



REFUGEES AND WOMEN'S RIGHTS IN ITALY

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1. REFUGEES AND MIGRANT'S RIGHTS IN ITALY

In recent years, Italy has found itself at the center of a complex web of human rights issues, particularly concerning the condition of refugees and migrants seeking asylum in the country. Our goal is to provide an informative and impartial perspective that encourages reflection and raises awareness about the detention practices and repatriation policies in Italy.

According to ISTAT (the National Institute of Statistics)¹, in the year 2020, during the pandemic period due to the spread of the Covid-19 virus, countermeasures resulted in a massive drop in migration flows. Subsequently, 2021 marked an upswing in the mobility of foreign nationals from Africa and Asia to Italy. In addition, this upswing was also, and consequently, due to the less restrictive Covid-19 pandemic containment measures. Indeed, transfers from abroad increased by more than 28.6% from the previous year. This upward trend was also confirmed in the January-October period of 2022, with +13% of flows. Similarly, 2023 was the most critical year as it featured more than 157,300 arrivals to the Italian peninsula, compared to 105,100 in 2022 and 67,400 in 2021. Of these 157,300 arrivals, it must be counted that more than 24,800 are minors (of which 17,300 are unaccompanied). These are flows from the Middle East and North Africa, Sub-Saharan Africa, and Central and South Asia, arriving in Italy often in dire conditions.

1.1 Detention facilities and new measures on immigration

The migration phenomenon is not merely a matter of numbers or statistics, but a human challenge requiring a compassionate, rights-based approach. The Detention centers for repatriation (CPRs) are facilities where migrants subject to a deportation order are held, awaiting identification and repatriation. In recent times there have been numerous changes in CPRs and these changes have occurred in particular following the election of the new government chaired by President Giorgia Meloni, in office since 22 October 2022. This government developed an exclusion-oriented policy choice. Nevertheless, the detention centers for irregular migrants that the government wants to upgrade – with a notable economic investment – do not actually facilitate repatriations and serious human rights violations have been documented inside them.

1.2 The administrative detention of CPRs

With administrative detention irregular migrants are *de facto* detained as they were in a prison, and indeed in conditions that are sometimes worse, but without the guarantees and protections provided by the prison system. Unlike traditional prisons, the main goal of CPRs is not reintegration into society, but deportation. Moreover, the management of CPRs is not regulated by ordinary law but rather by "secondary sources" such as administrative regulations issued by ministries, which do not offer sufficient guarantees for the protection of the rights of the detained persons. This is the reason why the exercise of the rights of detained persons is difficult and uncertain, from the right to health care to legal aid, as well as with regard to the possibility of having contacts with the outside world.

¹ Internal and international migration of the resident population - year 2021, ISTAT: https://www.istat.it/it/archivio/280743

1.3 The repatriations to countries defined as "safe"

Sometimes people who have not explicitly indicated that they wish to seek asylum and who, according to the authorities, come from countries that are "safe" for repatriation, end up in CPRs right away. The criteria by which certain countries are defined as *safe* are controversial. For example, these countries include Tunisia, a place where the human rights of minorities are not guaranteed, and with a national government that is increasingly authoritarian and hostile to migrants from central and southern Africa². Indeed, Tunisia's unstable situation is among the reasons behind the many departures in the early months of 2023. The fact of considering *safe* a country which is not objectively so – or may anyway not be safe in the presence of certain circumstances – makes violations of the fundamental principle of *non-refoulement* very likely, as elaborated in section 1.5 below.

1.4 The deteriorating conditions of detention and the violation of human rights

Under Article 14, paragraph 2, of Legislative Decree 286/1998³, in the CPRs the migrant must be detained in such a way as to ensure the necessary assistance and full respect for his or her dignity. Nevertheless, there have been documented cases of serious **human rights violations** and degrading conditions within the centers.

Starting from the beginning, CPRs are places where people are denied any kind of sociality and contacts with the outside world, where personal freedom is restricted, and where hygienic conditions, subsistence levels and care are often below the minimum acceptable level consistent with the very idea of human dignity. In addition, cases have been reported of treatment that is considered inhumane or degrading⁴. Concerning the latter aspects, the issue of **mental health protection** in CPRs deserves special attention. Unfortunately, many factors can exacerbate, in detainees, the need for psychological and psychiatric support, including the restrictions typical of detention life, the stress often brought about by the lack of information about one's fate, the isolation within the facility, and the absence of contact with the outside world. All this leads in many cases to dramatic episodes that have taken place in these centers over the past few years. Reference is made not "only" to deaths, but also to acts of self-harm⁵ and suicides⁶. The only "response" to the needs of detainees with psychological and psychiatric vulnerabilities has so far been the extensive use of psychotropic drugs. A recent *Altreconomia* investigation documented how large quantities of psychotropic drugs are prescribed and administered daily within the centers, mostly with the aim of sedating the detained persons and preventing them from rebelling ⁷.

https://www.amnesty.it/la-nostra-accusa-al-presidente-tunisino-kais-saied-discorsi-razzisti-incitano-alla-violenza-contro-i-neri

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https://www.normattiva.it/urires/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286

² Our accusation against Tunisian President Kais Saied, Amnesty International, March 2023:

³ 25 July 1998 Legislative Decree, n. 286:

⁴ Trattamenti inumani e degradanti: L'Italia condannata a risarcire tre migranti detenuti illegittimamente a Lampedusa, Melting Pot Europa, 2023: https://www.meltingpot.org/2023/10/trattamenti-inumani-e-degradanti-litalia-condannata-a-risarcire-tre-migranti-detenuti-illegittimamente-a-lampedusa/

⁵ Self-harm behaviour among male undocumented migrants detained in Southern Italian CPR, Dalarna University, October 2023: https://www.diva-portal.org/smash/get/diva2:1817654/FULLTEXT01.pdf

⁶ Moussa Balde's suicide reveals the anomalies of detention centers, Internazionale, May 2021: https://www.internazionale.it/opinione/annalisa-camilli/2021/05/31/suicidio-musa-balde-cpr

⁷ Imprisoned and sedated: the daily abuse of psychopharmaceuticals in Italian CPR, Altreconomia, April 2023: Rinchiusi e sedati: l'abuso quotidianodi psicofarmaci nei Cpr italiani (altreconomia.it)

Furthermore, irregular migrants are not adequately informed of their rights and their ability to legally defend themselves and be able to apply to leave the CPRs themselves. Indeed, one of the greatest human rights violations is the inaccessibility to **the right to due process**; some criticize the decision-making process regarding deportation or return as lacking due process guarantees. They may lack adequate access to counsel, the ability to appeal effectively, and the opportunity to be informed of the reasons for detention.

A further issue concerns **the treatment of minors**. The detention of minors in CPRs is particularly controversial, as it may violate the principle of the superior interests of the child and the Convention on the Rights of the Child. Cases have been documented⁸ where a person has declared himself a minor, which would preclude detention in a CPR, and detention in a CPR has nonetheless been validated due to the absence of "elements of certainty regarding the minor age of the detainee." Yet the law declares that in the absence of certainty, the presumption of minor age applies ⁹.

1.5 The Ineffectiveness of Repatriation Policies

Further complicating the issue is the ineffectiveness of Repatriation Policies, which are characterized by complex and burdensome procedures that are implemented in only half of the cases. Data 10 published on Oct. 6, 2023 by Eurostat reveal the Italian government's difficulties in implementing one of the aspects considered fundamental in the declared fight against irregular migration, i.e. the intensification of repatriation. However, excluding the small portion of migrants effectively repatriated, the others remain in a condition of illegal detention; these people, in addition of being subjected to blatant violations of their internationally recognized human rights, are deprived of the chance to integrate into society. As recalled by the National Guarantor of the Rights of Persons **Deprived of their Liberty** in his report to Parliament in 2021, "Such deprivation must be justified by a viable hypothesis of repatriation: this makes the restriction of freedom illegitimate when there are no agreements with the country of destination that make this hypothesis concretely feasible" 11. Similarly unjustified is the detention of those who cannot be repatriated because of the highly unstable situation in their countries of origin, which would put their lives in danger, considering the principle of non-refoulement contemplated by the 1951 Geneva Convention on the Status of Refugees ("1951 Refugee Convention") in Article 33¹². Possible violations of such a fundamental principle may occur any time when a refugee or a person potentially entitled to any other form of international protection is deported to a country where her/his human rights are likely to be violated, irrespective of the form taken by the deportation in each instant case (expulsion, extradition, etc.). This applies in particular with regard to fundamental human rights, especially freedom from torture or inhuman or degrading treatment and punishment. When violations of such rights are reasonably likely to happen in the country of destination of the deported person, this country cannot be considered safe, and deportation is consequently prohibited according to the principle of non-refoulement. It is essential

⁸ *Il libro nero del CPR di Torino,* Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), June 2021: <u>PERSITO_-Il-libro-nero-del-CPR-di-Torino.pdf (asgi.it)</u>

⁹ L'accertamento dell'età dei minori privi di documenti, Associazione per gli Studi Giuridici sull'Immigrazione (ASGI): L'accertamento dell'età dei minori privi di documenti - Asgi

¹⁰ Returns of irregular migrants up by 29% in Q2, Eurostat, October 2023:

https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20231006-1

¹¹Relazione al Parlamento, Garante nazionale dei diritti delle persone private della libertà personale, 2021 https://www.garantenazionaleprivatiliberta.it/gnpl/it/dettaglio_contenuto.page?contentId=CNG9035&modelId=10021

¹² Geneve Convention, 1951: https://www.ohchr.org/fr/instruments-mechanisms/instruments/convention-relating-status-refugees

to keep in mind that the exception to the applicability of this principle contemplated by para. 2 of Article 33 of the 1951 Refugee Convention – according to which "[t]he benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country" – is not applicable for Italy, as deportation of a person fulfilling the conditions described in this provision is anyway excluded per effect of certain treaties ratified by Italy, notably the 1966 International Covenant on Civil and Political Rights (Article 7), the 1950 European Convention on Human Rights (Article 3), and the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3), which consider *non-refoulement* as a principle of *absolute* character. The same character is conceived under customary international law, in the context of which the principle of *non-refoulement* has attained the status of a rule of *jus-cogens*.

Under the new government, regulations dedicated to Detention Centres for Repatriation and the complex and costly Repatriation policy have undergone changes that are leading to a worsening of the living conditions experienced by migrants and an increment in human rights violations, particularly as regards **deprivation of personal liberty**.

One of these changes is an **increased investment in CPRs**. Indeed, the latest Budget Law of Dec. 29, 2022, No. 197, indicates that "*In order to ensure the most effective execution of foreigner deportation decrees, the Ministry of the Interior is authorized to expand the network of detention centers for repatriation"* (Budget Law, Article 1 paragraph 678)¹³.

In addition to the increment in funds, another change has consisted of the raising of limits of **detention periods**. The terms of the stay of migrants awaiting deportation in return centers have been changed over time through multiple legislative interventions. Former Interior Minister Luciana Lamorgese had previously reduced it from 180 to 90 days (Decree 130/2020)¹⁴, a limit that, with Decree 124/2023, of September 19¹⁵, was increased to 18 months. It is questionable whether these changes have, over time, had any real impact on the effectiveness of detention for the purpose of repatriation of migrants in an irregular position present in the Italian territory. An analysis of the rates resulting from the comparison between detained and repatriated persons shows that the average number of the latter has constantly maintained around 50% never reaching 60%, regardless of the detention terms in force. Therefore, the repatriation rates remained unchanged even when detention periods in CPRs were longer. The relevant data also indicate how the effectiveness of the system of detention measures is not directly related to the extension of the maximum terms of stay in the centers, but is rather due to other factors, first and foremost the level of cooperation offered by each country of origin of migrants. Detention time in a CPR should be of very limited duration, strictly restricted to the time necessary to proceed to the identification and the preparation for repatriation. The issue is that the decision to allocate new funds prolonging the detention time further increases human rights

https://www.normattiva.it/urires/N2Ls?urn:nir:stato:legge:2022-12-29;197!vig=2023-01-10

https://www.normattiva.it/urires/N2Ls?urn:nir:stato:decreto.legge:2020-10-21;130!vig=2021-10-27

https://www.gazzettaufficiale.it/eli/id/2023/09/19/23G00137/sg

^{13 29} December 2022 Law, n. 197, NORMATTIVA:

¹⁴ 21 October 2020 Decree-Law, n.130, NORMATTIVA:

¹⁵ 19 Septembrer 2023 Decree-Law, n.124, Gazzetta Ufficiale:

¹⁶ Buchi Neri-La detenzione senza reato nei Centri di Permanenza per i Rimpatri (CPR), Coalizione Italiana Libertà e Diritti civili, January 2020 – July 2021 Report, pp. 35-36: https://cild.eu/wp-content/uploads/2021/10/ReportCPR_Web.pdf

violations and the occurrence of extreme situations, such as the deterioration of physical and mental health and the epidemic of attempted suicides ¹⁷.

Another decree starring in this change is the **Decree of September 14, 2023**¹⁸, which introduces a "bond" of 4.938 euros for migrants who do not want to be detained. The decree is based on Article 6a of Decree 142/2015¹⁹, which introduces the concept of a "financial guarantee." In short, it affirms the principle that migrants without valid documents can be asked for sums of money. The amount is what is estimated to be enough to cover four weeks' stay, including adequate housing, minimum livelihood, and repatriation costs. The sum must also be delivered in a lump sum by bank deposit and cannot be paid by third parties. Consequently, a very few migrant people can access this mechanism, considering the socio-economic conditions of most of them. Therefore, the decree in point has put in place, once again, a costly and exclusion-oriented policy.

2. VIOLENCE AND DISCRIMINATION AGAINST WOMEN IN ITALY

Since 2013, with the ratification of the Council of Europe's Istanbul Convention and the consequent adoption of Law on Feminicide no. 119/2013²⁰, Italy has formally adopted an anti-violence system. Despite the national legislation providing for laws and measures to combat and prevent gender-based discrimination and violence, in 2023 Italy fell from 63rd to 79th place in the ranking of the *Global gender gap report*²¹, monitoring progress towards gender equality in 143 countries. Considering the 36 European countries, Italy ranks only in 30th place. According to the *UN Gender Social Norm Index*²², which measures the stereotypes that give rise to gender inequalities, 61% of the Italian population have prejudices against women and 45% believe that there are conditions in which physical, sexual and psychological violence from partners is justifiable. Based on evidence, there are notable gaps within the action plan aimed at facing this crisis, mainly determined by the methods of data collection, the existing prevention schemes, and the way of implementing the protection system, including through anti-violence centers and women's shelters.

https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2023-09-21&atto.codiceRedazionale=23A05308&elenco30giorni=false

¹⁷ One of the main examples of this tragic phenomenon is Mamadou Moussa Balde, a 23-year-old Guinean national who died suicide at the Centre of Permanence for Repatriation (CPR) in Turin, where he was detained because he lacked a regular residence permit

⁽https://iris.unito.it/bitstream/2318/1813971/1/Mamadou%20Moussa%20Balde_%20una%20storia%20che%20ci%20interroga%20su%20che%20cosa%20sia%20la%20detenzione%20amministrativa.pdf)

¹⁸14 September 2023 Decree, Gazzetta Ufficiale:

¹⁹ 18 August 2015 Legislative Decree, n.142, Normattiva: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2015-08-18;142!vig=2023-09-26

²⁰ 15 Otober 2013 Law, n.119, Normattiva: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2013-10-15;119!vig=2017-11-15

²¹ Global gender gap: Nessun Paese raggiunge la piena parità di genere, Alleanza Italiana per lo Sviluppo Sostenibile, 2023: https://asvis.it/notizie/2-17354/global-gender-gap-nessun-paese-raggiunge-la-piena-parita-di-genere

²² Gender Social Norms Index, Human Development Reports, UNDP, 2023: <u>Gender Social Norms Index | Human Development Reports (undp.org)</u>

2.1 Data gaps in combatting gender-based violence in Italy

Today, in Italy, there is no evidence of an integrated data collection system, making it difficult to fully grasp the complexity of the situation. The *Group of Experts on Action against Violence against Women and Domestic Violence* (GREVIO) of the Council of Europe, in the monitoring report on the application of the Istanbul Convention in Italy of 2020²³, underlined that the data collected by Italian institutional bodies were not disaggregated in reference to the gender of the victim, the author and the relationship between them, cases where underage witnesses were not reported, and a lack of harmonization between the data collected by law enforcement and judicial authorities exists.

According to the *Italian civil society report for CEDAW*²⁴, drawn up by 32 women's organizations and four independent experts, coordinated by D.I.Re²⁵, the need to create a complete and integrated system has been reiterated in various documents and laws. A significant stride is the recent National Strategic Plan on Male Violence against Women 2017-2020 and 2021-2023²⁶, fostering data sharing between DPO²⁷ and ISTAT. Under this plan, ISTAT has conducted surveys on anti-violence centers and their users. However, this system heavily relies only on data from these centers, straining their limited human and financial resources.

Another government action in which, once again, reference is made to data collection, goes back to the provisions of Law No. 53/2022²⁸ on the collection of gender data, which in Article 2 defines the "general obligations of data collection". However, this law:

- does not clearly identify data sources;
- does not define "how" the different entities should collect the data, thus allowing neither standardisation nor harmonisation of the data themselves;
- does not oblige the persons in charge to process and disseminate data broken down by "gender and disability", but only by "gender";
- does not provide any kind of financial support to the entities responsible for the implementation of the various data collection systems, which should merge into a single integrated system;
- does not provide for the collection of statistics on violence in civil proceedings (but only in criminal proceedings), despite the fact that the Commission on Feminicide has repeatedly stressed the total lack of data in this area.

²³ Baseline Evaluation Report – Italy, GREVIO, 2020: Final report on Italy (coe.int)

²⁴ Report by "Italian civil society organizations for CEDAW", 87th Session, CEDAW Committee, January 2024: https://www.direcontrolaviolenza.it/wp-content/uploads/2024/01/CEDAW_ENG-1.pdf

²⁵ Women in Network against violence – a group of 87 organizations in Italy, which manage 106 anti-violence centers and more than 60 shelters, listening to around 21 thousand women every year.

²⁶National Strategic Plan on Male Violence Against Women 2021-2023, Department for Equal Opportunities: https://www.pariopportunita.gov.it/it/politiche-e-attivita/violenza-di-genere/piano-strategico-nazionale-sulla-violenza-maschile-contro-le-donne-2021-2023/

²⁷ The DPO, acronym of Data Protection Officer, is a figure introduced in Italy by the General Data Protection Regulation (GDPR), the well-established European Regulation on the protection of personal data. The designation of this figure, in several cases, is made mandatory by the legislation itself.

²⁸ 5 May 2022 Law, n.53, Normattiva: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2022;53

2.2 Deficiencies in implementing long-term prevention strategies against gender-based violence

According to the GREVIO, and as stated in the recommendations contained in the Report on Italy published on 13 January 2020, the Italian Government should strengthen prevention activities in the field of awareness, education, training of professionals, programmes aimed at perpetrators of violence and in the field of employment, with long-term initiatives aimed at promoting a change in sexist behaviour, which is often based on an idea of the inferiority of women in the social and cultural context. But, as reported by the NGO Action Aid in the study published on 26 October 2023, called "*Prevention below cost*" ²⁹, **there is almost no medium and long-term prevention strategy**, while the prevention activities promoted by the current Government mainly concern interventions to prevent cases of recidivism and increase the protection of women who have previously suffered violence. These are certainly important initiatives, but - according to the Istanbul Convention - States also have the obligation to adopt rules and measures to promote changes in socio-cultural behaviour to eliminate prejudices, customs, traditions, and practices based on the idea of the inferiority of women or on stereotypical models of the roles of women and men³⁰.

The same trend can also be observed from the beginning of 2024, the year in which three million euros were allocated for continuing and constant training of operators who, in various ways, come into contact with victims or perpetrators of violence. Four million euros were allocated for each of the years 2024, 2025 and 2026 to strengthen the network of centres for the treatment of perpetrators of violence,. These are specifically secondary and tertiary prevention interventions to be used during and after violent acts and prevent recurrence. **The budget law does not provide specific resources for primary prevention** to intervene in the patriarchal culture that perpetuates violence, hitting a woman every 72 hours. This role is probably reserved for the anti-violence plan, which, however, at present does not establish a financial forecast for this type of prevention.

In sum, in Italy, the level of prevention of gender-based violence is currently, as a result of the foregoing, absolutely inadequate.

2.3 Protection and support of women

With the law of 15 October 2013, n.119³¹, Italy has committed to respect the relationship of an antiviolence center (CAV) per ten thousand inhabitants. Despite this, the latest ISTAT data of 2022³², published on 24 November 2023, indicate that Italy has 385 active CAVs on its territory. This means that there are 13 centers per million women. On average, the regions of the South have 0.18 antiviolence centres for every 10,000 women, the regions of the Centre 0.13, the islands of Sicily and Sardinia 0.12, while the regions of the North 0.10. These data do not comply with the provisions of the 2023 law. This situation continues to be reiterated as a result of the new ministerial decree on the *Fund for Policies on Rights and Equal Opportunities*³³, which entered into force on 28 December 2023.

https://www.gazzettaufficiale.it/eli/id/2013/10/15/13G00163/sg

²⁹ Prevenzione Sottocosto, Actionaid, 2023: Prevenzione-Sottocosto_donne_2023.pdf (imgix.net)

³⁰ Council of Europe, Convention on the Prevention and Combating of Violence against Women and Domestic Violence, Art. 12-15

³¹ 15 October 2013 Law, n.119, Gazzetta Ufficiale:

³²Anti-violence centres and women who have started the way out of violence, ISTAT, 2023: https://www.istat.it/it/files//2023/11/reportCAV.pdf

^{33 16} November 2023 Decree, Gazzetta Ufficiale: https://www.gazzettaufficiale.it/eli/id/2023/12/27/23A07064/sg

A fund of 20 million euros has been earmarked for anti-violence centres and shelters, but this provides funding only for existing structures and not for the creation of new ones. Moreover, according to ISTAT data, for most of the centres (63.6%)³⁴ the promoter of the CAV is a private entity; this means that in Italy the number of local authorities, in single or associated form, is smaller. This situation poses a significant risk to the safety and protection of victims of gender-based violence, as there may be situations where private entities may no longer be able to bear the costs associated with such services. Such an eventuality could lead to a significant gap in the protection system, with potentially serious consequences, such as increased dangers and tragic events. Moreover, a small number of anti-violence centres are leading to greater dangers for women who are forced to remain in the same abusive and violent environment. It is also noteworthy that, after the femicide of Giulia Cecchettin³⁵, there was an exponential increment in requests for help. Some centres are even more at risk than others, and in general there is no adequate allocation or funds for the ordinary activities of the centres. Much more is needed to make facilities work in peace and provide women with the necessary support.

³⁴Anti-violence centres and women who have started the way out of violence, ISTAT, 2023, pag 3: https://www.istat.it/it/files//2023/11/reportCAV.pdf

³⁵ Violenza, in crescita le richieste di aiuto da parte delle donne, 2024: https://alleyoop.ilsole24ore.com/2024/02/09/violenza-donne-crescita-richieste-aiuto/