

30 years
CEDAW

1979/2009

Anniversary of the Convention on the Elimination
of All Forms of Discrimination against Women



SHADOW REPORT

Written by the Italian platform “30 years CEDAW: work in progress”

With reference to the 6th periodic report on the implementation of the CEDAW Convention submitted by the Italian Government in 2009.

Italy, June 2011

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The complete list of associations, experts, organizations and NGOs that have endorsed the shadow report will be delivered to the UN Committee on the Elimination of All Forms of Discrimination against women in July at the 49th CEDAW session and will be published on the website.

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INTRODUCTION

CSO engagement in promoting the CEDAW Convention in Italy. The role of the Platform “30 years CEDAW: work in progress”

On the occasion of the 30th anniversary of the CEDAW Convention MP Giancarla Codrignani described the day when Italy ratified CEDAW: “Italy ratified the Convention in 1985. The discussion at the Chamber of Deputies had been scheduled on Monday, when the Parliament is empty. I had to express the approval on behalf of two left parties: I was furious for the poor political interest in such an important event for women and decided to take revenge by renouncing to deliver a high content speech and used the time at my disposal for describing all the characteristics of the act. Some MPs belonging to the Communist and Socialist parties sitting in front of me showed signs of disapproval and insisted for quickly closing the session. I did not have fun as I knew my protest was useless. I can now at least remember the episode and share it with you”¹.

Since then, Italian institutions haven’t expressed much more interest in the public discussion on the CEDAW implementation. Women’s indignation and activism has nonetheless raised and many awareness raising and lobbying activities at local and national level have taken place for promoting women’s rights and including a gender perspective in policies.

However CEDAW still remains largely neglected, even by experts and local institutions. For this reason we created a national Platform able to deal with institutions and widely spread information about the Convention.

The Platform is composed of organizations and experts engaged in research, campaigning and training activities on women’s rights and the promotion of gender equality in Italy and in international cooperation. It was created in 2009, on the occasion of the CEDAW 30th anniversary. Since then the Platform has been promoting the major role the Convention plays in the protection of women’s rights through awareness and information initiatives.

In December 2009 the Italian Government submitted the 6th Periodic Report to the UN Committee on the Elimination of All Forms of Discrimination against women². Some of the organizations belonging to the Platform have engaged in the drafting of a Shadow Report for highlighting the critical aspects of the Italian protection system against gender discriminations.

THE ITALIAN GOVERNMENT 6th PERIODIC REPORT

Italy’s 6th Periodic Report aims at presenting to the CEDAW Committee the progress made in implementing the Convention in the period 2005-2008. As the Report was submitted in December 2009 and the Italian Government sent some additional information to the Committee last March, following some Critical Issues raised by the Committee during the Pre-session, the Report covers also the period 2009-2011.

THE CSO SHADOW REPORT

The Shadow Report is an important tool for spreading information and highlighting the main challenges faced by women in Italy in their empowerment processes and the enjoyment of human rights. The document includes an analysis of the main issues identified by the authors, who every day promote gender equality and equal opportunities through their professional and voluntary commitment.

The Report is the result of a wide consultation with civil society organizations, feminist and women’s associations, LGBTQI movements and experts on gender discrimination. It includes the suggestions and experience of the main organizations engaged in the promotion of women’s right in Italy.

In the period 2005-2009 little progress was registered in the status of Italian women. Poor attention was paid to domestic violence and rapes committed by migrants in public places (few numbers compared to domestic sexual violence) were politically instrumental to the adoption of repressive immigration laws. This led to many demonstrations in 2007 for asking investments and structural

¹ Giancarla Codrignani, <http://www.noidonne.org/blog.php?ID=00468>

² From now onwards CEDAW Committee.

interventions for the prevention of violence and the promotion of gender equality through the elimination of gender stereotypes which are the roots of gender-based violence and more broadly of the underrepresentation of women in the economic, political, social and cultural life.

The Shadow Reports outlines that women's access to work and reproductive health didn't improve in that period.

In recent years the Ministry for Equal Opportunities showed growing attention to gender-based violence and adopted legislative reforms neglected for years by the Parliament: we welcome the adoption of the Act on stalking and the adoption of the Antiviolence and UNSCR 1325 National Plans as examples of the Ministry engagement on the issue.

Nonetheless besides these reforms no concrete political will to strategically face the cultural cause of violence and the poor presence of women in decision-making processes was shown. This hinders improvements in women's rights protection and promotion.

The Government itself recognizes in the Periodic Report that deeply rooted gender stereotypes in our country are the most important obstacle to women's empowerment and equal opportunities.

Since 2005 no will to try to modify the stereotyped image of women in the media has been noticed. The political debate has contributed to a decline in this sense through frequent sexual references and stereotyped expressions on the role of women in society. Machos attitudes are widely tolerated also in the public sphere and have contributed to women giving up actively participating in social, economic political and cultural life, as they are aware of the difficulties they could face in pursuing a career of any type on the basis of their capacities.

The absence of an independent body devoted to gender discrimination and gender-based violence contributes to worsen the difficulties encountered by Italian institutions in defining effective long-term strategies for deconstructing gender stereotypes.

Since 2005 the Italian equal opportunities system has been characterized by a complex functioning and the lack of a homogeneous mission. The Ministry of Equal Opportunities is a ministry without portfolio and is therefore economically dependent on the Government. Powers of Minister are delegated by the Prime Minister and the responsibilities are shared among different ministries and a bunch of equal opportunities bodies at the local and national level. Those bodies are often insufficiently funded to carry out proper interventions and appointed by the government.

Civil society could undoubtedly give a strategic contribution to the necessary constitution of an independent body responsible for the promotion and protection of human rights, in line with the Paris principles and the Recommendations formulated by the six Committees that have examined Italy's Reports in the last years. This institution should of course include a specific body responsible for monitoring the promotion and protection of women's rights.

The respect of the Convention's principles in implementing actions for promoting gender equality and a greater involvement of civil society organizations could bring remarkable improvements in the future.

ARTICLE 1 DEFINITION OF GENDER-BASED DISCRIMINATION

1.1 THE DEFINITION OF SEX-BASED DISCRIMINATION AS CONTAINED IN ARTICLE 1 OF D. LGS. 198/2006 IS NARROWER THAN THE ONE REFERRED TO IN ARTICLE 1 OF THE CEDAW. THE PROHIBITION OF SEX-BASED DISCRIMINATION STATED IN THE SAME ARTICLE DOES NOT HAVE A UNIVERSAL NATURE SINCE IT DOES NOT OBTAIN ANY JURISDICTIONAL PROTECTION IN SEVERAL FIELDS OF SOCIAL LIFE³.

In Recommendations 19 and 20 of 2005 the CEDAW Committee expressed its concerns for the absence of a definition of gender in accordance with the one contained in art. 1 of the Convention, and found that such a legislative gap could have negative consequences on the understanding of the meaning and scope of the concept of substantive gender-based equality.

The Ministry of Foreign Affairs, on page 69⁴ of the 2005 Report to the Parliament “on the activity of the Interministerial Committee on Human Rights and on the protection and respect of human rights in Italy”, defined the CEDAW Committee Rec. 19/2005 to Italy “groundless”, considering the provisions by articles 3 and 51 of the Constitution sufficient.

The D. LGS. 198/2006 introduced in art. 1 a new definition of sex-based discrimination, amended afterwards by the D. LGS 5/2010. The new phrasing reductively follows art. 1 of the CEDAW⁵ losing its specific reference to the enjoyment of rights by women, “thus excluding the fundamental recipient of the provision, nearly willing to emphasize a narrow, bidirectional – that is to say referred both to man and woman – definition of formal equality, which entails the loss of the whole elaboration on substantive equality, unequal right and positive actions”⁶.

The legislative decree no. 198 itself, in art. 25, contradicts the universal nature of the prohibition of sex-based discrimination, specifying the concepts of direct and indirect discrimination in relation to discrimination in the workplace only, as likewise confirmed by the “Responses”⁷ of the Government in **paragraph 12**. According to what envisaged by articles 36 and 55 quinquies of the decree, it is possible to get legislative protection just for violations of the prohibitions of sex-based discrimination in the workplace and in the access to goods and services.

The universal prohibition of sex base discrimination stated in article 1 of d. lgs. 198/2006 is therefore a meaningless formula: serious protection gaps remain with regard to the violations of the prohibition of gender-based discrimination in the other fields (political, economical, social, cultural and civil). For such reasons the considerations expressed in the governmental Report in **paragraphs 37 and 38** cannot be endorsed (see also considerations developed in article 2).

The absence of a jurisdictional protection against gender-based discriminations applicable to all the fields of social life prevents women to achieve full and effective de facto equality with regard to the enjoyment of fundamental rights and freedoms.

1.2 THE DEFINITION OF SEX-BASED DISCRIMINATION CONTAINED IN ART 1 D. LGS. 198/2006 EXCLUDES LESBIAN AND TRANSEXUAL WOMEN DISCRIMINATED FOR THEIR SEXUAL ORIENTATION FROM PROTECTION. THE ABSENCE OF A DEFINITION OF GENDER AND SEXUAL ORIENTATION-BASED DISCRIMINATION PREVENTS THE PENAL PROTECTION ENVISAGED INSTEAD FOR ALL THE OTHER FORMS OF DISCRIMINATION⁸

As indicated in the European Region by the International Lesbian and Gay Federation, in a joint submission with Arcilesbica, Arcigay, Crisalide Azione Trans, International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA Europe and others), legal protection for lesbian, gay and bisexual persons in Italy exists only in the areas of employment and as ground for asylum. This discriminates lesbian and transsexual women in the enjoyment of their fundamental rights compared to the other women⁹.

Gender and sexual orientation-based discrimination is the only one that is not protected by criminal law.

3 Paragraph referred to Question no. 3 of the “List of Issues and questions by the CEDAW Committee with regard to the consideration of the Sixth Periodic Report of Italy on CEDAW” and to the consequent response provided by the Italian Government on the 21st March 2003. Hereafter referred to just as “Question by CEDAW Committee”.

4 <http://www.senato.it/service/PDF/PDFServer/BGT/219779.pdf>

5 See also in this sense the “Document on the acknowledgement of the 54/06 Directive on the implementation of the principle of equal opportunities and equal treatment between men and women in labour and employment by the network of Equality Councilors of Emilia-Romagna” http://www.consiglierediparitaer.it/wcm/parita/sezioni/documentazione/altro/All_07_RETE_CdP_EMILIA_ROMAGNArecepimento_dir_54.pdf

6 Quoted from BONARDI O., Equal opportunities: a minimal reform for a minimalist code, in Note informative, n. 49/2010, 15.09.2010, p. 2

7 From now on “Responses” will stand for “Responses to the list of issues and questions with regard to the consideration of the Sixth Periodic Report” sent by the Italian Government to the Committee on the 21st March 2011.

8 Paragraph referred to Question no. 3 by the CEDAW Committee.

9 ILGA Europa and others, pages 1-2.

Act 205/1993 (known as Mancino law) in fact considers a series of behaviors¹⁰ carried out for racial, ethnic, national or religious reasons as crimes. The same behaviors are not prosecutable (nor otherwise subject to protection) if due to gender- or sexual orientation-based discrimination. This protection gap appears even more blameworthy when considering that the Mancino law explicitly recalls the CERD – CEDAW’s “twin” convention – implementing it. Right because of the same protection acknowledged by both Conventions in art. 2 with regard to gender-based discrimination and discrimination for racial, ethnic or national reasons, a protection equivalence is desirable at the national level, as well.

Due to the absence of a juridical definition of gender- and sexual orientation-based discrimination it was impossible for the legislator to extend the penal legislative protection envisaged by Mancino law to these forms of discrimination, too.

Due to the increasing number of aggressions towards gays and lesbians, in 2009 two draft bills (no. 1658 and no.1882) were submitted to Parliament to extend the penal protection envisaged by Mancino law to sexual orientation-based discriminations, as well. During the parliamentary debate a preliminary constitutionality issue¹¹ was raised by the Catholic group, approved with the 54.8% of the votes, which led to the rejection of the draft bill. That is to say, the members of the Low Chamber, with a majority of 63 votes only, considered the text of the draft bill unconstitutional affirming that, in the absence of a juridical definition of “sexual orientation”, homosexuality and lesbianism were comparable to incest, paedophilia and other deviant sexual behaviors¹².

Also a new draft bill, modified, was not approved.

The double negative vote builds on a discriminatory ideological reason and this is confirmed by two evidences: primarily, nowadays the definition of sexual orientation-based discrimination is acknowledged all over Europe with a very specific meaning, as per articles 8 and 14 ECHR and 19 TUE and as to secondary communitarian law; secondly, in the Italian law itself the definition of “sexual orientation” has already been used at the national level in the D. LGS. 216/2003 implementing the European directive 2000/78/CE and at regional level in the law no. 63 of the Tuscany Region, 15th November 2004 (Norms against discriminations due to sexual orientation or gender identity)¹³. The same remarks can be expressed for the concept of “gender”¹⁴.

1.3 THE D. LGS. 5/2010 RESTRICTS THE DEFINITION OF INDIRECT DISCRIMINATION IN THE WORKPLACE VIOLATING ARTICLES 2 AND 15 OF THE CEDAW¹⁵ The D. LGS. 5/2010 introduced paragraph 2 bis to the article 25 of the CEO¹⁶, envisaging that *“under the clause of the present title, each less favourable treatment due to pregnancy, maternity or paternity, also if adoptive, or to the entitlement and the exercise of the relevant rights, constitutes a discrimination”*.

This formulation reductively amends the principle already contained in the art. 3 D. LGS. 151/2000. The former regulation considered any reference to the marital, family or pregnancy status as a discrimination. The new one instead only mentions maternity and paternity (also adoptive). The extension of the application field of the prohibition, with an explicit reference to the conditions of adoptive maternity and paternity, is favourably welcomed. Nevertheless, at the same time the application of the provision was limited, since the former formulation in art. 3 D LGS. 151/2000 contained a more generic (but thus broader)

¹⁰ The propaganda of ideas based on racial or ethnic superiority or hatred; the instigation to commit or the perpetration of discrimination acts for such reasons; the establishment, the promotion and the participation in organizations, associations, movements or groups having among their aims the incitement to discrimination or violence for such reasons

¹¹ By Hon. Vietti, UDC.

¹² The preliminary issue reads “The expression ‘sexual orientation’ is extremely generic, since it can be referred to specific phenomena like homosexuality or, more in general, to each ‘sexual tendency’, thus including also incest, pedophilia, zoophilia, sadism, masochism and any other kind of sexual choice that has nothing to do with homosexuality”.

http://leg16.camera.it/view/doc_viewer_full?url=http%3A//leg16.camera.it/409%3FidSeduta%3D231%26Resoconto%3Ddallegato_a.165800%23que_pre&back_to=http%3A//leg16.camera.it/412%3FidSeduta%3D0231%26resoconto%3Dstenografico%26indice%3Dcronologico%26tit%3D00080

¹³ At present the definition of “sexual orientation” appears also in the law no. 52 of the Liguria Region, 10th November 2009 (Norms against the discriminations due to sexual orientation or gender identity) and in the law no. 11 of the Marche Region, 11th February 2010 (Norms against the discriminations due to sexual orientation or gender identity).

¹⁴ Regional laws against gender-based discriminations or mentioning gender are: the L.R. Basilicata 18-12-2007, no. 26 Establishment of a regional observatory on gender violence and violence against minors; the L.R. Liguria 10-11-2009, no. 52 Norms against the discriminations based on sexual orientation or gender identity; the L.R. Liguria 01-08-2008, no. 26 Integration of equal opportunities policies in the Liguria Region; the L.R. Liguria 21-03-2007, no. 12 Interventions for the prevention of gender violence and measures supporting women and minors victims of violence; the L.R. Liguria 11-02-2010, no. 8 Provisions against discriminations due to sexual orientation or gender identity; the L.R. Piemonte 18-03-2009, no. 8 Integration of gender equal opportunities policies in the Piemonte Region and provisions for the establishment of gender budgets; the L.R. Puglia 21-03-2007, no. 7 Norms for gender policies and work-life conciliation in Puglia; the L.R. Toscana 02-04-2009, no. 16 Gender citizenship; the L.R. Toscana 16-11-2007, no. 59 Norms against gender violence; the L.R. Toscana 15-11-2004, no. 63 Norms against the discriminations based on sexual orientation or gender identity; L. P. Trentino-A.A./Trento: Provincia autonoma 09-03-2010, no. 6 Interventions for the prevention of gender violence and the protection of its women victims; L.R. Umbria 15-04-2009, no. 6, Establishment of the Centre for equal opportunities and implementation of gender policies in the Umbria region.

¹⁵ Paragraph referred to the **Question no. 2 of the CEDAW Committee**.

¹⁶ From now on CEO will stand for “Code of Equal Opportunities”, that is to say D. LGS. 198/2006, as amended in the course of time.

reference to the conditions of family and to the marital status, which is currently missing in the CEO¹⁷.

WE RECOMMEND:

- *Introducing of a general definition of gender-based discrimination and of sexual orientation-based discrimination in a national constitutional law.*
- *Extending jurisdictional protection to gender- and sexual orientation-based discriminations in whatever field of social life they shall occur, including those currently excluded or not mentioned by the Code of Equal Opportunities.*
- *Extending the penal protection acknowledged by Mancino Law to behaviors based on racial, ethnic, national or religious reasons to those behaviors perpetrated because of gender- or sexual orientation-based reasons, as well.*
- *Reformulating the definition of indirect discrimination in the workplace in accordance to CEDAW.*

17 BONARDI O., Pari opportunità: una riforma minimale per un codice minimalista, in Note informative, no. 49/2010, 15.09.2010, p.8.

ARTICLE 2 OBLIGATIONS OF THE STATE UNDER THE CONVENTION

2.1 NO INTEREST TO THE DISSEMINATION OF INFORMATION ON THE CONVENTION¹⁸

In the Recommendation 20/2005 the Committee suggested the implementation of a campaign to raise awareness about the Convention and the State party's obligations under the Convention, and the meaning and scope of discrimination against women aimed at the general public and public officials.

In the Recommendation 41/2005 the Committee demanded a broad dissemination of the concluding comments, of the Convention, of the Optional Protocol as well as of the Beijing Declaration and Platform for Action among Italian citizens, public officials, politicians, women and human rights organizations.

As already anticipated in our List of Critical Issues submitted to the Committee, those recommendations were completely disregarded, as well as the General Recommendations no. 6 par. 2 and no. 25 par. 2.

Despite Italy ratified the CEDAW almost 30 years ago, institutions have not adopted any effective strategy to increase the CEDAW visibility, yet.

The failed online publication of the Italian text of the Convention, of the General Recommendations and of its Optional Protocol by the institutions surely represents the major obstacle to the knowledge and use of the CEDAW by public and private actors.

2.1.1 No *online* official translation of the Convention, of the General Recommendations and of the Optional Protocol is available on the institutional websites

The website of the Department of Equal Opportunities dedicates just one page¹⁹ to the CEDAW, very concisely explaining its functioning in Italian. This page links to the official website of the Convention (in English) and to the session during which Italy will be examined, but no Italian version of the documents is available. Beside the *online* publication of the link to the website of the Convention, no other dissemination strategy was adopted.

2.1.2 No dissemination of the concluding observations. The 2005 Recommendations to the Italian Government were published *online* in Italian on the website of the Ministry of Equal Opportunities only at the end of 2010

The obligation of publishing and disseminating Concluding Comments directly derives from the ratification of the Convention and of its Optional Protocol. The Italian Government is not fulfilling this obligation, despite the recurring solicitations by civil society.

The official translation of the concluding comments by the CEDAW Committee of 2005 was made available *online* just in 2010. As already anticipated in our List of critical issues submitted to the Committee, this delay is unacceptable considered that their translation was released only 5 years afterwards, when the concluding comments were no longer politically implementable.

It is to be pointed out that in 2006 a parliamentary inquiry requiring written response and addressed to the Ministry for Equal Opportunities was presented to the Low Chamber²⁰ asking for the reason of the failed translation and dissemination of the Concluding Comments, but it remained unanswered²¹. A further remark is that the *online* publication of the concluding comments in Italian is subsequent to the request made by Italian Platform "Lavori in Corsa – 30 anni di CEDAW") on the occasion of a meeting with the Ministry Valentino Simonetti – former Chair of the Inter-Ministerial Committee for Human Rights within the Ministry of Foreign Affairs – on the 1st June 2010 and also to the submission, always by the Platform, of the List of critical issues to the CEDAW Committee. Therefore it is not the expression of a real will to disseminate the contents of the concluding comments, but rather of a political expedience to avoid censures by the Committee.

2.1.3 No institutional celebrative campaign for the 30th anniversary of the Convention

On the occasion of the 30th anniversary of the Convention no institutional initiative was arranged to celebrate the event and only some local institution adhered to the information campaign "Lavori in corsa – 30 anni di CEDAW" promoted by the civil society²².

18 Paragraph referred to Questions no. 2 and 7 by the CEDAW Committee.

19 <http://www.retepariopportunita.it/DefaultDesktop.aspx?page=3099>

20 Inquiry requiring written response n. 4/02065 presented by the women MPs De Simone, Deiana, Dioguardi on the 4th December 2006 during the Low Chamber session no. 090. http://www.camera.it/_dati/leg15/lavori/stenografici/sed090/pdfbt49.pdf

21 It is to be noticed that on the occasion Barbara Spinelli, for the Italian Association of Democratic Lawyers (Giuristi democratici) translated and published it on the website http://files.giuristidemocratici.it/giuristi/Zfiles/ggdd_20061122082612.pdf

22 For the calendar of the events see www.womenin.net/web/cedaw/home

2.1.4 No national structures and adequate coordination machinery in place to ensure a full and consistent implementation of the Convention by the regional and local authorities

WE RECOMMEND:

- *That economic resources are allocated for the Italian translation and the online publication of the whole normative body related to the Convention - including the General Recommendations, the Optional Protocol, the Committee decisions, the periodic Reports, the Concluding Comments - on the institutional websites.*
- *That economic resources are allocated for the reprint of the book “La Convenzione delle donne – CEDAW” published in 2002 by the national Commission for equality and equal opportunities, including, beside the texts of the Convention and of the Optional Protocol, those of the General Recommendations and of the Concluding Comments by the CEDAW Committee to Italy, as well.*
- *That this book is circulated for free to all national and regional MPs and to all the provincial and local Departments for Equal Opportunities. That a broad dissemination of the book in schools, in judicial offices and in the Boards of the Associations of Bars and Psychologists is ensured.*
- *That sensitization campaigns are carried out and dedicated trainings funded, in order to raise awareness on the Convention and the State party’s obligations under the Convention and on the meaning and scope of discrimination against women aimed at the general public, and especially public officials, the judiciary and the legal profession.*
- *That women’s associations are allowed to contribute to the implementation of the Convention and of the Optional Protocol through the allocation of funds for their capacity and skill development.*
- *Creating synergy and to make NGOs an active partner that fully plays its role but whose actions converge on common objectives.*
- *That the Concluding Comments by the CEDAW Committee are widely disseminated in Italian in order to make the citizens, including government officials, politicians, MPs and women’s and human rights organizations, aware of the steps that have been taken to ensure the de jure and de facto equality of women, as well as the further steps required in this regard.*

2.2 THE PERIODIC REPORT: NO TRANSLATION AND INSUFFICIENT CONSULTATION OF CIVIL SOCIETY²³

2.2.1 Partial and non transparent dynamics for civil society consultation. No involvement of the most active NGOs at the national level

Recommendations 12/2005 and 38/2005 by the CEDAW Committee were disregarded. The civil society consultation process was quite unclear in terms of purposes, timings and actors involved.

The Inter-Ministerial Committee for Human Rights did not set up any informative or accredit procedure for NGO’s participation and consultation.

No permanent, constructive and transparent dialogue²⁴ with women’s and feminist associations, also towards the preparation of the periodic Report, was started.

The Government did not involve the major NGOs working on women’s rights and well-rooted at the national level in the preparation of the report²⁵. In this regard, the Government did not accurately provide

23 Paragraph referred to Questions no . 1 and 7 by the CEDAW Committee

24 The Inter-Ministerial Committee for Human Rights rejection of dialogue with civil society does not affect CEDAW implementation only, but also the implementation of the other Conventions, as reported in the monitoring report on the Recommendations to the Italian Government by the UN Committee on Economic, Social and Cultural Rights and the UN Committee on Human Rights with regard to the implementation of the international Covenants on economic, social and cultural rights and on civil and political rights and other instruments of the international law, Rome, 19th June 2007, pages 70-71.

25 Among these, just to mention a few: the national network of the centers against violence, UDI and Giuristi Democratici did not receive any convocation by the Inter-Ministerial Committee for Human Rights, despite they had already come to the fore as qualified institutional stakeholders in this regard, being all convened in Parliament to provide their advice on some legislative reforms on gender violence and family law.

any of the clarifications required by the CEDAW Committee. The consultations mentioned by the Government at point 6 of the “Responses” refer only to international NGOs and institutions that usually collaborate with the Government.

Beside AIDOS and the Italian Coordination of the European Women’s Lobby, the 6th May 2008 meeting reported at point 6 was attended by associations such as Amnesty, Caritas, UNICEF, ARCS-ARCI and the University of Milan Bicocca, that is to say associations that work on human rights in general, none of which with a specific focus on gender issues, and that, however, cannot be considered representative of the reality of women’s and feminist associations in Italy. During the meeting, the only contribution required to the NGOs attending was the sending of useful materials. Moreover, a second meeting should have been convened in the month of July but some of the attending associations we consulted²⁶ did not receive either feedbacks on the May meeting or further invitations.

The Report was not circulated *ex ante* among the NGOs and, to date, is not published in Italian. On the occasion of the meeting with the Ministry Valentino Simonetti – former Chair of the Inter-Ministerial Committee on Human Rights within the Ministry of Foreign Affairs on the 1st June 2010 – the Italian Platform was informed that no Italian version of the Report was available and no translation of the official Report from Italian to English was planned due to lack of funds. Contrarily, point 7 of the “Responses” states that an Italian version of the Report is available, afterwards translated in English. The preparation of the State Party Sixth periodic Report on the CEDAW implementation lacked an actual information of the general public, an authentic consultation of women’s associations and a constructive dialogue with civil society.

2.2.2 Insufficient involvement of the Parliament and of the regional and local legislative Assemblies in the dissemination of the concluding comments

Through Recommendation 38/2005 the CEDAW Committee encouraged the State party to involve the Parliament in a discussion of the Report before its submission to the Committee. The recommendation was completely disregarded.

Through Recommendations 16 and 41/2005 the CEDAW Committee invited the State party to present the concluding comments to all the relevant ministries and to the Parliament, as well as to all the politicians and civil society, so that their full implementation could be ensured. We regret to notice that the Government showed a patent reluctance even in the communication of the whole contents of the concluding comments to the Parliament. In fact, the Inter-Ministerial Committee for Human Rights, in its “Report on the activity carried out by the Inter-ministerial Committee on Human Rights and on the protection and respect of human rights in Italy” submitted to the Parliament, reports the CEDAW Committee remarks to the Parliament in a partial and summarized version²⁷. Moreover, in summing up some of the remarks by the CEDAW Committee to the Parliament, the Inter-Ministerial Committee for Human Rights mostly (to the extent of 10) presents them as groundless, expressing the conviction that only 2 of the 2005 concluding comments by the CEDAW Committee were justified and only 1 partially groundless²⁸. The Inter-Ministerial Committee for Human Rights improperly played a “filter” role towards the Parliament as to the exact knowledge of the contents of the CEDAW Committee recommendations. The summarized presentation of the Concluding Comments by the CEDAW Committee, within a report on the whole governmental implementation activity of the conventions on human rights ratified by Italy, does not meet the request to involve the Parliament in the Convention’s implementation process.

Besides, no forms of presentation of the concluding comments are envisaged in the regional Legislative Assemblies and in the local administrations to ensure full implementation of the Recommendations at all levels, in accordance with the subsidiarity principle. The observations of the State party at point 10 of the “Responses” are not sufficient to exclude any responsibility in having not adequately fulfilled the obligation under the Convention.

2.3 NEED FOR A CHANGE IN THE CONCEPTUAL APPROACH TO THE IMPLEMENTATION OF THE CONVENTION²⁹

Observations proposed in paragraphs 2.1 and 2.2 highlight the need for the State party to modify its conceptual approach to the implementation of the Convention. The drawing up of the Report shall not be seen as a mere data collection activity NGOs and administrations must contribute to. The Government must establish a constructive dialogue with NGOs finalized to a participatory implementation of the Convention by public and private actors.

The presentation of the Governmental Report required by the monitoring system for the application of the CEDAW cannot be considered a mere fulfilment of an international obligation to be accomplished behind

26 Among these, ARCS-ARCI.

27 See pages 29-63

28 See pages 23

29 Paragraph referred to Question no. 7 of the CEDAW Committee.

closed doors by the Government, but must represent an occasion for it to encourage and promote a constructive dialogue at the national level and foster individual and social commitment to strengthen and protect women's rights in the country.

At the same time, the discussion of the observations by the CEDAW Committee in Parliament cannot be considered as the mere fulfilment of an international obligation by the Government. The annual Report of the Inter-Ministerial Committee on Human Rights does not represent an adequate form of involvement of the Parliament in the implementation of the Convention.

The presentation to the Parliament of the Concluding Comments of the CEDAW Committee in an abridged form, qualifying most of them as groundless, represents a serious violation of art. 13 of the Optional Protocol.

The Government should not provide the CEDAW Committee with incorrect and unreliable information about the commitment for the dissemination of the Convention. No modules nor at least a dedicated lecture on the CEDAW and the procedures envisaged by the Optional Protocol appear in any of the curricula of the trainings "Women, politics, institutions" mentioned by the Government in the "Response" no. 7 in paragraphs 41-43³⁰. The only University that insert CEDAW in any of the curricula of the trainings "Women, politics, institutions" is Macerata University³¹. The trainings promoted by the Department for Equal Opportunities are aimed at "fostering a greater women participation in the public sphere and in political life". It is extremely concerning that the future "experts" on equal opportunities do not know the Convention and are not trained on its principles and on the implementation machinery envisaged by the Optional Protocol. The absence of dedicated lectures on CEDAW in this curricula also represents a worrying signal of the scarce academic consideration of the Convention, not only in didactics in general, but also in gender courses.

The Government should admit its noncompliance to the obligation of disseminating information and promoting the application of the Convention and commit in concrete terms for the future.

WE RECOMMEND:

- ***That the Government clarifies if an official Italian version of the Report is available and, if so, why it was not either disseminated among the consulted associations or published online and why its existence was denied to the Italian Platform drawing up the Shadow Report.***
- ***Defining a procedure for a periodic, systematic and transparent consultation of NGOs, women's and feminist associations in order to promote a participatory, constructive and permanent dialogue with them.***
- ***A greater involvement of women's and feminist associations in the preparation and drawing up of the Report, informing the general public on deadlines and meeting.***
- ***A greater transparency and dialogue with the associations involved in the drawing up of the Shadow Report.***
- ***That economic resources are allocated for the creation of a web page dedicated to the monitoring reports, where the statistics and data used for the Report are made available to NGOs and civil society.***
- ***That economic resources are allocated for a rapid translation and publication of the Report, of the Critical Observations of the CEDAW Committee, of the Government Responses and the Concluding***

30 The list of the Universities adhering to the project by the Ministry of Equal Opportunities is available on:

<http://www.pariopportunita.gov.it/index.php/archivio-notizie/781-donne-politica-e-istituzioni-i-bandi-degli-atenei>. Here below the complete list of the available programs for the trainings "Women, politics, institutions" from which it can be verified that there are no modules nor specific lectures nor even general reference to the CEDAW: Bergamo <http://www.data.unibg.it/dati/bacheca/853/35675.pdf>; Camerino http://www.unicam.it/pariopportunita/corso/calendario_2009.pdf; Messina <http://ww2.unime.it/donne.politica/didattica.html>; Ferrara <http://www.unife.it/ateneo/organi-universitari/comitato-pari-oppportunita/corso-settembre-dicembre-2009/presentazione-del-corso>; Milan http://studenti.unimi.it/corsodonne/PROGRAMMA_DEFINITIVO.rtf; Calabria <http://www.unical.it/portale/ateneo/progetti/donnepolitica/corso/index.cfm?&pagg060111101851432=programma.cfm>; Genoa http://www.scpol.unige.it/dpi_materiale-2009.html; di Trieste <http://www2.units.it/corsopariopp/didattica/>; Roma3 <http://host.uniroma3.it/comitati/pariopportunita/iniziativa/Corso2006CalendarioProgramma.pdf>; Padua <http://www.dssp.unipd.it/corsodonnepolitica/segue.htm>; Udine <http://www.uniud.it/didattica/facolta/lingue/corso-base-donne-politica-e-istituzioni-a-a-2008-2009/calendario%20corso%20donna%202010-2011.pdf>; Turin http://www.cirsde.unito.it/ATTIVITA-CIRSD/Didattica-e-formazione/Donne-pol/Archivio_edizioni_precedenti/DPI_2009/Programma_provvisorio_DPI_2009.pdf; Salerno http://www.unisa.it/download/12_25_1263431049_CALENDARIO_CON_PROVE_II_PO.pdf; Teramo <http://www.unite.it/UniTE/Engine/RAServePG.php/P/45711UTE0301/>; Venice http://www.unive.it/media/allegato/comitato/cpo/corsodonne_cultura_2010.pdf

³¹ <http://www.unimc.it/af/formazione/07/donnepoliticaistituzioni/calendario-didattico/calendario-didattico>

Comments of the CEDAW Committee.

- *A wide dissemination of the Concluding Comments in an unabridged version among public and private actors.*
- *A greater involvement of the Parliament in the implementation of the Convention, also through the unabridged presentation of the Concluding Comments in a report dedicated to the CEDAW only.*
- *A greater involvement of the regional legislative assemblies and of the local administrations in the implementation of the Convention, in accordance to the subsidiarity principle. This should be done primarily (at least) through the unabridged presentation of the Concluding Comments in a report dedicated to the CEDAW only.*
- *That ad hoc mechanisms are established to ensure the full implementation of the Convention by all the regional and local authorities and institutions.*
- *That the study of the Convention and of the Optional Protocol is included in the curricula of the courses “Women, politics, institutions”.*
- *That State member will confers a certain coherence on and direction to all sectoral actions by building on and pooling effects and impacts at both social and cultural levels.*

2.4 INADEQUACY OF THE ANTI-DISCRIMINATORY PROTECTION SYSTEM³²

To date the extension of the scope of the anti-discriminatory law did not entail any significant application with regard to gender discriminations. Lawyers and judges rarely have recourse to the normative resources, actions and remedies offered by the anti-discriminatory technique.

The anti-discriminatory law in particular still has a limited impact on social behaviors³³. This is also due to the scarce knowledge the general public has on the anti-discriminatory instruments and their functioning. According to the data collected by the European Commission through the 2009 Eurobarometer³⁴, only 25% of the Italians who were interviewed declared they would know their rights if they were victims of discriminations or harassments, compared to an European average of 33%. To date, no forms of systematic monitoring are in place on the territory and at the local level to assess whether the protection system envisaged by the CEO really ensures an effective protection of women against every discriminatory act.

2.4.1 Gaps in protection

The CEO excludes gender discriminations in the fiscal and tax field, in the media representation of the sexes, in education and in women’s representation in decision-making processes from its protection – and such discriminations are not protected otherwise. These fields were, no wonder, those to be initially included by the G&S Directive 113/2004.

2.4.2 Inadequacy of the CEO

Still before its approval³⁵, the CEO was widely criticized by the most prominent academics and experts with regard to labour law and anti-discriminatory law as inadequate in several respects and scarcely coordinated. The CEO raised several doubts on the systematicity and completeness of its provisions, on the legislative technique³⁶ and finally on the scarce coordination with the other provisions³⁷. The inclusion of the new paragraph on the discrimination in the access to goods and services stressed the inconsistency and highlighted the limited coordination among the gender equality protection provisions in the normative body. The D. LGS. 5/2010 intervened reinforcing the critical aspects of the text³⁸. The following are the major critiques made to the current CPO.

32 Paragraph referred to Question no. 3 of the CEDAW Committee.

33 Premessa, in “Il nuovo diritto antidiscriminatorio” (by M. Barbera), Milan, Giuffrè, 2007, p. VI.

34 http://ec.europa.eu/public_opinion/archives/ebs/ebs_317_fact_it_it1.pdf

35 F. AMATO, M. BARBERA, L. CALAFÀ, Note sul progetto di Codice delle pari opportunità tra uomo e donna, on www.cgil.it. It notices that all the equality bodies, including the National Councillor, provided a negative advice on the decree, which was however approved. Cf. F. AMATO, M. BARBERA, L. CALAFÀ, Codificazioni mancate: riflessioni critiche sul codice delle pari opportunità, p. 228.

36 D. GOTTARDI, Il Codice italiano delle pari opportunità e la direttiva comunitaria, in GL, 37, 2006, p. 31, talks of an inadequate cut-and-paste operation, with a scarce command of legislative drafting, imprecise and incomplete references, which increased the distance from the European provisions. T. GERMANO, Il codice delle pari opportunità tra uomo e donna, in Il Lavoro nella Giurisprudenza, 8/2008, p.748 et seq, F. AMATO, M. BARBERA, L. CALAFÀ Codificazioni mancate: riflessioni critiche sul codice delle pari opportunità, quoted, 227 et seq.

37 LORENZETTI A. in “Il Recepimento Italiano della Direttiva “Beni e Servizi””, p. 22.

38 See also BONARDO O. Pari opportunità: una riforma minimale per un codice minimalista, in Note Informative, no. 49/2010, 15th September 2010

- 2.4.2.1 Lack of coordination among the provisions grouped by the CEO. Repetition and overlapping of definitions that do not clarify the scope of the discrimination prohibition and determine unfair protection differences.** In the CEO, the definition of what shall be meant by direct and indirect discrimination (art. 25) and by harassment and sexual harassment (art. 26) is currently followed by nine different articles, whose titles refer to the prohibition of discrimination: in access to labour (art. 27), in remuneration (art. 28), in work performance (art. 29), in access to social security allowances (art. 30), in pensions (art. 30-bis), in access to public posts (art. 31), in the enrolment in the armed forces and in the special corps (art. 32), in the appointment in the armed forces and in the Guardia di Finanza (art. 33), in military careers (art. 34). These articles are sided by the definitions as per art. 55-bis with regard to access to and supply of goods and services. The gathering of these definitions in a general section at the beginning of the Code, with the concomitant abrogation of articles. 25, 26 and 55-bis (envisaged by the scheme of the decree for the acknowledgement of the directive but not approved) would have been an effective step towards the reduction of overlapping and duplications of definitions, however not being limited to the definition part³⁹. For instance, the burden of proof itself is regulated in a dissimilar way in two different provisions. These duplications in definitions and discipline determine an inequality in protection. (see 2.4.2.2).
- 2.4.2.2 Narrower definition of discriminatory treatment compared to the one contained in Act 125/2001** The Act n. 125/2001 considered discriminatory each prejudicial treatment following the adoption of criteria that caused a proportionally greater disadvantage to workers of either sex and were referred to non essential requirements for the working activity. In the CEO that proportionally greater disadvantage became *“a position of particular disadvantage towards the workers of the other sex”*⁴⁰.
- 2.4.2.3 Negative aspects in the reception of the Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (known as “G&S Directive”)**⁴¹
- 2.4.2.3.1 Failed abrogation of all the legislative, regulatory and administrative provisions against the principle of equal treatment in the access to and supply of goods and services.** Introducing the new discipline the legislator did not abrogate all those provisions, still present in the law, that conflict with the principle of equal treatment in the access to and supply of goods and services. Neither were the contractual provisions, the company internal regulations and the norms of the profit and non-profit associations against the principle of equal treatment annulled nor amended.
- 2.4.2.3.2 Use of the term “sex” in place of “gender”.** The reference to sex determines an undue and unjustified exclusion of transsexual, intersexual and hermaphrodite people from the field of application of the provision. The legislator’s will to refer to sex in place of gender constitutes a weaker protection than the one granted at the European level.
- 2.4.2.3.3 Transformation of the “positive actions” envisaged by the Directive in “promotional activities”.** The provision on positive actions (art. 6, Dir. 2004/13) in the Code of Equal Opportunities was limited to the contemplation of promotional activities, task assigned to the newly established Bureau (art. 55-novies, par. 2, lett. c). Even if positive actions are a mere option for the State parties, the absence of a specific provision is likely to undermine the effectiveness and efficacy of the results, considering the uncertainty of the mere contemplation of promotional activity.
- 2.4.2.3.4 Non-compulsoriness of the compensation sentence (see 2.4.5.1.1)**
- 2.4.2.3.5 Fewer possibilities of implementation of the plan for the elimination of discriminations compared to the discipline on discriminations in the workplace (see 2.4.5.1.3)**
- 2.4.2.3.6 Limitations to the legitimation to act for associations and institutions (see 2.4.3.3)**
- 2.4.2.3.7 No investments on gender discrimination in the access to goods and services.** The legislator specifies that no new or greater financial burden for the State shall derive from the implementation of the decree for the acknowledgement of the G&S Directive (art. 2), thus

39 The scheme of the Decree for the acknowledgement of Directive 2006/54/CE tended to reduce repetitions and formulations that made the legislative framework inconsistent, coordinating with the provisions of the Code and envisaging a single defining section on the concepts of discrimination, included in the initial part of the normative text. This avoided the repetition of the definitions of direct and indirect discrimination, harassment, sexual harassment, order of discrimination (art. 1-bis), in each application field, thus reducing inconsistencies. However, the scheme was not confirmed in the final text. The acknowledgement act in fact fully repeated the communitarian definitions, maintaining the original structure of the Code. LORENZETTI A., in “The Italian acknowledgement of the “G&S’ Directive”. See also ALIDA VITALE, Equality Councillor for the Piemonte Region, “New norms on equality in the workplace”, 17th February 2010, http://www.kila.it/index.php?option=com_content&task=view&id=1126&Itemid=2

40 Interview to Anna Vincenti, Bergamo.

41 The following observations summarized those expressed by LORENZETTI A., in “Il Recepimento Italiano della Direttiva “Beni e Servizi””

restating the concept expressed in the art. 55-quarter, par. 5. Beside the tangible impossibility to provide for any of the several activities envisaged at zero cost, such a provision denounces a scarce will to invest in the fight against gender discriminations.⁴²

2.4.2.4 Discriminatory aspects of the Italian and communitarian social security law.

2.4.2.4.1 Narrower definition of discriminatory treatment compared to the one contained in the 2006/54/CE European Directive⁴³. The Directive contains several and more detailed indications on what has to be considered discriminatory, compared to the Italian provision⁴⁴. The communitarian provision considered the interruption of rights during maternity or family leaves discriminatory. On this point, both the D. LGS. 252/05 regarding the general discipline on complementary social security and the T.U. 151/01 regarding the leave discipline, as well as the CEO itself, intervene explicitly. For the calculation of the severance pay (and thus for its destination to the complementary social security) remuneration should be calculated as if the worker had performed the activity. Given the normative gap, the same inference should be drawn for the further contributions paid by the employer, for which the payment is often made in proportion to the reduced remuneration received⁴⁵. In order to avoid discriminations, a more detailed normative discipline is needed, inclusive of all the situations covered by the Communitarian Directive.

2.4.2.4.2 Art. 30-bis CEO and articles 2 and 13 CEDAW⁴⁶. Acknowledging art. 9 lett.I of the 2006/54/CE Directive, the CEO allows the possibility of differentiated pension levels for men and women, but only if this derives from the application of actuarial calculations criteria that are different for the two sexes. The admissibility of differentiating pensions according to life expectancy – well-known to be higher for women – represents a discriminatory aspect in common with the European and EU discipline. Such a criterion is widely used in the assurance field as well as in the compulsory social security field, but it was strongly challenged by the most outstanding doctrine⁴⁷, highlighting that other relevant factors for life expectancy assessments – such as smoke, obesity or other elements related to the person’s lifestyle – are not at all taken into account. Compared to such factors, the sex difference is simply easier to determine and apply. This however results in a worsening of the condition of women workers who – alongside lower pensions deriving from a lower contribution determined by the wage discrimination experienced during their working life and by the more frequent career interruptions – have to bare a further reduction compared to men due to the use of differentiated actuarial calculations. Considering the extension of the phenomenon, estimates contained in the new art. 30-bis – under which the criteria for actuarial calculations should be reliable, relevant and accurate and verified by the Monitoring Commission on Pension Funds, which has the obligation to report yearly to the national Equality Committee – appear to be totally insufficient.

2.4.2.4.3 Discriminatory acknowledgement of the discipline on pensionable age⁴⁸. The new art. 30-bis CEO does not acknowledge the 2006/54/CE directive on pensionable age⁴⁹. Italy is still unfulfilling this discrimination prohibition and has already been sentenced by the Court of Justice for the different pensionable age in public employment. The Court would draw the same conclusion shall it express itself on the legitimacy of a different access age to complementary security systems. This could have consequences also on the compulsory security system in private employment. The legislator must thus find a way to identify reform and acknowledgement paths for the European directive that do not penalize women. With

42 LORENZETTI A., in “Il Recepimento Italiano della Direttiva “Beni e Servizi””, p. 24.

43 The observations in the following paragraph report those by BONARDI O., *Pari opportunità: una riforma minimale per un codice minimalista*, in Note informative, no. 49/2010, 15.09.2010, p.12.

44 Among the forbidden behaviors, in fact, the European directive includes not only the selection of the people eligible for social security allowances, but also the indication of different access age limits, the definition of minimum employment requirements, the registration to the fund to receive the allowances, the inclusion of different provisions in case of reimbursement of contributions or the setting of different allowance levels, with the exception of the use of actuarial calculations.

45 As established for example by the statute of the Fonchim, the fund for the chemical sector.

46 The observations in the following paragraph report those by BONARDI O., *Pari opportunità: una riforma minimale per un codice minimalista*, in Note informative, no. 49/2010, 15.09.2010, p.12.

47 IZZI, *Eguaglianza e differenze nel rapporto di lavoro*, Naples, 2005, p. 116.

48 The observations reported in the following paragraph report those by BONARDI O., *Pari opportunità: una riforma minimale per un codice minimalista*, in Note informative, no. 49/2010, 15.09.2010, p.12.

49 Art. 11 D. LGS. 252/05 establishes that the pension right is acquired when the eligibility requirements to access pension set in the relevant compulsory system are met. Following the reform enforced by L. 243/04, the pensionable age in the compulsory system – and consequently in the complementary one – is different for men and women (65 and 60, respectively). Contrarily, the 2006/54/CE directive together with all the former discipline and the communitarian jurisprudence in this regard explicitly state that the establishment of different retirement age limits is discriminatory. This provision is valid for complementary security and for public employment security systems only and not for the compulsory systems of the private employment, where the age difference is still admitted (although at certain conditions).

regard to the acknowledgment of the discipline on pensionable age in the public employment, the choice made by the national legislator was certainly discriminatory. Following the intervention of the Court of Justice, the pensionable age for women in public employment has been raised without the introduction of further compensatory measures (a lower pensionable age is in fact considered by all the scholars and by the Constitutional Court a measure to compensate the disadvantages women are subjected to in their working life) or flexibility measures (in this case valid both for men and women) in the access to pension.

2.4.3 Inadequacy of the jurisdictional protection system⁵⁰

One of the most evident limits of the anti-discriminatory law is represented by the low effectiveness rate of the protection, also as a consequence of the scarce knowledge of legal remedies⁵¹.

2.4.3.1 Impossibility to obtain jurisdictional protection for intersectional discriminations. The impossibility to obtain jurisdictional protection for intersectional discriminations is a major issue. In case of intersectional discrimination based on sex and age, is not possible a single judgment: while in the case of age discrimination the judgment ends with a claimable order, in the case of gender discrimination the judgment ends with an opposable decree. This means that in the case of intersectional discriminatory offence the victim have to start two separate judgments, with more expenses and negatives aftermath for the victim's defence⁵².

2.4.3.2 The atypical measures the judge can adopt make the effectiveness of the protection for the victim of discrimination uncertain, depending on judge and lawyer specific training on the ground of discrimination. In case of discriminatory offences, the judge is allowed to order the cessation of the prejudicial behavior and any other measures suited to eliminate the effects of the discriminations. The atypical measures the judge can adopt, on one hand, offer the advantage of a greater adaptability of the principles to concrete issues; on the other, however, they are likely to cause uncertainty in protection, both as to the *an* and to the *quantum*. Only an effective and specific professional training of the judge and of the victim's lawyer on the ground of discrimination should guarantee the effectiveness of the anti-discriminatory protection, making it useful.

2.4.3.3 The burden of proof in lawsuits for discrimination in the workplace is less effective compared to the one for the access to goods and services. The acknowledgement of the G&S Directive (art. 55-sexies) envisages that *"When the claimant...infers suitable de facto elements to assume a violation of the prohibition...the burden of proving that no violation occurred is up to the defendant"*. The similar provision in the labour law (art. 40) states that *"When the claimant provides de facto elements, inferred even from statistical data...that are suitable to precisely and consistently justify the assumption that sex-based discriminatory deeds, pacts or behaviors occurred, the burden of proving that the discrimination did not take place is up to the defendant"*.

2.4.3.4 Limits to the legitimization to act for associations and institutions. The D. LGS. 198/2009 introduced an hypothesis of *class action* against public administrations and public service providers for the failed supply of a service for discriminatory purposes. The acknowledgement of the G&S Directive, beside collective legitimization, envisages legitimization by those subjects, registered in the ministerial list, who can act individually "in the name and on behalf of or in support of" the victim of discriminations. This new provision for class action is positive. Instead, the subordination of the legitimization to act to the registration in the ministerial list – not envisaged by the directive – is negative due to the "chronic" delay in the approval of the list updates, which for long lapses of time de facto prevents the action of those associations and institutions willing to intervene. The legitimization to act for representative parties should aim at, if not result in, an extension of protection of the individual, supporting him/her in lawsuits. The request of registration in the ministerial list instead significantly limits the participation of institutions and associations in support of the victim of discriminations, acting as a "filter" to avoid the likeliness of an overextension of the legal argument. Nevertheless such a "filter" not envisaged by the directive entails a weaker protection for the victims. While, in fact, the directive required associations, organizations or other legal persons to be entitled with a legitimate interest in respecting equal treatment between men and women in the access to and in the supply of goods and services (ex art. 8, par. 3, 2004/113) to settle a lawsuit, the legislator legitimized only those institutionalized groups that are acknowledged for their continuity in contrasting discriminations and comply to the procedures for the registration in the ministerial list. The choice of the national legislator seems not

⁵⁰ The following observations (par. 2.3.2) summarized AND INTEGRATED those expressed by LORENZETTI A., in "Il Recepimento Italiano della Direttiva "Beni e Servizi".

⁵¹ A. GUARISO, I provvedimenti del giudice, in "The new anti-discriminatory law" (by M. Barbera), Milan, Giuffrè, 2007, p. 579.

⁵² Contributo della dott.ssa Ilaria Traina.

to take into account all the various options that are consistent with the directive. Considering the promotion of collective interests as an expression of the horizontal subsidiarity principle determines a restriction of the new role acknowledged to the citizen by art. 118 of the Constitution.

2.4.4 Inadequate functioning and monitoring of the system of positive actions

In art. 7 the CEO establishes that by the 31st of May of each year a program framework is published indicating the typologies of positive action projects to be promoted, the eligible subjects for each typology and the evaluation criteria. The framework is disseminated by the Ministry of Labour and Social Welfare through the publication in the Official Gazette. All the program frameworks were published late. For 2009 the website of the Ministry of Labour send back to 2010⁵³. To date no evaluation of the projects funded from 1991 onwards has been undertaken⁵⁴.

2.4.5 Inadequacy of the sanctions envisaged by the CEO

2.4.5.1 Inadequacy of the sanctions protecting from discrimination in the access to goods and services⁵⁵

2.4.5.1.1 Non-compulsoriness of the compensation sentence. In the CEO the provisions on sanctions and compensation were not acknowledged in accordance with what established by the G&S Directive, thus entailing a weaker protection. For instance, the provision according to which the judge can (and not must) sentence the defendant to, not necessarily patrimonial, compensation (art. 55-quinquies, par. 7 CEO)⁵⁶. In fact, if the discrimination is ascertained and the defendant is not sentenced to compensation, this would not ensure either an effective and proportionate reparation to the injured person or any dissuasion on future behaviors of the subject who carried out the discrimination⁵⁷.

2.4.5.1.2 Fewer possibilities to apply the plan for the elimination of discriminations compared to the discipline on discriminations in the workplace. By verdict the judge can order to the subject who carried out the discrimination to define a plan for the elimination of the ascertained discriminations (art. 55-quinquies, par. 1). Contrarily to what envisaged for gender discriminations in the labour law, the definition of a plan for the elimination of the ascertained discriminations in case of gender discriminations in the access to goods and service cannot precede the verdict and represents only a possible content of the verdict (art. 37, par. 1 and 4). According to doctrine, the fact that the legislator left the possibility to adopt an elimination plan up to the judge highlights a certain pessimism about an instrument – introduced by art. 4, Act n. 125/91 on positive actions) – that has found a very limited application ever since. Another remarkable difference is that the elimination plan must be designed by the author of the discrimination and not by the judge, as envisaged for discriminations based on race (art. 4, par. 4, D. LGS. 215/2003) or on other factors (art. 4, par. 5, D. LGS. 216/2003)⁵⁸.

2.4.5.1.3 Finally, the major critical issue lies in having limited the elimination plan to collective discriminations. This marks another striking difference compared to the other forms of gender discriminations, for which the judge can order the elimination plan also for individual discriminations. Provided that a remedy is needed for all kind of discriminations, such a difference makes no sense⁵⁹.

2.4.6 Inadequate monitoring of the effectiveness of the anti-discriminatory protection system

The website of the national Equality Council provides databases that should collect all anti-discriminatory materials. As a matter of fact, the “jurisprudential review” database contains a non representative number of verdicts referred to lawsuits in which local equality councillors intervened or appeared before the court. The “mediation activity” and the “litigation conciliation activity” databases contain instead no data, at all. The only active monitoring tool at the same link is the Observatory on decentralized negotiation and work-life balance. Data collection is totally insufficient to assess the effectiveness of the protection system

53 Read: Please note that the Program Framework for the current year as per art. 10, par. 1, let. C D. LGS. 198/2006 will not be published. The publication of the Program Framework and the presentation of the positive action projects are postponed to 2010.

<http://www.lavoro.gov.it/Lavoro/md/AreaLavoro/tutela/comitatoNazionaleParita/>

54 Notes by Anna Vincenti, Bergamo.

55 The following observations (par. 2.3.2) summarized those expressed by LORENZETTI A., in “Il Recepimento Italiano della Direttiva “Beni e Servizi””

56 Art. 8 par. 2 Directive 113/2004/CE establishes that “Member States shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation, as the Member States so determine, for the loss and damage sustained by a person injured as a result of discrimination within the meaning of this Directive, in a way which is dissuasive and proportionate to the damage suffered. The fixing of a prior upper limit shall not restrict such compensation or reparation”.

57 See LORENZETTI A., in “Il Recepimento Italiano della Direttiva “Beni e Servizi”” p. 15.

58 A. GUARISO, I provvedimenti del giudice, in “Il nuovo diritto antidiscriminatorio” (a cura di M. Barbera), Milano, Giuffrè, 2007, p. 591.

59 A. GUARISO, I provvedimenti del giudice, in “Il nuovo diritto antidiscriminatorio” (a cura di M. Barbera), Milano, Giuffrè, 2007, p. 589.

envisaged by the CEO. In addition, there is no critical analysis available of the data collected at the local and national level that can be useful to make the equality bodies more effective and the anti-discriminatory protection tools more workable.

WE RECOMMEND:

- ***A review of the CEO that makes the anti-discriminatory discipline more systematic and consistent, as well as more adherent to the spirit of the Convention also thorough:***
 - *The use of the term “gender-based discrimination”,*
 - *The coordination among the CEO and the other provisions of the anti-discriminatory law,*
 - *The introduction of a single definition of the prohibition of discrimination valid across all fields,*
 - *A single discipline for the burden of proof valid across all fields,*
 - *The restoration of the more safeguarding definition of discriminatory treatment envisaged by the D. LGS. 125/2001.*
- ***The extension of the gender-based anti-discriminatory discipline to all those fields that are currently excluded from protection.***
- ***Greater investments on information campaigns for the general public on the concept of gender-based discrimination, on the existence and use of the judicial and non-judicial instruments available for the protection of the victims of gender-based discriminations.***
- ***The systematic collection of data on the activity of the equality bodies and their online publication.***
- ***The collection of all the verdicts regarding gender-based anti-discriminatory law in a single database, open to the public.***
- ***A monitoring activity allowing the assessment of the causes of the patchy impact of the anti-discriminatory law on the territory.***
- ***That the promotion of the positive actions is made effective and timely and that the next program frameworks are designed on the basis of an evaluation of the projects funded from 1991 onwards, which we demand and whose results we require to publish.***
- ***That the sentence to compensation – even not necessarily patrimonial – is made compulsory for discriminatory actions.***
- ***Implementing art. 24 of EU directive, introducing the provision of higher damages for retaliation, as prescribed for others form of discrimination.***
- ***That the effectiveness of the sanctioning system envisaged by the CEO is assessed on the whole.***

2.5 ABSENCE OF A GENDER APPROACH IN THE DISCIPLINE ON THE JURIDICAL STATUS OF FOREIGNERS

The provisions on immigration (D. LGS. 286/98) and its implementation regulation (D.P.R. 394/99) do not either state the prohibition of discrimination between migrant men and women or envisage equality instruments or other instruments considering the differences in the exercise of the freedom of movement, as well as mechanisms addressing the gap between men and women in the enjoyment of fundamental rights, which is larger in the case of migrants, due to their weak juridical status. This, combined with the exclusion clause envisaged by national and international anti-discriminatory juridical instruments – according to which the differentiations made by the States with regard to the entrance and stay of non nationals are not taken into account – entails negative consequences on the life of migrant women, as further detailed for each single right violation⁶⁰.

60 Notes by Emilia Naldi, Bergamo.

WE RECOMMEND:

- *That the review of the exclusion clause is required at the international level, or that such clause is interpreted in accordance with the CEDAW, that is to say urging the States to adopt equality and anti-discriminatory instruments for migrants to exercise their acknowledged rights, temporary special measures included*

2.6 WIDESPREAD VIOLATIONS OF THE INSTITUTIONAL OBLIGATION TO AVOID ANY DISCRIMINATORY ACT OR PRACTICE AGAINST WOMEN

2.6.1 Financial provisions directly or indirectly discriminating women

The Government introduced several financial provisions directly and indirectly discriminating women, zeroing the resources dedicated to the promotion of rights and equal opportunities by the two latest budget laws. The 29.92 million initially allocated for 2010 were reduced to 4, while the allocation for the years 2011, 2012 and 2013 amounts to 12.80 million in total. Resources were recently increased to 18 million, a sum that is however insufficient to promote gender equality and protection and to contrast violence⁶¹.

Other financial provisions are indirectly discriminatory towards women, to the extent that – on the whole – they significantly contributed to the worsening of the condition of women in several fields. The major ones – better examined in the relevant paragraphs – are:

- the annulment of the Act no.188/2007 by the Prodi Government against blank resignation;
- the failed refunding on the Fund for business finance meant to allocate specific resources for female entrepreneurship;
- the zeroing of the crèche fund;
- the cuts to the Fund for welfare policies (from 929 million in 2008 to 273 for 2011);
- the cuts to the Fund for family policies (from 346 million in 2008 to 52 for 2011);
- the cuts to the Fund for youth policies (from 94 million in 2008 to 32 in 2011);
- failed refunding of the Fund for non self-sufficient people.⁶²

2.6.2 Mayors often used their ordinance powers directly and indirectly discriminating migrant women⁶³

At municipal level institutions extensively carry out direct or indirect discriminatory actions and practices against women, for instance introducing sanctions on feminine behaviors by Mayor's ordinances. These measures, envisaged by art. 54 TUEL, deeply affect individual rights and freedoms granted by the Constitution, referring to activities that, yet not illegal in themselves, are sanctioned (on not sanctioned) differently by each Municipality, thus determining an unequal treatment.

Moreover, women are very often indirectly discriminated by provisions contained in regulations or other administrative measures. For instance, the Administrative Court⁶⁴ considered the requirement of driving license A (ride of high-powered motorcycles) to access the competitive examination for local police officers discriminatory, given the very low percentage of women possessing it, and demanded the reformulation of the participation clause (compelling the winners to get driving license A to be hired).

2.6.2.1 Anti-veil municipal ordinances. The use of whatever means that, without a justified reason, hinders the identification of a person in a public (or open to public) place, without a justified reason, is punished as a crime by a national law⁶⁵. Another provision forbids to appear disguised in public places⁶⁶. Nevertheless, the use of the veil is considered as a justified reason to cover the face, since it constitutes the exercise of the freedom to externally manifest one's religion symbols, granted by art. 19 and 21 of the Constitution and by art. 9 of the Convention for the safeguard of human rights and fundamental freedoms. The Human Rights Committee, too, in decision *Hudoyberganova v. Uzbekistan*⁶⁷, considered the restrictions to the right of wearing the hijab in public as a violation of

61 Information drawn unabridged from "*Libro nero sulla condizione delle donne in Italia*", published online by the women of the Democratic Party (http://beta.partitodemocratico.it/Allegati/brochure%20donne_Layout%201.pdf), p.7.

62 Information drawn from *Libro nero sulla condizione delle donne in Italia*, published online by the women of the Democratic Party (http://beta.partitodemocratico.it/Allegati/brochure%20donne_Layout%201.pdf) and commented by Collini S. "*A Berlusconi non piacciono le donne: il Governo le ha impoverite*", article published on L'Unità on the 4th March 2011.

63 For a more detailed review see LORENZETTI A. "Le ordinanze sindacali e il principio di uguaglianza: quali garanzie?" (1) and "Il divieto di indossare burqa e burqini. Che genere di ordinanze?" (2) in *Le Regioni*, a XXXVIII, n. 1-2, February-April 2010, p. 93 et seq. (1) and 349 et seq. (2).

64 Regional Administrative Court of Sardinia, verdict no. 2025 of the 25th November 2008. Note by Anna LORENZETTI.

65 L. 152/1975. Sentences for this crime were tightened by L 155/2005.

66 Art. 85 TULPS.

67 Dec. 931/2000, ICCPR, A/60/40 vol. II.

the right granted by the art. 18 (2) of the ICCPR. Nevertheless, several Mayors decided to use their ordinance powers to enforce the specific prohibition for Muslim women to wear niqab, burqa and burquini (a costume used by some Muslim women). The verdict includes a blank space at the bottom for the signature of the “trasgreditrice” (Italian feminine for “offender”). To date, the Administrative Courts⁶⁸ have declared such municipal ordinances illegitimate, since – by specifying the content of the provision with reference to specific means – their applicability is unjustly extended. Nevertheless, an explicit provision could make the criminalization of the burqa and of the niqab legal⁶⁹. The Ministry of Equal Opportunities herself wished for such a provision. Despite the Council of Europe adopted a resolution on the 23rd June 2010 inviting Member States to avoid the adoption of provisions introducing the generalized prohibition of wearing burqa and niqab, there are still several draft bills⁷⁰ in Parliament requiring the explicit prohibition of such accessories. Such draft bills would be directly discriminatory if they introduced a specific prohibition for one gender only or for those observing certain religious traditions. To date, despite jurisdictional pronouncements stating the legitimacy of the use of the niqab, episodes of women sanctioned for having worn the veil in public are still reported⁷¹.

2.6.2.2 Municipal ordinances against prostitution (see paragraph 6.2.3)

2.6.2.3 Sexism in political and institutional parlance (see paragraph 5.2)

2.6.3 Discriminatory measures excluding migrant families from social security benefits and access to services⁷²

Some of the social benefits envisaged by the Italian legislation with regard to family income, parental function or care of relatives are directly or indirectly discriminatory – in contrast with the constitutional principles of equality and reasonableness, as well as with the principle of non-discrimination in the international and European (ECHR) law – affecting migrant women in particular. In single-income families, the exclusion of immigrant women from welfare services related to the guardianship of minors and to the parental function increases in fact their economic and social dependence from their husbands and, thus, their vulnerability to segregation and domestic violence. Among the main discriminatory measures we highlight the following:

2.6.3.1 Art. 65 Act n. 448/98 [INPS (National Institute for Social Security) cheque assigned to large family units with at least three underage children and living in difficult economic conditions]. The provision includes a clause requiring Italian or EU citizenship to access the benefit, thus excluding all those citizens from third countries outside the EU, with the only exception of refugees.

2.6.3.2 Art. 74 D.LGS. 151/2001 (maternity basic cheque for each child born in family units living in difficult economic conditions). Access for non-EU women is allowed only for those in possession of the CE long-term residence permit as per Dir. No 109/2003 and for refugees, while all the non-EU women legally living in Italy with an ordinary residence permit are excluded.

2.6.3.3 Art. 81 D.L. n. 112/2008, converted in Act n. 133/2008 par. 32 (“purchase card” for over-65 elders and under-3 children living in family units in extremely difficult economic conditions). The provision includes a clause requiring the Italian citizenship to access the benefit, thus indiscriminately excluding all foreign citizens (men and women), even those from EU countries.

2.6.3.4 Art. 19 par. 18 Act n. 2/2009 (“children card”: reimbursement of the expenses for nappies and artificial milk to family units living in difficult economic conditions). The provision includes a clause requiring the Italian citizenship to access the benefit, thus indiscriminately excluding all foreign citizens (men and women), even those from EU countries.

2.6.3.5 Art. 11 par. 13 Act n. 133/2008, that converted, with amendments, the D.L. 112/2008 amending art. 11 of the Act n. 431/98. This provision subordinates the access for non EU-citizens to the national Fund in support of residential leasing (social benefit for income support in family units living in difficult economic conditions aimed at partially reimbursing rent expenses) to the possession of the certificate of historical residence on the national territory for at least 10 years and in the same

68 See Regional Administrative Court, Friuli Venezia Giulia, verdict no. 645/2006.

69 This is what can be inferred by the doctrinal debate and by the motivation of the verdict of the Court of Cremona on the 27th November 2008. See also N. FOLLA, “L’uso del burqa non integra reato, in assenza di una previsione normativa espressa”, in *Il Corriere del Merito*, 2009, 3, 294.

70 Bill no. 2422, 16th Legislature, “Amendment of art. 5 L. 152, 22nd May 1975, with regard to the prohibition of wearing burqa and niqab” presented on the 6th of May 2009, first signatory Souad Sbai, PDL MP from Morocco and chair of the ACMID. She proposed the amendment of L. 152/75 to include also the veil covering the face. Afterwards, a second bill was presented, cf. Low Chamber, Bill no. 2789 “Amendment of art. 5 L. 152, 22nd May 1975, with regard to the protection of public order and to the identifiability of people” requiring, on top of that, its coming into force on the day after publication.

71 A young Tunisian Muslim woman was fined 500€ because she went to the post office wearing the niqab, despite she accepted to be identified. News reported by *Il Manifesto* on the 15th of May 2010, author Fedoua Jaimous.

72 Summary of the contribution by Dott. Walter CITTI - ASGI (Association of Juridical Studies on Immigration) Anti-Discrimination Service.

region for at least 5 years, which is not required to Italian and EU citizens.

- 2.6.3.6** Art. 20 c. 10 D.L. n. 112/2008, Art. 20 par. 10 D.L. 112/2008 converted in L. 133/2008, which from the 1st January 2009 requires a ten-year residence seniority in Italy to access the welfare cheque destined to over-65 living in difficult economic conditions, thus originating an indirect or concealed discrimination against foreign citizens.
- 2.6.3.7** INPS and the Ministry of Labour and Welfare Policies have not yet implemented the various verdicts of the Constitutional Court (no. 306/2008, no. 11/2009, no. 285/2009, no. 187/2010, no. 61/2011) that affirmed the illegitimacy of the provision contained in the art. 80 par. 19 of the Act n. 388/2000, which subordinates the access of non-EU citizens to those social services that represent subjective rights in accordance to the current regulations to the possession of the residence permit or of the CE long-term residence permit, thus excluding all the others, with the exception of refugees. These services include all those addressing disability, which means that all the immigrant women affected by disability – despite legally living in Italy, though with residence permit only – do not enjoy access to social welfare services. In order to access them, they have to incur the expenses of a judicial appeal. The failed access to social welfare services for disability can determine the absence of the requirement of legal means of support enforced by the immigration regulations to obtain the renewal of the residence permit.
- 2.6.3.8** Starting with the 2001 constitutional reform, social welfare in the Italian system is within Regions' jurisdiction. Some region thus enacted restrictive provisions with regard to immigrants' access to welfare services and benefits. Friuli Venezia Giulia Region, in particular, approved a series of provisions that enforced a requirement of ten or eight year residence seniority in Italy to access welfare services aimed at supporting birth-rate, family or parental function, with the explicit purpose of excluding the highest number of foreigners from the beneficiary list. Against such provisions the European Commission set up a preliminary infraction procedure for the violation of the EU law on free circulation and non-discrimination. FVG Region even approved a regional regulation that simply excluded non-EU citizens from the access to the integrated welfare system, that is to say from every welfare service, even if occasional and discretionally provided by municipal social workers. The regulation was however declared unconstitutional by the Constitutional Court through verdict no. 40/2011.

WE RECOMMEND:

- ***The approval of the praxis according to which the Ministry of Equal Opportunities has to account back to Parliament for the gender impact of the financial provisions contained in the budget laws and to propose corrective measures whether such provisions determine an excessive gap for women in the enjoyment of fundamental rights or an excessive worsening in their access to essential services that causes a form of indirect discrimination by indirectly and significantly limiting their participation to the public, economic, social and cultural life of the country.***
- ***The compulsory introduction of training modules for Mayors on anti-discriminatory law and, more in general, a stronger sensitization of all the national and local politicians on the international and communitarian obligations with regard to women's rights that they are compelled to respect in the exercise of their powers.***
- ***The elimination of the provisions that discriminate migrant women and the consequent extension of welfare and social security benefits to them, too.***

ARTICLE 3 MEASURES FOR THE DEVELOPMENT AND ADVANCEMENT OF WOMEN

3.1 CRITICAL ISSUES WITH REGARD TO EQUAL OPPORTUNITIES INSTITUTIONS⁷³

In Recommendations 21-24/2005, the CEDAW Committee expressed its concerns especially for: the absence of specific national machinery for the advancement of women; the significant erosion of the powers and functions of the National Commission for Equality and Equal Opportunities; the absence of appropriate national structures to ensure the implementation of the Convention by regional and local authorities and institutions. No progress was registered with regard to the Committee Recommendations 21-24. The absence of a national institution with own resources and exclusive jurisdiction on women's rights and for the development of equality policies prevents the actions and provisions produced on equal opportunities from having a clear gender mark and being aimed at the implementation of the Convention in accordance with the priorities identified by the Committee. The lack of disaggregated gender-based data on several sectors and the failed enforcement of monitoring systems for the projects that were developed or funded by the various equality and equal opportunities bodies prevents the possibility of assessing the effectiveness of their activities and to strengthen their action.

3.1.1 Institutional pluralism of the subjects engaged against sex-based discriminations, sexual orientation-based discriminations, violence against women and for the advancement of women's rights. Lack of coordination with the other institutions and bodies working on human rights and discriminations

Recommendations 21 and 22/2005 were totally disregarded. To date, a large normative stratification of institutions for equal treatment and the promotion of equal opportunities⁷⁴ is registered. At the national and decentralized level a dichotomy between equality bodies working in the labour field and those working in the sectors of political, economic and social life still remains. In addition to this, a series of other joint bodies established by collective negotiation and councils, commissions and committees established by local institutions with vigilance, consultation and proposal functions on equal opportunities are also active. The new CEO lacks a redefinition of the roles of the different equality institutions that often overlap without having adequate coordination mechanisms and separation of duties. Their activity is self-referential and does not turn into large scaled actions, due to the lack of harmonization mechanisms. All these bodies share the same lack of funds and weakness in decision-making and management tasks⁷⁵. They are often political posts on voluntary basis, which makes their functioning ineffective⁷⁶. The data collected by European Commission through the 2009 Eurobarometer⁷⁷ show that such a plurality of equality and equal opportunities bodies is disorienting for citizens, while the scarce awareness and visibility of their activity disincentivate the reporting of discriminatory situations through such bodies.

3.1.2 Absence of a national institutional structure in charge of discrimination, gender and women's human rights only. Dependence of the Department for Equal Opportunities from the other Ministries. Absence of a "portfolio" of its own. The plurality of duties for the Department of Equal opportunities beyond gender discrimination causes a non-gender oriented action

3.1.2.1 With regard to women's rights, duties are shared among the Department of Equal Opportunities, the Ministry of Labour and the Ministry of Foreign Affairs (Interministerial Committee for Human Rights). The division of responsibilities entails an unequal allocation of resources, which hinders the adoption of effective and stand-alone strategies to tackle violence and discrimination through a gender approach. The Minister for Equal Opportunities acts delegated by the President of the Council of the Ministries and exercising the powers assigned by the latter through the Department for Equal Opportunities (DEO). This makes the action of the Minister of Equal Opportunities strongly

73 Paragraph referred to Questions no. 4, 5 and 6 by the CEDAW Committee.

74 GUARRIELLO F., Il ruolo delle istituzioni e della società civile, in "Il nuovo diritto antidiscriminatorio" (by M. Barbera), Milan, Giuffrè, 2007, p. 478-479.

75 TEGA D. Discriminazione e diritto antidiscriminatorio: considerazioni istituzionali a partire dal diritto costituzionale italiano, 20.03.2009, see also Rappresentanza politica e riequilibrio di genere, in «il Mulino», 3/2008, now published in "Lessico delle discriminazioni: tra società, diritto e istituzioni", by T. Casadei, Reggio Emilia, 2008, p.6.

76 GUARRIELLO F., Il ruolo delle istituzioni e della società civile, in "Il nuovo diritto antidiscriminatorio" (by M. Barbera), Milan, Giuffrè, 2007, p. 499-500. LA ROCCA D., Il fondo nazionale per le attività delle e dei consiglieri di parità (quoted by Guarriello) affirms that "The impact of the action of the equality and equal opportunities bodies on the whole cannot but be considered very unsatisfactory. The proliferation of weak bodies itself, rather than setting up cohesive system, ended by entailing a sort of chain paralysis and turning the single frailties into a general weakness of the entire institutional framework on which equal opportunities policies are based.

77 If an Italian citizen was a victim of discrimination she/he would be very little inclined to report it to an equality organization (10% less than the European average) http://ec.europa.eu/public_opinion/archives/ebs/ebs_317_fact_it_it1.pdf

dependent from the political direction of the President of the Council and of the other Ministries. This dependency is not only political but also economic, since the Minister for Equal Opportunities heads a ministry without portfolio. This restricts *ab initio* her actual strength and agenda, whose results ultimately depend from the political pressure the Minister can exercise on the ministerial whole⁷⁸. The Government was not able to answer the Committee Question no. 5 about the exact share of funds destined to gender policies on the total of those received by the DEO.

3.1.2.2 The Ministry for Equal Opportunities is responsible for several kind of discriminations⁷⁹ beyond the gender one. Gender issues represents just one of the areas of activity and this fosters the consideration of women as a category of “weak subjects”, together with minors and disabled people. For such reason, as well as because of the political and economic dependence of the Ministry of Equal Opportunities from the President of the Council and from the other Ministries, the Government was not able to develop an effective strategy to tackle the issues of the rooting of sexist stereotypes, of the under-representation and of the redistribution of powers and resources between men and women.

3.1.3 No measures were adopted by the Government to ensure the implementation of the convention by local and regional authorities, in compliance with Recommendations 23-24/2005. The division of responsibilities at the local, regional and national level and the lack of coordination determines situations of inequality in the promotion and protection of women’s rights from Region to Region

3.1.3.1 Anti-discriminatory law also lies within the jurisdiction of the Regional legislators. Some Regions showed a greater awareness on the promotion of women’s rights introducing in their new Statutes the commitment to make the equality principle effective, to enhance gender differences and the effective equality between men and women, and enacting regulations with specific provisions to promote the advancement of women’s rights in the areas under regional jurisdiction. This contributes to increase the inequality in women’s access to rights from Region to Region, in the absence of a national coordination between regional representatives defining minimum standards for women’s rights protection. The inequality in women’s access to rights related to the place of residence is furtherly reinforced by the fact that only some Regions have endowed themselves with regulations that promote gender-budgeting, which to date have been adopted just by a minimum share of the Italian municipalities and with significant differences in implementation from one another⁸⁰.

WE RECOMMEND:

- ***A rationalization of duties with regard to equal opportunities.***
- ***That the Minister for Equal Opportunities is released from the political and economic dependency from the President of the Council and endowed with a portfolio and specific and exclusive jurisdiction on gender- and sexual orientation-based discrimination.***
- ***That, with regard to the identification of such duties, the different scope of “equal opportunities” (for all, inclusive of each form of discrimination) and of discriminatory activity based on gender is clarified. Sex-based discrimination cannot be considered as one of the forms of discrimination the Minister is called to act upon (though primarily). It must be acknowledged that gender is an integral part of each person’s life, despite s/he belongs to an another majority or minority group, as reasserted by the CEDAW General Recommendations. Gender discrimination is thus to be given a special attention and a specific resource allocation, compared to the other forms of discrimination.***
- ***A greater coordination among the DEO and the other institutes and bodies working at the national and local level on human rights and discriminations.***
- ***The enforcement of monitoring systems for the projects developed and funded by the various equality and equal opportunities bodies.***
- ***The adoption of coordination mechanisms to reduce inequalities in the promotion and protection of women’s rights from Region to Region, through the setting of minimum protection standard***

78 TEGA D. Discriminazione e diritto antidiscriminatorio: considerazioni istituzionali a partire dal diritto costituzionale italiano, 20.03.2009, see also Rappresentanza politica e riequilibrio di genere, in «il Mulino», 3/2008, now published in “Lessico delle discriminazioni: tra società, diritto e istituzioni”, by T. Casadei, Reggio Emilia, 2008.

79 As acknowledged by the Government in par. 28 of the “Responses”, p. 9

80 See for instance www.genderbudget.it; www.bilancioidigenere.it

also for those matters of exclusive regional jurisdiction.

- ***The compulsory adoption of gender budgeting at the national and local level.***

3.2 CRITICAL ISSUES ABOUT EQUALITY INSTITUTIONS⁸¹

3.2.1 Equality councillors

In **Recommendation no. 8/2006⁸²** the **Human Rights Committee** asked Italy to provide information about the activity of the equality councillors, including statistics about reports, lawsuits and verdicts with regard to gender discrimination. These data, required also by the CEDAW Committee in **Question no. 9** of the "List", have never been provided by the Government, right because there is still no comprehensive data collection at the national level. Actually, the online databases⁸³ are not functioning at all (see 2.4.4).

The action of the equality councillors is highly depotentiated by the following factors, primarily:

3.2.1.1 Dependence from the executive branch. The Equality Councillors are politically appointed bodies. Their decisional autonomy is deeply undermined by the governmental dependence of their appointment, as demonstrated by the removal of the National Councillor Fausta Guarriello, after having expressed extremely critical views on the abrogation of the law on blank resignation, compared to those of the Government⁸⁴. The Councillor has been relieved from her duties by the Minister building on the spoils system provision for senior officials. The Administrative Court of Lazio declared the legitimacy of the removal act⁸⁵ through verdict, thus confirming that the Equality Councillor is hierarchically subordinated to the National Committee and Ministry.

The Equality Councillor is therefore dependant from the Government, which contrasts with Directive 2006/54/CE, stating in art. 20 that the Councillor and all the Equality bodies must be independent, in order to be able to provide victims of discriminations with independent support and hold independent inquiries. For such reason, reports were sent to the communitarian authorities and investigations are taking place on the matter⁸⁶ D.LGS. 5/2010, despite having extended the list of duties of the Councillors, did not implemented Directive 2006/54/CE correctly, since the directive envisages that such tasks are fulfilled by independent authorities. Such extension of tasks constitutes therefore a mere formal conformity to the directive⁸⁷. Reality showed that the political appointment and the risk of removal make very difficult, even at the local level, for the Councillors to perform their duties effectively and impartially. In addition, an excessive discretionality in the recruitment of equality councillors still remains.

3.2.1.2 All the equality and equal opportunities bodies regulated by the CEO are within Public Administration, despite communitarian provisions envisage that many of these roles are to be covered by independent authorities.

3.2.1.3 Lack of economic resources. Inadequate monthly allowance

3.2.1.4 Lack of social and political resources at the local level to foster the promotion of judicial and conciliatory actions.

3.2.1.5 Excessive duration of the term of office. According to the amendments to D.LGS. 5/2010, a Councillor can remain in office for three terms, which means for twelve years⁸⁸. Such provision, together with the partiality of the appointment, risks to further undermine an effective protection from discriminations.

81 Paragraph referred to **Questions no. 4, 5 and 6 by the CEDAW Committee.**

82 **CCPR/C/ITA/CO/5, 24th April 2006.**

83 <http://consiglieraanzionale.lavoro.gov.it/>

84 As highlighted in the List of Critical Issues at paragraph VII of the point 1: "Through a practice contrary to law, Minister Sacconi relieved the National Councillor, Mrs. Fausta Guarriello, appointed by the previous Government, of her duties last November, 4th. The decree of annulment was signed by the Minister of Labour and the Minister of Equal Opportunities after the Councillor had expressed her negative opinion about the abrogation of Law n. 188 of 17.10.2007, a law passed by Prodi Government with a nearly unanimous vote by the previous legislation on the initiative of all parties' women members, in order to contrast blank resignation. The Equal Opportunities Councillor pointed out that "the abrogation of Law n.188/2007 on voluntary resignation left working women without protection especially during pregnancy and return from maternity". The decree stated that, differently from what is expected by law, "the Equal Opportunities Councillor is not an independent authority"; the reason for annulment was due to "the lack of her agreement on Government's policies and the evident prejudice against the implementation of policies by the Government on that topic." At the moment no new protection instruments have been provided to contrast blank resignation".

85 Administrative Court of Lazio, verdict no. 5780/2009.

86 See the comment by GOTTARDI, Lo statuto delle Authorities in una prospettiva europea: il caso delle consigliere di parità in <http://www.europeanrights.eu/index.php?funzione=S&op=5&id=351>. See also GUARRIELLO F., Il ruolo delle istituzioni e della società civile, in "Il nuovo diritto antidiscriminatorio" (by M. Barbera), Milan, Giuffrè, 2007, p. 477.

87 BONARDI O., Pari opportunità: una riforma minimale per un codice minimalista, in Note informative, no. 49/2010, 15.09.2010, p.7.

88 http://www.kila.it/index.php?option=com_content&task=view&id=1126&Itemid=2

3.2.2 Committees for equal opportunities in the workplace

Art. 21 of the Collegato Lavoro (Act n. 183/2010) envisages the **dismantlement of the Committees for Equal Opportunities in the workplace**, to be substituted by a generic “Central Guarantee Committee for equal opportunities, workers’ welfare and non-discrimination” (CUG), which equates equal opportunities to other “neutral” issues such as mobbing and all the other forms of discriminations in the workplace. To date, no guidelines for the CUG functioning have been enacted yet, which in fact makes them inactive⁸⁹.

3.2.3 Amendment of the duties of the NATIONAL COMMITTEE FOR THE IMPLEMENTATION OF THE PRINCIPLES OF EQUAL TREATMENT AND EQUAL OPPORTUNITIES between women and men workers. Narrow views on the role of positive actions. Limited operational scope

Art.1 D.LGS. 5/10 amends and completes the duties and functions of the National committee for the implementation of the principles of equal treatment and equal opportunities between women and men workers, also envisaging its “contribution, also through the promotion of positive actions, to the elimination of the barriers that hinder equality between men and women in career and professional development, to the design of measures for the reintegration of women after maternity, to a wider diffusion of part-time and other flexibility tools at the corporate level ensuring a better work-life balance”.

This highlights a narrow view on positive actions, considered as measures aimed at supporting women in the difficult task of work-life balancing, which is supposed to be fulfilled mainly through flexible contracts. The legislator is thus ignoring the whole communitarian debate – according to which work-life balance assumes not only and not as much women’s reintegration, but also and above all bringing men back to family care duties – coming to reinforcing a second-class model of female work⁹⁰. The Committee exercises its assigned promotional tasks “within State jurisdiction”. The reference to the sole subjects within State jurisdiction is highly restrictive, since after the federalist reform of the State an important share of the labour policies (from employment services to assistance structures) lies within regional jurisdiction.

3.2.4 Bureau for the promotion of equal treatment in the access to goods and services and their supply⁹¹

Within the implementation of the G&S Directive, a new bureau was established for the promotion of equal treatment in the access to goods and services, within the Equal Opportunities Department. The independence requirement demanded for the assistance to the victims of discrimination cannot be considered fulfilled with the duties envisaged by the Directive assigned to a governmental office. Furthermore, this bureau was only assigned the duty to fulfil the information obligation. In order to achieve a higher organizational effectiveness, instead, it would have been advisable to include the setting of annual deadlines and the planning of activities.

WE RECOMMEND:

- *The rationalization of duties and the coordination among the existing equality bodies.*
- *The guarantee of independence in the appointment and in the exercise of the functions of the Equality Councillors and of all the other equality bodies for which such a requirement is demanded by the European directives.*
- *The equality bodies to be endowed with adequate resources for the actual exercise of their functions.*

3.3 ABSENCE OF AN INDEPENDENT INSTITUTION FOR THE MONITORING AND PROTECTION OF HUMAN RIGHTS⁹²

Italy has a large number of governmental bodies who in various capacities deal with racial discrimination, women’s rights, children’s rights, disabled people’s rights, but no national independent institution able to design and monitor a final, integrated, long-term and, if possible, transparent and participatory strategy for

89 The several critiques raised against the unification of the Committees remained in fact unheeded. For such reason on the 16th of February 2011 a parliamentary inquiry requiring written response from the Ministers of Public Administration and Innovation, of Labour and Welfare Policies and of Equal Opportunities was presented: <http://parlamento.openpolis.it/atto/documento/id/57801>

90 Quoted BONARDI O., Pari opportunità: una riforma minimale per un codice minimalista, in Note informative, no. 49/2010, 15.09.2010, p.4

91 Paragraph referred to **Question no.6 by the CEDAW Committee**. The following observations summarize those expressed by LORENZETTI A., in: “Il Recepimento Italiano della Direttiva “Beni e Servizi”, p. 21.

92 Paragraph referred to **Question no.6 by the CEDAW Committee**.

the coherent and systematic promotion and protection of all human rights in their universality and indivisibility across different sectors. The risk for proliferation and fragmentation of sectorial and local mechanisms in Italy is currently high⁹³, as shown by the proliferation of the bodies established by the CEO and of the Ombudspersons. For such reason, the establishment of an independent institution for the monitoring and promotion of human rights and the development of a national integrated plan of action is urgently needed.

To date, Italy is still not fulfilling the Paris Principles and all the Resolutions made by each of the 6 UN treaty bodies that have examined the Italian context in the last recent years⁹⁴, including the CEDAW Committee as to the establishment of an independent institution for the promotion and monitoring of human rights, moreover announced on the occasion of the 2010 Universal Periodic Review.

The approval of a draft bill⁹⁵ on the establishment of a national Commission for the promotion and protection of human rights by the Council of Ministries on the 3rd May 2011 cannot be considered a sufficient advancement towards the effective implementation of the obligation taken.

The Government has already evaded the obligation to establish such an institution in the past, through the approval of draft bills that, similarly to what happened with the one of the 3rd May, have not been assigned afterwards to the relevant parliamentary Commissions or have been dropped from the schedule of the parliamentary discussions. To date no consultative, inclusive, transparent and participatory process to involve civil society has even been started and no inquiries have been carried out. The draft bill adopted by the Council of Ministers on the 3rd of May 2011 is inadequate to the criteria envisaged by the Paris Principles and determines a significant regression compared to the former draft bill no 1463⁹⁶ on which the National Institutions Department of the UN High Commissioner for Human Rights had already expressed its technical advice⁹⁷. With regard to the promotion and protection of women's rights in particular, the present draft bill represents a regression both as to women's representation within the institution and as to the associations' participation, which is remarkably restricted by the further requirements demanded.

Considering the lack of dialogue with NGOs and women's associations by the Government, the absence of a national independent institution for the monitoring of human rights makes it difficult for civil society to participate and contribute to the development of a consistent, integrated and effective strategy to tackle gender discriminations and monitor the effectiveness of the action plans designed by the Government.

WE RECOMMEND:

- ***The imperative acceleration of the parliamentary debate for the approval of a law establishing a national independent institution for the promotion and protection of human rights, subject to widespread consultations with civil society and in accordance with the Paris Principles and the advice expressed by the National Institutions Department of the UN High Commissioner on Human Rights.***
- ***The inclusion of the already existing Ombudspersons (for children's rights and for the rights of detainees) as an integral part of the national independent institution for the promotion and protection of human rights.***
- ***The establishment of a monitoring body in charge of the promotion and protection of women's rights, as part of the new national independent institution for the promotion and protection of human rights.***

93 Please refer to the observations formulated by the Committee for the promotion and protection of human rights in 2007 in par. 1.2 of the Monitoring report of the Recommendations to Italian Government made by the UN Committee on economic, social and cultural rights and by the UN Committee on human rights with regard to the Italian implementation of the international Covenants on economic, social and cultural rights and on civil and political rights and of other international instruments. Hereafter "the 19.06.2007 Monitoring report") <http://www.befreecooperativa.org/filetestuali/pubblicazioni%20before/rapporto%20monitoraggio%20final%20editing%2028%2006%2007.pdf>

94 See also other **Recommendations addressed to Italy: REC 15/2003 CRC, REC. 14/2004 and 32/2004 CESCR, REC 7/2006 ICCPR, REC. 8/2007 CAT, REC 13/2008 CERD.**

95 http://www.governo.it/Governo/Provvedimenti/testo_int.asp?d=62616

96 <http://www.senato.it/service/PDF/PDFServer/BGT/00262121.pdf>

97 Please refer to the observations formulated in 2007 by the Committee for the promotion and protection of human rights in par. 1.3. of the 19.06.2007 Monitoring report.

http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/IT/CPDDU_UPR_ITA_S07_2010_ComitatoperlaPromoeProtezdeiDirittiUmani.pdf

ARTICLE 4 TEMPORARY SPECIAL MEASURES⁹⁸

In several occasions the State party showed a marked aversion to the adoption of temporary special measures aimed at accelerating the de facto equality between men and women.

In particular, it was impossible to achieve a sufficient parliamentary majority for the adoption of provisions introducing the so called “female quotas” in the composition of the electoral rolls and in the boards of quoted corporations⁹⁹, due to a strong cultural aversion to the usage of such a tool, especially on the side of male MPs who, both in the majority and in the opposition, hindered draft bills strongly demanded by the Minister of Equal Opportunities herself.

The failed introduction of the quotas mechanism is significantly delaying the process towards a greater women’s representation in the economic and political sectors and, without the adoption by the Government of other adequate measures for the promotion of de facto equality in the relevant sectors, violates the **art. 4 and the General Recommendation 5 par. 29**. Each single issue will be discussed in the relevant articles¹⁰⁰.

98 Paragraph referred to **Question no. 8 of the CEDAW Committee**.

99 Despite Italy is the penultimate country in Europe for the share of positions covered by women, the approved law postponed to 2015 the obligation for female quotas.

100 See **para. 7.2.2 of the Shadow Report**.

ARTICLE 5 STEREOTYPED REPRESENTATION OF WOMEN

5.1 STEREOTYPED PORTRAYALS REGARDING THE ROLE OF WOMEN AND POLICIES CONFIRMING THEIR ROOTS

Recommendations no. 25 and 26 of 2005 of the CEDAW Committee have been totally disregarded. A degrading representation of women persists in the mass media as well as in the political debate¹⁰¹.

In the VI Periodical Report, The Government recognizes that gender stereotypes in Italy are deeply rooted (**para. 152**) and could be conveyed through didactical programs, culture and mass media (**para. 151**). Despite the understanding of the problem, since 2005 there has not been any general and coordinated national plan prepared to fight the widespread acceptance of stereotyped gender roles. Even among younger generations, it is deeply rooted the idea that women should be conformed to traditional roles¹⁰², because of the absence of long-term political strategies for the deconstruction of gender stereotypes. This view is also reflected in the political debate and in the adoption of laws and policies that presuppose and reinforce these prejudices¹⁰³(See **art.11 and art.13**).

5.2 THE STEREOTYPED REPRESENTATION OF WOMEN IN THE POLITICAL DEBATE

Too often politicians, regardless of the political wing and their institutional position, use a disrespectful language towards women, sexist, misogynist, homophobic and stereotyped, both in public statements reported by media and during institutional events.

A Mayor from a left-wing party (PD), during the City Council answering the very serious question by a Councillor: "Mr Mayor, what are your aspirations?", he said: "My only ambition is to have sex with an eighteen girl"¹⁰⁴. At a press conference at Palazzo Chigi, Albanian Premier Berisha was talking about a moratorium on landing for illegal immigrants arriving by boat in Italy and Berlusconi said: "We'll make an exception for those who transport beautiful girls"¹⁰⁵. Again, during a TV talk-show, Berlusconi told to a member of the parliamentary opposition: "She is more beautiful than intelligent"¹⁰⁶. Once more, in reference to the scandals in which he is involved: "It is better to love a beautiful girl than being gay"¹⁰⁷.

The behaviour of politics often emphasizes the physical attributes and beauty of women, not their competences and merits. This promotes and enhances the persistence of sexual and gender stereotypes in political field, promoting in the public opinion the idea of woman as an object, merchandizing the body to reach her goals, rather than a woman as a person who thinks, feels, acts, with talents and autonomously¹⁰⁸. The media have constantly conveyed the statements of the Prime Minister and other politicians in recent years¹⁰⁹ overflowing the world of information, political debate and influencing public opinion. Civil society, associations, movements, NGOs promoting gender equality and women rights, have reacted with several initiatives and campaigns, to contrast such situation. "I am a woman and I say stop it"¹¹⁰ "I'm not a woman at his disposal"¹¹¹ are only few slogans created by citizens. On February 13, 2011 demonstrations called "If not now when?"¹¹² were held in many Italian towns and in the rest of the world to say stop to this situation. There were more than one million people. However, institutions remained unsympathetic to the demand for respect and dignity of women raised by the civil society. This is confirmed by the following declarations

101 See **para. 2** of the "List of critical issues , concerning the Sixth Periodic Report of Italy on CEDAW", by the Italian Network "30 years CEDAW – Lavori in Corsa.

102 <http://www.italiadonna.it/societa/soc08b.htm> (To the question: "Which should be the woman's role in society?" 31% answered that women should promote a new society model based on feminine values; 19.6% replied that the woman's role should be, like for men, to work, and 19.2% replied that, instead, the woman's role in the Italian society should be the hyper-traditional "being a mother". To make it stronger, 7.9% replied that women should be totally dedicated to the family and private issues, while fortunately a very modest 4.9% sees a woman only as a man's partner).

103 Lack of welfare system push to reproduce traditional female and male models(see **art.11 and 13**).

104 SANSÀ F., "Erotic dreams of a PD mayor", Il Fatto Quotidiano, 20.05.2010.

105 Article "Il Corriere", Berlusconi welcomes Berisha. "From Albania only pretty girls".

www.corriere.it/politica/10_febbraio_12/berlusconi_albania_04e30728-17f0-11df-b8a8-00144f02aabe.shtml

106 www.corriere.it/politica/09_ottobre_08/berlusconi-bindi-battibecco-porta-a-porta_828e7274-b3ec-11de-afa2-00144f02aabc.shtml

107 <http://chuiiko.com/world/958-berlusconi-luchshe-lyubit-krasivyx-devushkek-chem-byt-geem.html>

108 <http://www.ilfattoquotidiano.it/2011/01/28/santoro-il-13-febbraio-manifestazione-davanti-al-tribunale-di-milano/88986/>

109 <http://www.bbc.co.uk/news/world-europe-12442833>

110 <http://tv.repubblica.it/dossier/caso-ruby-donne-dicono-basta/sono-donna-e-dico-basta-i-volti-della-protesta-5/61413?video=&pagefrom=1>

111 <http://femminileplurale.wordpress.com/2009/10/08/sono-una-donna-che-non-e-a-sua-disposizione/>

112 For the advert: <http://tv.repubblica.it/dossier/caso-ruby-donne-dicono-basta/se-non-ora-quando/61080?video=&pagefrom=1>

that legitimated the use of the body by women to gain political positions¹¹³.

5.3 STEREOTYPED REPRESENTATION OF WOMEN IN THE MEDIA¹¹⁴

The Governmental Report identifies the field of communication (mass media) as a channel for transmission of gender stereotypes, but dedicates no paragraphs to the discussion of the topic, entirely omitting the question of the image of women conveyed through the media¹¹⁵. The Italian scenario is full of examples that not only highlight and encourage gender stereotypes, but also literally degrade women's dignity. A CENSIS survey reveals that 53% of women appearing on TV do not speak, 46% are associated with issues such as sex, fashion show and beauty, and only 2% are associated with cases of social commitment and professionalism. According to the survey, 30% of camera shots contain sexual innuendos and 73% of young people agree that the woman uses her body to make a career¹¹⁶. The Government has not set up any specific measure to counter the stereotypical representation of women in the media, or prepared a strategy for the future, as appear clear from the Governmental Report and from the provided CEDAW Committee answers to the Question no. 10.

5.3.1 The representation on public TV

It's welcome the news that the Ministry of Economic Development has signed a new Service Contract with RAI in April 2011, which will expire at the end of 2012 (a 3 year contract 2010-2012). It's providing new standards of protection regarding women representation on the public programs¹¹⁷ (TV and radio). Art. 29 of the service contract provides that, within 30 days of the enforcement date and by publication in the Official Gazette of an ad hoc law by the Department of Economic Development, "will be established within the Ministry a special commission, composed of eight members, four appointed by the Ministry and four by the RAI, with the aim of defining (...) the most effective operational modes and development of activities and obligations under this contract and to assess the degree of comprehensiveness in order to verify the accomplishment". To date, the Commission has not yet been created, but it is hoped that the commission of eight members will not include members chosen for their political stance, but on the contrary will include some independent female experts competent on communication and gender stereotypes¹¹⁸.

5.3.2 Representation in advertising

The CEDAW Committee in 2005 had recommended to the media and advertising agencies to disseminate the image of women as "equal partners in all spheres of life" (**Recommendation no. 26**). Nothing has been done in this direction until 2011, for example naked women's bodies continue to be used to sell any kind of product.

Advertisement play with the double meaning of the words. We report few examples:

The slogan of a company selling photovoltaic panels has the slogan "Montami (which means install something but also "make me sex") at zero cost"¹¹⁹ with the body of a woman squatting, wearing stiletto shoes and a thong underwear. In a mozzarella cheese advertisement, the only picture shown is the womb of a prosperous woman, accompanied by the slogan "Good things in summer"¹²⁰. The slogan: "Trust me, I give it to you for free.... "la montatura" (which means spectacle frames, but it also means the sexual act)" is accompanied by the image of a woman. Two support groups for the advertisement have been created on the social network Facebook¹²¹. In 2007, the advertisement of two famous Italian fashion designers provoked the reactions of several associations, including Amnesty International, because the advertising

113 The member of Parliament Angela Napoli (FLI), confirmed that "Some women members of Parliament and of the Senate have made a huge career because they prostituted themselves". It is a serious allegation that implies that some members of both chambers of Parliament have made a career exploiting not their competences but their body. To this allegation, MP Giorgio Stracquadanio (PDL), replies: "It is absolutely legitimate that in order to have a career each of us uses whatever we have, either intelligence or beauty" (...)

http://www.corriere.it/politica/10_settembre_13/stracquadanio-corpo-carriera_b822b05e-bf43-11df-8975-00144f02_aabe.shtml

¹¹⁴ Paragraph referred to **Question no. 12 of the CEDAW Committee**.

¹¹⁵ See L. ZANARDO, "Il corpo delle donne", Feltrinelli, 2010; & "A List of critical issues, concerning the Sixth Periodic Report of Italy on CEDAW", proposed by the Italian Network "30 years CEDAW – Lavori in Corsa", <http://www.scribd.com/doc/47676861/LIST-OF-CRITICAL-ISSUES-PROPOSED-BY-ITALIAN-NGO-concerning-6th-periodic-report-of-Italy-on-CEDAW>

¹¹⁶ Article "A Woman on TV is only sex and fashion", L'Avvenire, 28.05.2010. Please see also, in english, <http://loredanalipperini.blog.kataweb.it/lipperatura/tag/cristina-tagliabue/>

¹¹⁷ **Art. 2 para 7**, states that RAI "has to monitor and report annually to verify the respect of equal opportunities as well as the correct representation

of personal dignity in the overall programming, with special reference to the distorted representation of female and to promote a real and non stereotyped image".

¹¹⁸ <http://giovannacosenza.wordpress.com/2011/04/12/il-nuovo-contratto-di-servizio-rai-e-le-donne/>

¹¹⁹ www.libero-news.it/news/455442/_Montami_a_costo_zero__spot_choc_in_Sicilia_.html

¹²⁰ <http://concentratore.it/donne-al-centro/>

¹²¹ www.facebook.com/group.php?gid=100447417744, www.facebook.com/group.php?gid=249349146478

image appealed to a sexual abuse: the woman is on the ground, held by a man by the wrists, while the other four look at her.¹²²

Currently, the main factors¹²³ that hinder the elimination of stereotypes in advertising are:

- The lack of national regulations/guidelines against sexist advertising, that provide rules that media, companies and advertising companies are obliged to comply with;
- The vicious circle between advertising and the mass media that prevents discussing and reporting sexist or humiliating (and advertising in general) advertisements on the mass media themselves; There is a sort of censorship towards those who want to report advertisements on the media, particularly on TV.¹²⁴
- The difficulty in taking actions against the advertising industry, a difficulty which is explained on many sides, in that advertising does not depend only on those who create it, but also on those who want it, namely the companies. It must also be added that there is no preventive control for verifying whether an advertisement is discriminatory against women: as a result, sexist and offensive advertisements are broadcast or visible for a long time. The only possible action is to report to the *Istituto di Autoregolamentazione Pubblicitaria*¹²⁵ (Institute of Self-regulation for Advertising companies).
- The widespread acceptance and agreement on gender stereotypes in Italy makes it easy for advertising companies and industries to use the woman's body to sell any kind of products. The presence of gender stereotypes emerges strongly through the comparison of commercials made for the same product, but broadcast or published in different EU countries.¹²⁶

To summarize, the main obstacle towards eliminating stereotypes in advertising is the lack of political will to act accordingly. From 2005 to 2010, the only actual initiatives were promoted by associations and women experts on gender communication and raises public awareness campaigns with civil society, making accessible to all women and men how to make complaints to the IAP. The Committee *Immagine Differente* (Different Image), promoted by CGIL Milan and the Associations *DonneinQuota* and *Amiche di ABCD*, was established precisely to support a bill on equality and non discrimination in advertising and media¹²⁷. The Committee *Pari o Dispare*¹²⁸ has prepared a proposal for the establishment of an "Authority against gender discrimination". Some industries have undertaken to not associate their brand to advertising campaigns that could be discriminatory, degrading or could induce or glorify violence against women. In particular, UDI (Union of Italian Women) has launched a national campaign "...to combat the damaging images and feminine stereotypes anywhere, not only in advertising, through meticulous, organized political action, with shared intentions"¹²⁹). On the UDI website it is possible to report images or spots damaging the woman's dignity.

A first result was reached in January 26, 2011, when the Ministry of Equal Opportunities has signed a protocol (two-year commitment) with IAP on advertising damaging to the dignity of women¹³⁰. This was

122 www.corriere.it/Primo_Piano/Cronache/2007/03_Marzo/02/dolce.shtml

123 Interview with Giovanna Cosenza professor of semiotics - university of Bologna.

124 During the interview, Giovanna Cosenza recounts a personal experience. Invited as an expert to give her opinion on advertising communication, in a reportage programme (Presadiretta "Without women", broadcast on September 26, 2010, RAI 3) the interview lasted one hour but her intervention was reduced (.....) the part concerning advertising was extremely reduced and this was not a journalistic choice, but because in the media it is very difficult to find strong complaints.... In the media we do not criticize advertisements. Something happens on the web where there are many blogs complaining about sexist advertisements".

125 Interview with Giovanna Cosenza: "In advertising, the situation is even worse and the only strategy is to report to the IAP, by sending more and more reports through the net. However, it is wise to avoid any mass media glamour in the most famous cases, because the noise is more publicity".... The more reports we send, the more possibilities there are to create attention to the problem. By so doing, companies suffer economic damage. It is not enough, because the IAP does not always answer positively; there is a certain mistrust between small and big companies. This is the only solution because of the lack of regulation, there are no sanctions, there are no laws against sexist advertising".

126 Interview with Giovanna Cosenza: "Advertising campaigns of the same company have a particularly sexist note in Italy and in similar countries like Portugal, Malta and Greece, countries where gender equality is poor like in Italy. The less equal a society, the more sexist the advertising". Let's think, for example, of the advertising campaign of the Muller yogurt where there is the body of a woman and a mouth drawn on the body. If we look at the campaign realized in England, it is a completely different story. The comparison is terrifying: in the spot realized in England there are fat people and thin people, young and old people... Everybody living life with yogurt". The Italian spot, on the contrary... shows one of the most depressing representations of soft porn with the woman's body

127 <http://www.immaginedifferente.net/?paged=2>; the Committee 'Immagine differente' (Different Image) is based on the meticulous work realized by the association DonneinQuota which, after the European Parliament Resolution adopted on 3 September 2008 (2008\ 2047 (INI)), started to act against sexist advertising.

128 On the Committee: <http://www.pariodispare.org/>; on the proposal: http://www.Pariodispare.org/index.php?option=com_content&view=article&id=55:una-prima-piccola-grande-vittoria-il-si-della-commissione-vigilanza-rai-allosservatorio&catid=2:blog-istituzionale&Itemid=21

129 <http://unionedonne.altervista.org/index.php/campagne/immagini-amiche.html>

130 A Joint Committee is created with the protocol, which will be able to ask for an immediate withdrawal of an advertisement clearly offensive towards women. The Committee is composed of three members from the Department of Equal Opportunities and three members from IAP. The reports received by the Committee, if deemed substantial, will have immediate effect. The former procedure with IAP used to perform the actual withdrawal only after one month, when the campaign had already been seen.

http://www.pariodispare.org/index.php?option=com_content&view=article&id=90:mara-carfagna-sigla-un-protocollo-sulle-pubblicita-lesive-verso-le-donne&catid=2:blog-istituzionale&Itemid=21

also in response to various campaigns and pressure from civil society.¹³¹ After this Protocol signing, there have been no more structured and long-term initiatives that highlight the real political will to intervene to oppose and curb sexist, stereotypical and gendered advertising.

Associations and experts who promote and monitor the complaints of sexist advertising to IAP underscore the lack of gender awareness in decisions to remove advertisements.

According to an analysis of complaints, the IAP interventions is effective only when the ads are vulgar and nudity are more integral. The complaints are not accepted when the advertise is related to sell products by leveraging on female traditional stereotypes roles, because they were considered by the IAP “ironic”¹³².

Considering the difficulty of maintaining a dialogue with associations working on gender issues, together with the self-defensive attitude that IAP has shown during the last few years¹³³, it is believed that the real intention behind the signing of the Protocol by the Secretary of Equal Opportunity is on one hand to alleviate the IAP in dealing with women’s organizations and on the other hand to avoid political answer to the CEDAW Committee about the total inactivity on such an important subject for women in all of this years. This idle underlines the conflict of interest between the double role that cover the Italian Prime Minister, the public and political role and the private business role of entrepreneur and owner of several media, and the huge economic interests related to advertising.

5.3.3 Representation in entertainment programs

The documentary “The body of women” denounced the use of the female body in Italian television, raising the international concern about the peculiarity of the Italian case. Lorella Zanardo reports: **“Women, real women, are disappearing from TV and have been replaced by a grotesque, vulgar and humiliating representation of them. This is a huge loss: erasure of women’s identity** is happening under everybody’s eyes, without an adequate reaction, not even by the women themselves¹³⁴. “The presence of women on television is a presence of quantity, rarely of quality”. “Reduced and self-reduced to being sexual objects, engaged in a race against time that forces her to undergo monstrous deformations, forced to be a mute presence, or promoted to the role of presenter of useless programs where no competence is ever required”.¹³⁵ Despite the huge impact obtained by the documentary, the use of sexist formats which offer the woman’s body as “quiet accessory” or force her into stereotyped roles still persists in entertainment programs.

5.3.4 Representation in the news¹³⁶

In 2005, women accounted for 14% of subjects in the news, i.e. they were either interviewed or they were the subject that the news talked about. In 2009, women accounted for 19% of the subjects of information, compared to an international average of 24%. The 2009 data shows a clear underrepresentation of women in the political and economic fields.

	Political information	Economic information
Female presence	15%	13%
Male presence	85%	87%

These results may be linked to the low presence of women in the political and economic sectors, where masculine leadership is predominant.

With reference to the feminine role in the news, it seems important to highlight a few aspects:

- 1) Women are relegated to their private lifestyle: in the majority of cases they are identified as representatives of popular opinion (57%), or they are interviewed to recount a personal experience (40%), which reveals a role deprived of any authority. To the contrary, men represent the public field, they occupy exclusive positions and authoritatively appear as expert commentators, or spokesmen (more than 80% of cases).
- 2) Women are more usually introduced and identified by their family status, or by their relationship with

131 We mention the report sent by the CEDAW Committee on our List of Critical Questions in the Pre-session ([para 2.III](#)), the research and analyses, the advocacy and lobby actions done by “Pari o Dispare”, “UDI” the “Parma Observatory”, “DonneInQuota”, and all the women expert and academic working on the issues and through blog: <http://vitadastreghe.blogspot.com/>, <http://giovannacosenza.wordpress.com/>, and so on.

132 <http://comunicazione digenere.wordpress.com/2011/02/06/gli-spot-che-piacciono-allo-iap/> &

<http://giovannacosenza.wordpress.com/2011/02/02/quando-il-giuri-della-pubblicita-sbaglia/>

133 See newsletter IAP “Spaziaperti” n. 5/2010, where they admit their difficult relationship with the female associations.

134 Ibidem.

135 For instance, in the selection of the TV sequences included in the video, a short part of a family entertainment program, can be seen broadcast on Sunday afternoons, where a girl wearing a very tight white dress is “forced” by the presenters, a man and a woman, to take a shower. It is the woman who pushed the girl under the shower. The documentary also highlights this aspect: women that have managed to become “powerful” behave like men do with other women, become arrogant and humiliate other women as much as men do. In another sequence, a presenter picks a girl at random from the audience, he asks her name, takes her hand and asks her: “Have you left your boobs at home?”.

136 Source of this paragraph: Global Media Monitoring Project www.osservatorio.it/download/GMMP2010ItalyReport.pdf

other individuals (i.e. as wife, mother, or a friend of somebody), instead of being considered as autonomous and independent individuals (1% man, 11% women).

3) It is possible to identify a positive trend in the profession of journalism: 55% of reporters are women (compared to 41% in 2005). However, women are mainly involved in “soft news”, i.e. news concerning celebrities, arts, media and sport (73%) and health and science (66%), while men prevail in news on politics and government (54%).

There is no analysis available on the representation of women in magazines targeting girls, teenagers and adult women.¹³⁷

It was not designed a project involving the media in addressing the issue of gender stereotypes, nor is it planned for the future, for example by including equal opportunity programs in the schedules.

In the field of news, women are underrepresented in both aspects, quantitative and qualitative. This is a result of the low presence of women in positions of “power” e.g. in politics, the economy, the media world etc..

5.4 STEREOTYPED REPRESENTATION OF YOUNG GIRLS BY THE MEDIA

With regards to childhood and adolescence, some worrying, increasingly aggressive trends must be overcome:

- 1) The inability to avoid even the youngest children from advertising images soft-porno, present in the public areas, with reference to every kind of media, format and in any place (Bus, street advertisement, underground, train..);
- 2) The early eroticism of the body of girls in the media, consequently the behaviour of children¹³⁸ themselves;
- 3) Gender stereotypes spreading through advertising, cartoons acted by and addressed to young girls and boys¹³⁹;
- 4) Sexual behaviours that tend to pornography¹⁴⁰ and actions of bullying through the use of internet¹⁴¹, the social network, particularly for adolescent;
- 5) The construction of stereotypes around a distorted concept of body and beauty among girls and adolescents, coming from the fashion¹⁴² world, with an increasing cases related to eating disorders, physical and mental illness.¹⁴³

These trends are coming, in particular, from advertising that does not respect the rights of children enshrined in the UN Convention¹⁴⁴ and is almost oblivious to the consequences it entails on adults today, as on the adults of tomorrow. In Italian society and in the advertising seems to be no difference between a woman and a girl: the same stereotypes interpreted and endured by an adult woman are applicable to young girls. The girl, like the woman, must be sexy, flirtatious, beautiful and made up even in an advert for school backpacks.¹⁴⁵ The girl, like the woman, in most of the time, is presented in the role of “mother”, which is part of the conservative and patriarchal image of women. This is why in an advert of cheese slices, the girl cooks and washes dishes, while her brother plays and disturbs her.¹⁴⁶

On television during the hours of the “protected area”(afternoon and evening time), are broadcast programs and advertisement stereotype images, merchandizing the women body (girls too), as if it is normal.

The only protection and prevention initiatives come from civil society: the campaign “**Free childhood**” (*Libera Infanzia*) has been launched through the blog “**Another gender of communication**”, supported by

137 Interview with AZZALINI M., coordinator of Global media Monitoring Project& researcher “Parma Observatory”.

138 Osservatorio sull'immagine dei minori, Anna Maria Ajello, Identità sfumata: riflessione in margine ad una ricerca, tratto dal sito <http://www.immaginedeiminori.it/07/intervento3.pdf>

139 Eurispes e Telefono Azzurro (organization for protection of children), Research on childhood and adolescent conditions in Italy, 2010, http://www.eurispes.it/index.php?option=com_content&view=article&id=1753:sintesi-indagine-conoscitiva-sulla-condizione-dellinfanzia-e-delladolescenza-in-italia&catid=40:comunicati-stampa&Itemid=135

140 Ivi, p.18.

141 Ivi, p. 16.

142 Ivi, p. 13.

143 Observatory on image of the child, Brancati Daniela, “Vorrei essere una donna da spot. La pubblicità produce i modelli per la spot generation, 2007”, <http://www.immaginedeiminori.it/07/intervento2.pdf>

144 UN Convention on Child Rights, ratified By Italy on May 27th, 1991, Act no. 176.

145 Cartorama Campaign, taken from the website <http://informarexresistere.fr/fermare-gli-stereotipi-e-lerotizzazione-precoci-riparte-la-campagna-libera-infanzia.html> and reported also by UDI in section “enemy images” with the campaign against sexist and humiliating advertising communication ; see <http://unionedonne.altervista.org/index.php/galleria-immagini-nemiche.html>

146 Advertisement for Kraft cheese slice, from the website <http://giovannacosenza.wordpress.com/2009/04/29/vita-da-sottilette/> , image from <http://www.facebook.com/pages/Gaia-La-bambina-della-pubblicita-delle-Sottilette-Kraft-Fila-Fondi/42341789620> . See also: L. LIPPERINI, “Ancora dalla parte delle bambine”, Feltrinelli, 2007.

private citizens and various associations¹⁴⁷). The problem has not been perceived by the institutions and no specific actions have been foreseen or planned for the future.

We hope that the new Ombudsman for Children, established in 2011, to coordinate actions to combat, prevent and protect the rights of girls and children, in television programs and advertising on all media, will work in coordination with the IAP and the Ministry of Equal Opportunities.

5.5 WOMAN'S ROLE STEREOTYPES IN THE FAMILY AND THE POLICIES THAT CONFIRM THEM

An ISTAT survey¹⁴⁸ shows that the unequal gender family- work balance division is a widespread phenomenon. This gender gap becomes a very distinct trait in Italy. Italian women carry a heavier burden than women in other countries and the Italian men's contribution is amongst the lowest in the world. Women spend an average of 5 hours and 20 minutes per day on family work and care, more than all other European women. Men spend less time than men from all the other European countries on these activities. The ISTAT survey also shows that the stereotyped role of women in Italian society is increasing between the absence of sharing of roles and policies of conciliation, the rigidity of the labor market and the general disinterest. The Equal Opportunities Department has launched the project: "P.A.R.I.", *Padri Attivi nella Responsabilità Interna alla famiglia* (Active Fathers in the Responsibilities within the Family)¹⁴⁹. The project focuses on the men's role within the family in order to achieve the target of sharing the burden of work that, as mentioned before, is carried out by women. The initiative is helpful, but frustrated by the lack of serious policy actions that allow the work/life balance (see **article 13**).

5.6 LACK OF LONG-TERM STRATEGIES TO CULTURALLY COMBAT GENDER STEREOTYPES¹⁵⁰

While listing a series of initiatives and awareness campaigns involving the world of work and education (**para. 154-189**), the Governmental Report highlights the absence of long-term strategies to contrast stereotypes in every sector.

5.6.1 The roles of local Councils and institutions

The absence of national strategies in combating stereotypes also has an impact at local level. However it should be pointed out as a good best practice, the initiative taken by the municipality of Pontecagnano Faiano which, by Municipal ordinances in 2010, forbids the display of advertisements utilising the women's body in degrading postures in all the municipal territory.¹⁵¹

5.7 GENDER EDUCATION¹⁵²

5.7.1 Lack of a National Plan to promote gender education models¹⁵³

Undoubtedly positive actions are:

- the agreement signed between the Department of Equal Opportunities and the Association for the National Coordination of the Equal Opportunities Committee in Italian Universities (UNI.C.P.O.), in order to promote gender studies¹⁵⁴;
- the agreement signed with the Ministry of Education and the Department of Equal Opportunities to promote the "Week Against Violence" in the schools (12-18 October 2010)¹⁵⁵ to involve and inform students and their families about gender violence.

However, these agreements, which generally characterise all the initiatives on the matter, leading to their failure:

- a) The initiatives are not coordinated and linked together and are not part of a broader strategy; actions are taken separately and their effectiveness is jeopardised; If the Department's aim is to

147 <http://comunicazione digenere.wordpress.com/libera-infanzia/> On the website, Mary, the creator of the campaign says: (...) "stereotyped gender roles are imposed on young girls, as much as they are applied to women, including the so called sexualisation of the body. The Western society protects childhood in terms of laws against pedophilia, child pornography and abuse of on minors. But then, when we go beyond the laws, we discover that laws are insufficient for us to hasten to say that minors are protected. Abuse of children is increasing, sexual tourism involving children is more exploited by Westerners, and in Italy, in 2008 and 2009 alone, more than one thousand children went missing. Moreover, there is a new phenomenon: the erotisation of children's bodies by the mass media. If child pornography is a crime, why is the erotisation of children allowed? Can we not also consider the images that violate childhood, that force children to become early adults and to be sexually attractive as equally damaging? Young girls are asked to be sexy, to be like their mothers, the same mothers that then are made fun of in advertisements and television and reduced to a mere sexual object".

148 "To reconcile work and family, a daily challenge", ISTAT 2008, available on the website page http://www.istat.it/dati/catalogo/20080904_00/ (page reference: 10-39).

149 See: http://www.retepariopportunita.it/Rete_Pari_Opportunita/UserFiles/Progetti/PARI/sintesi_progetto_pari.pdf

150 Paragraph referred to **Question no. 10 of the CEDAW Committee.**

151 See: Io Donna, 19.03.2011.

152 See also **article 10** of CEDAW Shadow Report.

153 Paragraph referred to **Question no. 11 of the CEDAW Committee.**

154 Protocol of Intent renewed on February 8, 2010; see http://www.pariopportunita.gov.it/images/stories/documenti_vari/UserFiles/PrimoPiano/protocollo_univ_2010.pdf

155 http://www.pariopportunita.gov.it/images/stories/documenti_vari/UserFiles/PrimoPiano/no-violenza/protocollo_carfagna_gelmini.pdf

contrast gender stereotypes and discrimination in families and at school¹⁵⁶, the same commitment should be applied to all other areas (for example at work and in media communication); it is the overall involvement that would make these initiatives effective.

- b) Most of the initiatives are temporary while they should be considered on a long-term or permanent basis.
- c) For most of the initiatives, the intervention is restricted to funding only. The funds are not always used to develop action with a specific gender orientation, thereby risking that these initiatives reinforce the stereotypes more than deconstructing them.
- d) There is no monitoring of funded initiatives, or any sort of control on the suitability of the initiatives developed with respect to the desired target.

5.7.2 The need to introduce gender issues in school curricula at all levels

5.7.3 The need to increase and develop the gender modules in University programmes

5.7.4 The need to promote a non-sexist use of the Italian language

5.8 MIGRANT, ROMA AND SINTI WOMEN ARE NOT REPRESENTED

5.8.1 The presence of immigrant women on Italian television is statistically irrelevant and unnoticeable, even though foreign women today represent a large part of the Italian population. Their absence is particularly relevant in the news and political programmes¹⁵⁷.

WE RECOMMEND:

- ***Developing a law on gender stereotypes protecting the rights of women and girls, requiring gender guidelines to which the media companies and advertising agencies should compulsorily comply.***
- ***Developing strategies and specific measures to counter the stereotypical and overly sexual representation of women and girls in the media.***
- ***Promoting a coordinated planning work and ongoing consultation between the Commissioner for Children, Ministry of Equal Opportunities and the IPA, to protect future generations from the twisted messages of all kind of media.***
- ***Enforcing tangible and non-negotiable penalties for sexist, over-sexed and racist advertising, inciting to discriminatory behaviour.***
- ***Involving private companies and advertisement agencies to raise awareness on them and engage them in fighting against the sexist, over-sexed and racist use of advertisings and language.***
- ***Encouraging public and private mass media, the private business sector to adopt Ethical codes to ensure responsible communication, gender sensitive, respectful and representative of children and minorities.***
- ***Developing a national action plan for the promotion of educational programs that respects the rights of women, gender and sexuality.***
- ***Promoting research on the use of gender stereotypes offensive of women and girls in the media, able to highlight monitor the messages disrespectful of the rights of women and children.***
- ***Promoting research, studies and surveys on the consequences that the diffusion of gender stereotypes through advertising, media and toys can have on children and adolescents. The results could be useful to formulate regulations and plan actions to protect and contrast these***

156 Reference to PARI programs.

157 From the study "Immigration and kindergardens in the Italian mass media", carried out by the faculty of Communication Sciences at the Università La Sapienza, Rome, 17.12.2009, in the para "Main characters: males, "ethnics" and without voice" (pages12, 13) it appears that "Generally, a peculiarity is confirmed, reinforced when the main characters do not have an Italian passport, of the gender description given by the media. The main characters of the recounted crimes are in vast majority males, almost 80% if they are immigrants (79.4%), more than 70% when they are Italian (71.8%). The Italian population, as much as the foreign one, has a naturally more balanced gender composition, made of more or less half of women and half of men. The same is in the case of victims. If Italian women are victims of crimes in a little more than half of the cases (52.2%), foreign women victims are 65.6%. But the difference between Italian and foreign offenders in the news is also highlighted by the rest of the details that appear in the report on the news. The image of immigrant offenders is based almost exclusively on one detail: nationality. The geographical origin, or in some cases the "ethnicity", of the main character or the offender in the episode is basically the only detail used to define him. If for the Italian equivalent persons, their profession is more frequently mentioned (46.1% vs 26%), their age (47.2% vs 38.2%), or being employed or unemployed (10% vs 5.3%), it appears that for foreigners the only detail that matters is the country of origin. But what is the role of these players in the news? Often, they are simply victims of human trafficking while very rarely they are active in it, reduced to pure representation, and as such stereotyped, of the offender or of the victim, without any human connotation such as personal story, personality or ideas.

effects, in coordination with the Authority for the Rights of the Child.

- *Planning gender and communication training courses for all the operators working in the mass media, from writers to reporters to cameramen. This initiative would increase the awareness and the consideration of the communication operators on the gender issues.*
- *Encouraging the media to pay attention to the different social composition of society, to enhance the gender and cultural differences and to increase the presence of immigrant and Roma and Sinti women.*
- *Preparing guidelines for the promotion of diversity and gender communication and enable a wider diffusion.*
- *Reinstating the teaching of civic education in schools and developing programmes that will educate on gender relations.*
- *Increasing programmes to eliminate the stereotypes connected to a heterosexual family model as the only possible model, to the woman's role in the family and care-giving work, that see women as the main performer of family duties (children's care, housework). To be effective, this action should involve many areas: it is pointless to change school times if then family welfare policies are not put in place, if advertising humiliates women and portrays them in hideous stereotypes and if institutional authorities promote a stereotyped image of the woman through their policies and their public statements.*
- *Promoting incentives and prizes for advertising campaigns that promotes a positive image of the woman's role and girls in society.*
- *Promoting campaigns of visual education in schools, in order to supply the young generation with the necessary tools to interpret and react to the stereotyped imagery proposed by the media.*

ARTICLE 6 SEXUAL EXPLOITATION OF WOMEN

6.1 TRAFFICKING

6.1.1 No dissemination of statistical data¹⁵⁸

Despite all the institutions adhering to the anti-trafficking projects collected disaggregated data¹⁵⁹ on the number, sex, age and nationality of women who accessed social protection programmes from 2008 onwards, and attached these data to the reports to be compulsorily submitted to the DEO of the Presidency of the Council of Ministers, which approves and co-funds such projects, neither data were disseminated to the general public.

The explanation provided by the Government in paragraph 102 of the “Responses” is insufficient: the drawing up of the new SIRIT file, containing slightly different instructions for data provision by the institutions, does not justify the failed processing of the data already collected by such institutions.

6.1.2 No measures were taken to discourage a demand for the services of trafficked women¹⁶⁰

No systematic and long-lasting awareness raising messages were carried out on mass-media to inform the general public on the forced nature of street and migrant women prostitution and to discourage potential clients.

No campaigns targeting the potential victims of exploitation were carried out to raise awareness on their own rights.

Anti-trafficking NGOs denounce that the options offered by art. 18 of D.LGS. 286/1998 are no longer proposed to the people who are found to be exercising street prostitution.

Such indifference is mainly due to an outstanding decrease in the ethical tension towards the issue of trafficking of human beings for exploitation purposes. Italy has signed and ratified the Convention of the Council of Europe, but has not undertaken any initiative to foster a culture of respect towards women and to enforce art. 6 (Measures to discourage demand), especially as to the positive obligation to identify adequate methodologies and strategies to discourage clients’ demand effectively (ex art. 110), except with the provision of sanctions to clients.

6.1.3 Absence of a national anti-trafficking plan

Despite the NGOs working in this sector have been asking for a constructive dialogue with the Government for years, no significant progress was registered in the adoption of a national anti-trafficking plan.

6.1.4 Need for consistency in the jurisdiction for the prosecution of trafficking and smuggling crimes.

Judges highlight that difficulties in the effective prosecution of sexual exploitation and trafficking crimes can derive from the fragmentation of the jurisdiction for trafficking and smuggling. Trafficking is within the jurisdiction of the Anti-Mafia District Departments, while smuggling is within the jurisdiction of the ordinary Public Prosecutor Offices. However, trafficking is often concealed in the aid and abet of illegal migration. A diversified jurisdiction, combined with a not always smooth relation among Public Prosecutor Offices, could determine the dispersion of useful information for the correct identification of the crime.

An improvement in the international cooperation could prevent investigations from stopping at the national level, likely involving only the last links in the chain of trafficking.¹⁶¹

6.1.5 Inadequate enforcement of art. 18 D.LGS. 286/1998¹⁶²

Through **Recommendation 32/2005** the CEDAW Committee encouraged the State’s party to revise the Act no. 189/2002 through amendments aimed at ensuring that all the victims of trafficking could obtain a residence permit for social protection purposes. Such recommendation was totally disregarded.

Trafficking of human beings is a crime against human rights.

There is not a prevention and protection approach that focus on victims rights.

A prevention and protection policy effectively addressing the protection needs of the victims of exploitation is lacking. The policies implemented from 2005 to date have focused on the prosecution of the exploiters and on the elimination of the decay related to street prostitution.

6.1.5.1 Protection of the victims became even more difficult with the introduction of the “Security Package”¹⁶³. Risk that the protection envisaged by art. 18 is neutralized by new dispositions

¹⁵⁸ Paragraph referred to **Question no. 18 by the CEDAW Committee.**

¹⁵⁹ Contacts with the reference target by each association, hospitality in shelter houses, settled lawsuits, released residence permits .

¹⁶⁰ Paragraph referred to **Question no. 17 by the CEDAW Committee.**

¹⁶¹ Paragraph 8.3, page 81 of the January 2010 Research report by the DEO Expertise and skills service for the monitoring, data collection, original research, development and implementation of an information system to support the launch of an observatory on human beings exploitation, at http://www.osservatorionazionaletratta.it/files/generics/prodotto_2.b1.pdf

¹⁶² Paragraph referred to **Question no. 19 by the CEDAW Committee.**

¹⁶³ Act no.94/2009.

6.1.5.1.1 Art. 6 D.LGS. 286/1998

The protection of the victims was hampered by the amendments to art. 6 D. LGS. 286/1998 introduced by L. 94/2009¹⁶⁴. It is well-known that most of the victims of sexual exploitation are illegal residents on the Italian territory¹⁶⁵: it is plain that, whether these people risk to be arrested, expelled or prosecuted if looking for information or reporting, the demand for support drastically drops¹⁶⁶.

6.1.5.1.2 Art. 10bis D.LGS 286/1998

Judges themselves¹⁶⁷ denounce how the introduction of the crime of illegal entry and stay on the State's territory ex art. 10-bis of D.LGS. 286/1998 by Act no. 94/2009 can make the "judicial" protection path much more difficult for the victims who choose to denounce their exploiters.

Despite the juridical nature of mere contravention, such a crime necessarily implies that the victim of trafficking or even of prostitution exploitation only must make declarations as a person under investigation for related crime (and thus be assisted by a defending counsel) in order for them to be used. Moreover, such declarations (made in order to access the social protection programme as per art. 18) and the possible accusations to traffickers and exploiters are debased by the fact that the person is considered under investigation for related crime. The criterion of evidence evaluation ex art. 192, par. 3 and 4 Code of Criminal Procedure – according to which such declarations alone are insufficient evidence of the mentioned facts, but have to be evaluated together with other pieces of evidence confirming their liability – must in fact be enforced also during the investigation phase.

It is easy to predict that the compliance to such a provision will not help the victims of trafficking in approaching the mechanism envisaged by art. 18 and that the debasement of their declarations will entail a general weakening of the system designed by this article as an investigation tool and as an effective device for repression.

6.1.5.2 The "judicial path" as an inescapable choice. Most of the victims of trafficking are prompted to take the "judicial path" in order to obtain the residence permit, which not always ensures them adequate protection

Anti-trafficking NGOs denounce that even if art. 18 provides that means of access to social protection programme are both the "legal path" and the "social path" (depending on whether or not the victims of the crimes had submitted a formal complaint), in fact most of the police headquarters of the national territory denies residence permits to women who ask for protection by choosing not to submit the complaint. It is in fact almost impossible to access (the "social path" of) art. 18 without formal complaint/action against one's traffickers/exploiters¹⁶⁸. This significantly prevents the choice for victims to access the "social path" of art. 18. It is worth-recalling that the "social path" is universally recognized as a best practice in protection of victims of trafficking. The refusal of permit of stay by the Police Department would require, however, the woman to make a specific appeal to the Court, resulting in considerable additional cost and time for her. Even in case of formal complaint, it is not always possible for the victims to be included in the protection programmes and obtain the residence permit, since the Prosecutor Offices can consider such complaints insufficient to settle a lawsuit¹⁶⁹. No protection is envisaged for the victim if the proceedings are dismissed: her presence on the territory is considered illegal and she is exposed to retaliations by the exploiters. Such a possibility is not uncommon: Prosecutor Offices and Penal Courts display several differences in their jurisdiction and sensitiveness to the issue of human trafficking for sexual and/or labour purposes, thus

164 Such legislative amendments envisage that in order to access any public service or public administration – excluded the urgent or essential treatments granted by art. 35 D. LGS. 286/1998 and the compulsory education services for minors – foreigners are compelled to produce a valid residence permit to public officers and public service employees.

165 Entering the State's territory – usually led or carried by those organizations or individuals who control them for exploitation purposes - with no entry visa.

166 See NICODEMI F., BONETTI P. "Misure di protezione sociale - Scheda pratica", on: http://www.asgi.it/home_asgi.php?n=documenti&id=1073&l=it

167 Observations drawn from the Report presented by MOTTA C., State Prosecutor in Lecce, on the occasion of the seminar "Tratta di esseri umani: evoluzione del fenomeno e mezzi di contrasto", organized by the Superior Council of Judiciary, Office of District Focal Points for Decentralized Training of the Rome Appeal Court, in Rome on the 21st January 2010.

168 Despite it is art. 18 itself that envisages the possibility for the victim to access it once taken in charge by an accredited institution that will draw up a report on the trafficking of the person and guarantee for his/her liability and firm will to abandon the exploitation circuit.

169 Being the information provided by the victim insufficient or difficult to be verified through investigations.

determining objective territorial differences in the enforcement of art. 18 D.LGS. 286/1998¹⁷⁰. This determines an unmotivated diversification in protection of trafficked people.

6.1.5.3 Inadequate social integration measures for the victims who choose the “social path”

The social protection programmes envisaged by art. 18 D.LGS. 286/1998 should ensure a complex protection path to the victims of trafficking¹⁷¹, but often the measured enforced are inadequate. The complete social reintegration of trafficked people is hampered by access modalities to professional training courses that require the possession of a residence permit. Due to the complex procedure envisaged by art. 18, the actual release of the permit requires sometimes an extremely long lapse of time. Contrarily, for all those women the release of the permit acquires an extremely high absolute value¹⁷². Such a waiting period thus risks to turn into an “empty” time.

6.1.5.4 No protection for the victims when the crime against them did not occurred on the Italian territory.

A dramatic extension of the exploitation of Nigerian women, who in their journey to Italy are trafficked through Libya and there forced to prostitution in downright brothel-jails, is documented by several associations and by the judicial authorities themselves.

Anti-trafficking NGOs denounce the actual impossibility to offer adequate protection forms to the victims when the crime against them was not perpetrated on the Italian territory, due to the current formulation of art. 18 D.LGS. 286/1998. The provision is usually interpreted in a restrictive sense and women who are trafficked in other countries and then led to Italy (to be trafficked here, too) are deprived of the possibility to access social protection paths¹⁷³. Protection should be instead extended to these women, too, both because of the presence of indicators of *severe and actual danger for the victim* in such cases (whose validation appears not to be influenced by the location of the perpetration place) and because of the transnational dimension of the human trafficking crime, already acknowledged by the UN Additional Protocol on transnational crime (Palermo, 2000).

6.1.5.5 Insufficient number of shelter houses

Neither the number of shelter houses for women victims of trafficking available at the national level, nor the amount of funds allocated for their maintenance is known.

WE RECOMMEND:

- ***The collection and dissemination of statistical data on trafficked women protection.***
- ***The development of a national anti-trafficking plan.***
- ***The promotion of a national anti-trafficking toll free number.***
- ***Funding awareness campaigns aimed at informing clients on the forced nature of street and migrant women’s prostitution.***
- ***Introducing procedures for the evaluation of the implementation of the measures, for information collection and exchange, cooperation, establishment of partnerships and dissemination of best practices.***
- ***That a special protection for minors forced in prostitution or victims of trafficking or sexual***

170 And not only in case of dismissal: when a penal proceeding is instituted for one of the crimes indicated in art. 18 TU, the police commissioner releases the residence permit after having acknowledged the proposal or the advice of the State Prosecutor who, being entitled for the penal proceeding, has all the elements to better evaluate the gravity and actuality of the danger the foreigner is exposed to, the level of exploitation and collaboration of the victim, the kind of criminal organisation involved and the consequent proceeding requirements. The advice of the State Prosecutor is compulsory for the release of the residence permit but it is not clear from the text whether it is binding, too. This is the reason why differences in the article enforcement persist, despite Circular 11050/M of the 28th May 2007 by the Ministry of Interior précised that – in case of judicial proceeding – the State Prosecutor must provide the police commissioner with all the necessary elements to evaluate the gravity and actuality of the danger but that, however, the latter shall independently evaluate the situation of actual danger for the safety of the foreigner. Such interpretation was further confirmed by verdict no. 6023 of the 10th October 2006 by the State Council. See NICODEMI F., BONETTI P., “Misure di protezione sociale - Scheda pratica”, at http://www.asgi.it/home_asgi.php?n=documenti&id=1073&l=it.

171 That is to say: the State’s party should establish all the necessary measures to ensure the effective possibility to intercept trafficked women and provide them with reception, hospitality, training, active job searching and professional placement.

172 People included in a protection path within Emergency shelters are in extreme need for new and concrete opportunities, and thus live their daily life in an extremely complex way, due to the severe shocks suffered during the exploitation period – and not only then.

173 Be Free Association denounces the figure is extremely high: for instance, with reference to the Center for Identification and Expulsion of irregular migrants (ex Center for temporary detention for irregular migrants) of Ponte Galeria, only, 25% of Nigerian women in custody there and having required support to the Association desk were exploited in Libya before reaching Italy. Be Free, “Dossier sull’esperienza di sostegno a donne Nigeriane trattenute presso il CIE di Ponte Galeria e trafficate attraverso la Libia. Richiesta di ampliamento dell’applicabilità dell’ Art. 18 d. lgs. 286/1998”.

exploitation is ensured.

- *That the trafficked person is not criminalized or hindered in the access to protection measures for possible crimes deriving by his/her being trafficked. Trafficked people must be considered as victims and, thus, penal or administrative proceedings due to their illegal status should not even be instituted against them.*¹⁷⁴
- *Identifying adequate forms of protection for the victims of trafficking even when the penal proceeding is dismissed for reasons unrelated to the contribution provided by the victim to the investigations.*
- *Uniforming the jurisdiction on trafficking and smuggling.*
- *Implementing coordination among Prosecutor Offices.*
- *Implementing training of judges and police forces, in order to make judicial orientations on the enforcement of art. 18 D. LGS. 286/1998 on penal proceedings more uniform.*
- *Introducing minimum standards of social assistance as an entitlement of all trafficked people, aimed at their emancipation, social inclusion and participation.*
- *Identifying effective strategies for all the victims of sexual exploitation to obtain quickly the residence permit for social protection.*
- *Allowing also trafficked women waiting for the residence permit to access training programmes right away, building on the introduction and report by the NGO in charge of them.*
- *Applying art. 18 D. LGS. 286/1998 even when the crime against trafficked women did not occur on Italian territory.*
- *Extending protection to the victims' relatives who remained in the home country in situations of effective risk.*¹⁷⁵
- *Making available the number of shelter houses for victims of trafficking.*
- *Making available the amount of funds allocated for the maintenance of shelters.*
- *Funding an adequate – necessarily integrated and cross-professional – training for social workers.*
- *Promoting the role of intermediaries for the NGOs and local institutions' representatives and the establishment of trustful and collaborative relations with the victims of trafficking, as well as an useful liaison with public prosecutors for the identification of behaviours and situations that may indicate the presence of trafficking.*¹⁷⁶
- *Developing and promote protocols of agreement following a multi-agency approach (thus among judicial authorities, police forces, institutional actors, voluntary associations and institutions working in the sector of gender violence) aimed at the key objective of identifying, assisting and protecting the victim.*¹⁷⁷
- *Involving all the sectorial NGOs in all the activities since the very beginning and in each phase, including the identification of the victims, the provision of assistance and the improvement of the legislative process.*

174 See in this sense MANCINI D., "Il cammino europeo nel contrasto alla tratta di persone", in *Dir. Pen. e Processo*, 2010, 9, 1114

175 Recommendation expressed also at page 72 of the DEO Expertise and skills service for the monitoring, data collection, original research, development and implementation of an information system to support the launch of an observatory on human beings exploitation at http://www.osservatorionazionaletratta.it/files/generics/prodotto_2.b1.pdf

176 Recommendation expressed also at page 72 of the DEO Expertise and skills service for the monitoring, data collection, original research, development and implementation of an information system to support the launch of an observatory on human beings exploitation at http://www.osservatorionazionaletratta.it/files/generics/prodotto_2.b1.pdf

177 As required in the deliberation of the 21st May 2009 by the Superior Council of Judiciary.

6.2 PROSTITUTION¹⁷⁸

6.2.1 Lack of statistical data on prostitution

As acknowledged by the Government in the “Responses” at paragraph 99, no updated data on prostitution in Italy have been collected since 2003.

6.2.2 Public debate on prostitution. Incapacity to distinguish between voluntary prostitution and exploitation of prostitution. Judicial consequences (art. 5 & art. 6 CEDAW)

There is a widespread perception of women as sexual objects, due, on one side, to the extensive use of naked and available female body on the mass media, and, on the other, to the easy irony displayed by politicians, even while exercising his institutional role, on the importance of women’s physical presence and on the enhancement of the “Latin lover” role as a feature of the Italian male worldwide.

The mass media representation of the judicial proceedings involving several politicians in indoor and outdoor prostitution affairs induced the public opinion to believe that trafficking concerns just poor foreigners women prostitutes and not other social groups.

In a strictly moralist vision of “paid sex” indoor prostitution, although well-known by the police and the community (escort, nightclubs, fashion and show business), is usually tolerated. Contrarily, street prostitution is strongly criminalized¹⁷⁹ whether it is voluntary or forced, also due to political reasons of public order and territory control.

Such a dichotomy determined the burgeoning of draft bills in Parliament tending, on one hand, to the legalization of the “free” exercise of prostitution acknowledging the dignity and the right to safety and health of the prostitutes, and, on the other, to the total criminalization of the exercise of prostitution, envisaging the punishment of prostitutes and clients¹⁸⁰.

Since the Parliamentary debate on prostitution was halted after the judicial proceedings involving the Premier, municipal ordinances against prostitution flourished. The repression of street prostitution determined significant difficulties in the fight against trafficking.

6.2.3 Mayors often used their ordinance powers in a directly and indirectly discriminatory way towards women who exercise street prostitution¹⁸¹. Street prostitutes are considered as dangerous people, subject to police controls and chased away from cities

Art. 54 of Local Institutions Act (D. LGS. 267/00), as rephrased following the security package, legitimized the mayors’ power to intervene on prostitution out of all proportion. Already before in the last decade, on the wake of moralistic and religious campaigns several mayors have issued anti-prostitution ordinances through measures formally justified by the need for state property protection and/or road traffic safety, but actually directly/indirectly discriminating/criminalizing women exercising outdoor prostitution, especially if migrant or transsexual.

The integrated service systems addressing prostitution and trafficking denounce how they have never been involved by the local institutions that decided to adopt such ordinances¹⁸².

None of these ordinances envisages positive actions for social inclusion, conflict mediation, police officers training aimed at the identification of trafficked or exploited people. All of them envisage sanctioning measures only.

Following the issuing of such ordinances, several institutions denounced the difficulty in building sound relations to reach those people on the street who could be victims of trafficking, due to the strong distrust

178 For further details on prostitution in Italy and on the civil society reaction to the anti-prostitution ordinances and to the Carfagna draft bill see, in English, http://en.wikipedia.org/wiki/Prostitution_in_Italy , <http://www.sexworkeurop.org/en/component/content/article/19-icrse-network-news/490-italy-prostitute-amanti-protette> , <http://www.xtalkproject.net/?p=184> , <http://www.italymag.co.uk/italy/veneto/verona-target-home-sex-workers> , <http://www.lauraagustin.com/prostitute-poveri-e-irregolari-controlling-migrant-women-not-helping-prostitutes-or-sex-workers>

179 The criminalization of street prostitutes occurs both because they are prostitutes and because they are migrants. An emblematic sentence representing the Italian conception of street prostitution is the one pronounced by the European MP Sonia Alfano during the radio programme “La zanzara” on Radio 24 on the 4th November 2010. Interviewed by the journalist Beppe Cruciani with regard to the so called RUBY-BERLUSCONI case, she affirmed that “the dignity of the Premier is lower than the one of a Nigerian prostitute”.

180 Hon. Franco Grillini presented a draft bill (no. 2229/2007) aimed at regulating the exercise of prostitution and at affirming the dignity and right to safety and health of prostitutes. Besides, draft bills were presented by Katia Belillo “Provisions on the legalization of prostitution” (1664), Mascia “Provisions on prostitution” (1168), Elisabetta Gardini “Provision against the exercise and exploitation of prostitution (1127), Matteo Brigardi “Provisions for the regulation of the exercise of prostitution” (1068), Carolina Lussana “Provisions on prostitution” (1040), Teodoro Buontempo “New provisions on prostitution” (301), Luana Zanella “New provisions on the exercise of prostitution and the fight against the prostitution of others” (230). A draft bill on people’s initiative (no. 6) was presented by Comunità Papa Giovanni XXIII envisaging the punishment of the client. The draft bills “Provisions on prostitution” (274) by Tiziana Valpiana and “Provisions to tackle the purchase of sexual performances” (210) by Maria Burani Procaccini were filed in Senate. In 2008, Daniela Santanché presented a referendum question (http://www.danielasantanche.com/stradeprotette/wp-content/uploads/2008/06/testo_quesito_referendario.doc) to abolish several points of the Merlin Law. The proposal had no follow up.

181 See **par. 2.6.2, under art. 2 CEDAW**. Considerations within this paragraph are drawn from “Prostituzione, favoreggiamento della prostituzione e intralcio alla circolazione”, Avv. DI STEFANO A. Oriano, 26.02.2007, at: http://www.anvu.it/approfondimenti/20060228_prostituzione.pdf; Rapporto di monitoraggio sulle ordinanze antiprostituzione, by the Street Units, 07.07.2009.

182 Monitoring report on the ordinances against prostitution by the Street Units, 07.07.2009, p. 11.

and the higher mobility on the territory to escape police controls¹⁸³.

These ordinances appear to be justified either by art. 823 Civil Code (“State property condition”)¹⁸⁴ or, mostly, by security and public order reasons¹⁸⁵. In both cases, the sanctioned behaviour is represented by the stopover of the vehicle to require information on the sexual performances or to negotiate (or agree) their price.

In order to highlight the discriminatory feature of such ordinances and of their application, we report the case of the Sovizzo municipality, where the *Carabinieri* halted a driver who was travelling with a coloured woman on the state highway. Letting the woman walk away undisturbed, they charged the driver with the violation of the anti-prostitution ordinance issued by the Mayor of Sovizzo, building on two unproved assumptions: that the woman (being “coloured”) was a prostitute and that she was contacted and collected in an area covered by the municipal ordinance. The driver contested the measure before the court of Vicenza that accepted the appeal (verdict no. 63/1998) considering both the municipal ordinance and the notification modalities illegitimate. The verdict also acknowledges that the anti-prostitution ordinance violates the criterion of definiteness of the sentenced behaviour, since it envisages that drivers “are forbidden to ask for information to subjects who, for their attitude or dressing or behaviours, show the intention to exercise sexual performances for money”, and allows traffic officers to evaluate in an absolute discretionary way the requirements that integrate the punishable behaviours, thus preventing the supposed offender from a correct understanding of the forbidden conduct. The section of the ordinance that envisages sanctions on the mere assumption of transiting or stopping by car in Sovizzo municipality while dressing or behaving in ways that could lead the traffic officers to believe prostitution is being exercised is also considered illegitimate. Such a provision is also interfering with the modalities to prove the violation actually occurred, thus prejudicing the citizen’s defence right.

It is evident how municipal ordinances determine disparities in treatment of the people exercising outdoor prostitution from town to town and, above all, contribute to reinforce those widespread stereotypes on the woman’s role, who is judged as a prostitute building on the way she dresses or the places she attends. Municipal ordinances were blamed by the Court of Cassation through verdicts no. 1716/2005 and 1995/2004, highlighting how they often represent the recurring and reiterated tentative by local authorities to distort L. 75/1958, which protects prostitutes’ freedom, both through very much questionable interpretations of the law and through downright “creative behaviours”, clearly inspired by (deplorable) ethical principles¹⁸⁶.

Even in the absence of municipal ordinances, the associations document the criminalization of street prostitutes through all the judicial devices that could be possibly used: street prostitutes are very often subject to repeated police controls, closed in security cells, chased away from cities through the enforcement of the prevention measures ex Act no. 1423/1956, building on the dangerousness that administrations consider intrinsic to the exercise of street prostitution, although legal.

Such measures “anticipate” – since they express the same repressive logic – the ones the draft bill N. 1079 (“Carfagna draft bill”) aims at extending to the national level.

6.2.4 The draft bill on prostitution (No. 1079) would determine a regression in protection¹⁸⁷

The Carfagna draft bill was strongly criticized by jurists and civil society.

Government seems to have not clear the distinction between voluntary prostitution, exploitation of prostitution and trafficking¹⁸⁸.

The draft bill text criminalizes every form of prostitution exercise in public or in places open to the public and punishes whoever negotiates or benefits from sexual performances. It is a generic provision that demolishes the principle of sexual freedom of people ex Act no. 75/1958, and it is ideological since it aims only at repressing prostitution in the name of a renewed concept of decency that goes beyond what

183 Monitoring report on the ordinances against prostitution by the Street Units, 07.07.2009, p. 12.

184 The municipal ordinance considers prostitution as an illegal use of state property which would disturb the use of the same facilities by other and different subjects.

185 Which would be violated by the queuing and hold-ups in road traffic that, hampering the regular flow of vehicles, would hinder the natural course of civil life.

186 These measures adopted as deterrent to street prostitution have an extremely high cost in relation to the violation of the individual freedom, to the prejudice of the rule of law, to the law credibility itself, and witnesses the scarce sense of legality also in those who should uphold and enforce the law but are often more inclined to exercise their powers to get their moral precepts abided by. As a matter of fact, following this logic, “indecent exposure in public places”, usually unpunished, was prosecuted with particular harshness when related to prostitution (to the detriment of the equality principle), through the device of the municipality ordinances. Moreover, a grave offence such as the aid and abet was often erroneously charged to the client, going as far as seizing his car, and the Highway Code (notification for traffic impeding) or of the state property regulation were illegitimately enforced. The right to privacy was also violated by sending the notification report with pictures attached to the client’s domicile.

187 Paragraph referred to [Question no. 16 by the CEDAW Committee](#).

188 [Paragraph 199 of Governmental Report](#).

allowed by the current regulations¹⁸⁹. This law is linked to a renewed repressive concept of the woman's body and of her sexual freedom, violates the negotiation rights of prostitutes and clients, does not comply to the international Convention stating that sex between consenting adults is not a crime¹⁹⁰.

The new discipline appears ineffective in "tackling exploitation while protecting the human dignity and values" (**para. 180**), and on the contrary makes the management of the trafficking issue more complicated, since the forced prostitution today exercised on the streets, being criminalized, would just be concealed to the common citizen and exercised indoor, thus hindering the anti-slavery work of the associations and of the police. Art. 18 of D.LGS. 286/1998, in fact, would remain untouched and enforced, but it would be more and more difficult to reach the victims of trafficking and to inform them about the protection options as per D.LGS. 286/1998¹⁹¹.

The ratio of the law is in contrast with the current regulations on prostitution, since it introduces a different, unjustified, treatment for outdoor (voluntary and forced) and indoor prostitution (voluntary and forced), considering outdoor prostitutes as garbage to remove from the urban streets. The Government based its communications aimed at gaining consensus about this initiative on the concept of "clearing urban spaces out".

The legislative text would also be in contrast with the current regulations on trafficking since:

- It has no protective features towards street prostitutes who are also victims of exploitation;
- It envisages repressive measures only and does not make use of the expertise developed by the network of associations, public health and social services and private social institutions who have been working on the enforcement of art. 18 for years;
- It increased the invisibility of criminal organizations, favouring the development of criminal circuits related to the use of private places – nightclubs, discos, apartments – where to force exploited people to prostitution. This would strengthen the criminal networks of the exploiters, already in close connection with the local mafias. The situation of the victims of trafficking would thus become even more difficult, since these women would be subject to the double control of the exploiters and of the local mafia, thus making impossible for them to free themselves and for the social workers to reach them.

6.3 SHOW BUSINESS, ENTERTAINMENT CLUBS AND PROSTITUTION

The recent years have witnessed the shift of prostitution to "close circuits", such as apartments, private houses, business hotel, nightclubs¹⁹².

In Italy there is widespread presence of nightclubs and lap-dance clubs that often employ young women from non-EU or new EU countries, not always with legal contracts.

On-line prostitution websites are also becoming more and more common.

Several researches and TV reports documented how, being promised legal job contracts, foreign girls are often induced to prostitution. In particular, entering Italy with the residence permit for "entertainment purposes" (whose validity is bound to the employer's will to confirm the contract) they are highly dependent on the owners of such clubs, often exploiting them¹⁹³. These clubs are not adequately controlled. No researches are available on the correlation between the existence of such clubs and the incidence of violence against women perpetrated there.

189 In this sense see also F. PALAZZO, "Moralismo e "bagatellizzazione" del diritto penale: a proposito del progetto sulla prostituzione", in "Dir. Pen. e Processo", 2008, 11, 1341, who comments the draft bill as follows: "As plain the legislative policy goal pursued appears, so weak and poor is the cultural background it builds on (...). The two pages of the illustrative report on the D.D.L. do not convey a full awareness of the implications of the problem and look more like the ratio decidendi of a local police measure: indeed, the interchangeability of an almost identical normative content, adopted sometimes by a State law sometimes by the urgent and contingent ordinances of not few mayors, is the best evidence for the narrow-mindedness behind those determinations (...). The new incrimination as per art. 1 D.D.L. is a truly emblematic example of the moralistic trivialization of penal law, since its illegality content focuses on the publicity of the prostitution exercise, thus concentrating its ratio in preventing the discreditable ostentation of the phenomenon in order to avert the discomfort and acute intolerance it generates in the "public"".

190 SPINELLI B., "Dalla Merlin alla Carfagna, ovvero dalla disciplina dell'esercizio della prostituzione alla repressione delle prostitute", intervention to the conference "Di cosa parliamo quando diciamo prostituzione", 7.10.2008, Bologna, <http://femminicidio.blogspot.com/search/label/prostituzione>.

191 SPINELLI B., "Dalla Merlin alla Carfagna, ovvero dalla disciplina dell'esercizio della prostituzione alla repressione delle prostitute", intervention to the conference "Di cosa parliamo quando diciamo prostituzione", 7.10.2008, Bologna, <http://femminicidio.blogspot.com/search/label/prostituzione>. But also par. "I suggerimenti di alcuni esponenti della magistratura", at page 72 of the DEO Expertise and skills service for the monitoring, data collection, original research, development and implementation of an information system to support the launch of an observatory on human beings exploitation at: http://www.osservatorionazionaletratta.it/files/generics/prodotto_2_b1.pdf

192 BEDIN E. e DONADEL C. (2008), "La tratta di persone a scopo di sfruttamento sessuale in strada e negli ambienti al chiuso", in Carchedi F., Orfano I., 2008, La tratta di persone in Italia - 1 Evoluzione del fenomeno ed ambiti di sfruttamento, Milano: Franco Angeli, pp. 74-125, a pp.77-78.

193 Monitoring report on the anti-prostitution ordinances, by the Street Units, 07.07.2009, p.17.

WE RECOMMEND:¹⁹⁴

- *The collection of updated data on indoor and outdoor prostitution in Italy.*
- *Avoiding the introduction of provisions on street prostitution that could determine a greater difficulty in the emergence and identification of the victims of exploitation and sexual trafficking, or causing a higher vulnerability of these people.*
- *Searching for non-sanctionatory solutions at the local level taking into account the demands of all the subject involved, through the establishment of mediation tables and concertation activities, also considering that those who prostitute themselves are more often victims rather than offenders.*
- *Supporting the presence and work of the street units, in order to promote individual and collective health protection and to offer information and services for the advancement of the rights and opportunities of those who exercise outdoor prostitution.*
- *Launching intervention systems aimed at the social and professional inclusion of those who prostitute themselves.*
- *Suspending the execution of the expulsion measures if there is a justified reason to believe the foreign woman was subject to sexual exploitation or trafficking.*
- *Developing an extensive control system to assess the conditions of the women working in erotic entertainment clubs and to prevent the induction to prostitution and sexual exploitation in commercial and private places.*
- *Amending the discipline of the residence permits “for entertainment reasons”, unbinding their validity to the exclusive will of the employer to confirm the contract.*

6.4 ACKNOWLEDGEMENT OF THE JUDICIAL DUTIES OF THE SEX WORKERS BUT NOT OF THEIR RIGHTS

The Court of Cassation through verdict no. 2052/2009 considered the regular exercise of prostitution as a legal professional activity, whose profits must be taxed¹⁹⁵.

Even if in Italy the profits deriving from the exercise of prostitution are taxable, being considered as self-employment income¹⁹⁶, sex workers do not actually enjoy the acknowledgement of any kind of security or social right, and it would not even be possible to legally stipulate a contract for sexual performances, indeed.

WE RECOMMEND:

- *Clarifying whether the regular exercise of prostitution actually represents a self-employment activity and, if so, to acknowledge not only the duties deriving from such status, but also the rights to social welfare and security in the workplace.*

194 Most of these recommendations are drawn from those formulated in the Monitoring report on the ant-prostitution ordinances, by the Street Units, 07.07.2009, p. 29.

195 LAMEDICA T., “Prostituzione, accertamento e partecipazione dei comuni”, Corriere Tributario, 47 / 2010, p. 3961.

196 Principio affermato dalla Corte di Giustizia e ripreso, inter alia, dalla Commissione tributaria provinciale di ReggioEmilia. E. GIOVENTU’, “Donne e party, fisco in agguato. Se c’è un giro di prostituzione tassabili i redditi delle ragazze”, Italia Oggi, 19.06.2009, p. 5.

ARTICLE 7 REPRESENTATION IN POLITICAL AND PUBLIC LIFE

7.1 SERIOUS UNDER-REPRESENTATION OF WOMEN IN PUBLIC LIFE

Since women obtained the right to vote, they have been scarcely represented in political life and centres of power, and this has been tolerated at all institutional levels.

In **Recommendation 13/2005**, the CEDAW Committee praised the Italian government for amending art. 51 of the Constitution, as the amendment made this article *“the means through which the principles of the Convention, assuming constitutional value, will constitute the basis of the use of special provisional measures, including the use of female quotas to accelerate the increase of female participation in political and public life”*.

The figures contained in the table below show that, despite the approval of the amendment to art. 51 of the Constitution, the rise of women to positions of leadership is still slow in this country compared to other European countries¹⁹⁷. The government, despite being well aware of this serious under-representation,¹⁹⁸ has **completely ignored Recommendations nos. 13 and 28 dated 2005 by the CEDAW Committee** concerning the need to adopt special temporary measures in order to achieve a “critical mass” of female representation. In a country such as Italy, in which male dominance is widespread and the allocation of women in private and family life is part of the accepted cultural heritage, the increased female presence in the public sector requires special temporary measures, as stated in CEDAW art. 4.

Table 1. ITALY – Breakdown of positions of responsibility (percentage values; respective EU27 values in brackets)		
	Women	Men
European Parliament Members	22 (35)	78 (65)
National Parliament Members (both chambers)	20 (24)	80 (76)
National Government (Ministers and under-secretaries)	19 (24)	81 (76)
Presidents of regional assemblies	9 (14)	91 (86)
Members of regional assemblies	12 (30)	88 (70)
Regional executive members	24 (31)	76 (69)
Public administration (Ministries and governmental departments)		
- Level I administrators (a)	14 (26)	86 (74)
- Level II administrators	29 (36)	71 (64)
Supreme court (b)	15 (32)	85 (68)
Central Bank (members of management body)	6 (18)	94 (82)
Boards of Directors (main companies quoted on the stock exchange) (c)		
- Chairmen	3 (3)	97 (97)
- Members	5 (12)	95 (88)

7.2 FAILED IMPLEMENTATION OF ART. 51 OF THE CONSTITUTION¹⁹⁹

Article 51 is destined to remain unimplemented due to the absence of political willingness. **Question no. 20** posed by the CEDAW Committee has remained unanswered by the government because no measures have actually been taken to increase the number of women in politics, or to favour the adequate representation of Roma and migrant women and those from the south of the country.

197 This is demonstrated by the figures in the “Women in decision making” database drawn up by the European Commission and updated to December 2010, with reference to positions of responsibility in the political, public, judicial, social and economic sectors in 34 European countries.

The table and figures are taken from *“Vogliamo di più. E ce lo meritiamo”*, articles by Marcella Corsi published on: <http://www.ingenere.it/articoli/vogliamo-di-pi-e-ce-lo-meritiamo>.

198 Recognised in **para. 234** of the Governmental Report.

199 Paragraph referring to **Question no. 20** of the CEDAW Committee.

In Parliament, there is a tacit transversal coalition of men in the ruling parties and opposition which blocks and often prevents the approval of laws for the introduction of special temporary measures to achieve equal representation between genders. These are the same parties that said they were favourable to increasing the presence of female candidates in elections and statutorily provide quotas or equal gender representation, and are not keeping to their promises when needed.

The government has always been contrary to so-called “female quotas”:²⁰⁰ Mrs. Carfagna herself, before becoming Minister for Equal Opportunities, said in 2006, while a Member of Parliament, “We suspect that female quotas will not solve the problem at its roots, but will close women in a sort of political living-room of a few privileged women meet and talk amongst themselves without having any real effect on political parties and Parliament”.²⁰¹

Some Regional Administrative Tribunals interpret art. 51 of the Constitution, statutory laws and art. 6 of the T.U.E.L. as “programme” regulations. On the basis of this interpretation, they believe the adoption of laws imposing “female quotas” are unconstitutional and confirm the legitimate constitution of a Committee, even though women are not, or scarcely, represented in it.

It is obvious that the achievement of substantial equality, although only formally represented as a programme objective, is in fact being strongly opposed by all institutions, on one hand because the contents of the principle of substantial equality are unclear to numerous representatives of institutions and the magistrate’s courts, and on the other because there is a strong political willingness to preserve a masculine orientated political system.

7.2.1 Failure to implement art. 51 through electoral reform in 2005

The unwillingness of the government majority to implement the presence of women in electoral campaigns is obvious from the fact that, despite the reform of the electoral system (Act no. 275/2005) that occurred in 2005, a few months after the amendment of art. 51 of the Constitution, the amendment on the minimum presence of one of the 2 sexes in electoral lists of at least 30% was rejected in a secret vote during a Parliamentary debate. The change to an electoral system based on lists has penalised women; recent internationally renowned scandals have shown that this system, in which it is possible for party representatives to “choose” those elected, widely favours the election of women chosen by men within their parties, not always on the basis of their ability or political experience, and their choices are not based on the views of the electorate. As little or nothing has been done since then, the statements made in **paragraph 234** of the Government Report are unfounded. The only equal opportunities reform made in public administration, if it has been implemented, was only made because it was imposed by a European Directive.

7.2.2. Failure to implement art. 51 through the approval of a national law

7.2.2.1 The law on quotas had worked. Insufficient information in the Governmental Report

For a brief period of time, there were gender quotas in force for administrative elections in Italy²⁰². Act no. 81/1993 reserved a certain percentage of candidatures in electoral lists for women only. This law was then declared unconstitutional in 1995.²⁰³ During these years, despite a general trend of increasing female representation, the percentage of women elected increased more in the local councils in which gender quotas were implemented than in the local councils which did not implement this system.²⁰⁴ The claims of unconstitutionality made by the Constitutional Court, which at the time were widely criticised by the more

200 This is not respected in the composition of the Ministerial set-ups either. In the current Berlusconi administration, there are 4 female ministers (one without portfolio), compared to 17 male, one female under-secretary to the Presidency, compared to 8 men, and 4 female ministerial under-secretaries, compared to 26 men.

201 Corriere della Sera online, “Quote rosa, lite Carfagna-Prestigiacomo”, F. RONCONE, 31.05.2006, http://www.corriere.it/Primo_Piano/Politica/2006/05_Maggio/31/carfagna.shtml

202 Act no. 277/1993 (for the election of the Chamber representatives), which provided that lists submitted at a regional level for the attribution of 25% of seats by the proportional method, should be formed by male and female candidates in alternate order (the significance of this provision is linked to the fact that electors could not express preferential votes within a list, thus ensuring that the candidates were elected according to the pre-established order of each list, as also disposed by the law for the Senate) and Act no. 81/1993 for the direct election of the Mayor, which established that neither of the sexes should have more than 2/3 representation in the lists of candidates. Source: “Discriminazione e diritto antidiscriminatorio: considerazioni istituzionali (a partire dal diritto costituzionale italiano)”, D.TEGA, 20.03.2009, on www.libertaeguale.com

203 Sentence no. 422/1995 of the Constitutional Court.

204 The law on gender quotas only regulated local Council elections held from April 1993 to September 1995, a short time, in which elections were not held in all local Italian Councils: 7,716 local Councils held elections using the quota system, while 389 local Councils never did so. Using this “casual” distinction, it can be verified that the local Councils in which the gender quotas were implemented registered a greater increase in the participation of women in politics in the years following their abolition than the others. The figures supplied by the Ministry of Internal Affairs on the local administrators of all the local Councils in Italy elected from 1985 to 2007 show that prior to 1993, local Councils were dominated by a significant male presence, with an average female representation of 7.6%. During the period in which quotas were in force, a significant increase in female representation can be observed: the percentage of seats occupied by women in local Councils increased, reaching a peak of 18.4%. During the period subsequent to the abolition of quotas, the percentage of women elected in local administrations in the local Councils that had voted using gender quotas (16.2%) remained more or less at the same level achieved when they were in force. The percentage of women elected in local Councils that never voted using this system reached 13.6% during the period 1996-2007.

eminent female constitutionalists in Italy,²⁰⁵ have been overcome by the amendment of art. 51 of the Constitution. The constitutional review was vital in overcoming the unconstitutionality claims made in the 1995 sentence and enabling the possibility of amending electoral laws for the election of the national Parliament by including the obligation of gender equality. The failure by the Government to implement art. 51 of the Constitution, which in **paragraph 234** of the Report links this to the need to study new methods of action, is even more serious considering the figures emerging from the specific institutional research conducted by Cittalia²⁰⁶ “Women and representation”, which show that gender quotas have had a positive and lasting effect on female representation in politics. This proves that this type of intervention can be used effectively as a transitory tool for changing social laws which impose traditional roles upon women and thus re-adjust the current imbalance between female and male representation in Italian politics. The worry that women will only be able to fill political roles by virtue of quotas and not in relation to their ability appears to us to be unfounded.²⁰⁷

7.2.2.2. Beyond female quotas? The Campania Region law on double preference

Even without the use of quotas, is it possible to properly implement art. 51 of the Constitution?²⁰⁸ The only attempt at this in Italy is the electoral law implemented by Campania Region, which provides for the possibility for voters to indicate an additional preference, which is only valid if given to person of the opposite gender to their first preference. This law appears to be working, but it is not enough to guarantee equality in those Bodies, such as Local Government Board, in which the components are chosen by the President. During the last regional elections, 14 women were elected thanks to this method, compared to just 2 in 2005. The increase in the number of women elected was high (one-quarter of the total), but the Governor then decided to appoint only one woman to the Local Government Board (one in thirteen). The method of the “zipper system” of candidates and male-female heads of lists (the choice of the list being blocked in strict alternation) appears to be one of the most effective means of guaranteeing the equal presence of men and women in a proportional electoral system: this emerged during the primaries²⁰⁹ for the Democratic Party Constituent, which used this method.

7.2.2.3 Other regional laws implementing art. 51

One of the most effective of these laws is the Abruzzo Act (9/2005) which states that neither of the two sexes can have more than 70% representation in provincial or regional lists. The Lazio Act (2/2005) provides for the equal numerical presence of male and female candidates in regional lists, otherwise they are inadmissible, while the provincial lists, neither of the two sexes are allowed more than 2/3 of the number of candidates, otherwise there will be a proportional reduction in electoral reimbursements, which has already occurred. The Tuscany Act (20/2004) also imposes the limit of 2/3 for provincial lists; for regional candidatures (there are no regional “lists”, but regional candidates who precede the provincial ones on the lists), should there be two candidates, there must be one of either gender, and failure to observe these dispositions, at both a provincial and regional level, implies exclusion. There is also no vote of preference in provincial elections (in considering the Tuscany case, it would be opportune and significant to recall that there is a law on primary elections, Act 70/2004, in force). The electoral results from the 2005 elections obviously show the different level of effectiveness of these laws: Lazio, Abruzzo and, especially, Tuscany (the region with most women on the regional council) registered better results than the other regions, with increases of 5.67%, 14.74% and 12.62% respectively.²¹⁰

7.2.3 The failure to implement art. 51 through a national law has led to differing protection at a local level of the rights of women to political representation. There are differing orientations between the various Regional Administrative Tribunals.

Some Italian Regions, such as Campania, have adopted regional laws which, in implementation of art. 117

205 DE SIEVRO, “La mano pesante della Corte sulle quote nelle liste elettorali”, in *Giur. Cost.*, 1996, 3268 ss.; L. CARLASSARE, “Parere sulla legittimità costituzionale della previsione di una quota del 50% riservata alle candidature femminili”, in www.landtag-bz.org/Parere_Carllassare.htm.
http://www.consiglioregionale.piemonte.it/labgiuridico/dwd/pubblicazione/pubblparita18_28.pdf

206 Anci European Centre for Studies and Research in Towns and Cities, 2009. In addition to the figures for local Councils, this document also includes interviews with local female administrators on their experiences and a sample investigation on the perception of citizens aimed at understanding the different views, roles and responsibilities of men and women.

207 The analysis of the figures concerning local administrators shows that the women present in local Councils generally have a higher level of education than their male colleagues. The women elected were also more highly educated than their male counterparts during the application of the quotas, despite the increase in female representation observed. This would appear to confirm what emerges in other contexts: women find it more difficult to achieve the results achieved by men and when they do so, it is often due to more effort.

208 M. CAIELLI, “La nuova legge elettorale della Regione Campania: alcune considerazioni sulle norme di promozione della parità di genere”, University of Turin, 19 March 2009

<http://www.libertaeguale.com/thinktank/La%20nuova%20legge%20elettorale%20della%20Regione%20Campania%20alcune%20considerazioni%20sulle%20norme%20di%20promozione%20della%20parita%20di%20genere%20-%20Mia%20CAIELLI.pdf>

209 Technically, these were not real primaries because they involved the election of internal bodies through the maximum involvement of electors, rather than the choice of candidates. Source: D. TEGA, “Discriminazione e diritto antidiscriminatorio: considerazioni istituzionali (a partire dal diritto costituzionale italiano)”, Milan-Bicocca University, 20 March 2009, on www.libertaeguale.com

210 This paragraph contains verbatim the considerations made in: D. TEGA, “Discriminazione e diritto antidiscriminatorio: considerazioni istituzionali (a partire dal diritto costituzionale italiano)”, 20.032009, on www.libertaeguale.com, p. 11.

of the Constitution, paragraph VII, “promote equal access by women and men to elected roles”. In many other Regions, the regional obligation to take action to achieve so-called equality democracy has been ignored. This has meant that not a single woman has been elected on to the regional Councils in Calabria and Basilicata, and of the 12 assessors on the Sicily Regional Government Board, only one is female. Women are not represented, or barely represented, on many local and provincial Government Boards.

The only possible solution to solve this serious violation is recourse to the Regional Administrative Tribunals (TAR) in order for it to declare illegitimate the Local Government Boards which do not respect the criteria of gender representation. However, not even this measure has been adequate in terms of effectively protecting the right of representation of women. The various local TAR follow different orientations.²¹¹ Consequently, there is additional disparity between women in different regions.

7.2.4 Proposals by civil society for the implementation of art. 51 of the Constitution

The Governmental Report does not mention the numerous solicitations from civil society for women to be guaranteed substantial equality in accessing political roles. A mention is made of the campaign promoted by the UDI²¹² “50% e 50% Ovunque si decide” (n.d.r. “50% and 50% wherever a decision is taken”), which consists of a draft law based on popular initiative, in support of which approximately 120,000 signatures were collected and filed at the Senate in November 2007. This proposal is still being examined by the Constitutional Affairs Commission of the Senate. At the end of 2010, a group of women with different tendencies and political and feminist views submitted the document “for a women friendly system of electoral rules” and, during the campaign for equalitarian democracy undertaken two years ago by the Italian Union of Women with the slogan 50%50, suggests various measures applicable to any electoral system.²¹³

A proposal has recently been made to include the double preference system in local Council elections as well. The path taken could be to modify art. 73, par. 3 of the Consolidation Act for Local Bodies, specifically the point referring to single candidates for the local Council, providing the possibility for electors to express a double preference, on condition that the two candidates in question are of opposite sexes; a simple amendment, but of extraordinary political value.

7.3 UNDER-REPRESENTATION IN THE PUBLIC SECTOR

The Governative Report clearly highlights the marginalisation of women in decision making processes. The figures provided in **paragraph 238** of the Governative Report on the political participation of women are accurate, but are presented in isolation and therefore badly interpreted by the Government. The explanation provided by the Government as to the low level of political participation is not shared; it cannot be said that the low figures are due to a lack of interest in politics by women, and is therefore the responsibility of women themselves if they do not achieve positions of leadership in politics and in career terms. In providing such a banal and inaccurate explanation, the Government is presenting figures out of context, without taking into account the quantity of service work that is almost exclusively the responsibility of Italian women, which means that they do not all have the time and way to participate in political matters.²¹⁴ Furthermore, the interpretation provided by the Government is refuted by the ISTAT Report

211 For example, the Lombardy TAR rejected a case in which the illegitimacy of the presence of a single female assessor in the Lombardy Local Government Board was contested, claiming that the laws for gender equality in the Statutes of the Lombardy regional Council are promotional and not prescriptive. According to the TAR, a law which favours the less represented gender is discriminatory because “the constitutional model consists partly of promotional laws that are not cogently prescriptive”. Contrarily, the Campania TAR, sentence no. 1427/2011, annulled a Mayor’s decree which constituted the Ercolano Local Government Board without the presence of women, “as it did not emerge from the tenor of the impugned decree that the required preliminary activities were conducted aimed at acquiring the availability for nomination of persons of the female gender, neither was adequate motivation provided as regards the reasons behind the failure to apply the principle of which in art. 51 of the Constitution, one must lean towards the illegitimacy of the administrative activities conducted by the Mayor in identifying the assessors”. The Puglia TAR, in sentence no. 2913/2008, reached a similar decision concerning Molfetta local Council. In ordinance dated 23.09.2009, the Puglia TAR ordered the President of Taranto Province to modify the composition of the Provincial Government Board so as to ensure the presence of both sexes, within 30 (thirty) days of the ordinance being issued.

212 Union of Italian Women.

213 The premise behind this plan is that each solution should be accompanied by a process of democratisation and self-reforms of the political parties. It has been proposed that, independently of the voting system, the electoral laws should include, at various levels, a regulation which guarantees equal representation, on penalty of the list being inadmissible if this condition is not respected. A mechanism has also been proposed to ensure a balanced representation in terms of those heading the lists and, in the case of resignation or withdrawal of the person elected, that their role is taken over by the first of the non-elected candidates of the same sex as the member of parliament being replaced. If the method provides that electors should express nominative preferences, the regulation successfully experimented in the Campania regional election law would be preferable, in other words double preference with the obligation that the second should be of a different gender to the first, on penalty of nullity. In the case of a majority system, the provision of bi-nominal boards is advised, each with two seats, one each for men and women. Incentives and disincentives on electoral reimbursements in favour of women have also been proposed, among other measures.

214 Merely for example, it would be interesting to refer to the CEDAW Committee the impossible times which the secretaries of local political parties impose for their weekly meetings. This in itself prevents participation in political matters by any women who do not have their own cars, because meetings often end at times when public transport is no longer available. To increase the female presence in politics, the conditions should be imposed to allow women to actually participate. Women are currently located mainly in the last places on electoral lists, thus meaning the chances of them being elected are minimal and even non-existent.

from which the figures quoted are taken. In paragraph 7, the ISTAT Report provides figures for the last ten years, which show a significant decrease in the number of women who are totally extraneous to political participation²¹⁵ and, at the same time, an increase in the number of women politically active.²¹⁶ On one hand, the Governative Report fails to highlight the willingness expressed by women in public to participate in political matters, and on the other does not mention the lack of interest of political parties in accepting women as members. The leadership of all the Italian political parties is almost exclusively male, in a context which rewards praise of the leader and appearance, rather than a feminist militant participation or the presence of female candidates capable of expressing independent thoughts and a gender viewpoint. The indignation of Italian women towards a political system which is still a male-oriented view of the inclusion of women, and deaf to the claims made by civil society, is shown by the “If not know, when” demonstration,²¹⁷ in which more than one million people participated in Italian towns and cities and other countries worldwide. The event was a protest against the sex scandals which have led to legal proceedings investigations against the Prime Minister, from which it emerged that there was a presumed link between the sexual favours provided by certain women in his party and their candidature in (or exclusion from) elections. It is obvious that the expectations of the majority of Italian women have been dashed by the current climate of depreciation of the female presence in public circles, and that formal political participation is being affected by this. The only solution would be the adoption of special temporary measures guaranteeing women a certain level of access such as to favour the inclusion not only of female candidates “chosen” by men, but also independent female candidates. Contrarily to this disaffection for formal politics, the willingness of Italian women to undertake political commitments is shown by their high level of participation in informal political life (from SCOs to movements). The women involved are frequently young. In this sense, the figures presented by the Government do not distinguish those concerning academic qualifications and professional positions; the gender differences with respect to political participation decrease on the basis of academic qualifications and professional position. Given that the level of education of young women is now better than that of young men, it is probable that their interest in politics will increase if these young women are given a real possibility of reaching positions of leadership.

7.4 UNDER-REPRESENTATION IN PUBLIC ADMINISTRATION²¹⁸

Generally, the number of women who have leadership positions in Italian Public Administration has decreased on average since 2008 (by about one per cent). In general, if geographical distribution is considered, Southern Italy remains in last position as regards the pursuit of equal opportunities in the leadership of public administrations, while the local, provincial and regional Councils in the North fill the leading positions. There are significant exceptions to this national trend, such as Palermo and Treviso, for example, which are 19th and 103rd in the classification of provincial capitals.²¹⁹ In general, if the figures concerning political roles and those concerning management roles are considered separately, it can be seen that what has the major effect on the average number is the very low number of female councillors and assessors, while the number of female managers is nearly always high.

7.5 UNDER-REPRESENTATION ON BOARD OF DIRECTORS AND IN THE TOP MANAGEMENT OF PUBLIC AUTHORITIES

See paragraph 11.11.

7.6 UNDER-REPRESENTATION IN PROFESSIONS (see para. 13.3)

In Italy, women account for 60% of graduates, 42% of magistrates, 32% of doctors, 42% of lawyers, 30% of entrepreneurs, 12% of executive officers, and 22% of senior managers and 5% of members of the Boards of Directors of companies on the stock exchange.

215 This change concerns the increase in the number of women who discuss politics at least once a week +47% (compared to +18.8% for men), in other words more than double; the number of women who keep up to date on political matters at least once a week is increasing (by 20% compared to 6% for men), as is the number of women who keep updated on a daily basis (by 25% compared to 11% for men). The number of women who never mention politics is decreasing (from 46.8% in 1999 to 40% in 2009). (Source: ISTAT 2010).

216 More specifically, the number of women who listen to political debates has increased from 12.9% in 1999 to 19.5% in 2009. Furthermore, within the small segment of people who attend demonstrations (4.5% of women, less than the 6% of men), a significant increase has been registered (+44.4%), due mainly to women (+73%), and especially those aged 45-64 and 20-24. There is most dynamism between managers, entrepreneurs, freelance professionals and employees (120%) and university and high school graduates in general (declining for men). (Source: ISTAT 2010)

217 <http://senonoraquando13febbraio2011.wordpress.com/2011/05/13/the-women-of-berlusconi%e2%80%99s-italy/> (article in English).

218 Paragraph referring to **Question no. 21** of the CEDAW Committee.

219 In 2010, the female component in political and administrative leadership positions in provincial capitals was 18.75% on average, compared to 19.68% in 2008; the situation in Councils, Local Government Boards and Management Bodies of Regional Councils is speculative, with a current average percentage of women of 29.07%, compared to 29.12% recorded two years ago. Source: survey submitted on 18 May during the “Actions for equal opportunities in public administrations” conference promoted by [futuro@lfemminile](mailto:futuro@lfemminile.it)

http://www.futuroalfemminile.it/progetto/Donne_lavoro/La_Ricerca_DellOsservatorio/Ricerca_DellOsservatorio.kl

7.6.1 Stereotypes and under-representation of women in male-oriented professions (art. 5 CEDAW)

The under-representation of women in male-oriented professions is related to the prejudice that certain jobs require qualities typically attributed to men (physical strength, severity). This means that those women who manage to access these jobs are more likely to encounter a hostile working environment. This is confirmed by a very recent sentence by the Court of Cassation, which convicted a trade union representative of the prison service for giving an interview in which he criticised the recent appointment of a woman as director of the prison, stating that a man would have been more suited as director of that prison. The Court of Cassation believed that the criticism of the director, being “based on the fact that she was a woman”, was a “gratuitous depreciation of the dignity of that person, being based on the profile, deemed decisive, deriving from the biological aspect of belonging to the one or other gender”.²²⁰

7.6.2 Under-representation in schools

Paragraphs 259 and 260 of the Governative Report mention a female domination in school teaching. However, it should be observed that the presence of female teachers is inversely proportional to the level of schooling (99% in kindergartens, 60% in secondary schools). The Report makes no mention of university education, where there are about 18% of female ordinary professors, 33% of associate professors and 45% of researchers, with a diverse distribution between science faculties – where the presence of men is higher – and humanistic faculties, where the female presence is concentrated. The female presence in university management bodies is very low because there are few female faculty deans,²²¹ few female heads of department and few members of Boards, etc.. Until very recently, the post of Rector was an almost exclusively male domain, female Rectors have only been appointed recently but only in minor universities, such as Udine University, the private university in Bolzano and Perugia University (and also Sant’Anna Higher Education School in Pisa). It should be noted that, conversely to what has occurred in other countries, especially Anglo/Saxon and Nordic countries, where gender studies were institutionalised during the 1960s and 1970s, gender studies in Italy are very often not subjects on their own but included in the curricula of other courses as seminars or study modules, and therefore taught by individual lecturers without any institutionalisation. These studies should become part of the training of lecturers and students, because only the understanding of relations between men and women, and also between different cultures, will lead to changes that are capable of creating a culture of equality able to affect politics and decision making processes.

7.7 NO AWARENESS CAMPAIGN ON THE IMPORTANCE OF THE PARTICIPATION OF WOMEN IN POLITICAL MATTERS

7.7.1 “Women, politics, institutions” courses are not a sufficient and adequate measure to favour the involvement of women in the public sector²²²

Paragraph 245 of the Governative Report and **paragraphs 112-114** of the Responses give “Women Politics Institutions” courses as the only action undertaken by the government (up to 2007) to promote the participation of women in politics. In truth, these courses merely constitute “training” for women who are already involved in politics. When asked about the type of participation and purposes of the courses themselves, the women who coordinate these courses said that the women who participated in them only did so because they were already interested in politics, because other areas (parties, local politics) are not easy for women to get into, and certainly not because an institutional training course could open the doors for them to enter electoral lists (no representatives of political parties has tried to recruit female candidates from these courses). The government’s attitude towards these courses has been ambiguous and varying, neither ensuring their institutionalisation nor the implementation of other “good practices” or funding.²²³

WE RECOMMEND:

- ***Taking action to make equal the starting points of elections and in all other sectors of public life, through the implementation of concrete measures to eliminate the obstacles encountered by women in participating in the public sector in this country.***
- ***Taking action to guarantee the right to access political positions at all levels, firstly through the***

220 Court of Cassation sentence 10164/2010. Source: B. SPINELLI “Un’analisi sulla violenza di genere in Italia alla luce delle Raccomandazioni del Comitato CEDAW”, in the documents of the international conference “Pari Opportunità e eguaglianza di genere: esperienze in Italia e in Turchia”, Istanbul, 15.04.2010. <http://femminicidio.blogspot.com/2010/07/il-femminicidio-e-una-violenza-dei.html> (2010).

221 **Para. 252** of the Governative Report makes an isolated mention of the 5% of female deans of medicine faculties, but the situation is generalised.

222 Paragraph containing the Responses formulated by the Government in **para. 112-114 to question 20** by the CEDAW Committee.

223 See also **para. 2.3** as regards the content of courses.

introduction of this principle into regional, provincial and local statutes, and secondly through an interpretation of this principle as being binding and not a planning disposition.

- *Modifying the electoral system by introducing measures aimed at ensuring the candidacy of women, such as the obligation that the list should include an equal number of male and female candidates, alternately.*
- *Using special temporary measures pursuant to art. 4 of the Convention to promote greater access by women to political positions, especially of Roma and migrant women*
- *Providing for sanctions (for example no funding, inadmissibility of the list) for parties which do not respect gender balance in their candidacies.*
- *Drawing-up regional electoral laws with the obligation of equality in lists and the list being inadmissible as the sanction for parties which do not respect them.*
- *Ensuring that the sector organizations collect disaggregated gender data in order to analyse the factors that contribute most towards the scarce female presence in political positions.*
- *Systematically collecting statistical information disaggregated by gender in order to better plan and control the effectiveness of the action undertaken aimed at promoting women in Public Administration.*
- *Including the gender perspective in population censuses, so as to enable analysts to investigate certain aspects that may be useful in the promotion of equal opportunities.*
- *Involving NGOs, committees, feminist associations and other organizations promoting this end in the elaboration of gender representation policies, opening constructive dialogue with civil society.*

ARTICLE 8 REPRESENTATION IN INTERNATIONAL BODIES

8.1 THE GOVERNATIVE REPORT DOES NOT INCLUDE ANY INFORMATION ON ARTICLE 8

CEDAW Committee Recommendation no. 10/2005 to Italy and the indications from paragraph 50 of the General Recommendation no. 23 were totally disregarded by the Government.

The Report does not include information on women's representation within international diplomatic bodies, defence and permanent delegations, the EU and other international bodies.

8.2 WOMEN REPRESENT ONLY 16% OF THE DIPLOMATIC OFFICIALS

In 2008 women represented 16.2% of diplomatic officials²²⁴. 52.5% of women diplomats are at the start of their career. In 2010, female representation is even lower²²⁵.

The Ministry of Foreign Affairs does not show any will to fully enforce the current regulations on equality and equal opportunities within itself and within its foreign network.

Women diplomats²²⁶ identify the following factors as major causes of their poor representation: on one side, the socio-cultural context is still deeply chauvinist; on the other, the administration has not yet institutionalized a sufficient number of concrete initiatives to support women's demands.

It is not clear from the Report whether women diplomats can enjoy the same family benefits granted to men. In particular, the provision according to which the wife of an ambassador becomes an "ambasciatrice", while no titles are envisaged for the husband of a woman becoming ambassador, should be abolished, since such a provision violates articles 1 and 3 CEDAW and in time has significantly hindered the appointment of women diplomats as ambassadors.

8.3 INADEQUATE INVOLVEMENT OF CIVIL SOCIETY IN THE IMPLEMENTATION OF UN RESOLUTION 1325 (see chapter on G.R. 19)

In 2010 the Inter-Ministerial Committee on Human Rights endorsed the national Plan of UN Resolution 1325. It is positive that the major NGOs working in the sector were consulted by the Government, as reported in paragraph 4 of the Introduction to the "Responses". However, we regret to notice that such a consultation was done only at the end of the decision-making process and represented a mere formality, since the Government did not take into any account the articulated suggestions and critiques expressed by the NGOs²²⁷ (See also Chapter 19. 5.1.5 of Shadow Report).

224 Compared to 11.6% in 2002.

225 At 30.04.2010, out of a total of 920 officials, women are only 148 (equal to 16% of the total, against 16.2% in 2008). Virtually, the exact half of women diplomats (50.6%) is at the start of the Career (Probationary Secretary of Legation and Secretary of Legation), for a total of 75 women, slightly decreasing compared to 52% in 2008.

Out of a total of 31 ranking Ambassadors, only one is a woman (about 3% of the total). Out of a total of 229 Ministers Plenipotentiary, women are 23, 10% of the total (against 8% in 2008 and 3.6% in 2002). Out of a total of 217 Embassy Councilors, women are 27 (equal to 12.4% of the total, against 9% in 2008). Out of a total of 125 Legation Councilors, women are 22 (equal to 17.6%, against 15.5% in 2008). Out of a total of 311 Secretaries of Legation, 81 are women (equal to 26% of the total, against 25.1% in 2008). Out of a total of 5 Probationary Secretaries of Legation, women are 3 (equal to 60% of the total). Out of a total of 123 Embassies, women Head of Mission are only 6 (4% of the total). Out of 9 Permanent Representations, only 1 is led by a woman (11% of the total). Out of 86 General Consulates, First Class Consulates and Consulates, only 4 (equal to 4%) are women-led, as follows: 1 woman out of 59 General Consulates (equal to 1.6%), 1 woman out of 6 First Class Consulates (equal to 16.6%), 2 women out of 21 Consulates (equal to 9.5%). Source: www.esteri.it/MAE/IT/Ministero/Circolo_Associazioni/Associazioni/Donneltaliane/Dati.htm

226 <http://www.ilssole24ore.com/art/SoleOnLine4/dossier/Italia/2009/commenti-sole-24-ore/8-marzo-2010/ambasciatrici-67-infranto-barriera-invisibile.shtml?uuid=fc11350c-2a82-11df-9f17-62d64697deee>, <http://www.donnemagistrato.it/home/Dettaglio/Associativa/ADID.htm> and http://www.ilssole24ore.com/art/SoleOnLine4/dossier/Italia/2009/commenti-sole-24-ore/8-marzo-2010/ambasciatori-rosa-ristretto-club_PRN.shtml

227 Among the main critiques to the Plan: lack of precise elements of geographic and political contextualization; apparently no reference to the best practices developed in the ten years following the Resolution's endorsement; no exact indication of the actions envisaged by the Plan for each area, of the implementation responsibilities, of the budget dedicated to each action, of the envisaged implementation timeline, of the indicators of success; no evaluation of the initiatives for the implementation of the Resolution 1325 carried out by the Italian Cooperation for Development in Afghanistan, Sierra Leone and Sudan; no detailed operational and technical elements on the projects already implemented; references to areas that do not fall under the jurisdiction of the Resolution 1325 (Female Genital Mutilations). Among the main suggestions: the rephrasing of the text where women appear as "vulnerable subjects" together with children (an outdated categorization for international orientations which contradicts the spirit of Resolution 1325/2010); the inclusion of a summary chart with the figures related to the presence of women within Armed Corps, divided per corps and detailing their functions/ranks; the clarification of the quantitative objectives to be achieved with regard to women's presence within the Armed Corps (objectives that were instead endorsed at the UN level as to peacekeeping/peacemaking); the inclusion in the plan of certain actions only, to be mentioned as imperative. By way of an example, on further civil society interventions see:

http://www.actionaid.it/filemanager/cms_actionaid/images/DOWNLOAD/Rapporti_DONNE_pdf/Rapporto_AAePANGEA.pdf and:

<http://www.pangeaonlus.org/main.php?liv1=eventi&liv2=eventi&liv3=2010&liv4=25novembre&liv5=rapporto>

WE RECOMMEND:

- *Collecting and releasing statistical data on women's presence in the fields indicated by art. 8 CEDAW, in accordance with General Recommendation no. 9 and, in particular, reviewing the evolution of the presence of and positions covered by women diplomats and women heads in time.*
- *Making every effort to abolish all regulation or praxis discriminating the diplomats' spouses holding the ambassador position and every other provision or praxis that could directly or indirectly discriminate women in the access to the diplomatic career.*
- *Endorsing special and adequate temporary measures to ensure an effective implementation of the obligations deriving from art. 8 CEDAW in accordance with article 4 CEDAW and General Recommendation no. 8, and, particularly, avoiding a further decrease in women's presence within the diplomatic representation.*
- *Including within the trainings for Probationary Secretaries of Legation and for Legation Councillors, gender modules in order to overcome a culture of prevention and prejudice towards women diplomats and women heads (including the still widespread attitude to consider family and career as incompatible) and more in general, making women's presence in the Administration perceived as a relevant issue.*
- *Defining a periodic, systematic and transparent consultation procedure with NGOs and women's and feminist associations, in order to promote an effective, constructive and permanent collaboration on the contents of the NAP of UN Resolution 1325 and on its implementation.*
- *Revising the National Action Plan for the implementation of UN Resolution 1325, taking into proper consideration the severe concerns raised by NGOs.*

ARTICLE 9 CITIZENSHIP

9.1 NO ADEQUATE INFORMATION ON THE IMPLEMENTATION OF ART. 9 IN THE REPORT

The Governative Reports data about citizenship applications without providing a gender impact analysis of the legislation. The Government fails to report about the increasing difficulties in accessing the citizenship caused by the amendments introduced by Act no. 94/2009.

9.2 INDIRECT DISCRIMINATION OF FOREIGN WOMEN IN THE ACQUISITION OF CITIZENSHIP

Rights continue to be based upon citizenship of those who belong to the national community. If institutions do not take into account the radical changes caused by migratory flows, there will be increasingly serious phenomena of exclusion at a level of social, economic and political rights. Citizenship of women is not only an useful indicator of the realisation of democratic processes in all countries, but also a measure of the capacity of countries to exclude or include citizens, given the migrant condition, the level of reception and methods of "integration".²²⁸

9.2.1 Citizenship by marriage and the risk of re-victimisation of foreign women who suffer from domestic violence

The lack of a gender perspective in the citizenship act denies foreign women every possibility of undertaking truly autonomous paths for social and economic inclusion, especially in consideration of the peculiarity of the composition of migratory flows in this country. Many women arrive in the country after their husbands, when the latter are already accepted into the social context of the host society. Husbands are therefore the first to acquire citizenship by residence and this right is only extended to their wives at a later date. Although Act no. 92/1991 provides for equal rights for men and women, its application discriminates against the latter and very often relegates women to a position of subalterns, binding them strictly to their marital status and depriving them of any possibility of autonomously exercising their own citizenship rights. This situation has been confirmed by an analysis of the applications for Italian citizenship by foreign women and the enormous difference between the numerical figures concerning applications for naturalisation by marriage and those for naturalisation by residence.²²⁹

The amendments introduced by Act no. 94 dated 15 July 2009 are re-victimising against those foreign women who suffer from domestic violence perpetrated by an Italian citizen. Art. 5 of Act no. 92/1991, as reformed by Act no. 94/2009, provides that if, after the application of Italian citizenship, one of the spouses requests the dissolution of marriage, the application will be rejected, considering that the marriage relationship or the cohabitation must still be in place until the adoption of the decree granting citizenship, which always occurs at least one year (sometimes four years!) after the application is made. In this way violent husbands can blackmail their wives and prevent them in acquiring such an important right. While awaiting the outcome of their requests, foreign women become totally dependent upon the "moods" and decisions of their husbands, in the fear that their husbands may decide to request separation before the acceptance of their application for citizenship, thereby annulling their right to citizenship, which is only "suspended" because of the inordinately long timeframes required for examining their cases, due to the lack of efficiency in Italian public administration.

9.2.2 Citizenship by residence: the law creates a mechanism of women dependence upon men

9.2.2.1 The requirement of income indirectly discriminates against women in terms of requesting

Similarly to men, women can apply for citizenship after ten years of legal residence in Italy. The most important requirement to obtain citizenship is the capacity of the applicants to have autonomous means of support guaranteeing them economic self-sufficiency²³⁰. However, as there are no gender disaggregated data available concerning the income of the foreign population resident in Italy, it is impossible to assess whether women encounter more difficulty than men in reaching the income limits required for the acquisition of citizenship²³¹. Circular of the Ministry of Interior no. K60.1 dated 5-1-2007 "On the income required for the granting of Italian citizenship"²³² makes easier for women to exercise their right to acquire citizenship. This Circular established that Italian citizenship can also be granted to foreign housewives if their husbands have suitable means of support to cover the family needs. Consequently, the evaluation of the income limit must be referred not only to the applicant income but also to the entire family one. The

228 GIOVANNETTI M., "Citizenship and New Inclusion", 2004.

229 In Italy in 2007, 25,070 women were granted citizenship because of marriage, compared to 6,540 men. In the same year, 2,244 applications for citizenship by residence were made by women, compared to 4,613 by men. (Source: XI report of the Caritas statistical bureau, 2009. Processing of data from the Ministry of Internal Affairs).

230 The minimum income to apply for citizenship currently is 5,424.9 Euro and it raises for every cohabiting family member.

231 Considering the peculiar professional and sectoral segregation which sees 89% of foreign female workers in Italy employed in the services sector.

232 Cited in **para. 269** of the Governative Report.

measure is positive because it recognizes the housewives right to be considered the owners or part-owners of their husbands' income as part of a family nucleus.

9.2.2.2 Dependence upon employers

The inflexibility of legal dispositions makes the exercise of the right of citizenship increasingly difficult, especially for foreign women who, for the most part, are employed – legally but more often than not illegally – in a closed circle of professions (household services). Their income often remains minimal and their employment is highly precarious. This situation has a significant effect on the effective possibility of migrant women to fully exercise their citizenship rights, although they are in the country legally, employed and have been resident for a number of years. In conclusion, the procedures to obtain the permit of stay and citizenship indirectly discriminate immigrant women because place them under the authority of their husbands or their employers, preventing their emancipation and integration.

9.2.3 Italian language test

The position outlined by the Italian Government in the CEDAW Report does not take into account the specificity of the problems faced by foreign women in achieving the full exercise of their right to the acquisition of citizenship. Act no. 94/2009 imposes a restrictive logic which further worsens the already difficult conditions for the acquisition of citizenship by foreigners. The new regulations, for example, provide for a test of Italian language and culture in order to obtain citizenship. This provision is very discriminatory for foreign women who, as they mostly originate from countries with lower female literacy rate, find additional obstacles in acquiring the needed skills and knowledge to pass the test.

WE RECOMMEND:

- *Adopting policies that are suited to promoting the full and autonomous exercise of the right to citizenship by foreign women, releasing them from their status of legal dependence upon their husbands currently imposed by the laws in force.*
- *Amending art. 5 of Act no. 91/92, providing that the marriage needs only to be in place until the request for citizenship is submitted, and not until citizenship is actually granted.*

ARTICLE 10 EDUCATION

10.1 CEDAW COMMITTEE RECOMMENDATIONS NO. 35 AND 36/2005 WERE TOTALLY DISREGARDED BY THE GOVERNMENT

No long-term strategy has ever been adopted either to promote the access to the right to education for Roma and migrant girls or to reduce their school drop-out rate.

10.2 WOMEN ARE DISCRIMINATED BY THE “GELMINI REFORM”²³³

10.2.1 Mothers can no longer count on the “guarantee” of the extended hours (article 11 & 13 CEDAW)

The cuts to the public education budget envisaged by the Gelmini Act no. in 2010 (-32% compared to 2008)²³⁴ do not allow extended hours to be guaranteed in all schools. This will have a deep impact on the family working choices. Women will choose to send their children to private schools or be forced to stay at home, or ask for a part-time job, or refer to informal family support networks or spend extra-money to get external child-care for after school hours while they are at work.

10.2.2 The gender gap in the right to education is worsened

Data from the Ministry of Education, University and Research reported by the Government in paragraph 271-271 of the Report confirm an equal percentage of enrolled girls at all levels and grades of education²³⁵. Nevertheless this figure cannot be read separately²³⁶.

Among the aspects negatively affecting the right to education, the policies of generalized cuts by the Government place first. The Gelmini Reform in particular introduced several cuts that led to the decrease in the number of teachers and to the change of the primary school timetable, reduced to 24 hours per week. Because of the lack of adequate work/life balance policies, families are often forced to refer to private child-care structures or relatives.

10.2.2.1 The gender gap in research is worsened

The reduction of funds for research led to an increasingly lower young women’s access to the university career. Despite representing 58% of graduates to date, women register lower and lower employment rates in the highest grades of the academic education and curriculum (researchers: 40%; associate professors: 32%; ordinary professors: 14% and only 2 rectors).

10.2.3 Funds for gender projects are at stake due to the entry of private actors in the University Boards

The entry of private companies in the university Boards envisaged by the Gelmini reform, together with its indiscriminate cuts to education and research funds, can lead to reducing or eliminating disciplinary innovations, such as the establishment of curricula for gender studies that some universities are arduously trying to put in place. The rich and powerful Catholic lobbies could spread a confessional approach to research and curricula limiting equal opportunities and women rights. As a consequence, the education offer is poorer and poorer and public and secular university threatened with extinction²³⁷.

10.2.4 Learning for migrant and disabled children is hardened

The cuts by the Gelmini Reform have a deep impact on the number of learning support teachers and on the possibility to keep schools open for additional activities. Migrant students represent 7.5% of the school population. Data highlight how their hold back rate is three times higher than the Italians’ one, underlining the need for more resources to be allocated for their integration in case of family reunification.

Among middle-aged people with disabilities (between 45-64 years) women without qualification are 12.8% while men are 7.3%. Among the elderly (over 65 years) disabled women with a high school diploma or a degree are almost half of disabled men, respectively 6.3% and 11.5%.²³⁸

WE RECOMMEND:

- *Modifying “Gelmini Reform” allocating adequate resources to ensure that every boy and girl –*

233 Reference legislation: D.L. 133/2008, Act no. 169/2008, Act no. 240/2010.

234 C. ZUNINO, La Repubblica, 31.03.2011.

235 Data from the Ministry of Education, University and Research website: <http://oc4jesedati.pubblica.istruzione.it/Sgcns/builder.do>

236 According to the Global Gender Gap 2010 Italy ranks 74th out of 134 countries examined with regard to educational attainment. The Global Gender Gap states that “Italy continues to be one of the lowest-ranking countries in the EU and deteriorates further over the last year” Global Gender Report 2010, p. 5. From the website <http://www.weforum.org/issues/global-gender-gap>

237 <http://www.ateneinrivolta.org/approfondimenti/gender/sisters-are-doin-it-themselves-too>

238 http://www.handicapincifre.it/descrizioni/differenze_istruzione.asp

citizen, foreigner, Roma, Sinti or disabled – can enjoy the actual right to public, free and quality education.

- *Promoting researches collecting data on the curricula chosen by girls in primary, secondary (high school) and university education, under a gender perspective; paying attention to discriminations, and highlighting the main obstacles that second-generation, migrant and disabled girls have to face.*

10.3 ACCESS TO EDUCATION

10.3.1 Difficult women's access to undergraduate and postgraduate research²³⁹

In 2006 almost half of the Italian population was in possession of the junior high school certificate only: in fact 48.7% of the population aged 25-64 attained, at most, a junior secondary level education which leads our country to rank at the lowest positions among the EU countries, together with Spain, Portugal and Malta. In the EU of 27 the average percentage of citizens with junior high school certificate only is 30%²⁴⁰. In 2007 slightly over 75% of the Italians aged 20-24 attained at least the high school diploma, which places Italy below the EU average²⁴¹.

At the university level major developments were made with regard to the number of both enrolled and graduated women. Feminization of education is not accompanied by a feminization of the working world or, better, the working world is still structured around men and for men.

Women filled the education gap that divided them from men²⁴², get better marks²⁴³ and graduate in a shorter time. Nevertheless, in most of careers male dominated, they still face difficulties in the access to the working world and they wait longer to get a job comparing to men graduates.

Looking through the data of the 2009 Report on university and work²⁴⁴ elaborated by MIUR²⁴⁵ referred to the degree courses matriculations in the academic year 2007/2008²⁴⁶, it can be noticed how some areas of study have a "female connotation"²⁴⁷: the gender gap is clear in the choice of the courses. The female presence in several areas is still very low while, on the contrary, in other areas is peaking.

With regard to post-graduate areas, "women face a greater difficulty in accessing the typical paths of academic career..."²⁴⁸.

On average women graduates' wages are lower: irrespective of the length of the degree course (4/6 years or triennial) the gender gap in wages is significantly high, ranging from 100 to nearly 400 Euro less in payroll²⁴⁹.

10.3.1.1 Difficult women's access to scientific research²⁵⁰

The Governative Report pays attention to the scarce presence of women in the scientific field: their limited presence in scientific degree courses leads, as a direct consequence, to a difficult access to technology and innovation sectors. Women's under-participation and under-representation within the research world is not only related to the small number of women graduates in such fields, but above all to the fact that Italy is investing less than the European average in Research & Development²⁵¹: this is resulting in the so called "brain drain", particularly female²⁵². Other reasons for women's under-representation within the scientific research sector are to be found mainly in the lack of support, isolation and exclusion experienced by women researchers because they are women. The idea that it is unworthy to invest training and funds on someone who has the work/life balance burden is still widespread.²⁵³

10.3.2 Difficulties in Roma girls' access to the right to education²⁵⁴

239 Referred to **para. 273-275** of the Governative Report.

240 Quoted from M. L. PACIELLO, (A1 gli studi universitari), available at www.roma1.infin-it/people/paciello/D&S

241 ISTAT, 100 statistiche per il Paese – indicatori per conoscere e valutare – 2008, www.istat.it

242 "Più brave e più povere. I numeri delle laureate", <http://www.ingenero.it/articoli/pi-brave-e-pi-povere-i-numeri-delle-laureate>

243 According to the ISTAT study, women got better marks than men: about 50% of women graduates (both in the former and current system) completed their studies with a final mark above 105/110; about 25% of women graduates completed their studies with the highest marks. ISTAT, *I laureate e il mondo del lavoro*, p. 16

244 ISTAT, "Università e lavoro 2009", *I numeri dell'Università*, www.istat.it

245 Ministry of Education University and Research

246 ISTAT, "Università e lavoro 2009", p. 11, www.istat.it

247 Within the teaching cluster, women achieve 91% out of the matriculations total; within the psychological cluster 81.9%; within the language cluster 81.6%. Contrarily, with regard to the areas of technological and scientific studies, the female presence is lower: engineering cluster 20.2%; sciences cluster 30.6%; physics cluster 34.4%.

248 ISTAT, "I laureati e il mondo del lavoro", p. 19.

249 ISTAT, "I laureati e il mondo del lavoro" p. 43, 44, 67.

250 **Para. 276-280** of the Governative Report.

251 UIS, "Global investments in R&D", Fact Sheet no. 7, October 2010.

252 As stated by M. L. PACIELLO "...it is plain how the enhancement of women in research, research itself and the enhancement of women in general are two missed opportunities in our country". Maria Luigia Paciello, *I numeri per dirlo*, available at www.donnescienza.it.

²⁵³ See para. 11.1 of Shadow Report.

254 **CERD Recommendation no. 20/2008**.

According to Opera Nomadi, there would be at least 20,000 Roma children under twelve years old, mainly Yugoslavian and Romani, who are not fulfilling the scholastic obligation in Italy. Estimates are that the hold back rate for the remaining Roma and Sinti children of the same age is no less than three years. According to a recent survey²⁵⁵ the root causes of such a scarce schooling are to be found not as much in nomadism, but rather in the “difficult economic conditions and in a certain distrust of school as an expression of a society that proved to be hostile and that, due to its assimilating action, is seen as a threat to their own identity”. Contrarily, in those settled communities better welcomed and living in good economic conditions, “youth is starting to attend secondary high school and some of them is also attending university, which is not so uncommon elsewhere in Europe”.

It is not possible to ensure the right to education to these minors, if their families are subject to reiterated evictions and evacuations from one city to another²⁵⁶. Girls face a double discrimination: because they are women and because they are Roma or Sinti. The risk of school drop-out is extremely high, despite no exact data were collected. The risk for female minors is not only related to forced mobility by their families, but also to the possibility of early marriage, even though such a practice is more and more uncommon in the settled communities. The situation is often so serious that teachers themselves intervene to demand that the right to education is granted to the Roma minors placed into their classes.

School drop-out data are lacking, however from the data available on the Roma presence within the Italian school system it can be inferred that most of the boys and girls from this ethnic group leave school after getting the junior high school certificate²⁵⁷.

Government statements²⁵⁸ are not confirmed by its recent policies that have been instead showing an increasingly racist and violent institutional attitude against the Roma²⁵⁹.

10.3.3 Difficulties in migrant women’s access to education²⁶⁰

Studies on foreign minors’ schooling in Italy were not carried out under a gender perspective. Data²⁶¹ highlight lack of regularity among foreign students already starting from 12 years old. Causes are to be found in the scarce command of the Italian language and in social integration problems.

10.3.4 Separate classes for foreigners

The school instead of being considered a place for education, integration, identity building and socialization, becomes an instrument of ideological, sexual and racial discriminations²⁶². In 2008 Lega Nord Party launched a proposal for establishing separate classes for foreign children, affirming that their lesser knowledge would slow down Italian students’ learning²⁶³.

WE RECOMMEND:

- ***Promoting statistic data researches aimed at assessing whether migrant second-generation Roma and Sinti girls face greater difficulties in accessing higher education compared to their Italian fellows.***
- ***Promoting positive actions aimed at removing barriers that prevent Roma, Sinti and migrant women from accessing superior education.***
- ***Funding scientific research and establishing the participation of at least 30% of women within the***

255 "Rapporto conclusivo dell'indagine sulla condizione di Rom, Sinti e Caminanti in Italia", 2010, Senato della Repubblica, Commissione straordinaria per la tutela e la promozione dei diritti umani.

256 These observations from “Il triste diario di Cristina”, a Romani 10 year girl from Milan (taken from the website of Le città a misura delle bambine e dei bambini: www.cittaperibambini.org) are emblematic of the discriminations that Romani girls face: “19th November 2009: evacuated from the camp in via Rubattino, she loses lots of her clothes, but her backpack is saved by her teachers who kept it at school”. “20th November 2009: chased away from an abandoned building”. “21st November 2009: chased away from a crumbling warehouse...she misses a month of school”. “2nd February 2010: another evacuation...other school days missed”. “4th February 2010: chased away from Quarto Oggiaro...other school days missed”. “24th February 2010: evacuated...”. “Evacuations go on until October. Since October 2010, Cristina and her family have been sleeping in various places in the city and have been evacuated each day”. From this story it can be inferred that Cristina, just as many other Romani children, cannot de facto exercise her right to education, being constantly engaged together with her family in the search for a house, due to the continuous evacuations by the Municipality.

257 Ministry of Education, University and Research, Gli alunni stranieri nel sistema scolastico italiano, a.s. 2008/2009, December 2009. P. 17, table 15.

258 **Para. 284-286** of the Governative Report.

259 **CERD Recommendation no. 15 and 16/2008.**

260 Referred to **para. 284-286** of the Governative Report.

261 Ministry of Education, University and Research, Gli alunni stranieri nel sistema scolastico italiano, a.s. 2008/2009, December 2009. P. 2-4, 17.

262 26th February 2011, Il Sole24Ore: “Berlusconi, visiting the Christian-Reformist congress, puts stress on public schools teachers, too: “They instill ideas diverging from those conveyed by families”. The Premier recalls what he said in 1994 when he entered politics. Berlusconi talked about the risk that parents could face if prevented from choosing a private school for their children as an alternative to the public one www.ilsole24ore.com/art/notizie/2011-02-26/berlusconi-gheddafi-controlla-situazione-115724.shtml

263 http://www.corriere.it/cronache/08_ottobre_15/stranieri_classi_separate_benedetti_792ff016-9a7c-11dd-8bde-00144f02aabc.shtml

working team.

- *Promoting surveys on women's presence within the R&D sector, in order to enforce adequate strategies to promote career opportunities for women in this field.*
- *Implementing a strategy allowing actual integration of foreign students. Roma and Sinti children are still the most discriminated minority and data on their situation are scarce and often do not consider the high number of boys and girls who do not have access to education.*
- *Abandoning evacuation policies and guaranteeing the right to house for the families demanding it, since the evacuation policy leads to several human rights violations, included those to the right to education.*

10.4 SCHOOL DROP-OUT²⁶⁴

The school drop-out rate decreased from 2005 to 2009 both for females and males. Nevertheless, Italy is still one of the European countries with the highest drop-out rate, being at the third last place in Europe. With regard to youth aged 18-24 who got the junior high school certificate and are not engaged in any education-training path, Italy ranks below the European average²⁶⁵. The study has the merit of focusing on the peculiar situation of each Region and school typology, but data are not disaggregated according to gender, age or citizenship. Equally, there are no studies on the causes and reasons behind early drop-outs²⁶⁶. The Governative Report confirms the existence of the problem, without however identifying any strategy for action. From 2005 to date, scientific surveys have never been ordered by Government in order to develop specific strategies for school drop-out reduction. This appears to be even more concerning since drop-outs are linked to the inclusion into the informal and illegal economy or the criminal market or to early marriages.

The scarce interest for main issues linked to the reproductive health of minors in school age is also worrying. In fact there are no studies on the drop-out rate of young mothers who have to face early pregnancy.

WE RECOMMEND:

- *Promoting statistic data researches disaggregated by gender with regard to school drop-out and its causes.*

10.5 DISINCENTIVES TO MIXED EDUCATION

10.5.1 Separate schools

Co-education, according to the supporters of single-sex schools, would help the development and embedding of gender stereotypes. Some study would show that girls and boys learn faster and achieve better results if studying separately²⁶⁷. Enrolments in single-sex schools are increasing in Italy²⁶⁸. The Governative Report considers negatively these schools, identifying them as one of the causes that in the past fostered a female tendency towards humanistic studies and a male tendency to technical/scientific studies. Since this gap still persists, it is not sufficient to acknowledge the problem, but it is needed to elaborate a strategy to invert the tendency.

10.5.2 Discrimination in the participation to physical education

To this day in several schools women and men attend physical education classes separately. In teaching physical education is still persisting the custom according to which men play football and basketball, while women practice gym (rope, hoop, ball, ribbon) or volleyball, – reproducing gender stereotypes.

²⁶⁴ Referred to **para. 287** of the Governative Report.

²⁶⁵ Study "La dispersione scolastica. Indicatori di base. Anno scolastico 2006-2007" conducted by the Ministry of Education, University and Research website, www.miur.it, p. 2.

²⁶⁶ Here following some specific cases: a girl who wishes to become an engineer but belongs to a traditional family who wants to make just their son to study; an Italian 10 year old girl living in Milan who has been abused in school for some years and does not want to attend it any longer, but does not know who she can talk to; a 9 year old Egyptian girl (born and living in Alexandria of Egypt) who cannot attend school because she has to look after her brother; a Chinese girl living in Milan who is not allowed by her family to attend after-school activities and play because of her bad marks and because she is supposed to take care of the family and the house.

²⁶⁷ Studies discussed at the EASSE convention, on the 24th April 2009, www.easse.org/programa_roma_2009.php

²⁶⁸ http://www.societadomani.it/Docuword/Educazione_vincente.pdf

<http://www.universitadelledonne.it/cicerone.htm>

<http://www.documentazione.info/article.php?id=716&idsez=19>

WE RECOMMEND:

- *Promoting mixed schooling, discouraging educational models that could reproduce gender stereotypes.*
- *Envisaging teaching protocols for physical education that do not reproduce gender stereotypes in the choice of the activities that boys and girls are demanded to play separately.*

10.6 CURRICULA LACK REPRODUCTIVE HEALTH AND FAMILY PLANNING INFORMATION

WE RECOMMEND:

- *Including in the curricula reproductive and sexual education taught by medically qualified personnel or within the health centers, in order to make the young generations aware of the public facilities.*

10.7 A GENDER EDUCATIONAL SYSTEM RESPECTING DIVERSITY IS NEITHER PROMOTED NOR FUNDED²⁶⁹

In a stronger diversity tolerance perspective, it would be useful to promote gender trainings for teachers and the revision of text books more effectively and through a longer-term plan, so that the educational system itself will no longer reproduce stereotypes.

Bullying episodes, also among girls, increasing since 2005, are often linked to interiorized social models that are disrespectful and overbearing of other people and tend to strongly reproduce gender stereotypes. In the absence of a deep intervention at cultural level aimed at deconstructing stereotypes, the young generations will grow with the idea it is normal and inevitable that everyone can be discriminated because of his/her identity. In this regard too, there are neither no long-term strategies in place.

The reintroduction of the civics education in the curricula could represent a good chance to train young generations under a gender perspective, even though a structural review of the educational system is needed to achieve effective results.

Without a deep reflection on the role of the educational system in the development of the civic and social personality of the young citizens of tomorrow and in the promotion of a value system strongly anchored to the advancement of human rights, the single awareness campaigns and projects carried out by the Government definitely lose effectiveness and relevance. Indeed, without such a reflection behind them, they themselves risk to become a vehicle for stereotypes²⁷⁰.

The policies implemented by the Government to date threaten the existence of public school itself: public schools have been deprived of resources by the Government, consequently they are forced to demand parents to personally fund the purchasing of didactical materials and to offer fewer and fewer services of lower quality.

WE RECOMMEND:

- *Developing specific monitoring indicators on gender education within primary and secondary schools, facilitating the identification of:*
 - *the number of modules dedicated to women's human rights and to gender education within each subject curricula in the last five years;*
 - *the number of modules dedicated to women's human rights and to gender education within the schoolbooks in the last five years;*
 - *the percentage of training activities for teachers and experts in the field of women's rights and gender education.*
- *Promoting an educational system respectful of diversity, also through the endorsement of a national plan for the allocation of adequate resources aimed at:*

²⁶⁹ CERD Recommendations no. 22/2008 para. referred to **Question no. 11** by the CEDAW Committee.

²⁷⁰ See the observations in the **G.R.19 para. 19.3.1.3** on the advertising campaign "Respect the women, respect the world".

- *the revision of textbooks in a gender perspective (see art. 5),*
- *gender and human rights trainings within the teachers' curricula (see art. 5),*
- *the modules monitoring of the various courses of study, introducing in-depth gender analysis within their distinctive subjects.*
- *Ensuring that education methods, curricula and resources serve to enhance understanding of and respect for, inter alia, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds.*

ARTICLE 11 EMPLOYMENT

In recommendation n. 29/2005 the CEDAW Committee highlighted 5 areas of concern: underrepresentation of women in senior positions, the concentration of women in low-wage sectors and part-time work, the significant wage gap between men and women, the lack of implementation of the principle of equal pay for work of equal value and paternity leave as foreseen in Act no. 53/2000 though few men take advantage of this opportunity.

According to recommendation n. 30/2005 since 2005, through, inter alia, special temporary measures, the Government should have been aiming to take measures to: eliminate occupational segregation through training and education, extend social security benefits to part-time workers and increase women's access to full-time employment, guarantee equal pay for equal work, improve the availability of childcare facilities and raise awareness among men of their need to take equal responsibility for childcare.

11.1 SPECIAL MEASURES TO FACILITATE THE ELIMINATION OF THE GLASS CEILING: INADEQUATE AND OVERDUE (article 11 and article 4 CEDAW)

The reality of the underrepresentation of women in senior positions is evident. In order to evaluate the vertical segregation to which women are subjected, it does not suffice to compare gender distribution in career levels²⁷¹. Rather, different education levels must be taken into account.

Despite Italy being ranked second to last in Europe in terms of the percentage of women holding senior positions²⁷², Parliament is still discussing the Act no. S2482/2010 establishing so-called "pink" quotas for the Boards of Directors of listed and publicly owned companies. In its present form, the law is overdue as well as totally insufficient to break through the glass ceiling. Parliament has met with such strong opposition to this law that, in order to approve it, it has had to allow companies until 2015 to reach their "pink" quotas of 30%.

Concerning women's career advancement, article 9 Act no. 125/1991 foresees that companies with more than 100 employees must present a bi-annual report to the Equal Opportunities Adviser and to the company union representatives on the actions taken to promote the professional advancement of women. Pursuant to article 9, unless the companies turn their reports in by the established deadline, the regional employment inspectorate, upon warning issued by the union or the Equal Opportunities Advisor, shall request that the companies provide the report within sixty days. In the event of non-compliance, the company shall be sanctioned pursuant to article 11 of the Decree of the President of the Republic of March 19, 1955, no. 520. In the worst case scenario, the tax benefits possibly enjoyed by the company may be suspended for one year. So far, there has been no news of companies being sanctioned for infringement pursuant to article 9 Act no. 125/1991, nor do we know whether all the companies have actually presented their bi-annual reports. Without a doubt, the absence of any form of publicity in the reporting process of the companies along with the lack of certainty of an actual warning and subsequent sanction definitely renders this instrument, which would help women overcome the obstacles to their career advancement as well as salary pay gaps, inefficient.

WE RECOMMEND:

- ***A thorough quantitative and qualitative analysis of the occupational segregation to which women are subjected.***
- ***that draft Act no. S2482/2010 on the "quote rosa" of the Boards of Directors be modified pursuant to article 4 CEDAW, which foresees a mandatory quota of 30%, increasing to 50% in 2015.***

271 As the Government does in their answer to Question n. 21, pg. 29 of the Responses.

272 According to Manageritalia Survey (Federazione nazionale dirigenti, quadri e professionale del commercio, trasporti, turismo, servizi, terziario avanzato, 150 anni dall'Unità d'Italia. Alla rincorsa della parità tra fratelli e sorelle d'Italia, Rapporto Manageritalia – Women Manager Group, 17 March 2011, <http://donne.manageritalia.it/wp-content/uploads/2011/03/Rapporto-Manageritalia-150-anni-di-donne-dItalia-marzo-2011.pdf>) working women have a higher education level than men (more than 26% of graduates aged between 15 and 64 years), but 11.9% of managers in the private sector and 3,2% of managers in the Board of Directors are female, compared to an European average of respectively 33,3% and 11,4% (as cited in page 5 of the Survey). Generally the female occupation rate decreases of 6,8% after the first child birth and of 15,7% after the second child, while in other countries, like Netherlands, the rate holds steady (as cited in page 17 of the Survey).

As regards training, see reports regarding the continuing training offered by *Fondirigenti* to 91% of male managers and only 8.1% of female managers (Isfol report 2007). This information re-confirms the constraints faced by women in pursuing senior positions.

- *creating a public registry on the website of the Department of Equal Opportunities, making the composition of the Boards of Directors of the companies subject to the mandatory “quota rosa” accessible online.*
- *issuing significant economic sanctions for listed and publicly owned companies in the event of non-compliance with these parameters, effective immediately upon infringement. The proceeds shall be used to promote the training and requalification of working women.*
- *extending the application of article 9 of Act no. 125/1991 to companies with a minimum of 30 employees or collaborators working under any type of contract, considering 90% of the Italian economy is made up of small businesses.*
- *that economic sanctions be foreseen for companies that do not comply with article 9 of Act no. 125/2001, calculated on the same companies’ profits, and we suggest that the proceeds be destined for information campaigns for the promotion of entrepreneurial activity that is attentive to women’s rights.*
- *that the Regional Equal Opportunities Advisor be obligated to issue warnings to companies²⁷³ that do not produce a bi-annual report, and that the failure to issue such warnings by the Equal Opportunities Advisor to the Employment Inspectorate be sanctioned.*
- *creating a public register that makes companies’ periodic reports visible online on the website of the Department of Equal Opportunities to encourage good practices (the companies’ reports are currently confidential).*

11.2 LACK OF SPECIAL MEASURES TO ENCOURAGE WOMEN’S EMPLOYMENT (articles 11, 2 and 4 CEDAW)

According to the December 2010 ISTAT report²⁷⁴, the percentage of women in Italy who are unemployed or not searching for employment is 48.9%, i.e. 1 out of 2 women is not seeking employment. Faced with women’s clear discouragement, besides promises and recent, largely programmatic plans²⁷⁵, the Government has not initiated any concrete action on a national scale.

To date, no plans have been made to introduce substantial tax reductions for employed women or incentives for companies who hire women.

The regulations regarding part-time work have also been made stricter, to women’s disadvantage²⁷⁶. Particularly in the public sector, Government reform (the so called *Riforma Brunetta* Act no. 15/2009) revoked the obligation to grant part-time options to those who apply for them for family reasons. Female employees still have the right to apply for part-time work, however, its concession is discretionary and dependent upon the demands of the corporation. This provision makes the working mother/wife more vulnerable and is a **violation of CEDAW articles 11 and 13.**

WE RECOMMEND:

- *Providing special temporary partial income tax reductions for employed women and incentives for companies that hire women, pursuant to CEDAW article 4.*
- *Reintroducing the mandatory granting of part-time work in the public sector when requested by women for family reasons.*
- *Defining part-time work by assessing competence, acknowledging work based on results and merit and not compromising career ambitions.*
- *Discouraging part-time work based exclusively on an hour threshold, which strengthens occupational segregation both horizontally and vertically.*
- *Providing for tax reductions for part-time employment (or rather for the hours relative to the reduction in hours) to lessen the impact on net salary.*

²⁷³ Now it is not compulsory.

²⁷⁴ ISTAT 2010 Annual Report http://www.istat.it/dati/catalogo/20110523_00/rapporto_2011.pdf

²⁷⁵ See **para. 11.12** on Piano Italia – 2020.

²⁷⁶ To all this, it must be added that (see **para. 13.13** of the Shadow Report) even the fund to support women enterprises in all productive industries (Act no. 215/1992) has not been refinanced and there are no funds available. Furthermore, the ruling which prevented the “white resignations”, which mainly affects young working women who decide to have a child, was abolished.

11.3 LACK OF MEASURES TO DECREASE PRECARIOUS FEMALE EMPLOYMENT AND FACILITATE FULL-TIME EMPLOYMENT

The Italian Industrialists Association²⁷⁷ questions the legitimacy of National Agreements. Their elimination could exacerbate the problem in terms of women's access to and presence in the job market, especially in terms of defending working conditions in small companies as well as in weaker job sectors.

If we add together fixed term employment, collaborations and temporary contracts, total non-permanent employment reaches 15.5% for women and 9.4% for men. According to the data, the likelihood of women having legally unstable employment is much higher than it is for men if gender differences by age, level of education and family status are taken into consideration²⁷⁸. The frequency of part-time work in Italy is lower than in most other European countries, particularly for adult women. It is true part-time work facilitates women working, as confirmed by the VI Periodic Report of the Italian Government paragraphs 346 and 347. However, in our country part-time employment hardly ever turns into full-time employment, and is used especially in job sectors²⁷⁹ where part-time employment, which is connected to the duties carried out, is oriented more toward satisfying the company's needs than those of the female employees, who often agree to very marginal and isolating working situations (part-time work is more frequent among less educated women – in 2006 more than 30% compared to 20% among more educated women)²⁸⁰. After the Biagi Act (no. 30/2003) was passed, no further significant government action has been taken in this regard (see **paragraph 11.2 of the Shadow Report**).

However, this issue should be considered in light of the process of administrative decentralisation underway in Italy, naturally leading to the progressive increase in and strengthening of the competences and responsibilities of the Regions. According to the 2008 ISFOL survey, regional employment services are more efficient and effective where the gap between job offer and request is greater, and are unable to adequately influence the problems of the market²⁸¹. Therefore, without adequate, large-scale national policies, regional disparity is enormous. The agreement reached in March 2011 between the social partners and the Ministry of Labour promoting the transformation of work into part-time work (for at least the first 3 years of a child's life, but also for parents or other second-degree relatives in need of care), including the right to return to full-time, has been favourably received.

WE RECOMMEND:

- *Extending the activity of Employment Inspectorate to illicit work and the improper use of "atypical" contracts.*
- *Making it possible to revert back to full-time after working part-time upon female employees' request once their need for part-time work have been met, and to increase the range of part-time work options according to the needs of female employees.*

11.4 NO SOCIAL PROTECTION FOR INTERMITTENT FEMALE EMPLOYEES

Precarious female workers in Italy are those working on fixed-term contracts, both as employees and as self-employed workers, with low income levels and high levels of employment instability. There is no welfare protection for these female workers in terms of the discontinuity characterising their professional careers. The so-called "*Una Tantum*" (One time payment) employment allowance, first introduced in the 2009 government budget, only applies to men and women working under coordinated and continuous collaboration project contracts and, as per the criteria set, only a part of the workers employed under such contracts may apply for it. Furthermore, the amount, 30% of one's 2009 income (which mustn't be lower than 5,000 Euro or higher than 20,000 Euro) is so low that those who have lost their jobs cannot possibly live through this period of unemployment in dignity.

WE RECOMMEND:

- *Eliminating any existing inequality in the treatment of female employees and self employed*

277 A view largely agreed upon by the current Government.

278 Reyneri E., *Il lavoro delle donne*, Rome 2008.

279 Such as retail, cleaning services and call centres.

280 From this point of view, part-time work has a negative impact on women's income and pensions, and contributes to the creation of a traditional family model in which women play the role of caregiver and men that of breadwinner.

281 ISFOL, *Monitoring employment services. 2008*, ISFOL, Rome.

women as far as welfare benefits are concerned.

- *Eliminating any existing inequality in the treatment of women working under coordinated and continuous collaboration project contracts and other precarious female workers.*
- *Introducing more consistent economic welfare benefits and training programmes for precarious female workers, conciliation options.*
- *Increasing opportunities to apply for part-time work according to the needs of working women.*

11.5 INSUFFICIENT AND INEFFECTIVE MEASURES TO REINTRODUCE WOMEN INTO THE JOB MARKET

The Government²⁸² introduces the 2007/2013 National Programme, financed by European structural funds, as an important tool for conciliation policies.

In fact, according to a timely and significant contribution made by ISFOL²⁸³ (both for the National Programme and the regional administrations and their subsequent choice of top priorities): “The current Programme does not provide for equal opportunity on two levels (mainstreaming initiatives and dedicated department). In fact, none of the regional planning documentation differs from the strategic national framework, which has identified only one specific objective regarding gender equality, *Specific Objective f*, Section II – Employability. Only 8 Regions, all under the “Competitiveness” objective, have devised training initiatives aimed at women. Only 1 Region has devised training initiatives for women in Section I “Adaptability” and 2 Regions in Section IV “Human resources”. These last 3 Regions are also under the “Competitiveness” objective. This results in different treatment from Region to Region”.

“Concerning the reintroduction of women into the job market, the Government offers a general list of objectives that are agreeable but not in line with the real economic situation²⁸⁴. Significant cuts have been made in the budgets of the local authorities as well as in Education, resulting in a rather significant drop in female employment, reducing the number of classes, full-time employment and support. The effects of these provisions impact families and particularly women, and diverge from the objectives the Government outlines in terms of welfare services”. The evaluation of bonus incentives (the so-called “conciliation vouchers”), whose use has been strongly promoted by the Government in recent years²⁸⁵, has not been totally positive because they tend to shift the responsibility for and practicability of these initiatives onto families (particularly on women). The Italian situation varies greatly and the effectiveness of bonus incentives depends largely on the way in which they are implemented on a regional level (the process of federalism tends to reinforce these variations).

The testing of the “Bollino Rosa – S.O.N.O. Stesse Opportunità Nuove Opportunità” (ndt. Same Opportunities New Opportunities)²⁸⁶ to verify the implementation of equal opportunity in companies²⁸⁷, is a positive model of long-term strategic action. This experiment was discontinued and concluded after the first round of testing.

WE RECOMMEND:

- *Guaranteeing a continuous, significant tax allowance on a national level for companies that hire women and provide training along with internal company requalification to promote post-maternity integration and career possibilities for women.*
- *Investing in public child and elderly care facilities, instead of focusing on “conciliation vouchers” and the privatisation of care services and social assistance (early childhood and non-autonomous persons).*
- *Refinancing and turning the “Bollino Rosa” experiment into a permanent strategy for the companies.*

282 In the VI Periodic Report, [para. 305, 306 and 307](#).

283 In “*La programmazione in chiave di genere del FSE 2007-2013*”.

284 See [para. 308](#) of the VI Periodic Report.

285 See [para. 308](#) of the VI Periodic Report and [para. 127](#) in Responses to [question 22](#) of the CEDAW Committee.

286 ISFOL, *Strumenti per certificare e promuovere la parità di genere in azienda*, Bollino Rosa-SONO, Rome, April 2008.

287 which the Government refers to [para. 400](#) of the VI Periodic Report.

11.6 LACK OF ADEQUATE MEASURES GUARANTEEING EQUAL PAY FOR EQUAL WORK²⁸⁸

A substantial pay gap still exists between men and women²⁸⁹: 23.3% of average annual income (net salaries). “In Italy the gender pay gap consists in a 20% “explainable” portion and an 80% “unexplainable” portion (or rather a potentially discriminatory portion). The unexplainable portion of the gap has been growing constantly over time and has almost reached 90% in recent years”. Pay gaps remarkably impact women’s pensions, which are considerably lower than men’s on average²⁹⁰.

Despite this, in the *“Libro Bianco sul futuro del modello sociale”* (White Book on the Future of the Social Model) presented by the Government in 2009, no concrete initiatives to overcome the pay gap between women and men were outlined²⁹¹. The pay gap problem has a huge impact on women’s choices within the family with respect to who assumes childcare responsibilities²⁹².

Apart from some laws and directives regarding substantive gender equality, as for the complex pay gap problem, no specific initiatives have been undertaken by the current or former legislations. Also in *“Piano Italia 2020 - Azioni per l’inclusione delle donne nel mercato del lavoro”* (Initiatives to include women in the job market) (2009), after a generic description of the problem, no concrete initiatives are indicated.

WE RECOMMEND:

- **Promoting greater awareness of salary inequality – among both companies and institutional bodies – by requesting more accurate and complete quantitative data (particularly on the number of male and female part-time workers by level and a table with incomes listed by gender and level) in the bi-annual reports companies and institutional bodies must send to the union and company representatives as well as to the Regional Equal Opportunities Advisor pursuant to article 9 of Act no. 125/91²⁹³ (see Recommendations in paragraph 11.1).**
- **Raising awareness of the issue among the public and private corporations to promote changes in work organisation, career paths and the transparency of evaluation criteria, connecting the additional variable salary component with goal achievement rather than the evaluation of the number of working hours.**
- **Monitoring the decentralisation process of collective salary negotiations as well as individual negotiation in the private sector so it does not negatively impact salary differentials.**

11.7 WORK/LIFE BALANCE²⁹⁴

Article 9 of Act no. 53/2000²⁹⁵ regarding experimental programmes aimed at reconciling work and family was not financed in the last two years (the last competition announcement was published and financed in February 2009). Only in 2011 a new announcement was published with a 15 million Euro budget, the equivalent of the amount allocated in 2010, unspent due to the lack of implementing regulation. The amendments to Act no. 53/2000 regarding the reconciliation of family and work time²⁹⁶ are generally positive²⁹⁷, and we are hoping for continuous and permanent implementation.

288 Paragraph referred to [Question no. 25 of the CEDAW Committee](#)

289 Source: 2008 ISFOL study *“Esiste un differenziale retributivo di genere in Italia?; “Differenziali retributivi di genere e organizzazione del lavoro. Una indagine qualitativa”* presented during the Congress “Gender Pay Gap” – CNEL July 15, 2008).

290 For instance, according to data collected by the INPDAP (*Istituto Nazionale di Previdenza per i Dipendenti della Pubblica Amministrazione*): until December 31, 2008, the average monthly pension, not including the 13th month payment, was 1,285.38 Euro for women and 1,860.69 Euro for men.

291 The text only mentions it among other existing problems in women’s employment. Though, it then refers to the right, approved by the EU, to equal pay for both men and women in the following way: “The same solemn principle of equal pay for both men and women referred to in the EU Constitution Treaty is illustrated by the fear of some forms of “social dumping” connected to the lower cost of female labour”. In the para. “Equal pay at work” there is no mention of the need to adjust women’s salaries to men’s.

292 In fact, women generally assume this responsibility because in Italy men earn more and families cannot manage a reduction in income due to missed working hours or days. A “men’s issue” undeniably exists as well; women have already “invaded” traditionally male sectors, taking responsibility for such changes and carrying the burden of the difficulties that arise as a consequence, while the male universe appears to be much slower and resistant to accept a logic of reciprocity as well as of substantial equality.

293 This allows for a more detailed analysis of the components of these salaries as well as an evaluation of the differential, i.e. how much of it is due to fixed components and how much to variable ones.

294 [Para. 327-335](#) of the VI Periodic Report and in response to [Question no. 22, para. 142](#) of the CEDAW Committee.

295 Today article 38 of Law 69/2009 “Measures for family and work balance”.

296 Listed in the Governative Report [para. 330](#).

297 It has been acknowledged that only in May 2011, during the delivery of the Shadow Report, two years after the law was passed, the regulation defining the criteria and methods for granting contributions entered into force pursuant to article 9 law 8, March 2000 n. 53, and in May the new financing announcement was published.

With respect to the changes in parental leave²⁹⁸, it should be highlighted that, one year after its approval, only 14.6% of men have taken advantage of it²⁹⁹. Cultural reasons aside, one reason why men do not take leave is because their compensation is only 30% of their total salary. Therefore, this reduction in income for men, who normally enjoy higher salaries, would be too great.

In fact, childcare, especially from age 0 to 3, is essentially the responsibility of women (or grandparents)³⁰⁰. In Italy work and maternity are more difficult to reconcile than in any other European country, including Spain and Greece: in Italy more than a quarter of employed women leave their jobs after maternity³⁰¹. Only 18% of paid leave for family reasons is requested by men. Various surveys show how, when fathers request parental leave, they are strongly stigmatised, paradoxically even more than women, at work³⁰². No specific communication campaigns have been planned to help eliminate the cultural stereotypes preventing men from requesting parental leave. In addition to the lack of awareness-raising campaigns, the other initiatives taken have not provided adequate short-term solutions. “Piano Italia 2020” foresees an intergenerational pact that essentially appears to be an agreement among different generations of mothers³⁰³. Linda Laura Sabbadini, General Director of the ISTAT, in the September 29, 2006 study, clearly shows that the informal family network, on which the Italian welfare system is largely based, is facing a deep structural crisis. In light of this, with the drop in fertility, the rise in female employment as well as in retirement age and average lifespan, the situation will only worsen as fewer women/grandmothers will be available to take care of grandchildren and the care-giving responsibilities of middle-class women will become more and more unsustainable. Concerning this, a recent agreement between the Government and the social partners on the subject of conciliation has been well-received, though at present, only its objectives have been accorded³⁰⁴.

WE RECOMMEND:

- ***Continuing the constant and permanent financing of article 9 of Act no. 53/2000 (currently article 38 Act no. 69/2009) and publishing periodic announcements that are better and more widely publicised.***
- ***Realizing and making public a complete plan of conciliation initiatives, to be financed by the fund derived from the levelling of women’s retirement age in the P.A. (almost 4 billion by 2010, then 242 million Euro per year in full swing by 2021) as foreseen in article 22-ter, comma 3 D.L. 78/2010.***
- ***Establishing legislation making parental leave mandatory for fathers, from one to three months, during the first three years the child’s life.***
- ***Substantially increasing compensation during parental leave beyond 30% of total salary (Gruppo Maternità & Paternità of Milan proposes 60%).***
- ***Introducing the possibility to use parental leave in the form of part-time work.***
- ***Introducing mandatory paternity leave upon the birth of the child for 8 consecutive working days within the first three months of the child’s life for employees and self-employed workers with 100% compensation (see the Mosca/Saltamartini draft law that foresees 4 consecutive days of leave with full pay).***
- ***Launching awareness campaigns to eliminate stereotypes regarding the role of men and women in family life and society, the main obstacles to men requesting parental leave.***
- ***Promoting gender negotiation through media campaigns aimed at helping the general public***

298 See [para. 327-335](#) of the Governative Report and the Responses to [Question no. 23, para. 152 and 153](#) of the CEDAW Committee.

299 D. Del Boca, S. Pasqua, [www.lavoce.info](#), 2010.

300 This helps us understand why the birth rate in Italy in 2009 showed a further, though slight, drop, from 1.42% in 2008 to 1.41% (despite the fact that, according to ISTAT, immigrant women largely contributed to the maintenance of the birth rate).

301 While “in all European countries new mother’s employment tendencies take on a U shape: a sharp decrease in the first 3 years of the child’s life followed by a gradual return to work”. Only in Italy does “the rate of female employment constantly decrease even as children grow older”. Manageritalia Survey cited in page 5.

302 See the study: “Maternità, Paternità e lavoro” conducted by the Province of Parma - LeNove and Formafuturo, 2008.

303 In fact, grandmothers are asked to take care of grandchildren so mothers can work outside the home.

304 See [para. 11.12](#) of the Shadow Report.

understand that better quality in work and, therefore, higher productivity can also be achieved by creating a better working environment (organisational wellbeing)³⁰⁵.

11.8 LACK OF SPECIAL HEALTHCARE AND SAFETY MEASURES FOR WORKING WOMEN

There is a strong link between precarious work and health and safety hazards for male and female workers. INAIL showed a 32% increase³⁰⁶ in work accidents among precarious female workers.

11.8.1 Sexual Harassment

The measures introduced by the Code of Equal Opportunities regarding sexual harassment are ineffective in that, for the most part, women are unacquainted with them or find them impracticable due to the stigmatisation, among other things, that comes with the reporting of incidents culturally perceived as acceptable and even desirable by women³⁰⁷. The only media campaign promoted by the Ministry of Labour and Social Affairs on Safety in the Work Place is not gender specific and does not help dismantle this stereotype, rather it is neutral and what's more makes male and female workers responsible for their own safety in the workplace, which really should be the responsibility of the employer and one of workers' rights.

11.8.2 Discrimination based upon sexual orientation

The labour market is the only area in which sexual orientation is explicitly recognised as a ground for discrimination by Italian legislation. The Employment Directive 2000/78/EC has been implemented in Italy by Legislative Decree no.216 of May 7, 2003. However, according to the European Commission, some parts of the Directive have not been properly implemented: 1) cases where differences of legal treatment cannot be qualified as discrimination because they are justified as genuine and determining occupational requirements, 2) the role of associations in engaging in judicial or administrative procedures against discrimination, 3) burden of proof, and 4) victimization. Disclosure is usually met with acceptance, indifference or curiosity. In studies, fewer than 10 per cent reported reactions of open resentment.

More frequent is the experience of witnessing discrimination or harassment against other LGBT persons in the workplace. There have been cases of LGBT persons being fired or forced to leave jobs due to of homophobic reactions³⁰⁸.

11.8.3 Inadequate facilities for disabled women in the workplace

Italian society is not yet ready to integrate disabled women in the workplace, most of which are structurally inadequate. In reality, this inadequacy may be interpreted as discrimination³⁰⁹.

11.8.4 Workplace safety and the absence of the gender factor. Resultant discrimination against women following an accident

During the post-accident period, the gender factor is totally ignored in terms of both the evaluation of the accident³¹⁰ and its inevitable impact on women's family life, compromising her ability to look after her children as well as perform domestic tasks. These substantial damages have never been taken into consideration by accident insurers.

WE RECOMMEND:

- ***Promoting a national awareness campaign specifically dedicated to sexual harassment and sexual blackmailing in the workplace as well as women's ability to report such incidents.***
- ***Financing organizations that support women who want to report incidents of sexual harassment and discrimination in the workplace as well as the female Equal Opportunities Advisors so that they may appear in court in these proceedings (legally they have the right, but lack the funds to sustain the legal fees).***

305 See the useful project carried out by the Equal Opportunities Advisor for the Piedmont Region analyzing the local situation and defining guidelines for gender negotiation. <http://www.kila.it/archivio-consigliera-di-parit-regionale-/promuovere-il-benessere-organizzativo-e-la-conciliazione-in-azienda.html>.

306 Compared to a general 18% increase in work accidents for precarious workers from 2004 to 2008 (Rivista Lavoro e diritto, 3/2010, "Genere, lavori precari e occupazione instabile", il Mulino).

307 Actually, no victims of sexual harassment choose to report the episode to the police. The most frequent reason reported is the "lack of seriousness of the episode" (28.4%), followed by having solved the problem alone or with the family help (23.9%), lack of trust in the police or their inability to act (20.4%) and the fear of being judged or mistreated when reporting the episode (15.1%). ISTAT Report – "Sexual harassment and sexual blackmail at work" – September 2010.

308 See point C5, para. 28/31, of the report "The social situation of homophobia and discrimination on the grounds of sexual orientation in Italy" by COWI in the Periodic Universal Review of Italy, March 2009.

309 <http://www.uildm.it/docs/gdu/BOweb.pdf>, "Donne, disabilità e lavoro", written by Simona Lancioni, 26.11.2007.

310 Insurance does not normally take into consideration the impact of an accident in the workplace or an occupational disease on women compared to men. For example, typically female tumours such as breast cancer, require a complete mastectomy. Yet, it is worth only 10 out of 100 points on the disability scale, for both men and women, due to its generic definition as malign neoplastic tumors that benefit from radical, local medical and/or surgical treatment".

- ANMIL³¹¹ recommends creating a permanent forum where the issues connected to the prevention of accidents in the workplace for women and the problems arising in the post-accident period could be discussed.
- ANMIL recommends an observatory chaired by the National Equal Opportunities Advisor along with representatives from the public authorities, social partners and representatives from the national associations of invalid and disabled workers, or rather, all the parties involved in the improved defence of women's employment.
- The legal acknowledgement of the gender factor for compensation protection, such as special temporary income integration for accident victims who are mothers of children under 3 years of age, in response to the special needs arising at a time when childcare is almost exclusively the responsibility of the mother (UILDM)³¹².
- Setting up appropriate work and social reintegration strategies to enable injured women to return to work as soon as possible, improving their skills and training and removing all obstacles to the full recovery of their working capabilities (UILDM).

11.9 PROMOTE THE EQUALITY OF ALL WOMEN WITH RESPECT TO EMPLOYMENT ACCESS AND WORKING CONDITIONS (Articles 2,3,4 & 11 CEDAW)

11.9.1 More difficult for Roma women to access the job market

There is no data regarding the job access of Roma and Sinti women. The testimony of some female workers demonstrates a general hesitancy to entrust these women with responsibility after declaring their ethnicity during the interview. Very low levels of education and frequent pregnancies also compromise their access to employment. To gain access to the job market, they often abandon their traditional dress. In order to overcome people's diffidence or in jobs that require a uniform, Roma women find themselves faced with the choice between emancipation and tradition.

11.9.2 Factors contributing to mothers not re-entering the job market

In Italy, 59 out of 100 women work before the birth of their first child, however, only 43 continue to work afterwards. The main reasons why they do not return to work are:

11.9.2.1 Lack of special measures to abolish the practice of "dimissioni in bianco" (literally "White resignations", i.e. when an employer requests that an employee sign a letter of resignation upon hiring to be kept on file).

In Italy, "Dimissioni in bianco" is still a deeply rooted practice, due, among other things, to the Government repeal of Law 188/2007. The Government claims this can be easily dealt with by the Employment Inspectorate and the Equal Opportunities Advisors, though there are not sufficient funds to do this.

11.9.2.2 It is less expensive to stop working than pay for day-care or a babysitter³¹³

An evaluation of why many new mothers stop working to stay at home as long as possible after the birth of their children must be seen in light of the fact that Italian women's salaries for part-time work is lower than the cost of daycare or a babysitter for the time needed for them to work. Very often a lack of services along with the low wages earned by women in Italy are why many new mothers work at a loss (to the detriment of their nuclear families as well). Therefore, it ends up being more affordable from a financial point of view for them to stay at home.

11.9.2.3 Lower maternity allowances for atypical employment compared to others types of employment contracts (article 11 and 13 CEDAW)

Maternity pay varies widely depending on the employment contract.

The least protected are those working under parasubordinate work contract, enrolled in the National Social Security Institute (INPS) with a special fund for the self-employed. An internal communication of the INPS³¹⁴ states that parasubordinate workers are not automatically covered by the INPS in the event of sickness and/or maternity. This means that, if the employer's contributions are irregular or late, the INPS will not provide maternity pay. This is not the case for subordinate female employees. Therefore, parasubordinate female workers are penalised on two fronts: first, by their employer and, second, by the social security system that, instead of seeking redress with the employer (as in the case of subordinate female employees), female employees are penalised because of unpaid or irregularly paid contributions.

11.9.3 The National Equal Opportunities Advisor is unable to defend the rights of more than five thousand ex-Alitalia employees.

311 Associazione Nazionale Mutilati e Invalidi sul Lavoro.

312 Unione Italiana Lotta alla Distrofia Muscolare.

313 See [para 13.1.2.3](#).

314 Communication n° 95 of September 6, 2006.

After being sold to the CAI, Alitalia laid off 10,000 employees. At least half of them were women. The hiring process within the new company has been discriminatory towards women: women with children, those covered by Act no. 104, those belonging to legally protected categories of workers, have not been selected for the hiring process. The agreement of the Cabinet of Ministers³¹⁵, signed by the Union Confederations, made hiring subject to criteria subsequently determined by the CAI, which, in fact, discriminates against women in that it requires employees to work night shifts, even mother with children under the age of 3. Furthermore, many women with children were offered severance pay to leave their jobs³¹⁶. The dossier attached to the Shadow Report should be read and the Government should be asked for clarification. The women who were discriminated against would have been better and more quickly protected if the National Equal Opportunities Advisor had acted autonomously and independently³¹⁷.

WE RECOMMEND:

- **Collecting gender disaggregated data on the job access of Roma and Sinti women.**
- **Foreseeing special measures to facilitate job access for Roma and Sinti women.**
- **Reintroducing the regulation established by the former Prodi Government that prevented the practice of "Dimissioni in bianco", particularly nasty considering its impact on pregnant women.**
- **Introducing equal maternity pay for all mothers, based on the universality of maternity, regardless of their job position (Gruppo Maternità & Paternità, Milan).**
- **Putting an end to the non-automatic payment of contributions for women working under parasubordinate contract.**

11.10 LACK OF SPECIAL MEASURES FOR THE DOUBLE DISCRIMINATION OF DISABLED WOMEN (article 4, 11, 13 CEDAW)³¹⁸

11.10.1 Job access for disabled women: no financing and no special initiatives to remove obstacles. After more than ten years, Act no. 68/99 has not been implemented.

The outcome of the integration of disabled workers in companies is unsatisfactory, both in terms of quantity as well as quality and continuity. This situation is critical for cultural, organisational and economic reasons³¹⁹. From the companies' point of view, there is still a strong belief that disability is synonymous with lack of productivity. This prejudice often leads to the failure of proper integration of disabled workers into the workplace. Another factor is the incorrect evaluation the worker's real skills with respect to his/her assigned tasks. It is precisely because of their fear of failing to integrate that many disabled people, even though they are on the list provided by Act no. 68/99, are not actually willing to work³²⁰. Even though people are aware of this situation, Act no. 68/99 regulating the targeted placement of disabled persons has only been partially implemented or not implemented at all ten years after its approval. "The law's intent is dead mail: job centres have not been able to create structures suitable to the needs of targeted placement and consequently only a very small percentage of disabled persons have found work through these centres. The funds allocated for professional requalification, in particular for victims of workplace accidents, have never actually been distributed to the Regions, and the INAIL (Italian Workers' Compensation Authority) has spent more or less 20% of the enormous funds at its disposal, funds frozen by the Ministry of Finance³²¹.

11.10.2 Lack of special measures to facilitate job access for disabled women following a workplace accident.

6 out of 10 women who have been victims of workplace accidents and are over 50 years old have stopped working. This figure is slightly lower, though no less significant, for women under 50, around 40%. This is the result of double discrimination: against the disabled, as shown in the latest Report to Parliament on the implementation of Act no. 68/99, whereby out of more than 700,000 names appearing on the job placement list, only 20,000 found a jobs; and against women, every month ISTAT statistics actually indicate

315 http://www.lastampa.it/_web/download/alitalia.pdf

316 Sources: <http://www.sdlintercategoriale.it/content/view/2985/234/lang,it/>,
discriminate-le-madri.html

<http://www.kila.it/archivio-notizie-in-primopiano/alitalia->

317 See para. 3.2.1.1. of the Shadow Report.

318 Paragraph referred to **Question no. 33 of the CEDAW Committee**.

319 FAPI report 2009 "Integrazione e Pari Opportunità" (edited by Alessandra Bozzoli and Mauro Rossigni).

320 This is also due to disabled persons' fear of losing their care services after starting to work. Furthermore, often the economic advantages derived from working are lower than the costs, and compared to the discomfort the person faces in order to keep his/her job, it is not sufficiently appealing even with an income improvement.

321 Statement by the Chairman of the ANMIL, at the congress "Innanzitutto persone" Rome, April 28, 2011.

that in Italy half of the female population is unemployed³²². Despite the gravity of these figures, no measures have been taken to help women who have become disabled re-enter the job market.

11.10.3 Disability Observatory provided by Act no. 18/2009. Would it work?

Act no. 18/2009 ratified the UN Convention on the rights of disabled people, providing for the creation of a disability observatory. The Official Gazette published the Ministry of Labour and Social Affairs Decree 167/2010, approving the working regulations of the Observatory on the conditions of disabled people. One year after the ratification of the Law, after strong critics from the civil society organizations, only at the end of 2010 the regulations were approved, allowing the Observatory to begin working with a budget of 500,000 Euro for each year of activity until 2014. To date, the Observatory has only met once³²³, it has no website and has not prepared a two-year plan for the promotion of the rights and integration of the disabled. The ANFFAS³²⁴ reports that “the situation has not improved at all, but rather is getting worse and worse. Disabled people and their families have been abandoned by the State and the Institutions. Their situation is critical and their ability to claim their rights is at risk while they are being offered services that continue to worsen as well as become more and more expensive”. The Observatory does not reflect a gender component, nor do their objectives take into consideration the gender factor in the collection of data and the promotion of policies. The inactivity of the Observatory strongly impacts the income as well as the ability to reconcile work and family life of disabled persons, as highlighted by the requests made of the ANFFAS reported in the “Recommendations”.

11.10.4 The Government has made provisions that directly and indirectly discriminate against disabled women and their job access

Despite proposed laws and the statements of principle and intent in the Governative Report, the funds allocated to promote disabled women’s job access as well as concrete long-term intervention programmes are insufficient. On the contrary, some Government provisions appear to go against what is indicated in the report.

11.10.4.1. Funds cut for the education of disabled children in schools (articles 2, 4, 5, 11 CEDAW)

In the last budget (July 2010) substantial cuts were made in the funds allocated to support disabled children in schools. It is hard to imagine a disabled person being successfully educated and entering into the working world, if from elementary school on the support necessary to sustain him/ her has been taken away. On top of this, the number of civil service volunteers was progressively reduced by more than 50% from 2008 to 2010, from 27,011 to 13,925. Above all, they have been shuffled around to fill the holes in public administration, instead of being assigned to private social organisations³²⁵.

11.10.4.2 Insufficient resources allocated for the Disabled Persons’ Employment Fund. Methods used to distribute funds discourage the hiring of disabled workers

The resources available to the Disabled Persons’ Employment Fund are totally insufficient to support a functioning system of incentives. Moreover, of extreme significance is the delayed payment of the benefits foreseen by the provisions, due, among other things, to the complicated methods used in the sharing of these resources and the choice of fiscalisation as a financing instrument. Incentives are not paid out upon the hiring of the disabled person, but rather subsequently and depending on the availability of the funds to the Province.

WE RECOMMEND:

- ***Allocating adequate funds for the professional requalification particularly of disabled women to facilitate their reintroduction into the job market.***
- ***Reinstating funds for the disabled and their families, starting from the Fondo Nazionale sulle Politiche Sociali and the Fondo Nazionale sulla Non Autosufficienza (ANFFAS).***
- ***Reviewing the minimum health and social health benefits established in 2001³²⁶ (DPCM November 29, 2001, ndr.) and defining the minimum levels of social services (ANFFAS).***
- ***Preparing a multi-year outline of a plan for policies regarding the disabled (ANFFAS).***
- ***Adjusting the distribution criteria to the cost of services on a national scale, in respect of the***

322 Fonte: <http://www.uildm.org/wp-content/uploads/2011/03/ANMIL.pdf> “Invalidità per infortunio sul lavoro: la condizione femminile” interview with Franco Bettoni, ANMIL President, edited by Coordinamento Gruppo donne UILDM, 08.03.2011.

323 http://www.controlacrisi.org/joomla/index.php?option=com_content&view=article&id=14624&catid=40&Itemid=68

324 Associazione Nazionale Famiglie di Persone con Disabilità Intellettiva e/o Relazionale, “E l’ANFFAS dichiara lo stato di crisi nazionale per i disabili e le loro famiglie”, article of 19/05/2011 published on www.controlacrisi.org.

325 Source: Interview with the Manager of Caritas Italiana in *Il Venerdì di Repubblica*, December 24, 2010.

326 DPCM dated 29 November 2001.

principle of highlighting the disabled individual's financial condition and their symbolic and sustainable economic contribution (ANFFAS).

- *Reviewing the assessment process for civil invalidity, handicap and disability, as provided by article 24³²⁷ of Act no. 328/00 and reviewing the extraordinary medical examination plan, by consulting with the associations in order to identify strategies to improve the system (ANFFAS).*
- *Reinstating payment for services with no delays due to service management (ANFFAS).*
- *Actually getting the National Observatory on the Condition of Disabled Persons going and introducing the gender factor in its composition and activities.*

11.11 THE RIGHT TO WORK IS NOT GUARANTEED FOR WOMEN DEPRIVED OF THEIR PERSONAL FREEDOM

Article 27 of the Constitution states that all punishments are intended to rehabilitate the convicted. In accordance with articles 1 and 4 of the Constitution and according to article 20-24 Act no. 354/1975, the main instrument of rehabilitation should be work (remunerated), which is the right of female inmates and an obligation for the penitentiary administration. Today, out of 68,000 inmates little more than 14,000 work, only 861 of whom are women, and only 172 of these women are employees of private companies or cooperatives, the rest works for the penitentiary administration. The reason women inmates are deprived of their right to work is the lack of funds. Each year, more funds are cut³²⁸. Supporting the production and services rendered by female inmates is an obligation not only with respect to inmates and their rights, but also to society: when a person works - in prison and after serving her/his sentence – repeat offence drops from 70% to less than 10%.

WE RECOMMEND:

- *Making it actually possible for all female inmates to work.*

11.12 “PIANO ITALIA 2020”. ACTION PLAN TO INCLUDE WOMEN IN THE JOB MARKET: NO GLOBAL STRATEGY TO FACE GENDER DISCRIMINATION IN THE JOB MARKET³²⁹

11.12.1. Piano Italia is not a plan but rather a programme of unfeasible objectives

Piano Italia 2020 is a demagogical manifesto. The strategic action plan for conciliation and equal opportunities regarding job access, proposed in Piano Italia 2020, puts forth five lines of action that are purely programmatic. Their implementation methods are only very generally outlined. Piano Italia does not detail the time, methods and resources needed to carry out its initiatives.

11.12.2 What resources are necessary to implement the Piano Italia?

Clearly, the Government has no real intention to implement a plan that is feasible by 2020. In Piano Italia there are courses of action to be initiated but their funds are being progressively reduced: the Fund for Social Policies and the Fund for Families, which should provide the necessary resources according to Article 9 of the Law, have been cut substantially³³⁰.

11.12.3 The Plan through policies centred on the role of the woman in the family actually reinforces traditional stereotypes (article 11&13 CEDAW)

The political and cultural framework of the document does not improve on the traditional framework of Italian welfare, which does not support gender equality. The fundamental approach of the Government in “Piano Italia 2020” and in the subsequent agreement does not appear to follow up on **Recommendations 29 and 30 of the CDAW Committee.**

As for the complex issues such as those found in Italian society, it would be advisable to adopt some of the extraordinary temporary measures in accordance with Article 4, paragraph 1 of the Convention.

Piano Italia is the basis for the implementation of grand actions that confirm the need to change the life conditions of working women in Italy, but they do not supply the tools and strategies to actually make these changes possible. One example is the agreement reached between the social partners and the Ministry of

327 Government Delegation for the reorganisation of emoluments for civil invalidity, blindness and deaf-mutism, ndr.

328 In 2010, the funds allocated for penitentiary administration amounted to slightly more than 50 million Euro. Only in 2006 did this figure rise to 71 million (and there were 17,000 fewer inmates). On average, in 2010, the Government allocated 67 Euro per inmate per month. And more cuts are foreseen in 2011. The source of the information in this para. is the article “La libertà è un mestiere: il lavoro in carcere” by Pietro Raitano, Manager of Altreconomia, <http://affaritaliani.libero.it/static/uppl/intr/introduzione-libro.pdf>

329 see **para. 13.1.2.3.**

330 see **para. 13.1.2.3.**

Labour and Social Affairs on conciliation policies, which refer to Piano Italia 2020 and its strategic actions in terms of conciliation and equal opportunities. The agreement states the need for companies to negotiate as well as provide for other measures for family-friendly flexibility, mostly by promoting and providing incentives, putting the building of “company welfare” at the centre. Several of these measures are already contained within category contracts, but incentives are provided for a second level of negotiation. Essentially, once again, nothing about economic resources, just statements of principles that do not add anything to the present picture.

The same agreement foresees an Observatory entrusted to the Equal Opportunities Advisor to collect good practices and a technical board to jointly evaluate these good practices as well as the supervision carried out by the Piano Italia 2020 “Control Room”. It is still just good intentions.

WE RECOMMEND:

- ***Modifying Piano Italia 2020, making it feasible through the allocation of specific funds to finance every action.***

ARTICLE 12 HEALTH

12.1 INSUFFICIENT INVESTMENTS ON GENDER AND HEALTH

Health is one of the first ten indicators used to evaluate the well-being or quality of life of a country. From 2005 to 2010 Italy has been steadily ranked eighth among 111 countries. When men's and women's health is affected by diseases with a particularly strong social and health impact, they require that the health system takes care of them, bearing gender differences clearly in mind.

In the last five years women's life expectancy has increased by only three months (from 84 years in 2006 to 84.1 years in 2009, 84.3 in 2010), while that of men has had an increase of seven months (from 78.4 years in 2006 to 78.9 years in 2009, 79.1 years in 2010). Women are also disadvantaged by the illnesses called "big killers"; tumors and cardiovascular diseases affect more women than men. This is a result connected with the change of lifestyle; smoking, for instance. Recent campaigns to stop smoking have been less successful with women (16% of ex-smokers among women and 39% ex-smokers among men); also women are less inclined to take part in sport (38% men vs 24% women). To this must be added a poor prevention record: 62% of women undergo mammography testing; caesarean sections are still very frequent (40%)³³¹.

In view of this general data and considering that gender is a determinant of health, gender issues must be systematically integrated through a new scientific approach to encourage biomedical research on the biological and social complexity of gender differences. Moreover, it is necessary to pay attention to how gender issues are dealt with within the health system to avoid possible inequalities negatively impacting on individuals and on health system costs.

There are insufficient data for properly intervening in those areas where it is important to implement changes, for instance modifying some practices in a hospital, training operators and better train doctors³³² within universities. The lack of specific surveys results not only in a lack of strategies, but also in a shortage of scientists and of a more modern research style, which would go beyond the obsolete rules, the too theoretical methods of screening populations and the evaluation criteria used in the development of a new drug. A new research approach is required so that universities, hospitals and the local health system units can work together closely. However, very few regions support gender and health policies and develop long-term plans which include gender issues; of course this generates big regional differences in the protection and improvement of women's right to health.

WE RECOMMEND:

- ***Taking into account the gender dimension in health system initiatives, plans and policies by developing capacity building initiatives within programs and health services organizations, and by adopting gender sensitive tools and guidelines to evaluate their efficiency and effectiveness.***
- ***Ensuring regular funds for research activities on gender and health.***
- ***Integrating gender determinants in epidemiological analysis and profiles to increase evidence of the impact of gender inequalities on specific health problems and services***
- ***Providing gender and age disaggregated data on epidemics.***
- ***Taking gender differences into account in implementing daily tasks in health facilities.***
- ***Improving gender approaches at regional level in the health system also by ensuring gender budgeting in order to integrate gender analysis in regional health plans.***
- ***Building awareness and improving public understanding on gender determinants relating to health by developing advocacy materials and activities.***

331 Report Osservasalute 2010, cited by A. Sarno in LaRepubblica.it Health in "Crisis, Italian health system loses its records. Women's health is more at risk": <http://www.lorenzinfoundation.org/padova2010/ReportTavolaRotonda.pdf>

332 Castrone A., Direttore Generale, Azienda Ospedaliera di Padova, Introduction to "GENDER MEDICINE AND IMPLICATIONS IN THE HEALTH SYSTEM ORGANISATION", 2nd National Congress on Gender Health, Padua 21- 23 October, 2010: <http://www.lorenzinfoundation.org/padova2010/ReportTavolaRotonda.pdf>

12.2 INSUFFICIENT PREVENTION POLICIES. LACK OF LONG-TERM STRATEGY

The POMI³³³ project contains guidelines to implement maternal and child health promotion programs. Such guidelines are merely programmatic and the actual achievement of targets depends on the regularity of funds. Unfortunately there is no monitoring of the National Women's and Children's Health Action Plan (see Governative Report paragraph 425). The Health Study Committee³³⁴ created by the Minister for Equal Opportunities has not published the results of its work on these issues.

12.2.1 Sexual and reproductive health³³⁵. Cuts in family health centers and their demolition

Recent Governmental policies aim to dismantle all those counseling services which were created as a result of last century battles by the feminist movement; their disappearance would lead to lack of basic qualified counseling services which provide information and medical care by lay qualified staff.

A deep-rooted catholic morality and the elevated number of anti-abortion doctors, are the main reasons that prevent adequate policies to be implemented for the prevention of AIDS and sexually transmitted diseases. They also contribute to the lack of proper education on safe sex and birth control practices, connected to women's sexual autonomy and reproductive choices.

In the Lazio Region, a review of family health centers has been proposed, the so called Tarzia Act, which would provide that family health centers are run by associations of families whose objective is to protect the embryo's life, although according to the Italian law the embryo has a legal status only after childbirth.

Public services, therefore, would be subjected to such private associations and to the Life Movement (political Party linked to traditional Catholic Church). The proposal foresees the presence in such health centers of an expert in bioethics, an expert in family anthropology, an expert in natural contraceptive methods, all of them without certified qualification. Women, on the basis of this proposed law, will have "a duty to cooperate" and will have to sign a document if they decide to have an abortion instead of giving their child up for adoption. It is obvious that women's right to sexual autonomy and reproductive choices would be seriously damaged by the attempt to protect a traditional ideal about family and maternity.

Also, again due to distorted information by some Catholic Church officials, and due to the presence of a number of religiously oriented politicians, some rooted prejudicial ideas about homosexuality have become more popular in the last five years, considering such sexual orientation as a disease that needs to be treated. There is insufficient knowledge allowing health services to offer adequate health support to homosexuals, fragile identities and transgender people. With reference to what is already mentioned in Art. 11 about family-work balance, it must be said that many reproductive choices are determined by socio-economical environments and by employment policies. The fact that birth and fertility rates in Italy are among the lowest in the world, undoubtedly shows a social discomfort deriving from employment instability, high property cost levels, insufficient welfare and family support.

12.2.2 Prevention of women's tumors: tax devolution is an obstacle

Epidemiological records in Italy regarding women's tumor patterns show that the public health system has some priorities to address on one side, preventive action to stop people from becoming smokers, and to encourage a healthier life style (dieting and exercise), on the other side, to improve prevention attitude and expand screening campaigns for breast cancer, rectal cancer and cervical cancer. It is worth mentioning how, in particular for some types of tumors, there is a difference in mortality rates (decreasing) and their frequency (increasing), such as breast cancer and melanoma; in these examples, screening programs and a better quality diagnosis have presumably resulted in a decreased mortality ratio. The offer for an early diagnosis in Italy has increased. Screening programs improve women's access to health services; however, there still are some social inequalities among Italian and immigrant citizens. The challenge for public health system is to overcome such inequalities. Unfortunately there are also huge regional differences between North and South in Italy³³⁶.

12.2.3 Breast cancer³³⁷

Every year breast cancer affects approximately 37,000 women in Italy. One woman out of two recovers thanks to an early diagnosis. Woman's associations, oncologists, health officials all over the world keep recommending prevention and large scale screenings. In Italy, according to Art. 32 of the Constitution Act, the health system should guarantee the same level of health services to everybody. At present, this does not happen. There are relevant inequalities at regional level. In seven regions, the screening programs levels

333 Progetto Obiettivo Materno Infantile (POMI, D.M. 24/4/2000, G.U. no.131, 7 June 2000; L.E.A.- S.O. G.U. no.19 dated 23 January 2002, p.37), currently in force. Strategic environments of POMI (Objective Project Mother and Child) are: birth process, prevention of women and teenagers health.

334 <http://www.pariopportunita.gov.it/index.php/organismi-collegiali/1071-commissione-salute>

335 Para referring to **para. 467** of the Governative Report.

336 The following data is taken from: <http://pappagallo.posterous.com/ogni-anno-in-italia-37-mila-donne-si-ammalano>

337 Paragraph referred to **Question no.27** of CEDAW Committee.

are unacceptable³³⁸. The Italian Health System devolution means that, while in Northern Italy (except for Liguria) approximately 90% of women are invited to take a mammography test, in almost all Southern regions this percentage does not even reach 40%. This is an unacceptable discrimination against women in Southern Italy. Annamaria Mancuso, chairwoman of Salute Donna Onlus NGO, calculated that two and a half million women in Italy have been denied the opportunity of undergoing a publicly organized mammography screening in violation of LEA (essential care assistance), which should in theory be guaranteed to all women between 50 and 69 years of age residing in Italy³³⁹. Also the lapse of time occurring between the test date and the delivery of results or, in case of uncertain diagnosis, the moment when a closer examination or surgery is required, are criteria to determine the quality standards of the screening program. To date, a number of Italian programs do not guarantee the required quality standards³⁴⁰. The outcome is that in the South tumors are diagnosed with a certain delay and therefore conservative surgery is less frequent.³⁴¹ Another critical aspect, strongly discriminatory against women in Southern Italy, is a lack of accurate information on the right to health services: they are not only less frequently invited to the screenings, but they also accept the invitation less frequently as they are scared, culturally suspicious, but also unaware of the benefits deriving from the public mammography screening. National and international records show the beneficial effects deriving from prevention, even if only based on mammography screening in women from 50 to 69 years of age if they undergo such a test every two years. Among women who underwent the mammography test, mortality rate has decreased up to 50%. The weaknesses of the programs in our country include the following: they do not include women between 40 and 49 years of age and between 70 and 75 years of age; they do not extensively use digital mammography, do not use CAD (computed assisted detection), scans or MRI (Magnetic Resonance Imaging); they also do not consider the family risk factor for every woman.

12.2.4 Prevention of addictions

On the matter of prevention of addictions and drugs abuse, there is no gender perspective in the medical or cultural approach. The lack of long-term strategies targeting young generations is an obstacle to a positive impact of the occasional campaigns promoted by DEO, such as the awareness campaign on eating disorders. Since 2002 there have been no national surveys on the use of drugs. This means that there is no awareness of the drug addiction situation in Italy. An accurate survey and analysis the current situation is required in view of the fact that new drugs are circulating and young and very young generations are increasingly drinking excessive amounts of alcohol. A monitoring plan is necessary for proper interventions to contrast the use and circulation of health damaging substances. As opposed to other countries that have already developed a gender analysis of addictions and have started up specific prevention and contrast actions, in Italy, the first meeting on “Women, alcohol and drugs”³⁴² was held in 2011.

12.2.5 HIV Prevention³⁴³

In Italy the characteristics of people affected by AIDS are changing. An increase in the average age of the affected population is noticeable, 40 years for men and 36 years for women. The trend is steady in the women population affected. The number of foreign people affected is growing. The percentage of patients who contracted the illness through drug addiction/syringes has slightly decreased, while it is increased in patients affected through heterosexual sex. This last record is due to the lack of sexual education and to the strong conditioning of the Catholic Church. The number of newborn babies by HIV-positive mothers has increased since 1997, while the percentage of affected babies is decreasing thanks to a combined positive

338 The report has been presented by the women patients associations with Salute Donna Onlus who, together with the National Screening Watchdog and the Italian mammography screening Group (Gisma), files an appeal to the Government, to the premier Silvio Berlusconi and to the Health Secretary Ferruccio Fazio so that the unfulfilling regions adapt to the levels of standard requested by the National Screening Watchdog.

339 2008: targeted women (between 50 and 69 years of age) per year, have been, according to Istat more than 3,500,000; those invited to have the test, however, per year, have been 2,434,000 (69% of the total) and out of these only 1,333,000 (36%) have accepted the invitation and actually took the test. In 2008 the invitations covered 90% in Northern Italy, more than 70% in Central Italy and less than 40% in the South. In Northern and Central Italy almost 3 women out of 4 have received the invitation to the test. Livia Giordano, chairwoman of Gisma, says: “If we look at the regions individually, only five Regions overtake the 90% standard, i.e. Lombardy, Val d’Aosta, Friuli Venezia Giulia, Emilia Romagna and Umbria. There are seven Regions which do not go beyond 50%, i.e. Liguria, Abruzzo, Campania, Molise, Sardinia and Sicily”.

340 Just over 70% of the screening programs send out a negative result within 21 days from the day of the actual test; less than 70% examine the test results within 28 days. The services where the test results are analyzed should make a record of at least 15,000 mammography tests per year. This is to guarantee a quality standard.

341 “quadrantectomia e l’esame del linfonodo sentinella” = advanced tests that, if negative, avoid further therapies, but they are much less applicable.

342 <http://www.politicheantidroga.it/comunicazione/eventi/dadnet/documentazione.aspx>. At the meeting it has been confirmed by the head of the Anti Drug Dept., Giovanni Serpelloni, that in Italy more than 27,000 women are drug addicts, and 86% (23,500) is being treated in public services or in communities, and this number has increased in the last 10 years (in 2000 there were less than 20,000). The most common addiction is to heroin. They accept treatment after 6-8 years from the beginning of the addiction and they generally accept to be treated more easily than men; they continue the treatment for longer periods and respond better to therapy. Also, 70% of treated women do not use drugs during therapy. 15% to 35% of them fall back to drug abuse, which is a lower figure than among men. Pregnancies, though, surely represent a serious problem compared to the male addicts situation. It appears that there are no gender surveys for other drug substances.

343 Paragraph referred to [Question no. 26 of the CEDAW Committee](#).

effect of therapies given at birth, more frequent caesarean sections and exclusion of breastfeeding. Despite the awareness of all the records, no adequate actions have been taken to prevent HIV transmission among adults.

WE RECOMMEND:

- *Forbidding the presence of non medically qualified personnel in Health Services who could contrast with women's rights to sexual autonomy and reproductive health.*
- *Organizing a widespread network of sexual education for the young generations to inform and train young people on sexual identity, gender roles, relationships, feelings, prevention, physical and mental health.*
- *Promoting a positive interaction between schools and health services which could be timed with the HPV vaccination for 12 year old girls; this would allow to inform the girls not only about their healthcare but also about the problems that they could face later in life relating to sexuality, maternity and work.*
- *Ensuring that Health Services continue to operate as their mandate is not only focused on medical issues, but it is also to support cultural change on the matter of male and female sexual and reproductive health, counseling for women, family and youth, contraception issues, prenatal and post-natal assistance, sex life help as in sex change and identity, cultural mediation, gender conflicts and problems connected to gender differences.*
- *Funding sexual and reproductive health information campaign at all level and order of schools held by qualified experts, in the event of a lack of human resources privilege the classes which are considered more vulnerable. It would be useful to choose at least two ages: twelve years, so that teenagers could be educated before they start their sexually active life (possibly linked to the campaign for the HPV vaccination) and the first years of high school. Teachers and parents should be involved so that they would be able to answer questions and interact accordingly.*
- *Promoting reproductive health counseling services to be held at Spazio Giovani and, for the rest of the public, at the Family Health centers. The object of the counseling is to answer questions on sexuality and reproductive health.*
- *Funding specific training courses for operators working with the counseling teams on sexual and reproductive system problems and gender relationships.*
- *Collecting all records on gender in connection with all types of addiction, sexually transmitted diseases and HIV.*
- *Regularly funding awareness/prevention campaigns on addictions and HIV.*
- *Regularly funding screening campaigns on sexually transmitted diseases and HIV.*
- *Financing updated surveys (the last one was done in 1993) on the diffusion and use of contraceptives in Italy, in order to verify the changes in sexual and birth control habits.*

12.3 NON UNIFORM ACCESS TO HEALTH SERVICES

12.3.1 Health services. Malpractices in the Health System. Discrimination in access to health services against women in Southern Italy (See 12.2.2)

Devolution in the Health System has resulted in some situations of excellence in some regions and penalized others, so that the right of access to health is now not evenly guaranteed throughout national territory. LEA³⁴⁴ are not effectively guaranteed in the whole country. This causes uneven performances, long waiting lists and of course, it means that health services are very differently accessible from region to region, as far as prevention, access to medical care, the right to fair treatment. There is no efficient services network to guarantee a regular medical care. The cuts of staff cause huge inconveniences.

12.3.2 Elderly women's health

There are no updated records on elderly women's health. **Recommendations 27, 49 and 51/2004** CESCRC have not been implemented taking into consideration a gender factor. Despite the fact that there are more elderly women in the population, there is no research and culture to implement adequate strategic actions;

344 LEA – essential levels of care have been introduced by Law11.2001 and subsequently reviewed.

CEDAW General Recommendation 27 para 21 has not been implemented.

12.3.3 Roma and Sinti women's health³⁴⁵

Media news and direct experience tell us that living conditions of Roma and Sinti communities who live in the Italian camps are extremely critical as they live isolated from the rest of society, with almost non-existent access to health services, essential services, employment and education. They survive in precarious living conditions; the strong prejudices against them, nurtured by mass media and politicians, is a barrier to the introduction of effective policies to enable access to schooling, employment and decent housing for Roma and Sinti communities. Marginalisation and discrimination are the result; also, children's and adults' health is affected. When they are moved from one camp to the other, their families are often split.

12.3.3.1 Immigrant women's health - Access to medical treatment

There is evidence of the lack of information and knowledge of sexual and reproductive health among immigrant women: a certain degree of difficulty in accessing health services and receiving cultural advice on prevention, there is a higher risk of psycho-social malaise, which translates into a higher number of unsuccessful deliveries, low birth weight in newborn babies, a high percentage of voluntary abortions, low participation for the screening programs.

12.3.3.2 Sexual and reproductive system health

Immigrant women's health must be analyzed in order to be able to measure the National Health System's real capability to guarantee effective, accurate and equal care to all. It is necessary to promote actions to implement services for guaranteeing a cultural mediation and language translation in all the phases of the health itinerary, which would require regular funding. One of the priorities is to understand immigrant women's needs in terms of their past lives in their countries of origin, age, education levels, geo-cultural and religious environment, as well as family connections, lifestyle and working times. From a health point of view, special attention must be paid to the right to a healthy sexual and reproductive life, bearing in mind, of course, that multiculturalism, which is normally assumed in integration policies and intercultural dialogue, does not necessarily mean that they have to accept hierarchies and power relations between men and women. Specific attention must be paid to health conditions in immigrant carers and prostitutes. The new immigration legislation in Italy is causing devastating consequences on the constitutional right to health; irregular immigration is now considered as a crime, according to Act no. 94/2009. Since this Act has been enforced, all irregular immigrants have kept away from public health services. They have thus created a network of clandestine medical care with a very negative impact on public health.

12.3.3.3 Maternity and pediatric services

Foreign women appear to be the most affected by postpartum depression³⁴⁶ however, no *ad hoc* support services have been created. As far as irregular immigrant families are concerned, it is obvious that access to pediatric services for their children born in Italy represents a critical point. It is worth mentioning that maternity entitles mothers to a temporary visa which has a time limit (up to six months from the date of birth).

12.3.4 Women victims of FGM's health

To date, there are services where victims of female genital mutilations can be welcomed and properly treated in seven regions and in the Bolzano Province only³⁴⁷. Elsewhere, there are very few and not easily accessible services where a mutilated woman can be properly supported when giving birth. Midwives and doctors are not regularly and adequately trained. From the point of view of prevention and guarantee of access to services, Act no. 7/2006 on Stop MGF has not been sufficiently implemented.

12.3.5 Lack of guaranteed free access to sexual and reproductive health³⁴⁸

12.3.5.1 Difficult access to emergency contraception³⁴⁹

The right to women's sexual autonomy and reproductive choice is systematically disregarded in Italy. Very often anti-abortionist doctors refuse to give emergency contraceptives on the basis of their conscience, which is conceptually wrong in that the day after pill is not an abortion drug. According to the Abortion Law, the conscientious objection issue can only be raised in the case of voluntary pregnancy interruption. However, the "conscience case" of the ethical code, Art. 22, states that "a doctor who is requested to perform actions contrasting with his/her conscience or with his medical convictions, may refuse to perform such an action, unless said refusal may pose a threat to the patient's life". When a doctor refuses to prescribe the "day after pill" on the grounds of conscience, he/she must supply the patient with the name of another doctor prepared to prescribe such a pill. Very often, this does not happen. A survey made by the association "Vita di donna" reveals that doctors deny the prescription of such a pill in 50.9% of the cases,

345 Paragraph referred to [Question no. 30 of the CEDAW Committee](#).

346 Niguarda hospital research. Postpartum depression; foreign women are the most affected, *Corriere della Sera*, Milano, 11.03.2011

347 See Lavori in Corsa, para. 6.V. of List of Critical issues related to the VI periodic Report of Italy on CEDAW, October 2010.

348 See Lavori in Corsa, para. 5.V. of List of Critical issues related to the VI periodic Report of Italy on CEDAW, October 2010, referred to the non implementation of [Recommendations no. 33 and 34/2005](#) of the CEDAW committee.

349 20"No day after pill. Half of the doctors reject it", A. Sarno, *La Repubblica.it*, Salute, 13.04.2011.

and the request for prescription is denied mainly by A&E doctors (34%), out-of-hours on-call doctors (30%), health services doctors(25%) and General Medicine doctors (11%). This is the reason why only 2.5% of women between 15 and 49 years of age ask for emergency contraceptives, one of the lowest averages in Europe.

12.3.5.2 Medical abortion – RU486 pill

Another extremely worrying record is that the Health Department guidelines, misleadingly interpreting Act no. 194/1978 on abortion, foresee mandatory 3 days hospitalisation for women taking the RU486 pill, as opposed to a day hospital procedure. The latter procedure is the most frequent in that, generally, women prefer to discharge themselves from the hospital and go home after taking the Mifepristone pill. It is important to highlight, however, that the Act, although not binding the Regions, has brought all the Regions, except Emilia Romagna and Tuscany, to accepted to apply the three days hospitalisation. This penalises all the non permanent women workers, underage girls and immigrant women – especially carers -, who cannot afford to be away from work for three days; therefore, they show preference for surgical abortion which, although more traumatic both clinically and psychologically, solves their problem in just a few hours at the hospital.

15.3.5.3 Obstacles to accessing abortion services

The decrease in both legal and clandestine abortions clearly indicates that, since the introduction of the Act, the trend of women to choose to have an abortion has significantly decreased; very likely, this is due to greater knowledge by women and couples on how to effectively manage reproductive functions by using contraceptives in a more responsible way. As a matter of fact, in Italy as in other countries, a widespread information circulation and a more effective commitment in the health services (above all, family health services, especially as far as prevention is concerned), have increased knowledge, awareness and competences among women in reproductive matters. Currently, the attack on Act no. 194/1978 is based on the conceptual and strategic confusion between policies in favour of birth-rate increases and National Health issues to reduce abortion rates. The principle of protecting the social value of motherhoods deliberately confused with the desired social control over women's choices on reproductive matters.

12.3.6 SGBV A&E – Gender violence

Antiviolence help desk have been opened in most major Italian cities within the A&E departments and procedures for collecting all relevant details concerning the violent episodes have been defined. In rape cases, biological samples must be collected immediately. These centers must be improved and made self-sufficient as, at the moment, in some city (Rome, for example) they are not public but managed by women's associations with no link to the National Health Service given that they are funded via specific projects.

The general public must be informed of their existence. In the last year, there has been a significant increase in the number of women who took advantage of these services after SGBV.

WE RECOMMEND:

- ***Ensuring implementation of LEA nationwide.***
- ***Increasing supervision and evaluation of the services by experts through the Central Government-Regions conference.***
- ***Ensuring regular checks on private clinics' performance standards.***
- ***Starting research and studies on the conditions of elderly women from a gender and a social and psychological geriatric point of view.***
- ***Systematically collecting gender and age data.***
- ***Amplifying studies and building awareness on trans-cultural medicine.***
- ***Planning specific courses for women during pregnancy and postpartum.***
- ***Ensuring mandatory health services to foreign children living in Italy, whatever their legal position, including the possibility to choose a pediatrician and a GP.***
- ***Extending the maternity visa to 12 months (instead of 6) and including the possibility to changing it into a work permit.***
- ***Reviewing and modifying immigration laws to support the reunion of families from foreign countries with the immigrant, and more generally to enable the integration of foreign families (housing, education, employment and other policies).***

- **Guaranteeing the participation of foreign communities in social and health planning processes and in the prevention and assistance organisations, also in order to prevent possible inequalities.**
- **Reinforcing at regional level the monitoring and analysis of immigrant communities' health issues and demanding, both on a quantitative (increasing research within the existing services – epidemiology watchdog, Public Health Agencies) and qualitative basis (in cooperation with different institutional and non institutional entities with specific expertise).**
- **Improving regular technical – political coordination to enable the creation and implementation of policies among the various institutions (at national and local level between the health sector and other sectors; between the national and the regional sectors).**
- **Defining and promoting Health Impact Assessment as a guarantee to implement intrasectoral policies covering all the socio-economic issues related to immigrant communities.**
- **Providing training for professional staff and operators within the health services on specific issues relating to immigrant's health, by strong support by regional health services and local health centers and councils³⁵⁰.**
- **Improving cooperation among social and health services and schools to combat FGM.**
- **Ensuring access to emergency contraception.**
- **Ensuring implementation of the national law through the availability of the pill RU486 in all hospitals and reproductive health departments on all national territory.**
- **Guaranteeing proper information on the day-after pill and surgical abortion.**
- **Training A&E-SVS staff so that they are able to identify and assist SGBV victims. Ensuring female A&E services and implementing such practice in LEA (Essential Care Levels).**
- **Guaranteeing affordable health programs for Roma and Sinti communities.**

12.4 ASSISTED PROCREATION³⁵¹

Assisted procreation in Italy is covered by Act no. 40/2004³⁵². With the sentence 151/09 issued on April 1, 2009, filed on May 8, 2009 and published in the Official Gazette on May 13, 2009, the High Court (Corte Costituzionale) declared the constitutional illegitimacy of Art. 14, para. 2, where it provides that there is a “single and simultaneous implantation, not exceeding three embryos”. The High Court stated that “the vision adopted by the legislator in Act no. 40 that provides the creation of a number of embryos not exceeding three, without any reference to the subjective conditions of the woman requesting the assisted procreation, is essentially in contrast with Art. 3 of the Constitution Act, both in view of reasonableness and equality principles. In fact, the legislator treats different situations in the same way; it is also in contrast with Art. 32 of the Constitution, as prejudicial to women's health and, possibly, with the fetuses involved”. The judges of the Court have produced a ruling of unconstitutionality of part of Act no. 40/2004, but this ruling is also valid as an interpretation of the Act. In the motives of the ruling, the Court highlights the limits that continually changing scientific and experimental knowledge, forming the foundation of medicine, actually determine for the legislators; therefore, “if regulating medical practices and procedures, the basic rule should be the autonomy and responsibility of the doctor who, with the patient's consent, makes the necessary professional choices”. Therefore, both the unreasonableness of identical treatment in different circumstances, and the need for the woman to be submitted to further ovarian stimulation, with a possible prejudice to her right to health have both been removed from Act no. 40/04. The principle stated in the Act, by which reproduction techniques must not create a higher number of embryos than strictly necessary, is today effectively applicable by the doctors, but it is absolutely forbidden to include the obligation to a single and simultaneous implantation and the maximum number of embryos to be implanted. The sentence “actually infringes the general principle to forbid cryopreservation according to para. 1 of Art. 14, as a logical consequence of the lapse, within the limits indicated, of para. 2 – which determines the necessity to use the freezing technique for embryos that have been produced but not implanted by doctors – and implies, moreover, the unconstitutionality of para 3, where it does not foresee that the transfer of embryos, to be performed as soon as possible, as provided by the Law, must be performed without putting the

350 Many of these recommendations reinforce those mentioned by Società italiana di medicina delle migrazione in the Congress SIMM Palermo 19-21 Maggio 2010, <http://www.simmweb.it/>

351 Paragraph referring to **Question no. 28** of the CEDAW Committee.

352 See Lavori in Corsa, para. 5.II. of List of Critical issues related to the VI periodic Report of Italy on CEDAW, October 2010.

woman's health at risk". In conclusion, on the basis of the individual conditions of the patients and upon their agreement, the doctor will decide how to intervene and the number of eggs to inseminate. He/she will act in respect of the least invasive techniques, and, if necessary for health protection purposes, he will cryopreserve the embryos. Finally, the Court declared the constitutional legitimacy of Art. 6, concerning the irrevocability of the woman's consent, and of paras 1 and 4 of Art. 14 as inadmissible, lacking relevance in principle. The High Court (Corte Costituzionale) judges have returned "discretion to the doctor, as the holder of the technical expertise in this practice". This will cause beneficial effects in terms of scientific results resulting from the application of assisted procreation techniques on more pregnancies, more newborn children, and less risks for the woman's and the foetus' health. After the High Court ruling, there have been two Court Rulings following appeals based on Act 700, to gain access to the assisted procreation techniques for fertile couples suffering from serious genetic diseases, who would have had the possibility to access clinical diagnosis techniques on the embryo through in-vitro techniques. The first ruling was issued by the Bologna Court - Ruling June 29, 2009, Judge Cinzia Gamberini, by which the right to access medically assisted procreation, preceded by a genetic pre-implantation diagnosis to conceive a healthy child is acknowledged for the non totally infertile couple, who have already had naturally conceived children. The Ruling of the Salerno Court of January 9, 2010 by judge Antonio Scarpa, then follows. It differs from the Bologna Ruling in that judge Scarpa issued a clear decision in respect of the right of the persons involved in acknowledging and confirming the "a woman's right to maternity". It is a subjective right, to be listed together with other inviolable "women's rights" according to Art. 2 of the Constitution. Therefore, all procreation choices made in awareness also have to be listed among the fundamental rights that are constitutionally protected. Moreover, the right to reproductive choice in procreation matters belongs to the fundamental and very personal choices of both parents together, in order to guarantee equality in reproductive choice, respecting the right to health". The European Court for human rights issued a sentence on April 1, 2010 by which it states that the absolute prohibition of the heterologous in-vitro fertilisation is not compatible with the European Convention of Human Rights (ECHR). The Court recognised that the total impossibility to use heterologous in-vitro fertilisation violates the right to family life and the ban on discrimination. ECHR, receiving appeals from S.H. and others against Austria – for violation of Arts. 14 and 8 of the Convention, has condemned Austria for discrimination against couples according to laws that forbid the use of donated gamete cells for in-vitro fertilisation. By application of Art. 8 the European Court stated: "... the right of a couple to conceive a child and use medical assisted procreation for this purpose, provided for by Art. 8 of the Convention, in that such a choice is clearly an expression of private and family life". The Court reminded that the notion of "private life", according to Art. 8 of the Convention, is a vast concept which includes, among others, the right to establish and develop relationships with other human beings and the right to respect the decision, both to have or not to have a child (see Evans, Great Britain (GC) No. 6339/05, 71, ECHR 2007-IV). With reference to the application and observance of Art. 14 of ECHR, the Court reminds that "a different treatment is discriminatory if there is no objective and reasonable justification to support it, i.e. if it does not seek a "legitimate objective" or that there is no "reasonable proportion between the means used and the desired objective". Although acknowledging a clear margin of discretionality in the specific matter for the member states, the judges specify that legislators must avoid any discriminatory treatment and that they must observe the European Convention as interpreted by the Strasbourg Court. Therefore, people who are in the same infertility condition cannot be treated in a different way only by means of the different fertilising technique used. It is not justifiable, therefore, to ban heterologous fertilisation if homologous fertilisation is admissible. By banning heterologous cells, the Government means to defend the need to protect family relationships. On this subject, the judges in Strasbourg say that, for a long time now, in some member States, unusual family compositions have been ruled by specific laws, and they are not necessarily based on a direct biological link, and among these are the relationships deriving from heterologous fertilisations. Following such a ruling on the relationship between the principle of equality and medically assisted procreation, there is a new debate that will inevitably involve our country too. In our country, there is a ban similar to the Austrian one, contained in Act 40/04 which allows infertile couples to access assisted procreation techniques, but then Art. 4 para 3, forbids heterologous techniques which could allow a pregnancy . This is even stricter than in Austria, therefore more serious in the violation of rights. The Italian High Court, rulings 348 and 349 2007, noted that the contrast between a national law and a conventional law, especially from the European Convention of Human Rights, is a violation of Art. 117, para 1. In the above-mentioned rulings, the High Court also pointed out that the national judge must apply the laws as interpreted by the Court in Strasbourg, which received such competence from all Member States. According to Art. 117 of our Constitution, the sentence of the Court in Strasbourg becomes part of our Law, as Italy signed the Convention of Human Rights to which the sentence refers. The 15 members of the High Court will soon be asked to deliberate and reinstate the right for couples who, in order to have a child, have to use heterologous techniques that, to date, are forbidden. Several judges have already considered the ban on assisted heterologous conception contained

in Art. 4 of Act 40/04, as unlawful, asking the High Court to issue a sentence on the subject. After the Florence Ruling, other rulings have followed about the doubtful constitutional legitimacy of the ban on heterologous fertilisation according to Art.4 para 3 of Act 40/04 of Catania and Milan Courts. Since 2004, thanks to rulings by various Italian Courts, the Law on assisted conception has been amended as follows: Ban on applying heterologous techniques (Art. 4 para 3): in force; ban on access to assisted conception for fertile couples (Arts. 1 and 4): in force; Ban on revoking the couple's consent for assisted conception, after the fertilisation of the egg (Art. 6 para 3): in force; on using non-useful embryos for scientific purposes (Art. 13 para 1): in force; ban on access for single parents³⁵³: in force; Obligation of simultaneous implantation of all the embryos produced (Art. 14 para 2): Obligation cancelled by the High Court sentence 151/09 declaration of unconstitutionality, ruling valid for all; ban on producing more than three embryos (Art. 14 para 2): ban cancelled by the High Court sentence 151/09, declaration of unconstitutionality, valid for all; ban on cryopreserving embryos (Art. 14 para 1): dispensation from the ban, for health reasons, to protect women's health, High Court ruling 151/09, declaration of unconstitutionality of Art. 14 para 3 where it does not foresee that the transfer of the embryos must not put the woman's health at risk, ruling valid for all; ban on applying diagnostic techniques on the embryo (Guidelines of Act 40/04 – Official Gazette 191 of 16/8/2004): ban cancelled, TAR Lazio ruling 398 21/0108, the rule cancels the guidelines due to “excess of power”, where they introduce the ban on preimplantation genetic diagnosis (PGD) which is not provided for in Act 40/04, ruling valid for all; ban on performing preimplantation genetic diagnosis on embryos: ban cancelled for “excessive power” and cancellation of the guidelines where they only allowed observation tests on embryos, TAR Lazio 2008. The matters still to be deliberated upon concern: embryos for scientific research; a not evenly spread application of the techniques on the Italian territory, with differences in performance between public and private operators; drugs deriving from human origin not carrying correct information³⁵⁴. To this, it must be added that the Act suggests a non favourable opinion on access to the reproductive techniques, as can be seen in the informed consent rules which require, among others, the doctor to provide information about the legal consequences for the mother, for the father and the child and “suggest” the consideration of adoption to the couple (Art. 6); this represents a way to discourage the use of such techniques, but it is certainly not part of the doctor's competences. On the other hand, as the Act on assisted procreation is so “excluding”, it has given way to a phenomenon called “procreative tourism”: many couples go abroad to realise the dream of a pregnancy, facing numerous difficulties and high costs, resulting in more substantial inequalities in access to those techniques, which is only possible for those people who can easily afford to go abroad.

WE RECOMMEND:

- ***Monitoring that the national registry of MAP are properly funded.***
- ***Adjusting laws in accordance with the principles stated by the ECHR.***
- ***Cancelling all regulations restricting women's sexual autonomy and reproductive choice (whether single or in a couple).***
- ***Guaranteeing women's freedom regarding the negative implication contained in the Law.***

12.5 INSUFFICIENT PROTECTION OF WOMEN'S HEALTH DURING PREGNANCY AND POSTPARTUM

Among the various POMI actions, there is the so-called “*percorso nascita*” (path to birth) regarding pregnancy. Despite the significant improvements achieved since 2000, there are still problems for the solution of which nothing has been done during the period under examination referring to the VI Periodical Report: excessive therapies at birth, excessive number of Caesarean sections, excessive private medical care³⁵⁵, excessive diagnostic tests, without significant differences between physiological pregnancies and those complicated by some sort of pathology, lack of information and knowledge among the women who are still too often excluded from the decisional processes, despite the fact that it is well known that the

353 By allowing only couples and not single parents the assisted conception, the Law shows its inconsistency: it not only strongly reduces the right/freedom for everyone to procreate but also the right to health, which is fundamental of that same Law. In fact the access to the reproductive techniques is allowed only on infertility or sterility grounds; such right being a fundamental right must be granted to everyone, whatever their family status.

354 Fully cited contribution from: “Legge 40 sulla procreazione assistita dal 2004 ad oggi. Filomena Gallo, Lawyer, Legge 40 sulla procreazione assistita dal 2004 ad oggi”, and “filiazione e procreazione assistita”, in “Le controversie in materia di filiazione”, Biblioteca del diritto di Famiglia, edito CEDAM 2010, chapter VIII.

355 81% national level, 85% Central Italy, 86% Southern Italy.

woman's higher awareness and her proactive role empower them in the management of pregnancy and delivery. These are essential prerequisites for less invasive obstetrician intervention, and also to avoid the risk of transforming obstetrics into a defensive practice.

The priority is still to guarantee accurate care in all three stages: pregnancy, delivery, postpartum. There is no doubt, in fact, that it is totally insufficient to criticise the methodology by which the delivery takes place when the entire preparation period has been dealt with using a culturally "medical" approach. To date, the recommended actions proposed by POMI during pregnancy have been completely ignored, in particular the implementation of interaction between the different health services and the family centers.

Humanity, improvement in the quality of the services offered and equality access to services must all be harmonised with the promotion of accuracy in care, especially with natural, physiological events like pregnancies and deliveries.

12.5.1 Difficult access to pain control procedures during delivery

There are still very few hospitals that offer patients the option of using painkillers during labour. The National Bioethics Committee has been suggesting for more than ten years that "the right of the patient to use an effective painkiller should be among those guaranteed and free at essential levels of care". Delivery in free epidural analgesia in 2006 was guaranteed 24/7 in only 16% of hospitals³⁵⁶. There are no updated records. Only some regions have issued *ad hoc* regulations to protect physiological deliveries and pain control³⁵⁷.

12.5.2 No temporary measures to reduce the number of caesarean sections

The Government totally disregarded **Recommendation no. 33/2005** concerning the development and monitoring of actions to reduce the number of Caesarean sections.

This has resulted in an even higher increase in Caesarean sections compared in 2005: the Euro-Peristat reports on mother/child health from December 2008 reveals that Italy has the highest European average of Caesarian sections. It increased from 11.2% in 1980 to 29.8% in 1996 and to 38.4% in 2008³⁵⁸.

Only at the end of 2010, in order to deal with the emergency, the Government promoted the publication of an informative leaflet³⁵⁹ and prepared some guidelines aiming at the promotion and improvement of quality, safety and accuracy of the services rendered during pregnancies and the reduction of the number of Caesarian sections³⁶⁰.

In the guidelines the Government itself recognises that the increase in Caesarean sections is linked to a malpractice problem³⁶¹, which mainly affects women in Southern Italy.

WE RECOMMEND:

- **Ensuring the possibility to use in all hospitals epidural analgesia during labours.**
- **Taking concrete actions to reduce the number of Caesarean sections.**
- **Implementing POMI's action plan.**

356 Source: AARO I SIARED 2006.

357 Region Veneto, in particular, issued a substantial regulation for the development of painkiller therapies and pain control (DGR 2989/2000 and DGR 309/2003) and in 2007 with a Regional Law 25/2007 specifically regulated physiological delivery.

358 With significant differences among geographical areas (23,1% in Friuli-Venezia Giulia and 61,9% in Campania) and lower levels in Northern Italy and higher levels in Central and Southern Italy). Source: <http://www.normativasanitaria.it/jsp/dettaglio.jsp?id=36591>.

359 http://www.salute.gov.it/imgs/C_17_opuscoliPoster_72_allegato.pdf

360 <http://www.normativasanitaria.it/jsp/dettaglio.jsp?id=36591>

361 The Guidelines state that: "The available data confirms, as far as the caesarean section is concerned and, generally, care during pregnancy and delivery, the increase in Italy of the use of procedures, the utility of which is not scientifically proved, and also are not justified by a real increase of the risk factor. Their use is often totally unrelated to the socio-demographic conditions of women and their clinical conditions; on the contrary, it is mainly associated to the availability of the hospitals involved and their organization; in 2008 in Italy there have been approximately 220,000 caesarean sections, with a rather significant human and financial cost; the risk of death for the mother is actually 3-5 times higher compared to vaginal delivery and postpartum risk of infection is 10-15 times higher; maternity departments with less than 500 deliveries, with no medical/obstetrician, anesthesia and pediatric coverage 24/7, still represent approximately 30% of the total and are generally located in Central and Southern Italy. In such hospitals the number of deliveries is very low (less than 300 p.a.) and represent less than 10% of the total deliveries. In such organizations, primarily dedicated to assist physiological deliveries, where it is reasonable to expect a low occurrence of pathologies, more caesarean sections are performed (50%), while in bigger and better equipped organizations, where a higher concentration of pathology is likely, the frequency of caesarean sections is many times lower, even though differences are significant. Together with recurrent clinical data, in absolute and/or comparative terms, referring to mothers and/or fetuses, there are with more and more growing frequency and with a rather important relevance, non clinical and/or medical factors, some of which are structural, technological and organizational weaknesses, such as delivery room organization, staff training, availability of the complete obstetrics team, pediatrician and anesthetician 24/7, together with doctors' convenience, defensive medicine and financial incentives".

12.6 DRUG ADDICTIONS

The last Health Department survey on drug addictions is dated 2002. There is no updated non-categorised gender data in connection with access to Public Services for drug addictions. It is well known that the differences between men and women addicts have a significant impact on the choice of therapies, which become more effective if specifically adapted to the patient's needs from the start. Women addicts who want to undergo treatment, must often overcome a series of hurdles: lack of coordination and cooperation among the social services, a limited offer if they are pregnant, the threat of losing custody of children, and the lack of programs culturally suitable to the specific situations. Active involvement of the patients in treatment and therapy significantly improves recovery and is essential for the development of effective services for women³⁶².

WE RECOMMEND:

- *Updating epidemiological surveys on addiction-related issues by taking into account the population composition and all non-categorized data on sex/age/socio-economic status and area of origin.*
- *Preparing on the basis of the collected data a set of procedures for all operators in addictions services, which focuses on clinical practices and research aiming at treatments and therapies for women addicts. It is particularly important to emphasize the social environment, significant relationships, educational and socialization levels, factors impacting experimentation and the use of drugs, as well as the request for help to the health services.*

12.7 FREEDOM DEPRIVED WOMEN'S HEALTH

12.7.1 Difficulty in accessing health services for imprisoned women

The transfer of the penitentiary health services to the national health centers has caused a lack of interaction which, in turn, has caused problems in the organized treatment of acute and chronic diseases, with an increase in the waiting lists and a deterioration in care levels. All this negatively impacts the imprisoned women.

12.7.2 Difficulty to access health services in CIE (Identification and Expulsion Centers)

Only a basic medical care is guaranteed, immigrants can only access to reproductive health and specialized treatments with difficulty and the local health services have no access to the Identification and Expulsion Center. Within the CIE center the UNHCR gender approach policies in managing refugee camps to protect women and children are not implemented. As far as Ponte Galeria I&E Center is concerned, it has been ascertained that 50% of the inmates take anti-psychotic, anti-anxiety drugs, and anti-epilepsy tranquilizers. Medical staff give these drugs without psychiatric consultation. The most frequent self-inflicted acts are multiple cuts with razor blades and simulations of hanging. At Ponte Galeria in 2009, there were three deaths, one of which was a suicide, out of the four in all the I&E Centers³⁶³. Ponte Galeria has a capacity for 366 people, of which 176 are for men and 190 are for women. 80% of women are human trafficking victims. Considering that these women are highly vulnerable, these figures are particularly disturbing.

12.7.3 Obstacles in the right to sexuality³⁶⁴ (Arts. 12 & 5 CEDAW)

The forced sexual abstinence and the mono-sexual environment in prisons are at the center of the penitentiary system which was based on the monastery model. The denial of sexuality in prisons is a violation of fundamental human rights. Many countries, in and outside of Europe, have believed it necessary to eliminate this archaic disciplinary and highly punitive measure. However, the denial of sexuality cannot be considered as a negligible effect of imprisonment. It is, on the contrary, an additional and particularly harsh punishment, so much so, that it could be considered within the ample definition of "degrading treatment"³⁶⁵. Enforced chastity is a form of institutional violence that no law has formally authorized. The accounts of women and men detainees expose the pain: the forced abstinence and the mono-sexual environment are described as a true "mental torture"³⁶⁶. The impossibility to have

362 http://www.droganews.it/news/334/Donne_e_tossicodipendenza_bisogni_e_necessita%3%A0_sp.html

363 "Il Ponte Galeria CIE, "worse than a jail" di Raffaella Cosentino, Repubblica, 2 marzo 2011.

364 exuality removed in Italian prisons" di Lucia Re, l'Altro Diritto Onlus, www.zeroviolenzadonne.it

365 Cfr. European Convention against torture and penalties or inhuman and degrading treatments. The same name Committee created inside the European Council never declared as torture or inhuman the simple sexual abstinence imposed to imprisoned individuals; on occasions, though, it tackled the problem, admitting the opportunity of promoting respect for affection and sexuality among imprisoned individuals. Sul tema cfr. A. Cassese, *Umano-Disumano. Commissariati e prigionieri nell'Europa di oggi*, Laterza, Roma-Bari 1994, p. 63.

366 Witness of a woman detained in a USA jail. H. Toch, a cura di, *Men in Crisis. Human Breakdowns in Prison*, Aldine Publishing Company, Chicago 1975, p. 186.

relationships with the other sex cause the fear not only to lose loving relationships formed before being imprisoned, but also emotional ability and even personal sexual identity. As far as women in prison are concerned, a frequent sexist belief is that the denial of women's sexuality is less problematic than men's. On the contrary, sexual repression in women's prisons is particularly suffered, as it prevents the possibility of sexual intercourses with men. The definition and control of sexuality, the relationship between sexuality and gender identity, reproductive system control should be considered for women as "the key of self-submission to others"³⁶⁷. The typical image of a devious woman is the prostitute: an imprisoned woman is, above all, a "bad mother", a "bad wife" and a "bad daughter" who must be rehabilitated by the prison so that she can be suitable for her role within the family. In the mono-sexual environment of the prison, the woman "who did not fulfill her role of wife and mother" is frequently taken back exactly to the same roles through the treatments received. Within this broader picture, the inability to perform the activities connected with maternity/parenting and, even worse, the denial of the possibility to have a child, are the cause of a deep concern among imprisoned women³⁶⁸. Exactly for this reason, femininity in prison is denied even more than virility³⁶⁹. The right to not having additional punishments inflicted – as stated by national and international laws³⁷⁰ – is totally ignored in Italian prisons. To be an imprisoned woman or man means that personal relationships are seriously limited, and so is the possibility to express emotions.

WE RECOMMEND:

- ***Ensuring a procedure of preferential services to prevent, diagnose and treat health problems among women in prison.***
- ***Ensuring the right to sexuality for all imprisoned women.***
- ***Considering gender policies in managing CIE centers.***
- ***Systematically considering the problems related to women affected by HIV-AIDS and drug addiction, in view of the large number of such cases in prisons.***

367 T. Pitch, "There but for fortune...". Women and the social control, in T. Pitch, a cura di, Diritto e rovescio. Studi sulle donne e il controllo sociale, Esi, Napoli 1987, p. 9.

368 It is one of the main causes of pain reported by Italian imprisoned women in the survey by E. Campelli et aliae, Women in prison. Research on female detainees in Italy, Feltrinelli, Milano 1992. Cfr. anche le testimonianze trascritte in H. Toch, a cura di, op. cit., pp. 192-193.

369 See the analysis in the female section of San Vittore da Lella Ravasi Bellocchio in Ead., Dreams without bars. Stories of women in prison, Raffaello Cortina, Milano 2005.

370 See for example, Constitution, art. 27,3; European Prison Rules, art. 102, 2.

ARTICLE 13 ECONOMIC AND SOCIAL RIGHTS

13.1 COMMENTS ON PUBLIC EXPENDITURE FOR SOCIAL PROTECTION AND WELFARE IN ITALY IN A GENDER PERSPECTIVE

Social policy spending in Italy is distinguished by the generally limited extent of investments compared to pension and healthcare spending³⁷¹. One woman in two in Italy works, the female employment rate has risen in recent years, in spite of the fact that skilled employment is decreasing while unskilled employment rises. Italian female business women have produced better results than businessmen in recent years. It must be pointed out that all women, whether or not they work, whether they are Italian or foreign, of whatever age, in spite of their daily effort and commitments, must overcome the serious disadvantages they encounter during their lifetime alone, due to reasons strictly connected with the lack of services to protect women and other more vulnerable categories (See [para. 2.6.1](#)).

13.1.1 Devolution generates unequal treatments for women in different regions³⁷²

Policies connected with welfare and families in recent years have been affected by an excessive fragmentation and territorial non-uniformity, and by the weak coordination of the central government. The territorial reform of the Italian welfare system³⁷³ has decentralised legislative power on social policies from the government to local bodies³⁷⁴, giving exclusive power to the regions³⁷⁵. This has caused inequalities in the treatments and protections between Regions and sometimes within the regional borders themselves³⁷⁶. The causes behind this must be undoubtedly examined within the individual conditions at the origin of the different welfare models chosen by each Region³⁷⁷. These regional differences create economic, social and cultural exclusion, emphasising the differences and poverty that affects families living in the south of the Country³⁷⁸.

For example, in the Northern Regions where female employment rates are high, thanks also to a more dynamic job market, work/life balance is generally considered among the priorities in the political debate³⁷⁹. On the contrary, where there is a lack of employment opportunities, the matter becomes a marginal issue in the social protection system. When there is a lack of funds for the implementation of welfare services, reconciliation between work and taking care of the family, Italian and foreign women, automatically become the solution, sacrificing their ambitions and talents, and returning to a vicious circle that it is impossible to escape from³⁸⁰.

ISTAT data in the "Report on social exclusion and poverty" of 2010, reveals that in Southern Italy there is an emergency within the emergency³⁸¹. For example, on the inequalities between the North and the South of the country as far as the funds allocated to social services are concerned, one can consider the iconic case of nurseries. In a study from 2007³⁸², it appears that "the difference between North and South of the Country as far as the service is concerned does not only consist of the expenses that families have to sustain to send their children to a public nursery (the most expensive 10 towns are all in Northern Italy), but it concerns also the number of nurseries in the Regions: according to the Home Office data, updated to 2006, the Region with the largest number of nurseries is Lombardy with 617 units and approximately 27,000 places available³⁸³ (...), last is the Molise Region with only 6 nurseries and 219 places available. Public nurseries are present only in 17% of the Italian towns. The 59% of nurseries are concentrated in the Northern Regions, 27% in the Central Regions and only the remaining 14% are in the Southern Regions. A

371 SABATINELLI, 2009 in "Employment and motherhood", ISFOL, 2011, page 60.

372 Comments on [paras 481-483](#) of Governmental Report.

373 The frame work law 328/2000 for the creation of the integrated social services system and the reform of Chapter V of the Constitution.

374 P. SAITTA, N. SOLLIMA "Family policies in Italy: issues and perspectives. A comparison among Regional Laws in Friuli-Venezia Giulia, Toscana e Marche" C.I.R.S.D.I.G, Working Paper n. 17, Quaderni di Section: Right and Social Communications, University of Messina www.cirsdig.it

375 Apart from some constitutional and legislative guarantees, the creation, priority and execution of laws favouring family policies is entrusted to the Regions, and to Provincials and Municipality Administrations, which elaborate and implement the measures and guidelines they consider to be most convenient.

376 BIFULCO 2005; GORI 2004; KAZEPOV 2009

377 R. LODIGIANI, E. RIVA "Policies on work-life balance: from enforcement to implementation" paper conference ESPAnet Italia 2010 Session nr. 1A "The enforcement of new social policies: processes, actors and participation".

378 See Recommendations 20 and 41/2004 CESCR, and the comments in the "Monitoring report of the Recommendations" to the Italian Government of the UN Committee on Economy, Social and Cultural Rights and the UN Committee on Human Rights with the regard to the implementation in Italy of the International Treaties on Economic, Social and Cultural Rights and on Civil and Political Rights and other international Law instruments, Roma, 19.06.2007, p. 121-127.

379 R. LODIGIANI, E. RIVA "Work policies-life balance: from enforcement to implementation".

380 ISTAT data shows that 63% of women in the South of Italy do not work and don't look for a job.

381 E. g. In Campania Region's one out of four families is in poverty. The 25.1% of families live under the poverty threshold (which in 2009 has been fixed at 983 EUR/month), the percentage is more than twice the national average, which is approximately 10.8%.

382 <http://www.cittadinanzattiva.it/il-punto-archivio-comunicazione/1722-asili-nido-comunali-tra-carro-rette-e-liste-di-attesa.html>

383 Followed by Emilia Romagna (540 nurseries and 23,463 places) and Toscana (399 nurseries and 14,137 places).

comparison of the places available and the potential users (children between 0 yrs and 3 yrs), the average coverage in Italy is 6%, with a maximum of 16% in Emilia Romagna and a minimum of 1% in Puglia, Calabria and Campania. Considering the dynamics of the children services offered and regional devolution, if we now compare the female employment rate with the birth rate in two Regions, Emilia Romagna³⁸⁴ and Campania, we will see that in Campania, with only 6% of coverage in nursery services, the female employment rate is fixed at 26.3%³⁸⁵ and the birth rate has decreased from 1.51 children in 1995 to 1.42 children in 2009; in Emilia Romagna, where nurseries coverage has reached 33%, the female employment rate is the highest in Italy at 61.5% and the birth rate has increased from 0.97 children in 1995 to the present 1.48 children³⁸⁶.

If connected to the poverty issue³⁸⁷, these records expose the obvious negative impact on the processes of women's economic and cultural impoverishment which, in the long-term, will in turn affect the entire family, the wider community and Italian society. Such huge inequalities among the Italian Regions aggravate the growing sense of distress and intolerance which is becoming more and more evident among both the male and female population in the different Regions, exacerbating a sense of insecurity, mainly endured by women, as well as a sense of discouragement and mistrust caused by the absence of public services and State interventions.

WE RECOMMEND:

- ***Preparing a political strategy and a national harmonious coordination that does not aggravate the existing inequalities between Northern and Southern Regions and enables the guarantee of equal policies for welfare, services and activities, in every Region.***
- ***Taking into consideration the gender perspective to plan and implement national and local policies on welfare and incentives for participation and socio-cultural promotion.***
- ***Monitoring activities in the Regions which must be transparent and coordinated with the national, provincial and local levels, and to promote incentives for equal opportunities.***
- ***Promoting a strategy that takes into account welfare services for mothers, children and families who would be able to access integrated quality services, continually identifying and updating essential social performances levels (LEP)³⁸⁸.***

13.1.2 Family welfare: unequally distributed expenditure discriminates against women³⁸⁹

During the last five years, the Italian welfare system has not adequately implemented the indicated gender and family policies and has not met financial requirements with respect to the needs of the population. Despite the different policies and public statements, there have been cuts in the budget made available. (See [para. 2.6.1](#))

At present, the national welfare system is largely "family network-based"; the Government offers insufficient and partial responses that lead to the privatisation of services. Too often, in practice, the main responsibility of the collective social well-being and the protection of its members lies with women, of all ages and origins (mothers, grandmothers, babysitters and carers), as well as with the family and informal networks.

The aggregated national data on welfare expenditure reveal an unbalanced composition which generally penalises women and families.

Eurostat data referring to 2005³⁹⁰ indicated that the overall Italian expenditure figure in the budget allocated to welfare was slightly lower than the European average (26.4% of GDP compared to 27.8%), but its composition did not guarantee an adequate protection system for women, family and vulnerable categories.

In 2007, within the EU (with 15 member States) Italy was at the bottom of the ranking for welfare expenditure destined to families and for maternity, with only 1.2% of the GDP, when the average was 2.1%

384 <http://www.regione.emilia-romagna.it/wcm/statistica/pagine/factbook/ambiti/elenco/benessere/quadro/schede/scheda6A10.htm>

385 http://www.lavoro.gov.it/NR/rdonlyres/4FF260F8-5BBC-4D5D-8CF4-98616A4F8D65/0/CS_Donneemercatodellavorodatistatistici.pdf

386 [http://noi-italia.istat.it/index.php?id=7&user_100ind_pi1\[id_pagina\]=24&cHash=e0f2494850ab7b92a8e62ec65000e711](http://noi-italia.istat.it/index.php?id=7&user_100ind_pi1[id_pagina]=24&cHash=e0f2494850ab7b92a8e62ec65000e711)

387 See [para. 13.1.2.6](#).

388 LEP as provided in Art. 22 in outline Law 328/ 2000 and Art. 117, para 2, letter m), of Constitution.

389 Comments referring to [paras 484-490](#) Governmental Report.

390 Eurostat, Statistics in focus 46/2008, Social Protection in the EU, http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-08-046/EN/KS-SF-

[08](#)

046-EN.PDF

within the EU with 15 members and 2% within the EU with 27 members³⁹¹.

In 2009, the Ministry of Economy and Finance published the Italian records only; it was found that the 2008 expenditure for family welfare increased compared to the previous year, reaching 1.4%; however, Italy was still behind the European average, which varied from 2.5% to 3.7% of the GDP in the more advanced countries³⁹².

The inadequacies of the Italian welfare system appear more evident if we analyse the expenditure items referring to socio-economic support for families/children, cash transfers, e.g. child benefits; services, nurseries, tax breaks, child allowance. In comparison with the other 27 EU members, Italy is in the penultimate position, only preceding Poland³⁹³: in our country, welfare expenditure on family and maternity welfare services is 4.7%³⁹⁴; the European average is 8%.

13.1.2.1 Lower protection of maternity for atypical female workers compared to others (see para. 11.9.1.3)

13.1.2.2 Parent leave and family care time sharing (see para. 11.7)

13.1.2.3 Nurseries (see para. 11.9.1.2)

ISTAT reveals that one working woman out of five of leaves work after giving birth, or after marriage. Only four mothers out of ten among those “forced” to leave work have recommenced employment at a later stage. Almost one million women were made redundant or were forced to resign after deciding to have a child in 2010. We would like to point out that leaving one’s job is almost never a free choice. The lack of services for young infants is part of the distortion of the female employment market.

The Lisbon strategy set the coverage of children in nurseries in Europe at 33%, in order to guarantee a healthy development in every country. Italy has stopped at 12.7%³⁹⁵, even though some of the Southern Regions are far below this figure. Satisfied demand is still very low compared to the potential users. The shortage in access to nurseries and related public services does not encourage women to return to work after maternity³⁹⁶. The extraordinary Plan 2007-2010 in favour of the development of nurseries in Italy has not been refinanced; moreover, the Government has cut the funds destined to local councils on all social expenditures, thus having a further impact on all the services related to young children starting from nurseries. “In Italy, only 0.15% of GDP (OECD, 2009) is destined to direct interventions for pre-school children, i.e. under 3 years of age. Despite the importance given to the care of children under 3 years of age, very little is practically achieved to offer adequate services to the family and favour access (and staying, we would like to add) of women to work³⁹⁷. In Italy there are no free childcare services under 3 years unlike the kindergarten and compulsory schooling. This means that families with young children and both parents that work (or the single parent that works), unless they have other support from private/personal sources, have to bear the related expenses”³⁹⁸.

“Women who work and have children are supported by the informal network, if they have children of 1 and 2 years of age mainly rely on the support offered by grandparents, more than services (52.3% as opposed to 27.8% in nurseries). 13.5% of children attend a public nursery, 14.3% a private one, 9.2% are looked after by a babysitter, 63% are looked after by a relative (52.3% grandparents, 7.3% parents themselves, 3.4% other relatives and friends).” Paradoxically, there is a higher offer of public nurseries in the North, while there is a higher use of private nurseries in the South: only 7.5% of children attend a public nursery in the South, 16.7% in Central Italy and 15.3% in the North. 18.7% of women workers’ children in the South attend a private nursery³⁹⁹, 12.3% in the North and 13.6% in Central Italy. The growing offer of private services is a compensation for the lack of public social services, in an area in Italy where poverty is more frequent and access to work, and the permanent employment, is difficult.

The Sacconi-Carfagna 2020 Plan from 2010 foresees 40 million Euro destined to improve women’s

391 General Report on the state of the economy 2009» Ministry of Finance .

392 Denmark spends 3.7% of its GDP, France spends 2.5%, Germany spends 2.8%, Sweden 3%.

393 In Poland it is 4.5%.

394 Dossier "Family in figures" Department for family policies with ISTAT.", 2010, http://www.conferenzafamiglia.it/media/6599/dossier_istat_4_1.pdf

395 Dossier “Council offers of nurseries and other socio-educational services for children 0 to 3 yrs. School year 2008/2009” Istat,2010 http://www.istat.it/salastampa/comunicati/non_calendario/20100614_00/testointegrale20100614.pdf

396 See para. 11.7.

397 At an audition at the Works and Pensions Commission at the Senate, the central manager for the survey on conditions and quality of life of ISTAT, has given an alarming piece of information: 27.1% of working women between 2003 and 2007 who have had a child has left the work world and among these last, 56.8% give maternity as the reason to leave work (ISTAT, 2010).

398 A. CASARICO, L. CERIANI, P. PROFETA, “The current tax measures in support of families with minor children are above all an income tax deduction on an annual basis, decreasing depending on the income amount and scaled in relation to the children’s age (younger or older than 3 years) and the number of components of the family (a higher deduction is granted for more than 3 children). As far as tax treatment of the expenses sustained by families for children care is concerned, there are allowances and deductions. From tax year 2005 (tax return 2006) it is possible to deduct up to a maximum amount of 1,549.37E for the pension contributions paid for cleaners or careers (and therefore, also contributions paid for babysitters’ pension), plus a 19% deduction for nursery fees for a maximum total amount not exceeding 632 E per annum per child” - From the document Short note 1 “Tax in favor of families with children under 3 years: two proposals and a simulation” University Bocconi, 2010.

399 Dossier "Family in figures" Department for family policies with ISTAT.", 2010, www.conferenzafamiglia.it/.../dossier-famiglia-in-cifre.aspx

employment and conciliation, but there is no planned financing to incentivise public nurseries: 10 million Euro for childminders, 4 million Euro for council family carers, 12 million Euro for family vouchers, 6 million Euro to support cooperatives and 4 million Euro to provide software for internet jobs (working remotely from the workplace). The Plan splits the responsibilities for implementation between regional and local administrations. Since the initiatives have been pre-defined, Regions have limited room to manoeuvre with regard to their territorial specific needs.

SEE RECOMMENDATIONS ART. 11.7 AND 11.9

WE RECOMMEND:

- ***Extending the guarantees provided by the Law concerning the indemnity for maternity leave to all the work contracts existing in Italy, ensuring the maximum of the salary charged under general taxation for at least 5 months leave for all women workers, whatever their contract (See also recommendations [para. 11.9.1.3](#)).***
- ***Foreseeing financial support for maternity with cash transfer, depending on income and on the number of children (on the French welfare model), guaranteed from birth to coming of age for all the children, or to apply policies of tax fairness, reducing taxes for families who support the social role of generational turnover.***
- ***Enhancing the pension contributions during the mandatory maternity leave , or to identify social security “cushions” that can guarantee a safety net during the periods of interruption due to maternity or paternity, also for individuals without contracts or working as carers (without prejudice to the contributions history and the future amount of the pension).***
- ***Promoting support for flexible working times and part-time work (reversible and voluntary) through the tax system (deductions, incentives for employers etc.), to favour work/family balance on an equality basis between men and women (See also recommendations [para. 11.2 e 11.3](#)).***
- ***Developing concrete actions to allocate more resources to the support and reinforcement of the services to infancy and childhood at governmental and public administration level (See also recommendations [para. 11.2 e 11.3](#)).***
- ***Guaranteeing full-time services in all the services dedicated to infancy and childhood, nurseries, kindergartens and all other school orders in order to encourage women to return to work and pursue their career.***
- ***Making the whole amount of the nursery fees tax deductible⁴⁰⁰ as well as the cost of private babysitting.***

13.1.2.4 Family allowance

Breaking down the expenditure for family and child welfare further, it is interesting to analyse how the transfers work (child benefits or family allowances), in Italy called “*assegni per il nucleo familiare*”, which represent approximately half of the expenditure. The criteria to apply in Italy are very selective compared to other European countries, making this security cushion not so effective in the fight against child poverty⁴⁰¹. The cheque for the family is granted only to those mainly on an employee income; it therefore does not include those working on a non permanent or uninterrupted basis, but also atypical workers and unemployed individuals. It is also based on the family income and the number of components⁴⁰². Items on the public budget 2009 with reference to the social welfare show that, in 2009, public expenditure for family allowance decreased to 6.390 billion Euro from 6.675 in 2008 (-4.3%). A drop was also registered for maternity benefit, which is considered under the same line of expenditure as sickness and accident benefits: the reduction in 2009 was 2.5% in comparison with 2008⁴⁰³.

400 Taxes paid by families who access the service of public nursery is calculated on the family income, while the maximum deduction in the tax return is 610 Euro.

401 C. SARACENO “Transfers to families with children. A European comparison”, 2007, <http://www.fondazionegorrieri.it/UserFiles/File/Saraceno-%20Comunicazione.pdf>

402 In Finance Bill 2007, a family composed of 4 members receives a contribution of 258.33 Euro /month if the annual income does not exceed 12,500 Euro, 121.83 Euro /month with an income of 25,000 Euro /annum, and then it progressively decreases until there is no contribution for incomes higher than 67,000 Euro /annum.

403 «Relazione Generale sulla situazione economica del Paese 2009» Ministry of Economy, <http://tesoro.it/doc-finanza-pubblica/dfp.rgse.asp>

13.1.2.5 Pensions

Since women today are still the weakest link of the job market, (with discontinuous careers, mainly part-time atypical jobs, little protection pension wise), it is possible to deduce that it is when women are employed or in the age of work (15-64 year old) that gender gaps are created, which will have an impact on final pension calculations.

To achieve the object of gender equality in pensions too, it is necessary to rethink the welfare models that would support women during their working life, taking into account demographic ageing, the low employment rate, the “family network based” welfare model and the economic crisis.

For example, Italy does not apply serious basic income policies as foreseen in Europe. The promotion of a basic income rate would allow women to have a decent minimum pension guarantee, for both those who have given up work in order to look after their own family, due to the lack of services and suitable social policies, and for those who have worked occasionally and for short periods only due to the lack of jobs. A basic income would also solve the imbalance caused by the Italian social security system that is highly dependent on labour. Those people who have not worked or who have done so only occasionally and for short periods have no access to the social protection system, e.g. students and long-term unemployed people. The female population is the one with most difficulty in accessing the system and keeping a job: ISTAT data from December 2010⁴⁰⁴ confirms the rate of non-working women at 48.9%, i.e. one woman every two is not looking for work. In the south, this figure reaches a peak of 63%. The employment rate for women aged between 15 and 64 was 46.1% 2010, the unemployment rate was 9.7%.

The expenditure for welfare in 2008 appears to have been concentrated on pensions (old-age and survivors benefits), “with a quota of 60.7% compared to a European average in the EU with 15 members of 45.7%”⁴⁰⁵. The number of female workers who have matured a pension is much lower than the one for male workers. The comparison between workers who have gained the right to old age pensions shows remarkable gender gaps (the highest in the EU with 25 members).

In Italy, the average female income for old age pensions is almost half of men’s (1,219 Euro/month)⁴⁰⁶. Women statistically live longer than men, but mature fewer years of contributions (52% mature less than 20 years of contributions); also, having earned incomes that are lower than men’s (the ISFOL survey Plus-2005 shows an average differential of 22%), women are more exposed to the risk of poverty. Women’s pensions are lower on average; they receive approximately 30.5% less than men: men represent 47% of the retired population and receive 56% of the total pension expenditure, resulting from higher salaries earned on average i.e. 17,137 Euro compared to the average of 11,906 earned by women. “In 2008 Italy paid 15.38% of GDP in pensions, distributed to the North (50% of the total), to the Centre (21.5%) and to the South (27.5%). The ISTAT data indicates that one Euro out of three paid by taxpayers is assigned to pensions. Altogether, there are 70 retired persons every 100 employed persons. However, 45.9% of retired persons – i.e. almost one out of two – lives on less than 550 Euro/month, while 26.1% does not reach 1,000 Euro/month”⁴⁰⁷.

The estimation for the future is an increased risk of poverty mainly for women, caused by the introduction of a tighter link between contributions paid and benefits received, leaving a narrow margin for a fairer redistribution.

The situation worsens for VAT-registered self-employed women workers, who endure all the discrimination of the women’s job market, like minimum protection during maternity and no protection at all during the children’s infancy or in the case of non self-sufficient relatives; often, their turnover is lower at the same performance levels than men. “If to all these data we add the progressive percentage of females in professions, it is urgent that private Pension funds take this matter into serious consideration (...) with the Department of Ministry of Employment in order to plan a specific professional welfare model in view, also, of an effective gender equality when it come to payments”⁴⁰⁸.

The almost total absence of work/family balance policies which mainly affects women, is further worsened by the Act no. 78/2010 and the Finance Bill 2011 (Stabilità2011), whereby the retirement age for women was postponed from 60 to 65 years (with the introduction of the so called “sliding door” only for public employees). The Government committed to invest the savings deriving from this rule in favour of services for childhood and for “non self-sufficient” people. Despite the promise, the Government has already used such funds for other expenditures.

404 ISTAT “Annual report” 2010 http://www.istat.it/dati/catalogo/20110523_00/rapporto_2011.pdf

405 Article “Higher pensions in the Centre, the South is at the bottom” Il Giornale, 12 June 2010, http://www.ilgiornale.it/economia/pensioni_piu_alte_centro_coda_sud/12-06-2010/articolo-id=452475-page=0-comments=1.

406 Data from Pensions watchdog, INPS, 2009.

407 13.4% receives a cheque between 1,000 and 1,500 EUR/month, the remaining 14,7% receives a pension higher than 1,500 EUR/month

408 Article “Female Welfare”, 2009, http://www.enpacl.it/index.php?option=com_content&task=view&id=356&Itemid=432

WE RECOMMEND:

- *Reforming the pension system taking into account gender issues, for instance considering the time spent studying, in maternity or in care-giving to elderly people when computing the pension contributions.*
- *Adjusting measures of the unequal distribution of pensions; such measures should correct the differences between the amount of contributions paid by men and women, taking into consideration the care-giving time, which is almost entirely on women, and also the discriminations and difficulties suffered by women in the work world, with respect, in particular, to the work/life balance issues.*
- *Respecting the commitment concerning Act no. 78/2010 to assign all the savings coming from the postponement of the women's retirement age to projects in the social and family policies, with particular attention to non self-sufficient people and the work/life balance issues for women of all ages (See para. 11.7).*

13.1.3 Social Exclusion – family poverty

Italy does not have serious social housing policies, which would favour autonomy for women who do not have immediate access to work, those who are more vulnerable from a socio-economic point of view, those who have chronically ill family members, and those who do not enjoy a strong support from the family network.⁴⁰⁹

In the ISTAT and EUROSTAT reports of recent years, financial and non financial indicators have revealed that poverty and inequality are still a very significant problem in Italy in comparison with the average of the other 15 European members. In Italy in 2009, there were 2,657,000 families in relative poverty, i.e. 10.8% of the total. According to ISTAT⁴¹⁰ 7,810,000 individuals were poor, 13.1% of the entire population⁴¹¹. In particular, the situation worsens in the South in Region Campania and Region Sicily and among large families. Beside lower income and consumer spending capacity levels, the Southern regions show a more significant inequality in income distribution compared to the rest of the Country⁴¹². In this situation, female poverty is becoming more and more relevant; it is more frequent among women heads of family, elderly women and families where one of the members has lost his/her job. In 2005, a study from Unicef/Innocenti Research Institute on OECD countries showed how poverty among minors is lower in countries where the expenditure for family welfare is higher. In 2005, Italy is among the countries with the lowest family welfare expenditure compared to GDP and, at the same time, with the highest poverty rate among minors (16.6%) in the OECD countries; only USA and Mexico show a higher rate⁴¹³.

In 2010, a study from Cittalia⁴¹⁴ on the poverty of mothers in Italy⁴¹⁵ reveals how protections of women, and mothers in particular, from social exclusion is irrelevant and ineffective. Today, in Italy, "to become a mother leads increasingly to a general impoverishment of the family, whatever the family type. In Italy, there are approximately one million poor mothers with at least one minor child (1,002 million) equal to 59.7% of poor mothers (1,678 million), 8.73% of Italian mothers. 86.3% live as a couple, 7.5% are single while the remaining 6.2% live in extended families. Among mothers living as a couple and single parent with minor children, the incidence of relative poverty is slightly higher than 15% (15.4% and 15.7% respectively). This figure increases to 22% when mothers live in extended families. Poor mothers living in a couple with children show a high frequency of housewives, women who have never had a job and are not seeking a job. On the contrary, among single parent mothers, the employed women rate is higher (32.7%), even with low professional profiles. To the contrary, when living in a couple, there are fewer working mothers (23.9%). In 19.7% of cases, both married couples/partners have a job, but the income level is not high enough to go beyond the poverty line. With respect to the years 2005-2006, relative poverty conditions of Italian mothers have significantly worsened: in fact, in 2006 the incidence of poor mothers had generally decreased

409 ISFOL, "Employment and maternity: territorial model and compatibility examples", 2011, p. 39.

410 The poverty threshold for a two member family is equal to the average monthly per person, that in 2009 is 983.01 EUR. Families composed by two persons who have a month/person expenditure equal or lower than, that are classified as poor. Moreover, in 2009, 1,162 families (4.7%) are classified in absolute poverty for a total of 3,074,000 individuals (5.2% of the entire population).

411 Dossier ISTAT "Annual Report on the job market and deprivation", 2010, www.istat.it/dati/catalogo/20100526_00/Avvio2009.pdf

412 Dossier ISTAT & Department for family policies, "Family in figures", 2010, www.conferenzafamiglia.it/.../dossier-famiglia-in-cifre.aspx

413 UNICEF/Innocenti research center, Child poverty in rich countries. 2005, Innocenti Report Card no. 5, Firenze 2005.

414 http://www.cittalia.com/images/file/poverta_madri_Italia2010.pdf

415 Report "Poverty of mothers in Italy" from Cittalia for Savethechildren <http://www.pratiche sociali.org/?p=7768>

(although only slightly), and also as a result of some ad hoc measures, in 2008 there was a new increase⁴¹⁶. “The picture resulting from the last Cif Report 2009⁴¹⁷ reveals a critical situation of the Italian families who, today more than ever in times of crises, really struggle to guarantee the generational turnover and, as a consequence, to guarantee a growth perspective (not only economic) for our country. The average monthly expenditure for children is 35.5% of the total family expenditure. The monthly cost of a child (only considering essential goods) from 0 to 5 years is 317 Euro, which corresponds to approximately 3,800 Euro per annum⁴¹⁸”.

WE RECOMMEND:

- ***That all the measures to combat female, childhood and family poverty become more generous and available to all, with a higher level of effectiveness taking, nonetheless, into consideration that the main factor contributing to a successful social inclusion is a higher level of women’s employment.***
- ***Introducing fair tax measures in view of the family income support, particularly to single parent families, low income families and large families, encouraging women’s employment.***
- ***Introducing a tax credit on “care” expenses, with the redistribution effect and incentives to work for both parents. Under a certain income level, the tax credit will become a transfer.***
- ***Monitoring, controlling and verifying possible instruments of income support, that will hopefully apply at a national level, to avoid any risks of unequal treatments at local level and of excessive discretion by the administrations in the payment of social security contributions.***
- ***Introducing regulations which assign funds for the promotion of social income and housing policies, to combat illegality, together with measures in favour of social and work inclusion within a wider integrated strategy to combat women’s short and long-term social and economical exclusion.***

13.1.4 Plan Italy 2020 (See para. 11.14)

The Action Plan Italia 2020 does not comply with CEDAW recommendations and, with only 40 million Euro budgeted for its implementation, besides its methodology, it does not appear to be effective to deal with women’s inactivity and low level of employment. Except for Malta, Italy shows the worst situation in the EU with 27 members, with an activity rate at 51.1% and an employment rate at 46.4% in 2009, with a birth rate of 1.4% and the highest ageing rate in the world (the ageing index is 144, ratio between over 65 and 0-14 years).

The plan does not effectively renew the classic “family network based” Italian welfare system, which is already not generous and based on passive assistance, mainly lacking in family support policies. The Plan still emphasises the “intergenerational pact” within the family, namely asking grandparents to make an even greater effort to take care of their grandchildren and asking women to take care of children and the elderly or non self-sufficient people. One need only consider that statistics already show that 30% of Italian grandparents take care of their grandchildren daily!

The entire Italian welfare system needs a rethink in a gender perspective in order to guarantee a fairer intergenerational equality, to decrease women’s poverty – and minor children’s as a consequence – but also to support the economic growth and efficiency, allowing women to better express their potentials and talents.

However, a political and economic overall strategy is still lacking. For example, the financial resources deriving from the postponement of civil service women’s retirement age (by fixing the minimum age at 65, from 2012 there will be a total saving of 3.95 billion Euro in the period 2010-2020), according to Act no. 78/2010, should be assigned to “interventions in social and family policies, with particular attention to non self-sufficient individuals and to the work/life balance for women”. Recently, several members of Parliament reported that 120 million Euro from the 2010 budget and 242 million Euro from the 2011 budget have instead been used on other projects. Actually, such savings do not even appear in the National Reform Programme (PNR), which foresees actions in favour of women workers’ work/life balance (as foreseen, among others, by Plan Italia 2020).

416 <http://www.pratichesociali.org/?p=7768>

417 P. DONATI, “The cost of children: which welfare for families?” Report Cif, 2009, Franco Angeli, Milano.

418 P. DONATI “The cost of children. Italy need a relation welfare” <http://www.pratichesociali.org/?p=8078>

WE RECOMMEND:

- **Using gender budgeting and gender mainstreaming. These tools should be extended to planning and designing of social protection system reforms, at all national and regional, provincial and municipal levels.**
- **Integrating the National Reform programme with the specification of the projects dedicated to non self-sufficient individuals and to the working women's need, including also elderly women, as regards work/life balance; specifying that such projects must be implemented with the savings expressly destined to these purposes.**
- **Publishing the detailed of the multi-annual program of interventions.**
- **Foreseeing that all actions in favour of work/life balance are meant to reinforce all the social services involving children and non self-sufficient individuals, as well as retired women.**
- **Reintegrating the funds utilised for different purposes in 2010 and 2011⁴¹⁹.**

13.2 PROMOTION OF WOMEN'S ENTERPRISES POLICIES⁴²⁰

Italy holds the record number of women entrepreneurs and self-employed women⁴²¹.

Regarding Italian women entrepreneurs⁴²², mainly they face the overly large amount of red-tape, a problematic relationship with obtaining credit, and prejudice and scepticism towards women that is still extremely widespread.

Both, foreign and Italian business women, suffer from a lack of information about bureaucratic obligations, existing aid and subsidies, and access to information networks and training for refresher and requalification courses concerning their own skills.

The main sources of financing for women are self-financing (family and friends) and bank loans. The Law regulating credit to women entrepreneurs is Act no. 215/92, meant to incentivise women by guaranteeing ad hoc funding. The Finance Bills 2007 and 2008 contained some dispositions to promote specific loans to women that have not been renewed by the present Government. Even considering some regional opportunities offered to women who are prepared to start a self-employed activity, the real opportunities are very few, mainly in the Veneto Region and in the autonomous Bolzano Province⁴²³.

WE RECOMMEND:

- **Promoting an informative campaign involving women entrepreneur associations and Chambers of Commerce with respect to bank regulations on the discrimination against women who want to access credit.**
- **Simplifying, widen, and improve bureaucratically procedures and initiatives for female entrepreneurs. To produce simple tools for the start-up of a business and for the continuing updating on new business-related issued, bearing in mind gender, cultural and origin issues.**
- **Renewing and refinance the National Fund for female's entrepreneurship.**
- **Strengthening professional training of self-employed women, particularly through actions to enable an easier access to credit and capital raising.**

419 See Recommendation of "Pari o Dispare" about the four points, <http://www.pariodispare.org/>

420 Comments on [paras 504-506](#) of the Governmental Report.

421 They are 1,482,200 against 1,340,900 in Germany and 1,168,300 in the United Kingdom. Figures contained in the report of «Observatory Artisans- network (confartigianato) women entrepreneurs » 2009. In the Italian context, there appears to be three reasons: self-employment is more flexible and allows an easier work/family; the difficulty in finding a job in a crisis time, but also, unfortunately, the false self-employment that many "partite IVA" hide.

422 http://www.unioncamere.gov.it/Unioncamere_gestione/allegati/com_MAP_UC.pdf

423 E. DELLA RATTA, ARTICLE, "Little help for female entrepreneurs", on line:

<http://www.ilsole24ore.com/art/SoleOnLine4/dossier/Economia%20e%20Lavoro/2009/mam-2009/imprese-femminile/imprenditoria-femminile/pochi-aiuti.shtml?uuid=31506952-46d3-11de-bf39-bf88fbec73a5&DocRulesView=Libero>

13.3 ACCESS TO THE FORMAL CREDIT SYSTEM

13.3.1 Access to credit⁴²⁴

Access to credit is one of the crucial moments, not only when starting new activities, but also when transforming the activity of both men and women's enterprises.

According to a recent CNEL Report ("Women's work in Italy – Comments and proposals, July 2010), a woman entrepreneur guaranteed by another woman is the worst possible client; therefore, much higher interest rates are applied, at the same conditions, in comparison with a woman guaranteed by a man. In fact, a recent study on access to credit⁴²⁵, analysed loans on bank current accounts of more than 150,000 individual enterprises (more than one million in credit loans). It appeared that, at equal conditions, women's enterprises bear a cost of access to credit from 30 to 50 basic points more than men's enterprises. This differential is not justified by a higher risk of failure (in 2004 failure rates were 1.9% for women and 2.2% for men). Moreover, women's individual enterprises are requested to supply external guarantees more often than their male colleagues. If the guarantee for a woman's enterprise is given by a man, the rate of interest applied is on average equivalent to the one applicable to a man's enterprise of the same characteristics. On this subject, it needs to be said that numerous associations and organisations of women entrepreneurs agree on the analysis of the problem and ask for the implementation of specific actions which take into consideration the gender issues in the realisation of instruments for the access to credit.

A WITNESS

"The finance partner, a woman farmer, recounted the occasion when she had asked for a public refund for a natural disaster and the bank gave priority to men's enterprises with a higher turnover, actually postponing her refund to the bottom of the list. She also said that a fellow woman farmer who did not obtain a loan because there were no men in her farm, nor "male" guarantees were supplied to support her loan application. Generally, she added, the unions consider women activities less interesting"⁴²⁶.

13.3.2 Loans

"Taking into consideration those who look for an on-line convenient loan, some curious and meaningful results come out. The search for a loan appears to be almost an exclusive women's right. According, for example, to the data supplied by "Mutui.it", up to 63% of the comparisons among different offers are made by the female public. However, if we look at whom actually signs the loan application, men are the majority, whose agreement appears on 80% of the final contracts. It is worthy of a question to know if this is only a chore sharing or, instead, a gender discrimination, as banks prefer to trust the economic stability guaranteed by a man worker⁴²⁷.

13.3.3 Microfinance

"Although the programmes are generally sensitive to gender issues, a combination of factors connected to women's socio-economic conditions, and to the consequent attitude towards risk-taking (women's social position within the family and in general), as well as the characteristics of the Microfinance operators at present (a young sector that has not yet completely taken in all the requirements of some potential vulnerable beneficiaries, like women, and therefore not yet in a position to offer adequate services), has so far prevented Italian microfinance operators to effectively combat the exclusion of women from finance in our country⁴²⁸, which is one of the gender discriminations about which there is not enough discussion"⁴²⁹.

WE RECOMMEND:

- ***That the Government and the Bank of Italy work together for the design of rules and criteria to analyse the gender discriminatory behaviour during access to credit and to promote laws to facilitate and guarantee equal opportunities in the access to credit, providing penalties towards banks which show discriminatory attitude against women candidate client and female customers.***
- ***Monitoring and controlling from the Bank of Italy that banks' performances on loans and mortgages are balanced and no gender discrimination is affected.***

424 Comments on [para. 494-497](#) of the Governmental Report .

425 A.ALESINA, F. LOTTI, P. E. MISTRULLI, "Do Women Pay More for Credit? Evidence from Italy", Working Paper nr. 14202-2008. Research loans on bank current accounts to more than 150,000 Italian individual enterprises were considered, approx 25% of which were female.

426 C. CIMINI & E. PEZZI, "The money is mine and i deal with it", online article, 2010, www.ingeneri.it

427 "Loans: don't banks trust women?", online article, <http://www.ditascanostra.it/2010/mutui-le-banche-non-si-fidano-delle-donne>

428 There are two organization working specifically in gender and microfinance/microcredit in Italy, at national level Fondazione PANGEA, and in the Region of Lazio Risorsa Donna.

429 F. BOTTI & M.CORSI, article "Female microcredit, but not in Italy", online, 2010, www.ingeneri.it

- **Realising an outline Bill on Microfinance, Ministry of Economy and Finance in collaboration with the Bank of Italy, respecting a gender perspective, considering the female microenterprises peculiarity and women social needs.**

13.4 WOMEN'S PARTICIPATION IN CULTURAL LIFE (Art. 13 and Art. 7)

Gender segregation exists even in the cultural sector, but there are no disaggregate data that enable a detailed analysis. Often, women occupy an honorary position but they are never in the positions where the actual strategies are decided and the funds are released: at the head of council departments and bank foundations. Therefore, in times of crisis, the men at the councillor decide to above all cut funding of gender awareness campaigns in towns and in schools, which are perceived as “unnecessary” and “niche” proposals, particularly if compared to town festivals and fairgrounds that, instead, attract tourism (and money) and a larger public consensus.

Moreover, cultural environments are characterised by a male presence in the top positions.

In 2011 Susanna Maelkki was the first woman to direct an opera play at the famous Teatro alla Scala di Milano⁴³⁰.

In 2011, Lorenza Lei was the first woman to be appointed General Manager of RAI, Italian public television. The heavy cuts made in the last Finance Bill in culture and entertainment activities, strongly penalise women working in that sector.

13.4.1 Women's participation in sporting activities

The level of sporting practices at any age has improved, especially for children and teenagers⁴³¹. However in 2011, as in many other sections of social life, even in sport, women are still discriminated in position and do not cover significant roles such as president, coach, referee, athletic trainer, team assistants, sports doctors, etc. The only professional roles in which they really shine are those connected with sports psychology, nutrition science and children teaching. The number of women Presidents of Olympic Sports Federations, professional or amateur, is extremely low (in Italy out of 45 Federations there is not even one woman president and, sadly, even within the Institutes of Sports Promotion, woman managers are very few. A woman has never been elected President of the Italian Olympic Committee – CONI – or of a Federation in the history of Italian sport; all this despite the fact that Italian women have proven to be very competitive (out of 28 medals, 10 have been won by women).

In Italy there are only 6 official sporting disciplines⁴³² that give an athlete a professional status; athletes who practice other sporting activities are amateurs. The 6 disciplines are all male only. “Professionals” are protected by laws, which provide social and pension benefits. “Amateurs” are neither protected nor paid, but they are granted scholarships. Being all amateurs, women endure this discrimination even more so⁴³³.

In 2007, CONI introduced the protection of maternity rights within the fundamental rights of its manifesto (Art. 29). Out of 45 sports federations, only 14 have adopted such a clause. Without a regular contract, often women are not protected. Generally, the contracts for amateurs consist in private agreements, in which sometimes it is even added an “anti-maternity” clause, i.e. resignation is requested if the athlete falls pregnant⁴³⁴. Moreover, there are significant salary differences between men and women and often the women's premium for competitions are half the amount of men's”⁴³⁵.

Black economy in sport is very high, especially for women. ENPALS (National Welfare and Assistance for Workers in the Entertainment and Professional Sports) states that the number of members (7.500) is immensely lower compared to the real number of sportsmen/women (10 millions)⁴³⁶. This can happen because there is a tax law on income deriving from sporting activities, but there is no law protecting a worker whose activity is mainly in sport.

A sporting woman's salary and rights, even at international level, are equivalent to those of a young male talent, an “amateur”⁴³⁷.

The Melandri Act 2005, provides the obligation to have at least 20% of athletes and 10% of coaches introduced by the Boards of Directors of the Federations as well as an equal gender representation. This

430 <http://donna.tuttogratis.it/amore/primo-direttore-dorchestra-donna-alla-scala-di-milano-susanna-maelkki/P177757/>

431 ISTAT, “Changing sport”, 2005

432 Football up to C2, road cycling, boxing, Division A1 and A2 basketball, motor cycling and golf.

433 The law 91 from 1981 attributes the right to qualification as a professional to the Federations that have qualified the six sporting disciplines listed in note 1.

434 See newspaper articles: M. R. Quario, “Ci vogliono professioniste ma col pancione ci cacciano”, Il Giornale, 8 May 2008; C. Cucchiariato, “Canoa è donna. L'insidabile mamma podio”, L'Unità, 18 August 2009; F. Pasquali “Maternità da difendere, cambiamo la legge 41”, La Gazzetta dello Sport, 1 December 2006; P.Rossi, “Ceccarelli, al rabbia e le accuse: discriminata perché mamma”, La Repubblica, 2 February 2007.

435 Explicative is comparing the premium amount in the sport female and male competitions, and reading few newspaper articles, as ex.: P.NATALICCHIO, “What female athletes repeats: the sport is deny to women”, l'Unità, 26 November 2008.

436 S.M. RIGHI, “Gli Stati generali dello sport donna. Obiettivo parità per i manager rosa”, l'Unità, 4 December, 2009.

437 Interview with the athlete Vera Varrara, Dribbling, 5 November 2010.

Law is basically unattended.

WE RECOMMEND:

- *The active participation of women in the world of work, culture, sports, politics depends on the time women can devote it during their life, if they are able to conciliate their duties and the care of family. Therefore it is essential that the State support with adequate funding conciliation policies for women and men with adequate funding, and that all the measures and laws are set up to incentivise the cultural and social change towards an effective equal opportunity policy in relation to family commitments.*
- *Researching disaggregated gender data on the presence of women in the field of arts, entertainment, sport and communication, and adopting specific measures to eliminate the vertical segregation in such sectors.*
- *Updating Act no. 91/1981 or to introduce a new law to give men and women working in the sporting sector the opportunity of regular contracts and implementing equal opportunities among men and women athletes.*
- *Promoting the introduction of a maternity protection clause in all the contracts signed by the sports federations, in particular providing sanctions for those federations which ask women athletes to sign an anti-maternity clause.*
- *Adopting specific measures to ensure a equal pay to women professional athletes.*
- *Monitoring the implementation of the Melandri Act providing disincentives and penalties for violation of the rule on equal gender representation in the Board of federations.*

ARTICLE 14 RURAL WOMEN⁴³⁸

14.1 LACK OF STATISTICAL DATA

It is positive that a clearer picture on the enjoyment of fundamental rights by women living in Italian rural areas was provided by the Government in the “Responses”. However, the Government itself in **paragraphs 230 and 235 of the “Responses”** highlights how the lack of statistical data makes the development of adequate strategies to promote a greater access to rights for women living in rural areas impossible. Despite this awareness, the first survey was published in 2010.

14.2 LACK OF A COMPREHENSIVE STRATEGY

14.2.1 The Government does not seriously acknowledge difficulties experienced by women living in rural areas in the enjoyment of their fundamental rights and does not want to implement a comprehensive and long-term strategy, based on the data collected, to improve their conditions.

Dialogue between Government and women entrepreneurs is poor. Governments in **para 507 of the VI Periodic Report** affirms that National Committee for Women Entrepreneurs met several times in recent years: actually the Committee met only twice and because associations asked for a meeting. The Committee never concretely started its activity.

14.2.2 The Government considers⁴³⁹ the decrease of women’s presence within the agricultural sector interlinked with the physiological decline of the sector itself. Actually, the data it provides⁴⁴⁰ contradict such an interpretation, highlighting an increase of men’s presence within the sector. As a matter of fact, since 2005 to date no structural interventions have been undertaken to support women agricultural entrepreneurs and this has definitely discouraged women’s presence within the sector. In fact the incentives to female agricultural entrepreneurship are actually stuck since Act no. 215/92 – envisaging positive actions both for start-ups and already existing women’s enterprises – has not been refunded for several years⁴⁴¹.

14.2.3 In the “Responses”⁴⁴² the Observatory for female entrepreneurship and agricultural work is mentioned as a positive example of governmental action, but it is not specified what actions have been undertaken since its establishment (in 1997) and what was their effectiveness and no plan of action or any other form of monitoring of results is envisaged. It is not even known how many funds were allocated in time for its actual functioning.

14.2.4 Multifunction enterprises⁴⁴³ represent positive examples of diversification of rural enterprises. They can be the response to the demand for a new welfare aimed at strengthening those services addressing children and non self-sufficient elders and, thus, allowing women – who are the most burdened with the duty of care – to have a greater freedom of choice, without having to give up the rural enterprises they lead. The Government acknowledges this function⁴⁴⁴, but has not shown any interest in supporting their start-up and development.

14.3 EXPLOITATION OF MIGRANT WOMEN IN THE AGRICULTURAL SECTOR

General Recommendation no. 26 by the CEDAW Committee was totally disregarded by the Government, since it completely ignored the discrimination factors emerging from the (few) data collected on migrant women’s employment in agriculture. About 1/5 of the immigrant women lives in rural areas⁴⁴⁵. Most of them are employed as unskilled agricultural labourer in the South of Italy, illegally or with seasonal contracts, in areas that are strongly controlled by mafia (Campania and Calabria). The Italian Government can count on data that well portray the precarious situation of the women seasonal agricultural labourers – migrant, vulnerable, underpaid and subject to sexual blackmails⁴⁴⁶. Despite this, the Government did not adopt any ad hoc strategy to monitor the actual enjoyment of fundamental rights by these women, first of all the rights to psycho-physical integrity and to work in decent conditions and at an equal wage. In recent

438 All the observations made for this article are referred to **Question no. 29 of the CEDAW Committee**.

439 At **paragraph 237** of the “Responses”.

440 At the same **paragraph 237** of the “Responses”.

441 The “law on women’s entrepreneurship” allocated subsidized contributions (on public funds) for women-established enterprises. The last announcement to access such funds was issued by the Ministry for Productive Activities in 2005 and closed in 2006. Afterwards, the jurisdiction shifted under the DEO, but in 2010 Minister Carfagna declared that without funding the law was in a stalemate.

442 At **paragraph 237**.

443 For a more in depth analysis see: National institute of Agrarian Economy *Verso il riconoscimento di un’agricoltura multifunzionale. Teorie, politiche, strumenti* by R.HENKE, 2004.

444 At **paragraphs 229 and 237** of the “Responses”.

445 “Gli immigrati nell’agricoltura italiana” by M. CICERCHIA, P. PALLARA. INEA 2009.

446 http://www.ecologiasociale.org/pg/dum_fem_est.html.

years MSF has denounced the outrageous conditions of the seasonal women labourers and lobbied the authorities for the improvement of the humanitarian situation of the seasonal labourers in the South of Italy. Two reports by MSF – “Una stagione all’inferno”⁴⁴⁷ (2008) and “I frutti dell’ipocrisia”⁴⁴⁸ (2005) – documented the terrible conditions of the thousands of immigrants, often exploited and enslaved, who work in every season of the year in the agricultural sector of the South. Trade Unions and the church denounced that often the working exploitation of women labourers is associated to sexual exploitation, too⁴⁴⁹. However, the associations witness that such a phenomenon is spreading in the North, as well⁴⁵⁰. Despite this and the international visibility of some dramatic episodes occurred, the Government did not adopt any specific measure.

WE RECOMMEND:

- **Promoting surveys and data analysis on the access to fundamental services by the women living in rural areas, particularly with regard to access to health services and counselling centres.**
- **Encouraging the establishment of rural crèches and agro-social enterprises across the entire national territory as a concrete support to services in rural, mountainous and disadvantaged areas and as a response to the welfare gaps that could generate new income opportunities for women-led agricultural enterprises.**
- **Refunding the actions envisaged by Act no. 215/1992 and, however, to re-establish a national Fund for the start-up, development and strengthening of women’s enterprises.**
- **Promoting interventions to facilitate women’s access to credit through guarantee funds.**
- **Envisaging incentives for the development of integration, training, innovation, research and internationalization forms, as well as for the stabilization and increase of women’s employment in agriculture.**
- **Supporting the start-up and development of multi-function enterprises.**
- **Promoting surveys and data analysis on EU and non-EU women employed in agriculture as seasonal labourers, in order to assess whether they are actually enjoying adequate working and reception conditions, access to services and information.**
- **Promoting verifications and investigations to evaluate the scope of illegal labour and identify the criminal networks involved in the working and sexual exploitation of migrant female workers.**
- **Ensuring protection to the victims who report episodes of working and sexual exploitation, also through the establishment of shelter houses for women who decide to report the situation they are victims of, as per art. IV, letter c, paragraph 26 of General Recommendation no. 26.**
- **Promoting specific actions as per art. 4 CEDAW aimed at ensuring an equal wage, decent working conditions, information on their rights and an easy access to health services for migrant seasonal women labourers, also intensifying the controls on employers and their obligations.**

447 http://www.medicisenzafrontiere.it/immagini/file/pubblicazioni/una_stagione_all_inferno.pdf

448 http://www.medicisenzafrontiere.it/immagini/file/pubblicazioni/una_stagione_all_inferno.pdf

449 It was documented that women migrant labourers “receive on average 25/35 euro per day (for more than eight hours a day) against the 45/55 euro get by men and they are offered 15/20 Euro for a sexual intercourse with their employer”. Source: A. CORROPPOLI, “Sfruttamento delle donne in agricoltura. Straniere e indifese sotto la schiavo del caporale”, published on “La Voce del Molise” on the 13.02.11. Source: http://www.traccialibera.it/index.php?option=com_content&view=article&id=1044:sfruttamento-delle-donne-in-agricoltura-straniere-e-indifese-sotto-la-schiavo-del-caporale&catid=71:alessandro-corroccoli&Itemid=108. See also: http://www.ecologiasociale.org/pg/dum_fem_est.html.

450 The MeltingPot website reports the experience of 14 young women from Morocco, Ghana and Ivory Coast employed by the agricultural enterprise San Sebastiano in Cologna Veneta (Verona Province) to process vegetables to be sold ready-made (washed, cleaned and packaged) in supermarkets. They asked for the Trade Union’s assistance to report to Carabinieri that they were forced to work 15 hours per day or even more, Sunday included, for 11 months a year, even if they formally had a short-term contract, also whether they were pregnant, or had a disabled child to look after at home, or felt sick due to tiredness or cold and that they worked in unheated environments, with their hands in cold water basins. They were paid 5 euro per hour, while according to the collective labour agreement they should have got 6.8 euro per hour, while extra hours and holidays, as well as contributions, were not paid. Thanks to their complaint and mobilization they managed to reach an agreement and obtain better working conditions. Source: <http://www.meltingpot.org/articolo16244.html>

ARTICLE 15 EQUALITY BEFORE THE LAW

15.1 NULLITY OF MARRIAGE WHICH LIMIT THE LEGAL COMPETENCY OF WOMEN (art. 15 & art. 16 CEDAW)⁴⁵¹

15.1.1 Recognition and annulment of forced marriages contracted by foreign women in their country of origin

Although the phenomenon of forced marriages is still hidden, mediators, cultural operators and social assistants are receiving an increasing number of calls for help from foreign women who have been forced to marry one of their nationals in their country of origin against their wishes.⁴⁵² Pursuant to Italian law, if the consent given to the marriage by one of the spouses is forced, he or she may request the annulment of the marriage.⁴⁵³

This poses the problem of the recognition of these marriages in Italy, on one hand, and of their annulment, if they already recognised, on the other.

The Italian law concerning the recognition of foreign deeds⁴⁵⁴ provides that if the marriage has been properly celebrated according to the form requested by law in the country of origin (law which must not provide for regulations contrary to international public order),⁴⁵⁵ it must be recognised in Italy. In other words, for the purpose of recognising a marriage celebrated in another country, the Italian authorities are prevented from verifying whether both spouses agreed to the marriage. The absence of this control (which is required if the marriage occurs in Italy according to Italian law), has led to an increasing number of kidnappings by the families of young women living in Italy. Parents take the young girls back to their country of origin in order to marry them, knowing that the marriage will be recognised in Italy without any problem. Many foreigners living in Italy go back to country of origin to marry, because they know that Italian authorities cannot check the effective consent of the women to the marriage celebrated in another country. The lack of this form of control makes it difficult to identify forced marriages and to protect victims, and favours the impunity of the perpetrators.

If a woman has been forced into an arranged marriage and wants to request its annulment, she will encounter numerous problems. The main ones are the very long timeframes of the Italian legal system and difficulty in accessing free legal assistance. If the woman's permit of stay is bound by marriage to her husband (permit for family reasons), her permit of stay will not be renewed when she decides to leave her home. Her presence in Italy will therefore be at risk of being declared illegal. Consequently, in the absence of a legal permit of stay, she will not be granted free legal assistance in order to take legal proceedings to annul her marriage.

15.1.2 Recognition of foreign deeds for the dissolution of marriages which violate the rights of women

Italian law concerning the recognition of foreign divorce provides for its automatic recognition, if it is not contrary to international public order.

There are significant problems concerning the recognition of repudiation sentences, especially in the presence of children.

For example, if a foreign woman living in Italy, is repudiated in front of a Moroccan judge, pursuant to Moroccan law, the father owns parental rights. If the mother wants her children to join her in Italy, she will encounter insurmountable obstacles in exercising the right for them to visit her and the other parental rights recognised to her by Italian law: even when the mother has the right of custody recognized by Moroccan judge, if the father does not consent to the transfer of the children, the consular authorities will not grant a visa for the children to go to Italy with her.

WE RECOMMEND:

- ***That for the recognition of foreign marriages, also for the purpose of families joining each other, separate negotiations should be provided with both spouses in order to verify the existence of effective consent to the marriage. During the discussions with woman, if it emerge that she has been forced into an arranged marriage, she should be given the possibility of immediate protection, provided by being accompanied to a shelter, and be granted a permit of stay on***

451 Paragraph referred to [Question no. 30 of the CEDAW Committee](#).

452 "Per forza, non per amore". I matrimoni forzati in Emilia-Romagna". Exploratory study, by Trama di Terre, Bologna, 2010.

453 Art. 122 of the Civil Code.

454 Act no. 218/1995, arts. 27 and 65.

455 Act no. 218/1995, arts. 63 and 64.

humanitarian grounds.

- *Providing a faster and more accessible legal procedure for the annulment of the marriage challenged by one of the spouses, whose consent was obtained through violence or determined by fear of an exceptional nature deriving from causes external to the husband (case for the annulment of the marriage provided by art. 122, paragraph 1 of the Civil Code).*
- *Founding legal solutions or stipulating bilateral agreements concerning the dissolution of marriages and the fostering of minors with countries under Islamic law in which women are not recognised equal rights to men during divorce proceedings and the effective exercise of the right of custody.*

15.2 EQUAL ACCESS TO JUSTICE

15.2.1 Free legal aid. Separation and divorce

The income limit to access to free legal aid is too low.

If an employed woman wants to access to free legal aid during a separation, divorce or custody litigation, she cannot benefit from free legal aid because her income exceeds the one established by the law. Even in this case, however, her effective economic capacity is extremely reduced, having consideration of the expenses faced by women during the separation phase and of the level of indebtedness contracted in order to deal with the need to “split” the family nucleus (see art. 11). This means that women often remain part of a conflicting family, as they are not able to cover the legal expenses for dissolution of the marriage.

15.2.2 Free legal aid for women who are the victims of gender violence

D.P.R. 115/2002, which disciplines free legal aid, has been amended by Act no. 38/2009, which introduced free legal aid for the victims of rape, statutory rape, and gang rape⁴⁵⁶. Thanks to this reform, the person affected by these crimes can now qualify for free legal aid also in derogation of the income limits required by the law for accessing such benefits.

In the opinion of many legal experts, this amendment has led to the unequal treatment of victims of sexual violence compared to the victims of other crimes which in any case constitute forms of gender violence or perpetrated against vulnerable victims.⁴⁵⁷

Granting free legal aid to adult victims without income distinction appears to be unjustified. The income limit provided by the law is effectively low, but to remove it completely is unworthy. It would be more reasonable to establish a higher income to access to free legal aid.

WE RECOMMEND:

- *Extending access to free legal aid to all the victims of crimes that constitute gender violence and to vulnerable victims, also providing an income limit for accessing to free legal aid higher than the current one, but not unlimited.*
- *Introducing among the criteria for the access to free legal aid a substantial income limit, that evaluate the economic capacity of women in relation to their level of indebtedness.*

456 See articles 609-bis, 609-quater and 609-octies of the Penal Code.

457 For example, the victims of domestic violence (art. 572 of the Penal Code), FGM (583 bis P.C.), reduction or maintenance in slavery or as servants (600 P.C.), underage prostitution (600bis P.C.), child pornography (600ter-sexies P.C.), the use of minors in blackmail (600octies P.C.), the trafficking of human beings (601 P.C.), smuggling of human beings (602 P.C.) and stalking (612bic P.C.).

ARTICLE 16 NON DISCRIMINATION IN MARRIAGE AND FAMILY RELATIONS

16.1 DISCRIMINATION IN THE RIGHT TO CONTRACT MARRIAGE OF IRREGULAR MIGRANT WOMEN⁴⁵⁸

16.1.1 Convenience marriages. Violation of the right to enter into marriage for irregular immigrants.

Art. 1, paragraph 15 of Act no. 94/2009 has amended the Art. 116 of Civil Code, providing that the marriage of foreigners have to be subordinated to the condition that they are present in the country legally. Migrant needs a regular permit of stay both at the time of publication and at the time of celebration. This condition is required only for non-EU citizens, in order to dissuade the so-called “convenience marriages”, and does not prevent the marriage from being celebrated abroad. In the opinion of renowned jurists,⁴⁵⁹ the new regulation which subordinates the exercise of the right to marry of non-EU citizens in Italy to the requirement of them being in the country legally, is contrasting with EU law,⁴⁶⁰ with the constitutional obligations concerning the respect of freedom of marriage as a fundamental human right (art. 31 Cost.) and with other obligations based on the international and European charter of human rights.

The new discipline violates art. 16 CEDAW, in as much as it limits the right to contract marriage and to freely choose the spouse, which is one of the fundamental human rights also recognized by international conventions (for example arts. 8 and 12 of the European Convention on Human Rights).

The exercise of the freedom to contract marriage should be due to all people present within Italian territory, independently of their nationality and their legal status.⁴⁶¹ Interference with the right to marry is not proportionate to the objectives that the law is supposed to ensure (public order and control of migratory processes). Surely the aim of preventing convenience marriages can partially restrict the exercise of this right but cannot indiscriminately deny it to all irregular migrants. In this regard, a recent document by the European Commission (“Guidance for better transposition and application of the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States”, 2 July 2009) expressly highlights that “the measures adopted by the member States to prevent convenience marriages cannot be such as to dissuade EU citizens and their family members from invoking their right to free circulation or to unduly usurp their legitimate rights [and] must not undermine the effectiveness of EU law nor constitute discrimination on the basis of nationality”.

All actions and measures aimed at preventing convenience marriages must not therefore be of a collective or systematic nature, but should be based – as stated by the European Commission – on individual criteria and investigations conducted in compliance with fundamental rights, especially the right of respecting private and family life (art. 8 CEDU) and the right of marriage (art. 12 CEDU).

WE RECOMMEND:

- ***Guaranteeing the right of marriage for foreign women who are in the country illegally.***
- ***Modifying Art. 116 of Civil Code in order to guarantee the right to contract marriage also to irregular migrant women.***

458 Paragraph referred to **Question no. 30 of the CEDAW Committee.**

459 W. CITTI., “Il nuovo art. 116 del c.c. dopo l’entrata in vigore della legge n. 94/2009 e la condizione di regolarità del soggiorno del cittadino extracomunitario ai fini della capacità matrimoniale in Italia”.

http://www.asgi.it/public/parser_download/save/il.nuovo.art.116.c.c.studio.a.cura.di.walter.citti.doc

460 A national act preventing access to the free circulation of the family members of EU citizen who have acquired such personal status within the territory of the member state, in which he/she was present as illegal immigrants, does not comply with EU law. Even more so the new Italian law seems to be in contrast with the EU law since it fully deprives the entire category of irregular foreigners of the possibility of acquiring the status of family member within the territory of a member state, which is the presupposition for exercising the right of free circulation. Source: Citti, W., see note 1.

461 In a statement released on 26.11.2003 (paragraphs 95-96), in relation to a draft law submitted by the French government and then withdrawn, providing for the obligation of the registrar to report the illegal status of foreigners who requested the publication of their marriage to the competent authority, the French Constitutional Court concluded that “such dispositions are of a nature such as to dissuade the spouses from contracting marriage; consequently, they offend the constitutional principle of freedom of marriage”. This on the basis of the general consideration that “if the illegal status of a foreigner in the country may constitute, under certain circumstances and in presence of other elements, a serious index leading to the assumption that the marriage has been contracted with a scope other than marital union, the lawmakers – believing that the fact that a foreigner cannot justify his/her illegal status in the country constitutes in all cases a serious index of the absence of consent – have offended the constitutional principle of freedom of marriage” (ref. <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/depuis-1958/decisions-par-date/2003/2003-484-dc/decision-n-2003-484-dc-du-20-novembre-2003.871.html>) The considerations of the French Constitutional Court are perfectly applicable to the current Italian laws. Source: CITTI, W., see note 1.

16.2 MARRIAGE CELEBRATED ACCORDING TO ROMA CEREMONY⁴⁶²

The legal status of people who have contracted marriage according to traditional Roma ceremony poses problems of equality in front of the law if not followed by an official ceremony that confers upon them the status of married people according to civil law as well.

National jurisprudence leads to different conclusions. On this matter there are two sentences by the Court of Cassation, both dated 2006.

One of these⁴⁶³ states that a marriage celebrated exclusively according to Roma ceremony is recognized only as a cohabitation (and does not have the legal validity deriving from a marital union). So it does not prevent the expulsion of the male partner of a woman during pregnancy or in the six months following the birth of the child.⁴⁶⁴

The other sentence (on the expulsion of a future father too), follows a more reasoned argument: it first recalls that the constant jurisprudence of legitimacy in all cases in which the marital status of a non EU citizen is called into question always excludes the possibility of making effective unions that are not celebrated as marriages according to the laws of their countries of origin, and consequently asks the judge for the proceedings to verify whether in the country of origin of the foreigner a marriage celebrated according to Roma ceremony has legal effect. There would be nothing to prevent our lawmakers, should they deem it appropriate, to unilaterally introduce a legal disposition for both Roma and gypsy unions, with the aim of making these traditional marriages valid from a civil viewpoint.⁴⁶⁵ Contrarily to religious marriages, for the Roma people, their traditional rite, over 500 years old, constitutes a valid marriage to all effects. A law would be required to ensure spouses who are such only according to Roma ceremony and their families equal juridical treatment to those who are spouses according to the laws of the Civil Code should – as apparently is the case very frequently – the repetition of the marriage before the local council authority not be easy,⁴⁶⁶ and the lack of a civil marriage causes disadvantages or prevents the advantages reserved for married couples and their legitimate families from being enjoyed.

WE RECOMMEND:

- *Ensuring the legal validity of marriages celebrated according to Roma ceremony.*

16.3 DISCRIMINATION OF LESBIAN MOTHERS⁴⁶⁷

There are legal problems for lesbian women with children in Italy, while society shows rather a lack of negative judgements and discriminations. More and more women decide to have children in couple with another woman, thanks to the social climate that today is generally more open towards homosexuality - though the increased visibility of gays and lesbians can meet violent reactions due to hatred for gender nonconforming people, too. Qualitative research⁴⁶⁸ indicate that it is likely that the proportion between lesbian women having children from former heterosexual relationships and lesbians who decide, alone or together with another woman, to have kids, is inverting: until now the great majority of lesbian mothers were formerly married to a man, but there is an increasing diffusion of artificial insemination techniques. But the children born with these techniques are legally sons and daughters only of the woman who has carried them, and not also of the other woman, who decided to have them together with the mother and helps growing them as a co-mother.

It is not legally possible to publicly recognize these families for what they are, respecting the ties that exist

462 Paragraph referred to **Question no. 30 of the CEDAW Committee**. Observations taken entirely from: LAMARQUE E., "The legal protection of the family", report to the international convention "La Condizione Giuridica Di Rom E Sinti In Italia", Milan 16-18 June 2010, Milan-Bicocca University. On www.asgi.it

463 Court of Cassation, Section I Civil, 4 July 2006, no. 15244.

464 Art. 19, paragraph 2, letter d of D.LGS. no. 286 dated 25 July 1998 (Consolidation Act for the dispositions concerning the discipline of immigration and laws on the status of foreigners), originally only prevented the expulsion of a woman during pregnancy or in the six months following the birth of a child. A manipulative sentence by the Constitutional Court (sentence 376 dated 2000) had extended this prohibition to the "cohabiting husband" of the woman during pregnancy and the six months following the birth of the child.

465 Neither the Italian Constitution, which in art. 18 imposes the principle of agreement only in relations between the State and religious orders, leaving it up to the national lawmakers to discipline matters of common interest to the public and cultural minorities, nor the European Convention, as interpreted by the Court of Strasbourg, which leaves a margin for appreciation, and thus once again space for discretion, for the national lawmakers on this matter, would appear to prevent this.

466 I refer to difficulty in fact. I am not considering another very significant legal obstacle that arises today, following the amendment of art. 116, paragraph 1 of the Civil Code by Legislative Decree 94 dated 15 July 2009, for couples married under Rom rites who want to contract civil matrimony, should one or both of the spouses be foreigners illegally staying within Italian territory. As regards the strong constitutional doubts cast by the new law, see L. LENTI, *Il matrimonio dello straniero e la regolarità del soggiorno*, in NGCC, 2010, II, 196 and following.

467 Contribution by Daniela Danna, Daniela Danna, researcher in sociology at the Università degli Studi in Milan.

468 "Crescere in famiglie omogenitoriali", Franco Angeli, 2009, a cura di Danna Daniela e Chiara Cavina;; D. Danna, "Io ho una bella figlia..." in *Le madri lesbiche raccontano*, Zoe Edizioni, Forlì 1998.

between the non-biological mother and the child/children, and this brings about difficult situations especially in the case of separation of the couple: according to the law the non-biological mother is nonexistent, and the children are not protected in carrying on their relationship with their second parent. This issue regards families composed by lesbians much more than by gay men, since lesbian women can easily decide to have kids with a male contribution that is consisting only of the seminal biological material, while of course the same is not possible in an analogous situation for a gay couple.

16.4 FORCED MARRIAGES (see also chapter FM 19 of the Shadow Report)

16.4.1 Legal validity in Italy of marriages contracted abroad. Impossibility of re-verifying consent for the purpose of recognition

As already mentioned in the paragraph concerning GR 19, there are no statistics on the phenomenon of forced marriages in Italy. The only two surveys conducted in the country⁴⁶⁹ highlight that one of the most critical factor which prevent the effective protection of victims is the impossibility of preventing the recognition of marriages validly contracted abroad by re-verifying in Italy the validity of the consent to marriage given by the woman in the country of origin.

By virtue of the principle of favouring marriage, pursuant to Act no. 218/1995, a deed of marriage validly celebrated abroad is recognised in Italy. The lack of an internal check on the validity of the consent given by the woman to the marriage contracted in the country of origin has led to an intensification of the forced repatriation (by parents) of young foreign girls, who have grown up in Italy, in order for them to contract marriage at home, as they are aware of the possibility of the marriage being immediately recognised on return to Italy.

The lack in Italy of a mechanism to verify the effective consent to marriage given by a foreign woman abroad has led to an increase of the process by parents of repatriating their daughters and “selling” them for marriage to whoever needs to come to Italy legally: the phenomenon of so-called “blank weddings”. This further victimises women forced into marriage, as they then need recourse to the law for annulment.

16.4.2 Excessively long times for annulling marriages

Women who are the victims of forced marriages and want to have them annulled due to vice of consent are compelled to follow the standard legal procedure for the annulment of a marriage, which is onerous and time-consuming, without receiving adequate protection in the meantime.

See the recommendations in chapter on Forced Marriages

16.5 DISSOLUTION OF MARRIAGES. LENGTH OF THE PROCEDURE AND FEMICIDE

Another serious anomaly in the Italian legal system is the time required to obtain divorce. Divorce can only be requested three years after the initial separation hearing, and this implies a duplication of proceedings (separation and divorce) and the costs for the woman involved and for the Italian state.

The impossibility of dissolving a marriage quickly has led to an increase in conflicts between spouses (domestic violence and stalking). Throughout the duration of the proceedings, the husband very often persecutes or exercises control over the wife, who does not receive adequate protection.

A woman, who makes a claim for domestic violence and persecution during the separation or divorce phase, is never believed, on the basis of the prejudice that her claims may be useful for her in the ongoing proceedings. Very often, criminal behaviour, stalking and psychological violence are often mistaken for “physiological” conflict in couples who are in the separation phase.

The police underestimate the risk of aggression and do not adequately protect the woman. Cases of women being killed are not uncommon, usually preceded by claims made against their former partner. The unjustified normalisation of male violence against women during the separation phase, associated to the length of the divorce procedure, increases the risk of femicide.

WE RECOMMEND:

- ***Reforming family law, accelerating the procedure for dissolving marriages.***
- ***Strengthening mechanism for better protection of women during the separation and divorce phases.***

⁴⁶⁹ See also Shadow Report in the chapter concerning General Recommendation 19.

16.6 PARENTAL POWERS

16.6.1 Repudiation and discrimination in exercising parental powers

It may occur that a repudiated woman suffers serious discrimination in exercising parental powers.

A practical example is reported: a Moroccan woman accepts the dissolution of her marriage by repudiation in her country of origin, and obtain custody of her children, while the father has right to visit. The woman decide to return to Italy and be reunited with her children. If the father not give his consent for them to be expatriated, the Moroccan consulate could deny a visa for the children to leave, as only the father can exercise parental powers, according to Moroccan law, also if mother has custody.

In such cases, it would be very difficult for the mother of the children to exercise the right of family unity and parental powers.

16.6.2 Witnessed violence and parental powers

Children are the invisible victims of gender violence.

The violence suffered by sons and daughters who are forced to assist to domestic violence acts daily perpetrated by their father on their mother, is not always recognised as violence against children by Courts. The most frequent stereotype is that of “a violent father, but he has never harmed his children”. Surely physical and sexual violence on children is recognized as a crime because of its intrinsic seriousness, because it is visible and because it can be reported by the child in question. However, children who witness violence suffer the same damage of abused children. “Witnessed intra-family violence is defined as exposure of the child to any form of abuse through acts of physical, verbal, psychological, sexual and financial violence against figures of reference or other affectively significant figures, adults or minors. The child may direct experience of this directly (when it occurs in his/her perceptive field), indirectly (when the minor is aware of the violence) and/or by perceiving its effects. Witnessing the violence of minors against other minors and/or other members of the family, and the abandoning and mistreatment of pets are also included.” (CISMAI 1999).

Unfortunately, this type of psychological violence on children who are witness to acts of violence is too often underestimated. Moreover the responsibility for the problems the child is linked to a generic conflict between the parents or to the family disgregation instead of the mistreatment being suffered by their mother.

It is vital to recognise that mistreatment within the family are not “arguments between parents”, but are criminal acts in their own way which damage the physical and psychic integrity of the victim. Children who witness violence are themselves the victims of this violence.

There is no law which explicitly recognises witnessed violence. Articles 333 and 330 of the Civil Code make reference to the “prejudice” that the child may suffer. The concept of prejudice is discretionally interpreted by the judge. The Juvenile Court of Rome has emanated numerous decrees declaring that the parent no longer has parental powers in the case of witnessed violence only. This has led to the introduction of a new culture within these Tribunals, making judges aware of what and how much damage and trauma is induced in children by violence, in the short-term and in the long-term.⁴⁷⁰ Therefore, what is needed is and increased awareness on gender violence and of its multiple aspects.

16.6.3 Shared custody and PAS (Syndrome of Parental Alienation)

Act no. 54/2006, concerning shared custody, harmonised national law to EU legal framework and also to the “Convention on the rights of children”. This reform is founded on the principle right of children to maintain stable relations with both their parents (bigenitorialità).

The shared custody of children has been widely applied: in 2007, this was agreed by parents or ordered by the law courts in 72.1% of consensual and legal separation proceedings involving children, and in 49.9% of joint and legal divorces involving children. In 2008, these percentages increased to 78.8% in separations and 62.1% in divorces respectively. As years go by, the percentage of shared custody in consensual separations has risen to 83.3%. In contentious proceedings, the percentage is 52.1%, very often because of the very serious problems encountered by one or other parent.⁴⁷¹

The Act provides for the exclusion of shared custody in the case of “prejudice” towards the child, but this in itself is insufficient to guarantee their protection. Psychological violence towards a child, or witnessed violence, or psychological, physical and economic violence inflicted by one parent on the other in the presence of a child are very often not recognized as “prejudicial conduct” towards the child.

This means that in cases of mistreatment, whether denounced or not, it may be that the child is in any case forced to see the parent who is inflicting mistreatment.

Consequently, the Act on custody, as it does not explicitly provide that in the case of mistreatment, abuse of corrective means, sexual violence and physical violence, shared custody must be excluded, on one hand

470 Ref. Rome Juvenile Court: 3.02.2006; 16.04.2007; 6.06.2008; 27.05.2008; 13.05.2009; 2.04.2009; 19.03.2009; 5.02.2009; 20.01.2010; 2.03.2010; 19.05.2010; 21.06.2010; 20.09.2010; 7.10.2010; 18.11.2010; 14.01.2011; 8.02.2011.

471AIAF document on the proposed amendment to Law 54/2006 concerning shared custody, 11.02.2011, http://www.aiaf-avvocati.it/files/2011/02/AIAF-Documento-su-DDL-957-in-materia-di-modifica-dellaffidamento-condiviso-11_2_20111.doc

violates the rights of children to a life free from any form of violence, and on the other hand does not protect women who are victims of domestic violence, and rather exposes them to an increase in the risk of violence by their ex husband because of the shared custody of children imposed by law.

Tribunals, social services and public opinion are not sensitive in recognizing direct link between the violence suffered by mothers and the serious consequences of a psychological, physical, social and cognitive nature on their children, in the short-term and in the long-term. The refusal by the child to meet their mistreating or abusive father is also often interpreted by judges and social services as a psychological conditioning of the child by their mother (PAS – Parental Alienation Syndrome).

The failure to recognise the borderline between gender violence and marital conflict has meant that women who denounce violence they have suffered personally or on their children during separation have been stigmatised, because it is expected that the woman should abide by the logic of family composition.

Any attempt by a woman to reveal the violent life that characterised her married life is interpreted by the defence counsels of their separated husbands and fathers (during custody proceedings) as a fake put up by the woman in order to try and get around the law on shared custody, motivated by parental alienation syndrome.

Draft Bill no. 957, currently being discussed by the Senate, creates further damage to children and women victims of violence. Fathers and mothers individually and together have a duty towards their children, and it would be extremely dangerous, from a social viewpoint as well, if the approval of this draft law were to give way to fathers “waging war” against mothers on the basis of motivations concerning the economic aspects of their separation rather than the needs of their children.⁴⁷²

This draft bill has been forcefully promoted by associations of separated fathers.

If approved, separated women would have to submit to and obey their ex spouses and their families: according to the new regulation, in order to obtain shared custody, women would not only have to reconcile their interests with those of their former spouses, but also with those of the grandparents, who would be given the possibility of taking legal action to affirm their visiting rights. This would imply a further limitation for women in terms of choosing the place where she wants to settle and her own interests after the marriage ends.

Furthermore, to ensure being awarded the family home in cases of shared custody, the woman would have to renounce to live with her new partner, because he cannot reside there. It is obvious that this draft bill is asking women renounce starting a relationship with another man if they want to remain the custodians of their children. In this way, the ex husband actually keeps a stranglehold over the new life of his ex wife, using shared custody as a form of blackmail. This stranglehold, in addition to being excessively limiting in terms of self-sufficiency of the woman under normal conditions, constitutes in itself a risk factor in terms of re-victimisation of in the cases of women who have denounced their ex husbands for violence and, in cases in which the latter has in any case obtained shared custody, being susceptible to their control.

If approved, the draft bill would also force women who have suffered violence (and denounced it) to sit at a table with their aggressor and discuss with him the conditions of custody, because family mediation would be obligatory even in cases in which the woman has been the victim of violence.

Draft bill no. 957 do not include gender violence as a reason for the exclusion of shared custody.

In addition, it provide PAS to be included among the reasons for the exclusion of shared custody.

Assessing the custody of children on the basis of a syndrome that is not recognised in psychiatric circles, promoted in America and now in Italy by organizations of separated fathers, means depriving children of the possibility of defending themselves in cases of violence inflicted by their fathers.

In practice, this means that in any custody proceedings, if the child refuses to see him/her father and if abuse, paedophilia or sexual molestation is reported, the father can invoke PAS to claim under any circumstances that this is “conditioning of the child’s wishes” on the part of the mother.

This would imply the further serious consequence that, on the basis of the diagnosis of a non-existent illness (PAS is not included in the DSM), the judge, without being able to assess other elements pursuant to art. 155 of the Civil Code, in breach of the constitutional guarantees provided by art. 111 of the Constitution,⁴⁷³ would be forced to exclude the woman from decisions concerning her children and the right to visit.

472 <http://www.aiaf-avvocati.it/affidamento-condiviso-e-proposte-di-modifica-della-legge-542006/>

473 The OUA (National Body of Lawyers) has denounced draft law 957 for “the lack of any detailed explanation as regards situations linked to parental alienation syndrome and similar behaviour”. Furthermore, the OUA Families Commission believes that “the approval of the regulations in draft law 957 would imply an exponential and unjustified increase in conflict, a very damaging circumstance for children and in obvious contrast to the aims of the law on shared custody.”

<http://www.oua.it/Documenti/2011.4.04%20-%20Affido%20condiviso.doc>

WE RECOMMEND:

- *Providing specific agreements with the countries from where the principal migratory flows originate, in order to facilitate the possibility of exercising parental powers following the dissolving of a marriage in an equitable manner that is not discriminatory to women.*
- *Including witnessed violence as a reason for the withdrawal of parental powers.*
- *Amending Act no. 54/2006, including all cases of domestic violence, mistreatment and sexual violence against the wife and her children as reasons for the exclusion of shared custody.*
- *Adopting all other measures pursuant to art. 31 of the European Convention on violence against women that may be necessary to ensure that the right to visits and the right to shared custody of a parent do not nullify the right to protection of women and their children.*

16.7 CHARGE OF SEPARATION AND FAILURE TO RECOGNISE FAMILY VIOLENCE.

In pronouncing separation decisions, if specific circumstances are in place and if requested by one of the parties, the Judge can declare to which of the two spouses should be declared responsible for separation. Mistreatments or vexation and humiliation that the woman may suffer in a family context may be relevant in deciding who separation should be debited to. In order to reach a separation decision with responsibility, mistreatment must be proven during the proceedings, but it must also be ascertained if the mistreatment were the effective cause of marital crisis.

It is very difficult to prove domestic violence through witnesses. Mistreatment occurs within the home, and only very rarely in the presence of other people, and the only witnesses are children, who cannot testify as they are underage. This creates a serious violation of the rights of women: repeated physical and psychological violence inflicted by the husband constitute such serious violations of the duties arising from marriage that they are enough on their own not only to justify separation, but also to justify the husband being declared as the person responsible for the separation, The systematic denigration of the woman by her husband constitutes mistreatment and can be qualified as a sort of domestic “mobbing”, aimed at damaging the dignity and degrading the image of the woman, especially in front of her children. Psychological marital violence is surely one of the many forms of mistreatment that occur in private within the home. This form of violence involves psycho-physical molestation which leads the victim to gradually lose her self-esteem. Such behaviour is only undertaken in order to diminish the other person and thus destroy her personality. Such “psychological violence” on a daily basis creates a strongly de-stabilising environment, leading to a process of psychological destruction. This form of psychological violence is very often not recognised in Courts.

Illicit behaviour by the husband in these cases “unjustly” damages the personality, self-esteem and expectations of the woman, in violation of art. 32 of the Constitution and art. 2043 of the Civil Code. In cases of mistreatment, there is a violation not only of the duties arising from marriage (art. 143 of the Civil Code), but also to the rights of constitutional rank, especially those concerning personal dignity.

However, during separation proceedings, judges do not recognise any compensation for damages to the woman, ex art. 2043 of the Civil Code.

Once again, it emerges that domestic violence suffered by women is not recognised as inhuman and degrading treatment, whereas it is recognised as such the European Court of Human Rights (ECHR, sentence dated 9.06.2009, Opuz v. Turkey).

WE RECOMMEND:

- *Adopting all measures required to ensure the recognition of all the forms of domestic violence as a cause for responsibility for separation.*

16.8 PROBLEMATIC PERCEPTION OF FAMILY ALLOWANCE BETWEEN SEPARATED COUPLES

Family allowance are a performance which has been instituted to help the families of dependent employees and retirees from dependent employment whose family are composed of several people whose income is below the limits laid down by the law on a yearly basis. The cheque is due for differing amounts on the basis of the number of components and the income of the family.

In the case of divorce or legal separation with awarding of joint custody of the children, the right to receive a family allowance is due to both of the custodian spouses. It can be established by joint agreement which

one of the two spouses should request authorisation for family benefits. Statistically, it is more often woman that needs the authorisation of her ex husband to receive family benefits. This authorisation is often not given or given late by the husband in cases of non-amicable separations: because of this woman experience serious problems in receiving family allowance and is discriminated in the management of the family income.

WE RECOMMEND:

- ***In the case of divorce or legal separation awarding custody of the children, the right to receive the family allowance should automatically be in favour of the spouse who is due family benefits, without the need for authorisation from the other spouse.***

16.9 FAILURE TO PAY ALIMONY TO THE OTHER SPOUSE

The delayed payment or failure to pay alimony is a very widespread phenomenon.

To ascertain the income of the non-fulfilling spouse, recourse to the law is necessary, wasting additional time and money.

Draft bill 957, promoted by associations of separated fathers, proposes a reduction of the possibility of investigating and ascertaining the income of the non-paying parents, which represents “a gift” for those who hide their income and assets in order to not fulfil their obligations towards their children.

Draft bill 957 also proposes the elimination of all references to the lifestyle of the family prior to separation, which implies the children losing the right to continue living as they did before. In addition to this, it would also remove the right to keep the house of the spouse awarded custody of the children should they enter a live-in relationship with another partner, another aspect which would have an inevitable negative effect on the children themselves.⁴⁷⁴

It is obvious that the separation would penalize more women, discriminating against her in the exercise of parental powers and the availability of family assets.

WE RECOMMEND:

- ***That the authorities should subrogate woman in the rights over her spouse, creating support funds for spouses who are denied the benefit of receiving alimony.***
- ***Introducing the possibility for the spouse who should receive alimony to access information on the income of whoever is bound to pay them alimony without having to make recourse to the law.***

16.10 MANAGEMENT OF ASSETS

Community of estates of spouses is the legal patrimonial regime of the family favoured by Italian lawmakers following the reform of family rights in 1975. In community of estates (art. 177 of the Civil Code), the assets acquired during the marriage, excluding personal property, assets owned prior to marriage and donations or inheritances taken over, become common property and can be administered by both spouses. Savings and debts are also common property. In community of estates (art. 215 of the Civil Code), each spouse remains the owner of their own assets and contributes proportionally to their self-sufficiency to the needs of the family. For this, the lawmakers have provided the regime of separation of estates as an

474 See also: <http://www.oua.it/Documenti/2011.4.04%20-%20Affido%20condiviso.doc>

exception, in order to protect the position of the woman in the family.⁴⁷⁵

The separation of estates is only advisable in cases in which both of the spouses have their own secure income.

In fact, the majority of Italian spouses today opt for the regime of the separation of estates.

As regards the high number of unemployed or precarious women in Italy who mainly dedicate their life to ensuring the wellbeing of the family members, this choice in the case of dissolution of the marriage discriminates against the woman, given that there are no other mechanisms for the division of the family wealth, contrarily to the majority of other European countries.

WE RECOMMEND:

- ***Providing mechanism for the protection of the weaker spouse in the case of a marriage in which the patrimonial regime is the separation of estates.***

475 "Given that in the case of separation of property each spouse maintains the exclusive ownership of their assets and cannot claim any thing in terms of the assets of the other (as this is a regulation which can in any case be derogated by joint agreement), it appears obvious that the regulations of the Civil Code did not in any way constitute a violation of the principles of equality in a juridical sense, because the formal status of the husband and wife was completely identical. However, there could not have been a more radical form of degradation of the family role of the woman, by effect of a law which *de facto* extended the capitalist logic of the appropriation of surpluses to relations between the spouses. In the absence of provisions which inderogably dispose criteria for the assessment of the domestic work of the wife, and of her collaboration in the family enterprise which is not legally formalised, any regulation of the patrimonial relations between spouses will determine the very evident economic discrimination of the woman. More specifically, a codification which privileges the regime of pure and simple separation of property will simultaneously legitimise forms of authentic expropriation in favour of non-paid work. The extension to the family nucleus of such an odious logic of the appropriation of surpluses cannot be done without irreparably degrading the quality of marriage relations, and the image of the family as a place for affection. Even if the principles of equality in a juridical sense pursuant to arts. 3, paragraph 1, and 29, paragraph 2 had not been violated, the regulations of the 1942 Civil Code would have been incompatible in terms of their effects with any prospective implementation of the draft bill. The effects of the discrimination of the wife due to the traditional regime of patrimonial relations between the spouses certainly represented one of the "obstacles of an economic and social nature" which art. 3, paragraph 2 is intended to eliminate to ensure that the woman is granted substantial equality. The same guarantees of female emancipation are at the same time a necessary condition for progress towards the family model outlined in art. 2". (Bessone 1975, p. 2731).

GENERAL RECOMMENDATION 19 GENDER VIOLENCE

19.1 GOVERNMENT REPORT: THERE IS NO SECTION DEDICATED TO GENERAL RECOMMENDATION 19

The Italian Governative Report does not dedicate a specific section to violence by men against women. This matter has been relegated to notes xix-xxx of the Report, contrarily to that indicated in CEDAW **General Recommendation 12** (8th session, 1989), in which the Committee asked all the signatory countries to include in their reports information about: 1) the legislation in force to protect women against the incidence of all kinds of violence in everyday life; 2) other measures adopted to eradicate this violence; 3) The existence of support services for women who are victims of aggression or abuses; 4) Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.

WE RECOMMEND:

- *That next periodic report should include a specific section dedicated to gender violence.*

19.2 THE ABSENCE OF A LEGAL DEFINITION OF GENDER VIOLENCE (R.19 & ART. 1) ENGENDER THE ABSENCE OF A COMPREHENSIVE STRATEGY TO COMBAT ALL FORMS OF VIOLENCE AGAINST WOMEN

The Italian legal system still lacks a regulatory definition of gender violence, in violation of that disposed by **General Recommendation 19** (1992) § 6.

The lack of a definition of “gender violence” reflects a general lack of awareness, which has also been reported in Institutions, of the common origin of all forms of violence committed against women because they are women, intended as the violation of the fundamental rights of women because they are women.

This lack of awareness has determined the different legislative and juridical treatment of different forms of gender violence, and consequently the unequal protection between the women who are victims of sexual violence, domestic violence, female genital mutilation or sexual harassment in the workplace.

An emblematic example of the failure to recognise the common origin of all forms of gender violence is lexicon used in drafting the 2007 Financial bill, which determines the funds that should have been used to set up a “National observatory against sexual and gender violence” and the “national action plan against sexual and gender violence” (which was then drawn up in 2011, and called “national action plan against stalking and gender violence”. Inadequate vocabulary indicates the total inability by the lawmakers to accept that sexual violence is a form of gender violence, and not something different to gender violence. The use of inappropriate language misleads the media and operators in the sector about the effective meaning of gender violence.

The lack of gender perspective and the failure to recognise the common origin of all forms of gender based violence has prevented the definition of a comprehensive strategy.

Despite the fact that since 2005⁴⁷⁶ passed new acts related to some gender issues the obligation/objective of prevention through an integrated legal system has not been fulfilled. New dispositions are very difficult to interpret and apply, as they are not coordinated amongst each other and fulfil public order expectation. This approach raises both the risk of further violence for victims and that of arbitrary limitations to the rights and freedom of individuals in general.⁴⁷⁷ In this sense, **Recommendation 32/2005** by the CEDAW Committee has not been respected.

The principal obstacle to the realisation of a comprehensive strategy to combat gender violence is the absence of political willingness.

The only attempt at holistic reform on the matter of gender violence was made in the form of the Draft Bill submitted by the last legislature, no. 2169/2007 on the “Measures for increasing awareness and prevention and the repression of crimes against the person in a family context, due to sexual orientation, gender identity and any other causes of discrimination” (so-called DDL Bindi, Mastella, Pollastrini). Anti-violence women associations, NGOs and female jurists have criticised this draft law because it did not introduce a

476 Act no. 54 dated 8 February 2006, Dispositions concerning the separation of parents and shared custody of their children; Act n. 7 dated 9 January 2006, Dispositions concerning the prevention and prohibition of female genital mutilation; Act n. 38 dated 3 February 2006, Dispositions concerning the fight against the sexual exploitation of children and child pornography, including over the Internet; Law 38 dated 23 April 2009, Conversion of Decree Law 11 dated 23 February 2009 containing urgent measures concerning public safety and combating sexual violence, and also concerning persecutory acts.

477 Sentence no. 265/2010 of the Constitutional Court.

definition of gender discrimination and violence as required by the CEDAW Committee and proposed the vision of women as a vulnerable subject as children, disabled and elderly people, reproducing stereotypes about the role of women instead of disposing the means to eliminate them.⁴⁷⁸ On that occasion, the Italian Association of Democratic Lawyers (Giuristi Democratici), called upon to appear before the Justice Commission, provided Parliamentarians with an Italian translation of the 2005 Concluding Observations by the CEDAW Committee. The Italian Association of Democratic Lawyers also submitted a text containing all the amendments that were to be made to the draft law for it to respond to the claims made by the CEDAW Committee in its 2005 Recommendations and for it to thus constitute an optimum model of a comprehensive law capable of ensuring the implementation of the Convention.⁴⁷⁹ The draft law was not approved because of the end of the legislature.

There has not been another attempt at comprehensive legislation since then.

19.2.1 The European Convention for the prevention of violence against women proposes a reductive definition of violence against women

The European Convention⁴⁸⁰ provides a reductive definition of violence against women⁴⁸¹ compared to that provided by **General Recommendation 19**.⁴⁸²

WE RECOMMEND:

- ***Introducing a definition of gender violence in compliance with the international standards.***

19.3 DUE DILIGENCE OBLIGATION OF THE STATE: TO PROMOTE ACTION TO INCREASE AWARENESS ON VAW

19.3.1 No cultural fight against the stereotypes linked to gender violence⁴⁸³ (G.R. 19 & arts. 2, 3, 4, 5 CEDAW)

Education is essential to promote a culture respectful of gender differences.

Education is also essential to contrast homophobia, because LGBTQ people are even more affected by prejudice, that frequently causes violence, hate speeches, but also social difficulties such as to cause suicide.

19.3.1.1 No national campaign to combat forced marriages⁴⁸⁴

19.3.1.2 Inadequate campaigns to combat FGM

The Government has not adopted a comprehensive and effective strategy to culturally combat FGM. The “Nessuno Escluso” social advertisement, which was only broadcast during the week from 4 to 18 February 2009, is wholly inadequate.⁴⁸⁵

As regards the other information and awareness projects financed by the Ministry, none of them were related to any of the others and there was no impact monitoring or follow up on any of them.

19.3.1.3 Campaigns against stalking and domestic violence: message issued by the Ministry of Equal Opportunities is ambiguous

In Italy, the tendency to attribute violence against women to “others” as a sign of differentiation first and foremost against these others, be they illegal immigrants (falsely presented as those principally responsible for sexual violence by the political propaganda of right-wing parties) and/or people with psychic or economic problems.

The recent institutional advertising campaigns promoted during the “women G8” also represents violence against women as an “obscure evil”: the message clearly stated that “violence against women is ignorance and madness”.⁴⁸⁶ In theory, social advertising should encourage the media to remove the prejudice deeply

478 http://www.giuristidemocratici.it/post/20070410172456/post_html

479 <http://files.giuristidemocratici.it/giuristi/Zfiles/20070627101134.pdf>

480 Council of Europe Convention on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11.5.2011, has not yet been ratified by Italy.

481 Violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

482 Violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.

483 Paragraph concerning **Question 12 by the CEDAW Committee**.

484 Please see **Chapter on forced marriage of the Shadow Report**.

485 http://www.governo.it/GovernoInforma/campagne_comunicazione/nessuno_escluso/index.html

486 “Respect women Respect the world” communication campaign, promoted by the Italian Presidency of the G8 to promote the Conference on violence against women, held in Rome on 9 September 2009.

http://www.pariopportunita.gov.it/index.php?option=com_content&view=article&id=1212:campagna-di-informazione-respectwomen-respect-the-world&catid=55:campagne-di-informazione&Itemid=122 .

eradicated in the public opinion. However, the campaign “respect women, respect the world” attributed the cause of violence to the being a person with mental problems (madness) or belonging to a weak social group (ignorance), reproducing a stereotype which does not correspond to the statistical data, which confirm that male violence against women “because they are women” is transversal and not only part of this categories.⁴⁸⁷ It appears that the Ministry of Equal Opportunities is not clear on the fact that physical violence against women is a form of gender violence, involving women in all social classes, and that this kind of violence constitutes a crime committed by “sane” men, not caused by mental illness or social problems (in most cases). This confusion is also reproduced in the “respect women, respect the world” advertising campaign, which misinforms rather than informs.

19.3.1.4 Sexual harassments in the workplace, mobbing and bossing

The number of hidden sexual harassment in the workplace, mobbing and bossing against women is still very high. Despite this, no media communications campaigns have been implemented at national level in order to combat this widespread phenomenon.

19.3.1.5 The legislation in force is based on prejudice

The legislation in force is prevalently based on the logic of safeguarding public order and the safety of citizens on one hand and on family values on the other.

From the viewpoint of safeguarding public order and safety, it responds to the contingent requirements of limiting the social alarm caused by cruel acts of sexual violence, focusing public attention on those committed by foreigners, rather than actually recognising that gender violence is a serious form of discrimination against women because they are women, especially in family relations (**General Recommendation 19**, 11th section 1992, §6) and as reiterated once again by the European Court of Human Rights in its sentence passed on 6 September 2009, *Opuz v. Turkey*. Regulatory changes made in 2008 and 2009 quote this point,⁴⁸⁸ but are based on a logic that they are all acts of sexual violence committed by foreigners.

These regulatory changes have proven to be inadequate and ineffective from a viewpoint of increasing awareness against violence, for the following reasons:

- a) they strengthen the already widespread perception of the phenomenon of violence against women as exceptional and episodic;
- b) they consolidate the stereotype on the basis of which violence against women is mainly constituted by criminal acts committed by strangers;
- c) they contribute towards spreading the stereotype on the basis of which violence against women is committed by foreigners and individuals who are usually socially and economically disadvantaged or affected by psychiatric problems.

From the viewpoint of the prevalence of the protection of the family, in contrast to **General Recommendation 19, 11, 21, 24**, letters e-f, Italian laws concerning violence against women are oriented towards safeguarding and reuniting the family rather than the protection and empowerment of victims of gender violence. This is confirmed, for example, by art. 342 ter, paragraph 2 of the Civil Code, which provides for the intervention of a family mediation centre in case of domestic violence.

WE RECOMMEND:

- ***Promoting campaigns for increasing awareness and information on gender violence and the laws in force on the matter.***
- ***Developing awareness programmes aimed at men, with the scope of preventing acts of gender violence.***
- ***Promoting campaigns to inform victims of FGM in the languages of the countries of origin of the women on specialized hospital in different areas.***

⁴⁸⁷ According to the press, in 2006, 3.9% of female murders were caused by psychic problems; in 2007, 5.5% were attributed to psychic problems and 6.3% to folly or madness; in 2008, 4.4% of cases were traced to psychic problems and 3,5% to folly or madness; in 2009, 18% of cases were attributed to folly, madness or psychic problems (figures are collected together here). The sources of the figures are research conducted on the press by Casa delle donne per non subire violenza and published on the website www.casadonne.it in the section “materiali pubblicati”, respectively “Femminicidi in Italia nel corso del 2006: indagine sulla stampa italiana” by C.KARADOLE; “La mattanza: Femminicidi in Italia nel corso del 2007, indagine sulla stampa” by Sonia GIARI; “Donne uccise dai loro cari: indagine sul femminicidio in Italia nel 2008” by C.VERUCCI, C.PASINETTI, F.URSO, M.VENTURINI; “Femminicidi nel 2009: un’indagine sulla stampa italiana” by S.GIARI, C.KARADOLE, C. VERUCCI, C. PASINETTI. Source: B. SPINELLI “Un’analisi sulla violenza di genere in Italia alla luce delle Raccomandazioni del Comitato CEDAW”, in the records of the International Conference “Pari Opportunità e eguaglianza di genere: esperienze in Italia e in Turchia”, Istanbul, 15.04.2010. <http://femminicidio.blogspot.com/2010/07/il-femminicidio-e-una-violenza-dei.html> (2010).

⁴⁸⁸ Decree Law 92/2008, urgent public safety measures, Decree Law 11/2009 “Urgent measures concerning public safety and combating sexual violence, and also acts of persecution”, Law 94/2009, Dispositions concerning public safety.

- *Promoting information campaigns on the measures of protection from sexual harassment in the workplace, in the languages of the countries of origin of the women staying in different areas.*
- *Promoting the compulsory training of company trade union representations on the aspects of sexual harassment in the workplace.*

19.4 LACK OF STATISTICAL DATA (CEDAW G.R. 19 & G.R. 9)

Without an adequate analysis of the phenomenon of violence against women and of factors involved in determining its greater or minor incidence in local areas, it is impossible to predispose adequate prevention plans.

Italy is one of the European countries with the least amount of statistics available.

It is also one of the very few countries in Europe where there is no systematic analysis of the social costs of violence, in terms of human suffering and economic loss which affects everyone in the social, health, legal, etc., sectors. The analysis of the costs of violence should affect both the allocation of funds and the promotion of policies aimed at preventing specific forms of violence.

19.4.1 Lack of statistical data on the incidence of FGM

Art. 2, paragraph 2 of Act 7/2006 provides that the Department for Equal Opportunities should acquire data and information, at national and international level, on the activities carried out for prevention and repression and on the strategies planned or implemented by other countries. As of today, no data has been collected or distributed at a national or international level. Due to the lack of statistical data collection, the Government has not been able to respond to Question no. 13 posed by the CEDAW Committee.

19.4.2 Lack of statistical data on forced marriages

In Italy, there is no form of statistical data collection capable of determining the occurrence of forced marriages. There is no data disaggregated by gender and by nationality as regards the number of legal proceedings undertaken for the annulment of marriages, or concerning the number of family reunions which were followed by the separation or divorce of the spouses. The only territorial survey conducted by an association shows that forced marriages constitute a hidden phenomenon which is increasing, and therefore a national survey is urgently required to establish approximately the incidence of this phenomenon on the total foreign population present in Italy.⁴⁸⁹

19.4.3 No periodical and systematic data collection and analysis concerning the various forms of gender violence is provided⁴⁹⁰

The Government has not been able to respond to Question no. 15 posed by the CEDAW Committee because there is not enough data available.

In Italy it is almost impossible to provide annual data about domestic violence on the national level (only one research done during 2006), and consequently about high risk victims, because there is not a national observatory on gender based violence. The same situation characterized the research about data on homicides and attempt homicides in the family, since Minister of the Interior doesn't provide specific data that could allow the analysis about the relationship between victim and perpetrator: data are available only from Eures Institute of Research that collects them by Ansa Press Agency.

The same difficult exists also on the local level, speaking about both the Region and the Province. The only one epidemiological research that considers the national level for gender violence is the Istat (National Institute of Statistic) "La violenza e i maltrattamenti contro le donne dentro e fuori la famiglia"⁴⁹¹: here it is possible to find data about rape reports, domestic violence, harassments and stalking, but there are not reported homicides and attempted homicides⁴⁹².

The lack of data is extremely worrying and significantly affects the inability of Institutions to predispose adequate policies for the prevention and protection of victims of gender violence.

It is difficult to understand how any Government could be able to allocate adequate funds and implement adequate policies for the protection of the victims of gender violence if it is not even able to refer how many shelters there are in the country.

There is also a lack of data concerning the number of restraining order requested and granted to protect the victims of gender violence, denunciations and the outcome of legal proceedings because the majority of the Public Prosecutor's Offices and Courts in Italy collect data with different methods and does not disaggregate data by gender. This has ensured that, ten years after the promulgation of Act 154/2001, it is still not possible to assess the effectiveness of this Act and the reasons for which it has not been

489 "Per Forza, Non Per Amore". I Matrimoni Forzati In Emilia-Romagna". Exploratory study by Trama di Terre, Bologna, 2010.

490 Paragraph referring to **Question 15 by the CEDAW Committee.**

491 Anno 2006, published in 2007.

492 Introduction and comments to the interviews submitted inside the Daphne Project PROTECT, (by Angela ROMANIN and Isadora BERGAMI, Casa delle donne per non subire violenza, Bologna, Italia.

implemented in many regions, while in others it has been applied, even in a very quick time.

Furthermore, as there is not data available concerning the outcome of claims and criminal proceedings started by the victims of gender violence, it is difficult to explain why these criminal phenomena continue to be hidden.

WE RECOMMEND:

- *The National Institute of Statistics, in the context of its resources and institutional competences, should ensure that statistics are taken every two years on: a) the social cost of violence; b) reported cases of sexual violence, persecutory action, mistreatment, illegal trade and any other crimes constituting gender violence or violence connected to sexual orientation; c) the outcome of the reports filed concerning the above-mentioned crimes and the time required for the completion of criminal proceedings; d) the number of requests for the application of civil and criminal restraining orders (Law 154/2001) for each district court of appeals and the number of civil restraining orders effectively granted; e) the number of restraining orders violated for which the application of more serious cautionary measures is required, as regards the type of crime, and any other information required for these purposes; f) the number of homicide cases in which the victim is a woman and in how many of these the murder was preceded by other acts of violence reported by the woman of which a civil restraining and separation order had already been applied; e) any other indicator deemed necessary to assess the factors related to the incidence of criminal acts committed against women because they are women.*
- *The Institutions, Courts and Public Prosecutor to collect gender disaggregated data.*

19.5 DUE DILIGENCE OBLIGATION OF THE STATE: TO PREVENT VAW

19.5.1 Inadequacy of the national action plans (G.R. 19 & art. 2 CEDAW)

19.5.1.1 The national action plans do not respect international standards

The United Nations Secretary-General's Campaign UNiTE to End Violence against Women 2008-2015, which is tied to the deadline for achieving the Millennium Development Goals (MDGs), calls on all countries to have adequately-resourced National Action Plans adopted and underway by 2015—one of the five priority outcomes for country level action (see the Framework for Action). Similarly, recent UN General Assembly Resolutions have called for Governments to develop NAPs (see **para. 8 of UN General Assembly Resolution of 2006, 61/143**: Intensification of efforts to eliminate all forms of violence against women, and **paras. 16(a)(f)(g) and 17 of UN General Assembly Resolution of 2008, 63/155**: Intensification of efforts to eliminate all forms of violence against women).

The national plans predisposed by the Italian Government concerning gender violence, the implementation of UN Resolution 1325 and the prevention and elimination of FGM are completely inadequate in the light of the international standards⁴⁹³ for drawing up national plans.

19.5.1.2 The national action plans are destined to be ineffective

Due to their generic nature, the lack of clear objectives to be realised within the deadlines provided and the lack of specific funds allocated for the implementation of each action required, the national plans drawn up by the Italian Government are no more than planning guidelines, without operating effectiveness.

19.5.1.2.1 The objectives cannot be achieved without funds

19.5.1.2.2 The strategies are not based on statistical evidence

The national plans outline strategies independently of a real and effective knowledge of the phenomena they are aimed at preventing. The lack of statistics providing a current and detailed overview at a national, regional and local level makes it difficult to understand how specific strategies and intervention models have been defined. In particular, the national violence prevention plan does not include a critical analysis of the existing situation and does not identify the weak aspects in the prevention, protection and persecution of gender violence.

19.5.1.2.3 The national action plans are drawn up without adequate consultation with members of civil society

The national plans have been drawn up without prior effective dialogue with civil society and the NGOs operating in the sector, which were only consulted when the plan was in the adoption phase, and therefore already structurally and substantially already written.

493 UNIFEM, "Introductory Brief & Suggestions: Formulating NATIONAL ACTION PLANS (NAPs) to END VIOLENCE against WOMEN and GIRLS", September 2010; Council of Europe, "Handbook on National machinery to promote gender equality and action plans. Guidelines for establishing and implementing National machinery to promote equality, with examples of good practice", Strasbourg, May 2001.

The plans do not include the good practice and recommendations from civil society and the NGOs operating in these fields.

19.5.1.3 The national plan to combat violence against women⁴⁹⁴

19.5.1.3.1 NAP on VAW does not specify the funds allocated and does not make adequate resources available for the development of local networks The national plan to combat violence against women never specifies the entity of the funds allocated by year or for the triennial duration of the plan or for achieving each objective. Furthermore, it is unclear who decides upon the commitments and verifies their outcome. Paragraph 5 “Implementation and monitoring” of the plan states that “The Minister will set up a Committee to monitor the performance of the activities in the plan, composed of representatives of the State administrations involved, Regions and local authorities.” The previous paragraph also defines the actions to be taken by Regions and local authorities with significant duties in terms of the planning of local interventions, coordination of the bodies involved throughout the territory and promotion and support in training the operators involved in the sector. However, such statements are devoid of meaning and the possibility of achieving their objectives, in the light of the fact that the UPI and ANCI during the Unified Conference, stated the following: “In expressing a favourable opinion, after recalling the role and importance of the local authorities in the creation of services to combat violence, ANCI and UPI intend to formulate the following recommendations: 1) assessing the opportunity of providing in the national plan that local plans should be predisposed at a regional, provincial, communal and urban level, possibly within a fixed deadline, after which the methods provided in the national plan should be implemented. 2) The funds for the realisation of campaigns and interventions aimed at the construction, improvement and valorisation of antiviolence shelters and for initial welcoming in emergencies should be explicitly provided in the national plan and then assigned to local authorities for management and operational duties, under the supervision of the Regions.”

Constructing local networks capable of training all the people involved in dealing with the effects of VAW, require a national framework and homogeneous directives in the sectors involved, but also must be structured and act locally with certain resources and defined responsibilities. In other words, if the objective of the NAP is to combat violence against women and support the services available to women, providing real and effective help, the antiviolence shelters must be financed and supported more than they have been up to now, and this can only be done by transferring resources to the Regions.⁴⁹⁵

The Government acknowledged that antiviolence centers need to be improved, but has not made funds available to the Institutional bodies financing them.

NAP does not provide for financing, except to restructuring shelters in L’Aquila, where the shelters were all in rented property. If L’Aquila is ever reconstructed, it does require great imagination to see where these funds will go. It will probably not be to the shelters, because Abruzzo Region has cut funds allocated by the regional law on violence against women, due to the lack of resources.

However, money must be available if importance is given to the awareness campaigns managed by the DEO, already on-going, and for sporadic interventions in schools.

It is unknown how many funds will be allocated specifically for shelters. NGO are concerned that Government will not provide to fund long – terms project to finance the existing shelters and the building of new one in order to assure protection of the victims of violence, but that it will continue to finance annual projects, as in the past. This will waste precious time and effort, with an uncertain outcome by all groups of women who for years have worked untiringly, but always on precarious projects and always subject to further verification, and not on definitive services with certain finances available over time.

The objective of expanding and improving the shelters, which in the words of the plan is considered essential, is then assigned to Regions and local authorities, almost without finances and despite the explicit acknowledgement of the lack of homogenous services nationwide with serious damage to women who, according to where they live, can or cannot find services able to welcome them and prevent violence and mistreatment against them.

Therefore, the objectives of the plan, points 2) and 5) of which mention improving antiviolence shelters and the assistance, support, protection and re-integration of victims and the need to introduce “welfare” measures in support of the victims of gender violence, are thwarted from step one.

The lack of shelters nationwide also has a series of other very specific consequences: without shelters, there is no adequate local network system, and without an adequate local network system, awareness campaign and repression initiatives can only be sporadic and on the basis of a partial knowledge of the phenomenon. The lack of a local network does not enable systematic exchange of information and training

494 NAP on VAW.

495 The most part of which have laws in this sense, but few resources, which are in fact decreasing, to make them effective because there is a stranglehold over the communes and provinces which have overcome this with their own funds in the absence of Government funds.

between the various services and operators who intervene or could intervene on this phenomenon. This makes impossible to share problems and best practices, create mechanisms to promote gender mainstreaming.

In the plan, reporting the phenomenon is no more than set forward the details emerging from reports or legal proceedings and 1522 data, or that from antiviolence shelters. This is despite the fact that the plan clearly states that violence against women is a largely hidden phenomenon.

All the European NAP have dealt with the problem of systematic data collection because only reliable figures will enable the planning of effective policies. The Minister does not deal with this and “solves” the problem of systematic data collection by quoting the data collected over the 1522 toll-free line (reliable and welcome), but this only concerns a self-selected group of users and there are few estimated figures available from antiviolence shelters, distributed unequally at a national level.

1522 data, as shown by the ISTAT survey, contain important qualitative elements, but are only partial.

In conclusion, for years Italian women have been expecting a comprehensive and effective action plan, but have then been confronted with a text produced in the absence of those involved and which does not acknowledge the most urgent requirements stated by ANCI and UPI. Consequently, the NAP is fragile, basic and not transparent as regards the allocation of resources, which does not reflect positively on the political willingness to combat male violence.⁴⁹⁶

19.5.1.3.2 There is still no Committee for monitoring the performance of the activities, as provided in point 5 of the plan

It would be appropriate if representatives from antiviolence shelters and independent female experts on gender violence were also members of the Committee, but this is not provided in the plan.

19.5.1.3.3 No timely action for the achievement of the stated objectives is provided

The stated objectives are generic. No timely actions are indicated for the achievement of these objectives. There is no distinction between medium and long-term objectives. Those responsible for the implementation of each action and monitoring the achievement of single objectives are not identified.

19.5.1.3.4 There is no longer any reference to the setting up of an Observatory against gender violence, established by the 2007 Financial Bill and not yet realised.

19.5.1.3.5 No specific action is provided for vulnerable groups of women

The NAP does not provide any specific action for the investigation, prevention and protection from violence perpetrated against disabled women and those who are deprived of their personal freedom.

19.5.1.3.6 No specific action is provided for migrant, Roma and sinti women

The NAP does not provide for specific action for the investigation, prevention and protection from violence perpetrated against migrant, Rom and gypsy women.

19.5.1.3.7 The minimum standards of protection and the timeframe within which they should be accessible by all victims of violence are not determined

The Government is not even aware of the number of safe houses throughout the country.

Government in the NAP does not even explain how will achieve the minimum standard laid down by the Council of Europe is for at least one shelter for every ten thousand women and at least one violence prevention centre in each provincial capital.

19.5.1.4.8 No action in schools is provided The NAP does not consider schools and educators as people who need necessarily to be the beneficiaries and promoters of training, prevention and information activities. The allocation of one week every year for increasing the awareness of students as regards male violence against women is nowhere near enough in this sense.

19.5.1.4 The national plan for the implementation of UN Resolution 1325

Italian civil society has long been involved in promoting UNSCR 1325 implementation⁴⁹⁷. The Italian representation of the EPLO thematic working group/task team⁴⁹⁸ “Gender, Peace and Security” systematically sent to the Minister of Foreign Affairs and the competent office documents and recommendations elaborated by European civil society organizations and experts, providing information on initiatives and activities on the resolution implementation at the national level⁴⁹⁹. Italian NGOs involved in UNSCR 1325 produced a document for the 10th celebration of UNSCR1325⁵⁰⁰ and made a conference in the

496 TOLA V., 3.05.2011, http://www.zeroviolenzadonne.it/index.php?option=com_content&view=article&id=13526%3Aapiano-nazionale-contro-la-violenza-alle-donne-ma-la-carfagna-ce-o-ci-fa&Itemid=54

497 http://www.pangeaonlus.org/download/eventi/2010/25novembre/Atti_convegno_1325_dicembre2009.pdf

498 Centro Studi Difesa Civile, (Civil Defence Center), Luisa del Turco

499 See for example: EPLO, Civil Society Recommendations on the Implementation of UN SCR 1325 in Europe, http://www.eplo.org/assets/files/2.%20Activities/Working%20Groups/GPS/CSO_Recommendations_Implementation_UNSCR1325_in_Europe.pdf ; EPLO, 10 points on 10 years UNSCR1325 in Europe, CSO Position Paper on Europe-wide Implementation of UN Security Council Resolution 1325, http://www.eplo.org/assets/files/2.%20Activities/Working%20Groups/GPS/CSO_Position_Paper_10_Points_on_10_Years_UNSCR_1325_in_Europe_1008.pdf .

500 Document “Donne Pace e sicurezza, a dieci anni dalla risoluzione 1325, una prospettiva italiana”(women peace and security. After 10 years from 1325, an Italian perspective” of Action Aid and Fondazione Pangea, written by Luisa del Turco at: http://www.actionaid.it/filemanager/cms_actionaid/images/DOWNLOAD/Rapporti_DONNE_pdf/Rapporto_AAePANGEA.pdf or:

Italian Parliament, to lobby for a transparent and participatory building process of a the Italian NAP. The document includes specific recommendations and guide lines for Governments to implement a National Action Plan by taking into account the best practices already in place in Europe. In spite of these actions, civil society was only involved in a late phase of UNSCR 1325 National Plan drafting (see Chapter 8.3 of Shadow Report) and the same happened with other action plans. Moreover civil society recommendations were not taken into account and the Plan contains all the formal and structural flaws that characterize the Anti-Violence National Plan and make it an inefficient tool for UNSCR 1325 implementation without any specific funds for it.

19.5.2 Lack of operators training

The training of operators in the social, health, legal, judicial, and police force sectors plays a critical role in the policies intended to contrast gender discrimination and violence.

Very often, the life of a woman depends upon the ability of first aid and legal operators and agents to evaluate the risk of re-victimisation of woman who have asked them for support, or by their ability to promptly direct her towards the antiviolence shelters present in their area and to inform her of the juridical instruments available to them to try and resolve their situation.⁵⁰¹ Judiciary and public safety forces professional training on VAW is currently not systematic and rarely involves the associations and experts in the sector of gender violence.⁵⁰² It is only thanks to the initiatives by antiviolence centers, which in the last twenty years have provided operators in the juridical sector and the psycho-socio-sanitary sector with training programmes concerning male violence against women based on the gender viewpoint.⁵⁰³

19.5.2.1 Lack of training for Judges leads to insufficient protection for victims.

Despite the progress made in training on the topic of gender violence, judges are still not knowledgeable enough to make an adequate evaluation of the risk incurred by the victim during the all trial (included the investigation phase). In addition to this factor, the cultural aspects have negative effect in the decision making process for restricting cautionary measures to take in order to protect the victims of any kind of gender violence⁵⁰⁴.

The inability to protect the victim party and alarm aroused by sexual crimes in particular, has forced the lawmakers to amend art. 275, paragraph 3 of the Criminal Procedures Code, providing for the obligatory measure of cautionary detention in prison for those being investigated for crimes of a sexual nature, sexual acts with underage girls and child prostitution.

However, providing a more serious cautionary measure, (detention in prison), as obligatory by law is merely a way of reassuring the general public, but does not actually protect the victims, who are often left to deal with the trial and subsequent proceedings alone.

In Italy, implementing prison as the only cautionary measure applicable is only possible for crimes involving organised criminal gangs, because the social danger of the accused is taken for granted in these cases. In other cases, it is always the judge who assesses the dangerousness of the accused and decides which cautionary measure is most suited to the case in question.

This is the reason why the Constitutional Court, in sentence no. 265/2010, declared this disposition to be unconstitutional. This sentence should be a warning to the lawmakers: they cannot think that the problem of protecting the victim will be solved by providing imprisonment as an obligatory measure. The problem is cultural and can be solved by removing the patriarchal stereotypes on the role of women in society on one hand and properly training magistrates on the other. These stereotypes are not only taken by those who commit the crimes but often also by those called upon to judge them. For example, in crimes of a sexual nature, the assessment of the seriousness of the situation is very often more obvious when the crime is committed by a migrant and on the streets; contrarily, in cases of violence occurring in the context of working, family and friendship relations, a lesser social value is very often recognised, which sometimes leads to the application of a punishment. What protection is there for these women? Or more accurately, what protection is there for the majority – statistically speaking – of the victims of sexual violence? Surely criminal repression is not enough, but the use of Act no. 154/2001, and thus the use of restraining orders, needs to be improved and implemented, providing effective action and support, also and especially in psychological and economic terms, for women who report that they have been the victims of such crimes, during the investigation and criminal proceedings phases. The psycho-physical integrity of the victim is not best protected by depriving the accused of their freedom, but by a network of protection which the

<http://www.pangeaonlus.org/main.php?liv1=eventi&liv2=eventi&liv3=2010&liv4=25novembre&liv5=rapporto>

501 B. SPINELLI, "Un'analisi sulla violenza di genere in Italia alla luce delle Raccomandazioni del Comitato CEDAW", in the official records of the international conference "Pari Opportunità e eguaglianza di genere: esperienze in Italia e in Turchia", Istanbul, 15.04.2010. <http://femminicidio.blogspot.com/2010/07/il-femminicidio-e-una-violenza-dei.html> (2010).

502 The first course organized by the CSM for magistrates on the matter of domestic and gender violence was held in October 2010.

503 In Rome, for example, the Progetto Strega. ended in 2010, after training more than 500 operators in the police force.

504 Particularly cases of sexual violence and domestic violence and, more generally, in cases of crimes affecting the life and sexual freedom of an unknown individual.

Government must provide, guarantee and implement.⁵⁰⁵

WE RECOMMEND:

- ***Systematically review NAP according to the international standards, involving independent female experts on gender violence and female and feminist associations and NGOs in this review.***
- ***The adoption of a National Plan to prevent and fight arranged marriages, after consultation with independent female experts on gender violence and immigration, female and feminist associations and the antiviolence shelters that have already dealt with the victims of arranged marriages.***
- ***Reviewing the civil and criminal law applicable in terms of the prevention of gender violence, implementing a system of coordination between the various regulations, not without consulting associations of women and female jurists expert in gender violence.***
- ***Allocating a specific fund to finance prevention actions proposed by non Government organizations and female associations which work with the victims of gender violence.***
- ***Allocating a specific fund to finance Women's shelters.***
- ***Assuring adequate social protection for the victims of gender violence, including foreign women, through the provision of a specific and autonomous permit of stay.***
- ***Planning a training programme from a gender viewpoint for all judicial operators and the police force and for operators in the psycho-socio-sanitary sector, involving all associations and female experts on gender violence.***
- ***Providing for specific training, also through the distribution of guidelines, for law enforcement agencies and magistrates on the assessment of the dangerousness of sex offenders and the perpetrators of domestic violence, so that the victims of these crimes are protected, with an adequate use of all the cautionary measures provided by our legal system.***
- ***Promoting compulsory periodical awareness and training programmes for personnel in the health sector, also through compulsory integration in the study programmes for university courses and the courses for specialisation in social and health related professions, with contents concerning the prevention and advance diagnosis of gender violence, and interventions and support for the victims of family and gender violence and violence on the basis of their sexual orientation, also determined by cultural and inter-generational conflict.***

19.6 DUE DILIGENCE OBLIGATION OF THE STATE: TO PROTECT WOMEN FROM GENDER VIOLENCE

19.6.1 Failure to create a database

The protection of victims of gender violence is very often inadequate because of the failure to collect information on their level of victimisation. For example, if a victim moves and the stalker follows her, the warning act or the claim she got against him, is not reported automatically to the others local police stations. Giuristi Democratici have been championing some of the predisposition of a database which collects together and combines all the reports by victims of harassments and crimes constituting forms of gender violence or violence based on sexual orientation from all law enforcement agencies. A database structures in such a way, with all the guarantees of privacy for the assumed perpetrators and reporting victims, which has no significance in terms of previous convictions, but which collects together all the crimes made in a specific time period of five years, would enable the investigating authorities to identify cases of stalking or even in cases, which are actually widespread, in which the victim has not reported less serious acts to other law enforcement agencies, or simply omits to include other claim of harassments they have been the victims of, the seriousness of which escapes the person in question. The database would also undoubtedly be used as an instrument for protecting the assumed perpetrator, to deal with the ever increasing "claiming mania" which has led to may ex-partners to maliciously submit claims upon report for irrelevant episodes not involving materially discriminating or otherwise offensive conduct. In any case, it is believed that the this would be the best method to ensure that the law enforcement agencies monitor

505 ASSOCIAZIONE NAZIONALE GIURISTI DEMOCRATICI, Gruppo di ricerca "generi e famiglie", "Un commento alle reazioni suscitate della sentenza n. 265/2010 con cui la Corte Costituzionale ha dichiarato la parziale incostituzionalità dell'art. 275 co. 3 cpp in relazione alla misura della custodia cautelare prevista per i reati di violenza sessuale", 22.07.2010, http://www.giuristidemicratici.it/post/20100723084010/post_html

situations which, following claim upon claim, risk becoming cases of female homicide.⁵⁰⁶

It is favourably noted that the proposal for the creation of a database has been acknowledged in the national violence prevention plan, in point 4), but it is not clear whether the collection of disaggregated data has begun and how this is to be carried out.

19.6.2 Lack of specific mechanisms for the protection of the victims of arranged marriages (see Chapter on forced marriage of the Shadow Report M.F.19)

19.6.3 Insufficient application of law 154/2001 (protection orders)

As asserted by some judges, **the act of living together** is considered to be a presupposition required for the application of protection measures, and this involves the misapplication of arts. 342 bis and 342 ter of the Civil Code. However, violent and persecutory behaviour in the majority of cases occurs during the separation of spouses or live-in partners, and also regardless the cohabitation. Consequently, there is a risk of a lack of protection in case of intolerable cohabitation because of mistreating and abusive behaviour.

The order to leave the family home provided by art. 282 bis of Criminal Procedure Code , that is a specific cautionary measure introduced by art. 1 of Act no. 154 dated 4 April 2001, is rarely adopted, as is the ban on going to the places habitually frequented by the victim (place of work, homes of their other family members or neighbours), as provided by paragraph 2 of art. 282 bis of the Criminal Procedures Code.⁵⁰⁷

Paradoxically, judicial authorities take into consideration only cases that highly risk to injured the victim to require cautionary imprisonment .

It should be noted also the almost complete failure to apply art. 282 bis, paragraph 3 of the Criminal Procedures Code, concerning the patrimonial and accessory measures for women without income who have children.

The specific cautionary measure of to visit places frequented by the victim of which in art. 282 ter of the Penal Procedures Code is also rarely applied.

The limited application of these instruments is due to two sets of reasons: cultural (the criminal implications of these acts are underestimated) and technical (the law literally requires only the reiteration of harassment and threats, so that two persecutory acts should be enough to integrate the offense, but, in practice, only series of multiple episodes of violence are considered criminally relevant).

The same problem arises for the adoption of the warning ex art. 8 of D.L. no. 1 dated 23/02/2009, as the authorities require several persecutory acts and do not consider repeated harassment to be sufficient. The obligation to communicate the adoption of such measures to the victim, as it is prescribed by art. 282 quater of the Criminal Procedures Code, is an important protection of female victims of violence by the partners and ex partners, but it is no longer mandatory in case of revocation, modification or cessation of effects, thus putting the victim at serious risk.

19.6.4 Need for coordinating the various protection measures

Recommendation no. 3/2005 by the CEDAW Committee has not been implemented, because the required harmonisation of civil and criminal laws (family rights, custody of children, removal of the spouse from the family home and other cautionary measures) concerning the protection of women who are victims of violence and related situations (parentage, patrimonial rights) has not taken place. The laws disciplining the various aspects are often unrelated, and sometimes contrasting in nature. The Italian legal system has no comprehensive measures for the protection of women who are victims of violence, who are guaranteed protection only through a careful combination of several available tools. Furthermore, the lack of coordination between the available criminal and civil cautionary measures only contributes towards weakening this protection.

19.6.5 Criticisms for the application of the offense of persecutory acts (stalking)

The introduction of the offense of persecutory acts (art. 612 of the Criminal Code), desired for years by anti violence center & shelters, marked a significant landmark in the protection of women from violence. Statistics show that in 50% of cases, persecution suffered by women is followed by physical or sexual violence, and even homicide. The figures emerging from the Ministry of Internal Affairs, according to which 10% of voluntary homicides in Italy from 2002 to 2008 were preceded by stalking, is alarming.

Two years after its introduction, , there has not been any monitoring as regards its effectiveness in protecting victims who have reported stalking.

The critical aspects most linked to the persecution of this crime are:

19.6.5.1 The inability of the law enforcement agencies and judicial authorities to assess the dangerousness of the perpetrators during preliminary investigations

506 Proposal made by GIURISTI DEMOCRATICI in the "Dossier in materia di violenza di genere. Proposte di emendamenti al disegno di legge Bindi-Mastella-Pollastrini", submitted on 26 June 2007 by SPINELLI BARBARA and ELENA COCCIA in the hearing of the Justice Commission of the Chamber of Deputies <http://files.giuristidemocratici.it/giuristi/Zfiles/20070627101134.pdf>

507 Survey on the criminal and civil law experiences by female lawyers in the national network of violence prevention centres concerning domestic violence against women, submitted to the CSM on 20 March 2009, which led to the CSM decision taken on 8 July 2009, Initiatives to improve the response of the legal system as regards family violence, < http://www.csm.it/pages/circ_sesta.html>, 24.04.10.

The risk of new assault for victim too often underestimated. Some initial data collection initiatives show more than 4,000 reports per year, of varying degrees of sensitivity to the law with respect to the crime of stalking, the competent offices having a varying propensity towards adopting the measure of warning, and public prosecutor's offices not always agreeing as to what preventive administrative procedure to adopt, possibly because of the effect of determining the official procedure in the case of harassment.⁵⁰⁸ The cases dealt with by operators of antiviolence shelters shows that the ban on visiting the places frequented by the injured party and warning are only applied in a very limited amount of cases compared to the number of requests made by victims, and are too often applied too late, when the increasing seriousness of the persecutory behaviour requires the application of more serious measures. There was a recent case of a woman who reported continuous threatening behaviour and telephone calls by her ex-husband. Only after a series of claims were made, and when the violence had escalated to a level such as to make the restraining order insufficient, was the cautionary measure of detention in prison applied, because the man had reached the point where he had burned down the shop owned by the woman.⁵⁰⁹

19.6.5.2 Probationary difficulties

One of the difficulties in the persecution of persecutory acts derives from the configuration of the crime as an event offense. It must be provided evidence not only of persecutory behaviour (repeated threats and harassment, through threatening behaviour, telephone calls and text messages, for example), but also of the events required by the provision, in other words either a state of anxiety or fear in the victim, further qualified as "serious and on-going", or the proven fear of the victim for her safety and that of people close to her, or her daily habits being forced to change. These are events which concern the condition of the victim; the first two concern subjective states and only the third the objective state of the victim. It is clear that while an objective condition, such as the changing of daily habits, is more easily verifiable and less subject to variability in terms of the opinion of those assessing her condition, the subjective conditions of the victim present a more problematical verification, and therefore provide less guarantees of objectivity, necessarily implying reference to reporting indices of the subjective condition required by the incriminated law. Some judges believe that these conditions occur only in the case of a state of anxiety or fear which involves pathological characteristics, in other words medical and scientific symptoms that can be ascertained by consultancy and then expert inspection. It is obvious that numerous persecutory acts against people who are very strong psychologically but still run a very high risk of being re-victimised are thus excluded. Other judges, in terms of the protection of the victim in the preliminary phase, believe it to be a probationary index of both the seriousness and continuing nature of anxiety or fear and the basis of this fear, characteristics of the objective seriousness of threats or harassments, and thus referable alternatively or jointly to their content or frequency. From this viewpoint, the subjective condition of the victim would not be commensurate to the specific and individualising subjective characteristics of the victim (it would therefore be irrelevant whether the woman was particularly weak or courageous or not) but to the objective characteristics of her conduct, thereby surreptitiously introducing the requirement of conduct, that of the seriousness of the treats or harassment involved, which is not required by the lawmakers, ignoring the event (the subjective condition of the victim), which is assumed to be significant and discriminatory by the lawmakers in the classification process.

It is obvious that these problems of interpretation arise from the difficulties faced by the lawmakers in classification, which are also linked to the inability to accept the aspects characterising gender violence, thereby removing them from the effects it causes on the victims.

19.6.6 Few women shelters. Many are at risk of closure because of the lack of stable financing. Absence of highly protected safe houses for the victims of forced marriages

Adequate services for supporting and assisting victims must be made available, as must structures for the temporary protection of high-risk victims. In Italy, there are currently more than 119 antiviolence shelters, of which 93 are managed by women's associations and 56 have accommodation facilities.⁵¹⁰ The number of structures is not sufficient to respect the standards established at a European level.⁵¹¹ These are locations and services prevalently managed by women's associations and according to a gender methodology, but the access and number of requests for help far exceed the number of beds available, which show that they are not sufficient to satisfy the prevention and support needs of the victims.

The economic resources allocated at a local and national level for the management of these locations and services are not sufficient to cover the costs, and many of them are at risk of closure.

508 CASACCIA S., "La legge sullo stalking, a che punto siamo?", 3.05.2011, http://www.zeroviolenzadonne.it/index.php?option=com_content&view=category&layout=blog&id=178&Itemid=560

509 MANENTE T., "il reato di stalking a due anni dalla sua introduzione", 3 May 2011, http://www.zeroviolenzadonne.it/index.php?option=com_content&view=category&layout=blog&id=178&Itemid=560

510 Source: CASA DELLE DONNE PER NON SUBIRE VIOLENZA, ONLUS, Bologna.

511 Data from <http://www.wave-network.org/start.asp?extra=Ind&Indid=116&ctry=ITALY&b=3>; Recommendation by the European Parliament 19865 1 family place in a women's shelter should be provided per 10,000 inhabitants in every country.

The financing of antiviolenza shelters and other support structures is not planned on a national and annual basis. Consequently, the services are available in a non-homogeneous way throughout the country because of the differences in economic resources allocated to these services by different regions and the structures are precarious because they can only plan support and assistance activities over time periods limited by the duration of the finances available, and personnel are not always adequately specialised if the allocation of resources and management does not provide for the presupposition of professional training and education from a gender viewpoint.

19.6.7 Insufficient funds for antiviolenza centers for activities in support of victims and the management of shelters

There are many antiviolenza centers and shelters in Italy at risk of closure because of the lack of economic resources. The new Act no. 39/2009 introduced the obligation to inform women who reported stalking and sexual violence crimes of the existence of antiviolenza shelters in their area. However, the antiviolenza shelters do not receive stable and adequate finances in order to deal with this additional workload.

When a woman decide to make a claims against her persecutor or her violent (ex) partner, she is really in danger, risk of being re-victimised for her is really high.

Despite this risk factor being known, and despite the increase in the number of women reporting violence, the funds and structures available for the emergency shelter of women who want to report violence in high-risk situations have not increased.

19.6.8 Insufficient funds for programmes for the protection and reinsertion of victims

The lack of an comprehensive strategy to combat violence against women is also highlighted in the relationship between welfare policies and interventions for the protection of women who are the victims of family violence in Italy. Currently, the number of women reporting domestic violence is increasing significantly, but the resources available to the welfare system and policies for the prevention of and protection from violence are reducing just as significantly. There is a tendency towards reducing public commitments in this sector, also due to items of expenditure defined by the law, and this makes the implementation of the law on protection orders even more difficult.

19.6.9 No social protection for the victims of violence

The first right of victims that the State must guarantee is that of receiving immediate social protection and assistance in reinsertion, otherwise reporting violence and awareness of these situations will be de-incentivised (CEDAW Committee Recommendations 21-31-32-/2005).

In this sense, there are no standardised protocols for integrated assistance through which the community ensures protection to victims as soon as possible, by coordination between first aid, social operators, police and the law courts, the so-called cooperative multiagency approach, which has been working for years in other European countries and has the advantage of the victim not being forced to provide information and search for protection and legal assistance but, through agency coordination, immediately provides the victim with adequate protection and starts legal proceedings deemed appropriate to the case, which obviously does not replace but integrates and makes more effective the "initial welcome" function currently provided by antiviolenza shelters.

To enable the complete recovery of victims from psychic, physical and relational problems caused by gender violence, specific support measures must be provided which enable the victim to gradually return to normality, without this significantly compromising their economic stability, and consequently their employment relations, be they subordinate or autonomous.

Specific focus should be placed on the victims of sexual violence, attempted homicide or sexual harassment in the workplace, considering the fact that the victims of "sexual mobbing" are mainly workers fixed-term contracts or workers with open-ended contracts, but which are not protected pursuant to art. 18 of the Workers Charter (businesses employing at least 15 workers), or workers who have been proposed career advancements in exchange for sexual favours. The victims of violence in the workplace should all be protected and reinserted in protected categories if cases of sexual mobbing have involved or involve the loss of employment, for the purpose of their social reinsertion.⁵¹²

19.6.10 No protection for women requesting asylum for reasons of gender based persecution⁵¹³

Women escaping from their countries of origin where they suffer from serious violations of their fundamental rights and, once in Italy, asking for international protection, very often do not receive adequate protection. There is a lack of gender based training for members of local territorial commissions, and very often situations deserving of political asylum or subsidiary protection are defined by less protective measures, as the permits of stay for humanitarian reasons.

There is a lack of awareness that female genital mutilation constitutes the presupposition for the

512 GIURISTI DEMOCRATICI in the "Dossier in materia di violenza di genere. Proposte di emendamenti al disegno di legge Bindi-Mastella-Pollastrini", submitted on 26 June 2007 by SPINELLI BARBARA and ELENA COCCIA in the hearing of the Justice Commission of the Chamber of Deputies <http://files.giuristidemocratici.it/giuristi/Zfiles/20070627101134.pdf>

⁵¹³ Paragraph referred to **Question no. 32 of the CEDAW Committee.**

recognition of refugee status. In the definitive version of Law 7/2006, the article which referred to international protection was not approved, and it is still extremely difficult to obtain international protection in Italy for women who are at risk of mutilation when they return to their country of origin. The Court of Cassation,⁵¹⁴ contrarily to that sanctioned at an international level by the UN and UNHCR (UN High Commission for Refugees) has deemed that female genital mutilation does not constitute a form of persecution based on gender by a form of “obedience” to which women are subjected in numerous countries throughout the world, and as such does not merit international protection.⁵¹⁵ For this reason, cases in which international protection is granted for reasons of persecution based on gender are extremely rare. Currently, the risk of being forced into an forced marriage on return home, or that deriving from having managed to escape an forced marriage, is not deemed a sufficient element to obtain humanitarian protection. Paradoxically, cases in which refugee status is granted for reasons of persecution based on sexual orientation are much more numerous because this ground of persecution is more easy to be recognized by the judges.

19.6.11 Insufficient protection for victims during criminal proceedings

19.6.11.1 Failed implementation of framework decision 220/2001/Gai concerning the standing of victims in criminal proceedings. Not even trials are efficient for victims.

19.6.11.1.1 Victims are not informed of the right to receive legal assistance when they report offences.

19.6.11.1.2 The Italian Government has not taken action to adopt specific forms of protection which art. 2 of the framework decision imposes for vulnerable victims, including women who are victims of gender based violence because of the subjection determined by the violence suffered.

19.6.11.2 Decree Law No. 11 dated 23/02/2009 extends to victims of certain offenses⁵¹⁶ the possibility of bringing forward questioning during investigations, but does not extend to the victims of these crimes protected hearings, as provided by art. 498 of the Criminal Procedures Code exclusively for minors or mentally unstable victims, for whom questioning is carried out, on request by their defence counsel, through the use of reflecting glass cabins and an intercom system. The same Decree Law also predisposes incomplete protection for underage or mentally unstable victims who, if they are victims of the above-mentioned crimes, can make recourse to protected methods of questioning, but cannot do so if they are the victims of family-related mistreatment, because the law has failed to provide for this.

19.6.11.3 Equal access to justice for the victims of gender violence (see para. 15.2)

19.6.11.4 The Framework Decision expresses the necessity to guarantee the victim effective reparations through compensations for damages by the aggressor. To date, many obstacles hinder the claim for compensation by victims of gender-based violence. The victim can sue for damages in a civil trial or in a criminal trial. Claiming damages in a civil trial is nevertheless very expensive. Moreover trial probatory rules could preclude to verify concretely what happened and therefore obstruct the victim’s claim for compensation. In the criminal proceeding, if the defendant choose a criminal action as plea bargain⁵¹⁷, victim is not allowed to act to recover damages⁵¹⁸. ..and she have to start a new civil trial...

WE RECOMMEND:

- ***Adopting specific measures for the protection of victims in criminal proceedings.***
- ***Introduce adequate regulatory dispositions aimed at ensuring the right of the victim to be informed of the termination or replacement of any cautionary measures that may be applied to the offender.***
- ***Ensuring adequate financial resources for a capillary distribution and constant activity throughout the country of shelters.***
- ***Promoting the setting up at a regional level of at least a unified first aid system specifically for the victims of gender violence, in which the victims can benefit from assistance by qualified personnel, providing immediate medical and psychological assistance and legal support should***

514 Civil Court of Cassation no..24906/2008

515 B. SPINELLI "Persecuzione per motivi di genere e protezione internazionale: l'ostacolo della sudditanza nella giurisprudenza della Suprema Corte" in "Diritto immigrazione cittadinanza" no. 2/2009, Franco Angeli.

516 Articles 572, 609-bis, 609-ter, 609-quater, 609-quinquies, 609-ocies, 612-bis, 600, 600-bis and 600-ter, although concerning the pornographic material of which in articles 600-quater.1, 600-quinquies, 601 and 602 of the Civil Code.

517 See on this point MINA F. "La tutela della vittima in sede penale. Punti di criticità", in AA.VV. Forum Associazione Donne Giuriste, "Stalking e Violenza sulle donne", Franco Angeli, Milano, 2009, e Miserocchi M., "La costituzione di parte civile di associazioni, enti e sindacati nei processi per reati integranti violenza di genere", relazione tenuta al seminario di formazione forense "Gli strumenti internazionali per la tutela delle vittime di violenza e discriminazioni di genere", organizzato da Giuristi Democratici e D.i.RE. Bologna, 14.01.2010.

518 Victim is not allowed to act to recover damages in criminal proceeding as plea bargain (see: art. 444 c.p.p.; CASS. SU., 27.11.2008, N. 47803).

they decide to report acts of violence. The first aid system must be coordinated with the antiviolence shelters and shelter houses in order to provide immediate accommodation for the victim if required. The presence of specialised personnel must be provided, including at least one gynaecologist, one psychologist, and a cultural mediator, a coroner and a lawyer if required.

- *Adopting measures for facilitating adequate compensations for damages to the victims of violence, also by making the accused's access to benefits granted by law to full compensation for damage to the victim of the crime.*
- *Ensuring information and audition to victims reporting violence during the inquiry.*
- *Ensuring that the police and other law enforcement agencies have adequate powers to enter premises and conduct arrests in cases of violence against women, and to take immediate measures to ensure the safety of victims.*
- *Ensuring that the police and the law courts have the authority to issue and enforce protection and restraining or barring orders in cases of violence against women. If such powers cannot be granted to the police, measures must be taken to ensure timely access to court decisions in order to ensure swift action by the court. Such protective measures should not be dependent on initiating a criminal case.*
- *Developing new or improve existing model procedures and resource material to help criminal justice officials to identify, prevent and deal with violence against women, including by assisting and supporting women subjected to violence in a manner that is sensitive and responsive to their needs.*
- *Ensuring that the victims of gender violence have the right to a reduction and reorganisation of their working hours and geographical mobility, the suspension of their working activities while preserving their job or the termination of their employment contract.*
- *Guaranteeing the victims of gender violence that the suspension or termination of their employment contract will give them the right to claim unemployment benefits. Provide that the time of suspension is considered as an effective remuneration period for social security and unemployment purposes.*
- *Guaranteeing that the businesses which during the periods of absence of employees who are victims of gender violence employ personnel to replace them on fixed-term contracts have the right to benefit from total exemption as regards the payment of social costs. Ensure that the victims of gender violence can return to their jobs under the same conditions as those prior to the suspension of the contract.*
- *Guaranteeing the victims of gender violence that any absences or lateness due to their physical or psychological condition caused by violence will be justified following the submission of documents certifying their condition.*
- *Identifying, as regards autonomous female workers who do not have insurance coverage for illness purposes and who find themselves in the impossibility of working because they are the victims of one of the crimes of which in articles 572, 609-bis, 609-octies and 612-bis of the Penal Code, the methods of exoneration from the payment of contributions and premiums for a maximum period of six months. During this period, figurative payments should be made for them, calculated on the average quotas paid during the six months prior to the exoneration period*
- *The following should be provided as the basic levels of social assistance in favour of people who are the victims of the crimes constituting gender violence:*
 - a) *information on the measures provided by the laws in force concerning the protection, safety and assistance and first aid rights for victims of gender violence;*
 - b) *the existence of services which clearly have the required social and assistance competences, with specialised personnel, easily identifiable and accessible to users;*
 - c) *the provision that the services are capable of carrying out first aid activities in psychological terms and then deal with these situations in the medium-term;*
 - d) *integration between services, should there be more than one with shared competences;*
 - e) *the stability and continuity of services, be they public or private and with agreements or accreditation with the Regions or otherwise recognised by the latter;*

f) the provision of social support, protection, educational support, training and professional insertion activities.

19.7 DISCRIMINATION IN THE PROTECTION OF MORE VULNERABLE WOMEN FROM VAW⁵¹⁹

All victims should be equally protected in the law from violence with no discrimination on the basis of age, race, ethnicity, religion, marital status, social status, caste or descent, migration status, employment (including sex work), sexual practice or sexual orientation (for example, lesbians), gender identity (for example, transgender women) or appearance (for example, the way a woman is dressed).

Other women suffer a double victimization because of a hatred which may be rooted in gender as well as in their race/ethnicity or sexual orientation.

Towards all of them, the State failed to comply to its duty of protection, because it did not provide for special measures aiming at eliminating the obstacles to proper protection.

19.7.1 Violence against migrant women

The state must ensure that victims and survivors of sexual or other forms of gender-based violence have access to safe and timely avenues to report the crime.

A victim who reports sexual or gender-based violence must not run the risk of being charged with a crime.

The introduction of the crime of illegal immigration (art. 10 bis of D.L. 286 dated 1998, as amended by Act no. 94 dated 2009) means that the judge (as a public official) to whom a request for protection is made by a foreign national not legally resident in Italy is bound by law to file a report ex art. 331, fourth paragraph, of the Penal Procedures Code.

The law prevents a foreign women (or man) from denouncing violations of basic human rights if not provided with a permit of stay and contradicts the laws on immigration that foresee humanitarian protection, including those contained in the T.U, with particular reference to art. 18 T.U.Imm. on the status of immigrant women⁵²⁰.

Therefore, a foreign women who does not have a valid permit of stay and is the victim of serious mistreatment with her children and decides to turn to the judicial authorities to protect her fundamental rights, such as her dignity and the psycho-physical integrity of her children who are forced to witness acts of violence, will certainly encounter discrimination because she is a clandestine, and will risk simultaneous procedures for her expulsion.

The introduction of the crime of illegal immigration therefore implies that the right for the protection of the freedom of women and their children is prejudiced, and the willingness to report family mistreatment is significantly reduced if the victim is illegally resident.

This regulatory framework, connected to a climate of intolerance towards the change, which is also expressed in certain institutional interventions, reduces the access to legal protection, especially by women, in as much as they are more exposed to having their right to personal freedom and self-sufficiency undermined.

Act no. 94/2009 was approved in violation of Recommendation by the Committee of Ministers of the European Council Recommendation 5 (2002), adopted on 30 April 2002, which commits member states to review their own legal systems and policies in order to ensure that women can exercise and protect their human rights and fundamental liberties.

This Act contrasts numerous articles and principles expressed in the Italian Constitution. Currently, there are proceedings pending before the Constitutional Court in relation to arts. 2, paragraph 5, and 10 of D.L. no. 286 dated 25 July 1998 (ordinance by the Juvenile Law Courts in Rome dated 17 September 2010).

19.7.1.1 Mistreatment, slavery, the exploitation in employment and sexual terms of family assistants (see Chapter on migrant women workers of the Shadow Report)

19.7.2 Violence against Roma and Sinti women⁵²¹

The EveryOne Group reported⁵²² the double violence suffered by Roma women: victims with their families of forced evictions and expulsion, they find themselves “in the middle of the road without their fathers and husbands, who are deprived of their freedom being innocent, on grounds of the offences that Roma people are commonly blamed for: occupation of dilapidated buildings [because their right to adequate housing is not recognized], troublesome begging, resistance to public officers, public disturbance and so on. In recent years, Italian volunteers of the EveryOne Group received countless reports of abuses on Roma women and even young girls. Out of shame, Roma victims never denounce their assailants, and often refuse to go to the

519 Paragraph referred to Question no. 30 of the CEDAW Committee.

520 See Judge Maria Acierno's speech delivered at the seminar “International tools for the protection of victims of violence and gender discrimination” organised by Giuristi Democratici and D.I.R.E in Bologna on 14th January 2010.

521 European Roma Rights Center, “Il paese dei campi. La segregazione razziale dei Rom in Italia”, serie “Rapporti nazionali”, n. 9, ottobre 2000. <http://cooperativamiki.org/pdf/rapporto%20europeo%20su%20discriminazione%20rom%20in%20italia.doc>

522 <http://www.articolo21.org/221/notizia/violenza-contro-le-donne-gli-abusi-sulle-donne.html>

hospital. Besides rape, Roma women undergo frequent racist attacks and ill-treatment by intolerant persons or even men in uniform. Some emblematic cases: in summer 2007, in Livorno [Tuscany], Lenuca Carolea and Eva Clopotar, two girls aged 6 and 11, were burned alive by a racist group; in June 2010, in Rimini [Emilia Romagna], 16-year-old Neli Grancea, who was pregnant, was beaten while dozens of passers-by remained indifferent; the plight of Veta and Elena, young pregnant Roma women who lost their babies because of the shock they suffered during the terrible evacuation carried out by Pesaro [Marche] authorities on February 25th, 2009. But this list of atrocities, always perpetrated in impunity, includes many other cases”.

19.7.3 Violence against sex workers

Violence against sex workers is an increasing phenomenon, of considerable relevance also as a femicide. The most frequently victimized amongst them are those who work on the road, who are very often robbed and raped by their customers, and allegedly subjected to sexual blackmailing by law enforcement officers.⁵²³

19.7.4 Violence against lesbians

It is now undoubtedly the time to extend the laws already in force concerning discrimination as an aggravating factor in crimes to include cases in which hate or discrimination is based on sexual orientation or gender identity. There are no official nor unofficial data collection about violence against lesbian in Italy.

19.7.5 Abuse of disabled women

The European Council estimates that approximately 40% of women with disabilities have suffered any form of violence. Nonetheless, according to Ana Peláez, Director of the Women Committee of the European Disability Forum, the rate is much higher.

However in Italy and in many other European countries, gender equality policies ignore disability and disability policies do not take gender issues into account, therefore perpetrating multiple discrimination and invisibility of women and girls with disabilities⁵²⁴.

In Italy no data on violence and harassment suffered by women with disabilities are available. No mention to women with disabilities is included in laws and in the Anti-Violence National Plan, nor specific actions in support of them are foreseen.

Disability limits women's defense capacities in case of violence and their need of support in carrying out some activities exposes them to more risks of violation of their privacy and other human rights.

Psychologist and President of Disabled People International Italy, Emilia Napolitano declared in a recent interview: “Considered as asexual beings, women with disabilities are more exposed to risks of sexual violence. For example they seldom receive information on birth control/family planning and sexuality and they suffer from abuses and violence much more than other women”⁵²⁵.

19.7.6 Sexual violence and harassment of women deprived of their personal freedom

The State's duty of care towards those who are deprived of personal freedom encompasses the obligation to protect them from any harm caused by others. Women detainees are amongst the most vulnerable groups, being exposed to double violence, as women and as persons subjected to restrictions in the enjoyment of their rights.

The allegations of ill-treatment by men, in particular sexual harassment (including verbal abuse) and violence, against women in custody, are the most frequent, mainly when the State fails to provide separate facilities with the supervision of women personnel for women detainees. As a matter of principle, detention facilities should always have strictly separated areas for men and women; women should be kept separated from both men detainees and men guards.⁵²⁶

19.7.6.1 Violence against migrant women deprived of their personal freedom⁵²⁷

The media representation of violence against women who are deprived of their personal freedom tends to stigmatize victims while emphasizing the irreprehensible conduct of law enforcement officials, or the ‘guardians’ of their freedom, who are under charge.

For example, in 2011, in Rome, a woman who reported being raped in a barracks by the Carabinieri who detained her was portrayed by the press as a homeless, unemployed single mother — a pretty young woman with a “complicated life” —, while the Carabinieri General Command hastened to highlight how the involved officers boasted a “spotless disciplinary sheet”, and those officials, as a justification, maintained that she was “consenting” — like a person being deprived of her/his freedom could exercise free choice.

Some women's rights defenders made a list, for public diffusion on March 8th in various Italian cities, of the latest episodes of sexual violence perpetrated by law enforcement officials. Most cases involve violence suffered by women and transgender persons detained within police/carabinieri stations, prisons or CIE

523 <http://www.ilmessaggero.it/articolo.php?id=149929> , <http://mondodonna.blogosfere.it/2009/06/agenti-della-gf-stuprano-prostituta-a-roma.html> , http://www.libero-news.it/news/682964/_Stuprata_in_caserma___Indagati_tre_carabinieri.html

524 <http://www.superando.it/content/view/6236/112>

525 <http://www.ilcarrettinodelleidee.com/notizie/violenza-domestica-sulle-disabili.html>

526 <http://www.cpt.coe.int/lang/ita/ita-standards.pdf>

527 Testo tratto integralmente da: http://www.zeroviolenzadonne.it/index.php?option=com_content&view=article&id=12836:la-violenza-contro-le-detenute-nelle-caserme-nelle-carceri-e-nei-cie&catid=205&Itemid=0 SABELLI S., “La violenza contro le detenute nelle caserme, nelle carceri, nei CIE”.

(Identification and Expulsion Centres) — a violence which is rooted in the power relationship between the detained person and her warder, just as it used to happen in past centuries in colonies or plantations, between colonized women and settlers, or slaves and masters. In particular, sexual harassment and sexual blackmailing against women detained in CIE are allegedly largely widespread: any everyday need, such as cigarettes or phonecards, can be satisfied by law enforcement officials or CIE workers against a sexual favour.

In 2009 the feminist group “noionsiamocomplici” (‘We are not accomplices’) published a report⁵²⁸ on violence against migrant women within and outside the CIE, tracing the first allegations of sexual harassment against detained women back to 1999.

In particular the case of Joy – a Nigerian woman who denounced a police inspector for having raped her while she was in custody in the CIE of via Corelli in Milan – highlights how, in courtrooms, the word of an ‘alien’ woman weighs far less than the word of a man in uniform. During the trial, not only Joy’s account was considered to be not “plausible”, but she was charged with defamation. The rationale for the acquittal of inspector Vittorio Adesso is an epitome of the worst racist stereotypes which reinforce a defence strategy aiming at undermining Joy’s credibility: in a rape trial the allegations of the victim “can in themselves constitute sufficient evidence for criminal charge”, but “only after due and severe assessment of the reliability of the plaintiff”. In line with the worst tradition of rape trials, where victims are turned to defendants, the “numerous inconsistencies” in Joy’s statements are (even graphically) highlighted, and she is portrayed as the ringleader of the protest of the Nigerian CIE detainees, marked by “particularly violent and coarse behaviour”. Moreover, it is highlighted that no other detainee, Nigerian or ‘of white race’ — such is the incredible wording —, witnessed on her behalf, forgetting that the other women who were present to the facts were “deported to Nigeria before having an opportunity to be heard”. Hellen, the only witness on her behalf, is allegedly not reliable because she speaks “in a slightly helter-skelter manner” and shares with Joy the nationality, the situation of “irregularity” and the charge of participating in the revolt against the act extending to six months the detention in the CIE. Having thus proved the “unreliability of the statements made by the two women” and the character illogic and implausible of their report, simply because it describes an “absurd” situation, the judge certainly concludes that the fact does not exist. Instead, the statements made by inspector Adesso, who “firmly” rejects any charges suggesting that the report is instrumental to obtaining a residence permit and avoiding expulsion, and by Mauro Tavelli, the other inspector in charge at the via Corelli CIE, later sentenced to 7 years and 2 months reclusion for raping a Brazilian transgender woman who was detained in the same facility — those statements are deemed credible. But these details are not mentioned in the rationale of the sentence, as well as the fact that Joy, like many other Nigerian women detained in the CIE, is a victim of trafficking and therefore entitled to a permit for humanitarian reasons under Article 18 of the *Testo unico sull’immigrazione* (Unified Immigration Act).

It is no chance that, with few exceptions, the press have not paid the slightest attention to this affair: the response of Italian media and public opinion to sexual violence is strongly conditioned by the race of raper and victims, the front pages of crime news are reserved to the figure of the ‘immigrant rapist’ and a black woman raped by a white man has no audience.⁵²⁹

An effective strategy to combat sexual violence cannot disregard the recognition of gender, race and class intersectionality and the need to tackle both sexism and racism, upholding the rights of migrant women who survive sexual violence.

19.7.6.2 Violence against Roma women deprived of their personal freedom⁵³⁰

Another form of violation of the right to privacy and degrading treatment by law enforcement officers is forcing women to get undressed for body searches.

According to a 2000 report of the European Roma Rights Center, body searches of Roma women frequently involve degrading treatment such as forcing women to undress in presence of male staff and sexual harassment. L.L., aged 28, reports having beaten and frisked when she was only 13 by male agents following a theft charge; her parents filed a complaint on behalf of her daughter, but the proceedings dragged on for many years and in the meanwhile the family moved to another city, and “everything went up in smoke.” According to the wide documentation gathered by ERRC, in Rome, especially in the areas of the Colosseo,

528 <http://noionsiamocomplici.noblogs.org/>

529 Testo tratto integralmente da: http://www.zeroviolenzadonne.it/index.php?option=com_content&view=article&id=12836:la-violenza-contro-le-detenate-nelle-caserme-nelle-carceri-e-nei-cie&catid=205&Itemid=0 SABELLI S., “La violenza contro le detenute nelle caserme, nelle carceri, nei CIE”.

530 This paragraph reproduces in its entirety para. 3.7 Molestie sessuali durante le perquisizioni delle women [Sexual harassment during body search on women] of ERRC report, *Il paese dei campi. La segregazione razziale dei Rom in Italia* [Land of Camps. Racial segregation of Roma in Italy], Rapporti nazionali [Nationwide Reports] series, nr.9, October 2000, <http://errc.org/cikk.php?cikk=3881>

Piazza di Spagna and Termini train station, Roma women who are caught begging often undergo a 'special' body search procedure: the agents lead the women to some nearby place (the police allegedly have habitual places for this practice inside Termini station) and force them to undress, beating them if they refuse to do so, and frequently imposing sexual acts; there are reports of young women who had their hair cut, also, the agents often take the women to out-of-the-way places and leave them there alone. The Italian law forbids male police officers to perform body searches on women. To ERRC's knowledge, no police officer has ever been sentenced or subjected to inquiry for this illegal practice against Roma women.

WE RECOMMEND:

- **Monitoring the risk of violence for disabled women.**
- **Monitoring the risk of violence for women deprived of their personal freedom.**
- **Collect data on violence faced by lesbian.**
- **Collect data on violence faced by sex workers.**
- **Overcoming the "assistance approach" to disability, mainstreaming a gender perspective in the evaluation of the specific needs of disabled women.**
- **Protecting disabled women's rights by establishing specific services providing information, orientation, counselling and legal assistance to them.**
- **Providing psycho-social support in order to empower the personal autonomy and start a process of elaboration of the handicap.**
- **Providing specific training and designed interventions for the educators and social workers, considering the specific needs of the disabled women victim of violence.**
- **Providing specific measures to contrast abuses on women deprived of their personal freedom.**
- **Better investigate and persecute sexual harassment and abuses on women deprived of their personal freedom.**

19.8 DUE DILIGENCE OBLIGATION OF THE STATE: TO PROSECUTE PERPETRATORS OF VAW

The obligation of the State to criminally prosecute whoever commits gender violence and ensure adequate assistance and protection for the victims before and during criminal proceedings has not been fulfilled.

19.8.1 Excessive duration of criminal proceedings and risk of stale offence

The excessive duration of criminal proceedings is due to the lack of economic resources allocated to the legal system on one hand and the fact that for gender violence crimes, there are no incentives in terms of coordination between offices, speeding up the investigations and ascertaining responsibility, as is the case with organised crime, on the other. One of the most serious risks for criminal proceedings involving stalking and family mistreatment is that of stale offence, which thwarts any request for justice by the victims of serious crimes, such as those against the individual. The ex Cirielli Act (Act no. 251 dated 2005) states that these crimes are time-barred in only seven and a half years, which is too short a time, given their complexity, for two levels of discussion proceedings and verifying legitimacy by the Court of Cassation. Especially in the major Courts, such as those in Rome, trials nearly always finish with a sentence that appeals cannot be made because of stale offence.

19.8.2 Rehabilitation programmes for those guilty of committing gender violence crimes

The re-educative purpose of the sentence handed down to the accused who is recognised as being responsible for gender violence is thwarted by the lack of awareness and training programmes structured according to a gender viewpoint. It should be pointed out that to be effective, the provision of rehabilitation programmes for perpetrators should include; voluntary adhesion, no benefit in prison terms for the first three months of treatment and personalised social reinsertion programmes.⁵³¹

531 Proposal made by GIURISTI DEMOCRATICI in the "Dossier in materia di violenza di genere. Proposte di emendamenti al disegno di legge Bindi-Mastella-Pollastrini", submitted on 26 June 2007 by SPINELLI BARBARA and ELENA COCCIA in the hearing of the Justice Commission of the Chamber of Deputies <http://files.giuristidemocratici.it/giuristi/Zfiles/20070627101134.pdf>

WE RECOMMEND:

- *Developing mechanisms to ensure a comprehensive, coordinated, systematic and sustained approach in order to increase the likelihood of a successful apprehension, prosecution and conviction of the offender, contribute to the well-being and safety of the victim and prevent secondary victimization.*
- *Introducing mechanism to decrease the risk of stale offence for proceedings on gender violence issues.*
- *That Institution activities and criminal justice preventing the crimes should be guided by the overall principle of human rights, to response to violence against women, manage the risk and promote victim safety and empowerment while ensuring offender accountability.*
- *Encouraging the specialised training of judges and public prosecutors on gender violence issues.*
- *Providing rehabilitation programmes implemented by the prison service and held by qualified personnel, including those from outside the prison, for offender who have been convicted of gender violence, in the context of which, after at least the first three months of treatment, a judges may assess the attendance and application of the convict to the programme in order to grant permits or conditional freedom.*
- *Developing awareness and training programmes for convicts (sex offenders, stalkers, molesters) structured from a gender perspective.*

19.9 DUE DILIGENCE OBLIGATION OF THE STATE: TO COMPENSATE VICTIMS OF VAW

19.9.1 The Italian Government has not fulfilled its obligations in terms of guaranteeing compensation for victims of gender violence

Directive 2004/80/EC dated 29 April 2004⁵³² provides that the State must compensate the victims of all malicious crimes if the offenders are not able to do so. Italian State is the only EU country that failed to implement directive together with Greece. On 29.11.2007, the Italian Government was also found guilty of failing to implement it by the European Court of Justice. When Prodi Government was in power, Decree Law 204/2007 allocated an ad hoc fund, but only for 56,000 Euro, and it was never refinanced.

Given that this European Directive has not been fully acknowledged, all women who are victims of violence (in cases in which the accused cannot be found or cannot compensate them) are forced to take legal action against the government to be compensated, with additional costs being sustained. The Turin law courts ordered the Prime Minister to pay 100,000 Euro in compensation to a 25 year old girl who was the victim of sexual assault, kidnapped and raped for an entire night by two Romanians, who were sentenced to house arrest but escaped and are still on the run, having been sentenced by the Court of Cassation. The State Lawyer's Association defence stated that the European Directive does not cover crimes of violence against women (this is not true, as the directive covers all malicious crimes) and the Italian government is still refusing to pay damages to the victim. Following this sentence, some members of parliament in the opposition submitted a parliamentary interrogation to ask "what the Government's intentions are, also to avoid further conviction sentences", but never received a reply.⁵³³

On the other hand, it is imperative to remark with indignation that it would seem that in the eyes of the Italian institutions, the life of a football fan is worth more than that of a victim of gender violence, because in 2010 the Italian Government, always defaulting in the institution Fund for Compensation for victims of gender violence, has established the "civil solidarity fund for the victims of crimes committed during or because of sporting events"⁵³⁴ (!).

532 Directive 2004/80/EC: All member states must ensure that their national laws provide for the existence of a system of indemnities for the victims of intentional and violent crimes committed within their respective countries, which guarantees equitable and adequate compensation for victims. (art. 12, paragraph 2). This failure to fulfil its obligations by the Italian state was recognised for the first time in the sentence handed down by Roberta Dotta at Turin Law Courts on 6 May 2010, no. 3145/10.

533 L'Unità, "Stuprata a venti anni. Nessun risarcimento dal Governo italiano", M. Gerina, 23.07.2010.

534 La legge n. 217 del 2010 (legge di conversione del decreto-legge 12.11.2010 n. 187, recante misure urgenti in materia di sicurezza) ha introdotto -nel decreto legge citato- l'articolo 2-bis, che istituisce il Fondo. Fonte: <http://sportelegge.gazzetta.it/post/23861582/risarcimento-per-le-vittime-della-violenza-negli-stadi>

WE RECOMMEND:

- *Setting up a national implementation of Directive 2004/80/EC to fund and pay compensation to the victims of crimes including gender violence.*
- *That the Prime Minister's office should immediately pay compensation to the victims of gender violence if this has already been requested.*

GENERAL RECOMMENDATION N.26 WOMEN MIGRANT WORKERS⁵³⁵

The Italian Government has been implementing its policies on migrant work without adopting a clear gender perspective, ignoring CEDAW Committee's General Recommendation n.26.

There is still a lack of research on multiple discrimination against migrant women in access to labour market and work conditions, and the results of these studies are not given proper consideration in the development of immigration policies.

This lack of a gender-sensitive planning in immigration policies has a particular impact on one group of migrant workers: women domestic workers,⁵³⁶ on whose behalf we deemed opportune to submit this fact sheet to the CEDAW Committee.

26.1 MULTIPLE DISCRIMINATION AGAINST MIGRANT WOMEN

This fact sheet relates the results of a research carried out by two Italian NGOs⁵³⁷ on multiple discrimination connected to gender, race/ethnicity and age and its impact on migrant women's lives. The study concerned only the province of Bolzano (in the northern Region of Trentino Alto Adige), but the comparison with other reports and studies, at both local and national level, shows how the outcome are indicative of the situation of the majority of migrant women in the whole country.

The survey shows the presence and interaction of multiple forms of discrimination affecting migrant women in the different spheres of their lives, in their relationships with family and community, with many and heavy effects on their physical and psychological health as well as on their social, economic and cultural situation. In general, the intersectional effects of different forms of discrimination cause foreign women to live in suffering and oppression, deeply undermining their well-being, their self-respect and self-perception, the quality of their lives, their chances for a future, their freedom of choice and self-determination, the enjoyment of their fundamental human rights.

Migrant women actually:

- are less employed than migrant men, with even lower employment percentages than the other women in the wider society;
- are on the average underemployed for the qualification and professional title they achieved in their country of origin;
- are relegated to the less qualified, paid and unionized job sectors, as well as strongly affected by gender stereotypes and racial segregation;
- carry the burden of reconciliation between extra-domestic work and caretaking within their own family, with usually more numerous families and often with limited access to child care services;
- have fewer chances to access programmes of professional requalification because of many factors: migrant women have less time for themselves, the schedules and duration of the programmes are often inconvenient, there is a lower quality and lesser quantity of educational opportunities available for them;
- have a more restricted access to economic resources and on the average send more money to their families in the country of origin than men do;
- get fewer welfare rights, because they do more frequently part-time jobs, may suspend their activity because of maternity and are more likely to have underground employment;
- are more vulnerable as for their physical and psychological health than both native women and migrant men, because migrant women do wearing jobs, suffer from the stress to reconcile it all, and have less time to take care of their health;
- often suffer serious psychological disorders connected to their job as caretakers, which in many cases involves cohabitation with the assisted persons and their families, the stress of a double or triple job, the sense of guilt connected to the separation from their families in the country of origin, a crisis of marriage relationship because of distance and role change;

535 Chapter referred to the **Question no. 31** of Cedaw Committee.

536 A domestic worker is someone who performs continuative work to satisfy the everyday needs of the employers' family, within the employer's household. Domestic workers perform a variety of household services: providing care for children and old persons — the so called *badante* (plural *badanti*) 'a person (usually a woman) who looks after (children or old people)' (from the Italian verb *badare* 'to look after, to care for'), with a slightly derogatory nuance —, cleaning and household maintenance (housekeeping), cooking, doing laundry and ironing, food shopping and other household errands.

537 E. LAURENZI and P. RANDINI, *Genere e migrazioni: comprendere gli effetti delle discriminazioni multiple* [Gender and migrations: understanding the impact of multiple discrimination], Associazione Trama di Terre (Imola, <http://www.tramaditerre.org/>) and Associazione Donne-Nissà (Bolzano, <http://www.nissa.bz.it/>), Bolzano, Italy, 2010, in course of printing.

- often live in situations of control and oppression within their communities, especially if these groups are characterized by a strong permanence of traditional values and harmful practices;
- often live in situations of oppression and subordination within their families, too, because of many factors: the load of domestic work lies entirely on women's shoulders; men tend to keep the exclusive control of family financial resources; women are denied freedom of choice and self-determination and often undergo ill-treatment and violence from which it is hard to escape because of the difficulty to achieve autonomy (housing and work);
- inherit a considerable part of their mothers' social distress, even if they arrived to Italy on family reunion and attended school in this country: migrant girls and young women often remain subjected to family control, including serious displays such as forced marriage, enjoy lesser educational investment than their brothers, and face obstacles to job access as the first generation migrant women did.

26.2 MULTIPLE DISCRIMINATION AGAINST WOMEN DOMESTIC WORKERS

A recent official statistic survey⁵³⁸ on the composition of workforce indicates a phenomenon of overrepresentation of foreign women in the service sector (mostly housekeeping and caretaking), who amount to 62% — or 85-90% according to other local and nationwide studies — on the total of foreign tertiary sector workers.

According to another recent survey,⁵³⁹ **in Italian houses there are 1,5 millions of domestic workers: a +42% increase since 2001.** This trend, which has been setting since a few decades, traces back to increasing women's employment, removing women from their traditional family duties of housekeeping and caretaking of children and old/disabled persons. Moreover, because of the extension of life expectancy and the consequential constant increase in the population of non-self-sufficient aged persons, the institutions find it hard to implement an adequate welfare response to the families' new needs. That is why family assistant is an emerging figure in the social fabric of our country, often being the backbone of a 'do-it-yourself welfare' and a vital support to many families, and becoming a more and more steady and integrated presence within Italian houses. Its profile is: woman (82,6%), young, migrant – over 70% from Eastern Europe, mostly Romania, Ukraine, Poland and Moldova, with a considerable component from Philippines and South America⁵⁴⁰.

More than the other foreign women workers in the domestic sector, carers undergo specific forms of discrimination which are typical of this sector and make them more vulnerable, including to sexual harassment and violence, just because they are women:

- Discrimination on arrival: prejudices leading to think that women from certain countries are the most suitable persons to act as caretakers;
- Discrimination in bargaining: there is a lot of irregularity in labour market in the domestic sector, always to the detriment of women workers. Even when they are hired on a regular contract, there is no recognition of a specific profile;
- Discrimination in labour conditions: carers have little bargaining power, especially if they lack a residence and work permit. So they are more liable to be easily blackmailed and therefore to accept in silence schedules or duties not previously agreed upon;
- Discrimination in opportunities of enhancement: it is very hard for those who live in cohabitation with their employers to develop an upward labour mobility that enables them to improve their social and financial status.

26.2.1 The difficult access to regular employment

It is not simple to calculate how many carers are present in Italy, both because the majority has underground jobs and because those who have a regular contract are generically assigned to the wider category of domestic workers, without any specific reference to the performed duties. There is no specific labour agreement for carers, but their relations with the employers are regulated under the national

538 See ISTAT Istituto nazionale di statistica (Italian National Statistic Institute, <http://www.istat.it/>), Demo (official site offering all demographic figures from ISTAT research, <http://demo.istat.it/index.html>), <http://demo.istat.it/strasa2009/index.html>; quoted in CESPI Centro studi politica internazionale (International Policy Research Centre, <http://www.cespi.it/>), Osservatorio di politica internazionale (International Policy Watch), *Flussi migratori* [Migration flows], nr.4, July/October 2010, <http://www.cespi.it/ITALIA.html> (available for download under the section 'Focus'); see also ISFOL Istituto per lo sviluppo della formazione professionale dei lavoratori (Institute for the development of workers' professional training, <http://www.isfol.it/>), *Analisi degli interventi di integrazione rivolti alle donne immigrate* [An analysis of social integration policies for migrant women], November 2009.

539 CENSIS Centro studi investimenti sociali (Social Investments Research Centre, <http://www.censis.it/>), *La sicurezza dei lavoratori domestici* [Safety for domestic workers], Rome, July 13th 2010, http://www.censis.it/10?resource_50=107733&relational_resource_51=107733&relational_resource_52=107733&relational_resource_385=107733&relational_resource_381=107733&relational_resource_382=107733&relational_resource_383=107733&relational_resource_384=10773.

540 On the average, foreign women housekeepers have a higher education level than their Italian colleagues (45% have got a secondary school certificate or a degree). Over 50% of them are under 40 years old and work for only one family, and more than 25% (36% if they are foreigners) live in the same house. Their average net monthly income is about 800 Euro.

collective agreement for the category of domestic workers.⁵⁴¹

According to a recent survey,⁵⁴² **in Italy there is an estimated 774.000 women carers, of which 700.000 are foreigners; out of these 700.000 only 232.000 women (33%) have a regular contract, the others do not have it because they are staying in Italy without papers (43%), or because they prefer not having a contract (in order to avoid paying taxes) or they cannot obtain a contract (24%).**

Such contractual irregularity brings about a labour market which is much less qualified, precarious, at high risk of exploitation, with no protections or safeguards for women workers.

Those who are staying irregularly in Italy experience a situation of strong labour and social segregation, because they often cohabit with the persons they assist and their families. A relation of personal dependence sets in, precluding any chance to create relationships with the wider context. Such a situation frequently determines very harsh conditions of exploitation and even abuses.

26.2.2 Inadequacy of regularization policies

In the last 5 years there has been a progressive increase in irregularity rates, partly due to the meagre immigration quotas (*decreti flussi*) granted to extra-EU family housekeepers and carers, compared to the real and potential demand. In particular, for carers in cohabitation, families prefer hiring persons upon direct acquaintance or references by relatives and friends, even if the person lack a regular permit. Moreover, the increased expenses charged on families, who are already exhausted because of the crisis, have contributed to the increase of underground employment.⁵⁴³

In the estimate of the Italian government, the last regularization (2009)⁵⁴⁴ should have affected 500.000 to 750.000 workers. In fact, only 300.000 were regularized. Amongst the causes, the excessively strict requirements (e.g. the minimum family income) and the serious exclusions opposed to extra-EU workers (if they are reported into the Schengen Information System or they were condemned because they did not respect the order of expulsion)⁵⁴⁵.

More than 8 carers out of 10 declare being in a situation of contractual irregularity because of their little bargaining power and because their employers refuse to take upon themselves the hiring expenses and are afraid that, once regularized, the carers may advance union demands.⁵⁴⁶

26.2.3 Harsh labour conditions

A recent research published by the Bank of Italy⁵⁴⁷ highlighted the fact that **foreign carers are often a replacement in caretaking duties for Italian women, who gain time and are no more forced to renounce an occupation outside domestic walls**. In comparison to the lack of policies and of assistance and vigilance services, **they offer a far more efficient service than any other kind of public welfare intervention**: non-self-sufficient persons over 65 years old which are followed by a caregiver are 6,6%, a number more than triple than that of the old people living in residential facilities and even higher if compared to public home services.⁵⁴⁸

In spite of the recognition of the fundamental role of foreign carers, the measures which have been adopted in order to safeguard their position have been largely insufficient. On the one hand, the regularization rules turned out to be inadequate to their own aim; on the other hand, the lack of any specific labour agreement for this category has the effect that carer are not recognized a specific profile within domestic workers' collective agreement; as a result, these women are assigned to the minimum wage level provided for domestic workers with generic duties (house cleaning).

541 Under this agreement, however, they are not always attributed the proper profile according to the requested and performed duties. For the wage categories see the collective agreement (CCNL) of February 13th, 2007.

542 See S. PASQUINELLI and G. RUSMINI, *Badanti: la nuova generazione. Caratteristiche e tendenze del lavoro privato di cura* [Caregivers (see note 1): the new generation. Characteristic features and trends of private caretaking], IRS Istituto per la ricerca sociale (Social Research Institute), November 2008. The evaluation refers to official sources such as INPS Istituto nazionale della previdenza sociale (National Welfare Institute, <http://www.inps.it/>), ISTAT (see footnote 3), AGENAS Agenzia nazionale per i servizi sanitari regionali (National Agency for Regional Health Services, <http://www.agenas.it/>), research outcomes and a wide range of informal reports.

543 Hiring a full-time, cohabitating, untrained carer with a regular contract means an average annual expense (basic salary plus social insurance contributions) of about 18,000 Euro. This fact, adding to the lack of adequate tax breaks, results in a widespread tendency to reduce as much as possible the expenses (that is cutting social insurance contributions), avoiding regular contracts or declaring fewer working hours than real. The advantage is an average 1,169 Euro for the employer and 357 Euro for the employee, per year.

544 Act no. 102/2009 'Disposizioni in materia di legalizzazione del lavoro irregolare, per attività di assistenza e di sostegno alle famiglie di cittadini italiani, comunitari ed extracomunitari' [Measures for the legalization of irregular labour, for activities of assistance and support to the families of Italian, EU and extra-EU citizens].

545 Under EU Justice Court's sentence El Dridi (April 28th, 2011), repealing the offence under Article 14.5ter of D.LGS. 286/1998, the Consiglio di Stato (State Council), in plenary session, annulled the decisions denying regularization to migrants that were condemned on the grounds of the Art. 14 D.Lgs. 286/1998.

546 PASQUINELLI and RUSMINI, *op. cit.*

547 G. BARONE and S. MOCETTI, *Gli effetti dell'immigrazione poco qualificata sull'offerta di lavoro femminile* [The impact of scarcely qualified immigration on women's labour offer], Banca d'Italia Publications, nr.766, July 2010.

548 In the last two years, however, there has been a slight slowdown in the so far increasing numbers of carers, due to a progressive market saturation. The expenses for their work and the concurrent economic recession, which has been reducing family spending, cause increasing difficulty for the families to meet the costs for a regularly hired carer. As a result, Italian women give up their job in order to stay at home and take care of family members.

Therefore, carers cannot obtain the recognition of their professional skills nor a retribution in line with the quality and responsibilities of the required performance.

As for the cohabiting carers, their salary is partly virtual because of the deductions for board and lodging, which are often inadequate in quantity and quality and are usually not monetized. This causes a partial tax evasion as well as an arbitrary abatement of other due emoluments such as holidays not taken, year-end bonus and retirement bonus.

Finally, the cohabiting carers often experience a situation of greater insecurity, in comparison to other domestic workers, because they are at constant risk of losing both work and housing if the person they assist dies or goes into a nursing home.

What we reported shows how foreign carers suffer discriminations connected both to their irregular stay on the national territory and to the lack of a proper labour agreement:

- irregular migrant women working in the underground employment face total exploitation;
- many women workers who have permit of stay but are frequently forced to work without being regularly hired are in a halfway situation: they have more opportunities for social and labour integration because they have access to training, registers and local counselling services, but nevertheless they remain in a precarious and professionally uncertain situation of exploitation and lack of all the safeguards provided for by a regular contract;
- also women who have both a permit of stay and a regular contract face discrimination in welfare: for some years they have been paying social insurance contributions in Italy, and when they return to their countries of origin they lose everything because there is no autonomous right to an Italian pension for citizens of extra-EU countries. This means that, unless there is a reciprocity agreement between the pension institutions of both States, the contributions cannot be transferred to the pension institutions in the country of origin, and the workers should return to Italy when they reach retirement age, in order to demand the refund of their money.

26.2.4 Risk of victimization

A 2007 survey⁵⁴⁹ highlighted that 64% of women domestic workers feared labour exploitation and 34,8% feared sexual harassment or violence; 17,5% had faced actual discrimination: 23% had suffered ill-treatment and exploitation and 16,9% sexual harassment/violence.

Women domestic workers are more likely to experience situations of physical, psychological and sexual violence, about which they usually remain silent because of isolation or for fear of losing their job and lodging or even being denounced and expelled if they are irregular.

26.2.4.1 Trafficking for labour exploitation

Those who perform domestic work or caregiver to old persons are frequently victim of trafficking and abuse. In this sector there have been serious episodes of exploitation of citizens from eastern Europe, especially in the Regions of Friuli Venezia Giulia and Veneto (north-eastern Italy), Umbria (central Italy) and Sicily, where criminal organizations for the underground employment of women carers have been discovered.⁵⁵⁰

In such cases, abuses are often very hard to identify because the workplace is a private house. An ordinance of 1998 (Art. 18 of D.LGS. no. 286/1998) extends to the victims of labour exploitation the safeguards provided for the victims of sexual exploitation.

Under Article 18 of the *Testo Unico per l'Immigrazione* (Immigration Act, unified text), a permit of stay for humanitarian reasons can be granted in case of grave exploitation and risk of violence for the victim or her family, in order to allow foreign exploited workers to develop a new migration plan. Nevertheless, "there are still few cases of application of Article 18 to persons who are victim of labour exploitation because, unlike sexual exploitation, it is more difficult to gather evidence of labour exploitation through inquiries".⁵⁵¹

549 ACLI Associazioni cristiane lavoratori italiani (Christian Unions of Italian Workers, <http://www.acli.it/>) of Rome (<http://www.acliroma.it/>) and IREF Istituto di ricerche educative e formative (Educational and Training Research Institute, <http://www.irefricerche.it/>), *Il welfare invisibile. Indagine nazionale sul lavoro di cura, le famiglie e le collaborazioni domestiche straniere* [The Invisible Welfare. National survey (concerning five major Italian cities) on caretaking, families and foreign domestic work], ... 2006-2007, <http://www.irefricerche.it/news.interna.php?notizia=84> (not available for download; to have a copy of the report please contact directly ACLI or IREF).

550 M. G. VIVARELLI, "Il caporalato: problemi e prospettive" [*Caporalato* means an illegal, abusive system of hiring exploited day labourers through an intermediary or foreman called *caporale*): problems and perspectives], *ir. Pen. e Processo*, 2009, 8, Annex 1, 35.

551 Interview with lawyer Lorenzo Trucco from ASGI Associazione per gli studi giuridici sull'immigrazione (Association for Legal Studies on Immigration, <http://www.asgi.it/>) at the conference 'Se è vero che non si vuole il lavoro nero... La tratta e il grave sfruttamento sui luoghi di lavoro' [If you really don't want underground employment... Trafficking and grave exploitation on workplaces], Torino, Italy, October 18th, 2010, <http://www.gruppoabele.org/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/950>

WE RECOMMEND:

- *Adopting more effective immigration policies, with a specific focus on domestic workers and their social relevance, in order to eradicate the alarming phenomenon of underground employment.*
- *Carrying out nationwide research and analysis on a quantitative and qualitative basis to identify problems and specific needs of women migrant workers.*
- *Providing for tax relief covering the cost of private help services for aged persons and families.*
- *Promoting professional requalification and vocational trainings for migrant women, at national, regional and local level, in order to recognise and enhance their knowledge and skills, and to create professional profiles responding to market demand.*
- *Creating and supporting information and counselling services that provide orientation and facilitate a fair management of work relations, with a view to protecting both the employers' needs and workers' rights as for retribution, retirement and welfare.*
- *Promoting the integration of public service network in order to protect both carers and families, to support the choices of the families, for a care which is less precarious and closer to everyone's expectations.*
- *Promoting awareness-raising campaigns targeted at women migrant workers, to inform them about their rights and available local services to help them getting free from situations of exploitation and violence. Campaign materials should use a simple, accessible style and be available in the languages of the main migrant communities.*
- *Ensuring that the victims of exploitation have access to a permit of stay for job reason, at least on a temporary basis, regardless of whether they co-operate or not with the law enforcement and judiciary officials - as witnesses or complainants - in criminal proceedings; and that they have easier access to labour market.*
- *Ensuring that the victims of exploitation and their children have access to: adequate and safe housing; frontline support services, including benefits for basic livelihoods, emergency health care, assistance services, translation/interpretation when needed, help to contact their families, and education.*
- *Ensuring that the victims of exploitation are applied simplified rules for family reunion.*

GENERAL RECOMMENDATION 19 FEMICIDE IN ITALY⁵⁵²

F.19.1 CONCEPTUALIZING FEMINICIDE AND FEMICIDE

An increasing number of sociologists, criminologists, and anthropologists⁵⁵³ employs neologism “femicide” to conceptualize every form of discrimination and violence (physical, sexual, psychological, economic, structural, cultural, including violence perpetrated or condoned by the state or its officials) accomplished in harm to a woman because she is a woman. This definition permit to name violent practices which attempt women psycho-physic integrity, their freedom and their possibility of full realization of fundamental rights and citizenship.

The concept of femicide is so referred to women killing because they are women, as well as to any gender based violent action against women⁵⁵⁴.

In Italy the term “femicide” points out and names, according to Diana Russell’s essay “Femicide: The Politics of woman killing” written in 1992, the primary cause of female homicides as an extreme violence perpetrated by a man against a woman “because she is a woman”. It covers both the murder of the woman, and any situations whereas behaviors or misogynist practices lead to woman’s death as result.

In Italy “femicide” also highlights the common root causes of gender based violence, annihilating women in their physical, psychological, and social extent.

It refers to Marcela Lagarde’s definition as “extreme form of gender based violence and human rights violation, whether occurring in public or private life, through misogynist practices – abuses, physical, sexual, educational, professional, economic, patrimonial violence, violence perpetrated within the family, the community or the state institutions – which lead impunity and put women in a condition of risk and lack of protection until their murder or attempt, or other kinds of death of women and children, such as suicides, accidents, sufferings or deaths caused by lack of personal security and interest from institutions, and absence of inclusion on development and democracy”.

F.19.2. LACK OF OFFICIAL SURVEYS ON FEMINICIDE IN ITALY

In Italy since the beginning of the 90’s the amount of homicides involving male victims decreased by one third, but intimate femicides amount doubled. It means that male murders perpetrated by men felt off, while grew the rate of women killing at the hands of intimate partners. It also means that measures to struggle violence against women didn’t provide a response on the most terrible kind of violence, the one within the family.

The last survey of Istat about violence in Italy, allows to consider the seriousness of the matter and importance to held data collecting to prevent violence: 20% of the victims of intimate violence complaints she scared for its life, and this is a relevant amount of women at high risk, since women killing in the family or domestic unit occurring after an escalation of violence.

The closest linking between violence against women and femicide has been highlighted in the Anna Baldry’s researches about femicide cases in Italy in 2004, revisited in 2008 and based on justice data regarding cases brought to trial: they notice that in 70% of the cases there were precedent offences, even if not reported but resulting from declarations of relatives and neighbors⁵⁵⁵.

Although the concerning notices moving from the surveys, in Italy there is lack of institutional statistics and

552 Analysis referred to [Question no. 14 of CEDAW Committee](#).

553 RUSSELL Diana- RADFORD Jill, (1992) *Femicide, the politics of woman killing*, New York, Twayne Gale Group; RUSSELL Diana - HARMES A. Roberta, (2001), *Femicide in global perspective*, New York, Athena series; LAGARDE Y DE LOS RIOS Marcela, (2004 e 2006) *Por la vida y la libertad de las mujeres: Fin al feminicidio*. MONARREZ FRAGOSO J., *Elementos de analisis del feminicidio sexual sistematico en Ciudad Juarez para su viabilidad juridica*, in “Feminicidio, Justicia y Derecho”, LIX Legislatura, COMISION ESPECIAL PARA CONOCER Y DAR SEGUIMIENTO A LAS INVESTIGACIONES RELACIONADAS CON LOS FEMINICIDIOS EN LA REPUBLICA MEXICANA Y A LA PROCURACION DE JUSTICIA VINCULADA, Messico, novembre 2005; NADERA SHALOUB – KEVORKIAN, (2003) *Reexamining femicide: breaking the silence and crossing scientific borders*, in “Signs”, Chicago, Winter 2003, volume. 28, Iss. 2, pg. 581. GIURISTI DEMOCRATICI - SPINELLI Barbara, 2006 “*Violenza sulle donne: parliamo di femminicidio*. Spunti di riflessione per affrontare a livello globale il problema della violenza sulle donne con una prospettiva di genere” in www.giuristidemocratici.it Bologna; SPINELLI Barbara (2008) “*Feminicidio. Dalla denuncia sociale al riconoscimento giuridico internazionale*”, FrancoAngeli, Milano; SPINELLI Barbara (2008) , “*Femicide e femminicidio: nuove prospettive per una lettura gender oriented dei crimini contro donne e lesbiche*” in “*Questione criminale*”, Carocci, novembre 2008.

554 Nadera Shaloub Kevorkian, Palestinian criminologist names “femicide ” every social practice of men’s domination over women, addressed to destroy women rights, skills, abilities and their chances to live in safety. It is a sort of abuse, assault, harassment which humble and put women down. Women live in fear, frustration, loneliness, exclusion and at risk from not deciding about themselves. This new definition stresses new crimes not considered as such in criminologist nor in victimization studies, caused by impair dominant position of men and women in the society. Femicide shall be better understood through victims voices, social institutions analysis, social frameworks, and relational behaviour patterns based on tradition. A wide reading of feminicide is a step on its comprehension and on struggle against women killing sexism, and against long process leading to their physical or spiritual death. Increasing feminicide studies, we discover how the phenomenon is enigmatic, to give voice to voiceless and unveil the refuse where atmosphere is static” (Nadera Shaloub Kevorkian).

555 http://www.casadonne.it/cms/images/pdf/pubblicazioni/materiali/feminicidio_2010.pdf

gender disaggregated data regarding femicides and attempted femicides: reliable data aren't available to supervise the phenomenon, and there are just Eures' data collecting about intimate homicides, which provides data "gender blinded".

This lack of data and sensationalized media coverage about cases might allow misinformation and myths about intimate partner violence and femicides⁵⁵⁶.

F.19.2.1 Media reports on femicide

Most common stereotypes, which lead to the gravest consequences, are about the roles of women and men in their relationships.

Often media represent perpetrators as victims of impulse or mentally ill⁵⁵⁷, as justifiably unable to contain their rage, and so they perpetuate the idea that such killings were private affairs or committed by men affected by a psychic illness. Instead in the last five years less than 10% of the femicides happened because of psychiatric reasons, and in less than 10% of the cases the motives were unemployment or economic issues⁵⁵⁸.

Therefore the outcomes of the annual research of the "Casa delle donne per non subire violenza di Bologna" on femicide reported by the press, as well as official data collected by Eures and those recorded in his Annual Report on Crime in Italy by Italian Home Secretary, all confirm that linking between violence against women and mentally ill or psychic suffering is a misrepresentation.

In Italy in 1992 violent deaths suffered by women were 15,3% of all the murders, while in 2006 they were 26,6%⁵⁵⁹.

Between 2006 and 2009, femicide victims identified by the researches on the press were 439. Among these, just in 15% of the cases the perpetrator was unknown to the victim⁵⁶⁰.

More than half of the cases, femicide occurs in intimate relationships and the perpetrator is husband, lover, former husband or former partner⁵⁶¹.

Remaining cases show the perpetrator is another relative of the victim or a man that she knew.

It is noticeable that femicides committed by Italian men in harm to Italian women are named "crimes of passion" while if the perpetrator and the victim are migrants, the femicide is called "honour crime".

This different classification is discriminatory because it leads to understand these crimes as culturally related, as a peculiarity of the foreign community and their different traditions, forgetting that the same custom of clearing the family honor and justifying these practices invoking clauses to get a reduction in penalty, was widespread in Italy till a few years ago.

Also statistics data highlight that behind femicide there is always a feeling of injured pride, jealousy, rage and wish to vindicate or punishment for apparent departures from the behavior patterns expected of women. There are no differences between this perceiving of "dishonouring" that causes women killing at the hand of an Italian perpetrator and a migrant perpetrator, apart from the role of the members of the community – usually young men often below the age of criminal responsibility – in the moral supporting of the perpetrator.

This aspect is very important for risk assessment in the case of young women escaping from the family.

In Italy femicides happen especially in the women's house⁵⁶², and every ten murders of women, 7,5 follow abuses, or other kind of psychological or physical violence⁵⁶³.

The official data on women victimization also draw a concerning situation: a ISTAT survey of 2004 remarks 55,2% of Italian women between 14 and 59 years suffered a sexual harassment throughout their life⁵⁶⁴.

Reliable data on sexual violence aren't available because just 7,4% of women reported to the police a sexual violence or attempted rape, so we have a "hidden side" to violence, in that it appears the number of cases reported and recorded is significantly lower than the actual number, overall about rapes in family⁵⁶⁵.

Male violence against women in Italy is mostly domestic violence because here, as well as in other

556 Spinelli B., "Maschi, perché uccidete le donne?", in G. Salvatore "Mia per sempre. Femminicidio e violenza sulle donne" Franco Angeli, 2011,

557 According to researches on the press in 2006 the 3,9 % of the femicides has been committed for mental problems ; in 2007 they were 5,5%, while 6,3% were motivated on raptus or insanity; in 2008 il 4,4% of the cases led to mental problems and 3,5% to raptus or insanity follia, in 2009 they were 18% for raptus, insanity, mental problems (here data are collected together). Sources are C.Karadole "Femminicidi in Italia nel corso del 2006: indagine sulla stampa italiana"; S.Giari "La mattanza: Femminicidi in Italia nel corso del 2007, indagine sulla stampa"; C.Verucci, C.Pasinetti, F.Urso, M.Venturini "Donne uccise dai loro cari: indagine sul femminicidio in Italia nel 2008"; S.Giari, C.Karadole, C. Verucci, C. Pasinetti "Femminicidi nel 2009: un'indagine sulla stampa italiana" all printed in www.casadonne.it nella sezione "materiali pubblicati".

558 In 2006, 3,9%; in 2007, 6,3%; in 2008, 11,5%; in 2009, 8%; Source: researches in www.casadonne.it as noted at n.5.

559 Report on Crime in Italy by Italian Home Secretary.

560 Source: researches in www.casadonne.it as noted at n.5.

561 In 2006, 7,9% of perpetrator aren't women relatives, in 2007, 12%, in 2008, 12,4% and in 2009 the 6%; Source: researches in www.casadonne.it as noted at n.5.

562 Source: researches in www.casadonne.it as noted at n.5; these data are available just for 2008 and 2009: in 2008 70,8% of the femicides occur in the victim's house; in 2009, 71% of the femicides occurred in the house of the woman, of her relatives or of the perpetrator.

563 Source: Eures-Ansa.

564 Source: Istat report 2004.

565 Source: Istat report 2006 "La violenza e i maltrattamenti contro le donne dentro e fuori la famiglia".

European country, though advanced law system, the concept of woman as wife and mother, as caretaker of the family and sexual and reproductive object is too shared in contemporary society. So when woman chooses self determination and escapes male humiliation, control and possession, physical violence and stalking increases. When a conflict arise in the couple, this becomes economic control, physical and psychological violence till the woman submission or her death.

The matter, as Cedaw Committee underlined, is a cultural matter and is necessary to eradicate a patriarchal culture to prevent femicide, that culture putting women in traditional and subordinate roles, both in private life, and in public, as a body available to erotic images, to her husband or to the community, dressed with covert or undressed, lover or prostitute.

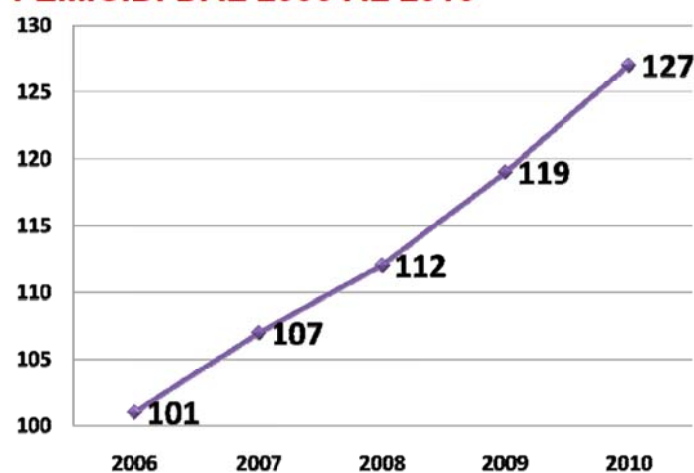
This culture and stereotypes on gender roles crossover each society and country and impede women protection because is often shared by authorities, institutions and social agencies that would joint actions, in respect of Cedaw principles, to eradicate violence against women⁵⁶⁶.

F.19.2.2. Surveys on press

The Association "Casa delle donne per non subire violenza di Bologna" has been promoting for five years a research on femicides reported by local and national press.

This statistics, even if the case collected are lower than the actual number because many cases aren't traced when victim is unidentified or perpetrator's guilty not ensured, is the lonely in Italy that collects data gender disaggregated about women killing because they are women.

FEMICIDI DAL 2006 AL 2010

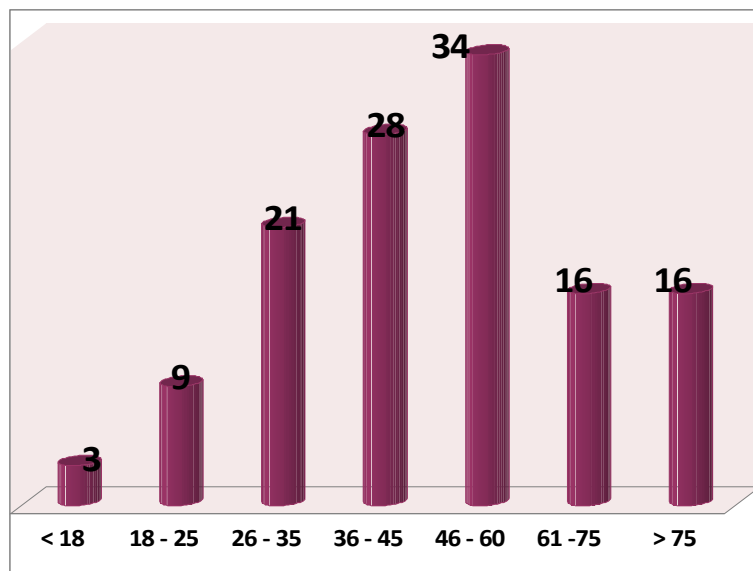


566 Spinelli B., "Un'analisi sulla violenza di genere in Italia alla luce delle Raccomandazioni del Comitato CEDAW.", report at Conference "Equal Opportunities and Gender Equality: Experiences in Italy and Turkey", Ankara, 15 th of April 2010

COUNTRIES OF ORIGIN OF WOMEN

COUNTRY	NUMBER	PERCENTAGE
ITALY	100	78%
ROMANIA	8	6%
ALBANIA	3	2%
PHILIPPINES	2	2%
BRAZIL	2	2%
POLAND	2	2%
PAKISTAN	1	1%
CUBA	1	1%
FORMER YUGOSLAVIA	1	1%
ROMA	1	1%
ECUADOR	1	1%
MOROCCO	1	1%
RUSSIA	1	1%
NIGERIA	1	1%
CHINA	1	1%

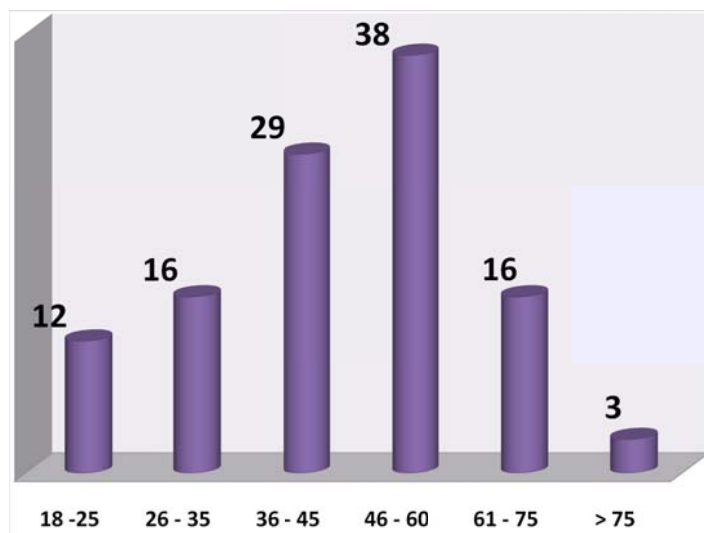
AGE OF WOMEN



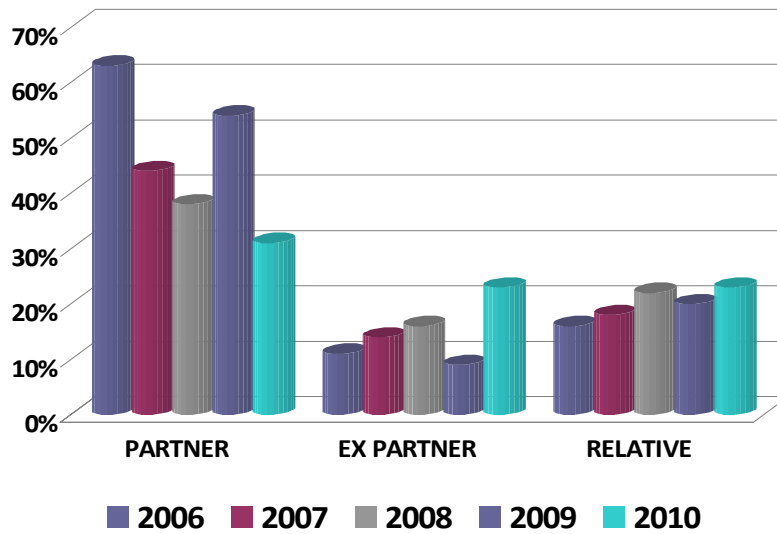
COUNTRIES OF ORIGIN OF MEN

COUNTRY OF ORIGIN OF MEN	NUMBER	PERCENTAGE
ITALY	95	79%
ALBANIA	4	3%
ROMANIA	3	2%
MOROCCO	2	2%
BULGARIA	2	2%
UCRAINA	1	1%
CROATIA	1	1%
PHILIPPINE	1	1%
PAKISTAN	1	1%
BOSNIA-HERZEGOVINA	1	1%
ECUADOR	1	1%
ROMA	1	1%
ARGENTINA	1	1%
UNKNOWN REPERIBILE	6	5%
AMOUNT	120	100%

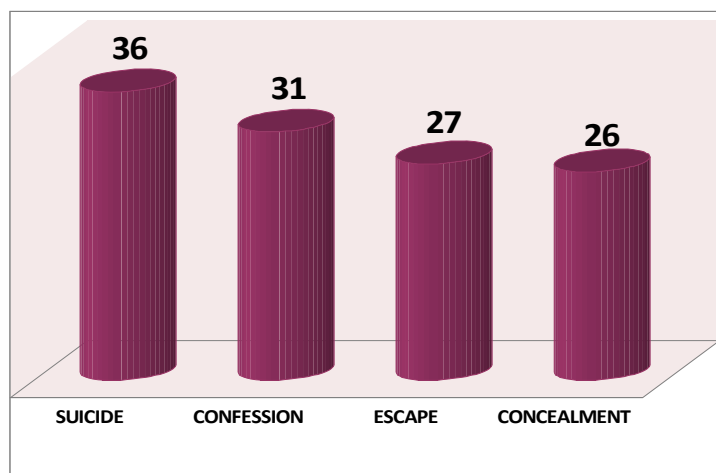
AGE OF MEN



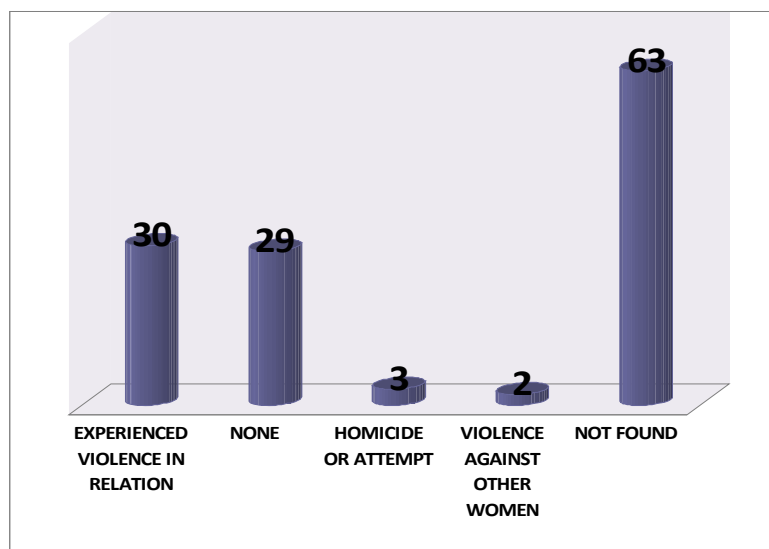
RELATIONSHIP BETWEEN VICTIM AND PERPETRATOR



MEN BEHAVIOR IN CONSEQUENCE OF FEMICIDE



PREVIOUS VIOLENCE



PROCESS 2006 – 2010 ON MOTIVES

MOTIVES	2006	2007	2008	2009	2010
SEPARATION	33%	17%	12%	31%* (including conflictual relationship)	19%
JEALOUSY	/	8%	/	11%	10%
RAPTUS	22%	6%	3%	18%	13%
CONFLICTUAL RELATIONSHIP	17%	25%	17%	/	12%
REFUSE	2%	3%	1%	3%	2%
EMPLOYMENT AND FINANCIAL ISSUES	4%	6%	11%	8%	12%

PROCESS 2006 – 2010 ON RELATIONSHIP

RELATIONSHIP	2006	2007	2008	2009	2010
PARTNER, LOVER	63%	44%	38%	54%	31%
FORMER	11%	14%	16%	9%	23%
FATHER, BROTHER, SON	14%	14%	14%	13%	14%
OTHER RELATIVES	2%	4%	8%	7%	9%
ACQUAINTANCE- COLLEAGUE	8%	12%	13%	4%	13%
CLIENT, EXPLOITER	2%	2%	1%	3%	4%
UNKNOWN	/	11%	10%	2%	4%

PROCESS 2006-2010 ON BEHAVIOR OF PERPETRATORS

BEHAVIOR	2006	2008	2009	2010
SUICIDE, ATTEMPT SUICIDE	33%	20%	41%	29%
CONFESSION	35%	36%	19%	24%
CONCEALMENT	33%	3%	19%	20%
ESCAPE	/	26%	17%	21%

GENERAL RECOMMENDATION 19 & ARTICLE 15 CEDAW FORCED MARRIAGES IN ITALY⁵⁶⁷

FM.19.1 LACK OF STATISTIC SURVEYS

Although immigration is not a very recent phenomenon in Italy, there are no nationwide statistic surveys on the diffusion of the practice of arranged and forced marriages. This deficiency makes it impossible to provide for specific measures in order to prevent forced marriages, protect the victims and effectively prosecute the related offences.

FM.19.2 FORCED MARRIAGES IN EMILIA ROMAGNA

Forced marriage affects both young men and women, but it is undeniable that young women and girls are subjected to a very stronger parental control than that imposed on their male counterparts.

The Emilia Romagna report highlighted 33 cases of forced marriage, and in only 3 of them the victim was a man. However, none of these three men opposed his parents' will or tried to escape or contacted the services for help. In general, life within a forced marriage is very likely to be much less of a plight for a husband than for a wife, because she is usually denied equal opportunities to get out and socialize, also outside her community.

The main characteristic feature of forced marriage is the strong control that the family exerts on the victim by means of threatening, violent and often criminal behaviours aiming at restraining the woman's freedom to choose a spouse or her freedom within marriage.

Two patterns of victimization emerge from the help requests received by governmental agencies.

The first and more frequent type includes girls who are in the last classes of upper secondary school in Italy. They fear, or know for sure, they will be brought back to their country of origin in order to marry a man chosen by their families; as they express their disagreement, they undergo such restrictions of their personal liberties as amount to criminal offences and, out of fear, they seek help from their teachers.

The second type includes girls and young women who got married, whether by consent or by deception, to a man chosen by their families in their country of origin, and then came back to Italy with their husbands; they cannot tolerate anymore a situation made of physical, psychological and sexual violence and deep moral suffering, and so they turn to social services for help.

In both cases, the problem is how to establish a safe, direct contact with the victim, and how to maintain it without putting at risk the woman's personal safety and without compromising her relationships with her family, in order to avoid the risk of losing her trail, should her family put a stronger control on her, also by forcing her to go back to their country of origin.

FM.19.2.1 Concerned communities

According to the Emilia Romagna report, the majority of the requests of protection from forced marriages was made by women from **Moroccan (12)**, **Pakistani (5)** and **Indian (5)** communities. There was only one case involving an Italian woman.

FM.19.3 OPEN ISSUES

The Emilia Romagna report emphasized various factors which make the victims of forced marriage much more vulnerable than the victims of other forms of domestic violence. Women are at serious risk of committing or attempting suicide, and of being imprisoned and held in a slavery condition by their families, and also abducted to their country of origin.

In particular, the research highlighted the following critical points.

- For the victim it is often very difficult to report being forced into marriage, or a threat or attempt to force her into marriage.
- Social and educational agencies, including intercultural mediators face a difficulty in providing both emergency and long-term support to the victims, due to lack of specific training.
- Survivors face many problems in their process of liberation from violence and empowerment:
 - a) immigration law obstacles relating to the woman's legal presence in Italy: families often take away or even destroy the woman's ID; the woman is often on spousal visa, a measure which has the devastating effect of locking the victim into abusive relationships for fear of losing her legal status

567 B. SPINELLI, Fact sheet referring to **Question n.14 and 30 of the CEDAW Committee**. This fact sheet is based on the following documents: Daniela DANNA and Associazione TRAMA DI TERRE, "Per forza, non per amore": I matrimoni forzati in Emilia-Romagna ['By force, not love': Forced marriages in Emilia-Romagna] (in this text "the Emilia Romagna report") Research abstract available in English on: <http://www.tramaditerre.org/tdt/docs/1939.pdf> and Barbara SPINELLI, 'La tutela delle donne vittime di matrimoni forzati in Italia: il quadro giuridico' [Protecting women victims of forced marriages in Italy: the legal framework], address to the international conference on forced marriage 'Per forza, non per amore' ['By force, not love'], July 27th, 2011, Imola (BO), Italy, video will be published online on: www.tramaditerre.org.

- if she leaves her husband;
- b) obstacles relating to the victim's age: many forms of legal protection are only available for under age persons; this problem particularly affects women over 18 on spousal visa;
 - c) financial obstacles relating to the lack of public funds for social services and for specific social reintegration programmes, such as those provided for the victims of human traffic;
 - d) Bureaucratic obstacles due to the impossibility for the victim to change her identity when escaping forced marriage or domestic violence;
 - e) structural obstacles relating to the lack of shelters for victims of forced marriage, who are at higher risk of harassment and stalking, and therefore need stronger safety measures, than victims of other forms of domestic violence.
- It is very hard to reconcile the victim's need for special protection with her reluctance to file a formal complaint against her own parents or otherwise triggering criminal proceedings against them, even in case of grave abuses such as ill-treatment, abduction, assault.
 - Current Italian immigration laws make it very difficult to prevent the victims to be forcibly sent back to their countries of origin, or to help them return to Italy.
 - There are legal obstacles and long delays in preventing the recognition, or obtaining the annulment in Italy of forced marriages that have been celebrated in the country of origin.

WE RECOMMEND:

- **Promoting statistic surveys in order to establish the incidence of forced marriage amidst the population.**
- **Adopting a national plan against forced marriage. The plan should:**
 - developed in close co-operation with relevant NGOs and migrant and native women's groups;
 - ring-fence adequate funding for programmes of exit from violent relationships and social and occupational reintegration for the victims;
 - include public campaigns to raise awareness about the problem;
 - establish specific training for educational and social agencies (including intercultural mediators) and law enforcement and justice agencies;
 - be implemented through formal co-operation agreements involving all the relevant State and non-State actors.

Implementing Council of Europe Parliamentary Assembly Recommendation 1723 (2005) 'Forced marriages and child marriages:

- **prevention campaigns in primary, secondary and upper secondary schools, aiming both at a general audience and at those particularly concerned and suited to the age of the pupils targeted, informing them of their rights and especially of sexual and reproductive rights such as the right to make up one's own mind with regard to marriage, the right to choose one's future partner and the right not to marry before 18 years of age;**
- **Informing persons under threat of forced marriage of the practical steps to be taken to forestall marriage, such as placing their passport in safe keeping, lodging a complaint of theft of papers in the event of confiscation by their family and giving the address of the proposed holiday location;**
- **Providing emergency reception facilities where people liable to be forcibly married can be heard, cared for and accommodated, shielding them from the pressure brought to bear by others;**
- **Financial support to women's groups and other non-governmental organisations that assist and support shelter and protect potential or actual victims;**
- **Aid victims in their physical and psychological recovery;**
- **Punishing the persons who aid and abet the contracting of a forced or a child marriage, considering as an aggravating circumstance the victim's dependency on these persons;**

- **Check the validity of any marriage celebrated abroad, making its transcription subject to the presence of both spouses and authorising the diplomatic staff to interview either or both spouses beforehand.**
- **Implementing Council of Europe Parliamentary Assembly Recommendation 1468 (2005) 'Forced marriages and child marriages':**
- **Make it compulsory for every marriage to be declared and entered by the competent authority in an official register;**
- **Instituting an interview between the registrar and the bride and groom prior to the celebration of the marriage and allow a registrar who has doubts about the free and full consent of either or both parties to summon either or both of them separately to another meeting;**
- **Refraining from recognising forced marriages and child marriages contracted abroad except where recognition would be in the victims' best interests with regard to the effects of the marriage, particularly for the purpose of securing rights which they could not claim otherwise;**
- **Making automatic, or at least facilitate, the annulment of forced marriages;**
- **Laying down a maximum period of one year, in so far as practicable, to investigate and rule on an application for annulment of a forced marriage or a child marriage.**

Implementing Council of Europe Parliamentary Assembly Resolution 2006/2010(INI) 'Female immigration: Role and status of migrant women in the European Union':

- **Promoting information campaigns targeting migrant women at national, regional and local level, with the aim of preventing forced, early and arranged marriages, female genital mutilations (FGMs) and other forms of psychological or physical coercion. Campaign materials should use a simple, accessible style and be available in the languages of the main migrant communities;**
- **In the procedures of recognition of autonomous legal status to migrant women, giving special consideration to the cases of physical, sexual or psychological violence, including forced, early or arranged marriages, in compliance with Council of Europe Regulation 2004/81/CE Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities; and ensure the enforcement of all civil protection measures, including full access to assistance and protection mechanisms;**

Implementing Council of Europe Parliamentary Assembly Resolution 1662 (2009) 'Action to combat gender-based human rights violations, including the abduction of women and girls':

- **Collecting statistics on forced marriages and other gender-based human rights violations, and ensuring that the results are analysed and followed up;**
- **Promoting networking among social and political players with a view to exchanging information, and encourage concerted public action;**
- **Implementing preventive measures, which might include:**
 - a. **awareness-raising and training programmes for women and girls and their family circles on respect for fundamental rights, the promotion of equality between women and men and the fight against practices, in particular gender-based practices, which are contrary to human rights;**
 - b. **information targeted at the communities concerned and made available in their languages about laws and best practices in the host country, highlighting the risks incurred by offenders and the protection arrangements that exist;**
 - c. **information targeted at girls and women from the communities concerned, including those undergoing full-time education at school or university, about the protection arrangements available**

- in the host country;*
- d. *support for non-governmental organisations with a view to informing immigrant communities about any improvements in the law with regard to women's rights that might have occurred in the countries of origin and any changes in attitudes;*
 - e. *arrangements to assist victims, particularly by increasing the number of women's refuges, so as to ensure their protection (shelters, helplines) and their social and occupational reintegration after their return to their home country;*
 - f. *awareness-raising and training programmes on gender-related violence for police forces (including border police), court staff, the civil and criminal judiciary, and employees of health systems;*
 - g. *an early-warning system which would enable relatives, friends and other persons in connection with the victims, or potential victims, of gender-based violence to alert the authorities in the country of residence (and, where appropriate, its consular missions) to abductions, illegal confinements and any forced or arbitrary return of these victims to their countries of origin by their families. The authorities should launch an official investigation on such allegations and, where possible, provide for victim protection measures, such as issuing an order prohibiting the victims or potential victims from leaving the country;*
- ***Introducing legal measures which make it simpler to prosecute perpetrators of the criminal offence of domestic violence against women and children;***
 - ***Increasing awareness of the consular staff, through training and practical guides, of gender equality issues in the countries of origin, of the existing statutory arrangements concerning women's rights and their application, and of the serious risks facing women and girls who, in the name of practices contrary to human rights, are forcibly or arbitrarily returned to their countries of origin;***
 - ***Developing, for consular staff in particular, clear response protocols, setting out the procedures for locating and identifying victims, for facilitating their access to the consulate of the country where they are habitually resident and for facilitating their return and reintegration;***
 - ***Developing co-operation procedures with the national and local authorities in the countries of origin encouraging them to intercede with the families concerned so as to prevent or stop human rights violations and, where appropriate, impose the penalties prescribed by law;***
 - ***Introducing co-operation programmes with non-governmental organisations in the countries of origin in order to enable victims to be located and identified and to facilitate the establishment of contacts with the victim's family;***
 - ***Speeding up the granting of a return visa to any woman or girl who is the victim of a violation of human rights, particularly when her original residence permit has expired;***
 - ***Stepping up co-operation with the authorities of the countries of origin and, through training programmes and financial assistance for example, encourage them to:***
 - a. *amend their legislation, if they have not yet done so, to prohibit any ritual or customary practices contrary to human rights in accordance with international legal instruments, particularly the UN Declaration on the Elimination of Violence Against Women (DEVAW) and the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW);*
 - b. *enact laws to ensure women's empowerment and gender equality and combat violence against women;*
 - c. *pursue vigorous policies to raise public awareness of this legislation and ensure its effective application, both in urban and rural areas;*
 - d. *support non-governmental organisations in host countries and countries of origin, which play a vital role in prevention and assistance in this area and can act as a bridge between immigrant communities and their countries of origin.*