



International Federation of Action by Christians for the Abolition of Torture

Action by Christians for the Abolition of Torture in Italia



ACAT Italia and FIACAT's report for the 3rd UPR of Italy

Table of contents

<u>AUTHORS OF THE REPORT</u>	3
FIACAT	3
ACAT ITALY	3
<u>INTRODUCTION</u>	4
<u>I. DETENTION</u>	4
A. PRISON OVERCROWDING	4
B. NATIONAL PREVENTIVE MECHANISMS	6
C. SUICIDES IN PRISON	7
D. CHILDREN IMPRISONED WITH THEIR MOTHER	7
<u>II. PROHIBITION OF TORTURE AND ILL-TREATMENT</u>	8
A. CRIMINALIZATION OF TORTURE	8
B. CASES OF TORTURE AND ILL-TREATMENT BY SECURITY FORCES	9
1. IDENTIFICATION OF SECURITY FORCES	9
2. ALLEGATIONS OF TORTURE, ILL-TREATMENT AND EXCESSIVE USE OF FORCE BY LAW ENFORCEMENT OFFICIALS	10
3. CUCCHI CASE	11
<u>III. IMMIGRATION, ASYLUM RIGHTS AND STATELESSNESS</u>	12
A. ASYLUM AND INTERNATIONAL PROTECTION	12
B. BILATERAL AGREEMENTS	14
C. UNACCOMPANIED FOREIGN MINORS (MINORI STRANIERI NON ACCOMPAGNATI - MSNA)	15
D. STATELESSNESS	16
<u>IV. NATIONAL HUMAN RIGHTS INSTITUTION</u>	17

AUTHORS OF THE REPORT

FIACAT

The International Federation of Action by Christians for the Abolition of Torture, FIACAT, is an international non-governmental human rights organisation, set up in 1987, which works towards the abolition of torture and the death penalty. The Federation brings together some thirty national associations, the ACATs, present in four continents.

FIACAT – representing its members in international and regional organisations

It enjoys Consultative Status with the United Nations (UN), Participative Status with the Council of Europe and Observer Status with the African Commission on Human and Peoples' Rights (ACHPR). FIACAT is also accredited to the International Organisation of la Francophonie (OIF).

By referring the concerns of its members working on the ground to international bodies, FIACAT's aim is to encourage the adoption of relevant recommendations and their implementation by governments. FIACAT works towards the application of international human rights conventions, the prevention of torture in places of detention, and an end to enforced disappearances and impunity. It also takes part in the campaign against the death penalty by calling on states to abolish capital punishment in their legal systems.

To give added impact to these efforts, FIACAT is a founding member of several campaigning coalitions, in particular the World Coalition against the Death Penalty (WCADP), the International Coalition against Enforced Disappearances (ICAED) and the Human Rights and Democracy Network (HRDN).

FIACAT – building up the capacities of the ACAT network in thirty countries

FIACAT assists its member associations in organising themselves, supporting them so that they can become important players in civil society, capable of raising public awareness and having an impact on the authorities in their country.

It coordinates the network by promoting exchanges, proposing regional and international training events and joint campaigns, thus supporting the activities of the ACATs and providing them with exposure on the international scene.

ACAT Italy

Azione dei Cristiani per l'Abolizione della Tortura (ACAT Italia) is an association founded in 1987 and is one of the first national ACATs born in Europe; ACAT Italia is also one of the founding associations of the International Federation FIACAT. It works for the abolition of torture and the death penalty. ACAT Italia works in network with other Associations and NGOs, and it focuses on youth education on human rights. In this field ACAT Italia launches every year a prize for university graduation thesis on torture or death penalty.

INTRODUCTION

1. During the twentieth session of the Universal Periodic Review in 2014, Italy was reviewed and accepted 176 out of the 186 recommendations addressed by Member States. The midterm report sent by the Italian government, in November 2017, shows that several steps were taken to comply with many of the recommendations. However, many issues remain in particular regarding detention, the prohibition of torture, migration, asylum and the National Human Rights Institution.

I. DETENTION

A. Prison overcrowding

2. During its last periodic review, Italy received several recommendations to improve detention conditions and fight against prison overcrowding¹.

3. Despite the measures taken in recent years, the rate of overcrowding in Italian prisons has risen again. In fact, there had been a decrease in the rate of prison occupation between 2013 and 2015². However, the prison population started to slightly increase again in 2016 (from 53 623 in 2014 to 54 632 on 31st December 2016) and 2017 (56 863 detainees on 31st May 2017)³. On 31 December 2018, there were 59,655 detainees, among which 20,255 foreigners, for a capacity of 50,581 places (being an occupancy rate of 118%)⁴.

4. This increase is particularly worrying given that there has been a decline in the number of crimes committed⁵.

5. Two decrees⁶, converted into law, from 2013 and 2014, introduced a “preventive” and compensatory mechanisms. The “preventive” mechanism introduces the obligation for the prison administration to cease unlawful conducts, being any act or omission contrary to the Penitentiary Code or the rules of procedure. For example, the detainee can be transferred to another cell or even establishment if the violation was related to prison overcrowding. The compensatory mechanism provides for the refund of 8 euros per day or a one-day reduction in sentence for every ten days of violation of fundamental rights suffered.

6. The reforms from 2013-2014 caused only a limited reduction of the number of detainees⁷ and only partially contributed to the elimination of the automatisms which precluded access to alternatives measures to detention on the basis of absolute presumptions of danger⁸, they concentrated rather on

¹ [Report of the Working Group of the Universal Periodic Review on Italy](#), A/HRC/28/4, para.145.100 – 145.104 and 145.129, recommendations by France, Hungary, Australia, the Russian Federation and Thailand.

² There were 64 323 detainees in 2014 and 53 623 detainees in 2014 for a capacity of 47 668 places (Data from the Dipartimento dell'amministrazione penitenziaria - Ufficio del Capo del Dipartimento – Sezione Statistica).

³ Data from the Dipartimento dell'amministrazione penitenziaria - Ufficio del Capo del Dipartimento – Sezione Statistica

⁴ Data from the Dipartimento dell'amministrazione penitenziaria - Ufficio del Capo del Dipartimento – Sezione Statistica.

⁵ Ministero dell'Interno, [Dossier Viminale. 1 Agosto 2017 – 31 Luglio 2018](#).

⁶ D.L. 146/2013, converted by law n. 10 on 21 February 2014 and D.L. 92/2014 converted by law n.117 on 11 August 2014

⁷ When introducing DL. 146/2013, the Ministry of justice had announced that the introduction of the measure of house arrest would have permitted to release about 12 000 detainees.

implementing the detainees' protection system for who had suffered injury to their rights due to prison overcrowding.

7. Subsequently, by Law No. 203 of June 23, 2017 (law Orlando), the Parliament mandated the government to reform the penal system to improve the following points: the health care sector, simplification of proceedings, the automatic presumption of dangerousness without individual assessment (precluding access to some alternatives to detention), the role of volunteer association in prisons, the right to affectivity and work, freedom of worship, detention of women especially if mothers, protection of foreigners, detention of minors. It should be noted that no changes were made at the art. 41-bis regime⁹.

8. Since 2015, a work involving about 200 experts and civil society representatives, aiming to reform the penal system, had started. The final document that came out of the process contained rules for the improvement of detention conditions and for a wider access to alternative measures to detention¹⁰. The non-approval of the text during the previous legislature led to the subsequent approval by the current Government of Legislative Decree No 123/2018 which contains important changes from the original text. The National Guarantor for the rights of the persons detained or deprived of personal liberty, Mauro Palma, characterized the text as deficient. In fact, he highlighted that this decree did not include *“the revision of the methods, procedures and conditions of access to alternative measures, the elimination of automatisms and foreclosures, the valorisation of volunteering, the recognition of the right to affectivity, as well as of the revision of the alternative measures aimed at the protection of the relationship between prisoners and minor children”*

9. While appreciating the improved content (even if not completely devoid of weaknesses and criticisms) regarding access to health¹¹, the enhancement of work in prison¹² and the new provisions on criminal justice for minors and young adults¹³, one cannot ignore how, in the absence of a reform which privileges alternative measures to detention and of a decisive intervention for the reduction of the excessive recourse to pre-trial detention and the lengthy procedures, prison overcrowding and the violation of the rights it entails are destined to remain a systemic problem. In fact, at the end of 2017, 34% of the prison population was made of detainees awaiting a final ruling.¹⁴

FIACAT and ACAT Italia recommend to the Italian government to:

⇒ Enhance the system of protection and reparation of detainees who have suffered a violation of their fundamental rights;

⁹ Article 41-bis of the Act. No. 354 of 26th July 1975, applies to criminals being part of: organized criminal organizations (such as Sicilian Mafia, Camorra, etc.), terrorist organizations or those who do not cooperate with the judicial authorities. This article sets out a derogatory regime for those persons. For instance, these detainees have several of their rights restricted such as the right to have contact with the outside world or the right to exercise outside. Moreover, they cannot benefit from alternative measures to imprisonment.

¹⁰ Ministero della Giustizia, [Documento finale degli Stati Generali dell'esecuzione penale](#), 18 April 2016.

¹¹ Modification to the medical examination upon arrival at the establishment, extension of the range of treatments detainees can access in prisons at their own expense, provision of health checks in prison by the ASL.

¹² Possibility to install a rotation system if not there are not enough places, adjustment of the pay to 2/3 of what is provided by the collective agreement and promotion of agricultural activities for self-consumption.

¹³ In particular the development of alternatives measures to detention (ex: probation, home detention, semi-open regimes etc.).

¹⁴ Antigone, [Un anno in carcere, XIV Rapporto sulle condizioni di detenzione](#).

- ⇒ *Pursue its efforts to reform the criminal justice in particular with regard to access to alternative measures of detention, the protection of the right to affectivity in prison, the positive role of volunteering and re-education;*
- ⇒ *Revise the 41-bis regime to ensure the respect the fundamental rights of the detainees under this regime.*

B. National preventive mechanisms

10. In 2014, 3 countries recommended to Italy to put in place a National Preventive Mechanism in line with the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), that Italy ratified on 9 November 2012¹⁵.

11. In February 2016, Mauro Palma was appointed as the first "National Guarantor for the rights of the persons detained or deprived of personal liberty" (National Guarantor)¹⁶. It will deal with all forms of deprivation of liberty, including, police custody, identification and expulsion centres and psychiatric institutions.

12. The National Guarantor coordinates also a network of local Guarantors, which are institutions already in place or to be set up at regional and city levels. Regional Guarantors are present, at the moment, in 17 out of the 20 Italian regions.¹⁷ The office of the National Guarantor includes the president and two other members. They are appointed for a non-renewable mandate of 5 years. They are conferred a fixed annual allowance equal to 40% of the members of parliament's fixed allowance for the President, and 30% of the same for the two members. For the functioning of the National Guarantor 200 000 euros were allocated per year in 2016 and 2017 and 300 000 euros in 2018. The Ministry of Justice, in which the National Guarantor's office is established, allocates the space and offices necessary to its functioning, and 25 civil servants of its staff, which are under the direct supervision and management of the National Guarantor¹⁸.

13. Since the establishment of the National Guarantor, detainees can also raise a complaint before him in order to have specific recommendations formulated to the involved administration, if violations of the penitentiary law are found. The Ministerial Circular of 18th May 2016 recalls the independence of the National Guarantor vis-à-vis the State administration and powers, in particular regarding the authority's power to visit and access all places of detention and the possibility to conduct individual and confidential interviews with the detainees¹⁹. However, some academics still consider the new National Guarantor to be between an independent authority and a ministerial office with larger autonomy (given the strong link with the Ministry of Justice)²⁰.

¹⁵ [Report of the Working Group on the Universal Periodic Review – Italy](#), A/HRC/28/4, Para 145.49-145.51, recommendations by Switzerland, Liechtenstein and Morocco.

¹⁶ The National Guarantor has been established by the Law Decree 23rd December 2013 No. 146 (art. 7) and Act No. 10, of 21 February 2014.

¹⁷ Regional Guarantors existed already before the National office was established. They still have not been established in 3 of the 20 Italian regions, e.g. Calabria, Liguria and Basilicata. Although, it should be noted that in Calabria, the relevant law has already been approved and only the election of the guarantor is lacking.

¹⁸ [Ministerial decree n° 35](#), 11 March 2015.

¹⁹ [Ministerial Circular](#), 18 May 2016.

²⁰ Il Sole 24 ore, [Il Garante trascurato anti-tortura](#), 5th September 2016.

FIACAT and ACAT Italia recommend to the Italian government to:

- ⇒ **Take all necessary measures to ensure the effective independence of the National Guarantor and provide the necessary funds for its functioning.**

C. Suicides in prison

14. According to the data provided by Ristretti Orizzonti, from January 2000 until 13 February 2019 1.059 detainees have taken their lives in prison²¹. It should be noted that there has been an increase in the number of suicides in prison recorded during 2018²².

15. This figure becomes even more prominent if we consider the number of acts of self-harm (5,157 only in the first half of 2018²³) and cases of ill-treatment by prison staff²⁴.

16. In this regard, the subjects considered most at risk are those who suffer from psychiatric pathologies and foreigners "*who, having no links or affections on the territory, live the imprisonment as a doubly alienating condition. In these cases the risk of suicide is particularly high even more if it is their first time in prison*"²⁵.

17. In order to try to reduce the number of deaths in prison, at the end of December 2018, the association Antigone submitted a proposal of law that favours the prisoners' affective relations and reduces their isolation, including for the detainees serving more than a life sentence²⁶.

FIACAT and ACAT Italia recommend to the Italian government to:

- ⇒ ***Take all necessary measures to reduce the number of suicides, suicide attempt and self-mutilation in prison paying specific attention to the most vulnerable detainees in that regard and shed the light on all cases of suspicious deaths in detention.***

D. Children imprisoned with their mother

18. On 30 November 2018, there were 55 children present in penal institutions with their mothers²⁷. The penal system, as amended in 2011, provides that the mother can keep the child in prison until the sixth year is completed.

19. Recognizing as paramount the interest of the minor in relation to the punitive function of the sentence, the Finocchiaro law²⁸ introduced in 2001 the measure of "special home detention". According to this provision, for the purpose of ensuring the care and assistance of children, mothers with children under 10 may carry out their sentence in their own home or in any other place of private residence or in

²¹ Ristretti Orizzonti, [Morire di carcere: dossier 2000-2019](#).

²² 67 against 52 of the previous year.

²³ Data from: SAPPE Sindacato Autonomo Polizia Penitenziaria (Penitentiary police autonomus union)

²⁴ For example, we recall the case of Hassan Sharaf, detained in the Mammagialla prison in Viterbo, who hang himself on 23 July 2018. His story gave rise to a complaint presented by the Authority Guarantor of the rights of the detainees of the Lazio region, where the acts of violence suffered by the detainees have been denounced. See Corriere della Sera, [Mammagialla, esposto del garante: «Detenuti picchiati dagli agenti»](#), 1 August 2018.

²⁵ According to Claudio Paterniti Martello (Antigone) on the Corriere della Sera investigation : Corriere Della Sera, [Mille suicide dal 2000, quando il carcere fa venir voglia di morire](#), 17 October 2018.

²⁶ Antigone, [Norme per prevenire I suicide in carcere](#).

²⁷ Ministero dell'Interno, [Detenute madri con figli al seguito](#), 30 November 2018.

²⁸ Misure alternative alla detenzion a tutela del rapporto tra detenute e figli minori, L. 40/2001, 8 March 2001.

a place of care, assistance or foster care after they have served at least a third of their sentence or after 15 years in case of life imprisonment. However, the rule is hardly applicable for two reasons: 1) the magistrate must be able to exclude the risk of recidivism, and 2) the mother must prove that she can restore the cohabitation with her child.

20. Also, still in order to ensure the protection of the children of detainees who do not fulfil the necessary requirements to benefit from special home detention, Institution with attenuated custody for imprisoned mothers (Istituti a Custodia Attenuata per Madri detenute – ICAM) were set up. They were initiated in 2006 as an experiment and finally made operational by Law n° 62/2011²⁹. The law also provides that mothers with a residual sentence of not more than four years can stay at protected family houses³⁰ with their children. At present there are only two such establishments: one in Roma and the other in Milano. Each of them with the capacity to host 6 mothers with their children. In 2018, 276 mothers benefited from this measure. On the contrary, at the end of 2018, 52 children were still in prison with their mothers.

21. The main difference between the two institutions is that staying in the family house constitutes an alternative measure to prison, while ICAMs are custodial structures. Furthermore, it is the responsibility of the local authorities to fund those protected family houses (which can make use of donations from private institutions or foundations), so they bare no additional expense for the State. Thus, this rule limits the creation and maintenance of the protected family houses³¹.

22. Finally, on this issue, a recent tragedy at the female section of Rebibbia prison in Roma should be mentioned. A mother detained there, killed her two children who were in detention with her³². She explained her act by saying it would free her children from prison.

FIACAT and ACAT Italia recommend to the Italian government to:

⇒ ***Review the legislative dictate establishing protected family houses to ensure that the appropriate funds are allocated for their implementation and favour the use of alternative measures to detention for mothers with young children in the name of the best interests of the child'.***

II. PROHIBITION OF TORTURE AND ILL-TREATMENT

A. Criminalization of torture

23. In 2014, Italy received a recommendation by Australia to criminalise all acts of torture³³.

24. The introduction of the law regulating the crime of torture in Italy in 2017³⁴, 33 years after ratifying the Convention against torture, has immediately created a series of frictions among political parties, the

²⁹ There were 5 as of 10 July 2018 in : Torino "Lorusso e Cutugno", Milano "San Vittore", Venezia "Giudecca", Cagliari e Lauro.

³⁰ Specific institutions similar to ordinary houses that were created to host mothers with children.

³¹ Vita, [Bambini in carcere: troppo poche due case famiglia protette in tutta Italia](#), 19 September 2018.

³² Roma Sette, [Rebibbia femminile, detenuta getta i figli dalle scale](#), 18 September 2018.

³³ [Report of the Working Group of the Universal Periodic Review on Italy](#), A/HRC/28/4, para. 145.99 recommendations by Australia.

³⁴ DL n. 110 del 14 luglio 2017

Police Union (SAP) and public opinion on its effective and practical application. Thus, several parties tried to repeal the law³⁵ and criticized it publicly³⁶.

25. The current criminalization of torture contained in the new article 613 bis of the Criminal Code is not satisfactory. Firstly, the case differs from the Convention against Torture because it lacks any reference to the purpose of the conduct. Secondly, it does not require that the act of torture be committed, instigated, consented or acquiesced by a public official or other person acting in an official capacity. Thirdly, it has a significantly more limited scope than that contained in article 1 of the Convention, since it requires multiple acts of violence or threats in order to be qualified as torture and psychological torture is limited to cases where psychological trauma can be verified. Those issues were raised by the Committee against torture in 2017 during its review of Italy³⁷. Since then, no proposition was made to put article 613 bis in line with the Convention. On the contrary, the FDI party wishes to repeal the crime and transform it into a series of aggravating circumstances.

FIACAT and ACAT Italia recommend to the Italian government to:

⇒ ***Amend article 613-bis of the Criminal Code to bring the criminalization of torture in conformity with article 1 of the Convention against torture and ensure that the crime of torture is not subject to any statute of limitation.***

B. Cases of torture and ill-treatment by security forces

1. Identification of security forces

26. In 2012, the European Parliament approved a resolution on the situation of fundamental rights in the European Union (2010-2011). Recommendation No 192 of this resolution called the Member States "to ensure that police personnel carry an identification number". This was also a recommendation of the Committee against torture during its review of Italy in 2017. In fact, Italy was recommended to "ensure that members of the police and other law enforcement officers can be effectively identified at all times when carrying out their functions"³⁸.

27. In the course of the past legislatures, many parliamentary initiatives have underlined the need to make the identification of individual agents easier, where necessary³⁹. None of these proposals has been followed⁴⁰.

³⁵ Fratelli d'Italia (FDI), presented to the Chamber of Deputies two proposals aiming to repeal the crime of torture and simply include it as aggravating circumstances for some other offences, and increase penalties for crimes of threat or resistance to public official. The proposals were launched with the slogan: 'We defend those who defend us'.

³⁶ Il Fatto Quotidiano, Tortura, Giorgia Meloni: "Abolire reato che impedisce ad agenti di fare il loro lavoro". Poi cancella il Tweet: "Modificarlo", 12 July 2018 : in July 2018, Mrs. Meloni, FDI leader, wrote on Twitter that the crime of torture "prevents agents from doing their jobs."

³⁷ Committee against torture, [Concluding observations on the combined fifth and sixth periodic reports of Italy](#), CAT/C/ITA/CO5-6, para 10 and 11.

³⁸ Committee against torture, [Concluding observations on the combined fifth and sixth periodic reports of Italy](#), CAT/C/ITA/CO5-6, para 39.

³⁹ When dealing with public order measures or demonstrations

⁴⁰ Amnesty Italia, [La nostra campagna per chiedere i codici identificativi delle forze di polizia](#), 20 November 2018.

2. Allegations of torture, ill-treatment and excessive use of force by law enforcement officials

28. The prevention of the crime of torture, and of any form of cruel, inhuman or degrading treatment or punishment is fundamental and can only be implemented through rules regulating in particular the conduct of law enforcement agents in any of their activities (maintenance of public order, investigation, interrogation, custody, etc.)

29. The Committee against Torture, in its 2017 review of Italy, expressed concerns about the number of injured during clashes between protesters and security forces in social protest movements.

30. However, seventeen years after the G8 in Genoa in 2001, many of the perpetrators of the serious violations of human rights committed on that occasion have remained unpunished. The proceedings of 3 of the main cases can be presented as example.

• *Events at the Bolzaneto Barracks*

Facts: Some agents and nurses in Bolzaneto witnessed episodes of violence by police officers and demonstrators arriving heavily wounded.

Proceedings:

2008: At first instance, 15 of the defendants were convicted to sentences ranging from 5 months to 5 years of prison and 30 were acquitted.

2010: The Genoa Court of Appeal overturned the first instance judgment because of the statute of limitation. It, however, sentenced the Ministry of Justice, Interior and Defence to compensate the victims for a total sum of over 10 million euros. 7 of the defendants were also sentenced to prison including, the Deputy State police Chief Massimo Luigi Pigozzi (sentenced to 3 years and 2 months of prison), two police officers Marcello Mulas and Michele Colucci Sabia (1 year of prison), Dr. Sonia Sciandra (2 years and 2 months of prison) and three state police inspectors Mario Turco, Paolo Ubaldi and Matilde Arecco (1 year of prison).

14 June 2013: The Court of Cassation confirmed the judgement in appeal but reduced the amount due in the civil proceedings.

• *The Giuliani case*

Facts: One of the demonstrators, Carlo Giuliani, at the summit was killed by a police officer, Mario Placanica, during a violent confrontation between police officers and demonstrators.

Proceedings:

2003: The Italian Courts acquitted Mario Placanica on the basis that he was acting in self-defence against Carlo Giuliani who was trying to attack him with a fire extinguisher.

2009: At first instance, the European Court of Human Rights sentenced Italy to pay 40 000 euros to Carlo Giuliani's family criticizing how the security systems was managed around the Summit.

2011: At the appeal, the European Court of Human rights acquitted Italy.

• *Events at the Armando Diaz School*

Facts: An assault was conducted by law enforcement officers against the Armando Diaz school serving as sleeping quarters for demonstrators and centre for independent medias.

Proceedings:

13 November 2008: Out of the 29 defendants, 16 were acquitted and 13 were convicted.

18 May 2010: The Court of Appeal partially overturned the judgment of first instance and 25 defendants were convicted to sentences ranging from 3 to 4 years of prison and a 5-year ban on public offices.

5 July 2012: The European Court of Human Rights confirmed several sentences including against Francesco Gratteri head of the central anti-crime department of the police (sentenced to 4 years of prison), Giovanni Lupery deputy director of UCIGOSAT (sentenced to 4 years of prisons), Gilberto Caldaroizzi head of the central operations department (sentenced to 3 years and 8 months of prison). It also partially confirmed the sentence against Vincenzo Canterini head of the “*Mobile*” department of the police (reducing his sentence from 5 years to 3 years and 6 months). However, the court overturned the conviction of 9 agents from the “*Mobile*” department because of the statute of limitations.

In parallel, on 16 March 2019, the Court of Audit sentenced several head of department, inspectors and officers to pay 2 million and 800 thousand euros in compensation of the judicial expenses. Also, on 22 May 2019, the Court of Cassation will review an additional complaint requesting 5 million euros for the image damage to the State.

31. Another very delicate case occurred in 2005. Paolo Scaroni, a football fan, was seriously beaten during a police charge on 24 September 2005, while returning from a game between Verona and Brescia. Struck repeatedly at the head by policemen holding the baton turned backwards to cause more harm, Scaroni remained in a coma for two months and is still 100% disabled. At first instance, 7 of the defendants were acquitted since the helmets worn by the perpetrators of the beating prevented them from being identified. The eighth defendant, the driver from the truck, was also acquitted. It then emerged that the footage of the event was incomplete. The appeal is set to start on 8 March 2019⁴¹.

3. *Cucchi case*

32. The case of Stefano Cucchi certainly represents best the need for a concretely applied and effective law against torture.

33. The case concerns a young man, Stefano Cucchi, arrested in 2009 for possession of drugs who died after only a week in custody in a hospital in Rome. The cause of the death of Stefano Cucchi remains unclear. In fact, during his detention, Stefano Cucchi was examined by doctors three times. During these examinations, several signs of beatings were found including several fractures. According to the experts, his death was probably due to a crisis of epilepsy however it could also be due, even if less likely, to the fractures he suffered⁴².

⁴¹ Giornale di Brescia, [Codici identificativi nelle forze di polizia già 34 mila firme](#), 29 November 2018

⁴² Medici per i diritti umani, [Il caso Cucchi, un'indagine medica indipendente](#), October 2015.

34. On 15th December 2015, the Supreme Court overturned the acquittal of five doctors and convicted them for manslaughter. However, three prison officers, the doctor who first visited Cucchi and the three nurses who came under trial were acquitted⁴³.

35. In January 2017, the prosecutor's office in Rome asked for a new trial with charges of manslaughter with aggravated circumstances against new defendants: three carabinieri: Alessio di Bernardo, Raffaele D'Alessandro and Francesco Tedesco and charges of abuse of authority, slander and falsification of a public act against two other carabinieri.

36. On 11 October 2018, Francesco Tedesco confesses and accuses his colleagues of the beating of Cucchi. He also revealed in his deposition the existence of a note written by himself explaining what had happened to Stefano Cucchi. It seems the note was sent to the carabinieri Appia's station where it disappeared.

37. On 22 October 2018, the head of the carabinieri Luciano Soligo appeared among the suspects in the new investigation regarding the falsification of an arrest report and the beating of Stefano Cucchi. The investigation also concerns Lieutenant Massimiliano Colombo (commander of the Tor Sapienza station) and the carabinieri Francesco Di Sano, who is suspected to have modified the report on Cucchi's state of health when he was taken to Tor Sapienza from the Casilina barracks⁴⁴. They are all currently being prosecuted.

38. The case is still open, pending a definitive ruling.

FIACAT and ACAT Italia recommend to the Italian government to:

- ⇒ ***Ensure that all allegations of torture, ill-treatment and excessive use of force by law enforcement officials are properly investigated and prosecute and punish perpetrators of such acts with appropriate penalties taking into account the gravity of those acts;***
- ⇒ ***Adopt a legislation that requires that all law enforcement officials on duty be equipped with visible identification number on their uniform or helmet and that provides sanction if the obligation is not enforced.***

III. IMMIGRATION, ASYLUM RIGHTS AND STATELESSNESS

39. In 2014, several states addressed recommendations to Italy regarding the protection of human rights of migrants⁴⁵.

A. Asylum and international protection

40. Decree No. 113 of October 4, 2018⁴⁶ has made numerous changes in the field of immigration. The main point of the decree is the cancellation of the residence permits for humanitarian reasons, replaced by a series of special permits (for victims of domestic violence or serious labour exploitation, for medical

⁴³ La Repubblica, Caso Cucchi, [la Cassazione: annullata assoluzione medici, nuovo appello](#), 15th December 2015.

⁴⁴ TPI News, [Caso Cucchi: la ricostruzione di tutta la storia](#), 20 February 2019.

⁴⁵ [Report of the Working Group of the Universal Periodic Review on Italy](#), A/HRC/28/4, para. 145.159 -145.169 and 145.171-145.177, recommendations by Trinidad and Tobago, Côte d'Ivoire, Cuba, Djibouti, Kenya, Japan, South Sudan, Philippines, Qatar, Guatemala, Nicaragua, Holy See, Turkey, Israel, Netherlands, Norway, United States of America and Sudan.

⁴⁶ Converted into law in December with L. 132/2018

care, for natural disasters in the country of origin, for acts of particular civic value)⁴⁷. This change will have a significant impact (especially when it is considered that, in 2017, 25% of the approved applications for international protection were residence permit granted on humanitarian grounds⁴⁸). All cases where the applicant risks inhumane and degrading treatment or is prevented, in the country of origin, the exercise of the democratic freedoms guaranteed by the Italian Constitution, will not be protected.

41. The law also refers to the safe country of origins⁴⁹. The list of those countries should be drawn up by ministerial order (but has not been so far) on the basis of the indications provided by the National Commission for the right of asylum and by European and international agencies. The asylum seeker originating in one of the countries included in this list will have to demonstrate he has serious reasons to justify his asylum request and his application will be examined in an accelerated manner. This law therefore causes a reversal of the burden of proof, in contrast to the general principle of the burden shared between the state and the asylum seeker⁵⁰.

42. In addition, new hypotheses of manifestly unfounded, and thus rejected, asylum applications are introduced: when the applications is submitted by a person who made inconsistent statements (this is particularly problematic when it is known that torture victims' testimonies can often include inconsistencies due to the trauma), provided false information or documents, or have refused to undergo the fingerprint identification, are in a situation of administrative expulsion, constituting a danger to order and safety, or have entered the country irregularly and have not immediately applied for asylum.

43. The principle of "internal flight" is also introduced: if a foreigner can be repatriated to certain areas of the country of origin where there is no risk of persecution, the demand for international protection is rejected⁵¹. It is clear that these provisions will allow for a strong discretion in examining asylum applications and broadly limit the possibilities of protection for applicants.

44. The other relevant amendment concerns the length of detention times in repatriation detention centres (CPR), extended from 90 to a maximum of 180 days. In addition, asylum seekers are expected to be detained for a maximum period of thirty days in hotspots to ascertain their identity and citizenship. If the identity is not established by that time, asylum seekers may also be detained in CPR for 180 days⁵². In fact, the asylum seeker may be deprived of personal freedom for 210 days, without committing any offence.

45. The new legislation is also affecting the Italian reception system. The possibility of staying into SPRARS⁵³ will be limited to those who have already obtained international protection and unaccompanied foreign minors, while applicants will only be able to stay in the centres of extraordinary reception, places without a structured path aimed at integration. In addition, asylum seekers will not be able to register with the General Registry Office and will not be able to obtain the residence permit and the rights associated with it⁵⁴.

⁴⁷ Article 1 of the Law n°132/2018.

⁴⁸ ISMU, *Xxiv Rapporto Ismu Sulle Migrazioni 2018*, 4 December 2018.

⁴⁹ Art. 7-bis of the Law n°132/2018, Introduced by an amendment presented to the Senate

⁵⁰ Consiglio Italiano per i Rifugiati (Italian Council for refugees), *Nota legale sul Disegno di Legge- A.S. N. 840/2018: problematiche e limiti*.

⁵¹ Art. 10 of the Law n°132/2018.

⁵² Art. 3 of the Law n°132/2018.

⁵³ The second reception structures, the Protection System for Asylum Seekers and Refugees

⁵⁴ Art. 13 of the Law n°132/2018.

46. According to the Centro Studi ISPI, the decree will produce 60,000 more irregular migrants (an increase of 10% from here to 2020)⁵⁵.

47. Finally, the decree might also be unconstitutional for several reasons. First, the legislation was adopted by means of a Decree-Law, although the requirements of necessity and urgency were not present. Secondly, there are no provisions on the rights of the asylum seekers deprived of liberty. Thirdly, it includes the possibility to deprive of citizenship foreigners who have already acquired it in the event of a final sentence for offences related to terrorism⁵⁶.

FIACAT and ACAT Italia recommend to the Italian government to:

⇒ ***Amend Law n°132/2018 to re-strengthen the SPRAR system, reinstate humanitarian protection in accordance with constitutional guarantees, guarantee fundamental safeguards for administrative detention and limit it to what is strictly necessary and ensure that all applications for international protection are thoroughly reviewed.***

B. Bilateral agreements

48. There are several bilateral agreements that are particularly worrying regarding the principle of non-refoulement. This report will focus on the agreements made between Italy and Libya (Mr. Berlusconi government 2008⁵⁷ and Mr. Gentiloni government 2017⁵⁸) since the human rights situation in Libya has been criticized at various times by international intergovernmental and national organisations⁵⁹.

49. The recent decree N° 84 approved by Mr. Conte government on 10th July 2018, further confirmed and strengthened the terms of previous agreements. In fact, the decree provides for "*the transfer free of charge, made by the Italian government, of patrol boats supplied to the body of the Port-authorities (Capitanerie di Porto), Coast guards (Guardia Costiera) and the Finance Guard (Guardia di Finanza)*" to ensure in particular "*the correct management of current migratory phenomenon, with particular reference to the flows from Libya, giving priority to the need to fight the trafficking of human beings, as well as to the safeguarding of human life at sea*". In addition, funds have been provided to "*ensure the maintenance of naval units transferred by the Italian Government to the Libyan government and the carrying out of staff training and training activities of the Coastguard personnel of the Ministry of Defence and Coastal security bodies of the Libyan Ministry of Interior*".

⁵⁵ All the mentioned figures are provided by ISPI, based on data from Ministero dell'Interno. Cfr. Villa, [I nuovi irregolari in Italia](#), 18 December 2018.

⁵⁶ Art. 14. of the Law n°132/2018 in violation of article 3 of the Constitution (which provides the equality of all citizens before the law – in fact this disposition will treat differently the citizens who have acquired citizenship by birth and the ones who acquired it later in their lives for other reasons) and in contrast with the article 8 of the Convention on the reduction of statelessness adopted on 30 August 1961, to which Italy acceded in 2015.

⁵⁷ [Trattato di amicizia, partenariato e cooperazione tra la Repubblica italiana e la Grande Giamabiria araba libica popolare socialista](#), signed in Benghazi 30 August 2008

⁵⁸ [Memorandum d'intesa sulla cooperazione nel campo dello sviluppo, del contrasto all'immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere tra lo Stato della Libia e la Repubblica Italiana](#), 2 February 2017.

⁵⁹ We remind in this regard, for example: "Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya" by High Commissioner for Human Rights of the UN, 18 December 2018; "Rapporto sulle condizioni di grave violazione dei diritti umani dei migranti in Libia (2014-2017)" (Report on the conditions of serious violation of human rights of migrants in Libya) by MEDU – Medici per i Diritti Umani (Doctors for Human Rights), December 2017; "Libia, un oscuro intreccio di collusion (Libya: an obscure interweaving of collusion)" by Amnesty International, December 2017

50. The decision of the current Italian Government not to allow the ships of NGOs active in rescuing migrants at sea is related to this security decree.

51. In 2018, 2 133 migrants died in the Mediterranean Sea according to the IOM⁶⁰.

FIACAT and ACAT Italia recommend to the Italian government to:

⇒ ***Review the agreements concluded with the Libyan government to ensure the protection fundamental human rights of migrants.***

C. Unaccompanied foreign Minors (Minori Stranieri Non Accompagnati - MSNA)

52. During its last UPR, Italy received two recommendations regarding the treatment of unaccompanied minors⁶¹.

53. In the last six years, 62 672 unaccompanied foreign minors arrived in Italy. The number of arrivals was particularly substantial in 2015 and 2016 and decreased in 2018, following the agreement between Italy and Libya⁶².

54. Among the surveyed unaccompanied minors, however, one out of four had escaped from the network of reception systems, sometimes to reach families in other European countries, much more often to enter the circuits of undeclared work and organized crime, pressed by the need to extinguish the debts that the family has contracted in the country of origin and frustrated by the length of the process for international protection.

55. Law No 47 of 7 April 2017 lays down "*Provisions on protection measures for unaccompanied foreign minors*". In strengthening the principle of *non-refoulement*, the law provides the absolute prohibition to refuse unaccompanied minors at the frontier⁶³:

56. At the time of arrival, the child benefits from first reception (CAS) and then is taken in charge by the SPRAR system⁶⁴. The CAS are conceived as extraordinary assistance structure and are therefore not adapted to minors. They do not offer any activities or programs⁶⁵ and rarely have legal staff or specialized educators contrarily to the SPRARs. However; according to the Ministry of Labour, on 31st December 2018, 28,1% of unaccompanied minors were placed in first reception facilities⁶⁶.

57. If there are doubts based on the age declared by the child, the Public Safety Authority shall carry out an interview in the presence of a cultural mediator and, where appropriate, the guardian⁶⁷. If the doubts remain, the juvenile court may order a multidisciplinary examination aimed at ascertaining the age. This

⁶⁰ Ansa, [Migranti: Mediterraneo, 2.133 morti 2018](#), 4 December 2018.

⁶¹ [Report of the Working Group of the Universal Periodic Review on Italy](#), A/HRC/28/4, para.145.179 and 145.180, recommendations by Denmark and Brazil

⁶² All the mentioned figures are provided by: Ministero dell'Interno, Dipartimento per le libertà civili e l'immigrazione, [I numeri dell'asilo](#).

⁶³ A permit is automatically given to the minors because of their age or if they are trying to reach their family.

⁶⁴ The law provides that local authorities can promote the awareness and the training of caregivers, with the objective of promoting family-based care to children. In practice, in reality many MSNA are hosted on the CAS, rather than entrusted to a family or hosted in the SPRAR system.

⁶⁵ Such as language or professional courses.

⁶⁶ Ministero del Lavoro et delle Politiche Sociali, Direzione generale dell'immigrazione et delle politiche di integrazione, [Report di Monitoraggio – I minori stranieri non accompagnati \(MSNA\) in Italia](#), 31 December 2018.

⁶⁷ A list of voluntary guardians is set up at each juvenile court: in those lists can be registered private citizens, selected and adequately trained by regional guarantors for children and adolescents.

examination is conducted at a public health facility, identified by the judge, and consists of a social interview (regarding the previous life experience of the person concerned), a paediatric visit and a psychological or neuropsychiatric assessment, in the presence of a cultural mediator, taking into account the specificities related to the ethnic and cultural background of the person concerned. Even if the reliability of this assessment is doubtful, it is still used for all legal purposes. This age assessment can be challenged within 10 days by the person concerned in front of the Court of Appeal⁶⁸. All proceedings resulting from this assessment is then pending until the decision is taken.

58. In general, the assessment of the age is carried out by evaluating the wrist bone maturation, which involves a margin of error of two years (so-called biological variability). There is currently no scientific method for a certain age determination and the reliability of the methods available is highly discussed in the scientific field ⁶⁹.

FIACAT and ACAT Italia recommend to the Italian government to:

- ⇒ ***Strengthen the SPRAR system for unaccompanied minors to ensure they are informed of their rights, that there is a constant monitoring of their growth and autonomy to prevent the risk that minors will end up in the hands of organized crime;***
- ⇒ ***Review the current process of age assessment of unaccompanied minors to use more appropriate and reliable methods.***

D. Statelessness

59. In its second Universal Periodic Review, Italy received a recommendation on the issue of statelessness⁷⁰

60. Statelessness recognition can be obtained through two ways: the administrative one (by submitting an application to the Ministry of Interior⁷¹) and the legal one.

61. Even if Italy adhered to the 1961 Convention on the reduction of Statelessness on 1 December 2015, the legislation remains uncomplete, unclear and contradictory, as well as completely ineffective as regards Roma people condition. In fact, the recognition of the status of Statelessness is subject to the submission of three documents that Roma people rarely possess: a title of residence in Italy, a birth certificate and a certificate of residence. As mentioned by ASGI, the stateless persons are stuck in a vicious cycle. They are denied a residence permit because of their lack of passport and are being denied the statelessness status because of their lack of residence permit. Thus, they need to go through a judicial procedure but the outcome will largely depend on the discretion of the judge who is often untrained on this issue.⁷²

62. To this must be added the difficult situation for the second generation of stateless persons. Even if the statelessness should be overcome for the second generation, in fact the recognition of the citizenship

⁶⁸ Cfr. d.p.c.m. n. 234/2016.

⁶⁹ Benso, Milani, *Alcune considerazioni sull'uso forense dell'età biologica*, 2013,

⁷⁰ *Report of the Working Group of the Universal Periodic Review on Italy*, A/HRC/28/4, para. 145.18 recommendation by Hungary

⁷¹ Article 17 of the Regulation implementing the Citizenship Act

⁷² Giulia Perin, *L'applicazione ai rom e ai sinti non cittadini delle norme sull'apolidia, sulla protezione internazionale e sulla condizione degli stranieri comunitari ed extracomunitari*, 2010.

of the second generation is consequential to the possibility of the first generation to demonstrate their status as stateless persons⁷³.

FIACAT and ACAT Italia recommend to the Italian government to:

- ⇒ ***Review the domestic law on the status of Statelessness to put it in line with the provisions of the 1961 Convention on the Reduction of Statelessness.***

IV. NATIONAL HUMAN RIGHTS INSTITUTION

During the last cycle, Italy received 23 recommendations on the creation of a National Human Rights Institution (NHRI) in accordance with the Paris Principles. Despite, having accepted those recommendations, Italy has still not yet established a NHRI. It should however be noted that a new bill was lodged on 3rd July 2018 to establish the National commission for the promotion and protection of fundamental human rights.

FIACAT and ACAT Italia recommend to the Italian government to:

- ***Proceed without further delay to the creation of a National Human Rights Institution in conformity with the Paris Principles.***

⁷³ "because if no parent, as in turn stateless or citizen of a country which does not transmit the citizenship "jure sanguinis", transmits the citizenship, the son born in Italy is "jure soli" an Italian citizen "