



Comitato per la promozione e protezione dei diritti umani

Member of the FRA Fundamental Rights Platform

Member EU Civil Society Platform Against Trafficking in Human Beings

Accredited Observer to WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)

JOINT SUBMISSION OF INFORMATION

To the UNITED NATIONS

IN CONNECTION WITH THE CONSIDERATION OF

ITALY

**Universal Periodic Review
20th Session**

A.GE. , AGEDO, AGENZIA DELLA PACE, AGESCI, ANFAA , ANOLF, ANTIGONE , ARCHIVIO DISARMO, ARCHIVIO IMMIGRAZIONE, ARCI, ARCIGAY , ARTICOLO 21 , ASGI-ASSOCIAZIONE STUDI GIURIDICI SULL'IMMIGRAZIONE, ASSOCIAZIONE CAMPANARI D'ARRONE , ASSOCIAZIONE ELEONORA PIMENTEL, ASSOCIAZIONE ASTRO NASCENTE, ASSOPACE, ASSOCIAZIONE SENZA CONFINI, ATD-QUARTO MONDO , AUCI, AUSER, BANCA ETICA, BE FREE, CASA DEI DIRITTI SOCIALI, CGIL , CHIAMALAFRICA, CIAI, CIPAX, CIPSI - COORDINAMENTO DI INIZIATIVE POPOLARI DI SOLIDARIETÀ INTERNAZIONALE, CIR-CONSIGLIO ITALIANO RIFUGIATI, CISL DIPARTIMENTO POLITICHE MIGRATORIE, CISMAI, CISP-COMITATO INTERNAZIONALE SVILUPPO DEI POPOLI , CITTADINANZATTIVA, CND – CONSIGLIO NAZIONALE SULLA DISABILITÀ, COMITATO PER I DIRITTI UMANI , COMITATO SINGH MOHINDER , COMITATO UNRWA ITALIA, DONNE IN NERO, EMA, FEDERAZIONE CHIESE EVANGELICHE, FONDAZIONE CENTRO ASTALLI, FONDAZIONE INTERNAZIONALE DON LUIGI DI LIEGRO, FONDAZIONE BASSO-SEZIONE INTERNAZIONALE, FONDAZIONE LABOS, FVGS, GIOVANI PER UN MONDO UNITO, GRUPPO MARTIN BUBER, ICS-CONSORZIO ITALIANO DI SOLIDARIETÀ ' , IISMAS-ISTITUTO INTERNAZIONALE SCIENZE MEDICHE ANTROPOLOGICHE E SOCIALI, IMS – INTERNATIONAL MEDICINE SOCIETY, INTERSOS, INTERVITA , IRMA , ISTITUTO COOPERAZIONE ECONOMICA INTERNAZIONALE, ISTITUTO DI MEDICINA DEL SOCCORSO, LABORATORIO DIRITTI UMANI, LA GABBIANELLA, LAW-LEGAL AID WORLDWIDE, LEGAMBIENTE, LEGA INTERNAZIONALE PER I DIRITTI E LA LIBERAZIONE DEI POPOLI , LIBERA , MED.EA, MEDICI CONTRO LA TORTURA, MEDICI PER I DIRITTI UMANI, MOVIMONDO, OLTRE BABELE , OSSIGENO INFORMAZIONE, PAXCHRISTI , PONTE DELLA MEMORIA, PRO.DO.C.S., PROGETTO CONTINENTI, RETE EDUCARE AI DIRITTI UMANI, SAVE THE CHILDREN, TERRE DES HOMMES, UBI MINOR, UDI-UNIONE DONNE IN ITALIA, UIL , UNICEF ITALIA, UNIONE FORENSE PER LA TUTELA DEI DIRITTI UMANI, UNITS , VIDES INTERNAZIONALE, VIS-VOLONTARIATO INTERNAZIONALE PER LO SVILUPPO, WILPF-WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM *and with the collaboration of* AMNESTY INTERNATIONAL, FOCSIV, MANI TESE, MEDICI SENZA FRONTIERE

Rome, 1st March 2014

JOINT SUBMISSION OF INFORMATION

1. ESTABLISHMENT OF AN INDEPENDENT NATIONAL HUMAN RIGHTS INSTITUTION

KEY WORDS: broad mandate, effectiveness, fragmentation, inclusive process, independence, National Human Rights Institution, obligation, ombudspersons, Paris Principles, participatory process, sectoralization, status A, technical advice, transparency, voluntary pledge

1. Italy is one of the States (www.nhri.net) still lacking an independent national institution for human rights (NHRI) and still not fulfilling Paris Principles and the Resolution 48/134 endorsed by the UN General Assembly on December 20, 1993, in addition the Resolution of the Council of Europe (97)11, of September 30, 1997 and all specific pertaining recommendations made by each UN Treaty bodies that have examined the Italian context in the last recent years (CRC/C/15/Add198 of March 18, 2003; CESCR/ ITA/ 04 of November 26, 2004; CCPR/C/ITA/CO/05 of November 2, 2005, CEDAW, 2005 A/60/38 (SUPP); CAT/C/ITA/CO/4 of May 18, 2007, CERD/C/ITA/CO/15 of March 7, 2008, CERD/C/ITA/CO/16-18 del 9 marzo 2012) who have highlighted this deficiency. In particular CERD in 2008 applied a special *follow up* procedure on this matter, requesting the Italian Government to provide information about advancements and implementation made within the year following the 2008 CERD Concluding Observations; such information was never made public. In addition, such absence is aggravated also by the unfulfilled commitment deriving from the ratification made by Italy (2206, Law no. 18/2009) to the UN Convention on the Rights of Persons with Disabilities.
 2. With reference to the reasons for which Italy has an urgent need for a NHRI, independent and effective, we would like to recall some specific aspects tightly linked to the issue:
 - risk for proliferation and fragmentation of sectorial and local mechanisms;
 - lack for a coherent, integrated and effective strategy for human rights promotion and protection also with regard to a permanent preventive approach;
 - added value and advantage deriving from the experience and best practices of many other countries.
 3. With reference to the political will of the Government to undertake the process to the establishment of a NHRI, even if there are important formal declarations made by the previous Prodi and Berlusconi Governments, and the last Government, just ended, upto now no real and concrete action has been implemented in such direction.
- **On May 8th, 2007**, Prodi's Government, in the voluntary pledge for membership to the UN Human Rights Council, committed itself in front of the UN General Assembly¹ to "*create the National Independent Commission for the Promotion and Protection of Human Rights and Fundamental Freedoms*".
 - **On December 10th, 2008**, during Berlusconi's Government, on the 60th Anniversary of the Universal Declaration of Human Rights, the Italian Minister for Foreign Affairs, Mr. Frattini, formally announced a draft Bill for a NHRI prepared by the Government Berlusconi, which

¹ Document A/61/863.

nobody has even had the opportunity to read, even if, in repeated occasions, it has been formally requested to be informed about it.

- **On February 11th, 2011**, Berlusconi's Government, in the voluntary pledge for the second mandate of membership to the UN Human Rights Council, committed itself in front of the UN General Assembly² to "*implement in a timely manner all (UPR) accepted recommendations...and the commitment to establish a national independent human rights institution in accordance with the Paris Principles*".
- **On September 19th, 2013**, Letta's Government, on the occasion for the launching of the *Annuario Italiano dei Diritti Umani 2013* (Italian Yearbook of Human Rights) the President of the Human Rights Commission of the Senate, Mr. Luigi Manconi, formally announced the intention of Italy to propose its candidature, for the third mandate to the UN Human Rights Council in 2019.

4. With reference to the Parliament, four Legislatures past during which many Draft Laws for the establishment of different types of National Commissions for Human Rights or Ombudspersons specific for some sectors (children, detainees, migrants) have only been proposed but have had no concrete follow up, except for the Ombudsperson for the Children finally established in 2011.

- **From 2004 to 2006**, during the XIV Legislature (from May 2001 to April 2006), Draft Bill no. 3300, "Istituzione della Commissione italiana per la promozione e la tutela dei diritti umani in attuazione alla Risoluzione n. 48/134 dell'Assemblea Generale delle Nazioni Unite del 20 dicembre 1993" (*Creation of the Italian Commission for the promotion and protection of human rights as per Resolution no. 48/134 UN General Assembly of December 20, 1993*)- first undersigner Senator Antonio Iovene and undersigned by other 28 senators- presented to the Senate in 2004, could not even start its legislative *iter* for discussion. Notwithstanding specific UN Recommendations (2.11.2005; 26.11.2004; 18.3.2003) and pressure on behalf of the civil society, it was not even assigned to the competent Commissions of the Parliament.
- **June 2006**, at the beginning of the XV Legislature (from April 2006 to February 2008), the Draft Bill with no. 247 was again presented to the Senate - first undersigner Sen. Antonio Iovene, undersigned by other 32 senators- and was assigned to the Constitutional Affairs Commission and Justice Commission of the Senate.
- **December 2006**, the Draft Bill was also presented to the Chamber of Deputies - first undersigner Hon. Tana de Zulueta. In December 5, 2006, the *Comitato*, and the *National Institutions Unit of the Office of the High Commissioner for Human Rights of the United Nations*, co-organized an International Workshop, held in Rome at the Chamber of Deputies, to which a UN experts delegation participated together with institutional representatives, parliamentarians, academic experts, media and representatives of the civil society and NGOs. Due to the strong impact of the workshop, the Draft Bill presented at the Chamber of Deputies was unified with the Draft Bill for an Ombudsperson for the Rights of Detainees and of Persons Deprived of their Personal Liberty.
- **On April 5, 2007** the Chamber of Deputies approved Draft Bill no. 1463: "Commissione Nazionale per la promozione e la protezione dei diritti umani e la tutela dei diritti delle persone detenute o private della libertà personale" (*National Commission for the Promotion and Protection of Human Rights and the Safeguard of the Rights of Detainees and Persons Deprived of Their Personal Liberty*), resulting from the unification of Draft Bills presented by Hon.

² Document A/61/863.

Mazzoni (no. 626); Hon. Mascia, Hon. Forgione, Hon. Farina, Hon. Frias and Hon. Russo (no. 1090); Hon. Boato and Hon. Mellano (no. 1441) and Hon. De Zulueta (no. 2018).

With regard to its *iter* for Parliamentary discussion, notwithstanding specific Recommendations of CESCR no. 32 and CCPR no. 7 – even then no consultative procedure, inclusive, transparent and participatory, taking into account and involving civil society, was applied.

- **In May 2007**, Draft Bill no. 1463 was approved by the Chamber of Deputies and then passed over, as foreseen by the Italian juridical system, to the Senate and assigned in September by the President of the Senate jointly to the Commissions Constitutional Affairs and Justice. Nevertheless, Draft Bill no. 1463 was never included on the agenda, and therefore with no date for examination, and never discussed in the Senate.
- **June 2008**, at the very beginning of the XVI Legislature (from April 2008 to December 2012), again new Draft Laws were again presented to the Senate (Sen. Marcenaro DDL 1223) and to the Chamber of Deputies (Hon. Maran DDL 1918 and Hon. Giulietti DDL 1720). The text was finally consolidated by the Senate into the DDL 4534 on **July 20, 2011**. The DDL 4534, however, never managed to complete its legislative *iter* as it did not succeed in having the second approval on behalf of the Chamber of Deputies (as required by the Italian legislation the two Chambers must express their consent for a DDL to become a binding Law), where it underwent various changes but the process was never concluded. The entire process from 2008 to 2012 when the Legislature ended, never included in any passage the civil society, notwithstanding the continuous work carried out by the organizations that have been monitoring and contributing through information and knowledge on this matter and the human rights mechanisms at international level and in the country.
- **In May 20, 2013**, Draft Bill n. 1004 “Creation of a National Commission for the Promotion and Protection of Human Rights”, (Hon. Kjalid Chaouki and 82 parliamentarians) was presented to Chamber of Deputies, during the XVII Legislature (from April 2013 – still open). The text presented is based on the previous consolidated DDL with some small changes and no involvement in any passage of the civil society. Even if assigned to the Commission for Constitutional Affairs, it has up to now never been included on the agenda, and therefore, still lacking a date for examination. Presently a new Government was just sworn, therefore, we are awaiting for the *iter* to proceed.

5. After a very long process, finally in November 2011, the National Ombudsperson for Children “Garante nazionale per l’infanzia e l’adolescente”, was appointed as per Law n. 112 of July 12, 2011. However, this came after many years of struggle and only after a year of its appointment, since 2012, it could start operating effectively due to lack of physical and economic resources, with some components still not in line with Paris Principles and International standards.

6. Even if the establishment of specialized human rights mechanisms contributes however to the promotion and protection of human rights, nevertheless, there is a risk that their creation will postpone *sine die* or even put aside the establishment of an independent NHRI plenipotentiary and with broad mandate. However, based on the present situation, it would be necessary to establish an independent NHRI foreseeing a strong interaction and sharing with the already existing National Ombudspersons.

In this direction, we would like to reiterate our belief that for the Italian situation a more appropriate and effective policy, also based on the wide international experience and best practices

on this matter, is the creation of an independent national institution plenipotentiary and with broad mandate.

7. The choice for the establishment of a National Independent Institution for Human Rights, unique and independent, with broad and strong power, within which a set of specific sections will operate (e.g. for children, migrants, detainees, for economic, social and cultural rights,) is the *strategic* and *far-sighted* political *concrete* action to be taken:

- a) *Far-sighted*, since it allows to effectively realize the specific human rights and required sectorial specializations avoiding fragmentation of efforts and capabilities, which imply the risk of a non coordinated and unbalance national policy in this domain.
- b) *Strategic*, since it would incorporate in its institutional policy the core principles of universality and indivisibility of human rights.
- c) *Concrete*, since the creation of one, unique and plenipotentiary institution for human rights promotion and protection would be the most economic, both in terms of financial and human resources, and effective strategy.

8. Present concrete experience of NHRI, in Europe and abroad, is to be in line with Paris Principles. European countries, such as Sweden and UK, whose giuridical tradition is rich of ombudspersons and specialized agencies for human rights, are also moving towards a gradual coordination and – when possible – merging together such mechanisms with a specific or limited mandate in order to set up a well defined mechanism as practice has shown how human rights need a systematic and comprehensive approach.

9. Recalling what expressly recommended by Paris Principles: the creation of a NHRI be carried out through a transparent, participatory and inclusive process of all social forces of the civil society; as they clearly refer to a broad conception of civil society including non governmental organizations and associations active in the field of human rights and in the social sector, trade unions, professional categories, philosophical and religious thinking and university; finally they recommend the involvement and active participation of civil society at least in three phases of the life of the national institution for human rights, such fundamental requirements should be clearly kept in mind at governmental level in the process of establishing a NHRI in Italy.

10. More specifically, particular attention should be given in the following three steps of such endeavour:

- a) *Creation*: as the decision making moment marking the beginning of the iter leading to the creation of the NHRI cannot exclude the involvement of civil society, that has to express its opinion about the role and the functions of the NHRI, mandate and powers, and finally the issues that it will have to deal with.
- b) *Composition/Appointment of NHRI Members*: credibility and legitimacy of the NHRI are important and its members are expression of the principle of pluralism and variegated reality (social, ethnical, religious, and cultural) which each national entity represents. From this depends most of the democratism of the institution, again it is fundamental that civil society is involved both in the identification of appointment criteria for its members and in the consultation that will entrust assignments. In both cases, a broad, participatory and transparent process of consultation is desirable.

- c) *Mechanisms and Methods of Cooperation Between the NHRI and Civil Society*: such mechanisms must be defined in the law establishing the institution, with the reservation that further definition or specification is remitted to the regulations the NHRI must adopt once it has been established.

11. As per the legislative *iter* it can be noted that, besides the awareness of some parliamentarians, in these years from 2004 to 2013 there has never been a clear participatory and inclusive procedure involving the civil society, even if the Paris Principles clearly recommend that the creation of a NHRI is carried out accordingly. Such involvement has been strongly highlighted also by the formal recommendations expressed by the National Human Rights Office of the UN High Commissioner for Human Rights.

12. In addition, we would like also to express here our serious concern about the low coverage given by national media to human rights issues especially related to violations and critical situations concerning the internal Italian scenario – besides violations and issues related to third country citizens or Rom, such as internal South/North juvenile migration, domestic violence, elder rights, disabled rights, health rights, poverty, minor criminality, prisons, ecc. and last but not least the issue concerning the creation of a National Independent Human Rights Institution.

Even if at CSO's level some NGO's active in the field of the media are presently implementing awareness raising activities, especially through the social network and their monitoring on specific aspects connected with information and communication, nevertheless, the media continue to be not adequately conscious of the importance of the promotion and protection of human rights especially at national level, with regard to national and non national citizens.

13. We would like also to recall our concern about the fact that media did not stress adequately the seriousness of some statements made by some politicians, during the debate in the Chamber of Deputies of the Draft Bill n. 1463 for the establishment of a NHRI, who publicly defined the establishment of such mechanism as an issue concerning “*third world countries*” and not “*..in countries as Italy with a high level juridical civilization, with a culture and tradition for order and the “right”, a NHRI is useless, plethoric and expensive...*”.

RECOMMENDATIONS:

- The Italian Government should implement the voluntary pledges undertaken on May 8, 2007 and February 11, 2011 in connection with Italy's membership to the UN Human Rights Council, and start a transparent, participatory and inclusive process, including the hearing of the civil society, in order to establish a National Independent Human Rights Institution in line with the Paris Principles.
- The Italian Government should make any effort to establish a NHRI able to be accredited with Status A within the UN Human Rights Council, after so many years of delay.
- The Italian Government should avail itself of the Technical Advice (juridical advices, hearings, joint studies and training programmes, etc) of the National Institutions Unit of the Office of the UN High Commissioner for Human Rights in order to take advantage of its expertise with regard to the application of the Paris Principles and the best practices of many countries that have already complied with the requirements contained in the UN Resolution 48/134 of December 20, 1993 creating NHRI independent and effective.