# MUZZLED AND UNHEARD IN THE PANDEMIC

URGENT NEED TO ADDRESS CONCERNS OF CARE AND HEALTH WORKERS IN ITALY

AMNESTY INTERNATIONAL

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# INTRODUCTION

Health and care workers who raised concerns of poor and unsafe working conditions in care homes during the pandemic have often faced disciplinary proceedings and feared retaliation from their employers just because they reported alleged wrongdoing in their workplace. Public and private employers have prevented them from enjoying the rights to freedom of expression and to freedom of association, which includes the right to unionize and to seek, receive and impart information.

The Italian authorities must ensure that these workers' voices are not silenced, but are heard instead. Amnesty International urges the Italian Parliament to complete the steps required to set up an independent committee of inquiry to investigate the authorities' response to the COVID-19 pandemic – any such committee must also have a specific focus on care homes and duly consider the serious concerns raised by workers and unions regarding health, safety and poor working conditions.

In December 2020, Amnesty International highlighted the failure of the Italian authorities to put in place adequate policies to protect the rights to life, to health and to be free from discrimination of older people living in care homes.[1] Barriers to access adequate personal protection equipment (PPE), especially in the first wave of the pandemic, and ill-conceived policies failing to protect health and safety at work exposed both workers and older people to higher risks of contracting COVID-19.[2]

COVID-19 has taken a huge toll on older people living in care homes. As of 29 September 2021, more than 130,200 people died of COVID-19 in Italy; more than 95% of them were older than 60 years.[3] Despite the lack of comprehensive data, some estimates suggest that 8.5% of the overall number of older people living in care homes in Italy died in the first months of the pandemic. In some regions the mortality rate for older people in care homes was higher - with a peak of 12.9% in Lombardy.[4] In contrast, the overall mortality rate among all people who are older than 60 has been 0.69% since the beginning of the pandemic.[5]

Staff working in residential care homes during the pandemic and trade unions have raised serious concerns regarding unsafe and unhealthy working conditions, long shifts without adequate rest and inadequate labour inspections. Morbidity and mortality rates among staff are very high. According to official statistics, 65.6% of the overall number of workers who have contracted COVID-19 in the workplace are health and care workers; these include, in particular, nurses and technical staff (37.6%), care workers (25.4%) and doctors (8.6%). Moreover, 24.1% of the workers who died after having contracted COVID-19 in the workplace are health and care workers, including nurses and technical staff (10.3%), care workers (7.7%) and doctors (5.7%).[6]

Workers in the highly feminized long-term care sector have also raised concerns relating to understaffing, low wages and precarious working conditions prior to the pandemic; they have reported that these long-

[1] Amnesty International, "Abbandonati: violazioni del diritto alla vita, alla salute e alla non discriminazione delle persone anziane nelle strutture socio-sanitarie e socio-assistenziali in Italia durante la pandemia", 17 December 2020, available at: https://d21zrvtkxtd6ae.cloudfront.net/public/uploads/2020/12/report-rsa-anziani-.pdf
[2] Amnesty International, "Abbandonati", chapter 7 (previously cited).
[3] Istituto Superiore di Sanità, epidemia COVID-19, aggiornamento nazionale 29 settembre 2021, available at: https://www.epicentro.iss.it/coronavirus/bollettino/Bollettino-sorveglianza-integrata-COVID-19_29-settembre-2021.pdf
[4] de Girolamo, G., Bellelli, G., Bianchetti, A., Starace, F., Zanetti, O., Zarbo, C., & Micciolo, R. (2020). Older people living in long-term care facilities and mortality rates during the covid-19 pandemic in italy: Preliminary epidemiological data and lessons to learn. *Frontiers in Psychiatry*, 11, 586524. https://doi.org/10.3389/fpsyt.2020.586524
[5] 121.632 who were older than 60 died as of 18 August out of 17.752.440 people in the same age range (in 2020), more information is available at: https://www.epicentro.iss.it/coronavirus/bollettino/Bollettino-sorveglianza-integrata-COVID-19_18-agosto-2021.pdf https://www.tuttitalia.it/statistiche/popolazione-eta-sesso-stato-civile-2020/
[6] Data updated until 30 June 2021. INAIL, Scheda nazionale infortuni sul lavoro da COVID-19. These data refer to care and health workers in both the health sector and the long-term care sector, which includes residential care homes. The category of care workers include both operat·ori·rici socio-sanitari and operat·ori·rici socio-assistenziali, available at: https://www.inail.it/cs/internet/docs/alg-scheda-tecnica-contagi-covid-30-giugno-2021.pdf.

standing issues were exacerbated due to COVID-19. While the vaccination campaign, which prioritized care home residents as well as health and care workers, has resulted in a decrease in morbidity and mortality among both older people and workers in care homes,[7] the long-standing concerns in the sector remain unaddressed and must also be urgently examined by the parliamentary committee.

# THE URGENT NEED FOR AN INDEPENDENT INQUIRY

According to the Italian Constitution, parliamentary committees can be established with the purpose of investigating matters of public interest. These parliamentary committees of inquiry are bestowed with powers that are similar to those of judicial authorities.[8] Three bills establishing a parliamentary committee to investigate some aspects of the authorities' response to the pandemic are currently pending before the Italian Parliament. The first bill[9] aims to set up a committee to investigate the causes of the COVID-19 pandemic and the responses given by the states where the COVID-19 epidemic initially broke out until 30 January 2020. The scope of this bill is limited as it does not include any focus regarding the Italian authorities' response to the pandemic. The second bill[10] aims to establish a parliamentary committee to investigate the authorities' response to the pandemic with a specific focus on care homes. The bill intends to shed light on, among other aspects, shortages of staff in care homes, lack of adequate personal protection equipment for both staff and older people, safety in the workplace and the causes of high mortality and morbidity rates in care homes. The third bill[11] aims to establish a parliamentary committee with a wider scope, which addresses issues affecting the public health system more generally, as well as the authorities' response to the pandemic.

Amnesty International urges the Italian Parliament to set up a committee of inquiry (*commissione d'inchiesta parlamentare*) tasked to conduct an investigation into the authorities' response to the pandemic, with a specific focus on care homes. Such a committee should investigate violations and abuses of the rights to life, to health and to non-discrimination suffered by older people in care homes. The committee should also investigate long-standing concerns in the long-term care sectors– including staff shortages, poor working conditions and respect for the principle of equal pay for equal work– as well as concerns raised by workers and trade unions regarding the rights to safe and healthy working conditions and to just and favourable conditions at work.

[7] Istituto Superiore di Sanità, Sorveglianza strutture residenziali socio-sanitarie nell'emergenza COVID, report nazionale, available at: https://www.epicentro.iss.it/coronavirus/pdf/REPORT%20STRUTT%20RES_5OTTOBRE2020_13GIUGNO2021_30GIU2021.pdf. Decree no.44 of 1 April 2021 no. 44 has made vaccination against COVID-19 a compulsory condition for health and care workers to exercise their functions, at least until the end of the year. Decree 122 of 10 September 2021 extends mandatory vaccination to all workers (including external contractors) working in care and nursing homes until the end of the year.
[8] Article 82 of the Italian Constitution, available at: https://www.senato.it/1025?sezione=127&articolo_numero_articolo=82
[9] The text of the bill is available at: https://documenti.camera.it/Leg18/Dossier/Pdf/ES0322.Pdf
[10] The text of the bill is available at: http://www.senato.it/service/PDF/PDFServer/DF/358150.pdf
[11] The text of the bill is available at: http://www.senato.it/service/PDF/PDFServer/BGT/01300279.pdf

# PURPOSE, SCOPE AND METHODOLOGY

This briefing complements the research that Amnesty International carried out in 2020 regarding the violations of the rights to life, to health and to non-discrimination of older people living in care homes in Italy. It provides information regarding abuses of the rights to freedom of expression and to freedom of association experienced by health and care workers during the pandemic. Moreover, the briefing provides examples of concerns raised by health and care workers regarding health, safety and working conditions during the pandemic. While more in-depth research would be necessary to establish the specific responsibilities of state institutions with respect to the rights of health and care workers, the information presented in this briefing reiterates the need for an independent committee of inquiry to ensure accountability and to prevent similar harm from occurring again in the future.

Although the term "health and care workers" is broad and includes all workers in the health and care sectors, this briefing covers health and care workers in the long-term care sector (LTC sector). According to the Organization for Economic Cooperation and Development (OECD), the long-term care sector includes a wide range of health, personal care and assistance services provided for example to reduce or alleviate the deterioration of health status for people with a degree of long-term dependency. LTC workers include nurses and personal care workers working in LTC institutions, such as residential care homes for older people. According to the OECD, LTC workers do not include doctors who work in LTC institutions.[12]

Between February and August 2021, Amnesty International's researchers interviewed 34 health and care professionals who worked in care homes during the pandemic (20 women and 14 men, 30 Italian workers and 4 migrant workers). Most of these workers are care workers (10 nurses and 20 personal care workers including both *Operat·ori·rici socio-assistenziali/OSS* and *ausiliari socio-assistenziali/ASA*). Four interviewees were health professionals, namely physiotherapists.

At the time when the research for this briefing was conducted, sixteen workers were employed directly by the care home where they worked, 10 were outsourced workers employed by a cooperative, one was a temporary agency worker and seven were self-employed. All the interviews were conducted by phone or online, in Italian without interpretation. In compliance with informed consent given by interviewees and as is the norm in many Amnesty International investigations, we provide the date and record of when the interview took place, but have protected the identity of all the people to whom we have spoken by using a pseudonym or other means to anonymize the individual, in accordance with their wishes. Most interviewees asked Amnesty International to anonymize their testimonies for fears of reprisals from their employers, an indication of the climate of fear in the workplace for reporting wrongdoings as further documented in this briefing (see section 1).

Moreover, Amnesty International spoke with 12 representatives of three trade unions (*Confederazione Generale Italiana del Lavoro* "CGIL", *Confederazione Italiana Sindacati Lavoratori* "CISL" and *Unione Sindacale di Base* "USB"), as well as four lawyers and two experts in the field of the long-term care sector. Further, Amnesty International requested a meeting with the four main organizations representing private

[12] OECD, Who cares? Annex 2.A Definitions and data sources, available at: https://www.oecd-ilibrary.org/sites/92c0ef68-en/1/3/2/index.html?itemId=/content/publication/92c0ef68-en&_csp_=50980b2bb9059e51e350f213ee338dac&itemIGO=oecd&itemContentType=book#annex-d1e4978

care homes in Italy[13]. When this briefing went to press (October 2021), no response had been received to the meeting requests. Amnesty International also requested a meeting with the National Labour Inspectorate, which had so far not replied to the meeting request.

Amnesty International would like to thank all the stakeholders interviewed as part of this research, and, in particular, all the health and care workers who shared their experiences and perspectives with us.

[13] *Unione Nazionale Istituzioni e Iniziative di Assistenza* "UNEBA", *Associazione Nazionale Strutture Territoriali e per la Terza Età* "ANASTE", *Associazione Gestori Servizi sociosanitari e cure Post Intensive* "AGESPI", *Associazione Religiosa Istituti Socio-Sanitari* "ARIS"

# 1. DISCIPLINARY MEASURES AND ANTI-UNION ACTIVITIES TARGETING WORKERS REPORTING HEALTH AND SAFETY ISSUES IN THE WORKPLACE

**Cooperatives and public care homes have put a muzzle on people who have reported or talked to the press.**

"**Marco"**, an outsourced nurse who works in a private care home in Lombardy.[14]

Nearly one-third of all the workers interviewed by Amnesty International (11 out of 34) raised concerns about a climate of fear and retaliation in the workplace, in particular during the COVID-19 pandemic. Three of them were subject to disciplinary proceedings, including dismissal, after having reported wrongdoing regarding health and safety in the care homes where they were working during the pandemic. Eight other workers raised concerns regarding the climate of fear in the workplace and the risk of retaliation from their employers should they have disclosed and reported wrongdoing. This appears to be part of a broader pattern: two lawyers interviewed by Amnesty International reported more than a dozen cases of disciplinary proceedings and dismissals targeting workers in different care homes, after they had raised concerns regarding the lack of adequate measures to protect health and safety during the first wave of the pandemic.[15] These testimonies are all the more worrying in the context of the pandemic as freedom of expression and trade unions' activities improve health and safety at work.[16]

[14]Interview by phone with "Marco" (name changed for security reasons), 22 March 2021.
[15] Interview by phone with lawyers from the Romolo Reboa Law Firm, 13 September 2021.
[16] Uni Global, "The Crisis in care. The urgent need for responsible investor action in nursing homes", pp. 10-11, available at: https://www.uniglobalunion.org/sites/default/files/files/news/the_crisis_in_care_en_final.pdf

On 10 May 2021, the Milan Employment Tribunal found that Hamala, an outsourced migrant care worker who worked in a private care home, had been dismissed unfairly in May 2020 by the cooperative that employed him. In April 2020, Hamala and 17 other workers had reported to judicial authorities and the media several wrongdoing regarding health and safety during the first weeks of the pandemic; specifically, they alleged that the management of the care home and the cooperative that employed them had concealed information regarding COVID-19 cases among older people and workers and prevented workers from using face masks in the workplace, putting them at risk of contracting COVID-19.[17] A judicial investigation was launched following the workers' complaint. The cooperative dismissed Hamala and suspended the other 13 outsourced workers. The care home management also terminated the contracts of 4 self-employed care workers who had filed the complaint.

The 13 outsourced workers were later reintegrated in the workplace in different care homes in the same region. The Milan Tribunal ordered the reintegration of Hamala, the payment of an indemnity, and emphasized that imparting the information of wrongdoing to judicial authorities was of public interest because it could have prevented the death of older people who lived in the care home. The court added that reporting wrongdoing or breaches of the law to the judicial authorities cannot be considered a source of disciplinary responsibility and is not a legitimate reason for terminating employment.[18] The case concerning one self-employed care worker whose contract had been terminated was pending before the Milan Tribunal when this briefing went to press (October 2021).

Piero, a trade unionist and a nurse employed directly by a large care home in Milano, was targeted because of his union-related activities, specifically raising concerns regarding the high mortality rate among the older people who lived in the care home. First, he received seven disciplinary warnings for having spoken out; then, in November 2020, his employer decided to suspend him from work for a month. Piero told Amnesty International that in the same period, in November and December 2020, 120 disciplinary proceedings were launched against other care workers who raised concerns regarding health and safety in the care home where he worked.[19]

In December 2020, the Milan Employment Tribunal ruled against the suspension of Piero and ordered his reintegration in the workplace. The court emphasized that he had been targeted because of his involvement in the trade union and that the measure had an intimidating effect on all those employees who intended to challenge their employers, including regarding wrongdoing in the area of occupational safety and health.[20]

Eight other health and care workers shared with Amnesty International their own experiences regarding disciplinary measures, or cases in which other colleagues had been targeted. For example, "Silvia", a nurse who was employed directly by a public care home in Milan told Amnesty International:

> *Lately there has been retaliation [against workers] and we are all on high alert. We were told not to use the masks not to panic users and families, but we were already in full covid, it was towards the end of February or beginning of March [2020]. We filed a complaint against the person who warned us not to use masks. I was placed in preventive quarantine for political reasons [as I had never got the virus] and on my return I had to test. Other colleagues were also turned away in this way. The negative repercussions began immediately after the allegations. Often colleagues have been moved from their sector as a reprisal. I also received a disciplinary measure because I joined a demonstration.*[21]

Two trade union delegates also told Amnesty International that the care home management had threatened them with a defamation lawsuit in view of their involvement in protecting workers' rights.[22] Anti-union activities and fear of retaliation for reporting wrongdoing occur in a context where precarious health and care workers already experience barriers to join a union. For example, "Nicola", a self-employed physiotherapist who works in a private care home in Milan told Amnesty International:

> *We have not been able to protest against poor working conditions, the management literally told us "this or nothing", we are constantly being blackmailed. In theory, I could also work elsewhere as self-employed, I do small jobs for individuals, but I haven't been able to find anything else. There is very low unionization here, because if they find out that you are a member of the union, they will destroy you professionally. Only direct employees [workers directly employed by care homes] are*

[17] For more information, see Abbandonati (previously cited), p. 83
[18] Full text of the judgment of the Milan Tribunal N. 6275 /2020 R.G.L. of 10 March 2021, reviewed by Amnesty International
[19] More information is available at: https://www.ilfattoquotidiano.it/2020/11/12/pio-albergo-trivulzio-sospeso-dal-servizio-il-sindacalista-che-ha-raccontato-al-fatto-i-provvedimenti-contro-medici-e-personale/6001149/
[20] More information is available on the website of CGIL at: https://fpcgil.lombardia.it/2020/12/10/pio-alberto-trivulzio-condannato-per-attivita-antisindacale/?fbclid=IwAR3SxrIB-nZ5O4SKDG6j1QEn4EeV0GD51ghn1auQWXpWguy8r8Ia-JOT1do
[21] Interview by phone with "Silvia", (name changed for security reasons), 02 September 2020.
[22] Interview by phone with two trade union delegates, conducted on 13 September 2021 and on 14 September 2021.

*usually union members. You feel a lot of pressure every day. For instance, we earn €18 gross per hour, and every time you go for an interview with the management to negotiate better working conditions, they show you CVs of other physiotherapists to make you understand that there is a queue outside of people [self-employed physiotherapists] ready to replace you and that you are always and, in any case, replaceable.*[23]

EUROFOUND has emphasized already several years ago that in Italy union density, that is the proportion of employees who are members of a trade union as a share of the overall number of employees, is likely to be lower in the private health and the long-term sectors than in the public health sector. In the long-term care sector, the fragmentation of the bargaining area and the numerous collective employment agreements applicable constitute barriers for unionizing.[24] Dozens of collective employment agreements are applicable in the long-term care sector (see section 2). Trade union representation is also very fragmented. For example, in 2019, more than one third of the employees in the public health sector were part of unions other than the three main ones (CGIL, CISL, UIL); in particular, 9.7% were part of 108 small trade unions.[25]

According to a representative of the grassroots union USB (Unione Sindacale di base) the multiplicity of contracts and employment statuses within the long-term care sector contribute to the high isolation of workers. The same trade union pointed out that fragmentation strengthens the division of workers in the sector and hinders their protection from reprisals.[26]

The right to freedom of association with others, including the right to form and join trade unions is recognised both in the International Covenant on Economic, Social and Cultural Rights (Article 8, ICESCR) and the International Covenant on Civil and Political Rights (Article 22, ICCPR). A similar right is also recognised in the European Convention on Human Rights (Article 11, ECHR) and ILO Convention on Freedom of Association and Protection of the Right to Organise (Article 2). The right to freedom of expression is also recognised by the ICCPR (Article 19) and ECHR (Article 10). While these rights may be subject to certain restrictions for the protection of national security, public health or public order, or for the protection of the rights of others, these restrictions must be provided by law, be necessary and proportionate specifically aimed at a relevant legitimate purpose, and not be discriminatory.[27]

According to international human rights law and standards, workers cannot be discriminated against or targeted for participating in trade unions' activities or filing a complaint against an employer for alleged breaches of the law – these are also not valid reasons for terminating employment.[28] Workers are protected against anti-union discrimination, which includes dismissal.[29][30] Not only must Italian authorities respect the right of workers in publicly run care homes, but the authorities are also obligated to protect these rights from abuse by private actors, including private care homes. The Italian authorities also have an obligation to protect whistleblowers who face retaliation because of having reported wrongdoing, and to put in place the necessary mechanisms to enable whistle-blowers to disclose the relevant information safely and without fear of reprisals.[31]

In Italy, trade unions can report to a civil judge (*pretore*) any anti-union activity on the part of an employer. Civil judges can issue a decree in which they request employers to put an end to specific anti-union activities until when they rule on the matter.[32] Moreover, a law that entered into force in 2017 protects employees who report wrongdoing in both the private and the public sector.[33] In particular, the law prohibits negative consequences such as disciplinary measures, suspension or dismissal targeting employees as a result of their decision to report wrongdoing. However, differences exist regarding procedures and safeguards in the public and the private sector. In the public sector, a centralized, external body, the National Authority against Corruption, is responsible for collecting reports of wrongdoing. The National Authority has set up an online system to report wrongdoing occurring in the public sector and can refer allegations to competent authorities

[23] Interview by phone with "Marco" (name changed for security reasons), 22 April 2021.
[24] European Foundation for the Improvement of Living and Working Conditions. Italy: Industrial Relations in the Health Care Sector, 2011, available at: https://www.eurofound.europa.eu/publications/report/2011/italy-industrial-relations-in-the-health-care-sector
[25] Accertamento provvisorio della rappresentatività: Triennio 2019-202,ARAN, 2019, available at: https://www.aranagenzia.it/attachments/category/7601/TABELLE%20ACCERTAMENTO%20PROVVISORIO%20RAPPRESENTATIVITA'%20TRIENNIO%202019-2021.pdf
[26] Interview by phone with USB delegate in Parma, Emilia Romagna, 14 September 2021.
[27] Human Rights Committee, General comment No. 34, CCPR/C/GC/34
[28] ILO Convention No. 1982, No.158, article 5
[29] ILO Convention No. 98, article 1
[30] See United Nations, Report of the Special Rapporteur on the Promotion of the Right to Freedom of Opinion and Expression (2015), p. 4 and Council of Europe, Protection of Whistleblowers, Recommendation CM/Rec(2014)7 and Explanatory Memorandum (2014), p. 15.
[31] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/70/361,
[32] Article 28 of the Employment Law (Statuto dei Lavoratori), available at: https://www.altalex.com/documents/news/2018/02/04/disposizioni-varie-e-generali-statuto-dei-lavoratori#titolo4
[33] Legge 30 novembre 2017, n. 179, available at: https://www.gazzettaufficiale.it/eli/id/2017/12/14/17G00193/sg

including judicial authorities. Available data show an increase of the number of reports brought to the attention of the National Authority against Corruption since the new law had entered into force in 2017. A significant number of wrongdoing has been reported in the public health sector; in 2018, for example, these amounted to 14.8% of the overall number of reported cases.[34]

However, the same procedure does not exist in the private sector, where an internal system for reporting wrongdoing may be established within business enterprises.[35] According to the law, these procedures can be embedded in existing organizational models to prevent criminal offences; however, business enterprises can choose or not to put in place these organizational models.[36] These differences in procedures between the public and private sectors are relevant insofar as 73% of care homes in Italy are private[37]. Concerns exist regarding the extent to which health and care workers in private care homes had access to adequate procedures to report wrongdoing during the pandemic.

By December 2021, Italy will have to implement EU law on whistleblowing, providing that public and private companies should establish appropriate internal procedures for receiving and following up on reports of wrongdoing. All business enterprises employing 50 or more workers are subject to the obligation to establish internal reporting channels, irrespective of the nature of their activities. EU law also extended the legal protection to a wide range of individuals, including consultants, suppliers, interns and volunteers.[38]

Amnesty International calls on the Italian Parliament to amend the existing legislative framework on whistleblowing by ensuring that all employers put in place systems that allow workers to report on health and safety risks and ensuring that whistleblowing mechanisms in both the private and the public sectors provide strong guarantees of confidentiality and independence. All employers should foster a safe and enabling environment that encourages reporting or disclosure of wrongdoing in an open manner, in accordance with the rights to freedom of expression and access to information.

Moreover, as further detailed in the following sections of this briefing, Amnesty International calls on the Italian authorities to urgently respond to the concerns raised by workers and trade unions regarding health and safety and favourable and just conditions at work by setting an independent committee of inquiry to investigate them.

[34] ANAC, Quarto rapporto annual sul whistleblowing, available at: https://www.anticorruzione.it/-/presentazione-del-4%C2%BO-rapporto-annuale-sul-whistleblowing?p_p_id=com_liferay_journal_web_portlet_JournalPortlet
[35] Article 2 of law n. 179 of 30 November 2017 (previously cited) and Articles 6.2 bis, ter and quarter of legislative decree 231/2001, available at: https://www.altalex.com/documents/codici-altalex/2014/04/09/responsabilita-amministrativa-delle-societa-e-degli-enti-dlgs-231#3030
[36] Article 6.1 of legislative decree 231/2000 (previously cited).
[37] According to data updated to 31 August 2020, provided by LIUC (previously cited)
[38] EU Directive 2019/1937, available at : https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937

# 2. WORKERS AND UNIONS' CONCERNS REGARDING CARE HOMES STAFF

**"The vital role of health and care workers in care homes is not socially and politically valued. Increasingly more women and migrants work in this sector in very precarious conditions. Wages are very low in the whole LTC sector, despite the high social utility of the care work"**

A representative of the trade union CGIL-NIDIL.[39]

Concerns regarding health and safety and unjust conditions at work raised by workers and unions during the pandemic mirror long-standing concerns affecting care home staff raised prior to the outbreak of COVID-19. These long-standing issues appear to have been exacerbated due to COVID-19. Despite unions and workers having repeatedly rung the alarm bell during the pandemic, their concerns remain unheard by the authorities.

## 2.1 LONG-STANDING CONCERNS AFFECTING STAFF IN THE LONG-TERM CARE SECTOR IN ITALY

Care work is a highly feminized, profession; around 85% of care workers in Italy are women[40] and 12% are migrant.[41] Many of these workers are precarious workers; they work part-time, on fixed-term contracts and/or are outsourced or temporary agency workers. Wages in the long-term care sector (LCT sector), which includes residential care homes for older people, are considerably lower than the wages in the public health

[39] Interview by phone with a representative of NIDIL CGIL national secretariat, 14 April 2021.
[40] OECD, Who cares, p. 44 (previously cited).
[41] EUROFUND, Long-term care workforce. Employment and working conditions, p. 11, available at: https://www.eurofound.europa.eu/publications/customised-report/2020/long-term-care-workforce-employment-and-working-conditions

sector. While the median hourly wage in the public hospitals is about €15, the median hourly wage in the long-term sector is about €11.[42]

## STAFF SHORTAGES

According to the OECD, there are about two care workers per every 100 people older than 65 in Italy; this ratio is one of the lowest in the OECD region, where the average is five workers per every 100 people older than 65.[43] While the number of care and health workers in Italy has slightly increased between 2009 and 2019 (from 22 to 23 workers every 1000 inhabitants), it remains much lower than the EU average (32 in 2019).[44] The shortage of workers in the Italian long-term care sector is only set to increase. The Italian population, currently the oldest one in Europe, will continue ageing at a fast pace; estimates predict that in 2050 more than 45% of the population will be 55 or older, the highest percentage predicted in Europe.[45]

## OUTSOURCING

The majority of the 7372 residential care homes in Italy are privately owned and managed; nearly 25% are owned by private business enterprises, 48% by private not-for-profit foundations or cooperatives and 26.7% by public authorities (municipalities or other public entities such as "aziende pubbliche servizi alla persona").[46] Care homes make use of outsourced workers who are employed by cooperatives, agency workers (*lavoratori somministrati*) who are employed by temporary-work agencies (*agenzie interinali*) and self-employed professionals (Partite Iva). The use of outsourced workers, agency workers and self-employed people is very widespread as a strategy to cope with staff shortages in the long-term care sector.

According to data collected by the Centre for Research on Health and Social Care Management (CERGAS), 75% of the staff working in the care homes who were surveyed in 2016 were outsourced through cooperatives, temporary agency workers or self-employed.[47] According to the trade union CGIL, up to 380,000 workers could be outsourced through cooperatives within the long-term care sector.[48] The increasing use of outsourced, self-employed and agency workers has occurred in the backdrop of the privatization of care homes in the last 20 years.[49]

## WORKING CONDITIONS

The working conditions of health and care workers in the long-term care sector are reported to be worse than those experienced by their peers in the public health sector. For example, while the average monthly gross wage of a full-time nurse in the health sector is about €1600, the wage of a nurse working in a private care home is about €1200/1300.[50]

While remuneration and working conditions of health and care workers in the health sector are regulated by a single national collective employment agreement, remuneration and working conditions of health and care workers in the long-term care sector are currently regulated by dozens of different collective employment agreements signed by a variety of organizations and unions representing workers and employers.[51] In the long-term care sector, differences exist between health and care workers employed directly by care homes and those outsourced through cooperatives regarding, for example, working time and rest periods.

Working conditions are generally reported to be less favourable for outsourced workers. For example, according to one among the collective employment agreements that are often applied to health and care workers employed directly by care homes, they should work maximum an average of 38 hours per week calculated within a period of a year, which means that if they work for more than 38 hours during a week, they need to work less another week. However, these workers cannot work more than 38 hours for more

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[42] OECD, Who cares, p. 21 (previously cited).
[43] OECD, Who Cares? Attracting and retaining care workers for the elderly, 2020, p.37, available at www.oecd-ilibrary.org/sites/92c0ef68-en/1/3/2/index.html?itemId=/content/publication/92c0ef68-en&_csp_=50980b2bb9059e51e350f213ee338dac&itemIGO=oecd&itemContentType=book
[44] These data are provided by EUROSTAT, they are available at: https://www.lavoce.info/archives/69562/troppo-pochi-lavoratori-nel-welfare-italiano/
[45] EUROSTAT, Aging Europe: statistics on population development, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Ageing_Europe_-_statistics_on_population_developments#Older_people_.E2.80.94_population_overview
[46] Data provided by the LIUC business school, updated to 31 August 2020, available at: https://www.corriere.it/dataroom-milena-gabanelli/rsa-covid-perche-case-riposo-sono-diventate-focolai-virus/c79559d4-1c5c-11eb-a718-cfe9e36fab58-va.shtml
[47] Data collected by CERGAS in 2016 and based on a survey carried out within a network gathering 20 care home managements throughout the country. Online Interview with a researcher of the CERGAS, 6 April 2021.
[48] Interview by phone with three representatives of the public sector branch of the CGIL national secretariat, 05 May 2021.
[49] LIUC business school (previously cited).
[50] LIUC business school (previously cited)
[51] Although official data regarding the number of collective employment agreements applicable in the LTC sector in Italy are missing, the trade union CGIL estimate that there are at least 42 such agreements. Interview by phone with three representatives of the public sector branch of the CGIL (previously cited).

than 6 weeks on end; they are also entitled to 11 hours of rest per day and to one rest day per week.[52] According to one collective employment agreement that is often applied to outsourced health and care workers by cooperatives, the average duration of the working week is also 38 hours. However, these workers can be required to work an additional 10 hours per week, which they should take as time-off-in-lieu within a period of 6 months. Although they are usually entitled to 11 hours of rest every day, in some instances this rest period can be reduced to 8 hours.[53]

Care homes enjoy a wide margin of discretion in the choices that they make regarding the employment relationships that they establish with their staff. They employ them directly, resort to outsourced care workers who are employed by a cooperative, make use of agency workers[54] and/or hire the services provided by self-employed professionals (including nurses, physiotherapists, amongst others).

## A HIGHLY FEMINIZED AND UNDERVALUED SECTOR

Care work is a highly feminized sector; around 85% of workers in the long-term care (LTC) sector, which includes care homes for older people, in Italy are women[55] The healthcare sector in Italy is also feminized, although to a lesser extent than the LCT sector; in 2017, 66.8% of workers in the healthcare sector were women.[56]

COVID-19 morbidity rates among women workers are generally much higher than those among male workers precisely because the employment sectors that have been hit harder by the pandemic are highly feminized; for example, in Italy, 68.7% of the overall number of workers who contracted COVID-19 in the workplace are women. Three-fourth of the nurses and technical staff and more than 80% of the care workers who contracted COVID-19 in the workplace are women.[57]

Wages in the long-term care sector are much lower than in the healthcare sector in Italy, including for equal work or work of similar value. For example, while the average monthly gross wage of a full-time nurse in the healthcare sector is about €1600, the wage of a nurse working in a private care home is about €1200/1300.[58] The OECD estimates that while the median hourly wage of care workers in the LTC sector (in the OECD region) is €9, the median hourly wage of hospital workers in the same occupations is €14.[59]

In 2019, the gender pay gap in Italy in all employment sectors amounted to 4.7%.[60] Women are paid less than men because, among other factors, they are more represented in lower-paid sectors such as education and care work. Other factors contributing to the gender pay gap include that women tend to spend fewer hours in paid work than men and more hours in unpaid work at home, and the glass-ceiling which relates to the fact that women are less likely than men to occupy higher-paid position at the top of hierarchies.[61] For example, in the healthcare sector, women are on average less paid than men because they are more likely to be in the lower paid and feminized jobs in the sector, such as nursing and midwifery rather than working as doctors, and are less likely to occupy highly paid specializations such as surgery.[62] In the European Union, women are on average paid 20% less than men in the healthcare sector.[63]

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[52] Collective employment agreement of UNEBA, articles 50-51, available at: https://fp.cisl.it/wp-content/uploads/2020/02/UNEBA_CCNL.pdf.pdf. UNEBA (*Unione Nazionale Istituzioni e Iniziative di Assistenza Sociale*) is an organization representing more than 900 private not-for-profit care homes in Italy. The UNEBA collective employment contract is applicable to health and care workers who are directly employed by care homes that are members of UNEBA.

[53] Contratto di lavoro collettivo cooperative sociali (Collective employment agreement for social cooperatives), articles 51-52, available at: https://www.ccnlcooperative.it/

[54] Law n. 96 of 2008 introduced some limitations regarding the number of agency workers as a share of the overall number of workers. The total number of fixed-term agency workers cannot exceed 30% of the permanent workforce, unless otherwise regulated by the collective employment agreement applied. More information is available at: https://www.lavoro.gov.it/temi-e-priorita/rapporti-di-lavoro-e-relazioni-industriali/focus-on/Disciplina-rapporto-lavoro/Pagine/Contratto-di-somministrazione.aspx

[55] OECD, Who Cares? Attracting and retaining care workers for the elderly, 2020, p.44, available at www.oecd-ilibrary.org/sites/92c0ef68-en/1/3/2/index.html?itemId=/content/publication/92c0ef68-en&_csp_=50980b2bb9059e51e350f213ee338dac&itemIGO=oecd&itemContentType=book

[56] Ministero della Sanita', Personale delle ASL e degli istituti di ricovero pubblici ed equiparati, 2017, p. 3, avalable at: https://www.salute.gov.it/imgs/C_17_pubblicazioni_2870_allegato.pdf

[57] INAIL, Scheda nazionale infortuni sul lavoro da COVID-19 (previously cited).

[58] LIUC business school (previously cited)

[59] OECD, Who Cares? p.

[60] The gender pay gap is defined as the difference between gross hourly earnings of male and female employees as a percentage of gross male earnings. Eurostat, gender pay gap statistics, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Gender_pay_gap_statistics

[61] European Commission, The gender pay gap situation in the EU, available at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/equal-pay/gender-pay-gap-situation-eu_en

**[62] OECD, WOMEN ARE WELL-REPRESENTED IN HEALTH AND LONG-TERM CARE PROFESSIONS, BUT OFTEN IN JOBS WITH POOR WORKING CONDITIONS, AVAILABLE AT: https://www.oecd.org/gender/data/women-are-well-represented-in-health-and-long-term-care-professions-but-often-in-jobs-with-poor-working-conditions.htm.**

[63] World Health Organizations, Delivered by women, led by men. A gender and equity analysis of the global health and social workforce, 2019, p. 31, available at: https://www.who.int/docs/default-source/nursing/delivered-by-women-led-by-men.pdf?sfvrsn=94be9959_2.

In 2017, the UN CEDAW Committee raised concerns regarding occupational segregation of women in Italy and their over-representation in part-time and low-paid jobs.[64] The Committee has called on Italy to adopt measures to narrow and close the gender wage gap and to increase women's access to full-time employment.[65]

Data regarding the gender pay gap between men and women in the LTC sector in Italy are not available. However, the high feminization of care work in Italy combined with the low wages in the sector is likely to contribute to occupational segregation and to the gender pay gap. According to the UN Committee on Economic, Social and Cultural Rights, states should ensure equal remuneration for work of equal value without distinction of any kind.[66] The Committee emphasizes that "remuneration set through collective agreements should seek equality for work of equal value. States parties should adopt legislation as well as other measures to promote equal remuneration for work of equal value including in the private sphere".[67]

The United Nations Working Group on Discrimination against Women and Girls (UN Working Group), an expert group tasked with analysing and providing interpretative guidance as to state obligations to respect, protect and fulfil women's human rights, highlighted the need for paid care work to start being properly valued both economically and socially through ensuring decent wages and working conditions. These can be achieved through a range of measures including through legislation to ensure minimum wage and equal pay for equal work or work of equal value and through tackling occupational segregation of women. States must introduce regulatory frameworks obligating employers to report on the gender composition of their enterprises or organizations by occupation, gender pay gap and women's representation in leadership."[68]

Amnesty International calls on the Italian government to implement the recommendations made by the United Nations treaty monitoring bodies on this issue and put in place measures to tackle occupational segregation and the persistent gender wage gap in both the public and the private sectors.

## 2.2 WORKERS' CONCERNS REGARDING HEALTH AND SAFETY AND JUST WORKING CONDITIONS DURING THE PANDEMIC

**I was a jolly, a gap filler. They called me for any shift during the day or the night if they needed. During the pandemic, I have often worked double shifts for several days on end […]. I didn't have fixed shifts, they called me whenever they lacked staff […].**

**"Jyoti"**, an outsourced care worker who worked in a private care home in Lombardy.[69]

### HEALTH AND SAFETY

Health and care workers in care homes lacked access to COVID-19 tests and personal protection equipment (PPE) at least until April 2020, as previously documented by Amnesty International.[70] The lack of PPE and access to COVID-19 tests combined with the lack of effective health and safety protocols during the pandemic, as well as staff shortages, exposed health and care workers to high morbidity rates (see introduction).

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In 2017, the UN CEDAW Committee has raised concerns regarding occupational segregation of women in Italy and their over-representation in part-time and low-paid jobs. The Committee has called on Italy to put in place measures to tackle occupational segregation and the persistent gender wage gap in both the public and the private sectors,

[64] CEDAW, Concluding Observations on Italy, para. 37, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ITA/CO/7&Lang=En

[65] CEDAW, Concluding Observations on Italy, para. 38 (previously cited).

[66] UN CESCR, General Comment 23 (2016), para. 11

[67] UN CESCR, General Comment 23 (2016), para. 15

[68] Report of the United Nations Working Group on discrimination against women and girls, "Women's human rights in the changing world of work," A/HRC/44/51, 16 April 2020, paras. 44 and 49, available at: https://undocs.org/A/HRC/44/51

[69] Interview by phone with "Jyoti" (name changed for security reasons), 12 April 2021.

[70] Amnesty International, Abbandonati, pp. 62-73 (previously cited).

The long-standing shortage of health and care workers in the long-term care sector has worsened during the pandemic. In a survey conducted by the Italian Public Health Authority, more than one third of the care homes that responded indicated staff shortage as one of the main challenges that they faced during the first months of the pandemic.[71]

In March 2020, the Italian government launched an extraordinary recruitment of health care professionals in public hospitals to deal with the increased number of COVID-19 patients who required hospital care.[72] Although official data are not available, trade unions emphasized that thousands of doctors, nurses and care workers who used to work in care homes or the private health sector were hired temporarily or permanently by public hospitals. A representative of the Italian Confederation of Workers' Trade Unions (CISL) explained to Amnesty International:

> *Many health and care workers decided to work in public hospitals, including on short-term contracts, because the economic treatment is usually better. Wages are 20% or 30% higher [than in the LTC sector]. It's not only a question of economic treatment but also of social recognition […]. Moreover, working shifts in care homes are exhausting and there is more pressure because of rules regarding minute count that workers should devote to residents.*[73]

This extraordinary recruitment drive in the public health sector was not accompanied by complementary measures to ensure the adequate staffing of care homes, despite the already low staffing levels and people at particularly high risk of COVID-19 in need of - and with a right to - care. A member of the trade union CISL in Lombardy highlighted that "the major problem concerned nurses, who were massively recruited by the public health sector, leaving care homes dried up and forced to rely on few nurses to grant very basic services with unbearable working shifts."[74]In some instances, the authorities adopted policies allowing care homes to recruit care workers who had not completed their training or staff with a lower qualification.[75] A regional representative of the trade union USB argued that "in some cases, these policies have lowered the quality of care provided to older people and increased the workload of more experienced health and care workers who had to provide supervision to newly recruited staff".[76]

Staff shortages also meant that health and care workers, particular outsourced workers, agency workers and self-employed health professionals, had often to work in both COVID-19 wards, hosting older people who had contracted COVID-19 or COVID-19 older patients discharged from hospitals, as well as wards hosting older people who had not contracted the virus yet. "Elisabetta", a care worker who was directly employed by a private care home in Lombardy told Amnesty International:

> *Outsourced workers and self-employed people were used like 'gap fillers'. Care workers employed directly by the care home were assigned to a specific floor while the others had to work on different floors as they were covering for those workers who were sick or on leave. With the pandemic, these movements between floors became more frequent because we were struggling as there was not enough staff as many were off sick. Outsourced workers often worked in several care homes too, unless the cooperative that recruited them functions as a provider for a unique big care home.*[77]

Occupational health and safety is a crucial underlying determinant of the right to health, as emphasized by the UN Committee on Economic, Social and Cultural Rights.[78] The right to safe and healthy working conditions entails domestic policies aiming to minimize the causes of hazards inherent to the working environment.[79] The authorities should put in place policies aimed to continuously improving occupational safety and health, including mechanisms ensuring compliance such as inspections, in consultation with employers' and workers' organizations.[80] An independent committee of inquiry should assess the efficiency

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[71] National Institute of Health, Survey Nazionale sul contagio COVID-19 nelle strutture residenziali e socio-sanitarie, 5 May 2020, p. 19, available at: https://www.epicentro.iss.it/coronavirus/pdf/sars-cov-2-survey-rsa-rapporto-finale.pdf

[72] Decreto Legge 9 marzo 2020, available here: https://www.salute.gov.it/portale/nuovocoronavirus/dettaglioNotizieNuovoCoronavirus.jsp?lingua=italiano&id=4188

[73] Interview by phone with a representative of CISL, 16 March 2021. The assistance provided by health and care workers in care homes is based on national standards (*Livelli Essenziali di Assistenza* "LEA") and organisational criteria defined by regional laws, which include the average minutes of weekly care to be devoted to older patients by the workforce. Most interviewees among staff and union members assessed that the number of minutes was insufficient to grant the assistance and care needed by older patients in care homes.

[74] Interview by phone with a CISL delegate in Lombardy, 16 March 2021.

[75] Regional health authorities of Emilia Romagna adopted such approach as of 20 March 2020 when they issued guidelines for long-term facilities for older people and people with disabilities in need to replace vacant staff: https://www.ctss.bo.it/Engine/RAServeFile.php/f/documenti/all._1_RER_Nota_indicazioni_CRA.pdf

[76] Interview by phone with USB delegate in Parma, Emilia Romagna, 14 September 2021.

[77] Interview by phone with "Elisabetta" (name changed for security reasons), 20 April 2021.

[78] General Comment No. 14, the right to health, para: 4, available here: https://www.refworld.org/pdfid/4538838d0.pdf

[79] ILO, Convention No. 155, Occupational Safety and Health Convention, article 4

[80] ILO, Promotional Framework for Occupational Safety and Health Convention, No. 187; Revised European Social Charter, article 3. Italy has not ratified ILO Convention No. 187 but has ratified the Revised European Social Charter.

of the national occupational safety and health framework, including in the long-term care sector, during the pandemic in view of developing preparedness plans for future health crisis as foreseen by the European Union's strategic framework for health and safety at work 2021-2027.[81]

## LONG AND EXHAUSTING WORKING SHIFTS WITHOUT ADEQUATE REST

All the health and care workers who spoke to Amnesty International's researchers emphasized that staff shortages in care homes, exacerbated by the extraordinary recruitment in the public health sector and the high numbers of workers on sick-leave because of COVID-19, led to staff often working excessively long hours, including repeated night shifts, for days on end without adequate rest periods.

"Giacomo", a self-employed nurse who worked for several care homes in the northern region of Veneto, explained to Amnesty International:

> *Even before COVID there was a tremendous staff shortage and we were forced to do hard shifts. Sometimes you work during the night shift, you sleep a few hours and you go back to work without due rest. During the emergency, many people, notably volunteers who feared to get infected without social security coverage, left and we found ourselves forced to cover many more shifts with very few staff. Sometimes I worked even 16 hours per day or I did the night shift and then the day shift the day after without rest, or I did 3-4 night shifts in a row, which is illegal. It was also tiring and stressful because shifts were readjusted on a daily basis, leaving you with no room to negotiate or plan your personal life.*[82]

"Jyoti", an outsourced care worker who worked in a private care home in the northern region of Lombardy, told Amnesty International:

> *I was a jolly, a gap filler. They called me for any shift during the day or the night if they needed. During the pandemic, I have often worked double shifts for several days on end. For example, I worked from 6.30am to 1.30 pm and then again from 5pm to 8pm. I didn't have fixed shifts, they called me whenever they lacked staff, including over weekends, bank holidays and so on. I had to work on different floors, including in wards for older people who had got COVID.*[83]

All the 34 health and care workers who spoke to Amnesty International's researchers explained that their working shifts became longer, more demanding and stressful during the pandemic. Moreover, they often had to perform more tasks than those within their job descriptions. "Annunziata", a care worker employed directly by the care home where she worked in Bologna, told Amnesty International:

> *Even before the pandemic, we had 1 care worker per 20 guests and that was challenging as they had 7 minutes top to devote to each guest. It looked already like an assembly line, it was heavy physically and psychologically. There was a continuous turnover of health workers even before. During the pandemic, we saw a heavy staff shortage after many workers got infected, worsened by the absence of families after external visits were banned and by the recruitment of care workers to the health sector. We were left with three workers instead of 10 with gruelling shifts.*[84]

In September 2021, a trade union delegate in Milan stressed that the staff shortage was still very critical in many care homes nationwide, in particular for nurses. In an interview, he said:

> *Due to a shortage of nurses, shifts are systematically covered by staff working extra shifts or redeployed by other wards. Many health and care workers are forced to cover double shifts and work up to 17 days in a row, without due rest. In addition, in many cases, care home management does not apply the work-related stress risk assessment process (Documento di valutazione dei rischi, DVR), which is mandatory by law. Many nurses are burning out and resigning.*[85]

"Annalisa" shared with Amnesty International's researchers the toll that the pandemic has had on her:

> *It was like being in war, you don't fight because your manager orders you to fight, but because the soldier you are close to needs you to be there. Now I have nightmares with episodes of war. I have heard this from many, I think post-traumatic stress disorder is what we are experiencing. At the time I resisted because I was afraid that if I collapsed, everything would collapse. It was hard for me to get psychological support. The next few months it will be war again. I am a fan of horror films*

[81] Communication (2021) 323, available here : https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0323&qid=1626089672913#PP1Contents
[82] Interview by phone with "Giacomo" (name changed for security reasons), 28 April 2021.
[83] Interview by phone with "Jyoti" (name changed for security reasons), 12 April 2021.
[84] Interview by phone with "Annunziata" (name changed for security reasons), 12 April 2021.
[85] Interview by phone with trade union delegate in Milan, 14 September 2021.

*and of that genre, which I have an excellent knowledge of, but they have ruined the passion for my favourite films, the films have come closer to reality.*[86]

In view of these concerns raised by workers and trade unions, Amnesty International calls on an independent committee of inquiry to also examine issues relating to the right to just and favourable conditions at work,[87] particularly in view of the high fragmentation of collective bargaining (see section 1) in the long-term care sector in Italy and the widespread use of outsourced workers and self-employed health professionals.

[86] Interview by phone with "Annalisa" (name changed for security reasons), 31 March 2021.
[87] Article 7, ICESCR. According to the UN Committee on Economic, Social and Cultural Rights (CESCR) the right to just and favourable conditions of work (article 7 of the Covenant) includes rest, leisure, reasonable limitation of working hours and periodic paid holidays (Article 7d), which are a prerequisite to prevent work-related stress, accidents and diseases, and thereby promote the realization of the right to health (Article 12). CESCR, GC 23 (2016) on the right to just and favourable conditions of work, para. 34

# 3. INSPECTIONS AND MONITORING

**Between 2017 and 2020, the overall number of labour inspections carried out decreased by 80% (from 180,464 inspections in 2017 to 103,857 in 2020).[88]**

Labour inspections play a crucial role in ensuring compliance with labour laws and in promoting just and favourable conditions at work. However, the capacity of the National Labour Inspectorate to carry out inspections has worryingly decreased in recent years.

In Italy, the National Labour Inspectorate, a body embedded in the Ministry of Employment and Social Affairs, is charged with monitoring the respect of a wide range of laws and regulations in the areas of employment, social security and health and safety in the workplace.[89] The National Labour Inspectorate has exclusive competence in monitoring compliance with labour laws and regulation. In the area of health and safety in the workplace, the Inspectorate shares its competence with regional mechanisms, namely the Department of Prevention and Safety in the workplace embedded within local health authorities (ASL).[90]

In many instances inspections and checks carried out by the National Labour Inspectorate identified non-compliance with existing employment laws; for example, in 2020 the Inspectorate found non-compliance in 66% of the overall number of inspections and checks carried out in the area of employment. In the same year, the Inspectorate identified irregular practices in 78% of the cooperatives inspected. Cooperatives, who often outsource care and health workers to care homes, engaged for example in "social dumping" aimed to reduce labour costs by applying collective employment contracts negotiated with trade unions which did not genuinely represent workers.[91] Moreover, in 2020, the Inspectorate found instances of misclassification of self-employment in 18% of the overall number of inspections conducted in the areas of health and social work (1,085 out of 5,287 inspections). The practice of misclassification of self-employment– which means that health and care workers are not genuinely self-employed although they are considered as such by the entities hiring their services including care homes– is more widespread in the area of health and social workers than in any other sector, where the average number of inspections in which misclassification issues had been identified was 2% in 2020.[92]

These data regarding non-compliance point to the necessary role of the Inspectorate in protecting and promoting safe, just and favourable working conditions. However, the number of both inspections and inspectors has decreased in recent years. Between 2017 and 2020, the overall number of labour inspections

[88] Annual report on inspections activity on labour and social legislation, National Labour Inspectorate, p. 1 (previously cited)
[89] More information regarding the competences of the National Labour Inspectorate are available at: https://www.ispettorato.gov.it/it-it/IspettoratoNazionaleLavoro/Pagine/IspettoratoNazionaleLavoro.aspx
[90] Legislative decree no. 81 of 9 April 2008, article 13, available at: https://www.ispettorato.gov.it/it-it/strumenti-e-servizi/Documents/TU%2081-08%20-%20Ed.%20Novembre%202020.pdf
[91] Annual report on inspections activity on labour and social legislation 2020, National Labour Inspectorate, available at: https://www.ispettorato.gov.it/it-it/in-evidenza/Documents/Rapporto-annuale-2020.pdf, p. 42
[92] https://www.ebinter.it/ebinter-site/wp-content/uploads/2020/04/Rapporto-annuale-2019-attivita-di-vigilanza-INL.pdf

carried out steadily decreased by 80% (from 180,464 inspections in 2017 to 103,857 in 2020). In the same period, the number of inspectors decreased by 20.5%.[93]

There are no comprehensive data available regarding the number of inspections carried out by local health authorities (ASL) during the pandemic and their reports are not publicly available. While these inspections continued during the pandemic, the testimonies collected by Amnesty International suggest that these inspections focused on administrative and procedural aspects and were not effective in identifying non-compliance with health and safety regulations.[94]

Trade unions have emphasized the need to strengthen the capacity of the Inspectorate to carry out inspections in view of improving health and safety at work. For example, on 1 May 2020, a few months after the pandemic had broken out, the Italian General Confederation of Labour emphasized the necessity to strengthen inspections in care homes where working conditions are on the verge of becoming unsustainable.[95]

A representative of the grassroots union USB in Lombardy told Amnesty International that his branch had reported to the National Labour Inspectorate several instances of non-compliance with labour laws, including practices of misclassification of self-employment in care homes, and had requested the Inspectorate to conduct inspections. However, according to the union, the Inspectorate rarely took steps to conduct inspections and address alleged wrongdoing in those specific cases.[96] On 6 July 2021, USB made public allegations regarding non-compliance with health and safety and fair and favourable working conditions in a public care home in Lombardy, which had outsourced the management and staffing of seven of its wards to private cooperatives. The day before, USB had sent a report documenting the same concerns to the public authorities, including the public prosecutor, the local health authority and the national anti-corruption authority.[97] Shortage of staff in the outsourced wards has allegedly resulted in lower quality of care, higher COVID-19 mortality rates among older people and poorer working conditions for care workers. A USB legal representative in Lombardy explained to Amnesty International that USB had reported the situation to the National Labour Inspectorate on 15 November 2017, requiring an urgent inspection in the public care home. The National Labour Inspectorate responded only in March 2019, confirming their inspection activity had been initiated. When this briefing went to press (October 2021), USB had no further information regarding the outcome of the inspections.[98]

ILO standards establish that states should maintain a system of labour inspection and that the number of labour inspections shall be determined in view of, among other factors, the number and complexity of legal provisions to be enforced.[99] Amnesty International calls on the Ministry of Labour and Social Affairs to review the financial and human resources available to the National Labour Inspectorate and to ensure that the Inspectorate is adequately resourced to ensure compliance with labour laws.

[93] Annual report on inspections activity on labour and social legislation, National Labour Inspectorate (previously cited), p.1
[94] Abbandonati (previously cited), p. 43-45
[95] CGIL-NdiL, I precari storici dell'emergenza, available at: https://www.nidil.cgil.it/somministrazione-precari-storici-emergenza/
[96] Interview by phone with Pietro Cusimano, USB representative in Lombardy, 12 February 2021.
[97] More information is available on the website of USB at: https://lombardia.usb.it/leggi-notizia/usb-denuncia-lultimo-per-ora-fallimento-della-sanita-lombarda-nelle-rsa-in-appalto-il-quadruplo-dei-morti-che-nelle-rsa-pubbliche-il-caso-golgi-redaelli-1416-1-1.html
[98] On XX September, Amnesty International sent a request for further information regarding the outcome of the inspections to the National Labour Inspectorate. When this briefing when to press, the Inspectorate had not replied to the letter.
[99] ILO Labour Inspection Convention, 1947 (No. 81). Articles 1 and 10, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081

# CONCLUSIONS AND RECOMMENDATIONS

COVID-19 has had a huge toll on both older people in care homes and the staff caring for them. Health and care workers raised serious concerns regarding health and safety and unjust working conditions during the pandemic. Some were silenced for doing that and their concerns remain today unheard.

With a view to addressing the concerns raised by care home workers and trade unions during the pandemic, Amnesty International calls on Members of Parliament to:

- Establish a parliamentary committee of inquiry to investigate, among other issues:
    - health and safety in care homes during the pandemic, including the efficiency of national occupational safety and health framework;
    - high morbidity and mortality rates in care homes;
    - violations and abuses of the rights to life, health and non-discrimination experienced by older people;
    - concerns raised by care home workers relating to a healthy and safe working environment and to favourable and just conditions at work;
    - the association between those concerns and long-term issues in the sector, such as staff shortages, poor working conditions and gender pay gap;
    - violations and abuses of the rights to freedoms of expression and association faced by home care workers during the pandemic.

The committee should duly consult health and care workers, trade unions, employers' organizations as well as organizations representing older people and their families.

Moreover, in view of the findings highlighted in this briefing, Amnesty International makes the following further recommendations:

The Italian parliament should:

- Amend the existing legislative framework on whistleblowing by ensuring that all employers put in place systems that allow workers to report on health and safety risks and ensuring that whistleblowing mechanisms in both the private and the public sector provide strong guarantees of confidentiality and independence. All employers should foster a safe and enabling environment that encourages reporting or disclosure of wrongdoing in an open manner, in accordance with the rights to freedom of expression and access to information;

The Ministry for Employment and Social Affairs should:

- Review the financial and human resources available to the National Labour Inspectorate and secure adequate resources to ensure compliance with labour laws. The Ministry should consider strengthening the inspection regime in the long-term care sector in line with ILO Convention 81 to ensure effective monitoring compliance with the complex and fragmented labour regulations currently applicable in the long-term care sector in Italy;

- Implement the recommendations made by the United Nations treaty monitoring bodies and put in place measures to tackle occupational segregation and the persistent gender wage gap in both the public and the private sectors;
- Ensure that all care home workers – including those in non-standard and informal forms of work – can exercise their rights to freedom of expression and association without fear of reprisal. This includes state authorities refraining from violating these rights, protecting these rights from abuse by private parties, and taking positive measure to fulfil these rights in line with international human rights law and standards.

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# MUZZLED AND UNHEARD IN THE PANDEMIC

## URGENT NEED TO ADDRESS CONCERNS OF CARE AND HEALTH WORKERS IN ITALY

Health and care workers in Italy who raised legitimate concerns about poor and unsafe working conditions in care homes during the COVID-19 pandemic were subjected to unfair disciplinary proceedings and feared recriminations from their employers.

Staff working and trade unions have raised serious concerns regarding unsafe and unhealthy working conditions, long shifts without adequate rest and inadequate labour inspections. Morbidity rates among staff are very high as 65.6% of the overall number of workers who have contracted COVID-19 in the workplace are health and care workers. Workers in the highly feminized long-term care sector have also raised concerns relating to understaffing, low wages and precarious working conditions prior to the pandemic; they have reported that these long-standing issues were exacerbated due to COVID-19.

The Italian authorities must ensure that these workers' voices are heard. Amnesty International is calling on the Italian parliament to set up an independent committee of inquiry to investigate the authorities' response to the COVID-19 pandemic with a specific focus on care homes. Any such committee must consider the serious concerns raised by workers and unions regarding health, safety and poor working conditions during the COVID-19 pandemic and preceding it.

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