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Racism, racial discrimination, xenophobia and related forms of intolerance: follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement on its visit to Italy

Comments by the State*

* The present document is being issued without formal editing.



Comments by the State on the Report of the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement on its visit to Italy

III. Systemic Racism

1. *Paragraph 22:* Within the Italian system, structures managed by the Ministry of the Interior or the Municipalities host, take care and assist unaccompanied foreign minors (UAMs). They are not under administrative detention and could spontaneously and unduly leave centres for territories where they believe to have greater opportunities for social and labour inclusion. These areas are mainly major municipalities where, in any case, they could access to reception and assistance. However, this alternative impacts on fullness of facilities and inevitably on low UAMs public assistance for long periods. To best manage this phenomenon, two notices have been published in August 2024, aimed at expanding the second reception network for UAMs, respectively through an expansion of 600 places in the SAI network projects and through a FAMI project aimed at creating 210 places specifically for UAMs with additional vulnerabilities.

2. *Paragraph 24 (and 27, 32, 33):* The Observatory for Security against Acts of Discrimination (OSCAD) is an inter-agency tool established, by decree of the Chief of Police, in September 2010 to respond operationally to the demand for security of people belonging to "vulnerable categories", by systematizing and giving further impetus to the activities carried out by the Italian National Police and the Carabinieri in the field of prevention and fight against hate crimes. The Observatory, set up within the Public Security Department – Central Directorate of Criminal Police -, is presided over by the Deputy Director General of Public Security – Director General of Criminal Police - and is composed of representatives of the National Police, the Carabinieri Corps and the departmental units competent in this field. The OSCAD's main objectives, which are closely interconnected, are the following: to facilitate the filing of complaints on hate crimes in order to effectively combat the phenomenon of under-reporting, thus increasing its visibility; to carry out a fruitful monitoring, also through an in-depth analysis of open sources; to raise awareness, train and constantly update law enforcement officers' skills to combat the phenomenon of under-recording (lack of recognition of the discriminatory nature of the crime). As for the last sentence of para. 24: OSCAD has no duties to supervise investigations of hate crimes even if they are committed by police officers. However, in such cases such crimes are prosecuted (by the Police and Carabinieri) both criminally and at the internal administrative level with disciplinary measures.

3. *Paragraph 25:* Considering, therefore, the aforementioned objectives, OSCAD does not have investigative tasks, but rather to give impulse to investigations, where they have not already been undertaken, or to request information from the offices of the National Police and the Carabinieri investigating throughout the country. All OSCAD staff have years of experience in identifying the signs that can bring out the discriminatory element in the commission of hate crimes and hate speech, as well as specific training on these issues. Therefore, the specific training on hate crimes that OSCAD provides both through in-person training activities, through the creation of training modules to be delivered online, and through training activities carried out within the framework of European projects (as specified during the delegation's visit) is of relevant importance.

IV. Law Enforcement

C. Use of force regulation

4. *Paragraph 43:* Article 53 of the Criminal Code, which regulates the use of weapons by public officials, has been in force since 1930 and there is no interpretative uncertainty in case law as to the limits of application of the absence of liability; in fact, it is a well-established principle that 'for the purposes of the absence of liability referred to in Article 53 of the

Criminal Code, the use of a weapon must constitute the “extreme ratio” and that, among various means of coercion, the least harmful must be chosen and also graduated according to specific needs of the case in compliance with the principle of proportionality’ (Cass. Sect. 4 - Sentence No. 35962 of 02 December 2020, lastly reaffirmed in Sect. 4 - Sentence No. 3727 of 11 January 2024. The prosecution on complaint provided for the offence of very slight (up to 20 days) and slight (from 21 to 40 days) personal injuries, introduced following the Cartabia reform, now operates even if the offence is aggravated pursuant to Article 61 no. 9) (“having committed the act with abuse of power, or with violation of the duties inherent to a public function or a public service [...]), which may include cases of excessive use of force by the police. It is true, however, that in the most significant cases, i.e. when the injuries are voluntarily carried out for the purpose of committing the crime of torture, the prosecution for the same is ex officio by virtue of the referral mechanism from combined provisions of Articles 582(2), 576(1)(1) and 61(2) of the Criminal Code. Additionally, the use of physical force and the use of means of coercion within prison facilities is governed by Article 41 of the Prison Ordinance Law (O.P), which legitimises the use of physical force in particular emergency situations, in order to avoid a serious and current danger to order or security in expressly regulated cases, always in compliance with the principle of proportionality. Therefore, the amount of force used must be the minimum necessary (‘The use of physical force against detainees and inmates is not permitted unless it is indispensable to prevent or impede acts of violence, to prevent escape attempts or to overcome resistance, including passive resistance, to the execution of orders. Any staff member who, for any reason whatsoever, uses physical force against prisoners or inmates must immediately report the matter to the director, who shall, without delay, order medical examinations and carry out any other appropriate investigations. No means of physical coercion may be used that is not expressly provided for in the regulations and, in any case, it may not be used for disciplinary purposes but only to prevent damage to persons or property or to ensure the safety of the person concerned. Use must be limited to the time strictly necessary and must be constantly monitored by the medical officer. Officers on duty within the institutions may not carry weapons except in exceptional cases when ordered to do so by the director”).

E. Organized crime and war on drugs

5. *Paragraph 52:* Data provided by the Department of Penitentiary Administration show that, as at 31 December 2023, out of a total of 20,566 persons detained for drug offences (i.e. 34.2 per cent of the inmate population), 5,988 were foreigners and 14,578 were Italian.

6. *Paragraph 54:* The possession of a quantity of active component beyond a 'single dose' in tables annexed to Presidential Decree No. 309/90 is not a criminal offence – as reported in footnote 51. The rationale behind personal consumption, and thus the non-criminal nature of the offence, may not be dismissed, even for significantly higher quantities: in such circumstances, consequently, there is no criminal sanction. Furthermore, considerations as referred to in para. 54 provide a coherent link between quantitative disproportion between convictions for drug offences among Italian citizens and those of African origin, and the high percentage of the latter ones who live in irregular and social exclusion conditions.

F. Oversight

7. *Paragraph 57 (and 110):* The National Guarantor of the Rights of Persons Deprived of their Liberty, as National Preventive Mechanism against Torture and Cruel, Inhuman or Degrading Treatment or Punishment under the Optional Protocol to the UN Convention against Torture, performs a preventive control over the activity of various Police Forces as for legitimate use of force and means of coercion; it also receives complaints and reports from persons deprived of their liberty who believe they have been abused by the Police Forces.

8. *Paragraph 59 (and 111):* In 1660 bill on public safety, which is being debated in the Chamber of Deputies in these days, an amendment was approved to provide the use of

bodycams for Police Forces. This provision allows Police Forces to use wearable video surveillance devices in public order maintenance services, territorial control, surveillance of sensitive sites, as well as in railways stations and on-board trains, and makes it possible to use video surveillance in places and environments where persons subject to restrictions on personal freedom are located.

H. Migrants and asylum seekers

9. *Paragraph 63:* It is not clear which services are referred to: Police Offices have the task to identify migrants, while reception services are managed by civil authorities (Prefectures).

10. *Paragraph 65:* Hotspots are not detention centres, while detention centres for repatriation are those ones where detention is in any case validated by the Judicial Authority.

11. *Paragraph 66:* The term ‘punishment’ seems inappropriate. The purpose of CPRs is the identification of the migrant with no right to stay on the national territory, for the ultimate purpose of repatriation.

12. *Paragraph 67:* Centres: The recently approved tender specifications, as outlined in the Ministerial Decree of 4 March 2024, envisage a notable expansion in the services provided in centres for repatriation. This is intended to address critical situations that have affected these facilities and to guarantee the implementation of adequate reception standards, particularly in view of the extension of the length of stay introduced by Law Decree No. 124/2023. In order to achieve this objective, the number of hours allotted to the following professionals has been increased: 24-hour professionals; psychologists and social professionals, to ensure an appropriate psychological support and assistance to persons, who are vulnerable and need for proper protection; linguistic mediators on a 24-hour basis. Services: Reception services are provided according to provisions set forth in tender specifications and related technical arrangements. The manager is selected through a public tender process. Consequently, whenever private, the selected manager is obliged to fulfil contractual obligations and guarantee the supply of goods and reception services, in accordance with the regulations set forth in tender specifications. With regard to healthcare, all migrants in centres are entitled to access the National Health Service. Additionally, a supplementary healthcare service is provided, guaranteed by medical and nursing personnel available for the manager. Moreover, services must be provided in compliance with Directive of 19 May 2022. Finally, tender specifications stipulate that all personnel providing services to persons in centres, including medical staff, must possess training requirements to perform their tasks. In this regard, Article 21 of the aforementioned tender specifications establishes that: “In the event of non-performance or inexact performance of services covered by the contract, the Prefecture shall apply a penalty, varying depending on the gravity of the breach, between 5 per thousand and 5 per cent of the monthly contractual amount, excluding VAT and security charges, for each breach. This is in accordance with Article 1382 of the Civil Code, which also allows for compensation for further damage”. Concurrently, Article 22 stipulates the termination of the contract following a violation of fundamental rights of the individual, as stated in Article 1, paragraph 8, of the specifications. These fundamental rights include, but are not limited to, considerations of an individual's origin and ethnicity, religious beliefs, health, gender differences, vulnerable situations, and the unity of families composed of spouses and relatives within the first degree. Moreover, the contract shall be terminated in the event of a failure to report facts and circumstances, including those beyond individual control, from which personal injury or significant damage to the facility or equipment has resulted. Additionally, failure to comply with the obligations set forth in Article 17, paragraphs 2, 3 and 4 (relating to the obligations of the successful tenderer in the performance of the contract) shall result in the termination of the contract.

13. *Paragraph 68:* As reported about monitoring of forced return flights, the issue of a lack of specific discipline on the use of force also concerns forced return procedures (Thematic report on monitoring activity of forced-return operations of foreign nationals, 1 July 2021 - 15 September 2022, <https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/cd6af12d5fa98>

80883725fee54234386.pdf): “What is therefore revealed is that the overall profile of the set of non-primary sources concerning forced returns in our system is substantially still inadequate and deficient. The knock-on effects are significant. First and foremost, they concern the possible recourse to the use of force and the use of restraining tools: actions exercised without a specific provision of law, typified for such operations, which fully regulates their modes and prescribes the type of coercion tools envisaged in the equipment supplied to escort personnel, the rules for their application, the authorised personnel, the health protection aspects and the reporting and recording obligations of the event”). Moreover, in relation to the lack of documentation of activities carried out by the Police Force in particular in relation to critical events, including coercive interventions, please see the National Guarantor letter sent to the Chief of Police on 7 December 2023: <https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/f36445472b83bbb107373728ea87ab6.pdf>.

I. Law enforcement wellbeing

14. *Paragraph 74:* According to data from the Ministry of Justice, as of 31 July 2024, there were 583 prison police officers on duty at the Milan San Vittore Prison. This figure represents a shortage of 72 officers compared to 655 originally foreseen. The shortage in the number of juridical-pedagogical officers and administrative staff appears to be less pronounced, with a reduction of one and ten, respectively.

V. Criminal Justice System

A. Overrepresentation of Africans and people of African descent

15. *Paragraph 77:* According to data from the Ministry of Justice, as of 31 December 2023 there were 175 foreign juvenile detainees (aged 14 to 17), representing 60.76% of the total number of detainees. If young adults (up to the age of 24) are also considered, the total number of detainees rises to 268 (or 54.14%), of whom 42.22% were of African nationality (Source: Department of Juvenile and Community Justice).

B. Conditions of detention and overpopulation

16. *Paragraph 82 (and 119):* It is noteworthy that the recent approval of Decree-Law No. 92 of 4 July 2024 (Urgent measures on penitentiary, civil and criminal justice and Ministry of Justice personnel matters) has been converted, with amendments, by Law No. 112 of 8 August 2024 (the so-called 'prisons' decree-law), addressing the issue of overcrowding. It should be noted that the Cartabia reform (Legislative Decree No. 150 of 2022) introduced Article 20-bis of the Criminal Code, which establishes the regulatory framework for alternative penalties to short prison ones such as: semi-liberty, home detention, work of public utility, and pecuniary penalties. In these circumstances the judge, through the implementation of a recently introduced 'sentencing' mechanism (Article 545-bis of the Code of Criminal Procedure), could issue an alternative custodial sentence in cases of imprisonment or arrest not exceeding four years, prior to the commencement of enforcement. Furthermore, the Legislative Decree incorporated the concept of restorative justice into the criminal system as a complementary one (Articles 42 to 67, as well as 92 and 93 of Legislative Decree No. 150 of 2022): it has significant potential to reduce recidivism and promote social pacification, which could indirectly contribute to reducing prison overcrowding also accounting for specific characteristics of social groups.

17. *Paragraph 85:* According to data of the Ministry of Justice, in 2022 and in 2023 84 and 68 suicides were recorded respectively, and as at 30 June 2024 suicides amounted to 46, 21 of whom were foreigners (6 of African origin). During the visit of the Mechanism, in the meeting with the National Guarantor tables containing the relevant figures were shared (85 suicides in 2022, 67 in 2023, 32 as of April 30, 2024). Divergences in figures for 2022 and 2023, as highlighted in the report for the period 2020-2022 (footnote number 2), pertain to a

female suicide case that occurred in December 2022 but resulted in death in a hospital setting in January 2023. The note explicitly indicates that the suicide was included in the 2022 total.

C. Torture in detention

18. *Paragraph 88:* With regard to the death ‘occurring in unclear circumstances’, through a check on ‘critical events’ application showed that the person - located at the time in the SAI ward of Naples Poggioreale (for detainees suffering from serious health problems) - died of cardiac arrest, in the absence of other critical events.
