



Fédération internationale de l'Action des chrétiens pour l'abolition de la torture  
International Federation of Action by Christians for the Abolition of Torture  
Federación Internacional de la Acción de los Cristianos para la Abolición de la Tortura



## **FIACAT and ACAT Italia<sup>1</sup>**

### **Contribution to the second review of the Republic of Italia**

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<sup>1</sup> ACAT Italia (Azione dei Cristiani per l'Abolizione della Tortura) is an association founded in 1987 and is one of the first national ACATs born in Europe; ACAT Italy is also one of the founding associations of the International Federation FIACAT. It works for the abolition of torture and the death penalty.

## **Authors of the report**

*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 Coalition of International NGOs against Torture (CINAT) and the International Coalition against Enforced Disappearances (ICAED).

### **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.

### **FIACAT – a network of Christians united in fighting torture and the death penalty**

FIACAT's mission is to awaken Churches and Christian organisations to the scandal of torture and the death penalty and convince them to act.

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## Introduction

With regards to the previous recommendations accepted by Italy at the time of its latest review in February 2010 during the Universal Periodic Review (UPR) seventh session, our organizations wish to bring to the Council's attention FIACAT's concerns regarding the treatment of migrants, especially focusing on the situation in the Lampedusa Center, the prisons overcrowding, the introduction of torture as a specific offence within ordinary criminal legislation, and the establishment of a National Human Rights Institution.

### I. The Human rights situations of migrants

#### A. Access to the right of asylum

During its first review in 2010, Italy accepted some recommendations regarding the need:

- to strengthen efforts to protect asylum-seekers and refugees (Yemen);
- to continue the implementation of laws on migration to ensure that the laws are always fully in line with international standards (Kyrgyzstan);
- to make additional efforts in work with refugees and migrants (Kyrgyzstan);
- to take further steps to ensure the full respect of the fundamental rights of migrants, asylum-seekers and refugees (Sweden).<sup>2</sup>

FIACAT and ACAT Italy welcome the fact that Italy accepted some recommendations which shows the efforts made by Italy on asylum procedures for all asylum-seekers and complying with the principle of non-refoulement stating that *“national legislation, case law and practices show the compliance with the principle of non-refoulement and with relevant international legal instruments. In particular, when a migrant rescued at sea expresses the intention to apply for asylum or other forms of international protection on board an Italian vessel, s/he is not returned to the country of origin or transit but taken to Italy.”*

FIACAT and ACAT Italy welcome that Italy has launched extra patrols, combining ships, helicopters and drones, to monitor the Mediterranean Sea, following a shipwreck in October 2013, in which 366 Eritrean migrants drowned.

Sea arrivals from northern Africa more than tripled in 2013, fuelled by refugees in Syria's civil war and strife in the Horn of Africa. Italy is a major gateway into Europe for many asylum seekers seeking a better life and over the past two decades, it bore the brunt of the arrivals.

The story of rejections at sea for which Italy has been convicted of violations of serious fundamental human rights (ECHR judgment 23.02.12 n. 27765, Hirsi and others v. Italy) showed that rules need to be more rigorous and detailed to avoid the violation at the borders and in the sea of the principle of non-refoulement;

The national system of reception of asylum seekers is with no doubt deeply deficient. Authorities often resort to short-lived *“emergency plans”* that don't guarantee consistent, adequate standards of treatment, conditions, and access to asylum. Italy has to respect the EU reception standards.

However, FIACAT and ACAT Italy deeply regret that Italy rejected recommendations dealing with the abolition of the legislation that criminalizes the irregular migration (with particular reference to the law 94/2009), on the grounds that *“The management of large migration flows remains a very serious challenge for any state. In this context, it is crucial to put in place the necessary tools to fight against human trafficking and promote regular migration. The 2009 legislation has the two-fold aim: of ensuring that migrants – those who are not entitled to any forms of protection - are effectively returned to their Country of origin;*

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<sup>2</sup> 2009 UN Working Group Report, p. 19

*and of preventing their involvement in organized crime networks. These measures are meant to curb criminal behaviours of individuals and no provision at all is envisaged against any community, group or class nor is linked to any form of discrimination and xenophobia. Along these lines, the aggravating circumstance under reference is solely meant to prevent the involvement of illegal migrants in organized crime”.*<sup>3</sup>

Italy therefore urgently needs a regulatory review covering all aspects of the right to asylum, in order to define a single text of the rules on asylum, firmly to the aforementioned constitutional provision.

**FIACAT and ACAT Italy urge:**

- *Italy to create a single national system for the protection of asylum seekers, including unaccompanied minors, articulated on their functions and roles of the State, the Regions and local authorities.*
- *Italy to introduce a specific national programme for the reception and rehabilitation of victims of torture and conflict and for people in need of psychological support because of the trauma suffered by fleeing from their country*

### ***B. Health and living conditions in the Lampedusa Temporary Stay Centre***

The United Nations High Commissioner for Refugees (UNHCR) asked the Italian government for urgent solutions to improve the standards of treatment in First Aid and Reception Centre in Lampedusa for all those who, forced to flee war and persecution, arrive in Italy in search of protection.<sup>4</sup>

The conditions in the detention centres for irregular migrants were well below international standards. According to NGO's reports, the legal safeguards for the return of irregular migrants in countries of origin have been violated on many occasions.

The centre has been designed to provide a first reception of migrants and asylum-seekers rescued at sea, waiting for their rapid transfer - within 48 hours at most - to special centres located throughout the country, where their cases are taken into consideration.

In view of possible new arrivals by sea, without a proper system of rapid transfer of migrants off the island, new emergency situations risk to re-appear.

The overcrowding that occurs constantly is unbearable and gives rise to a situation in which, despite the efforts of humanitarian workers, assistance is highly below the minimum standards.

In spite of the calls repeated by the UNHCR since 2011 for works of extension of the Center, the latter are surrounded due to the presence of too many guests.

The place must be discharged with an original accommodation facilities of 850 people to avoid, even in case of migrants' massive arrival, that we find a precarious emergency situation such the one met during Lampedusa October 2013 event.

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<sup>3</sup> Article 10, right to asylum

<sup>4</sup> Lampedusa: ancora condizioni di accoglienza inaccettabili, L'Unchr chiede trasferimenti rapidi e regolari, 17.12.2013, in <http://www.unhcr.it/news/dir/26/view/1637/lampedusa-ancora-condizioni-di-accoglienza-inaccettabili-l-unhcr-chiede-trasferimenti-rapidi-e-regolari-163700.html>

FIACAT and ACAT Italy recommend to Italy:

- *To improve the living conditions in the Lampedusa Temporary Stay Center which are highly below the minimum standards;*
- *To adopt an adequate system of rapid transfer of migrants off the island.*

## II. Living condition in detention

### *A. Ill-treatments and living standard in Italian prisons*

Italy accepted in 2010 the recommendation made by the Russian Federation to continue efforts to solve problems related to the penitentiary system, in particular overcrowding in prisons. To this way Italy put in place a governmental Plan of Action which has been adopted to draw a new framework concerning the prison system, which will cover several issues, such as prison building, penitentiary staff members, and deflationary measures of prison population.

However, FIACAT and ACAT Italy remain concerned by the situation within the Italian penitentiary system which is still critical.

For example, in May 2012, the European Committee for the Prevention of Torture (CPT) visited many Italian prisons and reported that ill-treatments and overcrowding are the most relevant problems in detention facilities.

The Committee invited Italy to ensure to the detainees of Ucciardone an adequate quantity of products for their personal care, to stop ill-treatments against detainees of Vicenza and to find a suitable prison cell for detainees of Bari. In that prison, for example, the Committee found a cell of 20 square meters in which where forced to live 11 people.<sup>5</sup>

The report noticed that, from the 2008 mission of the European Committee for the Prevention of torture to the 2012 mission, the penitentiary population has risen from 59,000 to 66,000. FACAT and ACAT Italy therefore welcome the fact that the plan envisages the building of new wings and prisons together with an increase of 2,000 units in the Penitentiary police staff and other measures aimed at reducing the prison population. Through this intervention, there will be 21,000 new places for a total prison capacity of about 80,000 places.

However, increase the number of places of detention won't solve living conditions problems.

As noted in a recent ruling condemned by the European Court of Human Rights (*Torreggiani c. Italy*), prison overcrowding in Italy is structural and systemic, resulting from chronic malfunction of the Italian prison system, which has affected many people and is incompatible with the European Convention on Human Rights. The national rate of overpopulation is around 150 per cent and over 40 per cent of prisoners are in pre-trial detention.

- **FIACAT and ACAT Italy recommend to Italy to pursue its effort regarding the overcrowding issue in prisons, and guarantee to all the detainees to be treated with dignity.**

### *B. Legislative Measures adopted by the government to solve the problem*

In this regard, FIACAT and ACAT Italy welcome the fact that, in December 2013, the Council of Ministers approved a decree to face the problem of prisons overcrowding and also a bill regarding the civil trial. It establishes the institution of the "*National Authority for Detainees Rights*"

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<sup>5</sup> "Strasburgo, nelle carceri italiane maltrattamenti e troppi detenuti", in La Stampa, 20.11.2013

and it introduces some measures in order to ease the re-integration of drug-addicts and the repatriation of migrants.

The measures contained in the decree are intended to alleviate overcrowding by reducing the flows into and out of the prisons, and to improve the living conditions of prisoner.<sup>6</sup>

With the increase from 45 to 75 days every 6 months for early release for good behaviour, one of the measures<sup>7</sup> contained in the decree on prisons approved by the Council of Ministers, will come out about 1,700 prisoners.

- **FIACAT and ACAT Italy recommend to the government to put into effect the measures recently approved in order to fulfil the duty to reduce the prison overcrowding and to improve the living conditions in the facilities.**

### **III. The lack of criminalization of torture in Italian legislation**

FIACAT and ACAT Italy deeply regret that Italy did not accept the recommendation made in 2010 which asked the legislator to introduce torture as a specific offence in the Italian ordinary criminal legislation.<sup>8</sup>

Italy stated then that *“torture is punishable under various offences and aggravating circumstances, which trigger a wider application of such crime. Even though this is not typified as one specific offence under the Italian criminal code, both the constitutional and legal frame work already punish acts of physical and moral violence against persons subject to restrictions of their personal liberty. Both provide sanctions for all criminal conducts covered by the definition of torture, as set forth in Article 1 of the relevant Convention”*.<sup>9</sup>

In its 2007 Concluding Observations, the UN Committee Against Torture invited Italy to incorporate the crime of torture into domestic law and adopt a definition of torture that covers all of the elements contained in article one of the UN Convention against torture.

Finally in 2013 Italian Parliament seems to have reached an agreement on a bill: the decree No. 362, which has been approved by the Senate last August. According to this decree, a person who commits an act of torture can be convicted to imprisonment from 3 to 10 years.

The definition of torture match the one included in the International Convention against Torture.<sup>10</sup> The Bill includes specific aggravating circumstances if the conduct is done by a public official or other person acting in an official capacity and if the result of such a behaviour is an acute or very acute injury. In case of death of the tortured person, the offender can be convicted to 30 years of imprisonment if death is an unwanted consequence of his conduct, on the contrary the offender will be convicted to life imprisonment.<sup>11</sup>

This Bill represents an important step for the Italian criminal code and also for its legal system. The legislative procedure is just at the beginning because the Bill has just been approved by the Senate and it needs the approval of the Chamber of Deputies in order to become a binding Law.

Therefore, FIACAT and ACAT Italy welcome the fact that, on 5 March 2014, the Senate passed the bill introducing the crime of torture into Italian legislation, with amendments. The text is before the House at the time we submit this report.

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<sup>6</sup> “Carceri, il cdm approva decreto legge contro il sovraffollamento”, in Il Giornale, 17.12.2013

<sup>7</sup> “Carceri, il cdm approva decreto legge contro il sovraffollamento”, in Il Giornale, 17.12.2013

<sup>8</sup> 2009 Working Group Report, p. 14

<sup>9</sup> Addendum, State’s answers, p. 2

<sup>10</sup> “Introduzione reato di tortura: adottato testo unificato in 2a Commissione”, Archivio del Senato, 7.08.2013

<sup>11</sup> “Introduzione reato di tortura: adottato testo unificato in 2a Commissione”, Archivio del Senato, 7.08.2013

With the text proposed by the Commission of Justice articles 613-bis, which defines the crime of torture, and 613-ter, which allow the prosecution of the conduct of a public officer who instigates others to the commission of an offense, are introduced in the Penal Code. The crime of torture is defined as a common crime, characterized by general intent, rather than a specific offense relating solely to public officials. Aggravating circumstances are constituted by the fact that the offense was committed by a public official and that said offense has gravely consequences (injury or death).

**According to FIACAT and ACAT Italy:**

- *Italy must convert the Decree No. 362 into Law at the earliest to uphold its international duties;*
- *Italy must adopt the definition outlined in Article 1 of the Convention against torture in order to be consistent with its obligations under the Convention.*

#### **IV. The Establishment of a National Human Rights Institution**

FIACAT and ACAT Italy welcome the fact that Italy accepted to consider establishing, at the earliest, a National Human Rights Institution that complies with the Paris Principles (India);

Unfortunately this Institution has not yet been created but the Committee for the Protection and Promotion of Human Rights, a network of Italian non-governmental organizations active in the field of human rights, arranged for 5 December 2013, in collaboration with the Office of the High Commissioner for Human Rights of the United Nations, a workshop in order to define the steps necessary for the creation of a National Human Rights Institution in Italy.

The workshop provided the members of the Italian Government, the Parliament, the academic community and civil society groups for openly treat the structure of assets, legal requirements and best practices for the creation of a National Human Rights Institute, in line with international standards for such entities contained in the Paris Principles.

The Italian civil society has played an important role in the operation to raise awareness about the importance of creating a national institution for human rights in the country. Since 2003, several proposals regarding the creation of such an institute in Italy were discussed in Parliament.<sup>12</sup>

- **FIACAT and ACAT Italy encourage the Government to increase its efforts in creating the National Human Rights Institution that is compliant with the Paris Principles.**

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<sup>12</sup> “Le organizzazioni italiane e l’ufficio dell’alto commissariato per i diritti umani s’impegnano per la creazione dell’istituto per i diritti umani”, Unric, Centro regionale di Informazione delle Nazioni Unite, in <http://www.unric.org/it/attualita/7565>