



## **ANTIGONE & CILD**

### **Joint Submission to the UN Human Rights Committee On Italy**

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## INTRODUCTION

This report has been prepared by Antigone and Coalizione Italiana Libertà e Diritti Civili.

Founded in 1991, **Antigone** is a NGO dealing with human right protection in the penal and penitentiary system. It helps shaping political culture and public opinion through campaigns, education, media and publications, including a four-monthly academic review. An Observatory on Italian prisons, involving around 50 people, is also active since 1998, when Antigone received from the Ministry of Justice special authorizations to visit prisons. Antigone's observers can access prisons also with video-cameras. Since 2009, Antigone is allowed to also access all Italian juvenile prison facilities. Every year Antigone's Observatory publishes a Report on Italian penitentiary system. Through a prison Ombudsman to which it gave birth, Antigone also collects complaints from prisons and police stations and mediates with the Administration in order to solve specific problems. Furthermore, Antigone's lawyers and physicians operate in some Italian prisons giving suggestions and monitoring detention conditions. Antigone also carries out investigations about ill-treatment and leads an European Union funded Observatory on prisons involving nine European Countries.

Founded in 2014, the **Coalizione Italiana Libertà e Diritti Civili** (hereinafter "CILD") is currently composed by 34 civil society groups working to address some of the most pressing human rights issues faced by Italy today - such as anti-discrimination and rights of minorities, criminal justice and prisoners rights, the right to asylum and international protection, freedom of expression and right to privacy. It supports and empowers civil society organisations through a combination of capacity building on policy analysis, advocacy, media strategy and public education.

## IMPLEMENTATION OF ICCPR AND RELATED ISSUES

### **Gender-based violence and femicide (art. 3 and 6)**

1. Described as a "national emergency" in the public and political debate, violence against women and femicide have been a hot topic in Italy for the past few years. According to a [2015 Italian National Institute of Statistics report](#)<sup>1</sup> almost 1 in 3 women in Italy (little less than 7 million) have been victims of some forms of violence, either physical or sexual, during their life. No national observatory on violence on women - providing official statistics on femicide - has yet been created, however feminist network [Casa delle Donne](#) has been monitoring the phenomenon for years (without any funding or other forms of support from the government) and has reported 1274 cases between 2005 and 2015, with more than 100 women killed each year<sup>2</sup>.
2. The Italian national legal framework to prosecute violence against women is extensive, covering domestic violence, sexual violence, violence against minors, female genital mutilation, stalking and trafficking of human beings. A national plan against gender-based violence and stalking was officially enacted in 2010 as a first attempt to develop an organic response to address violence against women in the country. In 2013, Italy ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and in 2015 it adopted the 'Special Plan against sexual violence and gender-based violence' to expand women's support services including anti-violence centres and women's shelters. While such legislative initiatives have been applauded, measures to ensure their implementation remain weak.

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<sup>1</sup> ISTAT, *Violence against women* (2015).

<sup>2</sup> Casa delle Donne, *I femicidi in Italia* (2016).

3. Furthermore, inadequate funding and malfunctioning of the system put at continuous risk the very existence of anti-violence centres and shelters<sup>3</sup> - which are more often than not volunteer ran due to lack of resources.

**Recommendations:**

- *Create a National Observatory on Violence Against Women responsible for coherent data collection on violence against women and femicide, and implement relevant legislation, penalties imposed on the perpetrators, and remedies provided to victims;*
- *Ensure that the Special Plan leads to concrete and tangible improvement in the prevention of violence against women including by ensuring that: (i) the impact of the plan is monitored and evaluated regularly on the basis of comprehensive data; (ii) there are adequate human and financial resources to effectively implement the plan;*
- *Ensure adequate funding and resources to anti-violence centres and shelters.*

**Accountability for excessive use of force and torture (art. 6, 7 and 26)<sup>4</sup>**

4. **Excessive use of force.** The use of excessive force by law enforcement officials remains a critical issue, especially in the context of migrant identification procedures under the so-called hotspot approach. Prior to 2015 Italy had limited success in getting fingerprints from asylum seekers who would refuse to provide any in order to be able to claim asylum in other countries. Thus, the EU implemented a new approach, imposing a 100% fingerprinting target on Italy and recommending the use of force where necessary to obtain them. As argued by a recent Amnesty report<sup>5</sup>, “meeting this target has pushed Italian authorities to the limits – and beyond – of what is permissible under international human rights law”. The “hotspot approach” - included in the 2015 European Agenda for Migration and firstly implemented in Italy and Greece - regulates identification, fingerprinting and registration of migrants by EU officers in collaboration with national authorities. NGO reports have denounced a significant number of episodes of violence and intimidation - and also some allegations of torture<sup>6</sup> - during fingerprinting operations<sup>7</sup>.
5. Accountability is a vital element of policing and is still not yet fully ensured in Italy. In fact, not enough measures have been taken to put an end to impunity for police and law enforcement officials involved in excessive use of force, torture and ill-treatment. No specific code of conduct has been adopted and the government has failed to introduce identification tags on the uniforms of law enforcement officers that would facilitate accountability for abuse<sup>8</sup> Concerns remain about lack of accountability for deaths in custody, as highlighted by many notable cases in the last years and most recently by new developments in the case of Stefano Cucchi<sup>9</sup>.
6. **Torture criminalization.** Torture is still not a specific crime under Italian law, despite the fact that the duty to criminally sanction torture is unequivocally stated in various international treaties which Italy has signed and ratified (most notably the 1984 UN Convention Against Torture and the 1953 European Convention on Human Rights). This state of affairs has been condemned repeatedly by international human rights bodies and courts - most recently in 2015 by the European Court of

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<sup>3</sup> No national mapping of such structures is conducted, but [the 2015 Women Against Violence Europe \(WAVE\) report](#) documents 140 anti-violence centres and 73 shelters for victims of violence.

<sup>4</sup> This section is a joint submission with Associazione Antigone.

<sup>5</sup> Amnesty UK, *Hotspot Italy* (2016).

<sup>6</sup> Amnesty UK, *Hotspot Italy* (2016).

<sup>7</sup> Oxfam Italia, *Hotspots, Rights Denied* (2016); ECRE and others, *The implementation of hotspots in Italy and Greece* (2016).

<sup>8</sup> Italy has been recommended to introduce such identification tags many times, most lately with regard to the specific context of a foreign nationals joint removal operation by the Committee for the Prevention of Torture (CPT). See: CPT/Inf (2016) 33 - §40.

<sup>9</sup> Stefano Cucchi died while in custody in 2009. His case is now to be reopened after prosecutors [declared](#) in January they concluded a second investigation into the death in custody of Stefano Cucchi on October 22, 2009 and that the three Carabinieri police who first arrested Cucchi on are probed for involuntary manslaughter. Two other Carabinieri also suspected of the crimes of calumny and making false declarations. The case is ongoing.

Human Rights (ECtHR) which, in its judgment on the [Cestaro v. Italy](#) case<sup>10</sup>, condemned Italy for police brutality amounting to torture committed during the infamous raid at the Diaz school in the context of the 2001 Genoa G8 summit. The court condemned Italy both on substantive and procedural grounds: not only for the violence perpetrated on the demonstrators, but also because Italy lacks appropriate legislation to punish the crime of torture - a situation which *de facto* ensured impunity for the police officers responsible for the violence.

7. After the judgement the Italian government pledged to finally fill the vacuum as a matter of priority but the [draft law](#) has been stuck for months before the Senate and is not likely to pass through at this point. Furthermore, the proposed text would still not comply with international law obligations as it asks for “reiterated acts” for a conduct to be deemed as torture and makes the offense a common crime, rather than one specific of public officials.
8. The unwillingness of the Italian State to comply with the CAT and the ECtHR judgements to introduce the crime of torture in the penal code is also evident from the tentative of friendly settlement proposed in relation to the Asti case<sup>11</sup>, which is now before the ECtHR<sup>12</sup>.

Italy’s failure to criminalize torture also puts Italy at risk of becoming a safe haven for torturers, as demonstrated by the recent Reverberi case<sup>13</sup>. Moreover, it endangers the outcome of trials regarding crimes against humanity, as in the Plan Condor trial<sup>14</sup>.

#### **Recommendations**

- *Take all steps necessary to ensure that migrant identification and registration procedures fully respect human rights;*
- *Forbid the use of coercive measures - violence, intimidation, prolonged detention - to force migrants to comply with photo-identification and fingerprinting procedures;*
- *Abrogate the hateful crime of illegal immigration;*
- *Adopt the Code of Conduct for Law Enforcement Officials as demanded by the UN General Assembly in A/RES/34/169;*
- *Introduce identification tags on the uniform of law enforcement officers;*
- *Incorporate the crime of torture into the Italian Criminal Code, in line with art. 1 of the UN Convention Against Torture.*

#### **Treatment of aliens (art. 2, 7, 9, 10, 13, 24 and 26)**

9. ***Collective expulsions, principle of non-refoulement and human rights compliance of migration agreements.*** Italy continues to carry on collective expulsion of migrants to countries of

<sup>10</sup> *Cestaro v. Italy* (App 6884/11) (2015) ECHR.

<sup>11</sup> The government, in order to avoid another negative sentence, instead of waiting for the ECtHR judgment, offered a monetary compensation to the two detainees who had been victims of torture; however the proposal was rejected by the ECtHR, which will proceed to issuing a judgement for this case.

<sup>12</sup> In December 2004 two men detained in Asti prison were put in solitary confinement, stripped of their clothes, denied food and sleep, insulted and beaten for days by the penitentiary police. Because of the absence of a specific crime of torture, the judges - despite recognizing that the mistreatment of the two men amounted to torture - were unable to condemn anyone for what happened. Antigone’s lawyers took part to the proceedings as plaintiff at the internal trial and later, along with Amnesty International Italia, helped the two detainees in the preparation and submission of the appeal to the ECtHR and at the end of November 2015, the Strasbourg judges admitted the case for violation of Article 3 ECHR.

<sup>13</sup> Franco Reverberi is a catholic priest subject to an Interpol international warrant under the accusation of having committed torture during Videla dictatorship in Argentina. He could not be extradited from Italy as the imprescriptible crime of torture is not recognized by Italian criminal law and all the other charges against him are prescribed (Cassazione Penale, sez. VI, sentenza 4/11/2014, n° 46634).

<sup>14</sup> Corte d’Assise di Roma, sez. III, sentenza 17/01/2017. The Plan Condor was an agreement established during the 1970s and 80s among the governments and intelligence services of the South American military dictatorships, which aimed to annihilate their political opponents. Their security operatives orchestrated a campaign of persecution, abduction, kidnapping, torture and murder. It was possible to hold the trial in Italy because some of the victims were Italian citizens. The Plan Condor trial shows the limitations that Italian justice encounters because of the lack of the crime of torture in the Penal Code. In fact eight of the accused could be prosecuted and sentenced only for the murder of the Italian citizens, but not for the acts of torture they subjected them.

origin or transit despite a number of judgements by the ECtHR<sup>15</sup> finding our country in breach of Article 4 of Protocol 4 to the European Convention of Human Rights (ECHR) (which prohibits collective expulsion of aliens). One of the most recent cases - reported by the [Italian Association for Juridical Studies on Immigration \(ASGI\)](#), [CIR and the European Council for Refugees and Exiles \(ECRE\)](#) - is that of the 48 Sudanese nationals deported from the border crossing of Ventimiglia to Khartoum in August 2016, in violation of the prohibition of collective expulsion as well as of the principle of non-refoulement. This deportation was the first to take place under a [much-contested](#)<sup>16</sup> [Memorandum of Understanding](#) on management of borders and migration signed between Italy and Sudan in August 2016. This agreement belongs to a series of measures taken or to be taken in the framework of cooperation between the Horn of Africa states and the European Union on migration - the so-called Khartoum process - followed up by the EU Emergency Trust Fund launched at the Valletta Summit in November 2015. This process of externalization of European and Italian policies on migration has deep consequences in terms of human rights violation and especially in terms of exposure to violations of the principle of non-refoulement, as documented by [a 2016 ARCI report](#)<sup>17</sup>.

10. Furthermore, there are grave concerns over serious and systematic human rights violations in the context of the “hotspot approach”: the lack of a clear legal framework for the operation of the hotspots was repeatedly raised during the [UN Human Rights Office’s mission to Italy](#) in June 2016 and its consequences in terms of human rights violations have been denounced by many NGO reports<sup>18</sup>. [A 2016 report by ECRE and others](#)<sup>19</sup> highlighted fundamental rights violations in the implementation of identification and registration practices, including the use of arbitrary detention and coercive measures for photo-fingerprinting purposes, as well as the impeded access to the asylum process through pre-identification measures conducted by the police immediately after disembarkation, without sufficient information provided, and differentiated treatment and returns based on nationality. Furthermore, no regular monitoring takes place in the hotspots that could spot shortcomings and irregularities and ensure full respect for human rights .

## Recommendations

- *Take all steps necessary to ensure that bilateral and multilateral agreements on migration guarantee the full respect for human rights as well as strict compliance with the principle of non-refoulement and immediately suspend any bilateral agreement lacking adequate human rights protection;*
- *In order to reduce the risk of a violation of the principle of non-refoulement, take all steps to ensure that a foreign national is not removed when: i) a court has suspended such removal; ii) a request for suspension of removal is pending before a court; iii) such a request for suspension is legally possible<sup>20</sup>;*
- *Rigorous monitoring mechanisms, including independent monitoring by international organisations, NGOs, and independent bodies like the newly established Ombudsman for the rights of detainees, should be in place to ensure that the hotspots function is compatible with legal and rule of law standards. Monitoring should cover all practices, from pre-identification to screening, to identification, access to the asylum procedure;*

<sup>15</sup> Most lately in its Grand Chamber judgement on *Khlaifia and Others v Italy* (2016). See also *Hirsi Jamaa and Others v Italy* (2012) and *Sharifi and Others v Italy and Greece* (2014).

<sup>16</sup> The Memorandum has been strongly criticised by the Tavolo Nazionale Asilo [a national consultation group on asylum including Acli, Arci, Asgi, Caritas italiana, Casa dei diritti sociali, Centro Astalli, Consiglio Italiano per i Rifugiati, Comunità di S. Egidio, Federazione delle Chiese Evangeliche in Italia, Medici per i Diritti Umani, Medici Senza Frontiere, Senza Confine]. See ASGI, *Memorandum of understanding between the Italian public security department and the Sudanese national police* (2016).

<sup>17</sup> ARCI, *Steps in the process of externalisation of border controls to Africa, from the Valletta Summit to today*. (2016).

<sup>18</sup> Amnesty UK, *Hotspot Italy* (2016); Oxfam Italia, *Hotspots, Rights Denied* (2016).

<sup>19</sup> ECRE and others, *The implementation of hotspots in Italy and Greece* (2016).

<sup>20</sup> CPT/Inf (2016) 33 - §18.

- *The access of NGOs and lawyers in the hotspots should be ensured in order to provide information and legal counselling before and during identification and access to the asylum procedure as well as to improve transparency over human rights compliance.*
11. **“Illegal immigration” and administrative detention in CIEs.** In 2014 the Government was tasked<sup>21</sup> with abolishing the offence of irregular entry into or stay on Italian territory but as to today such conducts remain punished under criminal law, notwithstanding widespread consensus on this being [wrong and useless](#)<sup>22</sup>
  12. Furthermore, following Chief of Police Franco Gabrielli’s [circular on extraordinary provisions related to “illegal immigration”](#) – the first step of “a wider strategy” of the new Minister of the Interior, Marco Minniti, which promises a strict regime regarding irregular immigrants – the discussion on opening new identification and expulsion centers (CIEs) has begun anew throughout the country. Notwithstanding the fact that immigration detention should only be used as a measure of last resort and that there are positive alternatives to immigration detention<sup>23</sup> - which has instead historically failed - the Italian government wants to make CIEs a core element of its immigration management strategy.
  13. At the administrative detention system’s peak of expansion there were 15 CIEs in Italy with a total capacity of over 2000 detainees. As these centers were established for emergency reasons, the single centers were and remain extremely dissimilar from one another in terms of structure and management. The CIEs have then been gradually dismantled in the past years due to grave legal, humanitarian and practical issues. Currently there are only 4 left - Brindisi, Caltanissetta, Rome and Turin - in which around 300 migrants are confined.
  14. Over the course of the years, a plethora of reports - both by institutional bodies<sup>24</sup> and NGOs<sup>25</sup> - have denounced CIEs as inhumane, useless and incredibly expensive. Internment in CIEs lies outside the safeguards provided by the legal penitentiary system and it is regulated only by administrative non-legislative sources. This legal *vacuum* affects people directly. Paradoxically, detainees in prisons are more protected than the “guests” of the centers for immigrants: in terms of transparency, the CIE system is significantly more suspect than the penitentiary system – the centers are closed prisons, closed to the press and difficult for civil society organizations to access – and left to the management of the custodial institutions. For “reasons of security and public order” the Italian Prefectures tend to further tighten up the rules that govern life within the CIE helping to make the detention conditions of migrants even more unbearable and degrading. The detention conditions in CIEs are so deplorable, unbearable and degrading – significantly worse than those of penitentiary facilities – that in 2012 the Court of Milan and the Court of Crotone<sup>26</sup> justified the riots in the CIEs as “forms of self-defense against the violations of the human rights of the internees”. In other words, the judges believed that the situation inside the CIEs was so dire in terms of the violation of human rights that the migrants’ violent reaction was legitimate.
  15. It is also to be noted that majority of people in CIEs have already been detained in prisons but got interned because it was not possible to identify them during their detention. A law to overcome

<sup>21</sup> Act 67/2017 of 28 April 2014.

<sup>22</sup> ASGI, *Le buone ragioni per abrogare il reato di clandestinità* (2016).

<sup>23</sup> The International Detention Coalition (IDC) has undertaken a program of research to identify and describe a number of [positive alternatives to immigration detention](#) that respect fundamental rights, are less expensive and are equally or more effective than traditional border controls. IDC, *There are alternatives - revised edition* (2015).

<sup>24</sup> Commissione Parlamentare d’Inchiesta per le verifiche e le strategie dei Centri per gli immigrati, *Rapporto De Mistura* (2007); Commissione Straordinaria per la Tutela e la Promozione dei Diritti Umani, *Rapporto sui centri di identificazione e espulsione in Italia* (2016).

<sup>25</sup> Medici per i diritti umani, *Arcipelago CIE* (2013); LasciateCIEntrare, *Accogliere: la vera emergenza* (2016).

<sup>26</sup> Trib. Milano, 18.7.2012, sez. I pen., Pres. Mannucci, Est. Freddi e Trib. Crotone, 12.12.2012, Giud. D’Ambrosio.

the problem of “double punishment” was adopted in 2013, amending the system of deportation as an alternative measure to detention and providing for a speeding up of the documenting process. To date, the actual impact of this legislative measure has been hard to measure, since, as pointed out in [the 2016 CIE update report of the Senate’s Extraordinary Commission for the protection and promotion of human rights \(ECPHR\)](#), the data on the repatriation of non-national detainees identified in prison and, once their sentence served out, directly repatriated without going through a CIE, are not available. According to the abovementioned report, still in 2016 “the people that pass to the CIEs mostly consist of people coming from prison”.

#### **Recommendations:**

- *Abolish the criminal offence of irregular entry into or stay on Italian territory;*
- *Refrain from expanding the system of administrative detention of third-country nationals in CIEs and work towards its progressive dismantlement;*
- *Use detention of third-country nationals only as extrema ratio (as a last resort) and ensure community options are as effective as possible;*
- *Regulate the rights of people interned in CIEs through primary legislation;*
- *Guarantee press and NGOs the right to access CIEs to ensure transparency;*
- *Put in place a rigorous monitoring mechanism, including independent monitoring by international organisations, NGOs, and independent bodies like the Ombudsman for the rights of detainees.*

#### **Trafficking in persons (art.8)**

16. The European Group of Experts against THB (GRETA) has recently published a [report](#)<sup>27</sup> denouncing cases in which possible victims of human trafficking were being returned from Italy to Nigeria on forced return flights<sup>28</sup>, as already reported by the European Committee on Prevention of Torture (CPT)<sup>29</sup>. It also expressed great concern over the broader situation with regard to the providing of assistance and protection to victims of THB. Antigone and CILD, who took part to consultations with GRETA, welcome and reiterate the recommendations made by the Group of Experts.

#### **Recommendations:**

- *Review the legislation in order to ensure that there is an automatic suspensive effect of appeals against removal orders and to provide the persons to be removed, their lawyers and NGOs working with them with full information of the planned removal operation;*
- *Conduct individual risk assessments prior to the return of trafficked persons to their countries of origin, in co-operation with the countries of return, international organisations and NGOs, with a view to ensuring compliance with the non-refoulement obligation.*

#### **Right to liberty and security of persons, treatment of persons deprived of liberty, fair trial (art. 9, 10)**

17. **Prison overcrowding.** In July 2009 Italy was condemned by the ECtHR for violation of Article 3 in the [Sulejmanovic case](#)<sup>30</sup>, which revealed for the first time the grave overcrowding conditions in

<sup>27</sup> GRETA, *Report on Italy*, 2016.

<sup>28</sup> GRETA expressed grave concerns about the manner in which the forced removals of possible victims of human trafficking are conducted, the lack of transparency, the lack of information given to the persons concerned, their lawyers and interested NGOs, and the methods of forced repatriation used.

<sup>29</sup> In the context of the monitoring of a so-called joint removal operation of 28 Nigerian# from Rome to Lagos in 2015. CPT/Inf (2016) 33.

<sup>30</sup> *Sulejmanovic v. Italy*, Appl n° 22635/03 (2009). The detainee of Bosniak origin Mr. Sulejmanovic had to share his cell with six other prisoners for two and a half months in the Rebibbia Jail in Rome. Each of them had about 2.7 square meters at his disposal.

Italian prisons. After the Sulejmanovic sentence, thousands of actions<sup>31</sup> were filed by detainees who were in the same conditions of detention.

18. In January 2010 a state of emergency in relation to the penitentiary system was declared: at that time there were around 68,000 detainees, with an official overcrowding rate of 153%. In reality, things were even worse: as denounced by Antigone's Observatory on Italian prisons<sup>32</sup>, the official accommodation capacity on which the statistics was based also included closed jail sections. The real overcrowding rate, as later recognized by the Ministry itself, had reached 175% - the highest among the EU countries.
19. Normative interventions – primarily the possibility of serving the last part of the sentence in home confinement – led to a slow reduction of prison population. Detainees were around 65.900 when, in January 2013, Italy was sentenced by the ECtHR in the historic [Torreggiani case](#)<sup>33</sup> - a landmark judgment which recognized the systemic and non-occasional character of the degrading living conditions in the Italian jails. It also required Italy to solve the problem of overcrowding within one year and to put in place both a mechanism to suspend the inhuman and degrading treatment while underway and a compensation mechanism for prisoners who suffered such treatment..
20. In order to tackle the issue of detention conditions,, the Ministry of Justice set up three special committees on penitentiary issues: two of them tasked with elaborating legislative measures against prison overcrowding and the third one with effectively intervening with non-normative measures on the quality of prison life.
21. On the normative side, two significant Decree Laws were issued in 2013 by the Italian Government - limiting the recourse to pre-trial detention; strengthening alternative measures to detention; raising the reduction of penalty to which well-behaving prisoners can have access from 45 to 75 days per semester; reducing penal sanctions for possession of small amounts of drugs; setting judicial mechanisms of protection of prisoners' human rights and instituting the national Ombudsman of people deprived of liberty. The measures developed by the third committee consisted primarily in imposing an open cell regime in medium security circuits<sup>34</sup>, redesigning prisons' spaces<sup>35</sup> and facilitating contacts between prisoners and relatives<sup>36</sup>.
22. These reforms in the prison life are gradually – but not everywhere – taking hold<sup>37</sup> and are at the core of that reorganization of the prison system that the Government has in mind in order to make the prison life conditions comply with the European standards. The increased use of alternative measures and the introduction of the “messa alla prova” diminished the [number of pre-trial detainees](#)<sup>38</sup>. However, there are still serious concerns regarding the percentage of detainees who are not serving a final sentence, which at the end of 2016 is of 34.61% (10% over the average of the other Member States of the Council of Europe<sup>39</sup>).

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<sup>31</sup> Approximately 4,000, more than one quarter of which has been directly helped by Antigone's lawyers.

<sup>32</sup> In 1998 Antigone received from the Ministry of Justice a special authorization to visit prisons with the same power that the law gives to parliamentarians. Every year Antigone publishes a Report on the Italian penitentiary system.

<sup>33</sup> *Torreggiani and others v. Italy*, Appl n° 43517/09, 46882/09, 55400/09 et al (2013) ECHR.

<sup>34</sup> Cells are here to be closed only at nighttime, with at least eight hours per day ensured each day.

<sup>35</sup> Creating spaces where the prisoners can spend the daytime together by organizing prisons like small towns where all the services are available in different common places.

<sup>36</sup> Through a flexible management of visits and phone calls and the use of new technologies.

<sup>37</sup> In 2015 the provision of the open cells was implemented for the 86% of the medium security prisoners, that is to say around 39,000 detainees. The second measure, requiring structural interventions, is much harder to be implemented.

<sup>38</sup> Ministry of Justice, *Number of detainees per legal position: 2008 - 2016*.

<sup>39</sup> Council of Europe, [SPACE I 2014](#). 5.1, the CoE mean of detainees not serving a final sentence in 2014 was of 25.7%.



23. The reforms accomplished after the Torreggiani judgment are now ending their effects on overcrowding. In fact, notwithstanding the measures adopted after the judgment, between December 31, 2015 and December 31, 2016 the [number of detainees](#)<sup>40</sup> has raised from 52,164 to 54,653 and the official overcrowding rate has increased to almost 109%, showing the need of a deeper reform of the Penitentiary Law. It has to be noted that within the prison system, the situation of [each institution](#)<sup>41</sup> varies consistently: some present very low overcrowding rates, while a few have a rate of more than 150%.
24. **Foreigners.** Foreigners represent the [34% of the prison population](#). They are usually detained for minor offences<sup>42</sup>, but receive on average harsher sentences than Italians for those same crimes and encounter difficulties to access non-custodial preventive measures and external alternative justice measures. A 2015 research<sup>43</sup> showed that this is due mainly to the prejudices of Italian judges, who on average tend to trust foreigners less than Italians, therefore they are more prone to inflict them a prison sentence instead of granting them alternative measures. The issue of difficulties to access alternative measures is also linked to factual problems, such as the lack of residence, necessary for home-detention sentencing.
25. Once they enter the prison, foreigners face even more discrimination, since the Italian prison system doesn't take into consideration the needs of non-Italian detainees (e.g. food habits, clothing, religion). Another very serious shortcoming is the lack of cultural mediators, who could facilitate the dialogue between the penitentiary police and foreign detainees.
26. **Religious minorities.** Serious concerns arise in relation to the issue of religious minorities, and especially regarding the Islamic faith. Only [47 Imams](#)<sup>44</sup> have been authorized to enter prisons and lead the Friday prayer, despite the presence of more than 6,000 detainees who declared themselves Muslims<sup>45</sup>. Furthermore, the Catholic chaplain is paid as staff by the State while Imams and pastors are volunteers.
27. The Dipartimento dell'Amministrazione Penitenziaria (DAP) affirmed that there are 375 radicalized prisoners in Italian prisons, but it is not explained which are the parameters to define them as radicalized. Moreover, there are no de-radicalization programs to be carried out in prisons. Radicalized Muslim detainees are usually held in separate sections, and Imams are not granted the authorization to meet with them. Even in these sections the penitentiary administration is not organized to have translators or cultural mediators<sup>46</sup> always available to communicate with the inmates.
28. **Health.** Prisoner healthcare - which is administered by the national sanitary service via regional branches since 2008 - suffers from lack of personnel, equipment and resources. In some cases, sick detainees are cared for by fellow inmates who are rewarded by the penitentiary administration with a small compensation (a so-called "piantone"). Moreover, prison doctors are also members of disciplinary boards, thus creating conflicts of interest and confidentiality

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<sup>40</sup> Ministry of Justice, *Number of Italian and foreign detainees: 1991 - 2016*.

<sup>41</sup> Ministry of Justice, *Number of Italian and foreign detainees and institutions' capacities*.

<sup>42</sup> Drug or prostitution related crimes, as well as violation of immigration law.

<sup>43</sup> P. Gonnella, *Detenuti stranieri in Italia. Norme, numeri e diritti*, (2015)

<sup>44</sup> Ministry of Justice, *Religions*

<sup>45</sup> This is likely to be underestimation, as there are 15,000 detainees who have not declared their faith - amongst which many it is plausible to think are included Muslims who prefer not to speak out as the simple declaration to belong to the Islamic faith automatically poses the inmate under a special supervision for radicalization risks.

<sup>46</sup> In the whole Italian prison system there are only 39 cultural mediators and 28 assistant-volunteers, who are entrusted to deal with detainees of Islamic faith.

problems. Medical records are generally difficult to access and poorly kept; for this reason the third reform committee [encouraged the adoption of digital medical records](#)<sup>47</sup>.

29. The state of health of inmates and the rate of infectious diseases in prison are alarming. In 2015 according to data by [Società Italiana Medicina e Sanità Penitenziaria](#)<sup>48</sup>, 60% to 80% of detainees were ill with one or more diseases, 48% of them suffered of infectious illnesses in prison and 32% had mental health problems. One third of the prison population was affected by hepatitis. A recent [research](#) carried out in 2015 by Agenzia regionale di sanità della Toscana shows that among the detainees with mental health issues, [half](#) of them has a pathology related to drug addiction, 27.6% suffers from neurotic disturbs and adaptation reaction, and 9% from alcohol-related mental issues<sup>49</sup>. The data regarding medicines used in penitentiary institutions reveal that 46% of the prescriptions are related to psychiatric pathologies, such as anxiety, psychosis, seizures and depression<sup>50</sup>.
30. After the progressive closure of the Judicial Psychiatric Hospitals (OPG), in many prisons it has been observed the opening of “psychiatric sections” (*articolarioni per la salute mentale*), which are [excessively used](#)<sup>51</sup> by the prison administration. In fact at times detainees who are perceived as “difficult” are transferred to the “psychiatric section”, notwithstanding the absence of any diagnosed mental health issue. There are also concerns on the effective quality of the health services guaranteed in these sections: the systematic lack of psychiatrics, psychologists and medical staff often corresponds to a massive use of psychiatric drugs. In some of these sections remnants techniques are still used daily.
31. **Suicides in detention.** According to [data by DAP elaborated by RistrettiOrizzonti](#)<sup>52</sup>, in 2015 there have been 43 suicides and 956 attempted suicides, as well as 7,029 episodes of self-harm in detention. A conference between State and Regions on the reduction of self-harm and suicidal acts among the detainees was held in 2012 and elaborated a prevention system that follows the guidelines of the World Health Organization (WHO). However, this system is based on agreements between the Regional “Provveditorati” of Penitentiary Administration and each Region, as well as on other agreements between each Penitentiary Institute and the local health institutes. These agreements vary in content and only sometimes adhere to the WHO guidelines. In May 2016, the Minister of Justice issued a directive in order to draft a National Plan for the Prevention of Suicides in Detention, which will take into consideration the WHO guidelines, and whose implementation is yet to be evaluated.
32. **National Ombudsman on the Rights of the Detainees and Prisoners.** The Ombudsman was created in 2013<sup>53</sup> and started functioning in 2016. It is a collegial body composed by three members - including its first president, Mauro Palma - with the aim to visit all places of detention (prisons, migrant centers, REMS etc.) in order to prevent any risk of torture and of inhuman and degrading treatment as well as to monitor the repatriation flights that take place under the 2008 EU Directive. The Ombudsman is reliant on the Ministry of Justice for financial resources and staff, which may pose significant obstacles to its future independence.

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<sup>47</sup> Commissione Ministeriale per le Questioni Penitenziarie, *Relazione al Ministero di Giustizia sugli Interventi in Atto e gli Interventi da Programmare a breve e medio termine* (2013).

<sup>48</sup> SIMSP, *L’Agorà Penitenziaria 2016. XVII Congresso Nazionale SIMSPE-ONLUS*.

<sup>49</sup> Agenzia regionale di sanità della Toscana, *La Salute dei Detenuti in Italia: i risultati di uno studio multicentrico* (2015), p.76.

<sup>50</sup> Agenzia regionale di sanità della Toscana, p.89.

<sup>51</sup> Associazione Antigone, *GALERE D’ITALIA. XII Rapporto di Antigone sulle condizioni di detenzione*.

<sup>52</sup> Ministry of Justice, *Eventi critici negli Istituti Penitenziari* (2015).

<sup>53</sup> Law decree 146/2013.

33. **Article 41-bis regime.** In 2016 there were 726 detainees subjected to 41-bis regime. The conditions of this special regime are very harsh<sup>54</sup> and have been criticized by the CPT<sup>5556</sup> and the ECHR<sup>57</sup>. In 2016 the Extraordinary Commission for the Protection and Promotion of Human Rights of the Senate carried out a fact-finding investigation and produced a [report](#)<sup>58</sup> highlighting several points of concern. A serious issue raised by the Commission and shared by [Antigone](#)<sup>59</sup> regards the presence of many restrictions, whose ratio seems to be purely repressive without a real link to the necessity to prevent and eradicate any relationship with the criminal organization; these restrictions have also the grave effect to undermine the right to a fair trial.
34. Another alarming issue with regards to this special regime is the denial of the penitentiary administration to let [Umbria's regional Authority for Persons under Restrictive Measures or Deprived of Personal Liberty](#)<sup>60</sup> visit privately detainees in 41-bis regime.
35. **Closure of Judicial Psychiatric Hospitals.** The closing down of Judicial Psychiatric Hospitals (OPG) is still an ongoing process, which relies on the opening of Centers for the Enforcement of Security Measures (REMS)<sup>61</sup>. REMS are smaller than OPGs<sup>62</sup>, well distributed on the territory<sup>63</sup> and "health-oriented": only medics and paramedics can work inside the facilities, while security staff must enter only in case of emergency.
36. A National Commissioner of the Government for the overcoming of OPGs was appointed by the Council of Ministers in February 2016 and released two reports<sup>6465</sup>, raising concerns on the lack of available places in some regions and the consequent need to transfer some patients to structures located out of their region of residence, which is especially problematic for women (as many structures are not equipped to host them). Another issue highlighted concerns the differences existing among the several regulations of REMS, which consequently creates a lack of uniformity in treatment of patients. Indeed most of the REMS are still organized as penal-institutions and not as hospitals open to the community as set by law.
37. **LGBT prisoners.** Different sexual orientations and gender identities are not acknowledged by existing Penitentiary Laws or referenced in any official capacity, therefore no specific conditions of detention are envisaged and no official data on LGBT prisoners exists. As a result LGBT prisoners often face discrimination, sometimes caused by the very remedies that the prison administrations put in place to protect them. The establishment of unofficial sections to host LGBT detainees for protection purposes is at the discretion of each prison administration. However, because of the lack of personnel, the placement in these protected sections can lead to exclusion from activities inside prison and further isolation, transforming a protective measure in a discriminatory treatment<sup>66</sup>.

<sup>54</sup> 22 hours per day in isolation, with only 2 hours daily being spent either outside or in "sociality rooms" in small groups (3 to 4 people). Correspondence is not confidential and censored; contacts with the family are constrained (no more than four visits per month) and exchangeable with a 10-minute phone call per month.

<sup>55</sup> CPT, [Report to the Italian Government on the visit to Italy carried out by CPT \(2008\)](#).

<sup>56</sup> CPT, [Report to the Italian Government on the visit to Italy carried out by CPT\(2012\)](#).

<sup>57</sup> Among the others *Enea v. Italy* Application n° 74912/01 (2009); *Ospina-Vargas v. Italy* n° 40750/98 (2004).

<sup>58</sup> ECPPHR, [Rapporto sul regime detentivo speciale del 41 bis](#) (2016)

<sup>59</sup> Galere d'Italia, XII Rapporto di Antigone sulle condizioni di detenzione (2016)

<sup>60</sup> Each Regional Authority is established by each Regional Government and can visit places of detention, can receive complaints on the conditions of detention and can demand for explanations from the penitentiary administration for any issue related to his mandate.

<sup>61</sup> Decided by law n. 81/2014.

<sup>62</sup> Holding no more than 20 patients each.

<sup>63</sup> There should be at least 2 in each region.

<sup>64</sup> Corleone F., [Relazione semestrale sull'attività svolta dal Commissario unico per il superamento degli Ospedali Psichiatrici Giudiziari](#).

<sup>65</sup> Corleone F., [Seconda relazione trimestrale sull'attività svolta dal Commissario unico per il superamento degli Ospedali Psichiatrici Giudiziari](#).

<sup>66</sup> As it indeed happened in Gorizia in 2016 and reported by the Garante Nazionale. Ombudsman, [Rapporto sulla visita alla Casa Circondariale di Gorizia \(CC14\)](#) (2016).

38. Another serious concern is represented by the treatment of transgender detainees in male prisons, as they cannot take part in activities for the other inmates and thus live in a *de-facto* segregated regime.
39. **Solitary confinement.** Solitary confinement remains a critical issue. The Italian Penitentiary Law<sup>67</sup> allows three types of solitary confinement<sup>68</sup>, making it quite a common practice. The use of solitary confinement as a disciplinary measure is particularly widespread<sup>69</sup>, and it also applies to minors in juvenile institutions - despite the fact that, as documented by [Antigone](#)<sup>70</sup>, this is a very dangerous practice, leading to psychological damages on inmates and also favouring mistreatment by the penitentiary police.
40. Solitary confinement should take place in the prisoner's cell, but this does not always happen: confinement sections, sometimes underground and soundproof, and "smooth cells"<sup>71</sup> still exist and are used for disciplinary confinement. There is no official data on the average length inflicted, but it can be observed that it often amounts to the maximum allowed (15 days). Moreover, the law doesn't prevent from inflicting more solitary confinement orders in a row and there have thus been cases where, after the expiration of the first period of solitary confinement, detainees were sent back to their section only to be inflicted a new period of solitary confinement only a few hours later. The law also fails to establish a specific limit of time for pre-trial detainees to spend in confinement, leaving this determination to the discretion of the judges. Furthermore, judges have the power to impose daily confinement for a fixed period between six months and three years as an additional punishment for prisoners with more than one life sentence, a punitive measure which has been criticised by the CPT in more than one report<sup>72</sup>.
41. **Right to a fair trial.** Regarding the right to a fair trial, in the Italian criminal procedure and practice, Antigone points out two main issues: one issue concerns the first hearing after the arrest, when the first decision is made concerning the deprivation of liberty. An unfair hearing can lead to unjustified deprivation of liberty and can even put at risk the ability of the defendant, when deprived of liberty, to participate effectively in his/her trial. The fairness of the first hearing is jeopardized by the inequality of means available to the parties (lawyers have little time to prepare for the first pre-trial detention hearing and reasoning of decisions appear formalistic and relying excessively on the evidence provided by the prosecutor) and by the lack of instruments for the judge to overcome this inequality. This is true in particular with regards to the absence of a legal provision requiring that, together with the notification of the date of the hearing, the lawyer should also receive the prosecutor's case file, to have adequate time to prepare the defence. With regards to the procedure, it is also relevant to point out the absence in court, during the first hearing for the application of the measure and for the entire trial, of social services: they could bridge the gap between the prosecution and the defence and support the judge in his/her decision, especially in situations of increased vulnerability of the defendant. Indeed, the presence of social services could prevent the detention of a vulnerable defendant that, with the support of these professionals, could be granted other alternatives to imprisonment from the first hearing. Also, looking at the demographic profile of the recipients of pre-trial detention orders and of

<sup>67</sup> Art.33 L. 354/1975.

<sup>68</sup> For disciplinary reasons, not exceeding 15 days; for health reasons, as prescribed by physicians; for judicial reasons, if the judge deems it necessary for the trial.

<sup>69</sup> In 2015 it was inflicted 7,307 times. Antigone, [Non isoliamo i diritti](#) (2015).

<sup>70</sup> Antigone, [Ecco perché l'isolamento fa male](#) (2016). More recently a case of violence in the prison of Ivrea was signalled to Antigone, which [called for an investigation](#) of the authorities. The Ombudsman carried out a visit in the prison and [confirmed the presence of two "smooth cells" in the prison](#). The DAP ordered the immediate closing of the two cells. In addition the CPT made a [visit](#) to the prison of Ivrea.

<sup>71</sup> Cells lacking all pieces furniture. Acts of violence perpetrated by the penitentiary police often take place in such places.

<sup>72</sup> CPT, [CPT/Inf \(2006\) 16](#) and CPT, [CPT/Inf \(2013\) 32](#).

detention sentences, a strong disparity between EU and non-EU citizens clearly emerges. In these specific cases, the role played by the defence is not enough to guarantee the effective participation of a defendant who doesn't speak Italian, also because of the partial implementation of Directive 64/2010/EU. Until this Directive will not be fully implemented, it can be affirmed that the right to a fair trial for defendants who don't speak Italian is often at risk.

42. The second issue concerns the right to access to a lawyer. In particular, legal aid and *ex officio* lawyers are far from satisfactory. Legal aid is governed by Decree 115/2002 and Article 98 of Criminal Procedure Code. It enables the "indigents" to qualify for free legal assistance to promote or defend themselves in civil or criminal proceedings. With legal aid, the lawyer fees are paid for by the State. However, the financial threshold for indigence is very low, and, as a consequence, many defendants who do not qualify for legal aid are nevertheless unable to pay for an effective and qualified defence. Besides, legal aid lawyers are paid by the State with huge delays, many years after the beginning of the proceedings, and this discourages many lawyers to take cases under the legal aid scheme. The *ex officio* lawyer, on the contrary, is a lawyer appointed by the state to defend the accused that has not appointed a lawyer of choice yet, in order to ensure the right to technical defence in any criminal trial. The *ex officio* lawyer must be paid by the accused, and not by the State, but the accused can instruct a lawyer of choice at all times. The issue with *ex officio* lawyer regards quality of the defence. Although the problem is rarely denounced, it is well known to experts and practitioners in the field that *ex officio* lawyers in some occasions provide a legal defence that is not always up to their professional standards. Controls about this are very limited and besides, in particular in the case of vulnerable defendants, they tend to confuse the two systems. They might accept an inadequate defence by an *ex officio* lawyer because they believe this is in fact legal aid, and that therefore the lawyer will be paid for by the State.

#### **Recommendations:**

- *Reform the Penitentiary Law, which dates back to 1975 and was written in order to deal with a prison model which was very different from the current one. A Bill of law which would delegate the Government to carry on such a reform is now pending at the Senate and its discussion should be encouraged. In particular consider to:*
  - *Apply the recommendations of the third committee on penitentiary issues in particular regarding dynamic surveillance and open prison life;*
  - *Extend the use of alternative measures and provide them with adequate personnel and funding to the Offices for Alternative Measures so that they can carry out their mandate;*
  - *Review contents, criteria and procedures to access alternative measures without restrictions for anybody;*
  - *Insure the rights of foreign detainees with regard to every-day basic needs and set up specific activities for them;*
  - *Guarantee specific rules and rights for female prisoners;*
  - *Guarantee specific rules and rights for juvenile prisoners and ban solitary confinement for them;*
  - *Limit the use of solitary confinement for adults;*
- *Reform the legislation on drugs, which is one of the main sources of prison overcrowding;*
- *Make sure that enough cultural mediators and translators are employed by DAP to facilitate the communication between the prison authorities and the inmates;*
- *Guarantee religious rights to everybody and not only to catholic prisoners;*
- *Make prisons more accessible to entrusted Imams, so that Muslim detainees can have a reference person that they trust and the prison authorities can better communicate with those belonging to the Islamic faith;*
- *Avoid the segregation, victimization and stigmatization of radicalized Muslims and organize social programs of de-radicalization involving translators, cultural mediators and Imams;*

- *Improve penitentiary health system by increasing medical facilities and staff numbers;*
- *Take further steps to close down all OPGs promptly as required by law;*
- *Consider to destine REMS only to patients with a definitive security measure;*
- *Review the Article 41-bis regime to eliminate those repressive restrictions, which negatively impact on the right to a fair trial and which don't have a real link to the necessity to prevent and eradicate any relationship with the criminal organization;*
- *Make sure that the extension of the 41-bis regime is carefully reviewed in each case with a special regard to older detainees;*
- *Put in place a functioning mechanism of suicide and self-harm prevention;*
- *Give to the National Authority appropriate personnel and economic means to carry out its mandate as a fully independent body;*
- *Acknowledge the presence of LGBT prisoners and make sure that they are not excluded from the activities or discriminated in treatment;*
- *The State administration should provide the funding for the construction and the management of family houses for women prisoners with children, that are now delegated to local administrations;*
- *Take all necessary steps to make sure that the first hearing after arrest is more fair and that the EU Directives on the rights of suspects and accused people are entirely implemented;*
- *Review the conditions to access legal aid and reduce the length of time that lawyers have to wait to be paid for their work;*
- *Address the problem of the quality of ex officio lawyers.*