



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

ITALY

1. The Committee considered the fourth periodic report of Italy (CAT/C/67/Add.3) at its 762nd and 765th meetings (CAT/C/SR.762 and 765), held on 4 and 7 May 2007, and adopted, at its 777th and 778th meetings (CAT/C/SR.777 and 778), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Italy and the information presented therein, but it regrets that the report did not follow the Committee's guidelines for reporting. The Committee expresses its appreciation for the dialogue with the State party's large and high-level delegation and welcomes the extensive responses to the list of issues in written form (CAT/C/ITA/Q/4/Rev.1/Add.1), which facilitated discussion between the delegation and Committee members. In addition, the Committee appreciates the delegation's oral and written responses to questions raised and concerns expressed during the consideration of the report.

B. Positive aspects

3. The Committee notes with appreciation that in the period since the consideration of the last periodic report, the State party has ratified the following international instruments:

(a) The United Nations Convention against Transnational Organized Crime, on 2 August 2006;

(b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 2 August 2006;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child pornography and child prostitution, on 9 May 2002;

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 9 May 2002;

(e) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 22 September 2000; and

(f) The Rome Statute of the International Criminal Court, on 26 July 1999.

4. The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

(a) Act No. 38/2006, which amends Act No. 269/1998, entitled “Provisions against the exploitation of child prostitution, child pornography, sexual tourism, as new forms of “reduction into slavery” and updates the existing legislation on unlawful acts against children;

(b) Act No. 7/2006 on the prohibition of female genital mutilation;

(c) Act No. 74/2005, entitled “Voluntary contributions to the United Nations Fund for Victims of Torture”;

(d) Act No. 228/2003 on “Measures against trafficking in human beings”;

(e) The introduction in 2002 of the crime of torture in article 185 bis of the Military Penal Code in Time of War;

(f) Act No. 154/2001, entitled “Measures against violence within the household”;

(g) The entry into force of the Guidelines on the management of centres for immigrants, issued under the Directive of the Minister of Interior on 8 January 2003;

(h) The Directive by the Minister of the Interior which entered into force on 8 March 2007 in order to facilitate the taking into care, by the National System of Protection for Asylum-seekers, of unaccompanied minors who reach the Italian borders;

(i) The establishment of the Committee for the Protection of Foreign Minors to set the methods and modalities for the reception and temporary protection of unaccompanied foreign minors at the national level; and

(j) The establishment of the National Anti-Racial Discrimination Office (UNAR) which started its activities in September 2004.

C. Principal subjects of concern and recommendations

Definition of torture/introduction of a crime of torture

5. Notwithstanding the State party’s assertion that, under the Italian Criminal Code all acts that may be described as “torture” within the meaning of article 1 of the Convention are punishable and while noting the draft law (Senate Act No. 1216) which has been approved by the Chamber of Deputies and is currently awaiting consideration in the Senate, the Committee

remains concerned that the State party has still not incorporated into domestic law the crime of torture as defined in article 1 of the Convention. (arts. 1 and 4)

The Committee reiterates its previous recommendation (A/54/44, para. 169(a)) that the State party proceed to incorporate into domestic law the crime of torture and adopt a definition of torture that covers all the elements contained in article 1 of the Convention. The State party should also ensure that these offences are punished by appropriate penalties which take into account their grave nature, as set out in article 4, para. 2 of the Convention.

Preventive detention

6. The Committee expresses its concern at the length of preventive detention. It also regrets that the maximum period for preventive detention is set by reference to the penalty for the offence of which the person stands accused. (arts. 2, 11 and 16)

The State party should urgently take appropriate measures to considerably reduce the length of preventive detention and restrict such detention to those cases, where it is deemed to be strictly necessary. Furthermore, the Committee encourages the State party to apply alternative non-custodial measures.

Fundamental safeguards

7. The Committee is concerned at allegations that fundamental legal safeguards for persons detained by the police, including the rights of access to a lawyer, are not being observed in all situations. In this respect, the Committee is concerned that Act. No. 155/2005 (the “Pisanu Decree”) includes a provision that extends the permissible period of deprivation of liberty by the police for identification purposes from 12 to 24 hours. Furthermore, an accused person may be held in detention for five days under a reasoned decree adopted by an investigating judge before being allowed to contact an attorney. (arts. 2, 13 and 16)

The State party should take effective measures to ensure that the fundamental legal safeguards for persons detained by the police are respected. The State party should reduce the maximum period during which a person may be held in custody following arrest on a criminal charge, even in exceptional circumstances, to less than the present five days. Furthermore, the State party should ensure that persons in police custody benefit from an effective right of access to a lawyer, as from the very outset of their deprivation of liberty.

National human rights institution

8. The Committee notes that the State party has not yet established a national human rights institution. However, it takes note of the approval of the Chamber of Deputies on 4 April 2007 of Senate Act No. 1463 on the establishment of a national institution for the protection of human rights, including a Guarantor for the rights of detainees. (art. 2)

The State party should proceed with the establishment of an independent national human rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), annexed to General Assembly resolution 48/134. In this respect, the State party is encouraged to promptly adopt the necessary legislation.

Detention of asylum-seekers and non-citizens

9. The Committee is concerned at the detention policy applied to asylum-seekers and other non-citizens, including reports that they often face lengthy periods of detention in the Temporary Detention Centres (CPTs) and the “temporary stay and assistance centres” (CPTAs). In this respect, the Committee regrets the change in the legislative framework resulting from Law No. 189/2002 (the “Bossi-Fini law”) which permits the detention of undocumented migrants and doubles the detention period (from 30 to 60 days). (arts. 2, 11 and 16)

The State party should take effective measures to ensure that detention of asylum-seekers and other non-citizens is used only in exceptional circumstances or as a measure of last resort, and then only for the shortest possible time. The State party should also ensure that courts carry out a more effective judicial review of the detention of these groups.

Access to a fair and prompt asylum procedure

10. The Committee welcomes the new draft law on asylum (NO. C. 2410) which was submitted to the Chamber of Deputies on 19 March 2007, and it notes with appreciation the statement by the State party's delegation that the adoption of a comprehensive legislation on political asylum is under due consideration. However, the Committee is concerned that some asylum-seekers may have been denied the right to apply for asylum and to have their asylum claim assessed individually in a fair and satisfactory procedure. (arts. 2 and 16)

The State party should adopt appropriate measures to ensure that all asylum-seekers have access to a fair and prompt asylum procedure. In this respect, the Committee recalls the obligation of the State party to ensure that the situation of each migrant is processed individually, and the Committee further recommends that the State party proceed with the adoption of a comprehensive legislation on political asylum.

Non-refoulement

11. The Committee notes with concern that individuals may not have been able, in all cases, to enjoy full protection under the relevant articles of the Convention in relation to expulsion, return or deportation to another country. The Committee is particularly concerned at reports of forcible and collective expulsions from the island of Lampedusa to Libya of persons not of Libyan origin. (arts. 3 and 16)

The State party should ensure that it complies fully with article 3 of the Convention and that individuals under the State party's jurisdiction receive appropriate consideration by its competent authorities and guaranteed fair treatment at all stages of the proceedings, including an opportunity for effective, independent and impartial review of decisions on expulsion, return or deportation.

In this respect, the State party should ensure that the relevant alien policing authorities carry out a thorough examination, prior to making an expulsion order, in all cases of foreign nationals who have entered or stayed in Italy unlawfully, in order to ensure that the person concerned would not be subjected to torture,

inhuman or degrading treatment or punishment in the country where he/she would be returned to.

12. The Committee is particularly concerned that article 3 of the “Pisanu Decree” has introduced a new procedure of expulsion of both regular and irregular migrants suspect of being involved in terrorist activities, which, according to the State party, will be in force until 31 December 2007 as an exceptional measure of prevention. The Committee also expresses its concern at the immediate enforcement of these expulsion orders, without any judicial review, and is concerned that this expulsion procedure lacks effective protection against refoulement. (arts. 2 and 3)

The Committee recalls the absolute nature of the right of each person not to be expelled to a country where he/she may face torture or ill-treatment and urges the State party to reconsider this new expulsion procedure. When determining the applicability of its non-refoulement obligations, under article 3 of the Convention, the State party should examine thoroughly the merits of each individual case and ensure that adequate judicial mechanisms for the review of the decision are in place.

Universal jurisdiction

13. The Committee notes the State party’s assurances that the Convention applies to the acts of Italian troops or police officers who are stationed abroad, whether in a context of peace or armed conflict. However, the Committee expresses its concern at the way in which the competent authorities, notably the judicial authorities, conducted the proceedings in respect of the incidents in Somalia involving Italian troops as well as the lack of detailed information on the progress and result of the judicial proceedings resulting from these incidents, as requested by the Committee in its previous conclusions and recommendations (A/54/44, para. 169(b)). (arts. 5 and 12)

The State party should make sure that it acts in compliance with article 5 of the Convention and take the necessary measures to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials and Italian troops, in Italy or abroad, and try perpetrators as well as impose appropriate sentences on those convicted.

Extradition

14. The Committee notes with concern how the competent judicial authorities have dealt with a request for extradition in respect of an Argentinean military officer caught in Italian territory in 2001 under an international warrant of arrest issued by France for the abduction and torture of a French citizen in Argentina in 1976. (arts. 7 and 9)

The State party should take the necessary measures to establish its jurisdiction over acts of torture in cases where the alleged offender is present in any territory under its jurisdiction, either to extradite or prosecute him or her, in accordance with the provisions of the Convention.

Training

15. The Committee takes note with appreciation of the detailed information provided by the State party on training for its law enforcement officials, penitentiary staff, border guards and

armed forces. However, the Committee regrets the lack of information on training on the employment of non-violent means, crowd control and the use of force and firearms. In addition, the Committee regrets that there is no available information on the impact of the training conducted for law enforcement officials and border guards, and how effective the training programmes have been in reducing incidents of torture and ill-treatment. (art. 10)

The State party should further develop and implement educational programmes to ensure that:

a) All law enforcement officials, border guards and personnel working in the CPTs and CPTAs are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted; and

b) All law enforcement officers are adequately equipped and trained to employ non-violent means and only resort to the use of force and firearms when strictly necessary and proportionate. In this respect, the Italian authorities should conduct a thorough review of current policing practices, including the training and deployment of law enforcement officials in crowd control and the regulations on the use of force and firearms by law enforcement officials.

Furthermore, the Committee recommends that all relevant personnel receive specific training on how to identify signs of torture and ill-treatment and that the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) become an integral part of the training provided to physicians.

In addition, the State party should develop and implement a methodology to assess the effectiveness and impact of its training/educational programmes on the reduction of cases of torture and ill-treatment.

Conditions of detention

16. The Committee is concerned that, notwithstanding the measures taken by the State party to improve conditions of detention, including the practice of collective pardon (Law No. 241 of 31 July 2006) and the prison-building programme adopted through the Ministerial Order of 2 October 2003, there is continuing overcrowding and understaffing in prisons. The Committee notes information provided on the improvement in penitentiary health care but it is concerned at reports of ill-treatment, including unsuitable infrastructures and unhygienic living conditions, in CPTAs and identification centres. While noting the recent Directive concerning the access to centres for immigrants by the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the International Committee of the Red Cross (ICRC), the Committee is also concerned at the absence of an independent organization that can systematically monitor the management of the centres. (arts. 11 and 16)

The State party should continue its efforts to alleviate the overcrowding of penitentiary institutions, including through the application of alternative measures to imprisonment and the establishment of additional prison facilities as needed. The State party should also take appropriate measures to ensure the prompt

appointment of additional prison staff, including staff in the educational and health areas

The State party should take effective measures to further improve living conditions in the immigration centres and ensure that a system of systematic monitoring be set up. In this respect, the Committee recommends that an independent body should monitor the management of these centres, respect for the human rights of the people held there and the health, psychological and legal assistance provided.

Treatment and excessive use of force

17. The Committee notes with concern continued allegations of excessive use of force and ill-treatment by law enforcement officials. In this respect, the Committee is particularly concerned at reports emerging of alleged excessive use of force and ill-treatment by law enforcement officials during the demonstrations in Naples (March 2001) in the context of the Third Global Forum, the G8 Summit in Genoa (July 2001) and in Val di Susa (December 2005). The Committee is also concerned that such incidents have reportedly occurred during football matches but it notes the recent adoption of Act no. 41/2007, entitled “Urgent measures on the prevention and the repression of violence cases occurring during football matches”. (arts. 12, 13 and 16)

The Committee recommends that the State party should take effective measures to:

- (a) Send a clear and unambiguous message to all levels of the police force hierarchy and to prison staff that torture, violence and ill-treatment are unacceptable, including through the introduction of a code of conduct for all officials;**
- (b) Certify that those who report assaults by law enforcement officials are protected from intimidation and possible reprisals for making such reports; and**
- (c) Ensure that law enforcement officials only use force when strictly necessary and to the extent required for the performance of their duty.**

Furthermore, the State party should report to the Committee on the progress of the judicial and disciplinary proceedings related to the above-mentioned incidents.

18. The Committee is concerned at reports that law enforcement officers did not carry identification badges during the demonstrations in connection with the 2001 G8 summit in Genoa which made it impossible to identify them in case of a complaint of torture or ill-treatment. (arts. 12 and 13)

The State party should make sure that all law enforcement officials on duty be equipped with visible identification badges to ensure individual accountability and the protection against torture, inhuman or degrading treatment or punishment.

Prompt and impartial investigations

19. The Committee is concerned at the number of reports of ill-treatment by law enforcement agencies, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated. The Committee notes with concern that the offence of torture, which as such does not exist in the Italian Criminal Code but rather is punishable under other provisions of the Criminal Code, might in

some cases be subject to the statute of limitations. The Committee is of the view that acts of torture cannot be subject to any statute of limitations and it welcomes the statement made by the State party's delegation that it is considering a modification of the time limitations. (arts. 1, 4, 12 and 16)

The Committee recommends that the State party should:

- (a) Strengthen its measures to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials. In particular, such investigations should not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture and ill-treatment, the suspect should as a rule be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation;**
- (b) Try the perpetrators and impose appropriate sentences on those convicted in order to eliminate impunity for law enforcement personnel who are responsible for violations prohibited by the Convention; and**
- (c) Review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention so that acts of torture as well as attempts to commit torture and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.**

Compensation and rehabilitation

20. The Committee regrets the absence of a specific programme to safeguard the rights of victims of torture and ill-treatment. The Committee also regrets the lack of available information regarding the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases as well as the lack of information about other forms of assistance, including medical or psychosocial rehabilitation, provided to these victims. However, the Committee welcomes information provided by the State party on the amendment in March 2007 of Senate Act No. 1216 referring to the introduction of the crime of torture, in order to introduce a domestic fund for the victims of torture. (art. 14)

The State party should strengthen its efforts in respect of compensation, redress and rehabilitation provided to victims, including the means for as full rehabilitation as possible and develop a specific programme of assistance in respect of victims of torture and ill-treatment.

Furthermore, the State party should provide in its next periodic report information about any reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes. The State party is encouraged to adopt the necessary legislation, establish a domestic fund for victims of torture and allocate sufficient financial sources for its effective functioning.

Vulnerable groups, including the Roma

21. While noting a number of measures adopted by the State party, including the establishment of UNAR and the Registry of Associations Working against Discrimination, the Committee expresses its concern at reports of acts of violence against and discrimination of vulnerable groups, in particular the Roma, foreigners and Italians of foreign origin and the reluctance on the part of the police and authorities to provide adequate protection to the victims and to effectively investigate those crimes. (arts. 2, 12, 13 and 16)

The State party should intensify its efforts to combat discrimination against and ill-treatment of vulnerable groups, including the Roma, foreigners and Italians of foreign origin. In this respect, the Committee recommends that the State party should:

(a) Combat racial discrimination, xenophobia and related violence, ensure prompt, impartial and thorough investigations into all such motivated violence and prosecute and punish perpetrators with appropriate penalties which take into account the grave nature of their acts;

(b) Publicly condemn racial discrimination, xenophobia and related violence and send a clear and unambiguous message that racist or discriminatory acts within the public administration, especially with regard to law enforcement personnel, are unacceptable; and

(c) Provide detailed information to the Committee on the effective measures adopted to prevent and combat such violence.

Trafficking

22. The Committee welcomes the variety of measures, projects and programmes undertaken by the State party to combat trafficking, including the establishment of an ad hoc inter-ministerial Committee to manage and implement programmes for victims of trafficking as well as the so-called "Article 18 approach", the release of stay permits for social protection reasons for all victims of trafficking providing for their participation in social integration programmes, and Law Decree No. 300 which extends the scope of the system of assistance to and social integration of victims of trafficking to both non-EU and EU citizens. However, the Committee expresses its concern at persistent reports of trafficking in women and children for sexual and other exploitative purposes and, while noting a high number of investigations, it is concerned at the lack of information on prosecutions and sentences in matters of trafficking. (arts. 2, 10, 12 and 16).

The State party should continue to strengthen its efforts to combat trafficking in women and children and take effective measures to prosecute and punish trafficking in persons, including by strictly applying relevant legislation, raising awareness of the problem, and including the issue in training of law enforcement personnel and other relevant groups.

Domestic violence

23. While noting various measures taken by the State party, including the survey issued on 21 February 2007 by the National Institute of Statistics (ISTAT) on the issue of physical and sexual violence against women, and the establishment on 8 March 2006 of an ad hoc toll-free

number 1522, called “Anti-violence against Women (Anti-violenza Donna)”, the Committee remains concerned about the persistence of violence against women and children, including domestic violence. The Committee further regrets that the State party did not provide statistical data on complaints, prosecutions and sentences in matters of domestic violence. (arts. 1, 2, 12 and 16)

The State party should increase its efforts to prevent, combat and punish violence against women and children, including the adoption of the Bill on “Awareness raising and prevention measures as well as the repression of crimes against the individual or within the household, on account of sexual orientation, gender identity and any other reason of discrimination” (Chamber Act No. 2169) which envisages, inter alia, the systematic collection and analysis of data on violence, including domestic violence.

Data collection

24. The Committee regrets the lack of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement officials, as well as on trafficking and domestic and sexual violence. However, the Committee takes note of the statement by the State party's delegation that the Ministry of Justice is updating its system for the collection of statistical data which is due to be completed by the end of 2007. (arts. 11 and 12)

The State party should establish an effective system to gather all statistical data relevant to the monitoring of the implementation of the Convention at the national level, including complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking and domestic and sexual violence, as well as on compensation and rehabilitation provided to the victims.

25. While noting the oral assurances given by the State party's representatives that ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is envisaged shortly, the Committee encourages the State party to ratify it.

26. The Committee recommends that the State party consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

27. The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, recently approved by the international human rights treaty bodies (HRI/MC/2006/3 and Corr.1).

28. The State party is encouraged to disseminate widely the reports submitted by Italy to the Committee and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

29. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 12, 16 and 20 above.

30. The State party is invited to submit its next periodic report, which will be considered as the sixth report, by 30 June 2011.
