

Alternative report
for the 6th periodic report of Italy
on fulfilment of obligations under the
International Covenant on Civil and Political
Rights



The Following Report was prepared by:

*A Buon Diritto – Associazione per le libertà*¹

Born in June 2001 with the aim of promoting the exercise of rights acknowledged by our judicial system but not sufficiently protected, or whose acknowledgment is suspended, delayed or hindered in practice, the Association works to publicize these issues among the public and to contribute to lobbying before the political and parliamentary system, in order to achieve change in legislation and collective norms. *A Buon Diritto* devotes great attention to the issues of immigration, deprivation of freedom, end of life issues and therapeutic freedom.

With the Support of:

RIDH International Network of Human Rights (Réseau International des Droits Humains)²
RIDH is a non-governmental organisation that contributes to capacity building by providing information, analysis and technical assistance to entities involved in promoting and protecting human rights. RIDH, which is based in Geneva, has ECOSOC consultative status at the United Nations and carries out an intermediary role in dialogue and advocacy processes relating to specific human rights contexts, working in particular with Latin American organisations.

Right to life, violence against women, including domestic violence, and prohibition of torture and cruel, inhuman or degrading treatment (arts. 2, 3, 6, 7 and 26)

LOI Paragraph 13

In the Reply to the LOI the Italian Government fails to mention that the incorporation of the international crime of torture into domestic law is significantly delayed³ (the legal implementation began on July 2013). In addition, the parliamentary scrutiny has weakened the legal text, which is now radically different⁴ from what is stated in the Article 1 of the UN Convention Against Torture.

LOI Paragraph 12

It is commendable that the Government now provides statistical data concerning the investigations and legal proceedings against police officers who are suspected to have

¹ <http://www.abuondiritto.it/en/association.html>

² For more information: <http://ridh.org>. Social Networks: Red Internacional de Derechos Humanos (Facebook) and RIDH_INHR (Twitter).

³ <http://www.ilpost.it/2016/07/20/ddl-reato-tortura/>

⁴ <http://www.senato.it/japp/bgt/showdoc/17/DDLPRES/705085/index.html>

broken the law during the performance of their duties⁵. But the data is neither published nor available to the public.

Our recommendations:

- To make available to the public the data about investigations against police officers.
- To publish disaggregated data by police force, type of crime committed, ongoing investigations, charges, disciplinary actions and sentences.

Women with disability (LOI Paragraph 10)

ISTAT underlines in its report that 36% of women with disability or illnesses have suffered from physical or sexual abuse. The risk of sexual violence for these persons is double the average for women in general (10% vs. 4.7%).⁶

Similar observations are made by CRPD in its report on Italy, where it is noted that women and girls with disability are not systematically mainstreamed in the gender equality agenda and disability agenda. The Committee *"recommends that gender be mainstreamed in disability policies and disability be mainstreamed in gender policies, both in close consultation with women and girls with disabilities and their representative organizations. It also recommends that the State party take into account article 6 of the Convention and the Committee's general comment No. 3 (2016) on women and girls with disabilities while implementing targets 5.1, 5.2 and 5.5 of the Sustainable Development Goals."*

However, even in this case there is no evidence of awareness about these issues in the Government replies to the List of Issues, nor there is any reference to what the Italian Government has done so far with regards to these issues.

Abortion Rights (LOI Paragraph 11)

The Italian Government in its reply to the List of Issues claims that the number of non-objector-physicians is adequate, given the number of abortions, per Region.⁷ In reality it the number objector physicians is constantly on the rise over the years (with 70.7% of objector gynaecologists in 2014, 70.7% in 2013, 69.6% in 2012, 69.3% in 2010 and 2011, whereas they were 58.7% in 2005).

The number of objector gynaecologists in some Regions is extremely high: in the Region of Molise it's 89.7% of all gynaecologists, in Sicily it's 89.1%. Overall, the average number in all the southern Regions is 80.4%.⁸

⁵ CCPR /C/ITA/Q/6/Add.1, Reply to the LOI, Paragraph 33b

⁶ http://www.istat.it/it/files/2015/06/Violenze_contro_le_donne.pdf?title=Violenza+contro+le+donne+-+05%2Fgiu%2F2015+-+Testo+integrale.pdf

⁷ CCPR /C/ITA/Q/6/Add.1, Reply to the LOI, Paragraph 23

⁸ http://www.salute.gov.it/imgs/C_17_pubblicazioni_2226_allegato.pdf

Also only 59.6% of facilities country-wide with a maternity or gynaecology ward practice abortions (which means that on a total of 654 facilities only 390 practice abortions). These data are in conflict with what Act 194/1978, which governs the right to abortion. Concerning non-invasive abortions, the last data published by the Italian Ministry of Foreign Affairs was published in 2010 and never updated. Also the monitoring of these non-invasive abortions ceased in 2010.

About the abortion pill Ru-486, the procedure by which it is administered differs from what takes place in other EU countries. Whereas in Italy it is administered within the 49th day of amenorrhea, in other EU countries it is administered within the 63rd week of amenorrhea (as prompted by the WHO).⁹

Right to liberty and security of person, treatment of persons deprived of their liberty and right to a fair trial (arts. 9, 10 and 14)

LOI Paragraph 24

Concerning the Special Regime under article 41-bis, the replies of the Government are inadequate. 8 years after the "stabilization" of 41-bis, an article of law that strongly limits the rights of detainees, the Government has not offered further elements for evaluation, despite the issuing of an in-depth report by the Senate Extraordinary Commission for the promotion and protection of human rights (April 2016).¹⁰

In its report, the Commission makes observations which echo those made by the European Court of Human Rights and the Committee Against Torture¹¹ and highlight a number of issues which we endorse:

- The maximum number of persons per socialization group has been reduced from five to four prisoners. Contacts with prisoners from another living unit remain strictly prohibited.
- The time prisoners are allowed to spend outside their cells has been reduced from four to two hours per day (one hour of outdoor exercise and one hour in a communal room). During these two hours, prisoners are allowed to associate with the other inmates of the same living unit; for the remaining 22 hours, prisoners must be locked up alone in their cell.
- The possibility for prisoners to maintain contact with the outside world has been further curtailed. They are now only allowed to make one ten-minute telephone call per month if they do not receive a visit from a family member during the same

⁹ WORLD HEALTH ORGANIZATION, *Safe abortion: Technical and Policy Guidance for Health System. Second edition*, Geneva, 2012, p.31

¹⁰https://www.senato.it/application/xmanager/projects/leg17/file/repository/commissioni/dirittiumaniXVII/allegati/Rapporto_41bis_aprile_2016.pdf

¹¹ Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 55, <http://www.cpt.coe.int/documents/ita/2013-32-inf-eng.htm>

month (they are entitled to one one-hour visit per month, under closed conditions and with audio-surveillance and video-recording, as well as the prohibition of accumulation of unused visit entitlements remain unchanged). In addition, the frequency of contacts with a lawyer has been limited to a maximum of three contact per week (one-hour visits or ten-minute telephone calls).

- The only positive change in terms of prisoners' regime is that they are now allowed to meet not only their children but also their grandchildren below the age of twelve under open conditions (i.e. without a glass partition) for ten minutes per visit.

Our recommendations (also issued by the Senate Extraordinary Commission for the promotion and protection of human rights):

- To review the procedure which allows the extension of the 41-bis for detainees, which in many cases is automatically renewed.
- To allow detainees under the 41-bis to have a channel of communication with the prison administration.
- To review the implementation of the 41-bis, with particular regard to the adaptation of prison facilities to the minimum standards of habitability, including the removal of unnecessary external filters which may block the air flow and the natural light, and the employment of internal locks to be operated by the detainee or at his request.
- To limit video surveillance to only specific cases, aiming to safeguard a detainee with disability or temporally limited to the time of the trial. To limit video surveillance to the living area and to exclude the bathroom area.
- To review the prohibitions concerning the possessions of items in the prison cells. To limit the prohibitions solely to items that can allow communication with the external world.
- To limit the prison cell searches to episodic, non-routine cases, as well as to bestow the highest regard for the detainees' belongings, in order to avoid unnecessary and punishment.
- To stop the body searches of visitor family members on all cases where the family visits take place without the glass window.
- To remove all prohibitions on detainees concerning the right to keep in the cell all the instruments needed for reading, studying and artistic activities that can be done individually.
- To ensure the full compliance to the principle of confidentiality that safeguards the doctor-patient relationship, which must take place away from auditory monitoring, and at times visual monitoring.
- To guarantee similar discretion, away from auditory and visual monitoring, for the informal meetings between detainees and officials of organizations for the protection of persons deprived of freedom.

- To guarantee the family visits to detainees, in particular to allow the adding up of the hours of visit not utilized (as recommended also by the CAT in its report ¹²).
- To consider the possibility of granting children younger than 12 years old additional time beyond the 60 minutes in total granted for the family visits.
- To allow detainees who have completed most of their sentence to have family visits without the glass window (as recommended also by the CAT in its report).
- To curtail unjustified limitations to family visits and phone calls, either for those who fall within the semester of access as per the 41-bis Paragraph 2¹³, or for whoever can enjoy family visits.
- To respect the principle of progressively mitigated conditions of the punishment, granting the termination of the 41-bis regime for an adequate time before reaching the end of the sentence.
- To grant the detainees the right to partake in all hearings in trials in which they are defendants, making provisions for safe prisoner transports.

Judicial Psychiatric Hospitals (OPGs)

On the issue of overcoming Judicial Psychiatric Hospitals (OPGs), the reply of the Government is inadequate.¹⁴ The mandate of the Government appointed Commissioner for overcoming OPGs will cease next February 19th 2017, but the OPG of Barcellona Pozzo di Gotto is currently open, with 13 detainees still housed there (8 housed with a definite sentence, 5 temporarily). This takes place almost two years after the deadline for the closure of OPGs as per the law n. 81/2014.

The 13 detainees still in OPG should have been transferred to the second Centre for the Enforcement of Security Measures (REMS) of Caltagirone, Catania. It looks like the opening of the second REMS, with the capacity for 9 men and 9 women will not take place before May 2017.

¹² Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 55, <http://www.cpt.coe.int/documents/ita/2013-32-inf-eng.htm>

¹³ <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1975-07-26;354!vig=>

¹⁴ CCPR /C/ITA/Q/6/Add.1, Reply to the LOI, Paragraph 64

Treatment of aliens and protection of children (arts. 2, 7, 9, 10, 13, 24 and 26)

Citizenship and statelessness (LOI Paragraph 14)

The reply issued by the Italian Government is inadequate¹⁵: many do not have the status of stateless person. The administrative procedure needed in order to obtain such status is long and difficult. The draft law aiming to simplify the procedure (DDL S.2148) is currently blocked in the Parliament and there does not seem to be the political will to have it approved by the end of the legislature. The same can be said for the citizenship law reform (DDL S.2092), which has been approved by the Chamber of Deputies but is still to even be scheduled for discussion in the Senate. This law would grant many minor foreigners, born and raised in Italy, the right to request for an Italian citizenship before turning 18 years of age.

The European program JUSTROM, mentioned by the Italian Government¹⁶ must still be implemented and is limited by its scope which is aimed at helping Roma women having access to justice, and not at solving the issue of citizenship or statelessness for the Roma community.

Treatment of migrants, expulsions, Identification and expulsion centers (CIE), "hotspot approach" (LOI Chapter 15, 16)

The replies of the Italian Government on the hotspot approach are insufficient¹⁷, also in light of the criticisms put forward by many international organizations. The Government should have provided more information with regards to the verdict issued by the European Court of Human Rights (December 15th 2016) on the Khlaifa case¹⁸, which has ruled against Italy for the unlawful treatment of a number of migrants during the "Arab spring". The migrants in question were held in the Lampedusa Reception center, then moved to a boat in the port of Palermo, awaiting a later repatriation to Tunisia. In that case the Court judged the Italian Government's actions to be without legal basis.

Identification and expulsion centers (CIE)

The Italian Government only mentions the legal framework for CIEs, but does not talk about how they operate.¹⁹ At present time there are 4 functioning CIEs (Brindisi, Caltanissetta, Roma, and Torino) with an availability of 574 spaces of which 359 utilizable. The CIE of Bari and Crotone are not currently habitable. The CIE of Trapani, active since

¹⁵ CCPR /C/ITA/Q/6/Add.1, Reply to the LOI, Paragraph 34

¹⁶ CCPR /C/ITA/Q/6/Add.1, Reply to the LOI, Paragraph 35

¹⁷ CCPR /C/ITA/Q/6/Add.1, Reply to the LOI, Paragraphs 38-39-43

¹⁸ <http://www.asylumlawdatabase.eu/en/content/european-court-human-rights-khlaifia-and-others-v-italy-no-1648312-articles-3-5-and-13-echr>

¹⁹ CCPR /C/ITA/Q/6/Add.1, Reply to the LOI, Paragraph 45

December 31st 2015, was converted to a Hotspot starting from the following day. An analysis of the data provided by the Ministry of Interior confirms how difficult it is to execute expulsions in Italy and the ineffectiveness of the entire system of Identification and expulsion centers (CIE).

From January 1st 2016, 1,968 persons went through the CIEs, of which 876 have been repatriated, about 44% of the total. From January 1st to December 20th 2015 5,242 persons went through CIEs, of which 2,746 have been repatriated, 52% of the total. In 2014 there have been 2,771 repatriations, (55%) over a total of 4,968 of foreign detainees in CIEs. In 2013, 2,749 repatriations (45%) over a total of 6,016 detainees. Despite the commitments taken with the European Union, the repatriations are still around 50% of the detainees. Also in 2015 of a total of 34,107 foreigners who received an expulsion order, only 15,979 have actually left the country, (46%), while 18,128 have never left the country.²⁰

In its ruling 105/2001 the Constitutional Court acknowledged that the expulsions are infringing on personal freedoms, and they cannot be carried out outside of the protections warranted under the Article 13 of the Italian Constitution.

CIEs have just been converted into CPR (centers for expulsion) but nothing will change about life conditions of detained people and procedures. Expulsion system will not change so fast. We do not agree about the new law about CPR that Italy (and Europe in general) will introduce: in order to make expulsions work, it would be necessary first to sign new protocols with countries of origins of irregular immigrants. At the same time we ask for a radical change of approach: Italy has to improve integration opportunities for migrants, and should not punish asylum seekers or who those who have lost the right to be regular. Among these persons, there are a lot of victims of smuggling and care givers without residence. We therefore ask to improve alternative measures to detention.

Hotspot approach

On balance, the first year of the Hotspot approach is anything but positive and underlines a failure of the European plan. The 94% of successful identifications of migrants has not determined positive results in terms of persons reallocated and repatriated. At the end of 2016 only 2,350 persons were reallocated on a total of 40,000 anticipated by the European plan.

This year there has been an increase in the asylum applications in Italy, compared to last year. In the first 10 months of 2016, there were 97,508 applications, compared to the

²⁰http://www.senato.it/application/xmanager/projects/leg17/file/repository/commissioni/dirittiumaniXVII/allegati/Cie_ra_pporto_aggiornato_2_gennaio_2017.pdf

89,970 total applications of 2015²¹. The applicants mostly come from Nigeria, Pakistan and Eritrea.

If despite these realities reallocations as provisioned by the European Union are permitted only for persons coming from Syria, Eritrea and Iraq, it is clear that most asylum seekers will complete the asylum applications and remain in Italy. It must be added that the outcome of most applications is a negative one, with a rejection rate of 58% for the 71,117 applications of 2015, an increase of 39% when compared to 2014. In the first six months of 2016 the asylum application rejections have been 60% of the total applications, therefore in constant increase.

The asylum seekers whose requests are rejected become illegal migrants, awaiting to be repatriated, with no possibility of becoming legal. Some of the rejected applicants will be housed in the CIEs, which currently fail to have an institutional purpose (failing at issuing repatriations, and no longer performing identifications).

Furthermore, there is a need to reconcile an increased efficacy of the European plan with the respect of the national and international laws regarding asylum seekers. The increased workload and the reduced time available for officials in charge of the identification process can negatively influence the outcome, leading to a less accurate assessment of the individual histories of the asylum seekers.

Vulnerable groups - Persons with disability (LOI Paragraph 15)

The subject matter of vulnerable groups amongst migrants, in particular persons with disabilities does indeed require specific interventions aimed at the protection of these individuals.

The last SPRAR (*Protection System for Asylum Seekers and Refugees*²²) report "Sprar Atlas 2015"²³ published in 2016, shows that 18.3% of the refugees taken in belonged to vulnerable groups. 7.1% were people with disabilities, with mental distress or in need for home care and specialist care. For these cases, the reception should take place within the SPRAR system, but many of the refugees belonging to vulnerable groups have been taken in by local projects not aimed at them: 297 people accommodated under the so-called projects for the disadvantaged and the disabled, over a total of 1,196 identified by SPRAR projects as in need of special care.

The SPRAR report highlights an increase of 74.7% of reported cases of individuals with mental issues (269 total) for the year 2015, when compared to the previous year. It is notable that the steep increase is due to the overall increase of migrants arriving to Italy, but also as a result of the prolonged stay in the centers of initial reception, which can exacerbate the psychological problems of its guests. The report highlights the fact that the number of places available in the national territory is insufficient to meet the needs.

²¹http://www.senato.it/application/xmanager/projects/leg17/file/repository/commissioni/dirittiumaniXVII/allegati/Cie_rapporto_aggiornato_2_gennaio_2017.pdf

²² <http://www.sprar.it/english>

²³ http://www.condicio.it/allegati/224/Sprar_Atlante2015.pdf

On December 6 2015 Yannis Vardakastanis, president of EDF (European Disability Forum) made a public appeal for greater attention to refugees and migrants with disabilities while meeting with the UN High Commissioner for Refugees. Mr. Vardakastanis pointed out the fact that refugees do not find adequate medical care upon arrival, especially worrying is the condition of women, minors and people with disabilities. He also warned against the risk that persons with disabilities and mental issues could face discrimination during the process of asylum applications.²⁴ Also the Committee on the Rights of Persons with Disabilities (CRPD) in its observations on the report on Italy²⁵ shared their concerns the access to mental health support and counselling for migrants and asylum seekers with disability arriving to Italy. The Committee recommended that the Italian Government ensures equal access to facilities and appropriate support and rehabilitation for persons with psychosocial disabilities. It also recommended for the Italian Government to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and endorse the 2016 Charter on Inclusion of Persons with Disabilities in Humanitarian Action.

Non-discrimination, equality between men and women, rights of minorities and prohibition of advocacy of national, racial or religious hatred (arts. 2, 3, 20, 23, 25, 26 and 27)

LOI Paragraph 3

In its Reply to the List of Issues the Government only mentions Education programs aimed at dealing with discrimination against women, and makes no mention of education aimed at preventing discriminations against LGBT persons.²⁶ Moreover, its reply related to sexuality related education – when mentioned – mirrors the idea that sexuality concerns only heterosexuals and their procreation issues.

The lack of adequate policies in this field is in strong contrast with the need for education promoting safe sex. Among others, also the ISS (Istituto Superiore di Sanità, Institute for Public Health) stressed this need, while reporting data about Sexually Transmitted Infections, which show an increasing trend²⁷. With regards to the specific issue of prevention, ISS reports that among those diagnosed positive with STI (6,089) within the observed panel in 2014 a striking 35.9% claimed to be non-condom users and another 44% claimed to use this method only sometimes. Clearly the lack of sex education on the methods to prevent STIs can be an influencing factor in the rate of STI infections.

²⁴ <http://www.edf-feph.org/newsroom/news/co-operation-needed-improve-situation-refugees-disabilities>

²⁵ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqlyxUZe3YrEMiILNTLYL1szEbjMGHZtilcNqR%2bZvUOXLqCL5gnN37gF0j0QJweJrBgHF%2fkntAPP%2bW%2b5gDf0AY6ospjIjVGSZcA5S7fwVOOo>

²⁶ CCPR /C/ITA/Q/6/Add.1, Reply to the LOI, Paragraphs 21, 24

²⁷ http://www.iss.it/binary/publ/cont/febbraio_IST_2016.pdf. Data refers only to data collected by the Italian Surveillance System and do not therefore cover 100% of the STIs diagnosed in 2015 in Italy. In this panel, data related to HIV infection is mentioned only as related to STI occurrence.

Furthermore, the youngest cohort (age 15 -24) amounted to 19.1% of total STI infections. In 2015 there have been 12 new diagnoses of HIV positive minors (age 15 to 17) amounting to 1.8% of the total new HIV diagnoses. For the same year there were 369 new diagnoses for the ages 18 to 25 (10.7% of the new diagnoses).²⁸

Until now the Education to Gender Equality is far from being implemented on a regular basis. On the one hand, it is true that the Reform of Education (Act 107/2015) provides for, *inter alia*, education on gender equality in school curricula, but the Ministry of Education has not yet released the guidelines, which will apply country-wide. A committee was established on Dec 2015 to provide such guidelines, but there is no information available about when it will finish its work.

Several draft laws are waiting to be discussed by Parliament. In the meanwhile a number of reports by the media have highlighted the growing opposition by groups advocating against the so-called "gender theory" opposed to any form of sexual education that might include a vision of family other than that composed of a man and a woman.

Roma, Sinti Caminati people

The reply offered by the Government²⁹ shows some concrete steps forward towards the implementation of policies concerning Roma, Sinti and Caminati communities in line with the principles adopted by the National Strategy.

The main issue is that there are few chances to implement the National Strategy effectively, given the lack of legislative and administrative mechanisms that can bind the local administration to obeying the guidelines issued by the National Strategy. Therefore not being able to issue a formal complaint, we must laud the fact that UNAR was able to utilize economic incentives as a tool to pressure local administrations to follow policies that respond to the principles of international law.

Also, there have been a few steps forward with regards to housing policies, as the three main Italian cities have committed to closing at least one or more of the illegal "nomad camps" within their jurisdictions.

Despite these positive aspects, some critical issues remain unaddressed: the UNAR is unable to issue a timetable for the implementation of housing desegregation policies. Furthermore, UNAR cannot set verifiable goals upon which to assess the commitment of local administration to implement those policies.

This fact determines an inability by UNAR to guide local administrations towards the implementation of the National Strategy guidelines (with the exception of a few cases of cooperation for the management of European funds).

A particularly salient example is the Region of Campania, where local administrations dealt directly with the Italian Ministry of Internal Affairs, without any involvement of UNAR nor the ANCI (National Associations of Italian Municipalities). These administrations have put forth intervention plans for the evacuation of some Nomad camps and the institution of new ones that do not fall within the guidelines issued by the

²⁸ http://www.iss.it/binary/publ/cont/COA_ONLINE_2016.pdf

²⁹ CCPR /C/ITA/Q/6/Add.1, Reply to the LOI, Paragraphs 9 to 18

National Strategy, and which are in clear violation of the civil rights of Roma Sinti and Caminati communities.

Lastly, two critical issues remain: at the present time no reparations have been issued for the Roma communities affected by the discriminatory policies implemented during the "*Emergenza Nomadi*" (Nomads Emergency) law decree issued in May 2008 under the Berlusconi government.³⁰ Furthermore, some Italian Regions have issued new policies, but still outside of a national coordination and outside of the legal framework as intended by the National Strategy.

³⁰http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2008-05-26&atto.codiceRedazionale=08A03712&elenco30giorni=false