices of the sanitary conditions of the property in which the applicant intends to establish his residence in accordance with current health standards." The legislative change, although in the abstract applies to all individuals, in practice, is clearly aimed at making it difficult to be registered particularly for the Roma and RARU, or other monitored people, who generally do not own property and to live in crowded housing, often on the edge of towns and dramatic health conditions.³⁴

Ownership of a dwelling and, therefore, the regulations on vital registration, are always closely associated with the right to mandatory health care. In fact, in order to obtain assistance from the National Health Service (SSN), Italian law requires foreigners to register for the SSN by their business on the lists of local public health service providers where they reside or as shown on their residence permit.³⁵

³¹ On this point, pending proceedings concerning constitutionality raised by the Voghera court, 20.11.09 in Riv. Critica dir. Lav., 2009, 1077.

³² Paragraphs 99 to 109, devoted to "The right to public health, medical care, social security and social services," only speak of the "baby bonus," a measure of care that has only an indirect relationship with the right to medical care. On this issue see Articles 2 and 32 of the Constitution, Art. 2, paragraph 1, Art. 34 and Art. 35 paragraph 3 and 5 of Legislative Decree no. 286/98, Art. 34 of Presidential Decree 394/99.

³³ On this issue see Articles 2 and 32 of the Constitution, Art. 2, paragraph 1, Art. 34 and Art. 35 paragraph 3 and 5 of Legislative Decree no. 286/98, Art. 34 of Presidential Decree 394/99.

³⁴ See the guidelines with regard to RARU, drawn up at the initiative of the Province of Parma, for a welcoming relationship and cross-cultural assistance. *Guidelines for integrated and attentive hospitality in the situation of vulnerable applicants and beneficiaries of international protection*, 2011, p. 58.

³⁵ See Art. 42 Presidential Decree 394/99. Art. 42, paragraph 1, refers to the area of residence or, in its absence, actual dwelling. However, paragraph 2 clarifies that, in the absence of vital registration, "the current dwelling is defined as that which is indicated on the permit."

The procedures for registration with the SSN pursuant to Art. 42 Presidential Decree 394/99, also entail dysfunction at the practical/application level, with particular reference to the RARU. A monitoring activity carried out by Physicians for Human Rights (MEDU),³⁶ showed that 67.18% of forced migrants in the Tuscany Region were not included in the SSN.³⁷ This figure can be attributed not only to insufficient information, but also to an excessively complex administrative practice. In fact, since, as we have just seen, those entitled to humanitarian protection encounter many difficulties in obtaining registration of their actual dwelling in the territory, their SSN registration notes the location indicated on the residence permit. The problem is that, normally, the permit for asylum-seekers, is registered in the location where it was issued - which is often different from the actual residence - and the procedure for updating addresses with the police (in addition to requiring payment) is likely to take too long, because the administration refuses to allow the applicant the option of self-certification.³⁸

Recommendations

- **Allow the acquisition of residence, as a precondition for access to a range of fundamental rights such as the right to health.**
- **Return to the preceding framework of the security package,³⁹ in which the registration request was not linked to any conditions and, in particular, the nature of the dwelling could not be an obstacle to enrollment;**
- **Set clear targets in tackling race inequalities in service provision and public health in order to put the health outcomes of minority ethnic communities on a par with the general population;**
- **Commission a yearly report on race inequalities in health and social care;**
- **Develop a clear strategy for more effective consultation with minority ethnic communities to ensure that these groups are involved in the development and evaluation of health and social care services;**
- **Ensure that all general practitioners (GPs, local doctors not based in hospitals) are given the necessary training to work more effectively with people from different minority ethnic groups;**
- **Encourage improved health outcomes by investing in raising awareness among minority ethnic communities about health conditions and services;**
- **Provide concrete access to primary and secondary healthcare to all asylum-seekers while they remain in Italy, also if detained in CIE or CARA and also for HIV treatment.**

9. ARTICLE 6

The right to an effective remedy against acts of racial discrimination

Italy is not complying with the principles established in **CERD Article 6**, regarding access to effective remedies against acts of racial discrimination.

Recommendation n. 21/2008 was totally disregarded.

The data about the limited number of cases, proceedings and convictions relating to acts of racial discrimination recorded in Italy are acknowledged by the Italian Government, which has indicated that this dysfunction is caused on one hand, by the lack of knowledge among those who have been discriminated against of any enforcement action available, and on the other, by the high costs of the proceedings.

However, to overcome these shortcomings, the Government continues to rely solely on the activities and work of private actors (associations and professional organisations) without identifying any effective changes to the enforcement strategies followed thus far. In both cases, the Government has

³⁶ MEDU is an international solidarity organisation whose main objective is the protection of human rights and the right to health especially aimed at those who for different reasons live on the social margins and away from access to care. www.mediciperidiritiumani.org.

³⁷ From the MEDU fieldwork data collected during 2009–2011.

³⁸ Report on health assistance activities in Rome and Florence, 2008, p. 35.

³⁹ It is the procedure established by Act No 1228/1954 and Presidential Decree No 223/1989 and clarified by the Circular of the Ministry of the Interior of 29 May 1995 no. 8

set up a number of inherent limitations that, in the absence of further measures, prevent widespread access to anti-discrimination protection.

At present UNAR is devoid of the independence required by Directive 2000/43 as established at the Ministry of Equal Opportunity and is staffed by personnel in the roles of Chairman of the Board and other Government agencies, as well as some experts in the field and Actuaries. Moreover, the institutional task of UNAR is severely limited. In judicial proceedings, in fact, the Office may provide assistance and support to victims of discrimination, but they cannot act directly in the court.⁴⁰ Instead, legitimation for action is expected from organisations dedicated to and registered in the field of discrimination pursuant to Article 6 of Legislative Decree 215/2003. These organisations can act in the name of and on behalf or in support of the individual discriminated against, as well as on their own in cases of collective discrimination, if there are no directly and immediately identifiable people harmed by discrimination. Collective action, as abstractly configured for the legislation, would be to offer "proactive protection" which could influence the distribution of opportunities and prevent their evolution towards a situation of real damage to individuals protected by the rule.

However, due to the limitations imposed by the Government, collective action remains a mere possibility to which the associations can aspire. A first criticism relates to the Italian legislature by Legislative Decree no. 215/2003, awarding substantial executive discretion in the selection of people entitled to act, by means of prior compulsory membership in a list approved by the Minister of Labour and Social Affairs and the Minister for Equal Opportunity.⁴¹ The requirement of prior enrolment in the Register is, at present, without any objective justification, even considering current legislation in related fields, where the legitimacy of the organisation is predicted on the basis of (only) a general criterion of their interest in acting.⁴² The action of the organisations was then severely restricted in the same year by the Presidency of the Council of Ministers, which updated the register only after four and a half years, in breach of Article. 6 par. 3 of Legislative Decree no. 215/2003, which provides for regular updates annually.⁴³

Although in the report the Government expresses a will to entrust much of the action for combating discrimination to the actors in civil society and affirms that the limited number of anti-discriminatory prosecutions moreover depends on the high cost of legal proceedings, the Italian State has not allocated any funding to support the work undertaken by the organisations, contrary to the provisions for the establishment and operation of the UNAR⁴⁴ and the legal actions that the Regional Councillor and National Councillor on Equality may undertake in discrimination cases of a collective character.⁴⁵ At present, therefore, there are organisations that do not have the resources to sue for discrimination while others, due to the same limitations, cannot select cases to be undertaken.

Finally, the failure by the Government to take appropriate measures led to a dis-function in the activity undertaken to combat discrimination on state territory. The activity of the organisations, in fact, is only expected (and permitted) at the level of court actions⁴⁶ effectively limited to a specific case, even in cases of collective discrimination/action. This characteristic, in an order of civil Act, where there is the principle of *stare decisis*, leads to an uneven application of the Act throughout the entire territory and, thus, to the existence of conflicting court verdicts even when, in some cases, the organisations are acting under the same authority (see attached chart). This also depends on the fact that the state, disregarding the provisions of Articles 11 and 12 of Directive 2000/43,⁴⁷ did not

⁴⁰ Report to the President of the Council of Ministers on the activities carried out by UNAR in 2010.

⁴¹ The list may merge organisations engaged in activities in the area of integration of immigrants pursuant to art. 52 paragraph 1 letter a) of Presidential Decree No 394/99 or in the registry of associations operating in the field of combatting discrimination and promoting equal treatment.

⁴² Such is the case with the procedures expected in relation to discrimination based on gender or other factors referred to in Directive No 2000/78/EC.

⁴³ An initial list was approved by a ministerial decree 16 December 2005. Since then the list was updated by a decree on April 9, 2010 in the Official Gazette No 180 dd. 04.08.2010.

⁴⁴ Article 8 of Legislative Decree no. 215/2003. For the realisation of their institutional duties, UNAR uses funds related to Chapter 537 "operating costs of UNAR" - amounting to 2,035,000.00 euros per year - which are expressly provided and determined by paragraph 3 of Article 29 of the Act of 1 March 2002, No. 39 "Provisions for the fulfillment of obligations deriving from Italy to the European Communities. Communities Act 2001."

⁴⁵ Art. 9 of Legislative Decree 23 May 2000 n. 196.

⁴⁶ Art. 5 of Legislative Decree 215/2003.

⁴⁷ In particular, Art. 12 of Directive 2000/43 entitled "Dialogue with non-Governmental organisations" provides that "In order to promote the principle of equal treatment, Member States shall encourage dialogue with appropriate non-Governmental organisations which, in accordance with their national Acts and practices, have a legitimate interest in contributing to the fight against discrimination based on race and ethnic origin."

encourage any dialogue with the organisations involved which, therefore, play no role in the pre-litigation.

Recommendations

- **Eliminate the Registry or the requirement for enrolment and the related discretionary assessment of its admissibility on the part of Government**
- **Introduce public support in order to promote an active role for organisations at the trial stage**
- **Adopt a broader strategy with the systematic involvement of social actors involved in the fight against discrimination at the preventive level (e.g., through consultations prior to the adoption of rules and regulations in areas that may have a potentially discriminatory effect).**
- **Ban any cost or tax for the proceedings of racial discriminations**

Protection against acts of racism and discrimination in Italian criminal law.

The case of E.B. in Parma.

Here we highlight, in summary, how the Italian criminal Act regarding protection against incidents of racism and xenophobia has been enacted recently: beyond the fact that Act no. 645/52 (the so-called "Scelba Act") implemented the provisions of the Constitution prohibiting the reconstitution of the dissolved Fascist party, it also included a general prohibition against racist propaganda, and notwithstanding the L.962/67 implementing the 1948 Convention against Genocide, it was only in 1975, with Act No. 654, better known as the "Royal Act," that the International Convention on the Elimination of All Forms of Racial Discrimination, signed in New York in 1966, was implemented. This Act introduced for the first time into Italian jurisprudence a broad definition of the concept of "racial discrimination" by providing a specific offence punishable by a penalty of one to four years for the dissemination of ideas based on superiority or racial or ethnic hatred such as incitement to commit such acts of discrimination.

Act 205/93 (the "Mancino Act"), as amended by Act no. 85/06, redefined illegal acts based on the propagation of ideas founded on ideas of superiority, racial or ethnic hatred, and instigation to commit or the commission of acts of discrimination for racial, ethnic, national or religious reasons.

Provision was also made for a specific aggravating circumstance leading to an increase in the penalty by half, which applies to all offences when committed for purposes of discrimination or on grounds of hatred towards an ethnic, national, racial or religious group.

The application of the Act has been very sporadic and only in the last few years has there been an increase of rulings that apply the particular aggravating circumstances of racial discrimination and hatred: the Appellate Court, after some very restrictive interpretations, has recently adopted the important principle that discrimination consists of "the same denial of equality or affirmation of social or legal inferiority of others, increasingly by means of conduct amounting to a crime" (Appellate Court Ruling No 9381/06).

The case of E.B., which took place in Parma, falls in this context.

Very briefly the facts: in September 2008 a young man of Ghanaian origin, who had lived legally in Parma for several years, went to his school, where in the park opposite, he was surrounded and brutally restrained by several people dressed in civilian clothes (who turned out to be Parma city policemen), probably being mistaken for a drug dealer. E.B. was repeatedly beaten and insulted with racist epithets; led to the Police Command Station where he was locked in a cell, completely stripped-searched, insulted and threatened again, beaten with a plastic bottle to force him to confess to crimes he never committed. He was also photographed next to an agent, who inserted the image as wallpaper on his desktop computer. Subjected to several other abuses, he was finally released late in the evening and was handed an envelope containing some of his belongings which was labeled: "E. negro."

The next day E.B. (who as a result of the facts reported above suffered a serious eye injury as well as heavy psychological consequences) immediately reported the incident: the procedure carried out by the Public Prosecutor of Parma first identified E.B. as an accused resistor according to the official report submitted by the Municipal Police and their reconstruction of the events; but later, in view of massive evidence of his claims, a charge was filed against his accosters and E.B. was identified as the victim. After a long and detailed investigation the 10 public officials, some even with executive functions, who took part in the episode, were scheduled for trial before the Court of Parma, facing serious allegations regarding crimes of injury, private violence, slander, perjury, sexual violence, abduction, and -- depending on behaviours otherwise attributed to them -- some were also accused of the aggravating circumstance of having committed the acts for the purpose of discrimination and racial hatred.

While two of the defendants chose an expedited procedure, the other eight opted for the ordinary procedure, denying any wrongdoing. All of the trials were concluded in the first tribunal with guilty verdicts: the summary judgments (verdicts pronounced in the months of May 2010 and January) carried sentences of about three years in prison, whereas the ordinary trial proceedings, which lasted through many hearings, were completed in September 2011 with different

sentences depending on the different liabilities, with penalties ranging from a minimum of two years up to a maximum of seven years and nine months in prison.

It should be emphasized that the prosecution as well as the complete trustworthiness of E.B. were fully confirmed by the various verdicts, which also took into account the aggravating circumstance -- which had been challenged -- of discrimination and racial hatred towards people of colour. In the ordinary trial the Court of Parma also ordered the defendants to compensate E.B. for all damages suffered, establishing a provisional sum immediately enforceable in the amount of EUR 135,000, and leaving the final amount to another judgment, while exempting the City of Parma from any civil liability.

The importance of these judgments, which were not conclusive and therefore await a final outcome, appears obvious, especially if they are integrated into the Italian justice system, or if with great difficulty they succeed in affirming the liability of public officials especially at management levels, and particularly if there are racial implications: there are many reasons but in general the victim's position of extreme weakness became a decisive factor. In the episode in question, E.B.'s determination, the extreme precision of his statements, the outcry in the media and the accuracy of the investigation were crucial. The lack of a specific crime of torture and inhumane and degrading treatment also emerged as a serious defect in the Italian legal system overall: in fact, despite having ratified the pertinent UN Convention against Torture, Italy, in default in this respect, has not yet identified a specific crime which would more easily permit punishment of unActful conduct of the police, without having to establish responsibility for distinct and separate offenses, as is currently the case.



SUBMISSION OF INFORMATION

To the UNITED NATIONS

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Eightieth session
13 February- 9 March 2012

IN CONNECTION WITH THE CONSIDERATION OF
THE SIXTEENTH -EIGHTEENTH CONSOLIDATED PERIODIC REPORTS OF

ITALY

Rome, March 2012

On occasion of the International Children's Day 2011, celebrated on November 20th, the Italian Committee for UNICEF in collaboration with Lorien Consulting, made public the results of the survey "The perception of racism among Italian adolescents and adolescents of foreign origin", in the context of the "IO come TU, Mai nemici per la pelle" campaign.

This sample survey has involved 400 Italian adolescents and 118 adolescents of foreign origin, between the ages of 14 and 19; they have been contacted with the help of some 90 volunteer associations across the country.

Answering the question "How often do you get in touch with people of foreign origin?", the Italian adolescents said: at least once a week 70,0%, especially during leisure time (43,9%) or at school (42,2%).

How often are you in touch with people of foreign origin?

At least twice a week 61,5%

Once a week 8,5%

Once a month 8,5%

Less than once a month 11,5%

Never 10%

Italian adolescents believe immigrants are an integral part of society (57% of respondents), but that they often live in difficult situations: therefore, it is a duty, especially for Italian citizens, to help them (52%). More than half of the sample believes the presence in Italy of foreign people (55.6%) is positive, thanks to the cultural enrichment they bring to the country (47.5% of respondents).

Relationship with immigrant people

Do you agree with the following sentence? (% of positive answers)

They are an integral part of our society 53%

They live in difficult situations; it is our duty to help them 49,8%

In our country, they are too many 40,5%

They contribute to the cultural enrichment of Italy 48,3%

The majority of them is involved in criminal activities 28%

I try to avoid them 20,5%

It would be important to create separated class for them in schools (15%).

Racism is present in the daily life of adolescents, in particular among those of foreign origin. For both Italian and foreign adolescents, racism is not expressed only through violent demonstrations (15.3% of adolescents of foreign origin, 17.5% of Italian adolescents), but primarily through rejection or marginalization (44.4% of adolescents of foreign origin and 43.0% of Italians). Many interviewed, especially adolescents of foreign origin, noted that they are faced with racism every time a distinction is made towards people of another race, culture, religion etc.. (36.5%).

What is racism?

	Italian adolescents	Adolescents of foreign origin
Rejection and exclusion towards people of another race, religion, culture, ideology, etc	43,0%	44,4%
Any distinction towards people of another race, religion, culture, ideology, etc	36,5%	38,9%
Violent acts towards people of another race, religion, culture, ideology, etc	17,5%	15,3%
Other	2,5%	1,9%

The sample of adolescents of foreign origin is divided between those who have witnessed racism (54.1%) and those who have not (44.4%). However, 22.2% of the adolescents of foreign origin interviewed, has suffered acts of racism, of which more than half last year (53.8%).

They have witnessed or suffered acts of racism mainly at school 61,5%. 43,0% of Italian adolescents interviewed affirm that they have never witnessed racism.

According to the answers of minors of foreign origin, these are the institutions that are committed to fight racism: national institutions (20.8%), church (18.1%), international organizations (16.7%) and schools (16.7%). Diversely, Italian adolescents mention: volunteer associations (48.0%), international organizations (32%), schools (26.5%), and individuals (26,5%).

Both groups of adolescents agree about who should be responsible for fighting racism: national institutions (50% for Italians, 37.5% for those of foreign origin), schools (47% vs. 27.8%) and the community (41% vs. 31.9%).

Citizenship law

Another question was about the knowledge of citizenship law: the greatest part of the sample does not know the mechanisms to obtain the Italian citizenship: 69.0% of Italian adolescents, and 68,1% of minors of foreign origin.

The majority of Italian adolescents (67%) and almost all of those of foreign origin (91.7%), however, agree to give the Italian citizenship to anyone who is born in Italy.

<http://www.unicef.it/doc/3267/pubblicazioni/indagine-razzismo-adolescenti.htm>



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Rome, March 2012

PRESENTATION of

VIS – Volontariato Internazionale per lo Sviluppo

VIS – International Volunteer Service for Development, a non-profit nongovernmental organization established in 1986 with a particular focus on human rights education and development with Special Consultative Status at the ECOSOC, Decision no. 226. 27th July 2009 and recognized in 1991 by the Ministry of Foreign Affairs, as per Italian Law no. 49, 1987. With these objectives VIS promotes training activities in Italy and in the European Community, and works throughout the world, carrying out human development, cultural and socio-economical programs.

SUBMISSION OF INFORMATION

ICERD, art. 2

HUMAN RIGHTS EDUCATION

CESCR (CESCR/ ITA/ 04 of November 2, 2004, no. 13, 29, 31); CRC (CRC/C/ITA/CO/3-4, 2011 n.19), have highlighted the lack for a widespread human rights culture in Italy from three different viewpoints:

- 1) promote permanent education of judges and judicial personnel and education of young generations;*
- 2) Promote initiatives in human rights education and training within the human rights council's agenda, including the adoption of a UN Declaration on the matter and implementation of the World Program on Human Rights Education;*
- 3) Promote ambitious educational measures to help eradicate all forms of discrimination.*

While expressing concern about the small number of judicial decisions referring to the provisions contained in ICERD, considered as indicator of a lack in knowledge of the international law for human rights, we recommend the Government not only an increased effort in continuing education of magistrates, but also an increased commitment in a background human rights education through mainstreaming human rights education in school curricula.

Notwithstanding the Voluntary Pledge and Commitments of the Italy in front of the UN General Assembly, when filing for its second membership to the new UN Human Rights Council in 2011, while the rest of Europe is in the process of conforming their school educational programs through the integration of traditional study subjects with all those considered of new generation, up to now Italy is still not compliant with the recommendations received at international level – from the United Nations and the Council of Europe – urging to mainstream human rights education in its school curricula.

In Italy, human rights is not a compulsory subject in teachers training nor it is mainstreamed in the new education plans for compulsory schooling or in high school, nor it is studied at University level, except as optional subject, not even in the Faculty of Law.

Reference national legislation and its application

On December 10, 2004 the UN General Assembly, with Resolution 59/113, established – as output of the UN Decade for Human Rights Education launched in 1993 at Vienna World Conference – the World Program for Human Rights Education. This program, divided into various steps and presently in its second phase (2010-2014), is focused on human rights education for higher education and on human rights training programs for teachers and educator, public officers, police officers and military staff. The focus has been defined on the basis of a consultation of the High Commissioner for Human Rights to which also Italy took part and contributed. The indication for the second phase are contained in the “Plan of Action for the second phase (2010-2014) of the World Program for Human Rights Education” (A/HRC/15/28) where specific action directed towards the various components of the educational path are indicated: adequate national policies, international cooperation, coordination and assessment.

For a right information, it must be evidenced that unto today the targets set in the first phase (introduction of human rights education into the ministerial curriculum for primary and secondary schools of first and secondary level) are still widely disregarded by the Italian Government.

The introduction of the reform of the Italian school system through the implementation of the Law of 30 October 2008, no. 169, has led to the introduction in our school system, of a new subject: "Citizenship and the Constitution", to become in force starting from the school year 2009-2010 for an amount of 33 hours per year.

Constitution and rights/duties education for an active citizenship foresees the acquisition of knowledge and skills through the educational contribution of the different fields of expertise with regard to kindergarten, as well as all other areas and disciplines envisaged in the curricula of schools of all levels. Therefore, it urges the connection between the disciplines of which it enhances the civic-social value, thus facilitating the overcoming of fragmentation.

Cross-cutting contents meet with the themes of legality and social cohesion, of national and European citizenship within a frame work of an International and interlinked community, of human rights, of equal opportunities, of pluralism, of the respect for diversity, of the intercultural dialogue, of ethics, of individual and social responsibility, of bioethics, of the protection of the artistic and cultural heritage.

Last December 19, 2011, UN General Assembly in New York adopted the Declaration on Human Rights Education and Training recognizing the right of everyone to access to human rights education, hence starting up a permanent process that involves all ages, all components of society and all types of education, formal and informal.

It is easy to envisage that the adoption of this document will facilitate an always more progressive implementation of human rights among the school subject to be taught.

The Comitato per la promozione e la protezione dei diritti umani wishes CERD will adopt in its Concluding Observations the following recommendations:

- 1. To recommend the **Ministry of Education**, Dipartimento per l'Istruzione - Direzione Generale per la Formazione e l'Aggiornamento del personale della scuola (Department for Education – General Direction for School Staff Education and Training) – to include a compulsory educational training on Human Rights Education, as subject mainstreamed into all educational topics, to be included in the training of teachers and in the primary and secondary school*

system;

2. To recommend the **Commissione di Revisione delle Indicazioni Nazionali** (Commission for the Revision of the National Guidelines), to include Human Rights Education in the new National Indications Guidelines for school programs as a mainstreamed subject, with specific contents to be comprised in the study of all traditional subjects (history, geography, sciences, etc. ;
3. To recommend the **Ministry for Education** to prepare specific monitoring indicators for human rights education in primary and secondary school in Italy capable of identifying:
 - number of human rights modules included in the curricula of any subject in the last 5 years;
 - number of human rights modules included in school texts in the last 5 years;
 - percentage of educational activities for teachers and experts dealing with human rights issues .