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# ADVANCE UNEDITED VERSION

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## Human Rights Committee

### Concluding observations on the sixth periodic report of Italy\*

1. The Committee considered the sixth periodic report of Italy (CCPR/C/ITA/6) at its 3345<sup>th</sup> and 3346<sup>th</sup> meetings (see CCPR/C/SR.3345 and 3346), held on 9 and 10 March 2016. At its 3364<sup>th</sup> meeting, held on 23 March 2016, it adopted the present concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of Italy, albeit 6 years late, and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/ITA/Q/6/Add.1) to the list of issues (CCPR/C/ITA/Q/6), which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

#### B. Positive aspects

3. The Committee welcomes the following legislative, institutional and policy measures taken by the State party, including the adoption of:

(a) Law No. 76 of 20 May 2016 (Regulation of Same-Sex Civil Union and Cohabitation);

(b) The National Action Plan against Trafficking and Serious Exploitation of Human Beings (2016-2021);

(c) Law No. 119 of 15 October 2013 (Gender violence and Civil Protection);

(d) The National Strategy for the Inclusion of Roma and Sinti Communities for 2012-2020.

4. The Committee also welcomes the ratification of the following international instruments by the State party:

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\* Adopted by the Committee at its 119th session (6 - 29 March 2017)

- (a) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 4 Feb 2016;
  - (b) The International Convention for the Protection of All Persons from Enforced Disappearance, on 8 Oct 2015;
  - (c) The 1961 Convention on the Reduction of Statelessness, in 29 September 2015;
  - (d) The Optional protocol to the International Covenant on Economic, Social and Cultural Rights, on 20 Feb 2015;
  - (e) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 3 Apr 2013;
  - (f) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 15 May 2009.
5. The Committee also welcomes the State party's decision to withdraw its reservations to articles 15(1) and 19(3) of the Covenant.

## **C. Principal matters of concern and recommendations**

### **National human rights institution**

6. While noting the operation of a number of specific bodies dedicated to the promotion of human rights and the repeated commitment made by the State party to establish a national human rights institution, the Committee regrets that it has not yet established one (art. 2).

**7. The State party should expeditiously establish a national human rights institution and establish the institution in compliance with the Paris Principles (General Assembly resolution 48/134, annex).**

### **Anti-discrimination legislation**

8. The Committee is concerned that article 3 of the Constitution does not contain a comprehensive list of prohibited grounds of discrimination and that existing anti-discrimination legislation addresses only some grounds of discrimination in limited spheres (arts. 2 and 26).

**9. The State party should take all measures, including the adoption of comprehensive anti-discrimination legislation, necessary to ensure that its legal framework: (a) provides full and effective protection against discrimination in all spheres, including in the private sphere, and prohibits direct and indirect discrimination; (b) comprehensively addresses all grounds of discrimination, including colour, national origin, citizenship, birth, disability, age, sexual orientation and gender identity and other status; and (c) provides for effective remedies in cases of violations, including in cases of multiple and intersectional discrimination.**

### **Discrimination on the grounds of sexual orientation and gender identity**

10. While welcoming the adoption of the Law No. 76 of 20 May 2016, the Committee remains concerned that the Act does not provide same-sex couples the right to adopt children and does not afford full legal protection to those children living in same-sex families. It is also concerned about the continued denial of access to In Vitro Fertilization under Law 400/2004, and at the prevalence of discrimination and hate speech against lesbian, gay, bisexual, transgender and intersex persons (arts. 2, 23, 24 and 26).

**11. The State party should review relevant legislation and consider allowing same-sex couples to adopt children, including their partner's biological children, and ensuring the same legal protection for those children living in same-sex families as those living in heterosexual families, and provide for equal access to In Vitro Fertilization. It should also intensify its efforts to combat discrimination and hate speech and hate crimes against LGBTI persons.**

#### **Hate speech and racial discrimination**

12. The Committee is concerned about reports of persistent stigmatization, stereotyping, and racist discourse against Roma, Sinti and Camminanti communities and non-citizens, exacerbated by the media and public officials at the local level. It is also concerned that the aggravating circumstances in Law no. 205/1993 (Mancino's Law) on hate crimes are applied only when a racist motive appears to be a sole motivation but not when there are mixed motives (arts.2 and 26).

**13. The State party should: (a) strengthen its efforts to eradicate stigmatization, stereotyping and racist discourse against Roma, Sinti and Camminanti communities and non-citizens, including by conducting public awareness campaigns to promote tolerance and respect for diversity; (b) review Law no. 205/1993 with a view to giving effect to aggravating circumstances to all hate crimes; (c) and ensure that all cases of racially motivated violence are systematically investigated, that perpetrators are prosecuted and punished and that appropriate compensation is awarded to the victims.**

#### **Discrimination against Roma, Sinti and Caminanti communities**

14. The Committee remains concerned at the persistent discrimination and segregation faced by Roma, Sinti and Caminanti communities, in particular:

(a) The absence of legal remedies provided to Roma, Sinti and Camminanti whose rights were violated by the implementation of the Nomad Emergency Decree from May 2008 to November 2011;

(b) The continuing practice of forced evictions of Roma, Sinti and Camminanti communities throughout the State party;

(c) The restrictive security measures, such as Executive decision no. 4077 (21 December 2016) of the Municipality of Rome, imposed on segregated Roma-only settlements;

(d) The construction by municipal authorities of new segregated Roma-only camps (arts. 2, 12, 17 and 26).

**15. The State party should intensify its efforts to eradicate the persistent discrimination and segregation against Roma, Sinti and Camminanti communities, including the full implementation of the National Roma Inclusion Strategy. The State party should also:**

(a) **Provide effective remedies and reparations to those who have suffered human rights violations as a result of the implementation of the Nomad Emergency Decree, taking into account the Council of State's Judgement No. 6050 of 16 November 2011;**

(b) **Take all feasible measures to avoid forced evictions of these communities and ensure, in case of evictions, the affected communities the legal protections and adequate alternative housing;**

(c) **Take necessary measures to repeal all restrictive security measures imposed on the segregated Roma-only settlements, including Executive decision no. 4077 (19 February 2017) of the Municipality of Rome, which severely restrict the rights to privacy and to movement of the residents and their visitors;**

(d) **Halt any plans which are likely to result in new segregated camps or segregated housing areas;**

(e) **Expedite consideration of pending legislation seeking to recognize the Roma, Sinti and Camminanti communities as a national minority;**

#### **Voluntary termination of pregnancy**

16. The Committee is concerned at reported difficulties in accessing legal abortions owing to the high number of physicians who refuse to perform abortions for reasons of conscience and their manner of distribution across the country, and the resulting in a significant number of clandestine abortions being carried out (arts. 6, 17 and 24).

**17. The State party should take measures necessary to guarantee unimpeded and timely access to legal abortion services in its territory, including by establishing an effective referral system for women seeking legal abortion services.**

#### **Torture**

18. The Committee is concerned that the crime of torture has not been incorporated in the Criminal Code (art. 7).

**19. The State party should incorporate, without further delay, the crime of torture into the Criminal Code, in line with the Covenant and other international standards.**

#### **Use of excessive force and ill-treatment**

20. The Committee is concerned about reports of frequent use of excessive force by police and law enforcement officials, particularly in the context of migrant identification procedures at the hotspots. It is also concerned at the prevalence of impunity for police and law enforcement officials involved in excessive use of force and Article 582 of the Criminal Code, which exacerbates the phenomenon by requiring the filing of a complaint by the victim (art. 7).

**21. The State party should take all measures necessary to prevent law enforcement and security forces from resorting to excessive force and ill-treatment, including by enhancing training for law enforcement officers, introducing a code of conduct for law enforcement officials and requiring them to wear identification tags. It should revise Article 582 of the Criminal Code, and ensure that allegations of ill-treatment and excessive use of force are thoroughly investigated even if the victim has not filed a complaint. It should ensure that perpetrators are prosecuted and, if convicted, punished with sanctions commensurate with the seriousness of the crime; and that victims are adequately compensated.**

#### **Statelessness and citizenship**

22. The Committee is concerned that most stateless persons, mainly Roma and third-country nationals, remain stateless owing to the complicated statelessness determination procedures, which put their children at high risk of inheriting the stateless status of their parents, despite the legislative guarantee of Italian citizenship to those children born in Italy. It is also concerned about the slow progress in adopting legislation to address these issues (art.2, 24).

**23. The State party should take measures necessary to simplify the statelessness determination procedures, reform the citizenship law, and expedite the adoption of appropriate legislation designed to reduce statelessness.**

**Migrants, asylum-seekers and refugees**

24. While appreciating the great efforts made by the State party to receive and host exceptional numbers of persons fleeing armed conflict or persecution, the Committee is concerned at:

(a) The non-implementation of Law no. 67/2014, which authorizes the executive to suspend the offence of irregular entry and stay in Italy;

(b) Continued reports of collective expulsion of migrants, including the deportation of 48 Sudanese migrants in August 2016, which were reportedly facilitated by a bilateral agreement on migration;

(c) The prolonged detention at the “hotspots” beyond the legally prescribed 72 hour period;

(d) The insufficient number of places in first and second level reception centres and the substandard living conditions in several reception centres;

(e) The lack of effective safeguards against erroneous classification of asylum seekers as ‘economic migrants’, including insufficient provision of information on and legal assistance for the pre-identification and identification procedures and asylum application procedure at the hotspots and reception centres (arts. 7, 9 and 10).

**25. The State party should:**

(a) **Implement Law no. 67/2014 to abrogate the crime of irregular entry and stay;**

(b) **Refrain from practices of collective expulsion of migrants; ensure that any expulsion order is based on the individual assessment of each migrant taking into account their special protection needs; and ensure that bilateral and multilateral agreements and their application, guarantee full respect of Covenant rights and strict compliance with the principle of non-refoulement and suspend any agreements without effective human rights protections;**

(c) **Ensure that immigration detention is only applied as a measure of last resort, after it has been determined, on a case by case basis, to be strictly necessary, proportionate, lawful, and non-arbitrary and is imposed for the shortest period possible;**

(d) **Strengthen its efforts to increase the number of available places in reception centres and take all necessary measures to improve, without delay, the conditions therein;**

(e) **Fully implement the Standard Operating Procedures (SOP) of the hotspots, and provide in all first level reception centers information and legal aid, where necessary, in relation to the pre-identification and identification procedures and the asylum procedure.**

**Unaccompanied minors**

26. While noting the difficult challenge arising from the increasing number of unaccompanied minors arriving in Italy, the Committee is concerned at the insufficient safeguards for these children, in particular relating to the inadequate age determination procedure, delays in the appointment of guardians; and conditions in first level reception

centres. It is particularly concerned at the increasing number of children going missing from reception centres, which places them at risk of labour and sexual exploitation (arts. 7, 9 and 24).

**27. The State party should:**

- (a) Ensure that the age assessment procedure is based on safe and scientifically sound methods, taking into account the children's mental well-being;**
- (b) Review the guardian assignment procedure to ensure that each unaccompanied minor is provided with a legal guardian in a timely manner;**
- (c) Ensure adequate conditions for unaccompanied minors in reception facilities, including their segregation from adults;**
- (d) Take the measures necessary to prevent the disappearance of those children, and to find the whereabouts of those already gone missing.**

**Trafficking in human beings and labour exploitation**

28. The Committee is concerned at reports of a rise in trafficking in human beings and exploitation of migrants, particularly in the context of the recent migration flow. It is particularly concerned at:

- (a) The lack of clear procedures for screening victims of trafficking in reception facilities;
- (b) Reports of forced removals of possible victims of human trafficking and the lack of information provided to them about their legal options and social services;
- (c) The labour exploitation faced by migrant workers, particularly those in irregular situations and in the agricultural sector, the systematic failure to comply with rules of occupational safety, minimum living conditions and the lack of effective labour inspections
- (d) The absence of clear and effective procedures available to migrant workers to complain about abusive working conditions, including outstanding pay (arts. 8 and 24).

**29. The State party should take measures necessary to fully implement the National Action Plan against Trafficking and Serious Exploitation of Human Beings (2016-2021) towards that goal. It should also:**

- (a) Establish clear procedures for identifying victims of human trafficking and continue to provide the necessary training for immigration police officers and staff working in all reception facilities;**
- (b) Conduct individual risk assessments prior to the return of trafficked persons to their country of origin;**
- (c) Strengthen labour inspections in the sectors where most migrant workers are working, including the agricultural sector, and release labour inspectors from the responsibility to engage in immigration enforcement;**
- (d) Establish effective complaint procedures for migrant workers to lodge complaints against their employers without fear of reprisals, and review Legislative Decree No. 109 (the Rosarno Law) to this end.**

**Detention conditions**

30. The Committee welcomes the information on the closure of judicial psychiatric hospitals in the State party. While noting the progress made to address overcrowding in prison, the Committee remains concerned about this problem. It is particularly concerned

about the over-representation of foreigners in prison owing to reported discrimination in terms of sentencing and limited application of alternative options to detention for foreigners; and the substandard conditions of detention, including in immigration detention centres, in relation to food, health care and recreational facilities (arts. 2, 9, 14 and 26).

**31. The State party should continue its efforts of reducing overcrowding in prison. It should also address the over-representation of foreigners in prison, including through conducting a study on discrimination against foreigners in criminal justice proceedings and the development of suitable and realistic alternatives to detention for foreign detainees. Furthermore, it should take measures to improve conditions of detention, including access to healthcare services, provision of sufficient and adequate food, taking into consideration of health conditions and dietary needs of detainees, and recreational facilities.**

#### **Special detention regime under Article 41-bis of the Law on the Penitentiary System**

32. The Committee is concerned about the special detention regime provided for by article 41-bis of the Law on the Penitentiary System, which allows for special detention regime for up to four years, with a possibility of extension for an additional period of two years. It is concerned about the alleged automatic extension of detention in such cases; the frequent rejection of appeal requests; the lack of judicial review of the orders imposing or extending this form of detention; and the severe restrictions on prisoners in terms of socialization with other inmates (arts. 2, 9, 14 and 26).

**33. The State party should ensure that this special regime is in line with the Covenant, including through expediting the judicial review of orders imposing and extending this regime. It should also take the measures necessary to improve the conditions of detention under this regime, including facilitating inter-prisoner communication.**

#### **Right to a fair trial**

34. The Committee remains concerned about the excessive length of court proceedings and the limited access to free legal aid owing to restrictive qualifying criteria and lack of information on legal aid options (art.14).

**35. The State party should continue its efforts to reduce the length of criminal and civil proceedings. It should also take the measures necessary to improve access to legal aid, including by expanding legal aid criteria and making information on the legal aid available to the public, in criminal and other types of proceedings, when the interests of justice so require.**

#### **Right to on-line and digital privacy**

36. The Committee is concerned about reports alleging a practice of intercepting personal communications by intelligence agencies and the employment of hacking techniques by them without explicit statutory authorization or clearly defined safeguards from abuse. It is also concerned that the Anti-Terrorism Decree and Law no. 21/2016 (“Decreto Mille Proroghe”) compel telecommunication providers to retain data beyond the period allowed by Article 132 of the Personal Data Protection Code, and accessing such data by the authorities is not subject to authorization from a judicial authority. It is concerned about allegations that companies based in the State party have been providing on-line surveillance equipment to foreign governments with a record of serious human rights violations and the absence of legal safeguards or oversight mechanisms put in place in relation to such exports (art.17).

37. The State party should review the regime regulating the interception of personal communications, hacking of digital devices and the retention of communications data with a view to ensuring (a) that such activities conform with its obligations under article 17 including with the principles of legality, proportionality and necessity, (b) that robust independent oversight systems over surveillance, interception and hacking, including by providing for judicial involvement in the authorization of such measures in all cases and affording persons affected with effective remedies in cases of abuse, including, where possible, an *ex post* notification that they were subject to measures of surveillance or hacking; and (c) take measures to ensure that all corporations under its jurisdiction, in particular technology corporations, respect human rights standards when engaging in operations abroad.

#### **Criminalization of defamation**

38. The Committee is concerned that forms of expression including defamation, libel and blasphemy remain criminalized, including with punishment of imprisonment, and that article 13 of the Press Law and that Article 595 of the Criminal Code imposes harsher punishment for defaming public officials, including the head of state. It is also concerned about the high number of journalists reportedly convicted of libel (art. 19).

39. **The State party should decriminalize blasphemy. It should also consider the complete decriminalization of defamation and libel, and in any case, it should restrict the application of criminal law to the most serious of cases. It should also revise its legislation, including Article 595 of the Criminal Code and the Press Law, with a view to bringing it into conformity with its obligations under the Covenant, taking into account the Committee's general comment No. 34 (2011) on freedoms of opinion and expression. It should further ensure that such lawsuits are not used as tools to curtail freedom of expression beyond the narrow restrictions permitted in article 19 of the Covenant.**

#### **Freedom of information**

40. While noting the adoption of the Freedom of Information Act in 2016, the Committee is concerned about reports that the Act lacks clear sanctions for authorities that refuse to answer a request without proper justification and that challenge to the non-disclosure decisions is possible only through judicial proceedings (art. 19).

41. **The State party should ensure that in the implementation of the Freedom of Information Act, the authorities provide reasons for any refusal to provide access to information and put in place effective arrangements for legal remedies for review of refusals to provide access to information as well as in cases of failure to respond to requests.**

### **D. Dissemination and follow-up**

42. The State party should widely disseminate the Covenant and its Optional Protocols, its sixth periodic report, the written replies to the Committee's list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and NGOs operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the official language of the State party.

43. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made



by the Committee in paragraphs 7 (NHRI), 25 (migrants, asylum seekers and refugees) and 27 (unaccompanied minors) above.

44. The Committee requests the State party to submit its next periodic report by 29 March 2022 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and NGOs operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.] Alternatively, the Committee invites the State party to agree, by 29 March 2018, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its periodic report. The State party's replies to that list will constitute its seventh periodic report to be submitted under article 40 of the Covenant.

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