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**Universal Periodic Review (UPR)**

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**ITALY**

**SUBMISSION BY FRANCISCANS INTERNATIONAL**

**September 2009**

1. This report is prepared by Franciscans International (FI) on the basis of concerns raised by members of the Franciscan Family in respect of human rights on the occasion of the Universal Periodic Review of Italy. Italy is a Member State of the European Union, as well as of the Council of Europe and a signatory to the main United Nations human rights instruments. As such it is committed to providing a high standard of human rights for those who come within the State's jurisdiction. The issues raised herein include the following:

1. The treatment of migrants.
2. Abuse of detainees.
3. Delays in relation to implementation of justice.
4. Environmental concerns.
5. *In vitro* Fertilization.

### **Promotion and Protection of Human Rights in Italy. General Summary.**

2. The state of affairs in Italy as regards the protection and promotion of human rights has been set out comprehensively in various UN and international reports, both in general and specifically with respect to the above-mentioned areas of concern. Thus there is the 5<sup>th</sup> periodic report of Italy in respect of the International Covenant on Civil and Political Rights commented on by the Human Rights Committee on 24<sup>th</sup> April 2006,<sup>1</sup> the Report of the Working Group on Arbitrary Detention dated 26<sup>th</sup> January 2009<sup>2</sup> and in respect of justice delays the most recent interim resolution of the Committee of Ministers of the Council of Europe - DH (2009) 42. It is clear from these reports that whilst Italy is open and cooperative with investigations in respect of human rights matters, many problems still remain to be dealt with effectively.

### **Progress, best practice, difficulties and constraints**

#### ***Treatment of migrants***

3. The topic of Italy's treatment of migrants has been extensively considered in previous UN Reports.<sup>3</sup> Unfortunately rather than progress in the improvement of treatment of migrants there has been a marked deterioration in their situation. The recent decree, Law no.94 of 15<sup>th</sup> July 2009, which came into force on 8<sup>th</sup> August 2009 makes irregular immigration a crime for the first time, punishable by a fine of between ten and fifteen thousand euro. Together with other existing provisions it adds to the harshening climate for migrants arriving in Italy, which has come to the notice of the Franciscan community.

4. This includes particularly the mode of interpretation of Article 12 of the Turco-Napolitano Legislative Decree, no. 286 of 25<sup>th</sup> July 1998. Article 12 makes an act aimed at procuring the illegal entrance of a migrant onto the State territory a crime punishable by a term of imprisonment of between one and five years and with a fine up to fifteen thousand euro.

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<sup>1</sup> CCPR/C/ITA/CO/5

<sup>2</sup> A/HRC/10/21/Add.5

<sup>3</sup> Report of Gabriela Rodriguez Pizarro, Special Rapporteur on the human rights of migrants – dated 15<sup>th</sup> November 2004 (E/CN.4/2005/85/Add.3); Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Doudou Diène – dated 15<sup>th</sup> February 2007 (A/HRC/4/19/Add.4); Report of the Working Group on Arbitrary Detention – dated 26<sup>th</sup> January 2009 (A/HRC/10/21/Add.5).

However this does not apply to humanitarian aid and assistance furnished in Italy to migrants who are in need.<sup>4</sup> Yet in the past few years a number of cases involving what on the face of it were cases of humanitarian assistance, such as the case of the *Cap Anamur* (a boat which had a lengthy history of humanitarian assistance starting with the Vietnamese “boat people”) and in respect of the 7 Tunisian fishermen on trial in Agrigento, have resulted in those rendering such assistance facing criminal charges under Article 12 and having their boats sequestered. Under the new Legislative decree, coming under the umbrella of public security, there appears to be a great risk of an ever increasing polarization of the situation, with legal provisions allowing for the prosecution and imprisonment of Italian citizens who do not report illegal migrants and also the envisioning of private citizens’ patrol groups likely to increase the marginalization of migrants and adversely affect their human rights.

### ***Abuse of Detainees***

5. This is another area which has given cause for concern in the past and continues to do so. It is linked to some extent with the treatment of migrants in that such detainees are often in a significantly weaker position than their Italian counterparts. It is therefore unsurprising that a line of recent cases in respect of infractions of the human rights of detainees involve the expulsion of migrants. In the cases decided by the European Court of Human Rights, of **Saadi v. Italy** (28<sup>th</sup> February 2008), **Ben Khemais v. Italy** (24<sup>th</sup> February 2009) and **Sellem v. Italy** (5<sup>th</sup> May 2009) the Respondent State was found in each instance to have had its decision to expel the respective Applicants to Tunisia impugned as contrary to Article 3 (torture) of the European Convention on Human Rights (ECHR). In the case of **Ben Khemais** the Applicant was in fact deported back to Tunisia, where he was at risk of being subject to torture or inhuman and degrading treatment.<sup>5</sup>

6. However, concerns have not alone been raised in respect of this but also in regard to the alleged brutality against detainees that has sometimes resulted in their deaths. There is also the case of **Sulejmanovic v. Italy** (16<sup>th</sup> July 2009) in which Italy was also found, by a majority verdict, to be in breach of Article 3 (ECHR) in respect of the treatment afforded to the Bosnian applicant in prison. The cases of alleged ill treatment referred to us include that of **Korachi Zouhair, Aldo Bianzino and Marcello Lonzi** paint a disturbing picture of violation of human rights by State officials who are not subjected to rigorous investigation. In the latter two cases where the victims died from such abuse the families and friends have been left bewildered by an apparent unwillingness to investigate thoroughly and to bring to justice those responsible. This amounts to a violation of the right to life and the right to an effective remedy.

### ***Delays in Justice***

7. The problem of delays in justice also links in with the problem of arbitrary detention, particularly as far as unreasonable remand detention is concerned, as noted by the Working Group report on the subject referred to above.<sup>6</sup> A detention imposed so many years after an action was commenced by prosecuting authorities can also only be described as arbitrary. It is

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<sup>4</sup> As per Article 12, 2 of the Turco-Napolitano legislative decree

<sup>5</sup> The Working Group on Arbitrary Detention had recommended the non-deportation of such asylum seekers (A/HRC/10/21/Add.5, §115).

<sup>6</sup> Ibid para. 36

contrary to art. 9 §3 of the International Covenant on Civil and Political Rights, providing that “Anyone arrested or detained on a criminal charge (...) shall be entitled to trial within a reasonable time or to release”. However, delays in justice have a much wider effect not only on the criminal justice system but also on civil society in general. The matter has already come to the fore on the international scene most particularly in the forum of the Council of Europe, and may be described as a running sore. The latest resolution on the matter from the Council of Europe Interim Resolution CM/ResDH (2009) 42, in the context of the 2183 cases against Italy concerning delays in justice, sets out the progress made and the various constraints and difficulties inherent in this. Despite the Resolutions made, the Committee of Ministers notes the continuing backlog in respect of criminal and civil cases and concludes that a final solution to the structural problem of length of proceedings still needs to be found. The effect of the reforms which have already been made will, according to the Committee of Ministers’ opinion, only be seen to be effective or not over the medium term.

### ***Environmental Concerns***

8. Two matters have been brought to the attention of FI in respect of environmental concerns. The first is particular to the polluting effect of the Cerano coal power plant in Puglia, allied to the huge metallurgical plant in Taranto, to which is attributed at least in part the rise in the cancer and mortality rate in the Salento area contrary to the decreasing national and regional trends. Statistics published by Arpa Puglia<sup>7</sup> – a regional agency for the protection of the environment – indicate the concentration of polluting emissions in the area. The figures given as a percentage of total output in Italy give great cause for concern: Puglia being responsible for 81.11% of the emissions of carbon monoxide, 95.48% of those of polycyclic aromatic hydrocarbons, 91.96% of industrial dioxins as well as 62.23% of industrial dust and high levels also of mercury (67.92%) and lead (78.88%). This would incline one to think of a breach of the inhabitants’ rights to enjoy the highest attainable standard of physical and mental health, contrary to Article 12 of the International Covenant on Economic, Social and Cultural Rights, in particular in regard to the improvement of all aspects of environmental and industrial hygiene.

9. The second matter is the more general concern of right to water. In Italy water is considered a State good, a *res communis omnium*. The Government therefore sets out the framework, in line with constitutional norms, and the local regions then organize water services. It is however in the allocation of the provision of these services to private companies that the following features are being noted:

Rise in prices; fixed connection charges, without regard to consumption; absence of social tariff; application of contract law with service cut-off for failure to pay bill.

10. Such occurrences do not sit well with the provision of such an essential commodity, which is a condition precedent to life, another fundamental human right.

### ***In vitro fertilization***

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<sup>7</sup> Regional Agency for Environmental Protection – website [www.arpa.puglia.it](http://www.arpa.puglia.it) The report is entitled *Le Emissioni Industriali in Puglia*.

11. The issue which arises here is the inherent loss of life which occurs through the use of this assisted procreation technique. The figures provided from the Health Ministry<sup>8</sup> in Italy show that over 91.15% of the embryos obtained are subsequently destroyed. No regard seems to be had to this percentage as opposed to the “success rate” of roughly one in three women who succeed in having a child by this method.

**Priorities, initiatives and essential national engagements. FI recommendations.**

12. The issues upon which Italy should work as a priority in the view of FI are as follows:

***Treatment of Migrants:*** What particularly concerns FI is the harshening of the political climate against migrants and the consequent infringing of their human rights. The fear would be that there would be increasing marginalization and criminalization of migrants as a group and that hate attacks such as those reported against the Roma would increase. We would urge Italy to take the following action:

- **Ensure that persons arriving in Italy and with a well founded fear of persecution in their country of origin or habitual residence are informed of their rights to apply for asylum, that these are dealt with in a manner consistent with their human rights, and that any provisions for detention have a proper legal basis.**
- **Ensure that persons who act in a *bona fide* manner to give migrants humanitarian assistance at sea, are not subject to prosecution or sequestration of their boats.**
- **Ensure that stringent safeguards are in place to protect migrants’ rights in respect of private citizens’ patrol groups should these in fact be formed.**
- **Italy should consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, comparing the State’s present treatment of migrants with the standards set out in that Convention.**

13. ***Abuse of Detainees:*** In respect of the expulsion of detainees Italy has now the three recent judgements of the European Court of Human Rights in respect of breaching Article 3 (torture) of the European Convention referred to above.<sup>9</sup> In addition, there are cases of abuse of detainees, such as the case of **Sulejmanovic**, where the Applicant is of Bosnian origin. All of the applicants were thus migrants who, considered as a group, have been noted to be a disproportionate part of the prison population in Italy<sup>10</sup>. FI thus recommends to:

- **Ensure that persons fleeing from likely torture or inhuman and degrading treatment are not deported to their country of origin.**
- **Take special measures to ensure that migrants who are detained are afforded the same standard of treatment afforded to Italian citizens, consistent with their human rights.**
- **Take steps to strengthen the independent investigation and prosecution, where appropriate, of those State officials accused of abuse of detainees. Even in situations where a State force is under significant pressure from combating terrorism an**

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<sup>8</sup> Website [www.ministerosalute.it](http://www.ministerosalute.it) The figures are taken from information released for 2007 and published by the Ministry on 25th March 2009.

<sup>9</sup> **Saadi, Ben Khemais and Sellem.**

<sup>10</sup> The Working Group on Arbitrary Detention notes that 36% of the prison population is composed of foreigners (A/HRC/10/21/Add.5,§63).

**independent and effective oversight mechanism can prove of great benefit in restoring respect for the rule of law – as for example in the case of the Office of the Police Ombudsman in Northern Ireland.**

14. *Delays in Justice:* Justice delayed has often been said to be justice denied and the lengthy and unacceptable delays in the Italian justice system have caused substantial injustices to people. The Committee of Ministers of the Council of Europe has however set out the position in this regard thoroughly in the latest Interim Resolution referred to above, with comments on Italy's co-operation, the priorities and other initiatives required. FI therefore recommends that Italy prioritizes this essential matter to ensure that the State not only enjoys laws which are compatible with human rights but also that they constitute a working legal system. It cannot be emphasized enough that respect for the rule of law can only diminish in such circumstances to the detriment of all citizens living in the State, and to the State itself. FI thus recommends to:

- **Give the highest priority to the issue of delays in justice, given its fundamental necessity to the provision of basic human rights.**

15. *Environmental concerns:* The specific concern that has been raised here in respect of Puglia is emblematic of the problems that many other countries are facing or have faced. The balance has to be found between the need for power and employment in what is a deprived area with the rights of the population of the area to have an adequate standard of living for their health and well being. In regard to the issue of the provision of water the point must be clearly made that water is not a commodity which can be characterized in terms of private contract law - but a public one for which the State must provide safeguards to ensure that the human rights of citizens are not infringed. FI thus recommends to:

- **Assess the situation as regards pollution from the Cerano power plant and the Taranto metallurgical plant and take concrete steps to reduce the levels of pollution and consequent health-related problems suffered by the population in the area.**
- **Clarify the “right to water” in Italian law to ensure that it is not regarded as a private commodity and sold for profit, but rather that its supply be ensured, and not prevented by reason of cost, to those who are most in need. The duty of the State remains the same even if it chooses to use private companies to deliver water services.**

16. *In vitro Fertilization:* The position of the Catholic Church in respect of the commencement of human life has been again restated in the document, *Dignitatis Personae*, issued by the Congregation for the Doctrine of the Faith on 8<sup>th</sup> December 2008. It states: “The human being is to be respected and treated as a person from the moment of conception; and therefore from that same moment his rights as a person must be recognized, among which in the first place is the inviolable right of every innocent human being to life.”

17. That the human embryo is not devoid of any rights under international law is plain from Article 6 of the International Covenant on Civil and Political Rights, where there is a prohibition on the execution of pregnant women. The practice of the technique of *in vitro* fertilization, from the statistics cited above accords this right to less than 10% of the embryos produced. FI recommends to:

- **Review the ethics and the law applied within its jurisdiction in respect of the destruction of embryos.**