



International Federation of ACATs - FIACAT

Action by Christians for the Abolition of Torture in Italia – ACAT Italia



**ACAT Italia and FIACAT's
alternative report for the
adoption of a list of issues prior
to reporting on Italy by the
Committee against torture**

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Authors of the report

FIACAT

The International Federation of ACATs, 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.

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I. Article 1 and 4 – Criminalisation of torture

1. The introduction of the law regulating the crime of torture in Italy in 2017¹, 33 years after ratifying the Convention against torture, has immediately created a series of frictions among political parties, the Police Union (SAP) and public opinion on its effective and practical application. Thus, several parties tried to repeal the law² and criticized it publicly³.

2. The current criminalization of torture contained in article 613 bis of the Criminal Code is not satisfactory. Firstly, the definition differs from article 1 of 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. The fact that the act is committed by a public official only appears as an aggravating circumstance. 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. However, no proposition was made to put article 613 bis in line with the Convention. On the contrary, the FDI (Fratelli d'Italia) party wishes to repeal the crime and transform it into a series of aggravating circumstances.

FIACAT and ACAT Italia invite the Committee against to torture to ask the Italian government:

⇒ *Which measures have been taken to amend article 613 bis of the Criminal Code to put the definition of torture in line with article 1 of the Convention against torture?*

II. Article 2 – Measures to prevent acts of torture

A. National human rights institution

3. Despite, having accepted several recommendations on the creation of a national human rights institution during its 2nd and 3rd Universal Periodic Review (UPR), Italy has still not yet established a NHRI. It should however be noted that a bill was lodged on 3rd July 2018 to establish the National commission for the promotion and protection of fundamental human rights. During the third Universal Periodic Review of Italy in November 2019, the Italian delegation announced that the Chamber of Deputies had just scheduled a debate on the draft law to establish an independent national human rights institution for 18 November 2019. No more recent information was found on this topic.

1 DL n. 110 del 14 luglio 2017

2 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 '.

3Il Fatto Quotidiano, Tortura, Giorgia Meloni: "[Abolire reato che impedisce ad agenti di fare il loro lavoro](#)". Poi [concella 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.*"

FIACAT and ACAT Italia invite the Committee against to torture to ask the Italian government:

⇒ *What progress has been made in the process of adopting the bill on the establishment of a national human rights institution and what guarantees have been taken to ensure that it complies with the Paris Principles?*

B. National preventive mechanism

4. Italy ratified the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) on 9 November 2012.

5. In February 2016, Mauro Palma was appointed as the first "National Guarantor for the rights of the persons detained or deprived of their personal liberty" (National Guarantor)⁴. It deals with all forms of deprivation of liberty, including, police custody, identification and expulsion centres and psychiatric institutions.

6. The National Guarantor coordinates also a network of regional 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 18 out of the 20 Italian regions.⁵ 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 Guarantor⁶.

7. 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 deprivation of liberty and the possibility to conduct individual and confidential interviews with the people held in these places⁷. 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)⁸.

4 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.

5 Regional Guarantors existed already before the National office was established. The last regional guarantor established was appointed in Calabria in July 2019. They still have not been established in 2 of the 20 Italian regions, e.g. Liguria and Basilicata. Although, it should be noted that in Liguria the law establishing the regional guarantor was approved in May 2020 and the election should take place within three months

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

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

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

8. It should be noted that the work of the National Guarantor and Regional Guarantors was able to continue throughout the Covid-19 pandemic. They have particularly worked to monitor the situation in all places of deprivation of liberty, including in repatriation centres⁹.

FIACAT and ACAT Italia invite the Committee against to torture to ask the Italian government:

- ⇒ *What measures have been taken to ensure the effective independence of the National Guarantor and provide the necessary funds for its functioning?*
- ⇒ *How has the Covid-19 crisis impacted the work of the National Guarantor and have any limitations been set on its work?*

III. Article 3 – Principle of non-refoulement

A. Asylum and international protection

9. Decree No. 113 of October 4, 2018¹⁰ 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 care, for natural disasters in the country of origin, for acts of particular civic value)¹¹. 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 grounds¹²). All cases where the applicant risks inhumane and degrading treatment or is prevented, in the country of origin, to exercise some democratic freedoms guaranteed by the Italian Constitution, will not be protected. In fact, in 2018, a total of 31 429 applications for international protection (refugees, subsidiary protection and humanitarian protection) were (including 20 014 for humanitarian protection) and 64 147 applications were rejected. In comparison, in 2019, 18 263 applications were accepted and 76 798 were rejected¹³. Even though, the territorial commissions and the courts had to deal with past claims and arrears during 2019, these figures are still an indicator of the current situation.

10. The law also refers to the safe country of origins¹⁴. The list of those countries has been drawn up by ministerial order on 14 March 2019 on the basis of the indications provided by the National Commission for the right of asylum and by European and international agencies. The list includes Albania, Algeria, Bosnia and Herzegovina, Cape Verde, Ghana, Kosovo, Northern Macedonia, Morocco, Montenegro, Senegal, Serbia, Tunisia and Ukraine. 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

⁹ The relevant bulletins and reports are all available on the official website of the national guarantor <http://www.garantenazionaleprivatiliberta.it/>

¹⁰ Converted into law in December with L. 132/2018

¹¹ Article 1 of the Law n°132/2018.

¹² ISMU, *Xxiv Rapporto Ismu Sulle Migrazioni 2018*, 4 December 2018.

¹³ Source Ministry of the Interior

¹⁴ Art. 7-bis of the Law n°132/2018, Introduced by an amendment presented to the Senate

causes a reversal of the burden of proof, in contrast to the general principle of the burden shared between the state and the asylum seeker¹⁵. This is particularly worrying when human rights violations have been documented in some of the countries included in the list.

11. In addition, new hypotheses of manifestly unfounded, and thus rejected, asylum applications are introduced: when the application 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.

12. In both hypotheses (when an application is manifestly unfounded or is presented by a person originating from a safe country of origins), even though the applicant has a right to appeal, this appeal does not have an automatic suspensive effect.

13. 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 rejected¹⁶. 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.

14. 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 days¹⁷. In fact, the asylum seeker may be deprived of personal freedom for 210 days, without committing any offence.

15. The new legislation is also affecting the Italian reception system. The possibility of staying in SPRARs¹⁸ 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 it¹⁹.

16. According to the Centro Studi ISPI, the decree will produce 60,000 more irregular migrants²⁰.

17. 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.

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

16 Art. 10 of the Law n°132/2018.

17 Art. 3 of the Law n°132/2018.

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

19 Art. 13 of the Law n°132/2018.

20 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.

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 terrorism ²¹.

18. If the new government had announced its intention to take over this decree, this initiative was stalled because of the Covid-19 emergency.

FIACAT and ACAT Italia invite the Committee against to torture to ask the Italian government:

⇒ What steps have been taken 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

19. 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 (during Mr. Berlusconi government in 2008 ²² and Mr. Gentiloni government in 2017²³) since the human rights situation in Libya has been criticized at various times by international intergovernmental and national organisations²⁴.

20. 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*

21 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.

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

23 [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.

24 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

of Interior". The Memorandum of Understanding was renewed on 2 February 2020 for a period of three years.

21. The decisions of the Italian Government not to allow some ships of NGOs active in rescuing migrants at sea is related to this security decree. In this regard we can mention the cases of Mediterranean Saving Humans and Sea Watch (trial of Carola Rackete), but there are many others. The trials recognized the right to these operations and freed the ships and their captains. Another example is the one of the ship Diciotti, stranded at sea in August 2018 with 177 people on board by the then Minister Salvini, and the one of the ship Aquarius, stranded in June 2018 with 629 people on board who then landed in Spain. Although the Minister of the Interior has been replaced since, the same policy came back into force with the pandemic. In fact, for the entire duration of the national sanitary emergency of Covid-19, that is until 31 July 2020, the Italian ports will no longer be considered as "place of safety" a necessary requirement for the disembarkation of the migrants rescued at sea. To establish this, a Decree was signed by the Ministers Infrastructure-Transport and Foreign Affairs, in agreement with the Minister of Health and the Minister of Interior.

22. In relation to this issue, it should be noted that 2 133 migrants died in the Mediterranean Sea in 2018 and 1300 died in 2019 according to the IOM²⁵.

FIACAT and ACAT Italia invite the Committee against to torture to ask the Italian government:

- ⇒ ***What steps have been taken to review the agreements concluded with the Libyan government to ensure the protection fundamental human rights of migrants?***
- ⇒ ***What measures have been implemented to stop criminalizing NGOs rescuing migrants at sea?***
- ⇒ ***How has the Covid-19 pandemic affected the rescue mission of migrants at sea?***

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

23. 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 Libya²⁶. As of 30 June 2019, 7 272 unaccompanied foreign minors were reported in Italy. This number decreased by 44,7% compared with previous year for the same reporting period according to the Ministry of Labour.

24. Among the surveyed unaccompanied minors, 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

²⁵ Ansa, [Migranti: Mediterraneo, 2.133 morti 2018](#), 4 December 2018.

²⁶ All the mentioned figures are provided by: Ministero dell'Interno, Dipartimento per le libertà civili e l'immigrazione, [I numeri dell'asilo](#).

debts that the family has contracted in the country of origin and frustrated by the length of the process for international protection.

25. 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 border²⁷:

26. At the time of arrival, the child benefits from first reception (CAS) and then is taken in charge by the SPRAR system²⁸. The CAS are conceived as extraordinary assistance structure and are therefore not adapted to minors. They do not offer any activities or programs²⁹ and rarely have legal staff or specialized educators contrarily to the SPRARs. However; according to the Ministry of Labour, on 31 December 2018, 28,1% of unaccompanied minors were placed in first reception facilities³⁰.

27. The subsequent Decree Law 13/2018 confirmed that minors that have been included in the SIPROIMI (ex SPRAR) system during their minority remain in reception after the age of 18 until their application for international protection is dealt with. Furthermore, circular n° 22146 of 27 December 2019 provided that unaccompanied minors in the SIPROIMI system are entrusted to social services beyond the age of 18 and until the maximum age of 21.

28. 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 guardian³¹. If the doubts remain, the juvenile court may order a multidisciplinary examination aimed at ascertaining the age. This 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 Appeal³². All proceedings resulting from this assessment is then pending until the decision is taken.

29. 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 certain scientific method for age determination and the reliability of the methods available is highly discussed in the scientific field³³.

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

28 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.

29 Such as language or professional courses.

30 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.

31 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.

32 Cfr. d.p.c.m. n. 234/2016.

33 Benso, Milani, [Alcune considerazioni sull'uso forense dell'età biologica](#), 2013,

FIACAT and ACAT Italia invite the Committee against to torture to ask the Italian government:

- ⇒ *What measures have been adopted to strengthen the SPRAR/SIPROIMI 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?*
- ⇒ *Which method are currently being used for age assessment of unaccompanied minors?*

IV. Article 10 – Detention conditions

A. Prison overcrowding

30. 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 2015³⁴. 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)³⁵. 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%)³⁶. According to the National Guarantor, in 2019, there were 60 885 detainees³⁷ for a capacity of 50 692 being an occupancy rate of 129,4%.

31. This increase is particularly worrying given that there has been a decline in the number of crimes committed³⁸.

32. Two decrees³⁹, 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.

³⁴ 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).

³⁵ Data from the Dipartimento dell'amministrazione penitenziaria - Ufficio del Capo del Dipartimento – Sezione Statistica

³⁶ Data from the Dipartimento dell'amministrazione penitenziaria - Ufficio del Capo del Dipartimento – Sezione Statistica.

³⁷ Among which 67% of Italians, 5% of EU nationals and 28% of non-EU nationals.

³⁸ Ministero dell'Interno, [Dossier Viminale, 1 Agosto 2017 – 31 Luglio 2018](#) and Ministero dell'Interno, [Dossier Viminale 1 Agosto 2018 – 31 Luglio 2019](#).

³⁹ 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

33. The reforms from 2013-2014 caused only a limited reduction of the number of detainees⁴⁰ and only partially contributed to the elimination of the automatism which precluded access to alternatives measures to detention on the basis of absolute presumptions of danger, they concentrated rather on implementing the detainees' protection system for who had suffered injury to their rights due to prison overcrowding.

34. 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 associations 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 regime⁴¹.

35. 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 detention⁴². 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 automatism 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”*

36. While appreciating the improved content (even if not completely devoid of weaknesses and criticisms) regarding access to health⁴³, the enhancement of work in prison⁴⁴ and the new provisions

40 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.

41 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. Under this regime, the following specific provisions apply: 1) Detainees must be placed in separate places from those where the common detainees are located. 2) Interviews can only be conducted with family members and cohabitants once per month, with authorised exceptions. They are subject to audio-visual control and are recorded if the court authorises it. They are carried out “in rooms equipped to prevent the passage of objects” and this has been translated by the prison administration into the well-known predisposition of a floor-to-ceiling partition glass; only children or minor grandchildren under 12 can carry out the interview without partition glass. 3) Telephone calls may be authorised once per month only for those who do not conduct interviews and only after the first six months of application of the regime and are recorded. 4) Interviews and telephone calls with the lawyer are also limited to up to three times a week. 5) The exchange of objects to and from the outside is limited; this is resolved by the prohibition provided by the prison administration to receive books and magazines to and from outside. 7) Correspondence is subject to a censorship visa, with the exception of correspondence with parliamentarians and European or national authorities competent in the field of justice. 8) The detainees cannot stay in the open air in groups of more than four persons and not for more than two hours per day

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

43 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.

44 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.

on criminal justice for minors and young adults⁴⁵, one cannot ignore how, in the absence of a reform which privileges alternative measures to detention and the reduction of the excessive use of 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, as of 31 May 2020, there were 8 793 detainees awaiting a final ruling against 9 721 as of 31 December 2019.

37. Since then, the only measures taken to reduce prison overcrowding was linked to the Covid-19 pandemic⁴⁶.

FIACAT and ACAT Italia invite the Committee against to torture to ask the Italian government:

- ⇒ *What measures have been taken to enhance the system of protection and reparation of detainees who have suffered a violation of their fundamental rights?*
- ⇒ *Which efforts have been made 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?*
- ⇒ *Could you indicate if there has been any revision of the 41-bis regime to ensure the respect the fundamental rights of the detainees under this regime?*

B. Suicides in prison

38. According to the data provided by Ristretti Orizzonti, since January 2000, 1 128 detainees have taken their lives in prison including 53 in 2019⁴⁷. It should be noted that there has been an increase in the number of suicides in prison recorded during 2018⁴⁸.

39. This figure becomes even more prominent if we consider the number of acts of self-harm (5,157 only in the first half of 2018⁴⁹) and cases of ill-treatment by prison staff⁵⁰.

40. 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 prison⁵¹".

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

46 See below D. Detention conditions under the Covid-19 pandemic

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

48 67 against 52 of the previous year.

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

50 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.

51 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.

41. 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 sentence⁵². However, this proposal was not approved.

FIACAT and ACAT Italia invite the Committee against to torture to ask the Italian government:

⇒ *What measures have been taken 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?*

C. Children imprisoned with their mother

42. On 31 May 2020, there were 34 children present in penal institutions with their mothers⁵³. The penal system, as amended in 2011, provides that mothers can keep their child in prison until their sixth year is completed.

43. Recognizing as paramount the interest of the minor in relation to the punitive function of the sentence, the Finocchiaro law⁵⁴ 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 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.

44. 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° 62/2011⁵⁵. The law also provides that mothers with a residual sentence of not more than four years can stay at protected family houses⁵⁶ 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. Another one should be created in Piedmont but has not so far. 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.

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

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

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

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

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

45. 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 houses⁵⁷.

46. Finally, on this issue, a tragedy at the female section of Rebibbia prison in Roma should be mentioned. On 18 September 2018 a mother detained there, killed her two children who were in detention with her⁵⁸. She explained her act by saying it would free her children from prison.

FIACAT and ACAT Italia invite the Committee against to torture to ask the Italian government:

⇒ *What steps have been taken to ensure that the appropriate funds are allocated for the implementation of family houses and favour the use of alternative measures to detention for mothers with young children in the name of the best interests of the child?*

D. Detention conditions under the Covid-19 pandemic

47. Under the pandemic, and given the state of emergency, the prisons were cut off from contact with the outside world to prevent the spread of the pandemic. This entailed the end of interviews with family members, the end of recreational and educational activities and volunteers were prevented from entering the establishments. Following the announcement of those measures, several demonstrations broke out between 7 and 10 March 2020 in 84 Italian prisons (in 30 prisons the demonstrations led to actual riots)⁵⁹. According to the final reports on these events, the demonstrations and riots led to serious damages within the establishments but also to several victims among detainees and prison staff and even to the death of 13 detainees, probably from an overdose, in the prisons of Modena (9 deaths), Rieti and Bologna. However, many uncertainties remain around the deaths of these detainees and a parliamentary question was addressed to the Minister of justice on 8 April 2020. Those uncertainties are primarily linked to the fact that the toxicology tests and results of the autopsy are still covered by the confidentiality of investigations but also concerns the death of 4 detainees during the transfer to a new establishment⁶⁰ without having being the subject of a medical examination before⁶¹.

48. Many detainees also denounce the violence and repression following the riots. In facts, in the days following the demonstrations and riots, numerous reports of and acts of violence from prison staff against detainees have been reported to the National Guarantor and the association Antigone. Those reports concern the prisons of Opera in Milano, in Pavia, in Santa Maria Capua Vetere and Melfi. Allegedly, the violence reported occurred after the end of the riot and were thus used as

⁵⁷ Vita, [Bambini in carcere: troppo poche due case famiglia protette in tutta Italia](#), 19 September 2018.

⁵⁸ Roma Sette, [Rebibbia femminile, detenuta getta i figli dalle scale](#), 18 September 2018.

⁵⁹ Parlamento Italiano, [Resoconto stenografica dell'Assemblea Seduta n°325 di giovedì 9 aprile 2020](#), 9 April 2020.

⁶⁰ After the riots 1600 detainees were transferred to another establishments because of the damages made to the prison.

⁶¹ Parlamento Italiano, [Resoconto stenografica dell'Assemblea Seduta n°325 di giovedì 9 aprile 2020](#), 9 April 2020.

punishment and not for confinement. In Melfi, the detainees were allegedly beaten up after being handcuffed, taken to solitary confinement and left in their underwear. Similar facts were reported from the prison of Santa Maria Capua Vetere⁶². Two months after these events, 44 prison officers are being investigated for torture, violence and abuse of power in the prison of Santa Maria Capua.

49. On the other hand, after those events, several positive measures were taken during the pandemic to reduce prison overcrowding in particular through the use of alternative to detention. Those measures, introduced through the Decree Law n°18 of 17 March 2020, have had a significant impact on the prison population which was reduced to 53 387 in 31 May 2020. Article 123 of the Decree Law provides that until 30 June 2020 and with the exception of certain categories of offences or detainees convicted in application of Law n°199/2010, the detainees with a remaining of sentence not exceeding 18 months should be able to carry out the rest of their sentence on house arrest. Article 124 provides also that exceptional licences given to detainees under a day-parole regime shall last until 30 June 2020.

FIACAT and ACAT Italia invite the Committee against to torture to ask the Italian government:

⇒ Please provide information on the measures taken to prevent the propagation of the Covid-19 in prisons and other places of deprivation of liberty and provide detailed information on the demonstrations and riots that took place in several prisons.

V. Article 12 and 13 – Investigation and prosecution of cases of torture and ill-treatment

A. Identification of security forces

50. 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"⁶³.

51. In the course of the past legislatures, many parliamentary initiatives have underlined the need to make the identification of individual agents easier, where necessary⁶⁴. None of these proposals has been followed⁶⁵.

⁶² Riformista, [Carcere Santa Maria. Il racconto dei detenuti: "Ci hanno fatti spogliare e picchiati"](#), 15 April 2020.

⁶³ Committee against torture, [Concluding observations on the combined fifth and sixth periodic reports of Italy](#), CAT/C/ITA/CO5-6, para 39.

⁶⁴ When dealing with public order measures or demonstrations

⁶⁵ Amnesty Italia, [La nostra campagna per chiedere i codici identificativi delle forze di polizia](#), 20 November 2018.

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

52. 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 officers in any of their activities (maintenance of public order, investigation, interrogation, custody, etc.)

53. However, nineteen 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 Caldarozzi 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.

54. 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. Finally, the defendants were acquitted by the Supreme court. The lack of identification tag contributed a lot to these acquittals since 7 of the defendants were acquitted for lack of evidence⁶⁶.

55. Other cases should be mentioned regarding violence in prison by prison staff. A first case concerns prison officers in Ferrara accused of torture for having stripped and beaten a detainee on 30 September 2017. The Ferrara Public Prosecutor’s Office has decided to prosecute them and the preliminary hearing of the trial is scheduled for 9 July 2020. According to the Prosecutor, the agents acted “with cruelty and serious violence”, taking advantage of the fact that the victim had been handcuffed and forcing her to undergo “inhuman and degrading treatment for the dignity of the person”.

56. In September 2019, an investigation was open against 15 prison staff from San Gimignano prison who were accused of several offences: torture, threats, serious bodily harm etc. The case is

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

related to a Tunisian detainee of 31 years old who was beaten up and left on the ground unconscious⁶⁷.

57. In October 2019, six prison guards in Lorusso and Cutugno have been arrested for abusing their power to torture certain detainees sentenced for sexual offences between April 2017 and November 2018⁶⁸.

58. Several abuses by police officers were also reported during the covid-19 pandemic. For example, several abuses (excessive fines, use of physical and verbal violence) were documented during the control of travel or personal document. Other cases were documented regarding the imposition of mandatory health treatment (TSO)⁶⁹ when unnecessary. One of the main cases is the one of Dario Musso, 33 years old, who was arrested and placed under mandatory health treatment on 2 May 2020 in the province of Agrigento (Sicily). The man was standing on a car in violation of the prohibition of free movement without any urgent reason and was shouting from a megaphone that the pandemic did not exist. The man was already known in the town for his unusual attitudes and his provocative videos (sometimes violent) that he publishes on social media. In the video of the whole arrest, it can be seen that the man is calm and cooperative, gets out of the car after an initial refusal, after which he is surrounded by law enforcement officers, thrown to the ground and handcuffed. He was then injected with a sedative and spent the next four days in a psychiatric ward during which his family was unable to hear from him. None of the conditions set out by the law for the imposition of TSO were met in this case. Since the beginning, this affair was marked by a series of irregularities, which led to the opening of an inquiry by the judiciary and to a parliamentary question. The National guarantor is also following the case. Finally, some abuses were documented regarding the containment of public marches or gathering. For example, a gathering was organised to greet the coffin of Salvatore Ricciardi in Rome and even though the people were standing with a distance between each other the police reacted fiercely by proceeding to some arrests and using physical and verbal assaults.

C. Cucchi case

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

⁶⁷ Il Messaggero, [Torture e pestaggio su un tunisino nel carcere di San Gimignano : inchiesta su 15 agenti, 4 subito sospesi](#), 22 September 2019

⁶⁸ Il Fatto Quotidiano, [Torino, violenze sui detenuti:sei agenti della Penitenziaria arrestati per torture. “Ti ammazzerei e invece devo tutelarti”](#), 17 October 2019.

⁶⁹ Article 34 of the law of 23 December 1978 Law defines what is the compulsory health treatment (T.S.O.) and how it has to be carried out. Because citizens cannot be subjected to medical treatment contrary to their will, the conditions for using a T.S.O. are defined by law in a clear and precise manner. Thus, compulsory health care can be applied when: a person - in a clear state of mental alteration - urgently needs medical treatment, has refused them, and it is not possible to proceed with other measures. The subject is generally dangerous for himself and for others, and in most cases, the family is asking for the intervention of health professionals or law enforcement. To ensure that it is possible to proceed with the T.S.O., it is necessary that the patient is actually visited by doctors and any remote diagnosis is void. In addition to the personal examination, proof must be provided that a differential diagnosis has been made.

60. 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 suffered⁷⁰.

61. 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 acquitted⁷¹.

62. 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.

63. 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. On 14 November 2019, the Court of Assise of Rome sentenced Alessio Di Bernardo and Raffaele d'Alessandro for the crime of manslaughter to 12 years of imprisonment, a life ban from public offices and to the payment of the legal costs and 100 000 euros to each of the victim's parents. The third carabiniere Francesco Tedesco, who had testified against his colleagues was acquitted for the crime of manslaughter but was sentenced to 2 years and 6 months of imprisonment for forgery. Marshal carabinieri, Roberto Mandolini was also sentenced to 3 years and 8 months of imprisonment and to a 5-year ban from public offices for forgery. The doctors from the hospital where Cucchi died who were prosecuted were acquitted (4 of them because the statute of limitation expired).

64. 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 barracks⁷². At the end of the investigation, on 14 April 2019, the trial of 8 carabinieri⁷³ was requested for falsification, omission of denunciation and aiding and slander. The case is still ongoing.

FIACAT and ACAT Italia invite the Committee against to torture to ask the Italian government:

⁷⁰ Medici per I diritti umani, [Il caso Cucchi, un'indagine medica indipendente](#), October 2015.

⁷¹ La Repubblica, Caso Cucchi, [la Cassazione: annullata assoluzione medici, nuovo appello](#), 15th December 2015.

⁷²TPI News, [Caso Cucchi: la ricostruzione di tutta la storia](#), 20 February 2019.

⁷³ Alessandro Casarsa, Francesco Cavallo, Luciano Soligo, Massimiliano Colombo Labriola, Francesco Di Lorenzo Sabatino, Titian Testarmata and Luca De Cianni

- ⇒ *What has been done 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?*
- ⇒ *Has any legislation requiring 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 been adopted?*
- ⇒ *Please provide information on cases of excessive use of force and abuse of power by law enforcement officers during the Covid-19 pandemic.*