**ITALY**

***Ministry of Foreign Affairs and international cooperation***

*Inter-ministerial Committee for Human Rights*

*Comitato Interministeriale per i Diritti Umani*

**ITALY’S REMARKS**

**ON FREEDOM OF ASSEMBLY AND ASSOCIATION**

***February 12 , 2015***

**ITALY’S REMARKS**

Further to the UN Special Rapporteur’s query, the Government of Italy is in a position to provide the following information:

**To the attention of freeassembly@ohchr.org**

**Introductory remarks**

The Italian Basic Law determines the political framework for action and organization of the State. The fundamental elements or structural principles of the constitutional law governing the organization of the State are as follows: Democracy, as laid down in Article.1; the so-called *personalistic* principle, as laid down in Article. 2, which guarantees the full and effective respect for human rights; the pluralist principle, within the framework of the value of democracy (Arts. 2 and 5); the importance of work, as a central value of the Italian community (Arts. 1 and 4); the principle of solidarity (Article.2); the principle of equality, as laid down in Article.3 (it is also the fundamental criterion applied in the judiciary system when bringing in a verdict); the principles of unity and territorial integrity (Article 5); and above all the relevant principles, including the social state, the rule of law and the respect for human rights and fundamental freedoms, such as freedom of correspondence, freedom of movement, freedom of religion or belief, and freedom of opinion and expression – as also mentioned in your report (para.10).

Indeed, the Italian legal system, based on the respect for human rights, aims at ensuring an effective framework of guarantees, to fully and extensively protect the fundamental rights of the individual. Within our national system of protection of human rights, mention has to be made, among others, of the Constitutional Court that deals only with infringements at constitutional level (The Constitutional Court consists of fifteen judges; one-third being appointed by the President of the Republic/Head of State, one-third by the Parliament in joint session, and one-third by ordinary and administrative supreme court).

The Constitutional Court exercises its duty as the highest guardian of the Italian Constitution in various ways. It becomes active when it is called on. For example, it supervises the preliminary stages of referenda and is competent in case of presidential impeachment. Complaints of unconstitutionality may be submitted to the Italian Constitutional Court by central and local authorities claiming that a state or a regional Act might be unconstitutional. Therefore, the Court monitors Authorities to see whether they have observed the Constitution in their actions. It also arbitrates in cases of disagreements between the highest State’s organs and decides in proceedings between central and local authorities.

* Procedurally, the court must examine *ex officio* (the prosecutor) or upon request of the plaintiff/defendant whether the provisions to be applied are in compliance with the Basic Law. When the court considers that an act is unconstitutional, such evaluation brings to a suspension of the *a quo* proceeding. Accordingly, a decision is made by the Court itself, pursuant to Art. 134 of the Italian Constitution. The Constitutional Court decides (and its decisions cannot be appealed) disputes: 1. concerning the constitutionality of laws and acts with the force of law adopted by state or regions; 2. arising over the allocation of powers between branches of government, within the state, between the state and the regions, and between regions; 3. on accusations raised against the head of State in accordance with the Constitution. More generally, this Court decides on the validity of legislation, its interpretation and if its implementation, in form and substance, according to the Basic Law. Thus, when the Court declares a law or an act with the force of law unconstitutional, the norm ceases its force by the day after the publication of its decision.

**Reply to specific questions**

**1.** Turning to the specific issue under reference, mention has to be made of Art. 17 of the Italian Constitution which envisages freedom of assembly: “(1) All citizens have the right to assemble peaceably and unarmed. (2) For meetings, including those held in places to which the general public has access, no previous notice is required. (3) For meetings held in public places previous notice must be given to the authorities, that can prohibit them only on the grounds of proven risks to security or public safety”. As for the latter, the denial by the senior police officer (*Questore*) must be motivated and can be challenged before the judicial Authorities. On the contrary, the lack of prior notice by the organizers triggers penal consequences.

Further, Art.18 sets outs: “(1) Citizens have the right - and without authorization -to freely form associations for those aims not forbidden by criminal law. (2) Secret associations and associations pursuing political aims by military organization, even if only indirectly, are forbidden”. As for the latter, it is the judicial Authority that has power to determine the closing down of an association in the event this finds it unconstitutional.

In terms of associations of major relevance, mention has to be made of political parties and trade unions as laid down in Art.49 and Art.39 of the Italian Constitution, respectively. The only association being prohibited by Constitution is the fascist party, in accordance with Disp. Trans. And Fin. XII and with Act No. 645/1952.

# 2. On a more specific note, Art. 18, para. 1, of the Italian Constitution (1948) recalls the distinction contained in our Civil Code (1942) between recognized associations and not recognized associations, while guaranteeing the right of each person to freely associate with others “for purposes which are not prohibited by the penal law” without a prior authorization.

# In practical terms, what is allowed to the single citizen, *uti singulus*, it is also authorized to him/her in association, *uti socius*. From a substantial standpoint, freedom of association embodies both positive and negative aspects in terms of *facere (freedom to form or join an association)* and *non facere (freedom not to join or leave an association)*.

**3.** As to **recognition and support for groups**, the Italian Constitution recognizes the value of citizens’ associations. According to the principle of “legitimate interests”, affirmed in general law on administrative process (Act No. 241/1990), opportunities to participate in decision-making process shall be given not only to individuals having an interest in the decision, but also to associations representing common interests, when such interests are likely to be influenced by the decision.

Turning **to environmental related issues**, according to general environmental legislation, including Act No. 349/1986, environmental organizations can apply for recognition by the MoE (following the consent by the National Council for the Environment) and be inserted in a list of recognized entities which have legal standing to challenge public authorities’ decisions (or omissions), both at the national and local levels, and to request compensation for environmental damage.

In order to be recognized, such organizations need to fulfil the following requirements:

- act across the whole Country or in at least five Regions;

- have democratic internal rules;

- pursue objectives of environmental protection; and

- have continuity of action.

At regional level there are further forms of recognitions for local associations or groups, such

the Non Profit Regional Register of Liguria Region (including a category for environmental NGOs).

**4.** In accordance with the above principle of “legitimate interests”, legal standing can be conferred by judges not only to recognized NGOs, but also to all organizations/groups (including local ones) representing an interest that could be prejudiced by the decision, once a concrete and stable connection with the territory is established (i.e. all relevant environmental organizations).

Environmental associations in Italy can rely on different channels for funding, for example they can ask to be inserted in the list of non-profit entities to which citizens can devolve 5x1000 of tax due to the State. They can also accede to EU, State, regional and local special funds. The Ministry of Environment collaborates and provide financial support also to international environmental associations to work on issues such as sustainable development, climate change and local development, and funds participation of NGOs to international meetings.

In the triennium 2011-2013, the Ministry of Environment has provided Euros 21.000 to one environmental umbrella organization for the participation in the Aarhus Convention’s meetings.

Within this framework, it is worthy of mention that Italy is party to the Aarhus Convention obliging member states to guarantee access to information, participation of the public opinion and access to remedies in the event of violations of environmental law (For ease of reference, please find enclosed herewith our last periodic report to the Aarhus Convention).

**5.** Not applicable.

**6.** In conclusion, Italian Authorities take this opportunity to recall that the preparation of a National Plan of Action on Business and Human Rights is under way, in line with the relevant UNWG’s Guidance on BHR 2014, within the Inter-ministerial Committee for Human Rights (additional information can be provided in the near future).

We also reiterate our firm willingness to closely cooperate with all UN Special Procedures Mandate-Holders.