**ITALY**

***Ministry of Foreign Affairs and International Cooperation***

*Inter-ministerial Committee for Human Rights*

**ITALY’S CONTRIBUTION TO THE UN WORKING GROUP ON THE ISSUE OF DISCRIMINATION AGAINST WOMEN IN LAW AND IN PRACTICE** – **THEMATIC REPORT TO BE PRESENTED IN JUNE 2019**

*November 6th, 2018*

**ITALY’S CONTRIBUTION**

*To the attention of*

*wgdiscriminationwomen@ohchr.org*

Following your query, we are in a position to provide the following for your information, only:

**Introduction**

1. The Italian Constitution determines the political framework for action and organization of the State. The fundamental elements or structural principles of the constitutional law governing the organization of the State are as follows: Democracy, as laid down in Article 1; the so-called *personalistic* principle, as laid down in Article 2, which guarantees the full and effective respect for human rights; the pluralist principle, within the framework of the value of democracy (Articles 2 and 5); the importance of work, as a central value of the Italian community (Articles 1 and 4); the principle of solidarity (Article 2); the principle of equality, including gender equality, as laid down in Article 3 (it is also the fundamental criterion applied in the judiciary system when bringing in a verdict); the principles of unity and territorial integrity (Article 5); and above all, the relevant principles, including the social state, the rule of law and the respect for human rights and fundamental freedoms.

2. The Italian legal system aims at ensuring an effective framework of guarantees, to fully and extensively protect the fundamental rights of the individual. Indeed, we rely on a solid framework of rules, primarily of a constitutional nature, by which the respect for human rights is one of the main pillars.

* On a more specific note, the Italian Constitution envisages the protection of all rights and fundamental freedoms included in relevant international standards, such as the European Convention on Human Rights and Fundamental Freedoms, the Human Rights Universal Declaration, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Discrimination Against Women and more recently, the CoE’s Istanbul and Warsaw Conventions.
* The protection and promotion of rights – be it civil and political, economic, social and cultural, be it referred to freedom of expression or to the fight against discriminations or to the rights of the child and of women – constitute one of the fundamental pillars of both domestic and foreign Italian policies.
  + One of the main goals of the Italian Government is to ensure equal opportunities and equal treatment for men and women and to combat all forms of discrimination on the grounds of gender. With a view to achieving this fundamental goal, Italy has put in place measures having a constitutional, legislative, and administrative nature in the economic, social, cultural, and political life. From a constitutional standpoint, the general principle of equality between women and men is enshrined in Article 3 of the Italian (rigid) Constitution, “*All citizens have equal social dignity and are equal before the law without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country*”.
  + In addition to the above Article 3 of the Italian Constitution, Art.1 of the Code on Equal Opportunities Between Women and Men (Legislative Decree 198/2006)[[1]](#footnote-1) sets forth: “*Relevant provisions envisage measures, aimed at eliminating whatsoever distinction, exclusion or limitation based on sex, which might affect or hinder the enjoyment and exercise of human rights and fundamental freedoms (..)” in all spheres of life*.

3. Within the domestic system of protection of human rights, mention has to be made, among others, of the Italian Constitutional Court that deals only with infringements of a constitutional level.[[2]](#footnote-2)

4. The Constitutional Court exercises its duty as one of the highest guardian of the Constitution in various ways. It becomes active when it is called on. For example, it supervises the preliminary stages of referenda and is competent in case of presidential impeachment. Complaints of unconstitutionality may be submitted before the Italian Constitutional Court by central and local Authorities claiming that a state or a regional Act might be unconstitutional. Therefore, the Court monitors Authorities to see whether they have observed the Constitution in their actions. It also arbitrates in cases of disagreements between the highest State’s organs and decides in proceedings between central and local Authorities.

* Procedurally, the Court must examine *ex officio* (the prosecutor) or upon request of the plaintiff/defendant whether the provisions to be applied are in compliance with the Basic Law. When the court considers that an act is unconstitutional, such evaluation brings to a suspension of the *a quo* proceeding. Accordingly, a decision is made by the Court itself, pursuant to Art. 134 of the Italian Constitution. The constitutional court decides (and its decisions cannot be appealed on) disputes: 1. concerning the constitutionality of laws and acts with the force of law adopted by state or regions; 2. arising over the allocation of powers between branches of government, within the state, between the state and the regions, and between regions; 3. on accusations raised against the head of State in accordance with the Constitution. More generally, the Court decides on the validity of legislation, its interpretation and on whether its implementation, in form and substance, is in line with the Basic Law. Thus, when the court declares a law or an act with the force of law unconstitutional, the norm ceases its force by the day after the publication of its decision.

5. At a domestic level, mention has to be made, among others, of the role and functions of the Inter-ministerial Committee for Human Rights (acronym in Italian,CIDU). It was established in 1978, at the Ministry of Foreign Affairs and International Cooperation of Italy ([[3]](#footnote-3)[www.cidu.esteri.it](http://www.cidu.esteri.it)[[[4]](#footnote-4)](http://www.cidu.esteri.it)). By an inter-ministerial and participatory approach, CIDU is the National Mechanism for Reporting and Follow-up (NMRF[[5]](#footnote-5)). The interaction with the Parliamentary Commissions to both the Chamber of Deputies and the Senate, working in the field of human rights, is carried out through constant dialogue and on the occasion of periodic public hearings, by the CIDU President. CSOs are included in the preparation of the reporting, in accordance with their specific competences and experience. They are also involved in conferences and events organized by the CIDU in cooperation with relevant Administrations as well as in online consultations for the compilation of national plan of actions, as occurred for example in the preparation of both the Italian NAPs on WPS, 2016 -2019, and BHR, 2016 -2020, and to further establishing proper follow-up mechanism with their active participation. Moreover CIDU has established a dedicated position to get contacts and promote close relationships and collaboration with civil society.

**Turning to the specific Questions[[6]](#footnote-6)**

**I Justice System**

6. The Penitentiary Order/Law (in Italian, *Ordinamento Penitenziario*) dedicates numerous Articles to female detention and in particular to detained mothers:

* As for the mothers who are in detention, Art.11, paragraph 9, of Act No.354/1975 allows to hold with mother detainees, their children up to the age of three, in special sections-nursery. And in every penitentiary Institutes, services for health care for breast-feeding mothers must be organized (paragraph 8 of the aforementioned Article).
  + The execution regulation, at its Art.19, envisages that pregnant women and breast-feeding women should be assisted by specialists in obstetrics and gynaecology. Paragraph 5 of the same Article outlines the organization of the nursery-sections in which to host pregnant women and mothers with children: rooms must remain open to allow movement within the section and the department. Paragraph 6 provides for the organization of recreational and training activities for children, who must be accompanied, upon consent of the mother, to the local kindergartens.
* Act No. 40/2001 subsequently inserted two types of extra-custodial benefits for mothers with children aged up to 10: special home detention - the application of which requires given requirements; and in cases where the mother cannot access this measure, external assistance is provided for the children (Article 21 bis of the Penitentiary Order), as a way to carrying out the work outside the prison.
* Act No. 62/2011 emphasizes from a re-educational and treatment standpoint the potentials of the tasks of care and assistance to the children, in line with the new cultural acquisitions.
  + From the standpoint of international and European legislation, the protection of the relations between restricted parents in prison and their children has been recognized by the UN Convention on the Rights of the Child and, among others, the 2006 EU Recommendation, which urges the EU Member States to ensure equal rights and treatment for children living with the imprisoned parent, as well as to create living conditions adapted to their needs in independent units and as far as possible from the prison environment, while the 2007 Resolution No. 2116 of the European Parliament recalls the importance of finding suitable housing solutions for children who follow the inmates, to be implemented in small units managed with the support of social services and where the interest of the child is paramount - without neglecting the need for security.

7. Within the detained female population, mothers detainees are a small number - though representing extreme social hardship. The mothers are mostly women of a foreign nationality, mainly from North Africa and South-America or belonging to Roma community. They lack a stable or reliable family reference, to whom they can entrust their children and in any case they are without suitable abode for house arrest-type measures.

8. At the Institutes where the mother detainees are confined with their children, there are nurses, paramedics and specialized doctors (obstetricians, gynaecologists, paediatricians). Operators and volunteers provide daily assistance to bring children to municipal kindergartens outside the Penitentiary Institute, to allow them to participate in socialization activities and to ensure interaction with their “peer group”.

- Such experiences are considered particularly important to ensure learning, while overcoming the deprivation of stimulus that the stay in prison may involve. In all female prison facilities or women's sections of Penitentiary Institutes, the presence of educational services for early childhood and socio-health care - made available by competent local authorities - allows the implementation of paths for the reintegration and social recovery of women through educational projects; training; accompaniment to work; and cultural linguistic mediation - a particularly important service given the high number of foreign national prisoners.

9. Act No. 62/2011, entitled "Amendments to the Code of Criminal Procedure and to Act No. 354/1975and other provisions to protect the relationship between mothers detainees and their children" incorporates the innovative indications, particularly stemming from the European legislation and the requests for structural changes, addressed by international organizations and by sectorial NGOs. Act No.62 therefore intervenes on Act No.40/2001, which had focused on special home detention, as later proven to be not very accessible for foreign and Roma prisoners and Roma in the absence of dedicated facilities for their reception outside the prison circuit.

* + Art.1 establishes the prohibition of pre-trial detention in prisons for pregnant women and mothers with children up to the age of six, unless there are exceptional precautionary requirements; Act No. 62 also applies to fathers if they find themselves carrying out the parental role alone.

10. The awareness of the existence of inadequate spaces to allow harmonious upbringing of children compelled into prison and the need to allow the cohabitation of the children with their parents during the delicate school period led the Legislator to provide for the creation of new types of facilities.

11. From January 1, 2014, this Act envisages the stay of parents with children at *ICAM* (standing for Institutes of Attenuated Custody for Mother Detainees), inspired by a practice developed for the first time in the Municipality of Milan, in operational synergy with local Authorities, as initially reserved to mothers only.

* + Within the ICAM, this Law provides for the inclusion of pregnant women and parents (mothers and fathers in case of impossibility / absence of the mother) with children under the age of six when undergoing pre-trial detention; and parents of children up to the age of ten, awaiting access to house arrest-type measures (home detention).
  + Other facilities set up by Act No. 62 are the protected family houses, in which they can be placed: defendants/parents with children under the age of six, in those cases when the Judicial Authority orders home detention at such facilities as an alternative to their own house – a place of private residence or public place of assistance; and mothers/fathers with children under the age of ten, who are cohabitant, as admitted to home detention pursuant to Arts. 47 ter and quinquies of the Penitentiary Order.

12. While the protected family houses, being destined to subjects unrelated to the detention circuit, are structured by the Penitentiary Administration, the ICAM has the legal status of Institutes of Attenuated Custody for Mother Detainees.

13. Support for the parental relationship during the period of detention - directed not only to the mothers detained but to the entire restricted population, together with the attention paid to children accessing prison on a temporary basis, for visits to the parents - have long been a major goal of administrative action.

14. Since long time, the programming of specific treatment initiatives at the Penitentiary Institutes has been covered by Directives from the central administration and has been incentivized on a regional basis by all the Territorial Unified Plans formulated by the *PRAP*.

15. Likewise, the training activities are addressed to both the treatment and penitentiary Police staff, with particular reference to the staff who work at the ICAM and the nursery sections, as well as staff working in the meeting rooms of the Institutes.

**II and III – N/A in Italy**

**IV Migration**

16. In addition to the recent DDL Zampa entered into force in April 2017 which focuses on the full protection of unaccompanied minors, including after their coming of age, in order to provide an overview of the information concerning migrant women, please kindly refer to the Plan on Integration adopted on September 27, 2017 and available in English at the following link: <http://www.interno.gov.it/sites/default/files/piano_nazionale_integrazione_eng.pdf>.

17. Likewise, mention should be made of: the National Action Plan against Trafficking in Human Beings and Serious Exploitation (available in Italian, at the following link: <http://www.pariopportunita.gov.it/contrasto-della-tratta-di-esseri-umani/>); and Act No. 119/2016, the so-called Law against *Caporalato* (illegal brokering of jobs).

1. Arts.37, 51, 117 Cost.. [↑](#footnote-ref-1)
2. The Constitutional Court consists of fifteen judges; one-third being appointed by the Head of State, one-third by the Parliament in joint session, and one-third by ordinary and administrative supreme courts. [↑](#footnote-ref-2)
3. In terms of composition, each Ministry appoints a specific human rights focal point participating in its work. The CIDU thus consists of, among others: Presidency of the Council of Ministers (acronym, PCM); Ministry of Justice; Ministry of Interior; Ministry of Education; Ministry of Labour; Ministry of Health; Ministry on Economic Development; Ministry of Defence; Ministry on Environment; Ministry on Agriculture; Ministry on Cultural Heritage; the National Office against Racial Discrimination; CSM; CNEL; **ISTAT**; Carabinieri Corps; Revenue Guards Corps (*Guardia di Finanza*); the National Association of Italian Municipalities (in Italian, ANCI); and the Italian Society for International Organizations (SIOI)). [↑](#footnote-ref-3)
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5. and performs the following tasks:

   a) Review laws, regulations and administrative measures relating to HR commitments and pledges made at an international level;

   b) Advisory activity on the adoption of provisions in line with relevant international obligations;

   c) Coordination and reporting relating to international human rights standards - that Italy is requested to submit to the UN, Council of Europe, and other Organizations and mechanisms in the field of human rights;

   d) Participation in international conferences and fora, such as the yearly sessions of the UN Human Rights Council (Geneva) and the UNGA Third Committee (New York);

   e) Preparation of the national reports and consideration of Italy under the Universal Periodic Review Mechanism (UPR);

   f) Elaboration of and focal point for the National Action Plan on Women, Peace and Security in accordance with Security Council Resolution 1325(2000);

   g) Elaboration of the National Action Plan on Business and Human Rights. [↑](#footnote-ref-5)
6. Additional information is available at the dedicated webpage of last Italy’s consideration by the UN CEDAW Committee (July 2017). [↑](#footnote-ref-6)