

**Statement by ILGA
on behalf of LGBTI Resource Centre, Associazione Radicale Certi Diritti, Famiglie Arcobaleno,
Intesexioni and ILGA-Europe
UPR Pre-Session for Itlay**

Dear colleagues and representatives of the Permanent Missions,

First of all, thank you so much for let us be part of this session. This statement is delivered on behalf of a coalition of organizations (LGBTI Resource Centre, Associazione Radicale Certi Diritti, Famiglie Arcobaleno, Intesexioni and ILGA-Europe) which were engaged in the UPR process since the beginning with the submission of a document on the status of the Human Rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBT) people.

There were two consultations held in May and July 2014 in Rome at the Ministry of Foreign Affairs coordinated by the Inter-ministerial Committee for Human Rights.

The statement addresses the following issues: (1) right to life, security, equality and protection from violence and discrimination, (2) right to family life (3) Sports (4) rights of Transgender people (5) rights of Intersex people.

I. Right to life, security, equality and protection from violence and discrimination

Italy lacks proper legal provisions to combat hate crimes and incidents against LGBTI persons. UNAR (the national Office for the promotion of equal treatment and the removal of discrimination on grounds of racial or ethnic origin) extended its mission to the removal of discrimination on grounds of sexual orientation and gender identity since 2010. However, the enlargement of its mandate is not prescribed by law and, therefore, UNAR's role in combating discrimination against LGBTI people is still impermanent and vulnerable to changes of the political will.

At the first Universal Periodic Review, Italy accepted the recommendations made by various states¹ on these issues and reported on their implementation in its National report, predominantly, by mentioning the LGBT National Strategy adopted in 2013 and the 114 cases of discriminations recorded by UNAR.

Yet, the National report fails to mention that the National Strategy to prevent and contrast discrimination on grounds of sexual orientation and gender identity (2013-2015) was adopted only by a Ministerial Decree and not by law, making it weak and vulnerable to changes of the political will. In fact, in 2014 a training course on homo-transphobic bullism programmed within the LGBT strategy, in the area of education and training, was blocked. We gather that the course may start later this year, but excluding LGBT NGOs and with a different program and different trainers.

According to a research² 19,4 % of gay men and 18,4% of lesbians interviewed have been insulted or harassed because of their sexual orientation. The percentage reaches 30% amongst gay men under 25. Against these data, the cases recorded by UNAR are highly underestimated.

Only some incomplete legal provisions and institutional mechanisms allow the Italian authorities to tackle sexual orientation and gender identity related discrimination and violence. These include a) the Legislative Decree no. 44 of 2010 on the prohibition of discrimination on SOGI in television

¹ Among others The Netherlands, Norway, Canada, Uruguay, Belgium, Vietnam and Spain.

² R. Lelleri, Survey nazionale su stato di salute, comportamenti protettivi e percezione del rischio di HIV nella popolazione omo-bisessuale (Arcigay, 2006), pp. 53, 76. This survey covered 4690 questionnaires from gay or bisexual men and 2084 questionnaires from lesbians or bisexual women.

broadcasting activities; b) The ‘Observatory for Security Against Acts of Discrimination’ (Osservatorio per la sicurezza contro gli atti discriminatori - OSCAD), c) the Law no. 183 of 2010 known as the “Collegato Lavoro” that affects several aspects of employment law and d) Art. 1468 of Legislative Decree no. 66 of 2010 containing the ‘Military Code’ prohibiting all discrimination against LGB military personnel in access, recruitment, duty assignments and transfers.

We therefore invite other governments to consider making the following recommendations:

1. Provide all legal professionals (police, prosecution and judicial services) with systematic training on hate crimes targeting LGBTI people, and organizing liaison with LGBTI NGOs.
2. Establishment and regular financing of an integrated and independent equality body monitoring the application of laws and pursuing a multi-ground equality agenda, also addressing discrimination on grounds of sexual orientation, gender identity and expression.
3. Adopt a comprehensive strategy supported by policy documents tackling discrimination against LGBTI people.
4. Develop a comprehensive and clear strategy to inform on LGBTI issues at school and address homophobic and transphobic violence, bullying and discrimination in schools
5. Complete the legislative and institutional frame to comprehensively address discrimination on grounds of sexual orientation, but also gender identity and expression and to cover areas other than employment (in the Italian legislative system a bill under discussion is not guarantee enough of a satisfactory outcome).
6. Tackle and prohibit the discrimination in the access to goods and services on grounds of sexual orientation and gender identity should be prohibited in the access to goods and service.
7. Enact and implement provisions that tackle problems related to family rejection of LGBT youths and consequent issues such as homelessness.

II. Right to family life

No recommendation was made on this point in 2009, but Italy accepted a recommendation on preventing and eliminating any form of discriminations against minors made by Uzbekistan.

The Constitutional Court ruling 138/2010 recognizes that same-sex couples should have their relationship regulated by laws. In addition, the ruling stated that it falls within the competence of the legislator to identify what kind of recognition and protection to grant to same-sex relationships and enact general legislation to regulate these subject, with the exception of the possibility for the Court to intervene to grant protection to single specific situations. Despite this, the Italian Parliament has never complied with the provision of the Court and same-sex couples do not enjoy any legal recognition, even though they live together and constitute a *de facto* family.

Consequently, children born within families headed by same-sex couples do not enjoy the same rights as other children since the legal standard that applies to them is as of a single parent. These children do not enjoy the right to be maintained, cared for, educated, and instructed by the non-legal parent; the right to have guaranteed affective continuity in the event of separation of the same-sex couple or the death of the legal parent; to acquire the kinship (grandparents, aunts and uncles, cousins, etc.) of the non-legal parent.

In addition, the non-legal parent is not recognized as the child's parent in the performance of daily activities such as dropping off and picking up from school, accompanying the child to the doctor, and others.

In the event that an Italian same-sex couple residing abroad adopts a child pursuant to the law of the country of residence, upon return to Italy, the child loses both parents because, according to Italian law, the adoption document cannot be transcribed. There is no recognition on the part of the Italian state, even for the child of a partner legally adopted abroad in a place that allows this possibility.

We therefore invite other governments to consider making the following recommendations:

1. Enact general legislation on recognition and protection of rights and duties of same-sex partners.

Enact general legislation to allow one partner of a same-sex couple to adopt the other partner's child (step-child adoption) and to remove marriage discrimination within the adoption law (in the Italian legislative system a bill under discussion is not guarantee enough of a satisfactory outcome).

III. Sports

At the first Universal Periodic Review Italy accepted the recommendation made by Austria to fight racism in sport even by passing specific laws and regulations. Although this recommendation did not specifically address discrimination on grounds of SOGI, this should be also considered during the upcoming UPR Review.

In February 2012 CONI - the 'Italian National Olympic Committee', that has a legal status in public law - approved the 'Sports Code of Conduct'. This Code includes the principle of non-discrimination³ but without an explicit reference to discrimination on grounds of sexual orientation and gender identity.

We therefore invite other governments to consider making the following recommendations:

1. Inclusion in CONI's 'Sports Code of Conduct' of sexual orientation gender identity and expression among the prohibited grounds of discrimination.

IV. Rights of Transgender people

No specific recommendation was made on this issue, but the Czech Republic did recommend the government to implement measures to grant all citizens the right to identity documents. Even though, the Government accepted this recommendations, Italy added that Italian law already provided identity cards for all citizens.

Yet, Law 164/82, which regulates the procedures for sex change and the consequent modification of personal ID, leaves room for interpretation, since it doesn't specify whether the correction should concern the primary or secondary sexual traits, and whether a pharmacological treatment is sufficient or surgical intervention is necessary in order for the modification to take place. As a matter of fact, it is currently necessary to demonstrate achieved sterility in order to obtain the amendment of the personal ID, which often means undergoing undesired surgery. This state of things determines difficulties in obtaining a job, signing lease contracts, etc. It also constitutes a privacy violation whenever it becomes necessary to show an ID that does not correspond to the appearance of its bearer. Since sex is also indicated in the Italian fiscal code, a simple modification of birth name is not sufficient to protect the privacy of the individual, and is a rarely used practice.

We therefore invite other governments to consider making the following recommendations:

³ In accordance with article 6: «The members, affiliates and other subjects involved in sport should refrain from any discriminatory conduct in relation to race, ethnic or territorial, sex, age, religion, political opinions or philosophical»

1. Issuing coherent ID through an effective and fast administrative procedure, anytime the trans person requests it.

VI. Rights of Intersex people

In Italy, the differences in sexual development (dsd/intersex) are still considered as an exclusively medical issue, and not also as a social and bioethical question, closely tied to the right to self-determination and to the respect of other fundamental human rights, such as physical integrity and the freedom to decide and dispose of oneself and one's own body.

Data monitoring based on an analysis of the incidence of the single intersex/dsd variations is still missing. Also missing is data tracking of the number of intersex/dsd variations among newborns, and of the number of individuals subjected to surgery or to medical intervention without surgery. There is no systematic follow-up data on the long-term results of precocious medicalization of intersex/dsd children, both at a local and national level. There is only raw data (collected by the single hospital structures) on the number of intersex/dsd individuals who are hospitalized as a consequence of their variation, or for different reasons leading up to the discovery of the variation.

To date, there is no specific legislation to regulate a modification of personal data for intersex/dsd individuals whose gender identity may not correspond to their medically assigned sex.

Researchers in Sociology and Anthropology are collecting the first testimonies on the negative effects of precocious medicalization on intersex/dsd children in Italy⁴

We therefore invite other governments to consider making the following recommendations:

1. To establish data monitoring based on an analysis of the incidence of the single intersex/dsd variations.
2. To guarantee the physical integrity, autonomy, and self-determination of intersex/dsd people.
3. To provide families with intersex children with adequate counselling, and support when requested.

⁴ Crocetti D., *L'invisibile intersex. Storie di corpi medicalizzati*, Pisa, ETS, 2013; Balocchi M., "Sexual and Human Rights of Intersex People: the Sociological Aspects of Medicalization of Intersexuality in Italy", in *Gender and Sexuality* (ed. S. Antosa), Aracne editrice, Roma, 2012, 35-50; Balocchi M. - Tonarti A.M. "Sanità e famiglie, troppa fretta: operando si mutilano i bambini", in *Il Manifesto*, 16, July 27, 2013: english version in <http://www.intersexioni.it/social-mutilations-scalpel-increasingly-popular-to-homologate-atypicalities/>; Braida N. *Essere donne, essere uomini. Percezione e trattamento della variabilità sessuale tra realtà biologica e costruzione culturale*, Master thesis, Università degli Studi di Torino, 2011.