

Coalizione Italiana Libertà e Diritti Civili (CILD)

Joint Submission to the Universal Periodic Review of Italy¹

3rd cycle, 34th session, March 2019

Founded in 2014, the Italian Coalition for Civil Liberties and Rights (CILD) is a network of 37 civil society organizations. It defends and promotes the civil liberties and rights guaranteed by the Italian Constitution and by international law, fighting against abuses and violations, through a combination of advocacy, public education and legal action.

The idea behind CILD is that civil liberties and rights are intertwined, and that through their promotion and protection it is possible to contribute to the establishment of a more cohesive and equal society.

¹ List of the contributors to the Joint Submission that are members of CILD: A Buon Diritto, Associazione Antigone, Associazione 21 luglio, Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), Cittadinanzattiva, Consiglio Italiano per i Rifugiati (CIR), Diritto di Sapere, Naga, Rete Lenford. Refugee Rights Europe (RRE), which is not a member of CILD, contributed to the Submission as well.

Follow-up to the previous review

During the second Universal Periodic Review of Italy in 2014, reviewing States made recommendations on a number of issues. In total, Italy received 186 recommendations, of which it supported 176 and noted 10.

This submission highlights a number of key areas of concern regarding Italy's compliance with its international human rights obligations, focusing on the pledges that Italy has yet to fulfill with respect to the rights of migrants, asylum seekers and refugees; Roma, Sinti and Travellers; the judiciary and detention system; women's rights; LGBTI rights; transparency and access to information; privacy; and the national human rights framework.

1. Rights of migrants, asylum-seekers and refugees

Migrants, asylum seekers and refugees

1.1 Italy continues to implement policies that lead to violations of the human rights of migrants, asylum seekers and refugees, ignoring several recommendations.² Italy has failed to adopt a long-term approach on migration, implementing instead short-term measures that do not guarantee consistent, adequate standards of treatment, conditions, and access to asylum.

1.2 Italy adopted Law no. 46/2017 to amend the asylum application procedure, eliminating the possibility for asylum seekers to appeal a first instance court decision on their application before the Court of Appeal, making the appeal possible only through the Supreme Court. This amendment decisively reduced asylum seekers' procedural guarantees and raised concerns with respect with Article 3 of the Italian Constitution, in which the principle of equality before the law is enshrined. Law no. 46/2017 also simplified asylum procedures by removing the obligation for the courts to hear asylum seekers in person. As a result, the asylum seekers' right to defence is substantially curtailed and their effective access to justice is limited.

² A/HRC/28/4/Add.1 - Para. 1, recommendations 145.161 (Cuba), 145.162 (Djibouti), 145.164 (Japan), 145.169 (Nicaragua), 145.160 (Côte d'Ivoire), 145.163 (Kenya), 145.167 (Qatar).

1.3 Most recently, Italy passed Law no. 132/2018, which provided for the abolition of humanitarian protection, a form of protection additional to the recognition of refugee status and subsidiary protection that allowed migrants to seek protection in Italy. Thus, asylum seekers can no longer be issued a residence permit on humanitarian grounds, except from cases of “special protection” and “special cases” regulated by the new law. However, not all residence permits issued for special cases can be converted into working residence permits upon expiration, thus jeopardizing migrants’ integration in the country.

By adopting Law no. 132/2018 Italy restricted the possibility for asylum seekers to obtain protection in our country and most likely this will cause an exponential increase in the number of irregular immigrants. According to recent estimates, the end of humanitarian protection will lead to around 130-140,000 immigrants losing their permits by 2020.³ This adds to the fact that irregular entry and stay is still labelled as a crime⁴ – although the Government was tasked with abolishing this offence in 2014⁵ – which results in discrimination against migrants in the access to justice and increase their vulnerability.⁶

1.4 In addition, Law no. 132/2018 amended the procedures for asylum seekers to enroll in civil registry by providing that residence permits for asylum seekers can no more be used as a valid document to submit the registration request. This entails obstacles in accessing services such as the National Health System, Employment Centres and schools.

1.5 Agreements on migration control with North African countries including Libya have led migrants and asylum-seekers, including children and unaccompanied foreign minors in particular, to be denied access to international protection. Since a Memorandum of understanding was signed in 2017 in order to stem the flow of illegal migrants through Libya into our country, Italy has strengthened the technical, technological and material

³ Claudia Torrì, *The Italian government has approved a new bill targeting migrants*, 2018, available at:

<https://openmigration.org/en/analyses/the-italian-government-has-approved-a-new-bill-targeting-migrants/>.

⁴ Legislative Decree no. 286/1998, Article 10bis.

⁵ Law no. 67/2014. See also ASGI, *Le buone ragioni per abrogare il reato di clandestinità*, 2016, available at:

http://www.asgi.it/wp-content/uploads/2016/01/2016_1_11_savio_reato_imm_irregolare1.pdf

⁶ A/HRC/28/4/Add.1 - Para. 1, 145.178 (Kyrgyzstan), Para. 6, recommendation 145.182 (Bangladesh).

capacity of the Libyan Coastguard to intercept migrants departing from Libya and pull them back to shore. This is the result of the so-called “pushback by proxy” strategy adopted by our country, by which Italy has repeatedly breached the principle of *non-refoulement* by indirectly returning migrants to countries where they face well documented grave human rights violations including torture.⁷

Recommendations

- Continue reinforcing and protecting the rights of migrants, asylum seekers and refugees and fully align Italian migration and asylum policies with international law;
- Abolish the criminal offence of irregular entry and stay on the Italian territory;
- Develop a comprehensive national system of data collection, analysis and dissemination regarding immigration policies and practices to be used as a foundation for rights-based policymaking on migration;
- Ensure that all migrants, including those rescued at sea, that express their will to apply for international protection are given access to the territory and a meaningful opportunity to file their asylum claim;
- Ensure that all refugees and migrants are able to access timely and appropriate information on their rights by the opening of official legal advice, asylum and family reunification processing centres in transit and border areas, providing legal representation, information and guidance in accessible languages and formats and with specific provisions for unaccompanied minors and survivors of trafficking;
- Repeal the provisions included in Law no. 132/2018 that undermine fundamental rights and narrow basic guarantees established in national, European and international laws, in particular those concerning the abolition of humanitarian protection, border procedures, the internal flight alternative and the withdrawal of international protection;
- Amend Law no. 132/2018 to guarantee the asylum seekers’ rights to enroll in the civil registry;

⁷ A/HRC/28/4/Add.1 - Para. 1, recommendation 145.169 (Nicaragua). Open Migration, Laura Clarke, *In the hands of the Libyan Coast Guard: pushbacks by proxy*, 2018, available at: <https://openmigration.org/en/analyses/in-the-hands-of-the-libyan-coast-guard-pushbacks-by-proxy/>

- Allow all residence permits for “special protection” and “special cases” to be converted into working residence permit, in order to encourage integration;
- Reform Law no. 25/2008, in particular as regard the lack of an initial screening of subsequent applications pending an expulsion order;
- Allow those reaching Italy who claim to be unaccompanied minors, without exception, to stay and be given access to a proper age determination process, a guardian, and a best interests determination;
- Strengthen mechanisms to guarantee migrant children access to study and integration in the school system;
- Enhance the implementation of legal pathways to guarantee safe entry opportunities for persons in need of protection;
- Adopt protocols to ensure that Italian authorities are not involved in *refoulement* of persons rescued at sea;
- Improve Assisted Voluntary Returns (AVR) in terms of eligibility and human and financial resources;
- Provide Italian authorities with trainings on international human rights obligations so as to put an end to the use of violence towards migrants;
- Actively engage with French counterparts to ensure that the illegal pushbacks⁸ of refugees and migrants at the border no longer take place;
- Support, and not criminalize, NGO Search & Rescue operations along the Central Mediterranean route;
- Enhance the presence of Italian Coast Guard vessels in the Mediterranean and allow NGOs vessels to promptly enter the Italian ports guaranteeing the access to a safety place and the disembarkation of rescued persons.

⁸ Association nationale d'assistance aux frontières pour les étrangers, *Persona non grata, Consequences of security and migration policies at the France-Italy border – Observation report 2017-2018*, Summary, available at: http://www.anafe.org/IMG/pdf/anafe_-_summary_-_persona_non_grata_-_en.pdf

Reception conditions

1.6 Reception of asylum seekers and refugees is placed in a political, social and media climate that has further worsened compared to 2014, continuing to rely on an emergency-led approach.⁹

1.7 The reception during the first stages of the asylum application process is one of the most delicate moments for individuals seeking asylum and it mainly takes place in extraordinary reception facilities¹⁰ fulfilling primary needs only.¹¹

1.8 Law no. 132/2018 significantly limited access to the Protection System for Asylum Seekers and Refugees (SPRAR). While access to the SPRAR facilities used to be granted to asylum seekers and those who had been recognised either subsidiary protection or refugee status, under the new law only unaccompanied foreign minors, beneficiaries of international protection, and those in possession of “special” residency permits will have access to these reception facilities, within a system that is now called SIPROIMI.¹² Asylum seekers with pending applications, as well as those holding permits for humanitarian protection, have been therefore cut out of the system. Eliminating the SPRAR network and confining asylum seekers in government or emergency facilities only may entail a breach of the Italian Constitution, particularly Article 117, as this would violate Articles 17 and 18 on the conditions for reception under EU Directive 2013/33.¹³ In addition, under Law no. 132/2018 and related tender specifications¹⁴ budget for CASs is significantly reduced and item costs for integration services removed; and new CASs and will be opened. Thus, criminalisation of the migratory

⁹ A/HRC/28/4/Add.1 - Para. 1, recommendations 145.175 (Sweden), 145.176 (United States of America), 145.177 (Sudan).

¹⁰ Centri di accoglienza straordinaria, CASs.

¹¹ Naga, (Stra)ordinaria Accoglienza, 2017, available at: <https://naga.it/2017/10/22/straordinaria-accoglienza/>; Atlante Sprar 2017, in particular p. 45, available at: <https://www.sprar.it/pubblicazioni/atlante-sprar-2017>.

¹² *Sistema di protezione per titolari di protezione internazionale e per minori stranieri non accompagnati*, Protection System for beneficiaries of international protection and unaccompanied foreign minors.

¹³ ASGI, quoted in Open Migration, Claudia Torrisi, *The Italian government has approved a new bill targeting migrants*, 2018, available at:

<https://openmigration.org/en/analyses/the-italian-government-has-approved-a-new-bill-targeting-migrants/>.

¹⁴ Tender specifications approved by Ministerial Decree on 20 November 2018, available at: <http://www.interno.gov.it/it/amministrazione-trasparente/bandi-gara-e-contratti/schema-capitolato-gara-appalto-fornitura-beni-e-servizi-relativo-alla-gestione-e-funzionamento-dei-centri-prima-accoglienza>.

experience and de-responsibilization of institutions persist.

1.9 The lack of state support has led many migrants to occupy abandoned buildings, where they are squatting in deplorable conditions. The Government's response so far has been to forcibly evict many of these sites, leaving migrants with no other option than living on the streets.¹⁵

Recommendations

- Plan and put in place a centralized, non emergency-driven reception system;
- Ensure that the requirements of the 2013/33/EU Directive on reception conditions for asylum seekers, and any subsequent directives, are fully implemented, including at the French-Italian border and other transit areas;¹⁶
- Adopt common standards on procedures and reception carried out by competent authorities in order to avoid uneven practices throughout Italy, ensuring adequate conditions, access to legal counsel, mental and physical healthcare, gender-appropriate camp design and with specific safeguarded sections for families and unaccompanied minors in reception facilities;
- Establish a comprehensive monitoring system over management and reception conditions in all centres as well as a coherent data collection and divulgation mechanism;
- Amend legislation so as to allow asylum seekers to access SIPROIMI and to promote reception centres that are equipped with the necessary range of services to facilitate integration, including language classes and job orientation.

Immigration detention

1.10 Migrants and asylum seekers keep being subject to administrative detention, which has never proven effective in terms of repatriation and thus appears as merely punitive measure for irregular migrants.¹⁷

¹⁵ See for example InfoMigrants, *Police evict migrants from Baobab center in Rome*, 2018, available at: <https://www.infomigrants.net/en/post/13312/police-evict-migrants-from-baobab-center-in-rome>.

¹⁶ Refugee Rights Europe, *In dangerous transit*, 2018, available at: http://refugeerights.org.uk/wp-content/uploads/2018/08/RRE_InDangerousTransit.pdf.

¹⁷ A/HRC/28/4/Add.1 - Para. 1, recommendation 145.176 (United States of America).

1.11 Since 2015 Italy has adopted the “hotspot approach” in accordance with European Union regulations. However, although hotspots are meant to be open facilities, migrants are not allowed to leave these premises until they are identified. As the procedure of identification may take up to a few weeks, the prohibition to exit is considered to amount to *de facto* detention.

1.12 In 2018 a delegation of NGOs including CILD observed the violations taking place in the Lampedusa hotspot, which were mostly the consequence of the lack of a proper juridical identification of this facility. The delegation noted arbitrary detention; extremely poor life conditions for men, women, and minors; limited access to information and to the asylum procedure; arbitrary distinction between asylum seekers and so-called “economic immigrants”; implementation of mandatory repatriations in breach of the current regulations.¹⁸

1.13 With a view to curtail illegal immigration, Italy adopted Law no. 46/2017 that allocated 13 million euros for the expansion of the immigration detention estate.

1.14 Law no. 132/2018 extended the previous 90-day limit for immigration detention to a maximum of 180 days, and currently provides that foreigners may be detained not only in Repatriation Centres (*Centri di Permanenza per il Rimpatrio*, CPRs)¹⁹, but also in appropriate facilities available to the public security authority.

1.15 The law also amended Law no. 142/2015 to include the possibility of detaining asylum seekers in hotspots for 30 days in order to ascertain their identity and citizenship. If this is not achieved, asylum seekers may also be detained in CPRs for up to additional 180 days. These measures violate international rules by criminalising the illegal entry and stay of asylum seekers without travel documents, which is often the case for those fleeing persecution or war.

1.16 Italy’s National Ombudsman for the rights of persons detained or deprived of personal liberty has repeatedly drawn attention to the conditions

¹⁸ CILD, ASGI, ActionAid, Indiewatch, *Scenari di frontiera: il caso Lampedusa*, 2018, available at: https://cild.eu/wp-content/uploads/2018/11/Lampedusa_scenari-di-frontiera_versione-corretta.pdf.

¹⁹ Formerly Centres for Identification and Expulsion, CIEs.

in which individuals live in immigration detention facilities.²⁰ The Ombudsman noted poor sanitary conditions in the centres, prison-like facilities, restriction of freedom of movement within the facilities, and violations of rights including the right to information and to access adequate judicial remedies to report the deplorable detention conditions. In addition, the Ombudsman recommended not to hold migrants and asylum seekers in the same facilities without considering their different legal situations, stressing the potential risks of the direct contact between individuals who have never been detained before with individuals with possible criminal records.²¹

Recommendations

- Refrain from expanding the system of administrative detention of third-country nationals in CPRs and work towards its progressive dismantlement;
- Reform Law no. 142/2015, in particular as regard to detention of asylum seekers for identity and nationality controls;
- Avoid holding asylum seekers in the same facilities as migrants with criminal records;
- Ensure that only persons with a reasonable prospect of expulsion are detained, and that any such detentions should only be a measure of last resort and for the shortest amount of time reasonable to achieve the purpose of expulsion;
- Enhance the use of alternatives to detention for irregular migrants subject to expulsion.

²⁰ Garante Nazionale dei diritti delle persone detenute o private della libertà personale, *Rapporto sulle visite tematiche effettuate nei Centri di Permanenza per il Rimpatrio (CPR) in Italia*, 2018, available at: http://www.garantenazionaleprivatiliberta.it/gnpl/it/comunicati_stampa.page?contentId=CNG1363&modelId=10017.

²¹ Garante Nazionale dei diritti delle persone detenute o private della libertà personale, *Rapporto sulle visite nei Centri di identificazione ed espulsione e negli hotspot in Italia*, 2017, available at: <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/6f1e672a7da965c06482090d4dca4f9c.pdf>.

Migrant workers and trafficking in human beings

1.17 Despite having received several recommendations in this sense,²² Italy has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).

1.18 We welcome that Italy has adopted measures to protect migrant workers and to combat trafficking in human beings (THB), including Law no. 199/2016 and the National Action Plan on Business and Human Rights 2016–2021. Italy also pledged to continue its efforts to counter human trafficking in occasion of its candidature to the UN Human Rights Council for the 2019–2021 term.

1.19 However, the adoption of such a firm approach in legislation is not followed by sufficiently efficient law enforcement measures.²³ Law enforcement agencies, prosecutors and labour inspectorates have been found to be inadequately resourced to effectively combat the business of human trafficking, which particularly affects migrant workers. In particular, law enforcement officers working in border areas have been found to have limited capability to identify potential victims of human trafficking, thus leaving these individuals at heightened risk of exploitation.

Recommendations

- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Improve identification of victims of THB by setting up a coherent national mechanism of identification and referral of such cases;
- Promote a victim-centred, human rights-oriented, gender and child-sensitive approach, as well as national and international law enforcement and judicial cooperation in countering THB.

²² A/HRC/28/4/Add.1 - Para. 3, recommendations 145.5 (Turkey), 145.1 (Egypt), 145.2 (Chile), 145.3 (Ghana, Sierra Leone, Uruguay, Peru, Islamic Republic of Iran), 145.4 (Senegal), 145.6 (Algeria).

²³ A/HRC/28/4/Add.1 - Para. 1, recommendations 145.119 (Armenia), 145.120 (Azerbaijan), 145.121 (Sudan), 145.122 (Australia), 145.124 (Republic of Moldova), 145.123 (Qatar), 145.125 (Holy See).

Citizenship and statelessness

1.20 Currently Law no. 91/1992 provides that individuals who have at least one parent of Italian nationality acquire Italian citizenship at birth: this is the so-called method of acquiring citizenship through *ius sanguinis*.

Foreigners who were born in Italy may instead become Italian citizens on condition that they have resided there legally and continuously until they turn 18 years old and declare, within one year of turning 18 years old, that they want to acquire Italian citizenship. The described legal framework prevents many foreign children born in Italy – who consider themselves Italian and sometimes have no ties with the country of origin of their family – to enjoy all the rights related to the acquisition of Italian citizenship until they reach at least 18 years of age.

1.21 The attempt to reform the legislation on citizenship proposed by Draft Law no. 2092, which aimed to introduce into our system the possibility of acquiring citizenship through *ius soli* and *ius culturae*, has failed. This reform would have allowed roughly 800,000 foreigners to become Italian citizens.

1.22 In addition, Law no. 132/2018 amended the Italian legislation concerning citizenship by introducing new cases for withdrawing the Italian citizenship acquired through naturalization and extending the time limit for the process of acquiring citizenship to 48 months.

1.23 We welcome that Italy has ratified the 1961 Convention on the Reduction of Statelessness and that Italian law provides a number of solutions to reduce and prevent statelessness of children born on Italian territory. Nevertheless, there are still some consistent legislative gaps and shortcomings in the interpretation of norms by the authorities, which leaves many children born on the Italian territory at risk of inheriting the statelessness status from their parents.²⁴ The measures included in Draft Law no. 2148 on the recognition of the status of statelessness²⁵ would ensure a great improvement through accessible and effective solutions.²⁶

²⁴ A/HRC/28/4/Add.1 - Para. 1, recommendation 145.18 (Hungary).

²⁵ Senato della Repubblica, Atto Senato n. 2148, available at: <http://www.senato.it/leg/17/BGT/Schede/Ddliter/46242.htm>.

²⁶ Draft Law no. 2148 was presented by the Senate Human Rights Commission in collaboration with the United Nations High Committee for Refugees (UNHCR) and the Italian Council for Refugees (CIR). However it has not been discussed yet despite appeals from human rights organisations.

Recommendations

- Amend Law no. 132/2018 to shorten the process for acquiring Italian citizenship;
- Amend legislation to allow for citizenship on the principle of *ius soli* or *ius culturae*.

2. Roma, Sinti and Travellers

2.1 Approximately 120,000 to 180,000 Roma, Sinti and Travellers are estimated to live in Italy,²⁷ constituting about 0,25% of the Italian total population. Approximately 25,000 of the Roma and Sinti people,²⁸ of which around 60% are minors,²⁹ live in housing emergency conditions, and more specifically in institutional slums, in informal slums, in micro settlements, and in Roma centres.

Segregated and substandard housing

2.2 Italy has repeatedly failed to fulfill its international obligations to protect the right to adequate housing and to non-discrimination,³⁰ as Italian authorities maintained the practice to officially construct and manage the so-called “authorised camps”,³¹ where to provide Roma and Sinti families

²⁷ Council of Europe, Estimates and official numbers of Roma in Europe, July 2012.

²⁸ These data has been gathered through the mapping conducted in 2018 by Associazione 21 luglio. The mapping is the result of its constant monitoring action as well as of the figures collected through the request of data regarding the presence of Roma and Sinti individuals in the various local Roma settlements addressed to civil society organizations and to institutional local bodies and offices.

²⁹ Extraordinary Commission for the Protection and Promotion of Human Rights of the Italian Senate, *Concluding Report of the Investigation on the Conditions of Roma, Sinti and Camminanti in Italy*, pp. 19, 45, 2011.

³⁰ The Observations adopted by the United Nations Human Rights Committee (HRC) on 23 March 2017 expressed concern in relation to the continuous discrimination and segregation of Roma and Sinti in Italy; Resolution CM/ResCMN (2017) 4 of 5 July 2017 on the implementation of the Framework Convention for the Protection of National Minorities recommended Italy to take action to rectify the shortcomings at national legislative level in the protection of the rights of Roma; the Commission of Justice of the European Commission on 4 July 2018 expressed a strong concern regarding the possibility of carrying out ad hoc ethnic censuses for the Roma communities living in Italy.

³¹ As an example, the “Via del Riposo” settlement in Naples, opened in April 2017, and the “camp” in Afragola, Naples, are the last “authorized camps” built *ex-novo* by the Italian authorities. See Associazione 21 luglio, *Annual Report 2017* and *Annual Report 2018* (soon to be published in April 2019).

with housing units. The housing units – mostly containers, trailers or bungalows – are overcrowded and present poor material and hygienic conditions, posing a grave threat to the health of the inhabitants. Most of the “authorised” settlements are located on the outskirts of cities, aggravating the marginalization of the inhabitants from the rest of the society.³² Some local administrations have tried to take measures to overcome Roma settlements,³³ but this has not led yet to a significant change of the living conditions of those Roma and Sinti that are in a housing emergency status.³⁴

Forced evictions

³² Associazione 21 luglio, *Annual Report 2017* and *Annual Report 2018* (soon to be published in April 2019).

³³ Municipality of Turin, *Roma Special Project*, available at: http://www.comune.torino.it/bandi/pdf/files/avviso_ass_tec_campi_nomadi_2018.pdf; Municipality of Rome, *Plan for the Inclusion of Roma, Sinti and Travellers population*: https://www.comune.roma.it/web-resources/cms/documents/Del_G.C.105_26_maggio_2017.pdf.pdf. In particular, the Roma Plan of the Municipality of Rome was adopted by the City Council on the 26 May 2017 with the “Guideline Plan of the Rome City Council for the Inclusion of the Roma, Sinti and Caminanti Populations” (Resolution No. 105/2017). The Plan acts on the four axes envisaged by the “National Inclusion Strategy of Roma, Sinti and Caminanti”: housing, employment, schooling and health. The Plan was first tested on the occasion of the “closing” of the Camping River formal settlement.

³⁴ The Camping River Roma settlement, located in the XV District of Rome and listed since 2005 as an “equipped village” until the end of September 2017, was considered a private campsite (with an area of 11,151 square meters) for the reception of Roma families, mainly from Bosnia Herzegovina and Romania. At the beginning of 2017 the Municipality of Rome, within this settlement, registered the presence of 420 people. On 4 July 2017, the Special Office for Roma, Sinti and Caminanti sent a letter to each of the Camping River dwellers with the object “Closure of the Camping River Equipped Village on the date of 30/09/2017. Communication of dismissal”. During all the process the measures foreseen within the Roma Plan were not implemented and no social inclusive path was envisaged. From 1 October 2017 the Camping River Roma settlement has been no longer considered an “equipped village” but a private occupied area, thus being definitively “downgraded” to an informal settlement. On 13 July 2018, Ordinance No. 122 was delivered by the Mayor of the City of Rome with the object “Private Area located in Via Tenuta Piccirilli no. 207. Urgent measures for the safeguard of the sanitation, public health and environment”. The Ordinance established the eviction of “all the people located within the settlement by the peremptory time limit of forty-eight (48) hours from the notification of the present Ordinance, in order to prevent the risk for their health”. On 19 July 2018, Ordinance No. 122 was notified to the Roma families within Camping River. No alternative and adequate housing solutions are provided by the public authorities as well as no proper solutions are mentioned within the Ordinance. Thus, on 16 July 2018, three dwellers living in a condition of extreme vulnerability within the Camping River settlement and not being provided with an alternative and adequate housing solution following the notification of Ordinance No. 122 appealed to the European Court of Human Rights supported by Associazione 21 luglio asking to adopt *interim* measures to stop an imminent risk of irreparable damage. On 26 July 2018 the City of Rome evicted the settlement of Camping River and approximately 300 Roma people remained without an alternative and adequate housing solution.

2.3 Roma and Sinti communities continue to be repeatedly forcibly evicted from institutional and informal settlements by Italian authorities.³⁵ Forced evictions constitute a gross violation of human rights³⁶ and have particularly dramatic consequences on the life of children, who suffer consequences for not being able to access education and social assistance.³⁷ During the evictions, Italian authorities hardly ever apply the procedural safeguards foreseen by international instruments:³⁸ evictions are often carried out in a discretionary manner, without a formal notice, therefore impeding the access to a legal remedy, and without an advance notification, in absence of any kind of consultation. Often evictions result in people being rendered homeless, as no adequate alternative housing solution is provided.³⁹

Anti-gypsyism and hate speech

2.4 Anti-gypsyism remains one of the distinguishing features of Italian society as a specific form of racism⁴⁰ that represents a powerful obstacle in preventing Roma and Sinti inclusion.⁴¹

³⁵ Forced evictions mainly target Roma and Sinti living in informal settlements, but inhabitants of “authorised camps” have reportedly been victims of forced evictions as well. See Associazione 21 luglio, *Annual Reports*, available at: <http://www.21luglio.org/21luglio/ricerca/>.

³⁶ United Nations Commission on Human Rights Resolution 1993/77, para 1. The UN Commission on Human rights has recognized eviction constitute gross violations of a range of human rights, in particular the right to adequate housing.

³⁷ In 2017, Associazione 21 luglio registered a total of 230 forced evictions of Roma and Sinti people throughout Italy; in 2018 it registered 195 forced evictions of Roma and Sinti living in informal and micro-settlements. See Associazione 21 luglio, *Annual Report 2017* and *Annual Report 2018* (soon to be published in April 2019).

³⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 7, 20 May 1997.

³⁹ See, for example, the forced eviction of 19 Roma people, of which 7 minors and three pregnant women, occurred on 6 February 2019 in city of Rome. The informal slum located in Via Collatina Vecchia (Rome) was removed after the damaging of the shacks by local police days before the eviction; threats by local officers were made to the families. In the case the Roma families did not want to move from the area, local officers told them that they would lose the custody of their children.

⁴⁰ European Commission against Racism and Intolerance (ECRI), General Policy Recommendation no. 13: On Combating Anti-Gypsyism and Discrimination Against Roma, 2011, available at: <https://rm.coe.int/ecri-general-policy-recommendation-no-13-on-combating-anti-gypsyism-an/16808b5aee>.

⁴¹ In September 2018 the Office of the UN High Commissioner for Human Rights, at the opening of the 39th session of the UN Human Rights Council, expressed concern about the increase in acts of violence and racism against migrants, people of African descent and Roma; in October 2018 the European Commission against Racism and Intolerance (ECRI) of the Council of Europe expressed in its General Recommendations concern for the repeated phenomenon of antigitanism in Europe and recommended to the National Authorities to prepare all the necessary instruments in order to avoid the practice of forced evictions of the Roma settlements and, in case of eviction, to guarantee them an adequate alternative accommodation for all those who turn out to be the object of eviction; in November 2018, the Commission on Civil Liberties, Justice and Home Affairs of the European Parliament in its Resolution on Minimum Standards for Minorities in the EU expressed

Data⁴² confirm that hate speech targeting Roma is a deep-rooted phenomenon in Italy, mainly fueled by the political discourse at local level.⁴³ However, the action of the National Office Against Racial Discrimination (*Ufficio Nazionale Antidiscriminazioni Razziali*, UNAR) is considerably limited due to the lack of sanctionatory and/or deterrent means to address and discourage episodes of anti-gypsyism.⁴⁴

Recommendations

- End the segregation of Roma and Sinti families in “authorized camps” with substandard housing conditions, ensuring Roma and Sinti are provided with adequate housing without discrimination;
- Immediately cease forced evictions affecting Roma and Sinti communities adopt legislation to guarantee procedural rights;
- Take measures to eradicate anti-gypsyism and to effectively addressing hate-speech episodes against Roma and Sinti communities by reinforcing the mandate of the UNAR and providing it with sanctionatory powers.

3. Judiciary and detention system

3.1. After the European Court of Human Rights (EctHR) issued a pilot judgement in the case *Torreggiani and others v. Italy*, Italy undertook several reforms to reduce overcrowding. Between 2010 and 2015 the number of

deep concern about the persistent incidents of discrimination and hate speech towards of the numerous Roma communities residing in Europe.

⁴² Data collected by Associazione 21 luglio through the National Observatory on Hate Speech against Roma. The Observatory monitors daily around 120 sources and focuses on hate speech episodes promoted by politicians, elected officials, State officials, private citizens with a certain degree of formal organization (e.g. Committees, Unions, Corporations, etc.). For its categorization the Observatory relies on the relevant international, regional and domestic standards. See Associazione 21 luglio, Osservatorio, available at: <http://www.21luglio.org/21luglio/osservatorio/>.

⁴³ In nearly six years of activity (2013 – 31 December 2018), the Observatory recorded a total of 1,603 hate speech episodes against Roma and Sinti, 889 of whom deemed of particular gravity. Data disaggregated per year: 2013 – 456 episodes, of which 255 categorized as grave; 2014 – 400, of which 191 categorized as grave; 2015 – 265 episodes, of which 146 categorized as grave; 2016 (1 January – 31 December) – 175 episodes, of which 57 categorized as grave; 2017 – 182 episodes, of which 57 categorized as grave; 2018 – 125 episodes, of which 38 categorized as grave.

⁴⁴ In various meetings with Associazione 21 luglio, UNAR representatives repeatedly highlighted the lack of available instruments to effectively tackle these kind of episodes.

detainees decreased from 68,258⁴⁵ (153% occupancy rate)⁴⁶ to 52,164⁴⁷ (105% o.r.). However, currently Italian prisons host 60,348 people⁴⁸ (119.5% o.r.), of which 33% has not a final sentence.⁴⁹ In 2018, Antigone detected the lack of 3 sq.m. per detainee in 15 institutes out of 82 visited prisons.

3.2 In 2018, Associazione Antigone saw an increase of reports of violence and ill-treatment in prisons, as 12 complaints were received in 2018.

3.3 Solitary confinement of life-sentenced detainees is a penal sanction prescribed by Article 72 of the Penal Code that may vary between 2 months and 3 years. Detainees should be allowed to participate to communal life; however, the common interpretation to totally exclude inmates in solitary confinement from all communal activities.⁵⁰

3.4 45 suicides were committed in Italian prisons in 2016, and 67 in 2018.⁵¹ The number of suicides per 10,000 detainees rose from 7.2 in 2016 to 10.4 in 2018.⁵² The suicidal risk can be prevented by allowing more contacts between the detainees and their families. The right to sexuality and to a private family life should be guaranteed by setting up rooms with a bedroom, a bathroom and kitchenware to facilitate encounters. Another means of suicide prevention is to guarantee psychological and social support.

⁴⁵ Ministry of Justice, Detainees and official capacity of penitentiary institutes, 30 June 2010, available at:

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&facetNode_2=1_5_2&facetNode_3=1_5_2_3&contentId=SST171276&previousPage=mg_1_14.

⁴⁶ Calculated on the official capacity published by the Ministry of Justice – Department of the Penitentiary Administration.

⁴⁷ Ministry of Justice, Detainees and official capacity of penitentiary institutes, 31 December 2015, available at:

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&facetNode_2=1_5_32&facetNode_3=1_5_32_1&contentId=SST1204500&previousPage=mg_1_14.

⁴⁸ Ministry of Justice, Detainees and official capacity of penitentiary institutes, 28 February 2019, available at:

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&contentId=SST173677&previousPage=mg_1_14.

⁴⁹ Ministry of Justice, Judicial position of detainees, 28 February 2019, available at:

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?contentId=SST173662&previousPage=mg_1_14.

⁵⁰ Garante Nazionale dei diritti delle persone detenute e private della libertà personale, *Relazione al Parlamento 2017*, p. 71.

⁵¹ Ristretti Orizzonti, *Morire di Carcere: dossier 2000-2019*, available at:

<http://www.ristretti.it/areestudio/disagio/ricerca/index.htm>.

⁵² Ministry of Justice, Critical events in penitentiary institutes, 1992-2018, available at:

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&contentId=SST788178&previousPage=mg_1_14.

3.5 The Residences for Security Measures enable people who cannot be charged with criminal offences due to mental issues to have their illness treated; however, there are still problems regarding the management of detainees' psychological health, which is most of the times treated only with psychotropic drugs. Antigone often receives complaints about the lack of treatments within penitentiary institutes.

3.6 Foreigners face several discriminations in the criminal justice system. They are issued pre-trial detention measures more often than Italian citizens. Their rights to information, interpretation and translation, and to a lawyer are hindered by several structural problems.⁵³

3.7 Law no. 132/2018 introduced the possibility for municipalities with over 100,000 inhabitants to equip local police officers with Taser guns, which are potentially lethal.⁵⁴ The municipalities of Turin and Palermo opposed the introduction of the Taser.

Recommendations

- Carry out decriminalization policies (in particular by amending the legislation on drugs) in order to reduce prison overcrowding;
- Reduce the use of pre-trial detention and extend the use of alternative measures to pre-trial detention and to detention;
- Ensure living spaces according to ECtHR standards and increase the use of the regime of open cells and of dynamic surveillance;
- Abolish prolonged solitary confinement for life-sentenced detainees;
- Reform special regimes so to diminish their harshness;
- Guarantee the right to a family life and to sexuality as a form of suicide prevention; increase the possibility of phone calls and allow private meetings with partners;
- Consider psychological health in the same way as physical health and guarantee the right to health for all detainees;
- Guarantee the procedural rights of suspects and accused foreigners;
- Introduce CVV recording in all places of deprivation of liberty (including police stations), train penitentiary personnel and police

⁵³ Inside police custody 2 – Comparative report, pp. 75-77, available at: <https://www.icclie/wp-content/uploads/2018/12/Inside-Police-Custody.pdf>.

⁵⁴ Reuters, *A 911 plea for help, a Taser shot, a death - and the mounting toll of stun guns*, available at: <https://www.reuters.com/investigates/special-report/usa-taser-911/>.

officers on the prevention of torture and on recognizing signs of torture and ill-treatment;

- Abolish the use of Taser guns;
- Introduce identification numbers for all police forces.

4. Women's rights

4.1 Women in Italy should be able to enjoy the same rights as men, as Article 3 of the Italian Constitution provides that all citizens have equal social dignity and are equal before the law, without distinction, *inter alia*, of sex. Nevertheless, Italian women still face difficulties in enjoying their rights.⁵⁵

4.2 The current Italian legal framework does not provide for measures aimed at specifically and exclusively protecting women. In fact, the gender of the victim of a crime does not play any role in the Italian criminal justice system.⁵⁶ Although the legislative measures introduced over the years have gradually bridged protections gaps concerning women, some challenges persist in the applicability of these laws. This leads women – and, if present, their children – to suffer serious human rights violations

Firstly, the laws that are aimed at contrasting violence against women are not always applied with the required competence and rapidity. Secondly, although the current criminal sanctions punishing those who commit violence against women ensure hefty sentences and are fundamental to deter further crimes, they are not sufficient,⁵⁷ as they are often only applied *after* the violence has been perpetrated: instead, more preventive measures are considered necessary. Thirdly, investigations and judicial procedures are often too lengthy to ensure that women are effectively protected, which may lead to violence-related crimes to be statute-barred pending trials. Finally, policies to prevent and raise awareness on the issue of violence against women need to be improved in order to be effective and make sure that women are aware of their rights and of the protection tools that they can resort to when they are victims of crimes.

⁵⁵ A/HRC/28/4/Add.1 - Para. 1, recommendations 145.118 (Romania), 145.57 (Trinidad and Tobago), 145.59 (France), 145.56 (Cyprus), 145.114 (Botswana), 145.106 (Dominican Republic), 145.107 (India), 145.108 (Maldives), 145.110 (Sierra Leone), 145.115 (Switzerland), 145.117 (Germany), 145.113 (Ireland), 145.109 (Uzbekistan), 145.112 (Islamic Republic of Iran), 145.116 (Malaysia).

⁵⁶ The only exception is the crime of female genital mutilation.

⁵⁷ Ministry of Economic Development, *Reflections on stalking and violence against women*, 2014, available at: https://www.mise.gov.it/images/stories/documenti/relazione_seminario_1_dicembre.pdf

4.3 Gender-based discrimination is still concerning in Italy. As far as discrimination in the workplace is concerned, as of 2016 women earned 5,3% less than men on average.⁵⁸

4.4 Women's access to safe abortions is also a critical issue. Law no. 194/1978 legalized abortions within the first three months of pregnancy but also allowed for doctors to conscientiously object from the practice: this means that on paper Italy allows abortion but in practice very few doctors will perform them. Around 70% of gynaecologists – up to 83% in some regions – are conscientious objectors to the law and do not perform abortions for religious or personal reasons.⁵⁹

Recommendations

- Review domestic legislation to implement the provisions of the Convention on the Elimination of All Forms of Discrimination against Women into national law;
- Consider adopting specific laws on combating violence against women and provide necessary support to the victims;
- Address the legal gaps in the area of child custody and include relevant provisions relating to protection of women who are the victims of domestic violence;
- Adopt additional measures, including by setting up an *ad hoc* national institution, to combat gender inequality and gender-based discrimination, particularly discrimination between men and women in the workplace;
- Allocate sufficient funds for the effective protection of victims who report gender-based violence and focus on training and education to violence;
- Consolidate the measures aimed at achieving social reintegration of women who are victims of human trafficking;
- Intensify the ongoing efforts to strengthen women's representation in leadership roles and decision-making positions.

⁵⁸ Eurostat, *Women in the EU earned on average 16% less than men in 2016, 2018*, available at: <https://ec.europa.eu/eurostat/documents/2995521/8718272/3-07032018-BP-EN.pdf/fb402341-e7fd-42b8-a7cc-4e33587d79aa>.

⁵⁹ Ministero della Salute, *Relazione sull'attuazione della Legge 194/1978*, 2015.

5. LGBTI rights

5.1 Italy passed Law no. 76/2016 allowing civil unions and providing a specific regulations for same-sex couples. Part of the duties and rights arising from the marriage can be found in this measure, although two main differences remain: members of same-sex couples have no right to adopt the biological partner's child, nor do such couples have the right to adopt children in any other case.

5.2 Notwithstanding the increasing number of hate crimes and hate speeches against the LGBTI community, the Italian Parliament has not discussed (nor passed) any law concerning homo/bi/transphobia.

5.3 In 2015, both the Italian Supreme Court and the Constitutional Court ruled against the necessary surgical sterilisation as a pre-requirement for the gender-reassignment, although only under specific conditions.

Recommendations

- Introduce legislation to allow same-sex couples to be fully recognized as families by extending to them full duties and rights of married couples, including right to adoption;
- At second best, amend legislation to allow the official recognition of same-sex families and comprehensive regulation on parenthood of same-sex couples;
- Reform Articles 604bis and 604ter the Italian Penal Code (formerly under Law no. 203/1995) to include sexual orientation and gender identity among the occurring circumstances leading to the enforcement of the law provisions;
- Take measures aimed explicitly at fighting homo/bi/transphobia;
- Include information on sexual orientation and gender identity in National Education Programmes on sex education and health education;
- Reform the current legislation on gender reassignment shifting from judicial to administrative procedure and simplifying the proceedings based on an *ex parte* lodging of documents; include statutory

re-affirmation of the possibility to obtain gender reassignment without surgical sterilisation;

- Introduce specific guidelines to guarantee the transsexual detainees' right to continue their gender transition during detention; take measures to guarantee their dignity while in detention, explicitly avoiding their isolation due to their gender transition;
- Introduce legislation, or at least guidelines, governing the case of intersex individuals to guarantee that no irreversible alteration of the body of a child is held for reasons appearing to be merely aesthetical without the full, free and informed consent of the concerned child;
- Introduce legislation guaranteeing free access to services and take measures against discriminatory acts based on gender identity;
- Introduce and improved educational programmes for public officers and civil servants with the aim of guaranteeing sufficient knowledge and skills on the specific issues concerning sexual orientation and gender identity.

6. Transparency and access to information

6.1 We welcome that Italy adopted a Freedom of Information Act (FOIA) with Legislative Decree no. 97/2016, allowing individuals to enforce their right to access information held by public authorities (PAs).

While Italy improved its right to information rating with this measure, the law still has several shortcomings, including the lack of sanctions for public bodies that illegitimately refuse to disclose documents; the absence, in many Italian regions, of an ombudsman that can safeguard the right to access to information; and the limited duties on proactive transparency for PAs. In addition, although the Italian National Anti-Corruption Authority has adopted guidelines for public bodies handling access to information requests, these seem to be disregarded or unknown by civil servants.

6.2 The Italian FOIA still falls far behind international standards, as it forces requesters to go through the infamously-slow Italian court system in order to challenge non-disclosure of information, making it difficult to hold public officials accountable and nearly impossible for citizens to participate in decision-making processes.

6.3 Moreover, the actual implementation of the FOIA is not yet satisfactory. The monitoring of several access to information requests conducted both in 2017⁶⁰ and 2018⁶¹ showed that around 75% of the requests were not answered at all by public bodies; one third of the denial by PAs to disclose information was illegitimate; and, in most cases, the responses received from PAs could be considered totally inappropriate or deprived of any sound legal basis.

Recommendations

- Put in place effective remedies and sanctions to prevent and redress violations of the right to access to information;
- Set up ombudsman mechanisms in all Italian regions to safeguard the right to access information;
- Invest resources for training civil servants, which is basic requirement for ensuring compliance with the obligations provided for by the FOIA;
- Spread the culture of transparency among civil servants and citizens and foster cooperation mechanisms to use access to information and transparency as leverage against corruption.

7. Privacy

7.1 The Italian law imposes on Telecom providers obligations to engage in indiscriminate data retention, in stark contradiction with international standards. Moreover, the temporal limitations that were introduced in the Personal Data Protection Code⁶² have been arbitrarily cast aside through Governmental decrees, allowing for retention of data for even longer periods, which constitutes a violation of the right to privacy. Even further, access to such data by the authorities does not require authorization from a judicial authority or any independent administrative body, thus putting at risk the fundamental right to privacy.

⁶⁰ Diritto di Sapere, *Ignoranza di Stato*, 2017, available at: <https://blog.dirittodisapere.it/wp-content/uploads/2017/04/ignoranza-di-stato.pdf>.

⁶¹ Cittadinanzattiva, monitoring of 8000 requests of access to information sent to local, regional and national entities conducted between March 2017 and September 2018.

⁶² Personal Data Protection Code, Legislative Decree no. 196/2003, Section 132 (Traffic Data Retention for Other Purposes).

Recommendations

- Refrain from imposing on third parties indiscriminate obligations to retain communications data;
- Review legislation to ensure that obligations to retain communications data or requests to access such data are subject to tests of necessity and proportionality and authorized by judicial body.

8. National human rights framework

8.1 Serious gaps persist in the national human rights framework. It is regrettable that Italy has failed to establish a National Human Rights Institution (NHRI) in accordance with the Paris Principles, despite having accepted several recommendations to this effect.⁶³

8.2 We welcome that Italy is strongly engaged in combating racism and racial discrimination, xenophobia, intolerance and all forms of discrimination, as stated on the occasion of the candidature of Italy to the UN Human Rights Council for the 2019–2021 term.

8.3 However, Italy has failed to address effectively the issues of racism and discrimination. Individuals targeted by racist acts report being discriminated against on a daily basis, while there has been an increase in racist physical attacks and in discrimination, including in schools and public institutions.⁶⁴ However, it is not possible to provide precise figures on racist episodes since Italian institutions provide no official monitoring of the phenomenon. In general terms, the main problem is the progressive ghettoisation of foreigners, a phenomenon that could be put to an end through forward-looking inclusion policies.

⁶³ A/HRC/28/4/Add.1 - Para. 1, recommendations 145.34 (Togo), 145.26 (Malaysia), 145.27 (Bulgaria), 145.28 (Chad), 145.29 (Indonesia), 145.30 (Bahrain), 145.31 (Chile), 145.32 (Morocco), 145.33 (Democratic Republic of the Congo), 145.35 (Portugal), 145.36 (Senegal).

⁶⁴ Information provided by Coordinamento Nazionale Nuove Generazioni Italiane (CoNNGI). More information available at: http://connqi.it/?fbclid=IwAR0sVaPviqDxkNOJX72v9fzKhPu4DCON_QD7dLLJEGjBmhVsar9GxB3n8nq.

8.4 Italy has not implemented supported recommendations to strengthen the National Office against Racial Discrimination (UNAR),⁶⁵ and its ability to combat discrimination remains limited, particularly due to lack of independence from the government.

8.5 The dissemination of fake news on the subject of immigration help to fuel the already widespread climate of xenophobia, and there has been an increase in hate speech on social media platforms.

Recommendations

- Continue strengthening mechanisms to combat racism, racial discrimination, xenophobia and other forms intolerance and set up a national system to monitor episodes of discrimination;
- Strengthen the mandate of the UNAR by making it an independent authority;
- Engage intensively to fight racist statements that persist in political discourse in order to avoid associating migrants, insecurity and unemployment;
- Oppose stereotyping and racism by raising awareness among the media, especially online, to prevent all forms of hate speech, which includes baseless, false and defamatory reporting;
- Ensure effective social and legal protection for victims of discrimination.

⁶⁵ A/HRC/28/4/Add.1 - Para. 1, recommendations 145.87 (India), 145.89 (Uruguay), 145.88 (Pakistan), 145.86 (Sierra Leone), 145.85 (Chile).