



International Federation of Action by Christians for the Abolition of Torture

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Action by Christians for the Abolition of Torture in Italy



# FIACAT and ACAT Italy's contribution to the list of issues for the review of the sixth periodic report of Italy

Human Rights Committee

118<sup>th</sup> session - June 2016

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## **Authors of the report**

### **FIACAT**

The International Federation of Action by Christians for the Abolition of Torture, FIACAT, is an international non-governmental human rights organisation, set up in 1987, which works towards the abolition of torture and the death penalty. The Federation brings together some thirty national associations, the ACATs, present in four continents.

### **FIACAT – representing its members in international and regional organisations**

It enjoys Consultative Status with the United Nations (UN), Participative Status with the Council of Europe and Observer Status with the African Commission on Human and Peoples' Rights (ACHPR). FIACAT is also accredited to the International Organisation of *la Francophonie* (OIF).

By referring the concerns of its members working on the ground to international bodies, FIACAT's aim is to encourage the adoption of relevant recommendations and their implementation by governments. FIACAT works towards the application of international human rights conventions, the prevention of torture in places of detention, and an end to enforced disappearances and impunity. It also takes part in the campaign against the death penalty by calling on states to abolish capital punishment in their legal systems.

To give added impact to these efforts, FIACAT is a founding member of several campaigning coalitions, in particular the World Coalition against the Death Penalty (WCADP), the International Coalition against Enforced Disappearances (ICAED) and the Human Rights and Democracy Network (HRDN).

### **FIACAT – building up the capacities of the ACAT network in thirty countries**

FIACAT assists its member associations in organising themselves, supporting them so that they can become important players in civil society, capable of raising public awareness and having an impact on the authorities in their country.

It coordinates the network by promoting exchanges, proposing regional and international training events and joint campaigns, thus supporting the activities of the ACATs and providing them with exposure on the international scene.

### **FIACAT – an independent network of Christians united in fighting torture and the death penalty**

FIACAT's mission is to awaken Churches and Christian organisations to the scandal of torture and the death penalty and convince them to act.

### **ACAT Italy**

Azione dei Cristiani per l'Abolizione della Tortura (ACAT Italia) is an association founded in 1987 and is one of the first national ACATs born in Europe; ACAT Italia is also one of the founding associations of the International Federation FIACAT. It works for the abolition of torture and the death penalty. ACAT Italia works in network with other Associations and ONGs, and it focuses on youth education on human rights. In this field ACAT Italia launches every year a prize for university graduation thesis on torture or death penalty.

## **I. Torture and cruel, inhuman or degrading treatment or punishment (Article 7)**

### **A. The Introduction of the crime of torture in the Italian criminal code**

1. The UN Committee Against Torture in its Concluding Observations invited in 2007<sup>1</sup> Italy to incorporate the crime of torture into domestic law and adopt a definition of torture that covers all of the elements contained in article one of the UN Convention against torture. The crime of torture is one of the most significant regulatory gaps in the Italian legal system.

2. In 2013 the Italian Parliament seemed to have reached an agreement on a bill: the decree No.362, which has been approved by the Senate. According to this decree, a person who commits an act of torture can be convicted to imprisonment from 3 to 10 years. This text proposed by the Commission of Justice would introduce in the Criminal Code an article 613-bis, defining the crime of torture, and an article 613-ter, allowing the prosecution of the conduct of a public officer who instigates others to the commission of an offense.

3. After several amendments, the definition of torture given in this text is not in conformity with the one given by the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The crime of torture is defined as a common crime, characterized by general intent, rather than a specific offense relating solely to public officials. However, the Bill includes specific aggravating circumstances if the conduct is carried out by a public official or another person acting in an official capacity and if the result of such behaviour is an acute or very acute injury. In case of death of the torture victim, the offender could be convicted to up to 30 years of imprisonment if death is an unwanted consequence of his conduct, on the contrary the offender could be convicted to life imprisonment.

4. Another issue has to be raised regarding this text. In fact, according to the current text, the offense of torture is only constituted in cases of repeated serious violence or threats or if the author acted with cruelty. This means that would not amount to torture acts of violence against a person that only occurred once.

5. However, this Bill still represents an important step for the Italian Criminal Code and also for its legal system. The legislative procedure is just at the beginning because the Bill was approved at first reading by both room of the Parliament between March 2014 and April 2015 and has since been stalled, at the second reading, in the Senate Justice Commission. Unfortunately, a calendar has not been established yet, so it is not clear when the law will be voted definitely. The text is still before the House at the time we submit this report.

**FIACAT and ACAT Italy invite the Human Rights Committee to ask the Italian government:**

- **Has a calendar been established to adopt the Bill introducing the crime of torture into the Italian Criminal Code and what steps have been taken to ensure that the Bill is adopted swiftly;**
- **What steps are being taken to ensure that the definition of torture in the Bill before the parliament is in conformity with the one of the Convention against torture in particular by amending the Bill to limit the crime of torture to acts carried out by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity?**

### **B. Police violence**

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<sup>1</sup> Committee against torture, concluding observations Italy, CAT/C/ITA/CO/4, para. 5

6. Many cases are still being reported of foreign nationals being victims of ill treatments by law enforcement officers.

- On 2 June 2011: A young Moroccan of 24 years old (Abderrahman SAHLI) resident in Montagnana in the province of Padua was found dead on the banks of a river with strange bruises on his forehead. On the evening of the feast of ham in Montagnana, the young man was arrested to keep him from bothering a group of women. Later on he was brought to the bridge that crosses the river Frassine, thrown into the water and left to his fate. His body was found on 2 June 2011, in the bed of an artificial channel. This discovery led to a protest from the North African community. Some of them declared in an interview that *"here it works like this: you are loaded in car and then they make you jumped in the river. And what shall we do? What happened to Abderrahman happened to me twice: the police get us drunk, we get into a car, handcuffed, that brings us to a bridge, they insult us, take away the handcuffs and then push us into the river with a kick"*. Four policemen have been investigated in this case, whose responsibilities have been established (also in relation to similar previous episodes). Three of the policemen have chosen a plea bargain with minor penalties for a maximum of two years and the fourth underwent a normal trial.<sup>2</sup>
- On Wednesday 18 February 2015 officers in riot gear, helmets and batons raided a Roma camp in Via CupaPerillo in Scampia [Naples] for, at least, the fourth time in two months. The Association of Roma Nation also reports another incident during which children and Roma women have been attacked in the Via Amarilli La Rustica in Rome. This event took place after the destruction by fire (probably arson) of the facility where the Roma were living on the night of 29 March 2015. The Roma families, children and women, suffered a violent aggression by the men of the municipal police after spending their second consecutive night sleeping on the ground, with just blankets, in front of the structure destroyed by fire. Gun shots were fired which fortunately did not reach anyone, but the municipal police beat some women and used pepper spray in the eyes of children. The families did not receive any help for housing and were evacuated from the centre of Via Amarilli.<sup>3</sup>

7. In September 2014, the Ministry of Interior authorized the police to use force to ensure the collection of fingerprints during the identification of refugees and migrants. This immediately led to reports of excessive use of force during identification procedures.<sup>4</sup>

8. The alleged ill-treatments mainly consisted of punches, kicks or blows with batons, at the time of apprehension (after the persons concerned had been brought under control) and, on occasion, during their stay in a law enforcement establishment.

9. On that topic, the European Parliament passed a resolution in 2012 calling on its Member States to ensure the legal and democratic control of their law enforcement authorities and that their staff is strengthened, their accountability guaranteed and that immunity will not be granted for cases of disproportionate use of force and torture or inhuman or degrading treatments.<sup>5</sup>

10. However, Italy still hasn't adopted a system of identification of police officers through identification codes on their uniform. In fact, it is not required for the agents in service to wear an ID number for recognition on their uniform or helmet. Moreover, there is no code of conduct for police officers in Italy but only guidelines and a Code of Conduct for employees of the Public administration in general.

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<sup>2</sup> Acad onlus, available on <http://www.acaditalia.it/2014/12/abderrahman-sahli-2-giugno-2011/>

<sup>3</sup> Osservatorio Repressione, *Roma: Vigili urbani aggrediscono donne e bambini del centro di Via Amarilli*, March 2015, available on <http://www.osservatoriorepressione.info/roma-vigili-urbani-aggrediscono-donne-e-bambini-del-centro-di-via-amarilli/>

<sup>4</sup> Amnesty International, *Amnesty International Report 2014*, p. 202, available on <https://www.amnesty.org/en/documents/pol10/0001/2015/en/>

<sup>5</sup>See Risoluzione del Parlamento europeo del 13 dicembre 2012 sulla revisione della strategia dell'UE in materia di diritti umani ([2012/2062\(INI\)](https://www.europarl.europa.eu/press-room/en/answer-debate-11644/2012-2062(INI)))

11. Regarding the proceedings on those cases of ill-treatments by law enforcement officers, it can be seen that in many of them the judges have not arrived yet to issue, after so many years, a verdict clearly stating the responsibilities of the authors who committed such acts. For example, in the case Uva, about a boy who died a day after his arrest in 2008, the verdict of the Supreme court is still pending.<sup>6</sup> Moreover, when authors have been convicted, some of them benefited from pardon and therefore served a sentence much lower than the one decided by the judge. For example, in the case Aldrovandi, four policemen were convicted for excess of the legitimate use of weapons but benefited from mercy for 36 of the 42 months of imprisonment to which they were convicted.<sup>7</sup> In all cases, the lack of the criminalization of the crime of torture does not permit to convict the authors for such crime.

**FIACAT and ACAT-Italy invite the Human Rights Committee to ask the Italian government:**

- **Give statistics on complaints for ill-treatments and torture, investigations and sanctions against police officers;**
- **What measures are being taken to prevent cases of torture and ill-treatments by law enforcement officials;**
- **What measures are being implemented to allow the identification of police officers in the course of their work;**
- **Is there an independent investigation carried out on all allegations of torture or ill-treatments by law enforcement officials and what measures are being taken to ensure that the authors of such acts are adequately and proportionately sanctioned?**

**II. Prison conditions (Article 10)**

**A. Prison overcrowding**

12. Prison overcrowding remains a persistent problem in Italy. In 2012, the CPT mentioned in its report<sup>8</sup> that the total prison population had increased “from some 59,000 to 66,000 prisoners” between 2008 and 2012. Overcrowding has reached 146.4% in 2012, whereas the rate was about 129,9% in 2008.

Years	Total number of prisoners (including pre-trial detainees)	Total capacity of penal institutions / prisons	PRISON DENSITY PER 100 PLACES,
2008 (1 <sup>st</sup> September) <sup>9</sup>	55 831	42 992	129.9 %
2010 (1 <sup>st</sup> September) <sup>10</sup>	68 345	44 608	153.2 %
2012 (1 <sup>st</sup> January) <sup>11</sup>	66 897	45 700	146,4 %
2013 (1 <sup>st</sup> January) <sup>12</sup>	65 701	47 040	139.6%
2014 (1 <sup>st</sup> January) <sup>13</sup>	62 536	47 709	131.1%

<sup>6</sup>“Caso Uva, procura Varese: Rinvio a giudizio per 8 tra carabinieri e poliziotti”, Il Fatto quotidiano, 24/03/2014: <http://www.ilfattoquotidiano.it/2014/03/24/caso-uva-procura-varese-chiede-rinvio-a-giudizio-per-agenti/924456/>

<sup>7</sup>“Caso Aldrovandi: La Cassazione conferma: 3 anni e 6 mesi di carcere ai poliziotti” La Stampa, 21/6/2012, at <http://www.lastampa.it/2012/06/21/italia/cronache/aldrovandi-la-cassazione-conferma-anni-e-mesi-di-carcere-ai-poliziotti-RvTlhtMinGH4liChzqjezM/pagina.html>

<sup>8</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Italian Government on the visit to Italy carried out by the CPT from 13 to 25 May 2012*, November 2013, para. 44.

<sup>9</sup>Council of Europe, *Annual Penal Statistics – Survey 2008*, 2010, p. 43 [http://www.coe.int/t/dghl/standardsetting/prisons/SPACEI/PC-CP\(2010\)07E%20SPACE%20Report%20I.pdf](http://www.coe.int/t/dghl/standardsetting/prisons/SPACEI/PC-CP(2010)07E%20SPACE%20Report%20I.pdf) p. 43

<sup>10</sup>Council of Europe, *Annual Penal Statistics – Survey 2010*, 2012 [http://wp.unil.ch/space/files/2014/04/SPACE1\\_2010\\_English.pdf](http://wp.unil.ch/space/files/2014/04/SPACE1_2010_English.pdf)

<sup>11</sup>Council of Europe, *Annual Penal Statistics*, 2012-2013 <http://wp.unil.ch/space/space-i/prison-stock-on-1st-january-2013/>

<sup>12</sup>*Ibid.*

<sup>13</sup>Council of Europe, *Annual Penal Statistics*, 2014-2015, available on : <http://wp.unil.ch/space/space-i/prison-stock-2014-2015/>

2015 (1 <sup>st</sup> January)	53.623	49.943	107.4%
2016 (31 January) <sup>14</sup>	52.475	49.480	106.1%

13. The data of the above-table shows the improvement of the situation between 2012 and 2015. According to the report drafted by Antigone, there were 53,982 detainees on 28 February 2015 and 53,623 on 31 December 2014. However, the association further states that “*According to the Dap, there are 49,943 beds. The prison population is therefore of 108%, or 108 prisoners per 100 beds. In the administration's own admission, however, information about the capacity does not take into account any temporary situations (departments closed for maintenance) involving temporary deviations from the value shown. According to what is established, the temporary deviations would be quantifiable at around 4,200 units. If so, the rate would rise to 118 % overcrowding. Therefore, we must insist on the land reforms to get to a 'normal' situation or of a prisoner to a bed*”<sup>15</sup>

14. The association Antigone Onlus attributes this decline in the number of detainees to “*change in the law about Foreign People (in particular the decision of the Court of Justice of the EU has imposed not to apply the provision which provided for the crime of refusal to comply with an obligation to leave the country), new rules on Stop (standards tend to avoid taking into account short detentions) and remand (limits its use to cases of crimes of lesser social alarm)*”<sup>16</sup>. Another important element is the non-application of the law Fini-Giovanardi on soft drugs, since there was 9000 less prisoners including 5500 for crimes related to trafficking and possession of drugs, when the law was abolished.

15. Regarding the possible alternatives to prison the association Antigone Onlus notes that over the last four years (2011 to date) there has been a direct correlation between the decrease in the prison population and an increase in the number of people assigned to an alternative measure to prison, “*the reduction of the prison population is not connected - at least in most cases - to a marked increase in the number of beneficiaries of alternatives to detention; among the measures currently applied the ones historically designed to favour the re-socialization of the convicted person are becoming less important, in favour of deflationary measures, which ignore the function of re-socialization of alternatives to incarceration*”. In fact, the report highlights there was only a small increase in the number of people placed under probation. On the contrary, it was found that there had been an important increase of house arrest.<sup>17</sup>

16. In Lombardy, for example overcrowding is 27% (that is five times larger than the national average) with peaks up to 80% (in Como there are 400 inmates in a capacity of 220 seats).

17. However, figures are disputed by the Prison Police autonomous union that communicated their own data according to which there were 52,144 inmates in prisons at the end of July 2015 while on 31 January, 2016 there were 52,475. In other words, the prison population, has increased rather than decreased over the past six months. The Department of Prison Administration indicated a capacity of Italian structures of 49,480 (but as previously mentioned, the calculation takes under consideration the prison sections currently under renovation or closed), and then there are at least over 3.000 detainees more.<sup>18</sup>

18. The “Prisons Plan”, launched in 2010, had planned the creation of 9,300 new places and then 11,934 in October 2015, also due to the plan for “renovation” and the new institute of Reggio Calabria.

<sup>14</sup> Ministry of Justice, Detenuti presenti, aggiornamento al 31 gennaio 2016 available on: [https://www.giustizia.it/giustizia/it/mg\\_1\\_14\\_1.wp?previousPage=mg\\_1\\_14&contentId=SST1211516](https://www.giustizia.it/giustizia/it/mg_1_14_1.wp?previousPage=mg_1_14&contentId=SST1211516)

<sup>15</sup> XI Rapporto Nazionale sulle Condizioni di Detenzione. Oltre i tre metri quadri Antigone ONLUS (pp: 2-3) Edizioni Gruppo Abele, 2015

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Corretta informazione, Situazione carceri, polemiche tra Sappe e DAP sul sovraffollamento: novità su ddl amnistia e indulto 2016: <http://www.correttainformazione.it/situazione-carceri-polemiche-sappe-dap-sovraffollamento-ddl-amnistia-indulto-2016/81631238.html>

From the original plan have been eliminated the new institutions foreseen in the city of Bari, Nola, Venezia, Mistretta, Sciacca and Marsale, and the new pavilions in the city of Salerno, Busto Arsizio and Alessandria. So the Court of Auditors highlighted that only 4,415 new places were created with the forecast to reach 6,183 in 2016.<sup>19</sup>

**FIACAT and ACAT Italy invite the Human Rights Committee to ask the Italian government:**

- **What measures are being implemented to reduce prison overcrowding, in particular how are alternatives to imprisonment in favour of re-socialization privileged;**
- **Give information on the implementation of the Prison plan launched in 2010 which was originally planned to create 9,300 new places;**
- **Give statistics on prison population ventilated distinguishing men and women, adults and minors, pre-trial and convicted detainees?**

## **B. Material conditions in prisons**

19. Material conditions of detention vary from one establishment to another or even from one detention unit to another. However, letters from detainees often denounce the material conditions of Italian prisons. For example, an inmate from Pisa Prison in January 2014 wrote: *"The things, walls, furniture are falling apart. [...] This morning we woke up with the floor full of water and other crap I do not know and I do not want to know. We live worse than animals dying."*<sup>20</sup> Another inmate from Frosinone Prison wrote in May 2014: *"We are here with broken windows from where drafts are entering [...] and last night it started to rain and this morning when I woke up [...] I wet my feet because the slippers were floating in the water that had come through the night. [...] The corridor was filled with water [...]. The infirmary is full of holes from mice. A fellow has been suffering from an umbilical hernia and has been needing an ultrasound for two months, not to mention the teeth. [...] Sometimes you get in healthy and come out in pieces. A few months ago a fellow went to the infirmary [...] he had to undergo an extraction of the molar on the right but the dentist extracted the one below, he apologized and told him that he must go to eat"*<sup>21</sup>. A similar testimony was given by the prison policemen union (SAPPE) denouncing, among other things, leaks from the roofs, crumbling walls and clogged lavatories<sup>22</sup>.

20. ACAT Italy and FIACAT would like to highlight the inadequacy of the food provided by the prison canteens: many detainees are forced to cover the cost of their meals, even though this is not always possible, but not all detainees may face charges of canteens fees. For example, people in solitary confinement have access to a kitchen. Prison canteens do not serve always the adequate regime to the inmates. For example, an elderly inmate from the Sulmona prison wrote: *"I have not eaten [for 2 days], not because I do not like the food but because I am suffering from cholesterol, so I cannot eat it."*<sup>23</sup>

21. Some improvements were noted by the association Antigone Onlus, especially regarding the Study Commission on the subject of interventions on prison matters (established from June to November 2013) which suggested to prison administration few provisions designed to improve daily life during imprisonment. Among those recommendations were the following ones, considered as the most urgent: the removal of all separation counters for talks between inmates and their family members (in 2013, 45 institutions still had them); the removal of any shielding windows that do not allow sufficient access to natural light and that cannot be opened (as it was the case in 20 institutions); the separation of the toilet from the rest of the cell in the case of a multiple cell or at least hidden in the case of individual cells (it was not the case in 138 institutions).

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<sup>19</sup> Polizia Penitenziaria, *Che fine ha fatto il "Piano Carceri"*: <http://www.poliziapenitenziaria.it/public/post/blog/che-fine-ha-fatto-il-piano-carceri--2403.asp>

<sup>20</sup> *Scarceranda 2015 Quaderno 10* Radio Onda Rossa (pp: 65)

<sup>21</sup> *Scarceranda 2015 Quaderno 10* Radio Onda Rossa (pp: 71-72)

<sup>22</sup> Polizia penitenziaria, *Che fine ha fatto il "Piano Carceri"*: <http://www.poliziapenitenziaria.it/public/post/blog/che-fine-ha-fatto-il-piano-carceri--2403.asp>

<sup>23</sup> [www.carmelomusumeci.com](http://www.carmelomusumeci.com) maggio 2015

## FIACAT and ACAT-Italy invite the Human Rights Committee to ask the Italian government:

- Give information about steps taken to ensure decent material conditions of detention;
- What measures are being taken to guarantee a healthy and nutritious diet for all detainees?

### C. Health care in prisons

#### 1. Overview of health care services

22. Italian prisons are not in the best conditions regarding healthcare, as it is shown in various reports. In the Scarceranda report published by Radio Onda Rossa, it is reported that many detainees testify each year of the lack of healthcare in prison. They report cases of healthcare denied and prescription of drugs without visits. The report also denounces the high use of psychotropic drugs in prison and shares the testimony of the spokesman of OSAPP (Autonomous Trade Union Organization of the Penitentiary Police) who said in 2012 that *"in Italian prisons there are at least 16,000 detainees in chemical containment because of the massive use of psychotropic drugs. It is more than 40% of prisoners awaiting trial"*.<sup>24</sup>

23. The Report of Antigone Onlus<sup>25</sup> also states on that topic that: *"One inmate out of two is suffering from an infectious disease, nearly one out of three of a psychiatric disorder. The plans of the legislature in 2008, the reform of the prison health should pursue the fundamental goal of ensuring that the right of detainees to protect their health is the same as for free citizens. But, after seven years there are too many cases of healthcare denied. In fact, the relations between the medical department and some of the detainees are often conflicting. The law provides that the doctor is a member of the disciplinary board. The same doctor is called to make judgments of compatibility with the environment penitentiary. It is thus undermining the relationship of trust which should bind the doctor with each of his patient."* The report also criticises the fact that prison inmates can only seek the assistance of a doctor from outside at their own expenses creating a risk of disparity in the healthcare received by the detainees based on their resources and that the wait for an authorization is often very long.

24. Another issue raised on that topic concerns the exercise by detainees of their right to information. In fact, clinical journals are poorly accessible and often illegible because of the fact that they are handwritten. On that point, the Committee for the protection of health in prison highlighted the fundamental importance of implementing digital medical records. According to Antigone Onlus: *"Last summer, in the region of Emilia Romagna each prison had already introduced digital medical records. In Lombardy, this was used in the prisons of San Vittore, Opera, Varese, Bergamo, Sondrio and Vigevano, while Busto Arsizio was adapting to the arrangement. In Molise Larino only digital folders were used, as in Sulmona in the Abruzzo region, and Messina in Sicily. In Campania only the institution Carinola was undergoing this adjustment. However, nothing was done on that matter in Calabria, Basilicata, Lazio, Liguria and Marche."* It also reports on that matter that *"in January 2015, the Azienda Sanitaria Locale (ASL)<sup>26</sup> of Carrara has submitted a pilot project through which the inmates of Massa, the first in Italy, will be able to choose the doctor of trust between those involved in the building, and an information desk health will allow family members to monitor the condition of the patient's health in prison, through interviews with doctors, subject to the consent of the patient"*.<sup>27</sup>

25. To this picture must be added the contribution of Osservatorio Repressione that 2 out of 3 detainees are sick, out of them 48% are suffering from infectious diseases (including hepatitis, while HIV is slightly lower), 32% from psychiatric disorders, 17% of musculoskeletal diseases 16% from cardiovascular disease, 11% from metabolic disorders and 10% of dermatological diseases. Moreover, *"most of the prisons have similarities: bathroom and kitchen in the same room, sheets changed every 15 days, the Turkish*

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<sup>24</sup> Scarceranda 2015 *Quaderno 10* Radio Onda Rossa (pp: 26-30)

<sup>25</sup> *XI Rapporto Nazionale sulle Condizioni di Detenzione. Oltre i tre metri quadri* Antigone ONLUS (pp: 15) Edizioni Gruppo Abele, 2015

<sup>26</sup> Local health institution providing the services of the national health system in a given area.

<sup>27</sup> Ibid.

*bath or toilets separated from each other by a wall just a meter tall, dilapidated structures. The staff is insufficient, social workers are less than what is necessary. Health care, as you can easily guess from this picture, is often of poor quality*<sup>28</sup>.

**FIACAT and ACAT Italy invite the Human Rights Committee to ask the Italian government:**

- **Give the number and details of medical staff in each prison in Italy;**
- **What measures are being implemented to ensure effective access to medical care to all detainees;**
- **How many prisons are equipped with digital medical files and when should all prisons be equipped with such equipment;**
- **What are the results of the pilot project in the ASL of Carrara to allow detainees to choose a doctor they trust and to allow family members to follow the medical state of detainees with their consent?**

## 2. Deaths in prison

Years	Total number of deaths in penal institutions	Suicides	% suicides
2010	184	66	35,9%
2011	186	66	35,5%
2012	154	60	39,0%
2013	153	49	32,0%
2014	132	44	33,3%
2015	120	42	35,0%

26. The number of people who died in prison has decreased since 2010. According to the prison population, the number of deaths is average for European prisons. The rate of suicides is also average and has been stable for the last 6 years (except the variation in 2012).

27. The association ACAD (Association Against Abuse in Uniform) reports the events of 11 inmates who died (between 2007 and 2013) in circumstances still unclear<sup>29</sup>. In many of those cases, the processes are not yet finished or are entered into without having identified those responsible. One of those cases concerns **Francesco Smeragliuolo (22 years)**, arrested on 5 January 2013 for a robbery and who died on 8 June 2013 in Monza. He died during his time in jail after losing sixteen kilos. Excluding the hypothesis of suicide, *“the autopsy, ordered by the magistrate, had ruled out the fact that the death could have occurred for violent causes or drug intoxication or drugs”*. It concluded that the death was due to a cardiac arrest.

28. Also, the rates of suicide in prison is 19 times higher than in the rest of the society. The reasons of the suicides can be the same in prisons than outside (mental disorders, lack of marks, family or friendly rejections) but are amplified in the prison environment by various factors: consolidation of sick inmates, violence between inmates, pressure by prison staff... According to the Ristretti Orizzonti's study on *“The suicides in penitentiary sphere: Suicides, health care disaster, death with no clear causes, overdose”*<sup>30</sup>, many detainees are losing hope during their prison sentences. The time of incarceration is difficult for many detainees because there are no activities (physical or mental), the stresses are higher and the time passes slowly:<sup>31</sup>

<sup>28</sup> Osservatorio Repressione, *Due detenuti su tre stanno male il carcere italiano e unistituzione*, June 2015, available on: <http://www.osservatoriorepressione.info/due-detenuiti-su-tre-stanno-male-il-carcere-italiano-e-unistituzione-malata/>

<sup>29</sup> ACAD Onlus website: [www.acaditalia.it/category/abusi/morte](http://www.acaditalia.it/category/abusi/morte)

<sup>30</sup> Ristretti Orizzonti, *I suicidi in ambito penitenziario: suicide, assistenza sanitaria distratta, morti per cause non chiare, overdose*, available on: <http://www.ristretti.it/arestudio/disagio/ricerca/2003/suicidi.htm>

<sup>31</sup> *Ibid.*

29. According to this same study, certain categories of prisoners are more subject to suicide. In fact, people undergoing medical treatments or having addiction are the most vulnerable. For example, *“drug users, who represent around 30% of the prison population, account for 31% of suicide cases reported. Their suicide attempt is more often "definitive" and even in the vicinity of their release: This may be indicative of particular anxieties related to the return to freedom, the impact of the social environment of origin, the renewed confrontation (unavoidable, outside prison) with their condition of dependency”*.

30. In fact, most of the committed suicides are at the beginning end of their sentence. New entrants represent 13% of the suicides because of the change of environment.

**FIACAT and ACAT-Italy invite the Human Rights Committee to ask the Italian government:**

- **What measures have been implemented to ensure that an independent and impartial investigation is carried out for each suspect death in prison;**
- **What steps are being taken to reduce the suicide rate in prison?**

#### **D. National preventive mechanism**

31. One of the most important measures which took place since 2012 has been the ratification of the Optional Protocol of the Convention Against Torture (OPCAT) in 2013, without any declaration. In conformity with the OPCAT, in April 2014, the Italian Government established by law the National Authority (Garante nazionale) for the Rights of Persons Detained or Deprived of Personal Liberty, which will constitute the National Preventive Mechanism together with the Local Authorities for the rights of persons deprived of liberty at regional and city levels. It will consist of a board of three members including a Chairman appointed for five years, not renewable. The members of this board can't be deputies which guarantees the independence of this institution for the protection of human rights. However, the effective independence of the Authority is doubtful since it will benefit from many resources from the Ministry of Justice and would have to report on its activities to it and to the Parliament annually. The National Authority came into office a few months ago; it is therefore too early to evaluate its actions.

32. Regarding the powers given to this national preventive mechanism, it would be able to visit without prior authorization the various places of detention and have access to information and people. Moreover, the Garante Nazionale should have access to any room of deprivation of liberty without restriction.

**FIACAT and ACAT-Italy invite the Human Rights Committee to ask the Italian government:**

- **What human and financial resources are allocated to the National Preventive Mechanism;**
- **How is the independence of the NPM guaranteed;**
- **How is the protection from retaliation of detainees talking to the NPM guaranteed?**

### **III. Migrants (Article 13)**

#### **A. Asylum procedure**

33. According to a UNHCR's report the number of arrivals of migrants, by sea, in Italy has drastically increased since 2012. In fact, the number of arrivals per year had decreased between 2011 and 2012 (from 61.000 to 13.200) but then increased from 2012 to 2014 from 13.200 to 170.000. The report further states that for the first nine months of 2015 this number was of 129.000 people.<sup>32</sup>

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<sup>32</sup> UNCHR, *Special Mediterranean Initiative*, 2015, p.21

34. The UNHCR's report states that difficulties of access to asylum procedures continue to be reported from the Centres for Identification and Expulsion (CIE) because of the lack of information and legal assistance or administrative obstacles. It also denounces the lack of a standard procedure for the submission of applications for asylum that has caused delays in the submission of applications to the Immigration Office. These delays can expose asylum-seekers to the danger of repatriation before their application for asylum is examined, leading to a risk of refoulement. UNHCR continues to report cases of asylum seekers who do not have access to immediate reception measures, when applying for international protection, but must instead wait for weeks or months.<sup>33</sup>

35. These delays are the result of structural deficiencies in the reception system and its low accommodation capacity, as well as the lengthy administrative procedures and problems that exist in the registration of applications for asylum. The partner organizations of the Praesidium project<sup>34</sup> have noted that, recently, an increasing number of people avoid being identified in Italy, by means of fingerprints, to try to reach other European countries to apply for asylum. What motivates these people to leave Italy are the low standards of treatment and the poor prospects of integration.

36. Another issue identified by UNHCR concerns the budgets cuts in 2012-2013 reducing the operational capacity of information services at entry points, as required by law (art. 11 c. 6 del Testo Unico sull'Immigrazione, Decreto legislativo n. 286/98) and managed by NGOs identified by the relevant prefectures through a formal selection procedure. The already limited possibility to provide information to potential asylum seekers at international airports (Rome, Milan, Bari, Venice) and at official entry points along the Adriatic coast (Venice, Ancona, Brindisi, Bari) was further reduced.

37. It should also be noted that access to legal aid for asylum applicants is not always guaranteed. For example, in Rome, the Bar Association continues to require that the applicant presents a tax return issued by the embassy of his/her country of origin, contrary to the provisions of Italian law, according to which the applicant is eligible for legal aid based on a self-certification of their financial situation.

**FIACAT and ACAT Italy invite the Human Rights Committee to ask the Italian government:**

- **What are the financial and human resources allocated to asylum procedures, in particular what measures were taken to respond to the drastic increase of migrants since 2012;**
- **What steps are being taken to guarantee the correct application of legislation on asylum, to create a single national system for the protection of asylum seekers;**
- **How is adequate information provided to asylum seekers at airports and official entry points;**
- **What measures are being implemented to ensure that no asylum seeker is being expelled in violation of the principle of non-refoulement while waiting to initiate the asylum procedure;**
- **How is access to legal aid guaranteed to all asylum seekers in practice?**

**B. Condition in reception centres**

38. The conditions in the first aid and reception centre of Mineo (CARA) are often denounced. According to the Ministry of Interior, the place hosted 3,792 people on 26 August 2014 for a maximum capacity of 2,000. The overcrowding of the structure makes it difficult to ensure adequate healthcare to all guests. According to the testimonies of some of the migrants to the Association of Doctors for Human Rights (MEDU), some spent days queuing to see a doctor. According to MEDU,

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<sup>33</sup> *Ibid.*

<sup>34</sup> Project supported by the Interior Ministry and by European funding, aiming at strengthening the reception capacity and services for all those who arrive by sea, through a joint action of the Red Cross, UNHCR (the UN agency for refugees), OIM (the international organization for migration) and Save the Children.

the staff in the structure is insufficient to meet the needs for socio-psychological support, social assistance and legal aid of asylum seekers. Even if the CARA of Mineo was not overcrowded there would be a psychologist/social worker every 300 people, at the moment there is one every 450. Finally, the UNHCR reported that several minors had left the reception centre to which they had been assigned. According to Europol, 5000 children had disappeared in Italy.<sup>35</sup>

39. The CPSA of Lampedusa, was visited on 3 June 2015 by a delegation of national and regional parliamentarians. According to them the centre is in truly disastrous conditions. It is overcrowded (it hosted 630 people for a capacity of 381). On top of that, the centre is in indecent conditions (electric wires dangling, kitchen not up to standard, bathrooms out of order or unavailable ...) and repairs for maintenance are not made or with huge delays.<sup>36</sup>

40. Several cases of ill-treatments were denounced in other reception centres such as the CDA of Ragusa. Those cases relate to the violence used by the police to convince the migrants to identify themselves.<sup>37</sup>

41. The conditions of detention in the identification and expulsion centres (CIE) are also denounced. In particular, the Extraordinary Commission for the Protection and Promotion of Human Rights stated in a Resolution adopted on 5 March 2014 (after a report on the centres for identification and expulsion in Italy) that the conditions of detention are not adequate to ensure the protection of the dignity and rights of migrants. The report explains that the inmates spend very little time outside and it highlights the high use of psychotropic drugs and the frequent acts of self-harm. The Resolution invited the government to close down the centres abandoned and not fit for living in order to restructure them. Regarding the situation of minors, the Association Antigone Onlus denounced the fact that some were being held in the CIEs and that some associations had to intervene for their release.<sup>38</sup> Moreover, the UNHCR reported that in some cases, unaccompanied and separated children remain in precarious conditions for a while before being transferred to an adequate facility. Moreover, the appointment of a guardian (usually the mayor or a municipal official) may in fact be a mere formality, since the guardianship functions are usually delegated to social workers who often encounter practical difficulties to provide assistance to all minors, given the large number of children that is assigned to them. Also, they sometimes have to wait a very long time before having a guardian appointed to them (2-11 months on average, found in Sicily and Calabria) which delays access to the procedure of international protection and the identification of the support the most appropriate for each case.<sup>39</sup>

#### **FIACAT and ACAT-Italy invite the Human Rights Committee to ask the Italian government:**

- **What measures are being taken to reduce overcrowding in reception centres and identification and expulsion centres and to improve living conditions in those centres;**
- **What steps are being taken to ensure that no minor is placed in an identification and expulsion centre and that he/she receives adequate assistance?**

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<sup>35</sup> The Guardian, "10,000 refugee children are missing, says Europol", 30 January 2016: <http://www.theguardian.com/world/2016/jan/30/fears-for-missing-child-refugees>

<sup>36</sup> Giornale Siracusa, *Ispedizione del M5S a Lampedusa, situazione disastrosa*, 3 June 2015: <http://www.giornalesiracusa.com/notizie/2015/06/03/delegazione-del-m5s-a-lampedusa-situazione-del-centro-daccoglienza-disastrosa>

<sup>37</sup> Osservatorio Repressione, « *Picchiati con la corrente elettrica* » *La denuncia dei migranti da 4 giorni nel Cpa di Pozzallo (Ragusa)*, April 2015: <http://www.osservatoriorepressione.info/picchiati-con-la-corrente-elettrica-la-denuncia-dei-migranti-da-4-giorni-nel-cpa-di-pozzallo-ragusa/> and Osservatorio Repressione, *Profughi siriani picchiati nel Cpsa di Pozzallo (Ragusa)*, June 2015: <http://www.osservatoriorepressione.info/profughi-siriani-picchiati-nel-cpsa-di-pozzallo-ragusa>

<sup>38</sup> Osservatorio Repressione, *Roma: Minori stranieri trattenuti nel carcere Regina Coeli per essere identificati*, June 2015: <http://www.osservatoriorepressione.info/roma-minori-stranieri-trattenuti-nel-carcere-regina-coeli-per-essere-identificati>

<sup>39</sup> UNHCR, *UNHCR Recommendations on important aspects of refugee protection in Italy* (July 2013), p.5